

**A.**

## **Finance Commission**

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## FINANCE COMMISSION OF TEXAS

**MEETING DATE** .....**August 16, 2019**

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

**CONTACT INFORMATION**.....Phone: (512) 936-6222  
Website: [www.fc.texas.gov](http://www.fc.texas.gov)

**FUTURE MEETING DATES** .....August 16, 2019  
October 18, 2019  
December 20, 2019  
February 14, 2020  
April 10, 2020  
June 19, 2020  
August 14, 2020  
October 16, 2020  
December 11, 2020

*\*\* 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

Thursday, August 15, 2019

1:45 p.m.

Or Upon Adjournment of the Audit Committee Meeting

Finance Commission Building

William F. Aldridge Hearing Room

2601 N. Lamar Blvd.

Austin, Texas 78705

*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. General Public Comment
2. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' Management Response to the Efficiency Audit Regarding Sunset Recommendation 2.6 – “Direct the Finance Commission to minimize duplication of agency functions and promote more cost efficient administration of the finance agencies.”
3. 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.

A. Office of Attorney General Legal Counsel Training on Antitrust Issues for Regulators

## B. OFFICE OF CONSUMER CREDIT COMMISSIONER

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

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

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

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

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

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# FINANCE COMMISSION AGENDA

Friday, August 16, 2019  
8:00 a.m.  
Finance Commission Building  
William F. Aldridge Hearing Room  
2601 N. Lamar Blvd.  
Austin, Texas 78705

***Section A.3 will take up agenda items A1, B6 – B9, and D2 – D5 with NO DISCUSSION as notated in bold and italicized***

*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 June 21, 2019 Finance Commission Meeting***
2. General Public Comment
3. Consent Agenda
4. Finance Commission Operations
5. Audit Committee Report
  - A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2019 Third Quarter Investment Officer Reports
    1. Department of Savings and Mortgage Lending
    2. Office of Consumer Credit Commissioner
    3. Texas Department of Banking
  - B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' Re-adoption of the Investment Policies for:
    1. Department of Savings and Mortgage Lending
    2. Office of Consumer Credit Commissioner
    3. Texas Department of Banking
  - C. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Department of Savings and Mortgage Lending's Information Technology Change Management Program Audit Report as Prepared and Presented by McConnell & Jones LLP
  - D. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Department of Savings and Mortgage Lending's 2019 Annual Internal Audit Report as Prepared and Presented by McConnell & Jones LLP

- E. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Office of Consumer Credit Commissioner's Information Technology Change Management Program Audit Report as Prepared and Presented by McConnell & Jones LLP
  - F. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Office of Consumer Credit Commissioner's 2019 Annual Internal Audit Report as Prepared and Presented by McConnell & Jones LLP
  - G. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Texas Department of Banking's Information Technology Change Management Program Audit Report as Prepared and Presented by McConnell & Jones LLP
  - H. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Texas Department of Banking's Fines, Penalties and Restitution Audit Report as Prepared and Presented by McConnell & Jones LLP
  - I. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Texas Department of Banking's 2019 Annual Internal Audit Report as Prepared and Presented by McConnell & Jones LLP
  - J. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2019 Third Quarter Financial Statements
    - 1. Department of Savings and Mortgage Lending
    - 2. Office of Consumer Credit Commissioner
    - 3. Texas Department of Banking
  - K. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' Fiscal Year 2020 Operating Budgets
    - 1. Department of Savings and Mortgage Lending
    - 2. Office of Consumer Credit Commissioner
    - 3. Texas Department of Banking
  - L. 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.
  - M. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Internal Auditor Function for the Finance Commission Agencies for Fiscal Year 2020
- 6. Discussion of and Possible Vote to Take Action on the Agency Priorities for Fiscal Year 2020 for the Commissioners of the Department of Savings and Mortgage Lending, Office of Consumer Credit Commissioner and the Texas Department of Banking
  - 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. 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 the Adoption of New 7 TAC, Part 4, Chapter 52 as found in the following sections: §52.10 Definitions, §52.11 Complaint Processing, §52.12 Complaint Resolution and Disposition, §52.13 Complaint Review and Reporting
6. *Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 4, Chapter 61, §61.1, Concerning Hearings Officer*
7. *Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 4, Chapter 64, §64.10, Concerning Savings and Loan Association Complaint Notices*
8. *Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 4, Chapter 76, §76.71, Concerning Hearings Officer and §76.122, Concerning Savings Bank Complaint Notices*
9. *Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 4, Chapter 81, §81.301, Concerning Investigations and §81.302, Concerning Hearings and Appeals*
10. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC, Part 4, Chapter 81, §81.110 Concerning Licensing of Military Service Members, Military Veterans, and Military Spouses
11. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

**C. OFFICE OF CONSUMER CREDIT COMMISSIONER**

1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities
2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments, New Rules, and a Repeal in 7 TAC, Part 1, Chapter 2, and Part 5, Chapters 82, 83, 84, 85, 86, 87, 88, and 89, Concerning Licensing, Registration, Administration, Complaints, and Appeals
3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Chapter 85, Subchapter A, Concerning Rules of Operation for Pawnshops
4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to §83.501 in 7 TAC, Part 5, Chapter 83, Subchapter A, Concerning Rules for Regulated Lenders, and to §90.203 in 7 TAC, Part 5, Chapter 90, Concerning Chapter 342, Plain Language Contract Provisions
5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to §86.201 in 7 TAC, Part 5, Chapter 86, Concerning Retail Creditors
6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New §2.108 in 7 TAC, Part 1, Chapter 2, Concerning Residential Mortgage Loan Originators
7. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New §85.309 in 7 TAC, Part 5, Chapter 85, Subchapter A, Concerning Rules of Operation for Pawnshops
8. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation  
*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

**D. 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 Adoption of New 7 TAC, Part 2, Chapter 11, §§11.10, 11.11 and 11.12 Concerning Complaint Handling Procedures*
3. *Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 2, Chapter 25, §§25.13, 25.23, and 25.24 Concerning Assessments on Prepaid Funeral Contract Sellers*

4. *Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 2, Chapter 26, §§26.1 Concerning Assessments on Perpetual Care Cemeteries*
5. *Discussion of and Possible Vote to Take Action on the Adoption of Repeal of 7 TAC, Part 2, Chapter 24, §§24.1 – 24.4 Concerning Cemetery Brokers*
6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeal of 7 TAC, Chapter 31, Part 2, §§31.1 – 31.115 Concerning Private Child Support Enforcement Agencies
7. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeal of 7 TAC, Chapter 33, Part 2, §§33.71 – 33.75 Concerning Bullion Depository Agents
8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Chapter 33, Part 2, §§33.3, 33.13, 33.15, 33.27, 33.51 Concerning Bullion Depository Agents
9. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

*E. Mex. Financial Services, Inc. v. Charles G. Cooper, Texas Banking Commissioner; Cause No. D-1-GN-19-003237, in the 200<sup>th</sup> District Court of Travis County, Texas*

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**MINUTES OF THE  
FINANCE COMMISSION MEETING  
Friday, June 21, 2019**

The Finance Commission of Texas convened at 8:06 a.m. on June 21, 2019 with the following members present:

**Finance Commission Members in Attendance:**

Paul W. Plunket, Chairman  
Phillip Holt, Vice Chair  
Bob Borochoff  
Hector Cerna  
Molly Curl

Stacy G. London  
George "Cliff" McCauley  
Lori B. McCool  
Vince Puente  
Robin Armstrong

Finance Commission Chairman Paul Plunket announced a quorum with ten members present.

Chairman Paul Plunket made a motion to excuse Will Lucas from the Finance Commission meeting held on June 21, 2019. There were no objections and the motion passed unanimously. (:43 on audio file)

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<b>A. Finance Commission Matters</b>		
1. Review and Approval of the Minutes of the April 12, 2019 Finance Commission Meeting	<b>On Consent Agenda – Item A1</b>	2:03 start of discussion
2. General Public Comment	No Action Required.	1:39 start of discussion
3. Consent Agenda – Item A1	Phillip Holt made a motion to Approve Consent Agenda item A1. Stacy London seconded, and the motion passed.	2:03 start of discussion  2:28 vote
4. Finance Commission Operations	No Action Required.	2:53 start of discussion

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<b>5. Audit Committee Report</b>		
<p>A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' Second Quarter Financial Statements.</p> <ol style="list-style-type: none"> <li>1. Office of Consumer Credit Commissioner</li> <li>2. Texas Department of Banking</li> <li>3. Department of Savings and Mortgage Lending</li> </ol>	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies' 2019 Second Quarter Financial Statements passed.</p>	<p>4:26 start of discussion</p> <p>4:35 Vote</p>
<p>B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Texas Financial Education Endowment (TFEE) 2020-2021 Funding Priorities</p>	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Texas Financial Education Endowment (TFEE) 2020-2021 Funding Priorities passed.</p>	<p>4:54 start of discussion</p> <p>5:05 Vote</p>
<p>C. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Appointment of a New Grant Advisory Committee Member</p>	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve Roy Lopez as a Grant Advisory Committee member passed.</p>	<p>5:16 start of discussion</p> <p>5:25 Vote</p>
<p>D. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action to Approve an Amount for the Upcoming 2020-21 Grant Cycle for the Texas Financial Education Endowment (TFEE)</p>	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve \$300,000 for the Upcoming 2020-21 Grant Cycle for the Texas Financial Education Endowment (TFEE) passed.</p>	<p>5:57 start of discussion</p> <p>6:06 Vote</p>
<p>6. Discussion of and Possible Vote to Take Action on Sunset Recommendation 2.6 – "Direct the Finance Commission to minimize duplication of agency functions and promote more cost efficient administration of the finance agencies</p>	<p>No Action Taken.</p>	<p>6:22 start of discussion</p>

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
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	Deferred to Executive Session – no vote taken.	n/a
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	Deferred to Executive Session – no vote taken.	n/a
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	Deferred to Executive Session – no vote taken.	n/a
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	Deferred to Executive Session – no vote taken.	n/a
<b>B. Office of Consumer Credit Commissioner</b>		
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.	49:00 start of discussion

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<p>2. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments, New Rules, and a Repeal in 7 TAC, Part 1, Chapter 2, and Part 5, Chapters 82, 83, 84, 85, 86, 87, 88, and 89, Concerning Licensing, Registration, Administration, Complaints, and Appeals</p>	<p>Vince Puente made a motion to approve the Proposal and Publication for Comment of Amendments, New Rules, and a Repeal in 7 TAC, Part 1, Chapter 2, and Part 5, Chapters 82, 83, 84, 85, 86, 87, 88, and 89, Concerning Licensing, Registration, Administration, Complaints, and Appeals. Bob Borochoff seconded and the motion passed.</p>	<p>1:33:34 start of discussion</p> <p>1:42:47 vote</p>
<p>3. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Chapter 85, Subchapter A, Concerning Rules of Operation for Pawnshops</p>	<p>Molly Cool made a motion to approve the Proposal and Publication for Comment of Amendments to 7 TAC, Chapter 85, Subchapter A, Concerning Rules of Operation for Pawnshops. Stacy London seconded and the motion passed.</p>	<p>1:43:30 start of discussion</p> <p>1:50:33 vote</p>
<p>4. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation</p> <p><i>Texas Office of Consumer Credit Commissioner v. Tim McMahan d/b/a Advantage Auto; Cause No. D-1-GN-17-005451, in the 98th District Court of Travis County, Texas</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 Paul Plunket called for a break at 10:56 a.m. (1:51:04 on the audio file). The open meeting resumed at 10:10 a.m. (1:51:17 on the audio file.)

<b>C. Texas Department of Banking</b>		
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	No Action Required.	1:51:30 start of discussion
2. Consent Agenda – Item C2	Phillip Holt made a motion to Approve Consent Agenda item C2. Stacy London seconded, and the motion passed.	2:03 start of discussion  2:38 Vote
3. Consent Agenda – Item C3	Phillip Holt made a motion to Approve Consent Agenda item C3. Stacy London seconded, and the motion passed.	2:03 start of discussion  2:38 Vote
4. Consent Agenda – Item C4	Phillip Holt made a motion to Approve Consent Agenda item C4. Stacy London seconded, and the motion passed.	2:03 start of discussion  2:38 Vote
5. Consent Agenda – Item C5	Phillip Holt made a motion to Approve Consent Agenda item C5. Stacy London seconded, and the motion passed.	2:03 start of discussion  2:38 Vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC, Part 2, Chapter 11, §§11.10, 11.11 and 11.12 Concerning Complaint Handling Procedures	Cliff McCauley made a motion to approve the Proposal and Publication for Comment of New 7 TAC, Part 2, Chapter 11, §§11.10, 11.11 and 11.12 Concerning Complaint Handling Procedures. Phillip Holt seconded and the motion passed.	2:26:12 start of discussion  2:33:13 Vote
7. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC, Part 1, Chapter 3, §3.24 Concerning Notification in Event of Cybersecurity Breach of State Banks	Stacy London made a motion to approve the Proposal and Publication for Comment of New 7 TAC, Part 1, Chapter 3, §3.24 Concerning Notification in Event of Cybersecurity Breach of State Banks. Lori McCool seconded and the motion passed.	2:34:05 start of discussion  2:44:18 Vote
8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC, Part 2, Chapter 17, §17.5 Concerning Notification in Event of Cybersecurity Breach of State Trust Companies	Vince Puente made a motion to approve the Proposal and Publication for Comment of New 7 TAC, Part 2, Chapter 17, §17.5 Concerning Notification in Event of Cybersecurity Breach of State Trust Companies. Cliff McCauley seconded and the motion passed.	2:44:49 start of discussion  2:46:17 Vote
9. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC, Part 2, Chapter 33, §33.30 Concerning Notification in Event of Cybersecurity Breach of Money Services Businesses	Molly Curl made a motion to approve the Proposal and Publication for Comment of New 7 TAC, Part 2, Chapter 33, §33.30 Concerning Notification in Event of Cybersecurity Breach of Money Services Businesses. Stacy London seconded and the motion passed.	2:46:48 start of discussion  2:47:45 Vote
10. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 2, Chapter 25, §§25.13, 25.23, and 25.24 Concerning Assessments on Prepaid Funeral Contract Sellers	Hector Cerna made a motion to approve the Proposal and Publication for Comment of Amendments to 7 TAC, Part 2, Chapter 25, §§25.13, 25.23, and 25.24 Concerning Assessments on Prepaid Funeral Contract Sellers. Stacy London seconded and the motion passed.	2:48:21 start of discussion  2:54:14 Vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
11. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 2, Chapter 26, §26.1 Concerning Assessments on Perpetual Care Cemeteries	Cliff McCauley made a motion to approve the Proposal and Publication for Comment of Amendments to 7 TAC, Part 2, Chapter 26, §26.1 Concerning Assessments on Perpetual Care Cemeteries. Phillip Holt seconded and the motion passed.	2:55:00 start of discussion  2:55:40 Vote
12. Discussion and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeal of 7 TAC, Part 2, Chapter 24, §§24.1 – 24.4 Concerning Cemetery Brokers	Cliff McCauley made a motion to approve the Proposal and Publication for Comment of Repeal of 7 TAC, Part 2, Chapter 24, §§24.1 – 24.4 Concerning Cemetery Brokers. Molly Curl seconded and the motion passed.	2:56:14 start of discussion  2:58:06 Vote
13. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Action Required.	n/a
<b>D. Department of Savings and Mortgage Lending</b>		
1. Industry Status and Departmental Operations – State Savings Bank Activity: a) Industry Status; and b) State Savings Bank Charter and Application Activity	No Action Required.	2:58:41 start of discussion
2. Industry Status and Departmental Operations – Mortgage Lending Activity: a) Residential Mortgage Loan Originators; b) Mortgage Examination; and c) Consumer Complaints	No Action Required.	3:00:24 start of discussion
3. Fiscal and Departmental Operations: a) Funding Status/Audits/Financial Reporting; and b) Staffing	No Action Required.	3:01:58 start of discussion
4. Legal Activity: a) Enforcement; b) Gift Reporting; and c) Legislative Activities	No Action Required.	3:03:47 start of discussion
5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC, Part 4, Chapter 52 as found in the following sections: §52.10 Definitions, §52.11 Complaint Processing, §52.12 Complaint Resolution and Disposition, §52.13 Complaint Review and Reporting	Molly Curl made a motion to approve the Proposal and Publication for Comment of New 7 TAC, Part 4, Chapter 52 as found in the following sections: §52.10 Definitions, §52.11 Complaint Processing, §52.12 Complaint Resolution and Disposition, §52.13 Complaint Review and Reporting. Stacy London seconded and the motion passed.	3:09:25 start of discussion  3:13:18 Vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
6-11. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 4, §61.1, §64.10, §76.122, §76.71, §79.20, §79.30, §80.301, §80.302, §81.301, and §81.302 which relate to consumer complaints and hearings	Phillip Holt made a motion to approve the Proposal and Publication for Comment of Amendments to 7 TAC, Part 4, §61.1, §64.10, §76.122, §76.71, §79.20, §79.30, §80.301, §80.302, §81.301, and §81.302 which relate to consumer complaints and hearings. Stacy London seconded and the motion passed.	3:09:25 start of discussion  3:14:06 vote
12. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Action Required.	n/a

There being no further business, Chairman Paul Plunket adjourned the meeting of the Finance Commission at 11:44 a.m. (3:24:17 on the audio file).

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Paul W. Plunket, Chairman  
Finance Commission of Texas

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Charles G. Cooper, Executive Director  
Finance Commission of Texas

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Brenda Medina, Executive Assistant  
Finance Commission of Texas



# Finance Commission of Texas

## Consent Agenda

August 16, 2019

### **A. Finance Commission Matters**

1. Review and Approval of the Minutes of the June 21, 2019 Finance Commission Meeting.

### **B. Department of Savings and Mortgage Lending**

6. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 4, Chapter 61, §61.1, Concerning Hearings Officer
7. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 4, Chapter 64, §64.10, Concerning Savings and Loan Association Complaint Notices
8. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 4, Chapter 76, §76.71, Concerning Hearings Officer and §76.122, Concerning Savings Bank Complaint Notices
9. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 4, Chapter 81, §81.301, Concerning Investigations and §81.302, Concerning Hearings and Appeals

### **D. Texas Department of Banking**

2. Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC, Part 2, Chapter 11, §§11.10, 11.11 and 11.12 Concerning Complaint Handling Procedures
3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 2, Chapter 25, §§25.13, 25.23, and 25.24 Concerning Assessments on Prepaid Funeral Contract Sellers
4. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 2, Chapter 26, §§26.1 Concerning Assessments on Perpetual Care Cemeteries
5. Discussion of and Possible Vote to Take Action on the Adoption of Repeal of 7 TAC, Part 2, Chapter 24, §§24.1 – 24.4 Concerning Cemetery Brokers

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# DEPARTMENT of SAVINGS & MORTGAGE LENDING

Caroline C. Jones, Commissioner

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## Memorandum

**To:** The Finance Commission

**From:** Caroline C. Jones

**Date:** August 16, 2019

**Re:** Agency Priorities for Fiscal Year 2020

### **I. Legislative Items**

**I.1 Objective:** Monitor Interim Charges that may affect the Department or its regulated industries.

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

**I.2 Objective:** Monitor federal legislation and regulations that may affect the Department or its regulated entities.

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

**I.3 Objective:** Implement recommendations from Sunset Review Process. -

**Measure:**

- a. At Finance Commission direction, collaborate on implementing plan for enhanced sharing between the three Finance Commission agencies.
- b. Implement all rules recommended by Sunset.

### **II. Regulatory Items**

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

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

**II.2 Objective:** Continue compliance examinations of mortgage companies and Residential Mortgage Loan Originators, licensed under Finance Code, Chapters 156 and 157, respectively; to ensure that licensees are in compliance with applicable laws and regulations when conducting business with Texas consumers. Analyze recurring examination findings and take steps to communicate best practices to the mortgage industry.

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

**II.3 Objective:** Initiate appropriate regulatory enforcement to ensure compliance with federal and state laws and regulations.

**Measure:** Report on enforcement actions.

**II.4 Objective:** Retain prompt resolution times on consumer complaints.

**Measure:**

- a. Provide updates to the Finance Commission on the aging of complaints.
- b. Conduct management review of any complaints open over 120 days to identify issues preventing the timely closing of such complaints.

**II.5 Objective:** Participate in the development and implementation of home equity interpretations.

**Measure:**

- a. Continued involvement in meetings of the Home Equity Lending Working Group as it develops recommended home equity rules and interpretations.
- b. Implement any rule and interpretations adopted by the Finance Commission and the Credit Union Commission.

**II.6 Objective:** Remain active and involved at the national level on supervisory issues affecting savings banks and the mortgage industry.

**Measure:**

- a. Maintain contact with state regulators from other states, regulatory associations (e.g. ACSBS, CSBS, AARMR, and NACCA), trade associations, (e.g. TBA, IBAT, TMBA, ATMP, and TAR), and federal regulators (e.g. CFPB, FDIC, FRB), in order to be aware of events, decisions, other state and federal policies and other areas of actual and potential impact on the Department's regulatory functions or the industries. Take proactive steps to respond as issues arise affecting the industries or supervisory duties.
- b. Continue working with the FDIC and FRB, and other federal agencies as appropriate, on examinations, supervision, and consumer complaint resolution issues. Monitor federal rule writing activity and interpretations of existing statutes.



- c. Report to the Finance Commission on interaction with federal agencies in all of the above listed activities.

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

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

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

**III.2 Objective:** Monitor and modify Texas Administrative Code rules as necessary to reflect changes in state and federal laws and address the dynamics of the changing industries.

**Measure:** Amend rules and adopt new rules as necessary to timely effect necessary changes.

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

**IV.1 Objective:** Communicate with regulated industries on matters of supervisory and industry interest, including emerging issues, through a variety of means both electronic and face to face as deemed appropriate and efficient.

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

### **V. Agency Management**

**V.1 Objective:** Recruit well qualified personnel, while seeking to broaden the Department's workforce diversity. Train and cross-train employees as needed to minimize knowledge loss due to employees' retirement or separation and to prepare for workload shifts due to changes in regulated industries and/or technology. Provide and promote opportunities for professional development.

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

**V.2 Objective:** Meet or exceed 90% of the key performance measures, within the Department's control. Strive to reduce deficiencies, if any, in the performance measures outside the Department's control. (See Attachment A for all Performance Measures)

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

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

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

**V.4 Objective:** Monitor the Department's budget and reserve balances as approved by the Finance Commission to maximize the responsiveness and flexibility allowed by the Self-Directed Semi-Independent status. Make decisions relating to finances in a fiscally prudent manner. Review expenditures and revenues monthly.

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

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

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

**V.6 Objective:** Continue to work towards a long term solution to address headquarters space and parking needs in collaboration with the other Finance Commission agencies.

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

## FY20 Performance Measures

		FY20 Target	FY19 Target
<b>01-01 Thrift Safety and Soundness</b>			
<b>Outcome Measures (Annual)</b>			
Key	01 Percentage of State Chartered Savings Institutions Receiving Examination within the Required Timeframes <sup>1</sup>	100%	100%
Key	02 Percentage of Savings Institutions Classified Safe and Sound <sup>1</sup>	90%	90%
Non-Key	04 Percentage of State Chartered Savings Institution Applications Processed within Statutory Timeframes <sup>1</sup>	100%	100%
<b>Output Measures (Quarterly)</b>			
Key	01 Number of State Chartered Savings Institution Examinations Performed <sup>1</sup>	21	22
Non-Key	04 Number of State Chartered Savings Institution Applications Processed. <sup>2</sup>	10	12
<b>Efficiency Measures (Annual)</b>			
Non-Key	01 Assets Examined Per Examiner Day (in Millions)	\$ 14.0	\$ 8.0
Non-Key	02 Average Time (Business Days) to Complete Analysis of Quarterly Financial Data	7	7
<b>Explanatory Measure (Annual)</b>			
Key	01 Number of State-Chartered Savings Institutions	24	24
Key	02 Dollar Amount of Assets under Regulation (in Billions)	\$ 25.3	\$ 22.2
<b>02-01 Mortgage Regulation</b>			
<b>Outcome Measures (Annual)</b>			
Key	01 Percentage of Satisfactory Levels of Compliance Reported Through Examination <sup>3</sup>	90%	90%
<b>Output Measures (Quarterly)</b>			
Key	01 Number of Applications Processed <sup>2</sup>	7,600	8,000
Key	02 Number of Licensees Examined <sup>2</sup>	6,600	6,000
<b>Efficiency Measures (Annual)</b>			
Non-Key	01 Average Cost Per Application Processed	\$ 55	\$ 30
<b>Explanatory Measures (Annual)</b>			
Non-Key	01 Total Number of Licensees in an Approved Status	35,000	38,000
<b>03-01 Consumer Responsiveness</b>			
<b>Outcome Measures (Annual)</b>			
Key	01 Percent of Complaints Completed within Ten Business Days of Receipt of Complete Information	99%	99%
Key	02 Percentage of Written Complaints Closed within 90 Days <sup>2</sup>	95%	n/a
<b>Output Measures (Quarterly)</b>			
Non-Key	01 Number of Complaints Closed <sup>2</sup>	1,000	1,000
<b>Efficiency Measures (Annual)</b>			
Non-Key	01 Average Cost Per Complaint Closed <sup>3</sup>	\$ 340	\$ 300
<b>04-01 Agency Administration</b>			
<b>Outcome Measures (Annual)</b>			
Key	01 Percentage of Employees Separated from the Agency <sup>2</sup>	10%	n/a
	02 Percentage of Actual Expenditures to Budgeted Expenditures <sup>2</sup>	95%	n/a

<sup>1</sup> These measures are comparable to similar measures with the Department of Banking<sup>2</sup> These measures are comparable to similar measures with the Department of Banking and Office of Consumer Credit Commissioner<sup>3</sup> These measures are comparable to similar measures with the Office of Consumer Credit Commissioner

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# Office of Consumer Credit Commissioner

## Agency Priorities

FY 2020

### 1. LEGISLATIVE

#### 1.1. Mandated Studies.

**1.1.1. Objective: Legislative Interim Studies.** Participate in legislative interim studies and provide resource information and research.

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

#### 1.2. Sunset Review

**1.2.1. Objective:** Implement changes resulting from Sunset legislation and review.

**Measure:** Regular reports communicated to the Finance Commission.

### 2. REGULATORY ACTIVITIES

#### 2.1. Regulated Entities.

**2.1.1. Objective:** Supervise and monitor the jurisdictionally appropriate industry segments for compliance with state and federal law. Investigate illegal activity. Initiate appropriate regulatory enforcement to ensure compliance with federal and state guidelines to protect the rights of consumers.

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

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

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

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

**Measure:** Reporting on improvements to the ACE Examination Tool.

## **2.2. Licensing.**

- 2.2.1. Objective:** Process 85% of license applications within 60 days from received date to completion date. Provide professional development and training opportunities to licensing staff once per quarter.

**Measure:** Report on license activities, benchmarks, application processing status, and departmental professional development.

- 2.2.2 Objective:** Implement modifications to the pawn employee licensing program to allow pawnshops to opt in to pawn employee licensing as directed in the sunset legislation.

**Measure:** Report on implementation of modifications to online system, industry communications and data on pawnshop employee licensing.

## **3. POLICY AND RULE DEVELOPMENT**

### **3.1. Agency Rules.**

- 3.1.1. Objective:** Rule Review. Complete rule reviews of 7 TAC, Part 1, Chapter 2, Residential Mortgage Loan Originators Regulated by the Office of Consumer Credit Commissioner (last reviewed FY 2015); 7 TAC Chapter 86, Retail Creditors (last reviewed FY 2015); and 7 TAC Chapter 90, Plain Language Contract Provisions (last review published FY 2015, adopted FY 2016). The preceding three rule reviews were deferred from FY 2019 due to legislation affecting these chapters. In addition, complete rule reviews of 7 TAC, Part 1, §1.201, Interpretations and Advisory Letters (last reviewed FY 2016); 7 TAC Chapter 82, Administration (last reviewed FY 2016); and 7 TAC Chapter 87, Tax Refund Anticipation Loans (last reviewed FY 2016).

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

- 3.1.2. Objective:** Rule Development. Work with interested stakeholders from all stakeholder groups to clarify and improve rules as issues arise during licensing, complaints, investigations, examinations, enforcement actions, or from other sources. Continue to hold and refine stakeholder webinars to increase stakeholder engagement in rule development process. Continue to work with interested stakeholders regarding rule provisions necessary to implement 2019 legislation and recommendations from the Sunset Commission. Draft rule amendments as appropriate.

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

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

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

**4.1.1. Objective:** Manage grant solicitation, application review and selection for FY 2020-2021 grant cycle, reporting and funding for the FY 2020-2021 grant cycle.

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

## **4.2 Financial Literacy**

**4.2.1. Objective:** Identify underserved populations in need of financial literacy and provide financial literacy education to new demographics of consumers by collaborating with local agencies. Collaborate with other agencies in the promotion and delivery of financial education as feasible and efficient.

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

## **4.3. Industry and Stakeholder Outreach**

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

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

# **5. AGENCY MANAGEMENT**

## **5.1. Performance Measures.**

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

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

## **5.2. Human Resources.**

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

**Measure:** Report on turnover ratio, cross-training initiatives and retention efforts. Maintain competitive financial examiners career development and progression path.

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

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

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

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

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

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

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

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

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

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

- 5.4.1. Objective: Software Modernization and Continuous Improvement.** Ongoing enhancements to the Application, Licensing, Examination, Compliance System (ALECS), improving functionality and security.

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

- 5.4.2 Objective: Hardware Modernization.** Updating and maintaining the OCCC endpoint computer asset deployment and the shared network equipment.

**Measure:** Reporting on milestones and distribution.

- 5.4.3 Objective: Increase Agency Security Posture.** Using the recommendations provided in the FY19 cybersecurity assessment, OCCC will increase security maturity for objectives in the Texas Cybersecurity Framework.

**Measure:** Activity reporting on the roadmap with timelines for implementation of recommendations.

**5.4.4 Objective: Formal Change Management Procedure.** OCCC IT has recently introduced a change management procedure which generates consistent, collected documentation.

**Measure:** Reporting of change request documentation metrics and summaries.

**FY 20 Performance Measures**  
**Office of Consumer Credit Commissioner**

FY 20 Target FY 19 Target

**Consumer Protection:**

Outcome Measures (Annual)			
Key	Monies returned to consumers	\$5,000,000	5,020,000
Key	Percentage of written complaints closed within 90 days <sup>1</sup>	85%	92%
Key	Percentage of examinations reporting acceptable level of compliance <sup>2</sup>	85%	85%
	Percentage of of licensed locations and registered offices examined annually	20%	25%
	Percentage of repeat referrals for enforcement action	13%	n/a
	Percentage of enforcement actions closed within targeted timeframe	70%	n/a
Output Measures (Quarterly)			
	Number of complaints closed <sup>1</sup>	1800	2020
Key	Number of examinations completed <sup>1</sup>	4000	4200
	Number of investigations completed	80	80
	Number of enforcement actions taken	275	275
	Number of contested cases heard at SOAH	5	6
	Number of compliance aids and tools published	45	n/a
	Number of industry stakeholder and outreach events hosted or attended by OCC staff	30	n/a
Efficiency Measures (Annual)			
	Average number of days for all complaints to reach final disposition	60	n/a
	Average number of days to close a complaint	45	n/a
	Average direct cost per complaint <sup>2</sup>	\$275	n/a
	Average direct cost per examination	\$1,250	n/a
Key	Average number of days to close an enforcement action	100	n/a

**Effective Licensing & Registration:**

Outcome Measures (Annual)			
Key	Percentage of business license applications processed within 60 days	90%	n/a
Output Measures (Quarterly)			
	Number of business applications processed <sup>1</sup>	1750	n/a
	Number of pawnshop employee license applications processed	900	n/a
	Number of residential mortgage loan originator licenses processed <sup>1</sup>	60	150
Efficiency Measures (Annual)			
Key	Average processing time (days) for business license applications	45	30
	Average processing time (days) for pawnshop employee applications	30	30
	Average processing time (days) for residential mortgage loan originators	15	15

**Efficient and Effective Agency Operation:**

Outcome Measures (Annual)			
Key	Percentage of regular employees separated from the agency <sup>1</sup>	16%	n/a
	Percentage of public information requests addressed within 5 business days	80%	n/a
	Percentage of actual expenditures to budgeted expenditures <sup>1</sup>	95%	n/a
Output Measures (Quarterly)			
	Number of public information requests closed	185	n/a
	Number of public information requests withdrawn	10	n/a
Efficiency Measures (Annual)			
	Average number of days to address a public information request	2.6	n/a
Explanatory Measures (Annual)			
	Number of public information requests received	200	n/a

**Financial Education:**

Output Measures (Quarterly)			
Key	Number of people receiving direct educational services	325	n/a
	Percentage of TFEF award recipients who reached their consumer participation goal within the grant period	100%	n/a

<sup>1</sup> These measures are comparable to similar measures with the Departments of Banking and Savings and Mortgage Lending

<sup>2</sup> These measures are comparable to similar measures with the Department of Savings and Mortgage Lending



Charles G. Cooper  
Commissioner

## ***TEXAS DEPARTMENT OF BANKING***

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### **MEMORANDUM**

TO: The Finance Commission

FROM: Charles G. Cooper, Commissioner

DATE: August 6, 2019

RE: Department of Banking Priorities for Fiscal Year 2020

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

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

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

- I.2 Objective: Maintain accurate, timely, and complete communication with Finance Commission members regarding conditions, trends and significant events in the industries the agency supervises.

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

- I.3 Objective: Monitor legislative interim charges that may affect the Department or its regulated entities. Implement legislative changes from the 86<sup>th</sup> legislative session that affect the agency.

Measure: Aid legislative committees with interim charges, if requested. Provide technical assistance and comprehensive resource materials when requested. Implement legislation that directly affects the Department or the industries we regulate by updating or creating rules, policies or procedures.

- I.4 Objective: Implement Sunset “Management Actions” approved by the Sunset Commission.

Measure: Implement Sunset “Management Actions” by updating or creating rules, policies, performance measures or procedures. Begin implementation of the Finance Commission’s Plan to minimize duplication of agency functions and promote more

cost-efficient administration of the finance agencies. Coordinate these efforts with the other Finance Commission agencies.

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

- II.1 Objective: Efficiently structure the agency to meet performance measures. Ensure performance goals are a true evaluation of major functions of the Department (See Attachment A for all performance measures)

Measure: Evaluate and update the Department's performance measures. Continue to meet or exceed the strategic planning goals for performance measures. Maintain accreditation from CSBS for the Bank and Trust Division. Quarterly, report results to the Finance Commission.

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

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

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

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

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

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

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



Measure: Monitor for and investigate illegal activity, and when necessary, initiate appropriate regulatory enforcement actions against licensed and/or unlicensed entities to ensure compliance with applicable statutes and rules to protect the rights and interests of consumers. Refer cases as needed to local, state or federal law enforcement agencies or the Texas Attorney General.

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

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

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

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

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

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

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

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

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

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

Measure: Maintain and periodically update the Department's financial education web pages and brochure. Highlight financial institutions with active programs in agency publications. Continue participation in financial education groups and events.

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

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

Measure: Actively recruit entry level positions at state universities and colleges by attending no less than six job fair events and supporting banking programs at Texas universities. Promptly post vacancies. Periodically review and update personnel policies and procedures.

- IV.2 Objective: Strive to attain full staffing, with an emphasis on employee retention and staff diversity. Promote junior staff involvement in new responsibilities to better enable seamless transition into senior staff positions as vacancies occur. Continue efforts to maintain a competitive salary structure. Obtain feedback from employees and the Employee Advisory Council and implement changes where feasible.

Measure: Continue to improve examination staff retention by addressing major issues that contribute to non-retirement resignations, with a goal to have the agency turnover rate (excluding retirements and intern separations) not exceed 9% for the fiscal year. Given the significant percentage of Department employees that are retirement-eligible, be proactive with succession planning development by providing leadership training. Maintain a competitive examiner salary program compared to the FDIC by striving to be at a 95% equivalency. Implement, when feasible, recommendations of the Employee Advisory Council.

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

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

- IV.4 Objective: Safeguard the integrity of data and information technology networks and systems from unauthorized access or use and ensure that access to critical systems by employees are available during an emergency.

Measure: Perform an annual external information security risk assessment and initiate corrective actions to maintain data integrity and minimize the risk of unauthorized access or use. Continue periodic intrusion testing by the Department of Information Resources for both the network and external facing web resources. Conduct an annual test of the Department's disaster recovery plan and initiate corrective actions to ensure operations will function appropriately.

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

Measure: Provide core required training courses to financial examiners in the FE I – FE III series so they can progress in the financial examiner series. Adequately prepare

assistant examiners to pass the commissioning test. Continue agency efforts to provide continuing education to Bank and Trust Supervision commissioned examiners as well as Special Audits examiners.

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

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

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

Measure: Report on improvements identified and implemented.

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

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

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

Measure: Ensure yearly update and exercise of the Plan.

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

## Proposed Performance Measures for 2020

### Department of Banking

#### Bank and Trust:

##### K Outcome Measures (Annual)

K	01-01.01	Percentage of Banks Receiving Examinations Within Required Timeframes <sup>1</sup>
	01-01.02	Percentage of Foreign Bank Organizations Receiving Examinations Within Required Timeframes
	01-01.03	Percentage of Trust Companies Receiving Examinations Within Required Timeframes
	01-01.04	Percentage of Problem Institutions with Appropriate Supervisory Actions in Place
	01-01.05	Certificate of Accreditation by CSBS Maintained in Good Standing

Target 2020	Target 2019
----------------	----------------

95.00%	95.00%
100.00%	95.00%
90.00%	95.00%
100.00%	100.00%
YES	YES

##### K Output Measures (Quarterly)

K	01-01.06	Number of Bank Examinations Performed <sup>1</sup>
K	01-01.07	# Foreign Bank Organization, Trust Co, Trust Dept, & IT Exams and Other Specialized Reviews Performed

90	108
185	218

##### Efficiency Measures (Annual)

	01-01.08	Average Direct Cost Per Bank Examination
	01-01.09	Assets Examined Per Examiner Day (in Millions)

\$88,700.00	\$84,850.00
\$9.00	\$10.50

##### K Explanatory Measure (Annual)

K	01-01.10	Percentage of Banks Classified Safe and Sound <sup>1</sup>
	01-01.11	Number of Texas State-Chartered Banks
	01-01.12	Total Assets in Texas State-Chartered Banks (in Billions)

95.00%	95.00%
218	233
\$285.00	\$331.00

#### Special Audits:

##### K Outcome Measures (Annual)

K	01-02.01	Percentage of Money Services Business Licensees Examined By Special Audits Within Required Timeframes
K	01-02.02	Percentage of Prepaid Funeral Contract Licensees Examined By Special Audits Within Required Timeframes
K	01-02.03	Percentage of Perpetual Care Cemetery Licensees Examined By Special Audits Within Required Timeframes
	01-02.04	Percentage of PCC and PFC Applications Processed within Statutory Period

90.00%	90.00%
95.00%	95.00%
95.00%	95.00%
95.00%	95.00%

##### K Output Measures (Quarterly)

K	01-02.05	Number of Special Audits Licensees Examined <sup>2</sup>
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550	560
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##### Efficiency Measures (Annual)

	01-02.06	Average Direct Cost Per Prepaid Funeral Contract and Perpetual Care Cemetery Licensee Examination.
	01-02.07	Average Direct Cost Per Money Services Business Licensee Examination

\$2,750	\$2,625
\$9,500	\$8,500

##### Explanatory Measures (Annual)

	01-02.08	Dollar Amount of Prepaid Funeral Contracts in Force (in Billions)
	01-02.09	Number of Special Audits Licensees
	01-02.10	Percentage of Special Audits Licensees Classified Safe and Sound

\$4.2	\$4.1
750	760
95.00%	95.00%

#### Application Processing:

##### K Outcome Measures (Annual)

K	01-03.01	Percentage of Applications and Notices for Banks, Trust Companies, Money Service Businesses, and Check Verification Companies Processed within Statutory Time Periods <sup>1</sup>
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95.00%	95.00%
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##### K Output Measures (Quarterly)

K	01-03.02	Number of Applications and Notices Processed for Banks, Trust Companies, Money Service Businesses, and Check Verification Companies <sup>2</sup>
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311	272
-----	-----

##### K Outcome Measures (Annual)

K	01-04.01	Percentage of Written Complaints Closed Within 90 Days <sup>2</sup>
---	----------	---

100.00%	100.00%
---------	---------

##### Output Measures (Quarterly)

	01-04.02	Number of Written Complaints Closed <sup>2</sup>
--	----------	--

370	400
-----	-----

#### Regulatory Oversight: (Finance Commission) (Reported Internally)

##### Output Measures

	01-04.03	Number of Meetings Convened
--	----------	-----------------------------

6.0	6.0
-----	-----

#### Operational Efficiency:

##### K Outcome Measures (Annual)

K	01-05.01	Percentage of Regular Employees Separated from the Agency <sup>2</sup>
	01-05.02	Percentage of Regular Employees Separated from the Agency (Excluding Retirements)
K	01-05.03	Percentage of Actual Expenditures to Budgeted Expenditures <sup>2</sup>

11.00%	N/A	New
9.00%	N/A	New
95.00%	N/A	New

<sup>1</sup> These measures are comparable to similar measures with the Department of Savings and Mortgage Lending

<sup>2</sup> These measures are comparable to similar measures with the Department of Savings and Mortgage Lending and Office of Consumer Credit Commissioner

**B.**

**Department of Savings and  
Mortgage Lending**

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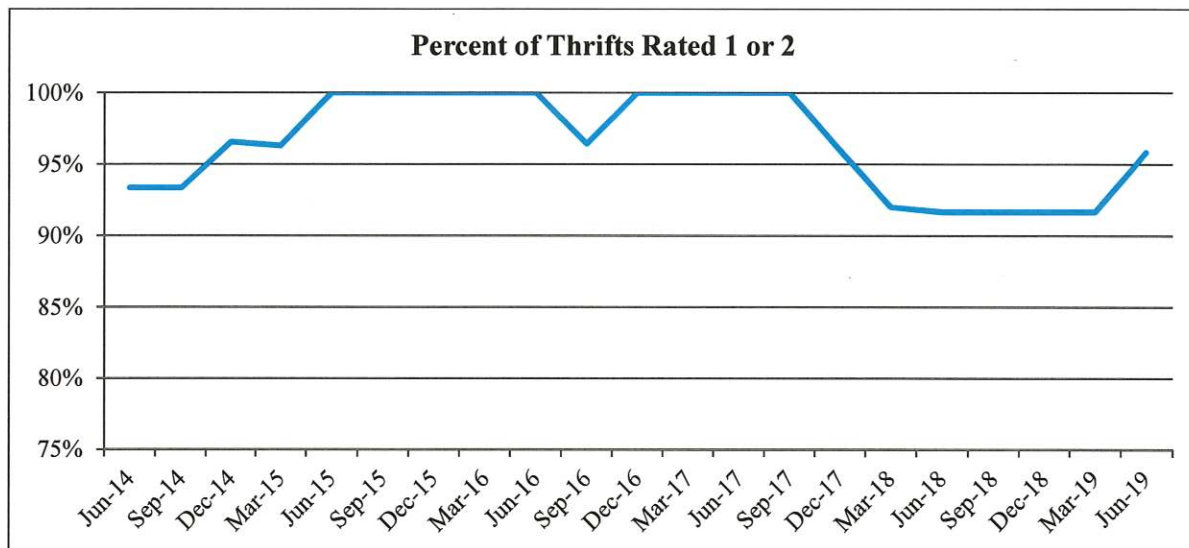
## B. Texas Department of Savings and Mortgage Lending

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

#### a. Industry Status

The June 30, 2019, quarterly financial data on Texas state thrifts had not been finalized by the FDIC prior to the preparation of this report. A detailed report on the second calendar quarter of 2019 will be presented at the next meeting of the Finance Commission.

As of June 30, 2019, there are 24 state savings banks, of which 96 percent are rated a Composite 1 or 2. One formal public enforcement action is outstanding.



The Department continues to monitor various local, state, and national data sources to best understand the risks facing the industry and individual savings banks. Energy prices, cyber security, interest rate risk, construction lending, and liquidity risk all continue to be areas of particular focus.

#### b. Savings Bank Charter and Merger Activity

No merger activity was received, approved or effective since the June Finance Commission meeting.

Other activity includes: On May 1, 2019, an application for a branch in Montgomery, Texas, was received from Spirit of Texas Bank, ssb, College Station, Texas. The application was approved May 24, 2019. The branch became operational July 1, 2019.

#### **Departmental Operations - Thrift**

Commissioner Jones attended the Texas Bankers Association's Legislative Tour in Austin on June 6, 2019. Additionally, some of the Department's Thrift Supervisory staff attended other Texas Bankers Association's Legislative Tour events.



The Department's 12<sup>th</sup> Annual Thrift Industry Day is to be held September 12, 2019. Scheduled to speak on the "Perspectives from Washington, DC" is Jim Butera, with the law firm of Butera, Israel & Bacher, D.C.

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

### a. Residential Mortgage Loan Originators

Current Licensing Population:

License Type As of 07/31/2019	Approved		
	Entity (MU1)	Branch (MU3)	MLO (MU4)
<i>Auxiliary</i>	3	n/a	
<i>CUSO</i>	4	2	
<i>FSC</i>	1	n/a	
<i>Independent Contractor</i>	159	n/a	
<i>Mortgage Company</i>	1,429	706	
<i>Mortgage Banker</i>	407	2,948	
<i>Mortgage Servicer</i>	197	n/a	
<b>Totals</b>	<b>2,200</b>	<b>3,656</b>	<b>28,101</b>

The following shows the aggregate Mortgage Call Report information for calendar years 2017, 2018, and 1<sup>st</sup> Quarter 2019. This information is reported by the licensees.

1 <sup>st</sup> Quarter CY2019 Mortgage Call Report Data			
	\$ Amount	# Loans	Average \$ Loan
<b>Direct</b>	\$14,941,288,669	69,911	\$213,719
<b>3<sup>rd</sup> Party</b>	\$1,993,670,742	7,952	\$250,713
CY2018 Mortgage Call Report Data			
	\$ Amount	# Loans	Average \$ Loan
<b>Direct</b>	\$70,730,872,810	330,038	\$214,311
<b>3<sup>rd</sup> Party</b>	\$8,335,350,406	33,789	\$246,688
CY2017 Mortgage Call Report Data			
	\$ Amount	# Loans	Average \$ Loan
<b>Direct</b>	\$70,194,961,439	338,091	\$207,622
<b>3<sup>rd</sup> Party</b>	\$7,968,833,463	33,862	\$235,333
Aggregate information as reported by licensees.			

### b. Mortgage Examinations

During the first three quarters of FY19 a total of 381 examinations were conducted covering 4,400 individual licensees.

The number of examinations is slightly higher when compared to the same period in FY18. The number of individual licensees covered decreased by 44%. The decrease in the number of licensees

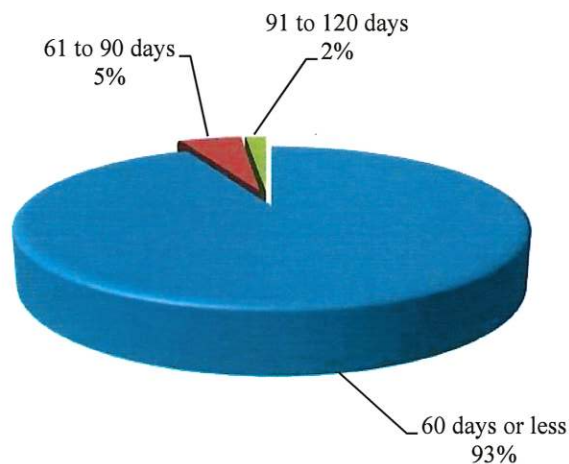


covered is a direct result of one large entity operation being examined during the second quarter of FY18 which accounted for 47% of the fiscal year total.

**c. Consumer Complaints**

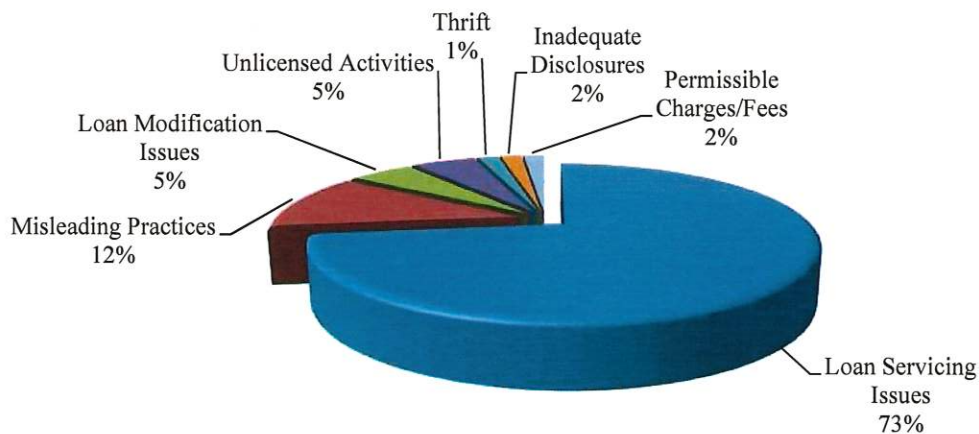
During the first three quarters of FY19, a total of 727 consumer complaints were received. This represents an 18% decrease when compared to the same period in FY18. Loan servicing complaints accounted for 69% of the total number of complaints received. As of May 31, 2019, there were a total of 59 open consumer complaints with 98% of the complaints being aged less than 90 days. The following charts reflect consumer complaint activity as of May 31, 2019.

**Aging of Open Complaints as of 05-31-2019**



Total Open Complaints as of 05-31-2019 = 59

**Nature of Open Complaints as of 05-31-2019**



Total Open Complaints as of 05-31-2019 = 59

### **Departmental Operations - Mortgage**

The Department held training for its mortgage examiners on July 9 – 11, 2019. Included in the training was information relating to electronic mortgages, which was presented by Martin “Marty” Green from Polunsky Bietel Green and Scott Gillen from Stewart Title. Additionally, TRID compliance and fraud, presented by Chris Long with Sovereign Mortgage Services, were covered during the training.

**Department of Savings and Mortgage Lending**  
**Actual Performance for Output Measures**

Type/Strategy/Measure	2019 Target	2019 Actual	2019 YTD	Percent of Annual Target		Comparable Historical Data for the same quarter ending time period			
						FY2018	FY2017	FY2016	FY2015
Output Measures-Key									
1-1-1	Thrift Safety and Soundness								
	1. Number of Examinations Performed								
Quarter 1	22	5	5	22.73%					
Quarter 2	22	8	13	59.09%	*				
The Department examines state chartered savings banks jointly with the FDIC and FRBD, based on a priority schedule. Examination cycles range from 12 to 18 months with frequency based on multiple factors, including institution size, CAMELS rating, and length of time in operation. The results for this measure may fluctuate between quarters due to the timing of individual examinations.									
Quarter 3	22	5	18	81.82%	*	13	15	14	21
The Department examines state chartered savings banks jointly with the FDIC and FRBD, based on a priority schedule. Examination cycles range from 12 to 18 months with frequency based on multiple factors, including institution size, CAMELS rating, and length of time in operation. The results for this measure may fluctuate between quarters due to the timing of individual examinations.									
2-1-1	Mortgage Regulation								
	1. Number of Applications Processed								
Quarter 1	8,000	2,107	2,107	26.34%					
Quarter 2	8,000	1,839	3,946	49.33%					
Quarter 3	8,000	2,336	6,282	78.53%		7,326	6,829	5,370	4,643
	2. Number of Licensees Examined								
Quarter 1	6,000	1,103	1,103	18.38%	*				
During the quarter, 79% of the examinations conducted were of smaller companies, most having fewer than 10 originators being sponsored by the company.									
Quarter 2	6,000	1,280	2,383	39.72%	*				
During the quarter, 82% of the examinations conducted were of smaller companies, most having fewer than 10 originators being sponsored by the company. The Department anticipates meeting this target by year end.									
Quarter 3	6,000	2,017	4,400	73.33%		7,922	4,593	3,573	6,573
3-1-1	Consumer Responsiveness								
	1. Number of Consumer Complaints Completed								
Quarter 1	1,000	230	230	23.00%	<sup>1</sup>				
Quarter 2	1,000	220	450	45.00%					
Quarter 3	1,000	281	731	73.10%		858	801	867	627

\*Varies by 5% or more from target.

<sup>1</sup> The first quarter number has been restated from what was previously reported. The original number reported was 228.

### 3. Fiscal/Operations Activity:

#### a. Funding Status/Audits/Financial Reporting

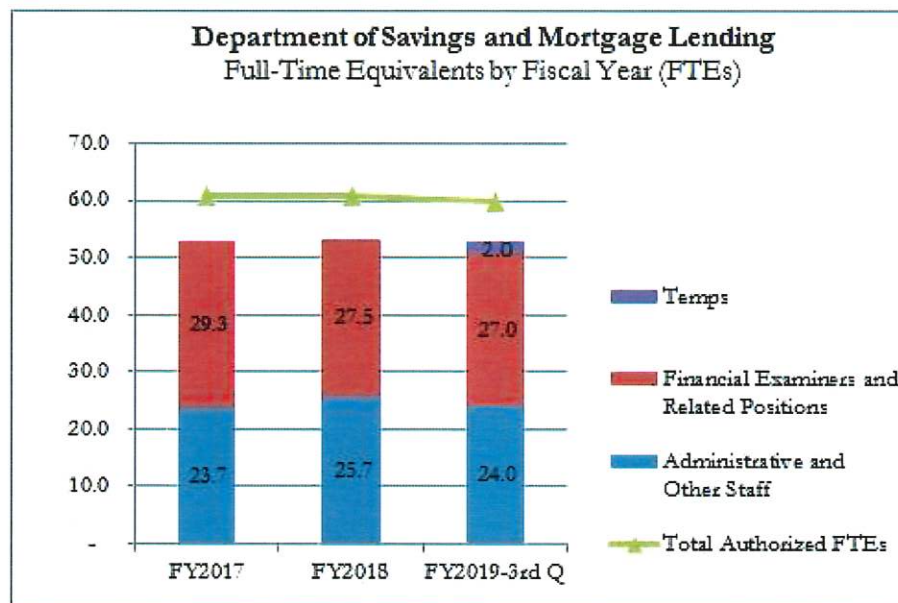
Funding Status/Budget – Staff has closed out the third quarter of FY19 and prepared the budget for FY20.

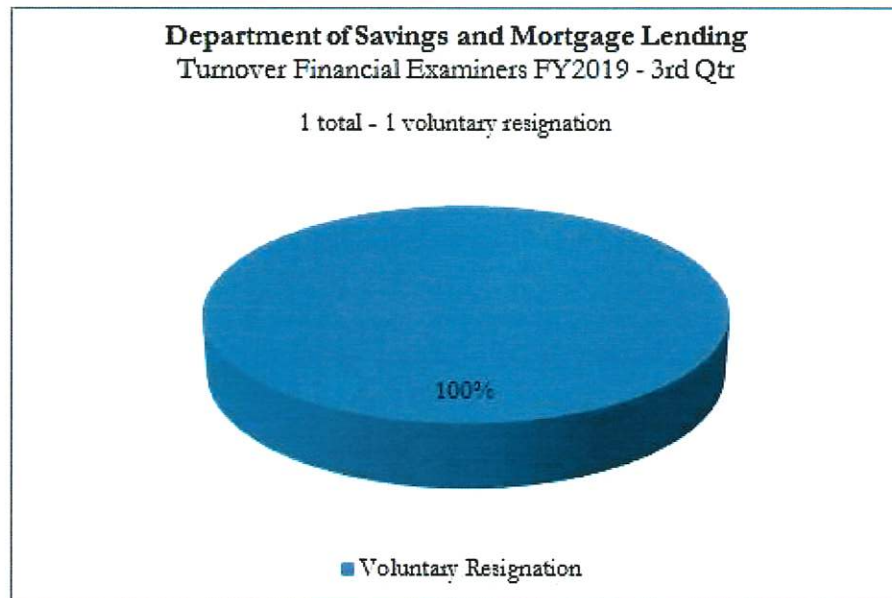
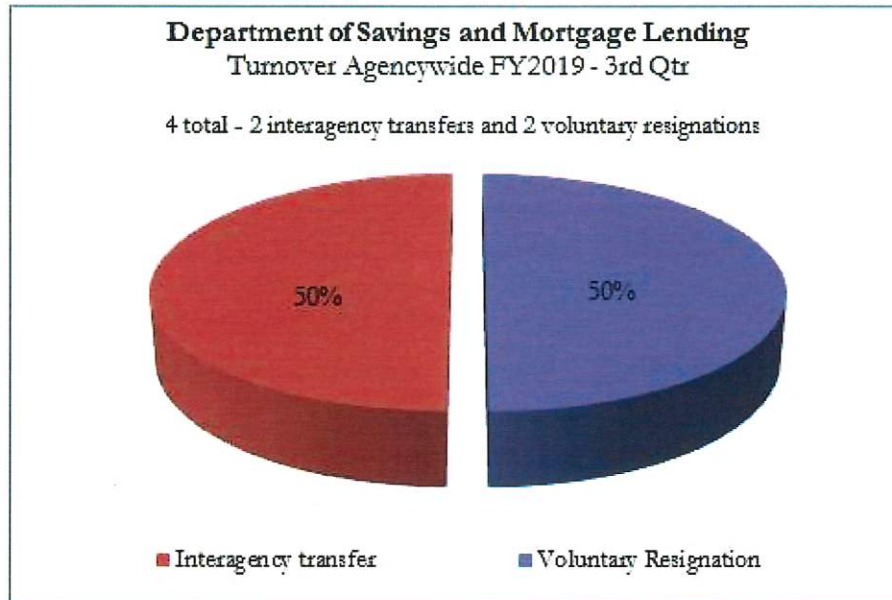
Audits – The reports related to the IT Change Management audit performed by McConnell Jones and the Human Resources Policies and Procedures Review performed by Texas Workforce Commission are located elsewhere in the package.

Administration – Staff worked on and submitted the agency’s Records Retention Schedule to the Texas State Library and Archives Commission for recertification, as required.

#### b. Staffing

Staffing Charts as of May 31, 2019





As of August 1, 2019, the agency was staffed at 54 regular employees – 53 full-time and one part-time with 60 FTEs available.

During the months of June and July the Department had no turnover activity or new staff. On August 1, 2019, a new Attorney began employment with the Department.

Below is the status of the Department's vacancies:

Vacancy Status	
Financial Examiner I/II – Thrift	Open – Reviewing Applications
Financial Examiner III – Thrift	Open – Reviewing Applications
Financial Examiner IV – Thrift	Open – Reviewing Applications



## **Departmental Operations**

On July 12, 2019, Steven O'Shields was elected as President of the Texas State Agency Business Administrators' Association for FY20.

### **4. Legal Activities:**

#### **a. Enforcement**

##### SOAH Cases:

The Department has had no contested hearings before SOAH, since the last report to the Finance Commission in June 2019.

Case No. 450 19-1864 *Department of Savings and Mortgage Lending v. James Joseph Oolut, dba Able Mortgage*: On July 12, 2019, the Administrative Law Judge issued Order No. 4 Denying the Petitioner's Motion for Summary Disposition and setting the contested hearing for August 28, 2019.

#### **b. Gift Reporting**

None

5. Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC, Part 4, Chapter 52 Department Administration, Subchapter A Complaints, §§52.10, 52.11, 52.12, and 52.13, Concerning Complaints and Their Processing, Resolution, Disposition, Review, and Reporting.

**PURPOSE:** The purpose of the new Chapter 52 is to implement a recommendation of the Sunset Advisory Commission that the Department update its complaint processing provisions to be in line with the Sunset Advisory Commission's Licensing and Regulation Model guidelines (Sunset Model).

The Sunset Model is intended as a guide to assist in evaluating occupational licensing and regulatory agencies to see if they are efficient, effective, fair, and accountable in their mission to protect the public. Complaint filing, processing, recordkeeping, appeals, and hearings are topics covered in the Sunset Model. The proposed new rules implement the applicable recommendations contained in the Sunset Model, and provide consistent procedures for persons to complain about conduct of entities and individuals regulated by the Department.

**RECOMMENDED ACTION:** The Department recommends that the Commission adopt the new rules without changes as previously published in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we adopt new 7 TAC, §§52.10, 52.11, 52.12, and 52.13.

**Title 7. Banking and Securities**  
**Part 4. Department of Savings and Mortgage Lending**  
**Chapter 52. Department Administration**  
**Subchapter A. Complaints**

**7 TAC §§ 52.10, 52.11, 52.12, 52.13**

The Finance Commission of Texas (the commission) adopts new Chapter 52, new Subchapter A, Complaints, new §§ 52.10, 52.11, 52.12 and 52.13, concerning complaints.

The Finance Commission adopts new Chapter 52, new Subchapter A, Complaints, new §§ 52.10, 52.11, 52.12 and 52.13, without changes to the proposed text as published in the July 5, 2019 issue of the Texas Register (44 Tex. Reg. 3393). The rules will not be republished.

The Department received one written comment on the proposed amendments from Pioneer Bank, SSB (“Commenter”). The comment mentions §§52.10(b), (d), and 52.11(a), (b), (d), (f), and (h). The comment does not specify whether it is for or against the adoption of the proposal but rather states that the comments are to address perceived anomalies. The Department’s response to the comment is included in the following discussion.

The new rules are adopted to provide consistent procedures for persons to complain about conduct of entities and individuals regulated by the Department. The new rules are adopted in response to a recommendation of the Sunset Advisory Commission that the Department update its complaint processing provisions in line with the Sunset Advisory Commission’s Licensing and Regulation Model guidelines (Sunset Model).

The Sunset Model is intended as a guide to assist in evaluating occupational licensing and regulatory agencies to see if they are efficient, effective, fair, and accountable in their mission to protect the public. Complaint filing, processing, and recordkeeping are topics covered in the Sunset Model. The adopted new rules implement the applicable recommendations contained in the Sunset Model.

The Department distributed a draft of the proposed new chapter to the Office of the Governor, who had no comments on the proposed rules. The Department then held a stakeholder meeting to which it did not receive any formal written precomments, but did receive verbal feedback. The Department appreciates the thoughtful input provided by stakeholders and believe that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

Concerning §52.10(b), Commenter suggests the inclusion of a question regarding the consumer’s efforts to resolve their complaint directly with the financial institution. The Department believes such addition is unnecessary as the Department’s complaint form already includes such a question.

Concerning §52.10(d), Commenter believes the definition of inquiry is overbroad and may potentially encourage the filing of complaints. The Department believes the definition is appropriate, as it is essentially simply a classification for any communication from a consumer that is not a complaint, and is consistent with the proposed definitions from the other finance commission agencies.

Concerning §52.11(a), Commenter has concerns regarding complaints being made



public and wanted to ensure the financial institution's response was made public as well. The Department notes that §52.11(a) is essentially a brief restatement of Texas' law concerning open records/public information and believes that Commenter's concerns are thus addressed in said laws.

Concerning §52.11(b), Commenter proposes that the Department refer Inquirers directly to the relevant financial institution, rather than to the Department's website. The primary reason to refer an Inquirer to the Department's website is to comply with certain statutory provisions requiring that complaints be signed and in writing. Referring Inquirers to their financial institution would not achieve this objective.

Concerning §52.11(d), Commenter is concerned regarding the Department protecting Complainants' identities, as concealing them from a financial institution could make resolving the complaint unworkable, but making private information public could put Complainants' information at risk. The Department believes the inclusion of the qualifiers "good faith effort" and "to the extent possible" address Commenter's initial concern, and the state's public information laws address the second concern.

Concerning §52.11(f), Commenter suggests the Department extend the time a financial institution has to respond to a complaint from 14 calendar days to 20 calendar days, as well as state they are calendar and not business days. The Department notes 14 calendar days has been a longstanding timeframe for a response, with extensions granted as needed. Therefore an across the board extension is unnecessary. Further, the rules specify the few instances where business days are the standard, with the remainder defaulting to calendar days.

Concerning §52.11(h), Commenter believes additional detail should be given regarding the time frame for resolution of complaints. The Department notes that §52.11(h) specifically, and the new Chapter 52 generally, is essentially the formalization in rule of the Department's current policies and procedures regarding the handling of complaints. As there have not been issues raised with the execution of these policies generally, and those in §52.11(h) in particular, the Department believes it is unnecessary to depart from them at this time.

The new rules are adopted under Government Code §2001.004, which provides the authority to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, Finance Code §11.307, which provides that the finance commission shall adopt rules applicable to each entity regulated by the Department relating to consumer complaints, Finance Code §13.011, which provides that the savings and mortgage lending commissioner shall prepare information concerning the Department's regulatory functions and consumer complaint procedures, Finance Code §96.002, which provides that the finance commission may adopt rules necessary to supervise and regulate savings banks and to protect public investment in savings banks, Finance Code §156.102, which provides that the finance commission may adopt and enforce rules necessary for the intent of or to ensure compliance with Chapter 156, Finance Code §157.0023, which provides that the finance commission may adopt and enforce rules necessary for the intent of or to ensure compliance with Chapter 157, Finance Code §158.003, which provides that the finance commission may adopt rules necessary to ensure that

residential mortgage loan servicers comply with federal and state laws, rules, and regulations, and Finance Code §180.004, which provides that the finance commission may implement rules necessary to comply with Chapter 180.

The statutory provisions affected by the adoptions are contained Finance Code Title 3, Subtitles B and C, and also Finance Code Chapters 13, 156, 157, 158, and 180.

## **7 TAC Chapter 52. Department Administration**

### **Subchapter A. Complaints**

#### **§52.10. Definitions.**

(a) “Complainant” means a person who files a complaint.

(b) “Complaint” means a signed, written communication submitted to the department by a person expressing a grievance against an entity or individual believed to be engaging in an activity that is regulated by the department. For purposes of this subchapter, complaints shall contain at least the following information:

(1) The complainant’s name and contact information;

(2) The name of the entity or individual against whom the complaint is submitted;

(3) The date and place of the alleged violation;

(4) A description of the facts or conduct alleged to violate applicable statutes or rules; and

(5) Written documentation supporting the complaint.

(c) “Inquirer” means a person who files an inquiry.

(d) “Inquiry” means a communication made to the department about an individual or entity believed to be engaging in an activity that is regulated by the department, but such communication does not include all of the required elements of a complaint.

#### **§52.11. Complaint Processing.**

(a) Complaints and inquiries filed with the department are generally considered public information, unless a specific statutory exception applies.

(b) Upon receipt of an inquiry, the department will refer the inquirer to the department’s website, or otherwise facilitate the filing of a complaint.

(c) Upon the receipt of a complaint, the department will determine if the complaint relates to an activity that the department regulates.

(1) If the department does not regulate the activity that is the subject of the complaint, the department shall close the complaint, notify the complainant and refer the complainant to the appropriate regulatory authority, if known, within 10 business days of determining that the department does not have jurisdiction.

(2) If the department regulates the activity that is the subject of a complaint, the department shall initiate an investigation into the merits of the complaint by sending,



within ten (10) business days of receiving the complaint, a copy of the complaint and any supporting documentation to the entity or individual that is the subject of the complaint.

(d) The department will make a good faith effort to protect complainants' identity to the extent possible.

(e) The department shall prioritize complaints for purposes of determining the order in which complaints are investigated, taking into account the seriousness of the allegations made in a complaint and the length of time a complaint has been pending.

(f) A regulated entity or individual that receives a complaint forwarded by the department shall respond within fourteen (14) days from the date the request is mailed by the department.

(g) The commissioner may appoint an investigator, enforcement staff, or other subject matter expert, to investigate a complaint received by the department.

(h) The department shall monitor how long each complaint is open, and shall make all reasonable efforts to resolve complaints within ninety (90) days of receipt. The department shall notify the complainant of their complaint status if more than forty-five (45) days has elapsed since the complaint was received, and shall continue to notify the complainant of the status at least quarterly until final disposition, unless such notice would jeopardize an investigation.

**§52.12. Complaint Resolution and Disposition.**

(a) If the department determines that the complaint is not supported by the evidence, or if the complaint is resolved to the satisfaction of the parties, the complaint will be closed.

(b) The department shall notify all parties to the complaint within ten (10) business days of closing the complaint.

(c) If the department determines that the complaint is sufficiently supported by the evidence, the complaint shall be referred to enforcement for adjudication.

(d) A complainant who disagrees with the disposition of a complaint by the department may appeal by requesting to have their file reviewed by another qualified employee of the department. Unless such review results in a new determination by the department, this review shall be considered final and, with the exception of 7 Tex. Admin. Code § 52.12(f), may not be further appealed.

(e) An entity or individual who is the subject of a complaint that has been referred to enforcement, and receives an order, may appeal by requesting a hearing. Such request shall be done in writing, which includes email. Such hearing shall be held in accordance with Chapter 9 of this title and with Government Code, Chapter 2001.

(f) A complainant, entity, or individual who disagrees with the disposition of a complaint by the department may appeal by filing a petition against the department in a district court in Travis County.

**§52.13. Complaint Review and Reporting.**

(a) The department shall maintain in accordance with its retention policy records of all complaints received. Such records shall include the information required in Finance Code § 13.011.

(b) A representative sample of all complaints closed due to lack of jurisdiction or evidence shall be reviewed quarterly by the head of the division that received the complaint.

(c) The department shall submit to the Finance Commission a report of the sources, subjects, types, and dispositions of complaint activity for each fiscal year quarter.

(d) The department shall make available on its website information describing procedures for complaint investigation and disposition.

### **Certification**

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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



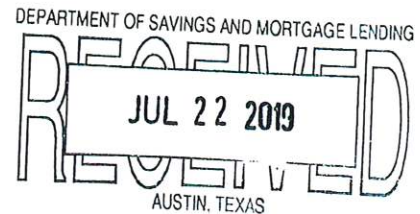


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Sugar Land, Texas 77496-0089

Devyn F. Wills, Associate General Counsel  
Department of Savings and Mortgage Lending  
2601 North Lamar Boulevard, Suite 201  
Austin, Texas 78705-4294

July 17, 2019

Re: Comments on Proposed Rules under 7 TAC §52.10, §52.11



Dear Mr. Wills,

Pioneer Bank, SSB ("Bank") appreciates the opportunity to comment on the Texas Department of Savings and Mortgage Lending's (the "Department") proposal related to consumer complaints. While the new rules are intended to be in line with the Sunset Advisory Commission's Licensing and Regulation Model guidelines (Sunset Model), the Sunset Model appears to be broadly written for various industries and not simply for financial institutions.

We acknowledge the Department's efforts to provide guidance to its regulated entities (financial institutions) as it pertains to complaints. The rules proposed by the Department present several anomalies as written and we will proceed to address our concerns.

#### INFORMATION REQUESTED & PROVIDED

Section 52.10(b) indicates information that will be requested from the consumer and it does not address whether the consumer attempted to resolve their complaint directly with the financial institution. The Bank believes including a question about the consumer's efforts to resolve their complaint with the financial institution directly will assist the Department in determining the level of seriousness. This will also assist financial institutions with determining whether the consumer is potentially expressing discontentment or grievance involving their interaction with the financial institution.

Section 52.10(d) indicates the definition of an Inquiry as "a communication made to the department about an individual or entity believed to be engaging in an activity that is regulated by the department, but such communication does not include all of the required elements of a complaint." This definition appears overbroad and presents concerns as it could be potentially problematic as it appears that the Department is potentially encouraging the consumer to file a complaint.

Further, Section 52.11(d) indicates that "the department will make a good faith effort to protect complainants' identity to the extent possible." It's unclear whether the department is referring to concealing the identity from the financial institution or the public records it maintains when the complaint is filed. Concealing the consumer's identity from the financial institution is impractical as it will impede



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the completion of a thorough and complete investigation. At most, it is necessary to provide the financial institution with the name, product, and loan or account number of the consumer to fully investigate the complaint. Additionally, the Department should seek permission from the consumer before making the complaint public if it cannot guarantee to conceal the consumer's identity. This practice of making the complaint public could present data privacy concerns if the consumer's identity is not concealed.

## INQUIRIES

Section 52.11(a) reads "Complaints and inquiries filed with the department are generally considered public information unless a specific statutory exception applies." It is important that the Department take time to comb the narratives of the complaint before making it public as it could contain false, harmful or derogatory language. The Department should also ensure that the financial institution has the right to request that the financial institution's response is made public or the mere fact that it responded. This protects the financial institution from potentially biased complaints without substantiated facts and/or evidence.

Section 52.11(b) states that "upon receipt of an inquiry, the department will refer the inquirer to the department's website, or otherwise facilitate the filing of a complaint." It is unclear as to why the Department should refer a consumer that meets its definition of an Inquirer to instructions on filing a complaint and not simply to the financial institution. Further, the Department should not seek to regulate inquiries.

## COMPLAINT PROCESS

Section 52.11(f) states that the financial institution "shall respond within fourteen (14) days from the date the request is mailed by the department." Financial Institutions need sufficient time to gather the facts before responding to the consumer and/or the Department. As proposed, financial institutions will lose time due to the complaint being sent through USPS mail and can potentially result in financial institutions merely acknowledging the receipt of a complaint as opposed to providing the resolution. If the Department intends for the institution to provide an adequate resolution, then it is recommended that the Department increase the days allotted from fourteen (14) days to twenty (20) calendar days to mirror the Federal Deposit Insurance Corporation (FDIC). In any case, the Department should clarify whether days are business or calendar days.

Section 52.11(h) reads "The department shall monitor how long each complaint is open, and shall make all reasonable efforts to resolve complaints within ninety (90) days of receipt. The department shall notify the complainant of their complaint status if more than forty-five (45) days has elapsed since the complaint was received, and shall continue to notify the complainant of the status at least quarterly until final disposition, unless such notice would jeopardize an investigation." It is unclear how the Department intends to monitor the complaint process and status. The Department indicates that a financial institution will have (14) days to respond to the complaint and does not indicate the time frame for resolution. It can be inferred that the financial institution has more than forty-five (45) days to resolve a complaint. It can also be interpreted that the Department notifies the consumer within 45 days and every quarter until final





PO Box 20089

Sugar Land, Texas 77496-0089

disposition of its own internal status of a complaint. The time frames and process proposed should be clarified to ensure appropriate and consistent action involving complaints.

Pioneer Bank looks forward to working with the Department on improving the rules pertaining to consumer complaints. Should you have any questions, please contact me.

Sincerely,

A handwritten signature in blue ink that reads "Tiffany S. Auzenne".

Tiffany S. Auzenne  
Director of Compliance  
(281) 632-1478

[E-mail address redacted]

cc: Ron Coben, President and CEO

6. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 4, Chapter 61, §61.1, Concerning Hearings Officers.

**PURPOSE:** The purpose of the amendments to §61.1 is to implement a recommendation of the Sunset Advisory Commission that the Department update its complaint processing provisions to be in line with the Sunset Advisory Commission's Licensing and Regulation Model guidelines (Sunset Model).

The Sunset Model is intended as a guide to assist in evaluating occupational licensing and regulatory agencies to see if they are efficient, effective, fair, and accountable in their mission to protect the public. Complaint filing, processing, recordkeeping, appeals, and hearings are topics covered in the Sunset Model. The proposed new rules implement the applicable recommendations contained in the Sunset Model, and provide consistent procedures for persons to complain about conduct of entities and individuals regulated by the Department.

**RECOMMENDED ACTION:** The Department recommends that the Commission adopt amendments to 7 TAC, §61.1 without changes as previously published in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we adopt amendments to 7 TAC, §61.1.



## ADOPT AMENDMENTS

7 TAC, §61.1

Page 1 of 2

### **Title 7. Banking and Securities Part 4. Department of Savings and Mortgage Lending Chapter 61. Hearings**

#### **7 TAC § 61.1**

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), proposes an amendment to 7 TAC § 61.1 concerning hearings. The amendment is proposed to provide consistent procedures for persons to complain about conduct of entities regulated by the department. The amendment is proposed in response to a recommendation of the Sunset Advisory Commission that the department update its complaint processing provisions in line with the Sunset Advisory Commission's Licensing and Regulation Model guidelines (Sunset Model).

The Sunset Model is intended as a guide to assist in evaluating occupational licensing and regulatory agencies to see if they are efficient, effective, fair, and accountable in their mission to protect the public. Complaint filing, processing, and recordkeeping are topics covered in the Sunset Model. The proposed amendments implement the applicable recommendations contained in the Sunset Model.

Caroline C. Jones, the Department of Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Commissioner Jones also has determined that, for each year of the first five years the

rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is that complainants will have a clear, consistent process to follow and an understanding of timeframes for complaint processing and resolution.

For each year of the first five years that the rules will be in effect, there will be no economic costs to persons required to comply with the rule as proposed.

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

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

The rules create new regulations concerning complaint handling to conform to recommendations from the Sunset Advisory Commission.

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

To be considered, comments on the proposed amendments must be submitted in writing to Devyn F. Wills, Associate General Counsel, Department of Savings and Mortgage Lending, 2601 North Lamar

## ADOPT AMENDMENTS

7 TAC, §61.1

Page 2 of 2

Boulevard, Suite 201, Austin, Texas 78705  
or by email to [smlinfo@sml.texas.gov](mailto:smlinfo@sml.texas.gov) within  
30 days of publication in the *Texas Register*.

The amendments are proposed under Government Code § 2001.004, which provides the authority to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, Finance Code § 11.307, which provides that the finance commission shall adopt rules applicable to each entity regulated by the department relating to consumer complaints, and Finance Code §§ 13.007 and 13.011, which provide that the savings and mortgage lending commissioner shall supervise and regulate the organization, operation, and liquidations of state savings associations and prepare information concerning the department's regulatory functions and consumer complaint procedures.

Other statutes affected by the proposed amendments are found in Finance Code Title 3, Subtitle B, and also Finance Code Chapter 13.

### ***§ 61.1. Hearings Officer***

Chapter 11 of the Texas Finance Code, provides that the Finance Commission may employ a hearings officer, who for purposes of Texas Government Code, § 2003.021, is an employee of the Department of Savings and Mortgage Lending, Texas Department of Banking and the Office of the Consumer Credit Commissioner. As determined by the Commissioner, the [The] Finance Commission hearings officer or an Administrative Law Judge at the State Office of Administrative Hearings (SOAH) may conduct hearings under provisions of the Act.

### **Certification**

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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

7. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 4, Chapter 64, §64.10, Concerning Savings and Loan Association Complaint Notices.

**PURPOSE:** The purpose of the amendments to §64.10 is to implement a recommendation of the Sunset Advisory Commission that the Department update its complaint processing provisions to be in line with the Sunset Advisory Commission's Licensing and Regulation Model guidelines (Sunset Model).

The Sunset Model is intended as a guide to assist in evaluating occupational licensing and regulatory agencies to see if they are efficient, effective, fair, and accountable in their mission to protect the public. Complaint filing, processing, recordkeeping, appeals, and hearings are topics covered in the Sunset Model. The proposed new rules implement the applicable recommendations contained in the Sunset Model, and provide consistent procedures for persons to complain about conduct of entities and individuals regulated by the Department.

**RECOMMENDED ACTION:** The Department recommends that the Commission adopt amendments to 7 TAC, §64.10 without changes as previously published in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we adopt amendments to 7 TAC, §64.10.



**Title 7. Banking and Securities**  
**Part 4. Department of Savings and Mortgage Lending**  
**Chapter 64 Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, [Consumer] Complaints**

**7 TAC § 64.10**

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), proposes an amendment to the name of Chapter 64, and an amendment to the name of § 64.10 concerning complaints. The amendments are proposed to provide clarification concerning consistent procedures for persons to complain about conduct of entities regulated by the department. The amendments are proposed in response to a recommendation of the Sunset Advisory Commission that the department update its complaint processing provisions in line with the Sunset Advisory Commission's Licensing and Regulation Model guidelines (Sunset Model).

The Sunset Model is intended as a guide to assist in evaluating occupational licensing and regulatory agencies to see if they are efficient, effective, fair, and accountable in their mission to protect the public. Complaint filing, processing, and recordkeeping are topics covered in the Sunset Model. The proposed amendments implement the applicable recommendations contained in the Sunset Model.

Caroline C. Jones, the Department of Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state government or for local government

as a result of enforcing or administering the rule.

Commissioner Jones also has determined that, for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is that complainants will have a clear, consistent process to follow and an understanding of timeframes for complaint processing and resolution.

For each year of the first five years that the rules will be in effect, there will be no economic costs to persons required to comply with the rule as proposed.

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

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

The rules create new regulations concerning complaint handling to conform to recommendations from the Sunset Advisory Commission.

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

**ADOPT AMENDMENTS**

**7 TAC, §64.10**

**Page 2 of 3**

To be considered, comments on the proposed amendments must be submitted in writing to Devyn F. Wills, Associate General Counsel, Department of Savings and Mortgage Lending, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294 or by email to [smlinfo@sml.texas.gov](mailto:smlinfo@sml.texas.gov) within 30 days of publication in the *Texas Register*.

The amendments are proposed under Government Code § 2001.004, which provides the authority to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, Finance Code § 11.307, which provides that the finance commission shall adopt rules applicable to each entity regulated by the department relating to consumer complaints, and Finance Code §§ 13.007 and 13.011, which provide that the savings and mortgage lending commissioner shall supervise and regulate the organization, operation, and liquidations of state savings associations and prepare information concerning the department's regulatory functions and consumer complaint procedures.

Other statutes affected by the proposed amendments are found in Finance Code Title 3, Subtitle B, and also Finance Code Chapter 13.

**§64.10. Savings and Loan Association**  
**[Consumer] Complaint Notices**  
**[Procedures]**

**(a) Definitions**

(1) "Privacy notice" means any notice which a savings and loan association provides to consumers regarding the association's privacy practices, regardless of whether it is required by a specific state or

federal law to provide such notice or provided to consumers voluntarily.

(2) "Required notice" means a notice in a form set forth or provided for in subsection (b)(1) of this section.

**(b) Notice of how to file complaints**

(1) In order to let its consumers know how to file complaints, savings and loan associations must use the following notice: The (name of savings and loan association) is chartered under the laws of the State of Texas and by state law is subject to regulatory oversight by the Department of Savings and Mortgage Lending. Any consumer wishing to file a complaint against the (name of savings and loan association) should contact the Department of Savings and Mortgage Lending through one of the means indicated below: In person or by U.S. Mail at 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, Telephone No: (877) 276-5550, Fax No: (512) 936-2003, or via electronic submission on the Department's website at [http://www.sml.texas.gov/consumerinformation/tdsml\\_consumer\\_complaints.html](http://www.sml.texas.gov/consumerinformation/tdsml_consumer_complaints.html).

(2) A required notice must be included in each privacy notice provided to consumers.

(3) A savings and loan association must provide consumers with the required notice in compliance with paragraph (1) of this section whether or not the savings and loan association is required by any state or federal law to provide privacy notices to its consumers.

(4) The following measures are deemed to be appropriate steps to give the required notice:

(A) In each area where a savings and loan association conducts business with consumers in person, the required notice, in the form specified in paragraph (1) of this section, must be conspicuously posted. A notice is deemed to be conspicuously posted if a customer with 20/20 vision can read it from the place where he or she would typically conduct business at that location or if it is included on a bulletin board, in plain view, on which all required notices to the general public (such as equal housing posters, licenses, Community Reinvestment Act notices, etc.) are posted.

(B) At a minimum, the savings and loan association must provide the required notice when the customer relationship is established.

(C) If a savings and loan association maintains a web site, the required notice must be included in a screen which the consumer must view whenever the site is accessed.

#### **Certification**

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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



8. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 4, Chapter 76, §76.71 Concerning Hearings Officer and §76.122, Concerning Savings Bank Complaint Notices.

**PURPOSE:** The purpose of the amendments to §76.71 and §76.122 are to implement a recommendation of the Sunset Advisory Commission that the Department update its complaint processing provisions to be in line with the Sunset Advisory Commission's Licensing and Regulation Model guidelines (Sunset Model).

The Sunset Model is intended as a guide to assist in evaluating occupational licensing and regulatory agencies to see if they are efficient, effective, fair, and accountable in their mission to protect the public. Complaint filing, processing, recordkeeping, appeals, and hearings are topics covered in the Sunset Model. The proposed new rules implement the applicable recommendations contained in the Sunset Model, and provide consistent procedures for persons to complain about conduct of entities and individuals regulated by the Department.

**RECOMMENDED ACTION:** The Department recommends that the Commission adopt amendments to 7 TAC, §76.71 and 76.122 without changes as previously published in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we adopt amendments to 7 TAC, §76.71 and §76.122.

**Title 7. Banking and Securities**  
**Part 4. Department of Savings and Mortgage Lending**  
**Chapter 76 Miscellaneous**  
**Subchapter E. Hearings**  
**Subchapter H. [Consumer] Complaint Procedures**

**7 TAC §§ 76.71, 76.122**

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), proposes an amendment to § 76.71 concerning hearings, an amendment to the name of Subchapter H of Chapter 76, and an amendment to the name of § 76.122, concerning complaints. The amendments are proposed to provide consistent procedures for persons to complain about conduct of entities regulated by the department. The amendments are proposed in response to a recommendation of the Sunset Advisory Commission that the department update its complaint processing provisions in line with the Sunset Advisory Commission's Licensing and Regulation Model guidelines (Sunset Model).

The Sunset Model is intended as a guide to assist in evaluating occupational licensing and regulatory agencies to see if they are efficient, effective, fair, and accountable in their mission to protect the public. Complaint filing, processing, and recordkeeping are topics covered in the Sunset Model. The proposed amendments implement the applicable recommendations contained in the Sunset Model.

Caroline C. Jones, the Department of Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications

for state government or for local government as a result of enforcing or administering the rule.

Commissioner Jones also has determined that, for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is that complainants will have a clear, consistent process to follow and an understanding of timeframes for complaint processing and resolution.

For each year of the first five years that the rules will be in effect, there will be no economic costs to persons required to comply with the rule as proposed.

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

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

The rules create new regulations concerning complaint handling to conform to recommendations from the Sunset Advisory Commission.

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



To be considered, comments on the proposed amendments must be submitted to Devyn F. Wills, Associate General Counsel, Department of Savings and Mortgage Lending, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294 or by email to [smlinfo@sml.texas.gov](mailto:smlinfo@sml.texas.gov).

The amendments are proposed under Government Code § 2001.004, which provides the authority to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, Finance Code § 11.307, which provides that the finance commission shall adopt rules applicable to each entity regulated by the department relating to consumer complaints, Finance Code §§ 13.007 and 13.011, which provide that the savings and mortgage lending commissioner shall supervise and regulate the organization, operation, and liquidations of state savings banks and prepare information concerning the department's regulatory functions and consumer complaint procedures, and Finance Code § 96.002, which provides that the finance commission may adopt rules necessary to supervise and regulate savings banks and to protect public investment in savings banks.

Other statutes affected by the proposed amendments are found in Finance Code Title 3, Subtitle C, and also Finance Code Chapter 13.

#### **§76.71. Hearings Officer**

Chapter 11 of the Texas Finance Code [~~The Texas Banking Act, § 1.011(b), House Bill 1543, Acts, 74th Legislature~~], provides that the Finance Commission may employ a hearings officer, who for purposes of Government Code, § 2003.21, is an employee of the Department of Savings and

Mortgage Lending, Texas Department of Banking and the Office of the Consumer Credit Commissioner. As determined by the Commissioner, the [The] Finance Commission hearings officer or an Administrative Law Judge at the State Office of Administrative Hearings (SOAH) may conduct hearings under provisions of the Act.

#### **Subchapter H. [Consumer] Complaint Procedures**

#### **§76.122. Savings Bank [Consumer] Complaint Notices [~~Procedures~~]**

##### **(a) Definitions.**

(1) "Privacy notice" means any notice which a state savings bank gives regarding a consumer's right to privacy, regardless of whether it is required by a specific state or federal law or given voluntarily.

(2) "Required notice" means a notice in a form set forth or provided for in subsection (b)(1) of this section.

##### **(b) Notice of how to file complaints.**

(1) In order to let its consumers know how to file complaints, state savings banks must use the following notice: The (name of state savings bank) is chartered under the laws of the State of Texas and by state law is subject to regulatory oversight by the Department of Savings and Mortgage Lending. Any consumer wishing to file a complaint against the (name of state savings bank) should contact the Department of Savings and Mortgage Lending through one

**ADOPT AMENDMENTS**

**7 TAC, §§76.71, 76.122**

**Page 3 of 3**

of the means indicated below: In Person or by U.S. Mail: 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294, Telephone No.: (877) 276-5550, Fax No.: (512) 936-2003, or via electronic submission on the Department's website at [http://www.sml.texas.gov/consumerinformation/tdsml\\_consumer\\_complaints.html](http://www.sml.texas.gov/consumerinformation/tdsml_consumer_complaints.html).

(2) A required notice must be included in each privacy notice that a state savings bank sends out.

(3) Regardless of whether a state savings bank is required by any state or federal law to give privacy notices, each state savings bank must take appropriate steps to let its consumers know how to file complaints by giving them the required notice in compliance with paragraph (1) of this subsection.

(4) The following measures are deemed to be appropriate steps to give the required notice:

(A) In each area where a state savings bank conducts business on a face-to-face basis, the required notice, in the form specified in paragraph (1) of this subsection, must be conspicuously posted. A notice is deemed to be conspicuously posted if a customer with 20/20 vision can read it from the place where he or she would typically conduct business or if it is included on a bulletin board, in plain view, on which all required notices to the general public (such as equal housing posters, licenses, Community Reinvestment Act notices, etc.) are posted.

(B) For customers who are not given privacy notices, the state savings bank must give the required notice when the customer relationship is established.

(C) If a state savings bank maintains a website, the required notice must be included in a screen which the consumer must view whenever the site is accessed.

**Certification**

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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

9. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 4, Chapter 81, §81.301 Concerning Investigations and §81.302 Concerning Hearings and Appeals.

**PURPOSE:** The purpose of the amendments to §81.301 and §81.302 are to implement a recommendation of the Sunset Advisory Commission that the Department update its complaint processing provisions to be in line with the Sunset Advisory Commission's Licensing and Regulation Model guidelines (Sunset Model).

The Sunset Model is intended as a guide to assist in evaluating occupational licensing and regulatory agencies to see if they are efficient, effective, fair, and accountable in their mission to protect the public. Complaint filing, processing, recordkeeping, appeals, and hearings are topics covered in the Sunset Model. The proposed new rules implement the applicable recommendations contained in the Sunset Model, and provide consistent procedures for persons to complain about conduct of entities and individuals regulated by the Department.

**RECOMMENDED ACTION:** The Department recommends that the Commission adopt amendments to 7 TAC, §81.301 and §81.302 without changes as previously published in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we adopt amendments to 7 TAC, §81.301 and §81.302.



**ADOPT AMENDMENTS**

**7 TAC, §§81.301, 81.302**

**Page 1 of 3**

**Title 7. Banking and Securities  
Part 4. Department of Savings and  
Mortgage Lending**

**Chapter 81 Mortgage Bankers and  
Residential Mortgage Loan Originators  
Subchapter D. Compliance and  
Enforcement**

**7 TAC §§ 81.301, 81.302**

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), proposes an amendment to § 81.301, concerning complaints and investigations, and to 7 TAC § 81.302 concerning hearings. The amendments are proposed to provide consistent procedures for persons to complain about conduct of entities and individuals regulated by the department. The amendments are proposed in response to a recommendation of the Sunset Advisory Commission that the department update its complaint processing provisions in line with the Sunset Advisory Commission's Licensing and Regulation Model guidelines (Sunset Model).

The Sunset Model is intended as a guide to assist in evaluating occupational licensing and regulatory agencies to see if they are efficient, effective, fair, and accountable in their mission to protect the public. Complaint filing, processing, and recordkeeping are topics covered in the Sunset Model. The proposed amendments implement the applicable recommendations contained in the Sunset Model.

Caroline C. Jones, the Department of Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state government or for local government

as a result of enforcing or administering the rule.

Commissioner Jones also has determined that, for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is that complainants will have a clear, consistent process to follow and an understanding of timeframes for complaint processing and resolution.

For each year of the first five years that the rules will be in effect, there will be no economic costs to persons required to comply with the rule as proposed.

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

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

The rules create new regulations concerning complaint handling to conform to recommendations from the Sunset Advisory Commission.

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

To be considered, comments on the

ADOPT AMENDMENTS

7 TAC, §§81.301, 81.302

Page 2 of 3

proposed amendments must be submitted in writing to Devyn F. Wills, Associate General Counsel, Department of Savings and Mortgage Lending, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294, or by email to [smlinfo@sml.texas.gov](mailto:smlinfo@sml.texas.gov) within 30 days of publication in the *Texas Register*.

The amendments are proposed under Government Code § 2001.004, which provides the authority to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, Finance Code § 11.307, which provides that the finance commission shall adopt rules applicable to each entity regulated by the department relating to consumer complaints, Texas Finance Code § 13.011, which provides that the savings and mortgage lending commissioner shall prepare information concerning the department's regulatory functions and consumer complaint procedures, Texas Finance Code § 157.0023, which provides that the finance commission may adopt and enforce rules necessary for the intent of or to ensure compliance with Chapter 157, and Texas Finance Code § 180.004, which provides that the finance commission may implement rules necessary to comply with Chapter 180.

Other statutes affected by the proposed amendments are found in Finance Code Chapter 156, 157, and 180.

**§ 81.301. [~~Complaints and~~] Investigations**

(a) Investigations [~~Upon receipt of a written complaint alleging acts or omissions of a person as defined under Finance Code, § 180.002(14) required to be licensed or a mortgage banker required to be registered~~

~~under Finance Code, Chapter 157, the Commissioner or the Commissioner's designee will make an initial determination whether the complaint sets forth reasonable cause to warrant an investigation:~~

~~(1) If it has been determined that the complaint warrants an investigation, advise all parties who are subject of the complaint by written notice that a complaint has been filed and an investigation will be conducted. The investigation]~~ will be conducted as [is] deemed appropriate in light of all the relevant facts and circumstances then known. Such investigation may include any or all of the following:

(A) review of documentary evidence;

(B) interviews with complainants, licensees, and third parties;

(C) obtaining reports, advice, and other comments and assistance of other state and/or federal regulatory, enforcement, or oversight bodies;

(D) other lawful investigative techniques as the Commissioner reasonably deems necessary and/or appropriate, including, but not limited to, requesting that complainants and/or other parties made the subject of complaints provide explanatory, clarifying, or supplemental information.

~~[(2) if determined that a complaint does not warrant investigation, advise the complainant of the right to bring forth additional facts or information to have the initiation of an investigation reconsidered,~~



**ADOPT AMENDMENTS**

**7 TAC, §§81.301, 81.302**

**Page 3 of 3**

~~and close the file.]~~

(b) The Commissioner may, upon a finding of reasonable cause, investigate a licensee or registrant to determine whether they are complying with Finance Code, Chapter 157 and this chapter.

(c) The Commissioner may conduct an undercover or covert investigation only if the Commissioner, after due consideration of the circumstances, determines that the investigation is necessary to prevent immediate harm and to carry out the purposes of Finance Code, Chapter 157.

(d) Reasonable cause will be deemed to exist if the Commissioner has received information from a source he or she has no reason to believe to be other than reliable, including documentary or other evidence or information, indicating facts which a prudent person would deem worthy of investigation as a violation of Finance Code, Chapter 157.

**§ 81.302. Hearings and Appeals**

(a) As determined by the Commissioner, hearings may ~~[Hearings are to]~~ be conducted in accordance with Chapter 9 of this title including, but not limited to motions for rehearing, notices of appeal, and applications for review. All ~~[such]~~ hearings shall, unless specifically authorized by the Commissioner, be conducted in Austin, Travis County, Texas. All appeals of decisions of the Commissioner shall be made to the State District Court in Travis County, Texas. Such rules, as set forth in

Chapter 9 of this title are incorporated herein by reference for all purposes.

(b) If a person against whom an order is made requires a hearing, the Commissioner shall set and give notice of a hearing before the Commissioner or a hearings officer. The hearing shall be governed by Government Code, Chapter 2001. Based on the findings of fact, conclusions of law, and any recommendations of the hearings officer, the Commissioner shall, by order, find that a violation has or has not occurred.

(c) Appeals of an order denying an application or the renewal of a license must be properly requested within ten calendar days of the date on which the initial order is received. All other appeals must be properly requested within thirty days of the date on which the initial order is issued. Any order not properly appealed by the applicable deadline becomes final without further action and cannot be appealed ~~[with no further action by the Commissioner]~~.

**Certification**

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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

10. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC, Part 4, Chapter 81, §81.110 Concerning Licensing of Military Service Members, Military Veterans, and Military Spouses.

**PURPOSE:** New §81.110 is proposed to implement the requirements of Occupations Code Chapter 55 regarding licensing Military Service Members, Military Veterans, and Military Spouses, as they pertain to the Department and to Residential Mortgage Loan Originators generally.

**RECOMMENDED ACTION:** The Department recommends that the Commission approve publication of the proposed New 7 TAC, §81.110 for publication in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we publish proposed amendments to 7 TAC, §81.110 in the *Texas Register* for comment.

**Title 7. Banking and Securities**  
**Part 4. Department of Savings and Mortgage Lending**

**Chapter 81. Mortgage Bankers and Residential Mortgage Loan Originators**  
**Subchapter B. Licensing**

**7 TAC § 81.110**

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), proposes a new § 81.110, concerning licensing of Military Service Members, Military Veterans, and Military Spouses. The new rule is proposed to implement Occupations Code Chapter 55 as it relates to the department. The new rule is proposed in response to SB 1200, which provides that a military spouse may engage in a licensed occupation in Texas without an applicable license, if certain conditions are met.

Caroline C. Jones, the Department of Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Commissioner Jones also has determined that, for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is that applicable individuals may be able to begin working in the mortgage industry sooner.

For each year of the first five years that the rules will be in effect, there will be no

economic costs to persons required to comply with the rule as proposed.

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

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

The rules create new regulations concerning licensing Military Service Members, Military Veterans, and Military Spouses.

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

To be considered, comments on the proposed new sections must be submitted in writing to Devyn F. Wills, Associate General Counsel, Department of Savings and Mortgage Lending, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294 or by email to [smlinfo@sml.texas.gov](mailto:smlinfo@sml.texas.gov) within 30 days of publication in the *Texas Register*.

The new rule is proposed under Occupations Code §55.002, which provides that a state agency that issues a license shall adopt rules



regarding exempting certain individuals from penalties for failure to renew a license; Occupations Code §55.004(a), which provides that a state agency that issues a license shall adopt rules regarding alternative licensing for Military Service Members, Military Veterans, and Military Spouses; Occupations Code §55.0041(e), which provides that a state agency that issues a license shall adopt rules regarding recognizing out-of-state licenses of Military Spouses; Occupations Code §55.007(b), which provides that a state agency that issues a license shall adopt rules regarding license eligibility requirements for applicants with military experience; Finance Code §156.102, which provides that the finance commission may adopt and enforce rules necessary for the intent of or to ensure compliance with Chapter 156; Finance Code §157.0023, which provides that the finance commission may adopt and enforce rules necessary for the intent of or to ensure compliance with Chapter 157; and Finance Code §180.004, which provides that the finance commission may implement rules necessary to comply with Chapter 180.

Other statutes affected by the proposed new rules are found in Finance Code Chapters 156, 157, and 180.

**§81.110. Licensing of Military Service Members, Military Veterans, and Military Spouses.**

(a) Purpose. The purpose of this section is to specify residential mortgage loan originator licensing requirements for military service members, military veterans, and military spouses, in accordance with Texas Occupations Code, Chapter 55.

(b) Definitions. In this section, the terms "military service member," "military spouse," and "military veteran" have the meanings provided by Texas Occupations Code, §55.001.

(c) Late renewal. As provided by Texas Occupations Code, §55.002, an individual is exempt from any increased fee or other penalty for failing to renew a residential mortgage loan originator license in a timely manner, if the individual establishes to the satisfaction of the department that the individual failed to renew the license in a timely manner because the individual was serving as a military service member.

(d) Expedited license procedure. As provided by Texas Occupations Code, §55.004 and §55.005, the department will process a license application as soon as practicable and issue a license to a qualifying applicant who is a military service member, military veteran, or military spouse, if the applicant:

(1) holds a current license in another jurisdiction as a residential mortgage loan originator in accordance with the S.A.F.E. Mortgage Licensing Act, 12 U.S.C. §§5101-5117; or

(2) held a residential mortgage loan originator license in Texas within the five years preceding the application date.

(e) Authorization for military spouse.

(1) As provided by Texas Occupations Code, §55.0041, a military spouse may engage in business as a residential mortgage loan originator if the spouse is currently licensed in good standing in another jurisdiction as a residential

mortgage loan originator in accordance with the S.A.F.E. Mortgage Licensing Act, 12 U.S.C. §§5101-5117.

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

(2) Before engaging in business in Texas, the military spouse must comply with the requirements described by Texas Occupations Code, §55.0041(b). If the military spouse does not obtain a residential mortgage loan originator license in Texas, then the military spouse is limited to the time period described by Texas Occupations Code, §55.0041(d).

(3) For purposes of this subsection and Texas Occupations Code, §55.0041, a residential mortgage loan originator license issued in another jurisdiction is substantially equivalent to a Texas residential mortgage loan originator license if it is issued in accordance with the S.A.F.E. Mortgage Licensing Act, 12 U.S.C. §§5101-5117. The department will verify a license issued in another jurisdiction through NMLS.

(f) As provided by Texas Occupations Code, §55.007, with respect to an applicant who is a military service member or military veteran, the department will credit verified military service, training, or education toward the licensing requirements, other than an examination requirement, for a residential mortgage loan originator license, by considering the service, training, or education as part of the applicant's employment history.

### **Certification**

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

<b>SML Future Rule Activity</b>		
<b>Rule</b>	<b>Short Title/Purpose</b>	<b>Projected Date for Presentation</b>
7TAC, Part 8, Ch. 155	<b>Payoff Statements</b> To conduct standard rule review under Tex. Gov't. Code, §2001.039 Joint rule review action between the Finance Commission agencies.	October, 2019
7TAC, Part 4, Ch. 52	<b>Hearings, Appeals, and Informal Settlement Conferences</b> New §52.20 will provide for traditional and alternative dispute resolution mechanisms. This rule will be proposed in response to a recommendation of the Sunset Advisory Commission	October, 2019

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**C.**

**Office of Consumer Credit  
Commissioner**

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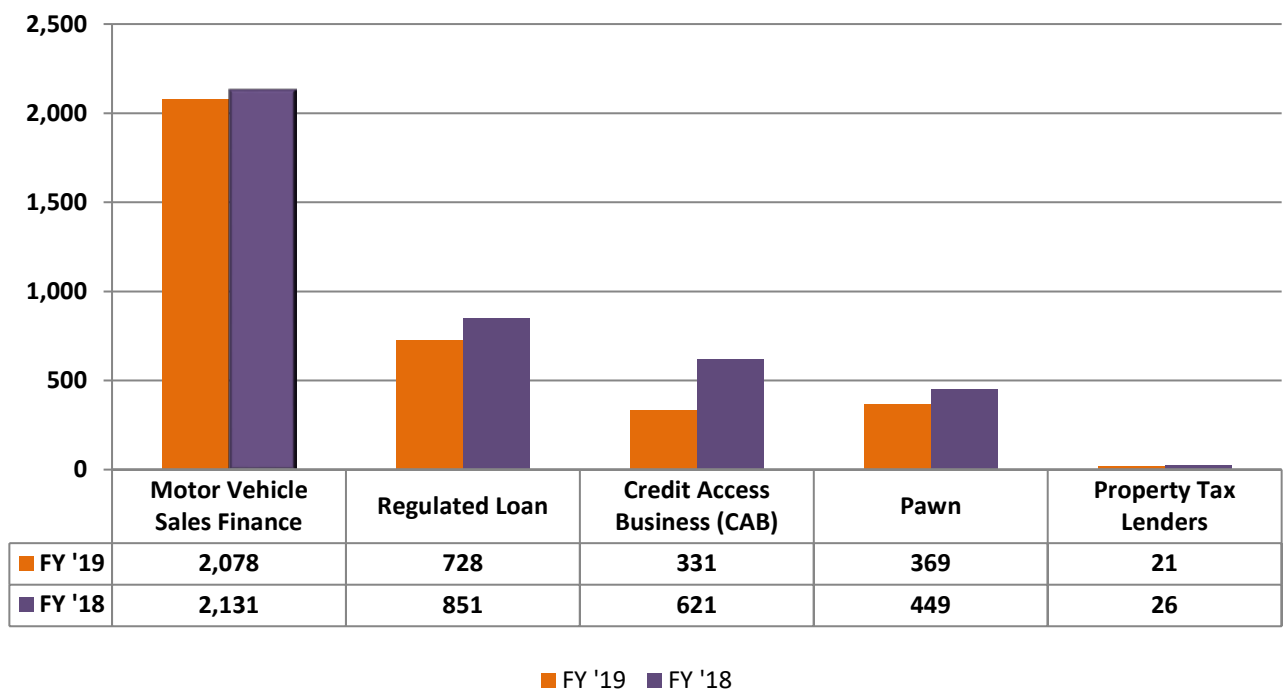
## Consumer Protection and Consumer Assistance Report

The examination progress for prorated FY 2019 goals is ahead of the FY 2019 goals. Currently, the Consumer Protection Department is completing two large Credit Access Business enterprise level exams and finalizing two out-of-state examinations of Motor Vehicle Sales Finance licensees. Additionally, one Credit Access Business enterprise level exam is in the planning stages.

The department conducted a “Train the Trainer” workshop attended by experienced financial examiners and Regional Supervisors with the goal of developing standard lesson plans and curriculum delivery.

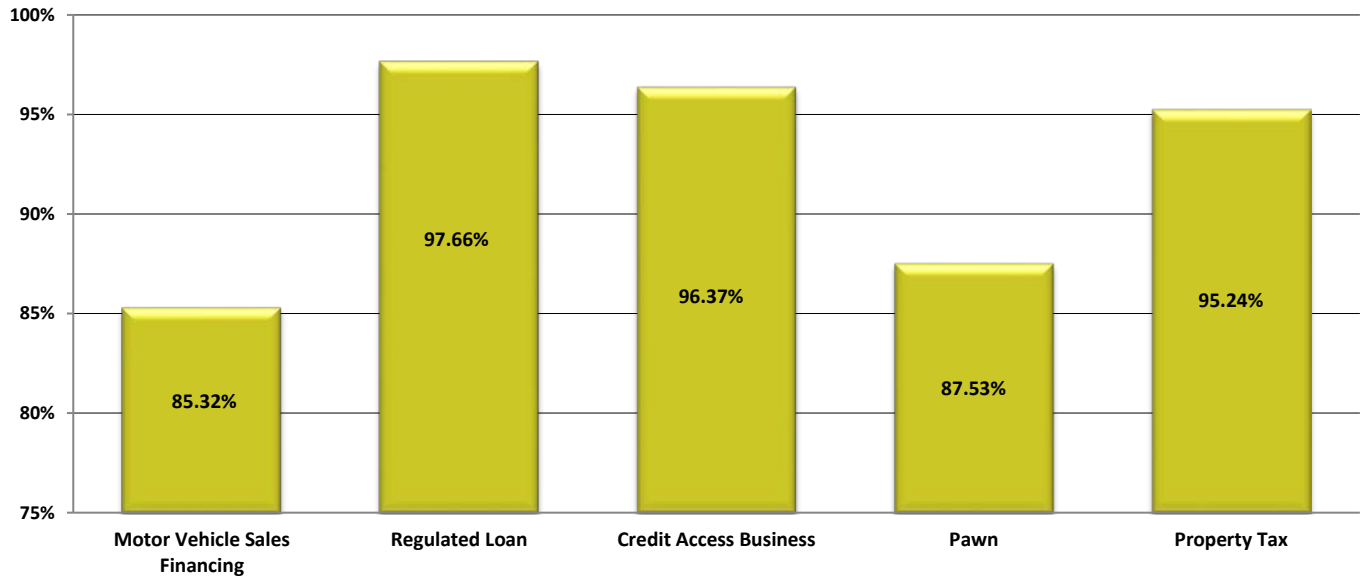
The two groups of financial examiners hired in the first quarter of FY 2019 have been certified in Motor Vehicle Sales Finance examinations. The four examiners previously in training for Subchapter F Regulated Lending and Pawnshops are now certified.

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

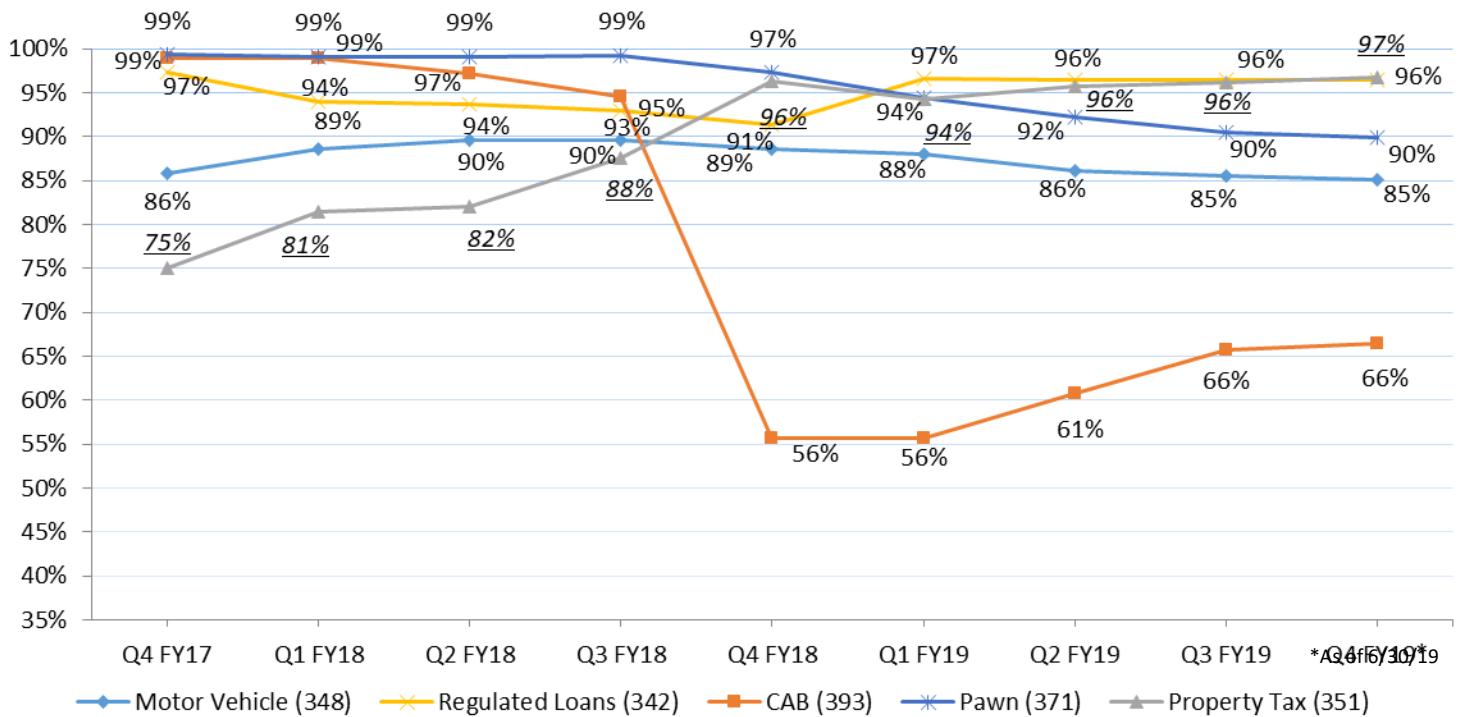


The first chart below reflects an acceptable level of compliance for examinations conducted during the first six months of FY 2019. All five license types are within an acceptable level of compliance (85%). The second chart shows acceptable compliance levels over a 12-month trailing period.

### Acceptable Level of Compliance FY '19 (Sept 2018 - Jun 2019)



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



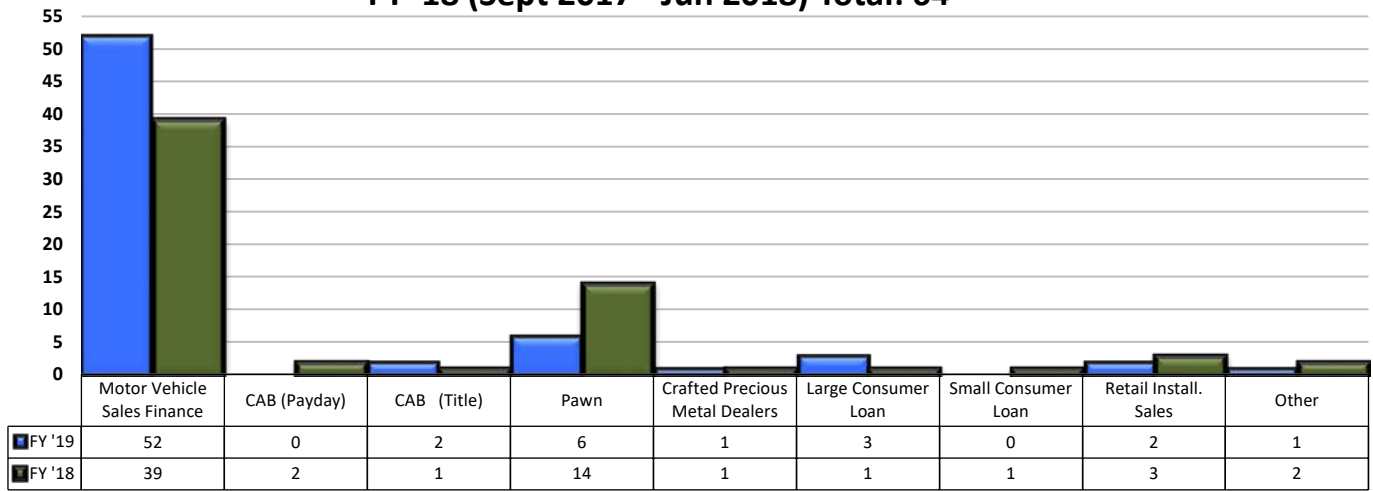


Motor Vehicle Sales Finance investigations and complaints are at a high level. The majority of the investigations and complaints are attributed to unlicensed activity and issues relating to repossessions.

### Investigations

For FY 2019, the agency completed 67 investigations, 83.75% of the FY 2019 goal of 80 investigations. Motor Vehicle Sales Finance was the largest category comprising 77.6 % of the overall number of investigations completed thru the third quarter of FY 2019 with unlicensed activity as the top issue.

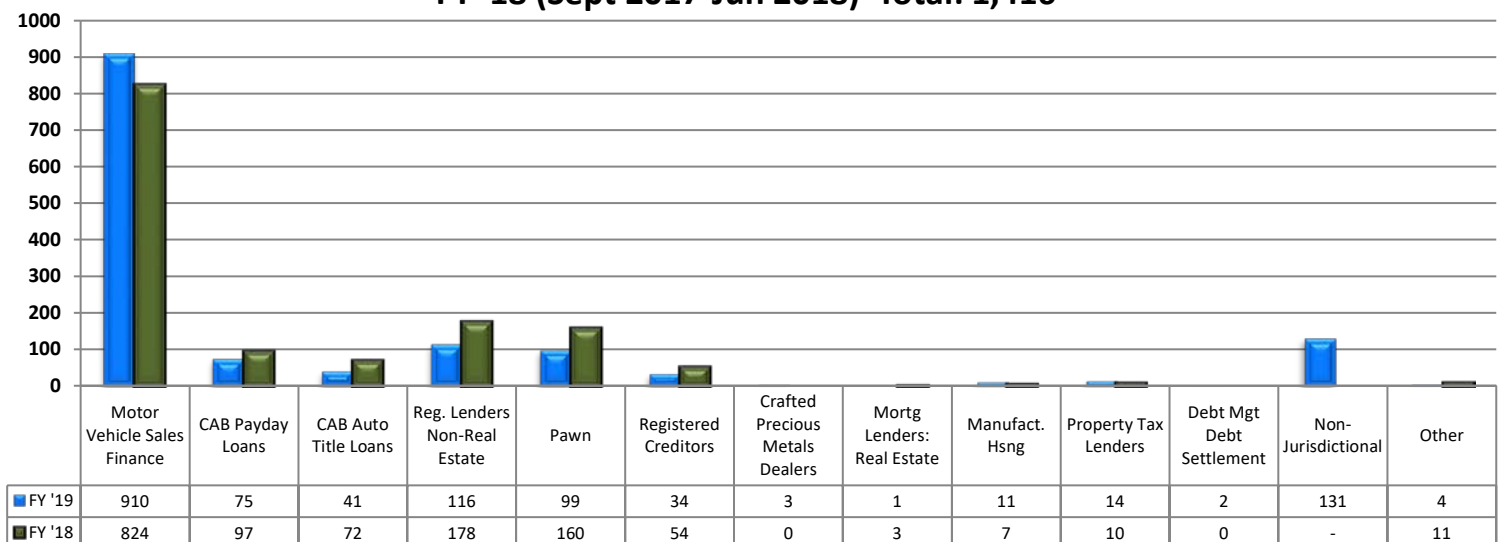
### Investigations Completed FY '19 (Sept 2018 - Jun 2019) Total: 67 FY '18 (Sept 2017 - Jun 2018) Total: 64



### Consumer Assistance

For this period, 1,441 complaints were processed of which 131 were classified as non-jurisdictional.

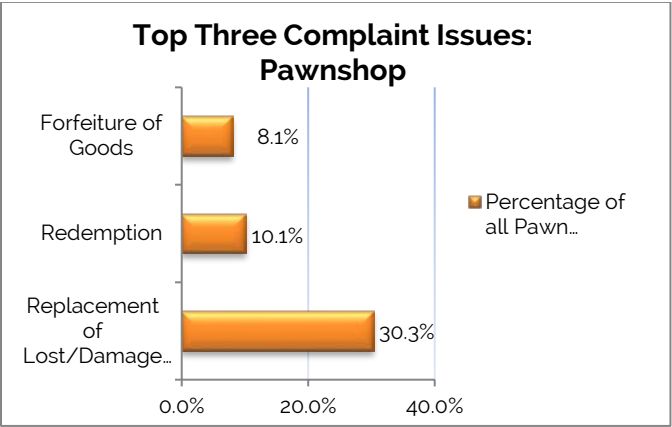
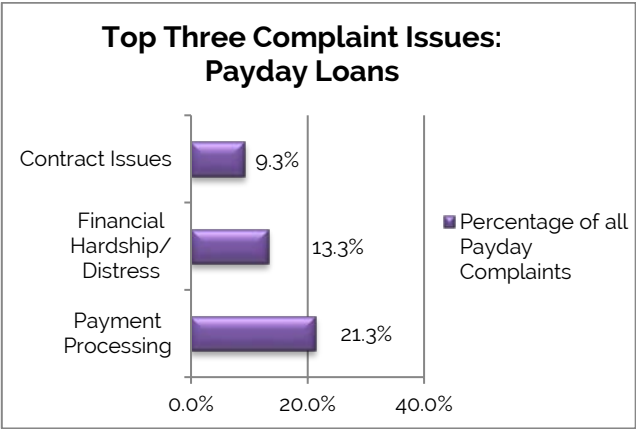
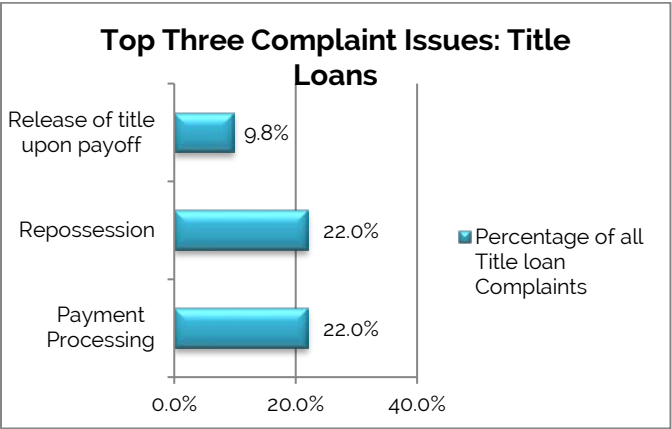
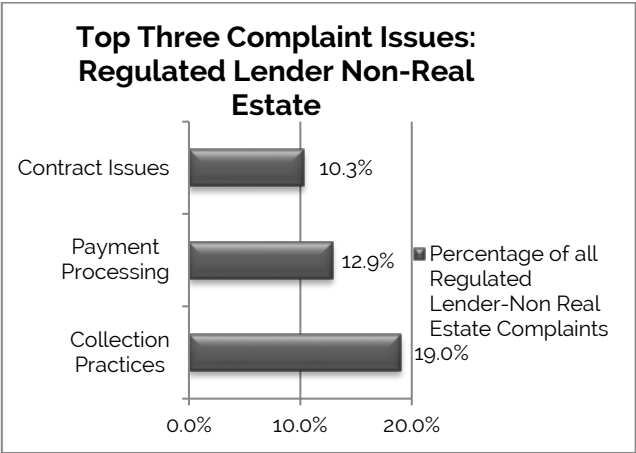
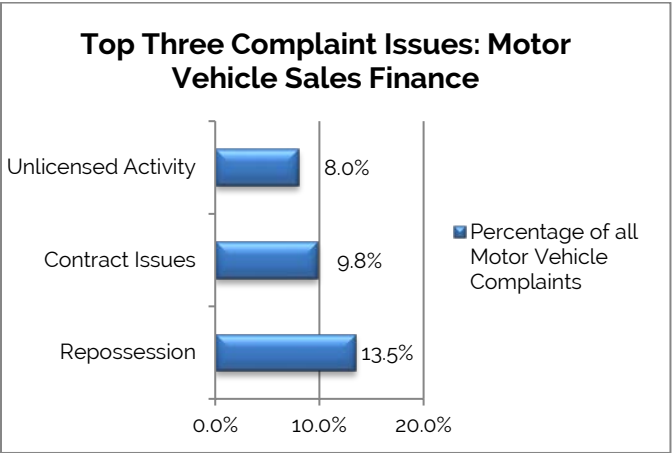
### Complaints Processed FY '19 (Sept 2018-Jun 2019) Total: 1,441 FY '18 (Sept 2017-Jun 2018) Total: 1,416



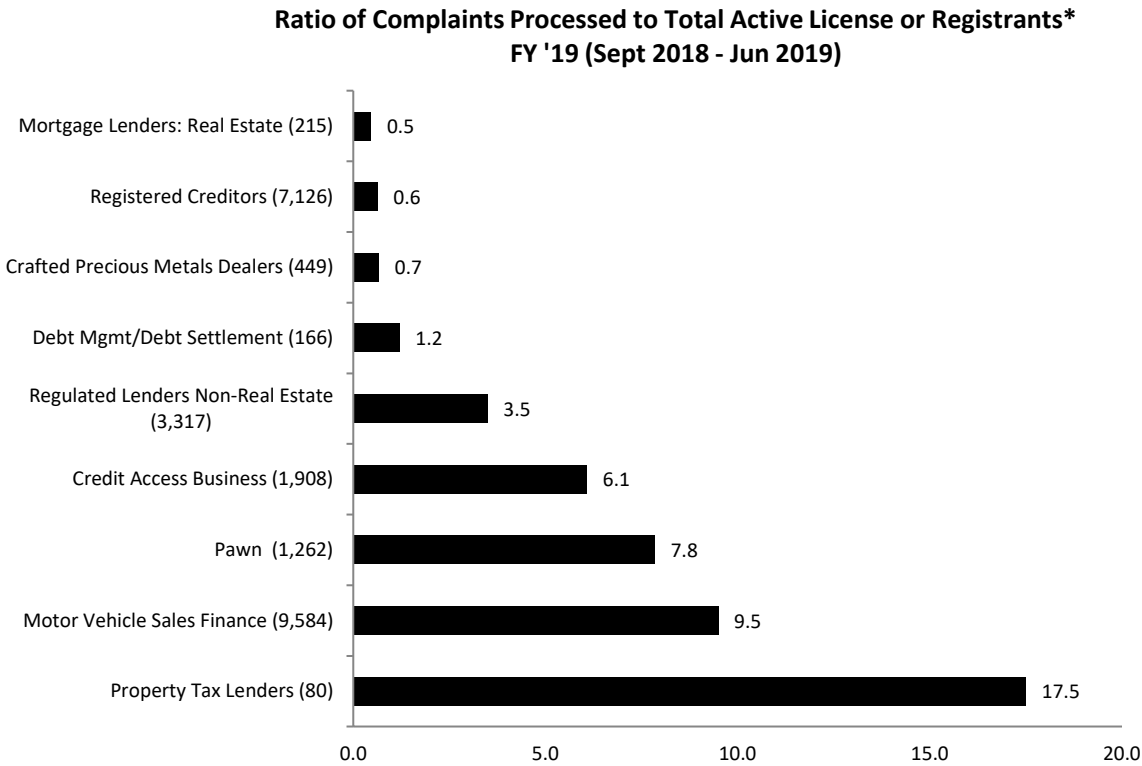
The top four areas of complaints are (1) Motor Vehicle Sales Finance (MVSF), (2) Credit Access Business (CAB), (3) Regulated Lenders Non-Real Estate, and (4) Pawn.

MVSF complaints were the largest complaint category at 63.2%. The second largest number of complaints came from CAB complaints at 8.1% collectively; separately, these are 5.2% for payday loans and 2.8% for title loans. The third largest category of complaints came from Regulated Lenders Non-Real Estate at 8.0%. The fourth largest category was Pawn at 6.9% complaints.

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



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



\*License-Registrant levels as of 7-1-2019

■ Complaints per Hundred Licenses



## **Licensing Report- August 2019**

*Mirand Diamond, Director*

### Renewals

Renewal for pawn shops and pawn employees concluded at the end of June, with 99% of pawn shops renewing and 73% of pawn employees renewing. Pawnshops who did not renew can reinstate the license through December.

Motor vehicle and commercial motor vehicle sales finance license renewal ended July 31. The department estimates that approximately 87% of licensees in these industries will renew, and 90% of renewals will be submitted online.

The department is preparing for renewal of registered creditor registrations which will open in early September.

### Applications Processing

Despite high call volume and customer contact during pawn and motor vehicle renewal, department staff has been able to keep pending application volume at a manageable level. The pending volume of business license applications remains close to the goal, and pawn employee applications are below the pending goal for volume.

The department anticipates the volume of incoming pawn employee applications will decrease when pawn shops choose to opt in to pawn employee licensing beginning in September. The department is planning to shift resources accordingly should this occur.

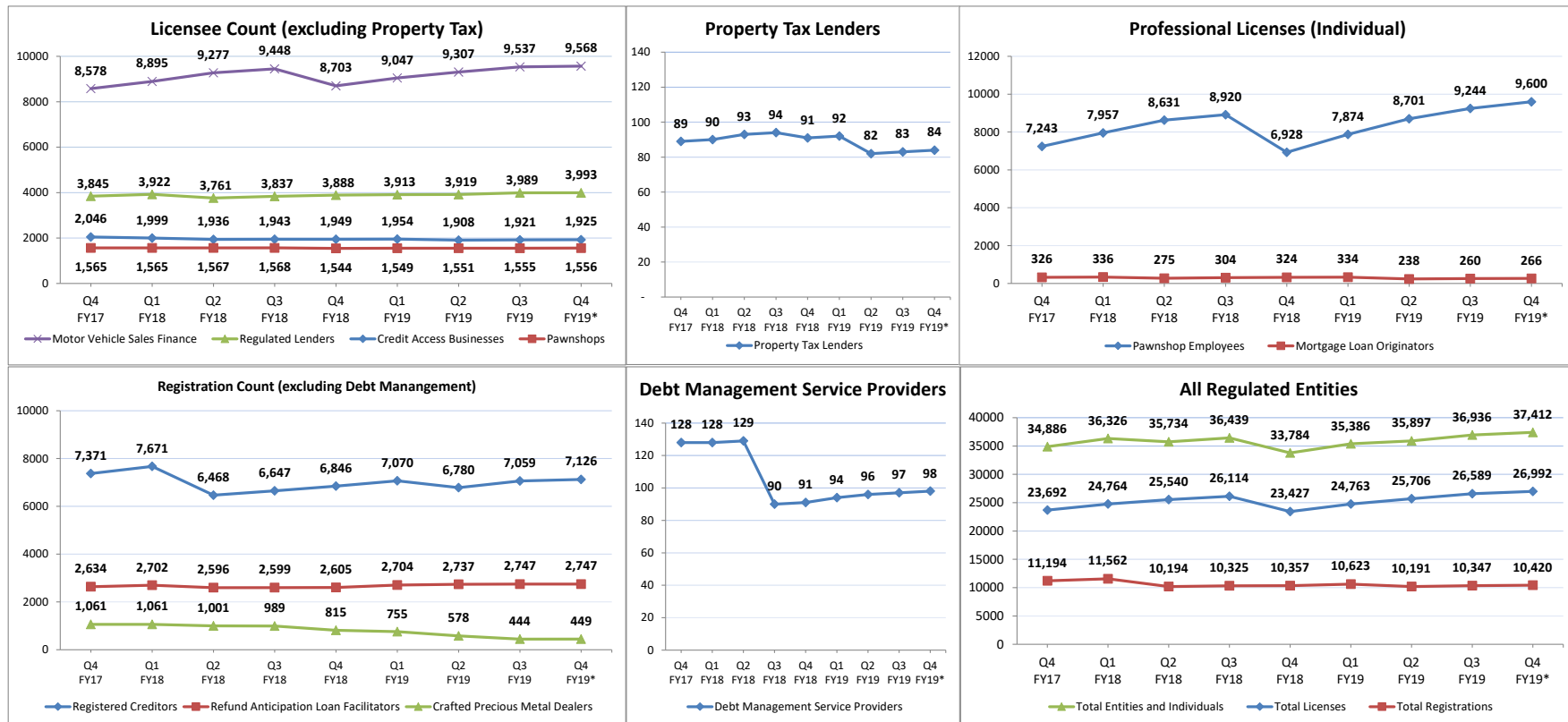
### Other Updates

The department is modifying systems and processes to accommodate the new pawn employee opt-in program as enacted in the agency's sunset bill.

### 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 7/1/2019



## ADMINISTRATION REPORT

### COMMUNICATIONS

Agency staff continue to provide a combination of live presentations and communication through various channels to regulated entities.

- In early June, several staff members attended the National Association of Consumer Credit Administrators Annual Meeting and Regulators Training Symposium in Dallas.
- June 5-6, Examiner Carlos Garcia addressed the Texas Department of Motor Vehicles (DMV) training in McAllen.
- On June 6, Deputy General Counsel Matthew Nance spoke at the National Automotive Finance Association's Non-Prime Auto Financing Conference, in a panel on state regulator insights.
- On July 2, Sr. Supervising Examiner, William Purce provided a presentation for the Texas Department of Housing and Community Affairs Licensing Education Class.
- July 10-11, Examiner Eric Fancher addressed the DMV training in McAllen.
- On July 11, Commissioner Pettijohn presented at the Texas Consumer Finance Association's Annual Meeting and participated in the afternoon round table discussions with Director of Consumer Protection, Huffman Lewis in San Antonio.
- On July 22, Huffman Lewis and Review Examiner Eric Fancher presented at the Texas Association of Independent Automobile Dealers Association Annual Conference in San Antonio, with Commissioner Pettijohn also in attendance.
- On July 22, Deputy General Counsel Matthew Nance spoke at the Conference of State Bank Supervisors' Legal Seminar, in a panel on temporary authority for residential mortgage loan originators.

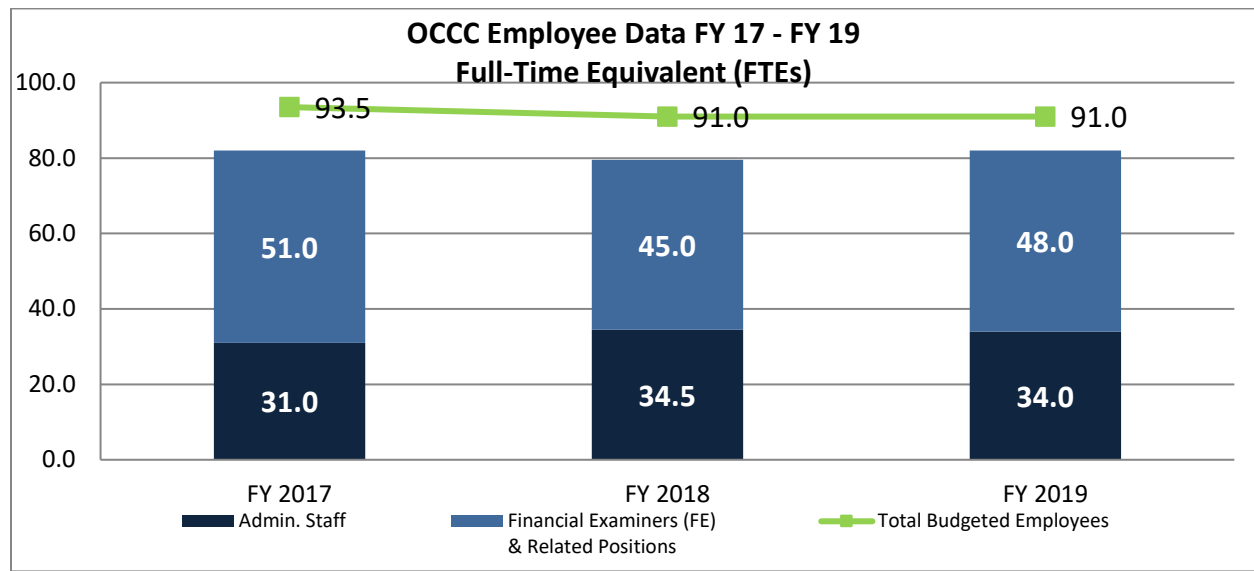
### HUMAN RESOURCES

For this reporting period (June-July), the Agency ended with 82 FTEs. Currently the agency is seeking to fill the following position:

Vacancy	Status
Program Specialist III (1-Austin)	Active – Accepting Applications

The following chart compares administrative staff vs. financial examiners (FEs) for the last three fiscal years.



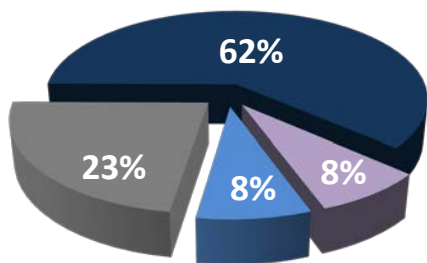


During this period, the Agency had 1 separation. The current turnover rate is 15.4%. The chart below represents year-to-date data.

### OCCC Turnover Categories FY 19 - All Employees

(09/01/18 - 7/31/19)

13 total - 1 Interagency Transfer, 8 Voluntary Resignations, 3 Retirements, 1 Dismissal

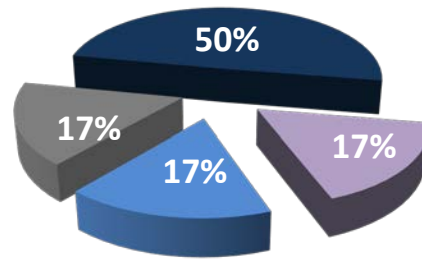


■ Interagency Transfer ■ Retirement  
 ■ Voluntary Resignation ■ Dismissal

### OCCC Turnover FY 19 - FE Series

(09/01/18 - 7/31/19)

6 total - 1 Interagency Transfer, 3 Voluntary Resignations, 1 Retirement, 1 Dismissal



■ Interagency Transfer ■ Retirement  
 ■ Voluntary Resignation ■ Dismissal

On June 17<sup>th</sup>, the OCCC received an official completed review from the Texas Workforce Commission Civil Rights Division of the personnel policies and procedures system under Texas Labor Code §§ [21.451 - 21.456](#). Based on that review, OCCC's personnel policies and procedures are in compliance with Texas Labor Code Chapter 21. OCCC is scheduled for its next review in six (6) years.

All employees have met the two year mandatory online Diversity, Equal Opportunity & Non-Discrimination Training provided by the Texas Workforce Commission, Civil Rights Division.

### **FINANCIAL EDUCATION**

During Q3, the Financial Education Specialist provided 94 students with financial education. As the school year continued to progress, increased availability and access to students continued and multiple weekly youth-based programs were provided. By the end of July 2019, a total of 17 financial literacy presentations were provided to 306 Texans seeking financial education, or 94% of the yearly participation goal. The department has reached out to organizations throughout Texas to promote financial education.

In order to provide financial education services statewide, new partnerships were formed with two senior centers in the Houston area, Fonteno Senior Education Center and Thomas A. Glazier Senior Education Center. The Financial Education Specialist coordinated two additional presentations for the fourth quarter in Houston, Texas.

Additionally, the Financial Literacy Specialist worked in collaboration with the State Securities Board (SSB) and the Department of Family and Protective Services (DFPS) to implement the provisions of House Bill 35. House Bill 35 required the OCCC, the DFPS, and the SSB to combine resources in order to update the Basic Life Skills and Social Skills guide delivered by the DFPS for fostered youth entering adulthood. This publication contains requirements for child-placing agencies and general residential operations that contract with the DFPS to provide residential child care.

### **Information Technology**

#### *Compliance*

IT has participated in the Change Management audit and has worked on implementing new procedures to address the recommendations.

#### *Hardware and Systems*

One internal server has been updated to Windows Server 2019, which provides improved security and other upgrades. The second Windows-based server will soon follow.

OCCC has nine enterprise computers running on Windows 7. IT plans to replace all with Windows 10 computers by end of CY'19. Microsoft has announced that Windows 7 support will end in January 2020.

IT has piloted the use of Cisco Jabber to enable employees to re-route their Austin office phones to their laptop when off-site.

#### *Security & Software*

The ALECS Core Build update, which integrated the latest release of JavaScript for several security improvements, was released for Production on July 01.

IT and a contracted vendor implemented a Captcha text as an additional login security feature.

The Statement of Work for the Annual Reporting update to ALECS was executed on July 03.

Requirements gathering for the Pawn Employee Opt-in has been completed and technical documents written and provided to the contracted vendor.



## **Accounting Report**

*Christina Cuellar Hoke, Manager*

The Accounting department will be attending the AFR training courses offered by the Comptroller's office in August. Also, Governmental Accounting Standards Board (GASB) questionnaires have been submitted to the Office of Texas Comptroller of Public Accounts, as per their request. The department has completed and submitted the FY 20 Agency budget. The Accounting department is now preparing for year-end, August 31, 2019.

**OFFICE OF CONSUMER CREDIT COMMISSIONER**  
**EXECUTIVE SUMMARY**

*As of May 31, 2019*

	FY 2017	FY 2018	FISCAL YEAR 2019				
			1st QTR	2nd QTR	3rd QTR	4th QTR	FYTD
CONSUMER PROTECTION							
Monies Returned to Consumers (000)	20,593	5,122	2,352	12,092	31		14,475
Regulated Lenders Examinations	1,207	1,085	266	176	209		651
Property Tax Lender Examinations	32	27	10	3	8		21
Pawnshop Examinations	575	484	121	57	147		325
Motor Vehicle Examinations	2,354	2,269	593	654	650		1,897
Credit Access Businesses Examinations	652	638	22	110	191		323
CONSUMER ASSISTANCE							
Telephone Complaints Received	986	742	154	78	154		386
Written Complaints Received	1,111	1,073	270	227	317		814
Total Complaints Processed	2,130	1,768	483	341	441		1,265
% of Written Complaints Closed within 90 Calendar Days	91.83%	83.72%	85.28%	76.49%	88.25%		83.67%
ADMINISTRATIVE ENFORCEMENT ACTIONS							
Originated	371	194	199	38	89		326
Finalized	389	200	22	161	70		253
LICENSING AND REGISTRATION							
Licenses							
Regulated Loan Licenses	3,845	3,888	3,913	3,919	3,989		3,989
Pawnshop Licenses	1,565	1,544	1,549	1,551	1,555		1,555
Pawnshop Employee Licenses	7,243	6,928	7,874	8,701	9,244		9,244
Commercial MV Sales Fin. Licenses	39	49	52	55	57		57
Motor Vehicle Sales Finance Licenses	8,539	8,654	8,995	9,252	9,480		9,480
Property Tax Loan Licenses	89	91	92	82	83		83
Mortgage Loan Originators	326	324	334	238	260		260
Credit Access Business Licenses	2,046	1,949	1,954	1,908	1,921		1,921
Registrations							
Registered Creditors	7,371	6,846	7,070	6,780	7,059		7,059
Crafted Precious Metal Dealers	1,061	815	755	578	444		444
Debt Management Service Providers	128	91	94	96	98		98
Refund Anticipation Loan Facilitators	2,634	2,605	2,704	2,737	2,747		2,747
Applications							
Business -- New	1,522	1,594	417	462	374		1,253
Business -- Change of Ownership	138	136	50	23	37		110
Pawnshop Employees -- New	3,133	3,135	1,164	1,069	744		2,977
HUMAN RESOURCES DATA							
Field Examiners Staffing	41	39	45	45	42		42
Total Staffing	82	80	86	87	83		83

**Office of Consumer Credit Commissioner  
Actual Performance for Output Measures  
Fiscal Year 2019**

Type/Strategy/Measure	2019 Target	2019 Actual	2019 YTD	Percent of Annual Target	Comparable Historical Data for the same time period			
					FY2018	FY2017	FY2016	FY2015
Output Measures-Key								
1-1-1	Complaint Resolution							
	1. # Complaints Closed							
Quarter 1	2,020	482	482	23.86%				
Quarter 2	2,020	342	824	40.79%				
The number of complaints processed or closed has declined due to a reduction in the overall number of actual complaints received. The agency has received 729 complaints for FY19YTD in comparison to 891 complaints for FY18YTD. The decline appears to be caused by Texas’ strong economic condition. Although the number of complaints received has declined, the agency has noted an increase of 25 complaints involving complex transactions in Motor Vehicle Sales Finance and Property Tax Lenders over the same period in FY18 which require more resources to process.								
Quarter 3	2,020	441	1,265	62.62%	1,277	1,568	1,668	1,575
The total number of complaints resolved FYTD has declined due to a reduction in the overall number of actual complaints received in this period. The agency received 111 fewer complaints year over year. Although the number of complaints received year to date has declined, in the same period there was an increase of 90 motor vehicle sales finance and property tax loan complaints addressed which are typically more complex to resolve.								
	2. # Investigations Closed							
Quarter 1	80	19	19	23.75%				
Quarter 2	80	21	40	50.00%				
Quarter 3	80	21	61	76.25%	58	72	87	73
2-1-1	Examination and Enforcement							
	1. # Compliance Examinations Performed							
Quarter 1	4,200	1,012	1,012	24.10%				
Quarter 2	4,200	1,000	2,012	47.90%				
Quarter 3	4,200	1,205	3,217	76.60%	2,898	3,469	2,946	2,939
2-2-1	Licensing							
	1. # Business Applications Processed							
Quarter 1	1,445	417	417	28.86%				
Quarter 2	1,445	462	879	60.83%				
The licensing department's volume of applications received increased in the first 2 quarters in FY 2019. Due to that increase, the department had to work to process more applications.								
Quarter 3	1,445	374	1,253	86.71%	1260	1,146	1,440	1,485
The licensing department continued to receive higher volumes of incoming applications and worked to timely process those applications, resulting in a higher number of business license applications processed.								



**Office of Consumer Credit Commissioner  
Actual Performance for Output Measures  
Fiscal Year 2019**

Type/Strategy/Measure	2019	2019	2019	Percent of	Comparable Historical Data			
	Target	Actual	YTD	Annual Target	for the same time period			
					FY2018	FY2017	FY2016	FY2015
<b>2. # Pawn Employee License Applications Processed</b>								
<b>Quarter 1</b>	2,700	1,164	1,164	43.11%				
Pending volume of pawn employee applications had increased in Q4 of FY 2018 so there was an immediate need to diminish that volume. In Q1 of 2019 the department was able to allocate resources to process a high number of pawn employee applications and get the number back down to a manageable level. Processing should adjust to normal levels throughout the remainder of FY 2019.								
<b>Quarter 2</b>	2,700	1,069	2,233	82.70%				
In order to diminish the significant number of pending applications the licensing department had to diligently work to process a high number of pawn employee applications and reallocate resources in the first 2 quarters of FY 2019. This number will likely even out in the rest of the fiscal year.								
<b>Quarter 3</b>	2,700	744	2,977	110.26%				
Staff resources reallocated to process pawn employee applications coupled with an increase in pawn employee applications received led to more applications being processed. The department anticipates these numbers with drop in Q4 of 2019 and all of FY 2020.								
<b>3-3-1 Financial Education</b>					2,206	2,242	2,420	3,116
<b>1. # Consumers Receiving Financial Education</b>								
<b>Quarter 1</b>	325	66	66	20.31%				
The financial education specialist focused on school age consumers and the number reflects the limited availability or access to students at the beginning of the school year.								
<b>Quarter 2</b>	325	146	212	65.23%				
As the school year progressed, availability and access to students increased and allowed additional program scheduling.								
<b>Quarter 3</b>	325	94	306	94.15%				
As the school year continued to progress, availability and access to students continued. Since students were accessible during this quarter, multiple weekly youth based programs were provided. State testing will take place during the remainder of the year causing access to students to decrease.								
					307	269	85	295

\*Varies by 5% or more from target.



## **Legal Department Report**

*Michael Rigby, General Counsel*

August 2019

### **Enforcement Report**

#### **Contested Case**

In June 2019, the OCCC participated in one contested case hearing before the State Office of Administrative Hearings (SOAH). The matter is *Office of Consumer Credit Commissioner v. Anson Financial Inc. d/b/a AFI Mortgage* (SOAH Docket No. 466-19-3734). The OCCC alleged that AFI Mortgage, a licensed property tax lender, failed to send a required notice to a pre-existing lienholder, in violation of Section 32.06(b-1) of the Texas Tax Code. The OCCC issued a cease-and-desist order and assessed a \$500 administrative penalty. AFI Mortgage requested a hearing on the cease-and-desist order and administrative penalty, and a hearing was held on June 27. As of July 31, the OCCC is awaiting a proposal for decision from SOAH.

#### **Orders for Reporting Violations**

In June 2019, the OCCC issued 16 enforcement orders against registered debt management service providers that did not timely file their 2018 annual reports or other required documents by the deadline of February 1, 2019. All 16 of these orders were injunctions requiring the registrants to file timely and accurate reports and required documents.

### **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 July 31, 2019. 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 July 31, 2019				
	FYTD 2019	FY 2018	FY 2017	FY 2016
<b>Injunction Actions</b>				
Crafted Precious Metal Dealer	0	0	0	0
Credit Access Business	51	27	47	25
Debt Management Provider	0	5	2	1
Manufactured Housing	0	0	1	0
Motor Vehicle Sales Finance	15	19	31	18
Pawnshop	82	39	37	1
Pawnshop Employee	67	48	69	0
Property Tax Lender	8	2	2	16
Registered Creditor	0	1	1	1
Regulated Lender	21	12	37	88
Residential Mortgage Loan Originator	0	1	1	0
<b>Total Injunction Actions</b>	<b>244</b>	<b>154</b>	<b>230</b>	<b>157</b>
<b>Administrative Penalty Actions</b>				
Crafted Precious Metal Dealer	0	0	0	2
Credit Access Business	12	6	23	97
Debt Management Provider	0	1	0	1
Motor Vehicle Sales Finance	14	26	106	129
Pawnshop	12	6	3	40
Pawnshop Employee	0	0	0	1
Property Tax Lender	3	6	2	3
Regulated Lender	7	0	13	0
Residential Mortgage Loan Originator	0	0	0	1
<b>Total Administrative Penalty Actions</b>	<b>48</b>	<b>45</b>	<b>147</b>	<b>273</b>
<b>Revocation / Suspension Actions</b>				
Crafted Precious Metal Dealer	0	0	0	0
Credit Access Business	1	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
<b>Total Revocation / Suspension Actions</b>	<b>2</b>	<b>1</b>	<b>8</b>	<b>17</b>
<b>Application Denial and Protest Actions</b>				
Credit Access Business	0	0	0	0
Motor Vehicle Sales Finance	2	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
<b>Total App. Denial and Protest Actions</b>	<b>2</b>	<b>0</b>	<b>3</b>	<b>11</b>
<b>Total Actions Closed</b>	<b>296</b>	<b>200</b>	<b>388</b>	<b>458</b>

From June 1, 2019 to July 31, 2019, the OCCC:

- closed 41 cases with final orders,
- opened 19 cases in order to assess administrative penalties,
- opened 58 cases in order to issue injunctions,
- opened two cases in order to revoke a license,
- participated in one contested case hearing, and
- opened no cases challenging an application denial.

The OCCC has one hearing scheduled between August 1, 2019, and September 30, 2019.

### **Administrative Rule Report**

At the August meeting, the OCCC is presenting for adoption two rule actions to implement the OCCC Sunset bill, HB 1442. One rule action would implement requirements for pawnshops and pawnshop employees, while the other rule action would implement across-the-board requirements for licensing and administration.

At the August meeting, the OCCC is also presenting proposed rule actions to implement 2019 legislation, relating to the single equivalent daily rate for regulated loans (implementing HB 3855), documentary fees for motor-driven cycles (implementing HB 3171), and military licensing for residential mortgage loan originators and pawnshop employees (implementing SB 1200).

At the October meeting, the OCCC intends to present a proposed rule action regarding negotiated rulemaking and alternative dispute resolution, to implement remaining portions of HB 1442.

### **Litigation**

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

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

VIP argues that the OCCC's enforcement action is barred because of a 1998 judgment, in which a Dallas district court held that VIP was not violating the Texas Credit Code and dismissed the State's claims against VIP. On February 22, 2018, a Dallas district court granted VIP's request for a temporary injunction against the OCCC. The OCCC appealed the case to the Dallas court of appeals, arguing that the Dallas district court does not have jurisdiction over the case.

On May 23, 2019, the Dallas court of appeals ruled in the OCCC's favor, dismissing the Dallas district court case. The court of appeals found that the current enforcement action against VIP deals with different transactions from the 1998 case. The court of appeals reversed the district court's denial of the OCCC's plea to the jurisdiction, reversed the district court's temporary injunction, and ordered VIP to pay the OCCC's costs of appeal. On July 12, the court of appeals denied VIP's motion for rehearing. On July 24, the court of appeals granted VIP's request to extend the deadline to file a motion for rehearing en banc (i.e., a motion for all justices on the Dallas court of appeals to rehear the case). The deadline for VIP to file a

motion for rehearing en banc is August 9.

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

#### **Advisory Bulletins**

From June 1, 2019 to July 31, 2019, the OCCC did not issue any advisory bulletins.

#### **Official Interpretation Requests**

From June 1, 2019 to July 31, 2019, the OCCC did not receive any requests for official interpretations. As of July 31, 2019, there were no pending requests for official interpretations.

#### **Public Information Requests**

From June 1, 2019 to July 31, 2019, the OCCC received 39 requests for information under the Texas Public Information Act, with no referrals to the Office of the Attorney General.

#### **Gifts Received by the OCCC**

From June 1, 2019 to July 31, 2019, the OCCC received no gifts.

Legislative Bill No. and Description	Rule Item/Purpose	Proposal Date	Adoption Date
<b>House Bill 1442</b> Relating to the continuation and functions of the OCCC, the licensing and registration of persons regulated by the OCCC, and certain consumer financial transactions regulated by the OCCC	<b>Licensing, Registration, Administration, Complaints, and Appeals -</b> <i>Adopt Amendments, New, and Repeal</i> 7 TAC, Part 1, Chapter 2 and Part 5, Chapters 82, 83, 84, 85, 86, 87, 88, and 89  To implement HB 1442's licensing and administrative provisions by setting license and registration terms; describing the OCCC complaint processes; and specifying requirements for appealing the denial of a debt cancellation agreement  <i>Precomment draft distributed May 14, 2019</i> <i>Stakeholder meeting held May 23, 2019</i>	06/21/2019	Presented for Adoption  08/16/2019
<b>House Bill 1442</b> Relating to the continuation and functions of the OCCC, the licensing and registration of persons regulated by the OCCC, and certain consumer financial transactions regulated by the OCCC	<b>Rules of Operation for Pawnshops - Adopt Amendments</b> 7 TAC, Part 5, Chapter 85, Subchapter A  To implement HB 1442's pawnshop-related provisions by implementing the optional pawnshop employee license program; amending pawnshop employee license fees; setting license terms; and removing the "good moral character" standard  <i>Precomment draft distributed May 14, 2019</i> <i>Stakeholder meeting held May 23, 2019</i>	06/21/2019	Presented for Adoption  08/16/2019
<b>House Bill 3855</b> Relating to methods of computing interest charges on certain consumer loans	<b>Rules for Regulated Lenders - Proposed Amendments</b> 7 TAC, Part 5, Chapter 83, Subchapter A, §83.501 7 TAC, Part 5, Chapter 90, §90.203  To implement HB 3855 by adding a reference to the single equivalent daily rate, and by adding model plain language provisions for loan contracts using the single equivalent daily rate  <i>Precomment draft distributed July 10, 2019</i> <i>Stakeholder meeting held July 19, 2019</i>	08/16/2019	
<b>House Bill 3171</b> Relating to the classification and operation of mopeds and certain motorcycles	<b>Retail Creditors - Proposed Amendments</b> 7 TAC, Part 5, Chapter 86, §86.201  To implement HB 3171 by removing references to the obsolete term "motor-driven cycle" in the current rule on documentary fees for motorcycles and mopeds  <i>Precomment draft distributed July 10, 2019</i> <i>Stakeholder meeting held July 19, 2019</i>	08/16/2019	



Legislative Bill No. and Description	Rule Item/Purpose	Proposal Date	Adoption Date
<b>Senate Bill 1200</b> Relating to the authority of certain military spouses to engage in a business or occupation in this state	<b>Residential Mortgage Loan Originators Regulated by the OCCC - Proposed New</b> 7 TAC, Part 1, Chapter 2, §2.108  To implement SB 1200 by specifying residential mortgage loan originator licensing requirements for military service members, military veterans, and military spouses  <i>Precomment draft distributed July 10, 2019</i> <i>Stakeholder meeting held July 19, 2019</i>	08/16/2019	
<b>Senate Bill 1200</b> Relating to the authority of certain military spouses to engage in a business or occupation in this state	<b>Rules of Operation for Pawnshops - Proposed New</b> 7 TAC, Part 5, Chapter 85, Subchapter A, §85.309  To implement SB 1200 by specifying pawnshop employee licensing requirements for military service members, military veterans, and military spouses  <i>Precomment draft distributed July 10, 2019</i> <i>Stakeholder meeting held July 19, 2019</i>	08/16/2019	
<b>House Bill 1442</b> Relating to the continuation and functions of the OCCC, the licensing and registration of persons regulated by the OCCC, and certain consumer financial transactions regulated by the OCCC  <b>Senate Bill 614</b> Relating to the continuation and functions of the Finance Commission of Texas, the Texas Department of Banking, and the Department of Savings and Mortgage Lending, to the training requirements applicable to the agencies overseen by the Finance Commission of Texas, and to the regulation of certain financial institutions and businesses	<b>Negotiated Rulemaking - Proposed New and Amendments</b> 7 TAC, Part 1, Chapter 5 7 TAC, Part 1, Chapter 9  To implement HB 1442 and SB 614 by providing the finance agencies with negotiated rulemaking procedures	10/18/2019	

Legislative Bill No. and Description	Rule Item/Purpose	Proposal Date	Adoption Date
<b>House Bill 1442</b> <i>(See bill description on page 2)</i>  <b>Senate Bill 614</b> <i>(See bill description on page 2)</i>	<b>Alternative Dispute Resolution - Proposed New</b> 7 TAC, Part 1, Chapter 5  To implement HB 1442 and SB 614 by providing the finance agencies with alternative dispute resolution procedures	10/18/2019	
Not applicable	<b>Residential Mortgage Loan Originators Regulated by the OCCC - Rule Review</b> 7 TAC, Part 1, Chapter 2  To conduct standard rule review under Tex. Gov't Code, §2001.039; to ensure consistency with agency procedures; and to make technical corrections	12/20/2019	
Not applicable	<b>Retail Creditors - Rule Review</b> 7 TAC, Part 5, Chapter 86  To conduct standard rule review under Tex. Gov't Code, §2001.039; to ensure consistency with agency procedures; and to make technical corrections	12/20/2019	
Not applicable	<b>Chapter 342, Plain Language Contract Provisions - Rule Review</b> 7 TAC, Part 5, Chapter 90  To conduct standard rule review under Tex. Gov' t Code, §2001.039; to ensure consistency with agency procedures; and to make technical corrections	TBD FY 2020	

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

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments, New Rules, and a Repeal in 7 TAC, Part 1, Chapter 2, and Part 5, Chapters 82, 83, 84, 85, 86, 87, 88, and 89, Concerning Licensing, Registration, Administration, Complaints, and Appeals

**PURPOSE:** The purpose of the amendments, new rules, and repeal in 7 TAC, Part 1, Chapter 2, and Part 5, Chapters 82, 83, 84, 85, 86, 87, 88, and 89 is to implement provisions related to licensing and administration in HB 1442, the Sunset legislation for the Office of Consumer Credit Commissioner. The Texas Legislature passed HB 1442 in the 2019 legislative session.

**RECOMMENDED ACTION:** The agency requests that the Finance Commission approve the amendments, new rules, and repeal in 7 TAC, Part 1, Chapter 2, and Part 5, Chapters 82, 83, 84, 85, 86, 87, 88, and 89 with changes as previously published in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we approve the amendments, new rules, and repeal in 7 TAC, Part 1, Chapter 2, and Part 5, Chapters 82, 83, 84, 85, 86, 87, 88, and 89.

*Title 7. Banking and Securities*

*Part 1. Finance Commission of Texas*

*Chapter 2. Chapter 2. Residential Mortgage Loan Originators Regulated by the Office of Consumer Credit Commissioner*

*Part 5. Office of Consumer Credit Commissioner*

*Chapter 82. Administration*

*Chapter 83. Regulated Lenders and Credit Access Businesses*

*Chapter 84. Motor Vehicle Installment Sales*

*Chapter 85. Pawnshops and Crafted Precious Metal Dealers*

*Chapter 86. Retail Creditors*

*Chapter 87. Tax Refund Anticipation Loans*

*Chapter 88. Consumer Debt Management Services*

*Chapter 89. Property Tax Lenders*

*7 TAC, Part 1, Chapter 2*

The Finance Commission of Texas (commission) adopts amendments to §2.201 (relating to License Term, Renewal, and Expiration) in 7 TAC, Chapter 2, concerning Residential Mortgage Loan Originators Regulated by the Office of Consumer Credit Commissioner.

The commission adopts the amendments without changes to the proposed text as published in the July 5, 2019, issue of the *Texas Register* (44 TexReg 3380).

The commission received no written comments on the proposal.

In general, the purpose of the adopted amendments in 7 TAC, Chapter 2 is to implement provisions related to licensing and administration in HB 1442, the Sunset legislation for the Office of Consumer Credit Commissioner (OCCC). The Texas Legislature passed HB 1442 in the 2019 legislative session.

HB 1442 continues the OCCC's existence as a state agency, and was passed in response to recommendations of the Texas Sunset Advisory Commission. The bill authorizes

the commission to set the term of each license or registration issued by the OCCC, for a period up to two years.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review and then held a stakeholder meeting and webinar regarding the rule changes. The agency believes that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

The adopted amendments specify the license term, renewal process, and expiration date for residential mortgage loan originators. These amendments implement Texas Finance Code, §14.112 (as added by HB 1442), which provides that the commission shall prescribe the licensing or registration period for licenses and registrations issued by the OCCC. In addition, the amendments modernize or remove obsolete language.

The individual purposes of the adopted amendments to Chapter 2 are provided in the following paragraph.

In §2.201, adopted amendments specify the term, renewal process, and expiration

**ADOPT AMENDMENTS, NEW RULES, & REPEAL  
7 TAC, CHAPTERS 2, 82, 83, 84, 85, 86, 87, 88, AND 89  
Page 2 of 27**

date for a residential mortgage loan originator license. The amendments maintain the current one-year term, the current December 31 expiration date, and the current reinstatement period from January 1 through the last day of February, all of which are currently described in §2.104. The title of §2.201 is also amended to state "License Term, Renewal, and Expiration," to ensure that the rule's title clearly conveys its contents, and to ensure consistency with other rules being amended in this adoption. In addition, adopted amendments shorten the titles of Chapter 2 and its two subchapters, in order to make these titles more simple and concise, and to clarify that Chapter 2 applies to residential mortgage loan originators regulated by the OCCC, not just those applying for licensure.

The amendments to 7 TAC, Chapter 2 are adopted under Texas Finance Code, §180.004, which authorizes the commission to adopt rules necessary to implement Texas Finance Code, Chapter 180. In addition, the amendments in §2.201 are authorized under Texas Finance Code, §14.112 (as added by HB 1442), which authorizes the commission to set license and registration terms.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 14 and 180.

*7 TAC, Part 5, Chapter 82*

The Finance Commission of Texas (commission) adopts new §82.4 (relating to Consumer Complaint Process), and adopts the repeal of §82.4, in 7 TAC, Chapter 82, concerning Administration.

The commission adopts the amendments with changes to the proposed text as

published in the July 5, 2019, issue of the *Texas Register* (44 TexReg 3398).

The commission received two written comments on the proposal, from the Texas Automobile Dealers Association (TADA) and the Texas Independent Automobile Dealers Association (TIADA). The commission's responses to these comments are discussed after the discussion for each subsection of adopted new §82.4.

In general, the purpose of the adopted rule changes in 7 TAC, Chapter 82 is to implement provisions related to complaints in HB 1442, the Sunset legislation for the Office of Consumer Credit Commissioner (OCCC). The Texas Legislature passed HB 1442 in the 2019 legislative session.

HB 1442 continues the OCCC's existence as a state agency, and was passed in response to recommendations of the Texas Sunset Advisory Commission. The bill simplifies statutory provisions regarding complaint processing, in order to meet the Sunset Advisory Commission's across-the-board requirements.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review and then held a stakeholder meeting and webinar regarding the rule changes. Several stakeholders provided verbal feedback during the stakeholder meeting, and the OCCC received written precomments from stakeholders. The agency believes that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

Section 82.4 is being repealed and replaced with a new rule, to specify procedures for complaint processing. The

adopted new rule is based on Texas Finance Code, §14.062 (as amended by HB 1442), which provides that the OCCC will maintain a system to act efficiently on complaints, will make information available describing complaint procedures, and will periodically notify complaint parties of the status of the complaint. The new rule is also adopted in response to a recommendation of the Sunset Advisory Commission, which directed the OCCC and the commission to develop an updated complaint process in rule. The Sunset Advisory Commission identified the following best practices that should be included in the complaint procedure rule: details on the phases of the complaint process; overall timeline goals; intervals for notifying parties of the status of the complaint; a process for providing a summary of complaint resolution to the parties; information about appealing the OCCC's resolution of a complaint; procedures governing administrative dismissal of complaints; procedures for defining, counting, and reporting types of complaints; and definitions of how the OCCC distinguishes between complaints and inquiries. Sunset Advisory Commission, Finance Agencies Staff Report with Final Results, p. 57 (June 2019).

In adopted new §82.4, subsection (a) defines the terms "complainant," "complaint," "inquiry," and "OCCC." The rule distinguishes between a complaint and an inquiry by defining a complaint to refer to a communication that expresses dissatisfaction with a transaction or alleges wrongful conduct, and by defining an inquiry to refer to a communication other than a complaint. In the precomment draft, the OCCC had included communications requesting assistance with a transaction in the definition of "complaint." The OCCC received an informal precomment that

recommended against including requests for assistance in the definition, and pointed to a definition used by the Consumer Financial Protection Bureau. Based on this input, the OCCC believes that the adopted definition appropriately captures the sense of the term "complaint," and will help ensure that the OCCC accurately counts complaints.

Regarding the definition of "complaint," the official comment from TADA states: "The proposed definition of 'complaint' appears to be more expansive than necessary as it includes a person's expressed 'dissatisfaction with a transaction' as well as alleged wrongful conduct. Requiring the agency to process a person's dissatisfaction with a transaction may include compiling information on issues over which no agency has jurisdiction, such as a grievance regarding a lawful interest rate. TADA requests that consideration be given whereby instances in which there is no alleged or actual wrongdoing not be included in the agency's compilation of 'complaints' processed and that a person's 'dissatisfaction with a transaction' not be included within the agency's 'complaint' numbers."

Regarding this same issue, the official comment from TIADA states: "TIADA requests that the definition of 'complaint' be more focused in scope and have a specific nexus to an actual transaction. As currently drafted, any person may file a complaint against a licensed entity to commence an investigation." TIADA recommends replacing the first sentence of the definition of "complaint" with the following: "'Complaint' means a communication received by the OCCC consumer assistance department that expresses dissatisfaction with a consumer's personal financial transaction and alleges actual wrongful conduct."



The commission disagrees with these proposals to limit the definition of "complaint." The commission and the OCCC do not wish to create unnecessary barriers to filing a complaint. Consumers may not be able to articulate the exact nature of a violation or act of wrongdoing when they file a complaint. The OCCC will have to review the facts of a complaint to determine whether it is appropriate for the OCCC to act and whether the conduct is lawful. For this reason, the definition appropriately includes expressions of dissatisfaction with a transaction. Similarly, stating that the consumer must allege "actual wrongdoing" to file a complaint creates an unnecessary barrier. It is unclear how this definition would be administered in practice, because the OCCC must review the facts to determine whether the wrongdoing is actual. Finally, it is entirely appropriate to allow any person to file a complaint. The OCCC often receives complaints from a spouse or relative on behalf of the person who entered a transaction, as well as complaints that are referrals from other government agencies. The OCCC also receives complaints about ongoing business practices that might be broader than an individual personal transaction (e.g., ongoing unlicensed activity). Limiting complaints to the complainant's "personal financial transaction" would create an unnecessary barrier to filing a complaint. The OCCC encourages licensees to work with consumers to resolve issues before a complaint is filed. If a consumer files a complaint and the licensee believes that its actions are lawful, the licensee may be required to explain why the actions are lawful.

Adopted §82.4(b) describes the procedures by which the OCCC processes complaints. The subsection explains that it will send a summary of the complaint and

supporting documentation to the person who is the subject of the complaint, and that the person must respond by the deadline identified by the OCCC. The subsection explains that the OCCC will make reasonable efforts to resolve the complaint within 90 days. The subsection also describes circumstances where the OCCC may close complaints, including situations where the complaint is not supported by the evidence, is not within the OCCC's jurisdiction, contains no violation, or is resolved to the satisfaction of the parties. The subsection describes the process for appealing a complaint determination to senior staff of the OCCC consumer protection department. In response to a precomment, subsection (b) explains that the OCCC will notify the complaint parties of a request to appeal a complaint determination.

As originally proposed, §82.4(b)(11) would have provided a 30-day period for a complainant to appeal the closure of a complaint. After further consideration, the OCCC has determined that a 90-day period for complaint appeals would be more appropriate, to ensure that the complaint process provides an adequate opportunity for complainants to appeal a determination by the OCCC. For this reason, adopted §82.4(b)(11) contains a 90-day period for a complainant to appeal.

Regarding the complaint processing provisions in §82.4(b), the official comment from TADA states: "If a complainant who files a complaint is allowed to appeal, TADA requests that the party who is complained about should also be able to appeal a disposition . . . ." TADA suggests adding language allowing a person who is forwarded a complaint to appeal a complaint.

The commission believes that this additional language is unnecessary. The existing complaint process allows businesses to respond to complaints. If a complaint results in an enforcement action against a business, then the business would have due process rights to appeal the enforcement action under Texas Government Code, Chapter 2001 (the Administrative Procedure Act). It would create unnecessary complications for a business to appeal a complaint against it at the same time that it is appealing an enforcement action through a separate process.

The official comment from TADA also suggests adding a new subparagraph in §82.4(b)(11) stating: "If a new allegation or information is submitted with the appeal request, a new complaint will be opened and processed."

The commission believes that this language is unnecessary. A new complaint is just one possible outcome of an appeal. Whether it is appropriate to open a new complaint might depend on whether there is actually a new issue between the complaint parties. It is unnecessary to specify by rule that a new complaint will be opened in this situation.

Regarding references to inquiries throughout §82.4(b), the official comment from TIADA states: "We believe that the term 'inquiry' should not be included anywhere throughout the section titled 'complaint processing' as proposed in 82.4(b)(1)-(11). The inclusion of 'inquiry' terminology in subsections (1)-(11) appears to fall outside of the language contained in Section 14.92 of the Finance Code and otherwise creates confusion in reporting and tracking actual identified complaints."

The commission disagrees with this suggestion. The references to inquiries in §82.4(b) state that inquiries are public information, that the OCCC will determine whether an inquiry relates to an activity that the OCCC regulates, and that the OCCC will close an inquiry and refer the person making the inquiry to an appropriate regulatory entity if known. The commission does not believe that these provisions will create confusion in how complaints are tracked and reported. The term "inquiry" is defined in §82.4(a)(3) to refer to communications that are not complaints. The term is intended to capture questions received by the consumer assistance department that do not express dissatisfaction or allege wrongful conduct (e.g., "What is the maximum documentary fee?" or "Can the dealer repossess my car?"). This is consistent with the instruction from the Sunset Advisory Commission that the complaint processing rule "should clearly define how the agency differentiates between complaints and inquiries." Sunset Advisory Commission, Finance Agencies Staff Report with Final Results, p. 57. The provisions regarding inquiries are also consistent with the commission's general authority to adopt rules necessary to supervise the OCCC under Texas Finance Code, §11.304. Responding to inquiries helps the OCCC carry out its four-part philosophy of regulating fairly, educating consumers and businesses about rights and responsibilities, communicating collaboratively with consumers and businesses, and protecting consumers against abusive practices. Office of Consumer Credit Commissioner, Strategic Plan, Fiscal Years 2019 - 2023, p. 1 (June 2018).

Adopted new §82.4(c) explains that the OCCC will quarterly review certain closed complaints, that the OCCC will quarterly report complaint activity to the commission, and that the OCCC will make complaint

procedure information available on its website.

In §82.4(c)(1), the official comment from TADA recommends specifying that the OCCC will maintain records of all inquiries, so that the paragraph would state: "The OCCC will maintain records of all complaints and inquiries received in accordance with its retention policy. These records will include the information required in Texas Finance Code, § 14.062." The commission believes that the phrase "and inquiries" is unnecessary in this provision. Some records related to inquiries may be subject to the record retention policy (e.g., phone logs, correspondence), but these records would generally not contain information described by Texas Finance Code, §14.062, which relates to complaints. Adding "and inquiries" in this provision would incorrectly suggest that inquiry records include complaint information.

In §82.4(c)(2), the official comment from TADA recommends specifying that the consumer assistance manager will quarterly review complaints closed due to "no wrongful conduct." In response to this comment, adopted §82.4(c)(2) has been changed since the proposal to specify that the quarterly review will include complaints where there is no violation. The provision has also been amended to specify that the consumer assistance manager will review a sample of closed complaints, consistent with the Sunset Advisory Commission's instruction that the OCCC should establish "a quality control process to ensure the agency checks a sample of complaints closed" for certain reasons. Sunset Advisory Commission, Finance Agencies Staff Report with Final Results, p. 57.

In §82.4(c)(3), the official comment from TADA recommends that the periodic complaint reports to the commission include "alleged misconduct in which the agency has jurisdiction as well as a separate category for inquiries." The commission disagrees with this suggestion. This language seems to suggest that the OCCC would not report nonjurisdictional complaints, or that nonjurisdictional complaints would be considered "inquiries" and reported separately. This is inconsistent with the recommendations of the Sunset Advisory Commission, which state that the complaint processing rule "should specifically require tracking and reporting of administratively dismissed complaints, complaints closed for lack of sufficient evidence, and nonjurisdictional complaints." Sunset Advisory Commission, Finance Agencies Staff Report with Final Results, p. 57.

In §82.4(c)(4), the official comment from TADA recommends specifying that the OCCC will make available on its website information describing procedures for inquiry receipt, investigation, and closure. The commission believes that the phrase "and inquiry" is unnecessary in this provision. As proposed, §82.4 adequately distinguishes between complaints and inquiries, consistent with the purpose of the section. It is not necessary for the rule to specify a website posting requirement for inquiry-related procedures.

The rule changes in 7 TAC, Chapter 82 are adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to administer Title 4 and Chapter 14 of the Texas Finance Code.

The statutory provisions affected by the adoption are contained in Texas Finance

Code, Chapters 14, 180, 342, 345, 347, 348, 351, 352, 353, 354, 393, and 394; and Texas Occupations Code, Chapter 1956.

*7 TAC, Part 5, Chapter 83*

The Finance Commission of Texas (commission) adopts amendments to §§83.309 (relating to License Inactivation or Voluntary Surrender), 83.403 (relating to License Term, Renewal, and Expiration), 83.3009 (relating to License Inactivation or Voluntary Surrender), and 83.4002 (relating to License Term, Renewal, and Expiration) in 7 TAC, Chapter 83, concerning Regulated Lenders and Credit Access Businesses.

The commission adopts the amendments without changes to the proposed text as published in the July 5, 2019, issue of the *Texas Register* (44 TexReg 3400).

The commission received no written comments on the proposal.

In general, the purpose of the adopted amendments in 7 TAC, Chapter 83 is to implement provisions related to licensing and administration in HB 1442, the Sunset legislation for the Office of Consumer Credit Commissioner (OCCC). The Texas Legislature passed HB 1442 in the 2019 legislative session.

HB 1442 continues the OCCC's existence as a state agency, and was passed in response to recommendations of the Texas Sunset Advisory Commission. The bill authorizes the commission to set the term of each license or registration issued by the OCCC, for a period up to two years.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review and then

held a stakeholder meeting and webinar regarding the rule changes. Several stakeholders provided verbal feedback during the stakeholder meeting, and the OCCC received written precomments from stakeholders. The agency believes that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

The adopted amendments specify the license term, renewal process, and expiration date for regulated lenders and credit access businesses. These amendments implement Texas Finance Code, §14.112 (as added by HB 1442), which provides that the commission shall prescribe the licensing or registration period for licenses and registrations issued by the OCCC. In addition, the amendments modernize or remove obsolete language.

The individual purposes of the adopted amendments to Chapter 83 are provided in the following paragraphs.

In §83.309, an adopted amendment removes a subsection dealing with the date of license expiration for regulated lenders, because expiration is addressed in separate adopted amendments at §83.403. In addition, an adopted amendment changes the title of §83.309 from "License Status" to "License Inactivation or Voluntary Surrender," to provide more clarity about the subject matter of the section. Throughout §83.309 and other sections in this adoption, amendments replace the use of the word "commissioner" with the agency's acronym, "OCCC." The agency believes that the use of "OCCC" will provide better clarity to the rules when the context calls for action by the agency, as opposed to the commissioner specifically. Adopted amendments to the section also

update a citation and simplify references to filing a license amendment.

In §83.403, adopted amendments specify the term, renewal process, and expiration date for a regulated lender license. The amendments maintain the current one-year term and the current December 31 expiration date. New subsection (e) also explains that an expired license may be reinstated during the 180-day period described in Texas Finance Code, Chapter 349. The OCCC received an informal precomment explaining that regulated lenders under Chapter 342, Subchapter F of the Texas Finance Code favor a one-year license period, and that this period may help avoid confusion that could occur if the OCCC used a two-year licensing period.

In §83.3009, an adopted amendment removes a subsection dealing with the date of license expiration for credit access businesses, because expiration is addressed in separate amendments at §83.4002. In addition, an adopted amendment changes the title of §83.3009 from "License Status" to "License Inactivation or Voluntary Surrender," to provide more clarity about the subject matter of the section.

In §83.4002, adopted amendments specify the term, renewal process, and expiration date for a credit access business license. The amendments maintain the current one-year term and the current December 31 expiration date.

The amendments in 7 TAC, Chapter 83, Subchapter A are adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to administer Title 4 and Chapter 14 of the Texas Finance Code. The amendments to 7 TAC, Chapter 83, Subchapter B are adopted

under Texas Finance Code, §393.622, which authorizes the commission to adopt rules necessary to enforce and administer Texas Finance Code, Chapter 393, Subchapter G. In addition, the adopted amendments in §83.403 and §83.4002 are authorized under Texas Finance Code, §14.112 (as added by HB 1442), which authorizes the commission to set license and registration terms.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 14, 342, and 393.

#### *7 TAC, Part 5, Chapter 84*

The Finance Commission of Texas (commission) adopts amendments in §84.309 (relating to Debt Cancellation Agreements Requiring Insurance) and §84.610 (relating to License Inactivation or Voluntary Surrender) to 7 TAC, Chapter 84, concerning Motor Vehicle Installment Sales. Additionally, the commission adopts new §84.617 (relating to License Term, Renewal, and Expiration), in 7 TAC, Chapter 84, concerning Motor Vehicle Installment Sales.

The commission adopts the amendments without changes to the proposed text as published in the July 5, 2019, issue of the *Texas Register* (44 TexReg 3403).

The commission received two written comments on the proposal, from the Texas Automobile Dealers Association (TADA) and the Texas Independent Automobile Dealers Association (TIADA). The commission's responses to these comments are discussed after the discussion of adopted new §84.617.

In general, the purpose of the adopted amendments and new rule in 7 TAC, Chapter 84 is to implement provisions related to

licensing and administration in HB 1442, the Sunset legislation for the Office of Consumer Credit Commissioner (OCCC). The Texas Legislature passed HB 1442 in the 2019 legislative session.

HB 1442 continues the OCCC's existence as a state agency, and was passed in response to recommendations of the Texas Sunset Advisory Commission. The bill addresses two issues that are relevant to this adoption. First, the bill authorizes the commission to set the term of each license or registration issued by the OCCC, for a period up to two years. Second, the bill removes current provisions from the Texas Finance Code stating that certain matters may be appealed to the commission, while maintaining a respondent's opportunity for judicial review in district court under the Administrative Procedure Act.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review and then held a stakeholder meeting and webinar regarding the rule changes. Several stakeholders provided verbal feedback during the stakeholder meeting, and the OCCC received written precomments from stakeholders. The agency believes that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

In general, this adoption is intended to fulfill two purposes. First, adopted amendments specify the license term, renewal process, and expiration date for motor vehicle sales finance licensees. These amendments implement Texas Finance Code, §14.112 (as added by HB 1442), which provides that the commission shall prescribe the licensing or registration period for licenses and registrations issued by the

OCCC. Second, an adopted amendment specifies procedures for appealing the denial of a debt cancellation agreement. In addition, the amendments modernize or remove obsolete language.

The individual purposes of the adopted amendments and new rule in Chapter 84 are provided in the following paragraphs.

In §84.309, adopted amendments specify the procedure for appealing the denial of a debt cancellation agreement in a contested case. The amendments remove references to appealing a denial to the commission. This is based on Texas Finance Code, §354.005(d) (as amended by HB 1442), which specifies that the denial of a debt cancellation agreement may be appealed to district court after an opportunity for a hearing, and removes references to appealing the denial to the commission.

In §84.610, an adopted amendment removes a subsection dealing with the date of license expiration for motor vehicle sales finance licensees, because expiration is addressed separately in new §84.617. Adopted amendments replace the use of the word "commissioner" with the agency's acronym, "OCCC." The agency believes that the use of "OCCC" will provide better clarity to the rules when the context calls for action by the agency, as opposed to the commissioner specifically. In addition, an adopted amendment changes the title of §84.610 from "License Status" to "License Inactivation or Voluntary Surrender," to provide more clarity about the subject matter of the section.

Adopted new §84.617 specifies the term, renewal process, and expiration date for a motor vehicle sales finance license. The new rule maintains the current one-year term, and



changes the expiration date from July 31 to October 31. Subsections (c) and (d) explain that expiration will occur after a notice of delinquency is sent to the licensee by mail or e-mail. The language on methods of sending the notice of delinquency is substantially similar to the rule previously located at §84.610(d). Subsection (e) also explains that an expired license may be reinstated during the 180-day period described in Texas Finance Code, Chapter 349. A temporary provision explains that licenses obtained or renewed in 2019 will be effective until October 31, 2020. The OCCC has determined that the October 31 date will better align with the OCCC's fiscal year, and will better enable the operational efficiencies associated with staggering different types of license and registration renewals throughout the year.

The official comments from both TADA and TIADA express support for a two-year license term. While the OCCC is open to considering two-year renewal in the future, the OCCC has several concerns. Currently, the motor vehicle sales finance licensee population sees a large amount of yearly turnover, with many new licensees coming into business each year and many other licenses expiring. Based on this turnover, the OCCC is concerned that a two-year renewal period would create additional complex and difficult situations pertaining to communications between licensees who have experienced changes in status or location and the OCCC. The OCCC is also concerned that the process of sending notifications to different portions of the licensed population on different dates would create confusion for licensees, who are most familiar with yearly renewal occurring on a common date for each license type. In addition, the OCCC is concerned about the additional costs that would result for the agency, including costly system modifications and fundamental

changes to budget structure. For these reasons, adopted §84.617 maintains the current one-year license period.

The official comment from TADA recommends that the text of §84.617 allow the OCCC to set the license term for a period up to two years. Under TADA's suggested language, the rule would state that a license "may be renewed annually or some other stated date that is no longer than two years, as provided by the agency's notice, to remain effective." The commission disagrees with this suggestion. Under Texas Finance Code, §14.112 (as added by HB 1442), the "finance commission by rule shall prescribe the licensing or registration period for licenses and registrations issued under" various chapters, including Chapter 348 of the Finance Code. Based on this statutory language, it is appropriate for the rule to specify the one-year license term.

In §84.617(c), the official comment from TADA recommends replacing "or" with "and," so that the OCCC would be required to send the notice of delinquency by both mail and e-mail at least 16 days before expiration. The commission disagrees with this suggestion. The new rule text at §84.617(c), which allows the notice to be sent by e-mail or mail, is substantially similar to the commission's previously adopted rule at §84.610(d). Currently, the OCCC sends the notice of delinquency by e-mail to those licensees that have provided an e-mail address, and by mail to licensees that have not provided an e-mail address. This is consistent with the OCCC's practice of encouraging the use of online electronic communication to make its licensing processes more efficient.

The amendments and new rule in 7 TAC, Chapter 84 are adopted under Texas Finance

Code, §11.304, which authorizes the Finance Commission to adopt rules to administer Title 4 and Chapter 14 of the Texas Finance Code. In addition, adopted new §84.617 is authorized under Texas Finance Code, §14.112 (as added by HB 1442), which authorizes the commission to set license and registration terms.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 14, 348, 353, and 354.

*7 TAC, Part 5, Chapter 85, Subchapter B*

The Finance Commission of Texas (commission) adopts amendments to §85.1007 (relating to Registration Term, Renewal, and Expiration) in TAC, Chapter 85, concerning Pawnshops and Crafted Precious Metal Dealers.

The commission adopts the amendments without changes to the proposed text as published in the July 5, 2019, issue of the *Texas Register* (44 TexReg 3413).

The commission received no written comments on the proposal.

In general, the purpose of the adopted amendments in 7 TAC, Chapter 85, Subchapter B is to implement provisions related to licensing and administration in HB 1442, the Sunset legislation for the Office of Consumer Credit Commissioner (OCCC). The Texas Legislature passed HB 1442 in the 2019 legislative session.

HB 1442 continues the OCCC's existence as a state agency, and was passed in response to recommendations of the Texas Sunset Advisory Commission. The bill authorizes the commission to set the term of each license

or registration issued by the OCCC, for a period up to two years.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review and then held a stakeholder meeting and webinar regarding the rule changes. The agency believes that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

The adopted amendments specify the registration term, renewal process, and expiration date for crafted precious metal dealers. These amendments implement Texas Finance Code, §14.112 (as added by HB 1442), which provides that the commission shall prescribe the licensing or registration period for licenses and registrations issued by the OCCC. In addition, the amendments modernize or remove obsolete language.

The individual purposes of the adopted amendments to Chapter 85, Subchapter B are provided in the following paragraph.

In §85.1007, adopted amendments specify the term, renewal process, and expiration date for a crafted precious metal dealer registration. The amendments maintain the current one-year term and the current December 31 expiration date. Additional amendments specify that December 31 is the due date for renewal fees, and that a registration for a temporary location is effective from the date of its issuance until it expires on December 31.

The amendments to 7 TAC, Chapter 85 are adopted under Texas Occupations Code, §1956.0611, which authorizes the commission to adopt rules necessary to implement Texas Occupations Code, Chapter 1956, Subchapter B. In addition, the adopted

amendments in §85.1007 are authorized under Texas Finance Code, §14.112 (as added by HB 1442), which authorizes the commission to set license and registration terms.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 14; and Texas Occupations Code, Chapter 1956.

*7 TAC, Part 5, Chapter 86*

The Finance Commission of Texas (commission) adopts amendments to §86.102 (relating to Fees) in 7 TAC, Chapter 86, concerning Retail Creditors. Additionally, the commission adopts new §86.103 (relating to Registration Term, Renewal, and Expiration) in 7 TAC, Chapter 86, concerning Retail Creditors.

The commission adopts the amendments without changes to the proposed text as published in the July 5, 2019, issue of the *Texas Register* (44 TexReg 3414).

The commission received no written comments on the proposal.

In general, the purpose of the adopted amendments and new rule in 7 TAC, Chapter 86 is to implement provisions related to licensing and administration in HB 1442, the Sunset legislation for the Office of Consumer Credit Commissioner (OCCC). The Texas Legislature passed HB 1442 in the 2019 legislative session.

HB 1442 continues the OCCC's existence as a state agency, and was passed in response to recommendations of the Texas Sunset Advisory Commission. The bill authorizes the commission to set the term of each license

or registration issued by the OCCC, for a period up to two years.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review and then held a stakeholder meeting and webinar regarding the rule changes. The agency believes that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

The adopted amendments specify the registration term, renewal process, and expiration date for registered creditors. These amendments implement Texas Finance Code, §14.112 (as added by HB 1442), which provides that the commission shall prescribe the licensing or registration period for licenses and registrations issued by the OCCC.

The individual purposes of the adopted amendments and new rule in Chapter 86 are provided in the following paragraphs.

In §86.102, an adopted amendment removes a paragraph stating that the registration fee must be paid within 60 days of commencing operations, while another amendment adds a statement that a person must pay a \$250 late filing fee under Chapter 349 of the Texas Finance Code. These adopted amendments would ensure that the rule provides a clear reference to the statutory process for late registration under Chapter 349. Another adopted amendment removes a reference to the October 31 due date for the annual registration fee, because the due date is addressed separately in new §86.103.

Adopted new §86.103 specifies the term, renewal process, and expiration date for registered creditors. The new rule maintains the current one-year term, and specifies that

registrations expire on November 30. Adopted §86.103 also specifies the process for late renewal of an expired registration.

The amendments and new rule in 7 TAC, Chapter 86 are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to administer Title 4 and Chapter 14 of the Texas Finance Code. In addition, adopted new §86.103 is authorized under Texas Finance Code, §14.112 (as added by HB 1442), which authorizes the commission to set license and registration terms.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 14, 345, and 347.

*7 TAC, Part 5, Chapter 87*

The Finance Commission of Texas (commission) adopts amendments to §87.107 (relating to Registration Term, Renewal, and Expiration) in 7 TAC, Chapter 87, concerning Tax Refund Anticipation Loans.

The commission adopts the amendments without changes to the proposed text as published in the July 5, 2019, issue of the *Texas Register* (44 TexReg 3416).

The commission received no written comments on the proposal.

In general, the purpose of the adopted amendments in 7 TAC, Chapter 87 is to implement provisions related to licensing and administration in HB 1442, the Sunset legislation for the Office of Consumer Credit Commissioner (OCCC). The Texas Legislature passed HB 1442 in the 2019 legislative session.

HB 1442 continues the OCCC's existence as a state agency, and was passed in response to recommendations of the Texas Sunset Advisory Commission. The bill authorizes the commission to set the term of each license or registration issued by the OCCC, for a period up to two years.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review and then held a stakeholder meeting and webinar regarding the rule changes. The agency believes that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

The adopted amendments specify the registration term, renewal process, and expiration date for tax refund anticipation loan facilitators. These amendments implement Texas Finance Code, §14.112 (as added by HB 1442), which provides that the commission shall prescribe the licensing or registration period for licenses and registrations issued by the OCCC. In addition, the amendments modernize or remove obsolete language.

The individual purposes of the adopted amendments to Chapter 87 are provided in the following paragraph.

In §87.107, adopted amendments specify the term, renewal process, and expiration date for a refund anticipation loan facilitator registration. The amendments maintain the current one-year term and the current December 31 expiration date. In addition, adopted amendments replace the use of the word "commissioner" with the agency's acronym, "OCCC." The agency believes that the use of "OCCC" will provide better clarity to the rules when the context calls for action.

by the agency, as opposed to the commissioner specifically.

The amendments in 7 TAC, Chapter 87 are adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to administer Title 4 and Chapter 14 of the Texas Finance Code. In addition, the adopted amendments in §87.107 are authorized under Texas Finance Code, §14.112 (as added by HB 1442), which authorizes the commission to set license and registration terms.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 14 and 352.

*7 TAC, Part 5, Chapter 88*

The Finance Commission of Texas (commission) adopts amendments to §88.201 (relating to Registration Term, Renewal, and Expiration) in 7 TAC, Chapter 88, concerning Consumer Debt Management Services.

The commission adopts the amendments without changes to the proposed text as published in the July 5, 2019, issue of the *Texas Register* (44 TexReg 3417).

The commission received no written comments on the proposal.

In general, the purpose of the adopted amendments in 7 TAC, Chapter 88 is to implement provisions related to licensing and administration in HB 1442, the Sunset legislation for the Office of Consumer Credit Commissioner (OCCC). The Texas Legislature passed HB 1442 in the 2019 legislative session.

HB 1442 continues the OCCC's existence as a state agency, and was passed in response to recommendations of the Texas Sunset Advisory Commission. The bill authorizes the commission to set the term of each license or registration issued by the OCCC, for a period up to two years.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review and then held a stakeholder meeting and webinar regarding the rule changes. The agency believes that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

The adopted amendments specify the registration term, renewal process, and expiration date for debt management services providers. These amendments implement Texas Finance Code, §14.112 (as added by HB 1442), which provides that the commission shall prescribe the licensing or registration period for licenses and registrations issued by the OCCC.

The individual purposes of the adopted amendments are provided in the following paragraph.

In §88.201, adopted amendments specify the term, renewal process, and expiration date for a debt management services provider registration. The amendments maintain the current one-year term, and specify that a registration expires on January 31.

The amendments to 7 TAC, Chapter 88 are adopted under Texas Finance Code, §394.214, which authorizes the commission to adopt rules to carry out Texas Finance Code, Chapter 394, Subchapter C. In addition, the adopted amendments in §88.201 are authorized under Texas Finance Code,

§14.112 (as added by HB 1442), which authorizes the commission to set license and registration terms.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 14 and 394.

*7 TAC, Part 5, Chapter 89*

The Finance Commission of Texas (commission) adopts to §89.309 (relating to License Inactivation or Voluntary Surrender) and §89.403 (relating to License Term, Renewal, and Expiration) in 7 TAC, Chapter 89, concerning Property Tax Lenders.

The commission adopts the amendments without changes to the proposed text as published in the July 5, 2019, issue of the *Texas Register* (44 TexReg 3418).

The commission received no written comments on the proposal.

In general, the purpose of the adopted amendments in 7 TAC, Chapter 89 is to implement provisions related to licensing and administration in HB 1442, the Sunset legislation for the Office of Consumer Credit Commissioner (OCCC). The Texas Legislature passed HB 1442 in the 2019 legislative session.

HB 1442 continues the OCCC's existence as a state agency, and was passed in response to recommendations of the Texas Sunset Advisory Commission. The bill authorizes the commission to set the term of each license or registration issued by the OCCC, for a period up to two years.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review and then

held a stakeholder meeting and webinar regarding the rule changes. The agency believes that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

The adopted amendments specify the license term, renewal process, and expiration date for property tax lenders. These amendments implement Texas Finance Code, §14.112 (as added by HB 1442), which provides that the commission shall prescribe the licensing or registration period for licenses and registrations issued by the OCCC. In addition, the amendments modernize or remove obsolete language.

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

In §89.309, an adopted amendment removes a subsection dealing with the date of license expiration for property tax lenders, because expiration is addressed in separate amendments at §89.403. Adopted amendments replace the use of the word "commissioner" with the agency's acronym, "OCCC." The agency believes that the use of "OCCC" will provide better clarity to the rules when the context calls for action by the agency, as opposed to the commissioner specifically. In addition, an adopted amendment changes the title of §89.309 from "License Status" to "License Inactivation or Voluntary Surrender," to provide more clarity about the subject matter of the section.

In §89.403, adopted amendments specify the term, renewal process, and expiration date for a property tax lender license. The amendments maintain the current one-year term and the current December 31 expiration date. New subsection (e) also explains that an expired license may be reinstated during the



180-day period described in Texas Finance Code, Chapter 349.

The amendments in 7 TAC, Chapter 89 are adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to administer Title 4 and Chapter 14 of the Texas Finance Code. In addition, the adopted amendments in §89.403 are authorized under Texas Finance Code, §14.112 (as added by HB 1442), which authorizes the commission to set license and registration terms.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 14 and 351.

*Title 7, Texas Administrative Code*

*Part 1. Finance Commission of Texas*

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

*Subchapter A. Application Procedures [~~for~~ ~~Office of Consumer Credit Commissioner~~ ~~Applicants~~]*

*Subchapter B. Operational Requirements [~~for~~ ~~Office of Consumer Credit Commissioner~~ ~~Licensees~~]*

*§2.201. License Term, Renewal, and Expiration.*

(a) License term. A new residential mortgage loan originator license is effective from the date of its issuance until December 31. A license must be renewed annually in order to remain effective. After renewal, a

license is effective for a term of one year, from January 1 to December 31.

(b) [(a)] Requirements. A license may be renewed if:

(1) the RMLO submits a completed application for renewal through the NMLS together with the payment of the applicable renewal application fee;

(2) the OCCC determines that the RMLO continues to meet the minimum requirements for license issuance, including financial responsibility, character, and general fitness, as provided in Texas Finance Code, §180.055, and subsection (g) [(d)] of this section; and

(3) the RMLO provides satisfactory evidence that the RMLO has completed the continuing education requirements of Texas Finance Code, §180.060.

(c) Due date for annual fees. Annual renewal fees are due by December 31 of each year.

(d) Expiration. A residential mortgage loan originator license expires on December 31 if the annual renewal fee has not been paid by December 31. After expiration, a license may be reinstated during the period from January 1 through the last day of February.

(e) [(b)] Rejection of renewal. Renewal of a license may be rejected for reasons provided in Texas Finance Code, §180.201.

(f) [(e)] Additional information. The OCCC may require additional, clarifying, or supplemental information from any applicant for the renewal of a license pursuant to Texas Finance Code, Chapter 180 in order to determine compliance with the law.

(g) ~~[(d)]~~ Additional background checks. After initial issuance of a license, the OCCC may require additional criminal and credit background checks in order to determine an RMLO's continuing compliance with the law.

*Part 5. Office of Consumer Credit Commissioner*

*Chapter 82. Administration*

**{{The following section will replace current section 82.4, which will be repealed.}}**

§82.4. Consumer Complaint Process.

(a) Definitions.

(1) "Complainant" means a person who files a complaint with the OCCC.

(2) "Complaint" means a communication received by the OCCC consumer assistance department that expresses dissatisfaction with a transaction or alleges wrongful conduct. For purposes of this section, the OCCC will collect the following items and information regarding a complaint, if available:

(A) the complainant's name and contact information;

(B) the name of the person against whom the complaint is submitted;

(C) the date and place of the alleged misconduct, violation, or transaction;

(D) a description of the facts or conduct alleged to violate applicable statutes or rules, and the transaction; and

(E) any written documentation supporting the complaint.

(3) "Inquiry" means a communication received by the OCCC consumer assistance department that is not a complaint.

(4) "OCCC" means the Office of Consumer Credit Commissioner of the State of Texas.

(b) Complaint processing.

(1) Complaints and inquiries filed with the OCCC are generally considered public information, unless a specific statutory exception applies.

(2) Upon receipt of a complaint and at the request of the complainant, the OCCC will make a good faith effort to protect the complainant's identity to the extent possible.

(3) The OCCC will determine whether the complaint or inquiry relates to an activity that the OCCC regulates.

(4) If the OCCC does not regulate the activity that is the subject of the complaint or inquiry, the OCCC will close the complaint or inquiry and refer the person making the complaint or inquiry to the appropriate regulatory entity, if known.

(5) If the OCCC regulates the activity that is the subject of a complaint, the OCCC will send a summary of the complaint and appropriate supporting documentation to the person that is the subject of the complaint.

(6) The OCCC will prioritize complaints for purposes of determining the order in which complaints are investigated, taking into account the seriousness of the

allegations made in a complaint and the length of time a complaint has been pending.

(7) A person that receives a complaint forwarded by the OCCC must respond by the deadline identified by the OCCC when it forwards the complaint.

(8) The OCCC will monitor how long each complaint is open, and will make all reasonable efforts to resolve complaints within 90 days of receipt. The OCCC will notify the complainant of their complaint status at least quarterly until final disposition, unless such notice would jeopardize an ongoing complaint analysis, a field investigation, or a pending enforcement action.

(9) If the OCCC determines that the complaint is not supported by the evidence, is not within the OCCC's jurisdiction, contains no violation, or is resolved to the satisfaction of the parties, the complaint will be closed. Upon closure, the OCCC will promptly send a closure summary outlining the results of the complaint analysis to all parties to the complaint.

(10) The OCCC will notify all parties to the complaint within 10 business days of closing the complaint.

(11) A complainant who disagrees with the disposition of a complaint may appeal by sending a written appeal request to the OCCC consumer assistance department within 90 calendar days after the date of the closure summary. Upon receipt of an appeal request, the OCCC will notify the complaint parties of the request, and a senior member of the OCCC consumer protection department will review all information and make a determination regarding the complaint. The

OCCC will send a letter of its final findings to the complaint parties.

(c) Complaint review and reporting.

(1) The OCCC will maintain records of all complaints received in accordance with its retention policy. These records will include the information required in Texas Finance Code, §14.062.

(2) At least quarterly, the consumer assistance manager will review a sample of complaints closed administratively, due to lack of jurisdiction, due to lack of a violation, or due to lack of evidence.

(3) At least quarterly, the OCCC will submit to the Finance Commission a report of the sources, subjects, types, and dispositions of complaint activity during the preceding period.

(4) The OCCC will make available on its website information describing procedures for complaint receipt, investigation, and closure.

[§82.4. Consumer Complaint Process.]

[(a) Purpose. The purpose of this section is to clarify the applicability of Texas Finance Code, §14.062, Consumer Information and Complaints.]

[(b) Definitions. The following terms, when used in this section, have the following meanings:]

[(1) OCCC—The Office of Consumer Credit Commissioner of the State of Texas.]

[(2) Person filing the complaint—An individual who has sought or is seeking to obtain goods, services, or financing from a

~~commercial entity. This definition applies for purposes of Texas Finance Code, §14.062(b) and (c).]~~

~~[(e) Copy of OCCC policies and procedures. As provided by Texas Finance Code, §14.062(b), the OCCC will provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the OCCC's policies and procedures relating to complaint investigation and resolution.]~~

~~[(d) Copy of policies and procedures not required. If the OCCC receives a complaint from a source other than a person filing the complaint (e.g., another state agency), then the OCCC is not required to send the policies and procedures to the subject of the complaint or the source of the complaint.]~~

*Chapter 83. Regulated Lenders and Credit Access Businesses*

*Subchapter A. Rules for Regulated Lenders*  
*Division 3. Application Procedures*

§83.309. License Inactivation or Voluntary Surrender *[Status]*.

(a) Inactivation of active license. A licensee may cease operating under a regulated loan license and choose to inactivate the license. A license may be inactivated by giving notice of the cessation of operations not less than 30 calendar days prior to the anticipated inactivation date. Notification must be provided by filing a license amendment ~~[filed on the Amendment to a License]~~ or an approved electronic submission as prescribed by the OCCC ~~[commissioner]~~. The notice must include the new mailing address for the license, the effective date of the inactivation, and the fee for amending the license. A licensee must

continue to pay the yearly renewal fees for an inactive license as outlined in §83.310 of this title (relating to Fees), or the license will expire as described by §83.403 of this title (relating to License Term and Annual Renewal).

(b) Activation of inactive license. A licensee may activate an inactive license by giving notice of the intended activation not less than 30 calendar days prior to the anticipated activation date. Notification must be provided by filing a license amendment ~~[filed on the Amendment to a License]~~ or an approved electronic submission as prescribed by the OCCC ~~[commissioner]~~. The notice must include the contemplated new address of the licensed office, the approximate date of activation, and the fee for amending the license as outlined in §83.310 of this title.

(c) (No change.)

~~[(d) Expiration. A license will expire on the later of December 31 of each year or the 16th day after the written notice of delinquency is given unless the annual assessment fees have been paid by the due date for license renewal. A licensee that pays the annual assessment fees will automatically be renewed even though a new license may not be issued.]~~

*Division 4. License*

§83.403. License Term, Renewal, and Expiration ~~*[Notice of Delinquency in Payment of Annual Assessment Fee]*~~.

(a) License term and renewal. A new license is effective from the date of its issuance until December 31. A license must be renewed annually to remain effective. After renewal, a license is effective for a term of one year, from January 1 to December 31.

(b) Due date for annual assessment fee.  
The annual assessment fee is due by  
December 1 of each year.

(c) Notice of delinquency. If a licensee does not pay the annual assessment fee, the OCCC will send a notice of delinquency. ~~Notice [For purposes of Texas Finance Code, §342.155, and §83.309(d) of this title (relating to License Status), notice]~~ of delinquency ~~[in the payment of an annual assessment fee]~~ is given when the OCCC sends the ~~[delinquency]~~ notice:

(1) by mail to the address on file with the OCCC as a master file address; or

(2) by e-mail to the address on file with the OCCC as a master file e-mail address, if the licensee has provided a master file e-mail address.

(d) Expiration. If a licensee does not pay the annual assessment fee, the license will expire on the later of:

(1) December 31 of each year; or

(2) the 16th day after notice of delinquency is given under subsection (c) of this section.

(e) Reinstatement. As provided by Texas Finance Code, §349.301 and §349.303(a), if a license was in good standing when it expired, a person may reinstate the expired license not later than the 180th day after its expiration date by paying the annual assessment fee and a \$1,000 late filing fee.

*Subchapter B. Rules for Credit Access Businesses*

*Division 3. Application Procedures*

§83.3009. License Inactivation or Voluntary Surrender ~~[Status]~~.

(a) Inactivation of active license. A licensee may cease operating under a credit access business license and choose to inactivate the license. A license may be inactivated by giving notice of the cessation of operations not less than 30 calendar days prior to the anticipated inactivation date. Notification must be provided by filing a license amendment or an approved electronic submission as prescribed by the OCCC ~~[commissioner]~~. The notice must include the new mailing address for the license, the effective date of the inactivation, and the fee for amending the license. A licensee must continue to pay the yearly renewal fees for an inactive license as outlined in §83.3010 of this title (relating to Fees), or the license will expire as described by §83.4002 of this title (relating to License Term and Annual Renewal).

(b) Activation of inactive license. A licensee may activate an inactive license by giving notice of the intended activation not less than 30 calendar days prior to the anticipated activation date. Notification must be provided by filing a license amendment or an approved electronic submission as prescribed by the OCCC ~~[commissioner]~~. The notice must include the contemplated new address of the licensed office, the approximate date of activation, and the fee for amending the license as outlined in §83.3010 of this title.

(c) (No change.)

~~[(d) Expiration. A license will expire on the later of December 31 of each year or the 16th day after the written notice of delinquency is given unless the annual assessment fees have been paid by the due~~

~~date for license renewal. A licensee that pays the annual assessment fees will automatically be renewed even though a new license may not be issued.]~~

*Division 4. License*

§83.4002. License Term, Renewal, and Expiration ~~[Notice of Delinquency in Payment of Annual Assessment Fee].~~

(a) License term and renewal. A new license is effective from the date of its issuance until December 31. A license must be renewed annually to remain effective. After renewal, a license is effective for a term of one year, from January 1 to December 31.

(b) Due date for annual assessment fee. The annual assessment fee is due by December 1 of each year.

(c) Notice of delinquency. If a licensee does not pay the annual assessment fee, the OCCC will send a notice of delinquency. Notice [For purposes of Texas Finance Code, §393.613, notice] of delinquency [in the payment of an annual assessment fee] is given when the OCCC sends the [delinquency] notice:

(1) by mail to the address on file with the OCCC as a master file address; or

(2) by e-mail to the address on file with the OCCC as a master file e-mail address, if the licensee has provided a master file e-mail address.

(d) Expiration. If a licensee does not pay the annual assessment fee, the license will expire on the later of:

(1) December 31 of each year; or

(2) the 16th day after notice of delinquency is given under subsection (c) of this section.

*Chapter 84. Motor Vehicle Installment Sales*

*Subchapter C. Insurance and Debt Cancellation Agreements*

§84.309. Debt Cancellation Agreements Requiring Insurance.

(a) Purpose and scope. This section applies to a debt cancellation agreement described by Texas Finance Code, Chapter 354, that includes insurance coverage as part of the retail buyer's responsibility to the holder. Debt cancellation agreements must be submitted to the OCCC for approval, as provided by Texas Finance Code, §354.005(a). The denial of a debt cancellation agreement may be appealed in a contested case [to the Finance Commission of Texas], as provided by Texas Finance Code, §354.005(d). This section describes the requirements for submitting a debt cancellation agreement to the OCCC and the requirements for appealing the denial of a debt cancellation agreement [to the commission].

(b) - (f) (No change.)

(g) Proposal for decision. In connection with a contested case under this section, the administrative law judge will issue a proposal for decision to the commissioner [commission]. The proposal for decision will include a recommendation regarding whether the OCCC's denial of the agreement should be affirmed or reversed. The proposal for decision may include a recommendation that costs be assigned to a party, to the extent authorized by law.



(h) Final ~~[Commission's final]~~ order. The commissioner ~~[commission]~~ will issue a final order after review of the administrative law judge's proposal for decision. The final order will include a statement of whether the OCCC's denial of the agreement is affirmed or reversed. The final order may include an assignment of costs to a party, to the extent authorized by law.

(i) Judicial review of ~~[commission's]~~ final order. A final order ~~[of the commission]~~ under subsection (h) of this section may be appealed to a Travis County district court, as provided by Texas Government Code, §2001.176.

#### *Subchapter F. Licensing*

#### §84.610. License Inactivation or Voluntary Surrender ~~[Status]~~.

(a) Inactivation of active license. A licensee may cease operating under a motor vehicle sales finance license and choose to inactivate the license. A license may be inactivated by giving notice of the cessation of operations not less than 10 calendar days prior to the anticipated inactivation date. Registered offices will be designated as closed when a license is inactivated. Notification must be provided by filing a license amendment or an approved electronic submission as prescribed by the OCCC ~~[commissioner]~~. The notice must include the new mailing address for the license, the effective date of the inactivation, and the fee for amending the license. A licensee must continue to pay the yearly renewal fees for an inactive license as outlined in §84.611 of this title (relating to Fees), or the license will expire.

(b) Activation of inactive license. A licensee may activate an inactive license by

giving notice of the intended activation not less than 10 calendar days prior to the anticipated activation date. Registered offices must be listed and appropriate fees paid upon activation of a license. Notification must be provided by filing a license amendment or an approved electronic submission as prescribed by the OCCC ~~[commissioner]~~. The notice must include the contemplated new address of the licensed office, the approximate date of activation, and the fee for amending the license as outlined in §84.611 of this title.

(c) (No change.)

~~[(d) Expiration. A license will expire the later of July 31 of each year or the 16th day after the written notice of delinquency is given unless the annual assessment fees have been paid by the due date for license renewal. A licensee that pays the annual assessment fees will automatically be renewed even though a new license may not be issued. For purposes of this subsection, notice of delinquency in the payment of an annual assessment fee is given when the OCCC sends the delinquency notice.]~~

~~[(1) by mail to the address on file with the OCCC as a master file address; or]~~

~~[(2) by e-mail to the address on file with the OCCC as a master file e-mail address, if the licensee has provided a master file e-mail address.]~~

(d) ~~[(e)]~~ Surrendering to avoid administrative action. A licensee may not surrender a license after an administrative action has been initiated without the written agreement of the OCCC.

§84.617. License Term, Renewal, and Expiration.

(a) License term and renewal. A new license is effective from the date of its issuance until October 31. A license must be renewed annually to remain effective. After renewal, a license is effective for a term of one year, from November 1 of a calendar year to October 31 of the next calendar year.

(b) Due date for annual assessment fee. The annual assessment fee is due by October 1 of each year.

(c) Notice of delinquency. If a licensee does not pay the annual assessment fee, the OCCC will send a notice of delinquency. Notice of delinquency is given when the OCCC sends the notice:

(1) by mail to the address on file with the OCCC as a master file address; or

(2) by e-mail to the address on file with the OCCC as a master file e-mail address, if the licensee has provided a master file e-mail address.

(d) Expiration. If a licensee does not pay the annual assessment fee, the license will expire on the later of:

(1) October 31 of each year; or

(2) the 16th day after notice of delinquency is given under subsection (c) of this section.

(e) Reinstatement. As provided by Texas Finance Code, §349.301 and §349.303(a), if a license was in good standing when it expired, a person may reinstate the expired license not later than the 180th day after its

expiration date by paying the annual assessment fee and a \$1,000 late filing fee.

(f) Temporary provision. Notwithstanding subsections (a) and (d) of this section, if a licensee renews a license during 2019, or obtains a new license on or after August 1, 2019, then the license will be effective until October 31, 2020. The license must be renewed in order to remain in effect after October 31, 2020. This subsection expires on January 1, 2021.

*Subchapter B. Rules for Crafted Precious Metal Dealers*

*Division 1. Registration Procedures*

§85.1007. Registration Term. [~~Annual~~ Renewal, and Expiration.

(a) Generally. An initial registration for a permanent location is effective from the date of its issuance until December 31. For each calendar year following the initial registration for a permanent registered location, a crafted precious metal dealer must renew the registration annually. A registration for a permanent registered location expires on December 31 of each year. After renewal, a registration is effective for a term of one year, from January 1 to December 31.

(b) Renewal procedure. A crafted precious metal dealer may renew its registration for a permanent registered location by providing the following:

(1) the fees required by §85.1011 of this title (relating to Fees); and

(2) any information required by the OCCC.

(c) Due date for renewal fees and information. The fees and information described by subsection (b) of this section are due by December 31 of each year.

(d) [(e)] Late renewal.

(1) If a crafted precious metal dealer renews its registration on or before the 30th day following expiration (i.e., on or before January 30), then there is no late renewal fee.

(2) If a crafted precious metal dealer renews its registration after the 30th day following expiration, but on or before the 180th day following expiration, then the dealer must pay a late renewal fee of \$50 for each permanent registered location, in addition to the fees described by §85.1011 of this title.

(3) A registration for a permanent registered location may not be renewed after the 180th day following expiration. In order to obtain a registration, the crafted precious metal dealer must reapply under §85.1002 of this title (relating to Filing of New Application).

(e) [(d)] Administrative penalty. If a person has engaged in the purchase of crafted precious metal while its registration was not effective, the person may be subject to an administrative penalty under Texas Occupations Code, §1956.0615.

(f) [(e)] Temporary locations. A registration for a temporary location is effective from the date of its issuance until it expires on December 31. A registration for a temporary location is not renewable.

## *Chapter 86. Retail Creditors*

### *Subchapter A. Registration of Retail Creditors*

#### *§86.102. [~~Annual Registration~~] Fees.*

(a) (No change.)

(b) Annual fee. An annual fee is required under the provisions of Texas Finance Code, §345.351 or §347.451 and will be payable as follows:

(1) A retail seller, creditor, holder, or assignee must pay a registration fee for every chapter under which business is conducted.

~~[(2) A retail seller, holder, creditor, or assignee who begins business under Texas Finance Code, Chapter 345 or 347 must pay the annual fee within 60 days after the first day of commencing regulated operations.]~~

~~[(3) The annual fee for each subsequent calendar year will be due and payable by October 31 of each year.]~~

(2) [(4)] The registration is not transferable between locations. A retail seller, creditor, holder, or assignee must obtain a registration for each new location. ~~[Each new location must comply with the provisions in paragraph (2) of this subsection.]~~

(3) [(5)] No annual fee is required for a location operated by a retail seller, creditor, holder, or assignee operating under the provisions of Texas Finance Code, Chapter 345 or 347, provided the personnel at the location are not conducting regulated business with the consumer (e.g., storage, web-hosting, or data processing facility).

(c) Late filing fee. As provided by Texas Finance Code, §349.302(b), a person must pay a \$250 late filing fee for each registered location if the person:

(1) obtains a new registration after the person has begun engaging in business under Texas Finance Code, Chapter 345 or 347; or

(2) obtains a renewal more than 30 days after expiration.

(d) [(e)] Evidence of registration. The Office of Consumer Credit Commissioner (OCCC) will issue a certificate evidencing registration under the provisions of Texas Finance Code, Chapter 345 or 347, and this section. A registrant may print a copy of its registration certificate through the OCCC's online licensing portal.

(e) [(d)] Registration duplicates sent by mail. If a registrant does not print its registration certificate online, the registrant may request that the OCCC mail a registration duplicate for a fee of \$10 per certificate mailed.

§86.103. Registration Term, Renewal, and Expiration.

(a) Registration term and renewal. An initial registration is effective from the date of its issuance until November 30. A registration must be renewed annually to remain effective. After renewal, a registration is effective for a term of one year, from December 1 of a calendar year to November 30 of the next calendar year.

(b) Due date for annual fee. The annual fee is due by November 30 of each year.

(c) Expiration. If a registrant does not pay the annual fee, the registration will expire on November 30.

(d) Late renewal. A person may renew an expired registration by December 30 by paying the annual fee. In order to renew an expired registration after December 30, a person must pay any registration fee for a prior year and the late filing fee described by §86.102 of this title (relating to Fees).

*Chapter 87. Tax Refund Anticipation Loans*

*Subchapter A. Registration Procedures*

§87.107. Registration Term, [Annual] Renewal, and Expiration.

(a) Registration term and renewal. An initial registration is effective from the date of its issuance until December 31. A registration must be renewed annually to remain effective. After renewal, a registration is effective for a term of one year, from January 1 to December 31.

(b) [(a)] Renewal requirements. A registered tax refund anticipation loan facilitator may renew its registration by providing the following:

(1) the renewal fees required by §87.105(c) of this title (relating to Fees);

(2) any late filing fees required by §87.105(d) of this title; and

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

(c) Due date for renewal fee. The annual renewal fee and information described by subsection (b) are due by December 31 of each year.

(d) [(b)] Expiration. If a facilitator does not pay the annual renewal fee, the registration will expire on December 31. A facilitator may not renew a registration that has been expired for more than one year. If a facilitator's registration has been expired for more than one year, then the facilitator must apply for a new registration under §87.102 of this title (relating to Filing of New Application) in order to obtain a registration.

*Chapter 88. Consumer Debt Management Services*

*Subchapter B. Annual Requirements*

*§88.201. Registration Term, [Annual] Renewal, and Expiration.*

(a) Registration term and renewal. An initial registration is effective from the date of its issuance until January 31. A registration must be renewed annually to remain effective. After renewal, a registration is effective for a term of one year, from February 1 of a calendar year to January 31 of the next calendar year.

(b) Renewal requirements. A [Not later than February 1, a] registered debt management services provider may renew its registration by providing the following:

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

(2) the annual fee [fees] required by §88.107(f) [§88.107(e)] of this title (relating to Fees); and

(3) any other information required by the OCCC.

(c) Due date for renewal fee. The annual fee and information described by subsection (b) of this section are due by January 31 of each year.

(d) Expiration. If a provider does not renew its registration, the registration will expire on January 31.

*Chapter 89. Property Tax Lenders*

*Subchapter C. Application Procedures*

*§89.309. License Inactivation or Voluntary Surrender [Status].*

(a) Inactivation of active license. A licensee may cease operating under a license and choose to inactivate the license. A license may be inactivated by giving notice of the cessation of operations not less than 30 calendar days prior to the anticipated inactivation date. Notification must be provided by filing a license amendment or an approved electronic submission as prescribed by the OCCC [~~commissioner~~]. The notice must include the new mailing address for the license, the effective date of the inactivation, and the fee for amending the license. A licensee must continue to pay the yearly renewal fees for an inactive license as outlined in §89.310 of this title (relating to Fees), or the license will expire as described by §89.403 of this title (relating to License Term, Renewal, and Expiration).

(b) Activation of inactive license. A licensee may activate an inactive license by giving notice of the intended activation not less than 30 calendar days prior to the anticipated activation date. Notification must be provided by filing a license amendment or an approved electronic submission as prescribed by the OCCC [~~commissioner~~]. The notice must include the contemplated

new address of the licensed office, the approximate date of activation, and the fee for amending the license as outlined in §89.310 of this title.

(c) (No change.)

~~[(d) Expiration. A license will expire on the later of December 31 of each year or the 16th day after the written notice of delinquency is given unless the annual assessment fees have been paid by the due date for license renewal. A licensee that pays the annual assessment fees will automatically be renewed even though a new license may not be issued.]~~

#### *Subchapter D. License*

§89.403. License Term, Renewal, and Expiration ~~[Notice of Delinquency in Payment of Annual Assessment Fee].~~

(a) License term and renewal. A new license is effective from the date of its issuance until December 31. A license must be renewed annually to remain effective. After renewal, a license is effective for a term of one year, from January 1 to December 31.

(b) Due date for annual assessment fee. The annual assessment fee is due by December 1 of each year.

(c) Notice of delinquency. If a licensee does not pay the annual assessment fee, the OCCC will send a notice of delinquency. Notice [For purposes of Texas Finance Code, §351.155, and §89.309(d) of this title (relating to License Status), notice] of delinquency [in the payment of an annual assessment fee] is given when the OCCC sends the [delinquency] notice:

(1) by mail to the address on file with the OCCC as a master file address; or

(2) by e-mail to the address on file with the OCCC as a master file e-mail address, if the licensee has provided a master file e-mail address.

(d) Expiration. If a licensee does not pay the annual assessment fee, the license will expire on the later of:

(1) December 31 of each year; or

(2) the 16th day after notice of delinquency is given under subsection (c) of this section.

(e) Reinstatement. As provided by Texas Finance Code, §349.301 and §349.303(a), if a license was in good standing when it expired, a person may reinstate the expired license not later than the 180th day after its expiration date by paying the annual assessment fee and a \$1,000 late filing fee.

#### **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 August 16, 2019.

Matthew J. Nance  
Deputy General Counsel  
Office of Consumer Credit Commissioner



1108 Lavaca, Suite 800  
Austin, Texas 78701  
Phone: 512-476-2686  
[www.tada.org](http://www.tada.org)

August 2, 2019

Ms. Laurie Hobbs  
Assistant General Counsel  
Office of Consumer Credit Commissioner  
2601 North Lamar Boulevard  
Austin, TX 78705-4207

Sent via email: [rule.comments@occc.texas.gov](mailto:rule.comments@occc.texas.gov)

Re: Proposed Rules  
7 TAC § 84.617 License Term, Renewal, and Expiration  
7 TAC § 82.4 Consumer Complaint Process

Dear Ms. Hobbs:

On behalf of the Texas Automobile Dealers Association (TADA), please accept these comments regarding the proposed rules as published in the July 5, 2019, *Texas Register*, 44 *TexReg* 3403 - 3406 regarding license term, renewal, and expiration, and the consumer complaint process.

**License Term, Renewal, and Expiration**

**7 TAC § 84.617**

Proposed rule § 84.617(a) states that “a license must be renewed annually to remain effective.” Although TADA recommended a two-year renewal cycle for the motor vehicle sales finance license in the May 23<sup>rd</sup> meeting as well as in written comments dated May 29<sup>th</sup>, the proposed rule only provides that a license must be renewed annually.

The Preamble to the proposed rule as published in the *Texas Register* (44 *TexReg* 3404) states that the agency is “open to considering two-year renewal in the future;” however, it discusses certain concerns of a two-year renewal.



The agency's first concern is that because of the "large amount of yearly turnover, with many new licensees coming into business each year and many other licenses expiring, the agency is concerned that a two-year renewal period would create additional complex and difficult situations pertaining to communications between licensees who have experienced changes in status or location and the OCCC."

The agency also discusses that a two-year renewal period and the process of sending a notification to "different portions of the licensed population on different dates would create confusion for licensees" as the licensees are familiar with annual renewals on a common date.

Finally, the agency expresses a concern about additional costs that would result for the agency, such as "system modifications and fundamental changes to budget structure."

H.B. 1442, amending the Texas Finance Code § 14.112 allows the Finance Commission, by rule, to prescribe the licensing or registration period, not to exceed two years.

As the statute now allows for a motor vehicle sales finance license to be issued for up to a two-year period, and as the agency states it is open to considering two-year renewals in the future, and because licensed motor vehicle dealers are familiar with a two-year license as the Texas Department of Motor Vehicles (TxDMV) issues a two-year license<sup>1</sup>, TADA requests that the proposed rule not foreclose a two-year renewal by stating that a license "must be renewed annually to remain effective."

TADA suggests that the proposed rule allow the agency the flexibility for a two-year issuance or renewal by amending the proposal to state:

§ 84.617. License Term, Renewal, and Expiration.

(a) License term and renewal. A new license is effective from the date of its issuance until October 31. A license may ~~[must]~~ be renewed annually or some other stated date that is no longer than two years, as provided by the agency's notice, to remain effective. After renewal, a license is effective for its stated [a] term ~~[of one year,]~~ from November 1 ~~[of a calendar year]~~ to October 31 of its stated year ~~[the next calendar year]~~.

(b) Due date for ~~[annual]~~ assessment fee. The ~~[annual]~~ assessment fee is due by October 1 of the stated renewal date ~~[each year]~~.

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<sup>1</sup>43 TAC § 215.87(a): "Except as provided by other law, the term of a license or license plate issued by the division under Occupations Code, Chapter 2301 or Transportation Code, Chapter 503 is two years."

(c) Notice of delinquency. If a licensee does not pay the required ~~[annual]~~ assessment fee, the OCCC will send a notice of delinquency. Notice of delinquency is given when the OCCC sends the notice:

- (1) by mail to the address on file with the OCCC as a master file address; and ~~[or]~~<sup>2</sup>
- (2) by email to the address on file with the OCCC as a master file e-mail address, if the licensee has provided a master file e-mail address.

(d) Expiration. If a licensee does not pay the required ~~[annual]~~ assessment fee, the license will expire on the later of:

- (1) October 31 of the stated ~~[each]~~ year; or
- (2) the 16<sup>th</sup> day after notice of delinquency is given under subsection (c) of this section.

(e) Reinstatement. As provided by Texas Finance Code, § 349.301 and 349.303(a), if a license was in good standing when it expired, a person may reinstate the expired license not later than the 180<sup>th</sup> day after its expiration date by paying the required ~~[annual]~~ assessment fee and a \$1,000 late filing fee.

The suggested amendments to the proposed rule allow the agency to determine the length of time for a license, whether it is an annual license or another time period, as long as it is no more than a biennial period.<sup>3</sup> The flexibility to provide for a license to be valid up to a two year period, as the legislature provided for in Texas Finance Code § 14.112, also satisfies the Sunset Advisory Commission's suggestion from their June 2019, Staff Report at 51:

A regulatory agency should have the flexibility in its renewal process to most efficiently regulate activities subject to its jurisdiction. . . Requiring annual renewals in statute is unnecessarily restrictive and limits the agency's ability to manage its workload and streamline regulation. Authorizing the agency to renew licenses and registrations every two years rather than annually would help the agency develop more efficient internal processes and ease the regulatory burden on regulated entities.

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<sup>2</sup>TADA requests that the notice be sent by mail and email to ensure receipt of notice and delivery.

<sup>3</sup>An amendment to 7 TAC § 84.610 is also suggested so that the last sentence reads: "A licensee must continue to pay the ~~[yearly]~~ renewal fees for an inactive license as outlined in § 84.611 of this title (relating to Fees), or the license will expire."

Adopting a rule that allows the agency the flexibility to adapt the licensing process for a longer period than one year precludes the necessity to have to re-propose the rule in the future if a time period beyond one year is determined to be in the best interests of the agency and its licensees.

### **Consumer Complaint Process**

#### **7 TAC § 82.4**

TADA appreciates the agency's proposed inclusion of an "inquiry" in the definition section of the proposed rule regarding the consumer complaint process and separating an inquiry from a complaint.<sup>4</sup>

The proposed definition of "complaint" appears to be more expansive than necessary as it includes a person's expressed "dissatisfaction with a transaction" as well as alleged wrongful conduct.<sup>5</sup> Requiring the agency to process a person's dissatisfaction with a transaction may include compiling information on issues over which no agency has jurisdiction, such as a grievance regarding a lawful interest rate.

TADA requests that consideration be given whereby instances in which there is no alleged or actual wrongdoing not be included in the agency's compilation of "complaints" processed and that a person's "dissatisfaction with a transaction" not be included within the agency's "complaint" numbers. In line with this request, TADA suggests amending proposed § 82.4(c):

- (c) Compliant review and reporting.
  - (1) The OCCC will maintain records of all complaints and inquiries received in accordance with its retention policy. These records will include the information required in Texas Finance Code, § 14.062.
  - (2) Complaints closed administratively, due to lack of jurisdiction, or due to lack of evidence or no wrongful conduct will be reviewed quarterly by the consumer assistance manager.
  - (3) At least quarterly, the OCCC will submit to the Finance Commission a report of the sources, subjects, types, and

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<sup>4</sup>§ 82.4(a)(3) "Inquiry" means a communication received by the OCCC consumer assistance department that is not a complaint.

<sup>5</sup>§ 82.4(a)(2) "Complaint" means a communication received by the OCCC consumer assistance department that expresses dissatisfaction with a transaction or alleges wrongful conduct. . .

dispositions of complaint activity with alleged misconduct in which the agency has jurisdiction as well as a separate category for inquiries during the preceding period.

(4) The OCCC will make available on its website information describing procedures for complaint and inquiry receipt, investigation, and closure.

With respect to the appeal process outlined in proposed § 82.4(b)(11), either the complainant or the person who receives a complaint against them should be able to appeal a disposition of a complaint. Allowing either party to appeal may be the intent of the proposal; however, “complainant” is defined in § 82.4(a)(1) to mean “a person who files a complaint with the OCCC.”

If a complainant who files a complaint is allowed to appeal, TADA requests that the party who is complained about should also be able to appeal a disposition and suggests the following:

(b) Complaint processing.

...

(11) (A) A complainant or person who is forwarded a complaint by the OCCC who disagrees with the disposition of a complaint may appeal by sending a written appeal request to the OCCC consumer assistance department within 30 calendar days after the date of the closure summary. Upon receipt of an appeal request, the OCCC will notify the complaint parties of the request, and a senior member of the OCCC consumer protection department will review all information and make a determination regarding the complaint.

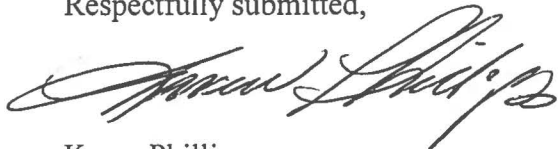
(B) If a new allegation or information is submitted with the appeal request, a new complaint will be opened and processed.

(C) The OCCC will send a letter of its final findings to the complaint parties.

Allowing either party in the complaint process the opportunity to appeal a decision provides for a more equal process.

On behalf of the TADA, I appreciate the opportunity to comment on the proposed rules as published in the *Texas Register* (July 5, 2019). If you have any question regarding, please do not hesitate to contact me.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Karen Phillips", written in a cursive style.

Karen Phillips  
General Counsel/EVP



August 2, 2019

Laurie Hobbs  
Texas Office of Consumer Credit Commissioner  
2601 N. Lamar Blvd  
Austin, TX 78705

*RE: Notice of Adoption of Rules 7 TAC 82.4 and 7 TAC 84.617*

Dear Ms. Hobbs:

On behalf of the Texas Independent Automobile Dealers Association (TIADA) I want to thank the Department for the opportunity to provide comments on the proposed rules necessary to implement statutory changes as required by House Bill 1442, 86<sup>th</sup> Legislature.

In general, there are two primary areas of focus:

1. 82.4 Complaints.

- a.) HB 1442, as adopted, modifies Section 14.92 of the Finance Code that requires the OCCC “shall maintain a system to promptly and efficiently act on **complaints**.”

The OCCC has proposed a definition of “Complaint” to “means a communication received by the OCCC consumer assistance department that expresses dissatisfaction with a transaction or alleges wrongful conduct. For purposes of this section, the OCCC will collect the following items and information regarding a complaint, if available.”

The OCCC based the definition of “complaint” in part on definitions utilized by the Consumer Financial Protection Bureau (CFPB). “The OCCC received an informal precomment that recommended against including requests for assistance in the definition, and pointed to a definition used by the Consumer Financial Protection Bureau. Based on this input, the OCCC believes that the proposed definition appropriately captures the sense of the term “complaint,” and will help ensure that the OCCC accurately counts complaints.”

The CFPB defines consumer complaints as “submissions that express dissatisfaction with, or communicate suspicion of wrongful conduct by, an identifiable entity related to a consumer’s personal experience with a financial product or service.”

TIADA requests that the definition of “complaint” be more focused in scope and have a specific nexus to an actual transaction. As currently drafted, any person may file a complaint against a licensed entity to commence an investigation. Amending the proposed rule would allow the Office to focus on actual



violations of statute and rule to be more effectively investigated, thus resulting in better customer outcomes and more efficient use of agency resources. TIADA proposes the following:

- (1) "Complaint" means a communication received by the OCCC consumer assistance department that expresses dissatisfaction with a consumer's personal financial transaction ~~or~~ and alleges actual wrongful conduct. For purposes of this section, the OCCC will collect the following items and information regarding a complaint, if available."

We believe that the term "inquiry" should not be included anywhere throughout the section titled "complaint processing" as proposed in 82.4(b)(1)-(11). The inclusion of "inquiry" terminology in subsections (1)-(11) appears to fall outside of the language contained in Section 14.92 of the Finance Code and otherwise creates confusion in reporting and tracking actual identified complaints.

## 2. 84.617 License Term, Renewal, and Expiration.

As noted previously, TIADA supports any effort to streamline the license renewal process and continues to support a biennial renewal term in proposed amendments to 84.617 if the agency can determine a way to provide greater efficiencies to both the OCCC as well as license holders.

Once again, TIADA appreciates the opportunity to comment on the proposed rules and looks forward to working with the Commissioner as we move forward on this important rule adoption. Please feel free to contact me directly with any questions or concerns you may have.

Sincerely,

/s/

Christopher Bean  
Director of Dealer Compliance and Strategic Communications  
Texas Independent Automobile Dealers Association  
9951 Anderson Mill Rd., Ste. 101 | Austin | 78750  
512.244.6060 o | 512.964.0922 m



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

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

**PURPOSE:** The purpose of the amendments to 7 TAC, Chapter 85, Subchapter A is to implement the pawnshop-related provisions of HB 1442, the Sunset legislation for the Office of Consumer Credit Commissioner. The Texas Legislature passed HB 1442 in the 2019 legislative session.

**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 §§85.102 (relating to Definitions), 85.104 (relating to License Term, Renewal, and Expiration), 85.202 (relating to Filing of New Application), 85.206 (relating to Processing of Application), 85.210 (relating to License Inactivation or Voluntary Surrender), 85.302 (relating to Notification of Termination), 85.303 (relating to Notification of Hiring), 85.304 (relating to Processing of Application), 85.306 (relating to Fees), 85.308 (relating to Availability of Pawnshop Employee License Information), 85.601 (relating to Denial, Suspension, or Revocation Based on Criminal History), 85.603 (relating to Reinstatement of an Expired Pawnshop License), 85.604 (relating to Enforcement Action Against Pawnshop License or Pawnshop Employee License), 85.701 (relating to Failure to Timely File a Pawnshop Employee Application), and 85.702 (relating to Accepting Prohibited Merchandise), in 7 TAC, Chapter 85, Subchapter A, concerning Rules of Operation for Pawnshops.

The commission adopts the amendments without changes to the proposed text as published in the July 5, 2019, issue of the *Texas Register* (44 TexReg 3406).

The commission received one written comment on the proposal from the Texas Association of Pawnbrokers (TAP). The comment relates to §85.104(a) and §85.202. The OCCC's response to the comment is included following the discussion of the changes to §85.202.

The adopted amendments affect rules contained in Division 1, concerning General Provisions; Division 2, concerning Pawnshop License; Division 3, concerning Pawnshop Employee License; 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 the pawnshop-related provisions of HB 1442, the Sunset legislation for the Office of Consumer Credit Commissioner (OCCC). The Texas Legislature passed HB 1442 in the 2019 legislative session.

HB 1442 continues the OCCC's existence as a state agency, and was passed in response to recommendations of the Texas Sunset Advisory Commission. The bill's amendments to Chapter 371 relate mainly to four issues. First, the bill provides that pawnshops may, but are not required to, participate in the pawnshop employee license program. Second, the bill removes provisions stating that pawnshop and pawnshop employee license applicants must be of "good moral character." Third, the bill authorizes the commission to set the term of pawnshop and pawnshop employee licenses for a period up to two years. Fourth, the bill authorizes the commission to set pawnshop employee license fee amounts in accordance with Texas Finance Code, §14.107, replacing current statutory provisions containing a \$25 initial fee and a \$15 annual renewal fee.

The OCCC distributed an early precomment 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. 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 purposes: (1) to implement the optional pawnshop employee license program; (2) to amend pawnshop employee license fees to \$50 for a new license and \$25 for a renewal; (3) to clarify provisions on license term, renewal, and expiration, while maintaining the current June 30 expiration date for pawnshops and pawnshop employees; and (4) to remove references to "good moral character" as a licensing standard, while maintaining the OCCC's review of an applicant's character and fitness. In addition, the adopted amendments modernize or remove obsolete language.

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

In §85.102, an adopted amendment to the definition of "pawnbroker" removes a statement that a pawnbroker may include a pawnshop employee, and adds a reference to the statutory reference of "pawnbroker" in Texas Finance Code, §371.003(6). Another amendment in §85.102 adds a definition of the term "pawnshop employee license program," explaining that this term refers to the optional licensing program under Texas Finance Code, Chapter 371, Subchapter C.

Adopted amendments to §85.104 specify license terms and expiration dates for pawnshops and pawnshop employees. These amendments implement Texas Finance Code, §14.112, as added by HB 1442. Section 14.112 provides that the commission shall prescribe the licensing period for licenses issued under Chapter 371, not to exceed two years. The amendments to §85.104 maintain the current one-year license period, as well as the current June 30 expiration date, for pawnshops and pawnshop employees. An amendment at §85.104(c), sets the due date for the annual license fee at May 31. This is based on Texas Finance Code, §371.064 and §371.106, as amended by HB 1442, which require licensees to pay a license fee not later than the 30th day before expiration of the license. Adopted §85.104(e) explains that at the time of renewal, a pawnshop may provide written notification to participate in the pawnshop employee license program. This is based on Texas Finance Code, §371.101(a-1), as amended by HB 1442, which explains that a pawnbroker may provide written notification to participate at the time of renewal. In §85.104, other amendments provide additional clarity to the rule text.

In §85.202, an adopted amendment explains that a pawnshop may provide a notification to participate in the pawnshop employee license program at the time of the license application.

The official comment from the Texas Association of Pawnbrokers states: "Referring to §85.104(e) and §85.202: Consider a check box utilizing the ALECS online licensing portal, rather than having a pawnshop provide written notification to participate in the pawnshop employee license program." The OCCC agrees that it is appropriate to allow pawnshops to participate in the program by selecting an option in the

OCCC's online licensing system. The OCCC intends to allow online pawnshop license applicants to select a radio button (similar to a checkbox) indicating that they wish to participate. During annual license renewal and other times that the OCCC specifies, the OCCC also intends to allow licensed pawnshops to indicate their participation through a drop-down menu in the online system. The OCCC intends to implement these changes by the end of calendar year 2019. Until these changes are implemented, the OCCC intends to allow pawnshops to notify the OCCC of their participation through email or mail. The commission believes that the new rule text at §85.104(e) and §85.202(a)(2)(I) appropriately provides that a pawnshop may participate by providing written notification. This language is based on the statutory text of Texas Finance Code, §371.101(a) and (a-1) (as amended by HB 1442), which describes the written notification to participate in the program. For purposes of the statute and rule, a pawnshop can provide this written notification by selecting an option in the online licensing system. For this reason, the commission believes that a change to the proposed rule text on this issue is unnecessary.

Adopted amendments to §85.206 remove references to "good moral character" as a licensing standard for pawnshops, while maintaining references to the OCCC's review of an applicant's character and fitness. These amendments implement HB 1442's amendments to Texas Finance Code, §371.052, which remove provisions stating that pawnshop license applicants must be of "good moral character," while maintaining references to review of character and fitness. The statutory amendment is based on a recommendation of Sunset Advisory Commission staff, which stated that "good moral character" is a subjective standard that

should be removed from the statute. An amendment at §85.206(f)(1)(A)(iv) explains that the OCCC will review an applicant's criminal history as part of its review of character and fitness. Throughout §85.206, amendments replace the use of the word "commissioner" with the agency's acronym, "OCCC." The agency believes that the use of "OCCC" will provide better clarity to the rules when the context calls for action by the agency, as opposed to the commissioner specifically.

In §85.210, an adopted amendment removes a subsection dealing with the date of license expiration, because expiration is addressed in the separate rule at §85.104. In addition, an amendment changes the title of §85.210 from "License Status" to "License Inactivation or Voluntary Surrender," to provide more clarity about the subject matter of the section.

In §85.302, an adopted amendment specifies that the requirement for a pawnshop to notify the OCCC of a pawnshop employee's termination applies if the pawnshop participates in the pawnshop employee license program.

In §85.303, an adopted amendment specifies that the requirement for a pawnshop to notify the OCCC of a pawnshop employee's hiring applies if the pawnshop participates in the pawnshop employee license program.

Adopted amendments to §85.304 remove references to "good moral character" as a licensing standard for pawnshop employees, while maintaining references to the OCCC's review of an applicant's character and fitness. These amendments implement HB 1442's amendments to Texas Finance Code, §371.102, which remove provisions stating

that pawnshop employee license applicants must be of "good moral character," while maintaining references to review of character and fitness. The amendments to §85.304 are similar to the amendments to §85.206 described earlier in this adoption.

Adopted amendments to §85.306 update fee amounts for pawnshop employee licenses. For the initial investigation and annual fee, an amendment contains a \$50 fee. For the annual renewal fee, an amendment contains a \$25 fee. These amendments implement HB 1442's amendments to Texas Finance Code, §371.103 and §371.106, which authorize the commission to set pawnshop employee license fee amounts in accordance with Texas Finance Code, §14.107 in an amount necessary to recover the costs of administration.

The OCCC has determined that the adopted fee changes in §85.306 are necessary in order to ensure that pawnshop employee license fees appropriately fund the pawnshop employee license program. The commission is authorized to establish reasonable and necessary fees for the OCCC to carry out its functions under Chapter 371, and to set licensing fees under Chapter 371 at amounts necessary to recover the costs of administering the chapter. Tex. Fin. Code §14.107(a)-(b). As a self-directed, semi-independent agency, the OCCC is responsible for all direct and indirect costs of its operation, and is authorized to set fee amounts as necessary to carry out its functions. Tex. Fin. Code §16.003(b)-(c).

The OCCC performed an analysis of its current costs, determining how much cost should be allocated to each regulated license and registration type. This analysis showed that \$285,000 of yearly costs are currently associated with licensing and regulation of

pawnshop employees. The OCCC also estimates that 30% of pawnshops will opt to participate in the optional pawnshop employee license program, and therefore, as a result of HB 1442, the total number of pawnshop employees is estimated to decrease by approximately 70%. Some costs of the pawnshop employee license program will stay the same, while others will decrease. The OCCC's initial analysis suggests that annual costs for pawnshop employees will decrease to approximately \$120,000. Based on this estimate, the OCCC has determined that a \$50 investigation and annual fee, with a \$25 annual renewal fee, would help ensure that revenues cover the cost of the pawnshop employee license program over time.

An adopted amendment at §85.306(d) specifies that a pawnshop employee must provide relocation notice to the OCCC in accordance with the OCCC's instructions.

In §85.308, adopted amendments specify that the requirement to maintain pawnshop employee records applies if the pawnshop participates in the pawnshop employee license program.

In §85.601, which describes denial, suspension, or revocation based on criminal history, adopted amendments remove references to "good moral character." As with the amendments to §85.206 and §85.304, the amendments to §85.601 maintain references to the OCCC's review of character and fitness.

In §85.603, an adopted amendment updates a reference to §85.104 as amended by this adoption.

In §85.604, which describes enforcement actions that the OCCC may take against a pawnbroker or pawnshop employee, adopted

amendments explain that the requirements imposed on pawnbrokers apply to all pawnbrokers, and the requirements imposed on pawnshop employees apply to employees of pawnbrokers that participate in the pawnshop employee license program.

In §85.701, which describes enforcement actions that the OCCC may take for failure to file a timely pawnshop employee license application, adopted amendments explain that the requirements imposed on pawnbrokers apply to all pawnbrokers, and the requirements imposed on pawnshop employees apply to employees of pawnbrokers that participate in the pawnshop employee license program.

In §85.702, which describes enforcement actions that the OCCC may take for accepting prohibited merchandise, adopted amendments explain that the requirements imposed on pawnbrokers apply to all pawnbrokers, and the requirements imposed on pawnshop employees apply to employees of pawnbrokers that participate in the pawnshop employee license program.

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 October 1, 2019.

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

changes in §85.104 are authorized under Texas Finance Code, §14.112 (as added by HB 1442), which authorizes the commission to set license terms. The adopted fee changes in §85.306 are authorized under Texas Finance Code, §§14.107, 371.103, and 371.106 (as amended by HB 1442), which authorize the commission to set license fees for pawnshop employee licenses.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 14 and 371.

*Title 7, Texas Administrative Code*

*Chapter 85. Pawnshops and Crafted Precious Metal Dealers*

*Subchapter A. Rules of Operation for Pawnshops*

*Division 1. General Provisions*

*§85.102. Definitions.*

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

(1) - (9) (No change.)

(10) Pawnbroker--Has the meaning provided by Texas Finance Code, §371.003(6), and includes a [A] person who has an ownership interest in a pawnshop as shown in an application for a pawnshop license filed with the OCCC. [When general duties and prohibitions are described,

~~pawnbroker also includes a pawnshop employee unless the context indicates otherwise.]~~

(11) Pawnshop employee license program--The optional program for licensing pawnshop employees described by Texas Finance Code, Chapter 371, Subchapter C.

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

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

(A) a proprietor;

(B) general partners;

(C) officers of privately held corporations, including the chief executive officer or president, the chief operating officer or vice president of operations, the chief financial officer or treasurer, and those with substantial responsibility for lending operations or compliance with the Texas Pawnshop Act;

(D) directors of privately held corporations;

(E) individuals associated with publicly held corporations designated by the applicant as follows:

(i) officers as provided by subparagraph (C) of this paragraph (as if the corporation was privately held); or

(ii) three officers or similar employees with significant involvement in the corporation's activities governed by the Texas Pawnshop Act. One of the persons designated must be responsible for assembling and providing the information required on behalf of the applicant and must sign the application for the applicant;

(F) voting members of a limited liability corporation;

(G) shareholders owning 5% or more of the outstanding voting stock;

(H) trustees and executors; and

(I) individuals designated as a principal party where necessary to fairly assess the applicant's financial responsibility, experience, character, general fitness, and sufficiency to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly as required by the commissioner.

§85.104. License Term, Renewal, and Expiration ~~[Renewal Dates of Licenses]~~.

(a) License term and renewal ~~[Licensing period and renewal due date]~~. A new pawnshop license or pawnshop employee license is effective from the date of its issuance until June 30. A pawnshop license and a pawnshop employee license must be renewed annually in order to remain effective. After renewal, a pawnshop license or pawnshop employee license is effective for a term of one year, from July 1 of one calendar year to June 30 of the next calendar year ~~[are effective from July 1 through June 30 of each year]~~.

(b) Due date for annual fees. The annual fees for pawnshop licenses and pawnshop



employee licenses are due by May 31 [~~on June 1~~] of each year for the following July 1 through June 30 term.

(c) [~~(b)~~] Notice of delinquency. If a licensed pawnshop or pawnshop employee does not pay the annual fees [~~by June 1~~], the OCCC will send a written notice of delinquency [~~will be sent~~] by June 15.

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

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

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

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

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

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

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

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

(e) Pawnshop employee license program. At the time of the annual renewal, a pawnshop may provide a written notification to participate in the pawnshop employee license program.

#### *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 at the date of filing and in accordance with the OCCC's instructions. The OCCC 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) - (J) (No change.)

(2) Other required filings.

(A) - (H) (No change.)

(I) Pawnshop employee license program. At the time of the application, the applicant may provide a written notification

to participate in the pawnshop employee license program.

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

*§85.206. Processing of Application.*

(a) - (e) (No change.)

(f) Decision on application. The OCCC may approve or deny an application.

(1) Approval. The OCCC 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).]~~

(i) [(ii)] A belief that the pawnshop will be operated lawfully and fairly. In evaluating this standard, the OCCC [commissioner] will consider an applicant's background and history. If the OCCC [commissioner] questions the applicant's ability to meet this standard, the OCCC [commissioner] may require further conditions, such as probation, to favorably consider an applicant for a license.

(ii) [(iii)] Financial responsibility. In evaluating the financial responsibility of an applicant, the OCCC [commissioner] may investigate the history of an applicant and the principal parties of the applicant as to the payment of debts, taxes,

and judgments, if any, and handling of financial affairs generally.

(iii) [(iv)] Experience. In evaluating experience, the OCCC [commissioner] will consider the applicant's background and history as well as the personnel that the applicant plans to use in the operation and management of the pawnshop.

(iv) [(v)] Character and [General] fitness [to command the confidence of the public]. In evaluating an applicant's character and fitness to command the confidence of the public, the OCCC will consider the [The] applicant's overall background and history, including the applicant's criminal history as described in §85.601 of this title (relating to Denial, Suspension, or Revocation Based on Criminal History) [will be considered]. Providing misleading information on the application or failing to disclose information to the OCCC may be grounds for denial.

(v) [(vi)] Net assets. Net assets are calculated by taking the sum of current assets and subtracting all liabilities either secured by those current assets or unsecured. Liabilities not included in the calculation are those liabilities that are secured by assets other than current assets including subordinated debt. Debt that is either unsecured or secured by current assets may be subordinated to the net asset requirement pursuant to an agreement of the parties providing that assets other than current assets are sufficient to secure the debt.

(B) (No change.)

(2) (No change.)

(g) - (h) (No change.)

§85.210. License *Inactivation or Voluntary Surrender* [Status].

(a) Inactivation of active license. A licensee may cease operating a pawnshop and choose to inactivate the license. A license may be inactivated by giving notice of the cessation of operations not less than 30 calendar days prior to the anticipated inactivation date. Written notification must be submitted by filing a license amendment or an approved electronic submission as prescribed by the OCCC [commissioner]. The notice must include the new mailing address for the license, the effective date of the inactivation, the fee for amending the license, a certification that no loans will be made or collected under the license until it is activated, a notice to pledgors that pawn loans are being relocated, and a plan ensuring pledged goods are made available for redemption. If an active license is not being used for the active operation of a pawnshop, the OCCC [commissioner] may unilaterally place the license in inactive status. A licensee must continue to pay the annual assessment fees for an inactive license as outlined in §85.211 of this title (relating to Fees), or the license will expire as described by §85.104 of this title (relating to License Term, Renewal, and Expiration).

(b) Activation of inactive license. To activate an inactive license the holder of the inactive license must comply with the relocation requirements set forth in §85.203 of this title (relating to Relocation).

(c) (No change.)

~~[(d) Expiration. A license will expire on the later of June 30 of each year or the 16th day after the written notice of delinquency is given unless the annual assessment fees are paid as per §85.104 of this title (relating to~~

~~Renewal Dates of Licenses). A licensee that pays the annual assessment fees will automatically be renewed even though a new license may not be issued.]~~

*Division 3. Pawnshop Employee License*

§85.302. Notification of Termination.

If a pawnshop employee ceases working at a pawnshop that participates in the pawnshop employee license program, then the pawnbroker must ~~[It is the responsibility of a pawnshop to]~~ notify the OCCC of the termination ~~[within a reasonable period of time when an employee ceases working at a pawnshop. A reasonable period of time is]~~ within one week from the issuance of the final wage payment or in accordance with a standard preapproved reporting schedule.

§85.303. Notification of Hiring.

If a licensed pawnshop employee begins working at a pawnshop participating in the pawnshop employee license program, and the pawnshop is different from the pawnshop on file for the employee's license, then the hiring pawnbroker must ~~[It is the responsibility of a pawnshop to]~~ notify the OCCC of the hiring ~~[within a reasonable period of time when a licensed employee begins working at a different pawnshop entity from that printed on the employee's license. A reasonable period of time is]~~ within one week from the issuance of the initial wage payment or in accordance with a standard preapproved reporting schedule.

§85.304. Processing of Application.

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

(c) Decision on application. The OCCC may approve or deny an application.

(1) Approval. The OCCC 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).]~~

(A) [(B)] Good business repute. In evaluating an applicant's business repute, the OCCC [commissioner] will consider the applicant's background and history.

(B) [(C)] Character and fitness [to warrant belief that pawnshop will be operated lawfully and fairly]. In evaluating the applicant's character and fitness to warrant the belief that the pawnshop will be operated lawfully and fairly, the OCCC will consider the [The] applicant's overall background and history, including the applicant's criminal history as described in §85.601 of this title (relating to Denial, Suspension, or Revocation Based on Criminal 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) - (f) (No change.)

*§85.306. Fees.*

(a) New licenses. A \$50 ~~[\$25]~~ nonrefundable investigation and annual fee is

assessed each time an application for a new license is filed.

(b) (No change.)

(c) Annual renewal fees. The annual renewal fee for a pawnshop employee license is \$25 ~~[\$15]~~. The fee must be paid by May 31 ~~[June 30]~~ each year. A pawnshop employee license will expire on the later of June 30 or the 16th day after the written notice of delinquency is given unless the annual renewal fee has been paid.

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

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

*§85.308. Availability of Pawnshop Employee License Information.*

(a) Maintaining records. If a pawnbroker participates in the pawnshop employee license program, then the pawnbroker ~~[A pawnbroker]~~ must maintain adequate written documents demonstrating that all pawnshop employees are either properly licensed pursuant to Texas Finance Code, §371.101 or have applied for a pawnshop employee license.

(b) Availability of records. If a pawnbroker participates in the pawnshop employee license program, then during [During] an examination by the OCCC [commissioner or the commissioner's representative,] or an inspection by a peace officer, copies of the pawnshop employee

licenses or copies of records relating to any pending applications for pawnshop employee licenses must be readily available.

*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).

(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 and fitness. 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) (No change.)

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

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

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

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

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

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

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

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

*§85.603. Reinstatement of an Expired Pawnshop License.*

If a pawnshop license expires as prescribed by §85.104 of this title (relating to License Term, Renewal, and Expiration ~~[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 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 action by the OCCC 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 Pawnshop License or Pawnshop Employee License.*

(a) Applicability. In this section:

(1) the requirements imposed on a pawnbroker apply to all pawnbrokers; and

(2) the requirements imposed on a pawnshop employee apply only to employees of pawnbrokers that participate in the pawnshop employee license program.

(b) [(a)] Generally. For the reasons in subsection (c) [(b)] of this section, the OCCC may take one or more of the following enforcement actions under Texas Finance Code, Chapters 14 and 371:

- (1) an injunction;
- (2) an administrative penalty;
- (3) a suspension; or
- (4) a revocation.

(c) [(b)] Basis for enforcement actions.

- (1) - (9) (No change.)

*Division 7. Enforcement; Penalties*

*§85.701. Failure to Timely File a Pawnshop Employee Application.*

(a) Applicability. This section applies only to pawnbrokers that participate in the pawnshop employee license program and employees of these pawnbrokers.

(b) [(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 find that no other ground is present on which to base a denial of the license, the OCCC may grant the license and take an enforcement action as provided in subsection (c) [(b)] of this section.

(c) [(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 pawnbroker ~~[pawnshop]~~ and the pawnshop employee to one or more of the following enforcement actions under Texas Finance Code, Chapters 14 and 371:

- (1) an injunction;
- (2) an administrative penalty;
- (3) a suspension; or
- (4) a revocation.

(d) [(c)] Pattern of violations. A pattern of violations may result in an additional enforcement action or denial.

*§85.702. Accepting Prohibited Merchandise.*

(a) Applicability. In this section:

(1) the requirements imposed on a pawnbroker apply to all pawnbrokers; and

(2) the requirements imposed on a pawnshop employee apply only to employees of pawnbrokers that participate in the pawnshop employee license program.

(b) [(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.

(c) [(b)] Enforcement actions. The acceptance of prohibited merchandise in violation of §85.418(a)(1) or (3) of this title (relating to Acceptance of Goods), may subject the pawnbroker ~~[pawnshop]~~ and pawnshop employee to one or more of the following enforcement actions under Texas Finance Code, Chapters 14 and 371:

- (1) an injunction;
- (2) an administrative penalty;
- (3) a suspension; or
- (4) a revocation.

(d) [(c)] Multiple violations. Multiple violations may result in an additional enforcement action.



**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 August 16, 2019.

Matthew J. Nance  
Deputy General Counsel  
Office of Consumer Credit Commissioner

# Texas Association of Pawnbrokers

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• • •

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## **Recommended Rule Changes Implementing 2019 Legislation**

The Texas Association of Pawnbrokers (TAP) has one recommendation to submit for consideration, regarding rules implementing the 2019 legislation: Pawnshops Participating in the Pawnshop Employee Licensing Program.

Chapter 85, Subchapter A; Rules of Operation for Pawnshops

Referring to **§85.104(e)** and **§85.202**: Consider a check box utilizing the **ALECS** online licensing portal, rather than having a pawnshop provide written notification to participate in the pawnshop employee license program.

Respectfully Submitted,



David A. Springett  
Texas Association of Pawnbrokers  
Legislative Committee

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

4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to §83.501 in 7 TAC, Part 5, Chapter 83, Subchapter A, Concerning Rules for Regulated Lenders, and to §90.203 in 7 TAC, Part 5, Chapter 90, Concerning Chapter 342, Plain Language Contract Provisions

**PURPOSE:** The purpose of the proposed amendments to §83.501 and §90.203 is to implement HB 3855, which the Texas Legislature passed in the 2019 legislative session. The proposal adds a reference to single equivalent daily rate, and adds model plain language provisions for loan contracts using the single equivalent daily rate authorized under HB 3855.

**RECOMMENDED ACTION:** The agency requests that the Finance Commission approve the amendments to 7 TAC §83.501 and §90.203 for publication in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we approve for publication and comment the amendments to 7 TAC §83.501 and §90.203.

*Title 7. Banking and Securities*

*Part 5. Office of Consumer Credit Commissioner*

*Chapter 83. Regulated Lenders and Credit Access Businesses*

*Chapter 90. Chapter 342, Plain Language Contract Provisions*

The Finance Commission of Texas (commission) proposes amendments to §83.501 (relating to Maximum Interest Charge) in 7 TAC, Chapter 83, concerning Regulated Lenders and Credit Access Businesses.

In general, the purpose of the proposed amendments to §83.501 is to implement HB 3855, which the Texas Legislature passed in the 2019 legislative session, by adding a reference to the single equivalent daily rate authorized under HB 3855.

Texas Finance Code, §342.201(e) allows a lender to charge a three-tiered interest rate on a loan subject to Chapter 342, Subchapter E of the Texas Finance Code. HB 3855 adds a new subsection at Texas Finance Code, §342.201(e-1), specifying that the lender may charge this amount by either: (1) applying an applicable daily rate to each bracket of the unpaid principal balance, or (2) applying a single equivalent daily rate to the entire principal balance.

The proposed amendments to §83.501 implement HB 3855 by specifying that a lender may apply the single equivalent daily rate. In subsection (c), a proposed amendment to paragraph (2) specifies that the currently authorized method for applying a daily rate to brackets applies when the loan is made under Texas Finance Code, §342.201(e) and (e-1)(1). Proposed new paragraph (3) explains that interest may be calculated by applying the single equivalent daily rate if the loan is made under Texas Finance Code, §342.201(e) and (e-2).

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC received one informal written precomment on the rule text draft. The precomment relates primarily to proposed amendments to model plain language clauses at §90.203. For this reason, the precomment is discussed in connection with the separate proposed amendments to §90.203.

Christina Cuellar Hoke, Manager of Accounting, has determined that for the first five-year period the proposed amendments to §83.501 are in effect, there will be no fiscal implications for state or local government as a result of administering the rule amendments.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the amendments to §83.501 are in effect, the public benefits anticipated as a result of the changes will be that the commission's rules will be more easily understood by licensees required to comply with the rules, will be consistent with legislation recently passed by the legislature, and will provide guidance and clarity to authorized lenders.

The single equivalent daily rate is an alternative method of calculating interest rates under Chapter 342, and lenders may continue to use the existing methods authorized under current law. The proposed amendments to §83.501 explain that lenders may use this alternative method as described

## PROPOSED AMENDMENTS

### 7 TAC §83.501 AND §90.203

Page 2 of 7

by HB 3855. Thus, there is no anticipated cost to persons who are required to comply with the rule changes to §83.501 as proposed. There will be no adverse economic effect on rural communities or small or micro-businesses.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rule changes will not require an increase or decrease in fees paid to the agency. The proposed rule changes do not create a new regulation. The proposed rule expand an existing regulation by permitting an interest calculation method in accordance with HB 3855. The proposed rule changes do not limit or repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rule's applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Matthew Nance, Deputy General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to [rule.comments@occc.texas.gov](mailto:rule.comments@occc.texas.gov). To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register*. At the

conclusion of business on the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The amendments to §83.501 are proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to ensure compliance with Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 authorizes the commission to adopt rules to enforce Chapter 342.

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

The Finance Commission of Texas (commission) proposes amendments to §90.203 (relating to Model Clauses) in 7 TAC, Chapter 90, concerning Chapter 342, Plain Language Contract Provisions.

In general, the purpose of the proposed amendments to §90.203 is to implement HB 3855, which the Texas Legislature passed in the 2019 legislative session, by adding model plain language provisions for loan contracts using the single equivalent daily rate authorized under HB 3855.

Texas Finance Code, §342.201(e) allows a lender to charge a three-tiered interest rate on a loan subject to Chapter 342, Subchapter E of the Texas Finance Code. HB 3855 adds a new subsection at Texas Finance Code, §342.201(e-1), specifying that the lender may charge this amount by either: (1) applying an applicable daily rate to each bracket of the unpaid principal balance, or (2) applying a single equivalent daily rate to the entire principal balance.

The proposed amendments to §90.203 implement HB 3855 by adding model clauses for loans where the lender uses the single equivalent daily rate. In paragraphs (7)(C) and (7)(E), proposed amendments to clauses (i) and (ii) specify that the currently authorized model clauses can be used when the interest charge is computed by applying a daily rate to brackets under Texas Finance Code, §342.201(e-1)(1). In paragraphs (7)(C) and (7)(E), proposed new clauses (iii) and (iv) contain model clauses that can be used when the interest charge is computed as a single equivalent daily rate under Texas Finance Code, §342.201(e-1)(2).

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC received one informal written precomment on the rule text draft. The precomment recommends including language in the model clauses specifying that the lender has used the single equivalent daily rate as defined by the Texas Finance Code. In response to this precomment, each new model clause in the proposed amendments to §90.203 includes the following sentence: "The interest rate is computed by applying a single equivalent daily rate under the Texas Finance Code."

Christina Cuellar Hoke, Manager of Accounting, has determined that for the first five-year period the proposed amendments to §90.203 are in effect, there will be no fiscal implications for state or local government as a result of administering the rule amendments.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the amendments to

§90.203 are in effect, the public benefits anticipated as a result of the changes will be that the commission's rules will be more easily understood by licensees required to comply with the rules, will be consistent with legislation recently passed by the legislature, will enable consumers to more clearly understand loan terms, and will provide guidance and clarity to authorized lenders by describing language that authorized lenders may use in their loan contracts.

The single equivalent daily rate is an alternative method of calculating interest rates under Chapter 342, and lenders may continue to use the existing methods and contract language authorized under current law. The proposed amendments to §90.203 describe the contract language that lenders may include when using the alternative method, as described by HB 3855. Thus, there is no anticipated cost to persons who are required to comply with the rule changes to §90.203 as proposed. There will be no adverse economic effect on rural communities or small or micro-businesses.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rule changes will not require an increase or decrease in fees paid to the agency. The proposed rule changes do not create a new regulation. The proposed rule expand an existing regulation

by permitting certain contract language in accordance with HB 3855. The proposed rule changes do not limit or repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rule's applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

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

The amendments to §90.203 are proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to ensure compliance with Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §341.502 authorizes the commission to adopt rules governing the form of plain language contracts for loans under Chapter 342.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 341 and 342.

*Title 7, Texas Administrative Code*

*Chapter 83. Regulated Lenders and Credit Access Businesses*

*Subchapter A. Rules for Regulated Lenders*

*Division 5. Interest Charges on Loans*

*§83.501. Maximum Interest Charge.*

(a) Precomputed loans. An authorized lender may charge the add-on rates authorized by Texas Finance Code, §342.201(a) or the alternative simple interest rate authorized by Texas Finance Code, §342.201(d) or (e) as calculated by the scheduled installment earnings method, for precomputed loans that are either unsecured or secured by personal property. Prepaid interest in the form of points is not permitted, unless expressly authorized by statute.

(b) Interest-bearing loans. An authorized lender may charge any rate of interest that does not exceed the maximum rate authorized by Texas Finance Code, §342.201(d) or (e) as calculated by the true daily earnings method or the scheduled installment earnings method, for an interest-bearing loan that is either unsecured or secured by personal property. Prepaid interest in the form of points is not permitted, unless expressly authorized by statute.

(c) Method of calculation.

(1) An authorized lender making loans under Texas Finance Code, §342.201(a), (d), or (e) may calculate the rate and amount of interest by any method of calculation as long as the amount of interest charged does not exceed the maximum rate



or amount of interest set forth in Texas Finance Code, §342.201(a), (d), or (e) calculated using the specified earnings methods of Texas Finance Code, §342.201.

(2) An authorized lender making a loan under Texas Finance Code, §342.201(e) and (e-1)(1) may contract for, charge, and receive an amount of interest, calculated according to the scheduled installment earnings method or true daily earnings method, not exceeding the equivalent total of a:

(A) simple annual rate of 30% on that portion of the unpaid balance of the cash advance that is less than or equal to the amount computed under Texas Finance Code, Chapter 341, Subchapter C, using the reference base amount of \$500;

(B) simple annual rate of 24% on that portion of the unpaid balance of the cash advance that is more than the amount computed for subparagraph (A) of this paragraph but less than or equal to an amount computed under Texas Finance Code, Chapter 341, Subchapter C, using the reference base amount of \$1,050; and

(C) simple annual rate of 18% on that portion of the unpaid balance of the cash advance that is more than the amount computed for subparagraph (B) of this paragraph but less than or equal to an amount computed under Texas Finance Code, Chapter 341, Subchapter C, using the reference base amount of \$2,500.

(3) An authorized lender making a loan under Texas Finance Code, §342.201(e) and (e-1)(2) may contract for, charge, and receive an amount of interest, calculated according to the scheduled installment earnings method or true daily

earnings method, by applying a single equivalent daily rate to the unpaid principal balance for the actual or scheduled number of days during a payment period, where the single equivalent daily rate is determined at the inception of the loan using the scheduled installment earnings method and would earn an amount of interest authorized under Texas Finance Code, §342.201(e) if the debt were paid to maturity according to the schedule of payments.

*Chapter 90. Chapter 342, Plain Language Contract Provisions*

*Subchapter B. Secured Consumer Installment Loans (Subchapter E)*

*§90.203. Model Clauses.*

(a) (No change.)

(b) Model clauses for a Chapter 342, Subchapter E secured consumer installment loan contract.

(1) - (6) (No change.)

(7) Finance charge earnings and refund method. The model finance charge earnings and refund method clauses include rate bracket amounts that are updated annually in the Texas Credit Letter. The model finance charge earnings and refund method clause options read:

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

(C) For contracts using the scheduled installment earnings method, Texas Finance Code, §342.201(e):

(i) For use when the interest charge is computed by applying a daily rate to brackets under Texas Finance Code,

**PROPOSED AMENDMENTS**

**7 TAC §83.501 AND §90.203**

**Page 6 of 7**

§342.201(e-1)(1), and the administrative fee is paid in cash or is not included in the cash advance on which interest is computed:

*Figure: 7 TAC §90.203(b)(7)(C)(i) {No changes to figure.}*

(ii) For use when the interest charge is computed by applying a daily rate to the brackets under Texas Finance Code, §342.201(e-1)(1), and the administrative fee is financed:

*Figure: 7 TAC §90.203(b)(7)(C)(ii) {No changes to figure.}*

(iii) For use when the interest charge is computed as a single equivalent daily rate under Texas Finance Code, §342.201(e-1)(2), and the administrative fee is paid in cash or is not included in the cash advance on which interest is computed: "The annual rate of interest is \_\_\_\_%. The interest rate is computed by applying a single equivalent daily rate under the Texas Finance Code. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. I will not get a refund if the refund would be less than \$1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment."

(iv) For use when the interest charge is computed as a single equivalent

daily rate under Texas Finance Code, §342.201(e-1)(2), and the administrative fee is financed: " The cash advance is \$ \_\_\_\_\_. The annual rate of interest is \_\_\_\_%. The interest rate is computed by applying a single equivalent daily rate under the Texas Finance Code. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. The unpaid cash advance includes the administrative fee, but does not include late charges and returned check charges. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. I will not get a refund if the refund would be less than \$1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment."

(D) (No change.)

(E) For contracts using the true daily earnings method, Texas Finance Code, §342.201(e):

(i) For use when the interest charge is computed by applying a daily rate to the brackets under Texas Finance Code, §342.201(e-1)(1), and the administrative fee is paid in cash or is not included in the cash advance on which interest is computed:

*Figure: 7 TAC §90.203(b)(7)(E)(i) {No changes to figure.}*

(ii) For use when the interest charge is computed by applying a daily rate to the brackets under Texas Finance Code, §342.201(e-1)(1), and the administrative fee is financed:

*Figure: 7 TAC §90.203(b)(7)(E)(ii) {No changes to figure.}*

(iii) For use when the interest charge is computed as a single equivalent daily rate under Texas Finance Code, §342.201(e-1)(2), and the administrative fee is paid in cash or is not included in the cash advance on which interest is computed: "The annual rate of interest is \_\_\_\_%. The interest rate is computed by applying a single equivalent daily rate under the Texas Finance Code. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment."

(iv) For use when the interest charge is computed as a single equivalent daily rate under Texas Finance Code, §342.201(e-1)(2), and the administrative fee is financed: "The cash advance is \$ \_\_\_\_\_. The annual rate of interest is \_\_\_\_%. The interest rate is computed by applying a single equivalent daily rate under the Texas Finance Code. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of

Payments. My final payment may be larger or smaller than my regular payment."

(8) - (27) (No change.)

### **Certification**

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

Issued in Austin, Texas on August 16, 2019.

Matthew J. Nance  
Deputy General Counsel  
Office of Consumer Credit Commissioner

**C. OFFICE OF CONSUMER CREDIT COMMISSIONER**

5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to §86.201 in 7 TAC, Part 5, Chapter 86, Concerning Retail Creditors

**PURPOSE:** The purpose of the proposed amendments to §86.201 is to remove references to the obsolete term "motor-driven cycle," in accordance with HB 3171, which the Texas Legislature passed in the 2019 legislative session.

**RECOMMENDED ACTION:** The agency requests that the Finance Commission approve the amendments to 7 TAC §86.201 for publication in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we approve for publication and comment the amendments to 7 TAC §86.201.

*Title 7. Banking and Securities*  
*Part 5. Office of Consumer Credit Commissioner*  
*Chapter 86. Retail Creditors*  
*Subchapter B. Retail Installment Contract*  
*§86.201. Documentary Fee*

The Finance Commission of Texas (commission) proposes amendments to §86.201 (relating to Documentary Fee) in 7 TAC, Chapter 86, concerning Retail Creditors.

In general, the purpose of the proposed amendments to §86.201 is to remove references to the obsolete term "motor-driven cycle," in accordance with HB 3171, which the Texas Legislature passed in the 2019 legislative session.

HB 3171 amends various provisions in the Texas Transportation Code and Texas Finance Code relating to motorcycles and mopeds. The bill amends the definitions of "motorcycle" and "moped," and removes the term "motor-driven cycle," which was considered a type of motorcycle under previous law. In particular, the bill removes "motor-driven cycle" from the list of vehicles for which a documentary fee is authorized for a retail installment transaction under Texas Finance Code, §345.251.

The proposed amendments to §86.201 would remove the definition of "motor-driven cycle," would remove the term "motor-driven cycle" from the definition of "covered land vehicle," and would renumber other definitions accordingly. This will ensure consistency with the Texas Finance Code and Texas Transportation Code as amended by HB 3171.

The OCCC distributed an early precomment 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.

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

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the amendments are in effect, the public benefits anticipated as a result of the changes will be that the commission's rules will be more easily understood by licensees required to comply with the rules, and will be consistent with legislation recently passed by the legislature.

There is no anticipated cost to persons who are required to comply with the rule changes as proposed. There will be no adverse economic effect on rural communities or small or micro-businesses.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the

OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rule changes will not require an increase or decrease in fees paid to the agency. The proposed rule changes do not create a new regulation. The proposed rule changes limit an existing regulation by removing references to "motor-driven cycle" in accordance with HB 3171. The proposed rule changes do not expand or repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rule's applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

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

These amendments are proposed under Texas Finance Code, §345.251(e), which authorizes the commission to adopt rules to implement and enforce the statutory provision authorizing a documentary fee for certain retail installment transactions under Texas Finance Code, Chapter 345. In addition, Texas Finance Code, §11.304 authorizes the Finance Commission to adopt rules to ensure compliance with Title 4 of the Texas Finance Code.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 345.

*Title 7, Texas Administrative Code*

*Chapter 86. Retail Creditors*

*Subchapter B. Retail Installment Contract*

*§86.201. Documentary Fee.*

(a) Definitions.

(1) All-terrain vehicle--Has the meaning provided by Texas Transportation Code, §502.001(1).

(2) Boat--A vessel, as described by Texas Parks and Wildlife Code, §31.003(2).

(3) Boat motor--An outboard motor, as described by Texas Parks and Wildlife Code, §31.003(13).

(4) Covered land vehicle--A motorcycle, ~~[motor-driven cycle,]~~ moped, all-terrain vehicle, boat trailer, or towable recreational vehicle.

(5) Covered watercraft--A boat or boat motor.

(6) Moped--Has the meaning provided by Texas Transportation Code, §541.201(8).

(7) Motorcycle--Has the meaning provided by Texas Transportation Code, §541.201(9).

~~[(8) Motor-driven cycle--Has the meaning provided by Texas Transportation Code, §541.201(10).]~~

(8) ~~[(9)]~~ Retail installment contract--Has the meaning provided by Texas Finance Code, §345.001(6) and refers to one or more instruments entered into that evidence a secured or unsecured retail installment transaction for the sale of goods under Texas Finance Code, Chapter 345.

(9) ~~[(10)]~~ Towable recreational vehicle--Has the meaning provided by Texas Finance Code, §348.001(10-a).

(b) Contract for covered land vehicles only. For a retail installment contract for the purchase of one or more covered land vehicles, the reasonable maximum amount of the documentary fee is \$125.

(c) Contract for covered watercraft only. For a retail installment contract for the purchase of one or more covered watercraft, the reasonable maximum amount of the documentary fee is \$125.

(d) Contract for both covered land vehicles and covered watercraft. For a retail installment contract for the purchase of one or more covered land vehicles and one or more covered watercraft, the reasonable maximum amount of the documentary fee is \$175.

### **Certification**

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

Issued in Austin, Texas on August 16, 2019.

Matthew J. Nance  
Deputy General Counsel  
Office of Consumer Credit Commissioner



**C. OFFICE OF CONSUMER CREDIT COMMISSIONER**

6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New §2.108 in 7 TAC, Part 1, Chapter 2, Concerning Residential Mortgage Loan Originators

**PURPOSE:** The purpose of proposed new §2.108 is to specify residential mortgage loan originator licensing requirements for military service members, military veterans, and military spouses, in accordance with Chapter 55 of the Texas Occupations Code, as amended by SB 1200, which the Texas Legislature passed in the 2019 legislative session.

**RECOMMENDED ACTION:** The agency requests that the Finance Commission approve new 7 TAC §2.108 for publication in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we approve for publication and comment new 7 TAC §2.108.

*Title 7. Banking and Securities*

*Part 1. Finance Commission of Texas*

*Chapter 2. Residential Mortgage Loan Originators Regulated by the Office of Consumer Credit Commissioner*

*Subchapter A. Application Procedures*

*§2.108. Military Licensing*

The Finance Commission of Texas (commission) proposes new §2.108 (relating to Military Licensing), in 7 TAC, Chapter 2, concerning Residential Mortgage Loan Originators Regulated by the Office of Consumer Credit Commissioner.

In general, the purpose of proposed new §2.108 is to specify residential mortgage loan originator licensing requirements for military service members, military veterans, and military spouses, in accordance with Chapter 55 of the Texas Occupations Code, as amended by SB 1200, which the Texas Legislature passed in the 2019 legislative session.

Chapter 55 of the Texas Occupations Code describes licensing requirements for military service members, military veterans, and military spouses. Chapter 55 applies to licenses that "must be obtained by an individual to engage in a particular business." Tex. Occ. Code §55.001(3). Chapter 55 includes an exemption for fees or penalties based on late renewal; an expedited license application procedure for certain previously licensed individuals; and a provision to credit military service, training, or education toward licensing requirements. SB 1200 adds a new section to Chapter 55, providing that a military spouse may engage in a licensed occupation in Texas without an applicable license, if the spouse is licensed in good standing in another jurisdiction with licensing requirements that are substantially equivalent to Texas's requirements.

Proposed new §2.108 specifies residential mortgage loan originator licensing requirements for military service members, military veterans, and military spouses, in accordance with Chapter 55. Subsection (a) explains the purpose of the section. Subsection (b) incorporates definitions from Texas Occupations Code, §55.001. Subsection (c) describes an exemption for fees or penalties based on late renewal. Subsection (d) describes the expedited license application procedure for certain previously licensed individuals. Subsection (e) describes the authority for a military spouse licensed in another jurisdiction to operate in Texas, in accordance with SB 1200. Under proposed subsection (e), the OCCC would consider a residential mortgage loan originator to be licensed in a jurisdiction with substantially equivalent requirements if the residential mortgage loan originator is licensed in accordance with the federal S.A.F.E. Mortgage Licensing Act, 12 U.S.C. §§5101-5117. Subsection (f) explains that military service, training, or education will be credited toward licensing requirements as part of an applicant's employment history.

The OCCC distributed an early precomment 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.

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

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the proposed new rule is in effect, the public benefits anticipated as a result of the rule will be that the commission's rules will provide enhanced occupational opportunities for military service members, veterans, and spouses, and will be consistent with legislation recently passed by the legislature.

There is no anticipated cost to persons who are required to comply with the new rule as proposed. There will be no adverse economic effect on rural communities or small or micro-businesses.

During the first five years the proposed new rule will be in effect, the rule will not create or eliminate a government program. Implementation of the rule will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rule will not require an increase or decrease in fees paid to the agency. The proposed rule creates a new regulation in accordance with Chapter 55 of the Texas Occupations Code. The proposed rule does not expand, limit, or repeal an existing regulation. The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability. The agency does not anticipate

that the proposed rule changes will have an effect on the state's economy.

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

The new rule is proposed under Texas Occupations Code, §§55.002, 55.004(a), 55.0041(e) (as added by SB 1200), and 55.007(b), which authorize a state agency to adopt rules implementing requirements of Chapter 55 of the Texas Occupations Code. In addition, Texas Finance Code, §180.004(b) grants the commission the authority to implement rules to comply with Texas Finance Code, Chapter 180.

The statutory provisions affected by the proposal are contained in Texas Occupations Code, Chapter 55 and Texas Finance Code, Chapter 180.

#### §2.108. Military Licensing.

(a) Purpose. The purpose of this section is to specify residential mortgage loan originator licensing requirements for military service members, military veterans, and military spouses, in accordance with Texas Occupations Code, Chapter 55.

(b) Definitions. In this section, the terms "military service member," "military spouse," and "military veteran" have the meanings provided by Texas Occupations Code, §55.001.

(c) Late renewal. As provided by Texas Occupations Code, §55.002, an individual is exempt from any increased fee or other penalty for failing to renew a residential mortgage loan originator license in a timely manner, if the individual establishes to the satisfaction of the OCCC that the individual failed to renew the license in a timely manner because the individual was serving as a military service member.

(d) Expedited license procedure. As provided by Texas Occupations Code, §55.004 and §55.005, the OCCC will process a license application as soon as practicable and issue a license to a qualifying applicant who is a military service member, military veteran, or military spouse, if the applicant:

(1) holds a current license in another jurisdiction as a residential mortgage loan originator in accordance with the S.A.F.E. Mortgage Licensing Act, 12 U.S.C. §§5101-5117; or

(2) held a residential mortgage loan originator license in Texas within the five years preceding the application date.

(e) Authorization for military spouse.

(1) As provided by Texas Occupations Code, §55.0041, a military spouse may engage in business as a residential mortgage loan originator if the spouse is currently licensed in good standing in another jurisdiction as a residential mortgage loan originator in accordance with the S.A.F.E. Mortgage Licensing Act, 12 U.S.C. §§5101-5117.

(2) Before engaging in business in Texas, the military spouse must comply with the notification requirements described by Texas Occupations Code, §55.0041(b). If the military spouse does not obtain a residential mortgage loan originator license in Texas, then the military spouse is limited to the time period described by Texas Occupations Code, §55.0041(d).

(3) For purposes of this subsection and Texas Occupations Code, §55.0041, a residential mortgage loan originator license issued in another jurisdiction is substantially equivalent to a Texas residential mortgage loan originator license if it is issued in accordance with the S.A.F.E. Mortgage Licensing Act, 12 U.S.C. §§5101-5117. The OCCC will verify a license issued in another jurisdiction through NMLS.

(f) Credit toward licensing requirements. As provided by Texas Occupations Code, §55.007, with respect to an applicant who is a military service member or military veteran, the OCCC will credit verified military service, training, or education toward the licensing requirements, other than an examination requirement, for a residential mortgage loan originator license, by considering the service, training, or education as part of the applicant's employment history.

### **Certification**

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

Issued in Austin, Texas on August 16, 2019.

Matthew J. Nance  
Deputy General Counsel  
Office of Consumer Credit Commissioner

**C. OFFICE OF CONSUMER CREDIT COMMISSIONER**

7. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New §85.309 in 7 TAC, Part 5, Chapter 85, Subchapter A, Concerning Rules of Operation for Pawnshops

**PURPOSE:** The purpose of proposed new §85.309 is to specify pawnshop employee licensing requirements for military service members, military veterans, and military spouses, in accordance with Chapter 55 of the Texas Occupations Code, as amended by SB 1200, which the Texas Legislature passed in the 2019 legislative session.

**RECOMMENDED ACTION:** The agency requests that the Finance Commission approve new 7 TAC §85.309 for publication in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we approve for publication and comment new 7 TAC §85.309.

*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*

*Division 3. Pawnshop Employee License*

*§85.309. Military Licensing*

The Finance Commission of Texas (commission) proposes new §85.309 (relating to Military Licensing), in 7 TAC, Chapter 85, concerning Pawnshops and Crafted Precious Metal Dealers.

In general, the purpose of proposed new §85.309 is to specify pawnshop employee licensing requirements for military service members, military veterans, and military spouses, in accordance with Chapter 55 of the Texas Occupations Code, as amended by SB 1200, which the Texas Legislature passed in the 2019 legislative session.

Chapter 55 of the Texas Occupations Code describes licensing requirements for military service members, military veterans, and military spouses. Chapter 55 applies to licenses that "must be obtained by an individual to engage in a particular business." Tex. Occ. Code §55.001(3). Chapter 55 includes an exemption for fees or penalties based on late renewal; an expedited license application procedure for certain previously licensed individuals; and a provision to credit military service, training, or education toward licensing requirements. SB 1200 adds a new section to Chapter 55, providing that a military spouse may engage in a licensed occupation in Texas without an applicable license, if the spouse is licensed in good standing in another jurisdiction with licensing requirements that are substantially equivalent to Texas's requirements.

Proposed new §85.309 specifies pawnshop employee licensing requirements for military service members, military veterans, and military spouses, in accordance with Chapter 55. Subsection (a) explains the purpose of the section. Subsection (b) incorporates definitions from Texas Occupations Code, §55.001. Subsection (c) describes an exemption for fees or penalties based on late renewal. Subsection (d) describes the expedited license application procedure for certain previously licensed individuals. Subsection (e) describes the authority for a military spouse licensed in another jurisdiction to operate in Texas, in accordance with SB 1200. Under proposed subsection (e), the OCCC would determine whether a license issued in another jurisdiction is substantially equivalent by reviewing applicable legal requirements in the jurisdiction, as well as the application review process in the other jurisdiction. The OCCC is not aware of another jurisdiction with requirements substantially similar to Texas's pawnshop employee license requirements, but the OCCC invites comments on this issue. Subsection (f) explains that military service, training, or education will be credited toward licensing requirements as part of an applicant's employment history.

The OCCC distributed an early precomment 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.

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

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the proposed new rule is in effect, the public benefits anticipated as a result of the rule will be that the commission's rules will provide enhanced occupational opportunities for military service members, veterans, and spouses, and will be consistent with legislation recently passed by the legislature.

There is no anticipated cost to persons who are required to comply with the new rule as proposed. There will be no adverse economic effect on rural communities or small or micro-businesses.

During the first five years the proposed new rule will be in effect, the rule will not create or eliminate a government program. Implementation of the rule will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rule will not require an increase or decrease in fees paid to the agency. The proposed rule creates a new regulation in accordance with Chapter 55 of the Texas Occupations Code. The proposed rule does not expand, limit, or repeal an existing regulation. The proposed

rule does not increase or decrease the number of individuals subject to the rule's applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

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

The new rule is proposed under Texas Occupations Code, §§55.002, 55.004(a), 55.0041(e) (as added by SB 1200), and 55.007(b), which authorize a state agency to adopt rules implementing requirements of Chapter 55 of the Texas Occupations Code. In addition, Texas Finance Code, §371.006, authorizes the Finance Commission to adopt rules to enforce Chapter 371 of the Texas Finance Code, and Texas Finance Code, §11.304 authorizes the Finance Commission to adopt rules to ensure compliance with Title 4 of the Texas Finance Code.

The statutory provisions affected by the proposal are contained in Texas Occupations Code, Chapter 55 and Texas Finance Code, Chapter 180.



*Title 7, Texas Administrative Code*

*Chapter 85. Pawnshops and Crafted  
Precious Metal Dealers*

*Subchapter A. Rules of Operation for  
Pawnshops*

*Division 3. Pawnshop Employee License*

§85.309. Military Licensing.

(a) Purpose and scope. The purpose of this section is to specify pawnshop employee licensing requirements for military service members, military veterans, and military spouses, in accordance with Texas Occupations Code, Chapter 55. This section applies only to employees of pawnbrokers that participate in the pawnshop employee license program.

(b) Definitions. In this section, the terms "military service member," "military spouse," and "military veteran" have the meanings provided by Texas Occupations Code, §55.001.

(c) Late renewal. As provided by Texas Occupations Code, §55.002, an individual is exempt from any increased fee or other penalty for failing to renew a pawnshop employee in a timely manner, if the individual establishes to the satisfaction of the OCCC that the individual failed to renew the license in a timely manner because the individual was serving as a military service member.

(d) Expedited license procedure. As provided by Texas Occupations Code, §55.004 and §55.005, the OCCC will process a license application as soon as practicable and issue a license to a qualifying applicant who is a military

service member, military veteran, or military spouse, if the applicant:

(1) holds a current license in another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for a pawnshop employee license in Texas; or

(2) held a pawnshop employee license in Texas within the five years preceding the application date.

(e) Authorization for military spouse.

(1) As provided by Texas Occupations Code, §55.0041, a military spouse may engage in business as a pawnshop employee if the spouse is currently licensed in good standing in another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for a pawnshop employee license in Texas.

(2) Before engaging in business in Texas, the military spouse must comply with the notification requirements described by Texas Occupations Code, §55.0041(b), and must notify the OCCC of the jurisdiction where the military spouse is licensed and how the license can be verified. If the military spouse does not obtain a pawnshop employee license in Texas, then the military spouse is limited to the time period described by Texas Occupations Code, §55.0041(d).

(3) For purposes of this section and Texas Occupations Code, §55.0041, the OCCC will determine whether the other jurisdiction's licensing requirements are substantially similar to Texas's by reviewing the applicable legal requirements that a license holder must comply with in the other

jurisdiction, as well as the application review process in the other jurisdiction. The OCCC will verify a license issued in another jurisdiction by requesting records from the appropriate licensing authority.

(f) Credit toward licensing requirements. As provided by Texas Occupations Code, §55.007, with respect to an applicant who is a military service member or military veteran, the OCCC will credit verified military service, training, or education toward the licensing requirements for a pawnshop employee license, by considering the service, training, or education as part of the applicant's employment history.

### **Certification**

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

Issued in Austin, Texas on August 16, 2019.

Matthew J. Nance  
Deputy General Counsel  
Office of Consumer Credit Commissioner

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**D.**

**Texas Department of Banking**

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## TEXAS DEPARTMENT OF BANKING

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

To: Finance Commission Members

From: Daniel Frasier, Director of Bank & Trust Supervision *DBF*

Date: August 2, 2019

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	233	\$257.7	231	\$261.6	228	\$271.7		
# Trust Co. (1)	17	\$108.5	17	\$107.4	18	\$108.0	18	\$101.4	17	\$107.7		
# FBA/FBB	10	\$56.1	7	\$66.3	7	\$64.8	7	\$68.0	7	\$74.9		
Examinations Performed												
Banks	103		107		26		23		25			
Trust Co.	26		27		5		3		3			
FBA/FBB	3		3		0		1		0			
Bank Uniform Financial Institution Composite Ratings												
1	123	51.3%	114	48.3%	111	47.6%	111	48.0%	109	47.8%		
2	104	43.3%	111	47.0%	111	47.6%	109	47.2%	112	49.1%		
3, 4, & 5	12	5.0%	11	4.7%	11	4.8%	11	4.8%	7	3.1%		
Non-Rated	1	0.4%	0	-	0	-	0	-	0	-		

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

The Department considers any bank with a Uniform Financial Institutions Composite Rating of 3, 4, or 5, to be a problem bank. The number of problem institutions declined during the 3<sup>rd</sup> fiscal quarter of 2019 yet remains in line with the normal range of between 3% and 5% of the total number of institutions. We expect that the number of problem banks to continue fluctuating in this range over the next six months.

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

Page 2

<b>Enforcement Actions Outstanding</b> (Number outstanding as of the date indicated)		<b>FY 2019</b>				
	<b>8/31/2017</b>	<b>8/31/2018</b>	<b>11/30/2018</b>	<b>2/28/2019</b>	<b>5/31/2019</b>	<b>8/31/2019</b>
<b>Banks - Safety and Soundness</b>						
Formal	2	2	2	2	2	
Informal	22	17	17	16	14	
<b>Banks - Bank Secrecy Act (BSA)</b>						
Formal	0	0	1	0	0	
Informal	2	1	1	1	1	
<b>Banks - Information Technology (IT)</b>						
Formal	0	0	0	0	0	
Informal	2	3	2	3	4	
<b>Trust Departments of Banks and Trust Companies</b>						
Formal	0	0	0	0	0	
Informal	2	2	2	2	1	
<b>Total Enforcement Actions Outstanding</b>						
Formal	2	2	3	2	2	
Informal	28	23	22	22	20	
<b>Total</b>	<b>30</b>	<b>25</b>	<b>25</b>	<b>24</b>	<b>22</b>	

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.

<b>Compliance with Examination Priorities</b> <b>Percent of Examinations Conducted within Department Guidelines</b>		
<b>Entity Type</b>	<b>FY 2018</b>	<b>FY 2019</b> (YTD – May 2019)
<b>Commercial Banks</b> (All / DOB Only)	94% / 98%	93% / 92%
<b>IT</b>	96% / 100%	94% / 95%
<b>Trust</b>	100% / 100%	96% / 100%
<b>Foreign Banks (FRB)</b>	100%	100%
<b>Trust Companies (DOB)</b>	100%	100%
<b>IT</b>	100%	100%

We have met all examination performance measures. As one final reminder, U.S. Senate Bill 2155, which became law on May 24, 2018, 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 examinations into the second and third fiscal quarters of 2019. Largely as a result of this change, the Department and our federal counterparts were not able to start 9 of 125 examinations on time with an average of 21 days past due. We now expect that examinations for two additional banks will start late in the



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

4<sup>th</sup> quarter of this fiscal year. The effects of this examination cycle change are not expected to extend beyond the current fiscal year.

Though compliance with examination priorities for trust companies through May is excellent, compliance is expected to decline in the fourth fiscal quarter. This is due to the combined effects of staff retirements, a resignation, de novo charter investigations, and the timing of many exempt trust company examination due dates. Two new experienced trust examiners were hired in the last three months, and we have an open posting for another trust examiner. Additionally, we are considering other prudent actions to achieve compliance with examination priorities for the next fiscal year.

**Division Highlights**

- The agency has been monitoring the changing legal environment surrounding the legalization of cannabis and cannabis-related products. Staff has been working on an industry notice to provide information to Texas financial institutions on serving customers with ties to the production, distribution, or sale of hemp, a cannabis derivative. In Industry Notice 2019-01 dated July 29, 2019, the Department provided information regarding the current legal landscape for hemp and hemp related products along with due diligence guidance.
- **Special Operations and Conferences:**
  - On July 11, 2019, Commissioner Cooper participated in a Regulatory Panel at the Texas Bankers Association (TBA) Senior Management Summit in Lost Pines.
  - Review Examiner Hodge was an instructor at the Graduate School of Banking at Colorado the week of July 15, 2019.
  - Beginning July 23, 2019, Director of Examination Support Activities Robinson, Review Examiners Hodge and Dvoracek, and Senior Examiner Willardson participated in the CSBS Deputy Seminar in Chicago, Illinois. The seminar provides a forum for Department representatives to dialogue with other state and federal regulators pertaining to a broad spectrum of supervision related issues.



Charles G. Cooper  
Commissioner

## TEXAS DEPARTMENT OF BANKING

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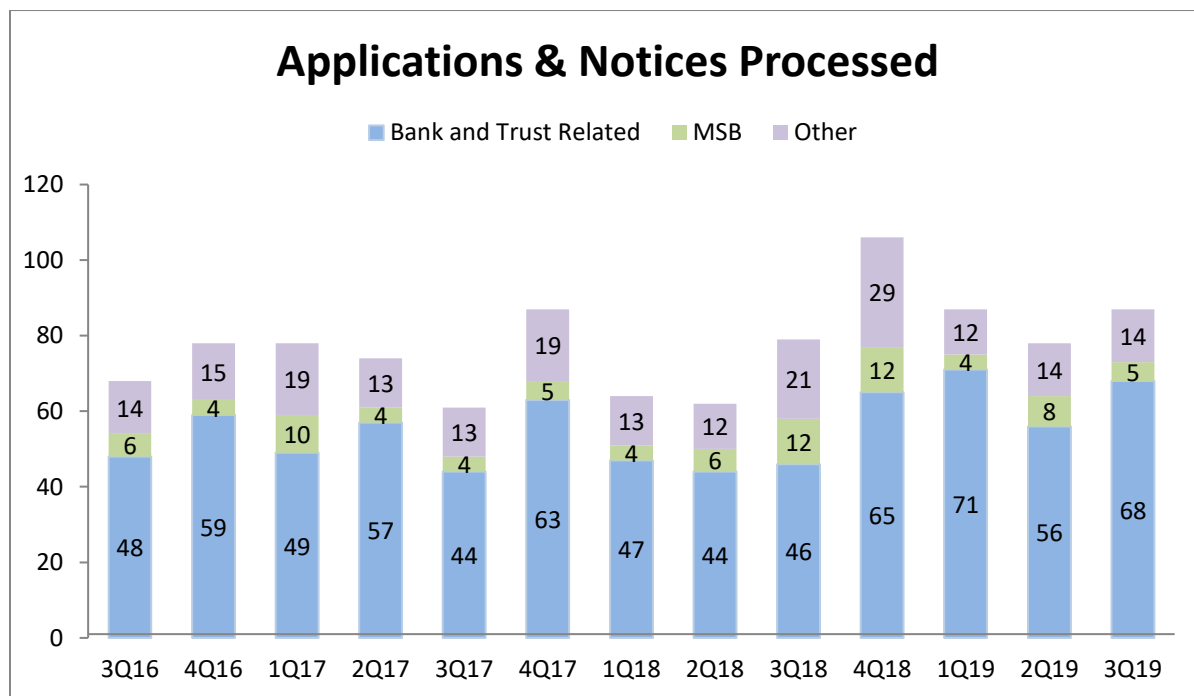
[www.dob.texas.gov](http://www.dob.texas.gov)

To: Finance Commission Members

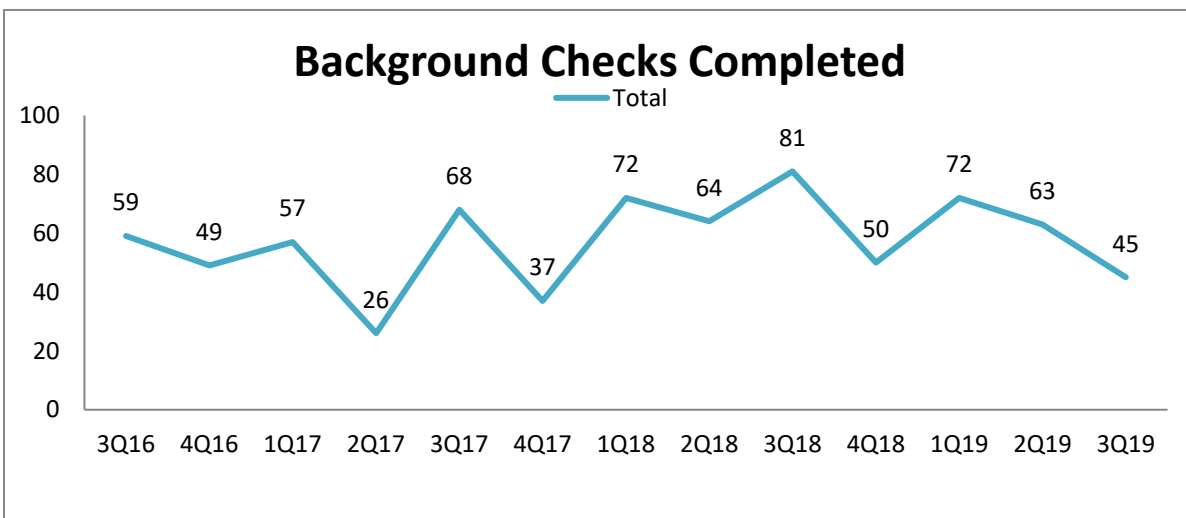
From: Mark Largent, Director of Corporate Activities

Date: July 31, 2019

Subject: Summary of the Corporate Division's Activities



Information on a Fiscal Quarter Basis.



Information on a Fiscal Quarter Basis.

Entities/Activities	Applications and Notices Under Review (as of July 30, 2019)
Bank Related	23
Trust Companies	8
Money Services Business (MSB)	14
Others	4
<b>Totals</b>	<b>49</b>

#### **Division Highlights**

- Application volume continues to be significant, especially compared to similar time periods for 2018 (48% higher) and 2017 (75% higher) and is above the level reported at the last Finance Commission meeting. 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 9 (64%)
  - Trust company increased 1 (14%)
  - MSB related decreased 2 (13%)
  - Other increased 1 (33%)
- Significant filing:
  - NexBank SSB, Dallas, Texas, has applied to convert from a Texas state savings bank to a Texas state bank under the name of NexBank [estimated gain in state banking assets of approximately \$8.5 billion].
- Charter, Conversion, and Merger Activity – The following transactions have consummated since Corporate's last report to the Finance Commission:
  - *Banks*
    - Fidelity Bank, Wichita Falls, Texas, merged into FirstCapital Bank of Texas, N.A., Midland, Texas [estimated loss in state banking assets of approximately \$543 million].
  - Trust Companies
    - Bolton Trust Company, L.T.A., Dallas, Texas, a de novo exempt trust company was added to the state system.
- Conferences, Conventions, and Committee Meetings – Since the last report to the Finance Commission, Corporate has participated in the following:
  - Director Mark Largent led a Town Hall discussion for Money Services Businesses ("MSB") regulators located in District 4 of the Conference of State Bank Supervisors. The discussion pertained to an initiative to consistently define who is in control and who needs to have a background check performed for MSB filings amongst the states.



Charles G. Cooper  
Commissioner

## TEXAS DEPARTMENT OF BANKING

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To: Finance Commission Members

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

Date: August 1, 2019

Subject: Summary of the Special Audits Division Activities

Special Audits (SA)			FY 2019							
Entity	FY 2018		1 <sup>st</sup>		2 <sup>nd</sup>		3 <sup>rd</sup>		4 <sup>th</sup>	
Industry Profile (# / Assets (billions) )										
Money Services Businesses (MSB)	161	\$131.5	160	\$135.4	167	\$137.7	164	\$137.6		
Prepaid Funeral Contract (PFC)	365	\$4.0	365	\$4.1	365	\$4.1	362	\$4.2		
Perpetual Care Cemeteries (PCC)	241	\$346.8	241	\$352.4	241	\$357.1	241	\$361.7		
Cemetery Brokers (CB)	14	n/a	14	n/a	14	n/a	14	n/a		
Private Child Support Enforcement Agencies (PCSEA)	10	n/a	10	n/a	10	n/a	10	n/a		
Check Verification Entities (CVE)	2	n/a	2	n/a	2	n/a	2	n/a		
Bullion Depository Agent (BDA)	0	n/a	0	n/a	0	n/a	0	n/a		
Examinations Performed										
MSB	97		22		24		29			
MSB Limited Scope	1		0		1		0			
MSB Accepted other State	14		5		4		3			
PFC	240		104		58		55			
PFC Limited Scope	8		3		0		1			
PCC	201		43		38		49			
PCC Limited Scope	4		1		0		0			
Ratings (# / %) Assigned to All Regulated Entities										
1	277	36.7%	268	35.5%	266	35.2%	273	36.2%		
2	399	52.8%	412	54.5%	415	54.9%	406	53.9%		
3	66	8.7%	64	8.5%	60	7.9%	63	8.4%		
4 & 5	13	1.8%	11	1.5%	15	2%	11	1.5%		
Noncompliance with Examination Priorities (Past Due)										
MSB	13		10		9		8			
PFC	13		5		2		3			
PCC	16		7		6		2			

### NOTES:

PCC \$ amounts reflected in the millions.

Limited scope examinations do not receive a rating.

**Noncompliance with Examination Priorities (Past Due)**

- The eight MSB past due examinations are on average two months past due.
- The two PCC past due examinations are on average 19 days past due and the three PFC past due examinations are on average 16 days past due.
- Our examination schedule reflects that four of the past due PFC/PCC examinations were completed in June 2019, and the remaining one past due PFC/PCC examination was completed in July 2019.
- Our examination schedule reflects that two of the past due MSB examinations were completed in June 2019, one was completed in July 2019, and the remaining five will be completed in August 2019, three of which have been delayed due to coordination with other MTRA state agencies.
- Special Audits met or exceeded all performance measures for the third quarter of FY 19.

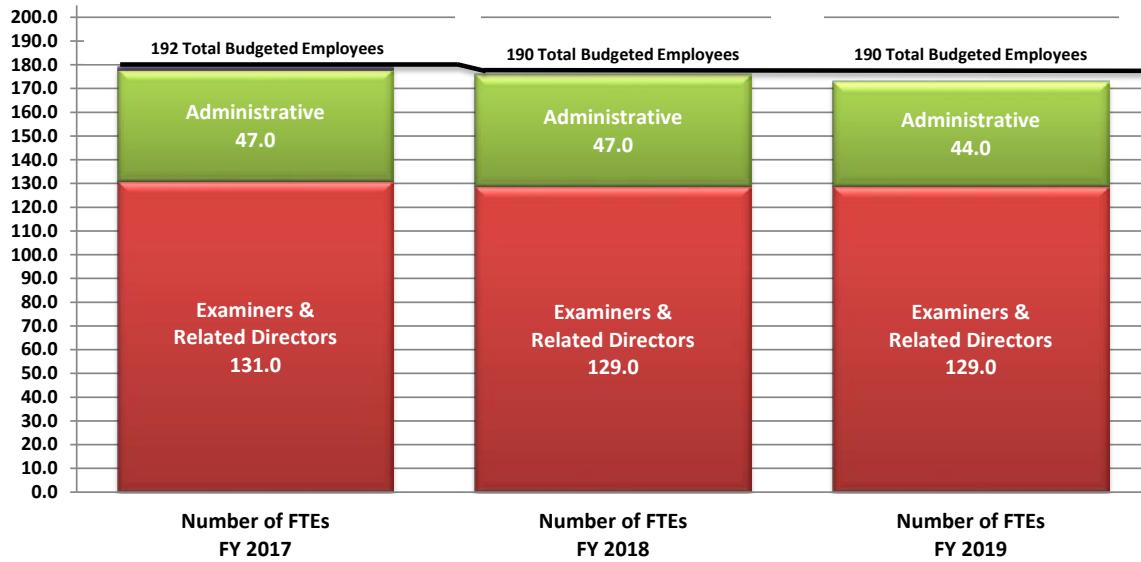
**Division Activities**

We continue to utilize staff resources to monitor for and investigate illegal activity, and when necessary, initiate appropriate regulatory enforcement actions against unlicensed and/or licensed entities to ensure compliance with applicable rules and regulation to protect the rights and interests of Texas consumers.

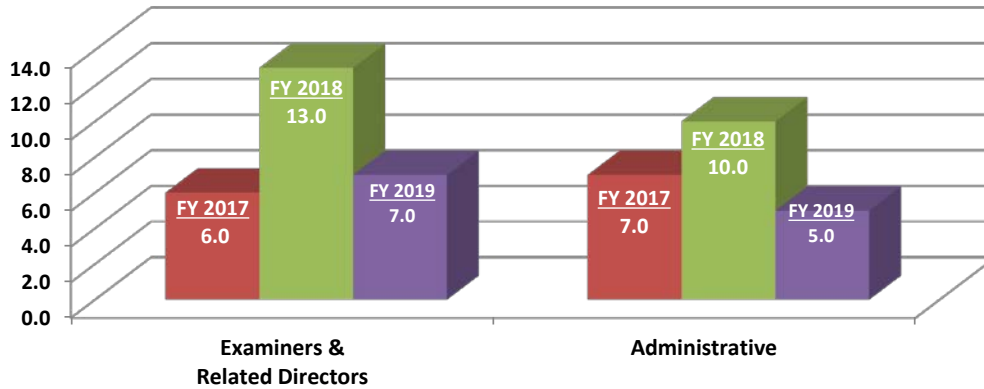
McConnell & Jones completed their audit fieldwork in July 2019 related to testing the internal controls and processes in place related to the Department Fines, Penalties and Restitution Processes. Review Examiner Saucillo, along with other Departmental representatives, attended various meetings and provided requested documentation. The initial draft report received from McConnell & Jones reflected that the Department controls were adequate and did not find any instances of noncompliance.

MSB staff continues with its participation in various MMET and MTRA committees to allow states an opportunity to discuss various licensing and examination issues in an attempt to provide clarity and regulatory certainty for businesses and individuals engaged in an expanding field of money services businesses.

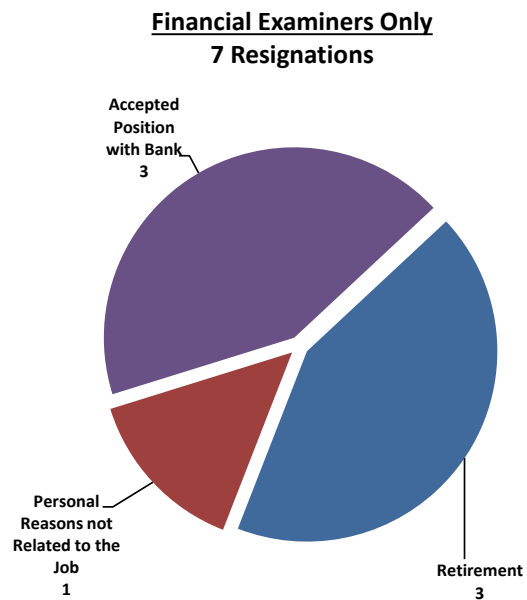
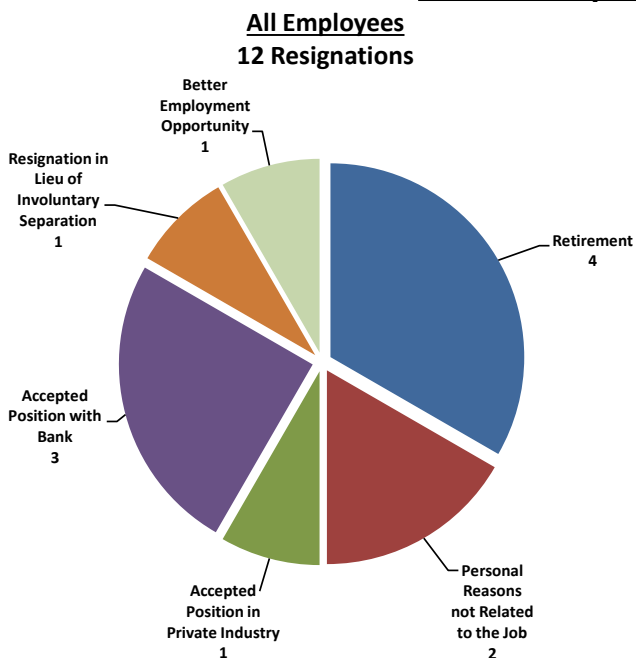
**Texas Department of Banking**  
**Employee Data for Fiscal Years 2017, 2018 and 2019 as of 5/31/19**



**New Hire Data for Fiscal Years 2017, 2018 and 2019**



**FY 2019 Employee Turnover Reasons**



As of 5/31/19

**Department of Banking**  
**Actual Performance for Output Measures**  
**Fiscal Year 2019**

Type/Strategy/Measure		2019 Target	2019 Actual	2019 YTD	Percent of Annual Target		Comparable Historical Data for the same time period			
							FY2018	FY2017	FY2016	FY2015
<b>Output Measures-Key</b>										
<b>1-1-1</b>	<b>Bank Examination</b>									
	<b>1. # Bank Examinations Performed</b>									
	<b>Quarter 1</b>	108	26	26	24.07%		25	25	33	24
	<b>Quarter 2</b>	108	24	50	46.30%		25	27	23	28
	<b>Quarter 3</b>	108	25	75	69.44%	*	25	27	24	29
	FY 2019, Quarter 3 - The number of bank examinations is below the target due to participating in fewer joint examinations than projected.									
	<b>2. # Trust/IT Examinations Performed</b>									
	<b>Quarter 1</b>	218	53	53	24.31%		49	44	61	54
	<b>Quarter 2</b>	218	48	101	46.33%		54	51	59	53
	<b>Quarter 3</b>	218	65	167	76.61%		59	70	59	64
<b>1-2-1</b>	<b>Non-Bank Examination</b>									
	<b>1. # Special Audit Licensees Examined</b>									
	<b>Quarter 1</b>	560	178	178	31.79%	*	136	145	156	132
	<b>Quarter 2</b>	560	123	301	53.75%		144	139	111	146
	<b>Quarter 3</b>	560	137	438	78.21%		161	172	143	150
	FY 2019, Quarter 1 - The positive variance relates to a team examination of a large entity with numerous licensees that was started near the end of the first quarter but was finalized in the second quarter. At the end of the second quarter, the performance will be near or at the budget.									
<b>1-3-1</b>	<b>Application Processing</b>									
	<b>1. # License Applications Completed</b>									
	<b>Quarter 1</b>	272	87	87	31.99%	*	64	78	84	65
	<b>Quarter 2</b>	272	78	165	60.66%	*	62	74	58	85
	<b>Quarter 3</b>	272	87	252	92.65%	*	79	61	68	96
	FY 2019, Quarter 1 - The number of filings completed was above expectations due to the higher than expected volume of bank and trust related filings received.									
	FY 2019, Quarter 2 - The number of filings completed was above expectations due to the higher than expected volume of bank and money service business filings received.									
	FY 2019, Quarter 3 - The number of filings during the quarter exceeded expectations largely due to both the number of branch offices being closed and opened exceeding expectations.									

\*Varies by 5% or more from target.



Charles G. Cooper  
Commissioner


## TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705

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**To:** Finance Commission Members

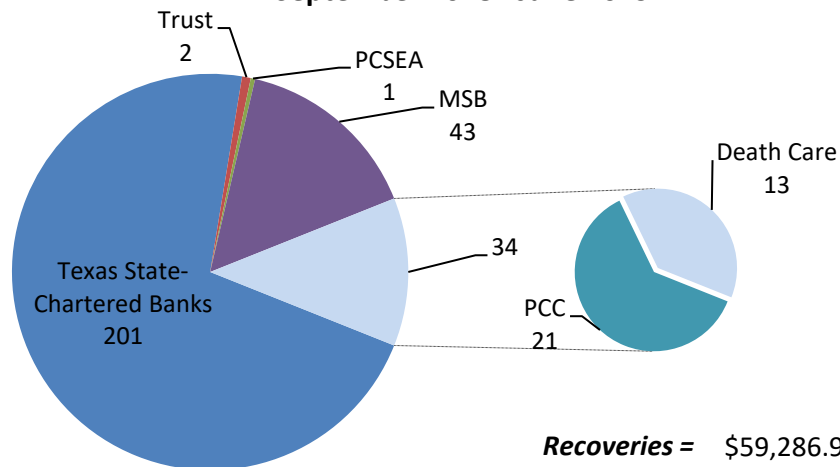
**From:** Wendy Rodriguez, Director of Strategic Support 

**Date:** August 1, 2019

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

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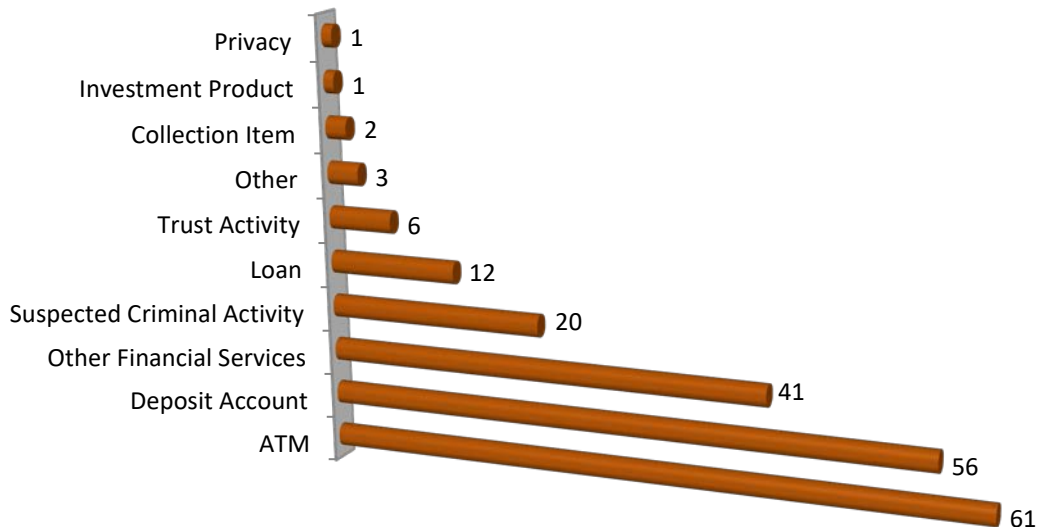
### Jurisdictional Written Complaints September 2018 - June 2019



**Recoveries =** \$59,286.99

**Total =** 281

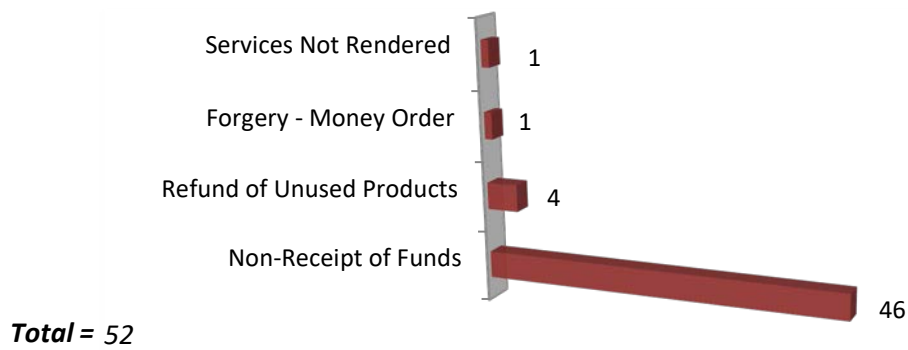
### State-Chartered Banks and Trust Companies Written Complaints by Type September 2018 - June 2019



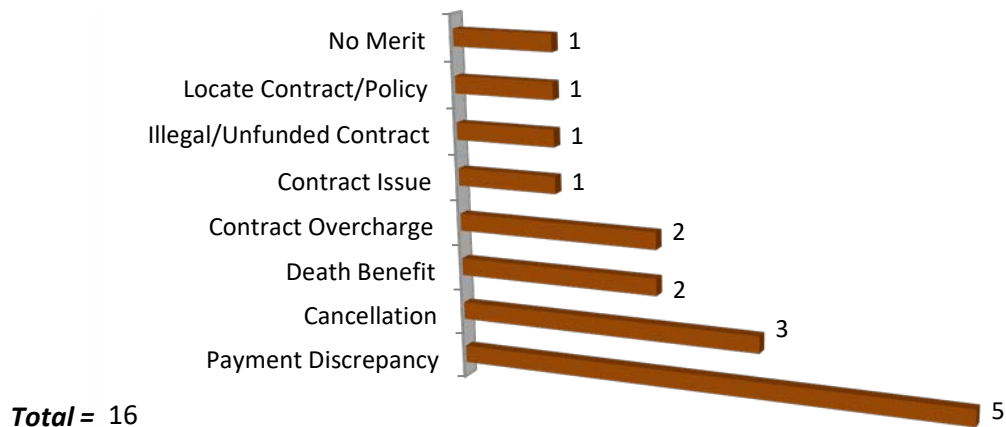
**Total =** 203



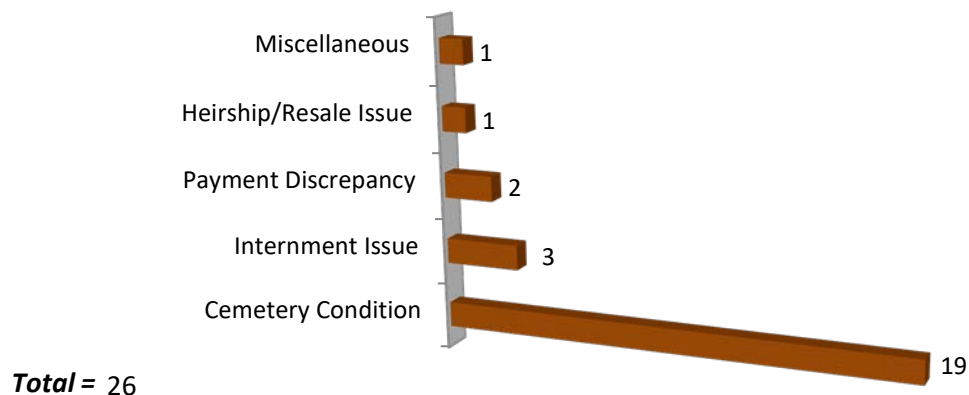
**Money Services Businesses  
Written Complaints by Type  
September 2018 - June 2019**



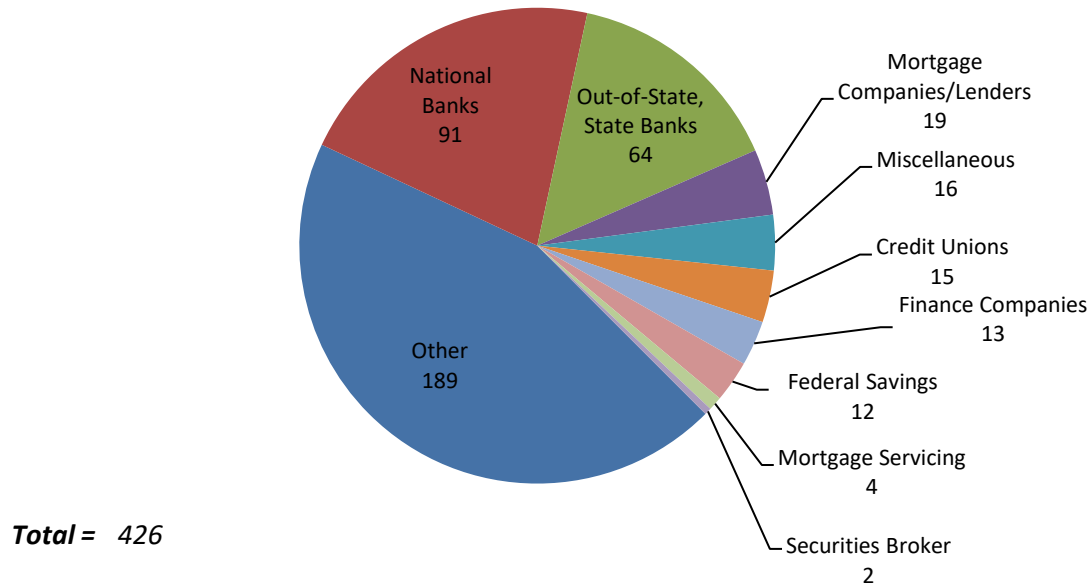
**Prepaid Funeral Contract Sellers  
Written Complaints by Type  
September 2018 - June 2019**



**Perpetual Care Cemeteries  
Written Complaints by Type  
September 2018 - June 2019**



### Written Complaints Against Non-Jurisdictional Entities September 2018 - June 2019



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.

### Consumer Assistance Activities Performance Information

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr
<b>State-Chartered Banks</b>				
Avg. Number of Days to Close a Written Complaint	19	7	11	
Percentage of Written Complaints Resolved Within 90 days	100%	100%	100%	
Number of Written Complaints Resolved	59	75	52	
<b>Trust</b>				
Avg. Number of Days to Close a Written Complaint	15	40	NA	
Percentage of Written Complaints Resolved Within 90 days	100%	100%	NA	
Number of Written Complaints Resolved	1	1	NA	
<b>PCSEA</b>				
Avg. Number of Days to Close a Written Complaint	NA	NA	1	
Percentage of Written Complaints Resolved Within 90 days	NA	NA	100%	
Number of Written Complaints Resolved	NA	NA	1	
<b>PFC/PCC</b>				
Avg. Number of Days to Close a Written Complaint	32	39	35	
Percentage of Written Complaints Resolved Within 90 days	100%	100%	100%	
Number of Written Complaints Resolved	13	10	16	
<b>MSB</b>				
Avg. Number of Days to Close a Written Complaint	36	30	35	
Percentage of Written Complaints Resolved Within 90 days	100%	100%	100%	
Number of Written Complaints Resolved	17	17	14	

**CANS ACTIVITY**  
**January 1, 2016 – July 31, 2019**

Entity	Enrolled	Compromised Accounts Reported
Texas State-Chartered Banks	206	612
Texas State-Chartered Savings Banks	23	55
Federal Savings Banks	10	1
State Credit Unions	132	828
Federal Credit Unions	229	463
National Banks	170	191
Out-of-State State-Chartered Banks	12	142
Out-of-State National Banks	6	1
<b>Total</b>	<b>788</b>	<b>2,293</b>

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

	FY 2016	FY 2017	FY 2018	FY 2019 <i>As of 7/31/19</i>
<b>I. General Knowledge</b>	9	8	6	3
<b>II. Loan Analysis</b>	4	3	3	5
<b>III. Panel</b>	3	2	2	4
<b>IV. Test Bank</b>	2	3	3	3
<b>Total FE3</b>	<b>18</b>	<b>24</b>	<b>22</b>	<b>19</b>

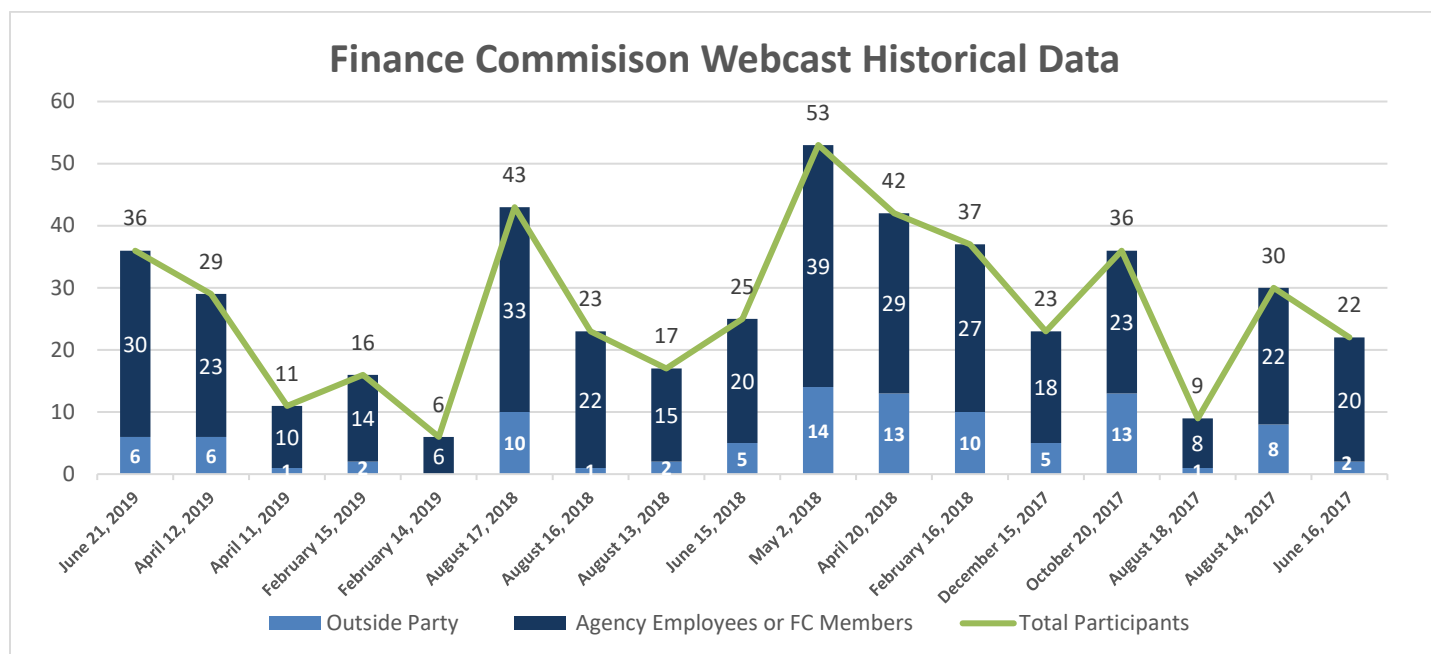
**Promotions**

<b>From FE3 to FE4 (Commissioned Examiner)</b>	2	3	2	4
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**Other Divisional Items:**

- *Financial Education*
  - Ms. Wendy Rodriguez participated in the 2019 Financial Literacy Summit in Irving, Texas on July 23, 2019. The program is designed to help bankers and educators exchange ideas, share financial education success stories and tools to enrich the bank's financial education outreach.
- *Personnel and Policies Manual Updates*
  - Personnel Manual
    - In June 2019, various subsections of Section 14 relating to Information Technology Standards and Procedures were updated. These sections included 14-02 Acceptable Use; 14-03 Account Management; 14-04 Administrative/Special Assets; 14-05 Backup and Recover; 14-06 Change Management; and 14-07 Email and Electronic Communications.

- Revised Administrative Memorandums (AM)
  - AM 2016 – Investment Policy for Funds under Oversight of Guaranty Fund Advisory Council
  - AM 2001 – Official Issuance and Communication System
- Examiner Bulletin (XB)
  - XB 2019-02 – Guidelines for Asset Quality Write-Ups in Reports of Examination for Bank & Trust Supervision Examination Staff
- *Staff Training*
  - The Department is hosting its staff conference in Sugar Land, Texas during the week of September 16, 2019. The agenda covers a variety of topics, including a legislative update, economic outlook, cyber security, credit risk and management, internal controls discussion, and more.
- *Examiners' Council*
  - The Examiners' Council, which consists of one commercial examiner from each regional office, a trust Specialist, and an IT Specialist, met the week of June 10 -13, 2019 to review commercial, trust, and IT examination work papers. A report of their findings was issued to the Director of Bank and Trust Supervision and the Director of Strategic Support on July 10, 2019. Regional Directors and the Chiefs of Trust and IT were asked to respond to the findings.



\* Webcast data is not available for the October 2018 and December 2018 meetings held at the capitol.



Charles G. Cooper  
Commissioner

## **TEXAS DEPARTMENT OF BANKING**

2601 North Lamar Blvd., Austin, Texas 78705

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### Memorandum

**TO:** Finance Commission Members

**FROM:** Catherine Reyer, General Counsel

**DATE:** August 1, 2019

**RE:** Legal Division Update

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#### **Pending Contested Cases**

***In the Matter of Clarence Lewis & Son Mortuary, Conroe, Texas, et al;*** Docket No. BF-1905-19-067. The Department received a complaint on December 27, 2018 regarding a prepaid funeral benefits contract issued by Respondents. Upon investigation, we determined that none of the respondents hold the required permit to sell prepaid funeral benefits. On April 3, 2019, Commissioner Charles Cooper issued an Emergency Order to Cease and Desist Activity and to Seize Prepaid Funeral Records. After we were unsuccessful in obtaining restitution for the individual who complained to the Department, the matter was set for hearing. On July 15, 2019, Commissioner Cooper issued a Consent Order under which Respondents agree to pay \$5,085 in restitution to the purchaser, and \$2,000 as an administrative penalty.

***In the Matter of Oliver W. Lomax and Lomax Funeral Home, Dallas, Texas;*** Docket No. BF-1903-19-060. Mr. Lomax is a funeral service provider authorized by Lifetime Services, Inc., which holds a permit to sell insurance-funded prepaid funeral benefits. During a regularly scheduled examination of Lifetime, the Department discovered that Respondents had failed to honor a prepaid funeral benefits contract on which Respondent had committed to as the funeral service provider, resulting in overcharges to the decedent's family. After Respondent repeatedly refused to refund the overcharges, the matter was set for hearing. On July 18, 2019, the Department received a signed Consent Order under which Respondents agree to pay \$1,323 in restitution to the decedent's family, and \$1,000 as an administrative penalty.

***In the Matter of Maria de la Luz Hernandez and Hernandez Funeral Home, Rosenberg, Texas;*** Docket No. BF-1906-19-074. Respondents hold a permit to sell prepaid funeral benefits contracts. In January 2019, the Department commenced a regularly scheduled examination of Respondents. During the examination, the Department identified three suspicious cancellations of trust-funded prepaid funeral benefits contracts. The Department subsequently confirmed that the contracts were cancelled by Respondents without the knowledge or consent of the purchasers, and the funds related to the cancellations were withdrawn from Respondents' prepaid funeral trust account but never provided to the purchasers as refunds. On April 30, 2019, Commissioner Charles Cooper issued an Emergency Order to Cease and Desist Activity and to Seize Prepaid Funeral Accounts and Records. On May 1, 2019, the Department seized Respondents' prepaid funeral trust account and records. Respondents submitted a timely request for hearing to the Department to show why the Emergency Order should be stayed. Hearing is set for August 6, 2019.

***In the Matter of E. Mex. Financial Services, Inc., Laredo, Texas;*** Docket No. BM-1904-18-029. Respondent holds a license to conduct currency exchange. In June 2018, the Department commenced a regularly scheduled examination of Respondent. During the examination, the Department identified numerous violations of state and federal law, including: failure to cooperate with an examination; failure to prepare, maintain, and preserve several key reports indicating the safety and soundness of Respondent's operations, such as a general ledger posted in accordance with generally accepted accounting principles, records related to bank reconciliations, and customer identification records. Based on the serious nature of the allegations, the Department issued an order to cease and desist activity, and is seeking revocation of the currency exchange license. Hearing is set for November 4, 2019; discovery and depositions are ongoing. In June, counsel for E. Mex. filed a petition for declaratory judgment and application for temporary injunction and writ of mandamus in Travis County District Court, Cause No. D-1-GN-19-003237. The petition seeks to enjoin the Department from using its contracted administrative law judge in the license revocation case. The Office of the Attorney General is representing the Department in the district court matter.

### **Gifts**

The Department received tuition and expense reimbursement totaling \$76,774.83 from the Conference of State Bank Supervisors for 92 Bank and Trust and Special Audits examiners to attend Intermediate IT Trainings held in San Antonio, Dallas, Denver, and Seattle in February, May, and June, 2019.

### **Orders Issued 6/1/19 – 7/31/19**

During this time period, the Commissioner issued two enforcement orders, both of which are final and non-appealable:

#### **Bank and Trust**

- Consent Order Prohibiting Further Participation dated June 7, 2019; Catana Gray, Amarillo, TX

#### **Special Audits**

- Consent Order dated July 15, 2019; Clarence Lewis & Son Mortuary, Conroe, TX

### **FY 2019 To Date Quarterly Order Activity**

<b>BANK</b>				
<b>Type of Action</b>	<b>1st</b>	<b>2nd</b>	<b>3rd</b>	<b>4th</b>
Consent Order	1	0	1	
Cease & Desist	1	0	1	
Supervision	0	0	1	
Prohibition	0	3	3	
Total	2	3	6	
<b>TRUST COMPANY</b>				
Consent Order	0	0	0	
Cease & Desist	0	0	0	
Supervision	0	0	0	
Prohibition	0	0	0	
Total	0	0	0	

<b>MONEY SERVICES BUSINESS</b>				
Consent Order	8	1	2	
Cease & Desist	0	2*	0	
Total	8	3	2	
<b>PERPETUAL CARE CEMETERY</b>				
Consent Order	0	1	0	
Cease & Desist	0	0	0	
Refusal to Renew Cert/Auth	0	0	0	
Final Order after hearing	0	0	0	
Total	0	1	0	
<b>PREPAID FUNERAL CONTRACT</b>				
Consent Order	1	1	1	
Cease & Desist	0	0	2	
Conversion	0	0	0	
Total	1	1	3	

\*The subject of one of these Orders has requested a hearing; therefore one of the Orders in this category is not yet effective.

<b>FUTURE RULEMAKING ACTIVITY</b>		
<b>Rule</b>	<b>Subject</b>	<b>Projected Date for Presentation</b>
7 TAC Ch. 9	Procedures for Alternative Dispute Resolution, Negotiated Rulemaking, and FC Appeals (new)	October 18, 2019
7 TAC Ch. 33	Broker-Dealers Exemption (new)	October 18, 2019

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2. Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC, Part 2, Chapter 11, §§11.10, 11.11 and 11.12 Concerning Complaint Handling Procedures

**PURPOSE:** New §§11.10, 11.11 and 11.12 provide consistent procedures for handling complaints by persons regarding conduct of entities regulated by the Department. The new rules are in response to a recommendation of the Sunset Advisory Commission that the Department update its complaint processing provisions in line with the Sunset Advisory Commission's Licensing and Regulation Model guidelines (Sunset Model). A change has been made to the proposed new rules in response to the Commission's recommendation to delete the word "signed" from the definition of a Complaint.

**RECOMMENDED ACTION:** No comments were received regarding new 7 TAC §§11.10, 11.11 and 11.12 except for the Commission's recommendation to remove the requirement for a complaint to be signed. The Department recommends that the Commission approve adoption of the new rule as previously published in the *Texas Register*, with the signature requirement for a complaint to be removed. The Department also recommends that the Commission approve republication of the revised new rule in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we adopt new 7 TAC §§11.10, 11.11 and 11.12 as previously published in the *Texas Register*, with the signature requirement for a complaint to be removed. I also move that we republish the revised new rule in the *Texas Register*.

***Title 7. Banking and Securities***  
***Part 2. Texas Department of Banking***  
***Chapter 11. Miscellaneous***  
***7 TAC, §§11.10 - 11.12***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts new §§11.10 - 11.12 concerning complaints with a change to the proposed text as published in the July 5, 2019, issue of the *Texas Register* (44 TexReg 3383). The new rules will be republished.

A change made to the proposed new rules is in response to the commission's recommendation to delete the word "signed" from the definition of a Complaint.

These new rules establish consistent procedures for persons to complain about conduct of persons regulated by the department. The new rules are in response to a recommendation of the Sunset Advisory Commission that the department update its complaint processing provisions in line with the Sunset Advisory Commission's Licensing and Regulation Model guidelines (Sunset Model).

The Sunset Model is intended as a guide to assist in evaluating occupational licensing and regulatory agencies to see if they are efficient, effective, fair, and accountable in their mission to protect the public. Complaint filing, processing, and recordkeeping are topics covered in the Sunset Model. The new rules implement the applicable recommendations contained in the Sunset Model.

The rules create new regulations concerning complaint handling to conform to recommendations from the Sunset Advisory Commission.

The department received no comments regarding the proposed new rules except for the commission's recommendation to remove the requirement for a complaint to be signed.

The new rules are adopted pursuant to Government Code, §2001.004, which provides the authority to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

***§11.10. Definitions.***

(a) "Complainant" means a person who files a complaint or inquiry.

(b) "Complaint" means a ~~[signed,]~~ written communication submitted to the department by a person that alleges misconduct by a person believed to be engaging in an activity that is regulated by the department. For purposes of this subchapter, a complaint shall contain at least the following information:

(1) the complainant's name and contact information;

(2) the name of the entity against whom the complaint is submitted;

(3) the date and place of the alleged violation;

(4) a description of the facts or conduct alleged to violate applicable statutes or rules; and

(5) written documentation supporting the complaint.

(c) “Inquiry” means a communication made to the department about an entity believed to be engaging in an activity that is regulated by the department, but such communication does not include all of the required elements of a complaint.

***§11.11. Complaint Processing.***

(a) Complaints and inquiries filed with the department are generally considered public information, unless a specific statutory exception applies.

(b) Upon receipt of a complaint or inquiry, the department will make a good faith effort to protect complainant's identity to the extent possible. The department will determine if the complaint or inquiry relates to an activity that the department regulates.

(c) If the department does not regulate the activity that is the subject of the complaint or inquiry, the department shall close the complaint or inquiry, notify the complainant and refer the complaint or inquiry to the appropriate regulatory entity within five business days of receiving the complaint or inquiry, if known.

(d) If the department regulates the activity that is the subject of a complaint, the department shall initiate an investigation into the merits of the complaint by sending, within 10 business days of receiving the

complaint, a copy of the complaint and any supporting documentation to the entity that is the subject of the complaint.

(e) The department shall prioritize complaints for purposes of determining the order in which complaints are investigated, taking into account the seriousness of the allegations made in a complaint and the length of time a complaint has been pending.

(f) A regulated entity that receives a complaint forwarded by the department shall respond within 30 days from the date the request is mailed by the department.

(g) The banking commissioner may appoint a hearings officer or other subject matter expert to investigate a complaint received by the department.

(h) The department may, at the discretion of the commissioner, arrange for the services of a qualified mediator or subject matter expert to assist in resolving the complaint.

(i) The department shall monitor how long each complaint is open, and shall make all reasonable efforts to resolve complaints within 90 days of receipt. The department shall notify the complainant of their complaint status at least quarterly if more than 45 days have elapsed since the complaint was received.

(j) If the department determines that the complaint is not supported by the evidence, or if the complaint is resolved to the satisfaction of the parties, the complaint will be dismissed.

(k) The department shall notify all parties to the complaint within 10 business days of closing the complaint.

(l) A complainant who disagrees with the disposition of a complaint may appeal by filing a petition against the department in a district court in Travis County.

***§11.12. Complaint Review and Reporting.***

(a) The department shall maintain in accordance with its retention policy records of all complaints received. Such records shall include the information required in Finance Code, §12.108.

(b) A representative sample of complaints closed due to lack of jurisdiction or evidence shall be reviewed quarterly by the head of the division that received the complaint.

(c) At least quarterly, the department shall submit to the Finance Commission a report of the sources, subjects, types, and dispositions of complaint activity during the preceding period.

3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 2, Chapter 25, §§25.13, 25.23 and 25.24 Concerning Assessments on Prepaid Funeral Contract Sellers

**PURPOSE:** Amendments to Chapter 25, §§25.13, 25.23 and 25.24 support the legislative directive that the commission by rule prescribe the term of a permit issued for the sale of prepaid funeral benefits. Section 25.13 adds the definition of a valid permit to clarify that a permit issued by the department to sell prepaid funeral benefits remains in effect until it is revoked by the department or surrendered by the permit holder. Section 25.23 eliminates the annual renewal fee, including the Renewal Fee Schedule. Section 25.24 combines the current Renewal Fee Schedule in §25.23 and the current Annual Assessment Schedule in §25.24 into one new annual assessment schedule. Combining the two current schedules into one new assessment schedule preserves the revenue to the department with little or no impact to existing permit holders. To eliminate the need for large, one-time increases in annual assessments, §25.24 also allows the department to increase the new assessment rates based on the percentage change in the Gross Domestic Product Implicit Price Deflator (GDPIPD) inflation index beginning September 1, 2020.

**RECOMMENDED ACTION:** No comments were received regarding the proposed amendments to 7 TAC, §§25.13, 25.23 and 25.24. The Department recommends that the Commission approve adoption of the amendments without changes to the proposal as previously published in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we adopt the amendments to 7 TAC, §§25.13, 25.23 and 25.24 without changes to the proposal as previously published in the *Texas Register*.

***Title 7. Banking and Securities  
Part 2. Texas Department of Banking  
Chapter 25. Prepaid Funeral Contracts  
Subchapter B. Regulation of Licenses  
7 TAC §§25.13, 25.23 and 25.24***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §25.13 concerning the annual report filing, §25.23 concerning the annual renewal fee and §25.24 concerning the annual examination fee (annual assessment) for existing permits to sell prepaid funeral benefits, without changes to the proposed text as published in the July 5, 2019 issue of the *Texas Register* (44 TexReg 3386). The amended rule will not be republished.

The amendment to §25.13 adds the definition of a valid permit to clarify that a permit issued by the department to sell prepaid funeral benefits remains in effect until it is revoked by the department or surrendered by the permit holder.

The amendment to §25.23 eliminates the annual renewal fee, including the Renewal Fee Schedule. The new definition of a valid permit makes existing permits perpetual rather than requiring that they be renewed each year. This supports the legislative directive that the commission by rule prescribe the term of a permit issued, which may be for more than one year. Existing permits will still be subject to revocation due to violations of state law.

The amendment to §25.24 combines the current Renewal Fee Schedule in §25.23(b)(2) and the current Annual

Assessment Schedule in §25.24(b)(1) into one new annual assessment schedule based on the number of outstanding prepaid funeral benefit contracts. The new annual assessment rates will still be billed in quarterly or fewer installments to preserve the advantages of the assessment system over the annual fee system. Combining the two current schedules into one new assessment schedule preserves the revenue to the department with little or no impact to existing permit holders.

To eliminate the need for large, one-time increases in annual assessments, the proposed amendment to §25.24 also allows the department to escalate the new assessment rates based on the percentage change in an inflation index beginning September 1, 2020. The inflation index is the Gross Domestic Product Implicit Price Deflator (GDPIPD), published quarterly by the Bureau of Economic Analysis, United States Department of Commerce. While the Consumer Price Index (CPI) published by the Bureau of Labor Statistics, United States Department of Labor, is the most well-known measure, it measures only the prices of goods and services typically purchased by urban consumers. These goods and services constitute only about 60% of the economy's total production. In contrast, the GDPIPD captures the overall level of inflation in everything that an economy produces and is typically used to calculate inflation at the corporate or governmental level.

Each September 1, the assessment rates set forth in the amendment to §25.24 will be reviewed by the department to determine if they should be revised upward (or downward) by an amount equal to the percentage change in the GDPIPD index

values from the first quarter value of the previous calendar year (the previous March-to-March period). An increase in the GDPIPD can result in an increase in assessment rates if adopted by the department.

As provided by §25.24(c)(1), the department may periodically forgive a portion of assessments otherwise due in a year when the additional funds are not needed to fund the department's operations. Over the past five fiscal years, the department has discounted or forgiven a portion of the permit holders' annual assessments because the forgiven revenue was not needed to cover the department's regular operations. In fiscal years 2014, 2015, 2016, 2017 and 2018, the department reduced total billable annual assessments by 19%, 30%, 30%, 13% and 18%, respectively. Therefore, an increase in assessment rates will not necessarily result in a proportionate increase in assessments collected.

The department received no comments regarding the proposed amendments.

The amendment is adopted pursuant to Texas Finance Code (Finance Code), §154.051(b) and §154.054, which authorize the commission to adopt rules necessary or reasonable to recover the cost of supervision and regulation by imposing and collecting reasonable fees.

### ***§25.13 Annual Report Filing.***

(a) Valid permit. A permit issued by the department to sell prepaid funeral benefits remains in effect until it is revoked by the

department or surrendered by the permit holder.

(b) ~~[(a)]~~ Date of filing. Each permit holder with outstanding prepaid funeral benefit contracts must file an annual report with the department ~~Department~~ by March 1 of each year for the preceding calendar year.

(c) ~~[(b)]~~ Contents of filing. The Annual Report filing must be sworn to by an authorized agent or corporate officer of the permit holder before a notary and must provide:

(1) – (7) (No change.)

### ***§25.23 Application ~~[and Renewal]~~ Fees.***

(a) Definitions.

(1) – (2) (No change.)

(b) Application fees. The application fees set forth in this subsection have been set in accordance with the Finance Code, Chapter 154, for the purpose of defraying the cost of administering the Finance Code, Chapter 154. Except as otherwise provided in this subsection, all fees are due at the time the application is filed and are nonrefundable. An application submitted without the appropriate filing fee will be deemed incomplete and will not be considered.

(1) (No change.)

~~[(2) Renewal fee. The renewal fee for an existing permit is based on the number of outstanding contracts as reflected on the most recent annual report you have filed with the department, as specified in the Renewal Fee Schedule following this paragraph. You must~~

**PROPOSED AMENDMENTS TO 7 TAC §§25.13, 25.23 AND 25.24**

**Page 3 of 6**

~~pay the renewal fee by ACH debit on or before March 1 of each year, or by another method if directed to do so by the department. At least 15 days prior to the scheduled ACH transfer, the department will send you a notice specifying the amount of the renewal~~

~~fee and the date the department will initiate payment of the fee by ACH debit, which will be March 1 of each year or, if March 1 is a holiday, the last business day immediately preceding March 1.]~~

**[Renewal Fee Schedule**

<b>If your number of outstanding contracts is:</b>		<b>Then your renewal fee is:</b>
<i>Over —</i>	<i>But not over —</i>	
_____	25	\$100
25	1,925	\$75 plus \$1.00 per outstanding contract
1,925	20,000	\$2,000
20,000	_____	\$3,000]

(2) [(3)] Conversion application fee. If you apply to convert a trust-funded prepaid funeral benefits operation to an insurance-funded prepaid funeral benefits operation, you must pay a \$1,000 fee per application. In the event additional processing time is required because the application is incomplete, you must pay the additional processing costs incurred in excess of the filing fee originally submitted, at the rate of \$600 per eight-hour employee day, provided that the total fee cannot exceed \$2,000. Until you have paid any such additional fee, the application will be deemed incomplete and will not be considered.

**§25.24 What fees must I pay for an examination?**

(a) Definitions.

(1) – (3) (No change.)

(b) As a prepaid funeral benefits seller, what fees must I pay for department examinations?

(1) An annual assessment must be paid as an examination fee and as a renewal fee to the department to defray the cost of administering Chapter 154 [~~\$154.054~~] of the Finance Code. The amount of your annual assessment is based on the number of outstanding contracts as reflected on your most recent annual report filed with the department. You must pay the annual assessment specified in the following table:



<u>Annual Assessment Schedule</u>		
<u>If your number of outstanding contracts is:</u>		<u>Then your annual assessment is:</u>
<u>Over</u>	<u>But not over</u>	
-----	99	<u>\$260 plus the number of outstanding contracts over 0 multiplied by a factor of \$4.00</u>
100	499	<u>\$700 plus the number of outstanding contracts over 100 multiplied by a factor of \$3.95</u>
500	999	<u>\$2,325 plus the number of outstanding contracts over 500 multiplied by a factor of \$3.80</u>
1,000	1,999	<u>\$4,275 plus the number of outstanding contracts over 1,000 multiplied by a factor of \$3.55</u>
2,000	2,999	<u>\$7,825 plus the number of outstanding contracts over 2,000 multiplied by a factor of \$1.90</u>
3,000	4,999	<u>\$9,825 plus the number of outstanding contracts over 3,000 multiplied by a factor of \$0.77</u>
5,000	9,999	<u>\$11,365 plus the number of outstanding contracts over 5,000 multiplied by a factor of \$0.26</u>
10,000	-----	<u>\$12,675 plus the number of outstanding contracts over 10,000 multiplied by a factor of \$0.20</u>

If calculation of the annual assessment produces an amount greater than \$18,450, then your annual assessment is \$18,450.

**PROPOSED AMENDMENTS TO 7 TAC §§25.13, 25.23 AND 25.24**  
**Page 5 of 6**

[Annual Assessment Schedule:

If your number of outstanding contracts is:		Then your annual assessment is:
Over —	But not over —	
_____	99	\$150 plus the amount of your number of outstanding contracts over 0 multiplied by a factor of \$3.50
100	499	\$500 plus the amount of your number of outstanding contracts over 100 multiplied by a factor of \$3.00
500	999	\$1,700 plus the amount of your number of outstanding contracts over 500 multiplied by a factor of \$2.70
1,000	1,999	\$3,100 plus the amount of your number of outstanding contracts over 1,000 multiplied by a factor of \$2.50
2,000	2,999	\$5,600 plus the amount of your number of outstanding contracts over 2,000 multiplied by a factor of \$2.00
3,000	4,999	\$7,600 plus the amount of your number of outstanding contracts over 3,000 multiplied by a factor of \$0.75
5,000	14,999	\$9,100 plus the amount of your number of outstanding contracts over 5,000 multiplied by a factor of \$0.25
15,000	_____	\$11,600 plus the amount of your number of outstanding contracts over 15,000 multiplied by a factor of \$0.15

If the annual assessment is greater than \$15,000, your annual assessment is \$15,000.]

(2) – (3) (No change.)

(c) How will the department bill me for the examination fees and when must I pay them?

(1) – (2) (No change.)

(d) Adjustments for inflation. In this section, “GDPIPD” means the Gross Domestic Product Implicit Price Deflator, published quarterly by the Bureau of Economic Analysis, United States Department of Commerce. The “annual GDPIPD factor” is equal to the percentage

change in the GDPIPD index values published for the first quarter of the current year compared to the first quarter of the previous year (the March-to-March period immediately preceding the calculation date), rounded to a hundredth of a percent (two decimal places).

(1) Beginning September 1, 2020, and each September 1 thereafter, the table in subsection (b)(1) of this section, as most recently revised before such date pursuant to this subsection, may be revised as follows:

(A) the base assessment amount listed in column three of the table may be increased (or decreased) by an amount proportionate to the measure of inflation (or deflation) reflected in the annual GDPIPD factor, rounded to whole dollars; and

(B) each factor listed in column three of the table may be increased (or decreased) by an amount proportionate to the measure of inflation (or deflation) reflected in the annual GDPIPD factor, rounded to two decimal places.

(2) If the table in subsection (b)(1) of this section is revised for inflation (or deflation), then not later than August 1 of each year, the department shall calculate and prepare a revised table reflecting the inflation-adjusted values to be applied effective the following September 1 and will provide each permit holder with notice of and access to the revised table.

4. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 2, Chapter 26, §26.1 Concerning Assessments on Perpetual Care Cemeteries

**PURPOSE:** The amendments to §26.1 support the legislative directive that the Commission by rule prescribe the term of a certificate of authority (certificate) to operate a perpetual care cemetery (PCC). First, the definition of a “certificate of authority” is added to clarify that certificates remain in effect until they are revoked by a district court or the Department, or surrendered by the certificate holder. The definition makes existing certificates perpetual rather than requiring that they be renewed each year. Certificates will still be subject to revocation due to violations of state law. Second, the annual renewal fee and associated Annual Fee Schedule are eliminated, and the word “renewal” is eliminated from all references to the report that must be filed with the Department each year. Third, the current Annual Fee Schedule in §26.1(b)(2) and Annual Assessment Schedule in §26.1(b)(4) are combined into one new annual assessment schedule. The new assessment schedule preserves the revenue to the Department with little or no impact to existing certificate holders. Finally, to eliminate the need for large, one-time increases in annual assessments, the Department will be allowed to increase the new assessment rates based on the percentage change in the Gross Domestic Product Implicit Price Deflator inflation index beginning September 1, 2020.

**RECOMMENDED ACTION:** No comments were received regarding the proposed amendments to 7 TAC §26.1. 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 §26.1 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 §26.1***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts the amendments to §26.1 concerning the fees for a certificate of authority (certificate) to operate a perpetual care cemetery without changes to the proposed text as published in the July 5, 2019, issue of the *Texas Register* (44 TexReg 3389). The amended rule will not be republished.

The amendments are in response to a legislative directive that the commission by rule prescribe the term of a certificate issued, which may be for more than one year.

First, the amendments to §26.1 add the definition of a “certificate of authority” to clarify that a certificate issued by the department to operate a perpetual care cemetery remains in effect until it is revoked by a district court or the department, or surrendered by the certificate holder. The amendments also eliminate the word “renewal” from all references to the report that must be filed with the department each year.

Second, the amendments to §26.1 eliminate the annual renewal fee, including the Annual Fee Schedule. The new definition of a “certificate of authority” makes existing certificates perpetual rather than requiring that they be renewed each year. This supports the legislative directive that the commission by rule prescribe the term of a certificate issued, which may be for more than one year.

Existing certificates will still be subject to revocation due to violations of state law.

Third, the amendments to §26.1 combine the current Annual Fee Schedule in §26.1(b)(2) and the current Annual Assessment Schedule in §26.1(b)(4) into one new annual assessment schedule based on the fund balance shown on the statement of funds in the most recent annual report. The new annual assessment rates will still be billed in quarterly or fewer installments to preserve the advantages of the assessment system over the annual fee system. Combining the two current schedules into one new assessment schedule preserves the revenue to the department with little or no impact to existing certificate holders.

Finally, to eliminate the need for large, one-time increases in annual assessments, the amendments to §26.1 also allow the department to escalate the new assessment rates based on the percentage change in an inflation index beginning September 1, 2020. The inflation index is the Gross Domestic Product Implicit Price Deflator (GDIPD), published quarterly by the Bureau of Economic Analysis, United States Department of Commerce. While the Consumer Price Index (CPI) published by the Bureau of Labor Statistics, United States Department of Labor, is the most well-known measure, it measures only the prices of goods and services typically purchased by urban consumers. These goods and services constitute only about 60% of the economy’s total production. In contrast, the GDIPD captures the overall level of inflation in everything that an economy produces and is typically used to calculate inflation at the corporate or governmental level.

## ADOPTION OF AMENDMENTS TO 7 TAC §26.1

Page 2 of 6

Each September 1, the assessment rates set forth in the amendments to §26.1 will be reviewed by the department to determine if they should be revised upward (or downward) by an amount equal to the percentage change in the GDPIPD index values from the first quarter value of the previous calendar year (the previous March-to-March period). An increase in the GDPIPD can result in an increase in assessment rates if adopted by the department.

As provided by §26.1(c)(1), the department may periodically forgive a portion of assessments otherwise due in a year when the additional funds are not needed to fund the department's operations. Over the past five fiscal years, the department has discounted or forgiven a portion of the certificate holders' annual assessments because the forgiven revenue was not needed to cover the department's regular operations. In fiscal years 2014, 2015, 2016, 2017 and 2018, the department reduced total billable annual assessments by 22%, 30%, 30%, 13% and 18%, respectively. Therefore, an increase in assessment rates will not necessarily result in a proportionate increase in assessments collected.

The department received no comments regarding the proposed amendments.

The amendments are adopted pursuant to Texas Finance Code (Finance Code), §712.008(a) which authorizes the commission to adopt rules necessary or reasonable to defray the cost of supervision and regulation by imposing and collecting reasonable fees.

### *§26.1. What Fees Must I Pay to Operate a Perpetual Care Cemetery?*

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

(1) – (5) (No change.)

(6) Certificate of authority--a certificate issued by the department to operate a perpetual care cemetery, which remains in effect until it is revoked by a district court or the department, or surrendered by the certificate holder.

(b) If I want to operate a perpetual care cemetery, what fees must I pay to the department?

(1) (No change.)

~~[(2) An annual renewal fee must be paid as required by Section 712.0037 of the Act. This annual renewal fee is based on your fund balance as reflected on the statement of funds in the most recent annual renewal report you have filed with the department. Your annual renewal fee will be calculated according to the following table:]~~

# ADOPTION OF AMENDMENTS TO 7 TAC §26.1

Page 3 of 6

## [Annual Fee Schedule

If your fund balance is:		Then your annual fee is:
Over--	But not over---	
-----	\$13,000	\$50
\$13,000	\$250,000	\$500
\$250,000	\$1,000,000	\$750
\$1,000,000	-----	\$1,000]

(2) [(3)] If the department does not receive your completed annual report [~~both your completed renewal report and renewal fee~~] by the due date, a late fee of \$100 per day for each business day after the due date that the department does not receive your completed annual report [~~renewal report and renewal fee~~] may be imposed. You must pay this fee immediately upon receipt of the department's written invoice.

department. You must pay the annual assessment specified in the following table:

(3) [(4)] An annual assessment will be imposed as an examination fee and as a renewal fee on a perpetual care cemetery corporation to defray the cost of administering the Act, as required by Sections 712.0037, 712.042 and 712.044(b) of the Act. The annual assessment will be collected pursuant to 7 TAC §26.1(c)(1). The amount of your annual assessment is based on your fund balance as reflected on the statement of funds in the most recent annual [~~renewal~~] report you have filed with the

**ADOPTION OF AMENDMENTS TO 7 TAC §26.1**  
**Page 4 of 6**

<b><u>Annual Assessment Schedule</u></b>		
<b><u>If your fund balance is:</u></b>		<b><u>Then your annual assessment is:</u></b>
<b><u>Over</u></b>	<b><u>But not over</u></b>	
<u>-----</u>	<u>\$12,999.99</u>	<u>\$250</u>
<u>\$13,000.00</u>	<u>\$24,999.99</u>	<u>\$700 plus the amount of your fund balance over \$13,000 multiplied by a factor of .0080</u>
<u>\$25,000.00</u>	<u>\$49,999.99</u>	<u>\$800 plus the amount of your fund balance over \$25,000 multiplied by a factor of .0053</u>
<u>\$50,000.00</u>	<u>\$99,999.99</u>	<u>\$950 plus the amount of your fund balance over \$50,000 multiplied by a factor of .0045</u>
<u>\$100,000.00</u>	<u>\$249,999.99</u>	<u>\$1,180 plus the amount of your fund over \$100,000 multiplied by a factor of .0033</u>
<u>\$250,000.00</u>	<u>\$499,999.99</u>	<u>\$1,900 plus the amount of your fund over \$250,000 multiplied by a factor of .0032</u>
<u>\$500,000.00</u>	<u>\$999,999.99</u>	<u>\$2,750 plus the amount of your fund over \$500,000 multiplied by a factor of .00315</u>
<u>\$1,000,000.00</u>	<u>-----</u>	<u>\$4,500 plus the amount of your fund over \$1 million multiplied by a factor of .00307</u>

If calculation of the annual assessment produces an amount greater than \$8,815, then your annual assessment is \$8,815.



[Annual Assessment Schedule:		
If your fund balance is:	-	Then your annual assessment is:
Over —	But not over —	-
_____	\$9,999.99	\$200
\$10,000.00	\$24,999.99	\$200 plus the amount of your fund balance over \$10,000 multiplied by a factor of .006
\$25,000.00	\$49,999.99	\$300 plus the amount of your fund balance over \$25,000 multiplied by a factor of .0045
\$50,000.00	\$99,999.99	\$450 plus the amount of your fund balance over \$50,000 multiplied by a factor of .004
\$100,000.00	\$199,999.99	\$650 plus the amount of your fund balance over \$100,000 multiplied by a factor of .0035
\$200,000.00	\$499,999.99	\$1,000 plus the amount of your fund balance over \$200,000 multiplied by a factor of .003
\$500,000.00	\$999,999.99	\$2,000 plus the amount of your fund balance over \$500,000 multiplied by a factor of .00295
\$1,000,000.00	_____	\$3,500 plus the amount of your fund balance over \$1 million multiplied by a factor of .0029

If the annual assessment is greater than \$7,600, your annual assessment is \$7,600.]

(4) [(5)] If you are a new certificate holder and have not yet filed your first annual [renewal] report, which includes the statement of funds required by Section 712.041 of the Act, you must pay an examination fee of \$75.00 per hour for each examiner and all associated travel expenses. Your subsequent annual assessments will be calculated in accordance with paragraph (3) [(4)] of this subsection.

(c) How will the department bill me for the annual assessment [and the annual fees] and when must I pay it? [them?]

(1) (No change.)

[(2) Your annual fee must be paid with the filing of your annual statement of funds by ACH debit on or before March 1st of each year.]

(2) [(3)] The annual assessment [A fee] is considered paid as of the date the department receives payment.

(d) Adjustments for inflation. In this section, “GDPIPD” means the Gross Domestic Product Implicit Price Deflator, published quarterly by the Bureau of Economic Analysis, United States Department of Commerce. The “annual GDPIPD factor” is equal to the percentage

## ADOPTION OF AMENDMENTS TO 7 TAC §26.1

Page 6 of 6

change in the GDPIPD index values published for the first quarter of the current year compared to the first quarter of the previous year (the March-to-March period immediately preceding the calculation date), rounded to a hundredth of a percent (two decimal places).

(1) Beginning September 1, 2020, and each September 1 thereafter, the table in subsection (b) of this section, as most recently revised before such date pursuant to this subsection, may be revised as follows:

(A) The base assessment amount listed in column three of the table may be increased (or decreased) by an amount proportionate to the measure of inflation (or deflation) reflected in the annual GDPIPD factor, rounded to whole dollars; and

(B) Each factor listed in column three of the table may be increased (or decreased) by an amount proportionate to the measure of inflation (or deflation) reflected in the annual GDPIPD factor, rounded to four decimal places for fund balances not over \$499,999.99 and five decimal places for fund balances of \$500,000.00 or more.

(2) If the table in subsection (b) of this section is revised for inflation (or deflation), then not later than August 1 of each year, the department shall calculate and prepare a revised table reflecting the inflation-adjusted values to be applied effective the following September 1 and will provide each certificate holder with notice of and access to the revised table.

(e) [~~d~~] Must I pay for additional examinations and if so how much and when?

(f) [~~e~~] Are any fees refundable? Fees paid under this section are nonrefundable.

(g) [~~f~~] What will happen if a fee is deemed unlawful or in excess of the department's authority? If a fee or reimbursement imposed or required by this section or the manner of its calculation is determined to be unlawful or to exceed the department's authority to adopt and impose, the remainder of the section is unaffected.

(1) – (2) (No change.)

5. Discussion of and Possible Vote to Take Action on Adoption of the Repeal of 7 TAC , Part 2, Chapter 24, §§24.1 – 24.4, Concerning Cemetery Brokers

**PURPOSE:** Repeal of Chapter 24, §§24.1 – 24.4 is in response to the legislative directives that persons are no longer required to be licensed or registered to sell a plot in a dedicated cemetery for another person, and Subchapter C-1, Chapter 711, Texas Health and Safety Code concerning cemetery broker registration is repealed in its entirety.

**RECOMMENDED ACTION:** No comments were received regarding the proposed Repeal of 7 TAC Chapter 24, §§24.1 – 24.4. The Department recommends that the Commission approve adoption of the Repeal without changes to the proposal as previously published in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we adopt the Repeal of 7 TAC Chapter 24, §§24.1 – 24.4 without changes to the proposal as previously published in the *Texas Register*.

**ADOPTION OF REPEAL OF 7 TAC, CHAPTER 24, §§24.1 – 24.4**  
**Page 1 of 3**

***Title 7. Banking and Securities***  
***Part 2. Texas Department of Banking***  
***Chapter 24. Cemetery Brokers***  
***7 TAC §§24.1 – 24.4***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts the repeal of Chapter 24, §§24.1 – 24.4 concerning cemetery brokers without changes to the proposed text as published in the July 5, 2019 issue of the *Texas Register* (44 TexReg 3386). The repealed rule will not be republished.

The repeal of Chapter 24 is in response to the legislative directives that persons are no longer required to be licensed or registered to sell a plot in a dedicated cemetery for another person, and Subchapter C-1, Chapter 711, Texas Health and Safety Code concerning cemetery broker registration is repealed in its entirety.

The department received no comments regarding the proposed repeal.

The repeal of Chapter 24 is adopted pursuant to Texas Health and Safety Code §711.012(a), which authorizes the commission to adopt rules for the regulation of perpetual care cemeteries.

**(Repealed) [~~§24.1 Registration.~~**

~~(a) To register as a cemetery broker, a person must file with the Texas Department of Banking (the department) a statement that complies with Texas Health and Safety Code §711.046, and pay a \$100 registration fee. The statement must be filed on a form promulgated by the department.~~

~~(b) The department shall notify each registrant within 15 days either that the statement is complete and accepted for registration, or that the statement is deficient. If the statement is deficient, the department shall specify the additional information that is required.~~

~~(c) On or before the 30th day after the date the department accepts the registration for filing, the banking commissioner will approve or deny the registration and advise the registrant in writing of the decision.~~

~~(d) Registration as a cemetery broker is not transferable.~~

**~~§24.2 Responsibilities After Registration.~~**

~~(a) No later than January 31 of every year, a registered cemetery broker must pay a \$100 administration fee.~~

~~(b) A registered cemetery broker must notify the department in writing not later than the 60th day after the date any of the information filed during registration changes.~~

~~(c) A new cemetery broker registration must be filed if:~~

~~(1) 25 percent or more of the ownership of a cemetery broker changes; or~~

~~(2) the power to directly or indirectly vote 25 percent or more of the outstanding voting interests of a cemetery broker changes.~~

~~(d) A registered cemetery broker must notify the department in writing at least 30 days before ceasing operations as a cemetery broker. The notice must include:~~

**ADOPTION OF REPEAL OF 7 TAC, CHAPTER 24, §§24.1 – 24.4**

**Page 2 of 3**

~~(1) the effective date of the closing;  
and~~

~~(2) a signed declaration that no broker transactions remain pending, and that the cemetery broker has satisfied all outstanding customer obligations.~~

**~~§24.3 Consumer Complaints.~~**

**~~(a) Definitions.~~**

~~(1) "Consumer" includes both the transferor and transferee of the exclusive right of sepulture in a plot.~~

~~(2) "Consumer complaint" means a written complaint received by a registered cemetery broker regarding the sale or transfer of the exclusive right of sepulture in a plot. The term includes a written complaint received either directly from a consumer or through the department. The term does not include an oral complaint.~~

~~(b) Information about filing a consumer complaint.~~

~~(1) A registered cemetery broker must provide consumers with written notice about how to file a consumer complaint. The notice must be provided when the consumer enters into an agreement with the cemetery broker.~~

~~(2) The notice must state that consumer complaints concerning a cemetery broker transaction involving the exclusive right of sepulture in a plot should be directed to the Texas Department of Banking. The notice must include the department's physical address, toll-free telephone number, and website address, and be in the language in which the transaction is conducted.~~

~~(3) If a cemetery broker maintains a website, the consumer complaint notice must also be posted prominently on the website. The notice must state that consumer complaints concerning a cemetery broker transaction involving the exclusive right of sepulture in a plot should be directed to the Texas Department of Banking. The notice must include the department's physical address and toll-free telephone number.~~

**~~(c) Responding to a consumer complaint.~~**

~~(1) Unless directed otherwise by the department, within 30 days of receipt of a consumer complaint, a cemetery broker must respond to the complaint in writing, and send a copy of the written response to the department.~~

~~(2) The written response to a consumer complaint must:~~

~~(A) list all actions the cemetery broker has taken and plans to take, including a corresponding timeline, to resolve the consumer complaint; or~~

~~(B) explain why no corrective action is required, and refer to any supporting legal authority.~~

~~(3) The cemetery broker must document the steps taken to resolve the consumer complaint, and must retain this documentation with the records required to be kept under Health and Safety Code §711.0381(g).~~

**~~§24.4 Appeal of Delay in Registration Processing Times.~~**

~~(a) If the department does not process a registration within the time periods specified in §24.1 of this title, a registrant may file a~~

**ADOPTION OF REPEAL OF 7 TAC, CHAPTER 24, §§24.1 – 24.4**  
**Page 3 of 3**

~~written complaint with the banking commissioner. The complaint must set out the facts regarding the delay and the specific relief requested. The department must receive the complaint on or before the 30th day after the date the banking commissioner approves or denies the registration.~~

~~(b) The department division responsible for complying with the applicable time period must submit a written response to the banking commissioner regarding the complaint that includes any facts on which the division relies to show that good cause existed for exceeding the applicable time period.~~

~~(c) The banking commissioner will review the written complaint and the division's response. If the commissioner deems it necessary, a hearing may be held to take evidence on the matter.~~

~~(d) The banking commissioner will determine, based upon the complaint and the division's response, if the department exceeded the applicable time period and, if so, whether the responsible division established good cause for the delay.~~

~~(e) The banking commissioner will notify the complainant of the decision regarding the complaint on or before the 60th day after the date the commissioner receives the written complaint. The commissioner's decision is final and may not be appealed.~~

~~(f) If the banking commissioner decides that the department exceeded the applicable time period without good cause, the department will reimburse all of the complainant's registration fees.~~

~~(g) A decision in a complainant's favor under this section does not affect any decision by the banking commissioner to grant or deny a registration. The decision to grant or deny a registration is based upon applicable substantive law without regard to whether the department timely processed the registration.]~~

6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeal of 7 TAC, Chapter 31, Part 2, §§31.1 – 31.115 Concerning Private Child Support Enforcement Agencies

**PURPOSE:** Repeal of Chapter 31, §§31.1 – 31.115 is in response to the passage of Senate Bill 614 (SB 614) in the 86<sup>th</sup> Regular Session of the Texas Legislature. Per recommendation of the Sunset Advisory Commission, SB 614 removes the requirement that private child support enforcement agencies register with the Department.

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

**RECOMMENDED MOTION:** I move that we publish the proposed repeal of 7 TAC, Chapter 31, §§31.1 – 31.115 in the *Texas Register*.

## PROPOSED REPEAL OF 7 TAC, CHAPTER 31, §§31.1 – 31.115

Page 1 of 4

***Title 7. Banking and Securities***  
***Part 2. Texas Department of Banking***  
***Chapter 31. Private Child Support***  
***Enforcement Agencies***  
***7 TAC §§31.1 – 31.115***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to repeal Chapter 31, §§31.1 – 31.115 concerning private child support enforcement agencies.

The commission proposes repeal of Chapter 31 in response to the passage of Senate Bill 614 (SB 614) in the 86<sup>th</sup> Regular Session of the Texas Legislature.

Per recommendation of the Sunset Advisory Commission, SB 614 removes the requirement that private child support enforcement agencies register with the department.

### Impact Summary

For each year of the first five years after Chapter 31 is repealed, the elimination of the chapter will:

- decrease fees paid to the agency;
- repeal an existing regulation; and
- decrease the number of individuals subject to the chapter's applicability.

The repeal of Chapter 31 will not:

- create or eliminate a government program;

- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- create a new regulation; or
- positively or adversely affect this state's economy.

### Analysis of Fiscal Impact and Public Benefits

Kurt Purdom, Deputy Commissioner, Texas Department of Banking, has determined that for each of the first five years after Chapter 31 is repealed, there will be minimal fiscal implications for state government and no fiscal implications for local government. Prior to the implementation of the legislative directive, there were 10 private child support enforcement agencies registered with the department. The annual registration fee was \$500 per year. Assuming a stable number of private child support enforcement agencies, the department's revenue will drop by \$5,000 per year in each of the first five years after Chapter 31 is repealed.

Mr. Purdom has also determined that, for each year of the first five years after Chapter 31 is repealed, the public benefit anticipated as a result of the repeal is a reduction in unnecessary regulation and an increase in operational efficiency.

### Analysis of Economic Impact

For each year of the first five years after Chapter 31 has been repealed, there will be a reduction in economic costs to persons



previously required to comply with the chapter.

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. Rather, there will be a \$500 per year reduction in the cost of compliance for entities that were formerly required to register as private child support enforcement agencies.

**Comment Requested**

To be considered, comments on the proposed repeal of Chapter 31 must be submitted no later than 5:00 p.m. on September 30, 2019. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to [legal@dob.texas.gov](mailto:legal@dob.texas.gov).

**Statutory Authority**

The repeal of Chapter 31, Subchapter A, §31.1 is proposed under Finance Code, §396.051(b), which requires the commission to adopt rules as necessary for administration of the chapter.

Finance Code, Chapter 396 is affected by the proposed repeal of Chapter 31, Subchapter A.

**§31.1. Definitions.**

Repeal of Chapter 31, Subchapter B, §§31.11 – 31.20 is proposed under Finance Code, §396.051(b), which requires the commission to adopt rules as necessary for administration of the chapter.

Finance Code, Chapter 396.203 is affected by the proposed repeal of Chapter 31, Subchapter B.

***§31.11. What must I do to legally engage in the business of child support enforcement in Texas?***

***§31.12. What are the requirements of my agency's surety bond?***

***§31.13. May my agency make a deposit of money instead of a surety bond?***

***§31.14. What are the requirements for the contract for services with my agency's clients?***

***§31.15. What if I am registering or renewing a certificate of registration for more than one agency location?***

***§31.16. How will I know if I have submitted all required information and the department has accepted my application?***

***§31.17. How is my agency's application evaluated?***

***§31.18. When is an application submitted by my agency abandoned?***

***§31.19. When and how will my agency's certificate of registration be issued and mailed?***

***§31.20. What remedy is available if the department does not comply with the registration processing times?***

Repeal of Chapter 31, Subchapter C, §§31.31 – 31.39 is proposed under Finance Code, §396.051(b), which requires the

commission to adopt rules as necessary for administration of the chapter.

Finance Code, Chapter 396 is affected by the proposed repeal of Chapter 31, Subchapter C.

***§31.31. Is my agency required to display its certificate of registration?***

***§31.32. Is there an annual fee requirement?***

***§31.33. When does my agency's certificate of registration expire?***

***§31.34. If my agency's certificate of registration expires soon, what must I do to renew it?***

***§31.36. Where may my agency engage in the business of child support enforcement?***

***§31.37. What practices are my agency prohibited from employing in enforcing a child support obligation?***

***§31.38. What if my agency's information changes?***

***§31.39. What are the record keeping requirements for my agency?***

Repeal of Chapter 31, Subchapter D, §§31.51 – 31.56 is proposed under Finance Code, §396.051(b), which requires the commission to adopt rules as necessary for administration of the chapter.

Finance Code, Chapter 396 is affected by the proposed repeal of Chapter 31, Subchapter D.

***§31.51. What if I want to establish an***

***additional registered office?***

***§31.52. What are the requirements for transferring a controlling interest in my agency?***

***§31.53. What are the requirements for relocating my agency's principal business office or an additional registered office?***

***§31.54. What are the requirements for closing a registered office?***

***§31.55. What are the department's requirements for changing my agency's web site URL or e-mail address?***

***§31.56. What are the requirements for my agency to cease engaging in the business of child support enforcement?***

Repeal of Chapter 31, Subchapter E, §§31.72 – 31.76 is proposed under Finance Code, §396.051(b), which requires the commission to adopt rules as necessary for administration of the chapter.

Finance Code, Chapter 396 is affected by the proposed repeal of Chapter 31, Subchapter E.

***§31.72. What claims may be made against my agency's surety bond or money deposit?***

***§31.73. How does the department conduct the administrative investigation of complaint filed against my agency?***

***§31.74. How can the department deny my agency's application or revoke or suspend its registration?***

***§31.75. How is the hearing process***

*conducted?*

***§31.76. Is it possible to appeal a decision of the department on a complaint filed against my agency?***

Repeal of Chapter 31, Subchapter F, §§31.91– 31.96 is proposed under Finance Code, §396.051(b), which requires the commission to adopt rules as necessary for administration of the chapter.

Finance Code, Chapter 396 is affected by the proposed repeal of Chapter 31, Subchapter F.

***§31.91. Are registration requirements waived if my foreign agency is registered in another state?***

***§31.92. How can my foreign agency obtain a registration exemption and an authorization to engage in business in this state?***

***§31.93. When will the department issue a certificate for my foreign agency to operate under another state's authorization?***

***§31.94. When must my foreign agency notify the department of updated information or changes?***

***§31.95. How can the department withdraw its approval of my foreign agency to operate under another state's authorization?***

***§31.96. Is a foreign agency subject to each section of this chapter?***

Repeal of Chapter 31, Subchapter G, §§31.111 – 31.115 is proposed under Finance Code, §396.051(b), which requires the

commission to adopt rules as necessary for administration of the chapter.

Finance Code, Chapter 396 is affected by the proposed repeal of Chapter 31, Subchapter G.

***§31.111. May a person bring a civil action against my agency under Chapter 396?***

***§31.112. Can a person recover court costs or attorney's fees in an action against my agency under Chapter 396?***

***§31.113. What if an action is brought against my agency under Chapter 396 in bad faith or to harass?***

***§31.114. How would a person serve process on my foreign agency?***

***§31.115. What remedies are available under other laws for violation of Chapter 396?***

7. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeal of 7 TAC, Chapter 33, Part 2, §§33.71 – 33.75 Concerning Bullion Depository Agents

**PURPOSE:** Repeal of Chapter 33, §§33.71 – 33.75 is in response to the passage of House Bill 2458 (HB 2458) in the 86<sup>th</sup> Regular Session of the Texas Legislature.

In 2015, the Texas Legislature passed House Bill 483 (HB 483), which established the Texas Bullion Depository within the Office of the Comptroller of Public Accounts. HB 483 amended sections of Finance Code Chapter 151 regarding regulation of money services businesses, outlining basic requirements for licensure of bullion depository agents by the Department. The Commission subsequently amended various sections of Chapter 33 to implement the new legislation.

HB 2458 removes all statutory references to licensed depository agents, instead allowing the depository to use private, independently managed financial institutions to provide retail locations for the provision of depository services to the public. This proposed repeal deletes those sections that deal exclusively with bullion depository agents.

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

**RECOMMENDED MOTION:** I move that we publish the proposed repeal of 7 TAC, Chapter 33, §§33.71 – 33.75 in the *Texas Register*.

**PROPOSED REPEAL OF 7 TAC, CHAPTER 33,  
§§33.71 – 33.75**

**Page 1 of 7**

***Title 7. Banking and Securities  
Part 2. Texas Department of Banking  
Chapter 33. Money Services Businesses  
7 TAC §§33.71-75.***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to repeal Title 7, Chapter 33 §§33.71-33.75 concerning bullion depository agents.

The commission proposes to repeal these sections of Chapter 33 in response to the passage of House Bill 2458 (HB 2458) in the 86<sup>th</sup> Regular Session of the Texas Legislature.

In 2015, the Texas Legislature passed House Bill 483 (HB 483), which established the Texas Bullion Depository within the Office of the Comptroller of Public Accounts. HB 483 amended sections of Finance Code Chapter 151 regarding regulation of money services businesses, outlining basic requirements for licensure of bullion depository agents by the department. The commission subsequently amended various sections of Chapter 33 to implement the new legislation.

HB 2458 removes all statutory references to licensed depository agents, instead allowing the depository to use private, independently managed financial institutions to provide retail locations for the provision of depository services to the public. This proposed repeal deletes those sections that deal exclusively with bullion depository agents.

**Impact Summary**

For each year of the first five years after these sections of Chapter 33 are repealed, the changes will:

- repeal existing regulations; and
- decrease the number of individuals subject to the chapter's applicability.

The repeal of these sections of Chapter 33 will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- create a new regulation; or
- positively or adversely affect this state's economy.

**Analysis of Fiscal Impact and Public Benefits**

Stephanie Newberg, Deputy Commissioner, Texas Department of Banking, has determined that for each of the first five years after these sections of Chapter 33 are repealed, there will be minimal fiscal implications for state government and no fiscal implications for local government. Since the original passage of HB 483 in 2015 and the subsequent establishment of the Texas Bullion Depository, there have been no

**PROPOSED REPEAL OF 7 TAC, CHAPTER 33,  
§§33.71 – 33.75**

**Page 2 of 7**

depository agents licensed by the department. Therefore, the department has collected no revenue as a result of licensure or assessments of any depository agents.

Ms. Newberg has also determined that, for each year of the first five years after these sections of Chapter 33 are repealed, the public benefit anticipated as a result of the amendments is a reduction in unnecessary regulation and an increase in operational efficiency.

#### Analysis of Economic Impact

For each year of the first five years after these sections of Chapter 33 have been repealed, there will be a reduction in economic costs to persons previously required to comply with the chapter.

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

#### Comment Requested

To be considered, comments on this proposed repeal of Chapter 33 §§33.71-33.75 must be submitted no later than 5:00 p.m. on September 30, 2019. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

#### Authority

The amendments to Chapter 33 are proposed under Texas Finance Code

§151.102, which authorizes the commission to adopt rules for the regulation of money services businesses.

Texas Finance Code, §§151.002, 151.003, 151.201, 151.207, 151.302, 151.502, 151.602, and 151.702 are affected by the proposed amendments to Chapter 33.

#### ***[§33.71. Security Required for Depository Agents.***

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

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

~~(c) The security must:~~

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

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

virtue of this chapter; and

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

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

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

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

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

The commissioner may permit a license holder to substitute another form of security when the license holder ceases to provide depository agent services.

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

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

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

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

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

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

bullion or specie. The deposit of bullion or specie:

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

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

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

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

***[§33.72. Net Worth Required for Depository Agents.***

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

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

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

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

on:

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

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

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

(4) the amount and nature of its liabilities;

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

(6) the quality of its operations;

(7) the quality of its management;

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

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

(10) any other factor the commissioner considers relevant.

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

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

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

(b) What are the general recordkeeping requirements?

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

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



(B) in addition to the records required under Finance Code, Chapter 151, the records required under this section related specifically to depository agent services transactions;

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

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

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

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

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

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

(1) For purposes of paragraph (2) of this subsection, "identifying number" means the taxpayer identification number (e.g., social security, employee identification number) or passport number of your customer or the person on whose behalf your customer conducts the transaction, as applicable, or, if your customer or other person has no such number and is an alien, then the number of an alien identification

card or other official document evidencing foreign nationality or residence, such as a foreign driver's license or foreign voter registration card.

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

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

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

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

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

(E) your customer's date of birth;

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

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

(H) the date of the transaction;

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

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

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

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

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

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

(O) any form relating to the

transaction that is completed or signed by the person placing the transaction; and

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

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

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

(2) the imposition of the requirement would cause an undue burden on you and conformity with the requirement would not significantly advance the state's interest under Finance Code, Chapter 151.]

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

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

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

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

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

(A) can be linked to the transaction records required under §33.73(c) of this title (relating to What Records Must I Keep Related to Depository Agent Services Transactions?); and

(B) contains:

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

(ii) the unique transaction or identification number;

(iii) the date of the transaction;

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

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

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

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

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

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

(a) The depository, as defined by §2116.001, Government Code, to the extent that it conducts money services as defined

**PROPOSED REPEAL OF 7 TAC, CHAPTER 33,  
§§33.71 – 33.75**

**Page 7 of 7**

by Finance Code §151.002, need not obtain a license under Finance Code, Chapter 151.

~~(b) An individual, partnership or corporation who conducts depository agent services as defined by Finance Code §151.002, need not obtain a license under Finance Code, Chapter 151, so long as that individual, partnership or corporation:~~

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

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

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

8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Chapter 33, Part 2, §§33.3, 33.13, 33.15, 33.27, 33.51 Concerning Bullion Depository Agents

**PURPOSE:** Amendments to Chapter 33, §§33.3, 33.13, 33.15, 33.27, 33.51 are proposed in response to the passage of House Bill 2458 (HB 2458) in the 86<sup>th</sup> Regular Session of the Texas Legislature.

In 2015, the Texas Legislature passed House Bill 483 (HB 483), which established the Texas Bullion Depository within the Office of the Comptroller of Public Accounts. HB 483 amended sections of Finance Code Chapter 151 regarding regulation of money services businesses, outlining basic requirements for licensure of bullion depository agents by the Department. The Commission subsequently amended various sections of Chapter 33 to implement the new legislation.

HB 2458 removes all statutory references to licensed depository agents, instead allowing the depository to use private, independently managed financial institutions to provide retail locations for the provision of depository services to the public. These proposed amendments seek to delete references to bullion depository agents in various sections of Chapter 33.

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

**RECOMMENDED MOTION:** I move that we publish the proposed amendments to 7 TAC, §§33.3, 33.13, 33.15, 33.27, 33.51 in the *Texas Register*.

**PROPOSED AMENDMENTS TO 7 TAC, CHAPTER 33,  
§§33.3, 33.13, 33.15, 33.27 and 33.51**

**Page 1 of 11**

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

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend Chapter 33, §§33.3, 33.13, 33.15, 33.27, and 33.51 concerning bullion depository agents.

The commission proposes to amend sections of Chapter 33 in response to the passage of House Bill 2458 (HB 2458) in the 86<sup>th</sup> Regular Session of the Texas Legislature.

In 2015, the Texas Legislature passed House Bill 483 (HB 483), which established the Texas Bullion Depository within the Office of the Comptroller of Public Accounts. HB 483 amended sections of Finance Code Chapter 151 regarding regulation of money services businesses, outlining basic requirements for licensure of bullion depository agents by the department. The commission subsequently amended various sections of Chapter 33 to implement the new legislation.

HB 2458 removes all statutory references to licensed depository agents, instead allowing the depository to use private, independently managed financial institutions to provide retail locations for the provision of depository services to the public. These proposed amendments seek to delete references to bullion depository agents in various sections of Chapter 33.

**Impact Summary**

For each year of the first five years after Chapter 33 is amended, the changes will:

- repeal existing regulations; and
- decrease the number of individuals subject to the chapter's applicability.

The amendments to Chapter 33 will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- create a new regulation; or
- positively or adversely affect this state's economy.

**Analysis of Fiscal Impact and Public Benefits**

Stephanie Newberg, Deputy Commissioner, Texas Department of Banking, has determined that for each of the first five years after Chapter 33 is amended, there will be minimal fiscal implications for state government and no fiscal implications for local government. Since the original passage of HB 483 in 2015 and the subsequent establishment of the Texas Bullion Depository, there have been no depository agents licensed by the department. Therefore, the department has collected no

**PROPOSED AMENDMENTS TO 7 TAC, CHAPTER 33,  
§§33.3, 33.13, 33.15, 33.27 and 33.51**

**Page 2 of 11**

revenue as a result of licensure or assessments of any depository agents.

Ms. Newberg has also determined that, for each year of the first five years after Chapter 33 is amended, the public benefit anticipated as a result of the amendments is a reduction in unnecessary regulation and an increase in operational efficiency.

**Analysis of Economic Impact**

For each year of the first five years after Chapter 33 has been amended, there will be a reduction in economic costs to persons previously required to comply with the chapter.

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

**Comment Requested**

To be considered, comments on these proposed amendments to Chapter 33 must be submitted no later than 5:00 p.m. on September 30, 2019. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to [legal@dob.texas.gov](mailto:legal@dob.texas.gov).

**Authority**

The amendments to Chapter 33 are proposed under Texas Finance Code §151.102, which authorizes the commission to adopt rules for the regulation of money services businesses.

Texas Finance Code, §§151.002, 151.003, 151.201, 151.207, 151.302, 151.502, 151.602, and 151.702 are affected by the proposed amendments to Chapter 33.

***§33.3. How Do I Claim an Exclusion from Licensing because I Am an Agent for a Federally Insured Financial Institution or a Foreign Bank Branch or Agency?***

(a) This section applies if you:

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

(2) – (3) (No change.)

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

(1) a general description of your business plan;

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

(A) assumes all legal responsibility for satisfying the money services obligations owed to purchasers of the money transmission [~~or depository agent~~]

**PROPOSED AMENDMENTS TO 7 TAC, CHAPTER 33,  
§§33.3, 33.13, 33.15, 33.27 and 33.51**

**Page 3 of 11**

services upon receipt of the purchaser's money or [;] monetary value [~~-, bullion or specie~~] by you or your agents or subagents;

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

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

(3) (No change.)

(c) (No change.)

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

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

(b) What must I do to apply for a license? To apply for a new money transmission or [;] currency exchange [~~or depository agent~~] license, you must:

(1) – (2) (No change.)

(c) (No change.)

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

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

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

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

(C) all required search firm reports; and

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

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

(ii) an audited financial statement demonstrating that you satisfy the minimum net worth requirement established

**PROPOSED AMENDMENTS TO 7 TAC, CHAPTER 33,  
§§33.3, 33.13, 33.15, 33.27 and 33.51**

Page 4 of 11

by Finance Code, §151.307(a), and that, if the license is issued, you are likely to maintain the required minimum; or

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

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

(ii) a financial statement demonstrating your solvency. ~~[(F) if you are applying for a depository agent license:]~~

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

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

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

(2) (No change.)

(e) – (j) (No change.)

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

(a) Does this section apply to me? This section applies if you applied for a new money transmission or ~~or~~ currency exchange ~~[or depository agent]~~ license under Finance Code, Chapter 151, and you believe that the department failed to comply with the application processing times specified in §33.13(e) or (h) of this title (relating to Application for New License).

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

(c) – (f) (No change.)

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

(a) Does this section apply to me? This section applies if you hold a money transmission or ~~or~~ currency exchange ~~[or depository agent]~~ license issued under Finance Code, Chapter 151, or are an applicant for a new money transmission or ~~or~~ currency exchange ~~[or depository agent]~~



**PROPOSED AMENDMENTS TO 7 TAC, CHAPTER 33,  
§§33.3, 33.13, 33.15, 33.27 and 33.51**

Page 5 of 11

license, as applicable. This section also applies if you are a person other than a license holder or applicant and are investigated under the authority of Finance Code, §151.104.

(b) Definitions.

(1) "Annual Assessment"--the fee assessed annually to pay the costs incurred by the department to examine a license holder and administer Finance Code, Chapter 151, including the annual license fee required by Finance Code, §151.207(b)(1).

(2) "Examination"--the process, either by on-site or off-site review, of evaluating the books and records of a license holder under the authority of Finance Code, §151.601, relating to its money services activities. For purposes of this section, the term does not include an investigation conducted under the authority of Finance Code, §§151.104, 151.305, or 151.505.

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

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

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

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

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

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

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

**PROPOSED AMENDMENTS TO 7 TAC, CHAPTER 33,  
§§33.3, 33.13, 33.15, 33.27 and 33.51**

**Page 6 of 11**

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

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

(e) What fees must I pay to maintain my money transmission or currency exchange license? You must pay your annual assessment. Subject to paragraph (3) of this subsection, the amount of your annual assessment is determined based on the total annual dollar amount of your Texas money transmission and or currency exchange transactions, as applicable, as reflected on your most recent annual report filed with the department under Finance Code, §151.207(b)(2).

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

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

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

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

(3) If you are a new license holder and have not yet filed your first annual report under Finance Code, §151.207(b)(2), you must pay an examination fee of \$75 per hour for each examiner and all associated travel expenses for an examination.

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

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

(1) If the commissioner considers it necessary or appropriate to investigate you or another person in order to administer and enforce Finance Code, Chapter 151, as authorized under §151.104, you or the investigated person must pay the department an investigation fee calculated at a rate of \$75.00 per employee hour for the investigation and all associated travel expenses.

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

**PROPOSED AMENDMENTS TO 7 TAC, CHAPTER 33,  
§§33.3, 33.13, 33.15, 33.27 and 33.51**

**Page 7 of 11**

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

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

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

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

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

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

(g) ~~[(+)]~~ What other fees must I pay?

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

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

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

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

(h) ~~[(+)]~~ How and when do I need to pay for the fees required by this section?

(1) You must pay the license application fees required under subsection

**PROPOSED AMENDMENTS TO 7 TAC, CHAPTER 33,  
§§33.3, 33.13, 33.15, 33.27 and 33.51**

**Page 8 of 11**

(d)(1) and (2) [~~-(3)-~~] of this section at the time you file your application for a license.

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

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

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

(4)[(5)] You or another person must pay the investigation fee required under subsection (f)[(h)] of this section within 10

days of receipt of the department's written invoice.

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

(6)[(7)] The department will bill you for any additional examination fees required under subsection (g)(2), (3) or (4) [(i)(2), (3), (4), or (5)] of this section by written invoice. You must pay this additional examination fee within 10 days of receipt of the department's written invoice.

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

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

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

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

**PROPOSED AMENDMENTS TO 7 TAC, CHAPTER 33,  
§§33.3, 33.13, 33.15, 33.27 and 33.51**

**Page 9 of 11**

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

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

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

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

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

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

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

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

(b) Definitions. Words used in this section that are defined in Finance Code, Chapter 151, have the same meaning as defined in the Finance Code. The following words and terms, when used in this section, shall have the following meanings unless the text clearly indicates otherwise.

(1) (No change.)

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

(3) – (4) (No change.)

(c) Must I provide notice to customers about how to file complaints? Yes. You must

**PROPOSED AMENDMENTS TO 7 TAC, CHAPTER 33,  
§§33.3, 33.13, 33.15, 33.27 and 33.51**

**Page 10 of 11**

tell each of your customers how to file a complaint concerning the money transmission or [;] currency exchange [~~or depository agent~~] business you conduct under Finance Code, Chapter 151, in accordance with this section.

(d) What must the notice say?

(1) You must use:

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

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

(2) (No change.)

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

(1) If a state or federal law requires you to send a privacy notice to your customers, you must include the required notice with each privacy notice.

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

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

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

**PROPOSED AMENDMENTS TO 7 TAC, CHAPTER 33,  
§§33.3, 33.13, 33.15, 33.27 and 33.51**

**Page 11 of 11**

(i) the payment instrument or other access device constitutes the only means of accessing the money [~~-, bullion or specie~~] received for transmission; or

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

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

(C) (No change.)

(4) (No change.)

(f) – (h) (No change.)

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