

A.

Finance Commission

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FINANCE COMMISSION AGENDA

Friday, June 16, 2017

8:30 a.m. or upon adjournment of the Audit Committee (whichever is later)

Section A.3 will take up the following agenda items with NO DISCUSSION as notated in bold and italicized A1

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 21, 2017 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 Department of Savings and Mortgage Lending's Annual Internal Audit Report 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 Texas Department of Banking's Audit Report on Fixed Asset Management 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 Revised Texas Financial Education Endowment (TFEE) Fund Grant Administration & Advisory Policy Manual and 2018-2019 Funding Priorities**
- D. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Appointment of a New Grant Advisory Committee Member**
- E. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action to Reapprove the Internal Auditor Contract for Garza/Gonzalez & Associates for Fiscal Year 2018**

6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 1, Chapter 9, §9.1 and §9.12, Regarding Contested Case Procedures
7. Discussion of and Possible Vote to Take Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Duties 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
8. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to §551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property
9. Discussion and Consultation with Attorney and Possible Vote to Take Action Pursuant to §551.071, Texas Government Code, for the purpose of seeking the advice or attorney-client privileged communications from our attorneys, including matters 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 Complaints; and d) Other Items
3. Fiscal/Operations Activity: a) Funding Status/Audits/Financial Reporting; b) Staffing; and c) Other Items
4. Legal Activity: a) Enforcement; b) Gift Reporting; and c) Legislative Activities
5. Discussion of and Possible Vote to Take Action on 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.

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 Proposal and Publication for Comment of New Rules in 7 TAC, Part 1, Chapter 7, Concerning the Texas Financial Education Endowment Fund
3. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 5, Chapter 84, Concerning Motor Vehicle Installment Sales, and a Proposed New Rule in Chapter 86, Concerning Retail Creditors

4. 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. 1:14-cv-00190-LY, in the United States District Court, Western District of Texas, Austin Division

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

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

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

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**MINUTES OF THE
FINANCE COMMISSION MEETING
Friday, April 21, 2017**

The Finance Commission of Texas convened at 9:10 a.m. on April 21, 2017 with the following members present:

Finance Commission Members in Attendance:

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

Finance Commission Chairman Stacy G. London announced a quorum with eleven members present.
(00:03) start of discussion)

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
A. FINANCE COMMISSION MATTERS		
1. Review and Approval of the Minutes of the February 16, 2017 and February 17, 2017 Finance Commission Meetings	On Consent Agenda – Item A1 This item approved on the Consent Agenda.	4:14 start of discussion
2. General Public Comment	No Action Required.	4:21 start of discussion
3. Consent Agenda – Items A1	Jay Shands made a motion to approve Consent Agenda item A1. Hector Cerna seconded and the motion passed.	4:40 start of discussion 5:05 vote
4. Finance Commission Operations	No Action Required.	5:15 start of discussion
5. Audit Committee Report		16:35 start of discussion
A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' February 28, 2017 Investment Officer	Coming upon recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies'	16:45 start of discussion

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<p>Reports</p> <ul style="list-style-type: none"> a. Office of Consumer Credit Commissioner b. Texas Department of Banking c. Department of Savings and Mortgage Lending 	<p>February 28, 2017 Investment Officer Reports passed.</p>	<p>16:51 vote</p>
<p>B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2017 Second Quarter Financial Statements</p> <ul style="list-style-type: none"> a. Office of Consumer Credit Commissioner b. Texas Department of Banking c. Department of Savings and Mortgage Lending 	<p>Coming upon recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies' 2017 Second Quarter Financial Statements passed.</p>	<p>16:57 start of discussion 17:08 vote</p>
<p>6. Discussion of and Possible Vote to Take Action on the Finance Commission Agency Heads' Fiscal Year 2017 Mid-Term Accomplishment Reports</p>	<p>Will Lucas made a motion to Approve the Finance Commission Agency Heads' Fiscal Year 2017 Mid-Term Accomplishment Reports. Molly Curl seconded and the motion passed.</p>	<p>17:18 start of discussion 18:12 vote</p>
<p>7. Discussion of the Report of the Financial Condition of the State Banking System</p>	<p>No Action Required.</p>	<p>18:34 start of discussion</p>
<p>8. Discussion of and Possible Vote to Take Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Duties and Compensation of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to the Duties and Compensation of Persons Holding the Position of Agency Commissioner Positions, and Other Staff</p>	<p>Deferred to Executive Session – no vote taken.</p>	<p>n/a</p>

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
9. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to §551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property	Deferred to Executive Session – no vote taken.	n/a
10. Discussion and Consultation with Attorney and Possible Vote to Take Action Pursuant to §551.071, Texas Government Code, for the purpose of seeking the advice or attorney-client privileged communications from our attorneys, including matters related to the potential financial exposure of the Finance Commission Agencies and their officers and the Finance Commission and its officers and including matters of pending and contemplated litigation	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.	19:55 start of discussion
2. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation <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 Commissioer 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>	No Action Required.	n/a

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
C. TEXAS DEPARTMENT OF BANKING		
1. Industry Status and Departmental Operations: a) Items of Interest from the Commissioner's Office; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Special Audits Division Activities; e) Administrative and Fiscal Division Activities; f) Strategic Support Division Activities; g) Legal Division Activities; h) Legislative Activities; and i) General Items of Interest	No Action Required.	50:22 start of discussion
2. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation <i>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</i>	No Action Required.	n/a
D. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING		
1. Industry Status and Departmental Operations - State Savings Bank Activity: a) Industry Status; b) State Savings Bank Charter and Merger Activity; c) Other Items	No Action Required.	1:09:07 start of discussion
2. Industry Status and Departmental Operations – Mortgage Lending Activity: a) Residential Mortgage Loan Originators; b) Mortgage Examination; c) Consumer Complaints; and d) Other Items	No Action Required.	1:25:50 start of discussion
3. Fiscal/Operations Activity: a) Funding Status/Audits/Financial Reporting; b) Staffing; and c) Other Items	No Action Required.	1:26:58 start of discussion

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
4. Legal Activity: a) Enforcement; b) Gift Reporting; and c) Legislative Activities	No Action Required.	1:27:22
5. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation <i>Catherine Sims vs. Texas Department of Savings and Mortgage Lending</i> , Cause No. D-1-GN-16-001194, 201 st District Court, Travis County, Texas.	No Action Required.	n/a

Chairman Stacy G. London called for an Executive Session at 10:53 a.m. (1:29:45 on the audio file). The open meeting resumed at 11:23 a.m. (1:29:56 on the audio file).

There being no further business, Chairman Stacy G. London adjourned the meeting of the Finance Commission at 11:24 a.m. (01:30:06) on the audio file).

Stacy G. London, Chairman
Finance Commission of Texas

Stephanie Newberg, Deputy Commissioner
Texas Department of Banking

Anne Benites, Executive Assistant
Finance Commission of Texas

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Finance Commission of Texas

Consent Agenda

June 16, 2017

A. Finance Commission Matters

1. Review and Approval of the Minutes of the April 21, 2017, Finance Commission Meeting

Future Meetings Rule Schedule

Rules	Short Title / Purpose	Projected Proposal Date for Presentation to Finance Commission	Agency
7 TAC, Part 4, Chapter 81, Subchapter B	Residential Mortgage Loan Originators Applying For licensure with SML under the SAFE Act - on Pre-licensing education – <i>New Rule</i>	08/18/17	SML
7 TAC, Part 1, Chapter 4	Credit Card Surcharge Appeal Procedures – <i>Repeal</i>	08/18/17	OCCC
7 TAC, Part 5, Chapter 89	Property Tax Lenders – <i>Rule Review</i>	08/18/17	OCCC
7 TAC, Part 1, Chapter 2	Residential Mortgage Loan Originators Applying for Licensure with the OCCC Under the SAFE Act <i>New Rule</i>	08/18/17	OCCC
7 TAC, Part 4, Chapter 80, Subchapter A, § 80.2 and Subchapter C	Residential Mortgage Loan Companies – delete part of physical office definition and create <i>New Rule</i>	10/20/17	SML
7 TAC, Part 4, Chapter 80, Subchapter C, § 80.200(a)	Residential Mortgage Loan Companies – amend form of required disclosure	10/20/17	SML
7 TAC, Part 4, Chapter 81, Subchapter A, § 81.2 and Subchapter C	Residential Mortgage Loan Originators – delete part of physical office definition and create <i>New Rule</i>	10/20/17	SML

Other Legislation of Interest to Finance Commission 85th Legislative Session, 2017

Finance Agencies' Headquarters

SB 1349 – Transfer of property to DMV (effective 5/28/17)

- Authorizes the Texas Department of Motor Vehicles (DMV) to own real property and establish permanent headquarters at property known as Camp Hubbard.
- Authorizes the Texas Department of Transportation (TXDOT) to transfer all or part of Camp Hubbard to DMV.
- Authorizes TXDOT to sell any remainder of Camp Hubbard property to financial regulatory agencies.

Rulemaking

HB 462 – Report on legislation granting rulemaking authority (effective 9/1/17 unless vetoed)

- Requires proposed rules to include a corresponding bill number, where applicable.
- For rules adopted pursuant to legislation, requires the notice to be sent to applicable bill author(s) and sponsor(s).

HB 1290 – Fiscal impact of rulemaking actions (effective 9/1/17 unless vetoed)

- Prohibits a state agency from adopting a rule that imposes a cost on regulated persons, unless the agency repeals another rule that imposes a total cost that is equal to or greater than the total cost of the proposed rule, or amends a rule to decrease the total cost in an amount that is equal to or greater than the proposed rule. SDSI agencies are exempt from this provision.
- Requires proposed rules to include detailed statement about impact on government growth. All agencies are subject to these requirements.

HB 3433 – Rules affecting rural communities (effective 9/1/17 unless vetoed)

- Requires proposed rules to include a statement of impact on rural communities (added to and mirrors current requirements for statements of impact on small businesses).
- Defines rural communities as municipalities with populations of less than 25,000.
- Allows agencies to establish separate requirements for rules as they apply to rural communities.

Open Meetings/Public Information

HB 3047 – Open meetings by videoconference call (effective 9/1/17 unless vetoed)

- Members of governmental bodies who attend meetings by videoconference call are considered absent for any portion of the meeting during which the audio or video communication is disconnected.
- In the event of disconnection, a meeting may not continue if a member's absence causes lack of quorum.

HB 3107 – Responses to public information requests (effective 9/1/17 unless vetoed)

- Establishes that requests in which the requestor fails, within prescribed time periods, to inspect or duplicate the requested information, or for which the requestor fails to pay applicable charges, are withdrawn.
- Multiple requests from the same individual on the same day are considered as a single request for the purpose of cost calculation.
- Agencies may establish reasonable monthly and yearly limits on the amount of time required to respond to requests by individuals who have filed a previous request that was deemed withdrawn due to non-payment or exceeding the time to inspect or duplicate the requested information.
- Employees of news media or communication service providers, and information sought for the creation or maintenance of a title insurance abstract plant, are not subject to the above limitations.

SB 564 – Deliberations concerning information security during meetings (effective 9/1/17 unless vetoed)

- Allows discussion of security assessments relating to information technology to be made in closed meeting of a governmental body.
- Existing law only exempted discussion of these issues by the Department of Information Resources (DIR) governing board from public meetings requirements. This will extend the exemption to this type of discussion by all governmental bodies.

Financial Reporting for Public Officials**HB 776 – Removal of certain information from personal financial statements filed with the Texas Ethics Commission (Effective 6/18/17 or upon signature)**

- Requires Texas Ethics Commission to remove telephone number and names of dependent children from personal financial statements before they are made available to the public.

Contested Cases**SB 813 – Recovery of damages by regulated persons (effective 9/1/17 unless vetoed)**

- Establishes a private cause of action against a state agency for bringing regulatory action that is frivolous, unreasonable, or without foundation.
- Provides for recovery of attorney fees and damages if the person prevails and the agency is unable to demonstrate good cause for bringing the regulatory action.

SB 1446 – Contested case procedures (effective 9/1/17)

- Allows facts in notice of hearing to be provided by incorporating statements in petition.
- In an agency action against a license holder, if license holder waives opportunity to show compliance, agency's failure to give license holder notice of facts warranting action does not constitute prejudice to license holder's substantive rights.
- Allows service pursuant to agency's rules regarding service of pleadings.
- Several changes regarding time limits when affected party does not timely receive notice of agency order.

A. FINANCE COMMISSION MATTERS

6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment on Amendments to 7 TAC, Part 1, Chapter 9, §9.1 and §9.12, Regarding Contested Case Procedures

PURPOSE: The purpose of the proposed amendments is to clarify the procedures used by the finance agencies to dispose of a contested case in the event of default. The proposed updates are necessary to reflect new default procedures enacted by the State Office of Administrative Hearings (SOAH) that became effective on January 1, 2017. The proposed amendments provide the finance agencies with specific procedures for resolving default cases that are remanded back to the agencies by SOAH.

RECOMMENDED ACTION: The finance agencies request that the Finance Commission approve the amendments to 7 TAC, Chapter 9 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve for publication and comment the amendments to 7 TAC, Chapter 9.

Title 7. Texas Administrative Code
Part 1. Finance Commission of Texas
Chapter 9. Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings
§9.1 and §9.12

The Finance Commission of Texas (commission) proposes amendments to §9.1, concerning Application, Construction, and Definitions; and §9.12, concerning Default in 7 TAC, Chapter 9, concerning Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings.

The purpose of the proposed amendments is to clarify the procedures used by the finance agencies to dispose of a contested case in the event of default. The finance agencies are the Texas Department of Banking (DOB), the Texas Department of Savings and Mortgage Lending (SML), and the Office of Consumer Credit Commissioner (OCCC). The proposed updates are necessary to reflect new default procedures enacted by the State Office of Administrative Hearings (SOAH), which became effective on January 1, 2017.

As a note of background, SOAH recently amended its procedural rules, found in Title 1, Chapter 155 of the Texas Administrative Code. The amendments were made in response to recommendations from the Sunset Advisory Commission. The Sunset Advisory Commission recommended that SOAH be specifically authorized to remand default cases back to the referring agencies for informal disposition. In 2015, the Texas Legislature adopted this recommendation by enacting HB 2154, codified at Texas Government Code, §2001.058(d-1).

The proposed amendments to the default rules provide the finance agencies with specific procedures for resolving default

cases that are remanded back to the agencies by SOAH. The agencies already have a default rule that applies to in-house contested case hearings.

The finance agencies circulated an early draft of proposed changes to interested stakeholders. The agencies received two informal written precomments. Certain recommendations by the precommenters have been incorporated into this proposal. The agencies appreciate the thoughtful input provided by stakeholders.

The individual purposes of the amendments are provided in the following paragraphs.

The purpose of the proposed amendment to §9.1 is to clarify that an agency must follow the requirements of proposed new subsection (b) of §9.12 for disposing of a default in a contested case hearing conducted by SOAH.

Regarding §9.1, the rule currently states that the SOAH rules of procedure govern contested case hearings conducted by SOAH. To create analogous procedures for resolving default cases remanded back to the agencies, the proposed amendment to §9.1 states that proposed new §9.12(b) also governs contested case hearings conducted by SOAH.

The purpose of the amendments to §9.12 is to clarify the procedures for disposing of a contested case by default, as authorized by Texas Government Code, §2001.056 and §2001.058(d-1).

Regarding §9.12, the proposed amendments maintain the current rule language in relettered subsection (a). An additional phrase is added to the beginning of subsection (a), specifying that the procedures in this subsection apply to hearings conducted by an administrative law judge employed or contracted by an agency.

The proposed amendments also add a new subsection (b) to §9.12. Subsection (b) specifies the default procedures that apply to hearings conducted by SOAH. The proposed amendments: (1) specify how an agency may notify a party of a contested case hearing, (2) require the agency to prove that it provided proper notice to the defaulting party, and (3) provide procedures for agencies to follow when resolving default cases. The amendments do not affect a party's right to a hearing or impose additional requirements on the party.

Subsection (b) states that an agency may request that an administrative law judge make a finding of default in a hearing conducted by SOAH. Subsection (b)(1) describes the mailing address and method of service that the agency must use to serve the notice of hearing. Subsection (b)(2) requires the agency to present adequate proof that it properly served the opposing party with the notice of hearing. Subsection (b)(3) describes the effect of default, which includes deeming admitted the allegations in the notice of hearing and granting the relief sought in the notice. Subsection (b)(4) states that the agency may request that a defaulted case be dismissed and remand to the agency for informal disposition. Subsection (b)(5) describes the content of the final order that the agency may issue, after a default case is dismissed and remanded to the agency.

One precommenter recommended adding language stating that a party may have a finding of default set aside by a showing of good cause or in the interests of justice by filing the appropriate motions, as set forth in 1 TAC §155.501, which is the default rule used by SOAH. In response to this precomment, proposed §9.12(b)(5) specifies that the defaulting party must first receive notice of its right to file a motion to set aside a default.

A second precommenter recommended clarifying proposed §9.12(b)(3) to specify that the relief sought in the notice may be granted only against a party that is given proper notice of the hearing. The agencies agree with this precomment, and proposed §9.12(b)(3) includes the suggested additional language.

The second precommenter also recommended adding a proposed §9.12(b)(6), stating that "[a]n order issued by an agency after default has no precedential or evidentiary value in a subsequent action alleging the same, or similar, violations." The precommenter explains that "[t]his rule, as proposed, may authorize the creation of an order that could have equal footing with an order that was created in a contested and completed administrative procedure." The agencies disagree with this statement. The current rule authorizes the agencies to dispose of a contested case by default. The proposed amendments to the rule do not change the evidentiary or precedential value of a default order.

First, default orders have evidentiary value. Under Rule 401 of the Texas Rules of Evidence, evidence is relevant if tends to make a fact more or less probable and is of consequence in determining the action. Prior

violations are relevant to determining the appropriate sanction for subsequent violations. For example, under Texas Finance Code, §14.253(c)(3), "[i]n determining the amount of an administrative penalty, the [consumer credit] commissioner shall consider . . . the history of violations." This statute does not prohibit or condition the use of default orders to establish the history of violations.

Second, default orders have precedential value. Under the doctrine of *res judicata*, a final administrative order bars subsequent adjudication of the same subject matter by the same party. *Al-Jazrawi v. Texas Bd. of Land Surveying*, 719 S.W.2d 670, 671 (Tex. App.--Austin 1986, writ ref'd n.r.e.). This doctrine applies to default judgments. *See, e.g., Greater Houston Transp. Co. v. Wilson*, 725 S.W.2d 427, 430 (Tex. App.--Houston [14th Dist.] 1987, writ ref'd n.r.e.).

Third, similarly situated parties are treated fairly and consistently when all final orders are given effect.

Finally, recognizing the precedential value of default orders eliminates the need to use substantial agency resources to relitigate prior violations. This is consistent with the purpose of the default rule, which is to best utilize agency resources by efficiently disposing of defaulted cases.

Leslie L. Pettijohn, Consumer Credit Commissioner, on behalf of the Finance Commission of Texas, has determined that for the first five-year period the proposed 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 amendments 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.

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

The amendments are proposed under Texas Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The amendments are also proposed under specific rulemaking authority in the substantive statutes administered by the agencies. Texas Finance Code, §11.301 and

§31.003(a)(5) authorize the finance commission to adopt rules necessary or reasonable to facilitate the fair hearing and adjudication of matters before the banking commissioner and the finance commission. Texas Finance Code, §151.102(a)(1) authorizes the finance commission to adopt rules necessary to implement and clarify Chapter 151. Texas Finance Code, §154.051(b) authorizes the Department of Banking to adopt rules concerning matters incidental to the enforcement and orderly administration of Chapter 154.

Texas Finance Code, §11.302 authorizes the finance commission to adopt rules applicable to state savings associations or to savings banks. Texas Finance Code, §96.002(a)(2) authorizes the savings and mortgage lending commissioner and the finance commission to adopt procedural rules for deciding applications filed with the savings and mortgage lending commissioner or the Department of Savings and Mortgage Lending.

Texas Finance Code, §11.304 authorizes the finance commission to adopt rules necessary for supervising the consumer credit commissioner and for ensuring compliance with Texas Finance Code, Chapter 14 and Title 4. Texas Finance Code, §371.006 authorizes the consumer credit commissioner to adopt rules necessary for the enforcement of Texas Finance Code, Chapter 371. Texas Finance Code, §11.306 authorizes the commission to adopt residential mortgage loan origination rules as provided by Chapter 156. Texas Finance Code, §180.004 authorizes the commission to adopt rules to enforce Chapter 180. Texas Finance Code, §393.622 authorizes the commission to adopt rules to enforce Chapter 393. Texas Occupations Code, §1956.0611 authorizes the commission to

adopt rules to enforce Subchapter B, Chapter 1956.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 14, 154, 156, 157, 180, 393, 394, and Title 4, and Texas Occupations Code, Chapter 1956.

§9.1. Application, Construction, and Definitions.

(a) This chapter governs contested case hearings conducted by an administrative law judge employed or contracted by an agency. All contested case hearings conducted by the State Office of Administrative Hearings (SOAH) are governed by SOAH's procedural rules found at Title 1, Chapter 155 of the Texas Administrative Code and §9.12(b) of this title (relating to Default).

(b) The same rules of construction that apply to interpretation of Texas statutes and codes, the definitions in Government Code, §2001.003, and the definitions in subsection (c) of this section govern the interpretation of this chapter. If any section of this chapter is found to conflict with an applicable and controlling provision of other state or federal law, the section involved shall be void to the extent of the conflict without affecting the validity of the rest of this chapter.

(c) The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Administrative law judge--The hearings officer employed by or contracted by an agency to conduct administrative hearings for the finance commission, the department of banking, the department of

savings and mortgage lending, and the office of consumer credit commissioner.

(2) Agency--The finance commission, the department of banking, the department of savings and mortgage lending, or the office of consumer credit commissioner.

(3) Agency head(s)--Finance commission members, the banking commissioner, the savings and mortgage lending commissioner, or the consumer credit commissioner, or a designee if authorized by law.

(4) Applicant--A party seeking a license, registration, charter, or permit, or to amend its authority under an existing license, registration, charter or permit, or other action from an agency.

(5) Protestant--A party opposing an application for a license, registration, charter, permit, or other action filed with an agency who has paid any filing fees required by an applicable law.

(6) Respondent--A permittee, licensee, registrant, charter holder, or other party against whom a disciplinary proceeding is directed by an agency.

§9.12. Default

(a) In-house hearings. In a hearing conducted by an administrative law judge employed or contracted by an agency, if, [H], after served with notice in compliance with §9.11 of this title (relating to Notice and Initiation of Proceedings), a party fails to attend a hearing, the administrative law judge may proceed in that party's absence and, where appropriate, may issue a proposal for decision against that party. The

proposal for decision shall be served upon the defaulting party and the party will be afforded the opportunity to contest the law as stated in the proposal for decision, but shall be deemed to have waived the right to contest the evidence, cross-examine the witnesses, and present an affirmative case or defense. In the alternative, an agency may informally dispose of the matter as permitted by §2001.056 of the Texas Government Code, without the necessity of a hearing.

(b) SOAH hearings. In a hearing conducted by the State Office of Administrative Hearings (SOAH), the agency may request that the administrative law judge make a finding of default under 1 TAC §155.501 (relating to Default Proceedings).

(1) Service of notice of hearing. A notice of hearing may be served to the party's last known address. Applicants and holders of licenses, registrations, charters, and permits shall keep the agency informed as to their correct current mailing addresses and may be served with initial process by registered or certified mail, return receipt requested, to the address provided to the agency.

(2) Adequate proof of notice of hearing. At the time of the request, the agency must present adequate proof to the administrative law judge that the agency properly served the party with the notice of hearing, as required by 1 TAC §155.501(b).

(3) Effect of default. If the administrative law judge receives the required showing of proof to support a default, the allegations contained in the notice of hearing may be deemed admitted, and the relief sought in the notice may be

granted with respect to any party given proper notice of the hearing.

(4) Disposing of default case. The agency may request that the administrative law judge dismiss the case from the SOAH docket and remand it to the agency for informal disposition as permitted by Texas Government Code, §2001.056 and §2001.058(d-1).

(5) Final order after default. If the administrative law judge issues a conditional order of dismissal and remand that provides the defaulting party with adequate notice and opportunity to set aside the default under 1 TAC §155.501(e) and the conditional order of dismissal and remand has become final, the agency may issue a final order that:

(A) finds that the agency served the party with a notice of hearing stating that if the party failed to attend the hearing, then the allegations contained in the notice of hearing could be deemed admitted, and the relief sought might be granted;

(B) describes how the notice of hearing was served on the party;

(C) finds that the party failed to attend the hearing;

(D) finds that the allegations described in the notice are deemed admitted;

(E) concludes that the party has defaulted as a matter of law; and

(F) grants the relief described in the notice of hearing.

Certification

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

Issued in Austin, Texas on June 16, 2017.

Michael Rigby
General Counsel
Office of Consumer Credit Commissioner

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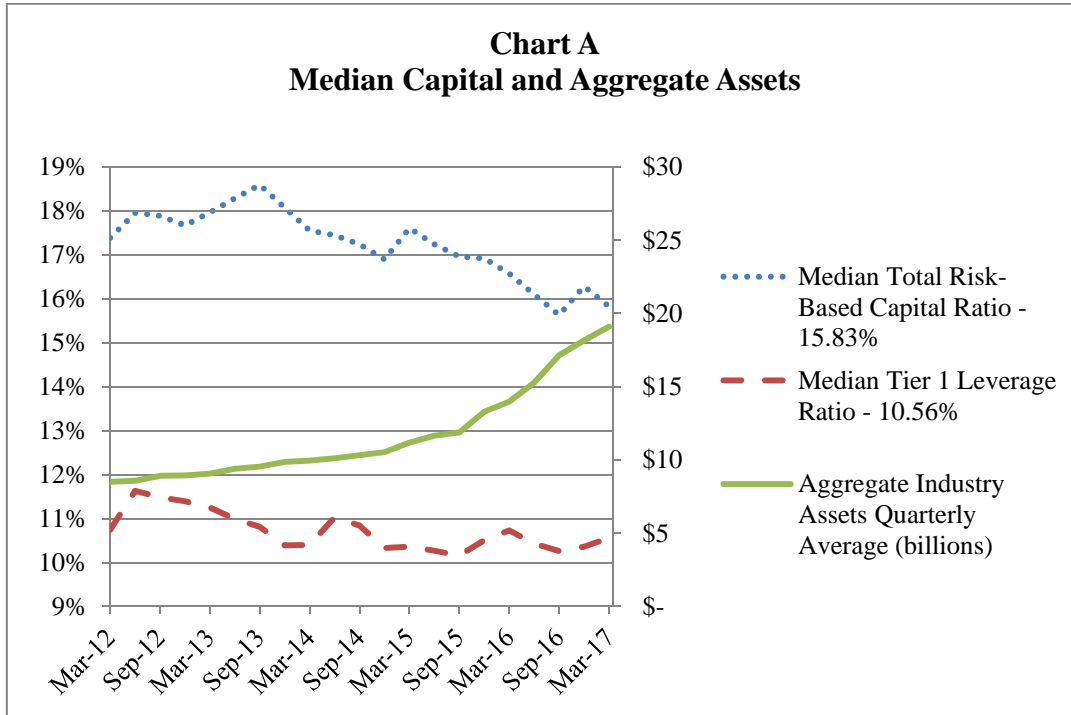
B.

**Department of Savings and
Mortgage Lending**

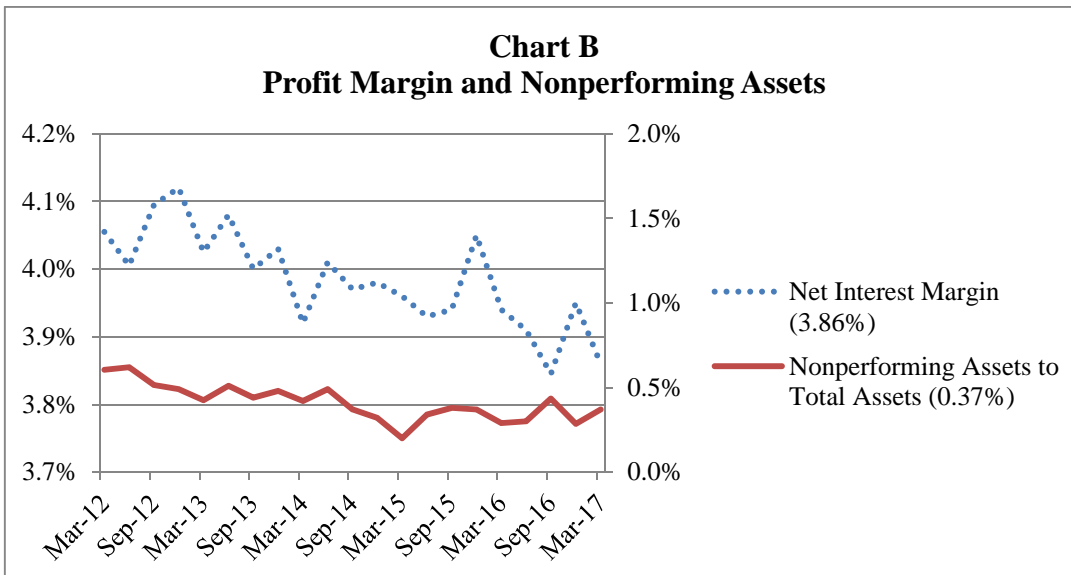
B. Texas Department of Savings and Mortgage Lending

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

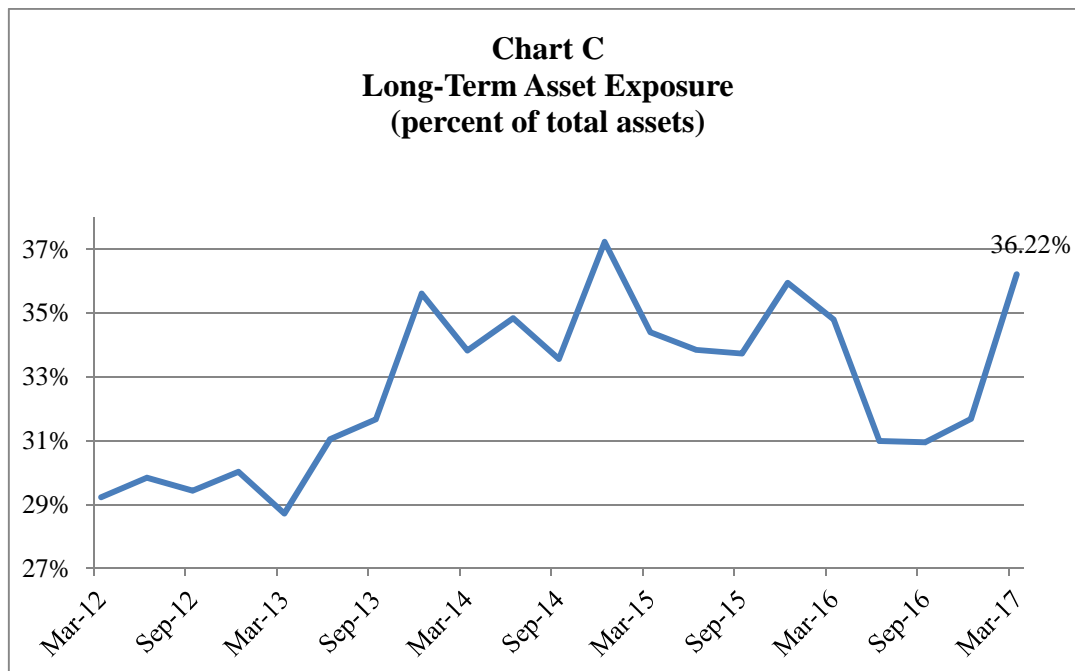
a. Industry Status



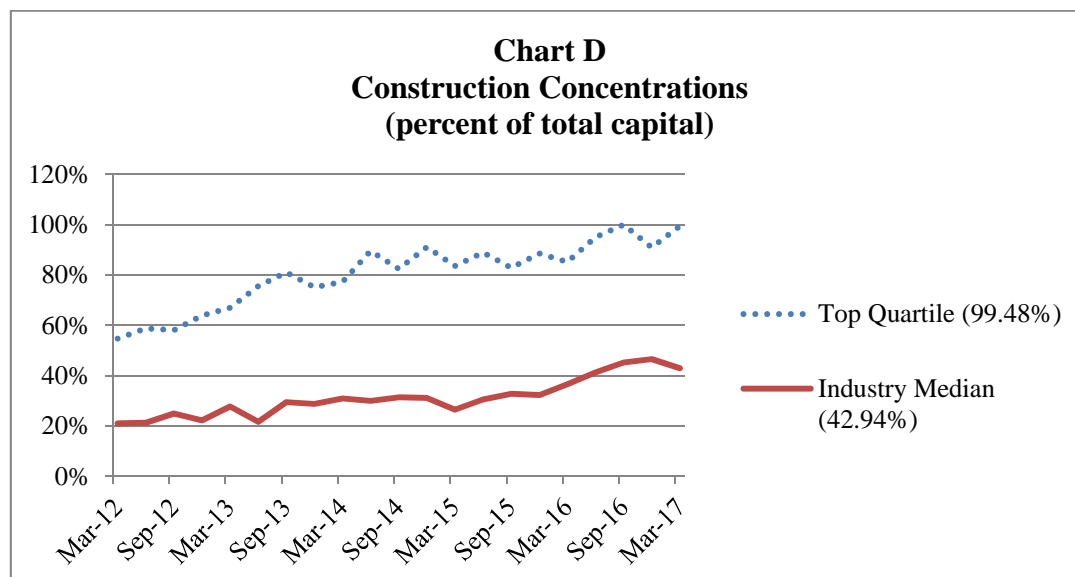
As of March 31, 2017, there are 28 state savings banks totaling \$19.57 billion in total assets. The average asset size of the median state savings bank (“SSB”) grew by 6.0% in the last four quarters to \$335 million. This trend continues extending more than five years in the industry. After some decline in the risk-based capital ratio due to increased lending from late 2013 to late 2015, capital protection has kept pace with assets into 2017 through earnings and contributions. The median total risk-based capital ratio (Chart A) is 15.83% and the median leverage capital protection is 10.56%.



The median net interest margin reduced back down slightly in the first quarter of 2017 (Chart B) to a modest 3.86%, which is down from one year before at 3.94%. Nonperforming asset levels were up slightly in the first quarter of 2017 but remain low at 0.37% of total assets.

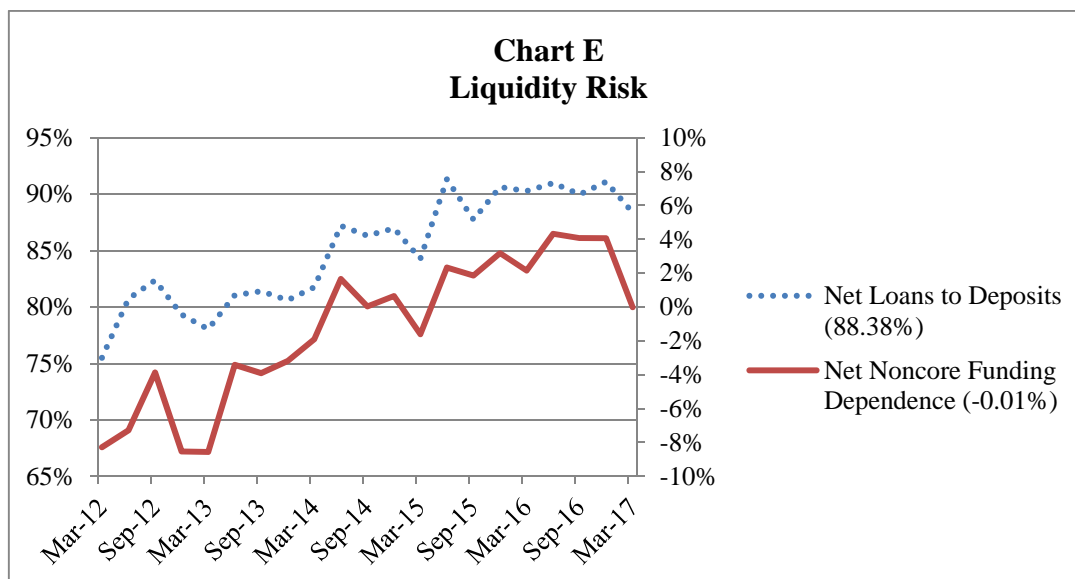


The Department continues to monitor various local, state, and national data sources to best understand the risks facing the industry and individual savings banks. Economic conditions, cybersecurity, market risk, lending concentrations, and liquidity risk all continue to be areas of focus. Market risk,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



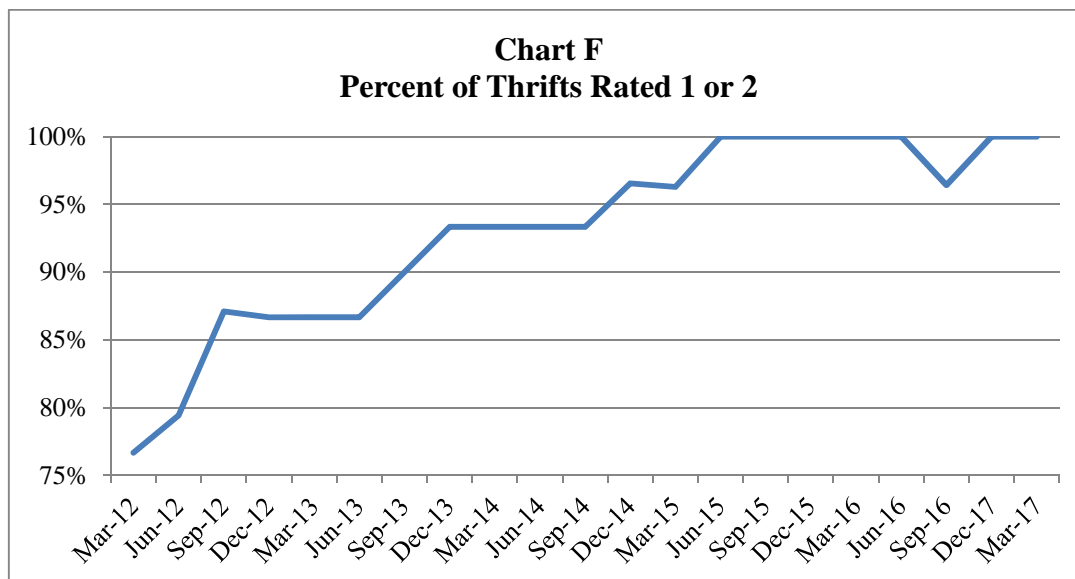
In addition to market risk, the Department closely monitors concentration risk, including commercial and industrial lending, commercial real estate lending, and agricultural lending.

Construction concentrations (Chart D) in the top quartile of the savings bank industry began to reach regulatory guidance during 2016. The industry median remains well below regulatory guidance.



Liquidity risk remains modest in Texas thrifts (Chart E). The median Net Noncore Funding Dependence (NNCFD) Ratio has decreased from over 4% during 2016 to right at 0%, and remains manageable. The loan-to-deposit ratio also remains modest at 88.38%.

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



All SSBs at March 31, 2017, were rated a Composite 1 or 2 (Chart F). There is one formal outstanding enforcement action.

b. Savings Bank Charter and Merger Activity

On September 9, 2016, notice was received of the intent of Sunflower Bank, National Association, Salina, Kansas, to acquire Capital Bank, SSB, El Paso. The merger is in process.

On February 23, 2017, notice was received of the intent of First Guaranty Bank, Hammond, LA, to acquire Synergy Bank, SSB, McKinney. The merger is in process.

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

c. Other Items

Commissioner Jones and Chief Thrift Examiner Trotti attended the Texas Bankers Association annual convention in San Antonio May 9-12, 2017.

Commissioner Jones spoke at the Texas Bankers Association's Board of Directors meeting on June 1, 2017.

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

a. Residential Mortgage Loan Originators

Current Licensing Population:

License Type As of 05/31/2017	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>	97	n/a	
<i>Mortgage Company</i>	1,135	548	
<i>Mortgage Banker</i>	393	2,526	
<i>Mortgage Servicer</i>	169	n/a	
Totals	1,807	3,076	24,986

Through the 3rd quarter of FY17, the Department received 6,850 new license requests and 69,367 other filings (amendments, sponsorships, etc.). Additionally, for the fiscal year 6,829 applications have been processed.

b. Mortgage Examinations

During the first half of FY17, a total of 232 examinations were conducted covering 3,376 Mortgage Loan Originators. Examinations are continuing to identify incomplete conditional qualification/approval letters, missing Mortgage Company/Banker Disclosures, and other compliance issues associated with the TILA-RESPA Integrated Disclosures.

In April, the Department sent 10 mortgage examiners to a five day AARMR Training School in Louisville, Kentucky which focused on risk identification and communication in the examination process. In-house mortgage examiner training is schedule to be held in Austin on June 30, 2017.

c. Consumer Complaints/Legal Issues

During the first half of FY17, a total of 495 consumer complaints were received. This represents a 1% increase when compared to the same period in FY16 with loan servicing complaints continuing to account for approximately 60% of the total number of complaints received. As of February 28, 2017, there were a total of 76 open consumer complaints with 92% of the complaints being aged less than 90 days.

d. Other Items

Commissioner Jones, Director Florence, and Director O'Shields attended and staffed a booth at the Texas Mortgage Bankers Association annual convention.

3. Fiscal/Operations Activity:

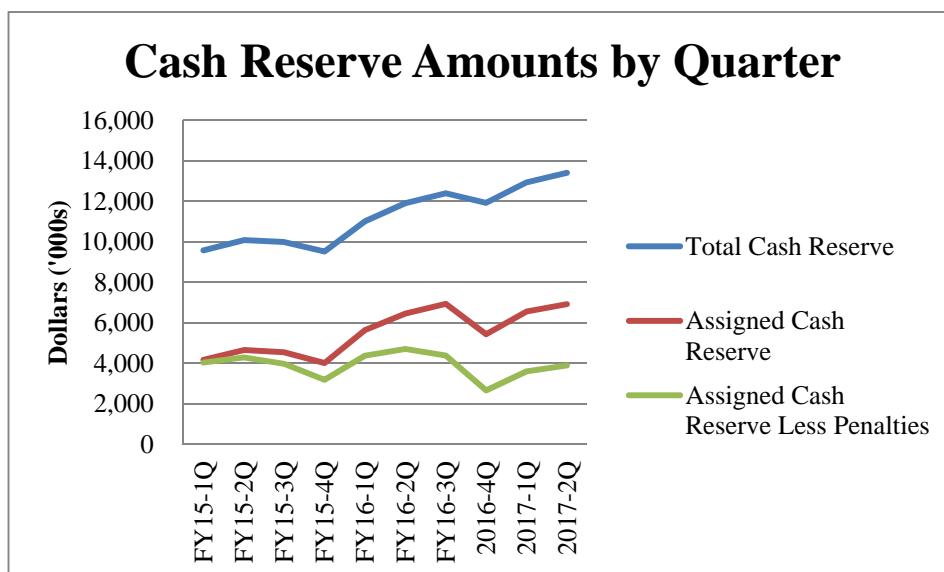
a. Funding Status/Audits/Financial Reporting

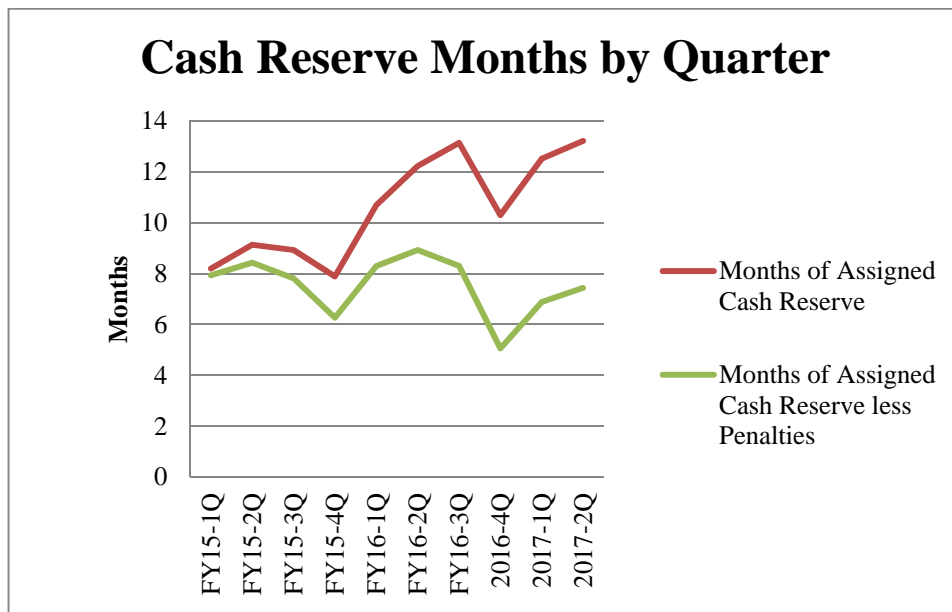
Funding Status/Budget – Staff is in the process of closing out the third quarter of FY17 and beginning the budgeting process for FY18.

Audits – Fieldwork, related to a Thrift Examination Audit, has been conducted by internal auditors Garza/Gonzales. The report is located elsewhere in the package.

Legislative Session – Staff members are reviewing bills that have passed and are evaluating the fiscal impact on the Department, staff, and regulated industries, and are determining any implementing rules that will be necessary to propose.

Financial Reporting –





b. Staffing

As of June 1, 2017, the Department was staffed at 54 regular full time employees with 61 FTEs available.

During April and May, we had no changes in staffing. Currently, we are collecting applications and interviewing candidates for four vacant positions.

Turnover charts for the third quarter of FY17 will be included in the August meeting materials.

c. Other Items

SML staff members participated in the State's 2017 "Everything's Fitter in Texas Challenge!". The Department competed in the 51-200 FTEs category and finished in 5th place. The number of SML staff completing the Challenge went up from 14 employees in 2016 to 30 employees in 2017.

The following historical information is being provided as requested by the Finance Commission, at its April 21, 2017 meeting. This information was previously reported to the Finance Commission at its meeting of August, 2009.

"The mortgage crisis that hit the nation during fiscal year 2007 had and continues to have a significant impact on the number of new applications received for processing, and as a result, on the revenue received from the applications. The workload has diminished in some areas and shifted in others; further reduction in workload is anticipated after Nationwide Mortgage Licensing System (NMLSR). The revenue levels expected for the FY2010-11 will be insufficient to cover all the existing positions in the Department. Regretfully, all these factors necessitated the elimination of 5.5 positions throughout the Department, effective September 1, 2009 – 3 administrative assistants from the Licensing section, 2 administrative assistants from the Central Administration section, and one half of an Accountant position from the Accounting section."

4. Legal Activities:

SOAH Cases:

There have been no contested SOAH hearings, nor any new SOAH decisions since the last report to the Finance Commission in April of 2017.

Case No. 450-19-2838 *Department of Savings and Mortgage Lending v. Sammy Trantham*. On April 19, 2017, the Administrative Law Judge granted the Department's motion for summary disposition to deny Mr. Trantham's license. The parties were thereafter required to submit proposed findings of fact and conclusions of law. May 19, 2017, was the administrative record close date. The Administrative Law Judge has 60 days from that date to enter his proposal for decision.

Gift Reporting:

On April 24 – 28, 2017, American Association of Residential Mortgage Regulators' (AARMR) provided a scholarship for the 2017 Spring Training School, covering registration; the value of the scholarship was \$945.00.

Litigation:

03/17/2016 Lawsuit

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 Department's decision was not reasonably supported by substantial evidence. The Texas Attorney General's Office is representing the Department. An Answer was filed on April 7, 2016, and the administrative record was filed on September 9, 2016. In February 2017, the parties received notification that Travis County District Judge Triana had been assigned the case. The parties submitted briefs on April 14, 2017. Responses to those briefs were due on May 12, 2017 -- the plaintiff failed to file her response. Replies to the response were due on May 30, 2017 and the judicial review is to occur on July 19, 2017 at 2:00 p.m.

Legislative Activity:

The following bills are some of those more meaningful to the Department or the regulated industries.

Bills recommended by the Department:

HB 2579 – (Rep. Holland) Clarifies the type of financial institution bond coverage required to be maintained by state savings banks. (effective Sept. 1, 2017)

HB 2580 – (Rep. Holland) Authorizes the Department to obtain criminal history information from the Department of Public Safety, when approving state savings bank directors and officers, and regarding Departmental employees. (effective Sept. 1, 2017)

HB 2823 – (Rep. Dean) Authorizes the Department to issue a subpoena in furtherance of an investigation regarding a residential mortgage loan servicer. (effective May 26, 2017)

HB 3342 – (Rep. Parker) Allows Finance Commission to establish rule regarding pre-licensing education under the SAFE Act. (sent to Governor on May 30, 2017)

Other bills of interest:

HB 1217 – (Rep. Parker) Allowing for certain notarial acts by an online notary public and online acknowledgement and proof of written instruments. (effective July 1, 2018)

HB 3921 – (Rep. Parker) Addressing financial exploitation of the elderly. (effective Sept. 1, 2017)

SB 526 – (Sen. Birdwell) Abolishing the mortgage fraud task force. (sent to the Governor May 28, 2017)

SB 1400 – (Sen. Campbell) Clarifies that Fin. Code 202.001 regarding bank holding companies does not apply when the only subsidiary held is a state savings bank. (sent to the Governor May 28, 2017)

SJR 60 – (Sen. Hancock) Proposes a constitutional amendment to be submitted to the voters on Nov. 7, 2017, which would make certain changes on home equity loans. (signed by the Senate and House on May 9, 2017 and filed with the Secretary of State on May 10, 2017)

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C.

**Office of Consumer Credit
Commissioner**

Consumer Protection and Consumer Assistance Report

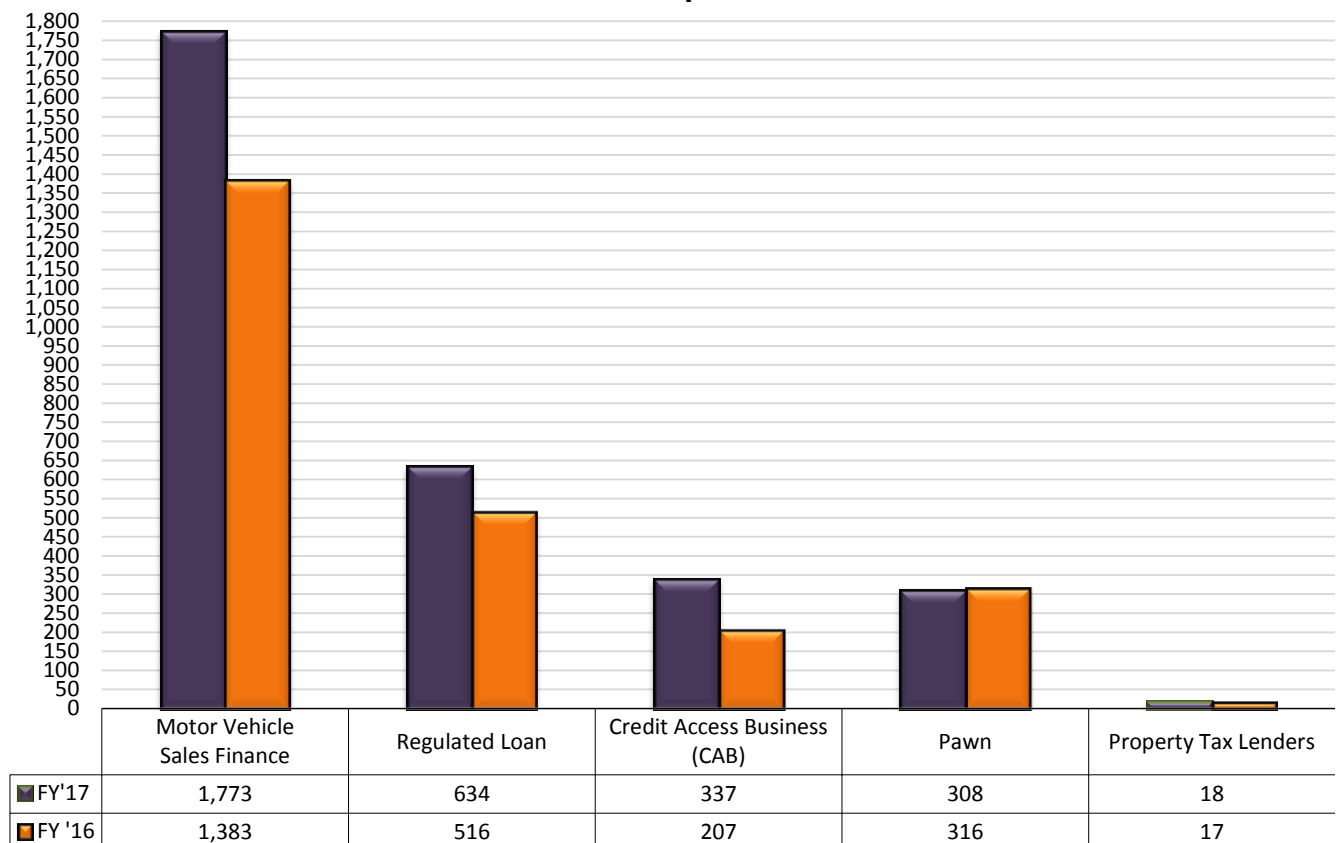
Rudy Aguilar, Director of Consumer Protection

Consumer Protection has now fully implemented the new Annual Report, Complaint, and Examination (ACE) system. Maintenance adjustments are being made to the system based on the feedback of examiners and administrative staff.

Overall, examinations conducted are ahead of the pro rata Fiscal Year (FY) 2017 goal and ahead of FY 2016 comparative data. Only Pawnshop examination progress is slightly behind compared to last year's examinations conducted.

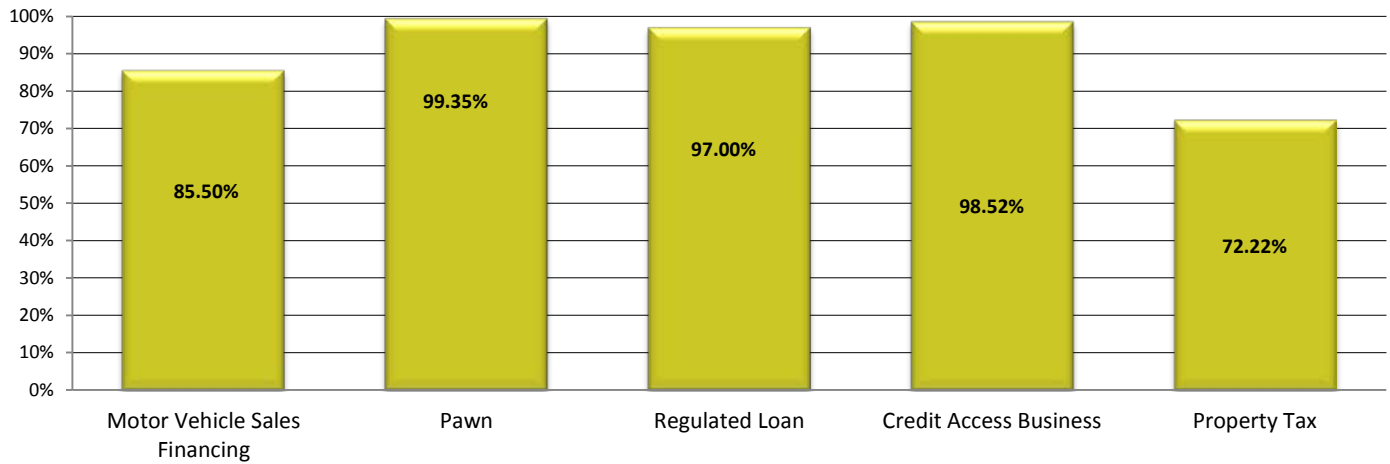
As of April 30, 2017, Motor Vehicle Sales Finance, Pawnshop, and Property Tax Lender examinations are ahead of the planned examination completion progress. Regulated Lenders and Credit Access Business examinations are short of the planned examination completion progress. The Agency expects to meet all license type FY '17 examination targets. The number of conducted examinations is ahead of last year's pace because: (1) increased training focus on motor vehicle examinations; and (2) the number of conducted enterprise-level examinations is higher than the previous year.

Examinations Conducted: Sept - Apr Fiscal Year Comparison

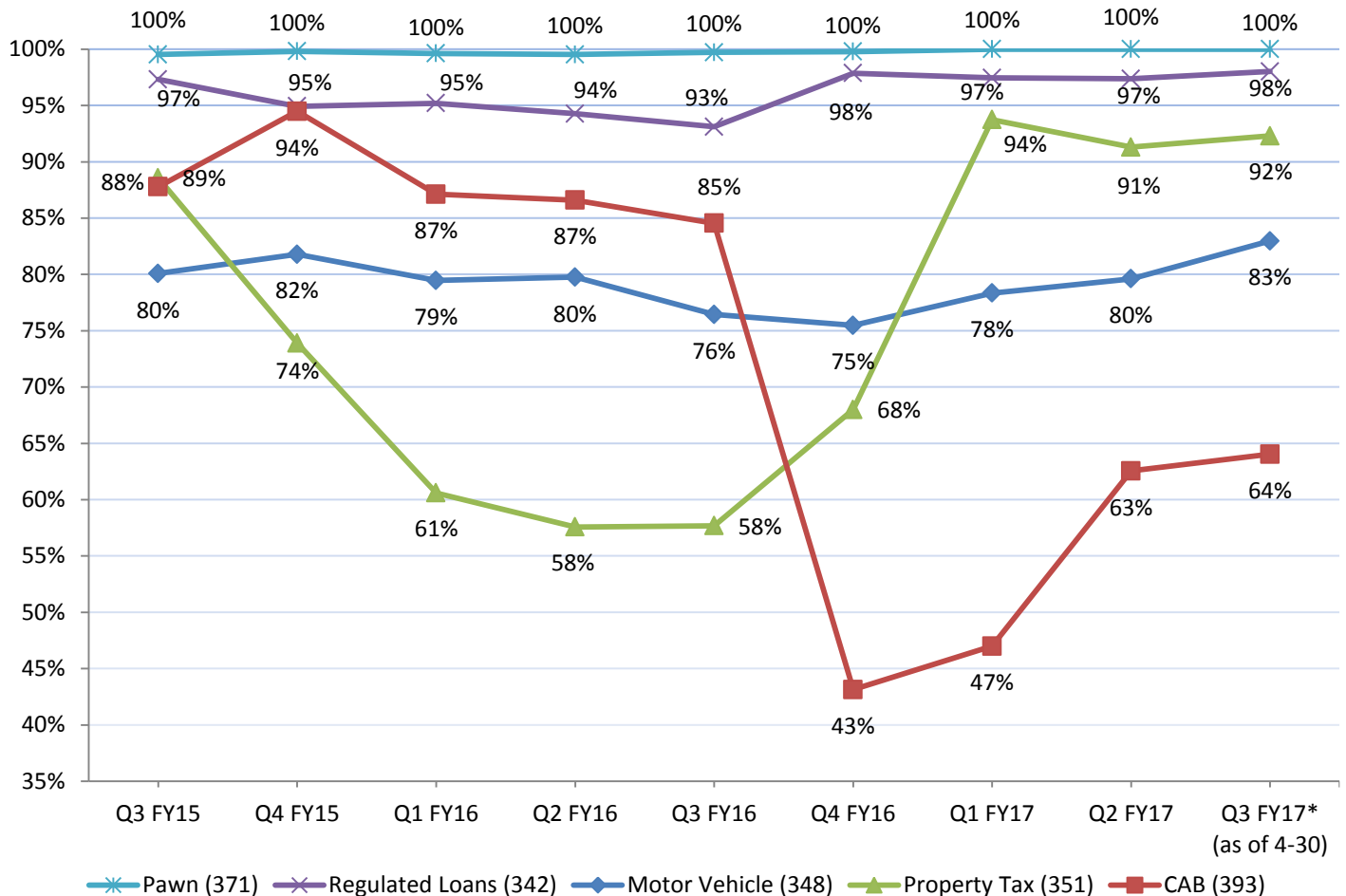


The acceptable level of compliance for all five examination areas is charted below. The first chart displays the FY '17 year-to-date acceptable levels of compliance; all examination areas except property tax are within the acceptable level of compliance. The second chart denotes the acceptable level of compliance on a trailing 12-month basis through the end of April 2017.

Acceptable Level of Compliance FY '17 (Sept 2016 - Apr 2017)



Acceptable Compliance Levels - Trailing 12 Months (at quarter end)

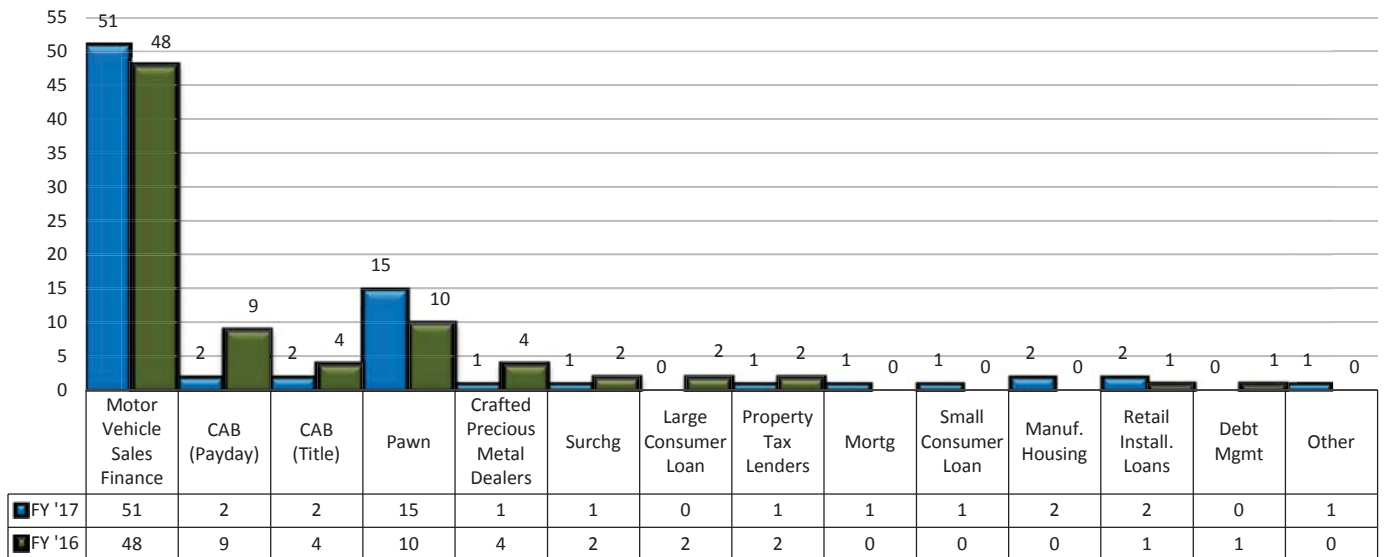


Investigations

Investigations Completed

FY '17 (Sept 2016 - Apr 2017) Total: 80

FY '16 (Sept 2015 - Apr 2016) Total: 83

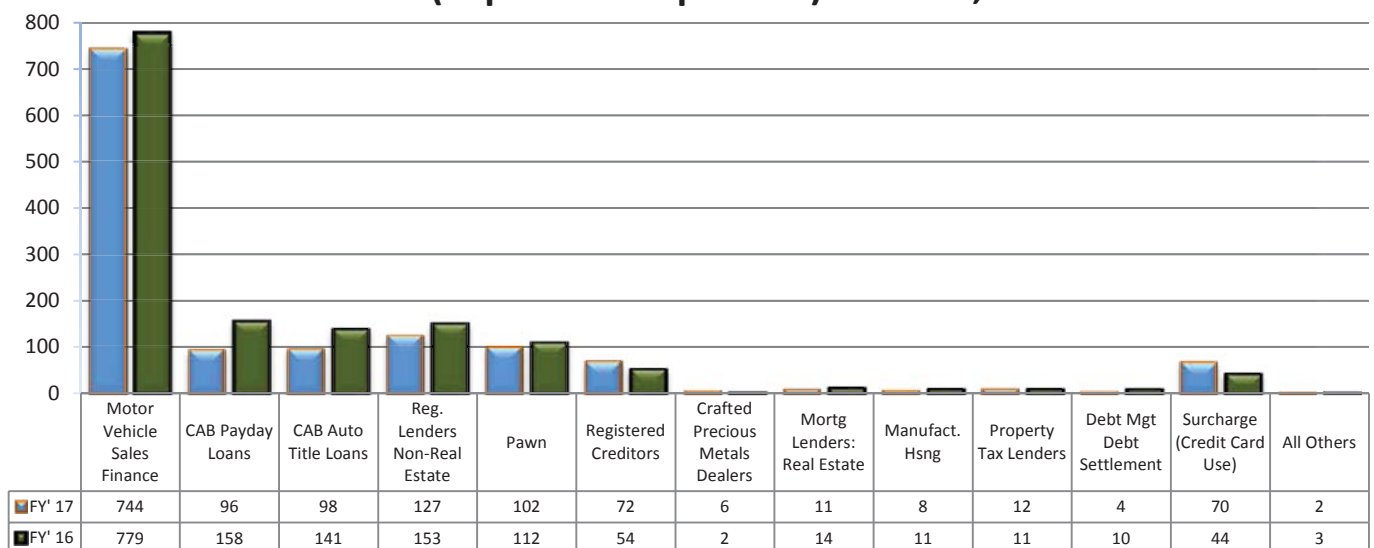


Consumer Assistance

Complaints Processed

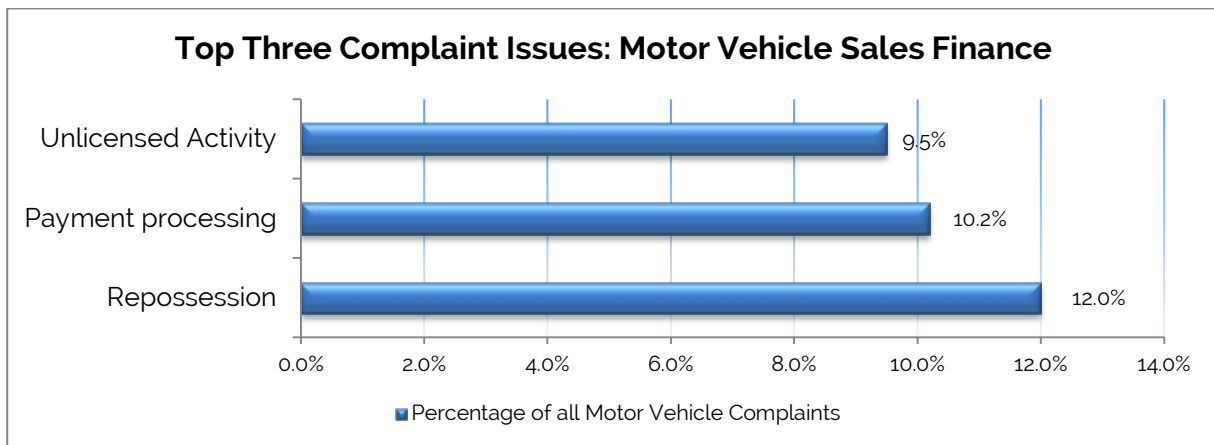
FY '17 (Sept 2016 - Apr 2017) Total: 1,352

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



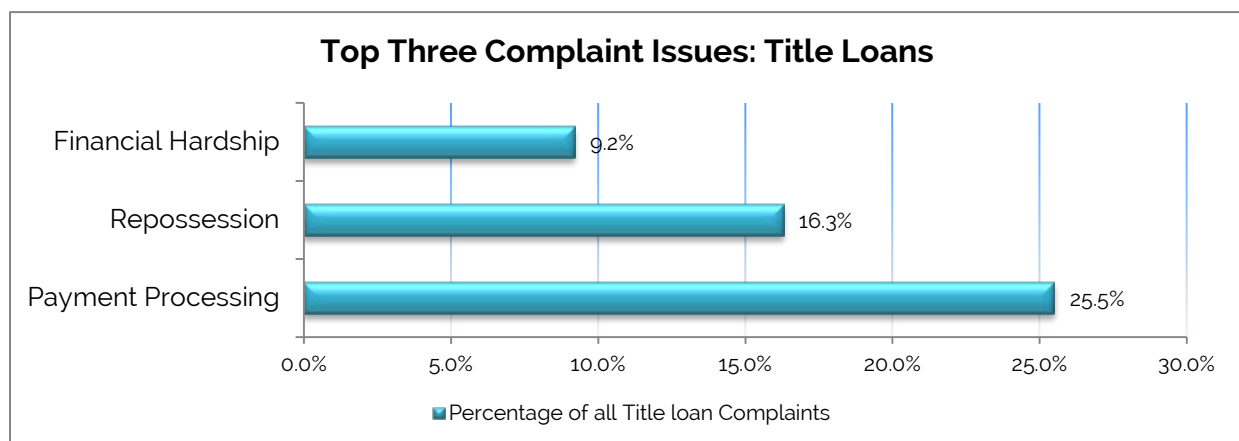
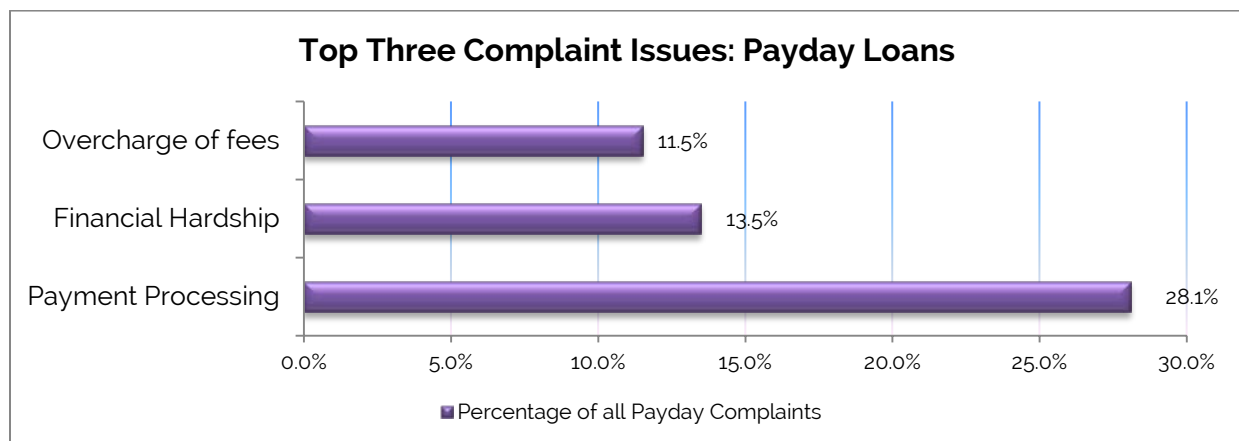
The top four areas of complaints are (1) Motor Vehicle Sales Finance (MVSF), (2) Credit Access Business (CAB), (3) Regulated Lenders Non-Real Estate, and (4) Pawn.

MVSF complaints were the largest complaint category at 55.0%. The top three MVSF complaint issues are charted below:



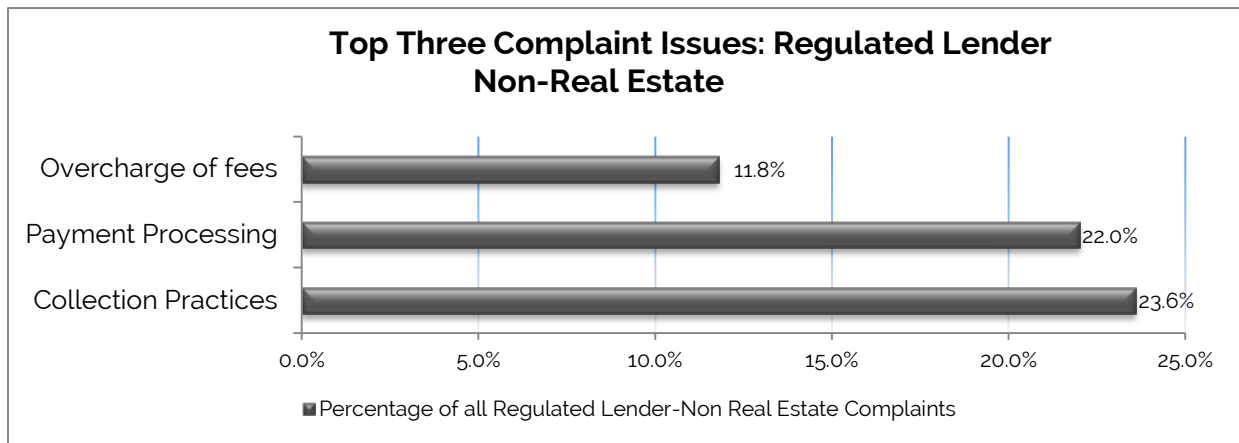
The main complaint issues are related to repossessions, payment processing and unlicensed activity. Payment processing issues are related to disputing amount owed and not applying payments properly.

The second largest category was CAB complaints. Collectively, CAB complaints are 14.3%; separately, these are at 7.1% for payday loans and 7.2% for title loans. The top three complaint issues are illustrated on the next two charts.



Predominant issues within payment processing includes auto drafting before due date, dispute of account balance, payment arrangements not honored and payment posting errors. Other concerns include complaints about charges and fees and consumers seeking financial hardship assistance.

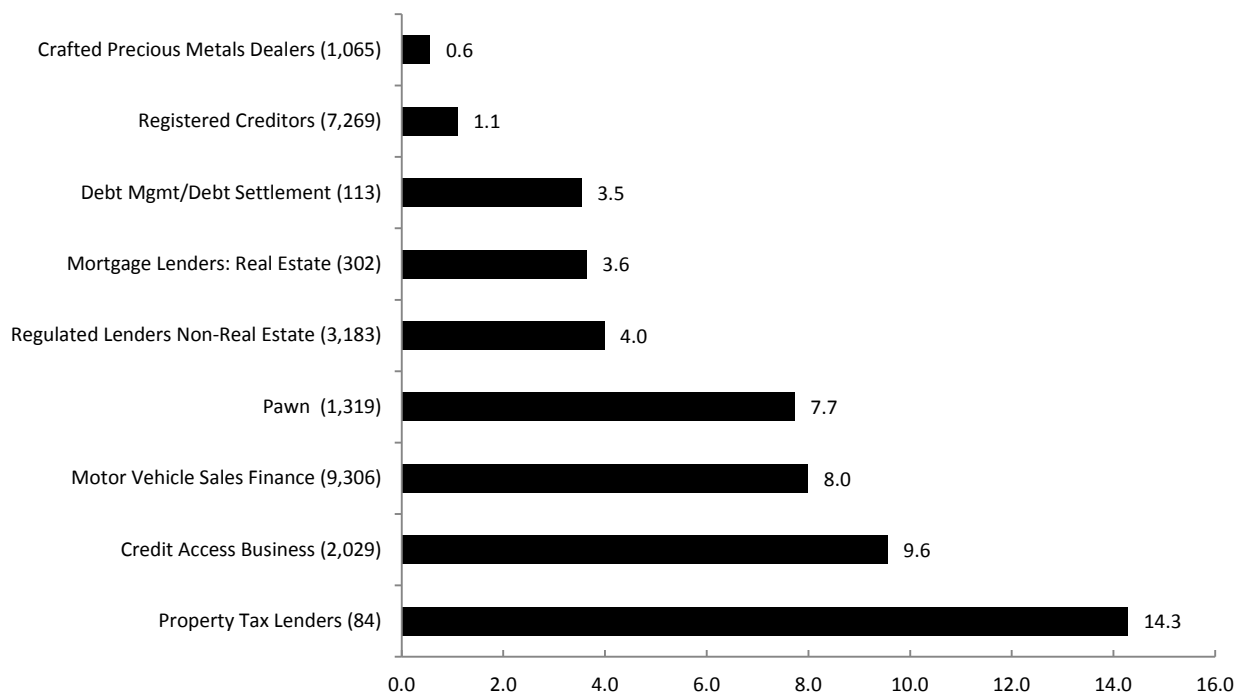
The third largest number of complaints came from the Regulated Lenders: Non Real Estate category at 9.4%. The top three issues are noted below.



Major consumer complaint issues were related to collection practices, payment processing, and allegations of excessive charges. Payment processing issues were related to dispute of account balances and application of payments.

Comparison of complaints processed to the number of active license or registrant population is noted on the chart below. The highest ratio involved Property Tax Lending complaints followed by Credit Access Business as the second highest. MVSF ratio of complaints to active licenses was third followed by Pawn as fourth highest.

**Ratio of Complaints Processed to Total Active License or Registrants*
FY '17 (Sept 2016-April 2017)**



*License-Registrant levels as of 05-01-2017

■ Complaints per Hundred Licenses



Licensing Report- June 2017

Mirand Zepeda, Manager

Renewals

Online renewal for pawnshops and pawn employees is open and ongoing. The department established a discount rate of 10% for pawn shops who renew licenses online and approximately 50% of pawn shops have already renewed through ALECS. The department is coordinating external communication to ensure timely renewal and annual report filing across the industry.

Motor vehicle sales finance renewal will open online in June and the department continues working to increase usage of ALECS in this industry, as well as others. External factors and industry trends will be taken into consideration when forecasting renewal rates for motor vehicle licensees.

Applications Processing

Application volume continues to remain at a manageable level. On a consistent basis there are less than 200 applications pending, with an average of approximately 140 applications submitted monthly this fiscal year. The department will continue to monitor work load, staffing and other resources to ensure maximum effectiveness for the department as a whole.

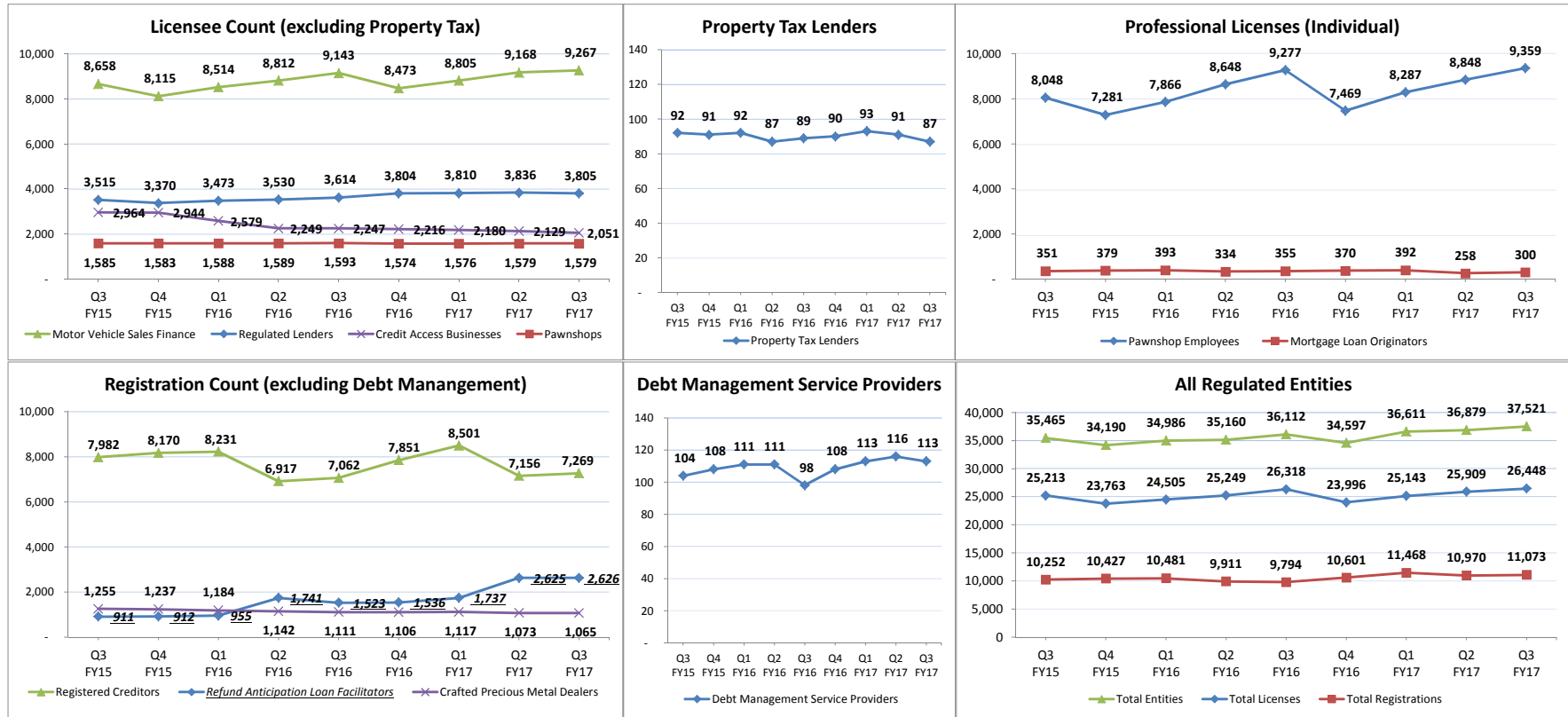
Other Updates

The Manager of Licensing attended the annual meeting and regulators' training symposium for the National Association of Consumer Credit Administrators at the end of May. Updates and training sessions on relevant topics were covered. The meeting also facilitated useful interactions with other state regulators, federal regulatory agencies, and industry representatives.

Regulated Entity Population Trends

The following charts reflect the number of OCCC regulated entities at the end of each quarter in fiscal years 2015 and 2016 to current data.

Number of OCCC Regulated Entities Quarterly Comparison of FY 15-17





Communications, Human Resources & Administration Report

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

COMMUNICATIONS

After 140 days, the Texas' 85th Legislative Session ended (*sine die*) on May 29. During these last two months (April-May), Commissioner Pettijohn and staff answered questions from Governor Office staff and members of both legislative bodies about bills affecting the Office of Consumer Credit Commissioner. During this session, the OCCC tracked numerous bills and out of sixty-four bills directly affecting regulated industries' operations, eight bills were passed by the Legislature and forwarded to Governor Greg Abbott. The Governor has until June 18, 2017 to sign, veto, or allow a bill to become law without his signature.

In preparation for the OCCC's upcoming Sunset review, Commissioner Pettijohn and Juan V. Garcia attended an informational meeting on May 31 to hear about the Sunset process and instructions for completing the Self-Evaluation Report (SER).

The agency continues to focus on stakeholder outreach and communication through various channels. During the last two months (April – May), Agency staff participated in three more seminars or presentations. Examiner Huffman Lewis made presentations at all 3 Dealer Trainings for the Texas Department of Motor Vehicles on April 18 & 19 in Houston and May 18 in Laredo. This resulted in addressing more than 230 participants (licensees) about compliance matters and the regulatory role and responsibilities of the agency.

The OCCC's website received 352,466 page views between September 1, 2016 and May 31, 2017, a 4.38% increase from the same period in FY 2016. The top pages on the website include the industry homepage (142,067 views) and the second most popular is the homepage (82,004 views).

The OCCC's internal Website Oversight Committee met on May 12 to discuss improvements to the website. From this discussion, the committee agreed to use Google analytics and develop several new policies to be implemented in the next couple of months.

In addition, the OCCC sent out its first industry e-newsletter to more than 5,300 Motor Vehicle Sales Finance Dealers. The OCCC is hopeful this e-newsletter will give the agency the opportunity to increase awareness and understanding of the OCCC. Topics for the e-newsletter included regulatory updates, the ALECS on-line registration system, and the examination process just to name a few.

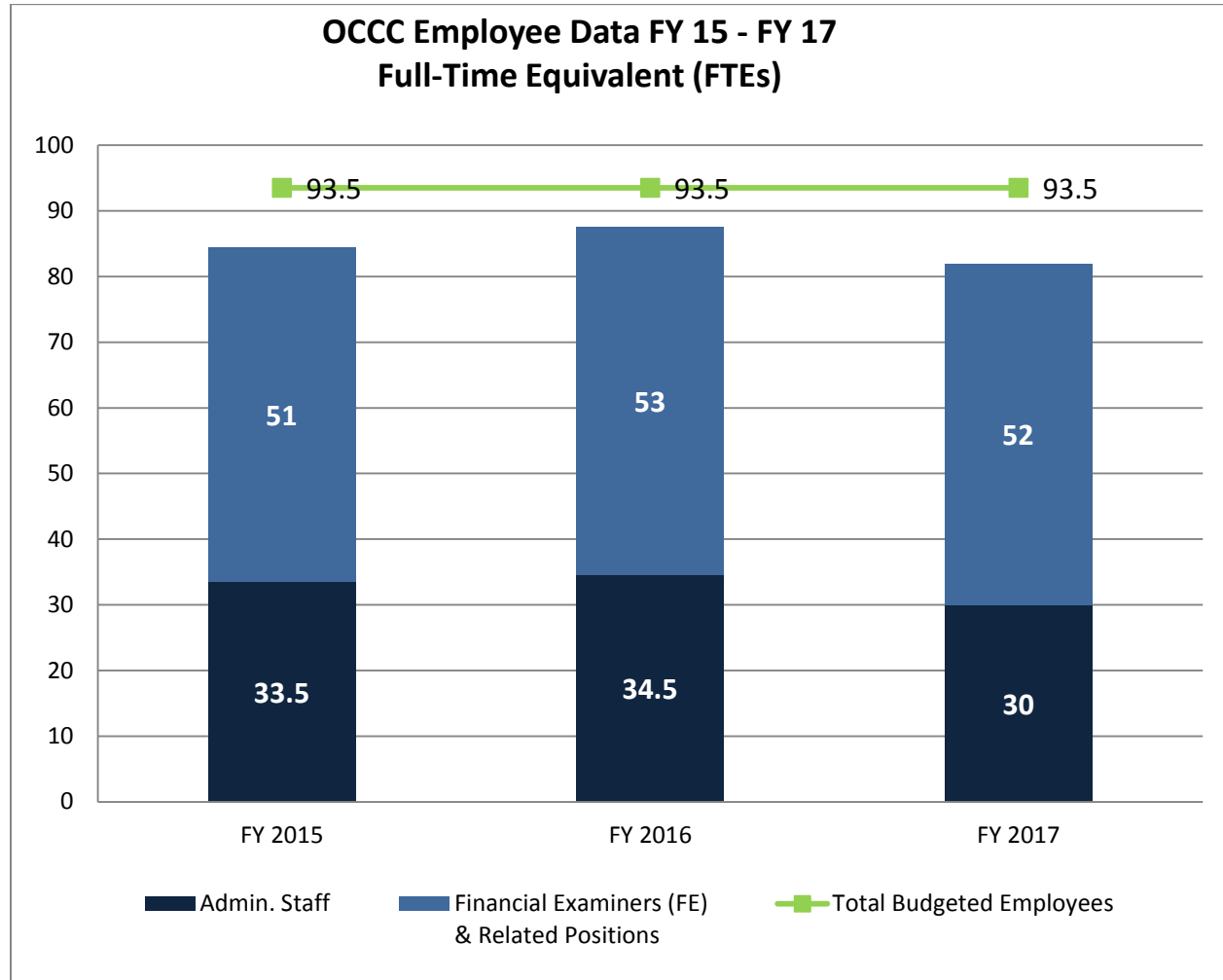
During the fourth quarter, the OCCC will continue to further identify opportunities to engage stakeholders through other various communication methods.

HUMAN RESOURCES

In this reporting period (April and May), the OCCC had four vacancies — Accountant III, Executive Assistant I, Information Specialist I, and a Licensing & Permit Specialist II. These positions are located in the Austin Headquarters.

During this same period, three (3) employees departed the agency, an Executive Assistant I, an Information Specialist I, and a Licensing & Permit Specialist II. With the exception of one position, these were voluntary resignations.

At the end of May, the agency was staffed with 82 FTEs. The turnover ratio held under the 15% goal and was 7.12% during this period. There have been no retirements or interagency transfers during this period.

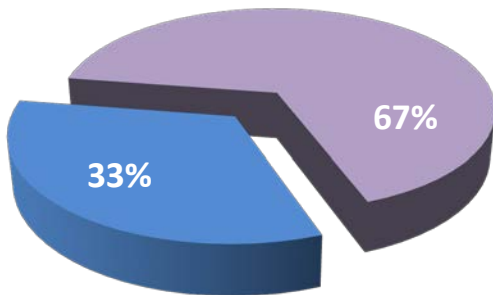


OCCC Turnover Categories

FY 17- All Employees

(09/01/16- 05/31/17)

6 total - 2 Dismissals and 4 Voluntary Resignations



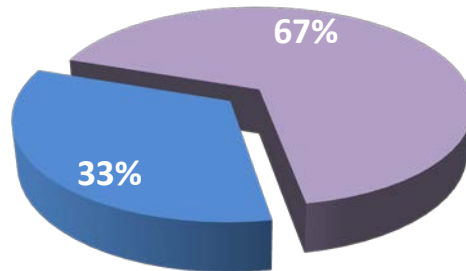
■ Dismissal ■ Voluntary Resignation

OCCC Turnover Categories

FY 17-Financial Examiners

(09/01/16-05/31/17)

3 total - 1 Dismissal and 2 Voluntary Resignations



■ Dismissal ■ Voluntary Resignation

ADMINISTRATION

FINANCIAL LITERACY

In this reporting period (April and May), Consumer Education staff provided financial education to 193 Texas consumers. The department has reached out to numerous organizations to promote financial education, and has successfully coordinated and scheduled an additional four presentations for this summer. The Financial Education Specialist worked with Junior Achievement and provided students with financial education.



Accounting & IT Reports

Accounting

The Accounting Department was engaged in creating and implementing updated accounting procedures in response to the State Auditor's Office (SAO) audit recommendations. Mid-year revenue accounting entries to the Uniform Statewide Accounting System (USAS) were implemented in the 3rd quarter in response to SAO recommendations. The mid-year reconciliation of the (USAS) and Sage balances was performed as a new procedure also in response to the SAO recommendations.

Information was gathered, reviewed, and supplied to the Audit firm of Garza and Gonzalez to assist them in completing their internal audit of the Texas Financial Education Endowment. The information supplied was necessary for the audit, to verify the accuracy of revenue and endowment accounting.

The Department also prepared 62 Fiscal Notes for the 85th Legislature. The information provided in Fiscal Notes help legislators evaluate the financial implications of a bill. Cost, savings, and revenue estimate analysis is among the information that is prepared and included in the notes.

Information Technology

LEGACY MODERNIZATION

The ALECS Legal module went live in April. The Record Retention module is still undergoing user testing and is expected to be moved into production by the end of May. We will continue to work through maintenance issues and enhancements for the next 12 months during vendor supported maintenance.

The OCCC's in-house programmer has been gathering requirements for development of a Human Resources database. Currently, outside of the functionality of the Uniform State Payroll System, the OCCC uses spreadsheets to track and maintain Human Resources data. Phase 1 of the database should be live prior to the end of the fiscal year.

SECURITY

The OCCC Security Policy and Compliance Committee (SPCC) continues to meet every other week and is making steady progress on our security roadmap, including new and revised policies and procedures, training requirements, and software policies.

The OCCC's new endpoint security suite, Comodo IT & Security Manager has been deployed to 95% of agency endpoints.



Legal Department Report

Michael Rigby, General Counsel

June 2017

Enforcement Report

Regulated Lender – Annual Report

In May 2017, the OCCC opened 43 enforcement actions against regulated lenders that did not timely file their 2016 annual report. Regulated lenders are statutorily required to file an annual report by May 1 of each year.

Of the 43 lenders, 12 lenders were previously issued an injunctive order by the OCCC for failing to timely file their annual report. The OCCC issued orders assessing an administrative penalty for violating a prior injunctive order against these 12 lenders. For the remaining 31 lenders, the OCCC issued orders to file timely and accurate annual reports. The order directed the lenders to file their 2016 annual report within 30 days of receiving the order and to file future annual reports in a timely manner. The 43 lenders have 30 days from the date of receiving the order to request a hearing on the order.

Pawn – Untimely Pawnshop Employee License Applications

In April 2017, the OCCC opened 86 enforcement actions related to untimely pawnshop employee license applications. An individual who begins employment at a pawnshop is statutorily required to apply for a pawnshop employee license within 75 days of beginning employment. Pawnshops have a separate statutory responsibility to not employ an individual to perform pawn transactions unless the individual holds or applies for a pawnshop employee license within 75 days of beginning employment.

In the 86 enforcement actions, the OCCC issued orders to cease and desist against 19 pawnshops and 67 pawnshop employees. The OCCC ordered the pawnshops to not employ an individual for more than 75 days unless the individual holds or applies for a pawnshop employee license. The OCCC ordered the pawnshop employees to not perform pawn transactions without holding a pawnshop employee license or applying for a license. The 86 pawnshops and pawnshop employees have 30 days from the date of receiving the order to request a hearing on the order.

Performance Report

The following table summarizes enforcement actions closed by the OCCC during the last three fiscal years, and the current fiscal year-to-date as of May 31, 2017. These figures reflect enforcement actions that have been fully resolved by formal order, informal resolution, or dismissal. Actions that are still pending are not included in the table.

Enforcement Actions Closed as of May 31, 2017				
	FYTD 2017	FY 2016	FY 2015	FY 2014
Revocation / Suspension Actions				
Regulated Loan License	1	1	27	10
Pawnshop License	1	3	2	1
Pawnshop Employee License	1	2	2	1
Credit Access Business	3	2	1	4
Motor Vehicle Sales Finance License	2	9	4	4
Property Tax Loan License	0	0	0	4
Crafted Precious Metal Dealer	0	0	2	0
Total Revocation / Suspension Actions	8	17	38	24
Injunction Actions				
Regulated Loan License	6	88	1	0
Pawnshop License	18	1	0	0
Pawnshop Employee License	3	0	0	0
Credit Access Business License	43	25	1	4
Motor Vehicle Sales Finance License	17	18	12	8
Property Tax Loan License	1	16	1	2
Crafted Precious Metal Dealer	0	0	3	0
Registered Creditor (Ch. 345)	0	1	0	0
Manufactured Housing (Ch.347)	1	0	0	0
Debt Management Services (Ch.394)	0	1	6	1
Credit Card Surcharge (Ch. 339)	2	7	1	0
Residential Mortgage Loan Originator	0	0	0	2
Total Injunction Actions	91	157	25	17
Administrative Penalty Actions				
Regulated Loan License	0	0	73	121
Pawnshop License	3	40	4	6
Pawnshop Employee License	0	1	4	8
Credit Access Business License	21	97	136	56
Motor Vehicle Sales Finance License	62	129	76	88
Property Tax Loan License	0	3	8	18
Crafted Precious Metal Dealer	0	2	0	1
Total Administrative Penalty Actions	86	272	301	298
Application Denial and Protest Actions				
Regulated Loan License	0	0	0	0
Pawnshop License	1	1	0	0
Pawnshop Employee License	0	7	13	2

Credit Access Business License	0	0	2	0
Motor Vehicle Sales Finance License	1	3	8	0
Property Tax Loan License	0	0	0	0
Residential Mortgage Loan Originator	1	0	1	0
Total App. Denial and Protest Actions	3	11	24	2
Total Enforcement Actions Closed	188	457	388	341

From April 1, 2017 to May 31, 2017, the OCCC:

- issued 30 final orders,
- opened 35 cases in order to assess administrative penalties,
- opened 41 cases in order to issue administrative injunctions,
- issued no assurances of voluntary compliance,
- participated in no contested case hearings, and
- dismissed no contested case hearings.

The OCCC has one hearing scheduled between June 1, 2017 and July 31, 2017.

Administrative Rule Report

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

- A proposal of amendments regarding contested case procedures, providing finance agencies with specific procedures for resolving default cases remanded back to the agencies by the State Office of Administrative Hearings.
- A proposal of new rules regarding the Texas Financial Education Endowment Fund, providing rules for the administration of the fund.
- A proposal of amendments and a new rule regarding motor vehicle retail installment transactions, implementing legislation recently passed by the Texas Legislature.

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

- A new rule regarding residential mortgage loan originators applying for licensure with the OCCC under the SAFE Act, implementing recent legislation.
- A repeal of rules regarding credit card surcharge appeal procedures, as recent legislation transfers regulatory authority to the Office of the Attorney General.
- Amendments regarding property tax lenders, resulting from rule review.
- Amendments regarding debt management service providers, resulting from rule review.

Litigation

Rowell v. Pettijohn

This case is a challenge to the constitutionality of the credit card surcharge prohibition in Section 339.001 of the Texas Finance Code. The plaintiffs argue that the credit card surcharge prohibition is an unconstitutional violation of free speech and that it is void for vagueness, under the First and Fourteenth Amendments to the U.S. Constitution. The Fifth Circuit Court of Appeals ruled in the OCCC's favor, holding that the law is a price regulation rather than a speech regulation, and that it is not void for

vagueness. *Rowell v. Pettijohn*, 816 F.3d 73 (5th Cir. Mar. 2, 2016). 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 WL 10818660, 2015 U.S. Dist. LEXIS 40739 (W.D. Tex. Feb. 4, 2015).

On April 3, 2017, the U.S. Supreme Court remanded *Rowell* back to the Fifth Circuit, for further consideration in light of the Supreme Court's decision in *Expressions Hair Design v. Schneiderman*, 137 S. Ct. 1144 (Mar. 29, 2017). On May 25, the Fifth Circuit issued an opinion remanding the case back to district court for further consideration in light of *Expressions*. The OCCC expects that the Fifth Circuit will issue its mandate to the district court on June 15.

In *Expressions*, the Supreme Court held that New York's credit card surcharge law is a speech regulation for First Amendment purposes. The Court remanded the case to the Second Circuit to evaluate the law as a speech regulation. The Court did not decide whether the law violates the First Amendment.

In addition to *Rowell* and *Expressions*, similar cases have been filed in two other states:

- 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). On April 3, 2017, the U.S. Supreme Court denied the State of Florida's petition appealing the Eleventh Circuit's decision.
- 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.

The full style of the *Rowell* 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 U.S. Supreme Court's case number is 15-1455, 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.

PHH Corporation v. Consumer Financial Protection Bureau

This case is an appeal of a penalty assessed by the federal Consumer Financial Protection Bureau (CFPB) against PHH Corporation for violating the Real Estate Settlement Procedures Act (RESPA). On October 11, 2016, the D.C. Circuit Court of Appeals invalidated the CFPB's order, holding that the alleged actions took place outside the applicable statute of limitations, and that the CFPB violated due process requirements by reversing a previous interpretation of the U.S. Department of Housing and Urban Development. *PHH Corp. v. Consumer Fin. Prot. Bureau*, 839 F.3d 1 (D.C. Cir. 2016). The court also invalidated the provision of federal law stating that the CFPB director may be removed only "for cause." According to the court, this provision deprives the president of removal authority in violation of Article II of the U.S. Constitution. The court held that the CFPB director serves at the will of the president. The court explained that this remedy "will not affect the ongoing operations of the CFPB."

On February 16, 2017, the D.C. Circuit granted the CFPB's petition to rehear the case en banc. This means that all the judges on the D.C. Circuit are rehearing the case. The parties have filed their briefs for the en banc rehearing. On March 10, the attorneys general of 15 states, including Texas, filed an amicus curiae brief in support of PHH. On March 17, the U.S. Solicitor General filed an amicus brief arguing that the D.C. Circuit correctly invalidated the "for cause" provision. On May 24, the D.C. Circuit heard oral argument. The case is currently pending in the D.C. Circuit with case number 15-1177.

CAB Municipal Ordinance Litigation

An Austin municipal court recently dismissed two cases against credit access businesses (CABs), relating to violations of the City of Austin's CAB ordinance. In *State of Texas v. ACSO of Texas, LP*, no. 8530627, and *State of Texas v. The Money Store, LP*, no. 8548312, the City of Austin brought actions against CABs for violating the ordinance's requirement limiting the number of installments on a payday or title loan obtained by a CAB. In both cases, a municipal court judge held that this requirement of the ordinance is preempted by Section 393.602(b) of the Texas Finance Code. The judge's decisions were issued on March 1, 2017. The City of Austin has stated that it is appealing these decisions.

Attorney General Opinion Request

On May 12, 2017, the Texas attorney general received opinion request number RQ-0162-KP from Representative Dan Flynn. The request asks for an interpretation of the 180-day limitation in Section 393.201(b)(2) of the Texas Finance Code, which provides that the contract between a consumer and a credit access business must "fully describe the services the organization is to perform for the consumer, including each guarantee and each promise of a full or partial refund and the estimated period for performing the services, not to exceed 180 days." The requestor argues that the 180-day limitation does not apply to: (1) honoring a demand for payment under a third-party lender's letter of credit, and (2) certain bill payment services performed by the credit access business. Briefs on the request are due June 13, 2017.

Advisory Bulletins

From April 1, 2017 to May 31, 2017, the OCCC did not issue any advisory bulletins.

Interpretation Requests

From April 1, 2017 to May 31, 2017, the OCCC did not receive any requests for official interpretations. There were no pending interpretation requests as of May 31, 2017.

Public Information Requests

From April 1, 2017 to May 31, 2017, the OCCC received 21 requests for information under the Texas Public Information Act, with no referrals to the Office of the Attorney General.

Gifts Received by the OCCC

From April 1, 2017 to May 31, 2017, the OCCC did not receive any gifts.



Summary of 2017 Legislation

Matthew Nance, Deputy General Counsel

June 2017

This is a summary of the Texas Legislature's recently passed legislation that affects the OCCC or its regulated industries. All of these bills are scheduled to go into effect on September 1, 2017, unless otherwise noted.

Bills affecting credit transactions and the OCCC's authority:

SB 560—Credit card surcharge enforcement authority:

This bill amends the credit card surcharge prohibition in Section 339.001 of the Texas Finance Code by transferring enforcement authority from the OCCC to the attorney general. This ensures consistent enforcement with the debit card surcharge prohibition in Section 604A.002 of the Texas Business & Commerce Code.

Within the next few months, the OCCC will be working with the Office of the Attorney General to ensure a proper transition of enforcement authority for the credit card surcharge prohibition. At the Finance Commission's August 18 meeting, the OCCC intends to present a proposed rule action that would repeal the credit card surcharge procedural rules located at Title 7, Chapter 4 of the Texas Administrative Code.

HB 2339—Trade-in credit agreements:

This bill adds a new section to Chapter 348 of the Texas Finance Code authorizing a retail seller to provide a trade-in credit agreement in connection with a motor vehicle retail installment transaction. The bill defines a trade-in credit agreement as "a contractual arrangement under which a retail seller agrees to provide a specified amount as a motor vehicle trade-in credit for the diminished value of the motor vehicle that is the subject of the retail installment contract in connection with which the trade-in credit agreement is offered if the motor vehicle is damaged but not rendered a total loss as a result of a collision accident, with the credit to be applied toward the purchase or lease of a different motor vehicle from the retail seller or an affiliate of the retail seller." The bill includes disclosure requirements, refunding requirements, a limitation on the amount charged, and a requirement that the seller be insured under a contractual liability reimbursement policy approved by the Texas Department of Insurance.

At the Finance Commission's June 16 meeting, the OCCC intends to present a proposed rule action that would amend Title 7, Chapter 84 of the Texas Administrative Code to implement HB 2339 and other motor-vehicle-related bills. The proposal includes requirements for recordkeeping and disclosing the benefit under a trade-in credit agreement.

HB 2949—Documentary fees:

This bill amends Chapter 348 of the Finance Code to specify that a retail seller is not required to notify the OCCC of an increased documentary fee if the seller charges a documentary fee is less than or equal to an amount presumed reasonable by rule of the Finance Commission.

At the Finance Commission's June 16 meeting, the OCCC intends to present a proposed rule action that would amend Title 7, Chapter 84 of the Texas Administrative Code to implement HB 2949 and other motor-vehicle-related bills. The proposal would specify that a documentary fee of \$150 or less is presumed reasonable under the new law, and that a seller is not required to provide a notification or cost analysis for a documentary fee of \$150 or less. The requirement to provide a notification and cost analysis for a documentary fee over \$150 would remain in place.

SB 1052—Debt cancellation agreements and deferments:

This bill moves provisions regarding debt cancellation agreements that require insurance from Chapter 348 to a new Chapter 354 of the Finance Code. The bill allows these agreements to be provided in a Chapter 345 retail installment transaction for a motorcycle, all-terrain vehicle, snowmobile, camper, boat, or personal watercraft trailer. The bill also allows the OCCC to agree to extend the 45-day approval period for debt cancellation agreements by an additional 45 days, and specifies refunding and recordkeeping requirements when a debt cancellation agreement terminates due to early payoff of a retail installment contract. The bill adds a new Chapter 397 to the Finance Code authorizing debt cancellation agreements for covered vehicle leases, and this new chapter would be enforced by the attorney general.

This bill also amends Chapter 348's deferment charge provisions. The bill limits these provisions to contracts using the add-on method or scheduled installment earnings method. The bill also states that in a contract using the true daily earnings method, the holder may defer one or more installments, and time price differential continues to accrue on the unpaid balance at the rate agreed to in the contract. At the time of the deferment, the holder must provide a written notice stating that finance charge will continue to accrue.

At the Finance Commission's June 16 meeting, the OCCC intends to present a proposed rule action that would amend Title 7, Chapters 84 and 86 of the Texas Administrative Code to implement SB 1052 and other motor-vehicle-related bills. The proposal would specify that current submission requirements apply to debt cancellation agreements for Chapter 345 covered vehicles. The proposal would also remove references to deferment charges for contracts using the true daily earnings method. The OCCC anticipates that it will begin accepting submissions of debt cancellation agreements for Chapter 345 covered vehicles (motorcycles, boats, etc.) starting July 1, 2017.

SB 1199—Depreciation benefit service contracts:

This bill amends Chapter 1304 of the Occupations Code to authorize a depreciation benefit optional member program. The bill defines a depreciation benefit optional member program as "a service contract financed under Chapter 348 or 353, Finance Code, that pays to the buyer, as a credit toward the purchase of a replacement vehicle at a participating dealer, an amount less than or equal to the difference between the purchase price and actual cash value for a total constructive loss."

At the Finance Commission's June 16 meeting, the OCCC intends to present a proposed rule action that would amend Title 7, Chapter 84 of the Texas Administrative Code to implement SB 1199 and other motor-vehicle-related bills. The proposal includes requirements for recordkeeping and disclosing the benefit under a depreciation benefit service contract.

HB 3342—Residential mortgage loan originator preclicensing education requirements:

This bill amends the expiration period for preclicensing education of residential mortgage loan originators under Chapter 180 of the Finance Code (the Texas SAFE Act). Currently, if an individual fails to maintain a residential mortgage loan originator license for at least five consecutive years, the individual must retake the preclicensing education requirements. This bill amends this requirement by authorizing the Finance Commission to set the number of years after which the individual must retake the preclicensing education requirements.

The bill will go into effect on January 1, 2018.

At the Finance Commission's August 18, 2017, meeting, the OCCC intends to propose a rule action that would create a new section in Title 7, Chapter 2 of the Texas Administrative Code to implement HB 3342. The OCCC anticipates that the proposal will set the expiration period at three years, to be consistent with the preclicensing education expiration policy adopted by the Nationwide Multistate Licensing System & Registry (NMLS).

SJR 60—Home equity loan fee cap and refinancing:

This joint resolution amends the Texas Constitution's provisions on home equity lending. Currently, the constitution provides a 3% cap on certain up-front fees for a home equity loan. The resolution reduces the 3% fee cap to 2% and provides that the following fees are excluded from the fee cap: bona fide discount points, third-party appraisal fees, a fee for a property survey performed by a registered or licensed surveyor, a base premium for a mortgage policy of title insurance, and a title examination report (if its cost is less than the base premium for a mortgage policy of title insurance). The resolution repeals the prohibition on a home equity loan secured by homestead property designated for agricultural use. The resolution amends the 12-day consumer disclosure to reflect these amended requirements.

This resolution also amends provisions related to refinances of home equity loans. Currently, if a home equity loan is refinanced, the constitution generally requires the new refinancing loan to be in the form of a home equity loan. This requirement is sometimes described as "once a home equity loan, always a home equity loan." The resolution amends this requirement by allowing a lender and borrower to refinance a home equity loan as a non-home-equity loan if: (1) the refinance happens at least one year from the date of the home equity loan, (2) funds advanced do not exceed the funds to refinance the debt plus actual costs and reserves required by the lender, (3) the total amount of indebtedness on the property after the refinance does not exceed 80% of the home's market value, and (4) the lender provides a disclosure describing the rights that the borrower is waiving by refinancing the loan as a non-home-equity loan (including the requirement to foreclose with a court order and the prohibition on personal liability against the borrower).

The resolution will go into effect on January 1, 2018, if it is approved by Texas voters in the constitutional amendment election on November 7, 2017.

Within the next few months, the OCCC will be working with the other state financial regulatory agencies to amend the home equity interpretations adopted by the Finance Commission and Credit Union Commission.

HB 2008—Military Lending Act requirements for Chapter 342 payday loans:

This bill amends Chapter 342 of the Finance Code to specify that a lender that engages in a payday loan with a member of the U.S. military or a member's dependent must comply with the federal Military Lending Act, and any rules adopted under that law, to the extent applicable.

HB 2019—Manufactured homes:

This bill updates references to federal laws and regulations throughout Chapter 347 of the Finance Code, which applies to manufactured home credit transactions. The bill removes references to lease-purchase agreements throughout Chapter 1201 of the Occupations Code, which applies to manufactured home sales. The bill specifies that the consumer may exercise the right to rescind a manufactured home sale within three days of the sales purchase agreement (for a cash transaction), or within three days of the note, security agreement, or credit contract (for a credit transaction). The bill also amends provisions related to forms adopted by the Texas Department of Housing and Community Affairs (TDHCA), including the statement of ownership and location. In particular, the bill deletes the phrase "and location" throughout provisions on the statement, amends the parties' election regarding whether the home is real or personal property, and requires an affidavit by the property owner with the application for the statement.

SB 526—Abolition of the residential mortgage fraud task force:

This bill abolishes the residential mortgage fraud task force, in addition to other advisory committees and bodies. Currently, the residential mortgage fraud task force is a group of agencies that shares information to track and prosecute residential mortgage fraud in Texas. It includes the OCCC, the Department of Banking, the Department of Savings and Mortgage Lending, and the attorney general. The bill provides that the attorney general shall notify an appropriate law enforcement agency if it receives a report of fraudulent activity. The bill provides that an authorized governmental agency may share confidential information. The term "authorized governmental agency" includes the OCCC, the Department of Banking, the Department of Savings and Mortgage Lending, and the attorney general.

SB 830—Mortgage servicer annual statements:

This bill adds a new Chapter 397 to the Finance Code, which would require mortgage servicers to provide annual accounting statements with information about the amount and application of the borrower's payments during the previous year, as well as outstanding balance information. Chapter 397 would apply to first or subordinate residential mortgage loans that are not federally related, made by a credit union, made for commercial purposes, or made by a relative within the second degree. The bill provides that the borrower is not liable for late charges and fees (other than principal or interest) if the borrower does not initially receive the statement as required, and the servicer does not send a statement within 25 days of receiving a request for a statement.

SB 2065—Vehicle protection product warranties:

This bill amends several statutes governing occupational licensing for various industries. In particular, it repeals Chapter 2306 of the Occupations Code, which currently contains registration and disclosure requirements for vehicle protection product warranties. The bill moves the definitions of “vehicle protection product” and “warrantor” to the Deceptive Trade Practices Act (DTPA), and specifies that it is a deceptive trade practice for a vehicle protection product provider to advertise with a name that includes “casualty,” “surety,” “insurance,” “mutual,” or other words descriptive of an insurance or surety business. The bill amends Chapters 348 and 353 of the Finance Code to provide that a retail seller may not require the buyer to purchase a vehicle protection product as a condition of a retail installment transaction or cash sale of a motor vehicle. The bill abolishes the Vehicle Protection Product Warrantor Advisory Board and requires the Texas Commission of Licensing and Regulation to repeal all rules regarding the current regulation of vehicle protection product warrantors.

The bill also amends Chapter 403 of the Government Code to require the Comptroller of Public Accounts to prepare a report on all occupational licenses required by state statute. The comptroller must submit the report by December 31 of each even-numbered year, starting with an initial report on December 31, 2018.

Bills affecting state agency administration:**HB 8—Cybersecurity for state agency information resources:**

The bill requires state agencies’ plans for remediation and mitigation of information security issues to include: (1) procedures for reducing level of exposure of information identifying an individual, (2) the best value approach for a legacy system, (3) analysis of IT personnel’s industry-recognized certifications, (4) level of preparedness of personnel who do not hold certifications, and (5) a strategy for mitigating workforce discrepancies with training and certifications. The bill provides that the Sunset Commission will consider an agency’s cybersecurity practices in its review for the continuation of an agency.

The bill requires each state agency to conduct an information security assessment every two years, and report the results to the Department of Information Resources (DIR), the governor, the lieutenant governor, and the speaker of the house. The report is due on December 1 of the year in which the agency conducts the assessment.

If an agency implements a website or mobile application that processes confidential or sensitive personal information, the bill requires the agency to submit a biennial data security plan to DIR not later than October 15 of each even-numbered year, starting October 1, 2018.

The bill requires DIR to conduct a study on state agency digital data storage, records management practices, and associated costs. Each agency must participate in the study and provide appropriate assistance and information to DIR. DIR is required to submit the study no later than December 1, 2018.

HB 91—Report on criminal history review:

This bill applies to each licensing authority that issues occupational licenses with eligibility requirements related to an applicant’s criminal history. This bill requires these licensing authorities to review each

eligibility requirement and make a recommendation of whether the requirement should be kept, changed, or repealed.

The bill will go into effect immediately upon the governor's signature. The bill requires each licensing authority to submit a report with its recommendations by December 1, 2018.

HB 462—References to legislation in rule proposals:

This bill amends the Texas Administrative Procedure Act's rulemaking requirements. It requires each rule proposal to include the bill number for the legislation that enacted the authority under which the rule is proposed. The bill also requires agencies to file a notice of a proposed rule with each author and sponsor of the legislation that enacted the statutory authority for the rule.

The bill applies to all rules proposed on or after September 1, 2017.

HB 1290—Government growth impact statement in rule proposals:

This bill requires state agencies to include a government growth impact statement in each rule proposal. The government growth impact statement must explain whether: (1) the proposed rule creates or eliminates a government program, (2) implementation of the proposed rule requires the creation of new employee positions or the elimination of existing employee positions, (3) implementation of the proposed rule requires an increase or decrease in future legislative appropriations to the agency, (4) the proposed rule requires an increase or decrease in fees paid to the agency, (5) the proposed rule creates a new regulation, (6) the proposed rule expands, limits, or repeals an existing regulation, (7) the proposed rule increases or decreases the number of individuals subject to the rule's applicability, and (8) the proposed rule positively or adversely affects this state's economy.

The bill also provides that if a state agency proposes a rule that imposes a cost on regulated persons, the agency must repeal or amend another rule to reduce costs by at least the same amount. However, the bill exempts self-directed semi-independent agencies, including the OCCC, from this requirement.

The requirement to provide a government growth impact statement applies to all state agency rules proposed on or after November 1, 2017. The bill requires the comptroller to adopt rules implementing this requirement by October 1, 2017.

HB 2463—Succession plan for state agency employees:

This bill requires state agencies to create written succession plans. A succession plan must include: (1) procedures to ensure that retiring employees share their institutional knowledge with successive employees, and (2) the skills and abilities successive employees should have or develop. At least once a year, the succession plan must be updated to show how the procedures are being implemented.

State agencies must submit their succession plans to the State Auditor's Office by September 1 of each year, starting with the initial succession plan due September 1, 2018.

HB 3047—Open meetings by videoconference:

Currently, the Texas Open Meetings Act allows a member of a governmental body to participate by

videoconference if certain requirements are met. This bill provides that a member is considered absent from any portion of a meeting where the member's audio or video communication is lost or disconnected. In this situation, a state governmental body's meeting may continue only if: (1) the presiding officer is physically present at the meeting's location, and (2) a quorum of members either is physically present or continues to participate by videoconference.

HB 3107—Public information request withdrawal and costs:

This bill amends the Texas Public Information Act to specify that a public information request is considered withdrawn if the requestor either: (1) does not inspect or duplicate the information in the offices of a governmental body within 60 days of the information being made available, or (2) fails to pay postage and applicable charges within 60 days of being informed of them. The bill allows a requestor to file a complaint with the attorney general if a prosecutor has not taken action within 90 days on a complaint alleging that a governmental body violated the Public Information Act.

This bill also amends the Public Information Act's cost provisions. Currently, a governmental body may establish a reasonable time limit (at least 36 hours per fiscal year) on the time it spends complying with public information requests from a single requestor. Once a requestor has reached the limit, the body must submit a written cost estimate to the requestor, and the body is not required to comply with additional requests unless the requestor pays the costs of the request. The bill allows a body to define a monthly limit, in addition to the current yearly limit, on the time personnel respond to a request without recovering labor costs. The monthly time limit must be at least 15 hours per requestor.

SB 73—State employee leave policy:

This bill requires each state agency to adopt a policy regarding employee leave. Each policy must be accessible to the public and employees, and must state when an employee is entitled to certain types of leave. This bill also amends the requirements that allow an administrative head to grant emergency leave. If the employee requests emergency leave, the administrative head may grant the emergency leave only if they believe in good faith that the requesting employee intends to return to their position after the emergency leave. The bill provides that if the agency is closed for a holiday or due to bad weather and the administrative head grants emergency leave, the employee is not required to request emergency leave.

In addition, the bill allows an administrative head to grant leave without a deduction in salary to a state employee who is: (1) the subject of an agency investigation, or (2) the victim of or a witness to an event that is the subject of an agency investigation. By the last day of each quarter, a state agency must submit a report to the State Auditor's Office and the Legislative Budget Board about employees who: (1) are on leave because they are the subject of an agency investigation, and (2) have been on leave for 168 hours or more that quarter.

The bill requires the comptroller to adopt a uniform system that agencies can use to report employee leave. The bill requires each state agency to submit a report to the comptroller, not later than October 1 of each year, identifying each employee who was granted more than 32 hours of emergency leave during the previous fiscal year. The first report is due October 1, 2017.

The bill allows state employees who are veterans and eligible for health benefits from the U.S. Department of Veterans Affairs to be granted up to 15 days of leave to receive medical care without a

deduction in salary, loss of vacation time loss of sick leave, loss or earned overtime credit, or loss of state compensatory time. Each year, an administrative head may exercise discretion to grant additional days of leave to these employees.

SB 79—Responding to public information request with URL:

This bill amends the Texas Public Information Act to allow a governmental body to respond to a public information request by referring the requestor to a website uniform resource locator (URL) if: (1) the website is maintained by the governmental body and accessible to the public, and (2) the requested information is identifiable and readily available on the website. If the governmental body responds by e-mail, it must notify the requestor of the requestor's right to access the information by inspection or U.S. mail.

SB 255—State agency contract management and personnel training:

This bill amends several provisions of the Government Code relating to employee training, procurement, and contract management. The bill requires the Comptroller of Public Accounts to develop and maintain a schedule of training programs for purchasing and contract management to meet the needs of state agencies. Each year, the state agencies must report their anticipated training needs to the comptroller. The bill allows state agencies to develop their own programs if they consult with the comptroller, but an employee who uses the agency-specific training must still meet the requirements established by the comptroller. The bill also requires state agency personnel that are directly involved in contract negotiations for the purchase of information resource technologies to complete the training developed by DIR and the comptroller.

If a state agency spends more than \$5,000 in a fiscal year for training or education program for any administrator or employee, the bill requires the agency to submit a report on the training to the Legislative Budget Board no later than August 31 of the fiscal year.

The bill exempts publicly traded companies from the general requirement to provide a disclosure of interested parties before entering a contract that requires a governing body's vote or has a value of \$1 million or more. The bill amends the form of the disclosure of interested parties. The provisions related to the disclosure of interested parties apply to contracts entered or amended on January 1, 2018, or later.

The bill replaces "Governor's Office of Budget, Policy, and Planning" with "governor's office" in a provision that requires the governor's office to determine the elements required in state agencies' strategic plans.

SB 532—State agency IT infrastructure reporting:

This bill provides that information arising from a governmental body's routine efforts to prevent, detect, investigate, or mitigate a computer security incident is confidential. The bill amends the biennial deadline for state agencies to complete a review of operational aspects of information resources deployment. Currently, this review must be done by December 1 of each odd-numbered year, but the bill replaces this with March 31 of each even-numbered year. The bill also requires state agencies to consider cloud computing service options when making purchases for a major information resources project.

The bill also requires DIR to prepare a consolidated report of state agencies' information technology infrastructure. The bill requires state agencies to provide information about their information technology infrastructure to DIR—including inventory of equipment and identification of vendors—according to a schedule developed by DIR. From this information, the DIR will create the consolidated report and submit it no later than November 15 of each even-numbered year.

SB 564—Closed meetings on network security information:

This bill allows a governmental body to conduct closed meetings on certain issues relating to information resource technology and security. Currently, the Open Meetings Act only authorizes DIR to conduct these closed meetings, but the bill expands this authority to other governmental bodies. The bill also replaces “state agency” with “governmental entity” in a provision specifying that an agency's network security information is confidential.

SB 813—Frivolous regulatory action by state agency:

This bill provides that a claimant may bring an action against a state agency if the agency takes a regulatory action against the claimant that is frivolous, unreasonable, or without foundation. The claimant may bring the action only after exhausting administrative remedies. The bill also allows a claimant to recover reasonable attorney's fees and costs incurred in defending against a frivolous regulatory action, if the claimant prevails in judicial review and the agency is unable to demonstrate good cause for the regulatory action.

SB 1446—Contested cases:

This bill amends provisions of the Texas Administrative Procedure Act related to contested cases. The bill specifies that in addition to the currently authorized methods of serving a contested case party with a decision or order, a state agency may serve the decision or order by fax (if agreed to by the party) or by a method required under the state agency's rules. The bill also amends the period of time after which a decision or order becomes final following an agency's failure to properly serve notification of a decision or order, and it limits the prejudicial effect of an agency's failure to notify a license holder of the opportunity to show compliance before suspension or revocation.

SB 1831—Comptroller report on state agency programs with no appropriations:

This bill requires the comptroller to submit a yearly report identifying for each state agency: (1) each program the agency is required to implement for which no appropriation was made in the preceding fiscal year, and (2) the amount and source of money the agency spent to implement any portion of this type of program.

The comptroller is required to file the report by December 31 of each year, starting with an initial report due on December 31, 2017. State agencies are required to provide information necessary for the report to the comptroller by September 30 of each year.

SB 1910—State agency information security plans:

This bill requires DIR to audit portions of state agency information security plans. It also adds a requirement that state agencies in the executive branch have an organizational structure that ensures

that chief information security officers or information security officers are independent.

Finally, if an agency implements a website or mobile application that handles any confidential information, the bill requires the agency to submit a data security plan to the DIR, subject the website or application to third-party testing to identify vulnerabilities, and address any weaknesses the testing identifies. The data security plan must be submitted by October 15 of every even-numbered year, starting October 15, 2018.

C. Office of Consumer Credit Commissioner

2. Discussion of and Possible Vote to Take Action on the Proposal for Publication and Comment of New Rules in 7 TAC, Part 1, Chapter 7, Concerning the Texas Financial Education Endowment Fund

PURPOSE: The purpose of the proposed new rules is to provide rules for the administration of the Texas Financial Education Endowment (TFEE) fund created by Texas Finance Code, §393.628. The proposed rules place into regulation existing commission policy, including the TFEE Grant Administration and Advisory Policy Manual, and commission approval of award amounts and grantees for each grant cycle. Additionally, certain proposed rules provide clarification and guidance regarding gifts, donations, and fund management.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve proposed new 7 TAC, Part 1, Chapter 7 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve for publication and comment proposed new 7 TAC, Part 1, Chapter 7.

Title 7. Banking and Securities
Part 1. Finance Commission of Texas
Chapter 7. Texas Financial Education Endowment Fund

The Finance Commission of Texas (commission) proposes new 7 TAC, Part 1, Chapter 7, §§7.101 - 7.105, concerning the Texas Financial Education Endowment Fund.

In general, the purpose of the proposed new rules is to provide rules for the administration of the Texas Financial Education Endowment (TFEE) fund created by Texas Finance Code, §393.628. The proposed rules place into regulation existing commission policy, including the TFEE Grant Administration and Advisory Policy Manual, and commission approval of award amounts and grantees for each grant cycle. Additionally, certain proposed rules provide clarification and guidance regarding gifts, donations, and fund management.

The TFEE was enacted by the 82nd Texas Legislature in 2011 to support statewide financial capability and consumer credit building activities and programs. The Office of Consumer Credit Commissioner (OCCC) and grant coordinator, assisted by the Grant Advisory Committee (GAC), have developed policies and procedures approved by the commission to administer the TFEE fund. These policies have been continually updated and refined to provide more efficiency in the TFEE grant program and in fund management. This action proposes to codify the core policies into regulation, while maintaining the commission's flexibility to approve particular award amounts, grantees, and policy improvements for each grant cycle.

The individual purposes of each proposed new rule are outlined in the following paragraphs.

Section 7.101 specifies the applicability and purpose of Chapter 7 to govern the administration of the TFEE fund, and also outlines the components of the fund. The TFEE fund consists of assessments paid by credit access business applicants and licensees, as well as gifts and donations contributed for financial education or consumer credit educational purposes.

Section 7.102 explains the responsibilities of the parties that administer and manage the TFEE fund, including the commission, the OCCC and its commissioner, the GAC, and the grant coordinator.

Section 7.103 outlines the TFEE grant program, with provisions regarding grant cycle timing, eligible grant applicants, the grant application, commission approval of award amounts and grantees, the grant agreement, and grantee compliance. Additional subsections describe reporting and monitoring requirements, as well as reimbursement procedure. Proposed new §7.103 maintains the TFEE Grant Administration and Advisory Policy Manual, while providing further clarity for applicants and grantees.

Section 7.104 details the gifts and donations that may be made to the TFEE fund, as currently authorized by statute. TFEE gifts and donations must be either for a purpose provided by Texas Finance Code, §393.628(c) ("TFEE purpose"), or for a

consumer credit education purpose under Texas Finance Code, §14.105(b). Gifts and donations may come from state agencies or other parties as approved by the commission.

Section 7.105 provides guiding principles for the management of the TFEE fund. Proposed new §7.105 references the statutory location and manner of investment for the TFEE fund.

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

For each year of the first five years the new rule chapter is in effect, Commissioner Pettijohn has also determined that the public benefit anticipated as a result of the proposed new rules will be that the commission's rules will provide clarity and consistency for TFEE grant applicants and grantees. Additionally, the proposed new rules will enhance the OCCC's and commission's administration of the TFEE fund.

The proposed new rules merely place into regulation existing policy and practice regarding the commission's administration of the TFEE fund. The proposal does not impose new requirements on grantees, donors, or other parties. Any costs that may be incurred would be imposed by the statute and are not a result of the proposed rules. Thus, aside from any costs required by the existing statutory provisions, the agency does not anticipate any additional costs to persons who are required to comply with the proposed rules. There will be no adverse economic effect on small or micro-

businesses. There will be no effect on individuals required to comply with the new rules as proposed.

Comments on the proposed new rules 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 proposed new rules are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The new rules are proposed under Texas Finance Code, §393.628(f), which authorizes the commission to adopt rules to administer the Texas Financial Education Endowment.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 14 and 393.

§7.101. Applicability and Purpose.

(a) Applicability. This chapter governs the administration of the Texas Financial Education Endowment (TFEE) fund as provided by Texas Finance Code, §393.628.

(b) Purpose. The purpose of this chapter is to provide guidelines regarding the administration of the TFEE fund, which serves to support statewide financial education and consumer credit building activities and programs in Texas.

(c) TFEE fund. The TFEE fund consists of assessments paid by credit access business applicants and license holders, as well as gifts and donations contributed to the fund to fulfill TFEE or consumer credit educational purposes as provided in §7.104 of this title (relating to TFEE Gifts and Donations).

§7.102. TFEE Responsibilities.

(a) Finance commission and Office of Consumer Credit Commissioner (OCCC). The finance commission administers all aspects of TFEE, including the grant program, gifts, donations, funding and policy decisions. The OCCC is responsible for collection of assessment fees, disbursement and tracking of TFEE funds, and maintaining financial records of revenue, expenditures, and reconciliation of funds. The Consumer Credit Commissioner (commissioner) or the commissioner's designee serves as the investment officer appointed by the finance commission to execute grant agreements, accept gifts and donations, and invest TFEE funds.

(b) Grant Advisory Committee (GAC) and grant coordinator. The GAC serves in an advisory role and makes program recommendations to the grant coordinator and finance commission audit committee regarding TFEE administration. The grant coordinator serves under the direction of the commissioner, provides information regarding grant activity to the GAC and finance commission, and serves as the liaison between grantees and the GAC.

§7.103. TFEE Grant Program.

(a) Grant cycle. The TFEE fund may have one competitive grant cycle every two years.

(1) Funding determination. The grant funding determination is made by December 31 of each odd-numbered year.

(2) Programming cycle. A new TFEE grant programming cycle may open on January 1 of every even-numbered year. An applicant may choose to apply for a one-year grant programming cycle, or a two-year grant programming cycle. The grant programming cycle for a one-year grantee begins on January 1 and ends on December 31 of the even-numbered year for the applicable cycle. The grant programming cycle for a two-year grantee begins on January 1 of the even-numbered year and ends on December 31 of the following odd-numbered year for the applicable cycle.

(b) Eligible grant applicants. Nonprofit organizations, schools, and for-profit entities are eligible to apply for TFEE grant funding. TFEE grant funding is not available to financial service providers and entities regulated by the finance commission.

(c) Grant application. To be considered for the TFEE grant program, an applicant must complete and submit the grant application by the deadline and in accordance with the instructions for the applicable grant cycle. Late or incomplete grant applications will not be accepted. Meeting the eligibility criteria and submission of a grant application does not guarantee award of a grant in any amount.

(d) Finance commission approval. The finance commission will approve the items listed in this subsection during a meeting open to the public.

(1) Award amounts. Before the start of the competitive grant process for each grant cycle, the finance commission

will determine the total TFEE fund amount to be awarded for the applicable grant cycle.

(2) Grantees. The audit committee, upon receipt of advice from the GAC and grant coordinator, will present recommendations to the finance commission of parties selected to receive TFEE awards for the applicable grant cycle. The finance commission has complete discretion to approve or deny, all or in part, the recommendations presented by the audit committee. Only grantees approved by the finance commission will be awarded TFEE funds upon fulfillment of grant requirements.

(e) Grant agreement. To participate in the TFEE grant program, a grantee approved by the finance commission must execute the grant agreement for the applicable grant cycle.

(f) Grantee compliance. A grantee must comply with applicable financial, administrative, and programmatic terms and conditions, and exercise proper stewardship over awarded TFEE funds. A grantee must use awarded TFEE funds in compliance with the following in effect for the applicable grant cycle:

(1) all applicable state laws and regulations;

(2) all applicable federal laws and regulations;

(3) the TFEE Grant Administration and Advisory Policy Manual;

(4) the grant application, including all application guidelines and instructions at the time of application;

(5) the grant agreement signed by the commissioner or commissioner's designee and the grantee; and

(6) all reporting and monitoring requirements, as outlined in the grant agreement and subsection (g) of this section; and

(7) any other guidance documents posted on the TFEE website for the applicable grant cycle.

(g) Reporting and monitoring.

(1) General reporting requirements. To receive reimbursement of TFEE grant expenses, a grantee must:

(A) submit grant reports in a timely manner;

(B) maintain satisfactory compliance with the grant agreement and proposed grant activities;

(C) report performance measures; and

(D) track and report participant demographic information.

(2) Semi-annual reports. A grantee must submit semi-annual reports that demonstrate performance outcomes and financial information over the term of the grant in accordance with and by the deadlines set forth in the grant agreement.

(3) Six-month longitudinal report. A grantee must submit a six-month longitudinal report after program completion to demonstrate program objectives.

(4) Monitoring. The grant coordinator or GAC may use the following methods to monitor a grantee's performance and expenditures:

(A) Desk review. The grant coordinator or GAC may conduct a desk review of a grantee to review and compare individual source documentation and materials to summary data provided during the reporting process.

(B) Site visits and inspection reviews. The grant coordinator or GAC may conduct a scheduled site visit to a grantee's place of business to review compliance and performance issues. Site visits may be comprehensive or limited in scope.

(h) Reimbursement.

(1) Eligibility. To be eligible for reimbursement, a grantee must comply with all terms of the grant agreement, as well as all other items provided in subsection (f) of this section. Grant funds will be awarded on a cost reimbursement basis for all actual, allowable, and allocable costs incurred by a grantee pursuant to the grant agreement. Expenses that were incurred before the beginning or after the termination of the grant agreement are not eligible for reimbursement.

(2) Procedure. To request reimbursement for work performed on TFEE grant activities, a grantee must submit a grant reimbursement report in accordance with and by the deadlines set forth in the grant agreement. A grantee must submit a detailed expense report with supporting documentation to justify the reimbursement request. The OCCC will review and approve requests for reimbursement that satisfy the

requirements and promptly disburse funds in response to approved requests.

§7.104. TFEE Gifts and Donations.

(a) Authorized gifts and donations.

(1) TFEE purpose. Under Texas Finance Code, §393.628(d), the finance commission may solicit gifts, grants, and donations that fulfill the purpose of TFEE to support statewide financial education and consumer credit building activities and programs in this state, including the specific purposes provided by Texas Finance Code, §393.628(c).

(2) Consumer credit educational purpose. Under Texas Finance Code, §14.105(a), the commissioner may accept gifts, grants, and donations on behalf of the state for a purpose related to a consumer credit educational opportunity, unless prohibited by Texas Finance Code, §14.105(b) or other law. A consumer credit educational opportunity is also considered to be a consumer credit building activity under TFEE.

(3) From state agencies. Under Texas Finance Code, §393.628(e), the finance commission may partner with other state agencies to administer the TFEE fund, including the acceptance of gifts and donations from other state agencies, for the purposes outlined in paragraphs (1) and (2) of this subsection.

(4) From other parties. Gifts and donations from parties other than state agencies must meet the same criteria required for grantees eligible under §7.103(b) of this title (relating to TFEE Grant Program).

(b) Finance commission approval. The finance commission will approve any gift or donation to the TFEE fund.

§7.105. TFEE Fund Management.

In accordance with Texas Finance Code, §393.628(b), TFEE funds will be remitted to the comptroller for deposit in the Texas Treasury Safekeeping Trust Company. TFEE funds may be invested and reinvested in the same manner as funds of the Employees Retirement System of Texas under Texas Government Code, Chapter 815, Subchapter D.

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 16, 2017.

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 Proposal and Publication for Comment on Amendments to 7 TAC, Part 5, Chapter 84, Concerning Motor Vehicle Installment Sales, and a Proposed New Rule in Chapter 86, Concerning Retail Creditors

PURPOSE: The purpose of the rule changes in 7 TAC, Chapters 84 and 86 is to implement four bills that the Texas Legislature passed in the 2017 legislative session: HB 2339, HB 2949, SB 1052, and SB 1199. The proposed rule changes relate to the following issues: trade-in credit agreements, documentary fees, debt cancellation agreements, deferments, and depreciation benefit service contracts.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the amendments to 7 TAC, Chapter 84 and the new rule in Chapter 86 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve for publication and comment the amendments to 7 TAC, Chapter 84 and the new rule in Chapter 86.

Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 84. Motor Vehicle Installment Sales
Chapter 86. Retail Creditors

The Finance Commission of Texas (commission) proposes amendments to §§84.203, 84.204, 84.205, 84.302, 84.308, 84.309, 84.707, 84.708, 84.709, 84.804, and 84.808 in 7 TAC, Chapter 84, concerning Motor Vehicle Installment Sales; and proposes new §86.202 in 7 TAC, Chapter 86, concerning Retail Creditors.

In general, the purpose of the rule changes in 7 TAC, Chapters 84 and 86 is to implement four bills that the Texas Legislature passed in the 2017 legislative session: HB 2339, HB 2949, SB 1052, and SB 1199. The proposed rule changes relate to the following issues: trade-in credit agreements, documentary fees, debt cancellation agreements, deferments, and depreciation benefit service contracts.

HB 2339 adds new §348.125 to the Texas Finance Code, authorizing a retail seller to provide a trade-in credit agreement in connection with a motor vehicle retail installment transaction. The bill defines a trade-in credit agreement as "a contractual arrangement under which a retail seller agrees to provide a specified amount as a motor vehicle trade-in credit for the diminished value of the motor vehicle that is the subject of the retail installment contract in connection with which the trade-in credit agreement is offered if the motor vehicle is damaged but not rendered a total loss as a result of a collision accident, with the credit to be applied toward the purchase or lease of a different motor vehicle from the retail seller or an affiliate of the retail seller." The bill includes disclosure requirements, refunding requirements, a limitation on the

amount charged, and a requirement that the seller be insured under a contractual liability reimbursement policy approved by the Texas Department of Insurance.

HB 2949 amends Texas Finance Code, §348.006, to specify that a retail seller is not required to notify the agency of an increased documentary fee if the seller charges a documentary fee that is less than or equal to an amount presumed reasonable by rule of the commission.

SB 1052 moves provisions regarding debt cancellation agreements that require insurance from Chapter 348 to a new Chapter 354 of the Texas Finance Code. The bill allows these agreements to be provided in a Chapter 345 retail installment transaction for certain covered vehicles, including a motorcycle, all-terrain vehicle, snowmobile, camper, boat, or personal watercraft trailer. The bill also allows the OCCC to agree to extend the 45-day approval period for debt cancellation agreements by an additional 45 days, and specifies refunding and recordkeeping requirements when a debt cancellation agreement terminates due to early payoff of a retail installment contract.

SB 1052 also amends Texas Finance Code, §348.114, which relates to deferment charges. The bill limits the deferment charge provision to contracts using the add-on method or scheduled installment earnings method. The bill also adds new §348.114(c), which provides that in a contract using the true daily earnings method, the holder may defer one or more installments, and time

price differential continues to accrue on the unpaid balance at the rate agreed to in the contract. At the time of the deferment, the holder must provide a written notice stating that finance charge will continue to accrue.

SB 1199 amends Texas Occupations Code, §1304.003, to authorize a depreciation benefit optional member program. The bill defines a depreciation benefit optional member program as "a service contract financed under Chapter 348 or 353, Finance Code, that pays to the buyer, as a credit toward the purchase of a replacement vehicle at a participating dealer, an amount less than or equal to the difference between the purchase price and actual cash value for a total constructive loss." These depreciation benefit service contracts would be subject to the same requirements that currently apply to service contracts under Chapter 1304 of the Occupations Code, including the requirement that the provider be registered with the Texas Department of Licensing and Regulation, the requirement to maintain a reimbursement insurance policy and a funded reserve account, disclosure requirements, and refunding requirements.

The agency circulated an early draft of proposed changes to interested stakeholders. The agency then held an online stakeholder meeting where attendees asked questions through a webinar. The agency did not receive any informal written precomments other than the questions received through the webinar.

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

A proposed amendment to §84.203(a) specifies that the rule on deferment charges does not apply to an amendment described

by Texas Finance Code, §348.114(c), to defer all or part of one or more payments for a retail installment transaction that employs the true daily earnings method. In addition, throughout §84.203, the proposal deletes references to the maximum deferment charge for transactions using the true daily earnings method. These amendments to §84.203 are intended to implement SB 1052's amendments to Texas Finance Code, §348.114, which provide that the continuing accrual of time price differential in a transaction using the true daily earnings method is not a deferment charge.

During the stakeholder meeting, one attendee asked what is required for a deferment in a transaction using the true daily earnings method, other than the notice described in Texas Finance Code, §348.114(c), as added by SB 1052. This issue is outside the intended scope of the amendments to §84.203, which specify that §84.203 does not apply to this type of deferment. As amended by the proposal, §84.203 would apply only to transactions using the add-on method or the scheduled installment earnings method. The agency will consider providing further guidance on this issue in the near future, in updates to the agency's advisory guidance for deferments in motor vehicle retail installment transactions.

A proposed amendment to §84.204 adds a new subsection (j), providing that a retail seller may not include a benefit under a trade-in credit agreement in the "Dealership Allowance for Trade-In" section of the disclosure of equity standard form. This amendment is intended to avoid confusion in the calculation of the trade-in allowance, which is limited to the value of the trade-in vehicle. Under Texas Tax Code, §152.002(b)(5), "the value of a motor

vehicle taken by a seller as all or a part of the consideration for sale of another motor vehicle, including any cash payment to the buyer under Section 348.404 or 353.402, Finance Code" is excluded from the total consideration for sales tax purposes. The Texas Comptroller of Public Accounts uses the term "trade-in allowance" to refer to the value of the vehicle for purposes of this exclusion from sales tax. Texas Comptroller of Public Accounts, Motor Vehicle Tax Guidebook at x, II-2 (2011). The benefit under a trade-in credit agreement is separate from the value of the trade-in vehicle itself. For this reason, the benefit under a trade-in credit agreement should not be included in the trade-in allowance shown on the disclosure of equity.

A proposed amendment to §84.205(b)(1) specifies that a documentary fee of \$150 or less is presumed reasonable under Texas Finance Code, §348.006(f). In addition, throughout §84.205, the proposal deletes references to the current requirement to provide a notification for a documentary fee that is greater than \$50 but less than or equal to \$150. These amendments are intended to implement HB 2949, which specifies that a retail seller is not required to notify the agency of an increased documentary fee if the seller charges a documentary fee that is less than or equal to an amount presumed reasonable by rule of the commission. \$150 is the same amount that the agency presumes reasonable under current §84.205(b)(2). The commission adopted \$150 as a reasonable documentary fee amount in 2016. This amount was based on the agency's ongoing review of documentary fee cost analyses, as well as document-related costs for Texas motor vehicle dealerships. The rule's current requirement to provide both a notification

and a cost analysis for a documentary fee over \$150 would remain in place.

Until HB 2949 goes into effect on September 1, 2017, sellers are required to continue complying with current law, and may not charge a documentary fee over \$50 without first notifying the agency.

Proposed amendments to §84.302, §84.308, and §84.309 contain updated citations to the new Chapter 354 of the Texas Finance Code, as added by SB 1052. In addition, an amendment to §84.309(d) acknowledges that the agency may agree to extend the normal 45-day approval period for debt cancellation agreements for an additional 45 days. This amendment is intended to implement SB 1052, which permits the agency to agree to these deadline extensions in new Texas Finance Code, §354.005(b).

In §84.707, the proposal amends the recordkeeping requirements for retail sellers that assign retail installment contracts. The amended recordkeeping requirements relate to trade-in credit agreements and depreciation benefit service contracts.

In §84.707(d)(2), proposed new subparagraphs (N) and (O) identify records that a seller must maintain for trade-in credit agreements, including a copy of the agreement, refunding records, and documentation used to process a claim. These amendments are intended to ensure that the agency can verify the seller's compliance with Texas Finance Code, §348.125, as added by HB 2339. These recordkeeping requirements are generally similar to requirements for other ancillary products. If any claims are administered by a party other than the seller, the seller should

be able to obtain these records from the administrator.

In §84.707(d)(2), proposed new subparagraph (P) requires the seller to maintain records relating to depreciation benefit service contracts, including evidence of the amount of any credit, and any documentation obtained by the seller to process a benefit. This amendment is intended to ensure that the agency can verify that any benefit under a depreciation benefit service contract is accurately reflected on the retail installment contract.

During the stakeholder meeting, attendees asked several questions about the recordkeeping requirements for depreciation benefit service contracts. One attendee asked how long records must be maintained. The depreciation benefit service contract records would be subject to the general requirement in Texas Finance Code, §348.517(b), and current §84.707(d)(6) and §84.708(e)(9) to maintain records for the later of four years from the date of the retail installment contract, or two years from the date of the final entry. Another attendee asked whether records are required to be maintained in electronic or paper form. The depreciation benefit service contract records would be subject to the general provisions in current §84.707(c) and §84.708(c), which allow a licensee to maintain records using a legible paper or manual recordkeeping system, an electronic recordkeeping system, an optically imaged recordkeeping system, or a combination of these. Another attendee asked which party is the "seller" for purposes of the recordkeeping rules. Throughout §84.707 and §84.708, the term "seller" refers to the seller of the motor vehicle, which is not necessarily the provider of the service contract. Service contract providers are subject to separate

recordkeeping requirements under Texas Occupations Code, §1304.155.

In §84.707(d), proposed new paragraph (6) requires the seller to maintain a copy of any contractual liability reinsurance policy required for trade-in credit agreements under new Texas Finance Code, §348.125(c), as added by HB 2339. This new paragraph also requires the seller to maintain a register or be able to generate a report reflecting agreements that were satisfied or denied. These amendments are intended to ensure that the agency can verify the seller's compliance with Texas Finance Code, §348.125, as added by HB 2339.

In §84.708, the proposal amends the recordkeeping requirements for retail sellers that collect installments on retail installment contracts. The amended recordkeeping requirements relate to deferments, trade-in credit agreements, and depreciation benefit service contracts. In §84.708(e)(2), new subparagraph (R) requires sellers to maintain written deferment agreements and deferment notices. These amendments are intended to ensure that the licensee can verify the seller's compliance with Texas Finance Code, §348.114, as amended by SB 1052. Other amendments throughout §84.708 conform to the previously discussed amendments to §84.707 relating to trade-in credit agreements and depreciation benefit service contracts.

In §84.709, the proposal amends the recordkeeping requirements for holders taking assignment of retail installment contracts. The amended recordkeeping requirements relate to deferments and debt cancellation agreements. In §84.709(e)(2), proposed new subparagraph (J) conforms to the previously discussed amendment to §84.708(e)(2) relating to deferments. In

addition, a proposed amendment to §84.709(e)(3)(A)(v) specifies that a holder must maintain refunding records if it receives or issues a refund for certain ancillary products, including debt cancellation agreements.

In §84.804, the proposal amends a list of authorized itemized charges to include a charge for a trade-in credit agreement and a charge for a depreciation benefit service contract.

In §84.808(8), proposed new paragraphs (F) and (G) specify that a benefit provided under a trade-in credit agreement or depreciation benefit service contract must be included in the downpayment and included in the line of the retail installment contract labeled "other (describe)." As discussed previously, the benefit under a trade-in credit agreement is separate from the value of the trade-in vehicle itself, and should not be included in the trade-in allowance. Disclosing the trade-in credit agreement benefit on the "other" line of the downpayment section helps ensure that the buyer understands the benefit amount and is not misled into believing that the benefit is part of the trade-in allowance. Similarly, disclosing a depreciation benefit on the "other" line of the downpayment section helps ensure that the buyer understands the benefit amount.

During the stakeholder meeting, one attendee asked how the initial charge for the trade-in credit agreement should be disclosed, and asked whether proposed §84.808(8)(F) applies only to the transaction where the buyer receives a benefit under the agreement. To clarify, there are two retail installment transactions relevant to the trade-in credit agreement: the first transaction in which the buyer purchases the

agreement, and the second transaction in which the buyer trades in the vehicle and receives a benefit under the agreement. In the first transaction, the initial charge for the trade-in credit agreement should be listed in the retail installment contract's itemization of amount financed, in the itemized charges not included in the cash price. This requirement is specified by Texas Finance Code, §348.005(4), as amended by HB 2339, and proposed §84.804(4)(R). For example, the seller may list the initial charge on line 4.O., "Other charges," of the model itemization of amount financed at §84.808(8)(A). In the second transaction, the benefit under the agreement should be disclosed in the retail installment contract's itemization of amount financed, on the "other" line of the downpayment section. Proposed §84.808(8)(F) applies only to the transaction where the buyer receives a benefit under the agreement.

Proposed new §86.202 provides that a debt cancellation agreement for a retail installment contract involving the purchase of a covered vehicle described by Texas Finance Code, §354.001(2), including a motorcycle, recreational vehicle, all-terrain vehicle, camper, boat, personal watercraft, or personal watercraft trailer, is subject to the submission requirements and appeal procedures of §84.309. This new rule is intended to implement SB 1052, which allows debt cancellation agreements to be provided in a Chapter 345 retail installment transaction for certain covered vehicles, including a motorcycle, all-terrain vehicle, snowmobile, camper, boat, or personal watercraft trailer. The agency will begin accepting submissions of debt cancellation agreements for these Chapter 345 covered vehicles starting July 1, 2017.

During the stakeholder meeting, one attendee asked when registrants may start offering debt cancellation agreements for Chapter 345 covered vehicles. These agreements are not authorized until SB 1052 goes into effect on September 1, 2017. In addition, any Chapter 345 debt cancellation agreement must be approved by the agency before a seller uses it. Another attendee asked a similar question about depreciation benefit service contracts. These contracts are not authorized until SB 1199 goes into effect on September 1, and are subject to requirements that generally apply to service contracts under Texas Occupations Code, Chapter 1304. Similarly, trade-in credit agreements in connection with retail installment transactions are not authorized until HB 2339 goes into effect on September 1, 2017. Before offering a trade-in credit agreement, a seller must ensure that it is insured under a contractual liability reimbursement policy under Texas Finance Code §348.125(c), as added by HB 2339.

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

Commissioner Pettijohn also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the changes will be that the commission's rules will be more easily understood by licensees required to comply with the rules, will be more easily enforced, will be consistent with legislation recently passed by the legislature, and will provide guidance and clarity to motor vehicle sales finance licensees.

Additional economic costs may be incurred by a person required to comply with this proposal. The agency anticipates that any costs resulting from the proposal would involve complying with the proposed changes contained in §§84.707, 84.708, and 84.709 concerning recordkeeping, and new §86.202 concerning debt cancellation agreements.

In reference to §§84.707, 84.708, and 84.709 concerning recordkeeping, the agency anticipates that licensees may encounter the following costs to comply with the proposal: 1) labor costs, 2) costs to generate new records not currently kept, and 3) programming costs for licensees that utilize electronic recordkeeping systems. These costs are impossible to predict, as much will depend on the particular licensee's current software system and the amount of programming changes required to comply with the proposal.

Regarding the costs of recordkeeping, it is important to note that trade-in credit agreements and depreciation benefit service contracts are optional products. Licensees have the option of not offering these products, in which case there will be no costs incurred for those licensees. The agency anticipates that the fees charged in connection with these agreements will cover costs of complying with the recordkeeping requirements, resulting in a neutral cost to licensees required to comply with the proposal. In addition, the current rules at §§84.707(d)(2), 84.708(e)(2), 84.709(e)(2) already require licensees to keep transaction documents showing compliance with Chapter 348, and the current rules at §84.707(d)(2)(A)(v) and §84.708(e)(2)(A)(vi) already require sellers to keep copies of any agreements or disclosures signed by the retail buyer applicable to the transaction. In

other words, even in the absence of the proposed recordkeeping amendments, licensees would still generally be required to keep copies of written deferment agreements, deferment-related notices, and trade-in credit agreements.

In reference to proposed §86.202, concerning debt cancellation agreements, the purpose of proposed new §86.202 is partly to specify that form submitters for debt cancellation agreements covering Chapter 345 vehicles must comply with current §84.309 and pay a \$250 submission fee. The \$250 amount, which the commission adopted in 2016, is based on the average time spent by OCCC employees to process the submission, review the agreement, and draft follow-up correspondence. The OCCC believes that this fee is necessary and prudent to recover the cost of the agency's resources to review these agreements within the 45-day statutory deadline.

It is important to note that debt cancellation agreements are an optional product. Licensees and registrants have the option of not offering debt cancellation agreements, in which case there will be no costs incurred for those licensees and registrants. For Chapter 345 registrants who opt to provide debt cancellation agreements in connection with their retail installment contracts, there would be an initial economic cost consisting of the \$250 submission fee in §84.309(c), as provided by proposed §86.202. The agency anticipates that the fees charged in connection with debt cancellation agreements will cover costs of complying with the recordkeeping requirements, resulting in a neutral cost to registrants required to comply with the proposal.

Overall, the agency anticipates that any costs involved to comply with the proposal will be minimal for most licensees and registrants. However, due to several factors resulting in varying, uncertain, and unpredictable costs, the agency would like to invite comment from licensees and registrants on any costs involved to comply with the proposal, as well as any alternatives to lessen those costs while achieving the purpose of the proposal. Aside from the previously outlined costs to comply with recordkeeping requirements and debt cancellation agreement submission fees, there will be no other effects on individuals required to comply with the rule changes as proposed.

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

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

be considered or accepted by the commission.

All of the amendments and the new rule are proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to ensure compliance with Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

The rule changes in §84.205 concerning documentary fees are proposed under Texas Finance Code, §348.006(f), as amended by HB 2949, which authorizes the commission to adopt a rule establishing a documentary fee amount presumed to be reasonable, and Texas Finance Code, §348.006(h), which authorizes the commission to adopt rules necessary to enforce §348.006.

Under proposed new §86.202, a person submitting a debt cancellation agreement for a Chapter 345 covered vehicle will be required to pay a filing fee under current §84.309(c). This new rule is authorized under Texas Finance Code, §14.107, which authorizes the commission to establish reasonable and necessary fees for carrying out the commissioner's powers and duties under Chapter 348.

The statutory provisions affected by the proposed rule changes are contained in Texas Finance Code, Chapters 345, 348, and 354.

Chapter 84. Motor Vehicle Installment Sales

§84.203. Deferment Charge.

(a) Definition. A "deferment charge" means a charge to defer the payment date of

a scheduled payment or partial payment on a contract. A deferment charge prescribed by this section may occur in a retail installment transaction that employs the precomputed add-on method for regular payment contracts using the sum of the periodic balances or [;] the scheduled installment earnings method [~~or the true daily earnings method~~]. This section applies only to an amendment relating to the deferment of all or a part of one or more installments, and does not apply to amendments relating to renewing, restating, or rescheduling the unpaid balance under a retail installment sales contract. This section does not apply to an amendment described by Texas Finance Code, §348.114(c), to defer all or part of one or more payments for a retail installment transaction that employs the true daily earnings method. The parties to a retail installment sales contract may agree to modify the terms of the transaction as long as the amendment conforms to the requirements of Texas Finance Code, Chapter 348, Subchapter B.

(b) - (c) (No change.)

(d) Computation of deferment charge. A holder of a retail installment sales contract under Texas Finance Code, Chapter 348 may calculate the deferment charge by any method of calculation as long as the deferment charge does not exceed the maximum amount permitted by Texas Finance Code, §348.114 and this section.

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

~~[(3) True daily earnings method.]~~

~~[(A) Base deferment charge. For a regular or an irregular payment contract employing the true daily earnings method, a holder may assess, charge, and~~

~~collect a base deferment charge computed by:]~~

~~[(i) Multiplying the amount of the installment or installments being deferred by either of the following rates computed on a daily basis using a 365-day calendar year:]~~

~~[(I) the maximum annualized daily rate authorized for the contract, as described by Figure: 7 TAC §84.201(d)(2)(B)(iii); or]~~

~~[(II) a lower rate agreed to by the parties, which may be the contract rate; and]~~

~~[(ii) multiplying the results of clause (i) of this subparagraph by the actual number of days the installment or installments are being deferred.]~~

~~[(B) Additional deferment costs. In addition to the base deferment charge authorized by this section, the holder of a retail installment sales contract may collect from the retail buyer the amount of the additional cost to the holder for:]~~

~~[(i) premiums for continuing in force any insurance coverages provided by the retail installment contract; and]~~

~~[(ii) any additional necessary official fees.]~~

~~[(C) Minimum deferment charge. The minimum deferment charge authorized under this paragraph is \$1.00.]~~

~~[(D) Accrual of time price differential. For a contract using the true daily earnings method, all time price~~

~~differential that will accrue on the deferred installments during the deferment period must be included in the base deferment charge. If the holder agrees to a base deferment charge that is less than the amount of time price differential that would otherwise have accrued on the deferred installments during the deferment period, then it must waive the accrued time price differential on the deferred installments for the deferment period in excess of the base deferment charge the holder agreed to. The deferment charge does not include time price differential that accrues on amounts other than the deferred installments, nor does it include time price differential that accrues outside of the deferment period.]~~

(e) (No change.)

(f) False, misleading, or deceptive representation. A holder may not make a false, misleading, or deceptive representation relating to a deferment charge. [For example, in a contract using the true daily earnings method, a holder may not make an offer to the retail buyer such as "Payment Holiday Pay Only \$25" if the total deferment charge, including all time price differential that the holder will charge on the deferred installment for the deferment period, exceeds \$25.] If a holder makes a false, misleading, or deceptive representation regarding a deferment charge, then the deferment charge is subject to refunding under subsection (e).

§84.204. Disclosure of Equity in Retail Buyer's Trade-in Motor Vehicle.

(a) - (i) (No change.)

(j) Benefit under trade-in credit agreement. A retail seller may not include a benefit under a trade-in credit agreement in

the "Dealership Allowance for Trade-In" section of the disclosure of equity standard form.

§84.205. Documentary Fee.

(a) Purpose. Under Texas Finance Code, §348.006(e), before a retail seller charges a documentary fee greater than \$150 ~~[\$50]~~, the seller must provide the OCCC with a written notification of the maximum amount of the documentary fee the seller intends to charge. The OCCC may review the amount of the documentary fee for reasonableness. This section describes the requirements for the notification and cost analysis.

(b) General requirements.

(1) \$150 ~~[\$50]~~ or less. A seller is not required to provide a notification or cost analysis to the OCCC before charging a documentary fee of \$150 ~~[\$50]~~ or less. A documentary fee of \$150 or less is presumed reasonable under Texas Finance Code, §348.006(f).

~~[(2) Over \$50, up to \$150. Before charging a documentary fee greater than \$50, but less than or equal to \$150, a seller must provide a notification to the OCCC. A seller is not required to provide a cost analysis before charging a documentary fee in this range. The OCCC will presume a documentary fee of \$150 or less to be reasonable.]~~

(2) ~~[(3)]~~ Over \$150. Before charging a documentary fee greater than \$150, a seller must provide a notification and a cost analysis to the OCCC.

(c) Notification.

(1) Generally. Before charging a documentary fee greater than \$150 ~~[\$50]~~, a seller must provide a written notification to the OCCC, stating the amount of the maximum documentary fee that the seller intends to charge.

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

(4) Transfer of ownership. In the event of a transfer of ownership described by §84.604 of this title (relating to Transfer of License; New License Application on Transfer of Ownership), if the transferee intends to charge a documentary fee greater than \$150 ~~[\$50]~~, then the transferee must provide a documentary fee notification for each licensed location or registered office that the transferee will operate. The transferee must provide the notification no later than the 30th calendar day following the transfer of ownership. If the transferee has not filed a notification on or before the 30th calendar day following the transfer of ownership, then it must cease charging a documentary fee greater than \$150 ~~[\$50]~~. The transferee may not charge a greater amount than the amount described in the transferor's previous notification until the transferee has provided a complete notification listing the amount that the transferee intends to charge. If the transferor did not previously provide a documentary fee notification, then the transferee may not charge a documentary fee greater than \$150 ~~[\$50]~~ until it has provided a complete notification listing the amount it intends to charge.

(5) Failure to provide notification. A seller violates this subsection if the seller:

(A) charges a documentary fee greater than \$150 ~~[\$50]~~ without first

providing a complete notification to the OCCC; or

(B) (No change.)

(6) Restitution and order to lower documentary fee. If a seller violates this subsection, then the OCCC may take an action, including ordering the seller to do one or more of the following:

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

(D) cease charging a documentary fee greater than \$150 [~~\$50~~] for a specified period of time.

(7) Restitution amount. If a seller does not provide a complete notification to the OCCC, then the amount of restitution for violating this subsection will not exceed the amount of the documentary fee the seller charged or received minus \$150 [~~\$50~~] (for each buyer). If the seller provides a notification but charges a documentary fee greater than the amount described in the notification, then the restitution for violating this subsection will not exceed the amount of the documentary fee the seller charged or received minus the amount of its filing (for each buyer).

(d) Cost analysis.

(1) - (5) (No change.)

(6) Restitution and order to lower documentary fee. If a seller violates this subsection by charging a documentary fee over \$150 that is not supported by a complete cost analysis or that includes costs that are not reasonable, then the OCCC may order the seller to provide restitution to affected buyers and lower its documentary fee prospectively. For each buyer, the

restitution for violating this subsection will not exceed the amount of the documentary fee the seller charged or received, minus \$150, minus other restitution paid under subsection (c)(6) - (7) of this section. In addition, the OCCC may order a seller to cease charging a documentary fee greater than \$150 [~~\$50~~] for a specified period of time if the seller violates this subsection.

§84.302. Authorized Credit Insurance and Debt Cancellation Agreements.

(a) - (g) (No change.)

(h) Debt cancellation agreements. Debt cancellation agreements are not credit insurance. For retail installment sales transactions involving ordinary vehicles, debt cancellation agreements that cancel all or part of the retail buyer's obligation to repay the retail installment sales contract based upon the occurrence of death, disability, or unemployment of the retail buyer are not authorized to be sold or written with a Chapter 348 motor vehicle retail installment sales contract. A debt cancellation agreement may be offered in connection with a Chapter 348 motor vehicle retail installment sales transaction and included as a term of, or modification to, the retail installment sales contract if the debt cancellation agreement is written in compliance with:

(1) Texas Finance Code, §348.124 and §84.308 of this title; or

(2) Texas Finance Code, Chapter 354 [~~Chapter 348, Subchapter G~~].

§84.308. Debt Cancellation Agreements Not Requiring Insurance.

(a) Purpose and scope. The Texas Finance Code allows a debt cancellation agreement to be included in a motor vehicle retail installment sales contract involving an ordinary vehicle subject to Texas Finance Code, Chapter 348 as an itemized charge. This section outlines the parameters under which a retail seller or holder may provide a debt cancellation agreement for total loss or theft of an ordinary vehicle in connection with a Chapter 348 retail installment sales contract. This section applies only to debt cancellation agreements that do not require insurance coverage. This section does not apply to a debt cancellation agreement under Texas Finance Code, Chapter 354 [Subchapter G of Chapter 348].

(b) - (k) (No change.)

§84.309. Debt Cancellation Agreements Requiring Insurance.

(a) Purpose and scope. This section applies to a debt cancellation agreement described by Texas Finance Code, Chapter 354, that includes insurance coverage as part of the retail buyer's responsibility to the holder [~~as provided by Texas Finance Code, §348.601(a)~~]. Debt cancellation agreements must be submitted to the OCCC for approval, as provided by Texas Finance Code, §354.005(a) [§348.604(a)]. The denial of a debt cancellation agreement may be appealed to the Finance Commission of Texas, as provided by Texas Finance Code, §354.005(d) [§348.604(e)]. This section describes the requirements for submitting a debt cancellation agreement to the OCCC and the requirements for appealing the denial of a debt cancellation agreement to the commission.

(b) - (c) (No change.)

(d) OCCC's notice of approval or denial. No later than the 45th day after the OCCC receives a debt cancellation agreement submission, the OCCC will send a notice of approval or a notice of denial to the person who submitted the agreement, as provided by Texas Finance Code, §354.005(b) [§348.604(b)]. On the written request of the person who submitted the agreement, the OCCC may agree in writing to extend the approval period for an additional 45 days. The date of approval or denial is the date on which the OCCC sends the notice of approval or denial. The OCCC may deny approval of a debt cancellation agreement if the agreement excludes language required by Texas Finance Code, §354.003 [§348.602] and §354.004 [§348.603], or if it contains any inconsistent or misleading provisions.

(e) (No change.)

(f) Contested case. If a person appeals the denial of a debt cancellation agreement under subsection (e), then the appeal will be a contested case under the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the rules of procedure applicable under §9.1(a) of this title (relating to Application, Construction, and Definitions). The burden of proof is on the appellant to show that the agreement should have been approved under Texas Finance Code, §354.005 [§348.604].

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

§84.707. Files and Records Required (Retail Sellers Assigning Retail Installment Sales Contracts).

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

(d) Records required.

(1) (No change.)

(2) Retail installment sales transaction file. A licensee must maintain a paper or imaged copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) - (M) (No change.)

(N) for a retail installment sales transaction involving the sale of a trade-in credit agreement under Texas Finance Code, §348.125:

(i) a copy of the trade-in credit agreement and any written notice or disclosure provided to the retail buyer;

(ii) evidence of the contractual liability reimbursement policy in effect at the time of the trade-in credit agreement, as required by Texas Finance Code, §348.125(c); and

(iii) documentation of any refund provided upon cancellation of a trade-in credit agreement.

(O) for a retail installment sales transaction in which a retail buyer requests or receives a benefit under a trade-in credit agreement under Texas Finance Code, §348.125:

(i) a copy of the trade-in credit agreement;

(ii) evidence of the amount of any credit applied under the trade-in credit agreement; and

(iii) any documentation used to process a claim, including:

(I) any proof of insurance settlement documents obtained from the retail buyer;

(II) any accident record or vehicle condition report obtained to process a claim; and

(III) any supplemental claim records supporting the approval or denial of the claim.

(P) for a retail installment sales transaction in which a retail buyer requests or receives a benefit under a depreciation benefit optional member program under Texas Occupations Code, §1304.003(a)(2)(C):

(i) evidence of the amount of any credit applied under the depreciation benefit optional member program; and

(ii) any documentation obtained by the licensee to process the benefit.

(3) - (5) (No change.)

(6) Trade-in credit agreement records. Each licensee that enters a trade-in credit agreement or provides a benefit in connection with a trade-in credit agreement must:

(A) maintain a copy of any contractual liability reimbursement policy related to the trade-in credit agreement, as required by Texas Finance Code, §348.125(c); and

(B) maintain a register or be able to generate a report, paper or electronic, that reflects agreements that were either satisfied or denied. This register or report must show the name of the retail buyer, the account number, and the date of satisfaction or denial.

(7) [(6)] Retention and availability of records. All books and records required by this subsection must be available for inspection at any time by Office of Consumer Credit Commissioner staff, and must be retained for a period of four years from the date of the contract, two years from the date of the final entry made thereon by the licensee, whichever is later, or a different period of time if required by federal law. For licensees who assign retail installment sales contracts, the final entry may be the date of the assignment if the licensee makes no other entries on the account after the assignment. Upon notification of an examination pursuant to Texas Finance Code, §348.514(f), the licensee must be able to produce or access required books and records within a reasonable time at the licensed location or registered office specified on the license. The records required by this subsection must be available or accessible at an office in the

state designated by the licensee except when the retail installment sales transactions are transferred under an agreement which gives the commissioner access to the documents. Documents may be maintained out of state if the licensee has in writing acknowledged responsibility for either making the records available within the state for examination or by acknowledging responsibility for additional examination costs associated with examinations conducted out of state.

§84.708. Files and Records Required (Retail Sellers Collecting Installments on Retail Installment Sales Contracts).

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

(e) Records required.

(1) (No change.)

(2) Retail installment sales transaction file. A licensee must maintain a paper or imaged copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must

include copies of the following records or documents, unless otherwise specified:

(A) - (Q) (No change.)

(R) for a retail installment sales transaction in which the licensee agrees to defer all or part of one or more payments:

(i) a copy of any written deferment agreement; and

(ii) any written notice to the retail buyer regarding a deferment under Texas Finance Code, §348.114(c).

(S) for a retail installment sales transaction involving the sale of a trade-in credit agreement under Texas Finance Code, §348.125:

(i) a copy of the trade-in credit agreement and any written notice or disclosure provided to the retail buyer;

(ii) evidence of the contractual liability reimbursement policy in effect at the time of the trade-in credit agreement, as required by Texas Finance Code, §348.125(c); and

(iii) documentation of any refund provided upon cancellation of a trade-in credit agreement.

(T) for a retail installment sales transaction in which a retail buyer requests or receives a benefit under a trade-in credit agreement under Texas Finance Code, §348.125:

(i) a copy of the trade-in credit agreement;

(ii) evidence of the amount of any credit applied under the trade-in credit agreement; and

(iii) any documentation used to process a claim, including:

(I) any proof of insurance settlement documents obtained from the retail buyer;

(II) any accident record or vehicle condition report obtained to process a claim; and

(III) any supplemental claim records supporting the approval or denial of the claim.

(U) for a retail installment sales transaction in which a retail buyer requests or receives a benefit under a depreciation benefit optional member program under Texas Occupations Code, §1304.003(a)(2)(C):

(i) evidence of the amount of any credit applied under the depreciation benefit optional member program; and

(ii) any documentation obtained by the licensee to process the benefit.

(3) - (8) (No change.)

(9) Trade-in credit agreement records. Each licensee that enters a trade-in credit agreement or provides a benefit in connection with a trade-in credit agreement must:

(A) maintain a copy of any contractual liability reimbursement policy related to the trade-in credit agreement, as

required by Texas Finance Code, §348.125(c); and

(B) maintain a register or be able to generate a report, paper or electronic, that reflects agreements that were either satisfied or denied. This register or report must show the name of the retail buyer, the account number, and the date of satisfaction or denial.

(10) [(9)] Retention and availability of records. All books and records required by this subsection must be available for inspection at any time by Office of Consumer Credit Commissioner staff, and must be retained for a period of four years from the date of the contract, two years from the date of the final entry made thereon, whichever is later, or a different period of time if required by federal law. Upon notification of an examination pursuant to Texas Finance Code, §348.514(f), the licensee must be able to produce or access required books and records within a reasonable time at the licensed location or registered office specified on the license. The records required by this subsection must be available or accessible at an office in the state designated by the licensee except when the retail installment sales transactions are transferred under an agreement which gives the commissioner access to the documents. Documents may be maintained out of state if the licensee has in writing acknowledged responsibility for either making the records available within the state for examination or by acknowledging responsibility for additional examination costs associated with examinations conducted out of state.

(f) (No change.)

§84.709. Files and Records Required (Holders Taking Assignment of Retail Installment Sales Contracts).

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

(e) Records required.

(1) (No change.)

(2) Retail installment sales transaction file. A licensee must maintain a paper or imaged copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) - (I) (No change.)

(J) for a retail installment sales transaction in which the licensee agrees to defer all or part of one or more payments:

(i) a copy of any written deferment agreement; and

(ii) any written notice to the retail buyer regarding a deferment under Texas Finance Code, §348.114(c).

(3) Account record for each retail installment sales contract (including payment and collection contact history). A separate paper, or an electronic record, must be maintained covering each retail installment sales contract. The paper or electronic account record must be readily available by reference to either a retail buyer's name or account number.

(A) Required information. The account record for each retail installment sales contract must contain at least the following information, unless stated otherwise:

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

(v) for a retail installment sales contract where the licensee receives or issues a refund of insurance charges, debt cancellation agreements or authorized ancillary products, a licensee is responsible for maintaining sufficient documentation of any refund including final entries and is also responsible for providing refunds to the retail buyer or correctly applying refunds to the retail buyer's account. Refund amounts must be itemized to show:

(I) - (IV) (No change.)

(vi) (No change.)

(B) - (C) (No change.)

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

(f) (No change.)

§84.804. Disclosures and Contract Provisions Required by Texas Finance Code.

A retail installment sales contract must include all provisions required by Texas Finance Code, Chapter 348, and other law. The contract must include the following disclosures and provisions, as applicable:

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

(4) The amounts of any itemized charges not included in the cash price, as required by Texas Finance Code, §348.102(a)(7). Itemized charges may include the following charges as applicable and any other charges that are authorized to be included in the itemized charges under Texas Finance Code, Chapter 348:

(A) - (P) (No change.)

(Q) Automobile club membership; [-]

(R) Trade-in credit agreement;

(S) Depreciation benefit optional member program.

(5) - (8) (No change.)

§84.808. Model Clauses.

The following model clauses provide the plain language equivalent of provisions found in contracts subject to Texas Finance Code, Chapter 348.

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

(8) Itemization of amount financed. The creditor drafting the contract is given considerable flexibility regarding the

itemization of amount financed disclosure so long as the itemization of amount financed disclosure complies with the Truth in Lending Act. As an example, a creditor may disclose the manufacturer's rebate either as: a component of the downpayment; or a deduction from the cash price of the motor vehicle. The model contract provision for the itemization of the amount financed discloses the manufacturer's rebate as a component of the downpayment. If the creditor elected to disclose the manufacturer's rebate as a deduction from the cash price of the motor vehicle, the cash price component of the itemization of amount financed would be amended to reflect the dollar amount of the manufacturer's rebate being deducted from the cash price of the motor vehicle.

(A) - (E) (No change.)

(F) Benefit under trade-in credit agreement. A benefit provided under a trade-in credit agreement must be included in the downpayment, and must be listed in the line labeled "other (describe)," with a description such as "trade-in credit agreement benefit."

(G) Benefit under depreciation benefit optional member program. A benefit provided under a depreciation benefit optional member program must be included in the downpayment, and must be listed in the line labeled "other (describe)," with a description such as "depreciation benefit."

(9) - (45) (No change.)

Chapter 86. Retail Creditors

Subchapter B. Retail Installment Contract

§86.202. Debt Cancellation Agreements.

A debt cancellation agreement for a retail installment contract involving the purchase of a covered vehicle described by Texas Finance Code, §354.001(2), including a motorcycle, recreational vehicle, all-terrain vehicle, camper, boat, personal watercraft, or personal watercraft trailer, is subject to the submission requirements and appeal procedures of §84.309 of this title (relating to Debt Cancellation Agreements Requiring Insurance).

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 16, 2017.

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

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D.

Texas Department of Banking

Legislation Influencing DOB Regulated Entities

85th Legislative Session, 2017

HB1948 – Perpetual Care Cemetery Investments (effective 9/1/17 unless vetoed)

- Allows Perpetual Care Cemeteries (PCCs) to choose total return method for investments.
- To convert to total return method, trustee must submit supporting documentation to commissioner.
- Trustee determines total return percentage that may be distributed, not to exceed 5%.
- Commissioner may require, after notice and opportunity for hearing, conversion back to net income method under certain conditions.

HB 2928 – Authorized investments for governmental entities (effective 9/1/17 unless vetoed)

- Adds obligations, including letters of credit, of the Federal Home Loan Banks as authorized investments for governmental entities.
- Clarifies that CDs or share certificates issued by a depository institution that has an office in Texas and is secured in accordance with the Public Funds Collateral Act is an authorized investment.
- Reverses previous AG opinion (KP-0128).

HB 3921 – Financial exploitation of vulnerable adults (effective 9/1/17)

- Requires bank employees to notify bank if suspect financial exploitation of disabled or elderly account holder.
- Requires banks to report to Department of Family and Protective Services (DFPS).
- Requires banks to adopt policies requiring reporting to DFPS and other appropriate agencies.
- Authorizes banks to place temporary hold on transactions that involve suspected abuse.
- Provides immunity from liability for reporting by bank or bank employee.
- Includes similar provisions relating to securities dealers.

SB 1400 – Bank cleanup bill (effective 9/1/17 unless vetoed)

- Delays required publication of notice regarding change of control until application is complete. Upon completion of application, commissioner must promptly notify the applicant of date the application is accepted for filing.
- Establishes procedure for termination of safe deposit box rentals.
- Clarifies that acquisition of a Texas bank holding company in which the only subsidiary is a state savings banks does not require approval from the Texas Banking Commissioner.
- Aligns requirements regarding minimum amount of foreign bank deposits with federal statute.

- Streamlines list of permissible activities of a Texas representative office of a foreign bank and mirrors current Federal Reserve rule.

SB 1401 – Bank and trust company enforcement (effective 9/1/17 unless vetoed)

- Modernizes language regarding examination and regulatory authority over third party service providers for banks and trust companies.
- Prohibits felons from serving as officers of state bank, trust company, or bank holding company, or as an employee of a bank holding company, unless specifically allowed by commissioner.
- Allows commissioner to terminate order of supervision at any time.
- Clarifies requirement for a trust charter if activities of the entity include acting as trustees or custodians as defined and approved by the Internal Revenue Service.

SB 1402 – Perpetual care cemeteries (effective 9/1/17)

- Allows cemeteries to pool trust funds or temporarily place them in segregated interest bearing accounts in order to reduce trust management costs.
- Require cemeteries to own the land where the cemetery is located, with a five year phase-in period for non-compliant cemeteries to meet the new requirement.
- Authorizes administrative law judges to recommend a penalty amount less than the statutory maximum if the situation so warrants.

SB 1403 – Money service businesses (effective 9/1/17)

- Excludes from licensing requirement armored car companies transporting currency from a person's bank back to the person.
- Excludes from licensing requirement Texas-chartered trust companies.
- Updates the name of the Nationwide Multistate Licensing System.
- Clarifies exclusion from licensure persons who only incidentally engage in money transmission.
- Allows commissioner to require an increased amount (up to 2X) of security for persons providing third-party bill payments in conjunction with loan acceleration services.
- Requires at least 50% of a license holder or applicant's net worth to be Tangible Net Worth. Current license holders who are not in compliance have a five-year phase-in requirement.
- Allows commissioner to order payment of restitution to harmed individuals in cease and desist orders conducting unlicensed money transmission.
- Authorizes administrative law judges to recommend a penalty amount less than the statutory maximum if the situation so warrants.



TEXAS DEPARTMENT OF BANKING

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To: Finance Commission Members

From: Kurt Purdom, Director of Bank & Trust Supervision

Date: June 2, 2017

Subject: Summary of the Bank & Trust Supervision Division Activities

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

* Third quarter performance measure numbers are not yet available.

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

The Department considers any bank with a Uniform Financial Institutions Composite Rating of 3, 4, or 5 to be a problem institution, requiring that remedial action be taken by the bank's board and management. As of this writing, problem institutions total 13. This level is consistent with last fiscal year-end and is well below the peak number of problem banks experienced during the last recession at 58. We consider the present number to be just above the normal range of between 3% and 5% of the total number of institutions. We anticipate that the number of problem institutions will be relatively stable over the next six months, however, we will continue to closely monitor banks that may be impacted by a protracted period of low oil prices or experience other increased risk factors.

Summary of the Bank & Trust Supervision Division Activities

Page 2

Administrative/Enforcement Actions (Number outstanding as of the date indicated)			FY 2017			
	8/31/2015	8/31/2016	11/30/2016	2/28/2017	5/31/2017*	8/31/2017
Banks - Safety and Soundness						
Formal	2	0	0	1		
Informal	14	19	21	20		
Banks - Bank Secrecy Act (BSA)						
Formal	1	0	0	0		
Informal	0	0	2	2		
Banks - Information Technology (IT)						
Formal	0	0	0	0		
Informal	2	0	0	2		
Trust Departments of Banks and Trust Companies						
Formal	0	0	0	0		
Informal	2	3	3	2		
Total Administrative/Enforcement Actions						
Formal	3	0	0	1		
Informal	18	22	26	26		
Total	21	22	26	27		

* Third quarter performance measure numbers are not yet available.

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

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

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

Compliance with Examination Priorities Percent of Examinations Conducted within Department Guidelines		
Entity Type	FY 2016	FY 2017 (YTD -April 2017)
Commercial Banks (All / DOB Only)	97% / 98%	91% / 96%
IT	98% / 100%	92% / 100%
Trust	94% / 94%	87% / 100%
Foreign Banks (FRB)	100%	100%
Trust Companies (DOB)	78%	100%
IT	94%	100%

Compliance with examination priorities for commercial banks at 91% is in line with the agency's goal of completing 90% of examinations within policy guidelines. Through seven months of the current fiscal year, eleven bank examinations were delayed, two of which were the Department's responsibility (averaged 16 days past due) and nine were the FDIC's responsibility (averaged 17 days). Delays in the Department's examinations were caused by resources being diverted to complete follow-up examinations of banks which

had been adversely affected by the decline in oil and gas commodity prices. Both of the Department's late examinations were in the first fiscal quarter; since then, no commercial examinations have been past due. Delays in FDIC examinations were caused by similar diversions of resources to more troubled institutions. Trust department examinations were delayed at two FDIC examinations resulting in performance which is below expectations.

Division Highlights

- **Cybersecurity Alert:** Division staff contacted banks via email and conference call to assess the possible impact of the WannaCry ransomware cybersecurity virus. Due to strong patch management processes, we found no impact on our supervised entities. Information about the impact was combined with other states' surveys and shared with the U.S. Department of Treasury.
- **Oil and Gas:** Division staff continues to closely monitor the impact that previously depressed, but now improved, crude oil prices are having on regulated institutions that report a concentration in oil and gas lending. Currently, 25 institutions are monitored on a quarterly basis. The number of monitored institutions is expected to decline as many of these banks are reducing their concentration risk. By and large, state banks have "weathered the storm." The overall outlook for the energy sector is cautiously optimistic as the stabilized price for oil is resulting in increased rig counts in Texas, which total 458 as of May 26, 2017, and have increased by 134 rigs since year-end 2016. The increase is largely confined to the Permian Basin and Eagle Ford Shale regions. Despite the increase in drilling activity, according to the Federal Reserve Bank of Dallas, oil patch employment will likely not return to pre-bust levels anytime soon due to higher operational efficiencies and increased automation.
- **Special Operations and Conferences:**
 - Director of Examination Support Activities Chris Robinson participated in a bank regulatory panel for the Mid-America Lenders Conference held in Austin on April 10, 2017.
 - Commissioner Charles G. Cooper met with FDIC Chairman Martin J. Gruenberg and his staff during a trip to Washington, D.C. on April 20, 2017. Discussion centered around current bank regulatory matters.
 - Commissioner Charles G. Cooper participated in the Sam Houston State University Banking Program on April 27, 2017 that recognized several Texas bankers for their lifetime of achievement to the industry.
 - Director Kurt Purdom participated in an Advisory Board Meeting of the Texas A&M Banking Program held in College Station on April 28, 2017.
 - Commissioner Charles G. Cooper, Deputy Commissioner Robert Bacon, Directors Kurt Purdom and Dan Frasier, and Regional Director Kenneth Kuntschik participated in the TBA's Annual Convention held in San Antonio beginning May 10, 2017.
 - Director Kurt Purdom gave a presentation to the Rotary Club of Austin – University Area on May 15, 2017 in Austin.

- Commissioner Charles G. Cooper, Director Kurt Purdom, Regional Director Larry Walker and Regional Review Examiner Tom Susany participated in the CSBS State Federal Supervisory Forum held in New Orleans the week of May 22, 2017. Commissioner Cooper was elected by the CSBS Board of Directors as Immediate Past Chairman and will continue to serve on the Executive Committee of the CSBS Board.



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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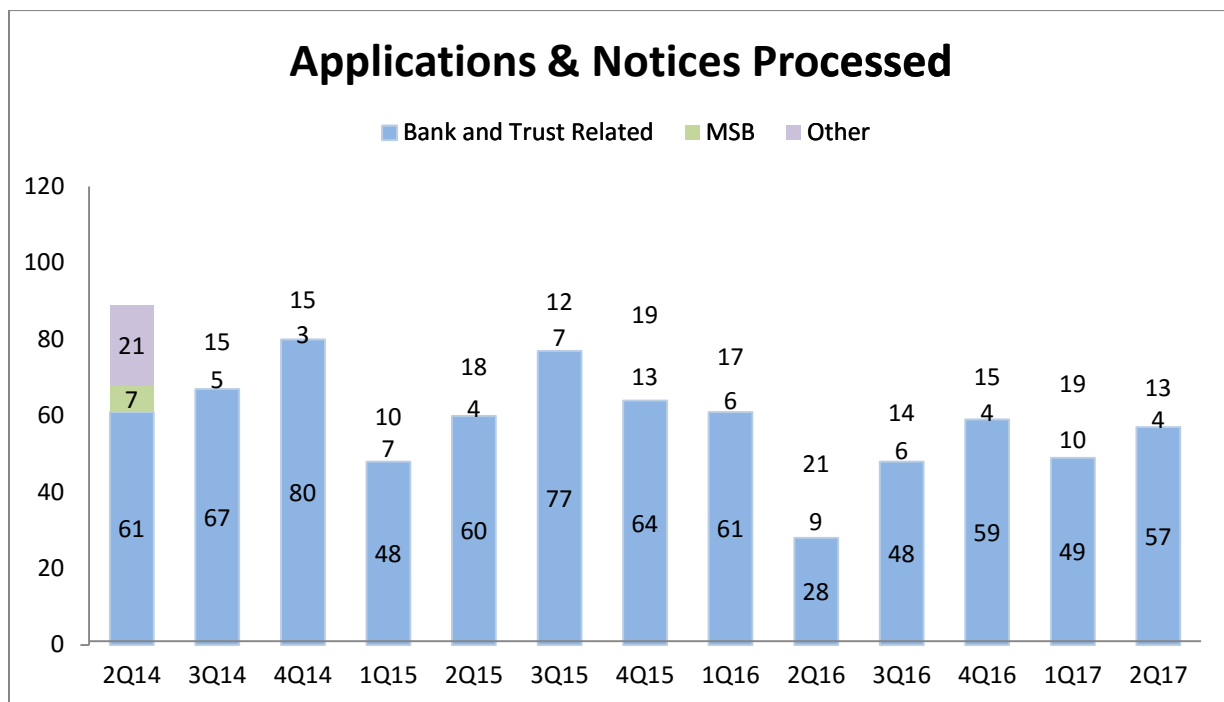
To: Finance Commission Members

From: Daniel Frasier, Director of Corporate Activities

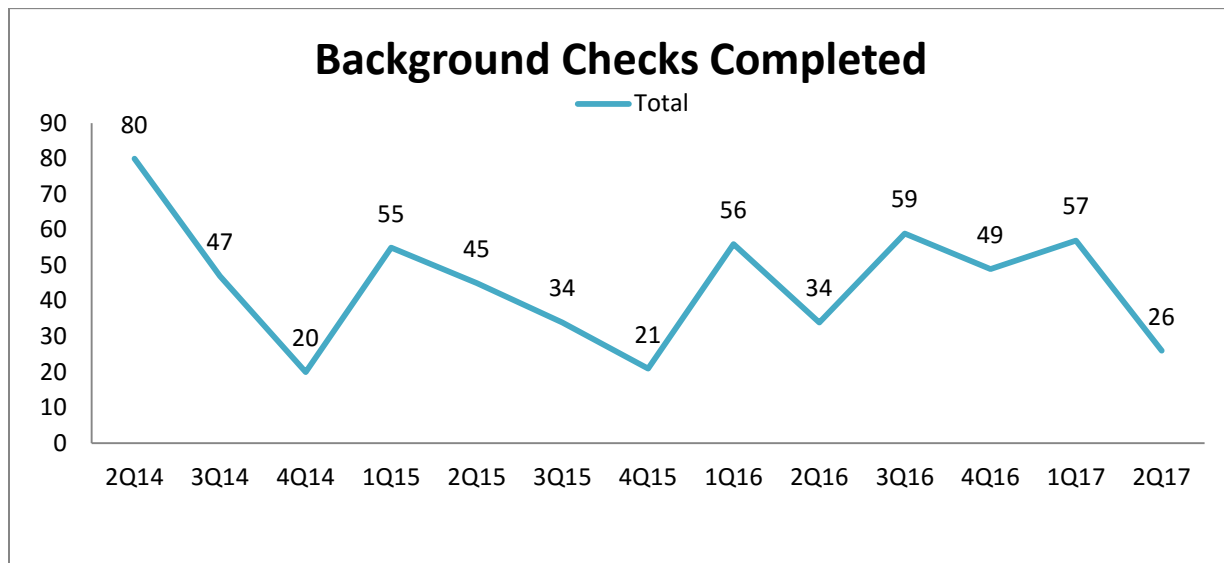
Date: May 31, 2017

Subject: Summary of the Corporate Division Activities

DBF



Fiscal 3Q17 information not available and will be presented at the next Finance Commission meeting.



Fiscal 3Q17 information not available and will be presented at the next Finance Commission meeting.

Entities/Activities	Applications and Notices Under Review (as of May 30, 2017)
Bank Related	7
Trust Companies	3
Money Services Business (MSB)	10
Others	1
Totals	21

*Branches of Commercial Banks in Texas				
Date	# of Commercial Banks	Number of Branches	Year over Year Change in Branches	\$ of Deposits
June 30, 2010	679	6,965	-	\$499 Billion
June 30, 2011	663	6,875	-1.29%	\$544 Billion
June 30, 2012	648	6,856	-0.28%	\$599 Billion
June 30, 2013	612	6,853	-0.04%	\$652 Billion
June 30, 2014	579	6,808	-0.66%	\$719 Billion
June 30, 2015	556	6,730	-1.15%	\$730 Billion
June 30, 2016	541	6,682	-0.71%	\$769 Billion

*Source – FDIC Deposit Market Share Report for all FDIC insured institutions. The number of branches in Texas peaked in 2010.

Division Highlights

- The volume of completed trust and MSB application activity was similar to that experienced in the second fiscal quarter while that of bank applications moderately declined.
- The Department approved a de novo bank application for The Bank of Austin, Austin, Texas, and is the first such approved filing since 2009. The bank is anticipated to open for business by the end of June with at least \$31 million in capital.
- Chartering, Conversion, and Merger Activity – The following transactions have consummated since Corporate’s last report to the Finance Commission:
 - *Banks*
 - AimBank, Littlefield, Texas, completed its acquisition merger of Muleshoe State Bank, Muleshoe, Texas
 - Pinnacle Bank, Keene, Texas, completed its acquisition merger of Woodhaven Bank, Fort Worth, Texas

Finance Commission Memorandum

Corporate Activities

- *Trust Companies*
 - American International Investment Corporation, Kerrville, Texas, completed its dissolution and liquidation
- Conferences, Conventions, and Committee Meetings – Corporate participated in the following meetings since the last report to the Finance Commission:
 - Director of Corporate Activities Dan Frasier attended the Texas Bankers Association Annual Convention



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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To: Finance Commission Members

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

Date: June 1, 2017

Subject: Summary of the Special Audits Division Activities

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

NOTES:

PCC \$ amounts reflected in the millions.

Limited scope examinations do not receive a rating.

*Third quarter fiscal year 2017 data has not been finalized and will be provided in the next summary.

Division Activities

During the week of April 24th, Director Reese and Senior Examiner Gonzalez were instructors at a training seminar for regulators of money services businesses during MTRA's Beginning Examiner Operation School in Austin, Texas. Forty-one examiners from various states attended the training seminar.

On April 24-25th, Deputy Commissioner Newberg and Senior Examiner Stuart-Garza gave presentations on perpetual care regulations to the members of the Texas Cemeteries Association (TCA) during their 2017 Annual Convention in Allen, Texas.

On May 18th, a Prepaid Funeral Guaranty Fund Advisory Council (Council) meeting was held in Austin, Texas. The Council ratified Trust Guaranty Fund claims totaling \$1,917.00 related to Tom G. Walker Funeral Home, Coleman, Texas, claims totaling \$5,659.00 related to Walker-Mora Funeral Home, Alice, Texas, and claims totaling \$26,522.05 related to El Paso Mission Funeral Home, El Paso, Texas.

On June 5th, Review Examiner Saucillo and Senior Examiner Dahlquist will give a presentation on prepaid funeral contract regulations to the members of the Texas Funeral Directors Association (TFDA) during their 2017 Annual Convention in Austin, Texas.


On June 19-20th, 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.



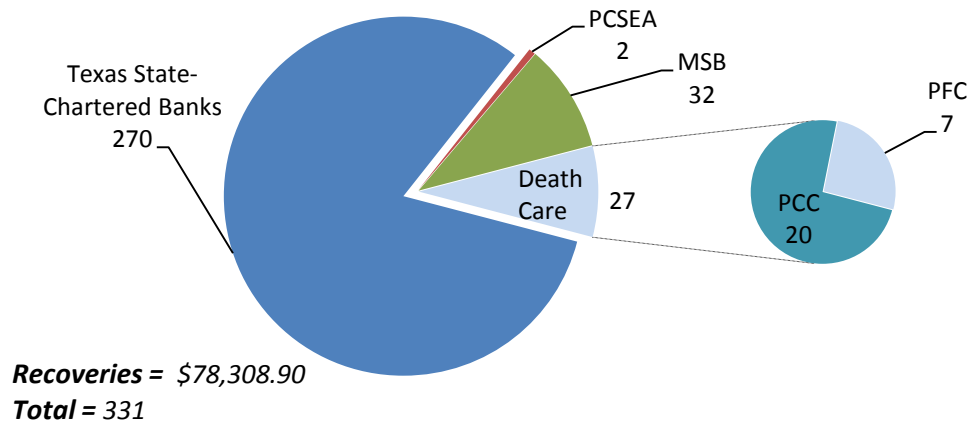
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Commissioner

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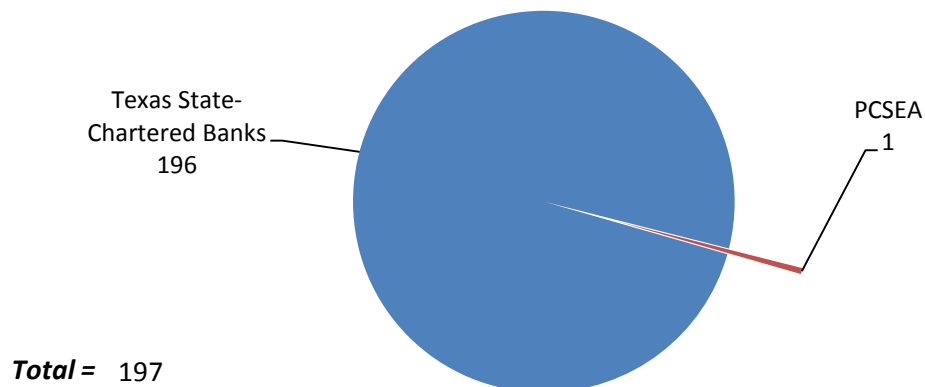
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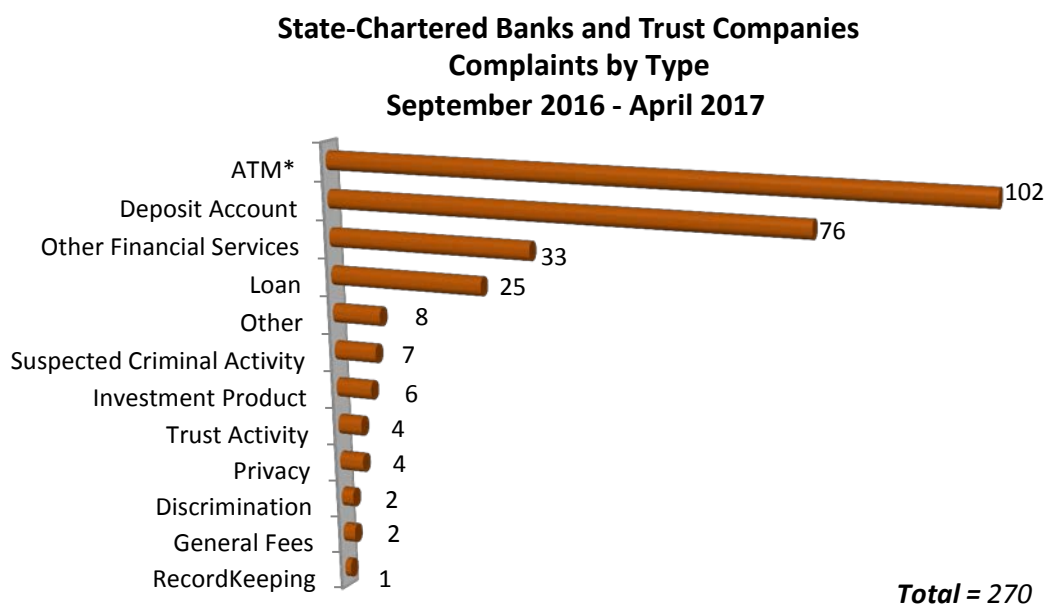
To: Finance Commission Members
From: Wendy Rodriguez, Director of Strategic Support 
Date: June 1, 2017
Subject: Summary of the Strategic Support Division Activities

Complaints on Regulated Entities September 2016 - April 2017

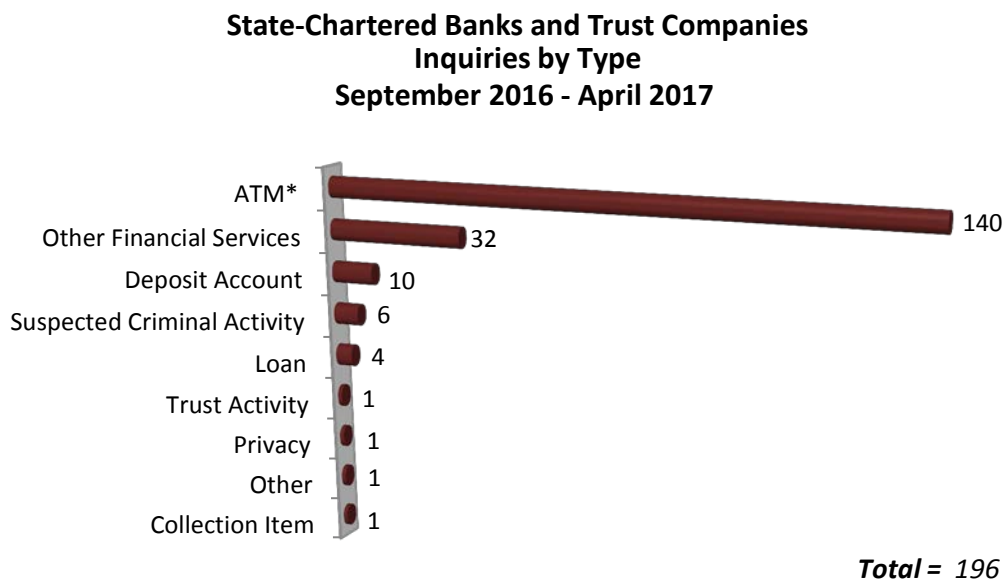


Inquiries on Regulated Entities September 2016 - April 2017



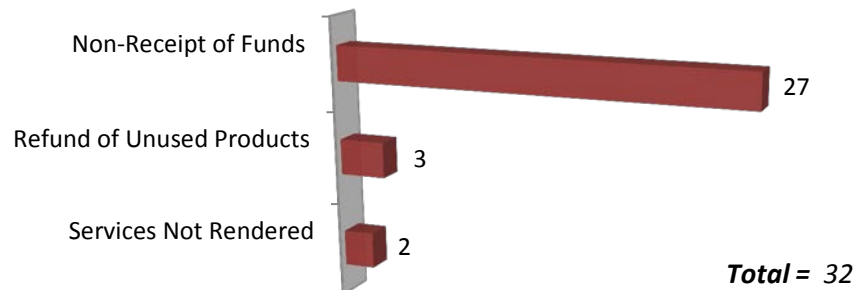


*Activity related to a single state bank. Consumer complaints range from needing clarification of the notice to account balance issues and card related problems.

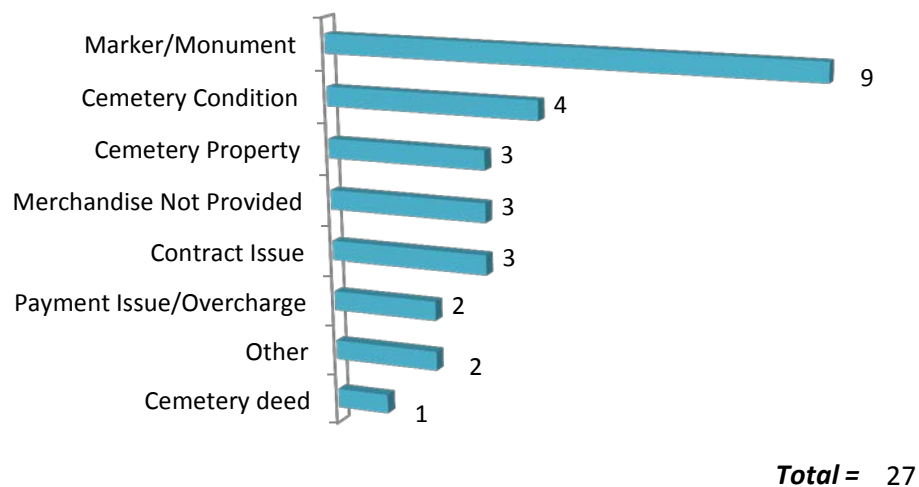


* Activity related to a single state bank. Activity related to consumers inquiring about their funds serviced by one institution.

Money Services Businesses Complaints by Type
September 2016 - April 2017

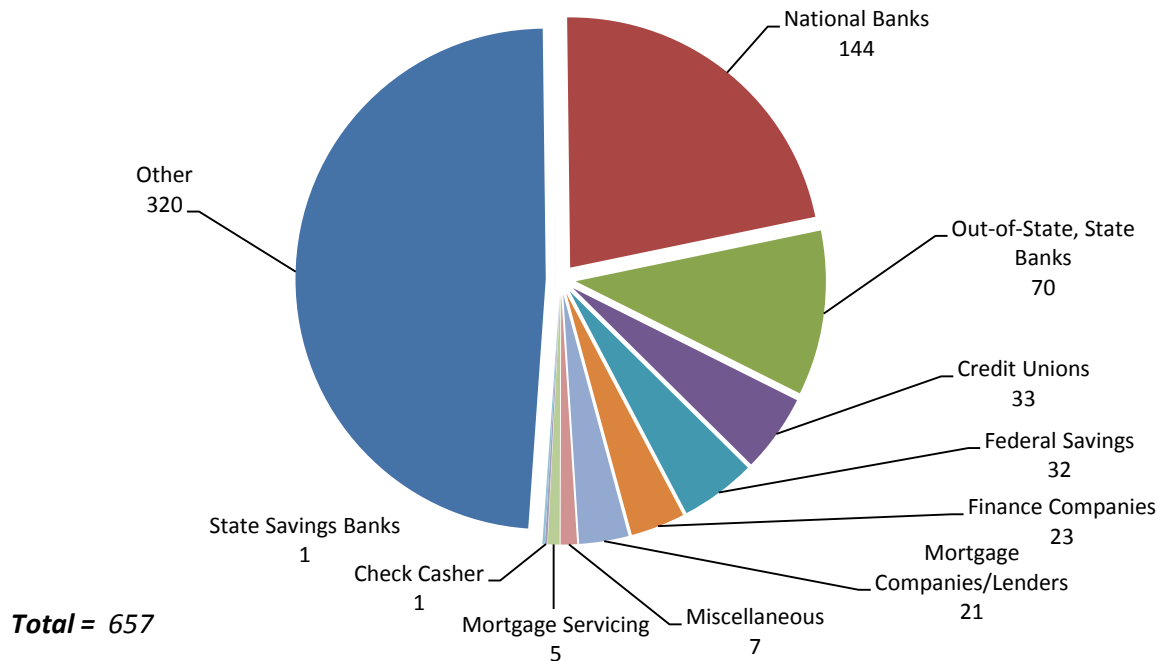


PFC/PCC Complaints by Type
September 2016 - April 2017



Complaints and Inquiries Against Nonregulated Entities

September 2016 - April 2017



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

Average Number of Days to Close a Written Complaint

Type	Sept. 2016 – Apr 2017
State-Chartered Banks	10
Trust	N/A
PCSEA	10
PFC/PCC	34
MSB	39

CANS ACTIVITY

January 1, 2014 – May 31, 2017

Entity	Enrolled	Compromised Accounts Reported
Texas State-Chartered Banks	221	933
Texas State-Chartered Savings Banks	25	51
Federal Savings Banks	10	80
State Credit Unions	132	876
Federal Credit Unions	229	616
National Banks	170	259
Out-of-State State-Chartered Banks	11	40
Out-of-State National Banks	6	15
Total	804	2,870

Bank Examination Testing System (BETS) Activity

Number of Candidates Passing Each Phase

	FY 2014	FY 2015	FY 2016	FY 2017 As of 5/31/17
I. General Knowledge	5	8	9	5
II. Loan Analysis	2	2	4	1
III. Panel	2	4	3	2
IV. Test Bank	1	4	2	2
Total FE3	14	19	18	25

Promotions

From FE3 to FE4 (Commissioned Examiner)	2	4	2	2
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Other Divisional Items:

- *Sunset Review*
 - The agency has begun to prepare the Self Evaluation Report (SER) for the 2018-2019 Sunset Review of the Department. Deputy Commissioner Stephanie Newberg and Wendy Rodriguez attended the initial meeting with Sunset Commission staff on May 31, 2017. The agency must submit the completed SER by September 1, 2017. The date for our review has not yet been finalized.
- *Town Hall Meetings*
 - The Department will be hosting four town hall meetings as part of its continued outreach efforts for the Community Banking in the 21st Century initiative. Town halls will be held in Dallas on July 10th, San Antonio on August 1st, College Station on August 2nd, and Lubbock on August 16th.
- *Financial Education*
 - May 23 2017 – The Department of Banking hosted a free financial education webinar in an effort to provide information about the Texas Financial Education Endowment (TFEE). There were ninety-five registrants.

- May 5, 2017 – The Jump\$tart Coalition Board Meeting at the Federal Reserve Bank of Dallas was attended by Ms. Leilani Lim-Villegas, who is an Advisory Board member. The strategic planning session was intended to brainstorm ideas on increasing membership.
- Month of May – Ms. Leilani Lim-Villegas attended various school assemblies and graduation ceremonies to present recipients of the \$mart Kid Essay scholarship with their certificate and winnings. A total of \$5,500 in scholarships was awarded this year.
- *Policy*
 - Administrative Memorandum (AM) 2043
 - AM 2043 regarding visitations and interim risk examination and assessment program (IREAP) was updated on April 28, 2017. Changes were made to conform this policy to sections of Supervisory Memorandum 1003. Modifications included clarifying that a Level I Full Scope examination would be performed if the CAMELS composite rating drops to a 5 and there is a possibility the bank would fail within 12 months. Another revisions includes the expansion of the documentation requirements for the IREAP examination.
- *Finance Commission Website*
 - Initial design layouts for the Finance Commission website have been approved. The build out of the site will take place in the month of June. The transfer of content will follow in July after the full design has been built and is ready for content.



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, 2017
RE: Legal Division Update

Litigation

Claim by the Texas Department of Banking against the estate of Felix Trevino Morales, Docket No. 442502, in Probate Court No. 2 of Harris County, Texas. On July 1, 2016, the Department of Banking filed a claim for \$12,545.00 against the estate of Felix Trevino Morales. Mr. Morales owned and operated Trevino & Sons Funeral Home in Houston where he sold prepaid funeral benefits without the necessary permit. The Department was seeking restitution to customers who purchased prepaid funeral benefits from Mr. Trevino when he was not authorized to sell them. Our claim was allowed by the executrix of the estate, but the probate case was dropped from the active docket before it was paid. The case was reinstated on January 12, 2017. On March 6, 2017, the Office of Attorney General presented an updated claim to the executrix for \$11,005 based on information that one purchaser had been issued a refund and another had passed away and the funeral services were performed; the claim was accepted on March 9, 2017.

Claim by the Texas Department of Banking against the estate of Bobby Royce Bankston, Docket No. P17-13928, in Hopkins County, Texas. Mr. Bankston, as owner and operator of Memorial Monuments and Apple Casket, Sulphur Springs, sold prepaid funeral merchandise to customers without the necessary permit. Mr. Bankston died on November 17, 2016. On March 17, 2017, the Office of Attorney General filed a claim against the estate for \$101,521.83, which is the amount paid on 61 contracts that are still outstanding. The attorney representing the estate has rejected the claim. We are attempting to facilitate a resolution between the estate and the individuals who purchased the business prior to Mr. Bankston's death. If that does not materialize, we will file our claim directly with the probate court.

Gifts

The Texas Bankers Association waived a registration fee (valued at \$725.00) for Commissioner Charles G. Cooper to attend the 2017 Annual Convention held May 10 – 12 in San Antonio, Texas.

Orders

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

Special Audits

- Order No. 2017-003, dated 4/7/2017; Assembly Payments, Inc., St. Louis, MO
This order imposed a \$23,700 penalty for unlicensed money transmission.
- Order No. 2017-004, dated 4/10/2017; VendEngine, Inc., d/b/a Jailfunds.com, Brentwood, TN
This order imposed a \$23,700 penalty for unlicensed money transmission.

Bank and Trust

- Order No. 2017-002, dated 4/3/2017; First Community Bank, N.A., San Benito (conversion)
- Order No. 2017-006, dated 5/8/2017; American International Investment Corporation, Kerrville (voluntary dissolution of trust company)
- Order No. 2017-007, dated 5/8/2017; The Bank of Austin (de novo charter)
- Order No. 2017-008, dated 5/23/2017; Sage Trust Company LTA, Houston (de novo trust company)