

**A.**

**Finance Commission**

*This page left blank intentionally.*



## FINANCE COMMISSION OF TEXAS

**MEETING DATE** .....August 18, 2017

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

**CONTACT INFORMATION**.....Phone: (512) 936-6222  
Email: [Finance.Commission@fc.texas.gov](mailto:Finance.Commission@fc.texas.gov)  
Website: [www.fc.texas.gov](http://www.fc.texas.gov)

**FUTURE MEETING DATES** ..... October 20, 2017  
December 15, 2017

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

*This page left blank intentionally.*



# FINANCE COMMISSION AGENDA

Friday, August 18, 2017

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

Finance Commission Building  
William F. Aldridge Hearing Room  
2601 N. Lamar Blvd.  
Austin, Texas 78705

*Section A.3 will take up the following agenda items with NO DISCUSSION as notated in bold and italicized A1, B2 and B3*

*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 June 16, 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 Agencies' May 31, 2017 Investment Officer Reports**

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

##### **B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Texas Department of Banking's 2017 Annual Internal Audit Report as Prepared and Presented by Garza/Gonzalez and Associates**

##### **C. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Office of Consumer Credit Commissioner's 2017 Annual Internal Audit Report as Prepared and Presented by Garza/Gonzales and Associates**

##### **D. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2017 Third Quarter Financial Statements**

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

- E. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' Fiscal Year 2018 Operating Budgets
  - 1. Office of Consumer Credit Commissioner
  - 2. Texas Department of Banking
  - 3. Office of Savings and Mortgage Lending
- F. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action to Approve an Amount for the Upcoming 2018-19 Grant Cycle for the Texas Financial Education Endowment Fund
- G. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Readoption of the Investment Policy for the Texas Department of Banking
- 6. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 1, Chapter 9, §9.1 and §9.12, Regarding Contested Case Procedures
- 7. Discussion of and Possible Vote to Take Action on the Agency Priorities for Fiscal Year 2018 for the Commissioners of the Office of Consumer Credit Commissioner, Texas Department of Banking, and the Department of Savings and Mortgage Lending
- 8. Discussion of and Possible Vote of a Resolution Supporting the Finance Commission Agencies in the Sunset Process
- 9. Discussion of and Possible Vote to Take Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Duties and Compensation of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to the Duties and Compensation of Persons Holding the Position of Agency Commissioner Positions, and Other Staff
- 10. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to §551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property
- 11. Discussion and Consultation with Attorney and Possible Vote to Take Action Pursuant to §551.071, Texas Government Code, for the purpose of seeking the advice or attorney-client privileged communications from our attorneys, including matters related to the potential financial exposure of the Finance Commission Agencies and their officers and the Finance Commission and its officers and including matters of pending and contemplated litigation

**B. OFFICE OF CONSUMER CREDIT COMMISSIONER**

- 1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities
- 2. *Discussion of and Possible Vote to Take Action on the Adoption of 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 Adoption of Amendments to 7 TAC, Part 5, Chapter 84, Concerning Motor Vehicle Installment Sales, and the Adoption of a New Rule in Chapter 86, Concerning Retail Creditors*

4. Discussion of and Possible Vote to Take Action on the Proposed Repeal of 7 TAC, Part 1, Chapter 4, Concerning Credit Card Surcharge Appeal Procedures
5. Discussion of and Possible Vote to Take Action on the Completed Rule Review of 7 TAC, Part 5, Chapter 89, Concerning Property Tax Lenders
6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments, New Rules, and Repeals in 7 TAC, Part 5, Chapter 89, Concerning Property Tax Lenders, Resulting from Rule Review
7. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

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

#### **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

#### **D. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING**

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

**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.

*This page left blank intentionally.*

**MINUTES OF THE  
FINANCE COMMISSION MEETING  
Friday, June 16, 2017**

The Finance Commission of Texas convened at 8:38 a.m. on June 16, 2017 with the following members present:

**Finance Commission Members in Attendance:**

Stacy G. London, 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 ten members present.  
(00:01) start of discussion)

Stacy G. London made a motion to excuse Jay Shands from the Finance Commission meeting held on June 16, 2017. There were no objections and the motion passed unanimously. (00:16)

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<b>A. FINANCE COMMISSION MATTERS</b>		
1. Review and Approval of the Minutes of the April 21, 2017 Finance Commission Meeting	<b>On Consent Agenda – Item A1</b> This item Approved on the Consent Agenda.	00:33 start of discussion
2. General Public Comment	No Action Required.	00:46 start of discussion
3. Consent Agenda – Item A1	Vince Puente made a motion to Approve Consent Agenda item A1. Will Lucas seconded and the motion passed.	1:06 start of discussion 1:26 vote
4. Finance Commission Operations	No Action Required.	1:50 start of discussion
5. Audit Committee Report		18:20 start of discussion

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Department of Savings and Mortgage Lending's Report on Thrift Examinations as Prepared and Presented by Garza/Gonzalez and Associates	Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Department of Savings and Mortgage Lending's Report on Thrift Examinations as Prepared and Presented by Garza/Gonzalez and Associates passed.	18:27 start of discussion 18:42 vote
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	Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Texas Department of Banking's Audit Report on Fixed Asset Management as Prepared and Presented by Garza/Gonzalez and Associates passed.	18:50 start of discussion 19:01 vote
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	Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Revised Texas Financial Education Endowment (TFEE) Fund Grant Administration & Advisory Policy Manual and 2018-2019 Funding Priorities, as amended with corrections on Pages 76 and 81 passed.	19:21 start of discussion 19:27 vote
D. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Appointment of a New Grant Advisory Committee Member	Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Appointment of a New Grant Advisory Committee Member passed.	19:41 start of discussion 19:52 vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
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	Coming upon Recommendation from the Audit Committee, no second is needed and the motion to Reapprove the Internal Auditor Contract for Garza/Gonzalez & Associates for Fiscal Year 2018 passed.	20:01start of discussion 20:11 vote
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	Molly Curl made a motion to Approve the Proposal and Publication for Comment of Amendments to 7 TAC, Part 1, Chapter 9, §9.1 and §9.12, Regarding Contested Case Procedures. Lori McCool seconded and the motion passed.	20:27 start of discussion 30:38 vote
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	Deferred to Executive Session – no vote taken.	n/a
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	Deferred to Executive Session – no vote taken.	n/a

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
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	Deferred to Executive Session – no vote taken.	n/a
<b>B. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING</b>		
1. Industry Status and Departmental Operations - State Savings Bank Activity: a) Industry Status; b) State Savings Bank Charter and Application Activity; c) Other Items	No Action Required.	31:17 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.	33:25 start of discussion
3. Fiscal/Operations Activity: a) Funding Status/Audits/Financial Reporting; b) Staffing; and c) Other Items	No Action Required.	40:55 start of discussion
4. Legal Activity: a) Enforcement; b) Gift Reporting; and c) Legislative Activities	No Action Required.	41:29 start of discussion



AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<p>5. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation</p> <p><i>Catherine Sims vs. Texas Department of Savings and Mortgage Lending, Cause No. D-1-GN-16-001194, 201<sup>st</sup> District Court, Travis County, Texas</i></p>	No Action Required.	n/a
<b>C. OFFICE OF CONSUMER CREDIT COMMISSIONER</b>		
<p>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</p>	No Action Required.	58:12 start of discussion
<p>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</p>	Vince Puente made a motion to Approve the Proposal and Publication for Comment of New Rules in 7 TAC, Part 1, Chapter 7, Concerning the Texas Financial Education Endowment Fund. Molly Curl seconded and the motion passed.	1:24:58 start of discussion 1:27:59 vote
<p>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</p>	Phillip Holt made a motion to Approve 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. Will Lucas seconded and the motion passed.	1:27:56 start of discussion 1:45:43 vote
<p>4. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation</p> <p><i>Lynn Rowell d/b/a Beaumont Greenery,</i></p>	No Action Required.	n/a

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<i>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</i>		
<b>D. TEXAS DEPARTMENT OF BANKING</b>		
1. Industry Status and Departmental Operations: a) Items of Interest from the Commissioner's Office; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Special Audits Division Activities; e) Administrative and Fiscal Division Activities; f) Strategic Support Division Activities; g) Legal Division Activities; h) Legislative Activities; and i) General Items of Interest	No Action Required.	1:47:08 start of discussion

Chairman Stacy G. London called for an Executive Session at 11:17 a.m. (2:25:09 on the audio file). The open meeting resumed at 11:50 A.M. (2:25:24 on the audio file).

There being no further business, Chairman Stacy G. London adjourned the meeting of the Finance Commission at 11:51 a.m. (2:25:40) on the audio file).

---

Stacy G. London, Chairman  
Finance Commission of Texas

---

Charles G. Cooper, Commissioner  
Texas Department of Banking

---

Anne Benites, Executive Assistant  
Finance Commission of Texas

## **Finance Commission of Texas**

# **Consent Agenda**

August 18, 2017

### **A. Finance Commission Matters**

1. Review and Approval of the Minutes of the June 16, 2017 Finance Commission Meeting

### **B. Office of Consumer Credit Commissioner**

2. Discussion of and Possible Vote to Take Action on the Adoption 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 Adoption 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

## Future Meetings Rule Schedule

<b>Rules</b>	<b>Short Title/Purpose</b>	<b>Projected Proposal Date for Presentation to Finance Commission</b>	<b>Agency</b>
7 TAC, Part 1, Chapter 2	Residential Mortgage Loan Originators Applying for Licensure with the OCCC Under the SAFE Act - <i>New Rule</i>	10/20/17	OCCC
7 TAC, Part 5, §83.503 & §90.203	Regulated Lenders & Plain Language Contract Provisions - administrative fee - <i>Amendments</i>	10/20/17	OCCC
7 TAC, Part 2, Chapter 33	Bullion Depository Agents	10/20/17	DOB
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>	10/20/17	SML
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 Companies – delete part of physical office definition and create <i>New Rule</i>	10/20/17	SML
7 TAC, Part 8, Chapter 153	Home Equity Lending - <i>Amendments</i>	10/20/17	Joint Fin. Agencies

**A. FINANCE COMMISSION MATTERS**

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

**PURPOSE:** The purpose of the amendments is to clarify the procedures used by the finance agencies to dispose of a contested case in the event of default. The 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 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 without changes as previously published in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we approve 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) adopts 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 commission adopts the amendments to §9.1 and §9.12, without changes to the proposed text as published in the June 30, 2017, issue of the *Texas Register* (42 TexReg 3329).

The commission received one written comments on the proposal from the Consumer Service Alliance of Texas (CSAT). The commission's responses to the official comment received are included after the purpose discussions following each respective rule provision receiving comments.

The purpose of the adopted 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 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 adopted 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 were incorporated into the proposal and those suggestions have been maintained for this adoption.

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

The purpose of the adopted amendment to §9.1 is to clarify that an agency must follow the requirements of 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 adopted amendment to §9.1 states that 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 adopted 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 adopted amendments also add a new subsection (b) to §9.12. Subsection (b) specifies the default procedures that apply to hearings conducted by SOAH. The 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.

The official commenter recommended adding a provision stating that "[a]n order issued by an agency after default has no precedential or evidentiary value in a subsequent action against another licensee alleging the same, or similar, violations." The commission disagrees with this suggestion for the following reasons.

The commenter cites to a 1996 Texas Supreme Court case regarding the use of an uncontested judgment against a third party insurance company. *See State Farm Fire & Cas. Co. v. Gandy*, 925 S.W.2d 696 (Tex. 1996). The commenter summarizes the *Gandy* holding as "a default judgment against licensee A has no precedential or evidentiary value against Licensee B in a subsequent, similar case." The agencies disagree with the commenter's interpretation of the *Gandy* case. The agencies believe the *Gandy* case supports a different, more narrow conclusion: that it would violate public policy to allow a defendant to enter into an uncontested judgment with a plaintiff and assign to the plaintiff the defendant's cause of action against his insurance company, using the judgment as evidence

against the insurance company. *Id.* at 710 (citing *International Proteins Corp. v. Ralston-Purina Co.*, 744 S.W.2d 932, 934 (Tex. 1988)).

The commenter also states that it would be unfair to give precedential value to default orders because they are not published and cannot be discovered or reviewed by licensees. In fact, a list of all OCCC and SML orders are published on their respective websites, and a copy of each order may be obtained by written request. Therefore, it is fair and consistent to give all final orders proper effect. It is the role of the administrative law judge, and reviewing courts, to determine the proper evidentiary and precedential value of individual orders.

Finally, the commenter states: "A case prepared, and a final order issued, without a fully adversarial trial should not be admissible as evidence against another licensee at a later date." The OCCC and SML issue hundreds of orders each year, but only a few after a full adversarial trial. Again, it is fair and consistent to give all final orders proper effect, which should be determined by an administrative law judge and reviewing courts.

Allowing a court to recognize the precedential or evidentiary value of default orders reduces the need to use substantial agency resources to relitigate facts and issues. This is consistent with the purpose of the default rule, which is to best utilize agency resources by efficiently disposing of defaulted cases.

Therefore, for the reasons outlined in the preceding paragraphs, the commission maintains the proposed language for this adoption and declines to add the commenter's suggestion.

The amendments are adopted 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 adopted 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 adoption 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, [If,] 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 adoption has been reviewed by legal counsel and found to be within the agencies' legal authority to adopt.

Issued in Austin, Texas on August 18, 2017.

Michael Rigby  
General Counsel  
Office of Consumer Credit Commissioner



Date: July 18, 2017

To: Laurie Hobbs  
Assistant General Counsel  
Office of the Consumer Credit Commissioner

From: Consumer Service Alliance of Texas

Re: Proposed Rule: Finance Agencies --- Contested Case Default Rule Amendments  
*Title 7. Texas Administrative Code*  
*Part 1. Finance Commission of Texas*  
*Chapter 9. Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings sections 9.1 and 9.2*

---

These comments are provided by the Consumer Service Alliance of Texas ("CSAT") regarding the Finance Commission's proposed amendments to the rules related to contested case defaults.

CSAT appreciates the opportunity to comment on the proposed amendments and to clarify a portion of our earlier comments to the Notice of Precomment Rule Draft. We also would like to express our appreciation to the finance agencies for their careful consideration of the informal written precomments and the corresponding changes made to the proposed amendments. We are available to answer any questions the Finance Commission or the Office of the Consumer Credit Commissioner ("OCCC") may have about these comments.

#### **Information about CSAT**

CSAT is a non-profit trade association that advocates for the protection of financial choice based on informed decision-making and personal responsibility for Texas consumers. CSAT represents the interests of consumers and credit access businesses in the Texas marketplace.

A credit access business ("CAB") provides retail financial products and services to Texas consumers. From stores in neighborhoods across the state, hardworking Texans have access to small, short-term loans; motor vehicle title loans; money orders; pre-paid telephone and debit cards; and other services to help them manage their finances.

CSAT's mission is to work cooperatively with industry, consumers, and government officials to help ensure Texans have access to short-term credit through financial services products in compliance with the law.

### CSAT Comments

We have no objection to a more streamlined process to deal with an enforcement action in when a licensee does not respond to the Notice of Hearing. Any order that is crafted after default --- which is, by definition, **uncontested** --- should be limited in evidentiary and precedential value to the licensee(s) identified in the Notice of Hearing and to the parties who were properly and legally served with notice.

Prior violations are, and should, be relevant in determining the appropriate sanction for subsequent violations --- **for the same licensee**. Texas Finance Code section 14.253(c)(3) provides "[i]n determining the amount of an administrative penalty, the [consumer credit] commissioner shall consider... the history of violations."

The rule of law in Texas is settled for default judgments and **different licensees**. In a 1966 decision, the Texas Supreme Court held a judgment for a plaintiff against a defendant, **rendered without a fully adversarial trial**, is not binding on a third party or admissible as evidence against a third party in an action by the plaintiff against the third party. See State Farm Fire & Cas. Co. v. Gandy, 925 S.W.2d 696, 713-714 (Tex. 1996).

Practical considerations based on the notions of equity and fairness also support the decision the Texas Supreme Court reached in Gandy --- that a default judgment against licensee A has no precedential or evidentiary value against Licensee B in a subsequent, similar case. Default judgments are not published. Absent periodic, systematic public record requests, licensees have no method to review orders that could be used as precedent in future enforcement actions.

Licensees who default are not plagued by ineffective representation. By the nature of their default, they have no representation at all. The enforcing agency drafts an order that is not reviewed, much less contested, by anyone. A case prepared, and a final order issued, without a fully adversarial trial should not be admissible as evidence against another licensee at a later date.

The proposed rule should clarify that the allegations, arguments, interpretations and conclusions of law or rules contained in a final order issued by an agency after "the administrative law judge remands the case to the agency based on a finding of default" are binding only on the parties to that order who have been properly served --- and have no precedential or evidentiary value against other licensees that may face the same, or similar, allegations in the future. Those licensees have the right to contest the allegations made against them without having to also litigate the evidentiary value of a previous order crafted solely by the agency because of a default by another licensee.

Proposed clarification language could include:

Section 9.12. Default

(3) Evidentiary value of order after default. An order issued by an agency after default has no precedential or evidentiary value in a subsequent action against another licensee alleging the same, or similar, violations.

The amendment would clarify that an order created under this rule only applies to parties identified in the order and served with the order. Thank you again for the opportunity to participate. Please consider these thoughts as you move forward in the rule making process.

**For More Information**

For more information about these comments by CSAT, please contact the following: Robert W. Norcross, Jr., Vianovo, LP, DFW Office, 302 Bowie St., Roanoke, Texas 76262, telephone 817-491-7110, fax 817-719-9200, email EMAIL REDACTED ; or Michael Grimes, Imperium Public Affairs, 1122 Colorado St., Suite 2320, Austin, Texas 78701, telephone 512-476-8880, email EMAIL REDACTED .

# Office of Consumer Credit Commissioner

## Agency Priorities

FY 2018

### 1. LEGISLATIVE

#### 1.1. Mandated Studies.

**1.1.1. Objective: Legislative Interim Studies.** The agency expects to participate in interim studies and provide resource information and research. Generally interim studies in each house encompass some area within the agency's jurisdiction or area of knowledge.

**Measure:** Response to requested resource information. Regular communication with the Finance Commission regarding interim legislative activity.

#### 1.2. Sunset Review

**1.2.1. Objective: Provide Requested Information for Sunset Review Process.** The agency's scheduled sunset date is September 1, 2019. The agency will be under review by the Sunset Commission in the 2018-2019 review cycle. The process includes a self-evaluation by the agency, review by Sunset staff, public hearings, and recommended legislative action.

**Measure:** Prepare self-evaluation report and respond to requests for information from the Sunset Commission. Maintain communication with Sunset staff to convey information about the agency and its mission.

### 2. REGULATORY ACTIVITIES

#### 2.1. Regulated Entities.

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

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

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

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

**2.1.3. Objective:** Identify improvements and refinements for the Annual Report, Complaint, Examination (ACE) Tool to provide improved efficiency and consistency of reporting.

**Measure:** Reporting on improvements and training sessions held for examiners to communicate enhancements to the ACE Examination Tool.

## **2.2. Licensing.**

**2.2.1. Objective:** Process 80% of license applications within 60 days from received date to completion date. Work with industry and stakeholders to encourage 85% of external pawn employee applicants to submit applications online. Digitize all historical license information into accessible database.

**Measure:** Report on license activities, benchmarks, application processing status, and imaging project.

## **3. POLICY AND RULE DEVELOPMENT**

### **3.1. Agency Rules.**

**3.1.1. Objective:** Rule Review. Complete rule reviews of 7 TAC Chapter 83, Subchapter B, Rules for Credit Access Businesses (last reviewed FY 2014) ; 7 TAC Chapter 85, Subchapter B, Rules for Crafted Precious Metal Dealers (last reviewed FY 2014); and 7 TAC Chapter 88, Consumer Debt Management Services (last reviewed FY 2014).

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

**3.1.2. Objective:** Rule Development. Work with interested stakeholders from all stakeholder groups to clarify and improve rules as issues arise during licensing, complaints, investigations, examinations, enforcement actions, or from other sources. Continue to hold and refine stakeholder webinars to increase stakeholder engagement in rule development process. Draft rule amendments as appropriate.

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

## **4. CONSUMER ISSUES / COMMUNICATION & OUTREACH STRATEGIES**

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

**4.1.1. Objective:** Manage grant solicitation, application review, selection, reporting and funding for the FY 2018-2019 grant cycle.

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



## **4.2 Financial Literacy**

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

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

## **4.3. Industry**

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

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

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

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

## **5. AGENCY MANAGEMENT**

### **5.1. Performance Measures.**

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

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

### **5.2. Human Resources.**

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

**Measure:** Thoroughly review exit interviews to identify improvements to support retention. Report on turnover ratio and cross-training initiatives. Maintain competitive financial examiners salaries compared to peers.

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

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

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

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

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

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

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

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

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

### **5.4. Information Technology.**

**5.4.1. Objective: Legacy Modernization.** Continue enhancements to the Application, Licensing, Examination, Compliance System (ALECS), improving functionality and security.

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

**5.4.2 Objective: Increase Agency Security Posture.** Using the recommendations developed by the external DIR-contracted vendor during the security assessment in FY17, the OCCC will move toward increasing agency maturity levels for objectives in the Texas Cybersecurity Framework.

**Measure:** Activity reporting on the roadmap with timelines for implementation of recommendations: The OCCC will implement all mid-term recommendations within FY18. Long-term recommendations will be evaluated for implementation by the end of FY 2018.

# OCCC Annual Targets for Performance Measures

Fiscal Years 2017 and 2018

Key Output Measures		FY 2017	FY 2018
1-1-1	COMPLAINT RESOLUTION		
	1. # COMPLAINTS CLOSED	2,100	2,100
	2. # INVESTIGATIONS CLOSED	87	80
2-1-1	EXAMINATION AND ENFORCEMENT		
	1. # COMPLIANCE EXAMINATIONS PERFORMED	4,087	4,200
2-1-1	LICENSING		
	1. # BUSINESS APPLICATIONS PROCESSED	1,500	1,600
	2. # INDIVIDUAL LICENSES PROCESSED	2,750	2,800
3-1-1	FINANCIAL EDUCATION		
	1. CONSUMERS RECEIVING FINANCIAL EDUCATION	350	325
Key Outcome Measures			
1-1	CONSUMER COMPLAINTS		
	1. % COMPLAINTS RESOLVED WITHIN 90 DAYS	95%	95%
2-1	ENSURE COMPLIANCE		
	1. % EXAMINATIONS IN COMPLIANCE	85%	85%
	2. MONIES RETURNED FROM LICENSEES	\$5,000,000	\$5,000,000
Non-Key Measures			
A. CONSUMER PROTECTION			
A-01-02	MONIES OR CREDITS RETURNED TO CONSUMERS – complaints/non-licensees	\$10,000	\$15,000
A-02-03	% OF LICENSEES EXAMINED ANNUALLY	25%	25%
A-02-04	% OF RE-EXAMS RESULTING IN ACCEPTABLE COMPLIANCE RATING	80%	80%
A-02	NUMBER OF ENFORCEMENT ACTIONS TAKEN	300	300
A-03	NUMBER OF RE-EXAMINATIONS PERFORMED	400	400
B. LICENSING AND REGISTRATION			
B-01-01	AVERAGE PROCESSING TIME (DAYS) FOR LICENSE APPS	30	30
B-01-02	AVERAGE PROCESSING TIME (DAYS) FOR PAWNSHOP EMPLOYEE APPS	30	30
B-01-03	AVERAGE PROCESSING TIME (DAYS) FOR RMLO APPS	15	15
B-03	NUMBER OF ADMINISTRATIVE HEARINGS CONDUCTED	10	5
B-04	NUMBER OF REGISTRATIONS PROCESSED	10,100	10,500
B-04	NUMBER OF RMLO APPS PROCESSED	225	175
C. FINANCIAL LITERACY			
C-01-01	NUMBER OF TX CONSUMERS REACHED THROUGH AGENCY PARTICIPATION AT COMMUNITY EVENTS, PRESENTATIONS AND ONLINE RESOURCES	1,500	1,500
C-02-01	TOTAL DOLLAR AMOUNT OF GRANT AWARDS DISTRIBUTED WITHIN THE GRANT CYCLE	\$150,000	\$150,000
C-01	NUMBER OF CONTACTS MADE WITH COMMUNITY ORGANIZATIONS AND MEDIA	70	30
C-02	NUMBER OF CONSUMERS SERVED/TRAINED (TFEE)	50,000	50,000
D. EFFECTIVE STAKEHOLDER COMMUNICATION			
D-01-01	% OF LICENSEES REACHED THROUGH AGENCY PARTICIPATION IN INDUSTRY WORKSHOPS, SEMINARS, CONFERENCES AND ONLINE COMPLIANCE ED PROGRAMS	10%	10%
D-01	NUMBER OF PUBLIC AND INDUSTRY MEDIA SOURCES PUBLISHING COMPLIANCE ED MATERIAL DEVELOPED BY THE AGENCY	4	4
D-02	NUMBER OF ADVISORY BULLETINS PUBLISHED	6	6
D-03	NUMBER OF ENFORCEMENT ACTION AND CORRECTIVE ACTION SUMMARIES PUBLISHED	5	7
E. HUB USAGE			
E-01-01	PERCENT OF TOTAL DOLLAR VALUE OF PURCHASING AND PUBLIC WORKS CONTRACT AND SUBCONTRACTS AWARDED TO HUBS	23.50%	23.50%
E-01	NUMBER OF HUB CONTRACTORS AND SUBCONTRACTORS CONTACTED FOR BID PROPOSALS	60	10
E-02	NUMBER OF HUB CONTRACTS AND SUBCONTRACTS AWARDED	40	2
E-03	DOLLAR VALUE OF HUB CONTRACTS AND SUBCONTRACTS AWARDED	\$400,000	\$75,000



Charles G. Cooper  
Commissioner

## ***TEXAS DEPARTMENT OF BANKING***

2601 North Lamar Blvd., Austin, Texas 78705

512-475-1300 / 877-276-5554

[www.dob.texas.gov](http://www.dob.texas.gov)

### **MEMORANDUM**

TO: The Finance Commission

FROM: Charles G. Cooper, Commissioner

DATE: August 10, 2017

RE: Department of Banking Priorities for Fiscal Year 2018

---

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

- I.1 Objective: Provide appropriate and comprehensive resource material as requested in a timely manner.

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

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

Measure: Keep members informed of significant federal laws and policy statements and how supervised entities are affected. Provide sufficient information and materials to give Commission members an overall assessment of our regulated industries.

- I.3 Objective: Implement laws and initiatives of the 85<sup>th</sup> Texas Legislature that directly affect the agency or its regulated entities.

Measure: Update policies, procedures, and rules as necessary to implement legislation from the 85<sup>th</sup> Session. Monitor interim charges and provide input as requested.

- I.4 Objective: Complete the Sunset Review process. Provide Finance Commission members updates on the review.

Measure: Timely file all required documents and reports as requested for the Sunset review and make staff available for interviews and inquiries. Provide timely updates to the Finance Commission on the Sunset process.

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

- II.1 Objective: Efficiently structure the agency to meet performance measures (See Attachment A for all performance measures)

Measure: Continue to meet or exceed the strategic planning goals for performance measures. Successfully obtain reaccreditation from CSBS for the Bank and Trust Division. Quarterly, report results to the Finance Commission.

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

Measure: Maintain active contact with other states individually and through regulatory associations (CSBS and MTRA), trade associations (IBAT and TBA) and frequent contact with federal regulators so as to be aware of events, decisions, other state and federal policies and other areas of actual or potential impact to the Department's regulatory functions or the industry. Take proactive steps to respond as issues arise affecting the industries or our supervisory duties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Measure: Draft amendments and new rules for potential adoption by the Finance Commission as necessary to timely effect necessary changes. Conduct reviews of all rules every four years to evaluate their continued necessity and applicability.

- III.3 Objective: Maintain active participation in financial education and outreach efforts.

Measure: Provide financial education material to the banking and money service business industry as requested, in addition to hosting informational webinars. Continue active participation in financial education groups and events. Provide outreach to regulated industries as needed or requested.

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

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

Measure: Actively recruit entry level positions at state universities and colleges by attending no less than six job fair events and supporting banking programs at Texas

universities. Promptly post vacancies. Update personnel policy and procedures to comply with changes due to legislation and judicial decisions.

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

Measure: Continue to improve examination staff retention by addressing major issues that contribute to non-retirement resignations, with a goal to have non-retirement turnover not exceed 8% for the fiscal year. Given the significant percentage of Department employees that are retirement-eligible, be proactive with succession planning development including temporary rotations to Headquarters for Review duties and providing leadership training. Maintain a competitive examiner salary program compared to the FDIC by maintaining a 90% minimum level of equivalency. Implement, when feasible, recommendations of the Employee Advisory Council.

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

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

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

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

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

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

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

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

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

Measure: Report on improvements identified and implemented.

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

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

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

Measure: Ensure yearly update and exercise of the Plan.

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





# DEPARTMENT of SAVINGS & MORTGAGE LENDING

Caroline C. Jones, Commissioner

---

## Memorandum

**To:** The Finance Commission

**From:** Caroline C. Jones

**Date:** August 18, 2017

**Re:** Agency Priorities for Fiscal Year 2018

### **I. Legislative Items**

**I.1 Objective:** Monitor federal legislation and regulations that may affect the Department or its regulated entities.

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

**I.2 Objective:** Monitor interim charges that may affect the Department or its regulated entities.

**Measure:** Provide regular updates to the Finance Commission regarding interim legislative activities.

**I.3 Objective:** Sunset review process.

**Measure:** Provide documents and information as requested to the Sunset Commission. Promptly communicate with Sunset staff regarding information about the Department. Provide regular updates to the Finance Commission regarding the review process.

### **II. Regulatory Items**

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

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

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

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

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

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

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

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

**II.5 Objective:** Continue to cooperate and build relationships with the CFPB, FDIC, FRB, and other federal agencies, as appropriate, on examinations, supervision, and consumer complaint resolution issues. Monitor federal rule writing activity and interpretations of existing statutes.

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

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

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

### **III. Policy and Rule Development**

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

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

### **IV. Industry Outreach and Communication**

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

**Measure:** Provide regular updates to the Finance Commission regarding activities conducted in these areas by reporting the number of communications sent and events participated in.

### **V. Agency Management**

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

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

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

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

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

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

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

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

**V.5 Objective:** Ensure hardware and software are kept current to maintain effectiveness, and quality of work product of the Department. Safeguard the integrity of data and information technology networks and systems.

**Measure:** Report to the Finance Commission enhancement/improvement activities in this area.

**V.6 Objective:** Continue to work towards a long term solution to address headquarters space and parking needs.

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

## FY18 Performance Measures

		FY18 Target
<b>01-01 Thrift Safety and Soundness</b>		
<b>Outcome Measures (Annual)</b>		
Key	01 Percent of State Chartered Savings Institutions Receiving Examination within the Required Timeframes	100%
Key	02 Percent of Safe and Sound Institutions to Total Savings Institutions	90%
Key	03 Percent of Assets in Safe and Sound Savings Institutions	90%
Non-Key	04 Percentage of Applications Receiving Final Action within Statutory Timeframes	100%
<b>Output Measures (Quarterly)</b>		
Key	01 Number of Examinations Performed	22
Non-Key	02 Number of Detected Instances of Activity of Unauthorized or Prohibited Areas	3
Non-Key	03 Number of Formal and Informal Regulatory Actions	5
Non-Key	04 Number of Applications Processed.	10
<b>Efficiency Measures (Annual)</b>		
Non-Key	01 Assets Examined Per Examiner Day (in Millions)	\$ 8.0
Non-Key	02 Average Time (Business Days) to Complete Analysis of Quarterly Financial Data	7
Non-Key	03 Average Time (Business Days) Between Identification of a Problem and Initiation of Regulatory Action	5
<b>Explanatory Measure (Annual)</b>		
Key	01 Number of State-Chartered Savings Institutions	26
Key	02 Dollar Amount of Assets under Regulation (in Billions)	\$ 20.6
<b>02-01 Mortgage Regulation</b>		
<b>Outcome Measures (Annual)</b>		
Non-Key	01 Percentage of Licensees Receiving Satisfactory Levels of Compliance Through Examination	90%
<b>Output Measures (Quarterly)</b>		
Key	01 Number of Applications Processed	7,500
Key	02 Number of Licensees Examined	4,500
<b>Efficiency Measures (Annual)</b>		
Non-Key	01 Average Cost Per Application Processed	\$ 50
<b>Explanatory Measures (Annual)</b>		
Non-Key	01 Total Number of Licensees in an Approved Status	35,000
<b>03-01 Consumer Responsiveness</b>		
<b>Outcome Measures (Annual)</b>		
Key	01 Percent of Complaints Answered within Ten Business Days of Receipt of Complete Information	99%
<b>Output Measures (Quarterly)</b>		
Key	01 Number of Consumer Complaints Completed	975
Non-Key	02 Number of Informational Inquiries and Requests Completed (phone/written)	70,000
<b>Efficiency Measures (Annual)</b>		
Non-Key	01 Average Cost Per Consumer Complaint Completed	\$ 250

*This page left blank intentionally.*

**B.**

**Office of Consumer Credit  
Commissioner**

*This page left blank intentionally.*



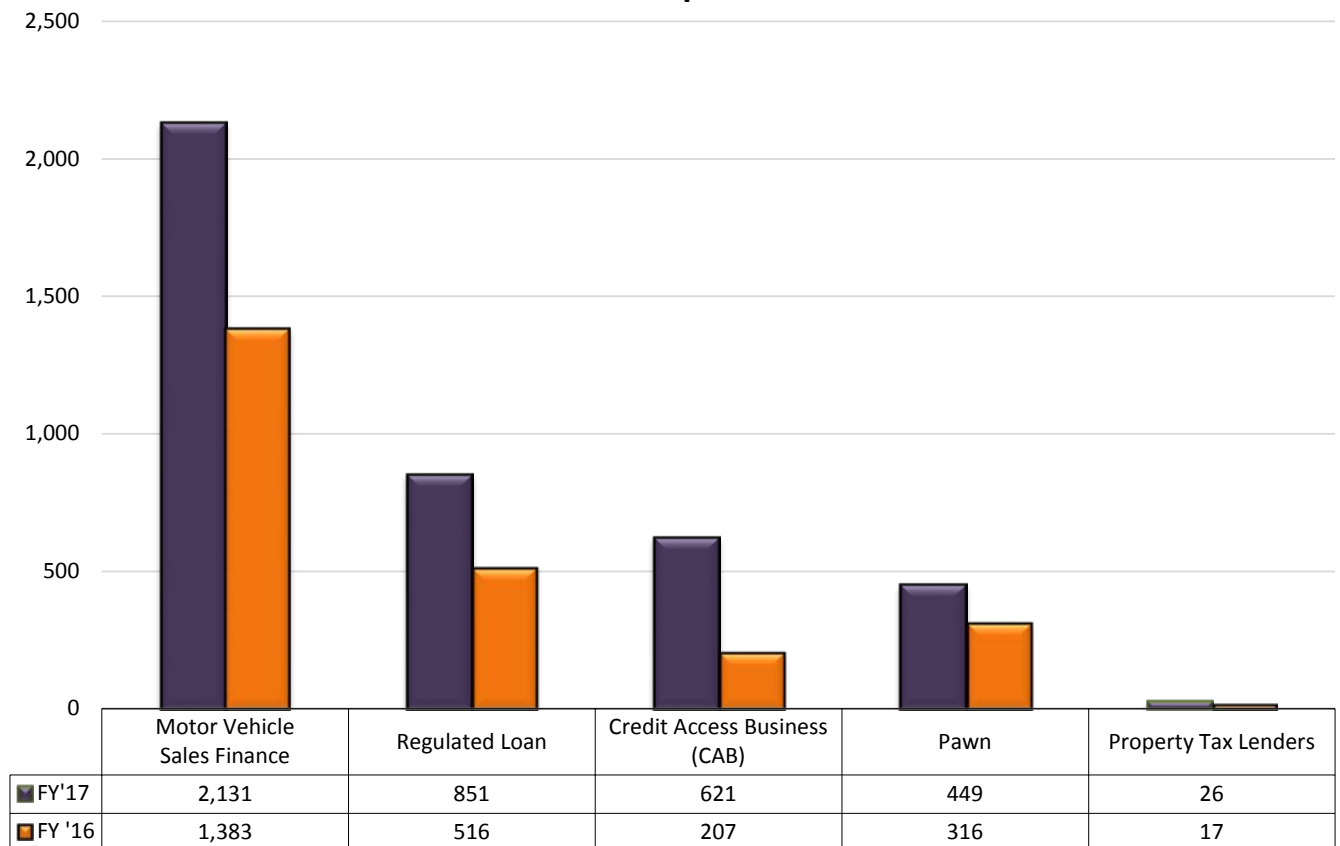
## Consumer Protection and Consumer Assistance Report

*Rudy Aguilar, Director of Consumer Protection*

Consumer Protection has implemented the new Annual Report, Complaint, and Examination (ACE) system. Staff continues to refine use of the system. The system has and will continue to result in efficiencies, increased consistency, and improved communication with licensees.

Aggregate (all license types) examination progress remains ahead of the pro rata Fiscal Year (FY) 2017 goal and FY 2016 comparative data. As of June 30, 2017, all license type examinations are ahead of the planned completion progress to date. The Agency expects to meet all license type FY '17 examination targets. The enterprise-level examination approach is a key factor in this increased efficiency. The agency is evaluating the compliance effectiveness of this approach by license type and number of licensed branches for a licensee group.

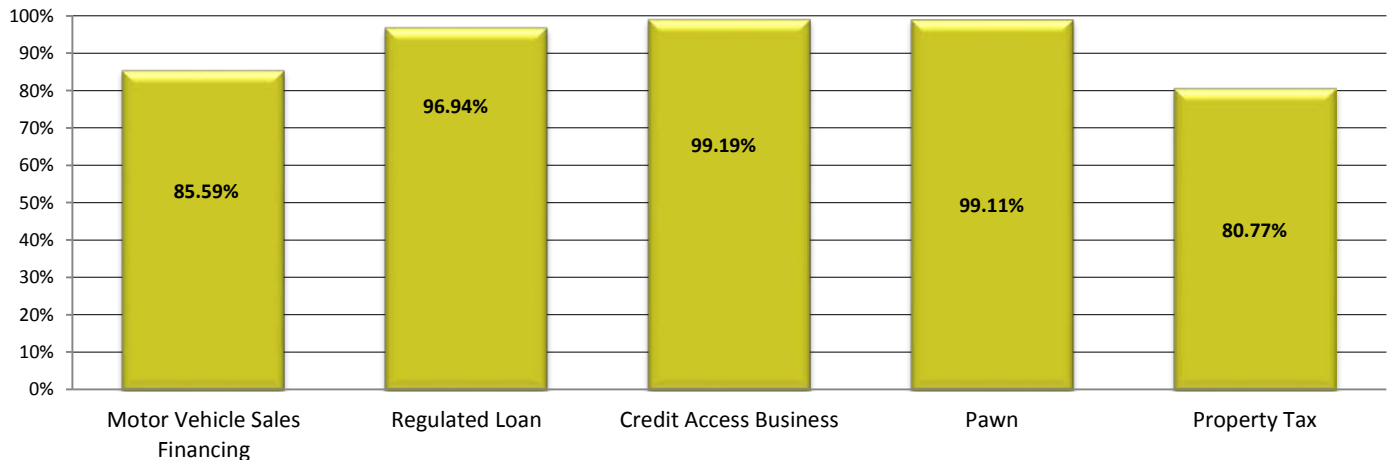
### Examinations Conducted: Sept - Jun Fiscal Year Comparison



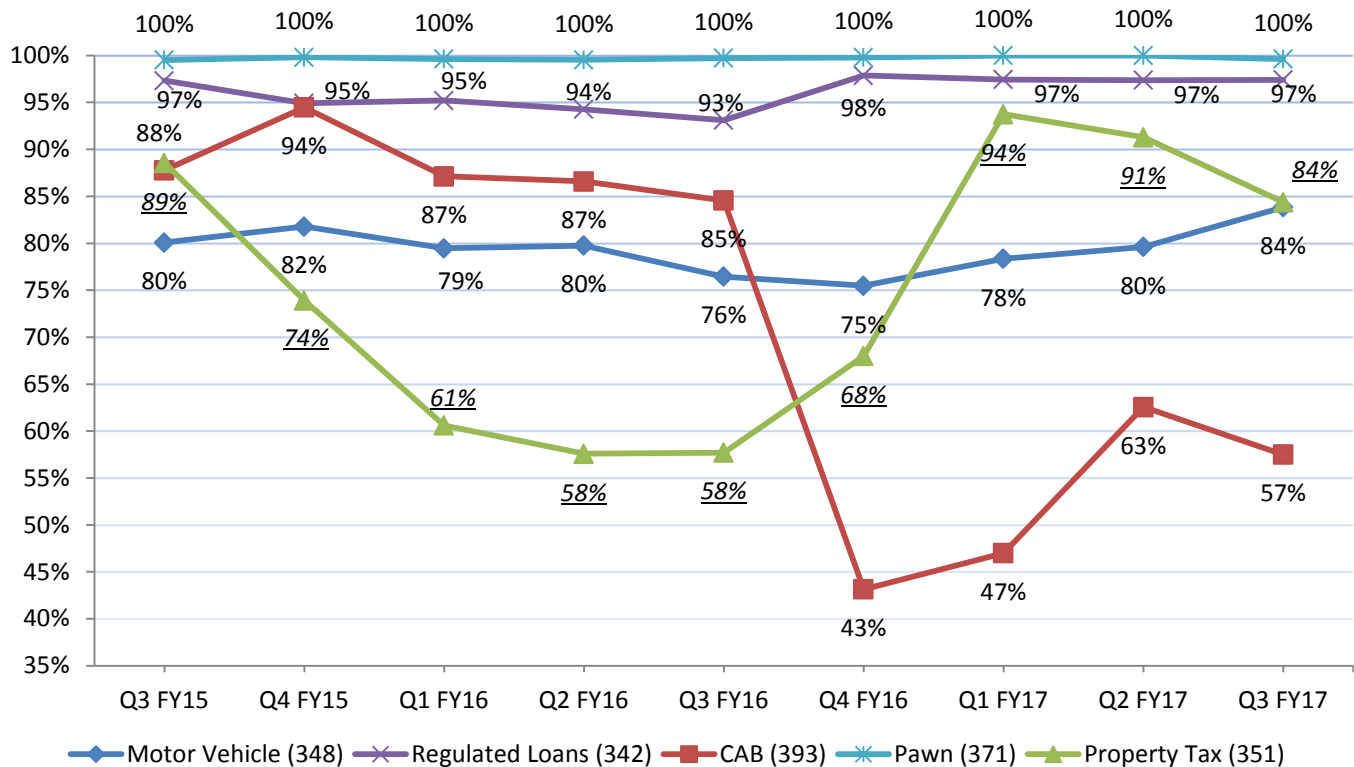
The acceptable level of compliance for all five examination areas is charted below. The first chart displays the FY '17 year-to-date acceptable levels of compliance; all examination areas except property tax are within the acceptable level

of compliance. The second chart denotes the acceptable level of compliance on a trailing 12-month basis through the end of June 2017. Because the calculation covers the prior 3 quarters, the 3rd quarter of FY'16 data point (85%) was no longer used in the trailing 12-month period calculation which had the effect of lowering the Credit Access Business percentage of acceptable level of compliance to 57% for this reporting period. The Acceptable Level of Compliance for Credit Access Business licenses is improving as exhibited in the Acceptable Level of Compliance FY '17 chart.

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

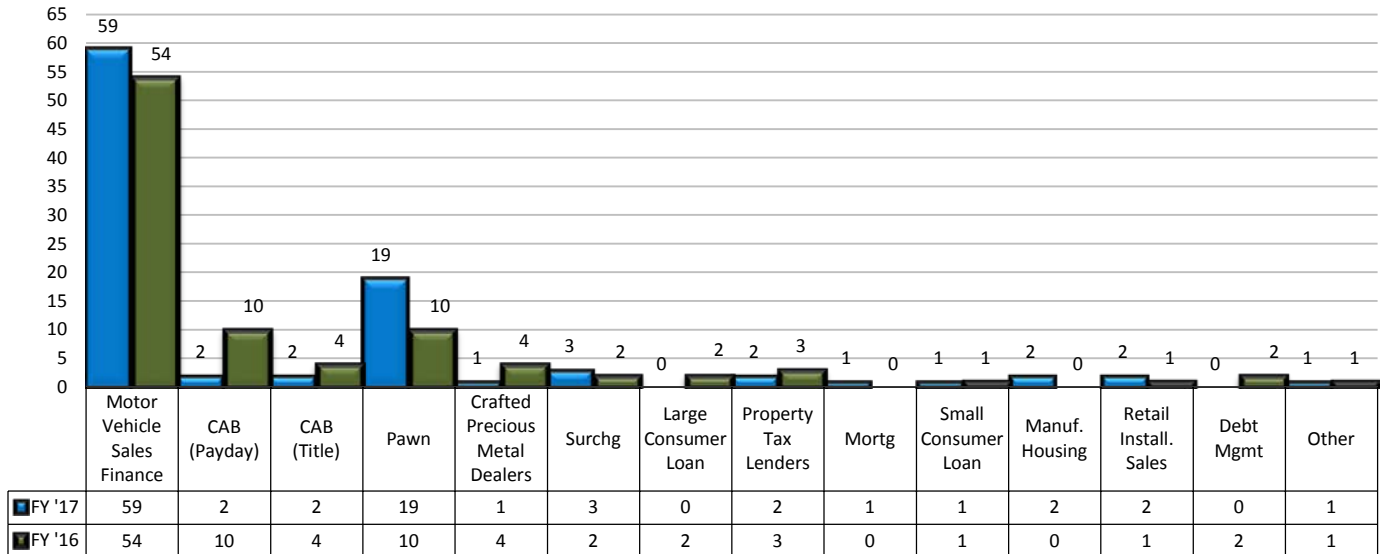


### Acceptable Compliance Levels - Trailing 12 Months (at quarter end)



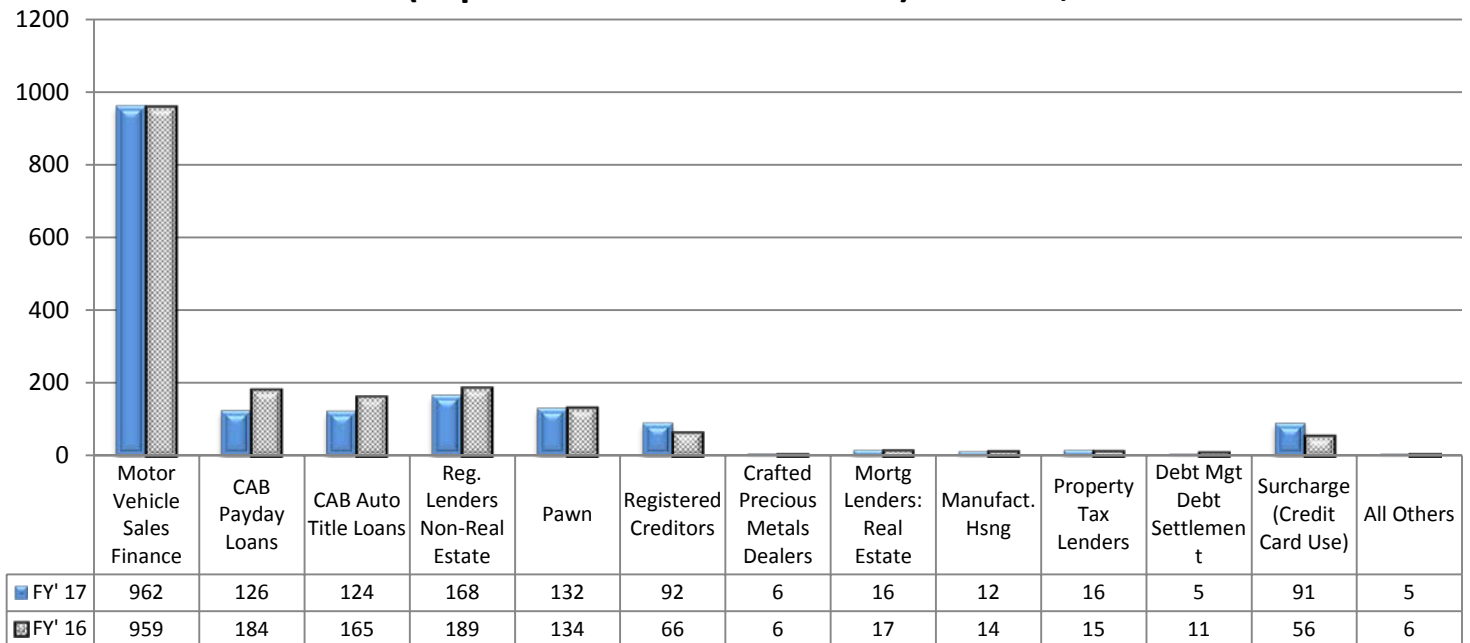
## Investigations

### Investigations Completed FY '17 (Sept 2016 - June 2017) Total: 95 FY '16 (Sept 2015 - June 2016) Total: 94



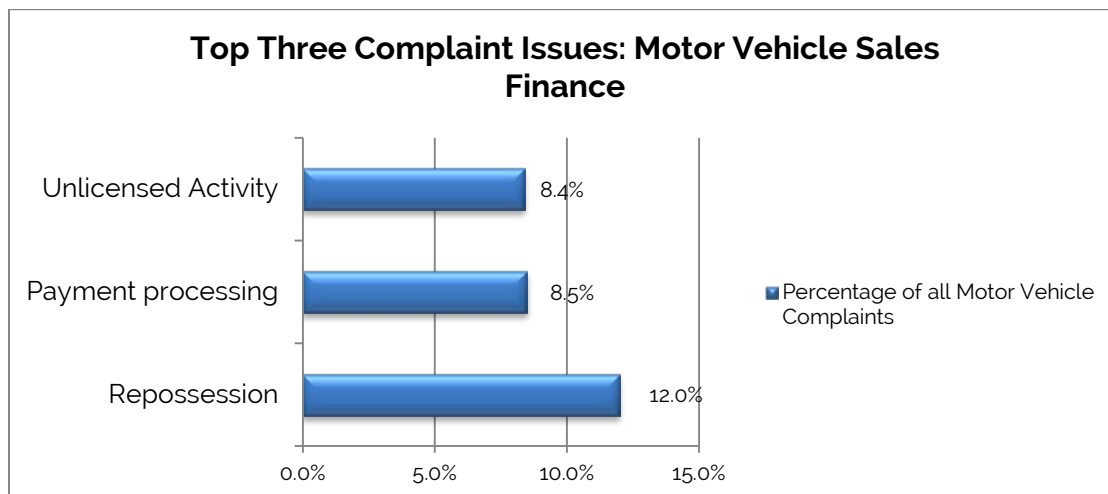
## Consumer Assistance

### Complaints Processed FY '17 (September 2016-June 2017) Total: 1,755 FY '16 (September 2015-June 2016) Total: 1,822



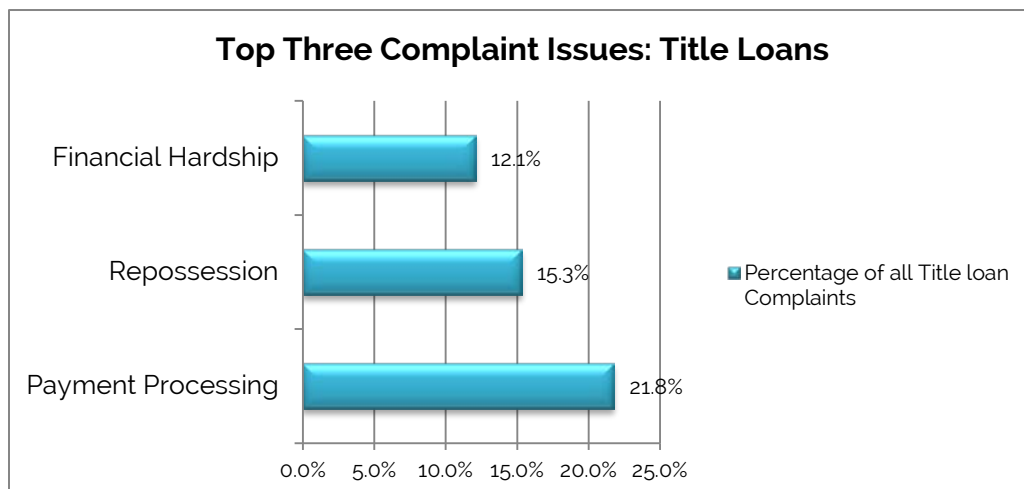
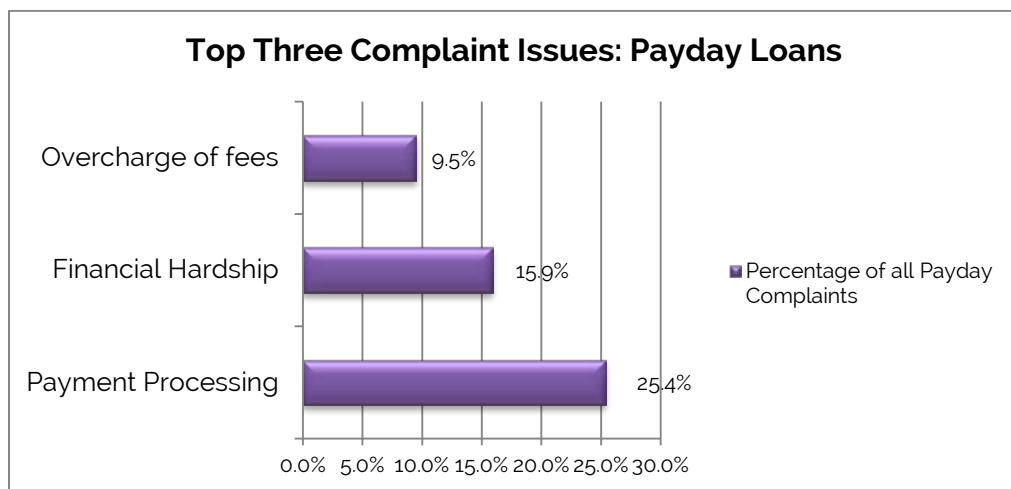
The top four areas of complaints are (1) Motor Vehicle Sales Finance (MVSF), (2) Credit Access Business (CAB), (3) Regulated Lenders Non-Real Estate, and (4) Pawn.

MVSF complaints were the largest complaint category at 54.8%. The top three MVSF complaint issues are charted below:



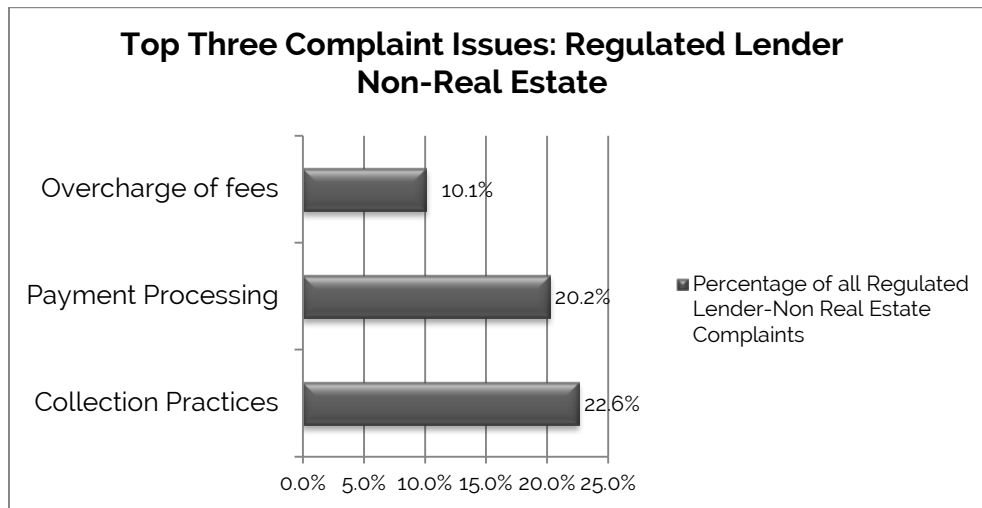
The main complaint issues are related to repossessions, payment processing and unlicensed activity. Payment processing issues are related to disputing amount owed and not applying payments properly.

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



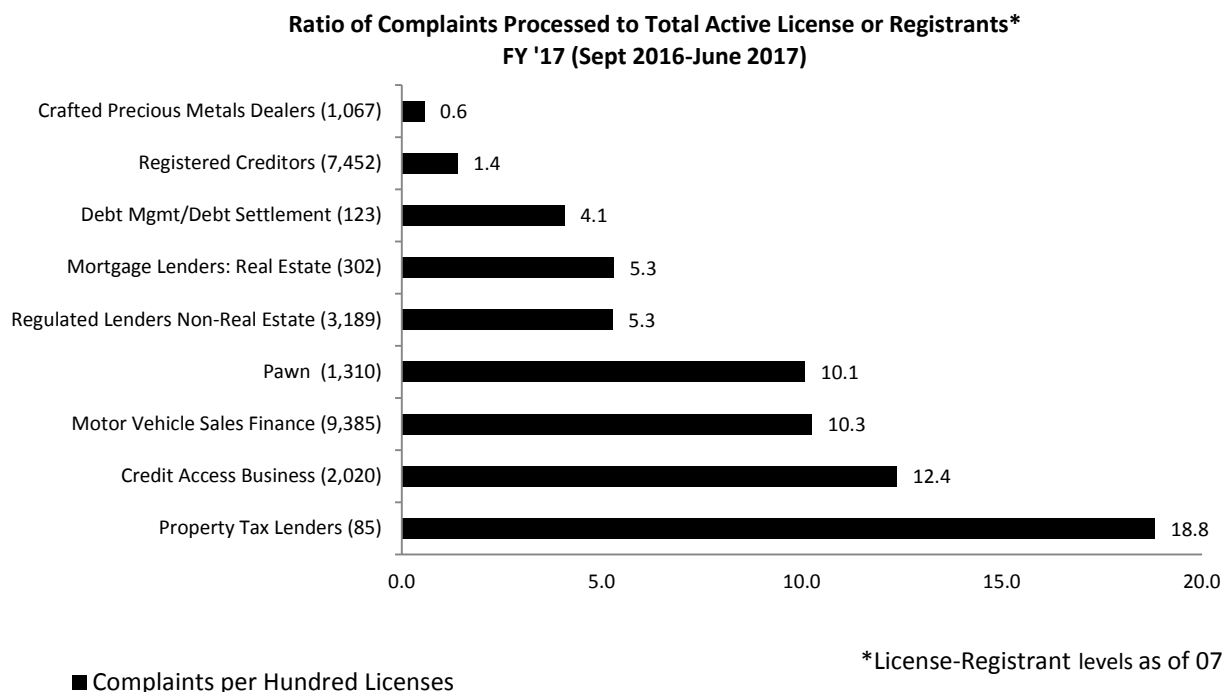
Predominant issues within payment processing includes auto drafting before due date, dispute of account balance, payment arrangements not honored and payment posting errors. Other concerns include complaints about repossessions, consumers seeking financial hardship assistance, and complaints about fees.

The third largest number of complaints came from the Regulated Lenders: Non Real Estate category at 9.6%. 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.



## CAB Reporting Update

Second quarter reports were due July 31, 2017. Summaries of all reports through the first quarter of 2017 are available on the OCCC website. Presented are selected statistics of January – March (Q1) reports through the years. Consolidation in the industry continues as the number of different stores arranging loans decreased 40% since 2012. The remaining stores increasingly offer installment loans payable in around five to six months. These lengthier loans represented over 40% of both new payday and title loans offered during the 1<sup>st</sup> quarter of 2017.

<b>Data Highlights (All Loan Types) Q1 Comparison</b>	<b>2017</b>	<b>2016</b>	<b>2015</b>	<b>2014</b>	<b>2013</b>	<b>2012</b>
Number of new payday loans	495,132	489,990	493,761	514,981	572,101	565,981
Number of new auto title loans	56,503	58,492	68,531	89,707	112,060	97,865
Percentage of payday loans due in multiple installments	42%	39%	35%	32%	18%	12%
Percentage of auto title loans due in multiple installments	43%	41%	13%	17%	12%	14%
Number of vehicles repossessed under all auto title loans	7,623	8,315	9,722	10,693	9,615	8,802
Total number of locations reporting activity	1,837	2,502	2,613	2,957	3,028	3,086

<b>Payday Loans Q1</b>	<b>Single Installment</b>			<b>Multiple Installment</b>		
	<b>2017</b>	<b>2016</b>	<b>2015</b>	<b>2017</b>	<b>2016</b>	<b>2015</b>
Number of consumers obtaining loans	203,505	214,618	243,309	183,786	170,467	152,894
Number of new loans	287,217	296,674	321,217	207,915	193,316	172,544
Number of refinances on new loans in the quarter <sup>1</sup>	181,259	198,551	233,425	20,717	14,460	12,710
Number of total refinances <sup>2</sup>	494,597	537,581	686,281	63,274	65,919	58,329
Average loan amount	\$468	\$464	\$522	\$553	\$565	\$526
Average fee per \$100 borrowed	\$23.97	\$23.70	\$23.20	\$149.67	\$166.30	\$171.31
Average original term (in days)	19	17	18	143	159	160

<b>Title Loans Q1</b>	<b>Single Installment</b>			<b>Multiple Installment</b>		
	<b>2017</b>	<b>2016</b>	<b>2015</b>	<b>2017</b>	<b>2016</b>	<b>2015</b>
Number of consumers obtaining loans	28,567	31,297	52,831	22,378	22,171	9,031
Number of new loans	32,407	34,703	59,352	24,096	23,789	9,179
Number of refinances on new loans in the quarter <sup>1</sup>	21,190	21,854	32,978	3,403	3,022	1,424
Number of total refinances <sup>2</sup>	181,009	230,355	118,859	22,247	7,868	29,850
Average loan amount	\$1,444	\$1,254	\$1,174	\$1,056	\$1,113	\$1,096
Average fee per \$100 borrowed	\$16.48	\$16.34	\$17.85	\$130.88	\$92.99	\$93.02
Average original term (in days)	30	29	30	155	169	161

<sup>1</sup> Refinance activity represents only the renewals occurring in the quarter the loan was originated.

<sup>2</sup> Refinance activity represents all renewals, including the renewals of loans that originated in prior quarters.



## **Licensing Report- August 2017**

*Mirand Zepeda, Manager*

### Renewals

The department processed and completed license renewal for pawnshops and pawn employees in June. Pawnshops who renewed online were offered a 10% discount, and more than 90% of those licenses renewed did so online utilizing ALECS. Approximately 70% of pawn employees renewed, which is indicative of the typical elasticity in that license group.

Motor vehicle sales finance license renewal opened online in June and ended July 31. The renewal fee was discounted 15% for all licensees. The department fielded thousands of phone calls throughout the renewal period and provided tech support and customer service to callers. While the department still works to process more than 8,000 renewals, it is estimated that more than 75% of licensees completed renewal online, and that the total renewal rate will be over 85%.

### Applications Processing

The number of pending applications has increased in June and July because of slightly diminished productivity with regard to applications, due to high call volume and workload in conjunction with pawnshop, pawn employee and motor vehicle renewal. That, coupled with staffing changes have increased the number of pending applications. But the department is working to conclude renewal, will fill a vacant position in the near future, and anticipates meeting all goals and performance measures by the end of FY 2017.

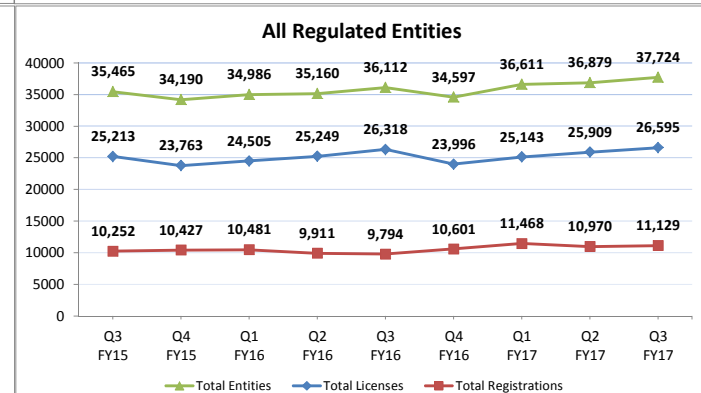
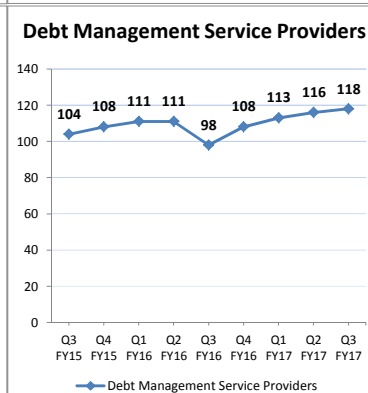
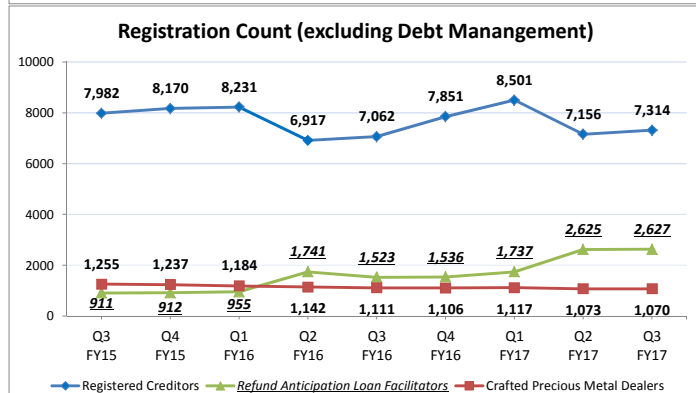
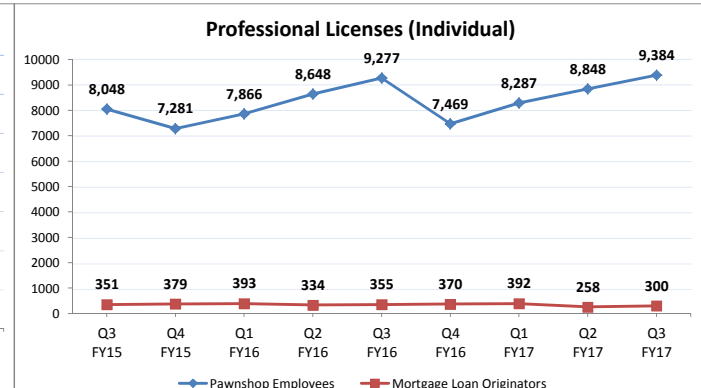
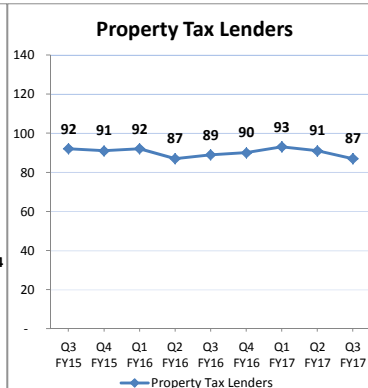
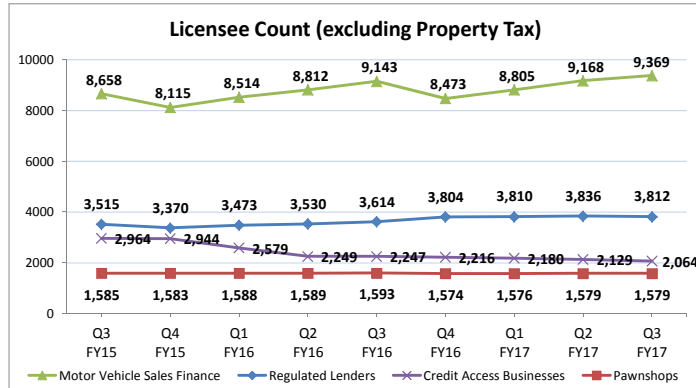
### Other Updates

Staff attended a Regulator Meeting in San Antonio in connection with the annual conference of the American Association of Residential Mortgage Regulators to learn more about the changes coming in the second phase of the Nationwide Mortgage Licensing System. At this conference, staff was also able to participate in a round table discussion and dialog with regulators from across the country, NMLS staff and industry representatives, about enhancements to the new system. Staff also coordinated with individuals from the Consumer Protection Division of the OCCC to host a booth at the Texas Independent Automobile Dealers Association annual conference in San Antonio, where TIADA members could inquire about licensing issues and see demonstrations of how best to utilize ALECS.

### 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**

On June 6, Governor Abbott called a special session of the Texas Legislature, which started July 18. The special session can last up to 30 days, and lawmakers can only consider legislation related to the Governor's agenda. The governor has the authority to call as many special sessions as he wants. None of the items that have been placed on the call directly affects the activities of the OCCC. However, several bills have been filed that would impact the agency and staff will continue to monitor the activities. This special session is scheduled to end on August 16, unless legislators conclude sooner.

Staff continues to prepare for the OCCC's upcoming Sunset review. The Self-Evaluation Report (SER) is being prepared and will be submitted by no later than September 1, 2017.

The agency continues to focus on stakeholder outreach and communication through various channels. For the 3<sup>rd</sup> quarter, staff provided presentations to more than 300 industry participants regarding compliance matters and the regulatory role and responsibilities of the agency at training seminars hosted by other regulatory agencies.

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

### **HUMAN RESOURCES**

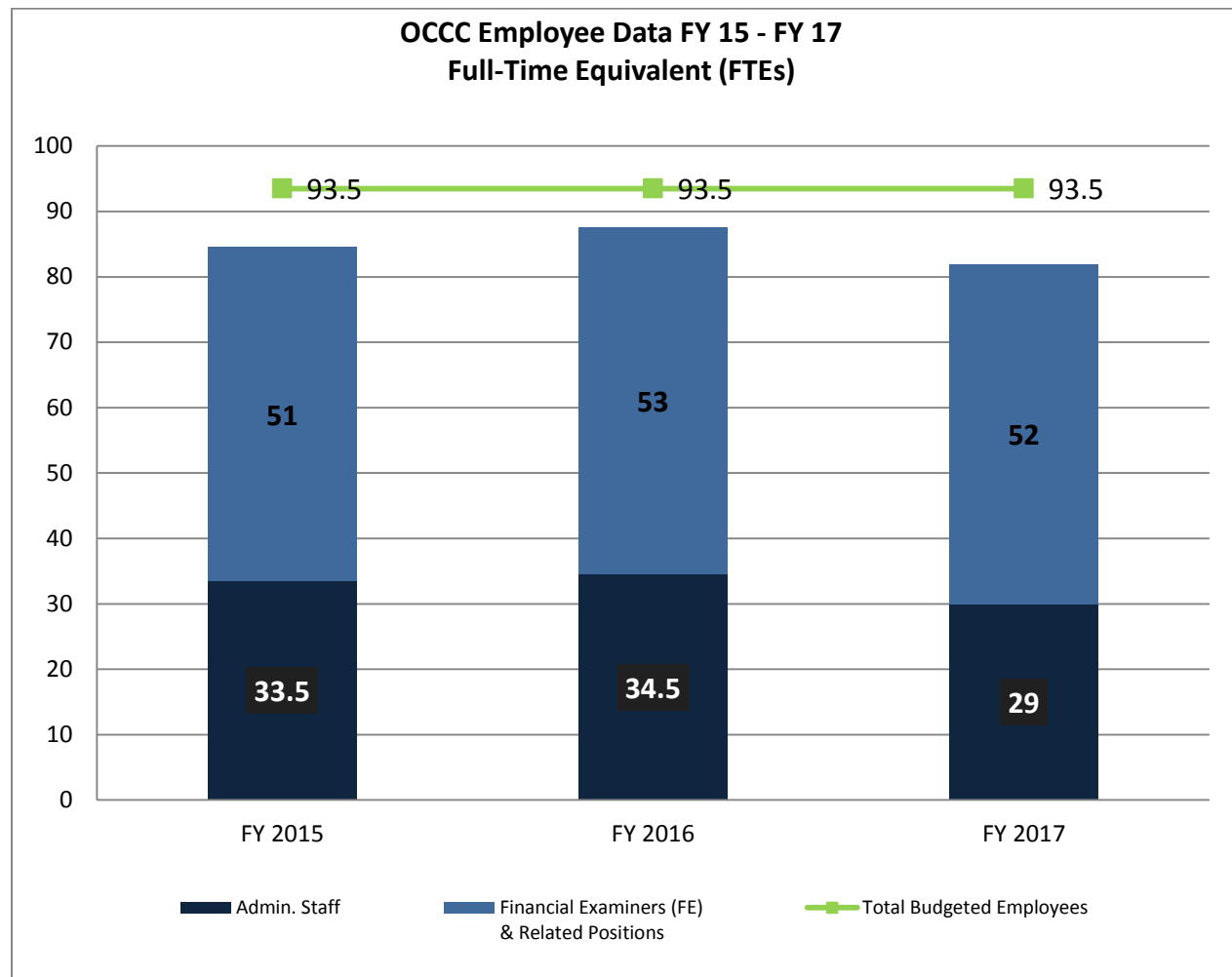
The following previously reported vacancies were filled: Executive Assistant I, Administrative Assistant II (Consumer Assistance Department) and Information Specialist I (Administration).

The OCCC had three voluntary separations in the Austin Headquarters: Investigator II, Financial Examiner III and Accountant IV.

Current recruiting efforts are focused on filling all open positions for the Agency.

FY 17 Vacancies	
Vacancy	Status
Accountant III – Austin	Position has been filled–New Hire start date Aug 7th
License and Permit Specialist II – Austin	Active – Accepting Applications/Interviewing
Investigator I – Austin	Active – Accepting Applications
Accountant IV-V	Active – Accepting Applications/Interviewing
Financial Examiner III-IV (Internal)	Active – Interviewing process
Financial Examiner I – Ft. Worth/Dallas (2)	Active – Accepting Applications
Financial Examiner I – Houston	Active – Accepting Applications/Interviewing

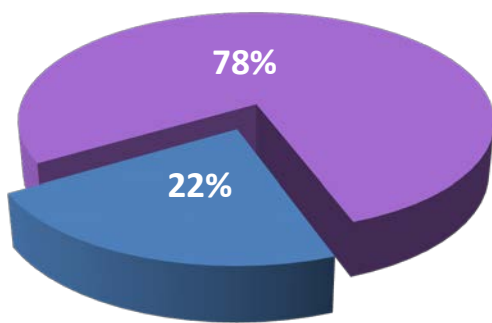
The chart below compares the number of FTEs from FY 2015 to present time.



At the end of the 3<sup>rd</sup> quarter, the OCCC was staffed with 81 FTEs. During this same period, the overall turnover rate was 10.75%. When excluding retirement and interagency transfers from the overall ratio, the percentage within the Financial Examiner series was 7.55% and 4.78% overall compared against the Agency.

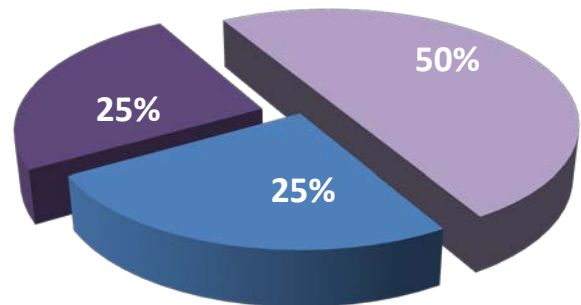
Below is a summary of the turnover by category.

**OCCC Turnover Categories**  
**FY 17- All Employees**  
(9/01/16 - 7/31/17)  
9 total - 2 Dismissal and 7 Voluntary Resignations



■ Dismissal   ■ Voluntary Resignation

**OCCC Turnover Categories**  
**FY 17- Financial Examiners**  
(9/01/16 - 7/31/17)  
Resignations (4)



■ Dismissal  
■ Private Sector  
■ Non-job Related/ Personal Reasons

The Texas Workforce Commission, Civil Rights Division provided OCCC - Human Resources with an online Diversity, Equal Opportunity & Non-Discrimination Training that all OCCC employees completed. OCCC had 100% participation and completed the required training in a timely manner.

## **ADMINISTRATION**

### **FINANCIAL LITERACY**

During the third quarter, Consumer Education staff provided financial education to 208 Texas consumers, bringing the total to 269 financial education participants for FY 2017. The department has reached out to numerous organizations throughout Texas to promote financial education, and had coordinated and scheduled five additional presentation for the fourth quarter. Unfortunately, two of these presentations were canceled due to lack of low pre-registration. In addition, the department continues to reach out to underserved communities to promote the importance of financial education and anticipates being on target to meet the yearly goal by the end of the 4<sup>th</sup> quarter.

Currently, the consumer education staff is preparing for the upcoming presentation to the Housing Authority, City of Brownsville in Brownsville, Texas. This presentation will be given in Spanish, in efforts to reach the underserved Spanish-speaking population of Texas.



## **Accounting & IT Reports**

### Accounting

The department has prepared the FY 2018 proposed budget for public input and consideration by the Finance Commission. In the first week of August an upgrade was installed for the Sage MIP accounting system. Staff has begun year-end planning and preparation for the Annual Financial Report in anticipation of filing deadlines. On August 7, the department welcomed a new staff accountant who will specialize in travel voucher processing.

### Information Technology

#### LEGACY MODERNIZATION

All ALECS modules are now live. Staff will continue to work through maintenance issues and enhancements for the next nine months, during vendor supported maintenance.

The agency has installed a new server to allow for upgrading the legacy accounting software platform. The live database be converted and moved to the new platform in August.

The agency's in-house programmer is in the design phase of development of a Human Resources database. Currently 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 Committee (SPCC) continues to make steady progress on the security roadmap, including new and revised policies and procedures, training requirements, and software policies. The committee has currently completed 27 of the 63 recommended action items.

The agency's new endpoint security suite, Comodo IT & Security Manager has been deployed to 99% of agency endpoints. The agency has experienced significantly improved protection from zero day exploits and ransomware.

**OFFICE OF CONSUMER CREDIT COMMISSIONER**  
**EXECUTIVE SUMMARY**

*As of May 31, 2017*

	FY 2015	FY 2016	FISCAL YEAR 2017				
			1st QTR	2nd QTR	3rd QTR	4th QTR	FYTD
CONSUMER PROTECTION							
Monies Returned to Consumers (000)	8,315	13,657	1,450	6,209	12,760		20,419
Regulated Lenders Examinations	1,065	891	145	207	386		738
Property Tax Lender Examinations	23	25	1	9	15		25
Pawnshop Examinations	533	484	74	76	227		377
Motor Vehicle Examinations	1,565	2,181	682	743	594		2,019
Credit Access Businesses Examinations	816	707	9	273	60		342
CONSUMER ASSISTANCE							
Telephone Complaints Received	1,186	1,177	240	211	327		778
Written Complaints Received	1,000	878	244	255	295		794
Total Complaints Processed	2,131	2,160	464	478	621		1,563
% of Written Complaints Closed within 90 Calendar Days	82.47%	94.46%	91.45%	87.55%	92.31%		90.62%
ADMINISTRATIVE ENFORCEMENT ACTIONS							
Originated	472	410	71	59	174		304
Finalized	390	459	77	61	51		189
LICENSING AND REGISTRATION							
Licenses							
Regulated Loan Licenses	3,370	3,804	3,810	3,836	3,812		3,812
Pawnshop Licenses	1,583	1,574	1,576	1,579	1,579		1,579
Pawnshop Employee Licenses	7,281	7,469	8,287	8,848	9,384		9,384
Commercial MV Sales Fin. Licenses	19	29	33	37	38		38
Motor Vehicle Sales Finance Licenses	8,096	8,444	8,772	9,131	9,331		9,331
Property Tax Loan Licenses	91	90	93	91	87		87
NMLS-Mortgage Loan Originators	379	370	392	258	300		300
Credit Access Business Licenses	2,944	2,216	2,180	2,129	2,064		2,064
Registrations							
Registered Creditors	8,170	7,851	8,501	7,156	7,314		7,314
Crafted Precious Metal Dealers	1,237	1,106	1,117	1,073	1,070		1,070
Debt Management Service Providers	108	108	113	116	118		118
Refund Anticipation Loan Facilitators	912	1,536	1,737	2,625	2,627		2,627
Applications							
Business -- New	1,832	1,642	377	445	324		1,146
Business -- Change of Ownership	624	259	49	39	40		128
Pawnshop Employees -- New	3,010	3,253	945	660	637		2,242
HUMAN RESOURCES DATA							
Field Examiners Staffing	43	45	42	41	41		41
Total Staffing	86	86.5	86.5	85	82		82

**OCCC Actual Performance for Output/Efficiency Measures**  
**Fiscal Year 2017**

**For Period Ending May 2017**

	2017	2017	2017	Percent of
Type/Strategy/Measure	Target	Quarter	YTD	Annual Target
<b>Output Measures-Key</b>				
1-1-1 COMPLAINT RESOLUTION				
1. # COMPLAINTS CLOSED				
Quarter 1	2,100	467	467	22.24%
Quarter 2	2,100	476	943	44.90%
Quarter 3	2,100	646	1,589	75.67%
2. # INVESTIGATIONS CLOSED				
Quarter 1	87	22	22	25.29%
Quarter 2	87	22	44	50.57%
Quarter 3	87	26	70	80.46%
The number of investigations closed is above the pro rata percentage in the first three quarters because of an increase in unlicensed Chapter 348 activity.				
2-1-1 EXAMINATION AND ENFORCEMENT				
1. # COMPLIANCE EXAMINATIONS PERFORMED				
Quarter 1	4,087	911	911	22.29%
Quarter 2	4,087	1,308	2,219	54.29%
Quarter 3	4,087	1,282	3,501	85.66%
Examination progress has been higher than planned because of the enterprise examination approach that has been implemented. Staff is continuing to evaluate this approach to determine optimal effectiveness.				
2-2-1 LICENSING				
1. # BUSINESS APPLICATIONS PROCESSED				
Quarter 1	1,500	377	377	25.13%
Quarter 2	1,500	445	822	54.80%
Quarter 3	1,500	324	1,146	76.40%
2. # INDIVIDUAL LICENSES PROCESSED				
Quarter 1	2,750	945	945	34.36%
The licensing department received more pawn employee applications in Q1, which led to more applications being processed. Staffing adjustments and volume of incoming applications could cause this number to even out in Qs 2, 3 and 4.				
Quarter 2	2,750	660	1,605	58.36%
Carry-over from a higher quantity of applications processed in Q1 continues to affect this measure. This percentage will likely even out in the second half of FY 2017.				
Quarter 3	2,750	637	2,242	81.53%
The pawn employee renewal period in May and June caused Q3 individual applications processed to dip to the lowest quantity of the year to date, but the overall annual percentage remains over the goal due to carry-over from Qs 1 and 2.				

3-1-1

# CONSUMERS RECEIVING FINANCIAL EDUCATION

<b>Quarter 1</b>	350	61	61	17.43%
Attendance at the 5 financial education workshops conducted in Q1 was lower than anticipated. The financial education department attempts to recruit groups of 20 or more; however the agency is committed to providing resources to all organizations regardless of their program size. The department is actively seeking new collaborations to increase the quantity of workshops or presentations.				
<b>Quarter 2</b>	350	0	61	17.43%
The quarterly target was not met due to the timing of the schedule of presentations. Organizations have requested dates in the latter part of Q3 and Q4. The department anticipates a higher participation by the end of Q3.				
<b>Quarter 3</b>	350	208	269	76.86%





## Legal Department Report

*Michael Rigby, General Counsel*

August 2017

### Enforcement Report

#### **Motor Vehicle Sales Finance – Injunction**

On March 14, 2017, the OCCC issued an injunction against AJ's Nice Cars, Inc. for six violations of the Texas Finance Code, the Truth-in-Lending Act, and their respective implementing regulations. The injunction requires AJ's Nice Cars to cease and desist, to take affirmative action, and to make restitution. AJ's Nice Cars timely requested a hearing on the injunction.

On August 1, 2017, a hearing was held on the merits at the State Office of Administrative Hearings ("SOAH") before an Administrative Law Judge. AJ's Nice Cars appeared and was represented by counsel at the hearing. The deadline for both parties to submit written closing arguments is August 22, 2017.

### Performance Report

The following table summarizes enforcement actions closed by the OCCC during the last three fiscal years, and the current fiscal year-to-date as of July 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.

<b>Enforcement Actions Closed as of July 31, 2017</b>				
	<b>FYTD 2017</b>	<b>FY 2016</b>	<b>FY 2015</b>	<b>FY 2014</b>
<b>Revocation / Suspension Actions</b>				
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
<b>Total Revocation / Suspension Actions</b>	<b>8</b>	<b>17</b>	<b>38</b>	<b>24</b>
<b>Injunction Actions</b>				
Regulated Loan License	37	88	1	0
Pawnshop License	36	1	0	0
Pawnshop Employee License	68	0	0	0

Credit Access Business License	43	25	1	4
Motor Vehicle Sales Finance License	26	18	12	8
Property Tax Loan License	2	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)	2	1	6	1
Credit Card Surcharge (Ch. 339)	2	7	1	0
Residential Mortgage Loan Originator	1	0	0	2
<b>Total Injunction Actions</b>	<b>218</b>	<b>157</b>	<b>25</b>	<b>17</b>
<b>Administrative Penalty Actions</b>				
Regulated Loan License	12	0	73	121
Pawnshop License	3	40	4	6
Pawnshop Employee License	0	1	4	8
Credit Access Business License	22	97	136	56
Motor Vehicle Sales Finance License	82	129	76	88
Property Tax Loan License	2	3	8	18
Crafted Precious Metal Dealer	0	2	0	1
Residential Mortgage Loan Originator	0	1	0	0
<b>Total Administrative Penalty Actions</b>	<b>121</b>	<b>273</b>	<b>301</b>	<b>298</b>
<b>Application Denial and Protest Actions</b>				
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
<b>Total App. Denial and Protest Actions</b>	<b>3</b>	<b>11</b>	<b>24</b>	<b>2</b>
<b>Total Enforcement Actions Closed</b>	<b>350</b>	<b>458</b>	<b>388</b>	<b>341</b>

From June 1, 2017 to July 31, 2017, the OCCC:

- issued 90 final orders,
- opened 41 cases in order to assess administrative penalties,
- opened 11 cases in order to issue administrative injunctions,
- issued no assurances of voluntary compliance,
- participated in no contested case hearings, and
- dismissed one contested case hearing.

The OCCC has one hearing scheduled between August 1, 2017 and September 30, 2017.

## **Administrative Rule Report**

At the August meeting, the OCCC is presenting six rule actions:

- An adoption 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.
- An adoption of new rules regarding the Texas Financial Education Endowment Fund, providing rules for the administration of the fund.
- An adoption of amendments and a new rule regarding motor vehicle retail installment transactions, implementing legislation recently passed by the Texas Legislature.
- A proposed repeal of rules regarding credit card surcharge appeal procedures, as recent legislation transfers regulatory authority to the Office of the Attorney General.
- An adoption of the completed rule review of the property tax lender rule chapter.
- A proposal of amendments regarding property tax lenders, updating licensing, criminal history, and disclosure provisions, resulting from rule review.

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.
- Amendments on including the administrative fee for a Chapter 342, Subchapter E loan in the loan's principal balance.
- Amendments to interpretations on home equity lending, implementing recent legislation.
- 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*. A status conference in the district court is scheduled for August 10, 2017.

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.

### ***Henry v. Cash Biz, LP***

This is a civil case in which the plaintiffs allege that a credit access business (CAB) wrongfully filed criminal charges to collect payday loans. A court of appeals held that the case should be remanded for arbitration, finding that the plaintiffs' claims are subject to the arbitration agreement and class action waiver contained in the loan documents. *Cash Biz, LP v. Henry*, 2016 Tex. App. LEXIS 7921 (Tex. App.—San Antonio July 27, 2016, pet. granted). The plaintiffs appealed this decision to the Texas Supreme Court, arguing that the CAB invoked the judicial process and waived the arbitration agreement by filing criminal charges. The parties have filed their briefs before the Texas Supreme Court. The Supreme Court has granted the plaintiffs' petition, and has set oral argument for September 15, 2017.

### **Legislation**

#### ***HB 365—Scope of credit access business provisions***

HB 365, filed by Representative Anchia during the 2017 special session of the Texas Legislature, would amend provisions in Chapter 393 of the Finance Code governing credit access business (CABs). Currently, Chapter 393 defines a CAB as a credit services organization (CSO) that assists a consumer in obtaining a payday or title loan. Chapter 393's provisions on disclosure and licensing refer to payday and title loans. The bill amends these provisions so that they refer to extensions of credit generally, not just payday or title loans. The effect of the bill would be to specify that all CSOs obtaining loans for consumers—not just those obtaining payday or title loans—are subject to Chapter 393's disclosure, licensing, and reporting requirements. The OCCC previously raised concerns about CSOs offering loans other than payday or title loans in a 2012 advisory bulletin, "Failing to Obtain Post-Dated Check or Motor Vehicle Title."

### **Federal Rulemaking**

#### ***CFPB Arbitration Rule***

On July 19, 2017, the Consumer Financial Protection Bureau (CFPB) published its final adopted rule governing arbitration agreements for consumer financial products. The rule prohibits creditors from including a class-action waiver in a pre-dispute arbitration agreement. Arbitration agreements must explain that the consumer may file a class action in court and may be a member of a class action. The rule also requires creditors to report information about arbitrations to the CFPB. The rule applies to arbitration agreements entered on or after March 19, 2018.

On July 25, the U.S. House of Representatives passed HJR 111, a resolution disapproving the CFPB's arbitration rule. A similar resolution, SJR 47, has been introduced in the U.S. Senate. These resolutions

have been introduced under the Congressional Review Act, which allows Congress to invalidate a federal regulation through a joint resolution within 60 legislative days of the rule's publication.

### **Advisory Bulletins**

From June 1, 2017 to July 31, 2017, the OCCC did not issue any new advisory bulletins. The OCCC revised the following advisory bulletins during this period:

- Bulletin no. B15-2, "Alternatives to Credit Card Surcharges," was revised to explain that starting September 1, enforcement authority for the credit card surcharge will be transferred from the OCCC to the Office of the Attorney General, as provided by SB 560 (2017).
- Bulletin no. B16-2, "Review of Debt Cancellation Agreements Requiring Insurance," was revised to reflect amended requirements for debt cancellation agreements and updated citations to the Finance Code, based on SB 1052 (2017).
- Bulletin no. B16-4, "Deferment Charges," was revised to reflect amended requirements for deferments in motor vehicle retail installment contracts, based on SB 1052 (2017).
- Bulletin no. B16-5, "Documentary Fee Filing Instructions," was revised to explain that motor vehicle sellers will no longer be required to file notice of a documentary fee of \$150 or less starting September 1, as provided by HB 2949 (2017).

### **Official Interpretation Requests**

From June 1, 2017 to July 31, 2017, the OCCC received one request for an official interpretation. The requestor asked whether the administrative fee for a Chapter 342, Subchapter E loan may be included in the loan's principal balance. The requestor withdrew the request on July 31. The OCCC anticipates that this issue will be addressed in a rulemaking action to be presented at the Finance Commission's October 20 meeting.

Other than this request, there were no pending interpretation requests as of July 31, 2017.

### **Public Information Requests**

From June 1, 2017 to July 31, 2017, the OCCC received 39 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 June 1, 2017 to July 31, 2017, the OCCC did not receive any gifts.

Legislative Bill No. and Description	Rule Item/Purpose	Proposal Date	Adoption Date
Not applicable	<b>Rules Regarding Contested Case Procedures - Adopt Amendments</b> 7 TAC, Part 1, Chapter 9 - §9.1 & §9.12  To provide finance agencies with specific procedures for resolving default cases that are remanded back to the agencies by the State Office of Administrative Hearings  <i>Precomment draft distributed May 4, 2017</i>	06/16/17	Presented for Adoption 08/18/17
Not applicable	<b>Texas Financial Education Endowment Fund - Adopt New Rules</b> 7 TAC, Part 1, Chapter 7  To provide rules for the administration of the Texas Financial Education Endowment fund created by Texas Finance Code, §393.628	06/16/17	Presented for Adoption 08/18/17
<b>House Bill 2339</b> Trade-in credit agreements  <b>House Bill 2949</b> Documentary fees  <b>Senate Bill 1052</b> Debt cancellation agreements and deferment charges  <b>Senate Bill 1199</b> Depreciation benefit service contracts	<b>Motor Vehicle Installment Sales - Adopt Amendments</b> 7 TAC, Part 5, Chapter 84  <b>Retail Creditors - Adopt New Rule</b> 7 TAC, Part 5, Chapter 86 - §86.202  To implement recent legislation regarding motor vehicle installment sales; to remove references to a deferment charge for contracts using the true daily earnings method; to specify that the benefit under a trade-in credit agreement may not be included in the equity disclosure form; to remove the requirement to file notification for a documentary fee over \$50 up to \$150; to update references and provide a retail creditor rule to refer to new Tex. Fin. Code, Chapter 354, concerning debt cancellation agreements; to implement related recordkeeping requirements  <i>Stakeholder webinar held June 1, 2017</i>	06/16/17	Presented for Adoption 08/18/17
<b>Senate Bill 560</b> Relating to surcharges imposed for the use of a credit card; providing a civil penalty	<b>Credit Card Surcharge Appeal Procedures - Proposed Repeal</b> 7 TAC, Part 1, Chapter 4  To repeal the procedures for parties to appeal credit card surcharge issues to the Finance Commission, as Senate Bill 560 transfers regulatory authority to the Office of the Attorney General	08/18/17	

Legislative Bill No. and Description	Rule Item/Purpose	Proposal Date	Adoption Date
Not applicable	<p><b>Property Tax Lenders - Adopt Completed Rule Review &amp; Proposed Amendments</b> 7 TAC, Part 5, Chapter 89</p> <p>To conduct standard 4-year review under Tex. Gov't Code, §2001.039; to update rules for property tax lenders with conforming and clarifying changes recently adopted in other regulated areas; to provide clarification; to update disclosures; and to make technical corrections</p> <p><i>Precomment draft distributed July 13, 2017</i> <i>Stakeholder meeting and webinar held July 27, 2017</i></p>	08/18/17	
<p><b>House Bill 3342</b> Relating to the prelicensing education requirements for residential mortgage loan originators</p>	<p><b>Residential Mortgage Loan Originators Applying for Licensure with the OCCC Under the SAFE Act - New Rule</b> 7 TAC, Part 1, Chapter 2 - §2.107</p> <p>To implement House Bill 3342 by providing a three-year education period prior to licensure</p> <p><i>Precomment draft anticipated September 2017</i></p>	10/20/17	
Not applicable	<p><b>Rules for Regulated Lenders - Amendments</b> 7 TAC, Part 5, §83.503, Administrative Fee</p> <p><b>Chapter 342, Plain Language Contract Provisions- Amendments</b> 7 TAC, Part 5, §90.203, Model Clauses</p> <p>To specify requirements for regulated lenders to include an administrative fee in the principal balance upon of a Chapter 342, Subchapter E loan</p>	10/20/17	
Not applicable	<p><b>Consumer Debt Management Services - Rule Review</b> 7 TAC, Part 5, Chapter 88</p> <p>To conduct standard rule review under Tex. Gov' t Code, §2001.039; to update citations</p>	TBD 2017 or 2018	

*This page left blank intentionally.*



**B. Office of Consumer Credit Commissioner**

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

**PURPOSE:** The purpose of the 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 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 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 without changes as previously published in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we approve 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) adopts new 7 TAC, Part 1, Chapter 7, §§7.101 - 7.105, concerning the Texas Financial Education Endowment Fund.

The commission adopts the new §§7.101 - 7.105 without changes to the proposed text as published in the June 30, 2017, issue of the *Texas Register* (42 TexReg 3327).

The commission received no written comments on the proposal.

In general, the purpose of the adopted 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 new 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 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 adoption codifies 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 adopted 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. Adopted 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. Adopted new §7.105 references the statutory location and manner of investment for the TFEE fund.

The new rules are adopted 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 adoption 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 adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on August 18, 2017.

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

## **B. OFFICE OF CONSUMER CREDIT COMMISSIONER**

3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 5, Chapter 84, Concerning Motor Vehicle Installment Sales, and the Adoption of a 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 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 without changes as previously published in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we approve 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) adopts 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 adopts new §86.202 in 7 TAC, Chapter 86, concerning Retail Creditors.

The commission adopts the 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; and new §86.202, without changes to the proposed text as published in the June 30, 2017, issue of the *Texas Register* (42 TexReg 3332).

The commission received one supportive written comment on the proposal from the Texas Independent Automobile Dealers Association (TIADA). The comment solely relates to amended §84.205, Documentary Fee, and supports the adopted changes stating that the "language accurately reflects the intent of HB 2949."

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 adopted 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 will 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.

Prior to proposal, the agency circulated an early draft of these 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.

An adopted 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 adoption deletes references to the maximum deferment charge for transactions using the true daily earnings method. These amendments to §84.203 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 adoption, §84.203 applies only to transactions using the add-on method or the scheduled installment earnings method. In response to the attendee's question, the agency recently

issued a revised advisory bulletin on deferments, explaining that Texas Finance Code, §348.116 requires an amendment to a retail installment contract to be confirmed in a writing signed by the buyer, and requires the holder to deliver a copy of the confirmation to the buyer.

An adopted 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.

An adopted 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 adoption deletes references to the requirement to provide a notification for a documentary fee

that is greater than \$50 but less than or equal to \$150. These amendments 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 §84.205(b)(2) prior to this adoption. 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.

Adopted 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 implements SB 1052, which permits the agency to agree to these deadline extensions in new Texas Finance Code, §354.005(b).

In §84.707, the adoption 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), adopted 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 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), adopted 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 ensures 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 will 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 will 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), adopted 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 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 adoption 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), adopted new subparagraph (R) requires sellers to maintain written deferment agreements and deferment notices. These amendments 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 adoption 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), adopted new subparagraph (J) conforms to the previously discussed amendment to §84.708(e)(2) relating to deferments. In addition, an adopted 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 adoption 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), adopted 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 §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 adopted §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. Adopted §84.808(8)(F) applies only to the transaction where the buyer receives a benefit under the agreement.

Adopted 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 implements 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 began accepting submissions of debt cancellation agreements for these Chapter 345 covered vehicles as of 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, as required by Texas Finance Code §348.125(c), as added by HB 2339.

All of the amendments and the new rule are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to ensure compliance with

Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §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 adopted 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 adopted 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 adopted 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 adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on August 18, 2017.

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





July 31, 2017

Commissioner Leslie Pettijohn  
Office of Consumer Credit Commissioner  
2601 N. Lamar Blvd.  
Austin, TX 78705

Dear Commissioner Pettijohn:

I am writing regarding the proposed amendments to Section 84.205 in 7 TAC Chapter 84, which seek to implement HB 2949 as passed by the 85<sup>th</sup> Texas Legislature. In the association's opinion, the proposed language accurately reflects the intent of HB 2949.

TIADA appreciates the agency's effort to increase efficiency for the thousands of auto dealers who do business in the state.

As always, we welcome the opportunity to engage in productive stakeholder dialogue with the agency.

Sincerely,

Amber Hackett Crosby  
Director of Dealer Compliance and Education  
Texas Independent Automobile Dealers Association  
800.442.5944 o / 214.566.0555 m

*This page left blank intentionally.*

**B. Office of Consumer Credit Commissioner**

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

**PURPOSE:** The purpose of the proposed repeal is to delete obsolete rules contained in 7 TAC, Chapter 4, which is no longer necessary. Senate Bill 560 amends the credit card surcharge prohibition in §339.001 by transferring enforcement authority from the Office of Consumer Credit Commissioner to the Office of the Attorney General effective September 1, 2017.

**RECOMMENDED ACTION:** The agency requests that the Finance Commission approve the proposed repeal of 7 TAC, Part 1, Chapter 4 for publication in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we approve for publication and comment the proposed repeal of 7 TAC, Part 1, Chapter 4.

*Title 7. Banking and Securities*  
*Part 1. Finance Commission of Texas*  
*Chapter 4. Credit Card Surcharge Appeal Procedures*

The Finance Commission of Texas (the commission) proposes the repeal of 7 TAC, Part 1, Chapter 4, Credit Card Surcharge Appeal Procedures. Chapter 4 consists of Subchapter A, containing §§4.101-4.106, relating to contested case procedure for credit card surcharge violations occurring on or before August 31, 2013.

The purpose of the proposed repeal is to delete obsolete rules contained in 7 TAC, Chapter 4. The commission has determined that Chapter 4 is no longer necessary, as the enforcement of the credit card surcharge prohibition is being transferred to the Office of the Attorney General (OAG).

Through August 31, 2017, Texas Finance Code, §339.001(c) states that the commission has exclusive jurisdiction to enforce and adopt rules relating to §339.001. As enacted by the 85th Texas Legislature, Senate Bill (SB) 560 amends the credit card surcharge prohibition in §339.001 by transferring enforcement authority from the Office of Consumer Credit Commissioner (OCCC) to the OAG. Effective September 1, 2017, the bill relocates these provisions to §604A.0021 of the Texas Business and Commerce Code, which will ensure consistent enforcement with the existing debit card surcharge prohibition contained in §604A.002 also enforced by the OAG.

Additionally, there are no pending contested cases involving credit card surcharge violations on or before August 31, 2013, which is the time period governed by 7 TAC, Chapter 4.

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

Commissioner Pettijohn also has determined that for each year of the first five years the repeal as proposed will be in effect, the public benefit anticipated as a result of the repeal will be the elimination of rules that are no longer necessary. There is no anticipated cost to persons who are required to comply with the repeal as proposed. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There will be no effect on individuals required to comply with the repeal as proposed.

Comments on the proposed repeal 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](mailto: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 repeal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The repeal is proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce

Chapter 14 and Title 4 of the Texas Finance Code. The repeal is also proposed under Texas Finance Code, §339.001(c) which currently states that the commission has exclusive jurisdiction to enforce and adopt rules relating to §339.001 (as of the date proposed to the commission). Effective September 1, 2017, SB 560 amends the credit card surcharge prohibition in §339.001 by transferring enforcement authority from the OCCC to the OAG and relocating these provisions to the Texas Business and Commerce Code.

The statutory provisions affected by the proposed repeal are contained in Texas Finance Code, §339.001.

*§4.101. Definitions and Scope.*

*§4.102. Credit Card Surcharge Complaints.*

*§4.103. OCCC's Recommendation of Whether to Initiate Credit Card Surcharge Proceeding.*

*§4.104. Initiation and Notice of Credit Card Surcharge Proceeding.*

*§4.105. Contested Case on Credit Card Surcharge.*

*§4.106. Final Order on Credit Card Surcharge.*

### **Certification**

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

Issued in Austin, Texas on August 18, 2017.

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

*This page left blank intentionally.*

## **B. OFFICE OF CONSUMER CREDIT COMMISSIONER**

### **5. Discussion of and Possible Vote to Take Action on the Completed Rule Review of 7 TAC, Part 5, Chapter 89, Concerning Property Tax Lenders**

**PURPOSE:** Pursuant to Texas Government Code, §2001.039, the agency has completed the review of 7 TAC, Chapter 89. The notice of the review was published in the *Texas Register* as required on June 16, 2017 (42 TexReg 3167). The commission received four written comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this chapter continue to exist. As a result of the comments received and internal review by the agency, the commission has determined that certain revisions are appropriate and necessary. Rule changes to Chapter 89 are being separately presented for proposal.

**RECOMMENDED ACTION:** The agency requests that the Finance Commission approve and adopt the rule review of Chapter 89, as the reasons for these rules continue to exist.

**RECOMMENDED MOTION:** I move that we find that the reasons for adopting Chapter 89 continue to exist and that the rules are repropose and readopted.

*Title 7. Banking and Securities*  
*Part 5. Office of Consumer Credit Commissioner*  
*Chapter 89. Property Tax Lenders*

The Finance Commission of Texas (commission) has completed the review of Texas Administrative Code, Title 7, Part 5, Chapter 89, concerning Property Tax Lenders. Chapter 89 contains Subchapter A, concerning General Provisions (§§89.101 - 89.102); Subchapter B, concerning Authorized Activities (§§89.201 - 89.208); Subchapter C, concerning Application Procedures (§§89.301 - 89.312); Subchapter D, concerning License (§§89.401 - 89.409); Subchapter E, concerning Disclosures (§§89.501 - 89.507); Subchapter F, concerning Costs and Fees (§§89.601 - 89.603); Subchapter G, concerning Transfer of Tax Lien (§§89.701 - 89.702); and Subchapter H, concerning Payoff Statements (§§89.801 - 89.804). The rule review was conducted pursuant to Texas Government Code, §2001.039.

Notice of the review of 7 TAC, Part 5, Chapter 89 was published in the *Texas Register* as required on June 16, 2017 (42 TexReg 3167). The commission received four written comments in response to that notice. The comments were submitted by Hunter-Kelsey of Texas, LLC, Propel Financial Services, Sombrero Capital, and the Texas Property Tax Lienholders Association. The commenters make several recommendations for amendments to the rules in Chapter 89.

In §89.207(3)(B), one commenter recommends removing the provision requiring a property tax lender to maintain the notice of the right of rescission, in light of the Fifth Circuit's decision in *Billings v. Propel Financial Services L.L.C.*, 821 F.3d 608 (5th Cir. 2016). The commission disagrees with this recommendation. Although the Fifth Circuit held that the Truth in Lending Act generally does not apply to Texas property tax lenders, the court acknowledged that certain sections of the Tax Code incorporate provisions of federal law, and these federal provisions apply to property tax lenders. *Billings*, 821 F.3d at 611. The right of rescission applies to a residential property tax loan under Texas Tax Code, §32.06(d-1). For this reason, the requirement to maintain a copy of the notice is not affected by the Fifth Circuit's decision.

In §89.207(3)(H), one commenter recommends clarifying that the requirement to maintain a copy of the release of lien does not apply to a lien that has been foreclosed. In response to this comment, the commission is proposing an amendment to §89.207(3)(H), published elsewhere in this issue of the *Texas Register*, specifying that if a property tax loan is satisfied through a foreclosure, the property tax lender must maintain the foreclosure deed.

In §89.208, one commenter recommends changes regarding advertisements and solicitations. First, the commenter recommends amending §89.208(b)(3) and (c) to allow the advertisement to state the name of a licensed affiliate of the property tax lender. The commission disagrees with this recommendation. These provisions currently require a property tax loan advertisement to state the name of the property tax lender. The name of the property tax lender is an important piece of information that helps to avoid confusion on the part of the borrower, and the advertisement is misleading if it does not state the property tax lender's name. Second, the commenter recommends amending §89.208(b)(9), which prohibits a property tax lender from



representing that the borrower will be sued by the taxing unit unless the property tax lender has verified this fact. The commenter states that "delinquent taxpayers will be sued 100% of the time if they never pay their taxes." The commission disagrees with this recommendation. Property tax lender advertisements should not contain unverified information, particularly information that will intimidate or confuse borrowers.

In §89.310, one commenter recommends an 18% increase in licensing fees charged by the Office of Consumer Credit Commissioner (OCCC), given the inflation index and increased costs of living. This is outside the scope of the amendments proposed elsewhere in this issue of the *Texas Register*, but the agency will consider re-evaluating the licensing fees as part of a future rule action.

In §89.312, two commenters recommend specifying that certain activities do not require an individual to be licensed as a residential mortgage loan originator. One of these commenters requests that the commission "clarify that person processing account need not be licensed if renewal is processed under the same terms at the original account and the application is completed online." The other commenter requests that the commission "clarify that an unlicensed individual may deliver a quote/terms to prospective borrowers if those terms have been prepared by a licensed individual. In this scenario, the non-licensed person is simply delivering quotes/terms that have prepared by a licensed agent and the non-licensed person cannot negotiate further." The commission disagrees with these recommendations. Under Texas Finance Code, §180.002(19), a residential mortgage loan originator is "an individual who for compensation or gain or in the expectation of compensation or gain: (i) takes a residential mortgage loan application; or (ii) offers or negotiates the terms of a residential mortgage loan . . . ." If an individual acts as a residential mortgage loan originator for a property tax loan, then the individual must be licensed under Texas Finance Code, §351.0515. Both of the situations presented by the commenters appear to involve individuals offering terms for a loan, and therefore require the individual to be licensed.

One commenter recommends that the commission review property tax lending disclosure rules to "[e]nsure that consumers receive adequate notices regarding the cost and terms of the underlying transaction," and to provide "[s]tandardization of the forms and calculation methods for certain terms (e.g., APR) to ensure consumers can make well-informed choices." Another commenter recommends re-evaluating current rules related to disclosures. The commission agrees with these recommendations and is proposing amendments to §§89.502, 89.503, 89.504, and 89.506, published elsewhere in this issue of the *Texas Register*, with amended disclosure requirements for property tax loans.

In §89.601(a), two commenters recommend limiting the scope of the closing cost rule's limitations to homestead property. In response to this recommendation, the commission is proposing an amendment to §89.601(a), published elsewhere in this issue of the *Texas Register*, that amends the scope of the rule's closing cost limitations.

In §89.601(c)(4), three commenters recommend allowing additional closing costs for each additional parcel of commercial property, for property tax loans that cover both residential and

commercial property. In response to these comments, the commission is proposing amendments to §89.601(c)(4), published elsewhere in this issue of the *Texas Register*, that remove language limiting the current additional \$100 authorization to residential parcels.

In §89.602, two commenters recommend increasing the allowable fees to process a release of lien due to inflation and increased actual costs. As part of a stakeholder meeting, the agency asked for specific information from stakeholders regarding the costs to file a release of lien. Although stakeholders provided general cost ranges, the agency does not believe that it has obtained sufficiently specific cost information that supports a change in the fee for filing a release of lien at this time. Stakeholders are welcome to submit specific cost information related to this issue for consideration in a future rule action.

In §89.603, one commenter recommends increasing the payoff statement fee from \$10 to \$12. The commenter did not identify any specific costs associated with this fee. The commission disagrees with this recommendation, and believes that amending the payoff statement fee is unnecessary at this time.

In §89.701(a)(13), which contains the form for the borrower's sworn document authorizing the tax lien transfer, one commenter states: "This section was never updated for the 2013 restriction on making a loan after a homestead owners turns 65. This should be changed to ' . . . and I am 65 years or older, or disabled, I may be . . .'" The commission disagrees with this recommendation. Under Texas Tax Code, §32.06(a-3), a person who is 65 years of age or older may not authorize a property tax loan if the person is authorized to claim a homestead exemption. The legislature added this provision to the statute in 2013. That same year, the commission amended the form of the sworn document to remove the phrase "either age 65 or older or" before "disabled." This amendment conformed to the 2013 statutory amendment. The statement regarding individuals 65 or older should not be included on the sworn document, because these individuals are prohibited from obtaining a property tax loan.

In §89.702, regarding the certified statement signed by the taxing unit, one commenter recommends allowing the citation to Texas Tax Code, §32.06 to be changed for transfers that occur under Texas Tax Code, §33.445. In response to this comment, the commission is proposing new §89.702(d)(3), published elsewhere in this issue of the *Texas Register*, that allows the citation to be replaced in this situation.

Two commenters recommend that the commission adopt rules clarifying Texas Tax Code, §32.06(a-8)(1), which prohibits a property tax loan on property that "has been financed, wholly or partly, with a grant or below market rate loan provided by a governmental program or nonprofit organization and is subject to the covenants of the grant or loan." As part of a stakeholder meeting, the agency asked stakeholders to provide information about the types of real property financed by governmental or nonprofit loans they have encountered, what rates they have encountered, and whether it is unclear if these rates are below market rate. Although some stakeholders provided recommended rule text, they did not provide specific rate information about governmental or nonprofit loans they have encountered. The agency does not believe that it has obtained sufficiently specific rate information that supports a rule on this issue.

Stakeholders are welcome to submit specific rate information on this issue for consideration in a future rule action.

Three commenters recommend that the commission authorize additional costs for the modification of a property tax loan. Two of these commenters characterize modification costs as "closing costs." The commission disagrees with this recommendation. Modification costs are post-closing costs, because they occur after the loan is closed. Post-closing costs are expressly limited by Texas Finance Code, §351.0021, which specifies certain narrow types of post-closing costs a property tax lender can charge for a modification. For example, §351.0021(a)(10) allows a property tax lender to charge "recording expenses incurred in connection with a modification necessary to preserve a borrower's ability to avoid a foreclosure proceeding." Section 351.0021(c)(1) explains that a property tax lender may not charge any post-closing fees except for the charges expressly authorized by the section. Because post-closing costs are already specified by statute, the commission believes that a rule on this issue is unnecessary.

One commenter requests "[e]laboration and/or clarification of permissible post-closing fees." Another commenter recommends that the commission "Enforce and Clarify Post-Closing Fees." The commenters do not identify which post-closing fees should be clarified. As discussed earlier, because post-closing costs are already specified by statute, the commission believes that a rule on this issue is unnecessary.

One commenter recommends that the commission "narrowly evaluate certain fee rules, especially those related to modifications and renewals of existing accounts." The commenter does not specify which rules are being referred to. As discussed earlier, the commission is proposing amendments to §89.601, published elsewhere in this issue of the *Texas Register*, dealing with closing costs. As discussed earlier, the commission believes that a rule authorizing costs for modification is unnecessary.

One commenter recommends that the commission "clarify that reasonable attorney's fees are not directly correlated to the loan balance but instead, calculated on actual work performed." The commenter explains: "Certain judges/tax masters have claimed legal fees are unreasonable when compared to some [tax lien transfer] balances (ie \$1,000 property tax loan with \$3,000 attorney's fees)." The commission disagrees with this recommendation. Whether attorney's fees are reasonable depends on a variety of facts that should be considered on a case-by-case basis. *See, e.g.,* Tex. Disciplinary Rules Prof'l Conduct R. 1.04(b) (providing a nonexclusive list of eight factors that may be considered in determining whether a fee is reasonable, for purposes of disciplinary rules governing attorneys). Typically, a court will determine whether attorney's fees are reasonable in a particular case. *See* Tex. Civ. Prac. & Rem. Code ch. 38; Fed. R. Civ. P. 54(d)(2) (describing procedural requirements for attorney's fee claims). For this reason, the commission does not believe that it would be appropriate to adopt a rule excluding certain facts from the consideration of whether attorney's fees are reasonable. Under the current recordkeeping rule at §89.207(3)(A)(ix) and (3)(I)(ii), property tax lenders are required to maintain invoices for attorney's fees that specifically describe the services performed by the attorney. Property tax lenders should also maintain evidence showing that their attorney's fees are reasonable, so that they can provide this evidence when a court questions their fee claims.

One commenter requests that the commission "[s]pecify if escrow accounts are allowable, and if so, adopt rules regarding their usage." Another commenter states: "The OCCC should also clarify that escrow accounts are optional. Escrow accounts can benefit consumers but the OCCC must ensure escrow accounts do not accrue interest, except if the PTL is due uncollected insurance premiums. However, an escrow account for property taxes must be free of finance charges or interest." The commission disagrees with these recommendations. Section 32.06 of the Tax Code and Chapter 351 of the Finance Code do not expressly mention escrow accounts. Whether an escrow account is permissible depends on how the account is used in a particular transaction. A property tax lender may not use an escrow account in a way that violates a legal requirement (e.g., exceeding the limitation on funds advanced in Texas Tax Code, §32.06(e), or engaging in unlicensed lending). Whether there is a violation depends on the particular transaction. The requirements of the Tax Code and Finance Code apply generally, whether or not the property tax lender uses an escrow account. The commission believes that a rule specifying that these requirements apply to property tax loans with escrow accounts is unnecessary.

One commenter requests "[c]larification that any insurance premiums charged count in the closing cost calculation." The commission disagrees with this recommendation. The funds advanced for a property tax loan are expressly limited under Texas Tax Code, §32.06(e), which does not authorize a property tax lender to advance insurance premiums. Fees for collateral protection insurance are authorized as a post-closing cost under Texas Finance Code, §351.0021(a)(8). The commission believes that a rule on this issue is unnecessary.

One commenter requests that the commission "[a]llow for and specify reasonable closing costs associated with . . . the processing of any force pay related to paying off a county tax suit made after our loans." The commission disagrees with this recommendation. It appears that the commenter is describing a post-closing cost, not a closing cost. As discussed earlier, because post-closing costs are already specified by statute, the commission believes that a rule on this issue is unnecessary.

One commenter requests that the commission "[p]ermit PTLs charge a nominal fee to accept credit cards." The commission disagrees with this recommendation. A fee for accepting credit card payment is a post-closing cost that is not authorized by Texas Finance Code, §351.0021.

One commenter requests that the commission "clarify that services must be performed by a person that is not an employee of the property tax lender in order to prevent creation of affiliated entities to circumvent [Texas Finance Code, §351.0021(d)]." The commission disagrees with this recommendation. Texas Finance Code, §351.0021(d) already provides that certain post-closing costs must be performed by a person who is not an employee of the property tax lender. The current recordkeeping rule at §89.207(3)(I)(iii) and (7) requires a property tax lender to maintain records of amounts paid to affiliated businesses, as well as records describing the property tax lender's relationship with any affiliated businesses. The current disclosure rule at §89.504(f) requires a property tax lender to disclose the names of affiliated businesses to which post-closing costs may be paid. The commission believes that additional rules on this issue are unnecessary at this time.

One commenter states that the commenter "has observed inconsistencies across the industry regarding business practices involving affiliated entities and believes clarifying certain rules on this topic would better protect consumers." The commenter does not specify which rules are being referred to. The commission is proposing amendments to §89.502(3), published elsewhere in this issue of the *Texas Register*, specifying that costs paid to affiliated businesses are included in the finance charge for purposes of calculating the annual percentage rate.

One commenter requests that the commission "clarify scenarios where a PTL may waive the 3 Day Right to Rescind. Suggested scenarios: a. The waiver prevents a foreclosure due to tax sale, or; b. The waiver prevents customer from being subject to a significant financial penalty: i. June to July increase; or, ii. January to February increase (properties not subject to a preexisting mortgage)." The commission disagrees with this recommendation. Texas Tax Code, §32.06(d-1), provides: "A right of rescission described by 12 C.F.R. Section 226.23 applies to a transfer under this section of a tax lien on residential property owned and used by the property owner for personal, family, or household purposes." The situations where a borrower may waive the right of rescission are described in Regulation Z, 12 C.F.R. §226.23(e)(1) and §1026.23(e), which provide: "The consumer may modify or waive the right to rescind if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. To modify or waive the right, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the right to rescind, and bears the signature of all the consumers entitled to rescind. Printed forms for this purpose are prohibited . . . ." Because Regulation Z and its official commentary specify the situations where the right of rescission may be waived, the commission believes that additional rules on this issue are unnecessary at this time.

As a result of the comments submitted and internal review by the agency, the commission has determined that certain revisions are appropriate and necessary. The commission is concurrently proposing amendments to 7 TAC Chapter 89 published elsewhere in this issue of the *Texas Register*.

Subject to the proposed amendments to Chapter 89, the commission finds that the reasons for initially adopting these rules continue to exist, and readopts this chapter in accordance with the requirements of Texas Government Code, §2001.039. This concludes the review of 7 TAC, Part 5, Chapter 89.

July 17, 2017

Ms. Laurie B. Hobbs  
Assistant General Counsel  
Office of Consumer Credit Commissioner  
2601 N. Lamar Blvd  
Austin, TX 78705

Dear Ms. Hobbs;

We appreciate the OCCC soliciting input on possible administrative rule amendments for property tax lenders. The following are items we'd like to see addressed in the review process to 7 Tex. Admin Code Chapter 89. Since subchapters D and E will already be addressed, this letter only addresses the other Subchapters that I hope can be incorporated into the overall review.

#### Subchapter B – Authorized Activities

- 1) 89.207 – Given the US Fifth Circuits ruling that Texas property tax loans do not need to comply with the Truth in Lending Act (Reg Z), the reference in 89.207(3)(B) should be removed.
- 2) 89.208 (b)(3) – Given that the largest lenders having multiple licensees (required by their institutional lenders which help PTLs get lower cost of funds), this section needs to add the following “...name of the property tax lender or one of its licensed affiliates will make the loan”.
- 3) 89.208 (b)(9) – The reality is delinquent taxpayers will be sued 100% of the time if they never pay their taxes. Those lawsuit costs only add to their overall burden. PTLs help property owners avoid that. It is not inappropriate to remove the reference to “may be sued” because they will be sued. Please consider this language: “indicates or implies that the potential property tax borrower has been sued by the taxing entity or another party unless the property tax lender has verified that the taxing unit or another party has sued or will sue within 30 days of when the advertisement or solicitation is sent”.
- 4) 89.208 (c) – This needs to acknowledge the reality that PTLs have affiliates who may ultimately fund the loan. Please consider changing the first sentence to: “An advertisement or solicitation must include the name of the property tax lender or its licensed affiliate.”

#### Subchapter C – Application Procedures

- 1) 89.310 – Fees. The inflation index has risen 18% from 2007 to 2018. An increase of fees of 18% is supported given cost of living changes since the fees were established 10 years ago.

#### Subchapter F – Costs and Fees

- 1) 89.601 – Closing Cost Fees. The most recent closing cost cap for Category A and Category E did not specify how to treat loans that have multiple properties beyond Category A and Category E. For instance, a property owner has 3 rent houses and a small commercial building. The borrower simply wants one loan with one set of closing costs and one set of documents to sign, and only one loan payment to make. A recent letter to the TPTLA from the OCCC stated that while an extra \$100 can be charged for each additional residential property, ZERO can be charged for additional

non-residential property. Our attorneys charge us for each set of sworn authorization and tax lien transfer documents they have to prepare for each tract. As it stands, we lose money adding additional non-residential properties because the rules don't allow for non-residential properties to be part of a residential property tax loan. The current rules motivate PTLs to create two loans so we can recover our incremental costs. It would be best if the rules allowed for one loan, and that the closing costs be delineated such that the residential properties have to comply with a cap of \$900 plus \$100 per additional residential property, and use the current standard of "reasonable" for all other property types. For example, a loan that had 3 residential properties and a small commercial building might have closing costs allocated as \$700 for the first residential, \$100 for the second residential, and \$300 for the commercial. Such an approach saves the customer hassle and money as the closing costs for a second loan may be \$700 or more, and a second loan requires two payments and twice the paperwork.

- 2) 89.602 – Fee for Filing Release. In the ten years since the maximum fees were set, inflation has increased approximately a compounded 18%. Therefore, the maximum inhouse fee should increase from \$35 to \$40, and the maximum fee should be increased from \$110 to \$130.
- 3) 89.603 – Payoff Statement Fee. It should be increased from \$10 to \$12.

#### Subchapter G – Transfer of Tax Lien

- 1) 89.701(a)(13) – This section was never updated for the 2013 restriction on making a loan after a homestead owners turns 65. This should be changed to "...and I am 65 years or older, or disabled, I may be..."

The Texas Property Tax Lienholders Association will be providing feedback to address Subchapters D and E.

Thank you again for reaching out for our feedback. Should you have any questions, please feel free to email or call me at my desk line of 512-672-7122. I am in Austin and would also be happy to come visit if you might prefer that.

Sincerely,

Peter J. Squier  
President  
Hunter-Kelsey of Texas, LLC

PO Box 100350  
San Antonio, TX 78201

July 14, 2017

Laurie B. Hobbs  
Assistant General Counsel  
Office of Consumer Credit Commissioner  
2601 N. Lamar Blvd  
Austin, TX, 78705

Dear Ms. Hobbs,

I am pleased to submit this letter on behalf of Propel Financial Services for the OCCC's consideration during the 2017 rule review process. Propel remains committed to helping the OCCC help ensure the property tax lien transfer industry remains a viable and valuable resource for Texas property owners. As the largest tax lender in the industry over the past decade, we have witnessed first-hand the positive impact that the OCCC's previously instituted rule changes have had on property owners and the industry. While we believe the industry is generally performing well currently, we would encourage you to consider amending rules in the following areas.

1. Disclosures. We believe consumers and tax lenders would benefit from a reevaluation of the current rules related to disclosures. This is especially critical now that the Fifth Circuit has clarified that tax lien lenders are not subject to the disclosure requirements of federal mortgage lending laws.
2. Affiliated Entities. Propel has observed inconsistencies across the industry regarding business practices involving affiliated entities and believes clarifying certain rules on this topic would better protect consumers.
3. Review of Rules Regarding Certain Fees. The existing rules contain ambiguity regarding permissible fees. Likewise, the current rules contain prohibitions against charging certain (reasonable) fees that discourage property tax lenders from making accommodations to certain property owners. Propel, acknowledging that fee reviews can be time-consuming and have recently been done, nonetheless requests the OCCC to narrowly evaluate certain fee rules, especially those related to modifications and renewals of existing accounts.

Propel applauds your continued efforts to fairly regulate our industry, especially as the other industries under your purview continue to grow while our industry remains flat. Propel is committed to working with the OCCC to ensure that the rules protect consumers, the industry in general, and other groups (e.g., mortgage lienholders, county tax offices). We appreciate your consideration.

Respectfully,



Jack Nelson  
President



The Propel Financial Services Family of Brands





# Sombrero Capital

711 Navarro St., Ste 535  
San Antonio, TX 78205

July 17, 2017

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

Re: The Finance Commission of Texas (commission) proposed amendments to Texas Administrative Code, Title 7, Part 5, Chapter 89, concerning Property Tax Lenders

Dear Commissioner Pettijohn,

I applaud the OCCC's efforts to collect comments from stakeholders to improve and clarify the rules governing Property Tax Lenders ("PTLs") and Tax Lien Transfers ("TLTs"). Please consider my suggestions below:

1. **Allow up to \$500 in Closing Costs to Modify a Delinquent TLT Account.** The OCCC should permit reasonable closing costs to modify certain TLT accounts. Points include:
  - a. To Qualify for a Good Faith Modification, the TLT account must be:
    - i. Delinquent by over 90 days, or;
    - ii. Subject to foreclosure proceedings by another lienholder(s).
      1. A lender may reach an agreement with the foreclosing lienholder(s) and amicably modify the account providing the borrower a "fresh-start."
  - b. \$500 is reasonable. To modify the account, a PTL will incur: attorney's fees for document preparation, notary fees, parcel delivery fees, recording fees, title report fees, and other processing fees. This option could benefit roughly 20% of the industry's consumers and prevent foreclosures.<sup>1</sup>
  - c. The lender's file must contain a payoff statement evidencing the delinquency and if applicable, invoices for actual attorney's fees incurred for collections.
  - d. The formula to calculate the modified principal balance shall be:
    - i. The full payoff of delinquent loan (without ROL fee); plus,

---

<sup>1</sup> TXOCCC Property Tax Lending Consolidated Volume Report – 2015 Calendar Year – reported 21.34% of the number of loans receivable be delinquent over 90 days (8,739 accounts out of 40,954).

- ii. Up to \$500 in reasonable closing costs.
- 2. **Clarify Reasonable Attorney's Fees with Respect to Collections.** The OCCC must clarify that reasonable attorney's fees are not directly correlated to the loan balance but instead, calculated on actual work performed.
  - a. The Chapter 33 collection rules are extensive and require collection attorneys to incur substantial billable hours throughout the process. The loan balance must be immaterial when justifying reasonable collection fees.
  - b. The Chapter 33 collection rules require attorneys to generally incur similar billable legal fees whether the TLT loan balance is \$750 or \$250,000. Certain judges/tax masters have claimed legal fees are unreasonable when compared to some TLT loan balances (ie \$1,000 property tax loan with \$3,000 attorney's fees). The collection attorneys that represent my company have fixed hourly rates that are assessed based on total work performed and charges for certain items.
  - c. If actual attorney's fees are unable to be collected, then consumers of TLT loans will face higher pricing due to potential losses enforcing smaller loans.
- 3. **Clarify that Fee Caps Only Apply to Homestead Properties.** The TXOCCC should clarify that the \$900 fee cap only applies to a TLT loan that encumbers a homestead (HS) property. If a TLT loan is subject to multiple properties, with one being the HS property, clarify that the PTL may charge up to \$100 for each additional property(s). The Texas Administrative Code 89.601 #4, only addresses residential property but should also include "non-residential" or simply state "additional property."
- 4. **Clarify Release of Lien Fees.** The TXOCCC must allow PTLs to charge for actual costs for processing a release of lien (ROL), which may exceed \$110. The TXOCCC should allow PTLs to charge a \$35 processing fee plus actual charges from the County Clerk and actual attorney's fees.
- 5. **Clarify Texas Tax Code 32.06(a-8)(1).** According to this provision, a PTL is prohibited from extending a TLT loan on a property that has been financed by a grant or a below market rate loan. The OCCC should clarify and define a below market rate loan. My suggestion would be that a below market rate loan is defined as: any fixed rate loan with an interest rate at or below WSJ prime at time of consumption.
- 6. **Clarify Texas Tax Code 32.06(d-1).** The TXOCCC should clarify scenarios where a PTL may waive the 3 Day Right to Rescind. Suggested scenarios:
  - a. The waiver prevents a foreclosure due to tax sale, or;
  - b. The waiver prevents customer from being subject to a significant financial penalty:
    - i. June to July increase; or,
    - ii. January to February increase (properties not subject to a preexisting mortgage).
- 7. **Enforce and Clarify Post-Closing Fees for TLT Consumers.** Consumers of Tax Lien Transfer Loans entrust that the licensed lenders uphold the rules and regulations that govern the industry. The TXOCCC must not permit a TLT consumer to be subject to any fees that are not explicitly permitted, including loan servicing fees and other charges.

8. **Clarify NMLS Licensing.** With respect to TAC 89.312, the TXOCCC should clarify that an unlicensed individual may deliver a quote/terms to prospective borrowers if those terms have been prepared by a licensed individual. In this scenario, the non-licensed person is simply delivering quotes/terms that have prepared by a licensed agent and the non-licensed person cannot negotiate further.
9. **Escrow accounts.** The OCCC should also clarify that escrow accounts are optional. Escrow accounts can benefit consumers but the OCCC must ensure escrow accounts do not accrue interest, except if the PTL is due uncollected insurance premiums. However, an escrow account for property taxes must be free of finance charges or interest.
10. **Credit Cards.** Permit PTLs charge a nominal fee to accept credit cards.

I appreciate the opportunity to voice my suggestions. Should you have any questions, please do not hesitate to contact me.

Respectfully,

Eric S. Covey  
CEO  
Sombrero Capital

July 17, 2017

Laurie B. Hobbs  
Assistant General Counsel  
Office of Consumer Credit Commissioner  
2601 N. Lamar Blvd.  
Austin, TX 78705

Dear Ms. Hobbs,

The Texas Property Tax Lienholders Association (TPTLA) appreciates the opportunity to submit suggestions prior to the upcoming rulemaking process for property tax lenders. We respectfully request the OCCC consider the following topics:

Disclosures:

- Ensure that consumers receive adequate notices regarding the cost and terms of the underlying transaction, especially in light of the Fifth Circuit's conclusion that federal mortgage disclosure laws do not apply to property tax loans
- Standardization of the forms and calculation methods for certain terms (e.g., APR) to ensure consumers can make well-informed choices

Closing Costs:

- Clarification that any insurance premiums charged count in the closing cost calculation
- Allow for and specify reasonable closing costs associated with:
  - the processing of any force pay related to paying off a county tax suit made after our loans
  - a modification that prevents a defaulted loan from foreclosure
  - non-residential property for any loan that combines both residential and non-residential property

Fees:

- Specification that fee caps should only apply to homestead properties, not other residential non-homestead properties, nor vacant land
- Elaboration and/or clarification of permissible post-closing fees

Escrow Accounts Regulation:

- Specify if escrow accounts are allowable, and if so, adopt rules regarding their usage

Clarification of specific sections:

- 32.06(a-8)(1): clarify what constitutes a "grant or below market rate loan."
- 351.0021(d): clarify that services must be performed by a person that is not an employee of the property tax lender in order to prevent creation of affiliated entities to circumvent this provision
- 89.312: clarify that person processing account need not be licensed if renewal is processed under the same terms at the original account and the application is completed online
- 89.207(3)(H): clarify that this does not apply to a lien that has been foreclosed

- 89.702(a)(10): intended for transfers authorized pursuant to section 32.06, however section 33.455 also authorizes tax lien transfers. Allow the section number to be changed to 33.445 when the tax lien transfer is issued pursuant to such section.

Thank you again for the opportunity to provide suggestions for consideration in the upcoming rulemaking process.

Please contact me with any questions.

Sincerely,

Monika Wilson  
TPTLA Manager  
EMAIL REDACTED

*This page left blank intentionally.*

## **B. OFFICE OF CONSUMER CREDIT COMMISSIONER**

6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment on Amendments, New Rules, and Repeals in 7 TAC, Chapter 89, Concerning Property Tax Lenders, Resulting from Rule Review

**PURPOSE:** The purpose of the proposal regarding 7 TAC, Chapter 89 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. The proposed rule changes generally relate to the following issues: disclosures provided by property tax lenders (including an updated version of the required pre-closing disclosure), licensing processes, fees charged by property tax lenders, and technical corrections. Additionally, certain sections are being proposed for repeal in order to replace them with new, reorganized rules.

**RECOMMENDED ACTION:** The agency requests that the Finance Commission approve the amendments, new rules, and repeals in 7 TAC, Chapter 89 for publication in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we approve for publication and comment the amendments, new rules, and repeals in 7 TAC, Chapter 89.

*Title 7. Banking and Securities*  
*Part 5. Office of Consumer Credit Commissioner*  
*Chapter 89. Property Tax Lenders*

The Finance Commission of Texas (commission) proposes amendments to §§89.102, 89.207, 89.208, 89.301, 89.302, 89.304, 89.306, 89.310, 89.403, 89.404, 89.502, 89.503, 89.504, 89.506, 89.507, 89.601, and 89.702; proposes new §89.303 and §89.405; and proposes the repeal of §§89.303, 89.405, and 89.406, in 7 TAC, Chapter 89, concerning Property Tax Lenders.

In general, the purpose of the proposal regarding 7 TAC, Chapter 89 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. The notice of intention to review 7 TAC Chapter 89 was published in the *Texas Register* on June 16, 2017 (42 TexReg 3167). The commission received four comments in response to that notice. The comments were submitted by the Hunter-Kelsey of Texas, LLC, Propel Financial Services, Sombrero Capital, and the Texas Property Tax Lienholders Association. The responses to the official comments on the rule review notice are included as part of the adopted rule review, published elsewhere in this issue of the *Texas Register*.

The proposed rule changes generally relate to the following issues: disclosures provided by property tax lenders (including an updated version of the required pre-closing disclosure), licensing processes, fees charged by property tax lenders, and technical corrections. Additionally, certain sections are being proposed for repeal in order to replace them with new, reorganized rules.

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

The individual purposes of the amendments, new rules, and repeals are provided in the following paragraphs.

Proposed amendments to §89.102 add definitions of the terms "residential property tax loan" and "commercial property tax loan." The definition of "residential property tax loan" states that the term refers to a property tax loan that includes a lien on residential property owned and used for personal, family, or household purposes. Property designated as "Category A (Real Property: Single-Family Residential)" is presumed to be residential property unless the property tax lender obtains an affidavit from the property owner stating that the property is owned and used for a business or investment purpose, not for personal, family, or household purposes. The definition of "commercial property tax loan" states that the term refers to a property tax loan that is not a residential property tax loan. The new definitions of "residential property tax loan" and "commercial property tax loan" are intended to provide consistent terminology in provisions related to disclosures and closing costs. The term "residential property tax loan" is also used to specify the scope of the limitation on closing costs, as discussed



**PROPOSED AMENDMENTS, NEW RULES, & REPEALS**  
**7 TAC, CHAPTER 89**  
**Page 2 of 32**

later in this proposal in the discussion of proposed amendments to §89.601(a).

Proposed amendments to §89.207 specify records that property tax lenders are required to maintain. These amendments are intended to ensure that the Office of Consumer Credit Commissioner (OCCC) can review a licensee's records to ensure compliance with applicable law. First, an amendment to §89.207(3)(A)(viii) specifies that a property tax lender must maintain any affidavits signed by the borrower applicable to the property tax loan, in addition to signed agreements and disclosures required by the current rule. This would include an affidavit regarding the use of commercial property, as described in the definition of "residential property tax loan" in §89.102(10). Second, an amendment to §89.207(3)(B) specifies that the current requirement regarding the right of rescission refers to maintaining the notice of the right of rescission, as required by Regulation Z, 12 C.F.R. §1026.23. Third, a proposed amendment to §89.207(3)(H) provides that if a property tax loan is satisfied through a foreclosure, the property tax lender must maintain the foreclosure deed, instead of the release of lien required by the current rule. This amendment is in response to an official comment on the notice of intention to review, which requests clarification on this issue. In the case of a foreclosure, there might not be a release of lien. Fourth, a proposed amendment to §89.207(3)(I)(ii) specifies that a property tax lender must maintain receipts and invoices for attorney's fees charged under Texas Finance Code, §351.0021(a)(6), which authorizes a reasonable post-closing fee for title examination and preparation of an abstract of title by an attorney, a title company, or a property search company authorized to do business in this state.

A proposed amendment to §89.208(h) explains that the annual percentage rate (APR) disclosed in a property tax loan advertisement must be calculated in accordance with the proposed amendment to §89.502(2). This amendment is intended to ensure that the method of calculating APR is consistent throughout the rules governing property tax lenders, as discussed later in this proposal in the discussion of proposed amendments to §89.502. It is also intended to ensure that potential borrowers receive information that will enable them to make an informed borrowing decision.

A proposed amendment to §89.301 would add a definition of "parent entity," specifying that this term refers to a direct owner of a licensee or applicant. This definition is intended to clarify the provisions on mergers and license transfers in §89.303 and §89.304, discussed later in this proposal, and is consistent with other OCCC licensing rules.

Also in §89.301, an amendment to proposed §89.301(3)(A) (current §89.301(2)(A)) amends the definition of "principal party" for sole proprietorships. The amendment removes the statement that proprietors include spouses with a community property interest. In addition, an amendment to §89.302(1)(A)(iv)(I) removes the requirement to disclose community property interests and documentation regarding separate property status, and replaces it with a requirement to disclose the names of the spouses of principal parties if requested. The agency currently spends considerable time requesting information from license applicants to determine the status of spouses' property interests, and explaining these concepts to applicants. These amendments will help streamline the licensing process and reduce regulatory

burden. The amendments will also make the application process simpler and more straightforward for applicants. In specific cases where the spouse is a principal party, the OCCC would be able to request additional information about the spouse under current §89.302(1)(C)(i)-(ii).

Section 89.303 is proposed for repeal and replacement with a new rule, with the intent to clarify the requirements when a licensee transfers ownership. Currently, §89.303 describes what constitutes a transfer of ownership requiring the filing of a transfer application. The proposed new rule largely maintains the requirements under the current rule, but it provides two different paths the transferee can take for a transfer of ownership: either an application to transfer the license, or a new license application on transfer of ownership. The amendments outline what the application has to include, the timing requirements, and which parties are responsible at different points in the transfer process. Subsection (a) describes the purpose of the new section. Subsection (b) defines terms used throughout the subsection. In particular, subsection (b)(3) defines the phrase "transfer of ownership," listing different types of changes in acquisition or control of the licensed entity. Subsection (c) specifies that a license may not be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §351.163. Subsection (d) provides a timing requirement, stating that a complete license transfer application or new license application on transfer of ownership must be filed no later than 30 days after the transfer of ownership. Subsection (e) outlines the requirements for the license transfer application or new license application on transfer of ownership. These requirements include complete documentation of the

transfer of ownership, as well as a complete license application for transferees that do not hold an existing property tax lender license. Subsection (e)(5) explains that the application may include a request for permission to operate. Subsection (f) provides that the OCCC may issue a permission to operate to the transferee. A permission to operate is a temporary authorization from the OCCC allowing a transferee to operate while final approval is pending for an application. Subsection (g) specifies the transferee's authority to engage in business if the transferee has filed a complete application including a request for permission to operate. It also requires the transferee to immediately cease doing business if the OCCC denies the request for permission to operate or denies the application. Subsection (h) describes the situations where the transferor is responsible for business activity at the licensed location, situations where the transferee is responsible, and situations where both parties are responsible.

In §89.304, concerning Change in Form or Proportionate Ownership, conforming changes are proposed corresponding to proposed new §89.303. Throughout subsections (b) and (c), references have been added to the new license application on transfer of ownership. In addition, amendments are proposed in subsection (b) to clarify situations where a merger is a transfer of ownership. The amendments specify that if a licensee is a party to a merger that results in a new or different surviving entity other than the licensee, then the merger is a transfer of ownership, and the licensee must file a license transfer application or new license application. The amendments to subsection (b) are intended to clarify the current rule text and are consistent with the OCCC's current policy.

Proposed amendments to §89.306 clarify the circumstances in which a licensee must notify the OCCC of changes to information in the original license application. The amendments specify that the requirement to provide updated information within 14 days applies before a license application is approved. Proposed new §89.306(b) provides that a licensee must notify the OCCC within 30 days if the information relates to the names of principal parties, criminal history, regulatory actions, or court judgments. Proposed new §89.306(c) specifies that each applicant or licensee is responsible for ensuring that all contact information on file with the OCCC is current and correct, and that it is a best practice for licensees to regularly review contact information.

A proposed amendment to §89.310(c) provides that a license applicant must pay a fee to a party designated by the Texas Department of Public Safety (DPS) for processing fingerprints, replacing a statement that the fee will be paid to the OCCC. This amendment conforms the rule to the method by which applicants currently provide fingerprint information through DPS's Fingerprint Applicant Services of Texas (FAST) program.

Proposed amendments to §89.403 clarify the agency's procedure for providing delinquency notices to licensees that have failed to pay an annual assessment fee. The amendments specify that notice of delinquency is considered to be given when the OCCC sends the notice by mail to the address on file with the OCCC as a master file address, or by e-mail to the address on file with the OCCC (if the licensee has provided an e-mail address).

A proposed amendment to §89.404 contains a technical correction to ensure that the rule refers to "the prior calendar year's loan activity."

Proposed new §89.405 specifies the criminal history information collected by the OCCC, outlines factors the OCCC will consider when reviewing criminal history information, and describes grounds for denial, suspension, and revocation of a property tax lender license. This section would replace the current §89.405 and §89.406, which are proposed for repeal. Subsection (a) describes the OCCC's collection of criminal history record information from law enforcement agencies. Subsection (b) identifies the criminal history information that the applicant must disclose. Subsection (c) describes the OCCC's denial, suspension, and revocation based on crimes that are directly related to the licensed occupation of property tax lender. Subsection (c)(1) lists the types of crimes that the OCCC considers to directly relate to the duties and responsibilities of being a property tax lender, including the reasons the crimes relate to the occupation, as provided by Texas Occupations Code, §53.025(a). Subsection (c)(2) contains the factors the OCCC will consider in determining whether a criminal offense directly relates to the duties and responsibilities of a licensee, as provided by Texas Occupations Code, §53.022. Subsection (c)(3) provides the mitigating factors the OCCC will consider to determine whether a conviction renders an applicant or licensee unfit, as provided by Texas Occupations Code, §53.023. Subsection (d) describes the OCCC's authority to deny a license application if it does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the

confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §351.104(a)(1). Subsection (e) explains that the OCCC will revoke a license on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b). Subsection (f) identifies other grounds for denial, suspension, or revocation, including convictions for specific offenses described by statutory provisions cited in the rule.

The proposed amendments to §§89.502, 89.503, 89.504, and 89.506 contain updated disclosure requirements for property tax loans. These amendments include a new version of the pre-closing disclosure required under Texas Tax Code, §32.06(a-4)(1), which provides that the commission will "prescribe the form and content of an appropriate disclosure statement to be provided to a property owner before the execution of a tax lien transfer." The current version of this disclosure, located at §89.506(a), is a one-page form with information about what a property tax loan is, the possibility of foreclosure, and OCCC contact information. The new pre-closing disclosure in this proposal adds an itemization of the costs of a property tax loan, and for residential property tax loans, it includes the annual percentage rate (APR). The proposed amendments to §89.502 describe a standardized method for property tax lenders to calculate the APR.

The commission believes that it is appropriate for the pre-closing disclosure to include cost information and APR. When borrowers are aware of the cost of loans, they can make an informed borrowing

decision. Borrowers can use cost information to shop among lenders, enhancing competition. In particular, an APR provides residential borrowers with a benchmark for comparing property tax loans to other loan products that may serve their needs.

Last year, the Fifth Circuit held that the federal Truth in Lending Act (TILA) does not apply to Texas property tax loans, because a property tax loan is not a "debt" under TILA. *Billings v. Propel Fin. Servs. L.L.C.*, 821 F.3d 608, 611-12 (5th Cir. 2016). In a closed-end consumer credit transaction TILA and its implementing rule, Regulation Z, require the creditor to make several disclosures, including five key pieces of information: the amount financed, the finance charge, the APR, the total of payments, and the payment schedule. TILA, 15 U.S.C. §1602(v) and §1604(a); Regulation Z, 12 C.F.R. §1026.18. After *Billings*, there is no general requirement for property tax lenders to disclose the APR and cost information before the closing of a property tax loan.

In light of *Billings*, the commission believes that it is an appropriate time to revisit the content of the required pre-closing disclosure, and to add information about costs and APR. The Texas Legislature recognized that much of this information is important to disclose to borrowers when it added Texas Finance Code, §351.0023 in SB 247 (2013). That section requires property tax loan advertisements and solicitations to disclose information such as the terms of repayment and APR. In addition, the agency understands that most property tax lenders are already providing this information to borrowers in some form between application and closing. Another purpose of the proposed amendments is to

provide a standardized method for disclosing this information that is already being provided, which further helps borrowers make an informed borrowing decision.

Two commenters on the notice of intention to review support reviewing the disclosure rules. One of these commenters recommends reviewing the rules to "[e]nsure that consumers receive adequate notices regarding the cost and terms of the underlying transaction," and to provide "[s]tandardization of the forms and calculation methods for certain terms (e.g., APR) to ensure consumers can make well-informed choices."

Proposed amendments to §89.502 add definitions of the terms "amount financed," "annual percentage rate," "finance charge," and "total of payments." The amount financed, finance charge, and total of payments are all used to calculate the APR. The definitions are intended to provide a standardized, uniform method of calculating the APR for a property tax loan. When this information is disclosed to borrowers through a standardized method, this enables borrowers to shop among lenders, enhancing competition. These terms are used in calculating the amounts on the amended pre-closing disclosure, as described later in the discussion of the proposed amendments to §89.504 and §89.506.

Under the proposed definition at §89.502(2), the APR would be calculated based on the methods described in Regulation Z, 12 C.F.R. §1026.22, which contains a standardized method for calculating APR that is generally used in consumer credit transactions. For this reason, the APR can provide residential borrowers with a benchmark for comparing

property tax loans to other loan products that may serve their needs.

One of the key components used in calculating the APR is the finance charge. Generally, the finance charge is the cost of credit as a dollar amount. Regulation Z, 12 C.F.R. §1026.4(a). Other things being equal, a higher finance charge will result in a higher APR. The proposed definition in §89.502(3) explains that the finance charge includes all interest and closing costs paid to the property tax lender or an affiliated business. The term "affiliated business" is defined in current §89.102(1), and includes a business that shares common management with a property tax lender, shares more than 10% common ownership with a property tax lender, or is controlled by a property tax lender through a controlling interest greater than 10%. At the stakeholder meeting, one stakeholder pointed out that certain property tax lenders impose internal costs that they retain, while other property tax lenders pass costs on to affiliated businesses. The stakeholder noted that if a property tax lender can exclude costs paid to the affiliated businesses from the finance charge, this will enable the property tax lenders using affiliated businesses to disclose a lower APR than property tax lenders imposing internal costs, even if the costs are substantially the same for the borrower. In response to this stakeholder statement, the proposed definition of "finance charge" in §89.502(3) specifies that the finance charge includes interest and closing costs paid to an affiliated business. This definition is intended to ensure that a prospective borrower can accurately compare rates between a property tax lender that generally retains fees for services performed at closing, and a property tax lender that passes fees on to an affiliated business.

The proposed amendments to §89.503(b) and (c) add the Calibri font to the list of typefaces considered to be readable, and specify that the text of the disclosure must generally be at least as large as 11 points in the Calibri font. These amendments reflect the updated pre-closing disclosure, which was prepared in the Calibri font for improved readability and design.

The proposed amendments to §89.504 describe the content of the amended pre-closing disclosure. These amendments generally maintain the elements that are required to be in the disclosure under current §89.504, while providing additional disclosures. Proposed amendments at §89.504(a)(1)-(4) require the pre-closing disclosure to include the parties' contact information, and for a residential property tax loan, require the disclosure to state the name and Nationwide Multistate Licensing System (NMLS) identification number of the residential mortgage loan originator. Under Texas Finance Code, §351.0515, an individual who acts as a residential mortgage loan originator for a property tax loan must be individually licensed with the OCCC. Disclosing the originator's name and NMLS ID number helps ensure that the property tax lender has complied with this requirement.

Proposed §89.504(a)(6) requires the pre-closing disclosure to include a section labeled "Loan Terms," including the funds advanced under Texas Tax Code, §32.06(e) (labeled as the "loan amount"), the contract interest rate, the term of the property tax loan in months, the monthly payment amount, the payment schedule, and a provision explaining whether there is a prepayment penalty.

Several precommenters request guidance about whether prepaid interest could be included in the funds advanced listed on the pre-closing disclosure. The funds advanced are expressly limited by Texas Tax Code, §32.06(e), which states: "Funds advanced are limited to the taxes, penalties, interest, and collection costs paid as shown on the tax receipt, expenses paid to record the lien, plus reasonable closing costs." Interest paid to the property tax lender, including prepaid interest, is not part of the funds advanced under this section. Although this provision mentions interest, this refers to interest paid to the taxing unit as shown on the tax receipt. In response to the precommenters' request for guidance, proposed §89.504(a)(6)(A) explains that the funds advanced include the amounts described by Texas Tax Code, §32.06(e), and do not include prepaid interest. Prepaid interest is disclosed separately on the pre-closing disclosure, as explained later in the discussion of §89.504(a)(9). At the stakeholder meeting, one stakeholder explained that some property tax lenders include prepaid interest (other than discount points) in the principal balance of the loan, but do not charge interest upon the prepaid interest. The current proposal does not specifically address this practice, but it would require the lender to exclude any prepaid interest from the loan amount on the pre-closing disclosure.

Proposed §89.504(a)(7) requires the pre-closing disclosure for a residential property tax loan to include a section labeled "Loan Calculations," containing the APR, amount financed, finance charge, and total of payments. Several precommenters suggest that this section be titled "Loan Calculations" instead of "Loan APR Calculation," which was the title used in the precomment draft. In response to these

precomments, proposed §89.504(a)(7) uses the title "Loan Calculations."

Proposed §89.504(a)(8) requires the pre-closing disclosure to include a section labeled "Loan Amount Itemization," containing itemizations of the amounts paid to taxing units, closing costs, and recording costs. At the stakeholder meeting, two stakeholders noted that some amounts may be paid to an entity other than a taxing unit (e.g., collection costs paid to a district clerk). In response to these statements, proposed §89.504(a)(8)(A)(i) explains that the itemization includes amounts paid to taxing units or other governmental entities as shown on the tax receipt.

Proposed §89.504(a)(9) requires the pre-closing disclosure to include a section labeled "Prepaid Interest," containing the total amount of any prepaid interest, itemized into per diem interest and discount points.

Proposed §89.504(a)(10) requires the following tax office notice in boldface type: "Your tax office may offer delinquent tax installment plans that may be less costly to you. You can request information about the availability of these plans from the tax office." This disclosure is based on Texas Finance Code, §351.0023(a), which requires this notice to be included on the first page of any solicitation materials in 12-point boldface type. Three precommenters state that this notice is unnecessary on the pre-closing disclosure, arguing that it should apply only to advertisements and solicitations. The commission disagrees with this argument for two reasons. First, the pre-closing disclosure might be used as a solicitation, which would trigger the requirement in Texas Finance Code, §351.0023 to include the notice. Second, the

notice provides potential borrowers with important information that they should consider before entering a property tax loan, as the legislature acknowledged by enacting Texas Finance Code, §351.0023.

Proposed §89.504(a)(23) contains updates to the OCCC's contact information in the pre-closing disclosure. In accordance with instructions from the Texas Department of Information Resources, the OCCC has updated its website and e-mail address with the "texas.gov" extension: [occc.texas.gov](http://occc.texas.gov) and [consumer.complaints@occc.texas.gov](mailto:consumer.complaints@occc.texas.gov). Other revisions have been made to the text of the OCCC notice to provide more clarity to consumers regarding the role of the OCCC in resolving complaints.

Proposed amendments to §89.504(b) explain that the pre-closing disclosure must fit on two pages, but a property tax lender may attach additional pages if necessary to disclose additional taxing units, additional third parties receiving closing costs, or additional government units receiving recording expenses.

Proposed §89.504(c) explains that all information on the disclosure must be accurate, and the APR must be accurate within 1/8 of 1 percentage point. If the property tax lender learns that the information is inaccurate, then it must promptly notify the property owner of the inaccuracy and provide an updated disclosure.

Proposed amendments at §89.504(d)-(g) contain technical corrections and updated citations. The proposal maintains the current requirements for delivering the pre-closing disclosure. In particular, the proposal does not amend the timing requirement currently in §89.504(c)(2)(B), which provides that the

disclosure must be delivered "within three business days from receipt of the property owner's application for a property tax loan, or within three business days from the date that the property tax lender first has knowledge of the property owner's agreement to enter into a property tax loan with the property tax lender." One precommenter states that this requirement should be maintained for the pre-closing disclosure, while another suggests that the disclosure should be provided at least three days before closing. The commission believes that the current requirement of providing the disclosure within three days of the application provides the borrower with an appropriate amount of time to review the cost information, consider alternatives, and reach an informed borrowing decision. If any information on the disclosure changes and renders the disclosure inaccurate, the property tax lender would be required to promptly notify the property owner and provide an updated disclosure under §89.504(c)(2).

The proposed amendments to §89.506 contain the updated figures for the pre-closing disclosure, with one version for residential property tax loans and another for commercial property tax loans.

Proposed amendments to §89.507 describe the permissible changes to the pre-closing disclosure. As mentioned previously, at the stakeholder meeting, two stakeholders noted that some amounts may be paid to an entity other than a taxing unit (e.g., collection costs paid to a district clerk). In response to these statements, proposed §89.507(a)(5) allows the property tax lender to replace "Amounts paid to taxing units" with "Amounts paid to taxing units and governmental entities" if the property tax lender pays amounts to other governmental

entities and these amounts are shown on the tax receipt. In addition, at the stakeholder meeting, one stakeholder suggested adding language to the pre-closing disclosure stating that the APR is not the same as the interest rate, while another stakeholder suggested that this disclosure should be optional. In response to these recommendations, proposed §89.504(a)(7) allows the property tax lender to add the following sentence to the APR line: "This is not your interest rate." Other permissible changes proposed in §89.507 include omitting the loan identification number, adding or omitting lines in the loan amount itemization to disclose all amounts paid to third parties, omitting the prepaid interest section if there is no prepaid interest charged, and adding any required disclosure of affiliated businesses under §89.504(g).

A proposed amendment to §89.601(a) specifies that the limitations in the rule governing closing costs for property tax loans apply to residential property tax loans, as defined by §89.102(10), discussed earlier in this proposal. This amends the current requirement, which states that the limitations apply to property tax loans secured by property designated as "Category A (Real Property: Single-Family Residential)," and homesteads designated as "Category E (Real Property: Farm and Ranch Improvements)" by the Property Classification Guide published by the Texas Comptroller of Public Accounts.

In two of the comments on the notice of intention to review, the commenters recommend limiting the scope of the closing cost rule's limitations to homestead property. Several stakeholders reiterated this recommendation at the stakeholder meeting and in written precomments on the proposal. In response to these comments and



precomments, the proposed amendment to §89.601(a), read together with the new definition of "residential property tax loan" in §89.102(10), will specify that the closing cost limitations apply to all property tax loans including a lien on residential property, including all homestead property, as well as any property with a Category A designation, unless the property tax lender obtains an affidavit stating that the property is used for a business or investment purpose. Effectively, this means that the closing cost limitations in §89.601 would no longer apply to Category A property that is owned and used for a business purpose (e.g., rental property), as long as the property tax lender obtains and maintains the appropriate affidavit. All property tax loan closing costs are still required to be reasonable under Texas Tax Code, §32.06(e). The limitations for residential property tax loans in §89.601 are intended to strike an appropriate balance between consumer protection and industry cost recovery. The commission believes that these proposed amendments help strike that balance. The commission disagrees with the suggestion that the rule should only apply to homestead property. Certain non-homestead property, such as a second home, is used as residential property for personal, family, or household use, and it is appropriate to ensure that these property owners can benefit from the consumer protections in §89.601.

Proposed amendments to §89.601(c)(4) deal with closing costs authorized for additional parcels of land. Currently, the rule provides that the property tax lender may charge up to \$100, in addition to the general \$900 maximum, for each additional parcel of residential property described by §89.601(a). In two of the comments on the notice of intention to review, the commenters recommend allowing the

additional \$100 in closing costs for each additional parcel of commercial property, for property tax loans that cover both residential and commercial property. Property tax loans that cover both residential and commercial property are subject to the limitations of §89.601, but the current rule authorizes the additional \$100 only for residential parcels. In response to these comments, the proposed amendments to §89.601(c)(4) remove language limiting the additional \$100 authorization to residential parcels, effectively allowing \$100 for each additional parcel regardless of whether it is residential or commercial. This is intended to reflect actual costs incurred by the property tax lender through closing for a property tax loan that includes both residential and commercial property.

Some precommenters recommend increasing the \$100 per parcel amount in §89.601(c)(4). Two precommenters suggest a general \$150 amount, while another suggests a \$300 amount for commercial property. The commission recently adopted the \$100 amount in 2015, following an extensive review of closing costs charged in connection with property tax loans. The commission believes that it is unnecessary to amend the \$100 amount at this time.

Proposed §89.702(d)(3) allows a permissible change to the certified statement signed by the taxing unit. In a comment on the notice of intention to review, one commenter explains that Texas Tax Code, §33.445 authorizes tax lien transfers when a taxing unit files suit to foreclose a tax lien and joins a tax lien transferee. The commenter recommends allowing the certified statement's citation to §32.06 to be amended in this situation. In response to this comment, proposed §89.702(d)(3) allows a taxing unit to replace "Texas Tax Code,

§32.06" with "Texas Tax Code, §33.445" if the transfer occurs in connection with the joinder of a tax lien transferee under Texas Tax Code, §33.445(a).

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, and will provide guidance and clarity to property tax lender licensees. The updated disclosure requirements will help ensure that borrowers can make informed borrowing decisions, enhancing competition among property tax lenders.

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 §§89.502, 89.503, 89.504, and 89.506, regarding the amended pre-closing disclosure.

For those who will be required to comply with the proposed disclosure amendments, the anticipated costs would include the costs associated with producing new forms, and costs attributable to the loss of obsolete forms inventory. The OCCC anticipates that the costs of printing amended forms will not exceed \$0.20 per form. Licensees may also encounter labor

costs to prepare the revised disclosures, as well as programming costs for licensees that use 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.

Overall, the agency anticipates that any costs involved to comply with the proposal will be minimal for most licensees. The OCCC understands that most property tax lenders are already providing APR and cost information in some form. Property tax lenders are already required to provide the current one-page version of the disclosure under current §89.504. The current recordkeeping rule at §89.207(3)(A)(vi) already requires property tax lenders to maintain a final itemization of actual fees, points, interest, costs, and charges that were charged at closing and to whom those charges were paid. In addition, licensees are already required to calculate and disclose an APR for any advertisement that includes a fixed rate, as provided by Texas Finance Code, §351.0023(d). Licensees can use free software to calculate the APR, such as the APRWIN program available on the Office of the Comptroller of the Currency's website. The agency anticipates that costs of complying with the proposal will primarily arise from rearranging this already-existing information and entering it into the revised disclosure.

Due to several factors resulting in varying, uncertain, and unpredictable costs, the agency would like to invite comments from licensees on any costs involved to comply with the proposal, as well as any alternatives to lessen those costs while achieving the purposes of the proposal. The agency is considering a delayed

implementation date for use of the revised pre-closing disclosure, which will help minimize potential costs and allow use of current forms inventory. In particular, the agency is considering a possible implementation date of January 1, 2018, for using the revised pre-closing disclosure, and invites comments on this issue.

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

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](mailto: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, repeals, and new rules 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, §351.007 grants the commission the authority to adopt rules to enforce Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06 and §32.065.

The rule change in §89.207 is proposed under Texas Finance Code, §351.0023(f), which authorizes the commission to adopt rules to implement requirements on advertising. The rule changes in §§89.502, 89.503, 89.504, and 89.506 are proposed under Texas Tax Code, §32.06(a-4)(1), which authorizes the commission to adopt the form and content of the pre-closing disclosure statement. The rule changes in §89.601 are proposed under Texas Tax Code, §32.06(a-4)(2), which authorizes the commission to adopt rules relating to the reasonableness of closing costs, fees, and other permitted charges.

The statutory provisions affected by the proposed rule changes are contained in Texas Finance Code, Chapter 351 and Texas Tax Code, Chapter 32.

*Title 7, Texas Administrative Code*

*Chapter 89. Property Tax Lenders*

*§89.102. Definitions.*

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 351 have the same meanings as defined in Chapter 351. The following words and terms, when used in this chapter, will have the following meanings, unless the context clearly indicates otherwise.

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

(3) Commercial property tax loan--  
A property tax loan that is not a residential  
property tax loan.

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

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

(6) [(5)] Licensee--Any person who  
has been issued a property tax lender license  
pursuant to Texas Finance Code, Chapter  
351.

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

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

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

(10) Residential property tax loan--  
A property tax loan that includes a lien on  
residential property owned and used by the

property owner for personal, family, or  
household purposes. This includes any  
property tax loan that includes a lien on  
homestead property. For purposes of this  
definition, non-homestead property  
designated as "Category A (Real Property:  
Single-Family Residential)" will be  
presumed to be residential property owned  
and used by the property owner for personal,  
family, or household purposes, unless the  
property tax lender obtains and maintains  
and affidavit from the property owner  
stating that:

(A) the property is owned and  
used by the property owner for a business or  
investment purpose; and

(B) the property owner does  
not own or use the property for personal,  
family, or household use.

(11) [(9)] Transacting a loan--Any  
of the significant events associated with the  
lending process through funding, including  
the preparation, negotiation and execution of  
loan documents, and an advancement of  
money on behalf of a borrower by the lender  
to a third party. This also includes the act of  
arranging a loan.

*§89.207. Files and Records Required.*

Each licensee must maintain records  
with respect to each property tax loan made  
under Texas Finance Code, Chapter 351 and  
Texas Tax Code, §32.06 and §32.065, and  
make those records available for  
examination under Texas Finance Code,  
§351.008. The records required by this  
section may be maintained by using either a  
paper or manual recordkeeping system,  
electronic recordkeeping system, optically  
imaged recordkeeping system, or a  
combination of the preceding types of

**PROPOSED AMENDMENTS, NEW RULES, & REPEALS**  
**7 TAC, CHAPTER 89**  
**Page 14 of 32**

systems, unless otherwise specified by statute or regulation. If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements prevail only to the extent of the conflict with the provisions of this section.

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

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

(A) For all property tax loan transactions:

(i) - (vii) (No change.)

(viii) copies of any other agreements, ~~or~~ disclosures, or affidavits signed by the borrower applicable to the property tax loan;

(ix) - (x) (No change.)

(B) If the property is residential property owned and used by the property owner for personal, family, or household use, the notice of the right of rescission as specified by Texas Tax Code, §32.06(d-1) and Truth in Lending (Regulation Z), 12 C.F.R. §1026.23;

(C) - (G) (No change.)

(H) If the property tax loan is paid off or otherwise satisfied, a copy of the release of lien as required by Texas Tax Code, §32.06(b), or if the property tax loan is satisfied through a foreclosure, the foreclosure deed;

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

(i) (No change.)

(ii) receipts or invoices along with proof of payment for attorney's fees assessed, charged, and collected under Texas Finance Code, §351.0021(a)(4), ~~and~~ (a)(5), and (a)(6), including specific descriptions of services performed by the attorney, unless the records required by this clause are maintained under paragraph (1)(B) of this section, and upon request, the licensee produces these records within a reasonable amount of time, and itemizes or otherwise indexes individual entries to a particular property tax loan transaction file; and

(iii) (No change.)

(J) - (M) (No change.)

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

*§89.208. Advertising.*

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

(h) Annual percentage rate and terms of repayment. The annual percentage rate and terms of repayment described by Texas Finance Code, §351.0023(d) - (e) must be calculated and disclosed in accordance with the Truth in Lending Act, 15 U.S.C. §1664, ~~and~~ Regulation Z, 12 C.F.R. §1026.24, and §89.502(2) of this title (relating to Definitions).

*§89.301. Definitions.*

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 351 have the same meanings as defined in Chapter 351. The following words and terms, when used in this chapter, will have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Parent entity--A direct owner of a licensee or applicant.

(3) [(2)] Principal party--An adult individual with a substantial relationship to the proposed lending business of the applicant. The following individuals are principal parties:

(A) a proprietor ~~[proprietors, including spouses with community property interest];~~

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

*§89.302. Filing of New Application.*

An application for issuance of a new license must be submitted in a format prescribed by the OCCC ~~[commissioner]~~ at the date of filing and in accordance with the OCCC's ~~[commissioner's]~~ instructions. The OCCC ~~[commissioner]~~ may accept the use of prescribed alternative formats in order to accept approved electronic submissions. Appropriate fees must be filed with the application, and the application must include the following:

(1) Required application information. All questions must be answered.

(A) Application for license.

(i) - (iii) (No change.)

(iv) Owners and principal parties.

(I) Proprietorships. The applicant must disclose the name of any individual holding an ownership interest in the business and the name of any individual [who owns and who is] responsible for operating the business. If requested, the applicant must also disclose the names of the spouses of these individuals. [All community property interests must also be disclosed. If the business interest is owned by a married individual as separate property, documentation establishing or confirming separate property status must be provided.]

(II) - (VII) (No change.)

(B) - (E) (No change.)

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

**PROPOSED AMENDMENTS, NEW RULES, & REPEALS**  
**7 TAC, CHAPTER 89**  
**Page 16 of 32**

*§89.303. Transfer of License; New License Application on Transfer of Ownership.*  
**{{This section will replace the current section 89.303, which will be repealed.}}**

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

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

(1) License transfer--A sale, assignment, or transfer of a property tax lender license.

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

(3) Transfer of ownership--Any purchase or acquisition of control of a licensed entity (including acquisition by gift, devise, or descent), or a substantial portion of a licensed entity's assets, where a substantial change in management or control of the business occurs. The term does not include a change in proportionate ownership as defined in §89.304 of this title (relating to Change in Form or Proportionate Ownership). Transfer of ownership includes the following:

(A) an existing owner of a sole proprietorship relinquishes that owner's

entire interest in a license or an entirely new entity has obtained an ownership interest in a sole proprietorship license;

(B) any purchase or acquisition of control of a licensed general partnership, in which a partner relinquishes that owner's entire interest or a new general partner obtains an ownership interest;

(C) any change in ownership of a licensed limited partnership interest in which:

(i) a limited partner owning 10% or more relinquishes that owner's entire interest;

(ii) a new limited partner obtains an ownership interest of 10% or more;

(iii) a general partner relinquishes that owner's entire interest; or

(iv) a new general partner obtains an ownership interest (transfer of ownership occurs regardless of the percentage of ownership exchanged of the general partner);

(D) any change in ownership of a licensed corporation in which:

(i) a new stockholder obtains 10% or more of the outstanding voting stock in a privately held corporation;

(ii) an existing stockholder owning 10% or more relinquishes that owner's entire interest in a privately held corporation;

(iii) any purchase or acquisition of control of 51% or more of a

company that is the parent or controlling stockholder of a licensed privately held corporation occurs; or

(iv) any stock ownership changes that result in a change of control (i.e., 51% or more) for a licensed publicly held corporation occur;

(E) any change in the membership interest of a licensed limited liability company:

(i) in which a new member obtains an ownership interest of 10% or more;

(ii) in which an existing member owning 10% or more relinquishes that member's entire interest; or

(iii) in which a purchase or acquisition of control of 51% or more of any company that is the parent or controlling member of a licensed limited liability company occurs;

(F) any transfer of a substantial portion of the assets of a licensed entity under which a new entity controls business at a licensed location; and

(G) any other purchase or acquisition of control of a licensed entity, or a substantial portion of a licensed entity's assets, where a substantial change in management or control of the business occurs.

(4) Transferee--The entity that controls business at a licensed location after a transfer of ownership.

(5) Transferor--The licensed entity that controls business at a licensed location before a transfer of ownership.

(c) License transfer approval. No property tax lender license may be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §351.163. A license transfer is approved when the OCCC issues its final written approval of a license transfer application.

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

(e) Application requirements.

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

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

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



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

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

(D) any other documentation evidencing the transfer event.

(3) Application information for new licensee. If the transferee does not hold a property tax lender license at the time of the application, then the application must include the information required for new license applications under §89.302 of this title (relating to Filing of New Application). The instructions in §89.302 of this title apply to these filings.

(4) Application information for transferee that holds a license. If the transferee holds a property tax lender license at the time of the application, then the application must include amendments to the transferee's original license application describing the information that is unique to the transfer event, including disclosure questions, owners and principal parties, and a new financial statement, as provided in §89.302 of this title. The instructions in §89.302 of this title apply to these filings. The responsible person at the new location must file a personal affidavit, personal questionnaire, and employment history, if not previously filed. Other information required by §89.302 of this title need not be filed if the information on file with the OCCC is current and valid.

(5) Request for permission to operate. The application may include a request for permission to operate. The request must be in writing and signed by the transferor and transferee. The request must include all of the following:

(A) a statement by the transferor granting authority to the transferee to operate under the transferor's license while final approval of the application is pending;

(B) an acknowledgement that the transferor and transferee each accept responsibility to any consumer and to the OCCC for any acts performed under the license while the permission to operate is in effect; and

(C) if the application is a new license application on transfer of ownership, an acknowledgement that the transferor will immediately surrender or inactivate its license if the OCCC approves the application.

(f) Permission to operate. If the application described by subsection (e) includes a request for permission to operate and all required information, and the transferee has paid all fees required for the application, then the OCCC may issue a permission to operate to the transferee. A request for permission to operate may be denied even if the application contains all of the required information. The denial of a request for permission to operate does not create a right to a hearing. If the OCCC grants a permission to operate, the transferor must cease operating under the authority of the license. Two companies may not simultaneously operate under a single license. A permission to operate terminates

if the OCCC denies an application described by subsection (e).

(g) Transferee's authority to engage in business. If a transferee has filed a complete application including a request for permission to operate as described by subsection (e), by the deadline described by subsection (d), then the transferee may engage in business as a property tax lender. However, the transferee must immediately cease doing business if the OCCC denies the request for permission to operate or denies the application. If the OCCC denies the application, then the transferee has a right to a hearing on the denial, as provided by §89.307(d) of this title (relating to Processing of Application).

(h) Responsibility.

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

(2) Responsibility of transferor and transferee. If a transferee begins performing property tax lending activity under a license before the OCCC's final approval of an application described by subsection (e), then the transferor and transferee are each responsible to any consumer and to the OCCC for activity performed under the license during this period.

(3) Responsibility of transferee. After the OCCC's final approval of an application described by subsection (e), the transferee is responsible to any consumer and to the OCCC for all property tax lending activity performed under the license. The transferee is responsible for any transactions

that it purchases from the transferor. In addition, if the transferee receives a license transfer, then the transferee's responsibility includes all activity performed under the license before the license transfer.

*§89.304. Change in Form or Proportionate Ownership.*

(a) (No change.)

(b) Merger.

(1) If a licensee is a party to a merger that results in a new or different surviving entity other than the licensee, then the merger is a transfer of ownership, and the licensee must file a license transfer application or a new license application on transfer of ownership [A merger of a licensee is a change of ownership that results in a new or different surviving entity and requires the filing of a transfer application] pursuant to §89.303 of this title (relating to Transfer of License; New License Application on Transfer of Ownership).

(2) If a licensee's parent entity is a party to a merger [If the merger of the parent entity of a licensee] that leads to the creation of a new entity or results in a different surviving parent entity, the licensee must advise the OCCC [commissioner] of the change in writing within 14 calendar days after the change, by filing a license amendment and paying the required fees as provided in §89.310. Mergers or transfers of other entities with a beneficial interest beyond the parent entity level only require notification within 14 calendar days in accordance with the OCCC's instructions.

(c) Proportionate ownership.

(1) A change in proportionate ownership that results in the exact same owners still owning the business, and does not meet the requirements described in paragraph (2) of this subsection, does not require a transfer. Such a proportionate change in ownership does not require the filing of a transfer application, but does require notification when the cumulative ownership change to a single entity or individual amounts to 10% or greater. No later than 14 calendar days following the actual change, the licensee is required to notify the OCCC ~~[commissioner]~~ in writing of the change in proportionate ownership by filing a license amendment and paying the required fees as provided in §89.310 of this title. This subsection does not apply to a publicly held corporation that has filed with the OCCC the most recent 10K or 10Q filing of the licensee or the publicly held parent corporation, although a license transfer application or a new license application on transfer of ownership may be required under §89.303 of this title.

(2) A proportionate change in which an owner that previously held under 10% obtains an ownership interest of 10% or more, requires a license transfer application or a new license application on transfer for ownership under §89.303 of this title.

§89.306. Updating Application and Contact Information ~~[Reportable Actions After Application]~~.

(a) Applicant's updates to license application information. Before a license application is approved, an applicant must report to the OCCC any ~~[Any action, fact, or]~~ information that would require a materially different answer than that given in the original license application and that

relates to the qualifications for license ~~[must be reported]~~ within 14 calendar days after the person has knowledge of the ~~[action, fact or]~~ information.

(b) Licensee's updates to license application information. A licensee must report to the OCCC any information that would require a different answer than that given in the original license application within 30 calendar days after the licensee has knowledge of the information, if the information relates to any of the following:

(1) the names of principal parties;

(2) criminal history;

(3) actions by regulatory agencies;

or

(4) court judgments.

(c) Contact information. Each applicant or licensee is responsible for ensuring that all contact information on file with the OCCC is current and correct, including all mailing addresses, all phone numbers, and all e-mail addresses. It is a best practice for licensees to regularly review contact information on file with the OCCC to ensure that it is current and correct.

§89.310. Fees.

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

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

~~commissioner will be charged to recover the costs of investigating each principal party's fingerprint record.]~~

(d) (No change.)

(e) License duplicates sent by mail. The fee for a license duplicate sent by mail is \$10.

(f) (No change.)

(g) Annual renewal and assessment fees.

(1) (No change.)

(2) An annual assessment fee not to exceed ~~[of]~~ \$250 is required for each inactive license.

(3) (No change.)

*§89.403. Notice of Delinquency in Payment of Annual Assessment Fee.*

For purposes of Texas Finance Code, §351.155 [(Acts 2007, 80th Leg., ch. 1220)], and §89.309(d) of this title (relating to License Status), notice of delinquency in the payment of an annual assessment fee is given when the OCCC sends the delinquency notice:

(1) by mail to the address on file with the OCCC as a master file address; or

(2) by e-mail to the address on file with the OCCC as a master file e-mail address, if the licensee has provided a master file e-mail address [upon the mailing of the delinquency notice, enclosed in a postpaid, properly addressed envelope, in a post office or official depository under the

~~care and custody of the United States Postal Service].~~

*§89.404. Annual Report.*

Each licensee must file the required annual report by March 31 for the prior calendar year's ~~[calendar]~~ loan activity on forms prescribed by the OCCC ~~[commissioner]~~ and must comply with all instructions relating to submitting the report.

***§89.405. Denial, Suspension, or Revocation Based on Criminal History. {{This section will replace sections 89.405 and 89.406, both of which will be repealed.}}***

(a) Criminal history record information. After an applicant submits a complete license application, including all required fingerprints, and pays the fees required by §89.310 of this title (relating to Fees), the OCCC will investigate the applicant and its principal parties. The OCCC will obtain criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant's fingerprint submission. The OCCC will continue to receive information on new criminal activity reported after the fingerprints have been initially processed.

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

(1) information about arrests, charges, indictments, and convictions of the applicant and its principal parties;

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

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

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

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been convicted of an offense that directly relates to the duties and responsibilities of a licensee under Texas Finance Code, Chapter 351, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Originating, acquiring, or servicing loans under Texas Finance Code, Chapter 351 involves or may involve making representations to consumers regarding the terms of the loan, receiving money from consumers, remitting money to third parties, maintaining accounts, collecting due amounts in a legal manner, foreclosing on real property in compliance with state and federal law, and compliance with reporting requirements to government agencies. Consequently, the following crimes are directly related to the duties and responsibilities of a licensee and may be

grounds for denial, suspension, or revocation:

(A) theft;

(B) assault;

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

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

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

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

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

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

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

(A) the nature and seriousness of the crime;

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

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

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

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

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

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

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

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

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

(F) evidence of the person's current circumstances relating to fitness to hold a license, which may include letters of

recommendation from one or more of the following:

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

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

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

(d) Crimes related to character and fitness. The OCCC may deny a license application if the OCCC does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §351.104(a)(1). In conducting its review of character and fitness, the OCCC will consider the criminal history of the applicant and its principal parties. If the applicant or a principal party has been convicted of an offense described by subsections (c)(1) or (f)(2) of this section, this reflects negatively on an applicant's character and fitness. The OCCC may deny a license application based on other criminal history of the applicant or its principal parties if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. The OCCC will, however, consider the factors identified in

subsection (c)(2)-(3) of this section in its review of character and fitness.

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

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

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

(2) a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42A.054 or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(3)-(4);

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

(4) a fact or condition that would have been grounds for denying the license application, and that either did not exist at the time of the application or the OCCC was unaware of at the time of application, as provided by Texas Finance Code, §351.156(3); and

(5) any other information warranting the belief that the business will not be operated lawfully and fairly, as

provided by Texas Finance Code, §351.104(a)(1) and §351.156.

*§89.502. Definitions.*

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Amount financed--The total of payments minus the finance charge.

(2) Annual percentage rate--Has the meaning described by Regulation Z, 12 C.F.R. §1026.22, using a finance charge and amount financed described by this section.

(3) Finance charge--The cost of a property tax loan expressed as a dollar amount. The finance charge includes all interest scheduled to be paid to the property tax lender, including prepaid interest, and includes all closing costs to be retained by the property tax lender or an affiliated business. The finance charge does not include amounts actually paid to a taxing unit for taxes, penalties, interest, and collection costs. A property tax lender may exclude recording expenses actually paid to a governmental unit from the finance charge. A property tax lender may exclude closing costs actually paid to third parties from the finance charge only if the costs are bona fide, reasonable in amount, and paid to a person that is not an affiliated business.

(4) ~~[(4)]~~ Property tax lender--Has ~~[has]~~ the meaning assigned by Texas Finance Code, §351.002(1) ~~[(Acts 2007, 80th Leg., ch. 1220)]~~. Another name for a "property tax lender" is a "transferee" as defined by Texas Tax Code, §32.06(a)(2) ~~[§32.06(2)]~~, and these terms may be used synonymously.

(5) [(2)] Property tax loan--Has [has] the meaning assigned by Texas Finance Code, §351.002(2) [~~(Acts 2007, 80th Leg., ch. 1220)~~]. Another name for a "property tax loan" is a "tax lien transfer," and these terms may be used synonymously.

(6) [(3)] Tax lien transfer--Has [has] the meaning assigned by Texas Finance Code, §351.002(2) [~~(Acts 2007, 80th Leg., ch. 1220)~~]. Another name for a "tax lien transfer" is a "property tax loan," and these terms may be used synonymously.

(7) Total of payments--The total amount the borrower will have paid after making all scheduled payments, including payments made at or before closing.

(8) [(4)] Transferee--Has [has] the meaning assigned by Texas Finance Code, §351.002(1), [~~(Acts 2007, 80th Leg., ch. 1220)~~] and Texas Tax Code, §32.06(a)(2) [~~§32.06(2)~~]. Another name for a "transferee" is a "property tax lender," and these terms may be used synonymously.

§89.503. *Format.*

(a) (No change.)

(b) The text of the document must be set in an easily readable typeface. Typefaces considered to be readable include: Times New Roman, Calibri, Scala, Caslon, Century Schoolbook, Helvetica, and Garamond.

(c) Typeface size is referred to in points. Because different typefaces in the same point size are not of equal size, typeface is not strictly defined but is expressed as a minimum size in the Calibri [~~Times New Roman~~] typeface for visual comparative purposes. Generally, the typeface for the body of the disclosures must

be at least as large as 11 point in the Calibri [~~Times New Roman~~] typeface. The typeface for the headings must be in boldface type and at least as large as 12 point in the Calibri [~~Times New Roman~~] typeface. A point is generally viewed as 1/72nd of an inch.

§89.504. *Requirements for Disclosure Statement to Property Owner.*

(a) Required elements. A disclosure statement under Texas Tax Code, §32.06(a-4)(1) to be provided to a property owner before the execution of a tax lien transfer must contain the following required elements:

(1) the title "Property Tax Loan Pre-Closing Disclosure" at the top of each page;

(2) the property owner's name and the address of the property;

(3) [(4)] the property tax lender's name, principal business address, and OCCC license number;

(4) for a residential property loan, the name and NMLS unique identifier of the individual residential mortgage loan originator;

(5) the closing date;

(6) a section labeled "Loan Terms" containing the following:

(A) the funds advanced under Texas Tax Code, §32.06(e), which are limited to the taxes, penalties, interest, and collection costs paid as shown on the tax receipt, expenses paid to record the lien, and reasonable closing costs, and may not



include any prepaid interest, labeled "Loan Amount (funds advanced on your behalf)";

(B) the contract interest rate described on the promissory note or loan agreement, labeled "Interest Rate (loan contract rate)";

(C) the term of the property tax loan in months, labeled "Loan Term";

(D) the monthly payment amount, labeled "Monthly Payment";

(E) the number, amounts, and timing of payments scheduled to repay the property tax loan, labeled "Payment Schedule"; and

(F) one of the following statements, labeled "Prepayment":

(i) for any residential property tax loan, or for a commercial property tax loan that does not have a prepayment penalty, the following statement: "You can pay off the loan at any time without a penalty."

(ii) for a commercial property tax loan that has a prepayment penalty, an explanation of the amount of the prepayment penalty such as: "If you prepay the loan within two years, you will pay a prepayment penalty as high as \$\_\_\_\_\_."

(7) for a residential property tax loan, a section labeled "Loan APR Calculation" containing the following:

(A) the annual percentage rate, labeled "APR (cost of loan as a yearly rate)";

(B) the amount financed, labeled "Amount Financed (amount of loan used for APR)";

(C) the finance charge, labeled "Finance Charge (loan cost used for APR)"; and

(D) the total of payments, labeled "Total of Payments";

(8) a section labeled "Loan Amount Itemization" containing the following:

(A) a subsection labeled "Amounts paid to taxing units" listing:

(i) the total amount that the property tax lender will pay to taxing units or governmental entities for unpaid taxes, penalties, interest, and collection costs as shown on the tax receipt;

(ii) the name of each taxing unit or governmental entity to which the property tax lender will disburse an amount shown on the tax receipt; and

(iii) the amount to be disbursed to each taxing unit or governmental entity;

(B) a subsection labeled "Closing costs" listing:

(i) the total amount of closing costs;

(ii) the total amount of closing costs paid to or retained by the property tax lender, labeled "Costs to lender"; and

(iii) for each portion of the closing costs paid to a third party, a

description of the cost, the name of the third party, and the amount of the cost;

(C) a subsection labeled "Recording costs" listing:

(i) the total amount of expenses to record the lien or liens;

(ii) the name of each governmental unit to which the property tax lender will pay an expense to record a lien; and

(iii) the amount to be paid to each governmental unit for recording expenses;

(9) for any property tax loan in which the lender will charge prepaid interest, including per diem interest or discount points, a section labeled "Prepaid Interest" containing the following:

(A) the total amount of prepaid interest that the property tax lender will charge, expressed as a dollar amount, labeled "Total prepaid interest (not included in loan amount)";

(B) if the property tax lender will charge per diem interest, the total amount of per diem interest expressed as a dollar amount, with a statement of the per diem interest rate and number of days, labeled "Per diem interest ( \_\_\_ % per day, \_\_\_ days)";

(C) if the property tax lender will charge discount points, the total amount of discount points expressed as a dollar amount, labeled "Discount points";

(10) the following notice in boldface type, labeled "Tax Office Notice":

"Your tax office may offer delinquent tax installment plans that may be less costly to you. You can request information about the availability of these plans from the tax office."

(11) [(2)] a statement that the property owner currently has a lien against the owner's property for unpaid property taxes;

(12) [(3)] a statement that the property owner can pay the taxing unit(s) directly;

(13) [(4)] a statement that the property owner may authorize that the lien of the taxing unit(s) be transferred to the property tax lender;

(14) [(5)] a statement that unless the property owner agrees in writing, the property tax lender may not make the property tax loan;

(15) [(6)] a statement that the property tax loan may include unpaid property taxes, penalties, interest, and collection costs paid as shown on the tax receipt;

(16) [(7)] a statement that the property tax lender may also assess closing costs and interest not to exceed 18% per year;

(17) [(8)] a statement that the property tax loan is superior to any other preexisting lien on the property;

(18) [(9)] a statement that if the property is a homestead, disabled persons are entitled to tax deferral under Texas Tax Code, §33.06;

**PROPOSED AMENDMENTS, NEW RULES, & REPEALS**  
**7 TAC, CHAPTER 89**  
**Page 28 of 32**

(19) ~~[(40)]~~ a statement that there may be alternatives available to the property owner instead of the property tax loan, (e.g., entering into a payment installment agreement with the taxing unit(s), financing options through an existing mortgage lender or other private lenders, borrowing from savings or family members);

(20) ~~[(44)]~~ a statement that if the property owner does not pay, the property owner may lose the property;

(21) ~~[(42)]~~ a statement that the tax lien may be considered a default by any mortgage holder with a lien on the same property, and the only way to correct the default is to pay off the taxes and have the lien released;

(22) ~~[(43)]~~ a statement that any secured loan may be foreclosed if the loan is in default, and the cost of a foreclosure, either tax lien or mortgage, may be added to the amount owed by the property owner;

(23) the following statement: "For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). If this does not resolve your question or complaint, you can contact the OCCC:" and the OCCC's address, consumer helpline, website, and consumer complaint email address as follows: 2601 N. Lamar Blvd., Austin, TX 78705, (800) 538-1579, [occc.texas.gov](http://occc.texas.gov), [consumer.complaints@occc.texas.gov](mailto:consumer.complaints@occc.texas.gov) ~~[(44)] a statement that the property owner may contact the Office of Consumer Credit Commissioner about questions or problems, listing the OCCC's address, toll-free consumer helpline, and website, as follows:~~

~~2601 North Lamar Boulevard, Austin, Texas 78705 4207, (800) 538-1579, [www.occc.state.tx.us](http://www.occc.state.tx.us)];~~

(24) ~~[(45)]~~ a statement that the property owner may seek the advice of an attorney or another third party before signing a property tax loan; and

(25) ~~[(46)]~~ a statement that the property owner should ask about the terms of any loan and should read any document before signing it.

(b) Page requirement. ~~[Single page required.]~~ The disclosure statement ~~[required by §89.506(a) of this title (regarding Disclosures)]~~ must fit on one standard-size sheet of paper (8 1/2 by 11 inches) printed on both sides, or on two standard sheets of paper printed only on the front sides of each page. A property tax lender may attach additional pages if necessary to disclose additional taxing units, additional third parties receiving closing costs, or additional governmental units receiving recording expenses. The disclosure statement must be delivered in a manner that does not minimize its significance.

(c) Accuracy. All information and amounts on the disclosure statement must be accurate and must correctly reflect the terms of the property tax loan at closing.

(1) Annual percentage rate. For a residential property tax loan, the annual percentage rate will be considered accurate if it is not more than 1/8 of 1 percentage point above or below the annual percentage rate determined in accordance with §89.502(2) of this title (relating to Definitions).

(2) Amended disclosure statement.  
At any time after delivering the disclosure statement, if the property tax lender learns that any information on the disclosure statement was inaccurate or did not correctly reflect the terms of the loan at closing, then the property tax lender must promptly notify the property owner of the inaccuracy, and must send an amended, accurate disclosure statement to the property owner in a manner described by subsection (d) of this section. The amended disclosure statement must list the date on which it was revised.

(d) [(e)] Delivery.

(1) Face-to-face interview before closing. In the case of a face-to-face interview, a property tax lender must provide a disclosure statement containing all of the elements outlined by subsection (a) of this section ~~[, as prescribed by Figure: 7 TAC §89.506(a) of this title,]~~ to the property owner at the time of the interview. A property owner present at the interview may sign an acknowledgment verifying receipt of the disclosure statement at that time.

(2) No face-to-face interview. If there is no face-to-face interview, a licensee must deliver a disclosure statement containing all of the elements outlined by subsection (a) of this section ~~[, as prescribed by Figure: 7 TAC §89.506(a) of this title,]~~ to the owner of the property.

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

(e) [(d)] Verification of delivery.

(1) (No change.)

(2) No face-to-face interview. If there is no face-to-face interview, the property tax lender must deliver the

disclosure statement to the property owner as prescribed in subsection (d)(2) [(e)(2)] of this section.

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

(F) Verification of delivery by email. For disclosures delivered via email, a dated reply email indicating that the disclosure statement was successfully delivered to the property owner will constitute verification of delivery. Alternatively, a property owner's affirmative consent to electronic delivery of the disclosure in accordance with ~~[\$101(e) of]~~ the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §7001(c), will constitute a rebuttable presumption for sufficient delivery.

(f) [(e)] Acknowledgment at time of closing. At the time of closing, a property tax lender may deliver an additional copy of the disclosure statement ~~[prescribed by Figure: 7 TAC §89.506(a) of this title,]~~ but is not required to do so. The property tax lender must obtain a dated acknowledgment signed by the property owner stating that the property owner received the disclosure statement prior to closing. The acknowledgment of receipt may be included on the disclosure form as provided in §89.507(a)(11) [§89.507(a)(4)] of this title (relating to Permissible Changes).

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

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

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

*§89.506. Disclosures.*

(a) The required disclosure statement under Texas Tax Code, §32.06(a-4)(1) to be provided to a property owner before the execution of a tax lien transfer is presented in the following figures: ~~[figure.]~~

(1) the following figure is for residential property tax loans:

Figure: 7 TAC §89.506(a)(1)

(2) the following figure is for commercial property tax loans:

Figure: 7 TAC §89.506(a)(2)

~~[Figure: 7 TAC §89.506(a)]~~

(b) (No change.)

*§89.507. Permissible Changes.*

(a) A property tax lender must use the required disclosure statement under Texas Tax Code, §32.06(a-4)(1) as prescribed by Figure: 7 TAC §89.506(a)(1) or Figure: 7 TAC §89.506(a)(2) ~~[Figure: 7 TAC §89.506(a)]~~ of this title, but may consider making only limited technical changes, as provided by the following exclusive list:

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

(3) Substituting "tax lien transfer" for "property tax loan"; ~~[øf]~~

(4) Omitting the loan identification number;

(5) Replacing "Amounts paid to taxing units" with "Amounts paid to taxing units and governmental entities" if the property tax lender pays amounts to governmental entities other than taxing units and these amounts are shown on the tax receipt;

(6) Adding or omitting lines in the "Loan Amount Itemization" section as necessary to disclose all amounts paid to third parties;

(7) Adding the following statement to the "APR" line of the "Loan Calculations" section: "This is not your interest rate.";

(8) Omitting the "Prepaid Interest" section if there is no prepaid interest charged, omitting the "per diem interest" line if there is no per diem interest charged, and omitting the "discount points" line if there are no discount points charged;

(9) Adding any required disclosure of affiliated businesses under §89.504(g) of this title (relating to Requirements for Disclosure Statement to Property Owner);

(10) Attaching additional pages described by §89.504(b) of this title; or

(11) ~~(4)~~ Adding an optional, dated signature block at the very bottom of the second page of the disclosure form, which must include the following statement directly above the signature line of the property owner(s): "ACKNOWLEDGMENT OF RECEIPT: By signing below, I acknowledge

**PROPOSED AMENDMENTS, NEW RULES, & REPEALS**  
**7 TAC, CHAPTER 89**  
**Page 31 of 32**

only that I have received a copy of this disclosure prior to closing, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_."

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

*§89.601. Fees for Closing Costs.*

(a) Applicability. The fee limitations contained in this section are applicable to a residential property tax loan described by §89.102(10) of this title (relating to Definitions) [~~property tax loans secured by property designated as "Category A (Real Property: Single Family Residential)," and homesteads designated as "Category E (Real Property: Farm and Ranch Improvements)" by the Property Classification Guide published by the Texas Comptroller of Public Accounts~~].

(b) (No change.)

(c) Total maximum fees for closing costs.

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

(4) Cost for additional parcels of real property. If a property tax loan includes the payment of taxes for more than one parcel of real property, then the property tax lender may charge up to \$100 for each additional parcel of [~~residential~~] property [~~described by subsection (a)~~], in addition to the general maximum fee limit described in paragraph (3) of this subsection.

(5) (No change.)

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

(1) Discount points are legitimate if:

(A) - (B) (No change.)

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

(i) an offer of a property tax loan that includes a contract rate without discount points and a corresponding annual percentage rate, calculated in accordance with Regulation Z, 12 C.F.R. §1026.22, and §89.502(2) of this title (relating to Definitions);

(ii) an offer of a property tax loan that includes a lower contract rate based on discount points and a corresponding annual percentage rate, calculated in accordance with Regulation Z, 12 C.F.R. §1026.22, and §89.502(2) of this title;

(iii) - (vi) (No change.)

(2) - (5) (No change.)

*§89.702. Certified Statement of Transfer of Tax Lien.*

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

(d) Permissible changes.

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

(3) Citation to Tax Code. The phrase "Texas Tax Code, §32.06" may be replaced with "Texas Tax Code, §33.445" if the transfer occurs in connection with the

joinder of a tax lien transferee under Texas  
Tax Code, §33.445(a).

**Certification**

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

Issued in Austin, Texas on August 18, 2017.

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

Property Tax Loan  
Pre-Closing Disclosure

<b>Borrower</b>	[borrower name]	<b>Lender</b>	[lender name]
<b>Property Address</b>	[borrower address 1] [borrower address 2]	<b>Address</b>	[lender address 1] [lender address 2]
<b>Closing Date</b>	[closing date]	<b>OCCC License #</b>	[lender license #]
<b>Loan ID#</b>	[loan ID]	<b>Loan Originator</b>	[RMLO name]
		<b>NMLS ID#</b>	[RMLO NMLS ID]

Loan Terms

<b>Loan Amount</b> (funds advanced on your behalf)	\$0.00
<b>Interest Rate</b> (loan contract rate)	0.00%
<b>Loan Term</b>	0 months
<b>Monthly Payment</b>	\$0.00
<b>Payment Schedule</b>	
<b>Prepayment</b>	You can pay off the loan at any time without a penalty.

Loan Calculations

<b>APR</b> (cost of loan as a yearly rate)	0.00%
<b>Amount Financed</b> (amount of loan used for APR)	\$0.00
<b>Finance Charge</b> (loan cost used for APR)	\$0.00
<b>Total of Payments</b>	\$0.00

Loan Amount Itemization

<b>Amounts paid to taxing units</b>	<b>\$0.00</b>
to [taxing unit name]	\$0.00
to [taxing unit name]	\$0.00
<b>Closing costs</b>	<b>\$0.00</b>
Costs to lender	\$0.00
[fee description] to [third party name]	\$0.00
[fee description] to [third party name]	\$0.00
[fee description] to [third party name]	\$0.00
[fee description] to [third party name]	\$0.00
[fee description] to [third party name]	\$0.00
[fee description] to [third party name]	\$0.00
<b>Recording costs</b>	<b>\$0.00</b>
to [governmental unit name]	\$0.00
to [governmental unit name]	\$0.00

Prepaid Interest

<b>Total prepaid interest</b> (not included in loan amount)	<b>\$0.00</b>
Per diem interest (0.00% per day, 0 days)	\$0.00
Discount points	\$0.00

Tax Office Notice

Your tax office may offer delinquent tax installment plans that may be less costly to you. You can request information about the availability of these plans from the tax office.



# Property Tax Loan

## Closing Disclosure *(continued)*

---

### **What is a property tax loan?**

You currently have a lien against your property for unpaid property taxes. The tax lien for unpaid taxes automatically attached to your property on January 1. You may pay the taxing unit(s) directly, or authorize the property tax lender to pay the taxes. In order for the property tax lender to pay the tax lien, you have to authorize the transfer of the lien from the taxing unit(s) and enter into a loan with the property tax lender. Unless you agree in writing, the property tax lender may not make the property tax loan. The property tax loan may include unpaid property taxes, penalties, and interest. The property tax lender may also assess closing costs and interest not to exceed 18% per year. This transaction does not remove the tax lien against your property. If you do not pay the property tax lender under the loan agreement, you may lose your property to foreclosure.

### **The property tax loan is the superior lien.**

If you default on any lien against your property, this property tax loan will be superior, or “first in line” to be paid, over any other preexisting lien on your property (for example, first or secondary mortgage).

### **You may have alternatives to this property tax loan.**

If this property is your homestead and you are disabled, you are entitled to tax deferral under Texas Tax Code, §33.06. You may arrange with the taxing unit(s) to enter into an installment agreement for the repayment of these taxes. You may have financing options available to you through other private lenders, such as establishing an escrow account or refinancing your existing mortgage to include the taxes. You may be able to borrow from savings or family members. You may shop around with other property tax lenders and compare the different loan terms offered by other lenders.

### **Foreclosure is possible.**

If you don't pay, you may lose your property. The tax lien may be considered a default by any mortgage holder with a lien on the same property. The only way to correct the default is to pay off the taxes and have the lien released. Any secured loan may be foreclosed if the loan is in default. The cost of any foreclosure, either tax lien or mortgage, may be added to the amount you owe.

### **You can contact the OCCC, a state agency that regulates the property tax lender.**

For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). If this does not resolve your question or complaint, you can contact the OCCC:

Office of Consumer Credit Commissioner  
2601 N. Lamar Blvd.  
Austin, TX 78705

(800) 538-1579 — Consumer Helpline  
[occc.texas.gov](http://occc.texas.gov)  
[consumer.complaints@occc.texas.gov](mailto:consumer.complaints@occc.texas.gov)

### **Before you sign a property tax loan, be sure that you understand this document.**

You may seek advice from an attorney or any third party before you enter into a property tax loan. You should ask about the terms of any loan you are considering and you should read any document before signing it.

Property Tax Loan  
Pre-Closing Disclosure

<b>Borrower</b>	[borrower name]	<b>Lender</b>	[lender name]
<b>Property Address</b>	[borrower address 1] [borrower address 2]	<b>Address</b>	[lender address 1] [lender address 2]
<b>Closing Date</b>	[closing date]	<b>OCCC License #</b>	[lender license #]
<b>Loan ID#</b>	[loan ID]		

Loan Terms

<b>Loan Amount</b> (funds advanced on your behalf)	\$0.00
<b>Interest Rate</b> (loan contract rate)	0.00%
<b>Loan Term</b>	0 months
<b>Monthly Payment</b>	\$0.00
<b>Payment Schedule</b>	
<b>Prepayment</b>	If you prepay the loan within two years, you will pay a prepayment penalty as high as \$____.

Loan Amount Itemization

<b>Amounts paid to taxing units</b>	<b>\$0.00</b>
to [taxing unit name]	\$0.00
to [taxing unit name]	\$0.00
<b>Closing costs</b>	<b>\$0.00</b>
Costs to lender	\$0.00
[fee description] to [third party name]	\$0.00
[fee description] to [third party name]	\$0.00
[fee description] to [third party name]	\$0.00
[fee description] to [third party name]	\$0.00
[fee description] to [third party name]	\$0.00
[fee description] to [third party name]	\$0.00
<b>Recording costs</b>	<b>\$0.00</b>
to [governmental unit name]	\$0.00
to [governmental unit name]	\$0.00

Prepaid Interest

<b>Total prepaid interest</b> (not included in loan amount)	<b>\$0.00</b>
Per diem interest (0.00% per day, 0 days)	\$0.00
Discount points	\$0.00

Tax Office Notice

Your tax office may offer delinquent tax installment plans that may be less costly to you. You can request information about the availability of these plans from the tax office.

# Property Tax Loan

## Closing Disclosure *(continued)*

---

### **What is a property tax loan?**

You currently have a lien against your property for unpaid property taxes. The tax lien for unpaid taxes automatically attached to your property on January 1. You may pay the taxing unit(s) directly, or authorize the property tax lender to pay the taxes. In order for the property tax lender to pay the tax lien, you have to authorize the transfer of the lien from the taxing unit(s) and enter into a loan with the property tax lender. Unless you agree in writing, the property tax lender may not make the property tax loan. The property tax loan may include unpaid property taxes, penalties, and interest. The property tax lender may also assess closing costs and interest not to exceed 18% per year. This transaction does not remove the tax lien against your property. If you do not pay the property tax lender under the loan agreement, you may lose your property to foreclosure.

### **The property tax loan is the superior lien.**

If you default on any lien against your property, this property tax loan will be superior, or “first in line” to be paid, over any other preexisting lien on your property (for example, first or secondary mortgage).

### **You may have alternatives to this property tax loan.**

If this property is your homestead and you are disabled, you are entitled to tax deferral under Texas Tax Code, §33.06. You may arrange with the taxing unit(s) to enter into an installment agreement for the repayment of these taxes. You may have financing options available to you through other private lenders, such as establishing an escrow account or refinancing your existing mortgage to include the taxes. You may be able to borrow from savings or family members. You may shop around with other property tax lenders and compare the different loan terms offered by other lenders.

### **Foreclosure is possible.**

If you don't pay, you may lose your property. The tax lien may be considered a default by any mortgage holder with a lien on the same property. The only way to correct the default is to pay off the taxes and have the lien released. Any secured loan may be foreclosed if the loan is in default. The cost of any foreclosure, either tax lien or mortgage, may be added to the amount you owe.

### **You can contact the OCCC, a state agency that regulates the property tax lender.**

For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). If this does not resolve your question or complaint, you can contact the OCCC:

Office of Consumer Credit Commissioner  
2601 N. Lamar Blvd.  
Austin, TX 78705

(800) 538-1579 — Consumer Helpline  
[occc.texas.gov](http://occc.texas.gov)  
[consumer.complaints@occc.texas.gov](mailto:consumer.complaints@occc.texas.gov)

### **Before you sign a property tax loan, be sure that you understand this document.**

You may seek advice from an attorney or any third party before you enter into a property tax loan. You should ask about the terms of any loan you are considering and you should read any document before signing it.

*This page left blank intentionally.*

**C.**

**Texas Department of Banking**

*This page left blank intentionally.*



## TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705  
512-475-1300 / 877-276-5554  
[www.dob.texas.gov](http://www.dob.texas.gov)

To: Finance Commission Members

From: Kurt Purdom, Director of Bank & Trust Supervision

Date: July 31, 2017

Subject: Summary of the Bank & Trust Supervision Division Activities

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

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

Problem banks, which the Department considers to be any bank with a Uniform Financial Institutions Composite Rating of 3, 4, or 5, reflect an improving trend as some long-standing problem institutions have improved sufficiently to warrant upgrades. As of this writing, problem institutions total 11. This level is consistent with last fiscal year-end and is well below the peak number of problem banks experienced during the last recession. The present number of 11 is in line with the normal range of between 3% and 5% of the total number of institutions. We anticipate that the number of problem institutions will continue to slowly reduce over the next six months.

## Summary of the Bank &amp; 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
<b>Banks - Safety and Soundness</b>						
Formal	2	0	0	1	1	
Informal	14	19	21	20	22	
<b>Banks - Bank Secrecy Act (BSA)</b>						
Formal	1	0	0	0	0	
Informal	0	0	2	2	0	
<b>Banks - Information Technology (IT)</b>						
Formal	0	0	0	0	0	
Informal	2	0	0	2	2	
<b>Trust Departments of Banks and Trust Companies</b>						
Formal	0	0	0	0	0	
Informal	2	3	3	2	2	
<b>Total Administrative/Enforcement Actions</b>						
Formal	3	0	0	1	1	
Informal	18	22	26	26	26	
<b>Total</b>	<b>21</b>	<b>22</b>	<b>26</b>	<b>27</b>	<b>27</b>	

\* 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 - June 2017)
<b>Commercial Banks</b> (All / DOB Only)	97% / 98%	90% / 97%
<b>IT</b>	98% / 100%	92% / 100%
<b>Trust</b>	94% / 94%	89% / 100%
<b>Foreign Banks (FRB)</b>	100%	100%
<b>Trust Companies (DOB)</b>	78%	100%
<b>IT</b>	94%	100%

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



## Summary of the Bank &amp; Trust Supervision Division Activities

## Page 3

oil and gas commodity prices. Delays in FDIC examinations were caused by similar diversions of resources to more troubled institutions and a short-term staffing imbalance that the FDIC reports will be alleviated by planned staff additions. Two FDIC trust department examinations were similarly delayed.

**Division Highlights**

- **Community Banking Research and Policy Initiatives:** Division staff is soliciting feedback from bankers prior to the Community Banking in the 21<sup>st</sup> Century Research Conference to be held at the St. Louis, Missouri on October 4 – 5, 2017. This annual conference, which is sponsored by CSBS and the Federal Reserve Bank of St. Louis, brings together academics, regulators, policymakers and bankers to discuss the latest in community bank research and other issues facing community banks. In preparation for the conference, phone interviews were held with five bankers regarding the challenges facing Texas community banks. In addition, Town Hall Meetings are being held in Dallas, San Antonio, College Station and Lubbock in July and August, providing an open forum for bankers to offer input about issues they believe are impacting the banking environment. Finally, data from an on-line survey is being collected on specific banking issues; this data will be used to assess trends in the industry and highlight potential problem areas.
- **Cybersecurity Initiatives:** Working with the Massachusetts Division of Banks and CSBS, Texas led the formation of a national task force of 15 banks from across the United States to identify and address specific cyber threats. The task force of mostly senior bank officers identified four threats of particular focus for community banks. These threats are:
  - 1) *Large-Value Funds Transfers* – unauthorized wire transfers of millions to billions in funds.
  - 2) *Ransomware* – a form of extortion that uses malicious software to encrypt a device or data, and demand payment for access.
  - 3) *Distributed Denial-of-Service (DDoS)* – an attempt to prevent users from accessing information or services, such as overloading the capacity of a bank's website.
  - 4) *ATM Jackpotting / Cash-Out* – an illegitimate attempt to dispense cash from an automated teller machine, or ATM.

On June 28<sup>th</sup>, the Department together with the Massachusetts Division of Banks rolled out Best Practices for reducing these four specific cyber threats to community banks. This was done during a Cyber Outreach Event in Massachusetts. CSBS then distributed the Best Practices to all of the state banking departments for distribution by the respective banking commissioners to their community banks.

On July 17<sup>th</sup>, Commissioner Cooper and Director of IT Security Examinations Hinkle participated in a meeting with U.S. Treasury Secretary Mnuchin, Federal Reserve Chairman Yellen, FDIC Chairman Gruenberg, Acting Comptroller of the Currency Noreika and the heads of other financial regulators. The purpose of the meeting was to discuss “harmonization” of cybersecurity regulations and examination.

The Department's staff continues to speak to Texas banking groups about the fundamentals of managing cybersecurity risk so that bank directors and executive officers:

- 1) Gain confidence in managing cyber threats holistically, rather than pursuing hot topics, reacting to regulators / auditors, and complying with checklists;
- 2) Learn a structured method to manage cyber threats;

## Summary of the Bank &amp; Trust Supervision Division Activities

## Page 4

- 3) Understand the basics of the NIST cybersecurity framework; and
  - 4) Learn about the four greatest cyber threats to community banks as identified by a national task force of bank executive officers.
- **Examiners Council (EC) Meeting:** The EC is a select group of commercial field examiners that meet at least once each year to review the consistency and quality of examination work papers and discuss perceived concerns with examination procedures. EC members also serve as liaison representatives between the field staff, regional office staff and headquarters personnel to consider and make recommendations for change to existing commercial examination procedures and work paper organization practices. The EC met in Austin the week of June 19, 2017 to perform these tasks. The EC is also developing a new scoring system, which if approved, will be used to better grade the quality of examination work papers.
  - **Special Operations and Conferences:**
    - Director of Examination Support Robinson participated in a bank regulatory panel during the Texas Bankers Association's (TBA's) CFO Conference held in San Antonio on June 8, 2017.
    - On June 22, 2017, Commissioner Cooper provided testimony to the U.S. Senate Committee on Banking, Housing and Urban Affairs about the need to adopt an activities-based definition for community banks, reducing the complexity of capital rules, exempting community banks from certain Dodd Frank regulations for mortgages held in their portfolio, and improving the transparency and timeliness of fair lending supervision. While in Washington, Commissioner Cooper also met with other key policy makers.
    - Division staff hosted a delegation of German students on June 29, 2017 and provided an overview of the Department's operations and mandates.
    - On July 13, 2017, Deputy Commissioner Bacon participated in a bank regulatory panel during the TBA's Senior Management Summit held in Bastrop.
    - The week of July 17, 2107, Commissioner Cooper met with House Financial Services Chairman Jeb Hensarling, U.S. House of Representative Al Green, and staff members of Senators John Cornyn and Ted Cruz to discuss bank examination fees and a community bank definition.
    - The week of July 31, 2017, the Division's two summer interns will be spending their final week in the Austin Headquarters Office learning more about the Department's operations. During the week, they will work closely with the Corporate, Strategic Support, Legal, Special Audits and Bank and Trust Divisions.



Charles G. Cooper  
Commissioner

## TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705

512-475-1300 / 877-276-5554

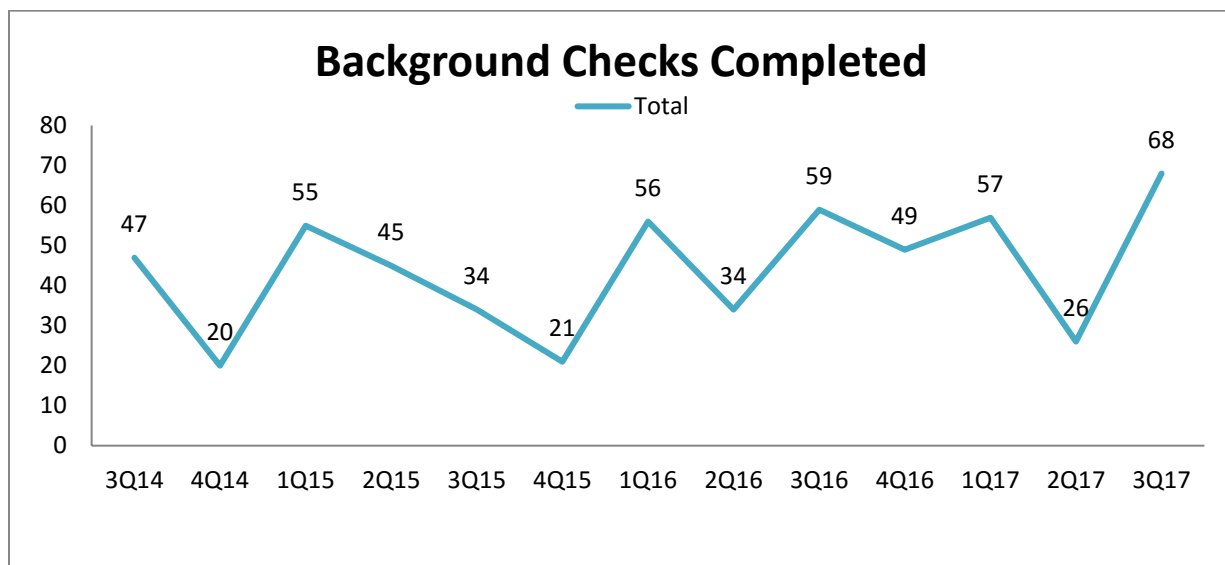
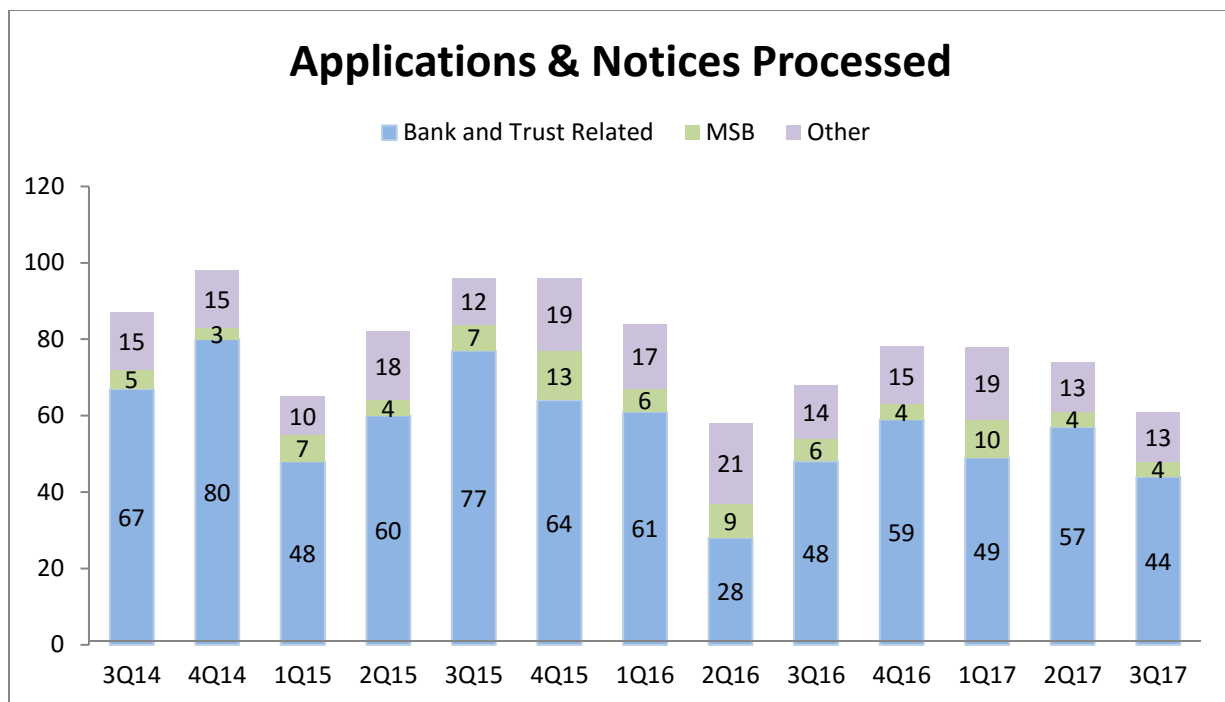
[www.dob.texas.gov](http://www.dob.texas.gov)

To: Finance Commission Members

From: Daniel Frasier, Director of Corporate Activities *DBF*

Date: July 28, 2017

Subject: Summary of the Corporate Division Activities



Entities/Activities	Applications and Notices Under Review (as of July 25, 2017)
Bank Related	16
Trust Companies	2
Money Services Business (MSB)	7
Others	3
<b>Totals</b>	<b>28</b>

#### Division Highlights

- The volume of bank and MSB activity has markedly picked up over the last few weeks after a lull in filings received during the first half of the summer.
- The Bank of Austin, Austin, Texas, opened for business on July 10, 2017. This is the first de novo bank chartered in Texas since 2009.
- Chartering, Conversion, and Merger Activity – The following transactions have consummated since Corporate’s last report to the Finance Commission:
  - *Banks*
    - TIB The Independent BankersBank, Farmers Branch, Texas, converted to a national bank under the name of TIB The Independent BankersBank, National Association
    - First Community Bank, San Benito, Texas, converted from a national bank under the name of First Community Bank, National Association to a Texas state bank
    - Vista Bank, Ralls, Texas, completed its acquisition merger of Hamlin National Bank, Hamlin, Texas
    - The Bank of Austin, Austin, Texas, a de novo Texas state bank, opened for business
  - *Trust Companies*
    - Sage Trust Company LTA, Houston, Texas, a de novo exempt trust company, opened for business
- Conferences, Conventions, and Committee Meetings – Since the last report to the Finance Commission Corporate participated in the following:
  - Director of Corporate Activities Dan Frasier and Corporate Analyst Clara Zamarripa are participating in a working group recently established by the states and the Conference of State Bank Supervisors (CSBS) to review a high profile and complex change of control application. Ant Small and Micro Financial Services Group Co., Ltd, Hangzhou, China (“Ant Financial”) is indirectly acquiring MoneyGram Payment Systems, Inc., an MSB headquartered in Dallas, Texas. The Ant Financial/MoneyGram working group was established to foster a collaborative review of this change of control application with the purpose of minimizing both the duplicate efforts by individual states and the resulting impact of the applicant responding to each state.



Charles G. Cooper  
Commissioner

## TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705  
512-475-1300 / 877-276-5554  
[www.dob.texas.gov](http://www.dob.texas.gov)

To: Finance Commission Members

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

Date: August 1, 2017

Subject: Summary of the Special Audits Division Activities

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

### NOTES:

PCC \$ amounts reflected in the millions.

Limited scope examinations do not receive a rating.

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

- The seven MSB past due examinations are on average two months past due.
- The four PCC past due examinations are on average one month past due.
- Our current examination schedule reflects that all past due PCC examinations were completed in June and July 2017.
- Our current examination schedule reflects that five of the past due MSB examinations were completed in June 2017, and the remaining two examinations have been delayed until September 2017 due to coordination with other MTRA state agencies.
- Special Audits met or exceeded all performance measures for the third quarter of FY 17.

**Division Activities**

The Department began in late May and early June 2017 to receive numerous complaints against Foresthaven Cemetery Corporation, also referred to as Aldine Cemetery, a licensed perpetual care cemetery (PCC) located in Houston, Texas. The Department received a total of 20 complaints against this cemetery. Based on the number and types of complaints received, the Department scheduled a town hall meeting in Houston on August 10<sup>th</sup> to hear first-hand the concerns of the complainants against the cemetery. In addition, representatives of the Department will also explain how the perpetual care fund works and provide a brief summary of PCC regulations.

As of July 31<sup>st</sup>, we have seven active enforcement actions that we are monitoring for payment of restitution and penalties. In addition, seven enforcement actions were paid-in-full in fiscal 2017 and one was deemed uncollectible and referred to the Attorney General's Office for further legal collection efforts.

# Actual Performance for Output/Efficiency Measures

Fiscal Year 2017

For Period Ending May 2017

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

## Output Measures-Key

### 1-1-1 BANK EXAMINATION

#### 1. # BANK EXAMINATIONS PERFORMED

<b>Quarter 1</b>	102	25	25	24.51%
<b>Quarter 2</b>	102	27	52	50.98%
<b>Quarter 3</b>	102	27	79	77.45%

#### 2. # TRUST/IT EXAMINATIONS PERFORMED

<b>Quarter 1</b>	206	44	44	21.36%
<b>Quarter 2</b>	206	51	95	46.12%
<b>Quarter 3</b>	206	70	165	80.10%

The measure is above the target amount due to the number of information technology examinations performed being more than projected as a result of more experienced IT specialists creating examination efficiencies.

### 1-2-1 NON-BANK EXAMINATION

#### 1. # SPECIAL AUDIT LICENSEES EXAMINED

<b>Quarter 1</b>	560	145	145	25.89%
<b>Quarter 2</b>	560	139	284	50.71%
<b>Quarter 3</b>	560	172	456	81.43%

The Division's positive variance relates to being fully staffed with a trained and knowledgeable examination force for the entire quarter.

### 1-3-1 APPLICATION PROCESSING

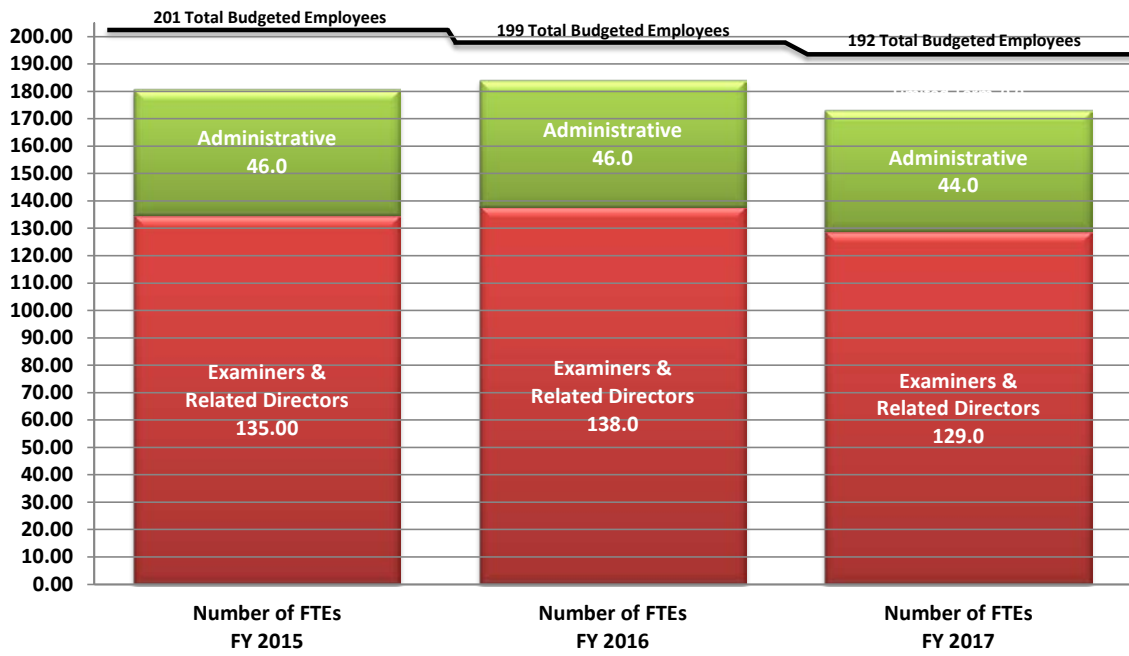
#### 1. # LICENSE APPLICATIONS COMPLETED

<b>Quarter 1</b>	267	78	78	29.21%
<b>Quarter 2</b>	267	74	152	56.93%
<b>Quarter 3</b>	267	61	213	79.78%

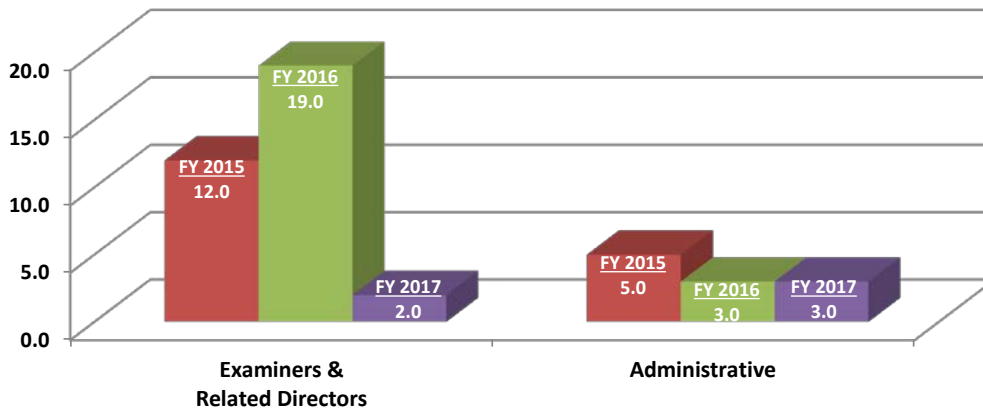
\* Varies by 5% or more from target.

# Texas Department of Banking

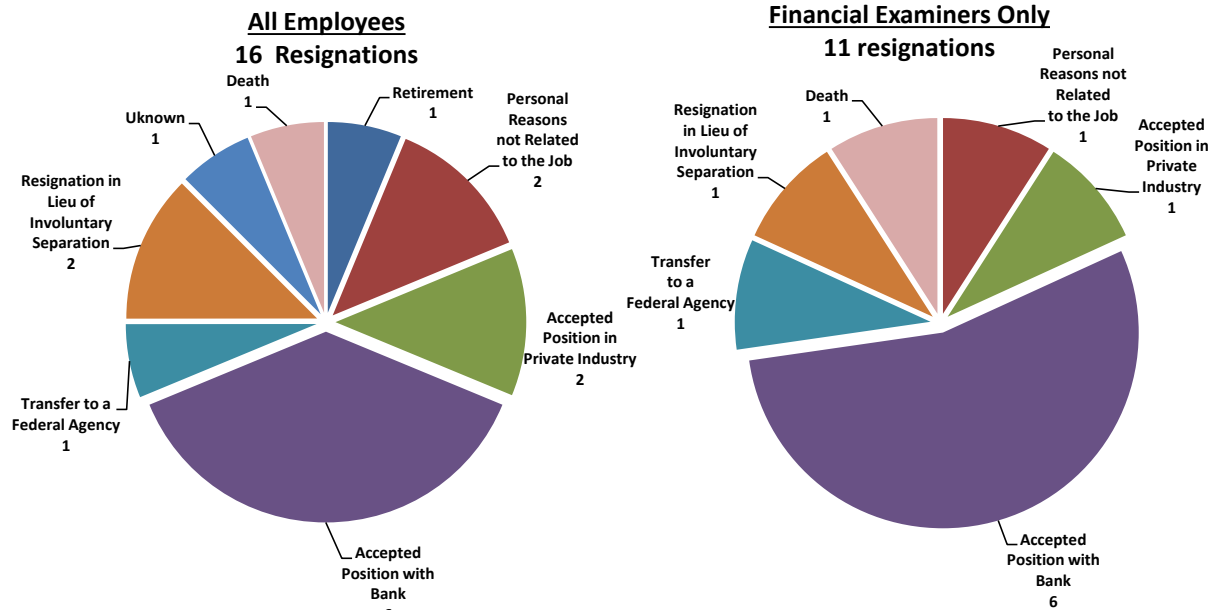
## Employee Data for Fiscal Years 2015, 2016 and 2017 as of 5/31/17



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



### FY 2017 Employee Turnover Reasons







Charles G. Cooper  
Commissioner


## TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705

512-475-1300 / 877-276-5554

[www.dob.texas.gov](http://www.dob.texas.gov)

**To:** Finance Commission Members

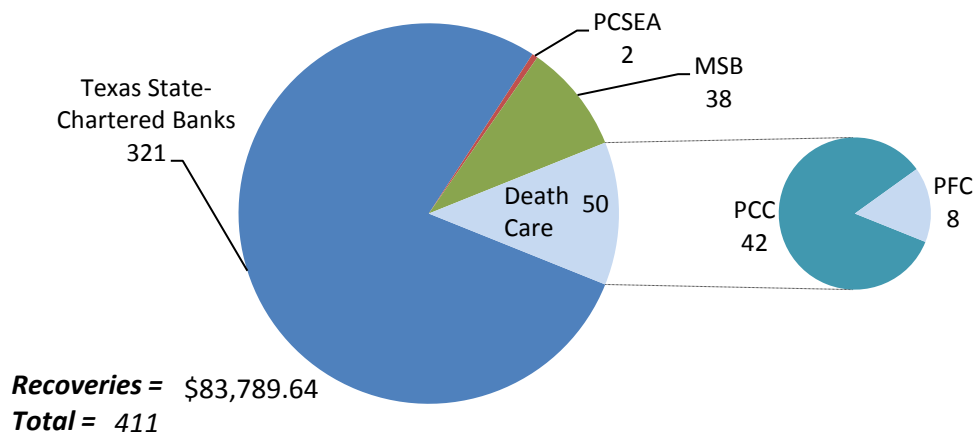
**From:** Wendy Rodriguez, Director of Strategic Support 

**Date:** August 1, 2017

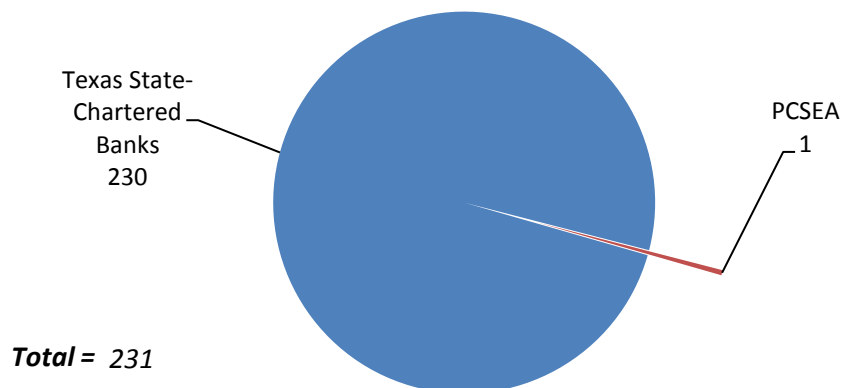
**Subject:** Summary of the Strategic Support Division Activities

---

### Complaints on Regulated Entities September 2016 - June 2017



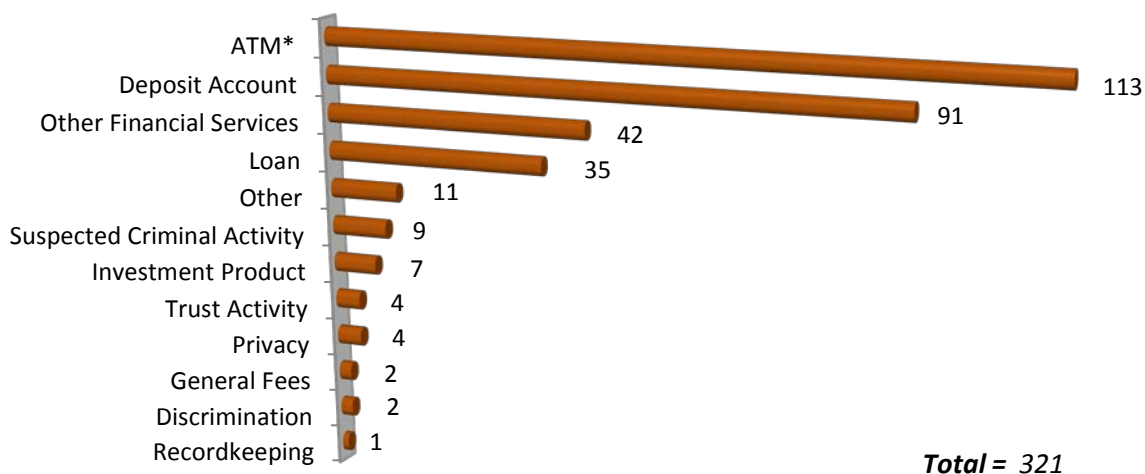
### Inquiries on Regulated Entities September 2016 - June 2017



### State-Chartered Banks and Trust Companies

#### Complaints by Type

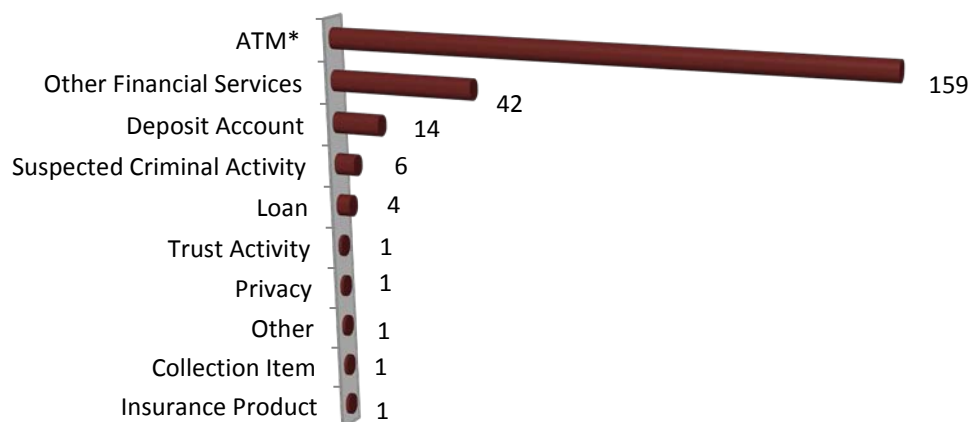
September 2016 - June 2017



### State-Chartered Banks and Trust Companies

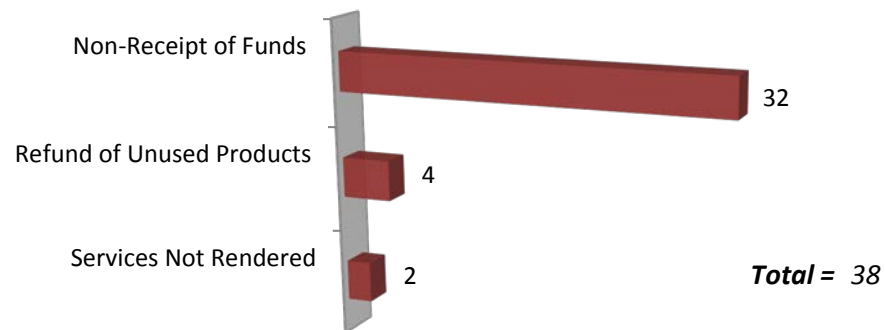
#### Inquiries by Type

September 2016 - June 2017

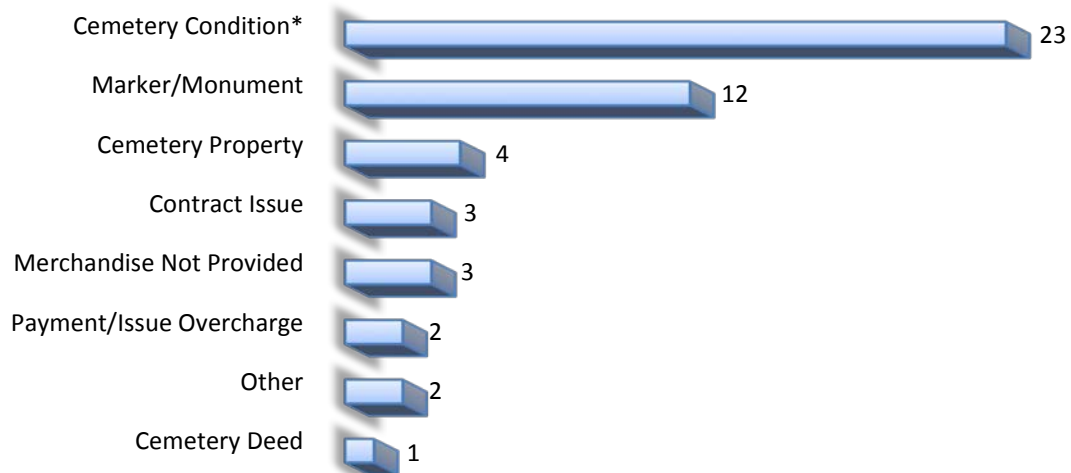


\* Activity related to a single state bank. Activity related to consumers inquiring about their funds serviced by one institution.

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



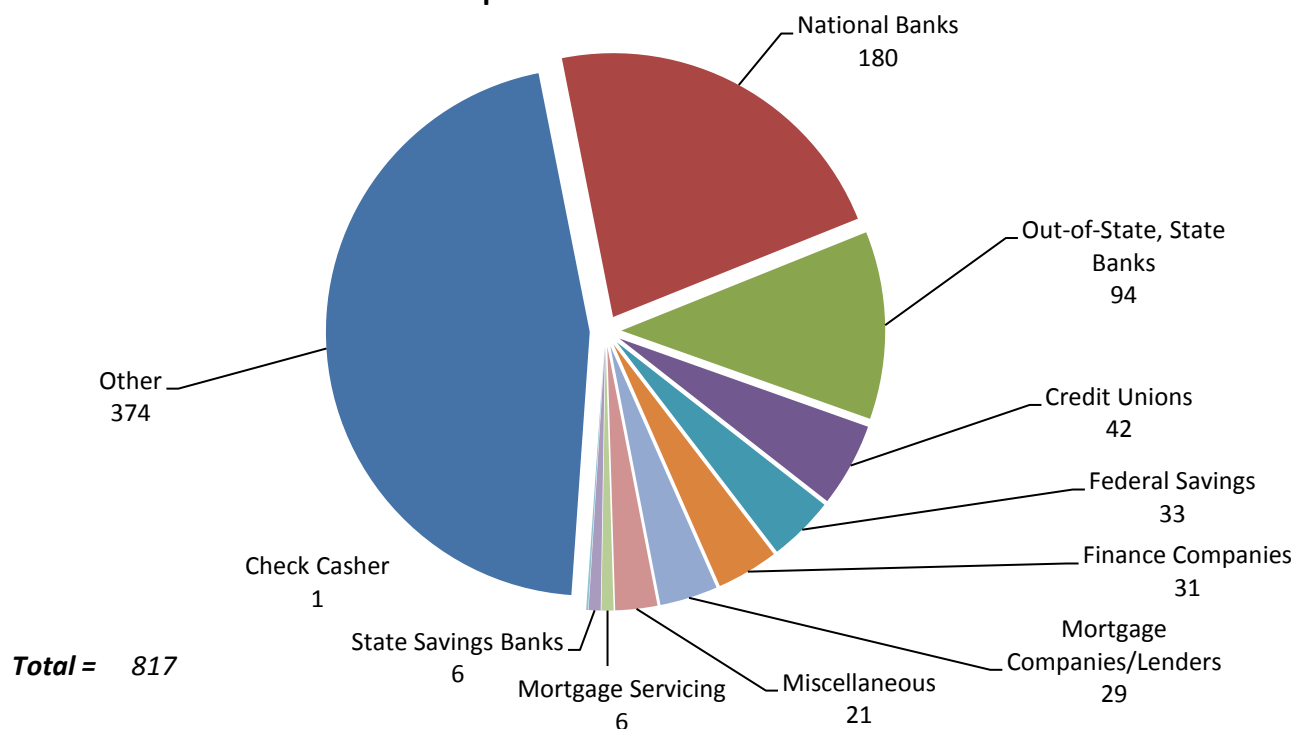
**PFC/PCC Complaints by Type  
September 2016 - June 2017**



\* See the Special Audits' memo for a discussion of the cemetery complaints.

### Complaints and Inquiries Against Nonregulated Entities

September 2016 - June 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 – June 2017
State-Chartered Banks	11
Trust	N/A
PCSEA	7
PFC/PCC	36
MSB	43

### CANS ACTIVITY

January 1, 2014 – July 25, 2017

Entity	Enrolled	Compromised Accounts Reported
Texas State-Chartered Banks	221	962
Texas State-Chartered Savings Banks	25	54
Federal Savings Banks	10	81
State Credit Unions	132	913
Federal Credit Unions	229	651
National Banks	170	265
Out-of-State State-Chartered Banks	11	50
Out-of-State National Banks	6	15
<b>Total</b>	<b>804</b>	<b>2,991</b>

### Bank Examination Testing System (BETS) Activity

Number of Candidates Passing Each Phase

	FY 2014	FY 2015	FY 2016	FY 2017 <i>As of July 31, 2017</i>
I. General Knowledge	5	8	9	7
II. Loan Analysis	2	2	4	2
III. Panel	2	4	3	2
IV. Test Bank	1	4	2	3
<b>Total FE3</b>	<b>14</b>	<b>19</b>	<b>18</b>	<b>24</b>

### Promotions

<b>From FE3 to FE4 (Commissioned Examiner)</b>	2	4	2	3
--	---	---	---	---

### Other Divisional Items:

- *Sunset Review*
  - The Department continues to work on the Self Evaluation Report (SER) for the 2018-2019 Sunset Review. The agency must submit the completed SER by September 1, 2017. The date for our review has not yet been finalized.
- *Examiner's Council*
  - Examiners' Council met the week of June 19<sup>th</sup> to perform an annual review of commercial, trust, and IT work papers. The Council also reviewed examination procedures and policies related to documenting work papers.
- *Website*
  - Work on the next generation of the Department Exchange Portal (DEX) has been completed. Training videos and user manuals are in place for internal staff to begin familiarizing themselves with the upgraded portal. Prior to officially launching the upgraded portal, the Department will host a training webinar for stakeholders who regularly use DEX. The webinar is tentatively scheduled for late August 2017.

- *Town Hall Meetings*
  - The Department hosted one of four town hall meetings in Dallas, Texas on July 10, 2017. The meetings are part of the Department's continued outreach efforts for the Community Banking in the 21<sup>st</sup> Century initiative. The remaining meetings are scheduled in San Antonio on August 1<sup>st</sup>, College Station on August 2<sup>nd</sup>, and Lubbock on August 16<sup>th</sup>.
- *Financial Education*
  - Ms. Leliani Lim-Villegas participated in the IBAT and TBA Financial Literacy Summit held in Dallas, Texas on July 24-26, 2017. This is Ms. Lim-Villegas' tenth year participating in this event.
  - Two state banks have requested financial education information along with a bank visit from the Department's Financial Education Coordinator. Ms. Lim-Villegas is scheduled to visit both banks in August 2017.



Charles G. Cooper  
Commissioner

## ***TEXAS DEPARTMENT OF BANKING***

2601 North Lamar Blvd., Austin, Texas 78705

512-475-1300 / 877-276-5554

[www.dob.texas.gov](http://www.dob.texas.gov)

### Memorandum

**TO:** Finance Commission Members  
**FROM:** Catherine Reyer, General Counsel  
**DATE:** August 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. On March 6, 2017, the Office of Attorney General presented an updated claim to the executrix for \$11,005; the claim was accepted on March 9, 2017. The probate case remains active.

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

### **Miscellaneous**

Legislation establishing the [Texas Bullion Depository](#) became effective in June 2015. The law requires the Texas Comptroller of Public Accounts (CPA) to administer the Depository, while the Department of Banking is responsible for licensing and regulating the depository agents. On June 14, 2016, CPA [announced its selection](#) of an outside vendor, Lone Star Tangible Assets (LSTA), to maintain the day to day operations of the depository. During the most recent legislative session and since, we have had several meetings with representatives of CPA, and more recently, LSTA, regarding the requirements for implementation. In the coming months, we will continue to work on rules, guidances, and application forms for the depository agents.

### **Gifts**

The Center for Financial Services Innovations provided complimentary registration (value \$1,095) for Leilani Lim-Villegas, Financial Education Coordinator, to attend the EMERGE Financial Health Forum in Austin June 14-16.

### **Orders**

Since the last Legal Division memo was submitted, the Commissioner issued one order, which is a final public order:

#### ***Bank and Trust***

- Order No. 2017-009, dated 7/21/2017; Order Approving Trust Company Charter, Strata Trust Company, Austin, TX



**D.**

**Department of Savings and  
Mortgage Lending**

*This page left blank intentionally.*

## D. Texas Department of Savings and Mortgage Lending

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

#### a. Industry Status

The June 30<sup>th</sup> quarterly financial data on Texas state thrifts had not been finalized by the FDIC prior to the preparation of this report. A detailed report on the second calendar quarter of 2017 will be presented at the next meeting of the Finance Commission.

As of June 30, 2017, there are 26 state savings banks, all of which are rated a Composite 1 or 2 with no outstanding public enforcement actions. The Department continues to monitor various local, state, and national data sources to best understand the risks facing the industry and individual savings banks. Energy prices, cyber security, interest rate risk, construction lending, and liquidity risk all continue to be areas of particular focus.

#### 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 was effective June 19, 2017.

On February 23, 2017, notice was received of the intent of First Guaranty Bank, Hammond, Louisiana, to acquire Synergy Bank, SSB, McKinney. The merger was effective June 16, 2017.

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 attended the Texas Banker's Association's Legislative Tour in Kilgore on June 23, 2017 and in Austin on June 27, 2017.

Commissioner Jones attended the Federal Financial Institutions Examination Council (FFIEC) meeting on July 11, 2017. Additionally, she attended the Financial and Banking Information Infrastructure Committee (FBIIC) meeting on July 17, 2017 in her role as Chair of the Board for the American Council of State Savings Supervisors (ACSSS).

The thrift examiner group held in-house training in conjunction with the agency wide training held in Austin the week of June 26, 2017.

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

### a. Residential Mortgage Loan Originators

Current Licensing Population:

License Type As of 07/31/2017	Approved		
	Entity (MU1)	Branch (MU3)	MLO (MU4)
<i>Auxiliary</i>	9	n/a	
<i>CUSO</i>	4	2	
<i>FSC</i>	1	n/a	
<i>Independent Contractor</i>	99	n/a	
<i>Mortgage Company</i>	1,159	570	
<i>Mortgage Banker</i>	394	2,605	
<i>Mortgage Servicer</i>	169	n/a	
<b>Totals</b>	<b>1,835</b>	<b>3,177</b>	<b>25,991</b>

The following shows the aggregate Mortgage Call Report information for calendar year 2016 and the 1<sup>st</sup> quarter of calendar year 2017. This information is reported by the licensees.

CY2016 Mortgage Call Report Data			
	\$ Amount	# Loans	Average \$ Loan
<b>Brokered</b>	\$9,274,149,052	45,218	\$205,099
<b>Retail</b>	\$65,387,014,894	318,588	\$205,240
<b>Wholesale</b>	\$12,843,978,861	58,292	\$220,339
1 <sup>st</sup> Quarter CY2017 Mortgage Call Report Data			
	\$ Amount	# Loans	Average \$ Loan
<b>Brokered</b>	\$1,639,430,681	8,783	\$186,659
<b>Retail</b>	\$13,159,199,630	65,379	\$201,275
<b>Wholesale</b>	\$2,349,355,695	10,922	\$215,103
Aggregate information as reported by licensees.			

### b. Mortgage Examinations

Through the end of the third quarter of FY17, a total of 375 examinations were conducted covering 4,593 licensees. The examinations are continuing to identify incomplete conditional qualification/approval letters, missing Mortgage Company/Banker Disclosures along with other compliance issues associated with the TILA-RESPA Integrated Disclosures.

The mortgage examiner group held in-house training in conjunction with the agency wide training held in Austin the week of June 26, 2017.

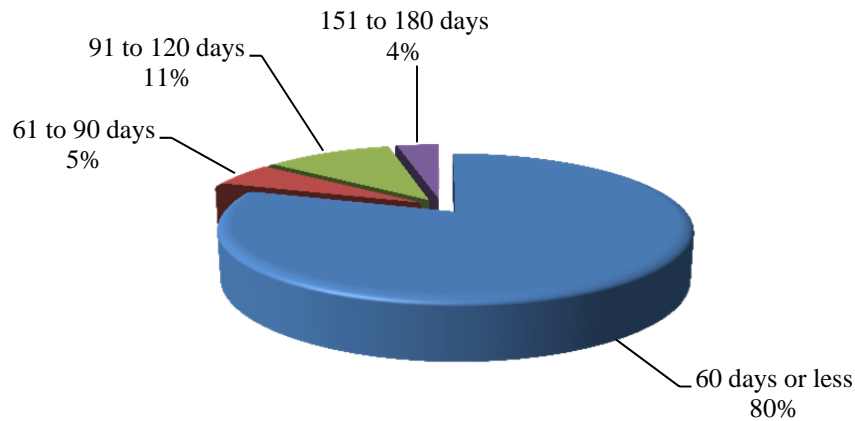
### c. Consumer Complaints

Through the end of the third quarter of FY17, a total of 768 consumer complaints were received. This represents an 8.5% decrease when compared to the same period in FY16. Loan servicing

complaints represent 64% of the total number of complaints received as of the end of the third quarter. As of May 31, 2017, there were a total of 55 open consumer complaints with 85% of the complaints aged less than 90 days.

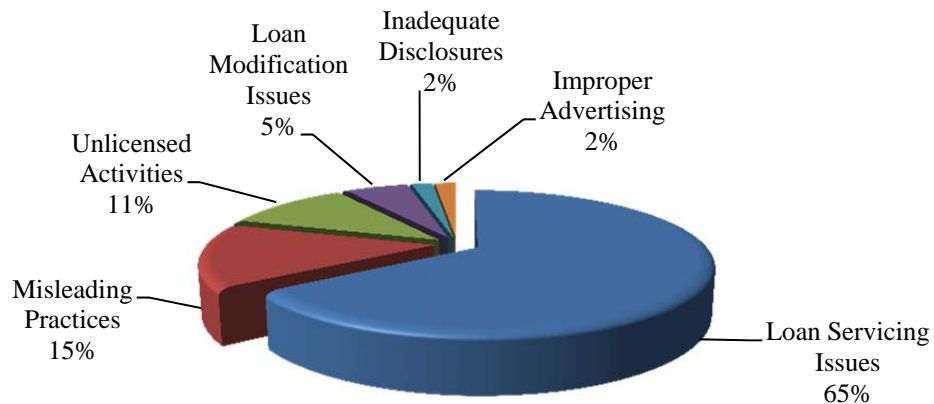
The following charts reflect the consumer complaint information through the end of the third quarter of FY17.

### **Aging of Open Complaints as of 05-31-2017**



Total Open Complaints as of 05-31-2017 = 55

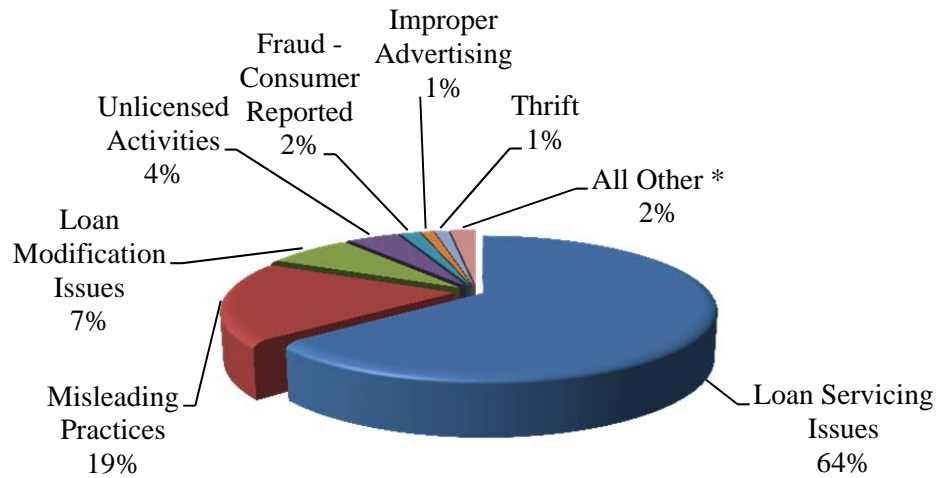
### **Nature of Open Complaints as of 05-31-2017**



Total Open Complaints as of 05-31-2017 = 55

## Nature of Complaints Received - YTD Fiscal Year 2017

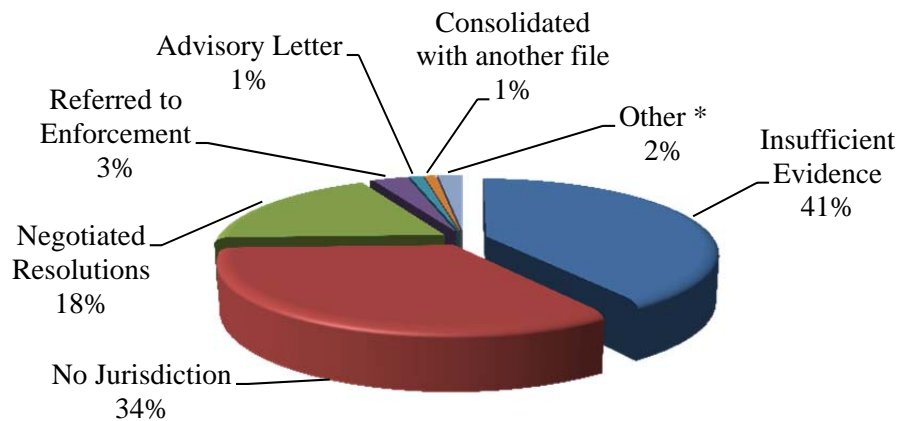
(Complaints Received 09-01-2016 to 05-31-2017)



Total Complaints Received in FY17 Year-to-Date = 768

## Disposition of Resolved Complaints - YTD Fiscal Year 2017

(Complaints Resolved Between 09-01-2016 and 05-31-2017)



Total Complaints Resolved Year-to-Date FY17 = 801

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

**d. Other Items**

Commissioner Jones and Director O'Shields spoke to the North Dallas Texas Association of Mortgage Professionals on July 12, 2017.

Commissioner Jones and Director O'Shields spoke to the Central Texas Association of Mortgage Professionals on July 18, 2017.

Tony Florence, Director of Mortgage Examinations and Investigations, chaired the American Association of Residential Mortgage Regulators Annual Conference July 31, 2017 to August 3, 2017. Commissioner Jones gave the opening remarks. Director O'Shields and three of the Department's mortgage examiners attended the conference.

Commissioner Jones spoke to the Board of the Texas Mortgage Bankers Association on August 7, 2017 at their Summer Board meeting.

**Mortgage Industry Advisory Committee – July 19, 2017 Meeting**

On July 19, 2017 MIAC held a regularly scheduled meeting. At this meeting the Department provided update on the Department's activities and answered questions from the committee members. The agenda for the meeting was as follows:

Agenda

1. Welcome – Commissioner
2. Review of Department's General Status of Originator Licensing and Registration Activity:
  - Licensing – Director of Licensing
  - Examination and Complaints – Director of Mortgage Examinations
  - Enforcement – General Counsel
3. 85<sup>th</sup> Legislative Session – Legal Counsel
4. General Discussion:
  - LOS system issues on exams
5. Open Forum
6. Upcoming Meetings:
  - To be determined
7. Adjourn - Commissioner

## Actual Performance for Output/Efficiency Measures

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

\*Varies by 5% or more from target.



### 3. Fiscal/Operations Activity:

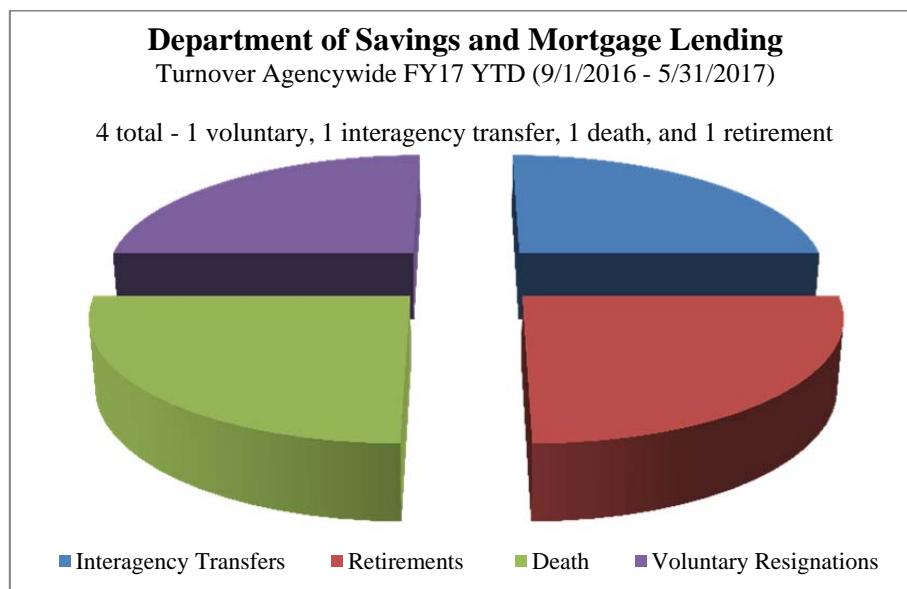
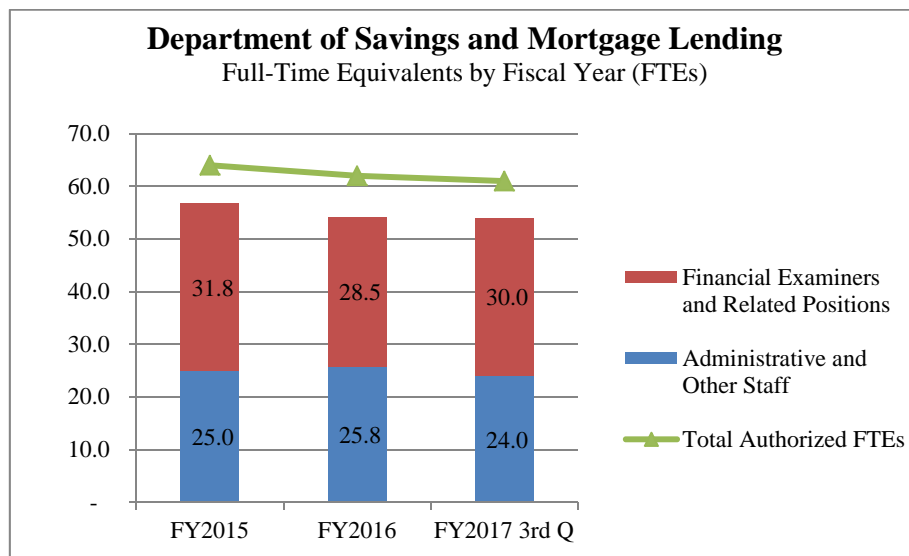
#### a. Funding Status/Audits/Financial Reporting

Funding Status/Budget – Staff has closed out the third quarter of FY17 and prepared the budget for FY18. The quarterly financial reports and the proposed budget are located elsewhere in the packet.

Legislative Session – Staff members are reviewing bills that passed during the 85<sup>th</sup> Regular Session, and are implementing any applicable changes.

#### b. Staffing

As of May 31, 2017, the agency was staffed at 54 regular full time employees with 61 FTEs available.



### **c. Other Items**

Agency wide training was held the week of June 26, 2017. At the training Certificates of Appreciation were awarded to five staff members for 10 years of services.

### **4. Legal Activities:**

#### SOAH Cases:

There have been no contested SOAH hearings since the last report to the Finance Commission in June of 2017.

Case No. 450-19-2838 *Department of Savings and Mortgage Lending v. Sammy Trantham*. On April 19, 2017, the Administrative Law Judge granted the department's motion for summary disposition to deny Mr. Trantham's license. May 19, 2017, was the administrative record close date. On July 17, 2017, the Administrative Law Judge issued his Proposal for Decision on Summary Disposition recommending that Mr. Trantham's license renewal be denied and for costs to be assessed against Mr. Trantham as the losing party in this matter. Exceptions to the Proposal for Decision are due on September 7, 2017 and any Replies to the Exceptions are due on October 20, 2017.

#### Gift Reporting:

The Texas Bankers Association provided a complementary registration to its' annual convention held on May 10-12, 2017 in San Antonio. The value of the registration was \$725.00.

#### Litigation:

03/17/2016 Lawsuit

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

In this case, Ms. Sims is contesting the denial of her license, claiming the Agency's decision was not reasonably supported by substantial evidence. The Texas Attorney General's Office is representing the Agency. An Answer was filed on April 7, 2016, 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 at 2:00 p.m. On July 19, 2017, the Court heard and took under advisement the merits of the case. After considering the trial briefs, the administrative record, and the applicable law, the Court issued an order affirming the Department's decision on July 19, 2017, concluding that the Department's decision of denying Ms. Sims's license is supported by substantial evidence. Ms. Sims has until August 21<sup>st</sup> to appeal.

#### Proposition 2 Home equity:

The proposed constitutional amendment is to be submitted to the voters at an election to be held November 7, 2017. The ballot shall be printed to provide for voting for or against the proposition:

“The constitutional amendment to establish a lower amount for expenses that can be charged to a borrower and removing certain financing expense limitations for a home equity loan, establishing certain authorized lenders to make a home equity loan, changing certain options for the refinancing of home equity loans, changing the threshold for an advance of a home equity line of credit, and allowing home equity loans on agricultural homesteads.”

## AG Paxton Obtains \$900,000 Judgment against Developer of Illegal Subdivision

*Friday, July 7, 2017 – Austin*

Attorney General Ken Paxton today announced the entry of a \$900,000 agreed judgment against Pearland developer Richard J. Burns in connection with his sale of property in an illegal Caldwell County subdivision known as Century Oak Estates.

The state's lawsuit against Burns included allegations that he engaged in unlawful conduct in the sale of lots in Century Oak. Burns deceptively represented that lots were fit for residential use when in fact some were in flood plains, others had illegal septic tanks, and purchasers were unable to obtain building permits because Century Oak Estates was an unplatted and unrecorded subdivision which had never been approved by Caldwell County.

The judgment bars Burns from engaging in similar deceptive sales practices and prohibits him from acting as a residential mortgage loan originator without a license as required by the Texas Finance Code. Burns is also prohibited from engaging in contract for deed financing without complying with the requirements of the Texas Property Code.

The judgment further establishes a refund program to be implemented by an independent third party settlement administrator who will provide notices to eligible consumers with details about the program and its options. Burns is ordered to fully cooperate with the settlement administrator and his failure to cooperate subjects him to a potential penalty of \$450,000.

In resolving this case, Attorney General Paxton worked with Caldwell County District Attorney Fred Weber and also received the cooperation of the Texas Department of Savings and Mortgage Loans.

To view a copy of the judgment, click here: <http://bit.ly/2tUCxa9>

To view a copy of the petition, click here: <http://bit.ly/2tpna8N>

79°

SUBSCRIBE  
as low as 99¢

my

LOG IN

## Settlement gives residents a way out of illegal Caldwell development

METRO-STATE By **Eric Dexheimer** - American-Statesman Staff

1



The entrance to Century Oak Estates in Caldwell County on Thursday July 6, 2017. JAY JANNER / AMERICAN-STATESMAN

Posted: 10:12 a.m. Friday, July 07, 2017

---

### Highlights

The announcement comes a year after a Statesman investigation highlighted the off-the-books subdivision.

---



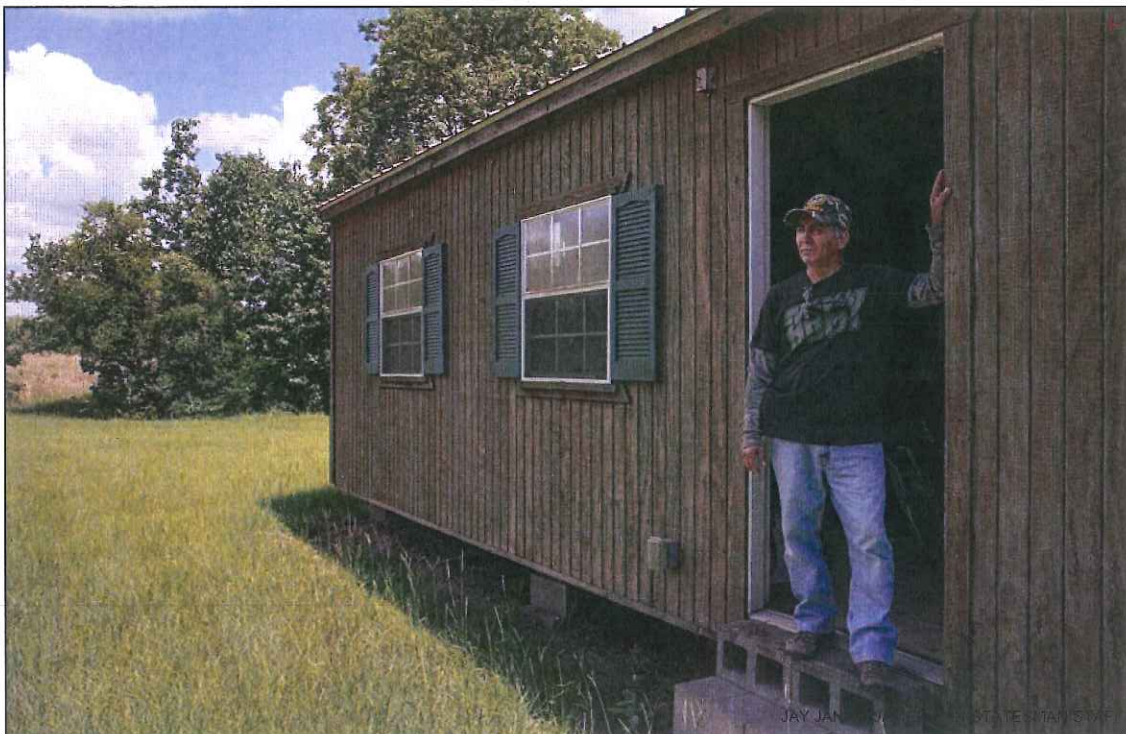
The Houston-area developer will pay \$850,000 into a trust fund to refund residents and help them move.

---

Caldwell County land-use regulators are still scrambling to keep up with the area's rapid growth.

**HARWOOD** — The owner of an illegal subdivision that was allowed to operate in an isolated corner of Caldwell County for more than a decade despite being known to local regulators is finally being forced to pay for his years of failing to abide by state and county land-use rules.

Richard Burns, whose Century Oak Estates was created and sustained with what officials described as a disregard for numerous real-estate development requirements, has agreed to pay nearly \$1 million to buy out approximately 30 residents and help them move out of his off-the-books development in the rural county that borders Travis County's southern tip.



Juan Alvarado stands in an unused trailer on his land at Century Oak Estates in Caldwell County on Thursday July 6, ... [Read More](#)

The announcement comes a year after an American-Statesman investigation profiled Burns and Century Oak, highlighting the predicament of those who



purchased land in the subdivision only to learn they could not then build on or sell it because Caldwell County considered their property illegal. Several residents, meanwhile, said that Burns had raised the specter of eviction to intimidate them and threatened to turn off the subdivision's single water well to punish them for late payments.

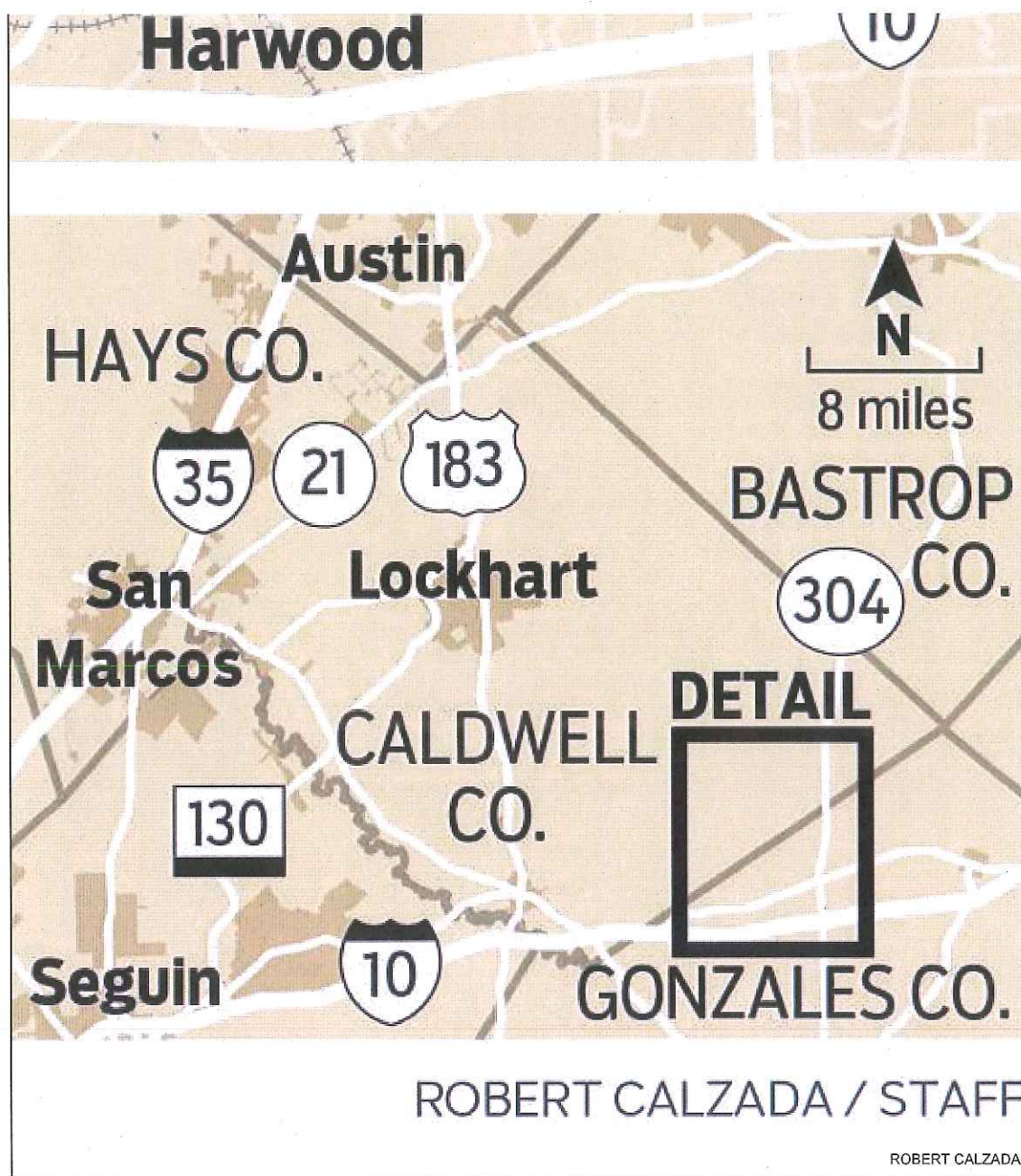
**READ THE INVESTIGATION: Long aware of problem community, Caldwell now faces irate residents**

Burns maintained that he was providing the opportunity for homeownership to less-affluent residents and never intended to break any laws. He blamed his attorneys for giving him bad advice as he started selling lots in 2004, many of them off a dirt road called Buffalo Run, on the 330-acre property situated on a former wild game park.

And not all Century Oak residents were dissatisfied.







Landowners who purchased property in Richard Burns's Caldwell County subdivision were shocked to learn that after paying tens of thousands of ... [Read More](#)

But at a [legislative hearing days after the article was published](#), several testified they had been afraid to speak out about problems for years because their owner-financed purchase agreements made them vulnerable to retaliation. Also known as poor man's mortgages, seller-financed "contracts for deed" grant a buyer title to the property only after paying the seller in full, typically over many years with high interest rates — 10 percent at Century Oak. Buyers don't build up equity and can be evicted rather than foreclosed on.

**State steps in**

Lawmakers **vowed to investigate** the property. In response, the Texas Department of Savings and Mortgage Lending last August fined Burns \$5,000 and issued a cease and desist order demanding he no longer use contracts for deed to sell his property. A spokesman for the agency said the fine was paid.

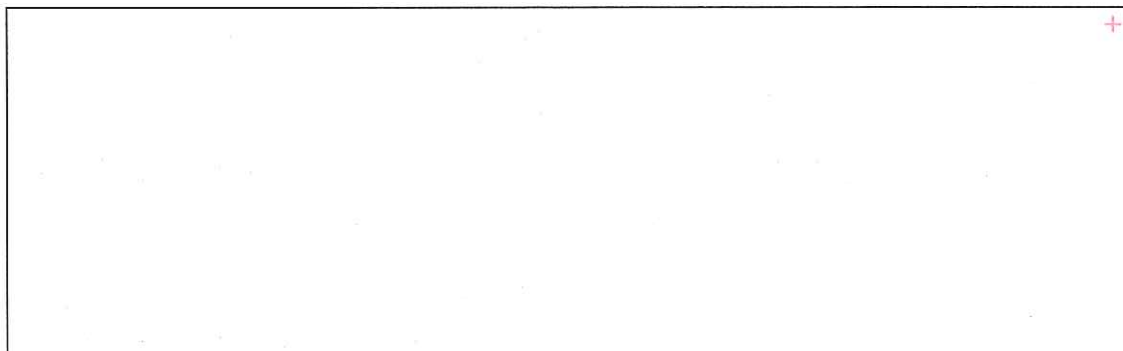
Although Burns faced misdemeanor criminal charges for illegally subdividing his land, Caldwell County District Attorney Fred Weber said he decided the civil settlement offered a better resolution. Finalized last week, it calls for Burns to deposit \$850,000 in a trust account administered by a retired state district judge. The money will be used to buy out those who want to move by refunding all payments made to date as well as compensating residents for improvements they made to their properties. It also provides \$5,000 per household to cover relocation.

The deal, negotiated by Weber and the state attorney general's office, also assesses a \$450,000 civil penalty against Burns. According to the terms, however, the fine will not be collected if Burns complies with the trust fund arrangement.

Both sides said that while the settlement was imperfect, it provided the best solution to what had grown into an intractable problem.

"I'm not real crazy about the idea of people having to pick up and move," Weber said. But after months of trying to untangle the legal thicket surrounding Century Oak, getting the subdivision into compliance "was going to be impossible given the multitude of problems that had developed over the past 14 years."

"This was the best we could accomplish."







Century Oak Estates in Caldwell County on Thursday July 6, 2017. JAY JANNER / AMERICAN-STATESMAN

Burns' attorney, Kenneth Phillips, agreed. "My client would have preferred to plat the property and sell off the parcels," he said. But facing high legal hurdles, "the only alternative was to refund everyone's money." The settlement agreement, he added, "was the right thing to do."

Weber and Phillips stressed the deal was voluntary, and none of the residents would be forced to leave Century Oak if they did not want to. But they also cautioned that staying would place property owners in a legal limbo, with the possibility they would not be able to sell their land.

"The money they invested up through this point may be for naught," Weber said.

Weber said most residents he'd spoken to said they supported the settlement. Several, however, reacted to the deal skeptically.

#### **DA: Other Caldwell subdivisions need scrutiny**

"We're all over a barrel," said Juan Alvarado, who three years ago moved to Texas from Fresno, California, after signing a \$98,000 owner-financed contract

for nine acres of pasture and a pond. He noted that a refund would not compensate him for the rise in the land's value in recent years.

Fredie McKinney said he moved out of Century Oak a year ago, two years into a contract for deed requiring him to pay \$1,031 a month for 25 years before he received title. "I just walked away from it, because I knew I couldn't sell it," he said.

Weber said that under the agreement, which calls for anyone who lived in the subdivision since May 2016 to be eligible for the repayments, McKinney would get his money back. The district attorney acknowledged that those who left earlier, however, would have to petition the trustee for compensation.

The settlement agreement does little to confront the underlying systemic problems that allowed Century Oak to exist.

County regulators conceded they had been aware of Century Oak's existence for a decade but had done little to address it. A Caldwell inspector had reported the subdivision to prosecutors as early as 2010, but former District Attorney Trey Hicks let the case languish.

After that, "I knew it was illegal," said Kasi Miles, who manages Caldwell County's subdivision permitting. "So there was no point in me going back."

Century Oak also was able to drift out of sight because Caldwell County's regulatory offices have struggled to keep up with exploding growth. While development services departments in neighboring Hays and Bastrop counties each employ about 20 people to handle permitting and review, Caldwell County has had only a single person — Miles — to review new subdivisions and building permits. Miles also is responsible for flood plain and septic regulation.

But facing budget pressures from declining oil and gas revenue and stagnant property tax income due to the large percentage of low-taxed agricultural land, the county has had difficulty hiring help. Miles said that while the current county budget contains a half-time position to take some of the pressure off of her, it has gone unfilled.

"It's our hope the county will provide the resources needed to maintain and protect the residents," Weber said, adding that he has identified several other subdivisions that may be operating off the books and so are in need of legal scrutiny.

---

### Statesman Investigates

The American-Statesman reported in May 2016 on how residents of a rural Caldwell County subdivision were unable to build on or sell their parcels because the community was developed without permits, surveys or even a plat and so wasn't recognized by the county. The owner also used seller-financed sales contracts that state lawmakers have tried to discourage in recent years as predatory. County officials acknowledged they'd known about the off-the-books subdivision, but had done little to stop it.



---

## About the Author



**ERIC DEXHEIMER** Eric  
Dexheimer is a member of the  
Austin American-Statesman's  
investigative team.



---

## Reader Comments 1

---