

A.

Finance Commission

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FINANCE COMMISSION OF TEXAS

MEETING DATE**June 10, 2016**

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

CONTACT INFORMATION.....Phone: (512) 936-6222
Email: Finance.Commission@fc.texas.gov
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FUTURE MEETING DATESAugust 19, 2016
October 21, 2016
December 16, 2016

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

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FINANCE COMMISSION AGENDA

Friday, June 10, 2016

9:00 a.m. or upon adjournment of the Strategic Planning 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, B5-7, C2-C4, and D2-D7*

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

A. FINANCE COMMISSION MATTERS

- 1. Review and Approval of the Minutes of the April 15, 2016 Finance Commission Meeting**
2. General Public Comment
3. Consent Agenda
4. Finance Commission Operations
5. Audit Committee Report
 - A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Office of Consumer Credit Commissioner's 2016 Motor Vehicle Sales Finance Examination Area as Prepared and Presented by Garza/Gonzalez and Associates
 - B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Department of Banking's Fiscal Year 2016 Annual Internal Audit Report as Prepared and Presented by Garza/Gonzalez and Associates
 - C. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Internal Auditor Contract for Garza/Gonzalez & Associates for Fiscal Year 2017
 - D. Report on Activities Relating to the Texas Financial Education Endowment Fund
6. Strategic Planning Committee Report
 - A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the 2017 – 2021 Strategic Plans
 1. Department of Savings and Mortgage Lending

2. Office of Consumer Credit Commissioner
3. Texas Department of Banking

B. Discussion of the 2017 – 2021 Strategic Plan for the Texas Finance Commission

7. Discussion of and Possible Vote to Take Action on the Adoption of the Completed Rule Review of 7 TAC, Part 8, Chapter 151, Concerning Home Equity Lending Procedures; Chapter 152, Concerning Repair, Renovation, and New Construction on Homestead Property; and Chapter 153, Concerning Home Equity Lending
8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 8, Chapter 153, Concerning Home Equity Lending, Resulting from Rule Review
9. Discussion of and Possible Vote to Take Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Duties and Compensation of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to the Duties and Compensation of Persons Holding the Position of Agency Commissioner Positions, and Other Staff
10. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to §551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property
11. Discussion and Consultation with Attorney and Possible Vote to Take Action Pursuant to §551.071, Texas Government Code, for the purpose of seeking the advice or attorney-client privileged communications from our attorneys, including matters related to the potential financial exposure of the Finance Commission Agencies and their officers and the Finance Commission and its officers and including matters of pending and contemplated litigation

B. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

1. Industry Status and Departmental Operations - State Savings Bank Activity: a) Industry Status; b) State Savings Bank Charter and Application Activity; c) Other Items
2. Industry Status and Departmental Operations – Mortgage Lending Activity: a) Residential Mortgage Loan Originators; b) Mortgage Examination; c) Consumer Complaint; d) Legal; and e) Other Items
3. Fiscal/Operations Activity: a) Funding Status/Audits/Financial Reporting; b) Staffing; c) Other Items; and d) Legislative Activity
4. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

Catherine Sims vs. Texas Department of Savings and Mortgage Lending,
Cause No. D-1-GN-16-001194, 201st District Court, Travis County, Texas.

5. ***Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §79.1, Concerning Definitions, and §79.2, Concerning Required Disclosure***
6. ***Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §80.2, Concerning Definitions, §80.204, Concerning Books and Records, and §80.205, Concerning Mortgage Call Reports***

7. *Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §81.2, Concerning Definitions, §81.204, Concerning Books and Records, and §81.205, Concerning Mortgage Call Reports*

C. OFFICE OF CONSUMER CREDIT COMMISSIONER

1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities
2. *Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 1, §1.201, Concerning Interpretations and Advisory Letters, Resulting from Rule Review*
3. *Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 5, Chapter 82, Concerning Administration, Resulting from Rule Review*
4. *Discussion of and Possible Vote to Take Action on the Adoption of the Completed Rule Review of 7 TAC, Part 5, Chapter 87, Concerning Tax Refund Anticipation Loans*
5. 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 83, Subchapter A, Concerning Rules for Regulated Lenders
6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments and a New Rule in 7 TAC, Part 5, Chapter 87, Concerning Tax Refund Anticipation Loans, Resulting from Rule Review
7. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

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

D. TEXAS DEPARTMENT OF BANKING

1. Industry Status and Departmental Operations: a) Items of Interest from the Commissioner's Office; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Special Audits Division Activities; e) Administrative and Fiscal Division Activities; f) Strategic Support Division Activities; g) Legal Division Activities; h) Legislative Activities; and i) General Items of Interest
2. *Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, §24.1 Concerning Registration of Cemetery Brokers*
3. *Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC, §24.4 Concerning Appeal of Delay in Registration Processing Times of Cemetery Brokers*

4. *Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, §31.18 Concerning When a Child Support Enforcement Application or Notice is Abandoned*
5. *Discussion of and Possible Vote to Take Action on the Adoption of Amendment to 7 TAC, §31.19 Concerning When and How a Private Child Support Enforcement Agency's Certificate of Registration Will be Issued and Mailed*
6. *Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC, §31.20 Concerning What Remedy is Available if the Department Does Not Comply with the Private Child Support Enforcement Registration Processing Times*
7. *Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC, §35.18 Concerning How Long the Department Will Take to Process Registration of Check Verification Entities, and §35.19 Concerning What Remedy is Available If the Department Does Not Comply with the Registration Processing Times of Check Verification Entities*
8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §11.37 Concerning Complaint Notices
9. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

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

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

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, April 15, 2016
8:30 a.m.**

The Finance Commission of Texas convened at 8:50 a.m. on April 15, 2016 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

Finance Commission Members Absent:

Victor Leal

Finance Commission Chairman Stacy G. London announced a quorum with ten members present.

Stacy G. London made a motion to excuse Victor Leal from the Finance Commission meeting held on April 15, 2016. There were no objections and the motion passed unanimously.

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
A. FINANCE COMMISSION MATTERS		
1. Introduction of new Finance Commission Members and Committee Assignments	No Action Required	18:38 start of discussion
2. Review and Approval of the Minutes of the February 19, 2016 Finance Commission Meeting	On Consent Agenda – Item A2 This item approved on the Consent Agenda.	24:18 start of discussion
3. General Public Comment	No Action Required	24:22 start of discussion
4. Consent Agenda - Items A2, B3-4, C2-C6, and D7-D9	Will Lucas made a motion to approve the Consent Agenda. Jay Shands seconded and the motion passed.	25:35 start of discussion 26:11 vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
5. Finance Commission Operations	No Action Required.	27:04 start of discussion
6. Audit Committee Report		
<p>A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' February 29, 2016 Investment Officer Reports</p> <ol style="list-style-type: none"> 1. Office of Consumer Credit Commissioner 2. Texas Department of Banking 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' February 29, 2016 Investment Officer Reports passed.	33:00 start of discussion 33:21 vote
<p>B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2016 Second Quarter Financial Statements</p> <ol style="list-style-type: none"> 1. Office of Consumer Credit Commissioner 2. Texas Department of Banking 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' 2016 Second Quarter Financial Statements passed.	33:28 start of discussion 33:39 vote
<p>C. Report on Activities Relating to the Texas Financial Education Endowment Fund</p>	No Action Required.	33:44 start of discussion
7. Discussion of and Possible Vote to Take Action on the Finance Commission Agency Heads' Fiscal Year 2016 Mid-Term Accomplishment Reports	Phillip Holt made a motion to Approve the Finance Commission Agency Heads' Fiscal Year 2016 Mid-Term Accomplishment Reports. Lori McCool seconded and the motion passed.	34:04 start of discussion 34:28 vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
8. Discussion of and Possible Vote to Accept the Report on the Financial Condition of the State Banking System (bound separately from the packet)	Molly Curl made a motion to Accept the Report on the Financial Condition of the State Banking System. Lori McCool seconded and the motion passed.	34:41 start of discussion 1:12:09 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
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 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.	1:12:52 start of discussion
2. Discussion of and Possible Vote to to Take Action on the Adoption of Amendments, New Rules, and	Paul Plunket made a motion to approve the Adoption of	1:32:40 start of

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
Repeals to 7 TAC, Chapter 84, Concerning Motor Vehicle Installment Sales, Resulting from Rule Review	Amendments, New Rules, and Repeals to 7 TAC, Chapter 84, Concerning Motor Vehicle Installment Sales, Resulting from Rule Review. Will Lucas seconded and the motion passed.	discussion 2:08:28 vote
3. Discussion of and Possible Vote to Take Action on the Adoption of the Completed Rule Review of 7 TAC, Part 1, Chapter 1, Concerning Consumer Credit Regulation	On Consent Agenda – Item B3 This item approved on the Consent Agenda.	n/a
4. Discussion of and Possible Vote to Take Action on the Adoption of the Completed Rule Review of 7 TAC, Part 5, Chapter 82, Concerning Administration	On Consent Agenda – Item B4 This item approved on the Consent Agenda.	n/a
5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment on Amendments to 7 TAC, Part 1, §1.201, Concerning Interpretations and Advisory Letters, Resulting from Rule Review	Jay Shands made a motion to approve the Proposal and Publication for Comment on Amendments to 7 TAC, Part 1, §1.201, Concerning Interpretations and Advisory Letters, Resulting from Rule Review. Molly Curl seconded and the motion passed.	2:09:01 start of discussion 2:10:30 vote
6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment on Amendments to 7 TAC, Part 5, Chapter 82, Concerning Administration, Resulting from Rule Review	Lori McCool made a motion to approve the Proposal and Publication for Comment on Amendments to 7 TAC, Part 5, Chapter 82, Concerning Administration, Resulting from Rule Review. Will Lucas seconded and the motion passed.	2:10:40 start of discussion 2:14:06 vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<p>7. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation</p> <p><i>Lynn Rowell d/b/a Beaumont Greenery, MPC Data and Communications, Inc., Micah Cooksey, NXT Properties, Inc., Mark Harken, Montgomery Chandler, Inc., Paula Cook, Townsley Designs, LLC, and Shonda Townsley v. Leslie L. Pettijohn, in her official capacity as Commissioner of the Office of Consumer Credit Commissioner of the State of Texas; Cause No. 15-50168, in the United States Court of Appeals for the Fifth Circuit</i></p>	No Action Required.	n/a
C. TEXAS DEPARTMENT OF BANKING		
<p>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</p>	No Action Required.	2:14:48 start of discussion
<p>2. Discussion of and Possible Vote to Take Action on the Adoption of Amendment to 7 TAC, §15.42 Concerning Establishment and Closing of a Branch Office</p>	<p>On Consent Agenda – Item C2</p> <p>This item approved on the Consent Agenda.</p>	n/a
<p>3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, §15.2 and §15.3 Concerning Filing and Investigation Fees and Expedited Filings, Respectively</p>	<p>On Consent Agenda – Item C3</p> <p>This item approved on the Consent Agenda.</p>	n/a
<p>4. Discussion of and Possible Vote to Take Action on the Adoption of Repeal of 7 TAC, §19.1 and §19.21 Concerning Trust Company Grandfathered Loans and Grandfathered Investments, Respectively</p>	<p>On Consent Agenda – Item C4</p> <p>This item approved on the Consent Agenda.</p>	n/a

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
5. Discussion of and Possible Vote to Take Action on the Adoption of Amendment to 7 TAC, §21.24 Concerning Exemptions for Family Trust Companies	On Consent Agenda – Item C5 This item approved on the Consent Agenda.	n/a
6. Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC, §21.43 Concerning Representative Trust Offices of Federally Chartered or Federally Insured Out-Of-State Banks and §21.44 Concerning Representative Trust Offices of Out-Of – State Trust Companies and Uninsured Banks	On Consent Agenda – Item C6 This item approved on the Consent Agenda.	n/a
7. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, §24.1 Concerning Registration of Cemetery Brokers	Molly Curl made a motion to approve the Proposal and Publication for Comment of Amendments to 7 TAC, §24.1 Concerning Registration of Cemetery Brokers. Paul Plunket seconded and the motion passed.	2:39:12 start of discussion 2:39:50 vote
8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC, §24.4 Concerning Appeal of Delay in Registration Processing Times of Cemetery Brokers	Hector Cerna made a motion to approve the Proposal and Publication for Comment of New 7 TAC, §24.4 Concerning Appeal of Delay in Registration Processing Times of Cemetery Brokers. Will Lucas seconded and the motion passed.	2:40:08 start of discussion 2:40:38 vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<p>9. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, §31.18 Concerning When a Child Support Enforcement Application or Notice is Abandoned</p>	<p>Lori McCool made a motion to approve the Proposal and Publication for Comment of Amendments to 7 TAC, §31.18 Concerning When a Child Support Enforcement Application or Notice is Abandoned. Matt Moore seconded and the motion passed.</p>	<p>2:40:47 start of discussion 2:41:40 vote</p>
<p>10. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendment to 7 TAC, §31.19 Concerning When and How a Private Child Support Enforcement Agency's Certificate of Registration Will be Issued and Mailed</p>	<p>Molly Curl made a motion to approve the Proposal and Publication for Comment of Amendment to 7 TAC, §31.19 Concerning When and How a Private Child Support Enforcement Agency's Certificate of Registration Will be Issued and Mailed. Lori McCool seconded and the motion passed</p>	<p>2:41:44 start of discussion 2:42:29 vote</p>
<p>11. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC, §31.20 Concerning What Remedy is Available if the Department Does Not Comply with the Private Child Support Enforcement Registration Processing Times</p>	<p>Molly Curl made a motion to approve the Proposal and Publication for Comment of New 7 TAC, §31.20 Concerning What Remedy is Available if the Department Does Not Comply with the Private Child Support Enforcement Registration Processing Times. Jay Shands seconded and the motion passed.</p>	<p>2:42:33 start of discussion 2:42:56 vote</p>
<p>12. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC, §35.18 Concerning How Long the Department Will Take to Process Registration of Check Verification Entities, and §35.19 Concerning What Remedy is Available If the Department Does Not Comply with the Registration Processing Times of Check Verification Entities</p>	<p>Will Lucas made a motion to approve the Proposal and Publication for Comment of New 7 TAC, §35.18 Concerning How Long the Department Will Take to Process Registration of Check Verification Entities, and §35.19 Concerning What Remedy is Available If the Department Does Not Comply with the Registration Processing Times of Check</p>	<p>2:43:21 start of discussion 2:44:20 vote</p>

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
	Verification Entities. Matt Moore seconded and the motion passed.	
<p>13. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation</p> <p><i>Antioch St. Johns Cemetery Co. v. The Texas Department of Banking Commissioner</i>, Cause No. 03-15-00341-CV, In the Third Court of Appeals, Austin, Texas.</p> <p><i>State of Texas v. Myrtlewood Memorial Services, Inc. d/b/a Harlingen-Combes Memorial Cemetery</i>, Cause No.D-1-GN-16-000565, 353rd District Court, Travis County, Texas.</p>	No Action Required	n/a
D. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING		
<p>1. Industry Status and Departmental Operations - State Savings Bank Activity: a) Industry Status; b) State Savings Bank Charter and Application Activity; c) Other Items</p>	No Action Required.	2:44:46 start of discussion
<p>2. Industry Status and Departmental Operations – Mortgage Lending Activity: a) Residential Mortgage Loan Originators; b) Mortgage Examination; c) Consumer Complaint; d) Legal; and e) Other Items</p>	No Action Required.	2:51:17 start of discussion
<p>3. Fiscal/Operations Activity: a) Funding Status/Audits/Financial Reporting; b) Staffing; c) Other Items; and d) Legislative Activity</p>	No Action Required.	3:02:57 start of discussion

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<p>4. Discussion of and Possible Vote to Take Action on</p> <p>anticipated and Pending Litigation <i>Catherine Sims vs. Texas Department of Savings and Mortgage Lending</i>, Cause No. D-1-GN-16-001194, 201st District Court, Travis County, Texas.</p>	<p>No Action Required.</p>	<p>n/a</p>
<p>5. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Chapters 51, 53, 57, 59, 61, 63-65, 67, 69, 71, and 73 Concerning Savings and Loan Associations, Resulting from Rule Review</p>	<p>Molly Curl made a motion to approve the Adoption of Amendments to 7 TAC, Chapters 51, 53, 57, 59, 61, 63-65, 67, 69, 71, and 73 Concerning Savings and Loan Associations, Resulting from Rule Review. Bob Borochoff seconded and the motion passed.</p>	<p>3:07:10 start of discussion 3:10:24 vote</p>
<p>6. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Chapters 75-77 Concerning Savings Banks, Resulting from Rule Review</p>	<p>Will Lucas made a motion to approve the Adoption of Amendments to 7 TAC, Chapters 75-77 Concerning Savings Banks, Resulting from Rule Review. Paul Plunket seconded and the motion passed.</p>	<p>3:10:32 start of discussion 3:12:11 vote</p>
<p>7. Discussion of and Possible Vote to Take Action on the Completed Rule Review of 7 TAC, Chapter 79, Concerning Residential Mortgage Loan Servicers</p>	<p>On Consent Agenda – Item D7 This item approved on the Consent Agenda.</p>	<p>n/a</p>
<p>8. Discussion of and Possible Vote to Take Action on the Completed Rule Review of 7 TAC Chapter 80, Concerning Texas Residential Mortgage Loan Companies</p>	<p>On Consent Agenda – Item D8 This item approved on the Consent Agenda.</p>	<p>n/a</p>
<p>9. Discussion of and Possible Vote to Take Action on the Completed Rule Review of 7 TAC Chapter 81,</p>	<p>On Consent Agenda – Item D9 This item approved on the</p>	<p>n/a</p>

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
Concerning Mortgage Bankers and Residential Mortgage Loan Originators	Consent Agenda.	
10. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §79.1, Concerning Definitions, and §79.2, Concerning Required Disclosure	Jay Shands made a motion to approve the Proposal and Publication for Comment of Amendments to 7 TAC §79.1, Concerning Definitions, and §79.2, Concerning Required Disclosure. Molly Curl seconded and the motion passed.	3:12:20 start of discussion 3:13:30 vote
11. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §80.2, Concerning Definitions, §80.204, Concerning Books and Records, and §80.205, Concerning Mortgage Call Reports	Matt Moore made a motion to approve the Proposal and Publication for Comment of Amendments to 7 TAC §80.2, Concerning Definitions, §80.204, Concerning Books and Records, and §80.205, Concerning Mortgage Call Reports. Will Lucas seconded and the motion passed.	3:13:36 start of discussion 3:14:47 vote
12. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §81.2, Concerning Definitions, §81.204, Concerning Books and Records, and §81.205, Concerning Mortgage Call Reports	Paul Plunket made a motion to approve the Proposal and Publication for Comment of Amendments to 7 TAC §81.2, Concerning Definitions, §81.204, Concerning Books and Records, and §81.205, Concerning Mortgage Call Reports. Phillip Holt seconded and the motion passed.	3:14:55 start of discussion 3:16:01 vote

Chairman Stacy G. London called for an Executive Session at 12:12 p.m. *(3:16:08 on the audio file)*. The open meeting resumed at 12:39 p.m. *(3:16:52 on the audio file)*.

There being no further business, Chairman Stacy G. London adjourned the meeting of the Finance Commission at 12:40 p.m. *(3:17:19 on the audio file)*

Stacy G. London, Chairman
Finance Commission of Texas

Charles G. Cooper, Executive Director
Finance Commission of Texas

Anne Benites, Executive Assistant
Finance Commission of Texas

Finance Commission of Texas

Consent Agenda

June 10, 2016

A. Finance Commission Matters

1. Review and Approval of the Minutes of the April 15, 2016, Finance Commission Meeting

B. Department of Savings and Mortgage Lending

5. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §79.1, Concerning Definitions, and §79.2, Concerning Required Disclosure
6. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §80.2, Concerning Definitions, §80.204, Concerning Books and Records, and §80.205, Concerning Mortgage Call Reports
7. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §81.2, Concerning Definitions, §81.204, Concerning Books and Records, and §81.205, Concerning Mortgage Call Reports

C. Office of Consumer Credit Commissioner

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 1, §1.201, Concerning Interpretations and Advisory Letters, Resulting from Rule Review
3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 5, Chapter 82, Concerning Administration, Resulting from Rule Review
4. Discussion of and Possible Vote to Take Action on the Adoption of the Completed Rule Review of 7 TAC, Part 5, Chapter 87, Concerning Tax Refund Anticipation Loans

D. Texas Department of Banking

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, §24.1 Concerning Registration of Cemetery Brokers
3. Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC, §24.4 Concerning Appeal of Delay in Registration Processing Times of Cemetery Brokers

4. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, §31.18 Concerning When a Child Support Enforcement Application or Notice is Abandoned
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Future Meetings Rule Schedule

Rules	Short Title/Purpose	Projected Proposal Date for Presentation to Finance Commission	Agency
7 TAC, §79.30	Appeals and Hearings related to Residential Mortgage Loan Servicers <i>Amendments</i>	8/19/16	SML
7 TAC, §80.302	Appeals and Hearings related to Residential Mortgage Loan Companies <i>Amendments</i>	8/19/16	SML
7 TAC, §81.302	Appeals and Hearings related to Mortgage Bankers and Residential Mortgage Loan Originators <i>Amendments</i>	8/19/16	SML
7 TAC, Chapter 83, Subchapter B	Rules for Credit Access Businesses <i>Amendments</i>	8/19/16	OCCC
7 TAC, Chapter 85, Subchapter A	Rules for Operation of Pawnshops <i>Amendments</i>	8/19/16	OCCC
7 TAC, §§25.1 - 25.6	Rules for Prepaid Funeral Contract Forms <i>Amendments</i>	8/19/16	DOB

A. Finance Commission Matters

7. Discussion of and Possible Vote to Take Action on the Adoption of the Completed Rule Review of 7 TAC, Part 8, Chapter 151, Concerning Home Equity Lending Procedures; Chapter 152, Concerning Repair, Renovation, and New Construction on Homestead Property; and Chapter 153, Concerning Home Equity Lending

PURPOSE: Pursuant to Texas Government Code, §2001.039, the agency has completed the review of 7 TAC, Part 8, Chapters 151, 152, and 153. The notice of the review was published in the *Texas Register* as required on February 26, 2016 (41 TexReg 1503). The commission received one comment in response to that notice. The commission believes that the reasons for initially adopting these rules continue to exist. As a result of internal review by the agencies, the commission has determined that certain revisions are appropriate and necessary. Amendments to Chapter 153 are being separately presented for proposal and include certain recommendations made by the commenter.

RECOMMENDED ACTION: The agencies request that the Finance Commission approve and adopt the rule review of Chapters 151, 152, and 153 as the reasons for these rules continue to exist.

RECOMMENDED MOTION: I move that we find that the reasons for adopting Chapters 151, 152, and 153 continue to exist and that the rules are repropose and readopted.

Title 7. Banking and Securities

Part 8. Joint Financial Regulatory Agencies

Chapter 151. Home Equity Lending Procedures

Chapter 152. Repair, Renovation, and New Construction on Homestead Property

Chapter 153. Home Equity Lending

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") have completed the review of the following chapters of Texas Administrative Code, Title 7, Part 8:

Chapter 151 (relating to Home Equity Lending Procedures), consisting of §§151.1-151.8;

Chapter 152 (relating to Repair, Renovation, and New Construction on Homestead Property), consisting of §§152.1, 152.3, 152.5, 152.7, 152.9, 152.11, 152.13, and 152.15; and

Chapter 153 (relating to Home Equity Lending), consisting of §§153.1-153.5, 153.7-153.18, 153.20, 153.22, 153.24, 153.25, 153.41, 153.51, 153.82, 153.84-153.88, and 153.91-153.96.

Notice of the review of 7 TAC, Part 8, Chapters 151, 152, and 153 was published in the *Texas Register* as required on February 26, 2016 (41 TexReg 1503). 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") received one comment on the notice of intention to review. The comment was submitted by Black, Mann & Graham, L.L.P. The commenter makes several recommendations for amendments to the interpretations in Chapter 153.

In §153.8, the commenter makes two recommendations. First, the commenter recommends adding a new paragraph describing a situation where the borrower "is considered the owner" for purposes of the constitutional home equity provisions. The commissions disagree with this recommendation. The commissions believe that this revision is unnecessary, because the current provision provides sufficient guidance to lenders, and the commenter's recommended text incorrectly assumes that the borrower is the only owner of the homestead. Second, in §153.8(5), the commenter recommends correcting the current reference to "50(a)(H)" to correctly refer to Section 50(a)(6)(H). In response to this recommendation, the commissions are proposing an amendment to §153.8(5), published elsewhere in this issue of the *Texas Register*, that corrects this citation.

In §153.10, the commenter recommends "that §153.10(2) be revised to clarify that if the property ceases to be the homestead of the owner, and the owner's spouse, who makes the equity loan, the equity loan may be treated by the lender or any other lender as a valid non-home equity loan secured by the property." The commissions disagree with this recommendation. The commissions believe that this revision is unnecessary, because the current provision provides sufficient guidance to lenders, and the commenter's recommended amendment uses unclear terminology.

In §153.12, the commenter suggested deleting a sentence about providing a required disclosure to married owners, and suggested adding the following sentence: "For married owners, only the spouse who will sign the equity loan debt instrument (e.g., a promissory note) is 'the owner' for purposes of Section 50(a)(6)(M)(i)." The commissions disagree with this recommendation, because the commenter's recommended amendment incorrectly assumes that the borrower is the only owner of the homestead.

In §153.13, the commenter makes three recommendations. First, the commenter recommends adding a statement that the preclosing disclosure requirement is limited to costs charged at closing. The commissions disagree with this recommendation. This revision is unnecessary, because the provisions identify the disclosures that lenders can provide in order to comply with the preclosing disclosure requirement. Second, in §153.13(3), the commenter recommends replacing the reference to the Department of Housing and Urban Development HUD-1 form with a reference to the recently adopted Consumer Financial Protection Bureau closing disclosure. The closing disclosure integrates and replaces the previous HUD-1 form. Lenders have been required to provide the closing disclosure since October 3, 2015, under Regulation Z, 12 C.F.R. §1026.19(f) and §1026.38. In response to this recommendation, the commissions are proposing amendments to §153.13(3), published elsewhere in this issue of the *Texas Register*, that would replace the reference to the HUD-1 form with references to disclosures currently required under Regulation Z. Third, in §153.13(6), the commenter suggests adding a statement that the loan may be closed "at any time" on a day after the owner receives the preclosing disclosure, and adding the following sentence: "Normal business hours are those of the closing office conducting the closing in accordance with §153.15(1)." The commissions disagree with this recommendation. The commissions believe that these revisions are unnecessary, because the current provision provides sufficient guidance to lenders.

In §153.15, the commenter recommends adding the following definitions of "attorney at law" and "title company": "An attorney at law is any attorney at law licensed to practice law in any state, territory or other jurisdiction of the United States. A title company is any title insurer or an agent of a title insurer licensed and regulated by the state, territory or jurisdiction of the United States in which it conducts business as a title insurer or agent of a title insurer." The commissions disagree with this recommendation. The commissions believe that this revision is unnecessary, and the commenter's proposed amendment would create the need for additional provisions specifying, for example, how to treat an attorney licensed in another state but engaged in unauthorized practice of law in Texas.

In §153.17, the commenter makes three recommendations. First, the commenter recommends an amendment specifying that the lenders authorized to make a home equity loan include "a bank, savings and loan association, savings bank, or credit union chartered or organized under another state's laws that is also authorized to conduct business in this state by the appropriate banking agency of this state." The commissions disagree with this recommendation. The commissions believe that this revision is unnecessary, and the commenter's proposed amendment would create the need for additional provisions to ensure that the interpretation is limited to depository institutions doing business under the laws of Texas, as provided by Section 50(a)(6)(P)(i). Second, the commenter recommends an amendment

specifying that a lender licensed under Texas Finance Code, Chapter 156 or 157 is a mortgage broker for purposes of the constitution. In response to this recommendation, the commissions are proposing a new provision, published elsewhere in this issue of the *Texas Register*, that would specify that a person licensed under Chapter 156 is a mortgage broker for purposes of the constitution. Third, the commenter recommends correcting a reference to "another section of (a)(6)(P)" to refer to Section 50(a)(6)(P). In response to this recommendation, the commissions are proposing an amendment to §153.17(2), published elsewhere in this issue of the *Texas Register*, that would replace this phrase with "another provision of Section 50(a)(6)(P)."

In §153.18, the commenter recommends an amendment to re-insert language that the commissions deleted in 2006, regarding the limitation on application of proceeds. The commissions disagree with this recommendation. For the reasons discussed in the commissions' preamble to the 2006 amendments (31 TexReg 5083-84), the commissions believe that it is appropriate to maintain the current text of §153.18.

In §153.20, the commenter recommends an amendment "to clarify what are 'substantive terms of agreement' in regard to blanks in an instrument." The commissions disagree with this recommendation. The commissions believe that this revision is unnecessary, because the current provision provides sufficient guidance regarding blanks in home equity instruments.

In §153.51, the commenter recommends adding the following sentence: "For married owners, only the spouse who will sign the debt instrument (e.g., a promissory note) of the equity loan agreement is 'the owner' for purposes of Section 50(g)." The commissions disagree with this recommendation. The commissions believe that this revision is unnecessary, because the current provision provides sufficient guidance to lenders, and the commenter's recommended text incorrectly assumes that the borrower is the only owner of the homestead.

As a result of the comment and internal review by the agencies, the commissions have determined that certain revisions are appropriate and necessary. The commissions are concurrently proposing amendments to Chapter 153, as published elsewhere in this issue of the *Texas Register*. Subject to the concurrently proposed amendments to Chapter 153, the commissions find that the reasons for initially adopting these rules continue to exist, and readopt Chapters 151, 152, and 153 in accordance with the requirements of Texas Government Code, §2001.039. This concludes the review of 7 TAC, Part 8, Chapters 151, 152, and 153.



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March 21, 2016

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Re: Comments in response to Proposed Rule Review Notice published in the February 26, 2016, *Texas Register* (41 TexReg 1503) regarding readoption, revision, or repeal of Home Equity Interpretations (7 TAC Chapter 153) by the Finance Commission of Texas and the Texas Credit Union Commission.

Dear Ms. Hobbs:

Black, Mann & Graham, L.L.P. represents over 250 residential mortgage lending clients in Texas, providing legal expertise in loan document production, state and federal regulatory compliance, and legal and closing issues relating to the perfection of valid mortgage liens on Texas homesteads and other Texas residential properties. Through our Dallas, Flower Mound and Houston offices and onsite personnel, we engage our clients daily in closing conventional, FHA, VA, home improvement and home equity loans.

The Notice requests written comments regarding the readoption, revision, or repeal of the home equity interpretations by the Commissions. In response, this letter comments on and proposes revisions to the following home equity interpretations:

§153.8. Security of the Equity Loan: Section 50(a)(6)(H).

1. Section 50(a)(6)(H) prohibits an equity loan from being “secured by any additional real or personal property other than the homestead.” This Interpretation lists certain items that it interprets are not additional real or personal property in violation of this Section. In recognition that (i) this list is not exhaustive, (ii) the definition of owner in §153.1(13) includes persons related by affinity or consanguinity who have separate homesteads in the same real property (*e.g.*, a child, mother, father or sibling), and (iii) this situation either prevents an owner-borrower from obtaining a home equity loan because the other owners will not be signing the equity loan note although they will be signing the equity loan deed of trust or, to satisfy Section 50(a)(6)(H), the non-borrowing owner(s) must abandon the homestead and convey their property interests to the owner-borrower, we recommend that §153.8 be revised to clarify that the real property subject to these separate homesteads may secure a home equity loan to the owner-borrower without the separate homesteads of the persons related to the owner-borrower by affinity or consanguinity being considered “additional real or personal property other than the homestead” prohibited by section 50(a)(6)(H). To accomplish this, we propose adding new 153(6) to read:

“(6) When persons related by affinity or consanguinity having separate homesteads in the same real property sign the equity loan security instrument (*e.g.*, deed of trust), but less than all of those persons sign the equity loan debt instrument (*e.g.*, a promissory note), an equity loan made to one of those persons and secured by that real property is not secured by additional real property in violation of Section 50(a)(6)(H) and, except for Sections 50(a)(6)(A) and (Q)(xi), the person who is the equity loan borrower is considered the owner and that real property is considered the homestead of that owner for purposes of compliance with Section 50(a)(6) and Sections 50(e)-(i) and (t).”

2. The misprint “50(a)(H)” in §153.8(5) should be corrected to read “50(a)(6)(H).”

§153.10. Number of Loans: Section 50(a)(6)(K).

We recommend that §153.10(2) be revised to clarify that if the property ceases to be the homestead of the owner, and the owner’s spouse, who made the equity loan, the equity loan may be treated by the lender or any other lender as a valid non-home equity loan secured by the property. To accomplish this purpose we propose the following revisions:

“(2) Loss of Homestead Designation. If under Texas law the property ceases to be the homestead of the owner, and the owner’s spouse, who made the equity loan, then ~~the lender, for purposes of Section 50(a)(6)(K), may treat~~ what was previously an [home] equity [mortgage] loan may be treated as a [non-homestead mortgage] valid non-equity loan secured by the property.”

We recommend these revisions to clarify the following:

1. The equity loan lender and subsequent lenders may refinance the loan without having to comply with the requirements and conditions of Section 50(a)(6).
2. The loan may be assumed without continuing its equity loan character.
3. A new equity loan may be made and secured by the property before the first anniversary of the closing date of the loan.

§153.12. Closing Date: Section 50(a)(6)(M)(i).

Due to the differing language in the Interpretations regarding owner for purposes of Section 50(a)(6) – see definition of owner in §153.1(13) and the Interpretations that refer to the owner or to the owner and spouse - we recommend that this Interpretation be revised to clarify that Section 50(a)(6)(M)(i) does not require the non-borrowing spouse to submit, sign or acknowledge the loan application and does not require a copy of the consumer disclosure to be provided to, signed or acknowledged by the non-borrowing spouse.

To accomplish these purposes we propose the following revisions to the introductory paragraph:

“An equity loan may not be closed before the 12th calendar day after the later of the date that the owner submits an application for the loan to the lender or the date that the lender provides the owner a copy of the required consumer disclosure. ~~[One copy of the required consumer disclosure may be provided to married owners.]~~ For purposes of determining the earliest permitted closing date, the next succeeding calendar day after the later of the date that the owner submits an application for the loan to the lender or the date that the lender provides the owner a copy of the required consumer disclosure is the first day of the 12-day waiting period. The equity loan may be closed at any time on or after the 12th calendar day after the later of the date that the owner submits an application for the loan

to the lender or the date that the lender provides the owner a copy of the required consumer disclosure. For married owners, only the spouse who will sign the equity loan debt instrument (e.g., a promissory note) is ‘the owner’ for purposes of Section 50(a)(6)(M)(i).’

§153.13. Preclosing Disclosures: Section 50(a)(6)(M)(ii).

1. We request that the Commissions reconsider their prior reservation on providing guidance on the meaning of the phrase “actual fees, points, interest, costs, and charges that will be charged at closing” (see preamble in the January 2, 2004 *Texas Register*, 29 TexReg 89). The Commissions’ statement in that preamble that “[t]he Commissions believe that the Interpretation gives clarification and context to the term ‘fees and charges’ as used in Section 153.13[.]” when read in context with the other statements in that section of the preamble, implies that the term “fees and charges” is limited to those charged to the owner at closing. Furthermore, since the adoption of §153.13 it has been an accepted practice for lenders not to restart the one business day preclosing timing requirement for an amount disclosed on a revised final itemized disclosure that is paid by a person other than the owner or for which a credit is given to the owner at closing. Because of this accepted practice and the implication by the above quoted statement by the Commissions, we recommend that this Interpretation be revised to clarify that the phrase “actual fees, points, interest, costs, and charges that will be charged at closing[.]” and similar phrases in this Interpretation, include only amounts charged to the owner at closing.

To accomplish this purpose we propose the following sentence be added to the introductory paragraph:

“For purposes of this section, the actual fees, points, interest, costs, and charges that will be charged at closing are limited to those charged to the owner at closing and do not include those paid by a person other than the owner or for which a credit is given to the owner at closing.”

2. Section 50(a)(6)(M)(ii), in pertinent part, requires that an equity loan cannot close before one business day after the homestead owner receives “a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing.” The Interpretation in §153.13(3) provides that this disclosure requirement is satisfied by “delivery to the borrower of a properly completed Department of Housing and Urban Development (HUD) disclosure Form HUD-1 or HUD-1A.” Effective for loans for which applications are received on or after October 3, 2015, new §§1026.19(f) and 1026.38 of Regulation Z (12 CFR Part 1026) mandate a new disclosure form – the Closing Disclosure Model Form H-25(A) - that replaces the HUD-1 and HUD-1A disclosure forms. For this reason, we recommend that §153.13(3) be revised to reflect this new Federal regulatory disclosure requirement and propose the following revision to §153.13(3):

“(3) A lender may satisfy the disclosure requirement of providing a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing by delivery to the borrower of a properly completed [~~Department of Housing and Urban Development (HUD) disclosure Form HUD-1 or HUD-1A~~] Bureau of Consumer Financial Protection Closing Disclosure Form.”

3. We request that the Commissions reconsider their prior reservation to provide guidance in §153.13(6) on the application of “normal business hours” (see preamble in the June 23, 2006 *Texas Register*, 31 TexReg 5083). While we agree with the Commissions’ preamble statement that “[w]hat constitutes normal business hours is a fact-specific question ... [that] is most appropriately raised in a court of law,” stating the day and to whom “normal business hours” applies is not a fact-specific question outside the Commissions’ interpretive authority. Section 50(a)(6)(M)(ii) does not restrict an equity loan closing to normal business hours; that restriction is added by the Commissions Interpretation in §153.13(6). It stands to reason, then, that if the Commissions have the interpretive authority to restrict the closing to normal business hours, they have the interpretive authority to state the day and to whom it applies. For these reasons, we recommend that §153.13(6) be revised and propose the following revisions:

“(6) An equity loan may be closed at any time during normal business hours on the next business day following the calendar day on which the owner receives the preclosing disclosure or at any time on any calendar day thereafter. Normal business hours are those of the closing office conducting the closing in accordance with §153.15(1).”

§153.15. Location of Closing: Section 50(a)(6)(N).

We recommend that this Interpretation be revised to clarify that attorneys who are licensed in other states and title companies located in other states are authorized by Section 50(a)(6)(N) to close equity loans. In initially adopting this Interpretation (see January 2, 2004 *Texas Register*, 29 TexReg 84), the Commissions stated in the preamble (29 TexReg 90) that they “do not believe that attorneys must be licensed in Texas to close equity loans ... [and] that closings may occur within or outside the state.” Because Section 50(a)(6)(N) and this Interpretation are silent on these issues, which has and continues to cause confusion in the residential mortgage lending and title industries, we recommend that the Commissions revise this Interpretation in line with their preamble statements. To accomplish this purpose, we propose the following sentences be added to the end of the introductory paragraph:

“An attorney at law is any attorney at law licensed to practice law in any state, territory or other jurisdiction of the United States. A title company is any title insurer or an agent of a title insurer licensed and regulated by the state, territory or jurisdiction of the United States in which it conducts business as a title insurer or agent of a title insurer.”

The second sentence in the proposed revision concerning a title company is based on the appellate court decision in *Rooms With A View, Inc. v. Private National Mortgage Association*, 7 S.W.3d 840 (Tex.App.—Austin 1999, pet. denied 2000), which defined “title company” as used in Section 50(a)(5) and (6) to mean “a title insurer or an agent of a title insurer” and held that “[n]othing suggests the legislature intended ‘title company’ to refer to an entity performing only title abstractions.”

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

1. Section 50(a)(6)(P) states “a bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States” is authorized to make an equity

loan. This Interpretation is silent as to the applicability of the phrase “under the laws of this state” to a bank, savings and loan association, savings bank, or credit union chartered or organized under another state’s laws that is also authorized to conduct business in this state by the appropriate banking agency of this state. We recommend that this Interpretation be revised to clarify that the phrase “under the laws of this state” applies to such out of state depository entities.

2. Section 50(a)(6)(P)(vi) states “a person regulated by this state as a mortgage broker” is authorized to make an equity loan. Before September 1, 2011, there was no need to interpret this provision because the statutory and administrative provisions regulating residential mortgage lenders used the term mortgage broker.

Effective September 1, 2011, statutory changes to Chapter 156 of the Texas Finance Code eliminated the term mortgage broker, replacing it with the term mortgage company, and eliminated the term loan officer, replacing it with the term residential mortgage loan originator. At that time, mortgage brokers and their loan officers were licensed under Chapter 156. In anticipation of this statutory change to Chapter 156, the Texas Department of Savings and Mortgage Lending, on August 25, 2011, issued its *Home Equity Terminology Advisory Bulletin* that, in pertinent part, states “a person regulated by this state who is licensed under Texas Finance Code Chapter 156 may originate a home equity loan, as provided by Texas Constitution Article XVI §50(a)(6)(P)(vi).” Effective September 1, 2013, statutory changes to Chapters 156 and 157 of the Texas Finance Code moved the licensing of residential mortgage loan originators to Chapter 157. The Texas Administrative Code rules regulating residential mortgage lenders (7 TAC Chapters 80 and 81) were also amended to reflect these statutory changes to Chapters 156 and 157.

Due to the above statutory and administrative rule changes, we recommend that §153.17(4) be revised to clarify who is a mortgage broker for the purposes of Section 50(a)(6)(P)(vi). For this purpose, we propose the following addition and revision:

“(4) A person licensed under Texas Finance Code Chapter 156 or Chapter 157 is a person regulated by this state as a mortgage broker under Section 50(a)(6)(P)(vi). A ~~[lender]~~ person who does not meet the definition of Section 50(a)(6)(P)(i), (ii), (iv), (v), or (vi), must obtain a regulated loan license under Chapter 342 of the Texas Finance Code to meet the provisions of subsection (iii).”

3. The misprint “(a)(6)(P)” in §153.17(2) should be corrected to read “50(a)(6)(P).”

§153.18. Limitation on Application of Proceeds: Section 50(a)(6)(Q)(i).

Effective June 29, 2006, this Interpretation was revised. One of the revisions deleted former §153.18(3) - the debt consolidation provision - that read: “When an owner applies for a debt consolidation loan, it is the owner, not the lender, that is requiring that proceeds be applied to another debt. If the proceeds of a home equity loan are used in conformity with owner’s credit application the limitations of this section do not apply.” The 2006 revisions also revised the second sentence of former §153.18(1) (now §153.18(2)) to read: “An owner is not precluded from voluntarily using the proceeds of an equity loan to pay on a debt owed to the lender making the

equity loan.” With the deletion of former §153.18(3), this Interpretation no longer provides any guidance on the “voluntariness” of a payment expressed in §153.18(2). We request that the Commissions reconsider their prior reservations on providing guidance on this voluntary payment issue (see preamble in the June 23, 2006 *Texas Register*, 31 TexReg 5083-5084). We recommend that this Interpretation be revised to provide general guidance on this issue or, at the very least, some voluntary payment examples.

§153.20. No Blanks in Any Instrument: Section 50(a)(6)(Q)(iii).

This Interpretation was last revised on June 29, 2006. On November 6, 2007, Section 50(a)(6)(Q)(iii) was amended to add the words “relating to substantive terms of agreement” so that it now reads “the owner of the homestead not sign any instrument in which blanks relating to substantive terms of agreement are left to be filled in[.]” (**Emphasis added.**) We recommend that this Interpretation be revised to clarify what are “substantive terms of agreement” in regard to blanks in an instrument.

§153.51. Consumer Disclosure: Section 50(g).

Due to the differing language in the Interpretations regarding owner for purposes of Section 50(a)(6) – see definition of owner in §153.1(13) and the Interpretations that refer to the owner or to the owner and spouse - we recommend that this Interpretation be revised to clarify that Section 50(g) does not require a copy of the consumer disclosure to be provided to, signed or acknowledged by the non-borrowing spouse. To accomplish this purpose we propose that the following sentence be added immediately after the introductory sentence:

“For married owners, only the spouse who will sign the debt instrument (e.g., a promissory note) of the equity loan agreement is ‘the owner’ for purposes of Section 50(g).”

We appreciate the opportunity to provide the Finance Commission of Texas and the Texas Credit Union Commission with the above comments and proposed revisions to their home equity interpretations.

Sincerely,
Black, Mann & Graham, L.L.P.

/s/ David F. Dulock

David F. Dulock
For the Firm

A. Finance Commission Matters

8. Discussion of and Possible Vote to Take Action on the Publication for Comment of Proposed Amendments to 7 TAC, Part 8, Chapter 153, Concerning Home Equity Lending, Resulting from Rule Review

PURPOSE: The main purpose of the proposed amendments is to implement changes resulting from the commissions' review of this chapter under Texas Government Code, §2001.039. The proposed amendments relate to consumer disclosures, the types of lenders authorized to make home equity loans, and technical corrections.

RECOMMENDED ACTION: The agencies request that the Finance Commission approve the proposed amendments to 7 TAC, Chapter 153 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve for publication and comment the proposed amendments to 7 TAC, Chapter 153.

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: §153.5, concerning Three percent fee limitation, §153.8, concerning Security of the Equity Loan, §153.13, concerning Preclosing Disclosures, and §153.17, concerning Authorized Lenders.

The amendments apply 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.

In general, the purpose of the amendments to Chapter 153 is to implement changes resulting from the commissions' review of this chapter under Texas Government Code, §2001.039. The notice of intention to review 7 TAC, Chapter 153 was published in the *Texas Register* on February 26, 2016 (41 TexReg 1503). 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") received one comment on the notice of intention to review. The comment was submitted by Black, Mann & Graham, L.L.P.

The agencies prepared an initial draft of amendments with technical corrections and updates to Chapter 153. The agencies distributed the initial draft to home equity stakeholders for precomments, in order to prepare an informed and well-balanced proposal for the commissions. The agencies

received written precomments from several stakeholders. The agencies have incorporated suggestions offered by stakeholders into the proposed amendments. The agencies believe that this early participation of stakeholders has greatly benefited the resulting proposal.

The individual purposes of the proposed amendments to each rule are provided in the following paragraphs.

The purpose of the amendments to §153.5 is to use terminology that is consistent with other interpretations. In paragraphs (3)(B) and (7), the amendments add "equity" before "loan" to ensure that the provisions use the term "equity loan," which is defined in §153.1(7).

The purpose of the amendment to §153.8(5) is to make a technical correction in a citation to Section 50(a)(6)(H). In the comment on the notice of intention to review, the commenter notes that this section currently contains an incorrect reference to "Section 50(a)(H)." In response to this comment, the amendment corrects the provision to cite Section 50(a)(6)(H).

The purpose of the proposed amendments to §153.13 is to specify how lenders can comply with the preclosing disclosure requirement in Section 50(a)(6)(M)(ii), and to include updated citations to federal rules. Under Section 50(a)(6)(M)(ii), a home equity loan may not be closed before "one business day after the date that the owner of the homestead receives . . . a final itemized disclosure of the actual fees, points, interest, costs, and

charges that will be charged at closing." Currently, §153.13(3) explains that lenders may comply with this requirement by providing a properly completed HUD-1 form from the U.S. Department of Housing and Urban Development. The Consumer Financial Protection Bureau (CFPB) recently adopted a closing disclosure that integrates and replaces the HUD-1 form. The CFPB's rules containing the requirements for the integrated closing disclosure are located at Regulation Z, 12 C.F.R. §1026.19(f) and §1026.38. The requirement to provide the closing disclosure went into effect on October 3, 2015. The requirement generally applies to closed-end residential mortgage loans for which the lender or servicer received a loan application on or after that date. For loans where the application was received before October 3, the HUD-1 form (rather than the CFPB closing disclosure) was the appropriate form for lenders to use. The closing disclosure requirement does not apply to home equity lines of credit, which require separate account-opening disclosures under a different section of Regulation Z, 12 C.F.R. §1026.6(a).

In the comment on the notice of intention to review, the commenter recommends replacing the reference to the HUD-1 form in §153.13(3) with a reference to the CFPB's closing disclosure. Based on this recommendation and the federal rules discussed above, the proposed amendments to §153.13(3) delete the reference to the HUD-1 form, and add new references to the disclosures currently required under Regulation Z: the closing disclosure (for closed-end equity loans) and the account-opening disclosures (for home equity lines of credit). When these disclosures are properly completed, they provide borrowers with a final itemized disclosure of the actual

fees, points, interest, costs, and charges that will be charged at closing, in accordance with Section 50(a)(6)(M)(ii).

The purpose of the amendment to §153.14(2)(A) is to update a citation to federal law. Currently, this provision cites the Soldiers' and Sailors' Civil Relief Act. In 2003, the Servicemembers Civil Relief Act replaced the former Soldiers' and Sailors' Civil Relief Act. The amendment to §153.14(2)(A) replaces a citation to the previous law with a citation to the current law.

The purpose of the amendments to §153.17 is to specify who is authorized to make a home equity loan, in light of recent changes in federal policy and amendments to the licensing provisions of Texas Finance Code, Chapters 156 and 342. Section 50(a)(6)(P) lists the types of lenders that are authorized to make home equity loans, including "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," and "a person regulated by this state as a mortgage broker."

In §153.17(2), a proposed amendment removes a reference to "Approved correspondents" and replaces it with "Loan correspondents." In 2010, the Department of Housing and Urban Development ended its program of approving loan correspondents, as described in mortgagee letter 2010-20. As amended by the proposed amendments, §153.17(2) explains that loan correspondents to an approved mortgagee are not authorized lenders unless they qualify under another provision of Section 50(a)(6)(P). In addition, in the comment on the notice of intention to review, the

commenter recommends correcting a reference in §153.17(2) to "another section of (a)(6)(P)." In response to this recommendation, a proposed amendment replaces this phrase with "another provision of Section 50(a)(6)(P)."

Proposed new §153.17(3) explains that a person who is licensed under Texas Finance Code, Chapter 156 is a person regulated by this state as a mortgage broker for purposes of Section 50(a)(6)(P)(vi). Until 2011, Chapter 156 of the Texas Finance Code described the licensing requirements for mortgage brokers. In 2011, the chapter was amended to replace the term "mortgage broker" with the terms "residential mortgage loan company" and "residential mortgage loan originator." In 2011, the Texas Department of Savings and Mortgage Lending published a "Home Equity Terminology Advisory Bulletin," explaining that a person licensed under Chapter 156 is a mortgage broker for purposes of the constitution. In the comment on the notice of intention to review, the commenter recommends an amendment to §153.17 describing this interpretation. In response to this comment, proposed new §153.17(3) explains that a person licensed under Chapter 156 is a mortgage broker for purposes of the constitution.

Proposed new §153.17(4) replaces current paragraphs (3) and (4), and explains that a Chapter 342 licensee is a regulated lender for purposes of the constitution. Current §153.17(3) explains that a nondepository lender must hold a license under Chapter 342 to make, transact, or negotiate a secondary mortgage loan. Current §153.17(4) explains that if a person does not meet the definition of Section 50(a)(6)(P)(i), (ii), (iv), (v), or (vi), the person must obtain a Chapter 342 license to

be authorized to make home equity loans. In 2007, Texas Finance Code, §342.051 was amended to include an exemption for a person licensed under Chapter 156. In a precomment, one stakeholder recommends deleting current paragraph (3), because the paragraph does not acknowledge the exemption for Chapter 156 licensees, and because current paragraph (1) already explains that lenders must comply with statutory licensing requirements. In response to this precomment, the proposal replaces paragraphs (3) and (4) with a new paragraph (4). The new paragraph explains that a Chapter 342 licensee is a regulated lender for purposes of the constitution, and that if a person is not described by Section 50(a)(6)(P)(i), (ii), (iv), (v), or (vi), the person must obtain a Chapter 342 license to be authorized to make home equity loans.

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 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 proposed amendments are in effect, the public benefits anticipated as a result of the amendments 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

amendments as proposed. Regulation Z currently requires lenders to provide the disclosures described in the proposed amendments to §153.13. Any costs of complying with the proposed amendments are imposed by the constitution and federal law, and are not imposed by the proposed amendments. There will be no adverse economic effect on small or micro-businesses. There will be no effect on individuals required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposed amendments are published in the *Texas Register*. At the conclusion of the 31st day after the proposed amendments are published in the *Texas Register*, no further written comments will be considered or accepted by the commissions.

The amendments 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 are contained in Article XVI, Section 50 of the Texas Constitution.

§153.5. 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, fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, three percent of the original principal amount of the extension of credit.

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

(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 three percent limitation.

(A) (No change.)

(B) Legitimate discount points are interest and are not subject to the three percent limitation. Discount points are 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 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) - (6) (No change.)

(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 [a] loan are fees subject to the three percent limitation. Charges 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 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) - (16) (No change.)

§153.8. Security of the Equity Loan: Section 50(a)(6)(H).

An equity loan must not be secured by any additional real or personal property other than the homestead. The definition of "homestead" is located at Section 51 of Article XVI, Texas Constitution, and Chapter 41 of the Texas Property Code.

(1) - (4) (No change.)

(5) Any equity loan on an urban homestead that is secured by more than ten acres is secured by additional real property in violation of Section 50(a)(6)(H) [~~50(a)(H)~~].

§153.13. Preclosing Disclosures: Section 50(a)(6)(M)(ii).

An equity loan may not be closed before one business day after the date that the owner of the homestead receives a copy of the loan application, if not previously provided, and a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing. If a bona fide emergency or another good cause exists and the lender obtains the written consent of the owner, the lender may

provide the preclosing disclosure to the owner or the lender may modify the previously provided preclosing disclosure on the date of closing.

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

(3) The lender must deliver to the owner a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing.

(A) For a closed-end equity loan, the lender may satisfy this requirement by delivering a properly completed closing disclosure under Regulation Z, 12 C.F.R. §1026.19(f) and §1026.38.

(B) For a home equity line of credit, the lender may satisfy this requirement by delivering properly completed account-opening disclosures under Regulation Z, 12 C.F.R. §1026.6(a).

~~[(3) A lender may satisfy the disclosure requirement of providing a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing by delivery to the borrower of a properly completed Department of Housing and Urban Development (HUD) disclosure Form HUD-1 or HUD-1A.]~~

(4) - (7) (No change.)

§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) A modification of an equity loan must be agreed to in writing by the borrower and lender, unless otherwise required by law. An example of a modification that is not required to be in writing is the modification required under the Servicemembers Civil Relief Act, 50 U.S.C. app. §§501-597b [~~Soldiers' and Sailors' Civil Relief Act~~].

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

§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; 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 broker.

(1) An authorized lender under Texas Finance Code, Chapter 341 [~~Texas Finance Code~~] must meet both constitutional and statutory qualifications to make an equity loan.

(2) A HUD-approved mortgagee is a person approved as a mortgagee by the United States government to make federally insured loans for purposes of Section 50(a)(6)(P)(ii). Loan [Approved] correspondents to a HUD-approved mortgagee are not authorized lenders of equity loans unless qualifying under another provision of Section 50(a)(6)(P) [~~section of (a)(6)(P)~~].

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

(4) A person who is licensed under Texas Finance Code, Chapter 342 is a person licensed to make regulated loans for purposes of Section 50(a)(6)(P)(iii). If a person is not described by Section 50(a)(6)(P)(i), (ii), (iv), (v), or (vi), then the person must obtain a license under Texas Finance Code, Chapter 342 in order to be authorized to make an equity loan under Section 50(a)(6)(P)(iii).

~~[(3) A non-depository lender or broker that makes, negotiates, arranges, or transacts a secondary mortgage loan that is governed by Chapter 342, Texas Finance~~

~~Code, must comply with the licensing provisions of Chapter 342, Texas Finance Code.]~~

~~[(4) A lender who does not meet the definition of Section 50(a)(6)(P)(i), (ii), (iv), (v), or (vi), must obtain a regulated loan license under Chapter 342 of the Texas Finance Code to meet the provisions of subsection (iii).]~~

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 June 10, 2016.

Leslie Pettijohn
Consumer Credit Commissioner
Joint Financial Regulatory Agencies

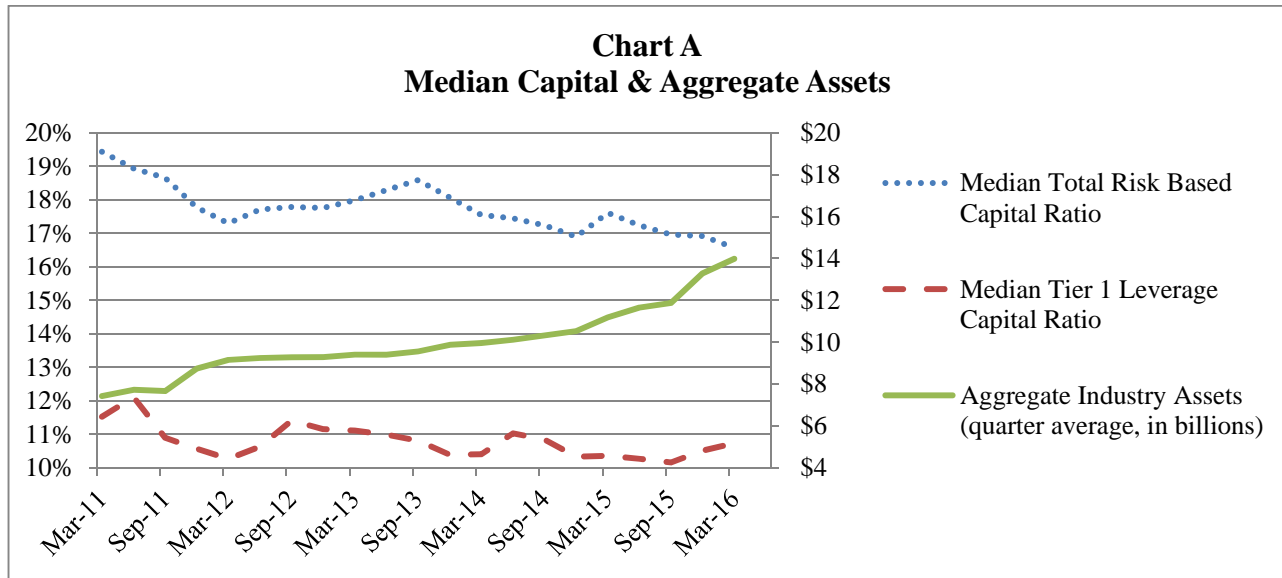
B.

**Department of Savings and
Mortgage Lending**

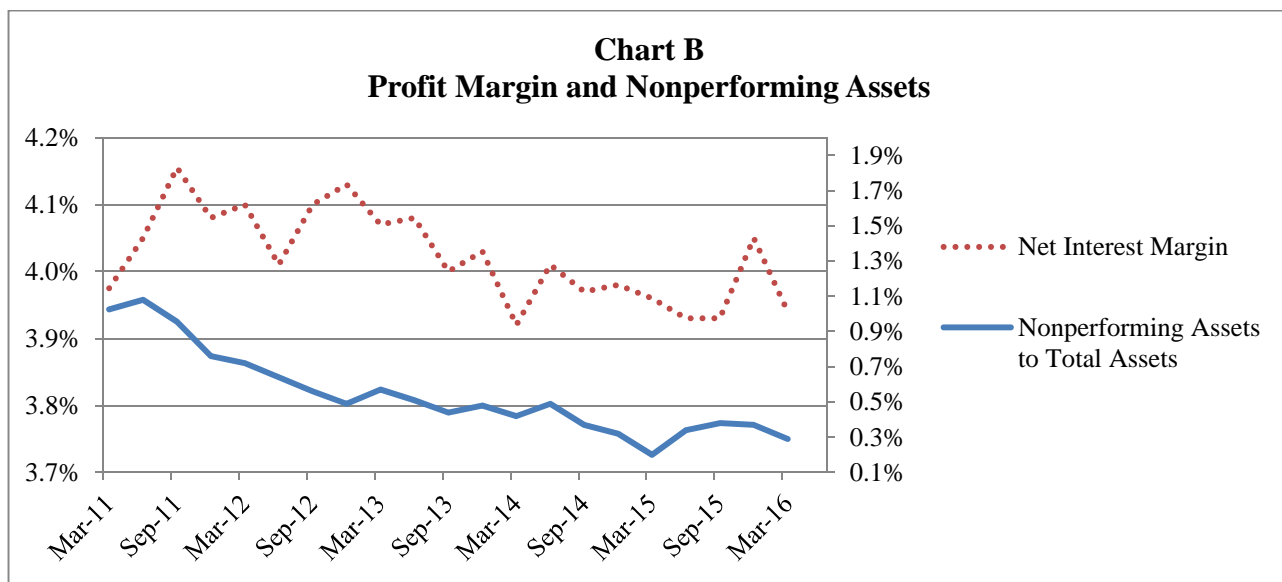
B. Texas Department of Savings and Mortgage Lending

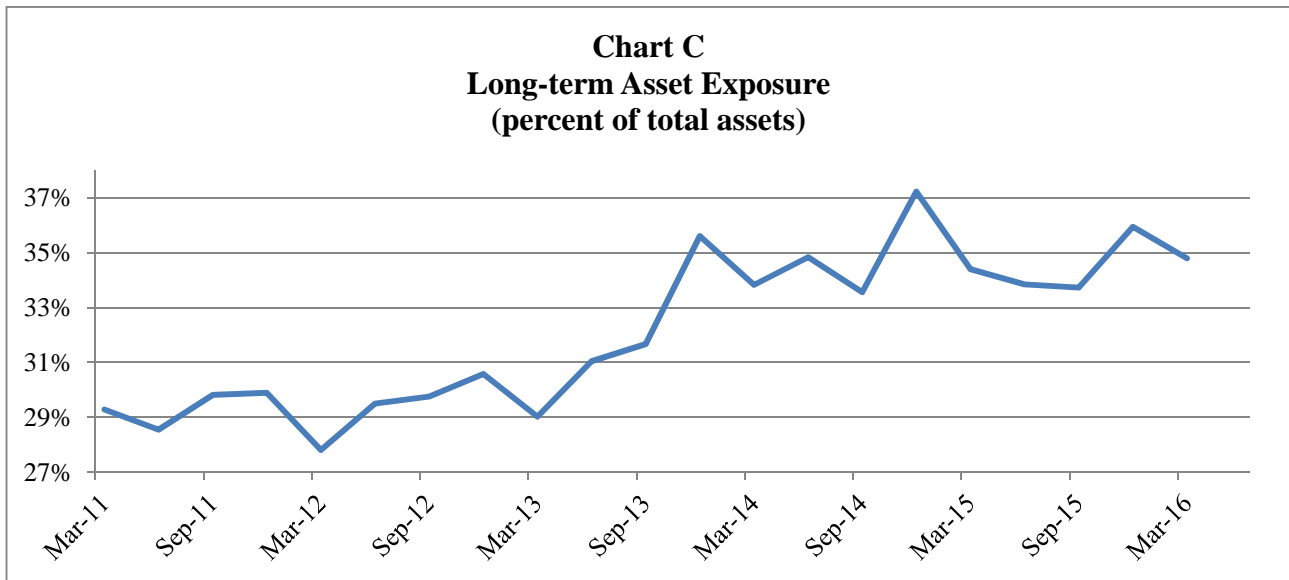
1. Industry Status and Departmental Operations – State Savings Bank Activity:

a. Industry Status

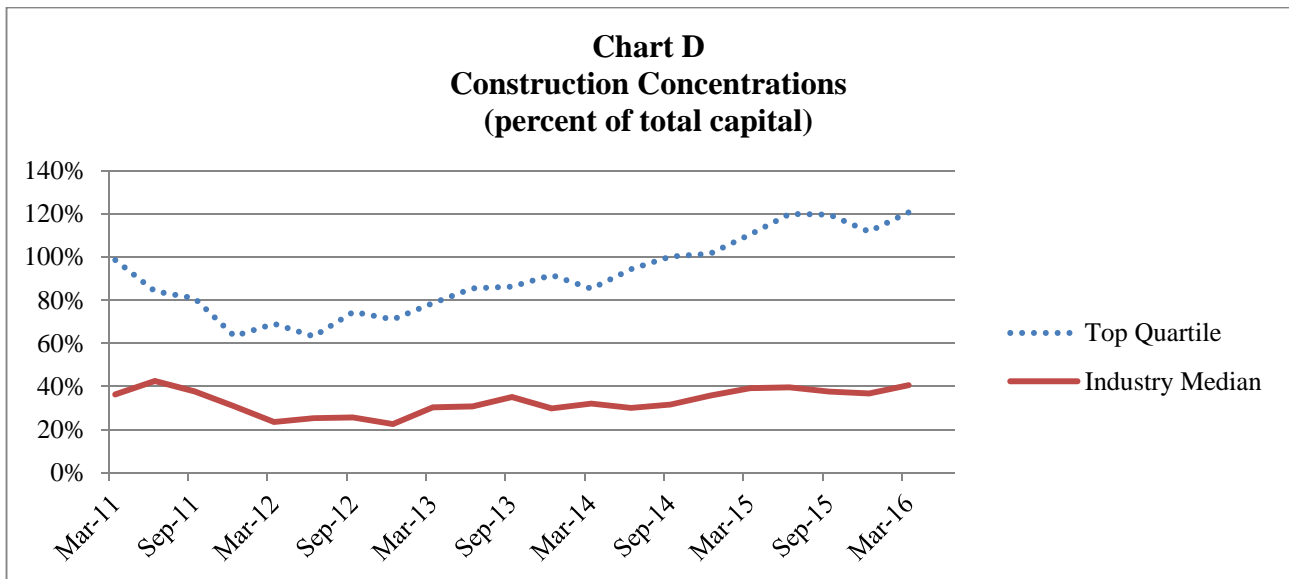


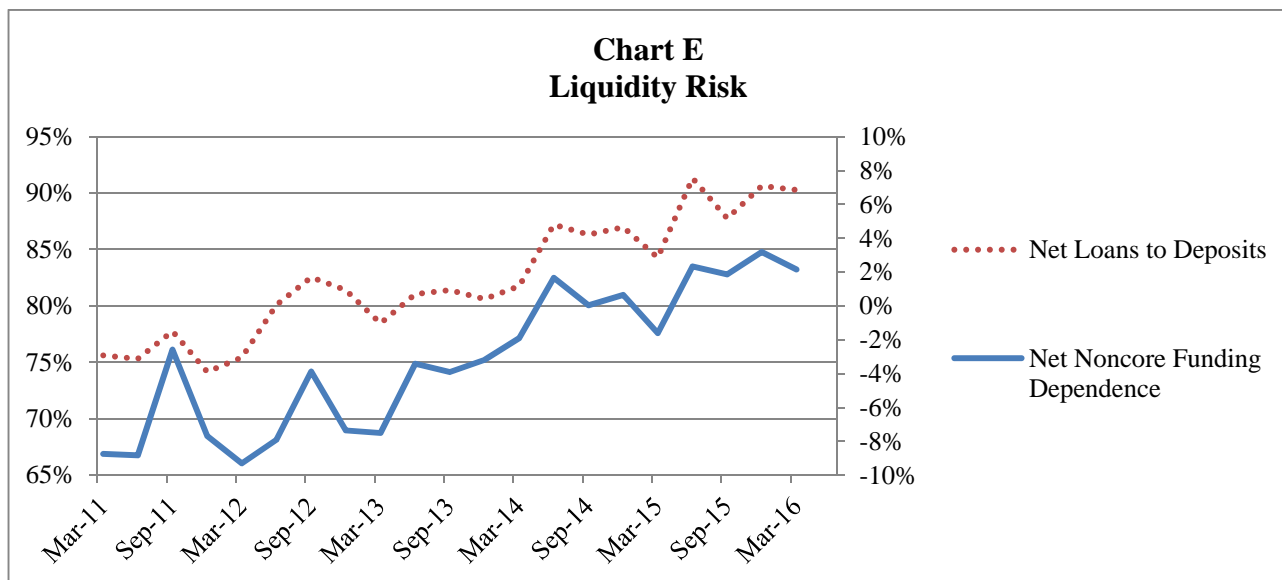
There are 27 state savings banks totaling \$15.0 billion in total assets, as of March 31, 2016. The average asset size of the median state savings bank grew by 11% in the last four quarters to \$316 million. This continues a four year growth trend in the industry. As a result of increased lending, the median total risk-based capital ratio (Chart A) has declined to 16.57%; however, leverage capital protection has increased slightly through retained earnings to 10.73%. Subject to some fluctuation within historical norms, the net interest or profit margin (Chart B) is relatively unchanged from the same quarter in the prior year at a modest 3.96%. Nonperforming asset levels remain below pre-crisis levels at 0.29% of total assets.



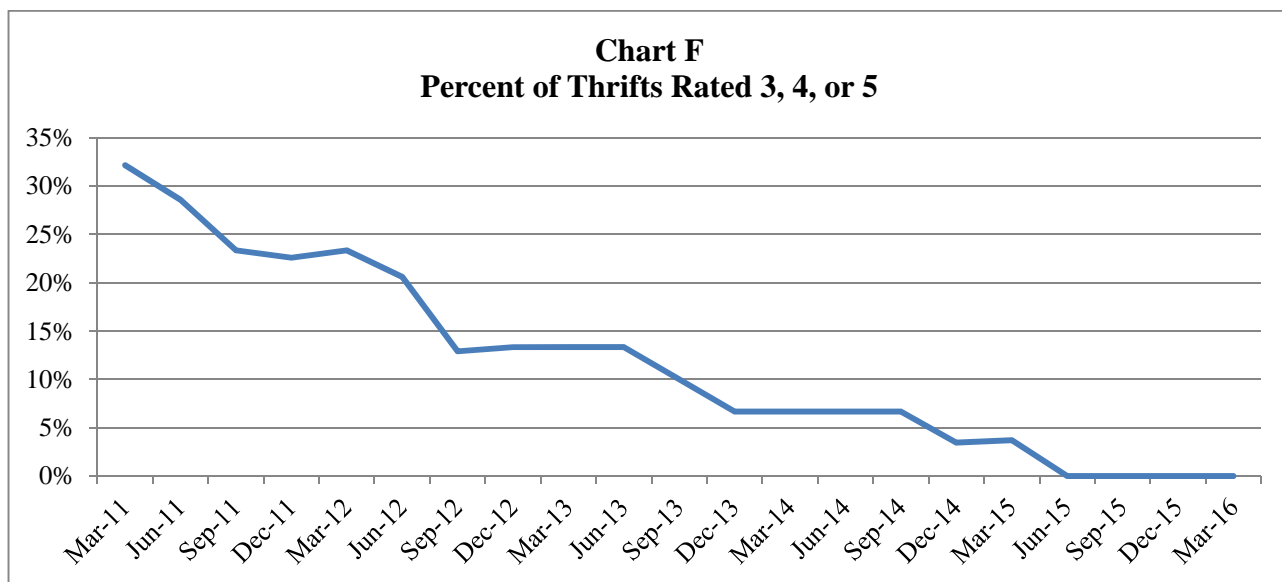


The Department continues to monitor various local, state, and national data sources to best understand the risks facing the industry and individual savings banks. Market risk, as evidenced by long-term asset exposure (Chart C), remains elevated due to an extension of assets over the past four years, and profit margins remain modest. Extension of assets continues to expose a few charters to rising funding costs should interest rates rise significantly. In addition, the Department closely monitors construction lending concentrations (Chart D), which vary widely throughout the industry, but have generally increased in the past four years. The growing demand for construction lending in the expanding Texas economy can be observed in the top quartile of Texas thrifts, which have a median concentration of 121% of total capital, increased from 110% one year earlier.





Liquidity risk remains manageable, but is increasing in Texas thrifts, as indicated by the Net Noncore Funding Dependence (NNCFD) Ratio (Chart E), a measure of the funding of long-term assets using potentially volatile liabilities such as uninsured and brokered deposits, and borrowings. The median NNCFD Ratio has increased from negative 1.61% to 2.16% in the last four quarters, but is considered manageable. Another indicator of liquidity risk is the loan-to-deposit ratio, which has grown from 84.28% to 90.28% over the same period. All SSBs are rated a Composite 1 or 2 (Chart F), with no outstanding public enforcement actions.



b. Savings Bank Charter and Merger Activity

On February 5, 2016, an application was received for TransPecos Banks, Pecos, Texas, to convert from a Texas state commercial bank charter to a savings bank charter. The application remains under review.

On April 15, 2016, an application was received for Triumph Bancorp, Inc., Dallas, Texas, to acquire ColoEast Bancshares, Inc., Lamar, Colorado, resulting in the merger of their depository

subsidiaries, specifically Colorado East Bank and Trust with and into TBK Bank, SSB. The application is currently under review.

c. Other Items

Commissioner Jones spoke on a regulatory panel at the Texas Bankers Association's Legal Conference.

Commissioner Jones attended the Texas Bankers Association's Annual Convention.

Commissioner Jones and Deputy Commissioner Smith met with Sanjay Bhasin, President and CEO of the Federal Home Loan Bank of Dallas.

A save the date notice was emailed to invitees for the Department's Annual Thrift Industry Day. This year's special guest speaker will be Sanjay Bhasin, President and CEO of the Federal Home Loan Bank of Dallas.

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

a. Residential Mortgage Loan Originators

Current Licensing Population:

License Type As of 05/31/2016	Approved		
	Entity (MU1)	Branch (MU3)	MLO (MU4)
<i>Auxiliary</i>	9	n/a	
<i>CUSO</i>	3	2	
<i>FSC</i>	1	n/a	
<i>Independent Contractor</i>	86	n/a	
<i>Mortgage Company</i>	1,055	464	
<i>Mortgage Banker</i>	375	2,146	
<i>Mortgage Servicer</i>	158	n/a	
Totals	1,687	2,612	21,651

Through the 3rd quarter of FY16, the Department received 6,281 new license requests and 57,204 other filings (amendments, sponsorship, etc.). Additionally, for the fiscal year 5,370 applications have been approved.

b. Mortgage Examinations

During the first half of FY16, a total 232 examinations were conducted covering 2,695 mortgage loan originators. The examinations are continuing to identify incomplete conditional qualification/approval letters along with other compliance issues associated with the TILA-RESPA Integrated Disclosures.

In April 2016, the Department sent nine mortgage examiners to a five day AARMR/CSBS Training School, in Washington D.C., which focused on fraud detection and preserving evidence.

c. Consumer Complaints/Legal Issues

During the first half of FY16, a total of 488 consumer complaints were received. This represents an 18% increase when compared to the same period in FY15. Loan servicing complaints continue to account for approximately 61% of the total number of complaints received. As of February 29, 2016, there were a total of 90 open consumer complaints with 93% of the complaints being aged less than 90 days.

d. Legal

SOAH Hearings – There have been no hearings held since the April 2016 report to the Finance Commission.

SOAH Hearings in the recent past:

01/21/2016 Denial of License

SOAH Docket No. 450-16-1422; *Department of Savings and Mortgage Lending v. Crystal Wilburn*. In this case, the Department's staff proposed to deny the application of Ms. Wilburn for a residential mortgage loan originator license on the grounds of lack of good moral character and failure to demonstrate financial responsibility. A hearing was held on January 21, 2016. On April 25, 2016, the Department filed exceptions to the proposal for decision. On May 11, 2016, the applicant filed a response to the Department's exceptions to the proposal for decision. The Department is presently waiting for the Administrative Law Judge's response.

SOAH Hearings – Upcoming:

06/30/2016 Hearing Scheduled on Appeal of License Denial

SOAH Docket No. 450-16-2838; *Department of Savings and Mortgage Lending v. Sammy Trantham*. In this case, the Department's staff denied the application of Mr. Trantham for a residential mortgage loan originator's license on the grounds of lack of good moral character. A pre-hearing conference was held on April 21, 2016. As a result of the pre-hearing conference the Administrative Law Judge entered Order No. 2 Setting Deadlines and New Hearing Date on May 3, 2016, the parties agreed to discovery deadlines and a hearing was set for June 30, 2016.

07/27/2016 Hearing Scheduled on Appeal of License Denial

SOAH Docket No. 450-16-4112; *Department of Savings and Mortgage Lending v. Jon K. Scampton*. In this case, the Department's staff denied the application of Mr. Scampton for a residential mortgage loan originator's license on the grounds of lack of good moral character. The hearing is set for July 7, 2016.

Gift Reporting:

The Department received a complementary registration fee in the value of \$945.00, for Samantha Tiner, Mortgage Financial Examiner, to attend the American Association of Residential Mortgage Regulators' 2016 Spring Training School: Building Effective Regulatory Actions and Enforcement Cases on April 25 - April 29, 2016.

The Department received a complementary registration fee in the value of \$725.00, for Commissioner Jones, to attend the Texas Bankers Association's 132nd Annual Convention on May 4 -May 6, 2016.

Litigation:

03/17/2016 Lawsuit Filed

Cause No. D-1-GN-16-001194; Catherine Sims v. Texas Department of Savings and Mortgage Lending, in the 201st Judicial District Court of Travis County, Texas

In this case, Ms. Sims is contesting the denial of her license, claiming the Agency's decision was not reasonably supported by substantial evidence. The Texas Attorney General's Office is representing the Agency. An Answer was filed on April 7, 2016.

e. Other Items

The Department received re-accreditation of its mortgage area from the AARMR/CSBS Performance Standards Committee in May 2016. The accreditation program identifies mortgage agencies that serve citizens of their State by operating a capable and professional regulatory program. The Department was first accredited in 2011 and was the ninth State non-depository mortgage program to receive accreditation.

Director Florence attended AARMR's Board of Directors Strategic Planning session in April.

Commissioner Jones spoke at the Texas Real Estate Teachers Association in April.

Commissioner Jones and Director O'Shields attended the Texas Mortgage Bankers Association's 100th Annual Convention.

Associate General Counsel Lindsey Brown-Bruno spoke at the Austin Bar Association's Financial Institutions Section seminar in April.

3. Fiscal/Operations Activity:

a. Funding Status/Audits/Financial Reporting

Funding Status/Budget – Staff is in the process of closing out the 3rd quarter of FY16 and building the budget for FY17.

Audits – During July the internal auditors, Garza/Gonzales, will conduct the audit of the Department's Management Information Systems.

b. Staffing

As of May 31, 2016, the Department was staffed at 50 regular full time employees, one regular part-time employee, and two temporary workers with 64 FTEs available.

The Department's recent turnover consisted of one Investigator in April due to a planned retirement and two Attorneys in May: one due to a planned retirement and one due to personal reasons.

c. Other Items

None

5. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, §79.1 Concerning Definitions, and §79.2 Concerning Required Disclosure.

PURPOSE: Amendments to §79.1 adds clarifying definitions. Amendments to §79.2 provides clarification that servicers are only required to give the statutory disclosure notice on real estate located in Texas.

RECOMMENDED ACTION: No comments were received regarding the amendments to §79.1 and §79.2. The Department recommends that the Finance Commission approve adoption of the amendments without changes to the proposal as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move we adopt the amendments to 7 TAC, §79.1 and §79.2 without changes to the proposal as previously published in the *Texas Register*.

Title 7. Banking and Securities
Part 4. Texas Department of Savings and Mortgage Lending
Chapter 79. Residential Mortgage Loan Servicers
Subchapter A. Registration

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), adopts amendments to §§79.1 and 79.2 in 7 Texas Administrative Code, Chapter 79, Subchapter A, concerning registration.

In general, the purpose of the adoption regarding these rule(s) is to implement changes resulting from the commission's review of Chapter 79, under Texas Government Code §2001.039.

Section 79.1 addresses definitions. The adopted amendments reorganize the terms and defines the Act.

Section 79.2 addresses required disclosures. The adopted amendments emphasize that the required disclosure is only necessary for the servicing of residential mortgage loans on real estate located in Texas. It further requires the posting of the disclosure on the registrant's website.

The department received no comments regarding the proposed amendments.

The amendments are adopted under Texas Finance Code §158.003, which provide that the Finance Commission may adopt rules relating to Residential Mortgage Loan Servicers.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 158.

<rule>

§79.1 Definitions

As used in this chapter, the following terms have the meanings indicated:

(1) "Commissioner" means the Savings and Mortgage Lending Commissioner.

(2) "Commissioner's designee" means an employee of the Department performing his or her assigned duties such other person as the Commissioner may designate in writing. A Commissioner's designee is deemed to be the Commissioner's authorized "personnel or representative" as such term is used in the Act.

(3) "Department" means the Department of Savings and Mortgage Lending.

(4) "Nationwide Mortgage Licensing System and Registry" has the meaning assigned by Finance Code §180.002(12).

(5) "Person" means an individual, corporation, company, limited liability company, partnership or association.

(6) The "Act" means the Residential Mortgage Loan Servicer Registration Act, as provided by Finance Code, Chapter 158.

§79.2 Required Disclosure

(a) A registrant shall provide to the borrower of each residential mortgage loan the disclosure contained in the following figure not later than the 30th day after the registrant begins servicing the loan.

(b) In order to let borrowers know how to file complaints with the Department, Residential Mortgage Loan Servicer registrants must include the disclosure contained in the

following figure in all correspondence provided to Texas borrowers, and on its website, a company shall conspicuously post the following notice:

[Attached Graphic](#)201105663-1.html [Attached Graphic](#)

Certification

The agency hereby certifies that the amendments have been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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

6. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, §80.2 Concerning Definitions, §80.204 Concerning Books and Records, and §80.205 Concerning Mortgage Call Reports.

PURPOSE: Amendments to §80.2 adds clarifying definitions. Amendments to §80.204 adds clarifying language. Amendments to §80.205 clarifies that administrative action includes the assessment of an administrative penalty.

RECOMMENDED ACTION: No comments were received regarding the amendments to §80.2, §80.204, and §80.205. The Department recommends that the Finance Commission approve adoption of the amendments without changes to the proposal as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move we adopt the amendments to 7 TAC, §80.2, §80.204, and §80.205 without changes to the proposal as previously published in the *Texas Register*.

Title 7. Banking and Securities

Part 4. Texas Department of Savings and Mortgage Lending

Chapter 80. Texas Residential Mortgage Loan Companies

Subchapter A. General Provisions

Subchapter C. Duties and Responsibilities

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), adopts amendments to §80.2 in 7 Texas Administrative Code, Chapter 80, Subchapter A, concerning definitions and also adopts amendments to §§80.204 and 80.205 in 7 Texas Administrative Code, Chapter 80, Subchapter C, concerning duties and responsibilities.

In general, the purpose of the adoption regarding these rule(s) is to implement changes resulting from the commission's review of Chapter 80, under Texas Government Code §2001.039.

Section 80.2 addresses definitions. The adopted amendments reorganizes the terms to reflect an alphabetical order, and introduces several new terms to create parity with 7 Texas Administrative Code Chapters 79 (regarding Residential Mortgage Loan Servicers) and 81 (regarding Mortgage Bankers and Residential Mortgage Loan Originators).

Section 80.204 addresses books and records. The adopted amendments capitalizes "Department" in order to link it to the adopted definition, as adopted in 7 Texas Administrative Code §80.2 and adds clarifying language.

Section 80.205 addresses mortgage call reports. The adopted amendment emphasizes that the term, "administrative action" includes the assessment of an administrative penalty.

The department received no comments regarding the proposed amendments.

The amendments are adopted under Texas Finance Code §156.102, which provides that the Finance Commission may adopt rules relating to Residential Mortgage Loan Companies.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 156.

<rule>

§80.2 Definitions

As used in this chapter, the following terms have the meanings indicated:

(1) "Branch Office" means any office that is separate and distinct from the company's headquarters location, whether located in Texas or not, which conducts mortgage business on residential real estate located in the state of Texas.

(2) "Commissioner" means the Savings and Mortgage Lending Commissioner.

(3) "Commissioner's designee" means an employee of the Department performing his or her assigned duties or such other person as the Commissioner may designate in writing. A Commissioner's designee is deemed to be the Commissioner's authorized "personnel or representative" as such term is used in Finance Code, Chapter 156.

(4) "Company" means, for purposes of this chapter, a residential mortgage loan company, as that term is defined in Finance Code, §156.002.

(5) "Control Person" means an individual that directly or indirectly exercises control over a company. Control is defined by the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person that:

(A) is a director, general partner or executive officer;

(B) directly or indirectly has the right to vote 10% or more of a class of a voting security or has the power to sell or direct the sale of 10% or more of a class of voting securities;

(C) in the case of an LLC, managing member; or

(D) in the case of a partnership, has the right to receive upon dissolution, or had contributed, 10% or more of the capital, is presumed to control that company.

(6) "Criminal Offense" means any violation of any state or federal criminal statute which:

(A) involves theft, misappropriation, or misapplication, of monies or goods in any amount;

(B) involves the falsification of records, perjury, or other similar criminal offenses indicating dishonesty;

(C) involves the solicitation of, the giving of, or the taking of bribes, kickbacks, or other illegal compensation;

(D) involves deceiving the public by means of swindling, false advertising or the like;

(E) involves acts of moral turpitude and violation of duties owed to the public including, but not limited to, the unlawful

manufacture, distribution, or trafficking in a controlled substance, dangerous drug, or marijuana;

(F) involves acts of violence or use of a deadly weapon;

(G) when considered with other violations committed over a period of time appears to establish a pattern of disregard for, a lack of respect for, or apparent inability to follow, the criminal law; or

(H) involves any other crime which the Commissioner determines has a reasonable relationship to whether a person is fit to serve as an originator in a manner consistent with the purposes of Finance Code, Chapter 157 and the best interest of the State of Texas and its residents.

(7) "Department" means the Department of Savings and Mortgage Lending.

(8) "Nationwide Mortgage Licensing System and Registry" has the meaning assigned by Finance Code §180.002(12).

(9) "One-to-four family residential real property" means improved or unimproved real property, or any portion of or interest in any such real property, on which a one-to-four family dwelling, including a manufactured home, is being or is to be constructed or situated.

(10) "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) "Qualifying Individual" shall have the same meaning as that provided in Finance Code, §156.002. Additionally, the license held by the qualifying individual must be held in a status, which authorizes them to conduct regulated activities, and is sponsored by the company for which they are the qualifying individual.

(12) "Residential Mortgage Loan" shall have the same meaning as that provided in Finance Code, §180.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan which is secured by a structure that is suitable for occupancy as a one-to-four family residence, but is used for a commercial purpose such as a professional office, beauty salon, or other non-residential use, and is not used as a residence.

§80.204 Books and Records

(a) In order to assure that each licensee will have all records necessary to enable the Commissioner or the Commissioner's designee to investigate complaints and discharge their responsibilities under Finance Code, Chapter 156 and this chapter, each originator shall maintain records as set forth in

this section. The particular format of records to be maintained is not specified. However, they must be accurate, complete, current, legible, readily accessible, and readily sortable. Records maintained for other purposes, such as compliance with other state and federal laws, will be deemed to satisfy these requirements if they include the same information.

(b) Mortgage Application Records. Each company or originator is required to maintain, at the location specified in their official record on file with the department, the following books and records:

(1) Residential Mortgage Loan File. For each residential mortgage loan application received the residential mortgage loan file shall contain at a minimum the following:

(A) a copy of the initial signed and dated residential mortgage loan application (including any attachments, supplements, or addenda thereto);

(B) either a copy of the signed closing statement or integrated closing disclosure, documentation of the timely denial, or other disposition of the application for a residential mortgage loan;

(C) a copy of the signed and dated disclosure statement required by Finance Code, Chapter 156 and §80.200(a) of this chapter;

(D) a copy of each item of correspondence, all evidence of any contractual agreement or understanding (including, but not limited to, any interest rate lock-ins or loan commitments), and all notes and memoranda of conversations or meetings with any mortgage applicant or any other party in connection with that residential mortgage loan application or its ultimate disposition;

(E) a copy of the notice to applicants required by Finance Code, §343.105;

(F) a copy of both the initial Good Faith Estimate and the initial Good Faith Estimate fee itemization worksheet, if applicable; and

(G) a copy of the initial integrated loan estimate disclosure, if applicable.

(2) Mortgage Transaction Log. A mortgage transaction log, maintained on a current basis (which means that all entries must be made within no more than seven days from the date on which the matters they relate to occurred), setting forth, at a minimum:

(A) name of each mortgage applicant and how to contact them;

(B) date of the initial residential mortgage loan application;

(C) description of the disposition of the application for a residential mortgage loan;

(D) identity of the person or entity who initially funded and/or acquired the residential mortgage loan; and

(E) full name of the originator and their Nationwide Mortgage Licensing System and Registry identification number.

(3) General Business Records. General business records include the following:

(A) all checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and cancelled checks (or copies thereof) relating to the mortgage lending business;

(B) complete records (including invoices and supporting documentation) for all expenses and fees paid on behalf of a

mortgage applicant, including a record of the date and amount of all such payments actually made by each mortgage applicant;

(C) copies of all federal tax withholding forms, reports of income for federal taxation, and evidence of payments to all company employees, independent contractors and all others compensated by such originator in connection with the mortgage lending business;

(D) copies of all written complaints or inquiries (or summaries of any verbal complaints or inquiries) along with any and all correspondence, notes, responses, and documentation relating thereto and the disposition thereof;

(E) copies of all contractual agreements or understandings with third parties in any way relating to mortgage lending services including, but not limited to, any delegations of underwriting authority, any agreements for pricing of goods or services, investor contracts, or employment agreements;

(F) copies of all reports of audits, examinations, inspections, reviews, investigations, or other similar matters performed by any third party, including any regulatory or supervisory authorities; and

(G) copies of all advertisements in the medium (e.g., recorded audio, video, and print) in which they were published or distributed.

(c) A company and/or originator shall maintain such other books and records as may be required to evidence compliance with applicable state and federal laws and regulations including, but not limited to: the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, and the Truth in Lending Act.

(d) A company and/or originator shall maintain such other books and records as the Commissioner or the Commissioner's designee may from time to time specify in writing.

(e) All books and records required by this section shall be maintained in good order and shall be produced for the Commissioner or the Commissioner's designee upon request. Failure to produce such books and records upon request, after a reasonable time for compliance, may be grounds for suspension or revocation of a license.

(f) All books and records required by this section shall be maintained for three years or such longer period(s) as may be required by applicable state and/or federal laws and regulations.

(g) An originator may meet applicable recordkeeping requirements if his or her sponsoring company maintains the required records.

(h) Upon termination of operations, the licensee shall notify the Commissioner, in writing, within ten days where the required records will be maintained for the prescribed periods. If such records are transferred to another licensee the transferee shall, in writing, within ten days of accepting responsibility for maintaining such records, notify the Commissioner.

§80.205 Mortgage Call Reports

(a) Call Report.

(1) A company shall file a mortgage call report on a quarterly basis. The filing deadlines are set by the Nationwide Mortgage Licensing System and Registry.

(2) A call report is required to be filed for each quarter a license is held, including partial

quarters.

(3) The call report shall be submitted through and in the manner and form prescribed by the Nationwide Mortgage Licensing System and Registry.

(b) Statement of Condition Report.

(1) A company shall file a statement of condition on an annual basis.

(2) A statement of condition report is required to be filed for each year a license is held, including partial years.

(3) The statement of condition report shall be submitted through and in the manner and form prescribed by the Nationwide Mortgage Licensing System and Registry.

(c) Submission of a call report or statement of condition report, by a company, satisfies the requirements of an originator under Finance Code, §180.101 for the period of sponsorship, provided that the originator's information is included in the report.

(d) Failure to file a mortgage call report or a statement of condition report may result in administrative action, which includes the assessment of an administrative penalty.

Certification

The agency hereby certifies that the amendments have been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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

7. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §81.2, Concerning Definitions, §81.204 Concerning Books and Records, and §81.205 Concerning Mortgage Call Reports.

PURPOSE: Amendments to §81.2 adds clarifying definitions. Amendments to §81.204 adds clarifying language. Amendments to §81.205 clarifies that administrative action includes the assessment of an administrative penalty.

RECOMMENDED ACTION: No comments were received regarding the amendments to §81.2, §81.204, and §81.205. The Department recommends that the Finance Commission approve adoption of the amendments without changes to the proposal as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move we adopt the amendments to 7 TAC, §81.2, §81.204, and §81.205 without changes to the proposal as previously published in the *Texas Register*.

Title 7. Banking and Securities

Part 4. Texas Department of Savings and Mortgage Lending

Chapter 81. Mortgage Bankers and Residential Mortgage Loan Originators

Subchapter A. General Provisions

Subchapter C. Duties and Responsibilities

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), adopts amendments to §81.2 in 7 Texas Administrative Code, Chapter 81, Subchapter A, concerning general provisions and adopts amendments to §§ 81.204 and 81.205 in 7 Texas Administrative Code, Chapter 81, Subchapter C, concerning duties and responsibilities.

In general, the purpose of the proposal regarding these rule(s) is to implement changes resulting from the commission's review of Chapter 81, under Texas Government Code §2001.039.

Section 81.2 addresses definitions. The adopted amendments reorganizes the terms to reflect an alphabetical order, and introduces new terms to create parity with 7 Texas Administrative Code Chapters 79 (concerning Residential Mortgage Loan Servicers) and 80 (concerning Texas Residential Mortgage Loan Companies) to enhance clarity.

Section 81.204 addresses books and records. The adopted amendment adds clarifying language.

Section 81.205 addresses mortgage call reports. The adopted amendment emphasizes that the term, "administrative action" includes the assessment of an administrative penalty.

The department received no comments regarding the proposed amendments.

The amendments are adopted under Texas Finance Code §157.023, which provide that the Finance Commission may adopt rules

relating to Mortgage Bankers and Residential Mortgage Loan Originators.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 157.

<rule>

§81.2 Definitions

As used in this chapter, the following terms have the meanings indicated:

(1) "Commissioner" means the Savings and Mortgage Lending Commissioner.

(2) "Commissioner's designee" means an employee of the department performing his or her assigned duties or such other person as the Commissioner may designate in writing. A Commissioner's designee is deemed to be the Commissioner's authorized "personnel or representative" as such term is used in Finance Code, Chapter 157.

(3) "Criminal Offense" means any violation of any state or federal criminal statute which:

(A) involves theft, misappropriation, or misapplication, of monies or goods in any amount;

(B) involves the falsification of records, perjury, or other similar criminal offenses indicating dishonesty;

(C) involves the solicitation of, the giving of, or the taking of bribes, kickbacks, or other illegal compensation;

(D) involves deceiving the public by means of swindling, false advertising or the like;

(E) involves acts of moral turpitude and violation of duties owed to the public including, but not limited to, the unlawful manufacture, distribution, or trafficking in a controlled substance, dangerous drug, or marijuana;

(F) involves acts of violence or use of a deadly weapon;

(G) when considered with other violations committed over a period of time appears to establish a pattern of disregard for, a lack of respect for, or apparent inability to follow, the criminal law; or

(4) "Department" means the Department of Savings and Mortgage Lending.

(5) "Mortgage banker" shall have the same meaning as that provided in Finance Code, §157.002.

(6) "Physical Office" means an actual office where the business of mortgage lending and/or the business of taking or soliciting residential mortgage loan applications are conducted. It must have a street address. A post office box or other similar designation will not suffice. It must be accessible to the general public as a place of business and must hold itself open on a regular basis during posted hours. The hours of business must be posted in a manner to give effective notice to walk-up traffic as to the hours of opening and closing. Normally this will require posting of the hours on an exterior door or window of the office. In those instances where the physical office is in a shared office suite or building, the hours may be posted in a common lobby or reception area. During the hours in which the physical office is open, at least one staff

member must be present to assist customers. The physical office of an originator need not be the location at which such originator's required records are maintained, but the location at which such required records are maintained must be accessible to the Commissioner or the Commissioner's designee for examination during normal business hours.

(7) "Residential mortgage loan" shall have the same meaning as that provided in Finance Code, §180.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan which is secured by a structure that is suitable for occupancy as a one-to-four family residence, but is used for a commercial purpose such as a professional office, beauty salon, or other non-residential use, and is not used as a residence.

(8) "Residential mortgage loan originator" has the meaning assigned in Finance Code, §180.002.

§81.204 Books and Records

(a) In order to assure that each licensee will have all records necessary to enable the Commissioner or the Commissioner's designee to investigate complaints and discharge their responsibilities under Finance Code, Chapter 157 and this chapter, each originator shall maintain records as set forth in this section. The particular format of records to be maintained is not specified. However, they must be accurate, complete, current, legible, readily accessible, and readily sortable. Records maintained for other purposes, such as compliance with other state and federal laws, will be deemed to satisfy these requirements if they include the same information.

(b) Mortgage Application Records. Each originator is required to maintain, at the

location specified in their official record on file with the department, the following books and records:

(1) A residential mortgage loan file for each mortgage loan application received; each file shall contain at a minimum the following:

(A) a copy of the initial signed and dated mortgage loan application (including any attachments, supplements, or addenda thereto);

(B) either a copy of the signed closing statement or integrated closing disclosure, documentation of the timely denial, or other disposition of the application for a residential mortgage loan;

(C) a copy of the disclosure statement required by Finance Code, §157.0021 and §81.200(a) of this chapter;

(D) a copy of each item of correspondence, all evidence of any contractual agreement or understanding (including, but not limited to, any interest rate lock-ins or loan commitments), and all notes and memoranda of conversations or meetings with any mortgage applicant or any other party in connection with that residential mortgage loan application or its ultimate disposition;

(E) a copy of the notice to applicants required by Finance Code, §343.105;

(F) a copy of both the initial Good Faith Estimate and the initial Good Faith Estimate fee itemization worksheet, if applicable; and

(G) a copy of the initial integrated loan estimate disclosure, if applicable.

(2) Mortgage Transaction Log. A residential mortgage transaction log,

maintained on a current basis, which means that all entries must be made within no more than seven days from the date on which the matters they relate to occurred, setting forth, at a minimum:

(A) name of each mortgage applicant and how to contact them;

(B) date of the initial residential mortgage loan application;

(C) description of the disposition of the application for a residential mortgage loan;

(D) identity of the person or entity who initially funded and/or acquired the residential mortgage loan and information as to how to contact them; and

(E) full name of the originator and their Nationwide Mortgage Licensing System and Registry identification number.

(3) General Business Records. General business records include the following:

(A) all checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and cancelled checks (or copies thereof) relating to the residential mortgage business;

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(C) copies of all federal tax withholding forms, reports of income for federal taxation, and evidence of payments to all mortgage banker employees, independent contractors and others compensated by such originator in connection with the mortgage lending business;

(D) copies of all written complaints or inquiries (or summaries of any verbal complaints or inquiries) along with any and all correspondence, notes, responses, and documentation relating thereto and the disposition thereof;

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(G) copies of all advertisements in the medium (e.g., recorded audio, video, and print) in which they were published or distributed.

(c) Each originator shall maintain such other books and records as may be required to evidence compliance with applicable state and federal laws and regulations including, but not limited to, the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, and the Truth in Lending Act.

(d) Each originator shall maintain such other books and records as the Commissioner or the Commissioner's designee may from time to time specify in writing.

(e) All books and records required by this section shall be maintained in good order and shall be produced for the Commissioner or the Commissioner's designee upon request. Failure to produce such books and records upon request, after a reasonable time for compliance, may be grounds for suspension or revocation of a license.

(f) All books and records required by this section shall be maintained for three years or such longer period(s) as may be required by applicable state and/or federal laws and regulations.

(g) An originator may meet applicable recordkeeping requirements if his or her sponsoring mortgage banker maintains the required records. Upon termination of a mortgage banker's sponsorship of an originator, that originator's records shall remain with the mortgage banker or be transferred to the new sponsoring mortgage banker. Upon written request from a former originator, a former mortgage banker may release to his or her former originator copies of records relating to residential mortgage loans handled by such former originator.

(h) Upon the termination of operations as a mortgage banker or an originator, the mortgage banker or originator shall notify the Commissioner, in writing, within ten days where the required records will be maintained for the prescribed periods. If such records are transferred to another mortgage banker, the transferee shall, in writing, within ten days of accepting responsibility for maintaining such records, notify the Commissioner.

§81.205 Mortgage Call Reports

(a) Call Report.

(1) A mortgage banker shall file a mortgage call report on a quarterly basis. The filing deadlines are set by the Nationwide Mortgage Licensing System and Registry.

(2) A call report is required to be filed for each quarter a license is held, including partial quarters.

(3) The call report shall be submitted through and in the manner and form

prescribed by the Nationwide Mortgage Licensing System and Registry.

(b) Statement of Condition Report.

(1) A mortgage banker shall file a statement of condition on an annual basis.

(2) A statement of condition report is required to be filed for each year a license is held, including partial years.

(3) The statement of condition report shall be submitted through and in the manner and form prescribed by the Nationwide Mortgage Licensing System and Registry.

(c) Submission of a call report or statement of condition report, by a mortgage banker, satisfies the requirements of an originator under Finance Code, §180.101 for the period of sponsorship, provided that the originator's information is included in the report.

(d) Failure to file a mortgage call report or statement of condition report may result in administrative action, which includes the assessment of an administrative penalty.

Certification

The agency hereby certifies that the amendments have been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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

C.

**Office of Consumer Credit
Commissioner**

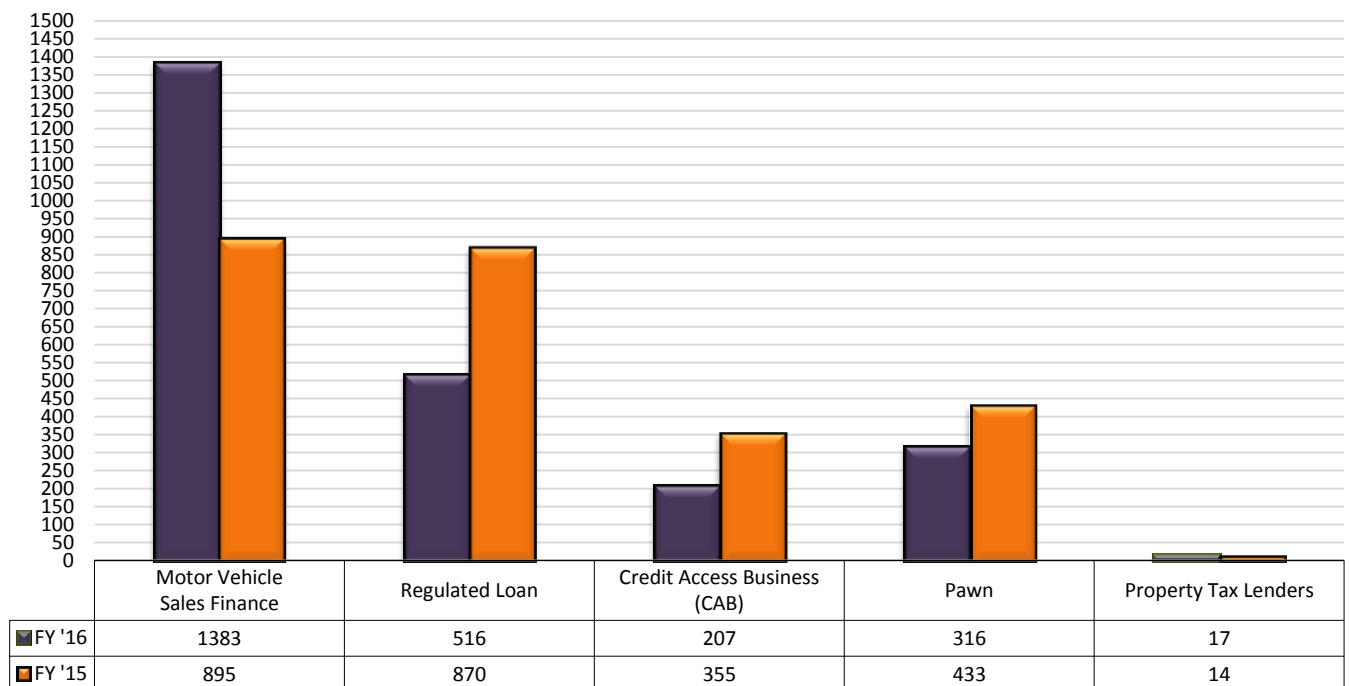


Consumer Protection and Assistance Report

Rudy Aguilar, Director of Consumer Protection

Comparison of examinations conducted for the first eight months of Fiscal Year 2015 (FY '15) and Fiscal Year 2016 (FY '16) are charted below. Recent concentration of effort continues to be in conducting Motor Vehicle Sales Finance (MVSF) examinations. MVSF examinations conducted at the end of April are almost 55% higher in FY '16 than at the same time for FY '15. Examinations conducted in the areas of Credit Access Business (CAB), Pawn, and Regulated Loan is behind the prior year's pace; Property Tax Lenders examinations are slightly ahead of FY '15.

Examinations Conducted: Sept - Apr Fiscal Year Comparison



Classroom training was completed on May 13, 2016 for the six Financial Examiners hired in April. Training for this group of examiners was focused on MVSF and included five weeks of classroom training. This group now moves on to 10 weeks of training in the field. At the conclusion of the 10 week period, these examiners will go through a MVSF exam competency certification process.

The Houston Region Assistant Supervisor position has been filled effective 05/01/16. The position was filled internally through a field examiner promotion.

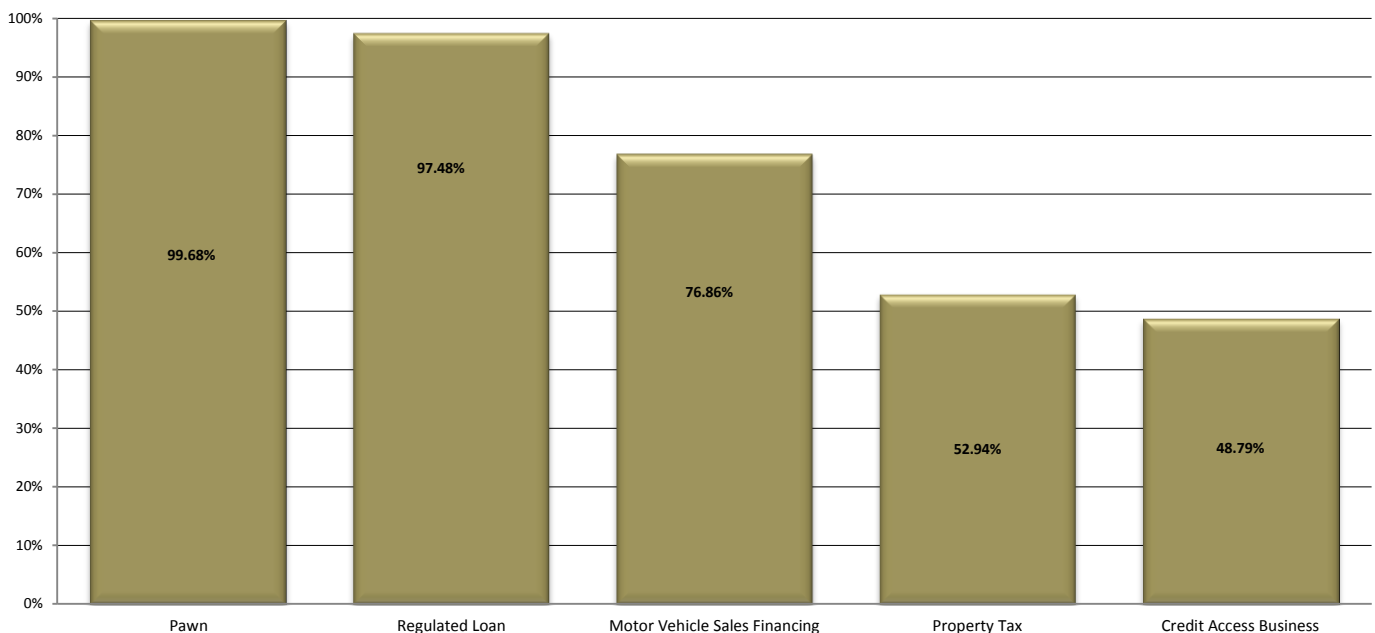
The three remaining field staff vacancies have been filled and the new examiner class will begin training on June 13, 2016. Two of the positions were filled by individuals with previous OCCC experience which should result in a reduced training window before becoming an effective resource.

Sally Ruiz, Customer Service Representative in the Consumer Assistance Section, will be retiring June 30, 2016. Ms. Ruiz is retiring after 17 years and 2 months service with the agency. Her position is in the process of being posted.

The chart below notes the acceptable level of compliance in the five examination areas through April 2016. Pawn, Regulated Loan, and MVSF examinations conducted are within the acceptable level of compliance. Since the prior reporting period, the acceptable level of compliance in the Property Tax and CAB examination area has improved by 19.61% and 18.70% respectively. The levels of compliance for Property Tax and CAB examinations have been affected by our recently adjusted risk based scheduling process. The process uses a more quantitative focused approach which has resulted in resource allocations to some persistent areas of non-compliance.

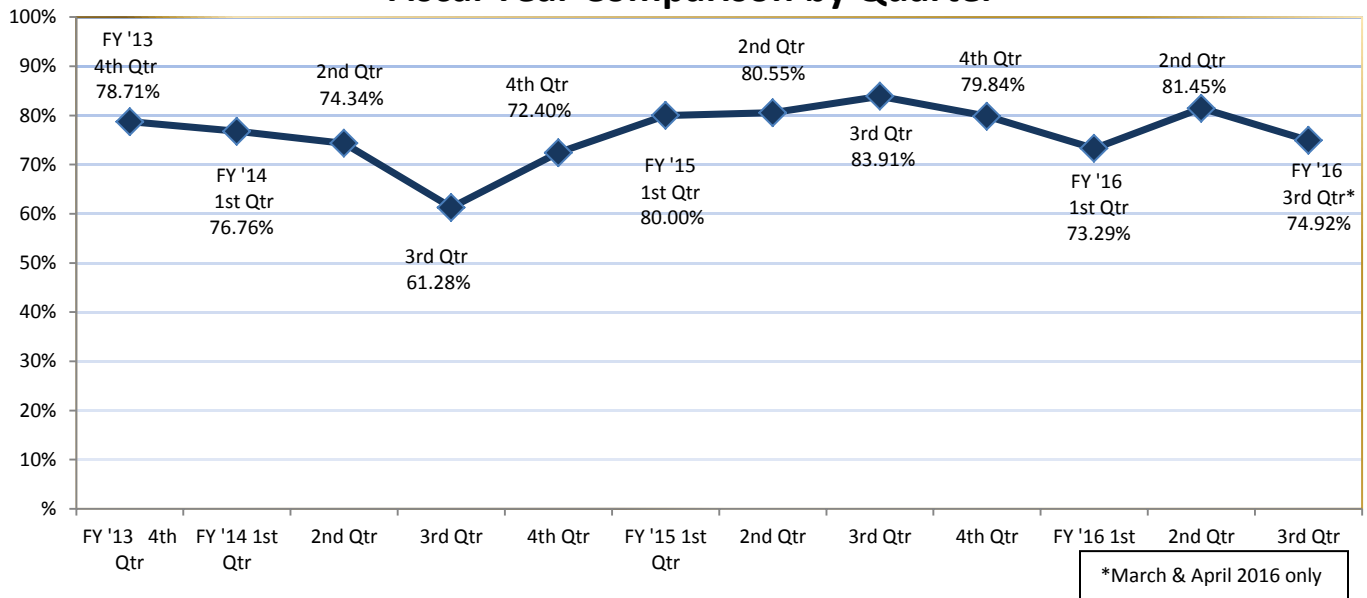
Recently adopted rules have clarified some outstanding issues in Property Tax lending and CAB activities. As we bring licensees into compliance with these rules, the compliance ratings may also be negatively impacted.

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



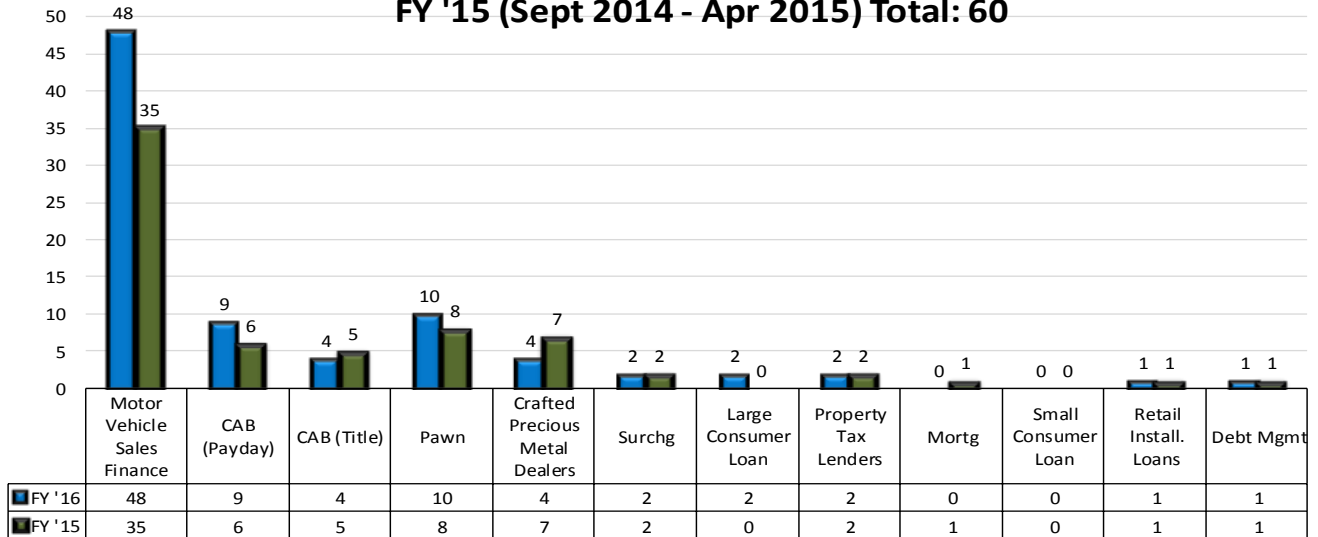
The chart that follows shows a rolling three year comparison of MVSF compliance rates by quarter. Enterprise level examinations in this industry have again had an impact on the acceptable level of compliance. These types of examinations can include more than 50 licensed locations, and, as such, an examination with an unacceptable level of compliance rating is multiplied by the number of licensed locations. Not all related licensed locations fit or benefit from the enterprise approach; however, those that do work out under this approach provide many efficiencies and advantages, but may have an offsetting impact to compliance level ratings.

MVSF: Acceptable Level of Compliance Fiscal Year Comparison by Quarter



Investigations

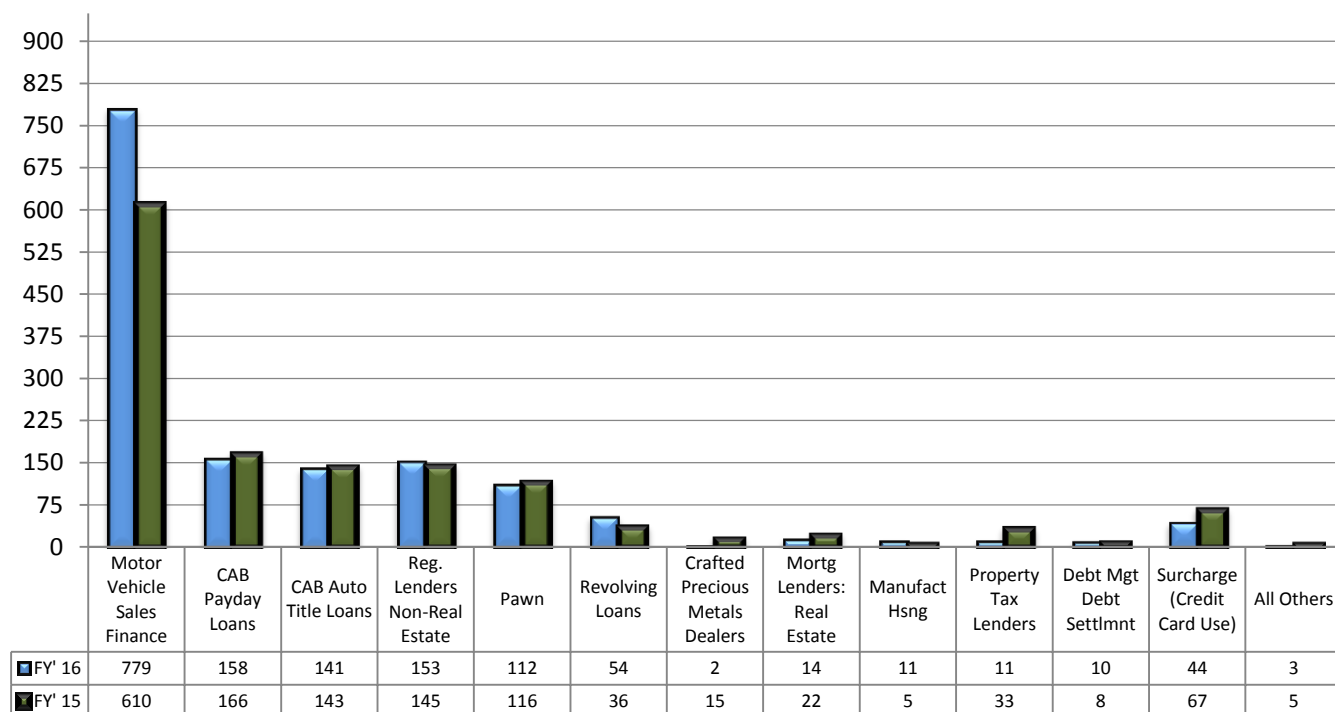
Investigations Completed FY '16 (Sept 2015 - Apr 2016) Total: 83 FY '15 (Sept 2014 - Apr 2015) Total: 60



Consumer Assistance

Complaints Processed

FY '16 (Sept 2015-Apr 2016) Total: 1,492
FY '15 (Sept 2014-Apr 2015) Total: 1,371



At the end of this reporting period, the highest number of complaints were in the categories of 1) MVSF, (2) CAB, 3) Regulated Lenders Non-Real Estate, and, 4) Pawn.

The largest complaint category was MVSF at 52.21%. The percentage of total complaints for this category is consistent with the previous reporting period which was 51.44%. The MVSF percentage of total complaints has remained. By type, these complaints can be categorized as: repossessions (16%), payment postings/dispute of account balances (13%), consumers wish to rescind contract (13%), issues related to ancillary products and insurance (10%), unlicensed activity (10%), financing conditioned on subsequent assignments (10%), contract issues related to agreed price or terms (7%), title issues (6%), mechanical issues (5%) and charges and fees (2%).

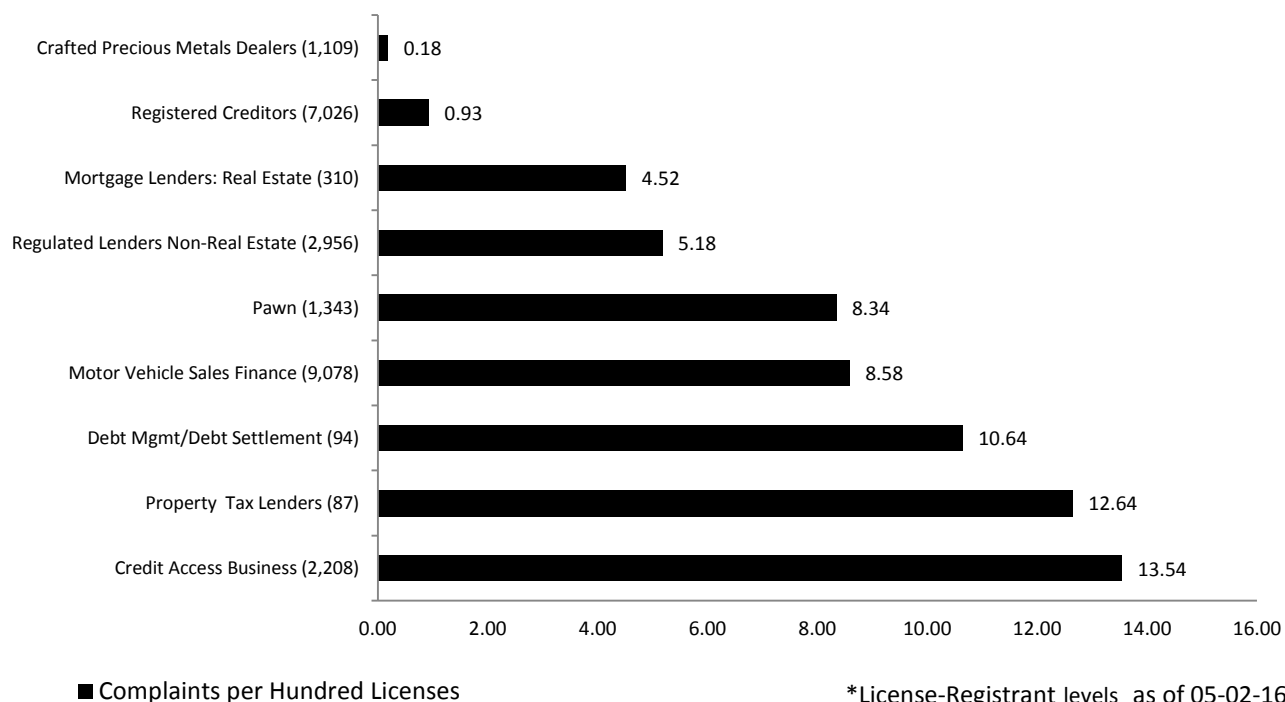
CAB Payday and Auto Title Loan complaints were the second largest category of complaints, collectively being 20.4%. Separately, the percentages of total complaints are at 10.59% for Payday loans and 9.45% for Auto Title loans. CAB payday complaints involved mainly: allegations of improper posting of payments-ACH and dispute of account balances (38%), allegations of ID theft, fraud or scams (16%), allegations that did not apply for loans (9%), collection practices (8%), complaints about fee amounts being charged (7%), issues with staff customer service (6%), and consumers alleging financial hardship and seeking assistance (6%). CAB title loan complaints by type were primarily: allegations of improper posting of payments and balance owed not decreasing (34%), repossessions (15%), charges and fees (15%), release of titles upon payoff (9%), and consumers alleging financial hardship and seeking assistance (8%).

At 10.25% of all complaints processed, Regulated Lenders Non-Real Estate was the third largest category. Primary issues involved allegations of incorrect payoff amount (31%), allegations of abusive collection practices (30%), and issues with staff customer service (9%).

Pawnshop complaints were 7.51% of all processed complaints which made it the fourth largest category. The predominant issues were: replacement of lost/damaged goods (32%), redeeming pawned items (21%), forfeiture of goods (9%), victim assistance in stolen items (7%), monitoring the acceptance of goods (5%) and pawn service charge (4%).

Complaints processed compared to the number of active license or registrant population is noted on the chart below. The highest ratio involved CAB complaints, with Property Tax Lending complaints ratio being the second highest. Debt Management/Debt Settlement and MVSF ratio of complaints to active licenses were third and fourth respectively.

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



CAB Reporting Update

Reports for the 1st quarter of 2016 were filed by 4/30/2016. Presented are selected statistics of January – March (Q1) reports through the years. Consolidation in the industry continues as the number of different stores arranging loans decreased 34% in the last four years. The remaining stores increasingly offer installment loans payable in around six months. These lengthier loans represented 40% of both the new payday and title loans offered during the 1st quarter.

Data Highlights (All Loan Types) Q1 Comparison	2016	2015	2014	2013
Number of new payday loans	489,441	493,761	514,981	572,101
Number of new auto title loans	58,796	68,531	89,707	112,060
Percentage of Payday Loans due in multiple installments	40%	35%	32%	18%
Percentage of Auto Title Loans due in multiple installments	40%	13%	17%	12%
Number of vehicles repossessed under all auto title loans	8,213	9,722	10,693	9,615
Number of locations reporting activity	2,052	2,613	3,078	3,093

Payday Loans Q1	Single Installment		Multiple Installment	
	2016	2015	2016	2015
Number of consumers obtaining loans	214,246	243,309	170,407	152,894
Number of New Loans	296,194	321,217	193,247	172,544
Number of refinances on new loans in the quarter ¹	197,434	233,425	14,460	12,710
Number of total refinances ²	536,275	686,281	65,908	58,329
Average Loan Amount	\$464	\$522	\$565	\$526
Average Fee per \$100 borrowed	\$23.69	\$23.20	\$166.35	\$171.31
Average original term (in days)	17	18	159	160

Title Loans Q1	Single Installment		Multiple Installment	
	2016	2015	2016	2015
Number of consumers obtaining loans	31,561	52,831	21,774	9,031
Number of New Loans	35,424	59,352	23,372	9,179
Number of refinances on new loans in the quarter ¹	21,622	32,978	3,022	1,424
Number of total refinances ²	229,817	369,503	7,676	6,915
Average Loan Amount	\$1,246	\$1,174	\$1,117	\$1,096
Average Fee per \$100 borrowed	\$16.76	\$17.85	\$92.94	\$93.02
Average original term (in days)	30	30	169	161

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

Mirand Zepeda, Manager

Renewals

Renewal for pawnshops and pawn employees is currently open online and ongoing, with the goal of more than 80% of shops renewing through the online platform, ALECS. The discount rate for pawnshops this year is 15%. As of May 27th, more than 70% of pawnshops have renewed their license, which expires, if not renewed, on July 1. The department anticipates sending fewer renewals through regular mail as more licensees utilize ALECS to complete renewal.

Motor vehicle sales finance renewal will open in June and the department is preparing to provide superior customer service and technical support to licensees. The department forecasts 80% of motor vehicle licensees will renew online.

Applications Processing

The licensing department has reached a significant benchmark by finally meeting the goal of less than 200 pending business applications. Effective use of ALECS, improved processes, and team work are some of the factors that have enabled the department to reach this goal. Additionally, total business applications received is down approximately 25% in March and April. Although the department anticipates receiving a large volume of transfer applications in the near future, reducing pending applications overall makes workload, call volume and a variety of other tasks more manageable, something that will benefit the team and future applicants in the long run.

Pending pawn employee applications are also close to reaching the goal of 300 or less applications pending. Pawn employee renewal may affect these numbers, but a large quantity of anticipated approvals at the beginning of July will lead to a significant drop in pending applications.

With regard to ALECS online accounts, approximately 65% of all licensees have a linked ALECS account, up from 60% in April.

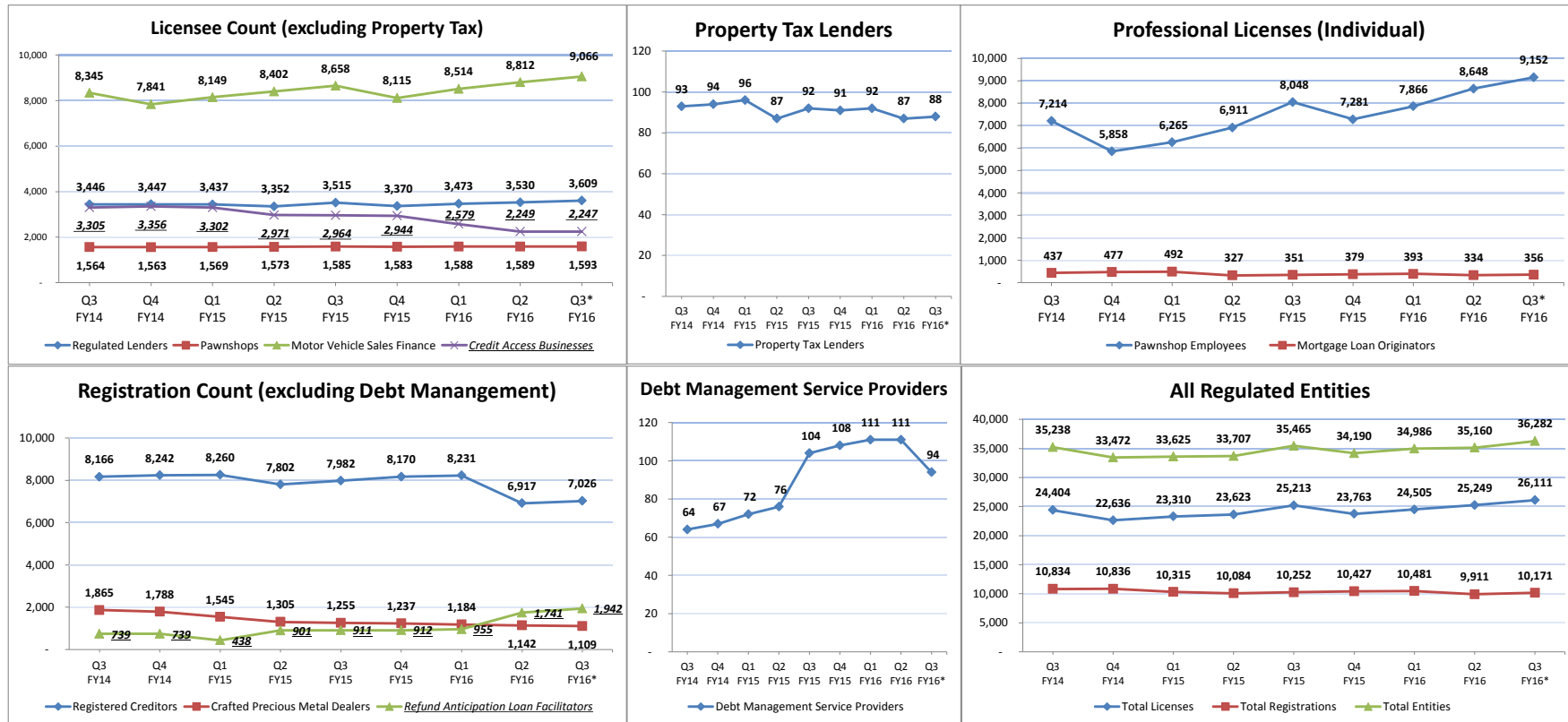
Industry Developments

On April 28, 2016 First Cash Financial Services, Inc. and Cash America International, Inc. announced that they had entered into a definitive merger agreement to combine the two companies. First Cash has 158 pawn licenses and Cash America holds 272 pawn licenses. The combined company, to be known as FirstCash, will have over 2000 locations across four countries. The company will be headquartered in Fort Worth, Texas.

Regulated Entity Population Trends

The following charts reflect the number of OCCC regulated entities at the end of each quarter in fiscal years 2014 and 2015, and the most recent quarterly data, as of April 30, 2016.

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





Communications, Human Resources & Administration Report

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

Strategic Planning /Stakeholder Engagement & Communication

On May 19, the agency submitted OCCC's Strategic Plan (Part 1) to the Finance Commission Strategic Planning Committee for review and input. The instructions for completing the agency's strategic plan required a different approach from previous years. This plan focused specifically on agency goals and action plans and how they would support Governor Abbott's five statewide objectives, listed below:

1. Accountable to tax and fee payers of Texas.
2. Efficient such that maximum results are produced with a minimum waste of taxpayer funds, including through the elimination of redundant and non-core functions.
3. Effective in successfully fulfilling core functions, measuring success in achieving performance measures and implementing plans to continuously improve.
4. Providing excellent customer service.
5. Transparent such that agency actions can be understood by any Texan.

A final version of the plan will be presented to the Finance Commission for consideration on June 10, 2016.

Agency staff continue to provide a combination of live presentations and advisory publications to licensees. William Purce, Senior Review Examiner, Austin, presented to dealers at the Manufactured Housing Division of the Texas Department of Housing and Consumer Affairs training on May 10, 2016 in Austin.

Matthew Nance, Deputy General Counsel, presented an introduction to the OCCC and a litigation update to the Austin Bar Association's Financial Institutions Section on April 26, in Austin.

Huffman Lewis, Financial Examiner, presented at the Dealer Training for the Texas Department of Motor Vehicles on April 20 and 21 in Houston and on May 12, in El Paso.

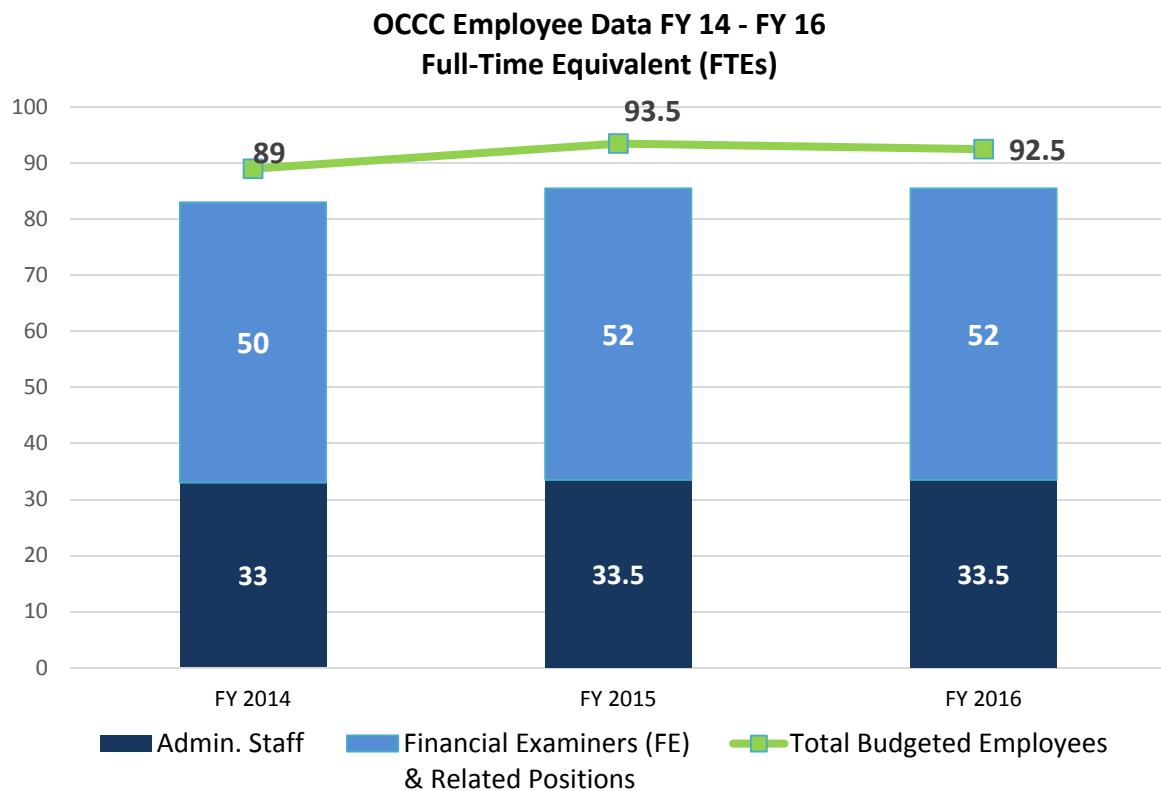
Human Resources

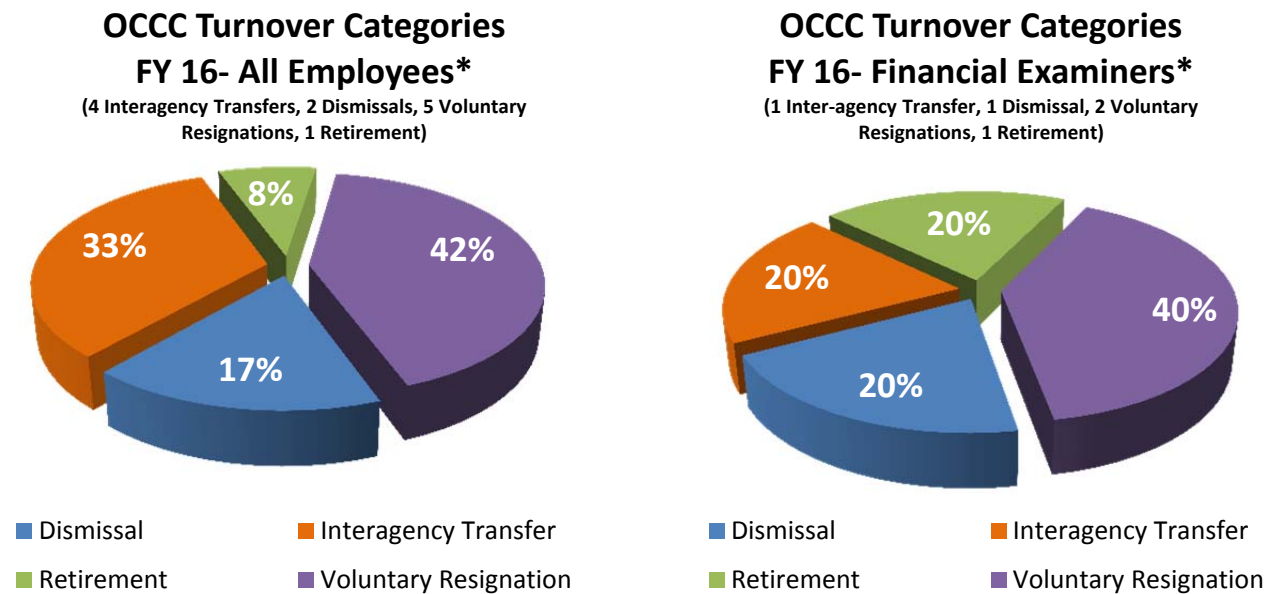
For this reporting period (April-May), the agency had one staff member depart the agency: Administrative Assistant II. However, during this same period, the agency hired a new class of Financial Examiners (six total). Overall, seven positions were filled for this period: (2) Financial Examiners for the Houston Region, (3) Financial Examiners for the Dallas Region, one (1) Financial Examiner for the San Antonio Region. In addition, the agency hired the Financial Literacy & Communications Specialist who has responsibilities for the Texas Financial Education Endowment Grant, allowing the FTE count to hold steady at 85.5 FTEs. The Administrative Assistant II transferred to another state agency. The current

overall turnover ratio is 14.04%. However, when excluding retirement from the overall ratio, the percentage is 12.87% and only 5.85% within the Financial Examiner series.

The Consumer Protection Department is currently evaluating candidates for the position below and is close to making offers to fill the vacancies.

FY 16 Vacancies	
Vacancy	Status
Financial Examiner I – Houston (2 Openings)	Active
Administrative Assistant II – Austin Headquarters (2 Openings)	Active





*September 1, 2015 – May 31, 2015

The Texas Labor Code, Title 5, Subtitle A, Chapter 412, requires the State Office of Risk Management (SORM) to assist state agencies to implement an effective risk management program and to identify the exposures to property and liability losses including workers' compensation losses. On May 31, SORM conducted the Risk Management Program Review (RMPPR) at the OCCC. SORM recommendations were not available at the time this report was prepared.

Financial Literacy

Jessica Salazar, Financial Literacy & Communications Specialist was hired effective May 2, 2016. Current efforts are being focused on training related to providing credit education to consumers.

Ms. Salazar attended the Financial Fitness of Greater Austin (FFGA) Scholarship Award Ceremony on May 18. Discussions are currently being held regarding possible leadership opportunities within FFGA. In addition, she has reached out to several organizations regarding collaboration and speaking opportunities. Catholic Charities of Central Texas, Department of Family Protective Services, and Austin Police Department (APD) Explorers have expressed interest in enhancing financial education for the individuals they serve.



Accounting & IT Reports

Accounting

The department is beginning early budget development preparation. The accounting department has also been providing further detailed accounting reports for other departments and is about to begin work on record retention. New staff members continue to receive more in-depth training on the accounting and leave systems, allowing them to provide effective agency support.

Information Technology-Legacy Modernization

Legacy Modernization

The OCCC signed off on final requirements for the development of the first module of the new compliance application, Online Documentary Fees. The testing module is anticipated to be available during the first week of June. Staff is currently reviewing the final requirements details for Annual/Quarterly Reporting, Consumer Assistance, Investigation and Legal modules and sign off is anticipated to be as scheduled. Development of the Examination module required additional business process engineering and is running two weeks behind schedule.

Security

The agency has upgraded its firewall appliance and installed new intrusion detection software, Sourcefire. This gives the OCCC improved visibility into the network, including applications, services, users and other content to better prevent and control network security issues.

Mobility

The agency is continuing to test features and enhanced functionality available with professional-level tablets, including electronic signatures and imaging, for use by OCCC field examiners. Other alternatives are also being explored which would add improved functionality using auxiliary peripheral devices to augment a standard laptop configuration.



Legal Department Report

Michael Rigby, General Counsel

June 2016

Enforcement Report

Credit Access Business – Quarterly Report

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

On January 13, 2016, a hearing was held at SOAH before an Administrative Law Judge. On March 9, 2016, the ALJ issued a proposal for decision. The proposal for decision is currently under review by Juan V. Garcia, as the Commissioner's designee.

Pawnshop Employee – Application Denial

In January 2016, the OCCC denied a pawnshop employee license application based on the applicant's criminal history. In 2014, the applicant pleaded guilty to felony burglary and misdemeanor theft. Theft is considered to be a crime of moral character that is directly related to duties and responsibilities of a pawnshop employee.

On February 25, 2016, a hearing was held at SOAH before an Administrative Law Judge. At the hearing, the applicant provided new information regarding his rehabilitation efforts. On April 12, 2016, the ALJ issued a proposal for decision recommending the application be granted. The ALJ held that although the OCCC had clear grounds to deny the application, the applicant's personal circumstances and extensive rehabilitative efforts justified granting the application. After reviewing the proposal for decision, the Commissioner determined that the application should be granted. The pending denial action was closed as moot after the application was granted.

Administrative Rule Report

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

- An adoption of amendments regarding official interpretations and advisory letters, including clarification and technical corrections.
- An adoption of amendments regarding administration, including criminal history information and public information requests.
- A proposal of amendments, new rules, and repeals regarding regulated lenders, including the licensing process and technical corrections.
- A proposal of amendments regarding refund anticipation loans, including the registration process and disclosures.

In addition, the Joint Financial Regulatory Agencies (OCCC, Texas Department of Banking, Texas Department of Savings and Mortgage Lending, and Texas Credit Union Department) are presenting a proposal of amendments to home equity interpretations as a result of rule review. The amendments relate to consumer disclosures, the types of lenders authorized to make home equity loans, and technical corrections.

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

- Amendments regarding pawnshops that would require pawnshops to maintain certain disclosures and records related to the Department of Defense's Military Lending Act Rule, and make other technical corrections and updates.
- Amendments regarding credit access businesses that would require credit access businesses to maintain certain disclosures and records related to the Department of Defense's Military Lending Act Rule, and make other technical corrections and updates related to criminal history and licensing.

Performance Report

The following table summarizes enforcement actions completed by the OCCC during the last three fiscal years, and the current fiscal year-to-date as of May 31, 2016. These figures reflect enforcement actions that have been fully resolved with a final order. Actions that are still pending are not included in the table.

Enforcement Actions Completed as of May 31, 2016				
	FYTD 2016	FY 2015	FY 2014	FY 2013
Revocation / Suspension Actions				
Regulated Loan License	1	27	10	3
Pawnshop License	2	2	1	1
Pawnshop Employee License	2	2	1	2
Credit Access Business	2	1	4	0
Motor Vehicle Sales Finance License	8	4	4	3
Property Tax Loan License	0	0	4	0
Crafted Precious Metal Dealer	0	2	0	0

Total Revocation / Suspension Actions	15	38	24	9
Injunction Actions				
Regulated Loan License	0	1	0	1
Pawnshop License	1	0	0	0
Pawnshop Employee License	0	0	0	0
Credit Access Business License	2	1	4	1
Motor Vehicle Sales Finance License	14	12	8	13
Property Tax Loan License	0	1	2	1
Crafted Precious Metal Dealer	0	3	0	0
Registered Creditor (Ch. 345)	1	0	0	1
Debt Management Services (Ch.394)	0	6	1	1
Credit Card Surcharge (Ch. 339)	2	1	0	0
Residential Mortgage Loan Originator	0	0	0	0
Unlicensed Activity – Other Chapters	0	0	2	10
Total Injunction Actions	20	25	17	28
Administrative Penalty Actions				
Regulated Loan License	0	73	121	144
Pawnshop License	38	4	6	9
Pawnshop Employee License	1	4	8	8
Credit Access Business License	89	136	56	52
Motor Vehicle Sales Finance License	88	76	88	112
Property Tax Loan License	3	8	18	12
Crafted Precious Metal Dealer	1	0	1	0
Total Administrative Penalty Actions	220	301	298	337
Application Denial and Protest Actions				
Regulated Loan License	0	0	0	1
Pawnshop License	0	0	0	0
Pawnshop Employee License	7	13	2	25
Credit Access Business License	0	2	0	3
Motor Vehicle Sales Finance License	2	8	0	6
Property Tax Loan License	0	0	0	0
Residential Mortgage Loan Originator	0	1	0	0
Total App. Denial and Protest Actions	9	24	2	35
Total Enforcement Actions Closed	264	388	341	409

From April 1, 2016 to May 31, 2016, the OCCC:

- issued 60 final orders,
- opened 30 cases in order to assess administrative penalties,
- opened 130 cases in order to issue administrative injunctions,
- participated in no contested case hearings, and
- dismissed one contested case hearing.

The OCCC has 2 hearings scheduled between June 1, 2016 and June 30, 2016.

Litigation

Rowell v. Pettijohn:

The Fifth Circuit Court of Appeals has ruled in the OCCC's favor, dismissing a challenge to the constitutionality of the credit card surcharge prohibition in Section 339.001 of the Texas Finance Code. *Rowell v. Pettijohn*, 816 F.3d 73 (5th Cir. Mar. 2, 2016). The plaintiffs argued that the prohibition is an unconstitutional violation of free speech and that it is void for vagueness, under the First and Fourteenth Amendments to the U.S. Constitution. The Fifth Circuit held that the law is a price regulation rather than a speech regulation, and that it is not void for vagueness. This decision affirmed the district court's ruling, which granted the OCCC's motion to dismiss the lawsuit. *Rowell v. Pettijohn*, No. 1:14-cv-00190-LY, 2015 U.S. Dist. LEXIS 40739 (W.D. Tex. Feb. 4, 2015).

The plaintiffs' deadline to appeal the case to the U.S. Supreme Court is May 31, 2016. The plaintiffs' attorney has stated that the plaintiffs intend to appeal the case by the deadline.

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

Similar cases have been filed in three other states:

- The Second Circuit upheld New York's credit card surcharge law. *Expressions Hair Design v. Schneiderman*, 808 F.3d 118 (2d Cir. 2015), *reversing* 975 F. Supp. 2d 430 (S.D.N.Y. 2013). The Second Circuit denied the plaintiffs' motion for rehearing. The plaintiffs filed a petition to appeal the case to the U.S. Supreme Court on May 12, 2016.
- The Eleventh Circuit struck down Florida's credit card surcharge law. *Dana's R.R. Supply v. Att'y Gen.*, 807 F.3d 1235 (11th Cir. 2015), *reversing* no. 4:14-cv-00134-RH-CAS (N.D. Fla. Sept. 2, 2014). The Eleventh Circuit denied the State of Florida's motion for rehearing. The state's deadline to appeal the case to the U.S. Supreme Court is June 6, 2016.
- A federal district court struck down California's credit card surcharge law. *Italian Colors Rest. v. Harris*, 99 F. Supp. 3d 1199 (E.D. Cal. 2015). The State of California has appealed this case to the Ninth Circuit, and the parties have filed their briefs on appeal.

State of Texas v. LowerMyBills, Inc.

In December 2014, the Consumer Protection Division of the Office of the Attorney General filed a lawsuit in Dallas County district court against Experian Information Solutions, Inc. and LowerMyBills, Inc., a former subsidiary of Experian, alleging violations of the DTPA. The lawsuit sought injunctive relief, restitution, and civil penalties against both companies. In May 2015, the attorney general filed an amended petition alleging violations of Chapter 394 and is representing the OCCC as to those violations.

On January 12, 2016 the parties resolved the case as to Experian. On May 18, 2016, the court granted an agreed motion to abate the case until October 3, 2016 to give the parties more time to explore informal options to resolve the remaining claims against LowerMyBills. The full style of the 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.

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

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

Property Tax Lender TILA Litigation:

The Fifth Circuit Court of Appeals has ruled that the federal Truth in Lending Act (TILA) does not apply to Texas property tax lenders. *Billings v. Propel Fin. Servs., LLC*, No. 14-51326, 2016 U.S. App. LEXIS 7843 (5th Cir. Apr. 29, 2016). The court held that a property tax loan does not constitute an extension of credit subject to TILA, because the transfer of an existing tax obligation does not create new debt. Before the Fifth Circuit reached its decision, federal district judges in San Antonio issued conflicting decisions on this issue. *Compare Billings v. Propel Fin. Servs., LLC*, No. 5:14-cv-00764-OLG, 2014 WL 7448248, 2014 U.S. Dist. LEXIS 179738 (W.D. Tex. Nov. 28, 2014) (holding that TILA does not apply to property tax lenders) *with Thiery v. Texas Tax Solutions, LLC*, No. 5:14-cv-00940-HLH, 2014 WL 7447976, 2014 U.S. Dist. LEXIS 179763 (W.D. Tex. Dec. 19, 2014) (holding that TILA applies to property tax lenders).

On May 27, the Fifth Circuit denied the plaintiffs' petition for rehearing. The plaintiffs' deadline to appeal the case to the U.S. Supreme Court is August 25, 2016.

Advisory Bulletins

From April 1, 2016 to May 31, 2016, the OCCC issued two advisory bulletins, both related to motor vehicle sales finance.

- Bulletin No. 16-3 describes the OCCC's new system for filing documentary fees through ALECS. The bulletin also explains that the documentary fee amount that does not require a cost analysis will increase to \$150 on June 1.
- Bulletin No. 16-4 describes requirements for deferment charges. The bulletin describes

situations where a written deferment agreement is required and provides examples showing how to calculate the deferment charge disclosed to the buyer.

Interpretation Requests

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

Open Records Requests

From April 1, 2016 to May 31, 2016, the OCCC received 39 requests for information under the Texas Public Information Act, with no referrals to the Office of the Attorney General.

OCCC Rule Schedule

<div> <div>June 10, 2016</div> <div>Rule Item Purpose</div> </div>	Proposal Date	Adoption Date
<p>Interpretations and Advisory Letters - Adopt Amendments (from Rule Review) 7 TAC, Part 1, §1.201</p> <p>To provide clarification, improved grammar, better readability, and technical corrections</p>	04/15/16	Presented for Adoption 06/10/16
<p>Administration - Adopt Amendments (from Rule Review) 7 TAC, Part 5, Chapter 82</p> <p>To update authorized viewers of criminal history information, update public information procedures, clarify the requirements to request a criminal history evaluation letter, clarify the recipients of consumer complaint procedures, and make technical corrections</p>	04/15/16	Presented for Adoption 06/10/16
<p>Tax Refund Anticipation Loans - Adopt Completed Rule Review 7 TAC, Part 5, Chapter 87</p> <p>To adopt the completed rule review under Tex. Gov't Code, §2001.039</p>	Not applicable	Presented for Adoption 06/10/16
<p>Rules for Regulated Lenders - Proposed Amendments, New Rules, & Repeals 7 TAC, Part 5, Chapter 83, Subchapter A</p> <p>To update rules regarding licensing of regulated lenders and to make technical corrections; to provide clarification regarding contact information, transfers, criminal history review, definitions, and recordkeeping</p> <p><i>Precomment draft distributed May 4, 2016</i> <i>Stakeholders meeting held May 20, 2016</i></p>	06/10/16	

OCCC Rule Schedule

<div> <div>June 10, 2016</div> <div>Rule Item/Purpose</div> </div>	Proposal Date	Adoption Date
<p>Tax Refund Anticipation Loans - Proposed Amendments & New Rule (from Rule Review) 7 TAC, Part 5, Chapter 87</p> <p>To clarify the term of registration, require current contact information, implement a statutory late filing fee, and add a required notice</p> <p><i>Precomment draft distributed May 9, 2016</i> <i>Stakeholders meeting held May 23, 2016</i></p>	06/10/16	
<p>Rules for Credit Access Businesses - Amendments 7 TAC, Part 5, Chapter 83, Subchapter B</p> <p>To make technical corrections in compliance with recent federal regulations, and to clarify criminal history information of applicants</p>	08/19/16	
<p>Rules for Operation of Pawnshops - Amendments 7 TAC, Part 5, Chapter 85, Subchapter A</p> <p>To make technical corrections in compliance with recent state law and federal regulations, and to conform licensing application procedures to other regulated areas</p>	08/19/16	

C. OFFICE OF CONSUMER CREDIT COMMISSIONER

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 1, §1.201, Concerning Interpretations and Advisory Letters, Resulting from Rule Review

PURPOSE: The purpose of the amendments to §1.201 is to implement changes resulting from the commission's review of Part 1, Chapter 1 under Texas Government Code, §2001.039. The changes provide clarification, improved grammar, better readability, and technical corrections.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the amendments to §1.201 without changes as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve the amendments to §1.201.

*Title 7. Banking and Securities**Part 1. Finance Commission of Texas**Chapter 1. Consumer Credit Regulation**§1.201. Official Interpretations and Advisory Letters*

The Finance Commission of Texas (commission) adopts amendments to §1.201, concerning Interpretations and Advisory Letters.

The commission adopts the amendments without changes to the proposed text as published in the April 29, 2016, issue of the *Texas Register* (41 TexReg 3032).

The commission received no written comments on the proposal.

In general, the purpose of the amendments to §1.201 is to implement changes resulting from the commission's review of Chapter 1 under Texas Government Code, §2001.039. The notice of intention to review 7 TAC, Part 1, Chapter 1 was published in the *Texas Register* on March 11, 2016 (41 TexReg 1980). The agency did not receive any comments on the notice of intention to review.

Overall, the adopted changes provide clarification, improved grammar, better readability, and technical corrections. The purposes of amendments to individual subsections are provided in the following paragraphs.

In subsection (a), the adoption includes a new definition of the term "advisory letter." The definition identifies certain documents that are not advisory letters, such as official interpretations, advisory bulletins, and letters sent in connection with an examination or license application.

In subsection (a), the adoption also amends the definition of "interpretation" to use the term "official interpretation." This reflects the agency's convention of referring to interpretations issued under Texas Finance Code, §14.108 as "official interpretations," and helps avoid confusion with other types of statements that the agency issues. Subsections (a), (b), and (c) contain conforming changes to replace "interpretation" with "official interpretation," and to improve readability and clarity.

In subsection (d), the adoption includes new text for the notice that appears on advisory letters interpreting Texas Finance Code, Title 4, Subtitle A or B. The new text is intended to improve readability and clarity.

The amendments are adopted under Texas Finance Code, §11.304, which authorizes the commission to propose rules to enforce Chapter 14 and Title 4 of the Texas Finance Code. In addition, the adopted amendment to subsection (b)(4) is authorized under Texas Finance Code, §14.107(a), which authorizes the commission to establish reasonable and necessary fees for carrying out the commissioner's powers under Chapter 14.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 14 and Title 4.

§1.201. Official Interpretations and Advisory Letters.

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

(1) Advisory letter--A letter by the commissioner or an OCCC employee providing an informal advisory response to a question concerning a provision of law. The term does not include:

(A) an official interpretation;

(B) an advisory bulletin addressed to a body of stakeholders;

(C) instructions for submitting required information to the OCCC (e.g., annual report instructions);

(D) a report or study provided to the Texas Legislature or the Finance Commission of Texas; or

(E) a letter sent in connection with an examination, investigation, license or registration application, complaint, or enforcement action.

~~[(1) Advisory letter--A letter by the commissioner or a member of the staff of the Office of Consumer Credit Commissioner providing an informal advisory response to an inquiry concerning provisions of Texas Finance Code, Title 4, Subtitle A or B, and is not an interpretation as defined in paragraph (4) of this subsection.]~~

(2) Agency or OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

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

(4) Official interpretation ~~[Interpretation]~~--A letter issued by the commissioner and approved by the Finance Commission of Texas under ~~[pursuant to]~~ Texas Finance Code, §14.108 interpreting a provision of Texas Finance Code, Title 4, Subtitle A or B in light of ~~[certain]~~ relevant facts provided by a ~~[the]~~ requestor.

(b) Required information for official interpretation request. Any person may submit a request for an official interpretation. All requests must be directed to the commissioner and contain the following items:

(1) Statement requesting official interpretation. The requestor must state explicitly ~~[An explicit statement]~~ that an official interpretation approved by the Finance Commission of Texas is desired.

(2) Description of transaction, facts, and legal issues. The requestor must provide a ~~[A]~~ concise description of the contemplated transaction or activity ~~[contemplated]~~, the legal issue raised, and all facts necessary to reach a conclusion in the matter.

(3) Pending litigation. The requestor must state ~~[A statement]~~ whether, to the best of the requestor's knowledge, the issue to be considered is an issue in pending litigation. Matters in litigation will ordinarily not be answered.

(4) Fee. The agency will charge a \$500 fee ~~[A fee of \$500 will be charged]~~ for an official interpretation to compensate the agency for the expense involved in researching and answering the request. The

ADOPT AMENDMENTS

7 TAC §1.201

Page 3 of 3

requestor should submit the payment of \$500 ~~[should be submitted]~~ with the request. The agency may ~~[determine and]~~ remit a partial or full refund if deemed appropriate ~~[applicable]~~. The agency may waive the fee.

(5) Additional information. The [A] requestor should ~~[also]~~ identify each provision of law involved, state ~~[and indicate]~~ the requestor's opinion of how the legal issues should be resolved, and state the basis for that opinion, including an analysis of any relevant court decisions or related official interpretations ~~[, as well as, all prior interpretations to which the request relates]~~.

(c) Processing an official interpretation ~~[of]~~ request. Within 10 business days of receiving ~~[receipt of]~~ a valid request under subsection (b), the agency will file ~~[pursuant to this subsection,]~~ the request ~~[will be filed]~~ with the Texas Register for publication. Within 31 calendar days of ~~[Upon]~~ publication in the *Texas Register*, any person ~~[party]~~ may ~~[within 31 calendar days]~~ submit briefs or proposals pertaining to the request.

(1) Official interpretation ~~[Interpretation]~~ not issued. After publication of a valid request for an official interpretation, the agency may decline to issue an official interpretation. A summary of the agency's reasons for deciding not to issue an official interpretation will be published in the *Texas Register*.

(2) Approved official interpretation. If the agency drafts an official interpretation, then the agency will present the official interpretation ~~[The agency may draft an interpretation or a response and present it]~~ to the Finance Commission of Texas for approval ~~[consideration]~~. If the Finance Commission approves the official interpretation, then within ~~[Within]~~ 10 business days of the approval ~~[of an interpretation by the Finance Commission of~~

~~Texas]~~, the agency will file a summary of the official interpretation ~~[will be filed]~~ with the Texas Register for publication. Copies of official interpretations will ~~[shall]~~ contain a statement ~~[notation]~~ of approval and the date of action by the Finance Commission ~~[of Texas]~~.

(d) OCCC advisory letters. If the OCCC sends an advisory letter concerning a provision of Texas Finance Code, Title 4, Subtitle A or B, then the advisory letter will include the following statement: "This advisory letter is not an official interpretation approved by the Finance Commission of Texas. The requirements for requesting an official interpretation are in Title 7, Section 1.201(b) of the Texas Administrative Code." ~~[Each advisory letter issued by the OCCC must contain the following notation: "This advisory letter is not an interpretation approved by the Finance Commission of Texas pursuant to Texas Finance Code, §14.108. If an interpretation approved by the Finance Commission of Texas is desired, then an interpretation should be requested pursuant to the procedures set forth in 7 Texas Administrative Code, §1.201(b)]."~~

Certification

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

Issued in Austin, Texas on June 10, 2016.

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

C. OFFICE OF CONSUMER CREDIT COMMISSIONER

3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 5, Chapter 82, Concerning Administration, Resulting from Rule Review

PURPOSE: The purpose of the amendments to these administrative rules is to implement changes resulting from the commission's review of Chapter 82 under Texas Government Code, §2001.039. The amendments update authorized viewers of criminal history information, update public information procedures, clarify the requirements to request a criminal history evaluation letter, clarify the recipients of consumer complaint procedures, and make technical corrections.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the amendments to 7 TAC, Chapter 82 without changes as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve for the amendments to 7 TAC, Chapter 82.

Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 82. Administration
§82.1 - §82.4

The Finance Commission of Texas (commission) adopts amendments to 7 TAC, Chapter 82, concerning Administration. The commission adopts amendments to all four rules contained in Chapter 82: §82.1, concerning Custody of Criminal History Record Information; §82.2, concerning Public Information Requests; Charges; §82.3, concerning request for Criminal History Evaluation Letter; and §82.4, concerning Consumer Complaint Process.

The commission adopts the amendments without changes to the proposed text as published in the April 29, 2016, issue of the *Texas Register* (41 TexReg 3042).

The commission received no written comments on the proposal.

In general, the purpose of the amendments to Chapter 82 is to implement changes resulting from the commission's review of this chapter under Texas Government Code, §2001.039. The notice of intention to review 7 TAC, Chapter 82 was published in the *Texas Register* on March 11, 2016 (41 TexReg 1979). The agency did not receive any comments on the notice of intention to review.

Overall, the adopted amendments update authorized viewers of criminal history information, update public information procedures, clarify the requirements to request a criminal history evaluation letter, clarify the recipients of consumer complaint procedures, and make technical corrections. The individual purposes of the amendments

to each rule are provided in the following paragraphs.

The purpose of the amendments to §82.1 is to update the list of agency employees who have access to criminal history record information, and to make technical corrections that improve readability. The adopted amendments to §82.1 implement Texas Government Code, §411.095, as amended by Senate Bill (SB) 1075 (effective September 1, 2015), relating to criminal history record information obtained by the Office of Consumer Credit Commissioner (OCCC). SB 1075 amended Texas Government Code, §411.095 by adding the following to the list of persons about whom the OCCC can obtain criminal history record information: (1) an employee or volunteer with the OCCC, (2) an applicant for employment with the OCCC, and (3) a contractor or subcontractor of the OCCC.

In §82.1(a), definitions of "commissioner," "criminal history record information," and "OCCC" have been added. In §82.1(b) (former subsection (a)), the provisions referring to the OCCC's use of criminal history record information have been updated to cite Texas Government Code, §411.095. In §82.1(c) (former subsection (b)), the list of agency employees with access to criminal history record information has been updated to include the following employees: the director of strategic communications, administration and planning; and the human resources specialist. These changes reflect the agency's practice. The commissioner has authorized the human resources specialist to

review criminal history record information in evaluating applicants for employment. In addition, the director of strategic communications, administration and planning may review criminal history record information in evaluating employees, applicants for employment, contractors, and subcontractors. Subsection (c) also includes changes to improve readability and conform to the definition of "commissioner."

The purpose of the amendments to §82.2 is to conform the rule to the agency's current public information process, remove obsolete language, and add clarification.

The OCCC has recently transferred its public information duties to the legal department and along with that reorganization, has reviewed and updated its public information procedures.

In subsection (a) of §82.2 concerning definitions, the term defined in paragraph (5) has been updated to match the one used by the Office of the Attorney General (OAG) in 1 TAC §70.2. Accordingly, the OAG term "Standard paper copy" has replaced the term "Standard-size copy" in §82.2(a)(5).

Subsection (b) of §82.2 includes several amendments to provide clarification regarding the initial receipt of public information requests by the OCCC. Subsection (b) has been divided into five paragraphs in order to provide better readability. The former language in §82.2(b) through the phrase "normal business activities" has been retained under new paragraph (1) with the tagline "Generally." The following new closing sentence has been added to adopted §82.2(1) for clarity: "All requests will be processed in accordance with the Texas Public

Information Act, and all requests will be treated equally." The remaining language from former subsection (b) has been relocated into new paragraph (4) "Confidential information," and new paragraph (5) "Fee waiver or reduction."

Two new paragraphs in §82.2(b) relate to requests received via email, and those received by other methods. Adopted new §82.2(b)(2) requires that public information requests submitted via email must be sent to the OCCC's designated public information officer, as authorized by Texas Government Code, §552.301(c). Directing requests for public information submitted via email to the public information officer or designee serves to streamline the agency's public information process, and will ensure that all email requests are handled timely and consistently.

Adopted new §82.2(b)(3) provides the agency's address for requests delivered by mail or hand delivery, and the fax number for requests sent by facsimile. This provision reflects the agency's existing policy for requests received by these methods, providing more clarification in the rule.

Subsection (c) of §82.2 concerning copy and service charges has experienced several revisions to better reflect current agency practice and provide clarity for requestors of public information. Introductory language has been added to subsection (c) citing use of the applicable charges established by the OAG. The adopted amendments to §82.2(c) clarify that the charges outlined are the most common charges the OCCC collects to produce copies of public information, but that they may be supplemented or modified as authorized by the OAG cost rules.

In §82.2(c)(1) and (2), references relating to number of pages have been removed, as the OCCC's updated public information procedures will generally not involve a copy charge per page (unless paper copies are requested). Additionally, the amendments throughout §82.2(c)(1)-(2) better align with the agency's use and requestors' receipt of electronic records.

The adopted amendments to §82.2(c)(1) clarify that no fees will be collected for requests resulting in charges of \$5 or less. This provision is similar to the former language, which states that no fee will be charged for 50 or fewer pages (\$0.10 per page x 50 pages = \$5). However, the new language also reflects that labor time of \$5 or less will also not be collected. It is the OCCC's understanding that most state Texas agencies do not collect fees for requests under a certain minimal dollar amount.

The adopted amendments to §82.2(c)(2) outline the application of charges to requests for public information received by the OCCC. In subparagraph (A), the clarifying phrases "copy charge" and "if paper copies are requested" clarify when \$0.10 per page will be charged. In subparagraph (B) regarding the existing \$15 per hour of personnel time, the amendments specify in more detail that the agency may charge requestors to "locate (including pulling documentation from archives), compile, manipulate (including redacting mandated confidential information), reproduce, and prepare." All of these actions are currently authorized by the OAG and used by the OCCC personnel to prepare public information. The adopted language reflects this policy and provides better clarity to requestors. In addition, the phrase "labor or" has been added before "personnel time," as

these two terms are often used interchangeably.

Adopted new subparagraph (C) in §82.2(c)(2) provides for a 20% overhead charge, calculated by multiplying the total personnel cost by 0.20. This 20% overhead charge is authorized by OAG cost rule 1 TAC §70.3(e). The OCCC has decided to begin charging requestors of public information an overhead charge, as the agency and requestors have shifted more to electronic records. An increasing number of the agency's requests involve manipulation of data into electronic spreadsheets, and the labor involved to compile information from the OCCC's databases can result in significant personnel time. Therefore, the controlling cost factor to produce public information is personnel time, and the resulting 20% overhead charge reflects that time.

Section 82.2(c)(3) related to requests for not readily available information has been deleted. While the cited OAG regulation is still valid and available should the agency need it, the OCCC believes it is no longer necessary to include in the agency's rule.

Since the adoption of this provision, the OCCC no longer maintains information at a remote storage location (aside from records stored at the Texas State Library and Archives Commission). In addition to increased digital storage of agency records, the OCCC has implemented an online license application system, where applicants upload documents directly to web-based cloud storage. The OCCC is currently working on a new IT project to include other agency functions, which will result in cloud storage of more types of agency records. Thus, subsection (c)(3) has been deleted as access to remote storage will become less

relevant to OCCC records. As a result of this deletion, the remaining paragraphs have been renumbered accordingly.

Amendments have been adopted in §82.2(c)(4) concerning certification to clarify that in addition to certifying copies, the OCCC also provides certified statements that verify information compiled from the OCCC's records. In addition to the commissioner, the adopted amendments include the option for a designated custodian of records to sign the certification.

In adopted §82.2(c)(4) (former (c)(5)), the term has been updated to match the one used by the OAG in 1 TAC §70.3. Accordingly, the OAG term "Nonstandard copy" has replaced the term "Non-standard-size copy" in §82.2(c)(4).

In §82.2(d)(2) regarding expedited delivery, the adopted amendments clarify that a requestor must ask and the agency must agree to provide public information by overnight delivery service or other expedited delivery. A sentence has been added at the end of the provision to further clarify that the requestor must pay for this service.

Section 82.2(d)(3) has been deleted, as the OCCC will no longer charge for electronic copies of pages that had to be scanned or copied in order to redact confidential information.

In §82.2(e)(2) regarding redaction of confidential information prepared for inspection, references relating to number of pages have been removed and replaced with references to "paper records." The adopted amendments state that if confidential information must be redacted prior to requestor's inspection of paper records, the

agency may charge \$0.10 per page to prepare the redacted pages.

Two new paragraphs in §82.2(e) relate to inspection of records. Adopted new §82.2(e)(3) provides that labor charges may be assessed if production of electronic information requires programming or manipulation of data prior to inspection. Adopted new §82.2(e)(4) states that the OCCC will send a cost estimate should a request for inspection result in charges over \$40. Adopted new §82.2(e)(3) and (4) reflect the agency's existing policy for requests to inspect records, providing more clarification in the rule. As a result of the two new paragraphs, the remaining paragraph has been renumbered accordingly.

Additional changes throughout §82.2 improve readability and clarity, and provide technical corrections.

The purpose of the amendments to §82.3 is to clarify the requirements for requesting a criminal history evaluation letter. The adopted amendments to §82.3 implement Texas Occupations Code, §53.102, which allows a person to request that a licensing authority issue a criminal history evaluation letter regarding the person's eligibility for a license issued by that authority if the person: (1) is enrolled or planning to enroll in an educational program that prepares a person for an initial license or is planning to take an examination for an initial license, and (2) has reason to believe that the person is ineligible for the license due to a conviction or deferred adjudication for a felony or misdemeanor offense.

In §82.3(a), definitions of "agency or OCCC," "commissioner," and "principal party" have been added. In §82.3(b) (former subsection (a)), the provisions relating to the

rule's purpose have been updated for readability and clarity. In §82.3(c) (former subsection (b)), the provisions relating to the rule's applicability have been updated to specify the individuals and business entities that may request the criminal history evaluation letter. The adopted amendments include references to the enrollment and examination requirement in Texas Occupations Code, §53.102(a)(1). In §82.3(d) (former subsection (c)), the provisions regarding required information have been updated to require a description of any educational program that the requestor is planning to enroll in, as well as a description of any examination that the requestor is planning to take. In §82.3(f) (former subsection (e)), the fee provisions have been amended to specify that the requestor must pay a fingerprint-processing fee to a party designated by the Texas Department of Public Safety (DPS), rather than a \$40 fingerprint-processing fee to the OCCC. This amendment conforms the rule to the method by which applicants currently provide fingerprint information through DPS's Fingerprint Applicant Services of Texas (FAST) program. Additional changes throughout §82.3 improve readability and clarity.

The purpose of the amendments to §82.4 is to clarify the requirements for consumer complaints under Texas Finance Code, §14.062. In §82.4(b), a definition of "OCCC" has been added. Adopted new subsection (c) explains that as provided by Texas Finance Code, §14.062(b), the OCCC will provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the OCCC's policies and procedures relating to complaint investigation and resolution. In §82.4(d) (former subsection (c)), the text of the rule has been updated to specify that if

the OCCC receives a complaint from a source other than a person filing the complaint (e.g., another state agency), then the OCCC is not required to send the policies and procedures to the subject of the complaint or the source of the complaint. Additional changes throughout §82.4 improve readability and clarity.

The amendments are 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. Additionally, Texas Finance Code, §14.157 authorizes the commission to adopt rules governing the custody and use of criminal history record information obtained under Texas Finance Code, Chapter 14, Subchapter D. The adopted amendments to §82.2 are authorized under Texas Finance Code, §14.107(a), which authorizes the commission to establish reasonable and necessary fees for carrying out the commissioner's powers under Chapter 14. Additionally, Texas Government Code, §552.230 authorizes governmental bodies to adopt reasonable rules of procedure under which public information may be inspected and copied.

The adopted amendments to §82.3 are authorized by Texas Occupations Code, §53.105, which authorizes a licensing authority to charge a fee for a criminal history evaluation letter, in an amount necessary to cover the cost of administering Texas Occupations Code, Chapter 53, Subchapter D.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 14 and Title 4.

§82.1. Custody of Criminal History Record Information.

(a) Definitions. The following terms, when used in this section, have the following meanings:

(1) Commissioner--The Consumer Credit Commissioner of the State of Texas.

(2) Criminal history record information--Has the meaning provided by Texas Government Code, §411.082(2).

(3) OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

(b) Use of criminal history record information. The OCCC may obtain criminal history record information under Texas Government Code, §411.095 and Texas Finance Code, Chapter 14, Subchapter D. The OCCC's use of criminal history information is limited to evaluating a person described by Texas Government Code, §411.095(a). All criminal history record information received by the OCCC is confidential and is for the exclusive use of the OCCC. The OCCC may not disclose criminal history record information except as provided by Texas Government Code, §411.095(b).

~~[(a) The use of "criminal history record information," as defined by Texas Government Code, §411.082, obtained or maintained by the Office of Consumer Credit Commissioner (OCCC) pursuant to Texas Finance Code, Chapter 14, Subchapter D, will be limited to assisting the commissioner in determining the character and fitness of an applicant for a license issued by the OCCC or in determining the character and fitness of a current license holder of the OCCC. All criminal history~~

~~record information received by the OCCC is confidential information and is for the exclusive use of the OCCC. Except on court order or as otherwise provided by Texas Finance Code, §14.155, such information may not be disclosed to any person or agency.]~~

(c) Employee access. [(b)] Access to criminal history record information maintained by the OCCC will be limited to the following persons:

(1) the commissioner [Consumer Credit Commissioner];

(2) - (6) (No change.)

(7) the director of strategic communications, administration and planning;

(8) the human resources specialist;

(9) [(7)] any person appointed to act on behalf of or in the stead of any of the above; and

(10) [(8)] any employee of the OCCC who:

(A) [that] requires access to criminal history record information in order to fulfill the employee's duties; and

(B) is [as designated and] approved by the commissioner or the director of consumer protection to view criminal history record information [a party provided in paragraph (1) or (5) of this subsection].

§82.2. Public Information Requests; Charges.

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

(1) Agency or OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

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

(3) Public information request--A written request made for public information pursuant to Texas Government Code, Chapter 552 (the Texas Public Information Act). Another name for a "public information request" is an "open records request," and these terms may be used synonymously.

(4) Readily available information--Public information that already exists in printed form, or information that is stored electronically, and is ready to be printed or copied without requiring any programming, but not information that is located in two or more separate buildings that are not physically connected with each other or information that is located in a remote storage facility as per Texas Government Code, §552.261.

(5) Standard paper [~~Standard size~~] copy--A printed impression on one side of a piece of paper that measures up to 8 1/2 inches by 14 inches. A piece of paper that is printed on both sides will be counted as two copies.

(b) Receipt of public information request.

(1) Generally. Upon receipt of a written request from a requesting party which clearly identifies the public records requested to be copied or examined pursuant to Texas Government Code, Chapter 552 (the Texas Public Information Act), the agency will make every reasonable effort to provide the information in the manner requested as quickly as possible without disruption of normal business activities. All requests will be processed in accordance with the Texas Public Information Act, and all requests will be treated equally. [~~on condition that information that is confidential by law will not be provided except under court order, Attorney General directive, or other legal process. All inquiries will be treated equally. Fees imposed by this section may be waived or reduced at the discretion of the commissioner as per Texas Government Code, §552.267.~~]

(2) Requests by email directed to OCCC public information officer or designee. Public information requests submitted via email must be sent to the OCCC's designated public information officer.

(3) Requests sent by other methods. Public information requests, other than email requests, may be submitted to the OCCC as follows:

(A) By mail or hand delivery. Submit the request to Public Information Officer, Office of Consumer Credit Commissioner, 2601 N. Lamar Blvd., Austin, TX 78705; or

(B) By fax. Submit the request to 512-936-7610.

(4) Confidential information. Information that is confidential by law will not be provided except under court order, attorney general directive, or other legal process.

(5) Fee waiver or reduction. Fees imposed by this section may be waived or reduced at the discretion of the commissioner as per Texas Government Code, §552.267.

(c) Copy and service charges. The cost to any person requesting copies of public information from the OCCC will be the applicable charges established by the Office of the Attorney General under Title 1, Part 3, Chapter 70 (relating to Cost of Copies of Public Information). This subsection outlines the OCCC's most common charges to produce copies of public information. These charges may be supplemented or modified as authorized by 1 TAC Chapter 70.

(1) Fees not collected [50 pages or fewer]. No fee will be collected [charged] for requests [for 50 or fewer standard size copies of public information] resulting in charges of \$5 or less.

(2) Application of charges. The [More than 50 pages. For standard size copies of more than 50 pages of public information, the] following charges may [will] apply to requests for public information:

(A) \$0.10 copy charge per page if paper copies are requested; [and]

(B) \$15 per hour of labor or personnel time spent to locate (including pulling documentation from archives), compile, manipulate (including redacting

mandated confidential information), reproduce, and prepare [locating, copying, and preparing] the information for delivery or inspection; [and.]

(C) 20% overhead charge, calculated by multiplying the total personnel cost under subparagraph (B) by 0.20.

[~~(3) Not readily available information. For standard size copies of information that is not readily available and that must be retrieved from a separate or remote storage location as per Texas Government Code, §552.261, and regardless of number of pages, a charge of \$15 per hour of personnel time spent driving to and from the storage location or locating, retrieving, and restoring the information may be added to the charges specified by this subsection as per 1 TAC §70.3 (relating to Charges for Providing Copies of Public Information).~~]

(3) [(4)] Certification. If certification of copies as true and accurate from the OCCC's records, or a certified statement verifying information on record with the OCCC is requested, an additional charge of \$5 per certification will be added to the computed fee. The certification will include [A certified statement copy will bear] the signature of the commissioner, or a designated custodian of records for the information being certified, and the OCCC seal.

(4) [(5)] Nonstandard [Non standard size] copies. The cost for nonstandard [non standard size] copies will be determined by reference to any recommended standards promulgated by the Office of the Attorney General, Title 1, Part 3, Chapter 70 (relating to Cost of Copies of Public Information).

(5) ~~[(6)]~~ Cost estimates.

(A) Over \$40. If the anticipated charges under this subsection plus anticipated charges under subsection (d) of this section exceed \$40, the agency will send an estimate outlining the estimated cost to fulfill the request as per Texas Government Code, §552.2615.

(B) Over \$100. If the anticipated charges under this subsection plus anticipated charges under subsection (d) of this section exceed \$100, the agency will send a cost estimate as provided in subparagraph (A) of this paragraph. In addition, the agency may require cash prepayment or bond equal to the total anticipated charges prior to providing copies of the requested information, as per Texas Government Code, §552.263.

(d) Delivery charges.

(1) U.S. mail. When public information is ~~[copies are]~~ required to be mailed, the cost of postage will be added to the computed fee.

(2) Expedited delivery. When a requestor asks and the agency agrees to provide public information ~~[copies are required to be sent]~~ by overnight delivery service or other expedited delivery, the cost of the service will be added to the computed fee unless the requestor arranges to pay the delivery charges directly. The agency is not required to provide expedited delivery without payment for the service.

~~[(3) Email. When copies of more than 50 pages are sent via email, the \$0.10 per page copying charge will not apply except for pages requiring redaction of confidential information.]~~

(e) Inspection of records.

(1) Generally. Records access for purposes of inspection will be by appointment only and will only be available during regular business hours of the agency. If the safety of any public record or the protection of confidential information is at issue, or when a request for inspection would be unduly disruptive to the ongoing business of the office, physical access may be denied and the option of receiving copies at the usual fees will be provided.

(2) Redaction of confidential information from paper records ~~[and more than 50 pages]~~. If confidential information must be redacted prior to a requestor's inspection of paper records ~~[and the request totals more than 50 pages]~~, \$0.10 per page may be charged to prepare the inspection copies containing the remaining public information.

(3) Inspection of electronic information. Labor charges may be assessed if production of the information requires programming or manipulation of data (including redaction). Overhead is not charged.

(4) Over \$40. If a request for inspection would result in charges under Texas Government Code, §552.271 that exceed \$40, the agency will send an estimate outlining the estimated cost to fulfill the request as per Texas Government Code, §552.2615.

(5) ~~[(3)]~~ Over \$100. If a request for inspection would result in charges of over \$100, the agency may require a 50% cash prepayment or a bond equal to the total anticipated charges prior to providing access to the requested information, as per Texas

Government Code, §552.263 and 1 TAC §70.7 (relating to Estimates and Waivers of Public Information Charges).

(f) Agency officer for public information. The commissioner or the commissioner's designee is the agency's officer for public information.

§82.3. Request for Criminal History Evaluation Letter.

(a) Definitions. The following terms, when used in this section, have the following meanings:

(1) Agency or OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

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

(3) Principal party--An individual who would qualify as a principal party as provided by the relevant chapter of this title under which a business entity is considering applying for a license or registration.

~~(b) [(a)] Purpose [and definitions]. The purpose of this section is to provide the procedures for a potential applicant [a person considering applying for a license from the Office of Consumer Credit Commissioner] to request a criminal history evaluation letter from the OCCC [regarding the person's eligibility for a license] under Texas Occupations Code, Chapter 53, Subchapter D. [This section adopts the words and terms as defined in §82.2 of this title (relating to Public Information Requests; Charges).]~~

(c) Applicability.

(1) This section applies to an individual who:

(A) is considering applying for a license or registration for which the OCCC may obtain criminal history record information;

(B) is enrolled or planning to enroll in an educational program that prepares the individual for a license or registration, or is planning to take an examination for a license or registration, as provided by Texas Occupations Code, §53.102(a)(1); and

(C) has reason to believe that the individual is ineligible for the license or registration due to a conviction or deferred adjudication for a felony or misdemeanor offense, as provided by Texas Occupations Code, §53.102(a)(2).

(2) This section applies to a business entity that:

(A) is considering applying for a license or registration for which the OCCC may obtain criminal history record information; and

(B) has at least one principal party who:

(i) is enrolled or planning to enroll in an educational program that prepares the principal party for a license or registration, or is planning to take an examination for a license or registration, as provided by Texas Occupations Code, §53.102(a)(1); and

(ii) has reason to believe that the business entity is ineligible for the license or registration due to a conviction or

deferred adjudication for a felony or misdemeanor offense of the principal party, as provided by Texas Occupations Code, §53.102(a)(2).

~~[(b) Applicability. This section applies to all persons, including business entities, considering applying for a license with the agency under Title 4 of the Texas Finance Code. This section also applies to any other licensed business, occupation, or profession requiring a criminal history evaluation assigned to the regulatory authority of the agency under other law.]~~

(d) [(e)] Required information. In order to request [A request for] a criminal history evaluation letter, a person must submit the request [must be submitted] in a format prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats in order to accept approved electronic submissions. The [Appropriate fees must be filed with the request, and the] request must include the following:

(1) a description of any educational program that the requestor is enrolled in or planning to enroll in to prepare for the license or registration;

(2) a description of any examination that the requestor is planning to take for the license or registration;

(3) [(4)] all court documentation relevant to the requestor's criminal history, including:

(A) copies of all court indictments, judgments, and orders against the requestor; and

(B) an explanation of the circumstances and events of the criminal action that led to the arrest, conviction, or sentence;

(4) [(2)] the basis for the requestor's potential ineligibility for a license or registration; and

(5) [(3)] an explanation of [as to] why any potential ineligibility should be disregarded.

(e) [(d)] Business entities. A business entity [Business entities] must provide the information required by subsection (d) [(e) of this section] for the entity and for each principal party. [every individual who would qualify as a principal party if the entity were applying for a license. To determine qualifying principal parties, each business entity requesting a determination under this section should consult the definition of "principal party" located in the respective chapter of this title under which the entity is considering applying for a license.]

(f) [(e)] Processing fees. A requestor must pay a \$75 processing fee to the OCCC for each individual or business entity that is considering applying for a license or registration. The requestor must pay the fee at the time the request is filed. In addition, for each individual potential applicant and each principal party, the requestor must pay a fee to a party designated by the Texas Department of Public Safety for processing fingerprints. The Texas Department of Public Safety and the designated party determine the amount of the fee and whether it is refundable. [The fees to process a request for a criminal history evaluation letter are \$75 for each entity requestor plus \$40 for fingerprint processing for each

~~individual or principal party included in the criminal history evaluation letter request.]~~

(g) [(f)] Notice of agency determination. Upon completion of the agency's investigation, the agency will notify the requestor of the agency's determination within 90 days of the requestor satisfying all of the agency's requests for information to complete the criminal history evaluation letter request. The determination letter will include the agency's determination on each ground of potential ineligibility.

§82.4. Consumer Complaint Process.

(a) Purpose. The purpose of this section is to clarify the applicability of Texas Finance Code, §14.062, Consumer Information and Complaints.

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

(1) OCCC--The Office of Consumer Credit Commissioner of the State of Texas [~~Generally. This section adopts the words and terms as defined in §82.2 of this title (relating to Public Information Requests; Charges).~~].

(2) Person filing the complaint--An [~~complaint. For purposes of Texas Finance Code, §14.062(b) and (c), "person filing the complaint" means an~~] individual who has sought or is seeking to obtain goods, services, or financing from a commercial entity. This definition applies for purposes of Texas Finance Code, §14.062(b) and (c).

(c) Copy of OCCC policies and procedures. As provided by Texas Finance Code, §14.062(b), the OCCC will provide to the person filing the complaint and to each

person who is a subject of the complaint a copy of the OCCC's policies and procedures relating to complaint investigation and resolution.

(d) Copy [(e) ~~Notice~~] of [OCCC] policies and procedures not required. If [~~When~~] the OCCC receives a complaint from a source other than a person filing the complaint (e.g., another state agency), then [~~"person filing the complaint" as defined in subsection (b)(2) of this section,~~] the OCCC is not required to send the policies and procedures [~~relating to complaint and investigation and resolution~~] to the subject of the complaint or the source of the complaint.

Certification

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

Issued in Austin, Texas on June 10, 2016.

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

C. OFFICE OF CONSUMER CREDIT COMMISSIONER

4. Discussion of and Possible Vote to Take Action on the Completed Rule Review of 7 TAC, Part 5, Chapter 87, Concerning Tax Refund Anticipation Loans

PURPOSE: Pursuant to Texas Government Code, §2001.039, the agency has completed the review of 7 TAC, Part 5, Chapter 87. The notice of the review was published in the *Texas Register* as required on May 6, 2016 (41 TexReg 3317). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this chapter continue to exist. As a result of internal review by the agency, the commission has determined that certain revisions are appropriate and necessary. Rule changes to Chapter 87 are being separately presented for proposal.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve and adopt the rule review of Chapter 87, as the reasons for these rules continue to exist.

RECOMMENDED MOTION: I move that we find that the reasons for adopting Chapter 87 continue to exist and that the rules are repropose and readopted.

Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 87. Tax Refund Anticipation Loans

The Finance Commission of Texas (commission) has completed the review of Texas Administrative Code, Title 7, Part 5, Chapter 87, concerning Tax Refund Anticipation Loans. Chapter 87 contains Subchapter A, concerning Registration Procedures. Subchapter A consists of §87.102, concerning Filing of New Application; §87.103, concerning Processing of Application; §87.104, concerning Relocation of Registered Location; §87.105, concerning Fees; §87.106, concerning Applications and Notices as Public Records; and §87.107, concerning Annual Renewal. The rule review was conducted pursuant to Texas Government Code, §2001.039.

Notice of the review of 7 TAC, Part 5, Chapter 87 was published in the *Texas Register* as required on May 6, 2016, (41 TexReg 3317). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this chapter continue to exist.

As a result of internal review by the agency, the commission has determined that certain revisions are appropriate and necessary. The rule changes to Chapter 87 are being concurrently published elsewhere in this issue of the *Texas Register*.

Subject to the proposed rule changes to Chapter 87, the commission finds that the reasons for initially adopting these rules continue to exist, and readopts this chapter in accordance with the requirements of Texas Government Code, §2001.039.

This concludes the review of 7 TAC, Part 5, Chapter 87.

C. OFFICE OF CONSUMER CREDIT COMMISSIONER

5. 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 83, Subchapter A, Concerning Rules for Regulated Lenders

PURPOSE: The purpose of the proposal is to update rules regarding the licensing of regulated lenders, and to make technical corrections. The proposed rule changes relate to the following issues: contact information, transfers, criminal history review, definitions, and recordkeeping. Additionally, certain sections are being proposed for repeal in order to replace them with reorganized rules.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the amendments, new rules, and repeals in 7 TAC, Chapter 83, Subchapter A for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve for publication and comment the amendments, new rules, and repeals in 7 TAC, Chapter 83, Subchapter A.

Title 7. Banking and Securities

Part 5. Office of Consumer Credit Commissioner

Chapter 83. Regulated Lenders and Credit Access Businesses

Subchapter A. Rules for Regulated Lenders

The Finance Commission of Texas (commission) proposes amendments to §§83.102, 83.301, 83.302, 83.304, 83.306, 83.310, 83.403, and 83.828; proposes new §83.303 and §83.404; and proposes the repeal of §§83.303, 83.404, and 83.405 in 7 TAC, Chapter 83, Subchapter A, concerning Rules for Regulated Lenders.

In general, the purpose of the rule changes in 7 TAC, Chapter 83, Subchapter A is to update rules regarding the licensing of regulated lenders, and to make technical corrections. The proposed rule changes relate to the following issues: contact information, transfers, criminal history review, definitions, and recordkeeping. Additionally, certain sections are being proposed for repeal in order to replace them with new, reorganized rules.

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

The individual purposes of the proposed changes to each section are provided in the following paragraphs.

In Section 83.102(3), the definition of "amount financed" is proposed to be replaced with a reference to Regulation Z, 12 C.F.R. §1026.18(b). The current rule

contains a specific definition of "amount financed" that applies only to rule provisions on computing earnings, deferments, maximum charges, and refunds of unearned interest. The current rules on these issues do not use the term "amount financed," so the specific definition is unnecessary. However, other rules throughout Chapter 83 use the term "amount financed" to refer to the amount calculated under Regulation Z. For this reason, the proposed amendment replaces the current definition with a reference to Regulation Z.

A proposed amendment to §83.301(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 §83.302(1)(B)(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 §83.302(1)(E)-(F).

Section 83.303 is proposed for repeal and replacement with a new rule, with the intent to clarify the requirements when a licensee transfers ownership. Currently, §83.303 describes what constitutes a transfer of ownership requiring the filing of a transfer application. The proposed new rule largely maintains the requirements under the current rule, but it provides two different paths the transferee can take for a transfer of ownership: either an application to transfer the license, or a new license application on transfer of ownership. The amendments outline what the application has to include, the timing requirements, and which parties are responsible at different points in the transfer process. Subsection (a) describes the purpose of the new section. Subsection (b) defines terms used throughout the subsection. In particular, subsection (b)(3) defines the phrase "transfer of ownership," listing different types of changes in acquisition or control of the licensed entity. The precommenter recommends that this definition specify that a transfer of ownership does not include a relocation of regulated transactions from one licensed location to another. Relocations of regulated transactions are governed by current §83.308(c), which requires licensees to notify debtors that the transactions have been relocated. In response to this recommendation, proposed §83.303(b)(3) states that a transfer of ownership does not include a relocation of regulated transactions from one licensed location to another licensed location.

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, §342.163. 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 regulated 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 this subsection, the precommenter makes the following recommendations. First, the precommenter recommends against using the phrase "joint and several responsibility," because the precommenter believes that this phrase could lead to confusion. Second, the precommenter recommends against drafting the subsection's paragraphs so that they overlap with each other. Third, the precommenter recommends that this

subsection consist of two paragraphs (one for the transferor's responsibility and one for the transferee's responsibility), for the sake of clarity. In response to these recommendations, the three paragraphs in proposed subsection (h) apply to three distinct periods of time: (1) the period before the transferee begins conducting business (when the transferor is responsible), (2) the period after the transferee begins conducting business and before final approval of the application (when the transferor and transferee are each responsible), and (3) the period after final approval (when the transferee is responsible). For the second period, proposed subsection (h)(2) specifies that the transferor and transferee are each responsible. The agency believes that is appropriate for the rule to specify that the transferor and transferee are each responsible during this period, which includes any activity performed by the transferee under a permission to operate. In this way, the rule helps ensure that licensees are aware of their responsibilities. The proposed rule's statement that the transferor is responsible for acts performed during a permission to operate is consistent with the current rule at §83.303(d), which states: "The transferor must accept full responsibility to any customer and to the OCCC for the licensed business for any acts of the transferee in connection with the operation of the lending business." The permission to operate is a temporary authorization allowing a transferee to operate under a transferor's license while the transferee's application is pending. The OCCC allows the permission-to-operate procedure in order to accommodate transferees that wish to begin doing business after a routine transfer of ownership but before approval of a license application. The alternative would be to prohibit the

transferee from engaging in business until after the license application is approved. If a transferor wishes to protect itself from responsibility for the transferee's acts, then the transferor can delay the transfer of ownership until the transferee's application is approved. Alternatively, the transferor can enter an indemnification agreement with the transferee, under which the transferee must reimburse the transferor for losses resulting from the transferee's acts.

In §83.304, concerning Change in Form or Proportionate Ownership, conforming changes are proposed corresponding to proposed new §83.303. Throughout subsections (b) and (c), references have been added to the second path a transferee may take, i.e., a new license application on transfer of ownership.

Proposed amendments to §83.306 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 10 days applies before a license application is approved. Proposed new §83.306(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. Proposed new §83.306(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.

A proposed amendment to §83.310(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. Proposed amendments to §83.310(d) conform the rule to proposed new §83.303 and add numbered paragraphs for clarity.

Proposed amendments to §83.403 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).

Proposed new §83.404 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 regulated lender license. This section would replace the current §83.404 and §83.405, which are proposed for repeal. Subsection (a) describes the OCCC's collection of criminal history record information from law enforcement agencies. Subsection (b) identifies the criminal history information that the applicant must disclose. Subsection (c) describes the OCCC's denial, suspension, and revocation based on crimes that are directly related to the licensed occupation of regulated lender. Subsection (c)(1) lists the types of crimes that the OCCC considers to directly relate to the duties and responsibilities of being a regulated 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, §342.104(a). Subsection (e) explains that the OCCC will revoke a license on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b). Subsection (f) identifies other grounds for denial, suspension, or revocation, including convictions for specific offenses described by statutory provisions cited in the rule.

A proposed amendment to the recordkeeping rule in §83.828(10)(A) lists documentation and disclosures required under the Department of Defense's Military Lending Act Rule, 32 C.F.R. pt. 232. The Department of Defense's recently adopted amendments to the rule have a required compliance date of October 3, 2016. Under the amended Military Lending Act Rule, lenders will generally be required to provide model disclosures to covered military borrowers. 32 C.F.R. §232.6. The amended

rule also specifies documentation that lenders can obtain in order to determine whether a consumer is a covered military borrower. 32 C.F.R. §232.5. The proposed amendments to §83.828(10)(A) specify that licensees are required to maintain these documents and disclosures in the individual borrower's loan file. This file must be maintained for four years from the date of the loan, or two years from the date of the final account entry, whichever is later, under current §83.828(14). However, licensees may keep the documents for a longer period of time if they choose. Additionally, a proposed amendment to the recordkeeping rule in §83.828(10)(C) updates a reference to the Texas Department of Public Safety "Driver's Crash Report" form.

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 rules.

Commissioner Pettijohn also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the rule changes will be that the commission's rules will be more easily understood by licensees required to comply with the rules, and will be more easily enforced. In particular, the rules being repealed and replaced with new, reorganized rules will provide more guidance and clarity to regulated lender licensees.

There is no anticipated cost to persons who are required to comply with the rule changes as proposed. The Department of Defense's Military Lending Act Rule requires lenders to provide the disclosures described in the proposed amendments to

§83.828. Any costs of complying with the proposed amendments to §83.828 are imposed by federal law, and are not imposed by the proposed amendments.

There is no anticipated adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the rule changes 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 the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The rule changes are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 342.

§83.102. Definitions.

Words and terms used in this subchapter that are defined in Texas Finance Code, Chapter 342 have the same meanings as

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defined in Chapter 342. The following words and terms, when used in this subchapter, will have the following meanings, unless the context clearly indicates otherwise.

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

(3) Amount financed--The amount calculated in accordance with Regulation Z, 12 C.F.R. §1026.18(b). ~~[of money which is used, forborne, or detained and upon which interest is charged. The cash advance plus any other amounts that are financed by the creditor are included. Any points or other prepaid finance charges, excluding the administrative loan fee, that are not paid at closing and that are financed as part of the transaction are included in the amount financed. This definition is only applicable for the purposes of this subchapter for computing earnings, deferments, maximum charges, and determining refunds of unearned interest. It is not intended to be synonymous with the similar term that is used in the Truth in Lending Act (15 U.S.C. §§1601—1667f).]~~

(4) - (30) (No change.)

§83.301. Definitions.

Words and terms used in this subchapter that are defined in Texas Finance Code, Chapter 342, have the same meanings as defined in Chapter 342. The following words and terms, when used in this subchapter, will have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(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.)

§83.302. Filing of New Application.

An application for issuance of a new regulated loan license must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats to facilitate multistate uniformity of applications or 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) (No change.)

(B) Disclosure of 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,~~

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~~documentation establishing or confirming separate property status must be provided.]~~

(ii) - (vi) (No change.)

(C) - (K) (No change.)

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

§83.303. Transfer of License; New License Application on Transfer of Ownership.
{{This section will replace the current section 83.303, which will be repealed.}}

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

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

(1) License transfer--A sale, assignment, or transfer of a regulated loan license.

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

(3) Transfer of ownership--Any purchase or acquisition of control of a licensed entity (including acquisition by gift, devise, or descent), or a substantial portion of a licensed entity's assets, where a substantial change in management or control

of the business occurs. The term does not include a change in proportionate ownership as defined in §83.304 of this title (relating to Change in Form or Proportionate Ownership) or a relocation of regulated transactions from one licensed location to another licensed location, as described by §83.308(c) of this title (relating to Relocation). 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);

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(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 regulated loan license may be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §342.512. A license transfer is approved when the OCCC issues its final written approval of a license transfer application.

(d) Timing. No later than 30 days after the event of a transfer of ownership, the transferee must file a complete license transfer application or new license application on transfer of ownership in accordance with subsection (e). A transferee may file an application before this date.

(e) Application requirements.

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

pay appropriate fees in connection with the application.

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

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

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

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

(D) any other documentation evidencing the transfer event.

(3) Application information for new licensee. If the transferee does not hold a regulated loan license at the time of the application, then the application must include the information required for new license applications under §83.302 of this title (relating to Filing of New Application). The instructions in §83.302 of this title apply to these filings.

(4) Application information for transferee that holds a license. If the transferee holds a regulated loan license at the time of the application, then the application must include amendments to the transferee's original license application describing the information that is unique to the transfer event, including disclosure

questions, owners and principal parties, and a new financial statement, as provided in §83.302 of this title. The instructions in §83.302 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 §83.302 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 regulated 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 §83.307(d) of this title (relating to Processing of Application).

(h) Responsibility.

(1) Responsibility of transferor. Before the transferee begins performing regulated lender activity under a license, the transferor is responsible to any consumer and to the OCCC for all regulated lender activity performed under the license.

(2) Responsibility of transferor and transferee. If a transferee begins performing regulated lender 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), the transferee is responsible to any consumer and to the OCCC for all regulated lender 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.

§83.304. Change in Form or Proportionate Ownership.

(a) (No change.)

(b) Merger. A merger of a licensee is a change of ownership that results in a new or different surviving entity and requires the filing of a license transfer application or a new license application on transfer of ownership pursuant to §83.303 of this title (relating to Transfer of License; New License Application on Transfer of Ownership). If the merger of the parent entity of a licensee that leads to the creation of a new entity or results in a different surviving parent entity, the licensee must advise the OCCC in writing of the change within 14 calendar days by filing a license amendment and paying the required fees as provided in §83.310 of this title. Mergers or transfers of other entities with a beneficial interest beyond the parent entity level only require notification within 14 calendar days.

(c) Proportionate ownership.

(1) A change in proportionate ownership that results in the exact same

owners still owning the business, and does not meet the requirements described in paragraph (2) of this subsection, does not require a transfer. Such a proportionate change in ownership does not require the filing of a license transfer application or a new license application on transfer of ownership, but does require notification when the cumulative ownership change to a single entity or individual amounts to 5% or greater. No later than 14 calendar days following the actual change, the licensee is required to notify the OCCC in writing of the change in proportionate ownership. This section does not apply to a publicly held corporation that has filed with the OCCC the most recent 10K or 10Q filing of the licensee or the publicly held parent corporation, although a license transfer application or a new license application on transfer of ownership may be required under §83.303 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 transfer under §83.303 of this title.

§83.306. 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 10 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.

§83.310. 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.

(d) [(e)] License amendments. A fee of \$25 must be paid each time a licensee amends a license by:

- (1) inactivating a license; [;]

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(2) activating an inactive license; [;]

(3) changing the assumed name of the licensee; [;]

(4) changing the organizational form or proportionate ownership that results in the exact same individuals or entities still owning the business and does not result in a transfer of ownership described by §83.303(b)(3) of this title (relating to Transfer of License; New Application on Transfer of Ownership; [does not require a transfer under §83.303(a)(4) or (5) of this title (relating to Transfer of License) or §83.304(c)(2) of this title (relating to Change in Form or Proportionate Ownership);]

(5) providing notification of a new parent entity; [;] or

(6) relocating an office.

(e) [~~(d)~~] License duplicates sent by mail. The fee for a license duplicate to be sent by mail is \$10.

(f) [~~(e)~~] Costs of hearings. The commissioner may assess the costs of an administrative appeal pursuant to Texas Finance Code, §14.207 for a hearing afforded under §83.307(d) of this title (relating to Processing of Application), including the cost of the administrative law judge, the court reporter, and agency staff representing the OCCC at a hearing.

(g) [~~(f)~~] Annual renewal and assessment fees.

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

§83.403. Notice of Delinquency in Payment of Annual Assessment Fee.

For purposes of Texas Finance Code, §342.155, and §83.309(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. [delinquency notice is sent to the licensee at the email or mailing address on file with the OCCC.]

§83.404. Denial, Suspension, or Revocation Based on Criminal History. {{This section would replace sections 83.404 and 83.405, both of which will be repealed.}}

(a) Criminal history record information. After an applicant submits a complete license application, including all required fingerprints, and pays the fees required by §83.310 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), 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 342, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Originating, acquiring, or servicing loans under Texas Finance Code, Chapter 342 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,

repossessing property without a breach of the peace, maintaining goods that have been repossessed, collecting due amounts in a legal manner, and foreclosing on real property in compliance with state and federal law. Consequently, the following crimes are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation:

(A) theft;

(B) assault;

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

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

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

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

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

(H) any offense that involves intent, attempt, aiding, solicitation, or conspiracy to commit an offense described in subparagraphs (A) - (G) of this paragraph.

(2) In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the OCCC will consider the following factors,

PROPOSED AMENDMENTS, NEW RULES, & REPEALS
7 TAC, CHAPTER 83, SUBCHAPTER A
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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, §342.104(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

PROPOSED AMENDMENTS, NEW RULES, & REPEALS
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applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. The OCCC will, however, consider the factors identified in subsection (c)(2)-(3) of this section in its review of character and fitness.

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

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

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

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

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

(4) a fact or condition that would have been grounds for denying the license application, and that either did not exist at the time of the application or the OCCC was unaware of at the time of application, as provided by Texas Finance Code, §342.156(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, §342.104(a)(1) and §342.156.

§83.828. Files and Records Required (Subchapter E and F Lenders).

(1) - (9) (No change.)

(10) Loan records and documents file.

(A) Generally. A licensee must maintain a loan records and documents file for each individual borrower. The loan records and documents file must contain all necessary records and documents to evidence compliance with applicable state and federal laws and regulations, including the Equal Credit Opportunity Act and the Truth in Lending Act. The loan records and documents file must include copies of the following records or documents:

(i) - (ix) (No change.)

(x) any written or recorded records relating to repossessions, legal actions, or foreclosure actions regarding the borrower or the borrower's collateral securing the loan; ~~and~~

(xi) any record maintained under the Department of Defense's Military Lending Act Rule, 32 C.F.R. §232.5, regarding whether the borrower is a covered borrower; and

(xii) ~~[(xi)]~~ any separate disclosures that are required by federal or state law, such as the notice to cosigner required by the Federal Trade Commission's Credit Practices Rule, 16 C.F.R. §444.3, or

any mandatory disclosure to a covered borrower under the Department of Defense's Military Lending Act Rule, 32 C.F.R. §232.6.

(B) (No change.)

(C) Supplemental gap waiver agreement records. Each licensee must maintain in the borrower's individual file records supporting the settlements or denials of gap waiver agreement claims reported in the gap waiver agreement register. The records must include, if applicable:

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

(v) if the accident was not investigated by a law enforcement officer, a copy of the Texas Department of Public Safety "Driver's Crash Report" (Form CR-2) [~~"Driver's Accident Report" (Form ST 2)~~] filed in connection with the total loss of the motor vehicle; and

(vi) (No change.)

(11) - (14) (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 June 10, 2016.

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

C. OFFICE OF CONSUMER CREDIT COMMISSIONER

6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments and a New Rule in 7 TAC, Part 5, Chapter 87, Concerning Tax Refund Anticipation Loans, Resulting from Rule Review

PURPOSE: The purpose of the proposal is to implement changes resulting from the commission's review of Chapter 87 under Texas Government Code, §2001.039. The proposed rule changes: clarify the term of registration, require that registrants maintain current contact information, implement a statutory late filing fee, and add a required notice that registrants must provide explaining to consumers how they can file a complaint with the agency.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the amendments and new rule in 7 TAC, Chapter 87 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve for publication and comment the amendments and new rule in 7 TAC, Chapter 87.

Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 87. Tax Refund Anticipation Loans
§§87.102 - 87.105, 87.107, & 87.201

The Finance Commission of Texas (commission) proposes amendments and a new rule in 7 TAC, Chapter 87, concerning Tax Refund Anticipation Loans. The commission proposes amendments to §§87.102 - 87.105, and 87.107; and proposes new §87.201.

In general, the purpose of the revisions to these rules for tax refund anticipation loan facilitators is to implement changes resulting from the commission's review of Chapter 87 under Texas Government Code, §2001.039. The notice of intention to review 7 TAC, Chapter 87 was published in the *Texas Register* on May 6, 2016 (41 TexReg 3317). The agency did not receive any comments on the notice of intention to review.

The agency circulated an early draft of proposed changes to interested stakeholders and then held a stakeholders meeting, including online participation. The agency believes that early participation by stakeholders in the rulemaking process results in more informed and balanced proposals.

The rule changes clarify the term of registration, require that registrants maintain current contact information, implement a statutory late filing fee, and add a required notice that registrants must provide explaining to consumers how they can file a complaint with the agency.

The individual purposes of the amendments to each rule and of the new rule are provided in the following paragraphs.

Proposed amendments to §87.102(a) remove unnecessary language and add a reference to the agency's name and acronym, Office of Consumer Credit Commissioner (OCCC). The agency believes that the use of "OCCC" will provide better clarity to the rules when the context calls for action by the agency, as opposed to the commissioner specifically.

Corresponding changes to further the use of this terminology are included throughout Chapter 87. The following provisions include proposed amendments to replace the use of "commissioner" or "commissioner's" with a reference to the OCCC: §87.103(a)(1) and §87.104.

Proposed new §87.103(b) explains that an applicant may apply for a registration for the current year or a registration for the following year. Subsection (b) also specifies the effective period of a registration. Although the current rules in Chapter 87 specify requirements for renewing a registration, they do not specify when the registration is effective or when it expires. Subsection (b) conforms to the agency's current practices and is intended to provide clarity on the effective period of registration.

Proposed new §87.103(c) explains that applicants and registrants must keep their contact information up-to-date. This provision is intended to ensure that the agency can contact registrants, so that the agency can carry out its responsibility to monitor facilitators and ensure compliance, as provided by Texas Finance Code, §352.005.

Proposed amendments to §87.105(a)-(c) amend current text to provide clarity and consistency. In particular, an amendment to subsection (c) replaces the term "Annual Assessments" with "Renewals," to ensure consistency with other rules in Chapter 87.

Proposed new §87.105(d) specifies that a facilitator must pay a \$250 late filing fee if the facilitator: 1) obtains a new registration after engaging in business as a facilitator (i.e., engages in unregistered activity), or 2) renews a registration for the current year after January 30. This requirement is based on Texas Finance Code, §349.302, which provides a late filing fee of \$250 for obtaining a late registration with the OCCC. Subsection (d) is intended to provide clarity regarding the amount of the late filing fee and the situations where it is required.

Proposed amendments to §87.107(a) conform to other amendments in the proposal. The current December 1 renewal deadline is replaced with a requirement to pay any late filing fee required by §87.105(d). This means that if a facilitator renews a registration for the current year after January 30, the facilitator must pay a \$250 late filing fee in order to renew. The amendments to subsection (a) are intended to clarify renewal requirements and ensure consistency with Texas Finance Code, §349.302.

Proposed new §87.107(b) specifies that a facilitator may not renew a registration that has been expired for more than one year, and that if a registration has been expired for more than one year, the facilitator must apply for a new registration. This provision is intended to clarify renewal requirements and ensure consistency with other amendments to the rules.

Proposed new §87.201 requires facilitators to provide a notice explaining how consumers can file a complaint with the OCCC. Subsection (a) describes the content of the OCCC notice, which includes the facilitator's contact information and the OCCC's contact information. Subsection (b) explains that the OCCC notice must be provided on either the privacy notice or the written disclosure of fees required under Texas Finance Code, §352.004. This requirement is based on Texas Finance Code, §11.307(b), which provides that the commission shall adopt rules requiring regulated entities to include complaint notices on legally required privacy notices. Because refund anticipation loan facilitators perform tax preparation services, they are required to provide privacy notices to consumers under federal law, as provided by Regulation P, 12 C.F.R. §§1016.3(l)(3)(ii)(H), 1016.3(s)(1), 1016.4(a).

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

Commissioner Pettijohn also has determined that for each year of the first five years the rule changes are in effect, the public benefit anticipated as a result of the changes will be that the commission's rules will be more easily understood by registrants and more easily enforced. Additionally, proposed new §87.201 will provide notice to consumers regarding how to file a complaint, resulting in the agency's enhanced ability to fulfill its regulatory duty of resolving consumer issues.

Additional economic costs may be incurred in order for registrants to comply with this proposal. The agency anticipates that

any costs resulting from the proposal would be minimal and involve complying with proposed new §87.201, which requires registrants to add the OCCC notice to either their existing privacy notice or existing written disclosure provided to consumers.

The OCCC believes that proposed new §87.201 is necessary so that consumers and creditors will have the most current contact information for the OCCC, as well as readily available information for consumers explaining how they can file a complaint with the OCCC.

For those who will be required to comply with the proposed new rule, the anticipated costs would include the costs associated with adding the notice to existing forms, or producing new forms, and costs attributable to the loss of obsolete forms inventory. The agency is considering a delayed implementation date for use of the revised forms, which will help minimize potential costs and allow use of current forms inventory. In particular, the agency is considering a possible compliance date of January 1, 2017, and invites comments on this issue.

Overall, the agency anticipates that any costs involved to comply with proposed new §87.201 will be minimal for most registrants. Registrants are already required under federal law to provide privacy notices, and they are already required to provide cost disclosures under Texas Finance Code, §352.004. There are multiple ways to comply with the proposed new rule: 1) add the OCCC notice to the current federal privacy notice in the box for "Other important information"; 2) add the OCCC notice to the registrant's existing disclosure form under Texas Finance Code, §352.004; or 3) provide the OCCC notice on a new page that is part of one of these two

forms. For the third option, the agency estimates that costs will not exceed \$0.05 per new page printed.

In order to obtain more complete information, the agency would like to invite comments from registrants on any costs involved to comply proposed new §87.201, as well as any alternatives to lessen those costs while achieving the purpose of the proposed new rule.

Any costs of complying with the proposed amendments to §87.105, concerning Fees, are imposed by the existing statutory requirements, and are not a result of the proposed amendments to this section. Additionally, the proposed amendments solely relate to tax refund anticipation loan facilitators that conduct unregistered business or that fail to timely renew. Thus, for registrants that properly comply with registration requirements, there will be no costs imposed by the proposed amendments.

The agency is not aware of any adverse economic effect on small businesses as compared to the effect on large businesses resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule changes, the agency invites comments from interested stakeholders and the public on any economic impact on small businesses, as well as any alternative methods of achieving the purpose of this proposal should that effect be adverse to small businesses.

Aside from the previously outlined costs to provide the OCCC notice in proposed §87.201, there will be no other effect on individuals required to comply with the rule changes 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 by 5:00 p.m. central time on or before the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The rule changes are proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Chapter 14 and Title 4 of the Texas Finance Code. The rule changes are also proposed under Texas Finance Code, §352.003, which authorizes the commission to prescribe procedures for the registration of tax refund anticipation loan facilitators. Proposed new §87.201 is proposed under Texas Finance Code, §11.307(b), which provides that the commission shall adopt rules requiring regulated entities to include complaint notices on legally required privacy notices.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 11 and 352.

Subchapter A. Registration Procedures

§87.102. Filing of New Application.

(a) New application. An application for issuance of a new tax refund anticipation loan facilitator registration must be submitted ~~[as prescribed by the commissioner at the date of filing—and]~~ in accordance with the ~~[commissioner's]~~ instructions of the Office of Consumer Credit Commissioner (OCCC).

(b) Required information. The application must include the following required information. All questions must be answered.

(1) Application for Registration of Tax Refund Anticipation Loan Facilitator.

(A) Each location in this state at which e-file providers authorized by the Internal Revenue Service file tax returns on behalf of borrowers for whom the facilitator acts to allow the making of a tax refund anticipation loan must be separately registered.

(B) The person responsible for the day-to-day operation of the applicant's proposed business location must be named.

(2) Assumed names. For any applicant that does business under an assumed name as that term is defined in Texas Business and Commerce Code, §71.002, the applicant must provide all assumed names used.

§87.103. Completion [Processing] of Application and Effective Period of Registration.

(a) Complete application. An application is complete when it:

(1) conforms to the rules and the ~~[commissioner's]~~ published instructions of the Office of Consumer Credit Commissioner (OCCC);

(2) all fees have been paid; and

(3) all requests for additional information have been satisfied.

(b) Effective period. An applicant may apply for a registration for the current year or a registration for the following year.

(1) A registration for the current year is effective beginning on the date the application is complete, and expires on December 31 of the current year.

(2) A registration for the following year is effective beginning on January 1 of the following year, and expires on December 31 of the following year.

(c) Contact information. Each applicant or registrant 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 registrants to regularly review contact information on file with the OCCC to ensure that it is current and correct.

§87.104. Relocation of Registered Location.

A registered tax refund anticipation loan facilitator may move the business office from the registered location to any other location by giving notice of intended relocation to the Office of Consumer Credit Commissioner (OCCC) [commissioner]. The notice must include the present address of the registered location, the contemplated new address of the registered location, and the approximate date of relocation.

§87.105. Fees.

(a) New registrations. For a new registration, the applicant must pay a [A] \$50 nonrefundable [non-refundable] fee for each registered location [is assessed each time an application for a new registration under this chapter is filed].

(b) Registration amendments. A registered facilitator must pay a fee of \$25 to amend [must be paid each time a registered

facilitator amends] a registration by changing the assumed name of the registrant or relocating an office.

(c) Renewals. For a renewal, the registered facilitator must pay an [Annual assessments. An] annual fixed fee of \$50 [is required] for each registered [tax-refund anticipation loan] location.

(d) Late filing fee. As provided by Texas Finance Code, §349.302(b), a facilitator must pay a \$250 late filing fee for each registered location if the facilitator:

(1) obtains a new registration after the facilitator has begun engaging in business as a facilitator; or

(2) obtains a renewal for the current year after January 30.

§87.107. Annual Renewal.

(a) Renewal requirements. A [Not later than December 1, a] registered tax refund anticipation loan facilitator may renew its registration by providing the following:

(1) the renewal fees required by §87.105(c) of this title (relating to Fees); [and]

(2) any late filing fees required by §87.105(d) of this title; and

(3) any other information required by the commissioner.

(b) Expiration. A facilitator may not renew a registration that has been expired for more than one year. If a facilitator's registration has been expired for more than one year, then the facilitator must apply for a new registration under §87.102 of this title

(relating to Filing of New Application) in order to obtain a registration.

Subchapter B. Disclosures

§87.201. OCCC Notice.

(a) Required notice. A refund anticipation loan facilitator must provide the following notice to each consumer: "For questions or complaints about this transaction, contact the loan facilitator, (insert name of facilitator), at (insert facilitator's phone number and, at facilitator's option, one or more of the following: mailing address, fax number, website, e-mail address). The Office of Consumer Credit Commissioner (OCCC) is a state agency, and it enforces certain laws that apply to the facilitator. If a complaint or question cannot be resolved by contacting the facilitator, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov."

(b) Location of notice. A facilitator must provide the notice described by subsection (a) by one or both of the following methods:

(1) including the notice on each privacy notice that the facilitator is required to provide to a consumer under state or federal law; or

(2) including the notice on each written disclosure that the facilitator is required to provide to a borrower under Texas Finance Code, §352.004.

Certification

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

Issued in Austin, Texas on June 10, 2016.

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

D.

Texas Department of Banking



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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To: Finance Commission Members

From: Kurt Purdom, Director of Bank & Trust Supervision

Date: May 27, 2016

Subject: Summary of the Bank & Trust Supervision Division Activities

Bank and Trust Supervision					FY 2016							
8/31/2014			8/31/2015		11/30/2015		2/28/2016		5/31/2016		8/31/2016	
Industry Profile (# / Assets in billions)												
# Banks	273	\$225.2	256	\$240.7	253	\$242.3	250	\$246.3				
# Trust Co. (1)	21	\$40.5	20	\$97.1	21	\$95.5	20	\$97.5				
# FBA/FBB	10	\$93.6	9	\$89.2	9	\$81.5	9	\$77.9				
Examinations Performed												
Banks	125		118		33		23					
Trust Co.	32		28		6		5					
FBA/FBB	2		2		0		0					
Bank Uniform Financial Institution Composite Ratings												
1	128	46.9%	127	49.6%	126	49.8%	131	52.4%				
2	132	48.3%	122	47.7%	120	47.4%	111	44.4%				
3, 4, & 5	13	4.8%	7	2.7%	7	2.8%	8	3.2%				
Non-Rated	0	-	0	-	0	-	0	-				

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

The number of problem banks, which the Department considers to be any bank with a Uniform Financial Institutions Composite Rating of 3, 4, or 5, continues to trend upward. As of this writing, problem institutions totaled 12. Though this is an increase from prior months, the number is still well below the peak number of problem banks experienced during the last recession at 58. We consider this increased number of problem banks to still be in the normal range of between 3% and 5% of the total number of institutions. However, we will continue to closely monitor banks that have a significant exposure to a protracted period of low oil prices.

Administrative/Enforcement Actions (Number outstanding as of the date indicated)			FY 2016			
	8/31/2014	8/31/2015	11/30/2015	2/28/2016	5/31/2016	8/31/2016
Banks Safety and Soundness						
Formal	5	2	2	1		
Informal	21	14	14	15		
Banks Bank Secrecy Act (BSA)						
Formal	0	1	0	0		
Informal	1	0	1	0		
Banks Information Technology (IT)						
Formal	0	0	0	0		
Informal	4	2	2	1		
Trust Departments of Banks and Trust Companies						
Formal	0	0	0	0		
Informal	1	2	3	3		
Total Administrative/Enforcement Actions						
Formal	5	3	2	1		
Informal	27	18	20	19		
Total	32	21	22	22		

Formal actions include Orders to Cease and Desist, Consent Orders and Written Agreements.

Informal actions include Determination Letters, Memoranda of Understanding, Commitment Letters and Board Resolutions.

Orders of Supervision, Orders of Conservatorship and Compliance actions are not included.

Compliance with Examination Priorities Percent of Examinations Conducted within Department Guidelines		
Entity Type	FY 2015	FY 2016 (YTD)
Commercial Banks (All / DOB Only)	94% / 93%	97% / 97%
IT	95% / 95%	98% / 100%
Trust	97% / 100%	95% / 100%
Foreign Banks (FRB)	100%	100%
Trust Companies (DOB)	97%	76%
IT	100%	91%

Trust company examinations are not within the Department's targeted outcome measure of 90% receiving examinations when due. The five trust company exams that were not conducted within the Department's guidelines averaged 14 days late. Trust examiner turnover is the primary reason for the delay. Three new assistant examiners were hired in January 2016 to replace examiners with significant experience. Some future delays in trust examinations may be encountered until these new examiners are adequately trained and can fully assist with trust examination procedures.

Division Highlights

- Oil and Gas Risk Analysis: Division staff continues to actively measure and monitor the impact of low oil and gas (O&G) commodity prices on our regulated entities. Banks can suffer increased loan losses, reduced earnings, and an outflow of deposits as O&G customers are forced to deploy excess liquidity. Direct lending to O&G producers and service companies is being assessed, as well as indirect lines of business that may be impacted. We receive quarterly information from banks that are known to be actively involved in oil and gas lending or are located in areas that are heavily dependent on oil production. In addition, we are working closely with our FDIC and Federal Reserve Bank counterparts to perform on-site follow-up reviews at institutions with potentially higher risk profiles. With few exceptions, financial institutions with elevated exposure are actively monitoring their exposure, stress testing O&G credits, and closely working with customers who are affected.
- Examination Tools Suite (ETS) Software: Review Examiner Wu and Houston Region Financial Examiner Voigt participated in ETS train-the-trainer sessions held in Kansas City, Missouri the week of 4-18-16 and St. Paul, Minnesota the week of 5-16-16, respectively. Wu and Voigt will be the instructors for the agency's staff when the program is implemented in Texas from September – October, 2016. ETS represents the single most significant technology upgrade to the supervisory process of depository institutions since the release of its predecessor, GENESYS, in 1996. ETS enables a digital examination process and sharing among examiners of previous and current examination information more securely, effectively, and efficiently. The product of a multi-year, interagency development initiative, ETS recently reached its final stages of the development lifecycle and is in deployment to state agencies, FDIC, and Federal Reserve users throughout 2016. ETS development has been led by the FDIC, with significant participation from the states and Federal Reserve. It is replacing older programs by offering a single, uniform, tool for asset review, operations work, and report of exam preparation.
- Special Operations and Conferences:
 - Commissioner Cooper and other staff members participated in the CSBS Government Relations Fly-in held in Washington, D.C. the week of 4-4-16.
 - Deputy Commissioner Bacon participated in a regulatory panel held during the Texas Bankers Association's (TBA) Legal Conference in San Antonio on 4-8-16.
 - Deputy Commissioner Bacon, Director Purdom and Regional Director Davenport participated in an FDIC Banker Roundtable Discussion held in Houston on 4-12-16.
 - Director Purdom participated in events of the Texas A&M Banking Program held in College Station on 4-19-16 and 4-29-16.
 - Commissioner Cooper and several staff members attended the TBA Convention held in Grapevine the week of 5-2-16.
 - The Employee Advisory Council (EAC) met in Austin the week of 5-16-16. The EAC is a representative group of employees from each regional office and the Austin Headquarters Office. Its purpose is to foster good communication and provide input and ideas for agency improvement to executive management. During the week, the EAC met with Commissioner Cooper, Deputy Commissioner Bacon, and Directors Purdom and Reese.
 - In April, a Houston Region Senior Examiner began a temporary rotation at the Austin Headquarters Office performing various functions including Review Examiner and Corporate Analyst. This cross-

training was recommended by the EAC and is intended to help familiarize field examiners with the activities and functions of the Austin Headquarters Office.

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

Federal Programs	Troubled Asset Relief Program (TARP) ⁽²⁾	Small Business Lending Fund (SBLF) as of 2/29/2016
Number of Applicants	80	23
Number of Banks that Received Funds	21	12
Total Amount Distributed (\$ in millions)	\$2,837.7	\$255.7
Number of Banks with Outstanding Funds	0	3
Total Amount Outstanding (\$ in millions)	\$0	\$34.6

(2) - The U.S. Treasury sold some of the TARP debt listed above at auction to private investors. In many cases, this debt is still outstanding, even though it is no longer payable to the U.S. Treasury.

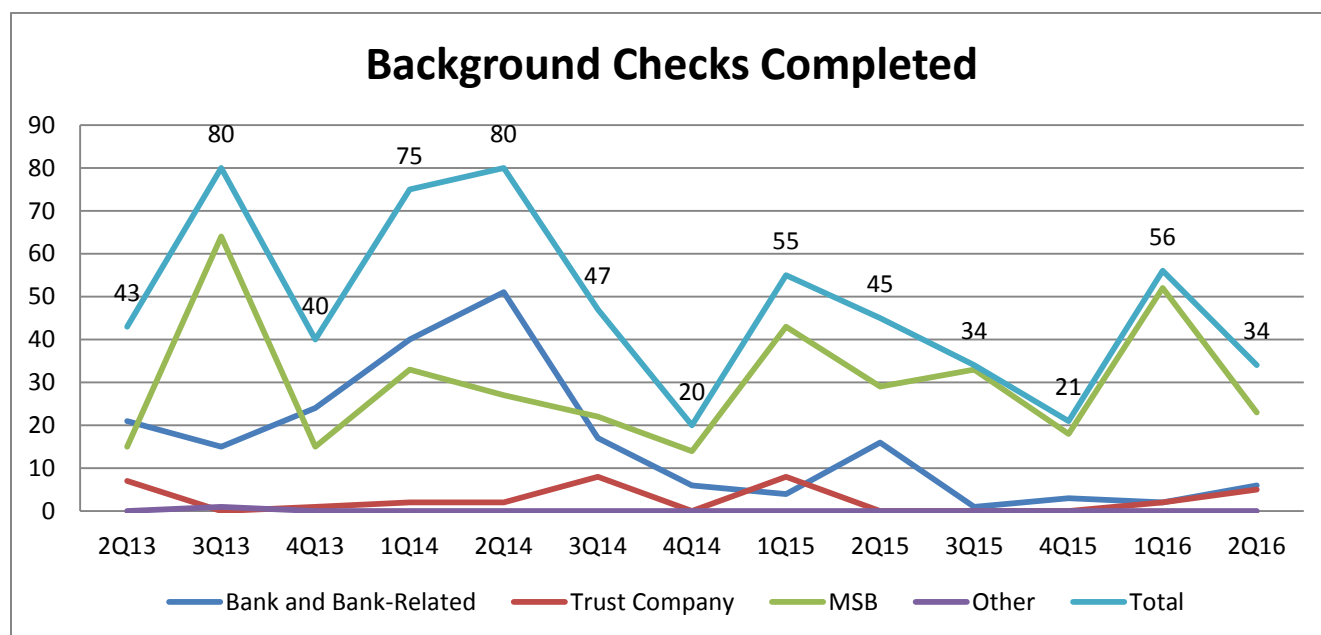
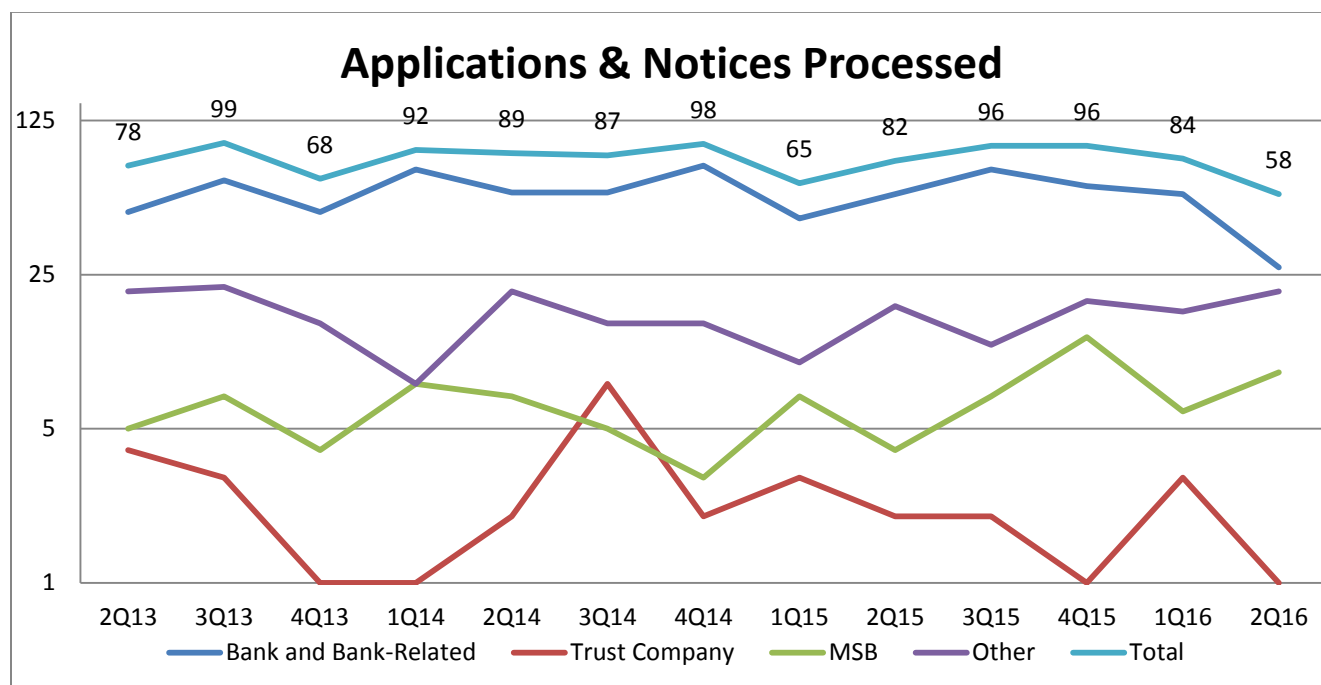


To: Finance Commission Members

From: Daniel Frasier, Director of Corporate Activities

Date: May 18, 2016

Subject: Summary of the Corporate Division Activities



Entities/Activities	Applications and Notices Under Review (as of May 17, 2016)
Bank and Bank Related	12
Trust Companies	2
MSBs	9
Others	1
Totals	24

Division Highlights

- The volume of applications received this calendar year-to-date is down appreciably compared to the past several years. The reduction is predominately due to a decline in bank related activity across most filing types.
- Chartering, Conversion, and Merger Activity – The following transactions consummated thus far in the third quarter of the 2016 fiscal year:
 - *Banks*
 - Star Bank of Texas, Lake Worth, merged with and into Community National Bank & Trust of Texas, Corsicana
 - Jourdanton State Bank, Jourdanton, merged with and into First Commercial Bank, N.A., Seguin
 - *Trust Companies*
 - Midland Security Trust Company, Plano, completed their conversion out to a limited liability corporation under the name of Barnes Midland Security Company LLC
- Conferences and Committee Meetings – Corporate participation included the following conferences and external committee meetings since the last report to the Finance Commission:
 - Most Corporate staff attended the DOB Staff Conference in Fort Worth, on the week of March 21st; and
 - Director Dan Frasier attended the CSBS Fly-in in Washington, D.C, for the week of April 4th.



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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To: Finance Commission Members

From: Russell Reese, Director of Special Audits

Date: June 1, 2016

Subject: Summary of the Special Audits Division Activities

Special Audits					FY 2016							
Entity	FY2014		FY2015		1 st		2 nd		3 rd		4 th	
Industry Profile (# / Assets (billions))												
MSB	136	\$96.0	142	\$104.0	147	\$104.1	151	\$105.0	*	*		
PFC	381	\$3.4	383	\$3.6	378	\$3.6	380	\$3.7	*	*		
PCC	242	\$286.6	243	\$298.0	245	\$305.4	243	\$307.2	*	*		
CB	4	n/a	8	n/a	9	n/a	9	n/a	*	*		
PCSEA	11	n/a	11	n/a	11	n/a	10	n/a	*	*		
CVE	3	n/a	2	n/a	2	n/a	2	n/a	*	*		
Examinations Performed												
MSB	93		97		24		22		*			
MSB Limited Scope	0		2		1		1		*			
MSB Accepted other State	6		7		3		6		*			
PFC	295		259		94		48		*			
PFC Limited Scope	10		6		3		0		*			
PCC	179		211		29		31		*			
PCC Limited Scope	6		1		2		3		*			
Ratings (# / %) Assigned to All Regulated Entities												
1	319	43%	340	45%	327	43%	330	44%	*	*		
2	355	48%	332	45%	348	46%	337	45%	*	*		
3,4, & 5	66	9%	78	10%	81	11%	85	11%	*	*		
Noncompliance with Examination Priorities (Past Due)												
MSB	15		8		14		17		*			
PFC	1		4		3		7		*			
PCC	4		3		3		1		*			
Enforcement Actions												
MSB	3		9		1		3		*			
PFC	1		10		1		0		*			
PCC	0		0		0		0		*			
PCSEA	0		0		0		1		*			

NOTES:

PCC \$ amounts reflected in the millions.

Limited scope examinations do not receive a rating.

*Third quarter fiscal year 2016 data has not been finalized and will be provided in the next summary.

Division Activities:

We currently have two job postings to fill PFC/PCC Financial Examiner vacancies and anticipate interviewing applicants in the near future.

On May 2nd, Director Reese gave a presentation on perpetual care regulations to the members of the Texas Cemeteries Association (TCA) during their 2016 Annual Convention in San Antonio, Texas

On May 3rd, Commissioner Cooper issued an Agreed Order relating to trust-funded prepaid funeral contracts (PFCs) sold by El Paso Mission Funeral Home, Inc. (Mission), of El Paso, Texas. The Commissioner had previously found that numerous trust-funded PFCs sold by Mission had been fraudulently cancelled and the money misappropriated. An Emergency Order to Cease and Desist Activity and to Seize Records and Funds was issued on September 14, 2015. The Agreed Order requires Mission to pay restitution for purchasers of PFCs whose funds were misappropriated and to pay administrative penalties.

On May 12th, a Prepaid Funeral Guaranty Fund Advisory Council (Council) meeting was held in Austin, Texas. The Council ratified Trust Guaranty Fund claims totaling \$9,588.38 related to Tom G. Walker Funeral Home, Coleman, Texas, and claims totaling \$9,020 related to Walker-Mora Funeral Home, Alice, Texas.

On June 7-8th, Review Examiner Jesse Saucillo will attend the Annual Money Laundering & Financial Crimes Conference hosted by the Office of the Attorney General in Austin, Texas. The conference is designed to support the efforts of state and local law enforcement officials and analysts engaged in financial crime and money laundering investigations.

On June 15th, Director Reese will give a presentation on prepaid funeral contract regulations to the members of the Texas Funeral Directors Association's (TFDA) during their 2016 Annual Convention in Corpus Christi.



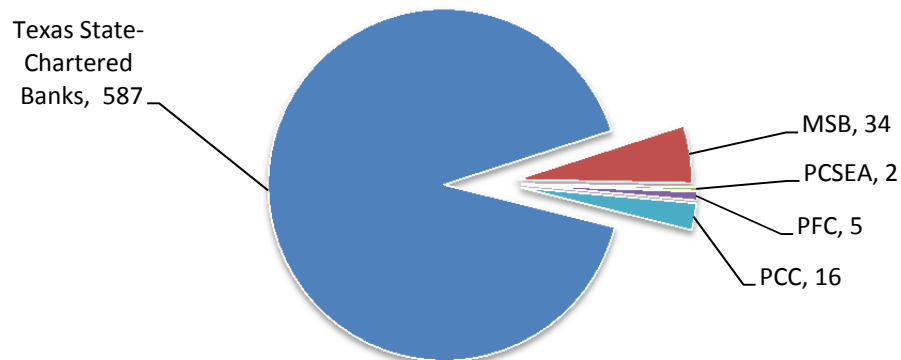
Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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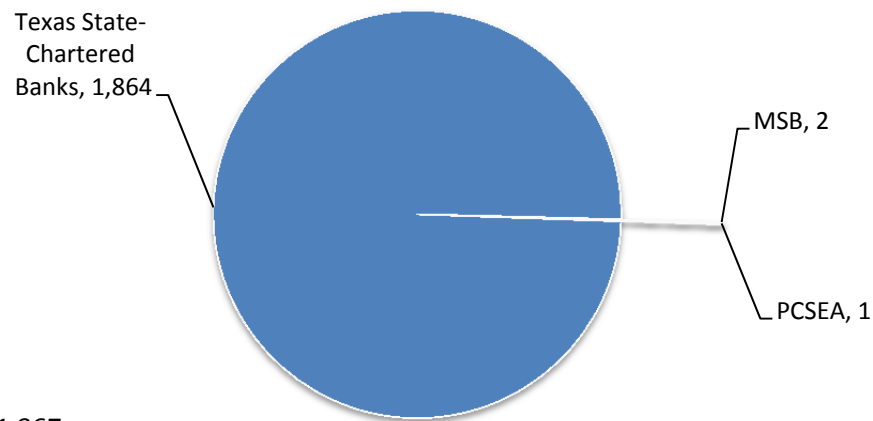
To: Finance Commission Members
From: Wendy Rodriguez, Director of Strategic Support *WR*
Date: May 27, 2016
Subject: Summary of the Strategic Support Division Activities

Complaints on Regulated Entities September 2015 - April 2016



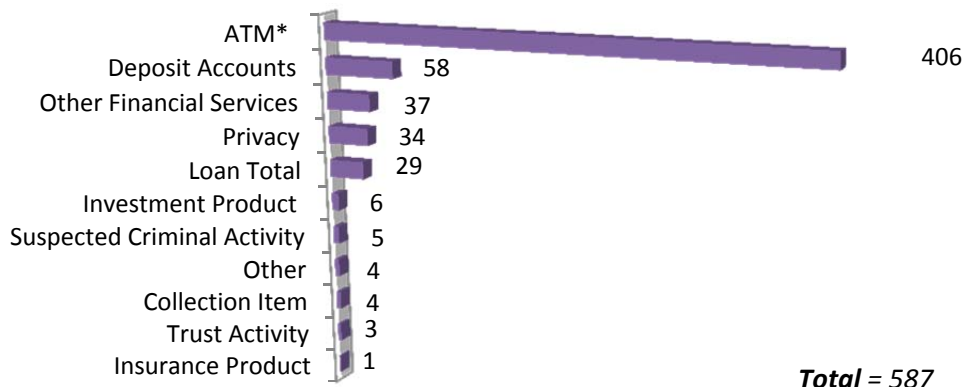
Recoveries = \$71,346.59
Total = 644

Inquiries on Regulated Entities September 2015 - April 2016



Total = 1,867

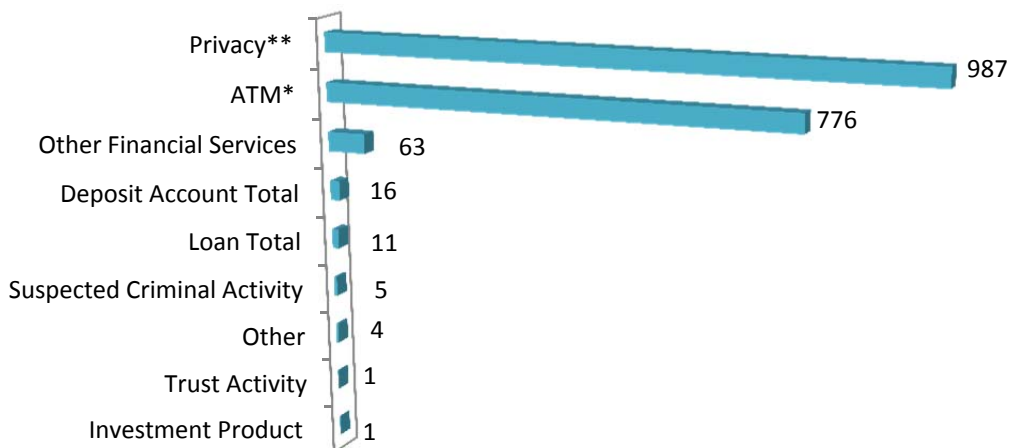
State-Chartered Banks and Trust Companies
Complaints by Type
September 2015 - April 2016



Total = 587

*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 2015 - April 2016

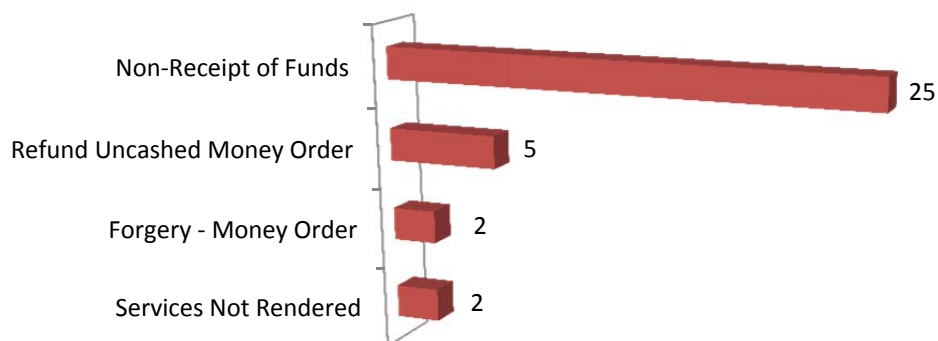


Total = 1,864

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

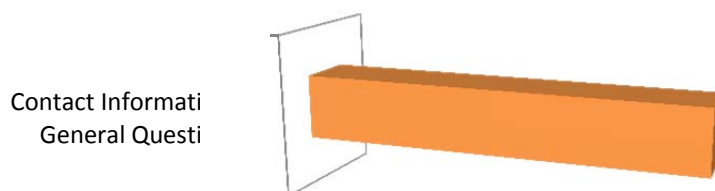
*Activity related to consumers inquiring about their personal accounts and outages in ATM network for one institution. Consumers contacted Department because the institution was experiencing a high call volume and they could not get through to entity.

**Money Services Businesses
Complaints by Type
September 2015 - April 2016**



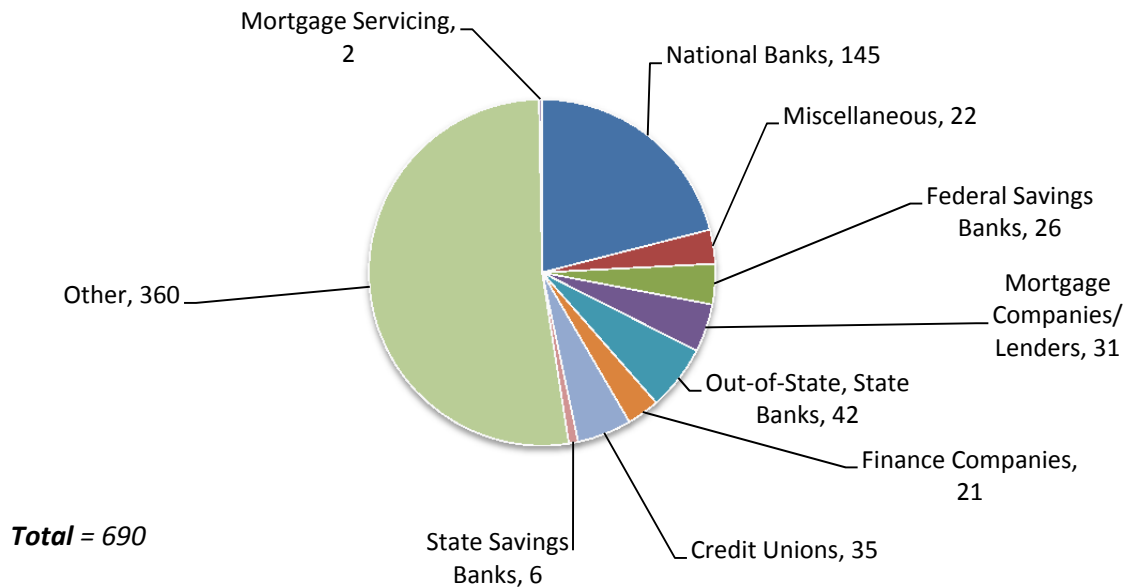
Total: 34

**Money Services Businesses
Inquiries by Type
September 2015 - April 2016**



Total: 2

Complaints and Inquiries Against Nonregulated Entities September 2015 - April 2016



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

Average Number of Days to Close a Complaint

Type	Sept. 2015 –April 2016
State-Chartered Banks	23
Trust	n/a
PCSEA	2
PFC/PCC	37
MSB	45

CANS Activity

January 1, 2012 – May 16, 2016

Entity	Enrolled	Compromised Accounts Reported
Texas State-Chartered Banks	229	1,503
Texas State-Chartered Savings Banks	25	59
Federal Savings Banks	10	200
State Credit Unions	132	1,112
Federal Credit Unions	229	1,060
National Banks	168	481
Out-of-State State-Chartered Banks	11	0
Out-of-State National Banks	4	44
Total	808	4,459

Bank Examination Testing System (BETS) Activity

	FY 2013	FY 2014	FY 2015	FY 2016 September – May 16, 2016
Number of Candidates Passing Each Phase				
I. General Knowledge	3	5	8	6
II. Loan Analysis	8	2	2	3
III. Panel	10	2	4	2
IV. Test Bank	11	1	4	2
Total FE3	16	14	19	19

Promotions

From FE3 to FE4 (Commissioned Examiner)	9	2	4	2
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Other Divisional Items:

- *Publications*
 - The agency's Strategic Plan 2017-2021 has been completed. Each member of the Strategic Planning Task Force provided input on the draft and a conference call was held on May 9, 2016, to allow for additional feedback. As part of the process, the Department also completed its Workforce Plan and Customer Service Report.
 - The spring edition of the [Texas Bank Report](#) is available on the website. This edition contains articles related to hot button issues, cybersecurity risk assessment reviews, policy updates and revisions, the importance of power generators, and branch relocation filings.
 - The [web version](#) of the Law and Guidance Manual has been updated through March 31, 2016 and is available on the website.
- *Financial Education*
 - April was National Financial Literacy Month, and various financial literacy events were hosted throughout the State of Texas. The agency's Financial Education Coordinator, Ms. Leilani Lim-Villegas, participated in several events, including Houston Money Week and the Financial Fitness Greater Austin (FFGA) week. Ms. Lim-Villegas coordinated the FFGA \$mart Kid Essay Contest, which received over 200 student submissions. Six middle and high school students were awarded \$5,000 in college scholarships sponsored by Capital One Bank. The FFGA Awards Ceremony was held on May 18th at the For the City Center, with Deputy Commissioner Bob Bacon providing welcoming remarks.
- *Website*
 - The Department of Banking website received 455,236 page views between September 2015 and April 30, 2016. The top searches for the site include the Top 100 Banks in Texas (19,116 views) and job vacancies (10,952 views).

- The Electronic Crimes Task Force website received 5,235 page views between September 2015 and April 30, 2016. The top searches for the site include Corporate Account Takeover (562 views) and Ask a Question (200 views).
- The Texas Prepaid Funeral Contracts website received 42,360 page views between September 2015 and April 30, 2016. The top searches for the site include the Prepaid Funeral Planning Brochure (5,270 views) and Guaranteed/Non-Guaranteed Prepaid Funeral Services and Merchandise (2,115 views).



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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Memorandum

TO: Finance Commission Members

FROM: Catherine Reyer, General Counsel

DATE: June 1, 2016

RE: Legal Division Update

Litigation

Antioch St. Johns Cemetery Co. v. The Texas Department of Banking Commissioner, Cause No. D-1-GN-14-000367, In the 261st District Court of Travis County, Texas. Plaintiffs filed this case on February 6, 2014, appealing the Banking Commissioner's order requiring them to pay \$56,000 in administrative penalties for numerous violations of Health and Safety Code provisions governing cemeteries. The case was heard by Judge Scott Jenkins on April 30, 2015. Judge Jenkins issued an order on May 4 affirming the Commissioner's order. The cemetery owner has filed an appeal to the Third Court of Appeals, and our reply brief was filed on November 23, 2015. On December 23, 2015, the appellate court designated the case as ready to be disposed of on the briefs. Because Antioch has not obtained a supersedeas bond; the penalty from our administrative action is due and owing. Abstracts of judgment have been filed in Dallas and Tarrant Counties and warrant holds have been issued.

State of Texas v. Myrtlewood Memorial Services d/b/a Harlingen-Combes Memorial Cemetery et al., Cause No. D-1-GN-16-000565, in the 353rd Judicial District Court of Travis County, Texas. This case was filed on February 19, 2016 to seek the appointment of a receiver. On April 7, 2016, the defendants filed an answer.

State of Texas v. House Savings Investment, LLC, et al, Cause No. D-1-GV-13-000763, in the 353rd District Court of Travis County, Texas. On July 26, 2013, the district court issued a temporary restraining order and appointed a temporary receiver under the authority of Chapter 151, Texas Finance Code, to take control of two companies performing money services business activities (bi-monthly mortgage payments). An agreed permanent injunction and appointment of permanent receiver order was entered by the court on August 13, 2013. The receiver closed the company offices in Houston and has continued to administer the estate, investigate misappropriation of customer funds, prosecute litigation against third parties, and pursue and recover estate assets. On March 31, 2016, the receiver filed a motion for authority to make distribution of settlement proceeds. In the motion, the receiver stated that if the distribution is approved by the court, it intends to file a subsequent motion to close the estate after all assets have been distributed.

Gifts Received by DOB

The Texas Bankers Association waived a registration fee (valued at \$725.00) for Commissioner Cooper to attend the 2016 Annual Convention held May 4-6 in Grapevine, Texas.

Orders

Since the last Legal Division memo was prepared, the Commissioner issued one order, which is a final public order:

Special Audits

- Order No. 2015-020a, dated 5/3/2016; Consent Order, El Paso Mission Funeral Home, El Paso, Texas

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2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, §24.1 Concerning Registration of Cemetery Brokers

PURPOSE: Amendments to §24.1 provide entities wishing to register as cemetery brokers with clear expectations regarding the times within which their registrations will be processed by the Department.

RECOMMENDED ACTION: No comments were received regarding the proposed amendments to 7 TAC, §24.1. The Department recommends that the Commission approve adoption of the amendments without changes to the proposal as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we adopt the amendments to 7 TAC, §24.1 without changes to the proposal as previously published in the *Texas Register*.

***Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 24. Cemetery Brokers
7 TAC §24.1***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §24.1, concerning registration of cemetery brokers without changes to the proposed text as published in the April 29, 2016, issue of the *Texas Register* (41 TexReg 3033). The amended rule will not be republished. The amendments specify times for department processing of cemetery broker registrations.

In 2013, the Texas Legislature passed House Bill 52, which required cemetery brokers to register with the department. The rules stating requirements for registration of these entities were adopted in December 2013 by the commission in the form of 7 TAC Chapter 24. The amendments to §24.1 reduce from 45 days to 15 days the amount of time the department has to notify a registrant whether the registration is complete, and state that the department will process registrations within 30 days of the department's notification that the registration has been accepted for filing.

The department received no comments regarding the proposed amendments.

The amended rule is adopted pursuant to Health and Safety Code, §711.012 and §711.0381, which provide the authority to adopt rules regarding registration of cemetery brokers with the banking commissioner.

Health and Safety Code, §711.046 is affected by the amended rule.

§24.1. Registration.

(a) To register as a cemetery broker, a person must file with the Texas Department of Banking (the department) a statement that complies with Texas Health and Safety Code §711.046, and pay a \$100 registration fee. The statement must be filed on a form promulgated by the department.

(b) The department shall notify each registrant within 15 days either that the statement is complete and accepted for registration, or that the statement is deficient. If the statement is deficient, the department shall specify the additional information that is required.

(c) On or before the 30th day after the date the department accepts the registration for filing, the banking commissioner will approve or deny the registration and advise the registrant in writing of the decision.

(d) Registration as a cemetery broker is not transferable.

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

3. Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC, §24.4 Concerning Appeal of Delay in Registration Processing Times of Cemetery Brokers

PURPOSE: New §24.4 provides a procedure for registrants to complain to the banking commissioner in the event the registration is not processed within the prescribed time periods.

RECOMMENDED ACTION: No comments were received regarding proposed new 7 TAC, §24.4. The Department recommends that the Commission approve adoption of the new rule without changes to the proposal as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we adopt new 7 TAC, §24.4 without changes to the proposal as previously published in the *Texas Register*.

Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 24. Cemetery Brokers
7 TAC §24.4

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts new §24.4, concerning appeal of processing time for cemetery broker registrations without changes to the proposed text as published in the April 29, 2016, issue of the *Texas Register* (41 TexReg 3034). The new rule will not be republished. This rule provides a procedure for registrants to complain to the banking commissioner in the event the registration is not processed within the prescribed time periods. The new rule conforms to Texas Government Code §2005.006.

In 2013, the Texas Legislature passed House Bill 52, which required cemetery brokers to register with the department. The rules stating requirements for registration of these entities were adopted in December 2013, by the commission in the form of 7 TAC Chapter 24. Proposed new §24.4 establishes the process by which an entity seeking to register as a cemetery broker may complain to the banking commissioner if the department fails to comply with the registration processing times specified in §24.1.

The department received no comments regarding the proposed new rule.

The new rule is adopted under Health and Safety Code, §711.012 and §711.0381, which provide the authority to adopt rules

regarding registration of cemetery brokers with the banking commissioner.

Health and Safety Code, §711.046 is affected by the amended rule.

§24.4. Appeal of delay in registration processing times.

(a) If the department does not process a registration within the time periods specified in §24.1 of this title, a registrant may file a written complaint with the banking commissioner. The complaint must set out the facts regarding the delay and the specific relief requested. The department must receive the complaint on or before the 30th day after the date the banking commissioner approves or denies the registration.

(b) The department division responsible for complying with the applicable time period must submit a written response to the banking commissioner regarding the complaint that includes any facts on which the division relies to show that good cause existed for exceeding the applicable time period.

(c) The banking commissioner will review the written complaint and the division's response. If the commissioner deems it necessary, a hearing may be held to take evidence on the matter.

(d) The banking commissioner will determine, based upon the complaint and the division's response, if the department exceeded the applicable time period and, if so, whether the responsible division established good cause for the delay.

(e) The banking commissioner will notify the complainant of the decision regarding the complaint on or before the 60th day after the date the commissioner receives the written complaint. The commissioner's decision is final and may not be appealed.

(f) If the banking commissioner decides that the department exceeded the applicable time period without good cause, the department will reimburse all of the complainant's registration fees.

(g) A decision in a complainant's favor under this section does not affect any decision by the banking commissioner to grant or deny a registration. The decision to grant or deny a registration is based upon applicable substantive law without regard to whether the department timely processed the registration.

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

4. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, §31.18 Concerning When a Child Support Enforcement Application or Notice is Abandoned

PURPOSE: Amendments to §31.18 clarify the conditions and procedures for determining and communicating that an application has been abandoned. The amendments enhance the opportunity for communication between child support enforcement agency applicants and the Department. The anticipated result is that fewer applications for child support enforcement agencies will be abandoned.

RECOMMENDED ACTION: No comments were received regarding the proposed amendments to 7 TAC, §31.18. The Department recommends that the Commission approve adoption of the amendments without changes to the proposal as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we adopt the amendments to 7 TAC, §31.18 without changes to the proposal as previously published in the *Texas Register*.

***Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 31. Private Child Support
Enforcement Agencies
Subchapter B. How Do I Register My
Agency to Engage in the Business of Child
Support Enforcement?
7 TAC §31.18***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §31.18, concerning when an application is abandoned without changes to the proposed text as published in the April 29, 2016 issue of the *Texas Register* (41 TexReg 3035). The amended rule will not be republished. These amendments clarify the conditions and procedures for determining and communicating that an application has been abandoned.

The amended rule streamlines and makes consistent the procedures for the department to determine whether an application has been abandoned. These amendments are intended to enhance the opportunity for communication between child support enforcement agency applicants and the department.

The department received no comments regarding the proposed amendments.

The amendments are adopted pursuant to Finance Code, §396.051, which authorizes the commission to adopt necessary rules to administer the chapter concerning private child support enforcement agencies.

Finance Code, §396.101, is affected by the amended section.

§31.18. When is an application submitted by my agency abandoned?

(a) Subject to subsection (b) of this section, the department must receive all information required to consider your application complete and to accept it for filing on or before the 61st day after the date the department receives your initial application.

(b) Upon a finding of good and sufficient cause, the banking commissioner shall grant an applicant additional time to complete the application. Extensions will be communicated to the applicant before the expiration of the filing period.

(c) After reviewing the information you provide in response to the department's request for additional information, the department may determine that still more information is required to consider your application complete and to accept it for filing. The department will notify you in writing if further information is required and specify the date by which the department must receive the information.

(d) If you do not provide the required information, the banking commissioner may determine that your application is abandoned, without prejudice to your right to file a new application.

(e) The banking commissioner will notify you in writing if your application is considered abandoned. The commissioner's determination is effective the date the department mails you the notice and may not be appealed. The department will not refund the fee you paid in connection with the abandoned application.

ADOPTION OF AMENDMENTS TO 7 TAC §31.18
Page 2 of 2

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

5. Discussion of and Possible Vote to Take Action on the Adoption of Amendment to 7 TAC, §31.19 Concerning When and How a Private Child Support Enforcement Agency's Certificate of Registration Will be Issued and Mailed

PURPOSE: Amendment to §31.19 clarifies the time for the Department processing of private child support enforcement agency registrations. The amendment reduces from 60 days to 45 days the time the Department will have to notify a registrant that its registration is approved or referred to the administrative law judge for notice and opportunity for hearing. The amendment shortens and simplifies the registration process for registrants seeking to engage in this business.

RECOMMENDED ACTION: No comments were received regarding the proposed amendment to 7 TAC, §31.19. The Department recommends that the Commission approve adoption of the amendment without changes to the proposal as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we adopt the amendment to 7 TAC, §31.19 without changes to the proposal as previously published in the *Texas Register*.

***Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 31. Private Child Support
Enforcement Agencies
Subchapter B. How Do I Register My
Agency to Engage in the Business of Child
Support Enforcement?
7 TAC §31.19***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §31.19, concerning how to register an agency to engage in the business of private child support enforcement without changes to the proposed text as published in the April 29, 2016 issue of the *Texas Register* (41 TexReg 3036). The amended rule will not be republished. These amendments clarify the time for department processing of private child support enforcement agency registrations.

The amended rule reduces from 60 days to 45 days the time the department will have to notify a registrant that its registration is approved or referred to the administrative law judge for notice and opportunity for hearing. These amendments are intended to shorten and simplify the registration process for registrants seeking to engage in this business.

The department received no comments regarding the proposed amendments.

The amendments are adopted pursuant to Finance Code, §396.051, which authorizes the commission to adopt necessary rules to administer the chapter concerning private child support enforcement agencies.

Finance Code, §396.101, is affected by the amended section.

§31.19. When and how will my agency's certificate of registration be issued and mailed?

(a) On or before the 45th day after the date your application is accepted for filing the banking commissioner will either:

(1) approve your application by issuing a certificate of registration for each location approved; or

(2) refer your application to the administrative law judge for notice and opportunity for hearing under Chapter 9 of this title.

(b) If your application is approved, the department will issue a certificate of registration for each location in your application.

(c) The banking commissioner will mail each certificate of registration for your agency to your agency's principal business office mailing address within 15 days of approval.

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

6. Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC, §31.20 Concerning What Remedy is Available If the Department Does Not Comply with the Private Child Support Enforcement Registration Processing Times

PURPOSE: New §31.20 establishes the process by which an entity seeking to register as a private child support enforcement agency may complain to the banking commissioner if the Department fails to comply with the application processing time periods specified in Subchapter B.

RECOMMENDED ACTION: No comments were received regarding proposed new 7 TAC, §31.20. The Department recommends that the Commission approve adoption of the new rule without changes to the proposal as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we adopt new 7 TAC, §31.20 without changes to the proposal as previously published in the *Texas Register*.

Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 31. Private Child Support
Enforcement Agencies
Subchapter B. How Do I Register My
Agency to Engage in the Business of Child
Support Enforcement?
7 TAC §31.20

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts new §31.20, concerning how to register an agency to engage in the business of private child support enforcement without changes to the proposed text as published in the April 29, 2016 issue of the *Texas Register* (41 TexReg 3036). The new rule will not be republished. This rule provides a procedure for registrants to complain to the banking commissioner in the event the registration is not processed within the prescribed time periods. The new rule conforms to Texas Government Code §2005.006.

Proposed new §31.20 establishes the process by which an entity seeking to register as a private child support enforcement agency may complain to the banking commissioner if the department fails to comply with the application processing time periods specified in Subchapter B.

The department received no comments regarding the proposed new rule.

The new rule is adopted pursuant to Finance Code, §396.051, which authorizes the commission to adopt necessary rules to administer the chapter concerning private child support enforcement agencies.

Finance Code, §396.101, is affected by the new section.

§31.20. What remedy is available if the department does not comply with the registration processing times?

(a) If the department does not process your registration within the time periods specified in Subchapter B of this title, you may file a written complaint with the banking commissioner. The complaint must set out the facts regarding the delay and the specific relief you seek. The department must receive your complaint on or before the 30th day after the date the commissioner approves or denies your registration.

(b) The department division responsible for complying with the applicable time period must submit a written response to the banking commissioner regarding your complaint that includes any facts on which the division relies to show that good cause existed for exceeding the applicable time period.

(c) The banking commissioner will review your written complaint and the division's response. If the commissioner deems it necessary, a hearing may be held to take evidence on the matter.

(d) The banking commissioner will determine, based upon your complaint and the division's response, if the department exceeded the applicable time period and, if so, whether the responsible division established good cause for the delay.

(e) The banking commissioner will notify you of the decision regarding your complaint on or before the 60th day after the

date the commissioner receives your written complaint. The commissioner's decision is final and may not be appealed.

(f) If the banking commissioner decides that the department exceeded the applicable time period without good cause, the department will reimburse you all of your registration fees.

(g) A decision in your favor under this section does not affect any decision by the banking commissioner to grant or deny your registration. The decision to grant or deny your registration is based upon applicable substantive law without regard to whether the department timely processed your registration.

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

7. Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC, §35.18 Concerning How Long the Department Will Take to Process Registration of Check Verification Entities, and §35.19 Concerning What Remedy is Available If the Department Does Not Comply with the Registration Processing Times of Check Verification Entities

PURPOSE: New §35.18 states specific time periods within which the Department will process check verification entity registrations. New §35.19 establishes the process by which an entity seeking to register as a check verification entity may complain to the banking commissioner if the Department fails to comply with the registration processing times specified in new §35.18.

RECOMMENDED ACTION: No comments were received regarding proposed new 7 TAC, §35.18 and §35.19. The Department recommends that the Commission approve adoption of the new rules without changes to the proposal as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we adopt new 7 TAC, §35.18 and §35.19 without changes to the proposal as previously published in the *Texas Register*.

***Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 35. Check Verification Entities
Subchapter B. Registration of Check
Verification Entities
7 TAC §35.18 and §35.19***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts new §35.18 and §35.19, concerning registration of check verification entities without changes to the proposed text as published in the April 29, 2016 issue of the *Texas Register* (41 TexReg 3037). The new rules will not be republished. These rules specify times for department processing of check verification entity registrations, and provide a procedure for registrants to complain to the banking commissioner in the event the registration is not processed within the prescribed time periods. New §35.19 conforms to Texas Government Code §2005.006.

Proposed new §35.18 establishes specific time periods within which the department will process registrations for check verification entities. Proposed new §35.19 establishes the process by which an entity seeking to register as a check verification entity may complain to the banking commissioner if the department fails to comply with the registration processing times specified in proposed new §35.18.

The department received no comments regarding the proposed new rules.

The new rules are adopted pursuant to Finance Code, §11.309(b), which provides

the authority to adopt rules requiring check verification entities to register with the banking commissioner.

Finance Code, §11.309, is affected by the new sections.

§35.18. How long will the department take to process my registration?

(a) On or before the 15th day after the date the department receives your registration form, the department will notify you in writing that:

(1) your registration form is incomplete and specify the additional information required before the department will accept your registration for filing; or

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

(b) On or before the 30th day after the date the department accepts your registration for filing, the banking commissioner will approve or deny your registration and advise you in writing of the decision.

§35.19. What remedy is available if the department does not comply with the registration processing times?

(a) If the department does not process your registration within the time periods specified in §35.18 of this title, you may file a written complaint with the banking commissioner. The complaint must set out the facts regarding the delay and the specific relief you seek. The department must receive your complaint on or before the 30th day after the date the commissioner

approves or denies your registration.

(b) The department division responsible for complying with the applicable time period must submit a written response to the banking commissioner regarding your complaint that includes any facts on which the division relies to show that good cause existed for exceeding the applicable time period.

(c) The banking commissioner will review your written complaint and the division's response. If the commissioner deems it necessary, a hearing may be held to take evidence on the matter.

(d) The banking commissioner will determine, based upon your complaint and the division's response, if the department exceeded the applicable time period and, if so, whether the responsible division established good cause for the delay.

(e) The banking commissioner will notify you of the decision regarding your complaint on or before the 60th day after the date the commissioner receives your written complaint. The commissioner's decision is final and may not be appealed.

(f) If the banking commissioner decides that the department exceeded the applicable time period without good cause, the department will reimburse you all of your registration fees.

(g) A decision in your favor under this section does not affect any decision by the banking commissioner to grant or deny your registration. The decision to grant or deny your registration is based upon applicable substantive law without regard to whether

the department timely processed your registration.

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

8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendment to 7 TAC, §11.37 Concerning Complaint Notices

PURPOSE: Amendment to §11.37 is proposed to allow consumer complaint notices to be in a form that is substantially similar to the current required notice. Proposed amendment to §11.37(b) states that this consumer complaint notice must only substantially conform to the form complaint notice that is currently provided by §11.37(b). This will allow an entity that is required to communicate the notice to make non-substantive changes to the notice, as might be necessary by the context or formatting in which it is being provided.

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

RECOMMENDED MOTION: I move that we publish the proposed amendments to 7 TAC, §11.37 in the *Texas Register*.

***Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 11. Miscellaneous
Subchapter A. General
7 TAC §11.37***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes amendment to §11.37(b), concerning the form of consumer complaint notices. The amended rule is proposed to allow consumer complaint notices to be in a form that is substantially similar to the current required notice.

Currently, §11.37(b) provides a form consumer complaint notice that must be duplicated exactly when the notice is required to be communicated to consumers. Proposed amended §11.37(b) would state that this consumer complaint notice must only substantially conform to the form complaint notice that is currently provided by §11.37(b). This will allow an entity that is required to communicate the notice to make non-substantive changes to the notice, as might be necessary by the context or formatting in which it is being provided.

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

Mr. Bacon also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is

that the notices provided to consumers may be made clearer and more consistent with the context of the notice.

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

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

To be considered, comments on the proposed amended rule must be submitted no later than 5:00 p.m. on July 25, 2016. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amended rule is proposed under Finance Code §11.003, which provides that the commission may adopt rules necessary and reasonable to implement Chapter 11 of the Finance Code.

Finance Code §11.307 is affected by the proposed amended section.

§11.37. How Do I Provide Information to Consumers on How to File a Complaint?

(a) (No change.)

(b) How do I provide notice of how to file complaints?

(1) You must use a notice that substantially conforms to the language and form of the following notice in order to let your consumers know how to file complaints:

The (your name) is (chartered, licensed, or registered) under the laws of the State of Texas and by state law is subject to regulatory oversight by the Texas Department of Banking. Any consumer wishing to file a complaint against the (your name) should contact the Texas Department of Banking through one of the means indicated below:

In Person or U.S. Mail: 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294

Telephone No.: 877/276-5554

Fax No.: 512/475-1313

Email: consumer.complaints@dob.texas.gov

Website: www.dob.texas.gov

(2) - (5) (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.