

A.

Finance Commission

This page left blank intentionally.



FINANCE COMMISSION OF TEXAS

MEETING DATE**December 15, 2017**

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

CONTACT INFORMATION.....Phone: (512) 936-6222
Email: Finance.Commission@fc.texas.gov
Website: www.fc.texas.gov

FUTURE MEETING DATESFebruary 16, 2018
April 20, 2018
June 15, 2018
August 17, 2018
October 19, 2018
December 14, 2018

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

This page left blank intentionally.

FINANCE COMMISSION AGENDA

Friday, December 15, 2017

9:00 a.m. or upon adjournment of the Study Committee (whichever is later)

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

Section A.3 will take up the following agenda items with NO DISCUSSION as notated in bold and italicized A1, B2-B3, C3-C4, & D5-D8

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 October 20, 2017 Finance Commission Meeting***
2. General Public Comment
3. Consent Agenda
4. Finance Commission Operations
5. Audit Committee Report
 - A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' Fiscal Year 2018 Internal Auditor's Risk Assessment and Audit Plan
6. Study Committee Report
 - A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on Revisions of the Finance Commission's Policies and Procedures
7. Discussion of the Process for the 2019 – 2023 Strategic Plans for the Finance Commission Agencies
8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC, Part 1, §10.40 Concerning Enhanced Contract and Performance Monitoring; Website Posting
9. Discussion of and Possible Vote to Take Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Duties and Compensation of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to the Duties and Compensation of Persons Holding the Position of Agency Commissioner Positions, and Other Staff

10. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to §551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property
11. Discussion and Consultation with Attorney and Possible Vote to Take Action Pursuant to §551.071, Texas Government Code, for the purpose of seeking the advice or attorney-client privileged communications from our attorneys, including matters related to the potential financial exposure of the Finance Commission Agencies and their officers and the Finance Commission and its officers and including matters of pending and contemplated litigation

B. OFFICE OF CONSUMER CREDIT COMMISSIONER

1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities
2. *Discussion of and Possible Vote to Take Action on the Adoption of New §2.107 in 7 TAC, Part 1, Chapter 2, Concerning Residential Mortgage Loan Originators Applying for Licensure with the OCCC Under the SAFE Act*
3. *Discussion of and Possible Vote to Take Action on the Adoption of the Completed Rule Review of 7 TAC, Part 5, Chapter 88, Concerning Consumer Debt Management Services*
4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments and a Repeal in 7 TAC, Part 5, Chapter 88, Concerning Consumer Debt Management Services, Resulting from Rule Review
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. Ken Paxton, in his official capacity as Attorney General of the State of Texas; Cause No. 1:14-cv-00190-LY, in the United States District Court, Western District of Texas, Austin Division

C. TEXAS DEPARTMENT OF BANKING

1. Industry Status and Departmental Operations: a) Items of Interest from the Commissioner's Office; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Special Audits Division Activities; e) Administrative and Fiscal Division Activities; f) Strategic Support Division Activities; g) Legal Division Activities; h) Legislative Activities; and i) General Items of Interest
2. Discussion of and Possible Vote to Take Action on the Reappointment of Rebecca Ann Motley as the Consumer Representative and the Appointment of Amy Biggs as the Insurance Industry Representative to the Guaranty Fund Advisory Council for the Period January 1, 2018 to December 31, 2019
3. *Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 2, §15.81 Concerning Application for Acquisition or Change of Control of State Bank*
4. *Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 2, §§33.3, 33.13, 33.15, 33.27, 33.51 and New §§33.71 – 33.75 Concerning Bullion Depository Agents*

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

D. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

1. Industry Status and Departmental Operations - State Savings Bank Activity: a) Industry Status; b) State Savings Bank Charter and Application Activity; c) Other Items
2. Industry Status and Departmental Operations – Mortgage Lending Activity: a) Residential Mortgage Loan Originators; b) Mortgage Examination; c) Consumer Complaints; and d) Other Items
3. Fiscal/Operations Activity: a) Funding Status/Audits/Financial Reporting; b) Staffing; and c) Other Items
4. Legal Activity: a) Enforcement; b) Gift Reporting; and c) Legislative Activities
5. *Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, §80.2, Concerning Definitions, and New §80.206, Concerning Physical Offices*
6. *Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, §80.200, Concerning Required Disclosures*
7. *Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, §81.2, Concerning Definitions, and New Rule §81.206, Concerning Physical Offices*
8. *Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC, §81.109, Concerning Pre-licensing Education*
9. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

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

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

This page left blank intentionally.

**MINUTES OF THE
FINANCE COMMISSION MEETING
Friday, October 20, 2017**

The Finance Commission of Texas convened at 9:03 a.m. on October 20, 2017 with the following members present:

Finance Commission Members in Attendance:

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

Finance Commission Chairman Stacy G. London announced a quorum with ten members present. (00:15) start of discussion)

Stacy G. London made a motion to excuse Vince E. Puente from the Finance Commission meeting held on October 20, 2017. There were no objections and the motion passed unanimously. (00:35)

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
A. FINANCE COMMISSION MATTERS		
1. Review and Approval of the Minutes of the August 18, 2017 Finance Commission Meeting	On Consent Agenda – Item A1 This item Approved on the Consent Agenda.	03:42 start of discussion
2. General Public Comment	No Action Required.	04:12 start of discussion
3. Consent Agenda – Items A1 and D2	Jay Shands made a motion to Approve Consent Agenda items A1 and D2. Phillip Holt seconded and the motion passed.	04:23 start of discussion 05:00 vote
4. Presentation by the Sunset Advisory Commission	No Action Required.	10:55 start of discussion
5. Finance Commission Operations		22:42 start of discussion

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
6. Audit Committee Report		24:15 start of discussion
<p>A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' August 31, 2017 Investment Officer Reports</p> <ol style="list-style-type: none"> 1. Texas Department of Banking 2. Department of Savings and Mortgage Lending 3. Office of Consumer Credit Commissioner 	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies' August 31, 2017 Investment Officer Reports passed.</p>	<p>24:23 start of discussion</p> <p>24:29 vote</p>
<p>B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2017 Fourth Quarter Financial Statements</p>	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies' 2017 Fourth Quarter Financial Statements passed.</p>	<p>24:41 start of discussion</p> <p>24:48 vote</p>
<p>C. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Readoption of the Investment Policies for:</p> <ol style="list-style-type: none"> 1. Department of Savings and Mortgage Lending 2. Office of Consumer Credit Commissioner 	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Readoption of the Investment Policies for the Department of Savings and Mortgage Lending and the Office of Consumer Credit Commissioner passed.</p>	<p>24:59 start of discussion</p> <p>25:10 vote</p>
<p>D. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Amount of Funds the Department of Savings and Mortgage Lending will Contribute to the Texas Financial Education Endowment Fund</p>	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Department of Savings and Mortgage Lending's Contribution of \$500,000 to the Texas Financial Education Endowment Fund passed.</p>	<p>25:22 start of discussion</p> <p>26:07 vote</p>

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<p>E. Discussion of and Possible Vote to Award Final Selection of Organizations, to Receive Grant Funds in an Aggregate Amount Not to Exceed \$250,000 From the Texas Financial Education Endowment Fund</p>	<p>Coming upon Recommendation from the Audit Committee, no second is needed and the motion to Approve the Final Selection of Organizations to Receive Grant Funds in an Aggregate Amount of \$250,000 from the Texas Financial Education Endowment Fund passed.</p> <ul style="list-style-type: none"> • Building Financial Capacity Coalition - \$33,000 • Center for Transforming Lives - \$33,000 • Family Service Association of San Antonio - \$33,000 • FirstLight Community Foundation - \$16,000 • Goodwill Industries of Central Texas - \$33,000 • Harris County Department of Education - \$19,000 • Trinity Basin Preparatory - \$17,000 • Wesley Mission Center - \$33,000 • Women's Resource of Greater Houston - \$33,000 	<p>26:20 start of discussion 27:28 vote</p>
<p>7. Discussion of and Possible Vote to Accept the Report on the Financial Condition of the State Banking System (<i>Note: Report provided separately</i>)</p>	<p>Jay Shands made a motion to Accept the Report on the Financial Condition of the State Banking System. Molly Curl seconded and the motion passed.</p>	<p>27:55 start of discussion 1:26:50 vote</p>
<p>8. Discussion of and Possible Vote to Take Action on the Accomplishment Reports for Fiscal Year 2017 for the Commissioners of the Texas Department of Banking, Department of Savings and Mortgage Lending, and the Office of Consumer Credit</p>	<p>Will Lucas made a motion to Approve the Accomplishment Reports for Fiscal Year 2017 for the Commissioners of the Texas Department of Banking, the Department of Savings and Mortgage Lending, and the</p>	<p>49:51 start of discussion 1:07:11 vote</p>

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
Commissioner	Office of Consumer Credit Commissioner. Molly Curl seconded and the motion passed.	
9. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments, a New Section, and a Repeal in 7 TAC, Part 8, Chapter 153, Concerning Home Equity Lending	Bob Borochoff made a motion to Approve the Proposal and Publication for Comment of Amendments, a New Section, and a Repeal in 7 TAC, Chapter 153, if the voters approve SJR 60 in the November 7, 2017 Constitutional Amendment Election. Phillip Holt seconded and the motion passed.	1:07:40 start of discussion 1:25:53 vote
10. Discussion of and Possible Vote to Take Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Duties and Compensation of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to the Duties and Compensation of Persons Holding the Position of Agency Commissioner Positions, and Other Staff	Deferred to Executive Session – no vote taken.	n/a
11. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to §551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property	Deferred to Executive Session – no vote taken.	n/a
12. Discussion and Consultation with Attorney and Possible Vote to Take Action Pursuant to §551.071, Texas Government Code, for the purpose of seeking the advice or attorney-client privileged communications from our attorneys, including matters related to the potential financial exposure of the Finance Commission Agencies and their officers and the Finance Commission and its officers and including matters of pending and contemplated litigation	Deferred to Executive Session – no vote taken.	n/a

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
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	No Action Required.	1:27:29 start of discussion
2. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 2, §15.81 Concerning Application for Acquisition or Change of Control of State Bank	Will Lucas made a motion to Approve the Proposal and Publication for Comment of Amendments to 7 TAC, Part 2, §15.81 Concerning Application for Acquisition or Change of Control of State Bank. Jay Shands seconded and the motion passed.	2:04:28 start of discussion 2:06:07 vote
3. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, §33.27 Concerning Fees for Money Service Business Licenses	Lori McCool made a motion to Approve the Proposal and Publication for Comment of Amendments to 7 TAC, §33.27 Concerning Fees for Money Service Business Licenses. Hector Cerna seconded and the motion passed.	2:06:42 start of discussion 2:08:33 vote
4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, §§33.3, 33.13, 33.15, 33.27, 33.51 and New §§33.71 – 33.75 Concerning Bullion Depository Agents	Will Lucas made a motion to Approve the Proposal and Publication for Comment of Amendments to 7 TAC, §§33.3, 33.13, 33.15, 33.27, 33.51 and New §§33.71 – 33.75 Concerning Bullion Depository Agents. Phillip Holt seconded and the motion passed.	2:09:05 start of discussion 2:25:09 vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
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	No Action Required.	2:26:51 start of discussion
2. Industry Status and Departmental Operations – Mortgage Lending Activity: a) Residential Mortgage Loan Originators; b) Mortgage Examination; c) Consumer Complaints; and d) Other Items	No Action Required.	2:33:10 start of discussion
3. Fiscal/Operations Activity: a) Funding Status/Audits/Financial Reporting; b) Staffing; and c) Other Items	No Action Required.	2:40:59
4. Legal Activity: a) Enforcement; b) Gift Reporting; and c) Legislative Activities	No Action Required.	2:43:33
5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, §80.2, Concerning Definitions, and New Rule §80.206, Concerning Physical Offices	Phillip Holt made a motion to Approve the Proposal and Publication for Comment of Amendments to 7 TAC, §80.2, Concerning Definitions, and New Rule §80.206, Concerning Physical Offices. Jay Shands seconded and the motion passed.	2:47:22 start of discussion 2:48:50 vote
6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, §80.200, Concerning Required Disclosures	Jay Shands made a motion to Approve the Proposal and Publication for Comment of Amendments to 7 TAC, §80.200, Concerning Required Disclosures. Lori McCool seconded and the motion passed.	2:49:24 start of discussion 2:50:33 vote
7. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, §81.2, Concerning Definitions, and New Rule §81.206, Concerning	Phillip Holt made a motion to Approve the Proposal and Publication for Comment of Amendments to 7 TAC, §81.2, Concerning Definitions, and New	2:51:10 start of discussion 2:51:41

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
Physical Offices	Rule §81.206, Concerning Physical Offices. Molly Curl seconded and the motion passed.	vote
8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New Rule in 7 TAC, §81.109, Concerning Pre-licensing Education	Phillip Holt made a motion to Approve the Proposal and Publication for Comment of New Rule in 7 TAC, §81.109, Concerning Pre-licensing Education. Jay Shands seconded and the motion passed.	2:52:12 start of discussion 2:53:41 vote
9. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Action Required.	
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	No Action Required.	2:54:22 start of discussion
2. Discussion of and Possible Vote to Take Action on the Adoption of the Repeal of 7 TAC, Part 1, Chapter 4, Concerning Credit Card Surcharge Appeal Procedures	On Consent Agenda – Item D2 This item Approved on the Consent Agenda.	n/a
3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments, New Rules, and Repeals in 7 TAC, Part 5, Chapter 89, Concerning Property Tax Lenders, Resulting from Rule Review	Paul Plunket made a motion to Approve the Adoption of Amendments, New Rules, and Repeals in 7 TAC, Part 5, Chapter 89, Concerning Property Tax Lenders, Resulting from Rule Review. Molly Curl seconded and the motion passed.	3:17:08 Start of discussion 3:21:11 vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<p>4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New §2.107 in 7 TAC, Part 1, Chapter 2, Concerning Residential Mortgage Loan Originators Applying for Licensure with the OCCC Under the SAFE Act</p>	<p>Phillip Holt made a motion to Approve the Proposal and Publication for Comment of New §2.107 in 7 TAC, Part 1, Chapter 2, Concerning Residential Mortgage Loan Originators Applying for Licensure with the OCCC Under the SAFE Act. Jay Shands seconded and the motion passed.</p>	<p>3:21:43 Start of discussion 3:23:24 vote</p>
<p>5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 5, §83.503 & §90.203 Concerning Regulated Lenders & Plain Language Contract Provisions</p>	<p>Lori McCool made a motion to Approve the Proposal and Publication for Comment of Amendments to 7 TAC, Part 5, §83.503 & §90.203 Concerning Regulated Lenders & Plain Language Contract Provisions. Phillip Holt seconded and the motion passed.</p>	<p>3:24:08 start of discussion 3:26:09 vote</p>
<p>6. 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. Ken Paxton, in his official capacity as Attorney General of the State of Texas; Cause No. 1:14-cv-00190-LY, in the United States District Court, Western District of Texas, Austin Division</i></p>	<p>No Action Required.</p>	

Chairman Stacy G. London called for an Executive Session at 12:45 p.m. (3:27:01 on the audio file). The open meeting resumed at 1:20 p.m. (3:27:04 on the audio file).

There being no further business, Chairman Stacy G. London adjourned the meeting of the Finance Commission at 1:20 p.m. (3:27:19) on the audio file).

Stacy G. London, Chairman
Finance Commission of Texas

Charles G. Cooper, Commissioner
Texas Department of Banking

Anne Benites, Executive Assistant
Finance Commission of Texas

This page left blank intentionally.

Finance Commission of Texas

Consent Agenda

December 15, 2017

A. Finance Commission Matters

1. Review and Approval of the Minutes of the October 20, 2017 Finance Commission Meeting

B. Office of Consumer Credit Commissioner

2. Discussion of and Possible Vote to Take Action on the Adoption of New §2.107 in 7 TAC, Part 1, Chapter 2, Concerning Residential Mortgage Loan Originators Applying for Licensure with the OCCC Under the SAFE Act
3. Discussion of and Possible Vote to Take Action on the Adoption of the Completed Rule Review of 7 TAC, Part 5, Chapter 88, Concerning Consumer Debt Management Services

C. Texas Department of Banking

3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 2, §15.81 Concerning Application for Acquisition or Change of Control of State Bank
4. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, §§33.3, 33.13, 33.15, 33.27, 33.51 and New §§33.71 – 33.75 Concerning Bullion Depository Agents

D. Department of Savings and Mortgage Lending

5. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, §80.2, Concerning Definitions, and New §80.206, Concerning Physical Offices
6. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, §80.200, Concerning Required Disclosures
7. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, §81.2, Concerning Definitions, and New Rule §81.206, Concerning Physical Offices
8. Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC, §81.109, Concerning Pre-licensing Education

Future Meetings Rule Schedule

Rules	Short Title/Purpose	Projected Proposal Date for Presentation to Finance Commission	Agency
7 TAC, Part 5, Chapter 84	Motor Vehicle Installment Sales <i>Amendments</i>	2/16/18	OCCC
7 TAC, Part 5, Chapter 85, Subchapter B	Rules for Crafted Precious Metal Dealers <i>Amendments</i>	2/16/18	OCCC
7 TAC, Part 1, Chapter 3	State Bank Regulation <i>Adopted Rule Review</i>	2/16/18	DOB
7 TAC, Part 2, Chapter 33	Money Services Businesses <i>Adopted Rule Review</i>	2/16/18	DOB

Finance Commission Agencies Tentative Strategic Planning Timeline

Date	Action
January – March 2018	Workforce Analysis Performance Measure Goals
January – March 2018	Customer Service Report
January – March 2018	Technology Resource Planning
March – April 2018	Planning, Developing & Drafting Strategic Plan
April 2018	Provide drafts to Finance Commission and staff to receive feedback
May 2018	Make edits and revisions as necessary
June 4, 2018	Provide revised Strategic Plan drafts to all Finance Commission members
June 15, 2018	Present Strategic Plans to Finance Commission for formal action
Late June 2018	Submission of final Strategic Plans to state leadership

This page left blank intentionally.

A. FINANCE COMMISSION MATTERS

8. Discussion of and Possible Vote to Take Action on the Proposal for Publication and Comment of New 7 TAC, Part 1, §10.40, Concerning Enhanced Contract and Performance Monitoring; Website Posting

PURPOSE: The purpose of the proposed new rule is to place into regulation the finance agencies' procedures concerning contracts for the purchase of goods or services from private vendors.

RECOMMENDED ACTION: The agencies request that the Finance Commission approve proposed new 7 TAC §10.40 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve for publication and comment proposed new 7 TAC §10.40.

Title 7. Banking and Securities

Part 1. Finance Commission of Texas

Chapter 10. Contract Procedures

Subchapter C. Contract Monitoring

§10.40. Enhanced Contract and Performance Monitoring; Website Posting

The Finance Commission of Texas (commission) proposes new 7 TAC §10.40, concerning enhanced contract and performance monitoring, and the posting of certain contracts on finance agency websites.

The purpose of proposed new §10.40 is to place into regulation the finance agencies' procedures concerning contracts for the purchase of goods or services from private vendors. The finance agencies are the Texas Department of Banking, the Texas Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner.

Subsection (a) states the purpose of the new rule, which provides the procedures applied by the finance agencies concerning contracts for the purchase of goods or services from private vendors.

Subsection (b) outlines the applicability of the rule to finance agency contracts made public or entered into on or after September 1, 2015. Additionally, proposed §10.40(b)(3) lists the types of documents not subject to enhanced monitoring under the rule, as provided by Texas Government Code, §2261.253(d) and (g).

Subsection (c) describes the general procedures for contract evaluation and monitoring, including the use of finance agency policies and contract management handbooks and notice to the commission.

Subsection (d) provides for the posting of certain contracts under Texas Government Code, §2261.253(a), as well as the redaction of confidential information under §2261.253(e) prior to posting. The authorization to redact confidential information from these contracts was recently added by the Texas Legislature with the enactment of Senate Bill 533, effective September 1, 2017.

Charles G. Cooper, Banking Commissioner and Executive Director of the Finance Commission, on behalf of the finance agencies, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state or local government as a result of administering the rule. The proposed rule would place into regulation existing procedures, as required by Texas Government Code, §2261.253 to monitor and post contracts fulfilling certain statutory requirements. This process of enhanced contract and performance monitoring, along with website posting, requires identical amounts of staff time and effort to complete under the existing policies, which are incorporated by reference into the proposed rule, and involves the same consideration of facts and governing state law.

Charles G. Cooper, Banking Commissioner and Executive Director of the Finance Commission, has also 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 the rule is that vendors and the public will have access

to clear, published guidelines governing the enhanced contract and performance monitoring of the finance agencies. Additionally, the proposed new rule will further increase the accountability and transparency of contract procedures used by the finance agencies.

There is no anticipated cost to persons who are required to comply with the proposed new rule. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There will be no difference in the cost of compliance for small businesses, micro-businesses, or rural communities, as compared to large businesses. There will be no effect on individuals required to comply with the proposed new rule.

During the first five years the proposed new rule will be in effect, the rule will not create or eliminate a government program. Implementation of the rule will not require the creation of new employee positions or the elimination of existing employee positions. The proposed new rule does not require an increase or decrease in fees paid to the agencies or the commission. The proposal creates a new rule at §10.40, concerning enhanced contract and performance monitoring, and the posting of certain contracts on finance agency websites. The proposed new rule does not expand, limit, or repeal an existing regulation. The proposed new rule does not increase or decrease the number of individuals subject to the contract procedures in Chapter 10. The agencies do not anticipate that the proposed new rule will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of

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

The new rule is proposed under Texas Government Code, §2261.253(c), which requires each state agency to adopt rules establishing a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the agency's governing body.

The statutory provisions affected by the proposed new rule are contained in Texas Government Code, Chapter 2261.

§10.40. Enhanced Contract and Performance Monitoring; Website Posting.

(a) Purpose. Under Texas Government Code, §2261.253, the finance agencies apply the following procedures concerning contracts for the purchase of goods or services from private vendors.

(b) Applicability.

(1) Finance agencies. This section applies to the agencies governed by the Finance Commission of the State of Texas: the Texas Department of Banking, the Texas Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner.

(2) Date of contracts subject to enhanced monitoring. This section applies to the following:

(A) contracts for which the request for bids or proposal is made public on or after September 1, 2015; and

(B) for contracts exempt from competitive bidding, contracts entered into on or after September 1, 2015.

(3) Documents not subject to enhanced monitoring. This section does not apply to:

(A) memoranda of understanding;

(B) interagency contracts;

(C) interlocal agreements;

(D) contracts that do not involve a cost; or

(E) contracts submitted to the Texas Legislative Budget Board for posting on its website.

(c) Contract evaluation and monitoring.

(1) Use of finance agency policies and contract management handbook. Contracts are evaluated and monitored in accordance with each respective finance agency's policies and contract management handbook. Each finance agency maintains a contract management handbook in accordance with Texas Government Code, §2261.256.

(2) Finance Commission notice. If a finance agency identifies a contract that requires enhanced monitoring, the finance agency will notify the Finance Commission

in accordance with its policies and contract management handbook. The finance agency will include in the notification any serious issues or risks identified with the contract.

(d) Website posting.

(1) Posting on finance agency website. Each finance agency will post on its website contracts that meet the posting requirements provided by Texas Government Code, §2261.253(a).

(2) Redaction of confidential information. Before posting the contracts under paragraph (1) of this subsection, each finance agency must redact information that is confidential by law, information excepted from public disclosure by the Texas Public Information Act (Texas Government Code, Chapter 552), and the social security number of any individual in accordance with Texas Government Code, §2261.253(e).

Certification

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

Issued in Austin, Texas on December 15, 2017.

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

B.

**Office of Consumer
Credit Commissioner**

Consumer Protection and Consumer Assistance Report

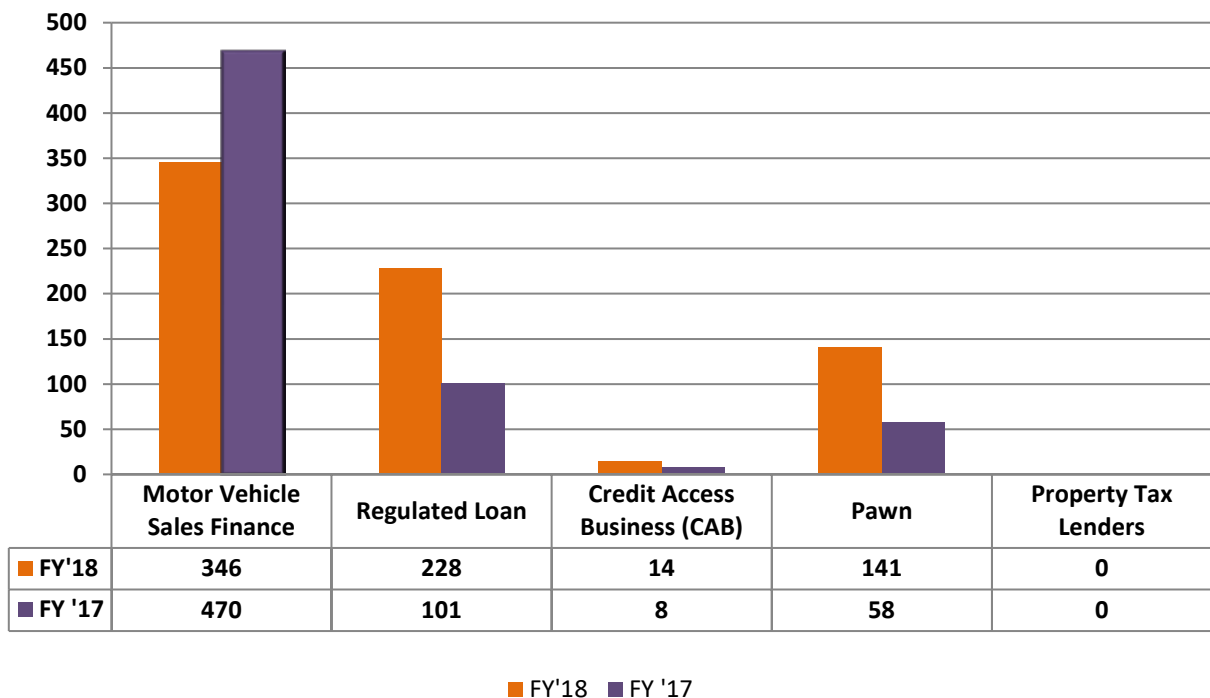
Rudy Aguilar, Director of Consumer Protection

In the first two months of fiscal year 2018, 728 examinations have been conducted, which is ahead of the pro rata goal of 700 examinations. Fiscal year 2018 aggregate examinations (all license types) are on track with the pro rata goal.

Enterprise level examinations are proceeding in the Credit Access Business, Motor Vehicle Sales Finance, and Property Tax license categories.

Examinations are in progress or in the planning stage for license categories that are below the pro rata goal.

Examinations Conducted: Sept - Oct Fiscal Year Comparison

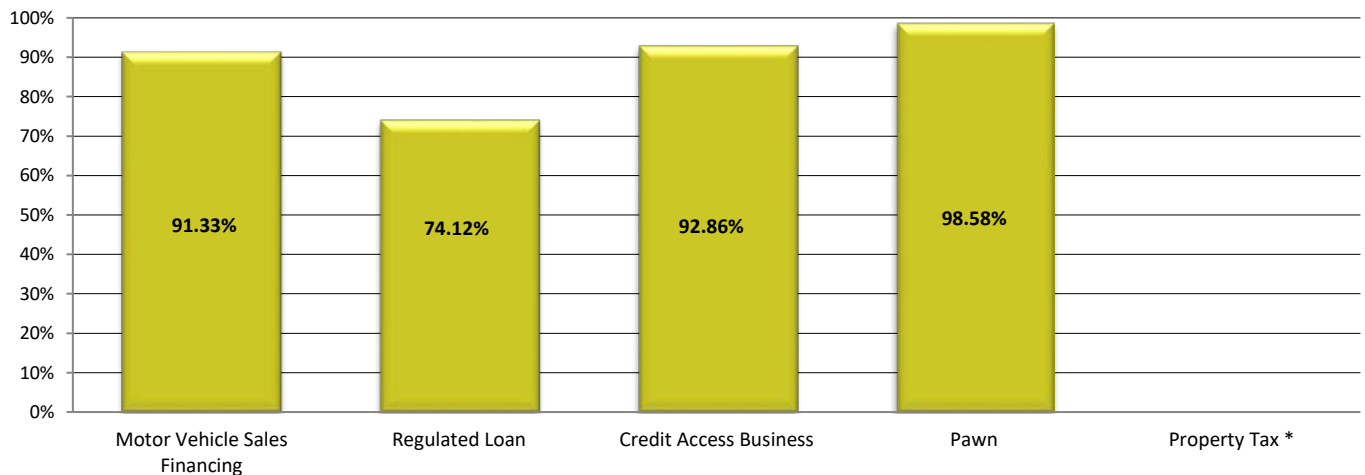


The acceptable level of compliance for all examination areas is charted below. The first chart displays the acceptable levels of compliance for FY '18; three of the examination areas were above 90%. The Regulated Loan acceptable level of compliance was affected by enterprise examinations that received an unacceptable compliance rating. Examinations have not been completed in the Property Tax license category as of the end of October, although several examinations are in progress. The second chart denotes the acceptable level of compliance data points on a trailing 12-month basis through October 31, 2017.

The OCC and the industry have been successful at improving the acceptable level of finance for the Motor Vehicle Sales Finance licensee base over time. Examinations have supported an understanding of compliance in the Motor Vehicle Sales finance transaction. Additionally, staff continues to provide industry guidance and participation with the Department of Motor Vehicles in monthly dealer events and other independent industry presentations on compliance.

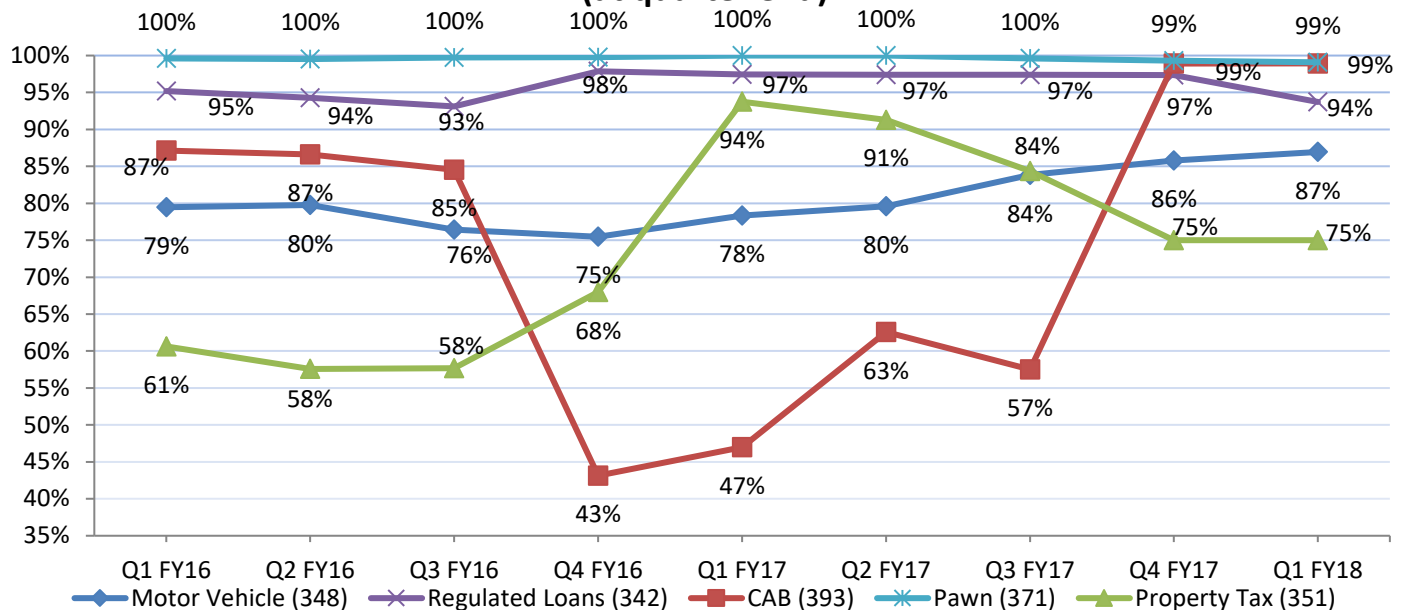
Compliance challenges continue, however, due to a relatively high level of turnover in newly licensed applicants and the recent addition of several ancillary products which are sold and added to retail installment contracts. Specifically, the processing of claims involving these ancillary products and refunding of fees in instances of early pay off, cancellation, total loss, and repossession present challenges to compliance.

Acceptable Level of Compliance FY '18 (Sept 2017 - Oct 2017)



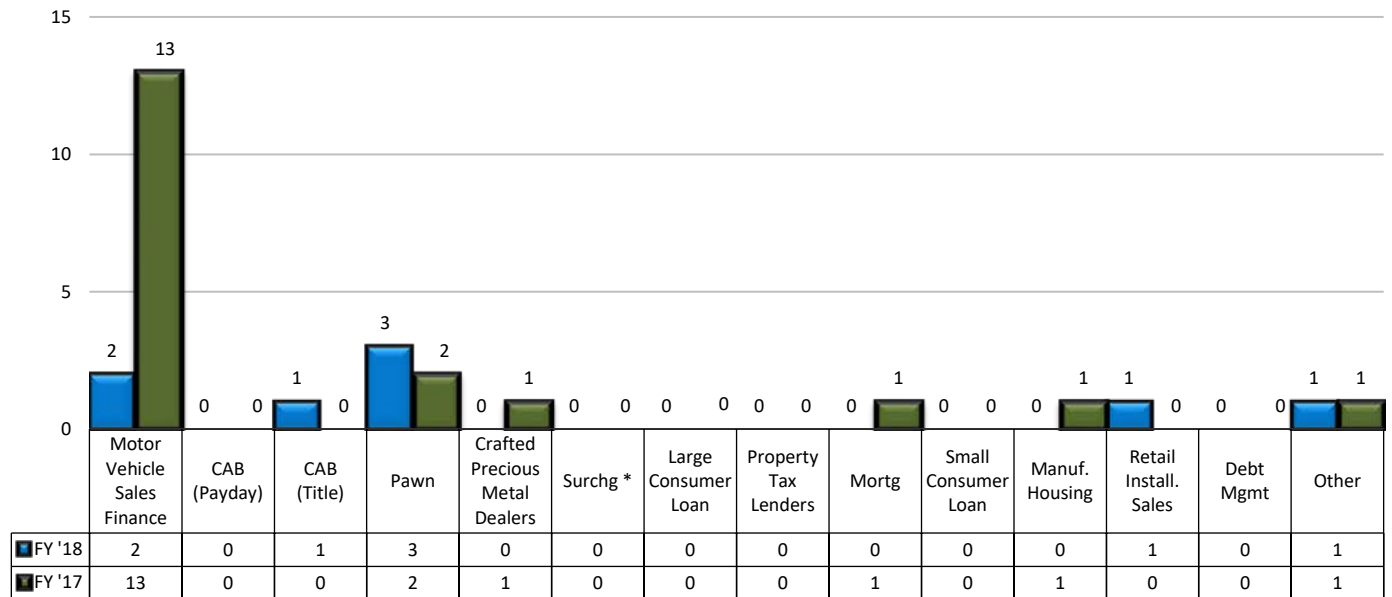
*No Property Tax data available for this period

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



Investigations

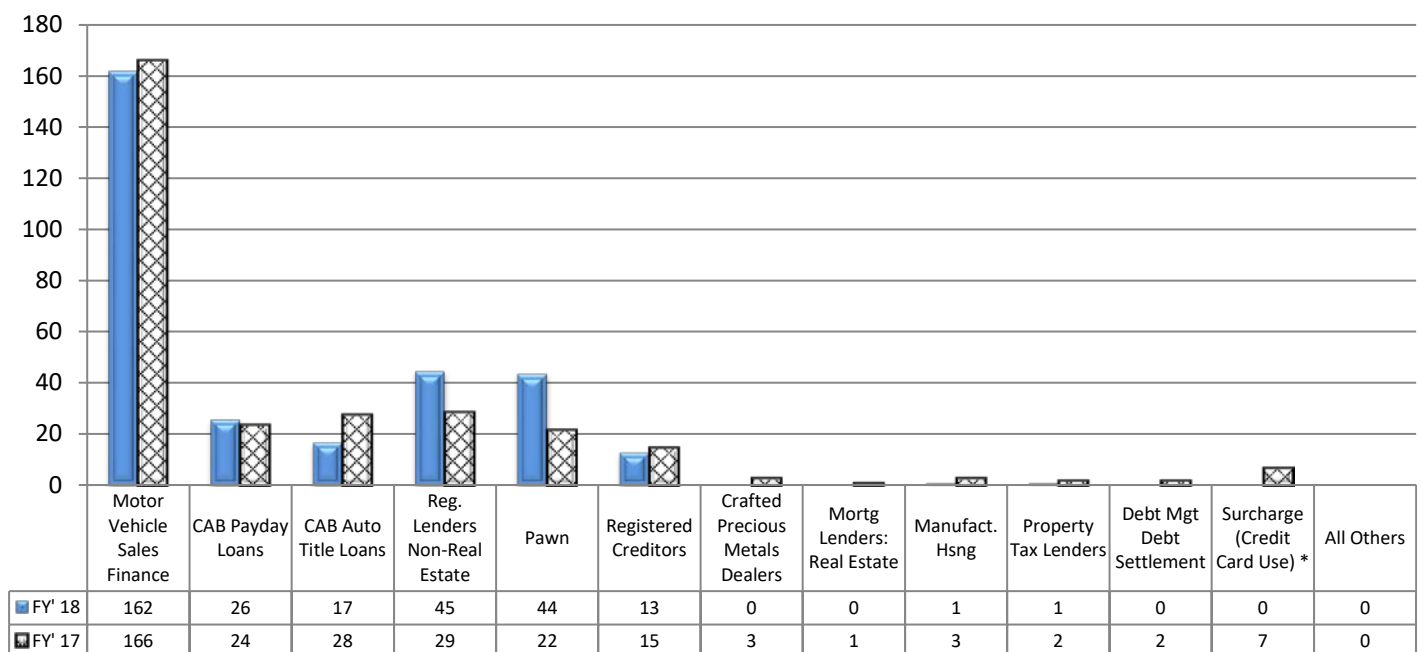
Investigations Completed FY '18 (Sept 2017 - Oct 2017) Total: 8 FY '17 (Sept 2016 - Oct 2016) Total: 19



*Surcharge no longer regulated by OCC

Consumer Assistance

Complaints Processed FY '18 (September 2017-October 2017) Total: 309 FY '17(September 2016-October 2016) Total: 302

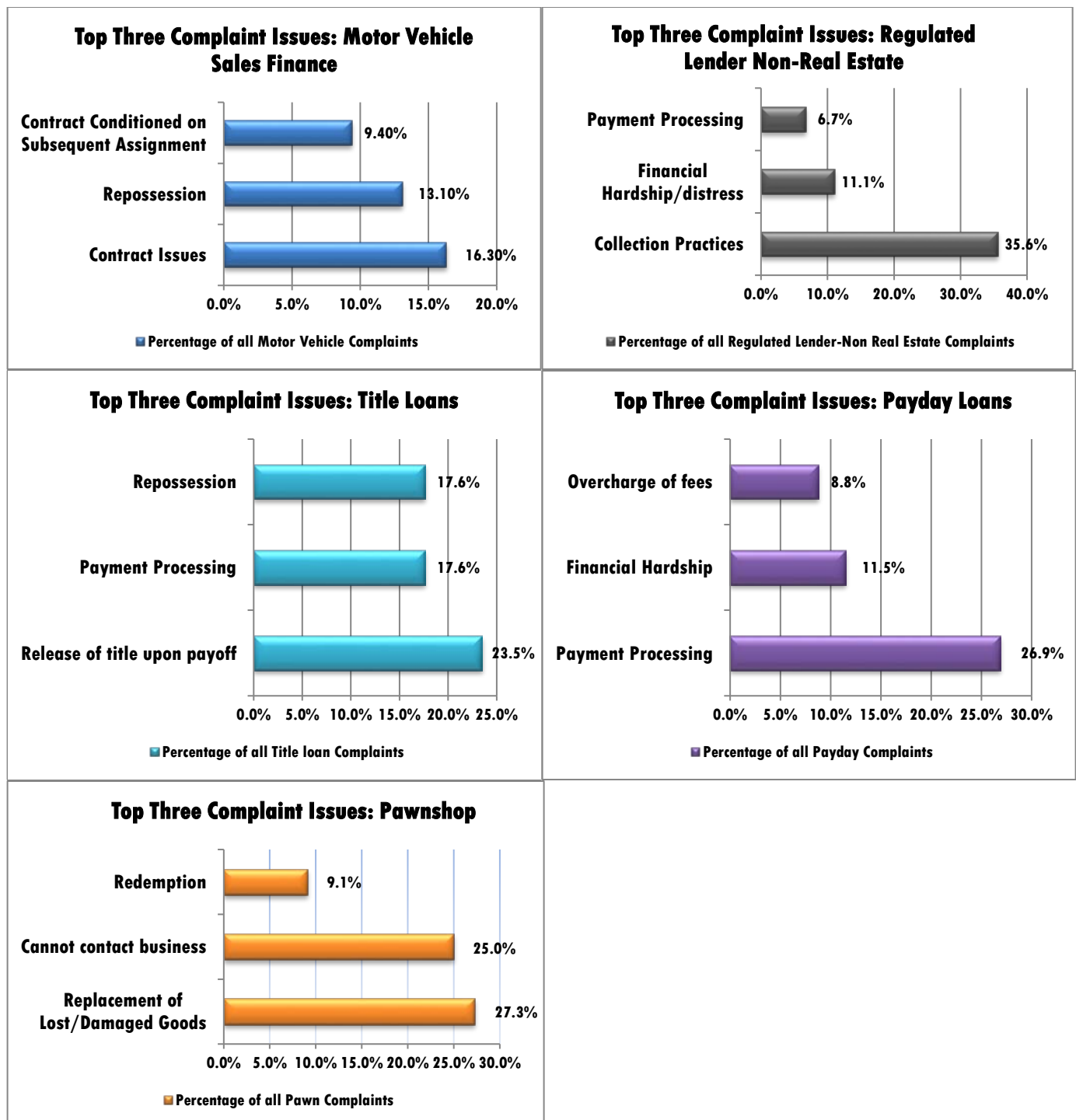


*Surcharge no longer regulated by OCC

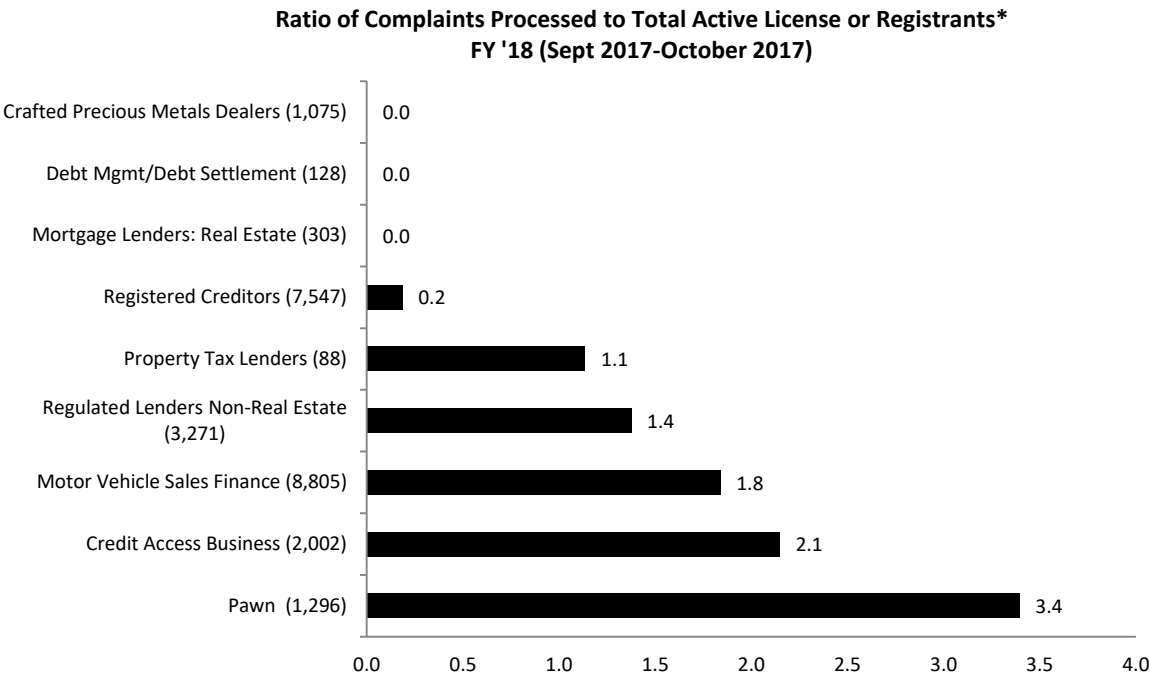
The top four areas of complaints are (1) Motor Vehicle Sales Finance (MVSF), (2) Regulated Lenders Non-Real Estate, (3) Pawn and (4) Credit Access Business (CAB).

MVSF complaints were the largest complaint category at 52.4%. The second largest number of complaints came from the Regulated Lenders: Non Real Estate category at 14.6%. The third largest category was pawn complaints at 14.2%. These issues were predominately related to replacement of lost/damaged goods and consumers having difficulty contacting pawnshops due to Hurricane Harvey. The fourth largest category was CAB complaints. Collectively, CAB complaints are 13.9%; separately, these are at 8.4% for payday loans and 5.5% for title loans.

Each of the following charts represent the three top complaint areas per license type.



Comparison of complaints processed to the number of active license or registrant population is noted on the chart below. The highest ratio involved Pawnshop, followed by Credit Access Business as the second highest. MVSF ratio of complaints to active licenses was third followed by Regulated Lenders Non-Real Estate as fourth highest.



■ Complaints per Hundred Licenses

*License-Registrant levels as of 11-01-2017

CAB Reporting Update

Summaries of all reports through the third quarter of 2017 are available on the OCCC website. Presented are selected statistics of January – September (Q1 – Q3) reports through the years. *Consolidation in the industry primarily occurred during 2014-2016. The number of different stores arranging loans decreased 36% in that time and now maintains at that lower level. The remaining stores increasingly offer installment loans payable in around five months.*

Data Highlights (All Loan Types) Q1 - Q3 Comparison	2017	2016	2015	2014	2013	2012
Number of new payday loans	1,598,074	1,693,477	1,762,942	1,727,233	1,914,163	1,840,000
Number of new auto title loans	214,454	208,922	249,770	306,920	385,866	350,451
Percentage of payday loans due in multiple installments	45%	41%	39%	32%	24%	15%
Percentage of auto title loans due in multiple installments	40%	39%	27%	17%	14%	17%
Number of vehicles repossessed under all auto title loans	23,052	24,494	28,365	32,460	28,134	26,973
Total number of locations reporting activity	1,889	1,933	2,549	2,999	3,168	3,113

Payday Loans Q1 - Q3	Single Installment			Multiple Installment		
	2017	2016	2015	2017	2016	2015
Number of consumers obtaining loans	622,317	710,534	808,745	642,011	619,696	614,622
Number of new loans	884,221	1,000,857	1,076,637	713,853	692,620	686,305
Number of refinances on new loans in the quarter ¹	587,024	661,477	799,725	75,148	53,071	55,786
Number of total refinances ²	1,421,129	1,562,296	1,957,741	209,289	204,484	188,584
Average loan amount	\$459	\$450	\$481	\$582	\$561	\$534
Average fee per \$100 borrowed	\$24.03	\$23.71	\$23.51	\$153.32	\$165.89	\$169.84
Average original term (in days)	20	17	18	148	159	160

Title Loans Q1 - Q3	Single Installment			Multiple Installment		
	2017	2016	2015	2017	2016	2015
Number of consumers obtaining loans	114,536	112,301	161,793	80,917	77,632	64,412
Number of new loans	127,799	126,847	182,024	86,655	82,075	67,746
Number of refinances on new loans in the quarter ¹	73,053	84,590	119,138	14,426	11,931	8,483
Number of total refinances ²	497,337	636,148	874,676	74,482	25,548	23,309
Average loan amount	\$1,310	\$1,228	\$1,267	\$1,050	\$1,283	\$1,072
Average fee per \$100 borrowed	\$16.41	\$16.77	\$16.94	\$131.79	\$90.53	\$91.25
Average original term (in days)	30	30	30	156	161	168

¹ Refinance activity represents only the renewals occurring in the quarter the loan was originated.

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



Licensing Report- December 2017

Mirand Zepeda, Manager

Renewals

The renewal period for Credit Access Businesses, Regulated Lenders, and Property Tax Lenders opened in November and will continue through December 31st. Regulated Lenders received a discount of 15% of the assessment this year. The department will work to provide exceptional customer service and tech support throughout the renewal period, while also working on incoming applications. The department estimates that more than 85% of licensees will complete renewal online.

Registered Creditor renewal ends November 30th. Currently more than 5,500 registrants have renewed, of which approximately 95% have completed renewal online through ALECS. Additionally, the renewal period for Refund Anticipation Loan Facilitators began on December 1 and ends December 31.

Applications Processing

Staffing changes, cross-training and increased workload have resulted in an increase in pending application volume in Q1 of FY 2018. The department has collaborated on possible solutions to increase efficiency. Management has implemented a new workload analysis and performance plan and will continue to analyze data and processes.

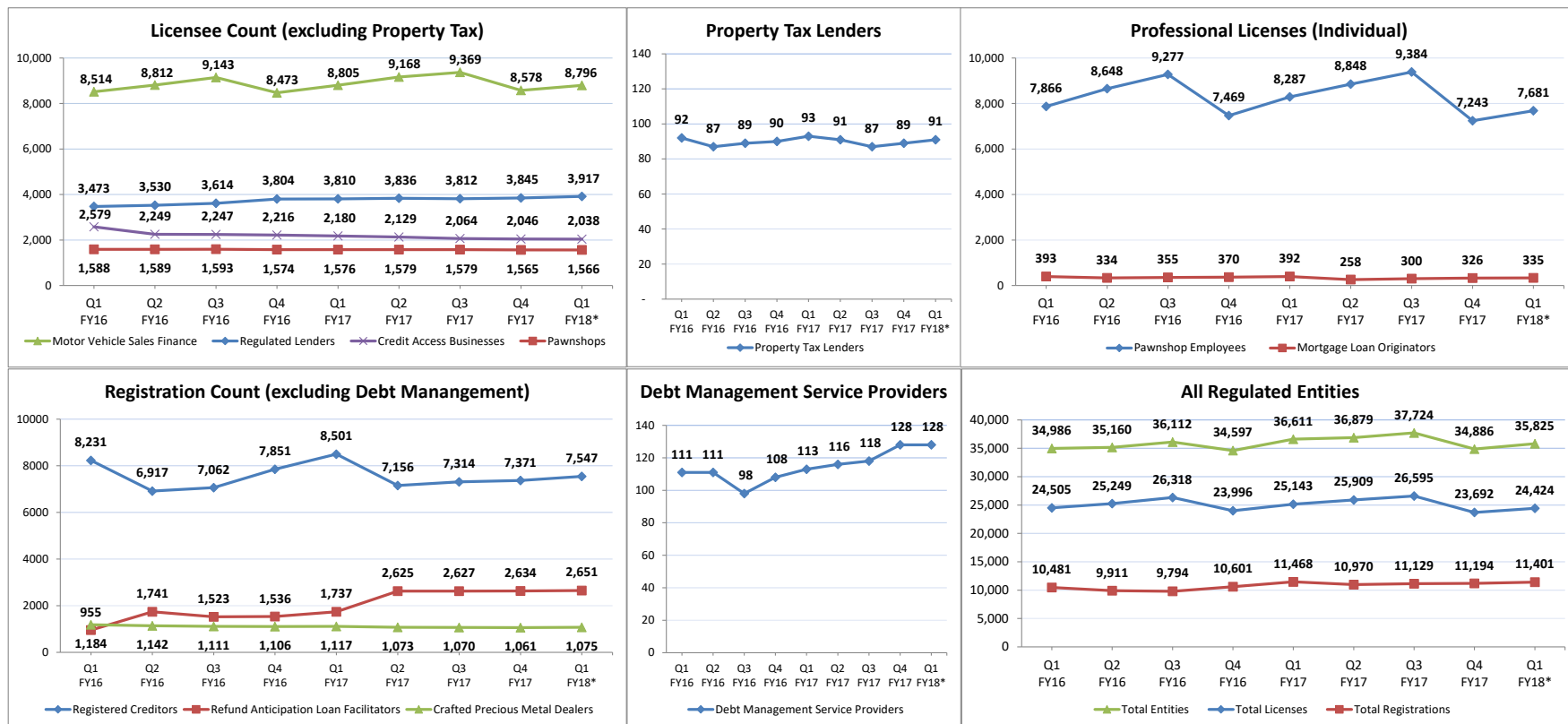
Other Updates

The department continues to work on the transition of crafted precious metals dealer registrations to ALECS from the DPS database.

Regulated Entity Population Trends

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

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



* Data through 11/01/2017



Communications, Human Resources & Administration Report

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

COMMUNICATIONS

Over the past month, Juan V. Garcia, Director of Strategic Communications, Administration & Planning, worked with Karl Hubenthal, Financial Analyst III, to complete a statutorily required report. The [2017 Report on Availability, Quality, and Pricing of Certain Financial Services and Consumer Loan Products](#) was published on December 1. This report was prepared in response to certain constitutional, statutory, and administrative regulation requirements and in accordance with Texas Finance Code, Sec. 11.305.

Agency staff continues to provide a combination of live presentations and communication through various channels. Year-to-date, more than 300 industry participants have attended staff presentations regarding compliance matters and the regulatory role and responsibilities of the agency at training seminars hosted by other organizations. On September 12, William Purce, Senior Review Examiner, presented to dealers at the Manufactured Housing Division of the Texas Department of Housing and Consumer Affairs in Austin. In addition, William Purce and Deputy General Counsel Matt Nance gave a presentation on Usury and the Truth in Lending Act at the TexasBarCLE Advanced Consumer and Commercial Law 2017 seminar on September 14.

Veronica Gonzalez-Celis participated at the Dealer Training for the Texas Department of Motor Vehicles on November 15, in McAllen.

During the first two weeks in November, the OCCC responded to a data request from Sunset staff and provided comprehensive statistical information for the previous ten years related to agency programs and other related operations.

HUMAN RESOURCES

In this reporting period (October and November), the OCCC had the following vacant positions at Austin Headquarters: (1) Accountant II-III, (1) Investigator I and (1) System Support Specialist.

During this same period, the Agency had one voluntary separation (Customer Service Representative) and one agency transfer (Accountant II) in the Austin Headquarters.

In addition, previously reported vacancies were filled including: (2) Investigator I positions in the Consumer Assistance Department, Accountant IV in the Accounting Department, and (3) Financial Examiner I positions within the Consumer Protection Department (2 positions in Fort Worth/Dallas area and 1 in the Houston area).

Recruiting efforts continue and are focused on filling all current open positions within the Agency. At the end of November 30, the OCCC had 86 FTEs and experienced an overall turnover of 3.66%, with the goal being under 15%. The Financial Examiner series has not experienced any turnover in this fiscal year.

ADMINISTRATION

FINANCIAL LITERACY

Since the start of FY 2018, the Financial Literacy Specialist provided financial education to 59 Texas consumers through presentations and delivery of educational brochures or handouts. In addition, staff has distributed over 2,000 pawnshop and regulated lender brochures to industries.

Staff traveled to the Doris Griffin Senior One-Stop Center in San Antonio, Texas on September 21 and October 24 to provide financial education on Identity Theft and Elderly Exploitation, to the seniors, underserved population of Texas. Presenting at this location allowed the Financial Literacy Specialist to network with other senior center supervisors across the state. Staff continues to reach out to senior centers in hopes of scheduling additional financial education courses.

In addition, the department continues to promote and support the importance of financial education statewide.



Accounting & IT Reports

Accounting

The Accounting Department prepared various reports that were requested by the Sunset Commission. The department is about to begin preparation for the FY 2017 Annual Non-Financial Report, which is due December 31. Employees have been engaged in more cross training to expand their knowledge and assist others as needed.

Information Technology

LEGACY MODERNIZATION

Staff continues to work through ALECS maintenance issues and enhancements during vendor supported maintenance.

Requirements gathering has begun in order to add Crafted Precious Metals registration to the ALECS portal so that it can be removed from the DPS hosted site. Staff is currently reviewing rules to ensure that OCCC technical requirements properly align with the legal requirements. The project should be completed by the end of fiscal year 2018.

The agency's in-house programmer continues development for the new Human Resources database. This project has been delayed due to other priorities.

VoIP (Voice over Internet Protocol)

OCCC has completed the necessary prerequisite network configuration changes to facilitate the transition to VoIP. This included moving OCCC's connection to DIR's MPLS network and setting up a trunked connection with DIR so that the agency can send voice and internet over the same connection.

OCCC has purchased new Power over Ethernet switches, necessary to power the VoIP phones, and is in the process of configuring the new switches for use. The agency has also upgraded the wireless bridge that provides network connectivity to the remote office at Nob Hill, to allow VoIP traffic to be passed over the bridge.

SECURITY

The OCCC Security Committee continues to make progress on the security roadmap, including new and revised policies and procedures, training requirements, and software/hardware policies. The Committee has completed the short term recommendations and has started working on medium term items.

The agency has completed the implementation of a security information and event management (SIEM) software product. It provides real-time analysis of security alerts generated by applications and network hardware.



Legal Department Report

Michael Rigby, General Counsel

December 2017

Enforcement Report

Credit Access Business – Quarterly Report

In November 2017, the OCCC issued administrative orders against 18 credit access businesses that did not timely file their 2017 3rd quarter report. Of the 18 late filers, the OCCC issued injunctive orders against 16 credit access businesses for a first-time reporting violation. The orders direct the credit access businesses to file their 2017 3rd quarter report within 30 days, and to file future quarterly and annual reports in a timely manner. The remaining two credit access businesses were assessed an administrative penalty for violating a prior injunctive order regarding the same issue.

Over the last two years, reporting compliance has improved for credit access businesses. During the first three quarters of 2017, the OCCC issued 26 administrative orders for late quarterly reports. This represents a 56% decrease from the 59 orders for this violation issued over the same period in 2016, and a 70% decrease from the 87 orders issued over the same period in 2017.

Pawnshop – Annual Report

In November 2017, the OCCC issued administrative orders against seven pawnshops that did not timely file their 2016 annual report. Of the seven late filers, the OCCC issued injunctive orders against six pawnshops for a first-time reporting violation. The orders direct the pawnshops to file their 2016 annual report within 30 days, and to file future annual reports in a timely manner. The remaining pawnshop was assessed an administrative penalty for violating a prior injunctive order regarding the same issue.

Over the last two years, reporting compliance has improved for pawnshops. The seven orders issued for late 2016 annual reports represents a 46% decrease from the 13 orders for this violation issued in 2016, and a 77% decrease from the 30 orders issued in 2015.

Performance Report

The following table summarizes enforcement actions closed by the OCCC during the last three fiscal years, and the current fiscal year-to-date as of November 30, 2017. These figures reflect enforcement actions that have been fully resolved by formal order, informal resolution, or dismissal. Actions that are still pending are not included in the table.

Enforcement Actions Closed as of November 30, 2017				
	FYTD 2018	FY 2017	FY 2016	FY 2015
Revocation / Suspension Actions				
Regulated Loan License	0	1	1	27
Pawnshop License	0	1	3	2
Pawnshop Employee License	0	1	2	2
Credit Access Business	0	3	2	1
Motor Vehicle Sales Finance License	0	2	9	4
Property Tax Loan License	0	0	0	0
Crafted Precious Metal Dealer	0	0	0	2
Total Revocation / Suspension Actions	0	8	17	38
Injunction Actions				
Regulated Loan License	2	37	88	1
Pawnshop License	1	37	1	0
Pawnshop Employee License	0	69	0	0
Credit Access Business License	3	47	25	1
Motor Vehicle Sales Finance License	8	31	18	12
Property Tax Loan License	0	2	16	1
Crafted Precious Metal Dealer	0	0	0	3
Registered Creditor (Ch. 345)	0	1	1	0
Manufactured Housing (Ch.347)	0	1	0	0
Debt Management Services (Ch.394)	0	2	1	6
Credit Card Surcharge (Ch. 339)	0	2	7	1
Residential Mortgage Loan Originator	1	1	0	0
Total Injunction Actions	15	230	157	25
Administrative Penalty Actions				
Regulated Loan License	0	13	0	73
Pawnshop License	0	3	40	4
Pawnshop Employee License	0	0	1	4
Credit Access Business License	1	23	97	136
Motor Vehicle Sales Finance License	13	106	129	76
Property Tax Loan License	0	2	3	8
Crafted Precious Metal Dealer	0	0	2	0
Residential Mortgage Loan Originator	0	0	1	0
Total Administrative Penalty Actions	14	147	273	301
Application Denial and Protest Actions				
Regulated Loan License	0	0	0	0
Pawnshop License	0	1	1	0
Pawnshop Employee License	0	0	7	13
Credit Access Business License	0	0	0	2
Motor Vehicle Sales Finance License	0	1	3	8
Property Tax Loan License	0	0	0	0
Residential Mortgage Loan Originator	0	1	0	1
Total App. Denial and Protest Actions	0	3	11	24
Total Enforcement Actions Closed	29	388	458	388

From October 1, 2017 to November 30, 2017, the OCCC:

- issued 12 final orders,
- opened 5 cases in order to assess administrative penalties,
- opened 29 cases in order to issue injunctions,
- issued no assurances of voluntary compliance,
- participated in no contested case hearings, and
- dismissed one contested case hearing.

The OCCC has one hearing scheduled between December 1, 2017 and January 31, 2018.

Administrative Rule Report

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

- A proposal of a new rule regarding enhanced contract and performance monitoring, and the posting of certain contracts on finance agency websites.
- An adoption of a new rule regarding residential mortgage loan originators applying for licensure with the OCCC under the SAFE Act, implementing recent legislation.
- A proposal of amendments regarding debt management services providers, updating registration procedures, recordkeeping and disclosure requirements, and providing clarification and technical corrections, resulting from rule review.

For the February 2018 meeting, the OCCC is working towards rule actions regarding the following issues:

- An adoption of amendments to interpretations on home equity lending, implementing recent amendments that Texas voters approved in the constitutional amendment election on November 7, 2017.
- An adoption of amendments on including the administrative fee for a Chapter 342, Subchapter E loan in the loan's principal balance. The OCCC originally intended to present this adoption at the December meeting. However, due to an error by the Texas Register, the figures in the proposed amendments were published in the November 17 issue of the Texas Register, rather than the November 3 issue. For this reason, the OCCC will accept comments on the rule amendments and figures until December 18 at 5 p.m., and intends to present the adoption at the February 2018 meeting.
- A proposal of amendments regarding recordkeeping for motor vehicle sales finance licensees.
- A proposal of amendments regarding registration procedures for crafted precious metal dealers.

Litigation

Ocwen Loan Servicing LLC Multistate Consent Judgment

In 2014, Ocwen Loan Servicing, LLC entered a consent judgment with Texas and 48 other states to resolve claims that Ocwen engaged in unlawful conduct in the servicing of residential mortgage loans. In 2017, a multistate monitoring committee found that Ocwen failed to cure a violation of a metric in the consent judgment. The committee filed a motion to enforce the consent judgment's remedy provisions, and the federal district court for the District of Columbia granted this motion on September 26, 2017.

The OCC and the Texas Department of Savings and Mortgage Lending each received \$4,500 of the total penalty paid by Ocwen for its violation of the 2014 consent judgment.

CAB Municipal Ordinance Litigation

A Travis County Court at Law has ruled in favor of the City of Austin in two cases relating to violations of Austin's credit access business (CAB) ordinance. The two cases were brought against ACSO of Texas, LP d/b/a Advance America and The Money Store, LP d/b/a Speedy Cash. The City of Austin alleged the CABs violated the ordinance's limit to the number of installment payments on a payday or motor vehicle title loan. The CABs alleged that the ordinance is preempted by Section 393.602(b) of the Texas Finance Code. The Travis County Court at Law held that that the ordinance is not preempted and can be harmonized with state law. This holding reversed earlier municipal court decisions holding that the ordinance is preempted.

In October 2017, the CABs appealed these cases to the Third Court of Appeals in Austin. The appellants' briefs are due in December 2017. The two cases are currently pending in the Third Court of Appeals under case numbers 03-17-00668-CR and 03-17-00675-CR.

Federal Rulemaking

CFPB Arbitration Rule

On October 24, 2017, the U.S. Congress passed HJR 111, a resolution invalidating the CFPB's recently adopted arbitration rule. The rule would have prohibited creditors from including a class-action waiver in a pre-dispute arbitration agreement, and would have required creditors to report information about arbitrations to the CFPB. Because Congress has invalidated the rule under the Congressional Review Act, the rule has no legal force or effect. The CFPB may not reissue the rule (or substantially the same rule) unless specifically authorized by a future law.

CFPB Payday Loan Rule

On November 17, 2017, the CFPB published its final adopted rule with requirements for payday loans, title loans, and other high-cost consumer loans. Creditors will be required to comply with the rule starting August 19, 2019. The rule contains ability-to-repay requirements and payment-withdrawal requirements for certain short-term and long-term consumer loans.

On December 1, 2017, a resolution to invalidate the rule was filed in the U.S. House of Representatives (HJR 122).

Attorney General Opinion Request

On May 12, 2017, the Texas attorney general received opinion request number RQ-0162-KP which asked for an interpretation of the 180-day limitation on credit access business services in Section 393.201(b)(2) of the Texas Finance Code. On November 7, 2017, the attorney general closed the request after receiving an e-mail from the requestor advising that he wished to withdraw the request.

Advisory Bulletins

On November 15, 2017, the Joint Financial Regulatory Agencies (Department of Banking, Department of Savings and Mortgage Lending, Credit Union Department, and OCCC) issued a statement on the passage of SJR 60. The statement explains that Texas voters approved SJR 60's amendments to the Texas Constitution's home equity lending provisions, and that the agencies will accept comments on the proposed home equity interpretation amendments until December 25 at 5 p.m. The statement also explains that SJR 60's new compliance requirements will be effective January 1, 2018, and directs stakeholders to finalized versions of English and Spanish disclosures posted on the Finance Commission's website.

Official Interpretation Requests

From October 1, 2017 to November 30, 2017, the OCCC received one request for an official interpretation. The request asks whether a motor vehicle licensee is required to retain the federal privacy notice as part of the retail installment sales transaction file. The request was published in the Texas Register on December 1, 2017, and the OCCC will accept official comments on it until 5 p.m. on January 1, 2018. The OCCC is considering addressing this issue through rule amendments rather than an official interpretation.

Public Information Requests

From October 1, 2017 to November 30, 2017, the OCCC received 32 requests for information under the Texas Public Information Act, with no referrals to the Office of the Attorney General.

Gifts Received by the OCCC

From October 1, 2017 to November 30, 2017, the OCCC did not receive any gifts.

Legislative Bill No. and Description	Rule Item/Purpose	Proposal Date	Adoption Date
Senate Bill 533 Relating to governmental entity contracting and procurement	Contract Procedures - Proposed New Rule 7 TAC, Part 1, Chapter 10 - §10.40 To place into regulation the finance agencies' procedures concerning contracts for the purchase of goods or services from private vendors	12/15/17	
House Bill 3342 Relating to the prelicensing education requirements for residential mortgage loan originators	Residential Mortgage Loan Originators Applying for Licensure with the OCCC Under the SAFE Act - Adopt New Rule 7 TAC, Part 1, Chapter 2 - §2.107 To implement HB 3342 by setting the expiration period for prelicensing education of residential mortgage loan originators <i>Precomment draft distributed September 15, 2017</i>	10/20/17	Presented for Adoption 12/15/17
Not applicable	Consumer Debt Management Services - Adopt Completed Rule Review; Proposed Amendments & Repeal 7 TAC, Part 5, Chapter 88 To conduct standard rule review under Tex. Gov't Code, §2001.039; to update registration procedures, recordkeeping and disclosures; to provide clarification; and to make technical corrections <i>Precomment draft distributed November 17, 2017</i>	12/15/17	
Not applicable	Motor Vehicle Installment Sales - Amendments 7 TAC, Part 5, Chapter 84 - §§84.707, 84.708, & 84.709 To clarify recordkeeping procedures <i>Precomment draft distributed November 15, 2017</i> <i>Stakeholder meeting anticipated January 2018</i>	02/16/18	

Legislative Bill No. and Description	Rule Item/Purpose	Proposal Date	Adoption Date
Not applicable	Rules for Crafted Precious Metal Dealers - Amendments 7 TAC, Part 5, Chapter 85, Subchapter B To update registration procedures	02/16/18	
Senate Joint Resolution 60 Proposing a constitutional amendment establishing a lower amount for expenses that can be charged to a borrower and removing certain financing expense limitations for a home equity loan, establishing certain authorized lenders to make a home equity loan, changing certain options for the refinancing of home equity loans, changing the threshold for an advance of a home equity line of credit, and allowing home equity loans on agricultural homesteads	Home Equity Lending - Amendments, New Section, & Repeal 7 TAC, Part 8, Chapter 153 To implement SJR 60, which amends Article XVI, Section 50 of the Texas Constitution and applies to home equity loans entered on or after January 1, 2018 <i>Precomment draft distributed September 13, 2017</i> <i>Stakeholder meeting and webinar held September 25, 2017</i> <i>Texas voters approved SJR 60 in Constitutional Amendment Election November 7, 2017</i> <i>Proposal published in Texas Register November 24, 2017</i> <i>Comment period ends December 25, 2017</i>	10/20/17	Scheduled for Adoption 02/16/18
Not applicable	Rules for Regulated Lenders - Amendments 7 TAC, Part 5, §83.503, Administrative Fee Chapter 342, Plain Language Contract Provisions- Amendments 7 TAC, Part 5, §90.203, Model Clauses To specify that in a consumer loan under Texas Finance Code, Chapter 342, Subchapter E, the administrative fee may be included in the cash advance or principal balance on which interest is computed <i>Precomment draft distributed September 15, 2017</i> <i>Texas Register published rule text November 3, 2017</i> <i>Texas Register published figures November 17, 2017</i> <i>Comment period ends December 18, 2017</i>	10/20/17	Scheduled for Adoption 02/16/18

B. Office of Consumer Credit Commissioner

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

PURPOSE: The purpose of the new rule is to implement HB 3342, which authorizes the commission to set the expiration period for prelicensing education of residential mortgage loan originators.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve new 7 TAC §2.107 without changes as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve new 7 TAC §2.107.

Title 7. Banking and Securities

Part 1. Finance Commission of Texas

Chapter 2. Residential Mortgage Loan Originators Applying for Licensure with the Office of Consumer Credit Commissioner Under the Secure and Fair Enforcement for Mortgage Licensing Act

Subchapter A. Application Procedures for Office of Consumer Credit Commissioner Applicants

§2.107. Prelicensing Education

The Finance Commission of Texas (commission) adopts new §2.107, concerning Prelicensing Education, in 7 TAC, Chapter 2, concerning Residential Mortgage Loan Originators Applying for Licensure with the Office of Consumer Credit Commissioner Under the Secure and Fair Enforcement for Mortgage Licensing Act.

The commission adopts new §2.107 without changes to the proposed text as published in the November 3, 2017, issue of the *Texas Register* (42 TexReg 6067).

The commission received no written comments on the proposal.

In general, the purpose of the new rule is to implement HB 3342, which the Texas Legislature passed in the 2017 legislative session. HB 3342 authorizes the commission to set the expiration period for prelicensing education of residential mortgage loan originators. Before HB 3342, Texas Finance Code, §180.056(h) stated: "An individual who fails to maintain a residential mortgage loan originator license for at least five consecutive years must retake the prelicensing education requirements prescribed by the S.A.F.E. Mortgage Licensing Act." HB 3342 amends this provision by replacing "at least five consecutive years" with "the period of time established by rule of the rulemaking authority." In this provision, "rulemaking authority" refers to the commission, as

provided by Texas Finance Code, §180.002(21). HB 3342 goes into effect on January 1, 2018.

Adopted new §2.107 provides a five-year expiration period for prelicensing education. This is the same period described by current Texas Finance Code, §180.056(h). The five-year period is currently used by the Nationwide Multistate Licensing System (NMLS), the system for licensing residential mortgage loan originators.

Section 2.107(a) states that if an individual completes the 20 hours of prelicensing education required by the S.A.F.E. Mortgage Licensing Act, 12 U.S.C. §5104(c)(1), and fails to obtain a valid license or federal registration within five years from the date of completion, then the individual must retake the 20 hours of prelicensing education in order to be eligible for licensure. Section 2.107(b) states that if an individual obtains a license or federal registration and fails to maintain the license or registration for at least five consecutive years, then the individual must retake the 20 hours of prelicensing education required by the S.A.F.E. Mortgage Licensing Act, 12 U.S.C. §5104(c)(1), in order to be eligible for licensure.

The State Regulatory Registry (SRR) has proposed reducing the five-year expiration period to three years, as explained in SRR's "Response to Comments Received

During the SRR Comment Period on the Proposed Pre-Licensure Education Expiration Policy," dated July 21, 2015. However, this change has not yet taken effect in the NMLS system. The agency anticipates that the change will occur as part of an NMLS update currently scheduled for fall 2018. The agency intends to revisit the rule in 2018. Because the change to a three-year period will take some time to be effective, the commission is currently adopting a five-year period consistent with current requirements.

The new rule is adopted under Texas Finance Code, §180.004(b), which grants the commission the authority to implement rules to comply with Texas Finance Code, Chapter 180. Additionally, Texas Finance Code, §180.056(h), as amended by HB 3342, authorizes the commission to adopt a rule establishing the period of time after which an individual must retake prelicensing education requirements. Texas Finance Code, §180.056(a) authorizes the commission to adopt rules providing additional requirements for prelicensing education. Texas Finance Code, §180.061(4) authorizes the commission to adopt rules establishing requirements for any activity the agency considers necessary for participation in NMLS.

The statutory provisions affected by the adopted new rule are contained in Texas Finance Code, §180.056.

§2.107. Prelicensing Education.

(a) Failing to obtain license. If an individual completes the 20 hours of prelicensing education required by the S.A.F.E. Mortgage Licensing Act, 12 U.S.C. §5104(c)(1), and fails to obtain a valid RMLO license or federal registration within

five years from the date of completion, then the individual must retake the 20 hours of prelicensing education in order to be eligible for licensure.

(b) Failing to maintain license. If an individual obtains an RMLO license or federal registration and fails to maintain the license or registration for at least five consecutive years, then the individual must retake the 20 hours of prelicensing education required by the S.A.F.E. Mortgage Licensing Act, 12 U.S.C. §5104(c)(1), in order to be eligible for licensure.

Certification

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

Issued in Austin, Texas on December 15, 2017.

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

B. OFFICE OF CONSUMER CREDIT COMMISSIONER

3. Discussion of and Possible Vote to Take Action on the Adoption of the Completed Rule Review of 7 TAC, Part 5, Chapter 88, Concerning Consumer Debt Management Services

PURPOSE: Pursuant to Texas Government Code, §2001.039, the agency has completed the review of 7 TAC, Chapter 88. The notice of the review was published in the *Texas Register* as required on November 3, 2017 (42 TexReg 6211). The commission did not receive any written comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this chapter continue to exist. As a result of internal review by the agency, the commission has determined that certain revisions are appropriate and necessary. Rule changes to Chapter 88 are being separately presented for proposal.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve and adopt the rule review of Chapter 88, as the reasons for these rules continue to exist.

RECOMMENDED MOTION: I move that we find that the reasons for adopting Chapter 88 continue to exist and that the rules are repropose and readopted.

Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 88. Consumer Debt Management Services

The Finance Commission of Texas (commission) has completed the review of Texas Administrative Code, Title 7, Part 5, Chapter 88, concerning Consumer Debt Management Services. Chapter 88 contains Subchapter A, concerning Registration Procedures (§§88.101 - 88.110), Subchapter B concerning Annual Requirements (§§88.201 - 88.202), and Subchapter C, concerning Operational Requirements (§88.302, and §§88.304 - 88.307). This rule review was conducted pursuant to Texas Government Code, §2001.039.

Notice of the review of 7 TAC, Part 5, Chapter 88 was published in the *Texas Register* as required on November 3, 2017, (42 TexReg 6211). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this chapter continue to exist.

As a result of internal review by the agency, the commission has determined that certain revisions are appropriate and necessary. The commission is concurrently proposing amendments and a repeal in 7 TAC, Chapter 88 published elsewhere in this issue of the *Texas Register*.

Subject to the proposed amendments to Chapter 88 and the repeal of §88.106, the commission finds that the reasons for initially adopting these rules continue to exist, and readopts this chapter in accordance with the requirements of Texas Government Code, §2001.039.

This concludes the review of 7 TAC, Part 5, Chapter 88.

B. OFFICE OF CONSUMER CREDIT COMMISSIONER

4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments and a Repeal in 7 TAC, Chapter 88, Concerning Consumer Debt Management Services, Resulting from Rule Review

PURPOSE: The purpose of the amendments to 7 TAC, Chapter 88 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. The proposed rule changes primarily relate to four areas: (1) registration procedure updates, (2) recordkeeping and disclosure, (3) clarification, and (4) technical corrections.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the amendments and proposed repeal in 7 TAC, Chapter 88 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve for publication and comment the amendments and proposed repeal in 7 TAC, Chapter 88.

Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 88. Consumer Debt Management Services

The Finance Commission of Texas (commission) proposes amendments to 7 TAC, Chapter 88, §§88.101 - 88.105, 88.107, 88.108, 88.110, 88.201, 88.202, and 88.302, concerning Consumer Debt Management Services. The commission also proposes the repeal of 7 TAC §88.106. The proposed changes affect rules contained in Subchapter A, concerning Registration Procedures; Subchapter B, concerning Annual Requirements; and Subchapter C, concerning Operational Requirements.

In general, the purpose of the amendments to 7 TAC, Chapter 88 is to implement changes resulting from the commission's review of Chapter 88 under Texas Government Code, §2001.039. The notice of intention to review 7 TAC, Chapter 88 was published in the *Texas Register* on November 3, 2017, (42 TexReg 6211). The agency did not receive any comments on the notice of intention to review.

The proposed rule changes primarily relate to four areas: (1) registration procedure updates, (2) recordkeeping and disclosure, (3) clarification, and (4) technical corrections.

The agency that enforces these rules, the Office of Consumer Credit Commissioner (OCCC), circulated an early draft of proposed changes to interested stakeholders. The OCCC did not receive any informal written precomments on the draft.

Any Chapter 88 rule not included in this proposal will be maintained in its current form. The individual purposes of the amendments to each section and the purpose

of the proposed repeal are provided in the following paragraphs.

Regarding Subchapter A, concerning Registration Procedures, many of the proposed amendments update the rules to conform to current practice, including the use of the OCCC's online registration portal. Several amendments align the rules with the OCCC's current registration practice and use language similar to that adopted by the commission in other areas regulated by the OCCC.

In §88.101, definitions for "Commissioner" and "OCCC" are proposed for addition to be used throughout the chapter. The remaining definition of "Principal party" has been renumbered accordingly.

Section 88.102 outlines the requirements to file a new application. Proposed amendments to §88.102(a) remove unnecessary language and add references to the agency's acronym, OCCC. The agency believes that the use of "OCCC" will provide better clarity to the rules when the context calls for action by the agency, as opposed to the commissioner specifically.

Corresponding changes to further use this terminology are included throughout Chapter 88. The following provisions include proposed amendments to replace "commissioner" or "commissioner's" with a reference to the OCCC: §§88.102(a) and (b)(5), 88.103(b)(1) and (c), 88.105, 88.201(3), 88.202(a)-(c), and 88.302(a)-(b).

Proposed amendments in §88.102(b) provide a general description of application

items that better align with the OCCC's online registration portal. These phrases are proposed to replace the titles of paper forms that are no longer used.

In §88.102(b)(3)(B), proposed amendments remove the current requirement to list spouses with community property interests as principal parties. These amendments will help streamline the registration process and reduce regulatory burden. The amendments will also make the application process simpler and more straightforward for applicants. If requested by the OCCC, applicants would still have to disclose the names of principal parties' spouses under proposed §88.102(b)(3)(B)(iv).

Proposed amendments to §88.102(b)(3)(B) adding clauses (iii) through (vii) update the disclosure of owners and principal parties to outline the application information that must be submitted for different entity types (i.e., limited liability companies, proprietorships, partnerships, and trusts or estates). These amendments provide better clarity to applicants regarding the ownership information necessary as it relates to each ownership structure.

Also in §88.102, proposed amendments to subsection (b)(4) provide clearer guidance for applicants on the required registered agent information that must be submitted with an application.

Section 88.103 describes how an application for a debt management services provider registration is processed. Subsections (a) and (f) contain proposed amendments to provide clarity and improve grammar and readability. Additionally, subsections (b) and (c) include proposed amendments to incorporate the terminology change described earlier under §88.102.

Section 88.104 relates to a provider's duty to update information. The current language of §88.104 has been reorganized into proposed subsection (a), providing better clarity and grammar. The proposed addition of subsection (b) 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, and so that the agency can carry out its responsibility to monitor providers and ensure compliance, as provided by Texas Finance Code, §394.214.

Section 88.105 contains proposed technical corrections as described earlier in the discussion regarding §88.102.

Section 88.106 is proposed for repeal, as an inactive operation status is not currently used by debt management services providers.

Section 88.107 outlines the required fees for debt management services providers. A corresponding amendment to the repeal of §88.106 is proposed in §88.107(c), removing inactive status from the list of registration amendments. In addition, the phrase "sent by mail" is proposed for addition to §88.107(d). As providers print their own registrations through the OCCC's online portal, a \$10 charge is only applicable if the registrant requests that the OCCC send a duplicate registration by mail.

Technical corrections are proposed in §88.108 regarding public records. The amendments use the acronym "OCCC" and also update the name of the agency that oversees state records, the Texas State Library and Archives Commission.

Proposed amendments to the criminal history rule at §88.110 provide clarification and updates. In §88.110(b)(4), a proposed amendment would clarify that any costs or

fees due may be paid or current. In subsection (c), the proposed amendments are intended to improve formatting and outline clearer guidance regarding the list of offenses directly related to the occupation of being a debt management services provider. Additionally, a statutory citation update is included in §88.110(f)(2).

Sections 88.201 and 88.202 contain proposed terminology changes as described earlier in the discussion regarding §88.102. In §88.202(b)(1), a proposed amendment would allow the OCCC to establish a procedure for a provider to certify current use of documents previously submitted with the provider's annual report. In further development of the OCCC's online portal, this amendment would provide increased flexibility in the annual report process.

Proposed amendments to the recordkeeping rule at §88.302 add subsection (c), which explains that providers must maintain a file for each debt management plan, including a copy of the debt management services agreement and an account history. These amendments are intended to provide clarity and guidance regarding the records required by Texas Finance Code, §394.205.

The proposed addition of subsection (d) to §88.302 requires debt management services providers to provide a notice explaining how consumers can file a complaint with the OCCC and is similar to notices required for other OCCC licensees and registrants. Subsection (d) describes the content of the OCCC notice, which includes the provider's contact information and the OCCC's contact information.

The proposed notice in §88.302(d) may be included in the provider's privacy notice or

in its agreement required by Texas Finance Code, §394.209. 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 debt management services providers perform credit counseling 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)(L) and §1016.4(a).

Christina Cuellar Hoke, Manager of Accounting, has determined that for the first five-year period the rule changes are in effect there will be no fiscal implications for state or local government as a result of administering the rule changes.

Rudy Aguilar, Director of Consumer Protection, has determined that for each year of the first five years the rule changes are in effect, the public benefits anticipated as a result of the changes will be that the commission's rules will be more easily understood by registrants and more easily enforced. Additionally, proposed amendments to §88.302 adding subsection (d) will provide notice to consumers regarding how to file a complaint, resulting in the agency's enhanced ability to fulfill its regulatory duty of resolving consumer issues.

Regarding the proposed amendments to §88.302 adding subsection (c), Section 394.205 of the Texas Finance Code requires debt management services providers to maintain records for three years after the date of the last service on a consumer's debt management plan. Further, §394.205 requires "records that will enable the commissioner to determine if the provider is complying with this subchapter." Any costs of complying with the proposed amendments in §88.302(c) are

imposed by state law, and are not imposed by the proposed amendments.

Additional economic costs may be incurred in order for registrants to comply with this proposal. The agency anticipates that any costs resulting from the proposal would be minimal and involve complying with proposed §88.302(d), which requires registrants to add the OCCC notice to either their existing privacy notice or existing written agreement provided to consumers.

The OCCC believes that proposed §88.302(d) is necessary so that consumers and creditors will have the most current contact information for the OCCC, as well as readily available information for consumers explaining how they can file a complaint with the OCCC.

For those who will be required to comply with the proposed amendments, the anticipated costs would include the costs associated with adding the notice to existing forms, or producing new forms, and costs attributable to the loss of obsolete forms inventory. The agency is considering a delayed implementation date for use of the revised forms, which will help minimize potential costs and allow use of current forms inventory. In particular, the agency is considering a possible compliance date of June 1, 2018, and invites comments on this issue.

Overall, the agency anticipates that any costs involved to comply with proposed §88.302(d) will be minimal for most registrants. Registrants are already required under federal law to provide privacy notices, and they are already required to provide a written debt management services agreement under Texas Finance Code, §394.209. There are multiple ways to comply with the

proposed §88.302(d): 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 agreement under Texas Finance Code, §394.209; or 3) provide the OCCC notice on a new page that is part of one of these two forms. For the third option, the agency estimates that costs will not exceed \$0.05 per new page printed.

In order to obtain more complete information, the agency would like to invite comments from registrants on any costs involved to comply with proposed §88.302(c) and (d), as well as any alternatives to lessen those costs while achieving the purpose of the proposed amendments.

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

Aside from the previously outlined costs to provide the OCCC notice in proposed §88.302(d), there will be no other effect on individuals required to comply with the rule changes as proposed.

During the first five years the proposed rule changes will be in effect, the rule will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee

positions or the elimination of existing employee positions. The proposed rule changes do not require an increase or decrease in fees paid to the agency. The proposal amends §§88.101 - 88.105, 88.107, 88.108, 88.110, 88.201, 88.202, and 88.302, resulting in certain requirements that are expanded and certain requirements that are limited, as discussed previously in this proposal. The proposal repeals the current rule at §88.106. The proposed rule changes do not increase or decrease the number of individuals subject to the debt management regulations in Chapter 88. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

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

These amendments are proposed under Texas Finance Code, §394.214, which authorizes the commission to adopt rules to carry out Texas Finance Code, Chapter 394, Subchapter C. The amendments in §88.302(d) 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 proposed amendments are contained in Texas

Finance Code, Chapter 11 and Chapter 394, Subchapter C.

Title 7, Texas Administrative Code

Chapter 88, Consumer Debt Management Services

Subchapter A. Registration Procedures

§88.101. Definitions [~~Definition~~].

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 394, Subchapter C, have the same meanings as defined in Chapter 394. The following terms [~~term~~], when used in this chapter, will have the following meaning, unless the context clearly indicates otherwise.

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

(2) OCCC--The Office of Consumer Credit Commissioner.

(3) Principal party--All adult individuals with a substantial relationship to the proposed debt management services business of the applicant. Individuals with a substantial relationship to the proposed debt management services business of the applicant include:

(A) [~~(1)~~] corporate officers, including the Chief Executive Officer or President, the Chief Financial Officer or Treasurer, and those with substantial responsibility for debt management services operations or compliance with the Finance Code;

(B) [~~(2)~~] shareholders owning 10% or more of the outstanding voting stock; or

(C) ~~[(3)]~~ owners, trustees, or governing persons of other organizational entities applying for registration under this chapter.

§88.102. Filing of New Application.

(a) An application for issuance of a new debt management services provider registration must be submitted as prescribed by the OCCC ~~[commissioner]~~ at the date of filing and in accordance with the OCCC's ~~[commissioner's]~~ instructions. Applications may be submitted electronically ~~[by Internet or e-mail, or by mail]~~.

(b) The application must include the following required forms and filings. All questions must be answered.

(1) Application for registration ~~[Registration of Debt Management Services Provider]~~.

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

(2) Application questionnaire ~~[Questionnaire for Debt Management Services Provider]~~. All applicable questions must be answered.

(3) Owners and principal parties. ~~[Disclosure of Owners and Principal Parties of Debt Management Services Provider.]~~

(A) Detailed ownership and for-profit affiliate disclosure of nonprofit or tax exempt organizations. If the applicant is a nonprofit or tax exempt organization, a detailed description of the ownership interest of each officer, director, agent, or employee of the applicant must be provided. Any member of the immediate family of an officer, director, agent, or employee of the applicant, in a for-profit affiliate or subsidiary of the applicant, or in any other for-profit business entity that

provides services to the applicant or to a consumer in relation to the applicant's debt management services business must also be provided.

(B) Ownership disclosure. The section inquiring about owners requires an answer based upon the applicant's entity type. ~~[If an individual's interest in an entity is community property, then spouses with a community property interest must also be listed. If the business interest is owned by a married individual as separate property, then a statement authenticating that fact must be provided.]~~

(i) All entity types. All applicants must disclose the name and home address of each officer and director of the applicant and each person that holds at least a 10% ownership interest in the applicant.

(ii) Corporations. All shareholders holding 10% ~~[5%]~~ or more voting stock must be named. If a parent corporation is the sole or part owner of the proposed business, a narrative or diagram must be provided that describes each level of ownership and management. This narrative or diagram must include the names of all officers, directors, and stockholders owning 10% ~~[5%]~~ or more stock at each level.

(iii) Limited liability companies. Each "manager," "officer," and "member" owning 10% or more of the company, as those terms are defined in Texas Business Organizations Code, §1.002, and each agent owning 10% or more of the company must be listed. If a member is a legal entity and not a natural person, a narrative or diagram must be included that describes each level of ownership of 10% or greater. ~~[Other organizations. The owners, trustees, or governing persons must be named.]~~

(iv) Proprietorships. The applicant must disclose the name of any individual holding an ownership interest in the business and the name of any individual responsible for operating the business. If requested, the applicant must also disclose the names of the spouses of these individuals.

(v) General partnerships. Each partner must be listed and the percentage of ownership stated. If a general partner is wholly or partially owned by a legal entity and not a natural person, a narrative or diagram must be included that lists the names and titles of all meeting the definition of "managerial official," as contained in Texas Business Organizations Code, §1.002, and a description of the ownership of each legal entity must be provided. General partnerships that register as limited liability partnerships should provide the same information as that required for general partnerships.

(vi) Limited partnerships. Each partner, general and limited, fulfilling the requirements of subclauses (I) - (III) of this clause must be listed and the percentage of ownership stated.

(I) General partners. The applicant should provide the complete ownership, regardless of percentage owned, for all general partners. If a general partner is wholly or partially owned by a legal entity and not a natural person, a narrative or diagram must be included that lists the names and titles of all meeting the definition of "managerial official," as contained in Texas Business Organizations Code, §1.002, and a description of the ownership of each legal entity must be provided.

(II) Limited partners. The applicant should provide a complete list

of all limited partners owning 10% or more of the partnership.

(III) Limited partnerships that register as limited liability partnerships. The applicant should provide the same information as that required for limited partnerships.

(vii) Trusts or estates. Each trustee or executor, as appropriate, must be listed.

(4) Registered agent. The registered agent must be provided by each applicant. The registered agent is the person or entity to whom any legal notice may be delivered. The agent must be a Texas resident and list an address for legal service. If the registered agent is a natural person, the address must be a different address than the business location address. If the applicant is a corporation or a limited liability company, the registered agent should be the one on file with the Office of the Texas Secretary of State. If the registered agent is not the same as the agent filed with the Office of the Texas Secretary of State, then the applicant must submit a certification from the secretary of the company identifying the registered agent. ~~[Statutory Agent Disclosure. The statutory agent is the person or entity to whom any legal notice may be delivered. The agent must list a Texas address for legal service. If the statutory agent is an individual, the address must be a residential address.]~~

(5) Surety bond or insurance. An applicant must file with the OCCC ~~[commissioner]~~ either:

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

(6) - (8) (No change.)

(9) Fingerprints.

(A) The applicant must provide a complete set of legible fingerprints for each person meeting the definition of "principal party" in §88.101 of this title (relating to Definitions [~~Definition~~]). All fingerprints must be submitted in a format prescribed by the OCCC and approved by the Texas Department of Public Safety and the Federal Bureau of Investigation.

(B) For limited partnerships, if the owners and principal parties [~~Disclosure of Owners and Principal Parties~~] under paragraph (3) of this subsection does not produce a natural person, the applicant must provide a complete set of legible fingerprints for individuals who are associated with the general partner as principal parties.

(C) - (E) (No change.)

§88.103. *Processing of Application.*

(a) Initial review. The agency will generally respond to incomplete applications within 14 calendar days of receipt stating that the application is incomplete and specifying the information required for acceptance.

(b) Complete application. An application is complete when:

(1) it conforms to the rules and the OCCC's [~~commissioner's~~] published instructions;

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

(c) Failure to complete application. If a complete application has not been filed with the OCCC [~~commissioner~~] within 30 days after notice of deficiency has been sent to the applicant, the application may be denied.

(d) - (e) (No change.)

(f) Processing time.

(1) A registered provider application [~~The commissioner~~] will ordinarily be approved or denied [~~approve or deny a registered provider application~~] within a maximum of 60 days after the date of filing of a completed application.

(2) More time may be taken [~~The commissioner may take more time~~] where good cause exists, as defined by Texas Government Code, §2005.004, for exceeding the established time period in paragraph (1) of this subsection.

§88.104. *Updating Application and Contact Information* [~~Amendments to Pending Application~~].

(a) Applicant's updates to registered provider application information. Before an application for registration is approved, an applicant must report to the OCCC any [~~Upon discovery of new or changed information, each applicant must provide the commissioner with information supplemental to that contained in the applicant's original application documents. Any action, fact, or~~] information that would require a materially different answer than that given in the original registered provider application and which relates to the qualifications for registration [~~must be reported to the commissioner~~] within 14 calendar [~~10 business~~] days after the person has knowledge of the [~~action, fact or~~] information.

(b) Contact information. Each applicant or registered provider 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 registered providers to regularly review contact information on file with the OCCC to ensure that it is current and correct.

§88.105. Relocation of Registered Provider Location.

A registered provider may move the business office from the registered provider location to any other location by giving notice of intended relocation to the OCCC ~~[commissioner]~~. The notice must include the present address of the registered provider location, the contemplated new address of the registered provider location, and the approximate date of relocation.

~~[§88.106. Designation of Inactive Status.]~~

~~[A registered provider may cease operating under a debt management services provider registration and render the registration inactive by giving notice of the cessation of operations to the commissioner. Notification must be filed on the Registration Amendment Form for Debt Management Services Provider.]~~

§88.107. Fees.

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

(c) Registration amendments. A fee of \$25 must be paid each time a registered provider amends a registration by changing the assumed name of the registered provider~~;~~ ~~inactivating an active registration,~~ or relocating the registered provider location.

(d) Registration duplicates sent by mail. The fee for a registration duplicate to be sent by mail is \$10.

(e) - (f) (No change.)

§88.108. Applications and Notices as Public Records.

Once a registration application or notice is filed with the OCCC ~~[Office of Consumer Credit Commissioner (OCCC)]~~, it becomes a "state record" under Texas Government Code, §441.180(11), and "public information" under Government Code, §552.002. Under Government Code, §§441.190, 441.191 and 552.004, the original applications and notices must be preserved as "state records" and "public information" unless destroyed with the approval of the director and librarian of the Texas State Library and Archives Commission ~~[State Archives and Library Commission]~~ under Government Code, §441.187. Under Government Code, §441.191, the OCCC may not return any original documents associated with a debt management services provider application or notice to the applicant or registered provider. An individual may request copies of a state record under the authority of the Texas Public Information Act, Government Code, Chapter 552.

§88.110. Denial, Suspension, or Revocation Based on Criminal History.

(a) (No change.)

(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) - (3) (No change.)

(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 registered occupation. The OCCC may deny a registration application, or suspend or revoke a registration, if the applicant or registrant has been convicted of an offense that directly relates to the duties and responsibilities of a debt management services provider, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Providing debt management services involves making representations to consumers regarding the terms of the services, holding money entrusted to the provider, remitting money to third parties, [and] collecting charges in a legal manner, and compliance with reporting requirements to government agencies. Consequently, the following crimes are directly related to the duties and responsibilities of a registered provider and may be grounds for denial, suspension, or revocation: [crimes involving the misrepresentation of costs or benefits of a product or service, the improper handling of money or property entrusted to the person, failure to file a governmental report or filing a false report, or the use or threat of force against another person are directly related to the duties and responsibilities of a registrant 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 transaction 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) - (3) (No change.)

(d) - (e) (No change.)

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

(1) (No change.)

(2) a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42A.054 [art. 42.12, §3g], or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(3)-(4);

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

Subchapter B. Annual Requirements

§88.201. Annual Renewal.

Not later than February 1, a registered debt management services provider may

renew its registration by providing the following:

(1) an annual report, according to §88.202 of this title (relating to Annual Report);

(2) the fees required by §88.107(e) of this title (relating to Fees); and

(3) any other information required by the OCCC [~~commissioner~~].

§88.202. Annual Report.

(a) Each authorized debt management services provider must file an annual report under this section and must comply with all instructions from the OCCC [~~commissioner~~] relating to submitting the report.

(b) Each year, at the time of annual renewal, an authorized debt management services provider must file with the OCCC [~~commissioner~~], in a form prescribed by the OCCC [~~commissioner~~], a report that contains the following:

(1) the information required by Texas Finance Code, §394.205 (the OCCC may allow a provider to certify current use of previously submitted information required by this paragraph);

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

(c) Upon request by the OCCC [~~commissioner~~], the provider must provide any other information the commissioner deems relevant concerning the provider's business and operations during the preceding calendar year.

Subchapter C. Operational Requirements

§88.302. Recordkeeping.

(a) Generally. A provider must maintain records required by Texas Finance Code, §394.205 by using either a paper or manual recordkeeping system, electronic recordkeeping system, or optically imaged recordkeeping system unless otherwise specified by statute or regulation. All required books and records must be reasonably available for inspection at any time by OCCC staff [~~the commissioner or the commissioner's authorized representatives~~].

(b) Availability of records. The OCCC [~~commissioner~~] may require that the provider make records available in the State of Texas for examination purposes.

(c) Debt management plan file. A licensee must maintain a paper or electronic file for each individual debt management plan under Texas Finance Code, Chapter 394, or be able to produce this information within a reasonable amount of time. The file must be maintained for at least three years after the date of the last service on the plan, as provided by Texas Finance Code, §394.205(a). The file must include the following documentation for each debt management plan:

(1) the written debt management services agreement described by Texas Finance Code, §394.209;

(2) any written educational information provided to the consumer under Texas Finance Code, §394.208(a)(1);

(3) the individualized financial analysis and initial debt management plan

described by Texas Finance Code, §394.208(a)(2);

(4) an account history showing each payment made by the consumer, each amount charged by the provider, and each amount that the provider has disbursed to a creditor;

(5) any privacy notice provided under the Gramm-Leach-Bliley Act, 15 U.S.C. §§6801-6809, and Regulation P, 16 C.F.R. Part 1016;

(6) any document signed by the consumer in connection with the plan;

(7) any other documentation created or obtained by the provider in connection with the debt management plan.

(d) OCCC notice. A debt management services provider must provide the following notice to each consumer: "For questions or complaints about this transaction, contact the debt management services provider, (insert name of provider), at (insert provider's phone number and, at provider'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 provider. If a complaint or question cannot be resolved by contacting the provider, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov." A provider must provide this notice by one or both of the following methods:

(1) including the notice on each privacy notice that the provider is required to

provide to a consumer under state or federal law; or

(2) including the notice on each written agreement that the provider is required to provide to a borrower under Texas Finance Code, §394.209.

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 December 15, 2017.

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

This page left blank intentionally.

C.

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

To: Finance Commission Members

From: Kurt Purdom, Director of Bank & Trust Supervision

Date: December 1, 2017

Subject: Summary of the Bank & Trust Supervision Division Activities

Bank and Trust Supervision					FY 2018							
8/31/2016			8/31/2017		11/30/2017*		2/28/2018		5/31/2018		8/31/2018	
Industry Profile (# / Assets in billions)												
# Banks	247	\$248.3	240	\$252.9								
# Trust Co. (1)	19	\$101.4	17	\$108.5								
# FBA/FBB	10	\$70.0	10	\$56.1								
Examinations Performed												
Banks	105		103									
Trust Co.	31		26									
FBA/FBB	2		3									
Bank Uniform Financial Institution Composite Ratings												
1	126	51.0%	123	51.3%								
2	109	44.1%	104	43.3%								
3, 4, & 5	12	4.9%	12	5.0%								
Non-Rated	0	-	1	0.4%								

* First quarter numbers are not yet available.

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

Problem banks, which the Department considers to be any bank with a Uniform Financial Institutions Composite Rating of 3, 4, or 5, reflect a stable trend. As of this writing, problem institutions total 12. This level is consistent with last fiscal year-end and is well below the peak number of problem banks experienced during the last recession. The level of problem banks is in line with the normal range of between 3% and 5% of the total number of institutions. We anticipate that the number of problem institutions will continue to slowly reduce over the next six months.

Summary of the Bank & Trust Supervision Division Activities

Page 2

Formal		2				
Informal		23				
Formal		0				
Informal		2				
Formal		0				
Informal		2				
Formal		0				
Informal		1				
Formal		2				
Informal		28				
Total		30				

* First quarter numbers are not yet available.

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

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

Compliance actions are not included.

Compliance with Examination Priorities Percent of Examinations Conducted within Department Guidelines		
Entity Type	FY 2017	FY 2018 (YTD –October 2017)
Commercial Banks (All / DOB Only)	91% / 98%	93% / 100%
IT	92% / 100%	93% / 100%
Trust	91% / 100%	100% / 100%
Foreign Banks (FRB)	100%	-
Trust Companies (DOB)	100%	100%
IT	100%	100%

Compliance with examination priorities for commercial banks is in line with the agency's goal of completing 90% of examinations within policy guidelines. Through the first two months of fiscal year 2018, two bank examinations were started outside of policy guidelines (averaged 20 days late), both of which were the responsibility of the FDIC. Delays in FDIC examinations were caused by a short-term staffing imbalance that the FDIC reports will be alleviated by planned staff additions. The same two banks were also late for FDIC information technology examinations.

Division Highlights

- **Review Examiners:** Senior Examiners Travis Graham and Michelle Hodge were promoted to Review Examiner. Both will be stationed in the Austin Headquarters Office and will begin their new assignments in January 2018.
- **Sunset:** The Bank and Trust Division met with Sunset staff on October 24, 2017 to describe the division's functions and responsibilities. Sunset representatives participated in a bank examination on November 9, 2017 and a trust company examination on November 16, 2017.
- **Special Operations and Conferences:**
 - Director Purdom participated in events of the Texas A&M University Banking Program. On October 11, 2017, Mr. Purdom held a lecture on bank regulatory supervision to the Banking Program students. On October 26 and 27, 2017, Mr. Purdom participated in a Banking Program Advisory Board meeting and internship interviews.
 - On October 26, 2017, Director Robinson gave a presentation to a group of bankers and bank directors during an event sponsored by Briggs & Veselka Co. in Houston.
 - The entire Bank and Trust Division staff participated in the Texas Department of Banking Examiners' Training Conference held in Corpus Christi the week of October 30, 2017. This training event covered a wide range of topics including cybersecurity threats, real estate trends, economic outlook, investigations, legislative changes, resources available to examiners, bank insurance and SBA lending.
 - Deputy Commissioner Bacon and Director Purdom participated in an FDIC and State Leadership Conference held in Dallas on November 14, 2017. Issues discussed included banking industry risks, the economy, consumer compliance and examiner staffing levels.
 - Review Examiner Wu held an Examinations Tool Suite (ETS) Working Group meeting in Austin on November 27 – 29, 2017. ETS, which was developed by the FDIC with significant participation from the states and Federal Reserve, enables a digital examination process and sharing among examiners of previous and current examination information more securely, effectively, and efficiently. This group is working to better align the division's internal procedures with ETS, addressing implementation issues, and developing customized ETS templates for examiners' use.



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705

512-475-1300 / 877-276-5554

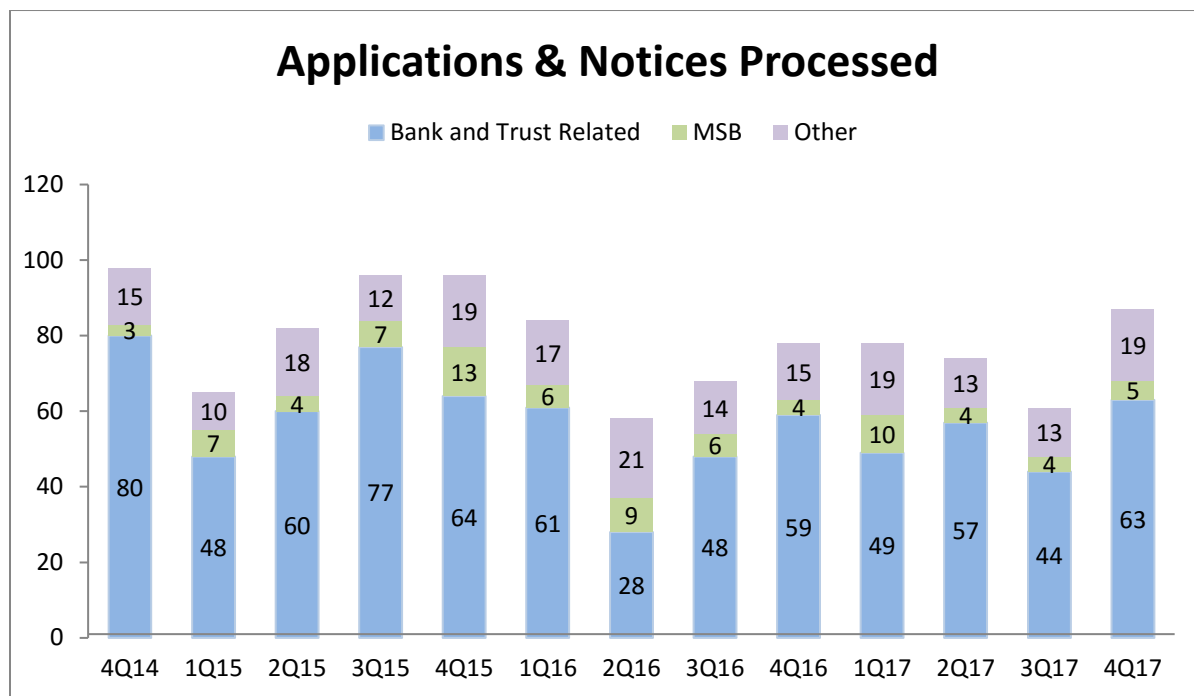
www.dob.texas.gov

To: Finance Commission Members

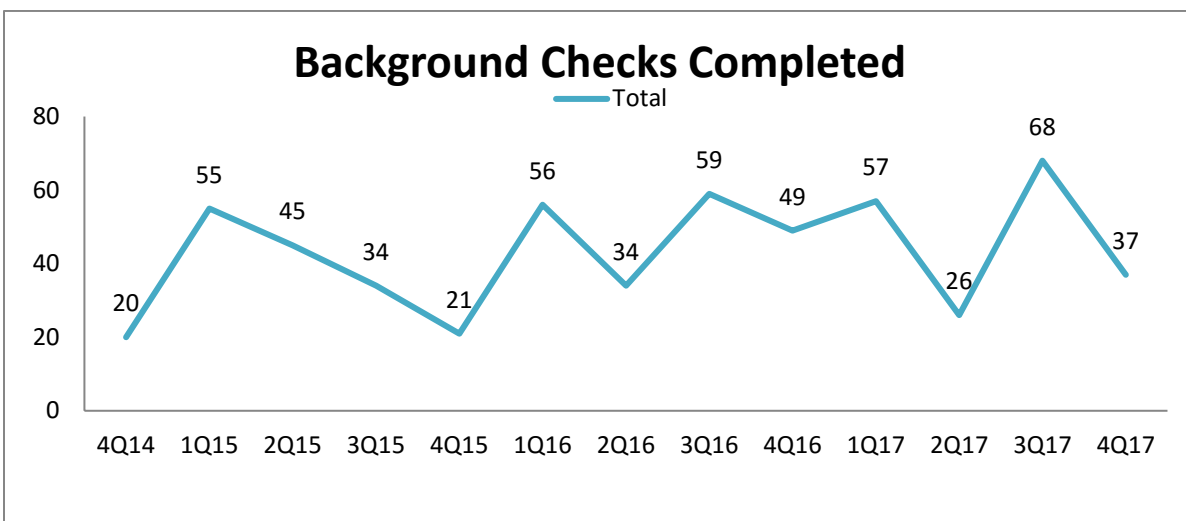
From: Daniel Frasier, Director of Corporate Activities *DBF*

Date: December 1, 2017

Subject: Summary of the Corporate Division Activities



Fiscal 1Q18 information is not available and will be presented at the next Finance Commission meeting.



Fiscal 1Q18 information is not available and will be presented at the next Finance Commission meeting.

Entities/Activities	Applications and Notices Under Review (as of November 29, 2017)
Bank Related	17
Trust Companies	3
Money Services Business (MSB)	8
Others	2
Totals	30

Division Highlights

- The volume of substantive bank filings received jumped during the first fiscal quarter of 2018. For example, the division worked on three conversion applications simultaneously. Additionally, during the fiscal quarter we processed several substantive bank filings involving change of control and mergers. Meanwhile, the volume of MSB application filings received recently slowed.
- Chartering, Conversion, and Merger Activity – The following transactions have consummated since Corporate’s last report to the Finance Commission:
 - *Banks*
 - Southside Bank, Tyler, Texas, completed its acquisition merger of First Bank & Trust East Texas, Diboll, Texas
 - *Trust Companies*
 - N/A



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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

To: Finance Commission Members

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

Date: December 1, 2017

Subject: Summary of the Special Audits Division Activities

Special Audits			FY 2018							
Entity	FY 2017		1 st		2 nd		3 rd		4 th	
Industry Profile (# / Assets (billions))										
Money Services Businesses (MSB)	156	\$113.8	*	*						
Prepaid Funeral Contract (PFC)	375	\$3.9	*	*						
Perpetual Care Cemeteries (PCC)	242	\$332.9	*	*						
Cemetery Brokers (CB)	14	n/a	*	*						
Private Child Support Enforcement Agencies (PCSEA)	10	n/a	*	*						
Check Verification Entities (CVE)	2	n/a	*	*						
Examinations Performed										
MSB	104		*							
MSB Limited Scope	3		*							
MSB Accepted other State	7		*							
PFC	284		*							
PFC Limited Scope	2		*							
PCC	172		*							
PCC Limited Scope	4		*							
Ratings (# / %) Assigned to All Regulated Entities										
1	303	40%	*	*						
2	384	51%	*	*						
3,4, & 5	70	9%	*	*						
Noncompliance with Examination Priorities (Past Due)										
MSB	5		*							
PFC	4		*							
PCC	5		*							

NOTES:

PCC \$ amounts reflected in the millions.

Limited scope examinations do not receive a rating.

*First quarter fiscal year 2018 data has not been finalized and will be provided in the next summary.

Division Activities

Special Audit Examiners Saucillo and Gonzalez participated in the Texas Department of Banking webinar on October 26th. The webinar provided both guidance to MSB license holders on how to properly complete the Texas Permissible Investment Reports and an overview of the recent legislative changes impacting MSBs that became effective September 1st.

On November 9th, a Prepaid Funeral Guaranty Fund Advisory Council (Council) telephonic meeting was held in Austin, Texas, to discuss and approve the changes made to Administrative Memorandum – 2016 that governs the investment of funds under the oversight of the Council. This special meeting was necessary based on several bills that were passed during the 85th Texas Legislative Session that impacted the Texas Public Funds Investment Act (PFIA). While the Council is not subject to the requirements of the PFIA, efforts are made to closely follow it.



Charles G. Cooper
Commissioner


TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705

512-475-1300 / 877-276-5554

www.dob.texas.gov

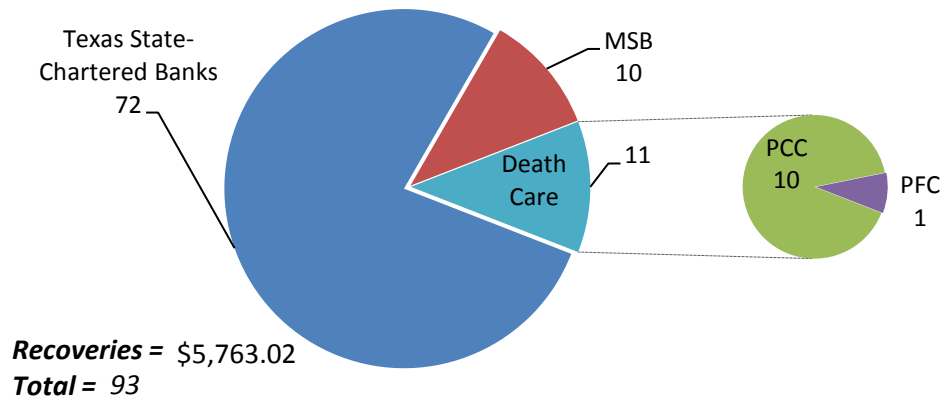
To: Finance Commission Members

From: Wendy Rodriguez, Director of Strategic Support 

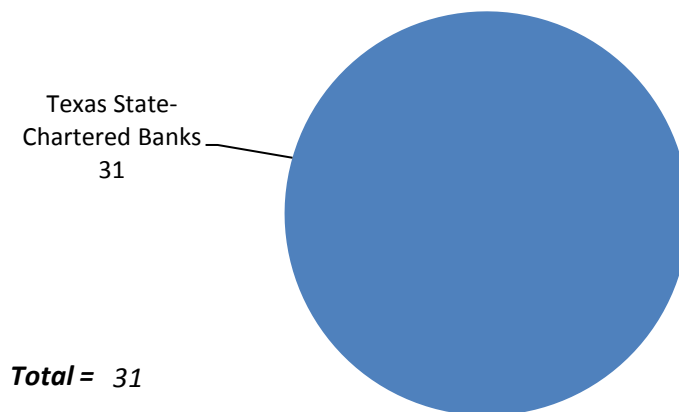
Date: December 1, 2017

Subject: Summary of the Strategic Support Division Activities

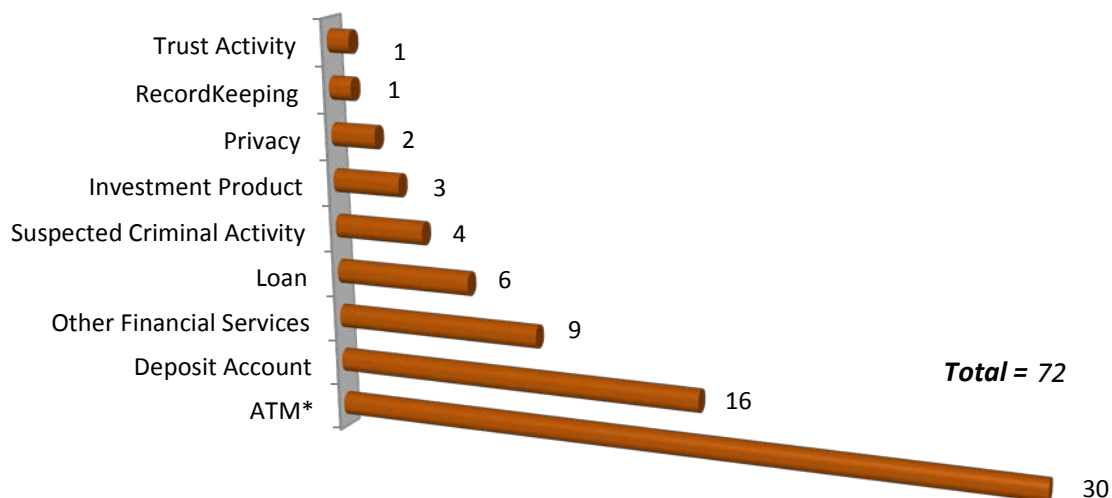
Complaints on Regulated Entities September 2017 - October 2017



Inquiries on Regulated Entities September 2017 - October 2017

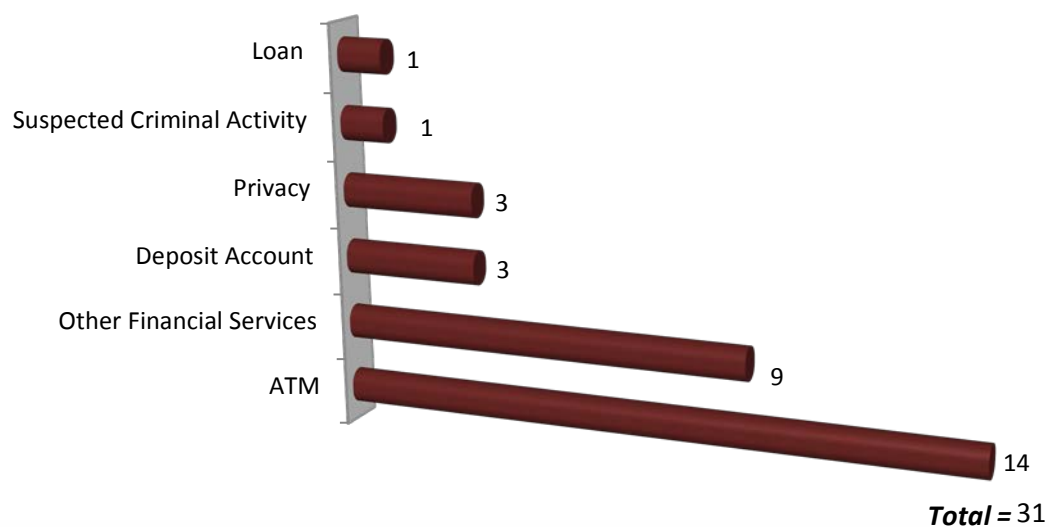


State-Chartered Banks and Trust Companies Complaints by Type September 2017 - October 2017

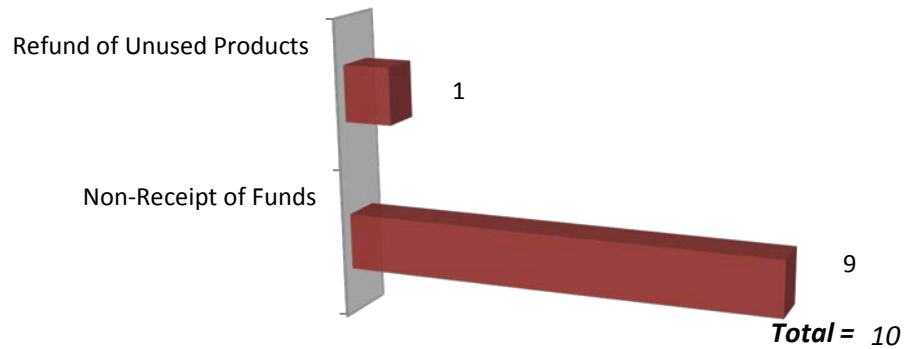


*Activity related to annual privacy notice containing the Department's contact information. Consumer complaints range from needing clarification of the notice to account balance issues and card related problems.

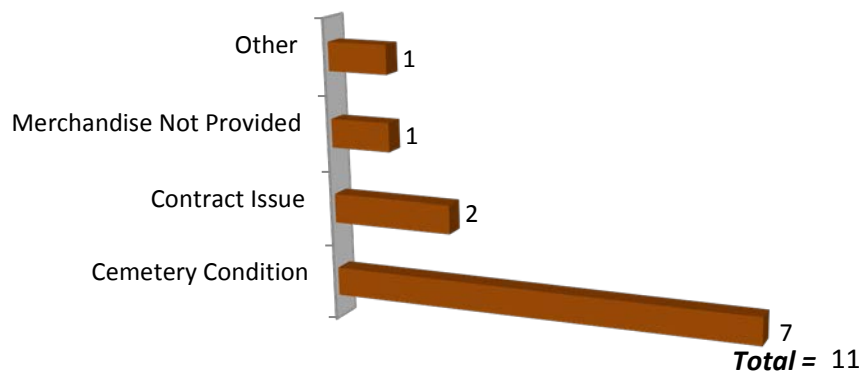
State-Chartered Banks and Trust Companies Inquiries by Type September 2017 - October 2017



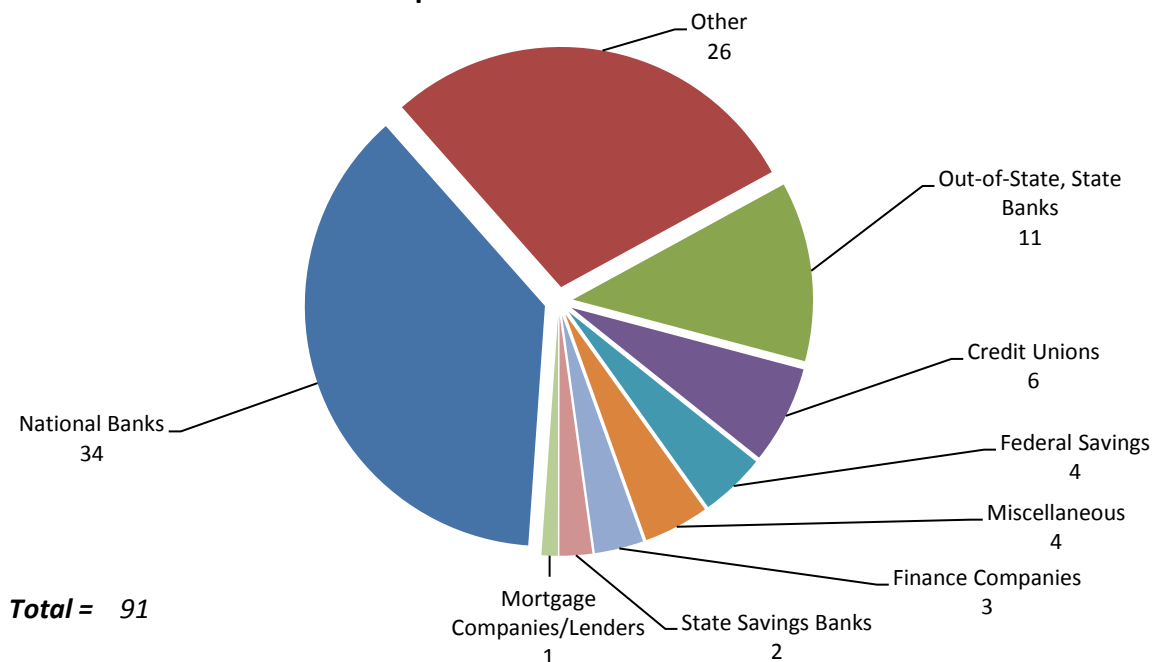
**Money Services Businesses
Complaints by Type
September 2017 - October 2017**



**PFC/PCC
Complaints by Type
September 2017 - October 2017**



Complaints and Inquiries Against Nonregulated Entities September 2017 - October 2017



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

Average Number of Days to Close a Written Complaint

Type	Sept. 2017 – Oct. 2017
State-Chartered Banks	6
Trust	N/A
PCSEA	N/A
PFC/PCC	30
MSB	39

CANS ACTIVITY

January 1, 2014 – November 29, 2017

Entity	Enrolled	Compromised Accounts Reported
Texas State-Chartered Banks	220	1,012
Texas State-Chartered Savings Banks	26	59
Federal Savings Banks	10	81
State Credit Unions	132	984
Federal Credit Unions	229	696
National Banks	170	286
Out-of-State State-Chartered Banks	12	68
Out-of-State National Banks	6	15
Total	805	3,201

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

	FY 2015	FY 2016	FY 2017	FY 2018 (As of 11/28/17)
I. General Knowledge	8	9	8	1
II. Loan Analysis	2	4	3	0
III. Panel	4	3	2	0
IV. Test Bank	4	2	3	0
Total FE3	19	18	24	27

Promotions

From FE3 to FE4 (Commissioned Examiner)	4	2	3	0
--	---	---	---	---

Other Divisional Items:

- *Sunset Review*
 - A notice was placed on all Department websites advising the public of the Sunset Review process. The notice details how the public can participate in the process.
 - The Sunset Review Team conducted divisional meetings on October 23 – 24, 2017. Individual interviews of select staff members have also taken place in the last two months. All follow-up information requested by the team has been provided.
 - On November 2, 2017, the Department received its first information request from the Sunset Review Team. All requested information was submitted on or before November 16, 2017 as required.
 - The Sunset Review Team observed one day of an examination for a state-chartered bank and a trust company. All follow-up information has been provided to the appropriate Sunset Review team members.
- *2017 Examiner Training Conference*
 - The Department held this year's examiner training conference at the Omni Bayfront Hotel, Corpus Christi, Texas during the week of October 30 – November 2, 2017. Topics included economic updates, real estate valuation, cybersecurity, and a variety of other banking subjects. A Sunset Review Team member was in attendance for the first two days.
- *Financial Education*
 - Ms. Lim-Villegas serves as a grant advisory committee member of the Texas Financial Education Endowment (TFEE) and participated in the selection of grant winners in which \$250,00 was awarded to nonprofits for the 2017 cycle.
- *Jump\$tart*
 - On September 15, 2017, Commissioner Cooper and Ms. Leilani Lim-Villegas participated in the Jump\$tart Membership Roundup Meeting held in Austin, 77

Texas. The event highlighted the importance of youth financial education in Austin.

- Ms. Leilani Lim-Villegas attended the Jump\$tart National Educator Conference November 4 – 5, 2017, in Washington, D.C. The conference focused on youth financial education on a national level.
- On November 9, 2017, Ms. Lim-Villegas attended the Jump\$tart Membership Roundup Meeting held at the Federal Reserve Bank of Dallas, Houston Branch. This meeting focused on youth financial education in Houston.
- Webinars
 - On September 28, 2017, the Texas Department of Banking hosted a webinar on elderly abuse financial education. There were 204 registrants.
 - On October 26, 2017, the Texas Department of Banking hosted a webinar on guidance on Texas Permissible Investment Reports and legislative changes for the money services businesses industry. There were 111 registrants.
- Publication
 - The fall edition of the [Texas Bank Report](#) is available on the Department's website with financial data as of June 30, 2017.
- Examination Procedure Revisions
 - Several procedures were revised in the first quarter of fiscal year 2017 based upon statutory changes or Examiner Council recommendations. These procedures include:
 - Commercial Examination Procedures:
 - Planning and Control Procedure
 - #3 Audit
 - #7 Collections, Consigned Items, Safekeeping & Safe Deposit
 - #14 Loans and Leases
 - #16 Management
 - #23 Retail Sale of Nondeposit Investment Products
 - #27 Other Supervisory Issues
 - Trust Examination Procedures:
 - Planning and Control Procedure
 - #E1 Exempt Trust Company
 - #E3 Exempt Trust Company – Off-Site
 - IT Examination Procedure:
 - Planning and Control Procedure



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705

512-475-1300 / 877-276-5554

www.dob.texas.gov

Memorandum

TO: Finance Commission Members
FROM: Catherine Reyer, General Counsel
DATE: December 1, 2017
RE: Legal Division Update

Litigation

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

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

Pending Contested Cases

There are currently two matters pending before an administrative law judge. One of these is a confidential prohibition matter; the other is a hearing pending on a proposed cease and desist order against an unlicensed entity alleged to have engaged in money transmission in Texas.

Gifts

The Conference of State Bank Supervisors paid for registration and travel expenses (value \$2,117.80) for Commissioner Charles Cooper to attend the American Society of Association Executives CEO Symposium in Baltimore, Maryland June 26-27, 2017.

Miscellaneous

According to a November 3, 2017 press release issued by the Texas State Comptroller's office, the Texas Bullion Depository will be located in Leander, Texas. Construction is expected to begin in early 2018, and the facility is expected to be completed in late 2018 or early 2019.

Orders Issued 10/1/17 – 11/30/17

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

Special Audits

- Order No. 2017-015, dated 10/23/2017; Consent Order, PayPool, LLC, Washington, D.C.
- Order No. 2017-016, dated 10/19/2017; Consent Order, C. Johnson Funeral Home, Inc., Houston, TX
- Order No. 2017-017, dated 10/25/2017; Order Approving Conversion from Trust-Funded Prepaid Funeral Benefits, CMG Funeral Partners, LLC, Mount Vernon, TX
- Order No. 2017-018, dated 10/25/2017; Order Approving Conversion from Trust-Funded Prepaid Funeral Benefits, CMG Funeral Partners, LLC, San Augustine, TX
- Order No. 2017-019, dated 10/25/2017; Order Approving Conversion from Trust-Funded Prepaid Funeral Benefits, CMG Funeral Partners, LLC, Cooper, TX
- Order No. 2015-011b, dated 11/21/2017; Third Consent Order, Ronald R. Ritter, Owner of Heartfield-Ritter Funeral Home and Bremond Funeral Home, Hearne, TX

Quarterly Order Activity

BANK				
Type of Action	1st	2nd	3rd	4th
Consent Order	0			
Cease & Desist	0			
Supervision	0			
Prohibition (not yet effective)	1			
Total	1			
TRUST COMPANY				
Consent Order	0			
Cease & Desist	0			
Supervision	0			
Prohibition	0			
Total	0			
MONEY SERVICE BUSINESS				
Consent Order	1			
Cease & Desist	0			
Total	1			
PERPETUAL CARE CEMETERY				
Consent Order	0			
Cease & Desist	0			
Total	0			

PREPAID FUNERAL CONTRACT				
Consent Order	2			
Cease & Desist	0			
Conversion	3			
Total	5			

Rebecca Ann Motley

Objective

I am committed to providing support through advocacy, and public awareness. I wish to utilize my professional skills and natural gifts to educate and enhance the lives of others.

Skills and Attributes

Mediator and Advocate

Creative and Energetic

Able to remain objective and calm in crisis.

Absolute discretion in confidential matters.

Responsive to the needs and concerns of others.

Empathetic and discerning.

Thrives in bringing out the best in others.

Organized and task oriented.

Able to work independently, yet a team player.

Manages priorities efficiently and timely.

Excellent problem solving skills.

Education and Training

Student at DCCCD and currently at TCCCD.

Home Funeral Guide

Accompanying the Dying LLC Certification (End-of-Life Doula)

Institute for Professional Care and Education. Alzheimer and Dementia training

Advanced Care Planning Facilitator Certification

Personal Care Attendant Certification

CASA

Citizens Fire Academy/Citizens Police Academy

Certified Grief Recovery Facilitator

Employment History

Cotton Closet; managed a women's consignment boutique.

Home caregiver/ companion for the aging and home bound. Private practice.

Visiting Angels; caregiver and companion to seniors experiencing varying degrees of physical and mental decline.

Heritage Keepers; provided emotional, mental and physical support to seniors.

North Dallas Crisis Pregnancy Center; interim director and lay counselor. Implemented vital support and recovery groups, provided emotional care, education and follow up for clients in crisis. Managed networking, resources and fundraising.

Allen Flower Shop; floral design, business management, sales and delivery.

Dermatology and Skin Surgery Center; receptionist and front office manager.

Tom Motley Urban Garden; marketing, event planning, bookkeeping, Inventory control, sales and produce growth. Event display design, class demonstrations and educational seminars. Farmer's Market vendor.

Talent Agent and Business Manager; supervised the modeling and acting careers of three children.

McKinney Independent School District; substitute teacher for all grade levels.

Home School Educator; three of my children. Grown adults now.

Philanthropic Activities and Public Service

Visitation to the homebound/ Hands And Hammers, liaison for new membership; First United Methodist Church of McKinney, Texas.

Funeral Consumers Alliance of North Texas; board member and consumer advocate.

Prepaid Funeral Guaranty Fund Advisory Council, consumer representative.

HUGS Café of McKinney, Texas; support role to adults with disabilities.

Real Options for Women of Plano, Texas; co-established crisis pregnancy center.

Mission trip to Cuba with church group.

Children's and Community Health Center of McKinney Texas; medical advocacy and outreach for uninsured and indigent.

Meals on Wheels; Dallas Texas.

State Fair of Texas; judge for creative arts competition.

Generations to Come of Dallas, Texas; support and guidance for inner city youth.

Dallas Lighthouse for the Blind; care and support for the visually impaired. Recipient of the Volunteer of the Year award.

References upon request

Memberships

National Home Funeral Alliance, Funeral Consumers Alliance of North Texas, Daughters of the American Revolution, Dallas Museum of Art, First United Methodist Church of McKinney Texas, Fort Worth Modern, Kimbell Art Museum of Fort Worth, Umlauf Sculpture Garden and Museum of Austin Texas, KERA Public Radio

Amy Biggs

6550 Directors Parkway, Abilene, Texas 79606

Experience

Amy Biggs is the Director of Policy Services for Funeral Directors Life Insurance Company. Funeral Agency, Inc., an affiliate of Funeral Directors Life, has had an insurance funded prepaid funeral benefits permit with the Department since 1982. Amy has over 20 years managerial and supervisory level experience as an operations supervisor at Funeral Directors Life with emphasis in new business underwriting, commissions, prepaid funeral contracts, and policy administration. Amy's analytical, organizational, and planning skills are an asset to the funeral homes, agents, and policyholders she serves. In her current role with Funeral Directors Life, Amy oversees the Claims, New Business, and Document Processing departments. Amy attended Cisco College and enjoys volunteering with Meals on Wheels and the Jim Ned Valley Heritage Preservation.

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

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

RECOMMENDED ACTION: One comment supporting the proposed amendment to 7 TAC, §15.81 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, §15.81 without changes to the proposal as previously published in the *Texas Register*.

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

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts the amendment §15.81, concerning application for acquisition or change of control of a state without changes to the proposed text as published in the November 3, 2017, issue of the *Texas Register* (42 TexReg 6068. The amended rule will not be republished.

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

One comment supporting the proposed amendment was received from the Independent Bankers Association of Texas (IBAT).

The amendment is adopted pursuant to Finance Code, §31.103, which authorizes the commission to adopt rules to accomplish the purposes of Subchapter A.

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

(a) – (c) (No change.)

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

(e) – (h) (No change.)

(i) Approval. Automatic approval; conditional approval. If an application filed under this section is not approved by the banking commissioner or is not set for hearing on or before the 60th day after the date notice is published, the transaction may be consummated. Before the expiration of the initial 60-day period, the banking commissioner may give the applicant written notice that the application is approved; upon receipt of the notice, the applicant may immediately consummate the transaction. Before the expiration of the initial 60-day period, the banking commissioner may also give an applicant written notice that the application is conditionally approved subject to certain conditions. The applicant must enter into a written agreement with the banking commissioner concerning these conditions on or before the 30th day after the date the applicant receives notification of conditional approval. An agreement entered into by the applicant and the banking

commissioner concerning conditional approval is enforceable against the applicant and the bank and is considered for all purposes an agreement under the provisions of the Finance Code. If an applicant receives conditional approval, but does not enter into an agreement with the banking commissioner as required by this subsection, the banking commissioner will set the matter for hearing.

(j) – (m) (No change.)

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

4. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 2, §§33.3, 33.13, 33.15, 33.27, 33.51 and New §§33.71 – 33.75 Concerning Bullion Depository Agents.

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

RECOMMENDED ACTION: No comments were received regarding the proposed amended rule or new subsections. The Department recommends that the Commission approve adoption of the amendments and new subsections without changes to the proposal as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we adopt the amendments and new subsections to 7 TAC, §33 without changes to the proposal as previously published in the *Texas Register*.

**ADOPTION OF AMENDMENTS TO 7 TAC,
§§33.3, 33.13, 33.15, 33.27, 33.51
AND NEW §§33.71 - 33.75
Page 1 of 18**

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

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts the amendment to §33.3, concerning the exclusion from licensing for bank agents; §33.13, concerning new license applications; §33.15, concerning violation of new license application processing times; §33.27, concerning fees, assessments and reimbursements; and §33.51, concerning providing information to customers about how to file a complaint. The commission also adopts new §33.71, concerning security required for depository agents; §33.72, concerning net worth required for depository agents; §33.73, concerning depository agent recordkeeping; §33.74, concerning depository agent receipts; and §33.75, concerning exemptions. The amendments and new rules are adopted without changes to the proposed text as published in the November 3, 2017, issue of the *Texas Register* (42 TexReg 6069). The amendments and new rules will not be republished.

The new and amended rules implement and administer Subchapter J of the Money Services Act, which creates a new type of money services license for depository agents.

During the 84th legislative session, the Texas Legislature created the Texas Bullion Depository (the depository) within the Office of the Comptroller of Public Accounts (the comptroller) (Act of June 19, 2015, 84th

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

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

The amendments to §33.27 add references to depository agent licenses and set out the fees that an applicant must pay to obtain a new or temporary depository agent license. Subsection (a) is amended to add references to depository agents. Subsection (c) is amended to add statutory references to the list of statutes that authorize fees, assessments and reimbursements. Subsection (d)(1) is amended to set the fee for obtaining a new depository agent license. Subsection

**ADOPTION OF AMENDMENTS TO 7 TAC,
§§33.3, 33.13, 33.15, 33.27, 33.51
AND NEW §§33.71 - 33.75
Page 2 of 18**

(d)(3) is added to set the fee for obtaining a temporary depository agent license. Subsection (f) is added to set the fee for maintaining a depository agent license. Subsection (g) is amended to add references to depository agent business. Subsection (j) is amended to add a reference to subsection (d)(3).

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

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

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

New §33.74 requires that a receipt be issued in connection with all depository agent services transactions. Subsection (a) clarifies to whom the section applies and subsection (b) explains and establishes the specific receipt requirements. Paragraph (1) of subsection (b) defines “receipt” in a manner that applies to electronic or online transactions, in addition to in person transactions. Paragraph (2) identifies the information the receipt must include and also requires that the receipt be linked to the

**ADOPTION OF AMENDMENTS TO 7 TAC,
§§33.3, 33.13, 33.15, 33.27, 33.51
AND NEW §§33.71 - 33.75
Page 3 of 18**

depository agent transaction records required under new §33.73. Finally, paragraph (3) provides that a license holder may use one receipt to satisfy the requirements of both new §33.74 and Finance Code, Chapter 278.

New §33.75 creates two exemptions from licensing. Subsection (a) affirms that the depository, as an agency of this state in the office of the comptroller, is exempt from all money services licensing. Subsection (b) creates a new exemption from depository agent licensing for the individual, partnership or corporation that operates the depository pursuant to a contract with the comptroller.

The remaining sections (§§33.3, 33.15 and 33.51) contain conforming changes.

The department received no comments regarding the proposed amendments or new rules.

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

§33.3. How Do I Claim an Exclusion from Licensing because I Am an Agent for a

Federally Insured Financial Institution or a Foreign Bank Branch or Agency?

(a) This section applies if you:

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

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

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

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

(1) a general description of your business plan;

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

(A) assumes all legal responsibility for satisfying the money services obligations owed to purchasers of

**ADOPTION OF AMENDMENTS TO 7 TAC,
§§33.3, 33.13, 33.15, 33.27, 33.51
AND NEW §§33.71 - 33.75
Page 4 of 18**

the money transmission or depository agent services upon receipt of the purchaser's money, monetary value, bullion or specie by you or your agents or subagents;

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

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

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

(c) (No change.)

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

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

(b) What must I do to apply for a license? To apply for a new money transmission,

currency exchange or depository agent license, you must:

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

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

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

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

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

**ADOPTION OF AMENDMENTS TO 7 TAC,
§§33.3, 33.13, 33.15, 33.27, 33.51
AND NEW §§33.71 - 33.75
Page 5 of 18**

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

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

(C) all required search firm reports; and

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

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

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

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

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

(ii) a financial statement demonstrating your solvency or;

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

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

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

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

(e) – (j) (No change.)

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

(a) Does this section apply to me? This section applies if you applied for a new money transmission, currency exchange or depository agent license under Finance Code, Chapter 151, and you believe that the

**ADOPTION OF AMENDMENTS TO 7 TAC,
§§33.3, 33.13, 33.15, 33.27, 33.51
AND NEW §§33.71 - 33.75
Page 6 of 18**

department failed to comply with the application processing times specified in §33.13(e) or (h) of this title (relating to Application for New License).

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

(c) – (f) (No change.)

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

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

(b) (No change.)

(c) What provisions of Finance Code, Chapter 151, authorize the fees, assessments,

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

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

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

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

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

**ADOPTION OF AMENDMENTS TO 7 TAC,
§§33.3, 33.13, 33.15, 33.27, 33.51
AND NEW §§33.71 - 33.75
Page 7 of 18**

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

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

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

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

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

department under Finance Code, §151.207(b)(2).

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

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

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

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

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

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

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

**ADOPTION OF AMENDMENTS TO 7 TAC,
§§33.3, 33.13, 33.15, 33.27, 33.51
AND NEW §§33.71 - 33.75
Page 8 of 18**

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

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

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

(4) The commissioner may reduce the filing fees described in paragraph (1) or (2) of this subsection, if the commissioner determines that a lesser amount than would otherwise be collected is necessary to administer and enforce Finance Code, Chapter 151, and this chapter.

(h) What fees must I pay in connection with a department investigation?

(1) If the commissioner considers it necessary or appropriate to investigate you or another person in order to administer and enforce Finance Code, Chapter 151, as authorized under §151.104, you or the investigated person must pay the department an investigation fee calculated at a rate of

\$75.00 per employee hour for the investigation and all associated travel expenses.

(2) If the commissioner determines that it is necessary to employ a third-party screening service to assist with an investigation, you must pay the department for the costs incurred for the third-party investigation.

(3) If the commissioner determines it is necessary to perform background checks using fingerprint identification records in an investigation, you must pay the department the costs incurred for this service.

(i) What other fees must I pay?

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

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

**ADOPTION OF AMENDMENTS TO 7 TAC,
§§33.3, 33.13, 33.15, 33.27, 33.51
AND NEW §§33.71 - 33.75
Page 9 of 18**

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

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

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

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

(1) You must pay the license application fees required under subsection (d)(1) – (3), of this section at the time you file your application for a license.

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

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

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

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

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

(7) The department will bill you for any additional examination fees required under subsection (i)(2), (3), (4), or (5) of this section by written invoice. You must pay this

**ADOPTION OF AMENDMENTS TO 7 TAC,
§§33.3, 33.13, 33.15, 33.27, 33.51
AND NEW §§33.71 - 33.75
Page 10 of 18**

additional examination fee within 10 days of receipt of the department's written invoice.

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

(k) What if I cannot afford the annual assessment?

(1) This subsection applies only if you hold a currency exchange license. If you are experiencing financial difficulties, you may be able to obtain a temporary reduction in the amount of your annual assessment for one year by meeting the requirements of this subsection.

(2) To request a reduction in your annual assessment, you must file a written application as described in paragraph (2)(A) of this subsection and the commissioner must find that your application satisfies the requirements described in paragraph (2)(B) of this subsection. If the commissioner decides to reduce your annual assessment, the commissioner has discretion to determine the amount of the reduction.

(A) To request a reduction in your annual assessment, you must:

(i) file a written application with the department not later than 10 days before the date the current annual assessment is due, accompanied by a written business recovery plan and other supporting documentation sufficient to demonstrate that you satisfy each factor described in paragraph (2)(B) of this subsection; and

(ii) file any additional documentation the department requests not later than the seventh day after the date you receive the written request.

(B) The commissioner will not reduce your annual assessment unless the commissioner finds, based on your application and supporting documentation, that:

(i) Your payment of the full assessment will cause you to become financially insolvent, and your current or impending financial condition is temporary and you reasonably expect to have the ability to pay your annual assessment in full by at least the third year after the year in which your request is made, based on a written business recovery plan that is reasonable and attainable; or

(ii) your business is temporarily closed during the annual assessment period and you have conducted no currency exchange activities during that period.

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

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

(b) Definitions. Words used in this section that are defined in Finance Code, Chapter 151, have the same meaning as

**ADOPTION OF AMENDMENTS TO 7 TAC,
§§33.3, 33.13, 33.15, 33.27, 33.51
AND NEW §§33.71 - 33.75
Page 11 of 18**

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

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

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

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

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

(c) Must I provide notice to customers about how to file complaints? Yes. You must tell each of your customers how to file a

complaint concerning the money transmission, currency exchange or depository agent business you conduct under Finance Code, Chapter 151, in accordance with this section.

(d) What must the notice say?

(1) You must use:

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

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

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

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

(1) If a state or federal law requires you to send a privacy notice to your

**ADOPTION OF AMENDMENTS TO 7 TAC,
§§33.3, 33.13, 33.15, 33.27, 33.51
AND NEW §§33.71 - 33.75
Page 12 of 18**

customers, you must include the required notice with each privacy notice.

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

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

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

(i) the payment instrument or other access device constitutes the only

means of accessing the money, bullion or specie received for transmission; or

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

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

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

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

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

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

**ADOPTION OF AMENDMENTS TO 7 TAC,
§§33.3, 33.13, 33.15, 33.27, 33.51
AND NEW §§33.71 - 33.75
Page 13 of 18**

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

(f) – (h) (No change.)

§33.71. Security Required for Depository Agents.

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

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

(c) The security must:

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

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

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

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

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

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

**ADOPTION OF AMENDMENTS TO 7 TAC,
§§33.3, 33.13, 33.15, 33.27, 33.51
AND NEW §§33.71 - 33.75
Page 14 of 18**

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

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

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

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

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

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

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

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

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

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

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

**ADOPTION OF AMENDMENTS TO 7 TAC,
§§33.3, 33.13, 33.15, 33.27, 33.51
AND NEW §§33.71 - 33.75
Page 15 of 18**

§33.72. Net Worth Required for Depository Agents.

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

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

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

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

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

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

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

(4) the amount and nature of its liabilities;

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

(6) the quality of its operations;

(7) the quality of its management;

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

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

(10) any other factor the commissioner considers relevant.

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

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

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

(b) What are the general recordkeeping requirements?

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

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

(B) in addition to the records required under Finance Code, Chapter 151, the records required under this section related

**ADOPTION OF AMENDMENTS TO 7 TAC,
§§33.3, 33.13, 33.15, 33.27, 33.51
AND NEW §§33.71 - 33.75
Page 16 of 18**

specifically to depository agent services transactions;

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

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

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

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

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

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

(1) For purposes of paragraph (2) of this subsection, “identifying number” means the taxpayer identification number (e.g., social security, employee identification number) or passport number of your customer or the person on whose behalf your

customer conducts the transaction, as applicable, or, if your customer or other person has no such number and is an alien, then the number of an alien identification card or other official document evidencing foreign nationality or residence, such as a foreign driver's license or foreign voter registration card.

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

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

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

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

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

(E) your customer's date of birth;

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

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

(H) the date of the transaction;

**ADOPTION OF AMENDMENTS TO 7 TAC,
§§33.3, 33.13, 33.15, 33.27, 33.51
AND NEW §§33.71 - 33.75
Page 17 of 18**

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

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

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

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

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

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

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

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

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

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

(2) the imposition of the requirement would cause an undue burden on you and conformity with the requirement would not

significantly advance the state's interest under Finance Code, Chapter 151.

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

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

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

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

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

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

(B) contains:

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

(ii) the unique transaction or identification number;

**ADOPTION OF AMENDMENTS TO 7 TAC,
§§33.3, 33.13, 33.15, 33.27, 33.51
AND NEW §§33.71 - 33.75
Page 18 of 18**

(iii) the date of the transaction;

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

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

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

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

(3) With respect to a currency transmission transaction subject to Finance Code, Chapter 278, you must provide the receipt required under Finance Code, §278.051 and §278.053, as applicable. The information required under those sections may be included on the receipt required under paragraph (2) of this subsection.

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

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

(b) An individual, partnership or corporation who conducts depository agent

services as defined by Finance Code §151.002, need not obtain a license under Finance Code, Chapter 151, so long as that individual, partnership or corporation:

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

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

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

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

This page left blank intentionally.

D.

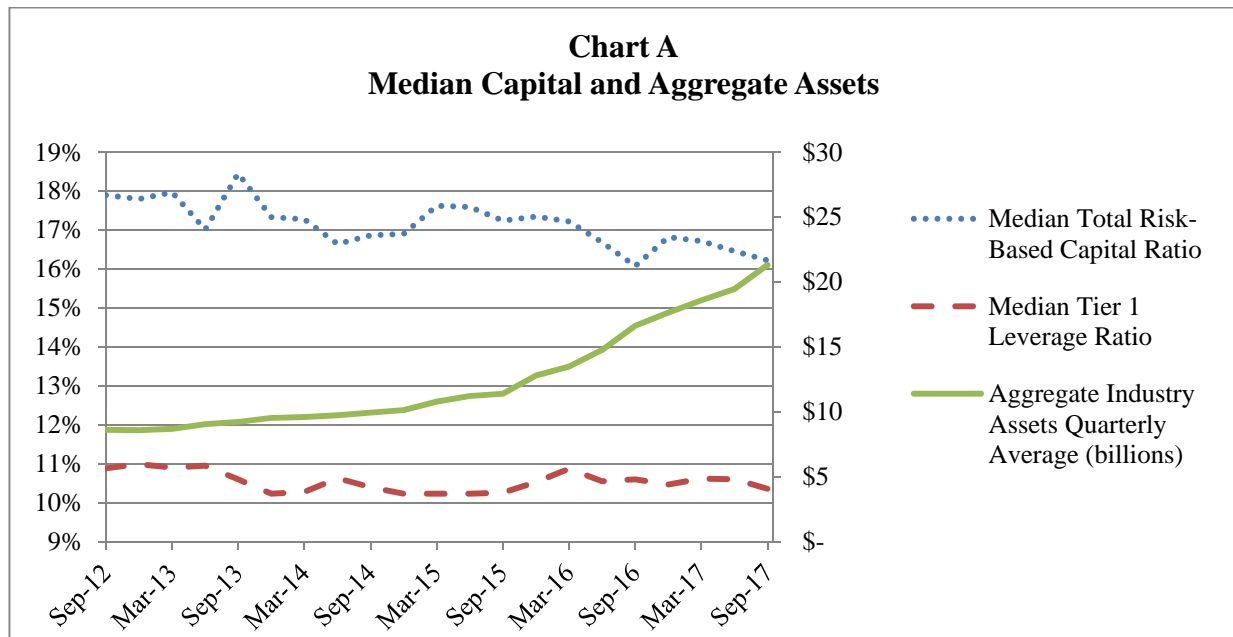
**Department of Savings
and
Mortgage Lending**

D. Texas Department of Savings and Mortgage Lending

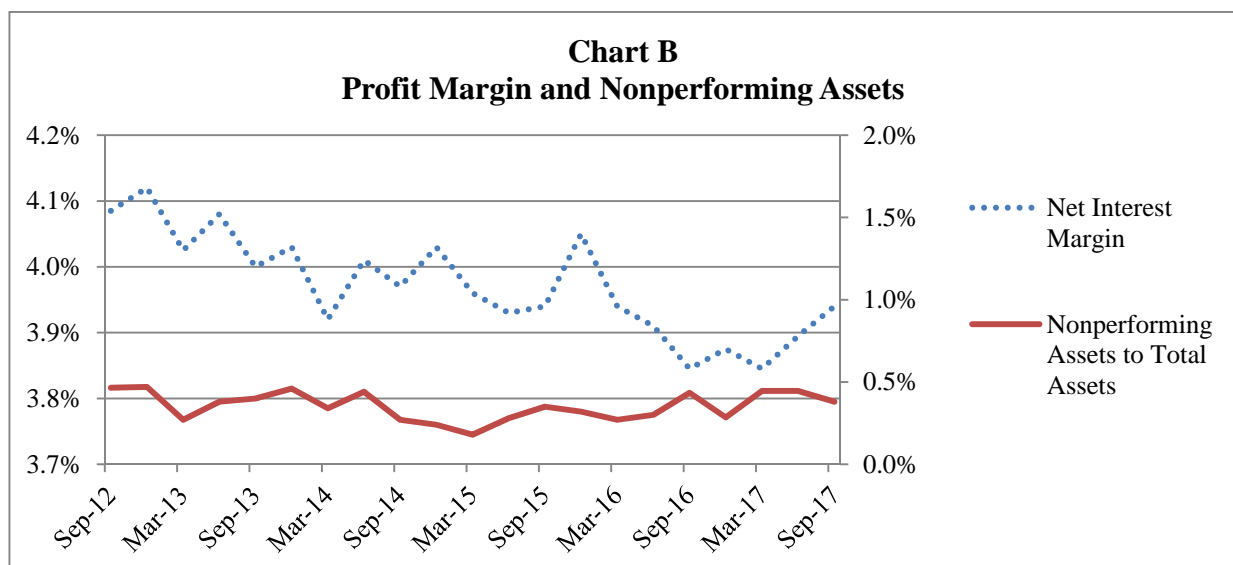
1. Industry Status and Departmental Operations – State Savings Bank Activity:

a. Industry Status

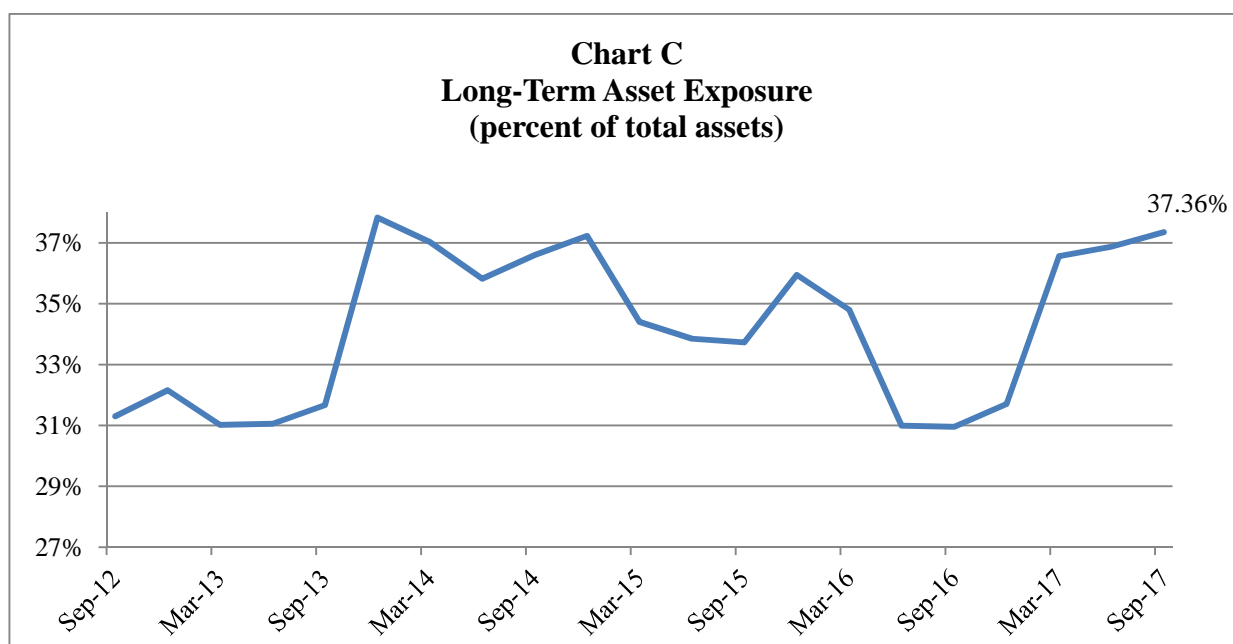
There were 26 state savings banks totaling \$22.298 billion in total assets, as of September 30, 2017. The average asset size of the median state savings bank (“SSB”) grew by 11.23% in the last four quarters to \$349.641 million. This continues a trend extending more than five years in the industry. As a result of increased lending, the median total risk-based capital ratio (Chart A) has declined over the last four quarters to 16.22% but is up slightly from last September at 16.08%. Median leverage capital protection has remained generally consistent and is now 10.36%. Median leverage capital protection has remained generally consistent and is now 10.36%.



After a period of some fluctuation, the net interest or profit margin (Chart B) is recovering some, to 3.94% from 3.85% at September 2016. Nonperforming asset levels remain low at 0.38% of total assets.

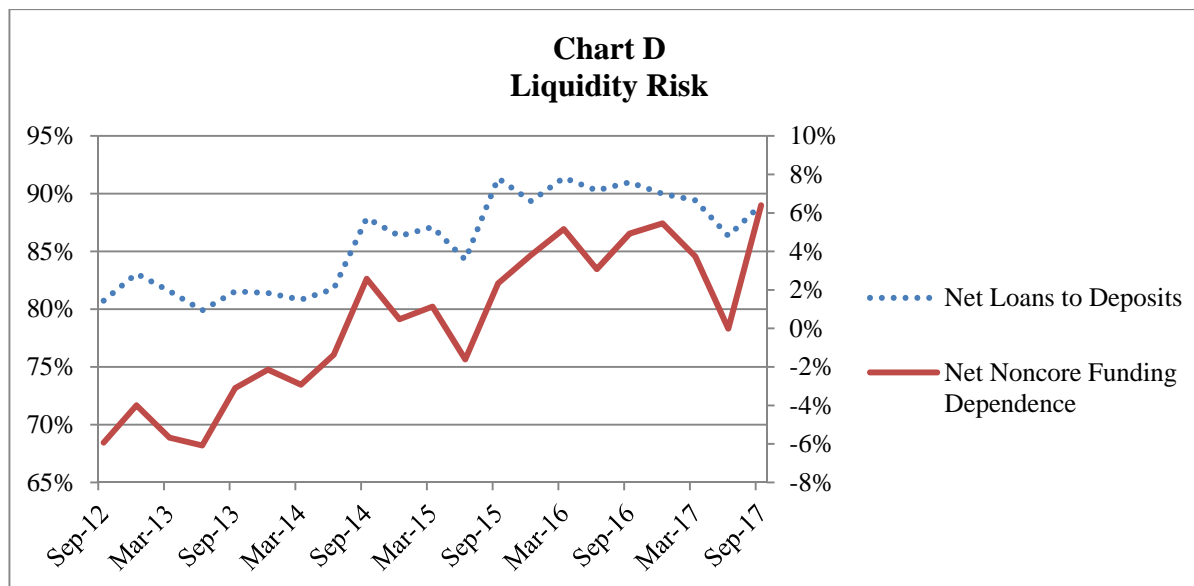


The Department continues to monitor various local, state, and national data sources to best understand the risks facing the industry and individual savings banks. Market risk, as evidenced by long-term asset exposure (Chart C), had been noticeably elevated from late 2013 through early 2016. However, a substantial decrease in exposure to long-term assets occurred with increased short-term lending in the second quarter. The exposure rose in the second quarter of 2017 and remains at that level. There are a small number of outlier institutions with high long-term asset exposure; however these are generally operating within historical norms of ten years or more.

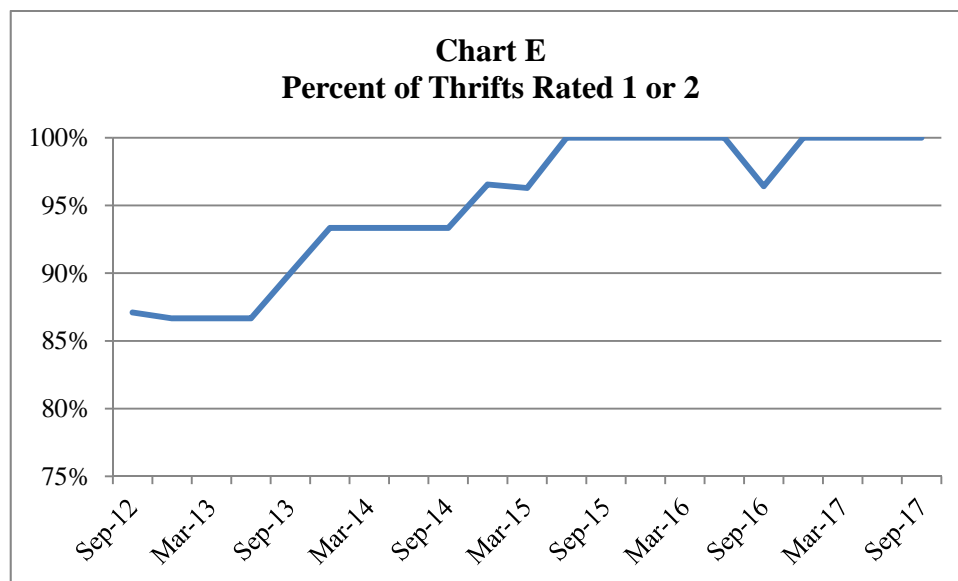


Liquidity risk remains elevated in Texas thrifts (Chart D), as indicated by the Net Noncore Funding Dependence (NNCFD) Ratio, a measure of the funding of long-term assets using potentially volatile liabilities such as uninsured and brokered deposits, and borrowings, and the loan-to-deposit ratio; a measure of the use of deposits to fund lending activities. The median NNCFD Ratio has increased from 4.92% to 6.4% in the last four quarters, however, it is considered manageable. The loan-to-deposit ratio also remains elevated at about 90% with 23% of the industry over 100%.

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



All SSBs at September 30, 2017, were rated a Composite 1 or 2 (Chart E). There is one formal outstanding enforcement action.



b. Savings Bank Charter and Merger Activity

On August 21, 2017, application was received from TBK Bank, SSB, Dallas, Texas, to acquire Valley Bank & Trust, Brighton, Colorado. An order approving the application was issued in November and the merger is intended to occur in December 2017.

The conversion of First Bank Texas SSB to a national bank was effective October 11, 2017.

c. Other Items

Commissioner Jones and Chief Thrift Examiner Trotti attended the FDIC Regional Office Leadership Conference November 14, 2017.

Commissioner Jones attended the State Liaison Committee pre-briefing meeting December 4, 2017 and the fourth quarter Federal Financial Institutions Examination Council's (FFIEC) meeting December 5, 2017.

Commissioner Jones and the Supervisory Analysts attended the FDIC Banker Outreach/Directors College Event in Austin on December 6, 2017. Additionally, the Commissioner attended the same event in Dallas on December 8, 2017. The Commissioner provided resource information at both events.

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

a. Residential Mortgage Loan Originators

Current Licensing Population:

License Type As of 11/30/2017	Approved		
	Entity (MU1)	Branch (MU3)	MLO (MU4)
<i>Auxiliary</i>	10	n/a	
<i>CUSO</i>	4	2	
<i>FSC</i>	1	n/a	
<i>Independent Contractor</i>	106	n/a	
<i>Mortgage Company</i>	1,191	569	
<i>Mortgage Banker</i>	405	2,677	
<i>Mortgage Servicer</i>	172	n/a	
Totals	1,889	3,248	27,970

As of November 30, 2017, 3,566 companies/branches and 17,287 individuals had submitted their renewal.

For the first quarter of FY18, the Department received 2,188 applications and 28,339 other filings.

b. Mortgage Examinations

The Department held its fifth annual Mortgage Industry Seminar in Plano on November 6, 2017. The presentations covered licensing, social media, mortgage examination procedures, consumer complaints and home equity lending. Presentations were given by senior management, in-house counsel and three field examiners from the Dallas and Austin regions. All mortgage examiners were in attendance at the seminar in coordination with training which was held on November 7, 2017. The feedback received from attendees at the Seminar was very positive. A copy of the agenda is in the meeting materials.



5th Annual

MORTGAGE INDUSTRY SEMINAR

Monday, November 6, 2017



3:00 – 3:05

Welcome Comments

Commissioner Caroline C. Jones

3:05 – 3:15

NMLS Mortgage Data

Supervisory Compliance Examiner– Justin Accola

3:15 – 3:30

TDSML Mortgage Examination Data

Supervisory Compliance Examiner – Bill Poe

3:30 – 3:45

Social Media

Chief Mortgage Examiner – Ellena Meier

3:45 – 4:00

Break

4:00 – 4:10

Consumer Complaints

Director of Mortgage Examination - Tony Florence

4:10 – 4:20

Enforcement Actions

Associate General Counsel –Roberto Ramirez

4:20– 4:35

Licensing Update

Director of Licensing - Steven O'Shields

4:35 – 5:00

Q & A Open Forum – What Do You Want to Know?

5:00

Closing Comments

Commissioner Caroline C. Jones

c. Consumer Complaints/Legal Issues

During the first quarter of FY18, a total of 288 consumer complaints were received and a total of 259 consumer complaints were resolved. Aging on open complaint files continues to be maintained at an acceptable level with no open complaints aged more than 120 days as of November 30, 2017.

d. Other Items

Commissioner Jones testified on two interim charges, both relating to the mortgage industry and Hurricane Harvey, at Senate Business and Commerce Committee Interim Hearing held on November 1, 2017.

Commissioner Jones met with Pete Mills, Senior Vice President of Residential Policy, William Kooper, Vice President of State Governmental Affairs, and other representatives from the national Mortgage Banker Association on December 4, 2017.

3. Fiscal/Operations Activity:

a. Funding Status/Audits/Financial Reporting

Funding Status/Budget – Staff is closing out the first quarter of FY2018.

Audit – The Department’s annual risk assessment has been completed by Garza/Gonzalez and can be found elsewhere in this packet. The audit of Thrift Supervision and Compliance area will be performed later in the year.

b. Staffing

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

Below is the status of the Department’s vacancies:

Vacancy Status	
Accountant II/III	Filled
License and Permit Specialist II/III	Open - Reviewing applications
Financial Examiner I/II – Thrift	Open - Reviewing applications
Financial Examiner IV/V – Thrift	Open – Conducting Interviews

c. Other Items

Sunset – In November, the Department received an information request from the Sunset Commission’s staff. The request covered all areas of the Department and included performance, statistical, fiscal, and other informational items, the majority of which spanned fiscal years 2007-2017. The Department’s staff compiled and submitted the detailed information.

4. Legal Activities:

SOAH Cases:

Case No. 450-17-5613 *Department of Savings and Mortgage Lending v. Anthony Spencer Lozano*. This is a RMLLO license denial case which, as of the date of printing of these materials, is set for a SOAH hearing on December 13, 2017.

Case No. 450-16-2838 *Department of Savings and Mortgage Lending v. Sammy Trantham*. On April 19, 2017, the Administrative Law Judge granted the department's motion for summary disposition to deny Mr. Trantham's license. May 19, 2017, was the administrative record close date. On July 17, 2017, the Administrative Law Judge issued his Proposal for Decision on Summary Disposition recommending that Mr. Trantham's license renewal be denied and for costs to be assessed against Mr. Trantham as the losing party in this matter. The exceptions to the Proposal for Decision were due on September 7, 2017 and any Replies to the Exceptions were due on October 20, 2017. However, these deadlines had to be suspended when Associate General Counsel Devyn F. Wills was called to State Active Duty for three weeks as part of the Texas State Guard's response to Hurricane Harvey, as the exceptions would have been due during his open-ended deployment. Counsels for the two parties have since met to discuss settlement, have been regularly updating the court on their progress, and are now negotiating a settlement that will hopefully be agreeable to both parties.

Gift Reporting:

The American Association of Residential Mortgage Regulator's provided a complimentary registration to its' Licensing School held on October 3-4, 2017. The value of the scholarship was \$575.00.

The Texas Bankers Association provided four discounted registrations to its FDIC Banker Outreach Program held on December 6, 2017 in Austin and a complimentary registration for the event held on December 8, 2017 in Dallas. The aggregate value of the discounted registrations was \$560.00 and the complimentary registration was \$295.00.

Litigation:

There has been no litigation since the last report to the Finance Commission in October of 2017.

Multistate penalty:

In 2014, Ocwen Loan Servicing, LLC entered a consent judgment with Texas and 48 other states to resolve claims that Ocwen engaged in unlawful conduct in the servicing of residential mortgage loans. In 2017, a multistate monitoring committee found that Ocwen failed to cure a violation of a metric in the consent judgment. The committee filed a motion to enforce the consent judgment's remedy provisions, and the federal district court for the District of Columbia granted this motion on September 26, 2017. The Department of Savings and Mortgage Lending and the Office of Consumer Credit Commissioner each received \$4,500 of the total penalty paid by Ocwen for its violation of the 2014 consent judgment.

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

PURPOSE: The purpose of amendments is to clarify and better organize the requirements regarding physical offices.

RECOMMENDED ACTION: The Department recommends the Finance Commission approve the amendments to 7 TAC, Chapter 80, §80.2 and new rule §80.206 without changes, as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move we approve the amendments to 7 TAC, Chapter 80, §80.2 and new rule §80.206.

Title 7. Banking and Securities
Part 4. Department of Savings and Mortgage Lending
Chapter 80. Texas Residential Mortgage Loan Companies
Subchapter A. General Provisions
Subchapter C. Duties and Responsibilities

The Finance Commission of Texas (the "Finance Commission") adopts amendment to 7 Tex. Admin. Code §80.2, relating to definitions, and adopts a new rule §80.206, relating to physical offices.

The Finance Commission adopts the amendments to §80.2 and adopts new rule §80.206 without changes to the proposed text as published in the November 3, 2017 issue of the *Texas Register* (42 TexReg 6077-6078). The rules will not be republished.

The commission did not receive any comments on the proposed amendments.

In general, the purpose of the adoption is to clarify and better organize the requirements regarding physical offices.

The adoption regarding 7 Tex. Admin. Code §80.2 is to simplify the definition of a physical office to mean an actual office where the business of mortgage lending and/or the business of taking or soliciting residential mortgage loan applications are conducted.

The adoption regarding 7 Tex. Admin. Code new §80.206 outlines the requirements a physical office must meet and that the physical office of a licensee need not be the location at which such person's required records are maintained, but the location at which such required records are maintained must be accessible to the Commissioner or the Commissioner's designee for inspection during normal business hours.

The adoption is made under the authority granted by the Texas Legislature to the Finance Commission pursuant to Tex. Fin.

Code §156.102.

The statutory provisions affected by the proposal are contained in Tex. Fin. Code, chapter 156.

§80.2 Definitions

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

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

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

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

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

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

by contract, or otherwise. Any person that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) "Physical Office" means an actual office where the business of mortgage lending and/or the business of taking or soliciting residential mortgage loan applications are conducted.

(11) "Qualifying Individual" shall have the same meaning as that provided in Finance Code, §156.002. Additionally, the license

held by the qualifying individual must be held in a status, which authorizes them to conduct regulated activities, and is sponsored by the company for which they are the qualifying individual.

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

§80.206 Physical Office

(a) A Physical Office must:

(1) have a physical or street address. A post office box or other similar designation will not suffice.

(2) be accessible to the general public as a place of business and must hold itself open on a regular basis during posted hours. The hours of business must be posted in a manner to give effective notice to walk-up traffic as to the hours of opening and closing. Normally this will require posting of the hours on an exterior door or window of the office. In those instances where the physical office is in a shared office suite or building, the hours may be posted in a common lobby or reception area.

(3) have at least one (1) staff member present to assist customers during the hours in which the Physical Office is open.

(b) The Physical Office of a licensee need not be the location at which such person's required records are maintained, but the location at which such required records are maintained must be accessible to the Commissioner or the Commissioner's designee for inspection during normal business hours.

Certification

The agency 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 December 15, 2017.

Devyn F. Wills
Associate General Counsel
Department of Savings and Mortgage Lending

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

PURPOSE: The purpose of amendment is to reduce regulatory burden and create parity between the Texas Mortgage Company and Mortgage Banker disclosures.

RECOMMENDED ACTION: The Department recommends the Finance Commission approve the amendments to 7 TAC, Chapter 80, §80.200 without changes, as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move we approve the amendments to 7 TAC, Chapter 80, §80.200.

Title 7. Banking and Securities
Part 4. Department of Savings and Mortgage Lending
Chapter 80. Texas Residential Mortgage Loan Companies
Subchapter C. Duties and Responsibilities

The Finance Commission of Texas (the “Finance Commission”) on behalf of the Department of Savings and Mortgage Lending (the “Department”), adopts the amendment to 7 Tex. Admin. Code §80.200, relating to required disclosures.

The Finance Commission adopts the rule without changes to the proposed text as published in the November 3, 2017 issue of the *Texas Register* (42 TexReg 6078). The rules will not be republished.

The commission did not receive any comments on the proposed amendments.

In general, the purpose of the adoption is to reduce regulatory burden and create parity between the Texas Mortgage Company and Mortgage Banker Disclosures, as found in 7 Tex. Admin. Code §§80.200 and 81.200, respectively.

The adoption of 7 Tex. Admin. Code §80.200 is to simplify the information contained in the Texas Mortgage Company Disclosure, thus creating parity with the Texas Mortgage Banker Disclosure. In addition, the Texas Mortgage Company Disclosure is adopted to add clarifying language, including that residential mortgage loan originators will be paid in compliance with Regulation Z.

The new rule is adopted under the authority granted by the Texas Legislature to the Finance Commission pursuant to Tex. Fin. Code §156.102.

The statutory provisions affected by the proposal are contained in Tex. Fin. Code, chapter 156.

§80.200 Required Disclosure

(a) An originator sponsored under Finance Code, Chapter 156 shall include the following notice, Figure: 7 TAC §80.200(a), to a residential mortgage loan applicant with an initial application for a residential mortgage loan:

Figure: 7 TAC §80.200(a)

(b) At each physical office, and on its website, a company or an originator shall conspicuously post the following notice:

Figure: 7 TAC §80.200(b)

(c) A notice is deemed to be conspicuously posted under subsection (b) of this section if a customer with 20/20 vision can read it from each 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, etc.) are posted. If applicable a notice is deemed conspicuously posted if prominently displayed on the website.

Certification

The 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 December 15, 2017.

Devyn F. Wills
Associate General Counsel
Department of Savings and Mortgage Lending

TEXAS MORTGAGE COMPANY DISCLOSURE

Residential Mortgage Loan Originator: _____

NMLS ID: _____

We will submit your loan application to a participating lender or we will make your loan ourselves. In connection with this mortgage loan, we are acting as an independent contractor and not as your agent.

We will be compensated in compliance with Section 1026.36(d) of Regulation Z (12 C.F.R. § 1026.36(d)) (if applicable).

Pursuant to Sections 156.004(b) and 156.102 of the Residential Mortgage Loan Company Licensing and Registration Act, Chapter 156, Texas Finance Code, you are hereby notified of the following:

CONSUMERS WISHING TO FILE A COMPLAINT AGAINST A MORTGAGE COMPANY OR A LICENSED RESIDENTIAL MORTGAGE LOAN ORIGINATOR SHOULD COMPLETE AND SEND A COMPLAINT FORM TO THE TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING, 2601 NORTH LAMAR, SUITE 201, AUSTIN, TEXAS 78705. COMPLAINT FORMS AND INSTRUCTIONS MAY BE OBTAINED FROM THE DEPARTMENT'S WEBSITE AT WWW.SML.TEXAS.GOV. A TOLL-FREE CONSUMER HOTLINE IS AVAILABLE AT 1-877-276-5550.

THE DEPARTMENT MAINTAINS A RECOVERY FUND TO MAKE PAYMENTS OF CERTAIN ACTUAL OUT OF POCKET DAMAGES SUSTAINED BY BORROWERS CAUSED BY ACTS OF LICENSED MORTGAGE COMPANY RESIDENTIAL MORTGAGE LOAN ORIGINATORS. A WRITTEN APPLICATION FOR REIMBURSEMENT FROM THE RECOVERY FUND MUST BE FILED WITH AND INVESTIGATED BY THE DEPARTMENT PRIOR TO THE PAYMENT OF A CLAIM. FOR MORE INFORMATION ABOUT THE RECOVERY FUND, PLEASE CONSULT THE DEPARTMENT'S WEB SITE AT WWW.SML.TEXAS.GOV.

Applicant(s)

Residential Mortgage Loan Originator

Signed: _____

Signed: _____

Name: _____

Name: _____

Date: _____

Date: _____

Signed: _____

Name: _____

Date: _____

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

PURPOSE: The purpose of amendments is to clarify and better organize the requirements regarding physical offices.

RECOMMENDED ACTION: The Department recommends the Finance Commission approve the amendments to 7 TAC, Chapter 81, §81.2 and new rule §81.206 without changes, as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move we approve the amendments to 7 TAC, Chapter 81, §81.2 and new rule §81.206.

Title 7. Banking and Securities

Part 4. Department of Savings and Mortgage Lending

Chapter 81. Mortgage Bankers and Residential Mortgage Loan Originators

Subchapter A. General Provisions

Subchapter C. Duties and Responsibilities

The Finance Commission of Texas (the "Finance Commission") on behalf of the Department of Savings and Mortgage Lending (the "Department"), adopts the amendment to 7 Tex. Admin. Code §81.2, relating to definitions, and adopts a new rule §81.206, relating to physical offices.

The Finance Commission adopts the amendments to §81.2 and adopts new rule §81.206 without changes to the proposed text as published in the November 3, 2017 issue of the *Texas Register* (42 TexReg 6079-6080). The rules will not be republished.

The commission did not receive any comments on the proposed amendments.

In general, the purpose of this adoption is to clarify and better organize the requirements regarding physical offices.

The adoption regarding 7 Tex. Admin. Code §81.2 is to simplify the definition of a physical office to mean an actual office where the business of mortgage lending and/or the business of taking or soliciting residential mortgage loan applications are conducted.

The adoption regarding 7 Tex. Admin. Code new §81.206 outlines the requirements a physical office must meet and that the physical office of a licensee need not be the location at which such person's required records are maintained, but the location at which such required records are maintained must be accessible to the Commissioner or the Commissioner's designee for inspection during normal business hours.

The new rules are adopted under the

authority granted by the Texas Legislature to the Finance Commission pursuant to Tex. Fin. Code §157.0023.

The statutory provisions affected by this proposal are contained in Tex. Fin. Code, chapter 157.

§81.2 Definitions

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

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

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

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

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

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

(C) involves the solicitation of, the

- giving of, or the taking of bribes, kickbacks, or other illegal compensation;
- (D) involves deceiving the public by means of swindling, false advertising or the like;
- (E) involves acts of moral turpitude and violation of duties owed to the public including, but not limited to, the unlawful manufacture, distribution, or trafficking in a controlled substance, dangerous drug, or marijuana;
- (F) involves acts of violence or use of a deadly weapon;
- (G) when considered with other violations committed over a period of time appears to establish a pattern of disregard for, a lack of respect for, or apparent inability to follow, the criminal law; or
- (H) involves any other crime which the Commissioner determines has a reasonable relationship to whether a person is fit to serve as an originator in a manner consistent with the purposes of Finance Code, Chapter 157 and the best interest of the State of Texas and its residents.
- (4) "Department" means the Department of Savings and Mortgage Lending.
- (5) "Mortgage banker" shall have the same meaning as that provided in Finance Code, §157.002.
- (6) "Physical Office" means an actual office where the business of mortgage

lending and/or the business of taking or soliciting residential mortgage loan applications are conducted.

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

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

§81.206 Physical Office

(a) A Physical Office must:

- (1) have a physical or street address. A post office box or other similar designation will not suffice.
- (2) be accessible to the general public as a place of business and must hold itself open on a regular basis during posted hours. The hours of business must be posted in a manner to give effective notice to walk-up traffic as to the hours of opening and closing. Normally this will require posting of the hours on an exterior door or window of the office. In those instances where the physical office is in a shared office suite or building, the hours may be posted in a common lobby or reception area.
- (3) have at least one (1) staff member present to assist customers during the hours in which the Physical Office is

open.

(b) The Physical Office of a licensee need not be the location at which such person's required records are maintained, but the location at which such required records are maintained must be accessible to the Commissioner or the Commissioner's designee for inspection during normal business hours.

Certification

The agency 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 December 15, 2017.

Devyn F. Wills
Associate General Counsel
Department of Savings and Mortgage Lending

8. Discussion and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, §81.109, Concerning Pre-licensing Education.

PURPOSE: The purpose of amendment is to implement HB3342, which changed the period during which an individual who fails to maintain a residential mortgage loan originator license is required to retake the pre-licensing education requirements prescribed by the SAFE Mortgage Licensing Act, from at least five consecutive years, to a period established by rule of the Finance Commission.

RECOMMENDED ACTION: The Department recommends the Finance Commission approve the new rule 7 TAC, Chapter 81, §81.109 without changes, as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move we approve the amendments to 7 TAC, Chapter 81, §81.109.

Title 7. Banking and Securities

Part 4. Department of Savings and Mortgage Lending

Chapter 81. Mortgage Bankers and Residential Mortgage Loan Originators

Subchapter B. Licensing

The Finance Commission of Texas (the “Finance Commission”) on behalf of the Department of Savings and Mortgage Lending (the “Department”), adopts a new rule 7 Tex. Admin. Code §81.109, relating to pre-licensing education.

The Finance Commission adopts the new rule without changes to the proposed text as published in the November 3, 2017 issue of the *Texas Register* (42 TexReg 6080). The rule will not be republished.

The commission did not receive any comments on the proposed amendments.

In general, the purpose of this new rule is to implement H.B. 3342, which the Texas Legislature passed in the 85th regular legislative session.

H.B. 3342 amended Tex. Fin. Code §180.056(h) and changed the period during which an individual who fails to maintain a residential mortgage loan originator license is required to retake the pre-licensing education requirements prescribed by the S.A.F.E. Mortgage Licensing Act, from at least five consecutive years, to a period established by rule of the Finance Commission.

H.B. 3342 further requires the Finance Commission to adopt the rules required by the newly amended Tex. Fin. Code §180.056(h) not later than December 1, 2017. The change in the law applies only to an application for a license filed on or after December 1, 2017. An application for a license filed before December 1, 2017 is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

New 7 Tex. Admin. Code §81.109 provides the circumstances under which an individual must retake the pre-licensing education

requirements prescribed by the S.A.F.E. Mortgage Licensing Act.

The new rule is adopted under the authority granted by the Texas Legislature to the Finance Commission pursuant to H.B. 3342.

The statutory provisions affected by this proposal are contained in Tex. Fin. Code, chapter 180.

§ 81.109 Pre-licensing Education

An individual must retake the pre-licensing education requirements prescribed by the S.A.F.E. Mortgage Licensing Act if the individual:

- (1) fails to acquire a valid residential mortgage loan originator license or federal registration within five years from the date of completing the pre-licensing education requirements prescribed by the S.A.F.E. Mortgage Licensing Act; or
- (2) has obtained a residential mortgage loan originator license or federal registration but did not maintain an active license or federal registration for five consecutive years.

Certification

The agency 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 December 15, 2017.

Devyn F. Wills
Associate General Counsel
Department of Savings and Mortgage Lending