# A.

# Finance Commission

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# FINANCE COMMISSION OF TEXAS

**MEETING DATE** ..... **October 20, 2017**

**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** ..... December 15, 2017
February 16, 2018
April 20, 2018
June 15, 2018
August 17, 2018
October 19, 2018
December 14, 2018

*** 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, October 20, 2017
8:30 a.m. or upon adjournment of the Audit Committee (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 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 August 18, 2017 Finance Commission Meeting***

2. General Public Comment

3. Consent Agenda

4. Presentation by the Sunset Advisory Commission

5. Finance Commission Operations

6. Audit Committee Report

   A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' August 31, 2017 Investment Officer Reports

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

   B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2017 Fourth Quarter Financial Statements

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

   C. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Readoption of the Investment Policies for:

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

D. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Amount of Funds the Department of Savings and Mortgage Lending will Contribute to the Texas Financial Education Endowment Fund

E. Discussion of and Possible Vote to Award Final Selection of Organizations, to Receive Grant Funds in an Aggregate Amount Not to Exceed $250,000 From the Texas Financial Education Endowment Fund

7. Discussion of and Possible Vote to Accept the Report on the Financial Condition of the State Banking System *(Note: Report provided separately)*

8. Discussion of and Possible Vote to Take Action on the Accomplishment Reports for Fiscal Year 2017 for the Commissioners of the Texas Department of Banking, Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner

9. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments, a New Section, and a Repeal in 7 TAC, Part 8, Chapter 153, Concerning Home Equity Lending

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

11. 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

12. Discussion and Consultation with Attorney and Possible Vote to Take Action Pursuant to §551.071, Texas Government Code, for the purpose of seeking the advice or attorney-client privileged communications from our attorneys, including matters related to the potential financial exposure of the Finance Commission Agencies and their officers and the Finance Commission and its officers and including matters of pending and contemplated litigation

**B. TEXAS DEPARTMENT OF BANKING**

1. Industry Status and Departmental Operations: a) Items of Interest from the Commissioner's Office; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Special Audits Division Activities; e) Administrative and Fiscal Division Activities; f) Strategic Support Division Activities; g) Legal Division Activities; h) Legislative Activities; and i) General Items of Interest

2. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 2, §15.81 Concerning Application for Acquisition or Change of Control of State Bank

3. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, §33.27 Concerning Fees for Money Service Business Licenses

4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, §§33.3, 33.13, 33.15, 33.27, 33.51 and New §§33.71 – 33.75 Concerning Bullion Depository Agents

## C. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

1. Industry Status and Departmental Operations - State Savings Bank Activity: a) Industry Status; b) State Savings Bank Charter and Application Activity; c) Other Items

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

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

4. Legal Activity: a) Enforcement; b) Gift Reporting; and c) Legislative Activities

5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, §80.2, Concerning Definitions, and New Rule §80.206, Concerning Physical Offices

6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, §80.200, Concerning Required Disclosures

7. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, §81.2, Concerning Definitions, and New Rule §81.206, Concerning Physical Offices

8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New Rule in 7 TAC, §81.109, Concerning Pre-licensing Education

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

## D. OFFICE OF CONSUMER CREDIT COMMISSIONER

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

2. ***Discussion of and Possible Vote to Take Action on the Adoption of the Repeal of 7 TAC, Part 1, Chapter 4, Concerning Credit Card Surcharge Appeal Procedures***

3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments, New Rules, and Repeals in 7 TAC, Part 5, Chapter 89, Concerning Property Tax Lenders, Resulting from Rule Review

4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New §2.107 in 7 TAC, Part 1, Chapter 2, Concerning Residential Mortgage Loan Originators Applying for Licensure with the OCCC Under the SAFE Act

5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 5, §83.503 & §90.203 Concerning Regulated Lenders & Plain Language Contract Provisions

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

*Lynn Rowell d/b/a Beaumont Greenery, MPC Data and Communications, Inc., Micah Cooksey, NXT Properties, Inc., Mark Harken, Montgomery Chandler, Inc., Paula Cook, Townsley Designs, LLC, and Shonda Townsley v. Ken Paxton, in his official capacity as Attorney General of the State of Texas*; Cause No. 1:14-cv-00190-LY, in the United States District Court, Western District of Texas, Austin Division

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

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

**MINUTES OF THE**
**FINANCE COMMISSION MEETING**
**Friday, August 18, 2017**

The Finance Commission of Texas convened at 9:45 a.m. on August 18, 2017 with the following members present:

**Finance Commission Members in Attendance:**
Stacy G. London, Chairman
Jay Shands, Vice Chairman
Bob Borochoff
Hector Cerna
Molly Curl
Phillip Holt
Will Lucas
Lori McCool
Matt Moore
Paul Plunket
Vince E. Puente

Finance Commission Chairman Stacy G. London announced a quorum with eleven members present. (00:01) start of discussion)

| AGENDA ITEM | ACTION | LOCATION ON AUDIO FILE |
|---|---|---|
| **A. FINANCE COMMISSION MATTERS** | | |
| 1. Review and Approval of the Minutes of the June 16, 2017 Finance Commission Meeting | **On Consent Agenda – Item A1** This item Approved on the Consent Agenda. | 00:33 start of discussion |
| 2. General Public Comment | No Action Required. | 00:05 start of discussion |
| 3. Consent Agenda – Items A1, B2, and B3 | Molly Curl made a motion to Approve Consent Agenda items A1, B2, and B3. Will Lucas seconded and the motion passed. | 00:42 start of discussion<br>00:55 vote |
| 4. Finance Commission Operations | No Action Required. | 1:19 start of discussion |
| 5. Audit Committee Report | | 03:25 start of discussion |

| AGENDA ITEM | ACTION | LOCATION ON AUDIO FILE |
|---|---|---|
| A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' May 31, 2017 Investment Officer Reports<br><br>1. Office of Consumer Credit Commissioner<br>2. Texas Department of Banking<br>3. Department of Savings and Mortgage Lending | Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies' May 31, 2017 Investment Officer Reports passed. | 03:27 start of discussion<br><br>03:44 vote |
| B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Texas Department of Banking's 2017 Annual Internal Audit Report as Prepared and Presented by Garza/Gonzalez and Associates | Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Texas Department of Banking's 2017 Annual Internal Audit Report as Prepared and Presented by Garza/Gonzalez and Associates passed. | 03:54 start of discussion<br><br>04:01 vote |
| C. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Office of Consumer Credit Commissioner's 2017 Annual Internal Audit Report as Prepared and Presented by Garza/Gonzales and Associates | Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Office of Consumer Credit Commissioner's 2017 Annual Internal Audit Report as Prepared and Presented by Garza/Gonzales and Associates passed. | 04:11 start of discussion<br><br>04:22 vote |
| D. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2017 Third Quarter Financial Statements<br><br>1. Office of Consumer Credit Commissioner<br>2. Texas Department of Banking<br>3. Department of Savings and Mortgage Lending | Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies' 2017 Third Quarter Financial Statements passed. | 04:27 start of discussion<br><br>04:35 vote |

| AGENDA ITEM | ACTION | LOCATION ON AUDIO FILE |
|---|---|---|
| E. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' Fiscal Year 2018 Operating Budgets<br><br>1. Office of Consumer Credit Commissioner<br>2. Texas Department of Banking<br>3. Office of Savings and Mortgage Lending | Coming upon Recommendation from the Audit Committee, no second is needed and the motion to Approve the Agencies' Fiscal Year 2018 Operating Budgets passed. | 04:46 start of discussion<br><br>04:54 vote |
| F. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action to Approve an Amount for the Upcoming 2018-19 Grant Cycle for the Texas Financial Education Endowment Fund | Coming upon Recommendation from the Audit Committee, no second is needed and the motion to Approve $250,000 for the Upcoming 2018-19 Grant Cycle for the Texas Financial Education Endowment Fund passed. | 05:02 start of discussion<br><br>05:14 vote |
| G. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Readoption of the Investment Policy for the Texas Department of Banking | Coming upon Recommendation from the Audit Committee, no second is needed and the motion to Approve the Readoption of the Investment Policy for the Texas Department of Banking passed. | 05:24 start of discussion<br><br>05:35 vote |
| 6. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 1, Chapter 9, §9.1 and §9.12, Regarding Contested Case Procedures | Will Lucas made a motion to Approve the Adoption of Amendments to 7 TAC, Part 1, Chapter 9, §9.1 and §9.12, Regarding Contested Case Procedures. Bob Borochoff seconded and the motion passed. | 08:01 start of discussion<br><br>28:05 vote |
| 7. Discussion of and Possible Vote to Take Action on the Agency Priorities for Fiscal Year 2018 for the Commissioners of the Office of Consumer Credit Commissioner, Texas Department of Banking, and the Department of Savings and Mortgage Lending | Will Lucas made a motion to Approve the Agency Priorities for Fiscal Year 2018 for the Commissioners of the Office of Consumer Credit Commissioner, Texas Department of Banking, and the Department of Savings and Mortgage Lending. Jay | 28:21 start of discussion<br><br>29:19 vote |

| AGENDA ITEM | ACTION | LOCATION ON AUDIO FILE |
|---|---|---|
| | Shands seconded and the motion passed. | |
| 8. Discussion of and Possible Vote of a Resolution Supporting the Finance Commission Agencies in the Sunset Process | Jay Shands made a motion to Approve a resolution supporting the Finance Commission Agencies in the Sunset process. Vince Puente seconded and the motion passed.<br><br>Jay Shands made a second motion to amend the resolution to change the word "uniformly" to "unanimously."<br><br>Paul Plunket made a third motion to amend the language to the resolution by adding: "Whereas, the three Finance Commission agencies file annual and biennial reports with the Office of the Governor, the Texas Legislature, and the Legislative Budget Board." Bob Borochoff seconded and the motion passed. | 35:30 start of discussion<br><br>46:50 vote |
| 9. Discussion of and Possible Vote to Take Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Duties and Compensation of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to the Duties and Compensation of Persons Holding the Position of Agency Commissioner Positions, and Other Staff | Deferred to Executive Session – no vote taken. | n/a |
| 10. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to §551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property | Deferred to Executive Session – no vote taken. | n/a |

| AGENDA ITEM | ACTION | LOCATION ON AUDIO FILE |
|---|---|---|
| 11. Discussion and Consultation with Attorney and Possible Vote to Take Action Pursuant to §551.071, Texas Government Code, for the purpose of seeking the advice or attorney-client privileged communications from our attorneys, including matters related to the potential financial exposure of the Finance Commission Agencies and their officers and the Finance Commission and its officers and including matters of pending and contemplated litigation | Deferred to Executive Session – no vote taken. | n/a |
| **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. | 48:17 start of discussion |
| 2. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New Rules in 7 TAC, Part 1, Chapter 7, Concerning the Texas Financial Education Endowment Fund | **On Consent Agenda – Item B2**<br>This item approved on the Consent Agenda. | n/a |
| 3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 5, Chapter 84, Concerning Motor Vehicle Installment Sales, and the Adoption of a New Rule in Chapter 86, Concerning Retail Creditors | **On Consent Agenda – Item B3**<br>This item approved on the Consent Agenda. | n/a |
| 4. Discussion of and Possible Vote to Take Action on the Proposed Repeal of 7 TAC, Part 1, Chapter 4, Concerning Credit Card Surcharge Appeal Procedures | Will Lucas made a motion to Approve the Proposed Repeal of 7 TAC, Part 1, Chapter 4, Concerning Credit Card Surcharge Appeal Procedures. Phillip Holt seconded and the | 1:07:01 start of discussion<br>1:08:17 vote |

| AGENDA ITEM | ACTION | LOCATION ON AUDIO FILE |
|---|---|---|
| | motion passed. | |
| 5. Discussion of and Possible Vote to Take Action on the Completed Rule Review of 7 TAC, Part 5, Chapter 89, Concerning Property Tax Lenders | Lori McCool made a motion to Approve the Completed Rule Review of 7 TAC, Part 5, Chapter 89, Concerning Property Tax Lenders. Will Lucas seconded and the motion passed. | 1:08:42 start of discussion<br>1:26:01 vote |
| 6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments, New Rules, and Repeals in 7 TAC, Part 5, Chapter 89, Concerning Property Tax Lenders, Resulting from Rule Review | Lori McCool made a motion to Approve the Proposal and Publication for Comment of Amendments, New Rules, and Repeals in 7 TAC, Part 5, Chapter 89, Concerning Property Tax Lenders, Resulting from Rule Review. Molly Curl seconded and the motion passed. | 1:26:33 start of discussion<br>1:26:45 vote |
| 7. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation<br><br>*Lynn Rowell d/b/a Beaumont Greenery, MPC Data and Communications, Inc., Micah Cooksey, NXT Properties, Inc., Mark Harken*<br>*Micah Cooksey, NXT Properties, Inc., Mark Harken, Montgomery Chandler, Inc., Paula Cook,Townsley Designs, LLC, and*<br>*Shonda Townsley v. Leslie L. Pettijohn, in her official capacity as Commissioner of the Office of Consumer Credit Commissioner of the State of Texas*; Cause No. 1:14-cv-00190-LY, in the United States District Court, Western District of Texas, Austin Division | No Action Required. | n/a |
| **C. TEXAS DEPARTMENT OF BANKING** | | |
| 1. Industry Status and Departmental Operations: a) Items of Interest from the Commissioner's Office; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Special Audits Division Activities; | No Action Required. | 1:27:16 start of discussion |

| AGENDA ITEM | ACTION | LOCATION ON AUDIO FILE |
|---|---|---|
| e) Administrative and Fiscal Division Activities; f) Strategic Support Division Activities; g) Legal Division Activities; h) Legislative Activities; and i) General Items of Interest | | |
| **D. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING** | | |
| 1. Industry Status and Departmental Operations - State Savings Bank Activity: a) Industry Status; b) State Savings Bank Charter and Application Activity; c) Other Items | No Action Required. | 1:47:43 start of discussion |
| 2. Industry Status and Departmental Operations – Mortgage Lending Activity: a) Residential Mortgage Loan Originators; b) Mortgage Examination; c) Consumer Complaints; and d) Other Items | No Action Required. | 1:49:13 Start of discussion |
| 3. Fiscal/Operations Activity: a) Funding Status/Audits/Financial Reporting; b) Staffing; and c) Other Items | No Action Required. | 1:59:00 Start of discussion |
| 4. Legal Activity: a) Enforcement; b) Gift Reporting; and c) Legislative Activities | No Action Required | 1:59:54 Start of discussion |
| 5. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation | No Action Required | n/a |

Chairman Stacy G. London called for an Executive Session at 12:00 p.m. *(2:05:31 on the audio file)*. The open meeting resumed at 12:55 p.m. (2:05:53 *on the audio file).*

There being no further business, Chairman Stacy G. London adjourned the meeting of the Finance Commission at 12:56 p.m. *(2:06:52) on the audio file).*

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Stacy G. London, Chairman
Finance Commission of Texas

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Charles G. Cooper, Commissioner
Texas Department of Banking

_____

Anne Benites, Executive Assistant
Finance Commission of Texas

Finance Commission of Texas

# Consent Agenda

October 20, 2017

## A. Finance Commission Matters

1. Review and Approval of the Minutes of the August 18, 2017, Finance Commission Meeting

## D. Office of Consumer Credit Commissioner

2. Discussion of and Possible Vote to Take Action on the Adoption of the Repeal of 7 TAC, Part 1, Chapter 4, Concerning Credit Card Surcharge Appeal Procedures

# Future Meetings Rule Schedule

| Rules | Short Title/Purpose | Projected Proposal Date for Presentation to Finance Commission | Agency |
|---|---|---|---|
| 7 TAC, Part 1, Chapter 10 | Contract Procedures<br>*New Rule* | 12/15/17 | FC Agencies |
| 7 TAC, Part 5, Chapter 88 | Consumer Debt Management Services<br>*Rule Review* | 12/15/17 | OCCC |

# Overview of the Sunset Process in Texas

2018-2019 Review Cycle

# What is Sunset?

- **Created in 1977 by the Texas Legislature**
- **A key tool for the Legislature to oversee state agencies and improve how Texas government works**
- **Agencies under Sunset are abolished unless continued by the Legislature**
  - Forces critical thinking about the need for and performance of an agency
  - Not just about abolishment - creates strong incentive to pass reforms



# Which agencies go through Sunset?

- **About 130 agencies subject to Sunset**
  - Most executive branch agencies
  - Universities and courts are exempt
  - Some special purpose reviews (ex. river authorities)
- **Legislature sets Sunset schedule in law, usually every 12 years for each agency**
- **20–30 agencies under review each biennium**



# Current Review Schedule

**2018-2019 Review Cycle (86th Legislative Session)**

- Texas State Board of Public Accountancy
- Appraiser Licensing and Certification Board
- Funeral Service Commission
- Texas Board of Professional Geoscientists
- Texas Historical Commission
- Texas Board of Professional Land Surveying
- Library and Archives Commission
- Texas State Board of Plumbing Examiners
- Real Estate Commission
- State Office of Risk Management
- School Land Board
- State Securities Board
- Veterans' Land Board
- Windstorm Insurance Association

***Major Reviews:***

- Department of Public Safety
- Department of Motor Vehicles
- Texas Alcoholic Beverage Commission
- Finance Commission
  - Savings and Mortgage Lending Commissioner
  - Banking Commissioner
  - Consumer Credit Commissioner
- Texas Military Department
- Texas Veterans Commission

***River Authorities:***

- Guadalupe-Blanco River Authority
- Lower Colorado River Authority
- Nueces River Authority
- Red River Authority



# Who Is Sunset?

12-Member Commission

5 Senators — ***4-year terms*** — 5 Representatives

&

1 Public Member — ***2-year terms*** — 1 Public Member

Appointed by the Lieutenant Governor

Appointed by the Speaker of the House

*Chair and Vice Chair rotate between the Senate and House each biennium.*

Staff of 30 supports the Sunset Commission members.

# Current Sunset Members

(as of 10/10/2017 - Pending appointments for 2018–2019 Review Cycle)

**SENATE**

- Sen. Kirk Watson
- Vacant
- Vacant
- Vacant
- Vacant
- Vacant, *Public Member*

**HOUSE**

- Rep. Dan Flynn
- Rep. Senfronia Thompson
- Vacant
- Vacant
- Vacant
- Vacant, *Public Member*

## Sunset Process – Three Phases

*Public involvement throughout!*

- **Phase 1:** Sunset staff evaluation
- **Phase 2:** Sunset Commission deliberation
- **Phase 3:** Legislative Action

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## What Standards Guide a Sunset Review?

- Criteria in the Texas Sunset Act (Texas Government Code, Chapter 325)
- Across-the-Board "Good Government" Provisions
- Model Standards for Licensing and Regulatory Agencies
- Industry-specific best practices

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## Impact of Sunset Since 1977

- **Streamlining state government**
  - 39 agencies/programs abolished outright
  - 46 agencies/programs consolidated
- **Saving taxpayers money**
  - $981 million in savings and increased revenues
  - Returned $21 for every $1 spent on Sunset
- **Providing effective oversight**
  - Conducted 500 reviews of state agencies and programs
  - About 80% of the Sunset Commission's recommendations typically become law
  - Major reforms in every area of government

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## www.sunset.texas.gov

- Information and flow charts on how Sunset works
- Dedicated page for each agency currently under review
- Public input forms to submit comments on an agency under review
- Sunset Commission meeting schedule
- Database of all previous Sunset reviews, reports, and results

*Sign up for our e-mail lists, and follow @TX_Sunset on Twitter, LinkedIn, and Facebook for announcements*

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## Contact Us

- **Email:** sunset@sunset.texas.gov
  **Phone:** (512) 463-1300
  **Fax:** (512) 463-0705
- **Physical Address**: Sunset Advisory Commission, 1501 North Congress Avenue, 6th Floor, Robert E. Johnson Building, Austin, Texas 78701
- **Mailing Address:** Sunset Advisory Commission, PO Box 13066, Austin, Texas 78711

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# Questions?

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Charles G. Cooper
Commissioner

**TEXAS DEPARTMENT OF BANKING**

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

**M E M O R A N D U M**

TO: The Finance Commission

FROM: Charles G. Cooper, Commissioner

DATE: October 9, 2017

RE: Department of Banking Priorities for Fiscal Year 2017 – With Year-End Accomplishments

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## I. LEGISLATIVE – *State and National Legislative Issues*

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

Measure: To the extent legally permissible, respond accurately and timely to all requests for resource information. Maintain contact with legislative committee chairs and staff. Testify at hearings as requested.

Update

- *The Commissioner provided written and oral testimony to the House Investments and Financial Services Committee on February 28, 2017.*
- *Agency staff briefed legislative offices on bills affecting the industries regulated by the agency and when requested served as resource witnesses at hearing.*
- *The agency also responded to requests during the Special Session.*

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

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

Update

- *Members were provided an email each Monday during the session of bills the agency ranked as a high priority for the agency or the Finance Commission. The email also included information on upcoming hearings.*
- *Updates were provided at each Finance Commission meeting during the regular legislative session. Agency staff provided the Finance Commission a*

*briefing session on February 16, 2017 regarding agency responsibilities, legislative actions and hot button issues. Agency staff also provided the Finance Commission a summary of enrolled bills affecting the agency and its regulated entities on June 16, 2017.*

I.3 Objective: Monitor state legislation that may affect the agency or its regulated entities. Make recommendations for state legislative changes to address areas that the law does not adequately address, correct technical errors and modernize outdated statutes.

Measure: Monitor interim charges and meet with stakeholders to determine if legislative changes are needed. Prepare draft bill proposals as necessary for legislative staff consideration. Monitor legislation and provide technical assistance and comprehensive resource materials when requested. Begin implementation of any legislation that directly affects the agency or the industries we regulate.

Update

- *Provided input for interim charge reports.*
- *Participated in the preparation of four bills that affect entities regulated by the agency.*
- *Monitored/tracked 306 bills.*
- *Completed 61 fiscal notes.*
- *Began drafting rules implementing legislation concerning savings promotion raffles and Texas bullion depository.*
- *Issued letter to other states' financial service regulators informing them of legislation concerning trust company activities.*

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

II.1 Objective: Meet key performance measures.

Measure: Continue to meet or exceed the strategic planning goals for key performance measures. Quarterly, report results to the Finance Commission.

Update

- *Quarterly, key performance measure results were reported in the Finance Commission packets. The non-key measures will be presented at the October meeting.*
- *The agency has met or exceeded all its key performance measures for fiscal 2017.*

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

Measure: Maintain active contact with other states individually and through regulatory associations (CSBS and MTRA), trade associations (IBAT and TBA) and frequent contact with federal regulators so as to be aware of events, decisions, other

state and federal policies and other areas of actual or potential impact on the Department's regulatory functions or the industry. Take proactive steps to respond as issues arise affecting the industries or our supervisory duties.

Update

- *Agency staff continues to remain active in key activities of these groups through participation in committees, events, conference calls, and training.*
- *Attorneys from the Legal Division attended the October and February meetings of the Uniform Law Commission Committee on Regulation of Virtual Currency Businesses.*
- *On April 1, Commissioner Cooper was elected Chair of the Multi-State Exam Task Force (MMET).*
- *During the week of April 24, Special Audits staff were instructors at the MTRA Operations Training School held in Austin attended by approximately forty-one MSB examiners from various states.*
- *On June 22, Commissioner Cooper testified before the Senate Committee on Banking, Housing and Urban Affairs in Washington, D.C. The hearing dealt with a call to end the one-size-fits-all bank regulation and instead tailor regulations to diverse kinds of banks.*
- *For two weeks beginning August 25, the Department participated in a coordinated exercise to reach out to the banking industry and determine the extent of the impact of Hurricane Harvey, assess the availability of banking services to the public, and to communicate a streamlined emergency closure process. The exercise included twice-daily conference calls with bank, savings bank, and credit union regulators from multiple states, all federal bank regulatory agencies, and industry trade groups.*
- *Corporate staff participated on a committee of state MSB regulators to collectively review a change of control application of a large MSB.*

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

Measure: Perform research, maintain ongoing dialogue with other regulators, and attend training to maintain an understanding of conditions in which our entities operate. Maintain a leading role in the effort to combat cybersecurity threats. Maintain an off-site monitoring program of bank and trust industries while initiating appropriate regulatory responses and actions when applicable. Research and take required actions against institutions with unacceptable risk profiles to minimize the adverse impact on depositors, shareholders and the banking system in general.

Update

*Agency staff continues to closely monitor bank industry conditions for potential adverse trends. As of June 30, 2017, staff was monitoring the impact of lower energy prices on 24 institutions that have been identified as having higher risk characteristics. These institutions submit quarterly worksheets that quantify the dollar volume of direct/indirect energy loans, problem energy credits, charge offs,*

*price decks, and total adversely classified assets. The agency also is monitoring institutions with high concentrations in commercial real estate and performs an intensive work program at on-site examinations. In response to damage caused by Hurricane Harvey, the agency issued two proclamations authorizing affected offices to close, and an order authorizing affected banks to open temporary offices required for the prompt restoration of access to banking services. The agency continues to closely monitor banks for lasting effects of the storm.*

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

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

Update

*The Finance Commission is given a briefing at each meeting about industry conditions regarding regulated entities. In addition, agency personnel actively participate in industry meetings and events and provide feedback to bankers through participation in regulatory panels and speaking engagements.*

- *Legal, Special Audits and Corporate continue to participate in the Licensing/MTRA Emerging Issues Committee.*
- *PFC/PCC staff continues to participate in the North American Death Care Regulators Association (DCRA).*
- *Legal, Special Audits and Corporate have participated in numerous meetings with the Comptroller to finalize the licensing and examination structure for bullion depository agents.*
- *Special Audits staff gave an update on perpetual care regulations to members of the Texas Cemetery Association at their annual conference in April 2017.*
- *Special Audits staff gave an update on preneed regulations to members of the Texas Funeral Director Association at their annual conference in June 2017.*
- *Bank and Trust continues to actively participate in committees and working groups, which are organized by the Conference of State Bank Supervisors and include regulators from several agencies and industry representatives.*
- *Bank and Trust Directors and Review Examiners actively, on approximately 40 occasions, participate in regulatory panels and presentations at events hosted by banking industry trade groups and service providers, as well as Commissioner Cooper's town hall meetings.*

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

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

Update

- *Issued eight orders against eight unlicensed money services businesses.*

- *Issued four orders against four prepaid funeral contract sellers.*
- *Issued one order against a perpetual care cemetery.*
- *Notified twelve MSB entities that may be engaged in money transmission without a license. As a result:*
  - *Six entities have review pending.*
  - *One needed a license, and submitted a license application.*
  - *Two were determined to be conducting money transmission and the companies opted to stop doing business in Texas.*
  - *Three were determined not to be engaged in money transmission.*
- *Received 11 requests from companies seeking to determine whether an MSB license is needed. As a result:*
  - *Five requests have provided documentation that is currently being reviewed by the Legal Division.*
  - *Four requests were determined not to require licensure.*
  - *Two requests were determined to be money transmission, and the companies agreed to cease the unlicensed activity.*

II.6 Objective: Process consumer complaints/inquiries professionally, appropriately and timely.

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

Update

- *Consumer assistance activity is reported at each Finance Commission meeting.*
- *Complaints have been processed timely and accurately.*
- *Due to a large number of complaints for a small cemetery, Department staff held a town hall meeting in Houston to gather information and discuss the plot owners' concerns.*

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

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

Update

- *Upgraded the Department's Law and Guidance Manual for the web, which contains statutes, rules, regulatory guidance, supervisory memorandums, and legal opinions. This allows Department staff to update the manual as changes become effective. The manual is current and reflects the statute changes enacted by the 85th Legislature and effective September 1, 2017. A desktop version of the Law and Guidance Manual is updated quarterly and allows all examiners access to the information in the web version as of quarter end, without requiring an internet connection.*

- *Prepared and distributed the Supervisory Update News Summary each month to staff. A modified version is also posted on the external website in a timely manner.*
- *Reviewed and revised 12 commercial examination procedures: Audit, Borrowed Funds/Liquidity, Capital, Earnings, Funds Management, Interbank Liabilities, Loans & Leases, Management, Other Real Estate Owned, Other Supervisory Issues, Overdrafts, and Related Organizations. Notified examination staff of the updates in a timely manner.*
- *Revised four trust examination procedures: Operations, Internal Controls, & Audits; Compliance; Trust Company Asset Quality; and Exempt Trust Company Off-site. Notified examination staff of the updates in a timely manner.*
- *Replaced the IT examination procedures with 12 new procedures and three planning documents to be used as part of the Information Technology Risk Examination (InTReX) program. Notified examination staff of the updates in a timely manner.*
- *Revised the Summary of Findings pages for all commercial, trust, and IT examination procedures to clarify that the examiner in charge has discretion whether to use comments deemed not report worthy in the Report of Examination. This change was communicated to staff in a timely manner. This change was a result of an audit recommendation.*
- *Reviewed monthly and updated examination reference material for commercial, trust, and IT procedures. Notified examination staff of the updates monthly.*
- *Added additional resources to the internal website for commercial and trust examination staff related to the Examinations Tool Suite (ETS). The new internally developed guides and templates are examination aids for examiners to use in preparing reports of examinations in ETS. Notified staff in a timely manner.*
- *Reviewed and revised four insurance-funded PFC examination procedures for additional clarification. Notified staff in a timely manner.*
- *Reviewed and revised four trust-funded PFC examination procedures for additional clarification. Notified staff in a timely manner.*
- *Reviewed and revised 10 PCC examination procedures for additional clarification and to include statute changes enacted by the 85th Legislature. Notified staff in a timely manner.*
- *Reviewed and revised 15 MSB examination procedures for additional clarification and added four procedures to enhance consumer complaint review procedures, NMLS system reviews and the sharing of ROEs per SM 1013. Notified staff in a timely manner.*
- *The examination records request lists for all Special Audits areas utilized to notify license holders of the records needed to conduct the examination were also reviewed and revised for clarification purposes.*

*Revised Examiner Bulletins*

- *XB 2016-02 regarding guidelines for procedures and work paper documentation for commercial examinations (September)*
- *XB 2016-03 regarding guidelines for procedures and work paper documentation for trust examinations (September)*

- *XB 2016-04 regarding guidelines for procedures and work paper documentation for information technology examinations (November)*

## III. POLICY AND RULE DEVELOPMENT – *Policies, Rules and Financial Education Activities*

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

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

Update

- *Revised Supervisory Memorandums (SM)*
  - *SM 1008 – Other Real Estate Owned for Commercial Banks (November)*
  - *SM 1032 – Other Real Estate Owned for Trust Companies (December)*
  - *SM 1023 – Examination Frequency Policy for MSBs (December)*
  - *SM 1010 – Bank Owned Life Insurance (March)*

- *Rescinded SM*
  - *SM 1034 – Level II Full Scope Examinations for IT (December)*

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

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

Update

- *Rule amendments and new rules were adopted to:*
  - *Correct an error in the text of the bank assessment calculation table.*
  - *Clarify the authority of a bank to invest in real property for the purpose of providing temporary housing for employees under certain circumstances.*
  - *Exclude from license requirements processors that meet the necessary conditions when accepting payment of donations to charitable organizations.*
  - *Establish requirements for entering into prepaid funeral benefits contracts electronically.*
  - *Allow consumer complaint notices to be in a form that is substantially like the current required notice.*

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

Measure: Provide financial literacy material to the banking and money service business industry as requested, in addition to hosting informational webinars. Continue active participation in financial literacy groups and events.

Update

- *September 15, 2016 – Financial Education Coordinator, Ms. Lim-Villegas visited with 30 bankers from the International Bank of Commerce in Laredo, Texas. She provided information on financial education programs and material.*
- *August 2017 – Financial Education Coordinator, Ms. Lim-Villegas visited two state banks who requested financial education information.*
- *Webinars*
  - *October 21, 2016 – The Department hosted a financial education webinar which drew 122 participants. The topic was Navigate, an educational resource by the Federal Reserve Bank of Dallas.*
  - *November 3, 2016 – The Department hosted a financial education webinar which drew 105 participants. The topic was cybersecurity awareness for money services businesses.*
  - *January 17, 2017 – The Financial Education Coordinator participated in a webinar hosted by the U.S. Small Business Administration. The webinar provided the 75 participants information on saving for retirement. Ms. Lim-Villegas offered statistical information on Texas' rank regarding savings among all 50 states, best practices, and data on numerous governmental and community initiatives and savings resources available to bankers and the general public.*
  - *February 23, 2017 – The Department hosted a financial education webinar which drew 113 participants. The webinar was intended to bring awareness of Money Smart Week Texas in preparation for National Financial Literacy and Capability Month [April].*
  - *March 23, 2017 – The Department hosted a financial education webinar for money services businesses which drew 174 participants. The topic related to guidance on federal and state filings for money services businesses.*
  - *May 23, 2017 – The Department of Banking hosted a webinar to provide information about the Texas Financial Education Endowment (TFEE) which drew 95 registrants.*

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

IV.1 Objective: Actively recruit qualified personnel while strengthening the diversity of the workforce whenever possible. Maintain compliance with all state and federal employment laws.

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

Update

*Twenty jobs were posted during fiscal year 2017.*
*Fourteen positions were filled:*

- *Two Programmer positions were filled in I.T. at Headquarters.*

- *One part-time Law Clerk position was filled in Legal at Headquarters.*
- *One Financial Examiner I – IT Examiner position was filled at the San Antonio Regional Office.*
- *One Administrative Assistant position was filled in Bank and Trust at Headquarters*
- *One Administrative Assistant position was filled in Corporate Activities at Headquarters*
- *One Administrative Assistant position was filled at the Dallas Regional Office*
- *One Program Specialist position was filled in the Division of Support Services at Headquarters.*
- *Two Interns served for the summer semester at the Dallas and San Antonio Regional Offices.*
- *Two former interns were hired to fill Financial Examiner I positions at the Dallas and Houston Regional Offices.*
- *Two former employees were rehired. One Financial Examiner VII and one Credit Review Examiner, both at the San Antonio Regional Office.*

*Agency personnel participated in 16 recruiting events at university and college campuses.*

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

Measure: Continue to improve examination staff retention by addressing major issues that contribute to non-retirement resignations, with a goal to have non-retirement turnover not exceed 8% for the fiscal year. Given the significant percentage of Department employees that are retirement-eligible, be proactive with succession planning development. Maintain competitive examiner salary program compared to the FDIC by maintaining a minimum 90% level of equivalency.

Update

- *Agency fiscal year 2017 turnover rate is 11.66%. Agency turnover excluding retirements is 11.10%.*
- *Financial Examiner fiscal year 2017 turnover rate is 9.23%. No Financial Examiners retired during the period.*
- *In fiscal year 2017, the agency hired fourteen new employees and lost twenty-one employees in turnover.*

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

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

Update

- *Updated Department's internet access speed from 10 MB to 30 MB.*
- *Purchased USB portable monitors for San Antonio, Houston and Lubbock regions.*
- *Purchased additional, larger scanners for field examiners.*
- *Hired two .Net programmers to move software to web platform.*
- *Completed and implemented Special Audits' SARA program for both MSB and PFC/PCC.*
- *Replaced all video conferencing computers at HQ and all Regional Offices.*
- *Moved database change management system to the Department's ticketing system, Track-It. This will allow better tracking of database changes.*
- *Replaced 35 outdated laptops.*
- *Upgraded Microsoft Office 2010 software to Office 365.*
- *Moved the Department's email to the Microsoft's cloud.*
- *Moved the Department's secure email service, Zix, to the cloud.*

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

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

Update

- *Cyber Security training completed for all Department employees.*
- *The Department has completed a yearly penetration test on the Department's internet facing devices and will continue to receive quarterly tests on an ongoing basis.*
- *The Department has upgraded HQ and all Regional Offices wireless devices.*
- *Network traffic has been segmented at HQ. Segmenting traffic will reduce congestion, improve security, and limit damage in the event of viruses, malware, or bad configuration.*
- *The Department's Disaster Recovery site has been updated and reconfigured.*

IV.5 Objective: Ensure financial examiners receive adequate and proper training to perform their duties and progress within the financial examiner series to become commissioned.

Measure: Provide core required training courses to financial examiners in the FE I – FE III series so they can progress in the financial examiner series. Prepare examiners adequately to pass the commissioning test.

Update

- *An internal Financial Examiner I-II School was held in March 2017 in the Dallas Regional Office for assistant bank examiners.*
- *Three examiners were commissioned during the fiscal year.*
- *Financial examiners attended 134 core classes this fiscal year.*

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

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

Update

- *Monthly financial statements are provided to all divisions for review and to the Finance Commission each quarter.*
- *For fiscal year 2017, revenues were 93.4% of budget and expenditures were 92.9% of budget.*
- *Cash reserves are within policy guidelines.*

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

Measure: Report on improvements identified and implemented.

Update

*Divisional reviews during the year required minimal tweaking to internal controls and processes of the agency. New processes and procedures were added as necessary.*

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

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

Update

- *The agencies renewed the contract with the broker and architect. Staff toured an existing building and the architect developed ideas and costs for rehab.*
- *Legislation passed that allows the agency to buy excess land from TXDOT. This option continues to be explored.*

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

Measure: Ensure yearly update and exercise of the Plan.

Update

*An exercise related to the Plan was conducted in January 2017 with satisfactory results. An after-action report was produced to follow up on items to improve on. The yearly Plan update was submitted to the State Office of Risk Management in January 2017.*

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

**Memorandum**

**To: The Finance Commission**

**From: Caroline C. Jones**

**Date: September 1, 2017**

**Re: Agency Priorities for Fiscal Year 2017**

## I. Legislative Items

I.1 **Objective:** Monitor legislation, throughout the 85th Legislative Session, that may affect the Department or its regulated industries.

**Measure:** Provide regular updates to the Finance Commission on the status of such legislation.

***Status:*** *The Department's legislative recommendations were filed as HB2579/SB1919 (state savings bank financial institution bond bill); HB2580/SB2058 (criminal history information bill); HB2823/SB1918 (subpoena – residential mortgage loan servicer bill); HB3367/SB1916 (general technical corrections bill); and HB3342 (mortgage pre-licensing education requirements bill). HB 2579, HB 2580, HB2823, and HB3342 passed and were enacted into law. The Department monitored 193 bills and provided weekly status reports on key bills to Finance Commission members.*

I.2 **Objective:** Serve as a resource for the Texas Legislature and other members of leadership. Respond promptly and accurately to any requests for information, providing appropriate and comprehensive resource materials, as legally permissible.

**Measure:** Notify Finance Commission members about any testimony given by the Department.

***Status:*** *Department staff served as resource support to legislative members and their staff on a variety of bills, by providing appropriate and comprehensive information, as legally permissible, to requests for information. The Commissioner testified as a resource witness on several bills. The Commissioner presented a Department update to the House Investments and Financial Services Committee February 28, 2017.*

I.3 **Objective***:* Monitor federal legislation and regulations that may affect the Department or its regulated entities.

**Measure**: Communicate relevant information with Finance Commission and industries, as necessary.

***Status:*** *The Department monitored legislation and regulations at the federal level and as appropriate reported information to the Finance Commission as well as to its regulated industries.*

## II. Regulatory Items

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

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

***Status:*** *The Department actively engaged in determining and taking appropriate supervisory action during on-site examinations and off-site reviews. Compliance with existing enforcement actions are monitored through quarterly reports from the state savings banks and on-site visitations and examinations. The off-site monitoring area reviews and processes Reports of Examination and other supervisory items as well as remaining in contact with the thrifts relating to various issues.*

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

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

***Status****: As of August 31, 2017, 100% of the open consumer complaints were aged less than 90 days, with 87% of them being aged less than 60 days.*

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

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

***Status:*** *The Department participated in the Home Equity Lending Working Group meetings and discussions on amendments to the home equity rules that were adopted by the Finance Commission in October, 2016.*

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

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

**Status**: *The Department has two staff members currently serving on national regulator trade association boards (Chair of ACSSS and President of AARMR). Serving on these boards provides the Department with a voice at the national level. Additionally, several staff members serve on CSBS working groups. The Department maintains regular contact with state level trade associations TBA, IBAT, TMBA, and ATMPros.*

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

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

***Status:*** *The Department continues to keep open communications with the CFPB, particularly in relation to upcoming origination/servicing examinations and enforcement actions. The Department and CFPB hold quarterly calls to discuss regulatory issues of joint interest.*

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

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

***Status:*** *The Department issued formal and informal enforcement actions as appropriate and had post-examination communication as deemed necessary. In FY17, the Department conducted 476 examinations covering 6,253 licensees.*

## III. <u>Policy and Rule Development</u>

III.1 **Objective:** Develop any rules necessary to implement statutory changes passed by the Legislature.

**Measure:** Obtain Finance Commission adoption of implementing rules. Include stakeholders in rule development process.

***Status:*** *The Department has developed rules to implement statutory changes enacted by the 85th Legislature. These proposed rules will be presented at the October 20, 2017 Finance Commission meeting.*

## IV. Industry Outreach and Communication

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

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

***Status:*** *The Department continues to meet with regulated industries. In FY17, the Department attended and/or presented at 15 industry related events, including Thrift Industry Day and Mortgage Seminar at which Department staff made presentations to the industry on topics of industry and regulatory importance.*

*Electronic mail blasts continued to be utilized for updates and informational purposes to the Thrift industry CEOs and Presidents. A similar communication tool was developed for the mortgage industry.*

*The Mortgage Industry Advisory Committee (MIAC) met three times during FY17 to discuss with and advise the Commissioner on a variety of subjects brought forth from the Department or from the committee.*

*The Commissioner continued in person meetings, on a rotating basis, with the President/CEOs of the state savings banks.*

## V. Agency Management

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

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

***Status:*** *The Department had seven departures during FY17. Two of the positions were filled and the others are in the process of being filled.*

*Significant efforts are made to provide training and cross-training for job skills and personal development and enrichment. Some of the trainings the Department has utilized are those offered by CSBS, FFIEC, FDIC, and AARMR. Thrift Examination and Mortgage Examination staff both held internal trainings during the fiscal year. Additional trainings for Department staff were provided as appropriate.*

V.2 **Objective:** Meet or exceed 90% of the key performance measures, within the Department's control. Strive to reduce deficiencies, if any, in the performance measures outside the Department's control.

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

***Status:*** *The Department has four key output performance measures. Performance is measured and reported quarterly to the Finance Commission. In FY17, the Department exceeded all four output measures.*

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

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

***Status:*** *During FY17, the Department underwent an SDSI audit by the State Auditor's Office. Recommendations were reviewed and considered by management and appropriate changes and improvements were implemented. Other audits of the Department were conducted by Garza/Gonzalez & Associates, and State Office of Risk Management. The recommendations from the Garza/Gonzalez audit have been implemented. The State Office of Risk Management audit had no findings.*

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

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

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

# Office of Consumer Credit Commissioner

Agency Priorities – Year End Accomplishments Report

FY 2017

## 1. LEGISLATIVE

### 1.1. 85th Legislative Session.

**1.1.1. Objective:** Respond timely to new legislative issues and requests for information or testimony. Anticipate issues and work to develop strong beneficial relationships with legislators and legislative staff. As appropriate, review or draft legislative proposals or amendments. Monitor all legislation and associated hearings affecting the regulated industries or respective underlying statutes of the OCCC.

**Measure:** To the extent legally permissible, respond to requested resource information. Regular weekly legislative reports communicated to the Finance Commission.

**Status:** *The OCCC legislative recommendation pertaining to Credit Card Surcharges (SB 560 / HB 2176) was passed and signed into law by the Governor. This law transfers the credit card surcharge prohibition from the Finance Code to the Business & Commerce Code, where it will be enforced by the attorney general (like the current debit card surcharge prohibition) and removes Finance Code provisions relating to the OCCC's enforcement of the credit card surcharge prohibition. Weekly status reports were provided to the Finance Commission members since the beginning of the legislative session. The OCCC high priority legislation report reflected 63 bills that the agency was very closely monitoring. The OCCC staff served as a resource witnesses to a number of the bills on the list. The agency staff provided a substantial amount of resource support related to legislation.*

## 2. REGULATORY ACTIVITIES

### 2.1. Regulated Entities.

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

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

**Status:**

| License | Compliance Status as of 8/31/17 | Enforcement |
|---|---|---|
| *Pawn* | *99.3% acceptable level of compliance.* | *98 enforcement actions closed*<br>—<br>*97 injunctive actions*<br>*1 administrative penalty action* |
| *Regulated Loans* | *97.35 % acceptable level of compliance.* | *48 enforcement actions closed*<br>—<br>*34 injunctive actions*<br>*13 administrative penalty actions*<br>*1 license revocation or suspension action* |
| *Property Tax Loans* | *75% acceptable level of compliance.* | *4 enforcement actions closed*<br>—<br>*2 injunctive actions*<br>*2 administrative penalty actions* |
| *Credit Access Business* | *98.93% acceptable level of compliance.* | *66 enforcement actions closed*<br>—<br>*47 injunctive actions*<br>*17 administrative penalty actions*<br>*2 license revocation or suspension actions* |
| *Motor Vehicle Sales Finance* | *85.81% acceptable level of compliance.* | *133 enforcement actions closed*<br>—<br>*28 injunctive actions*<br>*103 administrative penalty actions*<br>*2 license revocation or suspension actions* |

**2.1.2. Objective:** Achieve overall weighted average acceptable level of compliance of 80% through examinations and industry education efforts. Monitor follow-up and restitution orders for licensees with outstanding examination issues.

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

**Status:** *The agency completed 4,820 examinations in FY'17 which is 117.93% of the annual goal for the fiscal year. The overall compliance rate is 92.01% for all five examination areas combined. Restitution from examinations conducted is $20,592,800, as of August 31, 2017. During this period, the agency closed 349 enforcement actions concerning the five examination areas. The 349 closed cases include 208 injunctive actions, 136 administrative penalty actions, and five license revocation or suspension actions.*

**2.1.3. Objective:** Implement the ACE Examination Tool. Train examiners in the new ACE examination tool. Complete the implementation and integration of ACE by the end of FY '17 to enhance consistency of reporting and to streamline and improve the quality of the examination reporting process.

**Measure:** Completed implementation and training of ACE.

**Status:** *ACE training for examiners occurred on 3 dates (Feb. 8, 9, & 22); ACE was launched February 27, 2017 and continuous platform refinements are underway as new processes are implemented. Additional training needs have been identified, and training is scheduled during the Annual Examiner Conference in September, 2017.*

**2.2. Licensing.**

**2.2.1. Objective:** Process 85% of license applications within 90 days from received date to completion date. Provide guidance and technical support to encourage 90% of all licensees to create an account on the online system by the end of the fiscal year. Develop and present ALECS training for internal and external users.

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

**Status:** *In FY 2017 the licensing department processed 92% of all business license applications in less than 90 days, with 84% processed in less than 60 days. At the end of the fiscal year, 86.39% of licensees had a linked account on the online system. The department developed and presented ALECS training to internal users at the OCCC annual examiner training, as well as external industry groups.*

**3. POLICY AND RULE DEVELOPMENT**

**3.1. Agency Rules.**

**3.1.1. Objective:** Rule Review. Complete rule review of 7 TAC, Chapter 89, Property Tax Lenders (last reviewed 2012).

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

**Status:** *The commission adopted the completed rule review of Chapter 89, Property Tax Lenders, at its August 2017 meeting, with the proposal of associated amendments being approved for publication at that time. The amendments generally relate to the following issues: disclosures provided by property tax lenders, licensing processes, fees charged by property tax lenders, and technical corrections. The property tax rule review amendments are scheduled for adoption at the commission's October 2017 meeting.*

**3.1.2. Objective:** Rule Development. Work with credit access business stakeholders regarding rules to comply with recent federal regulations. Work with interested stakeholders regarding rule clarification related to licensing, criminal history, and technical corrections. Work with interested stakeholders regarding rule provisions necessary to implement 2017 legislation. Draft rule amendments as appropriate.

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

**Status:** *The agency worked with credit access business (CAB) and pawnshop stakeholders in the development of rule amendments relating to licensing, criminal history, recordkeeping, and technical corrections. The commission approved the pawnshop amendments in October 2016 and the CAB amendments in December 2016. Both the CAB and pawnshop amendments became effective in January 2017.*

*The agency provided further guidance to pawnshop stakeholders by publishing a Pawnshop Advisory Bulletin regarding the Military Lending Act Rule recently amended by the U.S. Department of Defense. The agency issued the bulletin in October 2016 and revised it in January 2017.*

*The agency engaged stakeholders in the development of rule amendments to implement four bills recently passed by the Texas Legislature regarding motor vehicle installment sales. The agency circulated an early draft of amendments and held an online webinar for stakeholders. These rule amendments relate to the following issues: trade-in credit agreements, documentary fees, debt cancellation agreements, deferments, and depreciation benefit service contracts. The commission adopted the motor vehicle rule amendments implementing 2017 legislation at its August meeting, and the amendments became effective on September 7, 2017.*

## 4. CONSUMER ISSUES / COMMUNICATION & OUTREACH STRATEGIES

### 4.1 Texas Financial Education Endowment Fund (TFEE).

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

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

**Status:** *Staff reported on fund activities, investment earnings, grant request submissions, and grantee reporting program highlights to the Finance Commission, Audit Committee, and Grant Advisory Committee throughout the year. The 2016-2017 grant cycle will be drawing to a close in December 2017. The second cycle provided many learning opportunities such as improvements in reporting, but overall was successful and will position the program well for the upcoming cycle. The Finance Commission approved the recommended changes to the grant administration and advisory policy manual that will better streamline operations for the 2018-2019 grant cycle, such as clarifying roles and responsibilities, and making appointments to the Grant Advisory Committee. In addition, enhancements to the website were created that report on the grant activities for TFEE and centralized all grant activity information.*

### 4.2 Financial Literacy

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

**Measure:** Report on number of people and programs reached.

**Status:** *In FY 2017, Agency staff identified 37 new partnerships to provide financial education to diverse demographics in undeserved populations, such as the senior citizen community and the growing Spanish-speaking population. Additionally, staff organized, coordinated, led, and participated in 18 various financial literacy community events via education presentations and meetings.*

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

**Measure:** Delivery of final report of second TFEE grant cycle and reporting on efforts to use TFEE data to support and improve financial education.

**Status:** *At the end of the fiscal year, the 2016 - 2017 grant cycle still has one reporting period left to complete. The final progress reports will be submitted at the end of January 2018 and a summary of the entire second cycle will be presented with information regarding their programs' progress, achievements, and outcomes.*

### 4.3. Industry

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

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

**Status:** *Staff developed an industry stakeholders' e-newsletter featuring education and regulatory compliance issues that was distributed to more than 5,300 Motor Vehicle Sales Finance Dealers. In addition, more than 1,600 licensees have benefited from education and regulatory compliance trainings provided by the Consumer Protection Department.*

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

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

**Status:** *The initial meeting was held with IT staff to plan execution of a customer feedback module. Draft questions are currently under review and completion is anticipated by the first quarter of fiscal year 2018.*

## 5. AGENCY MANAGEMENT

### 5.1. Performance Measures.

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

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

**Status:** *The agency met or exceeded all 9 key performance targets in FY17.*

### 5.2. Human Resources.

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

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

**Status:** *At end of fiscal year 2017, the agency had 82 FTEs out of a possible 93.5 allowed. The turnover ratio was 11.87%; the goal was met since it was less than 15%. Several methods were used to continue building right-size staffing and keep turnover under the 15% by recognizing key employees for their hard work. During FY17, the agency proactively managed the career ladder process by certifying examiners through classroom training, testing and on-the-job training. The results of this effort lead to examiners being certified in the following license types --- 12 examiners in Chapter 342-E (large consumer loans); 9 examiners in Chapter 342-G (secondary mortgage loans) and home equity lending; and 4 examiners in Chapter 351 (propery tax loans). The process resulted in 9 promotions in the financial examiner series. In addition, Human Resources and the Commissioner continue to thoroughly review exit interview comments and the overall general statistics provided to ensure consistency and fair treatments are implemented. Implementation of the Employees Assistance Program in April 2017, which offers multiple support services for employees, was brought on to further support staff.*

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

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

**Status:** *In FY 17, financial examiners and investigators attended annual training where an in-depth curriculum that included training on rule changes from the state and federal government, providing 32 of the 40 minimum required hours. Other training opportunities that were offered include National Association of Consumer Credit Administrators (NACCA) Examiner's School, American Association of Residential Mortgage Regulators (AARMR) Training School, Governor's Management Training, as well as OCCC-led classroom and distance-learning trainings. At the end of FY 2017, financial examiners (47) attained 3,445 training hours. In addition, all newly hired financial examiners receive at least five weeks of introductory classroom training in the Austin Headquarters before moving into the field. Multiple trainings were also available agency wide, which included mandatory participation such as Diversity, Equal Opportunity & Non-Discrimination Training from the Texas Workforce Commission Civil Rights Division, Active Shooter training from the Austin Police Department, and SANS/Cyber Security Training.*

**5.2.3.** **Objective:** Conduct review of Human Resources policies and update as appropriate. Enhance supervisory resources and training.

**Measure:** Report on completion of review and progress on supervisor resources.

**Status:** *Existing policies have been recommended for revisions. During the fiscal year, an enhanced supervisory manual was drafted for managers to use as a tool for their supervisory duties. The draft is being reviewed by the Legal Department for compliance and it is expected to be completed in early FY 2018. HR continues to assist and support supervisors with employee related issues such as performance and behavioral issues.*

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

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

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

**Status:** *The agency monitors and timely reviews the financial status through monthly Operating Statements and Budget Analysis reports. These reports are also reviewed on a quarterly basis by the Finance Commission. Financial performance in the year was within the budgeted levels as established by the Finance Commission. In response to audit reports, the OCCC implemented corrective actions to improve internal controls. The agency continues to fine tune its use of the internal accounting system to improve transparency and improve reporting.*

**5.3.2** **Objective:** Continue to work towards a long term solution, in collaboration with the other Commission agencies, to address headquarter facilities space and parking needs.

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

**Status:** *The Finance Commission agencies have continued to actively work on options towards a long term solution for headquarters facilities. The agencies worked collaboratively with the legislature, Governor's office, TxDOT and TxDMV on SB1349, which provides a possible long-term solution. The Finance Commission has been regularly briefed on these activities at each Finance Commission meeting.*

**5.4. Information Technology.**

**5.4.1.** **Objective: Legacy Modernization.** Continue work on the ACE project for ALECS, the Examination, Complaint and Annual Report functionality. Improve business operations. Continue development and implementation of modules for Consumer Assistance, Investigation, Annual Reporting, Examination and Legal.

**Measure:** Reporting on project development and milestones.

**Status:** *All ACE modules are operational. Most high priority bug or issues during the initial implantation have been addressed. Maintenance continues with a focus on addressing the remaining high priority issues and improving usability.*

**5.4.2** **Objective: Increase Agency Security Posture.** Using the recommendations developed by the external DIR-contracted vendor during the security assessment starting in late FY16, the OCCC will move toward increasing agency maturity levels for objectives in the Texas Cybersecurity Framework.

**Measure:** Activity reporting on the roadmap with timelines for implementation of recommendations: Short-term: immediate to six (6) months; Mid-term: six (6) to twenty-four (24) months; and Long-term: twenty-four (24) to sixty (60) months. The OCCC will implement all short term recommendations within FY17. Mid-term recommendations will be evaluated for implementation by the end of FY 2017.

**Status: :** *The Security Policy and Compliance Committee (SPCC) has completed 26 of 28 (93%) short term recommendations. One of the incomplete items is approximately 90% complete and the second incomplete item is in progress. The SPCC has evaluated 12 items and determined they are mid-term goals, to be completed by the end of April 2018.*

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## A. FINANCE COMMISSION MATTERS

9. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments, a New Section, and a Repeal in 7 TAC, Part 8, Chapter 153, Concerning Home Equity Lending

**PURPOSE:** The main purpose of the proposal is to implement SJR 60, passed by the Texas Legislature in 2017. SJR 60 amends Section 50 and applies to home equity loans entered on or after January 1, 2018.

**RECOMMENDED ACTION:** The agencies request that the Finance Commission approve the amendments, new section, and repeal in 7 TAC, Chapter 153 for publication in the *Texas Register*, if the voters approve SJR 60 in the November 7, 2017 Constitutional Amendment Election.

**RECOMMENDED MOTION:** Do I hear a motion to approve the proposal and publication for comment of amendments, a new section, and a repeal in 7 TAC, Chapter 153, if the voters approve SJR 60 in the November 7, 2017 Constitutional Amendment Election. Staff is instructed to submit the proposal to the *Texas Register* after approval by voters, or to not submit the proposal if SJR 60 is not approved by the voters.

*Title 7. Banking and Securities*
*Part 8. Joint Financial Regulatory Agencies*
*Chapter 153. Home Equity Lending*

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") propose amendments to the following home equity lending interpretations: §§153.1, 153.5, 153.14, 153.17, 153.84, and 153.86; propose new §153.45; and propose the repeal of §153.87, in 7 TAC, Chapter 153, concerning Home Equity Lending.

The proposal applies the administrative interpretation of the home equity lending provisions of Article XVI, Section 50 of the Texas Constitution ("Section 50") allowed by Section 50(u) and Texas Finance Code, §11.308 and §15.413.

The main purpose of the proposal is to implement SJR 60, passed by the Texas Legislature in 2017. SJR 60 amends Section 50 and applies to home equity loans entered on or after January 1, 2018.

SJR 60's constitutional amendments relate primarily to six issues. First, SJR 60 amends Section 50(a)(6)(E) by replacing the current three percent fee limitation with a two percent limitation, and specifying that four types of fees are not included in the limitation: an appraisal fee, a property survey fee, a mortgagee title insurance premium, and a title report fee. Second, SJR 60 amends Section 50(a)(6)(I) by removing the current prohibition on a home equity loan for agricultural property. Third, SJR 60 amends Section 50(a)(6)(P) by adding certain subsidiaries of depository institutions to the list of lenders authorized to make home equity loans, and replacing a reference to a "mortgage broker" with "mortgage banker or mortgage company." Fourth, SJR 60 amends Section 50(f) by allowing a home equity loan to be refinanced as a non-home-equity loan if four conditions are met: a one-year timing limitation, a limitation on advance of additional funds, an 80% loan-to-value limitation, and a required disclosure to the property owner. Fifth, SJR 60 amends Section 50(g) to make conforming changes to the required 12-day consumer disclosure. Sixth, SJR 60 amends Section 50(t)(6) by removing the 50% limitation on additional debits or advances for a home equity line of credit.

After the legislature passed SJR 60, the Texas Department of Banking, the Texas Department of Savings and Mortgage Lending, the Office of Consumer Credit Commissioner, and the Texas Credit Union Department ("agencies") circulated an initial precomment draft of proposed changes to interested stakeholders. The agencies then held a stakeholder meeting where attendees provided oral precomments. In addition, the agencies received four informal written precomments from stakeholders. Certain concepts recommended by the precommenters have been incorporated into this proposal, and the agencies appreciate the thoughtful input provided by stakeholders.

The individual purposes of the amendments, new section, and repeal are provided in the following paragraphs.

The proposed amendments to §§153.1, 153.5, and 153.14 implement SJR 60's amendments to Section 50(a)(6)(E). As discussed previously, SJR 60 amends Section 50(a)(6)(E) by replacing the current

three percent fee limitation with a two percent limitation, and specifying that certain types of fees are not included in the limitation.

A proposed amendment to §153.1(15) replaces the phrase "three percent limitation" with "two percent limitation."

In §153.5, proposed amendments to the introductory paragraph reflect SJR 60's amendments to Section 50(a)(6)(E). Throughout §153.5, proposed amendments replace the phrase "three percent limitation" with "two percent limitation." Proposed amendments to paragraph (3)(B) in §153.5 replace the phrase "legitimate discount points" with "bona fide discount points," reflecting SJR 60's exclusion of bona fide discount points from the two percent limitation. In paragraph (7), regarding third-party charges, a proposed amendment moves a sentence providing an example of a third-party charge in order to provide better clarity. The amendment also removes the phrase "mortgage brokers' fees" from paragraph (7), reflecting SJR 60's removal of the phrase "mortgage broker" from Section 50. This amendment also responds to precomments stating that the phrase "mortgage brokers' fees" is no longer necessary. Proposed amendments to paragraph (8), regarding charges to evaluate, conform to SJR 60's amendments on fees for appraisals, surveys, and title reports.

Proposed new paragraphs (13)-(16) in §153.5 identify the four types of fees that may be excluded from the two percent limitation under SJR 60's amendments to Section 50(a)(6)(E): an appraisal fee, a property survey fee, a mortgagee title insurance premium, and a title report fee.

Proposed §153.5(13) states that an appraisal must be performed by a person who is not an employee of the lender, and that the excludable appraisal fee is limited to the fee paid to the appraiser for completion of the appraisal, not the fee for appraisal management services. This paragraph is based on Section 50(a)(6)(E)(i) of SJR 60, which states that the two percent limitation excludes a fee for "an appraisal performed by a third party appraiser." Under Texas Occupations Code, §1104.158(a), an appraisal management company must "separately state the fees: (1) paid to an appraiser for the completion of an appraisal; and (2) charged by the company for appraisal management services" in reporting to a client. Proposed paragraph (13) specifies that only the first of these two fees, the fee paid to the appraiser for the completion of the appraisal, may be excluded from the two percent limitation. At the stakeholder meeting, one attendee asked whether a fee for an evaluation that is not an appraisal may be excluded. This fee would be subject to the two percent limitation under proposed §153.5(8), which provides that charges to evaluate are generally subject to the two percent limitation, and would not be excludable under proposed §153.5(13), which provides an exception to this general requirement for certain appraisal fees.

Proposed §153.5(14) states that a fee for a property survey performed by a state registered or licensed surveyor is not a fee subject to the two percent limitation, and that the property survey must be performed by a person who is licensed or registered under Texas Occupations Code, Chapter 1071. This paragraph is based on Section 50(a)(6)(E)(ii) of SJR 60, which states that the two percent limitation excludes a fee for "a property survey performed by a state registered or licensed surveyor."

Proposed §153.5(15) states that an excludable premium for title insurance is limited to the applicable basic premium rate for title insurance published by the Texas Department of Insurance (TDI), plus authorized premiums for applicable endorsements, and that rules adopted by the TDI govern the applicability of endorsements and the authorized amount for each premium. This paragraph is based on Section 50(a)(6)(E)(iii) of SJR 60, which states that the two percent limitation excludes a fee for "a state base premium for a mortgagee policy of title insurance with endorsements established in accordance with state law."

One precommenter recommends removing the applicability requirement in §153.5(15)(C), which states that any endorsements must be applicable to the mortgagee policy for the equity loan. TDI has identified various endorsements that may be used to modify a title insurance policy, and has established premiums for each type of endorsement. The endorsements are described in TDI's Title Insurance Basic Manual. The authorized endorsements include Form T-42 (insuring against loss due to failure to comply with Section 50's requirements for home equity loans), as well as endorsements relating to minerals, condominiums, balloon mortgages, and other issues. The applicability requirement in proposed §153.5(15)(C) is intended to capture the concept that a lender should not charge the property owner a premium for an endorsement that does not apply to the transaction. For example, if the property is not a manufactured home, then the property owner should not be required to pay a premium for a manufactured housing endorsement, Form T-31. Similarly, if the loan is not a home equity line of credit, then the property owner should not be required to pay a premium for a future advance or revolving credit endorsement, Form T-35. As stated in paragraph (15), TDI's rules govern the applicability of endorsements.

At the stakeholder meeting, one attendee explained that some lenders might make amendments to title insurance policies, and that these "amendments" are not necessarily endorsements for which TDI's rules authorize a premium. The commissions believe that proposed §153.5(15) appropriately defers to TDI's rules regarding the applicability of endorsements and authorized amount of the premium. TDI's rules, not the labels used by the parties, will determine whether the endorsement is authorized.

Proposed §153.5(16) states that an excludable fee for a title report must be less than the applicable basic premium rate for title insurance, and that the title report fee may not be excluded if the equity loan is covered by a mortgagee policy of title insurance. This paragraph is based on Section 50(a)(6)(E)(iv) of SJR 60, which states that the two percent limitation excludes a fee for "a title examination report if its cost is less than the state base premium for a mortgagee policy of title insurance without endorsements established in accordance with state law." The agencies understand that this fee is intended to be excluded in transactions where the lender obtains a title report instead of a mortgagee policy of title insurance. In addition, proposed §153.5(16)(C) explains that the fee must comply with applicable law, including Texas Finance Code, §342.308(a)(1), which limits title examination fees for certain secondary mortgages.

One precommenter makes the following recommendation regarding paragraph (16): "Rather than require that such report fee be less than the state base premium without endorsements, it would be more appropriate to provide that it cannot exceed the state base premium for a mortgagee policy with endorsements." The commissions disagree with this recommendation. Section 50(a)(6)(E)(iv) of SJR 60 states that the two percent limitation excludes a fee for "a title examination report if its cost is less than the state base premium for a mortgagee policy of title insurance without endorsements established in accordance with state law." The plain language of this provision requires the title report fee to be less than the state base premium for title insurance without endorsements.

In the initial precomment draft sent to stakeholders, paragraphs (13), (14), (15), and (16) each included a statement that the relevant fee "must comply with applicable law." This phrase was based on existing interpretations in current §153.5, which state that certain fees may be charged "to the extent authorized by applicable law" or that the lender "must comply with applicable law." Two precommenters recommended removing or amending this phrase, arguing that it is unnecessary or could create confusion. At the stakeholder meeting, one attendee recommended removing the phrase "must comply with applicable law" in paragraphs (14) and (15), while acknowledging that it is appropriate to state that a surveyor must be licensed under the Texas Occupations Code. The attendee recommended a provision-by-provision approach to using the phrase. In response to these precomments, proposed §153.5 does not include the phrase "must comply with applicable law" in paragraphs (13), (14), and (15), which relate to services performed by third parties, but includes the phrase in paragraph (16) regarding the title report, where the commissions believe that the phrase is appropriate.

A proposed amendment to §153.14(2)(D) replaces the phrase "3% fee cap" with "two percent limitation."

In §153.17, regarding lenders that are authorized to make home equity loans, proposed amendments to the introductory paragraph reflect SJR 60's amendments to Section 50(a)(6)(P). Proposed amendments to §153.17(3) remove a reference to a "mortgage broker" and specify that a person licensed under Texas Finance Code, Chapter 157 is a person regulated as a mortgage banker for purposes of Section 50(a)(6)(P)(vi).

Proposed new §153.45 describes the permissible ways in which a home equity loan can be refinanced, in accordance with Section 50(f) as amended by SJR 60. Paragraphs (1)-(4) of the new section describe the four conditions that must be met to refinance a home equity loan as a non-home-equity loan under Section 50(f)(2) of SJR 60.

Proposed §153.45(1) explains that the refinance may not be closed before the first anniversary of the closing date of the home equity loan, and that the closing date of the refinance is the date on which the owner signs the loan agreement for the refinance. This paragraph is based on Section 50(f)(2)(A) of SJR 60, which provides the following condition that must be met to refinance a home equity loan as a non-home-equity loan: "the refinance is not closed before the first anniversary of the date the extension of credit was closed." The statement regarding the closing date of the

refinance is based on the definition of "closing" in current §153.1(3).

Proposed §153.45(2) describes the limitation on the advance of additional funds for the refinance. This paragraph is based on Section 50(f)(2)(B) of SJR 60, which provides the following condition that must be met to refinance a home equity loan as a non-home-equity loan: "the refinanced extension of credit does not include the advance of any additional funds other than: (i) funds advanced to refinance a debt described by Subsections (a)(1) through (a)(7) of this section; or (ii) actual costs and reserves required by the lender to refinance the debt." Proposed §153.45(2)(A) explains that actual costs must be identifiable, must be actually incurred by the lender, and must comply with any applicable limitations on costs. Proposed §153.45(2)(B) explains that reserves (e.g., an escrow account for taxes and insurance) must be actually required by the lender to refinance the debt, and must comply with applicable law. The commissions believe that the statement that the reserves "must comply with applicable law" is appropriate in this provision to ensure that the lender complies with any laws governing reserve accounts, such as the escrow requirements in Regulation X, 12 C.F.R. §1024.17, and Regulation Z, 12 C.F.R. §1026.35(b).

One precommenter recommends that paragraph (2)(A) state that costs must be "actually incurred by an owner or an owner's spouse." The precommenter states that this recommendation would "conform to an exclusion for charges absorbed by a lender or a third party in §153.5(5) and (7), respectively." The commissions disagree with this recommendation. It appears that the legislature intended the phrase "actual costs" to refer to costs that the lender actually incurs and requires the owner to pay back along with other advanced amounts. If the commissions used the precommenter's recommended language, this would suggest that there is no limitation on actual costs advanced in connection with the refinance, because all costs that the lender charges are incurred by the owner. In addition, specifying that actual costs exclude costs absorbed by the lender is unnecessary, because the lender does not advance these amounts.

Proposed §153.45(3) describes the 80% loan-to-value limitation for the refinance. This paragraph is based on Section 50(f)(2)(C) of SJR 60, which provides the following condition that must be met to refinance a home equity loan as a non-home-equity loan: "the refinance of the extension of credit is of a principal amount that when added to the aggregate total of the outstanding principal balances of all other indebtedness secured by valid encumbrances of record against the homestead does not exceed 80 percent of the fair market value of the homestead on the date the refinance of the extension of credit is made." Subparagraphs (A), (B), and (C) in proposed §153.45(3) describe the method of calculating the principal amount of the refinance and the principal balance of other outstanding debt. These subparagraphs are based on current §153.3, which describes the 80% loan-to-value limitation for home equity loans.

One precommenter recommends adding the following subparagraph (D) in proposed §153.45(3): "On a closed-end multiple advance refinance, the principal balance also includes contractually obligated future advances not yet disbursed." The commissions disagree with this recommendation. Section 50(f)(2)(B) of SJR

60 limits the advance of funds to the amount refinanced, actual costs, and required reserves. It does not appear that the legislature intended for the Section 50(f)(2) refinance to include multiple future advances.

Proposed §153.45(4) describes the requirement to provide a disclosure to the owner in connection with the refinance. This paragraph is based on Section 50(f)(2)(D) of SJR 60, which provides the following condition that must be met to refinance a home equity loan as a non-home-equity loan: "the lender provides the owner the following written notice on a separate document not later than the third business day after the date the owner submits the loan application to the lender and at least 12 days before the date the refinance of the extension of credit is closed . . . ." Section 50(f)(2)(D) then includes the text of the required refinance disclosure, which provides important information about the consumer protections that a borrower loses by agreeing to refinance a home equity loan into a non-home-equity loan.

Subparagraphs (A)-(C) in proposed §153.45(4) provide guidance to lenders in calculating the three-day and 12-day periods under Section 50(f)(2)(D). These requirements are based on interpretations relating to the closing date and the required 12-day consumer disclosure for home equity loans in current §153.12 and §153.51. In particular, proposed §153.45(4)(C) states that if a lender mails the refinance disclosure to the owner, the lender must allow a reasonable period of time for delivery, and that a period of three calendar days, not including Sundays and federal legal public holidays, constitutes a rebuttable presumption for sufficient mailing and delivery. This subparagraph is nearly identical to current §153.51(1), which provides the same requirement and rebuttable presumption for the 12-day consumer disclosure under Section 50(g). The Texas Supreme Court upheld §153.51(1) in *Finance Commission of Texas v. Norwood*, 418 S.W.3d 566, 589 (Tex. 2013). The three-day rebuttable presumption is also consistent with similar presumptions for mailed notices, such as Rule 21a(c)-(e) of the Texas Rules of Civil Procedure. Proposed §153.45(4)(C) helps ensure that the borrower receives the important information in the refinance disclosure promptly after filing a loan application, and that the borrower has a full 12 days to consider this information before closing the refinance.

Two stakeholders suggested alternative language for the three-day requirement in §153.45(4)(C). At the stakeholder meeting, one attendee noted that in order to benefit from the rebuttable presumption in §153.45(4)(C), a lender would have to mail the refinance disclosure on the same day it receives the loan application. This is a result of reading the three-day presumption in §153.45(4)(C) together with the requirement to provide the disclosure within three days of the application under Section 50(f)(2)(D). The attendee expressed a concern that it would not be possible for lenders to send the refinance disclosure on the same day they receive the loan application. As an alternative, the attendee suggested a distinction between compliance with the three-day period (which would end when the lender deposits the disclosure in the mail) and compliance with the 12-day period (which would begin running when the borrower receives the disclosure). In an informal precomment, another stakeholder recommends addressing this issue by adding the following definition of "provide" in

§153.1: "deliver or place in the mail to the owner the disclosures required by Subsection 50(f)(2)(D) and Section 50(g)."

The commissions disagree with these recommendations, and believe that proposed §153.45(4)(C) appropriately requires a reasonable period for delivery of a mailed disclosure, for three reasons.

First, the requirement to allow a reasonable period for delivery is consistent with the plain meaning of the word "provide." *See, e.g.*, Webster's New Collegiate Dictionary (11th ed. 2003) (defining "provide" as "to supply or make available"). A mailed disclosure is supplied or made available to the borrower (i.e., provided) when it is delivered to the borrower. In *Norwood*, the Texas Supreme Court assumed that the 12-day disclosure is provided when the borrower receives it. *See Norwood*, 418 S.W.3d at 589 ("In giving meaning to 'provides', the Commissions have determined there is a rebuttable presumption that notice is received three days after it is mailed."). By contrast, the stakeholders' recommended changes would suggest that the disclosure is provided when it is placed in the mailbox. A disclosure is not supplied or made available to the borrower when the lender places it in a mailbox. This is why §153.45(4)(C) appropriately requires the lender to allow a reasonable period for delivery.

Second, if the commissions follow the stakeholders' recommended changes, then it is unclear whether the owner would be able to challenge the three-day presumption of delivery. The Texas Supreme Court upheld §153.51(1) because it gives homeowners an opportunity to challenge receipt and show that the consumer disclosure was not delivered in a timely manner. *See Norwood*, 418 S.W.3d at 589. Under the stakeholders' recommended changes, if an owner received the refinance disclosure weeks after submitting a loan application, it is unclear how the owner could challenge the lender's compliance with three-day requirement in Section 50(f)(2)(D).

Third, the commissions believe that adequate alternatives are available to lenders if they cannot mail the refinance disclosure on the same day they receive a loan application. Proposed §153.45 does not prohibit other methods of providing the refinance disclosure. For example, lenders may provide the disclosure electronically by e-mail or on a website in compliance with the E-Sign Act, 15 U.S.C. §§7001-7006, or they may deliver the disclosure in person. In addition, overnight U.S. mail or two-day commercial mailing might rebut the normal three-day presumption for delivery. Any of these alternatives could help the lender ensure that the refinance disclosure is provided to the owner "not later than the third business day after the date the owner submits the loan application to the lender," as required by Section 50(f)(2)(D).

In response to a precomment, proposed §153.45(4)(D) provides that one copy of the refinance disclosure may be provided to married owners. Proposed §153.45(4)(E) explains that the refinance disclosure is only a summary of substantive rights governed by the constitution. Proposed §153.45(4)(F) explains that a lender may rely on an established system of verifiable procedures to evidence compliance with paragraph (4). Proposed §153.45(4)(G) explains that lenders may use a Spanish translation of the refinance disclosure that will be posted on the Finance Commission's webpage. These provisions are based on interpretations for the 12-day consumer disclosure in current

§153.12 and §153.51. The agencies have circulated an initial draft Spanish translation of the refinance disclosure to stakeholders, and intend to post a final version to the Finance Commission's webpage once it is finalized.

One precommenter suggested specifying that a home equity line of credit may be refinanced as a non-home-equity loan under Section 50(f)(2). The commissions believe that this addition is unnecessary. Home equity lines of credit are a type of home equity loan under Section 50, and are subject to the same requirements as other home equity loans unless the constitution specifies otherwise. Adding the precommenter's suggested language could raise other questions about whether home equity lines of credit are subject to general requirements for home equity loans.

In addition to the amendments discussed previously, SJR 60 adds Section 50(f-1), stating: "An affidavit executed by the owner or the owner's spouse acknowledging that the requirements of Subsection (f)(2) of this section have been met conclusively establishes that the requirements of Subsection (a)(4) of this section have been met." When the agencies circulated the initial precomment draft of the amendments, the agencies asked whether an interpretation is needed regarding the content of the affidavit and the manner of its execution. The agencies received mixed responses on this issue. One precommenter recommends an interpretation on what would satisfy the affidavit provision. Another precommenter states that the commissions should not adopt an interpretation on this issue "because an affidavit is defined by §312.011(1), Chapter 312, Government Code, and the manner of its execution is subject to subsection 50(a)(6)(N)." This same precommenter recommends "that the Commissions propose an Interpretation to address the cure of a defective (f)(2) refinance pursuant to their authority under Subsection (u) to interpret Subsections (a)(6) and (f)," but the precommenter does not identify the constitutional basis for the cure or what the cure should entail. At the stakeholder meeting, one attendee stated that the commissions did not necessarily need to promulgate the affidavit, but the attendee believed it would be helpful to have a title for the affidavit. The agencies intend to monitor this issue to determine whether an interpretation is appropriate.

The proposed amendments to §153.84 and §153.86, together with the repeal of §153.87, implement SJR 60's amendments to Section 50(t)(6). As discussed previously, SJR 60 amends Section 50(t)(6) by removing the 50% limitation on additional debits or advances for a home equity line of credit. Proposed amendments to §153.84 and §153.86 remove references to the 50% limitation in Section 50(t)(6) while maintaining references to the overall 80% loan-to-value limitation in Sections 50(a)(6)(B) and 50(t)(5), which SJR 60 did not amend. Section 153.87 is proposed for repeal because it relates solely to the 50% limitation that SJR 60 removes.

One precommenter recommends that the commissions issue an interpretation of SJR 60's temporary provision, which states that SJR 60's changes apply to a home equity loan made on or after January 1, 2018, and that the temporary provision expires January 1, 2019. The precommenter recommends an interpretation specifying that the changes made by SJR 60 continue after January 1, 2019. The commissions believe that this interpretation is

unnecessary. The legislature clearly intended for the amendments in SJR 60 to continue in effect beyond December 31, 2018, and would have made a clearer statement if it intended for all of the amendments in SJR 60 to expire on December 31, 2018.

Harold Feeney, Credit Union Commissioner, on behalf of the Texas Credit Union Commission and Leslie L. Pettijohn, Consumer Credit Commissioner, on behalf of the Finance Commission of Texas have determined that for the first five-year period the amendments, new rule, and repeal are in effect there will be no fiscal implications for state or local government as a result of administering the interpretations.

Commissioner Feeney and Commissioner Pettijohn have also determined that for each year of the first five years the proposal is in effect, the public benefits anticipated as a result of the proposal will be to create standards and guidelines for both lenders and borrowers, fostering a stable environment for the extension of home equity loans.

There is no anticipated cost to persons who are required to comply with the proposal. Any costs are imposed by SJR 60's amendments to the constitution, and are not imposed by the proposal. There will be no effect on individuals required to comply with the proposal.

The commissions are not aware of any adverse economic effect on small businesses, micro-businesses, or rural communities resulting from this proposal. But in order to obtain more complete information concerning the economic effect of the proposal, the commissions invite comments from interested stakeholders and the public on any economic impacts on small businesses, micro-businesses, or rural communities, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses, micro-businesses, or rural communities.

During the first five years the proposal will be in effect, the proposal will not create or eliminate a government program. Implementation of the proposal will not require the creation of new employee positions or the elimination of existing employee positions. The proposal does not require an increase or decrease in fees paid to the agencies or the commissions. The proposal creates a new interpretation at §153.45, regarding the refinance disclosure. The proposal amends §§153.1, 153.5, 153.14, 153.17, 153.84, and 153.86, resulting in certain requirements that are expanded and certain requirements that are limited, as discussed previously in this proposal. The proposal repeals the current interpretation at §153.87. The proposal does not increase or decrease the number of individuals subject to the home equity interpretations in Chapter 153. To the extent that there is any change in the number of individuals subject to the interpretations, the change is a result of SJR 60's amendments to Section 50(a)(6)(P), and does not result from the proposal. The commissions do not anticipate that the proposal will have an effect on the state's economy. The commissions anticipate that any effect on the state's economy will be a result of SJR 60's amendments to the constitution, and will not result from the proposal.

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 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of business on the 31st day after the proposal is published in the Texas Register, no further written comments will be considered or accepted by the commissions.

The amendments, new section, and repeal are proposed under Article XVI, Section 50(u) of the Texas Constitution and Texas Finance Code, §11.308 and §15.413, which authorize the commissions to adopt interpretations of Article XVI, Section 50(a)(5)-(7), (e)-(p), (t), and (u) of the Texas Constitution.

The constitutional provisions affected by the proposed amendments, new section, and repeal are contained in Article XVI, Section 50 of the Texas Constitution.

*§153.1. Definitions.*

Any reference to Section 50 in this interpretation refers to Article XVI, Texas Constitution, unless otherwise noted. These words and terms have the following meanings when used in this chapter, unless the context indicates otherwise:

(1) - (14) (No change.)

(15) Two [~~Three~~] percent limitation--the limitation on fees in Section 50(a)(6)(E).

*§153.5. Two [~~Three~~] percent fee limitation: Section 50(a)(6)(E).*

An equity loan must not require the owner or the owner's spouse to pay, in addition to any interest or any bona fide discount points used to buy down the interest rate, any fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, two [~~three~~] percent of the original principal amount of the extension of credit, excluding fees for an appraisal performed by a third party appraiser, a property survey performed by a state registered or licensed surveyor, a state base premium for a mortgagee policy of title insurance with endorsements established in accordance with state law, or a title examination report if its cost is less than the state base premium for a mortgagee policy of title insurance without endorsements established in accordance with state law.

(1) Optional Charges. Charges paid by an owner or an owner's spouse at their sole discretion are not fees subject to the two [~~three~~] percent [~~fee~~] limitation. Charges that are not imposed or required by the lender, but that are optional, are not fees subject to the two [~~three~~] percent limitation. The use of the word "require" in Section 50(a)(6)(E) means that optional charges are not fees subject to the two [~~three~~] percent limitation.

(2) Optional Insurance. Insurance coverage premiums paid by an owner or an owner's spouse that are at their sole discretion are not fees subject to the two [~~three~~] percent limitation. Examples of these charges may include credit life and credit accident and health insurance that are voluntarily purchased by the owner or the owner's spouse.

(3) Charges that are Interest. Charges an owner or an owner's spouse is required to pay that constitute interest under §153.1(11) of this title (relating to Definitions) are not fees subject to the two [~~three~~] percent limitation.

(A) Per diem interest is interest and is not subject to the two [~~three~~] percent limitation.

(B) Bona fide [~~Legitimate~~] discount points are interest and are not subject to the two [~~three~~] percent limitation. Discount points are bona fide [~~legitimate~~] if the discount points truly correspond to a reduced interest rate and are not necessary to originate, evaluate, maintain, record, insure, or service the equity loan. A lender may rely on an established system of verifiable procedures to evidence that the discount points it offers are bona fide [~~legitimate~~]. This system may include documentation of options that the owner is offered in the course of negotiation, including a contract rate without discount points and a lower contract rate based on discount points.

(4) Charges that are not Interest. Charges an owner or an owner's spouse is required to pay that are not interest under §153.1(11) of this title are fees subject to the two [~~three~~] percent limitation.

(5) Charges Absorbed by Lender. Charges a lender absorbs, and does not charge an owner or an owner's spouse that the owner or owner's spouse might otherwise be required to pay are unrestricted and not fees subject to the two [~~three~~] percent limitation.

(6) Charges to Originate. Charges an owner or an owner's spouse is required to pay to originate an equity loan that are not interest under §153.1(11) of this title are fees subject to the two [~~three~~] percent limitation.

(7) Charges Paid to Third Parties. Charges an owner or an owner's spouse is required to pay to third parties for separate and additional consideration for activities relating to originating an equity loan are fees subject to the two [~~three~~] percent limitation. For example, these charges include attorneys' fees for document preparation to the extent authorized by applicable law. Charges that [~~those~~] third parties absorb, and do not charge an owner or an owner's spouse that the owner or owner's spouse might otherwise be required to pay are unrestricted and not fees subject to the two [~~three~~] percent limitation. [~~Examples of these charges include attorneys' fees for document preparation and mortgage brokers' fees to the extent authorized by applicable law.~~]

(8) Charges to Evaluate. Charges an owner or an owner's spouse is required to pay to evaluate the credit decision for an equity loan, that are not interest under §153.1(11) of this title, are fees subject to the two [~~three~~] percent limitation. Examples of these charges include fees collected to cover the expenses of a credit report, [~~survey,~~] flood zone determination, tax certificate, [~~title report,~~] inspection, or appraisal management services.

(9) Charges to Maintain. Charges paid by an owner or an owner's spouse to maintain an equity loan that are not interest under §153.1(11) of this title are fees subject to the two [~~three~~] percent limitation if the charges are paid at the inception of the loan, or if the charges are customarily paid at the inception of an equity loan but are deferred for later payment after closing.

(10) Charges to Record. Charges an owner or an owner's spouse is required to pay for the purpose of recording equity loan documents in the official public record by public officials are fees subject to the two [~~three~~] percent limitation.

(11) Charges to Insure an Equity Loan. Premiums an owner or an owner's spouse is required to pay to insure an equity loan are fees subject to the two [~~three~~] percent limitation. Examples of these charges include title insurance and mortgage insurance protection, unless the premiums are otherwise excluded under paragraph (15) of this section.

(12) Charges to Service. Charges paid by an owner or an owner's spouse for a party to service an equity loan that are not interest under §153.1(11) of this title are fees subject to the two [~~three~~] percent limitation if the charges are paid at the inception of the loan, or if the charges are customarily paid at the inception of an equity loan but are deferred for later payment after closing.

(13) Exclusion for Appraisal Fee. A fee for an appraisal performed by a third party appraiser is not a fee subject to the two percent limitation. The appraisal must be performed by a person who is not an employee of the lender. The excludable appraisal fee is limited to the amount paid to the appraiser for the completion of the appraisal, and does not include an appraisal management services fee described by Texas Occupations Code, §1104.158(a)(2).

(14) Exclusion for Property Survey Fee. A fee for a property survey performed by a state registered or licensed surveyor is not a fee subject to the two percent limitation. The property survey must be performed by a person who is licensed or registered under Texas Occupations Code, Chapter 1071.

(15) Exclusion for Title Insurance Premium. A state base premium for a mortgagee policy of title insurance with endorsements established in accordance with state law is not a fee subject to the two percent limitation.

(A) The excludable premium is limited to the applicable basic premium rate for title insurance published by the Texas Department of Insurance, plus authorized premiums for applicable endorsements.

(B) Any mortgagee policy for the equity loan must be provided by a company authorized to do business in this state.

(C) If additional premiums for endorsements are charged, the endorsements must be applicable to the mortgagee policy for the equity loan. Rules adopted by the Texas Department of Insurance govern the applicability of endorsements and the authorized amount of the premium for each endorsement.

(16) Exclusion for Title Examination Report Fee. A fee for a title examination report is not a fee subject to the two percent limitation if its cost is less than the state base premium for a mortgagee policy of title insurance without endorsements established in accordance with state law.

(A) The excludable fee must be less than the applicable basic premium rate for title insurance published by the Texas Department of Insurance, not

including any additional premiums for endorsements.

(B) The fee for a title examination report may not be excluded from the two percent limitation if the equity loan is covered by a mortgagee policy of title insurance.

(C) The fee must comply with applicable law. If the equity loan is a secondary mortgage loan under Texas Finance Code, Chapter 342, then the fee is limited to a reasonable fee for a title examination and preparation of an abstract of title by an attorney who is not an employee of the lender, or a title company or property search company authorized to do business in this state, as provided by Texas Finance Code, §342.308(a)(1).

(17) [~~(13)~~] Secondary Mortgage Loans. A lender making an equity loan that is a secondary mortgage loan under Texas Finance Code, Chapter 342 [~~of the Texas Finance Code~~] may charge only those fees permitted in Texas Finance Code, [~~TEX. FIN. CODE,~~] §§342.307, 342.308, and 342.502. A lender must comply with the provisions of Texas Finance Code, Chapter 342 [~~of the Texas Finance Code~~] and the constitutional restrictions on fees in connection with a secondary mortgage loan made under Texas Finance Code, Chapter 342 [~~of the Texas Finance Code~~].

(18) [~~(14)~~] Escrow Funds. A lender may provide escrow services for an equity loan. Because funds tendered by an owner or an owner's spouse into an escrow account remain the property of the owner or the owner's spouse those funds are not fees subject to the two [~~three~~] percent limitation. Examples of escrow funds include account funds collected to pay taxes, insurance premiums, maintenance fees, or homeowner's association assessments. A lender must not contract for a right of offset against escrow funds pursuant to Section 50(a)(6)(H).

(19) [~~(15)~~] Subsequent Events. The two [~~three~~] percent limitation pertains to fees paid or contracted for by an owner or owner's spouse at the inception or at the closing of an equity loan. On the date the equity loan is closed an owner or an owner's spouse may agree to perform certain promises during the term of the equity loan. Failure to perform an obligation of an equity loan may trigger the assessment of costs to the owner or owner's spouse. The assessment of costs is a subsequent event triggered by the failure of the owner's or owner's spouse to perform under the equity loan agreement and is not a fee subject to the two [~~three~~] percent limitation. Examples of subsequent event costs include contractually permitted charges for force-placed homeowner's insurance costs, returned check fees, debt collection costs, late fees, and costs associated with foreclosure.

(20) [~~(16)~~] Property Insurance Premiums. Premiums an owner or an owner's spouse is required to pay to purchase homeowner's insurance coverage are not fees subject to the two [~~three~~] percent limitation. Examples of property insurance premiums include fire and extended coverage insurance and flood insurance. Failure to maintain this insurance is generally a default provision of the equity loan agreement and not a condition of the extension of credit. The lender may collect and escrow premiums for this insurance and include the premium in the periodic payment amount or principal amount. If the lender sells insurance to the owner, the lender must

comply with applicable law concerning the sale of insurance in connection with a mortgage loan.

*§153.14. One Year Prohibition: Section 50(a)(6)(M)(iii).*

An equity loan may not be closed before the first anniversary of the closing date of any other equity loan secured by the same homestead property.

(1) (No change.)

(2) Section 50(a)(6)(M)(iii) does not prohibit modification of an equity loan before one year has elapsed since the loan's closing date. A modification of a home equity loan occurs when one or more terms of an existing equity loan is modified, but the note is not satisfied and replaced. A home equity loan and a subsequent modification will be considered a single transaction. The home equity requirements of Section 50(a)(6) will be applied to the original loan and the subsequent modification as a single transaction.

(A) - (C) (No change.)

(D) The two percent limitation [~~3% fee cap~~] required by Section 50(a)(6)(E) applies to the original home equity loan and any subsequent modification as a single transaction.

*§153.17. Authorized Lenders: Section 50(a)(6)(P).*

An equity loan must be made by one of the following that has not been found by a federal regulatory agency to have engaged in the practice of refusing to make loans because the applicants for the loans reside or the property proposed to secure the loans is located in a certain area: a bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States, including a subsidiary of a bank, savings and loan association, savings bank, or credit union described by this section; a federally chartered lending instrumentality or a person approved as a mortgagee by the United States government to make federally insured loans; a person licensed to make regulated loans, as provided by statute of this state; a person who sold the homestead property to the current owner and who provided all or part of the financing for the purchase; a person who is related to the homestead owner within the second degree of affinity and consanguinity; or a person regulated by this state as a mortgage banker or mortgage company [~~broker~~].

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

(3) A person who is licensed under Texas Finance Code, Chapter 156 is a person regulated by this state as a mortgage company [~~broker~~] for purposes of Section 50(a)(6)(P)(vi). A person who is registered under Texas Finance Code, Chapter 157 is a person regulated by this state as a mortgage banker for purposes of Section 50(a)(6)(P)(vi).

(4) (No change.)

*§153.45. Refinance of an Equity Loan: Section 50(f).*

A refinance of debt secured by the homestead, any portion of which is an extension of credit described by Subsection (a)(6) of Section 50, may not be secured by a valid lien against the homestead unless either the refinance of the debt is an extension of credit described by Subsection

(a)(6) or (a)(7) of Section 50, or all of the conditions in Section 50(f)(2) are met.

(1) One Year Prohibition. To meet the condition in Section 50(f)(2)(A), the refinance may not be closed before the first anniversary of the closing date of the equity loan. For purposes of this section, the closing date of the refinance is the date on which the owner signs the loan agreement for the refinance.

(2) Advance of Additional Funds. To meet the condition in Section 50(f)(2)(B), the refinanced extension of credit may not include the advance of any additional funds other than funds advanced to refinance a debt described by Subsections (a)(1) through (a)(7) of Section 50, or actual costs and reserves required by the lender to refinance the debt.

(A) Actual costs must be identifiable, must be actually incurred by the lender, and must comply with any applicable limitations on costs.

(B) Reserves (e.g., an escrow account for taxes and insurance) must be actually required by the lender to refinance the debt, and must comply with applicable law.

(3) 80 Percent Limitation on Loan Amount. To meet the condition in Section 50(f)(2)(C), the refinance of the extension of credit must be of a principal amount that when added to the aggregate total of the outstanding principal balances of all other indebtedness secured by valid encumbrances of record against the homestead does not exceed 80 percent of the fair market value of the homestead on the date the refinance of the extension of credit is made.

(A) The principal amount of the refinance is the sum of the amount advanced and any charges at the inception of the refinance, to the extent these charges are financed in the principal amount of the refinance.

(B) The principal balance of all outstanding debt secured by the homestead on the date the refinance is made determines the maximum principal amount of the refinance.

(C) The principal amount of the refinance does not include interest accrued after the date the refinance is made (other than any interest capitalized and added to the principal balance on the date the refinance is made), or other amounts advanced by the lender after closing as a result of default, including for example, ad valorem taxes, hazard insurance premiums, and authorized collection costs, including reasonable attorney's fees.

(4) Refinance Disclosure. To meet the condition in Section 50(f)(2)(D), the lender must provide the refinance disclosure described in Section 50(f)(2)(D) to the owner on a separate document not later than the third business day after the date the owner submits the loan application to the lender and at least 12 days before the date the refinance of the extension of credit is closed.

(A) Submission of a loan application to an agent acting on behalf of the lender is submission to the lender. A loan application may be given orally or electronically.

(B) For purposes of determining the earliest permitted closing date, the next succeeding calendar day after

the date that the lender provides the owner a copy of the required refinance disclosure is the first day of the 12-day waiting period. The refinance may be closed at any time on or after the 12th calendar day after the lender provides the owner a copy of the required refinance disclosure.

(C) If a lender mails the refinance disclosure to the owner, the lender must allow a reasonable period of time for delivery. A period of three calendar days, not including Sundays and federal legal public holidays, constitutes a rebuttable presumption for sufficient mailing and delivery.

(D) One copy of the required refinance disclosure may be provided to married owners.

(E) The refinance disclosure is only a summary of the owner's rights, which are governed by the substantive terms of the constitution. The substantive requirements prevail regarding a lender's responsibilities in an equity loan or refinance. A lender may supplement the refinance disclosure to clarify any discrepancies or inconsistencies.

(F) A lender may rely on an established system of verifiable procedures to evidence compliance with this paragraph.

(G) A lender whose discussions with the borrower are conducted primarily in Spanish for a closed-end loan may rely on the translation of the refinance disclosure developed under the requirements of Texas Finance Code, §341.502. Such notice shall be made available to the public through publication on the Finance Commission's webpage.

*§153.84. Restrictions on Devices and Methods to Obtain a HELOC Advance: Section 50(t)(3).*

A HELOC is a form of an open-end account that may be debited from time to time, under which credit may be extended from time to time and under which an owner is prohibited from using a credit card, debit card, or similar device, or preprinted check unsolicited by the borrower to obtain a HELOC advance.

(1) A lender may offer one or more non-prohibited devices or methods for use by the owner to request an advance. Permissible methods include contacting the lender directly for an advance, telephonic fund transfers, and electronic fund transfers. Examples of devices that are not prohibited include prearranged drafts, preprinted checks requested by the borrower, or written transfer instructions. Regardless of the permissible method or device used to obtain a HELOC advance, the amount of the advance must comply with:

(A) the advance requirements in Section 50(t)(2); and

(B) the loan to value limits in Section 50(t)(5). [~~; and~~]

[~~(C) the debit or advance limits in Section 50(t)(6).~~]

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

*§153.86. Maximum Principal Amount Extended under a HELOC: Section 50(t)(5).*

A HELOC is a form of an open-end account that may be debited from time to time, under which credit may be extended from time to time and under which the

maximum principal amount that may be extended under the account, when added to the aggregated total of the outstanding principal balances of all indebtedness secured by the homestead on the date the extension of credit is established, cannot exceed 80 percent of the fair market value of the homestead on the date the extension of credit is made.

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

(4) For purposes of calculating the maximum principal balance [~~limits and thresholds~~] under Section 50(t)(5) [~~and (6)~~], the outstanding principal balance of all other debts secured by the homestead is the principal balance outstanding of all other debts secured by the homestead on the date of the closing of the HELOC.

*§153.87. Maximum Principal Amount of Additional Advances under a HELOC: Section 50(t)(6).* **{{Section 153.87 will be repealed.}}**

**Certification**

The agencies hereby certify that the proposal has been reviewed by legal counsel and found to be within the commissions' legal authority to adopt.

Issued in Austin, Texas on October 20, 2017.

Leslie Pettijohn
Consumer Credit Commissioner
Joint Financial Regulatory Agencies

# B.

# Texas Department of Banking

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Charles G. Cooper
Commissioner

# TEXAS DEPARTMENT OF BANKING

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

To: Finance Commission Members

From: Kurt Purdom, Director of Bank & Trust Supervision

Date: October 6, 2017

Subject: Summary of the Bank & Trust Supervision Division Activities

| Bank and Trust Supervision | | | | | FY 2017 | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 8/31/2015 | | 8/31/2016 | | 11/30/2016 | | 2/28/2017 | | 5/31/2017 | | 8/31/2017 | |
| **Industry Profile *(# / Assets in billions)*** | | | | | | | | | | | | |
| **# Banks** | 256 | $240.7 | 247 | $248.3 | 244 | $252.3 | 244 | $254.6 | 240 | $252.7 | 240 | $252.9 |
| **# Trust Co.** (1) | 20 | $97.1 | 19 | $101.4 | 19 | $104.6 | 18 | $107.1 | 18 | $107.6 | 17 | $108.5 |
| **# FBA/FBB** | 9 | $89.2 | 10 | $70.0 | 10 | $63.1 | 10 | $62.2 | 10 | $57.4 | 10 | $56.1 |
| **Examinations Performed** | | | | | | | | | | | | |
| **Banks** | 118 | | 105 | | 25 | | 26 | | 25 | | 27 | |
| **Trust Co.** | 28 | | 31 | | 6 | | 3 | | 11 | | 6 | |
| **FBA/FBB** | 2 | | 2 | | 0 | | 1 | | 2 | | 0 | |
| **Bank Uniform Financial Institution Composite Ratings** | | | | | | | | | | | | |
| **1** | 127 | 49.6% | 126 | 51.0% | 129 | 52.9% | 126 | 51.6% | 123 | 51.3% | 123 | 51.3% |
| **2** | 122 | 47.7% | 109 | 44.1% | 103 | 42.2% | 106 | 43.5% | 103 | 42.9% | 104 | 43.3% |
| **3, 4, & 5** | 7 | 2.7% | 12 | 4.9% | 12 | 4.9% | 12 | 4.9% | 14 | 5.8% | 12 | 5.0% |
| **Non-Rated** | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 1 | 0.4% |

(1) Fiduciary assets for public trust companies (non-exempt) only.

Problem banks, which the Department considers to be any bank with a Uniform Financial Institutions Composite Rating of 3, 4, or 5, reflect a stable trend. As of this writing, problem institutions total 13. This level is consistent with last fiscal year-end and is well below the peak number of problem banks experienced during the last recession. The level of problem banks is in line with the normal range of between 3% and 5% of the total number of institutions. We anticipate that the number of problem institutions will continue to slowly reduce over the next six months.

| **Administrative/Enforcement Actions** *(Number outstanding as of the date indicated)* | | | **FY 2017** | | | |
|---|---|---|---|---|---|---|
| | **8/31/2015** | **8/31/2016** | **11/30/2016** | **2/28/2017** | **5/31/2017** | **8/31/2017** |
| **Banks - Safety and Soundness** | | | | | | |
| Formal | 2 | 0 | 0 | 1 | 1 | 1 |
| Informal | 14 | 19 | 21 | 19 | 22 | 23 |
| **Banks - Bank Secrecy Act (BSA)** | | | | | | |
| Formal | 1 | 0 | 0 | 0 | 0 | 0 |
| Informal | 0 | 0 | 2 | 3 | 2 | 2 |
| **Banks - Information Technology (IT)** | | | | | | |
| Formal | 0 | 0 | 0 | 0 | 0 | 0 |
| Informal | 2 | 0 | 0 | 2 | 2 | 2 |
| **Trust Departments of Banks and Trust Companies** | | | | | | |
| Formal | 0 | 0 | 0 | 0 | 0 | 0 |
| Informal | 2 | 3 | 3 | 2 | 2 | 1 |
| **Total Administrative/Enforcement Actions** | | | | | | |
| Formal | 3 | 0 | 0 | 1 | 1 | 1 |
| Informal | 18 | 22 | 26 | 26 | 28 | 28 |
| **Total** | **21** | **22** | **26** | **27** | **29** | **29** |

* Third quarter performance measure numbers are not yet available.

*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<br>Percent of Examinations Conducted within Department Guidelines** | | |
|---|---|---|
| **Entity Type** | **FY 2016** | **FY 2017** |
| **Commercial Banks** (All / DOB Only) | 97% / 98% | 91% / 98% |
| **IT** | 98% / 100% | 92% / 100% |
| **Trust** | 94% / 94% | 91% / 100% |
| **Foreign Banks** *(FRB)* | 100% | 100% |
| **Trust Companies** *(DOB)* | 78% | 100% |
| **IT** | 94% | 100% |

Compliance with examination priorities for commercial banks is in line with the agency's goal of completing 90% of examinations within policy guidelines. In fiscal year 2017, 17 bank examinations were started outside of policy guidelines, two of which were the Department's responsibility (averaged 16 days past due) and 15 of which were the FDIC's responsibility (averaged 14 days). Both of the Department's late examinations were in the first fiscal quarter and were caused by resources being diverted to complete follow-up examinations of banks which had been adversely affected by the decline in oil and gas commodity prices. Delays in FDIC

examinations were caused by similar diversions of resources to more troubled institutions and a short-term staffing imbalance that the FDIC reports will be alleviated by planned staff additions. Three FDIC trust department examinations and 14 FDIC information technology examinations were similarly delayed.

**Division Highlights**

- **Hurricane Harvey Preparedness and Aftermath**: Just prior to Hurricane Preparedness Week in May, the Department sent its Annual Emergency Preparedness notice to all banks urging managers to review their emergency preparedness plans and update emergency contact information on the Department's Authorized Contact and Email System, called ACES. As Hurricane Harvey approached landfall, staff called banks in the potential impact zone to discuss hurricane preparedness efforts and to solidify emergency contact numbers that would be used after the storm's passing. Commissioner Cooper issued a proclamation on August 24, 2017, allowing Texas state-chartered banks with offices in the affected areas to temporarily close under Section 37.003 of the Texas Finance Code. Hurricane Harvey made landfall near Rockport, Texas, on August 25, 2017, as a Category 4 hurricane producing extremely high winds, intense storm surge and record amounts of rain for many areas. Harvey's circulation stalled over South Texas and then moved slowly eastward, producing catastrophic flooding in the Houston and Beaumont areas. Twice daily conference calls were held after the storm's initial landfall with representatives of the FDIC, Federal Reserve Bank of Dallas, Louisiana Department of Financial Institutions, and others. Staff continually called banks in the affected areas to assess the damage, determine the number of bank office closures, and offer assistance. Commissioner Cooper issued an updated proclamation to allow temporary branch closings, expanding the number of affected counties to 54. The Department's Houston Regional Office remained closed for the entire week of August 28th. Staff held a post-hurricane meeting to discuss remaining action items and develop a "lessons learned" list to be used during the next emergency situation. In addition, the Department will issue guidance to financial institutions about the options and potential problem areas of extending new loans and renewing or modifying existing home equity and home improvement loans.

- **Community Banking Research and Policy Initiatives**: The Community Banking in the 21st Century Research Conference was held in St. Louis, Missouri on October 4 – 5, 2017. This annual conference was co-sponsored by CSBS and the Federal Reserve Bank of St. Louis and brings together academics, regulators, policymakers and bankers to discuss the latest in community bank research and other issues facing community banks. Pre-conference work by the agency included conducting phone interviews with bankers, holding banker Town Hall Meetings in four cities around the state, and soliciting feedback from bankers about specific issues through an on-line survey. Texas banks were well represented in the on-line survey results with 89 banks responding, the highest total for any state. Research papers discussed at the conference (available on the CSBS website), were grouped into three categories for discussion purposes:
    - Supervision, regulation, and bank risk;
    - Factors influencing bank behavior and performance; and
    - Real effects of government policies on banks.

- **Special Operations and Conferences**:
    - Deputy Commissioner Bacon and Senior Counsel Everette Jobe met with representatives of the Texas Employee Retirement System (ERS) to provide feedback about an ERS rule proposal on August 17, 2017.

- Deputy Commissioner Newberg and other staff members participated in the CSBS Board Meeting and Strategic Planning meeting held in Jackson, Wyoming, the week of August 28, 2017.

- Regional Directors met in Austin on September 12 – 13, 2017, to discuss staffing plans, training, leadership projects, and other issues.

- Review Examiner Wu participated in a regulatory panel held on September 13, 2017, at the Texas Bankers Association (TBA) Real Estate Lending School in Austin.

- Review Examiner Wu participated in the CSBS Technology Conference in Phoenix, Arizona, the week of September 18, 2017. Mr. Wu gave a presentation to the group on the importance of emergency preparedness as it relates to natural disasters like Hurricane Harvey.

- Commissioner Cooper and other staff members participated in the Independent Bankers Association of Texas Annual Convention held in Austin on October 1 – 3, 2017.

- Director Purdom participated in a CSBS District II and District IV meeting held in St. Louis, Missouri, on October 3 - 4, 2017.

- Review Examiner Whitson participated in a regulatory panel held during the TBA Internal Audit School in Austin on October 4, 2017.

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: Daniel Frasier, Director of Corporate Activities DBF

Date: October 6, 2017

Subject: Summary of the Corporate Division Activities

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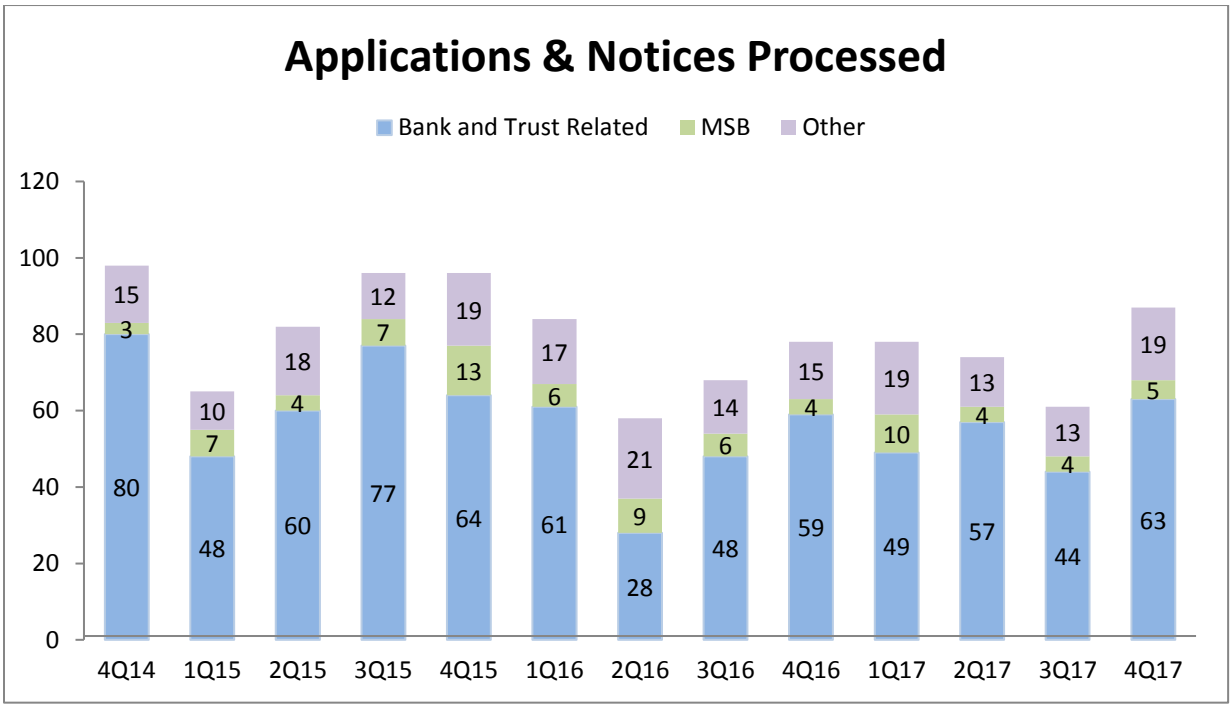
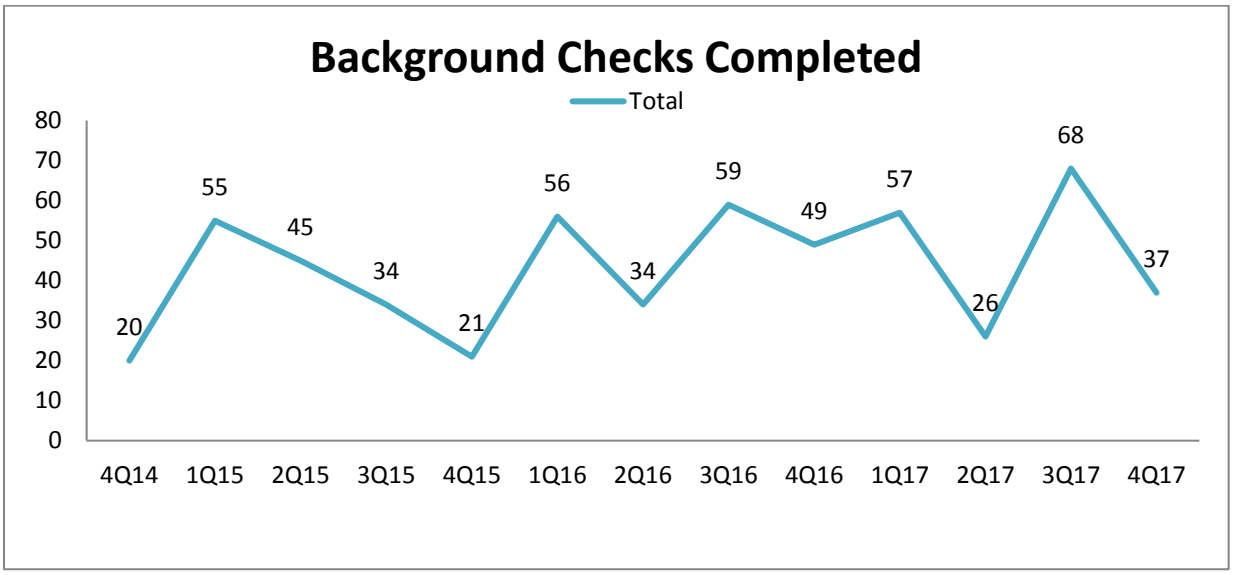


| Entities/Activities | Applications and Notices Under Review (as of October 3, 2017) |
|---|---|
| **Bank Related** | **12** |
| **Trust Companies** | **3** |
| **Money Services Business (MSB)** | **9** |
| **Others** | **3** |
| **Totals** | **27** |

**Division Highlights**

- The volume of bank activity has markedly increased in the fourth quarter compared to the third quarter's results.

- Strata Trust Company, Austin, Texas, a de novo trust company, opened for business on September 1, 2017.

- Chartering, Conversion, and Merger Activity – The following transactions have consummated since Corporate's last report to the Finance Commission:
    - *Banks*
        - Veritex Community Bank, Dallas, Texas, completed its acquisition merger of Sovereign Bank, Dallas, Texas
    - *Trust Companies*
        - Strata Trust Company, Austin, Texas, a de novo trust company, opened for business

- Conferences, Conventions, and Committee Meetings – Since the last report to the Finance Commission Corporate participated in the following:
    - Director Dan Frasier participated in the Money Transmitter Regulators Association Conference in Savannah, Georgia on September 25-28.
    - Director Dan Frasier and Senior Corporate Analyst Mark Largent represented the Department at the Independent Bankers Association of Texas Annual Convention held in Austin, Texas on October 1-3.

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: Russell Reese, Director of Special Audits

Date: October 1, 2017

Subject: Summary of the Special Audits Division Activities

| Special Audits | | | FY 2017 | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| **Entity** | **FY 2016** | | **1st** | | **2nd** | | **3rd** | | **4th** | |
| **Industry Profile (# / Assets (billions) )** | | | | | | | | | | |
| **Money Services Businesses (MSB)** | 155 | $114.7 | 156 | $106.7 | 156 | $106.7 | 156 | $113.4 | 156 | $113.8 |
| **Prepaid Funeral Contract (PFC)** | 380 | $3.9 | 379 | $3.8 | 376 | $3.8 | 375 | $3.9 | 375 | $3.9 |
| **Perpetual Care Cemeteries (PCC)** | 243 | $314.1 | 243 | $315.6 | 242 | $321.8 | 242 | $326.1 | 242 | $332.9 |
| **Cemetery Brokers (CB)** | 12 | n/a | 14 | n/a | 14 | n/a | 14 | n/a | 14 | n/a |
| **Private Child Support Enforcement Agencies (PCSEA)** | 10 | n/a | 10 | n/a | 10 | n/a | 10 | n/a | 10 | n/a |
| **Check Verification Entities (CVE)** | 2 | n/a | 2 | n/a | 2 | n/a | 2 | n/a | 2 | n/a |
| **Examinations Performed** | | | | | | | | | | |
| **MSB** | 97 | | 18 | | 28 | | 30 | | 28 | |
| **MSB** Limited Scope | 3 | | 0 | | 1 | | 1 | | 1 | |
| **MSB** Accepted other State | 17 | | 5 | | 1 | | 1 | | 0 | |
| **PFC** | 260 | | 65 | | 71 | | 97 | | 51 | |
| **PFC** Limited Scope | 6 | | 1 | | 0 | | 1 | | 0 | |
| **PCC** | 179 | | 54 | | 38 | | 41 | | 39 | |
| **PCC** Limited Scope | 6 | | 2 | | 0 | | 1 | | 1 | |
| **Ratings (# / %) Assigned to All Regulated Entities** | | | | | | | | | | |
| **1** | 317 | 42% | 315 | 42% | 313 | 42% | 303 | 40% | 303 | 40% |
| **2** | 351 | 47% | 356 | 47% | 365 | 48% | 383 | 50% | 384 | 51% |
| **3,4, & 5** | 82 | 11% | 82 | 11% | 78 | 10% | 73 | 10% | 70 | 9% |
| **Noncompliance with Examination Priorities (Past Due)** | | | | | | | | | | |
| **MSB** | 14 | | 21 | | 15 | | 7 | | 5 | |
| **PFC** | 10 | | 9 | | 5 | | 0 | | 4 | |
| **PCC** | 15 | | 8 | | 6 | | 4 | | 5 | |
| **Number of Enforcement Actions Taken in FY 2017** | | | | | | | | | | |
| **MSB** | 8 | | 3 | | 1 | | 2 | | 1 | |
| **PFC** | 2 | | 1 | | 1 | | 0 | | 1 | |
| **PCC** | 0 | | 1 | | 0 | | 0 | | 0 | |
| **PCSEA** | 1 | | 0 | | 0 | | 0 | | 0 | |

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

**Noncompliance with Examination Priorities (Past Due)**

- The five MSB past due examinations are on average 2.5 months past due.
- The five PCC past due examinations are on average eight days past due and the four PFC past due examinations are on average six days past due.
- Our current examination schedule reflects that four of the past due PCC/PFC examinations were completed in September 2017 and the remaining 5 past due PCC/PFC examinations will be completed in October 2017.
- Our current examination schedule reflects that three of the past due MSB examinations were completed in September 2017, one will be completed in November 2017 and the remaining past due examination has been delayed until January 2018 due to coordination with other MTRA state agencies.
- The reasons for the reduction in the number of PFC examinations performed this quarter is due to examiners assisting Austin Headquarters with special projects and the impact of Hurricane Harvey. However, Special Audits met or exceeded all performance measures for the fourth quarter of FY 17.

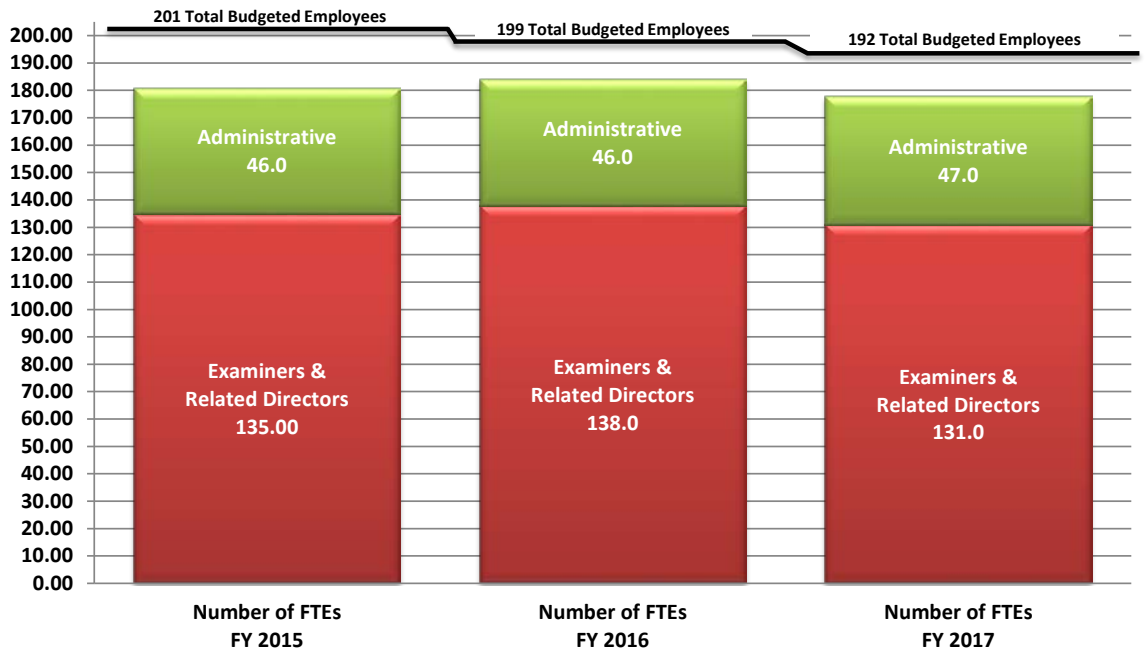
**Division Activities**

Special Audits Administrator Gonzales and Examiner Valis recently volunteered to participate in a working group established by CSBS to provide feedback and to share ideas related to the ongoing development of the State Examination System (SES). It is anticipated that the SES will be an end-to-end examination management system that will support supervision, complaint, investigation, and enforcement activities for all non-depository financial entities, including money service businesses.

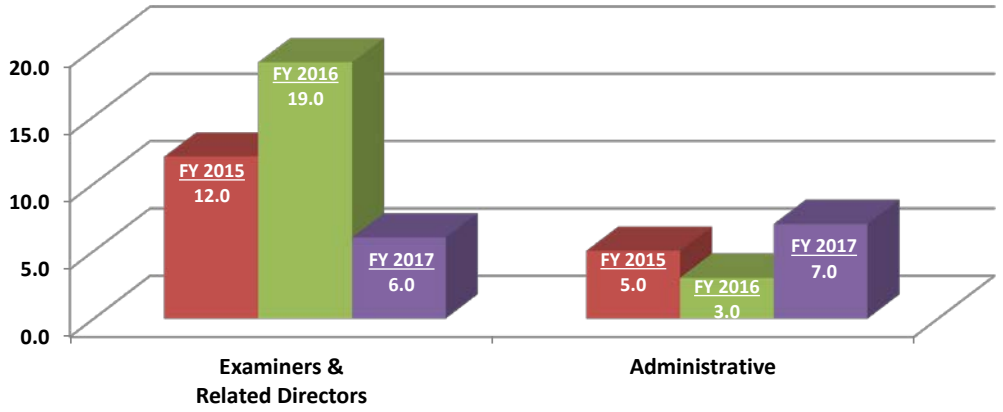
During the week of September 25th Commissioner Cooper, Deputy Commissioner (DC) Newberg, Director Reese and Director Frasier attended the annual MTRA conference in Savannah, GA, where current trends and events in the MSB industry were discussed. Director Reese was elected to serve on the MTRA Board of Directors. Commissioner Cooper and DC Newberg also participated on two separate panels during the conference.

# Texas Department of Banking

## Employee Data for Fiscal Years 2015, 2016 and 2017 as of 8/31/17



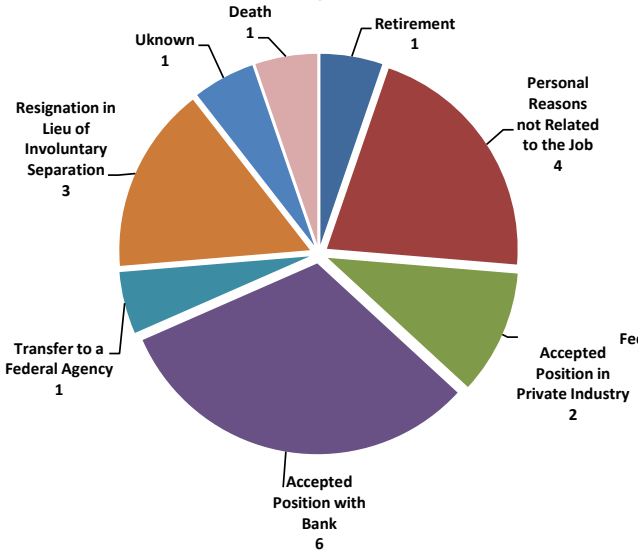

## New Hire Data for Fiscal Years 2015, 2016 and 2017




## FY 2017 Employee Turnover Reasons

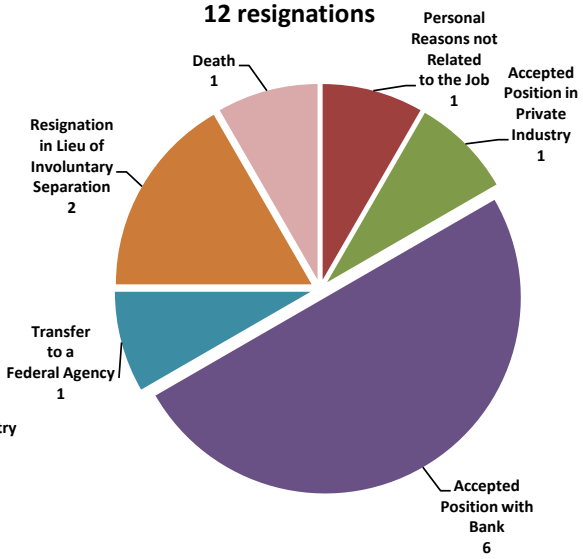
### All Employees

19 Resignations




### Financial Examiners Only

12 resignations




As of 8/31/17

# Actual Performance for Outcome Measures
## Fiscal Year 2017
## For Period Ending August 2017

| Type/Strategy/Measure | 2017 Target | 2017 YTD | Percent of Annual Target |
|---|---|---|---|
| **Outcome Measures - Key** | | | |
| 1-1 QUALITY BANK REGULATION | | | |
| 1. % BANKS EXAMINED | 90.00% | 90.91% | 101.01% |
| 1-2 QUALITY NON-BANK REGULATION | | | |
| 1. % MSB LICENSEES EXAMINED | 90.00% | 96.71% | 107.46% |
| The division's positive variance relates to being fully staffed with a trained and knowledgeable examination force for the entire year. | | | |
| 1-3 CORPORATE ACTIVITIES | | | |
| 1. % B&T, MSB, PCSEA APPS COMPLETED | 95.00% | 99.60% | 104.84% |

*Note: Variance of 5% from target require explanation.

# Actual Performance for Explanatory Measures
## Fiscal Year 2017
## For Period Ending August 2017

| Type/Strategy/Measure | 2017 Target | 2017 YTD | Percent of Annual Target |
|---|---|---|---|
| **Explanatory Measure - Key** | | | |
| **1-1-1** BANK EXAMINATION | | | |
| 1. % ASSETS IN SAFE & SOUND BANKS | 95.00% | 95.00% | 100.00% |

*Note: Variance of 5% from target require explanation.

# Actual Performance for Output/Efficiency Measures

## Fiscal Year 2017

## For Period Ending August 2017

| Type/Strategy/Measure | 2017 Target | 2017 Quarter | 2017 YTD | Percent of Annual Target |
|---|---|---|---|---|
| **Output Measures-Key** | | | | |
| **1-1-1** BANK EXAMINATION | | | | |
| 1. # BANK EXAMINATIONS PERFORMED | | | | |
| **Quarter 1** | 102 | 25 | 25 | 24.51% |
| **Quarter 2** | 102 | 27 | 52 | 50.98% |
| **Quarter 3** | 102 | 27 | 79 | 77.45% |
| **Quarter 4** | 102 | 27 | 106 | 103.92% |
| 2. # TRUST/IT EXAMINATIONS PERFORMED | | | | |
| **Quarter 1** | 206 | 44 | 44 | 21.36% |
| **Quarter 2** | 206 | 51 | 95 | 46.12% |
| **Quarter 3** | 206 | 70 | 165 | 80.10% |
| **Quarter 4** | 206 | 42 | 207 | 100.49% |
| **1-2-1** NON-BANK EXAMINATION | | | | |
| 1. # SPECIAL AUDIT LICENSEES EXAMINED | | | | |
| **Quarter 1** | 560 | 145 | 145 | 25.89% |
| **Quarter 2** | 560 | 139 | 284 | 50.71% |
| **Quarter 3** | 560 | 172 | 456 | 81.43% |
| **Quarter 4** | 560 | 120 | 576 | 102.86% |
| **1-3-1** APPLICATION PROCESSING | | | | |
| 1. # LICENSE APPLICATIONS COMPLETED | | | | |
| **Quarter 1** | 267 | 78 | 78 | 29.21% |
| **Quarter 2** | 267 | 74 | 152 | 56.93% |
| **Quarter 3** | 267 | 61 | 213 | 79.78% |
| **Quarter 4** | 267 | 87 | 300 | 112.36% |

The number of filings completed was higher than expected due to an unexpected increase in the volume of branch applications and subsidiary notices received.

*Note: Variance of 5% from target require explanation.

# Actual Performance for Non-Key Measures

## Fiscal Year 2017
## For Period Ending August 2017

| Type/Strategy/Measure | 2017 Target | 2017 YTD | Percent of Annual Target |
|---|---|---|---|

**Non-Key Measures**

**1-1-1 BANK EXAMINATION**

| | | | |
|---|---|---|---|
| 2. % FOREIGN BANK AGENCIES EXAMINED | 95.00% | 100.00% | 105.26% |
| The number of foreign bank agencies receiving examinations when due is higher than the target due to the Federal Reserve and Department being fully staffed in this area during the majority of fiscal 2017. | | | |
| 3. % TRUST COMPANIES EXAMINED | 90.00% | 100.00% | 111.11% |
| The number of trust companies receiving examinations when due is higher than the target due to progressive efficiencies of the less tenured trust specialists. | | | |
| 4. % PROBLEM INSTITUTIONS WITH APPROPRIATE SUPERVISORY ACTIONS IN PLACE | 100.00% | 100.00% | 100.00% |
| 5. CERTIFICATE OF ACCREDITATION BY CSBS MAINTAINED IN GOOD STANDING | YES | YES | YES |
| 8. AVERAGE COST PER BANK EXAMINATION | $97,800.00 | $87,503.54 | 89.47% |
| The average cost per bank examination is lower than the target due to fiscal year 2017 expenditures being less than projected. | | | |
| 9. ASSETS EXAMINED PER EXAMINER DAY (IN MILLIONS) | $10.50 | $9.92 | 94.48% |
| The assets examined per examiner day is slightly lower than the target due to minor changes in the examination schedule. | | | |
| 11. # STATE-CHARTERED BANKS IN TEXAS | 235 | 240 | 102.13% |
| 12. TOTAL ASSETS (IN BILLIONS) IN STATE-CHARTERED BANKS IN TEXAS | $320.00 | $316.40 | 98.88% |

**1-2-1 NON-BANK EXAMINATION**

| | | | |
|---|---|---|---|
| 2. % PREPAID FUNERAL CONTRACT LICENSEES EXAMINED | 90.00% | 98.91% | 109.90% |
| The Division's positive variances relates to being fully staffed with a trained and knowledgeable examination force for the entire year. | | | |
| 3. % PERPETUAL CARE CEMETERY LICENSEES EXAMINED | 90.00% | 97.91% | 108.79% |
| The Division's positive variances relates to being fully staffed with a trained and knowledgeable examination force for the entire year. | | | |
| 4. % PCC AND PFC APPLICATIONS COMPLETED WITHIN STATUTORY PERIOD | 95.00% | 100.00% | 105.26% |
| The Division's positive variance relates to being fully staffed with a trained and knowledgeable administrative staff for the entire year. | | | |
| 6. # SPECIAL AUDITS LICENSEES | 760 | 773 | 101.71% |
| 7. AVERAGE DIRECT COST PER PFC AND PCC LICENSEE EXAMINATION | $2,500.00 | $2,450.82 | 98.03% |
| 8. DOLLAR AMOUNT (IN BILLIONS) OF PREPAID FUNERAL CONTRACTS IN FORCE | $3.30 | $3.90 | 118.18% |
| The Division's positive variance is attributed to enhanced investment earnings and an increase in prepaid funeral contract sales above what we had projected. | | | |

# Actual Performance for Non-Key Measures

## Fiscal Year 2017

## For Period Ending August 2017

| Type/Strategy/Measure | 2017 Target | 2017 YTD | Percent of Annual Target |
|---|---|---|---|
| **Non-Key Measures** | | | |
| **1-3-1 APPLICATION PROCESSING** | | | |
| 3. # REQUESTS FOR INFORMATION RECEIVED | 2,850 | 1,777 | 62.35% |
| The consumer complaint area experienced a significant decrease in complaint and inquiry volumes due to the issuance of Supervisory Memorandum 1016 (SM 1016) issued on May 3, 2016. SM 1016 clarifies that entities occasionally enter into agreements with government agencies, such as the U.S. Government, to act as the government´s financial agent or fiduciary in order for the government agency to carry out its goal of providing certain financial services or benefits to the public. In these instances, the Department is not a party to these agreements and the terms are established by the entity and the government agency, not the Department. Therefore, an entity acting as a financial agent or fiduciary on behalf of a government agency is not required to provide information regarding filing a complaint with the Department. As a result of SM 1016, a large bank redesigned their annual privacy notice for a government program removing the Department's contact information. In addition, there were no large ATM outages reported in Fiscal Year 2017. These factors helped reduce our historically higher yielding complaint activity. | | | |
| **1-4-1 REGULATORY OVERSIGHT** | | | |
| 2. # FC MEETINGS CONVENED | 6 | 6 | 100.00% |

*Note: Variance of 5% from target require explanation.

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:*** October 2, 2017

***Subject:*** Summary of the Strategic Support Division Activities

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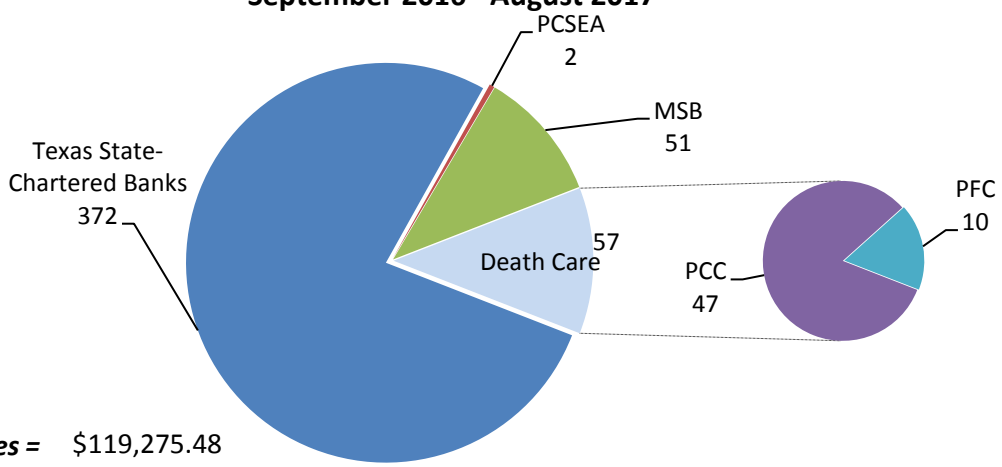
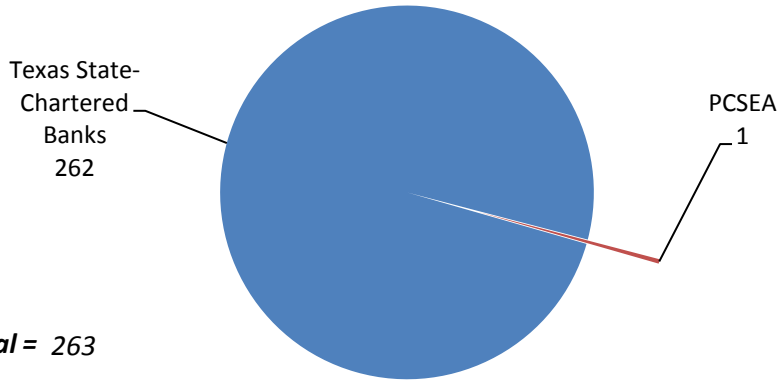
**Complaints on Regulated Entities**
**September 2016 - August 2017**



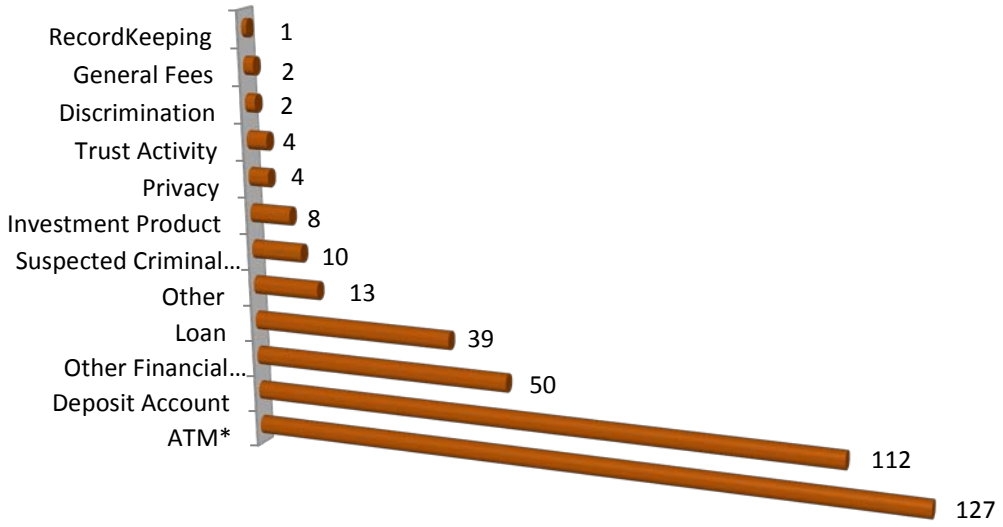

***Recoveries =*** $119,275.48
***Total =*** *482*

**Inquiries on Regulated Entities**
**September 2016 - August 2017**




***Total =*** *263*

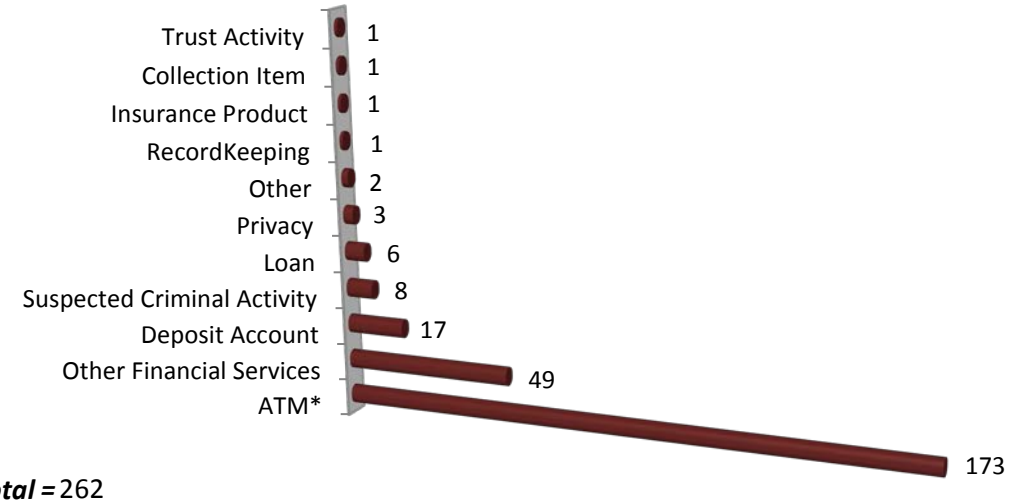
**State-Chartered Banks and Trust Companies**
**Complaints by Type**
**September 2016 - August 2017**




***Total =*** *372*

**High activity related to annual privacy notice containing the Department's contact information. Consumer complaints range from needing clarification of the notice to account balance issues and card related problems.*

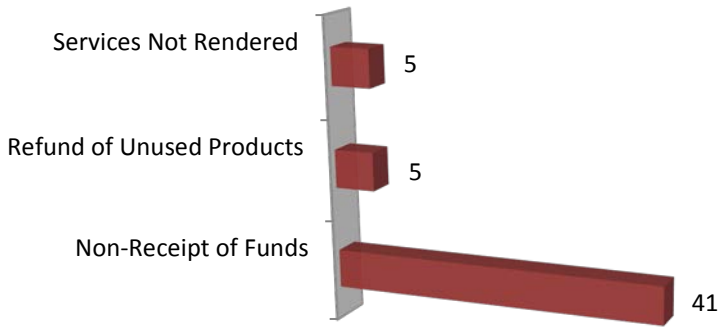
**State-Chartered Banks and Trust Companies**
**Inquiries by Type**
**September 2016 - August 2017**




***Total =*** 262

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

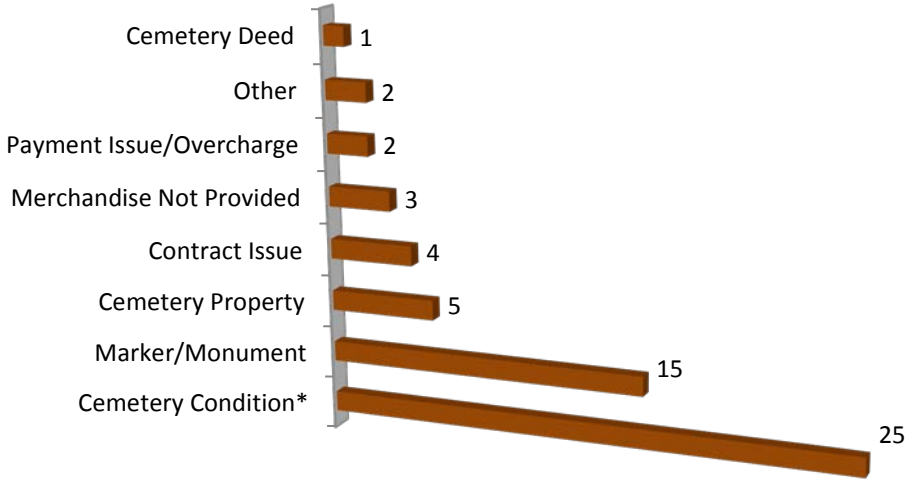
**Money Services Businesses**
**Complaints by Type**
**September 2016 - August 2017**




***Total =*** *51*

**PFC/PCC**

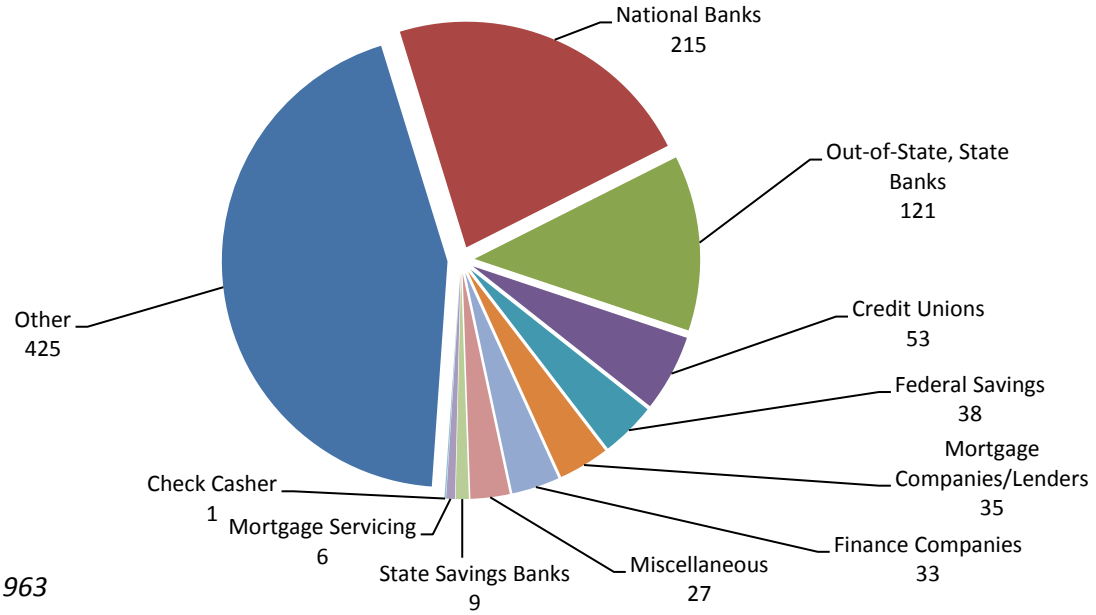
**Complaints by Type**
**September 2016 - August 2017**




***Total =*** *57*

* *Complaints related to a licensed perpetual care cemetery in the Houston area.*

**Complaints and Inquiries Against Nonregulated Entities**
**September 2016 - August 2017**




***Total =*** *963*

*On occasion, consumers do not provide the name of the entity they need assistance with. In these situations, the communication is categorized in the "Other" category.*

**Average Number of Days to Close a Written Complaint**

| Type | Sept. 2016 – Aug. 2017 |
|---|---|
| **State-Chartered Banks** | 11 |
| **Trust** | N/A |
| **PCSEA** | 7 |
| **PFC/PCC** | 40 |
| **MSB** | 39 |

**CANS ACTIVITY**
**January 1, 2014 – August 31, 2017**

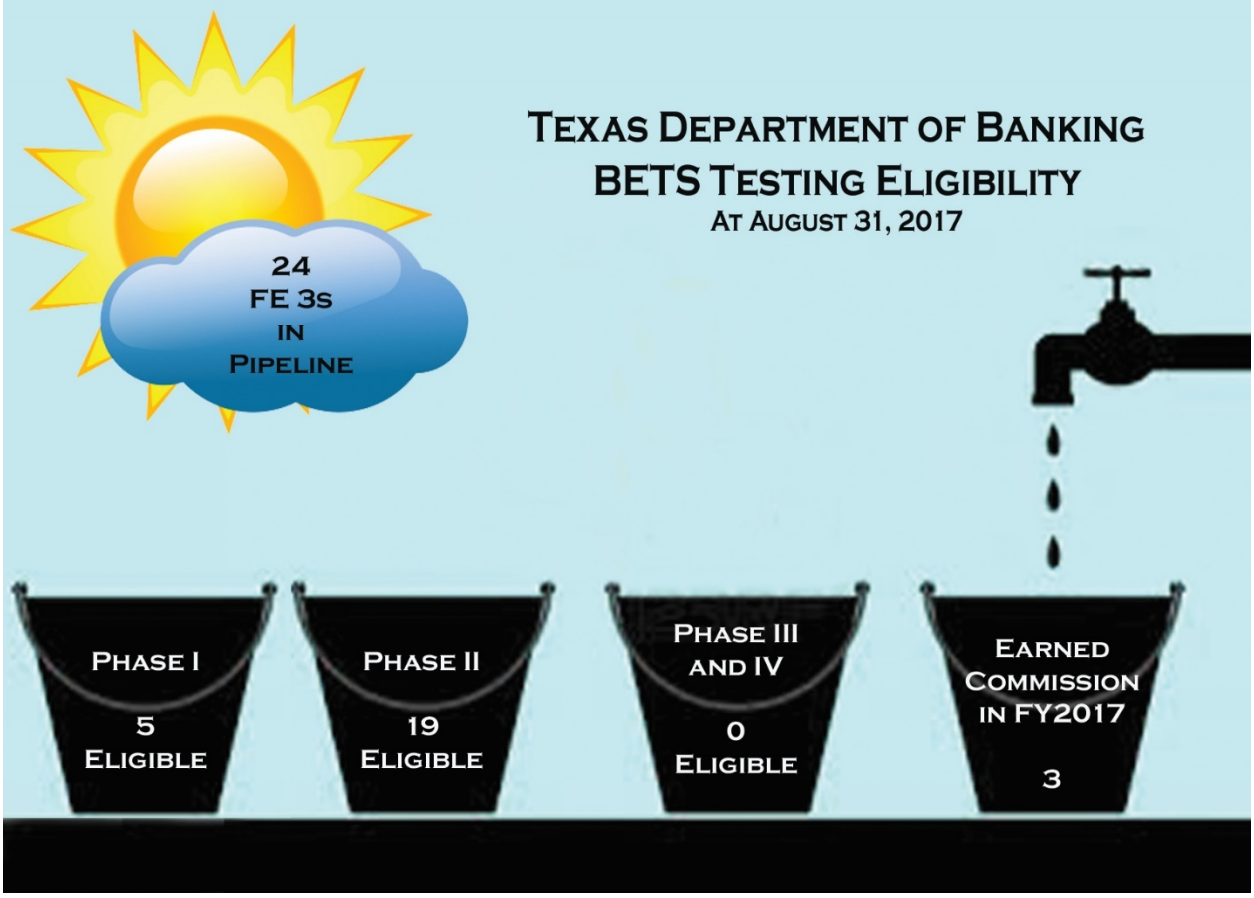
| Entity | Enrolled | Compromised Accounts Reported |
|---|---|---|
| **Texas State-Chartered Banks** | 220 | 748 |
| **Texas State-Chartered Savings Banks** | 25 | 41 |
| **Federal Savings Banks** | 10 | 37 |
| **State Credit Unions** | 132 | 798 |
| **Federal Credit Unions** | 229 | 504 |
| **National Banks** | 170 | 210 |
| **Out-of-State State-Chartered Banks** | 12 | 58 |
| **Out-of-State National Banks** | 6 | 11 |
| **Total** | **804** | **2,407** |

**Bank Examination Testing System (BETS) Activity**
**Number of Candidates Passing Each Phase**

| | FY 2014 | FY 2015 | FY 2016 | FY 2017 |
|---|---|---|---|---|
| **I. General Knowledge** | 5 | 8 | 9 | 8 |
| **II. Loan Analysis** | 2 | 2 | 4 | 3 |
| **III. Panel** | 2 | 4 | 3 | 2 |
| **IV. Test Bank** | 1 | 4 | 2 | 3 |
| **Total FE3** | 14 | 19 | 18 | 24 |

**Promotions**

| | | | | |
|---|---|---|---|---|
| **From FE3 to FE4** ***(Commissioned Examiner)*** | 2 | 4 | 2 | 3 |



**Other Divisional Items:**

- *Sunset Review*
    - The Department submitted its Self-Evaluation Report to the Sunset Advisory Commission on August 31, 2017. The Sunset Review Team introductory meeting and overview will be held on October 11, 2017. The agency will be under review from October 2017 through mid-April 2018.
- *Financial Education*
    - IBAT and TBA Financial Literacy Summit, Dallas, Texas – Ms. Leilani Lim-Villegas participated as a guest speaker and panel moderator for two sessions – "Working Adults" and "CRA Roundtable"
    - Bank Visits – The Department received requests from two entities for financial education visits in August 2017 (Mills County Bank, Goldthwaite, Texas and Tolleson Private Bank, Dallas, Texas).
- *Publication*
    - The September edition of the Condition of the Texas State Banking System report is available with financial data as of June 30, 2017.
- *Law & Guidance Manual*
    - The Law & Guidance Manual (website) has been updated through September 1, 2017 and includes all statute changes from the 85th Legislative Session. The desktop version of the Law & Guidance Manual used by the field examiners and the public was also updated through September 1, 2017.
- *Data Exchange (DEX 2.0)*
    - The Department hosted two webinars in September 2017 to launch the newly upgraded DEX 2.0. portal. The webinars provided users with helpful tips for navigating through the portal and showcased the newest feature, which includes the ability to drag and drop multiple files for easier uploading, downloading multiple folders, and to receive email notifications when files are added to folders.
- *Website*

  The following data relates to website activity between September 1, 2016 and August 31, 2017.

    - The Department of Banking website received 709,292 page views. The top searches for the site include the Top 100 Banks in Texas (17,439 page views) and Applications & Forms (17,210 page views).
    - The Electronic Crimes Task Force website received 5,318 page views. The top searches for the site include Ask A Question (369 page views) and the Corporate Account Takeover (CATO) (353 page views).
    - The Texas Prepaid Funeral Contracts website received 59,017 page views. The top searches for the site include the Prepaid Funeral Planning Brochure (6,017 page views) and the Frequently Asked Questions page (2,671 page views).
    - The Finance Commission website received 34,221 page views. The top searches for the site include the Finance Commission Members page (3,230 page views) and the Home Equity page (2,398 page views).

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:** **October 3, 2017**

**RE:** **Legal Division Update**

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## Litigation

***Claim by the Texas Department of Banking against the estate of Felix Trevino Morales***, Docket No. 442502, in Probate Court No. 2 of Harris County, Texas. On July 1, 2016, the Department of Banking filed a claim for $12,545.00 against the estate of Felix Trevino Morales. Mr. Morales owned and operated Trevino & Sons Funeral Home in Houston where he sold prepaid funeral benefits without the necessary permit. The Department was seeking restitution to customers who purchased prepaid funeral benefits from Mr. Trevino when he was not authorized to sell them. On March 6, 2017, the Office of Attorney General presented an updated claim to the executrix for $11,005; the claim was accepted on March 9, 2017. The probate case remains active.

***Claim by the Texas Department of Banking against the estate of Bobby Royce Bankston***, Docket No. P17-13928, in Hopkins County, Texas. Mr. Bankston, as owner and operator of Memorial Monuments and Apple Casket, Sulphur Springs, sold prepaid funeral merchandise to customers without the necessary permit. Mr. Bankston died on November 17, 2016. On July 7, 2017, the Office of Attorney General filed an amended claim against the estate for $94,330.42, which is the amount paid on 61 contracts that are still outstanding. The new owner of the business and the representatives of the estate are attempting to negotiate a resolution for the outstanding purchasers.

## Gifts

No gifts have been received from outside entities during this reporting period.

## Orders

Since the last Legal Division memo was submitted, the Commissioner issued six orders, five of which are final public orders:

***Special Audits***

- Order No. 2017-010, dated 8/3/2017; Order to Cease and Desist Activity and to Seize Prepaid Funeral Money and Records, C. Johnson Funeral Home, Inc., Houston, TX

- Order No. 2017-011, dated 8/3/2017; Consent Order, R.B.T. Trading LLC d/b/a R.B.T. Duty Free, Mission, TX

- Order No. 2017-011a, dated 8/22/2017; Amended Consent Order Nunc Pro Tunc, R.B.T. Trading LLC d/b/a R.B.T. Duty Free, Mission, TX

***Bank & Trust***

- Order No. 2017-012, dated 8/28/2017; Order Canceling Charter, First Texas Trust Corporation, Austin, TX

- Order No. 2017-013, dated 8/28/2017; Order Authorizing Temporary Branches or Offices, Texas

2. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendment to 7 TAC, §15.81 Concerning Application for Acquisition or Change of Control of State Bank.

**PURPOSE:** Amendment to §15.81 is proposed to implement recent statutory changes requiring the banking commissioner to promptly notify an applicant for acquisition or change of control of a state bank of the date the banking commissioner determines the application to be informationally complete and accepted for filing. The amendment also establishes a deadline within which the applicant must publish notice of the application that is based upon the date that the commissioner notifies the applicant of acceptance of the filing.

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

**RECOMMENDED MOTION:** I move that we publish the proposed amendment to 7 TAC, §15.81 in the *Texas Register*.

***Title 7. Banking and Securities***
***Part 2. Texas Department of Banking***
***Chapter 15. Corporate Activities***
***Subchapter E. Change of Control Applications***
***7 TAC §15.81***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §15.81, concerning application for acquisition or change of control of a state bank**.** The amended rule is proposed to implement recent statutory changes**.**

Finance Code §33.002 was amended effective September 1, 2017, by Section 1 of SB 1400 (Acts 2017, 85th Leg., R.S., Ch. 915, §1), to require the banking commissioner to promptly notify an applicant for acquisition or change of control of a state bank of the date the banking commissioner determines the application to be informationally complete and accepted for filing. This rule amendment is proposed to conform to the statutory change, and to establish a deadline within which the applicant must publish notice of the application that is based upon the date that the commissioner notifies the applicant of acceptance of the filing.

Mr. Daniel Frasier, Director of Corporate Activities, Texas Department of Banking, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Mr. Frasier also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is that the time for publication of notices of application for acquisition or change of control will follow the date that the application is accepted for filing, as required by the statutory change. This will provide greater clarity for all stakeholders.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed.

For each year of the first five years that the rule will be in effect, the rule will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; and
- positively or adversely affect this state's economy

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There will be no difference in the cost of compliance for these entities.

To be considered, comments on the proposed amended section must be submitted no later than 5:00 p.m. on December 4, 2017. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amendment is proposed under Finance Code, §31.103, which provides that the commission may adopt rules to accomplish the purposes of Subchapter A.

Finance Code, §33.002, is affected by the proposed amended section.

*§15.81. Application for Acquisition or Change of Control of State Bank.*

(a-c) (No change.)

(d) Public notice. Not later than 21 days from the date the banking commissioner notifies the applicant of acceptance [~~Within 14 days prior to or 14 days after submission~~]of the initial application, the applicant must publish notice as required by the Finance Code, §33.002(d), and §15.5 of this title (relating to Public Notice) in the county where the state bank's or bank holding company's home office is located. One publication under this subsection is adequate unless the banking commissioner expressly requires additional notice.

(e-h) (No change.)

(i) Approval. Automatic approval; conditional approval. If an application filed under this section is not approved by the banking commissioner or is not set for hearing on or before the 60th day after the [~~later of the~~] date notice is published [~~or the application is accepted for filing~~], the transaction may be consummated. Before the expiration of the initial 60-day period, the banking commissioner may give the applicant written notice that the application is approved; upon receipt of the notice, the applicant may immediately consummate the transaction. Before the expiration of the initial 60-day period, the banking commissioner may also give an applicant written notice that the application is conditionally approved subject to certain conditions. The applicant must enter into a written agreement with the banking commissioner concerning these conditions on or before the 30th day after the date the applicant receives notification of conditional approval. An agreement entered into by the applicant and the banking commissioner concerning conditional approval is enforceable against the applicant and the bank and is considered for all purposes an agreement under the provisions of the Finance Code. If an applicant receives conditional approval, but does not enter into an agreement with the banking commissioner as required by this subsection, the banking commissioner will set the matter for hearing.

(j-m) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be

within the state agency's legal authority to adopt.

3. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, §33.27 Concerning Fees for Money Service Business Licenses.

**PURPOSE:** Amendments to §33.27 are proposed to clarify what fees a new license holder must pay to maintain its license. The proposed amendments to §33.27 would eliminate §33.27(h)(3) requiring a new license holder to pay the minimum annual assessment shortly after it has paid a $10,000 application fee, and modify §33.27(e)(3) to maintain a license to clarify that a new license holder that has not yet filed its first annual report would only have to pay an examination fee of $75 per hour for each examiner and all associated travel expenses as its annual assessment.

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

**RECOMMENDED MOTION:** I move that we publish the proposed amendment to 7 TAC, §33.27 in the *Texas Register*.

***Title 7. Banking and Securities***
***Part 2. Texas Department of Banking***
***Chapter 33, Money Services Businesses***
***7 TAC §33.27***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §33.27, concerning fees, assessments and reimbursements. The amended rule is proposed to clarify what fees a new license holder must pay to maintain its license.

Texas Finance Code §151.207(b)(1) requires a money service business license holder to pay an annual license fee in an amount established by commission rule in order to maintain its license. The department currently has two rules that address what a new license holder that has not yet filed its first annual report must pay to maintain its license. Current §33.27(e)(3) provides that a new license holder that has not yet filed its first annual report must pay the minimum annual assessment as specified by §§33.27(e)(1) or (e)(2). In addition, current §33.27(h)(3) provides that a new license holder that has not yet filed its first annual report must pay an examination fee of $75 per hour for each examiner and all associated travel expenses, and that portion of this fee attributable to hourly charges shall be reduced by an amount equal to 50 percent of the annual assessment the license holder paid pursuant to §33.27(e)(3). Having these two rules in different subsections could be confusing to new license holders, particularly because §33.27(h)(3) has to do with the fee to maintain a license, but is under the subsection related to "other fees." Furthermore, the department believes it is more reasonable not to require a new license holder pay the minimum annual assessment shortly after it has paid a $10,000 application fee.

The proposed amendments to §33.27 would eliminate §33.27(h)(3) under the other fees subsection, and modify §33.27(e)(3) in the subsection on fees to maintain a license to clarify that a new license holder that has not yet filed its first annual report would only have to pay an examination fee of $75 per hour for each examiner and all associated travel expenses as its annual assessment.

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

Ms. Newberg has also determined that, for each year of the first five years the rule amendments as proposed are in effect, the public benefit anticipated is the correction of misleading language in order to clearly communicate how an assessment for a new license holder is calculated.

For each year of the first five years that the rule amendments will be in effect, there will not be economic costs to persons required to comply with the rule amendments as proposed.

For each year of the first five years that the rule amendments will be in effect, the rule amendments will not:

- create or eliminate a government program;

- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- create a new regulation;
- increase or decrease the number of individuals subject to the rule's applicability; or
- positively or adversely affect this state's economy

For each year of the first five years that the rule amendments will be in effect, the rule amendments will:

- decrease fees paid to the department; and
- limit an existing regulation.

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There will be no difference in the cost of compliance for these entities.

To be considered, comments on the proposed amendments must be submitted no later than 5:00 p.m. on December 4, 2017. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amendments are proposed under Finance Code §151.102, which authorizes the commission to adopt rules to administer and enforce Chapter 151, and under Finance Code §151.207(b)(1) which authorizes the commission to establish an annual license fee by rule.

Finance Code §151.207 is affected by the proposed amended section.

*§33.27. What Fees Must I Pay to Get and Maintain a License?*

(a) – (d) (No change.)

(e) What fees must I pay to maintain my license? You must pay your annual assessment. Subject to paragraph (3) of this subsection, the amount of your annual assessment is determined based on the total annual dollar amount of your Texas money transmission and or currency exchange transactions, as applicable, as reflected on your most recent annual report filed with the department under Finance Code, §151.207(b)(2).

(1) If you hold a currency exchange license, you must pay the annual assessment specified in the following table:

Figure: 7 TAC §33.27(e)(1) (No change.)

(2) If you hold a money transmission license, you must pay the annual assessment specified in the following table:

Figure: 7 TAC §33.27(e)(2) (No change.)

(3) If you are a new license holder and have not yet filed your first annual report under Finance Code, §151.207(b)(2), you must pay <u>an examination fee of $75 per hour for each examiner and all associated travel expenses for an examination</u>[~~the minimum annual assessment specified by paragraph (1) or (2) of this subsection, as applicable,~~

~~prorated for the number of quarters remaining in the department's fiscal year after the date your license is issued~~].

(f) – (g) (No change.)

(h) What other fees must I pay?

(1) If the department does not receive your completed annual report on or before the due date prescribed by the commissioner under Finance Code, §151.207, you must pay a late fee of $100 per day for each business day after the due date that the department does not receive your completed annual report.

(2) If more than one examination is required in the same fiscal year because of your failure to comply with Finance Code, Chapter 151, this chapter, or a department directive, you must pay for the additional examination at a rate of $75 per hour for each examiner required to conduct the additional examination and all associated travel expenses. A fiscal year is the 12-month period from September 1st of one year to August 31st of the following year.

[~~(3) If you are a new license holder and have not yet filed your first annual report required under Finance Code, §151.207(b)(2), you must pay an examination fee of $75 per hour for each examiner and all associated travel expenses for an examination. The portion of this fee attributable to hourly charges shall be reduced by an amount equal to 50% of the annual assessment you paid pursuant to subsection (e)(3) of this section, but not below zero.~~]

(3)[~~4~~] If the department travels out-of-state to conduct your examination, you must pay for all associated travel expenses.

(4)[~~5~~] If the commissioner determines it is necessary to conduct an on-site examination of your authorized delegate to ensure your compliance with Finance Code, Chapter 151, you must pay an examination fee of $75 per hour for each examiner and any associated travel expenses.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendment to 7 TAC, §§33.3, 33.13, 33.15, 33.27, 33.51 and New §§33.71 – 33.75 Concerning Bullion Depository Agents.

**PURPOSE:** Amendments and the addition of new subsections to Chapter 33 are proposed to implement and administer Subchapter J of the Money Services Act, which creates a new type of money services license for depository agents. Amendments to §33.13 propose to establish specific requirements for what must be included in an application for a new depository agent license; and amendments to §33.27 propose to set the fees and assessments that an applicant must pay to obtain a new or temporary depository agent license and to maintain a depository agent license. Proposed new §§33.71 - 33.74 specify the requirements for the security that a depository agent must provide; the net worth for depository agents; the records a license holder must maintain related to depository agent services transactions; and requires a receipt be issued in connection with all depository agent services transactions. Proposed new §33.75 affirms that the depository, as an agency of this state in the office of the comptroller, is exempt from all money services licensing, and creates a new exemption from depository agent licensing for the individual, partnership or corporation that operates the depository pursuant to a contract with the comptroller. The remaining §§33.3, 33.15 and 33.51 are modified with conforming changes.

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

**RECOMMENDED MOTION:** I move that we publish the proposed amendments and new subsections to 7 TAC, §33 in the *Texas Register*.

***Title 7. Banking and Securities***
***Part 2. Texas Department of Banking***
***Chapter 33, Money Services Businesses***
***7 TAC §§33.3, 33.13, 33.15, 33.27, 33.51, 33.71, 33.72, 33.73, 33.74, 33.75***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §33.3, concerning the exclusion from licensing for bank agents; §33.13, concerning new license applications; §33.15, concerning violation of new license application processing times; §33.27, concerning fees, assessments and reimbursements; and §33.51, concerning providing information to customers about how to file a complaint. The commission also proposes to adopt new §33.71, concerning security required for depository agents; §33.72, concerning net worth required for depository agents; §33.73, concerning depository agent recordkeeping; §33.74, concerning depository agent receipts; and §33.75, concerning exemptions. The new and amended rules are proposed to implement and administer Subchapter J of the Money Services Act, which creates a new type of money services license for depository agents.

During the 84th legislative session, the Texas Legislature created the Texas Bullion Depository (the depository) within the Office of the Comptroller of Public Accounts (the comptroller) (Act of June 19, 2015, 84th Leg., R.S., H.B. 483). The depository will hold certain bullion and specie acquired by the state or a political subdivision of the state, as well as receive and hold such deposits for private entities. The bill also created a new license and corresponding regulatory structure for depository agents, which are private, independently managed firms and institutions authorized to act as intermediaries to conduct retail transactions on behalf of the depository with current and prospective depository account holders. The bill placed responsibility for regulating depository agents under the purview of the department by amending several existing sections of Chapter 151 of the Texas Finance Code, the Money Services Act, and adding new Subchapter J. The depository is scheduled to begin accepting deposits of bullion and specie on January 1, 2018.

The proposed amendments to §33.13 make conforming changes and set out the requirements for what must be included in an application for a new depository agent license. Conforming changes are made in subsections (a) and (b). Subsection (d) paragraph (1)(F) establishes the specific application requirements.

The proposed amendments to §33.27 add references to depository agent licenses and set out the fees that an applicant must pay to obtain a new or temporary depository agent license. Subsection (a) is amended to add references to depository agents. Subsection (c) is amended to add statutory references to the list of statutes that authorize fees, assessments and reimbursements. Subsection (d) paragraph (1) is amended to set the fee for obtaining a new depository agent license. Subsection (d) paragraph (3) is added to set the fee for obtaining a temporary depository agent license. Subsection (e-1) is added to set the fee for maintaining a depository agent license. Subsection (f) is amended to add references to depository agent business. Subsection (i) is amended to add a reference to subsection (d) paragraph (3).

Proposed new §33.71 specifies the requirements for the security that a depository agent must provide. Subsection (a) establishes the acceptable forms of security. Subsection (b) sets the amount of required security. Subsection (c) sets out specific requirements for the security. Subsection (d) specifies who may bring a suit on the security. Subsection (e) establishes that the commissioner may collect delinquent costs from the security. Subsection (f) specifies that the security must remain in effect until cancelled and that cancellation does not affect previous liability. Subsection (g) requires that the security cover claims for at least one year after the license holder surrenders its license, but gives the commissioner authority to permit the amount of security to be reduced or eliminated as obligations are reduced or eliminated. Subsection (h) allows the commissioner to require new or additional security as reasonably required. Subsection (i) sets out specific requirements for a license holder or applicant that provides a deposit of cash in lieu of a bond. Subsection (j) sets out the specific requirements for a license holder or applicant that provides a deposit of bullion or specie in lieu of a bond. Subsection (k) establishes that the security is held in trust and is not considered an asset of the license holder.

Proposed new §33.72 specifies the net worth required for depository agents. Subsection (a) requires a license holder or applicant to maintain a minimum net worth and sets out what that minimum net worth is, based on the locations where business is conducted. Subsection (b) authorizes the commissioner to increase the amount of net worth required and sets out the criteria to be considered. Subsection (c) requires that 50 percent of net worth be in tangible net worth.

Proposed new §33.73 specifies the records a license holder must maintain related to depository agent services transactions. Subsection (a) clarifies to whom the proposed new section applies and subsection (b) sets out general recordkeeping requirements. Subsection (b) permits a depository agent license holder to retain the information in a log or by any other means that allows the information to be readily retrieved. Subsection (c) sets out the specific recordkeeping requirements that apply to depository agent services transactions. Subsection (d) authorizes the banking commissioner to waive a requirement of §33.73 in appropriate circumstances.

Proposed new §33.74 requires that a receipt be issued in connection with all depository agent services transactions. Subsection (a) clarifies to whom the section applies and subsection (b) explains and establishes the specific receipt requirements. Paragraph (1) of subsection (b) defines “receipt” in a manner that applies to electronic or online transactions, in addition to in person transactions. Paragraph (2) identifies the information the receipt must include and also requires that the receipt be linked to the depository agent transaction records required under proposed new §33.73. Finally, paragraph (3) provides that a license holder may use one receipt to satisfy the requirements of both proposed new §33.74 and Finance Code, Chapter 278.

Proposed new §33.75 creates two exemptions from licensing. Subsection (a) affirms that the depository, as an agency of this state in the office of the comptroller, is

exempt from all money services licensing. Subsection (b) creates a new exemption from depository agent licensing for the individual, partnership or corporation that operates the depository pursuant to a contract with the comptroller.

The remaining sections (§§33.3, 33.15 and 33.51) are modified with conforming changes.

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

Ms. Newberg has also determined that, for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is clear, consistent regulation of depository agents through administrative rules that implement and conform to current law, as well as the preservation and protection of the safety and soundness of depository agents, protection of the interests of purchasers of depository agent services, and protection against money laundering and similar financial crimes.

For each year of the first five years that the new and amended rules will be in effect, there will be economic costs to persons required to comply with the rules as proposed. Persons required to comply with these rules will incur costs of $5,000 as an initial application fee, approximately $3,000 as an annual examination fee (based on the expectation of one examiner for 40 hours at $75 per hour), and approximately $5,000 to $25,000 as an annual cost to maintain a surety bond (based on a fee of 1-5% of the amount of the bond, which must be at least $500,000). There may be some additional expense for creating compliant receipts and drafting and printing consumer complaint notices.

For each year of the first five years that the rule will be in effect, the rule will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency; or
- positively or adversely affect this state's economy.

For the first five years the rules will be in effect, they will:

- create new regulations for entities seeking to become licensed as depository agents;
- expand existing regulations of money services businesses to include depository agents as a new category of licensees of the department;
- increase the number of individuals subject to the rule's applicability; and
- increase fees paid to the department.

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

To be considered, comments on the proposed amendments and new rules must be submitted no later than 5:00 p.m. on December 4, 2017. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amendments and new rules are proposed under Finance Code, §151.102, which provides that the commission may adopt rules to administer and enforce Texas Finance Code, Chapter 151. The amendments and new rules are also proposed under Finance Code, §151.855, which authorizes the commission to establish the amount of the application fee, the minimum net worth required for applicants, and the requirements for the security that applicants must file with the department, and Finance Code, §151.857, which authorizes the commission to establish the amount of the temporary license fee.

Finance Code, Chapter 151, Subchapter J, is affected by the proposed amended and new sections.

*§33.3. How Do I Claim an Exclusion from Licensing because I Am an Agent for a Federally Insured Financial Institution or a Foreign Bank Branch or Agency?*

(a) This section applies if you:

(1) provide marketing, sales or other services related to money transmission or depository agent services either directly or through your own agents or subagents;

(2) provide these services only as agent for a federally insured financial institution described in Finance Code, §151.003(3), or a foreign bank branch or agency described in Finance Code, §151.003(4); and

(3) want to be excluded from licensing under Finance Code, §151.003(5), the agent exclusion.

(b) To provide services related to money transmission or depository agent services under the agent exclusion, you must first obtain the Department's written determination that the statutory conditions for the exclusion are satisfied. You must submit to the Department:

(1) a general description of your business plan;

(2) an executed agreement or other signed documents between you and the federally insured financial institution or foreign bank branch or agency in which the financial institution:

(A) assumes all legal responsibility [~~in the State of Texas~~ ]for satisfying the money services obligations owed to [~~Texas~~ ]purchasers of the money transmission or depository agent services upon receipt of the purchaser's money, [~~or~~ ]monetary value, bullion or specie by you or your agents or subagents;

(B) assumes all risk of loss that a purchaser may suffer as a result of the failure of you or one of your agents or subagents to transmit the purchaser's funds, bullion or specie to the entity; and

(C) appoints you as its agent for purposes of money transmission, depository agent services, or both, sets out the limits of your authority, and includes your agreement to act only within the scope of that authority; and

(3) any other information the Department reasonably requests to determine if you qualify for the exclusion.

(c) (No change.)

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

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

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

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

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

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

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

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

(A) your signature or the signature of your duly authorized officer, as applicable, sworn to before a notary, affirming that the information in the application and accompanying documentation is true;

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

(C) all required search firm reports; and

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

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

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

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

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

(ii) a financial statement demonstrating your solvency or;[~~.~~]

(F) if you are applying for a depository agent license:

(i) security in the amount of $500,000 that complies with §33.71 of this title (relating to Security Required for Depository Agents) and an undertaking to increase the amount of the security if additional security is required under that section; and

(ii) audited financial statements demonstrating that you satisfy the minimum net worth requirement established by §33.72 of this title (relating to Net Worth Required for Depository Agents), and that, if the license is issued, you are likely to maintain the required minimum.

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

(e) – (j) (No change.)

*§33.15. What May I Do If the Department Does Not Comply with the New License Application Processing Times?*

(a) Does this section apply to me? This section applies if you applied for a new money transmission, [~~or~~ ]currency exchange or depository agent license under Finance Code, Chapter 151, and you believe that the department failed to comply with the application processing times specified in §33.13(e) or (h) of this title (relating to Application for New License).

(b) May I file a complaint? Yes. If the department does not process your application for a new money transmission, [~~or~~ ]currency exchange or depository agent license within the time periods specified in §33.13(e) or (h) of this title (relating to Application for New License), you may file a written complaint with the banking commissioner. The complaint must set out the facts regarding the delay and the specific relief you seek. The department must receive your complaint on or before the 30th day after the date the

commissioner approves or denies your license application.

(c) – (f) (No change.)

*§33.27. What Fees Must I Pay to Get and Maintain a License?*

(a) Does this section apply to me? This section applies if you hold a money transmission, [~~or~~]currency exchange or depository agent license issued under Finance Code, Chapter 151, or are an applicant for a new money transmission, [~~or~~ ]currency exchange or depository agent license, as applicable. This section also applies if you are a person other than a license holder or applicant and are investigated under the authority of Finance Code, §151.104.

(b) (No change.)

(c) What provisions of Finance Code, Chapter 151, authorize the fees, assessments, and reimbursements required under this section? The fees, assessments, and reimbursements established by or required under this section are authorized by one or more of the following provisions of Finance Code, Chapter 151: §§151.102(a)(5), 151.104(e), 151.207(b)(1), 151.304(b)(1), 151.306(a)(5), 151.504(b)(1), 151.605(c)(3), [~~and~~ ]151.605(i), 151.855(b)(1), and 151.857(a)(5).

(d) What fees must I pay to obtain a new license?

(1) You must pay a non-refundable $10,000 application fee to obtain a new money transmission license, [~~or~~]a non-refundable $5,000 application fee to obtain a currency exchange license or a non-refundable $5,000 application fee to obtain a depository agent license. You may also be required to pay the following additional fees:

(A) If the commissioner determines that it is necessary to conduct an on-site investigation of your business, you must pay a non-refundable investigation fee at a rate of $75 per hour for each department examiner required to conduct the investigation and all associated travel expenses;

(B) If the commissioner determines that it is necessary to employ a third-party screening service to assist with the investigation of your license application, you must pay the department for the reasonable costs for the third-party investigation; and

(C) If the commissioner determines it is necessary to perform background checks using fingerprint identification records, you must either submit payment for the costs of this service at the time you file your application or pay the department upon request.

(2) To apply for a temporary money transmission license authorized under Finance Code, §151.306, you must pay a non-refundable $2,500 temporary license application fee in addition to the fees required under paragraph (1) of this subsection.

(3) To apply for a temporary depository agent license authorized under Finance Code, §151.857, you must pay a non-refundable $2,500 temporary license application fee in addition to the fees required under paragraph (1) of this subsection.

(4)[~~(3)~~] The commissioner may reduce the fees required under paragraphs (1), [~~or~~ ](2) or (3) of this subsection, if the commissioner determines that a lesser amount than would otherwise be collected is necessary to administer and enforce Finance Code, Chapter 151, and this chapter.

(e) What fees must I pay to maintain my money transmission or currency exchange license? You must pay your annual assessment. Subject to paragraph (3) of this subsection, the amount of your annual assessment is determined based on the total annual dollar amount of your Texas money transmission and or currency exchange transactions, as applicable, as reflected on your most recent annual report filed with the department under Finance Code, §151.207(b)(2).

(1) If you hold a currency exchange license, you must pay the annual assessment specified in the following table:

Figure: 7 TAC §33.27(e)(1) (No change.)

(2) If you hold a money transmission license, you must pay the annual assessment specified in the following table:

Figure: 7 TAC §33.27(e)(2) (No change.)

(3) If you are a new license holder and have not yet filed your first annual report under Finance Code, §151.207(b)(2), you must pay the minimum annual assessment specified by paragraph (1) or (2) of this subsection, as applicable, prorated for the number of quarters remaining in the department's fiscal year after the date your license is issued.

(e-1) What fees must I pay to maintain my depository agent license? You must pay your annual license fee. The amount of your annual license fee is the cost of your annual examination, which is calculated at a rate of $75 per hour for each examiner and all associated travel expenses for an examination. The annual license fee will be calculated in this manner for all license fees owed from September 1, 2017 to August 31, 2019.

(f) What fees must I pay in connection with a proposed change of control of my money transmission, [~~or~~ ]currency exchange or depository agent business?

(1) You must pay a non-refundable $1,000 fee at the time you file an application requesting approval of your proposed change of control.

(2) You must pay a non-refundable $500 fee to obtain the department's prior determination of whether a person would be considered a person in control and whether a change of control application must be filed. If the department determines that a change of control application is required, the prior determination fee will be applied to the fee required under paragraph (1) of this subsection.

(3) If the department's review of your change of control application or prior determination request requires more than eight employee hours, you must pay an additional review fee of $75.00 per employee hour for every hour in excess of eight hours.

(4) The commissioner may reduce the filing fees described in paragraph (1) or (2) of this subsection, if the commissioner

determines that a lesser amount than would otherwise be collected is necessary to administer and enforce Finance Code, Chapter 151, and this chapter.

(g) – (h) (No change.)

(i) How and when do I need to pay for the fees required by this section?

(1) You must pay the license application fees required under subsections (d)(1), [~~and~~ ](d)(2) and (d)(3) of this section at the time you file your application for a license.

(2) The department will bill you by written invoice for any investigation and third-party screening service fees under subsections (d)(1)(A), (B), or (C) of this section. You must pay the fees within 10 days of receipt of the department's written invoice.

(3) Your annual assessment required under subsection (e) of this section may be billed in quarterly or fewer installments in such periodically adjusted amounts as reasonably necessary to pay for the costs of examination and to administer Finance Code, Chapter 151. You must pay the annual assessment fee by ACH debit, or by another method if directed to do so by the department. At least 15 days prior to the scheduled ACH transfer, the department will send you a notice specifying the amount of the payment due and the date the department will initiate payment by ACH debit. The commissioner may decrease your annual assessment if it is determined that a lesser amount than would otherwise be collected is necessary to administer the Act.

(4) You must pay the filing fees required by subsection (f) of this section at the time you file your proposed change of control or prior determination request. You must pay any required additional fees within 10 days of receipt of the department's written invoice.

(5) You or another person must pay the investigation fee required under subsection (g) of this section within 10 days of receipt of the department's written invoice.

(6) If you owe a late fee as provided by subsection (h)(1) of this section, you must pay this fee immediately upon receipt of the department's written invoice.

(7) The department will bill you for any additional examination fees required under subsections (h)(2), (3), (4), or (5) of this section by written invoice. You must pay this additional examination fee within 10 days of receipt of the department's written invoice.

(8) A fee is considered paid as of the date the department receives payment.

(j) (No change.)

*§33.51. How do I Provide Information to My Customers about How to File a Complaint?*

(a) Does this section apply to me? This section applies if you hold a money transmission, [~~or~~ ]currency exchange or depository agent license issued by the department under Finance Code, Chapter 151.

(b) Definitions. Words used in this section that are defined in Finance Code,

Chapter 151, have the same meaning as defined in the Finance Code. The following words and terms, when used in this section, shall have the following meanings unless the text clearly indicates otherwise.

(1) Conspicuously posted--Displayed so that a customer with 20/20 vision can read it from the place where he or she would typically conduct business with you or, alternatively, on a bulletin board, in plain view, on which you post notices to the general public (such as equal housing posters, licenses, Community Reinvestment Act notices, etc.).

(2) Customer--As to money transmission or currency exchange, "customer" means any Texas resident[~~Any person~~] to whom, either directly or through an authorized delegate, you provide or have provided money transmission or currency exchange products or services or for whom you conduct or have conducted a money transmission or currency exchange transaction. As to depository agent services, "customer" means any person to whom you provide or have provided depository agent services or for whom you conduct or have conducted a depository agent services transaction.

(3) Privacy notice--Any notice regarding a person's right to privacy that you are required to give under a specific state or federal law.

(4) Required notice--The notice described in subsection (d) of this section.

(c) Must I provide notice to customers about how to file complaints? Yes. You must tell each of your [~~Texas~~ ]customers how to file a complaint concerning the money transmission, [~~or~~ ]currency exchange or depository agent business you conduct under Finance Code, Chapter 151, in accordance with this section.

(d) What must the notice say?

(1) You must use:

(A) a notice that conforms to the complaint notice requirements of the Remittance Transfer Rule of Regulation E (12 C.F.R. Part 1005, Subpart B), such as described by 12 C.F.R. §1005.31(b)(2)(vi), if the Remittance Transfer Rule applies to you; or

(B) a notice that substantially conforms to the language and form of the following notice: If you have a complaint, first contact the consumer assistance division of (Name of License Holder) at (License Holder consumer assistance telephone number), if you still have an unresolved complaint regarding the company's (money transmission, [~~or~~ ]currency exchange or depository agent) activity, please direct your complaint to: Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, 1-877-276-5554 (toll free), www.dob.texas.govwww.dob.texas.gov.

(2) You must provide the required notice in the language in which the transaction is conducted.

(e) How and where must I provide the required notice?

(1) If a state or federal law requires you to send a privacy notice to your customers, you must include the required notice with each privacy notice.

(2) If you maintain a website by which a customer may remit money for transmission, complete a depository agent services transaction or obtain information about you or the customer's transaction or an existing account, you must include the required notice on your website. The notice must be prominently displayed on the initial page the customer uses to initiate the remittance, transaction or access the information, or on a page available no more than one link from the initial page. The link must clearly describe the information available by clicking the link, e.g., "Texas customers click here for information about filing complaints about our money transmission or currency exchange product or service" or "Customers click here for information about filing complaints about our depository agent services."

(3) In addition to including the required notice in a privacy notice in accordance with paragraph (1) of this subsection and on your website in accordance with paragraph (2) of this subsection, you must tell customers how to file complaints by one or more of the following methods:

(A) You may include the required notice in at least 8 point type, on each payment instrument or other access device or receipt used in connection with your money transmission, [~~or~~ ]currency exchange or depository agent business, provided that:

(i) the payment instrument or other access device constitutes the only means of accessing the money, bullion or specie received for transmission; or

(ii) you issue a receipt for every money transmission, [~~or~~ ]currency exchange or depository agent service transaction you conduct.

(B) If you personally receive all the funds, bullion or specie paid by your customers, you may conspicuously post the required notice where you conduct money transmission, [~~or~~ ]currency exchange or depository agent activities with customers on a face to face basis.

(C) You may provide each customer with the required notice separately, provided that:

(i) not later than the time the transaction is conducted, you deliver the required notice in a form that your customer can retain; or

(ii) if you use an access device, such as a stored value card, in your money services business and mail the device to your customer, you include the required notice in the mailing; and

(iii) if the same access device may be used continuously, such as a reloadable stored value card, you also deliver the required notice to your customer at least once every twelve months. You may include the required notice with a privacy statement, with or on another statement, or by another means so long as the customer actually receives the notice within each twelve-month period.

(4) If your business is entirely internet based, so that account relationships and transactions are initiated solely by means of the internet, the additional disclosures described in paragraph (3) of this subsection are not required.

(f) – (h) (No change.)

*§33.71. Security Required for Depository Agents.*

(a) An applicant for a depository agent license must provide, and a depository agent license holder must maintain at all times, security consisting of a surety bond, an irrevocable letter of credit, or a deposit in cash, bullion or specie instead of a bond in accordance with this section.

(b) The amount of the required security is equal to the greater of $500,000 or one percent of the license holder's total yearly dollar volume of depository agent services business or the applicant's projected total volume of depository agent services business for the first year of licensure, up to a maximum of $2 million. When the amount of the required security exceeds $1 million, the applicant or license holder may, in the alternative, provide security in the amount of $1 million, plus a dollar for dollar increase in the net worth of the applicant or license holder over the amount required under Section 151.855(b)(3).

(c) The security must:

(1) be in a form satisfactory to the commissioner;

(2) be payable to any claimant or to the commissioner, on behalf of a claimant or this state, for any liability arising out of the license holder's depository agent services business, incurred under, subject to, or by virtue of this chapter; and

(3) if the security is a bond, be issued by a qualified surety company authorized to engage in business in this state and acceptable to the commissioner or, if the security is an irrevocable letter of credit, be issued by a financial institution acceptable to the commissioner.

(d) A claimant may bring suit directly on the security, or the commissioner may bring suit on behalf of the claimant or the state, either in one action or in successive actions.

(e) The commissioner may collect from the security or proceeds of the security any delinquent fee, assessment, cost, penalty, or other amount imposed on and owed by a license holder. If the security is a surety bond, the commissioner shall give the surety reasonable prior notice of a hearing to impose an administrative penalty against the license holder, provided that a surety may not be considered an interested, aggrieved, or affected person for purposes of an administrative proceeding under Section 151.801 or Chapter 2001, Government Code.

(f) The security remains in effect until canceled, which may occur only after providing 30 days' written notice to the commissioner. Cancellation does not affect any liability incurred or accrued during the period covered by the security.

(g) The security shall cover claims for at least one year after the license holder surrenders its license or otherwise ceases to engage in activities for which a license is required under this subchapter. However, the commissioner may permit the amount of the security to be reduced or eliminated before that time to the extent that the amount of the license holder's obligations to the department and to purchasers is reduced. The commissioner may permit a license holder to

substitute another form of security when the license holder ceases to provide depository agent services.

(h) If the commissioner at any time reasonably determines that the required security is insecure, deficient in amount, or exhausted in whole or in part, the commissioner by written order shall require the license holder to file or make new or additional security to comply with this section.

(i) Instead of providing all or part of the amount of the security required by this section, an applicant or license holder may deposit, with a financial institution possessing trust powers that is authorized to conduct a trust business in this state and is acceptable to the commissioner, an aggregate amount of United States currency, certificates of deposit, or other cash equivalents that equals the total amount of the required security or the remaining part of the security. The deposit:

(1) must be held in trust in the name of and be pledged to the commissioner;

(2) must secure the same obligations as the security; and

(3) is subject to other conditions and terms the commissioner may reasonably require.

(j) Instead of providing all or part of the amount of the security required by this section, an applicant or license holder may deposit, with an independent vault or depository that is acceptable to the commissioner, an aggregate amount of bullion or specie that equals the total amount of the required security or the remaining part of the security, plus an additional 15 percent to account for fluctuations in the value of the bullion or specie. The deposit of bullion or specie:

(1) must be held in trust in the name of and be pledged to the commissioner;

(2) must secure the same obligations as the security; and

(3) is subject to other conditions and terms the commissioner may reasonably require.

(k) The security is considered by operation of law to be held in trust for the benefit of this state and any individual to whom an obligation arising under this chapter is owed, and may not be considered an asset or property of the license holder in the event of bankruptcy, receivership, or a claim against the license holder unrelated to the license holder's obligations under this chapter.

*§33.72. Net Worth Required for Depository Agents.*

(a) An applicant for a depository agent license must possess, and a depository agent license holder must maintain at all times, a minimum net worth computed in accordance with generally accepted accounting principles of:

(1) $100,000, if business is proposed to be or is conducted at four or fewer locations; or

(2) $500,000, if business is proposed to be or is conducted at five or more locations or over the internet.

(b) The commissioner may increase the amount of net worth required of an applicant or license holder, up to a maximum of $1 million, if the commissioner determines, with respect to the applicant or license holder, that a higher net worth is necessary to achieve the purposes of this chapter based on:

(1) the nature and volume of the projected or established business;

(2) the number of locations at or through which depository agent services is or will be conducted;

(3) the amount, nature, quality, and liquidity of its assets;

(4) the amount and nature of its liabilities;

(5) the history of its operations and prospects for earning and retaining income;

(6) the quality of its operations;

(7) the quality of its management;

(8) the nature and quality of its principals and persons in control;

(9) the history of its compliance with applicable state and federal law; and

(10) any other factor the commissioner considers relevant.

(c) At least 50 percent of the applicant's or license holder's total net worth under this section must be tangible net worth.

*§33.73. What Records Must I Keep Related to Depository Agent Services Transactions?*

(a) Does this section apply to me? This section applies to you if you hold a depository agent license issued by the department under Finance Code, Chapter 151.

(b) What are the general recordkeeping requirements?

(1) As a general matter, you must maintain:

(A) records of all filings made, and that contain all information required, under applicable federal laws and regulations, including the Bank Secrecy Act and 31 CFR Chapter X (collectively BSA);

(B) in addition to the records required under Finance Code, Chapter 151, the records required under this section related specifically to depository agent services transactions;

(C) records sufficient to enable you to file accurate and complete reports with the commissioner or department in accordance with Finance Code, Chapter 151 and Chapter 33 of this title (relating to Money Services Businesses); and

(D) records sufficient to enable you to file accurate and complete reports with the comptroller in accordance with Government Code, Chapter 2116.

(2) You must obtain and retain the information required under this section in a log or by another means of retention that allows the information to be readily retrieved. In addition, you must:

(A) maintain your records in such a manner that you can identify and make available to the department the records related to your depository agent services activity; and

(B) make your records available to the department within the time period reasonably requested.

(c) What specific records must I keep related to depository agent services transactions?

(1) For purposes of paragraph (2) of this subsection, "identifying number" means the taxpayer identification number (e.g., social security, employee identification number) or passport number of your customer or the person on whose behalf your customer conducts the transaction, as applicable, or, if your customer or other person has no such number and is an alien, then the number of an alien identification card or other official document evidencing foreign nationality or residence, such as a foreign driver's license or foreign voter registration card.

(2) You must keep a record for each transaction that contains:

(A) the name, address and telephone number of your customer;

(B) an identifying number for your customer and, if applicable, the person on whose behalf your customer is conducting the transaction;

(C) the type of photograph identification presented by your customer;

(D) the identity of the issuer of the photograph identification;

(E) your customer's date of birth;

(F) your customer's account number at the depository or, if applicable, the account number of the person on whose behalf your customer is conducting the transaction;

(G) the amount of the transaction, recorded in the amount of precious metals bullion or specie and/or United States dollars, as applicable;

(H) the date of the transaction;

(I) the time of day the transaction is conducted;

(J) the location of the office where the transaction is conducted;

(K) the exchange rate used for pricing the transaction;

(L) the amount of any fee charged for the transaction;

(M) the method of payment (e.g., cash, check, credit card);

(N) any payment instructions received from the customer with the transaction order;

(O) any form relating to the transaction that is completed or signed by the person placing the transaction; and

(P) the unique number of the receipt required under §33.74 of this title (relating to What Receipts Must I Issue Related to Depository Agent Transactions?).

(d) May I obtain a waiver of the recordkeeping requirements? The commissioner may waive any requirement of this section upon a showing of good cause if the commissioner determines that:

(1) you maintain records sufficient for the department to examine your depository agent business; and

(2) the imposition of the requirement would cause an undue burden on you and conformity with the requirement would not significantly advance the state's interest under Finance Code, Chapter 151.

*§33.74. What Receipts Must I Issue Related to Depository Agent Services Transactions?*

(a) Does this section apply to me? This section applies if you hold a depository agent license issued under Finance Code, Chapter 151.

(b) Must I issue a receipt in connection with the depository agent services transactions I conduct?

(1) For purposes of this section "receipt" means a receipt, electronic record or other written confirmation. If the customer conducts the transaction online or electronically, the term includes a means by which the customer can save or print a receipt or other record of the transaction that contains the information required under this section.

(2) You must issue a receipt for each transaction that:

(A) can be linked to the transaction records required under §33.73(c)(3) of this title; and

(B) contains:

(i) the name of your licensed business and the business address and telephone number;

(ii) the unique transaction or identification number;

(iii) the date of the transaction;

(iv) the amount of the transaction in precious metals bullion or specie and/or United States dollars, as applicable;

(v) the exchange rate used for pricing the transaction;

(vi) the estimated date that the precious metals bullion or specie will be delivered to the depository, as applicable; and

(vii) the amount of any fee charged for the transaction.

(3) With respect to a currency transmission transaction subject to Finance Code, Chapter 278, you must provide the receipt required under Finance Code, §278.051 and §278.053, as applicable. The

information required under those sections may be included on the receipt required under paragraph (2) of this subsection.

*§33.75. Exemptions for the Texas Bullion Depository and an individual, partnership or corporation that operates the Texas Bullion Depository pursuant to a contract with the Comptroller.*

(a) The depository, as defined by Section 2116.001, Government Code, to the extent that it conducts money services as defined by Finance Code §151.002, need not obtain a license under Finance Code, Chapter 151.

(b) An individual, partnership or corporation who conducts depository agent services as defined by Finance Code §151.002, need not obtain a license under Finance Code, Chapter 151, so long as that individual, partnership or corporation:

(1) is under written contract with the comptroller to operate the depository; and

(2) acts only within the scope of authority conferred by that contract.

(c) Any individual, partnership or corporation exempted from licensing under subsection (b) of this section must immediately contact the Department of Banking in the event that any of the conditions listed in subsection (b) of this section change.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

# C.

# Department of Savings and Mortgage Lending

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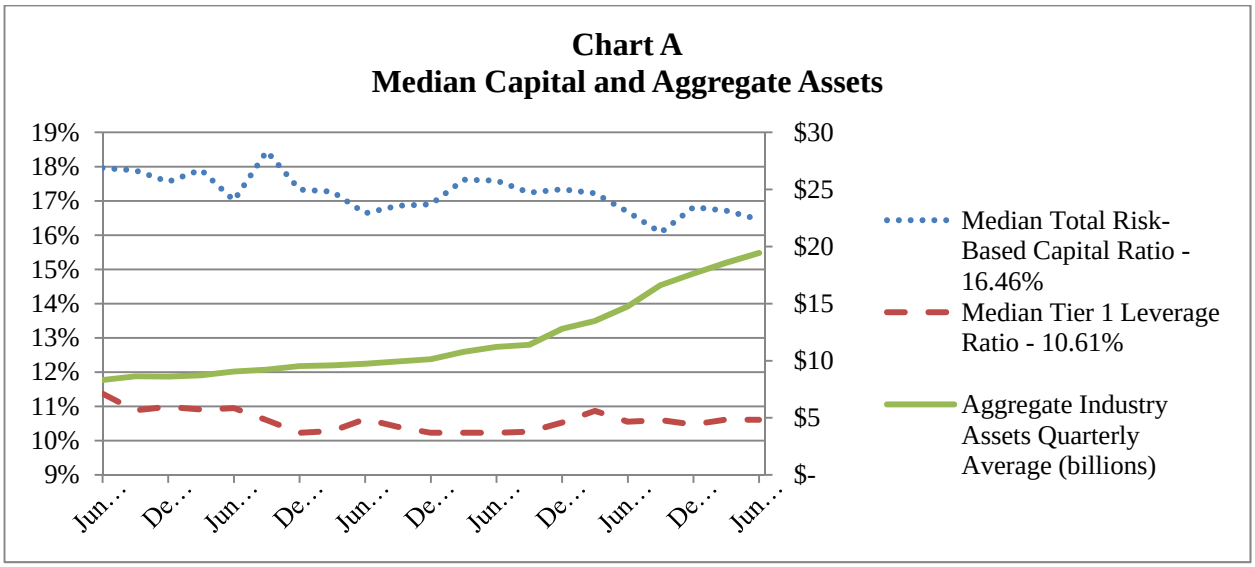
# C. Texas Department of Savings and Mortgage Lending

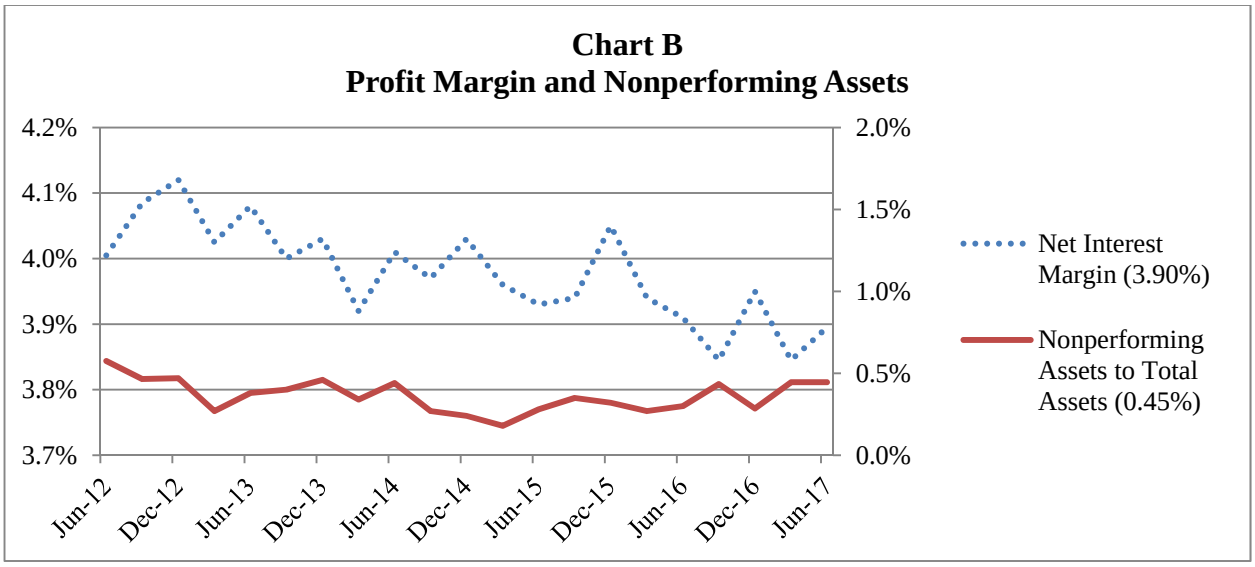
## 1. Industry Status and Departmental Operations – State Savings Bank Activity:

### a. Industry Status

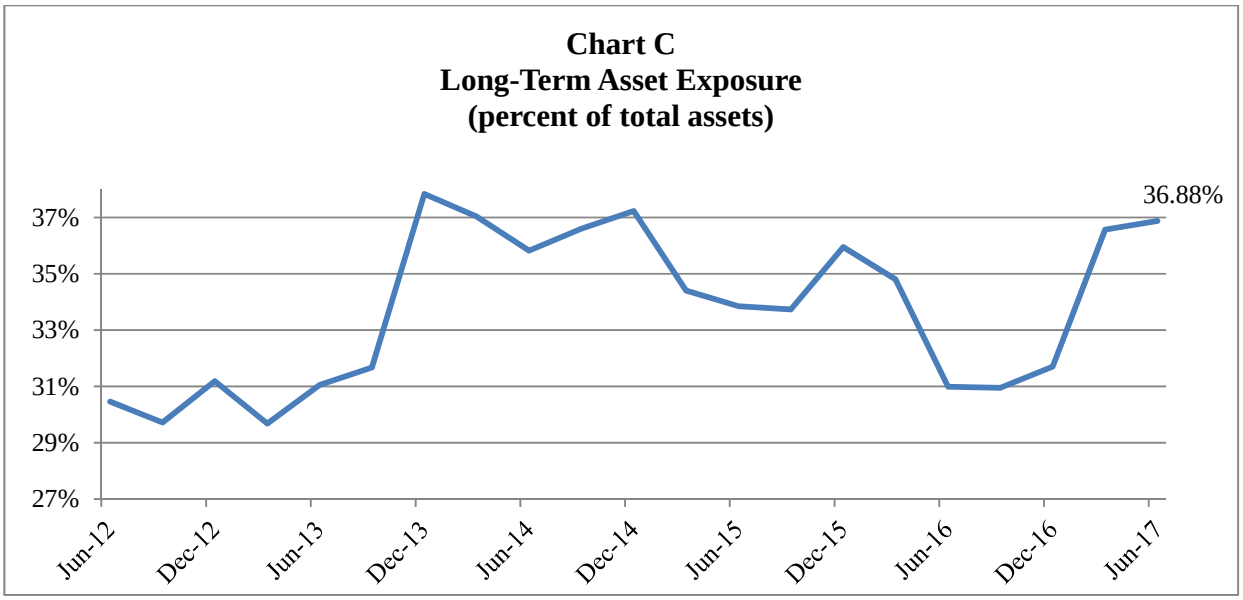
As of June 30, 2017, there are 26 state savings banks totaling $20.6 billion in total assets. The average asset size of the median state savings bank grew by 11.71% in the last four quarters to $347 million. This trend continues extending more than five years in the industry. After some decline in the risk-based capital ratio due to increased lending from late 2013 to late 2015, capital protection has kept pace with assets into 2017 through earnings and contributions. The median total risk-based capital ratio (Chart A) is 16.46% and the median leverage capital protection is 10.61%.



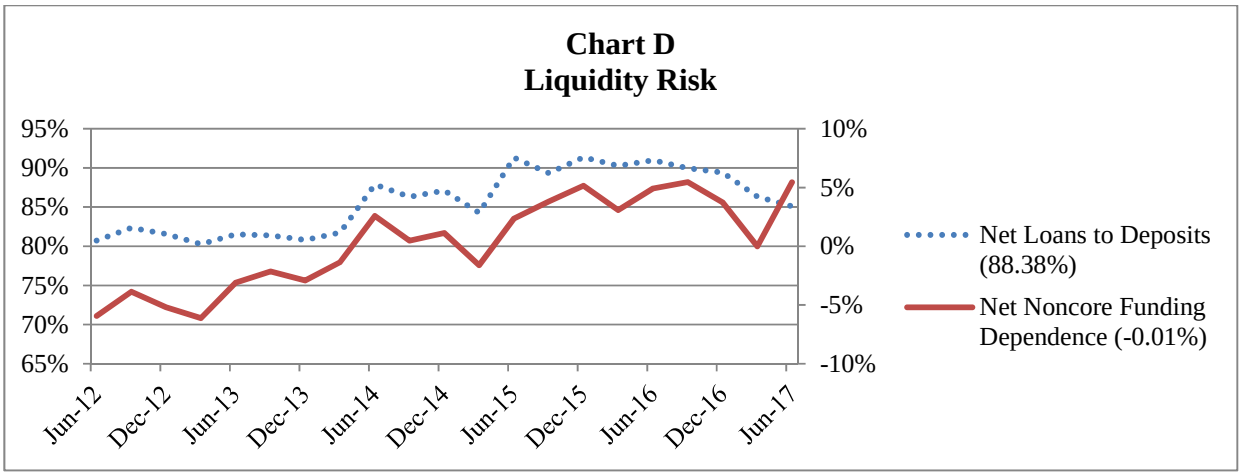

The median net interest margin has gone back up slightly in the second quarter of CY2017 (Chart B) to 3.90%, which is almost exactly as it was one year before at 3.91%. Nonperforming asset levels remain low at 0.45% of total assets, which is the same as the first quarter of CY2017, but up slightly from last year at 0.30%.



The Department continues to monitor various local, state, and national data sources to best understand the risks facing the industry and individual savings banks. Economic conditions, cybersecurity, market risk, lending concentrations, and liquidity risk all continue to be areas of focus. Market risk, as evidenced by long-term asset exposure (Chart C), had been elevated from late 2013 through early 2016, and again in the second quarter of CY2017. There remains a small number of outlier institutions with high long-term asset exposure that have continued to tick up slightly; however these are generally operating within historical norms of ten years or more.

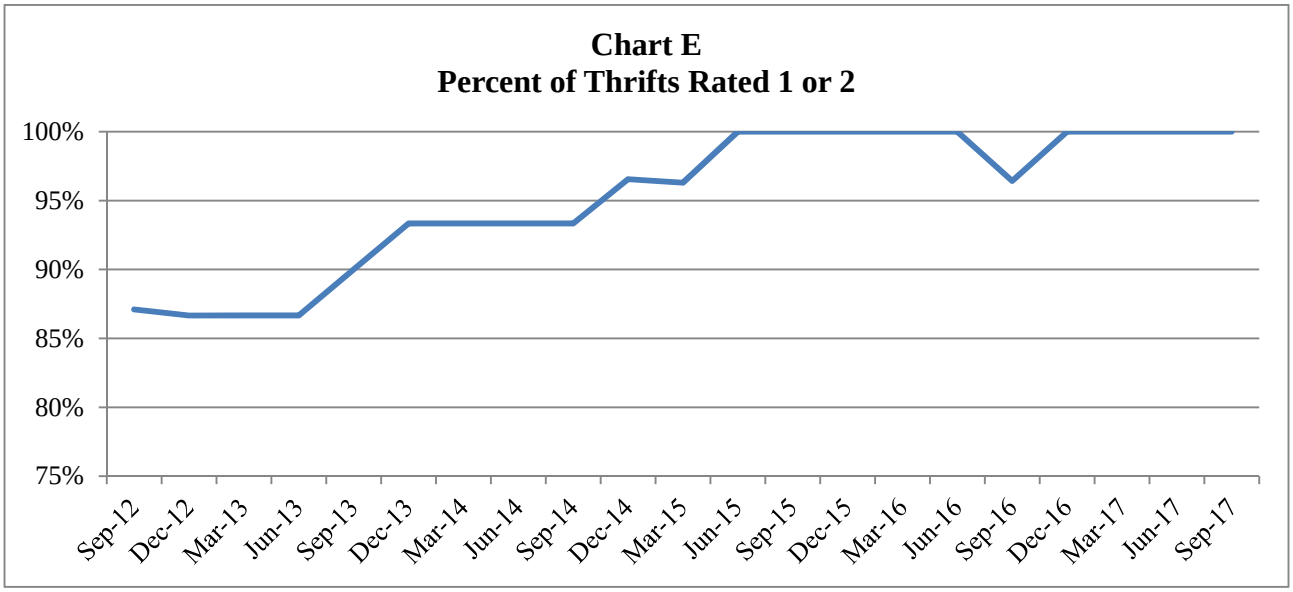



Liquidity risk remains modest in Texas thrifts (Chart D). The median Net Noncore Funding Dependence Ratio has remained between 0% and about 5% through 2016 and into 2017, and remains manageable. The loan-to-deposit ratio is elevated, but trending down, at 85.11% with 19% of the industry over 100%.




All SSBs are subject to quarterly offsite reviews including liquidity risk. Those with the highest risk profiles receive enhanced scrutiny at examinations and may receive more frequent examinations and/or corrective direction as needed.

All state savings banks, as of September 30, 2017, were rated a Composite 1 or 2 (Chart E). There is one formal outstanding enforcement action.




**b. <u>Savings Bank Charter and Merger Activity</u>**

On April 7, 2017, notice was received of the intent of First Bank Texas, SSB, Baird, Texas, to convert to a national bank. The conversion is in process.

On August 21, 2017, application was received from TBK Bank, SSB, Dallas, Texas, to acquire Valley Bank & Trust, Brighton, Colorado by merger. The merger application is in process.

**c. <u>Other Items</u>**

Hurricane Harvey
– There were nine thrifts whose facilities and/or employees were impacted. A total of 36 branches were temporarily closed, not necessarily at the same time and for different lengths of time. Some branches reopened for limited periods of time due to the lack of water. The longest time a branch was closed was seven days. All thrifts with loans in the impacted areas are evaluating potential losses.
– The Department issued guidance for lenders and borrowers and provided links on its website to the following resources: FDIC, FHFA, Independent Bankers Association of Texas, Texas Bankers Association, and the national Mortgage Banker Association.
– Commissioner Jones and staff were in contact with federal counterparts, both regionally and in DC. Additionally, the Department was in contact with the Texas Department of Banking, Texas Credit Union Department, Louisiana Office of Financial Institutions, Texas Bankers Association, and Independent Bankers Association of Texas. All agencies and trade associations shared information and issues of concern on a daily basis.

The Tenth Annual Thrift Industry Day was held on September 14, 2017 in Austin. Dr. Lila Valencia, Ph.D., Senior Demographer, Texas Demographic Center was the guest speaker. Thrift staff and management made presentations relating to topics of interest. The agenda is included in these materials.

Roberto Ramirez, Associate General Counsel, served on the regulatory panel at the Texas Association of Bank Counsel Annual Convention on September 22, 2017.

Commissioner Jones served on the regulatory panel at the Independent Bankers Association of Texas Annual Convention on October 1, 2017.

Commissioner Jones participated in the State Liaison Committee meeting September 25, 2017 and in the Federal Financial Institutions Council (FFIEC) meeting September 26, 2017.

Commissioner Jones and Dean Bass, CEO and Chairman of the Board for Spirit of Texas Bank SSB, attended Community Banking in the 21st Century, a research and policy conference co-sponsored by the Conference of State Bank Supervisors and the Federal Reserve System, October 4-5, 2017.

# DEPARTMENT of SAVINGS & MORTGAGE LENDING

# 10TH ANNUAL THRIFT INDUSTRY DAY

## THURSDAY, SEPTEMBER 14, 2017

12:30 – 1:00 Registration

1:00 – 1:15 Welcome Comments
*Caroline C. Jones, Commissioner*

1:15 – 2:00 Economic Outlook
*Lila Valencia, Ph.D., Senior Demographer, Texas Demographic Center*

2:00 – 2:30 Legislative Update
*Ernest C. Garcia, General Counsel/Legislative Liaison*
*Devyn F. Wills, Associate General Counsel*
*Roberto A. Ramirez, Associate General Counsel*

2:30 – 2:45 Best Practices for Regulatory Compliance
*Bill Poe, Supervisory Compliance Examiner, CSME*

2:45 – 3:00 Break

3:00 – 3:20 CECL
*Stephany Trotti, CPA, Chief Thrift Examiner*

3:20 – 3:35 Best Practices - Corporate Governance
*Susanna Blevins, Supervisory Examiner*

3:35 – 3:50 Commercial Real Estate-What's Expected
*Landon Odle, Examiner*

3:50 – 4:15 Cybersecurity Insurance and a Banker's Perspective
*Andrea Henderson, Examiner and Jay Howard, President and CEO, TrustTexas Bank, SSB*

4:15 – 4:25 Business Continuity Plans
*Teresa Nelson, Senior Supervisory Analyst*

4:25 – 4:40 Hot Topics
*Patsy Smith, CPA, Deputy Commissioner/Director of Thrift*

4:40 – 5:00 Q & A and Adjournment
*Caroline C. Jones, Commissioner*

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

### a. Residential Mortgage Loan Originators

Current Licensing Population:

| License Type As of 09/30/2017 | Approved | | |
|---|---|---|---|
| | Entity (MU1) | Branch (MU3) | MLO (MU4) |
| ***Auxiliary*** | 9 | n/a | |
| ***CUSO*** | 4 | 2 | |
| ***FSC*** | 1 | n/a | |
| ***Independent Contractor*** | 103 | n/a | |
| ***Mortgage Company*** | 1,185 | 584 | |
| ***Mortgage Banker*** | 399 | 2,652 | |
| ***Mortgage Servicer*** | 169 | n/a | |
| **Totals** | **1,870** | **3,238** | **27,024** |

For FY2017, the Department received 9,304 applications for licenses and 92,799 other filings. During the year the licensing section processed 9,190 applications and 12,953 sponsorship requests.

The licensing section is preparing for the coming renewal period, November 1st – December 31st. Companies that have not filed or have outstanding deficiencies related to mortgage call reports and individuals that have not completed the required continuing education will not be able to submit renewal until the issue(s) are resolved.

### b. Mortgage Examinations

During FY17 a total of 476 examinations were conducted covering 6,253 individual licensees. The number of examinations is slightly lower when compared to FY16 although the number of individual licensees covered increased by 13%. The increase is the result of larger to mid-size examinations being conducted during FY17.

The Department's 5th annual Mortgage Industry Seminar will be held in Plano on November 6, 2017 in conjunction with the TMBA Educational Seminar and Marketplace. In-house mortgage examiner training will also be conducted on November 7, 2017 in Plano.

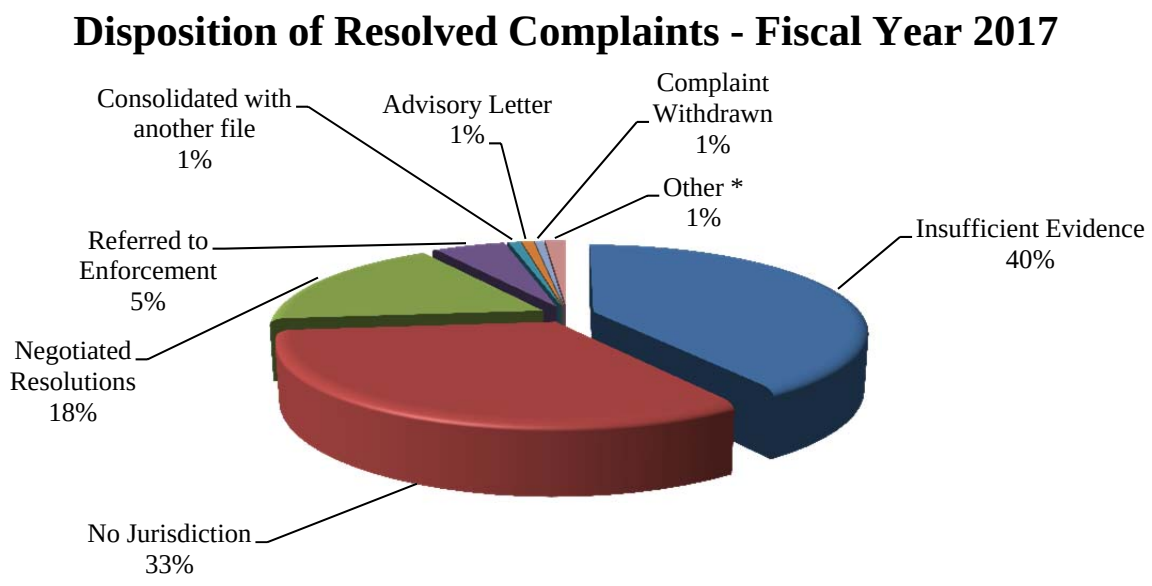
The following chart is a breakdown of mortgage examination results by compliance rating for FY17. As shown in the chart, the stratification of examination ratings during the past twelve months reflects little change when compared to FY16.

| Mortgage Examination Compliance Ratings | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | # Mortgage Exams | Rated "1" | % | Rated "2" | % | Rated "3" | % | Rated "4" | % | Rated "5" | % |
| **Fiscal Year 2015** | | | | | | | | | | | |
| **9/1/14 - 8/31/15** | **402** | **38** | **9%** | **175** | **44%** | **134** | **33%** | **51** | **13%** | **4** | **1%** |
| | | | | | | | | | | | |
| **Fiscal Year 2016** | | | | | | | | | | | |
| **9/1/15 - 8/31/16** | **488** | **50** | **10%** | **215** | **44%** | **173** | **35%** | **46** | **9%** | **4** | **1%** |
| | | | | | | | | | | | |
| **Fiscal Year 2017** | | | | | | | | | | | |
| **9/1/16 -8/31/17** | **476** | **62** | **13%** | **214** | **45%** | **156** | **33%** | **41** | **9%** | **3** | **1%** |

### c. Consumer Complaints/Legal Issues

During FY17, a total of 1,019 complaints were received. This represents a 10% decrease when compared to FY16. Loan servicing complaints represented 61% of the total number of complaints received during FY17. As of August 31, 2017, there were a total of 53 open complaints with 100% of the complaints aged less than 90 days.

The chart below shows the nature of the disposition of consumer complaints resolved in FY17.




Total complaints resolved FY2017 = 1,054

^ The "No Jurisdiction" category includes: complaint against exempt entities/individuals (No Jurisdiction-Exempt), complaints regarding issues outside the Department's authority (No Jurisdiction Over Issue), and complaints against entities/individuals with expired licenses (No Jurisdiction-License Expired).

* The "Other" category includes: Information Only, Referred to Attorney General, Opened in Error, Failure to Go Forward, No Investigation, and License Inactivated

### d. Other Items

Commissioner Jones and Director O'Shields spoke to the San Antonio Association of Mortgage Professionals on September 19, 2017.

Senior Compliance Examiner Bill Poe attended the CFPB Ombudsman meeting on September 19, 2017.

**Mortgage Industry Advisory Committee – September 27, 2017 Meeting**

On September 27, 2017 MIAC held a regularly scheduled meeting. At this meeting the Department provided updates on the Department's activities and answered questions form the committee members. Additionally, the Department presented proposed new and amendments to mortgage rules. MIAC took a record vote and agreed that the rules should be presented to the Finance Commission for publication to the *Texas Register* for comment. The agenda for the meeting was as follows:

AGENDA

1. Welcome – Commissioner
2. Review of Department's General Status of Originator Licensing and Registration Activity:
    - Licensing – Director of Licensing
    - Examinations and Complaints – Supervisory Compliance Examiner
    - Enforcement – Legal Counsel
3. Rules
    - 7 TAC, Part 4, Chapter 81, Subchapter B (new rule)
    - 7 TAC, Part 4, Chapter 80, Subchapter A, §80.2 and Subchapter C (new rule)
    - 7 TAC, Part 4, Chapter 80, Subchapter C, §80.200(a)
    - 7 TAC, Part 4, Chapter 81, Subchapter A, §81.2 and Subchapter C (new rule)
4. General Discussion:
    - LOS system issues on exams
    - Hurricane Harvey
    - Equifax
5. Open Forum
6. Upcoming Meetings:
    - March 14, 2018
    - July 18, 2018
7. Adjourn - Commissioner

**Actual Performance for Output/Efficiency Measures**

| Type/Strategy/Measure | 2017 Target | 2017 Actual | 2017 YTD | Percent of Annual Target | |
|---|---|---|---|---|---|
| **Output Measures-Key** | | | | | |
| **1-1-1 Thrift Safety and Soundness** | | | | | |
| **1. Number of Examinations Performed** | | | | | |
| **Quarter 1** | 22 | 6 | 6 | 27.27% | |
| **Quarter 2** | 22 | 5 | 11 | 50.00% | |
| **Quarter 3** | 22 | 4 | 15 | 68.18% | * |
| The Department examines state chartered savings banks jointly with the FDIC and Federal Reserve, based on a priority schedule. Examination cycles range from 12 to 18 months with frequency based on multiple factors, including institution size, CAMELS ratings, whether there is an informal or formal action, and the length of time that the savings bank has been in operation. The results for this measure may fluctuate between quarters due to the timing of individual examinations. | | | | | |
| **Quarter 4** | 22 | 8 | 23 | 104.55% | |
| **2-1-1 Mortgage Regulation** | | | | | |
| **1. Number of Applications Processed** | | | | | |
| **Quarter 1** | 7,500 | 2,027 | 2,027 | 27.03% | |
| **Quarter 2** | 7,500 | 2,069 | 4,096 | 54.61% | |
| **Quarter 3** | 7,500 | 2,733 | 6,829 | 91.05% | * |
| The number of applications submitted is outside the Department's control; therefore, the number of applications processed is ultimately affected in the same manner. The Department anticipates meeting and exceeding this goal for the year. | | | | | |
| **Quarter 4** | 7,500 | 2,361 | 9,190 | 122.53% | * |
| The number of applications submitted is outside the Department's control; therefore, the number of applications processed is ultimately affected in the same manner. The Department anticipates meeting and exceeding this goal for the year. | | | | | |
| **2. Number of Licensees Examined** | | | | | |
| **Quarter 1** | 4,800 | 2,225 | 2,225 | 46.35% | * |
| Four large / mid-size mortgage examinations were completed in the 1st quarter of FY2017 which accounted for 53% of the total number of licensees examined for the period. We anticipate meeting or exceeding this goal for the fiscal year. | | | | | |
| **Quarter 2** | 4,800 | 1,151 | 3,376 | 70.33% | * |
| Six large / mid-size mortgage examinations were completed in the 2nd quarter of FY2017 which accounted for 42% of the total number of licensees examined for the period. This type of concentration may continue in FY2017 as the individual licensee population continues to grow. | | | | | |
| **Quarter 3** | 4,800 | 1,217 | 4,593 | 95.69% | * |
| Five mid-size mortgage examinations were completed in the 3rd quarter of FY2017 which accounted for 38% of the total number of licensees examined for the period. The Department anticipates meeting and exceeding this goal for the year. | | | | | |
| **Quarter 4** | 4,800 | 1,660 | 6,253 | 130.27% | * |
| One large and two mid-size mortgage examinations were completed in the 4th quarter of FY2017 which accounted for 54% of the total number of licensees examined for the period. | | | | | |
| **3-1-1 Consumer Responsiveness** | | | | | |
| **1. Number of Consumer Complaints Completed** | | | | | |
| **Quarter 1** | 900 | 267 | 267 | 29.67% | |
| **Quarter 2** | 900 | 239 | 506 | 56.22% | * |
| This number is slightly higher than projected due to a higher number of less complicated complaints being processed during the quarter. | | | | | |
| **Quarter 3** | 900 | 295 | 801 | 89.00% | * |
| Disposition with a resolution of no jurisdiction or insufficient evidence accounted for 75% of the total in the 3rd quarter of FY2017, which is an increase over the prior quarters. These resolutions are normally less involved and can be closed without an extensive investigation. | | | | | |
| **Quarter 4** | 900 | 252 | 1,053 | 117.00% | * |
| Disposition with a resolution of no jurisdiction or insufficient evidence accounted for 70% of the total in the 4th quarter of FY2017. These resolutions are normally less involved and can be closed without an extensive investigation. | | | | | |

*Varies by 5% or more from target.

**Actual Performance for Outcome/Efficiency Measures**

| Type/Strategy/Measure | 2017 Target | 2017 YTD | Percent of Annual Target |
|---|---|---|---|
| **Outcome Measures-Key - Annual Reporting** | | | |
| **1-1-1 Thrift Safety and Soundness** | | | |
| 1. Percent of State Chartered Savings Institutions Receiving Examination within the Required Timeframes | 100% | 100% | 100.00% |
| 2. Percent of Safe and Sound Institutions to Total Savings Institutions | 90% | 100% | 111.11% * |
| All thrift institutions are well rated; therefore, percentage of safe and sound institutions is 100%. | | | |
| 3. Percent of Assets in Safe and Sound Savings Institutions | 90% | 100% | 111.11% * |
| Being that all thrift institutions are well rated, 100% of assets are safe and sound. | | | |
| **3-1-1 Consumer Responsiveness** | | | |
| 1. Percent of Complaints Answered within Ten Business Days of Receipt of Complete Information | 99% | 100% | 101.01% |
| **Explanatory Measures-Key - Annual Reporting** | | | |
| **1-1-1 Thrift Safety and Soundness** | | | |
| 1. Number of State-Chartered Savings Institutions | 28 | 26 | 92.86% * |
| Mergers within the industry caused the number of institutions to decrease. | | | |
| 2. Dollar Amount of Assets under Regulation (in Billions) | $12 | $20.63 | 171.92% * |
| Industry growth and mergers into thrift institutions caused the dollar amount of assets under regulation to increase. | | | |

*Varies by 5% or more from target.

## Actual Performance for Non-Key Measures
## Fiscal Year 2017
## For Period Ending August 2017

| Type/Strategy/Measure | 2017 Target | 2017 YTD | Percent of Annual Target | |
|---|---|---|---|---|
| **Non-Key Measures** | | | | |
| **Thrift Safety and Soundness** | | | | |
| **01-01 Outcome Measures** | | | | |
| 4. Percentage of Applications Receiving Final Action within Statutory Timeframes | 100.00% | 100.00% | 100.00% | |
| **Output Measures** | | | | |
| 2. Number of Detected Instances of Activity in Unauthorized or Prohibited Areas | 3 | 0 | 0.00% | * |
| During FY17, no detection of unauthorized or prohibited areas of activities were found. | | | | |
| 3. Number of Formal and Informal Regulatory Actions | 2 | 4 | 200.00% | * |
| The Department's proactive stance in dealing with isolated issues is reflected within these numbers which caused the number of formal or informal actions issued to be higher than the target. | | | | |
| 4. Number of Applications Processed. | 10 | 9 | 90.00% | * |
| The number of applications submitted is outside the Department's control; therefore, the number of applications processed is ultimately affected in the same manner. | | | | |
| **Efficiency Measures** | | | | |
| 1. Assets Examined Per Examiner Day (million) | $8 | $9.90 | 123.75% | * |
| Due to the increased assets of the industry, the assets examined per examiner day has increased also. | | | | |
| 2. Average Time (Business Days) to Complete Analysis of Quarterly Financial Data | 7 | 1.75 | 25.00% | * |
| The average time to review the financial data is lower than the target due to the Department's use of automated technology. | | | | |
| 3. Average Time (Business Days) between Identification of a Problem and Initiation of Regulatory Action | 5 | 66 | 1320.00% | * |
| Due to circumstances outside the Department's control, one regulatory action took a significant amount of time to have the regulatory action issued. | | | | |

* Varies by 5% or more under target.

## Actual Performance for Non-Key Measures
## Fiscal Year 2017
## For Period Ending August 2017

| Type/Strategy/Measure | 2017 Target | 2017 YTD | Percent of Annual Target | |
|---|---|---|---|---|
| **Non-Key Measures** | | | | |
| **Mortgage Regulation** | | | | |
| **02-01 Outcome Measures** | | | | |
| 1. Percentage of Licensees Receiving Satisfactory Levels of Compliance Through Examinations | 90% | 90% | 100.00% | |
| **Efficiency Measures** | | | | |
| 1. Average Cost Per Application Processed | $50.00 | $17.18 | 34.36% | * |
| The number of applications received, and thereby processed, directly affects the average cost per application. The more applications received and processed the lower average cost. | | | | |
| **Explanatory Measures** | | | | |
| 1. Total Number of Licensees in an Approved Status | 32,000 | 31,551 | 98.60% | |
| **Consumer Responsiveness** | | | | |
| **03-01 Output Measures** | | | | |
| 2. Number of Informational Inquiries and Requests Completed (Phone/Written) | 70,000 | n/a | | * |
| The number of inquiries received for the fiscal year is not available due to one of the reports being used in the calculation no longer being available. The Department is looking at additional methods of receiving data to capture the number of inquiries and requests received by the Department. Additionally, the Department will be reviewing this measure to determine if the information it provides is useful. | | | | |
| **Efficiency Measures** | | | | |
| 1. Average Cost Per Consumer Complaint Completed | $250 | $276.64 | 110.66% | * |
| The number of consumer complaints submitted, and thereby processed, directly affects the average cost per complaint completed. The fewer complaints received and processed the higher average cost. | | | | |

* Varies by 5% or more under target.

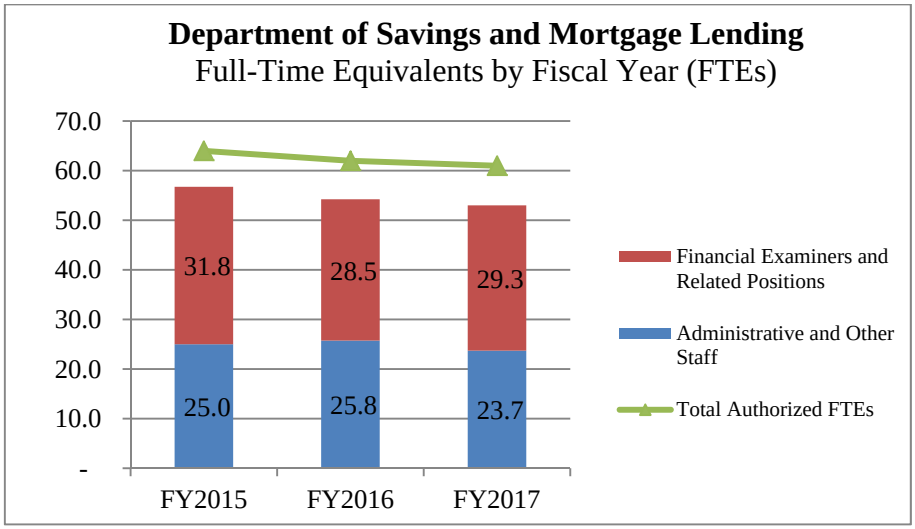
## 3. Fiscal/Operations Activity:

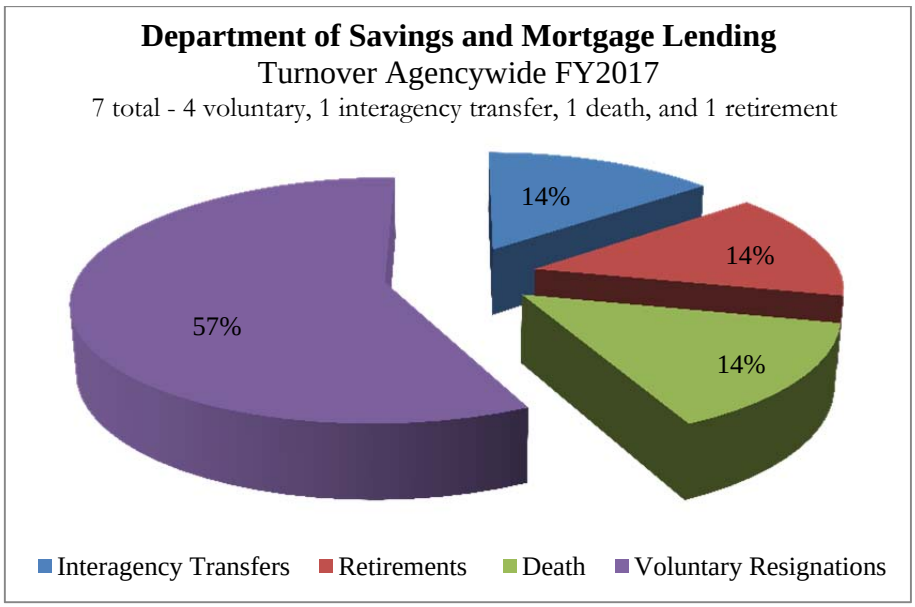
### a. Funding Status/Audits/Financial Reporting

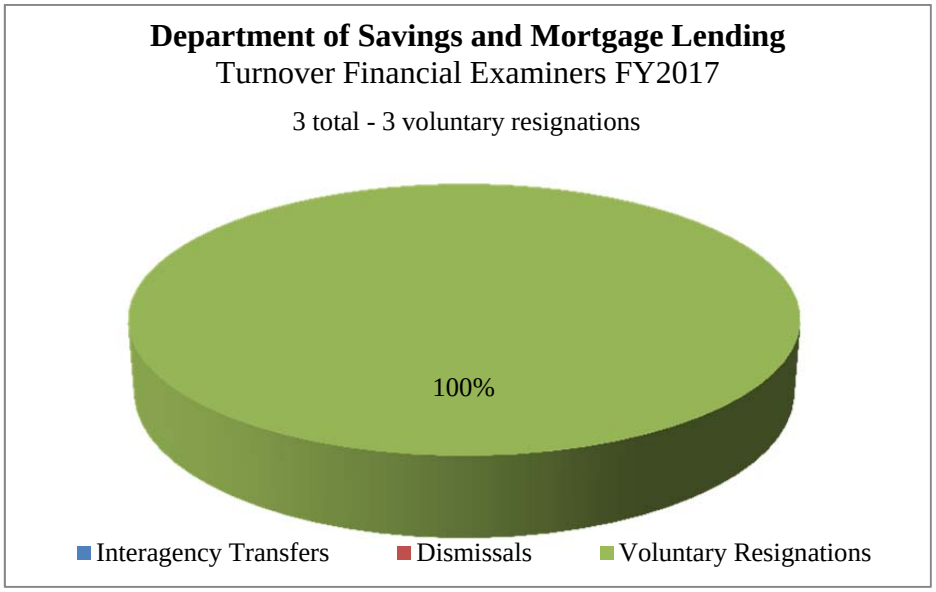
Funding Status/Budget – Staff has closed out FY2017. The annual financial report has been submitted to the oversight agencies, as required, and published on the Department's website.

### b. Staffing

As of September 1, 2017, the Department was staffed at 53 regular full time employees with 61 full time employees available.






Below is the status of the Department's vacancies:

| Vacancy Status | |
|---|---|
| License and Permit Specialist II/III | Open - Reviewing applications |
| Financial Examiner I/II – Thrift | Open - Reviewing applications |
| Financial Examiner IV/V – Thrift | Open – Conducting Interviews |
| Accountant II/III | Open – Conducting Interviews |
| Financial Examiner I/II – Thrift | Pending |
| Financial Examiner IV/V – Thrift (2) | Pending |
| Administrative Assistant II | Pending |

**c. <u>Other Items</u>**

The Department submitted its Self-Evaluation Report to Sunset staff on September 1, 2017.

Commissioner Jones and Director O'Shields participated in an introductory meeting held by Sunset staff at the Finance Commission building on October 11, 2017. Following the introductory meeting, Commissioner Jones and Directors provided Sunset staff and Legislative staff an overview of the Department's programs.

## 4. Legal Activities:

*<u>SOAH Cases:</u>*
There have been no contested SOAH hearings since the last report to the Finance Commission in August of 2017.

Case No. 450-19-2838 *Department of Savings and Mortgage Lending v. Sammy Trantham.* On April 19, 2017, the Administrative Law Judge granted the department's motion for summary disposition to deny Mr. Trantham's license. May 19, 2017, was the administrative record close date. On July 17, 2017, the Administrative Law Judge issued his Proposal for Decision on Summary Disposition recommending that Mr. Trantham's license renewal be denied and for costs to be assessed against Mr. Trantham as the losing party in this matter. The exceptions to the Proposal for

Decision were due on September 7, 2017 and any Replies to the Exceptions were due on October 20, 2017. However, these deadlines had to be suspended when Associate General Counsel Devyn F. Wills was called to State Active Duty for three weeks as part of the Texas State Guard's response to Hurricane Harvey, as the exceptions would have been due during his open-ended deployment. Counsels for the two parties are now working out new deadlines.

*Gift Reporting:*
The American Association of Residential Mortgage Regulator's provided a complementary registration to its' 28th Annual Regulatory Convention held on August 1-3, 2017 in San Antonio. The value of the scholarship was $795.00.

The University of Texas School of Law provided a complementary registration to its' Continuing Legal Education Mortgage Lending Institute and Workshop held on September 27-29, 2017 in Austin. The value of the registration was $885.00.

*Litigation:*
There has been no litigation since the last report to the Finance Commission in August of 2017.

*Historical Mortgage Recovery Fund Activity:*
Historically, the requests for reimbursement from the recovery trust fund have been low. For FY2015-2017 the Department received 40 claim requests. Of these claim requests three were deemed valid and payout of over $9,600 was made; five claim requests were settled by the parties without a recovery trust fund payment – the claimants received payments from the licensees totaling over $14,400; three claim requests are open pending investigation or hearing; three claim requests were withdrawn by the claimants; and the remainder of the claim requests were denied for not meeting the requirements of the fund or insufficient evidence.

**5.** Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, §80.2, Concerning Definitions, and New Rule §80.206, Concerning Physical Offices.

**PURPOSE:** The purpose of the proposed amendments is to clarify and better organize the requirements regarding physical offices.

**RECOMMENDED ACTION:** The Department recommends that the Commission approve publication of the proposed amendments in 7 TAC, Chapter 80, §80.2 and §80.206 for publication in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we publish proposed amendments to 7 TAC, Chapter 80, §80.2 and §80.206 in the *Texas Register* for comment.

***Title 7. Banking and Securities***
***Part 4. Department of Savings and Mortgage Lending***
***Chapter 80. Texas Residential Mortgage Loan Companies***
***Subchapter A. General Provisions***
***Subchapter C. Duties and Responsibilities***

The Finance Commission of Texas (the "Finance Commission") on behalf of the Department of Savings and Mortgage Lending (the "Department"), proposes to amend 7 Tex. Admin. Code §80.2, relating to definitions, and proposes a new §80.206, relating to physical offices.

In general, the purpose of the proposal is to clarify and better organize the requirements regarding physical offices.

7 Tex. Admin. Code §80.2 is amended to simplify the definition of a physical office to mean an actual office where the business of mortgage lending and/or the business of taking or soliciting residential mortgage loan applications are conducted.

The proposed 7 Tex. Admin. Code §80.206 outlines the requirements a physical office must meet and that the physical office of a licensee need not be the location at which such person's required records are maintained, but the location at which such required records are maintained must be accessible to the Commissioner or the Commissioner's designee for inspection during normal business hours.

Caroline C. Jones, the Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the proposed rules would be in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering this rule.

Commissioner Jones also has determined that for each year of the first five years the proposal would be in effect, the public benefits anticipated as a result of the proposal would be an increase in the readability and clarity of the regulations that pertain to physical offices.

There will be no effect on the individuals who are required to comply with the proposal. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

**Government Growth Impact Statement.** Commissioner Jones has determined that during the first five years the new rule as proposed would be in effect:
(1) the proposed rule does not create or eliminate a government program;
(2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;
(3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;
(4) the proposed rule does not require an increase or decrease in fees paid to the agency;
(5) the proposed rule does not creates a new regulation;
(6) the proposed rule does not expand, limit, or repeal an existing regulation;
(7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and
(8) the proposed rule does not positively or adversely affects this state's economy.

Comments on the proposed amendments may be submitted in writing to Devyn F. Wills, Associate General Counsel, Department of Savings and Mortgage Lending, 2601 North

Lamar, Suite 201, Austin, TX 78705 or by email to smlinfo@sml.texas.gov within 30 days of publication in the *Texas Register*.

The proposal is made under the authority granted by the Texas Legislature to the Finance Commission pursuant to Tex. Fin. Code §156.102.

The statutory provisions affected by the proposal are contained in Tex. Fin. Code, chapter 156.

**§80.2 Definitions**

As used in this chapter, the following terms have the meanings indicated:

(1) - (9) No change.

(10) "Physical Office" means an actual office where the business of mortgage lending and/or the business of taking or soliciting residential mortgage loan applications are conducted. [~~It must have a street address. A post office box or other similar designation will not suffice. It must be accessible to the general public as a place of business and must hold itself open on a regular basis during posted hours. The hours of business must be posted in a manner to give effective notice to walk-up traffic as to the hours of opening and closing. Normally this will require posting of the hours on an exterior door or window of the office. In those instances where the physical office is in a shared office suite or building, the hours may be posted in a common lobby or reception area. During the hours in which the physical office is open, at least one staff member must be present to assist customers. The physical office of a licensee need not be the location at which such person's required records are maintained, but the location at which such required records are maintained must be accessible to the Commissioner or the Commissioner's designee for inspection during normal business hours.~~]

(11) No change.

(12) No change.

**§80.206 Physical Office**

(a) A Physical Office must:

(1) have a physical or street address. A post office box or other similar designation will not suffice.

(2) be accessible to the general public as a place of business and must hold itself open on a regular basis during posted hours. The hours of business must be posted in a manner to give effective notice to walk-up traffic as to the hours of opening and closing. Normally this will require posting of the hours on an exterior door or window of the office. In those instances where the physical office is in a shared office suite or building, the hours may be posted in a common lobby or reception area.

(3) have at least one (1) staff member present to assist customers during the hours in which the Physical Office is open.

(b) The Physical Office of a licensee need not be the location at which such person's required records are maintained, but the location at which such required records are maintained must be accessible to the Commissioner or the Commissioner's designee for inspection during normal business hours.

**Certification**

The agency herby certifies that the amendments have been reviewed by legal

counsel and found to be within the agency's legal authority to adopt.

Devyn F. Wills
Associate General Counsel
Department of Savings and Mortgage Lending

**6.** Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, §80.200, Concerning Required Disclosures.

**PURPOSE:** The purpose of the proposed amendment is to reduce regulatory burden and create parity between the Texas Mortgage Company and Mortgage Banker Disclosures.

**RECOMMENDED ACTION:** The Department recommends that the Commission approve publication of the proposed amendments in 7 TAC, Chapter 80, §80.200 for publication in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we publish proposed amendments to 7 TAC, Chapter 80, §80.200 in the *Texas Register* for comment.

***Title 7. Banking and Securities***
***Part 4. Department of Savings and Mortgage Lending***
***Chapter 80. Texas Residential Mortgage Loan Companies***
***Subchapter C. Duties and Responsibilities***

The Finance Commission of Texas (the "Finance Commission") on behalf of the Department of Savings and Mortgage Lending (the "Department"), proposes to amend 7 Tex. Admin. Code §80.200, relating to required disclosures.

In general, the purpose of the proposal is to reduce regulatory burden and create parity between the Texas Mortgage Company and Mortgage Banker Disclosures, as found in 7 Tex. Admin. Code §§80.200 and 81.200, respectively.

7 Tex. Admin. Code §80.200 is amended to simplify the information contained in the Texas Mortgage Company Disclosure, thus creating parity with the Texas Mortgage Banker Disclosure. In addition, the Texas Mortgage Company Disclosure is amended to add clarifying language, including that residential mortgage loan originators will be paid in compliance with Regulation Z.

Caroline C. Jones, the Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the proposed rules would be in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering this rule.

Commissioner Jones also has determined that for each year of the first five years the proposal would be in effect, the public benefits anticipated as a result of the proposal will be a reduction of regulatory burden by reducing the contents of the notice and clarifying that residential mortgage loan originator will be paid in compliance with Regulation Z.

There will be no effect on the individuals who would be required to comply with the proposal. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

**Government Growth Impact Statement.** Commissioner Jones has determined that during the first five years the new rule as proposed would be in effect:
(1) the proposed rule does not create or eliminate a government program;
(2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;
(3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;
(4) the proposed rule does not require an increase or decrease in fees paid to the agency;
(5) the proposed rule does not creates a new regulation;
(6) the proposed rule does not expand, limit, or repeal an existing regulation;
(7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and
(8) the proposed rule does not positively or adversely affects this state's economy.

Comments on the proposed amendments may be submitted in writing to Devyn F. Wills, Associate General Counsel, Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, TX 78705 or by email to smlinfo@sml.texas.gov within 30 days of publication in the *Texas Register*.

The proposal is made under the authority granted by the Texas Legislature to the

Finance Commission pursuant to Tex. Fin. Code §156.102.

The statutory provisions affected by the proposal are contained in Tex. Fin. Code, chapter 156.

**§80.200 Required Disclosure**

(a) An originator sponsored under Finance Code, Chapter 156 shall include the following notice, Figure: 7 TAC §80.200(a), to a residential mortgage loan applicant with an initial application for a residential mortgage loan:

Figure: 7 TAC §80.200(a)

(b) No change.

(c) No change.

**Certification**

The agency herby certifies that the amendments have been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Devyn F. Wills
Associate General Counsel
Department of Savings and Mortgage Lending

Figure: 7 TAC §80.200(a)

# TEXAS MORTGAGE COMPANY DISCLOSURE

**Residential Mortgage Loan Originator: _____**

**NMLS ID: _____**

[~~Check *ALL that apply*~~]

[~~Duties and Nature of Relationship~~]

[~~☐~~] We will submit your loan application to a participating lender or we will make your loan ourselves [~~which we may from time to time contract upon such terms as you may request or a lender may require~~]. In connection with this mortgage loan, we are acting as an independent contractor and not as your agent.

[~~☐ We will make your loan ourselves. In connection with this mortgage loan, we are acting as an independent contractor and not as your agent.~~]

[~~☐ We will be acting as follows:~~]

We [~~How we~~] will be compensated in compliance with Section 1026.36(d) of Regulation Z (12 C.F.R. § 1026.36(d)) (if applicable).

[~~☐ The retail price we offer you - your interest rate, total points, and fees - will include our compensation. In some cases we may be paid all of our compensation by you or by the lender or investor~~]

[~~☐ Our pricing for your loan is based upon:~~]

[~~_____~~]

Pursuant to Sections 156.004(b) and 156.102 of the Residential Mortgage Loan Company Licensing and Registration Act, Chapter 156, Texas Finance Code, you are hereby notified of the following:

**CONSUMERS WISHING TO FILE A COMPLAINT AGAINST A MORTGAGE COMPANY OR A LICENSED RESIDENTIAL MORTGAGE LOAN ORIGINATOR SHOULD COMPLETE AND SEND A COMPLAINT FORM TO THE TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING, 2601 NORTH LAMAR, SUITE 201, AUSTIN, TEXAS 78705. COMPLAINT FORMS AND INSTRUCTIONS MAY BE OBTAINED FROM THE DEPARTMENT'S WEBSITE AT WWW.SML.TEXAS.GOV. A TOLL-FREE CONSUMER HOTLINE IS AVAILABLE AT 1-877-276-5550.**

**THE DEPARTMENT MAINTAINS A RECOVERY FUND TO MAKE PAYMENTS OF CERTAIN ACTUAL OUT OF POCKET DAMAGES SUSTAINED BY BORROWERS CAUSED BY ACTS OF LICENSED MORTGAGE COMPANY RESIDENTIAL MORTGAGE LOAN ORIGINATORS. A WRITTEN APPLICATION FOR REIMBURSEMENT FROM THE RECOVERY FUND MUST BE FILED WITH AND INVESTIGATED BY THE DEPARTMENT PRIOR TO THE PAYMENT OF A CLAIM. FOR MORE INFORMATION ABOUT THE RECOVERY FUND, PLEASE CONSULT THE DEPARTMENT'S WEB SITE AT WWW.SML.TEXAS.GOV.**

| Applicant(s) | Residential Mortgage Loan Originator |
|---|---|
| Signed: _____ | Signed: _____ |
| Name: _____ | Name: _____ |
| Date: _____ | Date: _____ |

Signed: _____
Name: _____
Date: _____

Figure: 7 TAC §80.200(a)

## TEXAS MORTGAGE COMPANY DISCLOSURE

**Residential Mortgage Loan Originator: _____**

**NMLS ID: _____**

We will submit your loan application to a participating lender or we will make your loan ourselves. In connection with this mortgage loan, we are acting as an independent contractor and not as your agent.

We will be compensated in compliance with Section 1026.36(d) of Regulation Z (12 C.F.R.§ 1026.36(d)) (if applicable).

Pursuant to Sections 156.004(b) and 156.102 of the Residential Mortgage Loan Company Licensing and Registration Act, Chapter 156, Texas Finance Code, you are hereby notified of the following:

**CONSUMERS WISHING TO FILE A COMPLAINT AGAINST A MORTGAGE COMPANY OR A LICENSED RESIDENTIAL MORTGAGE LOAN ORIGINATOR SHOULD COMPLETE AND SEND A COMPLAINT FORM TO THE TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING, 2601 NORTH LAMAR, SUITE 201, AUSTIN, TEXAS 78705. COMPLAINT FORMS AND INSTRUCTIONS MAY BE OBTAINED FROM THE DEPARTMENT'S WEBSITE AT WWW.SML.TEXAS.GOV. A TOLL-FREE CONSUMER HOTLINE IS AVAILABLE AT 1-877-276-5550.**

**THE DEPARTMENT MAINTAINS A RECOVERY FUND TO MAKE PAYMENTS OF CERTAIN ACTUAL OUT OF POCKET DAMAGES SUSTAINED BY BORROWERS CAUSED BY ACTS OF LICENSED MORTGAGE COMPANY RESIDENTIAL MORTGAGE LOAN ORIGINATORS. A WRITTEN APPLICATION FOR REIMBURSEMENT FROM THE RECOVERY FUND MUST BE FILED WITH AND INVESTIGATED BY THE DEPARTMENT PRIOR TO THE PAYMENT OF A CLAIM. FOR MORE INFORMATION ABOUT THE RECOVERY FUND, PLEASE CONSULT THE DEPARTMENT'S WEB SITE AT WWW.SML.TEXAS.GOV.**

| Applicant(s) | Residential Mortgage Loan Originator |
|---|---|
| Signed: _____ | Signed: _____ |
| Name: _____ | Name: _____ |
| Date: _____ | Date: _____ |

Signed: _____

Name: _____

Date: _____

**7.** Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, §81.2, Concerning Definitions, and New Rule §81.206, Concerning Physical Offices.

**PURPOSE:** The purpose of the proposed amendments is to clarify and better organize the requirements regarding physical offices.

**RECOMMENDED ACTION:** The Department recommends that the Commission approve publication of the proposed amendments in 7 TAC, Chapter 81, §81.2 and §81.206 for publication in the *Texas Register.*

**RECOMMENDED MOTION:** I move that we publish proposed amendments to 7 TAC, Chapter 81, §81.2 and §81.206 in the *Texas Register* for comment.

***Title 7. Banking and Securities***
***Part 4. Department of Savings and Mortgage Lending***
***Chapter 81. Mortgage Bankers and Residential Mortgage Loan Originators***
***Subchapter A. General Provisions***
***Subchapter C. Duties and Responsibilities***

The Finance Commission of Texas (the "Finance Commission") on behalf of the Department of Savings and Mortgage Lending (the "Department"), proposes to amend 7 Tex. Admin. Code §81.2, relating to definitions, and proposes a new §81.206, relating to physical offices.

In general, the purpose of this proposal is to clarify and better organize the requirements regarding physical offices.

7 Tex. Admin. Code §81.2 is amended to simplify the definition of a physical office to mean an actual office where the business of mortgage lending and/or the business of taking or soliciting residential mortgage loan applications are conducted.

The proposed 7 Tex. Admin. Code §81.206 outlines the requirements a physical office must meet and that the physical office of a licensee need not be the location at which such person's required records are maintained, but the location at which such required records are maintained must be accessible to the Commissioner or the Commissioner's designee for inspection during normal business hours.

Caroline C. Jones, the Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the proposed rules would be in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering this rule.

Commissioner Jones also has determined that for each year of the first five years this proposal would be in effect, the public benefits anticipated as a result of this proposal would be an increase in the readability and clarity of the regulations that pertain to physical offices.

There will be no effect on the individuals who are required to comply with this proposal. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

**Government Growth Impact Statement.** Commissioner Jones has determined that during the first five years the new rule as proposed would be in effect:
(1) the proposed rule does not create or eliminate a government program;
(2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;
(3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;
(4) the proposed rule does not require an increase or decrease in fees paid to the agency;
(5) the proposed rule does not creates a new regulation;
(6) the proposed rule does not expand, limit, or repeal an existing regulation;
(7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and
(8) the proposed rule does not positively or adversely affects this state's economy.

Comments on the proposed amendments may be submitted in writing to Devyn F. Wills, Associate General Counsel, Department of Savings and Mortgage Lending, 2601 North

Lamar, Suite 201, Austin, TX 78705 or by email to smlinfo@sml.texas.gov within 30 days of publication in the *Texas Register*.

This proposal is made under the authority granted by the Texas Legislature to the Finance Commission pursuant to Tex. Fin. Code §157.0023.

The statutory provisions affected by this proposal are contained in Tex. Fin. Code, chapter 157.

**§81.2 Definitions**

As used in this chapter, the following terms have the meanings indicated:

(1) - (9) No change.

(10) "Physical Office" means an actual office where the business of mortgage lending and/or the business of taking or soliciting residential mortgage loan applications are conducted. [~~It must have a street address. A post office box or other similar designation will not suffice. It must be accessible to the general public as a place of business and must hold itself open on a regular basis during posted hours. The hours of business must be posted in a manner to give effective notice to walk-up traffic as to the hours of opening and closing. Normally this will require posting of the hours on an exterior door or window of the office. In those instances where the physical office is in a shared office suite or building, the hours may be posted in a common lobby or reception area. During the hours in which the physical office is open, at least one staff member must be present to assist customers. The physical office of a licensee need not be the location at which such person's required records are maintained, but the location at which such required records are maintained must be accessible to the Commissioner or the Commissioner's designee for inspection during normal business hours.~~]

(11) No change.

(12) No change.

**§81.206 Physical Office**

(a) A Physical Office must:

(1) have a physical or street address. A post office box or other similar designation will not suffice.

(2) be accessible to the general public as a place of business and must hold itself open on a regular basis during posted hours. The hours of business must be posted in a manner to give effective notice to walk-up traffic as to the hours of opening and closing. Normally this will require posting of the hours on an exterior door or window of the office. In those instances where the physical office is in a shared office suite or building, the hours may be posted in a common lobby or reception area.

(3) have at least one (1) staff member present to assist customers during the hours in which the Physical Office is open.

(b) The Physical Office of a licensee need not be the location at which such person's required records are maintained, but the location at which such required records are maintained must be accessible to the Commissioner or the Commissioner's designee for inspection during normal business hours.

**Certification**

The agency herby certifies that the amendments have been reviewed by legal

counsel and found to be within the agency's legal authority to adopt.

Devyn F. Wills
Associate General Counsel
Department of Savings and Mortgage Lending

**8.** Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New Rule in 7 TAC, §81.109, Concerning Pre-licensing Education.

**PURPOSE:** The purpose of the proposed amendments is to implement H.B. 3342, which changed the period during which an individual who fails to maintain a residential mortgage loan originator license is required to retake the pre-licensing education requirements prescribed by the S.A.F.E. Mortgage Licensing Act, from at least five consecutive years, to a period established by rule of the Finance Commission.

**RECOMMENDED ACTION:** The Department recommends that the Commission approve publication of the proposed amendments in 7 TAC, Chapter §81.109 for publication in the *Texas Register.*

**RECOMMENDED MOTION:** I move that we publish proposed amendments to 7 TAC, Chapter 81, §81.109 in the *Texas Register* for comment.

***Title 7. Banking and Securities***
***Part 4. Department of Savings and Mortgage Lending***
***Chapter 81. Mortgage Bankers and Residential Mortgage Loan Originators***
***Subchapter B. Licensing***

The Finance Commission of Texas (the "Finance Commission") on behalf of the Department of Savings and Mortgage Lending (the "Department"), proposes a new 7 Tex. Admin. Code §81.109, relating to pre-licensing education.

In general, the purpose of creating this rule is to implement H.B. 3342, which the Texas Legislature passed in the 85th regular legislative session.

H.B. 3342 amended Tex. Fin. Code §180.056(h) and changed the period during which an individual who fails to maintain a residential mortgage loan originator license is required to retake the pre-licensing education requirements prescribed by the S.A.F.E. Mortgage Licensing Act, from at least five consecutive years, to a period established by rule of the Finance Commission.

H.B. 3342 further requires the Finance Commission to adopt the rules required by the newly amended Tex. Fin. Code §180.056(h) not later than December 1, 2017. The change in the law applies only to an application for a license filed on or after December 1, 2017.An application for a license filed before December 1, 2017 is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

The proposed 7 Tex. Admin. Code §81.109 provides the circumstance under which an individual must retake the pre-licensing education requirements prescribed by the S.A.F.E. Mortgage Licensing Act.

Caroline C. Jones, the Savings and Mortgage Lending Commissioner, has determined that for the first five-year period this proposal would be in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering this rule.

Commissioner Jones has also determined that, for each year of the first five years the new rule as proposed would be in effect, the public benefit anticipated as a result will be that the Finance Commission may modify the applicable pre-licensing education requirements, as required by the S.A.F.E. Mortgage Licensing Act, without having to wait for the next legislative session to convene.

There will be no effect on individuals required to comply with this proposal. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

**Government Growth Impact Statement.** Commissioner Jones has determined that during the first five years the new rule as proposed is in effect:
(1) the proposed rule does not create or eliminate a government program;
(2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;
(3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;
(4) the proposed rule does not require an increase or decrease in fees paid to the agency;
(5) the proposed rule does not creates a new regulation;
(6) the proposed rule does not expand, limit,

or repeal an existing regulation;
(7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and
(8) the proposed rule does not positively or adversely affects this state's economy.

Comments on the proposed amendments may be submitted in writing to Devyn F. Wills, Associate General Counsel, Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, TX 78705 or by email to smlinfo@sml.texas.gov within 30 days of publication in the *Texas Register*.

This proposal is made under the authority granted by the Texas Legislature to the Finance Commission pursuant to H.B. 3342.

The statutory provisions affected by this proposal are contained in Tex. Fin. Code, chapter 180.

**§ 81.109 Pre-licensing Education**

An individual must retake the pre-licensing education requirements prescribed by the S.A.F.E. Mortgage Licensing Act if the individual:

(1) fails to acquire a valid residential mortgage loan originator license or federal registration within five years from the date of completing the pre-licensing education requirements prescribed by the S.A.F.E. Mortgage Licensing Act; or

(2) has obtained a residential mortgage loan originator license or federal registration but did not maintain an active license or federal registration for five consecutive years.

**Certification**

The agency herby certifies that the amendments have been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Devyn F. Wills
Associate General Counsel
Department of Savings and Mortgage Lending

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# D.

# Office of Consumer Credit Commissioner

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## Consumer Protection and Consumer Assistance Report

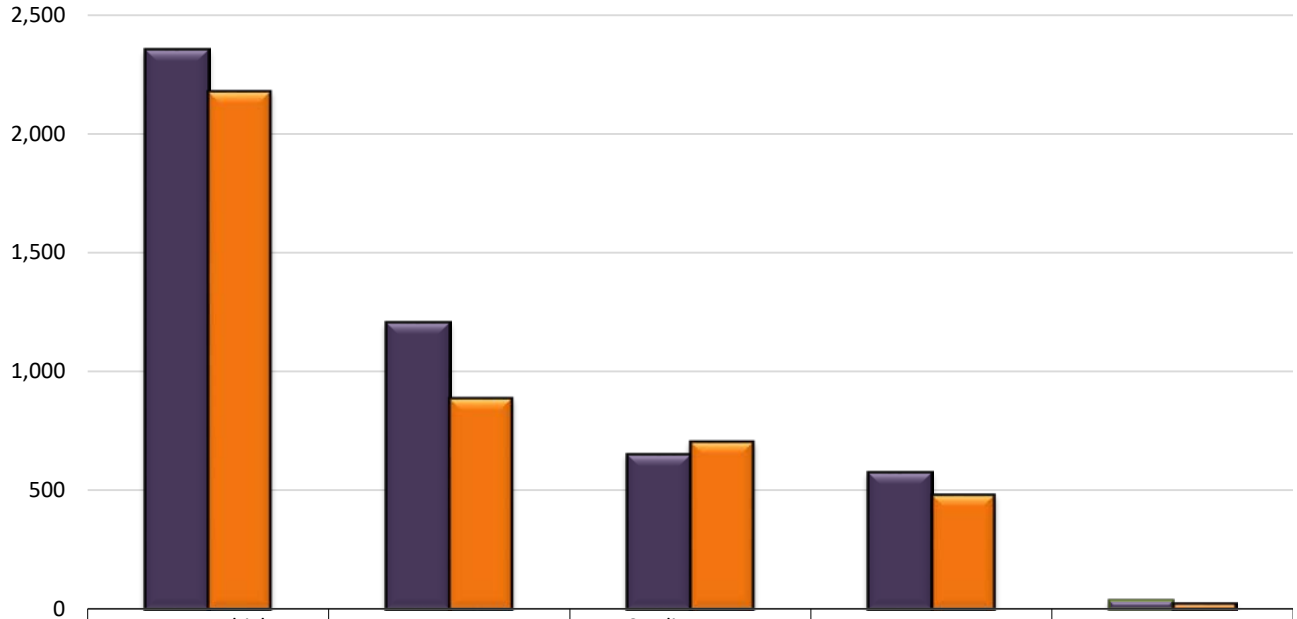
*Rudy Aguilar, Director of Consumer Protection*

For Fiscal Year (FY) 2017, the agency met or exceeded the FY '17 examination targets for all license types. The overall number of examinations surpassed the targeted goal by 733 examinations (117.93% of the targeted goal of 4,087 conducted examinations). The key factor in the increased efficiency was the number of examinations performed using the enterprise-level examination approach. The compliance effectiveness of this approach is still being evaluated by license type and number of licensed branches for a license group.

Several very large master file groups required follow-up examinations. The follow-up examinations were conducted with the primary focus of completing the previous exam instructions. These examinations were completed in a streamlined process to be as efficient as possible, and while very important towards improving industry compliance, they increased the number of examinations atypically.

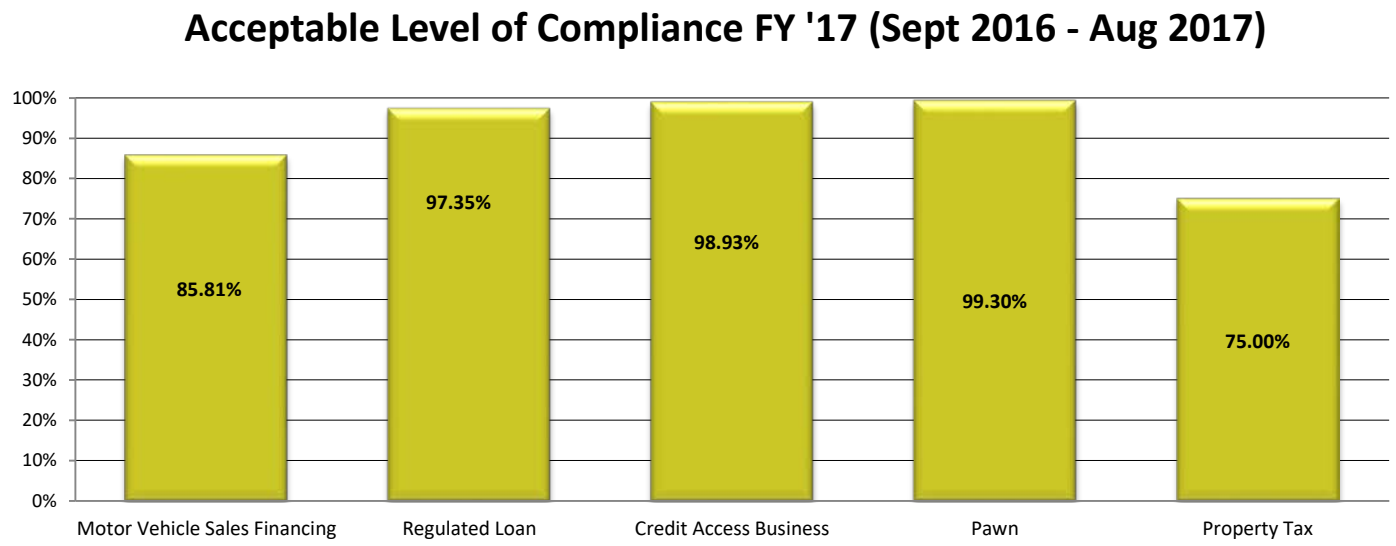
An evaluation of these large group examinations has resulted in a decision to limit enterprise level examinations to 50 licensed locations to allow for an effective review of transactions from each licensed location. This will result in fewer examinations per year. However, a more effective compliance review will be the result.

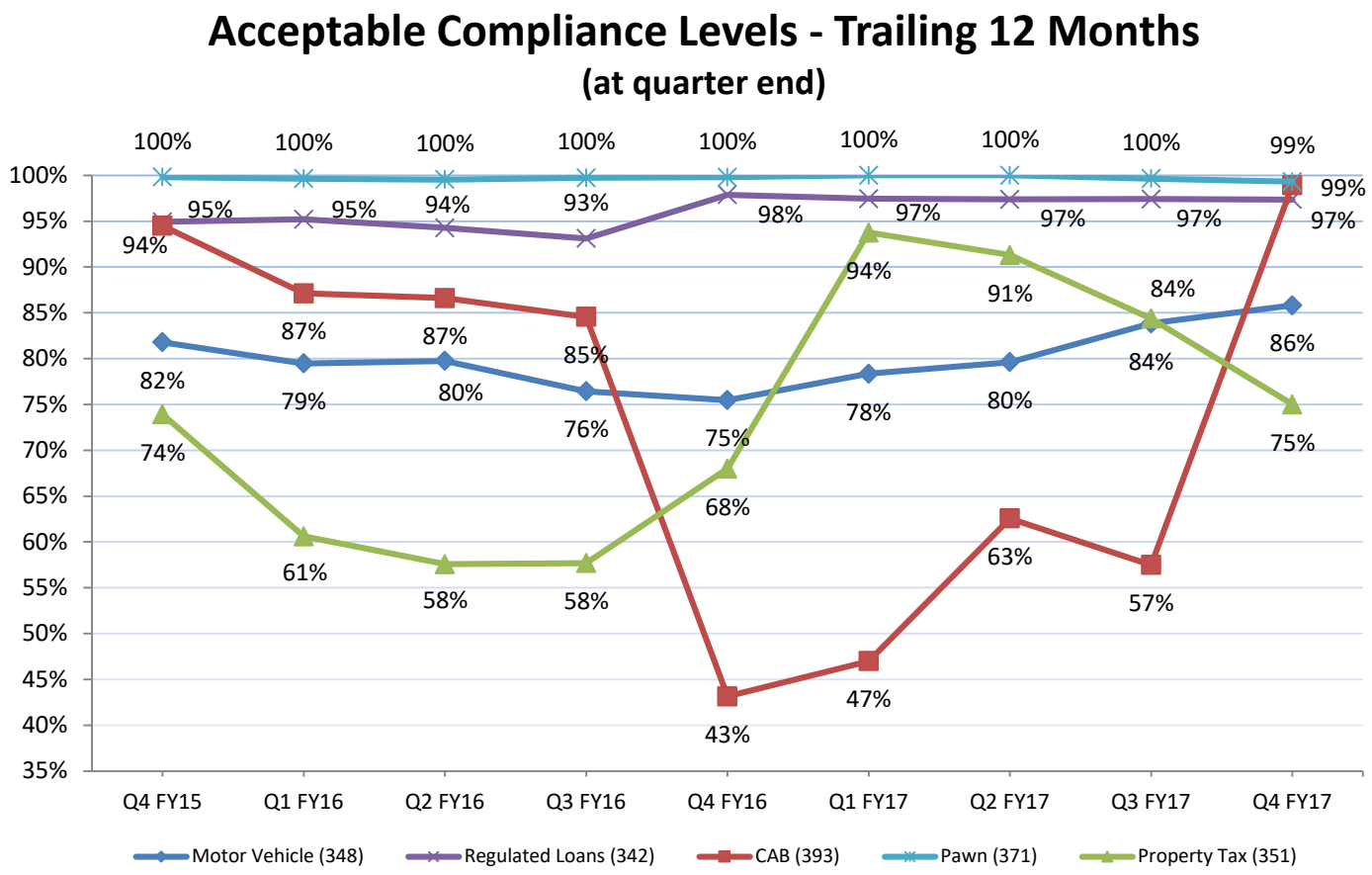
**Examinations Conducted: Sept - Aug**
**Fiscal Year Comparison**



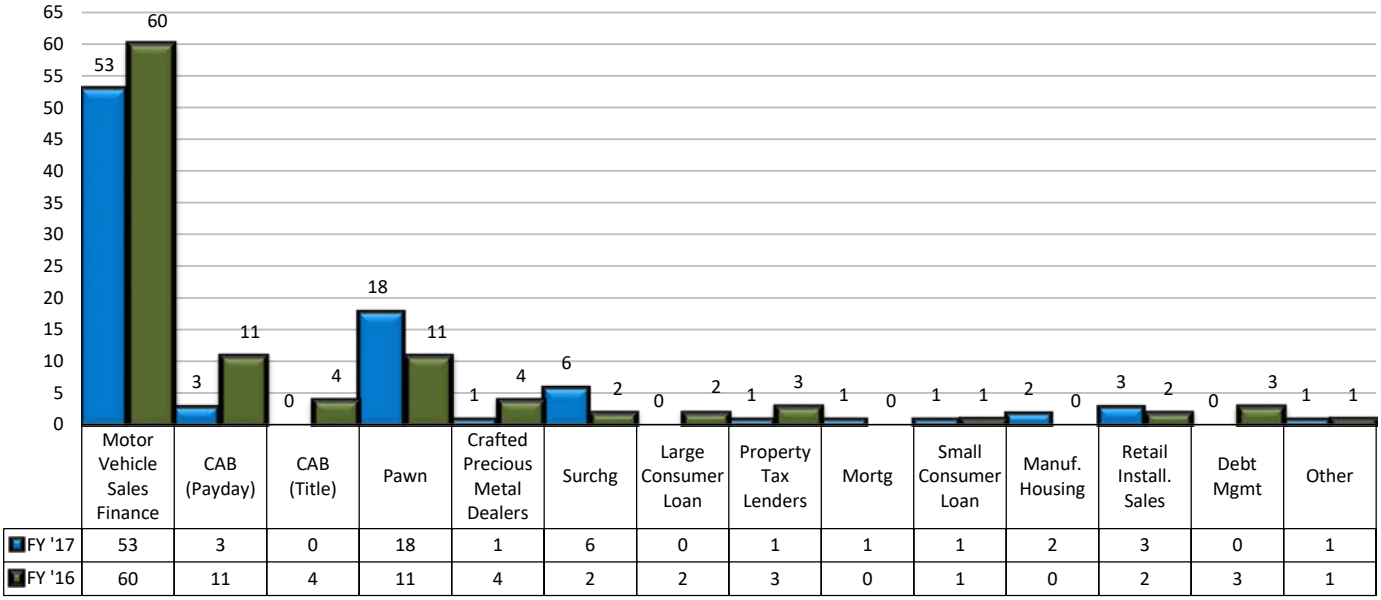

| | Motor Vehicle Sales Finance | Regulated Loan | Credit Access Business (CAB) | Pawn | Property Tax Lenders |
|---|---|---|---|---|---|
| FY'17 | 2,354 | 1,207 | 652 | 575 | 32 |
| FY '16 | 2,181 | 891 | 707 | 484 | 25 |

The acceptable level of compliance for all examination areas is charted below. The first chart displays the acceptable levels of compliance for FY '17; four of the examination areas were above 85% and the fifth was 75%. The second chart denotes the acceptable level of compliance on a trailing 12-month basis through the end of FY '17. The 4th quarter of FY '16 data point (43%) came off the trailing 12-month period calculation which had the effect of increasing the Credit Access Business percentage of acceptable level of compliance to 99% for the most recent reporting period. During FY '17, 645 out of the 652 examined licensed locations of credit access businesses had an acceptance level of compliance.

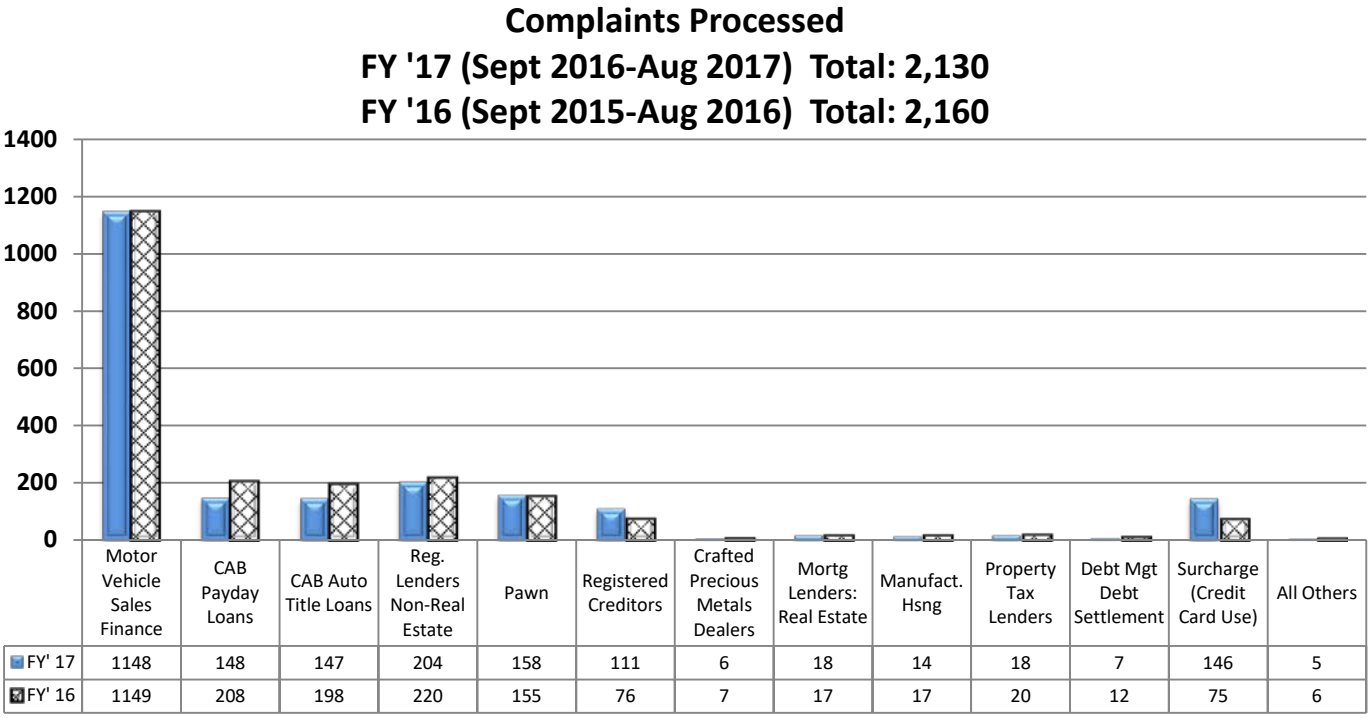


Investigations



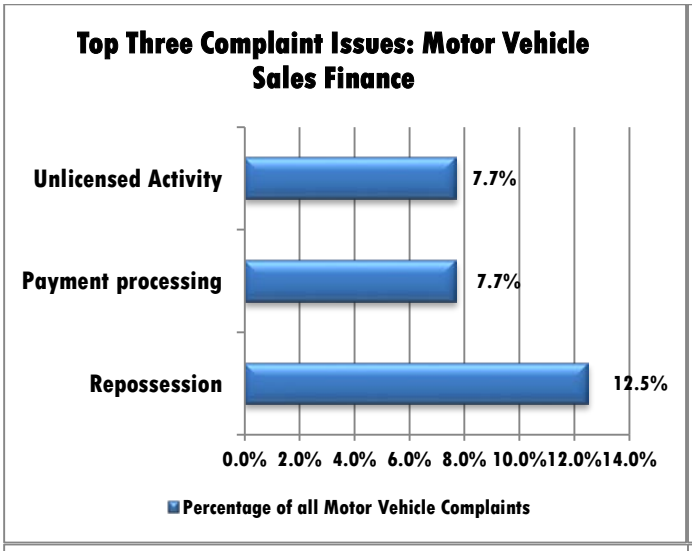

Consumer Assistance

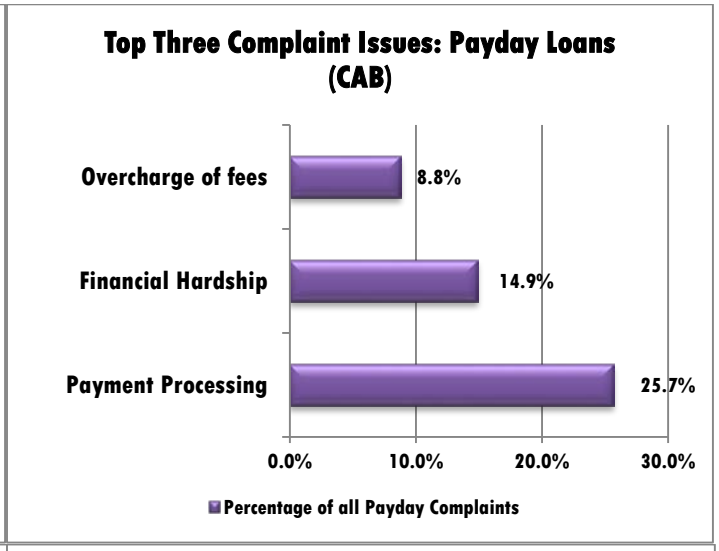


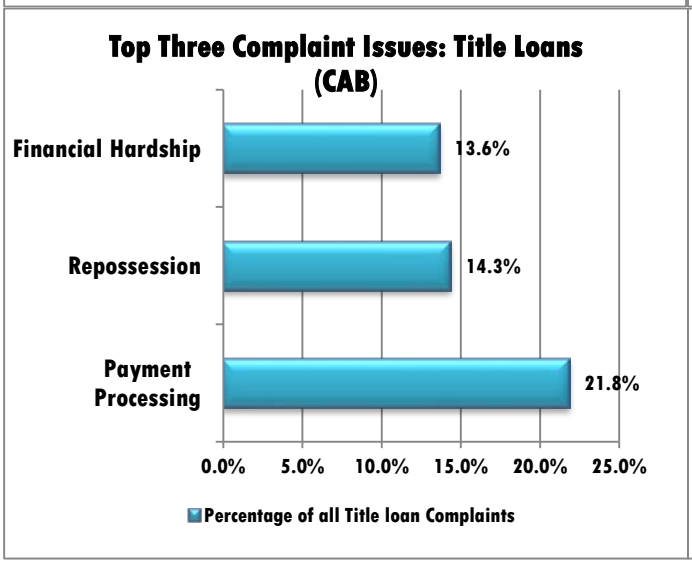
The top four areas of complaints are (1) Motor Vehicle Sales Finance (MVSF), (2) Credit Access Business (CAB), (3) Regulated Lenders Non-Real Estate, and (4) Pawn.

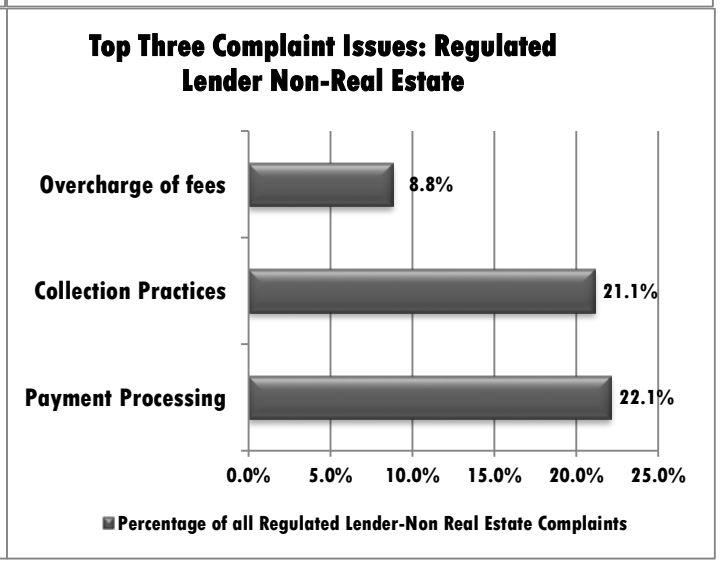
MVSF complaints were the largest complaint category at 54.8%. The second largest category was CAB complaints. Collectively, CAB complaints are 13.9%; separately, these are at 6.9% for payday loans and 6.9% for title loans. The third largest number of complaints came from the Regulated Lenders: Non Real Estate category at 9.6%.

Each of the following charts represent the three top complaint areas per license type. Predominant issues within payment processing include auto drafting before due date, dispute of account balance, payment arrangements not honored and payment posting errors.

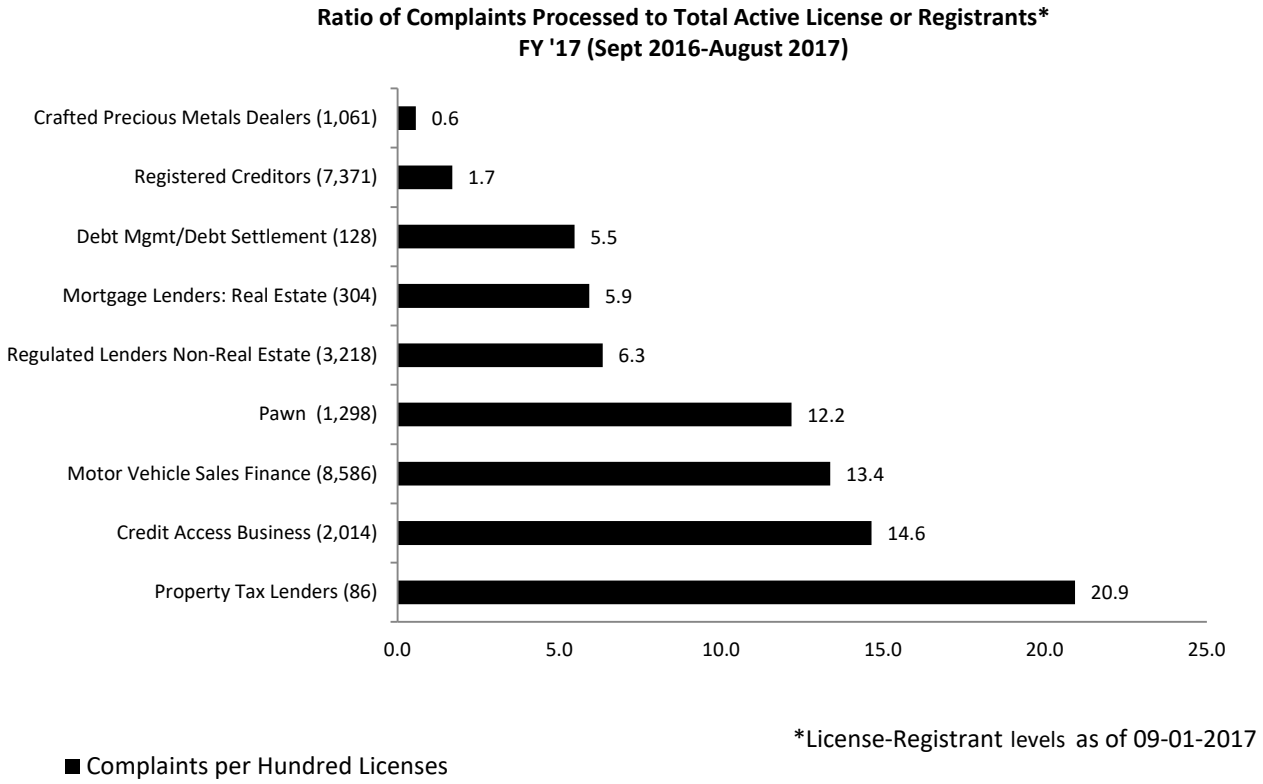


Comparison of complaints processed to the number of active license or registrant population is noted on the chart below. The highest ratio involved Property Tax Lending complaints followed by Credit Access Business as the second highest. MVSF ratio of complaints to active licenses was third followed by Pawn as fourth highest.



## CAB Reporting Update

Summaries of all reports through the second quarter of 2017 are available on the OCCC website. Presented are selected statistics of January – June (Q1 – Q2) reports through the years. Consolidation in the industry continues as the number of different stores arranging loans decreased 42% since 2012. The remaining stores increasingly offer installment loans payable in around five months. These lengthier loans represented 45% of both new payday and title loans offered during the first half of 2017.

| Data Highlights (All Loan Types) Q1 & Q2 | 2017 | 2016 | 2015 | 2014 | 2013 | 2012 |
|---|---|---|---|---|---|---|
| Number of new payday loans | 1,044,152 | 1,064,650 | 1,085,393 | 1,100,247 | 1,200,991 | 1,184,536 |
| Number of new auto title loans | 129,322 | 133,881 | 159,680 | 206,235 | 241,267 | 226,272 |
| Percentage of payday loans due in multiple installments | 45% | 41% | 38% | 32% | 20% | 14% |
| Percentage of auto title loans due in multiple installments | 45% | 40% | 23% | 17% | 13% | 16% |
| Number of vehicles repossessed under all auto title loans | 15,162 | 15,702 | 18,575 | 20,879 | 18,498 | 17,175 |
| Total number of locations reporting activity | 1,817 | 2,002 | 2,575 | 3,033 | 3,176 | 3,159 |

| | Single Installment | | | Multiple Installment | | |
|---|---|---|---|---|---|---|
| Payday Loans Q1 & Q2 | 2017 | 2016 | 2015 | 2017 | 2016 | 2015 |
| Number of consumers obtaining loans | 409,870 | 453,527 | 510,274 | 416,764 | 385,752 | 365,215 |
| Number of new loans | 577,829 | 631,906 | 676,518 | 466,323 | 432,744 | 408,875 |
| Number of refinances on new loans in the quarter[1] | 377,451 | 410,463 | 500,653 | 50,897 | 33,810 | 31,608 |
| Number of total refinances[2] | 939,831 | 1,018,289 | 1,294,633 | 137,009 | 133,418 | 118,729 |
| Average loan amount | $461 | $456 | $493 | $569 | $563 | $525 |
| Average fee per $100 borrowed | $23.94 | $23.73 | $23.32 | $149.98 | $165.50 | $172.62 |
| Average original term (in days) | 20 | 17 | 18 | 145 | 159 | 160 |

| | Single Installment | | | Multiple Installment | | |
|---|---|---|---|---|---|---|
| Title Loans Q1 & Q2 | 2017 | 2016 | 2015 | 2017 | 2016 | 2015 |
| Number of consumers obtaining loans | 63,347 | 71,271 | 109,570 | 53,628 | 51,028 | 34,953 |
| Number of new loans | 71,672 | 80,121 | 123,178 | 57,650 | 53,760 | 36,502 |
| Number of refinances on new loans in the quarter[1] | 46,031 | 50,146 | 76,256 | 9,429 | 7,735 | 4,505 |
| Number of total refinances[2] | 338,540 | 428,451 | 619,793 | 49,053 | 17,362 | 14,621 |
| Average loan amount | $1,383 | $1,226 | $1,226 | $1,044 | $1,420 | $1,069 |
| Average fee per $100 borrowed | $16.41 | $16.59 | $16.97 | $131.58 | $91.78 | $84.77 |
| Average original term (in days) | 30 | 29 | 30 | 156 | 165 | 166 |

[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- October 2017

*Mirand Zepeda, Manager*

### Renewals

Motor vehicle sales finance license renewal ended on July 31 with almost 90% of licensees renewing. Of those licensees that did renew, more than 77% did so online. Licensees who did not complete renewal have the option to reinstate through January of 2018.

Registered creditor renewal opened in September and almost 30% have already renewed. Registrants have until the end of November to complete renewal and the department will send several communications to inform them about the renewal period.

### Applications Processing

In FY 2017 the department processed more than 1,600 business license applications and 3,000 pawn employee applications, surpassing goals for both categories. Applications received have increased above averages due to a number of new applications for a license following the license's expiration. Additionally, staffing changes in the last half of FY 2017 led to cross-training opportunities and refinement of certain processes. Projected goals for application processing have been refined based on FY 2017 data.

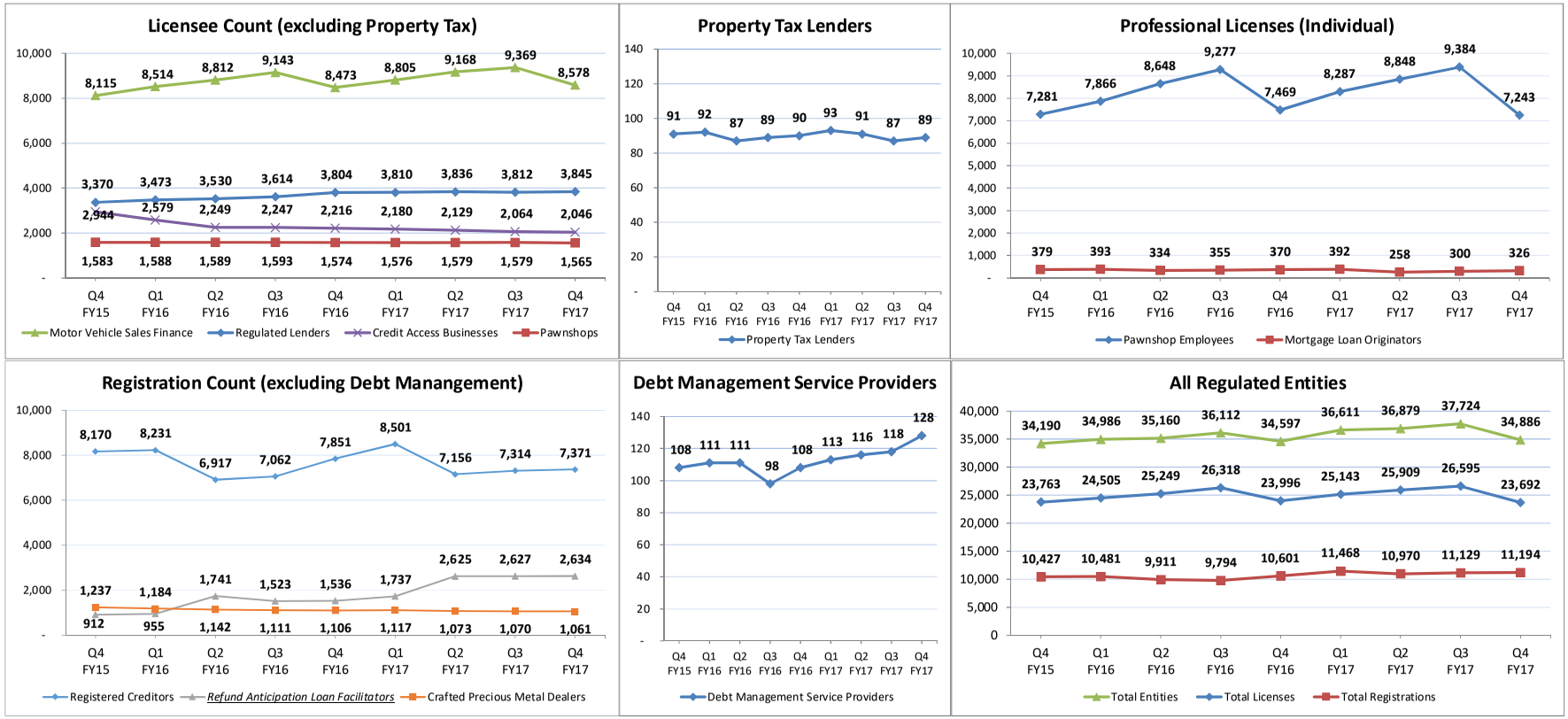
### Other Updates

The department is in coordination and communication with the Texas Department of Public Safety to bring Crafted Precious Metal Dealer registrations onto the ALECS platform. This project is in the beginning stages and completion is expected in FY 2019.

### Regulated Entity Population Trends

The following charts reflect the number of OCCC regulated entities at the end of each quarter in fiscal years 2015 and 2016 to current data.

# Number of OCCC Regulated Entities
# Quarterly Comparison of FY 15-17



OCCC
TEXAS OFFICE OF CONSUMER CREDIT COMMISSIONER

## Communications, Human Resources & Administration Report

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

### COMMUNICATIONS

The OCCC previously reported the Texas Legislature having a special session called by Governor Abbott. Shortly before the last Finance Commission meeting, the special session of the Texas legislature adjourned *sine die* (August 15). While the session accomplished some of the 20 items on the Governor's agenda, several more were left undone. None of the items passed during the special session appeared to directly affect the industries regulated by the OCCC.

On Wednesday, October 11, the OCCC and its sister agencies are scheduled to meet with Sunset Staff for an introductory meeting to introduce each team. The OCCC and its sister agencies are also scheduled to present a general overview (high level) of the Agency on the same day.

On Monday, October 16 and Wednesday, October 18, the OCCC is scheduled to meet with Sunset Staff to provide detailed presentations regarding the OCCC's functions and responsibilities. OCCC staff will continue to work closely with Sunset Staff during the next months and will assist with any information needed.

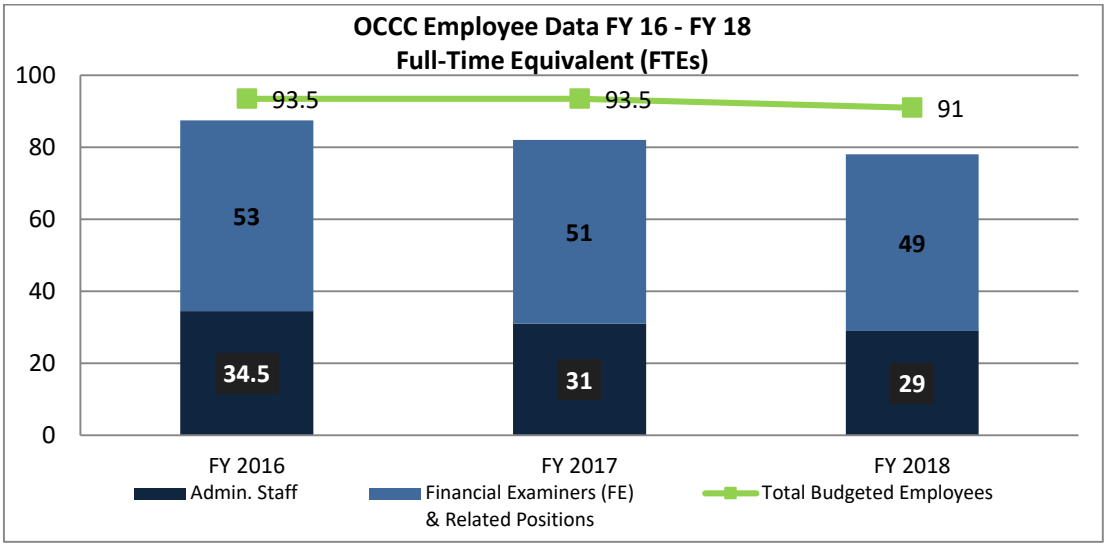
The agency continues to focus on stakeholder outreach and communication through various channels. In the fourth quarter of FY17, staff presented to more than 100 industry participants regarding compliance matters and the regulatory role and responsibilities of the agency at training seminars hosted by other organizations. In total for FY17, 1,663 industry participants were addressed, which is 145% of FY16's 679 participants.

### HUMAN RESOURCES

In this reporting period (August and September), the OCCC had several vacant positions. The table listed below provides a status update. During this period, one employee retired from the Agency after 29 years of service.

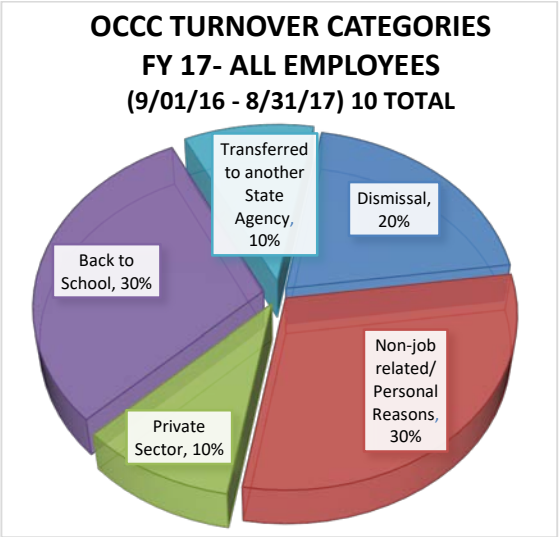
| Vacancies | |
|---|---|
| **Vacancy** | **Status** |
| Accountant III – Austin | Filled – New Hire started Aug. 7 |
| License and Permit Specialist II – Austin | Filled - New Hire started Aug. 28 |
| Investigator I – Austin (2) | Filled – New Hires scheduled to start Oct. 2 |
| Accountant IV-V | Active – Accepting Applications/Interviewing |
| Financial Examiner III-IV (Internal) | Filled – Employee transfer from another department started Sept. 1 |
| Financial Examiner I – Ft. Worth/Dallas (2) | Active – (1) Offer Extended and Accepted; (1) Accepting Applications/Interviewing |
| Financial Examiner I – Houston | Active – Offer Extended and Accepted |

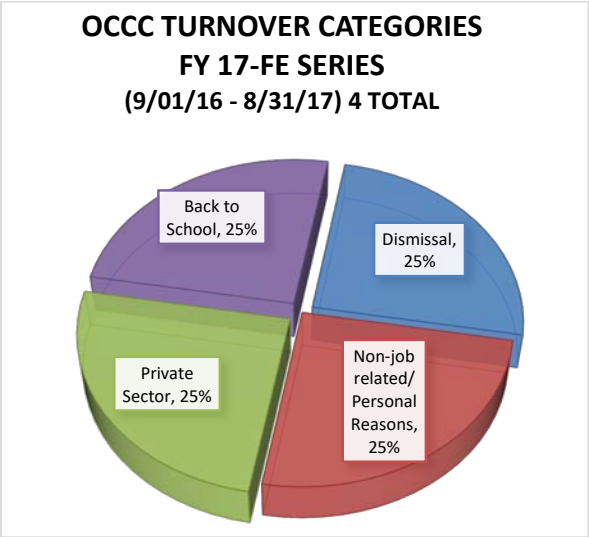
The bar chart below shows employee data from FY 2016 through September 30, 2017.




At the end of FY 17, the Agency was staffed with 82 FTEs with an overall turnover ratio of 11.87%, with the goal being less than 15%. When excluding retirement and interagency transfers from the overall ratio, the Financial Examiner series had a 7.55% turnover.

Below is a summary of Agency turnover by category for Fiscal Year 2017, including the Financial Examiner series.




For FY 2017, Human Resources coordinated several trainings for all employees, including: SANS Information Security Training (cybersecurity); active shooter training from the Austin Police Department; and Diversity and Equal Opportunity & Non-Discrimination Training from the Texas Workforce Commission, Civil Rights Division.

## ADMINISTRATION

### FINANCIAL LITERACY

During Q4, Consumer Education staff provided financial education to 73 Texas consumers, bringing the total to 342 financial education participants for FY 2017. During this time, consumer education staff traveled to Brownsville, Texas to provide financial education, in Spanish, to this fast-growing Spanish-speaking population in Texas. Staff will continue to work with other Agency staff to search for ways to secure additional Spanish-speaking participation to meet this need.

By continuing to reach out to numerous organizations throughout Texas to promote financial education, the financial literacy specialist successfully coordinated new partnerships and scheduled additional presentations for the new fiscal year with the Boys & Girls Clubs of the Austin Area and Mansfield Independent School District. In addition, the department continues to promote the importance of financial education and anticipates being on target to meet quarterly goals by the end of Q1 for FY 2018.

## Accounting & IT Reports

Accounting

For the Fourth quarter, the Accounting Department engaged in and completed three major activities:

- Budget: The Budget for FY 2018 was prepared and submitted to the Finance Commission.
- License Renewals: Renewals for Motor Vehicle and other licenses were processed.
- AFR: The AFR for FY 2017 was completed and submitted to the Comptroller.

The Accounting Staff is also preparing for the Comptroller's Post Payment Audit, which is scheduled to occur in October, 2017.

Information Technology

LEGACY MODERNIZATION

The agency continues to work through ALECS maintenance issues and enhancements during vendor supported maintenance.

Preliminary discussions have occurred with TXDPS to begin the process of moving the Crafted Precious Metals registration portal from DPS hosted servers to ALECS. Technical requirements gathering is slated to begin in October. The project should be completed by the end of fiscal year 2018.

The agency upgraded the legacy accounting software platform. The live database has been converted and implementation was completed in August.

The agency's in-house programmer has begun design development for the new Human Resources database. This project has been delayed due to other priorities.

SECURITY

The OCCC Security Policy and Compliance Committee (SPCC) has completed 26 of 28 (90%) short term recommendations. One of the incomplete items is approximately 90% complete and the second incomplete item is in progress. The SPCC has evaluated 12 items and determined they are mid-term goals, to be completed by April 2018.

The agency's new endpoint security suite, Comodo IT & Security Manager has been deployed to all agency endpoints. The agency has experienced 100% protection from zero day exploits and ransomware.

# OFFICE OF CONSUMER CREDIT COMMISSIONER
# EXECUTIVE SUMMARY

*As of August 31, 2017*

| | FY 2015 | FY 2016 | FISCAL YEAR 2017 | | | | |
|---|---|---|---|---|---|---|---|
| | | | 1st QTR | 2nd QTR | 3rd QTR | 4th QTR | FYTD |
| **CONSUMER PROTECTION** | | | | | | | |
| Monies Returned to Consumers (000) | 8,315 | 13,657 | 1,352 | 6,098 | 12,597 | 546 | 20,593 |
| Regulated Lenders Examinations | 1,065 | 891 | 145 | 207 | 382 | 473 | 1,207 |
| Property Tax Lender Examinations | 23 | 25 | 1 | 9 | 8 | 14 | 32 |
| Pawnshop Examinations | 533 | 484 | 74 | 76 | 223 | 202 | 575 |
| Motor Vehicle Examinations | 1,565 | 2,181 | 682 | 743 | 577 | 352 | 2,354 |
| Credit Access Businesses Examinations | 816 | 707 | 9 | 273 | 60 | 310 | 652 |
| **CONSUMER ASSISTANCE** | | | | | | | |
| Telephone Complaints Received | 1,186 | 1,177 | 240 | 211 | 327 | 208 | 986 |
| Written Complaints Received | 1,000 | 878 | 244 | 255 | 295 | 317 | 1,111 |
| Total Complaints Processed | 2,131 | 2,160 | 464 | 478 | 621 | 567 | 2,130 |
| % of Written Complaints Closed within 90 Calendar Days | 82.47% | 94.46% | 91.45% | 88.66% | 94.63% | 91.64% | 91.83% |
| **ADMINISTRATIVE ENFORCEMENT ACTIONS** | | | | | | | |
| Originated | 472 | 410 | 71 | 59 | 174 | 67 | 371 |
| Finalized | 390 | 459 | 77 | 61 | 51 | 200 | 389 |
| **LICENSING AND REGISTRATION** | | | | | | | |
| **Licenses** | | | | | | | |
| Regulated Loan Licenses | 3,370 | 3,804 | 3,810 | 3,836 | 3,812 | 3,845 | 3,845 |
| Pawnshop Licenses | 1,583 | 1,574 | 1,576 | 1,579 | 1,579 | 1,565 | 1,565 |
| Pawnshop Employee Licenses | 7,281 | 7,469 | 8,287 | 8,848 | 9,384 | 7,243 | 7,243 |
| Commercial MV Sales Fin. Licenses | 19 | 29 | 33 | 37 | 38 | 39 | 39 |
| Motor Vehicle Sales Finance Licenses | 8,096 | 8,444 | 8,772 | 9,131 | 9,331 | 8,539 | 8,539 |
| Property Tax Loan Licenses | 91 | 90 | 93 | 91 | 87 | 89 | 89 |
| Mortgage Loan Originators | 379 | 370 | 392 | 258 | 300 | 326 | 326 |
| Credit Access Business Licenses | 2,944 | 2,216 | 2,180 | 2,129 | 2,064 | 2,046 | 2,046 |
| **Registrations** | | | | | | | |
| Registered Creditors | 8,170 | 7,851 | 8,501 | 7,156 | 7,314 | 7,371 | 7,371 |
| Crafted Precious Metal Dealers | 1,237 | 1,106 | 1,117 | 1,073 | 1,070 | 1,061 | 1,061 |
| Debt Management Service Providers | 108 | 108 | 113 | 116 | 118 | 128 | 128 |
| Refund Anticipation Loan Facilitators | 912 | 1,536 | 1,737 | 2,625 | 2,627 | 2,634 | 2,634 |
| **Applications** | | | | | | | |
| Business -- New | 1,832 | 1,642 | 377 | 445 | 324 | 376 | 1,522 |
| Business -- Change of Ownership | 624 | 259 | 49 | 39 | 40 | 10 | 138 |
| Pawnshop Employees -- New | 3,010 | 3,253 | 945 | 660 | 637 | 891 | 3,133 |
| **HUMAN RESOURCES DATA** | | | | | | | |
| Field Examiners Staffing | 43 | 45 | 42 | 41 | 41 | 41 | 41 |
| Total Staffing | 86 | 86.5 | 86.5 | 85 | 82 | 82 | 82 |

# OCCC Actual Performance for Output/Efficiency Measures

## Fiscal Year 2017

## For Period Ending May 2017

| Type/Strategy/Measure | 2017 Target | 2017 Quarter | 2017 YTD | Percent of Annual Target |
|---|---|---|---|---|
| **Output Measures-Key** | | | | |
| 1-1-1 COMPLAINT RESOLUTION | | | | |
| 1. # COMPLAINTS CLOSED | | | | |
| **Quarter 1** | 2,100 | 467 | 467 | 22.24% |
| **Quarter 2** | 2,100 | 476 | 943 | 44.90% |
| **Quarter 3** | 2,100 | 625 | 1,568 | 74.67% |
| **Quarter 4** | 2,100 | 571 | 2,139 | 101.86% |
| 2. # INVESTIGATIONS CLOSED | | | | |
| **Quarter 1** | 87 | 22 | 22 | 25.29% |
| **Quarter 2** | 87 | 22 | 44 | 50.57% |
| **Quarter 3** | 87 | 28 | 72 | 82.76% |
| The number of investigations closed is above the pro rata percentage in the first three quarters because of an increase in unlicensed Chapter 348 activity. | | | | |
| **Quarter 4** | 87 | 18 | 90 | 103.45% |
| 2-1-1 EXAMINATION AND ENFORCEMENT | | | | |
| 1. # COMPLIANCE EXAMINATIONS PERFORMED | | | | |
| **Quarter 1** | 4,087 | 911 | 911 | 22.29% |
| **Quarter 2** | 4,087 | 1,308 | 2,219 | 54.29% |
| **Quarter 3** | 4,087 | 1,250 | 3,469 | 84.88% |
| Examination progress has been higher than planned because of the enterprise examination approach that has been implemented. Staff is continuing to evaluate this approach to determine optimal effectiveness. | | | | |
| **Quarter 4** | 4,087 | 1,351 | 4,820 | 117.93% |
| The number of compliance examinations performed exceeded the forecasted number because of the enterprise examination approach that was implemented in the motor vehicle sales finance and credit access business examinations and a relatively high number of followup examinations. | | | | |
| 2-2-1 LICENSING | | | | |
| 1. # BUSINESS APPLICATIONS PROCESSED | | | | |
| **Quarter 1** | 1,500 | 377 | 377 | 25.13% |
| **Quarter 2** | 1,500 | 445 | 822 | 54.80% |
| **Quarter 3** | 1,500 | 324 | 1,146 | 76.40% |
| **Quarter 4** | 1,500 | 514 | 1,660 | 110.67% |
| The licensing department was able to exceed the goal of applications processed due to staffing realignment and efficiencies created by ALECS. | | | | |
| 2. # INDIVIDUAL LICENSES PROCESSED | | | | |
| **Quarter 1** | 2,750 | 945 | 945 | 34.36% |
| The licensing department received more pawn employee applications in Q1, which led to more applications being processed. Staffing adjustments and volume of incoming applications could cause this number to even out in Qs 2, 3 and 4. | | | | |
| **Quarter 2** | 2,750 | 660 | 1,605 | 58.36% |
| Carry-over from a higher quantity of applications processed in Q1 continues to affect this measure. This percentage will likely even out in the second half of FY 2017. | | | | |
| **Quarter 3** | 2,750 | 637 | 2,242 | 81.53% |
| The pawn employee renewal period in May and June caused Q3 individual applications processed to dip to the lowest quantity of the year to date, but the overall annual percentage remains over the goal due to carry-over from Qs 1 and 2. | | | | |

| | | | | |
|---|---|---|---|---|
| **Quarter 4** | 2,750 | 891 | 3,133 | 113.93% |

The licensing department was able to exceed the goal of applications processed due to staffing realignment and efficiencies created by ALECS.

3-1-1 # CONSUMERS RECEIVING FINANCIAL EDUCATION

| | | | | |
|---|---|---|---|---|
| **Quarter 1** | 350 | 61 | 61 | 17.43% |

Attendance at the 5 financial education workshops conducted in Q1 was lower than anticipated. The financial education department attempts to recruit groups of 20 or more; however the agency is committed to providing resources to all organizations regardless of their program size. The department is actively seeking new collaborations to increase the quantity of workshops or presentations.

| | | | | |
|---|---|---|---|---|
| **Quarter 2** | 350 | 0 | 61 | 17.43% |

The quarterly target was not met due to the timing of the schedule of presentations. Organizations have requested dates in the latter part of Q3 and Q4. The department anticipates a higher participation by the end of Q3.

| | | | | |
|---|---|---|---|---|
| **Quarter 3** | 350 | 208 | 269 | 76.86% |
| **Quarter 4** | 350 | 73 | 342 | 97.71% |

## Actual Performance for Outcome Measures

| Type/Strategy/Measure | | 2017 Target | 2017 YTD | Percent of Annual Target |
|---|---|---|---|---|
| **Outcome Measures-Key** | | | | |
| 1-1 | CONSUMER COMPLAINTS | | | |
| | 1. % COMPLAINTS RESOLVED WITHIN 90 DAYS | 95.00% | 90.83% | 95.61% |
| 2-1 | ENSURE COMPLIANCE | | | |
| | 1. % EXAMINATIONS IN COMPLIANCE | 85.00% | 92.01% | 108.25% |
| | The percentage of examinations determined to be in compliance exceeded the forcasted target because the compliance ratings for credit access business examinations was substantially higher than expected. | | | |
| | 2. MONIES RETURNED FROM LICENSEES | $5,000,000 | $20,592,800 | 411.86% |
| | Performance exceeded the forecasted target for the year. The majority, approximately 97.5% of the restitution to Texas consumers was a result of errors found during examinations of licenses in the motor vehicle sales finance area. | | | |

# OCCC Actual Performance for Non-Key Measures

## Fiscal Year 2017

## For Period Ending August 2017

| Type/Strategy/Measure | | 2017 Target | 2017 YTD | Percent of Annual Target |
|---|---|---|---|---|
| **Non-Key Measures** | | | | |
| A. CONSUMER PROTECTION | | | | |
| A-01-02 | MONIES OR CREDITS RETURNED TO CONSUMERS-complaints/non licensees | **$10,000** | $3,672 | 36.72% |
| Monies returned to consumers from credit card surcharges did not meet anticipated levels. | | | | |
| A-02-03 | % OF LICENSEES EXAMINED ANNUALLY | **25%** | 31.08% | 124.32% |
| A-02-04 | % OF RE-EXAMS RESULTING IN ACCEPTABLE COMPLIANCE RATING | **80%** | 88.04% | 110.05% |
| A-02 | NUMBER OF ENFORCEMENT ACTIONS TAKEN | **300** | 354 | 118.00% |
| A-03 | NUMBER OF RE-EXAMINATIONS PERFORMED | **400** | 803 | 200.75% |
| B. LICENSING AND REGISTRATION | | | | |
| B-01-01 | AVERAGE PROCESSING TIME (DAYS) FOR LICENSE APPS | **30** | 37 | 123.33% |
| Significant improvements in processing were made in FY 2017, decreasing the average days to process to 37 days from 62 days in FY 2016. The department will work to lessen application processing time in FY 2018. | | | | |
| B-01-02 | AVERAGE PROCESSING TIME (DAYS) FOR PAWNSHOP EMPLOYEE APPS | **30** | 41 | 136.67% |
| Significant improvements made in FY2017, decreasing the average days to process to 41 days from 56 days in FY16. The department will work to lessen application processing time in FY18. | | | | |
| B-01-03 | AVERAGE PROCESSING TIME (DAYS) FOR RMLO APPS | **15** | 21 | 140.00% |
| Staffing changes and re-allocation of duties took some processing time away from RMLO applications in FY 2017. The department will look to decrease these processing times in FY 2018. | | | | |
| B-03 | NUMBER OF ADMINISTRATIVE HEARINGS CONDUCTED | **10** | 5 | 50.00% |
| Many hearings docketed were resolved informally. | | | | |
| B-04 | NUMBER OF REGISTRATIONS PROCESSED | **10,100** | 11,194 | 110.83% |
| An increase in registration applications submitted caused this increase in FY17. | | | | |
| B-04 | NUMBER OF RMLO APPS PROCESSED | **225** | 167 | 74.22% |
| Fewer RMLO applications were received by the agency in FY 2017, which caused the number of applications processed to be lower than anticipated. | | | | |
| C. FINANCIAL LITERACY | | | | |
| C-01-01 | NUMBER OF TX CONSUMERS REACHED THROUGH AGENCY PARTICIPATION AT COMMUNITY EVENTS, PRESENTATIONS AND ONLINE RESOURCES | **1,500** | 3,753 | 250.20% |
| C-02-01 | TOTAL DOLLAR AMOUNT OF GRANT AWARDS DISTRIBUTED WITHIN THE GRANT CYCLE | **$150,000** | $141,486 | 94.32% |
| TFEE is on a biannual reporting cycle and does not properly align with the FY reporting cycle. It is anticipated TFEE activity will reach the goal by the end of the grant cycle on December 31, 2017. Agency anticipates the full $249,000 awarded will be spent once the grant cycle ends. | | | | |
| C-01 | NUMBER OF CONTACTS MADE WITH COMMUNITY ORGS AND MEDIA | **70** | 37 | 52.86% |
| Turnover and training new staff prevented department from reaching goal. | | | | |
| C-02 | NUMBER OF CONSUMERS SERVED/TRAINED (TFEE) | **50,000** | 29,657 | 59.31% |
| TFEE is on a biannual reporting cycle and does not properly align with the FY reporting cycle. It is anticipated TFEE activity will reach the goal by the end of the grant cycle on December 31, 2017. | | | | |
| D. EFFECTIVE STAKEHOLDER COMMUNICATION | | | | |
| D-01-01 | % OF LICENSEES REACHED THROUGH AGENCY PARTICIPATION IN INDUSTRY WORKSHOPS, SEMINARS, CONFERENCES AND ONLINE COMPLIANCE ED PROGRAMS | **10%** | 10% | 100.00% |
| D-01 | NUMBER OF PUBLIC AND INDUSTRY MEDIA SOURCES PUBLISHING COMPLIANCE ED MATERIAL DEVELOPED BY THE AGENCY | **4** | 5 | 125.00% |
| A new method of delivering industry compliance education material was developed (electronic newsletter) this fiscal year. | | | | |
| D-02 | NUMBER OF ADVISORY BULLETINS PUBLISHED | **6** | 2 | 33.33% |
| The agency determined two legal and compliance issues warranted advisory bulletins in FY17. | | | | |
| D-03 | NUMBER OF ENFORCEMENT ACTION AND CORRECTIVE ACTION SUMMARIES PUBLISHED | **5** | 5 | 100.00% |
| E. HUB USAGE | | | | |
| E-01-01 | PERCENT OF TOTAL DOLLAR VALUE OF PURCHASING AND PUBLIC WORKS CONTRACT AND SUBCONTRACTS AWARDED TO HUBS | **23.50%** | 88.40% | 376.17% |
| E-01 | NUMBER OF HUB CONTRACTORS AND SUBCONTRATORS CONTACTED FOR BID PROPOSALS | **60** | 0 | 0.00% |
| There were no purchases in FY17 that required the bid process. | | | | |
| E-02 | NUMBER OF HUB CONTRACTS AND SUBCONTRACTS AWARDED | **40** | 59 | 147.50% |
| E-03 | DOLLAR VALUE OF HUB CONTRACTS AND SUBCONTRACTS AWARDED | **$400,000** | $777,831 | 194.46% |

# Legal Department Report

*Michael Rigby, General Counsel*

October 2017

## Enforcement Report

### Motor Vehicle Sales Finance – Injunction

On March 14, 2017, the OCCC issued an injunction against AJ's Nice Cars, Inc. for six violations of the Texas Finance Code, the Truth in Lending Act, and their respective implementing regulations. The injunction requires AJ's Nice Cars to cease and desist, to take affirmative action, and to make restitution. AJ's Nice Cars timely requested a hearing on the injunction.

On August 1, 2017, a hearing was held on the merits at the State Office of Administrative Hearings (SOAH) before an Administrative Law Judge. AJ's Nice Cars appeared and was represented by counsel at the hearing. On September 26, 2017, the Administrative Law Judge issued a proposal for decision recommending that the Commissioner uphold the injunction as to five of the six violations. The deadline for both parties to file exceptions to the proposal for decision is October 11, 2017.

## Performance Report

The following table summarizes enforcement actions closed by the OCCC during the last three fiscal years, and the current fiscal year-to-date as of September 30, 2017. These figures reflect enforcement actions that have been fully resolved by formal order, informal resolution, or dismissal. Actions that are still pending are not included in the table.

| Enforcement Actions Closed as of September 30, 2017 | | | | |
|---|---|---|---|---|
| | **FYTD 2018** | **FY 2017** | **FY 2016** | **FY 2015** |
| **Revocation / Suspension Actions** | | | | |
| Regulated Loan License | 0 | 1 | 1 | 27 |
| Pawnshop License | 0 | 1 | 3 | 2 |
| Pawnshop Employee License | 0 | 1 | 2 | 2 |
| Credit Access Business | 0 | 3 | 2 | 1 |
| Motor Vehicle Sales Finance License | 0 | 2 | 9 | 4 |
| Property Tax Loan License | 0 | 0 | 0 | 0 |
| Crafted Precious Metal Dealer | 0 | 0 | 0 | 2 |
| **Total Revocation / Suspension Actions** | **0** | **8** | **17** | **38** |
| | | | | |
| **Injunction Actions** | | | | |
| Regulated Loan License | 0 | 37 | 88 | 1 |

| | | | | |
|---|---|---|---|---|
| Pawnshop License | 0 | 37 | 1 | 0 |
| Pawnshop Employee License | 0 | 69 | 0 | 0 |
| Credit Access Business License | 2 | 47 | 25 | 1 |
| Motor Vehicle Sales Finance License | 1 | 31 | 18 | 12 |
| Property Tax Loan License | 0 | 2 | 16 | 1 |
| Crafted Precious Metal Dealer | 0 | 0 | 0 | 3 |
| Registered Creditor (Ch. 345) | 0 | 1 | 1 | 0 |
| Manufactured Housing (Ch.347) | 0 | 1 | 0 | 0 |
| Debt Management Services (Ch.394) | 0 | 2 | 1 | 6 |
| Credit Card Surcharge (Ch. 339) | 0 | 2 | 7 | 1 |
| Residential Mortgage Loan Originator | 0 | 1 | 0 | 0 |
| **Total Injunction Actions** | **3** | **230** | **157** | **25** |
| | | | | |
| **Administrative Penalty Actions** | | | | |
| Regulated Loan License | 0 | 13 | 0 | 73 |
| Pawnshop License | 0 | 3 | 40 | 4 |
| Pawnshop Employee License | 0 | 0 | 1 | 4 |
| Credit Access Business License | 1 | 23 | 97 | 136 |
| Motor Vehicle Sales Finance License | 7 | 106 | 129 | 76 |
| Property Tax Loan License | 0 | 2 | 3 | 8 |
| Crafted Precious Metal Dealer | 0 | 0 | 2 | 0 |
| Residential Mortgage Loan Originator | 0 | 0 | 1 | 0 |
| **Total Administrative Penalty Actions** | **8** | **147** | **273** | **301** |
| | | | | |
| **Application Denial and Protest Actions** | | | | |
| Regulated Loan License | 0 | 0 | 0 | 0 |
| Pawnshop License | 0 | 1 | 1 | 0 |
| Pawnshop Employee License | 0 | 0 | 7 | 13 |
| Credit Access Business License | 0 | 0 | 0 | 2 |
| Motor Vehicle Sales Finance License | 0 | 1 | 3 | 8 |
| Property Tax Loan License | 0 | 0 | 0 | 0 |
| Residential Mortgage Loan Originator | 0 | 1 | 0 | 1 |
| **Total App. Denial and Protest Actions** | **0** | **3** | **11** | **24** |
| | | | | |
| **Total Enforcement Actions Closed** | **11** | **388** | **458** | **388** |

From August 1, 2017 to September 30, 2017, the OCCC:

- issued 44 final orders,
- opened 11 cases in order to assess administrative penalties,
- opened 48 cases in order to issue administrative injunctions,
- issued no assurances of voluntary compliance,
- participated in one contested case hearing, and
- dismissed no contested case hearings.

The OCCC has no hearings scheduled between October 1, 2017 and November 30, 2017.

**Administrative Rule Report**

At the October meeting, the OCCC is presenting five rule actions:

- An adoption of the repeal of rules regarding credit card surcharge appeal procedures, as recent legislation has transferred regulatory authority to the Office of the Attorney General.
- An adoption of amendments regarding property tax lenders, updating licensing, criminal history, and disclosure provisions, resulting from rule review.
- A proposed new rule regarding residential mortgage loan originators applying for licensure with the OCCC under the SAFE Act, implementing recent legislation.
- A proposal of amendments on including the administrative fee for a Chapter 342, Subchapter E loan in the loan's principal balance.
- A proposal of amendments to interpretations on home equity lending, implementing recent legislation.

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

- A new rule regarding agency contract procedures.
- Amendments regarding debt management service providers, resulting from rule review.

**Litigation**

***Rowell v. Paxton***

This case is a challenge to the constitutionality of the credit card surcharge prohibition in Section 604A.0021 of the Texas Business & Commerce Code. The plaintiffs argue that the credit card surcharge prohibition is an unconstitutional violation of free speech and that it is void for vagueness, under the First and Fourteenth Amendments to the U.S. Constitution.

On September 5, 2017, the plaintiffs filed an amended complaint substituting Attorney General Ken Paxton as the sole defendant in the case. The OCCC and the Commissioner are no longer a defendant in this case.

The case is currently pending in the federal district court for the Western District of Texas with case number 1:14-cv-00190-LY. 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. Ken Paxton, in his official capacity as Attorney General of the State of Texas*.

***State of Texas v. LowerMyBills, Inc.***

In December 2014, the Consumer Protection Division of the Office of the Attorney General filed a lawsuit in Dallas County district court against Experian Information Solutions, Inc. and LowerMyBills, Inc., a former subsidiary of Experian, alleging violations of the DTPA. In May 2015, the attorney general filed an amended petition to include violations of Texas Finance Code Chapter 394 and represented the OCCC in seeking relief as to those violations. On January 12, 2016, the parties resolved the case as to Experian.

The lawsuit alleged that LowerMyBills misrepresented itself to be a debt management services provider, failed to disclose to consumers that consumer information would be sold to other companies, and referred consumers to companies that it misrepresented to be legally able to provide debt management services. The lawsuit alleged that LowerMyBills referred consumers to Credit Alliance Group (CAG) for debt management services, a company that was not registered with the OCCC. In a separate lawsuit, the Office of the Attorney General sued CAG for defrauding customers out of millions of dollars entrusted to settle their debts, and for providing debt management services without being registered with the OCCC.

On September 26, 2017, the Office of the Attorney General and the OCCC secured an Assurance of Voluntary Compliance (AVC) with LowerMyBills. The AVC provides $2 million in restitution to Texas consumers and imposes several requirements on LowerMyBills, including: (1) obtain the express consent of a consumer prior to providing the consumer's information to a third-party debt management services provider, (2) verify, at least bi-annually, that a third-party debt management services provider is registered with the OCCC prior to providing the provider with consumer information, and (3) disclose on all marketing material that LowerMyBills is a referral service and does not endorse any particular service provider. The full style of the Texas case is *State of Texas v. LowerMyBills, Inc. and Experian Information Solutions, Inc*. The case number is DC-14-14587, filed in the 14th District Court of Dallas County, Texas.

***Chamber of Commerce v. Consumer Financial Protection Bureau***

The U.S. Chamber of Commerce, the American Bankers Association, the American Financial Services Association, and other plaintiffs have sued the federal Consumer Financial Protection Bureau (CFPB), to stop the CFPB's enforcement of its recently adopted arbitration rule. The rule prohibits creditors from including a class-action waiver in a pre-dispute arbitration agreement for consumer financial services. The plaintiffs filed their original complaint on September 29, 2017. In their complaint, the plaintiffs argue that the structure of the CFPB is unconstitutional and that the CFPB did not follow statutory requirements in adopting the rule. The case is currently pending in the federal district court for the Northern District of Texas with case number 3:17-cv-02670-D.

**Federal Rulemaking**

***CFPB Payday Loan Rule***

On October 5, 2017, the Consumer Financial Protection Bureau (CFPB) issued its final adopted rule with requirements for payday loans, title loans, and other high-cost consumer loans. The rule contains two sets of requirements: ability-to-repay requirements and payment-withdrawal requirements.

The rule's ability-to-repay requirements apply to short-term loans (i.e., loans where the consumer is required to repay the loan in 45 days or less) and longer-term balloon-payment loans (i.e., loans with terms over 45 days where at least one payment is more than twice as large as any other payment). The rule generally requires creditors to verify the consumer's income and reasonably determine that the consumer has the ability to repay the loan according to its terms, while also meeting major financial obligations and basic living expenses. As an alternative to the ability-to-repay requirements, the rule allows creditors to offer a short-term loan up to $500 with a principal step-down option, where the loan

is repaid either in a single payment or in a sequence of loans that decrease in amount. Creditors will be required to submit covered loan data to registered information systems, and check these systems as part of their ability-to-repay analysis.

The rule's payment-withdrawal requirements apply to the short-term loans and longer-term balloon-payment loans discussed in the previous paragraph, and also apply to covered longer-term loans, which are loans where the APR exceeds 36% and the creditor obtains a leveraged payment mechanism (i.e., the right to obtain payment from an account). Creditors will be required to provide a written notice before the first attempt to withdraw payment for a covered loan. If two consecutive withdrawal attempts fail due to insufficient funds, the rule prohibits the creditor from attempting another withdrawal unless the consumer authorizes further withdrawals.

Certain loans are exempt from both the ability-to-repay requirements and the payment-withdrawal requirements, including purchase-money consumer loans, mortgages, credit cards, student loans, pawn loans, wage advance programs, alternative loans conforming to the National Credit Union Administration's Payday Alternative Loan program, and accommodation loans made by lenders that do not make more than 2,500 covered loans per year or derive more than 10% of their income from covered loans.

The CFPB has stated that the rule will go into effect 21 months after it is published in the Federal Register. This means that it will go into effect in July 2019 at the earliest.

**Advisory Bulletins**

From August 1, 2017 to September 30, 2017, the OCCC issued four new advisory bulletins:

- Bulletin no. B17-1, "Emergency Closing in Gulf Coast," describes requirements for emergency closing of pawnshops and temporary pawnshop relocations in light of Hurricane Harvey.
- Bulletin no. B17-2, "Trade-In Credit Agreements," describes requirements for motor vehicle trade-in credit agreements, based on HB 2339 (2017).
- Bulletin no. B17-3, "Depreciation Benefit Service Contracts," describes requirements for motor vehicle depreciation benefit service contracts, based on SB 1199 (2017).
- Bulletin no. B17-4, "Information Security After the Equifax Data Breach," summarizes three significant requirements for OCCC licensees and registrants after the Equifax data breach: (1) fraud alert restrictions under the Fair Credit Reporting Act, (2) identity theft prevention programs under the Federal Trade Commission's Red Flags Rule, and (3) information security programs under the Federal Trade Commission's Safeguards Rule.

In addition, the OCCC revised the following three advisory bulletins during this period:

- Bulletin no. B16-2, "Review of Debt Cancellation Agreements Requiring Insurance," was revised to reflect amended requirements that went into effect on September 1, 2017, based on SB 1052 (2017).
- Bulletin no. B16-4, "Deferment Charges," was revised to reflect amended requirements that went into effect on September 1, 2017, based on SB 1052 (2017).
- Bulletin no. B16-5, "Documentary Fee Filing Instructions," was revised to reflect amended

requirements that went into effect on September 1, 2017, based on HB 2949 (2017).

**Official Interpretation Requests**

From August 1, 2017 to September 30, 2017, the OCCC received one request for an official interpretation. The OCCC rejected the request on September 27 because it did not include a statement about whether the issue is in pending litigation, and did not include payment of the fee required by 7 Tex. Admin. Code § 1.201.

There were no pending interpretation requests as of September 30, 2017.

**Public Information Requests**

From August 1, 2017 to September 30, 2017, the OCCC received 14 requests for information under the Texas Public Information Act, with no referrals to the Office of the Attorney General.

**Gifts Received by the OCCC**

From August 1, 2017 to September 30, 2017, the OCCC has one item to report:

- The American Association of Residential Mortgage Regulators waived one $795 registration fee for its 2017 Annual Conference, on August 1-3, 2017.

| Legislative Bill No. and Description | Rule Item/Purpose | Proposal Date | Adoption Date |
|---|---|---|---|
| **Senate Bill 560**<br>Relating to surcharges imposed for the use of a credit card; providing a civil penalty | **Credit Card Surcharge Appeal Procedures** - *Adopt Repeal*<br>7 TAC, Part 1, Chapter 4<br><br>To repeal the procedures for parties to appeal credit card surcharge issues to the Finance Commission, as SB 560 transferred regulatory authority to the Office of the Attorney General | 08/18/17 | Presented for Adoption 10/20/17 |
| Not applicable | **Property Tax Lenders** - *Adopt Amendments, New Rules, & Repeals*<br>7 TAC, Part 5, Chapter 89<br><br>To conduct standard 4-year review under Tex. Gov't Code, §2001.039; to update disclosures provided by property tax lenders, licensing processes, fees charged by property tax lenders, and to make technical corrections<br><br>*Precomment draft distributed July 13, 2017*<br>*Stakeholder meeting and webinar held July 27, 2017* | 08/18/17 | Presented for Adoption 10/20/17 |
| **Senate Joint Resolution 60**<br>Proposing a constitutional amendment establishing a lower amount for expenses that can be charged to a borrower and removing certain financing expense limitations for a home equity loan, establishing certain authorized lenders to make a home equity loan, changing certain options for the refinancing of home equity loans, changing the threshold for an advance of a home equity line of credit, and allowing home equity loans on agricultural homesteads | **Home Equity Lending**- *Proposed Amendments, New Section, & Repeal*<br>7 TAC, Part 8, Chapter 153<br><br>To implement SJR 60, which amends Article XVI, Section 50 of the Texas Constitution and applies to home equity loans entered on or after January 1, 2018<br><br>*Precomment draft distributed September 13, 2017*<br>*Stakeholder meeting and webinar held September 25, 2017* | 10/20/17 | |

| Legislative Bill No. and Description | Rule Item/Purpose | Proposal Date | Adoption Date |
|---|---|---|---|
| **House Bill 3342**<br>Relating to the prelicensing education requirements for residential mortgage loan originators | **Residential Mortgage Loan Originators Applying for Licensure with the OCCC Under the SAFE Act** - *Proposed New Rule*<br>7 TAC, Part 1, Chapter 2 - §2.107<br><br>To implement HB 3342 by setting the expiration period for prelicensing education of residential mortgage loan originators<br><br>*Precomment draft distributed September 15, 2017* | 10/20/17 | |
| Not applicable | **Rules for Regulated Lenders** - *Proposed Amendments*<br>7 TAC, Part 5, §83.503, Administrative Fee<br><br>**Chapter 342, Plain Language Contract Provisions**- *Amendments*<br>7 TAC, Part 5, §90.203, Model Clauses<br><br>To specify that in a consumer loan under Texas Finance Code, Chapter 342, Subchapter E, the administrative fee may be included in the cash advance or principal balance on which interest is computed<br><br>*Precomment draft distributed September 15, 2017* | 10/20/17 | |
| Not applicable | **Contract Procedures**- *New Rule*<br>7 TAC, Part 1, Chapter 10<br><br>To refine agency contract procedures | 12/15/17 | |
| Not applicable | **Consumer Debt Management Services** - *Rule Review*<br>7 TAC, Part 5, Chapter 88<br><br>To conduct standard rule review under Tex. Gov' t Code, §2001.039; to provide a consumer complaint notice; to update citations and make technical corrections | 12/15/17 | |

## D. Office of Consumer Credit Commissioner

2. Discussion of and Possible Vote to Take Action on the Adoption of the Repeal of 7 TAC, Part 1, Chapter 4, Concerning Credit Card Surcharge Appeal Procedures

**PURPOSE:** The purpose of the repeal is to delete obsolete rules contained in 7 TAC, Chapter 4, which is no longer necessary. Senate Bill 560 amended the credit card surcharge prohibition in §339.001 by transferring enforcement authority from the Office of Consumer Credit Commissioner to the Office of the Attorney General effective September 1, 2017.

**RECOMMENDED ACTION:** The agency requests that the Finance Commission approve the repeal of 7 TAC, Part 1, Chapter 4 without changes as previously published in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we approve the repeal of 7 TAC, Part 1, Chapter 4.

*Title 7. Banking and Securities*
*Part 1. Finance Commission of Texas*
*Chapter 4. Credit Card Surcharge Appeal Procedures*

The Finance Commission of Texas (the commission) adopts the repeal of 7 TAC, Part 1, Chapter 4, Credit Card Surcharge Appeal Procedures. Chapter 4 consists of Subchapter A, containing §§4.101-4.106, relating to contested case procedure for credit card surcharge violations occurring on or before August 31, 2013.

The commission adopts the repeal without changes to the proposed text as published in the September 1, 2017, issue of the *Texas Register* (42 TexReg 4379).

The commission received no written comments on the proposal.

The purpose of the adopted repeal is to delete obsolete rules contained in 7 TAC, Chapter 4. The commission has determined that Chapter 4 is no longer necessary, as the enforcement of the credit card surcharge prohibition has been transferred to the Office of the Attorney General (OAG).

Through August 31, 2017, Texas Finance Code, §339.001(c) stated that the commission had exclusive jurisdiction to enforce and adopt rules relating to §339.001. As enacted by the 85th Texas Legislature, Senate Bill (SB) 560 amended the credit card surcharge prohibition in §339.001 by transferring enforcement authority from the Office of Consumer Credit Commissioner (OCCC) to the OAG. Effective September 1, 2017, the bill relocates these provisions to §604A.0021 of the Texas Business and Commerce Code, which will ensure consistent enforcement with the existing debit card surcharge prohibition contained in §604A.002 also enforced by the OAG.

Additionally, there are no pending contested cases involving credit card surcharge violations on or before August 31, 2013, which is the time period governed by 7 TAC, Chapter 4.

The repeal is adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Chapter 14 and Title 4 of the Texas Finance Code. Effective September 1, 2017, SB 560 amended the credit card surcharge prohibition in §339.001 by transferring enforcement authority from the OCCC to the OAG and relocating the prohibition to the Texas Business and Commerce Code.

The statutory provisions affected by the adopted repeal are contained in Texas Business and Commerce Code, §604A.0021 (formerly Texas Finance Code, §339.001).

*§4.101. Definitions and Scope.*
*§4.102. Credit Card Surcharge Complaints.*
*§4.103. OCCC's Recommendation of Whether to Initiate Credit Card Surcharge Proceeding.*
*§4.104. Initiation and Notice of Credit Card Surcharge Proceeding.*
*§4.105. Contested Case on Credit Card Surcharge.*
*§4.106. Final Order on Credit Card Surcharge.*

**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 October 20, 2017.

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

## D. OFFICE OF CONSUMER CREDIT COMMISSIONER

3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments, New Rules, and Repeals in 7 TAC, Chapter 89, Concerning Property Tax Lenders, Resulting from Rule Review

**PURPOSE:** The purpose of the amendments to 7 TAC, Chapter 89 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. The rule changes generally relate to the following issues: disclosures provided by property tax lenders (including an updated version of the required pre-closing disclosure), licensing processes, fees charged by property tax lenders, and technical corrections. Additionally, certain sections are being repealed in order to replace them with new, reorganized rules.

**RECOMMENDED ACTION:** The agency requests that the Finance Commission approve the amendments to 7 TAC, Chapter 89 with changes as previously published in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we approve the amendments to 7 TAC, Chapter 89.

*Title 7. Banking and Securities*
*Part 5. Office of Consumer Credit Commissioner*
*Chapter 89. Property Tax Lenders*

The Finance Commission of Texas (commission) adopts amendments to §§89.102, 89.207, 89.208, 89.301, 89.302, 89.304, 89.306, 89.310, 89.403, 89.404, 89.502, 89.503, 89.504, 89.506, 89.507, 89.601, and 89.702; adopts new §89.303 and §89.405; and adopts the repeal of §§89.303, 89.405, and 89.406, in 7 TAC, Chapter 89, concerning Property Tax Lenders.

The commission adopts the amendments to §§89.102, 89.207, 89.208, 89.301, 89.302, 89.304, 89.306, 89.310, 89.403, 89.404, 89.503, 89.506, 89.601, and 89.702; adopts new §89.303 and §89.405; and adopts the repeal of §§89.303, 89.405, and 89.406 without changes to the proposed text as published in the September 1, 2017, issue of the *Texas Register* (42 TexReg 4379).

The commission adopts the amendments to §§89.502, 89.504, and 89.507 with changes to the proposed text as published in the September 1, 2017, issue of the *Texas Register* (42 TexReg 4379). The changes are a result of the comments received as outlined in the following paragraphs, as well as changes to make these provisions clearer.

The commission received three written comments on the proposal from the following parties: Kohm and Associates, PC, Sombrero Capital, and the Texas Property Tax Lienholders Association (TPTLA). Additionally, an oral comment was received from the TPTLA.

Two of the written comments express general support for the rule amendments as proposed, but made some recommendations regarding the amended pre-closing disclosure requirements in §89.504 and §89.506. The other comments also made recommendations regarding the amended disclosure requirements. Some of the comments included recommendations on the following issues that were not addressed in the proposal: (1) the prohibition on a property tax loan for property financed by a below market rate loan under Texas Tax Code, §32.06(a-8)(1); (2) the limitation on fees for filing a release under current 7 TAC §89.602; and (3) waiver of the right of rescission under Texas Tax Code, §32.06(d-1).

The commission's responses to the official comments received are included after the purpose discussions following each respective rule provision receiving comments. The comments on below market rate loans, lien release fees, and the right of rescission are discussed after the purpose discussions for the rules that are part of this action.

In general, the purpose of the adoption regarding 7 TAC, Chapter 89 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. The notice of intention to review 7 TAC Chapter 89 was published in the *Texas Register* on June 16, 2017 (42 TexReg 3167). The commission received four comments in response to that notice. The comments on the notice of intention to review were submitted by the Hunter-Kelsey of Texas, LLC, Propel Financial Services, Sombrero Capital, and the Texas Property Tax

Lienholders Association. The responses to the official comments on the rule review notice were included as part of the adopted rule review, as published in the *Texas Register* on September 1, 2017 (42 TexReg 4481).

The adopted rule changes generally relate to the following issues: disclosures provided by property tax lenders (including an updated version of the required pre-closing disclosure), licensing processes, fees charged by property tax lenders, and technical corrections. Additionally, certain sections have been repealed in order to replace them with new, reorganized rules.

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

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

Adopted amendments to §89.102 add definitions of the terms "residential property tax loan" and "commercial property tax loan." The definition of "residential property tax loan" states that the term refers to a property tax loan that includes a lien on residential property owned and used for personal, family, or household purposes. Property designated as "Category A (Real Property: Single-Family Residential)" is presumed to be residential property unless the property tax lender obtains an affidavit from the property owner stating that the property is owned and used for a business or investment purpose, not for personal, family, or household purposes. The definition of "commercial property tax loan" states that the term refers to a property tax loan that is not a residential property tax loan. The new definitions of "residential property tax loan" and "commercial property tax loan" are intended to provide consistent terminology in provisions related to disclosures and closing costs. The term "residential property tax loan" is also used to specify the scope of the limitation on closing costs, as discussed later in this adoption in the description of amendments to §89.601(a).

Adopted amendments to §89.207 specify records that property tax lenders are required to maintain. These amendments ensure that the Office of Consumer Credit Commissioner (OCCC) can review a licensee's records to verify compliance with applicable law. First, an amendment to §89.207(3)(A)(viii) specifies that a property tax lender must maintain any affidavits signed by the borrower applicable to the property tax loan, in addition to signed agreements and disclosures required by the current rule. This would include an affidavit regarding the use of commercial property, as described in the definition of "residential property tax loan" in §89.102(10). Second, an amendment to §89.207(3)(B) specifies that the current requirement regarding the right of rescission refers to maintaining the notice of the right of rescission, as required by Regulation Z, 12 C.F.R. §1026.23. Third, an adopted amendment to §89.207(3)(H) provides that if a property tax loan is satisfied through a foreclosure, the property tax lender must maintain the foreclosure deed, instead of the release of lien required by the current rule. This amendment is in response to an official comment on the notice of intention to review, which requests

clarification on this issue. In the case of a foreclosure, there might not be a release of lien. Fourth, an adopted amendment to §89.207(3)(I)(ii) specifies that a property tax lender must maintain receipts and invoices for attorney's fees charged under Texas Finance Code, §351.0021(a)(6), which authorizes a reasonable post-closing fee for title examination and preparation of an abstract of title by an attorney, a title company, or a property search company authorized to do business in this state.

An adopted amendment to §89.208(h) explains that the annual percentage rate (APR) disclosed in a property tax loan advertisement must be calculated in accordance with the adopted amendment to §89.502(2). This amendment ensures that the method of calculating APR is consistent throughout the rules governing property tax lenders, as discussed later in this adoption in the description of amendments to §89.502. It will also ensure that potential borrowers receive information that will enable them to make an informed borrowing decision.

An adopted amendment to §89.301 adds a definition of "parent entity," specifying that this term refers to a direct owner of a licensee or applicant. This definition clarifies the provisions on mergers and license transfers in §89.303 and §89.304, discussed later in this adoption, and is consistent with other OCCC licensing rules.

Also in §89.301, an amendment to adopted §89.301(3)(A) (former §89.301(2)(A)) amends the definition of "principal party" for sole proprietorships. The amendment removes the statement that proprietors include spouses with a community property interest. In addition, an amendment to §89.302(1)(A)(iv)(I) removes the requirement to disclose community property interests and documentation regarding separate property status, and replaces it with a requirement to disclose the names of the spouses of principal parties if requested. The agency currently spends considerable time requesting information from license applicants to determine the status of spouses' property interests, and explaining these concepts to applicants. These amendments will help streamline the licensing process and reduce regulatory burden. The amendments will also make the application process simpler and more straightforward for applicants. In specific cases where the spouse is a principal party, the OCCC would be able to request additional information about the spouse under current §89.302(1)(C)(i)-(ii).

Section 89.303 has been repealed and replaced with a new rule, with the intent to clarify the requirements when a licensee transfers ownership. Previously, §89.303 described what constitutes a transfer of ownership requiring the filing of a transfer application. The adopted new rule largely maintains the requirements under the former rule, but it provides two different paths the transferee can take for a transfer of ownership: either an application to transfer the license, or a new license application on transfer of ownership. The amendments outline what the application has to include, the timing requirements, and which parties are responsible at different points in the transfer process. Subsection (a) describes the purpose of the new section. Subsection (b) defines terms used throughout the section. In particular, subsection (b)(3) defines the phrase "transfer of ownership," listing different types of changes in acquisition or control of the licensed entity. Subsection (c) specifies that a license may not be sold, transferred, or assigned without the written approval of the OCCC, as provided by

Texas Finance Code, §351.163. Subsection (d) provides a timing requirement, stating that a complete license transfer application or new license application on transfer of ownership must be filed no later than 30 days after the transfer of ownership. Subsection (e) outlines the requirements for the license transfer application or new license application on transfer of ownership. These requirements include complete documentation of the transfer of ownership, as well as a complete license application for transferees that do not hold an existing property tax lender license. Subsection (e)(5) explains that the application may include a request for permission to operate. Subsection (f) provides that the OCCC may issue a permission to operate to the transferee. A permission to operate is a temporary authorization from the OCCC allowing a transferee to operate while final approval is pending for an application. Subsection (g) specifies the transferee's authority to engage in business if the transferee has filed a complete application including a request for permission to operate. It also requires the transferee to immediately cease doing business if the OCCC denies the request for permission to operate or denies the application. Subsection (h) describes the situations where the transferor is responsible for business activity at the licensed location, situations where the transferee is responsible, and situations where both parties are responsible.

In §89.304, concerning Change in Form or Proportionate Ownership, conforming changes are adopted corresponding to adopted new §89.303. Throughout subsections (b) and (c), references have been added to the new license application on transfer of ownership. In addition, amendments in subsection (b) clarify situations where a merger is a transfer of ownership. The amendments specify that if a licensee is a party to a merger that results in a new or different surviving entity other than the licensee, then the merger is a transfer of ownership, and the licensee must file a license transfer application or new license application. The amendments to subsection (b) are intended to clarify the current rule text and are consistent with the OCCC's current policy.

Adopted amendments to §89.306 clarify the circumstances in which a licensee must notify the OCCC of changes to information in the original license application. The amendments specify that the requirement to provide updated information within 14 days applies before a license application is approved. Adopted new §89.306(b) provides that a licensee must notify the OCCC within 30 days if the information relates to the names of principal parties, criminal history, regulatory actions, or court judgments. Adopted new §89.306(c) specifies that each applicant or licensee is responsible for ensuring that all contact information on file with the OCCC is current and correct, and that it is a best practice for licensees to regularly review contact information.

An adopted amendment to §89.310(c) provides that a license applicant must pay a fee to a party designated by the Texas Department of Public Safety (DPS) for processing fingerprints, replacing a statement that the fee will be paid to the OCCC. This amendment conforms the rule to the method by which applicants currently provide fingerprint information through DPS's Fingerprint Applicant Services of Texas (FAST) program.

Adopted amendments to §89.403 clarify the agency's procedure for providing delinquency notices to licensees that have

failed to pay an annual assessment fee. The amendments specify that notice of delinquency is considered to be given when the OCCC sends the notice by mail to the address on file with the OCCC as a master file address, or by e-mail to the address on file with the OCCC (if the licensee has provided an e-mail address).

An adopted amendment to §89.404 contains a technical correction to ensure that the rule refers to "the prior calendar year's loan activity."

Adopted new §89.405 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 property tax lender license. This section replaces former §89.405 and §89.406, which have been repealed. Subsection (a) describes the OCCC's collection of criminal history record information from law enforcement agencies. Subsection (b) identifies the criminal history information that the applicant must disclose. Subsection (c) describes the OCCC's denial, suspension, and revocation based on crimes that are directly related to the licensed occupation of property tax lender. Subsection (c)(1) lists the types of crimes that the OCCC considers to directly relate to the duties and responsibilities of being a property tax lender, including the reasons the crimes relate to the occupation, as provided by Texas Occupations Code, §53.025(a). Subsection (c)(2) contains the factors the OCCC will consider in determining whether a criminal offense directly relates to the duties and responsibilities of a licensee, as provided by Texas Occupations Code, §53.022. Subsection (c)(3) provides the mitigating factors the OCCC will consider to determine whether a conviction renders an applicant or licensee unfit, as provided by Texas Occupations Code, §53.023. Subsection (d) describes the OCCC's authority to deny a license application if it does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §351.104(a)(1). 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.

The adopted amendments to §§89.502, 89.503, 89.504, and 89.506 contain updated disclosure requirements for property tax loans. These amendments include a new version of the pre-closing disclosure required under Texas Tax Code, §32.06(a-4)(1), which provides that the commission will "prescribe the form and content of an appropriate disclosure statement to be provided to a property owner before the execution of a tax lien transfer." The former version of this disclosure, located at §89.506(a), is a one-page form with information about what a property tax loan is, the possibility of foreclosure, and OCCC contact information. The new pre-closing disclosure in this adoption adds an itemization of the costs of a property tax loan, and for residential property tax loans, it includes the annual percentage rate (APR). The adopted amendments to §89.502

describe a standardized method for property tax lenders to calculate the APR.

The commission believes that it is appropriate for the pre-closing disclosure to include cost information and APR. When borrowers are aware of the cost of loans, they can make an informed borrowing decision. Borrowers can use cost information to shop among lenders, enhancing competition. In particular, an APR provides residential borrowers with a benchmark for comparing property tax loans to other loan products that may serve their needs.

Last year, the Fifth Circuit held that the federal Truth in Lending Act (TILA) does not apply to Texas property tax loans, because a property tax loan is not a "debt" under TILA. *Billings v. Propel Fin. Servs. L.L.C.*, 821 F.3d 608, 611-12 (5th Cir. 2016). In a closed-end consumer credit transaction TILA and its implementing rule, Regulation Z, require the creditor to make several disclosures, including five key pieces of information: the amount financed, the finance charge, the APR, the total of payments, and the payment schedule. TILA, 15 U.S.C. §1602(v) and §1604(a); Regulation Z, 12 C.F.R. §1026.18. After *Billings*, there is no general requirement for property tax lenders to disclose the APR and cost information before the closing of a property tax loan.

In light of *Billings*, the commission believes that it is an appropriate time to revisit the content of the required pre-closing disclosure, and to add information about costs and APR. The Texas Legislature recognized that much of this information is important to disclose to borrowers when it added Texas Finance Code, §351.0023 in SB 247 (2013). That section requires property tax loan advertisements and solicitations to disclose information such as the terms of repayment and APR. In addition, the agency understands that most property tax lenders are already providing this information to borrowers in some form between application and closing. Another purpose of the adopted amendments is to provide a standardized method for disclosing this information that is already being provided, which further helps borrowers make an informed borrowing decision.

Two commenters on the notice of intention to review support reviewing the disclosure rules. One of these commenters recommends reviewing the rules to "[e]nsure that consumers receive adequate notices regarding the cost and terms of the underlying transaction," and to provide "[s]tandardization of the forms and calculation methods for certain terms (e.g., APR) to ensure consumers can make well-informed choices."

Adopted amendments to §89.502 add definitions of the terms "amount financed," "annual percentage rate," "finance charge," and "total of payments." The amount financed, finance charge, and total of payments are all used to calculate the APR. The definitions are intended to provide a standardized, uniform method of calculating the APR for a property tax loan. When this information is disclosed to borrowers through a standardized method, this enables borrowers to shop among lenders, enhancing competition. These terms are used in calculating the amounts on the amended pre-closing disclosure, as described later in the discussion of the adopted amendments to §89.504 and §89.506.

Under the adopted definition at §89.502(2), the APR would be calculated based on the methods described in Regulation Z, 12 C.F.R. §1026.22, which contains a standardized method for calculating APR that is generally used in consumer credit transactions. For this reason, the APR can provide residential borrowers with a benchmark for comparing property tax loans to other loan products that may serve their needs.

One of the key components used in calculating the APR is the finance charge. Generally, the finance charge is the cost of credit as a dollar amount. Regulation Z, 12 C.F.R. §1026.4(a). Other things being equal, a higher finance charge will result in a higher APR. The adopted definition in §89.502(3) explains that the finance charge includes all interest and closing costs paid to the property tax lender or an affiliated business. The term "affiliated business" is defined in current §89.102(1), and includes a business that shares common management with a property tax lender, shares more than 10% common ownership with a property tax lender, or is controlled by a property tax lender through a controlling interest greater than 10%. At the stakeholder meeting, one stakeholder pointed out that certain property tax lenders impose internal costs that they retain, while other property tax lenders pass costs on to affiliated businesses. The stakeholder noted that if a property tax lender can exclude costs paid to the affiliated businesses from the finance charge, this will enable the property tax lenders using affiliated businesses to disclose a lower APR than property tax lenders imposing internal costs, even if the costs are substantially the same for the borrower. In response to this stakeholder statement, the new definition of "finance charge" in §89.502(3) specifies that the finance charge includes interest and closing costs paid to an affiliated business. This definition will ensure that a prospective borrower can accurately compare rates between a property tax lender that generally retains fees for services performed at closing, and a property tax lender that passes fees on to an affiliated business.

Since the proposal, a change has been made to the definition of "finance charge" in §89.502(3) to divide parts of the definition into lettered subparagraphs, and to add a statement that the finance charge excludes an amount to pay off an existing property tax loan in the case of a refinance. This change is intended to make the definition clearer, and to conform to changes in §89.504(a)(6)(A) and (a)(8)(D), discussed later in this adoption.

The adopted amendments to §89.503(b) and (c) add the Calibri font to the list of typefaces considered to be readable, and specify that the text of the disclosure must generally be at least as large as 11 points in the Calibri font. These amendments reflect the updated pre-closing disclosure, which was prepared in the Calibri font for improved readability and design.

The adopted amendments to §89.504 describe the content of the amended pre-closing disclosure. These amendments generally maintain the elements that are required to be in the disclosure under current §89.504, while providing additional disclosures. Adopted amendments at §89.504(a)(1)-(4) require the pre-closing disclosure to include the parties' contact information, and for a residential property tax loan, require the disclosure to state the name and Nationwide Multistate Licensing System (NMLS) identification number of the residential mortgage loan originator.

Under Texas Finance Code, §351.0515, an individual who acts as a residential mortgage loan originator for a property tax loan must be individually licensed with the OCCC. Disclosing the originator's name and NMLS ID number helps ensure that the property tax lender has complied with this requirement.

Adopted §89.504(a)(6) requires the pre-closing disclosure to include a section labeled "Loan Terms," including the funds advanced under Texas Tax Code, §32.06(e) (labeled as the "loan amount"), the contract interest rate, the term of the property tax loan in months, the monthly payment amount, the payment schedule, and a provision explaining whether there is a prepayment penalty.

Several precommenters requested guidance about whether prepaid interest could be included in the funds advanced listed on the pre-closing disclosure. The funds advanced are expressly limited by Texas Tax Code, §32.06(e), which states: "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." Interest paid to the property tax lender, including prepaid interest, is not part of the funds advanced under this section. Although this provision mentions interest, this refers to interest paid to the taxing unit as shown on the tax receipt. In response to the precommenters' request for guidance, adopted §89.504(a)(6)(A) explains that the funds advanced include the amounts described by Texas Tax Code, §32.06(e), and do not include prepaid interest. Prepaid interest is disclosed separately on the pre-closing disclosure, as explained later in the discussion of §89.504(a)(9). At the stakeholder meeting, one stakeholder explained that some property tax lenders include prepaid interest (other than discount points) in the principal balance of the loan, but do not charge interest upon the prepaid interest. This adoption does not specifically address this practice, but it would require the lender to exclude any prepaid interest from the loan amount on the pre-closing disclosure.

Adopted §89.504(a)(7) requires the pre-closing disclosure for a residential property tax loan to include a section labeled "Loan Calculations," containing the APR, amount financed, finance charge, and total of payments. One commenter suggests that this section be titled "Loan Calculations" instead of "Loan APR Calculation." In response to this comment, §89.504(a)(7) as adopted uses the title "Loan Calculations."

Adopted §89.504(a)(8) requires the pre-closing disclosure to include a section labeled "Loan Amount Itemization," containing itemizations of the amounts paid to taxing units, closing costs, and recording costs. At the stakeholder meeting, two stakeholders noted that some amounts may be paid to an entity other than a taxing unit (e.g., collection costs paid to a district clerk). In response to these statements, adopted §89.504(a)(8)(A)(i) explains that the itemization includes amounts paid to taxing units or other governmental entities as shown on the tax receipt.

Since the proposal, changes have been made to §89.504(a)(6)(A) and (a)(8)(D) in response to a comment. The commenter states that the pre-closing disclosure "should be altered to allow for a Refinance of an Existing Loan in the 'Loan Amount Itemization' section." In response to this comment, §89.504(a)(6)(A) as adopted explains that the funds advanced include any

amount to pay off an existing property tax loan in the case of a refinance. In addition, §89.504(a)(8)(D) as amended specifies that these amounts must be listed, along with the name of each property tax lender to which an amount will be paid, in a subsection labeled "Refinance of current property tax loan."

Adopted §89.504(a)(9) requires the pre-closing disclosure to include a section labeled "Prepaid Interest," containing the total amount of any prepaid interest, itemized into per diem interest and discount points.

Adopted §89.504(a)(10) requires the following tax office notice in boldface type: "Your tax office may offer delinquent tax installment plans that may be less costly to you. You can request information about the availability of these plans from the tax office." This disclosure is based on Texas Finance Code, §351.0023(a), which requires this notice to be included on the first page of any solicitation materials in 12-point boldface type. Three precommenters stated that this notice is unnecessary on the pre-closing disclosure, arguing that it should apply only to advertisements and solicitations. The commission disagrees with this argument for two reasons. First, the pre-closing disclosure might be used as a solicitation, which would trigger the requirement in Texas Finance Code, §351.0023 to include the notice. Second, the notice provides potential borrowers with important information that they should consider before entering a property tax loan, as the legislature acknowledged by enacting Texas Finance Code, §351.0023.

Adopted §89.504(a)(23) contains updates to the OCCC's contact information in the pre-closing disclosure. In accordance with instructions from the Texas Department of Information Resources, the OCCC has updated its website and e-mail address with the "texas.gov" extension: occc.texas.gov and consumer.complaints@occc.texas.gov. Other revisions have been made to the text of the OCCC notice to provide more clarity to consumers regarding the role of the OCCC in resolving complaints.

Adopted amendments to §89.504(b) explain that the pre-closing disclosure must fit on two pages, but a property tax lender may attach additional pages if necessary to disclose additional taxing units, additional third parties receiving closing costs, or additional government units receiving recording expenses.

Adopted §89.504(c) explains that all information on the disclosure must be accurate, and the APR must be accurate within 1/8 of 1 percentage point. If the property tax lender learns that the information is inaccurate, then it must notify the property owner of the inaccuracy and provide an updated disclosure.

Since the proposal, changes have been made to §89.504(c) in response to comments. All three written comments address §89.504(c), and the provision was also addressed in the oral comment. All of the commenters expressed concern about the requirement in proposed §89.504(c) that the property tax lender must "promptly" notify the property owner of any inaccuracy. One commenter "proposes that a pre-closing re-disclosure only be required if the APR increases or if closing costs increase. To the extent the APR is unchanged or decreases and/or non-financial terms are changed, we propose requiring a re-disclosure be provided at closing." In an oral comment, the commenter gave the following example.

The property tax lender provides an initial disclosure stating that there are $500 in closing costs, with $200 paid to a third party and $300 paid to the property tax lender. Before closing, the property tax lender learns that $300 will have to be paid to the third party, but the property tax lender determines that only $200 will be paid to it, resulting in the same $500 total closing costs and a slightly reduced APR compared to the initial disclosure. The commenter argued that the property tax lender should not be required to promptly provide an amended disclosure in this situation, because there is no increase in costs being paid by the property owner. Along the same lines, another commenter recommends: "Allow PTL to overstate APR initially, without having to re-disclose prior to closing, as long as the APR provided at closing is accurate." Finally, another commenter recommends that the commission allow the APR to be considered accurate if it is based on a finance charge that is either understated by $100 or less or overstated by any amount, based on the accuracy tolerances for mortgage loans under Regulation Z, 12 C.F.R. §1026.22(a)(4).

In response to these comments, §89.504(c)(2) as adopted provides that a dollar amount on the disclosure will be considered accurate if it is not more than $10 above or below the actual amount charged under the terms of the property tax loan. The commission believes that this $10 amount is appropriate given the size of property tax loans and the amount of closing costs, which are generally limited to $900 under §89.601 for residential property tax loans. The $10 accuracy threshold strikes a balance between ensuring that property owners receive accurate information and allowing minor variances for changes that property tax lenders cannot predict. The commission disagrees with the recommendation that the finance charge be considered accurate if it is understated by $100 or overstated by any amount. This recommendation would not provide property owners with sufficiently accurate information about the cost of loans to enable them to make an informed borrowing decision.

Also in response to these comments, §89.504(c)(3) as adopted provides a general timing requirement, stating that the amended disclosure must be provided before the property owner executes a property tax loan contract. However, if the inaccuracy results in an increase of more than $10 to certain amounts paid by the property owner, or an increase of more than 1/8 of 1 percentage point to the APR, then the property tax lender must promptly provide the amended disclosure after learning of the inaccuracy. The commission believes that this timing requirement strikes an appropriate balance by ensuring that property owners have accurate disclosures at the time of closing, and that they promptly receive updated disclosures if they will have to pay more than originally disclosed.

Adopted amendments at §89.504(d)-(g) contain technical corrections and updated citations. This adoption maintains the current requirements for delivering the pre-closing disclosure. In particular, the adoption does not amend the timing requirement currently in §89.504(c)(2)(B), which provides that the disclosure must be delivered "within three business days from receipt of the property owner's application for a property tax loan, or within three business days from the date that the property tax lender first has knowledge of the property owner's agreement to enter into a property tax loan with the property tax

lender." One precommenter stated that this requirement should be maintained for the pre-closing disclosure, while another suggests that the disclosure should be provided at least three days before closing. The commission believes that the current requirement of providing the disclosure within three days of the application provides the borrower with an appropriate amount of time to review the cost information, consider alternatives, and reach an informed borrowing decision. If any information on the disclosure changes and renders the disclosure inaccurate, the property tax lender would be required to notify the property owner and provide an updated disclosure under §89.504(c)(3).

As adopted, §89.504(e)(2)(F) maintains the previous provision on verification of delivery by email, stating that email delivery may be verified by a dated reply email or affirmative consent under the E-Sign Act, 15 U.S.C. §7001(c). Regarding this provision, one commenter states: "Do not burden consumers with regulation. Technology allows email senders to receive a confirmation receipt. The proposed rules require a response from customer by email and it is inappropriate to place a regulatory burden on customers." The commission disagrees with the suggestion that §89.504(e)(2)(F) places a regulatory burden on property owners. This provision describes methods by which the property tax lender can verify compliance with its legal responsibility to provide the disclosure statement to the property owner. This provision does not impose a requirement on property owners. The commission believes that it is appropriate to maintain this requirement, so that property tax lenders can verify delivery of electronic disclosures. In addition, the E-Sign Act provides a widely accepted method for electronic delivery of disclosures. The commenter's concern about providing email disclosures is partially addressed by the changes in adopted §89.504(c)(3), which allow certain amended disclosures to be provided at closing.

The adopted amendments to §89.506 contain the updated figures for the pre-closing disclosure, with one version for residential property tax loans and another for commercial property tax loans.

Adopted amendments to §89.507 describe the permissible changes to the pre-closing disclosure. As mentioned previously, at the stakeholder meeting, two stakeholders noted that some amounts may be paid to an entity other than a taxing unit (e.g., collection costs paid to a district clerk). In response to these statements, adopted §89.507(a)(5) allows the property tax lender to replace "Amounts paid to taxing units" with "Amounts paid to taxing units and governmental entities" if the property tax lender pays amounts to other governmental entities and these amounts are shown on the tax receipt.

Since the proposal, a change has been made to §89.507(a)(6) to allow the property tax lender to add or omit lines in the "Loan Amount Itemization" section as necessary to disclose any amounts to refinance an existing property tax loan. This change is intended to conform to changes in §89.504(a)(6)(A) and (a)(8)(D), discussed earlier in this adoption.

In addition, at the stakeholder meeting, one stakeholder suggested adding language to the pre-closing disclosure stating that the APR is not the same as the interest rate, while another stakeholder suggested that this disclosure should be optional. In response to these recommendations, adopted

§89.504(a)(7) allows the property tax lender to add the following sentence to the APR line: "This is not your interest rate." Other permissible changes adopted in §89.507 include omitting the loan identification number, adding or omitting lines in the loan amount itemization to disclose all amounts paid to third parties, omitting the prepaid interest section if there is no prepaid interest charged, and adding any required disclosure of affiliated businesses under §89.504(g).

One commenter requests "a January 1, 2017 implementation date for the new forms and disclosures." The agency understands the commenter to be requesting a delayed implementation date of January 1, 2018. In response to this comment, the agency will allow a delayed implementation date of January 1, 2018, for property tax lenders to provide the amended version of the pre-closing disclosure under §89.504 and §89.506. From the rule's effective date until January 1, 2018, property tax lenders may provide property owners with either the previous version of the disclosure or the amended version. Starting on January 1, 2018, property tax lenders must provide the amended version.

An adopted amendment to §89.601(a) specifies that the limitations in the rule governing closing costs for property tax loans apply to residential property tax loans, as defined by §89.102(10), discussed earlier in this adoption. This amends the former requirement, which stated that the limitations applied to property tax loans secured by property designated as "Category A (Real Property: Single-Family Residential)," and homesteads designated as "Category E (Real Property: Farm and Ranch Improvements)" by the Property Classification Guide published by the Texas Comptroller of Public Accounts.

In two of the comments on the notice of intention to review, the commenters recommend limiting the scope of the closing cost rule's limitations to homestead property. Several stakeholders reiterated this recommendation at the stakeholder meeting and in written precomments on the proposal. In response to these comments and precomments, the adopted amendment to §89.601(a), read together with the new definition of "residential property tax loan" in §89.102(10), specifies that the closing cost limitations apply to all property tax loans including a lien on residential property, including all homestead property, as well as any property with a Category A designation, unless the property tax lender obtains an affidavit stating that the property is used for a business or investment purpose. Effectively, this means that the closing cost limitations in §89.601 would no longer apply to Category A property that is owned and used for a business purpose (e.g., rental property), as long as the property tax lender obtains and maintains the appropriate affidavit. All property tax loan closing costs are still required to be reasonable under Texas Tax Code, §32.06(e). The limitations for residential property tax loans in §89.601 are intended to strike an appropriate balance between consumer protection and industry cost recovery. The commission believes that these amendments help strike that balance. The commission disagrees with the suggestion that the rule should only apply to homestead property. Certain non-homestead property, such as a second home, is used as residential property for personal, family, or household use, and it is appropriate to ensure that these property owners can benefit from the consumer protections in §89.601.

Adopted amendments to §89.601(c)(4) deal with closing costs authorized for

additional parcels of land. Previously, the rule provided that the property tax lender may charge up to $100, in addition to the general $900 maximum, for each additional parcel of residential property described by §89.601(a). In two of the comments on the notice of intention to review, the commenters recommended allowing the additional $100 in closing costs for each additional parcel of commercial property, for property tax loans that cover both residential and commercial property. Similarly, in one of the comments on the proposal, the commenter recommends clarifying that the property tax lender may charge up to $100 for each additional property, regardless of property category. Property tax loans that cover both residential and commercial property are subject to the limitations of §89.601, but the former rule authorized the additional $100 only for residential parcels. In response to these comments, the adopted amendments to §89.601(c)(4) remove language limiting the additional $100 authorization to residential parcels, effectively allowing $100 for each additional parcel regardless of whether it is residential or commercial. This is intended to reflect actual costs incurred by the property tax lender through closing for a property tax loan that includes both residential and commercial property.

Some precommenters recommended increasing the $100 per parcel amount in §89.601(c)(4). Two precommenters suggested a general $150 amount, while another suggested a $300 amount for commercial property. The commission recently adopted the $100 amount in 2015, following an extensive review of closing costs charged in connection with property tax loans. The commission believes that it is unnecessary to amend the $100 amount at this time.

Adopted §89.702(d)(3) allows a permissible change to the certified statement signed by the taxing unit. In a comment on the notice of intention to review, one commenter explained that Texas Tax Code, §33.445 authorizes tax lien transfers when a taxing unit files suit to foreclose a tax lien and joins a tax lien transferee. The commenter recommended allowing the certified statement's citation to §32.06 to be amended in this situation. In response to this comment, adopted §89.702(d)(3) allows a taxing unit to replace "Texas Tax Code, §32.06" with "Texas Tax Code, §33.445" if the transfer occurs in connection with the joinder of a tax lien transferee under Texas Tax Code, §33.445(a).

Some of the comments make additional recommendations on the following issues that were not addressed in the proposal: (1) the prohibition on a property tax loan for property financed by a below market rate loan under Texas Tax Code, §32.06(a-8)(1); (2) the limitation on fees for filing a release under current 7 TAC §89.602; and (3) waiver of the right of rescission under Texas Tax Code, §32.06(d-1). Because these issues are outside the subject matter included in the proposal, adopting this change would require a separate rulemaking action with a new publication for comment. *See State Bd. of Ins. v. Deffebach*, 631 S.W.2d 794, 801 (Tex. App.--Austin 1982, writ ref'd n.r.e.). However, the agency invites responses from stakeholders as discussed in the following paragraphs.

Regarding below market rate loans, two comments request guidance on what constitutes a below market rate loan for purposes of Texas Tax Code, §32.06(a-8)(1). In order to determine whether a future rule action on this issue is appropriate, the agency invites responses from stakeholders

on the following questions: What types of real property financed by governmental or nonprofit loans have stakeholders encountered? What rates have stakeholders encountered in connection with these loans? Is it unclear whether these rates are below market rate? What would be the benefits and drawbacks of adopting a rule on this issue?

Regarding lien release fees, one commenter provided a list of real property record filing fees charged by a county, and requested an increase in the lien release fee under §89.602. In order to determine whether a future rule action on this issue is appropriate, the agency invites responses from stakeholders on the following questions: What costs have stakeholders encountered in filing a lien release? What are the actual costs charged by county clerks? What would be the benefits and drawbacks of amending the $110 maximum in 89.602(c)?

Regarding waiver of the right of rescission under Texas Tax Code, §32.06(d-1), one commenter recommends that the commission "clarify scenarios where a PTL may waive the 3 Day Right to Rescind," including "foreclosure due to tax sale" or a "significant financial penalty." The commission disagrees with this recommendation. Texas Tax Code, §32.06(d-1), provides: "A right of rescission described by 12 C.F.R. Section 226.23 applies to a transfer under this section of a tax lien on residential property owned and used by the property owner for personal, family, or household purposes." The situations where a borrower may waive the right of rescission are described in Regulation Z, 12 C.F.R. §226.23(e)(1) and §1026.23(e), which provide: "The consumer may modify or waive the right to rescind if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. To modify or waive the right, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the right to rescind, and bears the signature of all the consumers entitled to rescind. Printed forms for this purpose are prohibited . . . ." Because Regulation Z and its official commentary specify the situations where a right of rescission may be waived, the commission believes that additional rules on this issue are unnecessary at this time.

All of the amendments, repeals, and new rules are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to ensure compliance with Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §351.007 grants the commission the authority to adopt rules to enforce Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06 and §32.065.

The rule change in §89.207 is adopted under Texas Finance Code, §351.0023(f), which authorizes the commission to adopt rules to implement requirements on advertising. The rule changes in §§89.502, 89.503, 89.504, and 89.506 are adopted under Texas Tax Code, §32.06(a-4)(1), which authorizes the commission to adopt the form and content of the pre-closing disclosure statement. The rule changes in §89.601 are 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 permitted charges.

The statutory provisions affected by the adopted rule changes are contained in Texas

Finance Code, Chapter 351 and Texas Tax Code, Chapter 32.

*Title 7, Texas Administrative Code*

*Chapter 89. Property Tax Lenders*

*§89.102. Definitions.*

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 351 have the same meanings as defined in Chapter 351. The following words and terms, when used in this chapter, will have the following meanings, unless the context clearly indicates otherwise.

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

(3) Commercial property tax loan--A property tax loan that is not a residential property tax loan.

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

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

(6) [~~(5)~~] Licensee--Any person who has been issued a property tax lender license pursuant to Texas Finance Code, Chapter 351.

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

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

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

(10) Residential property tax loan--A property tax loan that includes a lien on residential property owned and used by the property owner for personal, family, or household purposes. This includes any property tax loan that includes a lien on homestead property. For purposes of this definition, non-homestead property designated as "Category A (Real Property: Single-Family Residential)" will be presumed to be residential property owned and used by the property owner for personal, family, or household purposes, unless the property tax lender obtains and maintains and affidavit from the property owner stating that:

(A) the property is owned and used by the property owner for a business or investment purpose; and

(B) the property owner does not own or use the property for personal, family, or household use.

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

loan documents, and an advancement of money on behalf of a borrower by the lender to a third party. This also includes the act of arranging a loan.

*§89.207. Files and Records Required.*

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

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

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

(A) For all property tax loan transactions:

(i) - (vii) (No change.)

(viii) copies of any other agreements, [~~or~~] disclosures, or affidavits signed by the borrower applicable to the property tax loan;

(ix) - (x) (No change.)

(B) If the property is residential property owned and used by the property owner for personal, family, or household use, the notice of the right of rescission as specified by Texas Tax Code, §32.06(d-1) and Truth in Lending (Regulation Z), 12 C.F.R. §1026.23;

(C) - (G) (No change.)

(H) If the property tax loan is paid off or otherwise satisfied, a copy of the release of lien as required by Texas Tax Code, §32.06(b), or if the property tax loan is satisfied through a foreclosure, the foreclosure deed;

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

(i) (No change.)

(ii) receipts or invoices along with proof of payment for attorney's fees assessed, charged, and collected under Texas Finance Code, §351.0021(a)(4), [~~and~~] (a)(5), and (a)(6), including specific descriptions of services performed by the attorney, unless the records required by this clause are maintained under paragraph (1)(B) of this section, and upon request, the licensee produces these records within a reasonable amount of time, and itemizes or otherwise indexes individual entries to a particular property tax loan transaction file; and

(iii) (No change.)

(J) - (M) (No change.)

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

*§89.208. Advertising.*

(a) - (g) (No change.)

(h) Annual percentage rate and terms of repayment. The annual percentage rate and terms of repayment described by Texas Finance Code, §351.0023(d) - (e) must be calculated and disclosed in accordance with the Truth in Lending Act, 15 U.S.C. §1664, [~~and~~] Regulation Z, 12 C.F.R. §1026.24, and §89.502(2) of this title (relating to Definitions).

*§89.301. Definitions.*

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 351 have the same meanings as defined in Chapter 351. The following words and terms, when used in this chapter, will have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

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

(3) [~~(2)~~] Principal party--An adult individual with a substantial relationship to the proposed lending business of the applicant. The following individuals are principal parties:

(A) a proprietor [~~proprietors, including spouses with community property interest~~];

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

*§89.302. Filing of New Application.*

An application for issuance of a new license must be submitted in a format prescribed by the OCCC [~~commissioner~~] at the date of filing and in accordance with the OCCC's [~~commissioner's~~] instructions. The OCCC [~~commissioner~~] may accept the use of prescribed alternative formats in order to accept approved electronic submissions. Appropriate fees must be filed with the application, and the application must include the following:

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

(A) Application for license.

(i) - (iii) (No change.)

(iv) Owners and principal parties.

(I) Proprietorships. The applicant must disclose the name of any individual holding an ownership interest in

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

(II) - (VII) (No change.)

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

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

*§89.303. Transfer of License; New License Application on Transfer of Ownership.* **{{This section replaces current section 89.303, which has been repealed.}}**

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

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

(1) License transfer--A sale, assignment, or transfer of a property tax lender license.

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

(3) Transfer of ownership--Any purchase or acquisition of control of a licensed entity (including acquisition by gift, devise, or descent), or a substantial portion of a licensed entity's assets, where a substantial change in management or control of the business occurs. The term does not include a change in proportionate ownership as defined in §89.304 of this title (relating to Change in Form or Proportionate Ownership). Transfer of ownership includes the following:

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

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

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

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

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

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

(iv) a new general partner obtains an ownership interest (transfer of

ownership occurs regardless of the percentage of ownership exchanged of the general partner);

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) License transfer approval. No property tax lender license may be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §351.163. A license transfer is approved when the OCCC issues its final written approval of a license transfer application.

(d) Timing. No later than 30 days after the event of a transfer of ownership, the transferee must file a complete license transfer application or new license application on transfer of ownership in accordance with subsection (e). A transferee may file an application before this date.

(e) Application requirements.

(1) Generally. This subsection describes the application requirements for a license transfer application or a new license application on transfer of ownership. A transferee must submit the application in a format prescribed by the OCCC. The OCCC

may accept prescribed alternative formats to facilitate multistate uniformity of applications or in order to accept approved electronic submissions. The transferee must pay appropriate fees in connection with the application.

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

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

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

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

(D) any other documentation evidencing the transfer event.

(3) Application information for new licensee. If the transferee does not hold a property tax lender license at the time of the application, then the application must include the information required for new license applications under §89.302 of this title (relating to Filing of New Application). The instructions in §89.302 of this title apply to these filings.

(4) Application information for transferee that holds a license. If the transferee holds a property tax lender license at the time of the application, then the application must include amendments to the transferee's original license application describing the information that is unique to the transfer event, including disclosure questions, owners and principal parties, and a new financial statement, as provided in §89.302 of this title. The instructions in §89.302 of this title apply to these filings. The responsible person at the new location must file a personal affidavit, personal questionnaire, and employment history, if not previously filed. Other information required by §89.302 of this title need not be filed if the information on file with the OCCC is current and valid.

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

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

(B) an acknowledgement that the transferor and transferee each accept responsibility to any consumer and to the OCCC for any acts performed under the license while the permission to operate is in effect; and

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

(f) Permission to operate. If the application described by subsection (e)

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

(g) Transferee's authority to engage in business. If a transferee has filed a complete application including a request for permission to operate as described by subsection (e), by the deadline described by subsection (d), then the transferee may engage in business as a property tax lender. However, the transferee must immediately cease doing business if the OCCC denies the request for permission to operate or denies the application. If the OCCC denies the application, then the transferee has a right to a hearing on the denial, as provided by §89.307(d) of this title (relating to Processing of Application).

(h) Responsibility.

(1) Responsibility of transferor. Before the transferee begins performing property tax lending activity under a license, the transferor is responsible to any consumer and to the OCCC for all property tax lending activity performed under the license.

(2) Responsibility of transferor and transferee. If a transferee begins performing property tax lending activity under a license before the OCCC's final approval of an application described by subsection (e), then the transferor and transferee are each responsible to any consumer and to the OCCC for activity performed under the license during this period.

(3) Responsibility of transferee. After the OCCC's final approval of an application described by subsection (e) of this section, the transferee is responsible to any consumer and to the OCCC for all property tax lending activity performed under the license. The transferee is responsible for any transactions that it purchases from the transferor. In addition, if the transferee receives a license transfer, then the transferee's responsibility includes all activity performed under the license before the license transfer.

*§89.304. Change in Form or Proportionate Ownership.*

(a) (No change.)

(b) Merger.

(1) If a licensee is a party to a merger that results in a new or different surviving entity other than the licensee, then the merger is a transfer of ownership, and the licensee must file a license transfer application or a new license application on transfer of ownership [~~A merger of a licensee is a change of ownership that results in a new or different surviving entity and requires the filing of a transfer application~~] pursuant to §89.303 of this title (relating to Transfer of License; New License Application on Transfer of Ownership).

(2) If a licensee's parent entity is a party to a merger [~~If the merger of the parent entity of a licensee~~] that leads to the creation of a new entity or results in a different surviving parent entity, the licensee must advise the OCCC [~~commissioner~~] of the change in writing within 14 calendar days after the change, by filing a license amendment and paying the required fees as provided in §89.310. Mergers or transfers of other entities with a beneficial interest beyond the parent entity level only require notification within 14 calendar days in accordance with the OCCC's instructions.

(c) Proportionate ownership.

(1) A change in proportionate ownership that results in the exact same owners still owning the business, and does not meet the requirements described in paragraph (2) of this subsection, does not require a transfer. Such a proportionate change in ownership does not require the filing of a transfer application, but does require notification when the cumulative ownership change to a single entity or individual amounts to 10% or greater. No later than 14 calendar days following the actual change, the licensee is required to notify the OCCC [~~commissioner~~] in writing of the change in proportionate ownership by filing a license amendment and paying the required fees as provided in §89.310 of this title. This subsection does not apply to a publicly held corporation that has filed with the OCCC the most recent 10K or 10Q filing of the licensee or the publicly held parent corporation, although a license transfer application or a new license application on transfer of ownership may be required under §89.303 of this title.

(2) A proportionate change in which an owner that previously held under 10% obtains an ownership interest of 10% or more, requires a license transfer application or a new license application on transfer for ownership under §89.303 of this title.

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

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

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

(1) the names of principal parties;

(2) criminal history;

(3) actions by regulatory agencies; or

(4) court judgments.

(c) Contact information. Each applicant or licensee is responsible for ensuring that all contact information on file with the OCCC is current and correct, including all mailing addresses, all phone numbers, and

all e-mail addresses. It is a best practice for licensees to regularly review contact information on file with the OCCC to ensure that it is current and correct.

*§89.310. Fees.*

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

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

(d) (No change.)

(e) License duplicates sent by mail. The fee for a license duplicate sent by mail is $10.

(f) (No change.)

(g) Annual renewal and assessment fees.

(1) (No change.)

(2) An annual assessment fee not to exceed [~~of~~] $250 is required for each inactive license.

(3) (No change.)

*§89.403. Notice of Delinquency in Payment of Annual Assessment Fee.*

For purposes of Texas Finance Code, §351.155 [~~(Acts 2007, 80th Leg., ch. 1220)~~], and §89.309(d) of this title (relating to License Status), notice of delinquency in the payment of an annual assessment fee is given when the OCCC sends the delinquency notice:

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

(2) by e-mail to the address on file with the OCCC as a master file e-mail address, if the licensee has provided a master file e-mail address [~~upon the mailing of the delinquency notice, enclosed in a postpaid, properly addressed envelope, in a post office or official depository under the care and custody of the United States Postal Service~~].

*§89.404. Annual Report.*

Each licensee must file the required annual report by March 31 for the prior calendar year's [~~calendar~~] loan activity on forms prescribed by the OCCC [~~commissioner~~] and must comply with all instructions relating to submitting the report.

*§89.405. Denial, Suspension, or Revocation Based on Criminal History.* **{{This section replaces sections 89.405 and 89.406, both of which have been repealed.}}**

(a) Criminal history record information. After an applicant submits a complete license application, including all required fingerprints, and pays the fees required by §89.310 of this title (relating to Fees), the OCCC will investigate the applicant and its principal parties. The OCCC will obtain criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant's fingerprint submission. The OCCC will continue to receive information

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

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

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

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

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

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

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been convicted of an offense that directly relates to the duties and responsibilities of a licensee under Texas Finance Code, Chapter 351, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Originating, acquiring, or servicing loans under Texas Finance Code, Chapter 351 involves or may involve making representations to consumers regarding the terms of the loan, receiving money from consumers, remitting money to third parties, maintaining accounts, collecting due amounts in a legal manner, foreclosing on real property in compliance with state and federal law, and compliance with reporting requirements to government agencies. Consequently, the following crimes are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation:

(A) theft;

(B) assault;

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

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

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

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

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

(H) any offense that involves intent, attempt, aiding, solicitation, or conspiracy to commit an offense described in subparagraphs (A) - (G) of this paragraph.

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

(A) the nature and seriousness of the crime;

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Crimes related to character and fitness. The OCCC may deny a license application if the OCCC does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §351.104(a)(1). In conducting its review of character and fitness, the OCCC will consider the criminal history of the applicant and its principal

parties. If the applicant or a principal party has been convicted of an offense described by subsections (c)(1) or (f)(2) of this section, this reflects negatively on an applicant's character and fitness. The OCCC may deny a license application based on other criminal history of the applicant or its principal parties if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. The OCCC will, however, consider the factors identified in subsection (c)(2) and (3) of this section in its review of character and fitness.

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

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

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

(2) a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42A.054 or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(3)-(4);

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

(4) a fact or condition that would have been grounds for denying the license application, and that either did not exist at the time of the application or the OCCC was unaware of at the time of application, as provided by Texas Finance Code, §351.156(3); and

(5) any other information warranting the belief that the business will not be operated lawfully and fairly, as provided by Texas Finance Code, §351.104(a)(1) and §351.156.

*§89.502. Definitions.*

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Amount financed--The total of payments minus the finance charge.

(2) Annual percentage rate--Has the meaning described by Regulation Z, 12 C.F.R. §1026.22, using a finance charge and amount financed described by this section.

(3) Finance charge--The cost of a property tax loan expressed as a dollar amount. The finance charge includes all interest scheduled to be paid to the property tax lender, including prepaid interest, and includes all closing costs to be retained by the property tax lender or an affiliated business.

(A) The finance charge does not include amounts actually paid to a taxing unit for taxes, penalties, interest, and collection costs.

(B) In the case of a refinance of an existing property tax loan, the finance charge does not include the amount paid to the existing property tax lender to pay off the existing loan.

(C) A property tax lender may exclude recording expenses actually paid to a governmental unit from the finance charge.

(D) A property tax lender may exclude closing costs actually paid to third parties from the finance charge only if the costs are bona fide, reasonable in amount, and paid to a person that is not an affiliated business.

(4) [~~(1)~~] Property tax lender--Has [~~has~~] the meaning assigned by Texas Finance Code, §351.002(1) [~~(Acts 2007, 80th Leg., ch. 1220)~~]. Another name for a "property tax lender" is a "transferee" as defined by Texas Tax Code, §32.06(a)(2) [~~§32.06(2)~~], and these terms may be used synonymously.

(5) [~~(2)~~] Property tax loan--Has [~~has~~] the meaning assigned by Texas Finance Code, §351.002(2) [~~(Acts 2007, 80th Leg., ch. 1220)~~]. Another name for a "property tax loan" is a "tax lien transfer," and these terms may be used synonymously.

(6) [~~(3)~~] Tax lien transfer--Has [~~has~~] the meaning assigned by Texas Finance Code, §351.002(2) [~~(Acts 2007, 80th Leg., ch. 1220)~~]. Another name for a "tax lien transfer" is a "property tax loan," and these terms may be used synonymously.

(7) Total of payments--The total amount the borrower will have paid after making all scheduled payments, including payments made at or before closing.

(8) [~~(4)~~] Transferee--Has [~~has~~] the meaning assigned by Texas Finance Code, §351.002(1), [~~(Acts 2007, 80th Leg., ch. 1220)~~] and Texas Tax Code, §32.06(a)(2) [~~§32.06(2)~~]. Another name for a "transferee" is a "property tax lender," and these terms may be used synonymously.

*§89.503. Format.*

(a) (No change.)

(b) The text of the document must be set in an easily readable typeface. Typefaces considered to be readable include: Times New Roman, Calibri, Scala, Caslon, Century Schoolbook, Helvetica, and Garamond.

(c) Typeface size is referred to in points. Because different typefaces in the same point size are not of equal size, typeface is not strictly defined but is expressed as a minimum size in the Calibri [~~Times New Roman~~] typeface for visual comparative purposes. Generally, the typeface for the body of the disclosures must be at least as large as 11 point in the Calibri [~~Times New Roman~~] typeface. The typeface for the headings must be in boldface type and at least as large as 12 point in the Calibri [~~Times New Roman~~] typeface. A point is generally viewed as 1/72nd of an inch.

*§89.504. Requirements for Disclosure Statement to Property Owner.*

(a) Required elements. A disclosure statement under Texas Tax Code, §32.06(a-4)(1) to be provided to a property owner before the execution of a tax lien transfer

must contain the following required elements:

(1) the title "Property Tax Loan Pre-Closing Disclosure" at the top of each page;

(2) the property owner's name and the address of the property;

(3) [~~(1)~~] the property tax lender's name, principal business address, and OCCC license number;

(4) for a residential property loan, the name and NMLS unique identifier of the individual residential mortgage loan originator;

(5) the closing date;

(6) a section labeled "Loan Terms" containing the following:

(A) the funds advanced under Texas Tax Code, §32.06(e), which are limited to the taxes, penalties, interest, and collection costs paid as shown on the tax receipt, expenses paid to record the lien, reasonable closing costs, and any amount to pay off an existing property tax loan in the case of a refinance, and may not include any prepaid interest, labeled "Loan Amount (funds advanced on your behalf)";

(B) the contract interest rate described on the promissory note or loan agreement, labeled "Interest Rate (loan contract rate)";

(C) the term of the property tax loan in months, labeled "Loan Term";

(D) the monthly payment amount, labeled "Monthly Payment";

(E) the number, amounts, and timing of payments scheduled to repay the property tax loan, labeled "Payment Schedule"; and

(F) one of the following statements, labeled "Prepayment":

(i) for any residential property tax loan, or for a commercial property tax loan that does not have a prepayment penalty, the following statement: "You can pay off the loan at any time without a penalty."

(ii) for a commercial property tax loan that has a prepayment penalty, an explanation of the amount of the prepayment penalty such as: "If you prepay the loan within two years, you will pay a prepayment penalty as high as $_____.";

(7) for a residential property tax loan, a section labeled "Loan Calculations" containing the following:

(A) the annual percentage rate, labeled "APR (cost of loan as a yearly rate)";

(B) the amount financed, labeled "Amount Financed (amount of loan used for APR)";

(C) the finance charge, labeled "Finance Charge (loan cost used for APR)"; and

(D) the total of payments, labeled "Total of Payments";

(8) a section labeled "Loan Amount Itemization" containing the following:

(A) a subsection labeled "Amounts paid to taxing units" listing:

(i) the total amount that the property tax lender will pay to taxing units or governmental entities for unpaid taxes, penalties, interest, and collection costs as shown on the tax receipt;

(ii) the name of each taxing unit or governmental entity to which the property tax lender will disburse an amount shown on the tax receipt; and

(iii) the amount to be disbursed to each taxing unit or governmental entity;

(B) a subsection labeled "Closing costs" listing:

(i) the total amount of closing costs;

(ii) the total amount of closing costs paid to or retained by the property tax lender, labeled "Costs to lender"; and

(iii) for each portion of the closing costs paid to a third party, a description of the cost, the name of the third party, and the amount of the cost;

(C) a subsection labeled "Recording costs" listing:

(i) the total amount of expenses to record the lien or liens;

(ii) the name of each governmental unit to which the property tax lender will pay an expense to record a lien; and

(iii) the amount to be paid to each governmental unit for recording expenses;

(D) in the case of a refinance of an existing property tax loan, a subsection labeled "Refinance of current property tax loan" listing:

(i) the total of amounts to pay off any existing property tax loan or loans;

(ii) the name of each property tax lender to which an amount will be paid to pay off an existing property tax loan; and

(iii) the amount to be paid to each property tax lender to pay off an existing property tax loan;

(9) for any property tax loan in which the lender will charge prepaid interest, including per diem interest or discount points, a section labeled "Prepaid Interest" containing the following:

(A) the total amount of prepaid interest that the property tax lender will charge, expressed as a dollar amount, labeled "Total prepaid interest (not included in loan amount)";

(B) if the property tax lender will charge per diem interest, the total amount of per diem interest expressed as a dollar amount, with a statement of the per diem interest rate and number of days, labeled "Per diem interest (___% per day, ____ days)";

(C) if the property tax lender will charge discount points, the total amount

of discount points expressed as a dollar amount, labeled "Discount points";

(10) the following notice in boldface type, labeled "Tax Office Notice": "Your tax office may offer delinquent tax installment plans that may be less costly to you. You can request information about the availability of these plans from the tax office."

(11) [~~(2)~~] a statement that the property owner currently has a lien against the owner's property for unpaid property taxes;

(12) [~~(3)~~] a statement that the property owner can pay the taxing unit(s) directly;

(13) [~~(4)~~] a statement that the property owner may authorize that the lien of the taxing unit(s) be transferred to the property tax lender;

(14) [~~(5)~~] a statement that unless the property owner agrees in writing, the property tax lender may not make the property tax loan;

(15) [~~(6)~~] a statement that the property tax loan may include unpaid property taxes, penalties, interest, and collection costs paid as shown on the tax receipt;

(16) [~~(7)~~] a statement that the property tax lender may also assess closing costs and interest not to exceed 18% per year;

(17) [~~(8)~~] a statement that the property tax loan is superior to any other preexisting lien on the property;

(18) [~~(9)~~] a statement that if the property is a homestead, disabled persons are entitled to tax deferral under Texas Tax Code, §33.06;

(19) [~~(10)~~] a statement that there may be alternatives available to the property owner instead of the property tax loan, (e.g., entering into a payment installment agreement with the taxing unit(s), financing options through an existing mortgage lender or other private lenders, borrowing from savings or family members);

(20) [~~(11)~~] a statement that if the property owner does not pay, the property owner may lose the property;

(21) [~~(12)~~] a statement that the tax lien may be considered a default by any mortgage holder with a lien on the same property, and the only way to correct the default is to pay off the taxes and have the lien released;

(22) [~~(13)~~] a statement that any secured loan may be foreclosed if the loan is in default, and the cost of a foreclosure, either tax lien or mortgage, may be added to the amount owed by the property owner;

(23) the following statement: "For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). If this does not resolve your question or complaint, you can contact the OCCC:" and the OCCC's address, consumer helpline, website, and consumer complaint email address as follows: 2601 N. Lamar Blvd., Austin, TX 78705, (800) 538-1579, occc.texas.gov, consumer.complaints@occc.texas.gov [~~(14)~~

~~a statement that the property owner may contact the Office of Consumer Credit Commissioner about questions or problems, listing the OCCC's address, toll-free consumer helpline, and website, as follows: 2601 North Lamar Boulevard, Austin, Texas 78705-4207, (800) 538-1579, www.occc.state.tx.us~~];

(24) [~~(15)~~] a statement that the property owner may seek the advice of an attorney or another third party before signing a property tax loan; and

(25) [~~(16)~~] a statement that the property owner should ask about the terms of any loan and should read any document before signing it.

(b) Page requirement. [~~Single page required.~~] The disclosure statement [~~required by §89.506(a) of this title (regarding Disclosures)~~] must fit on one standard-size sheet of paper (8 1/2 by 11 inches) printed on both sides, or on two standard sheets of paper printed only on the front sides of each page. A property tax lender may attach additional pages if necessary to disclose additional taxing units, additional third parties receiving closing costs, additional governmental units receiving recording expenses, or additional information regarding amounts to pay off one or more existing property tax loans. The disclosure statement must be delivered in a manner that does not minimize its significance.

(c) Accuracy. All information and amounts on the disclosure statement must be accurate and must correctly reflect the terms of the property tax loan at closing.

(1) Annual percentage rate. For a residential property tax loan, the annual percentage rate will be considered accurate if it is not more than 1/8 of 1 percentage point above or below the annual percentage rate determined in accordance with §89.502(2) of this title (relating to Definitions).

(2) Dollar amounts. For purposes of this subsection, a dollar amount on the disclosure will be considered accurate if it is not more than $10 above or below the actual amount charged under the terms of the property tax loan.

(3) Amended disclosure statement. At any time after delivering the disclosure statement, if the property tax lender learns that any information on the disclosure statement was inaccurate or did not correctly reflect the terms of the loan at closing, then the property tax lender must notify the property owner of the inaccuracy, and must send an amended, accurate disclosure statement to the property owner in a manner described by subsection (d) of this section. The amended disclosure statement must list the date on which it was revised.

(A) General timing requirement. The property tax lender must provide any amended disclosure statement to the property owner before the property owner executes any promissory note, loan agreement, deed of trust, contract, security deed, or other security instrument.

(B) Prompt disclosure for certain increased amounts. In addition to complying with subparagraph (A) of this paragraph, the property tax lender must provide the amended disclosure to the property owner promptly after discovering the inaccuracy if the inaccuracy results in:

(i) an increase of more than $10 to the total of payments, the closing costs, or the amount of any periodic payment, compared to the amount originally disclosed to the property owner; or

(ii) an increase of more than 1/8 of 1 percentage point to the annual percentage rate, compared to the amount originally disclosed to the property owner for a residential property tax loan.

(d) [~~(c)~~] Delivery.

(1) Face-to-face interview before closing. In the case of a face-to-face interview, a property tax lender must provide a disclosure statement containing all of the elements outlined by subsection (a) of this section [~~, as prescribed by Figure: 7 TAC §89.506(a) of this title,~~] to the property owner at the time of the interview. A property owner present at the interview may sign an acknowledgment verifying receipt of the disclosure statement at that time.

(2) No face-to-face interview. If there is no face-to-face interview, a licensee must deliver a disclosure statement containing all of the elements outlined by subsection (a) of this section [~~, as prescribed by Figure: 7 TAC §89.506(a) of this title,~~] to the owner of the property.

(A) - (C) (No change.)

(e) [~~(d)~~] Verification of delivery.

(1) (No change.)

(2) No face-to-face interview. If there is no face-to-face interview, the property tax lender must deliver the disclosure statement to the property owner as prescribed in subsection (d)(2) [~~(c)(2)~~] of this section.

(A) - (E) (No change.)

(F) Verification of delivery by email. For disclosures delivered via email, a dated reply email indicating that the disclosure statement was successfully delivered to the property owner will constitute verification of delivery. Alternatively, a property owner's affirmative consent to electronic delivery of the disclosure in accordance with [~~§101(c) of~~] the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §7001(c), will constitute a rebuttable presumption for sufficient delivery.

(f) [~~(e)~~] Acknowledgment at time of closing. At the time of closing, a property tax lender may deliver an additional copy of the disclosure statement [~~prescribed by Figure: 7 TAC §89.506(a) of this title~~], but is not required to do so. The property tax lender must obtain a dated acknowledgment signed by the property owner stating that the property owner received the disclosure statement prior to closing. The acknowledgment of receipt may be included on the disclosure form as provided in §89.507(a)(11) [~~§89.507(a)(4)~~] of this title (relating to Permissible Changes).

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

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

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

*§89.506. Disclosures.*

(a) The required disclosure statement under Texas Tax Code, §32.06(a-4)(1) to be provided to a property owner before the execution of a tax lien transfer is presented in the following figures: [~~figure.~~]

(1) the following figure is for residential property tax loans:

Figure: 7 TAC §89.506(a)(1)

(2) the following figure is for commercial property tax loans:

Figure: 7 TAC §89.506(a)(2)

[~~Figure: 7 TAC §89.506(a)~~]

(b) (No change.)

*§89.507. Permissible Changes.*

(a) A property tax lender must use the required disclosure statement under Texas Tax Code, §32.06(a-4)(1) as prescribed by Figure: 7 TAC §89.506(a)(1) or Figure: 7 TAC §89.506(a)(2) [~~Figure: 7 TAC §89.506(a)~~] of this title, but may consider making only limited technical changes, as provided by the following exclusive list:

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

(3) Substituting "tax lien transfer" for "property tax loan"; [~~or~~]

(4) Omitting the loan identification number;

(5) Replacing "Amounts paid to taxing units" with "Amounts paid to taxing units and governmental entities" if the property tax lender pays amounts to governmental entities other than taxing units and these amounts are shown on the tax receipt;

(6) Adding or omitting lines in the "Loan Amount Itemization" section as necessary to disclose all amounts paid to third parties and any amounts to refinance an existing property tax loan;

(7) Adding the following statement to the "APR" line of the "Loan Calculations" section: "This is not your interest rate.";

(8) Omitting the "Prepaid Interest" section if there is no prepaid interest charged, omitting the "per diem interest" line if there is no per diem interest charged, and omitting the "discount points" line if there are no discount points charged;

(9) Adding any required disclosure of affiliated businesses under §89.504(g) of this title (relating to Requirements for Disclosure Statement to Property Owner);

(10) Attaching additional pages described by §89.504(b) of this title; or

(11) [~~(4)~~] Adding an optional, dated signature block at the very bottom of the second page of the disclosure form, which must include the following statement directly above the signature line of the property owner(s): "ACKNOWLEDGMENT OF

RECEIPT: By signing below, I acknowledge only that I have received a copy of this disclosure prior to closing, this ___ day of _____, 20__."

(A) Adding an optional affirmation statement to the optional signature block for married property owners: "I affirm that I am married to _____ (insert name of spouse)."

(B) Adding an optional affirmation statement to the optional signature block for persons signing on behalf of a legal entity: "I affirm that I am authorized to sign this document on behalf of _____ (insert name of legal entity property owner)."

(C) Adding the property owner's address to the optional signature block.

(b) (No change.)

*§89.601. Fees for Closing Costs.*

(a) Applicability. The fee limitations contained in this section are applicable to a residential property tax loan described by §89.102(10) of this title (relating to Definitions) [~~property tax loans secured by property designated as "Category A (Real Property: Single-Family Residential)," and homesteads designated as "Category E (Real Property: Farm and Ranch Improvements)" by the Property Classification Guide published by the Texas Comptroller of Public Accounts~~].

(b) (No change.)

(c) Total maximum fees for closing costs.

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

(4) Cost for additional parcels of real property. If a property tax loan includes the payment of taxes for more than one parcel of real property, then the property tax lender may charge up to $100 for each additional parcel of [~~residential~~] property [~~described by subsection (a)~~], in addition to the general maximum fee limit described in paragraph (3) of this subsection.

(5) - (6) (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) - (B) (No change.)

(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, calculated in accordance with Regulation Z, 12 C.F.R. §1026.22, and §89.502(2) of this title (relating to Definitions);

(ii) an offer of a property tax loan that includes a lower contract rate based on discount points and a corresponding annual percentage rate, calculated in accordance with Regulation Z, 12 C.F.R. §1026.22, and §89.502(2) of this title;

(iii) - (vi) (No change.)

(2) - (5) (No change.)

*§89.702. Certified Statement of Transfer of Tax Lien.*

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

(d) Permissible changes.

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

(3) Citation to Tax Code. The phrase "Texas Tax Code, §32.06" may be replaced with "Texas Tax Code, §33.445" if the transfer occurs in connection with the joinder of a tax lien transferee under Texas Tax Code, §33.445(a).

**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 October 20, 2017.

Matthew J. Nance
Deputy General Counsel
Office of Consumer Credit Commissioner

Figure: 7 TAC §89.506(a)(2)

# Property Tax Loan
# Pre-Closing Disclosure

| | | | |
|---|---|---|---|
| **Borrower** | [borrower name] | **Lender** | [lender name] |
| **Property Address** | [borrower address 1]<br>[borrower address 2] | **Address** | [lender address 1]<br>[lender address 2] |
| | | **OCCC License #** | [lender license #] |
| **Closing Date** | [closing date] | | |
| **Loan ID#** | [loan ID] | | |

## Loan Terms

| | |
|---|---|
| **Loan Amount**<br>(funds advanced on your behalf) | $0.00 |
| **Interest Rate**<br>(loan contract rate) | 0.00% |
| **Loan Term** | 0 months |
| **Monthly Payment** | $0.00 |
| **Payment Schedule** | |
| **Prepayment** | If you prepay the loan within two years, you will pay a prepayment penalty as high as $_____. |

## Loan Amount Itemization

| | | |
|---|---|---|
| **Amounts paid to taxing units** | | **$0.00** |
| to [taxing unit name] | | $0.00 |
| to [taxing unit name] | | $0.00 |
| **Closing costs** | | **$0.00** |
| Costs to lender | | $0.00 |
| [fee description] | to [third party name] | $0.00 |
| [fee description] | to [third party name] | $0.00 |
| [fee description] | to [third party name] | $0.00 |
| [fee description] | to [third party name] | $0.00 |
| [fee description] | to [third party name] | $0.00 |
| [fee description] | to [third party name] | $0.00 |
| **Recording costs** | | **$0.00** |
| to [governmental unit name] | | $0.00 |
| to [governmental unit name] | | $0.00 |

## Prepaid Interest

| | |
|---|---|
| **Total prepaid interest**<br>(not included in loan amount) | **$0.00** |
| Per diem interest<br>(0.00% per day, 0 days) | $0.00 |
| Discount points | $0.00 |

## Tax Office Notice

**Your tax office may offer delinquent tax installment plans that may be less costly to you. You can request information about the availability of these plans from the tax office.**

### What is a property tax loan?

You currently have a lien against your property for unpaid property taxes. The tax lien for unpaid taxes automatically attached to your property on January 1. You may pay the taxing unit(s) directly, or authorize the property tax lender to pay the taxes. In order for the property tax lender to pay the tax lien, you have to authorize the transfer of the lien from the taxing unit(s) and enter into a loan with the property tax lender. Unless you agree in writing, the property tax lender may not make the property tax loan. The property tax loan may include unpaid property taxes, penalties, and interest. The property tax lender may also assess closing costs and interest not to exceed 18% per year. This transaction does not remove the tax lien against your property. If you do not pay the property tax lender under the loan agreement, you may lose your property to foreclosure.

### The property tax loan is the superior lien.

If you default on any lien against your property, this property tax loan will be superior, or "first in line" to be paid, over any other preexisting lien on your property (for example, first or secondary mortgage).

### You may have alternatives to this property tax loan.

If this property is your homestead and you are disabled, you are entitled to tax deferral under Texas Tax Code, §33.06. You may arrange with the taxing unit(s) to enter into an installment agreement for the repayment of these taxes. You may have financing options available to you through other private lenders, such as establishing an escrow account or refinancing your existing mortgage to include the taxes. You may be able to borrow from savings or family members. You may shop around with other property tax lenders and compare the different loan terms offered by other lenders.

### Foreclosure is possible.

If you don't pay, you may lose your property. The tax lien may be considered a default by any mortgage holder with a lien on the same property. The only way to correct the default is to pay off the taxes and have the lien released. Any secured loan may be foreclosed if the loan is in default. The cost of any foreclosure, either tax lien or mortgage, may be added to the amount you owe.

### You can contact the OCCC, a state agency that regulates the property tax lender.

For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). If this does not resolve your question or complaint, you can contact the OCCC:

Office of Consumer Credit Commissioner
2601 N. Lamar Blvd.
Austin, TX 78705

(800) 538-1579 — Consumer Helpline
occc.texas.gov
consumer.complaints@occc.texas.gov

### Before you sign a property tax loan, be sure that you understand this document.

You may seek advice from an attorney or any third party before you enter into a property tax loan. You should ask about the terms of any loan you are considering and you should read any document before signing it.

Figure: 7 TAC §89.506(a)(1)

# Property Tax Loan
# Pre-Closing Disclosure

| | | | |
|---|---|---|---|
| **Borrower** | [borrower name] | **Lender** | [lender name] |
| **Property Address** | [borrower address 1]<br>[borrower address 2] | **Address** | [lender address 1]<br>[lender address 2] |
| | | **OCCC License #** | [lender license #] |
| **Closing Date** | [closing date] | **Loan Originator** | [RMLO name] |
| **Loan ID#** | [loan ID] | **NMLS ID#** | [RMLO NMLS ID] |

## Loan Terms

| | |
|---|---|
| **Loan Amount**<br>(funds advanced on your behalf) | $0.00 |
| **Interest Rate**<br>(loan contract rate) | 0.00% |
| **Loan Term** | 0 months |
| **Monthly Payment** | $0.00 |
| **Payment Schedule** | |
| **Prepayment** | You can pay off the loan at any time without a penalty. |

## Loan Calculations

| | |
|---|---|
| **APR**<br>(cost of loan as a yearly rate) | 0.00% |
| **Amount Financed**<br>(amount of loan used for APR) | $0.00 |
| **Finance Charge**<br>(loan cost used for APR) | $0.00 |
| **Total of Payments** | $0.00 |

## Loan Amount Itemization

| | | |
|---|---|---|
| **Amounts paid to taxing units** | | **$0.00** |
| to [taxing unit name] | | $0.00 |
| to [taxing unit name] | | $0.00 |
| **Closing costs** | | **$0.00** |
| Costs to lender | | $0.00 |
| [fee description] | to [third party name] | $0.00 |
| [fee description] | to [third party name] | $0.00 |
| [fee description] | to [third party name] | $0.00 |
| [fee description] | to [third party name] | $0.00 |
| [fee description] | to [third party name] | $0.00 |
| [fee description] | to [third party name] | $0.00 |
| **Recording costs** | | **$0.00** |
| to [governmental unit name] | | $0.00 |
| to [governmental unit name] | | $0.00 |

## Prepaid Interest

| | |
|---|---|
| **Total prepaid interest**<br>(not included in loan amount) | **$0.00** |
| Per diem interest<br>(0.00% per day, 0 days) | $0.00 |
| Discount points | $0.00 |

## Tax Office Notice

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### The property tax loan is the superior lien.

If you default on any lien against your property, this property tax loan will be superior, or "first in line" to be paid, over any other preexisting lien on your property (for example, first or secondary mortgage).

### You may have alternatives to this property tax loan.

If this property is your homestead and you are disabled, you are entitled to tax deferral under Texas Tax Code, §33.06. You may arrange with the taxing unit(s) to enter into an installment agreement for the repayment of these taxes. You may have financing options available to you through other private lenders, such as establishing an escrow account or refinancing your existing mortgage to include the taxes. You may be able to borrow from savings or family members. You may shop around with other property tax lenders and compare the different loan terms offered by other lenders.

### Foreclosure is possible.

If you don't pay, you may lose your property. The tax lien may be considered a default by any mortgage holder with a lien on the same property. The only way to correct the default is to pay off the taxes and have the lien released. Any secured loan may be foreclosed if the loan is in default. The cost of any foreclosure, either tax lien or mortgage, may be added to the amount you owe.

### You can contact the OCCC, a state agency that regulates the property tax lender.

For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). If this does not resolve your question or complaint, you can contact the OCCC:

Office of Consumer Credit Commissioner
2601 N. Lamar Blvd.
Austin, TX 78705

(800) 538-1579 — Consumer Helpline
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consumer.complaints@occc.texas.gov

### Before you sign a property tax loan, be sure that you understand this document.

You may seek advice from an attorney or any third party before you enter into a property tax loan. You should ask about the terms of any loan you are considering and you should read any document before signing it.

KOHM & ASSOCIATES PC
SAN ANTONIO · AUSTIN

112 E. PECAN ST., STE. 2810
SAN ANTONIO, TEXAS
210-704-1067

September 27, 2017

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

Dear Ms. Hobbs,

Kohm & Associates, P.C. appreciates the opportunity to submit comments in this rulemaking process for property tax lenders. As our law firm represents a substantial portion of the property tax lending industry, we are intimately aware of the issues regularly encountered under the current Texas Tax, Finance, and Administrative Codes. In accordance with the rule making process, we respectfully submit the following comments for consideration.

**Release of Lien Fee**

Following the submission of pre-comments, the OCCC noted recommendations to increase the allowable fees to process a release of lien under Texas Administrative Code § 89.602. The OCCC determined that it did not have sufficient information to suggest a change. We respectfully request the OCCC to reconsider its position. The proposed changes outlined below are not being sought for the purposes of becoming a profit center, but rather to allow for cost recovery. For your consideration, we have outlined the statutory history, the changes in actual costs, and an example to support the proposed increase.

1. Rule §89.602(a)(1): the actual cost charged by the county clerk for filing the release.

Generally, recording fees are based on the number of pages to be recorded (TX Local Gov. Code § 118.011(a)), but additional fees may be applicable: Recording Information Page Fee (TX Local Gov. Code § 118.011(a)(2)); Records Management and Preservation Fee (TX Local Gov. Code § 118.011(b)(2)); Courthouse Security Fee (TX Local Gov. Code § 291.008(d)); Records Archive Fee (TX Local Gov. Code § 118.011(f)); Optional Recording Fees for Court Facilities in Hidalgo and Cameron Counties (TX Local Gov. Code § 118.0131); Records Technology and Infrastructure Fee Section 118.011(f)(1)); Fee for over five (5) names listed (TX Local Gov. Code §118.011(a)(2))

Proposed Change to Rule § 89.602:

(a) Allowable fee components. Under Texas Tax Code § 32.06(b), a licensee may charge the following for filing the release:
(1): the actual cost charged by the county clerk for filing the release.
(2) the actual cost of attorney's fees paid to an outside attorney who is not an employee of the property tax lender for preparing the release; and
(3) an administrative fee not to exceed ~~$35.00~~ $40.00 for services related to filing provided by the property tax lender (e.g., costs to mail or deliver release to county clerk or taxing unit(s)).
(b) Potential limitations on administrative fee. The administrative fee provided by subsection (a)(3) of this section may be limited by other law.
(c) Maximum aggregate fee. The maximum aggregate fee for all of the items provided in subsection (a) of this section shall not exceed ~~$110~~ $150.

2. Rule § 89.602 was adopted on March 6, 2008, and subsequently amended on July 5, 2012 to change subsection (a) from “a property tax lender may charge” to “a licensee may charge,” but all other provisions have remained unchanged since the date of its adoption. The following is a comparison of the statutory cost increases that have occurred since the rule was adopted.

The pertinent statutes that pertain to the fee schedules of the County Clerk in 2008, when Rule § 89.602 was adopted, were as follows:

Section 118.011(a)(2) of the Local Government Code, Real Property Record Filing:

| | |
|---|---|
| for the first page | $5.00 |
| for each additional page or part of a page on which there are visible marks of any kind | $4.00 |
| for all or part of each 8-1/2" x 14" attachment or rider | $4.00 |
| for each name in excess of five names that has to be indexed | $0.25 |
| Section 291.008(d): Security Fee | not more than $1 |
| Section 118.013(b)(2): Records Management and Preservation Fee | not more than $5 |
| Section 118.011(f): Records Archive Fee | not more than $5 |

The pertinent parts of the Fee Schedule of the County Clerk <u>today</u>, are as follows:

Section 118.011(a)(2) of the Local Government Code, Real Property Record Filing:

| | |
|---|---|
| for the first page | $5.00 |
| for each additional page or part of a page on which there are visible marks of any kind (some counties <u>require</u> an additional "Recording Information Page") | $4.00 |
| for all or part of each 8-1/2" x 14" attachment or rider | $4.00 |
| for each name in excess of five names that has to be indexed | $0.25 |
| Section 291.008(d): Security Fee | not more than $1 |
| Section 118.013(b)(2): Records Management and Preservation Fee | not more than $10 |
| Section 118.011(f)(1): Records Archive Fee | not more than $10 |
| Section 118.011(f)(2): Records Technology and Infrastructure Fee | not more than $2 |
| Section 118.0131: Optional Recording Fees for Court Facilities in Hidalgo and Cameron | not more than $10 |

To put the reason for the proposal in context, the average "First Page" recording fee is approximately $26, which only includes the Record Management and Preservation, Security, and Archive Fees. As outlined above, the actual cost of recording is frequently higher. If the tax lender were to file a release with an Exhibit in Denton County, for example, the actual recording fees would be $34. If their attorney charges a reasonable fee of $75 for drafting said release, under the current statute, that would only leave $1 for the costs of services related to filing of the release. Under the current rule, filing a release of lien results in a net loss to the property tax lender. An increase in the maximum aggregate fee under 89.602(c) will allow the property tax lender the administrative fee § 89.602(a)(3) clearly intended to allow.

**Redisclosure of APR**

In the OCCC's commentary, it states that after *Billings*, "there is no general requirement for property tax lenders to disclose the APR and cost information before the closing of a property tax loan." However, the OCCC believes this is an important requirement, stating it "provides residential borrowers with a benchmark for comparing property tax loans to other loan products that may serve their needs." The proposed rule change to § 89.504(c) of the Texas Administrative Code requires all information on the disclosure statements to accurately reflect the terms of the property tax loan. It appears the OCCC has mirrored part of the federal regulations in allowing a tolerance of 1/8th of 1 percentage point above or below the actual APR. However, if the OCCC feels adopting the federal approach is appropriate, we would further request the additional tolerance exception allowed under federal regulations permitting APR to be overstated.

While the language in the proposed rules reflects 12 CFR 1026.22(a)(2), it fails to allow the additional tolerance levels afforded by the federal regulations. These tolerances include:

(1) an APR adjustment if a finance charge is understated by not more than $100, and
(2) the finance charge is overstated, and the APR is thus, overstated.

This would implement the ultimate goal of ensuring a potential borrower knows the maximum finance charges to which they may be subject. While failure to redisclose when the APR is actually lower than initially disclosed has a potential negative impact on the lender, the borrower's position is unchanged. Allowing the overstatement of APR, without the subsequent requirement to redisclose, has no negative impact on the consumer, will result in lower transaction costs, and competition will necessarily drive companies to more accuracy. This comment does not intend to change the proposed rule requiring redisclosure of a higher APR that is outside the tolerance and exception afforded by Regulation Z.

**Grant or Below Market Rate Loan**

In response to proposed rule changes, the OCCC noted recommendations to clarify § 32.06(a-8)(1) of the Texas Tax Code, which prohibits a property tax loan on property that "has been financed, wholly or partly, with a grant or below market rate loan provided by a governmental program or nonprofit organization and is subject to the covenants of the grant or loan." The OCCC determined that it did not have sufficient information to suggest a change. Pursuant to its rulemaking authority granted under § 32.06(a-9), we respectfully request the OCCC reconsider its position, and we provide the following for further review.

In 2013, Armando Garza testified at the senate hearing regarding his non-profit, Proyecto Azteca, losing houses to property tax lenders. As a result, §32.06(a)(8)(1) prohibits property tax lenders from conducting a transfer as described above. In practice, it is practically impossible to determine – by the face of a document filed in the real property records – what constitutes a grant or below market rate loan. Attached for reference are three deeds of trust, including one from Proyecto Azteca, that are presumed to fall into the grant or below market rate loan category. None of these documents mentions rate. Barring obtaining more information from property owners (who generally do not have the necessary information available), property tax lenders are unable to determine, using the four corners rule, whether or not the property falls into this prohibition, and consumers are unable to get the assistance they need. For these reasons, we request the OCCC establish a safe-harbor provision for property tax lenders similar to the following:

> A tax lien transferred to the person who pays the taxes on behalf of the property owner is not void under Tax Code § 32.06(a)(8)(1) if the security instrument does not:
>
> (1) specifically identify the governmental program or include the words "nonprofit organization," and
> (2) include the words "grant," "below market rate," or identify it is an interest free transaction.

We regret that we cannot provide the OCCC with more specific examples, but that is essentially the crux of the problem. The statute, as written, is so over-broad that it is prohibiting legitimate business transactions and hurts consumers that would be able to get a tax lien transfer otherwise. If the OCCC still does not believe it has been provided enough information to propose a rule change, we would request an official interpretation so that the industry can begin identifying ways to clarify this section in a future rulemaking action.

Thank you again for the opportunity to provide suggestions for consideration in the upcoming rulemaking process. While we have attempted to explain the purposes for the above recommendations, we would be happy to provide more specific examples or clarification if needed.

Please feel free to contact me if I can be of any further assistance.

Sincerely,

Taylor Kohm
Kohm & Associates, PC

# Sombrero Capital

711 Navarro St., Ste 535
San Antonio, TX 78205


October 2, 2017

Commissioner Leslie Pettijohn
Attn: Laurie Hobbs and Mathew Nance
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 Texas Administrative Code, Title 7, Part 5, Chapter 89, concerning Property Tax Lenders

Dear Commissioner Pettijohn,

I applaud the OCCC's efforts to collect comments from stakeholders to improve and clarify the rules governing Property Tax Lenders ("PTLs") and Tax Lien Transfers ("TLTs"). I adamantly support improving and clarifying regulations to provide fair and honest lending practices for property tax loans in Texas. Please consider my comments and suggestions to improve the proposed rules:

1. **Figure: 7 TAC §89.506(a)(2).** Consumers truly benefit from receiving uniform pricing disclosures. Suggested edits with respect to form:
    a. Do not burden consumers with regulation. Technology allows email senders to receive a confirmation receipt. The proposed rules require a response from customer by email and it is inappropriate to place a regulatory burden on customers.
    b. Replace "Loan Apr Calculation" with "Loan Calculations" since the form discloses other key amounts in addition to the APR.
    c. Allow PTL to overstate APR initially, without having to re-disclose prior to closing, so long as the APR provided at closing is accurate.

2. **Allow $100 in Additional Costs for Each Additional Property**. If a TLT loan is subject to multiple properties, the OCCC must clarify that the PTL may charge up to $100 for each additional property, regardless of property category. The Texas Administrative Code

89.601 (4), only addresses additional residential properties but should also include "non-residential" or simply state "additional property."

3. **Clarify Texas Tax Code 32.06(a-8)(1).** According to this provision, a PTL is prohibited from extending a TLT loan on a property that has been financed by a grant or a below market rate loan. I suggest the OCCC define a below market rate loan as:
    a. *Below Market Rate Loan - A still outstanding loan secured by residential property, owned and used by the property owner for personal, family, or household purposes, that was originated and is still held by a Texas governmental agency with a fixed interest rate at least two percentage points below the prime rate as quoted in the Wall Street Journal or its successor at the time the loan was originated or a still outstanding loan secured by residential property residential property, owned and used by the property owner for personal, family, or household purposes, that was originated and is still held by a Texas governmental agency with a portion of the indebtedness forgivable by the governmental agency with the terms of the forgivable portion of the debt stated in either the Deed of Trust or Promissory Note.*

4. **Clarify Texas Tax Code 32.06(d-1).** The OCCC should clarify scenarios where a PTL may waive the 3 Day Right to Rescind. Suggested scenarios are as follows:
    a. A foreclosure due to tax sale, or;
    b. A significant financial penalty:
        i. June to July increase; or,
        ii. January to February increase (properties not subject to a preexisting mortgage).

I appreciate the opportunity to voice my suggestions. Should you have any questions, please do not hesitate to contact me.

Respectfully,

Eric Covey

Eric S. Covey
CEO
Sombrero Capital

# Texas Property Tax Lienholders Association

October 2, 2017

Laurie B. Hobbs
Assistant General Counsel
Office of Consumer Credit Commissioner
2601 N. Lamar Blvd.
Austin, TX 78705

Dear Ms. Hobbs,

The Texas Property Tax Lienholders Association (TPTLA) greatly appreciates the opportunity to submit feedback on the rulemaking process for property tax lenders. We are appreciative of the Finance Commission's willingness to adopt more rules to improve our industry. The TPTLA offers the following comments in response to the proposed rules affecting property tax lenders published in the Texas Register on September 1, 2017.

The TPTLA encourages the OCCC to conduct a broader rule review in the near future. Our industry has evolved significantly since many of the existing rules were enacted, and several legislative changes have resulted in uncertainty and/or ambiguity as to their meaning. We believe a broader rule-making process would benefit customers, licensees, and all other stakeholders.

As it relates to the existing proposed rules, the TPTLA is supportive of the rules with two important exceptions:

1. Figure: 7 TAC 89.506(a)(1) & Figure: 7 TAC 89.506(a)(2), should be altered to allow for a Refinance of an Existing Loan in the "Loan Amount Itemization" section. There is no clear category where the payoff of an existing property tax loan would be listed; however, this is a common practice and allowable per the OCCC letter issued on July 30, 2015. Our recommendation is that another category be added called "Payoff of Existing Tax Lien." The form would read as follows:

   *Loan Amount Itemization:*
   1. *Amounts paid to taxing units and governmental entities*
   2. *Closing costs*
   3. *Recording costs*
   4. *Payoff of Existing Tax Lien (if applicable)*

**2.** Our final comment relates to the re-disclosure requirement of the APR disclosure in Section 89.504(c). The TPTLA has always sought to ensure transparency and provision of information to ensure our customers are making informed decisions. Even though the Fifth Circuit Court of Appeals concluded that existing laws and regulations do not require that we provide TILA disclosures, our

association supports the adoption of rules that require us to provide disclosures on residential transactions. However, it is critical for our customers and industry that we are able to close a loan very quickly, and requiring us to send a new disclosure each time we learn of a minor, non-financial change would significantly impact our ability to close a loan in a timely manner and thereby help taxpayers avoid the impending additional penalties and interest at month end (ex: a change in the closing date, or recording another document in the deed records, or a reduction in the APR). The TPTLA feels very strongly that the proposed new rule re: re-disclosure would harm consumers and our industry. **The TPTLA proposes that a pre-closing re-disclosure only be required if the APR increases or if closing costs increase. To the extent the APR is unchanged or decreases and/or non-financial terms are changed, we propose requiring a re-disclosure be provided at closing.**

***(c)(1). Annual Percentage Rate and Total of Payments.*** *For a residential property tax loan, the annual percentage rate will be considered accurate if it is not more than 1/8 of 1 percentage point above ~~or below~~ the annual percentage rate determined in accordance with §89.502(2) of this title (relating to Definitions). Moreover, the Total of Payments will be considered accurate if it is not more than $50 above the amount listed on the initial disclosure.*

***(2) Amended Disclosure Statement.*** *At any time after delivering the disclosure statement, if the property tax lender learns that any information on the disclosure statement has changed which results in an increase in APR or an increase in closing costs, then the property tax lender must promptly notify the property owner of the inaccuracy, and must send an amended, accurate disclosure statement to the property owner in a manner described by subsection (d) of this section. The amended disclosure statement must list the date on which it was revised. (c)(2).*

***(3) Exception for Non-Financial Terms or Decrease in APR****. If the APR is unchanged or decreases and/or non-financial information (changes made related to the Borrower, Property Address, Closing Date, Loan ID#, Lender, Lender's Address, OCCC License Number, Loan Originator, or NMLS ID# - collectively referred to as "non-financial information") Is changed, the property tax lender shall be required to provide an amended disclosure at closing.*

Finally, the TPTLA supports a January 1, 2017 implementation date for the new forms and disclosures.

Thank you again for the opportunity to provide additional suggestions for consideration in the rulemaking process.

Please contact me with any questions.

Sincerely,

Monika Wilson
TPTLA Manager
Email Redacted

## D. Office of Consumer Credit Commissioner

4. Discussion of and Possible Vote to Take Action on the Proposal for Publication and Comment of New §2.107 in 7 TAC, Part 1, Chapter 2, Concerning Residential Mortgage Loan Originators Applying for Licensure with the OCCC Under the SAFE Act

**PURPOSE:** The purpose of the proposed new rule is to implement HB 3342, which authorizes the commission to set the expiration period for prelicensing education of residential mortgage loan originators.

**RECOMMENDED ACTION:** The agency requests that the Finance Commission approve proposed new 7 TAC §2.107 for publication in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we approve for publication and comment proposed new 7 TAC §2.107.

*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*
*Subchapter A. Application Procedures for Office of Consumer Credit Commissioner Applicants*
*§2.107. Prelicensing Education*

The Finance Commission of Texas (commission) proposes new §2.107, concerning Prelicensing Education, in 7 TAC, Chapter 2, concerning Residential Mortgage Loan Originators Applying for Licensure with the Office of Consumer Credit Commissioner Under the Secure and Fair Enforcement for Mortgage Licensing Act.

In general, the purpose of the new rule is to implement HB 3342, which the Texas Legislature passed in the 2017 legislative session. HB 3342 authorizes the commission to set the expiration period for prelicensing education of residential mortgage loan originators. Specifically, HB 3342 amends Texas Finance Code, §180.056(h), which currently states: "An individual who fails to maintain a residential mortgage loan originator license for at least five consecutive years must retake the prelicensing education requirements prescribed by the S.A.F.E. Mortgage Licensing Act." HB 3342 amends this provision by replacing "at least five consecutive years" with "the period of time established by rule of the rulemaking authority." In this provision, "rulemaking authority" refers to the commission, as provided by Texas Finance Code, §180.002(21). HB 3342 will go into effect on January 1, 2018.

The agency circulated an early draft of the proposed rule to interested stakeholders. The agency did not receive any informal written precomments on the draft.

Proposed new §2.107 provides a five-year expiration period for prelicensing education. This is the same period described by current Texas Finance Code, §180.056(h). The five-year period is currently used by the Nationwide Multistate Licensing System (NMLS), the system for licensing residential mortgage loan originators.

Proposed §2.107(a) states that if an individual completes the 20 hours of prelicensing education required by the S.A.F.E. Mortgage Licensing Act, 12 U.S.C. §5104(c)(1), and fails to obtain a valid license or federal registration within five years from the date of completion, then the individual must retake the 20 hours of prelicensing education in order to be eligible for licensure. Proposed §2.107(b) states that if an individual obtains a license or federal registration and fails to maintain the license or registration for at least five consecutive years, then the individual must retake the 20 hours of prelicensing education required by the S.A.F.E. Mortgage Licensing Act, 12 U.S.C. §5104(c)(1), in order to be eligible for licensure.

The State Regulatory Registry (SRR) has proposed reducing the five-year expiration period to three years, as explained in SRR's "Response to Comments Received During the SRR Comment Period on the

Proposed Pre-Licensure Education Expiration Policy," dated July 21, 2015. However, this change has not yet taken effect in the NMLS system. The agency anticipates that the change will occur as part of an NMLS update currently scheduled for fall 2018. The agency intends to revisit the rule in 2018. Because the change to a three-year period will take some time to be effective, the commission is currently proposing a five-year period consistent with current requirements.

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 also has 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 new rule will be that the prelicensing education requirements for residential mortgage loan originators will be more easily understood by applicants and licensees, will be more easily enforced, will be consistent with legislation recently passed by the legislature, and will provide guidance and clarity to applicants and licensees.

There is no anticipated cost to persons who are required to comply with the new rule. There will be no adverse economic effect on rural communities or small or micro-businesses. There will be no effect on individuals required to comply with the new rule as proposed.

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 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of business on the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The new rule is proposed under Texas Finance Code, §180.004(b), which grants the commission the authority to implement rules to comply with Texas Finance Code, Chapter 180. Additionally, Texas Finance Code, §180.056(h), as amended by HB 3342, authorizes the commission to adopt a rule establishing the period of time after which an individual must retake prelicensing education requirements. Texas Finance Code, §180.056(a) authorizes the commission to adopt rules providing additional requirements for prelicensing education. Texas Finance Code, §180.061(4) authorizes the commission to adopt rules establishing requirements for any activity the agency considers necessary for participation in NMLS.

The statutory provisions affected by the proposed new rule are contained in Texas Finance Code, §180.056.

*§2.107. Prelicensing Education.*

(a) Failing to obtain license. If an individual completes the 20 hours of prelicensing education required by the S.A.F.E. Mortgage Licensing Act, 12 U.S.C. §5104(c)(1), and fails to obtain a valid RMLO license or federal registration within five years from the date of completion, then

the individual must retake the 20 hours of prelicensing education in order to be eligible for licensure.

(b) Failing to maintain license. If an individual obtains an RMLO license or federal registration and fails to maintain the license or registration for at least five consecutive years, then the individual must retake the 20 hours of prelicensing education required by the S.A.F.E. Mortgage Licensing Act, 12 U.S.C. §5104(c)(1), in order to be eligible for licensure.

**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 October 20, 2017.

Matthew J. Nance
Deputy General Counsel
Office of Consumer Credit Commissioner

## D. OFFICE OF CONSUMER CREDIT COMMISSIONER

5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 5, §83.503 & §90.203, Concerning Regulated Lenders & Plain Language Contract Provisions

**PURPOSE:** The purpose of the rule amendments is to specify that in a consumer loan under Texas Finance Code, Chapter 342, Subchapter E, the administrative fee may be included in the cash advance or principal balance on which interest is computed.

**RECOMMENDED ACTION:** The agency requests that the Finance Commission approve the amendments to 7 TAC §83.503 & §90.203 for publication in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we approve for publication and comment the amendments to 7 TAC §83.503 & §90.203.

*Title 7. Banking and Securities*
*Part 5. Office of Consumer Credit Commissioner*
*Chapter 83. Regulated Lenders and Credit Access Businesses*
*Chapter 90. Chapter 342, Plain Language Contract Provisions*

The Finance Commission of Texas (commission) proposes amendments to §83.503 in Chapter 83, concerning Regulated Lenders and Credit Access Businesses, and §90.203 in Chapter 90, concerning Chapter 342, Plain Language Contract Provisions.

In general, the purpose of the rule amendments is to specify that in a consumer loan under Texas Finance Code, Chapter 342, Subchapter E, the administrative fee may be included in the cash advance or principal balance on which interest is computed.

In 2013, the Texas Legislature passed SB 1251, which amended Texas Finance Code, §342.201 to provide that the Subchapter E administrative fee is not considered interest, and authorized the commission to set the maximum amount of the administrative fee. The administrative fee is a flat, nonrefundable charge paid to the lender. The commission adopted a rule at current 7 TAC §83.503(1), specifying that the maximum amount of the administrative fee is $100. Since 2013, the agency has received questions from stakeholders about whether the administrative fee can be included in the cash advance or principal balance on which interest is computed. This issue is not addressed in the current rules.

The agency circulated an early draft of the rule changes to interested stakeholders. The agency received two informal written precomments, both supporting the draft as written.

Proposed §83.503(5) explains that the administrative fee may be included in the cash advance or principal balance on which interest is computed. This amendment is consistent with Texas Finance Code, §342.201(f), which specifies that the administrative fee is not interest. The amendment is also consistent with the definition of "cash advance" in Texas Finance Code, §341.001(3), which includes an "amount that is paid at the borrower's direction or request, on the borrower's behalf, or for the borrower's benefit." In addition, the amendment is consistent with Texas case law governing the calculation of the principal balance for a loan. *See Tanner Dev. Co. v. Ferguson*, 561 S.W.2d 777, 782 (Tex. 1977) (holding that the true principal of a loan is calculated by subtracting interest from the amount advanced to the borrower).

Proposed amendments to §90.203(b)(7) add model plain language clauses to be used in transactions where the lender finances the administrative fee. Lenders that do not finance the administrative fee will be able to continue using the current model clauses in §90.203(b)(7). The amendments specify that the current model clauses should be used when the administrative fee is paid in cash or is not included in the cash advance on which interest is computed. The current model clauses are amended to include updated rate bracket amounts under Texas Finance Code, §342.201. The amendments also add new clauses to be used when the administrative fee is financed. Each of the new clauses includes a statement of the amount of the cash advance, in order to

ensure that the contract discloses the specific amount on which interest will be computed.

Current figures in §90.203(b)(7)(A), (b)(7)(C), and (b)(7)(E), have been amended and renumbered as (b)(7)(A)(i), (b)(7)(C)(i), and (b)(7)(E)(i). New figures have been added at §90.203(b)(7)(A)(ii), (b)(7)(C)(ii), and (b)(7)(E)(ii), for use when the administrative fee is financed.

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

Commissioner Pettijohn also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the changes will be that the commission's rules will provide clearer guidance and will be more easily understood. Another public benefit of these rule amendments will be increased uniformity and consistency in loan contracts. The new model clauses in §90.203 will help lenders reduce the current cost of developing new loan contracts and submitting them as non-standard plain language contracts.

There is no anticipated cost to persons who are required to comply with the proposed amendments. There will be no adverse economic effect on rural communities or small or micro businesses. There will be no effect on individuals required to comply with the amendments as proposed.

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 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of business on the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The amendments are proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, the amendment to §83.503 is proposed under Texas Finance Code, §342.551, which authorizes the commission to adopt rules to enforce Chapter 342. The amendments to §90.203 are proposed under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of plain language contracts for loans under Chapter 342.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, §341.502 and §342.201.

*Chapter 83. Regulated Lenders and Credit Access Businesses*

*§83.503. Administrative Fee.*

An authorized lender may collect an administrative fee pursuant to Texas Finance Code, §342.201(f), on interest-bearing and precomputed loans.

(1) - (4) (No change.)

(5) The administrative fee may be included in the cash advance on which interest is computed under Texas Finance Code, §342.201(a) or (e). The administrative fee may be included in the principal balance on which interest is computed under Texas Finance Code, §342.201(d).

*Chapter 90. Chapter 342, Plain Language Contract Requirements*

*§90.203. Model Clauses.*

(a) (No change.)

(b) Model clauses for a Chapter 342, Subchapter E secured consumer installment loan contract.

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

(7) Finance charge earnings and refund method. The model finance charge earnings and refund method clauses include rate bracket amounts that are updated annually in the Texas Credit Letter. The model finance charge earnings and refund method clause options read:

(A) For contracts using the scheduled installment earnings method, Texas Finance Code, §342.201(a):

(i) For use when the administrative fee is paid in cash or is not included in the cash advance on which interest is computed:

Figure: 7 TAC §90.203(b)(7)(A)(i) *{See attached amendments, renumbered from 7 TAC §90.203(b)(7)(A).}*

(ii) For use when the administrative fee is financed:

Figure: 7 TAC §90.203(b)(7)(A)(ii) *{New figure.}*

(B) For contracts using the scheduled installment earnings method, Texas Finance Code, §342.201(d):

(i) For use when the administrative fee is paid in cash or is not included in the principal balance on which interest is computed: "The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. I will not get a refund if the refund would be less than $1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment."

(ii) For use when the administrative fee is financed: "The cash advance is $____. The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. The unpaid cash advance includes the administrative fee, but does not include late charges and returned check charges. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. I will not get a refund if the refund would be less than $1.00. You base the Finance Charge and

Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment."

(C) For contracts using the scheduled installment earnings method, Texas Finance Code, §342.201(e):

(i) For use when the administrative fee is paid in cash or is not included in the cash advance on which interest is computed:

Figure: 7 TAC §90.203(b)(7)(C)(i) *{See attached amendments, renumbered from 7 TAC §90.203(b)(7)(C).}*

(ii) For use when the administrative fee is financed:

Figure: 7 TAC §90.203(b)(7)(C)(ii) *{New figure.}*

(D) For contracts using the scheduled installment earnings method, Texas Finance Code, §342.201(d):

(i) For use when the administrative fee is paid in cash or is not included in the principal balance on which interest is computed: "The annual rate of interest is _____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment."

(ii) For use when the administrative fee is financed: "The cash advance is $____. The annual rate of interest is _____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment."

(E) For contracts using the true daily earnings method, Texas Finance Code, §342.201(e):

(i) For use when the administrative fee is paid in cash or is not included in the cash advance on which interest is computed:

Figure: 7 TAC §90.203(b)(7)(E)(i) *{See attached amendments, renumbered from 7 TAC §90.203(b)(7)(E).}*

(ii) For use when the administrative fee is financed:

Figure: 7 TAC §90.203(b)(7)(E)(ii) *{New figure.}*

(8) - (27) (No change.)

**Certification**

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

Issued in Austin, Texas on October 20, 2017.

Matthew J. Nance
Deputy General Counsel
Office of Consumer Credit Commissioner

**Amended Figure 7 TAC §90.203(b)(7)(A)(i) [~~§90.203(b)(7)(A)~~]**
(Add-on method under §342.201(a), administrative fee not financed)

"Interest will be calculated by using the add-on interest method. Add-on interest is calculated on the full amount of the cash advance and added as a lump sum to the cash advance for the full term of the loan. The interest charge will be:

- $18.00 per $100.00 per year on that portion of the cash advance that is $2,070 [~~$2,010~~] or less; and

- $8.00 per $100.00 per year on that portion of the cash advance that is greater than $2,070 [~~$2,010~~] through $17,250 [~~$16,750~~].

You base the Finance Charge and the Total of Payments as if I will make each payment on the day it is due. I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. The amount I save will be figured using the scheduled installment earnings method as defined by the Texas Finance Code. I will not get a refund if the amount I save would be less than $1.00."

**New Figure 7 TAC §90.203(b)(7)(A)(ii)**
(Add-on method under §342.201(a), administrative fee financed)

"The cash advance is $____. Interest will be calculated by using the add-on interest method. Add-on interest is calculated on the full amount of the cash advance and added as a lump sum to the cash advance for the full term of the loan. The interest charge will be:

- $18.00 per $100.00 per year on that portion of the cash advance that is $2,070 or less; and

- $8.00 per $100.00 per year on that portion of the cash advance that is greater than $2,070 through $17,250.

You base the Finance Charge and the Total of Payments as if I will make each payment on the day it is due. I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. The amount I save will be figured using the scheduled installment earnings method as defined by the Texas Finance Code. I will not get a refund if the amount I save would be less than $1.00."

**Amended Figure 7 TAC §90.203(b)(7)(C)(i) [~~§90.203(b)(7)(C)~~]**
(Scheduled installment earnings method under §342.201(e), administrative fee not financed)

"The annual rate of interest is: (1) 30% on the unpaid cash advance that is $3,450.00 [~~$3,350.00~~] or less; (2) 24% on the unpaid cash advance that is greater than $3,450.00 [~~$3,350.00~~] through $7,245.00 [~~$7,035.00~~]; and (3) 18% on the unpaid cash advance that is greater than $7,245.00 [~~$7,035.00~~] through $17,250 [~~$16,750~~]. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. I will not get a refund if the refund would be less than $1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment."

**New Figure 7 TAC §90.203(b)(7)(C)(ii)**
(Scheduled installment earnings method under §342.201(e), administrative fee financed)

"The cash advance is $____. The annual rate of interest is: (1) 30% on the unpaid cash advance that is $3,450.00 or less; (2) 24% on the unpaid cash advance that is greater than $3,450.00 through $7,245.00; and (3) 18% on the unpaid cash advance that is greater than $7,245.00 through $17,250.00. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code. The unpaid cash advance includes the administrative fee, but does not include late charges and returned check charges. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. I will not get a refund if the refund would be less than $1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment."

**Amended Figure 7 TAC §90.203(b)(7)(E)(i) [~~§90.203(b)(7)(E)~~]**
(True daily earnings method under §342.201(e), administrative fee not financed)

"The annual rate of interest is: (1) 30% on the unpaid cash advance that is $3,450.00 [~~$3,350.00~~] or less; (2) 24% on the unpaid cash advance that is greater than $3,450.00 [~~$3,350.00~~] through $7,245.00 [~~$7,035.00~~]; and (3) 18% on the unpaid cash advance that is greater than $7,245.00 [~~$7,035.00~~] through $17,250 [~~$16,750~~]. This interest rate may not be the same as the Annual Percentage Rate. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment."

**New Figure 7 TAC §90.203(b)(7)(E)(ii)**
(True daily earnings method under §342.201(e), administrative fee financed)

"The cash advance is $____. The annual rate of interest is: (1) 30% on the unpaid cash advance that is $3,450.00 or less; (2) 24% on the unpaid cash advance that is greater than $3,450.00 through $7,245.00; and (3) 18% on the unpaid cash advance that is greater than $7,245.00 through $17,250. This interest rate may not be the same as the Annual Percentage Rate. The unpaid cash advance includes the administrative fee, but does not include late charges and returned check charges. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment."