

**A.**

**Finance Commission**

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## FINANCE COMMISSION OF TEXAS

**MEETING DATE** .....October 21, 2016

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

**CONTACT INFORMATION**.....Phone: (512) 936-6222  
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**FUTURE MEETING DATES** .....December 16, 2016  
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, October 21, 2016

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

*Section A.3 will take up the following agenda items with NO DISCUSSION as notated in bold and italicized A1, A8, B2, C2*

*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 August 19, 2016 Finance Commission Meeting***

2. General Public Comment

3. Consent Agenda

4. Finance Commission Operations

5. Audit Committee Report

A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' August 31, 2016 Investment Officer Reports

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

B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Readoption of the Investment Policies for:

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

C. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2016 Fourth Quarter Financial Statements

1. Office of Consumer Credit Commissioner
2. Texas Department of Banking

### 3. Department of Savings and Mortgage Lending

6. Discussion of and Possible Vote to Accept the Report on the Financial Condition of the State Banking System (*Note: Report provided separately*)
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
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***
9. Discussion of Legislative Recommendations of the Office of Consumer Credit Commissioner, Texas Department of Banking, and the Department of Savings and Mortgage Lending
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
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
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

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

1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities
2. ***Discussion of and Possible Vote to Take Action on the Adoption of Amendments, New Rules, and Repeals in 7 TAC, Chapter 85, Subchapter A, Regarding Rules of Operation for Pawnshops***
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
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*

**C. TEXAS DEPARTMENT OF BANKING**

1. Industry Status and Departmental Operations: a) Items of Interest from the Commissioner's Office; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Special Audits Division Activities; e) Administrative and Fiscal Division Activities; f) Strategic Support Division Activities; g) Legal Division Activities; h) Legislative Activities; and i) General Items of Interest
2. ***Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §25.1 – 25.6 Concerning Prepaid Funeral Contract Forms***
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
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
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
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<sup>rd</sup> District Court, Travis County, Texas.

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

1. Industry Status and Departmental Operations - State Savings Bank Activity: a) Industry Status; b) State Savings Bank Charter and Application Activity; c) Other Items
2. Industry Status and Departmental Operations – Mortgage Lending Activity: a) Residential Mortgage Loan Originators; b) Mortgage Examination; c) Consumer Complaint; 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, 201<sup>st</sup> District Court, Travis County, Texas.

**NOTE: The Finance Commission may go into executive session (close its meeting to the public) on**

**Meeting Accessibility:** Under the Americans with Disabilities Act, the Finance Commission will

**MINUTES OF THE  
FINANCE COMMISSION MEETING  
Friday, August 19, 2016**

The Finance Commission of Texas convened at 10:20 a.m. on August 19, 2016 with the following members present:

**Finance Commission Members in Attendance:**

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

**Finance Commission Members Absent:**

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

| AGENDA ITEM   | ACTION  | LOCATION<br>ON AUDIO<br>FILE          |
|---|---|---------------------------------------|
| <b>A. FINANCE COMMISSION MATTERS</b>  |   |                                       |
| 1. Review and Approval of the Minutes of the June 10, 2016 Finance Commission Meeting           | <b>On Consent Agenda – Item A1</b><br>This item approved on the Consent Agenda.                         | n/a                                   |
| 2. Review and Approval of the Minutes of the June 10, 2016 Strategic Planning Committee Meeting | <b>On Consent Agenda – Item A2</b><br>This item approved on the Consent Agenda.                         | n/a                                   |
| 3. General Public Comment   | No Action Required.   | 00:40 start of discussion             |
| 4. Consent Agenda – Items A1-2, B2, D2-3  | Molly Curl made a motion to approve the Consent Agenda.<br>Hector Cerna seconded and the motion passed. | 2:33 start of discussion<br>2:51 vote |
| 5. Finance Commission Operations  | No Action Required.   | 4:06 start of discussion              |



| AGENDA ITEM  | ACTION   | LOCATION ON AUDIO FILE                |
|--|--|---------------------------------------|
| 6. Audit Committee Report  |  |                                       |
| A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Department of Savings and Mortgage Lending's Fiscal Year 2016 Annual Internal Audit Report as Prepared and Presented by Garza/Gonzalez and Associates | Coming upon recommendation from the Audit Committee, no second is required and the motion to Approve the Department of Savings and Mortgage Lending's Fiscal Year 2016 Annual Internal Audit Report as Prepared and Presented by Garza/Gonzalez and Associates passed. | 6:31 start of discussion<br>7:19 vote |
| B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' May 31, 2016 Investment Officer Reports   | Coming upon recommendation from the Audit Committee, no second is required and the motion to approve the Agencies' May 31, 2016 Investment Officer Reports passed.   | 7:28 start of discussion<br>7:34 vote |
| C. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2016 Third Quarter Financial Statements   | Coming upon recommendation from the Audit Committee, no second is required and the motion to approve the Agencies' 2016 Third Quarter Financial Statements passed.   | 7:43 start of discussion<br>7:52 vote |
| D. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' Fiscal Year 2017 Operating Budgets  | Coming upon recommendation from the Audit Committee, no second is required and the motion to approve the Agencies' Fiscal Year 2017 Operating Budgets passed.  | 8:05 start of discussion<br>8:13 vote |
| 7. Discussion of and Possible Vote to Take Action on the 2017 – 2021 Finance Commission Strategic Plan   | Hector Cerna made a motion to approve the 2017 – 2021 Finance Commission Strategic Plan. Bob Borochoff seconded and the motion passed.   | 8:21start of discussion<br>9:59 vote  |

| AGENDA ITEM  | ACTION   | LOCATION ON AUDIO FILE                  |
|--|--|---|
| 8. Discussion of and Possible Vote to Take Action on the Agency Priorities for Fiscal Year 2017 for the Commissioners of the Texas Department of Banking, Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner   | Lori McCool made a motion to approve the Agency Priorities for Fiscal Year 2017 for the Commissioners of the Texas Department of Banking, Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner. Phillip Holt seconded and the motion passed. | 11:31 start of discussion<br>13:21 vote |
| 9. Discussion of and Possible Vote to Take Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Duties and Compensation of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to the Duties and Compensation of Persons Holding the Position of Agency Commissioner Positions, and other Staff | Deferred to Executive Session – no vote taken.   | n/a                                     |
| 10. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to §551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property  | Deferred to Executive Session – no vote taken.   | n/a                                     |
| 11. Discussion and Consultation with Attorney and Possible Vote to Take Action Pursuant to §551.071, Texas Government Code, for the purpose of seeking the advice or attorney-client privileged communications from our attorneys, including matters of pending and contemplated litigation  | Deferred to Executive Session – no vote taken.   | n/a                                     |
| <b>B. TEXAS DEPARTMENT OF BANKING</b>  |  |   |
| 1. Industry Status and Departmental Operations: a) Items of Interest from the Commissioner's Office; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Special Audits Division Activities; e) Administrative and Fiscal Division Activities; f) Strategic Support Division Activities; g) Legal  | No Action Required.  | 14:06 start of discussion               |

| AGENDA ITEM  | ACTION   | LOCATION ON AUDIO FILE                  |
|--|--|---|
| Division Activities; h) Legislative Activities; and i) General Items of Interest   |  |   |
| 2. Discussion of and Possible Vote to Take Action on the Adoption of Amendment to 7 TAC §11.37 Concerning Complaint Notices  | <b>On Consent Agenda – Item B2</b><br>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 §25.1 – 25.6 Concerning Prepaid Funeral Contract Forms  | Molly Curl made a motion to approve the Proposal and Publication for Comment of Amendments to 7 TAC §25.1 – 25.6 Concerning Prepaid Funeral Contract Forms. Matt Moore seconded and the motion passed. | 31:03 start of discussion<br>35:04 vote |
| 4. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation<br><br><i>Antioch St. Johns Cemetery Co. v. The Texas Department of Banking Commissioner, Cause No. 03-15-00341-CV, In the Third Court of Appeals, Austin, Texas.</i><br><br><i>State of Texas v. Myrtlewood Memorial Services, Inc. d/b/a Harlingen-Combes Memorial Cemetery, Cause No.D-1-GN-16-000565, 353<sup>rd</sup> District Court, Travis County, Texas.</i> | No Action Required.  | n/a                                     |
| <b>C. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING</b>   |  |   |
| 1. Industry Status and Departmental Operations - State Savings Bank Activity: a) Industry Status; b) State Savings Bank Charter and Application Activity; c) Other Items   | No Action Required.  | 35:36 start of discussion               |
| 2. Industry Status and Departmental Operations – Mortgage Lending Activity: a) Residential Mortgage Loan Originators; b) Mortgage Examination; c) Consumer Complaint; d) Legal; and e) Other Items   | No Action Required.  | 39:55 start of discussion               |

| AGENDA ITEM  | ACTION  | LOCATION ON AUDIO FILE                          |
|--|---|---|
| 3. Fiscal/Operations Activity: a) Funding Status/Audits/Financial Reporting; b) Staffing; Other Items; and d) Legislative Activity   | No Action Required.   | 54:40 start of discussion                       |
| 4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §79.30 Concerning Appeals and Hearings related to Residential Mortgage Loan Servicers                         | Lori McCool made a motion to approve the Proposal and Publication for Comment of Amendments to 7 TAC §79.30 Concerning Appeals and Hearings related to Residential Mortgage Loan Servicers. Molly Curl seconded and the motion passed.                          | 55:20 start of discussion<br><br>1:11:39 vote   |
| 5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §80.302 Concerning Appeals and Hearings related to Residential Mortgage Loan Companies                        | Lori McCool made a motion to approve the Proposal and Publication for Comment of Amendments to 7 TAC §80.302 Concerning Appeals and Hearings related to Residential Mortgage Loan Companies. Phillip Holt seconded and the motion passed.                       | 1:12:09 start of discussion<br><br>1:12:25 vote |
| 6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §81.302 Concerning Appeals and Hearings related to Mortgage Bankers and Residential Mortgage Loan Originators | Hector Cerna made a motion to approve the Proposal and Publication for Comment of Amendments to 7 TAC §81.302 Concerning Appeals and Hearings related to Mortgage Bankers and Residential Mortgage Loan Originators. Will Lucas seconded and the motion passed. | 1:12:34 start of discussion<br><br>1:12:41 vote |

| AGENDA ITEM  | ACTION  | LOCATION ON AUDIO FILE   |
|--|---|--|
| <p>7. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation</p> <p><i>Catherine Sims vs. Texas Department of Savings and Mortgage Lending,</i><br/>Cause No. D-1-GN-16-001194, 201<sup>st</sup> District Court, Travis County, Texas</p>                  | No Action Required.   | n/a  |
| <b>D. OFFICE OF CONSUMER CREDIT COMMISSIONER</b>   |   |  |
| <p>1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities</p> | No Action Required.   | 1:13:05<br>start of discussion                                   |
| <p>2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments, New Rules, and Repeals in 7 TAC, Chapter 83, Subchapter A, Concerning Rules for Regulated Lenders</p>  | <p><b>On Consent Agenda – Item D2</b><br/>This item approved on the Consent Agenda.</p>   | n/a  |
| <p>3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments and a New Rule in 7 TAC, Chapter 87, Concerning Tax Refund Anticipation Loans, Resulting from Rule Review</p>   | <p><b>On Consent Agenda – Item D3</b><br/>This item approved on the Consent Agenda.</p>   | n/a  |
| <p>4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for comment of Amendments, New Rules, and Repeals in 7 TAC, Chapter 85, Subchapter A, Regarding Operations of Pawnshops</p>   | <p>Will Lucas made a motion to approve the Proposal and Publication for comment of Amendments, New Rules, and Repeals in 7 TAC, Chapter 85, Subchapter A, Regarding Operations of Pawnshops. Jay Shands seconded and the motion passed.</p> | <p>1:38:14<br/>start of discussion<br/><br/>1:43:25<br/>vote</p> |

| AGENDA ITEM  | ACTION              | LOCATION ON AUDIO FILE |
|--|---------------------|------------------------|
| <p>5. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation</p> <p><i>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</i></p> | No Action Required. | n/a                    |

Chairman Stacy G. London called for an Executive Session at 12:01 p.m. (1:43:59 on the audio file). The open meeting resumed at 12:34 p.m. (1:44:40 on the audio file).

There being no further business, Chairman Stacy G. London adjourned the meeting of the Finance Commission at 12:34 p.m. (1:44:56 on the audio file)

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Stacy G. London, Chairman  
Finance Commission of Texas

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Charles G. Cooper, Executive Director  
Finance Commission of Texas

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Anne Benites, Executive Assistant  
Finance Commission of Texas

Finance Commission of Texas

**Consent Agenda**

October 21, 2016

**A. Finance Commission Matters**

1. Review and Approval of the Minutes of the August 19, 2016, Finance Commission Meeting
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

**B. Office of Consumer Credit Commissioner**

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments, New Rules, and Repeals in 7 TAC, Chapter 85, Subchapter A, Regarding Rules of Operation for Pawnshops

**C. Texas Department of Banking**

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

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# Office of Consumer Credit Commissioner

## Agency Priorities – Year End Report

FY 2016

### 1. LEGISLATIVE

#### 1.1. Mandated Studies.

**1.1.1. Objective: Legislative Interim Studies.** The agency expects to participate in interim studies and provide resource information and research. Generally interim studies in each house encompass some area within the agency's jurisdiction or area of knowledge. During the legislative session, the chairs of the respective oversight committees indicated an interest in continuing to study property tax lending and credit access businesses during the interim.

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

**Status:** *The agency provided testimony, including written reports regarding agency updates, implementation of legislation, policy issues and litigation:*

- *House Investment & Financial Services (IFS) Committee:*
  - *The agency provided testimony regarding agency updates, policy issues and litigation at the March 29 committee hearing.*
  - *The committee was charged to examine the short-term lending industry in Texas. At the hearing held on September 14, 2016 (FY 2017, the OCCC provided testimony and a written report.*
- *Senate Business & Commerce (B&C) Committee:*
  - *Provided testimony & written report for hearing held on January 26, 2016 to study elder financial abuse and determine what steps the State of Texas should take to help protect older Texans from financial exploitation and examine and make recommendations for necessary changes regarding the collection process of delinquent ad valorem property taxes, including an inquiry into the role that tax lien transfers play in forestalling foreclosure.*

### 2. REGULATORY ACTIVITIES

#### 2.1. Regulated Entities.

**2.1.1. Objective:** Supervise and monitor the jurisdictionally appropriate industry segments for compliance with state and federal law. Investigate illegal activity. Initiate appropriate

regulatory enforcement to ensure compliance with federal and state guidelines to protect the rights of consumers.

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

**Status:**

Pawn:

*The pawn industry had a 99.79% acceptable level of compliance at the end of the year. Enforcement actions are taken against pawnshops and individual pawnshop employees. During FY 2016, the agency closed enforcement actions against 45 pawnshops and 10 pawnshop employees. This includes cases closed by formal order, informal resolution, or by dismissal.*

Regulated Loans:

*Acceptable level of compliance for regulated lenders was 97.87 % as of August 31, 2016. During FY 2016, the agency closed 89 enforcement actions against regulated lenders. This includes cases closed by formal order, informal resolution, or by dismissal. The 89 cases include 88 injunctive actions and one license revocation action.*

Property Tax Loans:

*The acceptable level of compliance was 68.00% for property tax lenders at the end of the fiscal year. This is the smallest licensee category by volume that the agency regulates. At the beginning of the fiscal year, some master licensee group examinations were conducted that resulted in an unacceptable level of compliance. During FY 2016, the agency closed 19 enforcement actions against property tax lenders. This includes cases closed by formal order, informal resolution, or by dismissal. The 19 cases include 16 injunctive actions and three administrative penalty actions.*

CAB:

*Credit access businesses had a 43.14% acceptable level of compliance at the end of the fiscal year. The agency continues to conduct enterprise level CAB examinations to the extent possible. Several enterprise level examinations completed during the fiscal year had ratings outside of the acceptable level of compliance and thus had an impact on the compliance percentage. During FY 2016, the agency closed 124 enforcement actions against credit access businesses. This includes cases closed by formal order, informal resolution, or by dismissal.*

Other enforcement actions:

*The agency closed one enforcement action against a registered creditor, one enforcement action against a debt management/debt settlement business, two enforcement actions against crafted precious metal dealers, and one enforcement action against a residential mortgage loan originator. The agency closed seven injunctive actions related to credit card surcharge violations*

- 2.1.2. Objective: MVSF.** Achieve acceptable level of compliance of 80% through examinations and industry education efforts. Complete 1,650 MVSF examinations. Monitor follow-up and restitution orders for licensees with outstanding examination issues.

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

**Status:** *Of the examinations conducted for the motor vehicle sales finance industry in FY16, the acceptable level of compliance is 75.47%. Examinations continued to be completed at increased rates, with 2,181 completed at the end of the fiscal year, which is 123.6 % of the goal for the year. When analyzing the last examination performance including prior to FY16) of the entire MVSF population, the industry maintains a satisfactory compliance rating of 93.64%. During FY 2016, the agency closed 160 enforcement actions concerning motor vehicle sales finance dealers. The 160 closed cases include three application denial actions, one assurance of voluntary compliance action, 18 injunctive actions, 129 administrative penalty actions, and nine license revocation or suspension actions.*

*In FY '16, \$6,632,927 in restitution has been returned to consumers as a result of MVSF examinations.*

- 2.1.3. Objective: MVSF Examination Procedure Review.** The motor vehicle sales finance examination procedures will be amended to enhance the scope and quality aspects of the examination. The enhancements will improve the efficiency of the examination teams, and streamline the process by identifying key issues to be included during the scope of the examination. The Examiner Manual will be updated to provide the necessary requirements to achieve the enhancements.

**Measure:** Completed review and update of Examiner Manual on amended examination procedures.

**Status:** *The review and amendment of the Motor Vehicle Sales Finance section of the Examiner Manual was completed in the fourth quarter of 2016.*

## 2.2. Licensing.

**2.2.1. Objective:** Process 95% of license applications within 90 days from received date to completion date. Ensure that all newly submitted and processed paper applications are optically imaged. Provide guidance and technical support to encourage 80% of all licensees to create an account on the online system by the end of the fiscal year. Ensure 100% of licensing personnel receive training in professional development or customer service.

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

**Status:** *Approximately 83% of incoming applications are received via ALECS. The only paper applications the department receives are some transfer applications and rarely new pawn shop applications. All documents for new applications are scanned or imaged into the system. In the 4th quarter of FY16, the department processed 90% of incoming applications in 90 days or less, a challenging task that required applicants to promptly respond. Due to this factor the department is taking a closer look at goals for FY 17 and evaluating the feasibility of that proportion. Additionally in Q4 almost 86% of all licenses were linked to ALECS. The department has begun monthly team-building meetings, where they also evaluate processes and brainstorm ideas as a group to improve functionality.*

## 3. POLICY AND RULE DEVELOPMENT

### 3.1. Agency Rules.

**3.1.1. Objective: Rule Review.** Complete rule reviews of 7 TAC Chapter 83, Subchapter B, Rules for Credit Access Businesses (originally adopted 2011) ; 7 TAC Chapter 85, Subchapter B, Rules for Crafted Precious Metal Dealers (originally adopted 2011); 7 TAC Chapter 87, Tax Refund Anticipation Loans (reviewed 2012); and 7 TAC Chapter 89, Property Tax Lenders (reviewed 2012).

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

**Status:** *The commission adopted the completed rule review of 7 TAC Chapter 83, Subchapter B, Rules for Credit Access Businesses (CAB) in October, with the publication of associated amendments being approved in two phases: set one in October 2015 and set two in December 2015. Both sets of CAB amendments were approved by the commission and became effective on January 7 and March 10, 2016, respectively. The commission adopted the completed rule review of 7 TAC Chapter 85, Subchapter B, Rules for Crafted Precious Metal Dealers (CPMD) in December 2015, with the publication of*

*associated amendments being approved at that time. The CPMD amendments were approved by the commission in February 2016 and became effective on March 10, 2016.*

*The commission adopted the completed rule review of Chapter 87, Tax Refund Anticipation Loans (RAL) in June 2016, with the publication of associated amendments being approved at that time. The RAL amendments were approved by the commission in August 2016 and became effective on September 8, 2016. The rule review for Chapter 89, Property Tax Lenders has been reassigned to FY 2017.*

*Although not mentioned in the Objective, the agency also completed the rule review of 7 TAC Chapter 90, Plain Language Contract Provisions, during this time period. The commission adopted the completed rule review of Chapter 90 in October 2015, with the adoption of associated amendments being approved at that time. The Chapter 90 amendments became effective on November 5, 2015. The Chapter 90 rule review was an extensive project, involving the detailed revision of numerous plain language contract forms used by creditors, as reflected in over 60 figures provided in the rules.*

*Additionally, the agency completed the rule reviews of: 7 TAC Chapter 84, Motor Vehicle Installment Sales (effective May 5, 2016); 7 TAC, Part 1, Chapter 1, Consumer Credit Regulation (effective June 30, 2016); and 7 TAC Chapter 82, Administration (effective June 30, 2016).*

- 3.1.2. Objective: Rule Development.** Work with interested stakeholders regarding development of updated disclosures for credit access businesses and other associated issues. Work with interested stakeholders from all stakeholder groups to develop more streamlined licensing and registration procedures. Draft rule amendments as appropriate.

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

**Status:** *As part of the credit access business (CAB) rule review completed in October 2015, the agency held a stakeholders meeting on November 18, 2015, and collected precomments from CAB stakeholders to develop updated disclosures, and to clarify reporting requirements and license transfers. The updated disclosures and other amendments were approved by the commission in February 2016 and became effective on March 10, 2016. As requested by stakeholders, CABs were permitted to use the previous disclosures through August 31, 2016, to exhaust existing supplies and implement the revised disclosures.*

*In addition to the CAB stakeholders meeting, the agency held meetings to engage stakeholders in the development of rule amendments in five other areas: contested case procedures (September 9, 2015), motor vehicle sales finance (February 3, 2016), regulated loans (May 20, 2016), tax refund anticipation loans or RAL (May 23, 2016),*

*and pawnshop transactions (July 28, 2016). Certain concepts provided by stakeholders were incorporated into the motor vehicle amendments approved by the commission in April 2016, the regulated lender amendments approved by the commission in August 2016, as well as the pawnshop amendments approved for publication by the commission in August 2016.*

*While the CAB, motor vehicle, and RAL stakeholder meetings and amendments were conducted according to scheduled rule reviews, the contested case procedure, regulated lender, and pawnshop amendments were developed to update licensing rules, to make changes in accordance with recent state and federal law, and to provide other technical corrections.*

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

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

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

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

**Status:** *With the recommendations from the Grant Advisory Committee, the Finance Commission selected eight recipients for the 2016-2017 grant cycle. Staff reported on fund activities, investment earnings, grant request submissions, grants awarded and grantee reporting program highlights to the Finance Commission, Audit Committee, and Grant Advisory Committee throughout the year.*

##### **4.2 Financial Literacy**

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

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

**Status:** *Sixteen presentations were conducted with a total of 246 individuals participating in financial literacy sessions for FY 2016. The agency successfully identified and targeted new populations in need of financial literacy, and began developing relationships with the community to provide financial education. To combat the rise of senior financial exploitation, the agency conducted a Preventing Financial Exploitation for Older Adults for senior centers throughout Texas. Efforts were also made to expand*

*services statewide. The agency has reached new geographic areas, and strives to reach every MSA in Texas.*

*The agency was not successful in reaching the performance goal of providing financial education to 325 Texas consumers. The financial education specialist left the agency mid-year and with the onboarding of the new financial education specialist in May 2016 outreach to conduct financial education presentations resumed, and positive progress was made. One hundred forty five Texas consumers, over 40% of the yearly goal, participated in financial education in Q4.*

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

**Measure:** Delivery of final report of first TFEE grant cycle (2014-2015) and reporting on efforts to use TFEE data to support and improve financial education.

**Status:** *As of December 31, 2015 the inaugural 2014-2015 grant-cycle was completed. For this past fiscal year the remainder of the \$250,000 in funding was provided to the eight grant recipients. More than 200,000 Texas consumers received financial education from the programs supported by TFEE. Program highlights were summarized in the 2014-2015 Grant Cycle Report. Based on report and audit findings, reporting requirements were modified for the 2016-2017 grant cycle.*

*Twenty-two organizations submitted applications requesting funds for the 2016-2017 grant cycle. The Grant Advisory Committee provided recommendations to the Finance Commission, and ultimately eight organizations were selected and awarded a total of \$249,000 in funds.*

### **4.3. Industry**

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

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

**Status:** *The agency continues to build relationships and to monitor emerging issues in the areas of regulation. The agency provided twenty-six compliance related training seminars to over 1,400 participants in the areas regulated and licensed by the OCC.*

*In addition, the Financial Literacy & Communication Specialist Education was hired in the last quarter and is developing a quarterly newsletter that will be discuss emerging issues*

*in agency's areas of regulation and communicate the impact to regulated and licensed entities.*

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

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

**Status:** *During FY16, the OCCC substantially expanded its efforts to receive customer feedback during the Strategic Planning process. The agency is planning to use its experience and results of that feedback effort to develop a consumer feedback module.*

## **5. AGENCY MANAGEMENT**

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

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

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

**Status:** *The agency attained 80%, 7 of the 9 key performance targets, this fiscal year. Achievement of the consumer education target was impacted by staff departure, but with the concerted effort of the new consumer education specialist, significant gains toward the goal were made in the fourth quarter. The percent of examinations in compliance fell short of the goal by 4.41%, primarily due to quantitative risk-based scheduling and the implementation of enterprise examinations in both the CAB and MVSF areas.*

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

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

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

**Status:** *Human Resources (HR) completed a salary review and worked with agency leadership to implement equity adjustments within the financial examiner series; these adjustments were provided in the Spring 2016.*



*The agency turnover for the fiscal year was 18.6%, representing sixteen (16) departing employees. Thirty-eight percent (38%) of the departures represent retirements and dismissals. The internal training program for the exam staff continues to be improved and supported the development and advancement of the examination staff which minimized institutional knowledge loss.*

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

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

**Status:** *At the close of the fiscal year, 40% of the administrative staff participated in various external training and development courses. The agency provided a variety of opportunities for specific skill, competency and communication development related to roles and responsibilities within the legal, examination, licensing and accounting departments; 100% of staff members participated in at least one training and development opportunity with at least 40% of the staff members participating in two or more opportunities.*

*For FY 2016, 100% of examiners (52) received continuing education training with an average of 57.36 training hours per examiner. Six examiners attended the NACCA Examiners' course during the first quarter; two additional senior examiners attended AARMR-sponsored training; and ten examiners attended additional external training, six of these ten attended the LBJ School of Public Affairs Governor's Center for Management Development.*

- 5.2.3. Objective:** Conduct review of Human Resources policies and update as appropriate. Develop and implement a supervisor manual.

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

**Status:** *HR conducted a review of the employee manual and workplace policies and procedures; the review identified opportunities for streamlining, refreshing, and updating content. Supervisory training is planned for FY 2017.*

- 5.2.4. Objective:** Develop and conduct comprehensive strategic process to include stakeholders.

**Measure:** Report on progress to the Finance Commission.

**Status:** *The agency invited interested stakeholders of all regulated areas to participate in a work session in preparation for the 2017-2021 Strategic Plan. The meeting was held*

*on March 9, 2016 and was an all-inclusive session for stakeholders to provide input and feedback relative to specific industries, interests, and business operations. During FY16, the OCCC began to hold regular stakeholder meetings in connection with most rule development projects to gain greater stakeholder input and participation.*

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

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

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

**Status:** *The agency monitors and timely reviews the financial status through monthly Operating Statements and Budget Analysis reports. These reports are also reviewed on a quarterly basis by the Finance Commission. Financial performance in the year was within the budgeted levels as established by the Finance Commission. The agency continues to fine tune its use of the internal accounting system to improve transparency and improve the granularity of data for reporting and decision making.*

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

- 5.4.1. Objective: Legacy Modernization.** Commence work on the Compliance IT project for ALECS, the OCCC's data management and regulatory information system. Improve business operations. Engage in conceptual design for the project which will modernize data management for the examination function. Complete contract negotiation and Statement of Work specifications with a qualified vendor. Begin data requirement gathering and development.

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

**Status:** *Work is well underway on this project, with milestones reported regularly to the Finance Commission. The first two deliverables have been successfully implemented; preliminary design work and Online Documentary Fee filing. There was a 3 week delay in the timeline projected for the rest of the deliverables. Complaint, Investigation and Online Annual Reporting are scheduled to be completed in late October.*

- 5.4.2 Objective: Increase Agency Security Posture.** Evaluate and test additional network security hardware/software to protect agency data assets. Locate or develop staff security training programs to enhance user awareness of their role in network/computer security.

**Measure:** Evaluation and testing of 2 hardware/software products with possible implementation; promote security awareness and initiate training program for at least 50% of staff.

**Status:** *The new ASA with Sourcefire was successfully installed, providing enhanced network security and additional insight into network traffic. All OCCC staff participated in a cybersecurity awareness training program. The OCCC also participated in a formal security assessment that will assist the agency with strengthening its security posture.*



Charles G. Cooper  
Commissioner

## **TEXAS DEPARTMENT OF BANKING**

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### **MEMORANDUM**

TO: The Finance Commission

FROM: Charles G. Cooper, Commissioner

DATE: September 30, 2016

RE: Department of Banking Priorities for Fiscal Year 2016 – With Year-End Accomplishments

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

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

Measure: To the extent legally permissible, respond accurately and timely to all requests for resource information. Maintain contact with legislative committee chairs and staff. Prepare interim charge reports if requested.

Status: *Throughout the year Finance Commission members were provided Legislative committee information, agency testimony and resource data for interim charge hearings of various committees.*

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

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

Status: *Notices of hearings and updates on the regulated industries and applicable federal laws have been provided to members at their regular meetings and through email correspondence.*

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

### **II.1 Objective: Meet key performance measures.**

Measure: Continue to meet or exceed the strategic planning goals for key performance measures. Quarterly, report results to the Finance Commission. Ensure that every problem institution has an effective administrative or enforcement action to address adverse examination findings.

Status: *All key performance measures were met in fiscal year 2016, except one. Though the agency met its key measure of performing bank examinations when due, the actual number of bank examinations performed of 107 was below the target number of 115, resulting in a variance. Due to mergers and acquisitions, a reduced number of bank examinations were required.*

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

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

Status:

- *Commissioner Cooper serves as Chairman of CSBS, and multiple staff members serve on CSBS committees.*
- *The agency is an active member of MTRA and the MMET.*
- *Deputy Newberg completed her presidency term with MTRA in October 2015.*
- *Deputy Newberg interviewed by the Financial Analysis Task Force regarding state MSB licensing.*
- *Director Purdom served as the Chairman of the CSBS Performance Standards Committee through May 2016 and will serve as the Immediate Past Chairman through May 2017.*
- *Deputy Commissioner Bacon co-chairs the Financial Services Sector Specific Agency task force under the Texas Office of Homeland Security.*
- *Director of IT Security Examinations Phillip Hinkle is one of six members of the Cybersecurity and Critical Infrastructure Work Group, which was created by the Federal Financial Institutions Examination Council, or FFIEC. The group works at a national level to address cyber threats to the banking system.*
- *Review Examiner Kevin Wu and Examiner Jay Voigt served as instructors for train-the-trainer sessions sponsored by CSBS for Examination Tool Suite (ETS) software. ETS is a new examination software program that enables an*

*improved format for recording and sharing examination findings more securely, effectively and efficiently.*

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

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

**Status:**

***Oil and Gas Risk Analysis:*** *Efforts continue to assess the risks associated with bank business lines directly and indirectly dependent upon the oil and gas economic sector. Information is collected quarterly from banks that are known to be actively involved in oil and gas lending or are located in areas that are heavily dependent on oil and gas activity. Staff continues to work closely with the FDIC and Federal Reserve Bank to perform follow-up reviews and visitations at banks with potentially higher risk profiles.*

***Cyber-Security Threats:*** *The Department continues to place a high importance on cyber threats and is proactive in identifying and addressing best practices the industry needs to take to monitor and manage cyber risks. Staff continues to work with the banking industry to enhance the policies, procedures and practices that institutions can use to counter the ever growing array of cyber threats. The Director of IT Security Examinations is one of six members of the Cybersecurity and Critical Infrastructure Work Group (CCIWG), which was created by the FFIEC. The CCIWG is working at the national level to address cyber threats to the banking system, from which Texas banks will benefit. Department staff also participated in the development of the Cybersecurity Assessment Tool (CAT), which was released by the FFIEC on June 30, 2015. This tool is designed to assist bank managers in evaluating their inherent risks to cyber threats and measuring their preparedness to handle such events. Though the use of this tool by bank managers is optional, Commissioner Cooper issued Industry Notice 2015-8 on September 15, 2015 alerting the industry about its usefulness and stating that measuring and preparing for cyber risks is not optional. The Department's IT Specialists started reviewing completed cybersecurity assessments at all IT exams beginning January 2016.*

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

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

Status:

- *Commissioner Cooper held three town hall meetings in June 2016 to give Texas bankers an open forum to discuss issues affecting community banks.*
- *MSB staff continues to participate in the MTRA Emerging Issues and Licensing Committees.*
- *The MSB industry was notified of a Departmental guidance concerning third-party compliance officers and sharing of examination reports with financial institutions.*
- *Emerging issues discussions have occurred at each Finance Commission meeting.*
- *Director Reese gave an update on perpetual care regulations to members of the Texas Cemetery Association at their annual conference in May 2016.*
- *Director Reese gave an update on preneed regulations to members of the Texas Funeral Director Association at their annual conference in June 2016.*

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

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

Status:

- *Issued three orders prohibiting former bank officers from engaging in any future banking activity.*
- *Issued twelve orders against nine money service businesses.*
- *Issued two orders against two prepaid funeral contract sellers, including one emergency cease and desist order.*
- *Issued one order against a private child support enforcement agency.*
- *Notified 21 MSB entities that may be engaged in money transmission without a license, and as a result:*
  - *One company responded as not doing business in Texas; certification letter was submitted.*
  - *One company closed its business.*
  - *Initial and follow-up correspondence sent to two companies was returned undeliverable; however, since customers were unable to utilize website for transactions and no complaints were received, files were closed.*
  - *Seven companies responded and were referred to the Legal Division for review; it was determined a license was not required.*
  - *Ten companies responded and provided documentation that is currently being reviewed by the Legal Division.*

- *Notified five PFC entities that may be engaged in prepaid funeral contract activity without a license, and as a result:*
  - *Four companies stopped selling and paid restitution.*
  - *One company stopped selling and restitution was funded by NOLHGA (the insurance guaranty fund).*

II.6 Objective: Continue to process consumer complaints/inquiries professionally, appropriately and timely.

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

Status:

- *Consumer assistance activity is reported at each Finance Commission meeting.*
- *Complaints are processed timely and accurately.*

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

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

Status:

- *The Department's Law and Guidance Manual for the web, which contains statutes, rules, regulatory guidance, supervisory memorandums, and legal opinions, is updated every calendar quarter. A desktop version of the Law and Guidance Manual is updated at the same time and allows all examiners access to the same information as the web version, without requiring an internet connection. Updates were completed as of March 31, 2016 and June 30, 2016.*
- *Reviewed and made substantive changes to eight commercial examination procedures: Planning and Control; Borrowings/Liquidity; Capital Accounts and Dividends; Collections, Consigned Items, Safekeeping & Safe Deposit; Deposits, Dormant Accounts, and Official Checks; Insurance and Risk Management; Retail Sale of Nondeposit Investment Products; and Other Supervisory Issues. Examination staff is notified of changes when they are completed.*
- *Reviewed and revised 12 trust examination procedures. Changes were primarily for clarification purposes; however substantive changes were made to Compliance, Trust Company Capital, and Trust Company Asset Quality procedures. Examination staff is notified of changes when they are completed.*
- *Added new IT Risk Examination procedures (InTREx), IT Profile, and Planning and Scoping documents. This is a new examination program which*



*was tested and finalized by fiscal year end and replaces the FDIC's IT Risk Management Program for examinations.*

- Reviewed and updated examination reference materials for commercial, trust, and IT procedures.*
- Issued new Examiner Bulletin XB 2016-01 regarding Assessing Credit Quality of Oil and Gas Production Loans and added a Cash Flow Worksheet for Exploration & Production Loans to Examiner Resources.*
- Updated Administrative Memorandum 2015 for all Bank & Trust Examination staff regarding Work Paper Organization, Retention, and Review.*
- Bank & Trust examination staff are notified when examination materials are updated or new materials are available.*
- Prepared and distributed the Supervisory Update News Summary each month to staff. A modified version is also posted on the external website in a timely manner.*
- Revisions were made to the MSB MT examination procedures, which included the addition of six procedures related to new affiliation notice requirements, computing average daily outstanding amount to include gift card breakage, the verification of payout locations by foreign correspondents, verifying authorized delegate website compliance, receipt disclosures, and one procedure regarding bi-weekly examination notice.*
- Revisions were made to the MSB CEX examination procedures, which included the addition of one procedure related to mail-order customer identification verification, and one procedure concerning mail-order current shipping.*
- Minor clarifications were made to the MSB Examination Request List.*
- Revisions to the PCC examination procedures were made to 26 procedures for clarification purposes.*
- Revisions to the trust-funded and insurance-funded PFC examination procedures were made to 19 procedures for clarification purposes.*
- All updates to Special Audits examination procedures are provided to staff upon completion.*

### **III. POLICY AND RULE DEVELOPMENT – *Internal and External Policies, Activities, and Rules***

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

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

Status:

- *Revised Supervisory Memorandums (SM)*
  - *SM 1003 – Examination Frequency for State-Chartered Banks (March)*
  - *SM 1004 – Examination Frequency for Trust Companies (September)*
  - *SM 1020 – Information Technology Examination Frequency and Ratings (March)*
  - *SM 1025 – Level II Full Scope Examinations (March)*
- *New Supervisory Memorandums (SM)*
  - *SM 1013 – Sharing Examination Reports with a Bank (February)*
  - *SM 1015 – Outsourcing of Compliance Functions (February)*
  - *SM 1016 – Providing Consumer Complaint Notices (May)*
  - *SM 1040 – Recommended File Documentation for Money Services Business License Holders that Conduct Business through Authorized Delegates, Foreign Agents and Counterparties, and Gateway Agents (October)*
  - *SM 1041 – Examination Policy for Domestic Money Services Businesses that Conduct Business from a Non-Traditional Office Location (November)*

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

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

Status:

- *Rule amendments and new rules were adopted to:*
  - *Establish procedures for banking development districts, as required by HB 1626;*
  - *Clarify regulatory requirements for payment processors under the Texas Money Services Act;*
  - *Set assessments and specialty examination fees for banks;*
  - *Make confidential the statement of condition and income (call report) of an exempt trust company, and require that such call reports be filed simultaneously with annual certification of exempt status;*
  - *Amend exemptions for family trust companies pursuant to SB 875;*
  - *Provide internal deadlines for the commissioner and department and for MSB license holders seeking change of control approval;*
  - *Provide training and education assistance to employees of the finance agencies;*
  - *Establish deadlines for processing registrations for check verification entities, private child support enforcement agencies, and cemetery brokers;*

- *Establish procedure for registrants to complain to banking commissioner if registration is not processed within prescribed time periods;*
- *Streamline procedures for short distance branch relocations;*
- *Repeal outdated provisions concerning trust company grandfathered loans and investments;*
- *Simplify requirements for posting complaint notices; and,*
- *Establish registration procedures for representative trust offices.*

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

Measure: Enhance outreach efforts by providing train-the-trainer financial literacy workshops to the banking industry and the public, in addition to webinars. Continue active participation in financial literacy groups and events.

Status:

*A webinar was hosted on August 18, 2016. The featured topic was Fraud Awareness for Money Services Businesses. The webinar was geared towards the money service business industry and provided information on possible fraud activity through currency transmission transactions. Speakers John Skoglund III with Western Union and Derek McMillian with MoneyGram shared best practices on how to identify, monitor, and address these issues. The webinar drew 240 participants.*

*A webinar was hosted on June 23, 2016. The featured topic was Expanding Children's Savings Account for College in Texas. Mr. Woody Widrow with RAISE Texas, Laura Rosen with Center for Public Policy Priorities, and Amanda Stephens with First Convenience and First National Bank were the guest speakers. The webinar drew 145 participants.*

*A webinar was hosted on December 10, 2015. The featured topic was Bankers and the Volunteer Income Tax Assistance (VITA) Program. Mr. Johnnie Bowers with the Internal Revenue Service was the guest speaker. The webinar drew 92 participants.*

*The Department hosted three financial education Train-the-Trainer sessions. The three workshops were held in October in Houston, November in San Antonio, and June in Dallas. The goal was to provide hands on training to financial institutions, teachers, government agencies, non-profit organizations and community leaders who are interested in delivering financial education to their communities. Ninety participants attended the three events.*

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

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

Measure: Actively recruit entry level positions at state universities and colleges by attending no less than six job fair events. Promptly post vacancies. Update personnel policy and procedures to comply with changes due to legislation and judicial decisions.

Status:

- *Fifteen jobs were posted from September 1, 2015 through August 31, 2016.*
- *Six Bank and Trust Assistant Financial Examiners and four Assistant Trust Examiners were hired.*
- *One Senior Examiner for Bank and Trust was hired through the senior examiner posting.*
- *One Financial Examiner VII - CPC (Central Point of Contact) position was filled by an internal applicant.*
- *One Administrative Assistant position was filled in the Dallas Regional Office.*
- *Bank and Trust Executive area filled a Financial Analyst position with an internal applicant.*
- *Special Audits filled three PFC/PCC Examiner positions.*
- *The Division of Strategic Support filled one Program Specialist position with an internal applicant.*
- *Agency staff participated in 15 recruiting fairs and numerous student outreach events.*
- *The agency revised four personnel manual sections and three administrative memorandums.*
- *Two summer interns were hired from the Texas A&M University Banking Program and the Smith-Hutson Endowed Chair of Banking Program at Sam Houston State University. One intern has accepted a job offer upon their graduation.*

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

Measure: Continue to improve examination staff retention by promoting career opportunities and addressing major issues that contribute to non-retirement resignations, with a goal to have non-retirement turnover not exceed 8% for fiscal year 2016. Given the significant percentage of Department employees that are retirement-eligible, the agency should be proactive with succession planning development. Also, maintaining a competitive examiner salary program of at least 90% of comparable pay by the FDIC is important in achieving success.

Status:

- *For fiscal year 2016 agency turnover was 10.74%.*
- *Agency turnover excluding Retirements was 9.13%.*
- *Agency turnover excluding Retirements and Interns was 8.06%.*
- *Two of the employees hired and separated from service this fiscal year were interns meant to have time-limited employment.*

- *Financial Examiner turnover rate for fiscal year 2016 was 11.11%.*
- *Financial Examiner turnover excluding Retirements was 10.32%.*
- *The agency hired 24 new employees and lost 20.*

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

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

Status:

- *Corporate's CATS system has been enhanced with quality assurance reporting and an automated report generation and delivery module.*
- *67 laptops, 33 desktop printers and 2 tablets have been upgraded.*
- *Larger and faster scanners have been purchased for field examiners.*
- *17 portable USB monitors have been purchased for field examiners. The portable monitors will allow examiners to use more online services reducing/eliminating printing of documents.*
- *Optical character recognition (OCR) has been added to the document imaging system. The new feature will allow users to conduct word searches in the document and index.*
- *The Department is in the middle of a re-design of the data exchange program (DEX). The re-design will give users added features including a folder structure view.*

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

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

Status:

- *Replaced the Department's old and outdated spam firewall.*
- *Cyber security training continues as all Department employees were required to take online monthly security awareness training.*
- *A new network backup system has been installed. The new system is faster and allows for off-site backups through our wide area network (WAN), eliminating the use of a third party courier.*

- IV.5 Objective: Ensure financial examiners receive adequate and proper training to perform their duties and progress within the financial examiner series to become commissioned. Provide advanced training for senior supervisory staff to enhance their career development.

Measure: Provide core required training courses to financial examiners in the FE I – FE III series so they can progress in the financial examiner series. Prepare examiners adequately to pass the commissioning test. Continue to develop specialist positions and provide opportunities for senior staff to select appropriate courses to aid in this development. Promote meaningful leadership and management courses to strengthen management succession opportunities.

Status:

- *For Fiscal Year 2016, two examiners were commissioned.*
- *An Examiners' Conference was held in Fort Worth in March. This conference provided an opportunity to provide training to all staff members.*
- *Bank Secrecy Act training was held in February for all examination staff and other select staff members.*

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

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

Status:

- *Monthly financial statements are provided to all divisions for review and to the Finance Commission each quarter.*
- *For fiscal year 2016, revenues were 101.8% of budget and expenditures were 94.8% of budget.*
- *Cash reserves are within policy guidelines.*

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

Measure: Report on improvements identified and implemented.

Status: *Divisional reviews during the year required minimal tweaking to internal controls and processes of the agency.*

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

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

Status: *Broker and architect selected and contracts executed. Architect has completed "Space Needs Assessment". Agency heads and staff have toured multiple properties and met with interested sellers. Test fits and due diligence has been performed on multiple sites.*

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

Measure: Ensure yearly update and exercise of the Plan.

Status: *An exercise related to the Plan was conducted in January 2016 with good results. The yearly Plan update and submission to the State Office of Risk Management was completed in March 2016.*

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





# DEPARTMENT of SAVINGS & MORTGAGE LENDING

Caroline C. Jones, Commissioner

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## Memorandum

**To:** The Finance Commission

**From:** Caroline C. Jones

**Date:** September 1, 2016

**Re:** Agency Priorities Year End Report for Fiscal Year 2016

### I. Legislative Items

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

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

**Status:** *The Department monitored legislation and regulations at the federal level and as appropriate reported this information to the Finance Commission as well as to regulated industries.*

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

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

**Status:** *Throughout the year, the Department provided updates to the Finance Commission relating to interim charges in which it was asked to provide testimony.*

### II. Regulatory Items

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



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

**Status:** *The Department actively engaged in determining and taking appropriate supervisory action during on-site examinations and off-site reviews. Off-site monitoring continued to take place with communication to state savings banks as deemed necessary and appropriate.*

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

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

**Status:** *As of August 31, 2016, 86% of the open consumer complaints were less than 90 days old with 72% of them being aged less than 60 days, and none being aged over 180 days.*

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

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

**Status:** *During the first quarter of FY16, the Home Equity Lending Working Group conferred on the implications of the home equity case, Wood v. HSBC Bank, pending before the Texas Supreme Court to determine if an amicus brief should be filed. Ultimately, the Working Group determined not to pursue filing a brief. In February 2016, the Home Equity Lending Working Group developed a timeline for proposed home equity interpretation revisions to be considered in 2016. The working group conducted rule review of the home equity rules, which were readopted at the June meeting. Additionally, amendments to the home equity rules were presented, for publication, to the Finance Commission at the June meeting.*

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

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

**Status:** *The Department has two staff members currently serving on national regulator trade association boards (Chair of American Council of State Savings Supervisors and President of American Association of Residential Mortgage Regulators). Serving on these boards provides the Department with a voice at the national level. Additionally, several staff*

*members serve on CSBS committees and working groups. The Department maintains regular contact with state level trade associations TBA, IBAT, TMBA, and ATMPros.*

**II.5 Objective:** Continue to cooperate and build relationships with the CFPB on examinations, supervision, and consumer complaint resolution issues. Monitor CFPB rule writing activity and interpretations of existing statutes such as RESPA, TILA, and SAFE Act.

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

***Status:** During the year, the Department kept open communications with the CFPB particularly in relation to upcoming multistate origination/servicing examinations and enforcement actions. The Department worked in conjunction with the Multi-State Mortgage Committee. The Department and CFPB established quarterly calls to discuss regulatory issues of joint interest. Such calls are scheduled to begin FY17.*

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

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

***Status:** The Department issued formal and informal enforcement actions as appropriate and had post-examination communication as deemed necessary. In FY2016, the Department conducted 488 entity examinations covering 5,511 individual licensees.*

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

**III.1 Objective:** Conduct rule review of all rules related to the savings and loan and state savings banks regulations and mortgage lending. Propose necessary amendments to the rules as necessary.

**Measure:** Have final action taken, either re-adoption or repeal, on the rule reviews and proposal of any amendments needed to these rules.

***Status:** During FY16, the Department completed the rule reviews. Amendments to rules were brought before the Finance Commission for proposal and final action.*

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

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

**Measure:** Provide regular updates to the Finance Commission regarding activities conducted in these areas.

***Status:** During FY16, the Department participated in 16 speaking engagements providing information related to frequently cited exam violation, regulatory hot topics, and Department updates. Additionally during the fiscal year, the Department held its eighth Annual Thrift Industry Day in September 2015, and its third Mortgage Industry Seminar in November 2015.*

## **V. Agency Management**

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

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

***Status:** During FY2016, there were thirteen separations. The Department has filled the majority of these positions and is taking steps to fill the vacant positions.*

*Significant efforts are made to provide training and cross-training for job skills and personal development and enrichment. Thrift staff held in-house training and sent staff to trainings presented by FFIEC, FDIC, CSBS, and IBAT. Mortgage staff held in-house training and sent staff to trainings presented by AARMR and CSBS. Additional trainings for Department staff were provided as appropriate. The Department's structure and business needs are monitored on an ongoing basis in an effort to anticipate needed skills and qualifications and to be prepared for succession planning upon retirements.*

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

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

***Status:** The Department has four key output performance measures, two of which are within the Department's control. The performance is measured and reported quarterly to the Finance Commission. For FY16, the Department met or exceeded three of the four output measures.*

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

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

***Status:** The Department's Annual Internal Audit had three recommendations to the audited area. At the end of the fiscal year the recommendations were in different stages of implementation and will be completed during FY17.*

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

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

***Status:** Reports were submitted quarterly to the Finance Commission as required, with detailed explanations of variance and cash reserves. Internally, the budget is monitored and analyzed on an ongoing basis.*

**V.5 Objective:** Ensure hardware and software are kept current to maintain effectiveness, and quality of work product of the Department.

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

***Status:** The Department strives to keep its hardware and software up-to-date. During FY16 the Department replaced the laptops of all thrift examiners'. Additionally, during the fiscal year the Department entered into a contract with Vintage IT Services to provide network managed services and system support.*

**A. Finance Commission Matters**

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

**PURPOSE:** The main purpose of the amendments is to implement changes resulting from the commissions' review of this chapter under Texas Government Code, §2001.039. The amendments relate to consumer disclosures, the types of lenders authorized to make home equity loans, and technical corrections.

**RECOMMENDED ACTION:** The agencies request that the Finance Commission approve the amendments to 7 TAC, Chapter 153 as previously published in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we approve the amendments to 7 TAC, Chapter 153.

*Title 7. Banking and Securities*  
*Part 8. Joint Financial Regulatory Agencies*  
*Chapter 153. Home Equity Lending*

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") adopt amendments to the following home equity lending interpretations: §153.5, concerning Three percent fee limitation, §153.8, concerning Security of the Equity Loan, §153.13, concerning Preclosing Disclosures, §153.14, concerning One Year Prohibition, and §153.17, concerning Authorized Lenders.

The commissions adopt the amendments without changes to the proposed text as published in the July 22, 2016, issue of the *Texas Register* (41 TexReg 5309).

The commissions received no written comments on the proposal.

The amendments apply the administrative interpretation of the home equity lending provisions of Article XVI, Section 50 of the Texas Constitution ("Section 50") allowed by Section 50(u) and Texas Finance Code, §11.308 and §15.413.

In general, the purpose of the amendments to Chapter 153 is to implement changes resulting from the commissions' review of this chapter under Texas Government Code, §2001.039. The notice of intention to review 7 TAC, Chapter 153 was published in the *Texas Register* on February 26, 2016 (41 TexReg 1503). The Texas Department of Banking, the Texas Department of Savings and Mortgage Lending, the Office of Consumer Credit Commissioner, and the Texas Credit Union Department ("agencies") received one comment on the notice of intention to

review. The comment was submitted by Black, Mann & Graham, L.L.P.

The agencies prepared an initial draft of amendments with technical corrections and updates to Chapter 153. The agencies distributed the initial draft to home equity stakeholders for precomments, in order to prepare an informed and well-balanced proposal for the commissions. The agencies received written precomments from several stakeholders. The agencies incorporated suggestions offered by stakeholders into the amendments. The agencies believe that this early participation of stakeholders has greatly benefited the resulting adoption.

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

The purpose of the amendments to §153.5 is to use terminology that is consistent with other interpretations. In paragraphs (3)(B) and (7), the amendments add "equity" before "loan" to ensure that the provisions use the term "equity loan," which is defined in §153.1(7).

The purpose of the amendment to §153.8(5) is to make a technical correction in a citation to Section 50(a)(6)(H). In the comment on the notice of intention to review, the commenter notes that this section currently contains an incorrect reference to "Section 50(a)(H)." In response to this comment, the amendment corrects the provision to cite Section 50(a)(6)(H).

The purpose of the adopted amendments to §153.13 is to specify how lenders can

comply with the preclosing disclosure requirement in Section 50(a)(6)(M)(ii), and to include updated citations to federal rules. Under Section 50(a)(6)(M)(ii), a home equity loan may not be closed before "one business day after the date that the owner of the homestead receives . . . a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing." Previously, §153.13(3) explained that lenders could comply with this requirement by providing a properly completed HUD-1 form from the U.S. Department of Housing and Urban Development. The Consumer Financial Protection Bureau (CFPB) recently adopted a closing disclosure that integrates and replaces the HUD-1 form. The CFPB's rules containing the requirements for the integrated closing disclosure are located at Regulation Z, 12 C.F.R. §1026.19(f) and §1026.38. The requirement to provide the closing disclosure went into effect on October 3, 2015. The requirement generally applies to closed-end residential mortgage loans for which the lender or servicer received a loan application on or after that date. For loans where the application was received before October 3, 2015, the HUD-1 form (rather than the CFPB closing disclosure) was the appropriate form for lenders to use. The closing disclosure requirement does not apply to home equity lines of credit, which require separate account-opening disclosures under a different section of Regulation Z, 12 C.F.R. §1026.6(a).

In the comment on the notice of intention to review, the commenter recommends replacing the reference to the HUD-1 form in §153.13(3) with a reference to the CFPB's closing disclosure. Based on this recommendation and the federal rules discussed above, the adopted amendments to

§153.13(3) delete the reference to the HUD-1 form, and add new references to the disclosures currently required under Regulation Z: the closing disclosure (for closed-end equity loans) and the account-opening disclosures (for home equity lines of credit). When these disclosures are properly completed, they provide borrowers with a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing, in accordance with Section 50(a)(6)(M)(ii).

The purpose of the amendment to §153.14(2)(A) is to update a citation to federal law. Previously, this provision cited the Soldiers' and Sailors' Civil Relief Act. In 2003, the Servicemembers Civil Relief Act replaced the former Soldiers' and Sailors' Civil Relief Act. The amendment to §153.14(2)(A) replaces a citation to the previous law with a citation to the current law.

The purpose of the amendments to §153.17 is to specify who is authorized to make a home equity loan, in light of recent changes in federal policy and amendments to the licensing provisions of Texas Finance Code, Chapters 156 and 342. Section 50(a)(6)(P) lists the types of lenders that are authorized to make home equity loans, including "a person approved as a mortgagee by the United States government to make federally insured loans," "a person licensed to make regulated loans, as provided by statute of this state," and "a person regulated by this state as a mortgage broker."

In §153.17(2), an adopted amendment removes a reference to "Approved correspondents" and replaces it with "Loan correspondents." In 2010, the Department of Housing and Urban Development ended its

program of approving loan correspondents, as described in mortgagee letter 2010-20. As amended by the adoption, §153.17(2) explains that loan correspondents to an approved mortgagee are not authorized lenders unless they qualify under another provision of Section 50(a)(6)(P). In addition, in the comment on the notice of intention to review, the commenter recommends correcting a reference in §153.17(2) to "another section of (a)(6)(P)." In response to this recommendation, an adopted amendment replaces this phrase with "another provision of Section 50(a)(6)(P)."

Adopted new §153.17(3) explains that a person who is licensed under Texas Finance Code, Chapter 156 is a person regulated by this state as a mortgage broker for purposes of Section 50(a)(6)(P)(vi). Until 2011, Chapter 156 of the Texas Finance Code described the licensing requirements for mortgage brokers. In 2011, the chapter was amended to replace the term "mortgage broker" with the terms "residential mortgage loan company" and "residential mortgage loan originator." In 2011, the Texas Department of Savings and Mortgage Lending published a "Home Equity Terminology Advisory Bulletin," explaining that a person licensed under Chapter 156 is a mortgage broker for purposes of the constitution. In the comment on the notice of intention to review, the commenter recommends an amendment to §153.17 describing this interpretation. In response to this comment, adopted new §153.17(3) explains that a person licensed under Chapter 156 is a mortgage broker for purposes of the constitution.

Adopted new §153.17(4) replaces former paragraphs (3) and (4), and explains that a Chapter 342 licensee is a regulated lender for purposes of the constitution.

Former §153.17(3) explained that a nondepository lender must hold a license under Chapter 342 to make, transact, or negotiate a secondary mortgage loan. Former §153.17(4) explained that if a person does not meet the definition of Section 50(a)(6)(P)(i), (ii), (iv), (v), or (vi), the person must obtain a Chapter 342 license to be authorized to make home equity loans. In 2007, Texas Finance Code, §342.051 was amended to include an exemption for a person licensed under Chapter 156. In a precomment, one stakeholder recommends deleting former paragraph (3), because the paragraph does not acknowledge the exemption for Chapter 156 licensees, and because current paragraph (1) already explains that lenders must comply with statutory licensing requirements. In response to this precomment, the adoption replaces paragraphs (3) and (4) with a new paragraph (4). The new paragraph explains that a Chapter 342 licensee is a regulated lender for purposes of the constitution, and that if a person is not described by Section 50(a)(6)(P)(i), (ii), (iv), (v), or (vi), the person must obtain a Chapter 342 license to be authorized to make home equity loans.

The amendments are adopted under Article XVI, Section 50(u) of the Texas Constitution and Texas Finance Code, §11.308 and §15.413, which authorize the commissions to adopt interpretations of Article XVI, Section 50(a)(5) - (7), (e) - (p), (t), and (u) of the Texas Constitution. The constitutional provisions affected by the adopted amendments are contained in Article XVI, Section 50 of the Texas Constitution.



*§153.5. Three percent fee limitation: Section 50(a)(6)(E).*

An equity loan must not require the owner or the owner's spouse to pay, in addition to any interest, fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, three percent of the original principal amount of the extension of credit.

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

(3) Charges that are Interest. Charges an owner or an owner's spouse is required to pay that constitute interest under §153.1(11) of this title (relating to Definitions) are not fees subject to the three percent limitation.

(A) (No change.)

(B) Legitimate discount points are interest and are not subject to the three percent limitation. Discount points are legitimate if the discount points truly correspond to a reduced interest rate and are not necessary to originate, evaluate, maintain, record, insure, or service the equity loan. A lender may rely on an established system of verifiable procedures to evidence that the discount points it offers are legitimate. This system may include documentation of options that the owner is offered in the course of negotiation, including a contract rate without discount points and a lower contract rate based on discount points.

(4) - (6) (No change.)

(7) Charges Paid to Third Parties. Charges an owner or an owner's spouse is required to pay to third parties for separate and additional consideration for activities

relating to originating an equity [a] loan are fees subject to the three percent limitation. Charges those third parties absorb, and do not charge an owner or an owner's spouse that the owner or owner's spouse might otherwise be required to pay are unrestricted and not fees subject to the three percent limitation. Examples of these charges include attorneys' fees for document preparation and mortgage brokers' fees to the extent authorized by applicable law.

(8) - (16) (No change.)

*§153.8. Security of the Equity Loan: Section 50(a)(6)(H).*

An equity loan must not be secured by any additional real or personal property other than the homestead. The definition of "homestead" is located at Section 51 of Article XVI, Texas Constitution, and Chapter 41 of the Texas Property Code.

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

(5) Any equity loan on an urban homestead that is secured by more than ten acres is secured by additional real property in violation of Section 50(a)(6)(H) [~~50(a)(H)~~].

*§153.13. Preclosing Disclosures: Section 50(a)(6)(M)(ii).*

An equity loan may not be closed before one business day after the date that the owner of the homestead receives a copy of the loan application, if not previously provided, and a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing. If a bona fide emergency or another good cause exists and the lender obtains the written consent of the owner, the lender may

provide the preclosing disclosure to the owner or the lender may modify the previously provided preclosing disclosure on the date of closing.

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

(3) The lender must deliver to the owner a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing.

(A) For a closed-end equity loan, the lender may satisfy this requirement by delivering a properly completed closing disclosure under Regulation Z, 12 C.F.R. §1026.19(f) and §1026.38.

(B) For a home equity line of credit, the lender may satisfy this requirement by delivering properly completed account-opening disclosures under Regulation Z, 12 C.F.R. §1026.6(a).

~~[(3) A lender may satisfy the disclosure requirement of providing a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing by delivery to the borrower of a properly completed Department of Housing and Urban Development (HUD) disclosure Form HUD-1 or HUD-1A.]~~

(4) - (7) (No change.)

*§153.14. One Year Prohibition: Section 50(a)(6)(M)(iii).*

An equity loan may not be closed before the first anniversary of the closing date of any other equity loan secured by the same homestead property.

(1) (No change.)

(2) Section 50(a)(6)(M)(iii) does not prohibit modification of an equity loan before one year has elapsed since the loan's closing date. A modification of a home equity loan occurs when one or more terms of an existing equity loan is modified, but the note is not satisfied and replaced. A home equity loan and a subsequent modification will be considered a single transaction. The home equity requirements of Section 50(a)(6) will be applied to the original loan and the subsequent modification as a single transaction.

(A) A modification of an equity loan must be agreed to in writing by the borrower and lender, unless otherwise required by law. An example of a modification that is not required to be in writing is the modification required under the Servicemembers Civil Relief Act, 50 U.S.C. app. §§501-597b ~~[Soldiers' and Sailors' Civil Relief Act]~~.

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

*§153.17. Authorized Lenders: Section 50(a)(6)(P).*

An equity loan must be made by one of the following that has not been found by a federal regulatory agency to have engaged in the practice of refusing to make loans because the applicants for the loans reside or the property proposed to secure the loans is located in a certain area: a bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States; a federally chartered lending instrumentality or a person approved as a mortgagee by the United States government to make federally insured loans; a person licensed to make regulated loans, as provided by statute of this state; a person who sold the homestead property to

the current owner and who provided all or part of the financing for the purchase; a person who is related to the homestead owner within the second degree of affinity and consanguinity; or a person regulated by this state as a mortgage broker.

(1) An authorized lender under Texas Finance Code, Chapter 341 [~~], Texas Finance Code,~~] must meet both constitutional and statutory qualifications to make an equity loan.

(2) A HUD-approved mortgagee is a person approved as a mortgagee by the United States government to make federally insured loans for purposes of Section 50(a)(6)(P)(ii). Loan {Approved} correspondents to a HUD-approved mortgagee are not authorized lenders of equity loans unless qualifying under another provision of Section 50(a)(6)(P) [~~section of (a)(6)(P).~~]

(3)A person who is licensed under Texas Finance Code, Chapter 156 is a person regulated by this state as a mortgage broker for purposes of Section 50(a)(6)(P)(vi).

(4)A person who is licensed under Texas Finance Code, Chapter 342 is a person licensed to make regulated loans for purposes of Section 50(a)(6)(P)(iii). If a person is not described by Section 50(a)(6)(P)(i), (ii), (iv), (v), or (vi), then the person must obtain a license under Texas Finance Code, Chapter 342 in order to be authorized to make an equity loan under Section 50(a)(6)(P)(iii).

~~{(3) A non-depository lender or broker that makes, negotiates, arranges, or transacts a secondary mortgage loan that is governed by Chapter 342, Texas Finance~~

~~Code, must comply with the licensing provisions of Chapter 342, Texas Finance Code.]~~

~~{(4) A lender who does not meet the definition of Section 50(a)(6)(P)(i), (ii), (iv), (v), or (vi), must obtain a regulated loan license under Chapter 342 of the Texas Finance Code to meet the provisions of subsection (iii).}~~

### **Certification**

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

Issued in Austin, Texas on October 21, 2016.

Leslie Pettijohn  
Consumer Credit Commissioner  
Joint Financial Regulatory Agencies

## **Office of Consumer Credit Commissioner**

### **Legislative Issues for 2017**

#### **Credit card surcharges:**

Potential legislation would transfer enforcement authority for the credit card surcharge prohibition in Section 339.001 of the Texas Finance Code from the OCCC to the Office of the Attorney General. This would ensure consistent enforcement with the debit card surcharge prohibition in Section 604A.002 of the Texas Business & Commerce Code. In SB 641 (2015), the Legislature transferred enforcement authority for the debit card surcharge prohibition from the Department of Banking to the Office of the Attorney General.

## **Texas Department of Banking Issues for Legislative Consideration – 2017 Session**

### **Banks and Trust Companies**

- Clarify notification requirements for change of control and require the Department to notify applicant(s) of the date accepted for filing
- Establish procedures for termination of safe deposit contracts
- Eliminate notification requirement for acquisition of bank holding companies that only own a state savings bank
- Conform deposit requirements of state branches and agencies of foreign banks to FDIC insurance limit
- Specify permissible activities of foreign bank representative office
- Clarify authority to regulate third-party service providers of banks and trust companies
- Provide that persons subject to prohibition orders may not serve as a director, officer or employee in state bank holding companies
- Prohibit felons from serving as an officer of a state bank or trust company
- Clarify requirements for issuance of cease and desist orders to include reasonable probability
- Provide Commissioner discretion for termination of supervision order
- Correct statutory cross-reference regarding admissible evidence in prohibition hearings concerning authorized activities

## **Money Service Businesses**

- Clarify exclusion of armored car companies
- Exclude state trust companies from money transmission licensing requirements
- Streamline discretionary exemption Commissioner may grant to companies engaging in incidental money transmission
- Amend net worth requirements for money transmission (with phase-in period):
  - Clarify that internet businesses are subject to same requirement as entities conducting transactions at 5 or more locations;
  - require 50% of net worth of all MT businesses to be held in tangible assets
- Allow for increase in security requirement for businesses providing accelerated loan repayment services with higher risk factors (with phase-in period)
- Clarify that restitution may be required for harmed customers
- Provide discretion for hearing officer penalty recommendation
- Establish process for licensed operators to sponsor start up entities seeking to engage in money transmission

## **Perpetual Care Cemeteries**

- Amend qualifications to require ownership of cemetery property for certificate of authority (with phase-in period)
- Simplify requirements for entities to combine their trust accounts
- Allow entities with small funds to apply for temporary placement in separate interest bearing account
- Provide discretion for hearing officer penalty recommendation



# DEPARTMENT of SAVINGS & MORTGAGE LENDING

Caroline C. Jones, Commissioner

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## 85th Legislature (2017) Items for Consideration

### SAVINGS BANKS

- ❖ Replace the phrase “articles of incorporation” with “certificate of formation.”
- ❖ Update reference in Texas Finance Code §92.158 from Texas Business Corporation Act to the Texas Business Organization Code.
- ❖ Eliminate the requirement of executing two copies of a conversion application in Texas Finance Code §92.302.
- ❖ Clarify that the Commissioner is to approve (not consent to) an investment in a subsidiary corporation by a savings bank in Texas Finance Code §94.301.
- ❖ Clarify insurance requirements in Texas Finance Code §92.156 on indemnity bonds.
- ❖ Department of Banking (DOB) is recommending an amendment to Texas Finance Code §202.001 to clarify that DOB is not required to approve holding company acquisition of a state savings bank. SML concurs with the recommendation.

### RESIDENTIAL MORTGAGE LOAN COMPANIES

- ❖ Amend information required in disclosures to a loan applicant in Texas Finance Code §156.004.

### RESIDENTIAL MORTGAGE LOAN SERVICERS

- ❖ Specify in Texas Finance Code §158.101 that disclosure statement requirement only applies to mortgage loans on real estate located in the State of Texas.
- ❖ Under Texas Finance Code §158.102 permit the Commissioner authority to initiate an investigation upon reasonable cause that there has been a violation of Texas Finance Code Chapter 158. Currently exists in Chapters 156 and 157.
- ❖ Create statutory authority (e.g. as a new Texas Finance Code §158.107) to provide the Commissioner the authority to issue a subpoena during the course of an investigation. Currently exists in Chapters 156 and 157.

### CRIMINAL HISTORY RECORD INFORMATION ACCESS

- ❖ Amend Texas Government Code §411.1385 to expand the SML Commissioner’s authority to include employees, contractors, subcontractors, and potential state savings bank officers and directors.

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**B.**

**Office of Consumer  
Credit Commissioner**

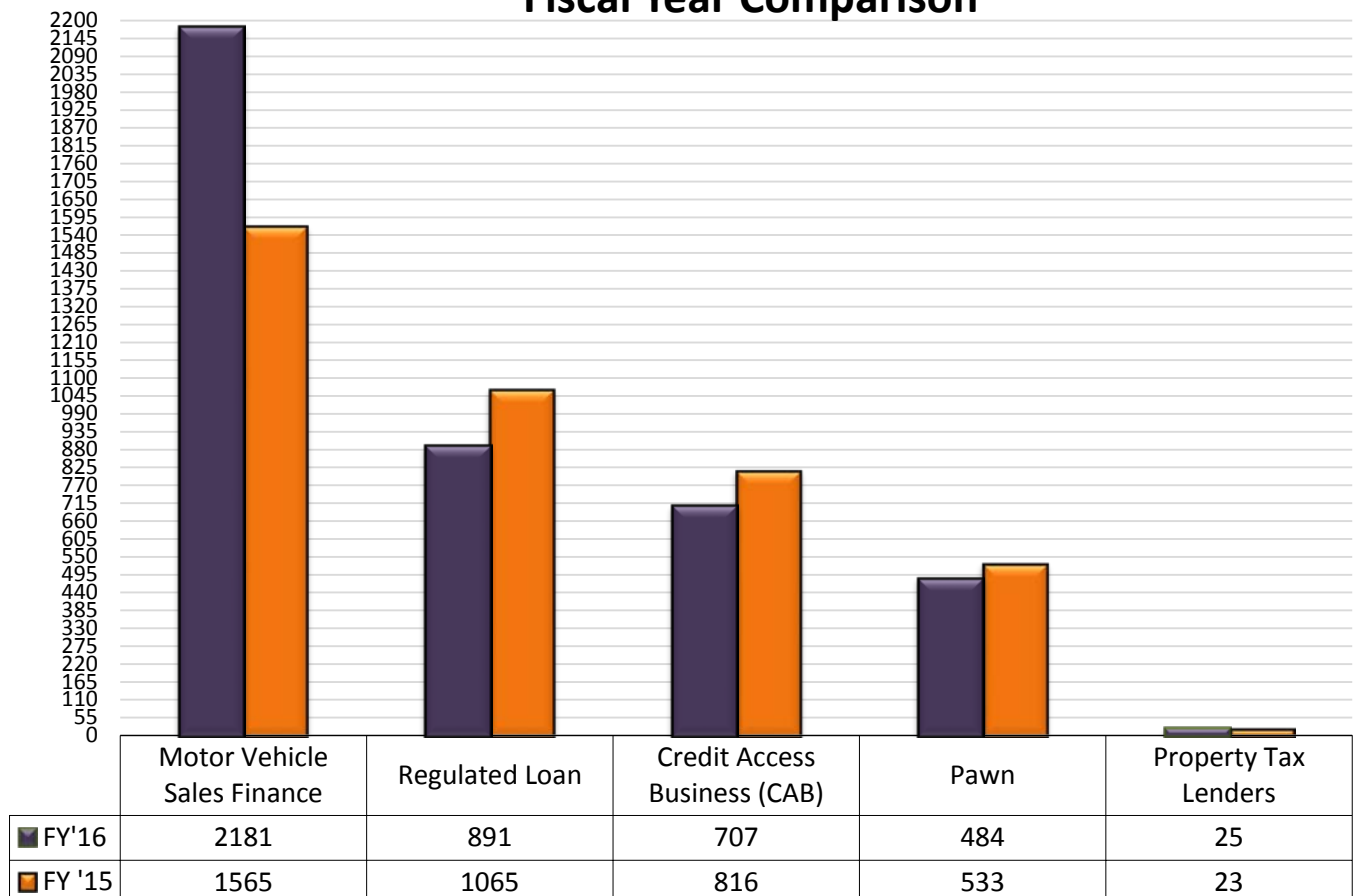


## Consumer Protection and Assistance Report

*Rudy Aguilar, Director of Consumer Protection*

Examinations conducted in Fiscal Year 2015 (FY '15) and Fiscal Year 2016 (FY '16) are compared in the chart below. The agency achieved 107.2% of the total overall examination goal this fiscal year. The examinations conducted goal in the Regulated Loan, Property Tax, and Motor Vehicle Sales Finance (MVSF) areas were met or exceeded. Credit Access Business (CAB) examinations conducted were at 95.28% of the goal. The fifth area of examination, Pawn, was the only industry not within 5% of our goal. At year's end, 83.59% of the Pawn goal was met; however, their acceptable level of compliance was at 99.79% which is the highest among the license types.

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

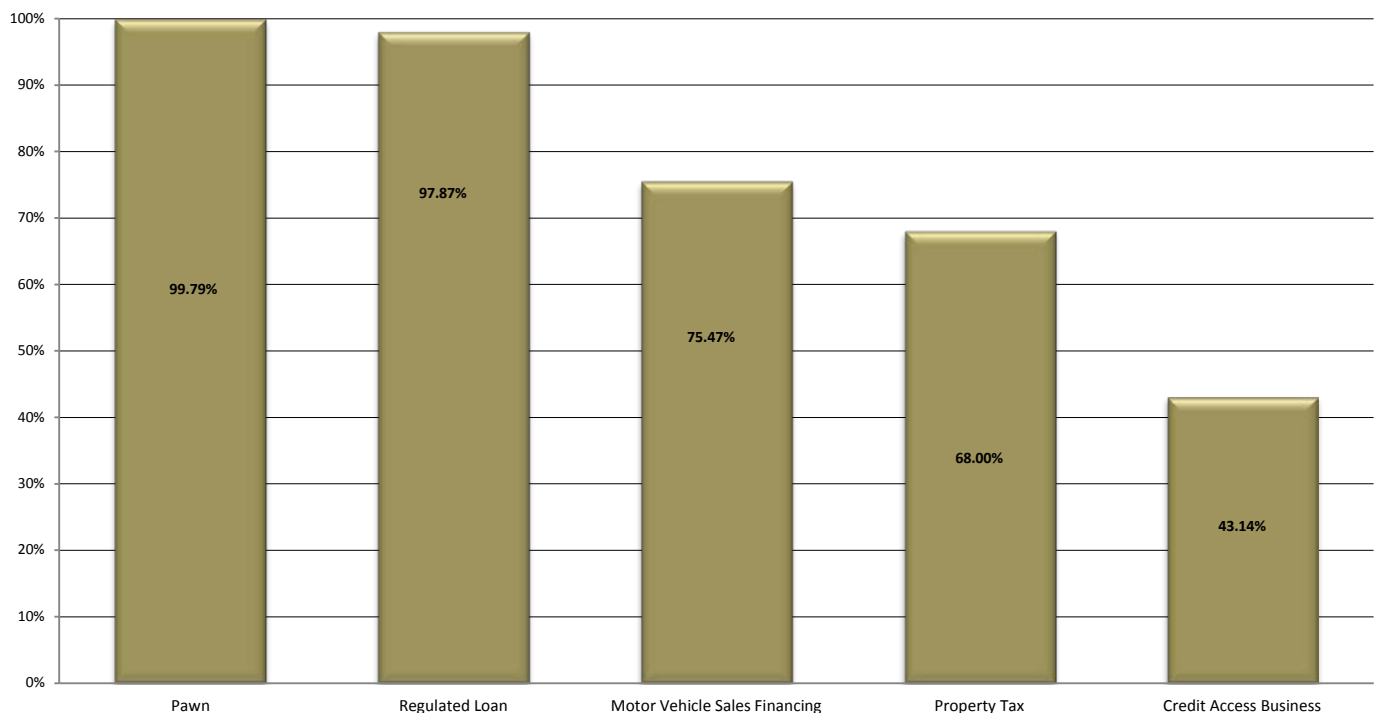


The three most recently hired examiners are in the MVSF exam competency certification process. We currently have 3 field examiner vacancies, two in Dallas and one in Houston. The two most recent classes of newly hired examiners were trained in a methodology that focused on the completion of more complex examinations within a shorter period of time. At this point, this curriculum application appears to be more successful in identifying examiner capability early on in the training process.

Joseph Adamek was selected for the Investigation Coordinator IV position effective August 19, 2015. Mr. Adamek had previously held the Financial Analyst II position in Austin.

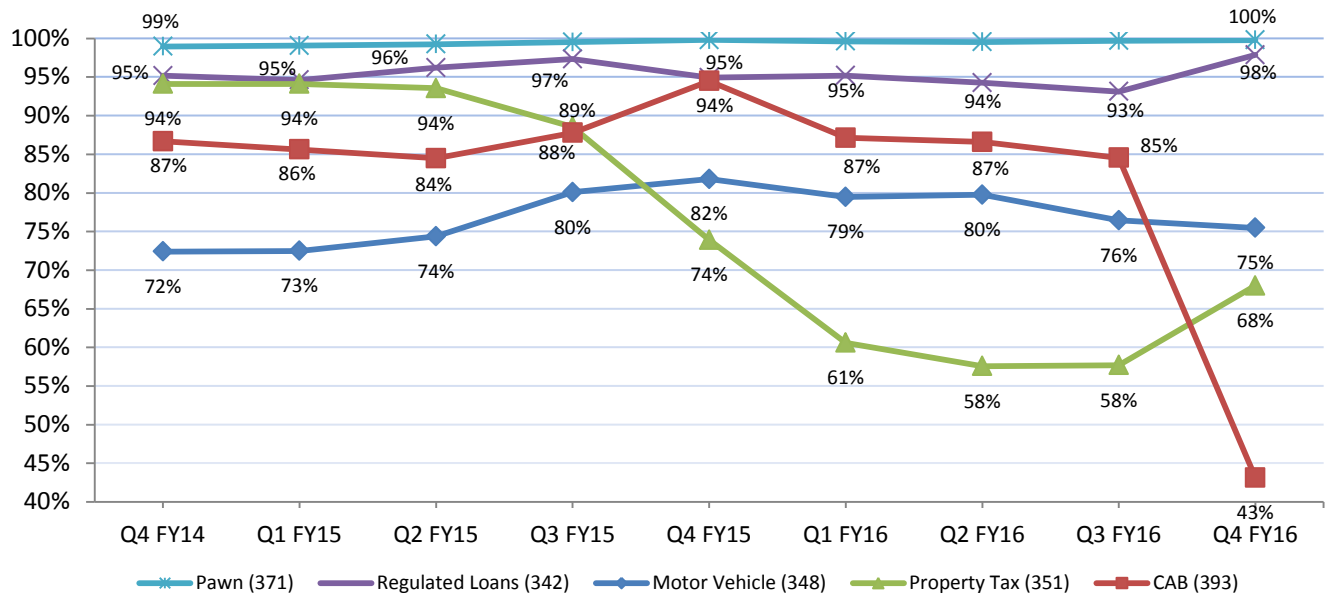
The chart below notes the acceptable level of compliance in the five examination areas through the end of FY '16. Pawn, Regulated Loan, and MVSF examinations conducted were within the acceptable level of compliance. The acceptable level of compliance in the Property Tax area increased 24.17%, resulting in a 68% acceptable level of compliance at the end of the fiscal year. For CAB examinations, the acceptable level of compliance took a downturn in the last month of the fiscal year. Several deficiencies were found during enterprise examinations which resulted in the 4-rated examinations.

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



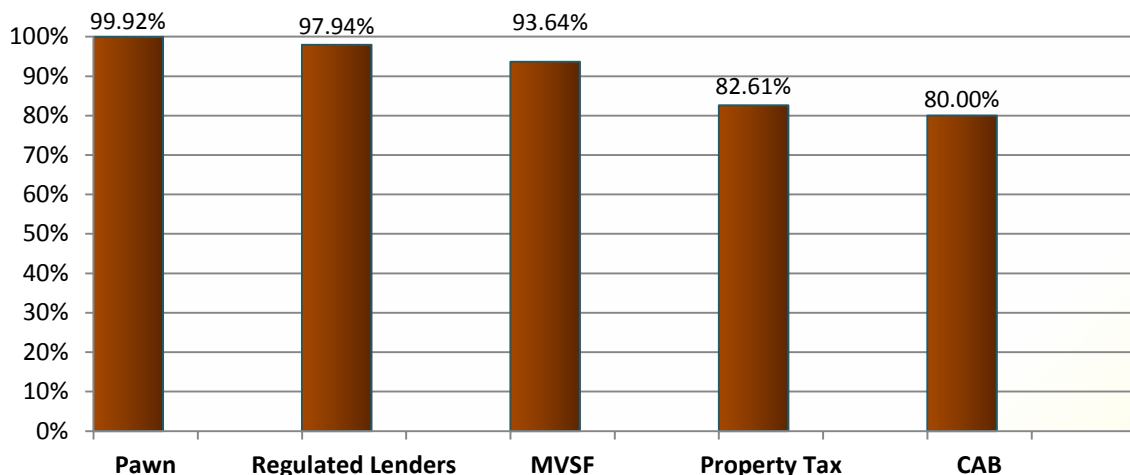
The chart that follows compares the compliance rates for the five examination areas on a trailing 12-month basis.

## Acceptable Compliance levels – Trailing 12 months (at quarter end)



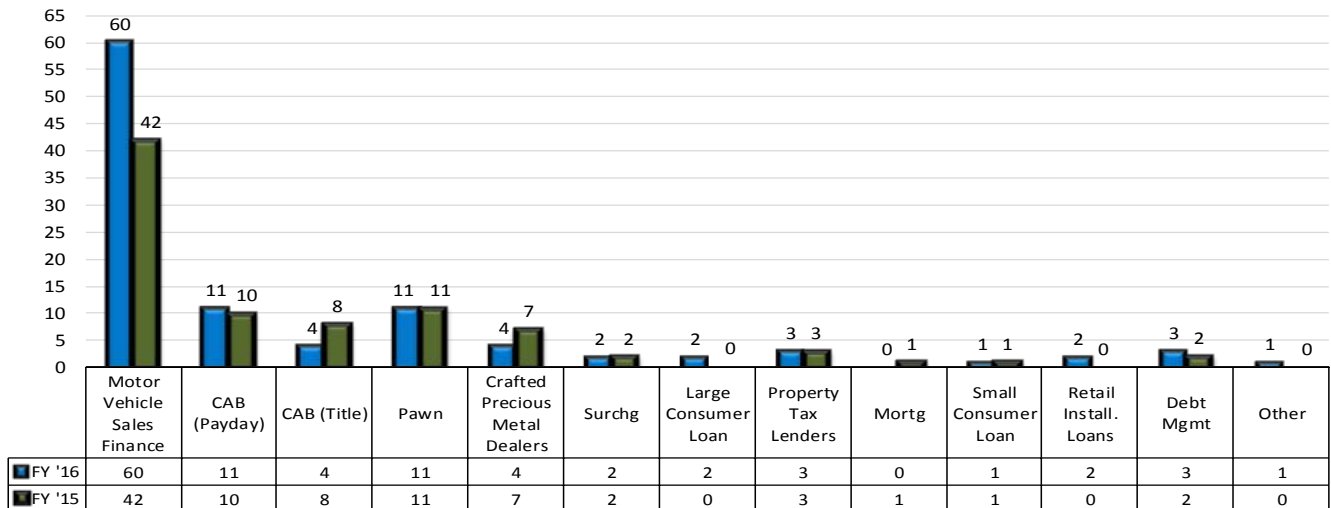
The previous two charts exhibit the acceptable level of compliance of examinations during FY16 and a 12-month moving trend of compliance at each quarter's end for the last two years. The previous charts can capture repeated examinations at a single non-compliant licensee. The chart below displays the acceptable level of compliance of all active licenses based on their current (most recent) examination rating. This method normalizes yearly compliance fluctuations and presents a clearer picture of where regulated industries currently stand. Follow-up examinations will occur in the lower rated industries until compliance levels improve. After a follow-up examination, the current compliance rating replaces the previous compliance rating.

## ACCEPTABLE LEVEL OF COMPLIANCE ACTIVE LICENSE STATUS ONLY



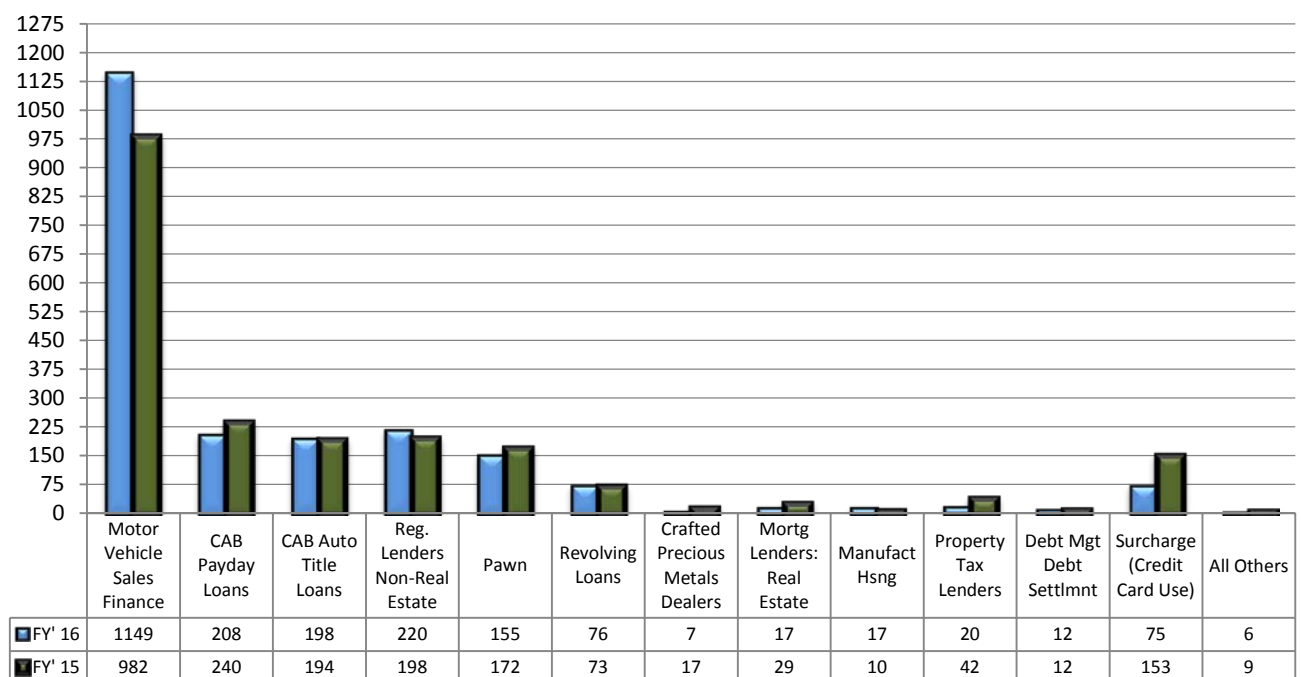
## Investigations

### Investigations Completed FY '16 (Sept 2015 - Aug 2016) Total: 104 FY '15 (Sept 2014 - Aug 2015) Total: 87

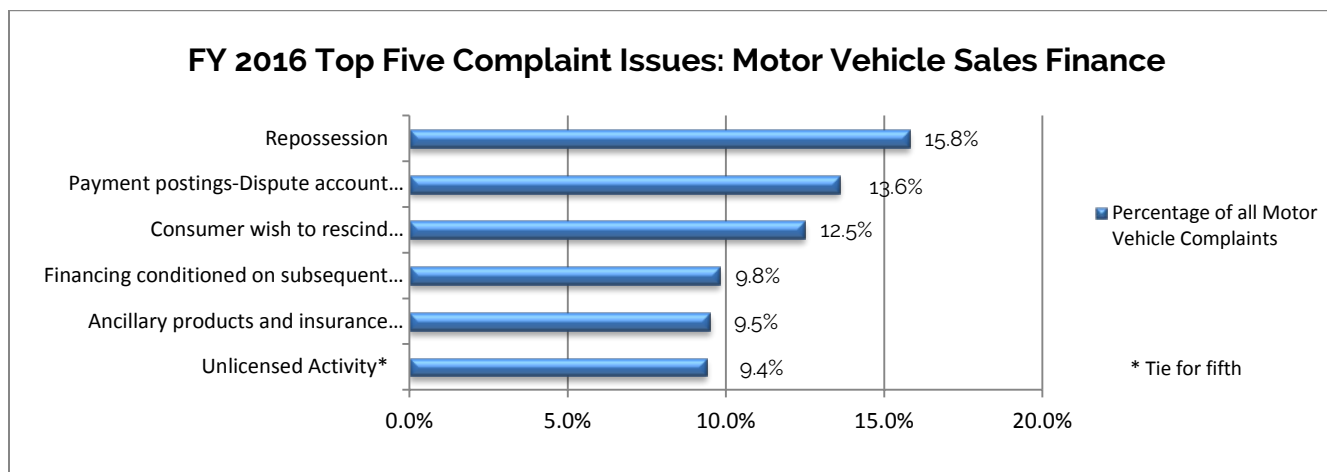


## Consumer Assistance

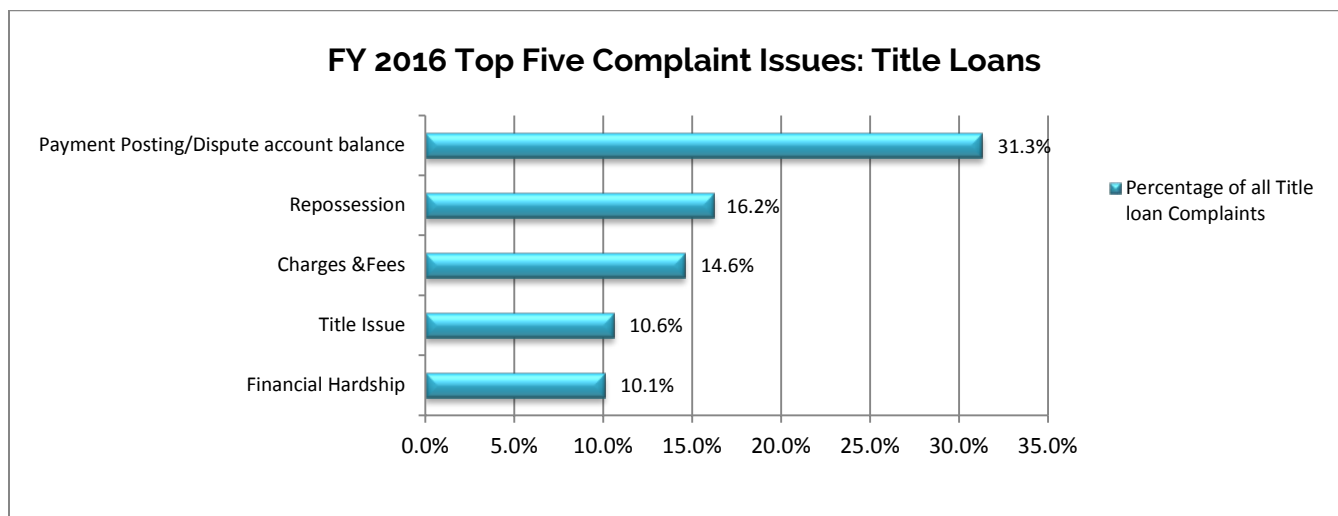
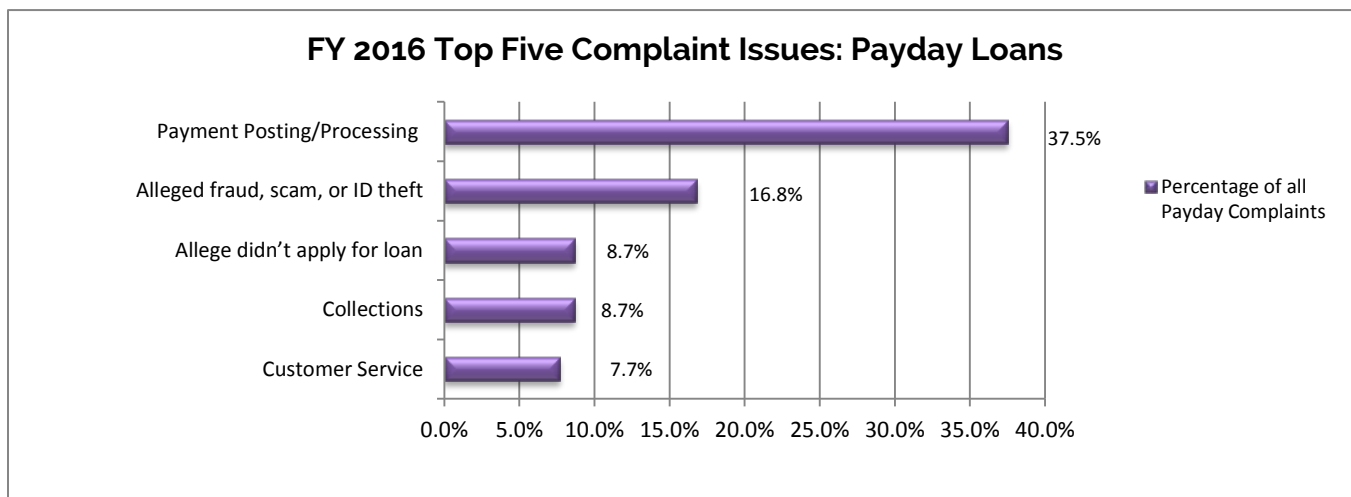
### Complaints Processed FY '16 (Sept 2015 - Aug 2016) Total: 2,160 FY '15 (Sept 2014 - Aug 2015) Total: 2,131



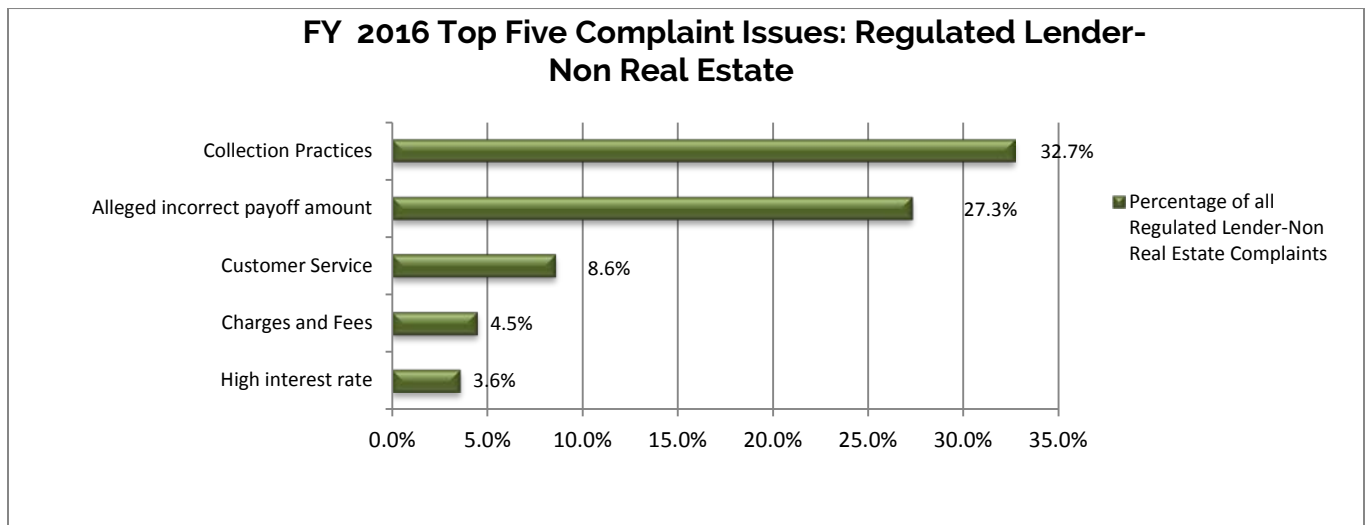
At 53.19%, MVSF complaints comprised the largest category of complaints for FY '16. The top five MVSF complaint issues are charted below.



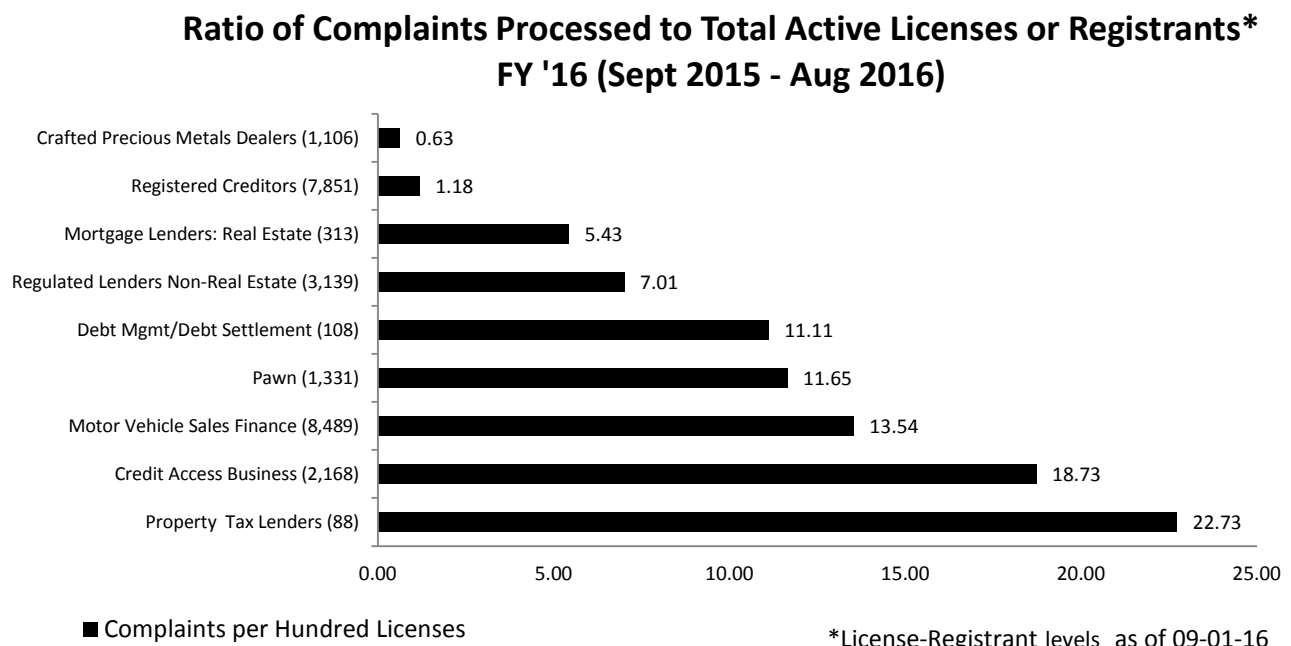
CAB Payday and Auto Title Loan complaints were the second largest category of complaints, collectively being 18.8%. Separately, the percentages of total complaints are at 9.63% for Payday loans and 9.17% for Auto Title loans. The next two charts show separately, the top five complaints for CAB Payday loans and CAB Auto Title loans.



Regulated Lenders Non-Real Estate was the third largest category at 10.19%. The top five categories of complaints for Regulated Lenders Non-Real Estate were identified as collection practices, alleged incorrect payoff amount, customer service issues, release of title, and high interest rate. Percentages for these five categories are charted below.



The ratio of complaints processed to the number of active licenses or registrant population is noted on the chart that follows. The highest ratio of complaints for FY '16 involved Property Tax Lending followed by CAB complaints. MVSF complaints ranked third and Pawn ratio of complaints to active licenses was fourth.



## CAB Reporting Update

Reports through the second quarter CY2016 are currently compiled and published. The third quarter 2016 submissions are due on 10/31/2016. A comparison of data from the first two quarters is presented by year. The number of individual stores making loans continues to decrease. The continuing trend is to structure payday loans with longer repayment periods. For the year, 44% of all new payday loans and 40% of title loans are due in an average term of 159 and 165 days respectively.

| <b>Data Highlights (All Loan Types) Q1 &amp; Q2 Comparison</b> | <b>2016</b> | <b>2015</b> | <b>2014</b> | <b>2013</b> | <b>2012</b> |
|--|-------------|-------------|-------------|-------------|-------------|
| Number of new payday loans                                     | 1,126,356   | 1,085,393   | 1,100,247   | 1,200,988   | 1,184,536   |
| Number of new auto title loans                                 | 133,881     | 159,680     | 206,235     | 241,267     | 226,272     |
| Percentage of Payday Loans due in multiple installments        | 44%         | 38%         | 32%         | 20%         | 14%         |
| Percentage of Auto Title Loans due in multiple installments    | 40%         | 23%         | 17%         | 13%         | 16%         |
| Number of vehicles repossessed under all auto title loans      | 15,702      | 18,575      | 20,879      | 18,498      | 17,175      |
| Total number of locations reporting activity                   | 2,000       | 2,575       | 3,001       | 3,176       | 3,063       |

| <b>Payday Loans Q1 &amp; Q2</b>                               | <b>Single Installment</b> |             |             | <b>Multiple Installment</b> |             |             |
|---|---------------------------|-------------|-------------|-----------------------------|-------------|-------------|
|   | <b>2016</b>               | <b>2015</b> | <b>2014</b> | <b>2016</b>                 | <b>2015</b> | <b>2014</b> |
| Number of consumers obtaining loans                           | 453,488                   | 510,274     | 588,056     | 385,752                     | 365,215     | 311,336     |
| Number of New Loans   | 631,841                   | 676,518     | 745,347     | 494,515                     | 408,875     | 354,900     |
| Number of refinances on new loans in the quarter <sup>1</sup> | 410,454                   | 500,653     | 634,917     | 33,810                      | 31,608      | 29,267      |
| Number of total refinances <sup>2</sup>                       | 1,018,265                 | 1,294,633   | 1,657,264   | 71,647                      | 118,729     | 67,497      |
| Average Loan Amount   | \$456                     | \$493       | \$475       | \$575                       | \$525       | \$538       |
| Average Fee per \$100 borrowed                                | \$23.73                   | \$23.32     | \$23.16     | \$165.50                    | \$172.62    | \$151.09    |
| Average original term (in days)                               | 17                        | 18          | 19          | 159                         | 160         | 153         |

| <b>Title Loans Q1 &amp; Q2</b>                                | <b>Single Installment</b> |             |             | <b>Multiple Installment</b> |             |             |
|---|---------------------------|-------------|-------------|-----------------------------|-------------|-------------|
|   | <b>2016</b>               | <b>2015</b> | <b>2014</b> | <b>2016</b>                 | <b>2015</b> | <b>2014</b> |
| Number of consumers obtaining loans                           | 71,271                    | 109,570     | 153,130     | 51,028                      | 34,580      | 33,264      |
| Number of New Loans   | 80,121                    | 123,178     | 170,900     | 53,760                      | 36,074      | 35,335      |
| Number of refinances on new loans in the quarter <sup>1</sup> | 50,146                    | 76,256      | 100,559     | 7,735                       | 4,481       | 5,510       |
| Number of total refinances <sup>2</sup>                       | 428,451                   | 619,793     | 633,879     | 17,362                      | 14,354      | 24,005      |
| Average Loan Amount   | \$1,226                   | \$1,226     | \$1,128     | \$1,420                     | \$1,075     | \$1,080     |
| Average Fee per \$100 borrowed                                | \$16.59                   | \$16.97     | \$19.24     | \$91.78                     | \$83.87     | \$98.75     |
| Average original term (in days)                               | 29                        | 30          | 30          | 165                         | 166         | 198         |

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

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





## **Licensing Report- October 2016**

*Mirand Zepeda, Manager*

### **Renewals**

Renewal for Registered Creditors is currently open and on-going. The high number of active registered creditors makes communication with registrants a challenge, but the department plans to maximize electronic contact in order to diminish mailing costs. The department anticipates a renewal rate of at least 75% for registered creditors.

Preparation for Residential Mortgage Loan Originators' renewal is underway for the period beginning in December. The department is planning and projecting, while working with NMLS to coordinate the requirements.

Property tax, credit access business and regulated lender licensees will renew at the end of the year with online renewal opening in early November. Staff within the licensing department is making arrangements for this period as well.

### **Applications Processing**

Pending business license applications hovers at approximately 200, and staff continues to monitor aging applications and incoming volume. This manageable workload has allowed staff to balance incoming applications with long-standing projects that have been awaiting completion.

Pending pawn employee applications have stayed near the goal of 300, an amount that allows for outreach to stakeholders, while balancing applicant communication and review.

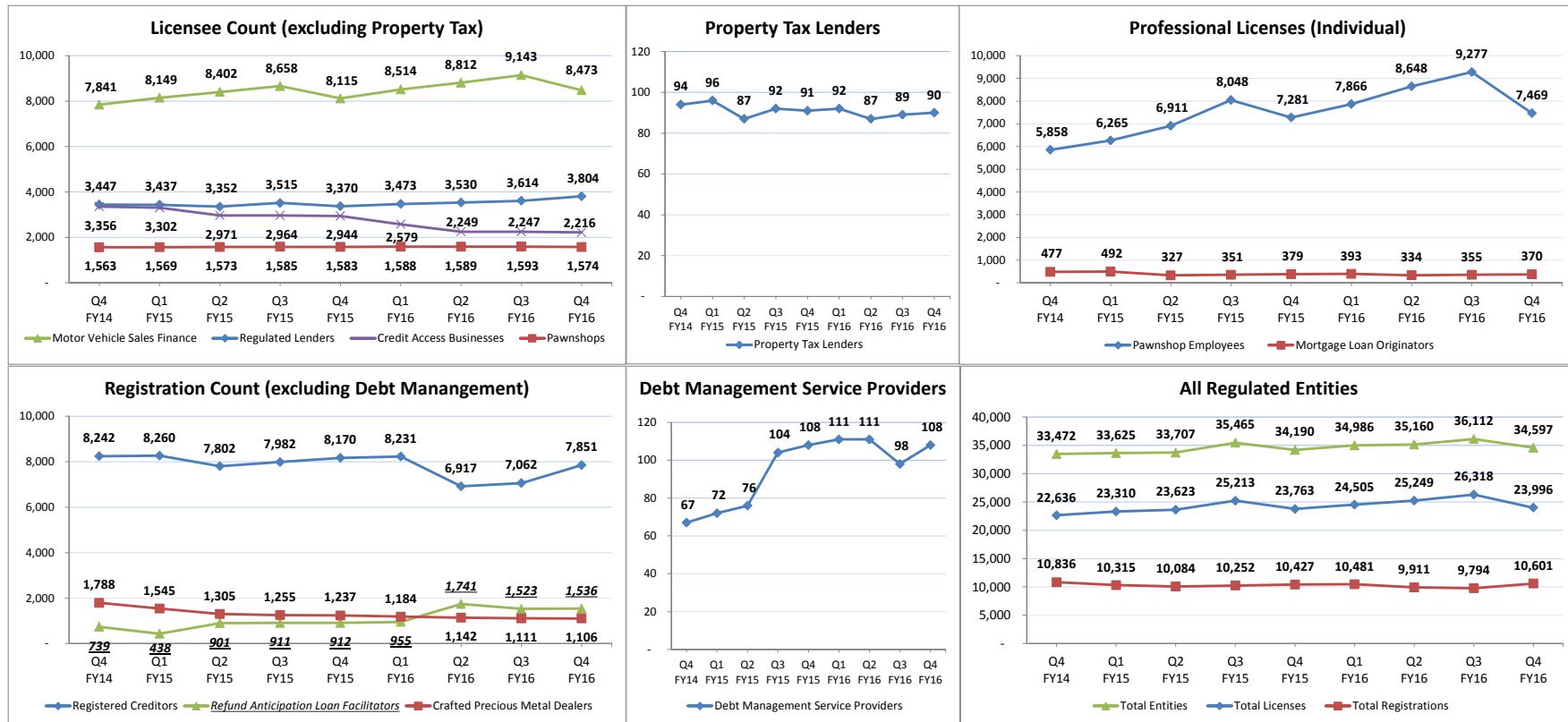
### **Average Timeframe for Applications**

In the last quarter of FY 16 business applications were processed in an average of 45 days, half of the same average at the beginning of FY 16. Pawn employee applications were processed in an average of 47 days, a decrease of 20% from Q1 of FY 16. Lastly RMLO applications were processed in approximately 16 days, down from 35 days in November of last year.

### **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.

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





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

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

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

Engaging stakeholders and maintaining strong communication strategies plays an important role in the regulatory activities of the Office of Consumer Credit Commissioner. A strategic and structured approach to stakeholder relations incorporates live presentations, production of new brochures, and advisory bulletins.

Since the beginning of FY 16, the agency published a total of five compliance-focused communications in the form of advisory bulletins.

The agency provided twenty-five live presentations to various state agencies and industry stakeholders during FY 2016 with a total of more than 2,000 attendees. The focus of these presentations related to compliance matters and the regulatory role and responsibilities of the agency.

On September 14, 2016, Commissioner Pettijohn and staff attended the Investment and Financial Services Interim Committee Hearing held at the Capitol. The Committee met to hear interim charge #2: *Examine the short-term lending industry in Texas. Study the adequacy of consumer access to credit and the effectiveness of consumer protections, specifically reviewing the consistency and coordination of state law with federal law and local ordinances. Review data-reporting requirements for credit-access businesses and make appropriate recommendations.* Commissioner Pettijohn provided an update on credit access businesses in Texas and the Consumer Financial Protection Bureau's (CFPB) Payday Loan Rule.

The agency began FY 2017 with a number of live presentations to various state agencies and industry stakeholders. William Purce, Senior Review Examiner, Austin, presented to dealers at the Manufactured Housing Division of the Texas Department of Housing and Consumer Affairs training on September 7 in Austin. Senior Review Examiner Purce also presented to the National Association of Consumer Credit Administrators (NACCA) 29<sup>th</sup> Annual Consumer Services and Examiners' School in Tulsa, OK.

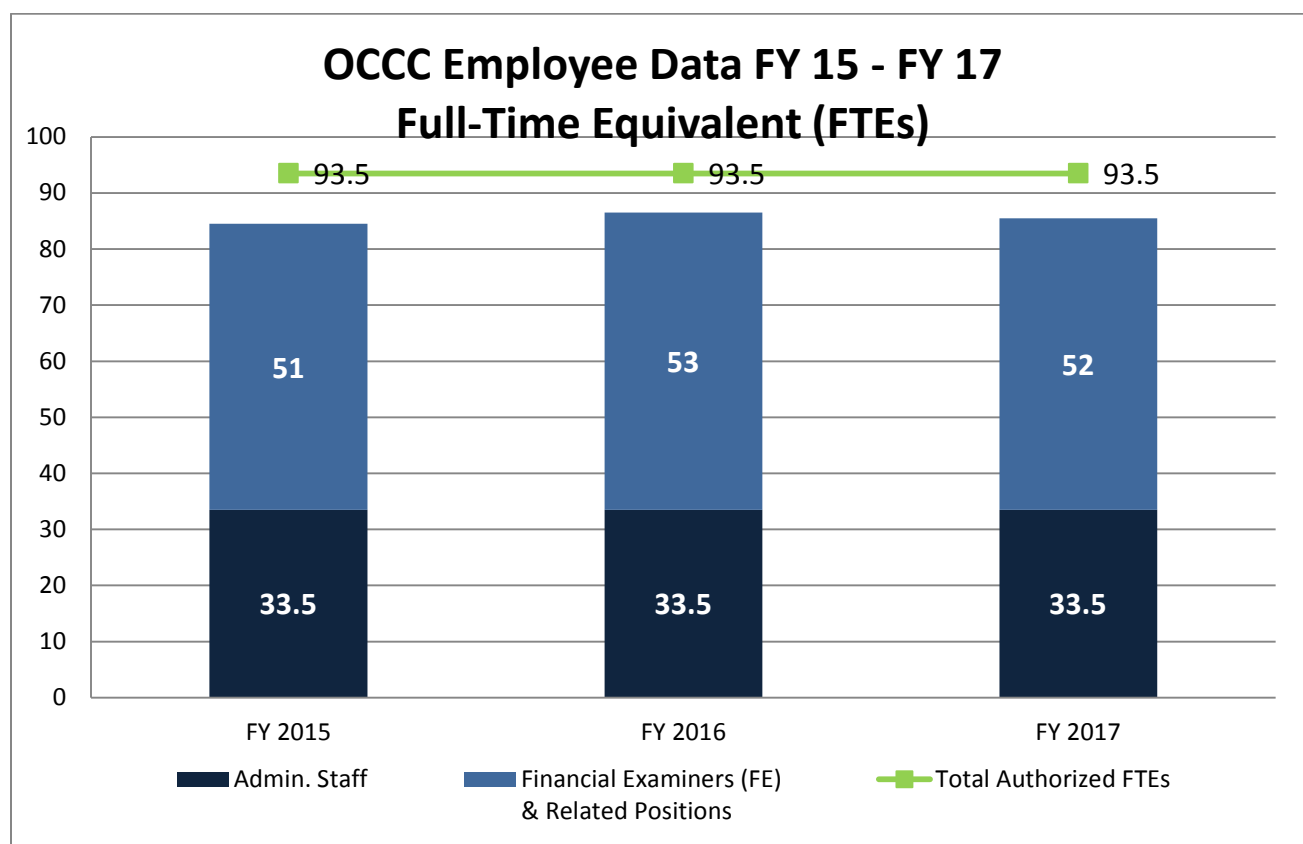
Eric Fancher, Financial Examiner, participated at the Dealer Training for the Texas Department of Motor Vehicles on September 7 & 8 in Fort Worth.

## Human Resources

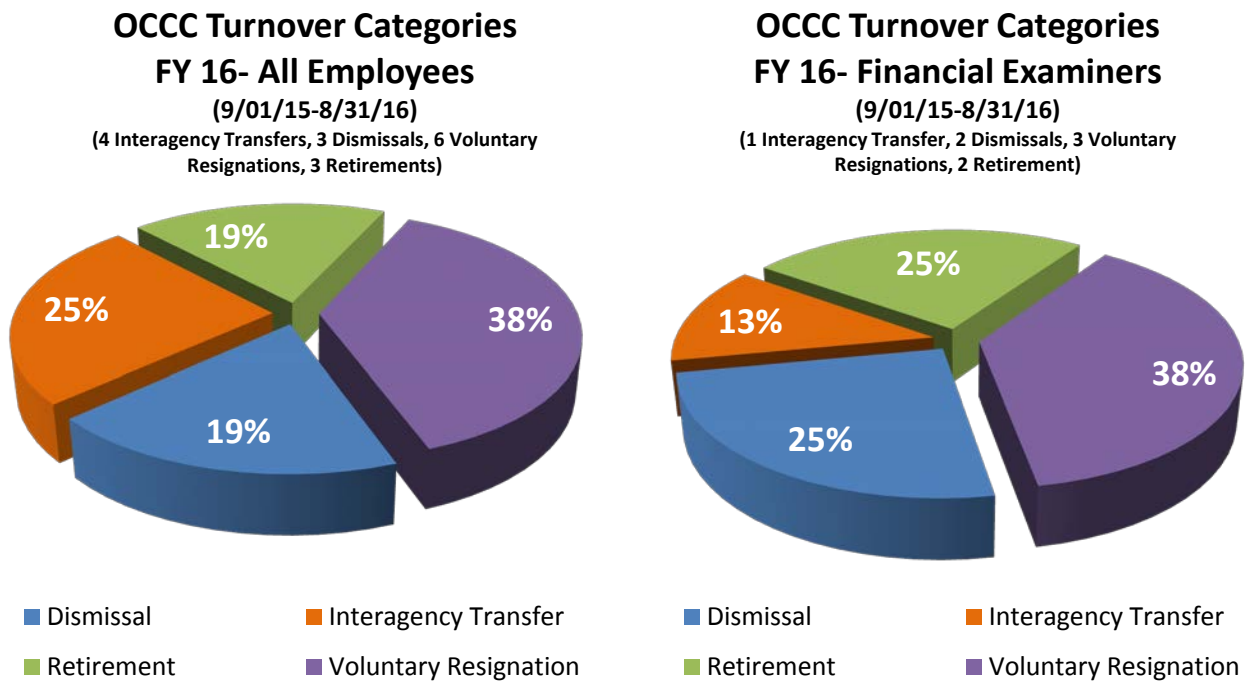
In this reporting period (August and September), we have had three (3) Financial Examiners (I, II, V) depart the agency: (1 dismissal, 1 resignation and 1 retirement). Because of these vacancies, the Investigator (FE IV) position was filled internally by a Financial Analyst. The FY 2017 turnover ratio is currently 1.16%, (FE I position).

Our current recruiting efforts will continue to focus on filling positions both in the field and in the Austin office.

| FY 17 Vacancies                             |                                    |
|---|------------------------------------|
| Vacancy                                     | Status                             |
| Accountant I (New Position - Austin)        | Active – Applications under review |
| Accountant III – IV (Austin)                | Active – Applications under review |
| Customer Service Representative II (Austin) | Active – Interviews in progress    |



For FY 2016, the overall turnover ratio was 18.60%. However, when excluding retirement and interagency transfers from the overall ratio, the percentage was 10.47%. Below you will find a summary of the turnover by category.



The Agency continues to educate and train employees when it comes to cybersecurity. For the period, ending August 31, 2016, staff completed ten training modules. This training entails comprehensive security awareness solutions, enables them to easily and effectively manage their human cybersecurity risk. All employees are scheduled to complete the next group of required cybersecurity training by October 31, 2016.

### **Financial Literacy**

During FY 2016, Consumer Education staff provided financial education to 246 Texas consumers. In addition, the agency successfully identified and targeted new populations in need of financial literacy, expanded outreach to new geographic areas, and formed new relationships within the community. However, despite the positive trend in the number of education sessions conducted and individual participation numbers, the agency was short of reaching the internal goal of providing financial education to 325 Texas consumers due to the departure of the previous consumer education specialist. For FY 2017, the agency does not expect any vacancies and fully intends to reach the goal of providing financial education to 350 Texas consumers.

Lastly, consumer education staff conducted sessions on budgeting for the staff of the Catholic Charities of San Antonio and Elder Exploitation Awareness for the: Doris Griffin Senior Center; Garland Senior Activity Center; Ron Carreon Senior Center; North Tri-Ethnic Center; and Watauga Senior Center.



## **Accounting & IT Reports**

### Accounting

The accounting department completed and submitted the Annual Financial Report on September 30<sup>th</sup>.

The State Auditor's Office continues to conduct an audit of the OCCC. Fieldwork is anticipated to be completed by the end of October. The audit objectives are to (1) verify the accuracy of certain financial and performance data and the effectiveness of related controls at selected self-directed, semi-independent agencies and (2) evaluate the agencies' processes for setting fees and penalties. The work will include the automated systems and processes that support the functions being audited.

### Information Technology-Legacy Modernization

Work on the ACE (Annual Reporting, Complaints and Examinations) project continues. Quality Assurance has begun on the Complaint and Investigation modules. Development continues on the Annual Report, Exam/Exam Scheduling and Legal modules. User testing is slated to begin in October for Complaint, Investigation, and Annual Report. We expect to move this deliverable into production during the last week in October.

OCCC required several small changes to the final requirements, which resulted in a modification to the SOW. In accordance with SB 20, this modification was submitted to DIR for approval. DIR approved the SOW changes on September 16.

### **SECURITY**

OCCC is nearing completion of the Security and Risk Assessment with NTT Data. A primary benefit of this assessment is the development of a road map to assist with continuing improvements to the agency's security posture over the next 2 years.

The agency continues to fine-tune the security configuration for Sourcefire. The Network Administrator will be taking an advanced Sourcefire course in November.

### **MOBILITY**

The agency is continuing to explore options for integrating smart phones as a tool for field staff.

# OFFICE OF CONSUMER CREDIT COMMISSIONER

## EXECUTIVE SUMMARY

*As of August 31, 2016*

|   | FY<br>2014 | FY<br>2015 | FISCAL YEAR 2016 |            |            |            |        |
|---|------------|------------|------------------|------------|------------|------------|--------|
|   |            |            | 1st<br>QTR       | 2nd<br>QTR | 3rd<br>QTR | 4th<br>QTR | FYTD   |
| CONSUMER PROTECTION                                       |            |            |                  |            |            |            |        |
| Monies Returned to Consumers (000)                        | 22,977     | 8,315      | 4,348            | 6,390      | 1,664      | 1,255      | 13,657 |
| Regulated Lenders Examinations                            | 1,106      | 1,065      | 173              | 230        | 143        | 345        | 891    |
| Property Tax Lender Examinations                          | 34         | 23         | 10               | 2          | 6          | 7          | 25     |
| Pawnshop Examinations                                     | 593        | 533        | 112              | 105        | 105        | 162        | 484    |
| Motor Vehicle Examinations                                | 1,247      | 1,565      | 512              | 539        | 668        | 462        | 2,181  |
| Credit Access Businesses Examinations                     | 1,031      | 816        | 101              | 12         | 228        | 366        | 707    |
| CONSUMER ASSISTANCE                                       |            |            |                  |            |            |            |        |
| Telephone Complaints Received                             | 1,067      | 1,186      | 337              | 262        | 290        | 288        | 1,177  |
| Written Complaints Received                               | 976        | 1,000      | 221              | 209        | 211        | 237        | 878    |
| Total Complaints Processed                                | 1,915      | 2,131      | 650              | 528        | 475        | 507        | 2,160  |
| % of Written Complaints<br>Closed within 90 Calendar Days | 90.60%     | 82.47%     | 95.72%           | 95.14%     | 97.11%     | 89.63%     | 94.46% |
| ADMINISTRATIVE ENFORCEMENT ACTIONS                        |            |            |                  |            |            |            |        |
| Originated  | 321        | 472        | 83               | 76         | 183        | 68         | 410    |
| Finalized   | 335        | 390        | 95               | 89         | 81         | 194        | 459    |
| LICENSING AND REGISTRATION                                |            |            |                  |            |            |            |        |
| Licenses  |            |            |                  |            |            |            |        |
| Regulated Loan Licenses                                   | 3,447      | 3,370      | 3,473            | 3,530      | 3,614      | 3,804      | 3,804  |
| Pawnshop Licenses   | 1,563      | 1,583      | 1,588            | 1,589      | 1,593      | 1,574      | 1,574  |
| Pawnshop Employee Licenses                                | 5,858      | 7,281      | 7,866            | 8,648      | 9,277      | 7,469      | 7,469  |
| Commercial MV Sales Fin. Licenses                         | 16         | 19         | 25               | 27         | 30         | 29         | 29     |
| Motor Vehicle Sales Finance Licenses                      | 7,825      | 8,096      | 8,489            | 8,795      | 9,113      | 8,444      | 8,444  |
| Property Tax Loan Licenses                                | 94         | 91         | 92               | 87         | 89         | 90         | 90     |
| NMLS-Mortgage Loan Originators                            | 477        | 379        | 393              | 334        | 355        | 370        | 370    |
| Credit Access Business Licenses                           | 3,356      | 2,944      | 2,579            | 2,249      | 2,247      | 2,216      | 2,216  |
| Registrations   |            |            |                  |            |            |            |        |
| Registered Creditors                                      | 8,242      | 8,170      | 8,231            | 6,917      | 7,062      | 7,851      | 7,851  |
| Crafted Precious Metal Dealers                            | 1,788      | 1,237      | 1,184            | 1,142      | 1,111      | 1,106      | 1,106  |
| Debt Management Service Providers                         | 67         | 108        | 111              | 111        | 98         | 108        | 108    |
| Refund Anticipation Loan Facilitators                     | 739        | 912        | 955              | 1,741      | 1,523      | 1,536      | 1,536  |
| Applications  |            |            |                  |            |            |            |        |
| Business -- New   | 1,427      | 1,832      | 354              | 415        | 475        | 398        | 1,642  |
| Business -- Change of Ownership                           | 473        | 624        | 140              | 22         | 34         | 63         | 259    |
| Pawnshop Employees -- New                                 | 2,011      | 3,010      | 655              | 1,034      | 730        | 834        | 3,253  |
| HUMAN RESOURCES DATA                                      |            |            |                  |            |            |            |        |
| Field Examiners Staffing                                  | 42         | 43         | 41               | 38         | 40         | 45         | 45     |
| Total Staffing  | 83         | 85.5       | 81.5             | 80.5       | 85.5       | 86.5       | 86.5   |

**OCCC Actual Performance for Output/Efficiency Measures**  
**Fiscal Year 2016**  
**For Period Ending August 2016**

| Type/Strategy/Measure   | 2016<br>Target | 2016<br>Quarter | 2016<br>YTD | Percent of<br>Annual Target |   |
|---|----------------|-----------------|-------------|-----------------------------|---|
| <b>Output Measures-Key</b>  |                |                 |             |                             |   |
| 1-1-1 COMPLAINT RESOLUTION  |                |                 |             |                             |   |
| 1. # COMPLAINTS CLOSED  |                |                 |             |                             |   |
| Quarter 1   | 2,100          | 648             | 648         | 30.86%                      | * |
| The agency experienced a 47.5% increase in processed complaints in the motor vehicle finance category over the same quarter in FY '15. This may be partially attributed to a nationwide increase in motor vehicle sales in calendar year 2015.  |                |                 |             |                             |   |
| Quarter 2   | 2,100          | 532             | 1,180       | 56.19%                      | * |
| There was a 37.1% increase in processed complaints in the motor vehicle finance category over the first two quarters in FY '15. The increase in motor vehicle sales in calendar year 2015 continues to be a factor in exceeding the overall processed complaint target.   |                |                 |             |                             |   |
| Quarter 3   | 2,100          | 488             | 1,668       | 79.43%                      |   |
| Quarter 4   | 2,100          | 497             | 2,165       | 103.10%                     |   |
| 2. # INVESTIGATIONS CLOSED  |                |                 |             |                             |   |
| Quarter 1   | 86             | 29              | 29          | 33.72%                      | * |
| A concerted effort has been made to close older investigations.   |                |                 |             |                             |   |
| Quarter 2   | 86             | 29              | 58          | 67.44%                      | * |
| Efforts are being made to hold the average investigation time to less than 180 days and a more dedicated effort is being made to address unlicensed activity.   |                |                 |             |                             |   |
| Quarter 3`  | 86             | 29              | 87          | 101.16%                     | * |
| Staff has provided more proactive oversight of recently assigned investigations to ensure more timely completion by field staff, in addition to the continued concentration of effort to close older investigations.  |                |                 |             |                             |   |
| Quarter 4   | 86             | 17              | 104         | 120.93%                     | * |
| Increased scheduling priorities and concerted efforts to address the backlog of investigations have been successful.  |                |                 |             |                             |   |
| 2-1-1 EXAMINATION AND ENFORCEMENT   |                |                 |             |                             |   |
| 1. # COMPLIANCE EXAMINATIONS PERFORMED  |                |                 |             |                             |   |
| Quarter 1   | 4,000          | 908             | 908         | 22.70%                      |   |
| Quarter 2   | 4,000          | 888             | 1,796       | 44.90%                      | * |
| The agency completed 1,797 examinations as of February 29, which is 89.9% of the prorated goal for mid-year and three examinations shy of the 5% tolerance for performance measures. Six of seven field examiner vacancies have now been filled, with a new examiner class scheduled to begin on April 4, 2016. |                |                 |             |                             |   |
| Quarter 3   | 4,000          | 1,150           | 2,946       | 73.65%                      |   |
| Quarter 4   | 4,000          | 1,342           | 4,288       | 107.20%                     | * |
| Recent changes in examination policies (i.e., enterprise examinations) and a change in the training of new examiners has increased overall productivity.  |                |                 |             |                             |   |
| 2-2-1 LICENSING   |                |                 |             |                             |   |
| 1. # BUSINESS APPLICATIONS PROCESSED  |                |                 |             |                             |   |
| Quarter 1   | 1,875          | 494             | 494         | 26.35%                      |   |
| Quarter 2   | 1,875          | 437             | 931         | 49.65%                      |   |
| Quarter 3   | 1,875          | 509             | 1,440       | 76.80%                      |   |
| Quarter 4   | 1,875          | 461             | 1,901       | 101.39%                     |   |

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



| Type/Strategy/Measure   | 2016<br>Target | 2016<br>Quarter | 2016<br>YTD | Percent of<br>Annual Target |   |
|---|----------------|-----------------|-------------|-----------------------------|---|
| <b>Output Measures-Key</b>  |                |                 |             |                             |   |
| 2. # INDIVIDUAL LICENSES PROCESSED  |                |                 |             |                             |   |
| <b>Quarter 1</b>  | 2,500          | 655             | 655         | 26.20%                      |   |
| <b>Quarter 2</b>  | 2,500          | 1034            | 1,689       | 67.56%                      | * |
| Increased efficiencies in ALECS, a higher volume of incoming pawn employee applications in Q2, and the department filling a vacancy for a license and permit specialist who primarily processes pawn employee applications all contributed to significant gains in individual licenses processed. These numbers will likely even out in Qs 3 & 4 as the department reallocates resources and incoming applications drop back down to average.   |                |                 |             |                             |   |
| <b>Quarter 3</b>  | 2,500          | 731             | 2,420       | 96.80%                      | * |
| The high volume of incoming individual applications has continued through Q3, while processing and turn-around times have improved efficiencies. Licensees utilizing ALECS for submission of these applications has given the department an opportunity to increase the number of applications processed. Various other duties and tasks occurring in Q4 will potentially take resources away from processing individual licenses, diminishing the variances seen in Qs 2 and 3.  |                |                 |             |                             |   |
| <b>Quarter 4</b>  | 2,500          | 833             | 3253        | 130.12%                     | * |
| Gains processing pawn employee applications in both Q2 and Q3 led to inevitably surpassing goals set for FY16 as a whole. Applications processed in Q4 maintained roughly the same quantities as the previous two quarters, due to efficiencies in ALECS, the online system, and a high volume of incoming workload. Looking ahead to fiscal year 2017, the department will take these accomplishments and volumes into consideration when projecting goals for the year.   |                |                 |             |                             |   |
| 3-1-1 # CONSUMERS RECEIVING FINANCIAL EDUCATION   |                |                 |             |                             |   |
| <b>Quarter 1</b>  | 325            | 46              | 46          | 14.15%                      | * |
| The first quarter of FY 2016 required heavy concentration on preparing, reviewing and selecting the second cycle of TFEE funds to new recipients, effective January 2016. With the new funding cycle underway, staff is able to focus on achieving end of fiscal year consumer education goals.   |                |                 |             |                             |   |
| <b>Quarter 2</b>  | 325            | 39              | 85          | 26.15%                      | * |
| Staff remained focused on TFEE grant efforts through the end of February, presenting one consumer training in the second quarter before the staff member resigned from the agency in early March. Efforts are underway to fill this position with the goal to reach this measure by the end of the fiscal year.   |                |                 |             |                             |   |
| <b>Quarter 3</b>  | 325            | 0               | 85          | 26.15%                      | * |
| This staff position was filled May 2, and concerted efforts are underway to secure speaking engagements before the end of the fiscal year to try and reach the year-end target.   |                |                 |             |                             |   |
| <b>Quarter 4</b>  | 325            | 145             | 230         | 70.77%                      | * |
| The agency fell short in reaching the internal goal of providing financial education to 325 Texas consumers. The financial education specialist left the agency mid-year and with the onboarding of the new financial education specialist in May 2016, outreach to conduct financial education presentations resumed, and positive progress was made toward the goal. Approximately 145 Texas consumers, over 40% of the yearly goal participated in financial education in Q4. The agency successfully identified and targeted new populations in need of financial literacy, and began developing relationships with the community to provide financial education. Efforts were also made to expand services statewide. The agency has reached new geographic areas and strives to reach every MSA in Texas. |                |                 |             |                             |   |

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

## Actual Performance for Outcome Measures

| Type/Strategy/Measure       | 2016<br>Target  | 2016<br>YTD | Percent of<br>Annual Target |
|-----------------------------|---|-------------|-----------------------------|
| <b>Outcome Measures-Key</b> |   |             |                             |
| 1-1                         | CONSUMER COMPLAINTS   |             |                             |
|                             | 1. % COMPLAINTS RESOLVED WITHIN 90 DAYS   | 92.00%      | 89.63% 97.42%               |
| 2-1                         | ENSURE COMPLIANCE   |             |                             |
|                             | 1. % EXAMINATIONS IN COMPLIANCE   | 85.00%      | 77.50% 91.18% *             |
|                             | The acceptable level of compliance has been affected by the quantitative risk-based scheduling process and the implementation of enterprise examinations in both the CAB and MVSF areas of examination. The result has been the more accurate identification and scheduling of non-compliant licensees. |             |                             |
|                             | 2. MONIES RETURNED FROM LICENSEES   | \$2,500,000 | \$13,563,000 542.52% *      |
|                             | Performance exceeded the forecasted target for the year. The majority, approximately 99%, of the restitution to Texas consumers was a result of errors found during examinations of licensees in the motor vehicle sales finance area.  |             |                             |

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

# OCCC Actual Performance for Non-Key Measures

Fiscal Year 2016

For Period Ending August 2016

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

## Non-Key Measures

### A. CONSUMER PROTECTION

|         |  |          |          |         |
|---------|--|----------|----------|---------|
| A-01-02 | MONIES OR CREDITS RETURNED TO CONSUMERS-complaints/non licensees | \$10,000 | \$95,000 | 950.00% |
| A-02-03 | % OF LICENSEES EXAMINED ANNUALLY                                 | 25%      | 27.11%   | 108.44% |
| A-02-04 | % OF RE-EXAMS RESULTING IN ACCEPTABLE COMPLIANCE RATING          | 80%      | 78.15%   | 97.69%  |
| A-02    | NUMBER OF ENFORCEMENT ACTIONS TAKEN                              | 300      | 392      | 130.67% |
| A-03    | NUMBER OF RE-EXAMINATIONS PERFORMED                              | 400      | 385      | 96.25%  |

### B. LICENSING AND REGISTRATION

|   |   |        |       |         |
|---|---|--------|-------|---------|
| B-01-01   | AVERAGE PROCESSING TIME (DAYS) FOR LICENSE APPS           | 30     | 63    | 209.17% |
| Significant improvements made in FY2016. In Q4 57% of applications were processed in 30 days or less.<br>Readjusting internal procedures to timely process business license applications.                             |   |        |       |         |
| B-01-02   | AVERAGE PROCESSING TIME (DAYS) FOR PAWNSHOP EMPLOYEE APPS | 30     | 58    | 194.17% |
| Significant improvements made in FY2016. Readjusting internal procedures to timely process pawn employee license applications.  |   |        |       |         |
| B-01-03   | AVERAGE PROCESSING TIME (DAYS) FOR RMLO APPS              | 15     | 24    | 161.67% |
| Significant improvements made in FY2016. In Q4 60% of applications were processed in 30 days or less.<br>Readjusting internal procedures to timely process RMLO license applications.                                 |   |        |       |         |
| B-03  | NUMBER OF ADMINISTRATIVE HEARINGS CONDUCTED               | 10     | 6     | 60.00%  |
| Many hearings docketed were resolved informally.  |   |        |       |         |
| B-04  | NUMBER OF REGISTRATIONS PROCESSED                         | 10,100 | 9,022 | 89.33%  |
| Cancellations due to non-renewal of certain registration types caused the total amount processed to decrease.   |   |        |       |         |
| B-04  | NUMBER OF RMLO APPS PROCESSED                             | 225    | 148   | 65.78%  |
| Licensing received fewer RMLO applications than expected in FY15. The volume of RMLOs within OCCC jurisdiction is declining as OCCC licensees shift away from some of the products that would require RMLO licensing. |   |        |       |         |

### C. FINANCIAL LITERACY

|   |   |           |          |         |
|---|---|-----------|----------|---------|
| C-01-01   | NUMBER OF TX CONSUMERS REACHED THROUGH AGENCY PARTICIPATION AT COMMUNITY EVENTS, PRESENTATIONS AND ONLINE RESOURCES | 1,500     | 5,261    | 350.73% |
| C-02-01   | TOTAL DOLLAR AMOUNT OF GRANT AWARDS DISTRIBUTED WITHIN THE GRANT CYCLE  | \$150,000 | \$91,002 | 60.67%  |
| This variance is a timing issue for distribution of reimbursements requested.   |   |           |          |         |
| C-01  | NUMBER OF CONTACTS MADE WITH COMMUNITY ORGS AND MEDIA   | 70        | 90       | 128.57% |
| C-02  | NUMBER OF CONSUMERS SERVED/TRAINED (TFEE)   | 50,000    | 30,004   | 60.01%  |
| TFEE activity is reported semi-annually during the 2-yr grant cycle. These numbers reflect July 2015-June 2016 data, encompassing 2 different grant cycles. The number reached in calendar 2015 was 58,059. |   |           |          |         |

### D. EFFECTIVE STAKEHOLDER COMMUNICATION

|   |  |     |     |         |
|---|--|-----|-----|---------|
| D-01-01   | % OF LICENSEES REACHED THROUGH AGENCY PARTICIPATION IN INDUSTRY WORKSHOPS, SEMINARS, CONFERENCES AND ONLINE COMPLIANCE ED PROGRAMS | 10% | 13% | 128.43% |
| D-01  | NUMBER OF PUBLIC AND INDUSTRY MEDIA SOURCES PUBLISHING COMPLIANCE ED MATERIAL DEVELOPED BY THE AGENCY                              | 4   | 2   | 50.00%  |
| A tremendous effort was made to keep the agency website updated with compliance information and thus no need to publish additional compliance material. |  |     |     |         |
| D-02  | NUMBER OF ADVISORY BULLETINS PUBLISHED   | 6   | 5   | 83.33%  |
| The agency determined five legal and compliance issues warranted advisory bulletins in FY16.  |  |     |     |         |
| D-03  | NUMBER OF ENFORCEMENT ACTION AND CORRECTIVE ACTION SUMMARIES PUBLISHED   | 5   | 7   | 140.00% |

### E. HUB USAGE

|   |  |           |           |         |
|---|--|-----------|-----------|---------|
| E-01-01   | PERCENT OF TOTAL DOLLAR VALUE OF PURCHASING AND PUBLIC WORKS CONTRACT AND SUBCONTRACTS AWARDED TO HUBS | 23.50%    | 69.00%    | 293.62% |
| E-01  | NUMBER OF HUB CONTRACTORS AND SUBCONTRACTORS CONTACTED FOR BID PROPOSALS                               | 60        | 91        | 151.67% |
| E-02  | NUMBER OF HUB CONTRACTS AND SUBCONTRACTS AWARDED   | 40        | 71        | 177.50% |
| E-03  | DOLLAR VALUE OF HUB CONTRACTS AND SUBCONTRACTS AWARDED   | \$400,000 | \$224,283 | 56.07%  |
| This variance was impacted by the delay in launching the ACE project during FY16. |  |           |           |         |



## **Legal Department Report**

*Michael Rigby, General Counsel*

October 2016

### **Enforcement Report**

#### **Pawnshop – Annual Report**

In September 2016, the OCCC issued injunctive orders to file timely and accurate annual reports against 13 pawnshops that did not timely file their 2015 annual report. The injunctive orders directed the licensees to file their annual reports within 30 days of receiving the orders and to file future annual reports in a timely manner. The deadline to request a hearing on the orders is October 10, 2016. Pawnshops are required by rule and instructions published by the Commissioner to file an annual report by June 1 of each year.

#### **Credit Access Business – Quarterly Report**

In August 2016, the OCCC issued administrative orders against 17 credit access businesses that did not timely file their 2016 2nd quarter report. Of the 17 late filers, the OCCC issued 14 injunctive orders to file timely and accurate quarterly and annual reports. The orders directed the licensees to file their quarterly reports within 30 days and to file future quarterly and annual reports in a timely manner. The remaining three licensees were assessed an administrative penalty for violating a prior injunctive order regarding the same issue.

Of the 17 late filers, 11 licensees filed their 2016 2nd quarter report within 30 days and did not request a hearing. One licensee surrendered its license. One injunctive order was withdrawn based on the licensee's date of licensure. The remaining four licensees did not comply with the order or request a hearing. On October 6, 2016, the orders became final and enforceable.

### **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 September 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 Closed as of September 30, 2016 |           |            |            |            |
|---|-----------|------------|------------|------------|
|   | FYTD 2017 | FY 2016    | FY 2015    | FY 2014    |
| <b>Revocation / Suspension Actions</b>              |           |            |            |            |
| 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          |
| <b>Total Revocation / Suspension Actions</b>        | <b>1</b>  | <b>17</b>  | <b>38</b>  | <b>24</b>  |
|   |           |            |            |            |
| <b>Injunction Actions</b>                           |           |            |            |            |
| Regulated Loan License                              | 1         | 88         | 1          | 0          |
| Pawnshop License                                    | 0         | 1          | 0          | 0          |
| Pawnshop Employee License                           | 0         | 0          | 0          | 0          |
| Credit Access Business License                      | 2         | 25         | 1          | 4          |
| Motor Vehicle Sales Finance License                 | 1         | 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          |
| 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          |
| <b>Total Injunction Actions</b>                     | <b>4</b>  | <b>157</b> | <b>25</b>  | <b>17</b>  |
|   |           |            |            |            |
| <b>Administrative Penalty Actions</b>               |           |            |            |            |
| Regulated Loan License                              | 0         | 0          | 73         | 121        |
| Pawnshop License                                    | 0         | 40         | 4          | 6          |
| Pawnshop Employee License                           | 0         | 1          | 4          | 8          |
| Credit Access Business License                      | 0         | 97         | 136        | 56         |
| Motor Vehicle Sales Finance License                 | 9         | 129        | 76         | 88         |
| Property Tax Loan License                           | 0         | 3          | 8          | 18         |
| Crafted Precious Metal Dealer                       | 0         | 2          | 0          | 1          |
| <b>Total Administrative Penalty Actions</b>         | <b>9</b>  | <b>272</b> | <b>301</b> | <b>298</b> |
|   |           |            |            |            |
| <b>Application Denial and Protest Actions</b>       |           |            |            |            |
| 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          |
| <b>Total App. Denial and Protest Actions</b>        | <b>0</b>  | <b>11</b>  | <b>24</b>  | <b>2</b>   |
|   |           |            |            |            |
| <b>Total Enforcement Actions Closed</b>             | <b>14</b> | <b>457</b> | <b>388</b> | <b>341</b> |

From August 1, 2016 to September 30, 2016, the OCCC:

- issued 36 final orders,
- opened 22 cases in order to assess administrative penalties,
- opened 30 cases in order to issue administrative injunctions,
- issued no assurances of voluntary compliance,
- participated in no contested case hearings, and
- dismissed two contested case hearings.

The OCCC has three hearings scheduled between October 1, 2016 and November 30, 2016.

### **Administrative Rule Report**

At the October meeting, the OCCC is presenting two rule actions:

- An adoption of amendments, new rules, and repeals regarding pawnshops, including the licensing process, maintenance of certain disclosures and records related to the Department of Defense's Military Lending Act Rule, and other technical corrections and updates.
- A proposal of amendments regarding credit access businesses that would require credit access businesses to maintain certain disclosures and records related to the Department of Defense's Military Lending Act Rule, and make other technical corrections and updates related to licensing and criminal history.

In addition, the Joint Financial Regulatory Agencies (OCCC, Texas Department of Banking, Texas Department of Savings and Mortgage Lending, and Texas Credit Union Department) are presenting an adoption of amendments to home equity interpretations as a result of rule review. The amendments relate to consumer disclosures, the types of lenders authorized to make home equity loans, and technical corrections.

### **Litigation**

#### ***Rowell v. Pettijohn:***

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

The plaintiffs filed a petition to appeal the case to the U.S. Supreme Court on May 31, 2016. The plaintiffs argue that the Court should hold this case until it rules on the *Expressions Hair Design* case (discussed below), or alternatively, grant review in both this case and *Expressions Hair Design*. On July 5, the OCCC filed a brief in opposition, arguing that the Fifth Circuit's decision was correct and does not warrant review by the Supreme Court. On September 29, the Court granted review in *Expressions Hair Design*. The OCCC expects that the Court will hold *Rowell* until it decides *Expressions Hair Design*.

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

Similar cases have been filed in three other states:

- The Second Circuit upheld New York's credit card surcharge law. *Expressions Hair Design v. Schneiderman*, 808 F.3d 118 (2d Cir. 2015), *reversing* 975 F. Supp. 2d 430 (S.D.N.Y. 2013). The plaintiffs appealed the case to the U.S. Supreme Court on May 12, 2016. The Supreme Court granted review on September 29 and will hear the case during the 2016-2017 term.
- The Eleventh Circuit struck down Florida's credit card surcharge law. *Dana's R.R. Supply v. Att'y Gen.*, 807 F.3d 1235 (11th Cir. 2015), *reversing* no. 4:14-cv-00134-RH-CAS (N.D. Fla. Sept. 2, 2014). The State of Florida appealed the case to the U.S. Supreme Court on June 6, 2016.
- A federal district court struck down California's credit card surcharge law. *Italian Colors Rest. v. Harris*, 99 F. Supp. 3d 1199 (E.D. Cal. 2015). The State of California has appealed this case to the Ninth Circuit, and the parties have filed their briefs on appeal.

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

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

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

#### ***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 property tax lender defendants filed a brief in opposition on September 28, arguing that the Fifth Circuit's decision was correct. The plaintiffs filed a reply brief on October 5.

***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 denied the plaintiffs' motion for preliminary injunction on October 3. The case is currently pending in the District of Columbia federal district court, with case number 1:16-cv-01433-CKK.

**Federal Rulemaking**

***CFPB Payday Loan Rule:***

On June 2, 2016, the Consumer Financial Protection Bureau (CFPB) proposed a rule with requirements for payday loans, title loans, and other high-cost consumer loans. The rule would apply to short-term consumer loans (*i.e.*, loans where the consumer is required to repay the loan in 45 days or less). The rule would also apply to longer-term consumer loans that: (1) have a term more than 45 days; (2) have an all-in APR over 36% (this includes certain fees that are not in a normal APR); and (3) require a leveraged payment mechanism (*i.e.*, the right to obtain payment from the consumer's account or payroll) or a security interest in a motor vehicle.

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

The CFPB's deadline for official comments on the rule was October 7, 2016. The OCC filed an official comment on the CFPB's rule, expressing concern about access to consumer credit.

The CFPB has proposed that the rule will be effective 15 months after a final version of the rule is published in the *Federal Register*.



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

On July 22, 2015, the U.S. Department of Defense adopted amendments to its Military Lending Act Rule at 32 C.F.R. part 232. The amendments expand the scope of the MLA Rule, so that it will apply to most consumer loans made to covered military borrowers (including active-duty service members and their dependents). If a creditor makes a loan to a covered military borrower, then the MLA Rule: (1) prohibits the lender from making the loan at a military APR over 36% (the MAPR is similar to APR but includes additional charges), (2) requires the creditor to provide a disclosure about the MLA Rule and the MAPR to the borrower, and (3) prohibits the creditor from requiring arbitration. The DOD has established a database that lenders can consult, to determine whether a consumer is a covered military borrower. Lenders must comply with the amended MLA Rule starting October 3, 2016.

**Advisory Bulletins**

From August 1, 2016 to September 30, 2016, the OCCC issued one advisory bulletin. Bulletin No. 16-6 summarizes requirements of the Department of Defense's Military Lending Act Rule for pawnshops.

The OCCC also revised Bulletin No. 16-4, relating to deferment charges for motor vehicle retail installment contracts, to make technical corrections in calculation examples.

**Interpretation Requests**

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

**Public Information Requests**

From August 1, 2016 to September 30, 2016, the OCCC received 33 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 August 1, 2016 to September 30, 2016, the OCCC received one scholarship from the American Association of Residential Mortgage Regulators, which waived one registration fee to its 2016 Annual Conference, valued at \$795.00, on August 2, 2016.

**OCCC Rule Schedule**

**October 21, 2016**

| Rule Item/Purpose  | Proposal Date | Adoption Date                   |
|--|---------------|---------------------------------|
| <p><b>Rules for Operation of Pawnshops - Adopt Amendments, New Rules, &amp; Repeals</b><br/> 7 TAC, Chapter 85, Subchapter A</p> <p>To update rules regarding the licensing of pawnshops; to provide clarification regarding contact information, transfers, criminal history review, disclosures, and recordkeeping; and to make technical corrections</p> <p><i>Precomment draft distributed July 14, 2016</i><br/> <i>Stakeholders meeting held July 28, 2016</i></p> | 08/19/16      | Presented for Adoption 10/21/16 |
| <p><b>Rules for Credit Access Businesses - Proposed Amendments</b><br/> 7 TAC, Chapter 83, Subchapter B</p> <p>To make technical corrections; to conform the licensing rules to clarifying changes recently adopted in other regulated areas</p> <p><i>Precomment draft distributed September 23, 2016</i></p>   | 10/21/16      |                                 |

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

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

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

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

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

*Title 7. Banking and Securities*

*Part 5. Office of Consumer Credit Commissioner*

*Chapter 85. Pawnshops and Crafted Precious Metal Dealers*

*Subchapter A. Rules of Operation for Pawnshops*

The Finance Commission of Texas (commission) adopts amendments, new rules, and repeals in 7 TAC, Chapter 85, Subchapter A, concerning Rules of Operation for Pawnshops.

The commission adopts the amendments to §§85.102, 85.104, 85.202, 85.206, 85.208, 85.209, 85.211, 85.305, 85.306, 85.402, 85.405, 85.413, 85.420, 85.423, and 85.702; new §85.205; and the repeal of §§85.205, 85.601, and 85.602 without changes to the proposed text as published in the September 2, 2016, issue of the *Texas Register* (41 TexReg 6593).

The commission adopts new §85.601 with changes to the proposed text as published in the September 2, 2016, issue of the *Texas Register* (41 TexReg 6593). The changes are a result of a technical correction to a citation.

The commission received no written comments on the proposal.

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

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

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

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

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

Adopted amendments to §85.104(b) and (c) clarify the agency's procedure for providing delinquency notices to licensees that have failed to pay an annual assessment fee. The amendments specify that notice of delinquency is considered to be given when the OCCC sends the notice by e-mail to the address on file with the OCCC (if the

pawnshop has provided an e-mail address), or by mail to the address on file with the OCCC as a master file address (if the pawnshop has not provided an e-mail address).

An amendment to §85.202(a)(1)(B)(i) removes the requirement to disclose community property interests and documentation regarding separate property status, and replaces it with a requirement to disclose the names of the spouses of principal parties if requested. The agency currently spends considerable time requesting information from license applicants to determine the status of spouses' property interests, and explaining these concepts to applicants. These amendments will help streamline the licensing process and reduce regulatory burden. The amendments will also make the application process simpler and more straightforward for applicants. In specific cases where the spouse is a principal party, the OCCC would be able to request additional information about the spouse under current §85.202(a)(1)(E)-(F).

Section 85.205 is being repealed and replaced with a new rule, with the intent to clarify the requirements when a licensee transfers ownership. Section 85.205 describes what constitutes a transfer of ownership requiring the filing of a transfer application. The adopted new rule largely maintains the requirements under the former rule, including the requirements for filing a license transfer application. In addition to the license transfer application allowed under the former rule, the new rule allows an alternative method for a transfer of ownership: a new license application on transfer of ownership. The new rule describes what the application must include, the timing requirements, and which parties

are responsible at different points in the transfer process. Subsection (a) describes the purpose of the new section. Subsection (b) defines terms used throughout the section. In particular, subsection (b)(3) defines the phrase "transfer of ownership," listing different types of changes in acquisition or control of the licensed entity.

Subsection (c) specifies that a license may not be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §371.070. Subsection (d) provides a timing requirement, stating that a complete license transfer application or new license application on transfer of ownership must be filed no later than 30 days after the transfer of ownership. Subsection (e) outlines the requirements for the license transfer application or new license application on transfer of ownership. These requirements include complete documentation of the transfer of ownership, as well as a complete license application for transferees that do not hold an existing pawnshop license. Subsection (e)(5) explains that the application may include a request for permission to operate.

Subsection (f) provides that the OCCC may issue a permission to operate to the transferee. A permission to operate is a temporary authorization from the OCCC allowing a transferee to operate while final approval is pending for an application. Subsection (g) specifies the transferee's authority to engage in business if the transferee has filed a complete application including a request for permission to operate. It also requires the transferee to immediately cease doing business if the OCCC denies the request for permission to operate or denies the application. Subsection (h) describes the situations where the

transferor is responsible for business activity at the licensed location, situations where the transferee is responsible, and situations where both parties are responsible.

In §85.206, concerning Processing of Application, conforming changes in this adoption cite the amended title of §85.205.

In §85.208, concerning Change in Form or Proportionate Ownership, conforming changes are adopted corresponding to proposed new §85.205. Throughout subsections (b) and (c), references have been added to the new license application on transfer of ownership. In addition, amendments in subsection (b) clarify situations where a merger is a transfer of ownership. The amendments specify that if a licensee is a party to a merger that results in a new or different surviving entity other than the licensee, then the merger is a transfer of ownership, and the licensee must file a license transfer application or new license application. The amendments to subsection (b) are intended to clarify the current rule text and are consistent with the OCCC's current policy.

Adopted amendments to §85.209 clarify the circumstances in which a pawnshop applicant or licensee must notify the OCCC of changes to information in the original license application. The amendments specify that the requirement to provide updated information within 10 days applies before a license application is approved. Adopted new §85.209(c) provides that a licensee must notify the OCCC within 30 days if the information relates to the names of principal parties, criminal history, regulatory actions, or court judgments. Adopted new §85.209(d) specifies that each applicant or licensee is responsible for ensuring that all contact information on file with the OCCC

is current and correct, and that it is a best practice for licensees to regularly review contact information. Corresponding changes are adopted in §85.305 for pawnshop employee licensees.

An adopted amendment to §85.211(d) provides that a pawnshop license applicant must pay a fee to a party designated by the Texas Department of Public Safety (DPS) for processing fingerprints. This amendment conforms the rule to the method by which applicants currently provide fingerprint information through DPS's Fingerprint Applicant Services of Texas (FAST) program. A corresponding change is adopted in §85.306 for pawnshop employee licensees. An amendment to former §85.211(g) (adopted §85.211(h)) adds a tagline for clarity.

An adopted amendment to §85.402(g) relates to the requirement for sequential numbering of electronic pawn tickets. The amendment removes the requirement that the OCCC approve methods of numbering the pawn ticket other than sequential numbering by the form supplier. Instead, the amendment provides that the pawnshop may sequentially number each pawn ticket in accordance with written policies that ensure appropriate management and controls. The amendment is intended to provide pawnshops with flexibility in numbering pawn tickets, while also ensuring that pawnshops properly account for all transactions. Another adopted amendment to §85.402(g) specifies that each of the three parts of the pawn ticket must be numbered with the same sequential number.

Adopted new §85.402(h) requires pawnshops to maintain documentation and disclosures required under the Department of Defense's Military Lending Act (MLA)

Rule, 32 C.F.R. pt. 232. The Department of Defense's recently adopted amendments to the MLA Rule have a required compliance date of October 3, 2016. Under the amended MLA Rule, creditors will generally be required to provide model disclosures to covered military borrowers. 32 C.F.R. §232.6. The amended MLA Rule also specifies documentation that creditors can obtain in order to determine whether a consumer is a covered military borrower. 32 C.F.R. §232.5. Adopted new §85.402(h) specifies that licensees are required to maintain these documents and disclosures. These records must be maintained for two years from the date of the final entry, like the pawn ticket under current §85.402(b). The two-year requirement is based on Texas Finance Code, §371.152, which requires pawnshops to keep records of pawn transactions for two years from the date of the last recorded event. However, licensees may keep the documents for a longer period of time if they choose.

At the stakeholders meeting, one stakeholder asked whether §85.402(h) would require a particular form for records about whether a consumer is a covered military borrower. The Department of Defense has created a database that lenders can consult to determine whether a consumer is a covered military borrower. Although the MLA Rule provides a safe harbor for lenders who use the database, it provides that a lender may apply its own method to determine whether a consumer is a covered military borrower. 32 C.F.R. §232.5(a). To clarify, adopted §85.402(h) does not require a particular form for records about whether a consumer is a covered military borrower, but requires licensees to retain any records that they obtain to make that determination.

Several stakeholders raised other questions about how to comply with the MLA Rule. For example, stakeholders asked questions about how to calculate the military annual percentage rate for purposes of the MLA Rule's 36% maximum for loans made to covered military borrowers. Stakeholders also asked questions about obtaining a potential borrower's Social Security number in order to determine whether the borrower is a covered military borrower. These questions are generally outside the scope of the adopted rule amendments. However, on September 28, 2016, the agency published an advisory bulletin with guidance on complying with the MLA Rule.

An adopted amendment to §85.405(a)(2) allows licensees to modify the current rule's model pawn ticket, to add the mandatory disclosure to a covered borrower under the MLA Rule, 32 C.F.R. §232.6. One precommenter suggested adding language to the amendment to §85.405(a)(2), to specify that the required disclosure is not required to be on the pawn ticket. In response to this precomment, the amendment explains that a licensee may provide the disclosure on a separate form, as an alternative to including the disclosure on the pawn ticket.

Another precommenter suggested an additional permissible pawn ticket change related to the MLA Rule. The precommenter suggested adding the following sentence to §85.405(a)(2)(B): "A licensee also may modify the pawn ticket to add an inquiry as to whether or not the borrower is a covered borrower." The agency believes that this modification could create confusion. The inquiry might be misunderstood by borrowers and licensees, who could believe that the borrower's statement creates a safe harbor from penalties under the MLA Rule. However, if a licensee creates a specific

modification of the pawn ticket, it may submit the non-standard ticket to the OCCC under former §85.405(a)(2)(B) (adopted §85.405(a)(2)(C)), and the OCCC will review the inquiry in the context of the amended pawn ticket.

An adopted amendment to §85.405(a)(6)(A) explains that a handgun license is an acceptable form of identification, as provided by Texas Business and Commerce Code, §506.001(a). Under Section 506.001(a), a person may not deny the holder of a handgun license issued by the Texas Department of Public Safety access to goods, services, or facilities, because the holder presents a handgun license rather than a driver's license or other acceptable form of personal identification. The Texas Legislature enacted this provision in H.B. 2739 (2015). In the same legislative session, the Legislature enacted an open-carry law, H.B. 910 (2015), which replaced statutory references to the phrase "concealed handgun license" with the phrase "handgun license." The amendment to §85.405(a)(6)(A) is intended to clarify that a Texas handgun license is permissible for a borrower in a pawn transaction, in addition to other forms of photographic identification listed in Texas Finance Code, §371.174(b). The amendment conforms to the OCCC's advisory bulletin no. B15-3 for pawnshops, "Handgun License as a Valid Form of ID." At the stakeholders meeting, one stakeholder asked whether this amendment refers only to Texas handgun licenses, or includes handgun licenses from other states. In response to this question, the adopted rule text states that a "Texas handgun license issued under Texas Government Code, Chapter 411" is an acceptable form of identification, in order to clarify that this provision refers only to Texas handgun

licenses issued by the Texas Department of Public Safety.

Adopted amendments to §85.413 relate to disclosures for consumer complaints about lost or damaged goods. A new figure is being adopted to replace former figure 7 TAC §85.413(e)(6), which is a disclosure about the complaint process for lost or damaged goods. The new figure removes the former figure's statement that the pawnshop must provide a copy of the OCCC complaint form to the consumer, and replaces it with a statement explaining that the consumer may file a complaint through the OCCC's website. The new figure also includes updated contact information for the OCCC. Corresponding changes are adopted in §85.413(h). Previously, subsection (h) provided that the pawnshop must provide a copy of the OCCC complaint form upon request by a person attempting to redeem pledged goods, and figure 7 TAC §85.413(h) contained a copy of the OCCC's complaint form. The amendments to subsection (h) replace these provisions with a statement that a person attempting to redeem lost or damaged goods may file a written complaint with the OCCC, and a statement that the complaint form is available on the OCCC's website. These amendments are intended to ensure that consumers receive disclosures with up-to-date OCCC contact information, and that consumers are encouraged to file any complaints through the OCCC's website.

An adopted amendment to §85.420(b)(2) clarifies hold-period requirements for purchase transactions by pawnshops. Generally, pawnshops are required to hold purchased items for at least 20 days, under §85.420(b)(1)(A). However, there is an exception to this general requirement in former §85.420(b)(2), which provides that a



pawnshop and a law enforcement agency may agree to a hold period of seven days or less if the following conditions are met: (1) information is exchanged electronically, (2) the agreement does not conflict with any local ordinance, and (3) the agreement is submitted to the OCCC in writing. The adopted amendment to §85.420(b)(2) replaces "seven days or less" with "less than 20 days," to clarify that the agreement with the law enforcement agency can be for a period between 7 and 20 days (e.g., a 10-day hold period).

Adopted amendments to §85.423 relate to a notice to consumers about filing complaints with the OCCC. Under §85.423, pawnshops are generally required to include this notice on the privacy notices that they provide to consumers, unless the pawnshop provides the privacy notice at the same time as the pawn ticket, and the pawn ticket includes a shorter OCCC notice with the agency's phone number. An adopted amendment to §85.423(b) amends the longer OCCC notice to include the OCCC's updated website and e-mail address. In accordance with instructions from the Texas Department of Information Resources, the OCCC has updated its website and e-mail address with the "texas.gov" extension: [occc.texas.gov](http://occc.texas.gov) and [consumer.complaints@occc.texas.gov](mailto:consumer.complaints@occc.texas.gov). Other revisions have been made to the text of the OCCC notice to provide more clarity to consumers regarding the role of the OCCC in resolving complaints. Previously, this notice had been referenced in the rules as the "Complaints and inquiries notice." To continue the use of the agency's acronym and provide consistency with other rules, this consumer notice has been relabeled as the "OCCC Notice."

Adopted new §85.601 specifies the criminal history information collected by the OCCC, outlines factors the OCCC will consider when reviewing criminal history information, and describes grounds for denial, suspension, and revocation of a pawnshop or pawnshop employee license. This section replaces former §85.601 and §85.602, which are being repealed. Subsection (a) describes the OCCC's collection of criminal history record information from law enforcement agencies. Subsection (b) identifies the criminal history information that the applicant must disclose. Subsection (c) describes the OCCC's denial, suspension, and revocation based on crimes that are directly related to the licensed occupation of a pawnbroker or pawnshop employee. Subsection (c)(1) lists the types of crimes that the OCCC considers to directly relate to the duties and responsibilities of being a licensee, including the reasons the crimes relate to the occupation, as provided by Texas Occupations Code, §53.025(a). Subsection (c)(2) contains the factors the OCCC will consider in determining whether a criminal offense directly relates to the duties and responsibilities of a licensee, as provided by Texas Occupations Code, §53.022. Subsection (c)(3) provides the mitigating factors the OCCC will consider to determine whether a conviction renders an applicant or licensee unfit, as provided by Texas Occupations Code, §53.023. Subsection (d) describes the OCCC's authority to deny a license application if it does not find that the applicant is of good moral character, or if the applicant does not have the responsibility, character, and fitness to command the confidence of the public, as provided by Texas Finance Code, §371.052(a) and §371.102(b). Subsection (e) explains that the OCCC will revoke a license on the licensee's imprisonment

following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b). Subsection (f) identifies other grounds for denial, suspension, or revocation, including convictions for specific offenses described by statutory provisions cited in the rule.

Since the proposal, a change has been made to §85.601(f)(2) to remove a reference to a provision in the Texas Code of Criminal Procedure that will be in effect through December 31, 2016. Because the effective date of this adoption is January 1, 2017, a citation to the 2016 version of the provision is unnecessary. As revised in new §85.601, subsection (f)(2) cites the relevant provisions of the Texas Code of Criminal Procedure that will be effective in 2017.

At the stakeholders meeting, two stakeholders expressed concern about new §85.601's provisions regarding denial of a license application when the applicant provides incomplete or inaccurate information on the application. One stakeholder asked whether providing incomplete or inaccurate information would constitute the criminal offense of "filing a false government report" for purposes of §85.601(c)(1)(F). To clarify, the list of directly related offenses in adopted §85.601(c)(1) refers to criminal offenses for which the applicant has been convicted. Providing incomplete or inaccurate information to the OCCC would not constitute an offense under §85.601(c)(1) unless the applicant is actually convicted of an offense in connection with the application. However, providing incomplete or inaccurate information might be a separate basis for denying the application, as specified in §85.601(f)(4). Another

stakeholder asked whether the OCCC would continue its policy of providing applicants an opportunity to respond when the OCCC finds that the license application contains incomplete information regarding criminal history. After an applicant files an application, if the OCCC finds criminal history that relates to the occupation or the applicant's moral character, the agency's policy is to send a letter to the applicant providing an opportunity to explain the criminal history. The OCCC intends to continue this policy. However, applicants still have a responsibility to ensure that applications are complete and accurate at the time of submission, so that the OCCC can review applications in a timely and efficient manner. Submitting an incomplete or inaccurate license application reflects negatively on the applicant's responsibility, character, and fitness to hold a license.

Adopted amendments to §85.702(b) include technical corrections relating to the administrative penalty for violating the acceptance of goods provisions in §85.418(a). One amendment replaces "items" with "item," to clarify that a licensee commits a violation by accepting an item in violation of the acceptance of goods provisions. Another adopted amendment replaces "and" with "or," to clarify that a licensee is subject to a penalty if the licensee violates §85.418(a)(1) or (3).

Regarding the effective date of these rule changes, Texas Finance Code, §371.006 requires notice to licensees concerning rulemaking for the pawnshop industry. In order to comply with this statutory notice requirement, the delayed effective date for all rule changes included in this adoption will be January 1, 2017.

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Additionally, the agency has delayed the implementation date for use of the revised forms in §85.413(e)(6) and §85.423, which will help minimize potential costs and allow use of current forms inventory. Licensees may continue use of the prior forms until February 28, 2017. On or after March 1, 2017, licensees must use the revised forms for §85.413(e)(6) and §85.423, as amended by this adoption.

The rule changes are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §371.006 grants the Finance Commission the authority to adopt rules to enforce the Texas Pawnshop Act. The amendment to §85.420 is adopted under Texas Finance Code, §371.181(b), which provides that the commission shall adopt rules allowing a pawnshop to assist law enforcement agencies in locating and recovering stolen property. The amendments to §85.423 are adopted under Texas Finance Code, §11.307(b), which provides that the commission shall adopt rules requiring regulated entities to include complaint notices on legally required privacy notices.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 11 and 371.

*§85.102. Definitions.*

Words and terms used in this subchapter that are defined in Texas Finance Code, Chapter 371, have the same meanings as defined in that chapter unless the context clearly indicates otherwise. The following words and terms, when used in this subchapter, will have the following

meanings unless the context clearly indicates otherwise.

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

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

(10) [(9)] Pawnbroker--A person who has an ownership interest in a pawnshop as shown in an application for a pawnshop license filed with the OCCC. When general duties and prohibitions are described, pawnbroker also includes a pawnshop employee unless the context indicates otherwise.

(11) [(10)] Pledged goods--Tangible personal property held by a pawnbroker as collateral for a pawn loan and that has not become the property of the pawnbroker by a taking into inventory due to non-payment of the loan.

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

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

(B) - (I) (No change.)

*§85.104. Renewal Dates of Licenses*

(a) (No change.)

(b) Notice of delinquency. If a pawnshop or pawnshop employee does not pay the annual fees by June 1, a written notice of delinquency will be sent by June 15. ~~[The notice of delinquency will be delivered as follows:]~~

(1) If a pawnshop has provided a master file e-mail address to the OCCC, then the OCCC will:

(A) send any notice of delinquency for the pawnshop to the master file e-mail address on file for the pawnshop; and

(B) send any notice of delinquency for an employee of the pawnshop to the employee through the master file e-mail address on file for the pawnshop.

(2) If a pawnshop has not provided a master file e-mail address to the OCCC, then the OCCC will:

(A) send any notice of delinquency for the pawnshop by mail to the master file address on file for the pawnshop; and

(B) send any notice of delinquency for an employee of the pawnshop to the employee by mail through the master file address on file for the pawnshop.

~~[(1) for pawnshops, the notice will be sent to the address of the corporate office on file for the pawnshop;]~~

~~[(2) for pawnshop employees, the notice will be sent to the employee license holder through the corporate office on file for the licensed entity who employs the pawnshop employee.]~~

(c) Expiration of license. A pawnshop license and a pawnshop employee license will expire on the later of June 30 of each year or the 16th day after the written notice of delinquency is given unless the annual

fees for the following term have been paid. To be considered timely paid, the fees must be postmarked or submitted by June 30. June 30 is the end of the license term for each year. For purposes of this subsection and §85.210(d) of this title (relating to License Status), notice of delinquency is given when the OCCC sends the delinquency notice by the method described in subsection (b) of this section.

*§85.202. Filing of New Application.*

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

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

(A) (No change.)

(B) Disclosure of Owners and Principal Parties.

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

~~documentation establishing or confirming separate property status must be provided.]~~

(ii) - (vii) (No change.)

(C) - (J) (No change.)

(2) (No change.)

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

*§85.205. Transfer of License; New License Application on Transfer of Ownership.*  
**{{This section replaces former section 85.205, which is being repealed.}}**

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

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

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

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

(3) Transfer of ownership--Any purchase or acquisition of control of a licensed entity (including acquisition by gift, devise, or descent), or a substantial portion

of a licensed entity's assets, where a substantial change in management or control of the business occurs. The term does not include a change in proportionate ownership as defined in §85.208 of this title (relating to Change in Form or Proportionate Ownership) or a relocation of pawn transactions from one licensed location to another licensed location, as described by §85.203(g) of this title (relating to Relocation). Transfer of ownership includes the following:

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

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

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

(i) a limited partner owning 5% or more relinquishes that owner's entire interest;

(ii) a new limited partner obtains an ownership interest of 5% or more;

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

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

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

(i) a new stockholder obtains 5% or more of the outstanding voting stock in a privately held corporation;

(ii) an existing stockholder owning 5% or more relinquishes that owner's entire interest in a privately held corporation;

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

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

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

(i) in which a new member obtains an ownership interest of 5% or more;

(ii) in which an existing member owning 5% or more relinquishes that member's entire interest; or

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

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

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

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

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

(c) License transfer approval. No pawnshop license may be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §371.070. A license transfer is approved when the OCCC issues its final written approval of a license transfer application.

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

(e) Application requirements.

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

pay appropriate fees in connection with the application.

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

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

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

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

(D) any other documentation evidencing the transfer event.

(3) Application information for new licensee. If the transferee does not hold a pawnshop license at the time of the application, then the application must include the information required for new license applications under §85.202 of this title (relating to Filing of New Application). The instructions in §85.202 of this title apply to these filings.

(4) Application information for transferee that holds a license. If the transferee holds a pawnshop license at the time of the application, then the application must include amendments to the transferee's original license application describing the information that is unique to the transfer event, including the Application for

Pawnshop License, Application Questionnaire, Disclosure of Owners and Principal Parties, a new Financial Statement, and a lease agreement or proof of ownership, as provided in §85.202 of this title. The instructions in §85.202 of this title apply to these filings. Other information required by §85.202 of this title need not be filed if the information on file with the OCCC is current and valid.

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

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

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

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

(f) Permission to operate. If the application described by subsection (e) includes a request for permission to operate and all required information, and the transferee has paid all fees required for the application, then the OCCC may issue a permission to operate to the transferee. A request for permission to operate may be

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

(g) Transferee's authority to engage in business. If a transferee has filed a complete application including a request for permission to operate as described by subsection (e), by the deadline described by subsection (d), then the transferee may engage in business as a pawnshop. However, the transferee must immediately cease doing business if the OCCC denies the request for permission to operate or denies the application. If the OCCC denies the application, then the transferee has a right to a hearing on the denial, as provided by §85.206(g) of this title (relating to Processing of Application).

(h) Responsibility.

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

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

OCCC for activity performed under the license during this period.

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

*§85.206. Processing of Application.*

(a) (No change.)

(b) Application acceptance. An application will not be accepted until it contains the appropriate fees and substantially all of the items required in accordance with §85.202 of this title (relating to Filing of New Application), §85.203 of this title (relating to Relocation), or §85.205 of this title (relating to Transfer of License; New License Application on Transfer of Ownership) as appropriate.

(c) - (h) (No change.)

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

(a) (No change.)

(b) Merger.

(1) If a licensee is a party to a merger that results in a new or different surviving entity other than the licensee, then the merger is a transfer of ownership, and the licensee must file a license transfer



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application or a new license application on transfer of ownership [~~A merger of a licensee is a change of ownership that results in a new or different surviving entity and requires the filing of a transfer application~~] pursuant to §85.205 of this title (relating to Transfer of License; New License Application on Transfer of Ownership).

(2) If a licensee's parent entity is a party to a merger that [~~If the merger of the parent entity of a licensee~~] leads to the creation of a new entity or results in a different surviving parent entity, the licensee must advise the OCCC in writing of the change within 14 calendar days by filing a license amendment and paying the required fees as provided in §85.211 of this title.

(3) Mergers or transfers of other entities with a beneficial interest beyond the parent entity level only require notification within 14 calendar days in accordance with the OCCC's instructions.

(c) Proportionate ownership.

(1) A change in proportionate ownership that results in the exact same owners still owning the business, and does not meet the requirements described in paragraph (2) of this subsection or the requirements of §85.205(b)(3)(D) or (E) [§85.205(a)(4) or (5)] of this title, does not require a transfer. Such a proportionate change in ownership does not require the filing of a license transfer application or a new license application on transfer of ownership, but does require written notification to the OCCC when the cumulative ownership change to a single entity or individual amounts to 5% or greater. This subsection does not apply to a publicly held corporation that has filed with

the OCCC the most recent 10K or 10Q filing of the licensee or the publicly held parent corporation, although a license transfer application or a new license application on transfer of ownership may be required under §85.205 of this title.

(2) (No change.)

(d) (No change.)

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

(a) Supplemental information. Upon request, each applicant must provide information supplemental to that contained in the applicant's original application documents.

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

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

(1) the names of principal parties;

(2) criminal history;

(3) actions by regulatory agencies; or

(4) court judgments.

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

*§85.211. Fees.*

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

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

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

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

(f) [~~(e)~~] License amendments. A fee of \$25 must be paid each time a licensee amends a license by inactivating a license, activating an inactive license in a county with a population of less than 250,000, changing the assumed name of the licensee, changing the organizational form or proportionate ownership that results in the exact same individuals or entities still owning the business and does not require a transfer under §85.205(b)(3)(D) or (E) [~~§85.205(a)(4) or (5)~~] of this title (relating to

Transfer of License; New License Application on Transfer of Ownership) or §85.208(c)(2) of this title (relating to Change in Form or Proportionate Ownership), providing notification of a new parent entity, or relocating an office in a county with a population of less than 250,000. An activation or relocation in a county with a population of 250,000 or more will require a \$250 investigation fee and other fees as may be required of a new license applicant.

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

(h) Notice of application. [~~(g)~~] Each applicant for a new or relocated license will pay \$1.00 to the commissioner for each notice of application that is required to be mailed.

(i) [~~(h)~~] Costs of hearings. The commissioner or administrative law judge may assess the costs of an administrative appeal pursuant to Texas Finance Code, §14.207 for a hearing afforded under §85.206(g) of this title (relating to Processing of Application), including the cost of the administrative law judge, the court reporter, and agency staff representing the OCCC at a hearing. If it is determined that a protest is frivolous or without basis, then the cost associated with the hearing may be assessed solely to the protesting party.

(j) [~~(i)~~] Excess payment of fees. Any excess payment of fees received by the commissioner may be held to offset anticipated fees that may be owed by the licensee or applicant.

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

(a) Supplemental information. Upon request, each applicant must provide information supplemental to that contained in the applicant's original application documents.

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

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

- (1) the licensee's name;
- (2) criminal history;
- (3) actions by regulatory agencies; or
- (4) court judgments.

(d) Contact information. Each applicant or licensee is responsible for ensuring that all contact information on file with the OCCC is current and correct, including all mailing addresses, all phone numbers, and

all e-mail addresses. It is a best practice for licensees to regularly review contact information on file with the OCCC to ensure that it is current and correct.

§85.306. Fees.

(a) (No change.)

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

(c) [~~(b)~~] Annual renewal fees. The annual renewal fee for a pawnshop employee license is \$15. The fee must be paid by June 30 each year. A pawnshop employee license will expire on the later of June 30 or the 16th day after the written notice of delinquency is given unless the annual renewal fee has been paid.

(d) [~~(c)~~] License amendments. An employee seeking to amend a license by changing the name of the licensee or relocating to another pawnshop is not required to pay an additional fee. Any relocation requires notice to the OCCC in the format prescribed by the commissioner.

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

(f) [~~(e)~~] Cost of hearings. The commissioner or the administrative law judge may assess the cost of an administrative appeal pursuant to Texas Finance Code, §14.207 for a hearing afforded under §85.304(e) of this title (relating to Processing of Application),

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including the cost of the administrative law judge, the court reporter, and agency staff representing the OCCC at a hearing.

*§85.402. Recordkeeping.*

(a) - (f) (No change.)

(g) Requirements of electronic recordkeeping system. In an electronic recordkeeping system, the pawn ticket must be a three-part form. Entries made to the top copy of the pawn ticket must be legible and simultaneously reproduced on the remaining parts. The form must provide a perforated stub to be utilized in labeling and identifying pledged goods. Each part of the pawn ticket must be numbered sequentially by the supplier of the pawn ticket form [~~unless the commissioner approves, in writing, an alternative method of numbering the pawn ticket~~]. As an alternative to sequential numbering by the supplier, the licensee may sequentially number each pawn ticket in accordance with written policies and procedures (maintained by the licensee) that ensure the integrity of the numbering system through appropriate management and accounting controls. The stub and the three parts of the pawn ticket must be numbered simultaneously with the same sequential number. The second part of the pawn ticket (law enforcement copy) may be omitted or properly destroyed (i.e., pawn ticket is completely shredded or incinerated) if the pawn and purchase ticket information is exchanged electronically, directly or indirectly, with the primary law enforcement agency in the jurisdiction that the pawnshop is located.

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

(h) Military Lending Act records.

(1) A licensee must maintain any record that the licensee obtains under the Department of Defense's Military Lending Act Rule, 32 C.F.R. §232.5, regarding whether a consumer is a covered borrower. The licensee must maintain the record for at least two years after the last recorded event, as provided by subsection (b).

(2) A licensee must maintain any mandatory disclosure to a covered borrower under the Military Lending Act Rule, 32 C.F.R. §232.6. The licensee must maintain the disclosure for at least two years after the last recorded event, as provided by subsection (b).

*§85.405. Pawn Transaction.*

(a) Pawn Ticket.

(1) (No change.)

(2) Modifications of pawn ticket.

(A) (No change.)

(B) Military Lending Act disclosure. A licensee may modify the pawn ticket to add the mandatory disclosure to a covered borrower under the Department of Defense's Military Lending Act Rule, 32 C.F.R. §232.6. Alternatively, a licensee may provide the mandatory disclosure on a separate form.

(C) [(B)] Other changes. Any other changes to the prescribed forms must be approved, in writing, in advance, by the commissioner.

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

(6) Identification of pledgor or seller.

(A) Proper identification. The pledgor must present a proper form of identification at the time of the pawn transaction. For purposes of this paragraph, any form of identification found in Texas Finance Code, §371.174(b) that is either current or has not been expired for more than one year will be considered acceptable. A Texas handgun license issued under Texas Government Code, Chapter 411 is an acceptable form of identification, as provided by Texas Business and Commerce Code, §506.001(a). A pawnbroker is not required to take a photograph of any pledgor or seller for purposes of identification.

(B) (No change.)

(7) (No change.)

(b) - (h) (No change.)

*§85.413. Lost or Damaged Goods.*

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

(e) Communications with pledgors.

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

(6) When an attempt or offer to redeem, renew, or extend a pawn transaction is made and it is known or learned that pledged goods have been lost or damaged, the pledgor must accurately be informed of the facts of the situation, the status of the pledged goods, the pawnbroker's responsibility under Texas Finance Code, Chapter 371, and the pledgor's rights under paragraph (5) of this subsection. A model disclosure is provided in the following example.

Figure: 7 TAC §85.413(e)(6) {{See attached figure, which replaces former figure 7 TAC §85.413(e)(6).}}

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

(h) Replacement complaints. A person attempting to redeem lost or damaged goods may file a written complaint with the OCCC. [Upon request by the person attempting to redeem pledged goods, a complaint form issued by the commissioner must be provided.] The complaint form is available on the OCCC's website [provided in the following figure]. The OCCC will begin review of a complaint for lost or damaged items upon receipt of the written complaint.

[Figure: 7 TAC §85.413(h)]

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

*§85.420. Purchase Transactions.*

(a) (No change.)

(b) Hold period.

(1) (No change.)

(2) A reduced hold period of less than 20 days ~~[seven days or less]~~ may be agreed upon by the pawnbroker and the law enforcement agency if the pawn and purchase ticket information is exchanged electronically. The agreement for a reduced hold period must not conflict with any local ordinance and must be submitted to the commissioner in writing by and through the chief local law enforcement officer for the jurisdiction.

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§85.423. OCCC ~~[Complaints and Inquiries]~~  
Notice.

(a) (No change.)

(b) Required notice.

(1) The following notice must be given to let consumers know how to file complaints: "For questions or complaints about this pawn loan, contact (insert name of pawnshop) at (insert pawnshop's phone number and, at pawnshop's option, one or more of the following: mailing address, fax number, website, e-mail address). The pawnshop is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the pawnshop, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: [occc.texas.gov](http://occc.texas.gov). Email: [consumer.complaints@occc.texas.gov](mailto:consumer.complaints@occc.texas.gov)." [~~"The (your name) is (licensed and examined or registered) under the laws of the State of Texas and by state law is subject to regulatory oversight by the Office of Consumer Credit Commissioner. Any consumer wishing to file a complaint against the (your name) should contact: Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 4207. Telephone No.: 800/538 1579. Fax No.: 512/936 7610. E mail: [consumer.complaints@occc.state.tx.us](mailto:consumer.complaints@occc.state.tx.us). Website: [www.oeccc.state.tx.us](http://www.oeccc.state.tx.us)."~~]

(2) - (4) (No change.)

§85.601. Denial, Suspension, or Revocation Based on Criminal History. **{{This section replaces former sections 85.601 and 85.602, both of which are being repealed.}}**

(a) Criminal history record information. After an applicant for a pawnshop license or pawnshop employee license submits a complete license application, including all required fingerprints, and pays the fees required by §85.211 of this title (relating to Fees) or §85.306 of this title (relating to Fees), the OCCC will investigate the applicant and any principal parties. The OCCC will obtain criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant's fingerprint submission. The OCCC will continue to receive information on new criminal activity reported after the fingerprints have been initially processed.

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

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

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

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

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

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a pawnshop license or pawnshop employee license, if the applicant or licensee has been convicted of an offense that directly relates to the duties and responsibilities of a licensee under Texas Finance Code, Chapter 371, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Being a pawnbroker or pawnshop employee involves or may involve representations to borrowers and sellers, receiving money from borrowers, collecting due amounts in a legal manner, maintenance of accounts to make loans and replace lost or damaged goods, and compliance with reporting requirements to governmental agencies relating to certain transactions including firearms. Consequently, the following crimes are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation:

(A) theft (including receiving or concealing stolen property);

(B) assault;

(C) any offense that involves misrepresentation, deceptive practices, or

making a false or misleading statement (including fraud or forgery);

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

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

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

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

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

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

(A) the nature and seriousness of the crime;

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Crimes related to moral character and fitness.

(1) The OCCC may deny a pawnshop license application if the applicant is not of good moral character, if the applicant does not show that the business will be operated lawfully and fairly, or if the applicant does not show that the applicant or the applicant's owners have the financial responsibility, experience, character, and general fitness to command the confidence of the public, as provided by Texas Finance Code, §371.052(a).

(2) The OCCC may deny a pawnshop employee license if the applicant is not of good moral character and good business repute, or if the applicant does not possess the character and general fitness necessary to warrant the belief that the individual will operate the business lawfully and fairly, as provided by Texas Finance Code, §371.102(b).

(3) In conducting its review of moral character and fitness, the OCCC will consider the criminal history of the applicant and any principal parties. The OCCC considers the offenses described by subsections (c)(1) and (f)(2) of this section to be crimes involving moral character. If the applicant or a principal party has been convicted of an offense described by subsections (c)(1) or (f)(2) of this section, this reflects negatively on an applicant's moral character. The OCCC may deny a license application based on other criminal



history of the applicant or its principal parties if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. The OCCC will, however, consider the factors identified in subsection (c)(2)-(3) of this section in its review of moral character and fitness.

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

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

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

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

(3) a conviction of a pawnshop licensee or a principal party for an offense directly related to the licensed occupation, as provided by Texas Finance Code, §371.251(a)(6);

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

(5) a fact or condition that would have been grounds for denying the license application, and that either did not exist at the time of the application or the OCCC was unaware of at the time of application, as provided by Texas Finance Code, §371.251(a)(3) and §371.255(2);

(6) a finding by the OCCC that the financial responsibility, experience, character, or general fitness of a pawnshop licensee or a principal party do not command the confidence of the public or warrant the belief that the business will be operated lawfully, fairly, and within the purposes of this chapter, as provided by Texas Finance Code, §371.251(a)(7); and

(7) a finding by the OCCC that the moral character, business reputation, and general fitness of a pawnshop employee licensee holder do not warrant belief that the license holder will operate the business lawfully and fairly, as provided by Texas Finance Code, §371.255(3).

*§85.702. Accepting Prohibited Merchandise.*

(a) (No change.)

(b) Individual violations. A pawnbroker or a pawnshop employee found to have taken an item ~~[items]~~ in violation of §85.418(a)(1) or ~~[and]~~ (3) of this title (relating to Acceptance of Goods), is subject to the following penalty:

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

(c) - (d) (No change.)

**Certification**

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

Issued in Austin, Texas on October 21, 2016.

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



## **Pledgor Disclosure: Lost or Damaged Goods**

You have attempted to claim your pledged goods or to renew or extend your loan. Your pledged goods have been lost or damaged by the pawnshop.

- The pawnshop is required to repair or replace your lost or damaged item. Replacements are required to be with a like kind item. Repair of a damaged item shall return the item to the condition in which it was received by the pawnshop. A pawnshop may, but is not required to, offer you a cash settlement as an alternative.
- Do NOT pay the pawnshop until your item or an acceptable replacement item is available. No additional pawn service charge will be added beyond today, when you attempted to redeem, renew, or extend your loan.
- You may file a complaint with the Office of Consumer Credit Commissioner. A complaint form is available at: <http://occc.texas.gov/consumers/complaint-resolution>
- All replacements of pledged goods are subject to review by the Office of Consumer Credit Commissioner if you believe that a review is necessary for an equitable settlement. If you cannot reach a suitable settlement with the pawnshop, you must seek the Commissioner's review before pursuing a remedy in court. If the Commissioner does not approve a replacement before the 91st day after the date the Commissioner receives your complaint concerning the lost or damaged goods, or if you do not accept the Commissioner's determination, you may seek a remedy in court.
- If multiple items are pledged on a single loan, some of the items may be redeemed. The pawnshop may negotiate for a partial payment to redeem the balance of the pledged goods.

### **Office of Consumer Credit Commissioner**

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[occc.texas.gov](http://occc.texas.gov)  
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(800) 538-1579 — Consumer Helpline  
(512) 936-7600 — Phone  
(512) 936-7610 — Fax

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

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, Concerning Rules for Credit Access Businesses

**PURPOSE:** The purpose of the proposed amendments 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.

**RECOMMENDED ACTION:** The agency requests that the Finance Commission approve the amendments to 7 TAC, Chapter 83, Subchapter B for publication in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we approve for publication and comment the amendments to 7 TAC, Chapter 83, Subchapter B.

*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) proposes 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 agency circulated an early draft of proposed changes to interested stakeholders. The agency received no written precomments on this draft.

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

In §83.1001, a proposed amendment would 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 is also proposed in the licensing definitions section found in §83.3001.

Also in §83.3001, the proposal would add a definition of "parent entity," specifying that this term refers to a direct owner of a licensee or applicant. This definition is intended to clarify the provisions on mergers and license transfers in §83.3003 and §83.3004, discussed later in this proposal, and is consistent with other OCCC licensing rules. A proposed amendment to current §83.3001(2) (proposed §83.3001(3)) amends the definition of "principal party" for sole proprietorships. The amendment would delete 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 proposed amendment is intended to remove any language suggesting that this option is not available under federal income tax law. The proposed amendment conforms to an amendment that the commission recently adopted for regulated lenders at §83.301(2)(A), effective September 8, 2016. A corresponding amendment is proposed 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 current language requires 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 proposed 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 is proposed to provide a more accurate citation to Texas Finance Code, §393.604(a)(4), which requires an applicant to provide information concerning third-party lender organizations.

Proposed 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 proposed 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. Proposed amendments to subsection (h) also describe the parties' responsibility at different points during the license transfer process. The proposed amendments are intended to provide clarity and remove confusion that might result from overlapping provisions in the current 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 proposed 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, amendments are proposed in subsection (b) to clarify situations where a merger is a transfer of ownership. The amendments specify that if a licensee is a party to a merger that results in a new or different surviving entity other than the licensee, then the merger is a transfer of ownership, and the licensee must file a license transfer application or new license application. The amendments to subsection

(b) are intended to clarify the current rule text and are consistent with the OCCC's current policy. Additionally, in subsection (c), a reference to "a new license application on transfer of ownership" is proposed for addition to provide consistent terminology with a prior amendment.

A proposed amendment to §83.4003(b)(4) clarifies the requirements for an applicant's disclosure of criminal history. Currently, §83.4003(b)(4) states 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 proposed 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 proposed 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.

Proposed 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 licensing authority." Texas Occupations Code, §53.025(a). Currently, the second sentence of §83.4003(c)(1) explains 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. A proposed 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 proposed 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 proposed list of criminal offenses. The 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.

A proposed 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.

Proposed 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. Proposed 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. A proposed amendment 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.

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

Commissioner Pettijohn has also determined that for each year of the first five years the amendments are in effect, the

public benefit anticipated as a result of the proposed amendments will be that the commission's rules will be more easily understood by licensees required to comply with the rules, and will be more easily enforced. In addition, the proposed amendments will provide more guidance and clarity to licensees.

There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no effect on individuals required to comply with the amendments as proposed.

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

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

These rule changes are proposed 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 compliance with Chapter 393 is necessary to the enforcement and administration of Chapter 393, Subchapter G. In addition, the amendments to §83.5004 are proposed 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 proposed 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 proposal 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 subchapter [~~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 subchapter [~~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 parties.

(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 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, one [~~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, §393.604(a)(4) [~~§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 transferee begins performing credit access business activity under a license ~~[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 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. The ~~[In addition, a]~~ transferee is responsible for any transactions that it purchases from the transferor. In addition, if the transferee receives a license transfer, then the transferee's responsibility includes all activity performed under the license before the license transfer.

~~[(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 license transfer application or a new license 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 or are current.

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been

convicted of an offense that directly relates to the duties and responsibilities of a 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;

(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. 42A.054, ~~[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 transaction file for each individual 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 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 any records obtained under [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 proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on October 21, 2016.

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

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**C.**

**Texas Department of Banking**



## TEXAS DEPARTMENT OF BANKING

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To: Finance Commission Members

From: Kurt Purdom, Director of Bank & Trust Supervision

Date: October 5, 2016

Subject: Summary of the Bank & Trust Supervision Division Activities

| Bank and Trust Supervision                           |     |           |     |            | FY 2016 |           |     |           |     |           |     |         |
|--|-----|-----------|-----|------------|---------|-----------|-----|-----------|-----|-----------|-----|---------|
| 8/31/2014  |     | 8/31/2015 |     | 11/30/2015 |         | 2/28/2016 |     | 5/31/2016 |     | 8/31/2016 |     |         |
| Industry Profile (# / Assets in billions)            |     |           |     |            |         |           |     |           |     |           |     |         |
| # Banks  | 273 | \$225.2   | 256 | \$240.7    | 253     | \$242.3   | 250 | \$246.3   | 248 | \$243.9   | 247 | \$248.3 |
| # Trust Co. (1)                                      | 21  | \$40.5    | 20  | \$97.1     | 21      | \$95.5    | 20  | \$97.5    | 20  | \$99.5    | 19  | \$101.4 |
| # FBA/FBB  | 10  | \$93.6    | 9   | \$89.2     | 9       | \$81.5    | 9   | \$77.9    | 10  | \$73.5    | 10  | \$70.0  |
| Examinations Performed                               |     |           |     |            |         |           |     |           |     |           |     |         |
| Banks  | 125 |           | 118 |            | 33      |           | 23  |           | 22  |           | 27  |         |
| Trust Co.  | 32  |           | 28  |            | 6       |           | 5   |           | 6   |           | 14  |         |
| FBA/FBB  | 2   |           | 2   |            | 0       |           | 0   |           | 2   |           | 0   |         |
| Bank Uniform Financial Institution Composite Ratings |     |           |     |            |         |           |     |           |     |           |     |         |
| 1  | 128 | 46.9%     | 127 | 49.6%      | 126     | 49.8%     | 131 | 52.4%     | 129 | 52.0%     | 126 | 51.0%   |
| 2  | 132 | 48.3%     | 122 | 47.7%      | 120     | 47.4%     | 111 | 44.4%     | 108 | 43.6%     | 109 | 44.1%   |
| 3, 4, & 5  | 13  | 4.8%      | 7   | 2.7%       | 7       | 2.8%      | 8   | 3.2%      | 11  | 4.4%      | 12  | 4.9%    |
| Non-Rated  | 0   | -         | 0   | -          | 0       | -         | 0   | -         | 0   | -         | 0   | -       |

(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 13. Though this is an increase from prior months, the number is still well below the peak number of problem banks experienced during the last recession at 58. We consider this increased number 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 to decreasing over the next six months, however, we will continue to closely monitor banks that have a significant exposure to a protracted period of low oil prices or evidence other increased risk factors.



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

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

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

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

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

| Compliance with Examination Priorities<br>Percent of Examinations Conducted within Department Guidelines |            |            |
|--|------------|------------|
| Entity Type  | FY 2015    | FY 2016    |
| <b>Commercial Banks</b><br>(All / DOB Only)  | 94% / 93%  | 97% / 98%  |
| <b>IT</b>  | 95% / 95%  | 98% / 100% |
| <b>Trust</b>   | 97% / 100% | 94% / 94%  |
| <b>Foreign Banks (FRB)</b>   | 100%       | 100%       |
| <b>Trust Companies (DOB)</b>   | 97%        | 78%        |
| <b>IT</b>  | 100%       | 94%        |

Trust company examinations are not within the Department's targeted outcome measure of 90% receiving examinations when due. The eight trust company exams that were not conducted within the Department's guidelines averaged 13 days late. Trust examiner turnover is the primary reason for the delay in examination timing. Three new assistant examiners were hired in January of 2016 to replace examiners with significant experience. Some future delays in trust examinations may be encountered until these new examiners are adequately trained and can fully assist with trust examination procedures.

**Division Highlights**

- Oil and Gas: We continue to closely monitor the impact that the recent increase in crude oil prices will have on oil and gas (O&G) service and exploration entities. The cash flow and debt service coverage of many service industry businesses remains stressed, but we are hopeful that the modest improvement in commodity prices will lead to increased demand for oil field services and subsequent ability to repay bank loans. However, since the recent price increase, little overall improvement has been observed.
- Examination Tools Suite (ETS) Software: Training of the division's field staff on ETS is coming to a conclusion. Training was provided in all four regional offices by Review Examiner Wu and field examiners who participated in train-the-trainer sessions and ETS user testing. ETS is an examination software tool developed by the FDIC with significant participation and input provided by state banking departments and the Federal Reserve. ETS enables a digital examination process and sharing among examiners of previous and current examination information more securely, effectively, and efficiently. Going forward, most of the Department's examination processes and work product will be in an electronic format. However, a hard copy of the report of examination will still be mailed to banks and trust companies after the review process is complete.
- Special Operations and Conferences:
  - The week of 8-1-16, the Division's two summer interns spent their final week in the Austin Headquarters Office learning more about the Department's operations. During the week, they worked with the Corporate, Strategic Support, Legal and Bank and Trust Divisions.
  - The Examiners' Council (EC) met in Austin the week of 8-22-16 to perform a review of examination work papers and suggest changes to the Department's examination procedures. The EC is a select group of commercial field examiners that meet at least once each year to review the consistency and quality of examination work papers and discuss issues with examination procedures. EC members also serve as liaison representatives between the field staff, regional office staff and headquarters personnel to consider and make recommendations for change to existing commercial examination procedures and work paper organization practices.
  - Regional Directors met in Austin on 9-7-16 and 9-8-16 to discuss various issues, including division staffing, budgeting and policy improvements.
  - Commissioner Cooper and other staff members participated in the CSBS Board and Strategic Planning Meeting held in Fort Worth from 9-12-16 to 9-15-16.
  - Deputy Commissioner Bacon and Review Examiner Wu participated in the CSBS Cybersecurity and Technology Risk Management Conference held in Austin from 9-19-16 to 9-22-16. Deputy Commissioner Bacon provided the opening remarks for the conference.
  - Commissioner Cooper and other staff members participated in the Independent Bankers Association of Texas Annual Convention held in San Antonio from 9-25-16 to 9-27-16.

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

## Page 4

- Commissioner Cooper, Director Purdom and two Texas community bankers participated in the Community Banking in the 21<sup>st</sup> Century Research Conference held 9-28-16 and 9-29-16 at the Federal Reserve Bank of St. Louis, St. Louis, Missouri. Texas bankers attending the conference included CEO Dewey Bryant of SouthWest Bank, Odessa and President and CEO Christopher Doyle of Texas First Bank, Texas City. This fourth annual conference, which was sponsored by CSBS and the Federal Reserve Bank of St. Louis, brought together academics, regulators, policymakers and bankers to discuss the latest in community bank research and other issues facing the community banking sector. Commissioner Cooper provided opening remarks for the conference. The research and discussions centered around three main points:
  - Continuing relevance and importance of the community bank business model;
  - Relationship between community bank size and performance; and
  - Community bank regulatory issues.

Highlights of the conference, including research papers that were presented and keynote speaker remarks, can be found at: <https://www.communitybanking.org/2016-conference.html>

Leading up to the conference, state banking regulators held town hall style meetings with their community bankers to gather first-hand accounts of the challenges and opportunities community banks face. The Department held meetings in San Antonio, Dallas and Lubbock to hear banker feedback, which helped to shape discussions and focus for the conference.

- Federal Capital Programs: The table below provides a snapshot of the two federal capital programs.

| <b>Federal Programs</b>                              | <b>Troubled Asset Relief Program<br/>(TARP) <sup>(2)</sup></b> | <b>Small Business Lending<br/>Fund (SBLF)<br/>as of 8/31/2016</b> |
|--|--|---|
| <b>Number of Applicants</b>                          | 80   | 23  |
| <b>Number of Banks that Received<br/>Funds</b>       | 21   | 12  |
| <b>Total Amount Distributed<br/>(\$ in millions)</b> | \$2,837.7  | \$255.7   |
| <b>Number of Banks with<br/>Outstanding Funds</b>    | 0  | 2   |
| <b>Total Amount Outstanding<br/>(\$ in millions)</b> | \$0  | \$25.5  |

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



Charles G. Cooper  
Commissioner

## TEXAS DEPARTMENT OF BANKING

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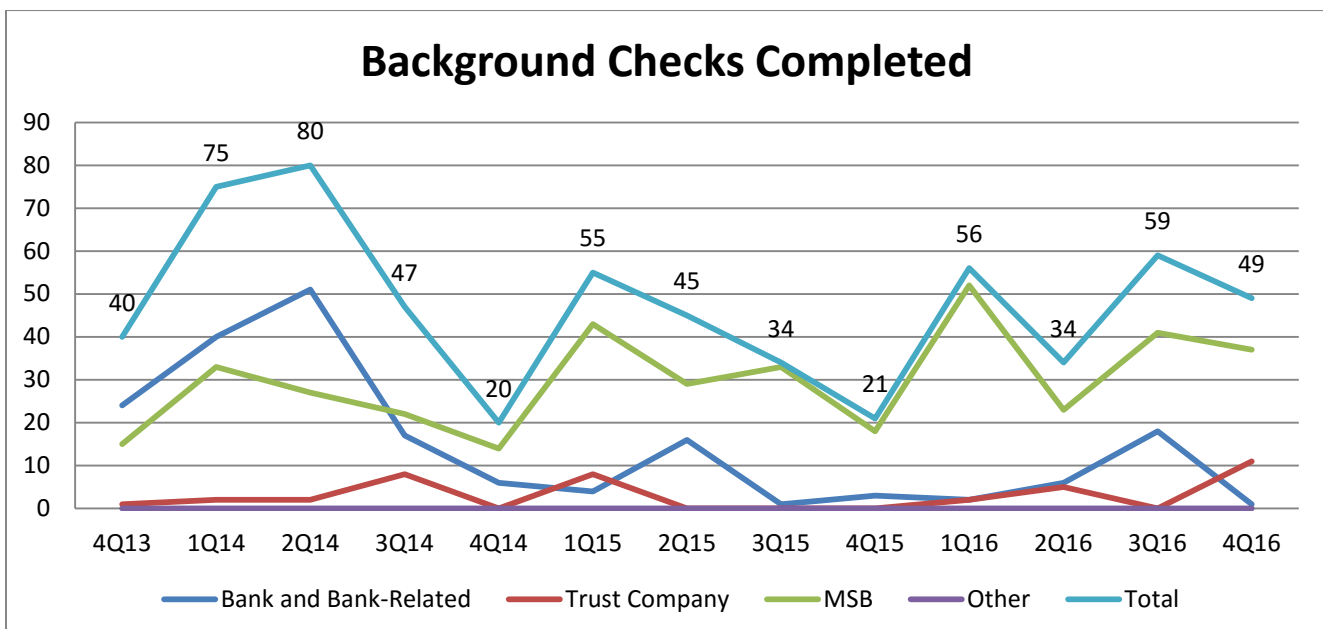
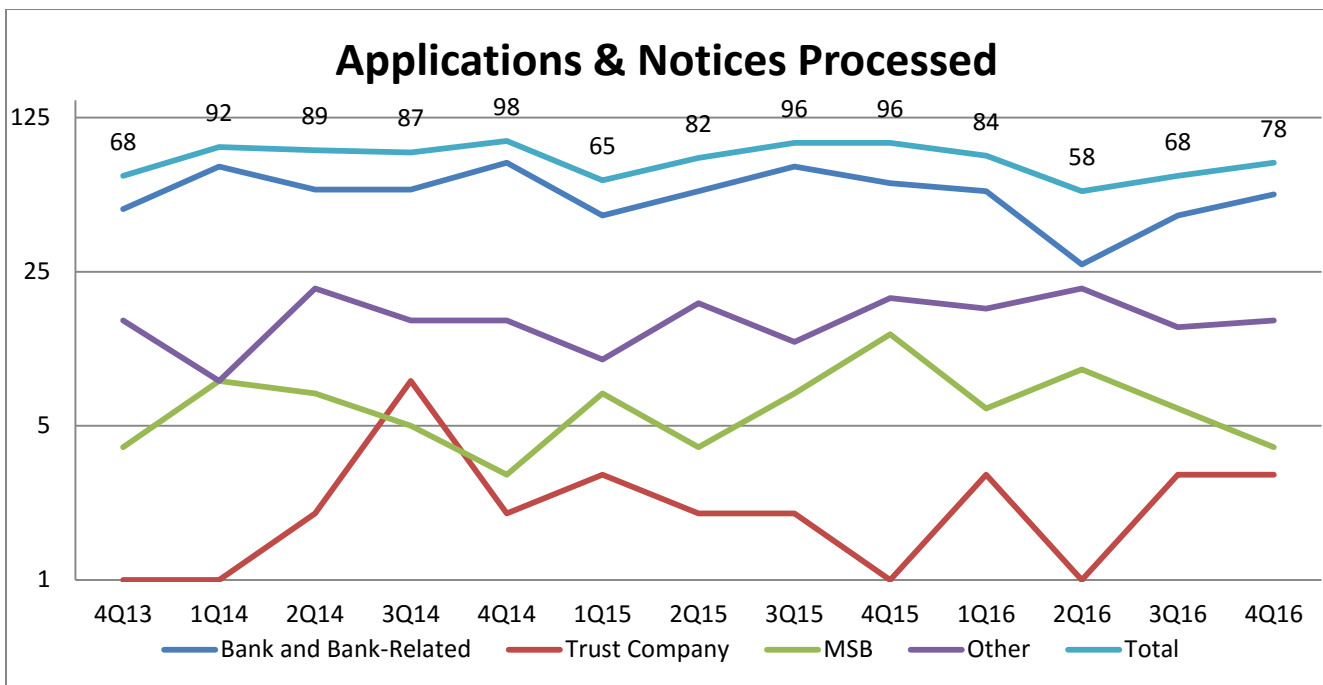
[www.dob.texas.gov](http://www.dob.texas.gov)

To: Finance Commission Members

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

Date: October 5, 2016

Subject: Summary of the Corporate Division Activities



| Entities/Activities   | Applications and Notices Under Review<br>(as of October 5, 2016) |
|-----------------------|--|
| Bank and Bank Related | 18   |
| Trust Companies       | 0  |
| MSBs                  | 10   |
| Others                | 4  |
| <b>Totals</b>         | <b>32</b>  |

### Division Highlights

- The volume of bank and trust applications received over the past couple of months has picked up after the notable slow start early this calendar year. Signs of increased activity are especially apparent for bank mergers and acquisitions. On the other hand, MSB filings have moderated as compared to prior periods.
- Chartering, Conversion, and Merger Activity – The following transactions have consummated since Corporate’s last report to the Finance Commission:
  - *Banks*
    - WestStar Bank, El Paso, completed its merger acquisition of First National Bank, Fabens
    - The Bank of San Antonio, San Antonio, completed its affiliated acquisition of San Antonio Trust Company, San Antonio
    - Texas Bank, Henderson, completed its merger acquisition of Prosper Bank, Prosper
    - Bloomberg State Bank, Bloomberg, merged into First National Bank of Hughes Springs, Hughes Springs
    - Citizens State Bank, Buffalo, completed its merger acquisition of First National Bank, Groesbeck
  - *Trust Companies*
    - Mayfair Private Trust Company, McAllen, was chartered as an exempt family trust company
- Conferences and Committee Meetings – Corporate participation included the following conferences and external committee meetings since the last report to the Finance Commission:
  - Director Dan Frasier participated in the CSBS Board of Directors & Strategic planning meeting in Fort Worth, Texas
  - Corporate Analyst Xazel Garcia participated in the MTRA Conference in Tucson, Arizona
  - Director Dan Frasier represented the Department at the Independent Bankers Association of Texas Annual Convention held in San Antonio, Texas



Charles G. Cooper  
Commissioner

## TEXAS DEPARTMENT OF BANKING

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512-475-1300 / 877-276-5554  
[www.dob.texas.gov](http://www.dob.texas.gov)

To: Finance Commission Members

From: Russell Reese, Director of Special Audits

Date: October 1, 2016

Subject: Summary of the Special Audits Division Activities

| Special Audits                                       |        |         |        |         | FY 2016         |         |                 |         |                 |         |                 |         |
|--|--------|---------|--------|---------|-----------------|---------|-----------------|---------|-----------------|---------|-----------------|---------|
| Entity   | FY2014 |         | FY2015 |         | 1 <sup>st</sup> |         | 2 <sup>nd</sup> |         | 3 <sup>rd</sup> |         | 4 <sup>th</sup> |         |
| Industry Profile (# / Assets (billions) )            |        |         |        |         |                 |         |                 |         |                 |         |                 |         |
| MSB  | 136    | \$96.0  | 142    | \$104.0 | 147             | \$104.1 | 151             | \$105.0 | 154             | \$105.1 | 155             | \$114.7 |
| PFC  | 381    | \$3.4   | 383    | \$3.6   | 378             | \$3.6   | 380             | \$3.7   | 380             | \$3.8   | 380             | \$3.9   |
| PCC  | 242    | \$286.6 | 243    | \$298.0 | 245             | \$305.4 | 243             | \$307.2 | 243             | \$307.4 | 243             | \$314.1 |
| CB   | 4      | n/a     | 8      | n/a     | 9               | n/a     | 9               | n/a     | 12              | n/a     | 12              | n/a     |
| PCSEA  | 11     | n/a     | 11     | n/a     | 11              | n/a     | 10              | n/a     | 10              | n/a     | 10              | n/a     |
| CVE  | 3      | n/a     | 2      | n/a     | 2               | n/a     | 2               | n/a     | 2               | n/a     | 2               | n/a     |
| Examinations Performed                               |        |         |        |         |                 |         |                 |         |                 |         |                 |         |
| MSB  | 93     |         | 97     |         | 24              |         | 22              |         | 23              |         | 28              |         |
| MSB Limited Scope                                    | 0      |         | 2      |         | 1               |         | 1               |         | 1               |         | 0               |         |
| MSB Accepted other State                             | 6      |         | 7      |         | 3               |         | 6               |         | 5               |         | 3               |         |
| PFC  | 295    |         | 259    |         | 94              |         | 48              |         | 61              |         | 57              |         |
| PFC Limited Scope                                    | 10     |         | 6      |         | 3               |         | 0               |         | 1               |         | 2               |         |
| PCC  | 179    |         | 211    |         | 29              |         | 31              |         | 52              |         | 67              |         |
| PCC Limited Scope                                    | 6      |         | 1      |         | 2               |         | 3               |         | 0               |         | 1               |         |
| Ratings (# / %) Assigned to All Regulated Entities   |        |         |        |         |                 |         |                 |         |                 |         |                 |         |
| 1  | 319    | 43%     | 340    | 45%     | 327             | 43%     | 330             | 44%     | 328             | 44%     | 317             | 42%     |
| 2  | 355    | 48%     | 332    | 45%     | 348             | 46%     | 337             | 45%     | 329             | 44%     | 351             | 47%     |
| 3,4, & 5   | 66     | 9%      | 78     | 10%     | 81              | 11%     | 85              | 11%     | 90              | 12%     | 82              | 11%     |
| Noncompliance with Examination Priorities (Past Due) |        |         |        |         |                 |         |                 |         |                 |         |                 |         |
| MSB  | 15     |         | 8      |         | 14              |         | 17              |         | 17              |         | 14              |         |
| PFC  | 1      |         | 4      |         | 3               |         | 7               |         | 1               |         | 10              |         |
| PCC  | 4      |         | 3      |         | 3               |         | 1               |         | 3               |         | 15              |         |
| Enforcement Actions                                  |        |         |        |         |                 |         |                 |         |                 |         |                 |         |
| MSB  | 3      |         | 9      |         | 1               |         | 3               |         | 2               |         | 2               |         |
| PFC  | 1      |         | 10     |         | 1               |         | 0               |         | 1               |         | 0               |         |
| PCC  | 0      |         | 0      |         | 0               |         | 0               |         | 0               |         | 0               |         |
| PCSEA  | 0      |         | 0      |         | 0               |         | 1               |         | 0               |         | 0               |         |

### NOTES:

PCC \$ amounts reflected in the millions.

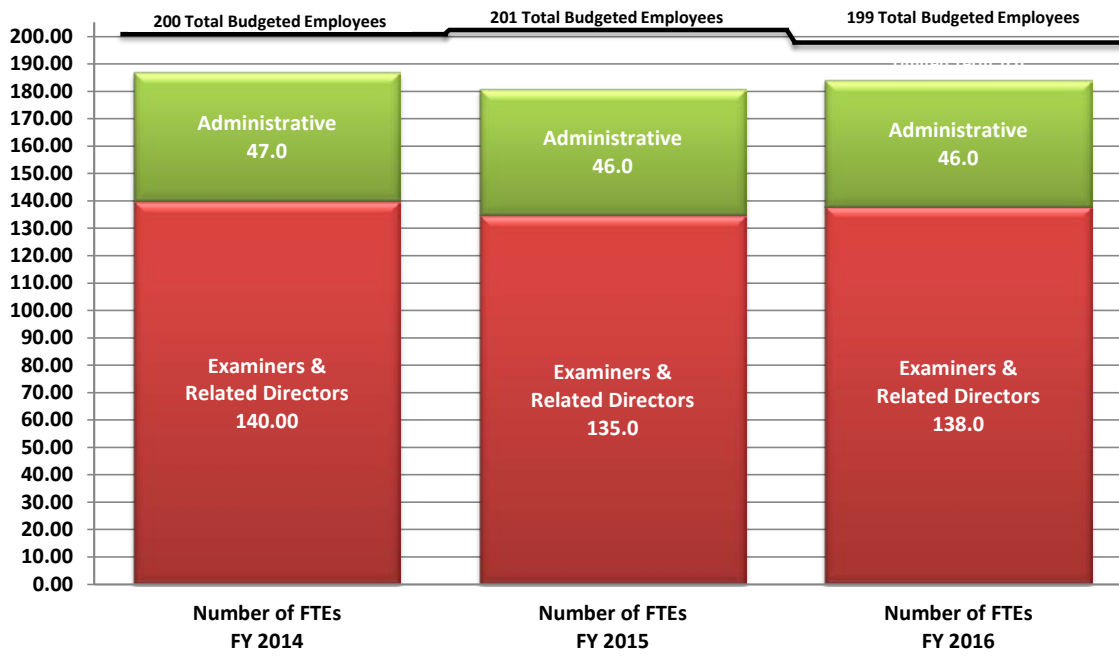
Limited scope examinations do not receive a rating.

**Division Activities:**

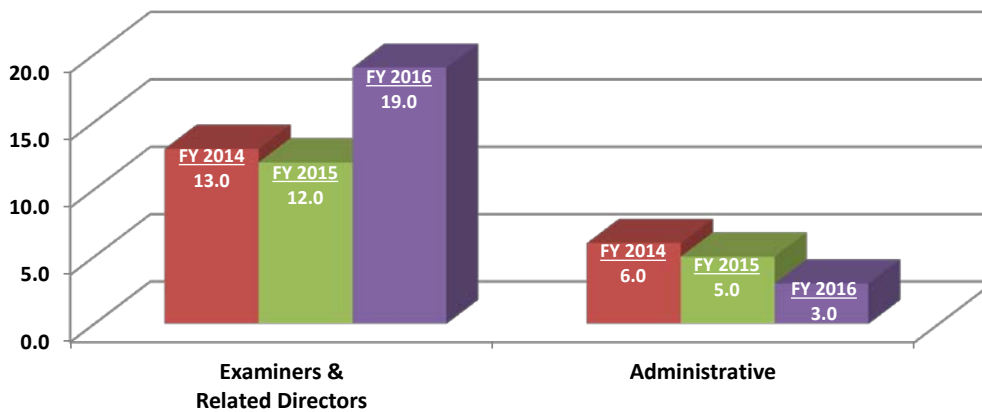
- The fourteen MSB past due examinations are on average 45 days past due.
- Twenty-four of the twenty-five PFC/PCC past due examinations are on average 20 days past due. The remaining one PFC/PCC past due examination is in legal proceedings, which prohibited the completion of the examination.
- Our current examination schedule reflects that twenty of the past due PFC/PCC examinations were completed in September 2016; three will be completed in October 2016 and one in November 2016.
- Our current examination schedule reflects that three of the past due MSB examinations were completed in September 2016, six will be completed in October 2016, four in November 2016 and the remaining examination has been delayed until December 2016 due to coordination with other MTRA state agencies.
- Special Audits met all performance measures for the fourth quarter of FY 16.

During the week of September 19<sup>th</sup> Commissioner Cooper, Deputy Commissioner Newberg, and various DOB staff attended the annual MTRA conference in Tucson, AZ, where current trends and events in the MSB industry were discussed.

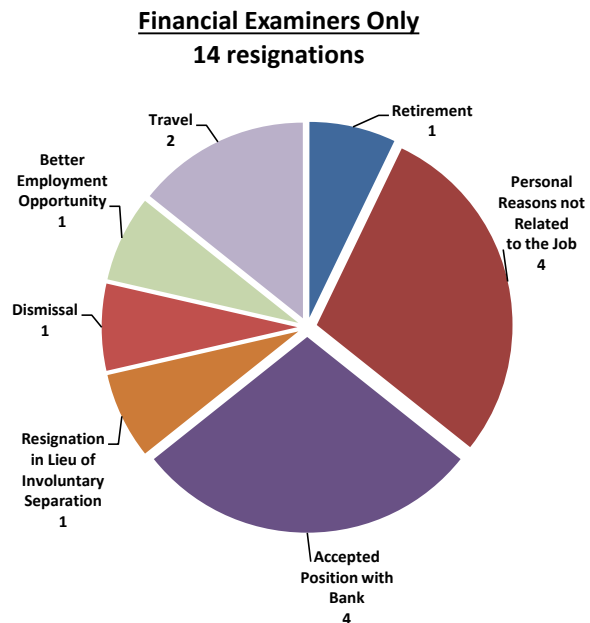
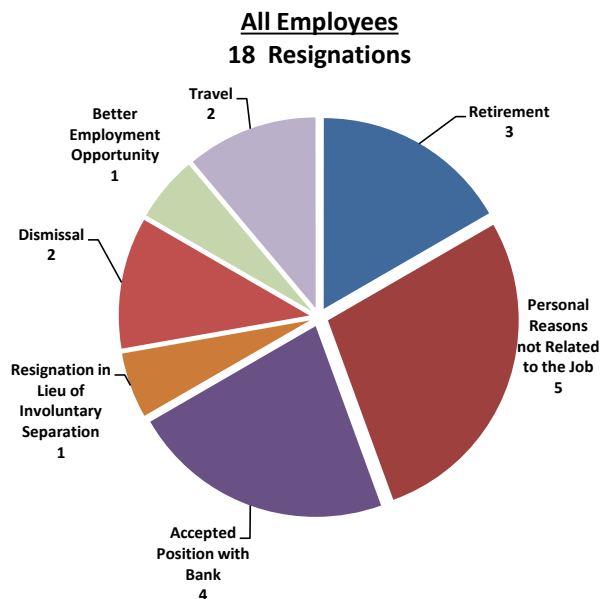
**Texas Department of Banking**  
**Employee Data for Fiscal Years 2014, 2015 and 2016 as of 8/31/16**



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



**FY 2016 Employee Turnover Reasons**





**Actual Performance for Outcome Measures**  
**Fiscal Year 2016**  
**For Period Ending August 2016**

| Type/Strategy/Measure               | 2016<br>Target  | 2016<br>YTD | Percent of<br>Annual Target |
|-------------------------------------|---|-------------|-----------------------------|
| <b>Outcome Measures - Key</b>       |   |             |                             |
| 1-1 QUALITY BANK REGULATION         |   |             |                             |
| 1. % BANKS EXAMINED                 | 87.50%  | 96.57%      | 110.37%                     |
|                                     | * A change in the past due examination policy and the decrease in examinations due as a result of less problem banks resulted in an increase in the percentage of banks receiving examinations when due by the end of this fiscal year. |             |                             |
| 1-2 QUALITY NON-BANK REGULATION     |   |             |                             |
| 1. % MSB LICENSEES EXAMINED         | 90.00%  | 90.48%      | 100.53%                     |
| 1-3 CORPORATE ACTIVITIES            |   |             |                             |
| 1. % B&T, MSB, PCSEA APPS COMPLETED | 95.00%  | 95.32%      | 100.34%                     |

\* Varies by 5% or more from target.

**Actual Performance for Explanatory Measures**  
**Fiscal Year 2016**  
**For Period Ending August 2016**

| Type/Strategy/Measure             | 2016<br>Target | 2016<br>YTD | Percent of<br>Annual Target |
|-----------------------------------|----------------|-------------|-----------------------------|
| <b>Explanatory Measure - Key</b>  |                |             |                             |
| 1-1-1 BANK EXAMINATION            |                |             |                             |
| 1. % ASSETS IN SAFE & SOUND BANKS | 97.00%         | 95.14%      | 98.08%                      |

# Actual Performance for Output/Efficiency Measures

Fiscal Year 2016  
For Period Ending August 2016

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

## Output Measures-Key

### 1-1-1 BANK EXAMINATION

#### 1. # BANK EXAMINATIONS PERFORMED

|           |     |    |     |        |
|-----------|-----|----|-----|--------|
| Quarter 1 | 115 | 33 | 33  | 28.70% |
| Quarter 2 | 115 | 23 | 56  | 48.70% |
| Quarter 3 | 115 | 24 | 80  | 69.57% |
| Quarter 4 | 115 | 27 | 107 | 93.04% |

\* The number of bank examinations is below the target primarily due to fewer problem banks and consolidations.

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

|           |     |    |     |        |
|-----------|-----|----|-----|--------|
| Quarter 1 | 234 | 61 | 61  | 26.07% |
| Quarter 2 | 234 | 59 | 120 | 51.28% |
| Quarter 3 | 234 | 59 | 179 | 76.50% |
| Quarter 4 | 234 | 47 | 226 | 96.58% |

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

#### 1. # SPECIAL AUDIT LICENSEES EXAMINED

|           |     |     |     |         |
|-----------|-----|-----|-----|---------|
| Quarter 1 | 560 | 156 | 156 | 27.86%  |
| Quarter 2 | 560 | 111 | 267 | 47.68%  |
| Quarter 3 | 560 | 143 | 410 | 73.21%  |
| Quarter 4 | 560 | 158 | 568 | 101.43% |

### 1-3-1 APPLICATION PROCESSING

#### 1. # LICENSE APPLICATIONS COMPLETED

|           |     |    |     |         |
|-----------|-----|----|-----|---------|
| Quarter 1 | 284 | 84 | 84  | 29.58%  |
| Quarter 2 | 284 | 58 | 142 | 50.00%  |
| Quarter 3 | 284 | 68 | 210 | 73.94%  |
| Quarter 4 | 284 | 78 | 288 | 101.41% |

\* Varies by 5% or more from target.

# Actual Performance for Non-Key Measures

Fiscal Year 2016  
For Period Ending August 2016

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

## Non-Key Measures

### 1-1-1 BANK EXAMINATION

|   |             |             |         |
|---|-------------|-------------|---------|
| 2. % FOREIGN BANK AGENCIES EXAMINED   | 95.00%      | 100.00%     | 105.26% |
| 3. % TRUST COMPANIES EXAMINED   | 90.00%      | 77.78%      | 86.42%  |
| * Trust examiner turnover is the primary reason for the delay in examination timing. Three new assistant examiners were hired in January of 2016 to replace examiners with significant experience. Some future delays in trust examinations may be encountered until these new examiners are adequately trained and can fully assist with trust examination procedures. |             |             |         |
| 4. % PROBLEM INSTITUTIONS WITH APPROPRIATE SUPERVISORY ACTIONS IN PLACE   | 100.00%     | 100.00%     | 100.00% |
| 5. CERTIFICATE OF ACCREDITATION BY CSBS MAINTAINED IN GOOD STANDING   | YES         | YES         | YES     |
| 8. AVERAGE COST PER BANK EXAMINATION  | \$86,400.00 | \$91,853.67 | 106.31% |
| 9. ASSETS EXAMINED PER EXAMINER DAY (IN MILLIONS)   | \$7.75      | \$9.02      | 116.39% |
| 11. # STATE-CHARTERED BANKS IN TEXAS  | 246         | 247         | 100.41% |
| 12. TOTAL ASSETS (IN BILLIONS) IN STATE-CHARTERED BANKS IN TEXAS  | \$315.00    | \$305.90    | 97.11%  |

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

|  |            |            |         |
|--|------------|------------|---------|
| 2. % PREPAID FUNERAL CONTRACT LICENSEES EXAMINED                     | 90.00%     | 97.30%     | 108.11% |
| 3. % PERPETUAL CARE CEMETERY LICENSEES EXAMINED                      | 90.00%     | 93.72%     | 104.13% |
| 4. % PCC AND PFC APPLICATIONS COMPLETED WITHIN STATUTORY PERIOD      | 95.00%     | 100.00%    | 105.26% |
| 6. # SPECIAL AUDITS LICENSEES  | 760        | 778        | 102.37% |
| 7. AVERAGE DIRECT COST PER PFC AND PCC LICENSEE EXAMINATION          | \$2,500.00 | \$2,600.61 | 104.02% |
| 8. DOLLAR AMOUNT (IN BILLIONS) OF PREPAID FUNERAL CONTRACTS IN FORCE | \$3.30     | \$3.90     | 118.18% |

### 1-3-1 APPLICATION PROCESSING

|  |       |       |         |
|--|-------|-------|---------|
| 3. # REQUESTS FOR INFORMATION RECEIVED | 3,735 | 4,214 | 112.82% |
|--|-------|-------|---------|

### 1-4-1 REGULATORY OVERSIGHT

|                           |   |   |         |
|---------------------------|---|---|---------|
| 2. # FC MEETINGS CONVENED | 6 | 6 | 100.00% |
|---------------------------|---|---|---------|

\* Varies by 5% or more under target.



Charles G. Cooper  
Commissioner


## TEXAS DEPARTMENT OF BANKING

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**To:** Finance Commission Members

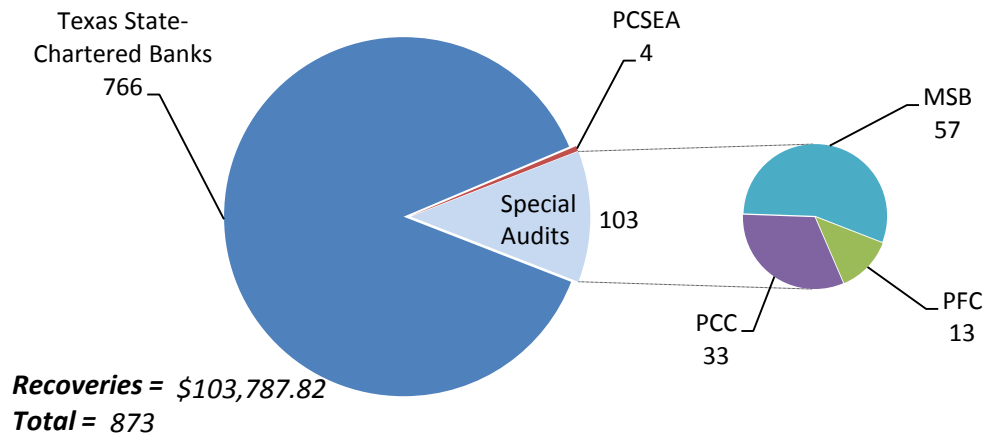
**From:** Wendy Rodriguez, Director of Strategic Support 

**Date:** October 1, 2016

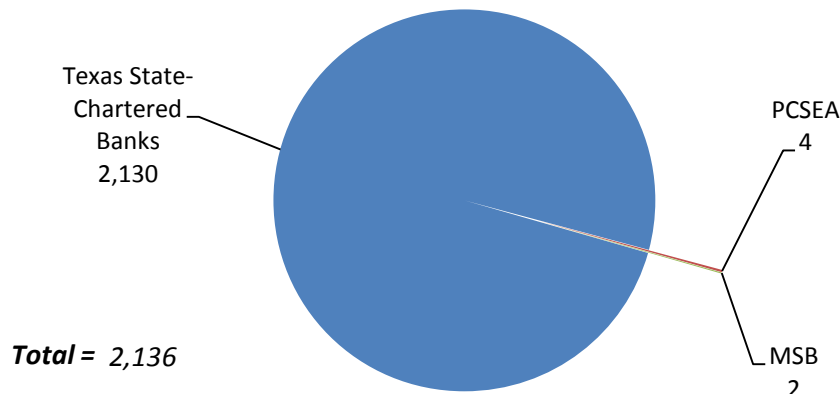
**Subject:** Summary of the Strategic Support Division Activities

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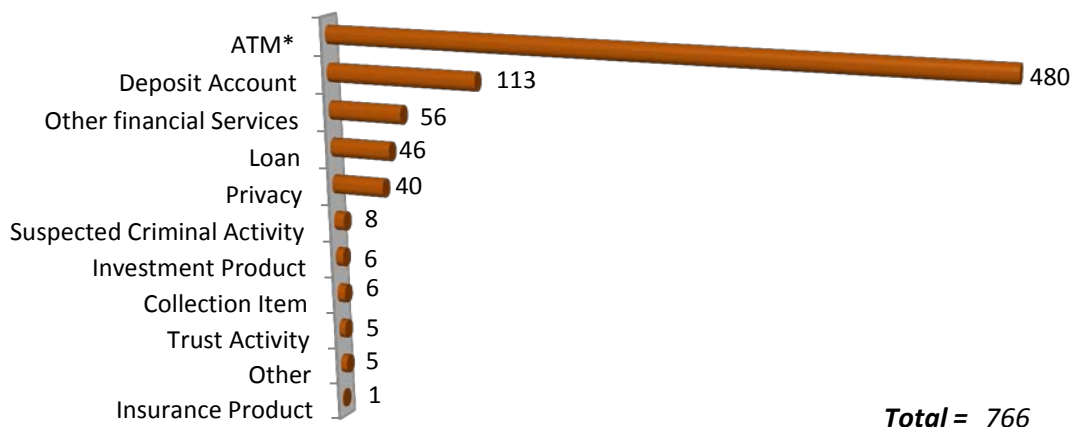
### Complaints on Regulated Entities September 2015 - August 2016



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

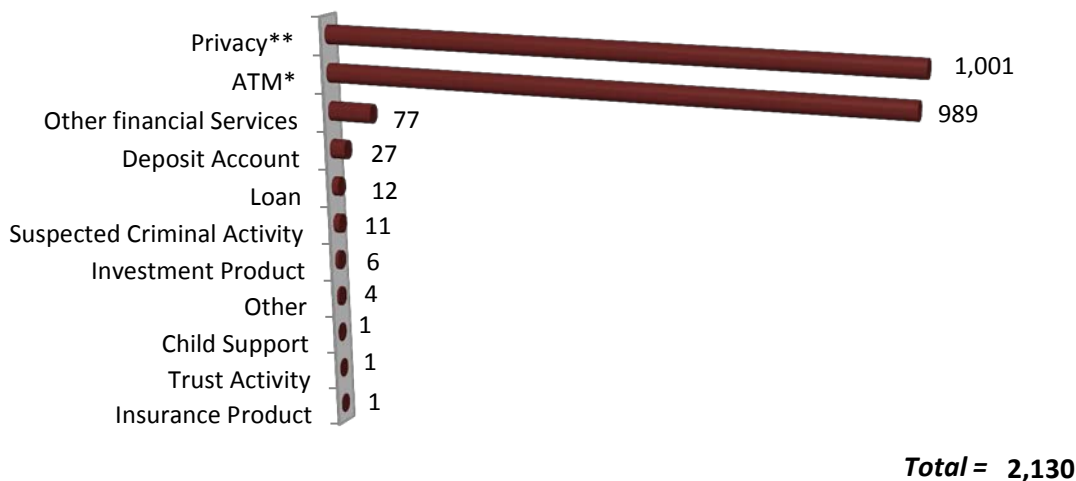


### State-Chartered Banks and Trust Companies Complaints by Type September 2015 - August 2016



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

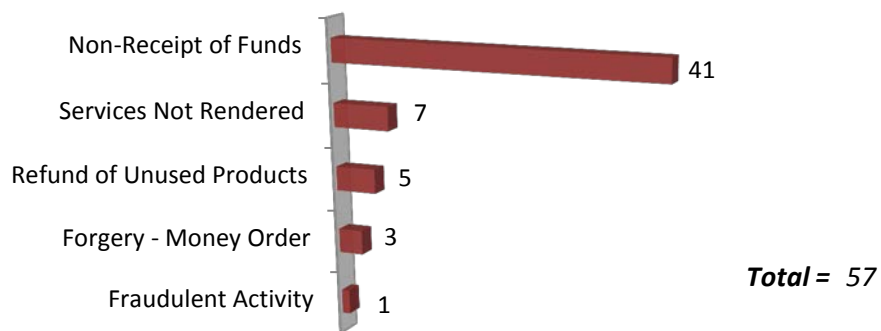
### State-Chartered Banks and Trust Companies Inquiries by Type September 2015 - August 2016



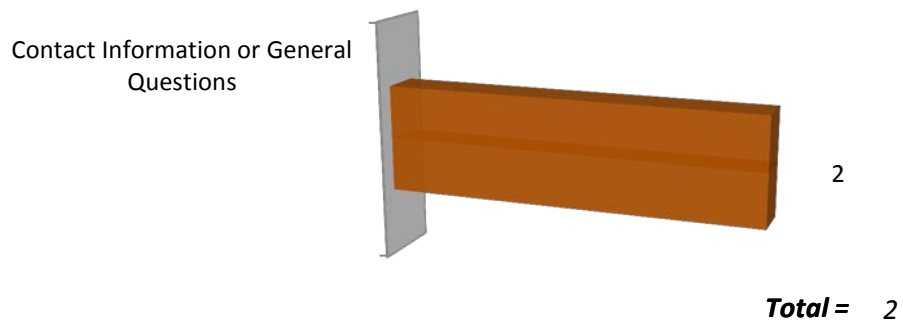
\*\* High activity related to annual privacy notice containing the Department's contact information.

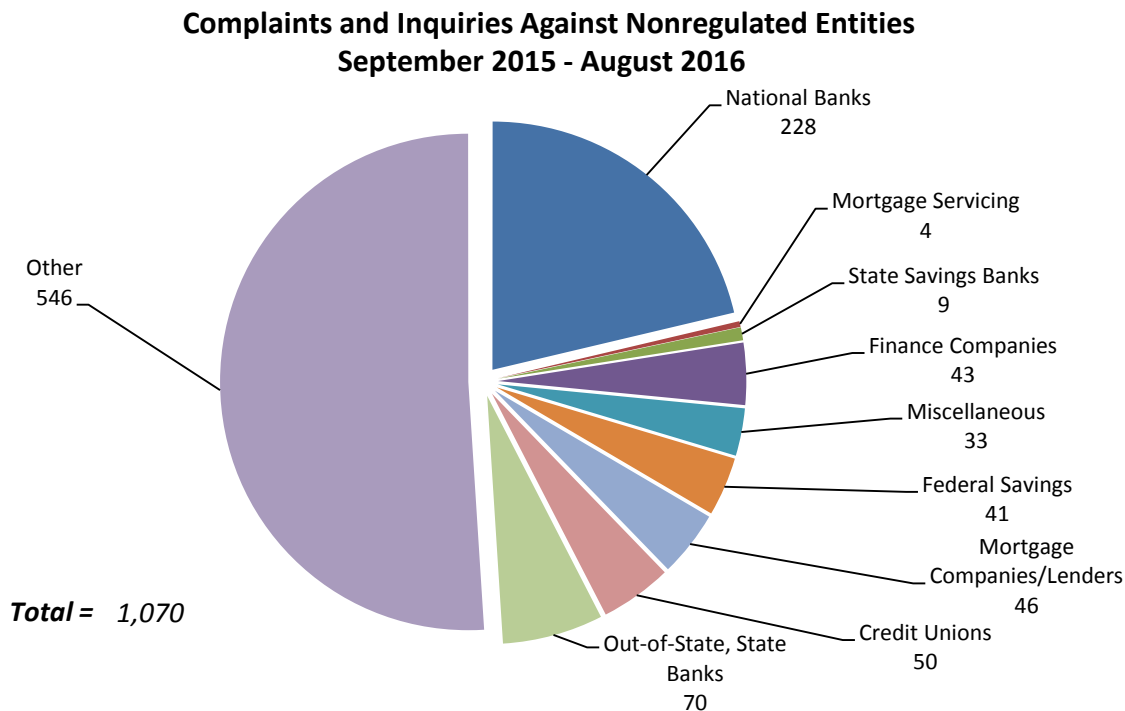
\*Activity related to consumers inquiring about their personal accounts and outages in ATM network for one institution. Consumers contacted Department because the institution was experiencing a high call volume and they could not get through to entity.

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



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





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

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

| Type                  | Sept. 2015 – Aug. 2016 |
|-----------------------|------------------------|
| State-Chartered Banks | 9                      |
| Trust                 | n/a                    |
| PCSEA                 | 19                     |
| PFC/PCC               | 34                     |
| MSB                   | 45                     |

**CANS ACTIVITY**

January 1, 2012 – August 31, 2016

| Entity                              | Enrolled   | Compromised Accounts Reported |
|-------------------------------------|------------|-------------------------------|
| Texas State-Chartered Banks         | 226        | 1,582                         |
| Texas State-Chartered Savings Banks | 25         | 63                            |
| Federal Savings Banks               | 10         | 197                           |
| State Credit Unions                 | 132        | 1,194                         |
| Federal Credit Unions               | 229        | 1,105                         |
| National Banks                      | 170        | 506                           |
| Out-of-State State-Chartered Banks  | 11         | 0                             |
| Out-of-State National Banks         | 6          | 44                            |
| <b>Total</b>                        | <b>809</b> | <b>4,691</b>                  |



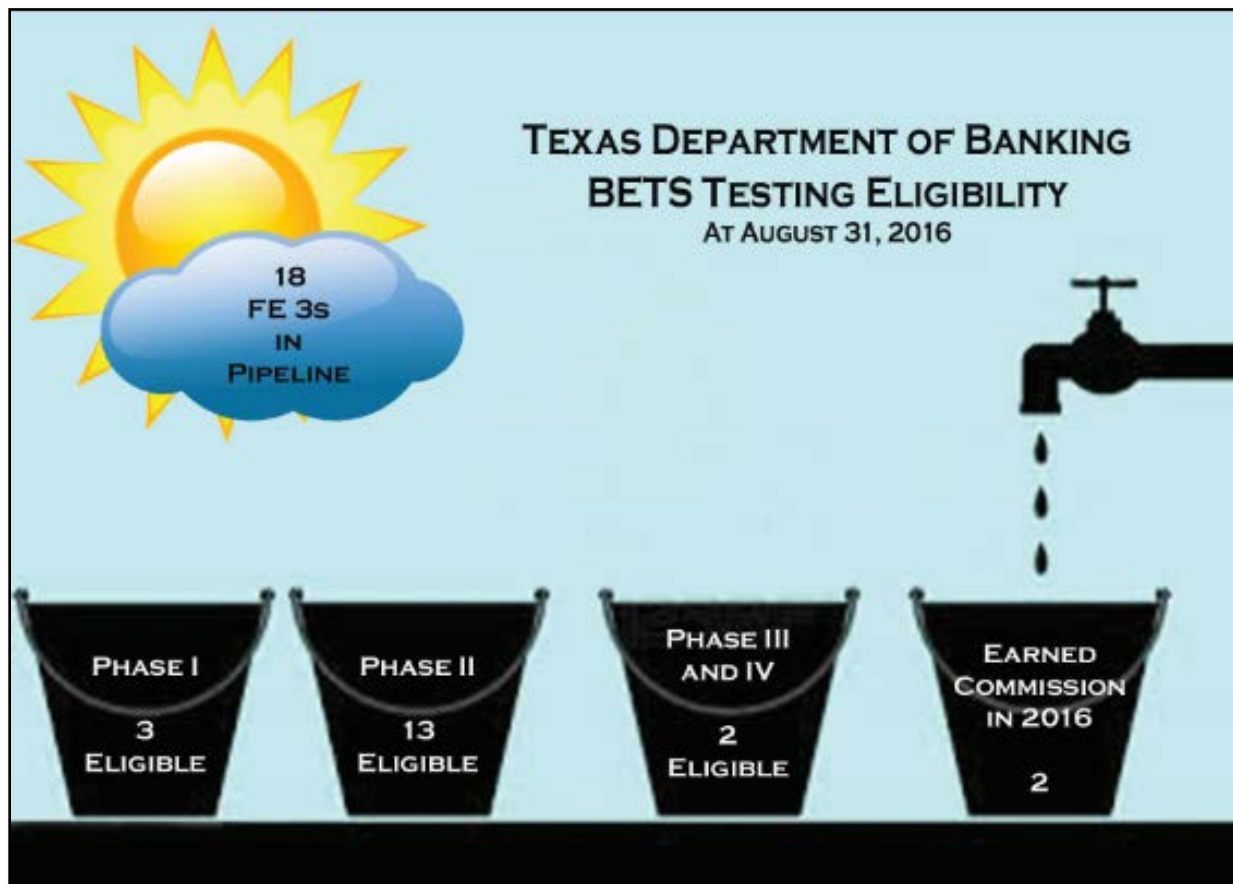
### Bank Examination Testing System (BETS) Activity

#### Number of Candidates Passing Each Phase

|                      | FY 2013   | FY 2014   | FY 2015   | FY 2016   |
|----------------------|-----------|-----------|-----------|-----------|
| I. General Knowledge | 3         | 5         | 8         | 9         |
| II. Loan Analysis    | 8         | 2         | 2         | 4         |
| III. Panel           | 10        | 2         | 4         | 3         |
| IV. Test Bank        | 11        | 1         | 4         | 2         |
| <b>Total FE3</b>     | <b>16</b> | <b>14</b> | <b>19</b> | <b>18</b> |

#### Promotions

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



**Other Divisional Items:**

- *Financial Education*
  - August 18, 2016 – The Department hosted a financial education webinar which drew 145 participants. The topic was “Fraud Awareness for Money Services Businesses.
  - September 7, 2016 – Financial Literacy Coordinator, Ms. Leilani Lim-Villegas, participated in a town hall meeting with CFPB’s Director Richard Cordray in Dallas, Texas. At the meeting, the CFPB announced the release of their report, “Building Blocks to Help Youth Achieve Financial Capability,” which describes how young people acquire the building blocks of financial capability to help them navigate the financial marketplace as adults.
  - September 15, 2016 – Ms. Lim-Villegas visited with 30 bankers from International Bank of Commerce in Laredo, Texas. She provided information on financial education programs and material.
  - September 22, 2016 – The FDIC’s Alliance for Economic Inclusion meeting was held in Houston, Texas. Ms. Lim-Villegas presented the financial education ranking information for Texas as reported by RAISE Texas and Corporate for Enterprise Development (CFED).
- *Publication*
  - The September edition of the Condition of the Texas State Banking System report is available with financial data as of June 30, 2016.
- *Examiner Council*
  - The Council met August 22 – 25, 2016 to review commercial, trust, and information technology examination work papers. The group also discussed changes to examination procedures. A report of the work paper review findings was provided to management.
- *Website*
  - The three versions of the Law & Guidance Manual have been updated through June 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 following data relates to website activity between September 1, 2015 and August 31, 2016.
    - The Department of Banking website received 682,934 page views. The top searches for the site include the Top 100 Banks in Texas (22,536 views) and Applications Forms (16,952 views).
    - The Electronic Crimes Task Force website received 6,963 page views. The top searches for the site include Corporate Account Takeover (320 views) and the Ask a Question feature (310 views).
    - The Texas Prepaid Funeral Contracts website received 61,362 page views. The top searches for the site include the Prepaid Funeral Planning Brochure (3,341 views) and Guaranteed/Non-Guaranteed Prepaid Funeral Services and Merchandise (1,284 views).
    - The Finance Commission website received 36,658 page views. The top searches for the site include the Membership page (3,345 views) and Packets page (2,944 views).



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## TEXAS DEPARTMENT OF BANKING

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### Memorandum

**TO:** Finance Commission Members  
**FROM:** Catherine Reyer, General Counsel  
**DATE:** October 11, 2016  
**RE:** Legal Division Update

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#### Litigation

***Antioch St. Johns Cemetery Co. v. The Texas Department of Banking Commissioner***, Cause No. D-1-GN-14-000367, In the 261st District Court of Travis County, Texas. Plaintiffs filed this case on February 6, 2014, appealing the Banking Commissioner's order requiring them to pay \$56,000 in administrative penalties for numerous violations of Health and Safety Code provisions governing cemeteries. The case was heard by Judge Scott Jenkins on April 30, 2015. Judge Jenkins issued an order on May 4, 2015, affirming the Commissioner's order. On June 30, 2016, the appellate court affirmed the trial court's decision, upholding the order and the penalty assessment. Abstracts of judgment have been filed in Dallas and Tarrant Counties and warrant holds have been issued. Plaintiffs did not timely file an appeal to the Texas Supreme Court, so the Commissioner's order stands. This matter has been referred to the Office of the Attorney General for collection.

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

***State of Texas v. Myrtlewood Memorial Services d/b/a Harlingen-Combes Memorial Cemetery et al.***, Cause No. D-1-GN-16-000565, in the 353<sup>rd</sup> Judicial District Court of Travis County, Texas. This case was filed on February 19, 2016, to seek the appointment of a receiver. The Attorney General's Office is preparing to file an amended petition.

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

\$554,245.62 in payments to 7,656 former customers. The receiver will perform a final reconciliation of all refunds made and file a motion to remit the remaining funds to the Comptroller's unclaimed property fund. After final administrative fees and expenses have been paid, the receiver will file a motion to close the estate.

***Claim by the Texas Department of Banking against the estate of Felix Trevino Morales***, Docket No. 442502, in Probate Court No. 2 of Harris County, Texas. On July 1, 2016, the Department of Banking filed a claim for \$12,545.00 against the estate of Felix Trevino Morales. Mr. Morales owned and operated Trevino & Sons Funeral Home in Houston where he sold prepaid funeral benefits without the necessary permit. The Department is seeking \$12,545.00 in order to return funds to customers who purchased prepaid funeral benefits from Mr. Trevino when he was not authorized to sell them. Although our claim was allowed by the executrix of the estate, the case has been placed on the inactive docket pending the executor's filing an inventory. In the meantime, we have contacted the executrix regarding restitution for the customers who purchased the illegal contracts.

***Texas Department of Banking v. Lamesa Memorial Park, LLC***, Cause No. 16-09-19874 in the 106<sup>th</sup> District Court of Dawson County, Texas. On September 13, 2016, Commissioner Cooper issued an Emergency Cease and Desist Order to 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.

### **Gifts**

The Independent Bankers Association of Texas waived a registration fee (valued at \$895.00) for Finance Commission Chair Stacy London to attend the 2016 Annual Convention held September 24-27 in San Antonio, Texas.

### **Orders**

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

#### ***Special Audits***

- Order No. 2016-012, dated 9/13/2016; Emergency Cease and Desist Order, Lamesa Memorial Park LLC, Devin Lee Avant, Jose Eleno Morales, Jr., Brenda Avant, and Michelle Vela
- Order No. 2016-013, dated 9/13/2016; Emergency Order to Cancel Permit to Hold and Administer Prepaid Funeral Benefit Contracts and to Seize Prepaid Funeral Funds and Records, Lamesa Memorial Park LLC, et al.

- Order No. 2016-14, In the Matter of: Fayette Memorial Funeral Home, LLC, La Grange, Texas, Order Approving Conversion from Trust-Funded Prepaid Funeral Benefits dated September 23, 2016
- Order No. 2016-15, In the Matter of: Knesek Bros. Mortician Services, Inc. dba Knesek Bros. Funeral Chapel, Sealy, Texas, Order Approving Conversion from Trust-Funded Prepaid Funeral Benefits dated September 23, 2016
- Order No. 2016-16, In the Matter of: Knesek & Sons Funeral Home, Wallis, Texas, Order Approving Conversion from Trust-Funded Prepaid Funeral Benefits dated September 23, 2016
- Order No. 2016-017, dated 10/3/2016; Consent Order, Regent Customer Care, LLC, Ruston, Louisiana

*Banking*

- Order No. 2016-011, dated 10/11/2016; Addendum withdrawing DOB participation in Written Agreement entered into by DOB, the Federal Reserve Bank of Dallas, TransPecos Banks, and TransPecos Financial Corp.

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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

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

**RECOMMENDED ACTION:** No comments were received regarding the proposed amendments to 7 TAC, §§25.1 – 25.6. The Department recommends that the Commission approve adoption of the amendments without changes to the proposal as previously published in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we adopt the amendments to 7 TAC, §§25.1 – 25.6 without changes to the proposal as previously published in the *Texas Register*.

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

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §§25.1 - 25.6 concerning prepaid funeral contracts. The amendments are adopted without changes to the proposed text as published in the September 2, 2016, issue of the *Texas Register* (41 TexReg 6587). The amended rule will not be republished.

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

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

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

The amendments to §25.3 explain the placement of contract provisions in electronic format. The amendment to §25.3(b)(8) requires the statement of guaranteed funeral goods and services selected to be on a single screen or consecutive screens, near the beginning or top of the contract, immediately following required consumer disclosures. The



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

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

The amendment to §25.5(b)(1)(A) requires inclusion of screen shots in an application to approve a non-model electronic contract. The amendment to §25.5(b)(1)(D)(ii) requires that the certification for electronic contracts verifies

that it complies with Business and Commerce Code, Chapter 322 (the Texas Uniform Electronic Transactions Act) and E-SIGN. The amendment to §25.5(f) deletes transition language that applied when the rules were amended in 2010 and is no longer applicable.

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

The department received no comments regarding the proposed amendments

The amendments are adopted pursuant to Finance Code, § 154.051, which provides that the commission may adopt rules necessary and reasonable to matters relating to the enforcement and administration of this chapter, and §154.151, which prescribes requirements for the department and the commission relating to the form of contracts.

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

*§25.1. Definitions.*

(a) (No change.)

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

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

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

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

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

(11) - (17) (No change.)

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

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

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

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

(b) - (e) (No change.)

(f) Sale of Prepaid Funeral Benefits Electronically.

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

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

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

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

(a) (No change.)

(b) Statement of guaranteed funeral goods and services selected. The first section of a proposed prepaid funeral benefits contract must inform the purchaser of the guaranteed funeral goods and services that you will provide under the contract, as

required by Finance Code, §154.151(e). This section must appear entirely on page one of the contract exactly as set out in the model contract and in the following figure, including substantially the same formatting and spacing, except:

Figure: 7 TAC §25.3(b) (No change.)

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

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

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

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

Figure: 7 TAC §25.3(c)(1) (No change.)

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

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

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

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

(2) If you delete the statement of non-guaranteed cash advance items:

(A) for a paper contract, you must include figure 7 TAC §25.3(c)(2)(B) on the bottom of page one of the contract, including substantially the same formatting and spacing; and

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

Figure: 7 TAC §25.3(c)(2)(B)

(d) - (i) (No change.)

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

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

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

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

(1) (No change.)

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

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

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

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

(m) (No change.)

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

and may be on a separate screen.

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

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

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

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

(c) - (e) (No change.)

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

(1) (No change.)

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

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

(g) (No change.)

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

(a) (No change.)

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

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

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

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

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

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

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

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

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

(E) - (F) (No change.)

(2) – (3) (No change.)

(c) - (e) (No change.)

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

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

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

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

(e) If an electronic contract was used, you may deliver an electronic record of the contract and all related agreements by email or other electronic means to the purchaser if the purchaser has consented to receiving an electronic record as specified in §25.2(f)(1) - (2). If the purchaser requests a paper copy or is unable to retrieve the electronic record, you must give the purchaser a paper copy. You may not charge a fee for providing a paper copy.

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

3. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendment to 7 TAC, §12.91 Concerning Other Real Estate Owned (OREO)

**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 would delete the text of §12.91(c)(8) and incorporate the deleted language into §12.91(h)(3), to correct this recently discovered misclassification.

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

**RECOMMENDED MOTION:** I move that we publish the proposed amendment to 7 TAC §12.91 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), proposes to amend §12.91, concerning other real estate owned (OREO). The amendment is proposed to correct a structural error and clarify 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 proposed amendment would delete the text of §12.91(c)(8) and incorporate 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 presently proposed to be amended.

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

Mr. Bacon also has determined that, for each year of the first five years the rule as proposed to be amended is in effect, the public benefit anticipated as a result of enforcing the rule is the elimination of misleading language in favor of a corrected statement of law governing bank ownership of real property.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed. There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.



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

The amendment is proposed under 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.

Finance Code §34.002 and §34.003 are affected by the proposed amended section.

*§12.91. Other Real Estate Owned.*

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

(c) Acquisition of OREO. A state bank may acquire ~~hold~~ OREO only ~~if acquired~~ 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.

~~[(8) purchase for the purpose of providing temporary housing for employees if:]~~

~~[(A) a 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.]~~

(d) - (g) (No change.)

(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 [property] 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 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) (No change.)

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

4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment 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 proposed to be amended to replace the phrase "assessable assets" in Step 6 with "on-book assets." As amended, Step 6 would 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:** The Department recommends that the Commission approve publication of the proposed amended rule in the *Texas Register* for comment.

**RECOMMENDED MOTION:** I move that we publish the proposed amendment to 7 TAC §3.37 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), proposes to amend §3.37, concerning the calculation of annual assessment for banks. The amendment is proposed to correct an error in the text of the bank assessment calculation table incorporated into §3.37(a).

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 currently describes 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), is incorrect and, if applied literally, could deprive some eligible banks of the discount. The size limitation should instead refer to "on-book assets" as defined in §3.36(b)(6), because examination frequency is determined based on the total of on-book assets as defined.

Accordingly, §3.37(a) is proposed to be amended to incorporate a cross-reference to defined terms in §3.36(b) to improve clarity. In addition, the bank assessment calculation table incorporated into §3.37(a) is proposed to be amended to replace the term "assessable assets" in Step 6 with the correct term, "on-book assets." No other changes are proposed in this table, and the proposed change will not result in any increase in assessments for banks.

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

Mr. Bacon also has determined that, for each year of the first five years the rule as proposed to be amended is in effect, the public benefit anticipated as a result of enforcing the rule is the correction of misleading language in order to clearly communicate how an assessment discount is applied.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed. There will

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

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

The amendment is proposed 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 imposing and collecting ratable and equitable fees. As required by Finance Code §31.003(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote 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.

Finance Code §31.106 is affected by the proposed amendment.

*§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)

~~[Figure: 7 TAC §3.37(a)]~~

(b) (No change.)

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

Figure: 7 TAC §3.37(a)

*First determine the bank's assessable asset group, then:*

| Steps | Assessment Calculation:   | Assessable Asset Group: |              |              |              |              |              |              |
|-------|---|-------------------------|--------------|--------------|--------------|--------------|--------------|--------------|
|       |   | 1                       | 2            | 3            | 4            | 5            | 6            | 7            |
| 1.    | For assessable assets of at least (in thousands)  | \$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 <b>marginal assessment rate</b> :   | 0.789600                | 0.448000     | 0.212800     | 0.208320     | 0.201600     | 0.123200     | 0.082880     |
| 4.    | Add this result to the <b>base assessment amount</b> :  | \$2,789                 | \$10,685     | \$17,405     | \$20,597     | \$26,847     | \$32,895     | \$51,375     |
| 5.    | Multiply the total by the factor corresponding to the bank's CAMELS composite rating (as defined in §3.36(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 <u>on-book</u> <del>[assessable]</del> assets of \$500 million or less and a CAMELS composite rating of 1 or 2. |                         |              |              |              |              |              |              |
| Steps | Assessment Calculation:   | Assessable Asset Group: |              |              |              |              |              |              |
|       |   | 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 <b>marginal assessment rate</b> :   | 0.073920                | 0.067200     | 0.053933     | 0.032130     | 0.020655     | 0.013770     | 0.009180     |
| 4.    | Add this result to the <b>base assessment amount</b> of:  | \$113,535               | \$409,215    | \$745,215    | \$1,284,545  | \$1,927,145  | \$2,340,245  | \$2,615,645  |
| 5.    | And multiply the total by the factor corresponding to the bank's CAMELS composite rating:   |                         |              |              |              |              |              |              |
|       | a. Composite rating of 3, 4, or 5:  | 2.0                     | 2.0          | 2.0          | 2.0          | 2.0          | 2.0          | 2.0          |
|       | b. Composite rating of 1 or 2:  | 1.0                     | 1.0          | 1.0          | 1.0          | 1.0          | 1.0          | 1.0          |

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

**PURPOSE:** Amendment to §33.4 is proposed to clarify the exemption for payment processors that handle charitable donations. The proposed amendment would exclude 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:** The Department recommends that the Commission approve publication of the proposed amended rule in the *Texas Register* for comment.

**RECOMMENDED MOTION:** I move that we publish the proposed amendment to 7 TAC, §33.4 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), proposes to amend §33.4, concerning payment processors. 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 MSBs, 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 proposed amendment would exclude 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

33.4(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 is proposed to allow exclusion of processors that meet the necessary conditions when accepting payment of donations to charitable organizations.

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

Ms. Newberg also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is greater clarity for how regulated entities can comply with the requirements of Finance Code Chapter 151.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed. The rule



creates no new regulatory requirements, and creates no new licensable activity.

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

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

The amendment is proposed under 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.

Finance Code §§151.003 and 151.302 are affected by the proposed amended section.

*§33.4. Payment Processors.*

(a) (No change.)

(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) (No change.)

(d) Point of Sale Payment Processors. A payment processor that receives funds from a consumer on behalf of a consumer-facing entity that either sells ~~[selling]~~ goods or services other than money services or accepts charitable donations does not need a 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) if the transaction involves goods or services, 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 proposal and found it to be within the state agency's legal authority to adopt.

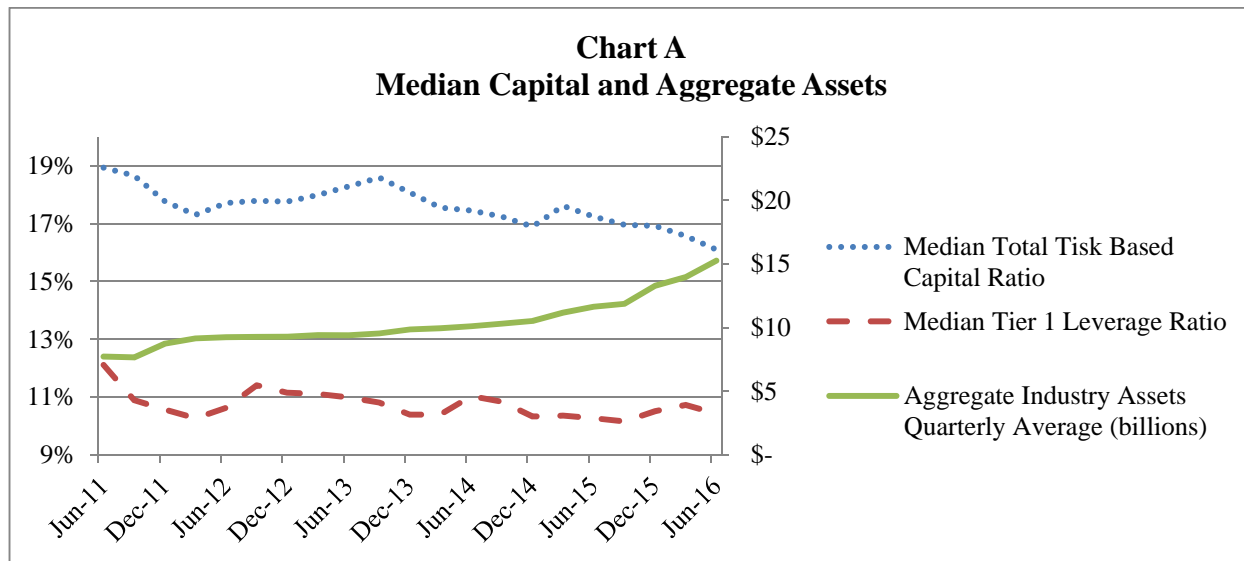
**D.**

**Department of Savings  
and  
Mortgage Lending**

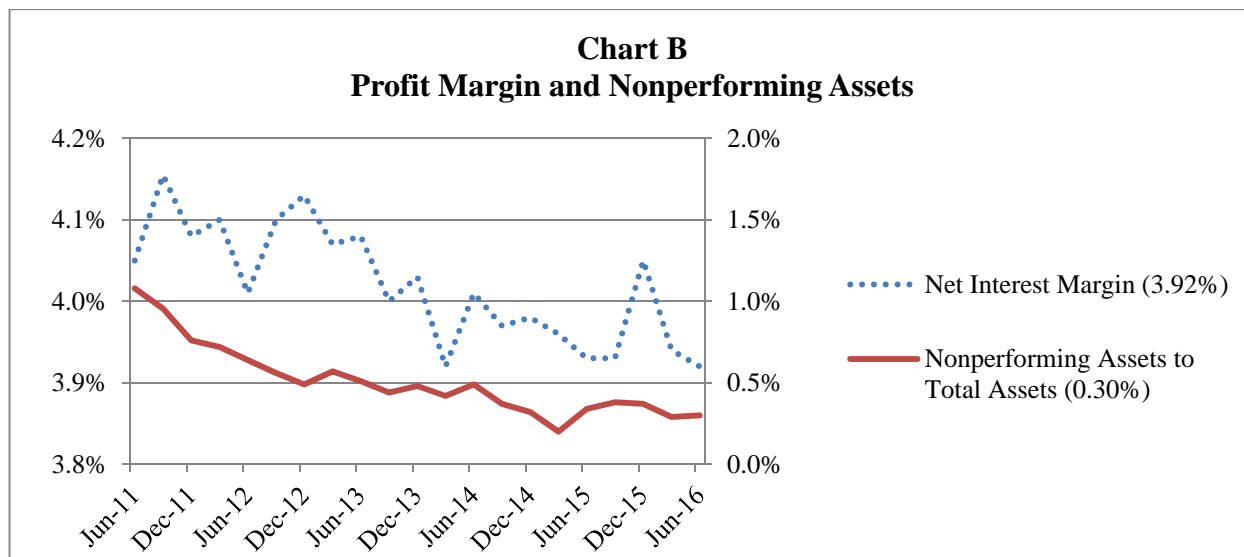
## D. Texas Department of Savings and Mortgage Lending

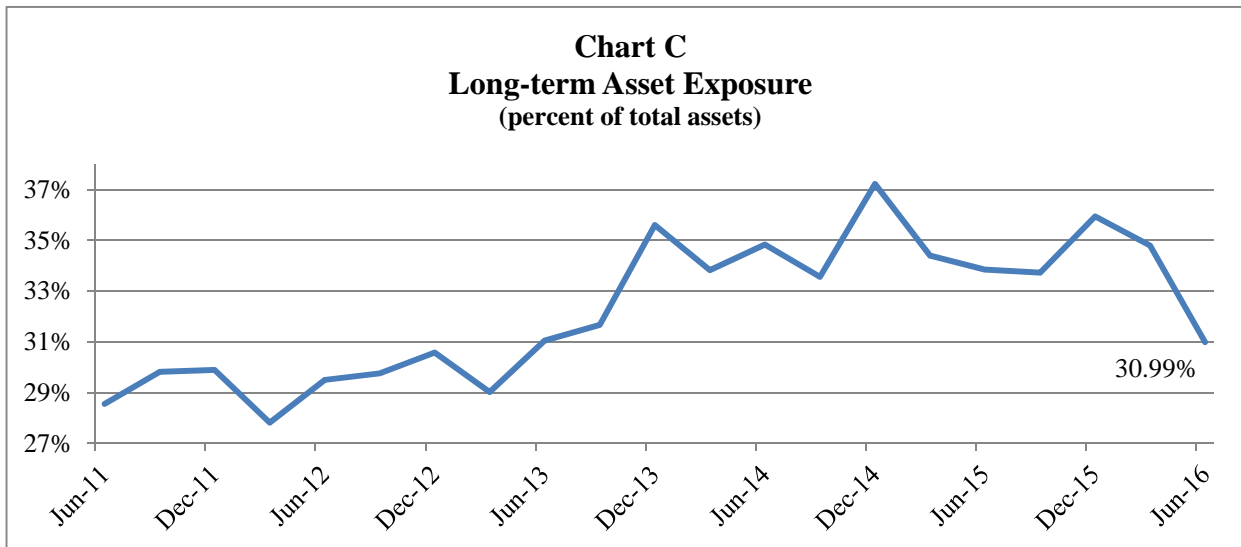
### 1. Industry Status and Departmental Operations – State Savings Bank Activity:

#### a. Industry Status

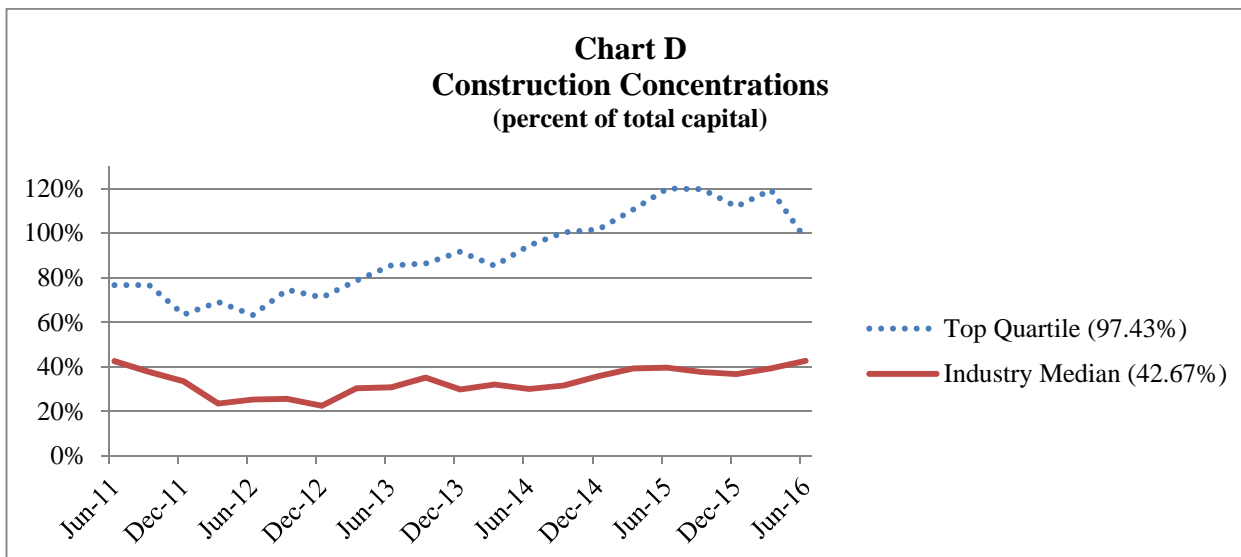


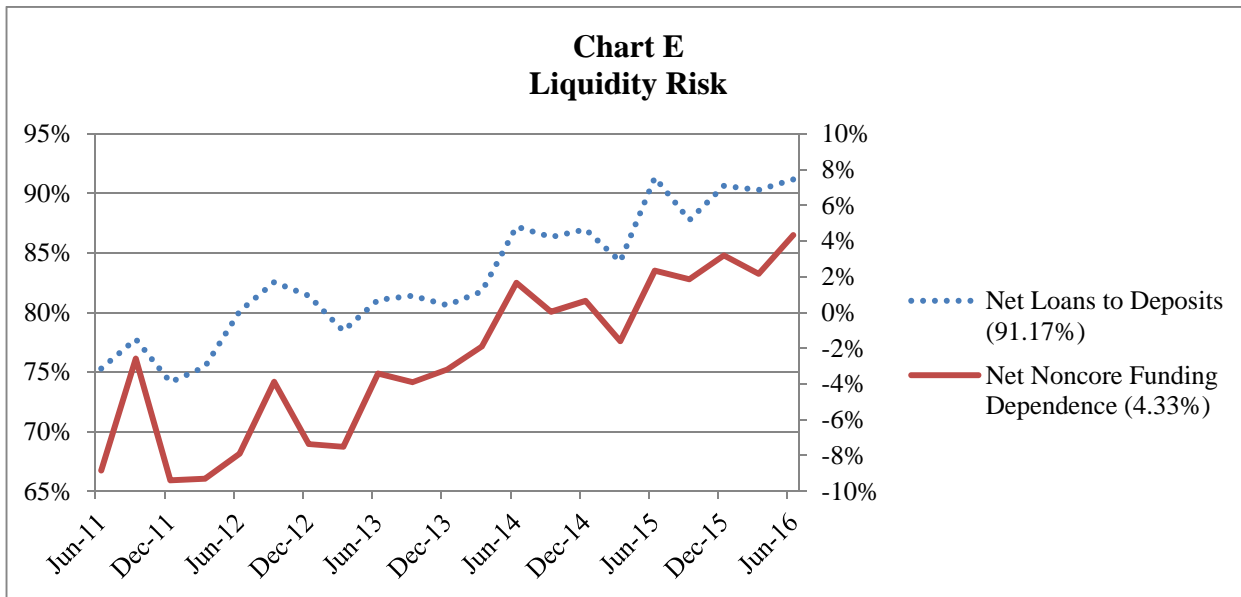
There were 27 state savings banks totaling \$16.4 billion in total assets, as of June 30, 2016. The average asset size of the median state savings bank (“SSB”) grew by 3.7% in the last four quarters to \$311 million. This continues a five-year growth trend in the industry, with the exception of the quarter ending June 30, 2016, which saw an increase in aggregate assets, but a decrease in median assets, indicating reduced size in some smaller SSBs. As a result of increased lending, the median total risk-based capital ratio (Chart A) has declined to 16.1%; however, leverage capital protection has increased slightly through retained earnings to 10.4%. Subject to some fluctuation within historical norms, the net interest or profit margin (Chart B) is relatively unchanged from the same quarter in the prior year at a modest 3.92%. Nonperforming asset levels remain low at 0.30% of total assets.





The Department continues to monitor various local, state, and national data sources to best understand the risks facing the industry and individual savings banks. Market risk, as evidenced by long-term asset exposure (Chart C), has reduced significantly in the last quarter as short-term lending and investment has increased. 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, especially in construction lending (Chart D). These concentrations vary widely throughout the industry, but had been experiencing a four-year increasing trend until recent quarters, and have now decreased even among the most concentrated SSBs. The growing demand for construction lending in the expanding Texas economy of the past five years can be observed in the top quartile of Texas thrifts. Those thrifts now have a reduced median concentration of 97% of total capital, down from a peak of 120% one year earlier. This is now under federal concentration guidance levels.



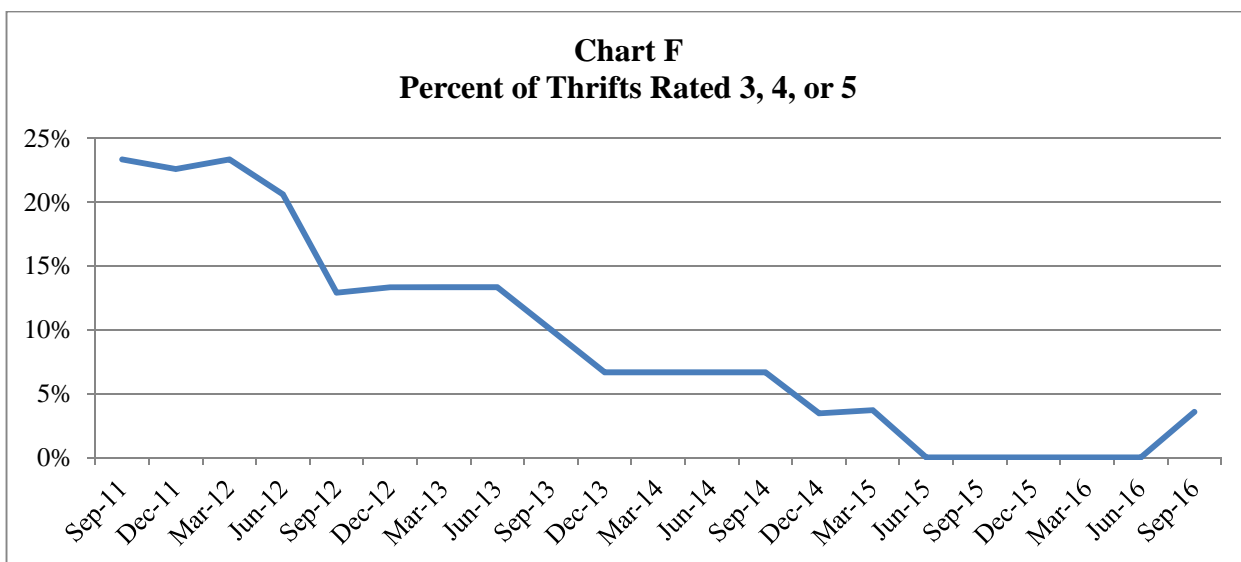


Liquidity risk continues to increase in Texas thrifts, as indicated by the Net Noncore Funding Dependence (NNCFD) Ratio (Chart E), a measure of the funding of long-term assets using potentially volatile liabilities such as uninsured and brokered deposits, and borrowings. The median NNCFD Ratio has increased from 2.34% to 4.33% in the last four quarters, but is considered manageable. Thirty-three percent of the industry is over 10%.

The loan-to-deposit ratio also remains elevated at 91% with 15% 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 outstanding enforcement actions.



**b. Savings Bank Charter and Merger Activity**

On April 15, 2016, an application was received for Triumph Bancorp, Inc., Dallas, Texas, to acquire ColoEast Bancshares, Inc., Lamar, Colorado, resulting in the merger of their depository subsidiaries, specifically Colorado East Bank and Trust with and into TBK Bank, SSB. The application was approved and the bank merger was consummated on August 1, 2016.

On May 18, 2016, an application was received for Fayette Savings Bank, SSB, La Grange, Texas, to form a holding company by merging with newly created Fayette Merger Corporation, a wholly-owned subsidiary of Fayette Bancshares, Inc. The application was approved and the merger was consummated on August 1, 2016.

**c. Other Items**

The Ninth Annual Thrift Industry Day was held on September 15, 2016. Mr. Sanjay Bhasin, President of the Federal Home Loan Bank – Dallas was the guest speaker. Thrift Supervision and Examination staff and management made presentations relating to topics of interest. The agenda is included in the Finance Commission materials.

Commissioner Jones served on the regulatory panel at the Texas Association of Bank Counsel Annual Convention on September 23, 2016.

Commissioner Jones served on the regulatory panel at the Independent Bankers Association of Texas Annual Convention on September 25, 2016.

Commissioner Jones attended the FFIEC meeting September 27, 2016.

Commissioner Jones and Mack Neff, President and & CEO of Integrity Bank, SSB, attended Community Banking in the 21<sup>st</sup> Century, a research and policy conference co-sponsored by the Conference of State Bank Supervisors and the Federal Reserve System, September 28 and 29, 2016.



# DEPARTMENT of SAVINGS & MORTGAGE LENDING

9TH ANNUAL

## THRIFT INDUSTRY DAY

THURSDAY, SEPTEMBER 15, 2016

12:30 – 1:00 Registration

1:00 – 1:15 Welcome Comments

*Caroline C. Jones, Commissioner*

1:15 – 1:45 Spotlight on the Industry

*Jonathan Finley, Chief Supervisory Analyst, TDSML*

1:45 - 2:15 Hot Topics

*Patsy Smith, CPA, Deputy Commissioner*

2:15 – 2:25 Qualified Thrift Lender

*Jan Florez, Senior Thrift Examiner*

2:25 – 3:00

Sanjay Bhasin

*President and CEO FHLB Dallas*

3:00 – 3:15 Break

3:15 – 3:30 Updates-Cybersecurity and ETS

*Susanna Blevins, CFE, Supervisory Examiner*

3:30 – 3:45 Shared Services

*Andrea Henderson, CEIC Examiner*

3:45 – 4:00 Compliance Update

*Bill Poe, Supervisory Compliance Examiner, CSME*

4:00 – 4:30 CECL

*Stephany Trotti, CPA, Chief Thrift Examiner*

4:30 – 5:00 Q & A and Adjournment

*Caroline C. Jones, Commissioner*



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

### a. Residential Mortgage Loan Originators

Current Licensing Population:

| License Type<br>As of 09/30/2016 | Approved        |                 |               |
|----------------------------------|-----------------|-----------------|---------------|
|                                  | Entity<br>(MU1) | Branch<br>(MU3) | MLO<br>(MU4)  |
| <i>Auxiliary</i>                 | 10              | n/a             |               |
| <i>CUSO</i>                      | 3               | 2               |               |
| <i>FSC</i>                       | 1               | n/a             |               |
| <i>Independent Contractor</i>    | 91              | n/a             |               |
| <i>Mortgage Company</i>          | 1,102           | 512             |               |
| <i>Mortgage Banker</i>           | 380             | 2,327           |               |
| <i>Mortgage Servicer</i>         | 161             | n/a             |               |
| <b>Totals</b>                    | <b>1,748</b>    | <b>2,841</b>    | <b>23,550</b> |

For FY2016, the Department received 8,563 applications for licenses and 76,364 other filings. During the year the licensing section approved 7,219 applications and processed 11,252 sponsorship changes.

The licensing section is preparing for the coming renewal period, November 1<sup>st</sup> – December 31<sup>st</sup>. Companies that have not filed or have outstanding deficiencies related to mortgage call reports and individuals that have not completed the required continuing education will not be able to submit renewal until the issues(s) are resolved.

### b. Mortgage Examinations

During FY2016 a total of 488 entity examinations were conducted covering 5,511 individual licensees.

The number of entity examinations is higher when compared to FY2015 although the number of individual licensees examined decreased by 33%. The decrease in the number of licensees examined is a direct result of small to mid-size mortgage banker and mortgage company examinations being conducted during FY2016.

Below is a breakdown of mortgage examination results by compliance rating for FY2016. As shown in the chart below, the stratification of examination ratings during the past twelve months reflects a slight change when compared to FY2015.

| Mortgage Examination Compliance Ratings |                        |              |     |              |     |              |     |              |     |              |    |
|---|------------------------|--------------|-----|--------------|-----|--------------|-----|--------------|-----|--------------|----|
|   | #<br>Mortgage<br>Exams | Rated<br>"1" | %   | Rated<br>"2" | %   | Rated<br>"3" | %   | Rated<br>"4" | %   | Rated<br>"5" | %  |
| <b>Fiscal Year 2014</b>                 |                        |              |     |              |     |              |     |              |     |              |    |
| 9/1/13 - 8/31/14                        | 366                    | 74           | 20% | 160          | 44% | 113          | 31% | 19           | 5%  | 0            | 0% |
| <b>Fiscal Year 2015</b>                 |                        |              |     |              |     |              |     |              |     |              |    |
| 9/1/14 - 8/31/15                        | 402                    | 38           | 9%  | 175          | 44% | 134          | 33% | 51           | 13% | 4            | 1% |
| <b>Fiscal Year 2016</b>                 |                        |              |     |              |     |              |     |              |     |              |    |
| 9/1/15 - 8/31/16                        | 488                    | 50           | 10% | 215          | 44% | 173          | 35% | 46           | 9%  | 4            | 1% |

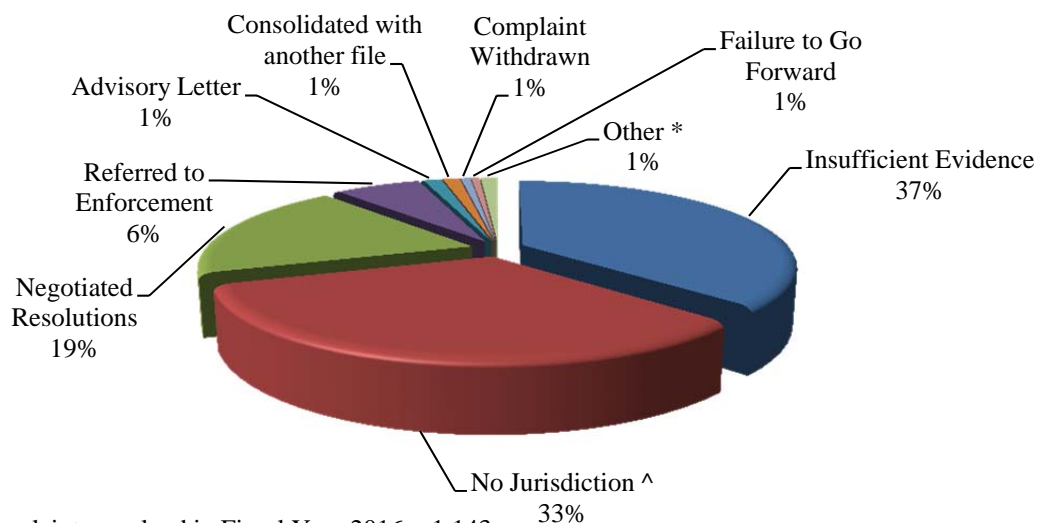
Annual in-house mortgage examiner training was held September 7 – 9, 2016.

### c. Consumer Complaints/Legal Issues

During FY2016, a total of 1,140 complaints were received. This represents a 22% increase when compared to FY2015. Loan servicing complaints represented 60% of the total number of complaints received during FY2015 and FY2016. The loan servicing complaint category is dominated by payment and escrow account disputes. As of August 31, 2016, there were a total of 103 open complaints with 86% of the complaints aged less than 90 days. There were no complaints aged over 180 days at the end of the quarter.

The chart below shows the nature of the disposition of consumer complaints resolved in FY2016.

### Disposition of Resolved Complaints - Fiscal Year 2016



Total complaints resolved in Fiscal Year 2016 = 1,143

^ The "No Jurisdiction" category includes: complaint against exempt entities/individuals (No Jurisdiction-Exempt), complaints regarding issues outside the Department's authority (No Jurisdiction Over Issue), and complaints against entities/individuals with expired licenses (No Jurisdiction-License Expired).

\* The "Other" category includes: Information Only, Opened in Error, No Investigation, and No Penalties Assessed

**d. Other Items**

Director O'Shields attended the 16<sup>th</sup> Annual Reverse Mortgage Day on September 6-7, 2016.

Commissioner Jones and Director O'Shields attended the Texas Mortgage Roundup on September 14, 2016. Additionally, Commissioner Jones presented at the event.

Commissioner Jones and Director O'Shields spoke to the Greater Houston Association of Mortgage Professionals on September 20, 2016.

**Mortgage Industry Advisory Committee – October 5, 2016 Meeting**

On October 5, 2016 MIAC held a regularly scheduled meeting. At this meeting the Department provided update on the Department's activities and answered questions from the committee members. The agenda for the meeting was as follows:

Agenda

1. Welcome – Commissioner
2. Review of Department's General Status of Originator Licensing and Registration Activity:
  - Licensing – Director of Licensing
  - Examination and Complaints – Director of Mortgage Examinations
  - Enforcement – General Counsel
3. General Discussion:
4. Upcoming Meetings:
  - March 8, 2017
5. Adjourn – Commissioner

### Actual Performance for Output/Efficiency Measures

| Type/Strategy/Measure   | 2016<br>Target | 2016<br>Actual | 2016<br>YTD | Percent of<br>Annual Target |   |
|---|----------------|----------------|-------------|-----------------------------|---|
| <b>Output Measures-Key</b>  |                |                |             |                             |   |
| 1-1-1 THRIFT SAFETY AND SOUNDNESS   |                |                |             |                             |   |
| 1. Number of Examinations Performed   |                |                |             |                             |   |
| <b>Quarter 1</b>  | 22             | 3              | 3           | 13.64%                      | * |
| The Department examines state chartered savings banks jointly with the FDIC, based on a priority schedule. Examination cycles range from 12 to 18 months with frequency based on multiple factors, including institution size, CAMELS rating, and length of time in operation. The results for this measure may fluctuate between quarters due to the timing of individual examinations.          |                |                |             |                             |   |
| <b>Quarter 2</b>  | 22             | 4              | 7           | 31.82%                      | * |
| The Department examines state chartered savings banks jointly with the FDIC and FRBD, based on a priority schedule. Examination cycles range from 12 to 18 months with frequency based on multiple factors, including institution size, CAMELS rating, and length of time in operation. The results for this measure may fluctuate between quarters due to the timing of individual examinations. |                |                |             |                             |   |
| <b>Quarter 3</b>  | 22             | 7              | 14          | 63.64%                      | * |
| The Department examines state chartered savings banks jointly with the FDIC and FRBD, based on a priority schedule. Examination cycles range from 12 to 18 months with frequency based on multiple factors, including institution size, CAMELS rating, and length of time in operation. The results for this measure may fluctuate between quarters due to the timing of individual examinations. |                |                |             |                             |   |
| <b>Quarter 4</b>  | 22             | 2              | 16          | 72.73%                      | * |
| The Department examines state chartered savings banks jointly with the FDIC and FRBD, based on a priority schedule. Examination cycles range from 12 to 18 months with frequency based on multiple factors, including institution size, CAMELS rating, and length of time in operation. The results for this measure may fluctuate between quarters due to the timing of individual examinations. |                |                |             |                             |   |
| 2-1-1 MORTGAGE REGULATION   |                |                |             |                             |   |
| 1. Number of Applications Approved  |                |                |             |                             |   |
| <b>Quarter 1</b>  | 6,500          | 1,793          | 1,793       | 27.58%                      |   |
| <b>Quarter 2</b>  | 6,500          | 1,650          | 3,443       | 52.97%                      | * |
| <b>Quarter 3</b>  | 6,500          | 1,927          | 5,370       | 82.62%                      |   |
| The number of applications submitted is outside of the Department's control; therefore, the number of applications processed is ultimately affected in the same manner. The Department anticipates meeting and exceeding this goal for the year.  |                |                |             |                             |   |
| <b>Quarter 4</b>  | 6,500          | 1,849          | 7,219       | 111.06%                     | * |
| The number of applications submitted is outside of the Department's control; therefore, the number of applications processed is ultimately affected in the same manner. The Department exceeded this goal for the year.   |                |                |             |                             |   |
| 2. Number of Licensees Examined   |                |                |             |                             |   |
| <b>Quarter 1</b>  | 3,600          | 1,077          | 1,077       | 29.92%                      | * |
| <b>Quarter 2</b>  | 3,600          | 1,618          | 2,695       | 74.86%                      | * |
| Two large mortgage banker examinations were completed in the second quarter of FY16 which accounted for 28% of the total number of licensees examined for the period. This type of concentration may continue over the remaining quarters of FY16.  |                |                |             |                             |   |
| <b>Quarter 3</b>  | 3,600          | 878            | 3,573       | 99.25%                      | * |
| Several mid size mortgage examinations were completed in the third quarter of FY16 which accounted for 40% of the total number of licensees examined for the period. This type of concentration may continue over the remaining quarters of FY16.   |                |                |             |                             |   |
| <b>Quarter 4</b>  | 3,600          | 1,938          | 5,511       | 153.08%                     | * |
| Three large/mid-size mortgage examinations were completed in the fourth quarter of FY16 which accounted for 47% of the total number of licensees examined for the period. This type of concentration may continue in FY17 as the individual licensee population continues to grow.  |                |                |             |                             |   |
| 3-1-1 CONSUMER RESPONSIVENESS   |                |                |             |                             |   |
| 1. Number of Consumer Complaints Completed  |                |                |             |                             |   |
| <b>Quarter 1</b>  | 900            | 247            | 247         | 27.44%                      |   |
| <b>Quarter 2</b>  | 900            | 268            | 515         | 57.22%                      |   |
| <b>Quarter 3</b>  | 900            | 352            | 867         | 96.33%                      |   |
| <b>Quarter 4</b>  | 900            | 276            | 1,143       | 127.00%                     | * |
| Total complaints increased 13% in the fourth quarter of FY16 when compared to the fourth quarter of FY15. Overall complaints received in FY16 increased by 22% when compared to FY15. Loan servicing complaints accounted for 60% of the total complaints received in FY16.   |                |                |             |                             |   |

| <b>ANNUAL MEASURES</b>   | <b>2016</b>   | <b>2016</b>   | <b>Percent of</b>    |
|--|---------------|---------------|----------------------|
| <b>Outcome Measures-Key</b>  | <b>Target</b> | <b>Actual</b> | <b>Annual Target</b> |
| THRIFT SAFETY AND SOUNDNESS  |               |               |                      |
| 1-1 THRIFT SAFETY AND SOUNDNESS  |               |               |                      |
| 1. % of State Chartered Savings Institutions Receiving Examination as Required by Priority Schedule.   |               |               |                      |
| Annual   | 100%          | 100%          | 100%                 |
| 2. % of Safe and Sound Institutions to Total Savings Institutions  |               |               |                      |
| Annual   | 90%           | 96%           | 107% *               |
| Due to the attention of regulators and bank management, the institutions that encountered challenges during the recent recession have worked through the major issues. |               |               |                      |
| 3. % of Assets in Safe and Sound Savings Institutions  |               |               |                      |
| Annual   | 90%           | 99%           | 110% *               |
| Due to the attention of regulators and bank management, the institutions that encountered challenges during the recent recession have worked through the major issues. |               |               |                      |
| 3-1 CONSUMER RESPONSIVENESS  |               |               |                      |
| 1. % of Complaints Answered Within Ten Business Days of Receipt of Complete Information  |               |               |                      |
| Annual   | 90%           | 99%           | 110% *               |
| Additional staff training and improved processes account for the increased efficiency.   |               |               |                      |
| <b>Explanatory Measures-Key</b>  |               |               |                      |
| 1-1 THRIFT SAFETY AND SOUNDNESS  |               |               |                      |
| 1. Number of State Chartered Savings Institutions  |               |               |                      |
| Annual   | 28            | 28            | 100%                 |
| 2. Dollar Amount of Assets Under Regulation (in Billions)  |               |               |                      |
| Annual   | \$12.00       | \$16.40       | 136.67% *            |
| Industry growth and mergers into thrift industry caused increase.  |               |               |                      |
| * Varies by 5% or more from target.  |               |               |                      |

**Actual Performance for Non-Key Measures**  
**Fiscal Year 2016**  
**For Period Ending August 2016**

| Type/Strategy/Measure   | 2016<br>Target | 2016<br>YTD | Percent of<br>Annual Target |
|---|----------------|-------------|-----------------------------|
| <b>Non-Key Measures</b>   |                |             |                             |
| <b>Thrift Safety and Soundness</b>  |                |             |                             |
| <b>01-01 Outcome Measures</b>   |                |             |                             |
| 4. % of Applications Receiving Final Action within Statutory Timeframes                                 | 100%           | 100%        | 100.00%                     |
| <b>01-01-01 Output Measures</b>   |                |             |                             |
| 2. Number of Detected Instances of Activity in Unauthorized or Prohibited Areas                         | 0              | 0           | 100.00%                     |
| 3. Number of Formal and Informal Regulatory Actions   | 2              | 2           | 100.00%                     |
| 4. Number of Applications Processed.  | 15             | 10          | 66.67%                      |
| <b>01-01-01 Efficiency Measures</b>   |                |             |                             |
| 1. Assets Examined Per Examiner Day (in Thousands)  | 4,628          | 5,596       | 120.92%                     |
| 2. Average Time (Business Days) to Complete Analysis of Quarterly Financial Data                        | 7              | 6.7         | 95.71%                      |
| 3. Average Time (Business Days) between Identification of a Problem and Initiation of Regulatory Action | 31             | 48          | 154.84%                     |
| <b>Residential Mortgage Loan Originators Regulation</b>   |                |             |                             |
| <b>02-01 Outcome Measures</b>   |                |             |                             |
| 1. % of Licensees Receiving Satisfactory Levels of Compliance Through Examinations                      | 86%            | 90%         | 104.65%                     |
| <b>02-01-01 Efficiency Measures</b>   |                |             |                             |
| 1. Average Cost Per License Issued and Mortgage Originator Approved                                     | \$18.50        | \$15.03     | 81.24%                      |
| 2. % of New Individual Licenses Issued and Mortgage Originators Approved within Ten Days                | n/a            | n/a         |                             |
| <b>02-01-01 Explanatory Measures</b>  |                |             |                             |
| 1. Total Number of Licensees in an Approved Status  |                | 27,569      |                             |
| <b>Complaint and Inquiry Processing</b>   |                |             |                             |
| <b>03-01-01 Output Measures</b>   |                |             |                             |
| 2. Number of Informational Inquiries and Requests Completed (Phone/Written)                             |                | 72,153      |                             |
| <b>03-01-01 Efficiency Measures</b>   |                |             |                             |
| 1. Average Cost Per Consumer Complaint Completed  | \$250          | \$218.47    | 87.39%                      |

**3. Fiscal/Operations Activity:**

**a. Funding Status/Audits/Financial Reporting**

Funding Status/Budget – Staff has closed out FY16 and submitted all financial reports to the Comptroller’s office and other oversight agencies as required.

**b. Staffing**

As of October 1, 2016, the Agency was staffed at 50 regular full time employees with 61 FTEs available.

In August, one Thrift examiner joined the Department. Additionally, in August the receptionist and an attorney positions became vacant, both were filled in September.

Multiple vacancies are posted and in different stages of the hiring process.

**c. Other Items**

None

**4. Legal Activity:**

SOAH Hearings:

07/28/2016 Appeal of License Denial

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

The Department had denied the RMLO license application of Jon Kevin Scampton on the grounds that he had failed to establish that he was of good moral character. Mr. Scampton appealed the license denial. A contested SOAH hearing was held before an administrative law judge on July 28, 2016. A Proposal for Decision was issued by the SOAH ALJ on September 26, 2016 finding that Mr. Scampton should be granted a license. The Commissioner signed the Proposal for Decision and the license was granted.

Gift Reporting:

There have been no new gifts to report since the last report to the Finance Commission in June 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 201<sup>st</sup> Judicial District Court of Travis County, Texas***

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