A.

Finance Commission

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FINANCE COMMISSION OF TEXAS

MEETING DATE	December 16, 2016
MEETING LOCATION	William F. Aldridge Hearing Room 2601 North Lamar Boulevard
	Austin, Texas 78705
CONTACT INFORMATION	
	Email: Finance.Commission@fc.texas.gov Website: www.fc.texas.gov
FUTURE MEETING DATES	February 17, 2017
	April 21, 2017
	June 16, 2017
	August 18, 2017
	October 20, 2017 December 15, 2017

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

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FINANCE COMMISSION AGENDA

Friday, December 16, 2016 8:30 a.m.

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, C2, D2-D4

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 21, 2016 Finance Commission Meeting
- 2. General Public Comment
- 3. Consent Agenda
- 4. Finance Commission Operations
- 5. Discussion of Legislative Recommendations of the Department of Savings and Mortgage Lending, Texas Department of Banking, and the Office of Consumer Credit Commissioner
- 6. Update on Audit Activities
- 7. Discussion of and Possible Vote to Take Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Duties and Compensation of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to the Duties and Compensation of Persons Holding the Position of Agency Commissioner Positions, and Other Staff
- 8. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to §551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property
- 9. Discussion and Consultation with Attorney and Possible Vote to Take Action Pursuant to §551.071, Texas Government Code, for the purpose of seeking the advice or attorney-client privileged communications from our attorneys, including matters related to the potential financial exposure of the Finance Commission Agencies and their officers and the Finance Commission and its officers and including matters of pending and contemplated litigation

B. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

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

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

C. OFFICE OF CONSUMER CREDIT COMMISSIONER

- Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities
- 2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Chapter 83, Subchapter B, Regarding Rules for Credit Access Businesses
- 3. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

Lynn Rowell d/b/a Beaumont Greenery, MPC Data and Communications, Inc., Micah Cooksey, NXT Properties, Inc., Mark Harken, Montgomery Chandler, Inc., Paula Cook, Townsley Designs, LLC, and Shonda Townsley v. Leslie L. Pettijohn, in her official capacity as Commissioner of the Office of Consumer Credit Commissioner of the State of Texas; Case No. 15-1455, in the Supreme Court of the United States

D. TEXAS DEPARTMENT OF BANKING

- 1. Industry Status and Departmental Operations: a) Items of Interest from the Commissioner's Office; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Special Audits Division Activities; e) Administrative and Fiscal Division Activities; f) Strategic Support Division Activities; g) Legal Division Activities; h) Legislative Activities; and i) General Items of Interest
- 2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, §12.91 Concerning Other Real Estate Owned
- 3. Discussion of and Possible Vote to Take Action on the Adoption of Amendment to 7 TAC, §3.37 Concerning Calculation of Annual Assessment for Banks
- 4. Discussion of and Possible Vote to Take Action on the Adoption of Amendment to 7 TAC, §33.4 Concerning Payment Processors

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

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

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

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

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MINUTES OF THE FINANCE COMMISSION MEETING Friday, October 21, 2016

The Finance Commission of Texas convened at 9:03 a.m. on October 21, 2016 with the following members present:

Finance Commission Members in Attendance:

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

Finance Commission Members Absent:

Finance Commission Chairman Stacy G. London announced a quorum with eleven members present. (00:10) start of discussion)

AGENDA ITEM		ACTION	LOCATION ON AUDIO FILE
А.	FINANCE COMMISSION MATTERS		
1.	Review and Approval of the Minutes of the August 19, 2016 Finance Commission Meeting	On Consent Agenda – Item A1 This item approved on the Consent Agenda.	n/a
2.	General Public Comment	No Action Required.	1:58 start of discussion
3.	 Consent Agenda – Items A1, A8, B2, C2 Will Lucas made a motion to approve Consent Agenda items A1, A8, and B2 with a correction to A1 to reflect the August 19th Minutes. Item C2 was removed from the Consent Agenda by Paul Plunket. Matt Moore seconded and the motion passed. 		2:31 start of discussion 4:29 vote
4.	Finance Commission Operations	No Action Required.	5:21 start of discussion

AGENDA ITEM		ACTION	LOCATION ON AUDIO FILE	
5.	Audit Committee Report			
	A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' August 31, 2016 Investment Officer Reports	Coming upon recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies' August 31, 2016 Investment Officer Reports passed.	6:32 start of discussion 6:40 vote	
	B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Readoption of the Agencies' Investment Policies	Coming upon recommendation from the Audit Committee, no second is required and the motion to approve the Readoption of the Agencies Investment Policies passed.	6:54 start of discussion 7:05 vote	
	C. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2016 Fourth Quarter Financial Statements	Coming upon recommendation from the Audit Committee, no second is required and the motion to approve the Agencies' 2016 Fourth Quarter Financial Statements passed.	7:12 start of discussion 7:25vote	
6.	Discussion of and Possible Vote to Accept the Report on the Financial Condition of the State Banking System	Vince Puente made a motion to Accept the Report on the Financial Condition of the State Banking System. Matt Moore seconded and the motion passed.	7:51 start of discussion 27:28 vote	
7.	Discussion of and Possible Vote to Take Action on the Accomplishment Reports for Fiscal Year 2016 for the Commissioners of the Office of Consumer Credit Commissioner, Texas Department of Banking, and the Department of Savings and Mortgage Lending	Lori McCool made a motion to approve the Accomplishment Reports for Fiscal Year 2016 for the Commissioners of the Office of Consumer Credit Commissioner, Texas Department of Banking, and the Department of Savings and Mortgage Lending. Molly Curl seconded and the motion passed.	27:46 start of discussion 28:47 vote	
8.	Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 8, Chapter 153, Concerning Home Equity Lending, Resulting from Rule Review	On Consent Agenda – Item A8 This item approved on the Consent Agenda.	n/a	

	AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
9.	Discussion of Legislative Recommendations of the Office of Consumer Credit Commissioner, Texas Department of Banking, and the Department of Savings and Mortgage Lending	No Action Required.	29:14 start of discussion
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.	 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 		n/a
B.	OFFICE OF CONSUMER CREDIT COMMISS	IONER	
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.	41:13 start of discussion

	AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
2.	Discussion of and Possible Vote to Take Action on the Adoption of Amendments, New Rules, and Repeals in 7 TAC, Chapter 85, Subchapter A, Regarding Rules of Operation for Pawnshops	On Consent Agenda – Item B2 This item approved on the Consent Agenda.	n/a
3.	Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Chapter 83, Subchapter B, Regarding Rules for Credit Access Businesses	Will Lucas made a motion to approve the Proposal and Publication for Comment of Amendments to 7 TAC, Chapter 83, Subchapter B, Regarding Rules for Credit Access Businesses. Vince Puente seconded and the motion passed.	1:10:37 start of discussion 1:14:51vote
4.	 4. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation Lynn Rowell d/b/a Beaumont Greenery, MPC Data and Communications, Inc., Micah Cooksey, NXT Properties, Inc., Mark Harken, Montgomery Chandler, Inc., Paula Cook, Townsley Designs, LLC, and Shonda Townsley v. Leslie L. Pettijohn, in her official capacity as Commissioner of the Office of Consumer Credit Commissioner of the State of Texas; Case No. 15-1455, in the Supreme Court of the United States 		n/a
C.	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 		1:16:22 start of discussion
2.	Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §25.1 – 25.6 Concerning Prepaid Funeral Contract Forms	Paul Plunket made a motion to amend the proposed to 7 TAC §25.1 – 25.6 Concerning Prepaid Funeral Contract Forms by adding a requirement to provide a	1:43:45 start of discussion 1:56:44

	AGENDA ITEM	ITEM ACTION LOCATION ON AUDIO FILE	
		paper copy of the contract. Vince Puente seconded. Five members voted in favor of the motion, six members opposed and the amendment did not pass. Paul Plunket made a motion to	vote
		Approve the Adoption of Amendments to 7 TAC §25.1 – 25.6 Concerning Prepaid Funeral Contract Forms. Will Lucas seconded and the motion passed.	
3.	Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §12.91 Concerning Other Real Estate Owned	Jay Shands made a motion to approve the Proposal and Publication for Comment of Amendments to 7 TAC §12.91 Concerning Other Real Estate Owned. Lori McCool seconded and the motion passed.	1:58:40 start of discussion 2:00:51vote
4.	Discussion of and Possible Vote to Take action on the Proposal and Publication for Comment of Amendments to 7 TAC §3.37 Regarding Bank Assessments	Molly Curl made a motion to approve the Proposal and Publication for Comment of Amendments to 7 TAC §3.37 Regarding Bank Assessments. Jay Shands seconded and the motion passed.	2:01:09 start of discussion 2:02:30 vote
5.	Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendment to 7 TAC, §33.4 Concerning Payment Processors	Vince Puente made a motion to approve the Proposal and Publication for Comment of Amendment to 7 TAC, §33.4 Concerning Payment Processors. Molly Curl seconded and the motion passed.	2:02:45 start of discussion 2:04:57 vote

	AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
6.	Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation State of Texas v. Myrtlewood Memorial Services, Inc. d/b/a Harlingen-Combes Memorial Cemetery, Cause No.D-1-GN-16-000565, 353 rd District Court, Travis County, Texas.	No Action Required.	n/a
D.	DEPARTMENT OF SAVINGS AND MORTGA	GE 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.	2:05:23 start of discussion
2.	Industry Status and Departmental Operations – Mortgage Lending Activity: a) Residential Mortgage Loan Originators; b) Mortgage Examination; c) Consumer Complaint; and d) Other Items	No Action Required.	2:09:15 start of discussion
3.	Fiscal/Operations Activity: a) Funding Status/Audits/Financial Reporting; b) Staffing; and c) Other Items	No Action Required.	2:13:24 start of discussion
4.	Legal Activity: a) Enforcement; b) Gift Reporting; and c) Legislative Activities	No Action Required.	2:17:06 start of discussion
5.	Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation <i>Catherine Sims vs. Texas Department of Savings and</i> <i>Mortgage Lending</i> , Cause No. D-1-GN-16-001194, 201 st District Court, Travis County, Texas.	No Action Required.	n/a

Chairman Stacy G. London called for an Executive Session at 11:43 a.m. (2:22:53 on the audio file). The open meeting resumed at 12:25 p.m. (2:22:56 on the audio file).

There being no further business, Chairman Stacy G. London adjourned the meeting of the Finance Commission at 12:25 p.m.(2:23:19) on the audio file)

Stacy G. London, Chairman Finance Commission of Texas

Charles G. Cooper, Executive Director Finance Commission of Texas

Anne Benites, Executive Assistant Finance Commission of Texas This page left blank intentionally.

Finance Commission of Texas

Consent Agenda

December 16, 2016

A. Finance Commission Matters

1. Review and Approval of the Minutes of the October 21, 2016 Finance Commission Meeting

C. Office of Consumer Credit Commissioner

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Chapter 83, Subchapter B, Regarding Rules for Credit Access Businesses

D. Texas Department of Banking

- 2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, §12.91 Concerning Other Real Estate Owned
- 3. Discussion of and Possible Vote to Take Action on the Adoption of Amendment to 7 TAC, §3.37 Concerning Calculation of Annual Assessment for Banks
- 4. Discussion of and Possible Vote to Take Action on the Adoption of Amendment to 7 TAC, §33.4 Concerning Payment Processors

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An Audit Report on

The Department of Banking: A Self-directed, Semi-independent Agency

November 2016 Report No. 17-012

State Auditor's Office reports are available on the Internet at <u>http://www.sao.texas.gov/</u>.



An Audit Report on The Department of Banking: A Self-directed, Semi-independent Agency

SAO Report No. 17-012 November 2016

Overall Conclusion

The Department of Banking (Department) had effective controls that helped ensure that the financial data tested in its self-directed, semiindependent agency reports for fiscal year 2015 and fiscal year 2016 through May 2016 was accurate.

The Department also had an adequate budgeting process to help ensure that it collected enough revenue to cover operating expenditures. It adjusted its bank and trust assessment fees, as appropriate, to collect that **amount of revenue. The Department's fiscal** year 2015 ending fund balance was \$11,673,445, which represented an increase of \$3,760,339 (48 percent) from its fiscal year 2012 ending fund balance. That increase was partially due to the Department increasing its cash reserve for the purchase of a new building.

In addition, the Department complied with requirements for the calculation and collection of bank and trust assessment fees. To impose

Background Information

Established in 1905, the Department of Banking (Department) operates under the oversight of the Finance Commission of Texas and is charged with ensuring that the State has a safe, sound, and competitive financial services system.

The Department regulates state banks, foreign bank branches, agencies, and representative offices, trust companies, prepaid funeral benefit contract sellers, perpetual care cemeteries, money services businesses, private child support enforcement agencies, and check verification entities.

As of June 2016, the Department reported that it regulated 1,096 entities with assets totaling approximately \$529,141 million.

The 81st Legislature granted the Department self-directed and semiindependent status effective September 1, 2009.

Sources: The Department and Texas Finance Code, Chapter 16.

penalties on money services businesses when those businesses did not comply with requirements, the Department followed a process guided by factors in the Texas Finance Code. That process helped to ensure that the Department calculated penalties in accordance with requirements.

The Department also reported accurate results for the two performance measures tested for fiscal year 2015 and fiscal year 2016 through May 2016: (1) Number of Bank and Foreign Bank Examinations Performed and (2) Percentage of Money Services Business (MSB) Licensees Examined by Special Audits When Due.

The Department had controls to help ensure that data from its automated systems was reliable. However, auditors identified weaknesses related to user access and change management that the Department should address. To minimize security risks, auditors communicated details about other issues directly to the Department in writing.

Auditors communicated other, less significant issues related to information technology and policies and procedures to Department management separately in writing.

This audit was conducted in accordance with Texas Finance Code, Section 16.004.

For more information regarding this report, please contact Michael Simon, Audit Manager, or Lisa Collier, First Assistant State Auditor, at (512) 936-9500.

Table 1 presents a summary of the findings in this report and the related issue ratings. (See Appendix 2 for more information about the issue rating classifications and descriptions.)

Table 1

Summary of Chapters and Related Issue Ratings		
Chapter	Title	Issue Rating ^a
1	The Department Had Effective Controls That Helped to Ensure That the Financial Data Tested Was Accurate	Low
2	The Department Had an Adequate Budgeting Process and Complied with Requirements for Setting Bank and Trust Assessment Fees and for Imposing Penalties on Money Services Businesses	Low
3	The Department Reported Accurate Results for the Two Performance Measures Tested	Low
4	The Department Had Controls to Help Ensure That Data from Its Automated System Was Reliable; However, It Should Strengthen Certain Information Technology Security Controls	Low

^a A chapter is rated Priority if the issues identified present risks or effects that if not addressed could critically affect the audited **entity's ability to effectively administer the program(s)/function(s) audited. Immediate action is required to address the noted concern** and reduce risks to the audited entity.

A chapter is rated High **if the issues identified present risks or effects that if not addressed could substantially affect the audited entity's** ability to effectively administer the program(s)/function(s) audited. Prompt action is essential to address the noted concern and reduce risks to the audited entity.

A chapter is rated Medium if the issues identified present risks or effects that if not addressed could moderately affect the audited **entity's ability to effectively admi**nister program(s)/function(s) audited. Action is needed to address the noted concern and reduce risks to a more desirable level.

A chapter is rated Low if the audit identified strengths that support the audited entity's ability to administer the program(s)/functions(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.

Summary of Management's Response

At the end of Chapter 4 in this report, auditors made recommendations to address the issues identified during this audit. The Department agreed with the recommendations.

Audit Objectives and Scope

The objectives of this audit were to:

- Verify the accuracy of certain financial and performance data and the effectiveness of related controls at selected self-directed, semi-independent agencies.
- > Evaluate the agencies' processes for setting fees and penalties.

The scope of this audit covered the Department for fiscal year 2015 (September 1, 2014, through August 31, 2015) and the first three quarters of fiscal year 2016 (September 1, 2015, through May 31, 2016).

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Detailed Results

^{Chapter 1} The Department Had Effective Controls That Helped to Ensure That the Financial Data Tested Was Accurate

Chapter 1 Rating: Low ¹ The Department of Banking (Department) had effective financial control processes and procedures to help ensure the accuracy of the financial data that auditors tested from the Department's self-directed, semi-independent agency reports for fiscal year 2015 and fiscal year 2016 through May 2016.

Auditors tested the accuracy of selected financial data in the Department's annual financial report for fiscal year 2015 and identified no significant errors. That selected financial data included:

- Accumulated depreciation.
- Capital outlay.
- Accounts payable.
- Cash balances and short-term investments.
- Consumable inventory.
- Fund balance.
- Expenditures for materials and supplies, professional fees, travel, and other expenditure categories (for example, registration and membership fees and freight and delivery fees).
- Revenue for Bank and Trust Assessment Fees and Money Services Business Penalties.

The Department accurately processed the receipt and deposit of penalties and accurately accounted for bank and trust assessment fees due. It also properly recorded and approved expenditures while maintaining appropriate segregation of duties.

In addition, the Department effectively reconciled its financial records on a monthly basis, which helped to ensure that the Department reported its financial data accurately. Specifically, the Department performed monthly

¹ Chapter 1 is rated Low because the audit identified strengths that support the audited entity's ability to administer the program(s)/functions(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.

reconciliations of its internal accounting system with information from the Uniform Statewide Accounting System (USAS) and the Texas Treasury Safekeeping Trust Company, as required by its internal policy. The Department appropriately followed up on outstanding reconciling items for the two reconciliations that auditors tested.

Auditors also determined that:

- The Department accurately collected the 64 bank and trust and money services business revenue transactions tested, recorded the associated transactions in its financial accounting system, and deposited the associated revenue in the Texas Treasury Safekeeping Trust Company.
- The Department appropriately approved, supported with invoices and travel documents, and correctly coded in its accounting system and USAS all 68 expenditures tested.

Chapter 2

The Department Had an Adequate Budgeting Process and Complied with Requirements for Setting Bank and Trust Assessment Fees and for Imposing Penalties on Money Services Businesses

Chapter 2 Rating: Low ² The Department had an adequate process for setting bank and trust assessment fees, and that process was based on its budgetary needs. It followed a reasonable methodology to ensure that its revenue, which consisted primarily of bank and trust assessment fees, adequately covered its operational costs. The Department used its budget projections to determine the amount of revenue it would need to cover its operating expenditures. The Department also adjusted its bank and trust assessment fees, as necessary, to collect the desired amount of revenue (see Appendix 3 for more information on the Department's bank and trust fee assessment history).

In addition, the Department complied with requirements for the calculation of bank and trust assessment fees, and it followed a process guided by factors in the Texas Finance Code for imposing penalties when money services businesses did not comply with requirements.

Budgeting

The Department's budgeting process helped to ensure that the Department set bank and trust assessment fees that were necessary to cover operational costs. As part of its budgeting process, the Department's internal procedures required each division to review budget variance reports each quarter. The Department also adjusted its bank and trust assessment fees, as necessary, to collect the desired amount of revenue. In November 2015, the Department implemented a rule change in the Texas Administrative Code to adjust its bank and trust assessment fees.

To review fund balance information, auditors analyzed the Department's fund balance for fiscal years 2012 through 2015. The Department's fiscal year 2015 ending fund balance was \$11,673,445.³ That represented an increase of \$3,760,339 (48 percent) from its fiscal year 2012 ending fund balance.

² Chapter 2 is rated Low because the audit identified strengths that support the audited entity's ability to administer the program(s)/functions(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.

³ That \$11,673,445 amount is prior to any adjustments.

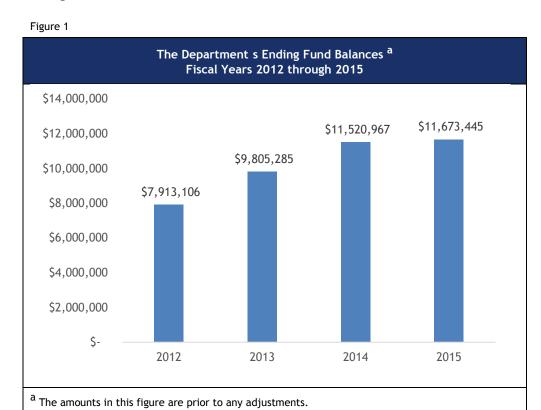


Figure 1 shows the Department's ending fund balances for fiscal years 2012 through 2015.

The increase in the fund balance since fiscal year 2012 can partially be attributed to the Department's cash reserve to purchase a new building. In fiscal year 2012, the Department's cash reserve included \$3 million to purchase a new building. That amount increased to \$5 million in fiscal year 2014 and remained at \$5 million in fiscal year 2015. The remaining fund balance for fiscal year 2015 also included a reserve for approximately three months for the Department's future operations. The Department also adopted the cash reserve policy that the Finance Commission of Texas established.

Source: The Department.

Bank and Trust Assessment Fees⁴

The Department complied with Texas Administrative Code requirements for the calculation of bank and trust assessment fees in fiscal year 2015 and fiscal year 2016 through May 2016 (see text box for additional information on bank and trust assessments). Specifically it:

 Accurately calculated bank and trust assessment fees totaling approximately \$4.8 million for examinations that the Department performed independently for fiscal year 2015. The Department reduced the bank and trust assessment fees that banks owed in the fourth quarter of fiscal year 2015 by \$150,685, which resulted in actual collections of approximately \$4.6 million. Bank and Trust Assessments

The primary function of the **Department's Bank and Trust** Division is to examine and supervise banks chartered by the State of Texas.

As authorized in the Texas Finance Code, the Department may set the amounts of fees, penalties, charges, and revenues required or permitted by statute or rule as necessary for the purpose of carrying out its functions and funding the approved budget.

As a result, banks chartered by the State of Texas pay the Department bank and trust assessment fees on a quarterly basis. The methodology to calculate those fees is specified in the Texas Administrative Code.

Source: The Department.

 Accurately calculated bank and trust assessment fees totaling approximately \$6.2 million for examinations that the Department performed independently through the third quarter of fiscal year 2016. The Department reported that it had collected approximately \$3.8 million (61 percent) of those fees as of May 31, 2016.

⁴ For the purposes of this audit and due to federal confidentiality requirements, audit conclusions for the bank and trust assessment fees were limited to fees assessed as a result of bank examinations that the Department performed independently (and not jointly with a federal agency).

Money Services Business Penalties

From fiscal year 2015 through May 2016, the Department complied with Texas Finance Code requirements to impose penalties on money services businesses (see text box for additional information on money services

Money Services Businesses

The money services businesses that the Department regulates engage in the following:

- Currency exchange.
- Money transmission (includes "inperson" and "internet" transactions).
- Currency transportation.
- Money orders.
- Travelers' checks.
- Third-party bill paying.
- Gift cards (in open systems)
- Stored value products (not issued by insured financial institutions).

The Department, in conjunction with the federal government, conducts examinations of money services businesses to help ensure that the overall financial condition of the money services businesses is sound and that the money services businesses are properly monitoring transactions to deter money laundering, terrorist funding, or financial crimes. Money services businesses that conduct currency exchange or money transmission activities as defined by Chapter 151 of the Texas Finance Code must be licensed by the Department.

According to the Department, if it identifies violations such as providing services as an unlicensed business or becomes aware of violations through other means, it may enter into a consent order agreement and assess a penalty against a money services business.

Source: The Department.

businesses). Specifically, for 10 consent orders tested, the Department appropriately imposed penalties on money services businesses by considering (1) the seriousness of the violation, (2) the money services business's compliance history, and (3) the money services business's good faith in attempting to comply with Texas Finance Code, Chapter 151. The Department's process for assessing penalties is guided by its consideration of those factors as they are specified in a consent order issued against a money services business.

A consent order identifies the final penalty and provides the basis for the penalty amount assessed. For the 10 consent orders that auditors tested, the Department negotiated the penalties within statutory limits and obtained approval from its commissioner for those penalties.

From fiscal year 2015 through May 2016, the Department appropriately imposed \$641,055 in penalties on 10 money services businesses. The Department collected \$637,055 of that amount; the remaining \$4,000 not collected was associated with one money services business that filed for bankruptcy, which prevented the Department from collecting the full amount of the penalty.

^{Chapter 3} The Department Reported Accurate Results for the Two Performance Measures Tested

Chapter 3 Rating: Low ⁵ In its reports to the Finance Commission of Texas for fiscal year 2015 and fiscal year 2016 through May 2016, the Department reported accurate results for the following two performance measures tested:

- Number of Bank and Foreign Bank Examinations Performed.
- Percentage of Money Services Business (MSB) Licensees Examined by Special Audits When Due.

For fiscal year 2015, based on auditors' recalculation of summary-level data generated from the Department's automated systems, the Department accurately reported that the Number of Bank and Foreign Bank Examinations Performed was 120 examinations, which exceeded its fiscal year 2015 target of 107. For fiscal year 2016 through May 2016, the Department accurately reported that the Number of Bank and Foreign Bank Examinations Performed was 80 examinations, which represented approximately 70 percent of the Department's target of 115 for that fiscal year.

For fiscal year 2015, based on auditors' recalculation of summary-level data generated from the Department's automated systems, the Department accurately reported that the Percentage of MSB Licensees Examined by Special Audits When Due was 94 percent, which exceeded its fiscal year 2015 target of 90 percent. For fiscal year 2016 through May 2016, the Department accurately reported that the Percentage of MSB Licensees Examined by Special Audits When Due was 88 percent, which represented approximately 98 percent of its 90 percent target.

⁵ Chapter 3 is rated Low because the audit identified strengths that support the audited entity's ability to administer the program(s)/functions(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.

Chapter 4

The Department Had Controls to Help Ensure that Data from Its Automated Systems Was Reliable; However, It Should Strengthen Certain Information Technology Security Controls

Chapter 4 Rating: Low ⁶ The Department's information technology system controls provided reasonable assurance of the reliability of data used for financial accounting, bank and trust assessment calculations, and performance measure reporting. However, the Department should improve certain key controls in user access, change management, and physical security to ensure the continued reliability of financial and performance data.

Auditors reviewed five key information technology systems that the Department used to manage the data it reported and that were applicable to the audit objectives:

- The Examination Division Information System on the Network (EDISON), which the Department used to monitor, update, and track performance measure data and calculate annual bank and trust assessment fees.
- The Special Audit Regulatory Application, which the Department used to monitor, update, and track performance measure data for money services businesses.
- The Micro Information Products (MIP) system, which is the Department's accounting system and general ledger. The Department used that system to record and report accounting activity, prepare its annual financial report, and generate other financial reports.
- The MIP Uniform Statewide Accounting System System's Link (MUSL), which the Department used to record transactions in two systems, MIP and USAS. The Department entered financial data into its general ledger using MUSL, which interfaced with MIP and USAS.
- The travel information system, which the Department used to prepare and approve employees' travel vouchers.

The information technology system controls in place for each of the information systems listed above were adequately designed to ensure that the data entered into and processed by the systems was sufficiently reliable. In addition, auditors determined that the Department had effective password security controls to help to ensure that the Department's

⁶ Chapter 4 is rated Low because the audit identified strengths that support the audited entity's ability to administer the program(s)/functions(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.

information resources are adequately safeguarded against unauthorized access.

However, the Department should strengthen certain information technology security controls related to user access to continue to minimize the risk of inadvertent or unauthorized alteration or deletion of data. Additionally, the Department should ensure that it complies with its change management policies and strengthen physical security and environmental controls. Specifically:

User Access. Auditors identified four travel information system user accounts for which the access privileges were not reasonable based on the users' job responsibilities. One additional user account had access privileges that also represented a weakness in separation of duties because it gave the user the ability to access multiple elements of a transaction. In addition, auditors identified 13 EDISON user accounts for which the access privileges were not reasonable based on the Department divisions to which the users were assigned.

Implementing effective user access controls helps to ensure that access privileges to critical information systems are appropriately restricted to help minimize the risk of unauthorized changes to data.

- Change Management. Auditors determined that the Department's change management policy was sufficient. That policy specified that:
 - All requests for changes to information resources must be managed using specific software.
 - Approvals of change requests must be obtained from the information technology director/information resources manager.
 - The Department must maintain separation of duties among employees who develop, review, and approve information system changes prior to implementation.

However, that policy did not address emergency changes to information resources. Establishing a policy for emergency changes would provide guidance to employees regarding how to implement emergency changes to critical information systems.

The Department also did not consistently comply with its change management policy. Specifically, the Department did not use software intended for managing information system change requests, and it did not separate the duties of developing information system changes and implementing those changes in the production environment. Consistently complying with the Department's change management policy will help to ensure that changes to information resources do not alter data or promote weaknesses that could jeopardize data.

 Physical Security and Environmental Controls. Auditors identified weaknesses in the environmental controls and physical security over the Department's information technology assets.

As discussed above, auditors identified certain weaknesses related to user access; however, through review of user activity reports, auditors verified that inadvertent or unauthorized alteration or deletion of data had not occurred during the audit period as a result of those weaknesses. Because of that, and based on the results of substantive testing that auditors conducted, auditors determined that the overall risk for unauthorized manipulation of data was minimal and that the data was sufficiently reliable.

To minimize risks, auditors communicated the details of other weaknesses regarding user access and physical security separately in writing to Department management.

Recommendations

The Department should:

- Assign user access rights appropriately based upon employees' job responsibilities.
- Restrict user access to help ensure that appropriate separation of duties exists with regard to processing transactions and to prevent a single user from executing a transaction throughout its entire process.
- Implement a periodic user access review process to help ensure that user access rights are appropriate.
- Develop and implement a policy regarding emergency changes to its information systems, and communicate that policy to appropriate personnel.
- Consistently comply with its change management policy in documenting and tracking change requests and separating the functions of developing information system changes and implementing those changes in the production environment.
- Adequately protect the Department's information technology assets from environmental factors and unauthorized access.

Management's Response

Recommendation:

Assign user access rights appropriately based upon employee's job responsibilities.

Response:

The Department agrees with the recommendation and the Director of IT is responsible for implementing the action(s) noted below. To ensure individual users' rights are set appropriately the Department will update its policy and applicant tracking program "BARTS" to automatically create Oracle accounts predicated on preset parameters based on an employee's title and division. Changes within policy parameters will require approval by the appropriate division director. Changes outside policy parameters will require approval by a Deputy Commissioner. This policy change will be implemented by December 31, 2016.

Recommendation:

Restrict user access to help ensure that appropriate separation of duties exists with regard to processing transactions and to prevent a single user from executing a transaction throughout its entire process.

Response:

The Department agrees with the recommendation and the Director of IT has implemented the recommendation. The separation of duties issue has been corrected by updating the program to only allow the director to approve travel vouchers and allow only the travel voucher processors to make changes to an approved voucher with prior consent by the user.

Recommendation:

Implement a periodic user access review process to help ensure that user access rights are appropriate.

Response:

The Department agrees with the recommendation and the Director of IT and Information Security Officer are responsible for implementing the action(s) noted below. The Department will continue to review user access levels annually. The process will be strengthened by having the agency's Information Security Officer meet annually with each Division Director to review the access levels and respond to any questions about user access rights. Additionally, the Department will investigate third party programs to better assist our Division Directors in reviewing access levels of our file structure. This action plan will be completed by August 31, 2017 when our next annual review is performed.

Recommendation:

Consistently comply with its change management policy in documenting and tracking change requests and separating the functions of developing information system changes and implementing those changes in the production environment.

Response:

The Department agrees with the recommendation and the Director of IT is responsible for implementing the action(s) noted below. The Department will document and monitor change requests by utilizing the internal help desk ticketing system, "Track It". New forms will be developed to document that change management requests are approved by the Director of the requesting division. This system will also allow the agency to prioritize change requests. The new system will be implemented by January 31, 2017 as will changes to Chapter 14 of the personnel manual.

Recommendation:

Develop and implement a policy regarding emergency changes to its information systems, and communicate that policy to appropriate personnel.

Response:

The Department agrees with the recommendation and the Director of IT is responsible for implementing the action(s) noted below. Emergency changes will be tracked by our internal help desk ticketing system, "Track It". The new system that will be developed to track change management will allow users to mark a request as an emergency change. If the change is determined to be an emergency, it will take top priority. The new system will be implemented by January 31, 2017 as will changes to Chapter 14 of the personnel manual.

Recommendation:

Adequately protect the Department's information technology assets from environmental factors and unauthorized access.

Response:

The Department agrees with the recommendation and the Director of IT is responsible for implementing corrective measures within our budgetary

constraints to address the environmental factors discussed during the audit by January 31, 2017. The unauthorized access issue has been corrected.

Appendices

Appendix 1 Objectives, Scope, and Methodology

Objectives

The objectives of this audit were to:

- Verify the accuracy of certain financial and performance data and the effectiveness of related controls at selected self-directed, semiindependent agencies.
- Evaluate the agencies' processes for setting fees and penalties.

Scope

The scope of this audit covered the Department of Banking (Department) for fiscal year 2015 (September 1, 2014, through August 31, 2015) and the first three quarters of fiscal year 2016 (September 1, 2015, through May 31, 2016).

Methodology

The audit methodology included collecting information and documentation, performing selected tests and other procedures on the information obtained, analyzing and evaluating the results of tests, and conducting interviews with Department management and staff. In addition, the methodology included performing a limited review of the general and application controls over the information technology systems that the Department used to manage and report financial data and performance measure data. Auditors also reviewed user access controls for the Uniform Statewide Accounting System (USAS) and MIP Uniform Statewide Accounting System's Link (MUSL).

Due to federal confidentiality requirements, audit conclusions for the bank and trust assessment fees were limited to fees assessed as a result of bank examinations that the Department of Banking performed independently (not jointly with a federal agency).

Data Reliability and Completeness

Auditors used revenue information from MIP and expenditure information from MIP and the travel information system. Auditors reviewed the Department's reconciliation process for MIP, USAS, and the Texas Treasury Safekeeping Trust Company; and other Department-specific reports. Auditors used bank and trust assessment data from the Department's Examination Division Information System on the Network (EDISON) and performance measure data from EDISON and from the Department's Special Audit Regulatory Application.

Auditors reviewed parameters used to extract data from the above systems where applicable, and reviewed certain general controls. Auditors determined that the data was sufficiently reliable for purposes of this audit.

Auditors used consent order information from the Department's Commissioner's Orders Database. Because the process the Department uses to refer penalty cases to its Legal Division spans multiple divisions within the Department and is not based on a comprehensive methodology, auditors could not verify whether all consent orders were recorded in that database. As a result, auditors determined that the data entered in that database was of undetermined reliability for the purposes of this audit. However, it was the most complete information available and auditors used it for purposes of this audit.

Sampling Methodology

To assess the Department's financial processes related to revenue from bank and trust assessment fees and money services business penalties, auditors selected non-statistical samples through random selection designed to be representative of the population. Test results may be projected to the population, but the accuracy of the projection cannot be measured. In addition, auditors selected non-statistical samples of expenditure items primarily through random selection designed to be representative of the population. In some cases, auditors used professional judgment to select expenditure items for testing. Those sample items generally were not representative of the population. The test results as reported did not identify which items were randomly selected or selected using professional judgment. Therefore, it would not be appropriate to project those test results.

In addition, auditors used professional judgment to select and test Department financial reconciliations. The sample items were not necessarily representative of the population; therefore, it would not be appropriate to project the test results to the population.

To verify the accuracy of money services business penalties the Department imposed, auditors recalculated penalty amounts assessed for the penalties identified. Auditors determined that the data was of undetermined reliability and, therefore, recalculated all 10 penalties identified. Information collected and reviewed included the following:

- The Department's policies and procedures.
- Expenditure and revenue data from MIP and related supporting documents.
- Data and supporting documents for selected performance measures.
- Department reconciliations for revenue collections and expenditure transactions.
- Department strategic plan for fiscal years 2015 through 2019.
- Money services business penalty consent orders.
- Program code used for selected data extracts.
- The Department's annual financial report for fiscal years 2014 and 2015.
- The Department's quarterly budget variance reports.

Procedures and tests conducted included the following:

- Tested internal controls and selected significant accounts, including testing of detailed supporting documentation, to determine the accuracy of selected financial data in the Department's financial reports for fiscal year 2015 through May 31, 2016.
- Tested selected performance measure data that the Department reported to the Finance Commission of Texas.
- Evaluated the Department's annual budget-setting and fee-setting processes.
- Reviewed administrative penalties to determine whether they complied with the Texas Finance Code.

Criteria used included the following:

- Department policies and procedures.
- Title 7, Texas Administrative Code, Section 3.37.
- Texas Finance Code, Section 151.707(d).
- Texas Finance Code, Chapter 16.
- Title 1, Texas Administrative Code, Section 202.24.

Project Information

Audit fieldwork was conducted from April 2016 through September 2016. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The following members of the State Auditor's staff performed the audit:

- Courtney Ambres-Wade, CGAP (Project Manager)
- Kelly Bratton, CFSA, CRMA (Assistant Project Manager)
- Shaun Alvis, JD
- Mary K. Anderson
- Adam Berry
- Rebecca Franklin, CISA, CGAP, CFE, CICA
- Nick Hoganson
- Mary Ann Wise, CPA, CFE (Quality Control Reviewer)
- Michael Simon, MBA, CGAP (Audit Manager)

Auditors used professional judgement and rated the audit findings identified in this report. Those issue ratings are summarized in the report chapters/sub-chapters. The issue ratings were determined based on the degree of risk or effect of the findings in relation to the audit objective(s).

In determining the ratings of audit findings, auditors considered factors such as financial impact; potential failure to meet program/function objectives; noncompliance with state statute(s), rules, regulations, and other requirements or criteria; and the inadequacy of the design and/or operating effectiveness of internal controls. In addition, evidence of potential fraud, waste, or abuse; significant control environment issues; and little to no corrective action for issues previously identified could increase the ratings for audit findings. Auditors also identified and considered other factors when appropriate.

Summary of Issue Ratings				
Issue Rating Description of Rating				
Low	The audit identified strengths that support the audited entity's ability to administer the program(s)/functions(s) audited <u>or</u> the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.			
Medium	Issues identified present risks or effects that if not addressed could <u>moderately affect</u> the audited entity's ability to effectively administer program(s)/function(s) audited. Action is needed to address the noted concern(s) and reduce risks to a more desirable level.			
High	Issues identified present risks or effects that if not addressed could <u>substantially affect</u> the audited entity's ability to effectively administ the program(s)/function(s) audited. Prompt action is essential to add the noted concern(s) and reduce risks to the audited entity.			
Priority	Issues identified present risks or effects that if not addressed could <u>critically affect</u> the audited entity's ability to effectively administer the program(s)/function(s) audited. Immediate action is required to address the noted concern(s) and reduce risks to the audited entity.			

Table 2 provides a description of the issue ratings presented in this report.

An Audit Report on the Department of Banking:
A Self-directed, Semi-independent Agency
SAO Report No. 17-012
November 2016
Page 18
November 2016

Table 2

Appendix 3 Bank and Trust Assessment Fee History for Fiscal Years 2003 Through 2015

Table 3 shows the Department of Banking's (Department) history of assessing, collecting, and forgiving bank and trust assessment fees based on factors the Department determined, sometimes in conjunction with federal agencies. The Department's bank and trust assessment fee calculation methodology is specified in Title 7, Texas Administrative Code, Section 3.37.

	Department Bank and Trust Assessment Fee History Fiscal Years 2003 Through 2015 ^a								
Fiscal Year	Number of Banks	Total Assets	Total Off balance sheet Assets	Total Assessment Fees	Percent Change in Assessment Fees	Assessment Fees Collected	Percent of Assessment Fees Collected	Assessment Fees Forgiven	Percent of Assessment Fees Forgiven
2003	339	\$60,320,489.00	\$7,074,407.00	\$9,038,742.96	0.17%	\$9,038,742.96	100.0%	\$0.00	0.0%
2004	336	\$60,765,118.00	\$6,614,905.00	\$10,852,433.95	20.07%	\$10,852,433.95	100.0%	\$0.00	0.0%
2005	330	\$67,790,972.00	\$7,977,865.00	\$11,294,000.49	4.07%	\$8,772,105.36	77.7%	\$2,521,895.13	22.3%
2006	328	\$74,246,262.00	\$9,871,829.00	\$11,607,225.41	2.77%	\$11,607,225.41	100.0%	\$0.00	0.0%
2007	328	\$86,691,750.00	\$13,652,024.00	\$12,154,877.61	4.72%	\$10,921,697.99	89.9%	\$1,233,179.62	10.1%
2008	328	\$153,888,397.00	\$41,810,085.00	\$14,819,263.96	21.92%	\$12,953,067.53	87.4%	\$1,866,196.43	12.6%
2009	326	\$163,229,549.00	\$32,357,872.00	\$16,544,403.66	11.64%	\$13,352,750.21	80.7%	\$3,191,653.45	19.3%
2010	324	\$162,196,482.00	\$31,889,414.00	\$18,652,670.06	12.74%	\$18,652,670.06	100.0%	\$0.00	0.0%
2011	316	\$161,642,835.00	\$43,529,270.00	\$19,655,619.96	5.38%	\$17,684,200.38	90.0%	\$1,971,419.58	10.0%
2012	307	\$160,214,057.00	\$42,201,929.00	\$19,129,512.89	-2.68%	\$19,129,512.89	100.0%	\$0.00	0.0%
2013	296	\$191,318,753.00	\$49,201,640.00	\$19,929,903.52	4.18%	\$19,929,903.52	100.0%	\$0.00	0.0%
2014	283	\$204,906,403.00	\$52,372,549.00	\$19,642,534.59	-1.44%	\$19,642,534.59	100.0%	\$0.00	0.0%
2015	272	\$217,096,571.00	\$57,064,825.00	\$19,835,409.77	0.98%	\$19, 190, 756. 15	96.7%	\$644,653.62	3.3%
-	2015 272 \$217,096,571.00 \$57,064,825.00 \$19,835,409.77 0.98% \$19,190,756.15 96.7% \$644,653.62 3.3 a According to the Department, it changed its bark and trust assessment fee calculation effective Sentember 4, 2003, which resulted in assessment fee								

^a According to the Department, it changed its bank and trust assessment fee calculation effective September 4, 2003, which resulted in assessment fee increases ranging from 16.3 percent to 23.5 percent.

Source: The Department.

Table 3

Copies of this report have been distributed to the following:

Legislative Audit Committee

The Honorable Dan Patrick, Lieutenant Governor, Joint Chair The Honorable Joe Straus III, Speaker of the House, Joint Chair The Honorable Jane Nelson, Senate Finance Committee The Honorable Robert Nichols, Member, Texas Senate The Honorable John Otto, House Appropriations Committee The Honorable Dennis Bonnen, House Ways and Means Committee

Office of the Governor

The Honorable Greg Abbott, Governor

Members of the Finance Commission of Texas

Ms. Stacy G. London, Chair Mr. Hilliard Shands III, Vice Chair Mr. Robert Borochoff Mr. Hector J. Cerna Ms. Margaret Curl Mr. Phillip A. Holt Mr. William M. Lucas Ms. Lori B. McCool Mr. Matthew Moore Mr. Vince E. Puente Sr. Mr. Paul Plunket

Department of Banking

Mr. Charles G. Cooper, Commissioner



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TEXAS STATE FIRE MARSHAL'S OFFICE FIRE SAFETY INSPECTION REPORT

FACILITY INSPECTION NUMBER DATE OF INSPECTION INSPECTOR State Finance Building RRO15975A November 15, 2016 Warren Lay

State Finance Building C. Vance Ivie 2601 N. Lamar Austin, TX 78705-4294

512-475-1364 Travis County

Physical Address: 2601 N. Lamar, Austin, Texas 78705 Email Address: <u>vance.ivie@dob.texas.gov</u>

One building was inspected with the following violations noted. Please respond to this office within 30 days of receipt of this report, detailing your intentions to correct the violations and a timeline for their completion.

State Finance Building is a three-story story structure classified as an existing business occupancy. Features of fire protection include a partial fire sprinkler system, a standpipe system, a complete fire alarm system and portable fire extinguishers. Illuminated exit signs and emergency lighting are provided.

3rd Floor

VIOLATION 1

The Hearing Room lacks a required illuminated exit sign.

NFPA 1, Fire Code, Chapters 14.14.1.1, 14.14.1.2.1; and NFPA 101, Life Safety Code, Chapters 39.2.10 and 7.10

1st Floor

VIOLATION 2

There is an open junction box in the Supply Room.

NFPA 1, Fire Code, Chapter 11.1.10



TEXAS STATE FIRE MARSHAL'S OFFICE FIRE SAFETY INSPECTION REPORT

VIOLATION 3

Ground-fault circuit-interrupters do not protect the electrical outlets in the Break Room.

All receptacles that are located within six feet of the outside edge of sinks shall be equipped with a GFCI circuit.

NFPA 1, Fire Code, Chapter 11.1.2; and NFPA 70, National Electrical Code, Article 210.8 (B) (5)

VIOLATION 4

Various items are stored within 24-inches of the ceiling in the OCC Mailroom.

NFPA 1, Fire Code, Chapter 10.19.3.1

You are in receipt of a report that details the Fire Code and Life Safety hazards that were identified by this office at your facility. Some of the violations identified in this report may be of a serious life safety hazard. It is your responsibility to correct the hazards and bring your facility up to code. The State Fire Marshal's Office assumes no liability for your failure to follow up and correct these hazards

Sincerely,

War Jay

Warren Lay

Deputy State Fire Marshal, Inspector P.O. Box 149221, Mail Code: FM-112 Austin, Texas, 78714-9221 Phone 512-970-9652





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

December 5, 2016

Warren Lay, Deputy State Fire Marshal Texas State Fire Marshal's Office P.O. Box 149221, Mail Code: FM-112 Austin, Texas, 78714-9221

RE: Fire Safety Inspection Report

Dear Mr. Lay,

We are in receipt of your Fire Safety Inspection Report from the inspection performed on November 15, 2016 of the State Finance Commission Building. Actions taken on the violations noted from the report are as follows:

VIOLATION 1

The Hearing Room lacks a required illuminated exit sign. Exit sign has been installed.

VIOLATION 2

There is an open junction box in the Supply Room. Junction box has been closed.

VIOLATION 3

Ground-fault circuit-interrupters do not protect the electrical outlets in the Break Room. All receptacles that are located within six feet of the outside edge of sinks shall be equipped with a GFCI circuit. *GFCI outlets have been installed*.

VIOLATION 4

Various items are stored within 24-inches of the ceiling in the OCC Mailroom. *Items have been removed.*

Please contact Vance Ivie at <u>vance.ivie@dob.texas.gov</u> with any follow-up questions or inspections that are required. Thank you for your assistance in ensuring the fire safety of our building.

Sincerol

Charles G. Cooper Banking Commissioner

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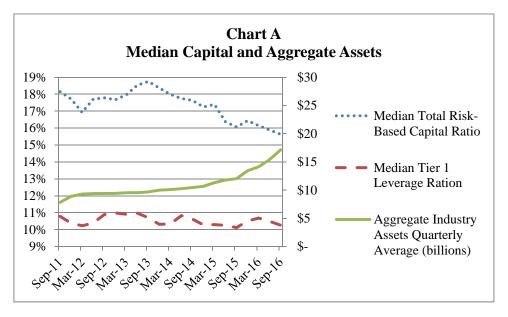
B.

Department of Savings and Mortgage Lending

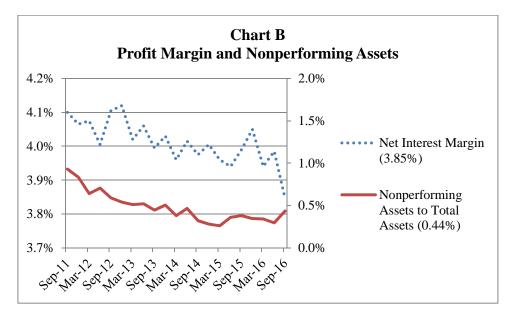
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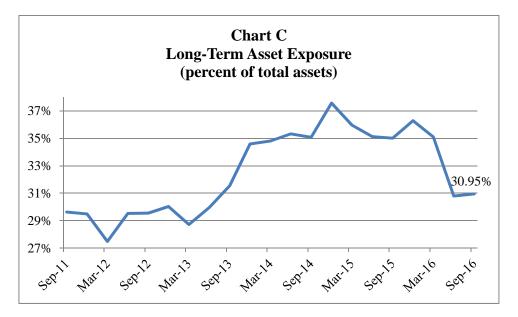
1. Industry Status and Departmental Operations – State Savings Bank Activity:

a. <u>Industry Status</u>

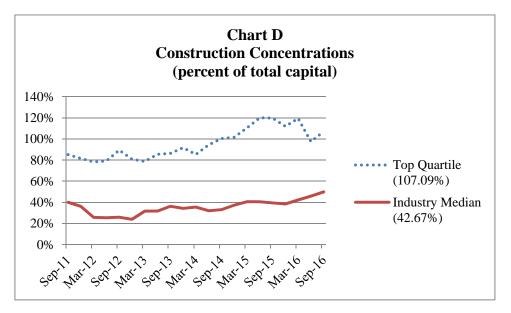


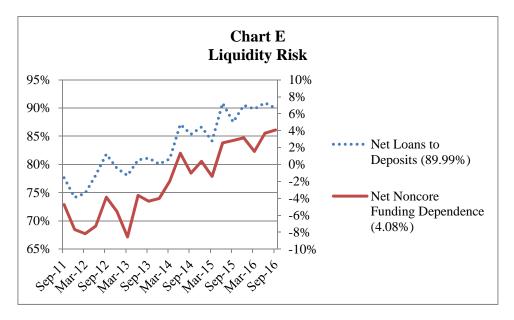
There were 28 state savings banks totaling \$18.0 billion in total assets, as of September 30, 2016. The average asset size of the median state savings bank ("SSB") grew by 8.0% in the last four quarters to \$311 million. This continues a trend extending more than five years in the industry. As a result of increased lending, the median total risk-based capital ratio (Chart A) has declined to 15.6% from a peak of 18.8%. Median leverage capital protection has remained generally consistent and is now 10.26%. After a period of some fluctuation, a more defined decrease in the net interest or profit margin (Chart B) is apparent, declining to 3.85% from 3.99% one quarter before and from 3.94% one year before. Nonperforming asset levels remain low at 0.44% of total assets, but are noticeably higher than 0.30% one quarter before and 0.38% one year before.





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 and remained stable in the third quarter of 2016. There remain 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. In addition to market risk, the Department closely monitors concentration risk, including commercial and industrial lending, commercial real estate lending, and agricultural lending. Construction concentrations (Chart D) in the top quartile of the savings bank industry began to exceed regulatory guidance in late 2014 and have remained elevated with the exception of the second quarter of 2016. Though increased over prior periods, the industry median remains well below regulatory guidance at 50% of total capital.



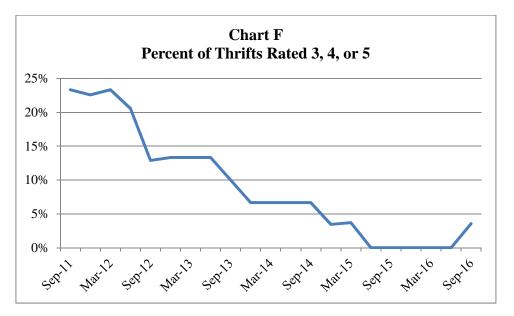


Liquidity risk remains elevated in Texas thrifts (Chart E), as indicated by the Net Noncore Funding Dependence (NNCFD) Ratio, a measure of the funding of long-term assets using potentially volatile liabilities such as uninsured and brokered deposits, and borrowings, and the loan-to-deposit ratio; a measure of the use of deposits to fund lending activities. The median NNCFD Ratio has increased from 3.25% to 4.08% in the last four quarters, but is considered manageable. Twenty-nine percent of the industry is over 10%.

The loan-to-deposit ratio also remains elevated at 90% with 11% 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.

Ninety-six percent of all SSBs at September 30, 2016, were rated a Composite 1 or 2 (Chart F). There are two formal outstanding enforcement actions.



b. Savings Bank Charter and Merger Activity

On September 9, 2016, notice was received of the intent of Sunflower Bank, National Association, Salina, Kansas, to acquire Capital Bank, SSB, El Paso. The merger is intended to occur early in 2017.

c. Other Items

Chief Thrift Examiner Stephany Trotti attended the Federal Home Loan Bank-Dallas's annual conference held October 27-28, 2016.

Commissioner attended the 4th Quarter FFIEC-SLC Meeting and FBIIC Senior Leaders Meeting on December 1, 2016.

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

a. <u>Residential Mortgage Loan Originators</u>

Current Licensing Population:

Licongo Tymo	Approved					
License Type As of 11/30/2016	Entity (MU1)	Branch (MU3)	MLO (MU4)			
Auxiliary	10	n/a				
CUSO	3	2				
FSC	1	n/a				
Independent Contractor	92	n/a				
Mortgage Company	1,122	524				
Mortgage Banker	386	2,407				
Mortgage Servicer	164	n/a				
Totals	1,778	2,933	24,475			

As of November 30, 2016, 3,201 companies/branches and 14,874 individuals had submitted their renewal.

For the first quarter of FY17, the Department received 2,174 applications and 22,581 other filings.

Recently, Nerida Garcia joined the licensing section as an Investigator. She has previously conducted similar investigative work for a prior employer.

b. Mortgage Examinations

The Department held its fourth annual Mortgage Industry Seminar in Plano on November 7, 2016. The presentations covered licensing, social media, mortgage examination procedures, consumer complaints and enforcement actions. Presentations were given by senior management and three field examiners from the Dallas and Austin regions. The feedback received from attendees was very positive.



Texas Department of Savings and Mortgage Lending

4th Annual

MORTGAGE INDUSTRY SEMI

*

	Monday, November 7, 2016
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 General Counsel - Ernest Garcia
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. <u>Consumer Complaints/Legal Issues</u>

During the first quarter of FY17, a total of 247 consumer complaints were received and a total of 264 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 30th.

d. Other Items

Recently, Maria Pysor, an investigator for the Department, served on a Planning Committee for an Affordable Housing Forum being hosted by the FDIC's Alliance for Economic Inclusion. The event was held October 13, 2016 in Austin and Director of Mortgage Examinations, Tony Florence served on a panel.

3. Fiscal/Operations Activity:

a. Funding Status/Audits/Financial Reporting

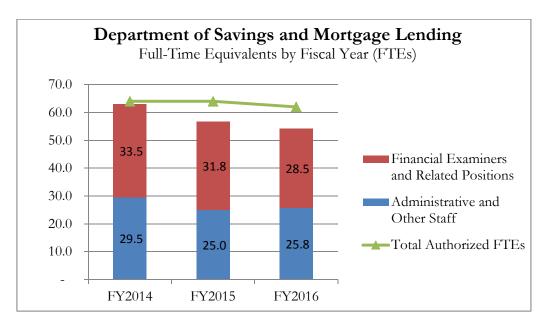
Funding Status/Budget – Staff is working on closing out the first quarter of FY2017.

Audit – The Department is currently undergoing a State Auditor's Office (SAO) SDSI audit. Tentative completion date for fieldwork is the end of February 2017 and tentative issuance date for the report is April 2017.

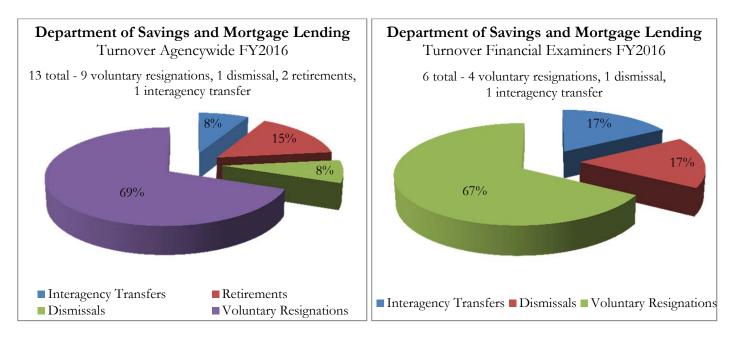
b. <u>Staffing</u>

Fiscal Year 2016

During FY2016, the Department had an average of 54.3 full time equivalents (FTEs) with total of 62 FTEs authorized.



During FY2016, the overall turnover rate was 24%. Thirteen (13) employees separated from the agency, six (6) of which were financial examiners.



Fiscal Year 2017, 1st quarter

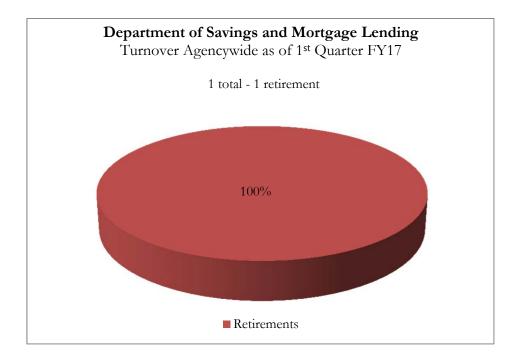
As of December 1, the agency was staffed at 52 regular full time employees with 61 FTEs available.

During the months of October and November, three positions were filled: an Accountant II position, vacant due to an internal transfer, an Administrative Assistant/Purchaser, vacant due to a retirement, and a Licensing Investigator.

Vacancy Status				
Attorney II/III	Open - Scheduling Interviews			
Financial Examiner I/II-Thrift (2)	Open - Reviewing applications			
Financial Examiner III – Thrift	Open - Reviewing applications			
Financial Examiner IV/V – Thrift	Open - Reviewing applications			
License and Permit Specialist II/III	Open - Reviewing applications			
Investigator II – Licensing	Open - Collecting applications			
System Support Specialist III	Pending - Preparing posting			
Financial Examiner I/II-Thrift	Pending			

Below is the status of the Department's vacancies:

During the 1st quarter of FY2017, the Department had one office staff separation due to a retirement and no financial examiners separations. The turnover rate for fiscal year 2017 to date (September 1 to November 30, 2016) was less than 2%.



c. Other Items

None

4. Legal Activities:

SOAH Cases -

11/07/2016 Appeal of License Renewal Denial – SOAH Docket No. 450-16-2838; Department of Savings and Mortgage Lending v. Sammy Trantham.

The department denied the RMLO license renewal application of Sammy Trantham on the grounds that he had failed to establish that he was of good moral character. Mr. Trantham appealed the denial. Trantham filed a motion for summary disposition which was denied by order of administrative law judge on November 7, 2016. The department's motion for summary judgment is currently pending. The contested SOAH hearing on the merits is currently scheduled to be held on December 20 and 21, 2016.

Gift Reporting:

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

Litigation:

03/17/2016 Lawsuit -- NO DEVELOPMENT Cause No. D-1-GN-16-001194; Catherine Sims v. Texas Department of Savings and Mortgage Lending, in the 201st Judicial District Court of Travis County, Texas

In this case, Ms. Sims is contesting the denial of her license, claiming the Agency's decision was not reasonably supported by substantial evidence. The Texas Attorney General's Office is representing the Agency. An Answer was filed on April 7, 2016 and the administrative record was filed on September 9, 2016.



<u> </u>	<u>Cyrier, John(R)</u>	Relating to the use of insurance proceeds paid to an insured and a lender for residential property damage.
	Last Action:	: 11-28-16 H Filed
<mark>⊕</mark> <u>НВ 471</u>	<u>Johnson, Eric(D)</u>	Relating to authorizing a credit union or other financial institution to conduct savings promotion raffles.
	Last Action:	: 11-30-16 H Filed
➡ <u>HJR 37</u>	<u>Johnson, Eric(D)</u>	Proposing a constitutional amendment relating to legislative authority to permit credit unions and other financial institutions to award prizes by lot to promote savings.
	Last Action:	: 11-30-16 H Filed
Ţ <u>SB 210</u>	<u>Kolkhorst, Lois(R)</u>	Relating to the required repeal or amendment of two state agency rules before adoption of a new state agency rule that increases costs to regulated persons.
	Last Action:	: 11-14-16 S Filed
		All Track
	Total B	Bills: 4 4

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C.

Office of Consumer Credit Commissioner

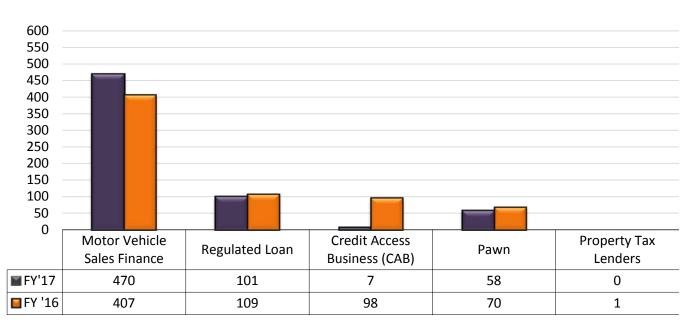
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Consumer Protection and Assistance Report

Rudy Aguilar, Director of Consumer Protection

Examinations conducted in Fiscal Year 2016 (FY '16) and Fiscal Year 2017 (FY '17) are compared in the chart below. In total, FY '17 examinations conducted are on track with the prorated fiscal year goal. Credit Access Business (CAB) examinations are behind the prorated number of examinations planned for this fiscal year period. The number of CAB examinations is expected to increase by the end of the first quarter as enterprise examinations are completed. Property Tax examinations are ongoing; however no final reports have been completed as of the end of October.

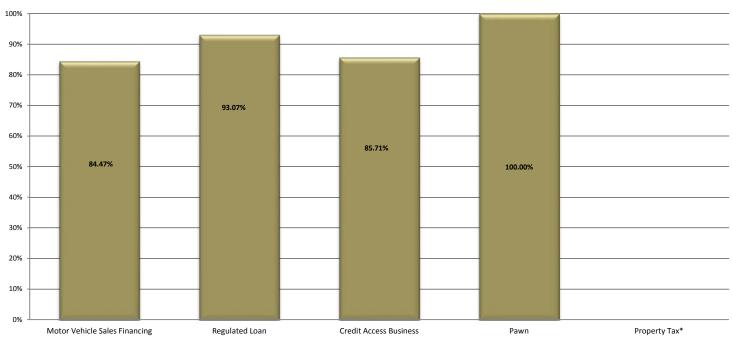


Examinations Conducted: Sept - Oct Fiscal Year Comparison

The Consumer Assistance Customer Service Representative position was filled effective November 14, 2016. Interviews were conducted with selection pending for an examination review position in Austin. Currently there are two field examiner vacancies in Dallas, one in Houston, and, most recently, one in San Antonio with the resignation of an experienced examiner.

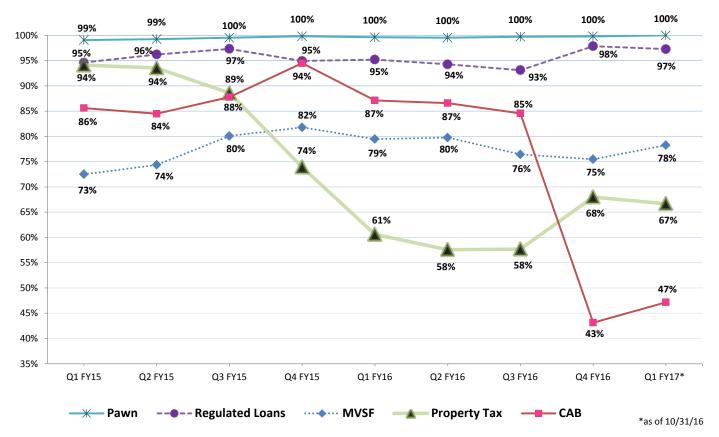
The following two charts note the acceptable level of compliance for FY '17 and the acceptable level of compliance for a trailing 12 month basis.

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

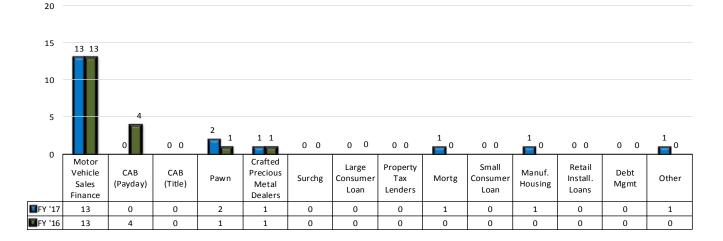


*No Property Tax Exams Conducted

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

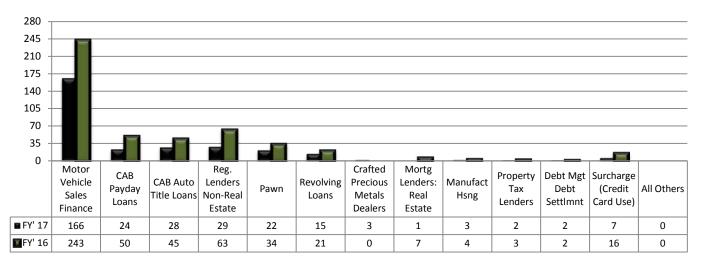


Investigations Completed FY '17 (Sept 2016 - Oct 2016) Total: 19 FY '16 (Sept 2015 - Oct 2015) Total: 19



Consumer Assistance

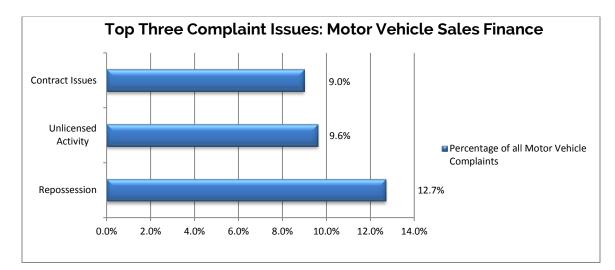




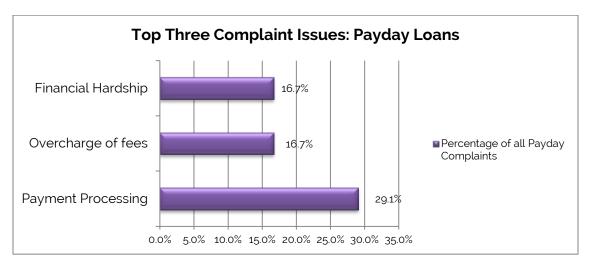
The top four areas of complaints are (1) MVSF, (2) CAB, (3) Regulated Lenders Non-Real Estate, and, (4) Pawn.

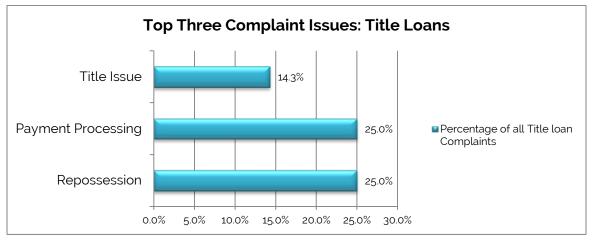
MVSF complaints were the largest complaint category at 54.6%. The top three MVSF complaint issues are charted on the following page.

The three primary MVSF complaint issues were in reference to repossessions, unlicensed activity, and contract issues. Contract issues are related to terms being different than agreed to and signing of multiple contracts.



The second largest category was CAB complaints. Collectively, CAB complaints are 17.2%; separately, these are at 6.3% for payday loans and 10.9% for title loans. The top three complaint issues are illustrated on the next two charts. Payment processing issues for payday loans include auto drafting before due date, dispute of account balance and payment arrangements not honored.

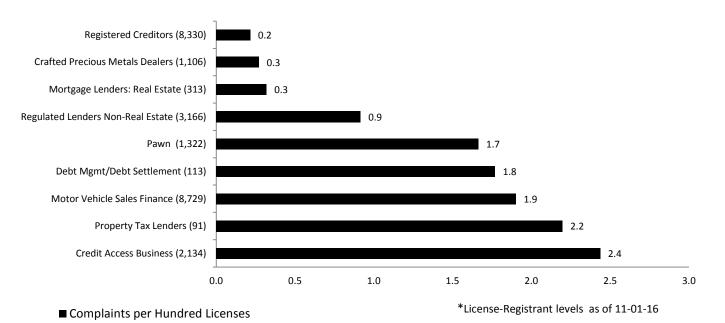




Payment processing includes dispute of account balances and payment posting errors. Contract issues include not using proper contract or agreement and terms different than agreed upon.

Pawnshop complaints were 7.3% of all processed complaints which made it the fourth largest category. Complaint issues include like kind replacement of lost or damaged goods, redemption of firearms, forfeiture of goods, and dispute amount owed. Prohibited acts included one allegation of discrimination and one allegation that pawnshop was closed on the last day of grace.

Comparison of complaints processed to the number of active license or registrant population is noted on the chart below. The highest ratio involved CAB complaints followed by Property Tax Lending complaints as the second highest. MVSF ratio of complaints to active licenses was third followed by Debt Management/Debt Settlement.



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

CAB Reporting Update

Reports through the third quarter of 2016 are compiled and published on our website. The 4th quarter and annual submissions are due 1/31/2016. The data presented is a year over year comparison of January – September (Q1-Q3) reports through the years. The number of stores and overall volume of loans have continued to decrease since their 2013 peak. Loans per active location have increased as stores consolidate and loan volume increases over the internet. Installment lending as a percentage of the industry continues to grow representing 40% of new loans.

Data Highlights (All Loan Types) Q1 Q3 Comparison	2016	2015	2014	2013	2012	
Number of new payday loans	1,693,477	1,762,942	1,727,233	1,914,163	1,840,000	
Number of new auto title loans	208,922	249,770	306,920	385,866	350,451	
Percentage of Payday Loans due in multiple installments	41%	39%	32%	24%	15%	
Percentage of Auto Title Loans due in multiple installments	39%	27%	17%	14%	17%	
Number of vehicles repossessed under all auto title loans	24,494	28,365	32,460	28,134	26,973	
Total number of locations reporting activity	1,933	2,549	2,999	3,168	3,113	
		Single Insta	llment	Multi	ple Installme	ent
Payday Loans Q1 - Q3	2016	2015	2014	2016	2015	2014
Number of consumers obtaining loans	710,534	808,745	909,958	619,696	614,622	492,366
Number of new Loans	1,000,857	1,076,637	1,168,195	692,620	686,305	559,038
Number of refinances on new loans in the quarter ¹	661,477	799,725	984,101	53,071	55,786	44,429
Number of total refinances ²	1,562,296	1,957,741	2,466,961	204,484	188,584	100,515
Average loan amount	\$450	\$481	\$476	\$561	\$534	\$539
Average fee per \$100 borrowed	\$23.71	\$23.51	\$23.37	\$165.89	\$169.84	\$150.54
Average original term (in days)	17	18	19	159	160	152
		Single Insta	llment	Multi	ple Installme	ent
Title Loans Q1 Q3	2016	2015	2014	2016	2015	2014
Number of consumers obtaining loans	112,301	161,793	227,816	77,632	64,412	50,559
Number of new Loans	126,847	182,024	253,250	82,075	67,746	53,670
Number of refinances on new loans in the quarter ¹	84,590	119,138	154,834	11,931	8,483	8,786
Number of total refinances ²	636,148	874,676	936,381	25,548	23,309	36,420
Average loan amount	\$1,228	\$1,267	\$1,160	\$1,283	\$1,072	\$1,078
Average fee per \$100 borrowed	\$16.77	\$16.94	\$19.20	\$90.53	\$91.25	\$96.40
Average original term (in days)	30	30	30	161	168	192

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 2016

Mirand Zepeda, Manager

Renewals

Renewal for regulated lenders, credit access businesses, and property tax lenders has begun. Regulated lenders received a discount of 15% on assessments this year. The department expects more licensees to utilize ALECS this year than last, which helps reduce costs for mailings. While more than 90% of regulated lenders and property tax lenders are likely to renew, attrition for credit access businesses could vary more widely due to changes within the industry.

Residential Mortgage Loan Originator (RMLO) renewal is also underway. RMLOs will complete renewal online through NMLS and the renewal rate is expected to be 80-90%. Multiple individuals within the licensing department have been cross-trained on RMLO renewal, which further ensures a smooth process.

Refund Anticipation Loans registration renewals are currently ongoing as well. This industry saw increases in total registrants over the last year, so the department plans to provide customer service and be a resource for this growing group of registrants.

Applications Processing

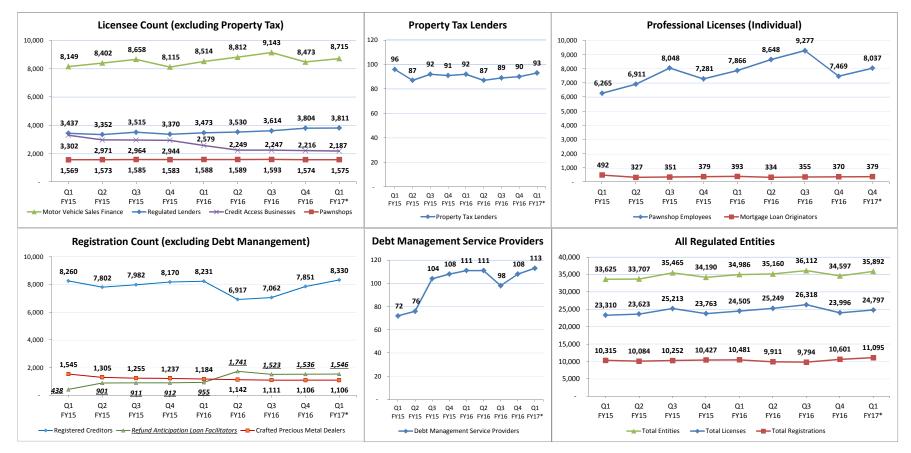
The volume of pending business license applications continues to hover around 200. The department continues to balance processing incoming applications with completion of various other projects.

Pending pawn employee applications have remained at around 300. The department continues to work with pawn shops to convey the benefits and efficiencies that can be gained when utilizing ALECS to submit pawn employee applications online.

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 & 16 with Current Data



*data as of 10-31-2016



Communications, Human Resources & Administration Report

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

Strategic Planning /Stakeholder Engagement & Communication/Website Report

In the fiscal year-to-date, the agency has had the opportunity to provide eight live presentations to licensees and interested stakeholders. The focus of these presentations relates to compliance matters and the regulatory role and responsibilities of the agency. William Purce, Senior Review Examiner, Austin, presented to dealers at the Manufactured Housing Division of the Texas Department of Housing and Consumer Affairs on November 8 in Austin. Eric Fancher and Huffman Lewis, Financial Examiners, contributed to a seminar hosted by the Houston Independent Automobile Dealers Association (HIADA) on November 15 in Houston. Additionally, Huffman participated at the Dealer Training for the Texas Department of Motor Vehicles on October 6 in Lufkin and November 17 in Houston. These presentations highlight the importance of continued improvement in industry compliance levels and the agency's commitment to providing learning situations for licensees whether through formal industry presentations or during the individual examination process.

Other stakeholder engagements included William Purce, Senior Review Examiner, and Matt Nance, Deputy General Counsel holding their quarterly meeting with the Texas Property Tax Lenders Association to discuss current issues affecting their industry on October 25.

The Office of Consumer Credit Commissioner website received 109,658 page views between September 1 and November 27, 2016, a 7.12% increase compared to 102,367 for the same period in 2015. The top pages on the website include the homepage (27,006 views) and the second most popular is Motor Vehicle Sales Finance page (17,078 views). Our traffic consists of 59.57% organic searches, which consist of Google, Yahoo, Bing, or simply all search engines. From these searches, 33.49% were a result of direct traffic to the website, 6.70% were referrals, meaning any other website containing a link to our site, and 0.24% Social/Other Category, meaning it derived from social media.

For this same period, other Agency's top traffic derived from the Regulated Lenders Industry page (4,644 views), Debt Collections Practices page (3,879 views), Interest Rates page (2,823 views), Publications (2,579 views), and Pawnshops/Pawn employees Industry page (2,294 views). The remainder of the views were for various other pages.

The ALECS database website has received 72,297 page views between September 1, 2016 and November 27, 2016. The traffic consists of 73.54% direct traffic, 20.81% organic searches, 5.61% referrals, 0.04% Social/Other Category.

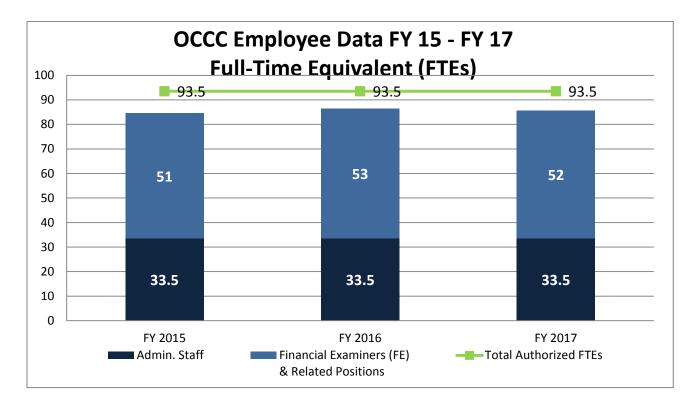
Human Resources

During this reporting period (October and November), there were several vacant positions. The Customer Service Representative II position previously reported was filled during this period. Additionally, an offer was made to a candidate for one of the two Accounting Department positions at the time this report was being prepared.

During this fiscal year, the Agency has had only one employee depart the agency, (1) Financial Examiner I. The FY 2017 turnover ratio is currently 1.16%. This staffing change has resulted in an FTE count of 86.5 as of November 30. With four field examiner positions vacant, the Consumer Protection Department is currently working with HR to plan the next Examiner class for early 2017.

Our current recruiting efforts will continue to focus on filling positions within the Agency.

FY 17 Vacancies			
Vacancy Status			
Accountant I (New Position - Austin)	Active – Applications under review		
Accountant III – IV (Austin)	Offer was made, start date Dec. 6, 2016		



Communications, Human Resources & Administration Report November 28, 2016 Page **3** of **3**

Financial Literacy

To date, Consumer Education staff has provided financial education to 61 Texas consumers for FY 2017. The most recent presentation was conducted at the Salvation Army in Dallas to individuals enrolled in their Home Sweet Home Program. The Home Sweet Home Program helps prevent homelessness and support residential stability by providing homeless and at-risk households the tools to effectively budget and manage income and expenses. The presentation was well received and the Salvation Army's Education Supervisor has requested the OCCC conduct additional financial literacy sessions next year.

In an effort to reach more consumers, staff developed an electronic consumer education newsletter that explains basic financial education concepts. The first edition was distributed in November and provided an overview of credit reports. Future editions will be distributed quarterly to individuals who have requested to be added to the distribution list.



Accounting & IT Reports

Accounting

The department has been busy working with the State Auditors and completing their requests. The accounting department has started working on the Annual Non-Financial Report for FY 17. The department will also be gearing up for W-2's and 1099 preparation due out at the end of January.

Information Technology

LEGACY MODERNIZATION

Due to a number of circumstances, OCCC decided to delay the second deliverable approximately 6 weeks. Currently, the Complaint, Investigation, and Annual Report modules are undergoing last round of UAT (User Acceptance Testing). We expect to move this deliverable into production during the middle of December.

Development continues on the Exam/Exam Scheduling and Legal modules. Quality Assurance for these modules began the first week of December. UAT will begin mid-December and continue through the first week of January. We expect to release these modules into production mid-January.

SECURITY

OCCC is currently analyzing our NTT Data Security and Risk Assessment. We anticipate finalizing a two year roadmap detailing specific improvements to the agency's security posture in accordance with NIST and TAC 202 standards.

The Network Administrator completed advanced Sourcefire course in November and will be fine tuning network security on the agency's security appliance.



Legal Department Report

Michael Rigby, General Counsel

December 2016

Enforcement Report

Regulated Lender – Revocation

On October 17, 2016, the OCCC issued a notice of hearing on the revocation of Skylann Inc. d/b/a Texas Financial Express's regulated loan license. Texas Financial did not timely file its 2015 annual report. Texas Financial did not comply with an injunctive order requiring it to file the report. Additionally, the OCCC has previously assessed administrative penalties against Texas Financial for failing to timely file its 2007 annual report, 2008 annual report, 2009 annual report, 2010 annual report, 2012 annual report, and 2013 annual report.

On November 3, 2016, a hearing was held at the State Office of Administrative Hearings ("SOAH") before an Administrative Law Judge. Texas Financial did not appear at the hearing despite receiving timely and proper notice. The Administrative Law Judge announced the default and has remanded the case back to the OCCC for informal disposition of the revocation.

Credit Access Business – Revocation

On October 17, 2016, the OCCC issued a notice of hearing on the revocation of 4 Star Loan LLC's credit access business license. 4 Star Loan did not timely file complete and accurate 2015 quarterly and annual reports. 4 Star Loan did not comply with an injunctive order requiring it to file corrected 2015 reports within 30 days. Additionally, 4 Star Loan did not timely files its 2016 1st and 2nd quarter reports.

On November 3, 2016, a hearing was held at the State Office of Administrative Hearings ("SOAH") before an Administrative Law Judge. 4 Star Loan did not appear at the hearing despite receiving timely and proper notice. The Administrative Law Judge announced the default and has remanded the case back to the OCCC for informal disposition of the revocation.

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, 2016. 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 Close	ed as of Novemb	oer 30, 20	16	
	FYTD 2017	FY 2016	FY 2015	FY 2014
Revocation / Suspension Actions				
Regulated Loan License	0	1	27	10
Pawnshop License	0	3	2	1
Pawnshop Employee License	0	2	2	1
Credit Access Business	0	2	1	4
Motor Vehicle Sales Finance License	1	9	4	4
Property Tax Loan License	0	0	0	4
Crafted Precious Metal Dealer	0	0	2	0
Total Revocation / Suspension Actions	1	17	38	24
Injunction Actions				
Regulated Loan License	3	88	1	0
Pawnshop License	13	1	0	0
Pawnshop Employee License	0	0	0	0
Credit Access Business License	16	25	1	4
Motor Vehicle Sales Finance License	8	18	12	8
Property Tax Loan License	0	16	1	2
Crafted Precious Metal Dealer	0	0	3	0
Registered Creditor (Ch. 345)	0	1	0	0
Manufactured Housing (Ch.347)	0	0	0	0
Debt Management Services (Ch.394)	0	1	6	1
Credit Card Surcharge (Ch. 339)	0	7	1	0
Residential Mortgage Loan Originator	0	0	0	2
Total Injunction Actions	40	157	25	17
		157	25	17
Administrative Penalty Actions				
Regulated Loan License	0	0	73	121
Pawnshop License	3	40	4	6
Pawnshop Employee License	0	1	4	8
Credit Access Business License	4	97	136	56
Motor Vehicle Sales Finance License	28	129	76	88
Property Tax Loan License	0	3	8	18
Crafted Precious Metal Dealer	0	2	0	1
Total Administrative Penalty Actions	35	272	301	298
Application Denial and Protest Actions				
Regulated Loan License	0	0	0	0
Pawnshop License	0	1	0	0
Pawnshop Employee License	0	7	13	2
Credit Access Business License	0	0	2	0
Motor Vehicle Sales Finance License	0	3	8	0
Property Tax Loan License	0	0	0	0
Residential Mortgage Loan Originator	0	0	1	0
Total App. Denial and Protest Actions	0	11	24	2
	70	457	200	241
Total Enforcement Actions Closed	76	457	388	341

From October 1, 2016 to November 30, 2016, the OCCC:

- issued 58 final orders,
- opened 25 cases in order to assess administrative penalties,
- opened 24 cases in order to issue administrative injunctions,
- issued one assurance of voluntary compliance,
- participated in three contested case hearings, and
- dismissed no contested case hearings.

The OCCC has one hearing scheduled between December 1, 2016 and January 31, 2017.

Administrative Rule Report

At the December meeting, the OCCC is presenting one rule action: an adoption of amendments regarding credit access business. These amendments require credit access businesses to maintain certain disclosures and records related to the Department of Defense's Military Lending Act Rule, and make other technical corrections and updates related to licensing and criminal history.

Litigation

Rowell v. Pettijohn

This case is a challenge to the constitutionality of the credit card surcharge prohibition in Section 339.001 of the Texas Finance Code. The plaintiffs appealed the case to the U.S. Supreme Court on May 31, 2016. The plaintiffs argue that the credit card surcharge prohibition is an unconstitutional violation of free speech and that it is void for vagueness, under the First and Fourteenth Amendments to the U.S. Constitution. The Fifth Circuit Court of Appeals ruled in the OCCC's favor, holding that the law is a price regulation rather than a speech regulation, and that it is not void for vagueness. *Rowell v. Pettijohn*, 816 F.3d 73 (5th Cir. Mar. 2, 2016). This decision affirmed the district court's ruling, which granted the OCCC's motion to dismiss the lawsuit. *Rowell v. Pettijohn*, No. 1:14-cv-00190-LY, 2015 WL 10818660, 2015 U.S. Dist. LEXIS 40739 (W.D. Tex. Feb. 4, 2015).

The U.S. Supreme Court is currently holding the *Rowell* case, but it has agreed to hear a related case challenging New York's credit card surcharge law: *Expressions Hair Design v. Schneiderman*, case no. 15-1391. In that case, the Second Circuit upheld New York's credit card surcharge law. *Expressions Hair Design v. Schneiderman*, 808 F.3d 118 (2d Cir. 2015), *reversing* 975 F. Supp. 2d 430 (S.D.N.Y. 2013). The *Expressions* plaintiffs filed their brief in the U.S. Supreme Court on November 14, and the State of New York's brief is due on December 14. On November 21, the U.S. Solicitor General filed an amicus brief in support of neither party, arguing that the *Expressions* case should be remanded to the court of appeals to clarify the meaning of New York's credit card surcharge law. The OCCC expects that the Court will hold *Rowell* until it decides *Expressions*.

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

• The Eleventh Circuit struck down Florida's credit card surcharge law. *Dana's R.R. Supply v. Att'y Gen.*, 807 F.3d 1235 (11th Cir. 2015), *reversing* no. 4:14-cv-00134-RH-CAS (N.D. Fla. Sept. 2, 2014). The State of Florida appealed the case to the U.S. Supreme Court on June 6, 2016.

• A federal district court struck down California's credit card surcharge law. *Italian Colors Rest. v. Harris*, 99 F. Supp. 3d 1199 (E.D. Cal. 2015). The State of California has appealed this case to the Ninth Circuit, and the parties have filed their briefs on appeal.

The full style of the *Rowell* case is *Lynn Rowell d/b/a Beaumont Greenery, MPC Data and Communications, Inc., Micah Cooksey, NXT Properties, Inc., Mark Harken, Montgomery Chandler, Inc., Paula Cook, Townsley Designs, LLC, and Shonda Townsley v. Leslie L. Pettijohn, in her official capacity as Commissioner of the Office of Consumer Credit Commissioner of the State of Texas.* The U.S. Supreme Court's case number is 15-1455, the Fifth Circuit's case number is 15-50168, and the district court's case number is 1:14-cv-00190-LY. The OCCC is being represented by three divisions of the Office of the Attorney General: the Office of Solicitor General; the General Litigation Division; and the Financial Litigation, Tax, and Charitable Trusts Division.

Billings v. Propel Financial Services, LLC

The Fifth Circuit Court of Appeals has ruled that the federal Truth in Lending Act (TILA) does not apply to Texas property tax lenders. *Billings v. Propel Fin. Servs., LLC*, 821 F.3d 608 (5th Cir. Apr. 29, 2016). The court held that a property tax loan does not constitute an extension of credit subject to TILA, because the transfer of an existing tax obligation does not create new debt. Before the Fifth Circuit reached its decision, federal district judges in San Antonio issued conflicting decisions on this issue. *Compare Billings v. Propel Fin. Servs., LLC*, No. 5:14-cv-00764-OLG, 2014 WL 7448248, 2014 U.S. Dist. LEXIS 179738 (W.D. Tex. Nov. 28, 2014) (holding that TILA does not apply to property tax lenders) *with Thiery v. Texas Tax Solutions, LLC*, No. 5:14-cv-00940-HLH, 2014 WL 7447976, 2014 U.S. Dist. LEXIS 179763 (W.D. Tex. Dec. 19, 2014) (holding that TILA applies to property tax lenders).

The plaintiffs appealed the case to the U.S. Supreme Court on June 29. The Court denied the plaintiffs' petition on October 31.

Huntco Pawn Holdings, LLC v. U.S. Department of Defense

Huntco Pawn Holdings and the National Pawnbrokers Association have sued the U.S. Department of Defense (DOD), to stop DOD's enforcement of its recently amended Military Lending Act Rule against pawnshops. The plaintiffs filed their original complaint on July 12, 2016. In their complaint, the plaintiffs argue that when DOD adopted the rule, it did not comply with the federal Administrative Procedure Act and the Regulatory Flexibility Act. The district court ruled in DOD's favor, dismissing the lawsuit on October 12. The plaintiffs appealed the case to the D.C. Circuit Court of Appeals on October 21. The case is currently pending in the D.C. Circuit with case number 16-5304.

Advisory Bulletins

From October 1, 2016 to November 30, 2016, the OCCC did not issue any new advisory bulletins. On October 5, the OCCC revised Bulletin No. 16-6, which summarizes requirements of the Department of Defense's Military Lending Act Rule for pawnshops. The OCCC revised the bulletin to provide updated links to the text of the MLA Rule and DOD's guidance.

Interpretation Requests

From October 1, 2016 to November 30, 2016, the OCCC did not receive any requests for official interpretations. There were no pending interpretation requests as of November 30, 2016.

Public Information Requests

From October 1, 2016 to November 30, 2016, the OCCC received 27 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, 2016 to November 30, 2016, the OCCC received:

- a scholarship valued at \$575 from the American Association of Residential Mortgage Regulators, which waived one registration fee to its 2016 Financial Analysis for Examiners training school, held from November 16 to November 18, 2016; and
- a training grant of \$1,500 from the Texas Association of State Systems for Computing and Communications, which helped pay the tuition for a Global Knowledge network security course, held from November 28 to December 2, 2016.



<u> ПВ 60</u>		Relating to requiring a credit access business to verify the vehicle identification number used to obtain a motor vehicle title loan.
	Specific Remarks:	Amends Ch. 393, Fin. Code. Requires a CAB, before obtaining a title loan for a consumer, to physically inspect the vehicle used as collateral, photograph the vehicle identification number, and verify that the number matches the number on the title provided by the consumer. Requires the CAB to retain the photograph until the second anniversary of the date the extension of credit is made.
	Last Action:	11-14-16 H Filed
• <u>HB 153</u>	<u>Schaefer, Matt(R)</u>	Relating to the authority of a municipality to regulate occupations.
·	Companions:	
	Specific Remarks:	Amends Ch. 215, Loc. Gov't Code. Prohibits a municipality from adopting any ordinance that: (1) establishes additional, more stringent licensing requirements for an occupation that requires an occupational license issued by a state licensing authority, or (2) requires a person to obtain an occupational license issued by the municipality. Provides that any ordinance violating this prohibition is void.
	Last Action:	11-14-16 H Filed
<u> НВ 197</u>	<u>Bernal, Diego(D)</u>	Relating to contracts and other documents issued by credit access businesses.
	Specific Remarks:	Amends Ch. 393, Fin. Code. Requires the contract and other documents provided by a CAB to be: (1) provided before signing written in both English and Spanish, (2) written in plain language, and (3) printed in an easily readable font and type size. Requires the Finance Commission to adopt rules implementing this provision. Requires the CAB disclosure and notice to be available in both English and Spanish at each CAB business location.
	Last Action:	11-14-16 H Filed
<u> </u>		Relating to the use of insurance proceeds paid to an insured and a lender for residential property damage.
	Specific Remarks:	Amends Ch. 343, Fin. Code, Ch. 557, Ins. Code. Applies to insurance claims for damage to residential real property where the claim is paid to the insured and a lender. Requires the lender to notify the insured of the options to: (1) place the claim proceeds in escrow for repairing or rebuilding the property, or (2) apply the proceeds to the loan balance. Removes language limiting current notice requirement to situations where the lender holds proceeds of the claim pending completion of repairs. Provides that a lender may not apply claim proceeds to reduce the loan balance until the 90th day after the lender sends the required notice.

OCCC Rule Schedule

Rule Item/Purpose	Proposal Date	Adoption Date
 Rules for Credit Access Businesses - Adopt Amendments 7 TAC, Chapter 83, Subchapter B To update the licensing rules for credit access businesses with conforming and clarifying changes recently adopted in other regulated areas; to provide clarification regarding criminal history and recordkeeping; and to make technical corrections Precomment draft distributed September 23, 2016 	10/21/16	Presented for Adoption 12/16/16
 Property Tax Lenders - <i>Rule Review</i> 7 TAC, Part 5, Chapter 89 To conduct standard 4-year review under Tex. Gov't Code, §2001.039; to update rules for property tax lenders with conforming and clarifying changes recently adopted in other regulated areas; to provide clarification; and to make technical corrections 	06/16/17	

December 16, 2016

C. OFFICE OF CONSUMER CREDIT COMMISSIONER

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Chapter 83, Subchapter B, Concerning Rules for Credit Access Businesses

PURPOSE: The purpose of the amendments is to update rules regarding the licensing of credit access businesses and to make technical corrections. The amendments primarily relate to conforming these licensing rules to clarifying changes recently adopted in other areas regulated by the agency. Additional changes provide clarification regarding criminal history and recordkeeping.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the amendments to 7 TAC, Chapter 83, Subchapter B without changes as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve the amendments to 7 TAC, Chapter 83, Subchapter B.

ADOPT AMENDMENTS 7 TAC, CHAPTER 83, SUBCHAPTER B Page 1 of 9

Title 7. Banking and Securities Part 5. Office of Consumer Credit Commissioner Chapter 83. Regulated Lenders and Credit Access Businesses Subchapter B. Rules for Credit Access Businesses

The Finance Commission of Texas (commission) adopts amendments to §§83.1002, 83.3001 - 83.3004, 83.4003, and 83.5004 in 7 TAC, Chapter 83, Subchapter B, concerning Rules for Credit Access Businesses.

In general, the purpose of the rule changes in 7 TAC, Chapter 83, Subchapter B is to update rules regarding the licensing of credit access businesses and to make technical corrections. The proposed amendments primarily relate to conforming these licensing rules to clarifying changes recently adopted in other areas regulated by the agency. Additional changes provide clarification regarding criminal history and recordkeeping.

The commission adopts the amendments without changes to the proposed text as published in the November 4, 2016, issue of the *Texas Register* (41 TexReg 8701).

The commission received no written comments on the proposal. Additionally, the agency circulated an early draft of proposed changes to interested stakeholders. The agency also received no written precomments on the early draft.

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

In §83.1001, an adopted amendment will replace "chapter" with "subchapter" to provide the appropriate applicability of the listed definitions. Chapter 83 is divided into Subchapter A, Rules for Regulated Lenders, and Subchapter B, Rules for Credit Access Businesses. These definitions only apply to credit access businesses, and hence, should reference "subchapter" as opposed to "chapter." A similar correction has also been made in the licensing definitions section found in §83.3001.

Also in §83.3001, the adoption adds a definition of "parent entity," specifying that this term refers to a direct owner of a licensee or applicant. This definition is intended to clarify the provisions on mergers and license transfers in §83.3003 and §83.3004, discussed later in this adoption, and is consistent with other OCCC licensing rules. An amendment to former §83.3001(2) (adopted §83.3001(3)) amends the definition of "principal party" for sole proprietorships. The amendment deletes the phrase "holding a 100% ownership interest." The Internal Revenue Service allows a married couple that jointly owns and operates a business to classify the business as a proprietorship, by electing to file as a qualified joint venture. The amendment is intended to remove any language suggesting that this option is not available under federal income tax law. The amendment adopted conforms to an amendment that the commission recently adopted for regulated lenders at §83.301(2)(A), effective September 8, 2016. A corresponding amendment has also been made in §83.3002(1)(A)(iv).

In §83.3002(1)(E)(i) and (ii) regarding the signature on a new license application, the rule's former language required each owner of a proprietorship and each general partner of a partnership to sign the

application. As part of an online process, the agency will only require one owner or one partner, respectively, to sign for these applicants. The adopted amendments reflect that "the owner" of a proprietorship and "one general partner" of a partnership must sign the application. Additionally, in §83.3002(2)(E), a technical correction has been made to provide a more accurate Texas Finance citation to Code. §393.604(a)(4), which requires an applicant to provide information concerning thirdparty lender organizations.

Adopted amendments to §83.3003(e)(5)(B) and §83.3003(h) clarify the responsibility of the transferor and transferee during the course of a license transfer or new license application on transfer of ownership. The amendments remove the phrase "joint and several" in order to avoid confusion between the responsibility described in the rule and joint and several liability in a tort context. The amendments to subsection (h) also describe the parties' responsibility at different points during the license transfer process. The amendments are intended to provide clarity and remove confusion that might result from overlapping provisions in the rule. An amendment to subsection (h)(3) explains that if a transferee receives a license transfer, then the transferee's responsibility includes activity performed by the transferor before the license transfer. The adopted amendments to §83.3003 conform to a rule that the commission recently adopted for regulated lenders at §83.303, effective September 8, 2016.

In §83.3004, adopted amendments in subsection (b) to clarify situations where a merger is a transfer of ownership. The amendments specify that if a licensee is a party to a merger that results in a new or different surviving entity other than the licensee, then the merger is a transfer of ownership, and the licensee must file a license transfer application or new license application. The amendments to subsection (b) are intended to clarify the rule text and are consistent with the OCCC's current policy. Additionally, in subsection (c), a reference to "a new license application on transfer of ownership" has been added to provide consistent terminology with a prior amendment.

An adopted amendment to §83.4003(b)(4) clarifies the requirements for an applicant's disclosure of criminal history. Previously, §83.4003(b)(4) stated that the OCCC may request "proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid." The adopted amendment adds the phrase "or are current" at the end of this provision, to account for cases where a court orders the applicant to pay an amount over time. The adopted amendment conforms to a rule that the commission recently adopted for motor vehicle sales finance licensees at §84.613(b)(4), effective May 5, 2016, and a rule that the commission recently adopted for regulated lenders at §83.404(b)(4), effective September 8, 2016.

Adopted amendments to §83.4003(c)(1) clarify the crimes that are directly related to the duties and responsibilities of a licensee that may be grounds for denial, suspension, or revocation. Under Texas Occupations Code, §53.025, state licensing authorities are required to issue guidelines relating to their use of criminal history in licensing decisions. These guidelines "must state the reasons a particular crime is considered to relate to a particular license and any other criterion that affects the decisions of the

ADOPT AMENDMENTS 7 TAC, CHAPTER 83, SUBCHAPTER B Page 3 of 9

licensing authority." Texas Occupations Code, §53.025(a). Previously, the second sentence of §83.4003(c)(1) explained that crimes involving certain elements (e.g., the misrepresentation of costs or benefits of a product or service, the improper handling of money or property entrusted to the person) are grounds for denial, suspension, or revocation of a license. An amendment to §83.4003(c)(1) replaces this sentence with a more specific list of criminal offenses, in order to provide clearer guidelines to applicants. Another adopted amendment to §83.4003(c)(1) adds a statement that providing credit access business services involves compliance with reporting requirements to government agencies. This amendment is intended to describe the reason for including a criminal offense of "failure to file a government report, filing a false government report, or tampering with a government record" in the list of criminal offenses. The adopted list of criminal offenses conforms to a rule that the commission recently adopted for motor vehicle sales finance licensees at §84.613(c)(1), effective May 5, 2016, and a rule that the commission recently adopted for regulated lenders at \$83.404(c)(1), effective September 8, 2016.

An adopted amendment to §83.4003(f)(2) updates a citation to the Texas Code of Criminal Procedure. Effective January 1, 2017, Texas Code of Criminal Procedure, article 42.12, §3g will be recodified to article 42A.054.

Adopted amendments to §83.5004(2)(A) update recordkeeping requirements relating to the Department of Defense's Military Lending Act (MLA) Rule, 32 C.F.R. pt. 232. The recently adopted amendments to the MLA Rule have a required compliance date of October 3, 2016. Under the amended

MLA Rule, creditors are required to provide model disclosures to covered military borrowers. 32 C.F.R. §232.6. Adopted new 83.5004(2)(A)(iv)(VI) explains that a licensee must maintain any mandatory disclosure to a covered borrower under the MLA Rule. The amended MLA Rule also specifies documentation that creditors can obtain in order to determine whether a consumer is a covered military borrower. The previous version of the MLA Rule (before the recent amendments) prescribed a "covered borrower identification statement" to be signed by applicants, and creditors could use this statement to determine an applicant's covered borrower status. 32 C.F.R. §232.5 (2014 version). Under the amended MLA Rule, creditors can choose their method of determining covered borrower status, but the only ways to conclusively determine a borrower's status (and benefit from a safe harbor) are to check the borrower's status through the DOD's MLA website, or to obtain a consumer report that includes information from the DOD's MLA database. 32 C.F.R. §232.5. adopted amendment An to §83.5004(2)(A)(vii) replaces a statement that a licensee must maintain the identification of covered borrower (i.e., the statement required under the previous version of the MLA Rule) with a statement that the licensee must maintain any records obtained under 32 C.F.R. §232.5. The amendment is intended to clarify that licensees must maintain any documentation that they obtain regarding whether a consumer is a covered borrower under the MLA Rule.

These rule changes are adopted under Texas Finance Code, §393.622(a), which authorizes the Finance Commission to adopt rules to necessary to enforce and administer Chapter 393, Subchapter G. Ensuring

ADOPT AMENDMENTS 7 TAC, CHAPTER 83, SUBCHAPTER B Page 4 of 9

compliance with Chapter 393 is necessary to the enforcement and administration of Chapter 393, Subchapter G. In addition, the amendments to §83.5004 are adopted under Texas Finance Code, §393.622(a)(3), which authorizes the commission to adopt rules regarding periodic examinations of credit access businesses by the OCCC. The amendments to §83.4003(c)(1) are adopted under Texas Occupations Code, §53.025, which requires state licensing authorities to issue guidelines relating to their use of criminal history in licensing decisions.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 393.

§83.1002. Definitions.

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 393 have the same meanings as defined in Chapter 393. The following words and terms, when used in this <u>subchapter</u> [chapter], will have the following meanings, unless the context clearly indicates otherwise.

(1) - (8) (No change.)

§83.3001. Definitions.

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 393, have the same meanings as defined in Chapter 393. The following words and terms, when used in this <u>subchapter</u> [chapter], will have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

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

(3) [(2)] Principal party--An adult individual with a substantial relationship to the applicant by ownership of more than 10% of the applicant, or having control of the proposed credit access business of the applicant. The following individuals are principal parties:

(A) a proprietor [holding a 100% ownership interest];

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

§83.3002. Filing of New Application.

An application for issuance of a new credit access business license must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats to facilitate multistate uniformity of applications or in order to accept approved electronic submissions. Appropriate fees must be filed with the application and the application must include the following:

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

(A) Application for license.

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

(iv) Owners and principal

(I) Proprietorships. The applicant must disclose the name of any [the] individual holding an [a - 100%] ownership interest in the business and the name of any individual responsible for

parties.

ADOPT AMENDMENTS 7 TAC, CHAPTER 83, SUBCHAPTER B Page 5 of 9

operating the business. If requested, the applicant must also disclose the names of the spouses of these individuals.

(II) - (VI) (No change.)

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

(E) Consent form. Each applicant must submit a consent form signed by an authorized individual. Electronic signatures will be accepted in a manner approved by the commissioner. The following are authorized individuals:

(i) If the applicant is a proprietor, the [each] owner must sign.

(ii) If the applicant is a partnership, <u>one</u> [each] general partner must sign.

(iii) - (v) (No change.)

(2) Other required filings.

(A) - (D) (No change.)

(E) Third-party lender organizations. As required by Texas Finance Code, $\S{393.604(a)(4)}$ [$\S{393.604(4)}$], each applicant must provide the names, physical addresses, and telephone numbers of the third-party lender organizations with which the business contracts to provide services or from which the business arranges extensions of consumer credit.

(F) (No change.)

(3) (No change.)

§83.3003. Transfer of License; New License Application on Transfer of Ownership

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

(e) Application requirements.

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

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

(A) (No change.)

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

(C) (No change.)

(f) - (g) (No change.)

(h) Responsibility.

(1) Responsibility of transferor. Before the <u>transferee begins performing</u> <u>credit access business activity under a</u> <u>license</u> [OCCC's final approval of an application described by subsection (e)], the transferor is responsible to any consumer and to the OCCC for all credit access business activity performed under the license.

(2) Responsibility of transferor and transferee. If a transferee begins performing credit access business activity under a license before the OCCC's final approval of

ADOPT AMENDMENTS 7 TAC, CHAPTER 83, SUBCHAPTER B Page 6 of 9

an application described by subsection (e), then the transferor and transferee are each responsible to any consumer and to the OCCC for activity performed under the license during this period.

(3) [(2)] Responsibility of transferee. After a transferee begins performing credit access business activity under a license, the transferee is responsible to any consumer and to the OCCC for all credit access business activity performed under the license. <u>The</u> [In addition, a] transferee is responsible for any transactions that it purchases from the transferor. <u>In addition, if</u> the transferee receives a license transfer, then the transferee's responsibility includes all activity performed under the license before the license transfer.

[(3) Joint and several responsibility. If a transferee begins performing credit access business activity under a license before the OCCC's final approval of an application described by subsection (e) (including activity performed under a permission to operate), then the transferor and transferee are jointly and severally responsible to any consumer and to the OCCC. This responsibility applies to any acts performed under the license after the transferee begins performing credit access business activity and before the OCCC's final approval of the license transfer.]

§83.3004. Change in Form or Proportionate Ownership.

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

(1) If a licensee is a party to a merger that results in a new or different surviving entity other than the licensee, then the merger is a transfer of ownership, and the licensee must file a license transfer application or a new license application on transfer of ownership [A merger of a licensee is a change of ownership that results in a new or different surviving entity and requires the filing of a license transfer application or a new license application on transfer of ownership] pursuant to \$83.3003 of this title (relating to Transfer of License; New License Application on Transfer of Ownership).

(2) If a licensee's parent entity is a party to a merger [If the merger of the parent entity of a licensee] that leads to the creation of a new entity or results in a different surviving parent entity, the licensee must advise the commissioner of the change in writing within 10 calendar days after the change, by filing a license amendment and paying the required fees as provided in §83.3010 of this title. Mergers or transfers of other entities with a beneficial interest beyond the parent entity level only require notification within 10 calendar days in accordance with the OCCC's instructions.

(c) Proportionate ownership.

(1) A change in proportionate ownership that results in the exact same owners still owning the business, and does not meet the requirements described in paragraph (2) of this subsection, does not require a transfer. Such a proportionate change in ownership does not require the filing of a license transfer application or a new license application on transfer of ownership, but does require notification when the cumulative ownership change to a single entity or individual amounts to 10% or greater. No later than 10 calendar days following the actual change, the licensee is required to notify the commissioner in writing of the change in proportionate ownership by filing a license amendment and paying the required fees as provided in \$83.3010 of this title. This section does not apply to a publicly held corporation that has filed with the OCCC the most recent 10K or 10Q filing of the licensee or the publicly held parent corporation, although a <u>license</u> transfer application <u>or a new license</u> application on transfer of ownership may be required under \$83.3003 of this title.

(2) (No change.)

§83.4003. 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 <u>or are current</u>.

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

(1) Providing credit access business services involves or may involve making representations to consumers regarding the terms of the contract, receiving money from consumers, remitting money to third parties, maintaining accounts, repossessing property without a breach of the peace, maintaining goods that have been repossessed, [and] collecting due amounts in a legal manner, and compliance with reporting requirements to government agencies. [Consequently, 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 licensee and may be grounds for denial, suspension, or revocation.] Consequently, the following crimes are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation:

(A) theft;

(B) assault;

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

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

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

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(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 license application, or suspend or revoke a license, 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. <u>42A.054</u>, [42.12, \$3g,] or art. 62.001(6), as provided by Texas Occupations Code, \$53.021(a)(3)-(4);

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

§83.5004. Files and Records Required.

A licensee must maintain records for each transaction under Texas Finance Code, Chapter 393, and make those records available to the OCCC for examination. The records required by this section may be maintained by using a paper or manual recordkeeping system, electronic recordkeeping system, optically imaged recordkeeping system, or a combination of these types of systems, unless otherwise specified. All records must be prepared and maintained in accordance with generally accepted accounting principles. If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements prevail only to the extent of the conflict with the provisions of this section.

(1) (No change.)

(2) Consumer's transaction file. A licensee must maintain a paper or electronic for each individual transaction file transaction under Texas Finance Code, Chapter 393, or be able to produce this information within a reasonable amount of time. The transaction file must contain documents that show the licensee's compliance with applicable state and federal law, including Texas Finance Code, Chapter 393. If a substantially equivalent electronic record for any of the following documents exists, a paper copy of the record does not have to be included in the transaction file if the electronic record can be accessed upon request.

(A) The transaction file must include the following documentation for each transaction under Texas Finance Code, Chapter 393:

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

(iv) all legally required disclosures provided in connection with the transaction, including:

(I) - (V) (No change.)

(VI) any mandatory disclosure to a covered borrower under the

ADOPT AMENDMENTS 7 TAC, CHAPTER 83, SUBCHAPTER B Page 9 of 9

Department of Defense's Military Lending Act Rule, 32 C.F.R. §232.6;

(v) - (vi) (No change.)

(vii) any documentation of whether the consumer is a covered borrower under the Department of Defense's Military Lending Act Rule, 32 C.F.R. Part 232, including <u>any records obtained under</u> [the identification of covered borrower described by] 32 C.F.R. §232.5;

(viii) - (x) (No change.)

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

(3) - (12) (No change.)

Certification

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

Issued in Austin, Texas on December 16, 2016.

Laurie B. Hobbs Assistant General Counsel Office of Consumer Credit Commissioner This page left blank intentionally.

D.

Texas Department of Banking

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TEXAS DEPARTMENT OF BANKING

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



K.C.mgm

To: Finance Commission Members

From: Kurt Purdom, Director of Bank & Trust Supervision

Date: November 30, 2016

Subject: Summary of the Bank & Trust Supervision Division Activities

Bank and Trust Supervision				FY 2017								
	8/31/	2015	5 8/31/20		11/30	/2016*	2/28	8/2017	5/31/2017		8/31/2017	
				ndustry Pi	ofile (#	/ Assets in	n billions)				
# Banks	256	\$240.7	247	\$248.3								
# Trust Co. (1)	20	\$97.1	19	\$101.4								
# FBA/FBB	9	\$89.2	10	\$70.0								
	Examinations Performed											
Banks	118 105											
Trust Co.		28		31								
FBA/FBB		2		2								
		В	ank Uni	form Finar	ncial Inst	itution Co	omposit	e Ratings				
1	127	49.6%	126	51.0%								
2	122	47.7%	109	44.1%								
3, 4, & 5	7	2.7%	12	4.9%								
Non-Rated	0	-	0	-								

* First quarter performance measure numbers are not yet available.

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

The Department considers any bank with a Uniform Financial Institutions Composite Rating of 3, 4, or 5 to be a problem institution, requiring that remedial action be taken by the bank's board and management. As of this writing, problem institutions total 12. Though this is an increase from last fiscal year, the number is still well below the peak number of problem banks experienced during the last recession at 58. We consider this increased number to still be within the normal range of between 3% and 5% of the total number of institutions. We anticipate that the number of problem institutions will be relatively stable over the next six months, however, we will continue to closely monitor banks that may be impacted by a protracted period of low oil prices or experience other increased risk factors.

Summary of the Bank & Trust Supervision Division Activities

Page	2
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Administrative/Enforcement Actions (Number outstanding as of the date indicated)			FY 2017			
	8/31/2015	8/31/2016	11/30/2016*	2/28/2017	5/31/2017	8/31/2017
Banks - Safety	and Soundness					
Formal	2	0				
Informal	14	19				
Banks - Bank S	ecrecy Act (BSA)					
Formal	1	0				
Informal	0	0				
Banks - Inform	ation Technology	(IT)				
Formal	0	0				
Informal	2	0				
Trust Departm	ents of Banks and	Trust Companies	;			
Formal	0	0				
Informal	2	3				
Total Administ	trative/Enforceme	nt Actions				
Formal	3	0				
Informal	18	22				
Total	21	22				

* First quarter numbers are not yet available.

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

Informal actions include Determination Letters, Memoranda of Understanding, Commitment Letters and Board Resolutions. Orders of Supervision, Orders of Conservatorship and Compliance actions are not included.

Compliance with Examination Priorities Percent of Examinations Conducted within Department Guidelines				
Entity Type FY 2016 FY 2017 (YTD)				
Commercial Banks (All / DOB Only)	97% / 98%	84% / 89%		
ІТ	98% / 100%	93% / 100%		
Trust	94% / 94%	100% / 100%		
Foreign Banks (FRB)	100%	100%		
Trust Companies (DOB)	78%	100%		
IT	94%	100%		

Compliance with examination priorities for commercial banks has lagged behind the agency's goal of completing 90% of commercial examinations within policy guidelines. Through two months of the current fiscal year, five bank examinations were delayed, two of which were the Department's responsibility (averaged 16 days past due) and three were the FDIC's responsibility (averaged 21 days). The delay for the Department's examinations was caused by resources being diverted to complete follow-up examinations of banks which had been adversely affected by the decline in oil and gas commodity prices. Over the course of this fiscal year, compliance is expected to improve.

Division Highlights

- **Oil and Gas:** Agency staff continues to closely monitor the impact that previously lower, but now improved, crude oil prices are having on oil and gas (O&G) service and exploration entities. The cash flow and debt service coverage of many service industry businesses remains stressed, but we are hopeful that the modest improvement in commodity prices will lead to increased demand for oil field services and improved repayment capacity. Since the recent rebound in oil prices, however, little overall improvement has been observed.
- **Cybersecurity Preparedness:** Commissioner Cooper reconstructed the Bankers' Electronic Crimes Task Force for a meeting on 11-17-16, at the U.S. Secret Service Office in Dallas. Representatives from eleven states participated with approximately 35 individuals in attendance from banks, law enforcement, regulatory agencies and trade associations. The purpose of the meeting was to discuss recent developments in sophisticated cyber-attacks and the best ways to engage community bank CEOs to adopt new measures to defend against these attacks. Commissioner Cooper emphasized the importance of maintaining consumer confidence in the U.S. financial system. Participants identified teams to develop "best practices" for community bank CEOs, which will be published in 2017.

In June of 2015, the Federal Financial Institutions Examination Council, or FFIEC, released a Cybersecurity Assessment Tool, or CAT. This tool was developed by the federal bank regulatory agencies to assist bank managers in assessing their inherent risks to cyber threats and measuring their cybersecurity preparedness needed to handle such events. <u>Though use of this tool by bank managers is optional, measuring and preparing for cyber risks is not</u>. Commissioner Cooper issued Industry Notice 2015-8 in September of 2015 alerting the industry about this useful tool and outlining the Department's expectations regarding cybersecurity assessments. This notice advised bank managers to use the CAT to assess and measure their bank's preparedness no later than 12-31-15. Throughout 2016, the Department's staff reviewed completed cybersecurity assessments at all Texas state-chartered banks, and the Department's staff was trained on the importance of this issue by the Director of IT Security Examinations Phillip Hinkle. IT Examination Specialists are now working with the few banks that still need to improve their cybersecurity preparedness. Most of these institutions will receive on-site examinations in the coming months.

• Examination Tools Suite (ETS) Software: ETS is a software program developed by the FDIC with significant participation and input provided by state banking departments and the Federal Reserve. ETS is a digital examination process for inputting and sharing previous and current examination information among examiners more securely, effectively, and efficiently. Going forward, most of the Department's examination processes and work product will be in an electronic format. Training was provided to the regional offices, specialists, and review staff by Review Examiner Kevin Wu and select field examiners who had participated in train-the-trainer sessions and ETS user testing. With the exception of the report review process for joint exams, ETS is fully implemented. Independent examination reports have already been created, submitted and reviewed in ETS. In the coming months, additional changes will be made to the regional offices and Austin Headquarters. The Department's internal databases, website, proprietary software applications, and templates are also being updated to accommodate the new ETS technology and

Finance Commission Members

Summary of the Bank & Trust Supervision Division Activities Page 4

data storage requirements. Enhanced data security and storage standards are also being implemented to coincide with the transition to ETS.

• Special Operations and Conferences:

- Review Examiner Tanya Miller participated in a bank regulatory panel at the Texas Bankers Association Internal Audit School on 10-5-16.
- Commissioner Cooper, Deputy Commissioner Bacon and Director Purdom participated in an FDIC Commissioners' Conference held in Dallas from 10-12-16 to 10-13-16. Several topics of common concern were discussed including the status of the Texas economy, the impact of oil price fluctuations on Texas banks, cybersecurity risks, concentration risk management, ETS implementation, and consumer compliance.
- Commissioner Cooper and other staff members participated in the Texas A&M Banking Program Banquet held in College Station on 10-27-16. Commissioner Cooper provided the keynote address.
- Federal Capital Programs: The table below provides a snapshot of the two federal capital programs.

Federal Programs	Troubled Asset Relief Program (TARP) ⁽²⁾	Small Business Lending Fund (SBLF) as of 10/31/2016
Number of Applicants	80	23
Number of Banks that Received Funds	21	12
Total Amount Distributed (\$ in millions)	\$2,837.7	\$255.7
Number of Banks with Outstanding Funds	0	2
Total Amount Outstanding (\$ in millions)	\$0	\$25.5

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



TEXAS DEPARTMENT OF BANKING

BF

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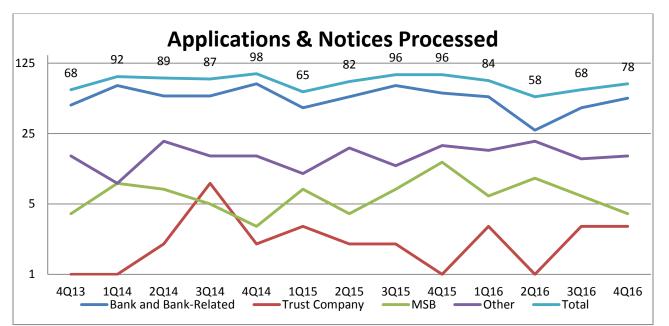
Charles G. Cooper Commissioner

To: Finance Commission Members

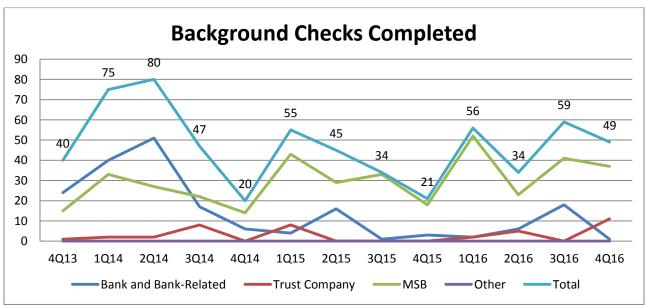
From: Daniel Frasier, Director of Corporate Activities

Date: November 30, 2016

Subject: Summary of the Corporate Division Activities



Fiscal 1Q17 information not available and will be presented at the next Finance Commission meeting.



Fiscal 1Q17 information not available and will be presented at the next Finance Commission meeting.

Corporate Activities

Entities/Activities	Applications and Notices Under Review (as of November 29, 2016)
Bank and Bank Related	14
Trust Companies	2
Money Services Business (MSB)	6
Others	0
Totals	22

Division Highlights

- The volume of bank and trust applications received over the past couple of months has slackened somewhat compared to the prior quarter's activity. On the other hand, MSB filings have accelerated compared to recent periods.
- <u>Chartering, Conversion, and Merger Activity</u> The following transactions have consummated since Corporate's last report to the Finance Commission:
 - o Banks
 - Northstar Bank, Denton, completed its affiliate acquisition of Northstar Bank of Colorado, Denver, Colorado
 - Wellington State Bank, Wellington, completed its merger acquisition of First National Bank in Dalhart, Dalhart, Texas
 - American Bank of Texas, Sherman, merged with and into First United Bank and Trust Company, Durant, Oklahoma
 - Trust Companies
 - None
- <u>Conferences and Committee Meetings</u> Corporate participation included the following committee meeting since the last report to the Finance Commission:
 - Corporate Analyst Xazel Garcia began participation in a multi-year working group project devoted to enhancing the Nationwide Mortgage Licensing System that Money Services Businesses also use to file their initial applications as well as their annual reporting requirements.



Charles G. Cooper Commissioner

TEXAS DEPARTMENT OF BANKING

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To: **Finance Commission Members**

Russell Reese, Director of Special Audits From:

Date: December 1, 2016

Subject: Summary of the Special Audits Division Activities

Special Audits						FY 201	.7		
Entity		2016	1	st	2	nd		3 rd	4 th
Industry Profile (# / Assets (billions))									
Money Services Businesses (MSB)	155	\$114.7	*	*					
Prepaid Funeral Contract (PFC)	380	\$3.9	*	*					
Perpetual Care Cemeteries (PCC)	243	\$314.1	*	*					
Cemetery Brokers (CB)	12	n/a	*	*					
Private Child Support Enforcement Agencies (PCSEA)	10	n/a	*	*					
Check Verification Entities (CVE)	2	n/a	*	*					
			Examiı	nations Pe	erformed				
MSB		97	*						
MSB Limited Scope		3	*						
MSB Accepted other Sta	te	17	*						
PFC		260	*						
PFC Limited Scope		6	*	k					
PCC		179	*	*					
PCC Limited Scope		6	k	k					
		Ratings (# / %) Ass	igned to A	All Regula	ted Entiti	es		
1	317	42%	*	*					
2	351	47%	*	*					
3,4, & 5	82	11%	*	*					
	N	loncomplia	ance with	Examinat	ion Priori	ties (Past	Due)		
MSB		14	*						
PFC		10	k	*					
PCC		15	k	*					

NOTES:

PCC \$ amounts reflected in the millions.

Limited scope examinations do not receive a rating.

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

Special Audits		FY 2017				
Entity	FY2016	1 st	2 nd	3 rd	4 th	
	Enforcement Actions					
MSB	8	3				
PFC	2	1				
PCC	0	1				
PCSEA	1	0				

Division Activities:

Since being appointed Receiver of Lamesa Memorial Park, the Department has completed numerous tasks to stabilize the situation and to rehabilitate the cemetery property and records. A list of these tasks is identified in the Receiver's Initial Status Report, Business Plan, and Request for Management Order that was approved by the court on November 16, 2016. It is the ultimate goal of the Department to locate a responsible party approved by the Court to take over the ownership and maintenance of the cemetery.

On May 3, 2016 Commissioner Cooper issued an Agreed Order relating to trust-funded prepaid funeral contracts (PFCs) sold by El Paso Mission Funeral Home, Inc. (Mission), of El Paso, Texas. The Commissioner had previously found that numerous trust-funded PFCs sold by Mission had been fraudulently cancelled and the money misappropriated. The Department notified all known contract holders and sent out an initial bid to area funeral homes in an attempt to secure a successor funeral home. However, since no bids were received, the Department sent out a second bid invitation that will expire on December 9, 2016. If the Department is unable to secure a successor funeral home, it may become necessary for the Department to issue appropriate refunds to the known purchasers.



TEXAS DEPARTMENT OF BANKING

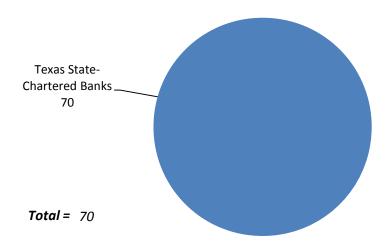
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To:	Finance Commission Members
From:	Wendy Rodriguez, Director of Strategic Support
Date:	December 1, 2016
Subject:	Summary of the Strategic Support Division Activities

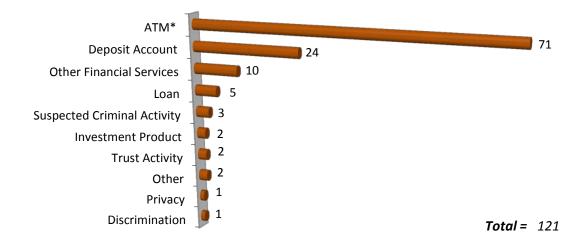
September 2016 - October 2016

Complaints on Regulated Entities

Inquiries on Regulated Entities September 2016 - October 2016

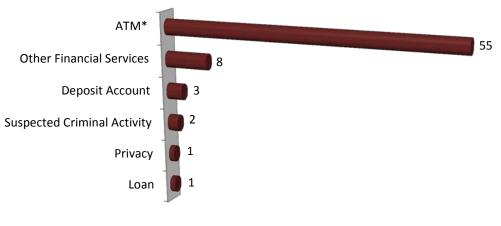


State-Chartered Banks and Trust Companies Complaints by Type September 2016 - October 2016



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

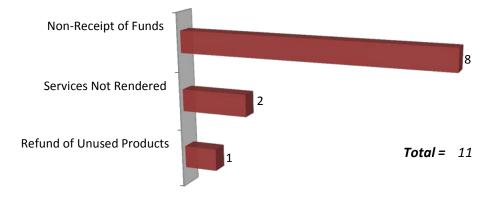
State-Chartered Banks and Trust Companies Inquiries by Type September 2016 - October 2016



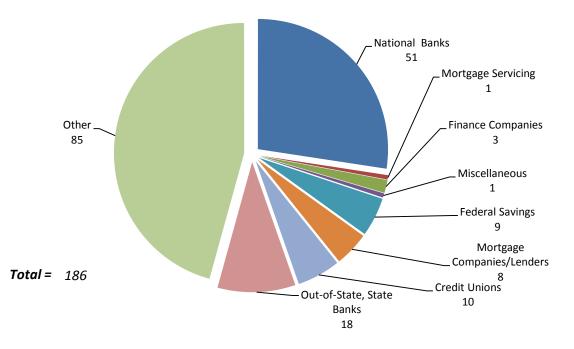


* High activity related to a single state bank. Activity related to consumers inquiring about their funds serviced by one institution.





Complaints and Inquiries Against Nonregulated Entities September 2016 - October 2016



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

Туре	Sept. 2016 – Oct. 2016
State-Chartered Banks	10
Trust	n/a
PCSEA	n/a
PFC/PCC	33
MSB	45

Average Number of Days to Close a Written Complaint

CANS ACTIVITY

January 1, 2012 – November 21, 2016

Entity	Enrolled	Compromised Accounts Reported
Texas State-Chartered Banks	226	1,653
Texas State-Chartered Savings Banks	25	65
Federal Savings Banks	10	197
State Credit Unions	132	1,248
Federal Credit Unions	229	1,145
National Banks	170	525
Out-of-State State-Chartered Banks	11	0
Out-of-State National Banks	6	44
Total	809	4,881

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

	FY 2014	FY 2015	FY 2016	FY 2017
I. General Knowledge	5	8	9	2
II. Loan Analysis	2	2	4	N/A
III. Panel	2	4	3	1
IV. Test Bank	1	4	2	2
Total FE3	14	19	18	22

Promotions

From FE3 to FE4 (Commissioned Examiner)	2	4	2	2

Other Divisional Items:

- Vacancy
 - The division filled the Program Specialist vacancy and hired Mrs. Zainub Naeem on November 1, 2016. Mrs. Naeem will be in charge of research, writing and editing for various agency publications. She will also be assisting with training and other agency communications.

- Financial Education
 - October 21, 2016 The Department hosted a financial education webinar which drew 122 participants. The topic was Navigate, an educational resource by the Federal Reserve Bank of Dallas.
 - November 3, 2016 The Department hosted a financial education webinar which drew 105 participants. The topic was cybersecurity awareness for money services businesses.
- Polices
 - Supervisory Memorandum 1008 Policy for Other Real Estate Owned was revised and is applicable to state-chartered banks. In this revision, links were added to the forms on the agency's website which are required for holding other real estate. The sample forms were removed from the policy.
 - Examiner Bulletins XB 2016-02 CML, XB 2016-03-TR, and XB 2016-IT addressing guidelines for procedures and work paper documentation for Commercial, Trust, and IT examinations were issued.
- Website
 - The three versions of the Law & Guidance Manual have been updated through September 30, 2016 and are available on the Department's website. These include:
 - Law and Guidance Manual Web version
 - Desktop version
 - PDF version for Bank and Trust Entities Only
 - The Finance Commission website will be undergoing a redesigned to improve functionality and navigation. The Department of Banking, Office of Consumer Credit Commissioner, and Savings and Mortgage Lending Department are working to reorganize material before it is presented to the Commission. It is anticipated the redesigned site will be released in the spring of 2017.
 - The Department is working on the next generation of the Department Exchange Portal (DEX) and will be released in the spring of 2017. Enhancements are being made to permit regulated entities to upload material in a fast and easy manner. A folder system is also being incorporated to distinguish the various documents provided for examinations. The upgrade will provide a better communication system.



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Memorandum

TO:	Finance Commission Members
FROM:	Catherine Reyer, General Counsel
DATE:	December 1, 2016
RE:	Legal Division Update

Litigation

Charles G. Cooper Commissioner

State of Texas v. Myrtlewood Memorial Services d/b/a Harlingen-Combes Memorial Cemetery et al., Cause No. D-1-GN-16-000565, in the 353rd Judicial District Court of Travis County, Texas. This case was filed on February 19, 2016, to seek the appointment of a receiver. On October 26, 2016, the Attorney General's Office filed an amended petition to seek forfeiture of the corporate charter, dissolution of the corporation, an order confirming that the Cemetery is no longer under the regulation of the Texas Department of Banking, and termination of the Cemetery's perpetual care trust fund. The amended petition asks that the principal of the trust fund remain inviolable, but be placed in a certificate of deposit. The income from the fund would be available for the care of the cemetery. We hope to have a hearing on the petition no later than January, 2017.

Texas Department of Banking v. Lamesa Memorial Park, LLC, Cause No. 16-09-19874 in the 106th District Court of Dawson County, Texas. On September 13, 2016, Commissioner Cooper issued an Emergency Cease and Desist Order against this perpetual care cemetery for failure to renew its certificate of authority and other violations. On the same day, the Commissioner issued an order to cancel Lamesa's permit to hold and administer prepaid funeral benefit contracts and to seize prepaid funeral funds and records. On September 23, 2016, the Department filed an application for revocation of the charter, temporary restraining order, temporary injunction, and permanent injunction, and for appointment of a receiver. The same day, Judge Carter Schildknecht signed the order granting the TRO and set a hearing on the application for temporary injunction and to appoint a temporary receiver. At the hearing on October 5, the judge signed our proposed order granting the temporary injunction and appointing Russell Reese, DOB Director of Special Audits, as temporary receiver. The Department has retained outside counsel for the receiver. Counsel has filed an inventory and a status report advising the court regarding the financial condition of the cemetery, the expenses incurred to care for the cemetery, a plan for resolution of outstanding creditor accounts, and a plan to locate a successor owner of the cemetery. On November 16, 2016, the Court signed a Management Order approving matters set forth in the status report. The Department has established a claim filing process and is discussing potential bids with entities that have expressed an interest in taking over the cemetery. A permanent injunction hearing is set for January 11, 2017.

Memorandum to Finance Commission December 1, 2016 Page 2

<u>Gifts</u>

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

Orders

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

Special Audits

- Order No. 2016-018, dated 10/11/2016; Consent Order, Bannockburn Global Forex, LLC, Cincinnati, Ohio
- Order No. 2016-019, dated 10/13/2016; Order to Cease and Desist Activity, Foreign Currency Co. LLC, Fort Meyers, Florida, and South West Services, LLC, Appleton, Wisconsin



BANKING DEPARTMENT REPORT TO FINANCE COMMISSION

12-02-2016

•							
<u> НВ 471</u>	<u>Johnson, Eric(D)</u>	Relating to authorizing a credit union or other financial institution to conduct savings promotion raffles.					
	Remarks:	HB 471 adds Chapter 280, Savings Promotion Raffle, to the Finance Code. The bill would allow credit unions and financial institutions to conduct a savings promotion raffle in which the sole action required for a chance of winning a designated prize is the deposit of at least a specified amount of money in a savings account or other savings program offered by the credit union or financial institution. The provisions of Section 280.004 would apply to financial institutions. The finance commission would adopt rules and procedures for the administration of this section and determine record keeping requirements for financial institutions. This bill, if passed, would take effect on the date the proposed constitutional amendment (see HJR 37) is passed by voters. If the amendment is not approved, this bill would not be enacted.					
	Last Action:	11-30-16 H Filed					
1 <u>HJR 29</u>	<u>Munoz, Sergio(D)</u>	Proposing a constitutional amendment requiring the governor's appointments to state boards, commissions, or other governing bodies of state agencies to reflect the gender composition of this state.					
	Remarks:	The proposed constitutional amendment includes a provision that the adoption of this amendment does not affect the entitlement of a member serving on a state board, commission, or other governing body of a state agency to continue for the remainder of the member's term. A person who is a member of a state board, commission, or governing body is not prohibited from being reappointed despite the effect of that person's reappointment on the gender composition of the board, commission, or governing body. This provision would expire January 1, 2024.					
	Last Action:	11-14-16 H Filed					
1 <u>HJR 37</u>	<u>Johnson, Eric(D)</u>	Proposing a constitutional amendment relating to legislative authority to permit credit unions and other financial institutions to award prizes by lot to promote savings.					
	Last Action:	11-30-16 H Filed					

🗊 SB 210 Kolkhorst, Lois(R) Relating to the required repeal or amendment of two state agency rules before adoption of a new state agency rule that increases costs to regulated persons. *Remarks:* SB 210 amends Chapter 2001 of the Government Code. A state agency may not adopt a proposed rule that imposes a cost on any regulated person, another state agency, a special district, and a local government unless (1) two rules are repealed that impose costs equal to or greater than the cost of the proposed rule; (2) two rules are amended to decrease costs by an amount equal to or greater than the cost imposed; or (3) one rule is repealed and one rule amended to decrease the total costs imposed on the person by an amount equal to or less than the proposed rule. This would not apply to a rule related to state agency procurement or a rule amended to reduce the burden or responsibilities on a regulated person or decrease the person's cost for compliance.

Last Action: 11-14-16 S Filed

Total Bills Tracked = 4

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendment to 7 TAC, §12.91 Concerning Other Real Estate Owned

PURPOSE: Section 12.91 was amended in 2003 for the express purpose of clarifying that bank facilities include real property acquired for the purpose of providing temporary housing for employees under certain circumstances. However, the authorization was erroneously placed in §12.91(c), which describes various means of acquiring OREO (which is subject to required disposition), instead of in §12.91(h), which describes permissible means of disposing of OREO, because one means of disposal is to convert the OREO into a bank facility. The amendment deletes the text of §12.91(c)(8) and incorporates the deleted language into §12.91(h)(3), to correct this recently discovered misclassification.

RECOMMENDED ACTION: No comments were received regarding the proposed amendment to 7 TAC §12.91. 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 §12.91 without changes to the proposal as previously published in the *Texas Register*.

Title 7. Banking and Securities Part 2. Texas Department of Banking Chapter 12. Loans and Investments Subchapter D. Investments 7 TAC §12.91

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts the amendment to §12.91, concerning other real estate owned (OREO), without changes to the proposed text as published in the November 4, 2016 issue of the *Texas Register* (41 TexReg 8698). The amended rule will not be republished.

The amendment corrects a structural error and clarifies the authority of a bank to invest in real property for the purpose of providing temporary housing for employees under certain circumstances.

"Other real estate owned" (OREO) is generally defined by §12.91(a)(11) as real property interests not used or intended to be used as banking facilities. A state bank is not empowered to own real estate, other than for use in its own business, except in specified circumstances, such as acquisition of real estate through foreclosure of collateral securing debt previously contracted. The general prohibition on ownership of real property interests and the permissible means of acquiring OREO are set forth in §12.91(b) and (c). The bank must dispose of OREO within a specified period of time, or holding period, as set forth in §12.91(f), and §12.91(h) establishes those methods of disposition that will satisfy the statutory requirement.

Section 12.91 was amended in 2003 for the express purpose of clarifying that bank facilities include real property acquired for the purpose of providing temporary housing for employees under certain circumstances, see the July 4, 2003, issue of the Texas Register (28 TexReg 5149). However, the authorization was erroneously placed in §12.91(c), which describes various means of acquiring OREO (which is subject to required disposition), instead of in \$12.91(h), which describes permissible means of disposing of OREO, because one means of disposal is to convert the OREO into a bank facility. Therefore, the adopted amendment deleted the text of §12.91(c)(8) and incorporated the deleted language into §12.91(h)(3).

This recently discovered misclassification has not affected bank regulation. The Department and affected state banks have applied the section as if it had been correctly amended as intended in 2003, and as the section is amended to now read.

The department received no comments regarding the proposed amendment.

The amendment is adopted pursuant to Finance Code. §31.003(a)(1), which authorizes the commission to adopt such rules as are necessary or reasonable to implement and clarify Title 3, Subtitle B of the Finance Code, and Finance Code §34.001(4). which authorizes the commission to adopt rules specifying activities that may permissibly be conducted in a bank facility.

§12.91. Other Real Estate Owned.

(a) Definitions. Words and terms used in this subchapter that are defined in the Finance Code, §31.002, have the same meanings as defined in the Finance Code. The following words and terms when used in this subchapter shall have the following meanings unless the context clearly indicates the contrary.

(1) Appraisal–A written report by a state certified or licensed appraiser containing sufficient information to support the state bank's evaluation of OREO taking into consideration market value, analyzing appropriate deductions or discounts, and conforming to generally accepted appraisal standards unless principles of safe and sound banking require stricter standards.

(2) Appraiser–A state certified or licensed staff appraiser or a state certified or licensed third party fee appraiser with relevant and competent experience and background as related to a particular appraisal assignment.

(3) Bank facility–Real property, including improvements, owned or leased to the extent of the lease by a state bank if the real estate is held for the purposes set forth in the Finance Code, §34.001, and is not disqualified under the Finance Code, §34.002(b). The term also includes capitalized leasehold improvements if held for the same purposes.

(4) Coterminous sublease–A lease with the same duration as the remainder of the master lease.

(5) Evaluation–A written report prepared by an evaluator describing the OREO and its condition, the source of information used in the analysis, the actual analysis and supporting information and the estimate of the OREO's market value, with any limiting conditions.

(6) Evaluator–An individual who has related real estate training or experience and knowledge of the market relevant to the OREO but who has no direct or indirect interest in the OREO. An appraiser may be an evaluator.

(7) Generally accepted appraisal standards–The Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board, Appraisal Foundation, Washington, D.C.

(8) Market value—The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

(A) buyer and seller are typically motivated;

(B) both parties are well informed or well advised, and acting in what they consider their own best interests;

(C) a reasonable time is allowed for exposure in the open market;

(D) payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and (E) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(9) Non-coterminous sublease–A lease with a duration shorter than the remainder of the master lease.

(10) Other Real Estate Owned (OREO)–Real estate, including improvements, mineral interests, surface, and subsurface rights, owned in whole or in part or leased by a state bank, no matter how acquired, which is not a bank facility as defined by paragraph (3) of this subsection or leasehold property as permitted under the Finance Code, §34.204(a), but excluding nonparticipating royalty interests classified as personal property pursuant to Finance Code, §34.004.

(11) Staff appraiser–An appraiser on the staff of a state bank who has no direct or indirect interest in the OREO.

(12) Third party fee appraiser–An appraiser who has an independent contractor relationship with a state bank and has no direct or indirect interest in the OREO.

(13) Year–For the purposes of this section, a calendar year.

(b) Prohibition on real estate ownership. A state bank may not acquire or hold real estate except as specifically provided under the Finance Code, §§34.001-34.003 and 34.204(a), and this section. (c) Acquisition of OREO. A state bank may acquire OREO only by:

(1) purchase under judicial or nonjudicial foreclosure, or through a deed in lieu of foreclosure, of real estate that is security for a debt or debts previously contracted in good faith;

(2) purchase to protect its interest in a debt or debts previously contracted if prudent and necessary to avoid or minimize loss;

(3) purchase of an employee's principal residence to facilitate a change of duty assignment or relocation upon employment;

(4) with prior written approval of the banking commissioner, an exchange of OREO or personal property for real estate to avoid or minimize loss on the real estate exchanged or to facilitate the disposition of OREO;

(5) with prior written approval of the banking commissioner, purchase of additional real estate to avoid or minimize loss on OREO currently held;

(6) involuntary acquisition of an ownership interest or leasehold interest in real estate as a result of or incidental to a judicial or nonjudicial foreclosure, or by adverse possession, or by operation of law without any action on the part of the state bank to obtain such interest; or

(7) loss of designation of real estate owned or leased by the state bank as a bank facility. (d) Appraisal requirements.

(1) Subject to paragraph (2) of this subsection, when OREO is acquired, a state bank must substantiate the market value of the OREO by obtaining an appraisal within 60 days of the date of acquisition. An evaluation may be substituted for an appraisal if the recorded book value of the OREO is less than \$250,000.

(2) An additional appraisal or evaluation is not required when a state bank acquires OREO if a valid appraisal or appropriate evaluation was made in connection with the real estate loan that financed the acquisition of the OREO and the appraisal or evaluation is less than one year old.

(3) An evaluation shall be made on all OREO at least once a year. An appraisal shall be made at least once every three years on OREO with a recorded book value in excess of \$250,000.

(4) Notwithstanding another provision of this section, the banking commissioner may require an appraisal of OREO if the banking commissioner considers an appraisal necessary to address safety and soundness concerns.

(e) Additional expenditures on OREO. A state bank may re-fit OREO for new tenants or make normal repairs and incur routine maintenance costs to preserve or protect the value of the OREO or to render the OREO in saleable condition without prior notification to or approval by the banking commissioner. Other advances or additional expenditures on OREO must have the prior written approval of the banking commissioner, and must not be:

(1) made for the purpose of speculation in real estate;

(2) made for the purpose of changing or altering the current status or intended use of the OREO; and

(3) inconsistent with safe and sound banking practices.

(f) Holding period.

(1) A state bank must dispose of OREO no later than five years after the date it was acquired, ceases to be used as a bank facility, or ceases to be a bank facility as provided by Finance Code, §34.002(b), unless an extension of time for disposing of the real estate is granted in writing by the banking commissioner pursuant to Finance Code, §34.003(d).

(2) The holding period commences on the date that:

(A) ownership is acquired by the state bank pursuant to subsection (c)(1)-(5) of this section;

(B) OREO is acquired by a state bank through merger/consolidation, conversion or purchase and assumption;

(C) the bank first learns of its ownership interest in real estate which has devolved to the bank by operation of law under subsection (c)(6) of this section; (D) the bank ceases to use a former bank facility or completes its relocation from a former bank facility to a new bank facility; or

(E) is three years following the acquisition of real estate as a bank facility for future expansion or relocation of the bank if the real estate has not been occupied by the bank, unless the banking commissioner has granted written approval to a further delay in the improvement and occupation of the real estate.

(3) The banking commissioner may grant one or more additional extensions of time for disposing of OREO if the banking commissioner finds that the state bank has made a good faith effort to dispose of the OREO or that disposal of the OREO would be detrimental to the safety and soundness of the state bank.

(g) Disposition Efforts; Documentation. A state bank must make diligent and ongoing efforts to dispose of OREO and must maintain documentation adequate to reflect those efforts. Such documentation must be available for inspection by the banking commissioner.

(h) Disposition of OREO. A state bank may dispose of OREO by:

(1) selling the OREO in a transaction that qualifies as a sale under regulatory accounting principles;

(2) selling the OREO pursuant to a land contract or contract for deed;

(3) retaining the OREO for its own use as a bank facility, subject to the approval of the banking commissioner, including residential OREO retained for the purpose of providing temporary housing for employees if:

(A) the bank has two or more locations of sufficient distance that overnight travel is required in connection with business at either location; and

(B) the board has certified that the cost of purchasing and maintaining the property is reasonable in comparison to other options for temporarily housing employees;

(4) transferring the OREO to a majority-owned subsidiary in compliance with 12 C.F.R. §362.4(b)(5)(i);

(5) transferring the OREO for market value to an affiliate, subject to the Finance Code, §33.109, and applicable federal law, including 12 U.S.C. §§371c, 371c-1, and 1828(j);

(6) if the OREO is a master lease, obtaining a coterminous sublease or an assignment of a coterminous sublease, provided that if the bank acquires or obtains assignment of a non-coterminous sublease, the holding period during which the master lease must be divested is suspended for the duration of the sublease and will commence running again upon termination of the sublease; or

(7) entering into a transaction that does not qualify for disposal under paragraphs (1)-(5) of this section; provided that its obligation to dispose of the OREO is

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not met until the bank receives or accumulates from the purchaser an amount in cash, principal and interest payments, and private mortgage insurance totaling 10% of the sales price, as measured in accordance with regulatory accounting principles.

(i) Accounting for OREO. Investment in OREO, and disposition of OREO, must be accounted for in accordance with regulatory accounting principles.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

3. Discussion of and Possible Vote to Take Action on the Adoption of Amendment to 7 TAC, §3.37 Concerning Calculation of Annual Assessment for Banks

PURPOSE: To correct a descriptive error, the bank assessment calculation table incorporated into §3.37(a) is being amended to replace the phrase "assessable assets" in Step 6 with "on-book assets." As amended, Step 6 will now correctly describe a bank that is entitled to an assessment discount. In addition, a cross-reference is added to §3.37(a) to explicitly incorporate the definitions in §3.36(b), including "assessable assets" and "on-book assets."

RECOMMENDED ACTION: No comments were received regarding the proposed amendment to 7 TAC §3.37. 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 §3.37 without changes to the proposal as previously published in the *Texas Register*.

Title 7. Banking and Securities Part 1. Finance Commission of Texas Chapter 3. State Bank Regulation Subchapter B. General 7 TAC §3.37

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts the amendment to §3.37, concerning the calculation of annual assessment for banks, without changes to the proposed text as published in the November 4, 2016 issue of the *Texas Register* (41 TexReg 8697). The amended rule will not be republished.

The amendment corrects an error in the text of the bank assessment calculation table incorporated into §3.37(a) and add a cross-reference to applicable definitions in §3.36(b).

Effective November 5, 2015, §3.37 was amended to adjust the manner in which assessments applicable to state banks are calculated, see the October 30, 2015, issue of the *Texas Register* (40 TexReg 7620). The annual assessment for a state bank is calculated as described in §3.37, based on the values in the incorporated bank assessment calculation table.

As reflected in the table, a state bank's assessment is calculated on the basis of its assessable assets using two factors: the base assessment amount and the marginal assessment rate applicable to the bank's assessable asset group, subject to a potential surcharge or discount based on the bank's size and condition. A bank is entitled to a discount if it has total assets of \$500 million or less and a CAMELS composite rating of 1 or 2. The discount reflects the reduced examination frequency applicable to a qualifying bank.

However, Step 6 of the bank assessment calculation table formerly described a bank entitled to the discount as one that "has assessable assets of \$500 million or less and a CAMELS composite rating of 1 or 2." The reference to "assessable assets." a term defined in §3.36(b)(1), was incorrect and, if applied literally, could deprive some eligible banks of the discount. The size limitation should refer to "on-book assets" as defined §3.36(b)(6), examination in because frequency is determined based on the total of on-book assets as so defined.

Accordingly, §3.37(a) now incorporates a cross-reference to defined terms in §3.36(b), and the bank assessment calculation table incorporated into §3.37(a) is amended to replace the term "assessable assets" in Step 6 with the correct term, "onbook assets."

The department received no comments regarding the proposed amendment.

The amendment is adopted pursuant to Finance Code, §31.003(a)(4) and §31.106, which authorize the commission to adopt rules necessary or reasonable to recover the cost of supervision and regulation by and collecting ratable imposing and equitable fees. As required by Finance Code §31.003(b), the commission considered the promote a stable banking need to environment, provide the public with convenient, safe, and competitive banking promote services. preserve and the competitive position of state banks with regard to national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development in this state.

§3.37. Calculation of Annual Assessment for Banks.

(a) Bank assessment calculation table. The annual assessment for a state bank is calculated as described in this section and paid as provided by §3.36 of this title (relating to Annual Assessments and Specialty Examination Fees), based on the values in the following table, as such values may be periodically adjusted in the manner provided by Subsection (b) of this section. Certain terms used in this section and in the following table are defined in §3.36(b). The unadjusted values in the following table are effective until September 1, 2017:

Figure: 7 TAC §3.37(a)

(b) Required adjustments for inflation. In this section, "GDPIPD" means the Gross Domestic Product Implicit Price Deflator, published quarterly by the Bureau of Economic Analysis, United States Department of Commerce. The "annual GDPIPD factor" is equal to the percentage change in the GDPIPD index values published for the first quarter of the current year compared to the first quarter of the previous year (the March-to-March period immediately preceding the calculation date), rounded to a hundredth of a percent (two decimal places).

(1) Beginning September 1, 2017, and each September 1 thereafter, the table in subsection (a) of this section, as most recently revised before such date pursuant to this subsection, is revised as follows:

(A) Each marginal assessment factor listed in Step 3 of the table is increased (or decreased) by an amount proportionate to the measure of inflation (or deflation) reflected in the annual GDIPD factor, rounded to six decimal places;

(B) the base assessment amount listed in Step 4 for assessable asset group 1 is increased (or decreased) by an amount proportionate to the measure of inflation (or deflation) reflected in the annual GDIPD factor, rounded to whole dollars; and

(C) each base assessment amount listed in Step 4 for assessable asset groups 2 through 14 is adjusted to an amount equal to the maximum annual assessment possible for the next lower assessable asset group (without surcharge), rounded to whole dollars. For example, the base assessment amount for assessable asset group 2 is equal to the annual assessment (without surcharge) calculated under assessable asset group 1 for a bank with exactly \$10 million in assessable assets.

(2) Not later than August 1 of each year, the department shall calculate and prepare a revised table reflecting the inflation-adjusted values to be applied effective the following September 1, and shall provide each state bank with notice of and access to the revised table. At least once every four years, the department shall propose amendments to this section for the purpose of substituting a current revised table in subsection (a) of this section, and for such other purposes as may be appropriate.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

ADOPTION OF AMENDMENT TO 7 TAC §3.37

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Figure: 7 TAC §3.37(a)

First determine the bank's assessable asset group, then: Steps Assessment Calculation:

Stong	Assessment Calculation:		Assessable Asset Group:							
Steps			1	2	3	4	5	6	7	
1.		assessable assets of at least (in sands)	\$0	\$10,000	\$25,000	\$40,000	\$70,000	\$100,000	\$250,000	
	But not greater than (in thousands):		\$10,000	\$25,000	\$40,000	\$70,000	\$100,000	\$250,000	\$1,000,000	
2.	Take the total assessable assets over (in thousands):		\$0	\$10,000	\$25,000	\$40,000	\$70,000	\$100,000	\$250,000	
3.	And multiply by the marginal assessment rate:		0.789600	0.448000	0.212800	0.208320	0.201600	0.123200	0.082880	
4.	Add this result to the base assessment amount :		\$2,789	\$10,685	\$17,405	\$20,597	\$26,847	\$32,895	\$51,375	
5.	5. Multiply the total by the factor corresponding to the bank's CAMELS composite rating (as defined in §3.36(b)):						5(b)):			
	a.	Rating of 3, 4 or 5:	2.0	2.0	2.0	2.0	2.0	2.0	2.0	
	b.	Rating of 1 or 2:	1.0	1.0	1.0	1.0	1.0	1.0	1.0	
6.	And multiply the total by 0.875 if bank has on-book assets of \$500 million or less and a CAMELS composite rating of 1 or 2.									
Store	Assessment Calculation:		Assessable Asset Group:							
Steps			8	9	10	11	12	13	14	
1.	For assessable assets of at least (in thousands):		\$1,000,000	\$5,000,000	\$10,000,000	\$20,000,000	\$40,000,000	\$60,000,000	\$80,000,000	
	But not greater than (in thousands):		\$5,000,000	\$10,000,000	\$20,000,000	\$40,000,000	\$60,000,000	\$80,000,000		
2.	Take the total assessable assets over (in thousands):		\$1,000,000	\$5,000,000	\$10,000,000	\$20,000,000	\$40,000,000	\$60,000,000	\$80,000,000	
3.	And multiply by the marginal assessment rate :		0.073920	0.067200	0.053933	0.032130	0.020655	0.013770	0.009180	
4.	Add this result to the base assessment amount of:		\$113,535	\$409,215	\$745,215	\$1,284,545	\$1,927,145	\$2,340,245	\$2,615,645	
-	And multiply the total by the factor corresponding to the bank's CAMELS composite rating:									
5.	And	multiply the total by the factor correspond	ing to the ban	A S CAMELS O	mposite rating.					
5.	And a.	Composite rating of 3, 4, or 5:	2.0	2.0	2.0	2.0	2.0	2.0	2.0	

4. Discussion of and Possible Vote to Take Action on the Adoption of Amendment to 7 TAC, §33.4 Concerning Payment Processors

PURPOSE: Amendment to §33.4 clarifies the exemption for payment processors that handle charitable donations. The amendment excludes from licensing payment processors that are functionally identical to processors already excluded by 7 TAC §33.4(d), but which do not qualify for exclusion under the rule as currently worded.

RECOMMENDED ACTION: No comments were received regarding the proposed amendment to 7 TAC, §33.4. 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, §33.4 without changes to the proposal as previously published in the *Texas Register*.

Title 7. Banking and Securities Part 2. Texas Department of Banking Chapter 33. Money Services Businesses 7 TAC §33.4

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts the amendment to §33.4, concerning payment processors, without changes to the proposed text as published in the November 4, 2016, issue of the *Texas Register* (41 TexReg 8700). The amended rule will not be republished.

The amended rule is proposed to clarify how money transmission licensure applies to certain payment processors.

Finance Code §151.003(10) authorizes the commission to adopt rules that exclude from licensing any person, transaction, or class of persons or transactions on a finding that licensing the person or transaction is not necessary to achieve the purposes of the Act. The purposes of the Act, as expressed in Finance Code §151.102, are to preserve and protect the safety and soundness of money services businesses, to protect the interests of purchasers of money services, and to protect against money laundering and similar financial crimes. The department found that regulation of certain types of payment processors is not necessary achieve these aims. The commission then adopted new rule 7 TAC §33.4 to exclude from licensure two types of payment processors. Section 33.4 essentially codified existing Texas law in order to provide clarity and guidance to money transmitters and payment processors.

The amendment excludes from licensing payment processors that are functionally identical to processors already excluded by 7 TAC §33.4(d), but which do not qualify for exclusion under the rule as currently worded. Specifically, subsection (d) excludes point of sale processors that accept funds for payment of goods and services on behalf of merchants. But when a payment processor accepts donations on behalf of charitable organizations, because no goods or services are provided to donors, the rule does not apply. However, when a person processes payments on behalf of a charitable organization, the same legal liabilities, obligations, and risks exist as when a person processes payments made to merchants for goods and services. Moreover, the same principles of agency law apply to both types of transactions with the same result. Accordingly, the amended rule allows exclusion of processors that meet the necessarv conditions when accepting payment charitable of donations to organizations.

The department received no comments regarding the proposed amendment.

The amendment is adopted pursuant to Finance Code §151.102, which authorizes the commission to adopt rules to administer and enforce Chapter 151, and under Finance Code §151.003(10) which authorizes the commission to adopt rules that exclude from licensing a person, transaction, or a class of persons or transactions.

§33.4. Payment Processors.

(a) Policy. The Texas Department of Banking (Department) is committed to carrying out its legislative mandate under Finance Code Chapter 151 with respect to money services businesses (MSBs) while minimizing the regulatory burden where possible. Specifically, the Legislature has charged the Department with the following threefold mandate: to preserve and protect the safety and soundness of MSBs; to protect the interests of purchasers of money services and the public; and to protect against drug trafficking, terrorist funding, and money laundering or related financial crimes. But when issuing a license is not required to achieve this mandate, the Legislature has also authorized the Finance Commission to adopt rules that exclude from licensure any person, transaction, or class of persons or transactions that might otherwise require a license under Chapter 151. Because the nature of the transactions involved presents low risk to purchasers of money services, low risk of money laundering or related financial crimes, and low risk to the safety and soundness of MSBs, the Department has found that requiring certain classes of payment processors to obtain money transmission licenses is not necessary to achieve the goals of its mandate under Chapter 151.

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

(1) "Payment processor" means a person employed, directly or indirectly, by one of the parties to a transaction to handle the funds involved in order to complete the transaction.

(2) "Consumer-facing entity" means a person who interacts with a consumer in order to sell or offer the person's goods or services, or to receive charitable donations.

(3) "Funds" means money or monetary value as defined by Finance Code §151.301(b)(3).

(c) Downstream Payment Processors. A payment processor that acts as an intermediary between a consumer-facing entity that has incurred an outstanding money transmission obligation to a consumer, and the consumer's designated recipient, does not need a license under Finance Code Chapter 151, provided that the consumer-facing entity:

(1) is properly licensed, excluded under Finance Code §151.003, or has been granted an exemption under Finance Code §151.302(c);

(2) provides a receipt to the consumer identifying the consumer-facing entity as the provider of money services in the transaction; and

(3) bears sole responsibility to satisfy the outstanding obligation to the consumer, including the obligation to make the consumer whole in connection with any failure to transmit the funds.

(d) Point of Sale Payment Processors. A payment processor that receives funds from a consumer on behalf of a consumer-facing entity [selling] that either sells goods or services other than money services or accepts charitable donations does not need a

ADOPTION OF AMENDMENT TO 7 TAC §33.4 Page 3 of 3

license under Chapter 151, provided that:

(1) the consumer-facing entity, upon receipt of funds by the payment processor, immediately either:

(A) provides the purchased goods and services; or

(B) credits the consumer for the full amount of the funds received by the payment processor, which credit is not revocable by the consumer-facing entity, and evidences this credit in writing; and

(2) <u>if the transaction involves goods</u> <u>or services</u>, the consumer-facing entity is obligated to provide the purchased goods and services regardless of whether the payment processor transmits the funds.

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