

A.

Finance Commission

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FINANCE COMMISSION OF TEXAS

MEETING DATE**December 14, 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 DATESFebruary 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, December 14, 2018

8:30 a.m.

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 and C2-5*

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

A. FINANCE COMMISSION MATTERS

1. ***Review and Approval of the Minutes of the October 19, 2018 Finance Commission Meeting***
2. General Public Comment
3. Consent Agenda
4. Finance Commission Operations
5. Discussion of and Possible Vote to Take Action on the Finance Agencies' Fiscal Year 2019 Internal Auditor's Risk Assessment and Audit Plan as Prepared and Presented by McConnell & Jones LLP
6. Discussion of and Possible Vote to Take Action on Revisions to the Finance Commission's Policies and Procedures Regarding Training, Budgeting and Travel Reporting
7. Discussion of and Possible Vote to Take Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Duties and Compensation of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to the Duties and Compensation of Persons Holding the Position of Agency Commissioner Positions, and Other Staff
8. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to §551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property
9. Discussion and Consultation with Attorney and Possible Vote to Take Action Pursuant to §551.071, Texas Government Code, for the purpose of seeking the advice or attorney-client privileged communications from our attorneys, including matters related to the potential financial exposure of the Finance Commission Agencies and their officers and the Finance Commission and its officers and including matters of pending and contemplated litigation

10. Discussion of and Consultation on Security Audit, possible issue related to confidential or sensitive information, security breach audit and assessment, or security assessments or deployment related to information resources technology as authorized by Tex. Govt. Code Secs. 551.076 and 551.089

B. OFFICE OF CONSUMER CREDIT COMMISSIONER

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

Lynn Rowell d/b/a Beaumont Greenery, MPC Data and Communications, Inc., Micah Cooksey, NXT Properties, Inc., Mark Harken, Montgomery Chandler, Inc., Paula Cook, Townsley Designs, LLC, and Shonda Townsley v. 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

C. TEXAS DEPARTMENT OF BANKING

1. Industry Status and Departmental Operations: a) Current Issues Affecting Department's Regulated Entities; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Special Audits Division Activities; e) Administrative, Staffing and Fiscal Division Activities; f) Strategic Support Division Activities including Consumer Complaint Data; g) Legal Division Activities including Enforcement Activity and Gift Reporting; and h) Legislative Activities
2. *Discussion of and Possible Vote to Take Action on the Reappointment of Wallace Jones as the Trust Industry Representative to the Guaranty Fund Advisory Council for the period January 1, 2019 to December 31, 2020*
3. *Discussion of and Possible Vote to Take Action on the Adoption of Amendment to 7 TAC, Part 1, Chapter 5, §5.101, Concerning Employee Training and Education Assistance Programs*
4. *Discussion of and Possible Vote to Take Action on the Adoption of Amendment to 7 TAC, Part 2, Chapter 26, §26.11, Concerning Perpetual Care Cemeteries Complaints*
5. *Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 2, Chapter 33, §§33.23 and 33.35, Concerning Money Services Businesses Permissible Investments and Record Retention Related to Money Transmission Transactions, respectively*

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

D. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

1. Industry Status and Departmental Operations - State Savings Bank Activity: a) Industry Status; and b) State Savings Bank Charter and Application Activity
2. Industry Status and Departmental Operations – Mortgage Lending Activity: a) Residential Mortgage Loan Originators; b) Mortgage Examination; and c) Consumer Complaints
3. Fiscal and Departmental Operations: a) Funding Status/Audits/Financial Reporting; and b) Staffing
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

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

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

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**MINUTES OF THE
FINANCE COMMISSION MEETING
FRIDAY, October 19, 2018**

The Finance Commission of Texas convened at 10:15 a.m. on October 19, 2018 with the following members present:

Finance Commission Members in Attendance:

Stacy G. London, Chairman
Phillip Holt, Vice Chair
Bob Borochoff
Hector Cerna
Will Lucas
Lori McCool
Paul Plunket
Vince Puente

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

Stacy G. London made a motion to excuse Molly Curl, Cliff McCauley, and Matt Moore from the Finance Commission meeting held on October 19, 2018. There were no objections and the motion passed unanimously. (00:15)

Agenda Item	Action	Location on Video File
A. Finance Commission Matters		
1. Review and Approval of the Minutes of the August 17, 2018 Finance Commission Meeting	On Consent Agenda – Items A1, B2-6, D2-3	04:14 start of discussion
2. General Public Comment	No Action Required.	0:4:18 start of discussion
3. Consent Agenda – Items A1, B2-6, and D2-3	Phillip Holt made a motion to Approve Consent Agenda items A1, B2-6, and D2-3. Lori McCool seconded, and the motion passed.	04:40 start of discussion 05:07 vote
4. Finance Commission Operations	No Action Required.	05:27 start of discussion

5. Audit Committee Report		07:40 start of discussion
<p>A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' August 31, 2018 Investment Officer Reports</p> <p>1. Texas Department of Banking 2. Department of Savings and Mortgage Lending 3. Office of Consumer Credit Commissioner</p>	Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies' August 31, 2018 Investment Officer Reports passed.	<p>07:50 start of discussion</p> <p>08:02 vote</p>
<p>B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action Agencies' 2018 Fourth Quarter Financial Statements</p>	Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies' 2018 Fourth Quarter Financial Statements passed.	<p>08:12 start of discussion</p> <p>08:20 vote</p>
<p>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</p>	Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve an additional Finance Commission audit to be provided under the current Internal Auditor Contract not to exceed \$23,735 passed.	<p>8:38 start of discussion</p> <p>8:44 vote</p>
<p>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</p>	Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Department of Savings and Mortgage Lending's Contribution of \$750,000 to the Texas Financial Education Endowment Fund passed.	<p>8:55 start of discussion</p> <p>9:07 vote</p>
6. Discussion of and Possible Vote to Accept the Report on the Financial Condition of the State Banking System	Vince Puente made a motion to Approve the Report on the Financial Condition of the State Banking System. Phillip Holt seconded, and the motion passed.	<p>9:22 start of discussion</p> <p>45:26 vote</p>

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	Vince Puente made a motion to Approve 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. Hector Cerna seconded, and the motion passed.	33:54 start of discussion 50:48 vote
8. Discussion of Legislative Initiatives of the Texas Department of Banking, Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner	No Action Required.	51:05 start of discussion
9. Discussion of Management Actions from Sunset Reports	No Action Required.	1:02:39 start of discussion
10. Discussion of and Possible Vote to Take Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Duties and Compensation of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to the Duties and Compensation of Persons Holding the Position of Agency Commissioner Positions, and Other Staff	Deferred to Executive Session – no vote taken.	n/a
11. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to §551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property	Deferred to Executive Session – no vote taken.	n/a
12. 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	Deferred to Executive Session – no vote taken.	n/a

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	Deferred to Executive Session – no vote taken.	n/a
B. Texas Department of Banking		
1. Industry Status and Departmental Operations: a) Items of Interest from the Commissioner’s Office; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Special Audits Division Activities; e) Administrative and Fiscal Division Activities; f) Strategic Support Division Activities; g) Legal Division Activities; h) Legislative Activities; and i) General Items of Interest	No Action Required.	1:07:54 start of discussion
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	On Consent Agenda – Item B2 This item approved on the Consent Agenda.	n/a
3. Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 2, Chapter 11, Concerning Complaints, Resulting from Rule Review	On Consent Agenda – Item B3 This item approved on the Consent Agenda.	n/a
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	On Consent Agenda – Item B4 This item approved on the Consent Agenda.	n/a
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	On Consent Agenda – Item B5 This item approved on the Consent Agenda.	n/a

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	On Consent Agenda – Item B6 This item approved on the Consent Agenda.	n/a
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	Lori McCool made a motion to Approve the Proposal and Publication for Comment of Amendment to 7 TAC, Part 1, Chapter 5, §5.101, Concerning Employee Training and Education Assistance Programs. Paul Plunket seconded, and the motion passed.	01:34:01 start of discussion 01:36:04 vote
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	Phillip Holt made a motion to Approve the Proposal and Publication for Comment of Amendment to 7 TAC, Part 2, Chapter 26, §26.11, Concerning Perpetual Care Cemeteries Complaints. Will Lucas seconded, and the motion passed.	01:37:01 start of discussion 01:37:52 vote
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	Will Lucas made a motion to Approve 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. Phillip Holt seconded, and the motion passed.	1:38:35 start of discussion 1:40:50 vote
10. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Action Required.	n/a

C. Department of Savings and Mortgage Lending		
1. Industry Status and Departmental Operations - State Savings Bank Activity: a) Industry Status; b) State Savings Bank Charter and Application Activity; c) Other Items	No Action Required.	1:43:01 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.	1:47:20 start of discussion
3. Fiscal/ Operations Activity: a) Funding Status/Audits/Financial Reporting; b) Staffing; and c) Other Items	No Action Required.	1:56:40 start of discussion
4. Legal Activity: a) Enforcement; b) Gift Reporting; and c) Legislative Activities	No Action Required.	1:57:21 start of discussion
5. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Action Required.	n/a
D. Office of Consumer Credit Commissioner		
1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities	No Action Required.	01:59:25 start of discussion
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	On Consent Agenda – Item D2. This item Approved on the Consent Agenda.	n/a
3. Discussion of and Possible Vote to Take Action on the Adoption of the Completed Rule Review of 7 TAC, Chapter 85, Subchapter A, Concerning Rules of Operation for Pawnshops	On Consent Agenda – Item D3. This item Approved on the Consent Agenda.	n/a

<p>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</p>	<p>Phillip Holt made a motion to Approve the Proposal of Amendments in 7 TAC, Part 5, Chapter 85, Subchapter A, Concerning Rules of Operation for Pawnshops Resulting from Rule Review. Will Lucas seconded, and the motion passed.</p>	<p>02:09:50 start of discussion 02:19:55 vote</p>
<p>5. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation</p> <p><i>Lynn Rowell d/b/a Beaumont Greenery, 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>	<p>No Action Required.</p>	<p>n/a</p>

Chairman Stacy G. London called for an Executive Session at 12:49 p.m. (02:21:33) on the audio file). The open meeting resumed at 1:27 p.m. (02:22:02) on the audio file.)

There being no further business, Chairman Stacy G. London adjourned the meeting of the Finance Commission at 1:27 p.m. (02:22:15) 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

Finance Commission of Texas

Consent Agenda

December 14, 2018

A. Finance Commission Matters

1. Review and Approval of the Minutes of the October 19, 2018 Finance Commission Meeting

C. Texas Department of Banking

2. Discussion of and Possible Vote to Take Action on the Reappointment of Wallace Jones as the Trust Industry Representative to the Guaranty Fund Advisory Council for the period January 1, 2019 to December 31, 2020
3. Discussion of and Possible Vote to Take Action on the Adoption of Amendment to 7 TAC, Part 1, Chapter 5, §5.101, Concerning Employee Training and Education Assistance Programs
4. Discussion of and Possible Vote to Take Action on the Adoption of Amendment to 7 TAC, Part 2, Chapter 26, §26.11, Concerning Perpetual Care Cemeteries Complaints
5. Discussion of and Possible Vote to Take Action on the Adoption 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

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Office of Consumer Credit Commissioner – Audits Performed

Fiscal Year 2018

- Internal Audit:
 - Property Tax Lender Examinations Audit
- CPA - Post-Payment, Post-Procurement, Personnel, Payroll & Travel Audit
- DPS – Non-Criminal Justice Audit
- DIR – Network Security Controlled Penetration Testing
- SORM – On Site Risk Management Program Review & Consultation
- Sunset Review

Fiscal Year 2017

- Internal Audits:
 - TFEE- Investment Portfolio Administration Audit
 - Registrations Audit
- SAO – Financial Processes; Performance Data Reporting; Fees and Penalties; IT Security Controls

Fiscal Year 2016

- Internal Audit:
 - MVSF Exam Audit
- DPS/FBI – Criminal History Record Information Audit
- SORM – On Site Risk Management Program Review & Consultation
- NTTData/DIR – Cyber Security Assessment
- DIR – Network Security Controlled Penetration Testing

Fiscal Year 2015

- Internal Audit:
 - TFEE Grant and Investments Portfolio Administration Audit
- DIR – Network Security Controlled Penetration Testing

Fiscal Year 2014

- Internal Audit:
 - Professional License Audit
- DIR – Network Security Controlled Penetration Testing

Fiscal Year 2013

- Internal Audit:
 - Credit Access Business Exam Audit
- FBI – Criminal History Record Information Audit
- TWC – Personnel Policy & Procedure
- CPA – Post-Payment, Post-Procurement, Personnel, Payroll, SPA & Travel Audit
- DIR – Network Security Controlled Penetration Testing

Fiscal Year 2012

- Internal Audit:

- Complaint Investigations Audit
- SORM – Risk Management Program Review
- SAO – Agency Performance Audit
- DPS – Licensing (Criminal History Record Information) Audit

Fiscal Year 2011

- Internal Audits:
 - Information Resources Audit
 - Licensing Audit
- DIR – Network Security Controlled Penetration Testing

Fiscal Year 2010

- Internal Audits:
 - Pawn Examinations Audit
 - Regulated Lender Examination Audit
- CPA – Post-Payment, Post-Procurement, Personnel, Payroll, SPA & Travel Audit
- DIR – Network Security Controlled Penetration Testing

Fiscal Year 2009

- Internal Audits:
 - Payroll & Human Resources Audit
 - Revenues & Collections of Fees Audit
- SORM – Risk Management Program Review
- DIR – Network Security Controlled Penetration Testing

Fiscal Year 2008

- Internal Audit:
 - Record Retention & Fixed Asset Audit
- SAO – Agency Performance Audit
- DIR – Network Security Controlled Penetration Testing

Department of Banking – Audits Performed

Fiscal Year 2019

- DIR/AT&T Consulting – Texas Cybersecurity Framework Assessment (on-going)
- DIR – Network Security Controlled Penetration Test

Fiscal Year 2018

- DIR – Network Security Controlled Penetration Test
- Texas Workforce Commission – Personnel Policies and Procedures Audit
- Internal Audits:
 - Trust Examinations
 - Prepaid Funeral Guaranty Funds
- Comptroller – Post Payment Audit

Fiscal Year 2017

- SORM – On-Site Risk Management Program Review
- DIR – Network Security Controlled Penetration Test
- Internal Audits:
 - Fixed Asset Management
 - Bank Examinations
- SAO – An Audit Report on the Department of Banking: A Self-directed, Semi-independent Agency
- State Fire Marshal Walkthrough

Fiscal Year 2016

- Internal Audits:
 - IT Examinations
 - Imaging and Records Management
- DPS – On-Site Non-Criminal Justice Audit
- DIR – Network Security Controlled Penetration Test

Fiscal Year 2015

- Internal Audits:
 - Revenue Accounting Process
 - Perpetual Care Cemeteries
- SORM – Loss Control Assessment
- SORM – On-Site Consultation
- DIR – Network Security Controlled Penetration Test

Fiscal Year 2014

- Internal Audits:
 - Money Services Businesses
 - Management Information Systems (MIS)
- Comptroller – Post Payment Audit
- SORM – On-Site Risk Management Program Review
- SORM – Death Investigation
- DIR – Network Security Controlled Penetration Test

Fiscal Year 2013

- Internal Audits:
 - Prepaid Funeral Contract Examinations
 - Corporate Activities
- SAO – Off-Site Review of Outstanding Bank Examination Audit Findings
- DPS – Criminal History Record Audit
- Gartner – Network Security
- DIR – Network Security Controlled Penetration Test

Fiscal Year 2012

- Internal Audits:
 - Prepaid Funeral Guaranty Funds
 - Bank Examinations
- TWC – Civil Rights Audit
- SAO – Off-Site Review of Outstanding Bank Examination Audit Findings
- DIR – Network Security Controlled Penetration Test

Fiscal Year 2011

- Internal Audits:
 - Revenue Accounting Process
 - Trust Examinations
 - Financial Reporting
- DIR – Network Security Controlled Penetration Test

Fiscal Year 2010

- Internal Audits:
 - Money Service Business Examinations
 - IT Examinations
 - Management Information Systems
- State Auditor’s Office Bank Examinations – Supplement for newly released examination data by the FDIC (November 2009)
- Comptroller – Post Payment Audit
- SORM – On-Site Risk Management Review
- DIR – Network Security Controlled Penetration Test

Fiscal Year 2009

- Internal Audits:
 - Perpetual Care Cemetery Examinations
 - Performance Measures
 - Fixed Asset Management
- State Auditor’s Office Bank Examinations (July 2009)
- SORM – On-Site Risk Management Review
- DIR – Network Security Controlled Penetration Test

DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

Agency Audits for the period FY2010 to date

FY2019

Internal Audit

McConnell Jones Pending

External Audit

Texas Workforce Commission Personnel Policies and Procedures Review
(scheduled)
Department of Information Resources (plan IT Penetration Test (planned)

FY2018

Internal Audit

Garza/Gonzales Thrift Supervision and Compliance

External Audit

Comptroller of Public Accounts Post-payment and Post-procurement Audit
Sunset Commission Sunset Review
Department of Information Resources IT Penetration Test

FY2017

Internal Audit

Garza/Gonzales Thrift Examinations

External Audit

State Auditors Office SDSI Audit
State Office of Risk Management Risk Management Program Review
Department of Information Resources IT Penetration Test

FY2016

Internal Audit

Garza/Gonzales Management Information Systems

External Audit

Department of Information Resources IT Penetration Test

FY2015

Internal Audit

Garza/Gonzales Mortgage Examinations

External Audit

Department of Information Resources IT Penetration Test

FY2014

Internal Audit

Garza/Gonzales

Consumer Protection

External Audit

Comptroller of Public Accounts

Post-payment and Post-procurement Audit

State Office of Risk Management

Premises Walk-through

Department of Information Resources

IT Penetration Test

FY2013

Internal Audit

Garza/Gonzales

Thrift Supervision

External Audit

Texas Workforce Commission

Personnel Policies and Procedures Review

State Office of Risk Management

Risk Management Program Review

Department of Information Resources

IT Penetration Test

FY2012

Internal Audit

Garza/Gonzales

Mortgage Licensing

External Audit

Department of Information Resources

IT Penetration Test

Department of Public Safety

Use of Criminal History Information

FY2011

Internal Audit

Garza/Gonzales

Legal and Enforcement

Revenue Accounting Process

External Audit

Department of Information Resources

IT Penetration Test

FY2010

Internal Audit

Garza/Gonzales

Thrift Examination (SAO Follow up)

External Audit

State Auditor's Office

Savings Banks Oversight, Part II

Comptroller of Public Accounts

Post-payment and Post-procurement Audit

State Office of Risk Management

Premises Walk-through

Department of Information Resources

IT Penetration Test



McCONNELL & JONES LLP
CERTIFIED PUBLIC ACCOUNTANTS

Texas Finance Commission Internal Audit

FY 2019 Risk Assessment Report
FY 2019 Annual Audit Plan

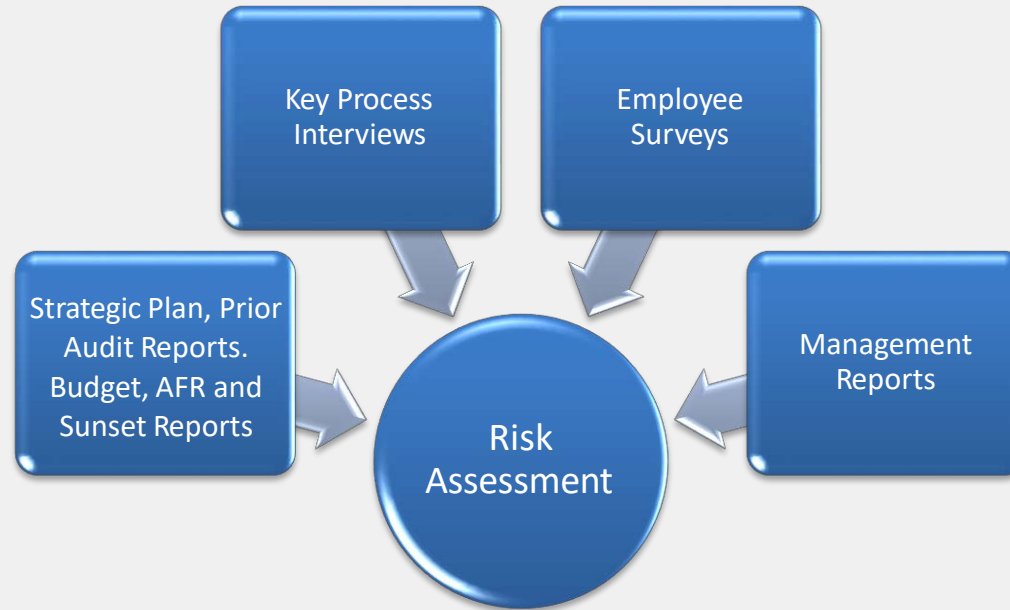
October 31, 2018



Table of Contents

- ❑ Risk Assessment Methodology
- ❑ Risks Factors
- ❑ Risk Scoring Descriptions
- ❑ Function and Business Process Risk Map - DOB
- ❑ Function and Business Process Risk Map - DSML
- ❑ Function and Business Process Risk Map - OCCC
- ❑ Summary of Proposed FY 2019 Internal Audits by Agency
- ❑ Audit History by Agency
- ❑ DOB Risk Assessment and Annual Audit Plan Details
 - Mission and Operational Objectives
 - Department Key Responsibilities
 - Primary Business Functions
 - Primary Functions and Key Business Process Matrix
 - Proposed 2019 Internal Audit Plan
 - Information Technology Change Management Audit
- ❑ DSML Risk Assessment and Annual Audit Plan Details
 - Mission and Operational Objectives
 - Department Key Responsibilities
 - Primary Business Functions
 - Primary Functions and Key Business Process Matrix
 - Proposed 2019 Internal Audit Plan
 - Information Technology Change Management Audit
- ❑ OCCC Risk Assessment and Annual Audit Plan Details
 - Mission and Operational Objectives
 - Department Key Responsibilities
 - Primary Business Functions
 - Primary Functions and Key Business Process Matrix
 - Proposed 2019 Internal Audit Plan
 - Information Technology Change Management Audit
 - Texas Financial Education Endowment (TFEE) Fund compliance audit of the investment administration controls.
- Fines and Penalties Audit

Risk Assessment Methodology



Internal Audit performed the following procedures in conducting the risk assessment:

- ❑ Reviewed each agency's Strategic Plan, Annual Financial Report, Operating Budget, prior internal audit reports, Sunset Self-Evaluation Reports and the Sunset Staff Report to obtain a preliminary understanding of the respective agency's operations.
- ❑ Interviewed each agency's commissioner, leadership team and managers to identify the key processes within their respective departments.
- ❑ Interviewed TFC Commissioners.
- ❑ Deployed electronic risk assessment survey to all staff.
- ❑ Analyzed process responsibilities to assess the associated risk, including financial, operational and compliance risks.

Risk Factors

Business process risks estimate the impact and likelihood that have the potential to affect the agency's mission, objectives or reputation. We deployed an electronic survey that evaluated the following agency risks on a 1-3 score. The average scores were then included in the respective business process and department assessment.

- ❑ Control Environment - Integrity and ethical values; organization structure; risk assessment; management philosophy and operating style; managing change; commitment to competence; compliance with laws and regulations; management oversight.
- ❑ Policy Management - Planning and budgeting; policies and procedures; human resources.
- ❑ Performance Management - Effective and efficiency of operations; performance measurement systems.
- ❑ Information Management - Information flow; communication; automation.
- ❑ Resource Management – Human resources, cash, estimations, assessments.

We also conducted interviews and reviewed key documents to assess the following risks on a 1-3 score. The average scores were then included in the respective business process assessment.

- ❑ Business Process Characteristics – Number of market/internal variables.
- ❑ Impact on Financial Statements – Number of estimates and the dollar amount of assets, receipts, or disbursements for which it is responsible or the degree of its responsibility related to the agency's primary mission.
- ❑ Fraud Risks – Amount of manual processes and the impact of these on the agency's reputation and/or ability to accomplish its objectives.
- ❑ Account Characteristics – The amount of calculations or complexities in the process.

Risk Scoring Description

Control Environment	
Significant impact on internal controls or of non-compliance with regulations	2.45 – 3.00
Moderate impact on internal controls or of non-compliance with regulations	1.45 – 2.44
Little to no impact on internal controls or of non-compliance with regulations	0.00 – 1.44

Performance Management	
Significant impact of not monitoring performance or inefficiencies	2.45 – 3.00
Moderate impact of not monitoring performance or inefficiencies	1.45 – 2.44
Little or no impact of not monitoring performance or inefficiencies	0.00 – 1.44

Resource Management	
Significant impact on agency resources	2.45 – 3.00
Moderate impact on agency resources	1.45 – 2.44
Little or no impact on agency resources	0.00 – 1.44

These factors are based on surveys. We evaluated these risks on a 1-3 score. The average scores were then included in the respective business process assessment.

Policy Management	
Significant impact of not following established policies	2.45 – 3.00
Moderate impact of not following established policies	1.45 – 2.44
Little or no impact of not following established policies	0.00 – 1.44

Information Management	
Significant impact of incorrect information or high data sensitivity	2.45 – 3.00
Moderate impact of incorrect information or high data sensitivity	1.45 – 2.44
Little or no impact of incorrect information or high data sensitivity	0.00 – 1.44

Risk Scoring Description *(Cont'd)*

These factors are based on interviews and document review. We evaluated these risks on a 1-3 score. The average scores were then included in the respective business process assessment.

Business Process Characteristics	
Significant number of dynamic market variables	2.45 – 3.00
Moderate number of dynamic market variables	1.45 – 2.44
Little to no dynamic market variables	0.00 – 1.44

Fraud Risk	
Significant manual processes	2.45 – 3.00
Moderate manual processes	1.45 – 2.44
Little or no manual processes	0.00 – 1.44

Impact on Financial Statements	
Balance based on a high number of estimates	2.45 – 3.00
Balance based on a moderate number of estimates	1.45 – 2.44
Balance based on few, if any, estimates	0.00 – 1.44

Account Characteristics	
Process has many calculations and/or complexities	2.45 – 3.00
Process has some calculations and/or complexities	1.45 – 2.44
Process has few calculations and/or complexities	0.00 – 1.44

Risk Scoring Description *(Cont'd)*

All together there were nine risk factors evaluated with a total maximum score of 32 points.

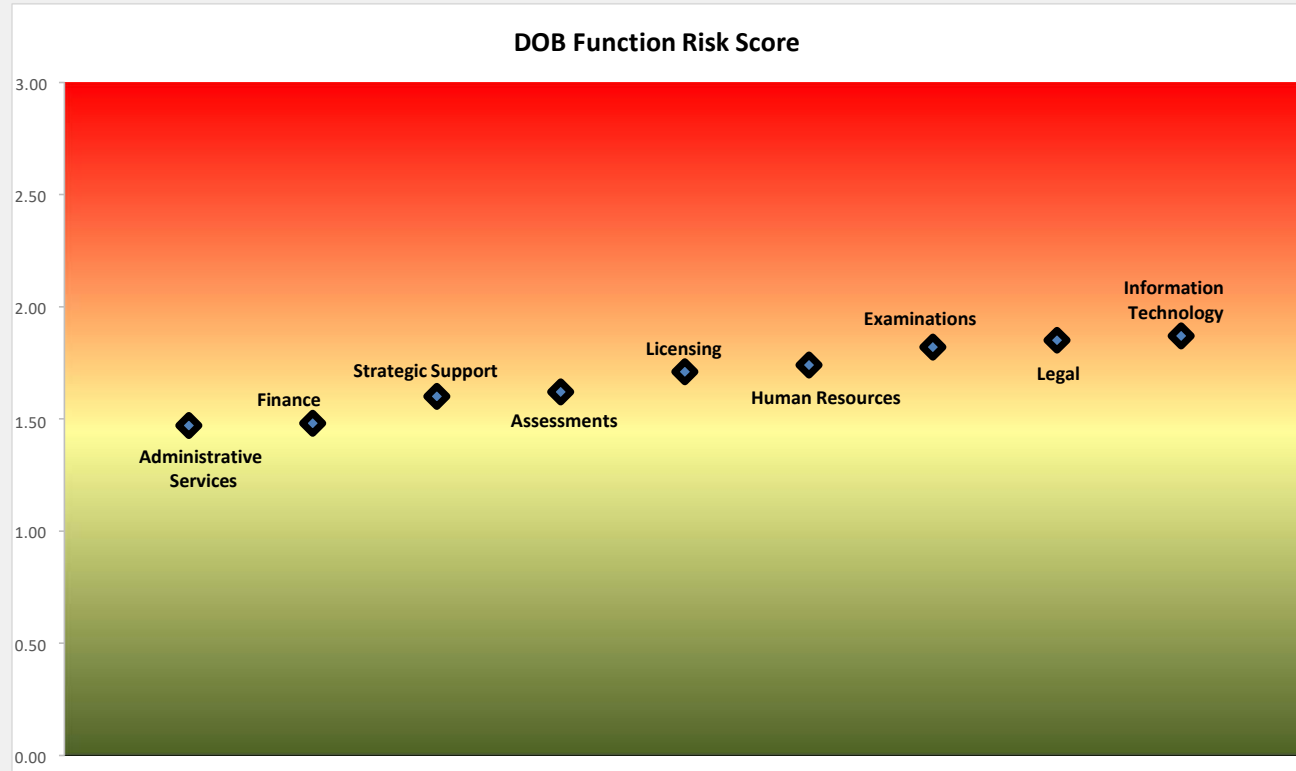
Average Overall Score	
High Risk	2.45 – 3.00
Moderate Risk	1.45 – 2.44
Low Risk	0.00 – 1.44

It is important to note that the nine risk factors and resulting scores are related to the impact the process and function has on the agency's ability to meet its mission and regulatory requirements. These are not based on comparisons to other agencies or organizations.

DOB - Function and Business Process Risk

Internal audit analyzed DOB's function and business process risks by assigning risk factors and weights in the following categories:

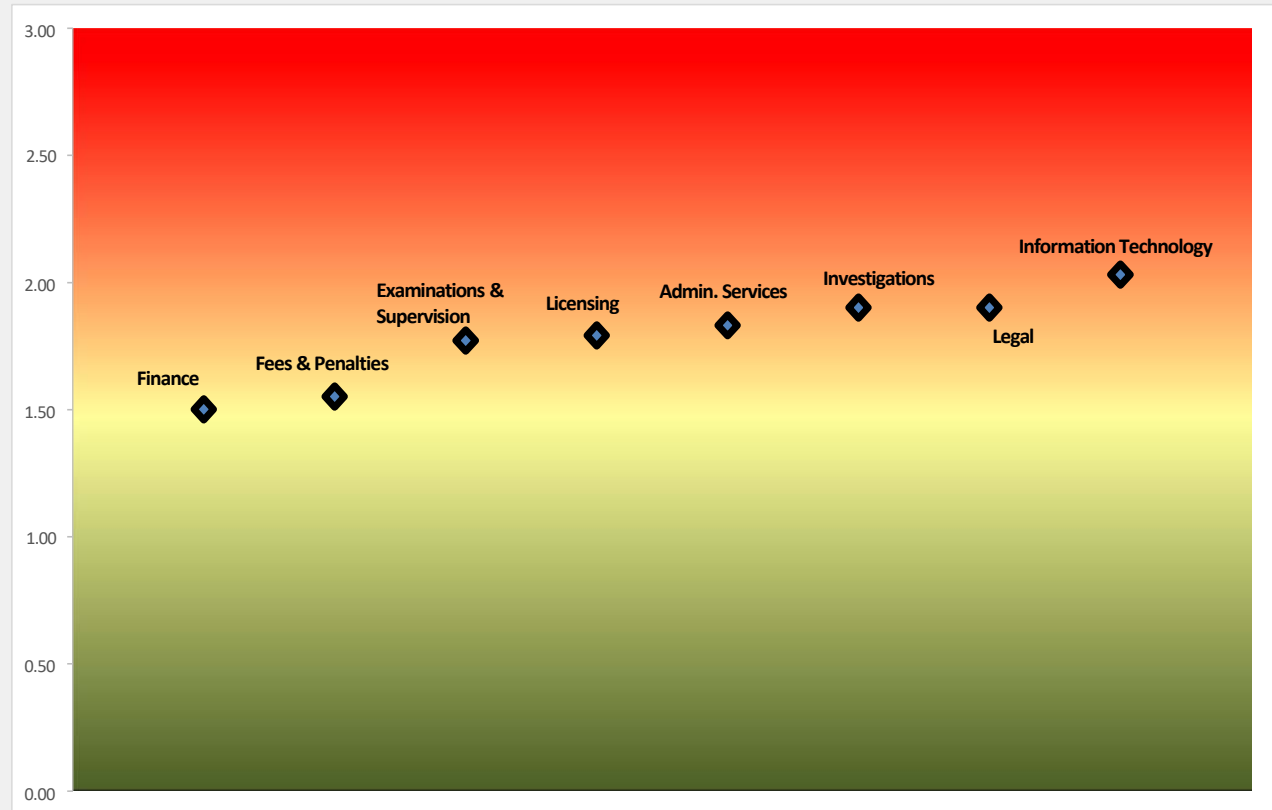
- ❑ Control Environment
- ❑ Policy Management
- ❑ Performance Management
- ❑ Information Management
- ❑ Resource Management
- ❑ Business Process Characteristics
- ❑ Impact on Financial Statements
- ❑ Fraud Risks
- ❑ Account Characteristics



DSML - Function and Business Process Risk

Internal audit analyzed SML's function and business process risks by assigning risk factors and weights in the following categories:

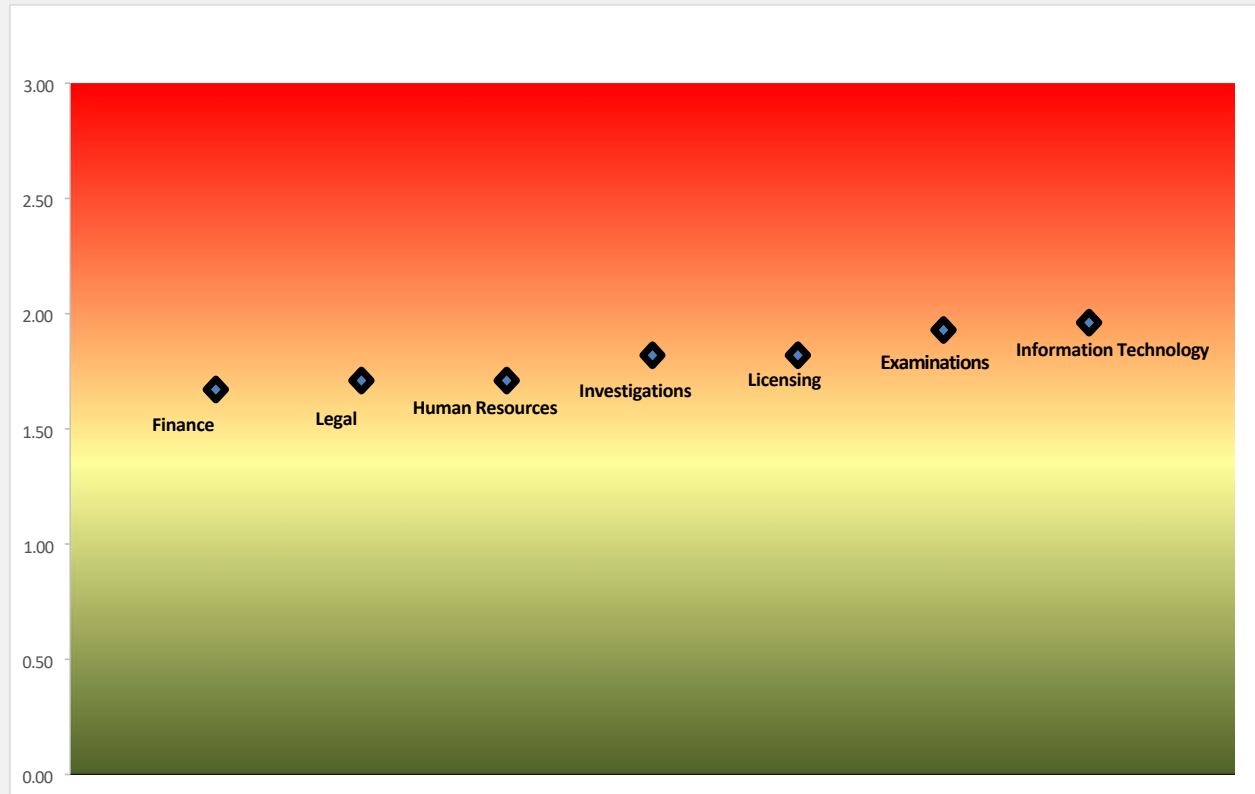
- ❑ Control Environment
- ❑ Policy Management
- ❑ Performance Management
- ❑ Information Management
- ❑ Resource Management
- ❑ Business Process Characteristics
- ❑ Impact on Financial Statements
- ❑ Fraud Risks
- ❑ Account Characteristics



OCCC - Function and Business Process Risk

Internal audit analyzed OCCC's function and business process risks by assigning risk factors and weights in the following categories:

- ❑ Control Environment
- ❑ Policy Management
- ❑ Performance Management
- ❑ Information Management
- ❑ Resource Management
- ❑ Business Process Characteristics
- ❑ Impact on Financial Statements
- ❑ Fraud Risks
- ❑ Account Characteristics



Proposed FY 2019 Internal Audits by Agency

Audit Activity #	Description	DOB Estimated Hours	DOB Estimated Fees	DSML Estimated Hours	DSML Estimated Fees	OCCC Estimated Hours	OCCC Estimated Fees	Total Hours	Total Fees
1	Information Technology – Change Management	132	\$15,932	67	\$7,824	65	\$8,010	264	\$31,766
2	Fines and Penalties Tracking	72	\$7,891	0	\$0	0	\$0	72	\$7,891
3	Investment Administration Controls of the Texas Financial Education Endowment (TFEE) Fund	0	\$0	0	\$0	42	\$4,470	42	\$4,470
4	Follow-Up on Prior Audit Findings	22	\$2,244	6	\$612	8	\$1,002	36	\$3,858
5	Update Risk Assessment & FY 2020 Annual Audit Plan	18	\$2,223	10	\$1,339	8	\$1,169	36	\$4,731
6	Annual Audit Report	6	\$999	6	\$999	2	\$455	14	\$2,453
7	Audit Communications, Committee Meetings, Project Management	18	\$2,666	4	\$544	2	\$272	24	\$3,482
Total		268	\$31,995	93	\$11,318	127	\$15,378	488	\$58,651

Audit History by Agency

Line #	Dept.	Potential Audit Topic	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
1	DOB	Bank Examinations		B	B*		A/B1*	B1*				A/B*	
2	DOB	Corporate Activities	A					A			H*		
3	DOB	Financial Reporting (Effective FY 2011)				A						B	
4	DOB	Fixed Asset Management		A	C*				C*			A	
5	DOB	Imaging and Records Management	A								A		
6	DOB	IT Examinations			A						A		
7	DOB	Management Information Systems	D*	D*	A/D*	D*	D*	D*/E	A/D*	D*	D*/H*	B/D*	
8	DOB	Money Service Businesses			A				A			B*	
9	DOB	Payroll and Human Resources			C	A*	G	H*	C		H*		
10	DOB	Perpetual Care Cemeteries		A						A		B*	
11	DOB	Prepaid Funeral Contracts	A					A				B*	
12	DOB	Prepaid Funeral Guaranty Funds (Effective FY 2012)					A						A
13	DOB	Purchasing			C	A*			C			B*	
14	DOB	Revenue Accounting Process (Effective FY 2011)				A				A		B	
15	DOB	Risk Management	F	F	F				F	F		F	
16	DOB	Travel			C	A*			C			B*	
17	DOB	Trust Examinations				A							A
18	OCCC	Billing and Collection of Fees		A								B	
19	OCCC	Business Licensing	B			A					F*	B*	
20	OCCC	Complaint Intake and Investigation	B				A						
21	OCCC	Credit Access Business Examinations (Effective FY 2012)						A					

Audit History by Agency *(Cont'd)*

Line #	Dept.	Potential Audit Topic	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
22	OCCC	Fiscal Division (includes Purchasing, Travel & Payroll)			C			C				B	
23	OCCC	Fixed Assets	A		C*			C*					
24	OCCC	Human Resources		A	C			C/G*					
25	OCCC	Legal and Enforcement (Effective FY 2018)										B*	
26	OCCC	Management Information Systems	E*	E*		A		E*	E*	E*		B*/E1	
27	OCCC	Motor Vehicle Sales Finance Examinations	B								A		
28	OCCC	Pawn Examinations			A								
29	OCCC	Professional Licensing (Pawnshop Employees & MLO) (Effective FY 2012)							A		F*	B*	
30	OCCC	Property Tax Lender Examinations (Effective FY 2012)											A
31	OCCC	Records Management	A										
32	OCCC	Registration (Effective FY 2012)										A	
33	OCCC	Regulated Lenders Examinations			A								
34	OCCC	Risk Management		D			D			D			
35	OCCC	TFEE Fund Grant Administration (Effective FY 2013)								A		A*	
36	OCCC	TFEE Fund Investment Portfolio Administration (Effective FY 2017)										A	
37	SML	Consumer Protection							A				
38	SML	Financial Reporting		E								B	

Audit History by Agency *(Cont'd)*

Line #	Dept.	Potential Audit Topic	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
39	SML	Fixed Assets		A/E*					E*				
40	SML	Legal and Enforcement				A						B	
41	SML	Management Information Systems	C*	B*/C*		C*		C*		C*	A	B*	
42	SML	Mortgage Examinations	A							A		B*	
43	SML	Mortgage Licensing and Registration					A						
44	SML	Payroll and Human Resources		A/E				F*	E				
45	SML	Purchasing and Travel		E					E			B	
46	SML	Records Management		A									
47	SML	Revenue Accounting Process				A						B	
48	SML	Risk Management	D2*	D1*	D1*			D1*	D1*		D1*	D1*	
49	SML	Thrift Examinations		B*	A*/B							A	
50	SML	Thrift Supervision and Compliance								A			A

Audit History Legend

Audits/reviews with asterisk are considered limited scope for the audit area

A	DOB	Internal audit performed by Garza/Gonzalez & Associates	
B	DOB	Audit performed by the State Auditor's Office	
B1	DOB	Off-site review of outstanding audit findings performed by the State Auditor's Office	
C	DOB	Post-payment audit performed by the Comptroller of Public Accounts	
D	DOB	Controlled penetration test performed by the Department of Information Resources	
E	DOB	Information security assessment review performed by Gartner	
F	DOB	Risk Management Program Review (RMPR) or On-Site Consultation performed by the State Office of Risk Management	
G	DOB	Review of personnel policies & procedures system performed by the Texas Workforce Commission Civil Rights Division	
H	DOB	Criminal history record audit performed by the Department of Public Safety	
A	OSCC	Internal audit performed by Garza/Gonzalez & Associates	
B	OSCC	Audit performed by the State Auditor's Office (SAO)	
C	OSCC	Post payment audit performed by the Comptroller of Public Accounts	
D	OSCC	Risk Management Program Review (RMPR) or On-Site Consultation (OSC) performed by the State Office of Risk Management (SORM)	
E	OSCC	Controlled penetration test performed by the Department of Information Resources	
E1	OSCC	Cyber security and risk assessment performed by NTT Data	
F	OSCC	Criminal history record audit performed by the Department of Public Safety	
G	OSCC	EEO policy review performed by the Texas Workforce Commission	
A	SML	Internal audit performed by Garza/Gonzalez & Associates	
B	SML	Audit performed by the State Auditor's Office (SAO)	
C	SML	Controlled penetration test performed by the Department of Information Resources	
D1	SML	Risk Management Program Review (RMPR) or On-Site Consultation (OSC) performed by the State Office of Risk Management (SORM)	
D2	SML	Audit of building safety, emergency evacuation procedures, and overall work conditions performed by SORM	
E	SML	Post-payment audit performed by the Comptroller of Public Accounts	
F	SML	Personnel policies & procedures review performed by the Texas Workforce Commission	

DEPARTMENT OF BANKING

RISK ASSESSMENT DETAILS

Department of Banking

Agency Mission

To ensure Texas has a safe, sound and competitive financial services system.

Agency Operational Objectives

- ❑ Ensure timely, fair, and effective supervision and regulation of the financial institutions under our jurisdiction.
- ❑ The regulatory process promotes a stable banking and financial services environment and provides the public with convenient, safe, and competitive financial services.
- ❑ Provide quality regulation and maintain the credibility of the Department with the public, industries we regulate, federal banking regulators and other government agencies.

Regulatory Oversight

- ❑ State-Chartered Commercial Banks
- ❑ State-Chartered Trust Companies
- ❑ Bank Holding companies
- ❑ Foreign Bank Offices
- ❑ Money Services Businesses
- ❑ Perpetual Care Cemeteries (Death Care Provider) Prepaid
- ❑ Funeral Contract Providers (Death Care Provider)

Key Department Responsibilities

Information Technology

- Maintains agency systems and interfaces
- Monitor and provide data
- Oversee and respond to security issues
- Conduct all agency hardware and software maintenance
- Monitor software licensing
- Maintain user access
- Maintain passwords
- Web site application support

Corporate Activities

- Process applications and notice filings (Licensing)
- Background check monitoring and results processing
- Receipt, review and approval of statutory documents

Key Department Responsibilities *(Cont'd)*

Bank and Trust Supervision

- On-site examinations
- Off- site monitoring
- Consumer complaint investigation
- Bank call program
- Determining risk profile and ranking
- Track changes to statutes, rules, guidance and training events

Strategic Support

- Web application support
- Certification Administration
- Training (Internal and External)
- Consumer Complaint Management
- Consumer Education
- Testimony Support
- Publications
- Updating and managing agency policy and procedures documentation

Key Department Responsibilities *(Cont'd)*

Administrative Services

- Accounts payable processing
- Budgeting
- Procurement and contracting
- Financial management
- Cash management
- Reconciliations
- Payroll processing
- Financial reporting
- Access management to financial system
- Facilities support and space management
- Mailroom operations
- Agency office supply inventory management
- Under utilized HUB program management
- Building access security management
- Risk management and Continuity of Operations Planning

Legal

- Provide interpretation, advice and consultation to agency staff on statute and rules
- Prepare enforcement actions
- Provide guidance on HR matters
- Provide guidance on purchase contracts
- Receive and facilitate public information requests
- Represent agency in administrative hearings
- Represent agency on enforcement actions
- Draft confidentiality agreements
- Provide ethics training
- Provide legal advice to commissioner

Key Department Responsibilities *(Cont'd)*

Special Audits

- Process licenses
- On-site examinations
- Off- site monitoring
- Consumer complaint follow-up
- Perform investigations
- Track changes to statutes, rules and regulations
- Contact and sanction banking/financial businesses operating without a license
- Provide education to the licensees and the general public

Human Resources

- Job posting and recruiting
- Applicant screening
- New employee onboarding
- Employee separations
- Time and leave accounting
- Employee benefits coordination
- Ensure agency compliance with state's Position Classification Act (salary/ position requirements)
- Workforce planning and policy
- Employee training, education and development
- Employee performance evaluation facilitation
- Payroll coordination
- State and Federal employment law compliance
- Employee relations
- Unemployment and worker's compensation coordination

DOB Primary Business Functions

Internal audit identified **17 primary functions** that DOB staff manage.

1. Customer Service
2. Licensing or Chartering
3. Regulatory Oversight
4. Assessments
5. Examinations
6. Review & Enforcement
7. Complaint & Special Investigations
8. Training (Internal and External)/Consumer Education
9. Human Resources
10. Information Technology Support
11. Accounting & Financial Management
12. Rule Making
13. Contract Management & Procurement
14. Internal Policy Management
15. Document Management/ Records Retention
16. Public Information Requests
17. Guaranty Funds Oversight

Mapping Business Processes to Departmental Functions

We identified 34 primary business processes and mapped the respective business process to DOB's eight departments.

Primary Function/Process	Bank and Trust	Special Audits	Information Technology	Strategic Support	Legal	Administrative Services	Corporate Activities	Human Resources
Access Control Management			P			P		
Application Processing		P					P	
Assessments	P	P				P		
Background Checks		P			P		P	P
Budgeting	P	P	P	P	P	P	P	P
Building Management						P		
Cash Management						P		
Certification Management				P				
Consumer Complaints	P	P		P				
Consumer Education/Publications	P	P		P				
Customer Service	P	P	P	P	P	P	P	P
Cyber and Information Management Security			P		P			
Document Management	P	P	P	P	P	P	P	P
Examinations	P	P						
Financial Reporting						P		
Fine/Fee Management	P	P			P	P	P	
HR Compliance (State and Federal)					P			P

Mapping Business Processes to Departmental Functions

Cont'd.

Primary Function/Process	Bank and Trust	Special Audits	Information Technology	Strategic Support	Legal	Administrative Services	Corporate Activities	Human Resources
Investigations	P	P		P	P			
IT Support Management			P					
Leave Management								P
Legal Case Management					P			
Legislative Monitoring	P	P		P	P	P		P
Licensing	P	P			P		P	
Mail Room Management						P		
Management of Office Inventory						P		
Offsite Monitoring	P	P						
Payroll						P		P
Policy and Procedures Management	P	P	P	P	P	P	P	P
Procurement					P	P		
Public Information Request					P			
Risk Management (SORM)			P			P		
Training	P	P	P	P	P	P		P
Travel and Expense Management	P	P	P	P	P	P	P	P
Web Management			P	P				

DOB - FY 2019 Annual Internal Audit Plan – Proposed

MJ proposes to perform the following audit activities in FY 2019.

Audit Activity #	Description	Risk Rating	Estimated Timing	Estimated Hours	Estimated Fees
1	Information Technology – Change Management	High	January – March 2019	132	\$15,932
2	Fines and Penalties Tracking	High	April 2019	72	\$7,891
3	Follow-Up on Prior Audit Findings	Compliance	On-Going	22	\$2,244
4	Update Risk Assessment & FY 2020 Annual Audit Plan	Compliance	July - August 2019	18	\$2,223
5	Annual Audit Report	Compliance	August 2019	6	\$999
6	Audit Communications, Committee Meetings, Project Management	N/A	On-Going	18	\$2,666
Total				268	\$31,995

Note: This budget excludes the initial risk assessment and FY 2019 Annual Audit Plan development.

This budget does not exceed the contracted amount of \$44,500, including the initial risk assessment and FY 2019 Annual Audit Plan.

Information Technology Change Management Audit

The information technology change management controls are rated high risk due to:

- ❑ Impact on operations.
- ❑ Impact on data reliability.

Objective:

- ❑ To determine if processes and controls in place provide reasonable assurance that changes to the agency's information systems/applications do not expose the agency to vulnerabilities and do not negatively impact operations.

Proposed Scope:

- ❑ Change management policies.
- ❑ Change management project planning.

Proposed Audit Activities:

- ❑ Review change management policy.
- ❑ Conduct interviews.
- ❑ Sample software patch application, upgrades and changes.

Proposed Hours: 132

Proposed Fees: \$15,932

Fines and Penalties Tracking Audit

The fines and penalties controls are rated high risk due to:

- ❑ Revenues not recorded on financials until collected.
- ❑ Impact on reputation if not properly accounted for

Objective:

- ❑ To determine if processes and controls in place provide reasonable assurance that fines and penalties are fully accounted for and not misappropriated.

Proposed Scope:

- ❑ Fine and penalty policy and procedures.
- ❑ Fine and penalty recording.
- ❑ Fine and penalty collection status monitoring.
- ❑ Fine and penalty revenue collection process.
- ❑ Fine and penalty reporting.

Proposed Audit Activities:

- ❑ Interviews and walk throughs.
- ❑ Sample audit testing.

Proposed Hours: 72

Proposed Fees: \$7,891

DEPARTMENT OF SAVINGS & MORTGAGE LENDING

RISK ASSESSMENT DETAILS

Department of Savings & Mortgage Lending

Agency Mission

Supervise and regulate the residential mortgage lending and state savings industries in order to protect Texans, provide a healthy residential mortgage lending environment, and maintain safe and sound savings banks and savings associations.

Agency Key Responsibilities

- ❑ Approves new charters, charter conversions, mergers, and other structural or operational changes for state savings banks.
- ❑ Licenses or registers mortgage companies, residential mortgage loan originators, and mortgage servicers who conduct regulated activities for properties in Texas.
- ❑ Examines state savings banks for safe and sound operations and compliance with state and federal laws.
- ❑ Examines mortgage licensees for compliance with state and federal laws.
- ❑ Enforces the Texas Finance Code by investigating and resolving complaints regarding alleged violations of statutes and regulations, and ordering consumer restitution or taking other disciplinary action.

Department of Savings & Mortgage Lending

Agency Operational Objectives

Thrift Safety and Soundness

Effectively and efficiently enforce safety and soundness standards in the state chartered thrift industry and compliance with the Texas Finance Code in a manner that is constructive and maintains the interest of depositors, creditors, and borrowers of savings institutions as paramount. Key functions of the Thrift Examination and Supervision follow:

- ❑ Perform full and limited scope examinations and participate with federal regulators in examinations within the required timeframes.
- ❑ Monitor and enforce the safe and sound operation of state chartered savings institutions.
- ❑ Monitor and enforce compliance with applicable laws and regulations.
- ❑ Encourage awareness of cybersecurity concerns within the regulated industry.

Mortgage Regulation

Protect Texas homebuyers through fair and effective regulation of mortgage originating entities, individuals, and mortgage servicers. Key functions of Mortgage Regulation follow:

Licensing

- Process, investigate, and take appropriate final action on mortgage license applications and registrations, both entities and individuals.
- Enforce compliance with licensing standards of conduct.

Department of Savings & Mortgage Lending

Agency Operational Objectives *(Cont'd)*

Examination

- Ensure effective and efficient examination of mortgage licensees and registrants through fair, responsible, and comprehensive investigation.
- Enforce compliance with applicable laws and regulations.

Consumer Responsiveness (Complaint and Inquiry)

Ensure responsiveness to inquiries, requests, and complaints from citizens, industry, public officials, and other state and federal governmental entities. Key functions of Consumer Responsiveness follow:

- ❑ Provide a forum for registering complaints regarding thrifts and mortgage entities and individuals.
- ❑ Review and investigate complaints and inquiries as appropriate; and, take appropriate supervisory action when warranted.

Agency Administration

Be prudent and good stewards of the Department's resources – both financial and human. Key functions of Agency Administration follow:

- ❑ Be staffed with employees who are trained or in training to be experts in regulating the thrift or mortgage industry.
- ❑ Provide cross-training in all areas of the Department.
- ❑ Monitor the Department's fiscal performance.

Department of Savings & Mortgage Lending

Regulatory Oversight of:

- ❑ State Savings Banks
- ❑ Residential Mortgage Loan Originators
- ❑ Mortgage Companies
- ❑ Independent Contractor Loan Processor or Underwriter Companies
- ❑ Auxiliary Mortgage Loan Activity Companies
- ❑ Credit Union Subsidiary Organizations
- ❑ Financial Services Companies
- ❑ Mortgage Banker Entities
- ❑ Mortgage Servicers
- ❑ Savings and Loan Associations (Currently None)

Key Department Responsibilities

Thrift

- Conduct off-site and on-site examinations
- Evaluate applications for approval or denial
- Monitor thrift entities
- Initiate enforcement actions

General Counsel

- Research and prepare legal opinions
- Draft memoranda on regulatory matters and administrative rules
- Advise on legal matters concerning department regulations and State and Federal laws
- Issue Orders, administrative actions, or assesses penalties, on issues relating to examinations or consumer complaints

Key Department Responsibilities *(Cont'd.)*

Administration & Finance

- Human Resources
 - Hiring
 - On-Boarding
 - Training Coordination & Staff Development
 - Performance Review Coordination
 - Separations
- Purchasing
- Budgeting
- Financial Reporting
- Payroll
 - Time Reporting - Monthly Excel Time Report (Exception Based)
 - USPS - Manual Entry
- Transaction Posting
 - USAS
 - MIP
- Reconciliations
 - Reconciliations between MIP, Trust, and USAS (Monthly for cash, quarterly for revenues and expenditures)
 - Reconciliation between Trust and NMLS
- Travel Reimbursements

Mortgage

- Conduct mortgage compliance examinations
- Report examination findings
- Refer findings to legal for administrative actions, as applicable
- Consumer Protection (Complaints)
 - Review and investigate complaints and inquiries
 - Take appropriate action as warranted

Key Department Responsibilities *(Cont'd.)*

Licensing

- Evaluate and take final action on license applications, both new and renewal
- Monitor eligibility and compliance with licensing standards

Information Technology

- Oversee outsourced Information Technology Provider (Vintage):
 - Network
 - Software Support
 - Helpdesk
 - User Access
- Coordinate with Federal agency on the NMLS system.
- MIP (Financial System) updates.
- Cyber Security.
- Thrift Program/Thrift Pro Maintenance.
- My License Maintenance (Internal Database).
- WASP Maintenance (Internal Workflow System used for Purchase Orders and Training Requests).

SML Primary Business Functions

Internal audit identified **14 primary functions** that SML staff manage.

1. Customer Service
2. Licensing
3. Regulatory Oversight
4. Examinations
5. Complaint & Investigations
6. Training (Internal and External/Industry Education)
7. Human Resources
8. Information Technology Support
9. Accounting & Financial Management
10. Rulemaking
11. Contract Management & Procurement
12. Internal Policy Management
13. Document Management/Records Retention
14. Public Information Requests

Mapping Key Business Process to Departmental Functions

We identified 33 primary business processes and mapped the respective business process to SML's five departments.

Primary Function/Process	General Counsel	Thrift	Mortgage	Licensing and IT	Administration and Finance
Access Control Management				P	
Application Processing		P		P	
Background Checks				P	
Budgeting	P	P	P	P	P
Cash Management					P
Certification Management		P	P	P	
Complaints and Investigations			P		
Customer Service	P	P	P	P	P
Cyber and Information Management Security				P	
Document Management	P	P	P	P	P
Examinations		P	P		
Fee Management		P		P	P
Financial Reporting					P
HR Compliance (State and Federal)					P
Industry Education/Publications		P	P	P	P
IT Support Management				P	

Mapping Key Business Process to Departmental Functions *Cont'd.*

Primary Function/Process	General Counsel	Thrift	Mortgage Examinations	Licensing and IT	Administration and Finance
Leave Management					P
Legal Case Management	P				
Legislative Monitoring	P	P	P	P	P
Licensing				P	
Mail room Management					P
Management of Office Inventory				P	P
Offsite Monitoring		P	P		
Payroll					P
Penalty Management	P	P			P
Policy and Procedures Management	P	P	P	P	P
Procurement					P
Public Information Requests	P				
Risk Management (SORM)				P	P
Training	P	P	P	P	P
Travel and Expense Management					P
Web Management				P	

DSML - FY 2019 Annual Internal Audit Plan – Proposed

MJ proposes to perform the following audit activities in FY 2019.

Audit Activity #	Description	Risk Rating	Estimated Timing	Estimated Hours	Estimated Fees
1	Information Technology – Change Management	High	June 2019	67	\$7,824
2	Follow-Up on Prior Audit Findings	Compliance	On-Going	6	\$612
3	Update Risk Assessment & FY 2020 Annual Audit Plan	Compliance	July - August 2019	10	\$1,339
4	Annual Audit Report	Compliance	August 2019	6	\$999
5	Audit Communications, Committee Meetings, Project Management	N/A	All Year	4	\$544
Total				93	\$11,318

Note: This budget excludes the initial risk assessment and FY 2019 Annual Audit Plan development.

This budget does not exceed the contracted amount of \$13,868, including the initial risk assessment and FY 2019 Annual Audit Plan.

Information Technology Change Management Audit

The information technology change management controls are rated high risk due to:

- ❑ Impact on operations.
- ❑ Impact on data reliability.

Objective:

- ❑ To determine if processes and controls in place provide reasonable assurance that changes to the agency's information systems/applications do not expose the agency to vulnerabilities and do not negatively impact operations. The focus of this audit will be processes in place to ensure data integrity within the information systems.

Proposed Scope:

- ❑ Change management policies.
- ❑ Change management project planning.

Proposed Audit Activities:

- ❑ Review change management policy.
- ❑ Conduct interviews.
- ❑ Sample software patch application, upgrades and changes.

Proposed Hours: 67

Proposed Fees: \$7,824

OFFICE OF CONSUMER CREDIT
COMMISSIONER
RISK ASSESSMENT DETAILS

Office of Consumer Credit Commissioner

Agency Mission

The mission of the Office of Consumer Credit Commissioner (OCCC) is to regulate non-depository financial services and to educate consumers and creditors, fostering a fair, lawful, and healthy credit environment for economic prosperity in Texas.

Agency Operational Objectives

- ❑ Regulate fairly, efficiently, and effectively, balancing the needs of both consumers and creditors by enforcing Texas credit laws and licensing qualified financial service providers;
- ❑ Educate consumers about rights, responsibilities, and remedies; and educate financial services providers about rights and responsibilities;
- ❑ Communicate collaboratively with and encourage communication among the financial services industry, consumer public, and the OCCC; and
- ❑ Protect and safeguard consumers against abusive, unfair, and deceptive lending practices.

Regulatory Oversight

Licenses

- ❑ Regulated Lenders
- ❑ Property Tax Lien Lenders
- ❑ Certain Residential Mortgage Loan Originators
- ❑ Commercial Motor Vehicle Sales Finance
- ❑ Motor Vehicle Sales Finance Dealers and Holders
- ❑ Credit Access Businesses
- ❑ Pawnshops and Pawnshop Employees

Registrations

- ❑ Debt Management and Settlement Service Providers
- ❑ Manufactured Housing Creditors
- ❑ Refund Anticipation Loan Facilitators
- ❑ Crafted Precious Metal Dealers
- ❑ Registered Creditors (Retail Sellers)

Key Department Responsibilities

Consumer Protection

- Complaint resolution
- Investigations
- Examinations and supervision
- Regulatory filings (annual reports, plain language contracts, documentary fee, debt cancellation agreements)

Legal

- Enforcement actions against persons or businesses that violate the state rules or laws
- Rulemaking facilitation
- Advisory guidance
- Public information request facilitation
- General legal advice to agency staff

Key Department Responsibilities *(Cont'd.)*

Finance and Accounting

- Fee collection
- Budget development
- Payroll processing
- Accounts payable processing
- Financial analysis
- Account reconciliations
- Financial statement preparation

Licensing and Registration

- Licensing
- Registrations
- Background checks to ensure entity meets eligibility requirements
- License and registration renewals
- License transfer applications
- Online portal tech support for licensees and applicants

Key Department Responsibilities *(Cont'd.)*

Administrative Support Services

- Procurement
- Contracting
- Risk management
- Governmental relations

Human Resources

- Job posting and recruiting
- Applicant screening
- New employee onboarding
- Employee separations
- Time and leave accounting
- Employee benefits coordination
- Ensure agency compliance with state's Position Classification Act (salary/ position requirements)
- Workforce planning and policy
- Employee training, education and development
- Employee performance evaluation facilitation

Key Department Responsibilities *(Cont'd.)*

IT Support Services

- General IT support
- Network security
- Application support

Financial Education & TFEE

- Consumer financial education
- Management of grant program to support statewide financial education and consumer credit building activities
- Industry outreach and education

OCCC Primary Business Functions

Internal audit identified **15 primary functions** that OCCC staff manage.

1. Customer Service
2. Licensing and Registration
3. Examinations & Supervision
4. Complaint & Investigations
5. Texas Financial Education Endowment Grant Program
6. Legal & Enforcement
7. Training (Internal and External)/Financial Education
8. Human Resources
9. Information Technology Support
10. Accounting & Financial Management
11. Rule-Making
12. Contract Management & Procurement
13. Internal Policy Management
14. Document Management/ Records Retention
15. Public Information Requests

Mapping Key Business Processes to Departmental Functions

We identified 32 primary business processes and mapped the respective business process to OCCC's eight departments.

Primary Function/Process	Legal	Consumer Protection	Licensing	Information Technology	Administration	Accounting
Access Control Management				P		
Application Processing			P			
Assessments/Fee/Fine Management	P	P	P			P
Background Checks			P			
Budgeting	P	P	P	P	P	P
Building Management					P	
Cash Management						P
Consumer Complaints		P				
Consumer Education/Publications					P	
Customer Service	P	P	P	P	P	P
Cyber and Information Management Security	P	P	P	P	P	P
Document Management	P	P	P	P	P	P
Examinations		P				
Financial Reporting						P
HR Compliance (State and Federal)					P	
Investigations		P				
IT Support Management				P	P	

Mapping Key Business Processes to Departmental Functions (*Cont'd.*)

Primary Function/Process	Legal	Consumer Protection	Licensing	Information Technology	Administration	Accounting
Leave Management					P	
Legal Case Management	P					
Legislative Monitoring	P				P	
Licensing			P		P	
Mail Room Management		P				
Management of Office Inventory					P	
Offsite Monitoring		P				
Payroll						P
Policy and Procedures Management	P	P	P	P	P	P
Procurement					P	
Public Information Requests	P					
Risk Management (SORM)	P				P	
Training		P	P		P	
Travel and Expense Management		P				P
Web Management				P	P	

OCCC - FY 2019 Annual Internal Audit Plan – Proposed

MJ proposes to perform the following audit activities in FY 2019.

Audit Activity #	Description	Risk Rating	Estimated Timing	Estimated Hours	Estimated Fees
1	Information Technology – Change Management	High	January – March 2019	65	\$8,010
2	Investment Administration Controls of the Texas Financial Education Endowment (TFEE) Fund	High	January 2019	42	\$4,470
3	Follow-Up on Prior Audit Findings	Compliance	On-Going	8	\$1,002
4	Update Risk Assessment & FY 2020 Annual Audit Plan	Compliance	July - August 2019	8	\$1,169
5	Annual Audit Report	Compliance	August 2019	2	\$455
6	Audit Communications, Committee Meetings, Project Management	N/A	On-Going	2	\$272
Total				127	\$15,378

Note: This budget excludes the initial risk assessment and FY 2019 Annual Audit Plan development.

This budget does not exceed the contracted amount of \$17,812, including the initial risk assessment and FY 2019 Annual Audit Plan.

Information Technology Change Management Audit

The information technology change management controls are rated high risk due to:

- ❑ Impact on operations.
- ❑ Impact on data reliability.

Objective:

- ❑ To determine if processes and controls in place provide reasonable assurance that changes to the agency's information systems/applications do not expose the agency to vulnerabilities and do not negatively impact operations. The focus will be on how system changes impact the agency's processes.

Proposed Scope:

- ❑ Change management policies.
- ❑ Change management project planning.

Proposed Audit Activities:

- ❑ Review change management policy.
- ❑ Conduct interviews.
- ❑ Sample software patch application, upgrades and changes.

Proposed Hours: 65

Proposed Fees: \$8,010

Investment Administration Controls

The Texas Financial Education Endowment (TFEE) Fund audit is a compliance audit of the investment administration controls.

Objective:

- ❑ To determine if the Texas Financial Education Endowment (TFEE) Fund investments and reporting are accurately reported and follow guidance of the Public Funds Investment Act.

Proposed Scope:

- ❑ Investment policy components compliance.
- ❑ Investment instruments compliance.
- ❑ Investment reporting compliance.
- ❑ Training compliance.
- ❑ Investment reporting accuracy and completeness.

Proposed Audit Activities:

- ❑ Interviews and walk throughs.
- ❑ Reconciliation of investments statements to trial balance, investment reports and balance sheet.
- ❑ Training verification.
- ❑ Sample audit testing of investment activities.

Proposed Hours: 42

Proposed Fees: \$4,470

Finance Commission Policies and Procedures

(updated-December 2018~~December 2017~~)

Table of Contents

Strategic Planning.....	Page 3
Presiding Officer.....	Page 4
Standards of Conduct.....	Page 7
Ethics Policy.....	Page 14
Training.....	Page 48 <u>19</u>
Separation of Functions.....	Page 20 <u>21</u>
Public Testimony.....	Page 22 <u>23</u>
Hearings Officer and Auditor.....	Page 24 <u>25</u>
Sharing of Staff, Equipment, and Facilities: Allocation of Costs.....	Page 25 <u>26</u>
Research.....	Page 27 <u>28</u>
Liquidity Policy	Page 30 <u>31</u>
Finance Commission of Texas Expense Reimbursement Policy	Page 32 <u>33</u>
Finance Agency Budgeting <u>and Travel Reporting</u>	Page 35

STRATEGIC PLANNING

Statute

Section 11.002. PURPOSE OF COMMISSION; STRATEGIC PLAN.

(a) The finance commission is responsible for overseeing and coordinating the Texas Department of Banking, the Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner and serves as the primary point of accountability for ensuring that state depository and lending institutions function as a system, considering the broad scope of the financial services industry. The finance commission is the policy-making body for those finance agencies and is not a separate state agency. The finance commission shall carry out its functions in a manner that protects consumer interests, maintains a safe and sound banking system, and increases the economic prosperity of the state.

(b) The finance commission shall prepare and periodically update a strategic plan for coordination of the state financial system. Each finance agency shall cooperate in preparation of the plan.

Policy Statement

The Finance Commission recognizes the benefit of sound short-term and long-term planning and the need to provide oversight for the regulatory responsibilities of each Finance Commission agency (finance agency) in a manner intended to protect the integrity of the state's financial system as well as to promote economic prosperity. In this regard, the Finance Commission will prepare and adopt a five-year strategic plan each biennium. Revisions and updates to the plan are permitted, but shall be limited to items that are material in nature and that will result in significant changes to the goals and objectives of the Finance Commission.

The Chair of the Finance Commission will appoint three members to serve on a Strategic Planning Committee. The Strategic Planning Committee shall be responsible for the oversight of the preparation and update of the strategic plan so that it encompasses the goals and objectives of the Finance Commission. The plan will embody the high-level goals, objectives and discussions of the finance agency plans.

PRESIDING OFFICER

Statute

Section 11.007. PRESIDING OFFICER.

(a) The governor shall appoint a member of the finance commission as presiding officer of the commission. The presiding officer serves at the will of the governor.

(b) The presiding officer shall preside at and provide for the keeping of minutes of each public meeting of the finance commission.

(c) The presiding officer may:

(1) adopt rules and procedures as the presiding officer considers necessary for the orderly operation of the finance commission and for communication among the finance commission, the Texas Department of Banking, the Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner;

(2) adopt internal procedures governing the time and place of meetings, the type of notice for special public meetings, the manner in which public meetings are to be conducted, and other similar matters; and

(3) appoint committees composed of finance commission members as the presiding officer considers necessary to carry out the commission's business.

Policy Statement

Meetings of the Finance Commission will be conducted with decorum and respect for all parties attending and appearing before the Commission. In furtherance of providing for the orderly operations of the Commission, the presiding officer (Chair) may designate a Vice-Chair. In the Chair's absence, the Vice-Chair will conduct and complete all business before the Commission in accordance with applicable statutes, proper open meeting protocols and these Finance Commission policies. The rules contained within the current edition of *Robert's Rules of Order Newly Revised* shall govern the Commission in all cases to which they are applicable and in which they are not inconsistent with these policies and any special rules the Finance Commission may adopt.

In furtherance of Section 11.103(a)(5), Texas Finance Code, each member of the Commission shall notify the Chair of an expected absence from a meeting of the Commission as soon as practicable after learning of the events that will cause the absence. The member shall also notify the Chair of the reasons for the expected absence. At the meeting where the member is absent, the Chair shall call for a vote of all members in attendance on whether the absence is excused.

The Chair will assign members to the Finance Commission committees. Standing committees are the Audit Committee, the Study Committee, and the Strategic Planning Committee. Committee membership will be assigned or reaffirmed annually, to become effective September 1, upon member replacement, or as the Chair determines necessary or appropriate. Each committee's membership will normally be, but is not required to

Page | 4

be, comprised of three members. From a committee's membership, the Chair will designate a Chairperson for each committee. All considerations of a committee, other than adoption of minutes, are recommendations for full Finance Commission action.

The Chair of the Finance Commission shall appoint members to serve on ad hoc committees as the need arises. The Chair shall designate a Chairperson for each such committee.

The Chair and Vice-Chair of the Finance Commission serve in an ex-officio non-voting capacity on each standing committee and each ad hoc committee. However, when the Chairperson of a committee learns that one or more members of a committee will be unable to attend a scheduled meeting such Chairperson may request that either the Chair or Vice-Chair of the Finance Commission (or both if more than one member will be absent) serve on the committee in a voting capacity on a one-time basis at the scheduled meeting. The minutes of the scheduled meeting shall reflect the actual voting membership of the committee.

The Chair will designate Commission members to coordinate the annual evaluation process of the three finance agency commissioners. This ad hoc committee will include at least one public member and three industry members (one industry member representing each finance agency).

The Finance Commission reserves to itself as a body the responsibility for passing upon and prescribing the manner of communication of matters of policy which represent the official position of the Finance Commission. Accordingly, it would be inappropriate for individual members to communicate official positions of the Finance Commission unless instructed or authorized to do so by an action of the Commission.

The Audit Committee shall be responsible for:

- providing oversight of the finance agencies' internal audit function, including:
 - o interviewing and recommending the selection of an internal auditor,
 - o reviewing and recommending the actions to be taken as a result of the annual risk assessments performed by the internal auditor,
 - o reviewing, with the internal auditors, the audit scope and plan of the internal auditors,
 - o reviewing and recommending the actions to be taken on the audit plan resulting from the annual internal audit reports, including management's responses thereto, and monitoring the finance agencies' corrective actions.
- reviewing and monitoring the action plans resulting from external audits conducted by state and federal agencies, including management's responses thereto, and monitoring the finance agencies' corrective actions.
- reviewing and recommending the actions to be taken if any on the annual operating budgets, quarterly financial statements, and investment reports of the finance agencies.
- Providing oversight and administration of the Texas Financial Education Endowment, including recommending the actions to be taken on the investment of funds and awarding of grants that support the objectives of the endowment.

A Certified Public Accountant member of the Finance Commission shall be appointed as a member of the Committee unless specifically excluded by a majority vote of the Finance Commission.

The Study Committee shall be responsible for:

- coordinating and reviewing any statutorily-required or authorized research studies or projects decided to be undertaken, as well as those determined to be necessary by the Finance Commission.
- monitoring and overseeing Legislative Interim Studies as appropriate.
- monitoring and overseeing activities related to the self-directed, semi-independent (SDSI) status of the finance agencies by conferring with the finance agencies on material interests, issues and matters related to SDSI status, as well as monitoring general reporting requirements to governing bodies and the state legislature associated with the SDSI status, and exploring additional strategies with finance agency heads regarding implementation and operational policies related to SDSI status.
- reviewing and making recommendations for updates to the policies and procedures of the Finance Commission every biennium.
- monitoring the Sunset Review process as appropriate, for the Finance Commission and its finance agencies.

On recommendation of the finance agencies or as required by law, the Study Committee may conduct research on:

- The availability, quality and prices of financial services, including lending and depository services offered to agricultural businesses, small businesses, and individual consumers in this state, and
- The practices of business entities in this state that provide financial services to agricultural businesses, small businesses, and individual consumers in this state.

The Strategic Planning Committee shall be responsible for:

- providing direction for and review of the strategic plans developed by each of the finance agencies under the Finance Commission.
- defining the scope and development of the Finance Commission's strategic plan ensuring alignment with legislative mandates, industry and economic indicators, and finance agency strategic plans.
- playing an active role in legislative hearings and communications with elected officials.
- overseeing the selection of the finance agency heads.

STANDARDS OF CONDUCT

Statute

Section 11.109. STANDARDS OF CONDUCT.

The presiding officer of the finance commission or the presiding officer's designee shall provide to members of the finance commission, as often as necessary, information regarding the requirements for office under this title, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers.

Policy Statement

Subchapter C, Chapter 572, Texas Government Code, specifically addresses **Standards of Conduct and Conflict of Interest** for state officers and employees. Members of the Finance Commission are committed to following these guidelines and abiding by the provisions therein. Portions of the statute applicable to Finance Commission members are found in Exhibit A. Pursuant to §572.051, Texas Government Code the Finance Commission and each of the finance agencies under its jurisdiction has adopted an ethics policy.

If a member of the Finance Commission or a finance agency commissioner is made aware of a potential conflict of interest involving a member of the Finance Commission or a finance agency commissioner as such conflicts are described in Exhibit A to these Policies and Procedures, it is the duty of that person to report the matter to the Chair of the Finance Commission, the Chair of the Audit Committee, and the Chair of the Strategic Planning Committee. The Chair of the Finance Commission, two committee Chairs, or a majority of the Finance Commission at a properly posted Finance Commission meeting may engage as deemed appropriate the services of one or more of the Office of the Attorney General, independent counsel (through prescribed procedures), its internal auditors, and/or the Office of the State Auditor to determine and report to the Finance Commission for its consideration the relevant facts and circumstances surrounding the potential conflict of interest.

Exhibit A

Standards of Conduct

Subchapter C, Chapter 572, Texas Government Code, is headed "STANDARDS OF CONDUCT AND CONFLICT OF INTEREST PROVISIONS." It contains sections that are only applicable to members of the Legislature and these sections have been omitted.

The following sections of Subchapter C are applicable to the Finance Commission:

§ 572.051. Standards of Conduct; State Agency Ethics Policy

(a) A state officer or employee should not:

- (1) accept or solicit any gift, favor, or service that might reasonably tend to influence the officer or employee in the discharge of official duties or that the officer or employee knows or should know is being offered with the intent to influence the officer's or employee's official conduct;
- (2) accept other employment or engage in a business or professional activity that the officer or employee might reasonably expect would require or induce the officer or employee to disclose confidential information acquired by reason of the official position;
- (3) accept other employment or compensation that could reasonably be expected to impair the officer's or employee's independence of judgment in the performance of the officer's or employee's official duties;
- (4) make personal investments that could reasonably be expected to create a substantial conflict between the officer's or employee's private interest and the public interest; or
- (5) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the officer's or employee's official powers or performed the officer's or employee's official duties in favor of another.

(b) A state employee who violates Subsection (a) or an ethics policy adopted under Subsection (c) is subject to termination of the employee's state employment or another employment-related sanction. Notwithstanding this subsection, a state officer or employee who violates Subsection (a) is subject to any applicable civil or criminal penalty if the violation also constitutes a violation of another statute or rule.

(c) Each state agency shall:

- (1) adopt a written ethics policy for the agency's employees consistent with the standards prescribed by Subsection (a) and other provisions of this subchapter; and
- (2) distribute a copy of the ethics policy and this subchapter to:

(A) each new employee not later than the third business day after the date the person begins employment with the agency; and

(B) each new officer not later than the third business day after the date the person qualifies for office.

(d) The office of the attorney general shall develop, in coordination with the commission, and distribute a model policy that state agencies may use in adopting an agency ethics policy under Subsection (c). A state agency is not required to adopt the model policy developed under this subsection.

(e) Subchapters E and F, Chapter 571, do not apply to a violation of this section.

(f) Notwithstanding Subsection (e), if a person with knowledge of a violation of an agency ethics policy adopted under Subsection (c) that also constitutes a criminal offense under another law of this state reports the violation to an appropriate prosecuting attorney, then, not later than the 60th day after the date a person notifies the prosecuting attorney under this subsection, the prosecuting attorney shall notify the commission of the status of the prosecuting attorney's investigation of the alleged violation. The commission shall, on the request of the prosecuting attorney, assist the prosecuting attorney in investigating the alleged violation. This subsection does not apply to an alleged violation by a member or employee of the commission.

§ 572.054. Representation by Former Officer or Employee of Regulatory Agency Restricted; Criminal Offense

(a) A former member of the governing body or a former executive head of a regulatory agency may not make any communication to or appearance before an officer or employee of the agency in which the member or executive head served before the second anniversary of the date the member or executive head ceased to be a member of the governing body or the executive head of the agency if the communication or appearance is made:

(1) with the intent to influence; and

(2) on behalf of any person in connection with any matter on which the person seeks official action.

(b) A former state officer or employee of a regulatory agency who ceases service or employment with that agency on or after January 1, 1992, may not represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter in which the former officer or employee participated during the period of state service or employment, either through personal involvement or because the case or proceeding was a matter within the officer's or employee's official responsibility.

(c) Subsection (b) applies only to:

(1) a state officer of a regulatory agency; or

(2) a state employee of a regulatory agency who is compensated, as of the last date of state employment, at or above the amount prescribed by the General Appropriations Act for step 1, salary

group 17, of the position classification salary schedule, including an employee who is exempt from the state's position classification plan.

(d) Subsection (b) does not apply to a rulemaking proceeding that was concluded before the officer's or employee's service or employment ceased.

(e) Other law that restricts the representation of a person before a particular state agency by a former state officer or employee of that agency prevails over this section.

(f) An individual commits an offense if the individual violates this section. An offense under this subsection is a Class A misdemeanor.

(g) In this section, the comptroller and the secretary of state are not excluded from the definition of "regulatory agency."

(g-1) For purposes of this section, the Department of Information Resources is a regulatory agency.

(h) In this section:

(1) "Participated" means to have taken action as an officer or employee through decision, approval, disapproval, recommendation, giving advice, investigation, or similar action.

(2) "Particular matter" means a specific investigation, application, request for a ruling or determination, rulemaking proceeding, contract, claim, charge, accusation, arrest, or judicial or other proceeding.

§ 572.056. Contracts by State Officers With Governmental Entities; Criminal Offense

(a) A state officer may not solicit or accept from a governmental entity a commission, fee, bonus, retainer, or rebate that is compensation for the officer's personal solicitation for the award of a contract for services or sale of goods to a governmental entity.

(b) This section does not apply to:

(1) a contract that is awarded by competitive bid as provided by law and that is not otherwise prohibited by law; or

(2) a court appointment.

(c) In this section, "governmental entity" means the state, a political subdivision of the state, or a governmental entity created under the Texas Constitution or a statute of this state.

(d) A state officer who violates this section commits an offense. An offense under this subsection is a Class A misdemeanor.

§ 572.057. Certain Leases Prohibited

(a) Except as provided by Subsection (d), a member of the legislature, an executive or judicial officer elected in a statewide election, or a business entity in which the legislator or officer has a substantial interest may not lease any office space or other real property to the state, a state agency, the legislature or a legislative agency, the Supreme Court of Texas, the Court of Criminal Appeals, or a state judicial agency.

(b) A lease made in violation of Subsection (a) is void.

(c) This section does not apply to an individual who is an elected officer on June 16, 1989, for as long as the officer holds that office.

(d) A member of the legislature or a business entity in which the legislator has a substantial interest may donate the use of office space that the member or entity owns and that is located in the member's district to the house of the legislature in which the member serves to be used for the member's official business. Office space donated under this subsection is not a contribution for purposes of Title 15, Election Code. Acceptance of a donation of office space under this subsection is not subject to Section 301.032.

§ 572.058. Private Interest in Measure or Decision; Disclosure; Removal From Office for Violation

(a) An elected or appointed officer, other than an officer subject to impeachment under Article XV, Section 2, of the Texas Constitution, who is a member of a board or commission having policy direction over a state agency and who has a personal or private interest in a measure, proposal, or decision pending before the board or commission shall publicly disclose the fact to the board or commission in a meeting called and held in compliance with Chapter 551. The officer may not vote or otherwise participate in the decision. The disclosure shall be entered in the minutes of the meeting.

(b) An individual who violates this section is subject to removal from office on the petition of the attorney general on the attorney general's own initiative or on the relation of a resident or of any other member of the board or commission. The suit must be brought in a district court of Travis County or of the county where the violation is alleged to have been committed.

(c) If the court or jury finds from a preponderance of the evidence that the defendant violated this section and that an ordinary prudent person would have known the individual's conduct to be a violation of this section, the court shall enter judgment removing the defendant from office.

(d) A suit under this section must be brought before the second anniversary of the date the violation is alleged to have been committed, or the suit is barred.

(e) The remedy provided by this section is cumulative of other methods of removal from office provided by the Texas Constitution or a statute of this state.

(f) In this section, "personal or private interest" has the same meaning as is given to it under Article III, Section 22, of the Texas Constitution, governing the conduct of members of the legislature. For purposes of this section, an individual does not have a "personal or private interest" in a measure, proposal, or decision if the individual

is engaged in a profession, trade, or occupation and the individual's interest is the same as all others similarly engaged in the profession, trade, or occupation.

§ 572.060. Solicitation Of Or Recommendations Regarding Contributions To Charitable Organizations And Governmental Entities

(a) Unless otherwise prohibited by the Code of Judicial Conduct, a state officer or state employee may:

(1) solicit from any person a contribution to:

(A) an organization that:

(i) is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code;

(ii) does not attempt to influence legislation as a substantial part of the organization's activities; and

(iii) has not elected under Section 501(h), Internal Revenue Code of 1986, to have that subsection apply to the organization; or

(B) a governmental entity; or

(2) recommend to any person that the person make a contribution to an organization or entity described by Subdivision (1).

(b) A monetary contribution solicited or recommended as provided by Subsection (a) must:

(1) be paid or made directly to the charitable organization or governmental entity by the person making the contribution;

(2) be in the form of a check, money order, or similar instrument payable to the charitable organization or governmental entity; or

(3) be in the form of a deduction from a state employee's salary or wage payment under the state employee charitable campaign under Subchapter I, Chapter 659.

(c) A contribution solicited or recommended as provided by Subsection (a) that is not a monetary contribution must be delivered directly to the charitable organization or governmental entity by the person making the contribution.

(d) A contribution paid as provided by Subsection (b) or delivered as provided by Subsection (c) is not:

(1) a political contribution to, or political expenditure on behalf of, the state officer or state employee for purposes of Title 15, Election Code;

(2) an expenditure for purposes of Chapter 305; or

(3) benefit to the state officer or state employee for purposes of Sections 36.08 and 36.09, Penal Code.

ETHICS POLICY

Statute

Section 572.051. STANDARDS OF CONDUCT; STATE AGENCY ETHICS POLICY.

(a) A state officer or employee should not:

- (1) accept or solicit any gift, favor, or service that might reasonably tend to influence the officer or employee in the discharge of official duties or that the officer or employee knows or should know is being offered with the intent to influence the officer's or employee's official conduct;
- (2) accept other employment or engage in a business or professional activity that the officer or employee might reasonably expect would require or induce the officer or employee to disclose confidential information acquired by reason of the official position;
- (3) accept other employment or compensation that could reasonably be expected to impair the officer's or employee's independence of judgment in the performance of the officer's or employee's official duties;
- (4) make personal investments that could reasonably be expected to create a substantial conflict between the officer's or employee's private interest and the public interest; or
- (5) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the officer's or employee's official powers or performed the officer's or employee's official duties in favor of another.

(b) A state employee who violates Subsection (a) or an ethics policy adopted under Subsection (c) is subject to termination of the employee's state employment or another employment-related sanction. Notwithstanding this subsection, a state officer or employee who violates Subsection (a) is subject to any applicable civil or criminal penalty if the violation also constitutes a violation of another statute or rule.

(c) Each state agency shall:

- (1) adopt a written ethics policy for the agency's employees consistent with the standards prescribed by Subsection (a) and other provisions of this subchapter; and
- (2) distribute a copy of the ethics policy and this subchapter to:
 - (A) each new employee not later than the third business day after the date the person begins employment with the agency; and
 - (B) each new officer not later than the third business day after the date the person qualifies for office.

(d) The office of the attorney general shall develop, in coordination with the commission, and distribute a model policy that state agencies may use in adopting an agency ethics policy under Subsection (c). A state agency is not required to adopt the model policy developed under this subsection.

(e) Subchapters E and F, Chapter 571, do not apply to a violation of this section.

(f) Notwithstanding Subsection (e), if a person with knowledge of a violation of an agency ethics policy adopted under Subsection (c) that also constitutes a criminal offense under another law of this state reports the violation to an appropriate prosecuting attorney, then, not later than the 60th day after the date a person notifies the prosecuting attorney under this subsection, the prosecuting attorney shall notify the commission of the status of the prosecuting attorney's investigation of the alleged violation. The commission shall, on the request of the prosecuting attorney, assist the prosecuting attorney in investigating the alleged violation. This subsection does not apply to an alleged violation by a member or employee of the commission.

Note:

Under §572.051(d), the term "commission" means the Texas Ethics Commission. Under §572.051(e), Subchapters E and F, Chapter 571, Texas Government Code (made inapplicable to a violation of this Section) set out respectively the procedures (including hearings) for dealing with certain complaints by the Texas Ethics Commission and the institution by the Texas Ethics Commission of civil and enforcement procedures related to certain alleged violations of law. Section 2261.252. TEXAS GOVERNMENT CODE. DISCLOSURE OF POTENTIAL CONFLICTS OF INTEREST; CERTAIN CONTRACTS PROHIBITED.

(a) Each state agency employee or official who is involved in procurement or in contract management for a state agency shall disclose to the agency any potential conflict of interest specified by state law or agency policy that is known by the employee or official with respect to any contract with a private vendor or bid for the purchase of goods or services from a private vendor by the agency.

(a-1) A state agency employee or official is required to disclose under Subsection (a) any potential conflict of interest specified by state law or agency policy that is known by the employee or official at any time during:

- (1) the procurement process, from the initial request for bids for the purchase of goods or services from a private vendor until the completed delivery of the goods or services; or
- (2) the term of a contract with a private vendor.

(b) A state agency may not enter into a contract for the purchase of goods or services with a private vendor with whom any of the following agency employees or officials have a financial interest:

- (1) a member of the agency's governing body;
- (2) the governing official, executive director, general counsel, chief procurement officer, or procurement director of the agency; or
- (3) a family member related to an employee or official described by Subdivision (1) or (2) within the second degree by affinity or consanguinity.

(c) A state agency employee or official has a financial interest in a person if the employee or official:

(1) owns or controls, directly or indirectly, an ownership interest of at least one percent in the person¹, including the right to share in profits, proceeds, or capital gains; or

(2) could reasonably foresee that a contract with the person could result in a financial benefit to the employee or official.

(d) A financial interest prohibited by this section does not include a retirement plan, a blind trust, insurance coverage, or an ownership of less than one percent in a corporation.

(e) This section applies only to a contract for the purchase of goods and services solicited through a purchase order if the amount of the purchase order exceeds \$25,000.

(f) *(Subsection not applicable to the Finance Commission.)*

Policy Statement

I. OVERVIEW

Pursuant to Section 572.051(c) of the Texas Government Code, the Finance Commission promulgates the following ethics policy. This ethics policy prescribes standards of conduct for all Finance Commission members. This ethics policy does not supersede any applicable federal or Texas law or administrative rule. All Finance Commission members must familiarize themselves with this ethics policy. All Finance Commission members must abide by all applicable federal and Texas laws, administrative rules, and Finance Commission conduct policies, including this ethics policy. A Finance Commission member who violates any applicable federal or Texas law or rule may be subject to civil or criminal penalties.

II. ETHICS POLICY

A. A Finance Commission member shall not:

(1) accept or solicit any gift, favor, or service that might reasonably tend to influence the member in the discharge of official duties, or that the member knows or should know is being offered with the intent to influence the member's official conduct;

¹ From Tex. Bus. & Com. Code Sec. 1.201(b)(27): "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, any other legal or commercial entity, or a particular series of a for-profit entity.

(2) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised his or her official powers or performed his or her official duties in favor of another;

(3) disclose confidential information, information that is excepted from public disclosure under the Texas Public Information Act (Tex. Gov't Code Ann. Ch. 552), or information that has been ordered sealed by a court, that was acquired by reason of the member's official position, or accept other employment, including self-employment, or engage in a business, charity, nonprofit organization, or professional activity that the member might reasonably expect would require or induce the member to disclose confidential information, information that is excepted from public disclosure under the Texas Public Information Act, or information that has been ordered sealed by a court, that was acquired by reason of the member's official position;

(4) accept other employment, including self-employment, or compensation or engage in a business, charity, nonprofit organization, or professional activity that could reasonably be expected to impair the member's independence of judgment in the performance of the member's official duties (Notwithstanding anything herein to the contrary, it is expected that members who are industry representatives will continue or accept employment that enables them to meet the qualifications required under Finance Code §11.102, relating to Qualifications of Members of the Texas Finance Commission);

(5) utilize state personnel, property, facilities, or equipment for any purpose other than official state business, unless such use is reasonable and incidental and does not result in any direct cost to the state, interfere with the member's official duties, and interfere with Finance Commission functions;

(6) utilize his or her official position, or state issued items, such as a badge, indicating such position for financial gain, obtaining privileges, or avoiding consequences of illegal acts;

(7) knowingly make misleading statements, either oral or written, or provide false information, in the course of official state business; or

(8) utilize state resources for any political activity.

B. A Finance Commission member shall:

(1) perform his or her official duties in a lawful, professional, and ethical manner befitting the state and the Finance Commission; and

(2) pursuant to the STANDARDS OF CONDUCT policy, report any conduct or activity that the member believes to be in violation of this ethics policy to the Chair of the Finance Commission, the Chair of Audit Committee, and the Chair of the Strategic Planning Committee.

C. Routinely in the performance of their duties as members of the Finance Commission, industry-representative members are required to vote on rules and take other actions that will have an impact on the industry they represent. Therefore, such cases are not conflicts of interest under this policy. However, if there is to be action on a matter that is specific to the Finance Commission member's employer or to an entity in

which the Finance Commission member has a substantial interest as described in §572.005 Texas Government Code, then the member must not participate in the action and shall recuse herself or himself from deliberating or voting on the matter.

D. The finance agencies may not enter into a contract for the purchase of goods or services with a private vendor with whom any of the following has a financial interest: (1) a Finance Commission member or (2) a family member of a Finance Commission member within the second degree by affinity or consanguinity. Examples of family members within the second degree of affinity include a brother-in-law, stepdaughter, and a spouse's grandchild. Examples of family members within the second degree of consanguinity include a sibling, child, and grandchild. A Finance Commission member must notify the commissioner of a finance agency if a family member of the Finance Commission member has a financial interest in a private vendor that has or will have a contract with the finance agency.

TRAINING

Statute

Section 11.110. TRAINING.

(a) A person who is appointed to and qualifies for office as a member of the finance commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the finance commission until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

- (1) the legislation that created the finance agencies and the finance commission;
- (2) the programs operated by the finance agencies;
- (3) the role and functions of the finance agencies;
- (4) the rules of the finance commission with an emphasis on the rules that relate to disciplinary and investigatory authority;
- (5) the current budget for the finance agencies;
- (6) the results of the most recent formal audit of the finance agencies;
- (7) the requirements of:
 - (A) the open meetings law, Chapter 551, Government Code;
 - (B) the public information law, Chapter 552, Government Code;
 - (C) the administrative procedure law, Chapter 2001, Government Code; and
 - (D) other laws relating to public officials, including conflict-of-interest laws; and
- (8) any applicable ethics policies adopted by the finance commission or the Texas Ethics Commission.

(c) A person appointed to the finance commission is entitled to reimbursement under Section 11.104, as if the person were a member of the finance commission, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Policy Statement

Finance Commission members acknowledge that state service is a privilege and duty that requires dedication and proper training. In this regard, members of the Finance Commission adopt the following training program that shall be administered by representatives of the finance agencies. The three finance agency commissioners will serve as the Finance Commission Training Committee. The Training Committee is charged with developing and preparing appropriate training material for new Finance Commission members that at a minimum includes items found in section 11.110 (b) of the Finance Code.

Periodically, the Training Committee shall revise and update the training manual and other materials so that its content is consistent with applicable statutory rules and regulations.

The Training Committee will provide classroom instruction to new Commission members as soon after appointment as possible, but not later than prior to the first scheduled meeting of the Finance Commission after their appointment. This training is required before a Finance Commission member may vote, deliberate or be counted as a member in attendance at a Commission meeting. The Training Committee may utilize the expertise of other state agencies in providing this training, including the areas of ethics, conflicts of interest, and open government.

Other training required before a Finance Commission member may vote, deliberate or be counted as a member in attendance at a Commission meeting includes:

- The Office of Attorney General's on-line courses - Open Meetings and Public Information Act
- The Texas Procurement and Support Service's on-line course - Governing Boards Webinar Training

Finance Commission members should also complete the Texas Higher Education Coordinating Board's training video - Protecting Public Funds – The Responsibilities of Governing Boards Under the Public Funds Investment Act.

The finance agencies will keep the Finance Commission members apprised of changes or developments in the law and recommend related training, if deemed appropriate. Each Finance Commission member must attest to receiving and reviewing the training manual annually.

SEPARATION OF FUNCTIONS

Statute

Section 11.111. SEPARATION OF FUNCTIONS.

The finance commission shall develop and implement policies that clearly separate the policymaking responsibilities of the finance commission and the management responsibilities of the banking commissioner, savings and mortgage lending commissioner, and consumer credit commissioner and staff of the finance agencies.

Policy Statement

The Finance Commission is responsible for implementing policies through its rulemaking authority in accordance with the Administrative Procedures Act, Texas Government Code, Chapter 2001. The Finance Commission also provides oversight and coordination of the finance agencies.

The commissioners of the finance agencies are responsible for managing staff and carrying out the administrative duties and statutory responsibilities of their finance agencies. The Finance Commission may offer advice and direction to the commissioners.

Under the direction of the commissioners, the staff of the finance agencies is responsible for managing programs that supervise and regulate entities in accordance with applicable statutes and Finance Commission rules. Confidential information of the finance agencies may not be released to Finance Commission members, however, a file or record pertinent to a hearing or matter pending before the Finance Commission may be provided to the members.

The Finance Commission must remain adequately informed of activities occurring with respect to legislation affecting the Finance Commission or the finance agencies. Legislative reporting will include the following:

Legislation Activity Reporting

The finance agency commissioners will email the Finance Commission members a weekly update during the legislative session. The report will list recently filed legislation or developments with respect to previously filed legislation that proposes to amend laws over which the Finance Commission or a finance agency has jurisdiction, or which otherwise impacts the Finance Commission or its finance agencies. The information will include an overview of the legislation, the author, and how the bill would affect the finance agency or the affected regulated area.

Weekly updates include any recent action on a bill previously reported in addition to other new legislation. If a bill is no longer viable due to legislative deadlines or other action, that fact will also be reported and the bill removed from future reporting.

Testimony

The finance agency commissioners will send an email notice to the Commission members when they are requested to testify or appear as a resource witness for a legislative committee. During session, the weekly update may include these scheduled appearances. Written testimony will be forwarded to Commission members.

Agency Resource Information

The finance agency commissioners and their staff are routinely consulted on issues regarding pending or potential legislation. These communications are often informal and merely informational in nature. Many legislators involved in these communications expect and request confidentiality regarding their requests. The finance agency heads will strive to report requests for legislative assistance in areas of substantial concern while balancing the need for confidentiality and maintenance of effective working relationships. Finance agency commissioners will maintain effective working relationships with the legislature by balancing confidentiality requests and appropriate reporting to the Finance Commission.

Legislative Communications with Finance Commission Members

Finance Commission members who communicate with legislators regarding legislation that impacts the finance agencies should notify the finance agencies and other Finance Commission members.

PUBLIC TESTIMONY

Statute

Section 11.112. PUBLIC TESTIMONY.

The finance commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the finance commission and to speak on any issue under the jurisdiction of the finance agencies.

Policy Statement

Public Input on Non-Agenda Items

Time will be set aside in regular meetings of the Finance Commission for the public to comment on any subject that is not a scheduled item on the agenda except for public testimony regarding an outstanding rule proposal for which the public comment period has expired. Persons wishing to comment must state their name and who they represent for the record. Unless authorized by a majority vote of the meeting quorum, comments will be limited to no more than five minutes.

Public Input on Agenda Items

Time will be set aside in regular meetings of the Finance Commission for the public to comment on agenda items. Persons wishing to comment must state their name and who they represent for the record. If multiple persons from an organization or affiliated group are present, one representative must be designated to speak on behalf of that organization or group. Unless authorized by a majority vote of the meeting quorum, comments will be limited to no more than ten minutes.

Public input is allowed on rule proposals before the Finance Commission where the Finance Commission is considering publication for comment or during the official comment period.

Public comment will not be allowed on agenda items related to final rule adoptions except upon majority vote of the commission, in which case comments will be limited to five minutes. All written comments received by a finance agency during the public comment period are included in the Finance Commission packet when the rule proposal is posted for final adoption.

Public Input on Rules Before the Commission

The finance agencies will provide time for public comment (written or oral) on all proposed rules by:

- Seeking pre-publication informal public comment by interested parties;
- Posting notice of the rule proposal in accordance with the Open Meetings Act, with notice in the *Texas Register*, for the date and time at which the Finance Commission will discuss and vote whether to

officially publish the rule proposal for public comment. With the rule proposal at this stage, the Finance Commission will provide for and consider public comments in its deliberations.

- Posting notice of the rule proposal for a minimum of 30 days, or longer if directed by the Finance Commission, in the *Texas Register* following commission action to post for public comment; or
- Posting notice of and holding a special meeting at which public comment is received on a proposed rule.

HEARINGS OFFICER AND AUDITOR

Statute

Section 11.202. HEARINGS OFFICER AND AUDITOR.

(a) The finance commission shall direct a finance agency to employ an internal auditor to provide services to and facilitate commission oversight and control over the finance agencies.

(b) The Texas Department of Banking may employ a hearings officer to serve the finance agencies as determined by interagency agreement. For the purposes of Section 2003.021, Government Code, a hearings officer employed under this section is considered to be an employee of each agency for which hearing services are provided. The hearings officer's only duty is to preside over matters related to contested cases before a finance agency or the finance commission.

Section 11.203. LIMITATION ON DIRECTION OF AUDITOR.

The internal auditor reports to the finance commission and is not subject to direction by the employing finance agency.

Policy Statement

Hearings Officer

The finance agencies may contract with the State Office of Administrative Hearings or a third-party for administrative law judge and hearings officer services to preside over contested cases brought before the Finance Commission or one of the finance agencies. The contracted party must be a licensed attorney in good standing with the state bar and have experience presiding over administrative hearings or presiding over hearings as a judge or master of a court.

Audit

The Finance Commission, through the Audit Committee, supervises the internal auditor engaged to audit the finance agencies. The internal auditor may be an external public accounting firm. Audits will address areas as designated by the Finance Commission based upon statute, risk assessments or other concerns.

SHARING OF STAFF, EQUIPMENT, AND FACILITIES: ALLOCATION OF COSTS

Statute

Section 11.204. SHARING OF STAFF, EQUIPMENT, AND FACILITIES; ALLOCATION OF COSTS.

(a) The finance commission shall use the staff, equipment, and facilities of the finance agencies to the extent necessary to carry out the finance commission's duties. To reduce administrative costs, the finance agencies shall share staff, equipment, and facilities to the extent that the sharing contributes to cost efficiency without detracting from the staff expertise needed for individual areas of agency responsibility.

(b) An interagency agreement must provide that the cost of staff used by the finance commission, including the internal auditor, is to be charged to the finance agencies in proportion to the amount of time devoted to each agency's business. All other costs of operation of the finance commission are to be shared by and included in the budgets of the finance agencies in proportion to the amount of cash receipts of each of those agencies.

(c) The finance commission shall have charge and control of the property known as the Finance Commission Building and use of staff, equipment, and facilities of the finance agencies. The Finance Commission Building refers to the property located in the city of Austin and titled in the name of the Banking Section of the Finance Commission of Texas, as described by deed recorded in Volume 5080, Page 1099, of the Deed Records of Travis County, Texas.

Policy Statement

On or before September 1 of each year, the finance agencies will enter into an interagency agreement that proportionally distributes all costs incurred by the Finance Commission or by one or more of the finance agencies in administering the affairs of the Finance Commission. Costs will include travel and expense reimbursements of the Finance Commission members along with administrative costs of one or more of the finance agencies including personnel time, copying, and facilities.

The Finance Commission will appoint one of the finance agency commissioners as the executive director of the Finance Commission to facilitate the oversight of Finance Commission activities and shared resources of the finance agencies. The Finance Commission will review the appointment, the term of the appointment and possible reassignment of the appointment every two years, as well as review the executive director's performance annually when the finance agency commissioners are reviewed. The executive director will supervise, support, and coordinate the activities of the Finance Commission and activities jointly engaged in by the finance agencies, including:

- meetings of the Finance Commission;
- shared personnel, equipment, and building resources of the finance agencies;
- requests for information or reports;

- activities of Finance Commission committees;
- permanent records of the Finance Commission; and,
- other duties and responsibilities as assigned by the Finance Commission or its Chair.

The executive director for the Finance Commission will act as facilitator and coordinator on Finance Commission and joint finance agency matters. The associated costs for the executive assistant and any salary supplement amount for the executive director will be equally allocated among the finance agencies. As each commissioner retains their own substantive responsibilities that relate to the Finance Commission, these duties are considered offsetting as to their costs. The finance agencies will allocate by interagency agreement those substantive costs of shared operations (e.g., building maintenance, Finance Commission administrative assistant, and utilities).

RESEARCH

Statute

Section 11.305. RESEARCH.

(a) The finance commission shall instruct the consumer credit commissioner to establish a program to address alternatives to high-cost lending in this state. The program shall:

- (1) study and report on the problem of high-cost lending, including without limitation the availability, quality, and prices of financial services, including lending and depository services, offered in this state to agricultural businesses, small businesses, and individual consumers in this state;
- (2) evaluate alternatives to high-cost lending and the practices of business entities in this state that provide financial services to agricultural businesses, small businesses, and individual consumers in this state;
- (3) develop models to provide lower-cost alternatives to assist borrowers who contract for high-cost loans; and
- (4) track the location of lenders who enter into loan contracts providing for an interest charge authorized by Section 342.201, map the location of the lenders by senatorial district and by any other appropriate areas, provide other demographic information relating to the loans and the location of the lenders, and provide information on the changes in the distribution of the lenders from 1997 through the date of the report.

(b) The program may:

- (1) apply for and receive public and private grants and gifts to conduct the research authorized by this section;
- (2) contract with public and private entities to carry out studies and analyses under this section;
- (3) provide funding for pilot programs; and
- (4) make grants to nonprofit institutions working to provide alternatives to high-cost loans.

(c) Not later than December 1 of each year, the consumer credit commissioner shall provide to the legislature a report detailing its findings and making recommendations to improve the availability, quality, and prices of financial services.

(d) The Texas Department of Banking and the Department of Savings and Mortgage Lending shall jointly conduct a continuing review of the condition of the state banking system. The review must include a review of all available national and state economic forecasts and an analysis of changing banking practices and new banking legislation. Periodically the departments shall submit a report to the finance commission on the results

of the review, including information relating to the condition of the state banking system at the time of the report and the predicted condition of that system in the future.

Section 11.3055. FINANCIAL SERVICES STUDY.

(a) The finance commission may assign the banking commissioner, savings and mortgage lending commissioner, or consumer credit commissioner to conduct research on:

(1) the availability, quality, and prices of financial services, including lending and depository services, offered in this state to agricultural businesses, small businesses, and individual consumers in this state; and

(2) the practices of business entities in this state that provide financial services to agricultural businesses, small businesses, and individual consumers in this state.

(b) The banking commissioner, savings and mortgage lending commissioner, or consumer credit commissioner may:

(1) apply for and receive public and private grants and gifts to conduct the research authorized by this section; and

(2) contract with public and private entities to carry out studies and analyses under this section.

Policy Statement

Research

From time to time, the Chair of the Finance Commission may appoint one or more of the commissioners of the finance agencies the responsibility of coordinating and conducting research on the availability, quality, and prices of financial services as prescribed in Section 11.3055(a), Texas Finance Code, during the ensuing year.

The Study Committee of the Finance Commission shall decide on the nature of any of the above research studies or projects after considering relevant economic and legislative factors affecting the agricultural, small business and consumer financial systems in the state. The Study Committee's recommendation shall be presented to the Finance Commission which is responsible for approving the final nature or type of research or study projects. The Study Committee may also consider the prior reports issued and any resource or funding limitations in its consideration of future studies or projects.

Reporting

Pursuant to §11.305 (c), and TEX. CONST. art. XVI, §50(s), the Consumer Credit Commissioner shall issue a report no later than December 1 of each year providing information on the availability, quality, and pricing of financial services with a specific emphasis on home equity lending activity.

Pursuant to §11.305 (d), the Texas Department of Banking and the Department of Savings and Mortgage Lending shall periodically issue a joint report to the Finance Commission describing the following:

1. the financial condition of the state banking system, including but not limited to, a comparison to national and regional trends and conditions;
2. an analysis of relevant national and state economic forecasts;
3. an analysis of changing banking practices and their impact upon the state's banking system; and
4. a forecast of the condition and composition of the state's banking system within the next 12-month period.

LIQUIDITY POLICY

Policy Statement

The long-term financial stability and health of the finance agencies requires a liquidity policy to ensure that the finance agencies preserve the capacity to provide adequate regulatory oversight. The finance agencies must maintain adequate levels of cash reserves for the purpose of mitigating current and future risks and ensuring consistent and adequate levels of regulation of the industries and services provided to Texas citizens. As self-directed, semi-independent finance agencies, it is essential that this policy provides accountability and transparency in guiding the finance agencies in setting goals and terms and conditions for cash reserves. This policy is not intended to be a policy related to the GAAP fund balance of a finance agency reported in the Annual Financial Report or GAAP accounting but rather a policy to ensure the finance agencies maintain adequate levels of liquidity that will position the finance agencies to respond to increases in the need for regulatory action, avoid cash flow stress, make planned capital purchases and generally maintain financial flexibility and plan for future needs.

The amount of cash reserves for each finance agency will differ depending on the finance agency's predictability of revenues, volatility of expenditures, timing of cash flows, and potential exposure to significant one-time outlays.

Reserved cash should prudently include amounts for, but not be limited to:

1. amounts necessary to address probable, quantifiable, and non-routine needs related to building maintenance or improvement, or information technology of cybersecurity projects. These outlays may span more than one fiscal year.
2. amounts for long-term facilities master planning, e.g. funds for building acquisition. These outlays may span more than one year.
3. amounts owed or obligated by the fiscal period end for payroll, goods and services for which the finance agency has not yet made payment. Accounts receivable for this same period may be netted against this amount.
4. lump sum vacation benefits for retirement eligible employees.
5. amounts for a specific purpose by a decision and a vote by the Finance Commission to fund a new or expand an existing program under the finance agencies, e.g. the Texas Financial Education Endowment Fund.
6. any other necessary amounts to manage risk and cash flow or maintain adequate levels of regulation and services that are probable, quantifiable, and non-routine.

The remaining funds are considered Unreserved funds and can be used for current or future operations. This

category should be at least two, but no more than six, months of budgeted operating expenditures of the finance agency (excluding extraordinary budget items). Seasonal fluctuations may cause this category to be larger at certain times of the fiscal year.

If the Unreserved funds of a finance agency are projected to exceed the six months of budgeted operating expenditures for four consecutive quarters, the finance agency shall create a plan to reduce the excess amount.

If the Unreserved funds of a finance agency are projected to fall below the two months of budgeted operating expenditures, the finance agency shall create a plan to replenish the amount.

The amounts included in the liquidity reports are based on each finance agency's best estimate and should be reviewed and adjusted as needed by finance agency's staff. The finance agencies will present their liquidity reports and any required plan reports to the Finance Commission quarterly. Measurement of the level of liquidity should be applied within the context of long-term forecasting, thereby avoiding the risk of placing too much emphasis upon the level of unreserved funds at any one time.

Finance Commission of Texas Expense Reimbursement Policy

The finance agencies are self-directed, semi-independent agencies. As such, the finance agencies and the commission are not subject to the provisions of the General Appropriations Act that set limitations on rates of reimbursement for travel. The Finance Commission and its finance agencies require a formal policy to guide the rates of reimbursement for travel.

Statute

Section 11.104. EXPENSES AND COMPENSATION OF MEMBERS.

A member of the finance commission is entitled to:

- (1) the reimbursement for reasonable and necessary expenses incidental to travel incurred in connection with the performance of official duties; and
- (2) a per diem for each day that the member engages in the business of the finance commission.

Policy Statement

The Finance Commission believes that its members should be reimbursed for reasonable expenses incurred in connection with the members performing their Finance Commission duties.

Finance Commission members may claim reimbursement of out-of-pocket expenses in accordance with this policy for official state Finance Commission business. Reimbursement for expenses related to attendance at events on behalf of the Finance Commission, other than Finance Commission meetings, require advance approval of the Finance Chairman. It is generally the policy of the Finance Commission to conserve funds to the extent possible by approximating the standard state limitations on travel unless specific circumstances warrant an exception. The Finance Commission encourages its members to minimize the amount of travel expenses incurred by ensuring that each travel arrangement is cost-effective considering all relevant circumstances.

(a) Meal reimbursement. Commission members may be reimbursed for actual expenses for meals not to exceed the maximum meal rates based on the federal travel regulations, as announced by the Comptroller. Alcohol and gratuity are not reimbursable expenses.

(b) Lodging reimbursement. Commission members should be guided by the maximum lodging rates based on the federal travel regulations and should use reasonable efforts to obtain a state rate. If a state rate is not available, a Commission member may be reimbursed for lodging at a rate of \$150 or the current federal city travel regulation rate per night, whichever is greater, exclusive of incidental expenses such as occupancy taxes and service fees.

(c) Transportation. Commission members may be reimbursed for transportation expenses, including:

(1) Personal motor vehicle. For the Commission member's use of a personally owned or leased motor vehicle, the mileage reimbursement rate equals the maximum fixed mileage allowance specified in the revenue rulings issued by the Internal Revenue Service under the federal income tax regulations as announced by the Comptroller. Mileage may be reimbursed, for instance, in conjunction with Finance Commission business, including travel to and from home and office, to and from the airport and to and from the location of any Finance Commission related meeting.

(2) Airfare and rental car. Commission members may be reimbursed for actual expenses for airfare and rental car expenses. A member should use reasonable efforts to obtain state contract rates, if available.

(d) Incidental expenses. A Commission member may be reimbursed for actual incidental expenses.

Reimbursement shall be subject to the Finance Commission member completing appropriate expense reimbursement forms and providing the Executive Director receipts or other reasonable acceptable evidence of costs incurred.

FINANCE AGENCY BUDGETING AND TRAVEL REPORTING

Statute

Section 16.003. BUDGET, REVENUE AND EXPENSES.

(a) A financial regulatory agency shall submit to the policy-making body of the financial regulatory agency a budget annually using generally accepted accounting principles. Notwithstanding any other provision of law, including the General Appropriations Act, the budget shall be adopted and approved only by the policy-making body of the financial regulatory agency.

(b) A financial regulatory agency shall be responsible for all direct and indirect costs of the agency's existence and operation. The financial regulatory agency may not directly or indirectly cause the general revenue fund to incur any cost.

(c) Subject to any limitations in a financial regulatory agency's enabling legislation, a financial regulatory agency may set the amounts of fees, penalties, charges, and revenues required or permitted by statute or rule as necessary for the purpose of carrying out the functions of the financial regulatory agency and funding the budget adopted and approved under Subsection (a).

(d) All fees and funds collected by a financial regulatory agency and any funds appropriated to the financial regulatory agency shall be deposited in interest-bearing deposit accounts in the Texas Treasury Safekeeping Trust Company. The comptroller shall contract with the financial regulatory agency for the maintenance of the deposit accounts under terms comparable to a contract between a commercial banking institution and the institution's customers.

(e) Periodically, each financial regulatory agency shall submit to the agency's policy-making body, as directed by the policy-making body, a report of the receipts and expenditures of the financial regulatory agency.

(f) The fiscal year for a financial regulatory agency begins on September 1 and ends on August 31.

Policy Statement

Budgeting

The finance agencies will present their budget proposals annually to the Audit Committee in August. Prior to this meeting, the finance agencies will conduct a public hearing to receive input on their proposed budgets as well as publish the proposed budgets on their websites with directions on how to make comments on the proposal. All written comments will be provided to the Audit Committee.

The budget proposal must include all direct and indirect costs of the finance agency. Fees and assessments to be collected from each area of regulation during the budget period must be set in a consistent and predictable manner and should be substantially sufficient to cover an area's anticipated cost of regulation. If necessary, budgeted fees and assessments may be adjusted to reflect activity from the preceding year. Each budget proposal must include a comparison of the budgeted fees and assessments to the maximum fees or assessments allowed to be charged to each regulatory area.

Flexibility in setting the fees and assessments is important to ensure that the finance agencies can meet their regulatory responsibilities and maintain compliance with the liquidity policy requirements. Fees and assessments should be accurately forecasted for an upcoming budget period, and significant discounts during the budget period should be limited. Any significant changes in fees and assessments during the budget period should be limited and must be communicated to the Finance Commission, the regulated industries and affected stakeholders, as soon as information becomes available.

The finance agencies will provide quarterly financial data to the Audit Committee. The data will include current quarter and year to date budget to actual revenue and expenditure comparisons.

A finance agency may not expend funds in excess of the total budgeted expenditures without prior approval of the Finance Commission.

Travel Reporting

For transparency in travel expenditures and increased monitoring by the Finance Commission, the finance agencies will track and report travel in the following four categories (separately for in-state and out-of-state travel):

Regulatory Supervision – This category is for travel related to regulatory functions associated with financial service entities including examinations, visitations, inspections, reviews, investigations, enforcement actions and management meetings. Also included is travel related to meetings with other regulators, financial education outreach and speaking or panelist engagements associated with regulatory matters.

Development and Training – This category is for travel related to training and staff or agency development. The category includes examiner education classes, administrative staff professional development, commission testing, conducting interviews, recruiting, participating in university banking programs, conferences, forums and seminars.

Other Regulatory Activities – This category is for travel activities ancillary to the regulatory statutory functions of the finance agency. This category includes travel related to service on a board or committee as an officer or director, legislative fly-ins, and instructors at graduate banking programs.

Non-Employee - This category is for travel activities of the members of the finance commission or advisory councils and any other non-agency person eligible for travel reimbursement by the finance agency.

Travel expenditures in the above categories will be presented quarterly to the Finance Commission.

The Chairman of the Finance Commission shall have the power to interpret, construe and implement these policies. **In** the absence of the Chairman, or in consultation with the Chairman, the Executive Director may exercise such power. These policies may be amended by simple majority vote of the entire Finance Commission.

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Finance Commission Policies and Procedures

(updated December 2018)

Table of Contents

Strategic Planning.....	Page 3
Presiding Officer.....	Page 4
Standards of Conduct.....	Page 7
Ethics Policy.....	Page 14
Training.....	Page 19
Separation of Functions.....	Page 21
Public Testimony.....	Page 23
Hearings Officer and Auditor.....	Page 25
Sharing of Staff, Equipment, and Facilities: Allocation of Costs.....	Page 26
Research.....	Page 28
Liquidity Policy	Page 31
Finance Commission of Texas Expense Reimbursement Policy	Page 33
Finance Agency Budgeting and Travel Reporting.....	Page 35

STRATEGIC PLANNING

Statute

Section 11.002. PURPOSE OF COMMISSION; STRATEGIC PLAN.

(a) The finance commission is responsible for overseeing and coordinating the Texas Department of Banking, the Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner and serves as the primary point of accountability for ensuring that state depository and lending institutions function as a system, considering the broad scope of the financial services industry. The finance commission is the policy-making body for those finance agencies and is not a separate state agency. The finance commission shall carry out its functions in a manner that protects consumer interests, maintains a safe and sound banking system, and increases the economic prosperity of the state.

(b) The finance commission shall prepare and periodically update a strategic plan for coordination of the state financial system. Each finance agency shall cooperate in preparation of the plan.

Policy Statement

The Finance Commission recognizes the benefit of sound short-term and long-term planning and the need to provide oversight for the regulatory responsibilities of each Finance Commission agency (finance agency) in a manner intended to protect the integrity of the state's financial system as well as to promote economic prosperity. In this regard, the Finance Commission will prepare and adopt a five-year strategic plan each biennium. Revisions and updates to the plan are permitted, but shall be limited to items that are material in nature and that will result in significant changes to the goals and objectives of the Finance Commission.

The Chair of the Finance Commission will appoint three members to serve on a Strategic Planning Committee. The Strategic Planning Committee shall be responsible for the oversight of the preparation and update of the strategic plan so that it encompasses the goals and objectives of the Finance Commission. The plan will embody the high-level goals, objectives and discussions of the finance agency plans.

PRESIDING OFFICER

Statute

Section 11.007. PRESIDING OFFICER.

- (a) The governor shall appoint a member of the finance commission as presiding officer of the commission. The presiding officer serves at the will of the governor.
- (b) The presiding officer shall preside at and provide for the keeping of minutes of each public meeting of the finance commission.
- (c) The presiding officer may:
 - (1) adopt rules and procedures as the presiding officer considers necessary for the orderly operation of the finance commission and for communication among the finance commission, the Texas Department of Banking, the Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner;
 - (2) adopt internal procedures governing the time and place of meetings, the type of notice for special public meetings, the manner in which public meetings are to be conducted, and other similar matters; and
 - (3) appoint committees composed of finance commission members as the presiding officer considers necessary to carry out the commission's business.

Policy Statement

Meetings of the Finance Commission will be conducted with decorum and respect for all parties attending and appearing before the Commission. In furtherance of providing for the orderly operations of the Commission, the presiding officer (Chair) may designate a Vice-Chair. In the Chair's absence, the Vice-Chair will conduct and complete all business before the Commission in accordance with applicable statutes, proper open meeting protocols and these Finance Commission policies. The rules contained within the current edition of *Robert's Rules of Order Newly Revised* shall govern the Commission in all cases to which they are applicable and in which they are not inconsistent with these policies and any special rules the Finance Commission may adopt.

In furtherance of Section 11.103(a)(5), Texas Finance Code, each member of the Commission shall notify the Chair of an expected absence from a meeting of the Commission as soon as practicable after learning of the events that will cause the absence. The member shall also notify the Chair of the reasons for the expected absence. At the meeting where the member is absent, the Chair shall call for a vote of all members in attendance on whether the absence is excused.

The Chair will assign members to the Finance Commission committees. Standing committees are the Audit Committee, the Study Committee, and the Strategic Planning Committee. Committee membership will be assigned or reaffirmed annually, to become effective September 1, upon member replacement, or as the Chair determines necessary or appropriate. Each committee's membership will normally be, but is not required to

Page | 4

be, comprised of three members. From a committee's membership, the Chair will designate a Chairperson for each committee. All considerations of a committee, other than adoption of minutes, are recommendations for full Finance Commission action.

The Chair of the Finance Commission shall appoint members to serve on ad hoc committees as the need arises. The Chair shall designate a Chairperson for each such committee.

The Chair and Vice-Chair of the Finance Commission serve in an ex-officio non-voting capacity on each standing committee and each ad hoc committee. However, when the Chairperson of a committee learns that one or more members of a committee will be unable to attend a scheduled meeting such Chairperson may request that either the Chair or Vice-Chair of the Finance Commission (or both if more than one member will be absent) serve on the committee in a voting capacity on a one-time basis at the scheduled meeting. The minutes of the scheduled meeting shall reflect the actual voting membership of the committee.

The Chair will designate Commission members to coordinate the annual evaluation process of the three finance agency commissioners. This ad hoc committee will include at least one public member and three industry members (one industry member representing each finance agency).

The Finance Commission reserves to itself as a body the responsibility for passing upon and prescribing the manner of communication of matters of policy which represent the official position of the Finance Commission. Accordingly, it would be inappropriate for individual members to communicate official positions of the Finance Commission unless instructed or authorized to do so by an action of the Commission.

The Audit Committee shall be responsible for:

- providing oversight of the finance agencies' internal audit function, including:
 - o interviewing and recommending the selection of an internal auditor,
 - o reviewing and recommending the actions to be taken as a result of the annual risk assessments performed by the internal auditor,
 - o reviewing, with the internal auditors, the audit scope and plan of the internal auditors,
 - o reviewing and recommending the actions to be taken on the audit plan resulting from the annual internal audit reports, including management's responses thereto, and monitoring the finance agencies' corrective actions.
- reviewing and monitoring the action plans resulting from external audits conducted by state and federal agencies, including management's responses thereto, and monitoring the finance agencies' corrective actions.
- reviewing and recommending the actions to be taken if any on the annual operating budgets, quarterly financial statements, and investment reports of the finance agencies.
- Providing oversight and administration of the Texas Financial Education Endowment, including recommending the actions to be taken on the investment of funds and awarding of grants that support the objectives of the endowment.

A Certified Public Accountant member of the Finance Commission shall be appointed as a member of the Committee unless specifically excluded by a majority vote of the Finance Commission.

The Study Committee shall be responsible for:

- coordinating and reviewing any statutorily-required or authorized research studies or projects decided to be undertaken, as well as those determined to be necessary by the Finance Commission.
- monitoring and overseeing Legislative Interim Studies as appropriate.
- monitoring and overseeing activities related to the self-directed, semi-independent (SDSI) status of the finance agencies by conferring with the finance agencies on material interests, issues and matters related to SDSI status, as well as monitoring general reporting requirements to governing bodies and the state legislature associated with the SDSI status, and exploring additional strategies with finance agency heads regarding implementation and operational policies related to SDSI status.
- reviewing and making recommendations for updates to the policies and procedures of the Finance Commission every biennium.
- monitoring the Sunset Review process as appropriate, for the Finance Commission and its finance agencies.

On recommendation of the finance agencies or as required by law, the Study Committee may conduct research on:

- The availability, quality and prices of financial services, including lending and depository services offered to agricultural businesses, small businesses, and individual consumers in this state, and
- The practices of business entities in this state that provide financial services to agricultural businesses, small businesses, and individual consumers in this state.

The Strategic Planning Committee shall be responsible for:

- providing direction for and review of the strategic plans developed by each of the finance agencies under the Finance Commission.
- defining the scope and development of the Finance Commission's strategic plan ensuring alignment with legislative mandates, industry and economic indicators, and finance agency strategic plans.
- playing an active role in legislative hearings and communications with elected officials.
- overseeing the selection of the finance agency heads.

STANDARDS OF CONDUCT

Statute

Section 11.109. STANDARDS OF CONDUCT.

The presiding officer of the finance commission or the presiding officer's designee shall provide to members of the finance commission, as often as necessary, information regarding the requirements for office under this title, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers.

Policy Statement

Subchapter C, Chapter 572, Texas Government Code, specifically addresses **Standards of Conduct and Conflict of Interest** for state officers and employees. Members of the Finance Commission are committed to following these guidelines and abiding by the provisions therein. Portions of the statute applicable to Finance Commission members are found in Exhibit A. Pursuant to §572.051, Texas Government Code the Finance Commission and each of the finance agencies under its jurisdiction has adopted an ethics policy.

If a member of the Finance Commission or a finance agency commissioner is made aware of a potential conflict of interest involving a member of the Finance Commission or a finance agency commissioner as such conflicts are described in Exhibit A to these Policies and Procedures, it is the duty of that person to report the matter to the Chair of the Finance Commission, the Chair of the Audit Committee, and the Chair of the Strategic Planning Committee. The Chair of the Finance Commission, two committee Chairs, or a majority of the Finance Commission at a properly posted Finance Commission meeting may engage as deemed appropriate the services of one or more of the Office of the Attorney General, independent counsel (through prescribed procedures), its internal auditors, and/or the Office of the State Auditor to determine and report to the Finance Commission for its consideration the relevant facts and circumstances surrounding the potential conflict of interest.

Exhibit A

Standards of Conduct

Subchapter C, Chapter 572, Texas Government Code, is headed "STANDARDS OF CONDUCT AND CONFLICT OF INTEREST PROVISIONS." It contains sections that are only applicable to members of the Legislature and these sections have been omitted.

The following sections of Subchapter C are applicable to the Finance Commission:

§ 572.051. Standards of Conduct; State Agency Ethics Policy

(a) A state officer or employee should not:

- (1) accept or solicit any gift, favor, or service that might reasonably tend to influence the officer or employee in the discharge of official duties or that the officer or employee knows or should know is being offered with the intent to influence the officer's or employee's official conduct;
- (2) accept other employment or engage in a business or professional activity that the officer or employee might reasonably expect would require or induce the officer or employee to disclose confidential information acquired by reason of the official position;
- (3) accept other employment or compensation that could reasonably be expected to impair the officer's or employee's independence of judgment in the performance of the officer's or employee's official duties;
- (4) make personal investments that could reasonably be expected to create a substantial conflict between the officer's or employee's private interest and the public interest; or
- (5) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the officer's or employee's official powers or performed the officer's or employee's official duties in favor of another.

(b) A state employee who violates Subsection (a) or an ethics policy adopted under Subsection (c) is subject to termination of the employee's state employment or another employment-related sanction. Notwithstanding this subsection, a state officer or employee who violates Subsection (a) is subject to any applicable civil or criminal penalty if the violation also constitutes a violation of another statute or rule.

(c) Each state agency shall:

- (1) adopt a written ethics policy for the agency's employees consistent with the standards prescribed by Subsection (a) and other provisions of this subchapter; and
- (2) distribute a copy of the ethics policy and this subchapter to:

(A) each new employee not later than the third business day after the date the person begins employment with the agency; and

(B) each new officer not later than the third business day after the date the person qualifies for office.

(d) The office of the attorney general shall develop, in coordination with the commission, and distribute a model policy that state agencies may use in adopting an agency ethics policy under Subsection (c). A state agency is not required to adopt the model policy developed under this subsection.

(e) Subchapters E and F, Chapter 571, do not apply to a violation of this section.

(f) Notwithstanding Subsection (e), if a person with knowledge of a violation of an agency ethics policy adopted under Subsection (c) that also constitutes a criminal offense under another law of this state reports the violation to an appropriate prosecuting attorney, then, not later than the 60th day after the date a person notifies the prosecuting attorney under this subsection, the prosecuting attorney shall notify the commission of the status of the prosecuting attorney's investigation of the alleged violation. The commission shall, on the request of the prosecuting attorney, assist the prosecuting attorney in investigating the alleged violation. This subsection does not apply to an alleged violation by a member or employee of the commission.

§ 572.054. Representation by Former Officer or Employee of Regulatory Agency Restricted; Criminal Offense

(a) A former member of the governing body or a former executive head of a regulatory agency may not make any communication to or appearance before an officer or employee of the agency in which the member or executive head served before the second anniversary of the date the member or executive head ceased to be a member of the governing body or the executive head of the agency if the communication or appearance is made:

(1) with the intent to influence; and

(2) on behalf of any person in connection with any matter on which the person seeks official action.

(b) A former state officer or employee of a regulatory agency who ceases service or employment with that agency on or after January 1, 1992, may not represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter in which the former officer or employee participated during the period of state service or employment, either through personal involvement or because the case or proceeding was a matter within the officer's or employee's official responsibility.

(c) Subsection (b) applies only to:

(1) a state officer of a regulatory agency; or

(2) a state employee of a regulatory agency who is compensated, as of the last date of state employment, at or above the amount prescribed by the General Appropriations Act for step 1, salary

group 17, of the position classification salary schedule, including an employee who is exempt from the state's position classification plan.

(d) Subsection (b) does not apply to a rulemaking proceeding that was concluded before the officer's or employee's service or employment ceased.

(e) Other law that restricts the representation of a person before a particular state agency by a former state officer or employee of that agency prevails over this section.

(f) An individual commits an offense if the individual violates this section. An offense under this subsection is a Class A misdemeanor.

(g) In this section, the comptroller and the secretary of state are not excluded from the definition of "regulatory agency."

(g-1) For purposes of this section, the Department of Information Resources is a regulatory agency.

(h) In this section:

(1) "Participated" means to have taken action as an officer or employee through decision, approval, disapproval, recommendation, giving advice, investigation, or similar action.

(2) "Particular matter" means a specific investigation, application, request for a ruling or determination, rulemaking proceeding, contract, claim, charge, accusation, arrest, or judicial or other proceeding.

§ 572.056. Contracts by State Officers With Governmental Entities; Criminal Offense

(a) A state officer may not solicit or accept from a governmental entity a commission, fee, bonus, retainer, or rebate that is compensation for the officer's personal solicitation for the award of a contract for services or sale of goods to a governmental entity.

(b) This section does not apply to:

(1) a contract that is awarded by competitive bid as provided by law and that is not otherwise prohibited by law; or

(2) a court appointment.

(c) In this section, "governmental entity" means the state, a political subdivision of the state, or a governmental entity created under the Texas Constitution or a statute of this state.

(d) A state officer who violates this section commits an offense. An offense under this subsection is a Class A misdemeanor.

§ 572.057. Certain Leases Prohibited

(a) Except as provided by Subsection (d), a member of the legislature, an executive or judicial officer elected in a statewide election, or a business entity in which the legislator or officer has a substantial interest may not lease any office space or other real property to the state, a state agency, the legislature or a legislative agency, the Supreme Court of Texas, the Court of Criminal Appeals, or a state judicial agency.

(b) A lease made in violation of Subsection (a) is void.

(c) This section does not apply to an individual who is an elected officer on June 16, 1989, for as long as the officer holds that office.

(d) A member of the legislature or a business entity in which the legislator has a substantial interest may donate the use of office space that the member or entity owns and that is located in the member's district to the house of the legislature in which the member serves to be used for the member's official business. Office space donated under this subsection is not a contribution for purposes of Title 15, Election Code. Acceptance of a donation of office space under this subsection is not subject to Section 301.032.

§ 572.058. Private Interest in Measure or Decision; Disclosure; Removal From Office for Violation

(a) An elected or appointed officer, other than an officer subject to impeachment under Article XV, Section 2, of the Texas Constitution, who is a member of a board or commission having policy direction over a state agency and who has a personal or private interest in a measure, proposal, or decision pending before the board or commission shall publicly disclose the fact to the board or commission in a meeting called and held in compliance with Chapter 551. The officer may not vote or otherwise participate in the decision. The disclosure shall be entered in the minutes of the meeting.

(b) An individual who violates this section is subject to removal from office on the petition of the attorney general on the attorney general's own initiative or on the relation of a resident or of any other member of the board or commission. The suit must be brought in a district court of Travis County or of the county where the violation is alleged to have been committed.

(c) If the court or jury finds from a preponderance of the evidence that the defendant violated this section and that an ordinary prudent person would have known the individual's conduct to be a violation of this section, the court shall enter judgment removing the defendant from office.

(d) A suit under this section must be brought before the second anniversary of the date the violation is alleged to have been committed, or the suit is barred.

(e) The remedy provided by this section is cumulative of other methods of removal from office provided by the Texas Constitution or a statute of this state.

(f) In this section, "personal or private interest" has the same meaning as is given to it under Article III, Section 22, of the Texas Constitution, governing the conduct of members of the legislature. For purposes of this section, an individual does not have a "personal or private interest" in a measure, proposal, or decision if the individual

is engaged in a profession, trade, or occupation and the individual's interest is the same as all others similarly engaged in the profession, trade, or occupation.

§ 572.060. Solicitation Of Or Recommendations Regarding Contributions To Charitable Organizations And Governmental Entities

(a) Unless otherwise prohibited by the Code of Judicial Conduct, a state officer or state employee may:

(1) solicit from any person a contribution to:

(A) an organization that:

(i) is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code;

(ii) does not attempt to influence legislation as a substantial part of the organization's activities; and

(iii) has not elected under Section 501(h), Internal Revenue Code of 1986, to have that subsection apply to the organization; or

(B) a governmental entity; or

(2) recommend to any person that the person make a contribution to an organization or entity described by Subdivision (1).

(b) A monetary contribution solicited or recommended as provided by Subsection (a) must:

(1) be paid or made directly to the charitable organization or governmental entity by the person making the contribution;

(2) be in the form of a check, money order, or similar instrument payable to the charitable organization or governmental entity; or

(3) be in the form of a deduction from a state employee's salary or wage payment under the state employee charitable campaign under Subchapter I, Chapter 659.

(c) A contribution solicited or recommended as provided by Subsection (a) that is not a monetary contribution must be delivered directly to the charitable organization or governmental entity by the person making the contribution.

(d) A contribution paid as provided by Subsection (b) or delivered as provided by Subsection (c) is not:

(1) a political contribution to, or political expenditure on behalf of, the state officer or state employee for purposes of Title 15, Election Code;

(2) an expenditure for purposes of Chapter 305; or

(3) benefit to the state officer or state employee for purposes of Sections 36.08 and 36.09, Penal Code.

ETHICS POLICY

Statute

Section 572.051. STANDARDS OF CONDUCT; STATE AGENCY ETHICS POLICY.

(a) A state officer or employee should not:

- (1) accept or solicit any gift, favor, or service that might reasonably tend to influence the officer or employee in the discharge of official duties or that the officer or employee knows or should know is being offered with the intent to influence the officer's or employee's official conduct;
- (2) accept other employment or engage in a business or professional activity that the officer or employee might reasonably expect would require or induce the officer or employee to disclose confidential information acquired by reason of the official position;
- (3) accept other employment or compensation that could reasonably be expected to impair the officer's or employee's independence of judgment in the performance of the officer's or employee's official duties;
- (4) make personal investments that could reasonably be expected to create a substantial conflict between the officer's or employee's private interest and the public interest; or
- (5) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the officer's or employee's official powers or performed the officer's or employee's official duties in favor of another.

(b) A state employee who violates Subsection (a) or an ethics policy adopted under Subsection (c) is subject to termination of the employee's state employment or another employment-related sanction. Notwithstanding this subsection, a state officer or employee who violates Subsection (a) is subject to any applicable civil or criminal penalty if the violation also constitutes a violation of another statute or rule.

(c) Each state agency shall:

- (1) adopt a written ethics policy for the agency's employees consistent with the standards prescribed by Subsection (a) and other provisions of this subchapter; and
- (2) distribute a copy of the ethics policy and this subchapter to:
 - (A) each new employee not later than the third business day after the date the person begins employment with the agency; and
 - (B) each new officer not later than the third business day after the date the person qualifies for office.

(d) The office of the attorney general shall develop, in coordination with the commission, and distribute a model policy that state agencies may use in adopting an agency ethics policy under Subsection (c). A state agency is not required to adopt the model policy developed under this subsection.

(e) Subchapters E and F, Chapter 571, do not apply to a violation of this section.

(f) Notwithstanding Subsection (e), if a person with knowledge of a violation of an agency ethics policy adopted under Subsection (c) that also constitutes a criminal offense under another law of this state reports the violation to an appropriate prosecuting attorney, then, not later than the 60th day after the date a person notifies the prosecuting attorney under this subsection, the prosecuting attorney shall notify the commission of the status of the prosecuting attorney's investigation of the alleged violation. The commission shall, on the request of the prosecuting attorney, assist the prosecuting attorney in investigating the alleged violation. This subsection does not apply to an alleged violation by a member or employee of the commission.

Note:

Under §572.051(d), the term "commission" means the Texas Ethics Commission. Under §572.051(e), Subchapters E and F, Chapter 571, Texas Government Code (made inapplicable to a violation of this Section) set out respectively the procedures (including hearings) for dealing with certain complaints by the Texas Ethics Commission and the institution by the Texas Ethics Commission of civil and enforcement procedures related to certain alleged violations of law. Section 2261.252. TEXAS GOVERNMENT CODE. DISCLOSURE OF POTENTIAL CONFLICTS OF INTEREST; CERTAIN CONTRACTS PROHIBITED.

(a) Each state agency employee or official who is involved in procurement or in contract management for a state agency shall disclose to the agency any potential conflict of interest specified by state law or agency policy that is known by the employee or official with respect to any contract with a private vendor or bid for the purchase of goods or services from a private vendor by the agency.

(a-1) A state agency employee or official is required to disclose under Subsection (a) any potential conflict of interest specified by state law or agency policy that is known by the employee or official at any time during:

- (1) the procurement process, from the initial request for bids for the purchase of goods or services from a private vendor until the completed delivery of the goods or services; or
- (2) the term of a contract with a private vendor.

(b) A state agency may not enter into a contract for the purchase of goods or services with a private vendor with whom any of the following agency employees or officials have a financial interest:

- (1) a member of the agency's governing body;
- (2) the governing official, executive director, general counsel, chief procurement officer, or procurement director of the agency; or
- (3) a family member related to an employee or official described by Subdivision (1) or (2) within the second degree by affinity or consanguinity.

(c) A state agency employee or official has a financial interest in a person if the employee or official:

(1) owns or controls, directly or indirectly, an ownership interest of at least one percent in the person¹, including the right to share in profits, proceeds, or capital gains; or

(2) could reasonably foresee that a contract with the person could result in a financial benefit to the employee or official.

(d) A financial interest prohibited by this section does not include a retirement plan, a blind trust, insurance coverage, or an ownership of less than one percent in a corporation.

(e) This section applies only to a contract for the purchase of goods and services solicited through a purchase order if the amount of the purchase order exceeds \$25,000.

(f) *(Subsection not applicable to the Finance Commission.)*

Policy Statement

I. OVERVIEW

Pursuant to Section 572.051(c) of the Texas Government Code, the Finance Commission promulgates the following ethics policy. This ethics policy prescribes standards of conduct for all Finance Commission members. This ethics policy does not supersede any applicable federal or Texas law or administrative rule. All Finance Commission members must familiarize themselves with this ethics policy. All Finance Commission members must abide by all applicable federal and Texas laws, administrative rules, and Finance Commission conduct policies, including this ethics policy. A Finance Commission member who violates any applicable federal or Texas law or rule may be subject to civil or criminal penalties.

II. ETHICS POLICY

A. A Finance Commission member shall not:

(1) accept or solicit any gift, favor, or service that might reasonably tend to influence the member in the discharge of official duties, or that the member knows or should know is being offered with the intent to influence the member's official conduct;

¹ From Tex. Bus. & Com. Code Sec. 1.201(b)(27): "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, any other legal or commercial entity, or a particular series of a for-profit entity.

(2) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised his or her official powers or performed his or her official duties in favor of another;

(3) disclose confidential information, information that is excepted from public disclosure under the Texas Public Information Act (Tex. Gov't Code Ann. Ch. 552), or information that has been ordered sealed by a court, that was acquired by reason of the member's official position, or accept other employment, including self-employment, or engage in a business, charity, nonprofit organization, or professional activity that the member might reasonably expect would require or induce the member to disclose confidential information, information that is excepted from public disclosure under the Texas Public Information Act, or information that has been ordered sealed by a court, that was acquired by reason of the member's official position;

(4) accept other employment, including self-employment, or compensation or engage in a business, charity, nonprofit organization, or professional activity that could reasonably be expected to impair the member's independence of judgment in the performance of the member's official duties (Notwithstanding anything herein to the contrary, it is expected that members who are industry representatives will continue or accept employment that enables them to meet the qualifications required under Finance Code §11.102, relating to Qualifications of Members of the Texas Finance Commission);

(5) utilize state personnel, property, facilities, or equipment for any purpose other than official state business, unless such use is reasonable and incidental and does not result in any direct cost to the state, interfere with the member's official duties, and interfere with Finance Commission functions;

(6) utilize his or her official position, or state issued items, such as a badge, indicating such position for financial gain, obtaining privileges, or avoiding consequences of illegal acts;

(7) knowingly make misleading statements, either oral or written, or provide false information, in the course of official state business; or

(8) utilize state resources for any political activity.

B. A Finance Commission member shall:

(1) perform his or her official duties in a lawful, professional, and ethical manner befitting the state and the Finance Commission; and

(2) pursuant to the STANDARDS OF CONDUCT policy, report any conduct or activity that the member believes to be in violation of this ethics policy to the Chair of the Finance Commission, the Chair of Audit Committee, and the Chair of the Strategic Planning Committee.

C. Routinely in the performance of their duties as members of the Finance Commission, industry-representative members are required to vote on rules and take other actions that will have an impact on the industry they represent. Therefore, such cases are not conflicts of interest under this policy. However, if there is to be action on a matter that is specific to the Finance Commission member's employer or to an entity in

which the Finance Commission member has a substantial interest as described in §572.005 Texas Government Code, then the member must not participate in the action and shall recuse herself or himself from deliberating or voting on the matter.

D. The finance agencies may not enter into a contract for the purchase of goods or services with a private vendor with whom any of the following has a financial interest: (1) a Finance Commission member or (2) a family member of a Finance Commission member within the second degree by affinity or consanguinity. Examples of family members within the second degree of affinity include a brother-in-law, stepdaughter, and a spouse's grandchild. Examples of family members within the second degree of consanguinity include a sibling, child, and grandchild. A Finance Commission member must notify the commissioner of a finance agency if a family member of the Finance Commission member has a financial interest in a private vendor that has or will have a contract with the finance agency.

TRAINING

Statute

Section 11.110. TRAINING.

(a) A person who is appointed to and qualifies for office as a member of the finance commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the finance commission until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

- (1) the legislation that created the finance agencies and the finance commission;
- (2) the programs operated by the finance agencies;
- (3) the role and functions of the finance agencies;
- (4) the rules of the finance commission with an emphasis on the rules that relate to disciplinary and investigatory authority;
- (5) the current budget for the finance agencies;
- (6) the results of the most recent formal audit of the finance agencies;
- (7) the requirements of:
 - (A) the open meetings law, Chapter 551, Government Code;
 - (B) the public information law, Chapter 552, Government Code;
 - (C) the administrative procedure law, Chapter 2001, Government Code; and
 - (D) other laws relating to public officials, including conflict-of-interest laws; and
- (8) any applicable ethics policies adopted by the finance commission or the Texas Ethics Commission.

(c) A person appointed to the finance commission is entitled to reimbursement under Section 11.104, as if the person were a member of the finance commission, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Policy Statement

Finance Commission members acknowledge that state service is a privilege and duty that requires dedication and proper training. In this regard, members of the Finance Commission adopt the following training program that shall be administered by representatives of the finance agencies. The three finance agency commissioners will serve as the Finance Commission Training Committee. The Training Committee is charged with developing and preparing appropriate training material for new Finance Commission members that at a minimum includes items found in section 11.110 (b) of the Finance Code.

Periodically, the Training Committee shall revise and update the training manual and other materials so that its content is consistent with applicable statutory rules and regulations.

The Training Committee will provide classroom instruction to new Commission members as soon after appointment as possible, but not later than prior to the first scheduled meeting of the Finance Commission after their appointment. This training is required before a Finance Commission member may vote, deliberate or be counted as a member in attendance at a Commission meeting. The Training Committee may utilize the expertise of other state agencies in providing this training, including the areas of ethics, conflicts of interest, and open government.

Other training required before a Finance Commission member may vote, deliberate or be counted as a member in attendance at a Commission meeting includes:

- The Office of Attorney General's on-line courses - Open Meetings and Public Information Act
- The Texas Procurement and Support Service's on-line course - Governing Boards Webinar Training

Finance Commission members should also complete the Texas Higher Education Coordinating Board's training video - Protecting Public Funds – The Responsibilities of Governing Boards Under the Public Funds Investment Act.

The finance agencies will keep the Finance Commission members apprised of changes or developments in the law and recommend related training, if deemed appropriate. Each Finance Commission member must attest to receiving and reviewing the training manual annually.

SEPARATION OF FUNCTIONS

Statute

Section 11.111. SEPARATION OF FUNCTIONS.

The finance commission shall develop and implement policies that clearly separate the policymaking responsibilities of the finance commission and the management responsibilities of the banking commissioner, savings and mortgage lending commissioner, and consumer credit commissioner and staff of the finance agencies.

Policy Statement

The Finance Commission is responsible for implementing policies through its rulemaking authority in accordance with the Administrative Procedures Act, Texas Government Code, Chapter 2001. The Finance Commission also provides oversight and coordination of the finance agencies.

The commissioners of the finance agencies are responsible for managing staff and carrying out the administrative duties and statutory responsibilities of their finance agencies. The Finance Commission may offer advice and direction to the commissioners.

Under the direction of the commissioners, the staff of the finance agencies is responsible for managing programs that supervise and regulate entities in accordance with applicable statutes and Finance Commission rules. Confidential information of the finance agencies may not be released to Finance Commission members, however, a file or record pertinent to a hearing or matter pending before the Finance Commission may be provided to the members.

The Finance Commission must remain adequately informed of activities occurring with respect to legislation affecting the Finance Commission or the finance agencies. Legislative reporting will include the following:

Legislation Activity Reporting

The finance agency commissioners will email the Finance Commission members a weekly update during the legislative session. The report will list recently filed legislation or developments with respect to previously filed legislation that proposes to amend laws over which the Finance Commission or a finance agency has jurisdiction, or which otherwise impacts the Finance Commission or its finance agencies. The information will include an overview of the legislation, the author, and how the bill would affect the finance agency or the affected regulated area.

Weekly updates include any recent action on a bill previously reported in addition to other new legislation. If a bill is no longer viable due to legislative deadlines or other action, that fact will also be reported and the bill removed from future reporting.

Testimony

The finance agency commissioners will send an email notice to the Commission members when they are requested to testify or appear as a resource witness for a legislative committee. During session, the weekly update may include these scheduled appearances. Written testimony will be forwarded to Commission members.

Agency Resource Information

The finance agency commissioners and their staff are routinely consulted on issues regarding pending or potential legislation. These communications are often informal and merely informational in nature. Many legislators involved in these communications expect and request confidentiality regarding their requests. The finance agency heads will strive to report requests for legislative assistance in areas of substantial concern while balancing the need for confidentiality and maintenance of effective working relationships. Finance agency commissioners will maintain effective working relationships with the legislature by balancing confidentiality requests and appropriate reporting to the Finance Commission.

Legislative Communications with Finance Commission Members

Finance Commission members who communicate with legislators regarding legislation that impacts the finance agencies should notify the finance agencies and other Finance Commission members.

PUBLIC TESTIMONY

Statute

Section 11.112. PUBLIC TESTIMONY.

The finance commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the finance commission and to speak on any issue under the jurisdiction of the finance agencies.

Policy Statement

Public Input on Non-Agenda Items

Time will be set aside in regular meetings of the Finance Commission for the public to comment on any subject that is not a scheduled item on the agenda except for public testimony regarding an outstanding rule proposal for which the public comment period has expired. Persons wishing to comment must state their name and who they represent for the record. Unless authorized by a majority vote of the meeting quorum, comments will be limited to no more than five minutes.

Public Input on Agenda Items

Time will be set aside in regular meetings of the Finance Commission for the public to comment on agenda items. Persons wishing to comment must state their name and who they represent for the record. If multiple persons from an organization or affiliated group are present, one representative must be designated to speak on behalf of that organization or group. Unless authorized by a majority vote of the meeting quorum, comments will be limited to no more than ten minutes.

Public input is allowed on rule proposals before the Finance Commission where the Finance Commission is considering publication for comment or during the official comment period.

Public comment will not be allowed on agenda items related to final rule adoptions except upon majority vote of the commission, in which case comments will be limited to five minutes. All written comments received by a finance agency during the public comment period are included in the Finance Commission packet when the rule proposal is posted for final adoption.

Public Input on Rules Before the Commission

The finance agencies will provide time for public comment (written or oral) on all proposed rules by:

- Seeking pre-publication informal public comment by interested parties;
- Posting notice of the rule proposal in accordance with the Open Meetings Act, with notice in the *Texas Register*, for the date and time at which the Finance Commission will discuss and vote whether to

officially publish the rule proposal for public comment. With the rule proposal at this stage, the Finance Commission will provide for and consider public comments in its deliberations.

- Posting notice of the rule proposal for a minimum of 30 days, or longer if directed by the Finance Commission, in the *Texas Register* following commission action to post for public comment; or
- Posting notice of and holding a special meeting at which public comment is received on a proposed rule.

HEARINGS OFFICER AND AUDITOR

Statute

Section 11.202. HEARINGS OFFICER AND AUDITOR.

(a) The finance commission shall direct a finance agency to employ an internal auditor to provide services to and facilitate commission oversight and control over the finance agencies.

(b) The Texas Department of Banking may employ a hearings officer to serve the finance agencies as determined by interagency agreement. For the purposes of Section 2003.021, Government Code, a hearings officer employed under this section is considered to be an employee of each agency for which hearing services are provided. The hearings officer's only duty is to preside over matters related to contested cases before a finance agency or the finance commission.

Section 11.203. LIMITATION ON DIRECTION OF AUDITOR.

The internal auditor reports to the finance commission and is not subject to direction by the employing finance agency.

Policy Statement

Hearings Officer

The finance agencies may contract with the State Office of Administrative Hearings or a third-party for administrative law judge and hearings officer services to preside over contested cases brought before the Finance Commission or one of the finance agencies. The contracted party must be a licensed attorney in good standing with the state bar and have experience presiding over administrative hearings or presiding over hearings as a judge or master of a court.

Audit

The Finance Commission, through the Audit Committee, supervises the internal auditor engaged to audit the finance agencies. The internal auditor may be an external public accounting firm. Audits will address areas as designated by the Finance Commission based upon statute, risk assessments or other concerns.

SHARING OF STAFF, EQUIPMENT, AND FACILITIES: ALLOCATION OF COSTS

Statute

Section 11.204. SHARING OF STAFF, EQUIPMENT, AND FACILITIES; ALLOCATION OF COSTS.

(a) The finance commission shall use the staff, equipment, and facilities of the finance agencies to the extent necessary to carry out the finance commission's duties. To reduce administrative costs, the finance agencies shall share staff, equipment, and facilities to the extent that the sharing contributes to cost efficiency without detracting from the staff expertise needed for individual areas of agency responsibility.

(b) An interagency agreement must provide that the cost of staff used by the finance commission, including the internal auditor, is to be charged to the finance agencies in proportion to the amount of time devoted to each agency's business. All other costs of operation of the finance commission are to be shared by and included in the budgets of the finance agencies in proportion to the amount of cash receipts of each of those agencies.

(c) The finance commission shall have charge and control of the property known as the Finance Commission Building and use of staff, equipment, and facilities of the finance agencies. The Finance Commission Building refers to the property located in the city of Austin and titled in the name of the Banking Section of the Finance Commission of Texas, as described by deed recorded in Volume 5080, Page 1099, of the Deed Records of Travis County, Texas.

Policy Statement

On or before September 1 of each year, the finance agencies will enter into an interagency agreement that proportionally distributes all costs incurred by the Finance Commission or by one or more of the finance agencies in administering the affairs of the Finance Commission. Costs will include travel and expense reimbursements of the Finance Commission members along with administrative costs of one or more of the finance agencies including personnel time, copying, and facilities.

The Finance Commission will appoint one of the finance agency commissioners as the executive director of the Finance Commission to facilitate the oversight of Finance Commission activities and shared resources of the finance agencies. The Finance Commission will review the appointment, the term of the appointment and possible reassignment of the appointment every two years, as well as review the executive director's performance annually when the finance agency commissioners are reviewed. The executive director will supervise, support, and coordinate the activities of the Finance Commission and activities jointly engaged in by the finance agencies, including:

- meetings of the Finance Commission;
- shared personnel, equipment, and building resources of the finance agencies;
- requests for information or reports;

- activities of Finance Commission committees;
- permanent records of the Finance Commission; and,
- other duties and responsibilities as assigned by the Finance Commission or its Chair.

The executive director for the Finance Commission will act as facilitator and coordinator on Finance Commission and joint finance agency matters. The associated costs for the executive assistant and any salary supplement amount for the executive director will be equally allocated among the finance agencies. As each commissioner retains their own substantive responsibilities that relate to the Finance Commission, these duties are considered offsetting as to their costs. The finance agencies will allocate by interagency agreement those substantive costs of shared operations (e.g., building maintenance, Finance Commission administrative assistant, and utilities).

RESEARCH

Statute

Section 11.305. RESEARCH.

(a) The finance commission shall instruct the consumer credit commissioner to establish a program to address alternatives to high-cost lending in this state. The program shall:

- (1) study and report on the problem of high-cost lending, including without limitation the availability, quality, and prices of financial services, including lending and depository services, offered in this state to agricultural businesses, small businesses, and individual consumers in this state;
- (2) evaluate alternatives to high-cost lending and the practices of business entities in this state that provide financial services to agricultural businesses, small businesses, and individual consumers in this state;
- (3) develop models to provide lower-cost alternatives to assist borrowers who contract for high-cost loans; and
- (4) track the location of lenders who enter into loan contracts providing for an interest charge authorized by Section 342.201, map the location of the lenders by senatorial district and by any other appropriate areas, provide other demographic information relating to the loans and the location of the lenders, and provide information on the changes in the distribution of the lenders from 1997 through the date of the report.

(b) The program may:

- (1) apply for and receive public and private grants and gifts to conduct the research authorized by this section;
- (2) contract with public and private entities to carry out studies and analyses under this section;
- (3) provide funding for pilot programs; and
- (4) make grants to nonprofit institutions working to provide alternatives to high-cost loans.

(c) Not later than December 1 of each year, the consumer credit commissioner shall provide to the legislature a report detailing its findings and making recommendations to improve the availability, quality, and prices of financial services.

(d) The Texas Department of Banking and the Department of Savings and Mortgage Lending shall jointly conduct a continuing review of the condition of the state banking system. The review must include a review of all available national and state economic forecasts and an analysis of changing banking practices and new banking legislation. Periodically the departments shall submit a report to the finance commission on the results

of the review, including information relating to the condition of the state banking system at the time of the report and the predicted condition of that system in the future.

Section 11.3055. FINANCIAL SERVICES STUDY.

(a) The finance commission may assign the banking commissioner, savings and mortgage lending commissioner, or consumer credit commissioner to conduct research on:

(1) the availability, quality, and prices of financial services, including lending and depository services, offered in this state to agricultural businesses, small businesses, and individual consumers in this state; and

(2) the practices of business entities in this state that provide financial services to agricultural businesses, small businesses, and individual consumers in this state.

(b) The banking commissioner, savings and mortgage lending commissioner, or consumer credit commissioner may:

(1) apply for and receive public and private grants and gifts to conduct the research authorized by this section; and

(2) contract with public and private entities to carry out studies and analyses under this section.

Policy Statement

Research

From time to time, the Chair of the Finance Commission may appoint one or more of the commissioners of the finance agencies the responsibility of coordinating and conducting research on the availability, quality, and prices of financial services as prescribed in Section 11.3055(a), Texas Finance Code, during the ensuing year.

The Study Committee of the Finance Commission shall decide on the nature of any of the above research studies or projects after considering relevant economic and legislative factors affecting the agricultural, small business and consumer financial systems in the state. The Study Committee's recommendation shall be presented to the Finance Commission which is responsible for approving the final nature or type of research or study projects. The Study Committee may also consider the prior reports issued and any resource or funding limitations in its consideration of future studies or projects.

Reporting

Pursuant to §11.305 (c), and TEX. CONST. art. XVI, §50(s), the Consumer Credit Commissioner shall issue a report no later than December 1 of each year providing information on the availability, quality, and pricing of financial services with a specific emphasis on home equity lending activity.

Pursuant to §11.305 (d), the Texas Department of Banking and the Department of Savings and Mortgage Lending shall periodically issue a joint report to the Finance Commission describing the following:

1. the financial condition of the state banking system, including but not limited to, a comparison to national and regional trends and conditions;
2. an analysis of relevant national and state economic forecasts;
3. an analysis of changing banking practices and their impact upon the state's banking system; and
4. a forecast of the condition and composition of the state's banking system within the next 12-month period.

LIQUIDITY POLICY

Policy Statement

The long-term financial stability and health of the finance agencies requires a liquidity policy to ensure that the finance agencies preserve the capacity to provide adequate regulatory oversight. The finance agencies must maintain adequate levels of cash reserves for the purpose of mitigating current and future risks and ensuring consistent and adequate levels of regulation of the industries and services provided to Texas citizens. As self-directed, semi-independent finance agencies, it is essential that this policy provides accountability and transparency in guiding the finance agencies in setting goals and terms and conditions for cash reserves. This policy is not intended to be a policy related to the GAAP fund balance of a finance agency reported in the Annual Financial Report or GAAP accounting but rather a policy to ensure the finance agencies maintain adequate levels of liquidity that will position the finance agencies to respond to increases in the need for regulatory action, avoid cash flow stress, make planned capital purchases and generally maintain financial flexibility and plan for future needs.

The amount of cash reserves for each finance agency will differ depending on the finance agency's predictability of revenues, volatility of expenditures, timing of cash flows, and potential exposure to significant one-time outlays.

Reserved cash should prudently include amounts for, but not be limited to:

1. amounts necessary to address probable, quantifiable, and non-routine needs related to building maintenance or improvement, or information technology of cybersecurity projects. These outlays may span more than one fiscal year.
2. amounts for long-term facilities master planning, e.g. funds for building acquisition. These outlays may span more than one year.
3. amounts owed or obligated by the fiscal period end for payroll, goods and services for which the finance agency has not yet made payment. Accounts receivable for this same period may be netted against this amount.
4. lump sum vacation benefits for retirement eligible employees.
5. amounts for a specific purpose by a decision and a vote by the Finance Commission to fund a new or expand an existing program under the finance agencies, e.g. the Texas Financial Education Endowment Fund.
6. any other necessary amounts to manage risk and cash flow or maintain adequate levels of regulation and services that are probable, quantifiable, and non-routine.

The remaining funds are considered Unreserved funds and can be used for current or future operations. This

category should be at least two, but no more than six, months of budgeted operating expenditures of the finance agency (excluding extraordinary budget items). Seasonal fluctuations may cause this category to be larger at certain times of the fiscal year.

If the Unreserved funds of a finance agency are projected to exceed the six months of budgeted operating expenditures for four consecutive quarters, the finance agency shall create a plan to reduce the excess amount.

If the Unreserved funds of a finance agency are projected to fall below the two months of budgeted operating expenditures, the finance agency shall create a plan to replenish the amount.

The amounts included in the liquidity reports are based on each finance agency's best estimate and should be reviewed and adjusted as needed by finance agency's staff. The finance agencies will present their liquidity reports and any required plan reports to the Finance Commission quarterly. Measurement of the level of liquidity should be applied within the context of long-term forecasting, thereby avoiding the risk of placing too much emphasis upon the level of unreserved funds at any one time.

Finance Commission of Texas Expense Reimbursement Policy

The finance agencies are self-directed, semi-independent agencies. As such, the finance agencies and the commission are not subject to the provisions of the General Appropriations Act that set limitations on rates of reimbursement for travel. The Finance Commission and its finance agencies require a formal policy to guide the rates of reimbursement for travel.

Statute

Section 11.104. EXPENSES AND COMPENSATION OF MEMBERS.

A member of the finance commission is entitled to:

- (1) the reimbursement for reasonable and necessary expenses incidental to travel incurred in connection with the performance of official duties; and
- (2) a per diem for each day that the member engages in the business of the finance commission.

Policy Statement

The Finance Commission believes that its members should be reimbursed for reasonable expenses incurred in connection with the members performing their Finance Commission duties.

Finance Commission members may claim reimbursement of out-of-pocket expenses in accordance with this policy for official state Finance Commission business. Reimbursement for expenses related to attendance at events on behalf of the Finance Commission, other than Finance Commission meetings, require advance approval of the Finance Chairman. It is generally the policy of the Finance Commission to conserve funds to the extent possible by approximating the standard state limitations on travel unless specific circumstances warrant an exception. The Finance Commission encourages its members to minimize the amount of travel expenses incurred by ensuring that each travel arrangement is cost-effective considering all relevant circumstances.

(a) Meal reimbursement. Commission members may be reimbursed for actual expenses for meals not to exceed the maximum meal rates based on the federal travel regulations, as announced by the Comptroller. Alcohol and gratuity are not reimbursable expenses.

(b) Lodging reimbursement. Commission members should be guided by the maximum lodging rates based on the federal travel regulations and should use reasonable efforts to obtain a state rate. If a state rate is not available, a Commission member may be reimbursed for lodging at a rate of \$150 or the current federal city travel regulation rate per night, whichever is greater, exclusive of incidental expenses such as occupancy taxes and service fees.

(c) Transportation. Commission members may be reimbursed for transportation expenses, including:

(1) Personal motor vehicle. For the Commission member's use of a personally owned or leased motor vehicle, the mileage reimbursement rate equals the maximum fixed mileage allowance specified in the revenue rulings issued by the Internal Revenue Service under the federal income tax regulations as announced by the Comptroller. Mileage may be reimbursed, for instance, in conjunction with Finance Commission business, including travel to and from home and office, to and from the airport and to and from the location of any Finance Commission related meeting.

(2) Airfare and rental car. Commission members may be reimbursed for actual expenses for airfare and rental car expenses. A member should use reasonable efforts to obtain state contract rates, if available.

(d) Incidental expenses. A Commission member may be reimbursed for actual incidental expenses.

Reimbursement shall be subject to the Finance Commission member completing appropriate expense reimbursement forms and providing the Executive Director receipts or other reasonable acceptable evidence of costs incurred.

FINANCE AGENCY BUDGETING AND TRAVEL REPORTING

Statute

Section 16.003. BUDGET, REVENUE AND EXPENSES.

(a) A financial regulatory agency shall submit to the policy-making body of the financial regulatory agency a budget annually using generally accepted accounting principles. Notwithstanding any other provision of law, including the General Appropriations Act, the budget shall be adopted and approved only by the policy-making body of the financial regulatory agency.

(b) A financial regulatory agency shall be responsible for all direct and indirect costs of the agency's existence and operation. The financial regulatory agency may not directly or indirectly cause the general revenue fund to incur any cost.

(c) Subject to any limitations in a financial regulatory agency's enabling legislation, a financial regulatory agency may set the amounts of fees, penalties, charges, and revenues required or permitted by statute or rule as necessary for the purpose of carrying out the functions of the financial regulatory agency and funding the budget adopted and approved under Subsection (a).

(d) All fees and funds collected by a financial regulatory agency and any funds appropriated to the financial regulatory agency shall be deposited in interest-bearing deposit accounts in the Texas Treasury Safekeeping Trust Company. The comptroller shall contract with the financial regulatory agency for the maintenance of the deposit accounts under terms comparable to a contract between a commercial banking institution and the institution's customers.

(e) Periodically, each financial regulatory agency shall submit to the agency's policy-making body, as directed by the policy-making body, a report of the receipts and expenditures of the financial regulatory agency.

(f) The fiscal year for a financial regulatory agency begins on September 1 and ends on August 31.

Policy Statement

Budgeting

The finance agencies will present their budget proposals annually to the Audit Committee in August. Prior to this meeting, the finance agencies will conduct a public hearing to receive input on their proposed budgets as well as publish the proposed budgets on their websites with directions on how to make comments on the proposal. All written comments will be provided to the Audit Committee.

Each finance agency's budget proposal must include all direct and indirect costs of the finance agency. Fees and assessments to be collected from each area of regulation during the budget period must be set in a consistent and predictable manner and should be substantially sufficient to cover an area's anticipated cost of regulation. If necessary, budgeted fees and assessments may be adjusted to reflect activity from the preceding year. Each budget proposal must include a comparison of the budgeted fees and assessments to the maximum fees or assessments allowed to be charged to each regulatory area.

Flexibility in setting the fees and assessments is important to ensure that the finance agencies can meet their regulatory responsibilities and maintain compliance with the liquidity policy requirements. Fees and assessments should be accurately forecasted for an upcoming budget period, and significant discounts during the budget period should be limited. Any significant changes in fees and assessments during the budget period should be limited and must be communicated to the Finance Commission, the regulated industries and affected stakeholders, as soon as information becomes available.

The finance agencies will provide quarterly financial data to the Audit Committee. The data will include current quarter and year to date budget to actual revenue and expenditure comparisons.

A finance agency may not expend funds in excess of the total budgeted expenditures without prior approval of the Finance Commission.

Travel Reporting

For transparency in travel expenditures and increased monitoring by the Finance Commission, the finance agencies will track and report travel in the following four categories (separately for in-state and out-of-state travel):

Regulatory Supervision – This category is for travel related to regulatory functions associated with financial service entities including examinations, visitations, inspections, reviews, investigations, enforcement actions and management meetings. Also included is travel related to meetings with other regulators, financial education outreach and speaking or panelist engagements associated with regulatory matters.

Development and Training – This category is for travel related to training and staff or agency development. The category includes examiner education classes, administrative staff professional development, commission testing, conducting interviews, recruiting, participating in university banking programs, conferences, forums and seminars.

Other Regulatory Activities – This category is for travel activities ancillary to the regulatory statutory functions of the finance agency. This category includes travel related to service on a board or committee as an officer or director, legislative fly-ins, and instructors at graduate banking programs.

Non-Employee - This category is for travel activities of the members of the finance commission or advisory councils and any other non-agency person eligible for travel reimbursement by the finance agency.

Travel expenditures in the above categories will be presented quarterly to the Finance Commission.

The Chairman of the Finance Commission shall have the power to interpret, construe and implement these policies. **In** the absence of the Chairman, or in consultation with the Chairman, the Executive Director may exercise such power. These policies may be amended by simple majority vote of the entire Finance Commission.

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B.

**Office of Consumer Credit
Commissioner**

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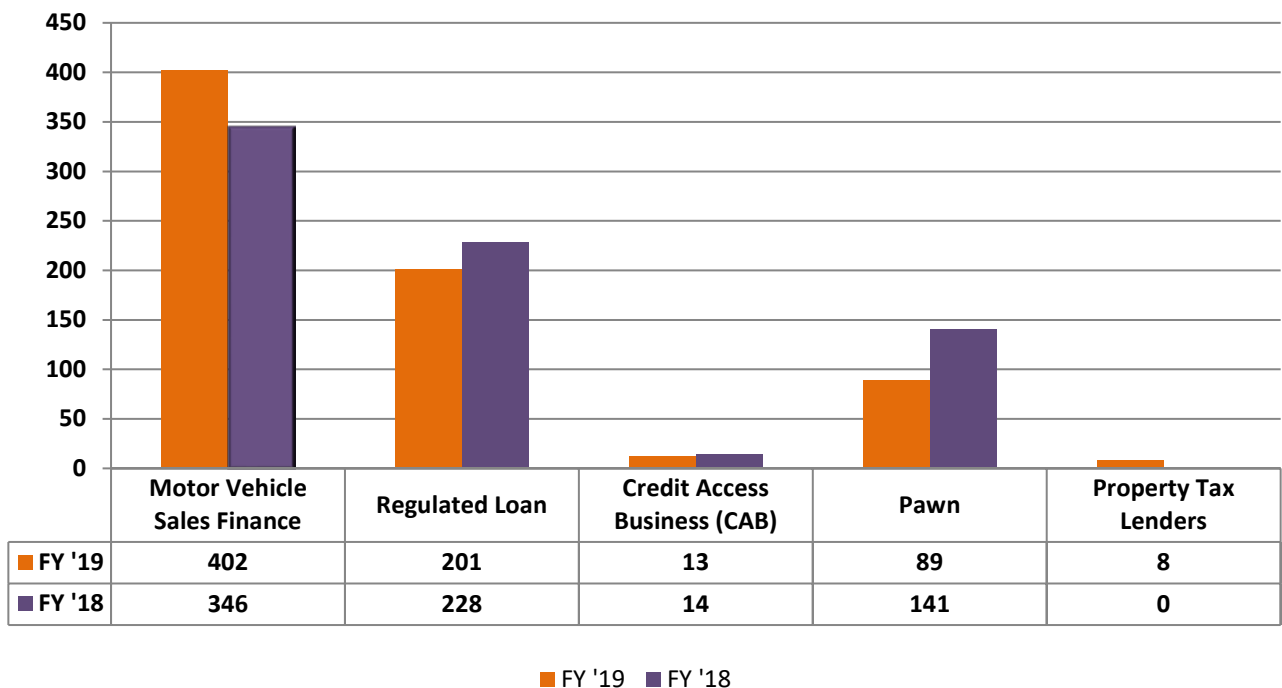
Consumer Protection and Consumer Assistance Report

Rudy Aguilar, Director of Consumer Protection

The overall examination process is on track with the prorated FY 2019 goals. Several enterprise level examinations have been assigned to the financial examiner in charge and are in the planning stage to conduct the examinations. These examinations will be staggered throughout the fiscal year.

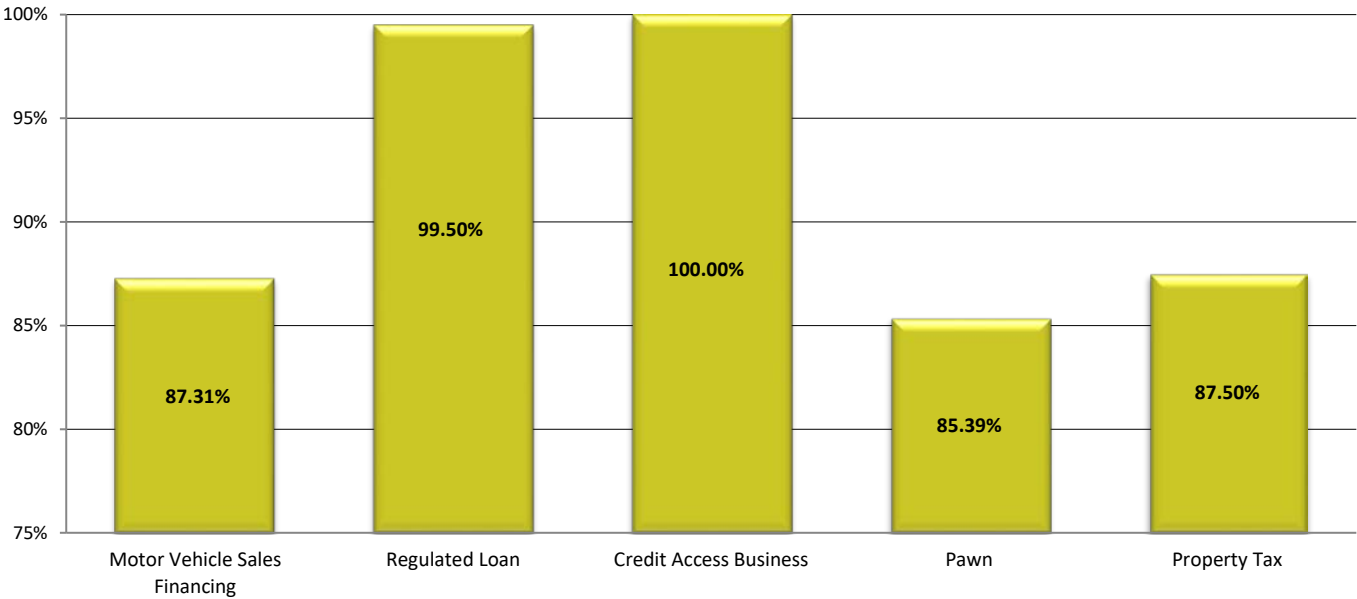
Two groups of financial examiners have recently been hired. The first group is nearing completion of field training. The second group is in the third week of classroom training. These two groups will bring the field staff to full strength. Over the next three years these examiners will be training and certifying for each of the five license types which are examined.

Examinations Conducted: Sept - Oct Fiscal Year Comparison

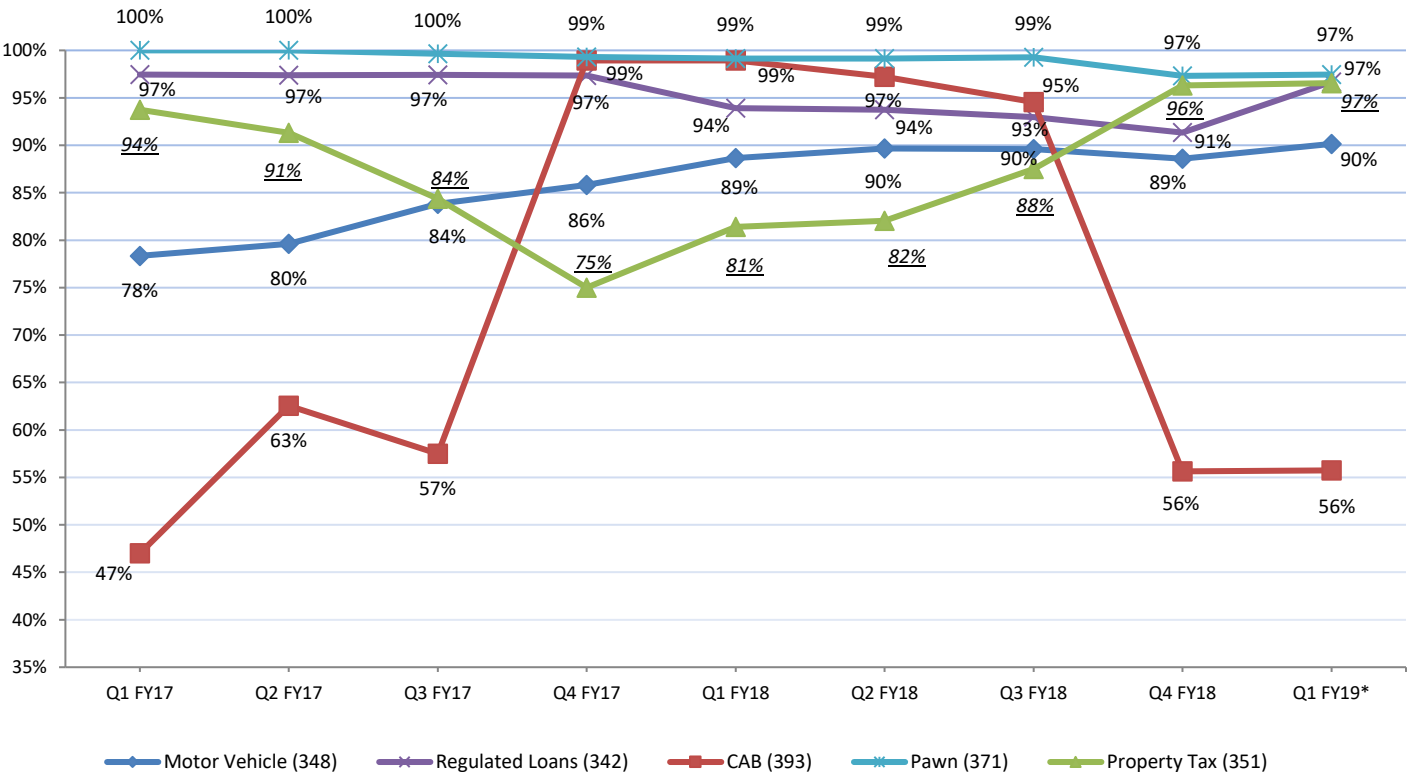


The first chart below exhibits the acceptable level of compliance of examinations during the first two months of FY 2019, which is acceptable for all five license types. The second, 12-month trailing chart shows CAB compliance at 56%, reflecting the impact of large enterprise exams conducted in the 4th quarter of FY '18.

Acceptable Level of Compliance FY '19 (Sept 2018 - Oct 2018)



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



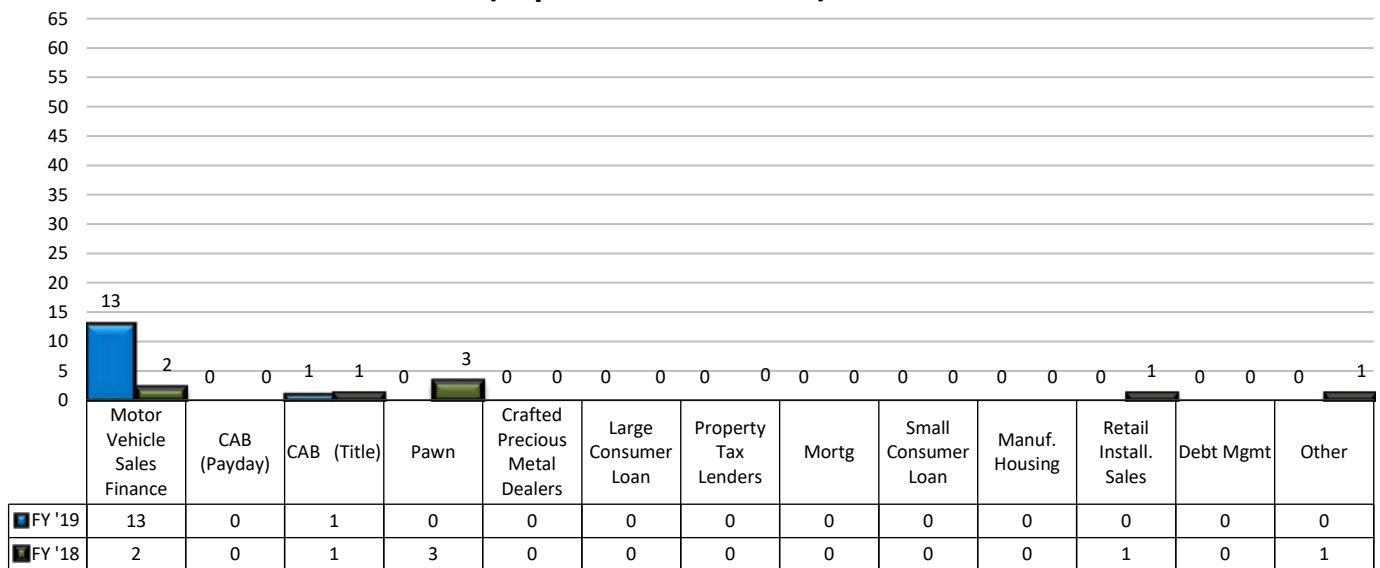
*As of 10/31/2018

Investigations

The agency completed 14 investigations, 17.5% of the FY 2019 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 '19 (Sept 2018 - Oct 2018) Total: 14
FY '18 (Sept 2017 - Oct 2017) Total: 9

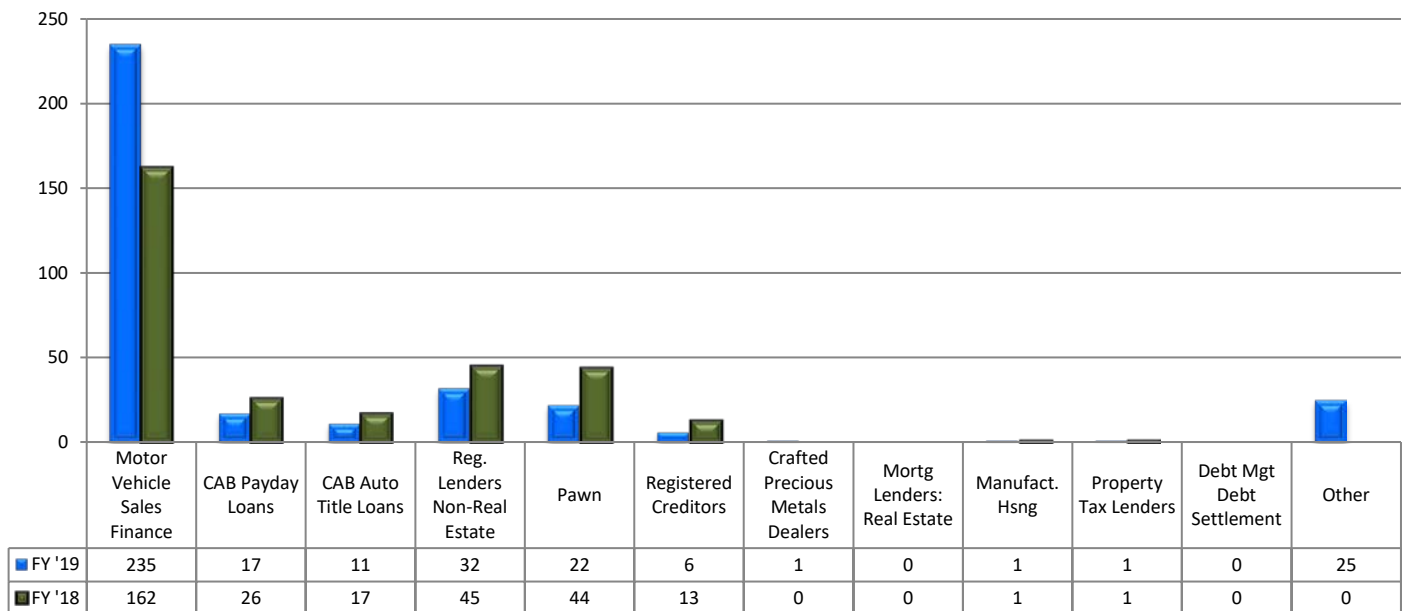


Consumer Assistance

For this period, 351 complaints were processed of which 24 were classified as non-jurisdictional.

Complaints Processed

FY '19 (Sept 2018 - Oct 2018) Total: 351
FY '18 (Sept 2017 - Oct 2017) Total: 309

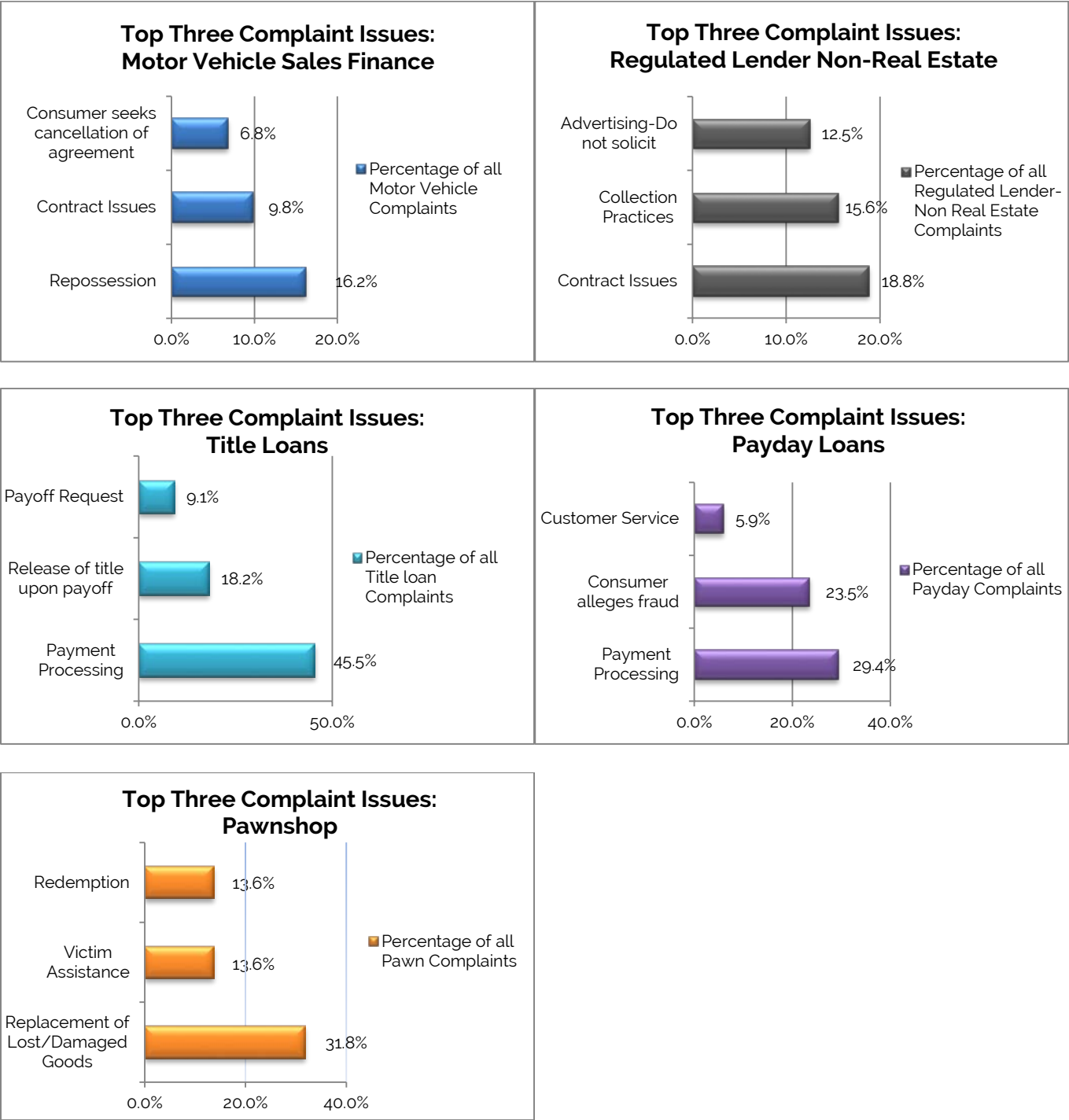


"Other" Includes Non-Jurisdictional Complaints
 Total Non-Jurisdictional Complaints is 24

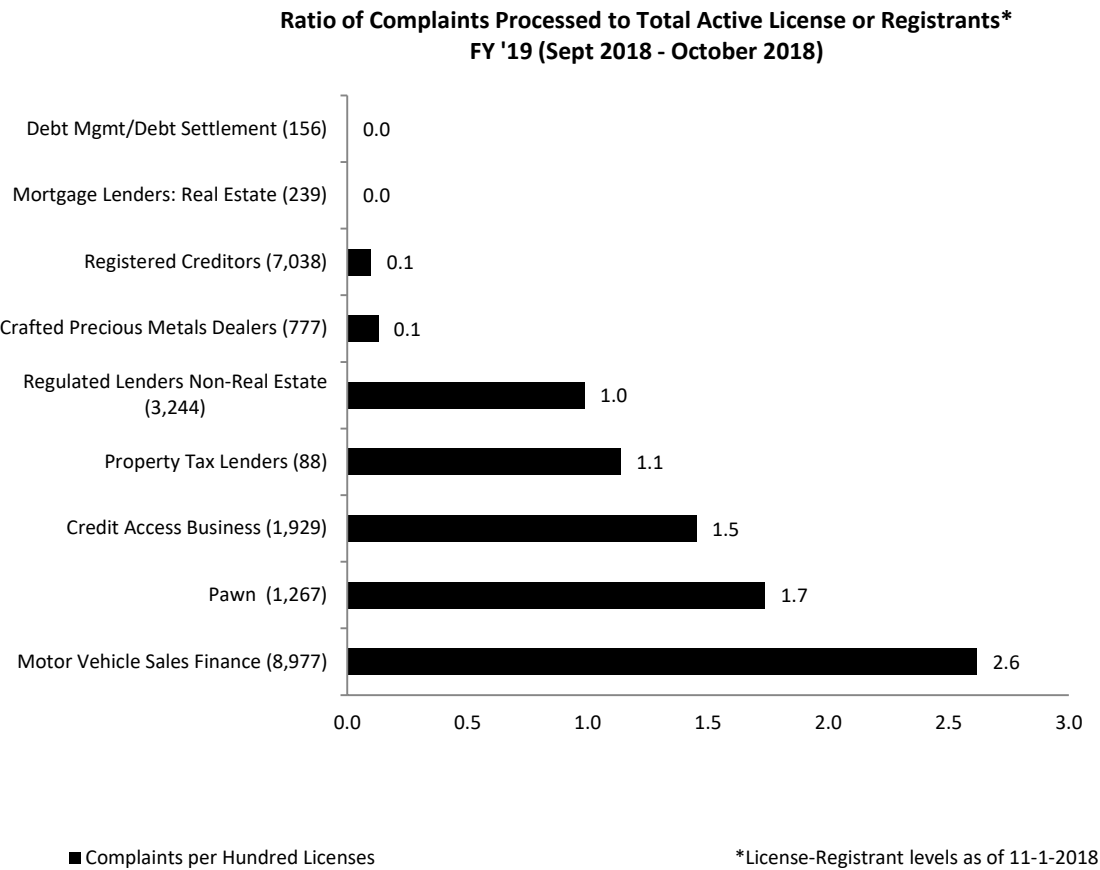
The top four areas of complaints are (1) Motor Vehicle Sales Finance (MVSF), (2) Regulated Lenders Non-Real Estate, (3) Credit Access Business (CAB) and (4) Pawn.

MVSF complaints were the largest complaint category at 67.0%. The second largest number of complaints came from Regulated Lenders Non-Real Estate at 9.1%. The third largest category of complaints came from CAB complaints at 7.9% collectively; separately, these are 4.8% for payday loans and 3.1% for title loans. The fourth largest category was Pawn at 6.3% 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 Motor Vehicle Sales Finance followed by Pawn as the second highest, Credit Access Business as the third, and Property Tax Lenders as the fourth highest.



CAB Reporting Update

Summaries of all reports through the third quarter of 2018 are available on the OCCC website. Presented are selected statistics of January – September (Q1 – Q3) reports through the years. The majority of new loans have multiple scheduled payments scheduled to last around five months. 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. Fees both as a percentage of the loan amount and when factoring in the length of the term have decreased this year across all product types.

Data Highlights (All Loan Types) Q1 Q3	2018	2017	2016	2015	2014	2013
Number of new payday loans	1,555,365	1,598,074	1,693,477	1,762,942	1,727,233	1,914,163
Number of new auto title loans	237,388	214,454	208,922	249,770	306,920	385,866
Percentage of payday loans due in multiple installments	52%	45%	41%	39%	32%	24%
Percentage of auto title loans due in multiple installments	54%	40%	39%	27%	17%	14%
Number of vehicles repossessed under all auto title loans	25,718	23,052	24,494	28,365	32,460	28,134
Total number of locations reporting activity	1,661	1,889	1,933	2,549	2,999	3,168

Payday Loans Q1 - Q3	Single Installment			Multiple Installment		
	2018	2017	2016	2018	2017	2016
Number of consumers obtaining loans	513,928	622,317	710,534	724,108	642,011	619,696
Number of new loans	744,504	884,221	1,000,857	810,861	713,853	692,620
Number of refinances on new loans in the quarter ¹	443,051	587,024	661,477	66,329	75,148	53,071
Number of total refinances ²	1,063,333	1,421,129	1,562,296	224,158	209,289	204,484
Average loan amount	\$468	\$459	\$450	\$615	\$582	\$561
Average fee per \$100 borrowed	\$23.85	\$24.03	\$23.71	\$137.47	\$153.32	\$165.89
Average original term (in days)	21	20	17	143	148	159
Average Fee Converted to a Daily Rate ³	1.11%	1.23%	1.36%	0.96%	1.03%	1.04%

Title Loans Q1 - Q3	Single Installment			Multiple Installment		
	2018	2017	2016	2018	2017	2016
Number of consumers obtaining loans	93,655	114,536	112,301	120,452	80,917	77,632
Number of new loans	109,780	127,799	126,847	127,608	86,655	82,075
Number of refinances on new loans in the quarter ¹	83,337	73,053	84,590	15,250	14,426	11,931
Number of total refinances ²	456,481	497,337	636,148	95,744	74,482	25,548
Average loan amount	\$1,330	\$1,310	\$1,228	\$1,191	\$1,050	\$1,283
Average fee per \$100 borrowed	\$15.67	\$16.41	\$16.77	\$114.27	\$131.79	\$90.53
Average original term (in days)	30	30	30	153	156	161
Average Fee Converted to a Daily Rate ³	0.53%	0.55%	0.57%	0.74%	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- December 2018

Mirand Diamond, Manager

Renewals

Registered creditor renewal ends at the beginning of December. More than 80% of registrants are estimated to complete renewal and most renewals will be completed online through ALECS.

Property tax lenders, credit access businesses and regulated lenders renewal is ongoing as well. Regulated lenders received a discount on the assessment fee of 30% this year, making the renewal fee for an active license \$420, which was the amount projected at the budget adoption. Most licensees in this group will also utilize ALECS to complete renewal.

Renewal for residential mortgage loan originators is currently ongoing in NMLS, and refund anticipation loan facilitators will begin renewal for their registrations in December.

Applications Processing

The department continues to work to diminish pending business license applications. Significant gains have been made in the first quarter of FY 2019 and the total pending volume will reach the goal in December.

Pending pawn employee application volume has diminished and gotten closer to the goal. The department has worked to communicate with licensed entities, temporarily reallocated departmental resources and collaborated on process improvement to diminish these volumes. While there is still progress to be made, the department anticipates reaching the pending volume goal in the coming months.

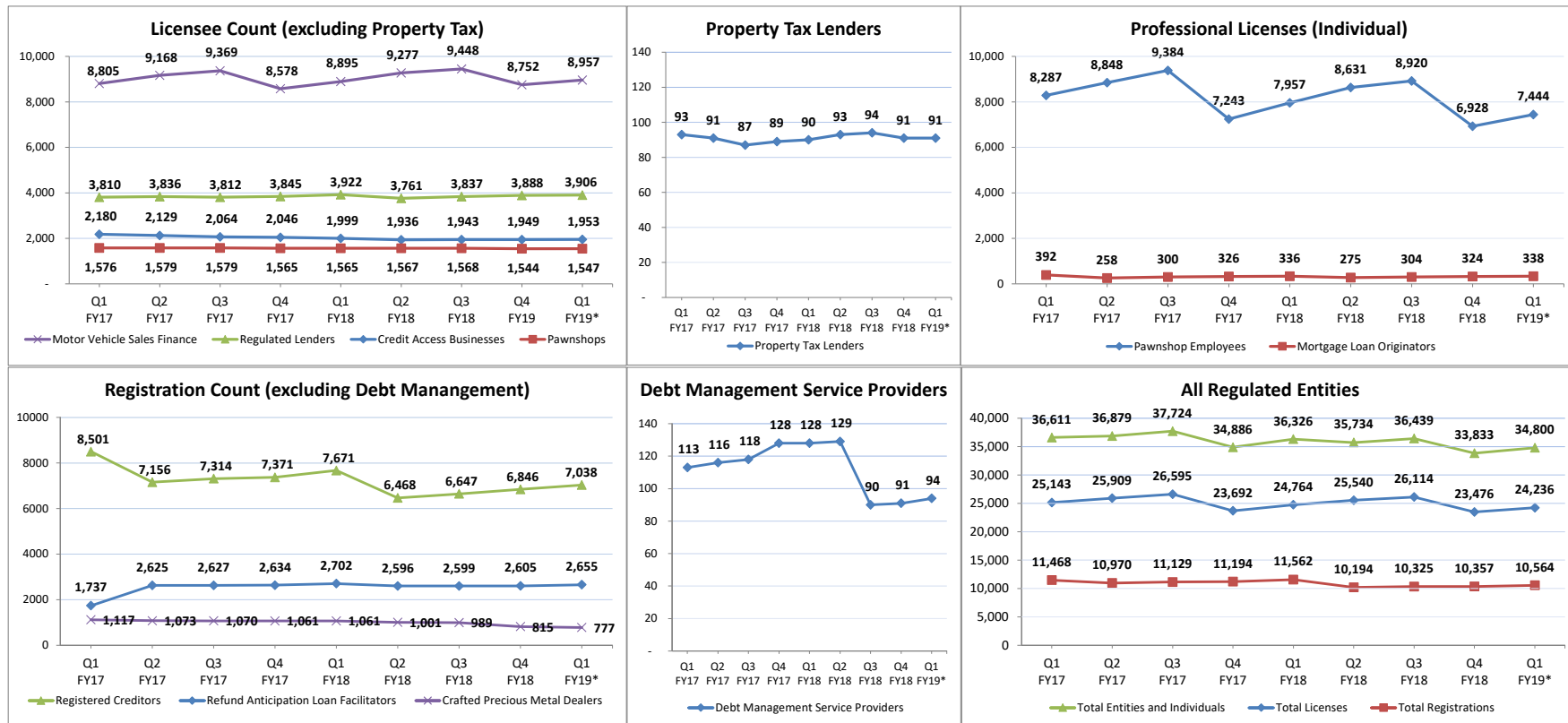
Other Updates

A representative from the department will be attending the NMLS annual conference and training in February in Florida to learn about system enhancements, receive information on NMLS 2.0 and engage with industry stakeholders.

Regulated Entity Population Trends

The following charts reflect the number of OCCC regulated entities at the end of each quarter in fiscal years 2017 and 2018 to current data.

Number of OCCC Regulated Entities Quarterly Comparison of FY17-19



*Data through 11/1/18



COMMUNICATIONS, HUMAN RESOURCES & ADMINISTRATION REPORT

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

COMMUNICATIONS

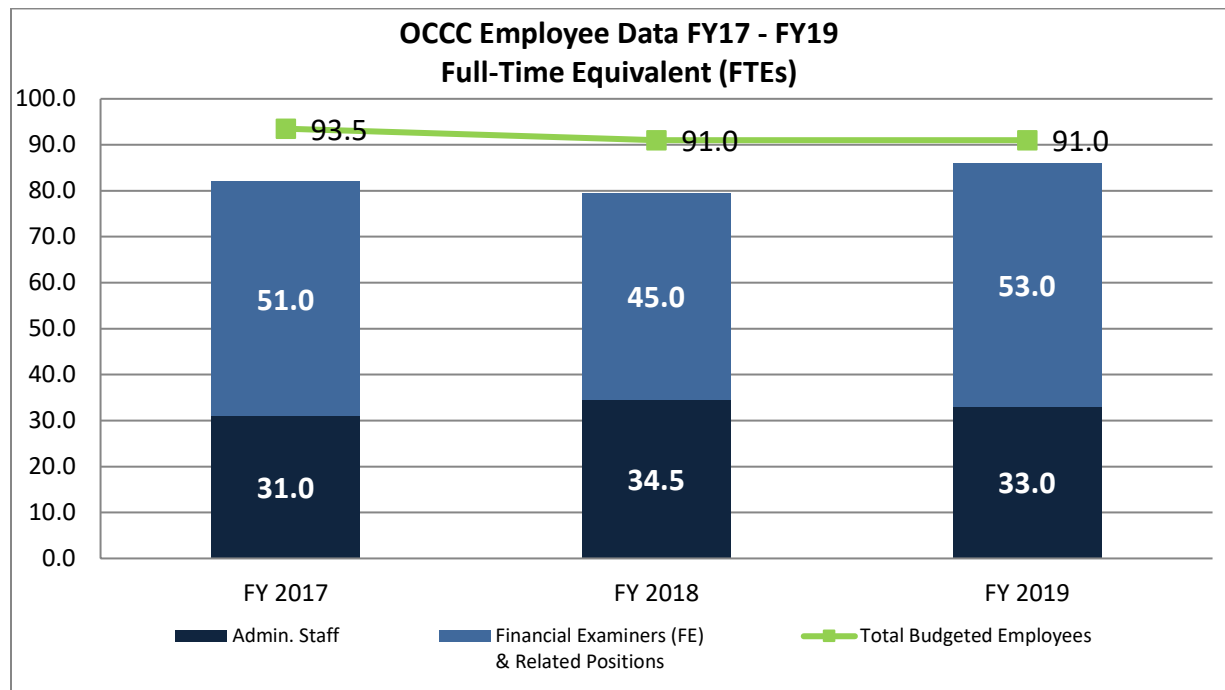
Although the 86th Legislature commences in less than six weeks, (Tuesday, January 8, 2019), legislators and legislators-elect have started filing bills for the upcoming session. Other upcoming dates of importance include the inauguration of the governor and lieutenant governor on Tuesday, January 15, 2019 and the governor's State of the State address on Tuesday, February 19, 2019. The agency has begun tracking bills, and as with previous legislative sessions, a weekly report will be provided to the Finance Commission detailing all bills impacting the agency.

The agency continues to provide live presentations to licensees and interested stakeholders. This focus relates to compliance matters and the regulatory role and responsibilities of the agency. Several members of the Department of Consumer Protection made presentations across the state. Specifically, on October 25, Eric Fancher, Financial Examiner IV, participated in the Dealer Training for the Texas Department of Motor Vehicles in Nacogdoches. William Purce, Senior Review Examiner, presented to dealers at the Manufactured Housing Division of the Texas Department of Housing and Consumer Affairs on November 7 in Austin. Finally, Joseph Adamek, Review Examiner, participated at the Dealer Training for the Texas Department of Motor Vehicles November 15 in Corpus Christi.

These presentations highlight the importance of continued improvement in industry compliance levels and the agency's commitment to providing learning situations for licensees whether through formal industry presentations or during the individual examination process.

HUMAN RESOURCES

Since the start of FY 2019, the OCCC has filled nine vacant positions (seven financial examiners, one financial analyst, and one attorney position). Additionally, the OCCC has experienced three departures (voluntary resignation – back to school, retirement, and interagency transfer). The current turnover ratio is 3.49%. A bar chart follows that depicts the current administrative staff to financial examiner ratio.



ADMINISTRATION

FINANCIAL EDUCATION

In the beginning months of FY19, the financial education specialist utilized existing relationships to create new partnerships and teaching opportunities in the Austin area. Currently, the financial education specialist is providing two six-week long courses focusing on building personal finance skills in young students at an area high school and middle school. These courses began in early November and will run through December.

Additionally, the financial education specialist joined 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 a financial education resource to Texans. The specialist will utilize additional partnership opportunities moving forward.

Lastly, the financial education specialist has coordinated additional presentations for FY 2019 and anticipates being on target to meet quarterly goals.

**TSEE Report – December 14, 2018**

Juan V. Garcia, Program Director

There are currently no updates for this reporting period. TSEE grantees are working on their second six-month reporting period of the 2018-19 (3rd) grant cycle, which will end on December 31, 2018. Grantees will have one month to prepare program progress and expense reports, due in February 2019. The Grant Coordinator will then review the expense reports for accuracy and prepare a summary of program progress for the Finance Commission Meeting in April.



Accounting & IT Reports

Accounting

The Accounting Department engaged in processing and completing Registration Renewals for Registered Creditors and other licenses. The Accounting Department has also begun discussing and preparing for our year-end records disposition. The department is about to begin preparation for the FY 2018 Annual Non-Financial Report.

Information Technology

Physical Facilities and Hardware

The Linux-based virtual machines had their SUSE operating systems upgraded from version 11 to version 12. An unintended consequence of the upgrade was an outage of internal and external email. A concerted effort by IT and appropriate vendor technical support resulted in the issue being diagnosed and permanently resolved within six hours.

The Consumer Assistance suite renovation was completed. Suite internal connectivity was verified and personnel and equipment were re-homed.

New, larger-capacity hard drives were acquired and configured for use in the disaster contingency backup plan. Older, smaller-capacity drives have been decommissioned.

Obsolete hard drives were erased, destroyed, and disposed of for materials recovery in coordination with DIR and TDCJ.

Austin facility work (building boiler) has imposed several planned power outages during weekends. Directed shut-downs of equipment have resulted in no related interruptions or hardware issues other than the expected downtimes.

Ongoing migration from paper to digital documentation has positioned OCCC to evaluate eliminating portable printers for field examiners.

Security & Software

The Linux upgrades allowed installation of newer revisions of the GroupWise email client and the Messenger live chat client.

A phishing email training campaign resulted in a success rate (suspicious web links not clicked) of 98.8%.

IT's presentation on Cybersecurity at the Examiner Conference was well-received.



Legal Department Report

Michael Rigby, General Counsel

December 2018

Enforcement Report

Contested Cases

During October 2018, the OCCC received one proposal for decision following a 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, and the OCCC received a proposal for decision from SOAH on October 22. In the proposal for decision, the administrative law judge recommends that Hollimon Transportation's application should be denied.

During October and November 2018, the OCCC issued two final orders following defaults in contested cases at SOAH. In the matter of *Office of Consumer Credit Commissioner v. Maz Auto, Inc.* (SOAH Docket No. 466-18-2931), the OCCC issued an injunction against a motor vehicle sales finance dealer. The injunction ordered Maz Auto to refund excessive and unauthorized lender processing fees, public official fees, deputy fees, inspection fees, and documentary fees. In the matter of *Office of Consumer Credit Commissioner v. Alfredo Prado* (SOAH Docket No. 466-18-3278), the OCCC revoked the pawnshop employee license of Alfredo Prado, who was an employee of Cash America Pawn, LP. The license revocation is based on Mr. Prado's acceptance of stolen goods in violation of the Texas Finance Code and its implementing rules.

Pawnshop Employee Unlicensed Activity Cases

In November 2018, the OCCC issued 106 enforcement orders against pawnshops and pawnshop employees for unlicensed activity by pawnshop employees. Of these enforcement orders, 65 orders were injunctions against pawnshop employees to ensure that they do not engage in unlicensed activity in the future, 38 orders were injunctions against pawnshops to ensure that their employees comply with pawnshop employee licensing requirements, and three orders were administrative penalty orders against pawnshops for violating a previous injunction.

Performance Report

The following table summarizes enforcement actions closed by the OCCC during the last three fiscal years, and the current fiscal year-to-date as of November 30, 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.

Enforcement Actions Closed as of November 30, 2018				
	FYTD 2019	FY 2018	FY 2017	FY 2016
Injunction Actions				
Crafted Precious Metal Dealer	0	0	0	0
Credit Access Business	5	27	47	25
Debt Management Provider	0	5	2	1
Manufactured Housing	0	0	1	0
Motor Vehicle Sales Finance	3	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	4	12	37	88
Residential Mortgage Loan Originator	0	1	1	0
Total Injunction Actions	13	154	230	157
Administrative Penalty Actions				
Crafted Precious Metal Dealer	0	0	0	2
Credit Access Business	1	6	23	97
Debt Management Provider	0	1	0	1
Motor Vehicle Sales Finance	2	26	106	129
Pawnshop	1	6	3	40
Pawnshop Employee	0	0	0	1
Property Tax Lender	0	6	2	3
Regulated Lender	4	0	13	0
Residential Mortgage Loan Originator	0	0	0	1
Total Administrative Penalty Actions	8	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	1	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	1	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	22	200	388	458

From October 1, 2018 to November 30, 2018, the OCCC:

- closed 12 cases with final orders,
- opened 11 cases in order to assess administrative penalties,
- opened 181 cases in order to issue injunctions,
- participated in no contested case hearings, and
- opened one case challenging an application denial.

The OCCC has two hearings scheduled between December 1, 2018 and January 31, 2018.

Administrative Rule Report

At the December meeting, the OCCC is recommending the adoption of pawnshop rule amendments to ensure consistency, modernize language, and make technical corrections. The amendments are a result of the OCCC's periodic rule review.

Litigation

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 trial on the merits is scheduled for March 5, 2019, 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.

Federal Rulemaking

CFPB Payday Loan Rule

On October 26, 2018, the Consumer Financial Protection Bureau (CFPB) issued a “Public Statement Regarding Payday Rule Reconsideration and Delay of Compliance Date.” This statement relates the CFPB’s Payday Rule, which contains ability-to-repay requirements and payment-withdrawal requirements for certain short-term and long-term consumer loans. The Payday Rule became effective on January 16, 2018, although most provisions of the rule do not require compliance until August 19, 2019. In the CFPB’s October 2018 statement, the CFPB announced that it expects to issue proposed rules in January 2019 to reconsider the Payday Rule and address the rule’s compliance date. The CFPB states that it is currently planning to propose revisiting only the ability-to-repay provisions and not the payments provisions.

In April 2018, the Community Financial Services Association of America and the Consumer Services Alliance of Texas filed a lawsuit against the CFPB to invalidate the Payday Rule. The complaint argues that the Payday Rule is unconstitutional, exceeds the CFPB’s statutory authority, and violates the federal Administrative Procedure Act. The case is pending in the federal district court for the Western District of Texas in Austin, with case number 1:19-cv-00295-LY. On May 31, the plaintiffs and the CFPB filed a joint motion seeking a stay of the rule’s compliance date and the litigation while the CFPB reconsiders the rule. On November 6, the court issued an order staying the Payday Rule’s August 2019 compliance date pending further order of the court. The court also ordered the parties to file a joint status report by March 1, 2019.

Advisory Bulletins

From October 1, 2018 to November 30, 2018, the OCCC did not issue any advisory bulletins.

Official Interpretation Requests

From October 1, 2018 to November 30, 2018, the OCCC did not receive any requests for official interpretations under Chapter 14 of the Texas Finance Code. As of November 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 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).

After discussing the request with the other agencies, the OCCC sent an email to the requestor explaining the agencies’ current understanding: that a separate copy must be provided to each owner, except for married owners (as described by 7 Tex. Admin. Code § 153.12). The requestor withdrew the request on October 18.

Public Information Requests

From October 1, 2018 to November 30, 2018, the OCCC received 33 requests for information under the Texas Public Information Act, with no referrals to the Office of the Attorney General.


Gifts Received by the OCCC

From October 1, 2018 to November 30, 2018, the OCCC did not receive any gifts.




OCCC LEGISLATIVE REPORT TO FINANCE COMMISSION

12-03-2018 - 13:54:59

 ☐ **HB 190** **Bernal, Diego(D)** Relating to verification by a credit services organization of a consumer's ability to repay an extension of consumer credit.

Specific Remarks: Amends Ch. 393, Fin. Code. Requires a CSO, before obtaining an extension of credit for a consumer, to verify that the consumer can reasonably repay the extension of credit and all fees in cash in accordance with the schedule of payments established by contract. Requires the CSO to use independently verifiable documentation of income and obligations, and to retain all documentation used to establish ability to repay.


Last Action: 11-12-18 H Filed

 ☐ **HB 193** **Bernal, Diego(D)** Relating to contracts and other documents issued by credit access businesses.

Companions: **HB 197** Bernal, Diego(D) (Refiled from 85R Session)

Specific Remarks: Amends Ch. 393, Fin. Code. Requires the contract and other documents provided by a CAB to be: (1) provided before signing and written in both English and Spanish, (2) written in plain language, and (3) printed in an easily readable font and type size. Requires the Finance Commission to adopt rules implementing this provision. Requires the CAB disclosure and notice to be available in both English and Spanish at each CAB business location.



Last Action: 11-12-18 H Filed

 ☐ **HB 242** **Bernal, Diego(D)** Relating to credit services organizations and extensions of consumer credit facilitated by credit services organizations.

Companions: **HB 1134** Craddick, Tom(R) (Refiled from 85R Session)



Specific Remarks: Amends Ch. 393, Fin. Code. Limits the amount of an extension of credit based on the consumer's income (or the vehicle's value for a title loan). Limits the number of refinances and number of installments for payday and title loans. Requires a CAB to review documentation establishing a consumer's income, and lists acceptable forms of documentation, including a payroll document, a paycheck, a bank statement, and a W-2. Prohibits a CAB from assisting a consumer in obtaining loans other than payday or title loans. Prohibits a CAB from transferring its license. Provides that local ordinances regulating CABs are not preempted if they are compatible with and equal to or more stringent than a requirement imposed by Chapter 393. Provides that Chapter 393 applies to extensions of credit made to consumers who are located in Texas, regardless of whether the extension of credit was made in person. Requires a CAB to provide copies of the contract and other documents in English and in any other language in which the contract is negotiated. Requires the CAB disclosure to be available in English and Spanish, and to refer to nonprofit agencies that provide financial education or cash assistance. Provides record retention requirements for CABs.

Last Action: 11-12-18 H Filed

  **HB 447** **Turner, Chris(D)** Relating to prohibiting certain telemarketing calls by a credit access business.

Specific Remarks: Amends Ch. 304, Bus. & Comm. Code, Ch. 393, Fin. Code. Prohibits CABs and their representatives from making telemarketing calls to consumers on the Texas no-call list, except for consumers who were parties to a contract with the CAB within the past year. Provides that the Texas Telemarketing Disclosure and Privacy Act applies to CABs by amending the Act's state-licensee exemption.



Last Action: 12- 3-18 H Filed

  **SB 110** **Menendez, Jose(D)** Relating to fees paid to certain credit services organizations in connection with certain extensions of consumer credit.

Companions: **SB 1155** Menendez, Jose(D) (Refiled from 85R Session)



Specific Remarks: Amends Ch. 302, Fin. Code. Provides that fees paid to a CAB are considered interest for usury purposes under state law if the extension of credit is unsecured or secured by a non-purchase money security interest, and the proceeds are used for personal, family, or household purposes.

Last Action: 11-12-18 S Filed

  **SB 182** **Miles, Borris(D)** Relating to the threat or pursuit of criminal charges against a consumer in association with certain extensions of consumer credit.

Specific Remarks: Amends Ch. 393, Fin. Code. Prohibits a CAB from filing criminal complaints, referring consumers to prosecutors, or threatening to refer consumers to prosecutors, unless the CAB possesses extrinsic evidence sufficient to prove a violation of the Penal Code provisions on theft or issuance of a bad check. Provides that evidence of a denied or returned payment due to insufficient funds or account closure is not extrinsic evidence of these offenses. Provides civil remedies against a CAB that violates these provisions.

Last Action: 11-14-18 S Filed

  **SB 186** **Miles, Borris(D)** Relating to the maximum permitted rate of interest, sum of fees, and other amounts due during a natural disaster declaration.

Specific Remarks: Amends Ch. 342, 393, Fin. Code. Provides a 36% maximum interest rate for a loan entered in a state-of-disaster area declared by the governor before the declaration is terminated. For CAB loans, the bill prohibits the sum of fees, interest, and other amounts in excess of principal from exceeding 36% of the principal if the loan is entered in a state-of-disaster area before the declaration is terminated.

Last Action: 11-14-18 S Filed

	All	Track
Total Bills:	7	7

Rule Item/Purpose	Proposal Date	Adoption Date
<p>Rules of Operation for Pawnshops - Adopt 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> <i>Official comment period on amendments ended December 3, 2018</i></p>	10/19/18	Presented for Adoption 12/14/18
<p>Residential Mortgage Loan Originators Applying for Licensure with the OCCC under the SAFE Act – Rule Review 7 TAC, Part 1, Chapter 2</p> <p>To conduct standard rule review under Tex. Gov't Code, §2001.039; to ensure consistency with agency procedures; and to make technical corrections</p>	TBD 2019	
<p>Retail Creditors - Rule Review 7 TAC, Chapter 86</p> <p>To conduct standard rule review under Tex. Gov't Code, §2001.039; to ensure consistency with agency procedures; and to make technical corrections</p>	TBD 2019	
<p>Chapter 342, Plain Language Contract Provisions - Rule Review 7 TAC, Chapter 90</p> <p>To conduct standard rule review under Tex. Gov't Code, §2001.039; to ensure consistency with agency procedures; and to make technical corrections</p>	TBD 2019	

B. OFFICE OF CONSUMER CREDIT COMMISSIONER

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

PURPOSE: The purpose of the 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 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 without changes as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve 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) adopts 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 commission adopts the amendments without changes to the proposed text as published in the November 2, 2018, issue of the *Texas Register* (43 TexReg 7288).

The commission received one written comment on the proposal from Vianovo, LP. The comment mentions proposed §85.604, concerning Enforcement Action Against Pawnshop License or Pawnshop Employee License. However, the comment does not specify whether it is for or against the adoption of the proposed amendments to this section. The agency's response to the comment is included following the discussion of the changes to §85.604.

The adopted 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 adopted 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 the rules as proposed and maintained for this adoption. 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 adopted 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 adoption will be maintained in its current form.

The individual purposes of the adopted 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) replaces the use of "commissioner" in three instances in the introductory language of §85.202. The agency believes that the use of "OCCC" provides better clarity to the rules when the context calls for action by the agency, as opposed to the commissioner specifically. In addition to §85.202, the following rules include amendments replacing "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 adopted amendments to ensure consistency with current agency procedures. In §85.202(a)(1)(A) and (a)(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 §85.202(a)(1)(A)(ii), to further the use of online terminology.

Adopted 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.

Adopted 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 adopted amendments to ensure consistency with current agency procedure. First, the term "registered agent" replaces "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 requires 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), 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 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. Adopted 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 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 adopted 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 adopted amendments update the documents required for new applications, increasing the efficiency of the licensing process. The provisions under former (a)(2)(C)(ii)(II) and (III), and (a)(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. In addition, the requirements in §85.202(a)(2)(C)(ii)(IV)(-a-) and (a)(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. 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 adopted 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, adopted amendments continue use of the agency's acronym and update licensing terminology. Additionally, the adopted 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 adopted amendments to ensure consistency with current agency procedure and make technical corrections. First, the former 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 adopted amendments delete "acceptance" terminology and focus on completion, as built into the online portal to improve the efficiency of application processing.

Second, the adopted 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. Adopted 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 adopted 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 adopted amendments to make technical corrections. In §85.211, concerning Fees, an internal reference has been 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) has been corrected. A

parallel change regarding the reference to TSLAC has also been made in §85.307, which is the public records rule for pawnshop employees.

In §85.301, concerning Filing of Application (for pawnshop employees), adopted amendments continue use of the agency's acronym, update licensing terminology, and make technical corrections.

The adopted 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, an adopted 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 §85.405(a)(6)(A), concerning Pawn Transaction, an adopted 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 adopted 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 adopted amendments 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 has been added to the introductory paragraph.

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

The adopted 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 adopted 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 adopted 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 been amended, replacing the phrase "Revocation or Suspension of" with the phrase "Enforcement Action Against" to more accurately describe the agency's authority. Thus, the full amended title of §85.604 as maintained in this adoption will be: "Enforcement Action Against Pawnshop License or Pawnshop Employee License."

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 adopted 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 commission received one comment that refers to the proposed amendments in §85.604. The commenter does not provide any suggestions or recommended changes to the rule text as proposed. Regarding the amendments in §85.604, the commenter states: "No statutory citation is provided for the changes updating enforcement procedures."

Section 14.208(a) of the Texas Finance Code authorizes injunctions against pawnshops and pawnshop employees. Section 14.208(a) states: "If the commissioner has reasonable cause to believe that a person is violating a statute to which this chapter applies, the commissioner, in addition to any other authorized action, may issue an order to cease and desist from the violation or an order to take affirmation action, or both, to enforce compliance." The term "injunction" refers to the order to cease and desist, take affirmative action, or do both, as authorized under Section 14.208(a). Sections 14.208(c), 14.251, and 371.303 of the Texas Finance Code authorize administrative penalties against pawnshops and pawnshop employees. Section 371.251 of the Texas Finance Code authorizes suspension or revocation of a pawnshop license, and Section 371.255 of the Texas Finance Code authorizes suspension or revocation of a pawnshop employee license.

The commenter also expresses concerns about the public nature of enforcement orders (as opposed to confidential examination instructions), and requests additional

information on the OCCC's policies and procedures for handling enforcement actions. For example, the commenter asks whether referrals from the examination department to the legal department will automatically result in an injunction. These requests are outside the scope of the rule amendments in §85.604(a), which simply restate the types of enforcement actions authorized under Chapters 14 and 371 of the Texas Finance Code. The OCCC intends to address the commenter's requests related to agency policies and procedures outside the rulemaking process. The proposed text of §85.604 will be maintained for this adoption.

The remaining amendments adopted 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, adopted 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."

Adopted 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 adopted 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).

Regarding the effective date of these amendments, Texas Finance Code, §371.006 contains a provision requiring notice to licensees concerning rulemaking for the pawnshop industry. In order to comply with this statutory notice requirement, the delayed effective date for the changes included in this adoption will be February 1, 2019.

These amendments are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §371.006 authorizes the commission to adopt rules for enforcement of the Texas Pawnshop Act (Chapter 371).

The statutory provisions affected by the adoption 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 repute. In evaluating an applicant's business repute, 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].~~

~~[(c) 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~~[s]~~ 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 adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on December 14, 2018.

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



Memorandum

To: Laurie Hobbs
Assistant General Counsel
Office of the Consumer Credit Commissioner

From: Rob Norcross
Vianovo, LP

Date: November 28, 2018

Re: **Proposal and Publication for Comment of Amendments in 7 TAC, Chapter 85, Subchapter A, Concerning Rules of Operation for Pawnshops, Resulting from Rule Review; Texas Register, Volume 43, Number 44, November 2, 2018, page 7288, et. seq.**

We appreciate the opportunity to comment on the amendments to the proposed rules of operations for pawnshops resulting from the statutorily mandated periodic rule review. We are available to answer any questions the Finance Commission or the Office of the Consumer Credit Commission ("OCCC") may have about these comments.

Information about Vianovo

Our firm represents pawnshops, and other entities that hold licenses with the OCCC, on regulatory compliance matters. Our clients hold multiple licenses in Texas, and in states across the country. Many are publicly traded corporations.

Our pawnshop clients work cooperatively with their regulators, other government officials, and law enforcement to help ensure Texans have access to short-term credit through pawn transactions in compliance with the law.

Historical Pawn Supervision

Over the past several years, Texas pawnshops have worked cooperatively with the OCCC to ensure compliance with applicable statutes and rules for Texas consumers. Acceptable Levels of Compliance are consistently high (97.31% for FY' 18). Enforcement actions (less than 2.7% of licensees for both FY' 17 and

FY' 18), administrative penalties (6 and 3, respectively, for over 1,500 licenses) and license revocations or suspensions (0 for FY' 17; 1 for FY'18) are admirably low.

We anticipate the OCCC's effective supervision of pawnshop licensees for the benefit of Texas consumers will not continue for years.

Proposed Amendments to Rules Resulting from Rule Review

Proposed Section 85.604 (related to enforcement actions available to the OCCC under the Texas Finance Code for pawnshops), according to the commentary,

"contains several proposed amendments to ensure consistency with current agency procedures and make technical corrections. The primary changes update enforcement procedures and terminology."

No statutory citation is provided for the changes updating enforcement procedures. The commentary also includes:

"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 [emphasis added], the first response will often be an injunction with no penalties..."

"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..."

"Additionally, before a violation is referred [ostensively to the legal department] for a potential enforcement action, an applicant or licensee will generally have opportunities to resolve the issue through the agency's other regulatory processes.... Many violations are also resolved as part of the confidential investigation or examination process."

While we certainly appreciate the OCCC's inclination to allow licensees to bring their practices into compliance without the added burden of paying an immediate administrative penalty, we have concerns on behalf of our clients about the possibility of an automatic injunction if a matter is simply referred to the legal department. We understand matters are often referred to the legal department simply for recommendations about proper sanctions --- when an issue is a straightforward violation of statute, or rule. However, there are also issues that require interpretation of statute, or rule... many of first impression. Our hope is our clients will be able to have some of those issues resolved as part of the confidential investigation or examination process through a letter agreement relating to voluntary compliance with a future process agreed upon by both parties.

According to the commentary to the proposed rule amendments, *"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."* A confidential Voluntary Assurance of Compliance letter often executed as part of the resolution of a violation as part of the examination process has essentially the same definition.

Potential Consequences of Injunctive Orders

Injunctions are orders.

Orders have consequences. Orders are public, not confidential.

For companies that operate multiple locations in one state, orders must be disclosed in subsequent license applications, and applications to renew and transfer licenses. Orders give the OCCC the discretion to deny those applications; confidential letters in an examination file do not.

Existing orders may also lead to enhanced penalties for subsequent violations of the same or different laws, or rules, whether in the shop where the initial violation occurred, or in another licensed location. The violation of an order, in and of itself, must also be disclosed in subsequent filings

For companies that operate in multiple states, the consequences of orders expand significantly. The existence of an injunctive order in Texas, or its subsequent violation, must be disclosed in applications and filings in every other state where the company does business. Confidential letters in exam files do not.

For publicly traded companies that operate pawnshops in multiple states, the consequences expand still further. In addition to disclosures in subsequent applications and filings in Texas and other states, federal securities laws public filings of public enforcement orders. Confidential letters in exam files setting out virtually the same information and requirements do not.

Finally, again orders are public. While not common, civil class action litigation is a possibility after a review of public enforcement orders by ambitious counsel. Confidential letters in an exam file do not pose the same risk.

Questions about Injunctive Orders

Again, we want to reiterate, we certainly appreciate the OCCC's inclination to allow licensees to bring their practices into compliance without the added burden of paying an immediate administrative penalty. However, we are concerned about where the boundary lines lie between injunctive orders and confidential letters in exam files.

If the analysis is simply a subjective examination of the factors contained in Texas Finance Code section 14.252, then some guidance on the following questions will help us advise our clients on how to collaboratively, effectively and efficiently interact with the various departments of the OCCC in future examination issues.

1. What triggers an escalation from an agreement within the scope of an examination report (voluntary assurance of compliance) to a public injunctive order?
2. Will every examination inquiry referred to the legal department result, at a minimum, in an injunction or other administrative order? In other words, if an examination dispute is referred to the legal department and results in an interpretation of an issue not addressed directly by statute, or rule, will the resolution automatically result in an injunctive order or other administrative order (i.e., will something that "falls between the cracks" always result in a public injunctive order that could trigger consequences with other states)?

3. Will injunction/injunctive orders have expiration dates? Are injunctions in effect until the next examination? If an entity has multiple licenses, will an injunction against one licensee be lifted after a subsequent examination of another licensee --- assuming the violation leading to the injunction has been corrected in the second licensee?
4. If a company with multiple licenses has an injunction against one license, will a subsequent examination of another license finding a different violation of statute, or rule, trigger cumulative penalty provisions? And if so, will there be an explanation as part of the permanent record?
5. If a licensee takes all appropriate steps to avoid a violation of statute, or rule, but deliberate deception by a "customer" results in a technical, unintentional violation of statute (for example, accepting stolen goods in a family dispute about ownership of goods), will an injunction automatically result, or is a "voluntary assurance of compliance" or some other agreement reached within the scope of the examination letter a possibility?
6. Will penalties be imposed for "violations" of injunctions if the second issue is different from the issue that caused the initial injunction?
7. Given Chapter 14 only references "injunction" in the title of a section, is there statutory authority to use injunctions to set the stage for the almost certain imposition of penalties for a second violation of the same issue, or a violation of another statutory, or rule issue?

Again, we appreciate the opportunity to comment on the amendments to the proposed rules of operations for pawnshops resulting from the statutorily mandated periodic rule review. We are available to answer any questions the Finance Commission or the Office of the Consumer Credit Commission ("OCCC") may have about these comments and questions.

For More Information

For more information about these comments and questions, please contact the following: Robert W. Norcross, Jr., Vianovo, LP, DFW Office, 302 Bowie St., Roanoke, Texas 76262, telephone 817-491-7110, fax 817-719-9200, email Email Redacted

C.

Texas Department of Banking

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TEXAS DEPARTMENT OF BANKING

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To: Finance Commission Members

From: Kurt Purdom, Deputy Commissioner

Date: November 30, 2018

Subject: Summary of the Bank & Trust Supervision Division Activities

Bank and Trust Supervision					FY 2019							
8/31/2017			8/31/2018		11/30/2018*		2/28/2019		5/31/2019		8/31/2019	
Industry Profile (# / Assets in billions)												
# Banks	240	\$252.9	236	\$257.3								
# Trust Co. (1)	17	\$108.5	17	\$107.4								
# FBA/FBB	10	\$56.1	7	\$66.3								
Examinations Performed												
Banks	103		107									
Trust Co.	26		27									
FBA/FBB	3		3									
Bank Uniform Financial Institution Composite Ratings												
1	123	51.3%	114	48.3%								
2	104	43.3%	111	47.0%								
3, 4, & 5	12	5.0%	11	4.7%								
Non-Rated	1	0.4%	0	-								

* First quarter numbers are not yet available.

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

The number of problem institutions remains stable, and the level 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. Though we expect the number of problem institutions to remain relatively stable over the next six months, further deterioration in crude oil prices or pipeline disruptions could result in a modest increase.

Summary of the Bank & Trust Supervision Division Activities

Page 2

Enforcement Actions Outstanding (Number outstanding as of the date indicated)			FY 2019			
	8/31/2017	8/31/2018	11/30/2018*	2/28/2019	5/31/2019	8/31/2019
Banks - Safety and Soundness						
Formal	2	2				
Informal	22	17				
Banks - Bank Secrecy Act (BSA)						
Formal	0	0				
Informal	2	1				
Banks - Information Technology (IT)						
Formal	0	0				
Informal	2	3				
Trust Departments of Banks and Trust Companies						
Formal	0	0				
Informal	2	2				
Total Enforcement Actions Outstanding						
Formal	2	2				
Informal	28	23				
Total	30	25				

* First quarter numbers are not yet available.

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

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

Compliance actions are not included.

Compliance with Examination Priorities Percent of Examinations Conducted within Department Guidelines		
Entity Type	FY 2018	FY 2019 (YTD – Oct. 2018)
Commercial Banks (All / DOB Only)	94% / 98%	97% / 95%
IT	96% / 100%	100% / 100%
Trust	100% / 100%	100% / 100%
Foreign Banks (FRB)	100%	100%
Trust Companies (DOB)	100%	100%
IT	100%	100%

Through the first two months of fiscal year 2019, only one bank examination was started outside of the agency's examination priorities. The examination was the responsibility of the Department, and it was started one day late.

U.S. Senate Bill 2155 raised the eligibility to qualify for an 18-month examination cycle for banks with \$1 billion in total assets to \$3 billion in total assets. This change effectively moved some of the agency's larger bank

Summary of the Bank & Trust Supervision Division Activities

Page 3

examinations into the second and third fiscal quarters of 2019. This change may result in some bank examinations falling past due in these quarters until a full examination cycle is achieved. The effects of this examination cycle change are not expected to extend beyond the current fiscal year.

Division Highlights

- **Community Banking Research and Policy Initiatives:** The sixth annual Community Banking in the 21st Century Research Conference was held in St. Louis, Missouri on October 3 – 4, 2018. The FDIC joined CSBS and the Federal Reserve Bank of St. Louis this year as a co-sponsor for the event. Deputy Commissioner Purdom participated in the conference. The conference brings together academics, regulators, policymakers and bankers to discuss the latest in community bank research and other issues facing community banks. Pre-conference work by the Department included conducting phone interviews with bankers and soliciting feedback from bankers about specific issues through an on-line survey. Texas bankers again provided the highest number of responses of any state. Research papers discussed at the conference (available on the CSBS website), were grouped into three categories for discussion purposes:
 - Small Business Lending;
 - Competition in Banking; and
 - Bank Management and Performance.
- **Special Operations and Conferences:**
 - Review Examiner Graham participated in a bank regulatory panel at the Texas Bankers Association's Internal Audit School held in Austin on October 4, 2018.
 - Commissioner Cooper participated in the Emerging Issues Forum for Bank Directors held in Asheville, North Carolina the week of October 8, 2018.
 - Deputy Commissioner Purdom and Director of Corporate Activities Frasier participated in a fintech conference held in Fredericksburg beginning October 10, 2018.
 - Agency representatives met with a foreign delegate from Belgium on October 15, 2018 to provide information about the banking environment in Texas.
 - Deputy Commissioner Purdom participated in several events sponsored by the Texas A&M Banking program held in College Station starting on October 24, 2018.
 - Commissioner Cooper participated in a webinar about current banking issues with CSBS Chief Executive Officer John Ryan sponsored by Promontory Interfinancial Network on November 6, 2018.
 - Commissioner Cooper participated in a bank regulatory panel at the SMU Cox School of Business held in Dallas on November 9, 2018.
 - Commissioner Cooper, Deputy Commissioner Purdom and Director of Corporate Activities Frasier participated in an FDIC and State Leadership Conference held in Dallas beginning November 13, 2018. Issues discussed included banking industry risks, the economy, consumer compliance and examiner staffing levels.
 - On November 14, 2018, Commissioner Cooper, Deputy Commissioner Purdom and Director Frasier met with representatives of the Federal Home Loan Bank (FHLB) of Dallas at their offices in Irving.

Summary of the Bank & Trust Supervision Division Activities

Page 4

FHLB representatives described the various products and services their organization provides to banks in their district.

- Commissioner Cooper participated in the Clearing House Association Annual Conference held in New York the week of November 26, 2018.
- Deputy Commissioner Purdom met with FDIC Chairman Jelena McWilliams in Dallas on November 27, 2018.



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705

512-475-1300 / 877-276-5554

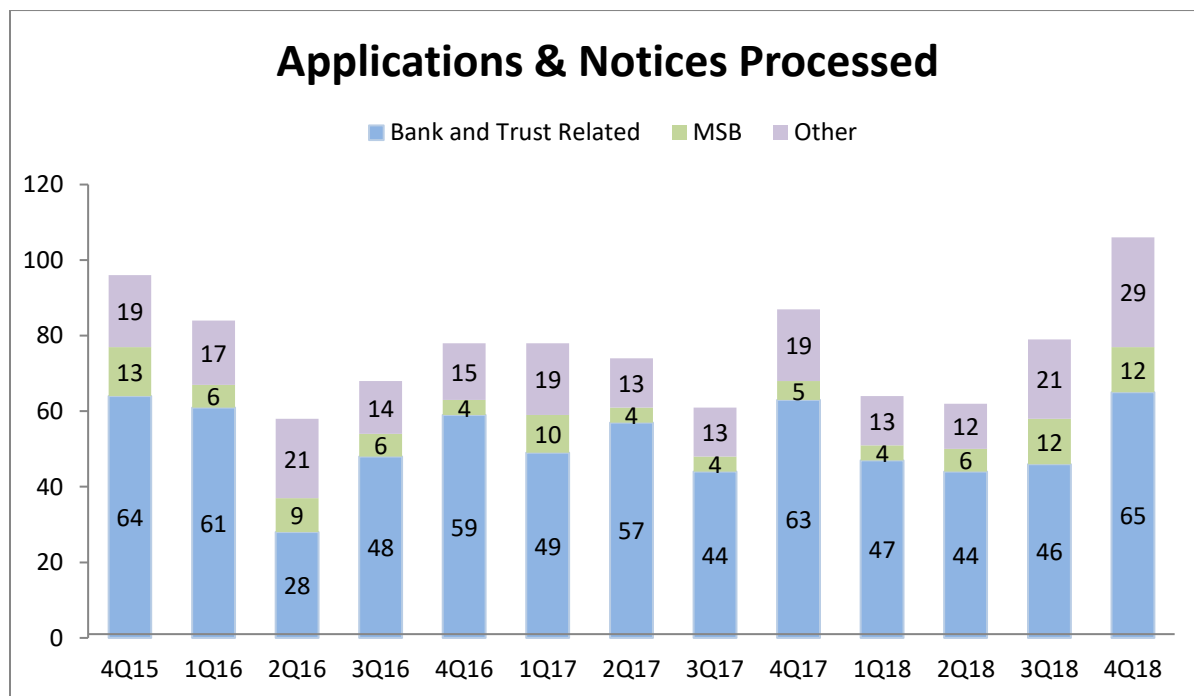
www.dob.texas.gov

To: Finance Commission Members

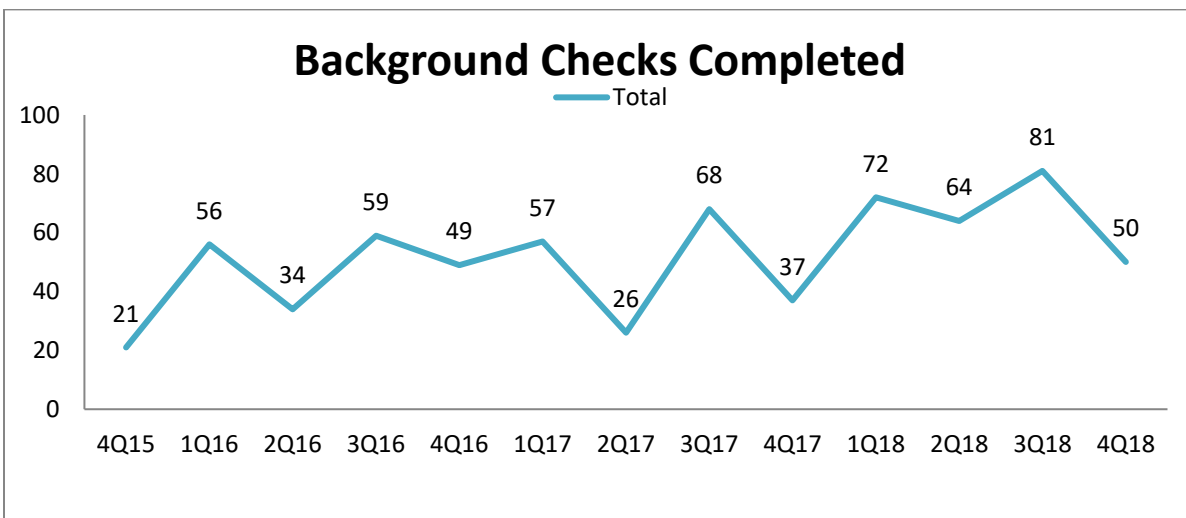
From: Daniel Frasier, Director of Corporate Activities *DBF*

Date: November 28, 2018

Subject: Summary of the Corporate Division Activities



Fiscal 1Q19 information not available and will be presented at the next Finance Commission meeting.



Fiscal 1Q19 information not available and will be presented at the next Finance Commission meeting.

Entities/Activities	Applications and Notices Under Review (as of November 27, 2018)
Bank Related	18
Trust Companies	8
Money Services Business (MSB)	14
Others	4
Totals	44

Division Highlights

- Bank, trust, and MSB application volume continues to be significant. Compared to our last report submitted to the Finance Commission, the Corporate division's applications and notices presently under review by category type changed by:
 - Bank related increased 6 (50%)
 - Trust company related increased 3 (60%)
 - MSB related increased 4 (40%)
 - Other increased 3 (300%)
- Charter, Conversion, and Merger Activity – The following transactions have consummated since Corporate's last report to the Finance Commission:
 - *Banks*
 - Vantage Bank Texas, San Antonio, Texas, completed its acquisition merger of Inter National Bank, McAllen, Texas [estimated gain in state banking assets of approximately \$1.4 billion]
 - Union State Bank, Florence, Texas, merged into Citizens National Bank, Henderson, Texas [estimated loss in state banking assets of approximately \$493 million]
 - *Trust Companies*
 - Quest Trust Company, Houston, Texas, a de novo non-exempt trust company, opened for business
- Conferences, Conventions, and Committee Meetings – Since the last report to the Finance Commission, Corporate participated in the following:
 - Director Dan Frasier participated in the Fintech Conference sponsored by FedFis and The Independent Community Bankers of America in Fredericksburg, Texas, on October 10-12.
 - Director Dan Frasier participated in the FDIC & State Leadership meeting in Dallas, Texas, on November 13-14.



Charles G. Cooper
Commissioner

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To: Finance Commission Members

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

Date: December 1, 2018

Subject: Summary of the Special Audits Division Activities

Special Audits (SA)			FY 2019							
Entity	FY 2018		1 st		2 nd		3 rd		4 th	
Industry Profile (# / Assets (billions))										
Money Services Businesses (MSB)	161	\$131.5	*	*						
Prepaid Funeral Contract (PFC)	365	\$4.0	*	*						
Perpetual Care Cemeteries (PCC)	241	\$346.8	*	*						
Cemetery Brokers (CB)	14	n/a	*	*						
Private Child Support Enforcement Agencies (PCSEA)	10	n/a	*	*						
Check Verification Entities (CVE)	2	n/a	*	*						
Bullion Depository Agent (BDA)	0	n/a	*	*						
Examinations Performed										
MSB	97		*							
MSB Limited Scope	1		*							
MSB Accepted other State	14		*							
PFC	240		*							
PFC Limited Scope	8		*							
PCC	201		*							
PCC Limited Scope	4		*							
Ratings (# / %) Assigned to All Regulated Entities										
1	277	36.7%	*	*						
2	399	52.8%	*	*						
3	66	8.7%	*	*						
4 & 5	13	1.8%	*	*						
Noncompliance with Examination Priorities (Past Due)										
MSB	13		*							
PFC	13		*							
PCC	16		*							

NOTES:

PCC \$ amounts reflected in the millions.

Limited scope examinations do not receive a rating.

*First quarter fiscal year 2019 data has not been finalized and will be provided in the next summary.

Division Activities

The Department recently revised Supervisory Memorandum 1023 related to the examination frequency for Money Services Businesses (MSB). The policy was revised to use an MSB's most current examination rating in lieu of the prior two examination ratings in the risk ranking evaluation and review of the licensee. The revision mirrors Supervisory Memorandum – 1003, Examination Frequency for State-chartered Banks.

On November 1st, Director Reese facilitated a conference call with representatives from the Department, several states and the U.S. Department of Homeland Security (DHS) to provide an update regarding the status of the Department's investigation and DHS' ongoing criminal investigation related to a Texas licensed MSB. Representatives from DHS were available to answer questions from the other states regarding their ongoing criminal investigation.

Director Reese participated with other Department representatives in two separate meetings in November 2018 with McConnell & Jones to discuss and provide feedback on the proposed 2019 Department Internal Audit Plan and Risk Assessment and an Efficiency Study to be presented to the Finance Commission in 2019.



Charles G. Cooper
Commissioner


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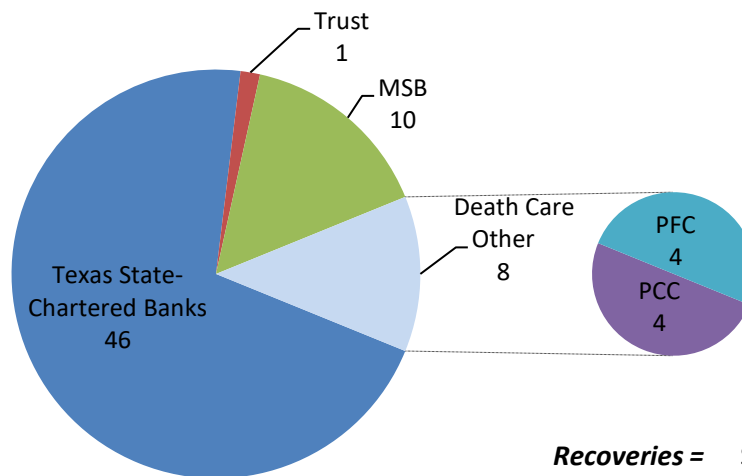
To: Finance Commission Members

From: Wendy Rodriguez, Director of Strategic Support 

Date: December 1, 2018

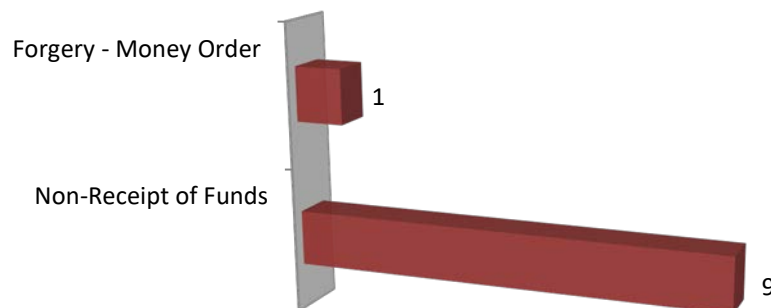
Subject: Summary of the Strategic Support Division Activities

Jurisdictional Complaints September 2018 - October 2018



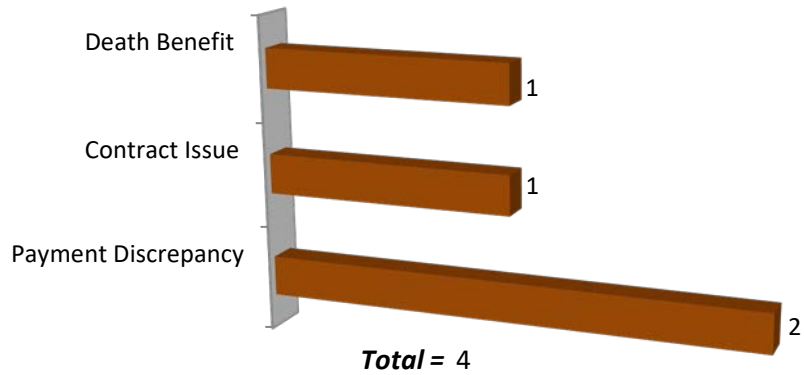
Recoveries = \$3,692.89
Total = 65

Money Services Businesses Complaints by Type September 2018 - October 2018

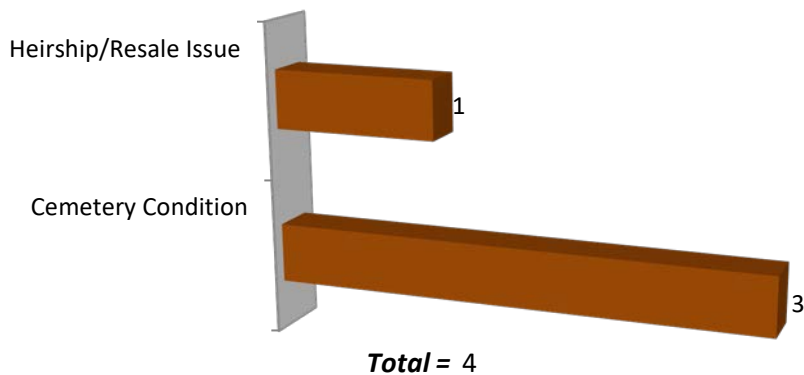


Total = 10

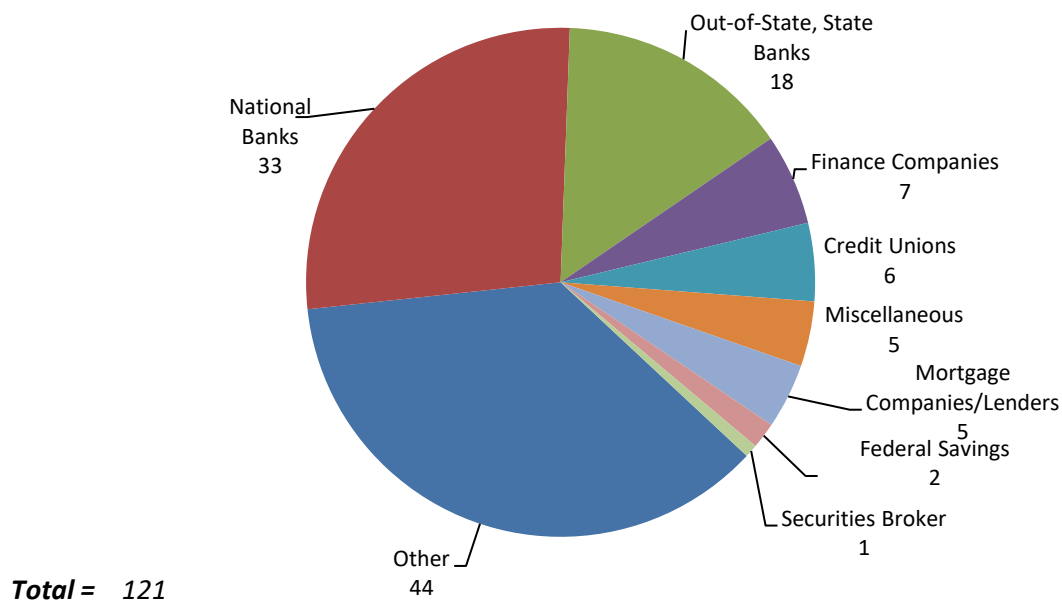
**Prepaid Funeral Contract Sellers
Complaints by Type
September 2018 - October 2018**



**Perpetual Care Cemeteries
Complaints by Type
September 2018 - October 2018**



Complaints Against Non-Jurisdictional Entities September 2018 - October 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. 2018 – Oct. 2018
State-Chartered Banks	17
Trust	15
PCSEA	NA
PFC/PCC	31
MSB	38

Percentage of Written Complaints Resolved Within 90 days

Type	Sept. 2018 – Oct. 2018
State-Chartered Banks	100%
Trust	100%
PCSEA	NA
PFC/PCC	100%
MSB	100%

Number of Written Complaints Resolved

Type	Sept. 2018 – Oct. 2018
State-Chartered Banks	33
Trust	2
PCSEA	0
PFC/PCC	8
MSB	12

CANS ACTIVITY

January 1, 2014 – October 31, 2018

Entity	Enrolled	Compromised Accounts Reported
Texas State-Chartered Banks	211	1,125
Texas State-Chartered Savings Banks	23	69
Federal Savings Banks	10	81
State Credit Unions	132	1,175
Federal Credit Unions	229	771
National Banks	170	313
Out-of-State State-Chartered Banks	12	117
Out-of-State National Banks	6	15
Total	793	3,666

Bank Examination Testing System (BETS) Activity

Number of Candidates Passing Each Phase

	FY 2016	FY 2017	FY 2018	FY 2019 As of 11/30/18
I. General Knowledge	9	8	6	1
II. Loan Analysis	4	3	3	1
III. Panel	3	2	2	1
IV. Test Bank	2	3	2	1
Total FE3	18	24	22	24

Promotions

From FE3 to FE4 (Commissioned Examiner)	2	3	2	0
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Other Divisional Items:

- *86th Legislative Session*
 - Prefiling for the 86th Legislative session began on November 12, 2018 with over 450 bills filed on the first day of pre-filing. The Texas Legislature will convene on Tuesday, January 8, 2019. Weekly tracking reports on bills of interest to the Finance Commission will be sent to each FC member beginning on Monday, January 14, 2019, and every Monday throughout the session.
- *Accreditation*
 - The Conference of State Bank Supervisors conducted their on-site review on October 16-17, 2018. The final results are expected in December 2018.
- *Training*
 - On November 1, 2018, the Department launched its annual web-based cyber security training courses. All staff is required to complete the four-part training curriculum to comply with 7 TAC §202.24 and internal policies.
 - The Department entered into an agreement with the Conference of State Bank Supervisors (CSBS) to provide financial examiners extensive cybersecurity training by the end of 2019. The first training session was held in Houston on October 9-11, 2018.
- *Personnel and Policies Manual Updates*
 - Personnel Manual
 - Section 14 relating to Information Technology was updated to include a new section dealing with cloud computing services.
 - Section 3 relating to training was updated to reflect the hours of training required for Information Technology staff members per Department of Information Resources.
 - Administrative Memorandums (AM)
 - AM 2035 relating to the Finance Commission building parking was modified to reflect the existing towing procedures.
 - AM 2038 relating to the frequent overnight stay-out stipend program was updated to provide clarifying language on qualifying nights.



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705

512-475-1300 / 877-276-5554

www.dob.texas.gov

Memorandum

TO: Finance Commission Members

FROM: Catherine Reyer, General Counsel

DATE: December 1, 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, on July 10, 2018, Commissioner Cooper issued an order imposing a \$35,000. The cemetery owner has been making monthly payments to satisfy the requirements of the order.

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 August 1, 2018, Commissioner Cooper issued an emergency cease and desist order which authorized seizure by the Department of Peel's records concerning the sale of unauthorized (illegal) prepaid funeral contracts. On November 6, 2018, Commissioner Cooper issued a Consent Order requiring the owner to pay \$524,780 in restitution and a minimum penalty of \$250,000 on or before February 15, 2019. We have filed notice of the Order in Travis County district court.

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. Plaintiff Rubio failed to respond to the OAG's motion to dismiss, so we are waiting for the judge to issue a ruling.

In the Matter of Charles Coney Burgess, Amarillo, Texas; Docket No. BB-1801-16-064. Staff had set this confidential prohibition matter for hearing in February, 2019. On October 9, 2018, the parties engaged in a mediation which resulted in a Consent Order. Under the Order, Commissioner Cooper determined that Mr. Burgess engaged in a breach of his fiduciary duty, conducted business in an unsafe and unsound manner, and violated provisions of the Texas Finance Code with regard to the affairs of Herring Bank. The order requires Mr. Burgess to pay the Department's investigative and enforcement costs related to the matter and to pay a penalty of \$75,000.

In the Matter of Southwest Group, LLC and Ryan Sasser, Fort Myers, Florida; Docket No. 18-1807-16-310. Respondents own and operate the website currencyliquidator.com, which offers customers the option to buy and sell foreign currencies. The Department had previously determined that the activity

constitutes money transmission, and therefore requires a license. Following contact by Department staff in late 2015, Respondents certified in February 2016 that it had ceased conducting money transmission in Texas. Upon receiving information that Respondents' website had been reconfigured to once again accept Texas customers, the Department issued a Cease and Desist Order to Respondents in 2016. In August 2018, Department staff learned that Respondents had violated the Cease and Desist Order by again providing unlicensed money transmission services to Texas customers. A hearing on the matter is set for January 17, 2019. Discovery and settlement negotiations are ongoing.

Gifts

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

Orders Issued 10/1/18 – 11/30/18

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

Bank and Trust

- Consent Order dated October 9, 2018; Charles Coney Burgess, Amarillo, TX

Special Audits

- Consent Order dated October 10, 2018; Accruit, LLC, Denver, CO
- Consent Order dated October 16, 2018; Uphold HQ, Inc., Larkspur, CA
- Consent Order dated October 23, 2018; Paycom Software, Inc. and Paycom Payroll, LLC, Oklahoma City, OK
- Consent Order dated November 1, 2018; Pay USA, King of Prussia, PA
- Consent Order dated November 6, 2018; Billy F. Peel, Individually and as President of Austin Peel and Son Funeral Home, Inc., Austin, TX

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	February 15, 2019



BANKING DEPARTMENT LEGISLATIVE REPORT TO FINANCE COMMISSION

12-03-2018 - 09:39:29

DOB-FC Report

[HB 112](#) [Swanson, Valoree\(R\)](#) Relating to legislative review and approval of certain state agency rules.

Companions:

HB 2017	Swanson, Valoree (F)	(Refiled from 85R Session)
SB 1718	Hall, Bob	(Refiled from 85R Session)

Specific Remarks: HB 112 amends Chapter 2001 of the Government Code. The bill relates to legislative review and approval of state agency rules that is anticipated to have an economic impact of \$20 million or more and is not an emergency rule. In addition to filing with the secretary of state, a state agency will be required to file a copy of the proposed rule with the officer or employee with whom bills are filed in each house of the legislature. After filing, the proposed rule shall be referred to a standing committee for consideration.

Bill History: 11-12-18 H Filed

[HB 415](#) [Guerra, Bobby\(D\)](#) Relating to the procedure for adoption by a state agency of rules that may have an adverse economic effect on small businesses, micro-businesses, and rural communities.

Specific Remarks: HB 415 amends Section 2006.002 of the Government Code. It outlines the procedures a state agency must follow for adoption of rules that may have an adverse economic effect on small businesses, micro-businesses, and rural communities. The agency would be required to prepare an economic impact statement and regulatory flexibility analysis, publish both the statement and analysis in the Texas Register, and provide copies of the statement and analysis to the appropriate standing committee of the legislature charges with reviewing proposed rules.

Bill History: 11-28-18 H Filed

[SB 122](#) [West, Royce\(D\)](#) Relating to the procedure by which a state agency considers legislative intent when adopting an agency rule.

Specific Remarks: SB 122 amends Sections 2001.032 and 402.042 of the Government Code. The bill modifies the procedure by which a state agency considers

legislative intent when adopting an agency rule. A state agency would be required to inform each author and sponsor of legislation that became law and that added, amended, or clearly affected the law under which the rule would be adopted, if the person is still a member of the legislature, that the adoption of a rule related to the member's legislation is being considered.

Bill History: 11-12-18 S Filed

Total Bills: 3

The Pre Need Corp.

588 N. Main
Giddings, Texas 78942

I have been employed by Phillips & Luckey Funeral Homes and Pre Need Corporation for over 40 years. I have worked my way up through the company and today I own 78% of both companies. In 1985 my father wanted to retire and I took over as manager of the funeral home and started working closer with the Pre Need Corporation and in 1992 I was named President of both corporations.

Some of the duties I have with the Pre Need Corp. are reviewing all new contracts to make sure they have been written properly and matured contracts that all documents are in the matured files. I am very involved in our audits working hard to achieve a 1 rating, I feel a 2 rating is a little disappointing but acceptable. With our accountant we review our investments and make changes when necessary. I also work with our employees so they better understand the proper way to complete a contract.

On the personal side I have lived most of my life in Rockdale, I am married with one child and she works for me. I have served our city as a business person, served on Rockdale City Council and as Mayor, served a number of years with our Chamber of Commerce Board, and a number of different committees and advisory groups. I currently am serving on the Board of Directors with Classic Bank, NA. and as a Deacon in our church.

Wallace Jones
Phillips & Luckey Co., Inc./Pre Need Corp.

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

PURPOSE: Subsection (e) of §5.101 requires the finance agencies to develop and maintain policies for administering the employee training and education program of each finance agency. Amendment to Subsection (e) of §5.101 eliminates the transitional provisions for future development of these policies, to reflect that the policies have been developed.

RECOMMENDED ACTION: No comments were received regarding the proposed amendment to 7 TAC, §5.101. The Department recommends that the Commission approve adoption of the amendment without changes to the proposal as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we adopt the amendment to 7 TAC, §5.101 without changes to the proposal as previously published 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), adopts the amendment to 7 TAC, §5.101, concerning Employee Training and Education Assistance Programs without changes to the proposed text as published in the November 2, 2018, issue of the *Texas Register* (43 TexReg 7284). The amended rule will not be republished.

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 finance agency. Subsection (e) also describes what the to-be-developed policies were to include. The finance agencies have developed such policies and the amendment to §5.101 eliminates the transitional provisions for future development to reflect that the policies have been developed.

The department received no comments regarding the proposed amendment.

The amendment is adopted pursuant to Finance Code, §656.048, which provides for training and education assistance to employees of state agencies.

§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.)

4. Discussion of and Possible Vote to Take Action on the Adoption of Amendment to 7 TAC, Part 2, Chapter 26, §26.11, Concerning Perpetual Care Cemeteries Complaints

PURPOSE: Amendment to §26.11 clarifies when a perpetual care cemetery website must contain access to the notice to consumers of how to file complaints.

RECOMMENDED ACTION: No comments were received regarding the proposed amendment to 7 TAC, §26.11. The Department recommends that the Commission approve adoption of the amendment without changes to the proposal as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we adopt the amendment to 7 TAC, §26.11 without changes to the proposal as previously published 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), adopts the amendment to 7 TAC, §26.11, concerning providing information to perpetual care cemetery customers about filing complaints without changes to the proposed text as published in the November 2, 2018, issue of the *Texas Register* (43 TexReg 7285). The amended rule will not be republished.

The amendment clarifies when a perpetual care cemetery website must contain access to the notice to consumers of how to file complaints.

The department received no comments regarding the proposed amendments.

The amendment is adopted pursuant to Health and Safety Code, §712.008, which authorizes the commission to adopt rules to enforce and administer Health and Safety Code, Chapter 712.

§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.

5. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 2, 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 provide greater clarity regarding the statutory requirements applicable to money transmission license holders and correct a statutory reference. The amendment to §33.23(d)(3) recognizes 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. New §33.23(g) defines the terms relevant to the receivables. New §33.23(h) sets forth the conditions precedent for ACH Receivables to constitute a permissible investment. New §33.23(i) and (j) describe similar conditions precedent to Credit Card Receivables and Debit Card Receivables, respectively. New §33.23(k) excludes 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. 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. Amendment to §33.23(c) allows the subsection to address the broader applicability of the term. Amendment to §33.35(e)(2) corrects the statutory reference for the federal definition of "funds transfer" to 331 CFR §1010.100(w).

RECOMMENDED ACTION: One comment was received regarding the proposed amendment to 7 TAC, §33.23. That comment was in support of the amendment. No comments were received regarding the proposed amendment to 7 TAC, §33.35. The Department recommends that the Commission approve adoption of the amendments without changes to the proposal as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we adopt the amendments to 7 TAC, §§33.23 and 33.35 without changes to the proposal as previously published in the *Texas Register*.

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

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to 7 TAC, §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 without changes to the proposed text as published in the November 2, 2018, issue of the *Texas Register* (43 TexReg 7286). The amended rules will not be republished.

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 the other permissible investments listed in Finance Code, §151.309(b). The commission

adopted the department's determination. New §33.23(d)(3) recognizes 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. New §33.23(g) defines the terms relevant to the receivables. New §33.23(h) sets forth the conditions precedent for ACH Receivables to constitute a permissible investment. New §33.23(i) and (j) describe similar conditions precedent to Credit Card Receivables and Debit Card Receivables, respectively. 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. 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 amended, 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 Finance Code, §151.309(b)(1). As amended, §33.23(c) allows 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

ADOPTION OF AMENDMENTS TO 7 TAC, §§33.23, 33.35

Page 2 of 4

reference for the federal definition to 31 CFR §1010.100(w).

The department received one comment regarding the proposed amendment to §33.23. That comment, from The Money Services Round Table, was in support of the amendment. No comments were received by the department regarding the proposed amendment to §33.35.

The amendments are adopted 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 adopted under Finance Code, §151.309(b)(7) which authorizes the commission 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.

§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.

(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)].

ADOPTION OF AMENDMENTS TO 7 TAC, §§33.23, 33.35
Page 4 of 4

(3) – (6) (No change.)

(f) – (g) (No change.)

November 30, 2018

Writer's Direct Contact

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VIA EMAIL

General Counsel
Texas Department of Banking
Legal Division
2601 North Lamar Boulevard, Suite 300
Austin, TX 78705-4294
legal@dob.texas.gov

Re: *Comments of The Money Services Round Table Regarding Proposed Amendments to 7 TAC §33.23*

To Whom It May Concern:

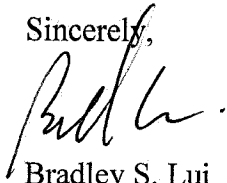
I am counsel to The Money Services Round Table ("TMSRT"), which is comprised of the leading national non-bank money transmitters: RIA Financial Services, Sigue Corporation, American Express Travel Related Services Company, Inc., Moneydart Global Services, Inc. and Travelex Currency Services Inc., Viamericas Corporation, Western Union Financial Services, Inc., and MoneyGram Payment Systems, Inc. These companies offer a variety of non-bank funds transmission services, often in locations not served by banks and other depository institutions. Each is currently licensed under the Texas Money Services Act, Tex. Fin. Code Ch. 151 (the "Act").

Proposed amendments to 7 TAC §33.23 would recognize any receivable owed by a bank to a money transmission license holder resulting from an automated clearinghouse (ACH), debit, or credit-funded transmission, subject to certain limitations, as a permissible investment. The Texas Department of Banking ("Department") has proposed this change based on its determination that developments in payment systems law and technology have caused these assets to have a safety substantially equivalent to other permissible investments enumerated in the Act. *See* §151.309(b). TMSRT believes that the confirmation that ACH, credit card, and debit card receivables may constitute permissible investments in Texas will be beneficial for money transmission licensees without creating any additional safety and soundness risk. TMSRT is hopeful that this effort by the Department will encourage greater uniformity among state money transmission licensing authorities regarding their respective definitions of permissible investments, and in particular the treatment of ACH, credit card, and debit card receivables as permissible investments.

Texas Department of Banking
November 30, 2018
Page Two

If you have any questions for TMSRT seeking more specific views regarding permissible investments and the proposed amendments to 7 TAC §33.23, TMSRT would be happy to respond.

Sincerely,

A handwritten signature in black ink, appearing to read "Bradley S. Lui".

Bradley S. Lui
Counsel to The Money Services Round Table

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D.

**Department of Savings and
Mortgage Lending**

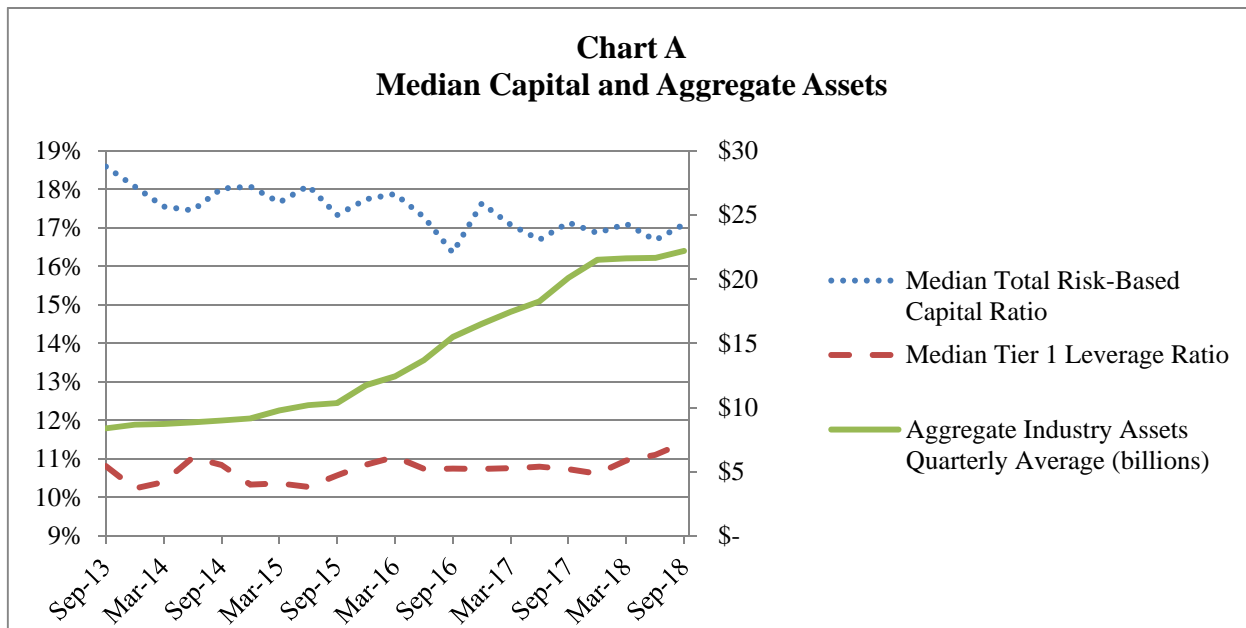
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D. Texas Department of Savings and Mortgage Lending

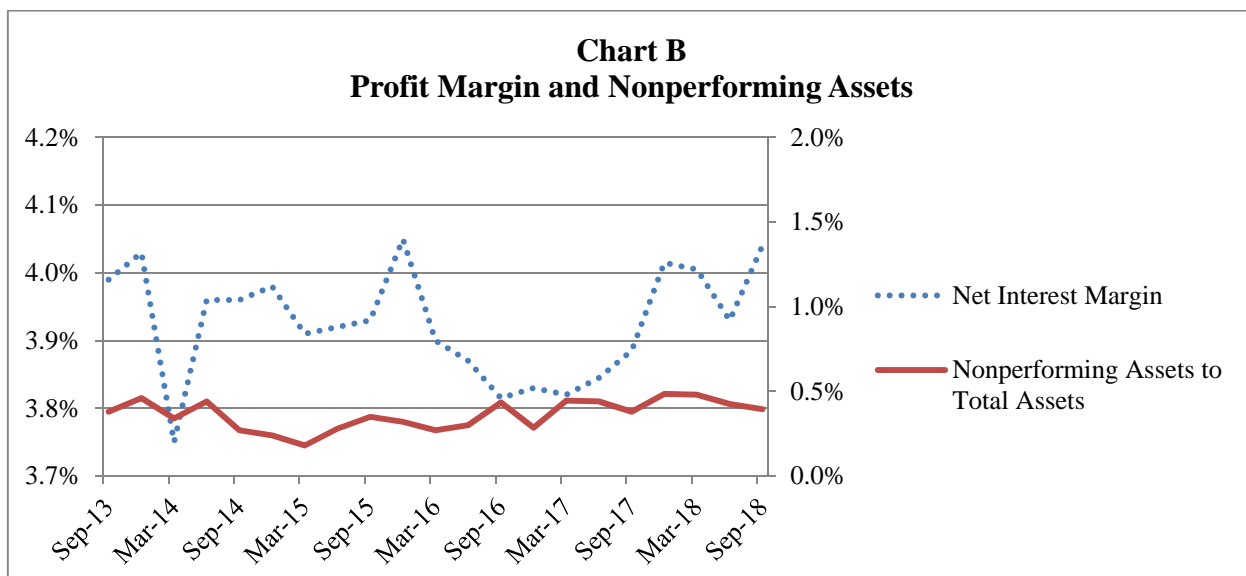
1. Industry Status and Departmental Operations – State Savings Bank Activity:

a. Industry Status

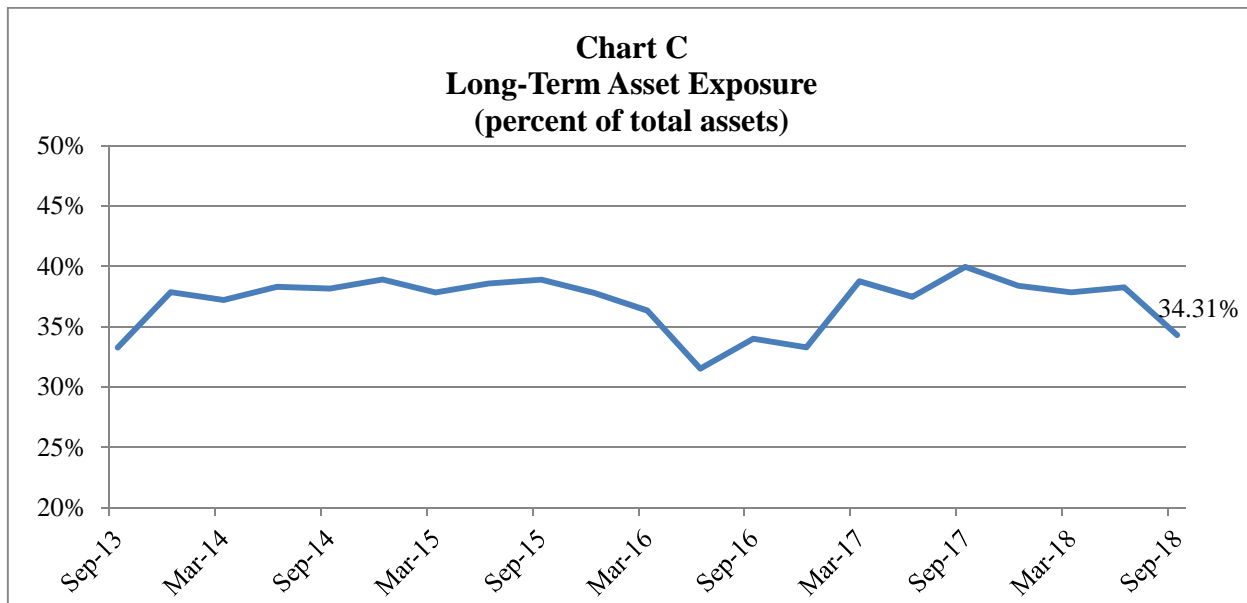
The Department continues to monitor various local, state, and national data sources to best understand the risks facing the industry and individual savings banks. Below is a state savings bank industry status to highlight specific areas that the department monitors in relation to changes in the state and national economic environment.



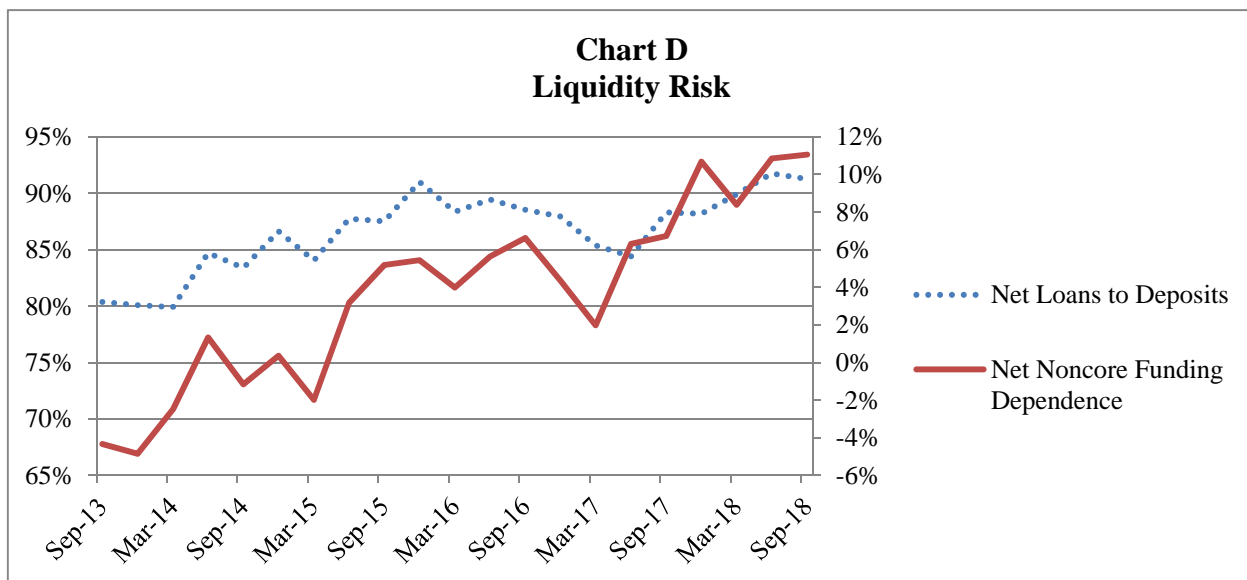
There were 24 state savings banks totaling \$22.2 billion in total assets, as of September 30, 2018. The average asset size of the median state savings bank (“SSB”) grew by 2.74% in the last four quarters to \$310.9 million. The median total risk-based capital ratio and median leverage capital protection have remained general consistent and are now 17.09% and 11.42%, respectively.



After a period of some fluctuation, the net interest or profit margin (Chart B) is recovering, to 4.04% from 3.89% at September 2017. Nonperforming asset levels remain low at 0.40% of total assets, almost the same as this time last year at 0.38%.



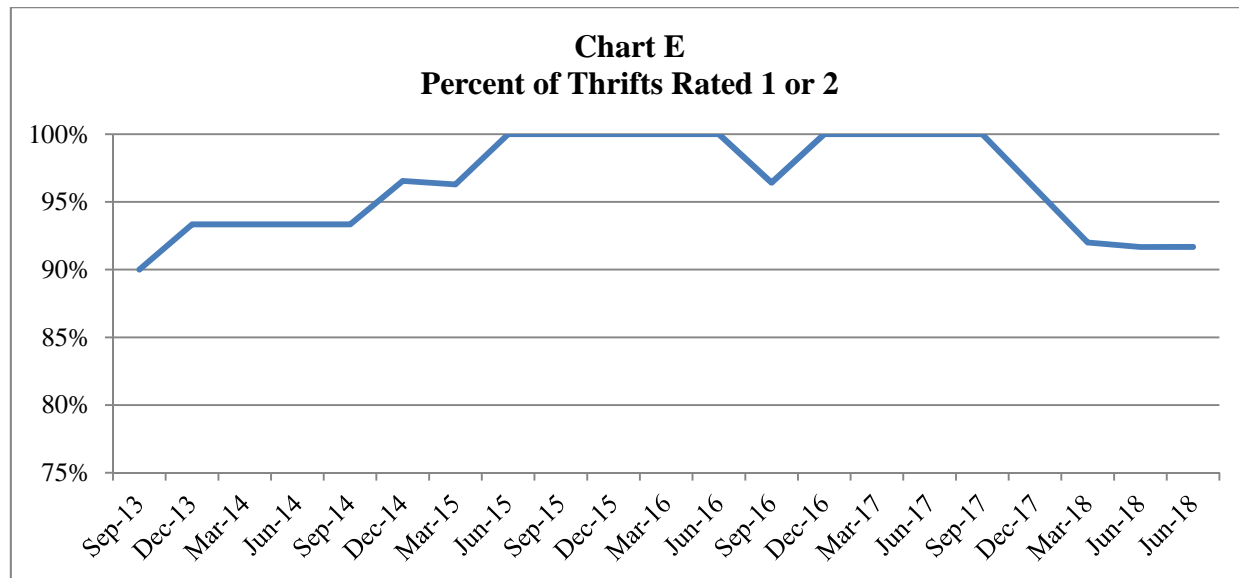
Market risk, as evidenced by long-term asset exposure (Chart C), was noticeably elevated from late 2013 through early 2016. In early 2017, the exposure again began to rise, however levels appear to be trending back down in the most recent quarter. There remain a small number of outlier institutions with high long-term asset exposure; however these are generally operating within historical norms of ten years or more.



Liquidity risk remains elevated in Texas thrifts (Chart D), as indicated by the Net Noncore Funding Dependence (NNCFD) Ratio, a measure of the funding of long-term assets using short-term funding strategies. The median NNCFD Ratio has increased from 6.73% to 11.06% in the last four quarters, but is considered manageable. The loan-to-deposit ratio; a measure of the use of deposits to fund lending activities also remains elevated at 91% with 21% of the industry over 100%.

All SSBs are subject to quarterly offsite reviews. Those with the highest risk profiles receive enhanced scrutiny, as warranted, with targeted visitations, accelerated examinations, and/or corrective actions.

Ninety-two percent of SSBs at September 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 September 10, 2018, application was received from Spirit of Texas Bank, SSB, College Station, Texas, to acquire Comanche National Bank, Comanche, Texas. The merger occurred on November 14, 2018.

The Department continues to receive and process various other applications.

Departmental Operations – Thrift

Commissioner Jones and Deputy Commissioner Trotti met with members of FDIC Dallas Regional management on October 26, 2018 to discuss regulatory matters of mutual interest.

Commissioner Jones served on a Regulatory Panel of Women in Community Banking on November 8, 2018.

Commissioner Jones and Deputy Commissioner Trotti attended the FDIC Regional Leadership Conference November 13 – 14, 2018.

Commissioner Jones and Deputy Commissioner Trotti attended a meeting with the executive management of the Federal Home Loan Bank-Dallas on November 14, 2018.

Commissioner Jones met with FDIC Chairman Jelena McWilliams at the FDIC Dallas Regional Office on November 27, 2018.

Commissioner Jones attended the 4th Quarter FFIEC meeting representing the American Council of State Savings Supervisors and as a member of the State Liaison Committee on December 4, 2018.

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

a. Residential Mortgage Loan Originators

Current Licensing Population:

License Type As of 11/30/2018	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>	129	n/a	
<i>Mortgage Company</i>	1,338	656	
<i>Mortgage Banker</i>	413	3,001	
<i>Mortgage Servicer</i>	200	n/a	
Totals	2,089	3,659	30,622

As of November 30, 2018, 4,088 companies/branches and 17,275 individuals had submitted their renewal.

For the first quarter of FY19, the Department received 1,900 applications and 29,641 other filings.

b. Mortgage Examinations

During the first quarter of FY19, a total of 117 examinations were completed covering 1,103 individual licensees. The number of examinations is slightly higher when compared to FY18 although the number of individual licensees covered decreased by 47%. The decrease was due to smaller examinations being conducted in the first quarter.

c. Consumer Complaints/Legal Issues

During the first quarter of FY19, a total of 219 complaints were received. This represents a 24% decrease when compared to FY18. Loan servicing complaints represented 68% of the total number of complaints received. As of November 30, 2018, there were 54 open complaints with 83% of the complaints aged less than 90 days.

Departmental Operations – Mortgage

Commissioner Jones and executive management of the Department met with representatives from various local chapters of mortgage professional associations on November 19, 2018.

Commissioner Jones and executive management of the Department conducted a stakeholders meeting on November 19, 2018 with mortgage industry representatives to discuss potential rule amendments.

Commissioner Jones met with Mortgage Bankers Association on December 3, 2018.

3. Fiscal and Departmental Operations:

a. Funding Status/Audits/Financial Reporting

Funding Status/Budget – Staff is working on closing out the first quarter of FY19.

Audit – The Department’s annual risk assessment has been completed by McConnell Jones and can be found elsewhere in this packet.

b. Staffing

As of December 1, the agency was staffed at 49 regular full time employees and 1 regular part-time with 60 FTEs available. In October, we had one voluntary separation.

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 - Reviewing applications
Financial Examiner I/II – Thrift	Open - Reviewing applications
Financial Examiner III – Thrift	Open - Reviewing applications
Financial Examiner IV – Thrift	Open - Reviewing applications

Departmental Operations

Commissioner Jones and executive staff of the Department met with McConnell & Jones staff relating to the Efficiency Audit Services they are performing.

4. Legal Activities:

SOAH Cases:

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

Case No. 450 18-2152 *Department of Savings and Mortgage Lending v. Fred D. Rich, Et Al*; On October 30, 2018, the parties reached a settlement agreement in this matter, whereby the respondents are to pay a \$100,000 administrative penalty and also within 120 days of the effective date of the settlement agreement the respondents are to provide a minimum of \$200,000 in restitution credits to homeowners with active outstanding owner-financed mortgages. Should the respondents not comply with the agreement additional penalty amounts would also be due.

Gift Reporting:

None.

Legislation:

Pre-filing of bills began November 12, 2018 and Legislative Session starts January 8, 2019.

Litigation:

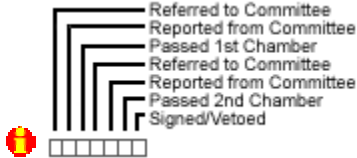
None.



SML FINANCE COMMISSION REPORT

11-30-2018 - 09:51:05

 - Action in the date range  - Link to Related Information () - Priority



SML - FC Report

HB 90

Ortega, Lina(D)

Relating to residential mortgage loans, including the financing of residential real estate purchases by means of a wrap mortgage loan.



Companions: [SB 42](#) Zaffirini, Judith (Identical)
11-12-18 S Filed

Bill History: 11-12-18 H Filed

SB 37

Zaffirini, Judith(D)

Relating to the abolition of student loan default or breach of a student loan repayment or scholarship contract as a ground for nonrenewal of professional license.



Companions: [HB 218](#) Krause, Matt (Identical)
11-12-18 H Filed
[HB 258](#) Blanco, Cesar (Identical)
11-12-18 H Filed

Specific Remarks: Regarding the grounds for denial of license renewal of residential mortgage loan originators under Chapter 157 of the Texas Finance Code, SB 37 seeks to amend Section 157.015(g) to remove the current Section (3), which currently provides that default on a student loan administered by the Texas Guaranteed Student Loan Corporation, under Section 57.491 of the Education Code, is grounds for license denial. It also amends and renumbers the current Section (4) to clarify that default on such a student loan is also not grounds for denial during the term of a license if the Commissioner becomes aware of it during such term and after the license has been granted. The bill also makes similar changes to other licenses not administered by the Department of Savings and Mortgage Lending.

Bill History: 11-12-18 S Filed

SB 42

Zaffirini, Judith(D)

Relating to residential mortgage loans, including the financing of residential real estate purchases by means of a wrap mortgage loan.



Companions: [HB 90](#) Ortega, Lina (Identical)
11-12-18 H Filed

Specific Remarks: Regarding the exemption from licensing of residential mortgage loan companies under Chapter 156 of the Texas Finance Code and of residential mortgage loan originators under Chapter 157 of the Texas Finance Code, SB 42 seeks to amend Sections 156.202 and 157.0121 to state that if two or more property owners are affiliates (or have substantially common ownership as

determined by the Department of Savings and Mortgage Lending Commissioner), they are considered as a single owner for purposes of determining the application of the de minimis exception to licensing (for five or fewer loans within a 12 month period). SB 42 also seeks to amend the same licensing exemption in Texas Finance Code Section 180.003, so that it will read the same as the proposed amended Sections 156.202 and 157.0121. SB 42 also seeks to create Chapter 159 in the Finance Code to be entitled Wrap Mortgage Loan Financing, which would be enforced by the Department of Savings and Mortgage Lending Commissioner. The bill defines wrap mortgage loan in Section 159.001. Chapter 159 would not apply to a loan on unimproved real estate where either: the senior lienholder consents or there is no applicable due on sale clause. Exemptions from licensing would mirror those of the amended sections above, under Chapters 156, 157 and 180. The bill would require wrap lenders to have a Chapters 156 or 157 license to originate or make wrap mortgage loans. It would require wrap lenders to provide a borrower: (a) before the seventh day prior to entering into any agreement, with the Texas Property Code Section 5.016 disclosure that the property will be encumbered by a lien and (b) notice that the borrower should purchase their own insurance coverage for the property being purchased. If the wrap transaction is negotiated in a language other than English, then the borrower should also receive the disclosure/notice in this other foreign language. If the disclosure, notice or foreign language requirements are not satisfied, any applicable statute of limitations would be tolled. A wrap lien would be void unless: (a) the senior lien holder consented in writing and (b) the closing occurred at the office of an attorney or title company. For any violation of the transaction requirements subchapter of Chapter 159, the wrap borrower could file a cause of action and could be awarded attorney's fees, if they are the prevailing party. A wrap borrower would not be allowed to waive their rights under the transaction requirements subchapter of Chapter 159 and any attempt by a party to have the borrower waive such rights would be void and a deceptive trade practice. The Finance Commission would have explicit authority to adopt rules to enforce intent and compliance with the transaction requirements subchapter of Chapter 159. The person receiving payments from a wrap borrower would have a fiduciary duty to use such payments to satisfy the senior lien/wrap lender's debt. Where the borrower is acquiring the property as their residence and the property being sold is not the seller's homestead, then a borrower without having to take legal action, would have the right to deduct from any payments due the wrap lender, such amounts as may be due from the wrap lender (to a senior lien holder) to cure any default by the wrap lender. For any wrap lender required to register as a servicer under Chapter 158, then Chapter 159 would allow the Department of Savings and Mortgage Lending Commissioner to inspect and investigate wrap servicers. The Finance Commission would be required to create rules to govern such inspections or investigations and for any out of state examination to set a maximum amount to be reimbursed regarding the examination. In furtherance of investigations of wrap servicers, would allow the Department of Savings and Mortgage Lending Commissioner to issue and enforce subpoenas. For any violation of Chapter 159, the bill would allow the Commissioner to issue Cease and Desist Orders and impose an administrative penalty of \$1,000 per day for a violation.

Bill History: 11-12-18 S Filed

Total Bills: 3