

**A.**

**Finance Commission**

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## FINANCE COMMISSION OF TEXAS

**MEETING DATE** .....August 19, 2016

**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 21, 2016  
December 16, 2016

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

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# FINANCE COMMISSION AGENDA

Friday, August 19, 2016

8:45 a.m. or upon adjournment of the Strategic Planning Committee (whichever is later)

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

*Section A.3 will take up the following agenda items with **NO DISCUSSION** as notated in bold and italicized A1-2, B2, D2-3*

*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 10, 2016 Finance Commission Meeting**
- 2. Review and Approval of the Minutes of the June 10, 2016 Strategic Planning Committee Meeting**
3. General Public Comment
4. Consent Agenda
5. Finance Commission Operations
6. Audit Committee Report
  - A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Department of Savings and Mortgage Lending's Fiscal Year 2016 Annual Internal Audit Report as Prepared and Presented by Garza/Gonzalez and Associates
  - B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' May 31, 2016 Investment Officer Reports
    1. Texas Department of Banking
    2. Department of Savings and Mortgage Lending
    3. Office of Consumer Credit Commissioner
  - C. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2016 Third Quarter Financial Statements
    1. Texas Department of Banking
    2. Department of Savings and Mortgage Lending
    3. Office of Consumer Credit Commissioner

- D. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' Fiscal Year 2017 Operating Budgets
1. Texas Department of Banking
  2. Department of Savings and Mortgage Lending
  3. Office of Consumer Credit Commissioner
7. Discussion of and Possible Vote to Take Action on the 2017 – 2021 Finance Commission Strategic Plan
8. Discussion of and Possible Vote to Take Action on the Agency Priorities for Fiscal Year 2017 for the Commissioners of the Texas Department of Banking, Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner
9. Discussion of and Possible Vote to Take Action 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. TEXAS DEPARTMENT OF BANKING**

1. Industry Status and Departmental Operations: a) Items of Interest from the Commissioner's Office; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Special Audits Division Activities; e) Administrative and Fiscal Division Activities; f) Strategic Support Division Activities; g) Legal Division Activities; h) Legislative Activities; and i) General Items of Interest
  2. ***Discussion of and Possible Vote to Take Action on the Adoption of Amendment to 7 TAC §11.37 Concerning Complaint Notices***
  3. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §25.1 – 25.6 Concerning Prepaid Funeral Contract Forms
  4. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation
- Antioch St. Johns Cemetery Co. v. The Texas Department of Banking Commissioner, Cause No. 03-15-00341-CV, In the Third Court of Appeals, Austin, Texas.*
- State of Texas v. Myrtlewood Memorial Services, Inc. d/b/a Harlingen-Combes Memorial Cemetery, Cause No.D-1-GN-16-000565, 353<sup>rd</sup> District Court, Travis County, Texas.*

**C. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING**

1. Industry Status and Departmental Operations - State Savings Bank Activity: a) Industry Status; b) State Savings Bank Charter and Application Activity; c) Other Items
2. Industry Status and Departmental Operations – Mortgage Lending Activity: a) Residential Mortgage Loan Originators; b) Mortgage Examination; c) Consumer Complaint; d) Legal; and e) Other Items
3. Fiscal/Operations Activity: a) Funding Status/Audits/Financial Reporting; b) Staffing; Other Items; and d) Legislative Activity
4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §79.30 Concerning Appeals and Hearings related to Residential Mortgage Loan Servicers
5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §80.302 Concerning Appeals and Hearings related to Residential Mortgage Loan Companies
6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §81.302 Concerning Appeals and Hearings related to Mortgage Bankers and Residential Mortgage Loan Originators
7. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

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

**D. OFFICE OF CONSUMER CREDIT COMMISSIONER**

1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities
2. ***Discussion of and Possible Vote to Take Action on the Adoption of Amendments, New Rules, and Repeals in 7 TAC, Chapter 83, Subchapter A, Concerning Rules for Regulated Lenders***
3. ***Discussion of and Possible Vote to Take Action on the Adoption of Amendments and a New Rule in 7 TAC, Chapter 87, Concerning Tax Refund Anticipation Loans, Resulting from Rule Review***
4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments, New Rules, and Repeals in 7 TAC, Chapter 85, Subchapter A, Regarding Operations of Pawnshops
5. 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; Case No. 15-1455, in the Supreme Court of the United States*

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

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

**MINUTES OF THE  
FINANCE COMMISSION MEETING  
Friday, June 10, 2016  
9:00 a.m.**

The Finance Commission of Texas convened at 9:03 a.m. on June 10, 2016 with the following members present:

**Finance Commission Members in Attendance:**

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

**Finance Commission Members Absent:**

Victor Leal

Finance Commission Chairman Stacy G. London announced a quorum with ten members present.  
(0:10 start of discussion)

Stacy G. London made a motion to excuse Victor Leal from the Finance Commission meeting held on June 10, 2016. There were no objections and the motion passed unanimously. (0:27 start of discussion)

| AGENDA ITEM  | ACTION   | LOCATION<br>ON AUDIO<br>FILE          |
|--|--|---------------------------------------|
| <b>A. FINANCE COMMISSION MATTERS</b>   |  |                                       |
| 1. Review and Approval of the Minutes of the April 15, 2016 Finance Commission Meeting | <b>On Consent Agenda – Item A1</b><br>This item approved on the Consent Agenda.                    | 3:46 start of discussion              |
| 2. General Public Comment  | No Action Required   | 4:00 start of discussion              |
| 3. Consent Agenda – Items A1, B5-B7, C2-C4, D2-D7                                      | Jay Shands made a motion to approve the Consent Agenda. Will Lucas seconded and the motion passed. | 4:16 start of discussion<br>4:51 vote |
| 4. Finance Commission Operations   | No Action Required   | 8:07 start of discussion              |

| AGENDA ITEM  | ACTION  | LOCATION ON AUDIO FILE                  |
|--|---|---|
| 5. Audit Committee Report  |   |   |
| A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Office of Consumer Credit Commissioner's Fiscal Year 2016 Annual Internal Audit Report as Prepared and Presented by Garza/Gonzalez and Associates | Coming upon recommendation from the Audit Committee, no second is required and the motion to Approve the Office of Consumer Credit Commissioner's Fiscal Year 2016 Annual Internal Audit Report passed.   | 10:56 start of discussion<br>11:20 vote |
| B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Department of Banking's Fiscal Year 2016 Annual Internal Audit Report as Prepared and Presented by Garza/Gonzalez and Associates                  | Coming upon recommendation from the Audit Committee, no second is required and the motion to approve the Department of Banking's Fiscal Year 2016 Annual Internal Audit Report as Prepared and Presented by Garza/Gonzalez and Associates passed. | 11:30 start of discussion<br>13:07 vote |
| C. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Internal Auditor Contract for Garza/Gonzalez & Associates for Fiscal Year 2017  | Coming upon recommendation from the Audit Committee, no second is required and the motion to extend the Internal Auditor Contract for Garza/Gonzalez & Associates for Fiscal Year 2017 passed.  | 18:00 start of discussion<br>18:09 vote |
| D. Report on Activities Relating to the Texas Financial Education Endowment Fund   | No Action Required.   | 18:21 start of discussion               |
| 6. Strategic Planning Committee Report   |   |   |

| AGENDA ITEM   | ACTION  | LOCATION ON AUDIO FILE                          |
|---|---|---|
| <p>A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the 2017 – 2021 Strategic Plans</p> <ol style="list-style-type: none"> <li>1. Department of Savings and Mortgage Lending</li> <li>2. Office of Consumer Credit Commissioner</li> <li>3. Texas Department of Banking</li> </ol>  | <p>Coming upon recommendation from the Strategic Planning Committee, no second is required and the motion to approve the 2017 – 2021 Strategic Plans passed.</p>  | <p>18:50 start of discussion<br/>20:15 vote</p> |
| <p>B. Discussion of the 2017 – 2021 Strategic Plan for the Texas Finance Commission</p>   | <p>No Action Required.</p>  | <p>20:40 start of discussion</p>                |
| <p>7. Discussion of and Possible Vote to Take Action on the Adoption of the Completed Rule Review of 7 TAC, Part 8, Chapter 151, Concerning Home Equity Lending Procedures; Chapter 152, Concerning Repair, Renovation, and New Construction on Homestead Property; and Chapter 153, Concerning Home Equity Lending</p>   | <p>Molly Curl made a motion to approve the Adoption of the Completed Rule Review of 7 TAC, Part 8, Chapter 151, Concerning Home Equity Lending Procedures; Chapter 152, Concerning Repair, Renovation, and New Construction on Homestead Property; and Chapter 153, Concerning Home Equity Lending. Lori McCool seconded and the motion passed.</p> | <p>21:02 start of discussion<br/>28:41 vote</p> |
| <p>8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 8, Chapter 153, Concerning Home Equity Lending, Resulting from Rule Review</p>  | <p>Molly Curl made a motion to approve the Proposal and Publication for Comment of Amendments to 7 TAC, Part 8, Chapter 153, Concerning Home Equity Lending, Resulting from Rule Review. Lori McCool seconded and the motion passed.</p>  | <p>29:15 start of discussion<br/>29:55 vote</p> |
| <p>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</p> | <p>Deferred to Executive Session – no vote taken.</p>   | <p>n/a</p>                                      |

| AGENDA ITEM   | ACTION  | LOCATION ON AUDIO FILE    |
|---|---|---------------------------|
| 10. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to §551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property   | Deferred to Executive Session – no vote taken.                                  | n/a                       |
| 11. Discussion and Consultation with Attorney and Possible Vote to Take Action Pursuant to §551.071, Texas Government Code, for the purpose of seeking the advice or attorney-client privileged communications from our attorneys, including matters of pending and contemplated litigation | Deferred to Executive Session – no vote taken.                                  | n/a                       |
| <b>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.   | 30:17 start of discussion |
| 2. Industry Status and Departmental Operations – Mortgage Lending Activity: a) Residential Mortgage Loan Originators; b) Mortgage Examination; c) Consumer Complaint; d) Legal; and e) Other Items  | No Action Required.   | 35:05start of discussion  |
| 3. Fiscal/Operations Activity: a) Funding Status/Audits/Financial Reporting; b) Staffing; c) Other Items; and d) Legislative Activity   | No Action Required.   | 40:23 start of discussion |
| 4. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation<br><br><i>Catherine Sims vs. Texas Department of Savings and Mortgage Lending,</i><br>Cause No. D-1-GN-16-001194, 201 <sup>st</sup> District Court, Travis County, Texas.                           | No Action Required.   | n/a                       |
| 5. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §79.1,   | <b>On Consent Agenda – Item B5</b><br>This item approved on the Consent Agenda. | n/a                       |

| AGENDA ITEM   | ACTION  | LOCATION ON AUDIO FILE    |
|---|---|---------------------------|
| Concerning Definitions, and §79.2, Concerning Required Disclosure   |   |                           |
| 6. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §80.2, Concerning Definitions, §80.204, Concerning Books and Records, and §80.205, Concerning Mortgage Call Reports  | <b>On Consent Agenda – Item B6</b><br>This item approved on the Consent Agenda. | n/a                       |
| 7. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §81.2, Concerning Definitions, §81.204, Concerning Books and Records, and §81.205, Concerning Mortgage Call Reports  | <b>On Consent Agenda – Item B7</b><br>This item approved on the Consent Agenda. | n/a                       |
| <b>C. OFFICE OF CONSUMER CREDIT COMMISSIONER</b>  |   |                           |
| 1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities | No Action Required.   | 42:08 start of discussion |
| 2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 1, §1.201, Concerning Interpretations and Advisory Letters, Resulting from Rule Review   | <b>On Consent Agenda – Item C2</b><br>This item approved on the Consent Agenda. | n/a                       |
| 3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 5, Chapter 82, Concerning Administration, Resulting from Rule Review   | <b>On Consent Agenda – Item C3</b><br>This item approved on the Consent Agenda. | n/a                       |
| 4. Discussion of and Possible Vote to Take Action on the Adoption of the Completed Rule Review of 7 TAC, Part 5, Chapter 87, Concerning Tax Refund Anticipation Loans   | <b>On Consent Agenda – Item C4</b><br>This item approved on the Consent Agenda. | n/a                       |

| AGENDA ITEM  | ACTION  | LOCATION ON AUDIO FILE   |
|--|---|--|
| <p>5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments, New Rules, and Repeals in 7 TAC, Part 5, Chapter 83, Subchapter A, Concerning Rules for Regulated Lenders</p>  | <p>Will Lucas made a motion to approve the Proposal and Publication for Comment of Amendments, New Rules, and Repeals in 7 TAC, Part 5, Chapter 83, Subchapter A, concerning Rules for Regulated Lenders. Jay Shands seconded and the motion passed.</p>        | <p>1:14:24<br/>start of<br/>discussion</p> <p>1:17:05<br/>vote</p> |
| <p>6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments and a New Rule in 7 TAC, Part 5, Chapter 87, Concerning Tax Refund Anticipation Loans, Resulting from Rule Review</p>   | <p>Jay Shands made a motion to approve the Proposal and Publication for Comment of Amendments and a New Rule in 7 TAC, Part 5, Chapter 87, Concerning Tax Refund Anticipation Loans, Resulting from Rule Review. Molly Curl seconded and the motion passed.</p> | <p>1:17:58start<br/>of<br/>discussion</p> <p>1:20:25<br/>vote</p>  |
| <p>7. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation</p> <p><i>Lynn Rowell d/b/a Beaumont Greenery, MPC Data and Communications, Inc., Micah Cooksey, NXT Properties, Inc., Mark Harken, Montgomery Chandler, Inc., Paula Cook, Townsley Designs, LLC, and Shonda Townsley v. Leslie L. Pettijohn, in her official capacity as Commissioner of the Office of Consumer Credit Commissioner of the State of Texas; Cause No. 15-50168, in the United States Court of Appeals for the Fifth Circuit</i></p> | <p>No Action Required.</p>  | <p>n/a</p>   |
| <p><b>D. TEXAS DEPARTMENT OF BANKING</b></p>   |   |  |
| <p>1. Industry Status and Departmental Operations: a) Items of Interest from the Commissioner's Office; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Special Audits Division Activities; e) Administrative and Fiscal Division Activities; f) Strategic Support Division Activities; g) Legal</p>   | <p>No Action Required.</p>  | <p>1:20:53<br/>start of<br/>discussion</p>                         |

| AGENDA ITEM  | ACTION  | LOCATION ON AUDIO FILE |
|--|---|------------------------|
| Division Activities; h) Legislative Activities; and i) General Items of Interest   |   |                        |
| 2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, §24.1 Concerning Registration of Cemetery Brokers  | <b>On Consent Agenda – Item D2</b><br>This item approved on the Consent Agenda. | n/a                    |
| 3. Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC, §24.4 Concerning Appeal of Delay in Registration Processing Times of Cemetery Brokers  | <b>On Consent Agenda – Item D3</b><br>This item approved on the Consent Agenda. | n/a                    |
| 4. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, §31.18 Concerning When a Child Support Enforcement Application or Notice is Abandoned  | <b>On Consent Agenda – Item D4</b><br>This item approved on the Consent Agenda. | n/a                    |
| 5. Discussion of and Possible Vote to Take Action on the Adoption of Amendment to 7 TAC, §31.19 Concerning When and How a Private Child Support Enforcement Agency’s Certificate of Registration Will be Issued and Mailed   | <b>On Consent Agenda – Item D5</b><br>This item approved on the Consent Agenda. | n/a                    |
| 6. Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC, §31.20 Concerning What Remedy is Available if the Department Does Not Comply with the Private Child Support Enforcement Registration Processing Times  | <b>On Consent Agenda – Item D6</b><br>This item approved on the Consent Agenda. | n/a                    |
| 7. Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC, §35.18 Concerning How Long the Department Will Take to Process Registration of Check Verification Entities, and §35.19 Concerning What Remedy is Available if the Department Does not comply with the Registration Processing Times of Check Verification Entities | <b>On Consent Agenda – Item D7</b><br>This item approved on the Consent Agenda. | n/a                    |

| AGENDA ITEM  | ACTION   | LOCATION ON AUDIO FILE                                 |
|--|--|--|
| 8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §11.37 Concerning Complaint Notices   | Lori McCool made a motion to approve the Proposal and Publication for Comment of Amendments to 7 TAC §11.37 Concerning Complaint Notices. Molly Curl seconded and the motion passed. | 1:35:50<br>start of discussion.<br><br>1:38:10<br>vote |
| 9. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation<br><br><i>Antioch St. Johns Cemetery Co. v. The Texas Department of Banking Commissioner, Cause No. 03-15-00341-CV, In the Third Court of Appeals, Austin, Texas.</i><br><br><i>State of Texas v. Myrtlewood Memorial Services, Inc. d/b/a Harlingen-Combes Memorial Cemetery, Cause No.D-1-GN-16-000565, 353<sup>rd</sup> District Court, Travis County, Texas.</i> | No Action Required.  | n/a  |

Chairman Stacy G. London called for an Executive Session at 11:38 a.m.

(1:38:33 on the audio file). The open meeting resumed at 11:38 a.m. (1:38:59 on the audio file).

There being no further business, Chairman Stacy G. London adjourned the meeting of the Finance Commission at 11:39 a.m. (1:39:28 on the audio file)

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Stacy G. London, Chairman  
Finance Commission of Texas

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Charles G. Cooper, Executive Director  
Finance Commission of Texas

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Anne Benites, Executive Assistant  
Finance Commission of Texas

**MINUTES OF THE  
STRATEGIC PLANNING COMMITTEE MEETING  
Friday, June 10, 2016  
8:30 a.m.**

The Strategic Planning Committee of the Finance Commission of Texas convened at 8:40 a.m. on June 10, 2016, with the following members present:

**Strategic Planning Committee Members in Attendance:**

Will Lucas, Chairman

Bob Borochoff

Phillip Holt

Strategic Planning Committee Chairman Lucas announced that there was a quorum of the Strategic Planning Committee of the Finance Commission of Texas with three members present (*0:05 on audio file*).

| AGENDA ITEM  | ACTION  | LOCATION ON AUDIO FILE                    |
|--|---|---|
| A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the 2017 – 2021 Strategic Plans<br><br>1. Department of Savings and Mortgage Lending<br>2. Office of Consumer Credit Commissioner<br>3. Texas Department of Banking | Bob Borochoff made a motion to recommend that the Finance Commission Approve the Agencies 2017 – 2021 Strategic Plans. Phillip Holt seconded and the motion passed. | 0:20 start of discussion<br><br>4:31 vote |
| B. Discussion of the 2017 – 2021 Strategic Plan for the Texas Finance Commission   | No Action Required.   | 5:02 start of discussion                  |

There being no further business of the Strategic Planning Committee of the Finance Commission of Texas, Will Lucas adjourned the meeting at 8:46 a.m. (*7:00 on audio file*)

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Will Lucas, Strategic Planning Committee Chair  
Finance Commission of Texas

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Charles G. Cooper, Executive Director  
Finance Commission of Texas

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Anne Benites, Executive Assistant  
Finance Commission of Texas

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Finance Commission of Texas

**Consent Agenda**

August 19, 2016

**A. Finance Commission Matters**

1. Review and Approval of the Minutes of the June 10, 2016, Finance Commission Meeting
2. Review and Approval of the Minutes of the June 10, 2016 Strategic Planning Committee Meeting

**B. Texas Department of Banking**

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendment to 7 TAC §11.37 Concerning Complaint Notices

**D. Office of Consumer Credit Commissioner**

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments, New Rules, and Repeals in 7 TAC, Part 5, Chapter 83, Subchapter A, Concerning Rules for Regulated Lenders
3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments and a New Rule in 7 TAC, Part 5, Chapter 87, Concerning Tax Refund Anticipation Loans, Resulting from Rule Review

## Future Meetings Rule Schedule

| <b>Rules</b>                       | <b>Short Title/Purpose</b>                                     | <b>Projected Proposal Date<br/>for Presentation to<br/>Finance Commission</b> | <b>Agency</b> |
|------------------------------------|--|---|---------------|
| 7 TAC, Chapter 83,<br>Subchapter B | <b>Rules for Credit Access Businesses</b><br><i>Amendments</i> | 10/21/16  | OCCC          |

# 2017-2021 STRATEGIC PLAN

August 2016

*FINANCE  
COMMISSION  
OF TEXAS*

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# STRATEGIC PLAN

## FISCAL YEARS 2017 TO 2021

### BY THE

## FINANCE COMMISSION OF TEXAS

| COMMISSION MEMBER                      | DATES OF TERM                | HOMETOWN   |
|--|------------------------------|------------|
| Stacy G. London, Chair                 | June 26, 2008 to Feb 1, 2020 | Houston    |
| Robert (Bob) Borochoff                 | Feb 22, 2016 to Feb 1, 2022  | Houston    |
| Hector J. Cerna                        | Dec 16, 2015 to Feb 1, 2020  | Eagle Pass |
| Margaret (Molly) Curl                  | Feb 23, 2016 to Feb 1, 2022  | Richardson |
| Phillip A. Holt                        | Feb 23, 2016 to Feb 1, 2022  | Bonham     |
| Victor E. Leal                         | Feb 2, 2012 to Feb 1, 2018   | Amarillo   |
| William M. (Will) Lucas                | Sept 27, 2011 to Feb 1, 2018 | Center     |
| Lori B. McCool                         | Apr 27, 2009 to Feb 1, 2020  | Boerne     |
| Matthew (Matt) Moore                   | Feb 23, 2016 to Feb 1, 2022  | Amarillo   |
| Paul Plunket                           | June 26, 2008 to Feb 1, 2020 | Dallas     |
| Hilliard (Jay) Shands, III, Vice Chair | Aug 23, 2010 to Feb 1, 2018  | Lufkin     |

AUGUST 19, 2016

SIGNED: \_\_\_\_\_

Stacy G. London, Finance Commission Chair

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# Finance Commission of Texas

## Strategic Plan 2017-2021

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## OVERVIEW

The Finance Commission of Texas (Commission) was established in 1943 and derives its authority from Chapter 11 of the Texas Finance Code. The Commission consists of eleven members who are private citizens appointed by the Governor of Texas, subject to Senate confirmation. The composition of the Commission includes:

- Two state bank executives
- One state savings executive,
- One consumer credit executive,
- One residential mortgage loan originator, and
- Six public members, one of whom must be a certified public accountant.

Commission members serve staggered, six year terms. Members with expired appointments continue serving until their replacements are named. The governor appoints the presiding officer, currently Stacy G. London, a residential mortgage loan originator from Houston, Texas, who was appointed in February 2016. The presiding officer appointed Hilliard (Jay) Shands, III, a banking executive, as vice chair in April 2016.

The Commission is the oversight and policy-making body for three agencies, the Texas Department of Banking (DOB), the Department of Savings and Mortgage Lending (DSML), and the Office of Consumer Credit Commissioner (OCCC). The Commission is not a separate state agency. The agencies overseen by the Commission provide administrative services and operational funding to the Commission. Meetings are required to be held at least six times during each calendar year. The commission members appoint one of the agency commissioners to serve as Executive Director to the Finance Commission. Commissioner Charles G. Cooper, Texas Department of Banking, was appointed to serve as the Executive Director effective May 1, 2014.

The Commission's Strategic Plan for 2017-2021 was developed in accordance with Section 11.002(a) and (b) of the Texas Finance Code.

## FINANCE COMMISSION OF TEXAS MISSION

**The mission of the Commission is to ensure that the banks, savings institutions, nondepository financial service providers, and other regulated entities chartered or licensed under state law operate as safe and sound institutions to increase the economic prosperity of the state.**

## FINANCE COMMISSION GOAL AND ACTION PLANS

The Commission aims to ensure Texas' financial service providers operate in a safe and sound manner, that the numerous financial services industries under its jurisdiction function as a coordinated system, and consumers that seek services from licensed financial service providers are protected from unfair or harmful practices. The Commission provides a forum for opinions to be heard from stakeholders, consumers, and the public.

To fulfill this mission, the Commission will oversee the agencies under its supervision in a manner that:

- Provides a regulatory framework that protects the rights of depositors, consumers and shareholders in Texas;

- Promotes a fair and stable financial services environment in which the credit and financial needs of the citizens and businesses of Texas are fulfilled;
- Advocates and exercises a system of open communication and unbiased consideration for rulemaking;
- Mandates a fair and efficient supervisory environment;
- Ensures safety and soundness in the financial service industries;
- Requires its agencies operate honestly and professionally in conducting their affairs with the public, the industries, and the legislature; and
- Protects consumers from unfair, deceptive, or harmful practices.

## **GOAL: PROVIDE EFFECTIVE OVERSIGHT OF THE ACTIVITIES OF THE TEXAS**

Ensure effective oversight of the agencies in order to protect consumers' interests and maintain a safe and sound banking and financial services system. In doing so, increase the economic prosperity of the state.

### **ACTIONS REQUIRED TO ACHIEVE GOAL**

- Maintain open and effective communications with the agencies.
- Provide clear direction and forward thinking leadership.
- Evaluate the priorities of each agency and assess the progress and attainment of these priorities.
- Review and take action on the annual operating budgets and quarterly financial statements, of the agencies to ensure the agencies are operating in a fiscally responsible manner.
- Monitor and oversee activities related to the Self-Directed, Semi-Independent (SDSI) status of the agencies.
- Provide oversight of the agencies' internal audit function, including:
  - Select an internal auditor,
  - Monitor the actions to be taken on the audit plans resulting from the annual risk assessment performed by the internal auditor, and
  - Monitor the actions to be taken on the plans resulting from the annual internal audit reports, including management's responses to the findings, and monitoring the agencies' corrective actions.
- Review and monitor the action plans from external audits conducted by state and federal agencies, and management's responses; monitor the agencies' corrective actions.
- Review and take action on rules drafted by the agencies to further implement statutes passed by the Texas Legislature.
- Provide opportunities for the public and stakeholders to present testimony or input on proposed rules and other issues of interest within the Commission's jurisdiction.
- Provide oversight and administration of the Texas Financial Education Endowment (TFEE), including the investment of funds and awarding of grants that support the objectives of the endowment.
- Select agency Commissioners and evaluate each annually.
- Monitor the Sunset Review process as appropriate, for the Commission and its agencies.

### **GOALS AND ACTION ITEMS SUPPORT STATEWIDE OBJECTIVES**

Each agency has identified goals related to effective licensing, examination and supervision, regulation, and operations and administration in their individual Strategic Plans which further explain how this goal

supports the five statewide objectives. Please reference the individual agency Strategic Plans for this information.

## **OTHER CONSIDERATIONS**

### ***Self-Funding and Self-Leveling***

The agencies are self-funding and self-leveling, and all revenues for operations are derived from fees and assessments collected from licensed and regulated entities. Each agency is responsible for their direct and indirect costs as no resources are appropriated from the General Revenue Fund. All revenues from operations are placed in a separate account at the Texas Treasury Safekeeping Trust Company. Various provisions in the Finance Code, Health and Safety Code, and Occupations Code authorize each agency, as applicable, to impose and collect fees to cover only the cost of examination, the equitable or proportionate cost of maintenance and operation of each agency, and the cost of enforcement. The Commission's oversight further ensures that each agency operates in a prudent and fiscally responsible manner while performing statutory duties.

Annually, the Commission evaluates and reviews the budgets developed by each agency. Prior to submission to the Commission, each agency holds a hearing for public review and comment on the budget. Each agency's budget must be approved before any expenditure may be made for the new fiscal year.

### ***Self-Directed, Semi-Independent Oversight***

The 81<sup>st</sup> Legislature enacted House Bill 2774 that amended the Texas Finance Code through the addition of Chapter 16 and granted four state financial regulatory agencies SDSI status. Three of the four agencies provided this status fall under the oversight of the Commission: the DOB, DSML, and the OCCC.

The SDSI status has been instrumental over the past several years in supporting the agencies' efforts to fulfill their missions. It has enabled these agencies to respond promptly to the dynamic economic and regulatory environment changes at both the state and federal level. This includes the ability to adjust budgets to implement immediate changes in staffing strategies as well as adjust salaries to retain and attract qualified personnel and strive for more competitive salary levels with other state and federal agencies. This responsiveness and flexibility allows the agencies to identify and incorporate efficiencies as they partner with each other and external entities, resulting in improved performance measurement and reporting to support effective and improved decision-making.

Biennial reporting to the Legislature and Governor regarding agency activities, financials, and audits are mandated. The agencies are also required to provide annual reports on salaries, travel expenses for employees and Commission members, operating plans, annual budgets, and detailed reports on revenue to the Governor's Office, the House Appropriations Committee, the Senate Finance Committee, and the Legislative Budget Board.

Although the agencies are no longer subject to certain requirements due to the SDSI status, they continue to operate in a similar manner as other executive agencies with a focus on transparency and accountability, as well as providing opportunities for stakeholder input and collaboration. At the direction of the Commission, each agency holds a public hearing to receive public input on its proposed annual budget and operations. The Commission maintains oversight of each agency's activities relating to SDSI status by:

- Functioning as the approving authority of the agencies budgets;

- Ensuring appropriate and mandated fund management of the agencies;
- Maintaining awareness of additional costs and contractual relationships resulting from SDSI status; and
- Maintaining awareness of annual and biennial reports provided to state leadership, assuring agency transparency and accountability.

### ***Oversight and Agency Activities***

The Commission's primary responsibility is to provide oversight of the activities of the agencies. The Commission has established goals for each of the commissioners, and their performance is evaluated based upon the achievement of these established goals. Charles G. Cooper serves as Commissioner of the Texas Department of Banking, Caroline C. Jones serves as the Commissioner of the Department of Savings and Mortgage Lending, and Leslie L. Pettijohn serves as Commissioner of the Office of Consumer Credit Commissioner.

Before each of the six required Commission meetings, members receive briefing materials regarding the status of the activities performed by the agencies and other issues affecting the regulated industries. This information typically includes budget and expenditure data, reports on examination and other agency activities, new legislative mandates, proposed and pending rules, statutory interpretations, performance measure reports, and staffing level information.

Commission members are provided public, non-confidential information which they use along with input from external auditors, agency commissioners, regulated entities, consumers and other sources to evaluate the effectiveness of each agency in meeting its goals and objectives.

The Commission believes that the agencies have been effective in meeting their primary missions; however, there are challenges ahead that will require the agencies to develop new and innovative strategies. These challenges facing the agencies include:

- changes within the regulated industries,
- advances in technology,
- technology risks including cybersecurity threats that are becoming more complex,
- growth in financial abuses against consumers,
- ability to attract and retain qualified staff, and
- issues affecting the economy.

### ***Finance Commission Building***

The agencies are headquartered in the Finance Commission building, which is owned by the agencies. The office space is inadequate and cannot effectively accommodate the agencies' headquarters staff and meet parking needs of the staff and general public. After many years of implementing interim solutions to these problems, an ad hoc building committee was formed to consider various alternatives; including redevelopment plans for the current location, alternative buildings, and new construction. A collective decision was made by the agencies and the Commission to sell the building and purchase another property that fits the needs of the agencies. Cash reserves have been set aside by each agency to cover the future expenses related to a new building and relocation. The Commission remains actively involved in this process.

## GOAL: MAINTAIN SAFE AND SOUND BANKING AND FINANCIAL SERVICES SYSTEM

Ensure that state depository and lending institutions function as a coordinated system, given the broad scope of the financial services industry. Through oversight and coordination activities, focus on protecting consumers' interests, as well as maintaining a safe and sound banking and financial services system, as a means of increasing the economic prosperity of the state.

### ACTIONS REQUIRED TO ACHIEVE GOAL

- Provide oversight of the agencies' operations.
- Evaluate priorities for each of the agencies and assess progress and attainment of these priorities.
- Monitor examination performance measures related to bank and nonbank financial service providers. Monitor the regulatory activities of each agency.
- Monitor the state of the industries regulated by each of the agencies.
- Monitor federal regulatory changes and how they affect the agencies and regulated industries.
- Provide opportunities for the public to present testimony or input on proposed rules.
- Review and take action on rules drafted by the agencies to further implement statutes passed by the Texas Legislature.
- Ensure agencies are supported by a well-trained, educated, and productive workforce.
- Monitor each agency's performance including division activities and other items of interest.
- Keep up to date on economic changes that affect the agencies' regulated entities.
- Testify, when requested, at Legislative hearings.
- Keep current on the economic outlook of the State.
- Promote coordination of the agencies with federal and other state financial service regulators.

### GOALS AND ACTION ITEMS SUPPORT STATEWIDE OBJECTIVES

Each agency has identified goals related to effective licensing, examination and supervision, and regulation in their individual Strategic Plans which further explain how this goal supports the five statewide objectives. Please reference the individual agency Strategic Plans for this information.

### OTHER CONSIDERATIONS

#### ***Entities regulated or licensed by the agencies under the supervision of the Commission***

The following entities are regulated or licensed by the agencies. In some cases, the entities are only required to register with an agency.

| Department of Banking                                | Department of Savings and Mortgage Lending         | Office of Consumer Credit Commissioner                          |
|--|--|---|
| State-Chartered commercial Banks <sup>1</sup>        | State-Chartered Savings Banks <sup>2</sup>         | Regulated Lenders   |
| State-Chartered Foreign Bank Agencies                | Residential Mortgage Loan Originators <sup>3</sup> | Second Lien Mortgage Lenders                                    |
| Public Trust Companies                               | Mortgage Companies                                 | Pawnshops & Pawn Employees                                      |
| Exempt Trust Companies                               | Mortgage Bankers                                   | Motor Vehicle & Commercial Vehicle Retail Finance Sellers       |
| Money Services Businesses                            | Mortgage Servicers                                 | Registered Retail Creditors                                     |
| Prepaid Funeral Contract Sellers                     |  | Property Tax Lenders  |
| Perpetual Care Cemeteries                            |  | Residential Mortgage Loan Originators <sup>4</sup>              |
| Private Child Support Enforcement Agencies           |  | Debt Management & Debt Settlement Service Providers             |
| Check Verification Entities                          |  | Refund Anticipation Loan Facilitators                           |
| Cemetery Brokers                                     |  | Manufactured Housing Creditors                                  |
| Texas Bullion Depository Agent Services <sup>5</sup> |  | Credit Access Businesses (Payday and Auto Title Loan Companies) |
|  |  | Crafted Precious Metals Dealers                                 |

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<sup>1</sup> Includes all State Banking Activity

<sup>2</sup> Includes all State Savings Bank Activity

<sup>3</sup> Individuals licensed and working for either Mortgage Companies or Mortgage Bankers under the authority of the Department of Savings and Mortgage Lending

<sup>4</sup> Individual loan originators working for Property Tax Lenders or Second Lien Mortgage Lenders under the authority of the Office of Consumer Credit Commissioner

<sup>5</sup> Licensing of these entities will begin after the Texas Bullion Depository has been established by the Texas Comptroller of Public Accounts

## GOAL: PROTECT CONSUMER INTERESTS

Ensure prompt, fair, and effective enforcement of applicable state and federal statutes and regulations so that consumers are protected from deceptive practices, fraud, and misrepresentation.

### ACTIONS REQUIRED TO ACHIEVE GOAL

- Conduct meetings in an open environment where the public may attend and provide comment.
- Provide oversight of the agencies' operations and regulatory activities to ensure that consumers are protected from abusive and deceptive practices, fraud, and misrepresentation.
- Monitor consumer complaint and inquiry activity for each agency. Set standards to ensure complaints and inquiries are processed in a professional, appropriate, and timely manner and appropriate restitution is provided when applicable. Review consumer activity reports.
- Monitor financial education outreach efforts of the agencies.
- Provide oversight and administration of the TFEE, including the investment of funds and awarding grants that support the financial literacy objectives of the endowment.
- Coordinate and review statutorily-required or authorized research studies or projects.
- Review and evaluate annual reports on customer service generated by each agency.
- Issue interpretations of the Texas Constitution relating to home equity lending and reverse mortgages.
- Provide a forum to receive public input and testimony.

### GOALS AND ACTION ITEMS SUPPORT STATEWIDE OBJECTIVES

Each agency has identified goals related to financial education, consumer protection, consumer responsiveness, and efficient and effective operations in their individual Strategic Plans which further explain how this goal supports the five statewide objectives. Please reference the individual agency Strategic Plans for this information.

### OTHER CONSIDERATIONS

#### *Financial Education*

With increased regulatory mandates and oversight that affect each of the agencies, the agencies continue to develop programs and provide educational opportunities to licensees.

Texas continues to make strides to develop educated consumers, such as through increasing personal financial education in schools. Texas is one of several states that have incorporated specific financial skills development within the school curriculum. However, the need for financial education is still high for Texans. A more financially educated population makes wiser financial decisions which will increase economic prosperity for all of Texas.

The agencies collaborate with various statewide organizations promoting programs that enhance financial literacy and publishing statewide financial literacy and education resources in partnership with other state agencies.

### ***Texas Financial Education Endowment***

The TFEE administered by the Commission supports statewide financial capability and consumer credit building activities and programs. The endowment was enacted by the 82<sup>nd</sup> Legislature and became effective January 1, 2012.

The endowment is administered through the receipt of assessments from regulated entities and the distribution of grant monies to selected organizations that promote and increase the financial capabilities of consumers. Financial coaching and counseling was emphasized during the 2016-17 grant cycle.

In September 2015, twenty-three grant applications were received with a total request for \$704,105 in grant funds by 21 eligible organizations. The Commission awarded a total of \$ 249,000 in funds to eight organizations that will deliver programs to improve the financial education and capability of Texans. Grantees are required to submit semi-annual reports that demonstrate performance outcomes and financial information. Information from the grantees' semi-annual reports are summarized and highlighted in a biennial report which is presented to the Commission.

### ***Legislative Recommendations and Interpretations***

Commission members regularly consider the effectiveness of current statutes in meeting the agencies' missions. In areas where weaknesses in the statutory framework are identified by an agency, the appropriate agency commissioner will initiate legislative recommendations for improvement and seek concurrence of the Commission before the proposals are formally presented to state policymakers. Areas of improvement often relate to consumer protections, streamlining regulatory burden, or enforcement authority.

The Legislature has the constitutional authority to delegate to one or more state agencies the power to interpret provisions of the Texas Constitution. The Legislature delegated interpretative authority relating to home equity loans and reverse mortgages to the Credit Union Commission (as to credit unions) and to the Commission (as to all other lenders). An act or omission of a lender relating to a home equity loan or reverse mortgage does not violate the Texas Constitution if it complies with an interpretation in effect at the time.

A working group composed of representatives from the Credit Union Department and the three agencies was formed to develop proposed interpretations for presentation to and final action by the two commissions. This working group continues to collaborate on an as needed basis to address new and continuing matters related to interpretations of the home equity lending provisions of the Texas Constitution.

## GOAL: INCREASE ECONOMIC PROSPERITY

Ensure that the agencies focus on protecting consumers' interests as well as maintain a safe and sound financial system and promote the economic prosperity of the state.

### ACTIONS REQUIRED TO ACHIEVE GOAL

- Monitor the current and forecasted condition of the state's financial systems and economy.
- Provide effective oversight and coordination activities for the agencies.
- Monitor the agencies' progress towards meeting goals and objectives.
- Evaluate input and feedback from all sources as a means to make improvements to the administration of the Commission and the agencies.
- Promote a favorable business climate.

### GOALS AND ACTION ITEMS SUPPORT STATEWIDE OBJECTIVES

Each agency has identified goals related to effective licensing, examination and supervision, regulation, consumer protection and responsiveness, and financial education in their individual Strategic Plans which further explain how this goal supports the five statewide objectives. Please reference the individual agency Strategic Plans for this information.

### OTHER CONSIDERATIONS

Recent economic data has been varied, but overall indicates a positive outlook with continued sluggish growth, according to the Federal Reserve Bank of Dallas. The Texas Leading Index rose strongly for the second straight month in April, up 1.4 percent, following four consecutive months of declines. Texas employment forecast now stands at 1.3 percent growth (December/December), on par with last year's increase.

The Federal Reserve Bank's Beige Book released in early June, notes that economic activity in the Dallas District rose marginally over the past six weeks. Manufacturing activity and demand for nonfinancial services increased. Retail sales were mixed, with automobile sales remaining strong. Real estate activity continued to expand in most markets, while the energy sector continued to weaken. Loan demand growth slowed and agricultural conditions improved. Reports of employment changes and price pressures were mixed. The outlooks from the sectors were generally positive, but remain cautious.

To promote economic prosperity, the Commission must remain diligent in providing effective oversight of the agencies and to monitor their progress in meeting their goals in protecting consumers and maintaining a safe and sound financial system.



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 5, 2016

RE: Department of Banking Priorities for Fiscal Year 2017

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

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

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

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

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

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

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

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

II.1 Objective: Meet key performance measures.

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

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

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

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

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

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

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

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

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

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

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

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

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

### **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.

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

- 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

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## Memorandum

**To:** The Finance Commission

**From:** Caroline C. Jones

**Date:** August 19, 2016

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

### **I. Legislative Items**

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

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

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

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

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

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

### **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 on examinations, supervision, and consumer complaint resolution issues. Monitor CFPB rule writing activity and interpretations of existing statutes such as RESPA, TILA, and SAFE Act.

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

**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.

#### **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.

# Office of Consumer Credit Commissioner

## Agency Priorities

FY 2017

### 1. LEGISLATIVE

#### 1.1. 85<sup>th</sup> Legislative Session.

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

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

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

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

## **2.2. Licensing.**

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

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

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

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

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

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

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

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

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

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

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

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

### **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.

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

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

#### **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.

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

**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 receive 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. Integrate accounting system with new agency enterprise system (ALECS).

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

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

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

**5.4.2 Objective: Increase Agency Security Posture.** Using the recommendations developed by the external DIR-contracted vendor during the security assessment starting in late 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: Short-term: immediate to six (6) months; Mid-term: six (6) to twenty-four (24) months; and Long-term: twenty-four (24) to sixty (60) months. The

OCCC will implement all short term recommendations within FY17. Mid-term recommendations will be evaluated for implementation by the end of FY 2017.

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**B.**

**Texas Department of Banking**



## 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: August 1, 2016

Subject: Summary of the Bank & Trust Supervision Division Activities

| Bank and Trust Supervision                           |     |           |     |            | FY 2016 |           |     |           |     |           |  |  |
|--|-----|-----------|-----|------------|---------|-----------|-----|-----------|-----|-----------|--|--|
| 8/31/2014  |     | 8/31/2015 |     | 11/30/2015 |         | 2/28/2016 |     | 5/31/2016 |     | 8/31/2016 |  |  |
| Industry Profile (# / Assets in billions)            |     |           |     |            |         |           |     |           |     |           |  |  |
| # Banks  | 273 | \$225.2   | 256 | \$240.7    | 253     | \$242.3   | 250 | \$246.3   | 248 | \$243.9   |  |  |
| # Trust Co. (1)                                      | 21  | \$40.5    | 20  | \$97.1     | 21      | \$95.5    | 20  | \$97.5    | 20  | \$99.5    |  |  |
| # FBA/FBB  | 10  | \$93.6    | 9   | \$89.2     | 9       | \$81.5    | 9   | \$77.9    | 10  | \$73.5    |  |  |
| Examinations Performed                               |     |           |     |            |         |           |     |           |     |           |  |  |
| Banks  | 125 |           | 118 |            | 33      |           | 23  |           | 22  |           |  |  |
| Trust Co.  | 32  |           | 28  |            | 6       |           | 5   |           | 6   |           |  |  |
| FBA/FBB  | 2   |           | 2   |            | 0       |           | 0   |           | 2   |           |  |  |
| Bank Uniform Financial Institution Composite Ratings |     |           |     |            |         |           |     |           |     |           |  |  |
| 1  | 128 | 46.9%     | 127 | 49.6%      | 126     | 49.8%     | 131 | 52.4%     | 129 | 52.0%     |  |  |
| 2  | 132 | 48.3%     | 122 | 47.7%      | 120     | 47.4%     | 111 | 44.4%     | 108 | 43.6%     |  |  |
| 3, 4, & 5  | 13  | 4.8%      | 7   | 2.7%       | 7       | 2.8%      | 8   | 3.2%      | 11  | 4.4%      |  |  |
| Non-Rated  | 0   | -         | 0   | -          | 0       | -         | 0   | -         | 0   | -         |  |  |

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

The number of problem banks, which the Department considers to be any bank with a Uniform Financial Institutions Composite Rating of 3, 4, or 5, continues to trend upward. As of this writing, problem institutions totaled 13. Though this is an increase from prior months, the number is still well below the peak number of problem banks experienced during the last recession at 58. We consider this increased number of problem banks to still be in the normal range of between 3% and 5% of the total number of institutions. However, we will continue to closely monitor banks that have a significant exposure to a protracted period of low oil prices or evidence other increased risk factors.

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

Page 2

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

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

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

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

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

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

**Division Highlights**

- Oil and Gas: We are closely monitoring the impact that the recent increase in crude oil prices will have on oil and gas (O&G) service and exploration entities. The cash flow and debt service coverage of many service industry businesses remains stressed, but we are hopeful that improved commodity prices will lead to increased demand for their services and subsequent ability to repay bank loans. Since the price increase, little overall improvement has been observed.

Strategies that we have implemented to monitor the changing conditions in the industry include:

- Working closely with our FDIC and Federal Reserve Bank counterparts to perform on-site follow-up reviews at institutions with potentially higher risk profiles. By 9-30-16, we will have completed either an on-site visitation or full scope examination of almost all of the banks with significant O&G exposure.
- Receiving quarterly information from banks that are known to be actively involved in O&G lending or are located in areas that are heavily dependent on oil production. Once this quarterly information is received, Review Examiner Whitson tabulates and analyzes the information for trends. He provides continual updates to senior management about developments in the industry.
- Staying in touch with bankers about conditions and trends in the industry through off-site monitoring, banker calls, and Town Hall Meetings. Off-site monitoring is performed quarterly, and banker calls are conducted between each off-site examination. Three town hall meetings were held in June and are more fully described below.

Only a few institutions have been downgraded to problem bank status as a result of deterioration in their O&G portfolio. With few exceptions, financial institutions with elevated O&G exposure are actively monitoring their exposure, stress testing O&G credits, and working closely with customers who are severely affected.

- Examination Tools Suite (ETS) Software: ETS is an examination software tool developed by the FDIC with significant participation and input provided by state banking departments and the Federal Reserve. It represents the single most significant technology upgrade to the supervisory process of depository institutions since the release of its predecessor, GENESYS, in 1996. ETS enables a digital examination process and sharing among examiners of previous and current examination information more securely, effectively, and efficiently. ETS is replacing older programs by offering a single, uniform tool for asset review, operations work, and report of exam preparation. ETS is now being deployed by state agencies, the FDIC, and Federal Reserve users throughout the United States. Several Department personnel participated in train-the-trainer sessions held in other states. These trainers will lead the Department's field examiner training in the coming months. Review Examiner Kevin Wu has led the Department's efforts to test and implement ETS and has been involved in the process from the early stages of development. Examiner training will be held the weeks of 8-15-16 (Austin), 8-29-16 (San Antonio), 9-12-16 (Dallas), 9-26-16 (Lubbock), and 10-3-16 (Houston).
- Special Operations and Conferences:
  - Commissioner Cooper and several other staff members participated in the CSBS State Federal Supervisory Forum held in Denver, Colorado the week of May 23rd. Commissioner Cooper was named the Chairman of CSBS during this event.

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

## Page 4

- The Department hosted Town Hall Meetings with bankers in San Antonio, Dallas and Lubbock on June 23<sup>rd</sup>, 28<sup>th</sup> and 29<sup>th</sup>, respectively. In total, 119 bankers and staff members attended the meetings. The purpose of the meetings was to bring community bankers together from across the state to discuss the challenges and opportunities that exist in their communities and on a national level. The results of a recent community bank survey were also discussed. Attending for the Department were Commissioner Cooper, Deputy Commissioner Bacon, Directors Purdom and Rodriguez, Regional Directors Anderson, Kuntschik and Walker, Regional Review Examiners Millsap, Susany, and Reed, Review Examiner Dvoracek, and Financial Analyst Lena. Finance Commission member Hector Cerna participated in the San Antonio meeting.

Feedback gathered from these meetings will be used as support for a joint policy and research conference to be held September 28<sup>th</sup> and 29<sup>th</sup> in St. Louis, Missouri. This conference is a joint effort of the Conference of State Bank Supervisors and the Federal Reserve Bank of St. Louis. Commissioner Cooper and Texas community bank representatives will be participating in this conference and providing input based upon the discussions from the Town Hall Meetings and the survey.

- Division staff received training on how to effectively give and receive feedback. The first session was held in Austin on June 21, 2016. Regional office presentations will be held in June and July.
  - Commissioner Cooper, Director Purdom, Review Examiner Miller and Regional Review Examiner Millsap participated in a CSBS District IV meeting held in Jackson Hole, Wyoming on July 13<sup>th</sup> and 14<sup>th</sup>.
  - Deputy Commissioner Bacon participated in a regulators' panel at the Texas Bankers Association's Senior Management Summit in San Antonio.
  - Director Robinson, Regional Director Walker and Senior Examiners Gerlach and Sims participated in the CSBS Deputy's Seminar held in Portland, Maine, the week of July 25<sup>th</sup>.
- Federal Capital Programs: The table below provides a snapshot of the two federal capital programs.

| <b>Federal Programs</b>                              | <b>Troubled Asset Relief Program<br/>(TARP) <sup>(2)</sup></b> | <b>Small Business Lending<br/>Fund (SBLF)<br/>as of 6/30/2016</b> |
|--|--|---|
| <b>Number of Applicants</b>                          | 80   | 23  |
| <b>Number of Banks that Received Funds</b>           | 21   | 12  |
| <b>Total Amount Distributed<br/>(\$ in millions)</b> | \$2,837.7  | \$255.7   |
| <b>Number of Banks with Outstanding Funds</b>        | 0  | 2   |
| <b>Total Amount Outstanding<br/>(\$ in millions)</b> | \$0  | \$25.5  |

(2) - The U.S. Treasury sold some of the TARP debt listed above at auction to private investors. In many cases, this debt is still outstanding, even though it is no longer payable to the U.S. Treasury.



Charles G. Cooper  
Commissioner

## TEXAS DEPARTMENT OF BANKING

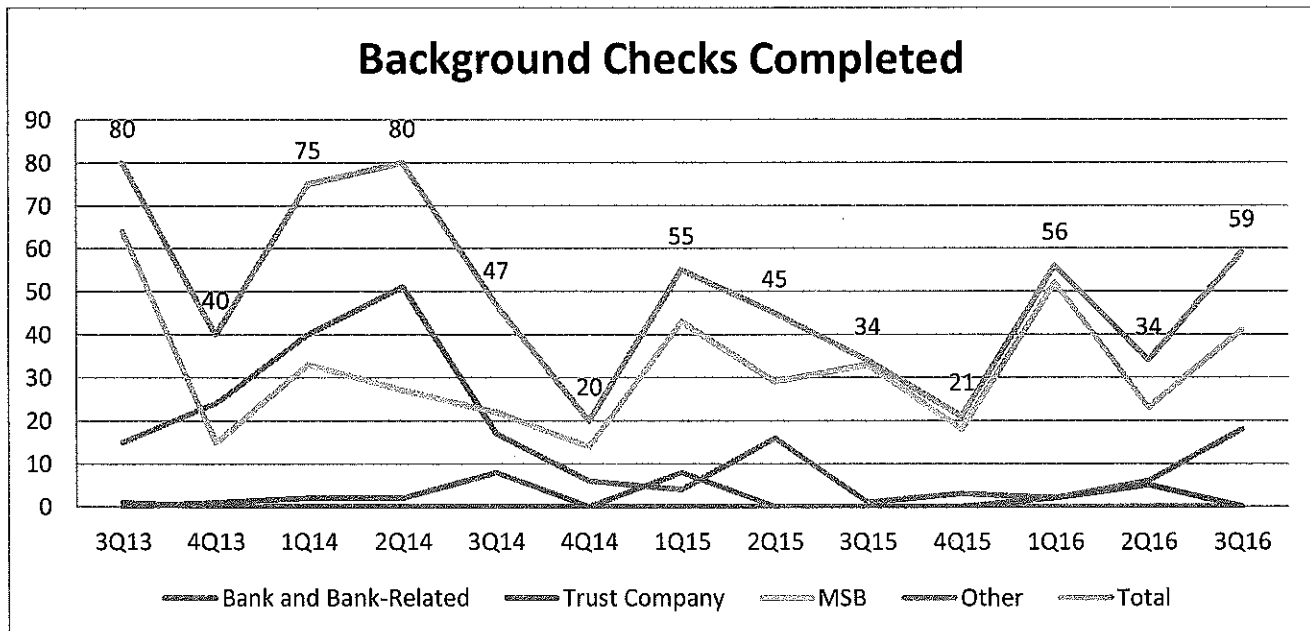
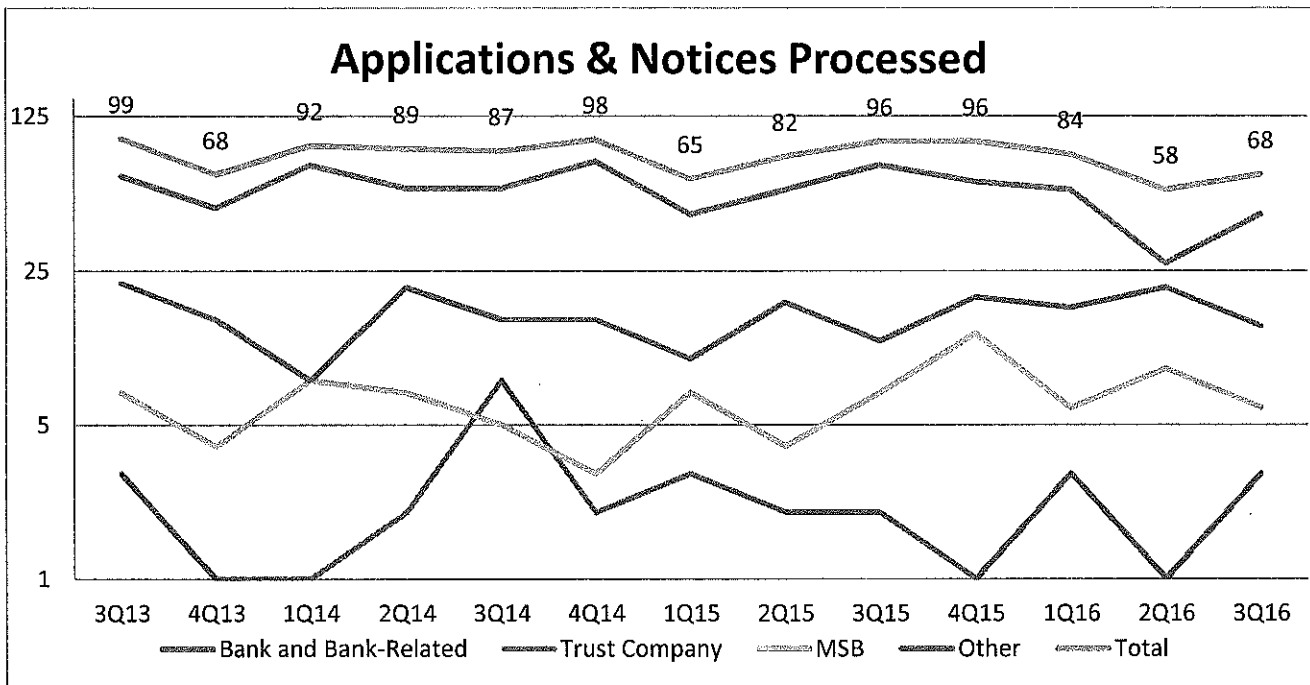
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To: Finance Commission Members

From: Daniel Frasier, Director of Corporate Activities *DBF*

Date: July 29, 2016

Subject: Summary of the Corporate Division Activities



| Entities/Activities   | Applications and Notices Under Review<br>(as of July 29, 2016) |
|-----------------------|--|
| Bank and Bank Related | 15   |
| Trust Companies       | 0  |
| MSBs                  | 12   |
| Others                | 3  |
| <b>Totals</b>         | <b>30</b>  |

#### Division Highlights

- The volume of applications received in the past couple of months has moderated after a slow start this calendar year-to-date. Bank merger and acquisition activity has notably picked back up again.
- Chartering, Conversion, and Merger Activity – The following transactions have consummated since Corporate’s last report to the Finance Commission:
  - *Banks*
    - AccessBank Texas, Denton, completed its merger acquisition of Preston National Bank, Dallas
    - The Bank of San Antonio, San Antonio, completed its affiliated acquisition of San Antonio Trust Company, San Antonio
    - Woodhaven Bank, Fort Worth, completed its conversion to a Texas state bank
    - TransPecos Banks, Pecos, completed its conversion to a Texas state savings bank under the name of TransPecos Banks, SSB
    - Citizens State Bank, Buffalo, completed its merger acquisition of First Bank & Trust Company, Dawson
  - *Trust Companies*
    - None
- Conferences and Committee Meetings – Corporate participation included the following conferences and external committee meetings since the last report to the Finance Commission:
  - Corporate Analyst Xazel Garcia and Director Dan Frasier are participating in a working group to launch electronic surety bond functionality in the National Mortgage Licensing System (NMLS) for the Department’s Money Services Businesses.



Charles G. Cooper  
Commissioner

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512-475-1300 / 877-276-5554  
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To: Finance Commission Members

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

Date: August 1, 2016

Subject: Summary of the Special Audits Division Activities

| Special Audits                                       |        |         |        |         | FY 2016         |         |                 |         |                 |         |                 |  |
|--|--------|---------|--------|---------|-----------------|---------|-----------------|---------|-----------------|---------|-----------------|--|
| Entity   | FY2014 |         | FY2015 |         | 1 <sup>st</sup> |         | 2 <sup>nd</sup> |         | 3 <sup>rd</sup> |         | 4 <sup>th</sup> |  |
| Industry Profile (# / Assets (billions) )            |        |         |        |         |                 |         |                 |         |                 |         |                 |  |
| MSB  | 136    | \$96.0  | 142    | \$104.0 | 147             | \$104.1 | 151             | \$105.0 | 154             | \$105.1 |                 |  |
| PFC  | 381    | \$3.4   | 383    | \$3.6   | 378             | \$3.6   | 380             | \$3.7   | 380             | \$3.8   |                 |  |
| PCC  | 242    | \$286.6 | 243    | \$298.0 | 245             | \$305.4 | 243             | \$307.2 | 243             | \$307.4 |                 |  |
| CB   | 4      | n/a     | 8      | n/a     | 9               | n/a     | 9               | n/a     | 12              | n/a     |                 |  |
| PCSEA  | 11     | n/a     | 11     | n/a     | 11              | n/a     | 10              | n/a     | 10              | n/a     |                 |  |
| CVE  | 3      | n/a     | 2      | n/a     | 2               | n/a     | 2               | n/a     | 2               | n/a     |                 |  |
| Examinations Performed                               |        |         |        |         |                 |         |                 |         |                 |         |                 |  |
| MSB  | 93     |         | 97     |         | 24              |         | 22              |         | 23              |         |                 |  |
| MSB Limited Scope                                    | 0      |         | 2      |         | 1               |         | 1               |         | 1               |         |                 |  |
| MSB Accepted other State                             | 6      |         | 7      |         | 3               |         | 6               |         | 5               |         |                 |  |
| PFC  | 295    |         | 259    |         | 94              |         | 48              |         | 61              |         |                 |  |
| PFC Limited Scope                                    | 10     |         | 6      |         | 3               |         | 0               |         | 1               |         |                 |  |
| PCC  | 179    |         | 211    |         | 29              |         | 31              |         | 52              |         |                 |  |
| PCC Limited Scope                                    | 6      |         | 1      |         | 2               |         | 3               |         | 0               |         |                 |  |
| Ratings (# / %) Assigned to All Regulated Entities   |        |         |        |         |                 |         |                 |         |                 |         |                 |  |
| 1  | 319    | 43%     | 340    | 45%     | 327             | 43%     | 330             | 44%     | 328             | 44%     |                 |  |
| 2  | 355    | 48%     | 332    | 45%     | 348             | 46%     | 337             | 45%     | 329             | 44%     |                 |  |
| 3,4, & 5   | 66     | 9%      | 78     | 10%     | 81              | 11%     | 85              | 11%     | 90              | 12%     |                 |  |
| Noncompliance with Examination Priorities (Past Due) |        |         |        |         |                 |         |                 |         |                 |         |                 |  |
| MSB  | 15     |         | 8      |         | 14              |         | 17              |         | 17              |         |                 |  |
| PFC  | 1      |         | 4      |         | 3               |         | 7               |         | 1               |         |                 |  |
| PCC  | 4      |         | 3      |         | 3               |         | 1               |         | 3               |         |                 |  |
| Enforcement Actions                                  |        |         |        |         |                 |         |                 |         |                 |         |                 |  |
| MSB  | 3      |         | 9      |         | 1               |         | 3               |         | 2               |         |                 |  |
| PFC  | 1      |         | 10     |         | 1               |         | 0               |         | 1               |         |                 |  |
| PCC  | 0      |         | 0      |         | 0               |         | 0               |         | 0               |         |                 |  |
| PCSEA  | 0      |         | 0      |         | 0               |         | 1               |         | 0               |         |                 |  |

### NOTES:

PCC \$ amounts reflected in the millions.

Limited scope examinations do not receive a rating.

**Division Activities:**

- The 17 MSB past due examinations are on average 45 days past due.
- Three of the four PFC/PCC past due examinations are on average 40 days past due. The remaining one PFC/PCC past due examination is in legal proceedings, which prohibited the completion of the examination.
- Our current examination schedule reflects that the three past due PFC/PCC examinations were completed in July 2016.
- Our current examination schedule reflects that ten of the past due MSB examinations were completed in June 2016, three in July 2016 and four past due examinations will be completed in August 2016.
- Special Audits met all performance measures for the third quarter of FY 16.

On June 1st, the Commissioner entered into a Second Consent Order with IntelliPayment, LLC (IntelliPayment), New York City, NY, an unlicensed money transmitter that provided an accelerated loan repayment program. Subsequent to the First Consent Order dated May 18, 2015, the Department determined based on information provided by IntelliPayment that the number of years and the volume of unlicensed money transmission business was underreported. Based on the additional volume of transactions and length of time IntelliPayment had been conducting an unlicensed money transmission business in Texas, an additional penalty of \$15,030 was assessed and collected.

On July 11th two PFC/PCC examiners were hired and are stationed in the Houston Region.

On July 18th, the Commissioner entered into a Consent Order with DebtWave Credit Counseling, Inc. (DebtWave), San Diego, California, an unlicensed money transmitter. DebtWave assumed an accelerated loan repayment program from an unlicensed money transmitter business in 2015 that had previously entered into three public orders with the Department. From July 17, 2015 until March 31, 2016, DebtWave contracted with over 14,500 Texas residents and transmitted at least \$50,000,000 without the required license. DebtWave has ceased the unlicensed activity and has been assessed a \$67,000 penalty for the time period of unlicensed activity.

As of July 31st, we have nine active enforcement actions that we are monitoring for payment of restitution and penalties. Nine enforcement actions were paid-in-full in fiscal 2016 and two were deemed uncollectible and referred to the Attorney General's Office for further legal collection efforts.

During the week of August 1<sup>st</sup>, Review Examiner Saucillo and Examiner Ostorva will attend the MTRA MSB Emerging Payment Risks Examiner School in Portland, Oregon. The training program is intended to give examiners an overview of electronic payment systems, prepaid and virtual prepaid cards, ACH payments risk, and virtual currency analysis.

# Actual Performance for Output/Efficiency Measures

Fiscal Year 2016

For Period Ending May 2016

| Type/Strategy/Measure | 2016<br>Target | 2016<br>Quarter | 2016<br>YTD | Percent of<br>Annual Target |
|-----------------------|----------------|-----------------|-------------|-----------------------------|
|-----------------------|----------------|-----------------|-------------|-----------------------------|

## Output Measures-Key

### 1-1-1 BANK EXAMINATION

#### 1. # BANK EXAMINATIONS PERFORMED

|                  |     |    |    |        |
|------------------|-----|----|----|--------|
| <b>Quarter 1</b> | 115 | 33 | 33 | 28.70% |
| <b>Quarter 2</b> | 115 | 23 | 56 | 48.70% |
| <b>Quarter 3</b> | 115 | 24 | 80 | 69.57% |

The number of joint examinations, primarily due to fewer problem banks, reduced the number of bank examinations this quarter.

#### 2. # TRUST/IT EXAMINATIONS PERFORMED

|                  |     |    |     |        |
|------------------|-----|----|-----|--------|
| <b>Quarter 1</b> | 234 | 61 | 61  | 26.07% |
| <b>Quarter 2</b> | 234 | 59 | 120 | 51.28% |
| <b>Quarter 3</b> | 234 | 59 | 179 | 76.50% |

### 1-2-1 NON-BANK EXAMINATION

#### 1. # SPECIAL AUDIT LICENSEES EXAMINED

|                  |     |     |     |        |
|------------------|-----|-----|-----|--------|
| <b>Quarter 1</b> | 560 | 156 | 156 | 27.86% |
| <b>Quarter 2</b> | 560 | 111 | 267 | 47.68% |
| <b>Quarter 3</b> | 560 | 143 | 410 | 73.21% |

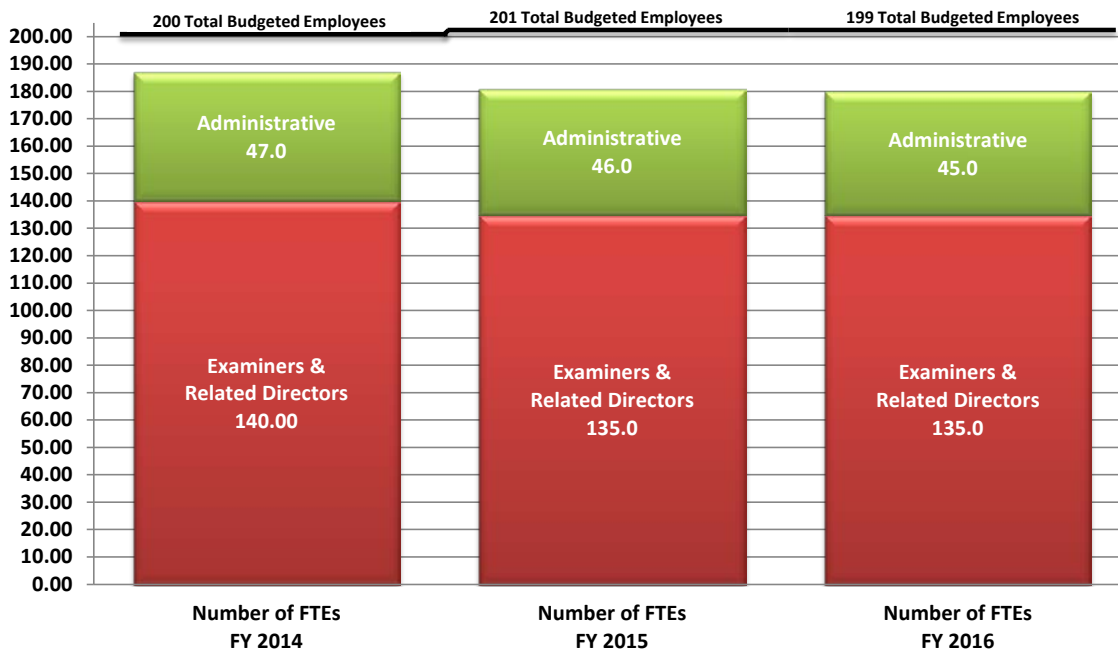
### 1-3-1 APPLICATION PROCESSING

#### 1. # LICENSE APPLICATIONS COMPLETED

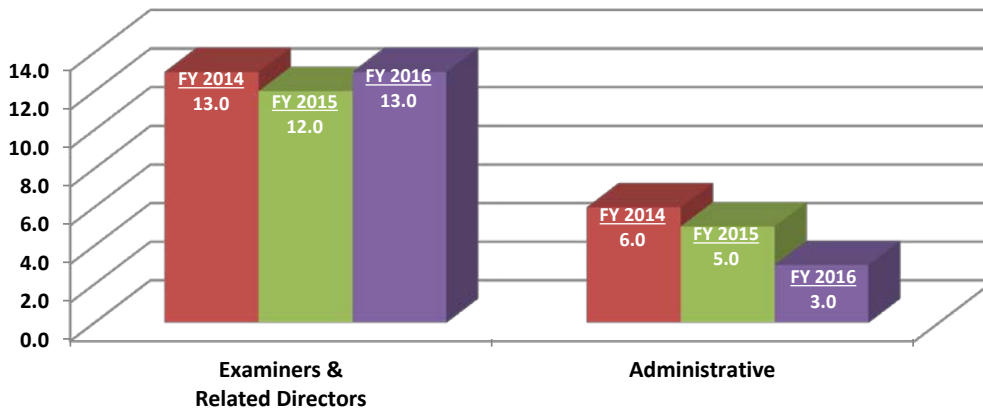
|                  |     |    |     |        |
|------------------|-----|----|-----|--------|
| <b>Quarter 1</b> | 284 | 84 | 84  | 29.58% |
| <b>Quarter 2</b> | 284 | 58 | 142 | 50.00% |
| <b>Quarter 3</b> | 284 | 68 | 210 | 73.94% |

\* Varies by 5% or more from target.

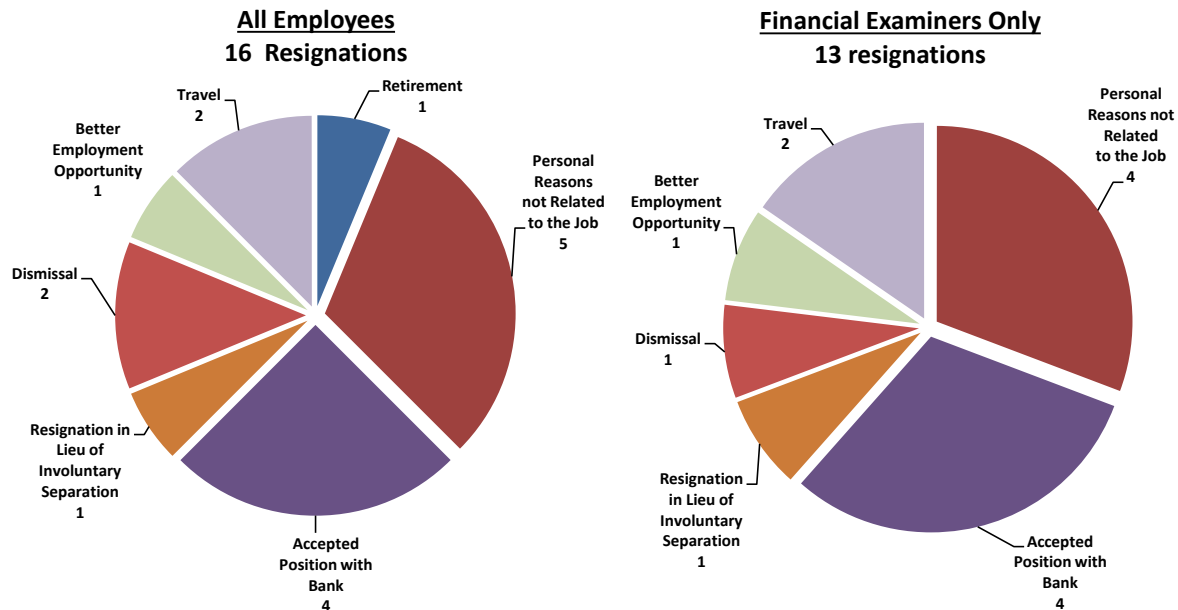
**Texas Department of Banking**  
**Employee Data for Fiscal Years 2014, 2015 and 2016 as of 5/31/16**



**New Hire Data for Fiscal Years 2014, 2015 and 2016**



**FY 2016 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

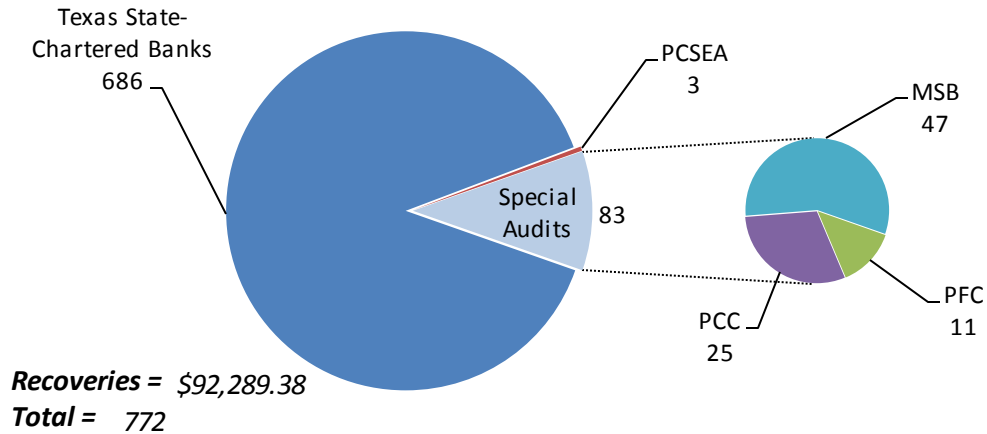
**From:** Wendy Rodriguez, Director of Strategic Support 

**Date:** August 1, 2016

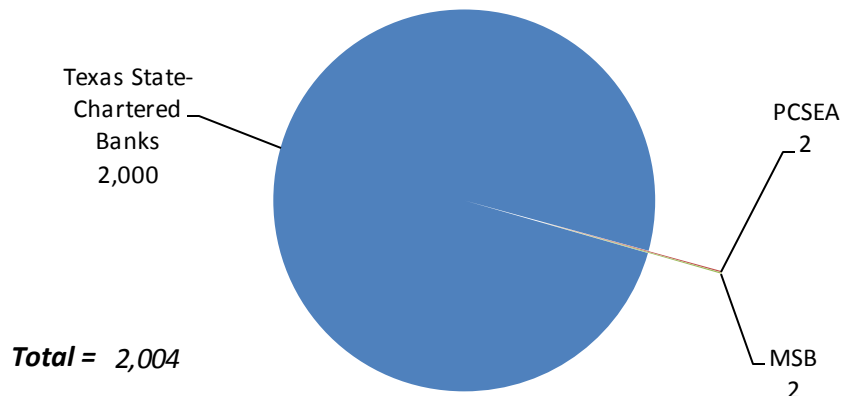
**Subject:** Summary of the Strategic Support Division Activities

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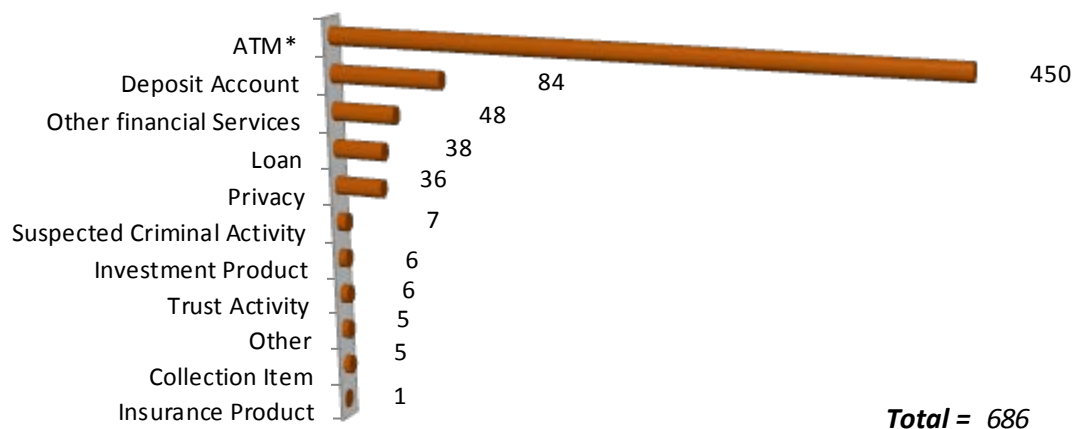
### Complaints on Regulated Entities September 2015 - June 2016



### Inquiries on Regulated Entities September 2015 - June 2016

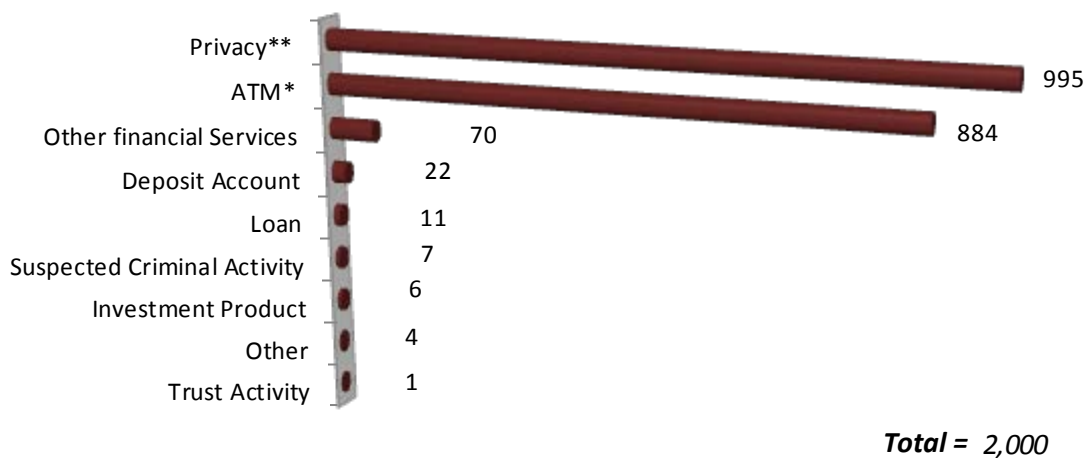


### State-Chartered Banks and Trust Companies Complaints by Type September 2015 - June 2016



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

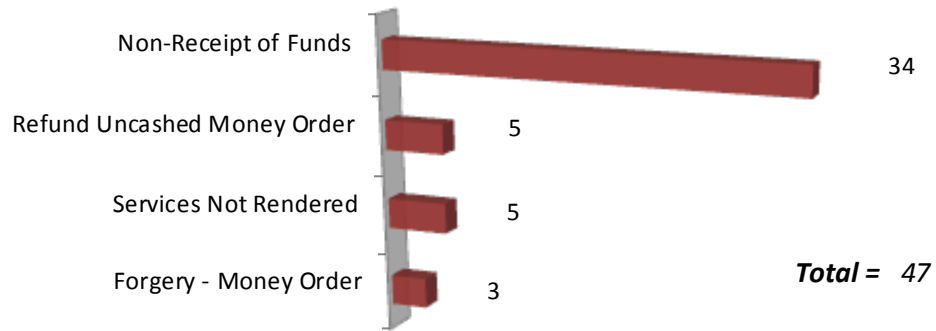
### Inquiries by Type State-Chartered Banks and Trust Companies September 2015 - June 2016



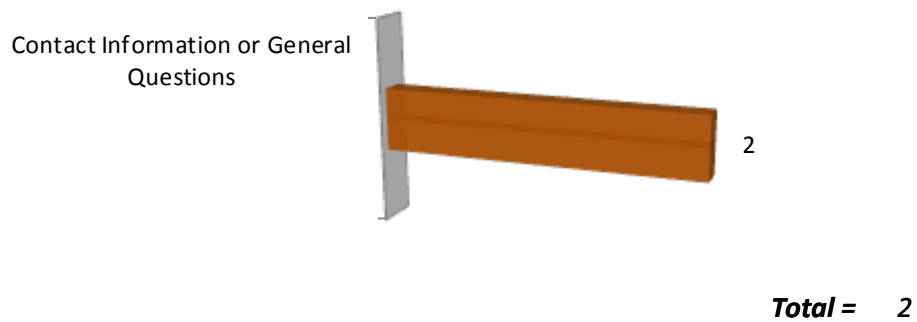
\*\* High activity related to annual privacy notice containing the Department's contact information.

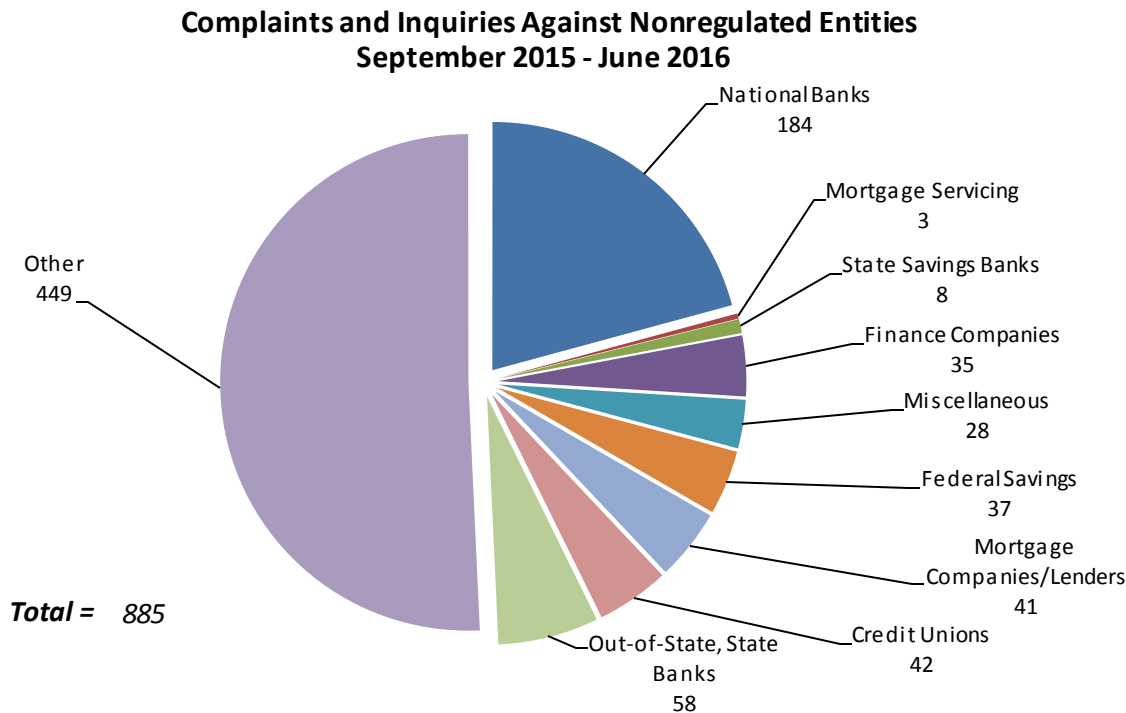
\*Activity related to consumers inquiring about their personal accounts and outages in ATM network for one institution. Consumers contacted Department because the institution was experiencing a high call volume and they could not get through to entity.

**Money Services Businesses  
Complaints by Type  
September 2015 - June 2016**



**Money Services Businesses  
Inquiries by Type  
September 2015 - June 2016**





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

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

| Type                  | Sept. 2015 – June 2016 |
|-----------------------|------------------------|
| State-Chartered Banks | 9                      |
| Trust                 | n/a                    |
| PCSEA                 | 2                      |
| PFC/PCC               | 32                     |
| MSB                   | 45                     |

**CANS ACTIVITY**

January 1, 2012 – July 31, 2016

| Entity                              | Enrolled   | Compromised Accounts Reported |
|-------------------------------------|------------|-------------------------------|
| Texas State-Chartered Banks         | 227        | 1,561                         |
| Texas State-Chartered Savings Banks | 25         | 63                            |
| Federal Savings Banks               | 10         | 197                           |
| State Credit Unions                 | 132        | 1,156                         |
| Federal Credit Unions               | 229        | 1,094                         |
| National Banks                      | 168        | 502                           |
| Out-of-State State-Chartered Banks  | 11         | 0                             |
| Out-of-State National Banks         | 4          | 44                            |
| <b>Total</b>                        | <b>806</b> | <b>4,617</b>                  |

### Bank Examination Testing System (BETS) Activity

#### Number of Candidates Passing Each Phase

|                             | FY 2013 | FY 2014 | FY 2015 | FY 2016<br>Sept July<br>31, 2016 |
|-----------------------------|---------|---------|---------|----------------------------------|
| <b>I. General Knowledge</b> | 3       | 5       | 8       | 8                                |
| <b>II. Loan Analysis</b>    | 8       | 2       | 2       | 4                                |
| <b>III. Panel</b>           | 10      | 2       | 4       | 3                                |
| <b>IV. Test Bank</b>        | 11      | 1       | 4       | 2                                |
| <b>Total FE3</b>            | 16      | 14      | 19      | 19                               |

#### Promotions

|  |   |   |   |   |
|--|---|---|---|---|
| <b>From FE3 to FE4<br/>(Commissioned Examiner)</b> | 9 | 2 | 4 | 2 |
|--|---|---|---|---|

#### Other Divisional Items:

- *Publications*
  - The Finance Commission Strategic Plan 2017-2021 has been completed and has been provided as a separate document to the Commission.
  - The web version of the Law and Guidance Manual, updated through June 30, 2016, is available on the website.
- *Financial Education*
  - Ms. Leilani Lim-Villegas participated as a speaker at the Financial Literacy Summit (July 26 - 27, 2016) hosted by the Texas Bankers Foundation and IBAT Education Foundation.



Charles G. Cooper  
Commissioner

## TEXAS DEPARTMENT OF BANKING

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### Memorandum

**TO:** Finance Commission Members

**FROM:** Catherine Reyer, General Counsel

**DATE:** August 1, 2016

**RE:** Legal Division Update

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#### Litigation

***Antioch St. Johns Cemetery Co. v. The Texas Department of Banking Commissioner***, Cause No. D-1-GN-14-000367, In the 261st District Court of Travis County, Texas. Plaintiffs filed this case on February 6, 2014, appealing the Banking Commissioner's order requiring them to pay \$56,000 in administrative penalties for numerous violations of Health and Safety Code provisions governing cemeteries. The case was heard by Judge Scott Jenkins on April 30, 2015. Judge Jenkins issued an order on May 4, 2015, affirming the Commissioner's order. On June 30, 2016, the appellate court affirmed the trial court's decision, upholding the order and the penalty assessment. Petition for review by the Texas Supreme Court is due August 15, 2016. Because Antioch has not obtained a supersedeas bond; the penalty from our administrative action is due and owing. Abstracts of judgment have been filed in Dallas and Tarrant Counties and warrant holds have been issued.

***In the Matter of: Perpetual Care Trust Fund of Antioch St. Johns Cemetery Company, d/b/a American Memorial Park Cemetery, Grand Prairie***, Cause No. DC-16-07738, in the 134<sup>th</sup> District Court of Dallas County, Texas. On June 27, 2016, the Attorney General filed this suit at the request of the Banking Commissioner, asking that, pursuant to Health and Safety Code § 712.0255, the perpetual care trust fund for this small cemetery be terminated and transferred to the new owners of the cemetery so that they may restore the cemetery to a decent condition and maintain it. The petition asks the court to set the matter for public hearing and after hearing transfer the assets of the fund to the new owners, with the approval of the Department of Banking required for any disbursements. The trustee of the fund and the respondent new owners have answered. A hearing is set for September 26, 2016.

***State of Texas v. Myrtlewood Memorial Services d/b/a Harlingen-Combes Memorial Cemetery et al.***, Cause No. D-1-GN-16-000565, in the 353<sup>rd</sup> Judicial District Court of Travis County, Texas. This case was filed on February 19, 2016, to seek the appointment of a receiver. On April 7, 2016, the defendants filed an answer.

***State of Texas v. House Savings Investment, LLC, et al***, Cause No. D-1-GV-13-000763, in the 353<sup>rd</sup> District Court of Travis County, Texas. On July 26, 2013, the district court issued a temporary restraining order and appointed a temporary receiver under the authority of Chapter 151, Texas Finance Code, to take control of two companies performing money services business activities (bi-monthly mortgage payments). An agreed permanent injunction and appointment of permanent receiver order was entered by the court on August 13, 2013. The receiver closed the company offices in Houston and has continued to administer the estate, investigate misappropriation of customer funds, prosecute litigation against third parties, and pursue and recover estate assets. As of June 30, 2016, the receiver had mailed \$554,245.62 in payments to 7,656 former customers.

***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 is seeking \$12,545.00 in order to return funds to customers who purchased prepaid funeral benefits from Mr. Trevino when he was not authorized to sell them. A response from the estate approving or denying the claim is due August 1, 2016.

**Gifts Received by DOB**

No gifts have been received by the Department of Banking since June 1, 2016.

**Orders**

Since the last Legal Division memo was prepared, the Commissioner issued two orders, both of which are final public orders:

***Special Audits***

- Order No. 2015-012a, dated 6/01/2016; Consent Order, Intellipayment LLC, New York, New York
- Order No. 2016-008, dated 7/18/2016; Consent Order, DebtWave Credit Counseling, Inc., San Diego, California

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendment to 7 TAC, §11.37 Concerning Complaint Notices

**PURPOSE:** Amendment to §11.37 allows consumer complaint notices to be in a form that is substantially similar to the current required notice. Amendment to §11.37(b) states that this consumer complaint notice must only substantially conform to the form complaint notice that is currently provided by §11.37(b). This allows an entity required to communicate the notice to make non-substantive changes to the notice, as might be necessary by the context or formatting in which it is being provided.

**RECOMMENDED ACTION:** One comment supporting the proposed amendment to 7 TAC, §11.37 was received from Independent Bankers Association of Texas (IBAT). The Department recommends that the Commission approve adoption of the amendment without changes to the proposal as previously published in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we adopt the amendment to 7 TAC, §11.37 without changes to the proposal as previously published in the *Texas Register*.

***Title 7. Banking and Securities***  
***Part 2. Texas Department of Banking***  
***Chapter 11. Miscellaneous***  
***Subchapter A. General***  
***7 TAC §11.37***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts the amendment to §11.37, concerning the form of consumer complaint notices without changes to the proposed text as published in the June 24, 2016, issue of the *Texas Register* (41 TexReg 4542). The amended rule will not be republished. The amendment allows consumer complaint notices to be in a form that is substantially similar to the current required notice.

Currently, §11.37(b) provides a form consumer complaint notice that must be duplicated exactly when the notice is required to be communicated to consumers. The amendment to §11.37(b) states that this consumer complaint notice must only substantially conform to the form complaint notice that is currently provided by §11.37(b). This allows an entity that is required to communicate the notice to make non-substantive changes to the notice, as might be necessary by the context or formatting in which it is being provided.

Comments supporting the proposed amendment were received from the Independent Bankers Association of Texas (IBAT).

The amendment is adopted pursuant to Finance Code, §11.003 which provides that the commission may adopt rules necessary

and reasonable to implement Chapter 11 of the Finance Code.

Finance Code §11.307 is affected by the amended section.

***§11.37. How Do I Provide Information to Consumers on How to File a Complaint?***

**(a) Definitions**

(1) "Consumer" means an individual who obtains or has obtained a product or service from you that is to be used primarily for personal, family, or household purposes.

(2) "Privacy notice" means any notice which you give regarding a consumer's right to privacy as required by a specific state or federal law.

(3) "Required notice" means a notice in a form set forth or provided for in subsection (b)(1) of this section.

(4) "You" means a bank, foreign bank, bank holding company, or trust company that is chartered, licensed, or registered by the Texas Department of Banking under the Finance Code.

**(b) How do I provide notice of how to file complaints?**

(1) You must use a notice that substantially conforms to the language and form of the following notice in order to let your consumers know how to file complaints: The (your name) is (chartered, licensed, or registered) under the laws of the State of Texas and by state law is subject to regulatory oversight by the Texas

**ADOPTION OF AMENDMENT TO 7 TAC §11.37**

**Page 2 of 2**

Department of Banking. Any consumer wishing to file a complaint against the (your name) should contact the Texas Department of Banking through one of the means indicated below: In Person or U.S. Mail: 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294, Telephone No.: (877) 276-5554, Fax No.: (512) 475-1313, email: [consumer.complaints@dob.texas.gov](mailto:consumer.complaints@dob.texas.gov), Website: [www.dob.texas.gov](http://www.dob.texas.gov).

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

(3) You must include the required notice with each privacy notice that you send out.

(4) Regardless of whether you are required by any state or federal law to give privacy notices, you must take appropriate steps to let your consumers know how to file complaints by giving them the required notice in compliance with paragraph (1) of this subsection.

(5) You must use the following measures to give the required notice:

(A) In each area where you conduct business on a face-to-face basis, you must conspicuously post the required notice. A notice is deemed to be conspicuously posted if a consumer with 20/20 vision can read it from the place where he or she would typically conduct business or if it is included on a bulletin board, in plain view, on which all required notices to the general public (such as equal housing posters, licenses, Community Reinvestment Act notices, etc.) are posted.

(B) For consumers who are not given privacy notices, you must give the required notice when the consumer first obtains a product or service from you.

(C) Those portions of your website that offer consumer goods and services must contain access to the required notice.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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3. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, §§25.1 – 25.6 Concerning Prepaid Funeral Contract Forms

**PURPOSE:** Amendments to §§25.1 – 25.6 are proposed to clarify the requirements for entering into prepaid funeral benefits contracts electronically.

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

**RECOMMENDED MOTION:** I move that we publish the proposed amendments to 7 TAC, §§25.1 – 25.6 in the *Texas Register*.

***Title 7. Banking and Securities***  
***Part 2. Texas Department of Banking***  
***Chapter 25. Prepaid Funeral Contracts***  
***Subchapter A. Contract Forms***  
***7 TAC §§25.1–25.6***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes amendments to §§25.1–25.6 concerning prepaid funeral contracts. The amended rules are proposed to clarify acceptable methods of use and delivery of electronic prepaid funeral benefits contracts.

Current §§25.1–25.6 provide the requirements for a licensed seller of prepaid funeral benefits to use and deliver a contract when engaging with a purchaser of benefits, whether via a model or non-model contract. These sections prescribe the substance, form, and approval process for the use of a contract that differs from the model contract issued by the department. Additionally, §25.6 sets out how and when an executed copy of a contract must be delivered to a purchaser. Because §§25.1–25.6 were drafted before the prevalence of electronic documents, it is not currently clear that a licensed seller of prepaid funeral benefits may use an electronic contract or how to have an electronic contract approved by the department. Because of this uncertainty, sellers have approached the department individually for a determination whether the seller’s electronic process is acceptable. The proposed amendments will provide guidance to the sellers and understanding to the public.

*Pre-proposal consultation with shareholders.*

On April 29, 2016, a draft of the proposed amendments was sent to stakeholders for pre-comment. One commenter stated that the allowance of delivery of electronic records by email alone was too narrow and that other electronic methods of delivery should be allowed. After considering this comment, the proposed amendment to §25.6 expands the allowed delivery methods to any electronic means upon verification that the purchaser can access the record.

One commenter asked if electronic contracts would be considered “printed” under Finance Code, §154.151. We stated that they would.

The same commenter also asked whether it could transmit electronically the brochure required by Finance Code, §154.131. We responded that this was acceptable. The commenter asked whether it would be possible to conduct all arrangements online with no in-person meeting. We responded that it would be acceptable as far as the department is concerned, but that sellers must abide by laws and regulations of other involved agencies such as the Federal Trade Commission and the Texas Funeral Services Commission (TFSC). For example, currently the TFSC requires that the brochure “Facts About Funerals” be given in paper before the transaction is entered into.

On June 14, 2016, a revised draft of the proposed amendments was again sent to stakeholders for pre-comment. We received one comment, which suggested revising certain language for clarity. We amended §25.2 and §25.3(n) to clarify.

*Description of proposed amendments.*

The proposed amendment to §25.1 states that a contract or a waiver in electronic form is a non-model contract. Being non-model requires an electronic contract to comply with the substance and form requirements within §25.3, the plain language requirements within §25.4, and the approval process within §25.5. As proposed, §25.3, §25.4, and §25.5 have been amended to clarify their application to contracts in electronic form. However, proposed §25.2 includes an exception to this general rule by providing that a PDF version of an approved non-model contract or model contract need not be approved by the department because these PDFs will accurately replicate the contract as previously approved in paper form.

The proposed amendment adding §25.2(f) expressly allows the use of contracts in electronic form for the sale of prepaid funeral benefits if the purchaser has been provided the disclosures required by the federal E-SIGN Act and has consented to the use of electronic documents. Because the disclosures required under E-SIGN primarily address the issues of retention and accessibility of an electronic record, the proposed amendments treat the transaction as not having been conducted electronically when the purchaser is contemporaneously given a completed paper copy of the contract.

The proposed amendments to §25.3 explain the placement of contract provisions in electronic format. The proposed amendment to §25.3(b)(8) requires the statement of guaranteed funeral goods and services selected to be on a single screen or

consecutive screens, near the beginning or top of the contract, immediately following required consumer disclosures. The proposed amendment to §25.3(c)(1)(G) requires the statement of non-guaranteed cash advance items in an electronic contract to appear on a single screen immediately following the statement of guaranteed funeral goods and services selected. The proposed amendment to §25.3(c)(2) requires, when the seller has deleted the statement of no-guaranteed cash advance items, that the seller include Figure 7 TAC §25.3(c)(2) immediately following the statement of guaranteed funeral goods and services selected. The proposed amendment to §25.3(j) requires the placement of required signatures and notices near the bottom of an electronic contract. The proposed amendment to §25.3(k)(2) requires the consumer complaints and inquiries notice to appear immediately preceding the area where a purchaser signs an electronic contract. The proposed amendment to §25.3(l)(1) eliminates the need for page numbers in an electronic contract that does not contain pages. The proposed addition of §25.3(n) requires the consumer disclosures mandated by E-SIGN to be before any other provision and allows them to be on a separate screen.

The proposed amendment to §25.4(a) clarifies that an electronic contract must be displayed in an easily readable font and type size. The proposed amendment to §25.4(b) confirms that electronic documents should substantially comply with plain language writing principles. The proposed amendment to §25.4(f)(2) clarifies that page size requirements do not apply to electronic documents.

The proposed amendment to §25.5(b)(1)(A) requires inclusion of screen shots in an application to approve a non-model electronic contract. The proposed amendment to §25.5(b)(1)(D)(ii) requires that the certification for electronic contracts verifies that it complies with Business and Commerce Code, Chapter 322 (the Texas Uniform Electronic Transactions Act) and E-SIGN. The proposed amendment to §25.5(f) deletes transition language that applied when the rules were amended in 2010 and is no longer applicable.

The proposed amendment to §25.6 adds two new subsections that specify that a paper copy must be given unless an electronic contract was used or if the purchaser requests a paper copy of an electronic copy. It also states that electronic contracts may be sent to the purchaser electronically if the purchaser has consented to that.

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

Ms. Newberg also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is that sellers and purchasers of prepaid funeral benefits will be better able to understand their rights and responsibilities regarding electronic contracting.

For each year of the first five years that the rule will be in effect, there will be no

economic costs to persons required to comply with the rule as proposed.

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

To be considered, comments on the proposed amendments must be submitted no later than 5:00 p.m. on October 3, 2016. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to [legal@dob.texas.gov](mailto:legal@dob.texas.gov).

The amended rule is proposed under Finance Code, §154.051, which provides that the commission may adopt rules necessary and reasonable to matters relating to the enforcement and administration of this chapter, and §154.151, which prescribes requirements for the department and the commission relating to the form of contracts.

Finance Code, §§154.001, 154.131, 154.151-154.1511, 154.156, 154.2021, 154.401, 154.406-154.410, and 154.415 are affected by the proposed amended sections.

**§25.1. Definitions.**

(a) (No change.)

(b) The following words and terms have the following meanings when used in this subchapter, unless the context in which a word or term is used clearly indicates a

different meaning that is consistent with the purpose of Finance Code Chapter 154:

(1) – (8) (No change.)

(9) "Non-model contract" means a prepaid funeral benefits contract form that differs from the model contract with respect to the requirements and standards of §25.3 of this title and §25.4 of this title (relating to What Are the Plain Language Requirements for a Non-Model Contract or Waiver). A model contract does not become a non-model contract because you add your name, trademark, or other information about you, or information about the provider. A contract in electronic form is a non-model contract.

(10) "Non-model waiver" means a form of waiver that has the same purpose as but differs from the model waiver with respect to the requirements and standards of §25.2(c) of this title (relating to Am I Required to Use the Model Contract and Model Waiver) and §25.4 of this title. For example, a model waiver does not become a non-model waiver because you add your name, trademark, or other information about you, or information about the provider. A waiver in electronic form is a non-model waiver.

(11) – (17) (No change.)

**§25.2. Am I Required to Use the Model Contract and Model Waiver?**

(a) Use of model contract and waiver. You may use the appropriate model contract or the model waiver described in this subsection except as provided in paragraph (2) of this subsection, but you are not

required to do so if you obtain approval to use a non-model contract or waiver. PDF forms of model contracts or waivers and PDF forms of approved non-model contracts or waivers do not need to be approved by the department as provided in §25.5.

(1) – (3) (No change.)

(b) – (e) (No change.)

(f) Sale of Prepaid Funeral Benefits Electronically.

(1) You may sell prepaid funeral benefits and deliver contracts and waivers by electronic means if the purchaser has consented to transacting electronically.

(2) A purchaser must consent to the use of electronic documents before you present the document to the purchaser, consistent with Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §7001.

(3) A contract or waiver is not considered as entered into or delivered electronically if a completed paper copy in the approved form is given to the purchaser at the time of sale.

**§25.3. What Requirements Apply to a Non-Model Contract or Waiver?**

(a) (No change.)

(b) Statement of guaranteed funeral goods and services selected. The first section of a proposed prepaid funeral benefits contract must inform the purchaser of the guaranteed funeral goods and services that you will provide under the contract, as required by Finance Code, §154.151(e). This section

must appear entirely on page one of the contract exactly as set out in the model contract and in the following figure, including substantially the same formatting and spacing, except:

Figure 7 TAC §25.3(b)

(1) – (7) (No change.)

(8) If your contract is in electronic form, the statement of guaranteed funeral goods and services selected must appear on a single screen or consecutive screens, near the beginning or top of the contract, immediately following consumer disclosures and consent required by 7 TAC §25.2(f).

(c) Statement of non-guaranteed cash advance items selected.

(1) The second section of a proposed prepaid funeral benefits contract must inform the purchaser of the non-guaranteed cash advance items that you will provide under the contract, as required by Finance Code, §154.1511(b). The section must appear entirely on either page one or two of the contract exactly as set out in the model contract and in the following figure, including substantially the same formatting and spacing, except;

Figure: 7 TAC §25.3(c)(1)

(A) – (D) (No change.)

(E) you may change the description of specific goods or services if the alteration does not change the intent of the description in the standard disclosure; [and]

(F) you may add other specific funeral goods and services to the list of non-guaranteed funeral goods and services to be provided only through a non-model filing; and[.]

(G) if your contract is in electronic form, this section must appear on a single screen immediately following the statement of guaranteed funeral goods and services selected.

(2) If you delete the statement of non-guaranteed cash advance items;[.]

(A) for a paper contract, you must include the following figure on the bottom of page one of the contract, including substantially the same formatting and spacing; and[:]

(B) for a contract in electronic form, you must include the following figure immediately following the statement of guaranteed funeral goods and services selected:

Figure 7 TAC §25.3(c)(2)

(d) – (i) (No change.)

(j) Required signatures and notices. Your proposed prepaid funeral benefits contract must contain a section for required signatures and related notices that appears in its entirety on the last page of the contract, or near the bottom of the contract if in electronic form. This section must include:

(1) – (8) (No change.)

(k) Inquiries and complaints notice. Your proposed prepaid funeral benefits contract

must disclose how a purchaser, potential purchaser or consumer can make consumer inquiries and complaints to the department as required by Finance Code, §11.307(a), and §25.41 of this title (relating to How Do I Provide Information to Consumers on How to File a Complaint and What Action Must I Take When I Receive a Complaint?), and to other specified state regulatory agencies with appropriate jurisdiction.

(1) (No change.)

(2) If the disclosure does not appear at the bottom of the last page of the contract following the signatures of the parties, it must be placed at the top or bottom of a preceding page and be separated from other contract text by at least 1/2 inches of white space. If the contract is in electronic form, the disclosure must appear immediately preceding the area a purchaser can sign the contract. The disclosure may not be placed on a page by itself.

(l) Additional requirements. A proposed prepaid funeral benefits contract must also contain:

(1) page numbers, unless in an electronic form that does not contain pages;

(2) – (5) (No change.)

(m) (No change.)

(n) Electronic contract requirements. A proposed non-model contract in electronic form must contain all consumer disclosures required under Electronic Signatures in Global and National Commerce Act, 15 U.S.C., §7001, before any other provision and may be on a separate screen.

***§25.4. What Are the Plain Language Requirements for a Non-Model Contract or Waiver?***

(a) Overview. If you elect to not use a model contract or waiver, you must prepare a non-model prepaid funeral benefits contract or a waiver of cancellation rights, whether in English or Spanish, in plain language designed to be easily understood by the average consumer. Your proposed non-model document must also be printed or displayed in an easily readable font and type size. The department is charged with enforcing these requirements by Finance Code, §154.151(d).

(b) Plain language principles for English documents. The department will consider the extent to which you have incorporated plain language principles into the organization, language, and design of a non-model document that you submit for approval. At a minimum, your proposed non-model document, including an electronic non-model document, should substantially comply with each of the plain language writing principles identified in this subsection.

(1) – (5) (No change.)

(c) – (e) (No change.)

(f) Formatting and design. The department will consider the extent to which your non-model document uses the plain language formatting and design concepts described in this subsection.

(1) (No change.)

(2) The minimum recommended page size of a proposed non-model contract is 8-1/2 inches by 11 or 14 inches and 8-1/2 inches by 11 inches for a proposed non-model waiver. However, the page size should ordinarily not be larger than 8-1/2 inches by 17 inches. This paragraph does not apply to a contract in electronic form.

(3) - (4) (No change.)

(g) (No change.)

***§25.5. How Do I Obtain Approval of a Non-Model Contract or Waiver?***

(a) (No change.)

(b) Application for approval. Your application for approval of your proposed non-model document must be in writing and include all additional information, documents, and fees required by this subsection. You should file your application as far in advance of the date you intend to use your proposed document as possible.

(1) The additional information, documents, and fees that you must file as part of your application include:

(A) both a printed copy of your proposed non-model document and an electronic version of the document, prepared using Microsoft Word or Corel WordPerfect software, including computer screenshots of any portion to be used in electronic form;

(B) – (C) (No change.)

(D) a certification on a form supplied by the department, signed and acknowledged by you or your authorized

agent, that you have reviewed the proposed non-model document that you filed for approval and to the best of your knowledge:

(i) your proposed non-model document complies with all applicable state and federal law, including Finance Code Chapter 154, and this chapter; [and]

(ii) if in electronic form, your proposed non-model document also complies with Business and Commerce Code, Chapter 322, and Electronic Signatures in Global and National Commerce Act, 15 U.S.C., §7001 et seq; and

(iii) if your application is for approval of amendments to a previously approved non-model document, the proposed non-model document is identical to the previously approved document except for text specifically marked as additions and deletions;

(E) – (F) (No change.)

(c) – (e) (No change.)

(f) Withdrawn approval. [This subsection describes circumstances under which you may not use a previously approved document.]

[(1) ]The department may withdraw its approval of a model or previously approved non-model document for future use if governing law is changed or clarified by statute, rule, or judicial opinion. The department will notify you in writing if you are affected by a withdrawn approval.

[(2) You may not use a prepaid funeral benefits contract form that was approved by the department before the effective date of this rule (an obsolete contract), except that you may continue using an obsolete contract if the model supplement developed by the department, and, if applicable, new Figure 7 TAC §25.3(i)(4)(E), are included as part of the contracting transaction until the later of:]

[(A) February 1, 2010;]

[(B) June 1, 2010, if you filed a proposed non-model contract with the department for approval before February 1, 2010; or]

[(C) a later date if, before February 1, 2010, you request an extension of time to permit completion of a pending approval proceeding under this section and the commissioner approves your request in writing.]

[(3) Notwithstanding the provisions of paragraph (2) of this subsection, you may not continue using an obsolete contract after the 30th day following the date the department approves your non-model contract.]

***§25.6. How and When are Contract Copies Distributed Between the Parties?***

(a) – (c) (No change.)

(d) To give a purchaser a copy of the contract, you must give the purchaser a paper copy unless an electronic contract was used.

(e) If an electronic contract was used, you may deliver an electronic record of the contract and all related agreements by email

or other electronic means to the purchaser if the purchaser has consented to receiving an electronic record as specified in §25.2(f)(1)–(2). If the purchaser requests a paper copy or is unable to retrieve the electronic record, you must give the purchaser a paper copy. You may not charge a fee for providing a paper copy.

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

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**C.**

**Department of Savings  
and  
Mortgage Lending**

## C. 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 2016 will be presented at the next meeting of the Finance Commission.

As of June 30, 2016, there are 27 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 February 5, 2016, an application was received for TransPecos Banks, Pecos, Texas, to convert from a Texas state commercial bank charter to a savings bank charter. The application was approved and the conversion became effective on July 1, 2016.

On April 15, 2016 an application was received for Triumph Bancorp, Inc., Dallas, Texas, to acquire ColoEast Bancshares, Inc., Lamar, Colorado, resulting in the merger of their depository subsidiaries, specifically Colorado East Bank and Trust with and into TBK Bank, SSB. The application was approved on July 25, 2016, and the Department is awaiting confirmation of the effective date of the merger.

On May 18, 2016, an application was received for Fayette Savings Bank, SSB, La Grange, Texas, to form a holding company by merging with newly created Fayette Merger Corporation, a wholly-owned subsidiary of Fayette Bancshares, Inc. The application was approved on July 14, 2016, and the Department is awaiting confirmation of the effective date of the merger.

#### c. Other Items

Commissioner Jones spoke at the FDIC Alliance for Economic Inclusion's quarterly Austin meeting on June 17th.

Chief Supervisory Analyst Jonathan Finley served as an instructor at the Graduate School of Banking at Colorado. He taught graduating "third-year" students in the Bank Management Simulation course.

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

#### a. Residential Mortgage Loan Originators

For the month of July the Department received 6,905 filings, of these filings 672 were new license applications.

Licensing Population:

| License Type<br>As of 07/31/2016 | Approved        |                 |               |
|----------------------------------|-----------------|-----------------|---------------|
|                                  | Entity<br>(MU1) | Branch<br>(MU3) | MLO<br>(MU4)  |
| <i>Auxiliary</i>                 | 10              | n/a             |               |
| <i>CUSO</i>                      | 3               | 2               |               |
| <i>FSC</i>                       | 1               | n/a             |               |
| <i>Independent Contractor</i>    | 89              | n/a             |               |
| <i>Mortgage Company</i>          | 1,083           | 495             |               |
| <i>Mortgage Banker</i>           | 377             | 2,229           |               |
| <i>Mortgage Servicer</i>         | 159             | n/a             |               |
| <b>Totals</b>                    | <b>1,722</b>    | <b>2,726</b>    | <b>22,629</b> |

The following shows the aggregate Mortgage Call Report information for calendar year 2015 and the 1<sup>st</sup> quarter of calendar year 2016. This information is reported by the licensees.

| CY2015 Mortgage Call Report Data                         |                  |         |                 |
|--|------------------|---------|-----------------|
|  | \$ Amount        | # Loans | Average \$ Loan |
| <b>Brokered</b>  | \$8,315,273,024  | 41,107  | \$202,283       |
| <b>Retail</b>  | \$54,374,666,432 | 276,664 | \$196,536       |
| <b>Wholesale</b>   | \$10,167,530,468 | 46,638  | \$218,009       |
|  |                  |         |                 |
| 1 <sup>st</sup> Quarter CY2016 Mortgage Call Report Data |                  |         |                 |
|  | \$ Amount        | # Loans | Average \$ Loan |
| <b>Brokered</b>  | \$1,776,610,312  | 8,945   | \$198,614       |
| <b>Retail</b>  | \$12,704,484,877 | 64,457  | \$197,100       |
| <b>Wholesale</b>   | \$2,496,374,329  | 11,920  | \$209,427       |
| Aggregate information as reported by licensees.          |                  |         |                 |

**b. Mortgage Examinations**

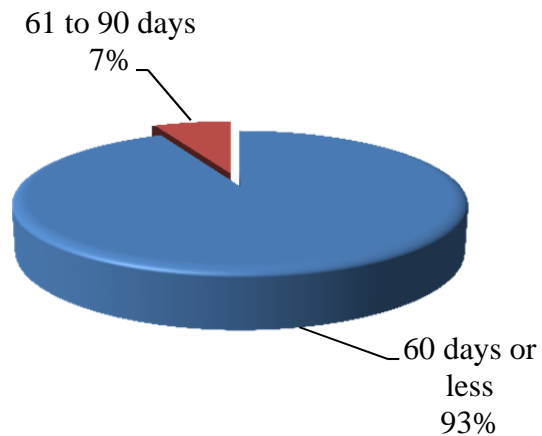
Through the end of the third quarter of FY16, a total of 393 examinations were conducted covering 3,573 licensees. The examinations are continuing to identify various degrees of unlicensed/unauthorized activity and the issuance of incomplete conditional qualification/approval letters.

**c. Consumer Complaints/Legal Issues**

Through the end of the third quarter of FY16, a total of 840 consumer complaints were received. This represents a 25% increase when compared to the same period in FY15. Loan servicing complaints represent 61% of the total number of complaints received during FY16. As of May 31, 2016, there were a total of 86 open consumer complaints with 100% of the complaints aged less than 90 days.

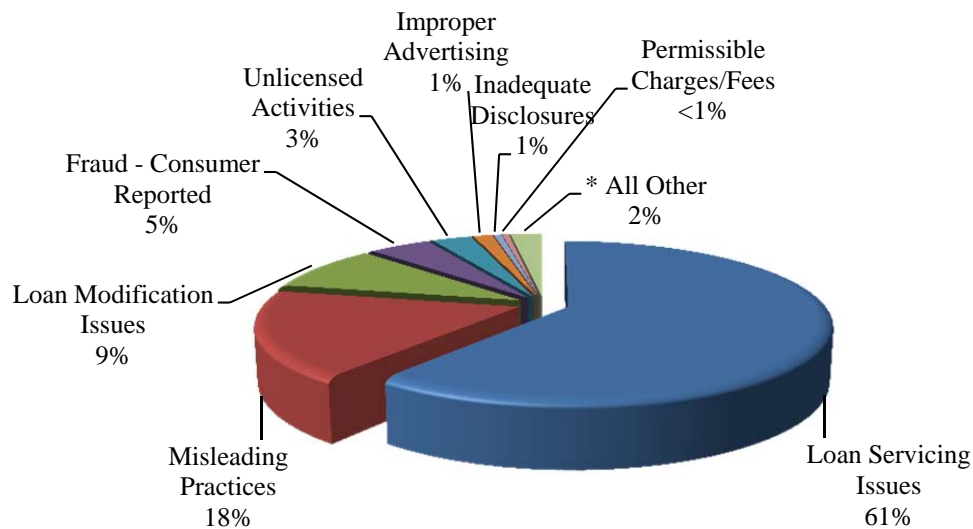
The following charts reflect the consumer complaint information through the end of the third quarter of FY16.

## Aging of Open Complaints as of 05-31-2016



Total Open Complaints as of 05-31-2016 = 86

## Nature of Complaints Received - YTD FY16

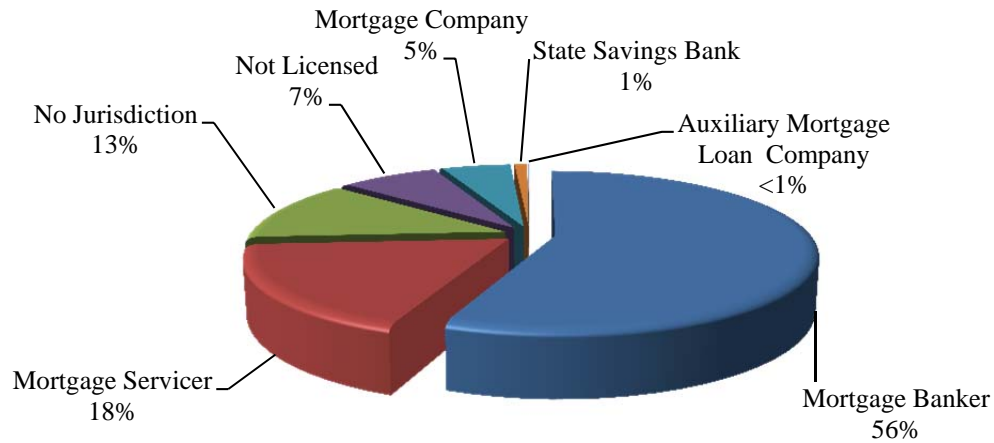


Total Complaints Received in FY16 Year-to-Date = 840

\* The "All Other" Category includes: Customer Relations Issues, Failure to Pay Appraisers/Vendors, Bait and Switch, Refunds and File Transfers, Fraud, Sponsor Issues, and

## Respondent License Types - Complaints Received YTD FY16

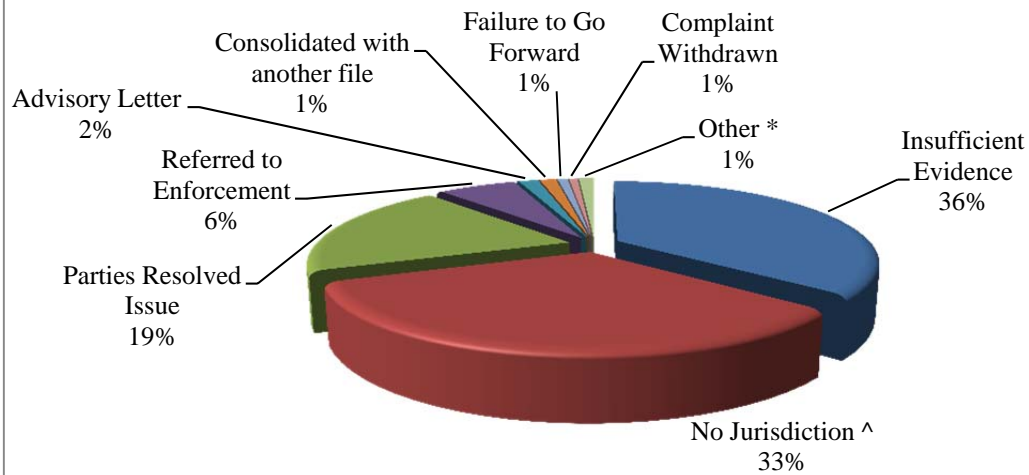
(Complaints Received 09-01-2015 to 05-31-2016)



Total Complaints Received Year-to-Date FY16 = 840

## Disposition of Resolved Complaints - YTD 16

(Complaints Resolved Between 09-01-2015 and 05-31-2016)



Total complaints resolved Year-to-Date FY16 = 860

### d. Legal

SOAH Hearings -  
06/30/2016 Denial of License -- DEVELOPMENT

**SOAH Docket No. 450-16-1422; *Department of Savings and Mortgage Lending v. Crystal Wilburn*.** In this case, the Department's staff proposed to deny the application of Ms. Wilburn for a residential mortgage loan originator license on the grounds of lack of good moral character and failure to demonstrate financial responsibility. A hearing was held on January 21, 2016. On April 25, 2016, the Department filed exceptions to the proposal for decision. On May 11, 2016, the applicant filed a response to the Department's exceptions to the proposal for decision. On June, 30, 2016, the SOAH ALJ issued her response to the Department's exceptions finding Ms. Wilburn should be granted a license. The commissioner is evaluating the ALJ's findings and the record of the hearing, before issuing a final agency decision.

*07/11/2016 Appeal of Cease and Desist Orders -- NEW*

**SOAH Docket No. 450-16-4819; *Department of Savings and Mortgage Lending v. Thomas Schober*.**

**SOAH Docket No. 450-16-4820; *Department of Savings and Mortgage Lending v. Geoffrey Schober*.**

**SOAH Docket No. 450-16-4821; *Department of Savings and Mortgage Lending v. El Paso Home Buyers, LLC*.**

The commissioner issued three orders on May 23, 2016, requiring Thomas Schober, Geoffrey Schober and El Paso Home Buyers LLC to cease and desist for engaging in unlicensed residential mortgage loan origination activity and unregistered residential loan servicing activity. The orders were appealed on June 21, 2016. The department filed a motion to have the three cases consolidated for procedural purposes, which was granted and a hearing was held on July 11, 2016. As a result the parties entered into an agreed final order requiring the Schobers and El Paso Home Buyers, LLC to cease and desist. In addition the Schobers and El Paso Home Buyers, LLC agreed to provide certain documentation by July 22, 2016, and to take certain other future action.

*07/28/2016 Appeal of License Denial -- NEW*

**SOAH Docket No. 450-16-4112; *Department of Savings and Mortgage Lending v. Jon Kevin Scampton*.**

The department had denied the RMLO license application of Jon Kevin Scampton on the grounds that he had failed to establish that he was of good moral character. Mr. Scampton appealed the license denial. A contested SOAH hearing was held before an administrative law judge on July 28, 2016, and the department is awaiting a proposal for decision.

*08/18-19/2016 Appeal of License Renewal Denial – NEW*

**SOAH Docket No. 450-16-2838; *Department of Savings and Mortgage Lending v. Sammy Trantham*.**

The department denied the RMLO license renewal application of Sammy Trantham on the grounds that he had failed to establish that he was of good moral character. Mr. Trantham appealed the denial. The contested SOAH hearing is currently scheduled to be held on August 18 and 19, 2016 before an administrative law judge.

*Gift Reporting:*

There have been no gifts to report since the last report to the Finance Commission in June 2016.

*Litigation:*

*03/17/2016 Lawsuit Filed -- NO DEVELOPMENT*

***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.

**e. Other Items**

Commissioner Jones and Director O'Shields spoke at the North Texas Association of Mortgage Professionals monthly luncheon on July 13, 2016.

Director of Licensing Steven O'Shields, Director of Mortgage Examination Tony Florence, and three of the Department's mortgage examiners attended the American Association of Residential Mortgage Regulators (AARMR) Annual Conference the week of August 2, 2016, in Tampa, Florida.

Director Florence was installed as President of AARMR at the Annual Conference.

**Mortgage Industry Advisory Committee – July 6, 2016 Meeting**

On July 6, 2016 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. Additionally, the Department presented proposed amendments to mortgage rules. MIAC took a record vote and agreed that the proposed amendments to the rules should be presented to the Finance Commission for publication in the *Texas Register* for comment. The agenda for the meeting was as follows:

Agenda

1. Welcome – Commissioner
2. Review of Department's General Status of Originator Licensing and Registration Activity:
  - Licensing – Director of Licensing
  - Examination and Complaints – Director of Mortgage Examinations
  - Enforcement – General Counsel
3. Rule Review (Voting Item)
4. General Discussion:
  - Committee Discussion Topics
5. Upcoming Meetings:
  - To be determined
6. Adjourn - Commissioner

## Actual Performance for Output/Efficiency Measures

| Type/Strategy/Measure  | 2016<br>Target | 2016<br>Actual | 2016<br>YTD | Percent of<br>Annual Target |   |
|--|----------------|----------------|-------------|-----------------------------|---|
| <b>Output Measures-Key</b>   |                |                |             |                             |   |
| 1-1-1 BANK EXAMINATION   |                |                |             |                             |   |
| 1. THRIFT EXAMINATION AND SUPERVISION  |                |                |             |                             |   |
| <b>Quarter 1</b>   | 22             | 3              | 3           | 13.64%                      | * |
| The Department examines state chartered savings banks jointly with the FDIC, based on a priority schedule. Examination cycles range from 12 to 18 months with frequency based on multiple factors, including institution size, CAMELS rating, and length of time in operation. The results for this measure may fluctuate between quarters due to the timing of individual examinations. |                |                |             |                             |   |
| <b>Quarter 2</b>   | 22             | 4              | 7           | 31.82%                      | * |
| The Department examines state chartered savings banks jointly with the FDIC, based on a priority schedule. Examination cycles range from 12 to 18 months with frequency based on multiple factors, including institution size, CAMELS rating, and length of time in operation. The results for this measure may fluctuate between quarters due to the timing of individual examinations. |                |                |             |                             |   |
| <b>Quarter 3</b>   | 22             | 7              | 14          | 63.64%                      | * |
| The Department examines state chartered savings banks jointly with the FDIC, based on a priority schedule. Examination cycles range from 12 to 18 months with frequency based on multiple factors, including institution size, CAMELS rating, and length of time in operation. The results for this measure may fluctuate between quarters due to the timing of individual examinations. |                |                |             |                             |   |
| 2-1-1 MORTGAGE LICENSING   |                |                |             |                             |   |
| 1. # NEW LIC/ORIGINATORS APPROVED  |                |                |             |                             |   |
| <b>Quarter 1</b>   | 6,500          | 1,793          | 1,793       | 27.58%                      |   |
| <b>Quarter 2</b>   | 6,500          | 1,650          | 3,443       | 52.97%                      |   |
| <b>Quarter 3</b>   | 6,500          | 1,927          | 5,370       | 82.62%                      | * |
| The number of applications submitted is outside of 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.   |                |                |             |                             |   |
| 2-1-2 MORTGAGE EXAMINATION   |                |                |             |                             |   |
| 1. NUMBER OF LICENSEES INSPECTED   |                |                |             |                             |   |
| <b>Quarter 1</b>   | 3,600          | 1,077          | 1,077       | 29.92%                      |   |
| <b>Quarter 2</b>   | 3,600          | 1,618          | 2,695       | 74.86%                      | * |
| Two large mortgage banker examinations were completed in the second quarter of FY 2016 which accounted for 28% of the total number of licensees examined for the period. This type of concentration may continue over the remaining quarters of FY 2016.   |                |                |             |                             |   |
| <b>Quarter 3</b>   | 3,600          | 878            | 3,573       | 99.25%                      | * |
| Several mid-size mortgage examinations were completed in the third quarter of FY 2016 which accounted for 40% of the total number of licensees examined for the period. This type of concentration may continue over the remaining quarter of FY 2016 as the licensee population continues to grow.  |                |                |             |                             |   |
| 3-1-1 COMPLAINT AND INQUIRY PROCESS  |                |                |             |                             |   |
| 1. # COMPLAINTS PROCESSED  |                |                |             |                             |   |
| <b>Quarter 1</b>   | 900            | 248            | 248         | 27.56%                      |   |
| <b>Quarter 2</b>   | 900            | 261            | 509         | 56.56%                      | * |
| Twenty complaints were received on one entity/individual associated with a misleading lending practice. More complaints on this entity may be received in the 3rd quarter as the matter became public and has been in the  |                |                |             |                             |   |
| <b>Quarter 3</b>   | 900            | 345            | 860         | 95.56%                      | * |
| Total complaints increased 36% in the third quarter of FY 2016 when compared to the third quarter of FY 2015. Loan servicing complaints reflected a sharp increase in the third quarter when compared to prior quarters in FY  |                |                |             |                             |   |

\*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 FY16 and is preparing for closing out the FY16. The budget for FY17 has been finalized and is presented elsewhere in this package.

Audits – The internal auditors Garza/Gonzales have completed the Management Information Systems Audit. The report is located elsewhere in the package.

State Office of Risk Management’s annual walk-through is scheduled for August 9, 2016.

#### **b. Staffing**

As of August 1, 2016, the agency was staffed at 50 regular full time employees, 1 regular part-time employee, and 1 temporary employee with 62 FTEs available.

In July, one licensing investigator and one administrative assistant began their employment with the Department. In the same month, one thrift examiner and one Licensing investigator separated from the Department for personal reasons.

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

#### **c. Other Items**

None

4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 Texas Administrative Code (TAC), §79.30, Concerning Hearings and Appeals.

**PURPOSE:** The purpose of the proposed amendment is to clarify that the Department should be permitted to recover costs of any hearing, when the Department is the prevailing party.

**RECOMMENDED ACTION:** The Department recommends that the Commission approve publication of the proposed amendments in 7 TAC, Chapter 79, §79.30 for publication in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we publish proposed amendment to 7 TAC Chapters 79, §79.30 in the *Texas Register* for comment.

***Title 7. Banking and Securities***

***Part 4. Texas Department of Savings and Mortgage Lending***

***Chapter 79. Residential Mortgage Loan Servicers***

***Subchapter C. Hearings and Appeals***

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the Department), proposes to amend 7 Texas Administrative Code §79.30.

In general, the purpose of the proposal regarding this rule is to add clarifying language to the hearing and appeal process under Chapter 79.

Section 79.30 addresses hearings and appeals. The proposed amendment seeks to clarify that the Department should be permitted to recover costs of any hearing, when the Department is the prevailing party. Further, the section title is modified to appear uniform with the hearings and appeals language in 7 Texas Administrative Code §80.302 applicable to residential mortgage loan companies and § 81.302 applicable to residential mortgage loan originators.

Caroline C. Jones, the Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering these rules.

Commissioner Jones also has determined that, for each year of the first five years the amended rule as proposed is in effect, the public benefit anticipated as a result will be that the Department's rules will be more accurate and reflective of legislative intent. There will be no effect on individuals required to comply with the amendments as proposed, unless they are the losing party at a contested administrative proceeding. There will be no adverse economic effect on small or micro

businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

Comments on the proposed amendments may be submitted in writing to Ernest C. Garcia, General Counsel, Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, TX 78705 or by email to [smlinfo@sml.texas.gov](mailto:smlinfo@sml.texas.gov) within 30 days of publication in the *Texas Register*.

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

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

<rule>

***§79.30 [~~Appeals and~~] Hearings and Appeals***

(a) The Hearings Officer for the Finance Commission is designated as the hearings officer for hearings under this chapter. All such hearings are to be conducted in accordance with Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings), including, but not limited to motions for rehearing, notices of appeal, and applications for review. All such hearings, unless specifically authorized by the Commissioner, shall be conducted in Austin, Travis County, Texas. Such rules, as set forth in Chapter 9 of this title, are incorporated herein by reference for all purposes.

(b) Notwithstanding any other provision of any administrative or agency rules applicable to the Department, the Department shall be entitled to recover the costs of any hearing arising from an appeal of an order issued by the Commissioner where the costs associated with same were primarily attributable to the party filing the appeal or the Department substantially prevails in the matter, whether that hearing is before a contracted administrative law judge or before the State Office of Administrative Hearings (SOAH). Costs as used herein, shall include filing fees, court reporter fees and the costs associated with time expended by the judge, but shall not include attorney's fees or investigative costs. Costs shall also include the costs of preparing any record of the hearing in the event of an appeal to the district court.

#### **Certification**

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

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

**5.** Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 Texas Administrative Code (TAC), §80.302, Concerning Hearings and Appeals.

**PURPOSE:** The purpose of the proposed amendment is to clarify that the Department should be permitted to recover costs of any hearing, when the Department is the prevailing party.

**RECOMMENDED ACTION:** The Department recommends that the Commission approve publication of the proposed amendments in 7 TAC, Chapter 80, §80.302 for publication in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we publish proposed amendment to 7 TAC Chapters 80, §80.302 in the *Texas Register* for comment.

***Title 7. Banking and Securities***  
***Part 4. Texas Department of Savings and Mortgage Lending***  
***Chapter 80. Texas Residential Mortgage Loan Companies***  
***Subchapter D. Compliance and Enforcement***

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), proposes to amend proposes to amend 7 Texas Administrative Code §80.302.

In general, the purpose of the proposal regarding this rule is to add clarifying language to the hearing and appeal process under Chapter 80.

Section 80.302 addresses hearings and appeals. The proposed amendments seek to clarify that the Department should be permitted to recover costs of any hearing, when the Department is the prevailing party.

Caroline C. Jones, the Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering these rules.

Commissioner Jones also has determined that, for each year of the first five years the amended rules as proposed are in effect, the public benefit anticipated as a result will be that the Department's rules will be more accurate and reflective of legislative intent. There will be no effect on individuals required to comply with the amendments as proposed, unless they are the losing party at a contested administrative proceeding. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

Comments on the proposed amendments may be submitted in writing to Ernest C.

Garcia, General Counsel, Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, TX 78705 or by email to [smlinfo@sml.texas.gov](mailto:smlinfo@sml.texas.gov) within 30 days of publication in the *Texas Register*.

The amendments are proposed under Texas Finance Code §11.306, which provides that the Finance Commission may adopt residential mortgage loan origination rules as provided by Chapter 156 and by Texas Finance Code §156.102, which provides that the Finance Commission may adopt rules relating to Residential Mortgage Loan Companies.

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

<rule>

***§80.302 Hearings and Appeals***

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

(d) Notwithstanding any other provision of any administrative or agency rules applicable to the Department, the Department shall be entitled to recover the costs of any hearing arising from an appeal of an order issued by the Commissioner where the costs associated with same were primarily attributable to the party filing the appeal or the Department substantially prevails in the matter, whether that hearing is before a contracted administrative law judge or before the State Office of Administrative Hearings (SOAH). Costs as used herein, shall include filing fees, court reporter fees and the costs associated with time expended by the judge, but shall not include attorney's fees or investigative costs.

Costs shall also include the costs of preparing any record of the hearing in the event of an appeal to the district court.

**Certification**

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

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

6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 Texas Administrative Code (TAC), §81.302, Concerning Hearings and Appeals.

**PURPOSE:** The purpose of the proposed amendment is to clarify that the Department should be permitted to recover costs of any hearing, when the Department is the prevailing party.

**RECOMMENDED ACTION:** The Department recommends that the Commission approve publication of the proposed amendments in 7 TAC, Chapter 81, §81.302 for publication in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we publish proposed amendment to 7 TAC Chapters 81, §81.302 in the *Texas Register* for comment.

***Title 7. Banking and Securities***

***Part 4. Texas Department of Savings and Mortgage Lending***

***Chapter 81. Mortgage Bankers and Residential Mortgage Loan Originators***

***Subchapter D. Compliance and Enforcement***

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), proposes to amend 7 Texas Administrative Code §81.302.

In general, the purpose of the proposal regarding this rule is to add clarifying language to the hearing and appeal process under Chapter 81.

Section 81.302 addresses hearings and appeals. The proposed amendments seek to clarify that the Department should be permitted to recover costs of any hearing, when the Department is the prevailing party.

Caroline C. Jones, the Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering these rules.

Commissioner Jones also has determined that, for each year of the first five years the amended rules as proposed are in effect, the public benefit anticipated as a result will be that the Department's rules will be more accurate and reflective of legislative intent. There will be no effect on individuals required to comply with the amendments as proposed, unless they are the losing party at a contested administrative proceeding. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

Comments on the proposed amendments may be submitted in writing to Ernest C.

Garcia, General Counsel, Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, TX 78705 or by email to [smlinfo@sml.texas.gov](mailto:smlinfo@sml.texas.gov) within 30 days of publication in the *Texas Register*.

The amendments are proposed under Texas Finance Code §157.023, which provide that the Finance Commission may adopt rules relating to Mortgage Bankers and Residential Mortgage Loan Originators.

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

<rule>

***§81.302 Hearings and Appeals***

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

(d) Notwithstanding any other provision of any administrative or agency rules applicable to the Department, the Department shall be entitled to recover the costs of any hearing arising from an appeal of an order issued by the Commissioner where the costs associated with same were primarily attributable to the party filing the appeal or the Department substantially prevails in the matter, whether that hearing is before a contracted administrative law judge or before the State Office of Administrative Hearings (SOAH). Costs as used herein, shall include filing fees, court reporter fees and the costs associated with time expended by the judge, but shall not include attorney's fees or investigative costs. Costs shall also include the costs of preparing any record of the hearing in the event of an appeal to the district court.

**Certification**

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

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

**D.**

**Office of Consumer  
Credit Commissioner**

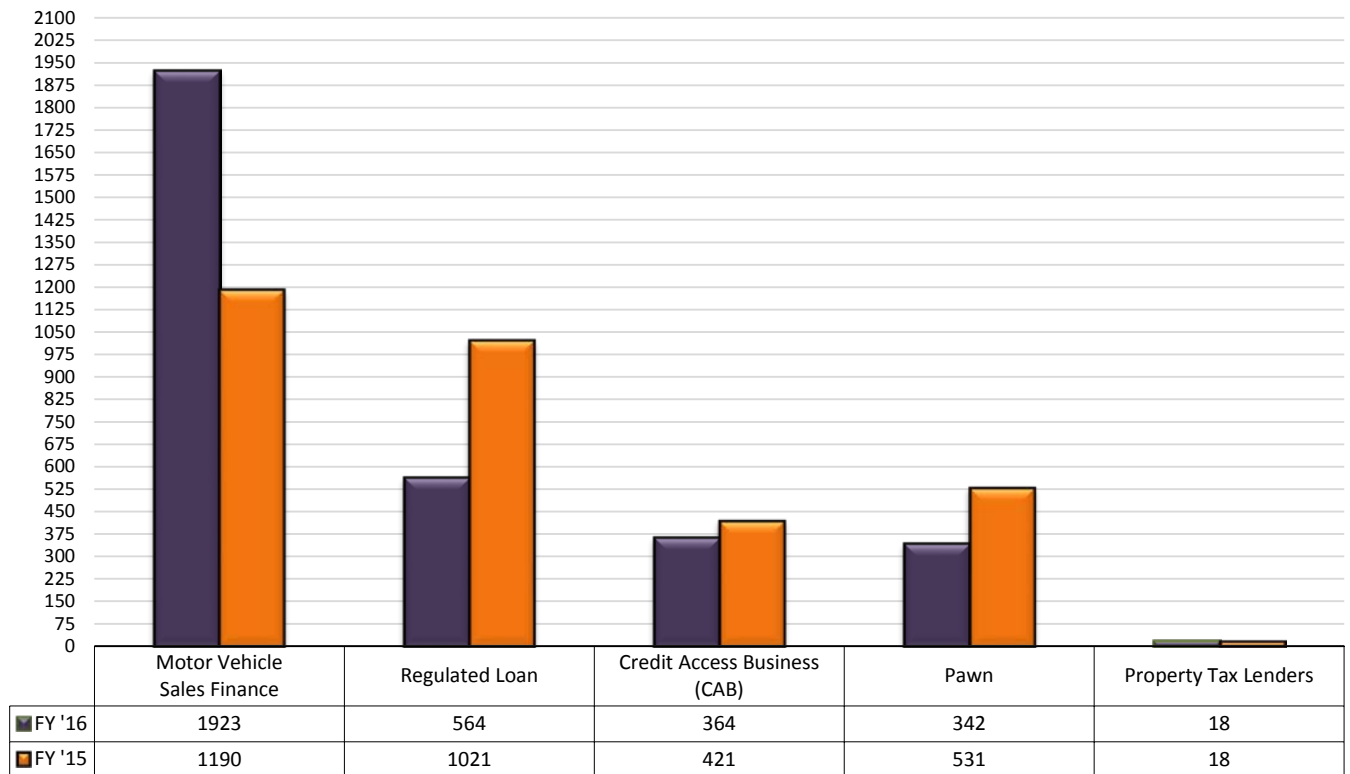


## Consumer Protection and Assistance Report

*Rudy Aguilar, Director of Consumer Protection*

A comparison of examinations conducted in Fiscal Year 2015 (FY '15) and Fiscal Year 2016 (FY '16) is charted below. The concentration of initial examiner training on Motor Vehicle Sales Finance (MVSF), as well as scheduling of examinations in this area, has allowed the agency to meet the FY '16 MVSF goal early in the month of June. Staff will continue to conduct MVSF examinations for training of new examiners as well as to address risk based scheduling, otherwise, examinations for the remainder of the fiscal year will be scheduled in the four other examination areas. It is anticipated the agency will meet examination goals in all areas.

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

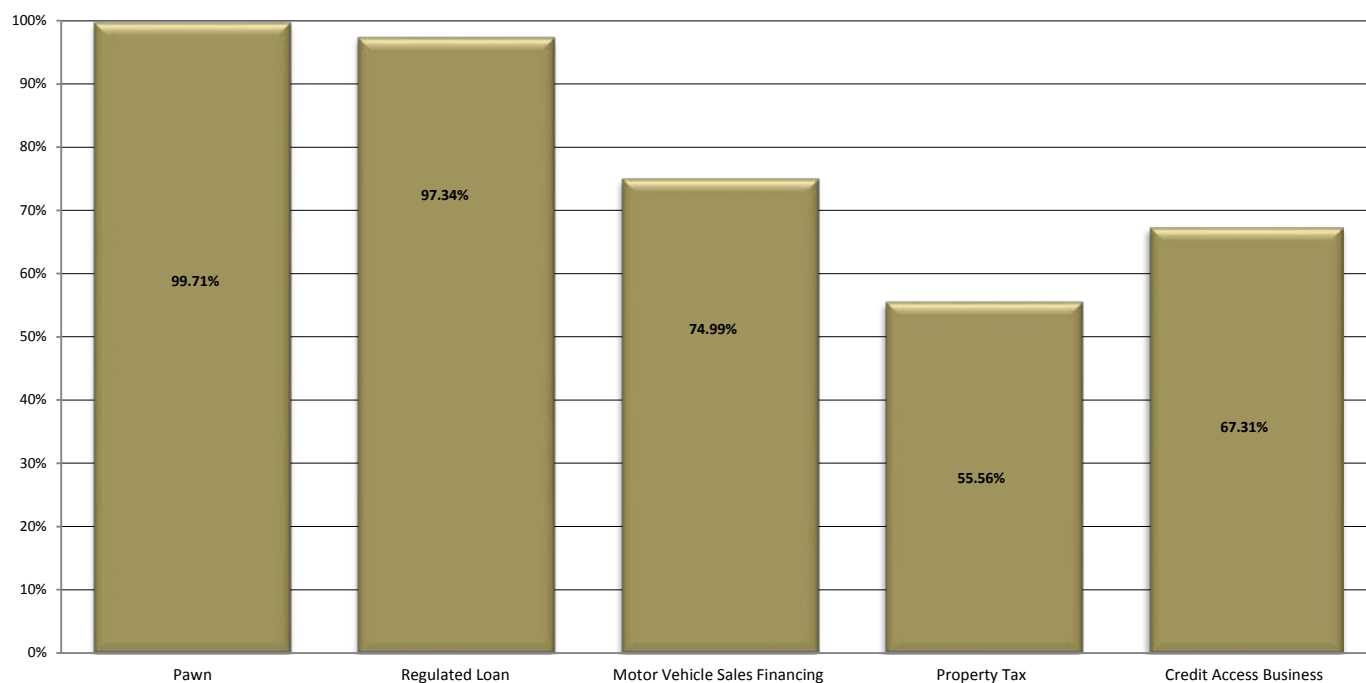


Classroom training was completed on July 22, 2016 for the three newly hired Houston Financial Examiners. All three examiners successfully completed classroom training, having obtained some of the highest test scores to date. These examiners are now participating in the 10-week field training. As with the previous examiner training class, at the conclusion of the 10 week period, these examiners will go through a MVSF exam competency certification process.

Financial Examiner V and Senior Investigator, Dennis Love, will be retiring August 31, 2016. Mr. Love is retiring after 16 years and 5 months service with the agency. His position has been posted.

The chart below notes the acceptable level of compliance in the five examination areas through June 2016. Pawn, Regulated Loan, and MVSF examinations conducted continue to be within the acceptable level of compliance. The acceptable level of compliance in the Property Tax area has improved slightly since the last reporting period. Examinations conducted year to date in the CAB area reflect an 18.52% improvement in level of compliance since the last reporting period.

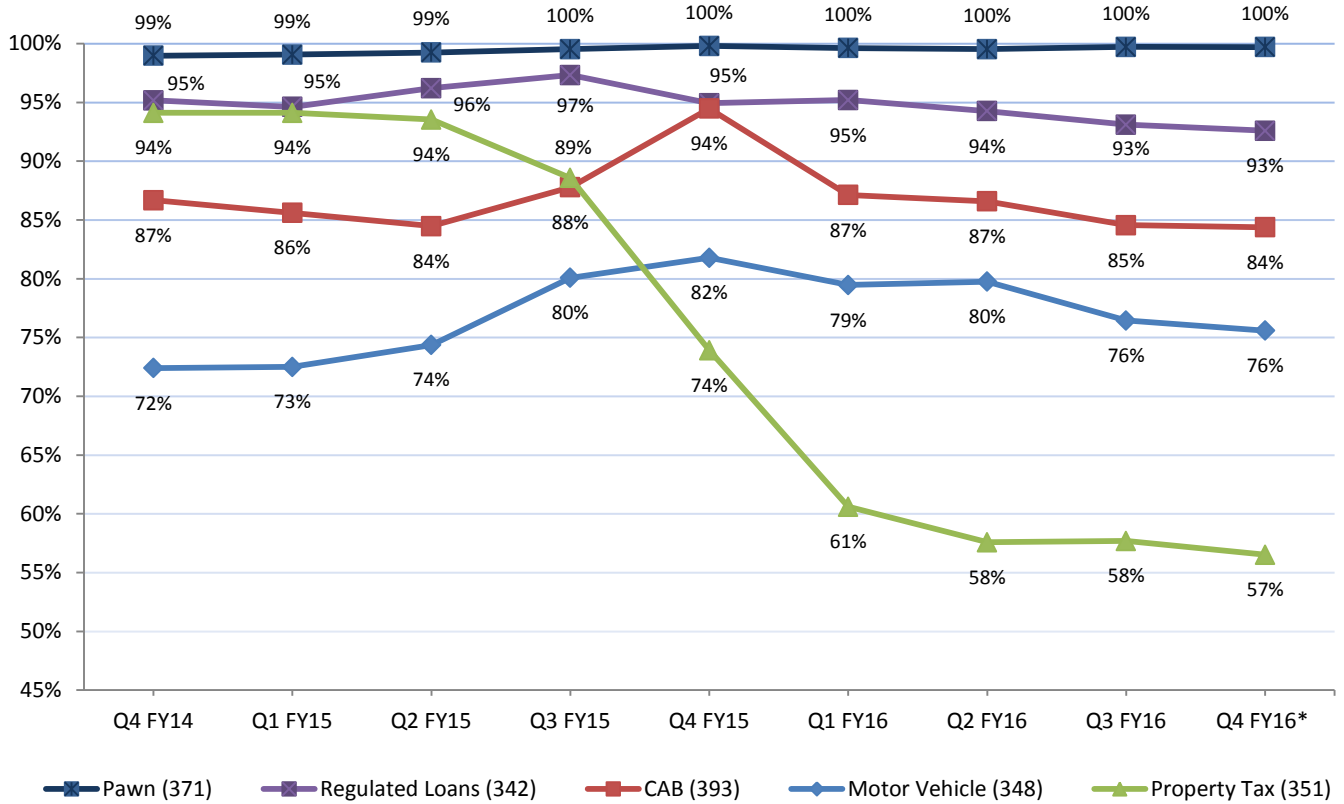
### **Acceptable Level of Compliance FY '16 (Sept 2015 - Jun 2016)**



The chart that follows compares the compliance rates for the five examination areas on a trailing 12 month comparison basis.

## Comparison of Acceptable Level of Compliance

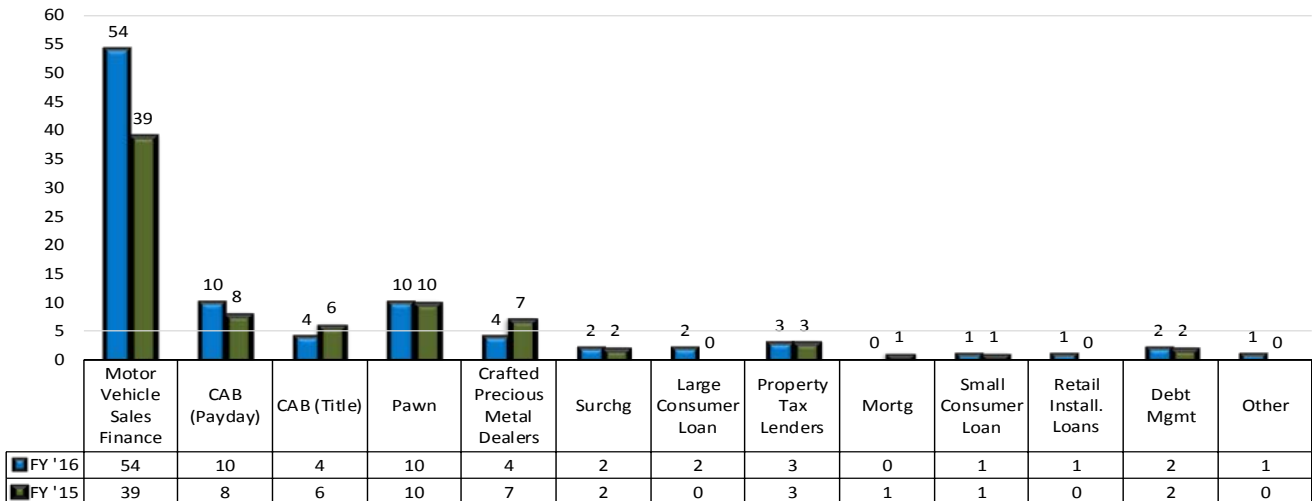
### Compliance Rate at Quarter End (computed using trailing 12 months)



\*Q4 FY16 (June only)

## Investigations

**Investigations Completed**  
**FY '16 (Sept 2015 - Jun 2016) Total: 94**  
**FY '15 (Sept 2014 - Jun 2015) Total: 79**

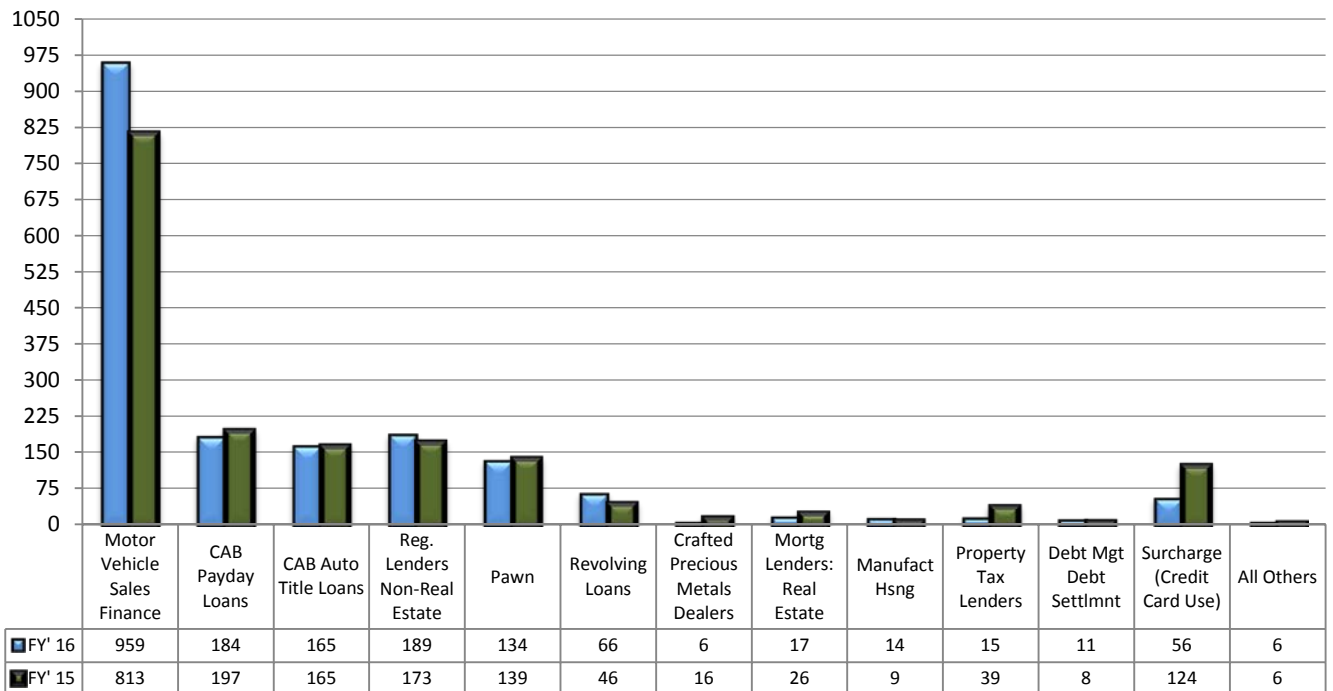


## Consumer Assistance

### Complaints Processed

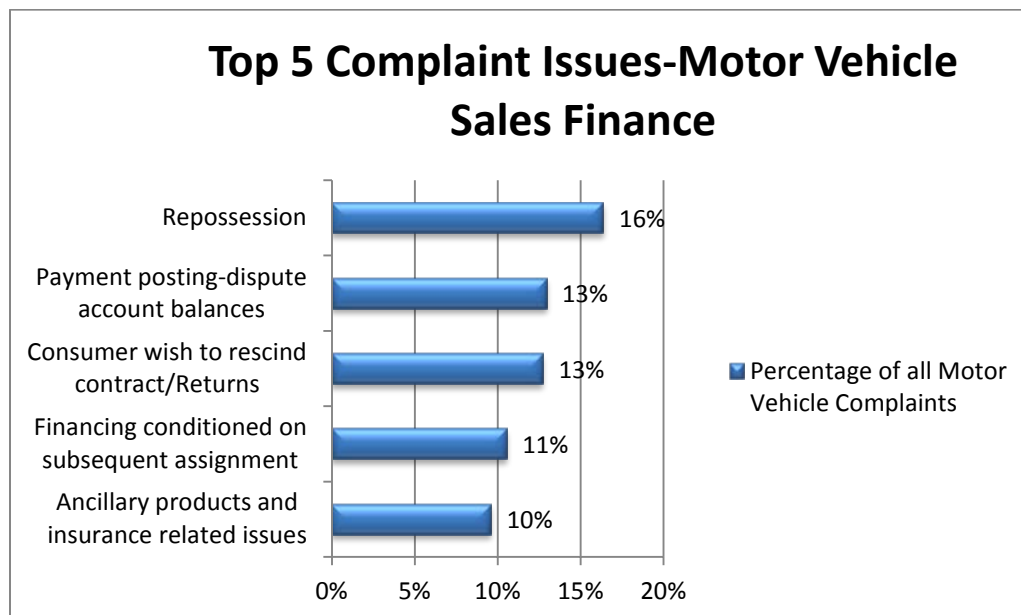
FY '16 (Sept 2015 - Jun 2016) Total: 1,822

FY '15 (Sept 2014 - Jun 2015) Total: 1,761

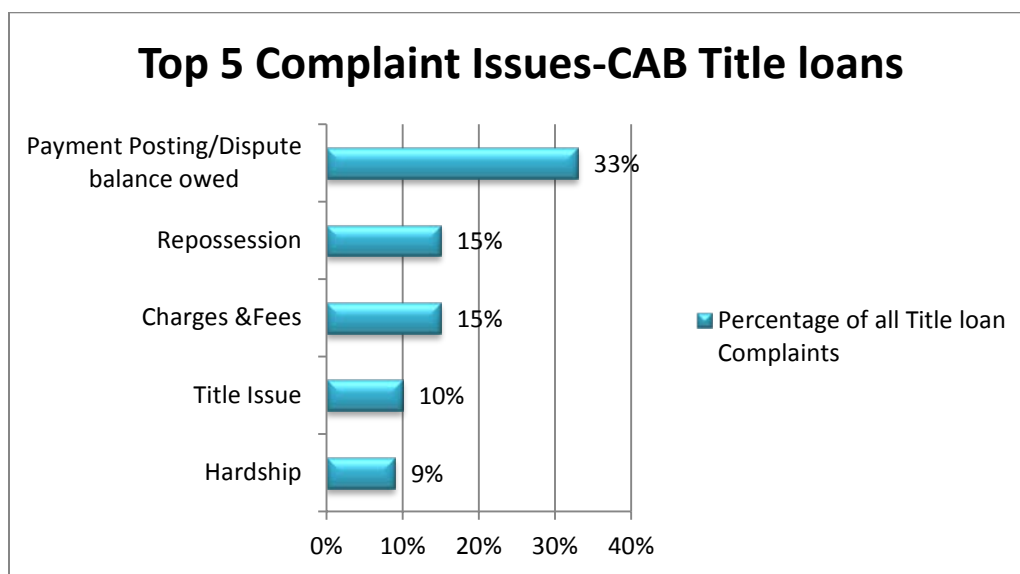
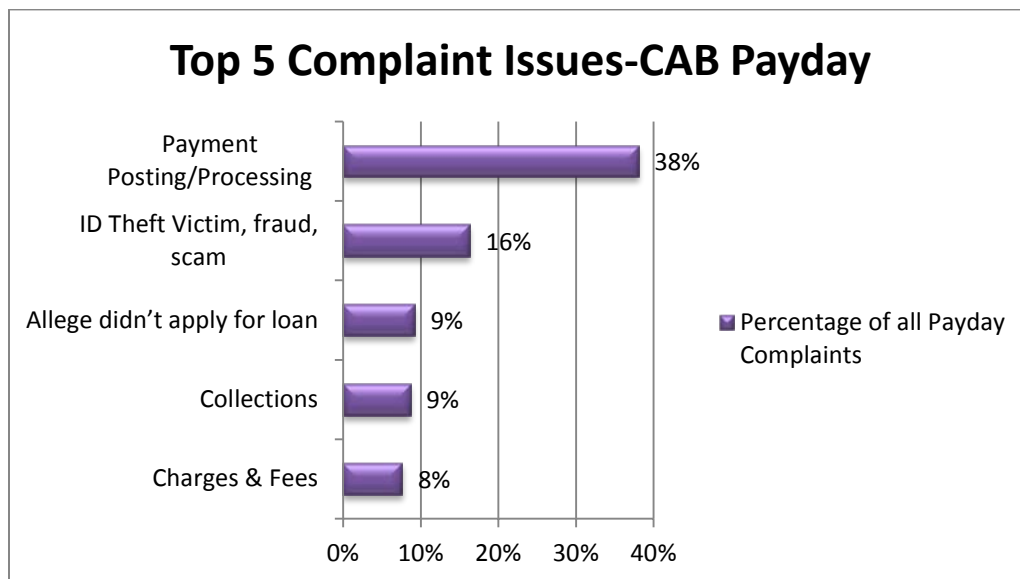


The top four categories of complaints for this reporting period were 1) MVSF, 2) CAB, 3) Regulated Lenders Non-Real Estate, and 4) Pawn.

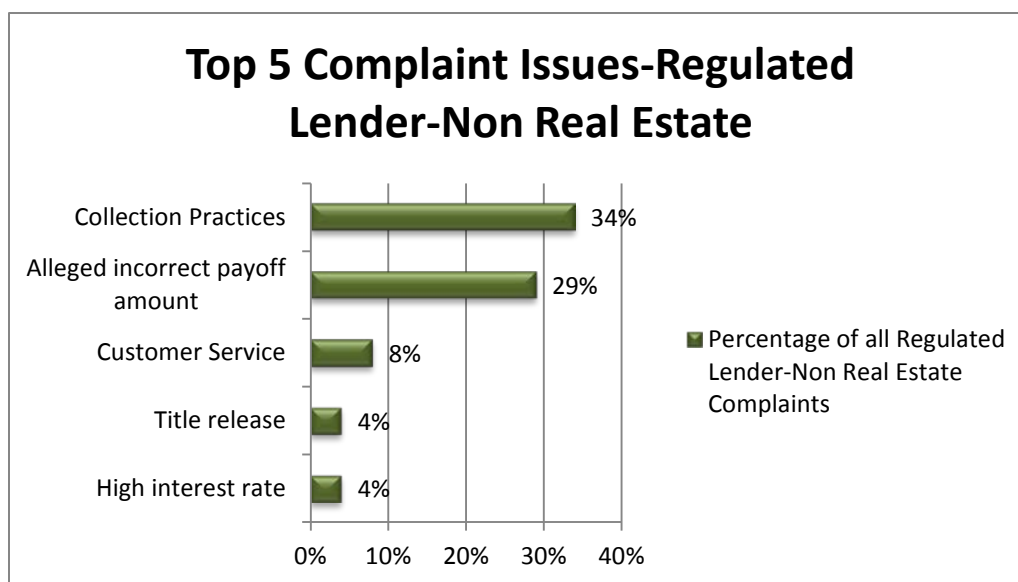
The largest complaint category continues to be MVSF at 52.63% of total complaints. The five most common categories of MVSF complaints are noted in the chart that follows.



CAB Payday and Auto Title Loan complaints were the second largest category of complaints, collectively being 19.16%. Separately, the percentages of total complaints are at 10.10% for Payday loans and 9.06% for Auto Title loans. The five most recurring complaints for CAB Payday and CAB Auto Title are charted separately below.

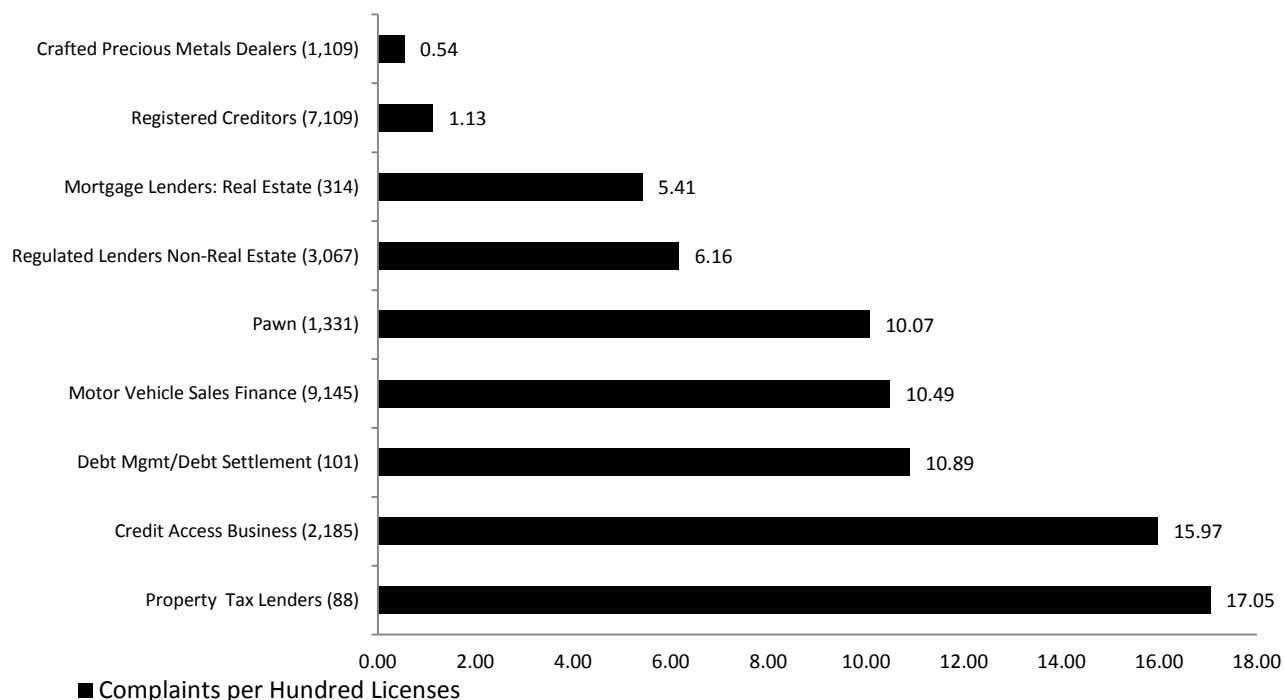


Regulated Lenders Non-Real Estate was the third largest category at 10.37%. The top five categories of complaints for Regulated Lenders Non-Real Estate were identified as collection practices, alleged incorrect payoff amount, customer service issues, release of title, and high interest rate. Percentages for these five categories are charted on the following page.



The ratio of complaints processed to the number of active licenses or registrant population is noted on the chart that follows. The highest ratio of complaints for this reporting period involved Property Tax Lending followed by CAB complaints. Debt Management/Debt Settlement complaints ranked third while the MVSF ratio of complaints to active licenses were fourth.

### Ratio of Complaints Processed to Total Active Licenses or Registrants\* FY '16 (Sept 2015 - Jun 2016)



\*License-Registrant levels as of 07-02-16

### CAB Reporting Update

Reports for the 2<sup>nd</sup> quarter of 2016 were due on 7/31/2016. All reports through the 1<sup>st</sup> quarter of 2016 are available under the publications section of the OCCC website. The percentage of locations reporting on-time for the 2<sup>nd</sup> quarter was 98.31%. The 37 locations which filed delinquent reports will face administrative action.



## **Licensing Report**

*Mirand Zepeda, Manager*

### Renewals

Motor vehicle sales finance renewal ended on July 31 with approximately 90% of licensees renewing, which is consistent with budgeted projections. The licensing team was successful in increasing the number of licensees completing renewal through the online platform, ALECS, by providing skillful customer service and guidance through tech support. ALECS made it possible to send renewal notification via email, utilizing immediate communication and access to complete the process outside of normal business hours, a useful tool for the industry. The department continues to process renewals and reinstatements received timely in the mail, and will be sending cancellation notices to licensees who did not renew.

Renewal for pawnshops ended June 30<sup>th</sup> with a renewal rate of 99% and more than 85% renewing online. The department hopes to carry this online momentum in the industry on to application submission, as pawnshops are the only license group still able to submit paper applications for new licenses.

### Applications Processing

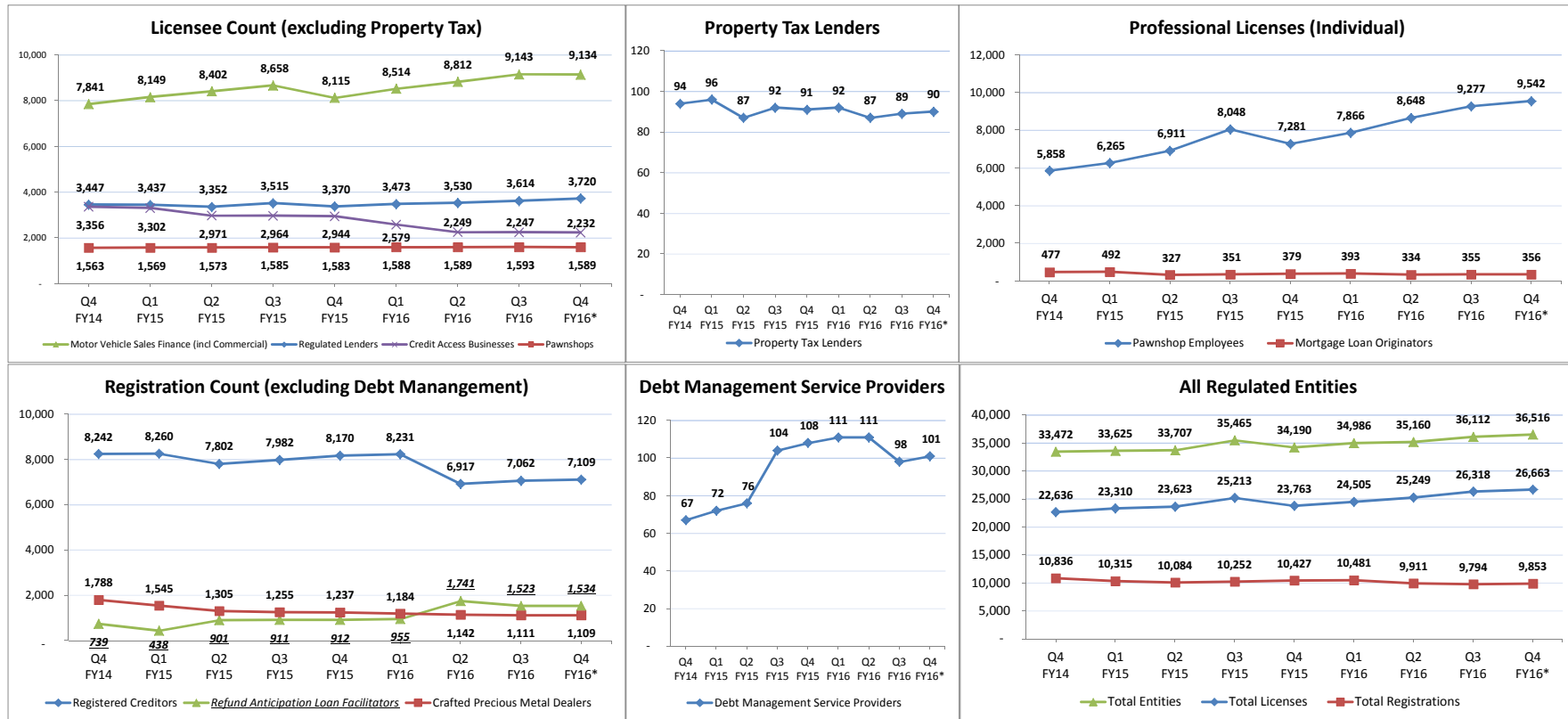
The licensing department is maintaining the goal of pending business application volume at approximately 200 applications or less, a significant accomplishment considering that in June the department received more than 200% of the FY16 average monthly applications volume. That, coupled with other imaging, IT and file consolidation projects, as well as high call volume due to motor vehicle renewal, demonstrates the team's ability to multi-task, while staying focused on application processing.

Pending pawn employee applications did see an increase due to pawn renewal and high call volume, but has averaged to the goal of approximately 300 or less. It is anticipated that more pawnshop licensees will utilize ALECS for application submission, diminishing time spent entering data and increasing application review.

### Regulated Entity Population Trends

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

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





## **Communications, Human Resources & Administration Report**

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

### **Strategic Planning /Stakeholder Engagement & Communication/Website Report**

On July 12, Commissioner Pettijohn and Rudy Aguilar, Director of Consumer Protection were invited to speak at the annual Texas Consumer Finance Association Conference held in Austin. This group represents Texas small consumer installment lenders. Commissioner Pettijohn gave an agency and industry update and participated in the round table discussions fielding informal questions.

During the June-July period, the agency also provided a number of live presentations to various state agencies and industry stakeholders. All presentations are focused on compliance matters and the regulatory role and responsibilities of the agency.

Huffman Lewis, Financial Examiner, presented to the Laredo Police Department on the topic of Pawn Shop and Used Car Finance Regulatory Operations on June 14. In addition, he participated at the Dealer Training for the Texas Department of Motor Vehicles on June 15 in Laredo and presented a Compliance Review Briefing to the Texas Independent Dealers Association Annual Conference in San Antonio on July 26.

William Purce, Senior Review Examiner, Austin, presented to dealers at the Manufactured Housing Division of the Texas Department of Housing and Consumer Affairs training on July 12 in Austin.

The Office of Consumer Credit Commissioner website received 425,490 page views between September 1, 2015 and July 31, 2016. The top pages on the website include Motor Vehicle Sales Finance (27,191 views) and the industries page (17, 672 views). Our traffic consists of 53.69% organic searches, which consist of Google, Yahoo, Bing, or simply all search engines. From these searches, 38.12% was a result of direct traffic to the website, 8.07% were referrals meaning any other website containing a link to our site, and 0.12% Social/Other Category meaning it derived from social media.

For the period between May 1, 2016 and July 31, 2016, the Agency's top traffic derived from the New Documentary Fee Advisory Bulletin (2,066 views), MVSF Industry page (8,561 views), Debt Collection Practices Industry page (3,913 views), Regulated Lenders Industry page (3,578 views), Publications Section (3,215 views), Interest Rates page (3,172 views) and Pawnshops/Pawn employees Industry page (3,156 views).

The ALECS program website has received 381,593 page views between September 1, 2015 and July 31, 2016. The traffic consists of 75.96% direct traffic, 21.13% organic searches, 2.79% referrals, 0.12% Social/Other Category.

### **Human Resources**

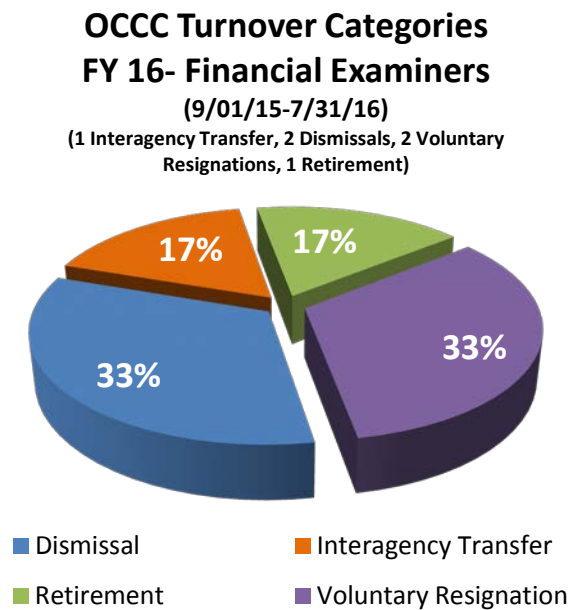
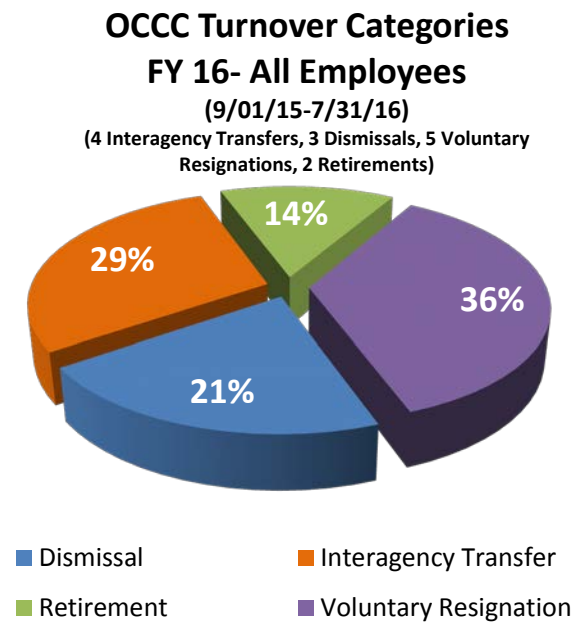
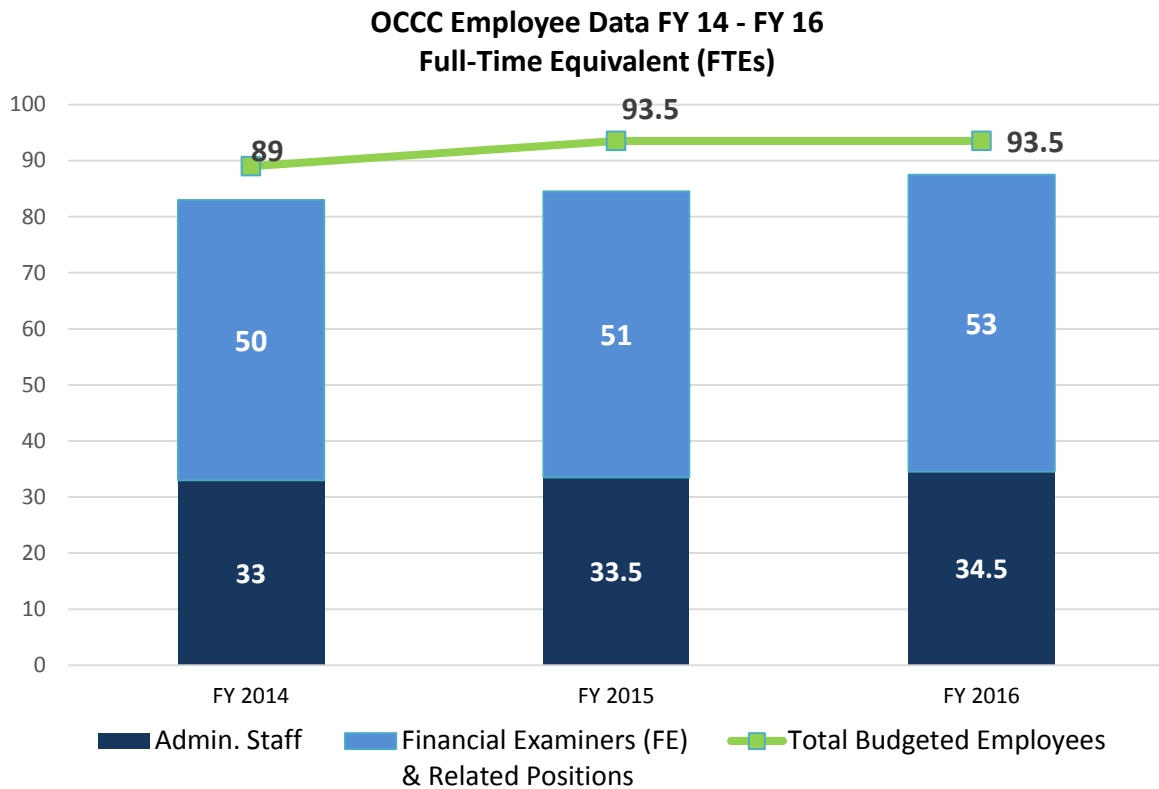
For this reporting period (June-July), the agency had two staff members depart the agency: Customer Service Representative II and Financial Examiner I, (1 retirement and 1 dismissal).

During this same period, the agency hired two (2) Financial Examiners I (Houston Region) and two (2) Administrative Assistant II positions. Four positions were filled for this period, allowing the FTE count to hold steady at 87.5 FTEs.

The current overall turnover ratio is 16.18%. However, when excluding retirement and interagency transfers from the overall ratio, the percentage is 9.25% and 13.64% within the Financial Examiner series.

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

| <b>FY 16 Vacancies</b>                                   |               |
|--|---------------|
| <b>Vacancy</b>   | <b>Status</b> |
| Customer Service Representative II – Austin Headquarters | Active        |
| Financial Examiner (FE) III-IV                           | Active        |



The Agency had previously reported that SORM had conducted its Risk Management Program Review (RMPR) on May 31. SORM had three items for recommendation: (1) develop an armed intruder policy and include training for staff, (2) develop an indoor air quality (IAQ) plan, and (3) develop a small appliance policy.

With the exception of the armed intruder training to staff that will be conducted at the upcoming annual staff conference, all other Items have been completed.

### **Financial Literacy**

To date, Consumer Education staff has provided financial education to 171 Texas consumers. The department is anticipating reaching the FY2016 goal of 325 Texas consumers with upcoming scheduled presentations.

In recent months, several presentations have been given to the senior community encouraging financial planning and providing awareness regarding elder financial exploitation. The agency has made significant outreach to senior centers across Texas and recently presented the financial literacy program to 50 senior activity directors in San Antonio. Additional presentations have been conducted in Austin and Watauga.

The agency also heavily targeted summer recreation programs to conduct financial education sessions for youth. Unfortunately, much of the summer programming is determined early in the year and only one session was held at the Metz Recreation Center in Austin. The financial literacy specialist was successful in developing numerous contacts and expects to be more active in after school programming in the fall.

The program has also been successful in developing a relationship with the outreach team for Travis County Constable. Staff has been invited to represent the agency at two community events and more are scheduled for the fall.

In addition to targeting broad age groups, the focus of the program is to expand its reach across the state of Texas. The financial literacy specialist is actively reaching out to organizations in each Metropolitan Statistical Area. Within the last quarter, the agency has reached out to more than 100 organizations across Texas to seek financial literacy opportunities.



## **Accounting & IT Reports**

### Accounting

The accounting department prepared and completed the FY 17 budget. The department is also getting ready for fiscal year-end. The department will be sending employees to Comptroller training on year-end procedures.

The State Auditor's Office will be conducting an audit of the OCCC beginning this month. The audit objectives are to (1) verify the accuracy of certain financial and performance data and the effectiveness of related controls at selected self-directed, semi-independent agencies and (2) evaluate the agencies' processes for setting fees and penalties. The work will include the automated systems and processes that support the functions being audited. Initial interviews have been conducted with agency management.

### Information Technology-Legacy Modernization

OCCC has approved the final requirements for all modules of the ACE (Annual Report, Complaint, Examination) compliance tool application. The first module, online Documentary Fee Filing, was launched in July and is in production. Over 950 Motor Vehicle dealers have used the module to file a Documentary Fee notification online. A final build to address minor issues is currently in the test environment and went into production August 2. Overall, the project consists of five component milestones, the first of which is complete, three are in progress and one is pending, with a projected final implementation date of December 30, 2016.

### Security

The agency upgraded the firewall appliance and installed new intrusion detection software, Sourcefire. During the past month the appliance has allowed the agency to locate and mitigate several potentially vulnerable computers.

OCCC is utilizing DIR's contract with an external IT security firm to perform a Security and Risk Assessment. The purpose of the project is to assess existing information security process and create a road map to address any gaps and mitigate associated risks. Relevant documents have been shared with the team to assist them in an assessment of OCCC's current state. A kick-off meeting was held August 17, and interviews and meetings with appropriate personnel are scheduled. The project is slated to last six to eight weeks.

# OFFICE OF CONSUMER CREDIT COMMISSIONER

## EXECUTIVE SUMMARY

*As of May 31, 2016*

|   | FY<br>2014 | FY<br>2015 | FISCAL YEAR 2016 |            |            |            |        |
|---|------------|------------|------------------|------------|------------|------------|--------|
|   |            |            | 1st<br>QTR       | 2nd<br>QTR | 3rd<br>QTR | 4th<br>QTR | FYTD   |
| CONSUMER PROTECTION                                       |            |            |                  |            |            |            |        |
| Monies Returned to Consumers (000)                        | 22,977     | 8,315      | 4,348            | 6,390      | 1,664      |            | 12,402 |
| Regulated Lenders Examinations                            | 1,106      | 1,065      | 173              | 230        | 143        |            | 546    |
| Property Tax Lender Examinations                          | 34         | 23         | 10               | 2          | 6          |            | 18     |
| Pawnshop Examinations                                     | 593        | 533        | 112              | 105        | 114        |            | 331    |
| Motor Vehicle Examinations                                | 1,247      | 1,565      | 513              | 539        | 668        |            | 1,720  |
| Credit Access Businesses Examinations                     | 1,031      | 816        | 101              | 12         | 228        |            | 341    |
| CONSUMER ASSISTANCE                                       |            |            |                  |            |            |            |        |
| Telephone Complaints Received                             | 1,067      | 1,186      | 337              | 262        | 290        |            | 889    |
| Written Complaints Received                               | 976        | 1,000      | 221              | 209        | 211        |            | 641    |
| Total Complaints Processed                                | 1,915      | 2,131      | 650              | 528        | 475        |            | 1,653  |
| % of Written Complaints<br>Closed within 90 Calendar Days | 90.60%     | 82.47%     | 95.72%           | 95.14%     | 97.11%     |            | 95.93% |
| ADMINISTRATIVE ENFORCEMENT ACTIONS                        |            |            |                  |            |            |            |        |
| Originated  | 321        | 472        | 83               | 75         | 183        |            | 341    |
| Finalized   | 335        | 390        | 95               | 89         | 81         |            | 265    |
| LICENSING AND REGISTRATION                                |            |            |                  |            |            |            |        |
| Licenses  |            |            |                  |            |            |            |        |
| Regulated Loan Licenses                                   | 3,447      | 3,370      | 3,473            | 3,530      | 3,614      |            | 3,614  |
| Pawnshop Licenses   | 1,563      | 1,583      | 1,588            | 1,589      | 1,593      |            | 1,593  |
| Pawnshop Employee Licenses                                | 5,858      | 7,281      | 7,866            | 8,648      | 9,277      |            | 9,277  |
| Commercial MV Sales Fin. Licenses                         | 16         | 19         | 25               | 27         | 30         |            | 30     |
| Motor Vehicle Sales Finance Licenses                      | 7,825      | 8,096      | 8,489            | 8,795      | 9,113      |            | 9,113  |
| Property Tax Loan Licenses                                | 94         | 91         | 92               | 87         | 89         |            | 89     |
| NMLS-Mortgage Loan Originators                            | 477        | 379        | 393              | 334        | 355        |            | 355    |
| Credit Access Business Licenses                           | 3,356      | 2,944      | 2,579            | 2,249      | 2,247      |            | 2,247  |
| Registrations   |            |            |                  |            |            |            |        |
| Registered Creditors                                      | 8,242      | 8,170      | 8,231            | 6,917      | 7,062      |            | 7,062  |
| Crafted Precious Metal Dealers                            | 1,788      | 1,237      | 1,184            | 1,142      | 1,111      |            | 1,111  |
| Debt Management Service Providers                         | 67         | 108        | 111              | 111        | 98         |            | 98     |
| Refund Anticipation Loan Facilitators                     | 739        | 912        | 955              | 1,741      | 1,523      |            | 1,523  |
| Applications  |            |            |                  |            |            |            |        |
| Business -- New   | 1,427      | 1,832      | 409              | 469        | 504        |            | 1,382  |
| Business -- Change of Ownership                           | 473        | 624        | 139              | 49         | 81         |            | 269    |
| Pawnshop Employees -- New                                 | 2,011      | 3,010      | 715              | 974        | 950        |            | 2,639  |
| HUMAN RESOURCES DATA                                      |            |            |                  |            |            |            |        |
| Field Examiners Staffing                                  | 42         | 43         | 41               | 40         | 40         |            | 40     |
| Total Staffing  | 83         | 85.5       | 81.5             | 80.5       | 85.5       |            | 85.5   |

**Office of Consumer Credit Commissioner**  
**Actual Performance for Output/Efficiency Measures**

| Type/Strategy/Measure   | 2016<br>Target | 2016<br>Quarter<br>Actual | 2016<br>YTD | Percent of<br>Annual<br>Target |   |
|---|----------------|---------------------------|-------------|--------------------------------|---|
| <b>Output Measures-Key</b>  |                |                           |             |                                |   |
| 1-1-1 COMPLAINT RESOLUTION  |                |                           |             |                                |   |
| 1. # COMPLAINTS CLOSED  |                |                           |             |                                |   |
| <b>Quarter 1</b>  | 2,100          | 650                       | 650         | 30.95%                         | * |
| The agency experienced a 47.5% increase in processed complaints in the motor vehicle finance category over the same quarter in FY '15. This may be partially attributed to a nationwide increase in motor vehicle sales in calendar year 2015.                          |                |                           |             |                                |   |
| <b>Quarter 2</b>  | 2,100          | 528                       | 1,178       | 56.10%                         | * |
| There was a 37.1% increase in processed complaints in the motor vehicle finance category over the first two quarters in FY '15. The increase in motor vehicle sales in calendar year 2015 continues to be a factor in exceeding the overall processed complaint target. |                |                           |             |                                |   |
| <b>Quarter 3</b>  | 2,100          | 475                       | 1,653       | 78.71%                         |   |
| 2. # INVESTIGATIONS CLOSED  |                |                           |             |                                |   |
| <b>Quarter 1</b>  | 86             | 29                        | 29          | 33.72%                         | * |
| A concerted effort has been made to close older investigations.   |                |                           |             |                                |   |
| <b>Quarter 2</b>  | 86             | 29                        | 58          | 67.44%                         | * |
| Efforts are being made to hold the average investigation time to less than 180 days and a more dedicated effort is being made to address unlicensed activity.   |                |                           |             |                                |   |
| <b>Quarter 3`</b>   | 86             | 29                        | 87          | 101.16%                        | * |
| Mr. Dennis Love has announced his retirement effective at the end of the fiscal year. He is being as diligent as possible in processing and closing investigations before his departure.  |                |                           |             |                                |   |

|       |  |       |       |       |           |
|-------|--|-------|-------|-------|-----------|
| 2-1-1 | EXAMINATION AND ENFORCEMENT  |       |       |       |           |
|       | 1. # COMPLIANCE EXAMINATIONS PERFORMED   |       |       |       |           |
|       | <b>Quarter 1</b>   | 4,000 | 909   | 909   | 22.73%    |
|       | <b>Quarter 2</b>   | 4,000 | 888   | 1,797 | 44.93% *  |
|       | The agency completed 1,797 examinations as of February 29, which is 89.9% of the prorated goal for mid-year and three examinations shy of the 5% tolerance for performance measures. Six of seven field examiner vacancies have now been filled, with a new examiner class scheduled to begin on April 4, 2016.  |       |       |       |           |
|       | <b>Quarter 3</b>   | 4,000 | 1,159 | 2,956 | 73.90%    |
|       |  |       |       |       |           |
|       |  |       |       |       |           |
|       |  |       |       |       |           |
|       |  |       |       |       |           |
| 2-2-1 | LICENSING  |       |       |       |           |
|       | 1. # BUSINESS APPLICATIONS PROCESSED   |       |       |       |           |
|       | <b>Quarter 1</b>   | 1,875 | 409   | 409   | 21.81%    |
|       | <b>Quarter 2</b>   | 1,875 | 469   | 878   | 46.83%    |
|       | <b>Quarter 3</b>   | 1,875 | 504   | 1,382 | 73.71%    |
|       | 2. # INDIVIDUAL LICENSES PROCESSED   |       |       |       |           |
|       | <b>Quarter 1</b>   | 2,500 | 715   | 715   | 28.60%    |
|       | <b>Quarter 2</b>   | 2,500 | 974   | 1,689 | 67.56% *  |
|       | Increased efficiencies in ALECS, a higher volume of incoming pawn employee applications in Q2, and the department filling a vacancy for a license and permit specialist who primarily processes pawn employee applications all contributed to significant gains in individual licenses processed. These numbers will likely even out in Qs 3 & 4 as the department reallocates resources and incoming applications drop back down to average.                                    |       |       |       |           |
|       | <b>Quarter 3</b>   | 2,500 | 950   | 2,639 | 105.56% * |
|       | The high volume of incoming individual applications has continued through Q3, while processing and turn-around times have improved efficiencies. Licensees utilizing ALECS for submission of these applications has given the department an opportunity to increase the number of applications processed. Various other duties and tasks occurring in Q4 will potentially take resources away from processing individual licenses, diminishing the variances seen in Qs 2 and 3. |       |       |       |           |

|       |   |     |    |    |        |   |
|-------|---|-----|----|----|--------|---|
| 3-1-1 | # CONSUMERS RECEIVING FINANCIAL EDUCATION   |     |    |    |        |   |
|       | <b>Quarter 1</b>  | 325 | 46 | 46 | 14.15% | * |
|       | The first quarter of FY 2016 required heavy concentration on preparing, reviewing and selecting the second cycle of TFEE funds to new recipients, effective January 2016. With the new funding cycle underway, staff is able to focus on achieving end of fiscal year consumer education goals.                 |     |    |    |        |   |
|       | <b>Quarter 2</b>  | 325 | 39 | 85 | 26.15% | * |
|       | Staff remained focused on TFEE grant efforts through the end of February, presenting one consumer training in the second quarter before the staff member resigned from the agency in early March. Efforts are underway to fill this position with the goal to reach this measure by the end of the fiscal year. |     |    |    |        |   |
|       | <b>Quarter 3</b>  | 325 | 0  | 85 | 26.15% | * |
|       | This staff position was filled May 2, and concerted efforts are underway to secure speaking engagements before the end of the fiscal year to try and reach the year-end target.   |     |    |    |        |   |

\* Varies by 5% or more from quarterly or year-end targets.



## **Legal Department Report**

*Michael Rigby, General Counsel*

August 2016

### **Enforcement Report**

#### **Regulated Loan – Annual Report**

In May 2016, the OCCC issued an Order to File Timely and Accurate Annual Reports against 88 regulated loan licensees who did not timely file their 2015 Annual Report. The injunctive order directed the licensees to file their 2015 Annual Report within 30 days of receiving the order and to file future annual reports in a timely manner. Regulated loan licensees are statutorily required to file an annual report by May 1 of each year.

Of the 88 late filers, 77 licensees filed their 2015 Annual Report within 30 days and did not request a hearing. One licensee was granted permission to surrender its license. Ten licensees did not file their report or surrender their license. On July 15, 2016, the OCCC issued a Final Order against the 10 licensees, notifying them that the OCCC would assess an administrative penalty against them if their report was not filed within 10 days of receiving the Final Order.

### **Administrative Rule Report**

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

- An adoption of amendments, new rules, and repeals regarding regulated lenders, including the licensing process and technical corrections.
- An adoption of amendments regarding refund anticipation loans, including the registration process and disclosures.
- A proposal of amendments, new rules, and repeals regarding pawnshops, including the licensing process, maintenance of certain disclosures and records related to the Department of Defense's Military Lending Act Rule, and other technical corrections and updates.

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

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

## **Performance Report**

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

| <b>Enforcement Actions Completed as of July 31, 2016</b> |                  |                |                |                |
|--|------------------|----------------|----------------|----------------|
|  | <b>FYTD 2016</b> | <b>FY 2015</b> | <b>FY 2014</b> | <b>FY 2013</b> |
| <b>Revocation / Suspension Actions</b>                   |                  |                |                |                |
| Regulated Loan License                                   | 1                | 27             | 10             | 3              |
| Pawnshop License   | 3                | 2              | 1              | 0              |
| Pawnshop Employee License                                | 2                | 2              | 1              | 3              |
| Credit Access Business                                   | 2                | 1              | 4              | 0              |
| Motor Vehicle Sales Finance License                      | 9                | 4              | 4              | 3              |
| Property Tax Loan License                                | 0                | 0              | 4              | 0              |
| Crafted Precious Metal Dealer                            | 0                | 2              | 0              | 0              |
| <b>Total Revocation / Suspension Actions</b>             | <b>17</b>        | <b>38</b>      | <b>24</b>      | <b>9</b>       |
| <b>Injunction Actions</b>                                |                  |                |                |                |
| Regulated Loan License                                   | 77               | 1              | 0              | 1              |
| Pawnshop License   | 1                | 0              | 0              | 0              |
| Pawnshop Employee License                                | 0                | 0              | 0              | 0              |
| Credit Access Business License                           | 23               | 1              | 4              | 0              |
| Motor Vehicle Sales Finance License                      | 17               | 12             | 8              | 13             |
| Property Tax Loan License                                | 16               | 1              | 2              | 1              |
| Crafted Precious Metal Dealer                            | 0                | 3              | 0              | 0              |
| Registered Creditor (Ch. 345)                            | 1                | 0              | 0              | 1              |
| Debt Management Services (Ch.394)                        | 1                | 6              | 1              | 1              |
| Credit Card Surcharge (Ch. 339)                          | 6                | 1              | 0              | 0              |
| Residential Mortgage Loan Originator                     | 0                | 0              | 2              | 0              |
| <b>Total Injunction Actions</b>                          | <b>142</b>       | <b>25</b>      | <b>17</b>      | <b>17</b>      |
| <b>Administrative Penalty Actions</b>                    |                  |                |                |                |
| Regulated Loan License                                   | 0                | 73             | 121            | 144            |
| Pawnshop License   | 40               | 4              | 6              | 10             |
| Pawnshop Employee License                                | 1                | 4              | 8              | 8              |
| Credit Access Business License                           | 91               | 136            | 56             | 53             |
| Motor Vehicle Sales Finance License                      | 123              | 76             | 88             | 113            |
| Property Tax Loan License                                | 3                | 8              | 18             | 12             |
| Crafted Precious Metal Dealer                            | 2                | 0              | 1              | 0              |
| <b>Total Administrative Penalty Actions</b>              | <b>260</b>       | <b>301</b>     | <b>298</b>     | <b>340</b>     |
| <b>Application Denial and Protest Actions</b>            |                  |                |                |                |
| Regulated Loan License                                   | 0                | 0              | 0              | 1              |
| Pawnshop License   | 1                | 0              | 0              | 2              |
| Pawnshop Employee License                                | 7                | 13             | 2              | 25             |
| Credit Access Business License                           | 0                | 2              | 0              | 3              |

|  |            |            |            |            |
|--|------------|------------|------------|------------|
| Motor Vehicle Sales Finance License          | 3          | 8          | 0          | 6          |
| Property Tax Loan License                    | 0          | 0          | 0          | 0          |
| Residential Mortgage Loan Originator         | 0          | 1          | 0          | 0          |
| <b>Total App. Denial and Protest Actions</b> | <b>11</b>  | <b>24</b>  | <b>2</b>   | <b>37</b>  |
|  |            |            |            |            |
| <b>Total Enforcement Actions Closed</b>      | <b>430</b> | <b>388</b> | <b>341</b> | <b>403</b> |

From June 1, 2016 to July 31, 2016, the OCCC:

- issued 153 final orders,
- opened 20 cases in order to assess administrative penalties,
- opened four cases in order to issue administrative injunctions,
- participated in no contested case hearings, and
- dismissed one contested case hearing.

The OCCC has two hearings scheduled between August 1, 2016 and September 30, 2016.

### **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 have appealed the case to the U.S. Supreme Court. 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 U.S. Dist. LEXIS 40739 (W.D. Tex. Feb. 4, 2015).

The plaintiffs filed a petition to appeal the case to the U.S. Supreme Court on May 31, 2016. The plaintiffs argue that the Court should hold this case until it rules on the *Expressions Hair Design* case (discussed below), or alternatively, grant review in both this case and *Expressions Hair Design*. On July 5, the OCCC filed a brief in opposition, arguing that the Fifth Circuit's decision was correct and does not warrant review by the Supreme Court. On July 25, the plaintiffs filed a reply brief reaffirming their position. The Court is scheduled to consider the case in conference on September 26, to decide whether it will hear the case in the 2016-2017 term.

The full style of the case is *Lynn Rowell d/b/a Beaumont Greenery, MPC Data and Communications, Inc., Micah Cooksey, NXT Properties, Inc., Mark Harken, Montgomery Chandler, Inc., Paula Cook, Townsley Designs, LLC, and Shonda Townsley v. Leslie L. Pettijohn, in her official capacity as Commissioner of the Office of Consumer Credit Commissioner of the State of Texas*. The 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.

Similar cases have been filed in three other states:

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

***State of Texas v. LowerMyBills, Inc.:***

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

On January 12, 2016, the parties resolved the case as to Experian. On May 18, 2016, the court granted an agreed motion to abate the case until October 3, 2016, to give the parties more time to explore informal options to resolve the remaining claims against LowerMyBills. The full style of the case is *State of Texas v. LowerMyBills, Inc. and Experian Information Solutions, Inc.* The case number is DC-14-14587, filed in the 14th District Court of Dallas County, Texas.

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

Several credit access businesses (CABs) have sued cities, arguing that CAB ordinances are preempted under state law. In June 2015, the Fort Worth court of appeals rejected a challenge to Denton’s CAB ordinance, finding that the CAB had not demonstrated a sufficient harm to its property interests to provide a state court with jurisdiction to hear the case. *ACE Cash Express, Inc. v. City of Denton*, No. 02-14-00146-CV, 2015 WL 3523963, 2015 Tex. App. LEXIS 5723 (Tex. App.—Fort Worth June 4, 2015, pet. denied) (mem. op.). On June 17, 2016, the Texas Supreme Court denied ACE Cash Express’s petition to review the case. The decision of the court of appeals is now final. The decision of the court of appeals was based partly on a 2014 Dallas court of appeals decision, which rejected a challenge to Dallas’s CAB ordinance for similar reasons. *Consumer Serv. Alliance of Tex., Inc. v. City of Dallas*, 433 S.W.3d 796 (Tex. App.—Dallas 2014, no pet.).

***Billings v. Propel Financial Services, LLC:***

The Fifth Circuit Court of Appeals has ruled that the federal Truth in Lending Act (TILA) does not apply to Texas property tax lenders. *Billings v. Propel Fin. Servs., LLC*, 821 F.3d 608 (5th Cir. Apr. 29, 2016). The court held that a property tax loan does not constitute an extension of credit subject to TILA, because the transfer of an existing tax obligation does not create new debt. Before the Fifth Circuit

reached its decision, federal district judges in San Antonio issued conflicting decisions on this issue. *Compare Billings v. Propel Fin. Servs., LLC*, No. 5:14-cv-00764-OLG, 2014 WL 7448248, 2014 U.S. Dist. LEXIS 179738 (W.D. Tex. Nov. 28, 2014) (holding that TILA does not apply to property tax lenders) *with Thiery v. Texas Tax Solutions, LLC*, No. 5:14-cv-00940-HLH, 2014 WL 7447976, 2014 U.S. Dist. LEXIS 179763 (W.D. Tex. Dec. 19, 2014) (holding that TILA applies to property tax lenders).

The plaintiffs appealed the case to the U.S. Supreme Court on June 29. The Court has requested a response from the property tax lender defendants. The response is due August 29. The Court is scheduled to consider the case in conference on September 26, to decide whether it will hear the case in the 2016-2017 term.

### **Attorney General Opinion**

On June 16, 2016, the Texas attorney general issued opinion no. KP-0095, regarding credit card surcharges for residential leases. The attorney general issued the opinion in response to a request asking whether certain fees imposed by residential landlords violate the credit card surcharge prohibition in Texas Finance Code § 339.001 or the debit card surcharge prohibition in Texas Business & Commerce Code § 604A.002. The requestor argued that processing fees are not prohibited surcharges if they are convenience fees for online payment, or if they are paid to a payment processor that provides multiple services such as document management and contract preparation.

The OCCC filed a brief on the request, arguing that any alternatives to the credit card surcharge prohibition should be strictly limited to five alternatives, consistent with the OCCC's advisory bulletin B15-2: (1) uniform pricing with no surcharge, fee, or discount; (2) a uniform convenience fee for all payments regardless of whether or not made online; (3) a cash discount; (4) an option to pay by credit card with no fee; and (5) a third-party payment processing fee where the seller receives no portion of the fee, there is an arm's-length relationship between the seller and processor limited to processing payments, and multiple payment channels are available to the buyer.

In opinion no. KP-0095, the attorney general determined that a fee charged by an arm's-length third-party vendor likely does not violate the surcharge prohibitions. However, the attorney general stated that if the relationship between the landlord and the processor "blurs the line of autonomy between the parties," there could be a violation of the surcharge prohibitions. The attorney general stated: "Whether any given relationship between a seller and a vendor rises to a problematic level is a question of fact that cannot be addressed in an attorney general opinion."

### **Rulemaking from Other Agencies**

The OCCC is monitoring several rule actions that other agencies have recently proposed or adopted.

#### **CFPB Payday Loan Rule:**

On June 2, 2016, the Consumer Financial Protection Bureau (CFPB) proposed a rule with requirements for payday loans, title loans, and other high-cost consumer loans. The rule would apply to short-term consumer loans (*i.e.*, loans where the consumer is required to repay the loan in 45 days or

less). The rule would also apply to longer-term consumer loans that: (1) have a term more than 45 days; (2) have an all-in APR over 36% (this includes certain fees that are not in a normal APR); and (3) require a leveraged payment mechanism (*i.e.*, the right to obtain payment from the consumer's account or payroll) or a security interest in a motor vehicle.

For both types of covered loans, the creditor would have to comply with either: (1) ability-to-repay requirements, under which the creditor must make a reasonable determination that the consumer can repay the loan, based on a review of income, major financial obligations, and borrowing history, or (2) alternative requirements, which limit the loan amount and the number of covered loans a consumer can have outstanding in a period of time. The rule would also put limitations on unsuccessful payment transfers from consumers' accounts, and would generally require creditors to report covered loans to a real-time commercial database for tracking information about covered loans.

The CFPB's deadline for official comments on the rule is October 7, 2016. The CFPB has proposed that the rule will be effective 15 months after a final version of the rule is published in the *Federal Register*.

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

On May 5, 2016, the CFPB proposed a rule with requirements for arbitration agreements for consumer financial products. The rule would prohibit creditors from including a class-action waiver in a pre-dispute arbitration agreement. Arbitration agreements would have to explain that the consumer may file a class action in court and may be a member of a class action.

The CFPB's deadline for official comments on the rule is August 22, 2016. The CFPB has proposed that the rule will begin to apply 211 days after a final version of the rule is published in the *Federal Register*.

#### **CFPB Debt Collection Rule:**

On July 28, 2016, the CFPB published an outline of a potential rule that would apply to third-party debt collectors. The rule would include requirements for leaving voicemails, requirements for collection by e-mail or text message, limitations on the frequency of contacts with the consumer, and a prohibition on collecting from a consumer's estate within 30 days after the consumer's death.

The CFPB is preparing to convene a Small Business Review Panel to gather feedback from small businesses on the proposal. After the CFPB seeks input from small businesses and other stakeholders, it will publish the rule and allow an additional period for official comments.

#### **DOD Military Lending Act Rule:**

On July 22, 2015, the U.S. Department of Defense adopted amendments to its Military Lending Act Rule at 32 C.F.R. part 232. The amendments expand the scope of the MLA rule, so that it will apply to most consumer loans made to covered military borrowers (including active-duty service members and their dependents). The MLA rule contains several requirements for loans made to covered military borrowers, including the following: (1) the rule prohibits the creditor from making the loan at a military APR over 36% (the MAPR is similar to APR but includes additional charges); (2) the rule requires the

creditor to provide a disclosure about the MLA rule and the MAPR to the borrower; and (3) the rule prohibits the creditor from requiring arbitration. The DOD has established a database that creditors can consult to determine whether a consumer is a covered military borrower. Creditors must comply with the amended MLA rule starting October 3, 2016.

#### **TxDMV Deputy Fee Rule:**

On June 27, 2016, the Texas Department of Motor Vehicles adopted rules governing full-service deputies and dealer deputies. A deputy is a person authorized to accept and process applications for motor vehicle title transfers and initial registrations. TxDMV's rule distinguishes between a full-service deputy (a person who has entered an agreement with the county) and a dealer deputy (a person licensed by TxDMV to sell motor vehicles). For title transactions, the rule would allow full-service deputies to charge a fee of \$20 or less, and would allow dealer deputies to charge a fee of \$10 or less. For registrations, the rule would allow full-service deputies to charge a \$9 convenience fee, and would allow both full-service deputies and dealer deputies to retain \$1 from the processing-and-handling fee paid to the county. The new rules replace TxDMV's previous rule, which limited the total deputy fee to \$5. The new rules have an effective date of August 8, 2016, although deputies may continue to operate under the previous rule through December 31, 2016.

#### **Advisory Bulletins**

From June 1, 2016 to July 31, 2016, the OCCC issued one advisory bulletin. Bulletin No. 16-5 summarizes documentary fee requirements and provides instructions about how to make documentary fee filings through ALECS.

#### **Interpretation Requests**

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

#### **Open Records Requests**

From June 1, 2016 to July 31, 2016, the OCCC received 44 requests for information under the Texas Public Information Act, with no referrals to the Office of the Attorney General.

#### **Gifts Received by the OCCC**

On June 14, 2016, the National Association of Consumer Credit Administrators waived one registration fee to its 2016 Annual Meeting, valued at \$495.00.

On August 2, 2016, the American Association of Residential Mortgage Regulators waived one registration fee to its 2016 Annual Conference, valued at \$795.00.

| Rule Item/Purpose   | Proposal Date | Adoption Date                   |
|---|---------------|---------------------------------|
| <p><b>Rules for Regulated Lenders - Adopt Amendments, New Rules, &amp; Repeals</b><br/>7 TAC, Chapter 83, Subchapter A</p> <p>To update rules regarding licensing of regulated lenders; to provide clarification regarding contact information, transfers, criminal history review, definitions, and recordkeeping; and to make technical corrections</p> <p><i>Precomment draft distributed May 4, 2016</i><br/><i>Stakeholders meeting held May 20, 2016</i></p>        | 06/10/16      | Presented for Adoption 06/10/16 |
| <p><b>Tax Refund Anticipation Loans - Adopt Amendments &amp; New Rule (from Rule Review)</b><br/>7 TAC, Chapter 87</p> <p>To clarify the term of registration, require current contact information, implement a statutory late filing fee, and add a required notice</p> <p><i>Precomment draft distributed May 9, 2016</i><br/><i>Stakeholders meeting held May 23, 2016</i></p>   | 06/10/16      | Presented for Adoption 06/10/16 |
| <p><b>Rules for Operation of Pawnshops - Proposed Amendments, New Rules, &amp; Repeals</b><br/>7 TAC, Chapter 85, Subchapter A</p> <p>To update rules regarding the licensing of pawnshops; to provide clarification regarding contact information, transfers, criminal history review, disclosures, and recordkeeping; and to make technical corrections</p> <p><i>Precomment draft distributed July 14, 2016</i><br/><i>Stakeholders meeting held July 28, 2016</i></p> | 08/19/16      |                                 |
| <p><b>Rules for Credit Access Businesses - Amendments</b><br/>7 TAC, Chapter 83, Subchapter B</p> <p>To make technical corrections in compliance with recent federal regulations, and to clarify criminal history information of applicants</p>   | 10/21/16      |                                 |

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

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments, New Rules, and Repeals in 7 TAC, Chapter 83, Subchapter A, Concerning Rules for Regulated Lenders

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

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

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

*Title 7. Banking and Securities*

*Part 5. Office of Consumer Credit Commissioner*

*Chapter 83. Regulated Lenders and Credit Access Businesses*

*Subchapter A. Rules for Regulated Lenders*

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

The commission adopts the amendments to §§83.102, 83.301, 83.302, 83.304, 83.306, 83.310, 83.403, and 83.828; and the repeals of §§83.303, 83.404, and 83.405 without changes to the proposed text as published in the June 24, 2016, issue of the *Texas Register* (41 TexReg 4543).

The commission adopts new §83.303 and §83.404 with changes to the proposed text as published in the June 24, 2016, issue of the *Texas Register* (41 TexReg 4543). The changes are a result of technical corrections to citations.

The commission received no written comments on the proposal.

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

The agency circulated an early draft of proposed changes to interested stakeholders.

The agency then held a stakeholders meeting where attendees provided oral precomments. In addition, the agency received one informal written precomment. Certain concepts recommended by the precommenter were incorporated into the proposal, and the agency appreciates the thoughtful input provided by stakeholders.

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

In Section 83.102(3), the definition of "amount financed" has been replaced with a reference to Regulation Z, 12 C.F.R. §1026.18(b). The rule previously contained a specific definition of "amount financed" that applies only to rule provisions on computing earnings, deferments, maximum charges, and refunds of unearned interest. The current rules on these issues do not use the term "amount financed," so the specific definition is unnecessary. However, other rules throughout Chapter 83 use the term "amount financed" to refer to the amount calculated under Regulation Z. For this reason, the amendment replaces the former definition with a reference to Regulation Z.

An adopted change to §83.301(2)(A) amends the definition of "principal party" for sole proprietorships. The amendment removes the statement that proprietors include spouses with a community property interest. In addition, an amendment to §83.302(1)(B)(i) removes the requirement to disclose community property interests and documentation regarding separate property status, and replaces it with a requirement to

disclose the names of the spouses of principal parties if requested. The agency currently spends considerable time requesting information from license applicants to determine the status of spouses' property interests, and explaining these concepts to applicants. These amendments help streamline the licensing process and reduce regulatory burden. The amendments also make the application process simpler and more straightforward for applicants. In specific cases where the spouse is a principal party, the OCCC would be able to request additional information about the spouse under current §83.302(1)(E)-(F).

Section 83.303 is being repealed and replaced with a new rule, with the intent to clarify the requirements when a licensee transfers ownership. Section 83.303 describes what constitutes a transfer of ownership requiring the filing of a transfer application. The adopted new rule largely maintains the requirements under the current rule, including the requirements for filing a license transfer application. In addition to the license transfer application allowed under the current rule, the new rule allows an alternative method for a transfer of ownership: a new license application on transfer of ownership. The new rule describes what the application has to include, the timing requirements, and which parties are responsible at different points in the transfer process. Subsection (a) describes the purpose of the new section. Subsection (b) defines terms used throughout the subsection. In particular, subsection (b)(3) defines the phrase "transfer of ownership," listing different types of changes in acquisition or control of the licensed entity. The precommenter recommended that this definition specify that a transfer of ownership does not include a relocation of regulated transactions from one licensed

location to another. Relocations of regulated transactions are governed by current §83.308(c), which requires licensees to notify debtors that the transactions have been relocated. In response to this recommendation, §83.303(b)(3) as adopted states that a transfer of ownership does not include a relocation of regulated transactions from one licensed location to another licensed location.

Section 83.303(c) specifies that a license may not be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §342.163.

Since the proposal, a change has been made to §83.303(c) in order to provide the correct citation to the Texas Finance Code relating to the transfer or assignment of a license.

Section 83.303(d) provides a timing requirement, stating that a complete license transfer application or new license application on transfer of ownership must be filed no later than 30 days after the transfer of ownership. Subsection (e) outlines the requirements for the license transfer application or new license application on transfer of ownership. These requirements include complete documentation of the transfer of ownership, as well as a complete license application for transferees that do not hold an existing regulated lender license. Subsection (e)(5) explains that the application may include a request for permission to operate.

Subsection (f) provides that the OCCC may issue a permission to operate to the transferee. A permission to operate is a temporary authorization from the OCCC allowing a transferee to operate while final

approval is pending for an application. Subsection (g) specifies the transferee's authority to engage in business if the transferee has filed a complete application including a request for permission to operate. It also requires the transferee to immediately cease doing business if the OCCC denies the request for permission to operate or denies the application.

Subsection (h) describes the situations where the transferor is responsible for business activity at the licensed location, situations where the transferee is responsible, and situations where both parties are responsible. In this subsection, the precommenter made the following recommendations. First, the precommenter recommended against using the phrase "joint and several responsibility," because the precommenter believes that this phrase could lead to confusion. Second, the precommenter recommended against drafting the subsection's paragraphs so that they overlap with each other. Third, the precommenter recommended that this subsection consist of two paragraphs (one for the transferor's responsibility and one for the transferee's responsibility), for the sake of clarity. In response to these recommendations, the three paragraphs in subsection (h) apply to three distinct periods of time: (1) the period before the transferee begins conducting business (when the transferor is responsible), (2) the period after the transferee begins conducting business and before final approval of the application (when the transferor and transferee are each responsible), and (3) the period after final approval (when the transferee is responsible). For the second period, subsection (h)(2) specifies that the transferor and transferee are each responsible. The agency believes that it is appropriate for the rule to specify that the transferor and

transferee are each responsible during this period, which includes any activity performed by the transferee under a permission to operate. In this way, the rule helps ensure that licensees are aware of their responsibilities. The new rule's statement that the transferor is responsible for acts performed during a permission to operate is consistent with the former rule at §83.303(d), which stated: "The transferor must accept full responsibility to any customer and to the OCCC for the licensed business for any acts of the transferee in connection with the operation of the lending business." The permission to operate is a temporary authorization allowing a transferee to operate under a transferor's license while the transferee's application is pending. The OCCC allows the permission-to-operate procedure in order to accommodate transferees that wish to begin doing business after a routine transfer of ownership but before approval of a license application. The alternative would be to prohibit the transferee from engaging in business until after the license application is approved. If a transferor wishes to protect itself from responsibility for the transferee's acts, then the transferor can delay the transfer of ownership until the transferee's application is approved. Alternatively, the transferor can enter an indemnification agreement with the transferee, under which the transferee must reimburse the transferor for losses resulting from the transferee's acts.

In §83.304, concerning Change in Form or Proportionate Ownership, conforming changes have been made corresponding to adopted new §83.303. Throughout subsections (b) and (c), references have been added to the new license application on transfer of ownership.

Adopted amendments to §83.306 clarify the circumstances in which a licensee must notify the OCCC of changes to information in the original license application. The amendments specify that the requirement to provide updated information within 10 days applies before a license application is approved. New §83.306(b) provides that a licensee must notify the OCCC within 30 days if the information relates to the names of principal parties, criminal history, regulatory actions, or court judgments. New §83.306(c) specifies that each applicant or licensee is responsible for ensuring that all contact information on file with the OCCC is current and correct, and that it is a best practice for licensees to regularly review contact information.

An adopted amendment to §83.310(c) provides that a license applicant must pay a fee to a party designated by the Texas Department of Public Safety (DPS) for processing fingerprints, replacing a statement that the fee will be paid to the OCCC. This amendment conforms the rule to the method by which applicants currently provide fingerprint information through DPS's Fingerprint Applicant Services of Texas (FAST) program. Additional amendments to §83.310(d) conform the rule to new §83.303 and add numbered paragraphs for clarity.

Adopted amendments to §83.403 clarify the agency's procedure for providing delinquency notices to licensees that have failed to pay an annual assessment fee. The amendments specify that notice of delinquency is considered to be given when the OCCC sends the notice by mail to the address on file with the OCCC as a master file address, or by e-mail to the address on file with the OCCC (if the licensee has provided an e-mail address).

Adopted new §83.404 specifies the criminal history information collected by the OCCC, outlines factors the OCCC will consider when reviewing criminal history information, and describes grounds for denial, suspension, and revocation of a regulated lender license. This section replaces former §83.404 and §83.405, which are being repealed. Subsection (a) describes the OCCC's collection of criminal history record information from law enforcement agencies. Subsection (b) identifies the criminal history information that the applicant must disclose. Subsection (c) describes the OCCC's denial, suspension, and revocation based on crimes that are directly related to the licensed occupation of regulated lender. Subsection (c)(1) lists the types of crimes that the OCCC considers to directly relate to the duties and responsibilities of being a regulated lender, including the reasons the crimes relate to the occupation, as provided by Texas Occupations Code, §53.025(a). Subsection (c)(2) contains the factors the OCCC will consider in determining whether a criminal offense directly relates to the duties and responsibilities of a licensee, as provided by Texas Occupations Code, §53.022. Subsection (c)(3) provides the mitigating factors the OCCC will consider to determine whether a conviction renders an applicant or licensee unfit, as provided by Texas Occupations Code, §53.023. Subsection (d) describes the OCCC's authority to deny a license application if it does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §342.104(a). Subsection (e) explains that the OCCC will revoke a license on the licensee's imprisonment

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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).

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

Since the proposal, a change has been made to §83.404(f)(2) in order to provide a more complete citation to the Texas Code of Criminal Procedure. As the cited provision is being relocated, the revision includes citations for both the current location and the location effective on January 1, 2017.

An adopted amendment to the recordkeeping rule in §83.828(10)(A) lists documentation and disclosures required under the Department of Defense's Military Lending Act Rule, 32 C.F.R. pt. 232. The Department of Defense's recently adopted amendments to the rule have a required compliance date of October 3, 2016. Under the amended Military Lending Act Rule, lenders will generally be required to provide model disclosures to covered military borrowers. 32 C.F.R. §232.6. The amended rule also specifies documentation that lenders can obtain in order to determine whether a consumer is a covered military borrower. 32 C.F.R. §232.5. The adopted amendments to §83.828(10)(A) specify that licensees are required to maintain these documents and disclosures in the individual borrower's loan file. This file must be maintained for four years from the date of the loan, or two years from the date of the final account entry, whichever is later, under current §83.828(14). However, licensees may keep the documents for a longer period of time if they choose. Additionally, an

amendments to the recordkeeping rule in §83.828(10)(C) update a reference to the Texas Department of Public Safety "Driver's Crash Report" form and correct a typographical error.

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

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

*§83.102. Definitions.*

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

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

(3) Amount financed--The amount calculated in accordance with Regulation Z, 12 C.F.R. §1026.18(b). ~~[of money which is used, forborne, or detained and upon which interest is charged. The cash advance plus any other amounts that are financed by the creditor are included. Any points or other prepaid finance charges, excluding the administrative loan fee, that are not paid at closing and that are financed as part of the transaction are included in the amount financed. This definition is only applicable for the purposes of this subchapter for~~

~~computing earnings, deferments, maximum charges, and determining refunds of unearned interest. It is not intended to be synonymous with the similar term that is used in the Truth in Lending Act (15 U.S.C. §§1601–1667f).]~~

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

*§83.301. Definitions.*

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

(1) (No change.)

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

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

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

*§83.302. Filing of New Application.*

An application for issuance of a new regulated loan license must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats to facilitate multistate uniformity of applications or in order to accept approved electronic

submissions. Appropriate fees must be filed with the application and the application must include the following:

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

(A) (No change.)

(B) Disclosure of Owners and Principal Parties.

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

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

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

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

*§83.303. Transfer of License; New License Application on Transfer of Ownership. {{This section replaces former section 83.303, which is being 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.

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

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

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

(3) Transfer of ownership--Any purchase or acquisition of control of a licensed entity (including acquisition by gift, devise, or descent), or a substantial portion of a licensed entity's assets, where a substantial change in management or control of the business occurs. The term does not include a change in proportionate ownership as defined in §83.304 of this title (relating to Change in Form or Proportionate Ownership) or a relocation of regulated transactions from one licensed location to another licensed location, as described by §83.308(c) of this title (relating to Relocation). Transfer of ownership includes the following:

(A) an existing owner of a sole proprietorship relinquishes that owner's entire interest in a license or an entirely new entity has obtained an ownership interest in a sole proprietorship license;

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

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

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

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

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

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

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

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

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

(iii) any purchase or acquisition of control of 51% or more of a company that is the parent or controlling stockholder of a licensed privately held corporation occurs; or

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

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

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

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

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

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

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

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

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

(c) License transfer approval. No regulated loan license may be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §342.163. 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 regulated loan license at the time of the application, then the application must include the information required for new license applications under §83.302 of this title (relating to Filing of New Application). The instructions in §83.302 of this title apply to these filings.

(4) Application information for transferee that holds a license. If the transferee holds a regulated loan license at the time of the application, then the application must include amendments to the transferee's original license application describing the information that is unique to the transfer event, including disclosure questions, owners and principal parties, and a new financial statement, as provided in §83.302 of this title. The instructions in §83.302 of this title apply to these filings. The responsible person at the new location must file a personal affidavit, personal questionnaire, and employment history, if not previously filed. Other information required by §83.302 of this title need not be filed if the information on file with the OCCC is current and valid.

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

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

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

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

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

(g) Transferee's authority to engage in business. If a transferee has filed a complete application including a request for permission to operate as described by subsection (e), by the deadline described by subsection (d), then the transferee may engage in business as a regulated lender. However, the transferee must immediately cease doing business if the OCCC denies the request for permission to operate or denies the application. If the OCCC denies the

application, then the transferee has a right to a hearing on the denial, as provided by §83.307(d) of this title (relating to Processing of Application).

(h) Responsibility.

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

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

(3) Responsibility of transferee. After the OCCC's final approval of an application described by subsection (e), the transferee is responsible to any consumer and to the OCCC for all regulated lender activity performed under the license. The transferee is responsible for any transactions that it purchases from the transferor. In addition, if the transferee receives a license transfer, then the transferee's responsibility includes all activity performed under the license before the license transfer.

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

(a) (No change.)

(b) Merger. A merger of a licensee is a change of ownership that results in a new or different surviving entity and requires the

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

(c) Proportionate ownership.

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

(2) A proportionate change in which an owner that previously held under 10% obtains an ownership interest of 10% or more, requires a transfer under §83.303 of this title.

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

(a) Applicant's updates to license application information. Before a license application is approved, an applicant must report to the OCCC any [~~Any action, fact, or~~] information that would require a materially different answer than that given in the original license application and that relates to the qualifications for license [~~must be reported~~] within 10 calendar days after the person has knowledge of the [~~action, fact or~~] information.

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

- (1) the names of principal parties;
- (2) criminal history;
- (3) actions by regulatory agencies; or
- (4) court judgments.

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

licensees to regularly review contact information on file with the OCCC to ensure that it is current and correct.

§83.310. Fees.

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

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

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

- (1) inactivating a license; [;]
- (2) activating an inactive license; [;]
- (3) changing the assumed name of the licensee; [;]
- (4) changing the organizational form or proportionate ownership that results in the exact same individuals or entities still owning the business and does not result in a transfer of ownership described by §83.303(b)(3) of this title (relating to Transfer of License; New Application on Transfer of Ownership; [does not require a transfer under §83.303(a)(4) or (5) of this title (relating to Transfer of License) or §83.304(c)(2) of this title (relating to Change in Form or Proportionate Ownership);]
- (5) providing notification of a new parent entity; [;] or
- (6) relocating an office.

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

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

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

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

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

For purposes of Texas Finance Code, §342.155, and §83.309(d) of this title (relating to License Status), notice of delinquency in the payment of an annual assessment fee is given when the OCCC sends the delinquency notice:

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

(2) by e-mail to the address on file with the OCCC as a master file e-mail address, if the licensee has provided a master file e-mail address. [delinquency notice is sent to the licensee at the email or mailing address on file with the OCCC.]

§83.404. Denial, Suspension, or Revocation Based on Criminal History. **{{This section replaces sections 83.404 and 83.405, both of which are being repealed.}}**

(a) Criminal history record information. After an applicant submits a complete license application, including all required fingerprints, and pays the fees required by §83.310 of this title (relating to Fees), the OCCC will investigate the applicant and its principal parties. The OCCC will obtain criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant's fingerprint submission. The OCCC will continue to receive information on new criminal activity reported after the fingerprints have been initially processed.

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

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

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

(3) proof that the applicant has maintained a record of steady employment, has supported the applicant's dependents,

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and has otherwise maintained a record of good conduct; and

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

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been convicted of an offense that directly relates to the duties and responsibilities of a licensee under Texas Finance Code, Chapter 342, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Originating, acquiring, or servicing loans under Texas Finance Code, Chapter 342 involves or may involve making representations to consumers regarding the terms of the loan, receiving money from consumers, remitting money to third parties, maintaining accounts, repossessing property without a breach of the peace, maintaining goods that have been repossessed, collecting due amounts in a legal manner, and foreclosing on real property in compliance with state and federal law. Consequently, the following crimes are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation:

(A) theft;

(B) assault;

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

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

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

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

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

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

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

(A) the nature and seriousness of the crime;

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Crimes related to character and fitness. The OCCC may deny a license application if the OCCC does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §342.104(a)(1). In conducting its review of character and fitness, the OCCC will consider the criminal history of the applicant and its principal parties. If the applicant or a principal party has been convicted of an offense described by subsections (c)(1) or (f)(2) of this section, this reflects negatively on an applicant's character and fitness. The OCCC may deny a license application based on other criminal history of the applicant or its principal parties if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and general fitness of the 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

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authorized by statute, including the following:

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

(2) a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42.12, §3g (effective through December 31, 2016), art. 42A.054 (effective January 1, 2017), or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(3)-(4);

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

(4) a fact or condition that would have been grounds for denying the license application, and that either did not exist at the time of the application or the OCCC was unaware of at the time of application, as provided by Texas Finance Code, §342.156(3); and

(5) any other information warranting the belief that the business will not be operated lawfully and fairly, as provided by Texas Finance Code, §342.104(a)(1) and §342.156.

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

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

(10) Loan records and documents file.

(A) Generally. A licensee must maintain a loan records and documents file for each individual borrower. The loan

records and documents file must contain all necessary records and documents to evidence compliance with applicable state and federal laws and regulations, including the Equal Credit Opportunity Act and the Truth in Lending Act. The loan records and documents file must include copies of the following records or documents:

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

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

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

(xii) ~~[(xi)]~~ any separate disclosures that are required by federal or state law, such as the notice to cosigner required by the Federal Trade Commission's Credit Practices Rule, 16 C.F.R. §444.3, or any mandatory disclosure to a covered borrower under the Department of Defense's Military Lending Act Rule, 32 C.F.R. §232.6.

(B) (No change.)

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

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

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

(vi) (No change.)

(11) - (14) (No change.)

### **Certification**

This agency hereby certifies that the 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 19, 2016.

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

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

3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments and a New Rule in 7 TAC, Chapter 87, Concerning Tax Refund Anticipation Loans, Resulting from Rule Review

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

**RECOMMENDED ACTION:** The agency requests that the Finance Commission approve the amendments and new rule in 7 TAC, Chapter 87 without changes as previously published in the *Texas Register*.

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

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

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

The commission adopts the amendments and new rule without changes to the proposed text as published in the June 24, 2016, issue of the *Texas Register* (41 TexReg 4551).

The commission received no written comments on the proposal.

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

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

The rule changes clarify the term of registration, require that registrants maintain current contact information, implement a statutory late filing fee, and add a required notice that registrants must provide to

consumers explaining how they can file a complaint with the agency.

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

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

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

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

Adopted new §87.103(c) explains that applicants and registrants must keep their

contact information up-to-date. This provision is intended to ensure that the agency can contact registrants, so that the agency can carry out its responsibility to monitor facilitators and ensure compliance, as provided by Texas Finance Code, §352.005.

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

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

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

Adopted new §87.107(b) specifies that a facilitator may not renew a registration that has been expired for more than one year, and that if a registration has been expired for more

than one year, the facilitator must apply for a new registration. This provision is intended to clarify renewal requirements and ensure consistency with other amendments to the rules.

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

The OCCC believes that new §87.201 is necessary so that consumers and creditors will have the most current contact information for the OCCC, as well as readily available information for consumers explaining how they can file a complaint with the OCCC. Registrants are afforded multiple ways to comply with the new rule: 1) add the OCCC notice to the current federal privacy notice in the box for "Other important information"; 2) add the OCCC notice to the registrant's existing disclosure form under Texas Finance Code, §352.004; or 3) provide the OCCC notice on a new page that is part of one of these two forms.

As stated in the proposal, the OCCC wishes to help registrants minimize potential costs with a delayed implementation date of January 1, 2017, for new §87.201. Accordingly, the agency will allow registrants to continue the use of current forms through December 31, 2016. Starting January 1, 2017, registrants must comply with new §87.201 by adding the OCCC notice to either their existing privacy notice or existing written disclosure provided to consumers.

The delayed implementation date applies only to new §87.201. Thus, the amendments to §§87.102-87.105 and 87.107 will be implemented immediately upon the effective date of these rules, which is anticipated to be on or around September 8, 2016.

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

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

#### *Subchapter A. Registration Procedures*

##### *§87.102. Filing of New Application.*

(a) New application. An application for issuance of a new tax refund anticipation loan facilitator registration must be submitted [as

~~prescribed by the commissioner at the date of filing—and]~~ in accordance with the ~~[commissioner's]~~ instructions of the Office of Consumer Credit Commissioner (OCCC).

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

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

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

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

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

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

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

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

(2) all fees have been paid; and

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

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

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

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

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

*§87.104. Relocation of Registered Location.*

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

*§87.105. Fees.*

(a) New registrations. For a new registration, the applicant must pay a [A] \$50 nonrefundable [non-refundable] fee for each

registered location [is assessed each time an application for a new registration under this chapter is filed].

(b) Registration amendments. A registered facilitator must pay a fee of \$25 to amend [must be paid each time a registered facilitator amends] a registration by changing the assumed name of the registrant or relocating an office.

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

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

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

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

*§87.107. Annual Renewal.*

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

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

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

(3) any other information required by the commissioner.

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

*Subchapter B. Disclosures*

§87.201. OCCC Notice.

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

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

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

(2) including the notice on each written disclosure that the facilitator is

required to provide to a borrower under Texas Finance Code, §352.004.

**Certification**

This agency hereby certifies that the 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 19, 2016.

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

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

4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments, New Rules, and Repeals in 7 TAC, Chapter 85, Subchapter A, Concerning Rules for Operation of Pawnshops

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

**RECOMMENDED ACTION:** The agency requests that the Finance Commission approve the amendments, new rules, and repeals in 7 TAC, Chapter 85, Subchapter A for publication in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we approve for publication and comment the amendments, new rules, and repeals in 7 TAC, Chapter 85, Subchapter A.

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**7 TAC, CHAPTER 85, SUBCHAPTER A**  
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*Title 7. Banking and Securities*

*Part 5. Office of Consumer Credit Commissioner*

*Chapter 85. Pawnshops and Crafted Precious Metal Dealers*

*Subchapter A. Rules of Operation for Pawnshops*

The Finance Commission of Texas (commission) proposes amendments to §§85.102, 85.104, 85.202, 85.206, 85.208, 85.209, 85.211, 85.305, 85.306, 85.402, 85.405, 85.413, 85.420, 85.423, and 85.702; proposes new §85.205 and §85.601; and proposes the repeal of §§85.205, 85.601, and 85.602 in 7 TAC, Chapter 85, Subchapter A, concerning Rules of Operation for Pawnshops.

In general, the purpose of the rule changes in 7 TAC, Chapter 85, Subchapter A is to update rules regarding the licensing of pawnshops and to make technical corrections. The proposed rule changes relate to the following issues: contact information, license transfers, criminal history review, disclosures, and recordkeeping. Additionally, certain sections are being proposed for repeal in order to replace them with new, reorganized rules.

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

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

In §85.102, the proposal 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 §85.205 and §85.208, discussed later in this proposal, and is consistent with other OCCC licensing rules. A proposed amendment to current §85.102(11) (proposed §85.102(12)) amends the definition of "principal party" for sole proprietorships. The amendment removes the statement that proprietors include spouses with a community property interest. This amendment conforms to an amendment to the application requirements for sole proprietorships in §85.202(a)(1)(B)(i), discussed later in this proposal.

Proposed amendments to §85.104(b) and (c) 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 e-mail to the address on file with the OCCC (if the pawnshop has provided an e-mail address), or by mail to the address on file with the OCCC as a master file address (if the pawnshop has not provided an e-mail address).

An amendment to §85.202(a)(1)(B)(i) removes the requirement to disclose community property interests and documentation regarding separate property status, and replaces it with a requirement to disclose the names of the spouses of principal parties if requested. The agency currently spends considerable time requesting information from license

applicants to determine the status of spouses' property interests, and explaining these concepts to applicants. These amendments will help streamline the licensing process and reduce regulatory burden. The amendments will also make the application process simpler and more straightforward for applicants. In specific cases where the spouse is a principal party, the OCCC would be able to request additional information about the spouse under current §85.202(a)(1)(E)-(F).

Section 85.205 is proposed for repeal and replacement with a new rule, with the intent to clarify the requirements when a licensee transfers ownership. Currently, §85.205 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, including the requirements for filing a license transfer application. In addition to the license transfer application allowed under the current rule, the new rule allows an alternative method for a transfer of ownership: a new license application on transfer of ownership. The new rule describes what the application must include, the timing requirements, and which parties are responsible at different points in the transfer process. Subsection (a) describes the purpose of the new section. Subsection (b) defines terms used throughout the section. In particular, subsection (b)(3) defines the phrase "transfer of ownership," listing different types of changes in acquisition or control of the licensed entity.

Subsection (c) specifies that a license may not be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §371.070. 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 pawnshop 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 §85.206, concerning Processing of Application, conforming changes are proposed to cite the amended title of §85.205.

In §85.208, concerning Change in Form or Proportionate Ownership, conforming changes are proposed corresponding to proposed new §85.205. Throughout subsections (b) and (c), references have been

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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 §85.209 clarify the circumstances in which a pawnshop applicant or licensee must notify the OCCC of changes to information in the original license application. The amendments specify that the requirement to provide updated information within 10 days applies before a license application is approved. Proposed new §85.209(c) 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 §85.209(d) 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. Corresponding changes are proposed in §85.305 for pawnshop employee licensees.

A proposed amendment to §85.211(d) provides that a pawnshop license applicant must pay a fee to a party designated by the Texas Department of Public Safety (DPS) for processing fingerprints. 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. A corresponding change is proposed in §85.306 for pawnshop employee licensees. A proposed amendment to current §85.211(g) (proposed §85.211(h)) adds a tagline for clarity.

A proposed amendment to §85.402(g) relates to the requirement for sequential numbering of electronic pawn tickets. The amendment removes the requirement that the OCCC approve methods of numbering the pawn ticket other than sequential numbering by the form supplier. Instead, the amendment provides that the pawnshop may sequentially number each pawn ticket in accordance with written policies that ensure appropriate management and controls. The amendment is intended to provide pawnshops with flexibility in numbering pawn tickets, while also ensuring that pawnshops properly account for all transactions. Another proposed amendment to §85.402(g) specifies that each of the three parts of the pawn ticket must be numbered with the same sequential number.

Proposed new §85.402(h) requires pawnshops to maintain documentation and disclosures required under the Department of Defense's Military Lending Act (MLA) Rule, 32 C.F.R. pt. 232. The Department of Defense's recently adopted amendments to the MLA Rule have a required compliance date of October 3, 2016. Under the amended MLA Rule, creditors will generally be required to provide model disclosures to covered military borrowers. 32 C.F.R. §232.6. The amended MLA Rule also specifies documentation that creditors can obtain in order to determine whether a consumer is a covered military borrower. 32 C.F.R. §232.5. Proposed new §85.402(h) specifies that licensees are required to maintain these documents and disclosures.

These records must be maintained for two years from the date of the final entry, like the pawn ticket under current §85.402(b). The two-year requirement is based on Texas Finance Code, §371.152, which requires pawnshops to keep records of pawn transactions for two years from the date of the last recorded event. However, licensees may keep the documents for a longer period of time if they choose.

At the stakeholders meeting, one stakeholder asked whether proposed §85.402(h) would require a particular form for records about whether a consumer is a covered military borrower. The Department of Defense has created a database that lenders can consult to determine whether a consumer is a covered military borrower. Although the MLA Rule provides a safe harbor for lenders who use the database, it provides that a lender may apply its own method to determine whether a consumer is a covered military borrower. 32 C.F.R. §232.5(a). To clarify, proposed §85.402(h) would not require a particular form for records about whether a consumer is a covered military borrower, but it would require licensees to retain any records that they obtain to make that determination.

Several stakeholders raised other questions about how to comply with the MLA Rule. For example, stakeholders asked questions about how to calculate the military annual percentage rate for purposes of the MLA Rule's 36% maximum for loans made to covered military borrowers. Stakeholders also asked questions about obtaining a potential borrower's Social Security number in order to determine whether the borrower is a covered military borrower. These questions are generally outside the scope of the proposed rule amendments. However, the agency intends to publish an advisory

bulletin with guidance on complying with the MLA Rule.

A proposed amendment to §85.405(a)(2) allows licensees to modify the current rule's model pawn ticket, to add the mandatory disclosure to a covered borrower under the MLA Rule, 32 C.F.R. §232.6. One precommenter suggested adding language to the proposed amendment to §85.405(a)(2), to specify that the required disclosure is not required to be on the pawn ticket. In response to this precomment, the proposed amendment explains that a licensee may provide the disclosure on a separate form, as an alternative to including the disclosure on the pawn ticket.

Another precommenter suggested an additional permissible pawn ticket change related to the MLA Rule. The precommenter suggested adding the following sentence to proposed §85.405(a)(2)(B): "A licensee also may modify the pawn ticket to add an inquiry as to whether or not the borrower is a covered borrower." The agency believes that this modification could create confusion. The inquiry might be misunderstood by borrowers and licensees, who could believe that the borrower's statement creates a safe harbor from penalties under the MLA Rule. However, if a licensee creates a specific modification of the pawn ticket, it may submit the non-standard ticket to the OCCC under current §85.405(a)(2)(B) (proposed §85.405(a)(2)(C)), and the OCCC will review the inquiry in the context of the amended pawn ticket.

A proposed amendment to §85.405(a)(6)(A) explains that a handgun license is an acceptable form of identification, as provided by Texas Business and Commerce Code, §506.001(a). Under Section 506.001(a), a person may not

deny the holder of a handgun license issued by the Texas Department of Public Safety access to goods, services, or facilities, because the holder presents a handgun license rather than a driver's license or other acceptable form of personal identification. The Texas Legislature enacted this provision in H.B. 2739 (2015). In the same legislative session, the Legislature enacted an open-carry law, H.B. 910 (2015), which replaced statutory references to the phrase "concealed handgun license" with the phrase "handgun license." The amendment to §85.405(a)(6)(A) is intended to clarify that a Texas handgun license is permissible for a borrower in a pawn transaction, in addition to other forms of photographic identification listed in Texas Finance Code, §371.174(b). The amendment conforms to the OCCC's advisory bulletin no. B15-3 for pawnshops, "Handgun License as a Valid Form of ID." At the stakeholders meeting, one stakeholder asked whether this amendment refers only to Texas handgun licenses, or includes handgun licenses from other states. In response to this question, the proposed text states that a "Texas handgun license issued under Texas Government Code, Chapter 411" is an acceptable form of identification, in order to clarify that this provision refers only to Texas handgun licenses issued by the Texas Department of Public Safety.

Proposed amendments to §85.413 relate to disclosures for consumer complaints about lost or damaged goods. A new figure is proposed to replace current figure 7 TAC §85.413(e)(6), which is a disclosure about the complaint process for lost or damaged goods. The new figure removes the current figure's statement that the pawnshop must provide a copy of the OCCC complaint form to the consumer, and replaces it with a statement explaining that the consumer may file a complaint through the OCCC's

website. The new figure also includes updated contact information for the OCCC. Corresponding changes are proposed to §85.413(h). Currently, subsection (h) provides that the pawnshop must provide a copy of the OCCC complaint form upon request by a person attempting to redeem pledged goods, and figure 7 TAC §85.413(h) contains a copy of the OCCC's complaint form. The amendments to subsection (h) replace these provisions with a statement that a person attempting to redeem lost or damaged goods may file a written complaint with the OCCC, and a statement that the complaint form is available on the OCCC's website. These amendments are intended to ensure that consumers receive disclosures with up-to-date OCCC contact information, and that consumers are encouraged to file any complaints through the OCCC's website.

A proposed amendment to §85.420(b)(2) clarifies hold-period requirements for purchase transactions by pawnshops. Generally, pawnshops are required to hold purchased items for at least 20 days, under current §85.420(b)(1)(A). However, there is an exception to this general requirement in current §85.420(b)(2), which provides that a pawnshop and a law enforcement agency may agree to a hold period of seven days or less if the following conditions are met: (1) information is exchanged electronically, (2) the agreement does not conflict with any local ordinance, and (3) the agreement is submitted to the OCCC in writing. The proposed amendment to §85.420(b)(2) replaces "seven days or less" with "less than 20 days," to clarify that the agreement with the law enforcement agency can be for a period between 7 and 20 days (e.g., a 10-day hold period).

Proposed amendments to §85.423 relate to a notice to consumers about filing complaints with the OCCC. Under current §85.423, pawnshops are generally required to include this notice on the privacy notices that they provide to consumers, unless the pawnshop provides the privacy notice at the same time as the pawn ticket, and the pawn ticket includes a shorter OCCC notice with the agency's phone number. A proposed amendment to §85.423(b) amends the longer OCCC notice to include the OCCC's updated website and e-mail address. In accordance with instructions from the Texas Department of Information Resources, the OCCC has updated its website and e-mail address with the "texas.gov" extension: `occc.texas.gov` and `consumer.complaints@occc.texas.gov`. Other revisions have been made to the text of the OCCC notice to provide more clarity to consumers regarding the role of the OCCC in resolving complaints. Previously, this notice has been referenced in the rules as the "Complaints and inquiries notice." To continue the use of the agency's acronym and provide consistency with other rules, this consumer notice has been relabeled as the "OCCC Notice."

Proposed new §85.601 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 pawnshop or pawnshop employee license. This section would replace current §85.601 and §85.602, 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 a pawnbroker or pawnshop employee. Subsection (c)(1) lists the types of crimes that the OCCC considers to directly relate to the duties and responsibilities of being a licensee, 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 applicant is of good moral character, or if the applicant does not have the responsibility, character, and fitness to command the confidence of the public, as provided by Texas Finance Code, §371.052(a) and §371.102(b). 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.

At the stakeholders meeting, two stakeholders expressed concern about new §85.601's provisions regarding denial of a license application when the applicant provides incomplete or inaccurate

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information on the application. One stakeholder asked whether providing incomplete or inaccurate information would constitute the criminal offense of "filing a false government report" for purposes of proposed §85.601(c)(1)(F). To clarify, the list of directly related offenses in proposed §85.601(c)(1) refers to criminal offenses for which the applicant has been convicted. Providing incomplete or inaccurate information to the OCCC would not constitute an offense under §85.601(c)(1) unless the applicant is actually convicted of an offense in connection with the application. However, providing incomplete or inaccurate information might be a separate basis for denying the application, as specified in §85.601(f)(4). Another stakeholder asked whether the OCCC would continue its policy of providing applicants an opportunity to respond when the OCCC finds that the license application contains incomplete information regarding criminal history. After an applicant files an application, if the OCCC finds criminal history that relates to the occupation or the applicant's moral character, the agency's policy is to send a letter to the applicant providing an opportunity to explain the criminal history. The OCCC intends to continue this policy. However, applicants still have a responsibility to ensure that applications are complete and accurate at the time of submission, so that the OCCC can review applications in a timely and efficient manner. Submitting an incomplete or inaccurate license application reflects negatively on the applicant's responsibility, character, and fitness to hold a license.

Proposed amendments to §85.702(b) include technical corrections relating to the administrative penalty for violating the acceptance of goods provisions in §85.418(a). One amendment replaces

"items" with "item," to clarify that a licensee commits a violation by accepting an item in violation of the acceptance of goods provisions. Another proposed amendment replaces "and" with "or," to clarify that a licensee is subject to a penalty if the licensee violates §85.418(a)(1) or (3).

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

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

Additional economic costs may be incurred in order for licensees to comply with this proposal. The agency anticipates that any costs resulting from the proposal would be minimal, and would involve providing the amended disclosure for lost or damaged goods under §85.413, and providing the amended complaint notice under §85.423.

The OCCC believes that the proposed amendments to §85.413 and §85.423 are necessary so that consumers and pawnshops will have the most current contact information for the OCCC, as well as readily available information for consumers

explaining how they can file a complaint with the OCCC.

For pawnshops that are required to provide the amended disclosure for lost or damaged goods under §85.413, the anticipated costs would include the cost of producing new forms. The agency anticipates that this cost will be minimal for most licensees. The amended disclosure is required only in transactions where a good is lost or stolen and the consumer attempts or offers to redeem, extend, or renew the transaction, as provided by §85.413(e)(6). For most pawnshops, this will be a small number of transactions. In addition, the cost of providing the updated form will be partially offset by the proposed amendment to §85.413(h), which removes the requirement that the pawnshop provide a copy of the OCCC complaint form.

There may also be some costs for pawnshops that are required to provide the amended OCCC complaint notice under §85.423. Overall, the agency anticipates that any costs involved to comply with proposed amendments to §85.423 will be minimal for most licensees. There are several methods by which licensees can comply with amended §85.423. If a licensee provides a privacy notice that includes the current OCCC notice, then it may replace the current OCCC notice with the amended notice. Under this method, 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 these costs will not exceed \$0.10 per form. Alternatively, if a licensee provides the privacy notice at the same time as the pawn ticket, and the pawn ticket includes the shorter OCCC notice with the agency's phone number, then the licensee may omit

the longer OCCC notice from the privacy notice, as provided by §85.423(b)(4). Under this method, there should not be any costs of complying with amended §85.423, because the licensee is not required to use the amended notice.

In order to obtain more complete information, the agency would like to invite comments from licensees on any costs involved to comply with the proposed amendments to §85.413 and §85.423, as well as any alternatives to lessen those costs while achieving the purposes of the proposed amendments. The agency is considering a delayed implementation date for use of the revised forms, which will help minimize potential costs and allow use of current forms inventory. In particular, the agency is considering a possible implementation date of March 1, 2017, for the proposed amendments to §85.413 and §85.423, and invites comments on this issue.

Other than the proposed amendments to new §85.413 and §85.423, there is no anticipated cost to persons who are required to comply with the rule changes as proposed. The Department of Defense's MLA Rule requires pawnshops to provide the disclosures described in the proposed amendments to §85.402(h) and §85.405(a)(2). In addition, Texas Finance Code, §371.152 requires pawnshops to maintain transaction records for two years from the date of the last recorded event. Any costs of complying with the proposed amendments to §85.402(h) and §85.405(a)(2) are imposed by state and federal law, and are not imposed by the proposed amendments.

The agency is not aware of any adverse economic effect on small businesses as compared to the effect on large businesses

resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule changes, the agency invites comments from interested stakeholders and the public on any economic impact on small businesses, as well as any alternative methods of achieving the purpose of this proposal if the economic effect is adverse to small businesses. Aside from the previously outlined costs to provide the amended disclosure for lost or damaged goods under §85.413, and the costs of providing the amended complaint notice under §85.423, there will be no other effect on individuals required to comply with the rule changes as proposed.

Comments on the proposal may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to [laurie.hobbs@occc.texas.gov](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 proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The rule changes are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §371.006 grants the Finance Commission the authority to adopt rules to enforce the Texas Pawnshop Act. The proposed amendment to §85.420 is proposed under Texas Finance Code, §371.181(b), which provides that the commission shall adopt rules allowing a pawnshop to assist law

enforcement agencies in locating and recovering stolen property. The proposed amendments to §85.423 are proposed under Texas Finance Code, §11.307(b), which provides that the commission shall adopt rules requiring regulated entities to include complaint notices on legally required privacy notices.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 11 and 371.

*§85.102. Definitions.*

Words and terms used in this subchapter that are defined in Texas Finance Code, Chapter 371, have the same meanings as defined in that chapter unless the context clearly indicates otherwise. The following words and terms, when used in this subchapter, will have the following meanings unless the context clearly indicates otherwise.

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

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

(10) [(9)] Pawnbroker--A person who has an ownership interest in a pawnshop as shown in an application for a pawnshop license filed with the OCCC. When general duties and prohibitions are described, pawnbroker also includes a pawnshop employee unless the context indicates otherwise.

(11) [(10)] Pledged goods--Tangible personal property held by a pawnbroker as collateral for a pawn loan and that has not become the property of the pawnbroker by a taking into inventory due to non-payment of the loan.

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

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

(B) - (I) (No change.)

*§85.104. Renewal Dates of Licenses*

(a) (No change.)

(b) Notice of delinquency. If a pawnshop or pawnshop employee does not pay the annual fees by June 1, a written notice of delinquency will be sent by June 15.

(1) If a pawnshop has provided a master file e-mail address to the OCCC, then the OCCC will:

(A) send any notice of delinquency for the pawnshop to the master file e-mail address on file for the pawnshop; and

(B) send any notice of delinquency for an employee of the pawnshop to the employee through the master file e-mail address on file for the pawnshop.

(2) If a pawnshop has not provided a master file e-mail address to the OCCC, then the OCCC will:

(A) send any notice of delinquency for the pawnshop by mail to the master file address on file for the pawnshop; and

(B) send any notice of delinquency for an employee of the pawnshop to the employee by mail through the master file address on file for the pawnshop.

~~[The notice of delinquency will be delivered as follows:]~~

~~[(1) for pawnshops, the notice will be sent to the address of the corporate office on file for the pawnshop;]~~

~~[(2) for pawnshop employees, the notice will be sent to the employee license holder through the corporate office on file for the licensed entity who employs the pawnshop employee.]~~

(c) Expiration of license. A pawnshop license and a pawnshop employee license will expire on the later of June 30 of each year or the 16th day after the written notice of delinquency is given unless the annual fees for the following term have been paid. To be considered timely paid, the fees must be postmarked or submitted by June 30. June 30 is the end of the license term for each year. For purposes of this subsection and §85.210(d) of this title (relating to License Status), notice of delinquency is given when the OCCC sends the delinquency notice by the method described in subsection (b) of this section.

*§85.202. Filing of New Application.*

(a) An application for issuance of a new pawnshop license must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats in order to accept approved electronic submissions.

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Appropriate fees must be filed with the application, and the application must include the following:

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

(A) (No change.)

(B) Disclosure of Owners and Principal Parties.

(i) Proprietorships. The applicant must disclose the name of any individual holding an ownership interest in the business and the name of any individual [who owns and who is] responsible for operating the business. If requested, the applicant must also disclose the names of the spouses of these individuals. [All community property interest 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.)

(C) - (J) (No change.)

(2) (No change.)

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

*§85.205. Transfer of License; New License Application on Transfer of Ownership.*  
**{{This section would replace current section 85.205, 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 pawnshop 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 §85.208 of this title (relating to Change in Form or Proportionate Ownership) or a relocation of pawn transactions from one licensed location to another licensed location, as described by §85.203(g) of this title (relating to Relocation). Transfer of ownership includes the following:

(A) an existing owner of a sole proprietorship relinquishes that owner's entire interest in a license or an entirely new entity has obtained an ownership interest in a sole proprietorship license;

(B) any purchase or acquisition of control of a licensed general partnership, in which a partner relinquishes that owner's

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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 5% or more relinquishes that owner's entire interest;

(ii) a new limited partner obtains an ownership interest of 5% 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 5% or more of the outstanding voting stock in a privately held corporation;

(ii) an existing stockholder owning 5% 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 5% or more;

(ii) in which an existing member owning 5% 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 pawnshop license may be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance

Code, §371.070. 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 pawnshop license at the time of the application, then the application must include the information required for new license applications under §85.202 of this title (relating to Filing of New Application). The instructions in §85.202 of this title apply to these filings.

(4) Application information for transferee that holds a license. If the transferee holds a pawnshop 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 the Application for Pawnshop License, Application Questionnaire, Disclosure of Owners and Principal Parties, a new Financial Statement, and a lease agreement or proof of ownership, as provided in §85.202 of this title. The instructions in §85.202 of this title apply to these filings. Other information required by §85.202 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 pawnshop. 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 §85.206(g) of this title (relating to Processing of Application).

(h) Responsibility.

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

(2) Responsibility of transferor and transferee. If a transferee begins performing pawnshop 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 pawnshop 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.

*§85.206. Processing of Application.*

(a) (No change.)

(b) Application acceptance. An application will not be accepted until it contains the appropriate fees and substantially all of the items required in accordance with §85.202 of this title (relating to Filing of New Application), §85.203 of this title (relating to Relocation), or §85.205 of this title (relating to Transfer of License; New License Application on Transfer of Ownership) as appropriate.

(c) (No change.)

*§85.208. 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 §85.205 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 that [If the merger of the parent entity of a licensee] leads to the creation of a new entity or results in a different surviving parent entity, the licensee must advise the OCCC in writing of the change within 14 calendar days by filing a license amendment and paying the required fees as provided in §85.211 of this title.

(3) 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 or the requirements of §85.205(b)(3)(D) or (E) [§85.205(a)(4) or (5)] of this title, does not require a transfer. Such a proportionate change in ownership does not require the filing of a license transfer application or a new license application on transfer of ownership, but does require written notification to the OCCC when the cumulative ownership change to a single entity or individual amounts to 5% or greater. 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 §85.205 of this title.

(2) (No change.)

(d) (No change.)

*§85.209. Updating Application and Contact Information [Amendments to Pending Application].*

(a) Supplemental information. Upon request, each applicant must provide information supplemental to that contained in the applicant's original application documents.

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(b) 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 [which] relates to the qualifications for license [must be reported to the commissioner] within 10 business days after the person has knowledge of the [action, fact, or] information.

(c) 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.

(d) 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.

*§85.211. Fees.*

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

(d) 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.

(e) ~~(d)~~ Annual renewal and assessment fees.

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

(f) ~~(e)~~ License amendments. A fee of \$25 must be paid each time a licensee amends a license by inactivating a license, activating an inactive license in a county with a population of less than 250,000, changing the assumed name of the licensee, changing the organizational form or proportionate ownership that results in the exact same individuals or entities still owning the business and does not require a transfer under §85.205(b)(3)(D) or (E) [~~§85.205(a)(4) or (5)~~] of this title (relating to Transfer of License; New License Application on Transfer of Ownership) or §85.208(c)(2) of this title (relating to Change in Form or Proportionate Ownership), providing notification of a new parent entity, or relocating an office in a county with a population of less than 250,000. An activation or relocation in a county with a population of 250,000 or more will require a \$250 investigation fee and other fees as may be required of a new license applicant.

(g) ~~(f)~~ License duplicates sent by mail. The fee for a license duplicate to be sent by mail is \$10.

(h) Notice of application. ~~(g)~~ Each applicant for a new or relocated license will pay \$1.00 to the commissioner for each

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notice of application that is required to be mailed.

(i) ~~[(h)]~~ Costs of hearings. The commissioner or administrative law judge may assess the costs of an administrative appeal pursuant to Texas Finance Code, §14.207 for a hearing afforded under §85.206(g) of this title (relating to Processing of Application), including the cost of the administrative law judge, the court reporter, and agency staff representing the OCCC at a hearing. If it is determined that a protest is frivolous or without basis, then the cost associated with the hearing may be assessed solely to the protesting party.

(j) ~~[(i)]~~ Excess payment of fees. Any excess payment of fees received by the commissioner may be held to offset anticipated fees that may be owed by the licensee or applicant.

*§85.305. Updating Application and Contact Information* ~~[Amendments to Pending Application]~~.

(a) Supplemental information. Upon request, each applicant must provide information supplemental to that contained in the applicant's original application documents.

(b) 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~~ ~~[which]~~ relates to the qualifications for license ~~[must be reported to the commissioner]~~ within 10 business days after

the person has knowledge of the ~~[action, fact, or]~~ information.

(c) 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 licensee's name;
- (2) criminal history;
- (3) actions by regulatory agencies; or
- (4) court judgments.

(d) 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.

*§85.306. Fees.*

(a) (No change.)

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

(c) ~~[(b)]~~ Annual renewal fees. The annual renewal fee for a pawnshop employee license is \$15. The fee must be

paid by June 30 each year. A pawnshop employee license will expire on the later of June 30 or the 16th day after the written notice of delinquency is given unless the annual renewal fee has been paid.

(d) ~~[(e)]~~ License amendments. An employee seeking to amend a license by changing the name of the licensee or relocating to another pawnshop is not required to pay an additional fee. Any relocation requires notice to the OCCC in the format prescribed by the commissioner.

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

(f) ~~[(e)]~~ Cost of hearings. The commissioner or the administrative law judge may assess the cost of an administrative appeal pursuant to Texas Finance Code, §14.207 for a hearing afforded under §85.304(e) of this title (relating to Processing of Application), including the cost of the administrative law judge, the court reporter, and agency staff representing the OCCC at a hearing.

*§85.402. Recordkeeping.*

(a) - (f) (No change.)

(g) Requirements of electronic recordkeeping system. In an electronic recordkeeping system, the pawn ticket must be a three-part form. Entries made to the top copy of the pawn ticket must be legible and simultaneously reproduced on the remaining parts. The form must provide a perforated stub to be utilized in labeling and identifying pledged goods. Each part of the pawn ticket must be numbered sequentially by the supplier of the pawn ticket form ~~[unless the commissioner approves, in writing, an~~

~~alternative method of numbering the pawn ticket]~~. As an alternative to sequential numbering by the supplier, the licensee may sequentially number each pawn ticket in accordance with written policies and procedures (maintained by the licensee) that ensure the integrity of the numbering system through appropriate management and accounting controls. The stub and the three parts of the pawn ticket must be numbered simultaneously with the same sequential number. The second part of the pawn ticket (law enforcement copy) may be omitted or properly destroyed (i.e., pawn ticket is completely shredded or incinerated) if the pawn and purchase ticket information is exchanged electronically, directly or indirectly, with the primary law enforcement agency in the jurisdiction that the pawnshop is located.

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

(h) Military Lending Act records.

(1) A licensee must maintain any record that the licensee obtains under the Department of Defense's Military Lending Act Rule, 32 C.F.R. §232.5, regarding whether a consumer is a covered borrower. The licensee must maintain the record for at least two years after the last recorded event, as provided by subsection (b).

(2) A licensee must maintain any mandatory disclosure to a covered borrower under the Military Lending Act Rule, 32 C.F.R. §232.6. The licensee must maintain the disclosure for at least two years after the last recorded event, as provided by subsection (b).

*§85.405. Pawn Transaction.*

(a) Pawn Ticket.

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(1) (No change.)

(2) Modifications of pawn ticket.

(A) (No change.)

(B) Military Lending Act disclosure. A licensee may modify the pawn ticket to add the mandatory disclosure to a covered borrower under the Department of Defense's Military Lending Act Rule, 32 C.F.R. §232.6. Alternatively, a licensee may provide the mandatory disclosure on a separate form.

(C) [(B)] Other changes. Any other changes to the prescribed forms must be approved, in writing, in advance, by the commissioner.

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

(6) Identification of pledgor or seller.

(A) Proper identification. The pledgor must present a proper form of identification at the time of the pawn transaction. For purposes of this paragraph, any form of identification found in Texas Finance Code, §371.174(b) that is either current or has not been expired for more than one year will be considered acceptable. A Texas handgun license issued under Texas Government Code, Chapter 411 is an acceptable form of identification, as provided by Texas Business and Commerce Code, §506.001(a). A pawnbroker is not required to take a photograph of any pledgor or seller for purposes of identification.

(B) (No change.)

(7) (No change.)

(b) - (h) (No change.)

*§85.413. Lost or Damaged Goods.*

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

(e) Communications with pledgors.

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

(6) When an attempt or offer to redeem, renew, or extend a pawn transaction is made and it is known or learned that pledged goods have been lost or damaged, the pledgor must accurately be informed of the facts of the situation, the status of the pledged goods, the pawnbroker's responsibility under Texas Finance Code, Chapter 371, and the pledgor's rights under paragraph (5) of this subsection. A model disclosure is provided in the following example.

**Figure: 7 TAC §85.413(e)(6) {{See attached figure, which would replace current figure 7 TAC §85.413(e)(6)}}**

(f) - (g) (No change.)

(h) Replacement complaints. A person attempting to redeem lost or damaged goods may file a written complaint with the OCCC. [Upon request by the person attempting to redeem pledged goods, a complaint form issued by the commissioner must be provided.] The complaint form is available on the OCCC's website [provided in the following figure]. The OCCC will begin review of a complaint for lost or damaged items upon receipt of the written complaint.

**[Figure: 7 TAC §85.413(h)]**

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

§85.420. Purchase Transactions.

(a) (No change.)

(b) Hold period.

(1) (No change.)

(2) A reduced hold period of less than 20 days ~~[seven days or less]~~ may be agreed upon by the pawnbroker and the law enforcement agency if the pawn and purchase ticket information is exchanged electronically. The agreement for a reduced hold period must not conflict with any local ordinance and must be submitted to the commissioner in writing by and through the chief local law enforcement officer for the jurisdiction.

§85.423. OCCC ~~[Complaints and Inquiries]~~  
Notice.

(a) (No change.)

(b) Required notice.

(1) The following notice must be given to let consumers know how to file complaints: "For questions or complaints about this pawn loan, contact (insert name of pawnshop) at (insert pawnshop's phone number and, at pawnshop's option, one or more of the following: mailing address, fax number, website, e-mail address). The pawnshop is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the pawnshop, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: [occc.texas.gov](http://occc.texas.gov).

Email: [consumer.complaints@occc.texas.gov](mailto:consumer.complaints@occc.texas.gov)." ["The (your name) is (licensed and examined or registered) under the laws of the State of Texas and by state law is subject to regulatory oversight by the Office of Consumer Credit Commissioner. Any consumer wishing to file a complaint against the (your name) should contact: Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207. Telephone No.: 800/538-1579. Fax No.: 512/936-7610. E mail: [consumer.complaints@occc.state.tx.us](mailto:consumer.complaints@occc.state.tx.us). Website: [www.occc.state.tx.us](http://www.occc.state.tx.us)."]

(2) - (4) (No change.)

§85.601. Denial, Suspension, or Revocation Based on Criminal History. **{{This section would replace current sections 85.601 and 85.602, both of which would be repealed.}}**

(a) Criminal history record information. After an applicant for a pawnshop license or pawnshop employee license submits a complete license application, including all required fingerprints, and pays the fees required by §85.211 of this title (relating to Fees) or §85.306 of this title (relating to Fees), the OCCC will investigate the applicant and any 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 any 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 pawnshop license or pawnshop employee 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 371, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Being a pawnbroker or pawnshop employee involves or may involve representations to borrowers and sellers, receiving money from borrowers, collecting due amounts in a legal manner, maintenance

of accounts to make loans and replace lost or damaged goods, and compliance with reporting requirements to governmental agencies relating to certain transactions including firearms. 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 (including receiving or concealing stolen property);

(B) assault;

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

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

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

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

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

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

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

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as specified in Texas Occupations Code, §53.022:

(A) the nature and seriousness of the crime;

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

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

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

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

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

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

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

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

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release, or following

the criminal activity if no time was served; and

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

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

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

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

(d) Crimes related to moral character and fitness.

(1) The OCCC may deny a pawnshop license application if the applicant is not of good moral character, if the applicant does not show that the business will be operated lawfully and fairly, or if the applicant does not show that the applicant or the applicant's owners have the financial responsibility, experience, character, and general fitness to command the confidence of the public, as provided by Texas Finance Code, §371.052(a).

(2) The OCCC may deny a pawnshop employee license if the applicant is not of good moral character and good business repute, or if the applicant does not possess the character and general fitness necessary to warrant the belief that the individual will operate the business lawfully and fairly, as provided by Texas Finance Code, §371.102(b).

(3) In conducting its review of moral character and fitness, the OCCC will consider the criminal history of the applicant and any principal parties. The OCCC considers the offenses described by subsections (c)(1) and (f)(2) of this section to be crimes involving moral character. 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 moral character. 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 moral character and fitness.

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

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

(1) a conviction for an offense that does not directly relate to the duties and responsibilities of the occupation and that was committed less than five years before

the date of application, as provided by Texas Occupations Code, §53.021(a)(2);

(2) a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42.12, §3g (effective through December 31, 2016), art. 42A.054 (effective January 1, 2017), or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(3)-(4);

(3) a conviction of a pawnshop licensee or a principal party for an offense directly related to the licensed occupation, as provided by Texas Finance Code, §371.251(a)(6);

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

(5) 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, §371.251(a)(3) and §371.255(2);

(6) a finding by the OCCC that the financial responsibility, experience, character, or general fitness of a pawnshop licensee or a principal party do not command the confidence of the public or warrant the belief that the business will be operated lawfully, fairly, and within the purposes of this chapter, as provided by Texas Finance Code, §371.251(a)(7); and

(7) a finding by the OCCC that the moral character, business reputation, and general fitness of a pawnshop employee license holder do not warrant belief that the license holder will operate the business lawfully and fairly, as provided by Texas Finance Code, §371.255(3).

*§85.702. Accepting Prohibited Merchandise.*

(a) (No change.)

(b) Individual violations. A pawnbroker or a pawnshop employee found to have taken an item [~~items~~] in violation of §85.418(a)(1) or [~~and~~] (3) of this title (relating to Acceptance of Goods), is subject to the following penalty:

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

(c) - (d) (No change.)

**Certification**

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

Issued in Austin, Texas on August 19, 2016.

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



**Pledgor Disclosure:  
Lost or Damaged Goods**

You have attempted to claim your pledged goods or to renew or extend your loan. Your pledged goods have been lost or damaged by the pawnshop.

- The pawnshop is required to repair or replace your lost or damaged item. Replacements are required to be with a like kind item. Repair of a damaged item shall return the item to the condition in which it was received by the pawnshop. A pawnshop may, but is not required to, offer you a cash settlement as an alternative.
- Do NOT pay the pawnshop until your item or an acceptable replacement item is available. No additional pawn service charge will be added beyond today, when you attempted to redeem, renew, or extend your loan.
- You may file a complaint with the Office of Consumer Credit Commissioner. A complaint form is available at: <http://occc.texas.gov/consumers/complaint-resolution>
- All replacements of pledged goods are subject to review by the Office of Consumer Credit Commissioner if you believe that a review is necessary for an equitable settlement. If you cannot reach a suitable settlement with the pawnshop, you must seek the Commissioner's review before pursuing a remedy in court. If the Commissioner does not approve a replacement before the 91st day after the date the Commissioner receives your complaint concerning the lost or damaged goods, or if you do not accept the Commissioner's determination, you may seek a remedy in court.
- If multiple items are pledged on a single loan, some of the items may be redeemed. The pawnshop may negotiate for a partial payment to redeem the balance of the pledged goods.

**Office of Consumer Credit Commissioner**

2601 N. Lamar Blvd.  
Austin, TX 78705

[occc.texas.gov](http://occc.texas.gov)  
[consumer.complaints@occc.texas.gov](mailto:consumer.complaints@occc.texas.gov)

(800) 538-1579 — Consumer Helpline  
(512) 936-7600 — Phone  
(512) 936-7610 — Fax

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