

A.

Finance Commission

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FINANCE COMMISSION OF TEXAS

MEETING DATEOctober 19, 2018

MEETING LOCATIONTexas State Capitol
1100 Congress Avenue, Room E2.030
Austin, Texas 78701

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

FUTURE MEETING DATESDecember 14, 2018
.....February 15, 2019
.....April 12, 2019
.....June 21, 2019
.....August 16, 2019
.....October 18, 2019
.....December 20, 2019

*** 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 19, 2018

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

Texas State Capitol

1100 Congress Avenue, Room E2.030

Austin, Texas 78701

Section A.3 will take up the following agenda items with NO DISCUSSION as notated in bold and italicized A1, B2-6, D2-3

Public comment on any agenda item or issue under the jurisdiction of the Finance Commission agencies is allowed unless the comment is in reference to a rule proposal for which the public comment period has ended. However, upon majority vote of the Commission, public comment may be allowed related to final rule adoption.

A. FINANCE COMMISSION MATTERS

- 1. Review and Approval of the Minutes of the August 17, 2018 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, 2018 Investment Officer Reports
 1. Texas Department of Banking
 2. Department of Savings and Mortgage Lending
 3. Office of Consumer Credit Commissioner
 - B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2018 Fourth Quarter Financial Statements
 1. Texas Department of Banking
 2. Department of Savings and Mortgage Lending
 3. Office of Consumer Credit Commissioner
 - C. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on an additional Finance Commission audit to be provided under the current Internal Auditor Contract

- D. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Department of Savings and Mortgage Lending's Contribution of \$750,000 to the Texas Financial Education Endowment Fund
- 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 2018 for the Commissioners of the Texas Department of Banking, Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner
- 8. Discussion of Legislative Initiatives of the Texas Department of Banking, Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner
- 9. Discussion of Management Actions from Sunset Reports
- 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
- 13. Discussion of and Consultation on Security Audit, possible issue related to confidential or sensitive information, security breach audit and assessment, and security assessments or deployment related to information resources technology as authorized by Tex. Govt. Code Secs. 551.076 and 551.089

B. TEXAS DEPARTMENT OF BANKING

- 1. Industry Status and Departmental Operations: a) Items of Interest from the Commissioner's Office; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Special Audits Division Activities; e) Administrative and Fiscal Division Activities; f) Strategic Support Division Activities; g) Legal Division Activities; h) Legislative Activities; and i) General Items of Interest
- 2. *Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 1, Chapter 5, Concerning Administration of Finance Agencies, Resulting from Rule Review*
- 3. *Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 2, Chapter 11, Concerning Complaints, Resulting from Rule Review*

4. *Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 2, Chapter 26, Concerning Perpetual Care Cemeteries Complaints, Resulting from Rule Review*
5. *Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 2, Chapter 27, Concerning Applications, Resulting from Rule Review*
6. *Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 2, Chapter 31, Concerning Private Child Support Enforcement Agencies, Resulting from Rule Review*
7. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendment to 7 TAC, Part 1, Chapter 5, §5.101, Concerning Employee Training and Education Assistance Programs
8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendment to 7 TAC, Part 2, Chapter 26, §26.11, Concerning Perpetual Care Cemeteries Complaints
9. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Chapter 33, §§33.23 and 33.35, Concerning Money Services Businesses Permissible Investments and Record Retention Related to Money Transmission Transactions, respectively
10. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

C. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

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

D. OFFICE OF CONSUMER CREDIT COMMISSIONER

1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities
2. *Discussion of and Possible Vote to Take Action on Adoption of Amendments and a Repeal in 7 TAC, Part 5, Chapter 83, Subchapter A, Concerning Rules for Regulated Lenders, Resulting from Rule Review*
3. *Discussion of and Possible Vote to Take Action on the Adoption of the Completed Rule Review of 7 TAC, Chapter 85, Subchapter A, Concerning Rules of Operation for Pawnshops*

4. Discussion of and Possible Vote to Take Action on Proposal of Amendments in 7 TAC, Part 5, Chapter 85, Subchapter A, Concerning Rules of Operation for Pawnshops, Resulting from Rule Review
5. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

Lynn Rowell d/b/a Beaumont Greenery, MPC Data and Communications, Inc., Micah Cooksey, NXT Properties, Inc., Mark Harken, Montgomery Chandler, Inc., Paula Cook, Townsley Designs, LLC, and Shonda Townsley v. Ken Paxton, in his official capacity as Attorney General of the State of Texas; Cause No. 1:14-cv-00190-LY, in the United States District Court, Western District of Texas, Austin Division

Ernest Polk v. Texas Office of Consumer Credit Commissioner; Cause No. 2018-04375, in the 281st Judicial District Court of Harris County, Texas

State of Texas v. Cash Auto Sales, Inc. f/k/a Larry Lake d/b/a Cash Auto Sales and VIP Finance of Texas, Inc. f/k/a Travis Lake d/b/a VIP Finance; Cause No. 05-18-00198-CV, in the Court of Appeals for the Fifth Judicial District, Dallas, Texas

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

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

**MINUTES OF THE
FINANCE COMMISSION MEETING
FRIDAY, AUGUST 17, 2018**

The Finance Commission of Texas convened at 8:38 a.m. on August 17, 2018, with the following members present:

Finance Commission Members in Attendance:

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

Finance Commission Chairman Stacy G. London announced a quorum with eleven members present.

Agenda Item	Action	Location on Video File
A. FINANCE COMMISSION MATTERS		
Chairman's opening Remarks		00:01 start of discussion
1. Review and Approval of the Minutes of the June 15, 2018, Strategic Planning Committee and Finance Commission Meetings	On Consent Agenda – Item A1 This item Approved on the Consent Agenda.	16:24 start of discussion
2. General Public Comment	No Action Required.	16:30 start of discussion
3. Consent Agenda – Items A1 and C2	Will Lucas made a motion to Approve Consent Agenda items A1 and C2. Matt Moore seconded, and the motion passed.	17:07 start of discussion 17:27 vote
4. Finance Commission Operations	No Action Required.	17:55 start of discussion

5. Discussion of and Possible Vote to Take Action on the Adoption of the 2019-2023 Finance Commission Strategic Plan	Lori McCool made a motion to Approve the Adoption of the 2019-2023 Finance Commission Strategic Plan. Molly Curl seconded and the motion passed.	23:48 start of discussion 24:43 vote
6. Audit Committee Report		25:05 start of discussion
<p>A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Readoption of the Investment Policies for:</p> <ol style="list-style-type: none"> 1. Department of Savings and Mortgage Lending 2. Office of Consumer Credit Commissioner 3. Texas Department of Banking 	Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Readoption of the Investment Policies for the Department of Savings and Mortgage Lending, the Office of Consumer Credit Commissioner, and the Texas Department of Banking passed.	25:13 start of discussion 25:24 vote
<p>B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Department of Savings and Mortgage Lending's 2018 Annual Internal Audit Report as Prepared and Presented by Garza/Gonzales and Associates</p>	Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Department of Savings and Mortgage Lending's 2018 Annual Internal Audit Report as Prepared and Presented by Garza/Gonzales and Associates passed.	25:35 start of discussion 25:45 vote
<p>C. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Office of Consumer Credit Commissioner's 2018 Annual Internal Audit Report as Prepared and Presented by Garza/Gonzales and Associates</p>	Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Office of Consumer Credit Commissioner's 2018 Annual Internal Audit Report as Prepared and Presented by Garza/Gonzales and Associates passed.	26:09 start of discussion 26:22 vote

<p>D. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Texas Department of Banking's 2018 Annual Internal Audit Report as Prepared and Presented by Garza/Gonzales and Associates</p>	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Texas Department of Banking's 2018 Annual Internal Audit Report as Prepared and Presented by Garza/Gonzales and Associates passed.</p>	<p>26:33 start of discussion 26:41 vote</p>
<p>E. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Selection of an Internal Auditor for the Finance Commission Agencies for Fiscal Year 2019</p>	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Selection of McConnell & Jones LLP as Internal Auditor for the Finance Commission Agencies for Fiscal Year 2019 passed.</p>	<p>26:51 start of discussion 27:03 vote</p>
<p>F. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies May 31, 2018, Investment Officer Reports</p> <ol style="list-style-type: none"> 1. Department of Savings and Mortgage Lending 2. Office of Consumer Credit Commissioner 3. Texas Department of Banking 	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies May 31, 2018, Investment Officer Reports passed.</p>	<p>27:13 start of discussion 27:19 vote</p>
<p>G. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2018 Third Quarter Financial Statements</p> <ol style="list-style-type: none"> 1. Department of Savings and Mortgage Lending 2. Office of Consumer Credit Commissioner 3. Texas Department of Banking 	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies' 2018 Third Quarter Financial Statements passed.</p>	<p>27:30 start of discussion 27:37 vote</p>
<p>H. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' Fiscal Year 2019 Operating Budgets</p> <ol style="list-style-type: none"> 1. Department of Savings and Mortgage Lending 2. Office of Consumer Credit Commissioner 3. Texas Department of Banking 	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies' Fiscal Year 2019 Operating Budgets passed.</p>	<p>27:47 start of discussion 27:54 vote</p>

7. Discussion of and Possible Vote to Take Action on the Agency Priorities for Fiscal Year 2019 for the Commissioners of the Department of Savings and Mortgage Lending, Office of Consumer Credit Commissioner, and the Texas Department of Banking	Phillip Holt made a motion to Approve the Agency Priorities for Fiscal Year 2019 for the Commissioners of the Department of Savings and Mortgage Lending, the Office of Consumer Credit Commissioner, and the Texas Department of Banking. Will Lucas seconded, and the motion passed.	28:15 start of discussion 28:35 vote
8. 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
9. 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
10. Discussion and Consultation with Attorney and Possible Vote to Take Action Pursuant to §551.071, Texas Government Code, for the purpose of seeking the advice or attorney-client privileged communications from our attorneys, including matters related to the potential financial exposure of the Finance Commission Agencies and their officers and the Finance Commission and its officers and including matters of pending and contemplated litigation	Deferred to Executive Session – no vote taken.	n/a
B. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING		
1. Industry Status and Departmental Operations - State Savings Bank Activity: a) Industry Status; b) State Savings Bank Charter and Application Activity; c) Other Items	No Action Required.	31:03 start of discussion

2. Industry Status and Departmental Operations – Mortgage Lending Activity: a) Residential Mortgage Loan Originators; b) Mortgage Examination; c) Consumer Complaints; and d) Other Items	No Action Required.	33:59 start of discussion
3. Fiscal/ Operations Activity: a) Funding Status/Audits/Financial Reporting; b) Staffing; and c) Other Items	No Action Required.	36:18 start of discussion
4. Legal Activity: a) Enforcement; b) Gift Reporting; and c) Legislative Activities	No Action Required.	39:24 start of discussion
5. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Action Required.	n/a
C. OFFICE OF CONSUMER CREDIT COMMISSIONER		
1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities	No Action Required.	43:48 start of discussion
2. Discussion of and Possible Vote to Take Action on the Adoption of the Completed Rule Review of 7 TAC, Chapter 83, Subchapter A, Concerning Rules for Regulated Lenders	On Consent Agenda – Item C2. 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 and a Repeal in 7 TAC, Part 5, Chapter 83, Subchapter A, Concerning Rules for Regulated Lenders, Resulting from Rule Review	Vince Puente made a motion to Approve the Proposal and Publication for Comment of Amendments and a Repeal in 7 TAC, Part 5, Chapter 83, Subchapter A, Concerning Rules for Regulated Lenders, Resulting from Rule Review. Phillip Holt seconded, and the motion passed.	1:00:23 start of discussion 1:05:38 vote
4. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Action Required.	n/a

<p><i>Lynn Rowell d/b/a Beaumont Greenery, Montgomery Chandler, Inc., Paula Cook, Townsley Designs, LLC, and Shonda Townsley v. Ken Paxton, in his official capacity as Attorney General of the State of Texas; Cause No. 1:14-cv-00190-LY, in the United States District Court, Western District of Texas, Austin Division</i></p> <p><i>Ernest Polk v. Texas Office of Consumer Credit Commissioner; Cause No. 2018-04375, in the 281st Judicial District Court of Harris County, Texas</i></p> <p><i>State of Texas v. Cash Auto Sales, Inc. f/k/a Larry Lake d/b/a Cash Auto Sales and VIP Finance of Texas, Inc. f/k/a Travis Lake d/b/a VIP Finance; Cause No. 05-18-00198-CV, in the Court of Appeals for the Fifth Judicial District, Dallas, Texas</i></p>		
D. TEXAS DEPARTMENT OF BANKING		
<p>1. Industry Status and Departmental Operations: a) Items of Interest from the Commissioner's Office; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Special Audits Division Activities; e) Administrative and Fiscal Division Activities; f) Strategic Support Division Activities; g) Legal Division Activities; h) Legislative Activities; and i) General Items of Interest</p>	No Action Required	1:06:38 start of discussion
<p>2. Discussion of and Possible Vote to Take Action on Petition to Initiate Rulemaking for Proposed New 7 TAC, Part 2, §33.5 Concerning Payroll Processors</p>	<p>Public Comment was made by Attorney John Podvin on behalf of Paycom Software Inc. and Paycom Payroll LLC. Paul Plunket made a motion to Approve the Petition to Initiate Rulemaking for Proposed New 7 TAC, Part 2, §33.5 Concerning Payroll Processors. Phillip Holt seconded. The motion failed with a vote of zero for and 11 against. Paul Plunket made a second motion to deny the Petition and to accept the letter prepared by the Texas Department of Banking outlining the reasons for denying the Petition. Phillip Holt seconded, and the motion passed.</p>	<p>1:21:47 start of discussion</p> <p>2:33:51 first vote</p> <p>2:42:18 second vote</p>

3. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Action Required.	n/a
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Chairman Stacy G. London called for an Executive Session at 11:38 a.m. (2:43:17) on the audio file). The open meeting resumed at 12:01 p.m. (2:44:03) on the audio file.)

There being no further business, Chairman Stacy G. London adjourned the meeting of the Finance Commission at 12:03 p.m. (2:44:20) on the audio file).

Stacy G. London, Chairman
Finance Commission of Texas

Charles G. Cooper, Executive Director
Finance Commission of Texas

Anne Benites, Executive Assistant
Finance Commission of Texas

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Finance Commission of Texas

Consent Agenda

October 19, 2018

A. Finance Commission Matters

1. Review and Approval of the Minutes of the August 17, 2018 Finance Commission Meeting

B. Texas Department of Banking

2. Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 1, Chapter 5, Concerning Administration of Finance Agencies, Resulting from Rule Review
3. Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 2, Chapter 11, Concerning Complaints, Resulting from Rule Review
4. Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 2, Chapter 26, Concerning Perpetual Care Cemeteries Complaints, Resulting from Rule Review
5. Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 2, Chapter 27, Concerning Applications, Resulting from Rule Review
6. Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 2, Chapter 31, Concerning Private Child Support Enforcement Agencies, Resulting from Rule Review

D. Office of Consumer Credit Commissioner

2. Discussion of and Possible Vote to Take Action on Adoption of Amendments and a Repeal in 7 TAC, Part 5, Chapter 83, Subchapter A, Concerning Rules for Regulated Lenders, Resulting from Rule Review
3. Discussion of and Possible Vote to Take Action on the Adoption of the Completed Rule Review of 7 TAC, Chapter 85, Subchapter A, Concerning Rules for Operation for PawnShops

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Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705

512-475-1300 / 877-276-5554

www.dob.texas.gov

MEMORANDUM

TO: The Finance Commission

FROM: Charles G. Cooper, Commissioner

DATE: September 15, 2018

RE: Department of Banking Priorities for Fiscal Year 2018 with Year-End Accomplishments

I. LEGISLATIVE – *State and National Legislative Issues*

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

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

Update:

- *Maintained regular contact with state and federal legislative committees.*
- *Commissioner Cooper testified at the House Investments and Financial Services hearing on January 31, 2018 regarding the impact of Hurricane Harvey on financial institutions.*
- *Commissioner Cooper and Deputy Commissioner Newberg provided testimony on April 24, 2018 to the House Investments and Financial Services Committee regarding cryptocurrency and the sandbox concept.*
- *Commissioner Cooper continues as a member of the Conference of State Bank Supervisors Legislative Committee.*
- *On April 4, 2018, Commissioner Cooper presented testimony at the House Business and Industry Committee, regarding the impact of data breaches or theft on Texas consumers and businesses.*

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

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

Update:

- *Updates provided to members at each Finance Commission meeting and members were provided by email copies of any Commissioner testimony.*
- *Members were updated at various meetings about the impact of Hurricane Harvey on regulated entities.*

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

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

Update:

- *Updates have been made to Supervisory Memorandum 1003 relating to the frequency of bank examinations. This update implements changes from the Economic Growth, Regulatory Relief, and Consumer Protection Act, which allows banks with total assets up to \$3 billion or less to qualify for an 18-month examination cycle. Prior to this change, the asset threshold was \$1 billion.*
- *Updates have been made in the contracting area related to legislative changes.*
- *Rules were completed to implement depository agent licensing related to the Bullion Depository legislation.*
- *Participated in interim charge hearings.*
- *Implemented Governor's Office new rule review requirements.*

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

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

Update:

- *The agency timely completed the Self-Evaluation Report, complied with all document and meeting requests and coordinated Sunset's participation in requested examinations.*
- *Formal response provided to Sunset recommendations in May 2018.*
- *Testified at Sunset hearing in May 2018.*
- *Attended the decision hearing in August 2018.*

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

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

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

Update:

- *All key performance measures were met or exceeded for fiscal 2018. A recap of fiscal 2018 key and non-key measures, including variance explanations, is included in the Department's section of the Finance Commission packet.*
- *Maintenance of CSBS Accreditation by the Bank and Trust Division is a performance measure, and the self-evaluation report has been completed and submitted. The reaccreditation onsite review will occur in October 2018.*

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

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

Update:

- *Agency staff participated in a number of committees, panels, and speaking engagements during the fiscal year. These engagements included FDIC Outreach panels in Austin and Dallas, IBAT's Tour de Texas Town Hall meetings, and TBA regulatory panels. Additionally, staff participated on nationwide committees including the CSBS State Examiner Review Team Committee, the CSBS Foreign Bank Committee, the CSBS State Supervisory Processes Committee, MSB Licensing and the FFIEC BSA Task Force. Finally, the Director of Information Security often participates in multiple cybersecurity speaking engagements across the nation.*
- *The agency is an active member of the MTRA and the MMET. Commissioner Cooper was re-elected as Chair of MMET and Director Reese was elected to serve on the MTRA Board of Directors.*
- *On January 12, 2018, the Agency signed on to a cooperative multi-state licensing compact to standardize key elements of the licensing process for MSBs. The multi-state compact is the latest step among state regulators toward an integrated system of licensing and supervision for MSBs. Agency personnel are active in working with the MSB Licensing Agreement Working Group to implement the enhanced licensing process outlined in the compact.*
- *Agency staff participated in the CSBS Strategic Planning Meeting from August 27-30, 2018 to provide feedback regarding the future priorities of CSBS.*

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

Measure: Perform research, maintain ongoing dialogue with other regulators, and attend training to maintain an understanding of conditions in which our entities operate.

Maintain a leading role in the effort to combat cybersecurity threats. Maintain an off-site monitoring program of bank and trust industries while initiating appropriate regulatory responses and actions when applicable. Research and take required actions against institutions with unacceptable risk profiles to minimize the adverse impact on depositors, shareholders and the banking system in general.

Update:

- *Agency staff members continue to closely monitor risk profiles of the institutions we regulate through ongoing off-site monitoring. For fiscal year 2018, we continued monitoring institutions that had oil and gas credit concentrations, researched bank performance for institutions located in areas affected by Hurricane Harvey, prepared monthly concentration in lending reports, reviewed banks with high loan-to-deposit ratios and prepared quarterly mortgage related activity reports. All reports are reviewed for adverse trends and red flags in high-risk areas. Finally, on-going monitoring through our quarterly off-site monitoring program helps to identify increased risks in between exam cycles.*
- *The agency maintained a leading role in the efforts to combat cybersecurity threats. IT examiners continue to assess financial institutions' cyber-security preparedness during on-site examinations, seeking improvement when an institution failed to meet a baseline level of preparedness. Agency staff led a multi-state examination of Equifax, a global consumer credit reporting agency, after a large security breach exposed millions of consumers' personal information. The Director of Information Security Examinations (DISE) continued to participate in the Cybersecurity and Critical Infrastructure Working Group, as well as other cybersecurity working group meetings. The DISE often served as a speaker or trainer for cybersecurity events and classes. Commissioner Cooper presented testimony to the Texas House of Representatives – Business and Industry Committee, about Interim Charge #4, which requires a study of the impact of data breaches or theft on Texas consumers and businesses. Finally, the agency sends out alerts to chief executive officers of banks when we become aware of potential threats.*
- *The BSA examiners monitor Suspicious Activity Reports from large institutions and IT examiners participate in multi-state examinations for large service providers.*
- *Regulatory responses and/or administrative actions were initiated whenever the Department became aware of situations or issues that weakened the safety and soundness of an institution, or that arose from non-compliance with policies, procedures, regulations, or laws.*

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

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

Update

- *Agency staff stayed apprised of the impact to financial institutions of Hurricane Harvey by placing multiple calls to banks directly affected by the storm in the days and weeks after the hurricane hit, and by keeping close contact with banks in the months after to discuss how customers were affected and the impact to loan defaults and past due credits. The Department provided guidance to the industry on how banks should handle new home equity loan requests as well as existing loan renewals in an Industry Notice in October. Commissioner Cooper testified before the House Committee on Investments and Financial Services on January 31, 2018, regarding our response during Hurricane Harvey and the aftermath of the banking industry in the affected region. Finally, staff provided input into financial institution letters the FDIC published relating to regulatory relief and examination guidance in the areas affected by the hurricane.*
- *Participated in IBAT and TBA meetings and seminars, other regulatory panel engagements, and spoke at graduate banking schools.*
- *In February 2018, all examination staff participated in accounting training to better assist bankers with implementation of new accounting guidance called the Current Expected Credit Loss methodology, or CECL. Though this new accounting guidance is not required to be implemented for several months, financial institutions will need to begin initial steps to transition in 2018.*
- *MSB staff participated in a working group of state MSB regulators to collectively review and make revisions/enhancements to the MTRA Examination Workprogram. The MTRA Workprogram revisions were incorporated into the Texas MSB Workprogram in June 2018.*
- *MSB staff participated in various working groups established by CSBS to provide feedback and to share ideas related to the ongoing development of the State Examination System (SES), including:*
 - *The Fintech Industry Advisory Panel, the Scheduling Analytics Working Group and the Risk Profiling Working Group.*
- *MSB staff provided feedback on the BSA/AML Self-Assessment Tool form developed by CSBS and state regulators for MSBs to help institutions better identify, monitor and communicate BSA/AML risk.*

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

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

Update:

- *The agency's staff monitors and pursues illegal activity in the following ways:*
 - *Ongoing monthly monitoring of SAR reports;*
 - *Pursuing prohibition orders when warranted; and,*
 - *Reviewing information for cases involving stolen bank identity, fraudulent crypto-currency bank, and fraudulent mortgage service companies that all*

require communication with other federal and state banking agencies across the country.

- *Issued one order against an unauthorized entity purporting to be a bank.*
- *Issued eleven orders against money service businesses.*
- *Issued two orders against prepaid funeral contract sellers.*
- *Issued two orders against perpetual care cemeteries.*
- *Issued three prohibition orders against bank officers.*
- *Issued one consent order against a former bank officer.*
- *Issued one order against a bank-related third-party service provider.*
- *Coordinated with federal law enforcement on three matters involving illegal MSB activities.*
- *Notified sixteen MSB entities that may be engaged in money transmission without a license, and as a result:*
 - *Three companies responded and confirmed in writing that they were not conducting business in Texas, no further action required;*
 - *Five companies provided documentation and upon review by Special Audits and the Legal Division, did not require a license; and,*
 - *Eight companies responded and provided documentation that is currently being reviewed by the Legal Division.*

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

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

Update:

- *Consumer assistance activity is reported at each Finance Commission meeting. We also updated our reporting to include inquiries.*
- *Expanded consumer assistance performance measures were developed for implementation in FY 2019.*

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

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

Update:

- *Revised Examiner Bulletins (XB) for Bank & Trust examination staff:*
 - *XB 2018-05 - Maintaining Work Papers in Document Manager (March 2018).*
 - *XB 2018-04 - IT Related Examination Procedures for Bank & Trust Staff (March 2018).*
 - *XB 2018-03 IT - Guidelines for Procedures and Work Paper Documentation for Information Technology Examinations (January 2018).*

- *XB 2018-02 TR - Guidelines for Procedures and Work Paper Documentation for Trust Examinations (January 2018).*
- *XB 2018-01 CML - Guidelines for Procedures and Work Paper Documentation for Commercial Examinations (January 2018).*
- *Revised Administrative Memorandums (AM) for Bank & Trust Examination Staff:*
 - *AM 2006 - Treatment of Matters Requiring Attention in the Report of Examination (April 2018).*
 - *AM 2015 - Work Paper Organization, Retention, and Review (September 2017).*
- *Reviewed and revised twelve commercial examination procedures: Planning & Control; Allowance for Loan and Lease Losses; Audit; Borrowed Funds; Collections; Deposits; Earnings; Funds Management; Loans & Leases; Management; Retail Sale of Nondeposit Products; and Other Supervisory Issues.*
- *Reviewed and revised six trust examination procedures: Planning & Control; Compliance; Trust Company Management; Trust Company Earnings; Trust Company Liquidity; and Exempt Trust Company.*
- *Reviewed and revised the IT Planning & Control procedure.*
- *Reviewed and revised the examination Request Lists for commercial, trust, and IT.*
- *Regularly update examination reference materials for commercial, trust and IT examiners.*
- *Promptly notified Bank & Trust staff of the above revisions.*
- *Reviewed and revised one insurance-funded and one trust-funded PFC examination procedure for additional clarification. Notified staff in a timely manner.*
- *Reviewed and revised two PCC examination procedures for additional clarification. Notified staff in a timely manner.*
- *Reviewed and revised ten MSB examination procedures for additional clarification. Also, five procedures were deleted, and some procedures were reorganized for clarification purposes and to eliminate redundancies. Notified staff in a timely manner.*
- *Reviewed and revised the examination Request Lists for MSB.*
- *Reviewed and revised the MSB Examination Work Program User Guide for additional clarification.*

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

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

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

Update:

- *Issued New Supervisory Memorandum (SM):*
 - *SM 1042 – Effect of Criminal Convictions on Licensing (October 2017).*

- *Reviewed and Revised Supervisory Memorandums (SM):*
 - *SM 1003 – Examination Frequency for State-Chartered Commercial Banks (July 2018).*
 - *SM 1004 – Examination Frequency for Trust Companies (March 2018).*
 - *SM 1020 – Information Technology Examination Frequency and Ratings (August 2018).*
- *Reviewed and Revised Administrative Memorandum (AM):*
 - *AM 2016 – Investment Policy for Funds Under the Oversight of the Guaranty Fund Advisory Council (November 2017).*
 - *AM 2002 - Equal Employment Opportunity, Non-Discrimination and Sexual Harassment Policy (December 2017).*
 - *AM 2029 - Non-Overnight Travel Status Assignments (January 2018)*
 - *AM 2008 - Normal Work Hours and Schedules for Department Employees (January 2018).*
 - *AM 2031 – Delegation of Authority (April 2018).*
 - *AM 2016 – Investment Policy for Funds Under the Oversight of the Guaranty Fund Advisory Council (May 2018).*
 - *AM 2007 – Time Reporting System (July 2018).*
 - *AM 2027 – Investment Policy for Funds Under the Oversight of the Finance Commission of Texas (August 2018).*
- *Reviewed and Revised Regulatory Guidance (RG):*
 - *RG 3008 – Residential Mortgage Loan Fraud*

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

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

Update:

- *Rule amendments and new rules were adopted to:*
 - *Implement recent statutory changes regarding applications for change of control of a state bank.*
 - *Establish new licensing requirements for bullion depository agents.*
 - *Clarify what fees a new MSB license holder must pay to maintain its license.*
 - *Make technical corrections to Chapter 3 concerning state bank regulation following rule review.*
 - *Make technical corrections to Chapter 33 concerning money services businesses following rule review.*

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

Measure: Provide financial education material to the banking and money service business industry as requested, in addition to hosting informational webinars. Continue

active participation in financial education groups and events. Provide outreach to regulated industries as needed or requested.

Update:

- *On September 15, 2017, Commissioner Cooper and the Financial Education Coordinator participated in the Jump\$tart Membership Roundup Meeting held in Austin, Texas. On November 9, 2017, the Financial Education Coordinator participated in the Jump\$tart Membership Roundup Meeting held at the Federal Reserve Bank of Dallas, Houston Branch.*
- *The Financial Education Coordinator attended the Jump\$tart National Educator Conference in November 2017 held in Washington, D.C. The conference focused on youth financial education on a national level.*
- *On September 28, 2017, the Texas Department of Banking hosted a webinar on elderly abuse financial education.*
- *On October 26, 2017, the Texas Department of Banking hosted a webinar on guidance on Texas Permissible Investment Reports and legislative changes for the money services businesses industry.*
- *The Department participated in the Financial Fitness Greater Austin (FFGA) \$mart Kid Essay Contest. A staff member participated as a judge for the \$mart Kid Essay scholarship contest in June 2, 2018.*
- *The Department's Financial Education Brochure was updated to reflect current information for bankers to use as a resource in their communities.*

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

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

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

Update:

- *The Department reviewed and updated six sections of the Personnel Policy and Procedure Manual in FY 2018.*
- *Thirty-one jobs were posted from September 1, 2017 through August 31, 2018.*
- *Successfully filled key positions in the agency including the Chief IT Security Examiner and Austin Review Examiners.*
- *Two trust examiners, two IT examiners, eight commercial examiners, one BSA Specialist and one administrative assistant were hired for Bank and Trust Supervision from external postings.*
- *Four interns were hired in Bank and Trust Supervision for the summer semester.*
- *One program specialist was hired for Division of Strategic Support.*
- *Three attorneys, one legal assistant and one law clerk were hired for the Legal Division.*

- *One staff services officer and one accountant were hired for Administrative Services.*
- *One human resources specialist was hired for Human Resources.*
- *Agency representatives attended 13 recruiting fairs around the state.*

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

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

Update:

- *Agency fiscal year 2018 turnover rate through August 31, 2018 is 16.42%; Agency turnover excluding retirements is 13.02%. Agency turnover, excluding retirements and interns is 10.75%. Financial Examiner fiscal year 2018 rate through August 31, 2018 is 11.29%; Financial Examiner turnover excluding retirements is 8.06%.*
- *Implemented a leadership development program to arm the current and future leaders of the agency with the skills needed to manage effective teams. In total, 28 senior staff members have either started or completed the program.*
- *At the recommendation of the Employee Advisory Council, a program was developed for staff to evaluate their managers and a change to the commissioning process was implemented on a trial basis..*
- *Through August 31, 2018, the agency has hired twenty-seven new employees and lost twenty-nine (four of which were interns).*
- *Salaries remain competitive with the FDIC.*

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

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

Update:

- *Upgraded Lubbock's phone system to DIR's new VOIP system.*
- *Upgraded all desktop and laptop computers in the headquarters' office and some of the field computers.*

- *Upgraded Oracle database server.*
- *Upgraded three VM servers.*
- *Finished Special Audit's SARA application.*
- *Converted ACES and CANS to .NET. ACES is used by banks and trust companies to manage entity contacts. ACES is used by all banks in Texas to report compromised bank accounts.*

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

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

Update:

- *Cybersecurity training completed for all Department employees.*
- *An internal information security risk assessment was performed over the third and fourth quarter of the fiscal year. All findings were immediately corrected.*
- *The Department went through another successful penetration test. The test confirmed that the Department's internet presence is safe and secure.*
- *The Department continues to update the Disaster Recovery (DR) site. The DR site is in the San Antonio regional office.*
- *Testing of the Disaster Recovery Plan is periodically performed by retrieving and reloading back-up files.*
- *Updated Section 14 of the personnel manual to include new state mandates and rules.*
- *Participated in a tabletop exercise on cybersecurity/business continuity.*

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

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

Update:

- *An internal Credit School was held the week of February 5, 2018 in Arlington, Texas for assistant bank examiners.*
- *Two examiners successfully completed the bank examination commissioning process through August 31, 2018.*
- *Financial examiners attended 132 core curriculum classes in fiscal year 2018.*

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.

Update:

- *Monthly financial statements are provided to all divisions for review and to the Finance Commission each quarter.*
- *For fiscal year 2018, revenues were 92.1% of budget and expenditures were 92.3% 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.

Update:

- *Various policies including the Travel Policy were updated to comply with current practice and/or new requirements.*

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.

Update:

- *The agencies continue to evaluate properties provided by the broker.*
- *A meeting was held with the broker in February 2018.*
- *Commissioners continue talks with other parties regarding the timeline for the Camp Hubbard site.*

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.

Update:

- *An exercise related to the Plan to test our mass notification system was conducted in January 2018 with good results. An after-action report and a corrective action plan were produced to mitigate minor issues encountered during the exercise. The yearly Plan update was submitted to the State Office of Risk Management in January 2018.*

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



DEPARTMENT of SAVINGS & MORTGAGE LENDING

Caroline C. Jones, Commissioner

Memorandum

To: The Finance Commission

From: Caroline C. Jones

Date: October 19, 2018

Re: Agency Priorities for 2018

I. Legislative Items

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

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

Status: *The Department monitored legislation and regulations at the federal level and as appropriate reported information to the Finance Commission as well as to its 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: *Commissioner Jones testified at an Interim Hearing of the Senate Business & Commerce Committee on November 1, 2017 and an Interim Hearing of the House Investments and Financial Services Committee on January 31, 2018. Both hearings related to the interim charges on the impact of Hurricane Harvey.*

I.3 Objective: Sunset review process.

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

Status: *During the review process, Department staff provided various documents and information to Sunset Commission staff as requested. Various Department staff members were interviewed by Sunset Commission staff. Sunset Commission staff attended a Thrift examination. Commissioner Jones testified at the May 24, 2018 public hearing held by the Sunset Commission. Commissioner Jones and several Directors attended the Sunset Commission's Decision Hearing on August 29, 2018.*

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 monitored the thrift industry's risk profiles and provided information to the Finance Commission on a regular basis. The Department actively engaged in the determination of necessary supervisory action and took appropriate supervisory action during on-site examinations and off-site reviews as necessary. Existing enforcement actions were monitored for compliance through quarterly reports from the thrifts and on-site visitations and examinations. Examinations conducted during the fiscal year reviewed components in Safety and Soundness, IT, and Compliance. The Compliance examinations were conducted through the Department's Compliance Examination Program.*

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, 2018, 99% of the open consumer complaints were aged less than 90 days. The Director of Mortgage Examinations reviews any complaints that are open for more than 120 days. Aging of complaints is reported to the Finance Commission on a quarterly basis.*

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: *The Department participated in the Home Equity Lending Working Group's work on Home Equity rules to implement the constitutional amendments enacted through Proposition 2. The proposed rules were presented to the Finance Commission at its December 2017 meeting and adopted at its February 2018 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. TBA, IBAT, TMBA, ATMP, and TAR) and federal regulators in order to be aware of events, decisions, other state and federal policies and other areas of actual and potential impact on the Department's regulatory functions or the industries. Take proactive steps to respond as issues arise affecting the industries or supervisory duties.

Status: *Throughout FY18 members of the Department's management team served in leadership positions on several national associations and committees. These include: the American Council of State Savings Supervisors, (Board Chair), the American Association of Residential Mortgage Regulators, (Board President), and served on the board of the State Regulatory Registry. The Commissioner served on the Federal Financial Institutions Examination Council (FFIEC) through the State Liaison Committee and on Financial and Banking Information Infrastructure Committee (FBIIC). Both FFIEC and FBIIC provide opportunities for active contact with federal counterparts. A staff member served on the NMLS Policy Committee. Several staff members served on Conference of State Bank Supervisors working groups. The Department was also in active contact with the FHLB and FINCen. The Department participated in the FDIC Dallas Region Annual Regulator Meeting and the FDIC Banker Outreach. The Department stayed in contact with the relevant state trade associations and has made 16 presentations to various statewide and local chapters of trade associations. The Commissioner met with representatives from the Mortgage Bankers Association in Washington D.C.*

Many of these appointments to boards, committees, and working groups will continue in FY19.

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

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

Status: *The Department, through its joint examination process, continued its relationship and contact with the FDIC and FRB on examination, supervision, and consumer complaint issues. On an as needed basis, the Director of Mortgage Examinations and representatives with the CFPB discussed issues relating to the mortgage industry. Additionally, the Department communicated with FINCen and FHLB, as necessary.*

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: *As of August 31, 2018, the Department conducted 431 examinations of mortgage entities covering 9,924 mortgage loan originators. The Department provided the overall top violations to industry at various opportunities, including presentations to statewide and local associations, and at the Department's Mortgage Seminar. The Department issued formal and informal enforcement actions as deemed necessary.*

III. Policy and Rule Development

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

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

Status: *During FY18, amendments to 7 TAC Chapter 80 and Chapter 81 were proposed to and adopted by the Finance Commission. These amendments provided clarification and some technical clean-up.*

IV. Industry Outreach and Communication

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

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

Status: *During FY18, the Commissioner and other Department representatives provided updates to industry at 16 face to face opportunities. These include presentations to local mortgage associations, regulatory panels at state trade association events, the 11th Annual Thrift Industry Day, and the 6th Annual Mortgage Seminar.*

Various Department representatives discuss issues related to the industries via individual face to face meetings, conference calls and electronic means as deemed necessary and appropriate. The Commissioner met with 11 state savings banks in FY18. These were

outreach meetings to foster communication between the Department and its regulated institutions.

In FY18, the Commissioner and Deputy Commissioner established a monthly Emerging Issues Call with the state savings bank presidents/chief executive officers, and their state savings bank management team. The purpose of the calls is to provide an opportunity for communication with industry as a whole on a regular basis; for the Department to share topics of interest and issues it sees emerging within the industry; and for the state savings banks to share information about topics with the Department and with each other, as well as giving them an opportunity to ask questions.

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: *Over 81% of personnel received training or professional development in FY18. Some of the trainings the Department has utilized are those offered by CSBS, FFIEC, FDIC, and AARMR. Turnover rate for FY18 was 7.5%.*

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

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

Status: *The Department has reported on its four key output measures to the Finance Commission on a quarterly basis. The Department met or exceeded all of these key 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: *During FY18, the Department was reviewed by the Sunset Commission. The Department has begun meeting with the other two Finance Commission agencies on implementing the recommendations relating to all three agencies. The Department is in the*

process of modifying its penalty matrix as recommended by Sunset staff. The matrix is due May 1, 2019.

During FY18, the Department was audited by the Comptroller of Public Accounts and internal auditors Garza/Gonzales. Recommendations made from Garza/Gonzales were implemented. The Comptroller of Public Accounts' report has not been issued to the Department.

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.*

Reserves were reduced 16.1% during FY18 amounting to \$913,099.

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

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

Status: *As deemed appropriate, the Department has implemented critical patches to its network and staff computers. The Department has replaced computer and other technological equipment as needed.*

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

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

Status: *The Department, along with the Department of Banking and Office of Consumer Credit Commissioner, continued to search for potential properties and review information relating to the relocation of the agencies' headquarters. Information has been reported to the Finance Commission as available.*

Office of Consumer Credit Commissioner

Agency Priorities – Year-End Report

FY 2018

1. LEGISLATIVE

1.1. Mandated Studies.

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

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

Status: *The agency provided testimony, including written reports regarding agency updates to the House Investments and Financial Services committee to address Hurricane Harvey issues on January 31st on agency regulated industries and the agency's guidance to pawnshops and other lenders. Testimony also discussed the effects on consumers and lenders in the mortgage and home equity markets.*

1.2. Sunset Review

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

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

Status: *The agency submitted its self-evaluation report at the beginning of Fiscal Year 2018 and responded to numerous requests for information from the Sunset Commission. In addition, Commissioner Pettijohn provided testimony during the Sunset Commission's review of the Sunset staff report.*

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:

License	Compliance Status as of 8/31/18	Enforcement
<i>Pawn</i>	<i>97.31% acceptable level of compliance.</i>	<i>93 enforcement actions closed — 87 injunctive actions 6 administrative penalty actions</i>
<i>Regulated Loans</i>	<i>91.34 % acceptable level of compliance.</i>	<i>12 enforcement actions closed — 12 injunctive actions</i>
<i>Property Tax Loans</i>	<i>96.30% acceptable level of compliance.</i>	<i>8 enforcement action closed — 4 injunctive actions 4 administrative penalty actions</i>
<i>Credit Access Business</i>	<i>55.64% acceptable level of compliance.</i>	<i>33 enforcement actions closed — 27 injunctive actions 6 administrative penalty actions</i>
<i>Motor Vehicle Sales Finance</i>	<i>88.59% acceptable level of compliance.</i>	<i>46 enforcement actions closed — 19 injunctive actions 26 administrative penalty actions 1 revocation</i>

- 2.1.2. Objective:** Achieve overall weighted average acceptable level of compliance of 85% through examinations and industry education efforts. Monitor follow-up and restitution orders for licensees with outstanding examination issues.

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

Status: *The agency has completed 4,503 examinations for FY 2018 which is 107.21% of the annual goal for the fiscal year. The overall compliance rate is 85.57% for all five examination areas combined. Restitution from examinations conducted is \$5,122,785 for FY 2018. During this period, the agency closed 192 enforcement actions concerning the five examination areas. The 192 closed cases include 149 injunctive actions, 42 administrative penalty actions, and one revocation action.*

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

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

Status: *Improvements in FY18 include: conversion of the annual report format from excel to a web-based platform; linking businesses in the complaints module so that contact and communication can be done through the ACE system; editing capability has been established in the complaint module to allow proper identification of the licensee or registrant; and additional editing capability has been implemented which allows*

technicians to add notations and upload documents to complaint records throughout the complaint cycle, allowing for more timely comments and improved documentation. Refinement and enhancement of the (ACE) tool is ongoing, with change management meetings held regularly to discuss and prioritize further refinements to the system.

2.2. Licensing.

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

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

Status: *In FY 2018 the licensing department processed applications in an average of 61 days, however 64% of applications were processed within 60 days of receipt to the agency. This is due to training new staff and the department rebounding from some senior staff members retiring or departing the department. The department anticipates that application processing time frames will diminish in FY 2019. Approximately 85% of pawn employee applications are now submitted online. This has been possible by working with stakeholders and maintaining consistent communication to educate and help them through the transition. The department continues to progressively work to digitize historical information.*

3. POLICY AND RULE DEVELOPMENT

3.1. Agency Rules.

3.1.1. Objective: Complete rule reviews of 7 TAC Chapter 83, Subchapter A, Rules for Regulated Lenders (last reviewed FY 2014) ; 7 TAC Chapter 85, Subchapter A, Rules of Operation for Pawnshops (last reviewed FY 2014); and 7 TAC Chapter 88, Consumer Debt Management Services (last reviewed FY 2014).

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

Status: *Since the adoption of the debt management rule review amendments at the February meeting, the commission adopted the completed rule review of Chapter 83, Subchapter A, Rules for Regulated Lenders, at its August 2018 meeting. The proposal of associated regulated lender rule amendments was approved for publication at that time. The amendments are intended to fulfill the following four purposes: 1) ensure consistency with current licensing terminology, agency procedures, and streamlined processes; 2) provide flexibility to licensees; 3) modernize or remove obsolete language; and 4) make technical corrections. The regulated lender rule amendments are scheduled to be presented for adoption at the commission's October 2018 meeting.*

The completed rule review of Chapter 85, Subchapter A, Rules of Operation for Pawnshops, is scheduled for adoption at the commission's October 2018 meeting, with the proposal of associated amendments. The pawnbroker rule amendments are intended to fulfill substantially similar purposes as the regulated lender rule amendments.

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

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

Status: *During the last two quarters of FY 2018, the agency distributed two precomment drafts and held two stakeholder meetings, both including webinar participation. These stakeholder meetings relate to the rule reviews for regulated lenders and pawnbrokers. Stakeholder input provided at the most recent meeting on September 27, 2018, is being used to clarify and refine the pawnbroker rule amendments scheduled for presentation at the commission's October meeting.*

4. CONSUMER ISSUES / COMMUNICATION & OUTREACH STRATEGIES

4.1 Texas Financial Education Endowment Fund (TFEE).

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

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

Status: *Resources and information for the 2018-19 Grant Cycle were published, including: applicant guidelines and instructions, grant application, directory of Grant Advisory Committee members, and a webinar review of the program. Applications were received from twenty-three organizations requesting more than \$830,000 in funds. After a rigorous review process, nine organizations were selected to receive grants, and a total of \$250,000 in funds was awarded to recipients distributed statewide. Grant agreements were signed and executed. In addition, a risk assessment was developed to appropriately monitor grantees. Investment policies were updated, conforming OCCC and Finance Commission (FC) policies to the policies of the Texas Treasury Safekeeping Trust Company (TTSTC). The FC received a fund update from TTSTC at the February meeting regarding the investment portfolio of TFEE.*

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: *Twenty presentations were conducted with a total of 332 (goal was 325) individuals participating in financial literacy sessions for FY 2018. 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 begun building relationships with underserved populations, specifically within the senior community.*

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 continued to build relationships and monitored emerging issues in the areas of regulation. Agency staff provided twenty-two training seminars to over 2,100 industry participants who benefited from education and regulatory compliance trainings.*

Also, staff developed an industry stakeholder's e-newsletter, Industry Insight: Insider Resources for Regulated Loan Lenders, featuring education and regulatory compliance issues. The e-newsletter was distributed to more than 970 compliance officers registered within the ALECS Database. These 970 compliance officers represent more than 3,800 licensed locations.

- 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: *The customer feedback module was developed with input from several departments. New applicants and current licensees may provide feedback during their registration or renewal process. The module is embedded with a link in the notification to the applicant. The short survey includes five questions pertaining to type of license obtained, satisfaction of licensing transaction, navigation of registration site and agency website and overall experience with the agency.*

5. AGENCY MANAGEMENT

5.1. Performance Measures.

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

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

Status: *The agency has met or exceeded 7 of the 9 key performance targets in FY18.*

5.2. Human Resources.

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

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

Status: *At the end of FY18, the OCCC experienced a turnover rate of 12.5%, excluding interagency transfers. When this category is added, the ratio rises to 20.0%. The agency proactively managed the career ladder process by certifying examiners through classroom training, testing and on-the-job training. The results of this effort were that six examiners were promoted within the FE series (one FE I to FE III, four FE I to FE II and one FE II to FE III). In addition, there were also twenty merit awards granted within this series to recognize performance and maintain more competitive compensation.*

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

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

Status: *In FY18, financial examiners and investigators attended annual training where an in-depth curriculum included training on state and federal rule changes, providing 32 of the 40 minimum required hours. Other training opportunities offered include the National Association of Consumer Credit Administrators (NACCA) Examiner's School, the Governor's Management Training, as well as OCCC-led classroom and distance-learning trainings. At*

the end of FY 2018, financial examiners (41) attained 2,535.5 training hours. In addition, all newly hired financial examiners receive at least five weeks of introductory classroom training in the Austin Headquarters before moving into the field. Multiple trainings were also offered agency-wide, which included mandatory Cybersecurity Training, specifically, Introductory Cybersecurity Training, Privacy Training modules and Phishing Training modules, for a combined total of 240 training hours. In addition, 14 security policy & compliance committee (SPCC) members, received an additional 15 hours per member for a total of 210 hours for FY 2018. Other job-specific seminars were attended by non-examination staff. These trainings included: employment and labor law, legal and ethical training, single audits & government accounting training, strategic communications training and an industry related regulators training symposium.

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

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

Status: *At the end of the fiscal year, several seminars were given to supervisors, providing insights on how to manage employee performance. The training focused on goal setting, coaching, evaluating performance, and feedback. The classes were available to all senior staff, supervisors, assistant supervisors and managers.*

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

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

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

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.*

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

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

Status: *The Finance Commission agencies have continued to actively work on options towards a long term solution for headquarters facilities. The Finance Commission has been regularly briefed on these activities at Finance Commission meetings.*

5.4. Information Technology.

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

Measure: Reporting on development and milestones.

Status: *The Crafted Precious Metal Dealers category has been integrated into ALECS functionality and released. Two-factor authentication, which is a significant security improvement, was tested and released for internal users and as an opt-in capability for external users.*

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

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

Status: *The OCCC successfully implemented all mid-term recommendations for FY18. Longer-term recommendations are in ongoing evaluation, or underway, for implementation by mid-FY19.*

Texas Department of Banking Issues for Legislative Consideration – 2019 Session

Banks and Trust Companies

- Authorize recovery of investigative costs in enforcement cases against banks and trust companies
- Delete mandatory min/max “per day” penalty requirement
- Designate investigations as confidential
- Restrict exemptions for Change of Control filings involving bank holding companies
- Clarify authority regarding bank and trust company contracts with third-party service providers
- Prohibit rent-a-charter activities by out of state trust companies
- Require banks and trusts to notify us in event of cyber breach (this may be done by rule)

Perpetual Care Cemeteries

- Clarify authority to investigate allegations of statutory violations by PCCs
- Authorize recovery of investigative costs for enforcement actions against PCCs
- Authorize injunctive relief against PCCs; e.g. reporting monthly fund reconciliations
- Authorize revocation of Certificate of Authority upon finding of violation (not just at renewal)

Prepaid Funeral Contract Sellers

- Clarify authority to investigate allegations of statutory violations by PFC sellers
- Authorize recovery of investigative costs for enforcement actions against PFC sellers
- Align escheat dates for PFCs with Comptroller requirements

DOB General

- Clarify responsibilities regarding financial literacy



DEPARTMENT of SAVINGS & MORTGAGE LENDING

Caroline C. Jones, Commissioner

Legislative Issues for the 86th Legislative Session

Sunset Recommendations for Statutory Changes – Issue 6 of Sunset Report

- 6.1 Remove unnecessary, subjective licensure provisions for residential mortgage loan originators.
- 6.2 Update the agency's complaint processing provisions to meet the Sunset Commission's standard across-the-board requirements.

Mortgage – Temporary Authority for Licensing

- Amend statutes to allow for temporary authority for mortgage loan originator licensing in order to comply with new federal regulations.



Legislative Issues for 2019

October 2018

Sunset Recommendations for OCCC Enforcement Authority

The Sunset Advisory Commission recommended several legislative changes related to the OCCC's enforcement authority. The full recommendations are listed in Issue 5 of the Sunset Staff Report with Commission Decisions. The following Sunset recommendations are similar to legislative issues that the OCCC identified in its Self-Evaluation Report to the commission.

- **Obstacle to transparency:** Currently, the OCCC is generally prohibited from disclosing information obtained in an investigation. Sunset supports a change authorizing the OCCC to give a summary of a case's resolution to the complainant.
- **Delayed investigations:** Currently, the OCCC is generally required to wait for a response from an entity before conducting an investigation. Sunset supports a change that would allow the OCCC to promptly open an investigation upon reasonable suspicion that a violation may have occurred.
- **Unnecessary barriers to enforcement:** Sunset supports removing outdated language requiring the OCCC to prove that a person "knowingly and willfully" committed a violation before imposing an administrative penalty. Sunset also supports granting the OCCC authority to issue cease-and-desist orders against crafted precious metal dealers.
- **Restitution:** Sunset supports amending a provision stating that the OCCC may order restitution to persons "injured" by a violation, because this standard is not required for other agencies. Sunset also supports authorizing the OCCC to order restitution by crafted precious metal dealers.
- **Judicial review and appeals:** One change would be to amend provisions that currently provide multiple avenues of appeals. Specifying that contested case hearings are followed by a final order of the commissioner, with an opportunity for judicial review, would better conform to administrative procedures used by other agencies.
- **Outdated appeals process:** Sunset supports amending provisions that require the OCCC to hold hearings on actions even when the respondent does not request one. Instead, Sunset recommends that these provisions should require the OCCC to provide an opportunity for a hearing. Sunset also supports removing provisions that allow parties to appeal agency decisions to the Texas finance Commission, because the appropriate avenue for appeals under the Administrative Procedure Act is an administrative hearing and district court.

Online Lending and Financial Technology

The OCCC has identified legislative changes that would clarify the Finance Code's applicability to online lenders. In its 2017 interim report, the House Investments and Financial Services Committee identified this issue and recommended that online lenders be regulated under Texas consumer lending laws.

- ***Loans to Texas residents:*** One possible way to address online lending would be to specify that Texas consumer lending laws apply to loans made to Texas residents. This change would help minimize regulatory uncertainty by making it clear which law applies, and would help the OCCC in coordinating with other states.
- ***Online loans:*** A provision of Chapter 342 of the Finance Code specifies that the chapter applies to loans made by mail. One possible clarifying amendment would specify that Chapter 342 applies to loans made online *or* by mail.

Strategic Plan Issues

In its 2019-2023 Strategic Plan, the OCCC identified other provisions that could be amended and modernized.

- ***Confidentiality:*** This change would specify that licensees may waive confidentiality only for documents that they provide or that were provided to them. This would provide clearer guidance to the agency and licensees.
- ***Study of agricultural and small-business lending:*** One change would amend Section 11.305 of the Texas Finance Code to remove the requirement that the OCCC conduct a study on agricultural and small-business lending. In general, the OCCC does not regulate commercial lending. This change would enable the OCCC to focus its research on consumer loans, based on the annual reports that the agency receives from licensees.
- ***Pawnshop rulemaking:*** One change would amend Section 371.006 of the Finance Code to remove the requirement that the OCCC keep pawnshop rules "in a permanent record book" and mail a copy of a new rule to each license holder. This provision is outdated and redundant with the rule-submission requirements of the Texas Administrative Procedure Act. The change would allow the OCCC to submit pawnshop rules through an efficient online process, without also having to send paper mailings.
- ***Registration deadlines:*** Currently, refund anticipation loan facilitators and crafted precious metal dealers must register with the OCCC by December 31 of the year before they engage in business. However, a business might not know it will engage in business by December 31 of the preceding year, and might not be able to provide necessary information to the OCCC. This change would update the Finance Code and Occupations Code to specify that these entities must register before engaging in business. This would promote efficient business practices while ensuring that the OCCC has information necessary to monitor these industries.
- ***Crafted precious metal report and list:*** Currently, crafted precious metal dealers must submit both a "list" and a "report" to local law enforcement for each transaction. The list and the report contain similar information and appear to be redundant. This change would specify that a dealer may submit a single document with the information required for both the list and the report.

B.

Texas Department of Banking

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TEXAS DEPARTMENT OF BANKING

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To: Finance Commission Members

From: Kurt Purdom, Director of Bank & Trust Supervision

Date: October 4, 2018

Subject: Summary of the Bank & Trust Supervision Division Activities

Bank and Trust Supervision					FY 2018							
8/31/2016			8/31/2017		11/30/2017		2/28/2018		5/31/2018		8/31/2018	
Industry Profile (# / Assets in billions)												
# Banks	247	\$248.3	240	\$252.9	240	\$257.1	238	\$254.8	237	\$255.4	236	\$257.3
# Trust Co. (1)	19	\$101.4	17	\$108.5	18	\$110.0	17	\$105.7	17	\$105.9	17	\$107.4
# FBA/FBB	10	\$70.0	10	\$56.1	8	\$64.7	7	\$66.8	7	\$68.2	7	\$66.3
Examinations Performed												
Banks	105		103		25		25		24		31	
Trust Co.	31		26		6		4		12		5	
FBA/FBB	2		3		0		0		1		1	
Bank Uniform Financial Institution Composite Ratings												
1	126	51.0%	123	51.3%	121	50.4%	117	49.2%	114	48.1%	114	48.3%
2	109	44.1%	104	43.3%	105	43.8%	108	45.4%	110	46.4%	111	47.0%
3, 4, & 5	12	4.9%	12	5.0%	13	5.4%	12	5.0%	12	5.1%	11	4.7%
Non-Rated	0	-	1	0.4%	1	0.4%	1	0.4%	1	0.4%	0	-

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

The number of problem institutions remains stable, and the level of problem banks is in line with the normal range of between 3% and 5% of the total number of institutions. The Department considers any bank with a Uniform Financial Institutions Composite Rating of 3, 4, or 5, to be a problem bank. We expect the number of problem institutions to remain relatively stable.

Summary of the Bank & Trust Supervision Division Activities

Page 2

Enforcement Actions Outstanding (Number outstanding as of the date indicated)			FY 2018			
	8/31/2016	8/31/2017	11/30/2017	2/28/2018	5/31/2018	8/31/2018
Banks - Safety and Soundness						
Formal	0	2	2	2	2	2
Informal	19	22	22	20	19	17
Banks - Bank Secrecy Act (BSA)						
Formal	0	0	0	0	0	0
Informal	0	2	1	1	1	1
Banks - Information Technology (IT)						
Formal	0	0	0	0	0	0
Informal	0	2	2	2	3	3
Trust Departments of Banks and Trust Companies						
Formal	0	0	0	0	0	0
Informal	3	2	2	2	2	2
Total Enforcement Actions Outstanding						
Formal	0	2	2	2	2	2
Informal	22	28	27	25	25	23
Total	22	30	29	27	27	25

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

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

Compliance actions are not included.

Compliance with Examination Priorities Percent of Examinations Conducted within Department Guidelines		
Entity Type	FY 2017	FY 2018
Commercial Banks (All / DOB Only)	91% / 98%	94% / 98%
IT	92% / 100%	96% / 100%
Trust	91% / 100%	100% / 100%
Foreign Banks (FRB)	100%	100%
Trust Companies (DOB)	100%	100%
IT	100%	100%

In fiscal year 2018, all of the goals for conducting examinations within the Department's guidelines of commercial banks, foreign banks, and trust companies were achieved. Nine bank examinations were started outside of policy guidelines in fiscal year 2018, averaging 20 days late. Still, 94% of bank examinations were started within policy guidelines, which exceeds our goal of conducting 90% on time. Only two of the late examinations were the responsibility of the Department (averaging one day late), while seven were the responsibility of the FDIC (averaging 26 days late). Delays in FDIC examinations were caused by a staffing

*Summary of the Bank & Trust Supervision Division Activities**Page 3*

imbalance that the FDIC reports will be alleviated by planned staff additions. The same seven banks were also late for FDIC information technology examinations.

It should be noted that the Department increased its fiscal year 2019 goal for conducting bank examinations within policy requirements to 95% from 90%.

Division Highlights

- Commissioner named to Financial Stability Oversight Council (FSOC) – On September 7, 2018, Commissioner Charles G. Cooper was appointed to serve a two-year term as the state banking department representative to FSOC. This council was created under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) to monitor the safety and stability of the nation's financial system, identify risks to the system and coordinate responses to potential threats. FSOC determines which financial organizations are systemically important to the U.S. and global economy. FSOC meets quarterly but may convene meetings on a more frequent basis if needed. Members of FSOC include heads of all of the federal financial regulatory agencies. The Dodd-Frank Act requires that one of the five nonvoting members of FSOC be a state banking supervisor. Commissioner Cooper participated in his first meeting on September 12, 2018 in Washington, D.C.
- Cyber-Security Efforts – In the third quarter 2018 Banker Economic and Business Survey conducted by the Department, respondents listed cyber-security threats as the greatest risk facing their institution. In this survey, which is available on the agency's website, 37% of respondents listed cyber-security concerns as their greatest risk. To ensure that the agency's examiners are well versed on cyber-security risks, the Department has entered a program made available by the Conference of State Bank Supervisors (CSBS) where all of the agency's financial examiners will receive extensive cyber-security training. CSBS will conduct three cyber-risk classes in Texas beginning in October 2018.
- CSBS Accreditation – The on-site portion of the CSBS Accreditation process is expected to begin on October 16, 2018. The CSBS Review Team will review the Self-Evaluation Questionnaire that was previously provided by the Department prior to their arrival. During the on-site portion of the review, the Review Team will interview various staff members and then assign ratings to five critical areas: administration and finances; personnel and training; bank examination policies and procedures; bank examination capabilities; and bank supervision and legislation.
- **Special Operations and Conferences:**
 - On August 2, 2018, Review Examiner Kevin Wu participated in a regulatory panel for the Independent Bankers Association of Texas (IBAT) Compliance School held in San Antonio.
 - During the week of August 6, 2018, the commercial banking interns were hosted at the Austin Headquarters Office, primarily to provide them with an understanding of the functions of the agency's different divisions. They were briefed on the activities of the Corporate, Legal, Strategic Support and Special Audits Divisions. They also worked closely with the Bank and Trust Division Review Examiners to get an understanding of how reports are reviewed and administrative actions are initiated and developed.
 - On August 7, 2018, Review Examiner Michelle Hodge participated in a regulatory panel for the Texas Bankers Association Compliance School held in Austin.

Summary of the Bank & Trust Supervision Division Activities

Page 4

- On August 16, 2018, Director of Examination Support Activities Chris Robinson participated in a regulatory panel for the Texas Tech Banking School held in Lubbock.
- During the week of August 27, 2018, Director of Corporate Activities Dan Frasier, Regional Review Examiner Tom Susany and Special Audits Review Examiner Jesse Saucillo participated in the CSBS Board and Strategic Planning meeting held in Biloxi, MS.
- On September 11, 2018, Director of Bank and Trust Supervision Kurt Purdom participated in a panel for the American Institute of Certified Public Accountants relating to the Current Expected Credit Losses, or CECL, accounting methodology. The event was held in Dallas.
- On September 21, 2018, Commissioner Cooper participated in a regulatory panel for the Texas Association of Bank Counsel held in San Antonio.
- Beginning September 23, 2018, Commissioner Cooper, Director Purdom, General Council Catherine Reyer, Regional Director Kenneth Kuntschik, Review Examiner Wu and Review Examiner Allen Millsap participated in the IBAT Convention held in San Antonio.



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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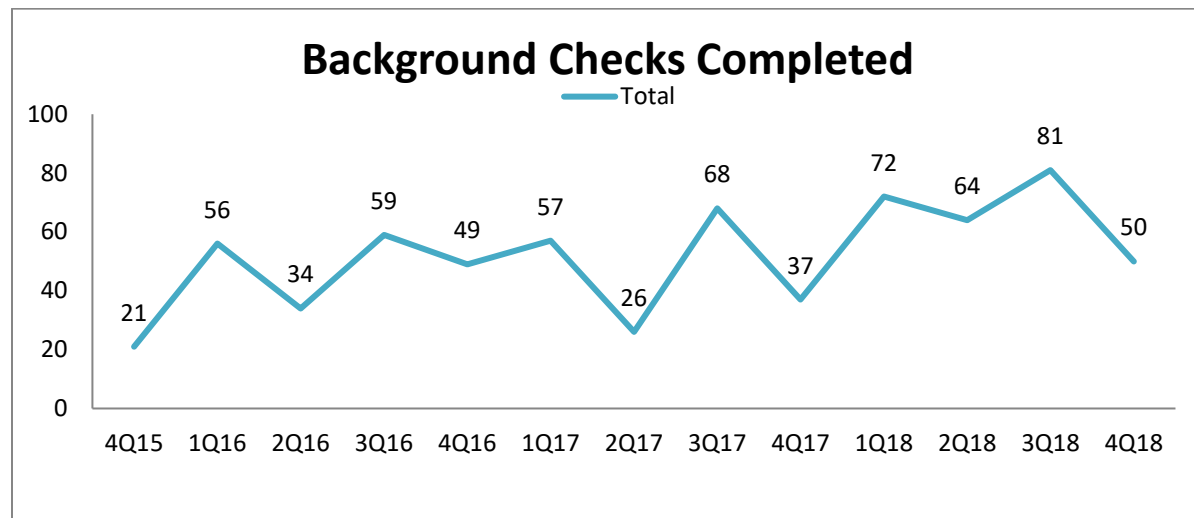
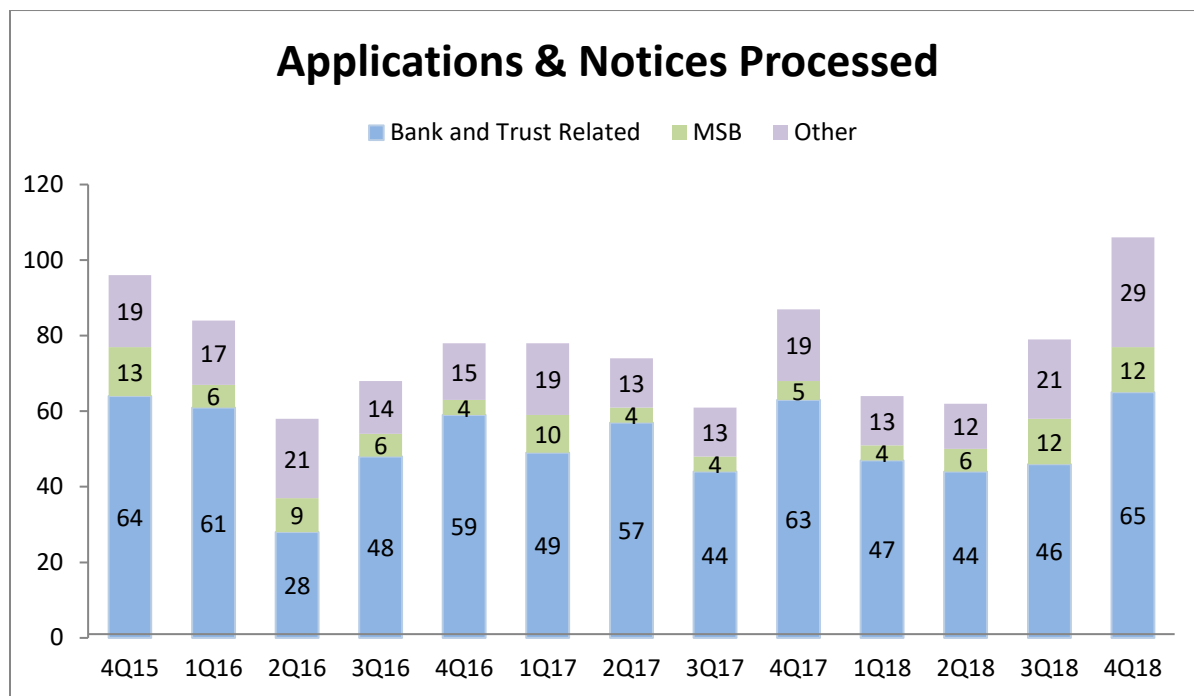
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To: Finance Commission Members

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

Date: October 4, 2018

Subject: Summary of the Corporate Division Activities



Entities/Activities	Applications and Notices Under Review (as of October 3, 2018)
Bank Related	12
Trust Companies	5
Money Services Business (MSB)	10
Others	1
Totals	28

Division Highlights

- Application volume has moderated a bit after a flurry of filings received and processed in the last fiscal quarter of 2018. We continue to experience active bank merger and acquisition environment activity while trust activity has recently picked up as well. The number of MSB applications currently in process remains elevated.
- A project permitting the Department to accept bank wires for filing fees was recently completed. Effective August 17, 2018, applicants can submit bank wires to cover fees for filings submitted through the Department's online system Corporate Application Filing Entry (CAFE). Previously the Department could only accept checks for filing fees.
- Charter, Conversion, and Merger Activity – The following transactions have consummated since Corporate's last report to the Finance Commission:
 - *Banks*
 - PlainsCapital Bank, Dallas, Texas, completed its acquisition merger of The Bank of River Oaks, Houston, Texas
 - The First State Bank, Louise, Texas, completed its acquisition merger of The First National Bank of Woodsboro, Woodsboro, Texas
 - Rio Bank, McAllen, Texas, completed its acquisition merger of Elsa State Bank and Trust Company, Elsa, Texas
 - First State Bank, Mesquite, Texas, merged into The American National Bank of Texas, Terrell, Texas
 - Citizens Bank, Kilgore, Texas, completed its acquisition merger of Gladewater National Bank, Gladewater, Texas
 - Allegiance Bank, Houston, Texas, completed its acquisition merger of Post Oak Bank, N.A., Houston, Texas
 - *Trust Companies*
 - Monarch Trust Company, Amarillo, Texas, completed its voluntary dissolution
- Conferences, Conventions, and Committee Meetings – Since the last report to the Finance Commission, Corporate participated in the following:
 - Director Dan Frasier participated in the CSBS Strategic Planning Session in Biloxi, Mississippi on August 27-30.
 - Senior Corporate Analyst Mark Largent represented the Department at the MTRA Conference held in Jackson, Wyoming on October 1-4.



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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To: Finance Commission Members

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

Date: October 5, 2018

Subject: Summary of the Special Audits Division Activities

Special Audits (SA)			FY 2018							
Entity	FY 2017		1 st		2 nd		3 rd		4 th	
Industry Profile (# / Assets (billions))										
Money Services Businesses (MSB)	156	\$113.8	156	\$113.8	159	\$113.8	160	\$114.4	161	\$131.5
Prepaid Funeral Contract (PFC)	375	\$3.9	373	\$4.0	374	\$4.0	368	\$4.0	365	\$4.0
Perpetual Care Cemeteries (PCC)	242	\$332.9	242	\$338.0	242	\$341.6	241	\$345.9	241	\$346.8
Cemetery Brokers (CB)	14	n/a	14	n/a	14	n/a	14	n/a	14	n/a
Private Child Support Enforcement Agencies (PCSEA)	10	n/a	10	n/a	10	n/a	10	n/a	10	n/a
Check Verification Entities (CVE)	2	n/a	2	n/a	2	n/a	2	n/a	2	n/a
Bullion Depository Agent (BDA)	n/a	n/a	0	n/a	0	n/a	0	n/a	0	n/a
Examinations Performed										
MSB	104		24		31		24		18	
MSB Limited Scope	3		0		0		0		1	
MSB Accepted other State	7		4		2		5		3	
PFC	284		64		46		59		71	
PFC Limited Scope	2		0		4		2		2	
PCC	172		43		59		71		28	
PCC Limited Scope	4		1		2		0		1	
Ratings (# / %) Assigned to All Regulated Entities										
1	303	40%	292	38.7%	289	38.2%	277	36.6%	277	36.7%
2	384	51%	391	51.8%	386	51.1%	397	52.4%	399	52.8%
3*	70	9%	72	9.5%	81	10.7%	83	11%	66	8.7%
4 & 5*									13	1.8%
Noncompliance with Examination Priorities (Past Due)										
MSB	5		12		9		10		13	
PFC	4		2		3		10		13	
PCC	5		3		2		1		16	

NOTES:

PCC \$ amounts reflected in the millions.

Limited scope examinations do not receive a rating.

*Beginning 4th Qtr., SA reported 3 rated Exams separately from 4 & 5 rated Exams, since SA considers licensees with a uniform risk rating of 1, 2, or 3 to be safe and sound. The number of problem licensees rated 4 and 5 reported this Qtr. are in line with the normal range of between 1.5% and 2% of the total number of license holders.

Noncompliance with Examination Priorities (Past Due)

- The thirteen MSB past due examinations are on average 1.5 months past due.
- The sixteen PCC past due examinations are on average 17 days past due and the thirteen PFC past due examinations are on average 20 days past due.
- Our examination schedule reflects that nine of the past due PFC/PCC examinations were completed in September 2018, and the remaining past due PFC/PCC examinations will be completed in October 2018.
- Our examination schedule reflects that three of the past due MSB examinations were completed in September 2018, and six will be completed in October 2018. Furthermore, the remaining four past due examinations will be completed in November 2018. These have been delayed due to joint examination coordination with other MTRA state agencies.
- Special Audits met or exceeded all performance measures for FY 18.

Division Activities

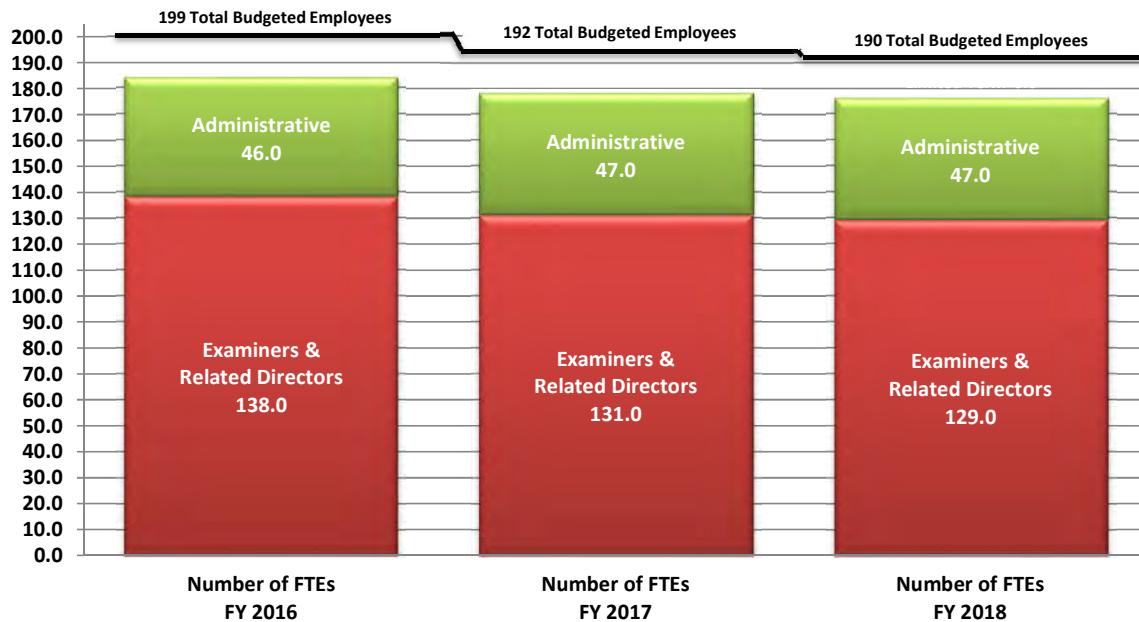
During the week of August 27th, Review Examiner Saucillo attended the CSBS Strategic Planning Meeting in Biloxi, MS, to participate in discussions and to provide feedback regarding the future priorities of CSBS.

On September 21st and 22nd, Director Reese and MSB Examiner Valis met with representatives from the U.S. Department of Homeland Security in Irving, TX, to discuss an ongoing criminal investigation against a licensed MSB.

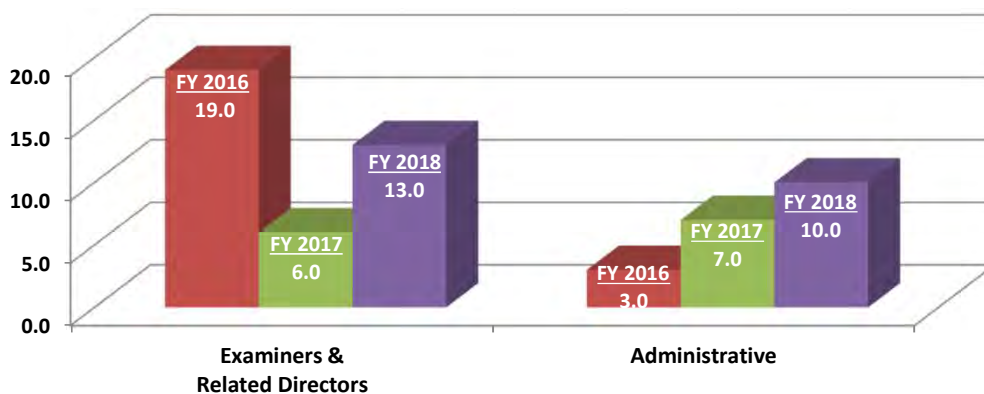
During the week of October 1st, Commissioner Cooper, Deputy Commissioner Newberg, and Director Reese attended the annual MTRA conference in Jackson Hole, WY, where current trends and events in the MSB industry were discussed. Director Reese currently serves on the MTRA Board of Directors. Commissioner Cooper also participated on a panel during the conference.

Texas Department of Banking

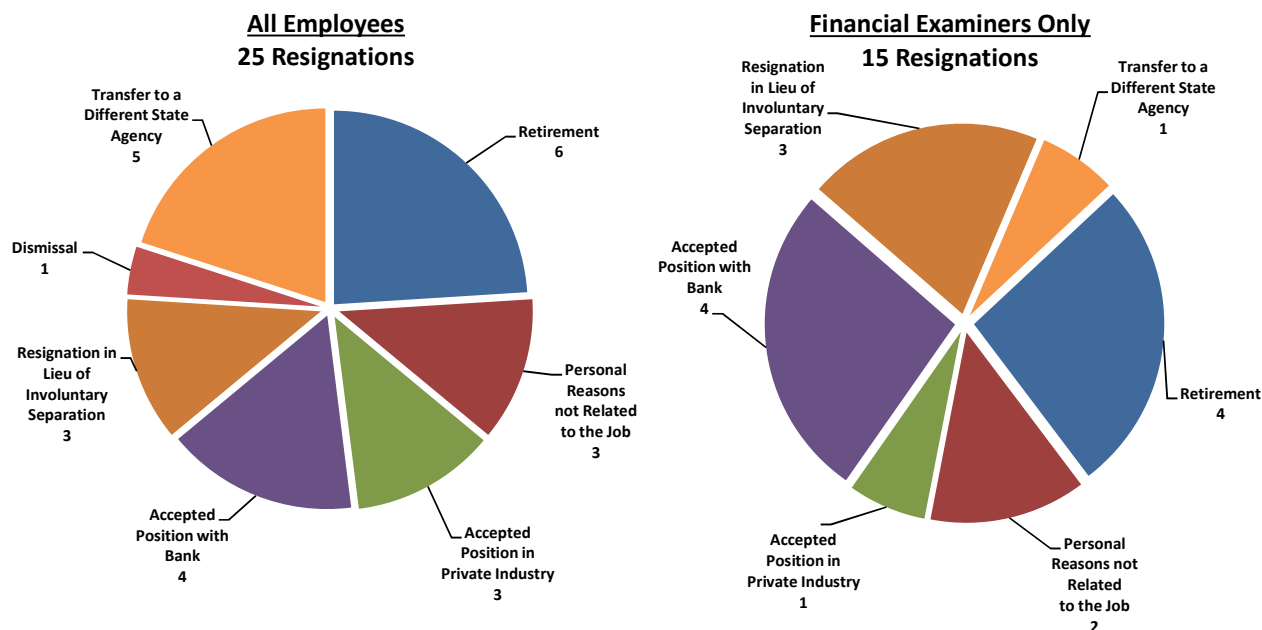
Employee Data for Fiscal Years 2016, 2017 and 2018 as of 8/31/18



New Hire Data for Fiscal Years 2016, 2017 and 2018



FY 2018 Employee Turnover Reasons



As of 8/31/18

ACTUAL PERFORMANCE FOR OUTCOME MEASURES

TEXAS DEPARTMENT OF BANKING

FISCAL YEAR 2018

8/31/2018

Actual Performance for Outcome Measures
Fiscal Year 2018
For Period Ending August 2018

Type/Strategy/Measure	2018 Target	2018 YTD	Percent of Annual Target
Outcome Measures - Key			
1-1 QUALITY BANK REGULATION			
1. % BANKS EXAMINED	90.00%	94.38%	104.87%
1-2 QUALITY NON-BANK REGULATION			
1. % MSB LICENSEES EXAMINED	90.00%	91.61%	101.79%
1-3 CORPORATE ACTIVITIES			
1. % B&T, MSB, PCSEA APPS COMPLETED	95.00%	97.88%	103.03%

*Note: Variance of 5% from target require explanation.

ACTUAL PERFORMANCE FOR EXPLANATORY MEASURES

TEXAS DEPARTMENT OF BANKING

FISCAL YEAR 2018

8/31/2018

Actual Performance for Explanatory Measures
Fiscal Year 2018
For Period Ending August 2018

Type/Strategy/Measure	2018 Target	2018 YTD	Percent of Annual Target
Explanatory Measure - Key			
1-1-1 BANK EXAMINATION			
1. % ASSETS IN SAFE & SOUND BANKS	95.00%	95.34%	100.36%

*Note: Variance of 5% from target require explanation.

ACTUAL PERFORMANCE FOR OUTPUT/EFFICIENCY MEASURES

TEXAS DEPARTMENT OF BANKING

FISCAL YEAR 2018

8/31/2018

Actual Performance for Output/Efficiency Measures

Fiscal Year 2018

For Period Ending August 2018

Type/Strategy/Measure	2018 Target	2018 Quarter	2018 YTD	Percent of Annual Target
-----------------------	----------------	-----------------	-------------	-----------------------------

Output Measures-Key

1-1-1 BANK EXAMINATION				
1. # BANK EXAMINATIONS PERFORMED				
Quarter 1	95	25	25	26.32%
Quarter 2	95	25	50	52.63%
Quarter 3	95	25	75	78.95%
Quarter 4	95	32	107	112.63%
The number of bank examinations is above the target due to several bank examinations being conducted earlier than anticipated as well as participating in more joint examinations than projected.				
2. # TRUST/IT EXAMINATIONS PERFORMED				
Quarter 1	208	49	49	23.56%
Quarter 2	208	54	103	49.52%
Quarter 3	208	59	162	77.88%
Quarter 4	208	47	209	100.48%
1-2-1 NON-BANK EXAMINATION				
1. # SPECIAL AUDIT LICENSEES EXAMINED				
Quarter 1	560	136	136	24.29%
Quarter 2	560	144	280	50.00%
Quarter 3	560	161	441	78.75%
Quarter 4	560	124	565	100.89%
1-3-1 APPLICATION PROCESSING				
1. # LICENSE APPLICATIONS COMPLETED				
Quarter 1	307	64	64	20.85%
Quarter 2	307	62	126	41.04%
Quarter 3	307	79	205	66.78%
Quarter 4	307	104	309	100.65%

*Note: Variance of 5% from target require explanation.

ACTUAL PERFORMANCE FOR NON-KEY MEASURES

TEXAS DEPARTMENT OF BANKING

FISCAL YEAR 2018

8/31/2018

Actual Performance for Non-Key Measures

Fiscal Year 2018

For Period Ending August 2018

Type/Strategy/Measure	2018 Target	2018 YTD	Percent of Annual Target
-----------------------	----------------	-------------	-----------------------------

Non-Key Measures

1-1-1 BANK EXAMINATION

2. % FOREIGN BANK AGENCIES EXAMINED	95.00%	100.00%	105.26%
The number of foreign bank agencies receiving examinations when due is higher than the target due to the proficiency of the Federal Reserve and Department's foreign bank staff.			
3. % TRUST COMPANIES EXAMINED	90.00%	100.00%	111.11%
The number of trust companies receiving examinations when due is higher than the target due to increased proficiency of the new trust specialists.			
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	\$95,270.00	\$82,841.20	86.95%
The average cost per bank examination is lower than the target due to salary and travel expenses being less than projected this fiscal year.			
9. ASSETS EXAMINED PER EXAMINER DAY (IN MILLIONS)	\$10.10	\$9.18	90.89%
The assets examined per examiner day measure is lower than the target primarily due to the federal frequency change extending the examination due dates for banks with assets between \$1 - \$3 billion implemented in the fourth quarter. The revised examination due dates allowed staff to conduct several smaller bank examinations earlier than anticipated, reducing the amount of assets examined this fiscal year.			
11. # STATE-CHARTERED BANKS IN TEXAS	235	236	100.43%
12. TOTAL ASSETS (IN BILLIONS) IN STATE-CHARTERED BANKS IN TEXAS	\$326.00	\$323.20	99.14%

1-2-1 NON-BANK EXAMINATION

2. % PREPAID FUNERAL CONTRACT LICENSEES EXAMINED	90.00%	96.41%	107.12%
The Special Audits Division's positive variances relates to being fully staffed with a trained and knowledgeable examination force for the entire year.			
3. % PERPETUAL CARE CEMETERY LICENSEES EXAMINED	90.00%	93.31%	103.68%
4. % PCC AND PFC APPLICATIONS COMPLETED WITHIN STATUTORY PERIOD	95.00%	100.00%	105.26%
The Special Audits Division's positive variance relates to being fully staffed with a trained and knowledgeable administrative staff for the entire year.			

Actual Performance for Non-Key Measures

Fiscal Year 2018

For Period Ending August 2018

Type/Strategy/Measure	2018 Target	2018 YTD	Percent of Annual Target
-----------------------	----------------	-------------	-----------------------------

Non-Key Measures

1-2-1 NON-BANK EXAMINATION (Continued)

6. # SPECIAL AUDITS LICENSEES	760	767	100.92%
7. AVERAGE DIRECT COST PER PFC AND PCC LICENSEE EXAMINATION	\$2,500.00	\$2,400.51	96.02%
8. DOLLAR AMOUNT (IN BILLIONS) OF PREPAID FUNERAL CONTRACTS IN FORCE	\$3.30	\$4.00	121.21%
The Special Audits Division's positive variance is attributed to enhanced investment earnings and an increase in prepaid funeral contract sales above what we had projected.			

1-3-1 APPLICATION PROCESSING

3. # REQUESTS FOR INFORMATION RECEIVED	1,835	1,329	72.43%
Complaints fell by 29.1% in fiscal year 2018. The consumer assistance area obtained fewer complaints regarding deposit accounts, ATM transactions and general banking inquiries. Furthermore, there were no disruptions in the state banking system or natural disasters in fiscal year 2018. During positive Texas economic cycles, consumers generally file fewer complaints with the Department.			

1-4-1 REGULATORY OVERSIGHT

2. # FC MEETINGS CONVENED	6	7	116.67%
The measure is above the target due to a special meeting held in May 2018 to discuss the Sunset Advisory Commission's staff report.			

*Note: Variance of 5% from target require explanation.



Charles G. Cooper
Commissioner


TEXAS DEPARTMENT OF BANKING

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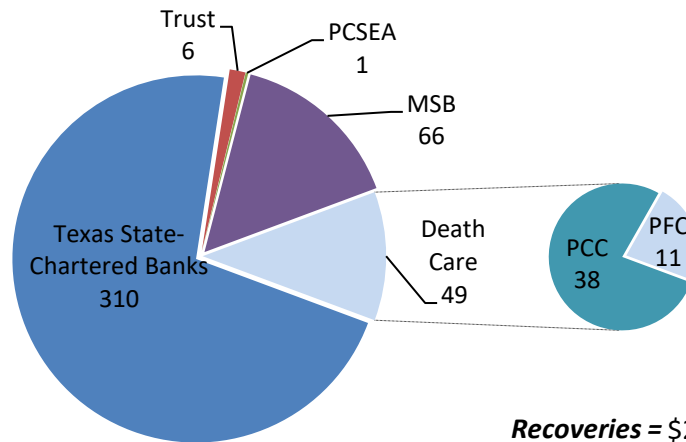
To: Finance Commission Members

From: Wendy Rodriguez, Director of Strategic Support 

Date: October 1, 2018

Subject: Summary of the Strategic Support Division Activities

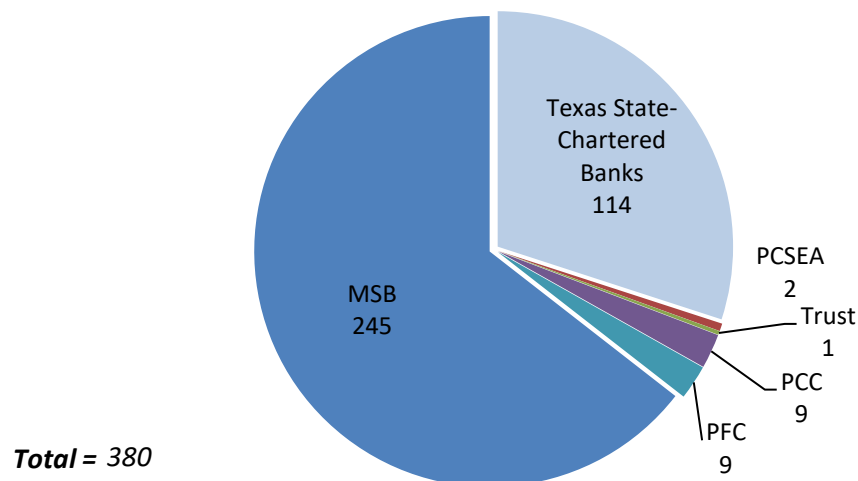
Jurisdictional Complaints September 2017 - August 2018



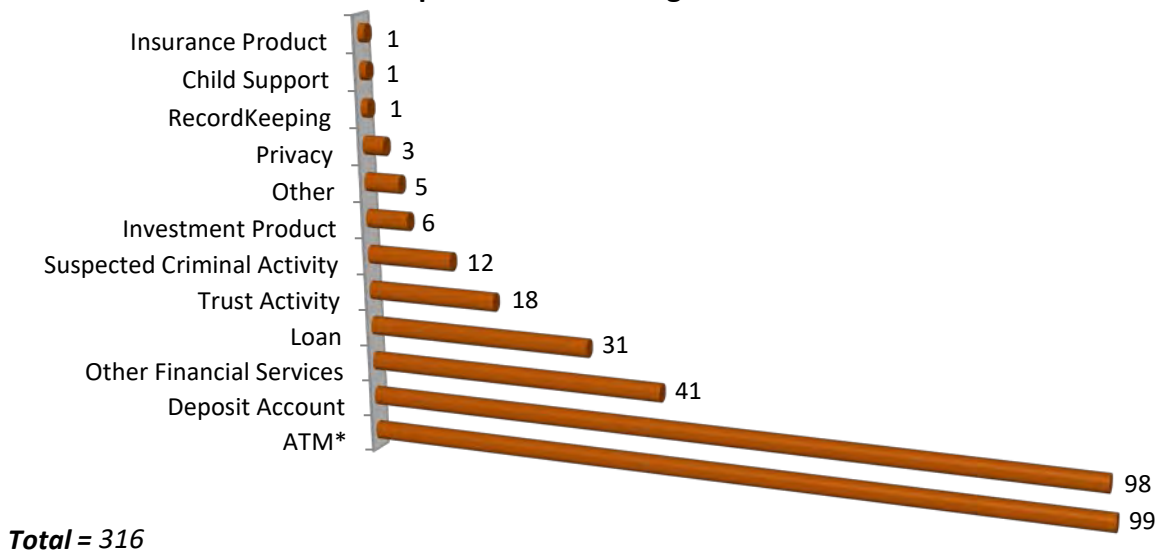
Recoveries = \$220,142.28

Total = 432

Jurisdictional Inquiries September 2017 - August 2018

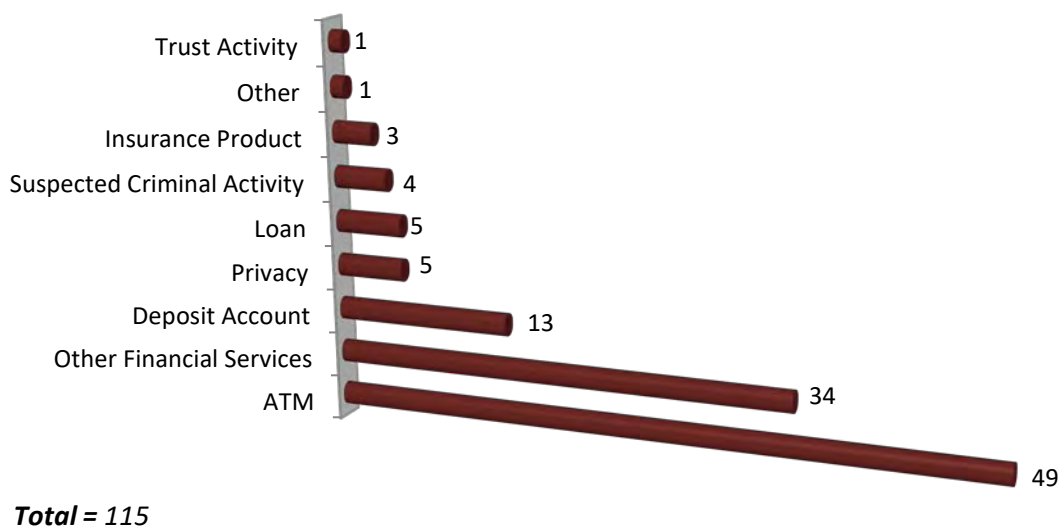


State-Chartered Banks and Trust Companies Complaints by Type September 2017 - August 2018

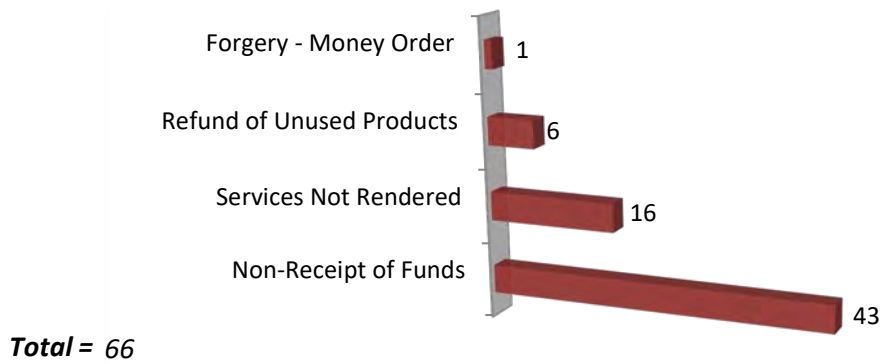


*High activity related to account balance issues and card related problems.

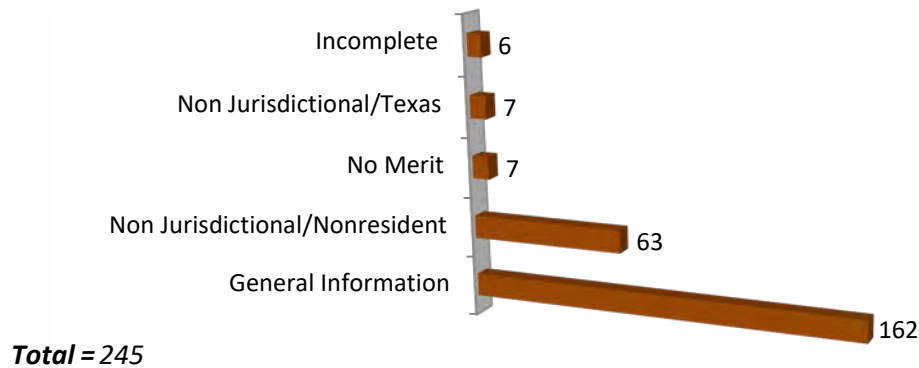
State-Chartered Banks and Trust Companies Inquiries by Type September 2017 - August 2018



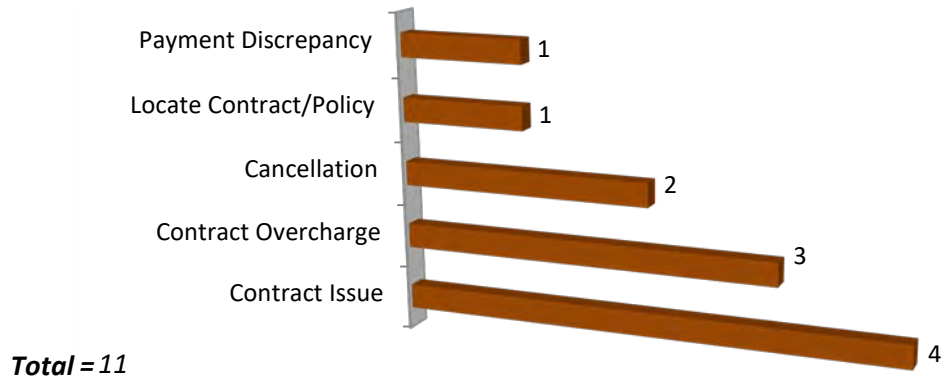
**Money Services Businesses
Complaints by Type
September 2017 - August 2018**



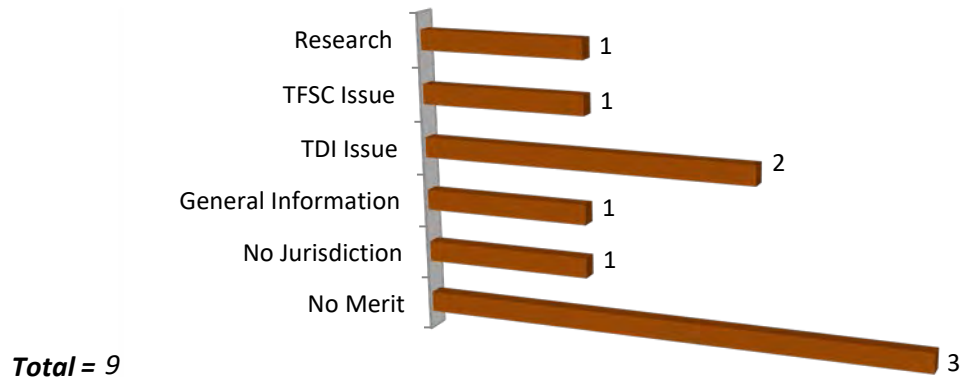
**Money Services Businesses
Inquiries by Type
September 2017 - August 2018**



**Prepaid Funeral Contract Sellers
Complaints by Type
September 2017 - August 2018**



**Prepaid Funeral Contract Sellers
Inquiries by Type
September 2017 - August 2018**

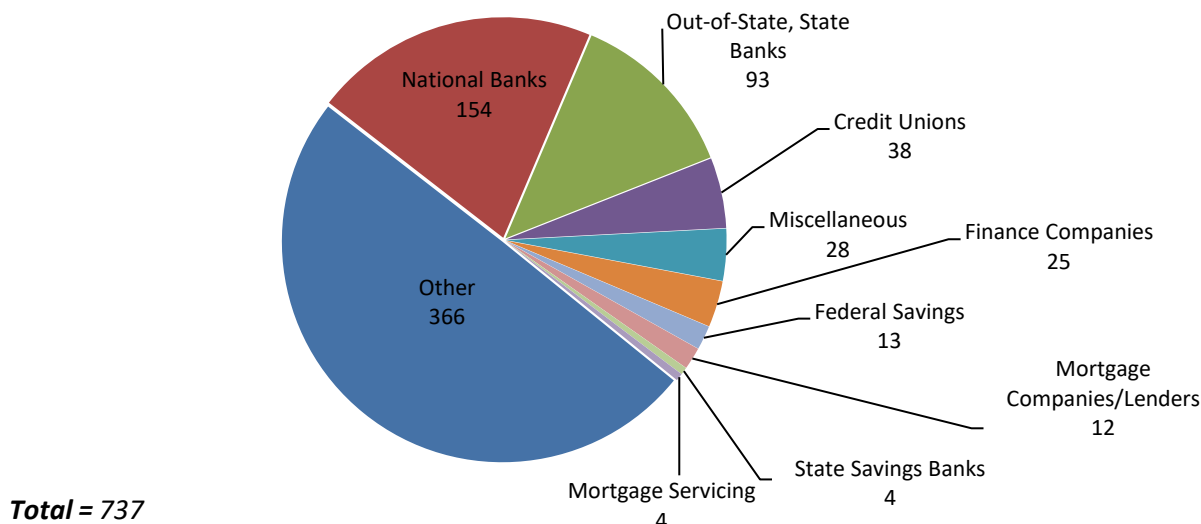


Issue	Count
Payment Discrepancy	2
Marker or Monument Issue	3
Marker or Monument Order	4
Internment Issue	2
Heirship/Resale Issue	4
Cemetery Merchandise	2
Cemetery Deed	1
Cemetery Contract	4
Cemetery Condition	16

Total = 38

Category	Count
No Jurisdiction	3
No Merit	3
General Information	2
Incomplete	1
Total	9

Complaints and Inquiries Against Non-Jurisdictional Entities September 2017 - August 2018



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

Average Number of Days to Close a Written Complaint

Type	Sept. 2017 – Aug. 2018
State-Chartered Banks	8
Trust	23
PCSEA	61
PFC/PCC	30
MSB	40

CANS ACTIVITY

January 1, 2014 – August 31, 2018

Entity	Enrolled	Compromised Accounts Reported
Texas State-Chartered Banks	212	1,116
Texas State-Chartered Savings Banks	23	65
Federal Savings Banks	10	81
State Credit Unions	132	1,134
Federal Credit Unions	229	749
National Banks	170	307
Out-of-State State-Chartered Banks	12	106
Out-of-State National Banks	6	15
Total	794	3,573

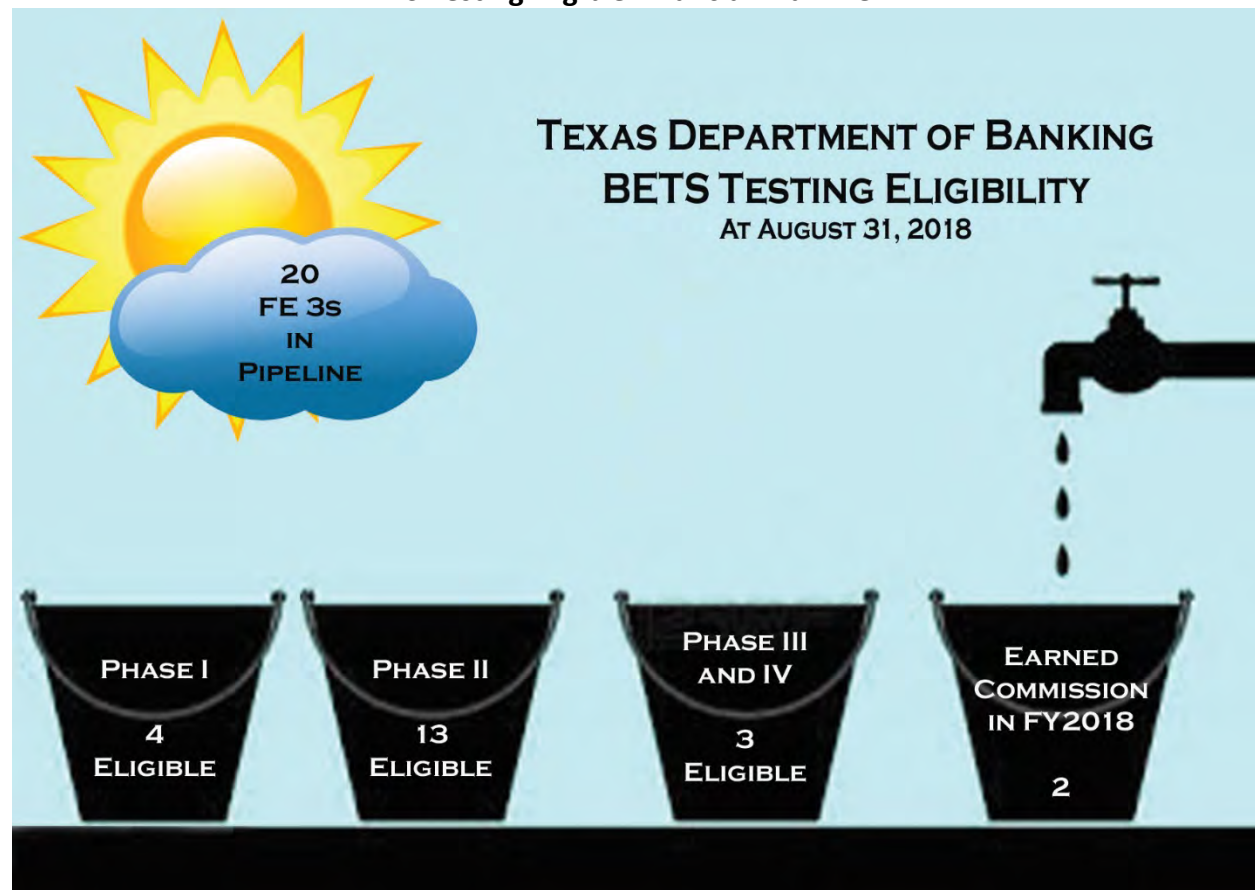
Bank Examination Testing System (BETS) Activity
Number of Candidates Passing Each Phase

	FY 2015	FY 2016	FY 2017	FY 2018
I. General Knowledge	8	9	8	6
II. Loan Analysis	2	4	3	3
III. Panel	4	3	2	2
IV. Test Bank	4	2	3	2
Total FE3	19	18	24	22

Promotions

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

BETS Testing Eligible Financial Examiner III



Other Divisional Items:

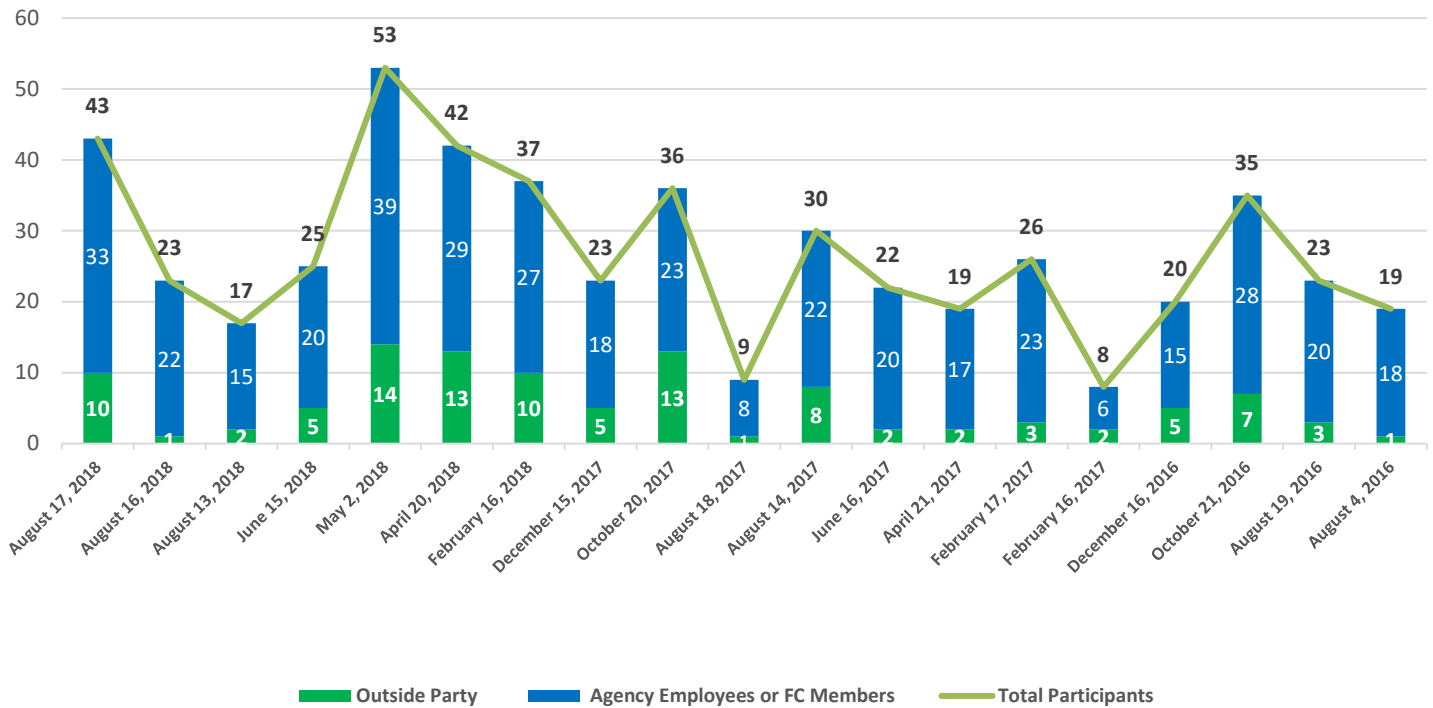
- *Sunset Review*
 - On August 29, 2018, the Sunset Advisory Commission held a decision hearing regarding the recommendations for the three Finance Commission agencies. The Commission's decision [summary](#) is available on the Sunset Advisory Commission website.
- *Consumer Assistance Activities*
 - Senior Consumer Specialist Sheón Corley accompanied commercial examiners on a target review of a financial institution's third-party vendor on September 17, 2018 to gain additional knowledge of their consumer program. The review provided beneficial information that will be used to provide further assistance to consumers.
- *Policy and Procedures*
 - Administrative Memorandum 2003 – Suspicious Activity Reports (SARs) Filed by the Department. This is a new policy addressing the process for the agency to file SARs with FinCEN.
- *Publication*
 - The September edition of the Condition of the Texas State Banking System report is available with financial data as of June 30, 2018.
- *Financial Education*
 - On September 7, 2018, Director Wendy Rodriguez and Senior Consumer Specialist Sheón Corley attended the FDIC Alliance for Economic Inclusion's third quarter meeting. Several presentations were made regarding financial education programs for low-to-moderate income families, an update on the FDIC Money Smart Program, and the Community Reinvestment Act.
- *Examiner Council*
 - The Examiners' Council meeting was held at the Austin headquarters on August 27-30, 2018. Division liaison Barbara Winters conducted the meeting for the six examiners tasked with annual workpaper reviews of commercial, trust, and IT examinations.
- *Website*

The following data relates to website activity between September 1, 2017 and August 31, 2018.

 - The Department of Banking website received 745,315-page views. The top searches for the site include the Top 100 Banks in Texas (18,840-page views) and Applications & Forms (17,807-page views).
 - The Electronic Crimes Task Force website received 5,159-page views. The top searches for the site include What is Corporate Account Takeover? (318-page views) and Tools & Resources (236-page views).
 - The Texas Prepaid Funeral Contracts website received 52,930-page views. The top searches for the site include Prepaid Funeral Planning Brochure (5,278-page views) and FAQs (2,318-page views).

- The Finance Commission website received 39,721-page views. The top searches for the site include Home Equity (5,030-page views) and the Finance Commission Members (3,360-page views).

Two-Year Historical Finance Commission Meeting Webcast Statistics





Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705

512-475-1300 / 877-276-5554

www.dob.texas.gov

Memorandum

TO: Finance Commission Members
FROM: Catherine Reyer, General Counsel
DATE: October 1, 2018
RE: Legal Division Update

Pending Contested Cases

In re Bellwood Memorial Park, Temple, Texas; Docket No. BF-1803-18-049. Respondent holds a permit to issue prepaid funeral contracts and a certificate of authority to operate a perpetual care cemetery. Following a contested case hearing at which the Respondent did not appear, the administrative law judge issued a proposal for decision recommending that the Banking Commissioner issue an order imposing a \$35,000 penalty, which was the full amount recommended by staff. On July 10, 2018, Commissioner Cooper issued an order adopting the findings and imposing the recommended penalty. We are negotiating a payment plan with Respondent.

In the Matter of CR International Services, LLC, Appleton, Wisconsin; Docket No. BM-1802-17-085. Respondent operates a website through which they purchase foreign currency from customers around the country. After initial contact with the Department in May 2017, Respondent certified that they had ceased doing business with Texas residents and would take measures to ensure they would not do so in the future. The Department subsequently obtained information showing that Respondent continued to conduct transactions with Texas residents. An Order to Cease and Desist (Order No. 2017-021) was issued to Respondent and became effective January 12, 2018. A hearing to determine whether to assess an administrative penalty was set for September 26, 2018. On September 24, 2018, the Banking Commissioner entered into Consent Order No. 2018-026 in which Respondent agreed to pay a \$9,000 penalty. Respondent is due to pay the full amount of the penalty by October 4, 2018.

In the Matter of Billy F. Peel, Individually and as President of Austin Peel and Son Funeral Home, Inc. and Austin Peel and Son Funeral Home, Inc., Austin, Texas; Docket No. BF-1806-18-194. Respondents held a permit to issue prepaid funeral contracts until 2006. On July 25, 2018, the Department received reports that Respondents were allegedly issuing prepaid funeral contracts without a permit. On August 1, 2018, Commissioner Cooper issued an emergency cease and desist order which authorized seizure by the Department of Peel's records concerning the illegal sales. Review of the records indicates that \$510,311.24 in restitution is owed to 227 customers from whom funds were collected but not properly deposited. An administrative hearing is scheduled for October 11, 2018. We are attempting to negotiate an Agreed Order with Respondents.

[Isabel Cristina Rubio v. Bonial & Associates, P.C., et al.; Civil Action No. 4:18-cv-03307 in the United States District Court for the Southern District of Texas, Houston Division.] Rubio, a sovereign citizen, has named Texas Banking Commissioner Charles G. Cooper as one of many defendants in her civil lawsuit against JPMorgan Chase regarding foreclosure of her property. Assistant Attorney General Jennifer Jackson and Assistant Attorney General William Sumner MacDaniel, who are assigned to represent the

Department, have filed a motion to dismiss. Defendant Chase successfully removed the case to federal court in the Southern District of Texas. Plaintiff Rubio has been given until October 19, 2018 to respond to the motion to dismiss.

The two confidential administrative penalty proceedings previously noted in this report and set for hearing on September 5, 2018 have been resolved by consent order.

The Department has a confidential prohibition matter pending before an administrative law judge. It is set for hearing in February, 2019.

Gifts

No gifts have been received by the Department since the last Legal Division Update was prepared.

Orders Issued 8/1/18 – 9/30/18

Since the last Legal Division memo was submitted, the Commissioner issued five enforcement orders, all of which are final and non-appealable.

Bank and Trust

- Consent Order, dated August 9, 2018; Diane R. Parker, Former Director, The Elkhart State Bank, Elkhart, TX

Special Audits

- Emergency Order to Cease and Desist Activity, and to Seize Records and Funds, dated August 1, 2018; Billy F. Peel, Individually and as President of Austin Peel and Son Funeral Home, Inc., Austin, TX
- Consent Order dated August 29, 2018; ZenPayroll, Inc., San Francisco, CA
- Consent Order, dated September 6, 2018; Paychex, Inc., Rochester, NY
- Consent Order, dated September 6, 2018; Plooto, Inc., Toronto, Ontario, Canada

Quarterly Order Activity

BANK				
Type of Action	1st	2nd	3rd	4th
Consent Order	0	0	0	0
Cease & Desist	0	1	0	0
Supervision	0	0	0	0
Prohibition	1*	1	0	2
Total	1	2	0	2
TRUST COMPANY				
Consent Order	0	0	0	0
Cease & Desist	0	0	0	0
Supervision	0	0	0	0
Prohibition	0	0	0	0
Total	0	0	0	0
MONEY SERVICE BUSINESS				
Consent Order	1	2	0	5
Cease & Desist	0	4	1	0
Total	1	6	1	5
PERPETUAL CARE CEMETERY				
Consent Order	0	0	0	0
Cease & Desist	0	0	0	0
Refusal to Renew Cert/Auth	0	1	0	0
Final Order after hearing	0	0	0	1
Total	0	1	0	2
PREPAID FUNERAL CONTRACT				
Consent Order	2	0	0	0
Cease & Desist	0	0	0	1
Conversion	0	0	0	0
Total	2	0	0	1

*Order is the subject of a contested case hearing, and therefore is not yet effective.

FUTURE RULEMAKING ACTIVITY		
Rule	Subject	Projected Date for Presentation
7 TAC Ch. 11	Complaint Handling Procedures	December 14, 2018

2. Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 1, Chapter 5, Concerning Administration of Finance Agencies, Resulting from Rule Review

PURPOSE: Texas Government Code §2001.039 requires a state agency to review each of its rules every four years and readopt, readopt with amendments, or repeal a rule based upon the agency's rule review and its determination as to whether the reasons for initially adopting the rules continue to exist.

Notice of the proposed review of 7 TAC Chapter 5 was published in the *Texas Register* as required on August 24, 2018 (43 TexReg 5544). No comments were received regarding the review.

The finance agencies believe the reasons for initially adopting the rules in Chapter 5 continue to exist and those rules should be readopted. Rule changes to Chapter 5 are being separately presented for proposal.

RECOMMENDED ACTION: The finance agencies request that the Commission find that the reasons for initially adopting the rules in 7 TAC Chapter 5 continue to exist and that the Commission readopt these rules.

RECOMMENDED MOTION: I move that the rules in 7 TAC Chapter 5 be readopted.

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed its review of Texas Administrative Code, Title 7, Part 1, Chapter 5 (Administration of Finance Agencies), §5.101, in its entirety.

Notice of the review of Chapter 5 was published in the August 24, 2018, issue of the *Texas Register* (43 TexReg 5544). No comments were received in response to the notice.

The commission believes the reasons for initially adopting the rules in Chapter 5 continue to exist. However, the commission has determined that certain revisions and other changes are appropriate and necessary. Proposed amended Chapter 5 sections, with discussion of the justification for the proposed changes, will be published in this issue of the *Texas Register*.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 5 in accordance with the requirements of the Government Code, §2001.039.

3. Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 2, Chapter 11, Concerning Complaints, Resulting from Rule Review

PURPOSE: Texas Government Code §2001.039 requires a state agency to review each of its rules every four years and readopt, readopt with amendments, or repeal a rule based upon the agency's rule review and its determination as to whether the reasons for initially adopting the rules continue to exist.

Notice of the proposed review of 7 TAC Chapter 11 was published in the *Texas Register* as required on August 17, 2018 (43 TexReg 5401). The Department received no comments regarding the review.

The Department believes the reasons for initially adopting the rules in Chapter 11 continue to exist and those rules should be readopted.

RECOMMENDED ACTION: The Department requests that the Commission find that the reasons for initially adopting the rules in 7 TAC Chapter 11 continue to exist and that the Commission readopt these rules.

RECOMMENDED MOTION: I move that the rules in 7 TAC Chapter 11 be readopted.

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed its review of Texas Administrative Code, Title 7, Part 2, Chapter 11 (Miscellaneous), §11.37, in its entirety.

Notice of the review of Chapter 11 was published in the August 17, 2018, issue of the *Texas Register* (43 TexReg 5401). No comments were received in response to the notice.

The commission believes the reasons for initially adopting Chapter 11 continue to exist. However, the commission has determined that certain revisions and amendments may be appropriate and necessary. Proposed amendments and revisions to Chapter 11, with discussion of the justification for the proposed changes, will be published in the *Texas Register* at a later date.

Accordingly, the commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 11 in accordance with the requirements of the Government Code, §2001.039.

4. Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 2, Chapter 26, Concerning Perpetual Care Cemeteries, Resulting from Rule Review

PURPOSE: Texas Government Code §2001.039 requires a state agency to review each of its rules every four years and readopt, readopt with amendments, or repeal a rule based upon the agency's rule review and its determination as to whether the reasons for initially adopting the rules continue to exist.

Notice of the proposed review of 7 TAC Chapter 26 was published in the *Texas Register* as required on August 17, 2018 (43 TexReg 5401). The Department received no comments regarding the review.

The Department believes the reasons for initially adopting the rules in Chapter 26 continue to exist and those rules should be readopted. Rule changes to Chapter 26 are being separately presented for proposal.

RECOMMENDED ACTION: The Department requests that the Commission find that the reasons for initially adopting the rules in 7 TAC Chapter 26 continue to exist and that the Commission readopt these rules.

RECOMMENDED MOTION: I move that the rules in 7 TAC Chapter 26 be readopted.

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed its review of Texas Administrative Code, Title 7, Part 2, Chapter 26 (Perpetual Care Cemeteries), §§26.1 - 26.6, 26.11, and 26.12, in its entirety.

Notice of the review of Chapter 26 was published in the August 17, 2018, issue of the *Texas Register* (43 TexReg 5401). No comments were received in response to the notice.

The commission believes the reasons for initially adopting the rules in Chapter 26 continue to exist. However, the commission has determined that certain revisions and other changes are appropriate and necessary. Proposed amended Chapter 26 sections, with discussion of the justification for the proposed changes, will be published in this issue of the *Texas Register*.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 26 in accordance with the requirements of the Government Code, §2001.039.

5. Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 2, Chapter 27, Concerning Applications, Resulting from Rule Review

PURPOSE: Texas Government Code §2001.039 requires a state agency to review each of its rules every four years and readopt, readopt with amendments, or repeal a rule based upon the agency's rule review and its determination as to whether the reasons for initially adopting the rules continue to exist.

Notice of the proposed review of 7 TAC Chapter 27 was published in the *Texas Register* as required on August 17, 2018 (43 TexReg 5401). The Department received no comments regarding the review.

The Department believes the reasons for initially adopting the rules in Chapter 27 continue to exist and those rules should be readopted.

RECOMMENDED ACTION: The Department requests that the Commission find that the reasons for initially adopting the rules in 7 TAC Chapter 27 continue to exist and that the Commission readopt these rules.

RECOMMENDED MOTION: I move that the rules in 7 TAC Chapter 27 be readopted.

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed its review of Texas Administrative Code, Title 7, Part 2, Chapter 27 (Applications), §27.1, in its entirety.

Notice of the review of Chapter 27 was published in the August 17, 2018, issue of the *Texas Register* (43 TexReg 5401). No comments were received in response to the notice.

The commission believes the reasons for initially adopting Chapter 27 continue to exist. However, the commission has determined that certain revisions and amendments may be appropriate and necessary. Proposed amendments and revisions to Chapter 27, with discussion of the justification for the proposed changes, will be published in the *Texas Register* at a later date.

Accordingly, the commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 27 in accordance with the requirements of the Government Code, §2001.039.

6. Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 2, Chapter 31, Concerning Private Child Support Enforcement Agencies, Resulting from Rule Review

PURPOSE: Texas Government Code §2001.039 requires a state agency to review each of its rules every four years and readopt, readopt with amendments, or repeal a rule based upon the agency's rule review and its determination as to whether the reasons for initially adopting the rules continue to exist.

Notice of the proposed review of 7 TAC Chapter 31 was published in the *Texas Register* as required on August 17, 2018 (43 TexReg 5402). The Department received no comments regarding the review.

The Department believes the reasons for initially adopting the rules in Chapter 31 continue to exist and those rules should be readopted.

RECOMMENDED ACTION: The Department requests that the Commission find that the reasons for initially adopting the rules in 7 TAC Chapter 31 continue to exist and that the Commission readopt these rules.

RECOMMENDED MOTION: I move that the rules in 7 TAC Chapter 31 be readopted.

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed its review of Texas Administrative Code, Title 7, Part 2, Chapter 31 (Private Child Support Enforcement Agencies), §§31.1 – 31.115, in its entirety.

Notice of the review of Chapter 31 was published in the August 17, 2018, issue of the *Texas Register* (43 TexReg 5402). No comments were received in response to the notice.

The commission believes the reasons for initially adopting Chapter 31 continue to exist. However, the commission has determined that certain revisions and amendments may be appropriate and necessary. Proposed amendments and revisions to Chapter 31, with discussion of the justification for the proposed changes, will be published in the *Texas Register* at a later date.

Accordingly, the commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 31 in accordance with the requirements of the Government Code, §2001.039.

7. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendment to 7 TAC, Part 1, Chapter 5, §5.101, Concerning Employee Training and Education Assistance Programs

PURPOSE: Amendment to Subsection (e) of §5.101 would eliminate transitional provisions for development of policies for administering the employee training and education program of each finance agency, as well as describing what the to-be-developed policies were to include. As amended, the rule would reflect that the policies have been developed and describe what the policies include.

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 for comment the proposed amendment to 7 TAC, §5.101 in the *Texas Register*.

Title 7. Banking and Securities
Part 1. Finance Commission of Texas
Chapter 5, Administration of Finance
Agencies
7 TAC §5.101

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking, the Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner (collectively, the finance agencies) proposes to amend 7 TAC §5.101, concerning Employee Training and Education Assistance Programs.

Government Code, §656.048 requires state agencies to adopt rules relating to the eligibility of the agency's administrators and employees for training and education supported by the agency and the obligations assumed by the administrators and employees on receiving the training and education. The commission adopted §5.101 to implement Government Code, §656.048.

Subsection (e) of §5.101 requires the finance agencies to develop and maintain policies for administering the employee training and education program of each respective finance agency. Subsection (e) also describes what the to-be-developed policies were to include. The finance agencies have developed such policies and the proposed amendment to §5.101 amends this transitional provision.

Charles G. Cooper, Commissioner, Texas Department of Banking, Caroline C. Jones, Commissioner, Department of Savings and Mortgage Lending, and Leslie L. Pettijohn, Consumer Credit Commissioner (the commissioners) have determined that for the first five-year period the proposed rule is in

effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

The commissioners have also determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is that the rule will accurately reflect the agencies' compliance with legislative requirements.

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.

For each year of the first five years that the rule will be in effect, the rule will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to any state agency;
- require an increase or decrease in fees paid to any state agency;
- create a new regulation;
- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; and
- positively or adversely affect this state's economy.

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There will be no

difference in the cost of compliance for these entities.

To be considered, comments on the proposed amendment must be submitted no later than 5:00 p.m. on December 3, 2018. 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 Government Code, §656.048, which provides for training and education assistance to employees of state agencies.

Government Code, §656.048(a), is affected by the proposed amended section.

§5.101. Employee Training and Education Assistance Programs.

(a) – (d) (No change.)

(e) The finance agencies [~~will develop and~~] maintain policies for administering the employee training and education program of each respective finance agency. These policies [~~will~~]include:

(1) – (3) (No change.)

(f) – (g) (No change.)

8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendment to 7 TAC, Part 2, Chapter 26, §26.11, Concerning Perpetual Care Cemeteries Complaints

PURPOSE: Amendment to §26.11 would provide clarity with respect to the existing policy regarding when a perpetual care cemetery owner must provide the complaint notice on its website.

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 for comment the proposed amendment to 7 TAC, §26.11 in the *Texas Register*.

Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 26, Perpetual Care Cemeteries
7 TAC §26.11

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend 7 TAC §26.11, concerning providing information to perpetual care cemetery customers about filing complaints. The amendment is proposed to provide clarity with respect to the existing policy regarding when a perpetual care cemetery owner must provide the complaint notice on its website.

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 or local government as a result of enforcing or administering the amended section.

Ms. Newberg also has determined that, for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of enforcing the rule is greater clarity of the rules to which perpetual care cemeteries are subject.

For each year of the first five years that the rule will be in effect, there is no anticipated economic cost to persons who are required to comply with the rule as proposed.

For each year of the first five years that the rule will be in effect, the rule will not:

- create or eliminate a government program;

- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; and
- positively or adversely affect this state's economy.

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There will be no difference in the cost of compliance for these entities.

To be considered, comments on the proposed amendment must be submitted no later than 5:00 p.m. on December 3, 2018. 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 Health and Safety Code, §72.008, which authorizes the commission to adopt rules to enforce and administer Health and Safety Code, Chapter 712.

Health and Safety Code, §72.008(b), is affected by the proposed amended section.

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

(a) (No change.)

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

(1) – (4) (No change.)

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

(A) (No change.)

(B) Those portions of your website that offer or promote consumer goods and services must contain access to the required notice. The language and form of the notice must substantially conform to the required notice set out in paragraph (1) of this subsection.

9. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Chapter 33, §§33.23 and 33.35, Concerning Money Services Businesses Permissible Investments and Record Retention Related to Money Transmission Transactions, respectively

PURPOSE: Amendments to Chapter 33 as proposed provide greater clarity regarding the statutory requirements applicable to money transmission license holders and correct a statutory reference. The amendment to §33.23 proposing new §33.23(d)(3) would recognize any receivable owed by a bank to a license holder resulting from an automated clearinghouse (ACH), debit, or credit-funded transmission, subject to certain limitations, as a permissible investment. Proposed new §33.23(g) defines the terms relevant to the receivables. Proposed new §33.23(h) sets forth the conditions precedent for ACH Receivables to constitute a permissible investment. Proposed new §33.23(i) and (j) describe similar conditions precedent to Credit Card Receivables and Debit Card Receivables, respectively. Proposed new §33.23(k) would exclude from total permissible investments the aggregate value of ACH Receivables, Credit Card Receivables, and Debit Card Receivables owed to license holder from a single person that exceeds ten (10) percent of the aggregate value of a license holder's permissible investments. Proposed new §33.23(l) instructs license holders as to how ACH Receivables, Credit Card Receivables, and Debit Card Receivables may be reported when reporting on permissible investments. The amendment proposed to §33.23(c) would allow the subsection to address the broader applicability of the term. Section 33.35(e)(2) as amended corrects the statutory reference for the federal definition of "funds transfer" to 331 CFR §1010.100(w).

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

RECOMMENDED MOTION: I move that we publish for comment the proposed amendments to 7 TAC, Chapter 33, §§33.23 and 33.35 in the *Texas Register*.

***Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 33. Money Services Businesses
7 TAC §§33.23, 33.35***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §33.23, concerning permissible investments that are required to be maintained by money transmitters under Finance Code, §151.309; and §33.35, concerning record retention relating to money transmission transactions. The amendments are proposed to create a new category of permissible investments and correct a statutory reference.

Finance Code, §151.309(a) requires a money transmission license holder to maintain permissible investments. Section 151.309(b) enumerates the categories of assets and investments that constitute a permissible investment for purposes of Finance Code, §151.309. Finance Code, §151.309(b)(7) grants the commission the authority to permit by rule other assets and investments to constitute permissible investments, based on a determination that the assets or investments have a safety substantially equivalent to other permissible investments.

Based on requests from money transmission license holders, the department evaluated the safety of Automated Clearing House Receivables, Credit Card Receivables, and Debit Card Receivables and determined that developments in payment systems law and technology have caused these assets to have a safety substantially equivalent to other the permissible investments listed in Finance

Code, §151.309(b). The commission adopted the department's determination. Proposed new §33.23(d)(3) would recognize any receivable owed by a bank to a license holder resulting from an automated clearinghouse (ACH), debit, or credit-funded transmission, subject to certain limitations, as a permissible investment. Proposed new §33.23(g) defines the terms relevant to the receivables. Proposed new Finance Code, §33.23(h) sets forth the conditions precedent for ACH Receivables to constitute a permissible investment. Proposed new §33.23(i) and §33.23(j) describe similar conditions precedent to Credit Card Receivables and Debit Card Receivables, respectively. Proposed new §33.23(k) excludes from total permissible investments the aggregate value of ACH Receivables, Credit Card Receivables, and Debit Card Receivables owed to a license holder from a single person that exceeds ten (10) percent of the aggregate value of a license holder's permissible investments. Proposed new §33.23(l) instructs license holders as to how ACH Receivables, Credit Card Receivables, and Debit Card Receivables may be reported when reporting on permissible investments.

As proposed, ACH Receivables, Credit Card Receivables, and Debit Card Receivables are subject to the "past due or doubtful of collection" standard, originally applied only to receivables due a license holder from authorized delegates in Finance Code, §151.309(b)(1). Section 33.23(c) defines the term "past due or doubtful of collection" in the context of in Finance Code, §151.309(b)(1). The amendment proposed to §33.23(c) would allow the subsection to address the broader applicability of the term.

Section 33.35(e)(2) cites 31 CFR §1010.100(j) to incorporate the federal definition of “funds transfer.” Section 33.35(e)(2) as amended corrects the statutory reference for the federal definition to 31 CFR §1010.100(w).

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

Ms. Newberg also has determined that, for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is greater clarity regarding the statutory requirements applicable to money transmission license holders. Also, the rules as proposed will more accurately reflect the developments to electronic payments systems and the commission’s resulting determination regarding the safety of Automated Clearing House Receivables, Credit Card Receivables, and Debit Card Receivables.

For each year of the first five years that the rules will be in effect, there is no anticipated economic cost to persons who are required to comply with the rules as proposed. The proposed amendment to §33.23, which makes it easier for a license holder to satisfy the permissible investment requirement of Finance Code, §151.309(a) may economically benefit license holders.

For each year of the first five years that the rules will be in effect, the rules will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rules' applicability; and
- positively or adversely affect this state's economy.

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There will be no difference in the cost of compliance for these entities.

To be considered, comments on the proposed amendments must be submitted no later than 5:00 p.m. on December 3, 2018. 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 amendments are proposed under Finance Code, §151.102, which authorizes the commission to adopt rules to administer and enforce Chapter 151. Additionally, the amendment to §33.23 is also proposed under Finance Code, §151.309(b)(7) which authorizes the commission to permit by rule

PROPOSED AMENDMENTS TO 7 TAC §§33.23, 33.35
Page 3 of 4

other assets and investments to constitute permissible investments, based on a determination that the assets or investments have a safety substantially equivalent to other permissible investments.

Finance Code, §151 is affected by the proposed amended sections.

§33.23. What Additional Provisions Apply to Permissible Investments?

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

(c) What does "past due ~~or~~[and] doubtful of collection" mean for purposes of Finance Code, §151.309(b)(1) and this rule? [~~Under Finance Code, §151.309(b)(1), a permissible investment may include 40 percent of the receivables due a license holder from authorized delegates resulting from money transmission that is not "past due or doubtful of collection." For purposes of §151.309(b)(1),~~ "Past due or ~~["past due and]~~ doubtful of collection" means cash due ~~[from an authorized delegate]~~ that is not remitted on or before the 10th business day after the date the remitting entity ~~[authorized delegate]~~ is required to remit the money to the license holder under the applicable written agreement ~~[between the license holder and the authorized delegate]~~.

(d) Does the department recognize any specific category of assets or securities as "permissible investments" in addition to the categories listed in Finance Code, §151.309(b)? In addition to the assets and securities listed in Finance Code, §151.309(b), to be a "permissible investment," a permissible investment for purposes of Finance Code, Chapter 151, includes:

(1) commercial paper within the top three rating categories of a nationally recognized rating service; ~~[and]~~

(2) interest bearing bills, notes or bonds that bear a rating within the top three rating categories of a nationally recognized rating service; and~~[-]~~

(3) any receivable owed by a bank to a license holder resulting from an automated clearinghouse, debit, or credit-funded transmission subject to subsections (g) through (l) of this section.

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

(g) For purposes of this section:

(1) "Automated Clearing House (ACH) Receivables" are amounts debited from a customer's depository account or ACH credits initiated by the customer through the ACH, which are for the purchase or payment of money transmission products and services.

(2) "Credit Card Receivables" are amounts owed by a license holder's merchant acquirer and arising from the license holder's submission of credit card transactions for settlement by the merchant acquirer for the purchase or payment of money transmission products and services.

(3) "Debit Card Receivables" are amounts owed by a license holder's merchant acquirer and arising from the license holder's submission of debit or pre-paid card transactions for settlement by the merchant acquirer for the purchase or payment of money transmission products and services.

(4) "Merchant acquirer" means an acquiring bank or its designated processor who forwards the transaction information to the respective credit card associations for authorization, clearing, and settlement. The acquiring bank must remain fully liable for payment to the license holder if the designated processor fails to settle with the license holder.

(h) ACH Receivables must be:

(1) due from U.S. national or state-chartered depository institutions, and

(2) current and not past due or doubtful of collection;

(i) Credit Card Receivables must be current and not past due or doubtful of collection;

(j) Debit Card Receivables must be current and not past due or doubtful of collection; and

(k) The aggregate value of ACH Receivables, Credit Card Receivables, and Debit Card Receivables owned by a license holder that qualifies as a permissible investment shall not include the portion of the aggregate value of such receivables due from one person, which exceeds 10% of the aggregate value of a license holder's permissible investments.

(l) ACH Receivables, Credit Card Receivables, and Debit Card Receivables may be reported by the license holder as:

(1) cash, cash items, or cash in transit
or

(2) ACH, Credit Card, or Debit Card Receivables or due from banks on the license holder's balance sheet, or in any other manner approved by the commissioner.

§33.35. What Records Must I Keep Related to Money Transmission Transactions?

(a) – (d) (No change.)

(e) What specific records must I keep related to transmission of funds transactions?

(1) (No change.)

(2) The requirements of this subsection do not apply to a transmission of funds transaction governed by the Electronic Fund Transfer Act of 1978 (title XX, Pub. L. 950630, 92 Stat. 3728, 15 USC 1693, et. seq.), as well as any other funds transfers that are made through an automated clearing house, an automated teller machine, or a point-of-sale system within the meaning of 31 CFR §1010.100(w) [31—CFR §1010.100(j)].

(3) – (6) (No change.)

(f) – (g) (No change.)

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C.

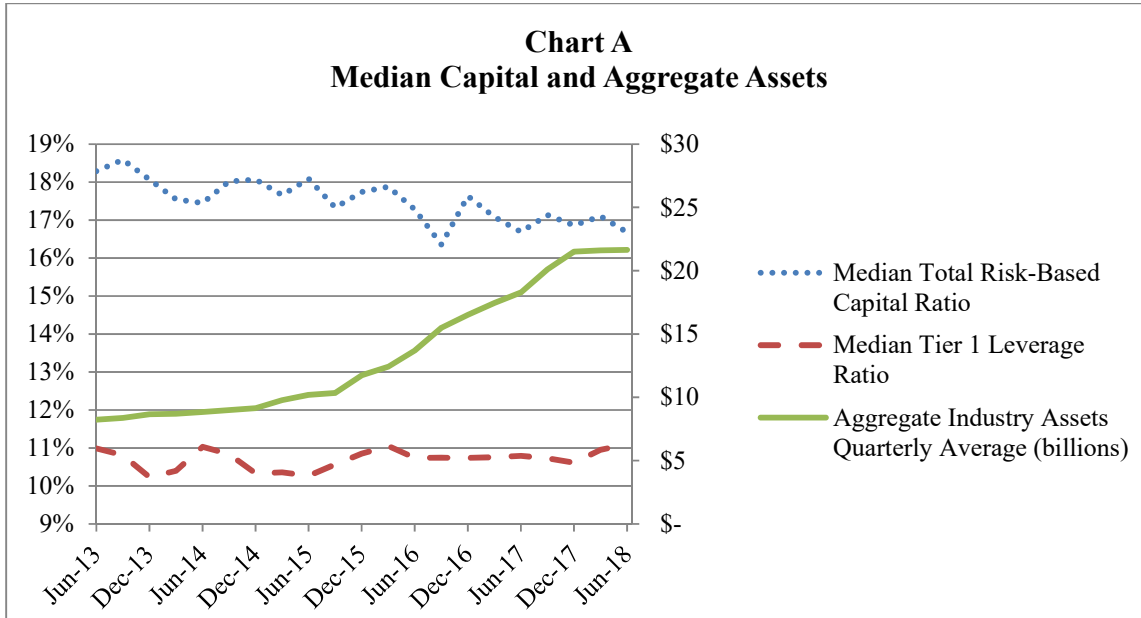
**Department of Savings and
Mortgage Lending**

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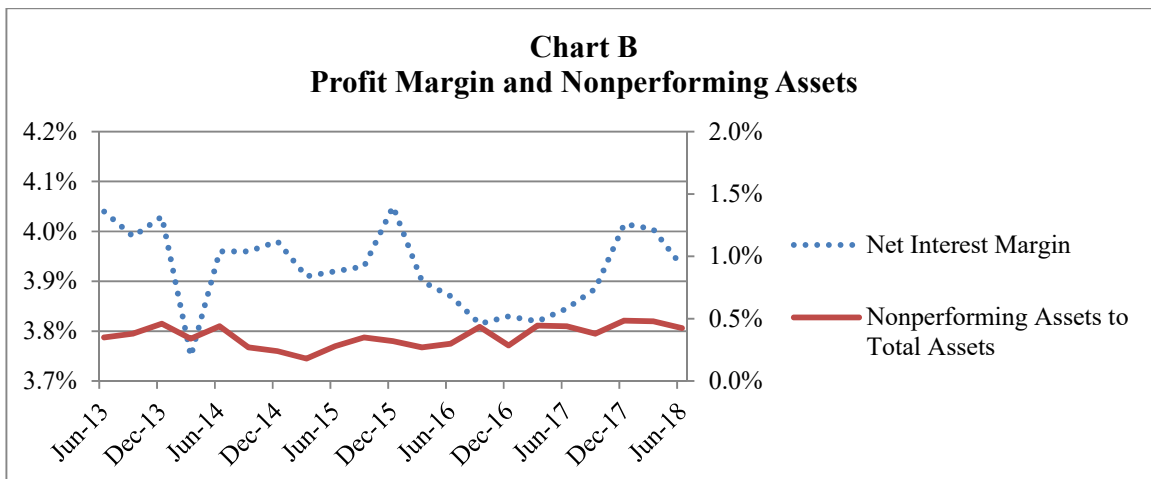
C. Texas Department of Savings and Mortgage Lending

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

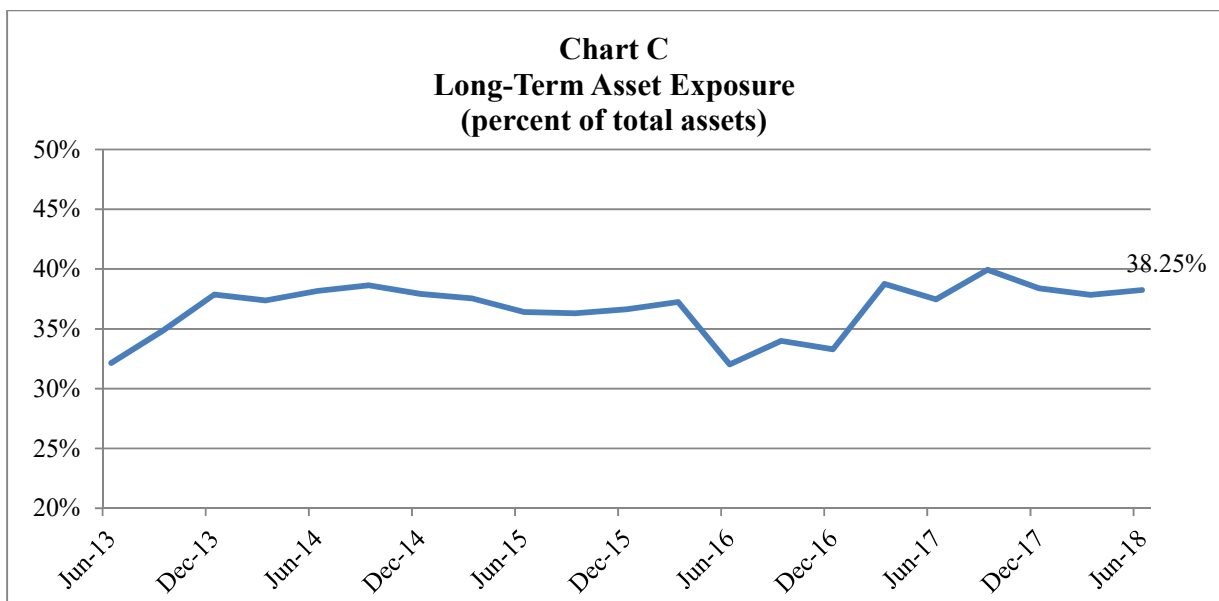
a. Industry Status



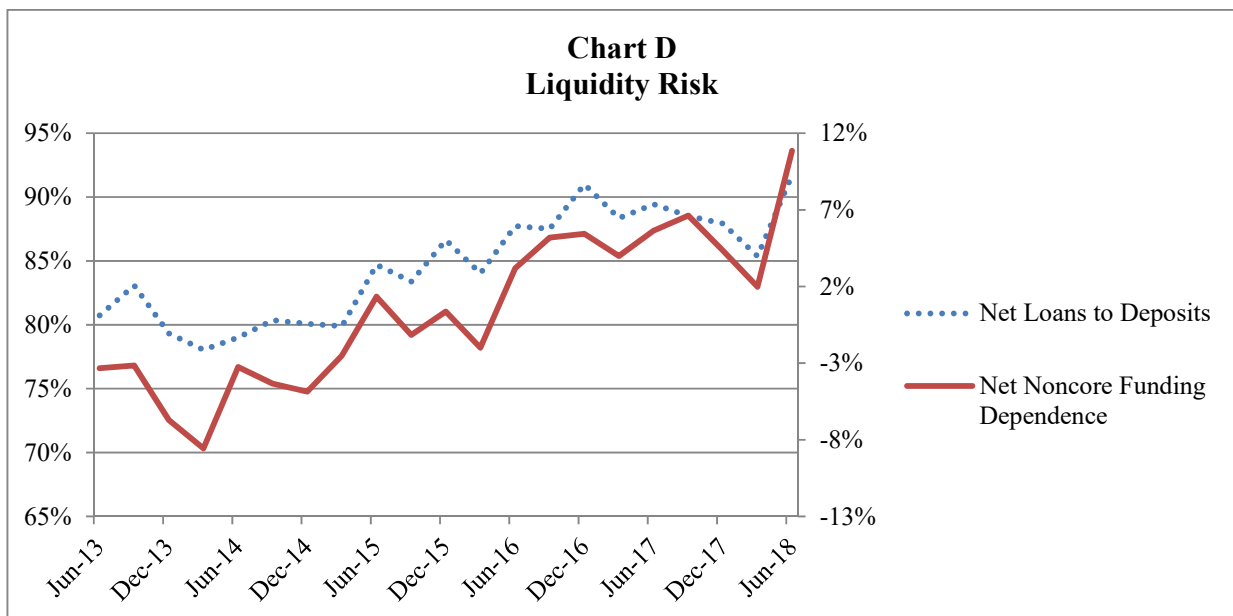
As of June 30, 2018, there are 24 state savings banks totaling \$22.685 billion in total assets. The average asset size of the median state savings bank (“SSB”) grew by 0.32% in the last four quarters to \$305.743 million. This trend has continued more than five years. After some decline in the risk-based capital ratio due to increased lending from late 2013 to late 2015, capital protection has generally kept pace with assets into 2018 through earnings and contributions. The median total risk-based capital ratio (Chart A) is 16.68% and the median leverage capital protection is 11.10%.



The median net interest margin has gone up slightly in the second quarter of 2018 to 3.93%, compared to 2017 (Chart B) which was 3.85%, but has declined from a high of 4.02% at year-end 2017. Nonperforming asset levels remain low at 0.43% of total assets, which is down one basis point down from June 2017.

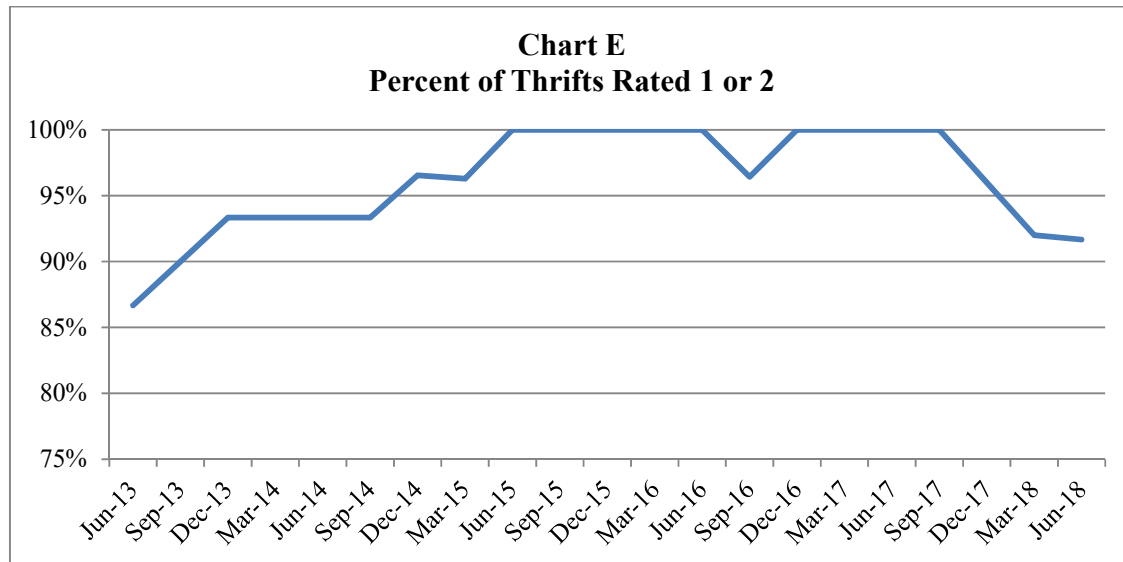


The Department continues to monitor various local, state, and national data sources to best understand the risks facing the industry and individual savings banks. Economic conditions, cybersecurity, market risk, lending concentrations, and liquidity risk all continue to be areas of focus. Market risk, as evidenced by long-term asset exposure (Chart C), had been elevated from late 2013 through early 2016, and again in the second quarter of 2018. There remains a small number of outlier institutions with high long-term asset exposure that have continued to increase slightly; however these are generally operating within historical norms of ten years or more.



Liquidity risk remains modest in Texas thrifts (Chart D), although increasing. The median Net Noncore Funding Dependence Ratio was between 0% and about 5% through 2016 and 2017, but has increased in the second quarter 2018 due to some growth and acquisitions, but remains manageable. The loan-to-deposit ratio is elevated, and has also increased in the second quarter due to some growth and acquisition to 91.75% with 33% of the industry over 100%.

All SSBs are subject to quarterly offsite reviews including 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-two percent of SSBs at June 30, 2018, were rated a Composite 1 or 2 (Chart E). There are two formal outstanding enforcement actions.

b. Savings Bank Charter and Merger Activity

On May 17, 2018, an application was received from TBK Bank, SSB, Dallas, Texas, to acquire (1) The First National Bank of Durango, a National bank located in Durango, Colorado (2) Bank of New Mexico, a New Mexico state-chartered bank located in Grants, New Mexico; and (3) Citizens Bank of Pagosa Springs, a Colorado state bank located in Pagosa Springs, Colorado. The transaction closed on September 8, 2018.

On September 10, 2018, an application was received from Spirit of Texas Bank, SSB, College Station, Texas, to acquire The Comanche National Bank, Comanche, Texas.

The Department continues to receive and process applications. During the past twelve months, there have been seven branch office applications, one branch office relocation application, two merger/reorganization applications, one purchase and assumption application, one change of control application, and ten various other applications.

c. Other Items

Commissioner Jones participated on the Regulatory Panel at the Southwest Association of Bank Counsel's Annual Convention on September 21, 2018.

Commissioner Jones participated on the Regulatory Panel at the Independent Bankers Association of Texas Annual Convention on September 24, 2018.

Commissioner Jones and Will Lucas, President and CEO of Shelby Savings Bank, SSB, attended Community Banking in the 21st Century, a research and policy conference co-sponsored by the Federal Reserve System, the Conference of State Bank Supervisors, and the FDIC. This conference was held October 3 – 4, 2018.

The 11th Annual Thrift Industry Day was held on September 13, 2018. Anthony Murphy from the Federal Reserve Bank-Dallas and Lila Valencia, Ph.D. from the Office of the State Demographer were the guest speakers. Thrift Supervision and Examination staff and management made presentations relating to topics of interest.



DEPARTMENT of SAVINGS & MORTGAGE LENDING

11TH ANNUAL THRIFT INDUSTRY DAY

THURSDAY, SEPTEMBER 13, 2018

12:30 – 1:00 Registration

1:00 – 1:15 Welcome and Opening Comments
Caroline C. Jones, Commissioner

1:15 – 1:45 The Outlook for the U.S. Economy
*Anthony Murphy, Lead-FRS Wholesale Supervisory Modeling Team
Federal Reserve Bank of Dallas*

1:45 – 2:00 Regulatory Compliance S.2155
Bill Poe, Supervisory Compliance Examiner, CSME

2:00 – 2:30 Break

2:30 – 3:15 Economic Outlook
*Lila Valencia, Ph.D., Senior Demographer
Texas Demographic Center*

3:15 – 3:30 Spotlight on the Industry
Andrea Henderson, Examiner

3:30 – 4:00 Break

4:00 – 4:30 Harvey Update
*Dean Bass, CEO Spirit of Texas Bank, SSB
Bart Caraway, CEO Third Coast Bank, SSB
Caroline C. Jones, Commissioner (Moderator)*

4:30 – 4:50 Hot Topics
Stephany Trotti, CPA, Chief Thrift Examiner

4:50 – 5:00 Agency Overview and Adjournment
Caroline C. Jones, Commissioner

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

a. Residential Mortgage Loan Originators

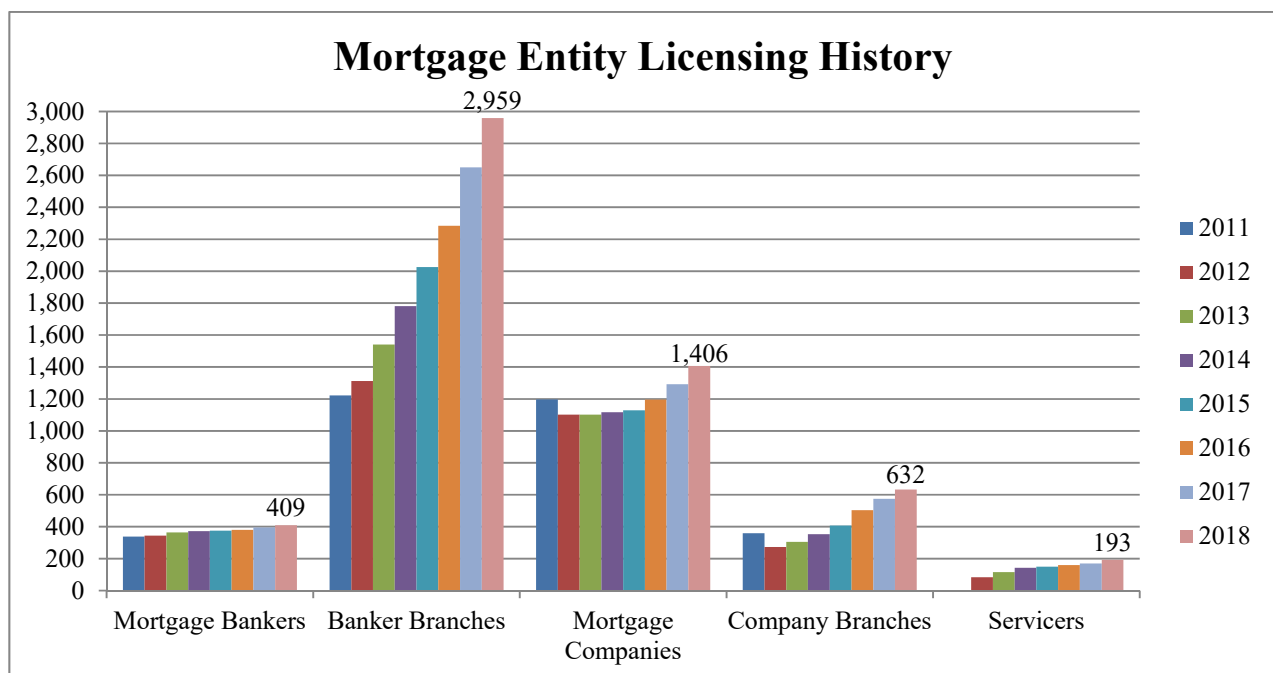
Current Licensing Population:

License Type As of 09/30/2018	Approved		
	Entity (MU1)	Branch (MU3)	MLO (MU4)
<i>Auxiliary</i>	4	n/a	
<i>CUSO</i>	4	2	
<i>FSC</i>	1	n/a	
<i>Independent Contractor</i>	119	n/a	
<i>Mortgage Company</i>	1,310	646	
<i>Mortgage Banker</i>	411	2,978	
<i>Mortgage Servicer</i>	195	n/a	
Totals	2,044	3,626	28,238

For FY2018, the Department received 9,753 applications for licenses and 108,280 other filings. During the year the licensing section processed 10,501 applications and 14,297 sponsorship requests.

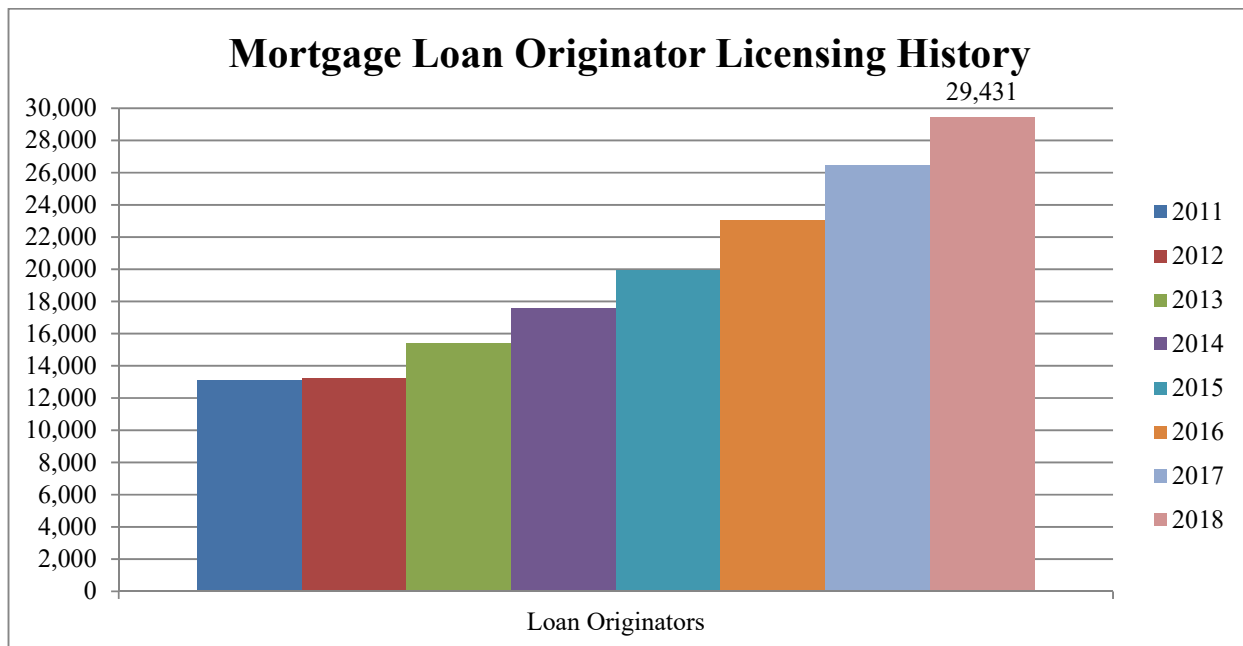
The licensing section is preparing for the coming renewal period, November 1st – December 31st. Companies that have not filed or have outstanding deficiencies related to mortgage call reports and individuals that have not completed the required continuing education will not be able to submit renewal until the issue(s) are resolved.

The following information provides a snapshot of the mortgage industry in Texas; the information is reflected as of fiscal year ends.



As of August 31, 2018:

- 15.4% or 63 of the 409 Texas licensed Mortgage Bankers are based in Texas.
- 54.8% or 1,623 of the 2,959 Texas licensed Mortgage Bankers branches are located in Texas.
- 74.4% or 1,046 of the 1,406 Texas licensed Mortgage Companies are based in Texas.
- 83.2% or 501 of the 632 Texas licensed Mortgage Company branches are located in Texas.
- 50.2% or 97 of the 193 Texas licensed Mortgage Servicers are based in Texas.
- 34.7% or 696 of Texas licensed entities have been licensed with the State for 3 years or less. Of these 291 or 41.8% were licensed within the last year.



As of August 31, 2018:

- 42.6% or 12,538 of the 29,431 Texas licensed originators reside in Texas.
- 20.3% or 5,974 of the 29,431 Texas licensed originators were in an “inactive” status
- 54.3% or 15,975 of the 29,431 Texas licensed originators have been licensed with the State for 3 years or less. Of these 7,438 or 46.6% were licensed within the last year.
- 20,259 Texas licensed originators had not completed their required continuing education for calendar year 2018, which is required in order to submit renewal beginning November 1st.

b. Mortgage Examinations

During FY18, a total of 431 examinations were conducted covering 9,924 individual licensees. The number of examinations is slightly lower when compared to FY17 although the number of individual licensees covered increased by 58%. The increase was the result of one large examination conducted during FY18.

Below is a breakdown of mortgage examination results by compliance rating for FY18. As shown in the chart below, the stratification of examination ratings during the past twelve months reflects little change when compared to FY17.

Mortgage Examination Compliance Ratings											
	# Mortgage Exams	Rated "1"	%	Rated "2"	%	Rated "3"	%	Rated "4"	%	Rated "5"	%
Fiscal Year 2016											
9/1/15 - 8/31/16	488	50	10%	215	44%	173	36%	46	9%	4	1%
Fiscal Year 2017											
9/1/16 - 8/31/17	476	62	13%	214	45%	156	32%	41	9%	3	1%
Fiscal Year 2018											
9/1/17 -8/31/18	431	53	12%	213	49%	120	28%	44	10%	1	1%

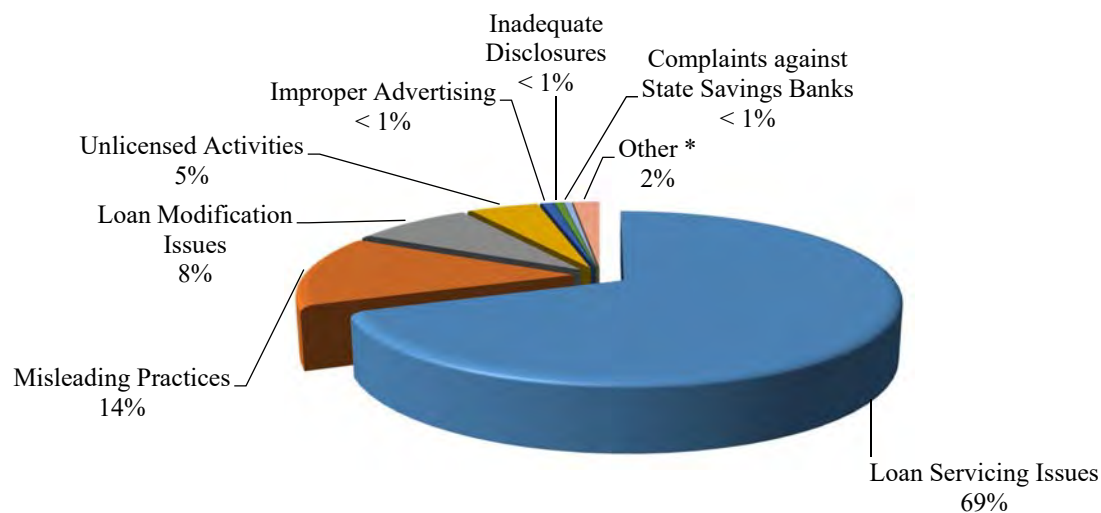
c. Consumer Complaints

During FY18, a total of 1,154 complaints were received. This represents a 13% increase when compared to FY17. Loan servicing complaints represented 69% of the total number of complaints received during FY18. As of August 31, 2018, there were 64 open complaints with 99% of the complaints aged less than 90 days.

The charts below show the nature of consumer complaints received and disposition in FY18.

Nature of Complaints Received - Fiscal Year 2018

(Complaints Received 09-01-2017 to 08-31-2018)

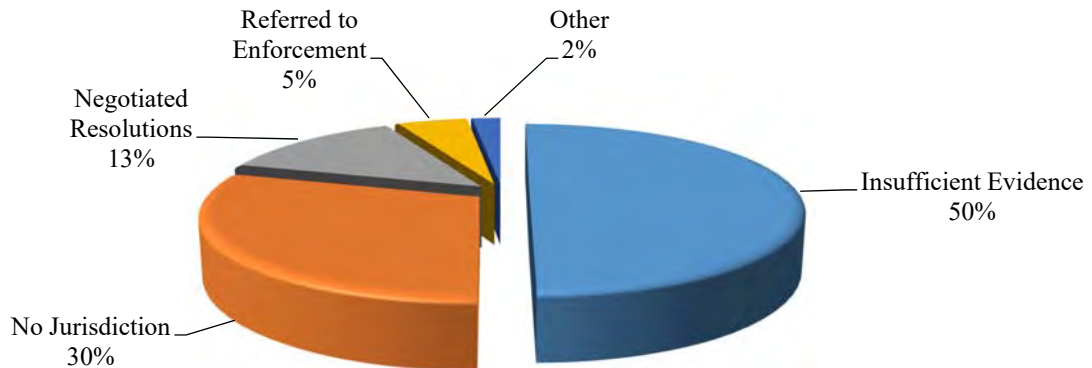


Total Complaints Received in FY18 = 1,154

* The "Other" Category includes: Refunds and File Transfers, Fraud-Consumer Reported, Fraud-Industry Referral, Failure to Pay Appraisers/Vendors, Identity Theft, Permissible Charges/Fees, Sponsor Issues, and Failure to Respond to Exam Order

Disposition of Resolved Complaints - Fiscal Year 2018

(Complaints Resolved Between 09-01-2017 and 08-31-2018)



Total complaints resolved in FY18 = 1,136

The "No Jurisdiction" category includes: complaints 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: consolidated with another file, opened in error, complaint withdrawn, advisory letter and information only

d. Other Items

Commissioner Jones spoke at the Texas Mortgage Roundup on September 6, 2018.

The Department's 6th Annual Mortgage Industry Seminar was held in Plano on September 10, 2018. The presentations covered licensing, social media, mortgage examination procedures, and consumer complaints. Presentations were given by senior management, in-house counsel and three mortgage examiners.



6th Annual

MORTGAGE INDUSTRY SEMINAR

Monday, September 10, 2018

3:00 – 3:05

Welcome Comments
Commissioner Caroline C. Jones

3:05 – 3:15

NMLS Mortgage Data
Supervisory Compliance Examiner– Justin Accola

3:15 – 3:30

SML Mortgage Examination Data
Supervisory Compliance Examiner – Bill Poe

3:30 – 3:45

Social Media
Chief Mortgage Examiner – Ellena Meier

3:45 – 4:00

Break

4:00 – 4:10

Consumer Complaints
Director of Mortgage Examination - Tony Florence

4:10 – 4:20

Enforcement Actions
Associate General Counsel –Devyn Wills

4:20– 4:35

Licensing Update
Director of Licensing - Steven O'Shields

4:35 – 4:55

Open Forum

5:00

Closing Comments
Commissioner Caroline C. Jones

Actual Performance for Key Output Measures

Type/Strategy/Measure	2018 Target	2018 Actual	2018 YTD	Percent of Annual Target	
Output Measures-Key - Quarterly Reporting					
1-1-1 Thrift Safety and Soundness					
1. Number of Examinations Performed					
Quarter 1	22	6	6	27.27%	
Quarter 2	22	4	10	45.45%	
Quarter 3	22	3	13	59.09%	*
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.					
Quarter 4	22	9	22	100.00%	
2-1-1 Mortgage Regulation					
1. Number of Applications Processed					
Quarter 1	7,500	2,274	2,274	30.32%	*
The number of applications submitted is outside the Department's control; therefore, the number of applications processed is ultimately affected in the same manner.					
Quarter 2	7,500	2,015	4,289	57.19%	*
The number of applications submitted is outside the Department's control; therefore, the number of applications processed is ultimately affected in the same manner.					
Quarter 3	7,500	3,037	7,326	97.68%	*
The number of applications submitted is outside the Department's control; therefore, the number of applications processed is ultimately affected in the same manner.					
Quarter 4	7,500	3,175	10,501	140.01%	*
The number of applications submitted is outside the Department's control; therefore, the number of applications processed is ultimately affected in the same manner.					
2. Number of Licensees Examined					
Quarter 1	4,500	2,095	2,095	46.56%	*
Of the examinations completed during the quarter, three of the examined entities consisted of large numbers of MLOs. These three examinations accounted for 48% of the total number of licensees examined during the quarter.					
Quarter 2	4,500	4,582	6,677	148.38%	*
Of the examinations completed during the quarter, one of the examined entities consisted of large number of MLOs, which accounted for 68% of the total number of licensees examined during the quarter.					
Quarter 3	4,500	1,245	7,922	176.04%	*
Of the examinations completed during the quarter, three of the examined entities consisted of large numbers of MLOs, which accounted for 33% of the total number of licensees examined during the quarter.					
Quarter 4	4,500	2,002	9,924	220.53%	*
Of the examinations completed during the quarter, four of the examined entities accounted for 52% of the total number of licensees examined during the quarter.					
3-1-1 Consumer Responsiveness					
1. Number of Consumer Complaints Completed					
Quarter 1	975	259	259	26.56%	
Quarter 2	975	277	536	54.97%	
Quarter 3	975	322	858	88.00%	*
Complaint dispositions with a resolution of no jurisdiction or insufficient evidence accounted for 81% of the FY18 totals, which is an increase over prior years. These resolutions are normally less involved and can be closed without an extensive investigation.					
Quarter 4	975	276	1,134	116.31%	*
Complaint dispositions with a resolution of no jurisdiction or insufficient evidence accounted for 80% of the FY18 totals. These resolutions are normally less involved and can be closed without an extensive investigation.					

*Varies by 5% or more from target.

Actual Performance for Outcome/Explanatory Measures

Type/Strategy/Measure	2018 Target	2018 YTD	Percent of Annual Target
Outcome Measures-Key - Annual Reporting			
1-1-1 Thrift Safety and Soundness			
1. Percent of State Chartered Savings Institutions Receiving Examination within the Required Timeframes	100%	88%	88.00% *
Due to pending regulatory applications, management made the decision to defer the start dates of two examinations.			
2. Percent of Safe and Sound Institutions to Total Savings Institutions	90%	92%	102.22%
3. Percent of Assets in Safe and Sound Savings Institutions	90%	60%	66.67% *
The measure is below target. The Department continues to monitor the issues that led to this result. The issues leading to this result do not relate to asset quality, but to readily correctable issues that can be resolved within the institutions daily operations.			
3-1-1 Consumer Responsiveness			
1. Percent of Complaints Answered within Ten Business Days of Receipt of Complete Information	99%	99.81%	100.82%
Explanatory Measures-Key - Annual Reporting			
1-1-1 Thrift Safety and Soundness			
1. Number of State-Chartered Savings Institutions	26	24	92.31% *
During the fiscal year, two state savings banks left the state system; however, the assets within the state system have continued to grow and substantially replenish the assets that left.			
2. Dollar Amount of Assets under Regulation (in Billions)	\$20.60	\$22.70	110.19% *
The assets are larger than targeted due to organic growth and acquisition activities of the state savings banks.			

*Varies by 5% or more from target.

Actual Performance for Non-Key Measures

Type/Strategy/Measure	2018 Target	2018 YTD	Percent of Annual Target	
Non-Key Measures - Annual Reporting				
Thrift Safety and Soundness				
01-01 Outcome Measures				
4. Percentage of Applications Receiving Final Action within Statutory Timeframes	100%	100%	100.00%	
Output Measures				
2. Number of Detected Instances of Activity in Unauthorized or Prohibited Areas	3	0	0.00%	*
During FY18, no detection of unauthorized or prohibited areas of activities were found.				
3. Number of Formal and Informal Regulatory Actions	5	9	180.00%	*
The Department's proactive stance in dealing with isolated issues is reflected within these numbers and resulted in the number of formal or informal actions issued to be higher than the target.				
4. Number of Applications Processed.	10	19	190.00%	*
As evidenced by the number of applications processed, there has been an increase in activity within the state savings banks. The majority of these applications were for new branches and acquisitions by the state savings banks.				
Efficiency Measures				
1. Assets Examined Per Examiner Day (million)	\$8	\$13.5	168.75%	*
Due to the increased assets of the industry, the assets examined per examiner day has increased.				
2. Average Time (Business Days) to Complete Analysis of Quarterly Financial Data	7	5.25	75.00%	*
The average time to review the financial data is lower than the target due to efficiencies utilized in the review process.				
3. Average Time (Business Days) between Identification of a Problem and Initiation of Regulatory Action	5	56	1120.00%	*
Due to circumstances outside the Department's control, one regulatory action took a significant amount of time to have the regulatory action issued.				

Actual Performance for Non-Key Measures

Type/Strategy/Measure	2018 Target	2018 YTD	Percent of Annual Target	
Non-Key Measures - Annual Reporting				
Mortgage Regulation				
02-01 Outcome Measures				
1. Percentage of Licensees Receiving Satisfactory Levels of Compliance Through Examinations	90%	89.60%	99.56%	
Efficiency Measures				
1. Average Cost Per Application Processed	\$50.00	\$21.62	43.24%	*
The number of applications received, and thereby processed, directly affects the average cost per application.				
Explanatory Measures				
1. Total Number of Licensees in an Approved Status	35,000	35,030	100.09%	
Consumer Responsiveness				
03-01 Output Measures				
2. Number of Informational Inquiries and Requests Completed (Phone/Written)	70,000	n/a		*
The number of inquiries received for the fiscal year is not available due to one of the reports being used in the calculation no longer being available. The Department is looking at additional methods of receiving data to capture the number of inquiries and requests received by the Department. Additionally, the Department will be reviewing this measure to determine if the information it provides is useful.				
Efficiency Measures				
1. Average Cost Per Consumer Complaint Completed	\$250.00	\$374.97	149.99%	*
The number of consumer complaints submitted, and thereby processed, directly affects the average cost per complaint completed.				

* Varies by 5% or more under target.

3. Fiscal/Operations Activity:

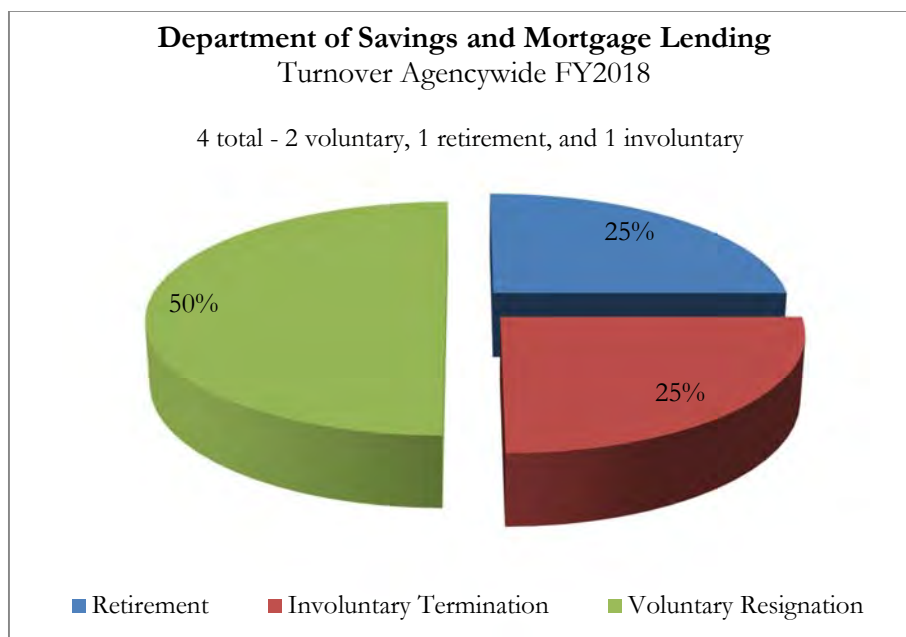
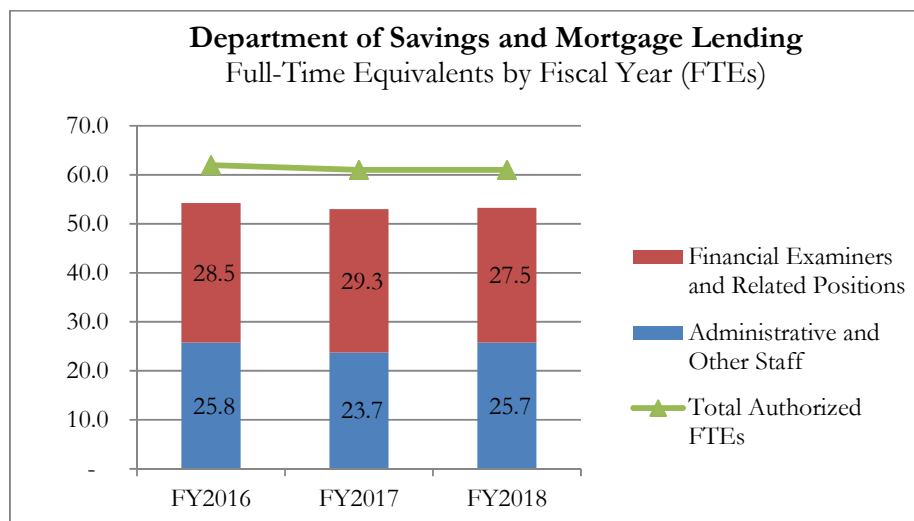
a. Funding Status/Audits/Financial Reporting

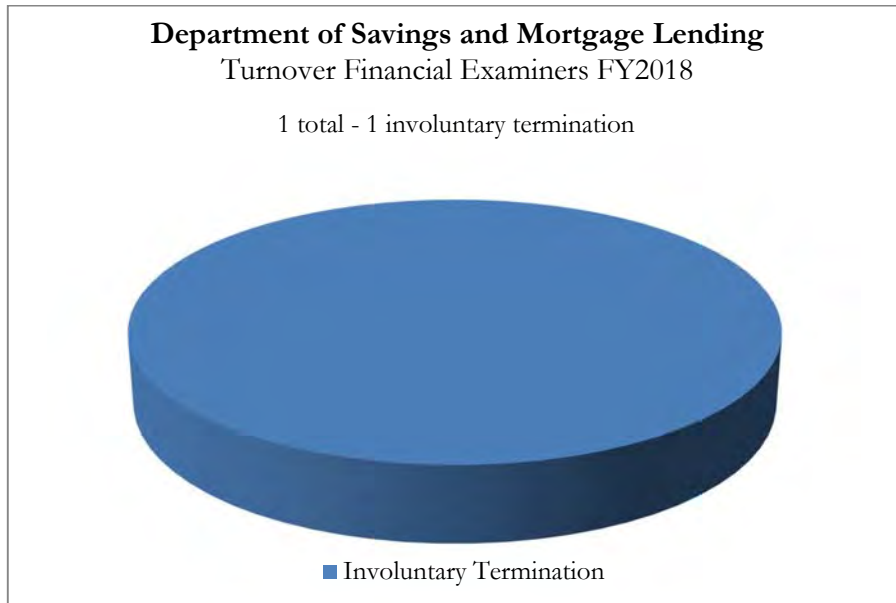
Funding Status/Budget – Staff has closed out the FY18. The annual financial report has been submitted to the oversight agencies, as required, and published on the Department’s website.

b. Staffing

As of September 1, 2018, the Department was staffed at 51 regular employees – 50 full-time and one part-time with 60 FTEs available.

During the last quarter of the fiscal year, the Department had four separations – one retirement, one involuntary termination, and two voluntary resignations.





Below is the status of the Department's vacancies:

Vacancy Status	
HR Specialist III/IV	Open – Conducting Interviews
Financial Examiner I/II – Mortgage	Open - Reviewing applications
Investigator II - Licensing	Open - Reviewing applications
License and Permit Specialist II/III	Open - Collecting applications

c. Other Items

None

4. Legal Activities:

SOAH Cases:

The Department has had no contested hearings before SOAH, since the last report to the Finance Commission in August 2018.

Gift Reporting:

On August 20, 2018, the Department was informed by CSBS Education Foundation that the Board of CSBS had approved a grant for the Foundation's Cybersecurity training program. States that sent examiners to the January 2018 and April 2018 classes were given a refund of the registration fees paid. The amount of this refund was \$1,295.

Litigation:

Case No. D-1-GN-17-005803 Department of Savings and Mortgage Lending v. VPW & Associates LLC, et al.

On September 21, 2018, the Department obtained a Judgment through the Travis County District Court, against two of the four named defendants in this case. As a result of the Judgment, defendants Jonathan Price and the defendant entity VPW & Associates are enjoined from engaging in any residential mortgage loan origination activity. In addition, the two defendants are to pay \$10,850 in restitution to consumers and \$127,000 in administrative penalties.

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D.

**Office of Consumer Credit
Commissioner**

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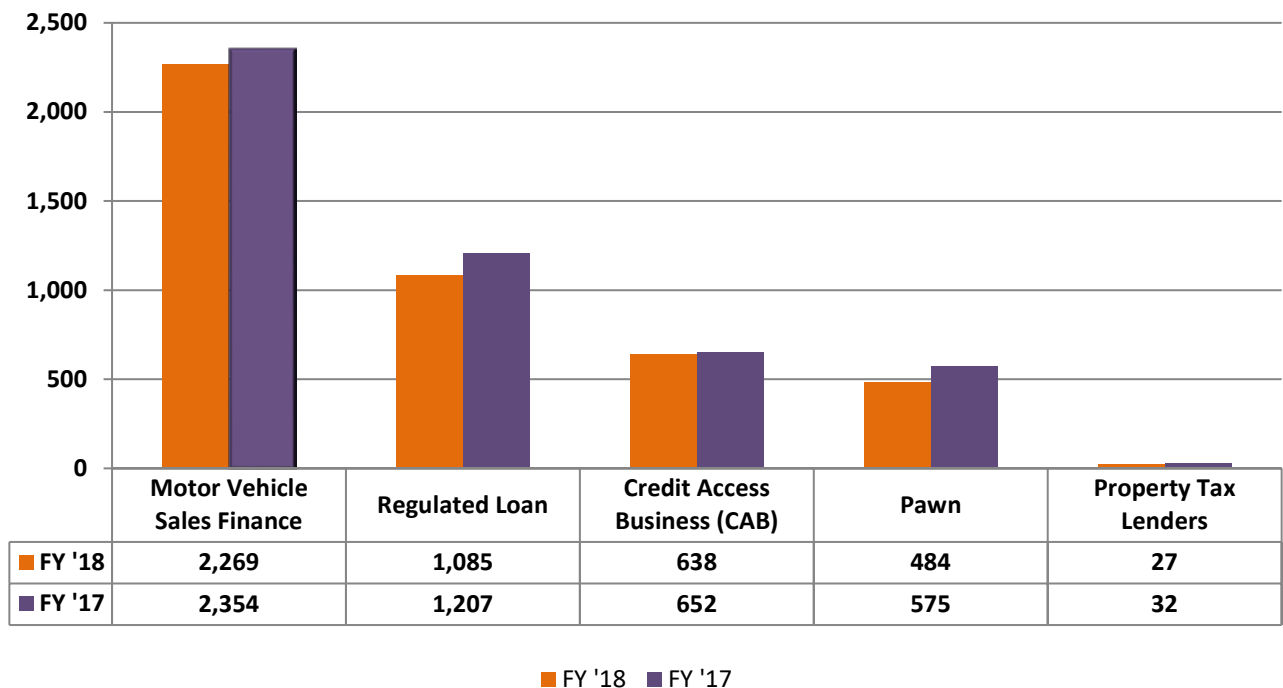
Consumer Protection and Consumer Assistance Report

Rudy Aguilar, Director of Consumer Protection

The Consumer Protection group exceeded the FY 2018 examination completion goal of 4,200, conducting a total of 4,503 examinations. Several factors contributed to the department's productivity in the final weeks of FY 2018, with the postponement of hiring the next class of entry level examiners being a major factor.

Four new examiners and a financial analyst have been recruited and hired; they are in the process of completing initial training at this time. There are four remaining positions that will be hired and trained in the October/November time frame. After completing the initial classroom training, the new examiners will be in field training for the next three to four months, which will affect overall productivity in that time frame.

Examinations Conducted: Sept - Aug Fiscal Year Comparison

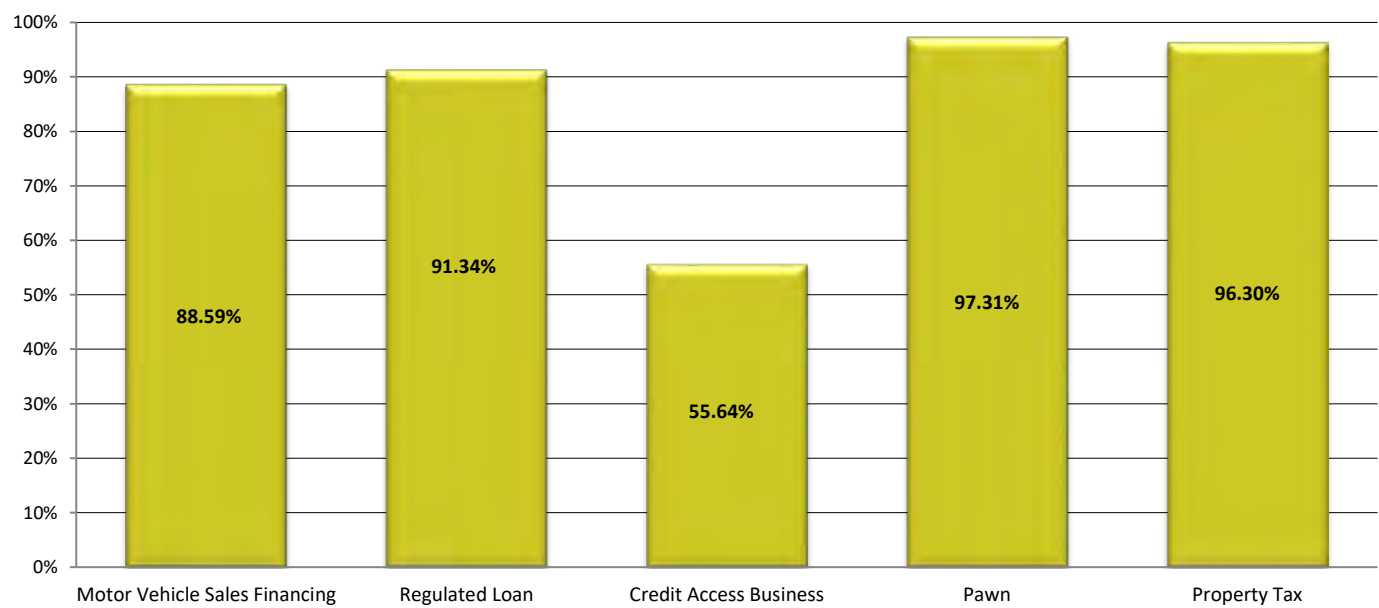


Four examiners attended the National Association of Consumer Credit Administrators (NACCA) examiner training school held in Fort Lauderdale, Florida Sept. 10-14, 2018.

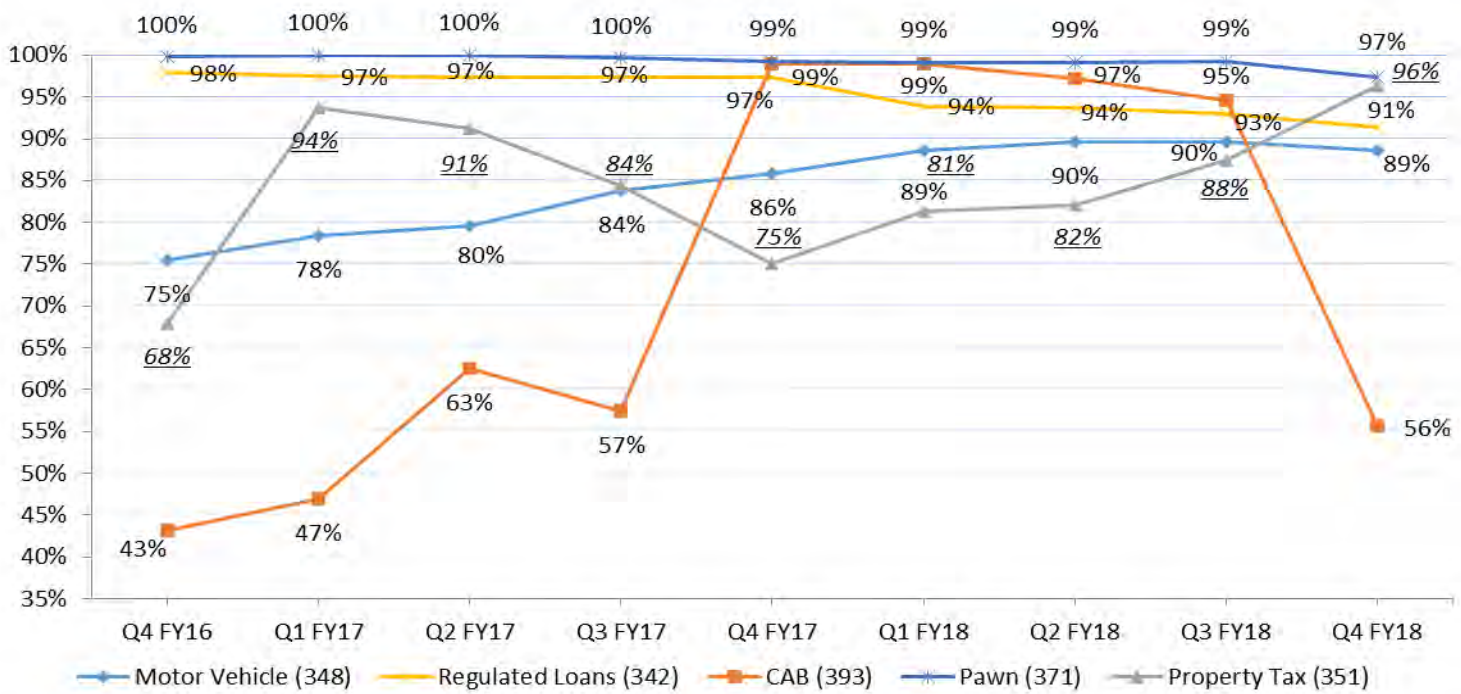
Senior examination staff Joseph Adamek and Christine Graham presented at the TxDMV Dealer Training Seminar held in Austin August 15, 2018.

The following two charts exhibit the acceptable level of compliance of examinations during FY 2018. Four of the five license types met the FY 2018 goal. The fifth license type was impacted by enterprise exams finalized at the end of the fourth quarter.

Acceptable Level of Compliance FY '18 (Sept 2017 - Aug 2018)



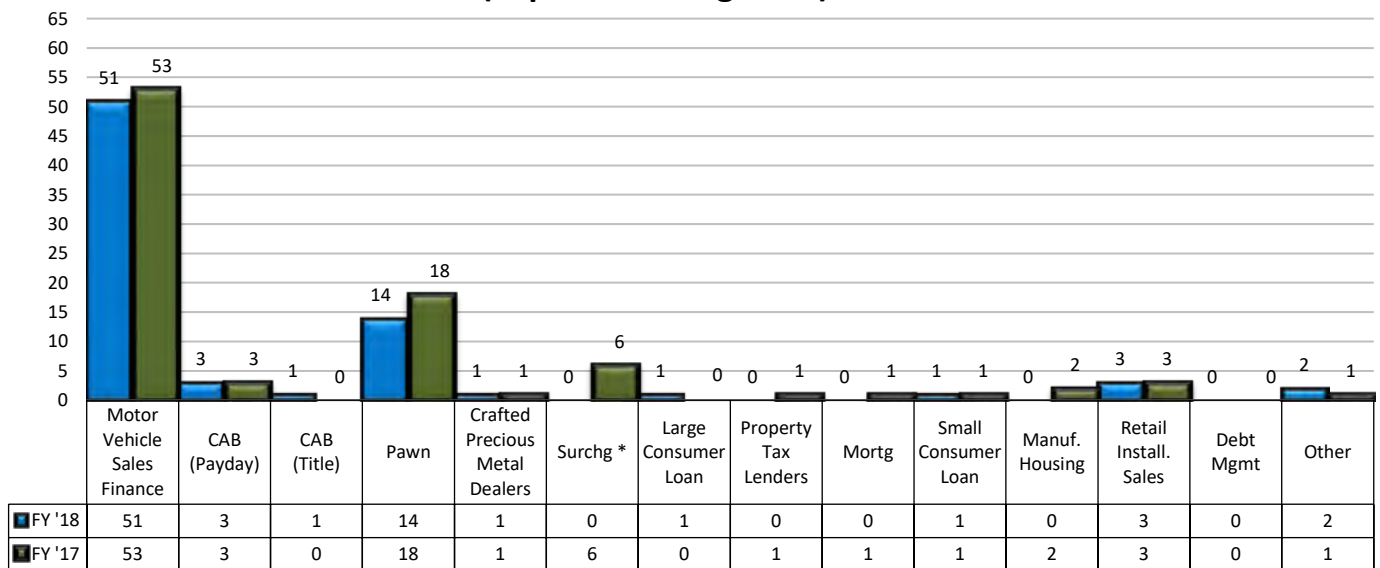
Acceptable Compliance Levels - Trailing 12 Months (at quarter end)



Investigations

The agency completed 77 investigations, 96% of our FY 2018 goal of 80 investigations. Motor Vehicle Sales Finance was the largest category with unlicensed activity and repossessions as the top two issues.

Investigations Completed FY '18 (Sept 2017 - Aug 2018) Total: 77 FY '17 (Sept 2016 - Aug 2017) Total: 90

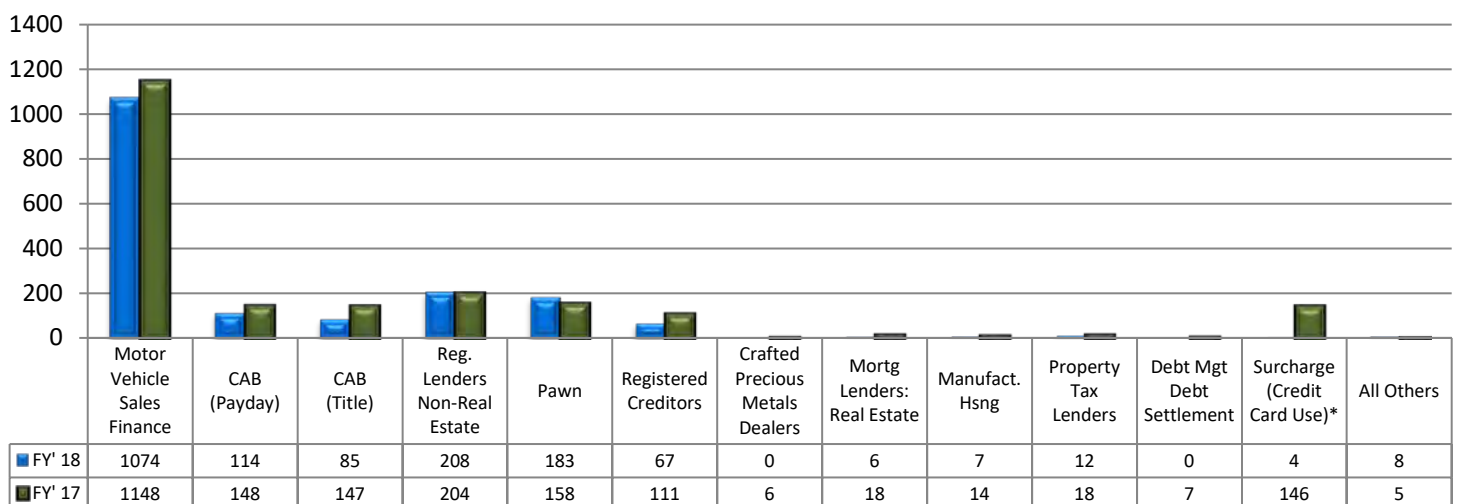


*Surcharge no longer regulated by OCCC

Consumer Assistance

There was a 17% decrease in complaints from FY 2017 to FY 2018. Additionally, credit card surcharge complaints are now under the authority of the Texas Attorney General. MVSF complaints were down by 6.4% and CAB (Payday and Auto Title) complaints were down by 32.5%. Positive economic indicators for this period may have had an impact on the decrease in consumer complaints across all categories.

Complaints Processed FY '18 (Sept 2017 - Aug 2018) Total: 1,768 FY '17 (Sept 2016 - Aug 2017) Total: 2,130

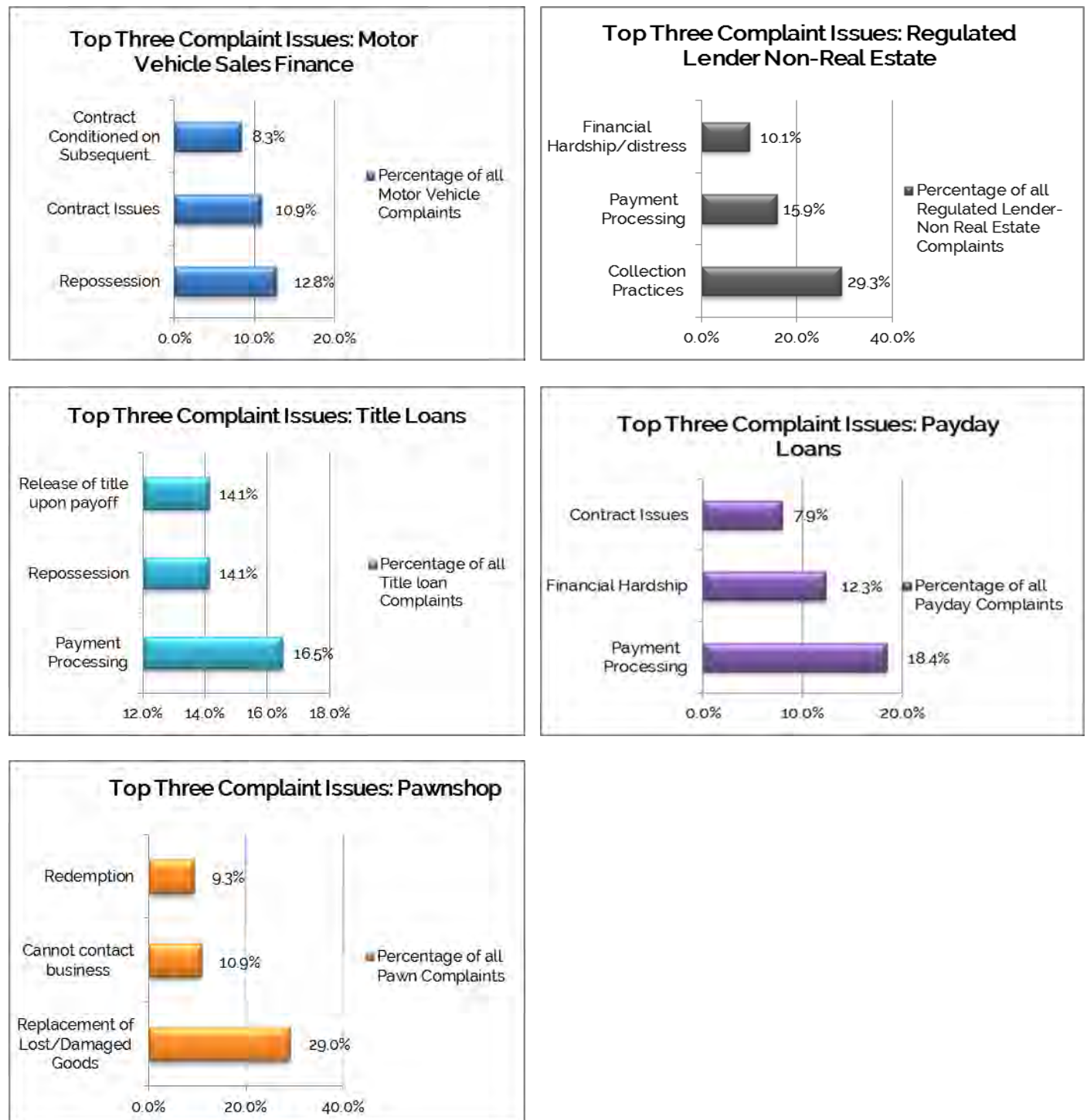


*Surcharge no longer regulated by OCCC

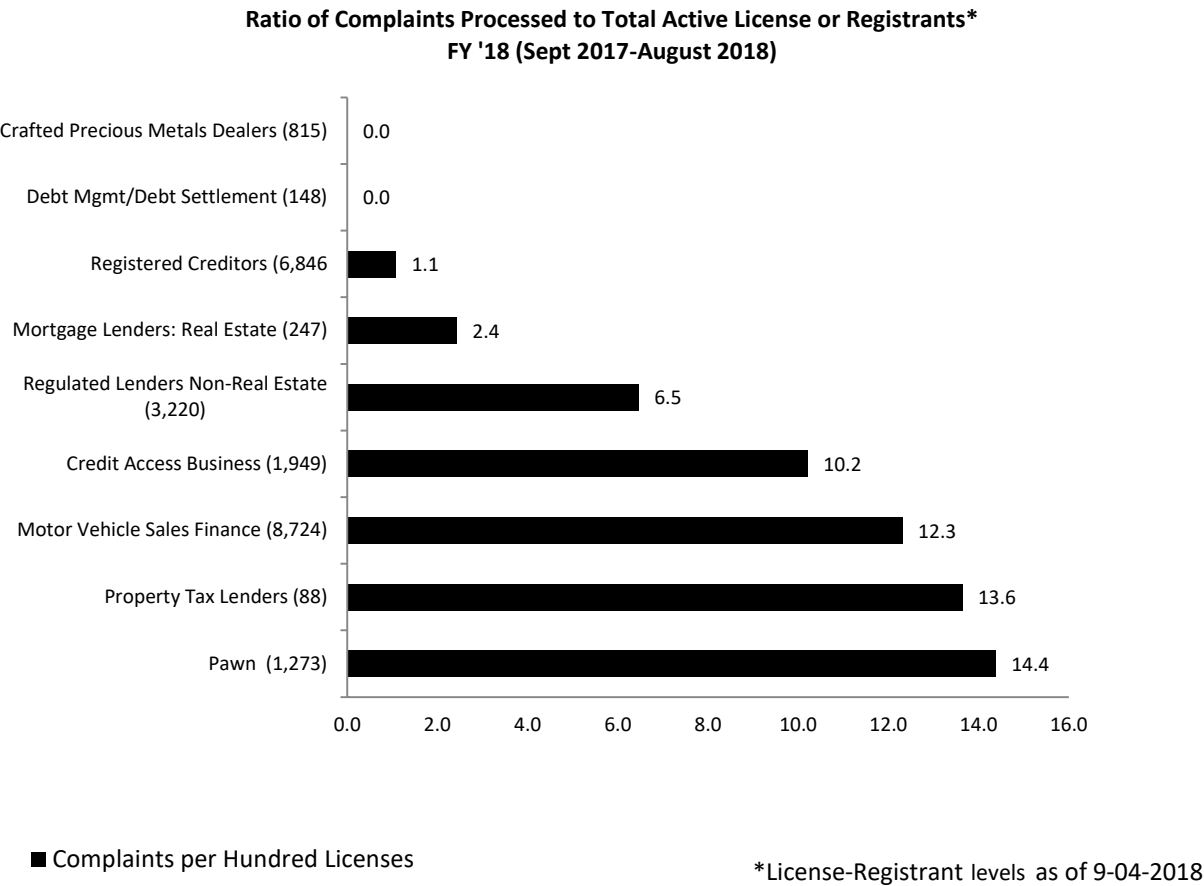
The top four areas of complaints are (1) Motor Vehicle Sales Finance (MVSF), (2) Regulated Lenders Non-Real Estate, (3) Credit Access Business (CAB) and (4) Pawn.

MVSF complaints were the largest complaint category at 60.7%. The second largest number of complaints came from Regulated Lenders Non-Real Estate at 11.8%. The third largest category of complaints came from CAB complaints at 11.3% collectively; separately, these are 6.4% for payday loans and 4.8% for title loans. The fourth largest category was Pawn at 10.4% complaints.

Each of the following charts represents the three top complaint areas per license type:



Comparison of complaints processed to the number of active license or registrant population is noted on the chart below. The highest ratio involved Pawn followed by Property Tax Lending as the second highest, MVSF as the third and Credit Access Business as the fourth highest.



CAB Reporting Update

Summaries of all reports through the second quarter of 2018 are available on the OCCC website. Presented are selected statistics of January – June (Q1 – Q2) reports through the years. The majority of new loans now have multiple scheduled payments. Depending on the loan structure, the multiple payments could either be principal reducing or fee and interest only with the principal due at maturity. Also presented in this chart, is the fee charged per product that takes into account the term of the loan.

Data Highlights (All Loan Types) Q1 & Q2	2018	2017	2016	2015	2014	2013
Number of new payday loans	1,000,386	1,044,152	1,064,650	1,085,393	1,100,247	1,200,991
Number of new auto title loans	149,006	129,322	133,881	159,680	206,235	241,267
Percentage of payday loans due in multiple installments	50%	45%	41%	38%	32%	20%
Percentage of auto title loans due in multiple installments	55%	45%	40%	23%	17%	13%
Number of vehicles repossessed under all auto title loans	16,620	15,162	15,702	18,575	20,879	18,498
Total number of locations reporting activity	1,832	1,817	2,002	2,575	3,033	3,176

Payday Loans Q1 & Q2	Single Installment			Multiple Installment		
	2018	2017	2016	2018	2017	2016
Number of consumers obtaining loans	346,365	409,870	453,527	441,335	416,764	385,752
Number of new loans	502,600	577,829	631,906	497,786	466,323	432,744
Number of refinances on new loans in the quarter ¹	305,052	377,451	410,463	37,969	50,897	33,810
Number of total refinances ²	778,715	939,831	1,018,289	129,207	137,009	133,418
Average loan amount	\$471	\$461	\$456	\$610	\$569	\$563
Average fee per \$100 borrowed	\$23.99	\$23.94	\$23.73	\$140.80	\$149.98	\$165.50
Average original term (in days)	22	20	17	144	145	159
Average Fee Converted to a Daily Rate ³	1.11%	1.23%	1.36%	1.03%	1.03%	1.04%

Title Loans Q1 & Q2	Single Installment			Multiple Installment		
	2018	2016	2015	2018	2016	2015
Number of consumers obtaining loans	58,637	63,347	71,271	76,982	53,628	51,028
Number of new loans	67,486	71,672	80,121	81,520	57,650	53,760
Number of refinances on new loans in the quarter ¹	44,352	46,031	50,146	9,525	9,429	7,735
Number of total refinances ²	294,655	338,540	428,451	64,719	49,053	17,362
Average loan amount	\$1,307	\$1,383	\$1,226	\$1,158	\$1,044	\$1,420
Average fee per \$100 borrowed	\$16.09	\$16.41	\$16.59	\$115.96	\$131.58	\$91.78
Average original term (in days)	30	30	29	155	156	165
Average Fee Converted to a Daily Rate ³	0.54%	0.55%	0.56%	0.75%	0.84%	0.56%

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

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

³Based on reported averages, a consumer would pay this percentage per day based on the average term of the loan. The APR is approximated by multiplying this rate by 365 for loans where the principal is paid in one installment at the end of the average term (e.g. fee only payments until the final payment). Alternatively, the APR would be significantly higher if the principal was reduced over multiple payments and the total fees remain the same. The method of earning fees varies by company and by store location within certain municipalities.



Licensing Report- October 2018

Mirand Diamond, Manager

Renewals

Registered creditor renewal has begun and the department hopes to see an increase from last year of registrants renewing online. Training and preparation for renewal of residential mortgage loan originators has already begun, and the department will also begin readiness for property tax lenders, credit access businesses and regulated lender renewal in the coming weeks.

Applications Processing

The department continues to work to diminish pending application volume for business licenses. Goals have been set and are monitored consistently to ensure progress is gradually being made. However management anticipates a significant increase in incoming applications in the next month, which could create an increase in pending application volume temporarily, but staff and management will work together to collaborate and prioritize processing. The department hopes to process business license applications in an average of 30 to 45 days in FY 2019.

Pawn employee applications remains above the pending benchmark. However staffing changes and system modifications should create an ability to increase output in Qs 1 and 2 of FY 2019.

Other Updates

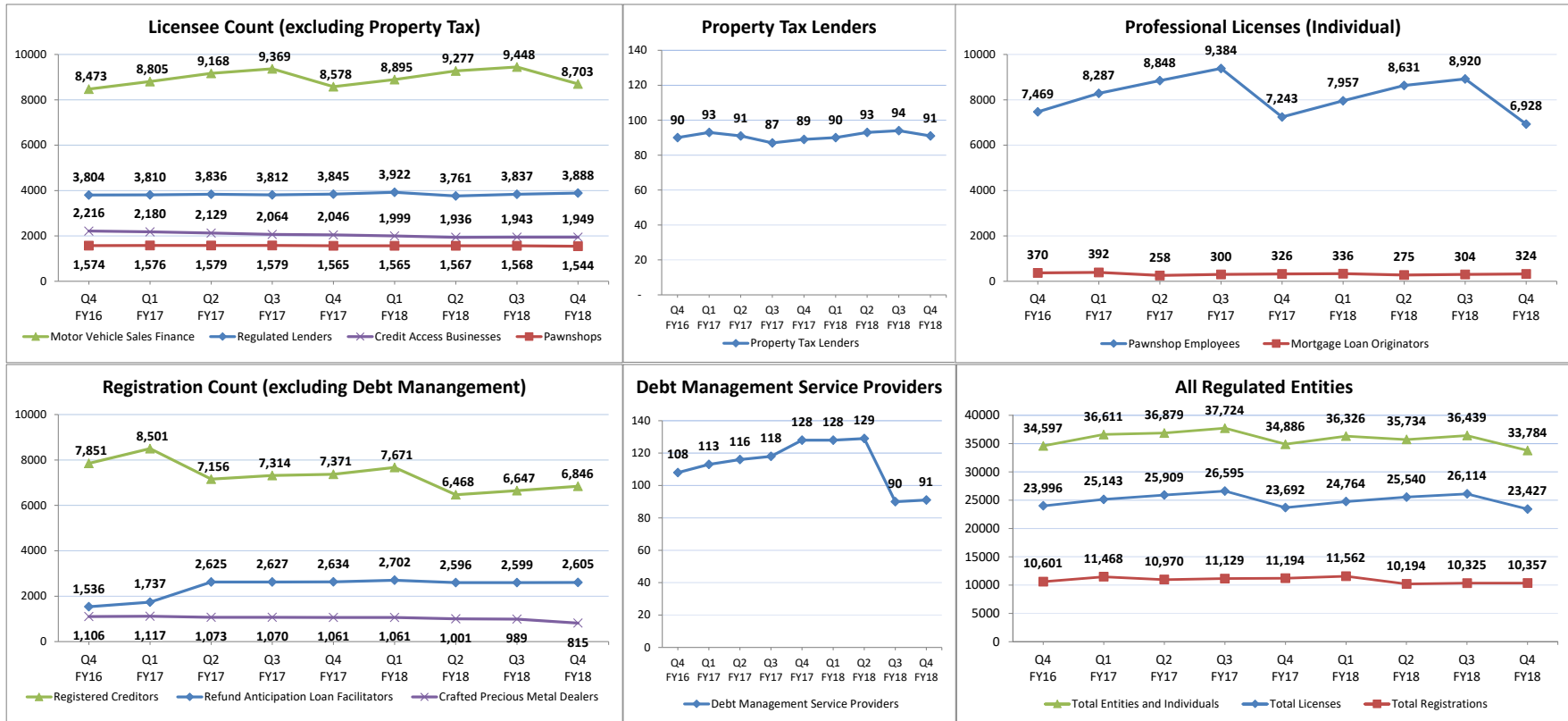
The licensing department has seen approximately 10% of crafted precious metals dealers create accounts in ALECS and submit registration applications as registrants continue to transition over from the DPS system.

Additionally the department will prepare for a modification in ALECS to implement two-factor authentication for external online users and will work to communicate with these users, provide technical support and craft clear, helpful messaging to ensure implementation goes smoothly.

Regulated Entity Population Trends

The following charts reflect the number of OCCC regulated entities at the end of each quarter for the 4th quarter fiscal year 16 to 4th quarter fiscal year 18.

Number of OCCC Regulated Entities Quarterly Comparison of FY16-18





COMMUNICATIONS, HUMAN RESOURCES & ADMINISTRATION REPORT

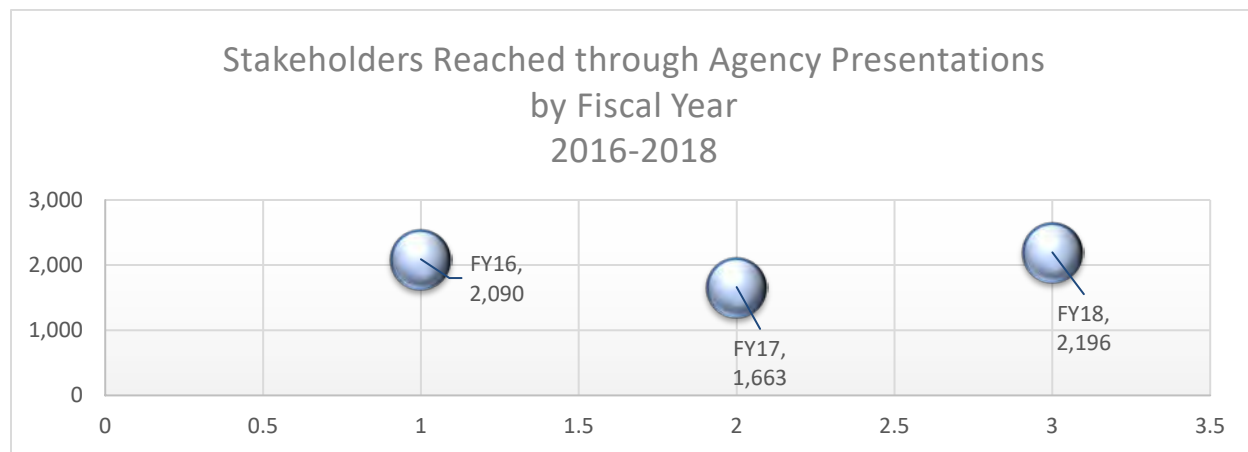
Juan V. Garcia, Director of Strategic Communications, Administration and Planning

COMMUNICATIONS

On August 29, 2018, the Sunset Advisory Commission met to deliberate on the issues from the previously heard Finance Commission Sunset Report released in April 2018. The Commission voted to approve most of the recommendations initially proposed from Sunset Staff, with a few exceptions.

All of the hearings for the Finance Commission Sunset Report have concluded, and the next step in the process will be to draft a Sunset bill. All Sunset bills go through the standard bill process, including referral to committee and a scheduled hearing in both the Senate and the House of Representatives. The bill will be deliberated in both chambers. If it passes, the Governor will have the opportunity to sign, veto, or allow the bill into law without his signature, just like all other bills. The 86th Regular Legislative Session begins on January 8, 2019.

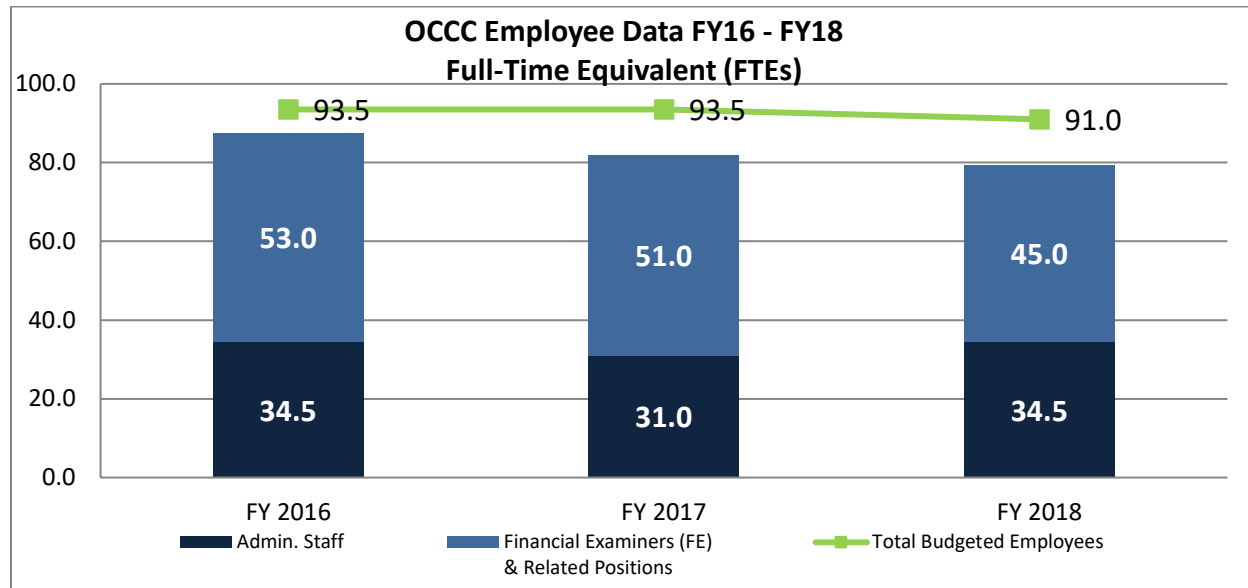
Throughout FY18, staff provided a combination of live presentations and communications through various channels to regulated entities. In the fourth quarter of FY18, staff presented to more than 850 industry participants regarding compliance matters and the regulatory role and responsibilities of the agency at training seminars hosted by other organizations. In total for FY18, 2,196 industry participants were addressed, which is 32% more than the 1,663 participants reached in FY17.



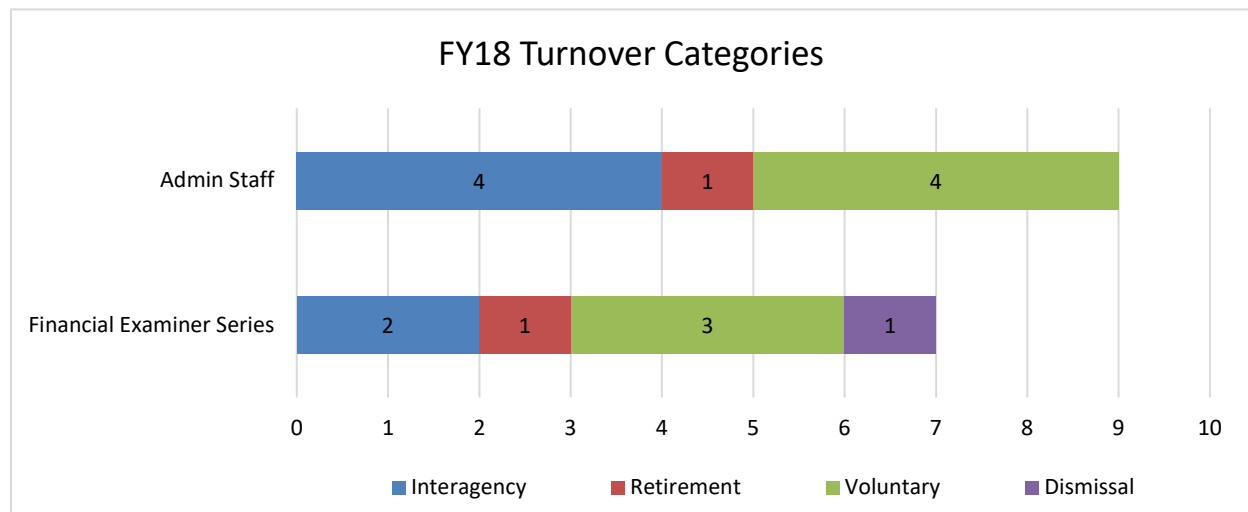
Other stakeholder communication goals accomplished included an industry stakeholder's e-newsletter, Industry Insight: Insider Resources for Regulated Lenders, featuring education and regulatory compliance issues. The e-newsletter contained emerging issues in the Agency's areas of regulation and communicated various topics of importance for Chapter 342 Lenders. The e-newsletter was distributed to more than 970 compliance officers registered within the ALECS Database. These 970 compliance officers represent more than 3,800 licensed locations. Also, a customer feedback module containing a short survey with five questions pertaining to: type of license or registration obtained; satisfaction with licensing transactions; navigation of the registration site and agency website; and overall experience with the agency was developed. The survey will be sent to them after completion of a renewal or registration to provide feedback during their process.

HUMAN RESOURCES

At the end of FY18, the OCCC was staffed with a total of 80 FTEs (full-time equivalent). The chart below shows a comparison of financial examiners, administrative staff and the total number of allowed FTEs.



The OCCC had a total of six interagency transfers, two retirements, seven voluntary resignations and one dismissal. The State of Texas excludes interagency transfers when reporting the overall ratio. At the end of FY18, the OCCC experience a turnover of 12.5%, excluding interagency transfers. When this category is included, the ratio rises to 20.0%. FY18 statewide ratios have not been published yet, however, for FY17, the state reported 18.6% turnover ratio compared to 11.8% for the OCCC. Below is a summary of the OCCC's turnover by category for FY18 including the Financial Examiner series.



ADMINISTRATION

FINANCIAL LITERACY

At the end of FY 2018, the Financial Literacy Specialist surpassed the yearly participation goal and provided financial education to 332 participants (102% of yearly goal). In addition, 37 contacts (123% of the yearly goal) were made with community and media organizations in efforts to expand financial education resources statewide. More than 3,000 pawnshop and consumer fact brochures were provided to entities across Texas in FY 2018.

Additionally, staff is exploring partnership opportunities with the Texas Jumpstart Coalition board. Texas JumpStart Coalition for Personal Financial Literacy is a non-profit coalition that believes young Texans need financial education to make informed decisions. The coalition raises public awareness of personal financial education in Texas, promotes financial education programs and acts as financial education resource to Texans.



Accounting & IT Reports

Accounting

The Accounting Department finalized and submitted the Annual Financial Report for 2018 by the given deadline and the payroll area completed the rollover in the payroll system to set it up for pay for FY19. The Accounting Department has begun discussing and preparing for year-end records disposition, moving some records as needed to make room for FY19 documents.

Information Technology

Physical Facilities

IT successfully supported OCCC operations through four significant events:

1. The internet firewall suffered an unpredictable hardware failure. Wifi hotspots were deployed around the Austin office to quickly restore partial internet capability. Full restoration of services was completed within 48 hours, including new hardware.
2. A full power-down to enable electrical facilities work was completed. Office systems were shut down smoothly, and all services were restored promptly following power-up.
3. Office cubicle redesign required temporary relocation, and subsequent return, of several personnel and computers. Operations and support maintained continuity throughout.
4. Also temporary but longer-term relocation of Consumer Assistance from their satellite office was completed. Office remodeling is ongoing, after which personnel and computers will be returned.

An internal audit by the State Office of Risk Management determined that nearly all of the surge protectors used for local electrical power distribution were aged beyond their specified lifetimes. While risk to equipment is small, new surge protectors have been acquired and will replace all units pre-dating 2015 manufacture.

Modernization

Upgrades to the Linux software systems on OCCC's servers is in progress. This will include an update to the GroupWise email system.

Development of OCCC's in-house Human Resources database is complete, and it has been released.

Security

KnowBe4 training courses on cybersecurity and data privacy were released to the OCCC workforce, who returned a completion rate of 98.7% (153 of 155 courses).

Two-factor authentication for ALECS access was thoroughly tested and activated for internal users. Since the second factor is exclusively delivered by email, the firewall failure and email system interruptus required a short-term deactivation, which served as an unintended, successful field test of the ease with which the two-factor security system can be disabled as needed. Upon restoration of email service, two-factor was re-activated successfully.

IT has acquired two new security products: one product "crawls" OCCC's web applications and automatically identifies and remediates vulnerabilities to protect from external threats; the second provides similar security

profiling – identification, classification, prioritization of vulnerabilities – for internal computers and network infrastructure.

OFFICE OF CONSUMER CREDIT COMMISSIONER
EXECUTIVE SUMMARY

As of August 31, 2018

	FY 2016	FY 2017	FISCAL YEAR 2018				
			1st QTR	2nd QTR	3rd QTR	4th QTR	FYTD
CONSUMER PROTECTION							
Monies Returned to Consumers (000)	13,657	20,593	2,158	1,078	689	1,197	5,122
Regulated Lenders Examinations	891	1,207	321	184	152	428	1,085
Property Tax Lender Examinations	25	32	12	5	3	7	27
Pawnshop Examinations	484	575	188	75	42	179	484
Motor Vehicle Examinations	2,181	2,354	555	673	457	584	2,269
Credit Access Businesses Examinations	707	652	18	43	170	407	638
CONSUMER ASSISTANCE							
Telephone Complaints Received	1,177	986	220	158	125	239	742
Written Complaints Received	878	1,111	246	267	295	265	1,073
Total Complaints Processed	2,160	2,130	446	455	374	493	1,768
% of Written Complaints Closed within 90 Calendar Days	94.46%	91.83%	83.69%	83.27%	82.47%	85.19%	83.72%
ADMINISTRATIVE ENFORCEMENT ACTIONS							
Originated	410	371	81	57	24	32	194
Finalized	459	389	29	76	39	56	200
LICENSING AND REGISTRATION							
Licenses							
Regulated Loan Licenses	3,804	3,845	3,922	3,761	3,837	3,888	3,888
Pawnshop Licenses	1,574	1,565	1,565	1,567	1,568	1,544	1,544
Pawnshop Employee Licenses	7,469	7,243	7,957	8,631	8,920	6,928	6,928
Commercial MV Sales Fin. Licenses	29	39	40	46	45	49	49
Motor Vehicle Sales Finance Licenses	8,444	8,539	8,855	9,184	9,403	8,654	8,654
Property Tax Loan Licenses	90	89	90	93	94	91	91
Mortgage Loan Originators	370	326	336	275	304	324	324
Credit Access Business Licenses	2,216	2,046	1,999	1,936	1,943	1,949	1,949
Registrations							
Registered Creditors	7,851	7,371	7,671	6,468	6,647	6,846	6,846
Crafted Precious Metal Dealers	1,106	1,061	1,061	1,001	989	815	815
Debt Management Service Providers	108	128	128	129	90	91	91
Refund Anticipation Loan Facilitators	1,536	2,634	2,702	2,596	2,599	2,605	2,605
Applications							
Business -- New	1,642	1,522	358	453	449	334	1,594
Business -- Change of Ownership	259	138	21	10	58	47	136
Pawnshop Employees -- New	3,253	3,133	832	850	524	929	3,135
HUMAN RESOURCES DATA							
Field Examiners Staffing	45	41	44	42	42	39	39
Total Staffing	86.5	82	86	83	83	80	80

OCCC Actual Performance for Output/Efficiency Measures

Fiscal Year 2018

For Period Ending February 2018

Type/Strategy/Measure	2018 Target	2018 Quarter	2018 YTD	Percent of Annual Target	
Output Measures-Key					
1-1-1 COMPLAINT RESOLUTION					
1. # COMPLAINTS CLOSED					
Quarter 1	2,100	440	440	20.95%	
Quarter 2	2,100	452	892	42%	*
There are several elements affecting the number of resolved complaints falling short of the percent annual target. The OCCC has noted a combined decrease of 26.1% in CAB complaints for this period. This is attributed to a decrease in CAB locations. Additionally, effective September 1, 2017, the OCCC no longer has enforcement authority over credit card surcharge complaints. This has resulted in 41 fewer credit card surcharge complaints (95.3% decrease) for this period.					
Quarter 3	2,100	385	1,277	60.81%	*
The OCCC noted an overall trend in decreased consumer complaints. A decrease in consumer financial complaints has also been documented in recent Consumer Financial Protection Bureau data. Additionally, the Texas Department of Banking and the Texas Department of Savings and Mortgage Lending have experienced recent complaint level decreases.					
Quarter 4	2,100	485	1762	83.90%	*
There was a 17% decrease in complaints from FY 2017 to FY 2018. Partial reasons for the decline were the move of credit card surcharge complaints to the Texas Attorney General, and positive economic indicators for this period may have also had an impact.					
2. # INVESTIGATIONS CLOSED					
Quarter 1	80	14	14	17.50%	*
The number of closed investigations in the first quarter of fiscal year 2018 is lower than the pro rata goal for the following reasons. Effective September 1, 2017, the enforcement authority for credit card surcharges was transferred from the Office of Consumer Credit Commissioner to the Office of the Attorney General. There are no more investigations for this product category. Additionally, the largest investigation category has historically been Chapter 348 investigations. For the past three years, this product category has averaged 56.6% of all investigations closed. From fiscal year 2016 to fiscal year 2017, there was a 26% drop in unlicensed Chapter 348 complaints received by the agency. These complaints often result in investigations. Finally, all areas of examination acceptable level of compliance are trending upward. The higher levels of compliance across the regulated industries results in fewer investigations into possible violations of the Texas Finance Code or applicable regulations.					
Quarter 2	80	17	31	39%	*
The number of closed investigations for the first two quarters of fiscal year 2018 is lower than the pro rata goal for the following reasons. The enforcement authority for credit card surcharges was transferred to the Office of the Attorney General. A large fraction of investigations originate as consumer complaints. Several key complaint categories are lower from the first two quarters of fiscal year 2018 as compared to the same time period in fiscal year 2017. However, the agency has seen a recent increase in issues that will be assigned investigations and staff anticipates reaching this measure target by the end of FY18.					
Quarter 3	80	27	58	72.50%	
Quarter 4	80	19	77	96.25%	
2-1-1 EXAMINATION AND ENFORCEMENT					
1. # COMPLIANCE EXAMINATIONS PERFORMED					
Quarter 1	4,200	1,094	1,094	26.05%	
Quarter 2	4,200	980	2,074	49%	
Quarter 3	4,200	824	2,898	69%	*
Several enterprise level examinations, which include large numbers of licensed locations, have completed their field work and are in the process of finalizing examination reports.					
Quarter 4	4,200	1,605	4,503	107.21%	*
Examinations completed for the 2018 fiscal year exceeded the goal due to several factors. Hiring and training of seven vacant examiner positions was postponed to maintain the productivity. Newly hired examiners require significant senior staff commitment and the following field training requires experienced field examiner resources. Additionally, several enterprise examinations were completed ahead of the estimated completion dates.					

2-2-1

LICENSING

1. # BUSINESS APPLICATIONS PROCESSED

Quarter 1	1,600	358	358	22.38%
Quarter 2	1,600	453	811	50.69%
Quarter 3	1,600	449	1260	78.75%
Quarter 4	1,600	334	1594	99.63%

2. # PAWN EMPLOYEE LICENSE APPLICATIONS PROCESSED

Quarter 1	2,800	832	832	29.71%
Quarter 2	2,800	850	1,682	60% *

While the department processed a high number of pawn employee applications in the first half of FY 2018, this number will likely even out through the rest of the fiscal year due to staffing changes and increased incoming application volume.

Quarter 3	2,800	524	2,206	78.79%
Quarter 4	2,800	929	3,135	111.96% *

The department was able to process more pawn employee applications in FY 2018 due to a temporary increase in staff and an increase in online application submission.

3-1-1

CONSUMERS RECEIVING FINANCIAL EDUCATION

Quarter 1	325	59	59	18.15% *
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The first quarter of FY 2018 required heavy concentration on preparing and reviewing TFEE Grant templates and reports, and selecting new recipients for the third cycle. In addition, attendance at the one of the three financial education workshops conducted in Q1 was lower than anticipated. The financial education department attempts to recruit groups of 20 or more; however the agency is committed to providing resources to all organizations regardless of their program size. With the new TFEE funding cycle commencing January 1, 2018, staff will be able to focus on achieving financial education goals by the end of Q2.

Quarter 2	325	107	166	51.08%
Quarter 3	325	141	307	94.46% *

Scheduling was focused on the latter part of the fiscal year due to TFEE activities in the first two quarters. Attendance has been consistent and therefore reflects the current number of attendees. The department is confident the goal will be met by the fourth quarter.

Quarter 4	325	25	332	102.15%
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* Varies by 5% or more from quarterly or year-end targets.

Actual Performance for Outcome Measures

Type/Strategy/Measure	2018 Target	2018 YTD	Percent of Annual Target
Outcome Measures-Key			
1-1	CONSUMER COMPLAINTS		
	1. % COMPLAINTS RESOLVED WITHIN 90 DAYS	95.00%	83.72%
	The Consumer Assistance department started FY 2018 with two vacancies which were filled in October 2017. However, in FY 2018 the department experienced another two vacancies and the loss of one FTE. The time needed to recruit new investigators and train them was one of the factors why this objective was not met. Nevertheless, the Consumer Assistance Department worked diligently to resolve complaints as expeditiously as possible and were able to resolve 92.1% of its written complaints within 120 days.		
2-1	ENSURE COMPLIANCE		
	1. % EXAMINATIONS IN COMPLIANCE	85.00%	85.57%
	2. MONIES RETURNED FROM LICENSEES	\$5,000,000	\$5,122,785

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

OCCC Actual Performance for Non-Key Measures

Fiscal Year 2018

For Period Ending August 2018

Type/Strategy/Measure	2018 Target	2018 YTD	Percent of Annual Target
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Non-Key Measures

A. CONSUMER PROTECTION

A-01-02	MONIES OR CREDITS RETURNED TO CONSUMERS-complaints/non licensees	\$15,000	\$4,000	26.67%
The projected restitution was not realized. The violations identified did not produce the projected amount of restitution. Monetary restitution from non-licensees has historically been a fraction of the overall monetary restitution to consumers reported out of this department. This amount is difficult to forecast and is highly variable.				
A-02-03	% OF LICENSEES EXAMINED ANNUALLY	25%	29.19%	116.76%
A-02-04	% OF RE-EXAMS RESULTING IN ACCEPTABLE COMPLIANCE RATING	80%	87.00%	108.75%
A-02	NUMBER OF ENFORCEMENT ACTIONS TAKEN	300	200	66.67%
Due to legislative changes, the agency experienced a net reduction in documentary fee actions of 85. Also, because of enhanced communication with licensees, the agency achieved greater compliance with reporting requirements before matters were referred for enforcement.				
A-03	NUMBER OF RE-EXAMINATIONS PERFORMED	400	377	94.25%
Follow-up examinations are affected by the timeliness of licensees completing examination "Special Instructions". Several follow-up examinations have been delayed due to requests by licensees to extend follow-up deadlines. The agency conducted 377 follow-up examinations during FY 2018, 94.25% of the established fiscal goal. Three additional follow-up examinations would have achieved the 95% fiscal goal.				

B. LICENSING AND REGISTRATION

B-01-01	AVERAGE PROCESSING TIME (DAYS) FOR LICENSE APPS	30	61	203.33%
In FY 2018 the licensing department processed applications in an average of 61 days, however 64% of applications were processed with in 60 days of receipt to the agency. This is due to training new staff and the department rebounding from some senior staff members retiring or departing the department. The department anticipates that application processing time frames will diminish in FY 2019.				
B-01-02	AVERAGE PROCESSING TIME (DAYS) FOR PAWNSHOP EMPLOYEE APPS	30	53	176.67%
Average processing time frames for pawn employee applications was higher than anticipated due to staffing changes, an increase in incomplete applications being submitted and notification issues. The department anticipates that application processing time frames will diminish in FY 2019.				
B-01-03	AVERAGE PROCESSING TIME (DAYS) FOR RMLO APPS	15	22	146.67%
Approximately 90 RMLO applications were processed in an average of 22 days in FY 2018. Enhanced prioritization and process improvement will diminish these time frames in FY 2019.				
B-03	NUMBER OF ADMINISTRATIVE HEARINGS CONDUCTED	5	3	60.00%
Some hearings docketed were resolved informally.				
B-04	NUMBER OF REGISTRATIONS PROCESSED	10,500	10,357	98.64%
B-04	NUMBER OF RMLO APPS PROCESSED	175	90	51.43%
The department received fewer RMLO applications than anticipated in FY 2018. This is likely due to industry trends and sharing RMLO licensure with the Department of Savings and Mortgage Lending.				

C. FINANCIAL LITERACY

C-01-01	NUMBER OF TX CONSUMERS REACHED THROUGH AGENCY PARTICIPATION AT COMMUNITY EVENTS, PRESENTATIONS AND ONLINE RESOURCES	1,500	3,915	261.00%
C-02-01	TOTAL DOLLAR AMOUNT OF GRANT AWARDS DISTRIBUTED WITHIN THE GRANT CYCLE	\$150,000	\$115,639	77.09%
TFEE cycles are set on a calendar year and the Agency's cycles are reported by fiscal year. The 2nd TFEE cycle awarded two one-year and six two-year programs. At the beginning of the fiscal year only six of the grantees were still active. By the end of the fiscal year, the 3rd cycle had begun and not all recipients had begun program activities.				
C-01	NUMBER OF CONTACTS MADE WITH COMMUNITY ORGS AND MEDIA	30	36	120.00%
C-02	NUMBER OF CONSUMERS SERVED/TRAINED (TFEE)	50,000	37,486	74.97%
TFEE cycles are set on a calendar year and the Agency's cycles are reported by fiscal year. The 2016-17 cycle served 60,598 persons by 2017 calendar year end. As FY18 began, only 6 grantees were still active and new grant recipients had just begun programs, resulting in the lower number of Texans served in FY18.				

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%	133.00%
D-01	NUMBER OF PUBLIC AND INDUSTRY MEDIA SOURCES PUBLISHING COMPLIANCE ED MATERIAL DEVELOPED BY THE AGENCY	4	4	100.00%
D-02	NUMBER OF ADVISORY BULLETINS PUBLISHED	6	4	66.67%
The agency determined that four legal and compliance issues warranted advisory bulletins in FY18.				
D-03	NUMBER OF ENFORCEMENT ACTION AND CORRECTIVE ACTION SUMMARIES PUBLISHED	7	7	100.00%

E. HUB USAGE

E-01-01	PERCENT OF TOTAL DOLLAR VALUE OF PURCHASING AND PUBLIC WORKS CONTRACT AND SUBCONTRACTS AWARDED TO HUBS	23.50%	78.00%	331.91%
E-01	NUMBER OF HUB CONTRACTORS AND SUBCONTRACTORS CONTACTED FOR BID PROPOSALS	10	1	10.00%
A bid proposal was only needed for one purchase in FY18, which was under \$50,000.				
E-02	NUMBER OF HUB CONTRACTS AND SUBCONTRACTS AWARDED	2	2	100.00%
E-03	DOLLAR VALUE OF HUB CONTRACTS AND SUBCONTRACTS AWARDED	\$75,000	\$368,331	491.11%



Legal Department Report

Michael Rigby, General Counsel

October 2018

Enforcement Report

Contested Cases

During August 2018, the OCCC participated in one contested case hearing at the State Office of Administrative Hearings (SOAH). The matter is *Office of Consumer Credit Commissioner v. Hollimon Transportation Inc.* (SOAH Docket No. 466-18-4924), which is an appeal of a license application denial. The OCCC denied Hollimon Transportation's application for a motor vehicle sales finance license based on the criminal history of the business's sole owner, including convictions for fraud, deceptive trade practices, and operation of a security company without a license. The denial was also based on the applicant's failure to fully disclose this criminal history in the license application. A hearing on the application denial was held at SOAH on August 21. As of October 1, the OCCC is awaiting a proposal for decision from SOAH.

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, 2018. 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. *(Note this table's layout has been changed to reflect current case tracking and data formatting).*

Enforcement Actions Closed as of September 30, 2018				
	FYTD 2019	FY 2018	FY 2017	FY 2016
Injunction Actions				
Crafted Precious Metal Dealer	0	0	0	0
Credit Access Business	0	27	47	25
Debt Management Provider	0	5	2	1
Manufactured Housing	0	0	1	0
Motor Vehicle Sales Finance	2	19	31	18
Pawnshop	0	39	37	1
Pawnshop Employee	0	48	69	0
Property Tax Lender	1	2	2	16
Registered Creditor	0	1	1	1
Regulated Lender	1	12	37	88
Residential Mortgage Loan Originator	0	1	1	0
Total Injunction Actions	4	154	230	157

Administrative Penalty Actions				
Crafted Precious Metal Dealer	0	0	0	2
Credit Access Business	0	6	23	97
Debt Management Provider	0	1	0	1
Motor Vehicle Sales Finance	1	26	106	129
Pawnshop	0	6	3	40
Pawnshop Employee	0	0	0	1
Property Tax Lender	0	6	2	3
Regulated Lender	3	0	13	0
Residential Mortgage Loan Originator	0	0	0	1
Total Administrative Penalty Actions	4	45	147	273
Revocation / Suspension Actions				
Crafted Precious Metal Dealer	0	0	0	0
Credit Access Business	0	0	3	2
Motor Vehicle Sales Finance	0	1	2	9
Pawnshop	0	0	1	3
Pawnshop Employee	0	0	1	2
Property Tax Lender	0	0	0	0
Regulated Lender	0	0	1	1
Residential Mortgage Loan Originator	0	0	0	0
Total Revocation / Suspension Actions	0	1	8	17
Application Denial and Protest Actions				
Credit Access Business	0	0	0	0
Motor Vehicle Sales Finance	0	0	1	3
Pawnshop	0	0	1	1
Pawnshop Employee	0	0	0	7
Property Tax Lender	0	0	0	0
Regulated Lender	0	0	0	0
Residential Mortgage Loan Originator	0	0	1	0
Total App. Denial and Protest Actions	0	0	3	11
Total Actions Closed	8	200	388	458

From August 1, 2018 to September 30, 2018, the OCCC:

- closed 25 cases with final orders,
- opened six cases in order to assess administrative penalties,
- opened five cases in order to issue injunctions,
- participated in one contested case hearing, and
- dismissed one contested case hearing.

The OCCC has two hearings scheduled between October 1, 2018 and November 30, 2018.

Administrative Rule Report

At the October meeting, the OCCC is recommending readoption of the pawnshop rules subject to proposed amendments following the OCCC's periodic review. The pawnshop rule amendments proposed for publication are intended to ensure consistency, modernize language, and make technical corrections. Also at the October meeting, the OCCC is recommending adoption of amendments to the regulated lender

rules following the OCCC's periodic review. No comments were received in response to the regulated lender rule proposal.

Litigation

State of Texas v. Cash Auto Sales, Inc. and VIP Finance of Texas, Inc.

In 2017, the OCCC issued an Order to Cease and Desist, to Take Affirmative Action, and to Make Restitution against VIP Finance of Texas, Inc. The OCCC alleges that VIP violated the Texas Finance Code by engaging in unlicensed regulated lending, engaging in unlicensed motor vehicle sales finance, requiring the purchase of automobile clubs in credit transactions, and charging unreasonable automobile club fees.

VIP argues that the OCCC's enforcement action is barred because of a 1998 judgment, in which a Dallas district court held that VIP was not violating the Texas Credit Code and dismissed the State's claims against VIP. On February 8, 2018, VIP filed an application with the Dallas district court for a temporary restraining order, temporary injunction, and permanent injunction against the OCCC. The district court granted the temporary restraining order. The State filed a plea to the jurisdiction in the district court, arguing that the court does not have jurisdiction over the case. On February 22, the Dallas district court denied the State's plea to the jurisdiction and issued a temporary injunction.

The State has appealed both the denial of the plea to the jurisdiction and the temporary injunction to the Fifth Court of Appeals in Dallas. The State has filed its appellate brief arguing that the Dallas district court does not have jurisdiction over the case, and that the district court's temporary injunction is overly broad. VIP has filed its response brief, and the State has filed a reply brief. As of October 1, the case is ready to be set for oral argument.

The temporary injunction remains in effect during the pendency of the State's appeal to the court of appeals. The hearing that was originally scheduled before the State Office of Administrative Hearings (SOAH) has been abated.

The OCCC is represented in the district court and court of appeals by the Financial Litigation and Charitable Trusts Division of the Office of the Attorney General. The SOAH case number is 466-18-1803. The district court case number is DC-96-11528. The court of appeals case number is 05-18-00198-CV.

Office of Consumer Credit Commissioner v. Tim McMahan d/b/a Advantage Auto

In June 2016, the OCCC issued an injunction against Tim McMahan d/b/a Advantage Auto, alleging that Mr. McMahan engaged in unlicensed activity under Chapters 342, 348, and 393 of the Texas Finance Code. In June 2017, the OCCC issued an order assessing an administrative penalty for violating the injunction.

In October 2017, the Office of the Attorney General filed a lawsuit in Travis County district court against Mr. McMahan. The lawsuit requests a judgment ordering that Mr. McMahan pay an administrative penalty. A hearing on the merits is scheduled for October 16, 2018, in Travis County district court.

The OCCC is represented in the district court by the Financial Litigation and Charitable Trusts Division of

the Office of the Attorney General. The full style of the Texas case is *Texas Office of Consumer Credit Commissioner v/ Tim McMahan d/b/a Advantage Auto*. The case number is D-1-GN-17-005451, in the 98th District Court of Travis County, Texas.

Advisory Bulletins

From August 1, 2018 to September 30, 2018, the OCCC did not issue any advisory bulletins.

Official Interpretation Requests

From August 1, 2018 to September 30, 2018, the OCCC did not receive any requests for official interpretations under Chapter 14 of the Texas Finance Code. As of September 30, 2018, there were no pending requests for official interpretations under Chapter 14 of the Texas Finance Code.

Home Equity Interpretation Request

On September 28, 2018, the OCCC received a request for a home equity lending interpretation from Wolters Kluwer. The request deals with the provision at Article XVI, Section 50(g) of the Texas Constitution requiring a lender to provide the owner of homestead property with a disclosure at least 12 days before the loan is closed. The request asks “whether one copy of the notice is sufficient for all owners, or whether each owner should receive their own distinct copy of the notice.” The OCCC has forwarded the request to the other Joint Financial Regulatory Agencies (the Texas Department of Banking, the Texas Department of Savings and Mortgage Lending, and the Texas Credit Union Department). As of October 1, the agencies are reviewing the request to determine how to proceed.

Public Information Requests

From August 1, 2018 to September 30, 2018, the OCCC received 39 requests for information under the Texas Public Information Act, with no referrals to the Office of the Attorney General.

Gifts Received by the OCCC

From August 1, 2018 to September 30, 2018, the OCCC did not receive any gifts.

Rule Item/Purpose	Proposal Date	Adoption Date
<p>Rules for Regulated Lenders - Adopt Amendments & Repeal 7 TAC, Chapter 83, Subchapter A</p> <p>To ensure consistency with current licensing terminology, agency procedures, and streamlined processes; to provide flexibility to licensees; to modernize or remove obsolete language; and to make technical corrections</p> <p><i>Precomment draft distributed July 13, 2018</i> <i>Stakeholder meeting and webinar held July 26, 2018</i> <i>Official comment period ended October 1, 2018</i></p>	08/17/18	Presented for Adoption 10/19/18
<p>Rules of Operation for Pawnshops - Adopt Completed Rule Review; Proposed Amendments 7 TAC, Chapter 85, Subchapter A</p> <p>To conduct standard rule review under Tex. Gov't Code, §2001.039; to ensure consistency with current licensing terminology, agency procedures, and streamlined processes; to modernize or remove obsolete language; and to make technical corrections</p> <p><i>Precomment draft distributed September 17, 2018</i> <i>Official comment period on rule review ended September 17, 2018</i> <i>Stakeholder meeting and webinar held September 27, 2018</i></p>	10/19/18	

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D. OFFICE OF CONSUMER CREDIT COMMISSIONER

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments and a Repeal in 7 TAC, Chapter 83, Subchapter A, Concerning Rules for Regulated Lenders, Resulting from Rule Review

PURPOSE: The purpose of the amendments to 7 TAC, Chapter 83, Subchapter A is to implement changes resulting from the commission's review of the subchapter under Texas Government Code, §2001.039. The amendments and repeal fulfill the following four purposes: 1) ensure consistency with current licensing terminology, agency procedures, and streamlined processes; 2) provide flexibility to licensees; 3) modernize or remove obsolete language; and 4) make technical corrections.

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

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

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

The Finance Commission of Texas (commission) adopts amendments to 7 TAC, Chapter 83, Subchapter A, §§83.102, 83.302, 83.304, 83.404, 83.505, 83.606, 83.707, 83.802, 83.828, 83.829, 83.833, and 83.835, concerning Rules for Regulated Lenders. The commission also adopts the repeal of 7 TAC §83.408.

The commission adopts the amendments to §§83.102, 83.302, 83.304, 83.404, 83.505, 83.606, 83.707, 83.802, 83.828, 83.829, 83.833; and adopts the repeal of §83.408 without changes to the proposed text as published in the August 31, 2018, issue of the *Texas Register* (43 TexReg 5619).

The commission received no written comments on the proposal.

The adopted changes affect rules contained in Division 1, concerning General Provisions; Division 3, concerning Application Procedures; Division 4, concerning License; Division 5, concerning Interest Charges on Loans; Division 6, concerning Alternate Charges for Consumer Loans; Division 7, concerning Interest and Other Charges on Secondary Mortgage Loans; Division 9, concerning Insurance; and Division 10, concerning Duties and Authority of Authorized Lenders.

In general, the purpose of the adoption regarding to 7 TAC, Chapter 83, Subchapter A is to implement changes resulting from the commission's review of subchapter under Texas Government Code, §2001.039. The notice of intention to review 7 TAC,

Chapter 83, Subchapter A was published in the July 6, 2018, issue of the *Texas Register* (43 TexReg 4563). The commission received no comments in response to that notice.

The agency distributed an early draft of proposed changes to interested stakeholders for review and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC did not receive any informal written precomments on the rule text draft. The agency believes that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

The adopted amendments and repeal fulfill the following four purposes: 1) ensure consistency with current licensing terminology, agency procedures, and streamlined processes; 2) provide flexibility to licensees; 3) modernize or remove obsolete language; and 4) make technical corrections. Any regulated lender rule not included in this adoption will be maintained in its current form.

The individual purposes of the adopted amendments to each section, as well as the purpose of the adopted repeal, are provided in the following paragraphs. Specific explanation is included with regard to rule changes to ensure consistency, provide flexibility, and modernize language. The remaining changes throughout all sections consist of minor revisions to formatting, grammar, punctuation, and other technical corrections. The technical changes will be summarized more generally.

In §83.102, the definition of "Interpretation letter" in former paragraph (14) has been deleted, as this definition is not used in the subchapter. As a result, the remaining definitions have been renumbered accordingly.

The agency's acronym "OCCC," defined in adopted §83.102(17) (former §83.102(18)) replaces the use of "commissioner" in three instances in the introductory language of §83.302. The agency believes that the use of "OCCC" will provide better clarity to the rules when the context calls for action by the agency, as opposed to the commissioner specifically. In addition to §83.302, the following rules include amendments replacing "commissioner" with "OCCC": §83.802(b), concerning Authorized Property Insurance; and §83.835, concerning Annual Report.

Section 83.302, concerning Filing of New Application, includes numerous adopted rule changes to ensure consistency with current agency procedures. In §83.302(1)(A) and (1)(B), changes streamline the introductory wording (referred to as "taglines") and grammar to more closely track the OCCC's online licensing portal, and to no longer refer to specific titles used on paper licensing forms. In particular, a statement that the "responsible person is also known as the location contact" has been added to §83.302(1)(A)(ii), to further the use of online terminology.

Adopted changes are included in §83.302(1)(A)(iii) regarding the signature on a new license application. These changes involve the deletion of unnecessary language, allowing for the electronic signature of an authorized individual of the

applicant, without reference to particular titles of the person signing.

An adopted revision throughout §83.302(1)(B) relates to the percentage of ownership that must be disclosed by various entities. In the former rule, these percentages are 5%. In evaluating the appropriate level of disclosure necessary for the agency to properly assess principal parties, the agency had determined that 10% would achieve the needed information. Therefore, the amendments align the rule with current agency practice and provide consistency in disclosure of ownership for new applications with transfer applications found in §83.303. Consequently, 5% has been replaced with 10% in the following proposed provisions: §83.302(1)(B)(iii)(II), (1)(B)(iv), and (1)(B)(v). A parallel change has also been adopted in §83.304, concerning Change in Form or Proportionate Ownership, as found in subsection (c)(1).

Adopted amendments updating licensing terminology continue in §83.302(1)(C) through (1)(K), (2)(A), and (3), to better align the rule with the OCCC's online portal. In addition, §83.302(1)(G) concerning employment history includes an amendment to remove the phrase "with no gaps." As the rule still requires "a continuous 10-year [employment] history," the deleted language is not necessary.

Section 83.302(1)(D) contains several adopted amendments to ensure consistency with current agency procedure. First, the term "registered agent" will replace "statutory agent." These terms have been used synonymously, but "registered agent" is used by the Texas Secretary of State (SOS) and has become the more common term. Second, a natural person will require simply a different address from the licensed

location, as opposed to the outdated requirement of a physical residential address. Third, a company's secretary may submit certification identifying an agent that differs from the SOS filing. Furthermore, these amendments are consistent with rule revisions previously adopted for other industries regulated by the agency and will provide consistency in the licensing process.

In §83.302(1)(J)(i), an adopted amendment adds language requiring all entity types to provide a bank confirmation if requested by the agency. This amendment memorializes the long-standing OCCC licensing procedure to obtain bank confirmations if necessary to confirm account balance information with financial institutions of applicants.

Section 83.302(2)(A)(iv) relates to the fingerprints of individuals who have previously been licensed by the agency and who are principal parties of currently licensed entities. Adopted amendments in §83.302(2)(A)(iv) update the fingerprinting requirements and provide increased flexibility so that applicants will not need to resubmit if acceptable fingerprints are on file. These amendments correspond to changes approved by the commission in the OCCC's other licensed areas and will provide consistency across regulated entities.

Regarding the entity documents under §83.302(2)(C), several adopted amendments update the documents required for new applications, increasing the efficiency of the licensing process. The provisions under former (2)(C)(ii)(II) and (III), and (2)(C)(iv)(II) and (III) required that applicants provide copies of the relevant portions of bylaws, operating agreements, and minutes addressing the number and

election of officers and directors. The agency recognizes that these documents are only necessary in limited situations. Thus, these provisions have been shifted to the end of each respective clause and language has been added to reflect that such documents should only be provided upon request. Additionally, the requirements in former §83.302(2)(C)(ii)(IV)(-a-) and (2)(C)(iv)(IV)(-a-) have been deleted. These provisions required applicants to provide minutes electing the statutory agent. The agency has streamlined the process for verification of the registered agent by certification from the secretary of the company.

Further, these adopted changes align the rule with the OCCC's online portal, listing the required documents first, removing documents no longer required, and listing last documents to only be provided "if requested" by the agency. Parallel changes are adopted for corporations in §83.302(2)(C)(ii), and for limited liability companies in §83.302(2)(C)(iv).

An adopted amendment in §83.302(2)(C)(viii) allows applicants to submit a "certification of formation." This language is similar to that approved by the commission in the OCCC's other regulated areas. The amendment provides flexibility to applicants that may wish to submit this type of document, as opposed to an entity-specific formation document (e.g., for a corporation, articles of incorporation).

Section 83.304 describes what action a licensee must take when it changes the proportion of ownership in or the form of the licensed entity and lists the time frame within which the licensee must notify the agency. The adopted changes in §83.304(b) revise grammar and formatting concerning

mergers. Separate paragraphs have been created to distinguish the requirements for merger of a licensee, merger of a parent entity, and a merger beyond the parent level. These amendments do not change what is required for each type of merger, but are intended to provide clarity and improve readability.

Section 83.404 describes the effect of criminal history information on applicants and licensees. In §83.404(f)(2), unnecessary language has been deleted related to a citation update.

Section 83.408, concerning License Reissuance, has been repealed. Upon reissuance of a license, this rule requires the licensee to return to the agency the license certificate held prior to the reissuance. With the OCCC's online portal, licensees print their own licenses and the agency no longer issues license certificates. As a result, §83.408 has become obsolete.

In §83.505, concerning Deferment, adopted new subsection (j) provides important amendments that increase flexibility for licensees during times of natural disasters. With recent hurricanes and floods, the agency has recognized the need for licensees to assist borrowers in these difficult situations. In accordance with agency practice, the addition of §83.505(j) memorializes in the rule the deferment procedures the agency has recently permitted during natural disasters. This disaster exception allows the licensee to deliver the deferment notice without obtaining the borrower's signature if the borrower resides in an area designated as a state of disaster, and the deferment occurs before the state of disaster has been terminated. Further, the new exception is

similar to that approved by the commission for motor vehicle sales finance licensees.

An adopted amendment to §83.606(f) will update internal references to a definition being renumbered as part of this adoption. With the deletion of the definition in former §83.102(14), all remaining definitions will be renumbered, including the definition of "United States rule" contained in former §83.102(30). Section 83.606, concerning Maximum Term and Maximum Installment Account Handling Charge, references the United States rule definition. Thus, the adopted amendments to §83.606(f) update the internal references to the new definition number, §83.102(29).

Section 83.707(d)(2), concerning Other Fees, contains an adopted amendment to make a correction in terminology. The rule previously used the phrase "finance charge," where the intended phrase as adopted is "contract rate."

Several adopted changes modernize §83.802, concerning Authorized Property Insurance. Since §83.802 was adopted, the Texas Department of Insurance (TDI) does not fix or approve rates for property insurance, but rather has what is referred to as a "file and use" system. As a result, this terminology has been modernized throughout §83.802. The rates provided by Figure: 7 TAC §83.802(c) have also been amended. The existing rates have not been updated for many years. The adopted rates in the figure correspond to those recently accepted by TDI for dual interest personal property insurance. Additionally, adopted §83.802(d) maintains the requirement for licensees to file with the OCCC a copy of the relevant policy to be used for a rate that has not been filed with TDI.

The adopted changes to the following rules enhance recordkeeping and reporting for licensees. First, in §83.828(13), concerning Files and Records Required (Subchapter E and F lenders), an amendment streamlines the compliance file requirements to align with examinations issued through the online portal. An additional amendment removes the requirement to maintain compliance bulletins, as these are now posted on the OCCC's website.

In §83.829(1)(H), concerning Files and Records Required (Subchapter G lenders), adopted terminology updates refer to the "compliance" file, as opposed to the prior term of "official correspondence" file.

Throughout §83.833(b), concerning Correction of Errors or Violations, adopted amendments make corrections in terminology. This rule previously used the term "retail buyer," where the intended term as adopted is "borrower."

In §83.835, concerning Annual Report, adopted changes in grammar and use of the agency's acronym will improve readability and consistency.

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

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

Title 7, Texas Administrative Code

Chapter 83. Regulated Lenders and Credit Access Businesses

Subchapter A. Rules for Regulated Lenders

Division 1. General Provisions

§83.102. Definitions.

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

(1) - (13) (No change.)

~~[(14) Interpretation letter--A formal interpretation of Texas Finance Code, Title 4 made by the commissioner and approved by the Finance Commission under Texas Finance Code, §14.108.]~~

(14) ~~[(15)]~~ Licensee--Any person who has been issued a regulated loan license pursuant to Texas Finance Code, Chapter 342. Another name for a "regulated loan license" is a "consumer loan license."

(15) ~~[(16)]~~ Making a loan--The act of making a loan is either the determination of the credit decision to provide the loan, or the act of funding the loan or transferring money from the lender to the borrower. A person whose name appears on the loan documents as the payee of the note is considered to have "made" the loan.

(16) ~~[(17)]~~ Negotiating a loan--The process of submitting and considering offers

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

(17) ~~[(18)]~~ OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

(18) ~~[(19)]~~ Precomputed loan--A loan in which the borrower agrees to pay the total of payments that includes both principal and all anticipated interest through the full term of the loan. If a borrower prepays a precomputed loan, the borrower is entitled to a rebate of all unearned interest and unearned charges.

(19) ~~[(20)]~~ Prepaid interest--Interest paid separately in cash or by check before or at consummation in a transaction, or withheld from the proceeds of the credit at any time. Some common terms such as points, discounts, and origination fees have been used to identify this charge.

(20) ~~[(21)]~~ Principal--The capital sum of the debt, including any interest capitalized and added to the cash advance at the inception of the loan. Principal is the amount of money which is used, forborne, or detained and upon which interest is charged. The principal amount does not include any interest accrued after the inception of the loan, such as default charges.

(21) ~~[(22)]~~ Pro rata method--A formula for determining the amount of unearned interest or other charges, such as

insurance, to be refunded following prepayment or acceleration by applying the amounts to equal unit periods. The formula for the pro rata method assumes that interest or other charges are earned in direct proportion to the time that a loan has been outstanding.

(22) ~~[(23)]~~ Rebate--A refund of all or part of a precomputed charge or interest.

(23) ~~[(24)]~~ Regulated loan--A loan made under the authority of Texas Finance Code, Chapter 342.

(24) ~~[(25)]~~ Renewal or refinance--A new loan contract that includes, in whole or in part, the net balance of one or more existing loan contracts.

(25) ~~[(26)]~~ Simple annual rate--The interest rate under the loan agreement expressed as a percentage rate per year employing the U.S. rule method.

(26) ~~[(27)]~~ Sum of the monthly balances or sum of the periodic balances method--A formula for determining the amount of unearned interest or other charges to be refunded. The sum of the balances method is a variant of the rule of 78s. This method provides that the fraction of the contract interest to be rebated at any given time in the loan term is the sum of the monthly loan balances for the months remaining in the originally scheduled loan term divided by the sum of the monthly balances for all of the months in the scheduled loan term. For example, for a six-month loan of \$600 that is scheduled to be repaid in \$100 monthly installments, the rebate fraction after two months would be: $400 + 300 + 200 + 100$ divided by $600 + 500 + 400 + 300 + 200 + 100 = 1000/2100 = 10/21 = 0.476$ (rounded). For any loan that

is paid off in equal installments, the sum of the balances method and the rule of 78s will provide identical rebates. If, however, a loan schedule contains unequal payments, and especially where the debt is retired by a final balloon payment, the rebates under the two formulas will be different.

(27) [(28)] Term loan--A loan made repayable in a single payment.

(28) [(29)] Transacting a loan--Any of the significant events associated with the lending process through funding, including the preparation, negotiation and execution of loan documents and the transfer of money by the lender to the borrower or to a third party on the borrower's behalf. Transacting a loan also includes the act of arranging a loan.

(29) [(30)] United States rule--Ruling of United States Supreme Court in Story v. Livingston, 38 U.S. (13 Pet.) 359, 371 (1839) that, in partial payments on a debt, each payment is applied first to interest and any remainder reduces the principal. Under this rule, accrued but unpaid interest cannot be added to the principal, and interest cannot be compounded.

Division 3. Application Procedures

§83.302. Filing of New Application.

An application for issuance of a new regulated loan license must be submitted in a format prescribed by the OCCC [commissioner] at the date of filing and in accordance with the OCCC's [commissioner's] instructions. The OCCC [commissioner] may accept the use of prescribed alternative formats 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 [License].

(i) Location. A physical street address must be listed for the applicant's proposed lending address. A post office box or a mail box location at a private mail-receiving service generally may not be used. If the address has not yet been determined or if the application is for an inactive license, then the application must so indicate.

(ii) Responsible person. The person responsible for the day-to-day operations of the applicant's proposed offices must be named. The responsible person is also known as the location contact.

(iii) Signature. Electronic signatures will be accepted in a manner approved by the commissioner. Each applicant must have the application signed by an authorized individual.

~~[(I) If the applicant is a proprietor, the owner must sign.]~~

~~[(II) If the applicant is a partnership, one general partner must sign.]~~

~~[(III) If the applicant is a corporation, an authorized officer must sign.]~~

~~[(IV) If the applicant is a limited liability company, an authorized member or manager must sign.]~~

~~[(V) If the applicant is a trust or estate, the trustee or executor, as appropriate, must sign.]~~

(B) ~~[Disclosure of]~~ Owners and principal parties ~~[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 responsible for operating the business. If requested, the applicant must also disclose the names of the spouses of these individuals.

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

(iii) Limited partnerships. Each partner, general and limited, must be listed and the percentage of ownership stated.

(I) General partners. The applicant should provide the complete ownership, regardless of percentage owned, for all general partners. If a general partner is wholly or partially owned by a legal entity and not a natural person, a narrative or diagram must be included that lists the names and titles of all meeting the definition

of "managerial official," as contained in Texas Business Organizations Code, §1.002, and a description of the ownership of each legal entity must be provided.

(II) Limited partners. The applicant should provide a complete list of all limited partners owning 10% ~~[5%]~~ or more of the partnership.

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

(iv) Corporations. Each officer and director must be named. Each shareholder holding 10% ~~[5%]~~ or more of the voting stock must be named if the corporation is privately held. If a parent corporation is the sole or part owner of the proposed business, a narrative or diagram must be included that describes each level of ownership of 10% ~~[5%]~~ or greater.

(v) Limited liability companies. Each "manager," "officer," and "member" owning 10% ~~[5%]~~ or more of the company, as those terms are defined in Texas Business Organizations Code, §1.002, and each agent owning 10% ~~[5%]~~ or more of the company must be listed. If a member is a legal entity and not a natural person, a narrative or diagram must be included that describes each level of ownership of 10% ~~[5%]~~ or greater.

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

(C) Disclosure questions. ~~[Application Questionnaire]~~. All applicable questions must be answered. Questions

requiring a "yes" answer must be accompanied by an explanatory statement and any appropriate documentation requested.

(D) Registered agent. The registered agent must be provided by each applicant. ~~[Appointment of Statutory Agent and Consent to Service. Each applicant must appoint a statutory agent and consent to service to that agent.]~~ The registered ~~[statutory]~~ agent is the person or entity to whom any legal notice may be delivered. The agent must be a Texas resident and list an address for legal service. If the registered ~~[statutory]~~ agent is a natural person, the address must be a different ~~[physical residential]~~ address than the licensed location address. If the applicant is a corporation or a limited liability company, the registered ~~[statutory]~~ agent should be the registered agent on file with the Office of the Texas Secretary of State. If the registered ~~[statutory]~~ agent is not the same as the registered agent filed with the Office of the Texas Secretary of State, then the applicant must submit certification from the secretary of the company identifying the registered agent ~~[certified minutes appointing the new agent]~~.

(E) Personal affidavit ~~[Affidavit]~~. Each individual meeting the definition of "principal party" as defined in §83.301 of this title (relating to Definitions) must provide a personal affidavit. All requested information must be provided.

(F) Personal questionnaire ~~[Questionnaire]~~. Each individual meeting the definition of "principal party" as defined in §83.301 of this title must provide a personal questionnaire. Each question must be answered. If any question, except

question 1, is answered "yes," an explanation must be provided.

(G) Employment history ~~[History]~~. Each individual meeting the definition of "principal party" as defined in §83.301 of this title must provide an employment history. Each principal party should provide a continuous 10-year history~~[- with no gaps,]~~ accounting for time spent as a student, unemployed, or retired. The employment history must also include the individual's association with the entity applying for the license.

(H) Statement of experience ~~[Experience]~~. Each applicant should provide a statement setting forth the details of the applicant's prior experience in the lending or credit granting business. If the applicant or its principal parties do not have significant experience in the same type of credit business as planned for the prospective licensee, the applicant must provide a written statement explaining the applicant's relevant business experience or education, why the commissioner should find that the applicant has the requisite experience, and how the applicant plans to obtain the necessary knowledge to operate lawfully and fairly.

(I) Business operation plan ~~[Operation Plan]~~. Each applicant must provide a brief narrative to the application explaining the type of lending operation that is planned. This narrative should discuss each of the following topics:

(i) - (vi) (No change.)

(J) Financial statement and supporting financial information ~~[Statement and Supporting Financial Information]~~.

(i) All entity types. The financial statement must be dated no earlier than 60 days prior to the date of application. Applicants may also submit audited financial statements dated within one year prior to the application date in lieu of completing the supporting financial information [~~Supporting Financial Information~~]. All financial statements must be certified as true, correct, and complete. If requested, a bank confirmation to confirm account balance information with financial institutions must be submitted.

(ii) Sole proprietorships. Sole proprietors must complete all sections of the financial statement and supporting financial information [~~Financial Statement and Supporting Financial Information~~], or provide a personal financial statement that contains all of the same information requested by the financial statement and supporting financial information [~~Financial Statement and Supporting Financial Information~~]. The financial statement and supporting financial information [~~Financial Statement and Supporting Financial Information~~] must be as of the same date.

(iii) Partnerships. A balance sheet for the partnership itself as well as each general partner must be submitted. In addition, the information requested in the supporting financial information [~~Supporting Financial Information~~] must be submitted for the partnership itself and each general partner. All of the balance sheets and supporting financial information [~~Supporting Financial Information~~] documents for the partnership and all general partners must be as of the same date.

(iv) Corporations and limited liability companies. Corporations and limited liability companies must file a

balance sheet that complies with generally accepted accounting principles (GAAP). The information requested in the Supporting Financial Information must be submitted. The balance sheet and supporting financial information [~~Supporting Financial Information~~] must be as of the same date. Financial statements are generally not required of related parties, but may be required if the commissioner believes they are relevant. The financial information for the corporate or limited liability company applicant should contain no personal financial information.

(v) Trusts and estates. Trusts and estates must file a balance sheet that complies with generally accepted accounting principles (GAAP). The information requested in the supporting financial information [~~Supporting Financial Information~~] must be submitted. The balance sheet and supporting financial information [~~Supporting Financial Information~~] must be as of the same date. Financial statements are generally not required of related parties, but may be required if the commissioner believes they are relevant. The financial information for the trust or estate applicant should contain no personal financial information.

(K) (No change.)

(2) Other required filings.

(A) Fingerprints.

(i) For all persons meeting the definition of "principal party" as defined in §83.301 of this title, a complete set of legible fingerprints must be provided. All fingerprints should be submitted in a format prescribed by the OCCC and approved by

the Texas Department of Public Safety and the Federal Bureau of Investigation.

(ii) For limited partnerships, if the owners and principal parties ~~[Disclosure of Owners and Principal Parties]~~ under paragraph (1)(B)(iii)(I) of this section does not produce a natural person, the applicant must provide a complete set of legible fingerprints for individuals who are associated with the general partner as principal parties.

(iii) For entities with complex ownership structures that result in the identification of individuals to be fingerprinted who do not have a substantial relationship to the proposed applicant, the applicant may submit a request to fingerprint three officers or similar employees with significant involvement in the proposed business. The request should describe the relationship and significant involvement of the individuals in the proposed business. The OCCC may approve the request, seek alternative appropriate individuals, or deny the request.

(iv) For individuals who have previously been licensed by the OCCC and principal parties of entities currently licensed, fingerprints are generally not required if the fingerprints are on record with the OCCC, are less than 10 years old, and have been processed by both the Texas Department of Public Safety and the Federal Bureau of Investigation. Upon request, individuals and principal parties previously licensed by the OCCC may be required to submit a new set of fingerprints.

(v) For individuals who have previously submitted fingerprints to another state agency (e.g., Texas Department of Savings and Mortgage Lending), fingerprints are still required to be submitted

to the OCCC, as per Texas Finance Code, §14.152. Fingerprints cannot be disclosed to others, except as authorized by Texas Government Code, §560.002.

(B) (No change.)

(C) Entity documents.

(i) Partnerships. A partnership applicant must submit a complete and executed copy of the partnership agreement. This copy must be signed and dated by all partners. If the applicant is a limited partnership or a limited liability partnership, provide evidence of filing with the Office of the Texas Secretary of State.

(ii) Corporations. A corporate applicant, domestic or foreign, must provide the following documents:

(I) a complete copy of the certificate of formation or articles of incorporation, with any amendments;

(II) a certification from the secretary of the corporation identifying the current officers and directors as listed in the owners and principal parties section of the application ~~[a copy of the relevant portions of the bylaws addressing the required number of directors and the required officer positions for the corporation];~~

(III) a certificate of good standing from the Texas Comptroller of Public Accounts ~~[a copy of the minutes of corporate meetings that record the election of all current officers and directors as listed on the Disclosure of Owners and Principal Parties, or a certification from the secretary of the corporation identifying the current~~

~~officers and directors as listed on the Disclosure of Owners and Principal Parties];~~

(IV) if the registered agent is not the same as the one filed with the Office of the Texas Secretary of State, a certification from the secretary of the corporation identifying the registered agent; [if the statutory agent is not the same as the registered agent filed with the Office of the Texas Secretary of State:]

~~[(a) a copy of the minutes of corporate meetings that record the election of the statutory agent; or]~~

~~[(b) a certification from the secretary of the corporation identifying the statutory agent; and]~~

(V) if requested, a copy of the relevant portions of the bylaws addressing the required number of directors and the required officer positions for the corporation; and

(VI) if requested, a copy of the minutes of corporate meetings that record the election of all current officers and directors as listed in the owners and principal parties section of the application [a certificate of good standing from the Texas Comptroller of Public Accounts].

(iii) Publicly held corporations. In addition to the items required for corporations, a publicly held corporation must file the most recent 10K or 10Q for the applicant or for the parent company.

(iv) Limited liability companies. A limited liability company applicant, domestic or foreign, must provide the following documents:

(I) a complete copy of the articles of organization;

(II) a certification from the secretary of the company identifying the current officers and directors as listed in the owners and principal parties section of the application [a copy of the relevant portions of the operating agreement or regulations addressing responsibility for operations];

(III) a certificate of good standing from the Texas Comptroller of Public Accounts [a copy of the minutes of company meetings that record the election of all current officers and directors as listed on the Disclosure of Owners and Principal Parties, or a certification from the secretary of the corporation identifying the current officers and directors as listed on the Disclosure of Owners and Principal Parties];

(IV) if the registered agent is not the same as the one filed with the Office of the Texas Secretary of State, a certification from the secretary of the corporation identifying the registered agent; [if the statutory agent is not the same as the registered agent filed with the Office of the Texas Secretary of State:]

~~[(a) a copy of the minutes of company meetings that record the election of the statutory agent; or]~~

~~[(b) a certification from the secretary of the company identifying the statutory agent; and]~~

(V) if requested, a copy of the relevant portions of the operating agreement or regulations addressing responsibility for operations; and

(VI) if requested, a copy of the minutes of company meetings that record the election of all current officers and directors a listed in the owners and principal parties section of the application [a certificate of good standing from the Texas Comptroller of Public Accounts].

(v) - (vii) (No change.)

(viii) Formation document alternative. As an alternative to the entity-specific formation document applicable to the applicant's entity type (e.g., for a corporation, articles of incorporation), an applicant may submit a "certificate of formation" as defined in Texas Business Organizations Code, §1.002, if the certificate of formation provides the entity formation information required by this section for that entity type.

(D) (No change.)

(3) Subsequent applications (branch offices). If the applicant is currently licensed and filing an application for a new office, the applicant must provide the information that is unique to the new location including the application for license, disclosure questions, owners and principal parties, and a new financial statement [~~Application for License, Application Questionnaire, Disclosure of Owners and Principal Parties, and a new Financial Statement~~] as provided in paragraph (1)(J) of this section. The responsible person at the new location must be listed. Other information required by this section need not be filed if the information on file with the OCCC is current and valid.

§83.304. Change in Form or Proportionate Ownership.

(a) (No change.)

(b) Merger.

(1) Merger of licensee. 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 [A merger of a licensee is a change of ownership that results in a new or different surviving entity and requires the filing of a] license transfer application or a new license application on transfer of ownership pursuant to §83.303 of this title (relating to Transfer of License; New License Application on Transfer of Ownership).

(2) Merger of parent entity. If a licensee's parent entity is a party to a merger [If the merger of the parent entity of a licensee] that leads to the creation of a new entity or results in a different surviving parent entity, the licensee must advise the OCCC in writing of the change within 14 calendar days by filing a license amendment and paying the required fees as provided in §83.310 of this title.

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

(c) Proportionate ownership.

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

(2) (No change.)

Division 4. License

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

(a) - (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. 42.12, §3g (effective through December 31, 2016),] art. 42A.054 [(effective January 1, 2017),] or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(3)-(4);

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

~~[§83.408. License Reissuance.]~~

~~[In the event of reissuance of a license for any reason, the licensee must return to the OCCC the license certificate that was held prior to the reissuance. Should the licensee be unable to return the license certificate to the OCCC, the licensee must provide a written statement to that effect, including the reason for inability to return it (e.g., lost, destroyed).]~~

Division 5. Interest Charges on Loans

§83.505. Deferment.

(a) - (i) (No change.)

(j) Disaster exception. A lender must deliver the deferment notice to the borrower, but is not required to obtain the borrower's signature, if the following conditions are met:

(1) The borrower resides in an area designated as a state of disaster under Texas Government Code, §418.014; and

(2) The deferment occurs before the state of disaster has been terminated:

(A) by executive order; or

(B) by expiration as described in Texas Government Code, §418.014(c).

(k) [(j)] Noncompliance. Deferment fees not assessed or collected in accordance with the requirements of this section are subject to refund to the borrower. In the event deferment fees are refunded to the borrower, no rescheduling of the loan contract is permitted.

Division 6. Alternate Charges for Consumer Loans

§83.606. Maximum Term and Maximum Installment Account Handling Charge.

(a) - (e) (No Change.)

(f) Maximum installment account handling charge for loan contract using the scheduled installment earnings method or the true daily earnings method.

(1) Generally. On a regular transaction or irregular transaction, a loan contract may provide for an installment account handling charge computed using the scheduled installment earnings method or the true daily earnings method. The installment account handling charge may not exceed the equivalent rate or effective return of the installment account handling charge for the original scheduled term of the loan.

(2) Scheduled installment earnings method. For a loan contract using the scheduled installment earnings method, the maximum installment account handling charge is computed by applying a daily rate to the unpaid principal balance as defined by this section, as if each payment will be made on its scheduled installment date. A payment received before or after the due date does not affect the amount of the scheduled reduction in the unpaid principal. The computation of the installment account handling charge must comply with the United States rule as defined by §83.102(29) [~~§83.102(30)~~] of this title (relating to Definitions).

(3) True daily earnings method. For a loan contract using the true daily earnings method, the maximum installment account handling charge is computed by applying a

daily rate to the unpaid principal balance as defined by this section. The computation of the installment account handling charge must comply with the United States rule as defined by §83.102(29) [~~§83.102(30)~~] of this title. The earned installment account handling charge is computed as follows:

(A) multiplying the unpaid principal balance by the daily rate; and

(B) multiplying the results of subparagraph (A) of this paragraph by the number of days the actual unpaid principal balance is outstanding.

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

(g) - (i) (No change.)

Division 7. Interest and Other Charges on Secondary Mortgage Loans

§83.707. Other Fees.

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

(d) Broker fees. An authorized lender may pay a broker fee in a secondary mortgage loan if the consideration paid by the borrower in the loan that involves a broker does not exceed the consideration paid by the borrower in a loan that does not involve a broker.

(1) (No change.)

(2) Example 2: A prospective borrower is quoted a contract rate [~~finance charge~~] of 12% plus a 2% origination fee when the borrower makes the inquiry directly to an authorized lender. On this same individual, a broker quotes a contract rate of 12% plus a 2% origination fee for a loan of the same amount from the same

authorized lender. The loan is then consummated with the authorized lender paying a 2% fee to the broker for originating the loan. Since the authorized lender has absorbed the expense of the fee, no unauthorized charge has been assessed, charged, or received.

(e) - (g) (No change.)

Division 9. Insurance

§83.802. Authorized Property Insurance.

(a) Property insurance, other than insurance covering a motor vehicle, written in connection with a loan made under Texas Finance Code, Chapter 342 must be written at lawful rates that have been filed with ~~[not in excess of the rates fixed or approved by]~~ the Texas Department of Insurance ~~[if a rate structure has been fixed or approved for that particular type of coverage]~~.

(b) If property insurance, other than insurance covering a motor vehicle, requested or required on a loan is sold or obtained by a licensee at a rate that has not been filed with ~~[is not fixed or approved by]~~ the Texas Department of Insurance, the licensee must file information with the OCCC ~~[first obtain prior acknowledgment from the commissioner]~~ that the coverage and the rate bear a reasonable relationship to:

(1) the amount, term, and conditions of the loan;

(2) the value of the collateral; and

(3) the existing hazards or risk of loss, damage, or destruction.

(c) A licensee who offers or provides property insurance, other than insurance covering a motor vehicle, requested or required on a loan sold or obtained by a licensee at a rate that is not filed with ~~[fixed or approved by]~~ the Texas Department of Insurance may use the rates found in ~~[, does not have to comply with the terms of subsection (b) of this section if the charges are equal to or less than the rates established by]~~ the following figure.

Figure: 7 TAC §83.802(c) *{{See page following rule text for amendments to figure.}}*

~~[(d) Insurance, other than insurance covering a motor vehicle, written at rates not fixed or approved by the Texas Department of Insurance, is subject to cancellation or adjustment if the insurance is not otherwise approved by the commissioner.]~~

~~(d)~~ ~~[(e) [If a licensee is seeking authority from the commissioner under subsection (b) of this section for a rate not fixed or approved by the Texas Department of Insurance, a]~~ A copy of the relevant policy that is to be issued must be filed with the OCCC, together with any evidence that is probative on the factors listed in subsection (b) of this section.

~~(e)~~ ~~[(f)]~~ Property insurance written in connection with a Texas Finance Code, Chapter 342 loan must be provided by a company authorized to do business in this state.

Division 10. Duties and Authority of Authorized Lenders

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

Each licensee must maintain records with respect to each loan made under Texas Finance Code, Chapter 342, Subchapters E and F, and make those records available for examination. The records required by this section may be maintained by using either a paper or manual recordkeeping system, electronic recordkeeping system, optically imaged recordkeeping system, or a combination of the preceding types of systems, unless otherwise specified by statute or regulation. If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements prevail only to the extent of the conflict with the provisions of this section.

(1) - (12) (No change.)

(13) Compliance file. Each licensee must maintain a separate file for all communications from the OCCC and for copies of correspondence and reports addressed to the OCCC. This file must include, at a minimum, electronic or paper copies of the current Texas Finance Code, Chapter 342, the last three examination reports, correspondence relating to compliance~~[, compliance bulletins]~~ issued in the last two years, and current rules issued by the commissioner. A licensee will be considered to have maintained copies of the Texas Finance Code and current rules by having access to the websites containing the official versions of the current Texas Finance Code and the current Texas Administrative Code. A licensee will be considered to have maintained copies of

some or all of the last three examination reports if those reports were issued electronically by the OCCC.

(14) (No change.)

§83.829. Files and Records Required (Subchapter G Lenders).

Each licensee must maintain records with respect to each loan made under Texas Finance Code, Chapter 342, Subchapter G and each home equity loan made under Texas Constitution, Article XVI, Section 50, and make those records available for examination. The records required by this section may be maintained by using either a paper or manual recordkeeping system, electronic recordkeeping system, optically imaged recordkeeping system, or a combination of the preceding types of systems, unless otherwise specified by statute or regulation. If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements prevail only to the extent of the conflict with the provisions of this section. The records required by this section must be retained and made available for inspection in the same manner as that specified in §83.828(14) of this title (relating to Files and Records Required (Subchapter E and F Lenders)).

(1) Required records. A licensee must maintain the following items in a substantially similar form to the respective provisions of §83.828 of this title, as follows:

(A) - (G) (No change.)

(H) A compliance ~~[An official correspondence]~~ file.

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

§83.833. Correction of Errors or Violations.

(a) (No change.)

(b) In lieu of crediting an existing account, a refund may be made directly to the borrower by cash, check, money order, or other negotiable instrument. The licensee must maintain sufficient records that the refund was made.

(1) Cash refunds. If the refund is made directly to the borrower in cash, the licensee must obtain a signed or authenticated acknowledgment from the borrower. The signed or authenticated acknowledgment must contain the following information:

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

(D) a statement that the borrower received the refund in cash and that the licensee has not instructed or required the borrower [~~retail-buyer~~] to repay the cash refund.

(2) Refunds made by check, money order, or other negotiable instrument. If the refund is made directly to the borrower [~~retail-buyer~~] by check, money order, or other negotiable instrument, the licensee must, at a minimum, mail the refund to the last known address of the borrower [~~retail-buyer~~] by first-class mail. The licensee must maintain a complete paper or electronic copy of the check, money order, or other negotiable instrument. The licensee must also maintain sufficient information that could be used to determine whether the check, money order, or other negotiable instrument was successfully negotiated.

(c) - (g) (No change.)

§83.835. Annual Report.

Each licensee must file the required annual report by May 1 for the prior calendar year's [~~calendar~~] loan activity on forms prescribed by the OCCC [~~commissioner~~] and must comply with all instructions relating to submitting the report.

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 19, 2018.

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

Figure: 7 TAC §83.802(c)

CHAPTER 342, SUBCHAPTER E TANGIBLE PERSONAL PROPERTY <u>DUAL INTEREST INSURANCE RATES</u>	
Insurable Amount	Rate per \$100 per year
<u>\$300 or more</u> [\$0.00 to \$1,000.00]	<u>3.00</u> [1.80]
[\$1000.01 to \$2,000.00]	[1.35]
[\$2000.01 or more]	[0.90]

D. OFFICE OF CONSUMER CREDIT COMMISSIONER

3. Discussion of and Possible Vote to Take Action on the Adoption of the Completed Rule Review of 7 TAC, Chapter 85, Subchapter A, Concerning Rules of Operation for Pawnshops

PURPOSE: Pursuant to Texas Government Code, §2001.039, the agency has completed the review of 7 TAC, Chapter 85, Subchapter A. The notice of the review was published in the *Texas Register* as required on August 17, 2018 (43 TexReg 5402). The commission did not receive any written comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this subchapter continue to exist. As a result of internal review by the agency, the commission has determined that certain revisions are appropriate and necessary. Rule amendments to Chapter 85, Subchapter A are being separately presented for proposal.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve and adopt the rule review of Chapter 85, Subchapter A, as the reasons for these rules continue to exist.

RECOMMENDED MOTION: I move that we find that the reasons for adopting Chapter 85, Subchapter A continue to exist and that the rules are repropose and readopted.

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) has completed the review of Texas Administrative Code, Title 7, Part 5, Chapter 85, Subchapter A, Rules of Operation for Pawnshops, in its entirety. The rule review was conducted pursuant to Texas Government Code, §2001.039.

Notice of the review of 7 TAC, Chapter 85, Subchapter A was published in the *Texas Register* as required on August 17, 2018 (43 TexReg 5402). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this subchapter continue to exist.

As a result of internal review by the agency, the commission has determined that certain revisions are appropriate and necessary. Those proposed changes are published elsewhere in this issue of the *Texas Register*.

Subject to the proposed changes to Chapter 85, Subchapter A, the commission finds that the reasons for initially adopting these rules continue to exist, and readopts this subchapter in accordance with the requirements of Texas Government Code, §2001.039.

This concludes the review of 7 TAC, Part 5, Chapter 85, Subchapter A.

D. OFFICE OF CONSUMER CREDIT COMMISSIONER

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

PURPOSE: The purpose of the proposed amendments to 7 TAC, Chapter 85, Subchapter A is to implement changes resulting from the commission's review of the subchapter under Texas Government Code, §2001.039. The proposed amendments are intended to fulfill the following three purposes: 1) ensure consistency with current licensing terminology, agency procedures, and streamlined processes; 2) modernize or remove obsolete language; and 3) make technical corrections.

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

RECOMMENDED MOTION: I move that we approve for publication and comment the amendments to 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) proposes amendments to 7 TAC, Chapter 85, Subchapter A, §§85.202, 85.203, 85.205, 85.206, 85.211, 85.212, 85.301, 85.304, 85.307, 85.402, 85.405, 85.421, 85.502, 85.601, 85.603, 85.604, 85.606, 85.701, and 85.702, concerning Rules of Operation for Pawnshops.

The proposed amendments affect rules contained in Division 2, concerning Pawnshop License; Division 3, concerning Pawnshop Employee License; Division 4, concerning Operation of Pawnshops; Division 5, concerning Inspections and Examination; Division 6, concerning License Revocation, Suspension, and Surrender; and Division 7, concerning Enforcement; Penalties.

In general, the purpose of the proposed amendments to 7 TAC, Chapter 85, Subchapter A is to implement changes resulting from the commission's review of the subchapter under Texas Government Code, §2001.039. The notice of intention to review 7 TAC, Chapter 85, Subchapter A was published in the August 17, 2018, issue of the *Texas Register* (43 TexReg 5402). The commission received no comments in response to that notice.

The agency distributed an early draft of proposed changes to interested stakeholders for review and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC did not receive any informal written precomments on the rule text draft, although several stakeholders provided verbal feedback during the

stakeholder meeting. Certain concerns raised during the meeting have been addressed in this proposal, and the agency appreciates the thoughtful input provided by stakeholders. The agency believes that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

The proposed amendments are intended to fulfill the following three purposes: 1) ensure consistency with current licensing terminology, agency procedures, and streamlined processes; 2) modernize or remove obsolete language; and 3) make technical corrections. Any pawnshop rule not included in this proposal will be maintained in its current form.

The individual purposes of the proposed amendments to each section are provided in the following paragraphs. Specific explanation is included with regard to rule changes to ensure consistency and modernize language. The remaining changes throughout all sections consist of minor revisions to formatting, grammar, punctuation, and other technical corrections. The technical changes will be summarized more generally.

The agency's acronym "OCCC," currently defined in §85.102(8) will replace the use of "commissioner" in three instances in the introductory language of §85.202. The agency believes that the use of "OCCC" will provide better clarity to the rules when the context calls for action by the agency, as opposed to the commissioner specifically. In addition to §85.202, the following rules include proposed amendments to replace

"commissioner" with "OCCC": §85.206, concerning Processing of Application; §85.301, concerning Filing of New Application (for pawnshop employees); §85.304, concerning Processing of Application (for pawnshop employees); §85.402, concerning Recordkeeping; §85.502, concerning Annual Report; §85.603, concerning Reinstatement of an Expired Pawnshop License; and §85.604, concerning Revocation or Suspension of Pawnshop License or Pawnshop Employee License.

Section 85.202, concerning Filing of New Application, includes numerous proposed amendments to ensure consistency with current agency procedures. In §85.202(a)(1)(A) and (a)(1)(B), proposed changes streamline the introductory wording (referred to as "taglines") and grammar to more closely track the OCCC's online licensing portal, and to no longer refer to specific titles used on paper licensing forms. In particular, a statement that the "responsible person is also known as the location contact" is proposed for addition to §85.202(a)(1)(A)(ii), to further the use of online terminology.

Proposed changes are included in §85.202(a)(1)(A)(iii) regarding the signature on a new license application. These changes involve the deletion of unnecessary language, allowing for the electronic signature of an authorized individual of the applicant, without reference to particular titles of the person signing.

Proposed amendments updating licensing terminology continue in §85.202(a)(1)(C) through (a)(1)(I) and (a)(2)(A) to better align the rule with the OCCC's online portal.

Section 85.202(a)(1)(D) contains several proposed amendments to ensure consistency with current agency procedure. First, the term "registered agent" will replace "statutory agent." These terms have been used synonymously, but "registered agent" is used by the Texas Secretary of State (SOS) and has become the more common term. Second, a natural person will require simply a different address from the licensed location, as opposed to the outdated requirement of a physical residential address. Third, a company's secretary may submit certification identifying an agent that differs from the SOS filing. Furthermore, these amendments are consistent with rule revisions previously adopted for other industries regulated by the agency and will provide consistency in the licensing process.

In §85.202(a)(1)(I)(i), a proposed amendment adds language requiring all entity types to provide a bank confirmation if requested by the agency. This amendment memorializes the long-standing OCCC licensing procedure to obtain bank confirmations if necessary to confirm account balance information with financial institutions of applicants.

Section 85.202(a)(2)(A)(iv) relates to the fingerprints of individuals who have previously been licensed by the agency and who are principal parties of currently licensed entities. Proposed amendments in clause (iv) update the fingerprinting requirements and clarify when applicants will not need to resubmit if acceptable fingerprints are on file. Upon request, previously licensed individuals and principal parties may need to submit a new set of fingerprints due to unsubscription requirements from the Texas Department of Public Safety. The proposed last sentence in clause (iv) provides clearer guidance to

applicants and will enhance the agency's ability to fulfill its criminal background check requirements.

Moreover, the proposed amendments to §85.202(a)(2)(A)(iv) updating fingerprinting correspond to changes approved by the commission in the OCCC's other licensed areas and will provide consistency across regulated entities.

Regarding the entity documents under §85.202(a)(2)(B), several proposed amendments update the documents required for new applications, increasing the efficiency of the licensing process. The provisions under current (a)(2)(C)(ii)(II) and (III), and (a)(2)(C)(iv)(II) and (III) require that applicants provide copies of the relevant portions of bylaws, operating agreements, and minutes addressing the number and election of officers and directors. The agency recognizes that these documents are only necessary in limited situations. Thus, these provisions have been shifted to the end of each respective clause and language is proposed to reflect that such documents should only be provided upon request. In addition, the requirements in §85.202(a)(2)(C)(ii)(IV)(-a-) and (a)(2)(C)(iv)(IV)(-a-) are proposed for deletion. The current provisions require applicants to provide minutes electing the statutory agent. The agency has streamlined the process for verification of the registered agent by certification from the secretary of the company.

Further, these proposed changes align the rule with the OCCC's online portal, listing the required documents first, removing documents no longer required, and listing last documents to only be provided "if requested" by the agency. While uncommon, the "if requested" documents

may be necessary to obtain missing information or resolve conflicts that may arise when determining the appropriate number and identity of an applicant's current officers and directors required for the owners and principal parties section of the application, or to address other discrepancies with business filings.

Parallel changes to streamline the required entity documents are proposed for corporations in §85.202(a)(2)(C)(ii), and for limited liability companies in §85.202(a)(2)(C)(iv).

In §85.203, concerning Relocation, proposed amendments continue use of the agency's acronym and update licensing terminology. Additionally, the proposed amendments to §85.205(e)(4), concerning Transfer of License; New License Application on Transfer of Ownership, provide corresponding revisions to licensing terminology.

Section 85.206, concerning Processing of Application, contains several proposed amendments to ensure consistency with current agency procedure and make technical corrections. First, the current terminology related to "acceptance" was intended to address paper applications that did not contain enough information to trigger initial processing. With the online portal, the majority of pawnshop license applications are submitted electronically, and there is no longer a need to distinguish application "acceptance" as opposed to "completion." The proposed amendments will delete "acceptance" terminology and focus on completion, as built into the online portal to improve the efficiency of application processing.

Second, the proposed amendments to §85.206(e) enhance the OCCC's ability to more quickly deliver the required notice of application and protest procedures when a competing application has been filed in an existing pawnshop's county. Section 371.057 of the Texas Finance Code requires that these notices be "given" to existing pawnshops when a competing application is filed. Proposed new §85.206(e)(1)-(2) will allow the OCCC to e-mail the notice of application and protest procedures to the master file e-mail address on file. If the OCCC receives notice that the e-mail is not deliverable or if an existing licensee does not have a master file e-mail address, the notice will be sent by first class mail.

And third, the remaining amendments proposed in §85.206 continue use of the agency's acronym and update an internal reference to the criminal history rule in §85.601, which was consolidated from two rules into one last year.

The following two sections include proposed amendments to make technical corrections. In §85.211, concerning Fees, an internal reference is being updated to refer to the appropriate subsection.

In §85.212, concerning Application and Notices as Public Records, the agency name for the Texas State Library and Archives Commission (TSLAC) is being corrected. A parallel change regarding the reference to TSLAC is also proposed in §85.307, which is the public records rule for pawnshop employees.

In §85.301, concerning Filing of Application (for pawnshop employees), proposed amendments continue use of the agency's acronym, update licensing

terminology, and make technical corrections.

The proposed amendments to §85.304, concerning Processing of Application (for pawnshop employees), provide parallel changes to those outlined in the discussion regarding the corresponding rule for pawnshops, §85.206. The amendments to §85.304 remove "acceptance" terminology, use the agency's acronym, and update a reference to the criminal history rule.

In §85.402(c), concerning Recordkeeping, a proposed amendment streamlines the compliance file requirements to align with examinations issued through the online portal. An additional proposed amendment removes the requirement to maintain compliance bulletins, as these are now posted on the OCCC's website.

In §85.405(a)(6)(A), concerning Pawn Transaction, a proposed amendment updates a citation to the Texas Business and Commerce Code. The cited section was redesignated to a different section number by the 2017 legislature.

The proposed amendments to §85.421, concerning Consumer Information, provide modernization. While pawnshops may request additional copies of consumer brochures from the agency, the amendment clarifies that licensees may print additional copies of these brochures, as available on the OCCC's website.

In §85.502, concerning Annual Report, the proposed amendments are intended to align this reporting rule with those in the agency's other regulated areas. The amendments streamline the language to more simply state compliance with posted agency instructions. Additionally, the July

31st due date for pawnshop annual reports is proposed for addition to the introductory paragraph.

In §85.601(d)(2), concerning Denial, Suspension, or Revocation Based on Criminal History, a proposed amendment corrects a citation to the Texas Finance Code.

The proposed amendments to §85.603, concerning Reinstatement of an Expired Pawnshop License, include changes to update terminology, including use of the agency's acronym.

Section 85.604, concerning Revocation or Suspension of Pawnshop License or Pawnshop Employee Licensee, contains several proposed amendments to ensure consistency with current agency procedures and make technical corrections. The primary changes update agency enforcement procedures and terminology.

As a result of the proposed amendments, §85.604 will better reflect the enforcement actions available to the agency under the Texas Finance Code: injunction, administrative penalty, suspension, and revocation. Accordingly, the title of §85.604 has a proposed amendment replacing the phrase "Revocation or Suspension of" with the phrase "Enforcement Action Against" to more accurately describe the agency's authority.

In general, the agency is moving away from an approach where every violation results in an immediate administrative penalty. Once a violation is referred to the legal department, the agency's first response will often be an injunction with no penalties. An injunction is an order issued by the commissioner that directs the person to

either take some action required by law or to refrain from action prohibited by law. Thus, the proposed amendments to §85.604 include several added references to injunctions.

For many first-time violations, the agency believes that this enforcement posture will better allow licensees to bring their practices into compliance without the added burden of paying an administrative penalty.

Should an administrative penalty be commensurate with the violation in question, the Texas Finance Code provides the OCCC with discretion in determining the amount of the penalty. The OCCC considers the following factors when determining the amount of an administrative penalty, as provided by Texas Finance Code, §14.252: "(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act; (2) the extent of actual or potential harm to a third party; (3) the history of violations; (4) the amount necessary to deter future violations; (5) efforts to correct the violation; and (6) any other matter that justice may require."

Additionally, before a violation is referred for a potential enforcement action, an applicant or licensee will generally have opportunities to resolve the issue through the agency's other regulatory processes. For example, many licensing deficiencies are resolved when the licensing department requests and receives additional information from an applicant. The OCCC's consumer assistance staff resolves numerous complaints through communications with licensee compliance officers. Many violations are also resolved as part of the confidential investigation or examination process.

The remaining amendments proposed in §85.604 continue use of the agency's acronym and update an ATF form number referenced in subsection (b)(4).

In §85.606, concerning Surrender of License, proposed amendments to subsection (b) update terminology by replacing the term "administrative action" with the term "enforcement action." The term "enforcement action" is intended to avoid confusion with the more specific term "administrative penalty."

Proposed amendments related to agency enforcement procedures are also contained in §85.701, concerning Failure to Timely File a Pawnshop Employee Application, and in §85.702, concerning Accepting Prohibited Merchandise. The amendments to both of these rules are consistent with those outlined in the discussion of §85.604.

In particular, the proposed amendments to §85.701(a) maintain the approach that a pawnshop employee application will usually not be denied solely because it has been filed late. If no other ground is present upon which to deny the application, the agency will typically grant the pawnshop employee license, along with an appropriate enforcement action listed in subsection (b).

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

Rudy Aguilar, Director of Consumer Protection, has determined that for each year of the first five years the amendments are in effect, the public benefits anticipated as a result of the proposal will be that the

commission's rules will be more easily understood by applicants and licensees, will reflect current agency procedures, and will be more easily enforced. Additional benefits of the proposed amendments are increased efficiencies and modernized rule language.

The general substance of these rules has already been in effect, as the majority of the changes are to ensure consistency with agency procedures and to make technical corrections. Thus, there is no anticipated cost to persons who are required to comply with the rule changes as proposed. There will be no adverse economic effect on rural communities or small or micro-businesses.

During the first five years the proposed amendments will be in effect, the rules will not create or eliminate a government program. Implementation of the proposed amendments will not require the creation of new employee positions or the elimination of existing employee positions. The proposed amendments do not require an increase or decrease in fees paid to the agency. The proposal does not create a new rule. The proposal amends §§85.202, 85.203, 85.205, 85.206, 85.211, 85.212, 85.301, 85.304, 85.307, 85.402, 85.405, 85.421, 85.502, 85.601, 85.603, 85.604, 85.606, 85.701, and 85.702, resulting in certain requirements that are expanded and certain requirements that are limited, as discussed previously in this proposal. The proposal does not repeal an existing rule. The proposed amendments do not increase or decrease the number of individuals subject to the pawnshop regulations in Chapter 85, Subchapter A. The agency does not anticipate that the proposed amendments will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Laurie Hobbs,

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

These amendments are proposed under Texas Finance Code §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 authorizes the commission to adopt rules for enforcement of the Texas Pawnshop Act (Chapter 371).

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 371.

Title 7, Texas Administrative Code

Chapter 85. Pawnshops and Crafted Precious Metal Dealers

Subchapter A. Rules of Operation for Pawnshops

Division 2. Pawnshop License

§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 OCCC ~~[commissioner]~~ at the date of filing and in accordance with the OCCC's

~~[commissioner's]~~ instructions. The OCCC ~~[commissioner]~~ may accept the use of prescribed alternative formats in order to accept approved electronic submissions. Appropriate fees must be filed with the application, and the application must include the following:

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

(A) Application for license ~~[Pawnshop License]~~.

(i) Location. A physical street address must be listed for the proposed location for which the applicant can show proof of ownership or an executed lease agreement. A post office box or a mail box location at a private mail-receiving service may not be used except for a physical location that does not receive general mail delivery. An application for a new license is not permitted ~~[will not be accepted]~~ if the address or the full legal property description has not yet been determined or the application is for an inactive license.

(ii) Responsible person. The person responsible for the day-to-day operations of one or more of the applicant's proposed locations must be named. The responsible person is also known as the location contact. This person must be:

(I) an individual who has an ownership interest in the pawnshop license and is named on the application;

(II) a licensed pawnshop employee identified by license number; or

(III) an applicant for a pawnshop employee license with the date of application.

(iii) Signature. Electronic signatures will be accepted in a manner approved by the commissioner. Each applicant must have the application signed by an authorized individual.

~~[(I) If the applicant is a proprietor, the owner must sign.]~~

~~[(II) If the applicant is a partnership, one general partner must sign.]~~

~~[(III) If the applicant is a corporation, an authorized officer must sign.]~~

~~[(IV) If the applicant is a limited liability company, an authorized member or manager must sign.]~~

~~[(V) If the applicant is a trust or estate, the trustee or executor, as appropriate, must sign.]~~

(B) ~~[Disclosure of]~~ Owners and principal parties ~~[Principal Parties]~~.

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

(C) Disclosure questions. ~~[Application Questionnaire]~~. All questions must be answered. Questions requiring a "yes" answer must be accompanied by an explanatory statement and any appropriate documentation requested.

(D) Registered agent. The registered agent must be provided by each applicant. ~~[Appointment of Statutory Agent and Consent to Service. Each applicant must appoint a statutory agent and consent to service to that agent.]~~The registered ~~[statutory]~~ agent is the person or entity to whom any legal notice may be delivered. The agent must be a Texas resident and list

an address for legal service. If the registered ~~[statutory]~~ agent is a natural person, the address must be a different ~~[physical residential]~~ address than the licensed location address. If the applicant is a corporation or a limited liability company, the registered ~~[statutory]~~ agent should be the registered agent on file with the Texas Secretary of State. If the registered ~~[statutory]~~ agent is not the same as the registered agent filed with the Texas Secretary of State, then the applicant must submit certification from the secretary of the company identifying the registered agent ~~[certified minutes appointing the new agent]~~.

(E) Personal affidavit ~~[Affidavit]~~. Each individual meeting the definition of "principal party" as defined in §85.102 of this title (relating to Definitions) must provide a personal affidavit. All requested information must be provided.

(F) Personal questionnaire ~~[Questionnaire]~~. Each individual meeting the definition of "principal party" as defined in §85.102 of this title must provide a personal questionnaire. Each question must be answered. If any question, except question 1, is answered "yes," an explanation must be provided.

(G) Employment history ~~[History]~~. Each individual meeting the definition of "principal party" as defined in §85.102 of this title must provide an employment history. Each principal party should provide a continuous 10-year history, accounting for time spent as a student, unemployed, or retired. The employment history must also include the individual's association with the entity applying for the license.

(H) Statement of experience [~~Experience~~]. Each applicant for a new license should provide a statement setting forth the details of the applicant's prior experience in the pawn or credit-granting business. If the applicant or its principal parties do not have significant experience in the pawnshop business as planned for the prospective licensee, the applicant must provide a written statement explaining the applicant's relevant background, why the commissioner should find that the applicant has the requisite experience, and how the applicant plans to obtain the necessary knowledge to operate lawfully and fairly.

(I) Financial statement and supporting financial information [~~Statement and Supporting Financial Information~~].

(i) All entity types. The financial statement must be dated no earlier than 60 days prior to the date of application submission. Applicants may also submit audited financial statements dated within one year prior to the application date in lieu of completing the supporting financial information [~~Supporting Financial Information~~]. All financial statements must be certified as true, correct, and complete. If requested, a bank confirmation to confirm account balance information with financial institutions must be submitted. All financial statements must reflect the net assets as defined in the Texas Pawnshop Act, §371.003 of at least the lesser of the following amounts:

(I) As required in the Texas Pawnshop Act, §371.072(a), \$150,000; or

(II) The amount required by the Texas Pawnshop Act, §371.072(b) as the license existed or should have existed

under the law and rules in effect on August 31, 1999. A change in net asset requirement occurs with respect to any change of ownership or other event causing a change in the net asset requirement that may have occurred prior to September 1, 1999. The change in the net asset requirement is effective as of the date of change of ownership or other event causing the change of the net asset requirement.

(ii) Sole proprietorships. Sole proprietors must complete all sections of the financial statement and supporting financial information [~~Financial Statement and Supporting Financial Information~~], or provide a personal financial statement that contains all of the same information requested by the financial statement and supporting financial information [~~Financial Statement and Supporting Financial Information~~]. The financial statement and supporting financial information [~~Financial Statement and Supporting Financial Information~~] must be as of the same date.

(iii) Partnerships. A balance sheet for the partnership itself as well as each general partner must be submitted. In addition, the information requested in the supporting financial information [~~Supporting Financial Information~~] must be submitted for the partnership itself and each general partner. All of the balance sheets and supporting financial information [~~Supporting Financial Information~~] documents for the partnership and all general partners must be as of the same date.

(iv) Corporations and limited liability companies. Corporations and limited liability companies must file a balance sheet that complies with generally accepted accounting principles (GAAP). The information requested in the supporting financial information [~~Supporting Financial~~

~~Information]~~ must be submitted. The balance sheet and supporting financial information ~~[Supporting—Financial Information]~~ must be as of the same date. Financial statements are generally not required of related parties, but may be required by the commissioner if the commissioner believes they are relevant. The financial information for the corporation or limited liability company applicant should contain no personal financial information.

(v) Trusts and estates. Trusts and estates must file a balance sheet that complies with generally accepted accounting principles (GAAP). The information requested in the supporting financial information ~~[Supporting—Financial Information]~~ must be submitted. The balance sheet and supporting financial information ~~[Supporting—Financial Information]~~ must be as of the same date. Financial statements are generally not required of related parties, but may be required by the commissioner if the commissioner believes they are relevant. The financial information for the trust or estate applicant should contain no personal financial information.

(J) (No change.)

(2) Other required filings.

(A) Fingerprints.

(i) For all persons meeting the definition of "principal party" as defined in §85.102 of this title, a complete set of legible fingerprints must be provided. All fingerprints should be submitted in a format prescribed by the OCCC and approved by the Texas Department of Public Safety and the Federal Bureau of Investigation.

(ii) For limited partnerships, if the owners and principal parties ~~[Disclosure of Owners and Principal Parties]~~ under paragraph (1)(B)(iii)(I) of this subsection does not produce a natural person, the applicant must provide a complete set of legible fingerprints for individuals who are associated with the general partner as principal parties.

(iii) For entities with complex ownership structures that result in the identification of individuals to be fingerprinted who do not have a substantial relationship to the proposed applicant, the applicant may submit a request to fingerprint three officers or similar employees with significant involvement in the proposed business. The request should describe the relationship and significant involvement of the individuals in the proposed business. The agency may approve the request, seek alternative appropriate individuals, or deny the request.

(iv) For individuals who have previously been licensed by the OCCC and principal parties of entities currently licensed, fingerprints are generally not required if the fingerprints are on record with the OCCC, are less than 10 years old, and have been processed by both the Texas Department of Public Safety and the Federal Bureau of Investigation. Upon request, individuals and principal parties previously licensed by the OCCC may be required to submit a new set of fingerprints.

(v) For individuals who have previously submitted fingerprints to another state agency (e.g., Texas Department of Savings and Mortgage Lending), fingerprints are still required to be submitted to the OCCC, as per Texas Finance Code, §14.152. Fingerprints cannot be disclosed to

others, except as authorized by Texas Government Code, §560.002.

(B) Entity documents.

(i) Partnerships. A partnership applicant must submit a complete and executed copy of the partnership agreement. This copy must be signed and dated by all partners. If the applicant is a limited partnership or a limited liability partnership, provide evidence of filing with the Texas Secretary of State and a certificate of good standing from the Texas Comptroller of Public Accounts.

(ii) Corporations. A corporate applicant, domestic or foreign, must provide the following documents:

(I) a complete copy of the articles of incorporation and any amendments;

(II) a certification from the secretary of the corporation identifying the current officers and directors as listed in the owners and principal parties section of the application [~~a copy of the relevant portions of the bylaws addressing the required number of directors and the required officer positions for the corporation~~];

(III) a certificate of good standing from the Texas Comptroller of Public Accounts [~~a copy of the minutes of corporate meetings that record the election of all current officers and directors as listed on the Disclosure of Owners and Principal Parties, or a certification from the secretary of the corporation identifying the current officers and directors as listed on the Disclosure of Owners and Principal Parties~~];

(IV) if the registered agent is not the same as the one filed with the Texas Secretary of State, a certification from the secretary of the corporation identifying the registered agent; [if the statutory agent is not the same as the registered agent filed with the Texas Secretary of State:]

~~[(a) a copy of the minutes of corporate meetings that record the election of the statutory agent; or]~~

~~[(b) a certification from the secretary of the corporation identifying the statutory agent; and]~~

(V) if requested, a copy of the relevant portions of the bylaws addressing the required number of directors and the required officer positions for the corporation; and

(VI) if requested, a copy of the minutes of corporate meetings that record the election of all current officers and directors as listed in the owners and principal parties section of the application [~~a certificate of good standing from the Texas Comptroller of Public Accounts~~].

(iii) Publicly held corporations. In addition to the items required for corporations, a publicly held corporation must file the most recent 10K or 10Q for the applicant or for the parent company.

(iv) Limited liability companies. A limited liability company applicant, domestic or foreign, must provide the following documents:

(I) a complete copy of the articles of organization;

(II) a certification from the secretary of the company identifying the current officers and directors as listed in the owners and principal parties section of the application [~~a copy of the relevant portions of the operating agreement or regulations addressing responsibility for operations~~];

(III) a certificate of good standing from the Texas Comptroller of Public Accounts [~~a copy of the minutes of company meetings that record the election of all current officers and directors as listed on the Disclosure of Owners and Principal Parties, or a certification from the secretary of the corporation identifying the current officers and directors as listed on the Disclosure of Owners and Principal Parties~~];

(IV) if the registered agent is not the same as the one filed with the Texas Secretary of State, a certification from the secretary of the corporation identifying the registered agent; [~~if the statutory agent is not the same as the registered agent filed with the Texas Secretary of State~~];

[~~(a) a copy of the minutes of company meetings that record the election of the statutory agent; or~~]

[~~(b) a certification from the secretary of the company identifying the statutory agent; and~~]

(V) if requested, a copy of the relevant portions of the operating agreement or regulations addressing responsibility for operations; and

(VI) if requested, a copy of the minutes of company meetings that record the election of all current officers and directors a listed in the owners and principal

parties section of the application [~~a certificate of good standing from the Texas Comptroller of Public Accounts~~].

(v) - (viii) (No change.)

(C) - (H) (No change.)

(b) Subsequent applications. If the applicant is currently licensed and filing an application for a new location, the applicant must provide the information that is unique to the new location including the application for license, disclosure questions, owners and principal parties, a new financial statement [~~Application for License, Application Questionnaire, Disclosure of Owners and Principal Parties, a new Financial Statement~~], a map of the area where the proposed license will be situated as provided in subsection (a)(2)(C) of this section, a certificate of occupancy or other evidence that the operation of a pawnshop is permitted at the proposed site, a lease agreement or proof of ownership, and proof of general liability and fire insurance as provided in subsection (a)(2)(G) of this section. Other information required by this section need not be filed if the information on file with the OCCC is current and valid.

(c) (No change.)

§85.203. Relocation.

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

(c) Filing requirements. An application for relocation must be submitted in a format prescribed by the OCCC [~~commissioner~~] at the date of filing and in accordance with the OCCC's [~~commissioner's~~] instructions. The OCCC [~~commissioner~~] may accept the use of prescribed alternative formats in order to accept approved electronic submissions. The

application for relocation must include the following:

(1) Application for relocation [~~Relocation~~].

(2) Financial statement and supporting financial information [~~Statement and Supporting Financial Information~~]. If the license requested for relocation includes the activation of a license that is inactive at the date of the request for relocation, a new financial statement [~~Financial Statement~~] is required. The instructions in §85.202 of this title (relating to Filing of New Application) are applicable to this filing.

(3) (No change.)

(d) - (g) (No change.)

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

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

(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 license, disclosure questions, owners and principal parties, a new financial statement [~~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) (No change.)

(f) - (h) (No change.)

§85.206. Processing of Application.

(a) Initial review. A response to an incomplete application will ordinarily be made within 14 calendar days of receipt stating that the application is incomplete and specifying the information required for completion [~~acceptance~~].

(b) Application requirements [~~acceptance~~]. An application must contain [~~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) Complete application. An application is complete when:

(1) the application conforms to the statutes, rules, and published instructions;

(2) all fees have been paid; and

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

(d) Competing application. An application in a county with a population of

250,000 or more will be acted upon based on the chronological order in which the application was accepted pursuant to subsection (b) of this section. A competing application may not be granted until a final ruling on any preceding competing application has been made.

(e) Notice of application and protest procedures. A notice of the application will be sent [~~mailed~~] to each pawnshop licensee in the county of the proposed location in accordance with this subsection. The notice will state a date and time, 10 working days following the date of notice, by which any interested person may request a hearing. Any pawnbroker who believes that the applicant's proposed pawnshop will significantly affect that pawnbroker's current business may submit a sworn petition to be admitted as a party in opposition to an application for a new or relocated pawnshop. The sworn petition must contain facts relevant to the eligibility of the applicant and how the protesting pawnshop licensee will be affected by the approving of the proposed application. The commissioner will admit a protesting pawnshop licensee as a party if the protestor can show that it would be significantly affected by the granting of the license and if the protestor can show facts relevant to the eligibility of the applicant. A copy of the sworn petition will be delivered to the applicant and certification of that delivery will be made to the commissioner at the time of filing. A person may appear, present evidence, and be heard on a license only if the person has filed a sworn petition and been accepted as a party by the commissioner.

(1) Notice of application delivered to master file e-mail address. If a pawnshop licensee has provided a master file e-mail address to the OCCC, then the OCCC will

send any notice of application applicable to the pawnshop licensee to the master file e-mail address on file for the pawnshop licensee.

(2) Notice of application delivered to master file mailing address. If a pawnshop licensee has not provided a master file e-mail address to the OCCC or the OCCC receives notice that attempts to send a notice of application via e-mail have been returned as undeliverable, then the OCCC will send any notice of application applicable to the pawnshop licensee via first class mail to the master file mailing address on file for the pawnshop licensee.

(f) Decision on application. The OCCC ~~[commissioner]~~ may approve or deny an application.

(1) Approval. The OCCC ~~[commissioner]~~ will approve the application upon payment of the appropriate fees and a finding of the eligibility and statutory location requirements.

(A) Eligibility requirements.

(i) Good moral character. In evaluating an applicant's moral character the commissioner will consider criminal history information and the applicant's conduct and activities as described in §85.601 of this title (relating to Denial, Suspension, or Revocation Based on Criminal History [Effect of Criminal History Information on Applicants and Licensees] and the applicant's conduct and activities as described in §85.602 of this title (relating to Crimes Directly Related to Fitness for License; Mitigating Factors)).

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

(B) (No change.)

(2) (No change.)

(g) (No change.)

(h) Processing time. The OCCC ~~[commissioner]~~ will ordinarily approve or deny a license application within 60 days after the date the application is complete. The OCCC ~~[commissioner]~~ may take more time if previous competing applications are on file, the placement of a reinstated expired pawnshop license would have an impact on the approval of an application, or where other good cause exists as defined by Texas Government Code, §2005.004 for exceeding the established time periods in this section.

§85.211. Fees.

(a) New licenses. A \$500 nonrefundable investigation fee is assessed each time an application for a new license is filed. The applicant is also required to pay the initial assessment fee required by subsection (e)(5) ~~[(d)(5)]~~ of this section. This assessment fee will be refunded if the application is not approved.

(b) Subsequent licenses. A \$250 nonrefundable investigation fee is assessed each time an application for an additional license of an existing licensee is filed or if the application involves substantially identical principals and owners of a licensed pawnshop. The applicant is also required to pay the initial assessment fee required by subsection (e)(5) ~~[(d)(5)]~~ of this section. This assessment fee will be refunded if the application is not approved.

(c) - (j) (No change.)

§85.212. Application and Notices as Public Records.

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

Division 3. Pawnshop Employee License

§85.301. Filing of New Application.

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

(1) Application [~~Form~~].

(A) Identifying information. The application must contain complete and accurate information identifying the applicant.

(B) Residence information. The application must report a continuous five-year residential history.

(C) Employment information. The application must report a continuous five-year employment history. If an applicant was unemployed for a period of time or was enrolled as a student during a period of time, the application must state that fact.

(D) Background and history. Any response about an employee's background and history must be true, correct, and complete. Additional information as required must be provided with the application.

(E) Signature. The applicant must sign and affirm the application as true, correct, and complete.

(2) Fingerprints.

(A) A complete set of legible fingerprints must be provided for each applicant. An individual who has previously been licensed by the OCCC is generally not required to provide fingerprints. The commissioner may require fingerprints of an employee if the commissioner believes that the individual has not been fingerprinted for a significant amount of time and believes a new set of fingerprints might provide additional information about the individual's criminal background. All fingerprints should be submitted in a format prescribed by the OCCC and approved by the Texas

Department of Public Safety and the Federal Bureau of Investigation.

(B) For individuals who have previously submitted fingerprints to another state agency (e.g., Texas Department of Licensing and Regulation), fingerprints are still required to be submitted to the OCCC, as per Texas Finance Code, §14.152. Fingerprints cannot be disclosed to others, except as authorized by Texas Government Code, §560.002.

§85.304. Processing of Application.

(a) Application requirements ~~[acceptance]~~. An application for a pawnshop employee license must contain ~~[will not be accepted until it contains the appropriate fees and]~~ the items required in accordance with §85.301 of this title (relating to Filing of New Application).

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

(1) the application conforms to the rules and published instructions;

(2) all fees have been paid; and

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

(c) Decision on application. The OCCC ~~[commissioner]~~ may approve or deny an application.

(1) Approval. The OCCC ~~[commissioner]~~ will approve the application upon payment of the appropriate fees and finding of the eligibility requirements. A license is the personal property of the employee and may not be retained by a pawnshop when an employee terminates employment with the pawnshop.

(A) Good moral character. In evaluating an applicant's moral character the commissioner will consider criminal history information and the applicant's conduct and activities as described in §85.601 of this title (relating to Denial, Suspension, or Revocation Based on Criminal History [Effect of Criminal History Information on Applicants and Licensees]) ~~and the applicant's conduct and activities as described in §85.602 of this title (relating to Crimes Directly Related to Fitness for License; Mitigating Factors)]~~.

(B) Good business reputation. In evaluating an applicant's business reputation, the commissioner will consider the applicant's background and history.

(C) Character and fitness to warrant belief that pawnshop will be operated lawfully and fairly. The applicant's overall background and history will be considered. Providing misleading information on the application or failing to disclose information to the OCCC may be grounds for denial.

(2) (No change.)

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

(f) Processing time. The OCCC ~~[commissioner]~~ will ordinarily approve or deny a license application within 60 days after the date the application is complete. The OCCC ~~[commissioner]~~ may take more time where good cause exists, as defined by Texas Government Code, §2005.004.

§85.307. Application and Notices as Public Records.

Once a license application or notice is filed with the OCCC, it becomes a "state

record" under Texas Government Code, §441.180(11), and "public information" under Government Code, §552.002. Under Government Code, §§441.190, 441.191 and 552.004, the original applications and notices must be preserved as "state records" and "public information" unless destroyed with the approval of the director and librarian of the Texas State Library and Archives Commission [~~State Archives and Library Commission~~] under Government Code, §441.187. Under Government Code, §441.191, the OCCC may not return any original documents associated with a pawnshop employee license application or notice to the applicant or licensee. An individual may request copies of a state record under the authority of the Texas Public Information Act, Government Code, Chapter 552.

Division 4. Operation of Pawnshops

§85.402. Recordkeeping.

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

(c) Compliance file. A separate file must be maintained at each licensed location for all communications from the OCCC and for copies of correspondence and reports addressed to the OCCC. This file must include, at a minimum, electronic or paper copies of the current Texas Finance Code, Chapter 371, the last three examination reports, correspondence relating to compliance[~~, compliance bulletins~~] issued in the last two years, and current rules issued by the OCCC [~~commissioner~~]. A licensee will be considered to have maintained copies of the Texas Finance Code and current rules by having access to the websites containing the official versions of the current Texas Finance Code and the current Texas Administrative Code. A licensee will be

considered to have maintained copies of some or all of the last three examination reports if those reports were issued electronically by the OCCC.

(d) - (h) (No change.)

§85.405. Pawn Transaction.

(a) Pawn Ticket.

(1) - (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, §507.001(a) [~~§506.001(a)~~]. A pawnbroker is not required to take a photograph of any pledgor or seller for purposes of identification.

(B) Prohibited identification. The following forms of identification are not acceptable for the identification of a pledgor or seller:

(i) a driver's license issued by a foreign country;

(ii) a state identification card issued by an entity other than the Texas Department of Public Safety or comparable agency in another state;

(iii) an inmate or parolee identification card; and

(iv) a social security card.

(7) (No change.)

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

§85.421. Consumer Information.

(a) Consumer education. The OCCC will provide each pawnshop, at the time of initial licensing, a display and printed materials that must be placed in a location clearly visible to the consumer from the register. The pawnshop must refill the display as necessary by requesting additional copies from the OCCC, or by printing additional copies of the consumer brochures available on the OCCC's website.

(b) (No change.)

Division 5. Inspections and Examination

§85.502. Annual Report.

As part of the examination process, a report must be filed in conjunction with the pawnshop license renewal providing certain information in a format prescribed by the OCCC and must comply with all instructions relating to submitting the report. ~~[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.]~~ These submissions are collected under the examination authority of Texas Finance Code, §371.201, and are confidential under the provisions of Texas Finance Code, §371.206. The OCCC ~~[commissioner]~~ will publish an aggregated

report. A report for each licensed location must be filed by July 31st for the period of January 1st to December 31st of the preceding year and include:

(1) Number of pawn loans made during the year;

(2) Amount advanced in connection with pawn loans made during the year;

(3) Number of pawn loans outstanding on the December 31st immediately preceding the due date of the report; and

(4) Amount of pawn loans outstanding on the December 31st immediately preceding the due date of the report.

Division 6. License Revocation, Suspension, and Surrender

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

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

(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(a) [~~§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) - (f) (No change.)

§85.603. Reinstatement of an Expired Pawnshop License.

If a pawnshop license expires as prescribed by §85.104 of this title (relating to Renewal Dates of Licenses) for failure to pay annual assessment fees, the OCCC will

notify the pawnshop license holder by mailing notice to the current registered [~~statutory~~] agent on file via certified mail that the license has expired and that the licensee may not make or renew a pawn loan. The holder of the expired license may elect to reinstate the license by submitting the fees required by §85.211(d) of this title (relating to Fees) and a \$1,000 reinstatement fee postmarked on or before December 27 of that same year. An expired pawnshop license holder may not conduct any licensed business at the formerly licensed location during the time the license is expired. Any unlicensed acts are subject to enforcement [~~administrative~~] action by the OCCC [~~of the commissioner~~] should the holder of the expired license not cease operations upon expiration of the license on July 1. An expired license is considered an operating pawnshop location for the duration of the period of reinstatement right for the purpose of statutory distance requirements.

§85.604. Enforcement Action Against [~~Revocation or Suspension of~~] Pawnshop License or Pawnshop Employee License.

(a) Generally. For [~~The commissioner may initiate an administrative action for~~] the reasons in subsection (b) of this section, the OCCC may take one or more of the following enforcement actions under Texas Finance Code, Chapters 14 and 371 [~~and assess any or all of the penalties in paragraphs (1) and (2) of this subsection~~]:

(1) an injunction [~~revoke or suspend a license~~];

(2) [~~assess~~] an administrative penalty; [~~:-~~]

(3) a suspension; or

(4) a revocation.

(b) Basis for enforcement ~~[administrative]~~ actions.

(1) Eligibility. A pawnbroker or pawnshop employee who fails to maintain eligibility under the Texas Pawnshop Act and the administrative rules promulgated by the OCCC ~~[commissioner]~~ is subject to an injunction, an administrative penalty, suspension or revocation.

(2) Character and fitness. A pawnbroker or a pawnshop employee must report within 30 calendar days to the OCCC ~~[commissioner]~~ knowledge of any arrest, charge, indictment, or conviction of any of the following filed with the OCCC:

(A) a principal party named on a pawnshop application;

(B) a principal party named on a pawnshop license;

(C) an individual named on a pawnshop employee application; or

(D) an individual named on a pawnshop employee license.

(3) Traffic violations. Traffic violations and any action previously reported to the OCCC ~~[commissioner]~~ are not required to be reported.

(4) ATF investigations and actions. Any known investigation of potential violations by the pawnbroker of federal laws or rules relating to firearms must be reported to the OCCC ~~[commissioner]~~, but this does not include compliance inspections by the United States Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). A notice of

revocation, suspension, or imposition of civil fine issued by ATF against the federal firearms license must also be reported. Reports must include notices issued on ATF Form 4500 and ATF Form 5300.13 ~~[4501]~~ as provided by 27 C.F.R. §478.73 and §478.74, and must be made within three business days of receipt of the notice.

(5) Failure to comply with the law. A pawnbroker or pawnshop employee who fails to comply with this subchapter or the provisions of Texas Finance Code, Chapter 14 or Chapter 371, is subject to an injunction, suspension, revocation, or an administrative penalty.

(6) Accepting stolen property. A pawnbroker or pawnshop employee who knowingly or without exercise of due care accepts stolen property or accepts property which has been represented to be stolen without reporting it to law enforcement may be subject to an injunction, suspension, revocation, or an administrative penalty. A pawnbroker or pawnshop employee who has personal knowledge of a pawnbroker or a pawnshop employee accepting stolen property without reporting it to law enforcement is subject to an injunction, suspension, revocation, or an administrative penalty.

(7) Failure to comply with OCCC ~~[commissioner's]~~ order. A pawnbroker or pawnshop employee who fails to comply with an OCCC order ~~[of the commissioner]~~ is subject to an injunction, suspension, revocation, or an administrative penalty.

(8) Responsibility for compliance. Any licensed pawnbroker or pawnshop employee who knowingly or without exercise of due care violates the purposes of Texas Finance Code, Chapter 371, or this

subchapter is subject to an injunction, suspension, revocation, or an administrative penalty.

(9) Responsibility for acts of others. Any person who holds a pawnshop license will be responsible for the acts of its officers, directors, employees, and agents in the conduct of the pawnshop business.

§85.606. Surrender of License.

(a) Winding down. When a licensee surrenders its license or ceases business operations, the licensee must comply with §85.605 of this title (relating to Redemption of Goods After License Revocation or Suspension).

(b) Surrendering to avoid enforcement [administrative] action. A licensee may not surrender a license after an enforcement [administrative] action has been initiated without the written agreement of the OCCC.

Division 7. Enforcement; Penalties

§85.701. Failure to Timely File a Pawnshop Employee Application.

(a) Reasonable ground for denial. Failure to file a pawnshop employee application with the OCCC within 75 calendar days of the first day the employee participated or trained in a transaction subject to Texas Finance Code, §371.101(c), will be a reasonable ground for denial of the license. Should the OCCC [commissioner] find that no other ground is present on which to base a denial of the license, the OCCC [commissioner] may grant the license and take an enforcement action as provided [with an agreed suspension as set out] in subsection (b) of this section.

(b) Enforcement actions. Failure to file a pawnshop employee application with the OCCC within 75 calendar days of the first day the employee participated or trained in a transaction subject to Texas Finance Code, §371.101(c), may subject both the pawnshop and the pawnshop employee to one or more of the following enforcement actions under Texas Finance Code, Chapters 14 and 371: ~~[Agreed suspension. As stated in subsection (a) of this section, if the commissioner finds that no grounds other than failure to timely file is present, the parties may agree upon one of the following options in lieu of denial:]~~

(1) an injunction [if the applicant has not previously held a pawnshop employee license, the application will be granted and then immediately suspended for the number of days equal to 20% of the total number of days past the 75th calendar day which the applicant worked without a license];

(2) an administrative penalty [if the applicant has previously held a pawnshop employee license, the application will be granted and then immediately suspended for the number of days equal to 30% of the total number of days past the 75th calendar day which the applicant worked without a license];

(3) a suspension [in cases where the pawnshop accepts responsibility for failure to timely file, and the suspension calculated under paragraph (1) or (2) of this subsection results in a suspension period in excess of 14 days, the pawnshop may pay \$30 per suspension day to reduce the suspension period]; or

(4) a revocation [another option agreeable to all parties].

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~~[(e) Suspension calculations. There will be no suspension of less than one complete day. All calculations resulting in fractions will be rounded up to the next full day.]~~

[(c) [(d)] Pattern of violations. A pattern of violations may result in an additional enforcement [administrative] action[;] or denial[;] or the forfeiture of the options in this section].

§85.702. Accepting Prohibited Merchandise.

(a) Reasonable ground for revocation. Reasonable ground for revocation of the license exists when a pawnbroker or pawnshop employee, knowingly or without exercising due care, fails to prevent a transaction of stolen property, in violation of Texas Finance Code, Chapter 371. ~~[Should the commissioner find that no other ground is present on which to base a revocation of the license, the commissioner may agree to a suspension or an administrative penalty as set out in subsections (b) and (c) of this section.]~~

(b) Enforcement actions. The acceptance of prohibited merchandise [Individual violations. A pawnbroker or a pawnshop employee found to have taken an item] in violation of §85.418(a)(1) or (3) of this title (relating to Acceptance of Goods),[is subject to the following penalty:] may subject the pawnshop and pawnshop employee to one or more of the following enforcement actions under Texas Finance Code, Chapters 14 and 371:

(1) an injunction; ~~[If the violation results from the action of ownership or management, the pawnshop license will be suspended for one day per each item found on premises or the pawnshop may pay an~~

~~administrative penalty per each item found on premises of:]~~

~~[(A) \$100 for the first violation;]~~

~~[(B) \$200 for the second violation subsequent to the date the first violation is cited;]~~

~~[(C) \$500 for a violation subsequent to the date the second violation is cited.]~~

(2) an administrative penalty; ~~[If the violation results from the action of a pawnshop employee, the employee license will be suspended for one day per each item found on premises or the pawnshop employee may pay an administrative penalty of \$50 for each item found on premises.]~~

(3) a suspension; or

(4) a revocation.

(c) Multiple violations. Multiple violations may result in an additional enforcement action. [A pawnshop that is found to have more than 10 violations of any of the provisions of §85.418(a)(1) and (3) of this title in a two-year period is subject to the following penalties in addition to the penalties of subsection (b) of this section:]

[(1) suspension of three days; or]

[(2) in lieu of suspension, an administrative penalty of \$1,000 for each day of suspension.]

[(d) Alternative resolution. If a pattern of violations indicates a lack of the management's affirmative duty to supervise its employees to prohibit violations of §85.418(a)(1) and (3) of this title, then

~~forfeiture of the options in subsections (b) and (c) of this section will result. If the OCCC has independent proof of violations of §85.418 of this title, the pawnbroker or pawnshop employee may be subject to stronger administrative actions than required by this section.]~~

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 19, 2018.

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