

A.

Finance Commission

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FINANCE COMMISSION OF TEXAS

MEETING DATE**October 18, 2019**

MEETING LOCATIONFinance 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

FUTURE MEETING DATESDecember 13, 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

Friday, October 18, 2019

9:00 a.m.

or Upon Adjournment of the Audit Committee

Finance Commission Building

William F. Aldridge Hearing Room

2601 N. Lamar Blvd.

Austin, Texas 78705

Section A.3 will take up agenda items A1, B2 – B9, C5 – C7 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 August 15-16, 2019 Finance Commission Meetings***
2. General Public Comment
3. Consent Agenda
4. Finance Commission Operations
5. Audit Committee Report
 - A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' August 31, 2019 Investment Officer Reports
 1. Texas Department of Banking
 2. Department of Savings and Mortgage Lending
 3. Office of Consumer Credit Commissioner
 - B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2019 Fourth Quarter Financial Statements
 1. Texas Department of Banking
 2. Department of Savings and Mortgage Lending
 3. Office of Consumer Credit Commissioner
 - C. Discussion and Possible Vote to Recommend that the Finance Commission Take Action on the Selection of an Internal Auditor for the Finance Commission Agencies for Fiscal Year 2020
6. Discussion of and Possible Vote to Accept the Report on the Financial Condition of the State Banking System (*Note: Report provided separately*)
7. Discussion of and Possible Vote to Take Action on the Accomplishment Reports for Fiscal Year 2019 for the Commissioners of the Texas Department of Banking, Department of Savings and Mortgage Lending and the Office of Consumer Credit Commissioner
8. Discussion of 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.”

9. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New Rules and Amendments in 7 TAC, Chapter 5, Concerning Administration of Finance Agencies, and a New Rule, Amendments, and Repeals in 7 TAC, Chapter 9 Concerning Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings
10. Discussion of and Possible Vote to Take Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Duties and Compensation of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to the Duties and Compensation of Persons Holding the Position of Agency Commissioner Positions, and Other Staff
11. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to §551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property
12. Discussion and Consultation with Attorney and Possible Vote to Take Action Pursuant to §551.071, Texas Government Code, for the Purpose of Seeking the Advice or Attorney-client Privileged Communications from our Attorneys, Including Matters Related to the Potential Financial Exposure of the Finance Commission Agencies and Their Officers and the Finance Commission and its Officers and Including Matters of Pending and Contemplated Litigation
13. Discussion of and Consultation on Security Audit, Possible Issue Related to Confidential or Sensitive Information, Security Breach Audit and Assessment, or Security Assessments or Deployment Related to Information Resources Technology as Authorized by Tex. Govt. Code Secs. 551.076 and 551.089

B. TEXAS DEPARTMENT OF BANKING

1. Industry Status and Departmental Operations: a) 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 Re-adoption of 7 TAC, Part 1, Chapter 6 Concerning Banking Development Districts, Resulting from Rule Review*
3. *Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 2, Chapter 15 Concerning Corporate Activities, Resulting from Rule Review*
4. *Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 2, Chapter 17 Concerning Trust Company Regulation, Resulting from Rule Review*
5. *Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 2, Chapter 19 Concerning Trust Company Loans and Investments, Resulting from Rule Review*
6. *Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 2, Chapter 21 Concerning Trust Company Corporate Activities, Resulting from Rule Review*
7. *Discussion of and Possible Vote to Take Action on the Adoption of Repeal of 7 TAC, Part 2, Chapter 31, §§31.1 – 31.115 Concerning Private Child Support Enforcement Agencies*

8. *Discussion of and Possible Vote to Take Action on the Adoption of Repeal of 7 TAC, Part 2, Chapter 33, §§33.71 – 33.75 Concerning Bullion Depository Agents*
9. *Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 2, Chapter 33, §§33.3, 33.13, 33.15, 33.27, 33.51 Concerning Bullion Depository Agents*
10. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendment to 7 TAC, Part 1, Chapter 6, §6.1 Concerning Banking Development Districts
11. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 2, Chapter 15, §§15.1, 15.2, 15.7, 15.23, 15.41, 15.42, 15.81, 15.103 - 15.106, 15.108, 15.111, 15.115, 15.122 Concerning Corporate Activities
12. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 2, Chapter 21, §§21.2, 21.6, 21.7, 21.42, 21.43, 21.61, 21.74 Concerning Trust Company Corporate Activities
13. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC, Part 2, Chapter 33, §33.54 Concerning Exemption for Registered Securities Dealers and Agents
14. 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 200th District Court of Travis County, Texas

C. 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 Amendments to 7 TAC, Part 4, Chapter 79, §79.20, Concerning Hearings Officer Investigations and §79.30, Concerning Hearings and Appeals*
6. *Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 4, Chapter 80, §80.301, Concerning Investigations, Administrative Penalties, and Disciplinary and/or Enforcement Actions and §80.302, Concerning Hearings and Appeals*
7. *Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC, Part 4, Chapter 81, §81.110 Concerning Licensing of Military Service Members, Military Veterans, and Military Spouses*

8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC, Part 4, Chapter 52 Concerning Hearings, Appeals and Informal Settlement Conferences
9. Discussion and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 4, Chapter 80, §80.201 Concerning Loan Status Forms
10. Discussion and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 4, Chapter 81, §81.201 Concerning Loan Status Forms
11. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

D. OFFICE OF CONSUMER CREDIT COMMISSIONER

1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities
2. *Discussion of and Possible Vote to Take Action on the Adoption 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*
3. *Discussion of and Possible Vote to Take Action on the Adoption of Amendments to §86.201 in 7 TAC, Part 5, Chapter 86, Concerning Retail Creditors*
4. *Discussion of and Possible Vote to Take Action on the Adoption of New §2.108 in 7 TAC, Part 1, Chapter 2, Concerning Residential Mortgage Loan Originators*
5. *Discussion of and Possible Vote to Take Action on the Adoption of New §85.309 in 7 TAC, Part 5, Chapter 85, Subchapter A, Concerning Rules of Operation for Pawnshops*
6. Discussion of and Possible Vote to Take Action on Request for an Attorney General Opinion RQ-0300-KP, Regarding the Authority of a Credit Services Organization Under Chapter 393 of the Texas Finance Code
7. Discussion of and Possible Vote to Take Action on Request for an Attorney General Opinion RQ-0306-KP, Regarding the Authority of the City of College Station to Regulate Secondhand Dealer Transactions by Ordinance When Those Businesses Also Operate as a Pawnshop
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

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

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

**MINUTES OF THE
FINANCE COMMISSION MEETING
Thursday, August 15, 2019**

The Finance Commission of Texas convened at 1:47 p.m. on August 15, 2019 with the following members present:

Finance Commission Members in Attendance:

Paul W. Plunket, Chairman	Stacy G. London
Phillip Holt, Vice Chair	George "Cliff" McCauley
Will Lucas	Lori B. McCool
Hector Cerna	Vince Puente
Molly Curl	Robin Armstrong

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

Chairman Paul Plunket made a motion to excuse Bob Borochoff from the Finance Commission meeting held on August 15, 2019. There were no objections and the motion passed unanimously. (1:11:35 on audio file)

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
A. Finance Commission Matters		
1. General Public Comment	No Action Required.	:41 start of discussion
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."	Public Comment was made by Steve Scurlock on behalf of the Independent Bankers Association of Texas (IBAT). No action was taken and a vote was deferred to the October 18, 2019 meeting.	1:23 start of discussion

Chairman Paul Plunket called for a break at 2:59 p.m. (1:12:08 on the audio file). The open meeting resumed at 3:12 p.m. (1:12:25 on the audio file.)

Chairman Paul Plunket called for Executive Session at 3:12 p.m. (1:12:44 on the audio file). The open meeting resumed at 4:27 p.m. (1:13:12 on the audio file.)

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<p>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.</p> <p>A. Office of Attorney General Legal Counsel Training on Antitrust Issues for Regulators</p>	<p>Deferred to Executive Session – no vote taken.</p>	<p>n/a</p>
<p>B. Office of Consumer Credit Commissioner</p>		
<p>1. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation</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>Deferred to Executive Session – no vote taken.</p>	<p>n/a</p>

There being no further business, Chairman Paul Plunket adjourned the meeting of the Finance Commission at 4:27 p.m. (1:13:24 on the audio file).

Paul W. Plunket, Chairman
 Finance Commission of Texas

Charles G. Cooper, Executive Director
 Finance Commission of Texas

Brenda Medina, Executive Assistant
 Finance Commission of Texas

**MINUTES OF THE
FINANCE COMMISSION MEETING
Friday, August 16, 2019**

The Finance Commission of Texas convened at 8:00 a.m. on August 16, 2019 with the following members present:

Finance Commission Members in Attendance:

Paul W. Plunket, Chairman	Stacy G. London
Phillip Holt, Vice Chair	George “Cliff” McCauley
Bob Borochoff	Lori B. McCool
Hector Cerna	Vince Puente
Molly Curl	Robin Armstrong
Will Lucas	

Finance Commission Chairman Paul Plunket announced a quorum with eleven members present. (:16 on audio file).

Molly Curl had to leave the Finance Commission meeting at 10:00 a.m. (1:57:41 on audio file).

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
A. Finance Commission Matters		
1. Review and Approval of the Minutes of the June 21, 2019 Finance Commission Meeting	On Consent Agenda – Item A1	1:22 start of discussion
2. General Public Comment	No Action Required.	:27 start of discussion
3. Consent Agenda – Item A1	Phillip Holt made a motion to Approve Consent Agenda item A1. Molly Curl seconded, and the motion passed.	:51 start of discussion 1:22 vote
4. Finance Commission Operations	No Action Required.	1:48 start of discussion

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
5. Audit Committee Report		
<p>A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies’ 2019 Third Quarter Investment Officer Reports</p> <ol style="list-style-type: none"> 1. Department of Savings and Mortgage Lending 2. Office of Consumer Credit Commissioner 3. Texas Department of Banking 	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies’ 2019 Third Quarter Investment Officer Reports passed.</p>	<p>2:46 start of discussion</p> <p>3:04 Vote</p>
<p>B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Re-adoption of the Investment Policies for:</p> <ol style="list-style-type: none"> 1. Department of Savings and Mortgage Lending 2. Office of Consumer Credit Commissioner 3. Texas Department of Banking 	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Re-adoption of the Investment Policies for the Agencies’ with the addition in the Department of Banking’s Investment Policy that Jesse Saucillo will serve as the primary Investment Officer and the secondary Investment Officer will go through the training when selected passed.</p>	<p>3:26 start of discussion</p> <p>3:50 Vote</p>
<p>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</p>	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Department of Savings and Mortgage Lending’s Information Technology Change Management Program Audit Report as Prepared and Presented by McConnell & Jones LLP passed.</p>	<p>4:01 start of discussion</p> <p>4:13 Vote</p>
<p>D. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Department of Savings and Mortgage Lending’s 2019 Annual Internal Audit Report as Prepared and Presented by McConnell & Jones LLP</p>	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Department of Savings and Mortgage Lending’s 2019 Annual Internal Audit Report as Prepared and Presented by McConnell & Jones LLP passed.</p>	<p>4:25 start of discussion</p> <p>4:36 Vote</p>
<p>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</p>	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Office of Consumer Credit Commissioner’s Information Technology Change Management Program Audit Report as Prepared and Presented by McConnell & Jones LLP passed.</p>	<p>4:49 start of discussion</p> <p>5:01 Vote</p>

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<p>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</p>	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Office of Consumer Credit Commissioner’s 2019 Annual Internal Audit Report as Prepared and Presented by McConnell & Jones LLP passed.</p>	<p>5:12 start of discussion</p> <p>5:23 Vote</p>
<p>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</p>	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Texas Department of Banking’s Information Technology Change Management Program Audit Report as Prepared and Presented by McConnell & Jones LLP passed.</p>	<p>5:36 start of discussion</p> <p>5:48 Vote</p>
<p>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</p>	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Texas Department of Banking’s Fines, Penalties and Restitution Audit Report as Prepared and Presented by McConnell & Jones LLP passed.</p>	<p>6:02 start of discussion</p> <p>6:12 Vote</p>
<p>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</p>	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Texas Department of Banking’s 2019 Annual Internal Audit Report as Prepared and Presented by McConnell & Jones LLP passed.</p>	<p>6:24 start of discussion</p> <p>6:35 Vote</p>
<p>J. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies’ 2019 Third Quarter Financial Statements</p> <ol style="list-style-type: none"> 1. Department of Savings and Mortgage Lending 2. Office of Consumer Credit Commissioner 3. Texas Department of Banking 	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies’ 2019 Third Quarter Financial Statements passed.</p>	<p>6:47 start of discussion</p> <p>6:54 Vote</p>
<p>K. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies’ Fiscal Year 2020 Operating Budgets</p> <ol style="list-style-type: none"> 1. Department of Savings and Mortgage Lending 2. Office of Consumer Credit Commissioner 3. Texas Department of Banking 	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies’ Fiscal Year 2020 Operating Budgets passed.</p>	<p>7:08 start of discussion</p> <p>7:19 Vote</p>

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
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	Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Department of Savings and Mortgage Lending’s contribution of \$750,000 to the Texas Financial Education Endowment Fund passed.	7:31 start of discussion 7:43 Vote
M. Discussion of and Possible Vote to Recommend that the Finance Commission Issue a Request for Proposal to Select an Internal Auditor for the Finance Commission Agencies for Fiscal Year 2020	Coming upon Recommendation from the Audit Committee, no second is required and the motion to issue a Request for Proposal to select an Internal Auditor for the Finance Commission Agencies for Fiscal Year 2020 passed.	8:02 start of discussion 8:14 Vote
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	Stacy London made a motion to Approve 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. Phillip Holt seconded, and the motion passed.	8:38 start of discussion 9:04 Vote
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	Commissioner Pettijohn gave an update on the Camp Hubbard property. Chairman Plunket allowed it to be discussed in open session.	2:24:20 start of discussion

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
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. 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	No Action Required.	13:45 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.	16:19 start of discussion
3. Fiscal and Departmental Operations: a) Funding Status/Audits/Financial Reporting; and b) Staffing	No Action Required.	20:05 start of discussion
4. Legal Activity: a) Enforcement; b) Gift Reporting; and c) Legislative Activities	No Action Required.	21:22 start of discussion
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	Stacy London made a motion to Approve 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. Hector Cerna seconded, and the motion passed.	36:00 start of discussion 39:05 Vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
6. Consent Agenda – Item B6	Phillip Holt made a motion to Approve Consent Agenda item B6. Molly Curl seconded, and the motion passed.	:51 start of discussion 1:22 vote
7. Consent Agenda – Item B7	Phillip Holt made a motion to Approve Consent Agenda item B7. Molly Curl seconded, and the motion passed.	:51 start of discussion 1:22 vote
8. Consent Agenda – Item B8	Phillip Holt made a motion to Approve Consent Agenda item B8. Molly Curl seconded, and the motion passed.	:51 start of discussion 1:22 vote
9. Consent Agenda – Item B9	Phillip Holt made a motion to Approve Consent Agenda item B9. Molly Curl seconded, and the motion passed.	:51 start of discussion 1:22 vote
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	Vince Puente made a motion to Approve 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. Lori McCool seconded, and the motion passed.	43:22 start of discussion 44:57 Vote
11. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Action Required.	n/a

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
C. Office of Consumer Credit Commissioner		
1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities	No Action Required.	47:30 start of discussion
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	Phillip Holt made a motion to Approve 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. Lori McCool seconded, and the motion passed.	1:14:30 start of discussion 1:33:56 Vote

Chairman Paul Plunket called for a break at 9:34 a.m. (1:32:19 on the audio file). The open meeting resumed at 9:38 a.m. (1:32:29 on the audio file.)

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	Cliff McCauley made a motion to Approve the Adoption of Amendments to 7 TAC, Chapter 85, Subchapter A, Concerning Rules of Operation for Pawnshops. Phillip Holt seconded, and the motion passed.	1:34:30 start of discussion 1:40:32 Vote
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	Molly Curl made a motion to Approve 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. Will Lucas seconded, and the motion passed.	1:41:00 start of discussion 1:43:58 Vote
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	Stacy London made a motion to Approve the Proposal and Publication for Comment of Amendments to §86.201 in 7 TAC, Part 5, Chapter 86, Concerning Retail Creditors. Lori McCool seconded, and the motion passed.	1:44:39 start of discussion 1:50:38 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 §2.108 in 7 TAC, Part 1, Chapter 2, Concerning Residential Mortgage Loan Originators	Vince Puente made a motion to Approve the Proposal and Publication for Comment of New §2.108 in 7 TAC, Part 1, Chapter 2, Concerning Residential Mortgage Loan Originators. Will Lucas seconded, and the motion passed.	1:51:11 start of discussion 1:54:19 Vote
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	Phillip Holt made a motion to Approve 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. Stacy London seconded, and the motion passed.	1:54:49 start of discussion 1:57:00 Vote
8. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation <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> <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>	No Action Required.	n/a

Chairman Paul Plunket called for a break at 10:03 a.m. (1:57:54 on the audio file). The open meeting resumed at 10:13 a.m. (1:58:02 on the audio file).

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	No Action Required.	1:58:10 start of discussion

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
2. Consent Agenda – Item D2	Phillip Holt made a motion to Approve Consent Agenda item D2. Molly Curl seconded, and the motion passed.	:51 start of discussion 1:22 vote
3. Consent Agenda – Item D3	Phillip Holt made a motion to Approve Consent Agenda item D3. Molly Curl seconded, and the motion passed.	:51 start of discussion 1:22 vote
4. Consent Agenda – Item D4	Phillip Holt made a motion to Approve Consent Agenda item D4. Molly Curl seconded, and the motion passed.	:51 start of discussion 1:22 vote
5. Consent Agenda – Item D5	Phillip Holt made a motion to Approve Consent Agenda item D5. Molly Curl seconded, and the motion passed.	:51 start of discussion 1:22 vote
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	Cliff McCauley made a motion to approve 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. Stacy London seconded and the motion passed.	2:14:36 start of discussion 2:17:41 Vote
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	Stacy London made a motion to approve the Proposal and Publication for Comment of Repeal of 7 TAC, Chapter 33, Part 2, §§33.71 – 33.75 Concerning Bullion Depository Agents. Phillip Holt seconded and the motion passed.	2:18:14 start of discussion 2:22:16 Vote

AGENDA ITEM	ACTION TAKEN	LOCATION ON AUDIO FILE
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	Phillip Holt made a motion to approve 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. Stacy London seconded and the motion passed.	2:22:43 start of discussion 2:23:14 Vote
9. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation <i>E. Mex. Financial Services, Inc. v. Charles G. Cooper, Texas Banking Commissioner; Cause No. D-1-GN-19-003237, in the 200th District Court of Travis County, Texas</i>	No Action Required.	n/a

There being no further business, Chairman Paul Plunket adjourned the meeting of the Finance Commission at 10:46 a.m. (2:30:49 on the audio file).

Paul W. Plunket, Chairman
 Finance Commission of Texas

Charles G. Cooper, Executive Director
 Finance Commission of Texas

Brenda Medina, Executive Assistant
 Finance Commission of Texas

Finance Commission of Texas

Consent Agenda

October 18, 2019

A. Finance Commission Matters

1. Review and Approval of the Minutes of the August 15-16, 2019 Finance Commission Meetings

B. Texas Department of Banking

2. Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 1, Chapter 6 Concerning Banking Development Districts, Resulting from Rule Review
3. Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 2, Chapter 15 Concerning Corporate Activities, Resulting from Rule Review
4. Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 2, Chapter 17 Concerning Trust Company Regulation, Resulting from Rule Review
5. Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 2, Chapter 19 Concerning Trust Company Loans and Investments, Resulting from Rule Review
6. Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 2, Chapter 21 Concerning Trust Company Corporate Activities, Resulting from Rule Review
7. Discussion of and Possible Vote to Take Action on the Adoption of Repeal of 7 TAC, Part 2, Chapter 31, §§31.1 – 31.115 Concerning Private Child Support Enforcement Agencies
8. Discussion of and Possible Vote to Take Action on the Adoption of Repeal of 7 TAC, Part 2, Chapter 33, §§33.71 – 33.75 Concerning Bullion Depository Agents
9. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 2, Chapter 33, §§33.3, 33.13, 33.15, 33.27, 33.51 Concerning Bullion Depository Agents

C. Department of Savings and Mortgage Lending

5. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 4, Chapter 79, §79.20, Concerning Hearings Officer Investigations and §79.30, Concerning Hearings and Appeals
6. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 4, Chapter 80, §80.301, Concerning Investigations, Administrative Penalties, and Disciplinary and/or Enforcement Actions and §80.302, Concerning Hearings and Appeals

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

D. Office of Consumer Credit Commissioner

2. Discussion of and Possible Vote to Take Action on the Adoption 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
3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to §86.201 in 7 TAC, Part 5, Chapter 86, Concerning Retail Creditors
4. Discussion of and Possible Vote to Take Action on the Adoption of New §2.108 in 7 TAC, Part 1, Chapter 2, Concerning Residential Mortgage Loan Originators
5. Discussion of and Possible Vote to Take Action on the Adoption of New §85.309 in 7 TAC, Part 5, Chapter 85, Subchapter A, Concerning Rules of Operation for Pawnshops



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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MEMORANDUM

TO: The Finance Commission

FROM: Charles G. Cooper, Commissioner

DATE: October 7, 2019

RE: Department of Banking Priorities for Fiscal Year 2019 with Year-end Accomplishments

I. LEGISLATIVE – *State and National Legislative Issues*

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

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

Update:

- *Commissioner Cooper testified at the House Pensions, Investments & Financial Services Committee hearing on February 14, 2019.*
- *Introductory meetings were held with the members of the committees the agency appeared before.*
- *The Commissioner testified as a resource witness at several hearings.*
- *Agency staff held briefings with state senators and representatives about legislation pending before their committees.*
- *100% of the requests by legislative offices for resource materials or hearing attendance were provided timely and accurately.*
- *Staff members participated in the CSBS Legislative Fly-in held in Washington, D.C. the week of April 1, 2019.*

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

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

Update:

- *In January, weekly legislative reports were emailed to Commission members.*
- *An update of federal and state legislative developments is presented at each Finance Commission meeting by Commissioner Cooper.*
- *During the June 2019 meeting, a summary of bills passed during the 86th Regular Session that impact the Department and our regulated entities was presented.*

- I.3 Objective: Monitor state legislation that may affect the Department or its regulated entities. Make recommendations for state legislative changes to address areas that the law does not adequately address, correct technical errors, and modernize outdated statutes.

Measure: Monitor interim charges and aid legislative committees if requested. Provide proposals for legislative improvements if requested by legislative committees. Monitor legislation and provide technical assistance and comprehensive resource materials when requested. Begin implementation of any legislation that directly affects the Department or the industries we regulate.

Update:

- *Suggestions for statutory improvements were provided to the Chairman of the House Pensions, Investments and Financial Services Committee and Senate Business and Commerce.*
- *The agency tracked 161 bills.*
- *The agency completed 37 fiscal notes.*
- *The agency served as a resource to legislative staff who have called with questions.*
- *Staff proposed rules to the Finance Commission and worked to implement changes required by legislation passed in the 86th Regular Legislative session.*
- *On July 29, 2019, the agency issued Industry Notice 2019-01 addressing hemp and hemp-related products to assist licensed entities with questions about HB 1325 that was signed by Governor Abbott. This bill authorized the production, manufacture, retail sale and inspection of industrial and consumable hemp in Texas.*
- *Staff responded to questions from licensed entities related to the changes brought about by legislation passed.*

- I.4 Objective: Monitor the Sunset bill through the legislative process and begin implementation of “Management Actions” approved by the Sunset Commission.

Measure: Monitor Sunset legislation and provide technical assistance and comprehensive resource materials when requested. Begin implementation of any Sunset legislation that passes and directly affects the Department or the industries we regulate. Begin implementation of Sunset approved “Management Actions” through rules, policies and procedures manuals. Review actions taken by other state agencies. Coordinate these efforts with the Finance Commission and other Finance Commission agencies.

Update:

- *Management actions related to performance measures, budgeting, and travel expenditures were completed.*
- *A training manual for Finance Commission members was drafted as required per Management Action 7.1. The newest Finance Commission members reviewed the manual.*
- *Agency staff attended Sunset hearings and Commissioner Cooper testified as a resource witness.*
- *As required by Management Action 4.4, the consumer complaint rule was presented at the June 2019 Finance Commission meeting and adopted at the August 2019 meeting.*
- *As required by Management Action 2.2, the three Finance Agencies collaborated in July to evaluate and update the agencies' performance measures, which were presented at the August meeting.*
- *As required by Management Action 2.6, the Efficiency Audit was completed by McConnell & Jones LLP and presented to the Finance Commission members at the June 2019 meeting.*

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 performance measures. Continue to meet or exceed the strategic planning goals for performance measures. Successfully obtain reaccreditation from the Conference of State Bank Supervisors (CSBS) for the Bank and Trust Division. Quarterly, report results to the Finance Commission.

Update:

- *The Department was reaccredited by CSBS on November 21, 2018.*
- *The Department updated its performance measures for Fiscal Year 2020.*
- *All key performance measures were met in Fiscal Year 2019, except one. Though the agency met its key measure of performing bank examinations when due, the actual number of bank examinations performed of 101 was below the target number of 108, resulting in a variance. This variance is due to participating in fewer joint examinations of banks with assets between one and three billion dollars than projected this fiscal year. This reduction in examinations was the result of an examination frequency change by federal and state bank regulators.*
- *A recap of Fiscal Year 2019 key and non-key measures, including variance explanations, is included in the Department's section of the Finance Commission packet.*

- 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 Money Transmitters Regulator Association (MTRA)), trade associations (Independent Bankers Association (IBAT) and the Texas Banker's Association (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.

Update:

- *The agency participated in the FDIC Deposit Insurance Application Roundtable in February 2019.*
- *In January/February, the Department collaborated with TBA to produce a handout that provides "8 Tips for Banking Online Safely" and "8 Tips to be More Cybersecure." The handouts are available in English and Spanish.*
- *Department staff participated on a seven-state CSBS task force charged with developing an updated model state law for money service businesses.*
- *The agency is an active member of the MTRA and the Multi-State MSB Examination Taskforce (MMET). Commissioner Cooper continues to serve as Chairman of MMET, and Director Reese continues to serve on the MTRA Board of Directors.*
- *Agency personnel are actively working with the Money Service Business (MSB) Accreditation Working Group to set appropriate standards to support modernized and harmonized MSB programs across the state system. Agency staff participated in the CSBS MSB Accreditation Working Group meeting held in Washington, D.C. on April 30 and May 1, 2019.*
- *Several agency staff members participated in the TBA's Legislative Blitz held on March 5-6, 2019 and IBAT's Community Banking Day at the Capitol held on March 27-28, 2019.*
- *Commissioner Cooper participated in TBA's Legal Conference on April 4 – 5, 2019.*
- *Staff participated in TBA's Annual Convention held in Austin the week of May 1, 2019. Commissioner Cooper was a featured speaker during the general session.*
- *Commissioner Cooper participated in and was a featured speaker during IBAT's CFO Summit held in Austin the week of May 6, 2019.*
- *Agency staff participated in the State-Federal Supervisors Forum held in San Antonio the week of May 20, 2019. Staff members continue to serve on several CSBS committees.*
- *Agency staff participated in TBA's Legislative Update held in several different cities throughout Texas in June and July 2019.*
- *Commissioner Cooper participated in TBA's Senior Management Summit held in Bastrop on July 11, 2019.*
- *Agency staff participated in the CSBS Deputy Seminar held in Chicago, Illinois the week of July 23, 2019.*
- *The agency participated in the CSBS Board and Strategic Planning meeting held in South Dakota the week of August 26, 2019, to provide feedback regarding the future CSBS priorities.*

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

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

Update:

- *Agency staff members closely monitored risk profiles of our regulated institutions through ongoing on-site examinations. BSA examiners monitor Suspicious Activity Reports from large institutions, and IT examiners participate in multi-state examinations for large service providers. Finally, ongoing monitoring through our quarterly off-site monitoring program helps to identify increased risks in between examination cycles.*
- *The Department sent examination staff and supervisors to the CSBS sponsored Intermediate IT & Cybersecurity Training course. This three-day training explained: cybersecurity guidance and frameworks, how hackers attack, methods of protecting information systems, an examiner's role, and described techniques for evaluating weaknesses and vulnerabilities.*
- *The agency monitored the impact of the federal government shutdown on regulated institutions. Concerns centered around delays in processing applications and other documents needed in areas such as SBA lending, federal flood insurance, FHA-backed loans, Farm Service Agency operations, and IRS income verification and tax return transcripts. No significant adverse effects were reported.*
- *The agency conducted a banker survey of agriculture area banks to judge the impact of increased Chinese tariffs on U.S. agriculture products and Texas farmers.*
- *The agency's Central Points of Contact researched the potential impact of deterioration in leveraged lending portfolios for banks with total assets greater than \$10 billion.*

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

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

Update:

- *The agency joined a six-state task force charged with developing money service business model practices and laws. The task force is led by CSBS and is a component of the Vision 2020 initiative.*
- *The agency participated in the MSB Multistate Licensing Agreement working group primarily designed to promote efficiency and effectiveness among the states for proposed MSB licensees by recognizing certain specified standards. This working group is coordinated by CSBS.*
- *The agency participated in a multistate working group to help automate and streamline MSB change of control application filings among the states. This working group is coordinated by the CSBS.*
- *A Condition of the Texas State Banking System Report was issued in October 2018 and in March 2019.*
- *A Texas Bank Report, which details areas of concern or interest for the banking industry, was issued in October 2018 and January 2019.*
- *The agency agreed to be part of a 2019 MSB Multistate Joint Examination Pilot whereby a multistate company will be examined only once in 2019. The efforts are coordinated in part by MMET and the various participating states.*
- *An agency staff member serves on the executive committee and is president-elect of the North American Death Care Regulators Association, which strives to promote a forum for death care regulators to discuss problems affecting the public and death care industry.*
- *Agency representatives attended the annual Nationwide Multistate Licensing Conference held in Orlando, Florida the week of February 18, 2019.*
- *Agency representatives served as speakers and panelists for numerous industry events during the fiscal year. These engagements included the TBA Internal Audit School in Austin; IBAT's Winter Summit, TBA's Lending School held in Austin, IBAT's Regional Tour meetings; FDIC Roundtable discussion; TBA's Legal Conference and Compliance School; IBAT's Chief Financial Officer Summit; TBA's Senior Management Summit. Additionally, staff served as instructors at several graduate banking programs, including Texas A&M University Banking Program, the Graduate School of Banking, Boulder, Colorado, and the Texas Tech School of Banking.*
- *The Director of Bank and Trust attended a centennial celebration on August 19, 2019.*
- *The agency actively monitored the changing landscape at the state and federal levels to provide a framework to legalize hemp and hemp-related products.*
- *The Top 100 Banks and Overall Banking Activity reports were issued on a quarterly basis.*
- *The monthly Supervisory Update News Summary of select regulatory issuances relating to the bank and trust industries was issued monthly during the fiscal year.*
- *Assistant Deputy Commissioner Reese was a speaker at the Texas Cemeteries Association's Annual Convention held in San Antonio on May 20 – 21, 2019.*
- *Agency staff participated in the North American Death Care Regulators Association's Annual Conference held in Des Moines, IA the week of August 13, 2019.*

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 federal law enforcement agencies.

Update:

- *Agency staff monitored and pursued illegal activity in the following ways:*
 - *Ongoing monthly monitoring of SAR reports;*
 - *Pursued prohibition orders when warranted;*
 - *Reviewed information for cases involving individuals and entities operating without a requisite bank, trust charter, or MSB license. In many instances, this required communication with other federal and state banking agencies across the country.*
 - *Notified six MSB entities that may be engaged in money transmission without a license, and as a result:*
 - *One company provided documentation and upon review by Special Audits and the Legal Division, did not require a license; and,*
 - *Five companies responded and provided documentation that is currently being reviewed by the Legal Division.*
- *Coordinated with federal law enforcement on three matters involving illegal MSB activities.*
- *Administrative Memorandum (AM)*
 - *Issued new AM 2003 – Suspicious Activity Reports Filed by the DOB (September)*
- *Issued two orders against unauthorized entities purporting to be a bank.*
- *Issued five prohibition orders against former bank officers or employees.*
- *Issued one consent order against a bank officer.*
- *Issued 10 orders against unauthorized money service businesses.*
- *Issued one cease and desist order against a currency exchange operator.*
- *Issued one cease and desist order against a money transmitter.*
- *Issued one consent order to revoke a license against a money transmitter.*
- *Issued three cease and desist orders against prepaid funeral contract sellers.*
- *Issued one order against a prepaid funeral contract seller.*

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

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

Update:

- *Consumer assistance activity is reported at each Finance Commission meeting.*
- *We began reporting on the new performance measures for Fiscal Year 2019, which included the percentage of written complaints resolved in 90 days and the number of written complaints resolved which was a Sunset recommendation.*

- 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.

February Update:

- *Revised Examiner Bulletins (XB) for Bank & Trust examination staff and provided timely communication of the changes to staff.*
 - *XB 2018-06 CML - Guidelines for Procedures and Work Paper Documentation (November)*
 - *XB 2018-07 TR - Guidelines for Procedures and Work Paper Documentation (November)*
 - *XB 2018-08 IT - Guidelines for Procedures and Work Paper Documentation (November)*
 - *XB 2019-01 Law, Policy Statement, and Asset Quality (LPAQ) Procedures. (New Bulletin issued in May)*
 - *XB 2019-02 CML - Guidelines for Asset Quality Write-Ups in Reports of Examination (June)*
 - *XB 2019-03 CML - BSA/AML Risk-Focused Examination Procedures (August)*

- *Administrative Memorandum (AM) updates related to Bank & Trust and MSB examinations were communicated to staff in a timely manner.*
 - *AM 2024 – Follow-up on Bank Compliance Examinations Conducted by Federal Regulators (December)*
 - *AM 2040 – Removal of Confidential FinCEN Data Files (February)*
 - *AM 2028 – Background Checks Conducted in Accordance with Statutory Authority (March)*
 - *AM 2022 – Institution Review Process for State-Chartered Banks (April)*
 - *AM 2039 – Examination of Foreign Banking Organizations (April)*
 - *AM 2045 – Institution Review Process for State-Chartered Trust Companies (April)*
 - *AM 2041 – Examination Due Date Calculation (August)*

- *Revised Bank & Trust and MSB examination procedures and provided timely notification of changes to staff.*
 - *Revised 17 commercial examination procedures: Planning & Control; Audit; Borrowed Funds/Liquidity; Cash & Cash Items; Collections, Consigned Items, Safekeeping & Safe Deposit; Deposits, Dormant Accounts, and Official Checks; Earnings; Interbank Liabilities; Investment Securities; Management; Other Assets; Other Liabilities; Other Supervisory Issues; Overdrafts, Kite Suspect, and Cuts; Premises and Equipment; BSA/AML, and Bank Conversion.*

- *Revised two trust examination procedures: Charter Investigation and Planning & Control.*
- *Revised one information technology examination Procedure: Planning & Control.*
- *Revised 21 MSB examination procedures related to: Pre-exam; Background; Safety & Soundness; Compliance; Financials; Ownership & Management; Operations & Records; and Authorized Delegates.*

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

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

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

Update:

- *Supervisory Memorandums (SM)*
 - *Revised SM 1023 – Examination Frequency for MSBs (September)*
 - *Revised SM 1037 – Regulatory Treatment of Virtual Currencies Under the Texas Money Services Act (January)*
 - *Revised SM 1037 – Regulatory Treatment of Virtual Currencies Under the Texas Money Services Act (April)*
 - *Corporate division informed registered Private Child Support Enforcement Agencies (PCSEA) and Cemetery Brokers that they are no longer required to register with the Department.*
 - *Corporate division returned surety bonds held by the Department to the existing registered PCSEAs*

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

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

Update:

- *Rule amendments were adopted to:*
 - *Update language to reflect implementation of employee training program.*
 - *Clarify requirements for complaint notices by perpetual care cemeteries.*
 - *Modify permissible investment requirements for money service businesses.*
 - *Clearly specify procedures for complaint handling.*
 - *Update assessment procedures on prepaid funeral contract sellers in line with recent statutory changes.*
 - *Update assessment procedures on perpetual care cemeteries in line with recent statutory changes.*

- *Rules concerning cemetery brokers and private child support enforcement agencies were repealed for implementation of recent statutory changes.*
- *Rules concerning bullion depository agents were amended and repealed for implementation of recent statutory changes.*
- *Rule reviews were conducted for 7 TAC Chapters 5, 9, 10, 11,12,24, 25, 26, 27, and 31.*

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

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

February Update:

- *Modified the financial education brochure at the beginning of the fiscal year.*
- *Director Rodriguez participated in the Alliance for Economic Inclusion meeting held in October 2018.*
- *The Department featured a financial institution in the October edition of the Texas Bank Report for their financial education programs. A separate featured article was done on the Texas Jump\$tart Coalition and their promotion of youth financial education.*
- *Deputy Commissioner Newberg attended the Jump\$tart Texas Capitol Day on February 27, 2019.*
- *Senior Consumer Specialist participated in the Alliance for Economic Inclusion meeting held in May 2019.*
- *The Director of Strategic Support participated as a judge for the Financial Fitness Greater Austin 2019 \$mart Kid Essay Contest and Adult Financial Fitness Contest in May 2019 and June 2019.*
- *The Director of Strategic Support provided the opening remarks at the 2019 Financial Literacy Summit on July 23, 2019, which was hosted by the Texas Bankers Foundation and the IBAT Education Foundation.*

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.

Update:

- *Senior managers were provided leadership training to arm them with the tools to become better leaders and managers.*
- *The Department updated Section 1 of the Personnel Policy and Procedures Manual, including the Recruitment/Workforce Diversity/Equal Employment Opportunity Plan.*
- *Revised employment benefits recruiting document on the jobs page of the website: “Total Compensation At-a-Glance”.*
- *Agency representatives attended 14 recruiting fairs around the state.*
- *Provided Interview training to 70 staff in August 2019.*
- *Posted 34 jobs from September 1, 2018 through August 31, 2019.*
- *Successfully filled key positions in the agency through internal promotion: Deputy Commissioner; Director of Bank and Trust Supervision; Deputy General Counsel; Director of Corporate Activities; Assistant Deputy Director - Special Audits; Chief Operating Officer; Director- Special Audits; Houston Regional Director; and Regional Review Examiner – Lubbock Regional Office.*
- *Filled one Administrative Assistant position in Executive.*
- *Filled two Attorney positions.*
- *Filled two Corporate Analyst positions.*
- *Filled an Administrative Assistant position in Corporate Activities.*
- *Filled four Assistant Examiner positions and one Credit Review examiner in Bank and Trust.*
- *Filled two Assistant Examiner positions in Specialist Audits.*
- *Filled two Programmer positions.*
- *Filled one Consumer Specialist and one Financial Analyst position in DSS.*
- *Promoted five Bank and Trust Examiners to Senior Examiners through internal competitive posting.*
- *Selected two Senior Examiners to fill CPC roles; one in the Houston Regional Office and one in the Dallas Regional Office.*
- *Employed one intern in the Dallas Regional Office for summer 2019.*
- *Employed one law clerk for four months.*

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 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 non-retirement turnover not exceed 8% for the fiscal year. Given the significant percentage of Department employees that are retirement-eligible, be proactive with succession planning development 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.

Update:

- *Agency Fiscal Year 2019 turnover rate through August 31, 2019 is 12.55%; Agency turnover excluding retirements is 8.56%. Financial Examiner Fiscal Year 2019 rate through August 31, 2019 is 10.57%; Financial Examiner turnover excluding retirements is 8.13%.*
- *Eight Financial Examiner VII's and the newly appointed Director of Corporate Activities attended the DOB leadership development program.*
- *Completed the first full-cycle performance appraisal process for all employees through an automated system - NEOGOV.*
- *Conducted Supervisor Evaluations in November 2018, using the NEOGOV program, as a response to Employee Advisory Council recommendation.*
- *Through August 31, 2019, the agency has hired 21 new employees and lost 22 employees.*
- *Salaries remain competitive with the FDIC.*

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

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

February Update:

- *Replaced three VM servers and network storage devices.*
- *Upgraded Windows Servers' operating system to Windows Server 2016.*
- *VOIP phones installed in HQ and regional offices.*
- *Launched the Employee Portal, which is an internally developed software program that allows employees to view useful information such as annual leave balances and salary information.*
- *Implemented Jira software program to help monitor and document the agency's IT change management process.*
- *Developed and implemented an internal software program to track and document fines and penalties.*
- *Entered into a service agreement with an external provider to perform maintenance on hardware and software that provides internet service to the Nob Hill location.*
- *Upgraded various software programs with a more current version, including upgrading all production workstations to a more current version of Windows 10.*

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. Conduct an annual test of the Department's disaster recovery plan to ensure operations will function appropriately and continue periodic intrusion testing by the Department of Information Resources.

Update:

- *Texas Cybersecurity Assessment performed by AT&T has been completed.*
- *Four security training modules have been completed by staff.*
- *First quarter vulnerability system scan was completed by the Department of Information Resources.*
- *Performed vulnerability scan for external-facing information system completed by Department of Information Resources.*
- *User audit was completed.*
- *Installed a security patch for the Oracle server.*

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

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

Update:

- *Twenty individual commissioning phases were conducted in Fiscal Year 2019.*
- *Four assistant financial examiners and one credit specialist were commissioned in FY 2019.*
- *Seventeen Assistant Examiners attended a Financial Examiner II class held in the Lubbock Regional Office the week of April 22, 2019.*

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

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

Update:

- *Monthly financial statements are provided to all divisions for review and to the Finance Commission each quarter.*
- *Budget variances are analyzed quarterly.*
- *For Fiscal Year 2019, revenues were 93.6% of budget and expenditures were 92.4% of budget.*
- *Cash reserves are within policy guidelines.*
- *On March 1, 2019, Commissioner Cooper announced a 20% reduction in the third fiscal quarter bank assessment. On August 8, 2019, Commissioner Cooper announced a 60% reduction in the fourth fiscal quarter bank assessment. The reduction for the fiscal year was 11.11%.*

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.

February Update:

- *Administrative Memorandums (AM) Revisions related to internal processes or procedures:*
 - *AM 2031 – Delegation of Authority (September)*
 - *AM 2035 – Finance Commission Parking Policy (October)*
 - *AM 2038 – Frequent Overnight Stay-Out Stipend Program (November)*
 - *AM 2023 – Website (Internet) and DOBIE (Intranet) Maintenance Policy (January)*
 - *AM 2019 – Employment and Promotion Qualifications for Financial Examiners (February)*
 - *AM 2002 – Equal Employment Opportunity, Discrimination and Sexual Harassment Policy (March)*
 - *AM 2010 – Finance Commission Building Service Center (April)*
 - *AM 2046 – Strategic Planning (April)*
 - *AM 2002 – Equal Employment Opportunity, Discrimination and Sexual Harassment Policy (April)*
 - *AM 2047 – Budget Variance (April)*
 - *AM 2031 – Delegation of Authority (April)*
 - *AM 2016 – Investment Policy for Funds under Oversight of Guaranty Fund Advisory Council (May)*
 - *AM 2001 – Official Issuance and Communication System (July)*
 - *AM 2027 – Investment Policy for Funds Under the Oversight of the Finance Commission of Texas (August)*
- *Personnel and Procedures Manual revisions related to internal administrative functions*
 - *Fraud Prevention Policy in Section 2-07 of the Personnel Policy and Procedure Manual (March)*
 - *Section 6 Performance Management System (January)*
 - *Section 14 Information Technology Standards & Procedures (September/June/July)*

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

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

Update:

- *SB 1349 was passed in the 85th (R) Legislative Session, which amended the Government Code and Transportation Code. SB 1349 authorizes the Texas Department of Transportation to sell specific land tracts that are not*

transferred to the Texas Department of Motor Vehicles to one or more financial regulatory agencies.

- *The Agencies continue to work with Texas Department of Transportation and Texas Department of Motor Vehicles to determine if: (1) excess land is available, (2) the size of the parcel, (3) financial terms, and (4) scheduling.*
- *The Agencies continue to work with the broker to look for a suitable alternative building location.*

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

Measure: Ensure update and exercise of the Plan as scheduled by SORM.

February Update:

- *The yearly Plan update, which includes the plan exercise and after-action report, was submitted to SORM in January 2019.*
- *The Plan update, which includes the plan exercise and after-action report, was evaluated by SORM and received a favorable review on March 7, 2019.*

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.

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DEPARTMENT of
SAVINGS & MORTGAGE LENDING
Caroline C. Jones, Commissioner

Memorandum

To: The Finance Commission

From: Caroline C. Jones

Date: October 18, 2019

Re: Year End Agency Priorities for Fiscal Year 2019

I. Legislative Items

I.1 Objective: Monitor legislation, throughout the 86th Legislative Session, that may affect the Department or its regulated industries.

Measure: Provide regular updates to the Finance Commission on the status of such legislation.

Status: *The Department monitored legislation for those bills that might impact the Department or the regulated industries. Those bills that had direct impact on the Department or the regulated industries were reported on a weekly basis to the Finance Commission. Besides these bills, the Department tracked other bills of interest. In total the Department tracked 298 bills.*

I.2 Objective: Serve as a resource for the Texas Legislature and other members of leadership. Respond promptly and accurately to any requests for information, providing appropriate and comprehensive resource materials, as legally permissible.

Measure: Notify Finance Commission members about any testimony given by the Department.

Status: *During the 86th Legislative session, Department staff served as resource support to legislative members and their staff by providing appropriate and comprehensive information, as legally permissible, to requests for information on a variety of proposed legislation. Additionally, Department staff met with stakeholders and legislative staff on bills impacting the regulated industries, as requested by Legislators and their staff. The Commissioner provided written and oral testimony at the organizational meeting of the House Committee on Pensions, Investments, and Financial Services on February 14, 2019. The Department submitted fiscal notes as requested to the Legislative Budget Board.*

I.3 Objective: Monitor and participate, as appropriate, in the Sunset process during Legislative Session.

Measure:

- a. Coordinate with Finance Commission, Office of Consumer Credit Commissioner, and Department of Banking to implement any statutory changes and management recommendations impacting the agencies.

Status: *Sunset Review was a major priority for the Department during FY19. The Department provided information to members of the Legislature, as requested, and responded to Open Records Requests related to the Sunset Review. Executive Management worked to retain staff. The Commissioner updated staff on the Sunset Review on a regular basis via email and staff meetings.*

The Department continues to coordinate with the Department of Banking and Office of Consumer Credit Commissioner, as appropriate, on statutory changes and management recommendations

- b. Enhance the Department's Mortgage Penalty Matrix by May 1, 2019.

Status: *The Department's Mortgage Penalty Matrix was updated and implemented April 1, 2019.*

I.4 Objective: Monitor federal legislation and regulations that may affect the Department or its regulated entities.

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

Status: *During FY19, the Department monitored legislation and regulations at the federal level and as appropriate reported information to the Finance Commission as well as to its regulated industries.*

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.

Status: *The Department monitors the thrift industry's risk profiles and reports information to the Finance Commission on a regular basis. The Department is actively engaged in*

determination of necessary supervisory action and taking appropriate supervisory action during on-site examinations and off-site reviews. Compliance with existing enforcement actions is monitored through quarterly reports from the thrifts and on-site visitations and examinations.

II.2 Objective: Transition from NMLS to NMLS2.0 and utilize expected new functionality, where feasible.

Measure: Report on status of implementation.

Status: *The roll out of NMLS 2.0 by the State Regulatory Registry Board (owners of the system) has not taken place.*

II.3 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.

Status: *For FY19, the Department conducted 511 examinations of mortgage entities covering 5,890 mortgage loan originators. The Department provided the top violations to industry at various opportunities, including presentations to statewide and local associations and at the Department's Mortgage Seminar. The Department issued formal and informal enforcement actions as deemed necessary.*

II.4 Objective: Initiate appropriate regulatory enforcement to ensure compliance with federal and state laws and regulations.

Measure: Report on enforcement actions.

Status: *During FY19, the Department issued 117 orders related to either examinations or complaints.*

II.5 Objective: Retain prompt resolution times on consumer complaints.

Measure:

a. Provide updates to the Finance Commission on the aging of complaints.

Status: *The Department reports to the Finance Commission the aging of complaints on a quarterly basis. For FY19, a majority (93.4%) of complaints were closed within 90 days or less.*

- b. Conduct management review of any complaints open over 120 days to identify issues preventing the timely closing of such complaints.

Status: *During FY19, the Department had no complaints aged over 120 days.*

II.6 Objective: Participate in the development and implementation of home equity interpretations.

Measure:

- a. Active involvement in meetings of the Home Equity Lending Working Group as it develops recommended home equity rules and interpretations.

Status: *No Home Equity interpretations were requested in FY19.*

- b. Implement any rule and interpretations adopted by the Finance Commission and the Credit Union Commission.

Status: *There were no rules or interpretations to implement for FY19.*

II.7 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. ACSSS, CSBS, AARMR, and NACCA), trade associations, (e.g. TBA, IBAT, TMBA, ATMP, and TAR, and federal regulators (BCFP, FDIC, FRB, and other federal regulators), in order to be aware of events, decisions, other state and federal policies and other areas of actual and potential impact on the Department's regulatory functions or the industries. Take proactive steps to respond as issues arise affecting the industries or supervisory duties.

Status: *Members of the Department's management team serve in leadership positions on several national associations and committees. These include: the American Council of State Savings Supervisors, (Board Chair), the American Association of Residential Mortgage Regulators, (Board), and the State Regulatory Registry board. The Commissioner served on the Federal Financial Institutions Examination Council (FFIEC) through the State Liaison Committee and continues to serve on Financial and Banking Information Infrastructure Committee (FBIIC). Both FFIEC and FBIIC provide opportunities for active contact with federal counterparts in Washington. Several staff members serve on Conference of State Bank Supervisors working groups. Commissioner Jones and Deputy Commissioner Trotti participated in the FDIC Dallas Region Annual FDIC and State Leadership Meeting.*

- 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.

Status: *The Department has continued its joint Safety & Soundness examination program with the FDIC and FRB, as well as its Compliance examination program.*

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

Status: *In addition to those mentioned above, the Department attended FDIC's Deposit Insurance Application Roundtable. Additionally, Commissioner Jones met with FDIC Chairman Jelena McWilliams at the FDIC Dallas Regional Office on November 27, 2018.*

III. Policy and Rule Development

III.1 Objective: Develop any rules necessary to implement statutory changes passed by the Legislature during the 86th Legislative Session. Include stakeholders in process prior to recommending any rules to the Finance Commission.

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

Status: *Rules relating to statutory changes during the 86th Legislative Session were presented to Finance Commission post-session.*

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.

Status: *The Department communicated with the relevant state trade associations and directly with the industries. During FY19, the Department held its 11th Annual Thrift Day and its 6th Annual Mortgage Seminar. The Commissioner made eight visits to state savings banks, and spoke to seven mortgage groups, as well as served on panels at five banking conferences.*

Various Department representatives discuss issues related to the industry via individual face to face meetings and electronic means as deemed necessary and appropriate. The Commissioner and Deputy Commissioner hold a monthly Emerging Issues call for State Savings Banks Presidents/CEOs and other staff members from their institutions.

V. Agency Management

V.1 Objective: Recruit and train personnel with the appropriate qualifications for a position, 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 staff professional development.

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

Status: *During FY19, over 71% of personnel received training or professional development. Additionally, in FY19 the Department filled six positions and had five separations of employment.*

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

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

Status: *The Department has reported on its four key output measures to the Finance Commission on a quarterly basis. In FY19, the Department met or exceeded all of these key measures.*

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

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

Status: *During FY19, the Department was under review of by the Sunset Commission and working with McConnell Jones on the Efficiency Study.*

During the same period, the Department's Human Resources Policies and Procedures and Information Technology Change Management Programs were audited by the Texas Workforce Commission and McConnell Jones, respectively. There were no findings or recommendations cited in these two audits.

All audit results were reported to the Finance Commission.

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.

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

V.5 Objective: Ensure hardware and software 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 enhancement/improvement activities in this area.

Status: *As deemed appropriate, the Department has implemented critical patches to the network and staff computers.*

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

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

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

SB 1349, passed in the 85th Legislative session, authorized the Texas Department of Transportation to sell specific land tracts that are not transferred to the Texas Department of Motor Vehicles to one or more financial regulatory agencies. The Agencies continue to work with Texas Department of Transportation and Texas Department of Motor Vehicles to determine if excess land is available, the size of the parcel, financial terms, and scheduling. Additionally, the Agencies continue to work with the broker to look for a suitable alternative building location.

Office of Consumer Credit Commissioner

Agency Priorities – Year-End Report

FY 2019

1. LEGISLATIVE

1.1. 86th Legislative Session

1.1.1. Objective: Respond timely to new legislative issues and requests for information or testimony. Anticipate issues and work to develop strong beneficial relationships with legislators and legislative staff. As appropriate, review or draft legislative proposals or amendments. Monitor all legislation and associated hearings affecting the regulated industries or respective underlying statutes of the OCCC.

Measure: To the extent legally permissible, respond to requested resource information. Regular weekly legislative reports communicated to the Finance Commission.

Status: *Weekly status reports were provided to Finance Commission members during the legislative session. Members from the 86th legislative session filed a total of 7,324 bills or 10.5% more bills than the 85th Legislative Session (6,631). The OCCC high priority legislation report reflected 46 bills that the agency was very closely monitoring. OCCC staff served as a resource witness to a number of bills on the list. OCCC staff provided a substantial amount of resource support related to legislation, particularly on the OCCC Sunset bill.*

1.2. Sunset Review

1.2.1. Objective: Provide Requested Information for Sunset Review Process. The agency's scheduled sunset date is September 1, 2019. The agency will be under review by the Sunset Commission in the 2018-2019 review cycle and will provide technical assistance to the Legislature during the upcoming Legislative Session (86th).

Measure: Maintain communication with Sunset Committee Members and staff to convey information about the agency and its mission. Regular reports communicated to the Finance Commission.

Status: *In September 2018, the Sunset Advisory Commission issued its decisions on the Sunset review of the OCCC, which included continuing the OCCC for 12 years. The OCCC's Sunset bill (HB 1442) was passed by the legislature and approved by the governor. The OCCC tracked HB 1442 through the legislative process and included the bill in its status reports to the Finance Commission. OCCC staff provided testimony to the House Pensions, Investments & Financial Services Committee (PIFS) and the Senate Business and Commerce Committee. At the request of the bill author, OCCC staff provided additional language for the HB 1442 house committee substitute. Following passage of HB 1442, the OCCC worked to implement the requirements of the Sunset bill.*

2. REGULATORY ACTIVITIES

2.1. Regulated Entities

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

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

Status:

License	Compliance Status as of 8/31/19	Enforcement
<i>Pawn</i>	<i>89.9% acceptable level of compliance.</i>	<i>162 enforcement actions closed: 149 injunctive actions 12 administrative penalty actions 1 license revocation</i>
<i>Regulated Loans</i>	<i>98.1% acceptable level of compliance.</i>	<i>29 enforcement actions closed: 22 injunctive actions 7 administrative penalty actions</i>
<i>Property Tax Loans</i>	<i>93.3% acceptable level of compliance.</i>	<i>14 enforcement actions closed: 8 injunctive actions 6 administrative penalty actions</i>
<i>Credit Access Business</i>	<i>68.0% acceptable level of compliance.</i>	<i>68 enforcement actions closed: 53 injunctive actions 14 administrative penalty actions 1 license revocation</i>
<i>Motor Vehicle Sales Finance</i>	<i>85.1% acceptable level of compliance.</i>	<i>39 enforcement actions closed: 20 injunctive actions 19 administrative penalty actions</i>

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

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

Status: *The OCC completed 4,383 examinations for FY 2019 which was 95.8% of the annual goal for the fiscal year. The overall compliance rate was 86.6% for all five examination areas combined. Restitution from examinations conducted was \$14,578,199 for FY19. During FY 2019, the agency closed 312 enforcement actions concerning the five*

examination areas. The 312 closed cases include 252 injunctive actions, 58 administrative penalty actions, and 2 license revocations.

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.

Status: *The Annual Report Build that allows for webform submission in all five industries that are required to file an annual report was completed. Webforms create a better user experience and uniformity in reporting.*

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.

Status: *In FY 19 the licensing department processed 73% of applications within 60 days, a 9% improvement over last fiscal year. Increases in the volume of unlicensed activity applications and other document review are factors that likely prevented the department from reaching the measure. In FY 20 the department will work to achieve this goal and diminish processing time. Licensing staff were provided with multiple trainings, collaborative meetings, team building, and professional development opportunities in FY 19 including two customer service trainings, access to webinars on various topics, round table meetings and events to enhance teamwork.*

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 Applying for Licensure with the Office of Consumer Credit Commissioner under the Secure and Fair Enforcement for Mortgage Licensing Act (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).

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

Status: *Due to enacted legislation that affected these chapters (including the OCCC's Sunset bill), the rule reviews of Chapter 2 for OCCC residential mortgage loan originators*

and Chapter 86 for retail creditors have been rescheduled for proposal at the commission's February 2020 meeting. In addition, the rule review of Chapter 90 relating to plain language contract provisions has been rescheduled to later in FY 2020. This rescheduling will allow the agency to more efficiently fulfill legislative mandates, avoid conflicting amendments, and present focused rule reviews.

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. Work with interested stakeholders regarding rule provisions necessary to implement 2019 legislation. Draft rule amendments as appropriate.

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

Status: *In August 2019, the Finance Commission adopted two rule actions to implement the OCCC's Sunset bill (HB 1442): one rule action relating to licensing terms and the consumer complaint process, and another rule action relating to pawnshops (including the optional pawnshop employee license program). In August 2019, the Finance Commission also proposed four rule additional rule actions to implement 2019 legislation, relating to the single equivalent daily rate for regulated loans (implementing HB 3855), the documentary fee for motor-driven cycles (implementing HB 3171), and military licensing for residential mortgage loan originators and pawnshop employees (implementing SB 1200). Before presenting these rules to the Finance Commission, OCCC staff held stakeholder meetings and online webinars to obtain input from stakeholders. In August 2019, the OCCC also circulated a precomment draft of rules to implement the Sunset bill's provisions relating to alternative dispute resolution, negotiated rulemaking, and appeals to the Finance Commission.*

4. CONSUMER ISSUES/COMMUNICATION & OUTREACH STRATEGIES

4.1 Texas Financial Education Endowment Fund (TFEE)

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

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

Status: *Staff continues to report on fund activities, investment earnings, grant reimbursement request submissions and grantee program highlights to the Finance Commission, Audit Committee, and Grant Advisory Committee. The 2018-2019 grant cycle will be drawing to a close in December 2019. A risk assessment matrix was implemented for this cycle to identify grantees that may require additional support and oversight. Based on this matrix, the grant coordinator conducted site visits for those*

grantees with a higher risk score. Staff continues to evaluate its grant management activities for ways to improve its processes and outreach.

4.2 Financial Literacy

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

Measure: Report on number of people and programs reached.

Status: *During Fiscal Year 2019 staff reached out to 21 new partners (senior centers, community centers, schools, and youth programs) across the state. During this same period, staff provided direct financial education to 337 participants, which is 103.7% of the goal for this fiscal year.*

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.

Status: *During FY19 the OCCC participated in a number of groups and events to foster communications with stakeholders. OCCC staff participated in Financial Literacy Coalition of Texas, Texas Jump Start Coalition, and FDIC Alliance for Economic Inclusion (AEI) to advance financial education throughout the state. The agency also attended several industry meetings and seminars to discuss regulatory compliance and encourage licensee education. Additionally, the agency published an "Industry Insight: Insider Resources for Regulated Lenders" newsletter.*

5. AGENCY MANAGEMENT

5.1. Performance Measures

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

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

Status: *The OCCC met or exceeded 7 of 9 key performance targets in FY19, which is 78% of the key performance measure target. Both measures under 5% of target were those in the consumer assistance area.*

5.2. Human Resources

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

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

Status: *The agency FY19 turnover ratio is 18.9%. Efforts continue to be made to increase staff retention. Those efforts include conducting in-person exit interviews and reviewing the State Auditor's Office exit interviews to determine the factors that could aid the agency and increase retention. The agency also provides career growth opportunities by posting internal postings and promoting within the agency.*

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

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

Status: *Financial Examiners attended the agency annual examiners' training, where they receive 26 hours of in-depth curriculum training, including changes to the specific industries regulated by the agency. Other training opportunities provided to certain examiners include: National Association of Consumer Credit Administrators (NACCA) Examiners School, American Association of Residential Mortgage Regulators (AARMR) Training School, Governor's Center for Management Development Training, and 16 hours of OCCC-Train the Trainer led classroom training based on exams and focused on Chapter 348, Motor Vehicle Sales & Finance.*

New Financial Examiners (9) received six weeks of introductory classroom training before progressing into the participation and performance of examinations.

The Consumer Protection Examination & Enforcement Department has developed a Special Projects Office which provides examiners additional opportunities for professional growth.

Overall agency employees attended the agency biannual staff conference, where training was provided on a variety of subjects.

Additionally, the IT Department provided FY2019 Cyber Security Awareness training to all employees.

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

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

Status: *The OCCC has finalized 80% of the policies in the Employee Manual. Revisions included the best practices recommendations from the Texas Workforce Commission, Civil Rights Division review. The remaining 20% will be finalized by December 2019.*

Human Resources continues to provide supervisory training using the new directives. The agency is in the process of creating a supervisory handbook and training which will be implemented early next year.

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

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

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

Status: *The OCCC monitors and timely reviews the financial status through monthly Operating Statements and Budget Analysis reports. These reports are also reviewed on a quarterly basis by the Finance Commission. Financial performance in the year was within the budgeted levels as established by the Finance Commission.*

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

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

Status: *SB 1349 was passed in the 85th (R) Legislative Session which amended the Government Code and Transportation Code. SB 1349 authorizes the Texas Department of Transportation to sell specific land tracts that are not transferred to the Texas Department of Motor Vehicles to one or more financial regulatory agencies. The Agencies continue to work with Texas Department of Transportation and Texas Department of Motor Vehicles to determine if excess land is available, the size of the parcel, financial terms, and scheduling. The Agencies continue to work with the broker to look for a suitable alternative building location.*

5.4. Information Technology

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

Measure: Reporting on development and milestones.

Status: *Two new ALECS program modules were developed, reviewed, and released – Pawn Employee Opt-in and Industry Reporting. Pawn Employee fulfills the mandate of HB1442, enacted by the 86th Texas Legislature. Industry Reporting converted the several annual and quarterly reporting formats to use webforms, which streamlines and secures licensee inputs. Also, the last, minor edits to the core build update were completed and released. OCCC has updated the entire field deployment to Windows 10 systems. OCCC upgraded one shared network drive to Windows Server 2019, which provides the latest security enhancements available, and another will be upgraded soon.*

5.4.2 Objective: Increase Agency Security Posture. Using agency risk assessment and security plan, OCCC will move toward increasing agency maturity levels for objectives in the Texas Cybersecurity Framework.

Measure: Activity reporting on the security plan and roadmap with timelines for implementation of recommendations.

Status: *OCCC IT reviewed its Texas Cybersecurity Assessment Report which was performed by an outside vendor and accepted the final report in March. Recommendations from the report are being incorporated into an updated agency security roadmap. Annual cybersecurity training was completed.*

The Finance Commission of Texas

Paul W. Plunket, Chairman
Phillip A. Holt, Vice Chair
Robin Armstrong, M.D.
Robert (Bob) Borochoff
Hector J. Cerna
Margaret (Molly) Curl
Stacy G. London
William (Will) Lucas
Cliff McCauley
Lori B. McCool
Vincent E. Puente

SUBJECT

Plan to minimize duplication of agency functions and promote more cost-efficient administration of the finance agencies (the Agencies).

BACKGROUND

Recommendation 2.6 of the *Sunset Advisory Commission Staff Report with Final Results 2018-2019 (86th Legislature)* is a non-statutory management action item which directed the Finance Commission to minimize duplication of agency functions and promote more cost-efficient administration of the Agencies.

In furtherance of this goal, the Finance Commission directed the Agencies to contract with McConnell & Jones, LLP, to perform an efficiency audit to identify duplication and potential areas for cost savings through resource sharing or consolidation. The Agencies received the Efficiency Audit Report (Report) on June 7, 2019. The Finance Commission reviewed the Report at the meeting held on June 21, 2019. On August 9, 2019 each agency submitted separate responses to the Report to the Finance Commission, and the Agencies sent their collective recommendations to enhance efficiencies.¹ These responses were discussed at the Finance Commission meeting held on August 15, 2019.

CONCLUSION

After reviewing the Report, the Agencies' responses and recommendations, and receiving input from stakeholders, the Finance Commission makes the following determinations:

1. As required by Section 11.204 of the Texas Finance Code, the Agencies do share the cost of the administrative functions of the Finance Commission. In addition, the Agencies currently share many other functions.

1

Texas Department of Banking response letter to Efficiency Audit dated August 9, 2019
Department of Savings and Mortgage Lending response letter to Efficiency Audit dated August 9, 2019
Office of Consumer Credit Commissioner response letter to Efficiency Audit dated August 9, 2019
Combined Agencies response letter to Finance Commission Directive dated August 9, 2019

2. Consolidation of any of the management responsibilities vested in each commissioner does not offer significant financial savings nor is it in the best interests of the Agencies or stakeholders.
3. Specific administrative functions have been identified that appear to offer some efficiencies through an interagency service agreement.

Therefore, the Finance Commission instructs the Agency Commissioners to move to accomplish the following in the areas indicated:

1. Budget and Accounting

Each of the Agencies will be converting financial systems to the state's new accounting system, Centralized Accounting and Payroll/Personnel System (CAPPS) within the next three years (SML is scheduled to begin 9/1/20; OCCC and DOB are scheduled to begin 9/1/22). The conversion is a significant endeavor and appears to be the appropriate time for the Agencies to evaluate opportunities for efficiencies and potential sharing of functions. The Agencies met with staff of the Comptroller of Public Accounts to discuss the upcoming conversion and discussed opportunities for shared services. The Agencies will evaluate potential shared functions in the budget and accounting area to identify opportunities presented by the CAPPS deployment.

- a. As the Agencies evaluate the impact and timing of CAPPS, the Agencies will explore a potential opportunity for a shared service relating to Accounts Payable. The DOB, as performing agency, can perform reconciliation and review of all records required for a payment as well as the data entry of the completed vouchers. The receiving agency would retain final review and approval. The DOB can provide this service to one agency without additional staff. Including both Agencies will require additional staff that will have to be evaluated to determine further action.
- b. The Agencies will establish a workgroup to share best practices and align financial reporting to the Finance Commission as much as possible.

2. Complaint Intake

The Agencies will establish a workgroup to explore opportunities to improve customer service, align performance measure reporting, review best practices, federal complaint issues, and emerging trends.

3. Financial Literacy Program

The DOB and the OCCC will work together to define a strategy and deliverables for an agreement to share financial education outreach services.

4. Purchasing and Contracting

- a. The Agencies will expand the already shared central office supply purchasing and inventory. Currently the DOB performs office supply purchasing and inventory for OCCC. The SML will be included in this shared service.

- b. The Agencies will explore the option of the DOB offering procurement services for one or more of the other Agencies.

5. Human Resources (HR)

The Agencies are scheduled to implement CAPPs for HR functionality within the next three years (OCCC & DOB begin 9/1/21; SML begins 9/1/22). The Agencies plan to collaborate on implementation and study opportunities for sharing of resources during and after the project.

- a. The Agencies will establish a workgroup to share best practices and align performance measures in reporting to the Finance Commission to enhance consistency and alignment.
- b. As the Agencies evaluate the impact and timing of CAPPs, the Agencies will explore the option of DOB offering the following HR services to the other Agencies: (1) benefits coordinator; (2) new employee orientation; (3) employee separation processing; and (4) possibly background checks, if appropriate clearance can be obtained.

6. Information Technology (IT)

The Agencies will create a workgroup to review possibilities for shared services, share best practices and strategic alignment, review emerging trends in cybersecurity, and review other ways to enhance IT services.

It is of the utmost importance that the evaluation and execution of these proposed functions be done with the stated purpose of being beneficial to the agencies involved while accomplishing overall efficiency without detracting from the staff expertise needed for individual areas of Agency responsibility.

ACCOUNTABILITY

Updates on the agencies progress will be provided on a semi-annual basis at the Finance Commission meetings.

A. FINANCE COMMISSION MATTERS

9. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New Rules and Amendments in 7 TAC, Chapter 5, Concerning Administration of Finance Agencies, and a New Rule, Amendments, and Repeals in 7 TAC, Chapter 9, Concerning Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings

PURPOSE: The purpose of the proposed amendments, new rules, and repeals in 7 TAC, Chapters 5 and 9 is to implement provisions relating to alternative dispute resolution, negotiated rulemaking, and appeals to the Finance Commission in HB 1442 and SB 614, the 2019 Sunset legislation for the finance agencies.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the amendments, new rules, and repeals in 7 TAC, Chapters 5 and 9 in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve for publication and comment the amendments, new rules, and repeals in 7 TAC, Chapters 5 and 9.

Title 7, Texas Administrative Code
Part 1, Finance Commission of Texas
Chapter 5. Administration of Finance Agencies
Chapter 9. Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings

7 TAC, Part 1, Chapter 5

The Finance Commission of Texas (commission) proposes amendments to §5.101 (relating to Employee Training and Education Assistance Programs) and proposes new §§5.100 (relating to Definitions), 5.103 (relating to Alternative Dispute Resolution Policy), and 5.105 (relating to Negotiated Rulemaking) in 7 TAC, Chapter 5, concerning Administration of Finance Agencies.

In general, the purpose of the proposed amendments and new rules in 7 TAC, Chapter 5 is to implement provisions related to alternative dispute resolution and negotiated rulemaking required by HB 1442, the Sunset legislation for the Office of Consumer Credit Commissioner (OCCC), and required by SB 614, the Sunset legislation for the Texas Department of Banking (DOB) and the Department of Savings and Mortgage Lending (SML). The Texas Legislature passed HB 1442 and SB 614 in the 2019 legislative session.

Effective September 1, 2019, Texas Finance Code, §§12.113, 13.017, and 14.110 require the commission to develop a policy by rule to encourage the use of negotiated rulemaking procedures under Texas Government Code, Chapter 2008, and alternative dispute resolution procedures under Texas Government Code, Chapter 2009.

The OCCC, SML, and DOB 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, SML, and DOB did not receive any informal written precomments on the rule text draft.

Proposed new §5.100 adds a definition of "finance agency" in Chapter 5, in order to allow the term "finance agency" to be used throughout Chapter 5. The proposed amendment to §5.101 repeals the definition of "finance agencies" in Chapter 5, because this definition is being moved to proposed new §5.100.

Proposed new §5.103 implements HB 1442 and SB 614 by encouraging the use of alternative dispute resolution. Subsection (a) explains that it is the policy of the commission to use alternative dispute resolution procedures when reasonable and appropriate. Subsection (b) explains that the procedures for alternative dispute resolution must conform to model guidelines of the State Office of Administrative Hearings. Subsection (c) explains that the finance agencies will coordinate to implement alternative dispute resolution procedures and training. Subsection (d) explains that the finance agencies will collect data concerning the effectiveness of alternative dispute resolution procedures and report to the commission.

Proposed new §5.105 implements HB 1442 and SB 614 by encouraging the use of negotiated rulemaking. Subsection (a) explains that it is the policy of the

commission to use negotiated rulemaking. Subsection (b) explains that the finance agencies will coordinate to implement negotiated rulemaking and training. Subsection (c) explains that the finance agencies will collect data concerning the effectiveness of negotiated rulemaking and report to the commission.

Christina Cuellar Hoke of the OCCC, Ernest Garcia of the SML, and Catherine Reyer of the DOB, have determined that for the first five-year period the proposed rule changes in Chapter 5 are in effect, there will be no fiscal implications for state or local government as a result of administering the rule amendments.

Huffman Lewis of the OCCC, Ernest Garcia of the SML, and Catherine Reyer of the DOB, have determined that for each year of the first five years the rule changes in Chapter 5 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 rule changes will be in effect, the rule 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, SML, or DOB because they are self-directed, semi-independent agencies that do not receive legislative appropriations. The proposed rule changes will not require an increase or decrease in fees paid to the agencies. The proposed rule changes create new regulations to move the definition of "finance agency" to new §5.100, to encourage the use of alternative dispute resolution in new §5.103, and to encourage the use of negotiated rulemaking in new §5.105. The proposed rule changes do not expand or repeal an existing regulation. The proposed rule changes limit current §5.101 by moving the definition of "finance agencies" out of this section. The proposed rule changes do not increase or decrease the number of individuals subject to the rules' applicability. The agencies do 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 Michael Rigby, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of business on the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The rule changes are proposed under Texas Finance Code, §§12.113, 13.017, and 14.110 (as added by HB 1442 and SB 614), which authorize the commission to adopt rules to encourage the use of negotiated rulemaking procedures under Texas Government Code, Chapter 2008, and alternative dispute resolution procedures

PROPOSED AMENDMENTS, NEW RULES, & REPEALS
7 TAC CHAPTERS 5 AND 9
Page 3 of 9

under Texas Government Code, Chapter 2009. In addition, Texas Finance Code, §§11.301, 11.302, 11.304, and 11.306 generally authorize the commission to adopt banking rules, rules applicable to state savings associations and savings banks, rules necessary to supervise the consumer credit commissioner, and rules applicable to residential mortgage loan origination.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 12, 13, and 14.

7 TAC, Part 1, Chapter 9

The Finance Commission of Texas (commission) proposes amendments to §9.82 (relating to Petitions To Initiate Rulemaking Proceedings); proposes new §9.85 (relating to Negotiated Rulemaking); proposes the repeal of §§9.51 (relating to Time Deadlines for Appeal to the Finance Commission Mandatory), 9.52 (relating to Motion for Rehearing), 9.54 relating to Application for Review), 9.55 (relating to Scope of Review) 9.56 (relating to Oral Argument before the Finance Commission), and 9.57 (relating to Interim Appeals); and proposes relettering the titles of Subchapters D and E in 7 TAC, Chapter 9, concerning Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings.

In general, the purpose of the proposed amendments, repeals, and new rule in 7 TAC, Chapter 9 is to implement provisions related to negotiated rulemaking and finance commission appeals in HB 1442, the Sunset legislation for the Office of Consumer Credit Commissioner (OCCC), and SB 614, the Sunset legislation for the Texas Department of Banking (DOB) and the Department of Savings and Mortgage Lending (SML). The

Texas Legislature passed HB 1442 and SB 614 in the 2019 legislative session.

Effective September 1, 2019, Texas Finance Code, §§12.113, 13.017, and 14.110 require the commission to develop a policy by rule to encourage the use of negotiated rulemaking procedures under Texas Government Code, Chapter 2008.

Effective September 1, 2019, all references to appeals to the commission have been removed from Texas Finance Code, §§14.208, 31.202, 31.204, 35.110, 181.202, 181.204, and 354.005. The proposed repeal of Subchapter C of 7 TAC, Chapter 9 would remove all provisions pertaining to appeals to the commission in conformity with the amendments to the Texas Finance Code found in SB 614 and HB 1442.

The OCCC, SML, and DOB 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, SML, and DOB did not receive any informal written precomments on the rule text draft.

The proposed repeal of Subchapter C of Chapter 9 implements HB 1442 and SB 614 by eliminating provisions relating to appeals to the commission. The proposed amendments would also reletter Subchapters D and E as a result of the repeal of Subchapter C.

The proposed amendments to §9.82 relate to petitions to initiate rulemaking proceedings. In subsection (a), a proposed amendment would add any request to engage in negotiated rulemaking to the list of items that a petition to initiate rulemaking must include. Proposed new subsection (b)

explains that an agency receiving a petition will present the petition and a recommendation to the commission. Proposed new subsection (c) explains that the commission will vote to initiate a rulemaking proceeding, or to deny the petition and state the reasons for denial.

Proposed new §9.85 describes to the procedures for negotiated rulemaking. Subsection (a) explains that an agency may propose to engage in negotiated rulemaking if the commission votes to initiate a rulemaking proceeding, or if the agency determines that a proposed rule might benefit from the process. Subsection (b) explains that an agency may appoint a convener to assist in determining whether negotiated rulemaking should proceed, as described by Texas Government Code, §2008.052. Subsection (c) explains that the agency will publish notice of intent to engage in negotiated rulemaking, as described by Texas Government Code, §2008.053. Subsection (d) explains that the agency will appoint a facilitator and committee, as described by Texas Government Code, §2008.056. Subsection (e) explains that the commission may adopt, amend, or refuse to adopt a rule created through negotiated rulemaking.

Christina Cuellar Hoke of the OCCC, Ernest Garcia of the SML, and Catherine Reyer of the DOB, have determined that for the first five-year period the rule changes to Chapter 9 are in effect, there will be no fiscal implications for state or local government as a result of administering the rule amendments.

Huffman Lewis of the OCCC, Ernest Garcia of the SML, and Catherine Reyer of the DOB, have determined that for each year of the first five years the rule changes to Chapter 9 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 rule 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, SML, or DOB because they are self-directed, semi-independent agencies that do not receive legislative appropriations. The proposed rule changes will not require an increase or decrease in fees paid to the agencies. The proposed rule creates a new regulation to encourage the use of negotiated rulemaking under §9.85. The proposed rule expands the current rule at §9.82, relating to a petition to initiate rulemaking, in order to address negotiated rulemaking. The proposed rule changes repeal Subchapter C of Chapter 9 to eliminate provisions relating to appeals to the commission, in accordance with HB 1442 and SB 614. The proposed rule changes do not limit an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rules' applicability. The agencies do not anticipate that the proposed rule changes will have an effect on the state's economy.

PROPOSED AMENDMENTS, NEW RULES, & REPEALS
7 TAC CHAPTERS 5 AND 9
Page 5 of 9

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

The rule changes are proposed under Texas Finance Code, §§12.113, 13.017, and 14.110 (as added by HB 1442 and SB 614), which authorize the commission to adopt rules to encourage the use of negotiated rulemaking procedures under Texas Government Code, Chapter 2008. In addition, Texas Finance Code, §§11.301, 11.302, 11.304, and 11.306 generally authorize the commission to adopt banking rules, rules applicable to state savings associations and savings banks, rules necessary to supervise the consumer credit commissioner, and rules applicable to residential mortgage loan origination.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 12, 13, 14, 31, 35, 181, and 354.

Title 7, Texas Administrative Code

Part 1, Finance Commission of Texas

Chapter 5. Administration of Finance Agencies

§5.100. Definitions.

In this chapter, a "finance agency" means the Texas Department of Banking, the Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner.

§5.101. Employee Training and Education Assistance Programs.

(a) [~~For purposes of this rule, "finance agencies" means the Texas Department of Banking, the Texas Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner.~~] Pursuant to the State Employees Training Act, Chapter 656, Subchapter C of the Texas Government Code, it is the policy and practice of the finance agencies to encourage employees' professional development through training and education programs sponsored or supported by the finance agencies.

(b) The finance agencies may provide assistance for education and training that will enhance an employee's ability to perform current or prospective job duties and will benefit both the respective finance agency and the employee.

(c) Approval to participate in a training or education program is not automatic and is subject to eligibility of individual employees as established in the respective finance agency's policy, and the availability of funds within the respective finance agency's budget.

(d) The employee training and education program for the finance agencies may include one or more of the following:

(1) agency-sponsored training provided in-house or by contract;

(2) seminars and conferences;

(3) technical or professional certifications and licenses; or

(4) reimbursement for tuition, fees and required course materials.

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

(1) eligibility requirements for participation;

(2) designation of appropriate level of approval for participation; and

(3) obligations of program participants.

(f) Approval to participate in any portion of a finance agency's training and education program will not in any way affect an employee's at-will status.

(g) In order to receive tuition reimbursement for a course offered by an institution of higher education, the employee must successfully complete the course, and the executive head of the finance agency must personally authorize the tuition reimbursement payment.

§5.103. Alternative Dispute Resolution Policy.

(a) Policy. It is the policy of the finance commission to use alternative dispute

resolution procedures where reasonable and appropriate under Texas Government Code, Chapter 2009 to assist in the resolution of internal and external disputes under the jurisdiction of a finance agency.

(b) Model guidelines. The procedures for alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) Coordination and training. The finance agencies will coordinate with each other as reasonable to implement the use of appropriate alternative dispute resolution procedures and provide training as needed to implement the use of alternative dispute resolution procedures.

(d) Data collection and reporting. Each finance agency will collect data concerning the effectiveness of alternative dispute resolution procedures, and report to the finance commission its use of alternative dispute resolution procedures.

§5.105. Negotiated Rulemaking.

(a) Policy. It is the policy of the finance commission to use negotiated rulemaking procedures under Texas Government Code, Chapter 2008 and §9.85 of this title (relating to Negotiated Rulemaking).

(b) Coordination and training. The finance agencies will coordinate with each other as reasonable to implement the use of negotiated rulemaking procedures and provide training as needed to implement the use of negotiated rulemaking procedures.

(c) Data collection and reporting. Each finance agency will collect data concerning the effectiveness of negotiated rulemaking procedures, and report to the finance commission its use of negotiated rulemaking procedures.

Chapter 9. Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings

{{Subchapter C of Chapter 9 will be repealed.}}

[Subchapter C. Appeals to Finance Commission]

[\$9.51. Time Deadlines for Appeal to the Finance Commission Mandatory.]

[The administrative law judge does not have authority to grant an extension of the time periods provided for perfecting an appeal to the finance commission.]

[\$9.52. Motion for Rehearing.]

[A motion for rehearing in the manner and within the time required in Government Code, §2001.145, is a prerequisite to an appeal to the finance commission in a contested case, except that a motion for rehearing is not a prerequisite to an appeal of a decision or order that is final and effective on the date rendered. A motion for rehearing must state the claimed error with specificity. Responses to the motion must be filed and the motion must be ruled upon by the agency within the time periods specified in Government Code, §2001.146.]

[\$9.54. Application for Review.]

[~~(a) The application for review must be filed within 30 days of notification that the motion for rehearing has been overruled, or within 30 days of the date that it is overruled by operation of law, or within 30 days of a decision or order that is final and effective on the date rendered.]~~

[~~(b) The application must state the identities of the parties, the action complained of, the interests of the parties, specific objections, the action sought from the finance commission, and also contain any other information and be accompanied by any fees required by statute or administrative regulation.]~~

[\$9.55. Scope of Review.]

[The finance commission shall consider the questions raised by the application for review and may also consider such additional matters pertinent to the appeal as it may determine, whether or not included in the application. Decisions by the finance commission must be based on testimony and other evidence in the record. The finance commission may adopt or decline to adopt the agency head's decision and the underlying findings of fact and conclusions of law in whole or in part. The finance commission may remand the proceeding for further consideration by the agency head with or without reopening the hearing. The finance commission may take any other action it considers to be just and reasonable, as permitted by law.]

[\$9.56. Oral Argument before the Finance Commission.]

[A party may request oral argument to the finance commission by separate pleading or include a request for oral argument in its review application. The finance commission,

~~in its discretion, may grant or deny the request. If granted, the amount of time allotted and the issues on which oral argument is allowed are within the finance commission's discretion. The finance commission may deny the request for oral argument but request that the parties be present at the meeting at which the case is to be considered to address any questions that finance commission members may have.]~~

~~[\$9.57. *Interim Appeals.*]~~

~~[A party may not make an interim appeal to the finance commission except as specifically provided for by statute or by rule adopted by the finance commission.]~~

~~Subchapter [D] C. Court Appeals~~

~~Subchapter [E] D. Rulemaking~~

~~§9.82. *Petitions To Initiate Rulemaking Proceedings.*~~

~~(a) Petitions to initiate rulemaking proceedings pursuant to Texas Government Code, §2001.021, must be submitted to the agency in writing. A petition must include:~~

~~(1) a brief explanation of the proposed rule;~~

~~(2) the full text of the proposed rule, and, if the petition is to modify an existing rule, the text of the proposed rule prepared in the same manner as an amendment to legislation that clearly identifies any words to be added or deleted from the existing text by underlining new language and striking through language to be deleted;~~

(3) a concise explanation of the legal authority to adopt the proposed rule, including a specific reference to the particular statute or other authority that authorizes it;

(4) an explanation of how the public would be benefitted by the adoption of the proposed rule;

(5) all available data or information showing a need for the proposed rule; ~~[and]~~

(6) any request to engage in negotiated rulemaking under §9.85 of this title (relating to Negotiated Rulemaking); and

(7) ~~[(6)]~~ such other or additional information as the agency may request.

(b) An agency receiving a petition under subsection (a) of this section will present to the finance commission the petition and the agency's recommendation.

(c) The finance commission will vote to initiate a rulemaking proceeding, or to deny the petition and state the reasons for the denial.

§9.85 *Negotiated Rulemaking*

(a) Initiation of process. An agency may propose to engage in negotiated rulemaking process pursuant to Texas Government Code, Chapter 2008 if:

(1) the finance commission votes to initiate a rulemaking proceeding under §9.82 of this title (relating to Petitions To Initiate Rulemaking) that includes negotiated rulemaking; or

(2) the agency determines that drafting the proposed rule might benefit from the negotiated rulemaking process.

(b) Appointment of a convener. Upon proposing a negotiated rulemaking process under subsection (a) of this section, the agency will appoint a convener to assist in determining whether it is advisable to proceed with negotiated rulemaking. The convener will be appointed pursuant to, and perform the duties described by, Texas Government Code, §2008.052.

(c) Notice of negotiated rulemaking. If the agency decides to engage in negotiated rulemaking after considering the convener's recommendation and report, then the agency will publish timely notice of its intent on its website and with the secretary of state for publication in the Texas Register in compliance with Texas Government Code, §2008.053.

(d) Appointment of facilitator and committee. The agency will appoint a facilitator and members of the negotiated rulemaking committee to carry out the duties described in Texas Government Code, §2008.056.

(e) Adoption of rule. The finance commission may adopt, amend, or refuse to adopt a rule created through the negotiated rulemaking process in its sole discretion.

Issued in Austin, Texas on October 18, 2019.

Michael Rigby
General Counsel
Office of Consumer Credit Commissioner

Ernest Garcia
General Counsel
Department of Savings and Mortgage Lending

Catherine Reyer
General Counsel
Texas Department of Banking

Certification

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

B.

Texas Department of Banking

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Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

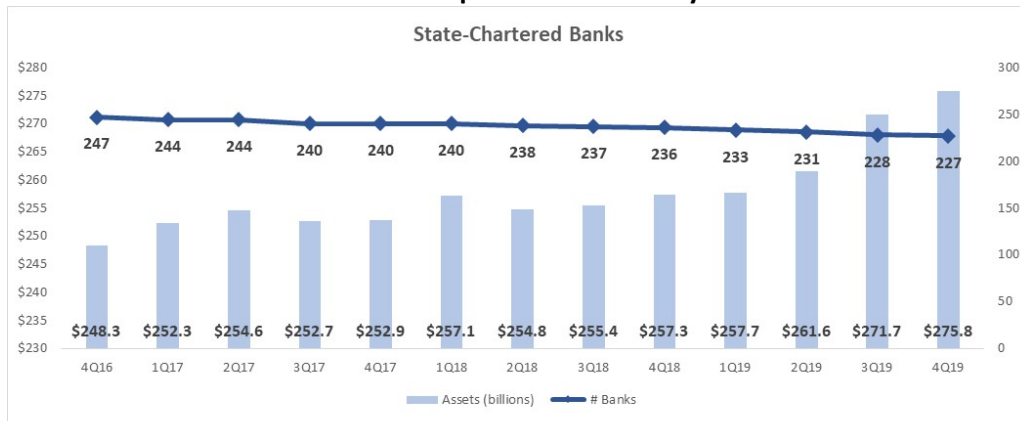
2601 North Lamar Blvd., Austin, Texas 78705

512-475-1300 / 877-276-5554

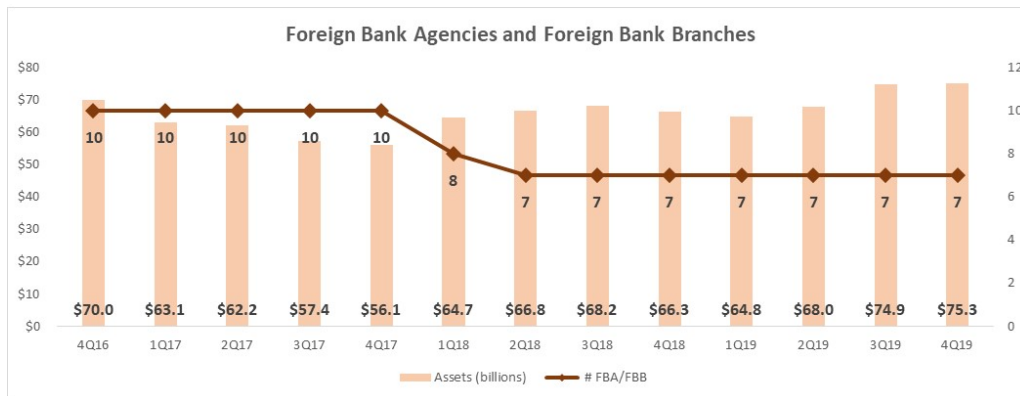
www.dob.texas.gov

To: Finance Commission Members
 From: Daniel Frasier, Director of Bank & Trust Supervision *DBF*
 Date: October 4, 2019
 Subject: Summary of the Bank & Trust Supervision Division Activities

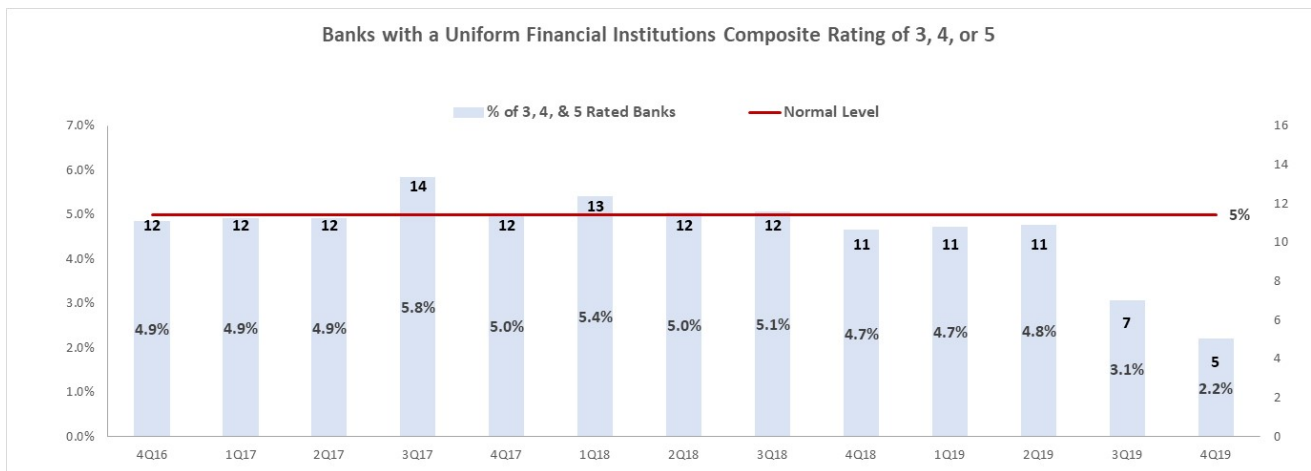
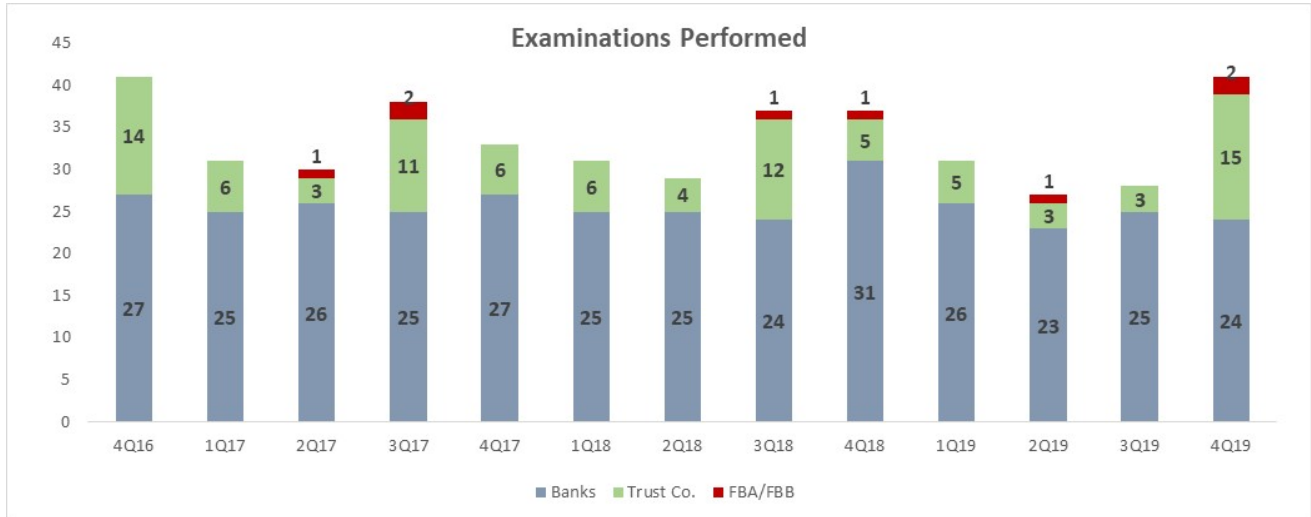
Bank and Trust Supervision – Industry Profiles



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



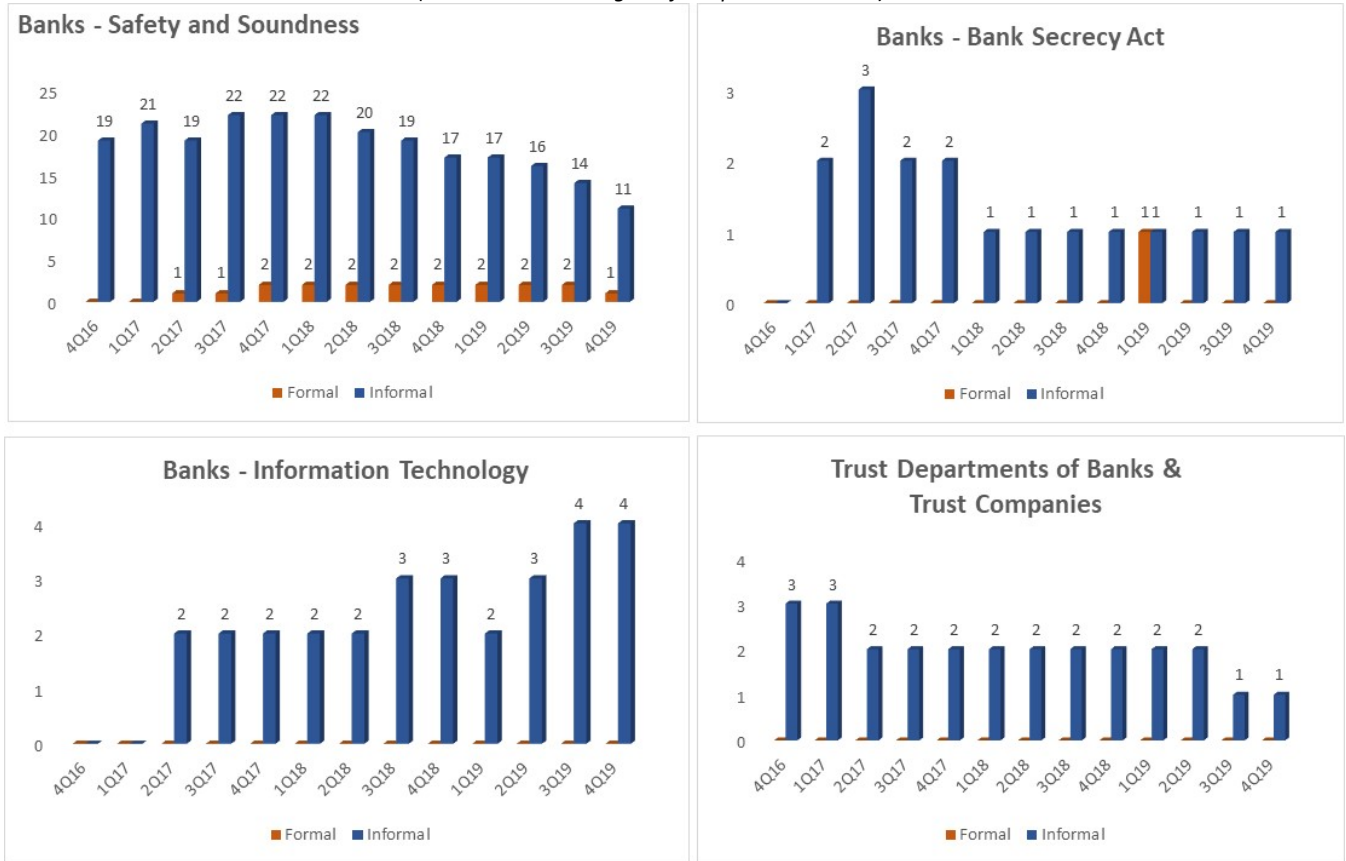
Summary of the Bank & Trust Supervision Division Activities



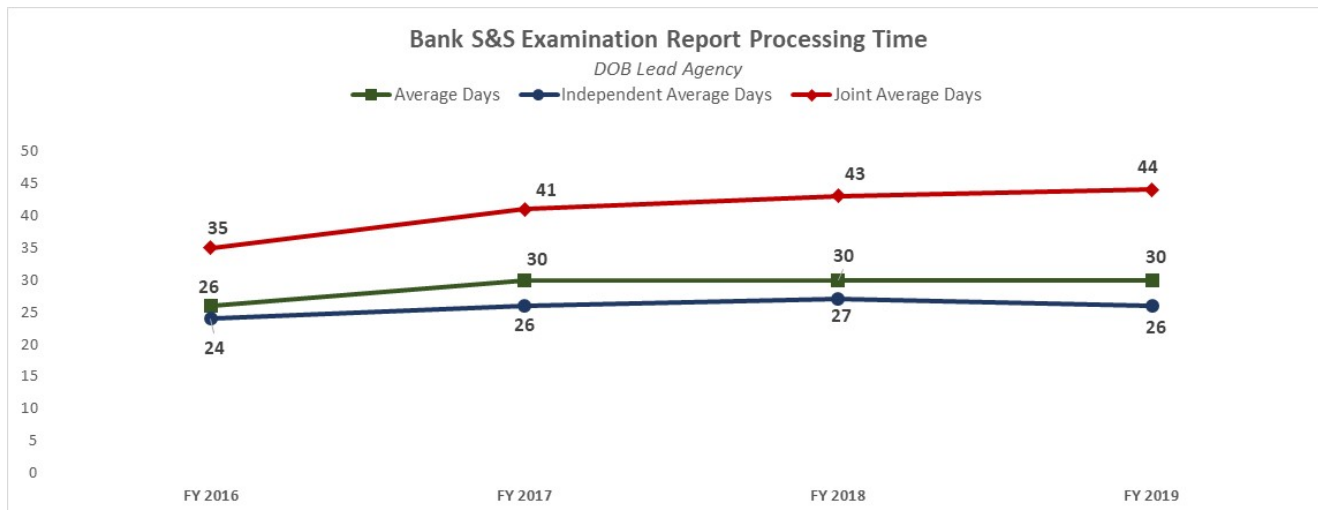
The Department considers any bank with a Uniform Financial Institutions Composite Rating of 3, 4, or 5, to be a problem bank. The number of problem institutions further declined during the 4th fiscal quarter of 2019. This latest decline in problem banks is below what we consider to be a normal range of between 3% and 5% of the total number of institutions. We expect that the number of problem banks will increase slightly up over the next six months.

Enforcement Actions Outstanding by Type

(Number outstanding as of the period indicated)



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.



The chart above depicts the number days to complete processing a bank safety and soundness report measured from the time examination staff leave the bank until a report is mailed to the bank. Reports for joint examinations on average take longer to process. First, joint examinations are normally conducted in larger banks and in problem institutions. The larger banks are usually more complex in that their products and services are more varied and sophisticated. In problem institutions, the reports are more voluminous, and the vetting and report review process is more time consuming. Finally, the processing time is extended due to two regulators needing time to review and edit the report.

Compliance with Examination Priorities Percent of Examinations Conducted within Department Guidelines		
Entity Type	FY 2018	FY 2019
Commercial Banks (All / DOB Only)	94% / 98%	93% / 92%
IT	96% / 100%	96% / 96%
Trust	100% / 100%	93% / 94%
Foreign Banks (FRB)	100%	100%
Trust Companies (DOB)	100%	48%
IT	100%	92%

We met all examination priorities for fiscal year 2019 except for examinations of trust companies. Compliance with examination priorities for trust companies dropped in the final fiscal quarter of 2019 due to the combined effects of a staff retirement, time spent on de novo charter investigations, and the timing of many exempt trust company examination due dates. The hiring of two trust examiners and temporary operational changes have allowed us to make good headway as only two trust examinations are past due as of the date of this report. Barring any unexpected setbacks, we expect to be current by the end of the second fiscal quarter of 2020.

Division Highlights

- The Department participated in the first Large Bank Peer Review Pilot meeting held in Jackson, Mississippi, on September 4 and 5, 2019. This Conference of State Bank Supervisors (CSBS) led program was initiated to provide state regulators with the ability to achieve a horizontal perspective for supervising banks with total assets greater than \$10 billion. The program provides participating state regulatory agencies with access to compiled data and other examination information common to these larger institutions. This state regulator initiative is similar to a federal agency only program that typically does not share information with state regulators. This inaugural meeting was attended by Regional Director Willardson and Senior Examiners Edwards and Sims.
- **Special Operations and Conferences:**
 - On August 15, 2019, Review Examiner Hodge led a bank regulation session at Texas Tech University's School of Banking.
 - The week of August 26, 2019, Commissioner Cooper, Deputy Commissioner Purdom, Director Frasier, Regional Director Walker, and Review Examiner Hodge participated in the CSBS Division IV meeting followed by the CSBS Board and Strategic Planning Meeting in Custer, South Dakota. This meeting provides the Department with opportunity to help direct CSBS priorities for coming year as well guide strategic direction into the next decade.
 - On September 11, 2019, Review Examiner Wu represented the Department on the Regulatory Panel at the Texas Bankers Association's Real Estate Lending School in Austin.
 - On September 13, 2019, Commissioner Cooper, Deputy Commissioner Purdom, Chief Operating Officer Rodrigues, Director Frasier, and General Counsel Reyer met with the leadership of the Texas Bankers Association (TBA) in Austin. TBA management shared their strategic vision and priorities, and discussions were held about common concerns.
 - The week of September 16, 2019, the Department held an all-staff conference in Sugar Land. In addition to providing valuable knowledge and perspective from several interesting speakers, the conference provides a crucial opportunity for our staff to connect with one another in a face-to-face setting.
 - Beginning September 21, 2019, Commissioner Cooper, Deputy Commissioner Purdom, Director Frasier, Regional Director Willardson, and Regional Review Examiner Adekoya attended the Independent Bankers Association (IBAT) Convention in Galveston.
 - Beginning September 30, 2019, Commissioner Cooper and Director Frasier attended the 2019 Community Banking in the 21st Century Research and Policy Conference in St. Louis, Missouri. This conference, which is hosted by CSBS, the Federal Reserve Bank of St. Louis, and the FDIC, focused on community banking related research on a wide variety of topics affecting banks including regulation, technology, and funding.



TEXAS DEPARTMENT OF BANKING

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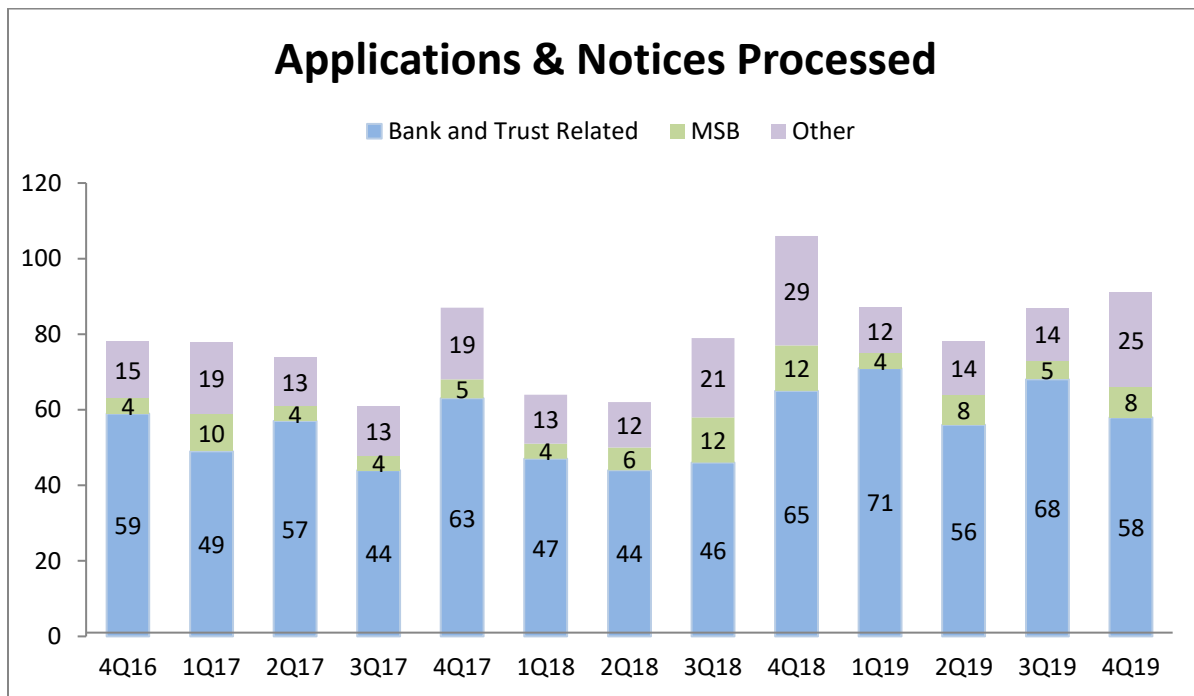
Charles G. Cooper
Commissioner

To: Finance Commission Members

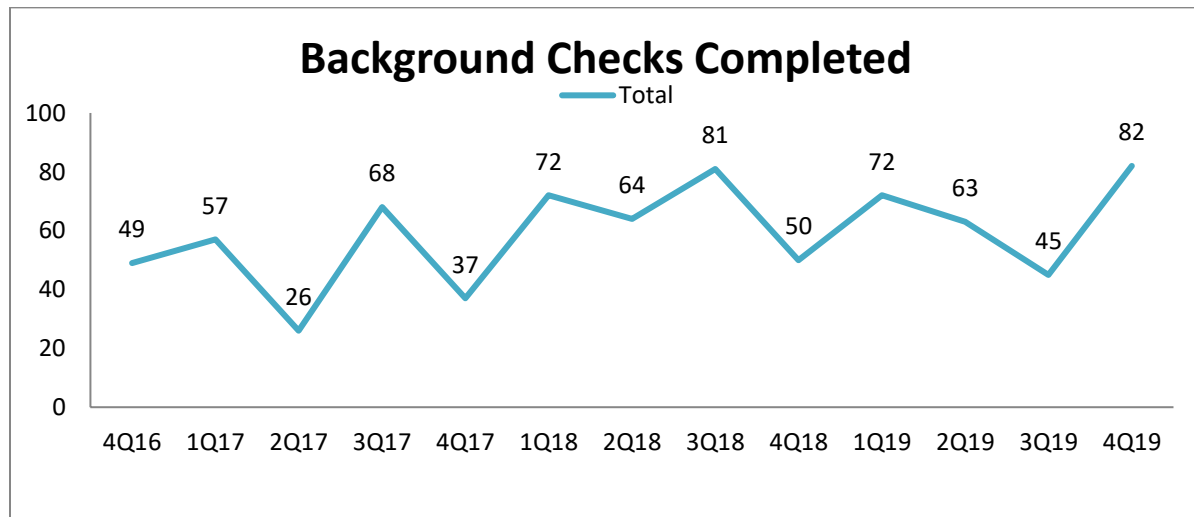
From: Mark Largent, Director of Corporate Activities *Mark R. Largent*

Date: October 4, 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 October 3, 2019)
Bank Related	17
Trust Companies	7
Money Services Business (MSB)	18
Others	3
Totals	45

Division Highlights

- Application volume continues to be significant and is similar to the level reported at the last Finance Commission meeting. Compared to our last report submitted, the Corporate Division’s filings presently under review by category type changed by:
 - Bank related decreased 6 (26%)
 - Trust company decreased 1 (13%)
 - MSB related increased 4 (29%)
 - Other decreased 1 (25%)

- During the fourth quarter the Corporate Division surpassed its key performance measure target of 95% for timely processing filings with an actual performance rate of 98.6% and for the fiscal year it was 96.7%.

- An individual with significant bank regulatory and legal experience has been selected for a Corporate Analyst position within the Corporate Division.

- The Department approved a de novo bank application for Gulf Capital Bank, Houston, Texas. The Commissioner issued a [press release](#) announcing that this is the first de novo Texas state bank charter approved since May 2017 and the first in Houston since June 2009.

- **Significant filing**
 - Lakeside National Bank, Rockwall, Texas, has applied to convert from a national charter to a Texas state bank charter under the name of Lakeside Bank [estimated gain in state banking assets of approximately \$80 million].

- **Charter, Conversion, and Merger Activity** – The following transactions have consummated since the Corporate Division’s last report to the Finance Commission:
 - *Banks*
 - Texas Star Bank, Van Alstyne, Texas, merged into BancorpSouth Bank, Tupelo, Mississippi [estimated loss in state banking assets of approximately \$378 million].
 - First State Bank, Hemphill, Texas merged into BOM Bank, Natchitoches, Louisiana [estimated loss in state banking assets of approximately \$59 million].
 - The State National Bank in West, West, Texas merged into Citizens State Bank, Buffalo, Texas [estimated gain in state banking assets of approximately \$81 million].
 - Western Bank, Lubbock, Texas completed its acquisition merger of Gruver State Bank, Gruver, Texas [no change in state banking assets].

- Trust Companies
 - N/A.

- **Conferences, Conventions, and Committee Meetings** – Since the last report to the Finance Commission, Corporate Division personnel have participated in the following:
 - Director Mark Largent participated in the Money Transmitter Regulators Association Conference in Pittsburgh, Pennsylvania on September 10-12.
 - Director Mark Largent represented the Department at the Independent Bankers Association of Texas Annual Convention held in Galveston, Texas on September 22-24.



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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To: Finance Commission Members

From: Jesus "Jesse" Saucillo, Director of Special Audits *JS*

Date: October 1, 2019

Subject: Summary of the Special Audits Division Activities

Special Audits (SA)			FY 2019							
Entity	FY 2018		1 st		2 nd		3 rd		4 th	
Industry Profile (# / Assets (billions))										
Money Services Businesses (MSB)	161	\$131.5	160	\$135.4	167	\$137.7	164	\$137.6	171	\$140.5
Prepaid Funeral Contract (PFC)	365	\$4.0	365	\$4.1	365	\$4.1	362	\$4.2	359	\$4.2
Perpetual Care Cemeteries (PCC)	241	\$346.8	241	\$352.4	241	\$357.1	241	\$361.7	241	\$365.3
Cemetery Brokers (CB)	14	n/a	14	n/a	14	n/a	14	n/a	14	n/a
Private Child Support Enforcement Agencies (PCSEA)	10	n/a	10	n/a	10	n/a	10	n/a	10	n/a
Check Verification Entities (CVE)	2	n/a	2	n/a	2	n/a	2	n/a	2	n/a
Bullion Depository Agent (BDA)	0	n/a	0	n/a	0	n/a	0	n/a	0	n/a
Examinations Performed										
MSB	97		22		24		29		26	
MSB Limited Scope	1		0		1		0		1	
MSB Accepted other State	14		5		4		3		1	
PFC	240		104		58		55		43	
PFC Limited Scope	8		3		0		1		1	
PCC	201		43		38		49		54	
PCC Limited Scope	4		1		0		0		1	
Ratings (# / %) Assigned to All Regulated Entities										
1	277	36.7%	268	35.5%	266	35.2%	273	36.2%	276	36.56%
2	399	52.8%	412	54.5%	415	54.9%	406	53.9%	409	54.17%
3	66	8.7%	64	8.5%	60	7.9%	63	8.4%	60	7.95%
4 & 5	13	1.8%	11	1.5%	15	2%	11	1.5%	10	1.32%
Noncompliance with Examination Priorities (Past Due)										
MSB	13		10		9		8		14	
PFC	13		5		2		3		3	
PCC	16		7		6		2		1	

NOTES:

PCC \$ amounts reflected in the millions.

Limited scope examinations do not receive a rating.

Effective 9/1/19, SB 614 of the 86th (R) Legislative Session repealed the statutory requirement for CBs, BDAs and PCSEAs to register with the Department. Therefore, this is the last quarter that entity totals for these three areas will be reported.

Noncompliance with Examination Priorities (Past Due)

- The 14 MSB past due examinations are on average one and one-half months past due.
 - Our examination schedule reflects that two of the past due MSB examinations were completed in September 2019, six will be completed in October 2019, and the remaining will be completed in November and December 2019, one of which was delayed due to coordination with other MTRA state agencies.
- The one PCC past due examination is four days past due and the three PFC past due examinations are on average one month past due.
 - Our examination schedule reflects that three of the past due PFC/PCC examinations were completed in September 2019, and the remaining one past due PFC/PCC examination will be completed in October 2019.
- Special Audits met or exceeded all performance measures for the fourth quarter of FY 19.

Division Activities

During the week of August 26th, Director Saucillo, Commissioner Cooper, and several other Department employees attended the annual CSBS Board and Strategic Planning Meeting in Custer, SD, to participate in discussions and provide feedback regarding future CSBS priorities.

During the week of September 9th, Assistant Deputy Commissioner Reese attended the annual MTRA conference in Pittsburgh, PA, where current trends and events in the MSB industry were discussed. Director Reese served on the Board of MTRA from 2017-2019.

On October 8th and 9th, Assistant Deputy Commissioner Reese and Director Saucillo will attend the Annual Money Laundering & Financial Crimes Conference hosted by the Office of the Attorney General in Georgetown, Texas. The conference is designed to support the efforts of state and local law enforcement officials and analysts engaged in financial crime and money laundering investigations.

MSB staff continues to participate in conference calls every two months with the MTRA Licensing/Emerging Issues Committee. The conference calls allow MTRA member states to discuss various licensing issues and MSB business models to provide clarity and regulatory certainty for businesses and individuals engaged in the expanding field of financial activity.

ACTUAL PERFORMANCE FOR OUTCOME MEASURES

TEXAS DEPARTMENT OF BANKING

FISCAL YEAR 2019

8/31/2019

Actual Performance for Outcome Measures
Fiscal Year 2019
For Period Ending August 2019

Type/Strategy/Measure	2019 Target	2019 YTD	Percent of Annual Target
Outcome Measures - Key			
1-1 QUALITY BANK REGULATION			
1. % BANKS EXAMINED	95.00%	93.25%	98.16%
1-2 QUALITY NON-BANK REGULATION			
1. % MSB LICENSEES EXAMINED	90.00%	91.30%	101.44%
2. % PFC LICENSEES EXAMINED	95.00%	99.16%	104.38%
3. % PCC LICENSEES EXAMINED	95.00%	99.58%	104.82%
1-3 APPLICATION PROCESSING			
1. % B&T, MSB, PCSEA APPS COMPLETED	95.00%	96.68%	101.77%

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

ACTUAL PERFORMANCE FOR EXPLANATORY MEASURES

TEXAS DEPARTMENT OF BANKING

FISCAL YEAR 2019

8/31/2019

Actual Performance for Explanatory Measures
Fiscal Year 2019
For Period Ending August 2019

Type/Strategy/Measure	2019 Target	2019 YTD	Percent of Annual Target
Explanatory Measure - Key			
1-1-1 BANK EXAMINATION			
1. % BANKS CLASSIFIED SAFE & SOUND	95.00%	97.80%	102.95%
1-4-1 APPLICATION PROCESSING			
1. % WRITTEN COMPLAINTS RESOLVED	100.00%	100.00%	100.00%

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

ACTUAL PERFORMANCE FOR OUTPUT/EFFICIENCY MEASURES

TEXAS DEPARTMENT OF BANKING

FISCAL YEAR 2019

8/31/2019

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
Output Measures-Key								
1-1-1 Bank Examination								
1. # Bank Examinations Performed								
Quarter 1	108	26	26	24.07%	25	25	33	24
Quarter 2	108	24	50	46.30%	25	27	23	28
Quarter 3	108	25	75	69.44%	25	27	24	29
Quarter 4	108	26	101	93.52%	32	27	27	39
FY 2019, Quarter 3 - The number of bank examinations is below the target due to participating in fewer joint examinations than projected.								
FY 2019, Quarter 4 - The number of bank examinations is below the target due to participating in fewer joint examinations of banks with assets between one and three billion dollars than projected this fiscal year. This reduction in examinations was the result of an examination frequency change by federal and state bank regulators.								
2. # Trust/IT Examinations Performed								
Quarter 1	218	54	54	24.77%	49	44	61	54
Quarter 2	218	48	101	46.33%	54	51	59	53
Quarter 3	218	65	167	76.61%	59	70	59	64
Quarter 4	218	59	226	103.67%	47	42	47	75
1-2-1 Non-Bank Examination								
1. # Special Audit Licensees Examined								
Quarter 1	560	178	178	31.79%	136	145	156	132
Quarter 2	560	123	301	53.75%	144	139	111	146
Quarter 3	560	137	438	78.21%	161	172	143	150
Quarter 4	560	127	565	100.89%	124	120	158	155
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.								

**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	
1-3-1 Application Processing									
1. # License Applications Completed									
Quarter 1	272	87	87	31.99%	*	64	78	84	65
Quarter 2	272	78	165	60.66%	*	62	74	58	85
Quarter 3	272	87	252	92.65%	*	79	61	68	96
Quarter 4	272	91	343	126.10%	*	104	87	78	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.									
FY 2019, Quarter 4 - The number of filings, especially those relating to branches, amending of Certificates of Formation, loan and deposit production locations, and merger activity, exceeded expectations.									

*Varies by 5% or more from target.

ACTUAL PERFORMANCE FOR NON-KEY MEASURES

TEXAS DEPARTMENT OF BANKING

FISCAL YEAR 2019

8/31/2019

**Actual Performance for Non-Key Measures
Fiscal Year 2019
For Period Ending August 2019**

Type/Strategy/Measure	2019 Target	2019 YTD	Percent of Annual Target
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Non-Key Measures

1-1-1 BANK EXAMINATION

2. % FOREIGN BANK AGENCIES EXAMINED	95.00%	100.00%	105.26%
The number of foreign bank agencies receiving examinations when due is higher than the target due to the continued proficiency of the Federal Reserve and Department's foreign bank staff.			
3. % TRUST COMPANIES EXAMINED	95.00%	48.28%	50.82%
The number of trust companies receiving examinations when due is significantly lower than the target due to combined effects of staff retirements, de novo charter investigations, and the timing of many exempt trust company examination due dates.			
4. % PROBLEM INSTITUTIONS WITH APPROPRIATE SUPERVISORY ACTIONS IN PLACE	100.00%	100.00%	100.00%
5. CERTIFICATE OF ACCREDITATION BY CSBS MAINTAINED IN GOOD STANDING	YES	YES	YES
8. AVERAGE COST PER BANK EXAMINATION	\$84,850.00	\$92,929.17	109.52%
The average cost per bank examination is higher than the target due to participating in less joint examinations than projected which increased the cost per bank examination.			
9. ASSETS EXAMINED PER EXAMINER DAY (IN MILLIONS)	\$10.50	\$10.75	102.38%
11. # STATE-CHARTERED BANKS IN TEXAS	233	227	97.42%
12. TOTAL ASSETS (IN BILLIONS) IN STATE-CHARTERED BANKS IN TEXAS	\$331.00	\$346.00	104.53%

1-2-1 NON-BANK EXAMINATION

4. % PCC AND PFC APPLICATIONS COMPLETED WITHIN STATUTORY PERIOD	95.00%	100.00%	105.26%
The Division's positive variance in processing applications within the required period is attributable to retaining experienced staff to timely review and process applications.			
6. AVERAGE DIRECT COST PER PFC AND PCC LICENSEE EXAMINATION	\$2,625.00	\$2,639.28	100.54%
7. AVERAGE DIRECT COST PER MSB LICENSEE EXAMINATION	\$8,500.00	\$10,085.34	118.65%
The Division's positive variance is attributed to hiring an additional full time MSB Examiner in the fourth quarter of FY 2019. <i>Note: the target average cost per MSB examination was increased in FY 2020 to compensate for the additional MSB examiner.</i>			
8. DOLLAR AMOUNT (IN BILLIONS) OF PREPAID FUNERAL CONTRACTS IN FORCE	\$4.1	\$4.2	102.44%
9. NUMBER OF SPECIAL AUDITS LICENSEES	760	771	101.45%
10. PERCENTAGE OF SPECIAL AUDITS LICENSEES CLASSIFIED SAFE AND SOUND	95.00%	98.68%	103.87%

Actual Performance for Non-Key Measures Fiscal Year 2019 For Period Ending August 2019

Type/Strategy/Measure	2019 Target	2019 YTD	Percent of Annual Target
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Non-Key Measures

1-3-1 APPLICATION PROCESSING

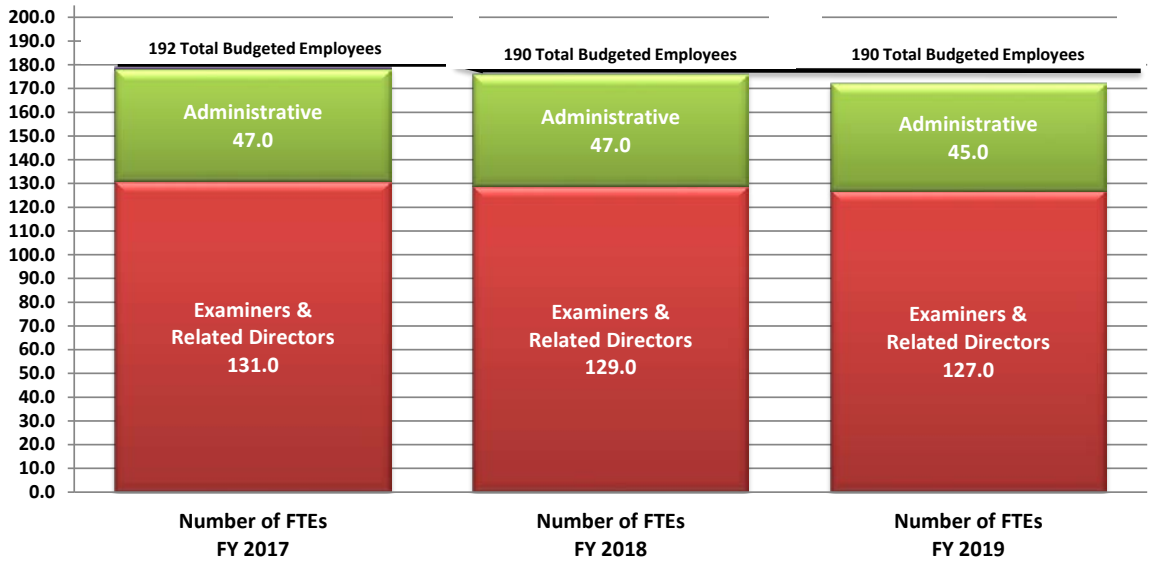
2. # WRITTEN COMPLAINTS RESOLVED	400	371	92.75%
The number of complaints resolved is lower as the agency did not receive more than 400 written complaints in FY 2019. Total written complaints against regulated or licensed entities for FY 2019 were 371 or 8% less than anticipated.			

1-4-1 REGULATORY OVERSIGHT

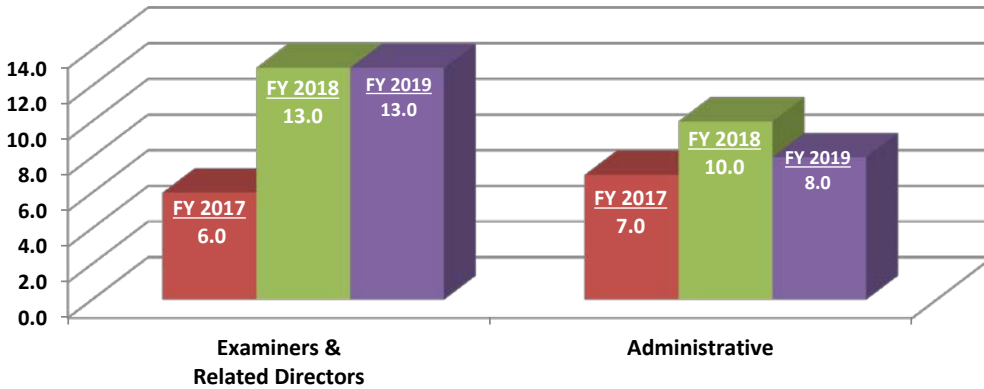
3. # FC MEETINGS CONVENED	6	6	100.00%
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*Note: Variance of 5% from target require explanation.

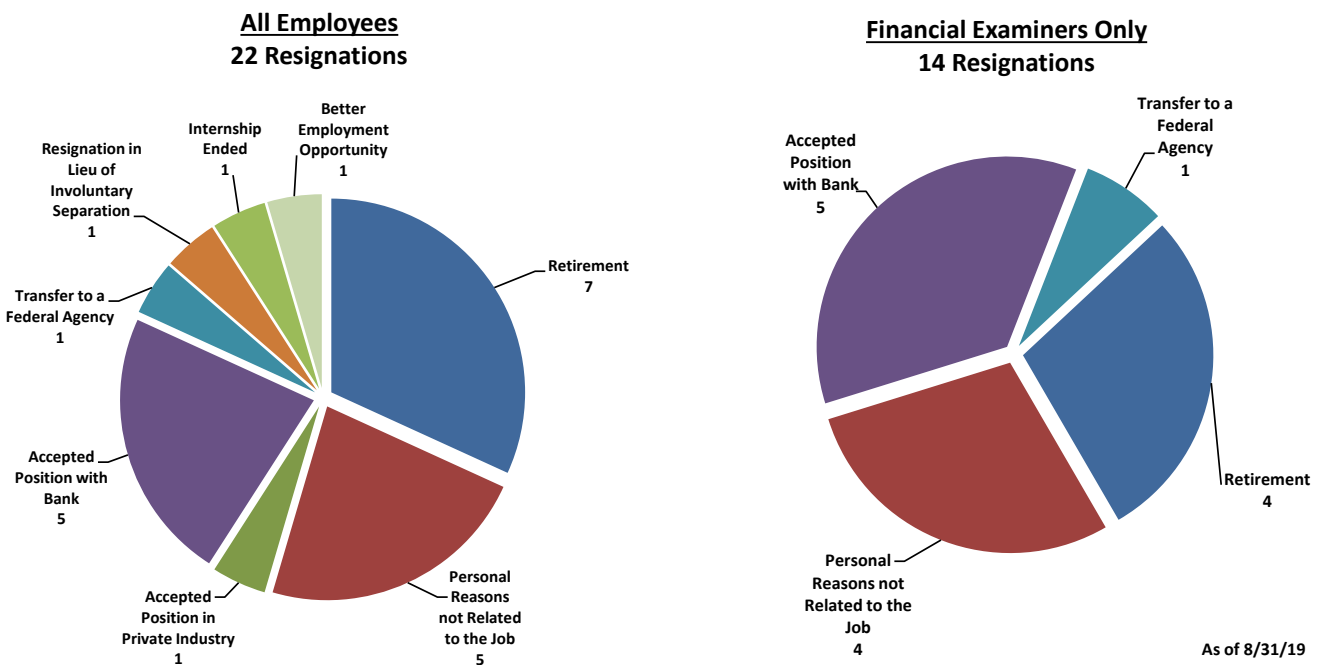
Texas Department of Banking Employee Data for Fiscal Years 2017, 2018 and 2019 as of 8/31/19



New Hire Data for Fiscal Years 2017, 2018 and 2019



FY 2019 Employee Turnover Reasons





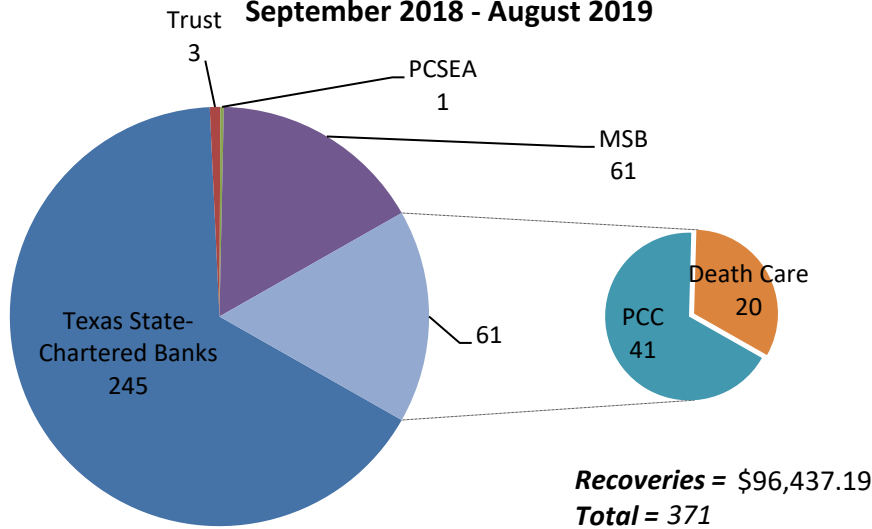
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Commissioner

TEXAS DEPARTMENT OF BANKING

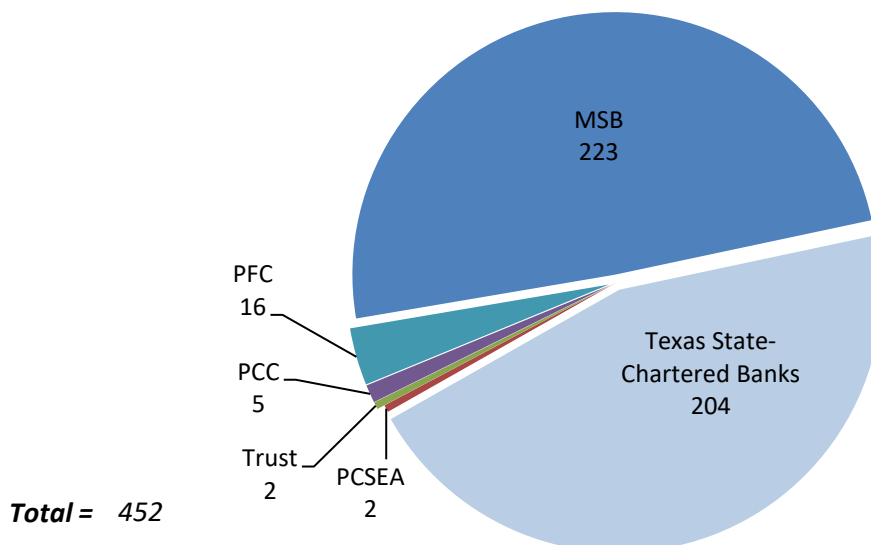
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To: Finance Commission Members
From: Wendy Rodriguez, Chief Operating Officer *WR*
Date: October 1, 2019
Subject: Summary of the Strategic Support Division Activities

Jurisdictional Written Complaints September 2018 - August 2019

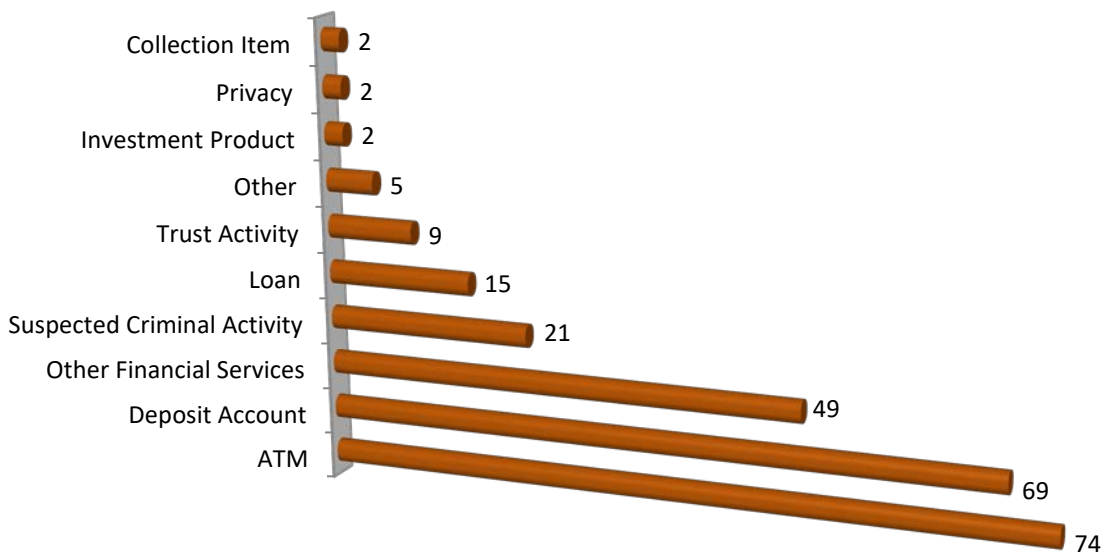


Inquiries on Jurisdictional Entities September 2018 - August 2019



State-Chartered Banks and Trust Companies

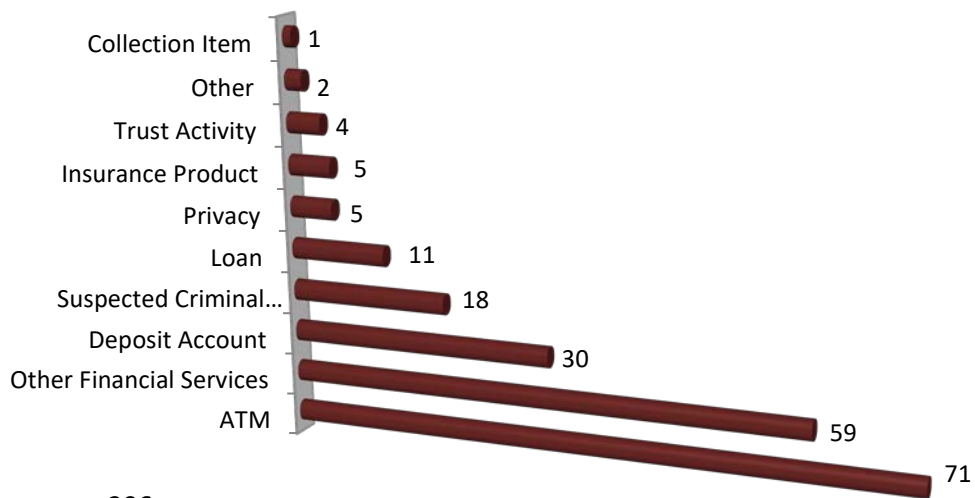
Written Complaints by Type September 2018 - August 2019



Total = 248

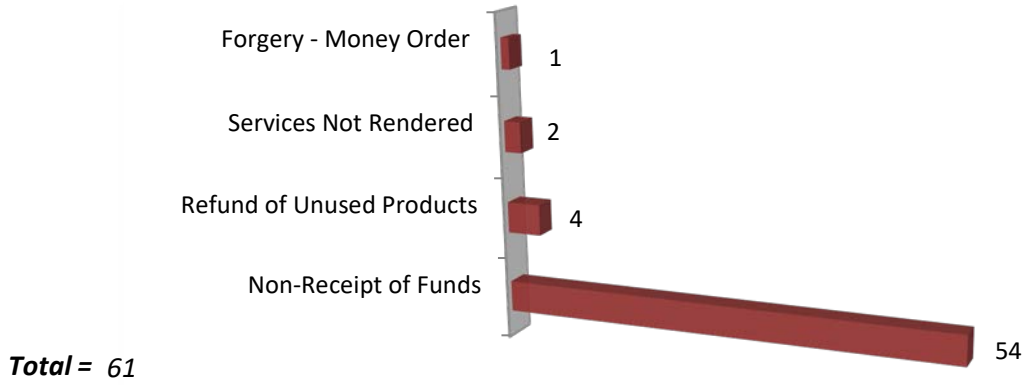
State-Chartered Banks and Trust Companies

Inquiries by Type September 2018 - August 2019

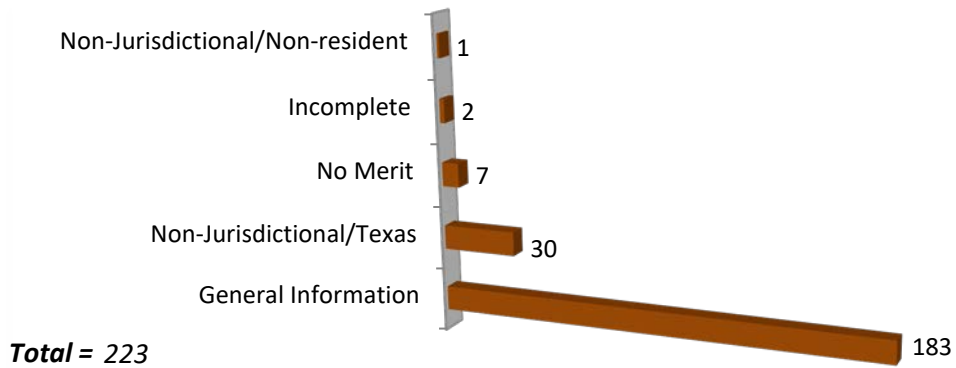


Total = 206

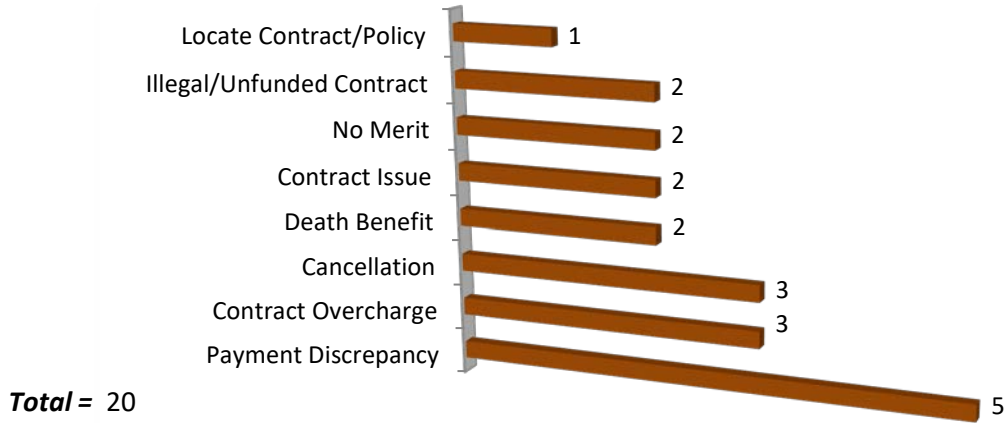
Money Services Businesses Written Complaints by Type September 2018 - August 2019



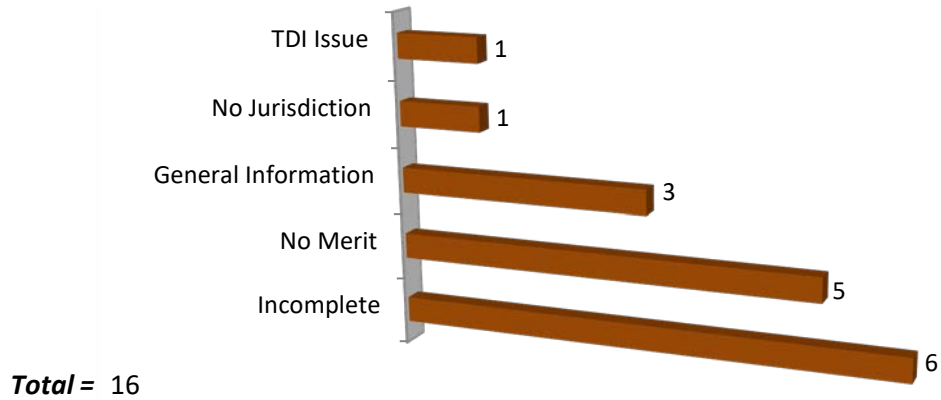
Money Services Businesses Inquiries by Type September 2018 - August 2019



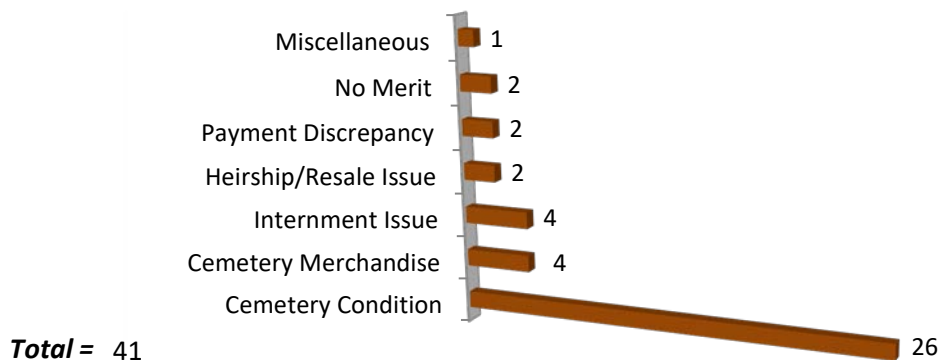
**Prepaid Funeral Contract Sellers
Written Complaints by Type
September 2018 - August 2019**



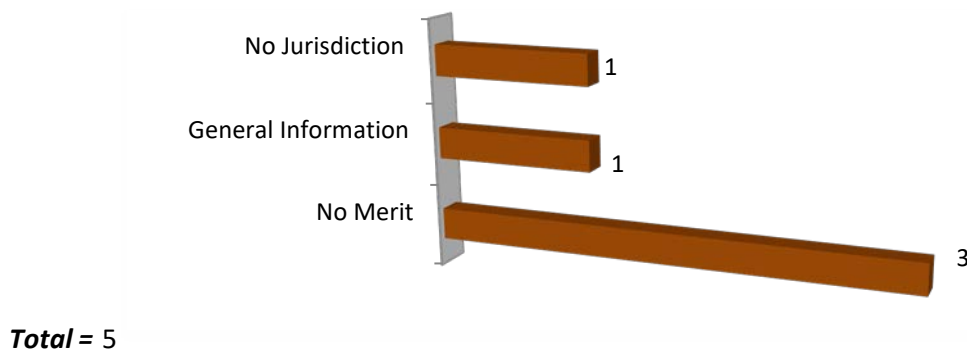
**Prepaid Funeral Contract Sellers
Inquiries by Type
September 2018 - August 2019**



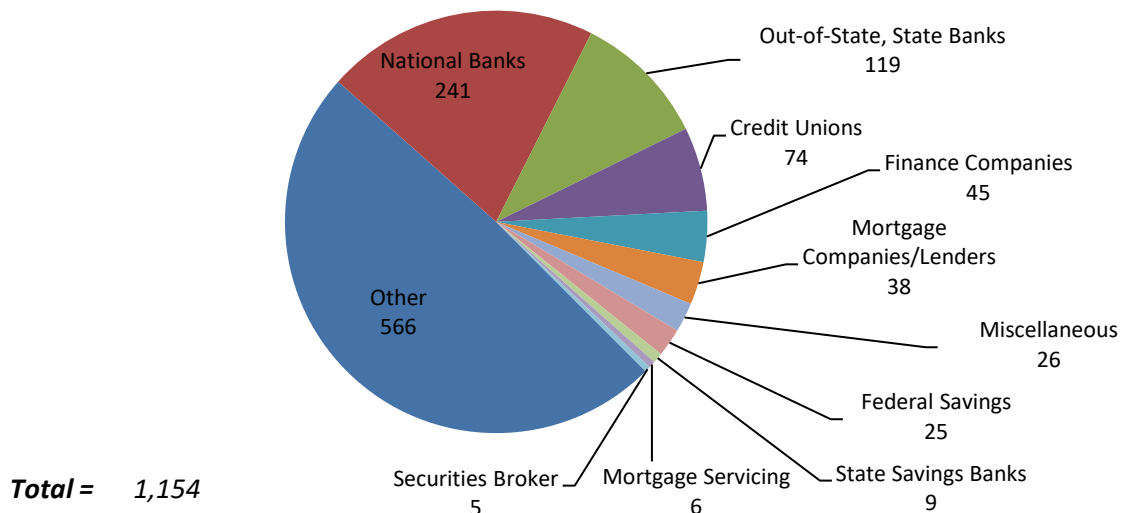
Perpetual Care Cemeteries Written Complaints by Type September 2018 - August 2019



Perpetual Care Cemeteries Inquiries by Type September 2018 - August 2019



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

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr
State-Chartered Banks				
Avg. Number of Days to Close a Written Complaint	19	7	11	19
Percentage of Written Complaints Resolved Within 90 days	100%	100%	100%	100%
Number of Written Complaints Resolved	59	75	52	59
Trust				
Avg. Number of Days to Close a Written Complaint	15	40	NA	1
Percentage of Written Complaints Resolved Within 90 days	100%	100%	NA	100%
Number of Written Complaints Resolved	1	1	NA	1
PCSEA				
Avg. Number of Days to Close a Written Complaint	NA	NA	1	NA
Percentage of Written Complaints Resolved Within 90 days	NA	NA	100%	NA
Number of Written Complaints Resolved	NA	NA	1	NA
PFC/PCC				
Avg. Number of Days to Close a Written Complaint	32	39	35	34
Percentage of Written Complaints Resolved Within 90 days	100%	100%	100%	100%
Number of Written Complaints Resolved	13	10	16	23
MSB				
Avg. Number of Days to Close a Written Complaint	36	30	35	35
Percentage of Written Complaints Resolved Within 90 days	100%	100%	100%	100%
Number of Written Complaints Resolved	17	17	14	15

Closed Account Notification System (CANS) ACTIVITY

January 1, 2016 – August 31, 2019

Entity	Enrolled	Compromised Accounts Reported
Texas State-Chartered Banks	204	622
Texas State-Chartered Savings Banks	23	57
Federal Savings Banks	10	1
State Credit Unions	132	856
Federal Credit Unions	229	468
National Banks	170	197
Out-of-State State-Chartered Banks	12	144
Out-of-State National Banks	6	1
Total	786	2,346

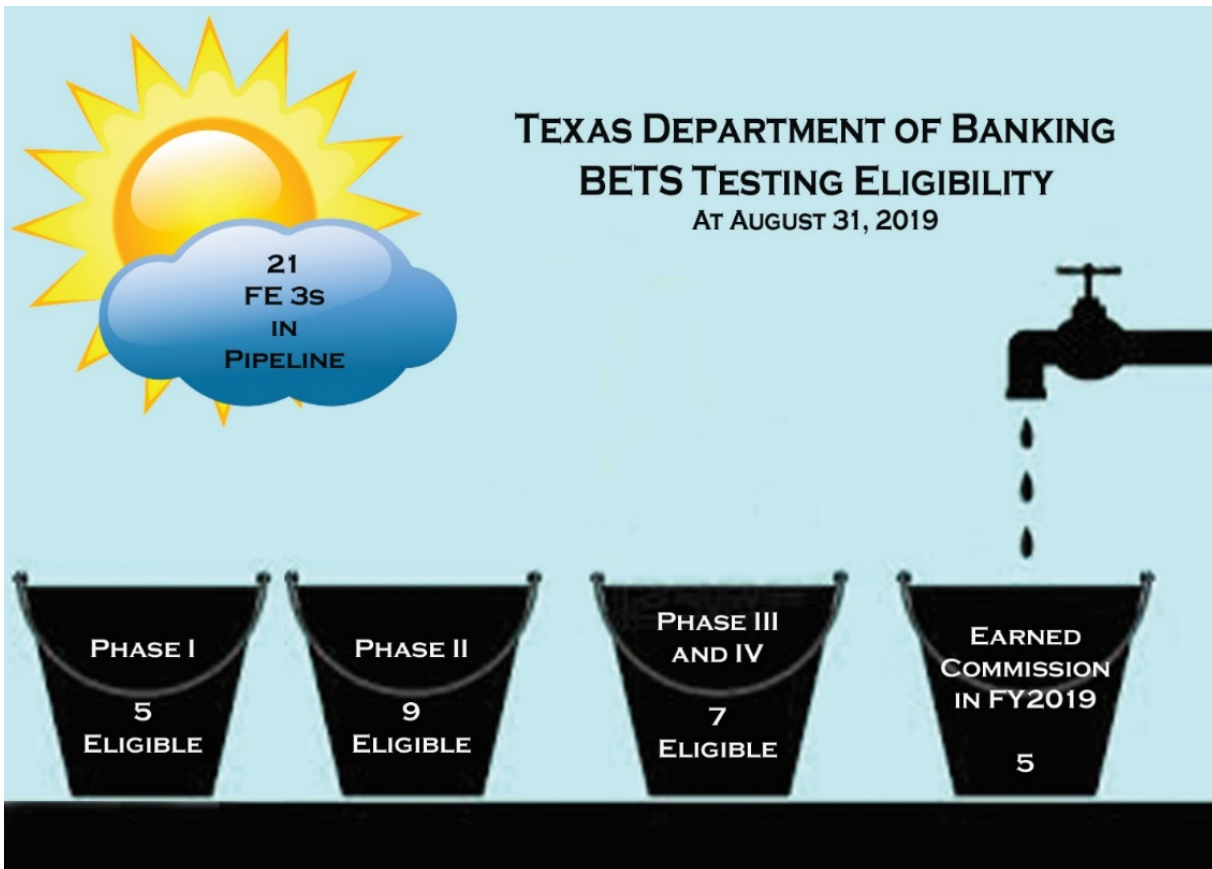
Bank Examination Testing System (BETS) Activity
Number of Candidates Passing Each Phase

	FY 2016	FY 2017	FY 2018	FY 2019
I. General Knowledge	9	8	6	3
II. Loan Analysis	4	3	3	5
III. Panel	3	2	2	5
IV. Test Bank	2	3	3	4
Total FE3	18	24	22	19

Promotions

Commissioned Examiners	2	3	2	5*
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*Includes a FE V Credit Specialist

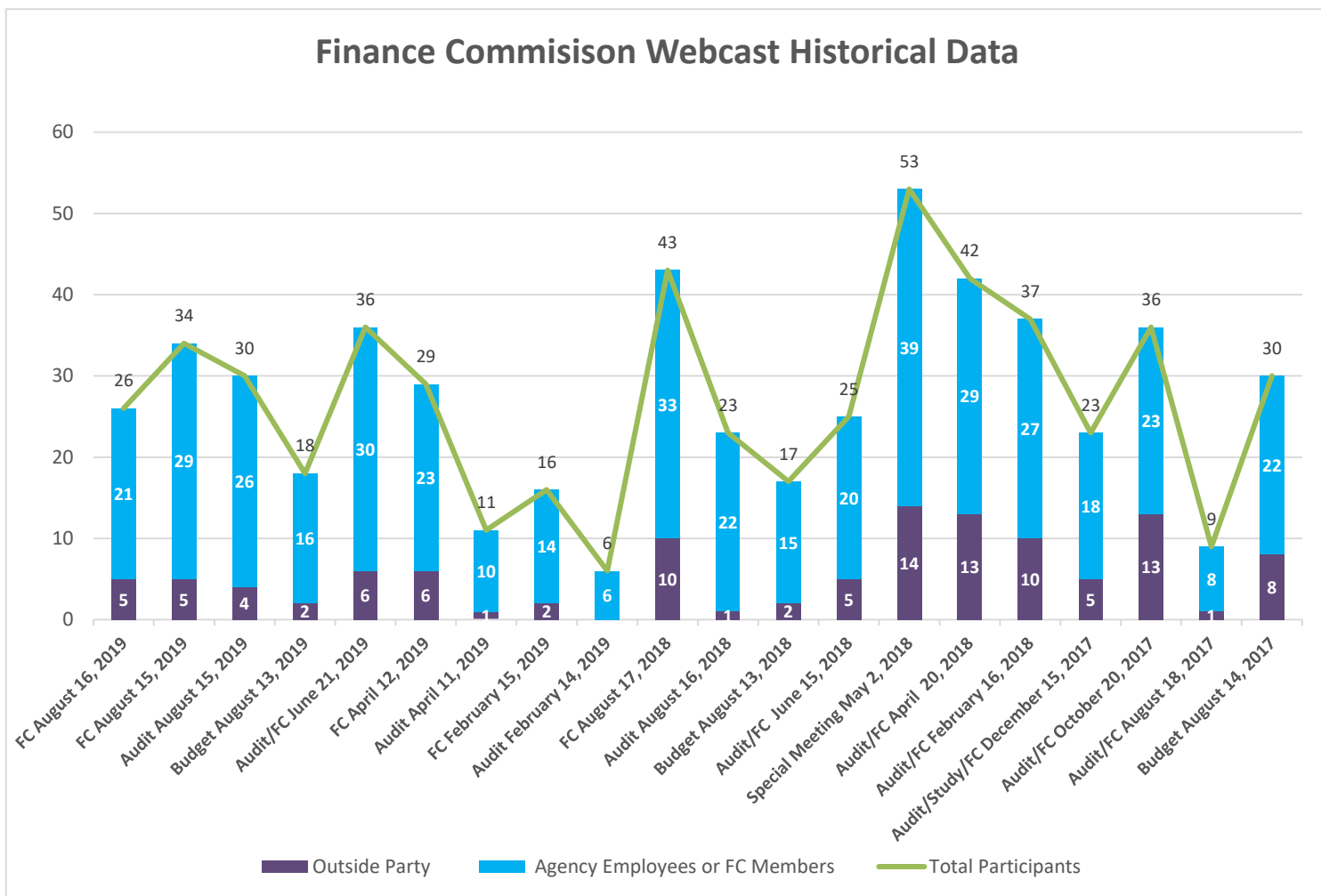


Other Divisional Items:

- *Personnel and Policies Manual Updates*
 - Personnel Manual
 - Section 4 Employee Actions has been updated to reflect legislative and Department organizational changes effective September 1, 2019. Most

significantly, Section 4-14 Equity Adjustments reflect legislative changes to the requirements for Equity Adjustment criteria.

- Revised Administrative Memorandums (AM)
 - AM 2002 – Administrative Memorandum 2002 Equal Employment Opportunity, Non-Discrimination and Sexual Harassment Policy
 - Administrative Memorandum 2012 - Policy on Utilization of Historically Underutilized Businesses (HUB)
 - AM 2027 – Investment Policy for Funds Under the Oversight of the Finance Commission of Texas
 - AM 2041 – Examination Due Date Calculation
 - AM 2043 – Visitations and Interim Risk Examination and Assessment Programs
- Revised Supervisory Memorandums (SM)
 - Supervisory Memorandum 1003 – Examination Frequency for State-Chartered Banks
 - Supervisory Memorandum 1029 – Risk Management of Account Takeovers for State-Chartered Banks with Attachment: *Best Practices for Reducing the Risks of Corporate Account Takeovers*.
- Revised Examiner Bulletins (XB)
 - XB 2019-03 relating to BSA/AML Risk-Focused Examination Procedures was issued in August 2019, replacing XB 2009-02. Changes were made to reflect the current practice of completing the Customer Due Diligence and Beneficial Ownership sections at each BSA/AML review. The XB was also revised to include guidance on presenting BSA findings in the report of examination.
 - XBs relating to the guidelines for procedures and work paper documentation were updated to reflect current practices.
 - XB 2019-06 Guidelines for Procedures and Work Paper Documentation for Commercial Exams
 - XB 2019-05 Guidelines for Procedures and Work Paper Documentation for IT Exams
 - XB 2019-04 Guidelines for Procedures and Work Paper Documentation for Trust Exams
- *Website Statistics for Fiscal Year*
 - The Department of Banking website received 727,083 pageviews and 549,647 Unique pageviews. The top pages for the site include the Applications & Forms (18,064 pageviews/13,073 Unique pageviews) and Money Services Businesses (17,844 pageviews/12,686 Unique pageviews).
 - The Texas Prepaid Funeral Contracts website received 41,331 pageviews and 29,131 Unique pageviews. The top pages for the site include Our Purpose (7,443 pageviews/5,787 Unique pageviews) and General Information (3,373 pageviews/1,399 Unique pageviews).
 - The Finance Commission website received 14,962 pageviews and 10,661 Unique pageviews. The top pages for the site include Finance Commission Meetings page (2,338 pageviews/1,414 Unique pageviews) and the 2019 Meeting Archives (669 pageviews/399 Unique pageviews).



* 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

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Memorandum

TO: Finance Commission Members
FROM: Catherine Reyer, General Counsel
DATE: October 1, 2019
RE: Legal Division Update

Pending Contested Cases

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; and 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.

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 G. 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 has been postponed as settlement discussions are continuing.

Gifts

The Department received tuition and expense reimbursement totaling \$11,221.98 from the Conference of State Bank Supervisors for six Bank and Trust and Special Audits examiners to attend Intermediate IT trainings held in Philadelphia and Salt Lake City in August 2019.

Finance Commission member Phillip Holt received complimentary registration (value \$2,600.00) to attend the LEND360 Conference September 25-27, 2019 in Dallas.

Orders Issued 8/1/19 – 9/30/19

During this time period, the Commissioner issued three enforcement orders, all of which are final and non-appealable:

Bank and Trust

- Order Prohibiting Further Participation dated September 13, 2019; Susann Nelson, Plano, TX

Special Audits

- Consent Order dated August 19, 2019; Oliver W. Lomax and Lomax Funeral Home, Dallas, TX
- Order to Cease and Desist Activity dated September 9, 2019; Avalon Financial Corp., Westlake, OH

FY 2019 To Date Quarterly Order Activity

BANK				
Type of Action	1st	2nd	3rd	4th
Consent Order	1	0	1	0
Cease & Desist	1	0	1	0
Supervision	0	0	1	0
Prohibition	0	3	3	1
Total	2	3	6	1
TRUST COMPANY				
Consent Order	0	0	0	0
Cease & Desist	0	0	0	0
Supervision	0	0	0	0
Prohibition	0	0	0	0
Total	0	0	0	0
MONEY SERVICES BUSINESS				
Consent Order	8	1	2	0
Cease & Desist	0	2*	0	0
Total	8	3	2	0

PERPETUAL CARE CEMETERY				
Consent Order	0	1	0	0
Cease & Desist	0	0	0	0
Refusal to Renew Cert/Auth	0	0	0	0
Final Order after hearing	0	0	0	0
Total	0	1	0	0
PREPAID FUNERAL CONTRACT				
Consent Order	1	1	1	2
Cease & Desist	0	0	2	0
Conversion	0	0	0	0
Total	1	1	3	2

*The subject of one of these Orders has requested a hearing; therefore one of the Orders in this category is not yet effective.

2. Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 1, Chapter 6, Concerning Banking Development Districts, Resulting from Rule Review

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

Notice of the proposed review of 7 TAC, Chapter 6 was published in the *Texas Register* as required on August 23, 2019 (44 TexReg 4519). The Department received no comments regarding the review.

The Department believes the reasons for initially adopting the rules in Chapter 6 continue to exist and those rules should be readopted.

RECOMMENDED ACTION: The Department requests that the Commission find that the reasons for initially adopting the rules in 7 TAC, Chapter 6 continue to exist and that the Commission readopt these rules.

RECOMMENDED MOTION: I move that we find that the reasons for initially adopting the rules in 7 TAC, Chapter 6 continue to exist, and that those rules be readopted.

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking (department) has completed its review of Texas Administrative Code, Title 7, Part 2, Chapter 6, §§6.1 - 6.6, in its entirety.

Notice of the review of Chapter 6 was published in the August 23, 2019 issue of the *Texas Register* (44 TexReg 4519). No comments were received in response to the notice.

The commission believes the reasons for initially adopting the rules in Chapter 6 continue to exist. However, the department has determined that certain revisions and other changes are appropriate and necessary. Proposed amended Chapter 6 sections, with discussion of the justification for the proposed changes, will be published in this issue of the *Texas Register*.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 6 in accordance with the requirements of the Government Code, §2001.039.

3. Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 2, Chapter 15, Concerning Corporate Activities, Resulting from Rule Review

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

Notice of the proposed review of 7 TAC, Chapter 15 was published in the *Texas Register* as required on August 23, 2019 (44 TexReg 4519). The Department received no comments regarding the review.

The Department believes the reasons for initially adopting the rules in Chapter 15 continue to exist and those rules should be readopted.

RECOMMENDED ACTION: The Department requests that the Commission find that the reasons for initially adopting the rules in 7 TAC, Chapter 15 continue to exist and that the Commission readopt these rules.

RECOMMENDED MOTION: I move that we find that the reasons for initially adopting the rules in 7 TAC, Chapter 15 continue to exist, and that those rules be readopted.

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking (department) has completed its review of Texas Administrative Code, Title 7, Part 2, Chapter 15, §§15.1 – 15.122, in its entirety.

Notice of the review of Chapter 15 was published in the August 23, 2019 issue of the *Texas Register* (44 TexReg 4519). No comments were received in response to the notice.

The commission believes the reasons for initially adopting the rules in Chapter 15 continue to exist. However, the department has determined that certain revisions and other changes are appropriate and necessary. Proposed amended Chapter 15 sections, with discussion of the justification for the proposed changes, will be published in this issue of the *Texas Register*.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 15 in accordance with the requirements of the Government Code, §2001.039.

4. Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 2, Chapter 17, Concerning Trust Company Regulation, Resulting from Rule Review

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

Notice of the proposed review of 7 TAC, Chapter 17 was published in the *Texas Register* as required on August 23, 2019 (44 TexReg 4520). The Department received no comments regarding the review.

The Department believes the reasons for initially adopting the rules in Chapter 17 continue to exist and those rules should be readopted.

RECOMMENDED ACTION: The Department requests that the Commission find that the reasons for initially adopting the rules in 7 TAC, Chapter 17 continue to exist and that the Commission readopt these rules.

RECOMMENDED MOTION: I move that we find that the reasons for initially adopting the rules in 7 TAC, Chapter 17 continue to exist, and that those rules be readopted.

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed the review of Texas Administrative Code, Title 7, Chapter 17 (Trust Company Regulation), comprised of Subchapter A (§§17.2 - 17.4) and Subchapter B (§§17.21 - 17.23).

Notice of the review of Chapter 17 was published in the August 23, 2019, issue of the *Texas Register* (44 TexReg 4520). No comments were received in response to the notice.

The commission believes the reasons for initially adopting Chapter 17 continue to exist. However, the department has determined that certain revisions and other changes are appropriate and necessary. Proposed amended Chapter 17 sections, with discussion of the justification for the proposed changes, will be published in the *Texas Register* at a later date.

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

5. Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 2, Chapter 19, Concerning Trust Company Loans and Investments, Resulting from Rule Review

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

Notice of the proposed review of 7 TAC, Chapter 19 was published in the *Texas Register* as required on August 23, 2019 (44 TexReg 4520). The Department received no comments regarding the review.

The Department believes the reasons for initially adopting the rules in Chapter 19 continue to exist and those rules should be readopted.

RECOMMENDED ACTION: The Department requests that the Commission find that the reasons for initially adopting the rules in 7 TAC, Chapter 19 continue to exist and that the Commission readopt these rules.

RECOMMENDED MOTION: I move that we find that the reasons for initially adopting the rules in 7 TAC, Chapter 19 continue to exist, and that those rules be readopted.

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed the review of Texas Administrative Code, Title 7, Chapter 19 (Trust Company Loans and Investments), comprised of Subchapter B (§19.22); and Subchapter C (§19.51).

Notice of the review of Chapter 12 was published in the August 23, 2019, issue of the *Texas Register* (44 TexReg 4520). No comments were received in response to the notice.

The commission believes the reasons for initially adopting Chapter 19 continue to exist. However, the department has determined that certain revisions and other changes are appropriate and necessary. Proposed amended Chapter 19 sections, with discussion of the justification for the proposed changes, will be published in the *Texas Register* at a later date.

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

6. Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 2, Chapter 21, Concerning Trust Company Corporate Activities, Resulting from Rule Review

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

Notice of the proposed review of 7 TAC, Chapter 21 was published in the *Texas Register* as required on August 23, 2019 (44 TexReg 4520). The Department received no comments regarding the review.

The Department believes the reasons for initially adopting the rules in Chapter 21 continue to exist and those rules should be readopted.

RECOMMENDED ACTION: The Department requests that the Commission find that the reasons for initially adopting the rules in 7 TAC, Chapter 21 continue to exist and that the Commission readopt these rules.

RECOMMENDED MOTION: I move that we find that the reasons for initially adopting the rules in 7 TAC, Chapter 21 continue to exist, and that those rules be readopted.

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed its review of Texas Administrative Code, Title 7, Part 2, Chapter 21 (Trust Company Corporate Activities), §§21.1 – 21.92, in its entirety.

Notice of the review of Chapter 21 was published in the August 23, 2019, issue of the *Texas Register* (44 TexReg 4520). No comments were received in response to the notice.

The commission believes the reasons for initially adopting the rules in Chapter 21 continue to exist. However, the department has determined that certain revisions and other changes are appropriate and necessary. Proposed amended Chapter 21 sections, with discussion of the justification for the proposed changes, will be published in this issue of the *Texas Register*.

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

7. Discussion of and Possible Vote to Take Action on the Adoption of Repeal of 7 TAC, Part 2, Chapter 31, §§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 86th 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: No comments were received regarding the proposed repeal of 7 TAC §§31.1 – 31.115. 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 repeal of 7 TAC §§31.1 – 31.115 without changes to the proposal as previously published in the *Texas Register*.

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), adopts the repeal of Chapter 31, §§31.1 – 31.115 concerning private child support enforcement agencies without changes to the proposed text as published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4600). The repealed rule will not be republished.

The repeal of Chapter 31 is in response to the passage of Senate Bill 614 (SB 614) in the 86th 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.

The department received no comments regarding the proposed repeal.

The repeal of Chapter 31, Subchapter A, §31.1 is adopted 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 repealed section.

(Repealed) [~~§31.1. Definitions.~~]

Repeal of Chapter 31, Subchapter B, §§31.11 – 31.20 is adopted 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 repealed sections.

(Repealed) [~~§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?~~

ADOPTION OF REPEAL OF 7 TAC, CHAPTER 31, §§31.1 – 31.115

Page 2 of 3

Repeal of Chapter 31, Subchapter C, §§31.31 – 31.39 is adopted 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 repealed sections.

(Repealed) [~~§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 adopted 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 repealed sections.

(Repealed) [~~§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 adopted 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 repealed sections.

(Repealed) [~~§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 adopted 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 repealed sections.

(Repealed) [~~§31.91. Are registration requirements waived if my foreign agency is registered in another state?~~

~~§31.9. 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 adopted 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 repealed sections.

(Repealed) [~~§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?~~

8. Discussion of and Possible Vote to Take Action on the Adoption of Repeal of 7 TAC, Part 2, Chapter 33, §§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 86th 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 repeal deletes those sections that deal exclusively with bullion depository agents.

RECOMMENDED ACTION: No comments were received regarding the proposed repeal of 7 TAC Chapter 33, §§33.71 – 33.75. 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 repeal of 7 TAC §§33.71 – 33.75 without changes to the proposal as previously published in the *Texas Register*.

Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 33. Money Services Businesses
7 TAC §§33.71 – 33.75

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts the repeal of §§33.71 - 33.75 without changes to the proposed text as published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4607). The repealed sections will not be republished.

The repeal of §§33.71 - 33.75 is in response to the passage of House Bill 2458 (HB 2458) in the 86th 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 repeal deletes those sections that deal exclusively with bullion depository agents.

The department received no comments regarding the proposed repeal.

The repeal of §§33.71 - 33.75 is adopted 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 repealed sections.

(Repealed) [~~§33.71. Security Required for Depository Agents.~~]

~~§33.72. Net Worth Required for Depository Agents.~~

~~§33.73. What Records Must I Keep Related to Depository Agent Services Transactions?~~

~~§33.74. What Receipts Must I Issue Related to Depository Agent Services Transactions?~~

~~§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.]~~

9. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 2, Chapter 33, §§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 in response to the passage of House Bill 2458 (HB 2458) in the 86th 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 amendments delete references to bullion depository agents in various sections of Chapter 33.

RECOMMENDED ACTION: No comments were received regarding the proposed amendments to 7 TAC §§33.3, 33.13, 33.15, 33.27, 33.51. The Department recommends that the Commission approve adoption of the amendments without changes to the proposal as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we adopt the amendments to 7 TAC §§33.3, 33.13, 33.15, 33.27, 33.51 without changes to the proposal as previously published in the *Texas Register*.

Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 33. Money Services Businesses
7 TAC §§33.3, 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), adopts amendments to §§33.3, 33.13, 33.15, 33.27, and 33.51 concerning bullion depository agents without changes to the proposed text as published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4603). The amended rule will not be republished.

The amendments to §§33.3, 33.13, 33.15, 33.27, and 33.51 are in response to the passage of House Bill 2458 (HB 2458) in the 86th 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 amendments delete references to bullion

depository agents in various sections of Chapter 33.

The department received no comments regarding the proposed amendments.

The amendments to Chapter 33 are adopted 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 amended sections.

§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 services either directly or through your own agents or subagents;

(2) – (3) (No change.)

(b) To provide services related to money transmission services under the agent exclusion, you must first obtain the department's written determination that the statutory conditions for the exclusion are satisfied. You must submit to the 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 services upon receipt of the purchaser's money or monetary value 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 to the entity; and

(C) appoints you as its agent for purposes of money transmission, 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 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 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 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.

(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 currency exchange 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 currency exchange 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 currency exchange license issued under Finance Code, Chapter 151, or are an applicant for a new money transmission or currency exchange 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).

(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. 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.

(3) The commissioner may reduce the fees required under 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.

(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 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.

(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 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 (d)(1) and (2) 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 or another person must pay the investigation fee required under subsection (f) of this section within 10 days of receipt of the department's written invoice.

(5) If you owe a late fee as provided by subsection (g)(1) of this section, you must pay this fee immediately upon receipt of the department's written invoice.

(6) The department will bill you for any additional examination fees required under subsection (g)(2), (3) or (4) 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) A fee is considered paid as of the date the department receives payment.

(i) 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.

(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 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.

(3) – (4) (No change.)

(c) Must I provide notice to customers about how to file complaints? Yes. You must tell each of your customers how to file a complaint concerning the money transmission or currency exchange 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) 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.

(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 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."

(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 business, provided that:

(i) the payment instrument or other access device constitutes the only

means of accessing the money received for transmission; or

(ii) you issue a receipt for every money transmission or currency exchange transaction you conduct.

(B) If you personally receive all the funds paid by your customers, you may conspicuously post the required notice where you conduct money transmission or currency exchange activities with customers on a face to face basis.

(C) (No change.)

(4) (No change.)

(f) – (h) (No change.)

10. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendment to 7 TAC Chapter 6, §6.1, Concerning Banking Development Districts

PURPOSE: Amendment to §6.1 corrects a citation which incorrectly refers to the Government Code instead of the Tax Code.

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

RECOMMENDED MOTION: I move that we publish the proposed amendment to 7 TAC Chapter 6, §6.1 in the *Texas Register*.

Title 7. Banking and Securities
Part 1. Finance Commission of Texas
Chapter 6. Banking Development Districts
7 TAC §6.1

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend 7 TAC, §6.1 concerning the purpose and scope of the rules for administering the banking development district program established by Finance Code, Chapter 279. The amendment is proposed to correct a citation.

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

Mr. Purdom has also determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is improved accuracy for persons required to comply with the rule.

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

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

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;

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

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

To be considered, comments on the proposed amendment must be submitted no later than 5:00 p.m. on December 2, 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.

The amendment is proposed under Finance Code, §279.052, which provides that the commission shall adopt rules regarding the criteria for the designation of banking development districts.

Finance Code, Chapter 279 is affected by the proposed amendment.

§6.1. Purpose; Scope.

- (a) (No change.)

(b) This chapter does not affect or circumvent:

(1) requirements under the Tax Increment Financing Act or the Property Redevelopment and Tax Abatement Act (Tax Code [~~Government Code~~], Chapters 311 and 312, respectively), including requirements for designation of an area as a municipal or county reinvestment zone or for authorization to enter into a tax abatement agreement; or

(2) (No change.)

11. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC Chapter 15, §§15.1, 15.2, 15.7, 15.23, 15.41, 15.42, 15.81, 15.103 - 15.106, 15.108, 15.111, 15.115, and 15.122 Concerning Corporate Activities

PURPOSE: Amendment to §15.42(j) codifies the current practice of allowing a bank to relocate a branch beginning on the 31st day after the date the commissioner receives the bank's notice of branch relocation. The remaining amendments update citations, correct typographical errors, simplify technical language, and ensure the consistency of the language within the chapter.

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

RECOMMENDED MOTION: I move that we publish the proposed amendments to 7 TAC Chapter 15, §§15.1, 15.2, 15.7, 15.23, 15.41, 15.42, 15.81, 15.103 - 15.106, 15.108, 15.111, 15.115, and 15.122 in the *Texas Register*.

Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 15. Corporate Activities
7 TAC, §§15.1, 15.2, 15.7, 15.23, 15.41,
15.42, 15.81, 15.103 - 15.106, 15.108,
15.111, 15.115, 15.122

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §15.42(j) concerning branch relocation, §15.115 concerning notification, and §§15.1, 15.2, 15.7, 15.23, 15.41, 15.81, 15.103 - 15.106, 15.108, 15.111, and 15.122 to update citations, correct typographical errors, simplify technical language, and ensure the consistency of the language within the chapter.

Section 15.42(j) currently states that a bank may relocate a branch immediately after the Banking Commissioner (the commissioner) notifies the bank in writing that the required fee has been paid and the notice is complete and accepted for filing. The proposed amendment relaxes this requirement by adding the current practice of allowing a bank to relocate a branch beginning on the 31st day after the date the commissioner receives the bank's notice of branch relocation. This method of approving branch relocations has worked well in practice and alleviated the need for the commissioner to issue written notifications for every branch relocation. In addition, stating that a bank's notice of relocation is complete means that the required fee has been paid and the notice has been accepted for filing. Therefore, in practice, the commissioner's written notification to the bank simply states that the bank's "required notice is complete." The proposed

amendment simplifies the language in the rule to match what is currently included in the commissioner's notification.

Section 15.115 allows notification by the commissioner to be made by mail, in person, or by fax. The proposed amendment will allow notification by the commissioner to be made by email as well.

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

Mr. Largent has also 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 improved accuracy and clarity for persons required to comply with the rules.

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

- create a new regulation;
- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; and
- positively or adversely affect this state's economy.

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

To be considered, comments on the proposed amendments must be submitted no later than 5:00 p.m. on December 2, 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.

Amendments to Chapter 15, Subchapter A, §15.1, §15.2, and §15.7 are proposed under Finance Code, §31.003, which provides that the commission may adopt rules necessary or reasonable to accomplish the purposes of the Texas Banking Act.

Finance Code §§202.001 and 202.004, and Finance Code, Title 3, Subtitles A and G are affected by the proposed amendments to Chapter 15, Subchapter A.

§15.1. Definitions.

Words and terms used in this chapter that are defined in the Finance Code, Title 3, Subtitle A or Subtitle G, have the same meanings as defined in the Finance Code.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Accepted filing-An application, request, notice, or protest filed with the banking commissioner pursuant to the Finance Code, Title 3, Subtitle A or G, this chapter, or another rule adopted pursuant to the Finance Code if:

(A) the appropriate fee has been paid pursuant to §15.2 of this title (relating to Filing and Investigation Fees [~~and Cost Deposits~~]); and

(B) (No change.)

(2) – (5) (No change.)

(6) Low or moderate income area-A designated geography for CRA purposes, as defined in 12 CFR, §228.12(m)(1) and (m)(2) [~~§228.12(l), (n)(1), and (n)(2)~~], for state member banks, or 12 CFR, §345.12 (m)(1) and (m)(2) [~~§345.12(l), (n)(1), and (n)(2)~~], for state nonmember banks.

(7) – (9) (No change.)

§15.2. Filing and Investigation Fees.

(a) (No change.)

(b) Filing fees. Simultaneously with a submitted application or notice, an applicant shall pay to the department:

(1) – (6) (No change.)

(7) \$2,000 for an application to establish a branch office (including an interstate transaction) pursuant to Finance

Code, §32.203, and §15.42 of this title (relating to Establishment and Closing of a Branch Office), or \$1,000 if the application is eligible for expedited treatment pursuant to §15.3 of this title (relating [~~related~~] to Expedited Filings), provided that the department will not require a filing fee for an application for a new branch office to be located in a low or moderate income area and where no other depository institution operates a branch or home office;

(8) – (23) (No change.)

(c) – (f) (No change.)

§15.7. Submission of Reproductions.

(a) (No change.)

(b) Reproduction. For purposes of this section, the term reproduction means:

(1) (No change.)

(2) a facsimile copy of an original document submitted by telephonic document transmission to the fax [~~telecopier telephone~~] number specified by the department; or

(3) (No change.)

(c) (No change.)

(d) Page limitations. A reproduction submitted by telephonic document transmission to the department's fax machine [~~telecopier machine~~] may not exceed 25 pages in total length, including the transmittal document required by subsection (e) of this section, or it will be rejected for filing. The transmission of portions of any particular filing at different times is treated as one reproduction for purposes of this subsection.

(e) (No change.)

(f) Time of receipt. To be considered received by the department, a reproduction must be in clearly legible form. The date the submission is actually received by the department or the date and time imprinted by the department's fax machine [~~telecopier~~] on the last page of a reproduction submitted by telephonic document transfer will determine the time of receipt, provided that a reproduction received after 4:30 p.m. is considered received at 8:00 a.m. on the next business day. A reproduction will not be considered received until the department receives the entire document and the required filing fee, if any.

(g) (No change.)

Amendment to Chapter 15, Subchapter B, §15.23 is proposed under Finance Code, §31.003, which provides that the commission may adopt rules necessary or reasonable to accomplish the purposes of the Texas Banking Act.

Finance Code, Chapters 32 and 203 are affected by the proposed amendment to Chapter 15, Subchapter B.

§15.23. Application for Interim Bank Charters.

(a) General. The banking commissioner may issue an interim state bank charter solely for the purpose of facilitating the acquisition, reorganization, or merger of a pre-existing bank, if the resulting bank will engage in the business of banking in substantially the same markets. The applicant must submit the application for an interim bank charter on a form prepared and prescribed by the banking

commissioner and tender the required filing fee pursuant to §15.2 of this title (relating to Filing and Investigation Fees [~~and Cost Deposits~~]). The applicant must describe in detail the entire transaction in which the interim bank charter is proposed to be used and identify the resulting bank after completion of the transaction.

(b) – (d) (No change.)

Amendments to Chapter 15, Subchapter C, §15.41 and §15.42 are proposed under Finance Code, §31.003, which provides that the commission may adopt rules necessary or reasonable to accomplish the purposes of the Texas Banking Act.

Finance Code §§32.202, 32.203, and 203.001 are affected by the proposed amendments to Chapter 15, Subchapter C.

§15.41. Written Notice or Application for Change of Home Office.

(a) Relocation by notice. Unless an application under subsection (b) of this section is required, a state bank may change its home office to one of its previously established branches pursuant to the Finance Code, §32.202(b), by filing a written notice containing the information required by subsection (c) of this section, accompanied by the filing fee required by §15.2 of this title (relating to Filing and Investigation Fees [~~and Cost Deposits~~]). A bank may relocate its home office immediately after the required notice and fee has been acknowledged in writing as complete and accepted for filing by the banking commissioner. An application under subsection (b) of this section is required if the proposed home office relocation:

(1) – (2) (No change.)

(b) – (f) (No change.)

§15.42. Establishment and Closing of a Branch Office.

(a) – (i) (No change.)

(j) Branch relocation. A bank may relocate a branch within a one-mile radius by submitting a completed written notice on a form prescribed by the banking commissioner and tendering the required filing fee pursuant to §15.2 of this title. A bank may relocate the branch beginning on the 31st day after the date the banking commissioner receives the bank's notice or immediately after the banking commissioner notifies the bank in writing that the required [~~fee has been paid and the~~] notice is complete [~~and accepted for filing~~].

(k) (No change.)

Amendment to Chapter 15, Subchapter D, §15.81 is proposed under Finance Code, §31.003, which provides that the commission may adopt rules necessary or reasonable to accomplish the purposes of the Texas Banking Act.

Finance Code §§33.001 – 33.005 are affected by the proposed amendment to Chapter 15, Subchapter D.

§15.81. Application for Acquisition or Change of Control of State Bank.

(a) – (b) (No change.)

(c) Form of application. The applicant must submit a fully completed, verified application in a form prescribed by the

banking commissioner and simultaneously tender the required filing fee pursuant to §15.2 of this title (relating to Filing and Investigation Fees [~~and Cost Deposits~~]). The Interagency Notice of Change of Control and the Interagency Biographical and Financial Report may be submitted in lieu of the commissioner prescribed forms if they are accompanied by the executed and notarized signature pages of the commissioner prescribed forms. The application must, except to the extent expressly waived in writing by the banking commissioner, disclose:

(1) – (14) (No change.)

(d) – (m) (No change.)

Amendments to Chapter 15, Subchapter F, §§15.103 - 15.106, §15.108, §15.111 and §15.115 are proposed under Finance Code, §31.003, which provides that the commission may adopt rules necessary or reasonable to accomplish the purposes of the Texas Banking Act.

Finance Code §§32.001, 32.008, 32.301 – 32.304, 32.401 – 32.405, 32.501, 32.502, 203.001, and 203.003 are affected by the proposed amendments to Chapter 15, Subchapter F.

§15.103. Expedited Filings.

(a) A financial institution that would be an eligible bank as defined in §15.1 of this title (relating to Definitions) if it was a state bank may file an expedited filing in lieu of an application required under §15.104 of this title (relating to Application for Merger or Share Exchange), §15.105 of this title (relating to Application for Authority to

Purchase Assets of Another Financial Institution), or §15.108 of this title (relating to Conversion of a Financial Institution into a State Bank), and simultaneously tender the required filing fee pursuant to §15.2 of this title (relating to Filing and Investigation Fees [~~and Cost Deposits~~]).

(b) – (f) (No change.)

§15.104. Application for Merger or Share Exchange.

(a) (No change.)

(b) Form of application. The applicant must submit a fully completed, verified application on a form prescribed by the banking commissioner and simultaneously tender the required filing fee pursuant to §15.2 of this title (relating to Filing and Investigation Fees [~~and Cost Deposits~~]). The Interagency Bank Merger Act application may be used in lieu of the commissioner prescribed form if it is accompanied by the signature page and supplemental page of the commissioner prescribed form. The application must, except to the extent waived by the banking commissioner, include:

(1) – (22) (No change.)

(c) – (e) (No change.)

§15.105. Application for Authority to Purchase Assets of Another Financial Institution.

(a) (No change.)

(b) Form of application. The applicant must submit a fully completed, verified application on a form prescribed by the banking commissioner and simultaneously

tender the required filing fee pursuant to §15.2 of this title (relating to Filing and Investigation Fees [~~and Cost Deposits~~]). The application must, except to the extent waived by the banking commissioner, include:

(1) – (20) (No change.)

(c) – (d) (No change.)

§15.106. Application for Authority to Sell Assets.

(a) (No change.)

(b) Subsection (f) of this section specifically addresses a sale of assets without shareholder approval under the Finance Code, §32.405(c) [~~(a)(7)~~] or Finance Code, §203.003.

(c) Form of application. The applicant must submit a fully completed, verified application on a form prescribed by the banking commissioner and simultaneously tender the required filing fee pursuant to §15.2 of this title (relating to Filing and Investigation Fees [~~and Cost Deposits~~]). The application must, except to the extent waived by the banking commissioner, include:

(1) – (18) (No change.)

(d) – (e) (No change.)

(f) Sale of assets without shareholder approval under the Finance Code, §32.405(c) [~~(a)~~]. The board of a state bank, with the prior written approval of the banking commissioner, may cause a bank to sell all or substantially all of its assets without shareholder or participant approval if the banking commissioner finds the interests of depositors and creditors are jeopardized

because of insolvency or imminent insolvency and that the sale is in their best interest.

(1) – (2) (No change.)

§15.108. Conversion of a Financial Institution into a State Bank.

(a) (No change.)

(b) Form of application. The applicant must submit a fully completed, verified application on a form prescribed by the banking commissioner and simultaneously tender a filing fee in the amount required for the filing of an application for a new bank charter pursuant to §15.2 of this title (relating to Filing and Investigation Fees [~~and Cost Deposits~~]). The application must, except to the extent waived by the banking commissioner, include:

(1) – (20) (No change.)

(c) – (e) (No change.)

§15.111. Investigation of Application.

(a) (No change.)

(b) Costs and fees. An applicant under this subchapter must pay reasonable costs incurred in the investigation including the cost of a required examination, as provided by §3.36(h) of this title (relating to Annual Assessments and Specialty [~~Speciality~~] Examination Fees) and §15.2(e) of this title (relating to Filing and Investigation Fees [~~and Cost Deposits~~]).

(c) (No change.)

§15.115. Notification.

A notification by the banking commissioner under this subchapter may be by registered or certified mail, return receipt requested, and is complete when the notification is deposited in the United States mail postage prepaid, return receipt requested, mailed to the address furnished in the application. Notification may also be made in person to the applicant, or to another person, financial institution, foreign corporation or domestic corporation, or other entity subject to this subchapter, by agent-receipted delivery or by courier-receipted delivery to the address furnished in the application, by email to the email address furnished in the application, or by telephonic document transfer to the [applicant's] ~~fax~~ [telecopier] number [as] furnished in the application. Notice by telephonic document transfer served after 6:00 p.m. local time of recipient is considered as notice served on the following day.

Amendments to Chapter 15, Subchapter G, §15.122 are proposed under Finance Code, §31.003, which provides that the commission may adopt rules necessary or reasonable to accomplish the purposes of the Texas Banking Act.

Finance Code §§31.002 and 32.101 are affected by the proposed amendments to Chapter 15, Subchapter G.

§15.122. Amendment of Certificate to Effect a Reverse Stock Split.

(a) (No change.)

(b) Procedure. Pursuant to the Finance Code, §32.101, to effectuate a reverse stock split in compliance with this section, a state bank must:

(1) (No change.)

(2) obtain the approval of the banking commissioner pursuant to subsection (d) of this section, by filing an application setting forth the information and documents required by subsection (c) of this section and the filing fee required by §15.2 of this title (relating to Filing and Investigation Fees [~~and Cost Deposits~~]).

(c) – (e) (No change.)

12. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC Chapter 21, §§21.2, 21.6, 21.7, 21.42, 21.43, 21.61, and 21.74 Concerning Trust Company Corporate Activities

PURPOSE: Amendments to §§21.7 and 21.74 add email as an option for submitting reproductions of application documents to the Department and providing notifications to applicants. The remaining amendments update citations, simplify technical language, and ensure the consistency of the language within the chapter.

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

RECOMMENDED MOTION: I move that we publish the proposed amendments to 7 TAC Chapter 21, §§21.2, 21.6, 21.7, 21.42, 21.43, 21.61, and 21.74 in the *Texas Register*.

Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 21. Trust Company Corporate Activities
7 TAC, §§21.2, 21.6, 21.7, 21.42, 21.43, 21.61, 21.74

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §21.7 concerning the submission of reproductions, §21.74 concerning notification, and §§21.2, 21.6, 21.42, 21.43, and 21.61 to update citations, simplify technical language, and ensure the consistency of the language within the chapter.

Section 21.7 allows reproductions of application documents to be submitted to the Department by mail, hand delivery, or fax. The proposed amendment will allow reproductions of application documents to be submitted to the Department by email as well.

Section 21.74 allows notification by the commissioner to be made by mail, in person, or by fax. The proposed amendment will allow notification by the commissioner to be made by email as well.

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

Mr. Largent has also 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 improved accuracy and clarity for persons required to comply with the rules.

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 rules 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;
- create a new regulation;
- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; and
- positively or adversely affect this state's economy.

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

To be considered, comments on the proposed amendments must be submitted no later than 5:00 p.m. on December 2, 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.

Amendments to Chapter 21, Subchapter A, §21.2, §21.6 and §21.7 are proposed under Finance Code, §181.003, which provides that the commission may adopt rules necessary or reasonable to accomplish the purposes of the Texas Trust Company Act.

Finance Code, §§182.003, 182.012, and 182.202 are affected by the proposed amendments to Subchapter A.

§21.2. Filing and Investigation Fees.

(a) (No change.)

(b) Filing fees. Simultaneously with a submitted application or notice, an applicant shall pay to the department:

(1) – (9) (No change.)

(10) \$2,000 for an application to relocate the home office with abandonment of existing office pursuant to Finance Code, §182.202(d), and §21.41(b) of this title, or \$1,000 for an application accepted for expedited treatment pursuant to §21.3 of this title (relating ~~[related]~~ to Expedited Filings);

(11) – (17) (No change.)

(18) \$2,500 for an application by an existing trust company for exemption pursuant to Finance Code, §182.012, and §21.24 of this title (relating to Exemptions for Family Trust Companies ~~[Administering Family Trusts]~~);

(19) – (22) (No change.)

(c) – (f) (No change.)

§21.6. Applications for Trust Charter: Notices to Applicants; Application Processing Times; Appeals.

(a) Form of application. An application to engage in a state trust company ~~[business]~~ under Finance Code, §182.003, must be filed on a form prescribed by the banking commissioner.

(b) – (e) (No change.)

§21.7. Submission of Reproductions.

(a) (No change.)

(b) Reproduction. For purposes of this section, the term reproduction means:

(1) a photographic or photostatic copy or similar reproduction of an original document that is submitted to the department by mail or hand delivery;

(2) a facsimile copy of an original document submitted by telephonic document transmission to the fax number specified by the department; or

(3) if permitted by the department with respect to a specific filing, an electronic copy of an original document submitted to the email address specified by the department.

~~[(b) Reproduction. For purposes of this section, the term reproduction means a photographic or photostatic copy or similar reproduction of an original document that is submitted to the department by mail, hand delivery, or telephonic document transmission to the telecopier machine~~

~~specified by the department.]~~

(c) (No change.)

(d) Page limitations. A reproduction submitted by telephonic document transmission to the department's fax [~~telecopier~~] machine may not exceed 25 pages in total length, including the transmittal document required by subsection (e) of this section, or it will be rejected for filing. The transmission of portions of any particular filing at different times is treated as one reproduction for purposes of this subsection.

(e) (No change.)

(f) Time of receipt. To be considered received by the department, a reproduction must be in clearly legible form. The date the submission is actually received by the department or the date and time imprinted by the department's fax machine [~~telecopier~~] on the last page of a reproduction submitted by telephonic document transfer will determine the time of receipt, provided that a reproduction received after 4:30 p.m. is considered received at 8:00 a.m. on the next business day. A reproduction will not be considered received until the department receives the entire document and the required filing fee, if any.

(g) (No change.)

Amendments to Chapter 21, Subchapter D, §21.42 and §21.43 are proposed under Finance Code, §181.003, which provides that the commission may adopt rules necessary or reasonable to accomplish the purposes of the Texas Trust Company Act.

Finance Code, §§182.203 and 204.106 are affected by the proposed amendments to

Subchapter D.

§21.42. Establishment, Relocation and Closing of an Additional Office.

(a) Establishment or relocation by notice. A trust company may establish or relocate an additional office pursuant to Finance Code, §182.203, by filing a written notice with the banking commissioner containing all information required by subsection (b) of this section, accompanied by the required filing fee pursuant to §21.2 of this title (relating to Filing and Investigation Fees [~~and Cost Deposits~~]), and notice of the submission must be published as required by subsection (d) of this section. A trust company filing notice of an additional office under this subsection may establish the additional office on the 31st day after the date the required notice and fee are received by the banking commissioner unless the banking commissioner gives notice in writing, prior to the expiration of that time period, that an earlier or later date is authorized or that additional information is required pursuant to subsection (c) of this section.

(b) – (h) (No change.)

§21.43. Representative Trust Offices of Federally Chartered or Federally Insured Out-of-State Banks.

(a) (No change.)

(b) An out-of-state bank authorized by its charter to conduct a trust business that has not established or acquired a branch in this state may establish a representative trust office in this state:

(1) if not chartered by a federal banking regulatory agency and not insured by

the Federal Deposit Insurance Corporation, only after complying with §21.44 of this title (relating to Representative Trust Offices of Out-of-State Trust Companies and Uninsured State Banks); or

(2) (No change.)

(c) (No change.)

Amendments to Chapter 21, Subchapter F, §21.61 and §21.74 are proposed under Finance Code, §181.003, which provides that the commission may adopt rules necessary or reasonable to accomplish the purposes of the Texas Trust Company Act.

Finance Code, §§182.003, 182.202, and 182.203 are affected by the proposed amendments to Subchapter F.

§21.61. Definitions.

(a) Words and terms used in this subchapter that are defined in the Trust Company Act or in §21.1 of this title (relating to Definitions), have the same meanings as defined therein.

(b) (No change.)

§21.74. Notification.

A notification by the banking commissioner under this subchapter may be by registered or certified mail, return receipt requested, and is complete when the notification is deposited in the United States mail postage prepaid, return receipt requested, mailed to the address furnished in the application. Notification may also be made in person to the applicant, or to the trust company or another person, fiduciary institution, foreign corporation or domestic

corporation, or other entity subject to this subchapter, by agent-receipted delivery or by courier-receipted delivery to the address furnished in the application, by email to the email address furnished in the application, or by telephonic document transfer to the fax [~~applicant's telecopier~~] number [as] furnished in the application. Notice by telephonic document transfer served after 6:00 p.m. local time of recipient is considered as notice served on the following day.

13. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC Chapter 33, §33.54 Concerning Exemption for Registered Securities Dealers and Agents

PURPOSE: New §33.54 would exempt dealers and dealer agents from money transmission licensing if they are registered and in good standing with the Texas State Securities Board to the extent they are operating in their capacity as securities dealers and securities dealer agents.

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

RECOMMENDED MOTION: I move that we publish the proposed new 7 TAC Chapter 33, §33.54 in the *Texas Register*.

Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 33. Money Services Businesses
7 TAC §33.54

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes a new rule, Title 7 Texas Administrative Code, §33.54, concerning an exemption for registered securities dealers and securities dealer agents. The new rule is proposed to exempt dealers and dealer agents from money transmission licensing if they are registered and in good standing with the Texas State Securities Board (the board), to the extent they are operating in their capacity as securities dealers and securities dealer agents.

Summary of Proposed New Rule

Proposed subsection (a) of this section provides that the terms “agent,” “dealer,” and “securities” have the meanings assigned by the Texas Securities Act.

Proposed subsection (b) of this section provides that a dealer or a dealer agent who, in the course of providing dealer or dealer agent services as to securities, receives or has control over a customer’s money or monetary value, is exempt from money transmission licensing requirements if they are: 1) registered and in good standing with the board as a dealer or dealer’s agent; 2) in compliance with all requirements of the Texas Securities Act and the board’s administrative rules; and 3) conducting no money transmission as defined by the Texas Finance Code except as necessary to provide securities dealer or securities dealer agent services for contractual customers.

The department regulates money transmission, defined by the Texas Finance Code, §151.301(b)(4) as the receipt of money or monetary value by any means in exchange for a promise to make the money or monetary value available at a later time or different location. A money transmission license is required to engage in the business of money transmission in Texas. See Texas Finance Code, §151.302(a).

Many registered securities dealers and securities dealer agents include money transmission in their business models and as part of the services provided to their clients. Both securities dealers and securities dealer agents, however, are already regulated by, and subject to registration requirements enforced by, the Texas State Securities Board. As such, further regulation by the department would be duplicative to the extent that such persons operate only as securities dealers and dealer agents. The department does not intend for this rule to exempt dealers and dealer agents from money transmission licensing if they perform separate money transmission activities as defined by the Texas Finance Code, unrelated to their operation as securities dealers or securities dealer agents.

Analysis of Fiscal Impact and Public Benefits

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

Mr. Reese has also determined that, for each year of the first five years the rule as proposed is in effect, the public benefit

anticipated as a result of enforcing the rule is potentially decreased administrative costs for securities dealers and securities dealer agents, that may be passed down to Texas consumers doing business with securities dealers and securities dealer agents, as well as to Texans employed by, or doing business as, securities dealers or securities dealer agents. Additionally, this rule will reduce the regulatory burden faced by securities dealers and securities dealer agents and may decrease regulatory redundancies.

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

Government Growth Impact Statement

Pursuant to Government Code, §2001.0221, the department provides the following Government Growth Impact Statement for the proposed rule. During the first five years that the rule will be in effect, the rule will not:

- 1) create or eliminate a government program;
- 2) require the creation of new employee positions or the elimination of existing employee positions;
- 3) require an increase or decrease in future legislative appropriations to the department;
- 4) require an increase in fees paid to the department – in fact such fees will likely decrease;

5) create a new regulation;

6) increase or decrease the number of individuals subject to the rule's applicability; and,

7) adversely affect this state's economy – in fact, the proposed new rule has the potential to positively affect this state's economy.

Additionally, during the first five years that the rule will be in effect, the rule will limit existing regulation of some entities engaged in money transmission, such as registered securities dealers and securities dealer agents, who are operating as such.

Analysis of Economic Impact

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.

Comment Requested

To be considered, comments on the proposed new rule must be submitted no later than 5:00 p.m. on December 2, 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 new rule is proposed under Finance Code, §151.102(a), which authorizes the commission to adopt rules necessary or appropriate to preserve and protect the safety

and soundness of money services businesses and protect the interests of purchasers of money services and the public.

Texas Finance Code, §151.301(b)(4) and §151.302(a) are affected by the proposed new rule.

§33.54 Exemption for Registered Securities Dealers and Agents

(a) For purposes of this section, the terms “agent,” “dealer,” and “securities” have the meanings assigned by the Texas Securities Act.

(b) A dealer or dealer agent who, in the course of providing dealer or dealer agent services as to securities, receives or has control over a customer’s money or monetary value, need not obtain a money transmission license if they are:

(1) registered and in good standing with the Texas State Securities Board as a dealer or dealer agent;

(2) in compliance with all the requirements of the Texas Securities Act and the Texas State Securities Board’s administrative rules; and

(3) conducting no money transmission as defined by Texas Finance Code, §151.301 except as necessary to provide dealer or dealer agent services for contractual customers as to securities.

C.

**Department of Savings and
Mortgage Lending**

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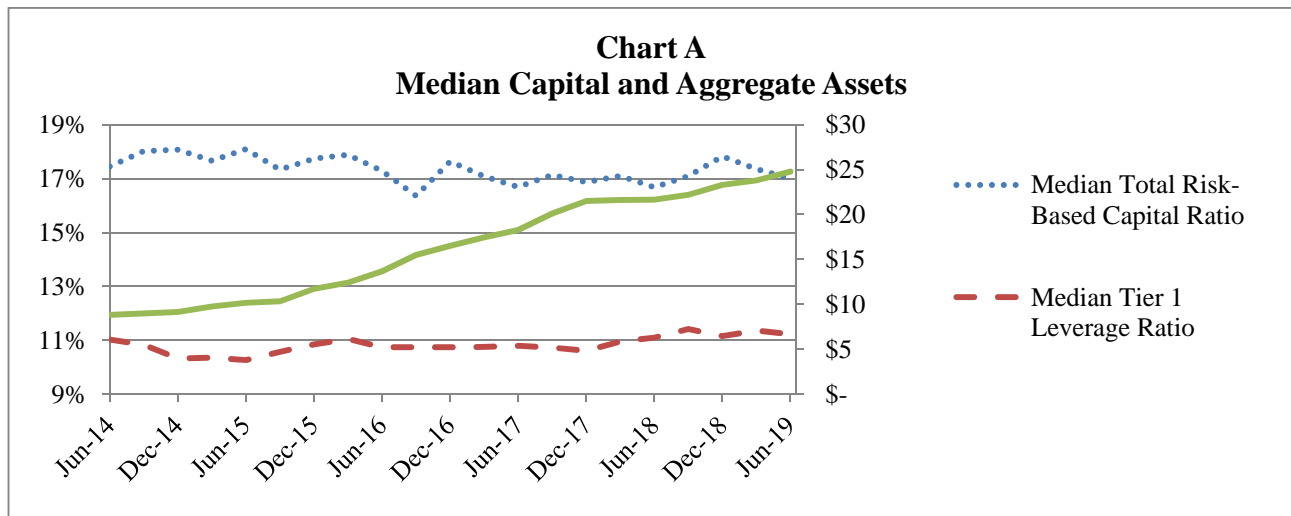
C. Texas Department of Savings and Mortgage Lending

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

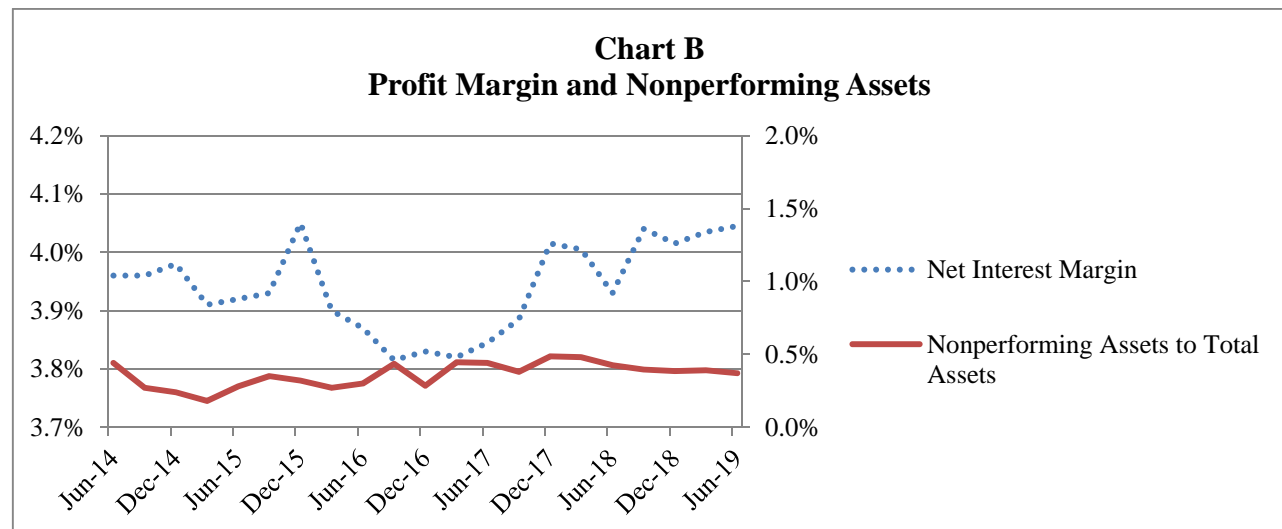
a. Industry Status

The Department continues to monitor various local, state, and national data sources to best understand the risks facing the industry and individual savings banks. Below is a state savings bank industry status to highlight specific areas that the Department monitors in relation to changes in the state and national economic environment.

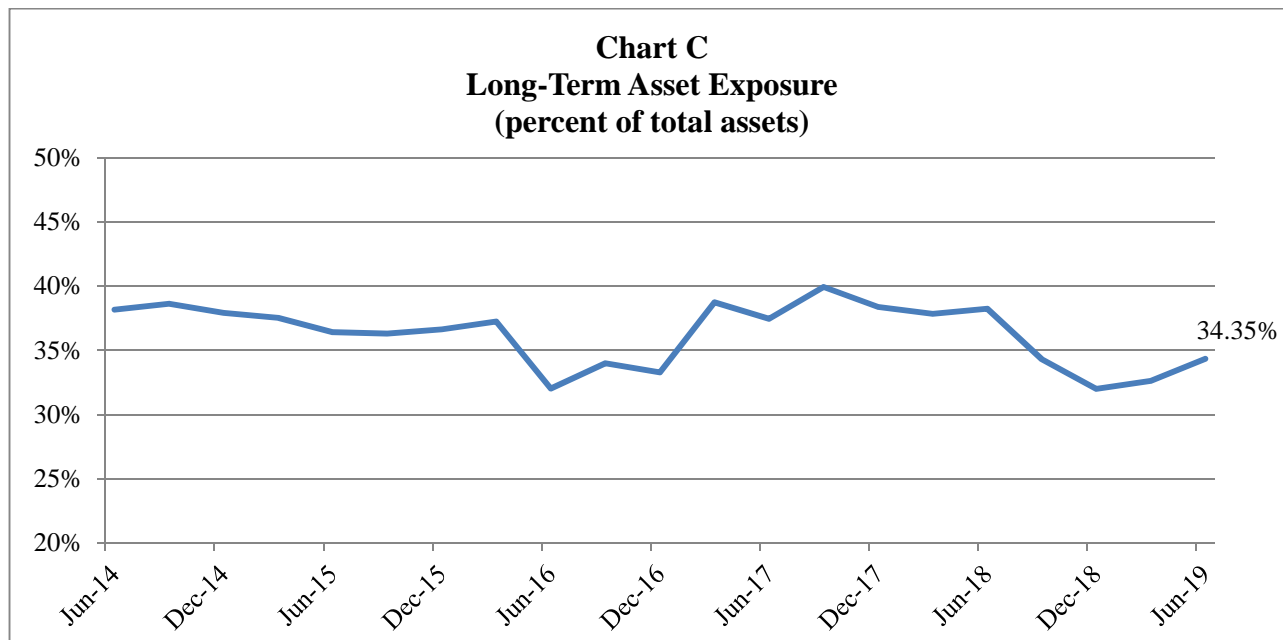
There were 24 state savings banks totaling \$25.9 billion in total assets, as of June 30, 2019. The average asset size of the median state savings bank (SSB) grew by 3.91% in the last four quarters to \$318.185 million. The median total risk-based capital ratio and median leverage capital (Chart A) protection have remained generally consistent and are now 17.00% and 11.23%, respectively.



The net interest or profit margin (Chart B) remains consistent with the prior year at 4.05%. Nonperforming asset levels remain low at 0.37% of total assets, compared to the prior year at 0.43%.

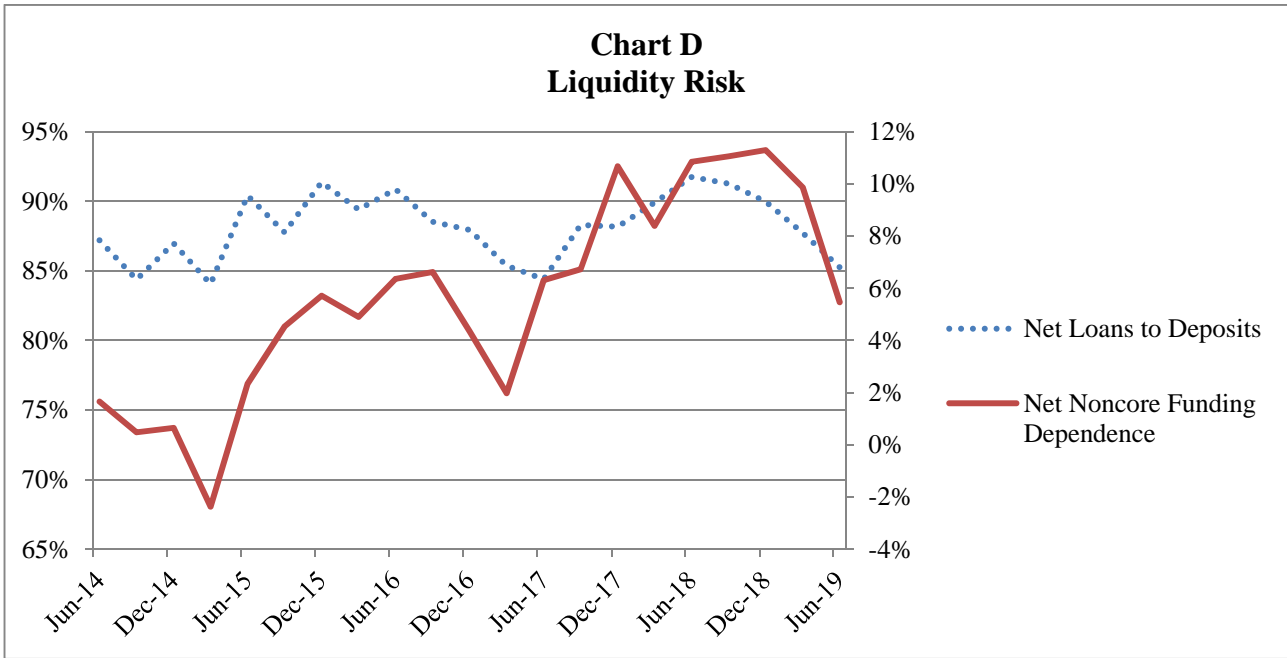


Market risk, as evidenced by long-term asset exposure (Chart C), was noticeably elevated from early 2017 to mid-2018. In early 2019, the exposure again began to rise, however, levels are consistent with the trends in long-term asset exposure. There remain a small number of outlier institutions with high long-term asset exposure; however, these are generally operating within historical norms of ten years or more.

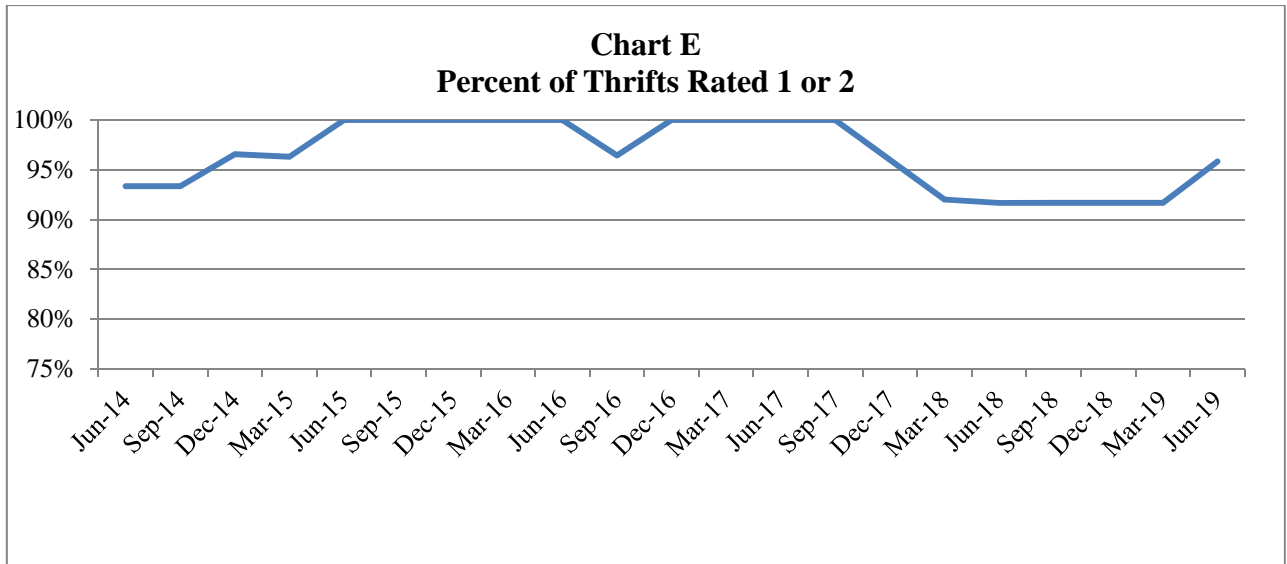


Liquidity risk is moderate in Texas thrifts (Chart D), as indicated by the Net Noncore Funding Dependence (NNCFD) Ratio, a measure of the funding of long-term assets using short-term funding strategies. The median NNCFD Ratio has decreased from 10.85% to 5.47% in the last four quarters. The loan-to-deposit ratio, a measure of the use of deposits to fund lending activities, is moderate at 85.25% with 25% of the industry over 100%.

All SSBs are subject to quarterly offsite reviews. Those with the highest risk profiles receive enhanced scrutiny, as warranted, with targeted visitations, accelerated examinations, and/or corrective actions.



Ninety-six percent of SSBs at June 30, 2019, were rated a Composite 1 or 2 (Chart E). There is one formal outstanding enforcement action.



b. Savings Bank Charter and Merger Activity

On September 10, 2019, an application to acquire Citizens State Bank, Tyler, was received from Spirit of Texas Bank, SSB. The application is in.

On September 18, 2019, an application for change of control of Shelby Bancshares, Inc., and indirectly, Shelby Savings Bank, SSB, Center, was received from the Campbell family group and Rick L. Campbell, individually. The application is in process.

On September 25, 2019, an application to acquire Heritage Bank, Pearland, was received from Third Coast Bank, SSB. The application is in process.

The Department continues to receive and process various other applications.

Departmental Operations - Thrift

The 12th Annual Thrift Industry Day was held on September 12, 2019. The guest speaker was James Butera, attorney, with the law firm of Butera, Israel & Becker. Thrift Supervision and Examination staff and management made presentations relating to topics of interest. A panel of state savings bank executives discussed Current Expected Credit Losses (CECL). The Thrift Day agenda is on the following page.

Commissioner Jones served on the regulatory panel at the Financial Women in Texas' Annual Conference on September 13, 2019.

Commissioner Jones and Deputy Commissioner Trotti attended the Independent Bankers Association of Texas Annual Convention. On September 20, 2019, Commissioner Jones served on the regulatory panel at the convention.

Commissioner Jones served on the regulatory panel at the Southwest Association of Bank Counsel on September 27, 2019.

Commissioner Jones and David Kapavik, President/CEO of SouthStar, SSB, attended Community Banking in the 21st Century, a research and policy conference sponsored by the Conference of State Bank Supervisors, the Federal Reserve System and the Federal Deposit Insurance Corporation on October 1 – 2, 2019.



DEPARTMENT of SAVINGS & MORTGAGE LENDING

12TH ANNUAL

THRIFT INDUSTRY DAY

THURSDAY, SEPTEMBER 12, 2019

12:30 – 1:00 Registration

1:00 – 1:15 Welcome and Opening Comments

Caroline C. Jones, Commissioner

1:15 – 2:00 CECL Panel

Greg Benson - TBK Bank, Dallas, Texas

Camille Stanfield and John Snider - Shelby Savings Bank, Center, Texas

Jeff Powell and Edward Poole - Spirit of Texas Bank, Conroe, Texas

Stephany Trotti (Moderator)

2:00 – 2:20 Regulatory Compliance

Bill Poe, Supervisory Compliance Examiner, CSME

2:20 – 2:35 Break

2:35 – 2:55 Reputational Risk

Susanna Blevins, Supervisory Examiner

2:55 – 3:15 Industry Trends

Andrea Kuhnert, Supervisory Examiner

3:15 – 3:30 Break

3:30 – 4:00 Hot Topics

Stephany Trotti, CPA, Deputy Commissioner/Director of Thrifts

4:00 – 4:30 Perspectives from Washington, DC

James Butera

Butera, Israel, & Becker - Washington, DC

4:30 – 5:00 Agency Overview and Adjournment

Caroline C. Jones, Commissioner

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

a. Residential Mortgage Loan Originators

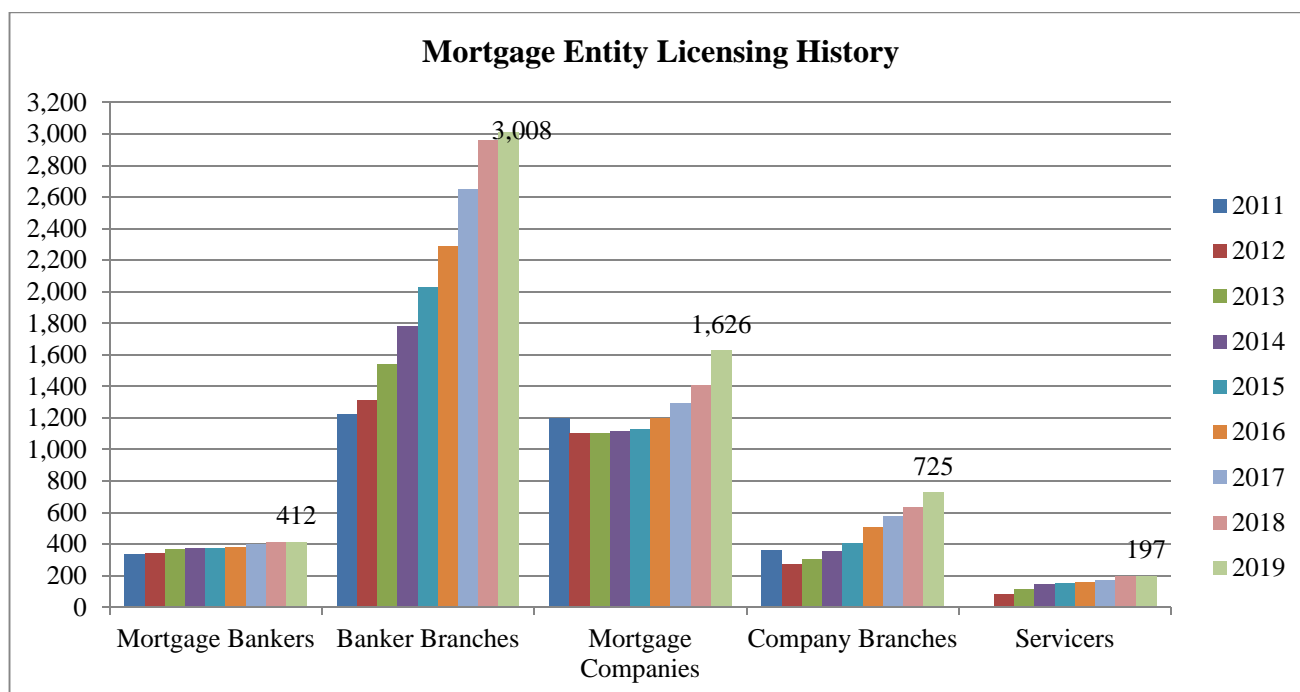
Current Licensing Population:

License Type As of 09/30/2019	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>	167	n/a	
<i>Mortgage Company</i>	1,478	733	
<i>Mortgage Banker</i>	410	3,006	
<i>Mortgage Servicer</i>	202	n/a	
Totals	2,265	3,741	

For FY2019, the Department received 8,527 applications for licenses and 106,758 other filings. During the year the licensing section processed 8,922 applications and 12,838 sponsorship requests.

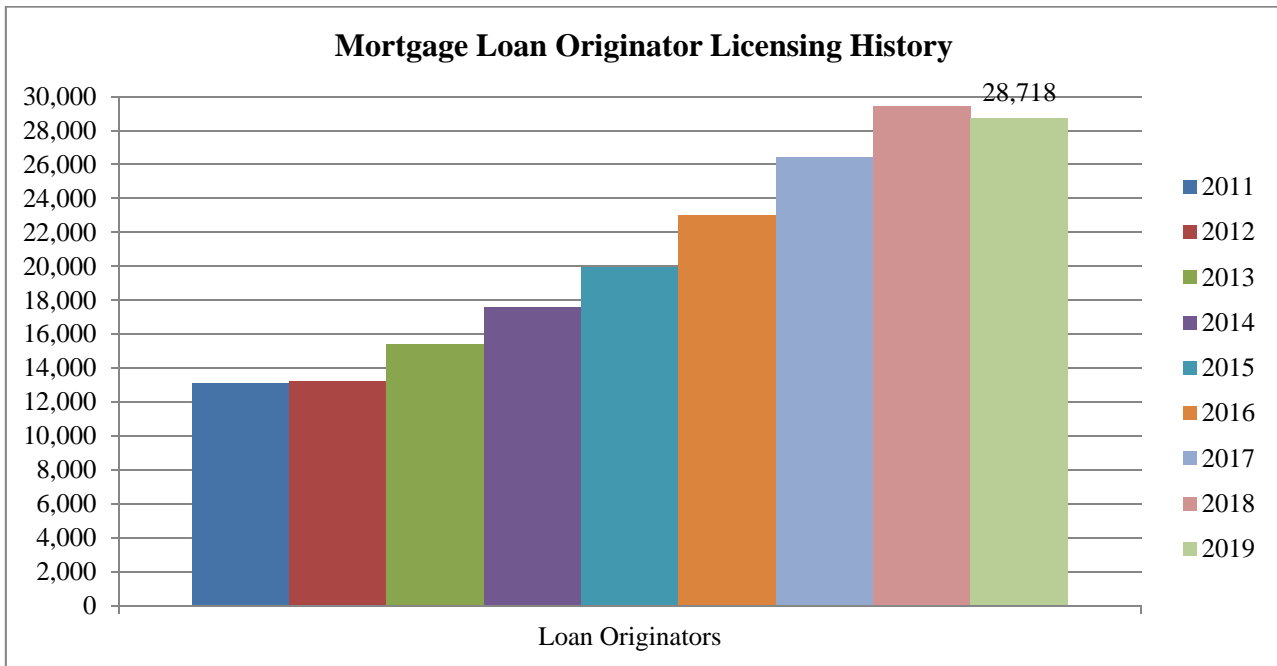
The licensing section is preparing for the coming renewal period, November 1st – December 31st. Companies that have not filed or have outstanding deficiencies related to mortgage call reports and individuals that have not completed the required continuing education will not be able to submit renewal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

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



As of August 31, 2019:

- 14.3% or 59 of the 412 Texas licensed Mortgage Bankers are based in Texas.
- 50.7% or 1,524 of the 3,008 Texas licensed Mortgage Bankers branches are located in Texas.
- 73.7% or 1,199 of the 1,626 Texas licensed Mortgage Companies are based in Texas.
- 82.1% or 595 of the 725 Texas licensed Mortgage Company branches are located in Texas.
- 50.8% or 100 of the 197 Texas licensed Mortgage Servicers are based in Texas.
- 41.3% or 936 of Texas licensed entities have been licensed with the State for 3 years or less. Of these 388 or 41.5% were licensed within the last year.



As of August 31, 2019:

- 44.8% or 12,879 of the 28,718 Texas licensed originators reside in Texas.
- 16.4% or 4,712 of the 28,718 Texas licensed originators were in an “inactive” status
- 69.5% or 19,957 of the 28,718 Texas licensed originators have been licensed with the State for 3 years or less. Of these 5,978 or 30.0% were licensed within the last year.
- 20,035 Texas licensed originators had not completed their required continuing education for calendar year 2019, which is required in order to submit renewal beginning November 1st.

b. Mortgage Examinations

During FY19, the Department conducted a total of 511 examinations covering 5,890 individual licensees. The number of examinations is higher when compared to FY18 although the number of individual licensees covered decreased by 68%. The decrease was the result of smaller entities being examined during FY19.

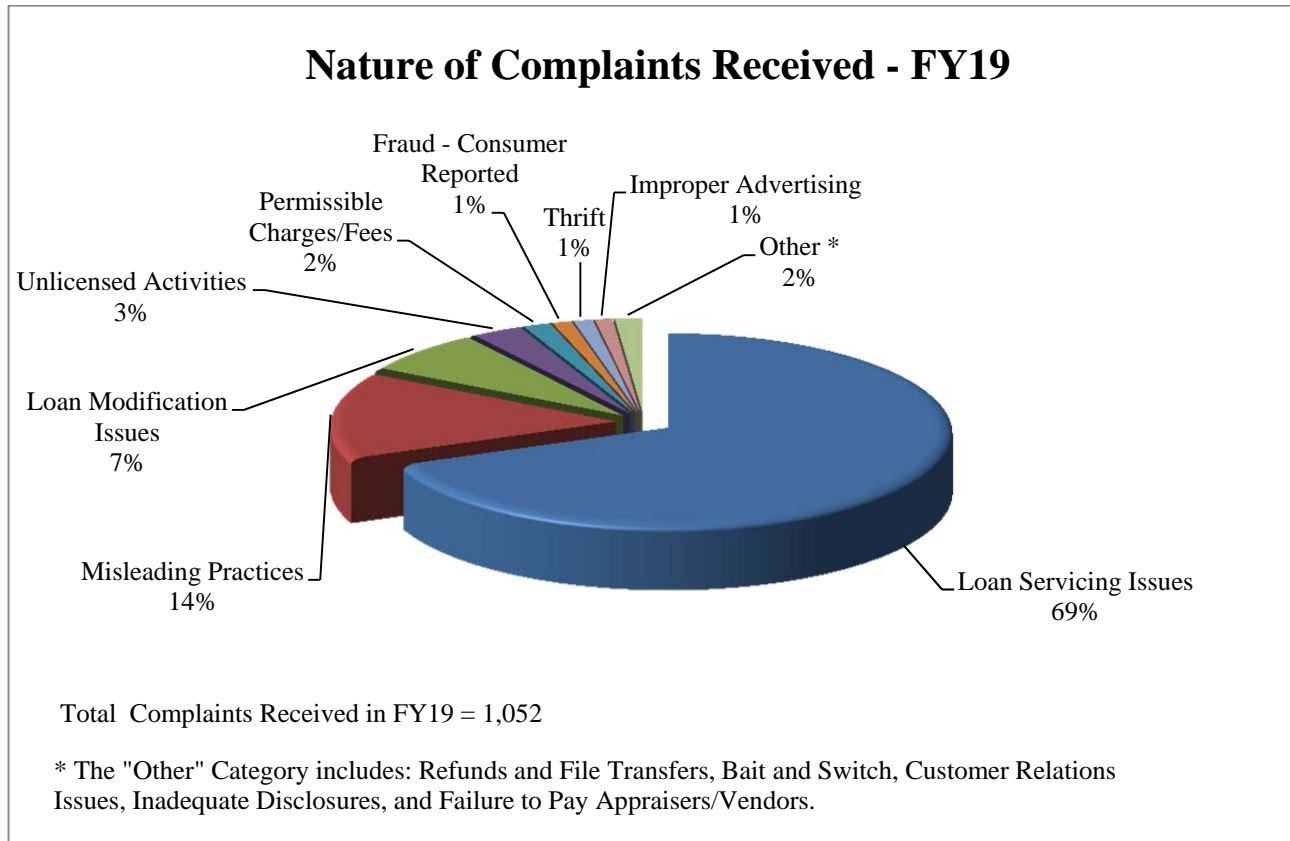
Below is a breakdown of mortgage examination results by compliance rating for FY19. As shown in the chart, the stratification of examination ratings during the past twelve months reflects a slight change when compared to FY17 and FY18.

Mortgage Examination Compliance Ratings											
	# Mortgage Exams	Rated "1"	%	Rated "2"	%	Rated "3"	%	Rated "4"	%	Rated "5"	%
Fiscal Year 2019 9/1/18 - 8/31/19	511	73	14%	243	48%	154	30%	41	8%	0	0%
Fiscal Year 2018 9/1/17 - 8/31/18	431	53	12%	213	49%	120	28%	44	10%	1	1%
Fiscal Year 2017 9/1/16 -8/31/17	476	62	13%	214	45%	156	32%	41	9%	3	1%

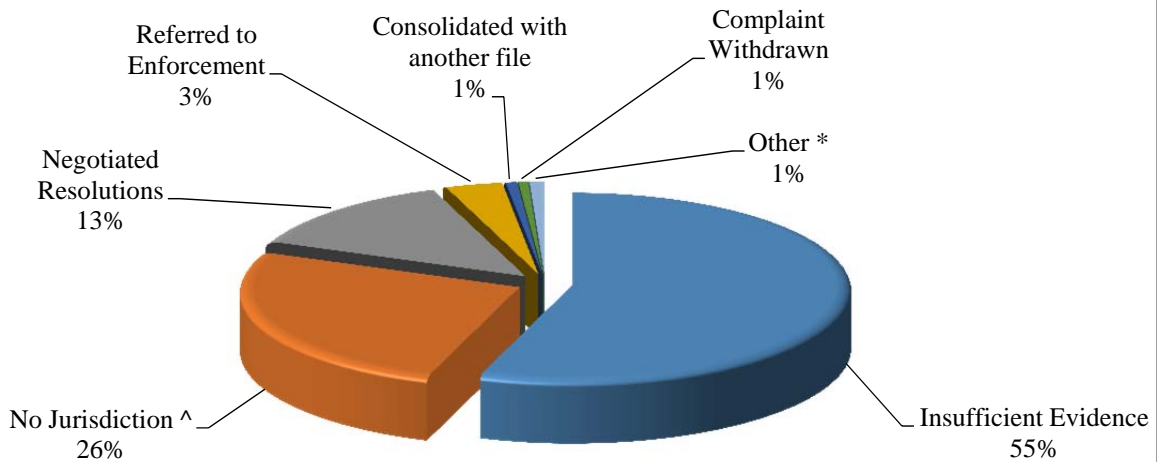
c. Consumer Complaints

During FY19, the Department received a total of 1,052 complaints. This represents a 10% decrease when compared to FY18. Loan servicing complaints represented 69% of the total number of complaints received during FY19. As of August 31, 2019, there were 91 open complaints with 99% of these complaints aged 90 days or less.

The charts below show, for FY19, the nature of complaints received, disposition of complaints, and the average number of days to close complaints.



Disposition of Resolved Complaints - FY19



Total complaints resolved in FY19 = 1,024

^ The "No Jurisdiction" category includes: complaint against exempt entities/individuals (No Jurisdiction-Exempt), complaints regarding issues outside the Department's authority (No Jurisdiction Over Issue), and complaints against entities/individuals with expired licenses (No Jurisdiction-License Expired).

* The "Other" category includes: Information Only, Advisory Letter, Opened in Error, and No Investigation

Average Days to Close Complaints

	1 st Qtr	2 nd Qtr	3 rd Qtr	4 th Qtr
Servicing Complaints				
Average Number of Days to Close a Complaint	20.7	21.3	21.3	18.9
Percentage of Complaints Resolved Within 90 Days	93.4%	92.5%	96.9%	97.6%
Number of Servicing Complaints resolved	152	146	191	208
Non-Servicing Complaints				
Average Number of Days to Close a Complaint	24.2	31.3	38.0	18.6
Percentage of Complaints Resolved Within 90 Days	92.2%	84.0%	81.1%	98.8%
Number of Non-Servicing Complaints resolved	77	75	90	85
FY19 - All Complaints				
Average Number of Days to Close a Complaint	22.93			
Percentage of Complaints Resolved Within 90 Days	93.4%			
Total Complaints resolved	1,024			

Departmental Operations - Mortgage

Commissioner Jones spoke to the TMBA Board of Directors at its August 5, 2019 Board Meeting.

Commissioner Jones spoke at the Texas Mortgage Round on September 5, 2019.

**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	4	17	77.27%				
The Department examines state chartered savings banks jointly with the FDIC and FRBD, based on a priority schedule. Examination cycles range from 12 to 18 months with frequency based on multiple factors, including institution size, CAMELS rating, and length of time in operation. The results for this measure may fluctuate between quarters due to the timing of individual examinations.								
Quarter 4	22	5	22	100.00%	22	23	16	25
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%				
Quarter 4	8,000	2,640	8,922	111.53%				
The number of applications submitted is outside the Department's control; therefore, the number of applications processed is ultimately affected in the same manner.								
2. Number of Licensees Examined								
Quarter 1	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%				
Quarter 4	6,000	1,490	5,890	98.17%	9,924	6,253	5,511	5,823

**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	
3-1-1 Consumer Responsiveness									
1. Number of Consumer Complaints Completed									
Quarter 1	1,000	230	230	23.00%					
Quarter 2	1,000	220	450	45.00%					
Quarter 3	1,000	281	731	73.10%					
Quarter 4	1,000	293	1,024	102.40%	1,134	1,053	1,143	907	

*Varies by 5% or more from target.

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

² The third quarter number has been restated from what was previously reported. The original number reported was 5.

Actual Performance for Outcome/Efficiency Measures

Type/Strategy/Measure	2019 Target	2019 YTD	Percent of Annual Target	Comparable Historical Data for the same quarter ending time period			
				FY2018	FY2017	FY2016	FY2015
Outcome Measures-Key - Annual Reporting							
1-1-1	Thrift Safety and Soundness						
	1. Percent of State Chartered Savings Institutions Receiving Examination within the Required Timeframes						
	100%	100%	100.00%	88%	100%	100%	100%
	2. Percent of Safe and Sound Institutions to Total Savings Institutions						
	90%	95.83%	106.48% *	92%	100%	96%	100%
	The majority of thrift institutions are well rated; therefore the percentage of safe and sound institutions is above projections.						
	3. Percent of Assets in Safe and Sound Savings Institutions						
	90%	96.12%	106.80% *	60%	100%	99%	100%
	Being that the majority of thrift institutions are well rated; the percentage of safe and sound assets is above projections.						
3-1-1	Consumer Responsiveness						
	1. Percent of Complaints Completed within Ten Business Days of Receipt of Complete Information						
	99%	99%	100.00%	99.81%	100%	99%	99%
Explanatory Measures-Key - Annual Reporting							
1-1-1	Thrift Safety and Soundness						
	1. Number of State-Chartered Savings Institutions						
	24	24	100.00%	24	26	28	27
	2. Dollar Amount of Assets under Regulation (in Billions)						
	\$22.20	\$25.90	116.67% *	\$22.70	\$20.63	\$16.40	\$11.80
	Industry growth and mergers into thrift institutions caused the dollar amount of assets under regulation to increase.						

*Varies by 5% or more from target.

**Actual Performance for Non-Key Measures
Fiscal Year 2019
For Period Ending August 2019**

Type/Strategy/Measure	2019 Target	2019 YTD	Percent of Annual Target	Comparable Historical Data for the same quarter ending time period			
				FY2018	FY2017	FY2016	FY2015
Non-Key Measures							
Thrift Safety and Soundness							
01-01 Outcome Measures							
4. Percentage of Applications Receiving Final Action within Statutory Timeframes	100%	100%	100.00%	100%	100%	100%	100%
Output Measures							
2. Number of Detected Instances of Activity in Unauthorized or Prohibited Areas	1	0	0.00%	*	0	0	0
During FY 19, no detections of unauthorized or prohibited areas were detected.							
3. Number of Formal and Informal Regulatory Actions	6	5	83.33%	*	9	4	2
The Department's proactive stance in prior years in dealing with isolated issues is reflected within these numbers which caused the number of formal and informal actions to be lower than target this year.							
4. Number of Applications Processed.	12	12	100.00%		19	9	15
Efficiency Measures							
1. Assets Examined Per Examiner Day (million)	\$8	\$11.60	145.00%	*	\$13.5	\$9.9	\$5.6
Due to increased assets of the industry, the assets examiner per examiner has also increased.							
2. Average Time (Business Days) to Complete Analysis of Quarterly Financial Data	7	3.25	46.43%	*	5.25	1.75	6.7
The average time to review the financial data is lower than the target due to the Department's use of automated technology.							

**Actual Performance for Non-Key Measures
Fiscal Year 2019
For Period Ending August 2019**

Type/Strategy/Measure	2019 Target	2019 YTD	Percent of Annual Target		Comparable Historical Data for the same quarter ending time period			
					FY2018	FY2017	FY2016	FY2015
3. Average Time (Business Days) between Identification of a Problem and Initiation of Regulatory Action	5	41.66	833.20%	*	56	66	48	n/a
Due to circumstances outside of the Department's control, one regulatory action took longer than expected.								
Mortgage Regulation								
02-01	Outcome Measures							
1. Percentage of Licensees Receiving Satisfactory Levels of Compliance Through Examinations	90%	92%	102.22%		89.6%	90%	90%	86%
Efficiency Measures								
1. Average Cost Per Application Processed	\$30.00	\$17.63	58.77%	*	\$21.62	\$17.18	\$15.03	\$25.56
The number of applications received, and thereby processed, directly affects the average cost per application. The more applications received and processed the lower average cost.								
Explanatory Measures								
1. Total Number of Licensees in an Approved Status	38,000	34,686	91.28%	*	35,030	31,551	27,569	24,026
During the fiscal year, nationwide the number of licensee slightly contracted.								
Consumer Responsiveness								
03-01	Efficiency Measures							

**Actual Performance for Non-Key Measures
Fiscal Year 2019
For Period Ending August 2019**

Type/Strategy/Measure	2019 Target	2019 YTD	Percent of Annual Target	
1. Average Cost Per Consumer Complaint Completed	\$300.00	\$445.11	148.37%	*
The number of consumer complaints submitted, and thereby processed, directly affects the average cost per complaint completed. The fewer complaints received and processed the higher average cost.				

Comparable Historical Data for the same quarter ending time period			
FY2018	FY2017	FY2016	FY2015
\$374.97	\$276.64	\$218.47	\$380.24

* Varies by 5% or more under target.

n/a - These measures did not exist at the time.

* - The calculation method has change since this timeframe and is therefore not comparable.

3. Fiscal/Operations Activity:

a. Funding Status/Audits/Financial Reporting

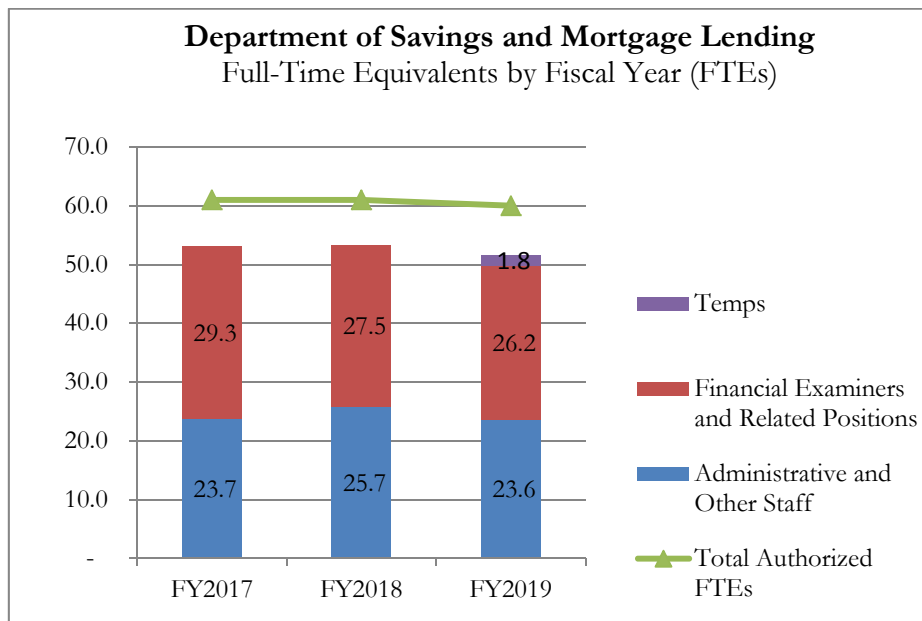
Funding Status/Budget – Staff closed out FY19 and prepared and submitted the Annual Financial Report and all relevant forms and disclosures as required.

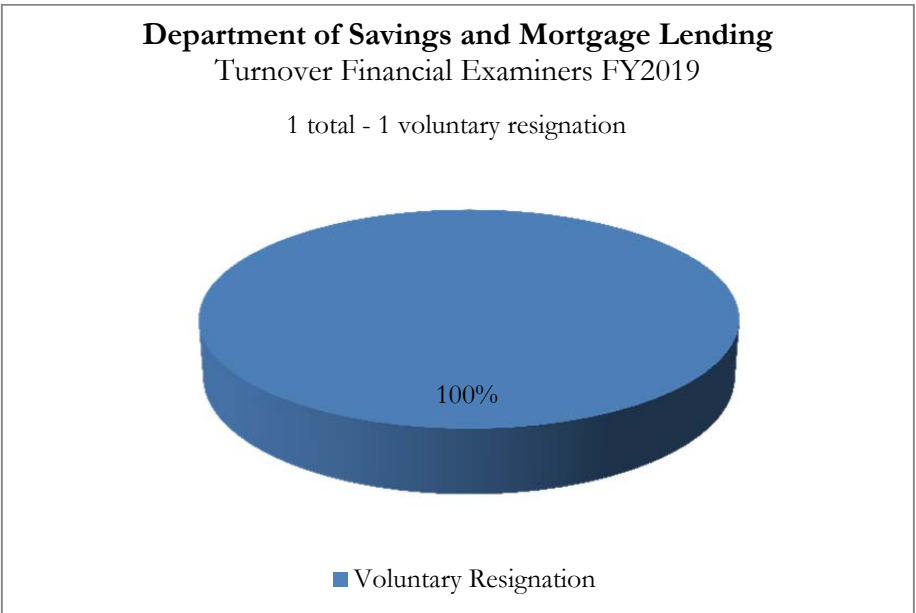
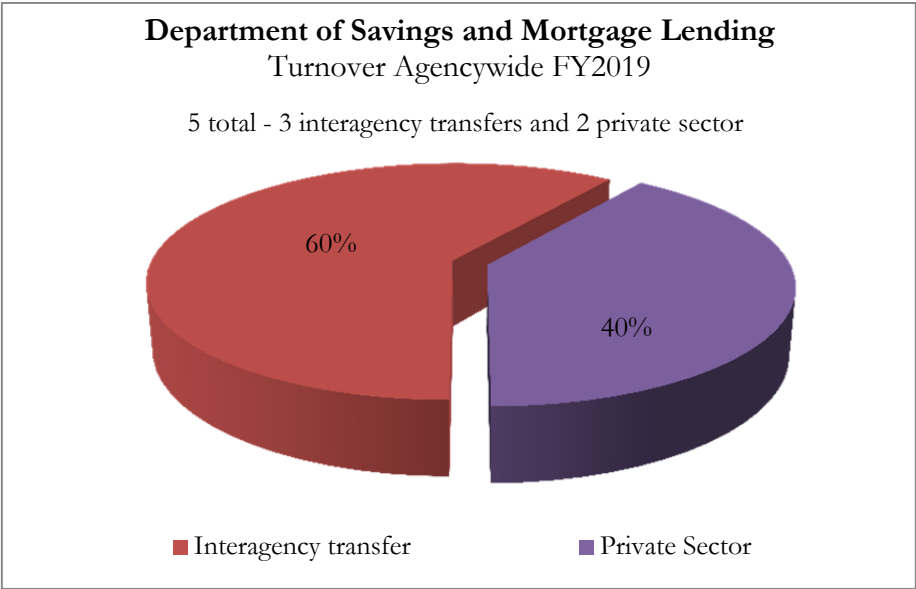
On October 2, 2019, the Department received an implementation chart from Sunset Commission staff to aid the Department in tracking the implementation of Sunset recommendations. Sunset staff advised they will contact the Department in the Fall of 2020 to begin their compliance review. The Department has implemented most of the recommendations that relate to SML and anticipates having all recommendations implemented by the end of second quarter FY20.

Financial Reporting - Staff submitted the Report on State Programs Not Funded by Appropriations to the Comptroller of Public Accounts, pursuant to Government Code §403.0147.

b. Staffing

Staffing Charts as of August 31, 2019.





As of September 30, 2019, the Department was staffed at 52 regular employees – 51 full-time and one part-time with 60 staff available.

During the months of August and September the Department had two separations – one voluntary interagency transfer and one involuntary.

Below is the status of the Department’s vacancies:

Vacancy Status	
Staff Services Specialist I/II	Open – Collecting Applications

The Department’s Employee Handbook was revised to implement changes enacted by the 86th Legislative Session.

Departmental Operations

None

4. Legal Activities:

SOAH Cases:

Case No. 450 19-1864; Department of Savings and Mortgage Lending v. James Joseph Oolut, dba Able Mortgage. In this case the Department was seeking revocation of the Respondent's Residential Mortgage Company and Loan Originator License. The contested hearing was to be held on September 24, 2019. However, on September 17, 2019, the parties entered into an Agreed Order whereby the Respondent (Oolut) agreed effective November 15, 2019, that his company and his individual licenses would be suspended for one (1) year, after which he could seek to apply for a license.

Case No. 450 17-5612; Department of Savings and Mortgage Lending v. Jon Douglas Black; Denial of Renewal Application The Department's denial of Mr. Black's renewal application has been an ongoing matter. On August 2, 2019, an ALJ's Proposal for Decision containing analysis, findings of fact and conclusions of law was issued recommending denying Mr. Black's renewal application. On September 18, 2019, the commissioner signed the Final Order denying licensure.

Gift Reporting:

On August 5 – 8, 2019, the American Association of Residential Mortgage Regulators provided a scholarship for the 2019 AARMR Annual Conference registration fee. The value of the scholarship was \$795.

Litigation:

Case No. 19-31300-HMC In Re: John Hoang Trien, Sr. in the U.S. Bankruptcy Court; Western District of Texas, El Paso Division

John Hoang Trien, Sr. ("Respondent") has never held a license with the Department as a residential mortgage loan originator or loan servicer in Texas. Beginning FY 2013 until present, the Department has received several complaints against John Hoang Trien, Sr. and his company John Trien Realty ("Company"). Such complaints led to the issuance by the Department of five (5) orders to cease and desist and despite this Trien's unlicensed activity regarding loan origination, wrap around loans and loan servicing continued. The Department therefore referred this matter to the Texas Attorney General's Consumer Protection Division. Mr. Trien filed Chapter 11 bankruptcy on August 6, 2019. The Department was represented at the debtor's 341 hearing on September 12, 2019, by the Attorney General's office and will continue to receive legal representation in this proceeding.

Cause No: DC-18-08015; 44th District Court, Dallas County, Texas; RE: State of Texas v. Emmerson Anthony Anderson, Jr.

On June 20, 2018, the State of Texas filed its Original Petition against Defendant Emmerson Anderson, Jr., individually and d/b/a Metroplex Capital Funding for violations of the Deceptive Trade Practices Act, violations of Chapters 156 and 157 of the Texas Finance Code and regulations promulgated thereunder, as well as violations of Chapter 601 of the Texas Business and Commerce Code (the Home Solicitations Act or HSA). Although not a party to the law suit, the Department provided legal support as well as written legal argument for the position that loan modification activity is loan origination activity and that an unlicensed person cannot engage in loan modifications. The Department also provided a live hearing witness. On September 18, 2019, the Department received notice and a copy of the Rule 11 Agreement to Stay Proceedings along with a finalized proposed Agreed Final Judgment and Permanent Injunction, which was to be submitted to

the district court. It is anticipated that the Agreed Final Judgment will be presented and signed by the district court by the end of October, 2019.

Departmental Operations - Mortgage

Associate General Counsel Devyn Wills and Associate General Counsel Iain Berry attended the University of Texas Advanced Administrative Law legal seminar on August 15 – 16, 2019.

General Counsel Ernest Garcia and Associate General Counsel Iain Berry attended the University of Texas Mortgage Lending legal seminar September 12 – 13, 2019.

5. Discussion of and Possible Vote to adopt amendments to 7 Texas Administrative Code (TAC), Chapter 79 Residential Mortgage Loan Servicers, Subchapter B Complaints and Investigations, §79.20, concerning complaints and investigations, and Subchapter C Hearings and Appeals, §79.30, concerning hearings and appeals.

PURPOSE: Amendments to Chapter 79 were proposed in response to 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 amendments 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.

Their publication in the *Texas Register* received no comments.

RECOMMENDED ACTION: The Department recommends that the Commission approve adoption of the proposed amendments, as published in the *Texas Register*.

RECOMMENDED MOTION: I move that we adopt the amendments to 7 TAC §§79.20 and 79.30 as published in the *Texas Register*.

Title 7. Banking and Securities
Part 4. Department of Savings and Mortgage Lending
Chapter 79 Residential Mortgage Loan Servicers
Subchapter B. Complaints and Investigations
Subchapter C. Hearings and Appeals

7 TAC §§ 79.20, 79.30

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 § 79.20, concerning complaints, and an amendment to 7 TAC § 79.30 concerning hearings. The amendments are proposed to provide consistent procedures for persons to complain about conduct of entities regulated by the department. The new rules 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 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 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, 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, and 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.

Other statutes affected by the proposed amendments are found in Finance Code Chapter 158.

§79.20. [~~Complaints and~~] Investigations

(a) Investigations [~~Upon receipt of a signed, written complaint from a person setting forth known, suspected, or asserted facts relating to acts or omissions of a person required to be registered under the~~

~~Act, the Commissioner or the Commissioner's designee will:~~

~~(1) make an initial determination whether the complaint sets forth reasonable cause to warrant an investigation;~~

~~(2) if it has been determined that the complaint warrants an investigation, advise the residential mortgage loan servicer who is the subject of the complaint by written notice to the authorized office specified on that person's registration that a complaint has been filed;~~

~~(3) if it is determined that a complaint does not warrant investigation, so advise the complainant and close the file, advising the complainant of the right to bring forth additional facts or information to have the initiation of an investigation reconsidered;~~

~~(4) if an investigation is to be conducted, advise the party who is the subject of the complaint that an investigation] will be conducted [and conduct such investigation] 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:~~

~~(1) [(A)] review of documentary evidence;~~

~~(2) [(B)] interviews with complainants, registrants, and third parties;~~

~~(3) [(C)] obtaining reports, advice, and other comments and assistance of other state and/or federal regulatory, enforcement, or oversight bodies; and~~

(4) ~~[(D)]~~ [~~such—~~]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.

(5) ~~[(E)]~~If the Department requests reports or other information of registrant and registrant does not respond as required a \$150 penalty may be assessed against the registrant.

(b) A complaint investigation fee may be assessed against a person required to be registered under this Act [~~after—the Department opens a fifth complaint or expends 12 hours of investigative work on an annual basis from September 1st to August 31st].~~ The amount of the complaint investigation fee assessed is limited to costs incurred, will be at the discretion of the Commissioner, and may [~~be set at an amount~~] not [~~to~~] exceed \$ 975 per complaint.

(c) The Commissioner may conduct a Departmental investigation 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 the Act.

§79.30 Hearings and Appeals [and Hearings]

As determined by the Commissioner, the [The] Hearings Officer for the Finance Commission or an Administrative Law Judge at the State Office of Administrative

Hearings (SOAH) may be [is] designated as the hearings officer for hearings under this chapter. All such hearings are to be conducted in accordance with Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings), including, but not limited to motions for rehearing, notices of appeal, and applications for review and shall be a contested case governed by Chapter 2001, Government Code. All such hearings, unless specifically authorized by the Commissioner, shall be conducted in Austin, Travis County, Texas. Such rules, as set forth in Chapter 9 of this title, are incorporated herein by reference for all purposes.

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

6. Discussion of and Possible Vote to adopt amendments to 7 Texas Administrative Code (TAC), Chapter 80 Texas Residential Mortgage Loan Companies, Subchapter D Compliance and Enforcement, §§80.301 and 80.302, concerning complaints, investigations, administrative penalties, disciplinary and/or enforcement actions, hearings, and appeals.

PURPOSE: Amendments to Chapter 80 were proposed in response to 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 amendments 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.

Their publication in the *Texas Register* received no comments.

RECOMMENDED ACTION: The Department recommends that the Commission approve adoption of the proposed amendments, as published in the *Texas Register*.

RECOMMENDED MOTION: I move that we adopt the amendments to 7 TAC §§80.301 and 80.302 as published in the *Texas Register*.

Title 7. Banking and Securities
Part 4. Department of Savings and Mortgage Lending
Chapter 80 Texas Residential Mortgage Loan Companies
Subchapter D. Compliance and Enforcement

7 TAC §§ 80.301, 80.302

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), proposes amendments to § 80.301 concerning complaints and investigations, and to 7 TAC § 80.302 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 changes and additions 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 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 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, 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, and 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.

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

§ 80.301. [~~Complaints,~~Investigations, Administrative Penalties, and Disciplinary and/or Enforcement Actions

(a) Investigations [~~Upon receipt of a written complaint alleging acts or omissions of a person, as defined in Finance Code, § 180.002(14), required to be licensed under Finance Code, Chapter 156, 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 circumstance then known. Such investigation may include any or all of the following:~~

~~(1) [(A)] review of documentary evidence;~~

~~(2) [(B)] interviews with complainants, licensees, and third parties;~~

~~(3) [(C)] obtaining reports, advice, and other comments and assistance of other state and/or federal regulatory, enforcement, or oversight bodies; and~~

~~(4) [(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, 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 156 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 156.

(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 156.

(e) A complaint which names a company or sponsored originator as the subject of the complaint is also a complaint against the qualifying individual at the time of any alleged violation. The qualifying individual of a company is responsible for all acts and conduct performed by or through the company and is required to fulfill his or her professional responsibility to the Commissioner and members of the public.

(f) If the Commissioner determines that a person has violated the requirements of Finance Code, Chapter 156, this chapter, or any order pursuant to Finance Code, Chapter 156 or this chapter, the Commissioner, after

notice and opportunity for hearing, may impose an administrative penalty on that person. Such penalties shall not exceed \$ 25,000 per violation. The amount of the violation is at the Commissioner's discretion. In determining the amount of any administrative penalty(ies) for any violation(s) of Finance Code, Chapter 156 or this chapter, the Commissioner shall consider such factors as required by Finance Code, § 156.302.

(g) If the Commissioner has reasonable cause to believe that a licensee has violated or is about to violate Finance Code, Chapter 156, this chapter, or an order issued pursuant to this chapter, the Commissioner may, without notice and hearing, issue an order to cease and desist a particular action or an order to take affirmative action, or both, to enforce compliance with Finance Code, Chapter 156 and this chapter. Any such order must contain a reasonably detailed statement of the facts on which the order is made. If a person against whom an order is made requests a hearing, the Commissioner shall set and give notice of a hearing to be held in accordance with this chapter and Government Code, Chapter 2001. Based on the findings of fact and conclusions of law, the Commissioner may find by order that a violation has or has not occurred.

(h) The Commissioner may, after giving notice and an opportunity for hearing, impose against any person who violates a cease and desist order, an administrative penalty in an amount not to exceed \$ 1,000 for each day on which the violation is continuing. In addition to any other remedy provided for by law, the Commissioner may

institute in District Court for Travis County an action for injunctive relief and/or to collect the administrative penalty. A bond is not required of the Commissioner with respect to any request for injunctive relief under this subsection.

(i) The Commissioner may order disciplinary action after notice and opportunity for hearing against a company or an originator if the Commissioner becomes aware during the term of the license of any fact that would have been grounds for denial of an original license if the fact had been known by the Commissioner on the date the license was issued.

§80.302. 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 by the commissioner 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

7. Discussion of and Possible Vote to Take Action on the Adoption of new 7 Texas Administrative Code (TAC) §81.110, concerning licensing Military Service Members, Military Veterans, and Military Spouses.

PURPOSE: New 7 TAC §81.110 was 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.

Occupations Code Chapter 55 contains sections regarding penalty exemptions, extensions of deadlines, alternative licensing arrangements, out of state licenses, expedited procedures, eligibility requirements, fees, and notice provisions.

The publication in the *Texas Register* received no comments.

RECOMMENDED ACTION: The Department recommends that the Commission approve adoption of the proposed new rules, as published in the *Texas Register*.

RECOMMENDED MOTION: I move that we adopt the new 7 TAC §81.110, as published in the *Texas Register*.

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) adopts the new 7 TAC § 81.110, concerning licensing military service members, military veterans, and military spouses.

The Finance Commission adopts the new 7 TAC § 81.110 without changes to the proposed text as published in the August 30, 2019 issue of the Texas Register (44 Tex. Reg. 4608-4609). The rules will not be republished.

The Department received no comments on the proposal.

The rules are adopted 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.

Occupations Code Chapter 55 contains sections regarding penalty exemptions, extensions of deadlines, alternative licensing arrangements, out of state licenses, expedited procedures, eligibility requirements, fees, and notice provisions.

The Department distributed a draft of the proposed rules to the Office of the Governor, who had no comments.

The rules are adopted 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 rules are found in Finance Code Chapter 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.

(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.

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

8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of additions to 7 Texas Administrative Code (TAC), Chapter 52 Department Administration; new Subchapter B Hearings and Appeals, §52.20, concerning appeals, hearings, and informal settlement conferences; and new Subchapter C Advisory Committees, §52.30, concerning advisory committees and informal conferences.

PURPOSE: New Subchapter B to Chapter 52 is proposed in response to a recommendation of the Sunset Advisory Commission that the department update its complaint resolution 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 resolution, 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 resolving complaints and other matters through appeals, hearings, and other means such as informal settlement conferences.

New Subchapter C to Chapter 52 is proposed to formalize in rule the use of advisory committees and informal conferences by the department, including creating an automatic abolition date for such committees.

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

RECOMMENDED MOTION: I move that we publish the proposed rulemaking for 7 TAC §§52.20 and 52.30 in the *Texas Register* for comment.

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

**Chapter 52. Department Administration
Subchapter B. Hearings and Appeals,
Subchapter C. Advisory Committees
7 TAC §§ 52.20, 52.30**

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), proposes new 7 Tex. Admin. Code Subchapter B, Hearings and Appeals, and Subchapter C, Advisory Committees, and new sections 52.20, 52.30, concerning appeals, hearings, informal settlement conferences, and advisory committees and informal conferences, respectively. The new rules are proposed to provide consistent procedures for resolving complaints concerning entities and individuals regulated by the department, as well as to formalize in rule the use of advisory committees and informal conferences by the department, including creating an automatic abolition date for such committees. The new rules are proposed in response to recommendations of the Sunset Advisory Commission that the department update its complaint resolution 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 new rules 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 and respondents will have a better understanding of the appeal and resolution process.

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 resolution to conform to recommendations from the Sunset Advisory Commission, and regulations to formalize in rule the use of advisory committees and informal conferences by the department, including creating an automatic abolition date for such committees.

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 within 30 days of publication in the *Texas Register*.

The new rules 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 § 13.011, which provides that the savings and mortgage lending commissioner shall prepare information concerning the department's regulatory functions and consumer complaint resolution procedures,

Finance Code § 13.018, which provides that the commissioner may appoint advisory committees to assist the department and commissioner in performing their duties, 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.

Other statutes affected by the proposed new rules are found in Finance Code Title 3, Subtitles B and C, and also Finance Code Chapters 13, 156, 157, 158, and 180.

7 TAC Subchapter B. Hearings and Appeals

§52.20. Appeals, Hearings, and Informal Settlement Conferences.

(a) Alternative resolution of appeal. If enforcement staff determines resolution to an appeal without a hearing is appropriate and possible, enforcement staff may pursue

settlement through negotiation, agreed order, consent order, informal settlement conference, or other appropriate means.

(b) Informal settlement conference. Informal settlement conferences:

(1) are conducted at the discretion of enforcement staff;

(2) may not be used as a delay tactic;

(3) may be primarily conducted over the phone and by email; and

(4) a request for an informal settlement conference does not create any new or additional rights or obligations.

(c) Mediation. As applicable under 1 Texas Administrative Code §155.351, 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 complaints or other matters.

(d) Hearing. Hearings may be conducted in accordance with Chapter 9 of this title, with Texas Government Code, Chapter 2001, and may be conducted by the State Office of Administrative Hearings (SOAH).

Subchapter C. Advisory Committees

§52.30. Advisory Committees and Informal Conferences.

(a) Advisory committees. The mortgage industry advisory committee referenced in Texas Finance Code, §§ 157.0024 and 156.104, as well as any advisory committees

which may be created under Texas Finance Code, §13.018 shall continue in existence and unless continued further shall be automatically abolished on September 1, 2031.

(b) Informal conferences. Without limiting any mortgage industry advisory committee's ability to advise and assist the commissioner, the commissioner may use committees, informal conferences, and consultations to obtain the opinions and advice of interested persons regarding contemplated rulemaking in accordance with Texas Government Code, §2001.031 or to otherwise advise the department. The power of any committee members appointed by the commissioner is advisory only. Any committees created, unless continued, shall be abolished

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 Texas Administrative Code (TAC), Chapter 80 Texas Residential Mortgage Loan Companies, Subchapter C Duties and Responsibilities, §80.201(a) and (b), concerning Loan Status Forms.

PURPOSE: Amendments to Chapter 80, Subchapter C Duties and Responsibilities, §80.201(a) and (b) addressing mortgage loan companies to: (1) make the content of the loan qualification forms or letters used by mortgage loan companies, mortgage bankers and residential mortgage loan originators more uniform; (2) help emphasize to the mortgage applicants that the pre-qualification form is not a loan approval or commitment to lend; (3) make the content of the conditional loan approval forms or letters used by mortgage loan companies, mortgage bankers and residential mortgage loan originators more uniform; and (4) help emphasize to the mortgage applicant that the conditional loan approval form states that the applicant is in fact approved for a mortgage loan, provided that certain conditions are met prior to loan closing.

RECOMMENDED ACTION: The Department recommends that the Commission approve amendments to 7 TAC, Chapter 80, §80.201(a) and (b) with changes to what was published in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve the amendments to 7 TAC Chapter 80, §80.201(a) and (b).

***Title 7. Banking and Securities
Part 4. Department of Savings and
Mortgage Lending
Chapter 80. Residential Mortgage Loan
Companies
Subchapter C. Duties and Responsibilities
7 TAC §80.201***

The Finance Commission of Texas (the commission) adopts amendments to 7 Texas Administrative Code Chapter 80, Subchapter C, §80.201 concerning loan status forms.

The Finance Commission adopts §80.201 with changes to the proposed text as published in the April 26, 2019 issue of the Texas Register (44 Tex. Reg. 2131). The rules will not be republished.

The commission received numerous comments on the proposed amendments in May of 2019. In addition, a stakeholders meeting was held on September 9, 2019, at which time additional comments were received.

The adoption regarding 7 Tex. Admin. Code § 80.201 is to clarify the usage of conditional pre-qualification and conditional loan approval forms, when such forms are provided by mortgage loan companies to mortgage applicants or prospective mortgage applicants. Adopted Graphic Form A the conditional pre-qualification letter content and Form B the conditional loan approval letter content: (1) make the content of the conditional pre-qualification forms or letters used by mortgage loan companies, mortgage bankers and residential mortgage loan originators more uniform; (2) help emphasize to the mortgage applicants that the pre-qualification form is not a loan approval or commitment to lend; (3) make the content of the conditional loan

approval forms or letters used by mortgage loan companies, mortgage bankers and residential mortgage loan originators more uniform; and (4) help emphasize to the mortgage applicant that the conditional loan approval form states that the applicant is in fact approved for a mortgage loan, provided that certain conditions are met prior to loan closing.

Public comment received from various individuals, business entities and the Texas Mortgage Bankers Association stated that the effective date of any rule / form amendment should not be effective for 90 to 150 days to allow for systems to be updated with any amended forms. The commission agrees with these comments and therefore the adopted rule amendments will not take effect until May 1, 2020.

Mr. John Fleming on behalf of the Texas Mortgage Bankers Association commented that the proposed language in subparagraph (a) and (b) referencing that there was no requirement for the forms to be issued could lead to confusion regarding voluntary usage of the forms and he suggested alternate language. The commission believes that language in such paragraphs as existing and adopted convey that issuance of the forms is not mandatory, but rather when written confirmation is provided the substance in the loan status forms should be conveyed to an applicant or prospective applicant.

Stacy G. London commented that Forms A and B, should include the contact information of the originator. The commission agrees with such comment and therefore Forms A and B, shall require an originator to provide their mailing address, email address and a phone number as well as their NMLS number.

Comments received from the Texas Realtors association recommended that any rule amendment state that conditional loan approvals should not be issued absent verification by the company or originator. The commission agrees with this comment and therefore the adopted rule amendment will state this explicitly in subparagraph (b).

Comments received from various individuals, business entities (including Encompass Lending Group) and the Association of Texas Mortgage Professionals, (through both Mr. Everett Ives and Daniel Jara) stated that any amendments should recognize that verifications are often accomplished through automated or electronic means. The commission agrees with these comments and therefore the adopted rule amendments will state explicitly in subparagraph (b) that verifications may be conducted manually or by electronic means.

Comments received from the firm of Pepper Hamilton suggested that the title of Form A should be Conditional Approval or Pre-Approval and that the title to Form B should be changed to Loan Commitment. The commission agrees that it would be helpful to modify the title of Form A for further clarification and as adopted Form A shall be entitled Conditional Pre-Qualification Letter. As to changing the title of Form B to Loan Commitment, the commission believes that such a title would convey more than is intended to a prospective applicant or applicant and therefore as adopted the title to Form B shall remain Conditional Approval Letter.

Mr. Everett Ives on behalf of the Association of Texas Mortgage Professionals as to Form B commented that the word “encumbrances” in paragraph 2

should be changed to the broader “conditions or exceptions”. Similarly, Stacy G. London commented that the language used could be broader, such as a “title commitment acceptable to lender”. The commission agrees with such comments and therefore the adopted from B deletes the word encumbrances and instead the sentence will read that “[t]he lender receives an acceptable title commitment”.

Mr. Everett Ives on behalf of the Association of Texas Mortgage Professionals as to Form B commented that paragraph 3 could also make reference to ingress, setbacks, easements and shortages in area or deletions on Schedule B of a title commitment. Similarly, Stacy G. London commented that such paragraph should simply read that the “title commitment is acceptable to lender and title company”. The commission agrees that boarder language is preferable and therefor such paragraph shall read “[t]he lender receives an acceptable survey”.

Mr. Everett Ives on behalf of the Association of Texas Mortgage Professionals as well as Wayne King and Paul Marsh of Encompass Lending Group commented that the forms when referring to “loan” documents that the lender may require should be changed to refer to “all” documents that the lender may require as many documents that require signature, such as disclosures, are not strictly “loan” documents. The commission agrees with this comment and therefore the adopted forms in paragraph 6 will refer to all documents a lender may require.

Several comments received stated that depositories were not required to use loan status forms and placed non depositories at somewhat of a disadvantage as non

depositories were required to use loan status forms. However, Tex. Fin. Code §§156.105 and 157.02012 require the Finance Commission to adopt loan status forms applicable to non depositories and there is no jurisdiction to require depositories to use similar forms.

The proposed amendments as published considered adding language that a Form B loan approval form would not be issued until all “credit requirements” had been met. Mr. Everett Ives on behalf of the Texas Mortgage Professionals objected to such phrase as being too broad and thus limiting the possible usage of Form B. John Fleming on behalf of the Texas Mortgage Bankers Association commented that use of such phrase would require further clarification. The commission agrees with such comments and the phrase “credit requirements” will be omitted in reference to Form B, in this adopted version.

The proposed amendments as published contemplated the addition of a subparagraph to state that an individual was required to be licensed to issue a loan status form, but it was thereafter decided that such statement was not required in this rule. In addition, the firm of Pepper Hamilton, LLP objected to the inclusion of such language.

The adoption is made under the authority of Texas Finance Code §§11.306 and 156.102.

The statutory provisions affected by the adoptions are contained in Texas Finance Code, Chapter 156.

7 TAC §80.201

§80.201 Loan Status Forms

(a) Except as otherwise provided by subsection (c) of this section, when provided to a mortgage applicant or prospective mortgage applicant [~~or mortgage applicant~~], written confirmation of conditional pre-qualification shall include the information in Form A, Figure: 7 TAC §80.201(a). This information can be provided by utilizing Form A or an alternate form that includes all of the information found on Form A. There is no requirement to issue a written confirmation of conditional pre-qualification. Form A or an alternate form [~~Either form~~] may be modified by adding any of the following as needed:

Figure 7 TAC §80.201(a)

- (1) Any additional aspects of the loan as long as not misleading;
- (2) Any additional items that the originator has reviewed in determining conditional qualifications; or
- (3) Any additional terms, conditions, and requirements.

(b) When provided to a mortgage applicant or prospective mortgage applicant, written notification of conditional loan approval [~~application~~] approval on the basis of credit worthiness, but not on the basis of collateral, shall include the information in Form B, Figure: 7 TAC § 80.201(b). This information can be provided by utilizing Form B or an alternate form that includes all of the information found on Form B. There is no requirement to issue a written notification of conditional loan approval. Form B or an alternate [~~Either~~] form may be modified by adding the additional information permitted by subsection (a)(1) - (3) of this section, or disclosure of fees charged. A disclosure of fees charged, on Form B or an alternate form, does not serve as a substitute for any fee disclosure required by state or federal laws or regulations. A conditional loan approval should not be issued unless the company or originator has verified that, absent any material changes prior to closing, the mortgage applicant or prospective

mortgage applicant has satisfied all loan requirements related to credit, income, assets, and debts. Verification may be conducted manually or by electronic means.

Figure 7 TAC §80.201(b)

(c) Subsection (a) of this section does not apply to "firm offers of credit," as that term is defined in 15 U.S.C. § 1681a (l).

Certification

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

Issued in Austin, Texas, on October 18, 2019.

Ernest C. Garcia
General Counsel
Department of Savings and Mortgage
Lending

Form A

Conditional Pre-Qualification Letter

This is not a loan approval or commitment to lend

Date:

~~[Residential Mortgage Loan Originator:]~~

~~[License Number: _____]~~

Prospective Applicant(s)/ Applicant(s):

[Address: _____]

[Phone #: _____]

Mortgage Company:

NMLS ID #:

Loan Details [~~(describe as follows)~~]:

Loan Amount:

Qualifying Interest Rate:

Term:

Maximum Loan-to-Value Ratio:

Loan Type and Description:

~~[Residential mortgage loan originator _____ has _____ has not received a signed application for the Loan from the prospective applicant]~~

Mortgage company [~~Residential mortgage loan originator~~] _____ has _____ has not reviewed the prospective applicant's / applicant's credit report and credit score

~~[Residential mortgage loan originator _____ has _____ has not reviewed the prospective applicant's credit score]~~

~~[Residential mortgage loan originator has reviewed the following additional items (list):]~~

The prospective applicant(s) / applicant(s) has provided the mortgage company [~~residential mortgage loan originator _____ verbally _____ in writing~~] with the following information [~~about the prospective applicant~~]:

Income ____ Yes ____ No ____ Not applicable

Available cash to close [~~for down payment and payment of closing costs~~] ____ Yes ____ No ____ Not applicable

Debts ____ Yes ____ No ____ Not applicable

Assets ____ Yes ____ No ____ Not applicable

Figure: 7 TAC §80.201(a)

Based on the information that the prospective applicant(s) / applicant(s) has provided, the mortgage company ~~to the residential mortgage loan originator as described above, the residential mortgage loan originator~~ has determined that the prospective applicant(s) / applicant(s) is eligible and qualified to meet the financial requirements of the loan.

This is not a loan approval or a commitment to lend on the terms described in the Loan Details section ~~[an approval for the Loan].~~

Approval of the loan ~~[Loan]~~ requires:

1. Receipt of a complete loan application and all supporting documents requested ~~[(1) the residential mortgage loan originator to verify the information that the prospective applicant has provided;]~~
2. Lender verification of the information that the prospective applicant(s) / applicant(s) has provided ~~[(2) the prospective applicant's financial status and credit report to remain substantially the same until the loan closes;]~~
3. The prospective applicant's / applicant's financial status and credit report to remain substantially the same until the loan closes ~~[(3) the collateral for the loan (the subject property) to satisfy the lender's requirements (for example, appraisal, title, survey, condition, and insurance;]~~
4. The collateral for the loan to satisfy the lender's requirements ~~[(4) the loan, as described, to remain available in the market;]~~
5. The loan, as described, to remain available in the market ~~[(5) the prospective applicant to execute loan documents the lender requires; and]~~
6. The prospective applicant(s) / applicant(s) to execute all documents the lender requires ~~[(6) the following additional items (list);]~~
7. The following additional items (list):

This conditional pre-qualification expires on: _____

Residential Mortgage Loan Originator Name

Mailing address

Phone number

e-mail address

NMLS ID #

Form B

Conditional Approval Letter

Date:

~~[Residential Mortgage Loan Originator:]~~

~~[License Number: _____]~~

Prospective Applicant(s) / Applicant(s):

Mortgage Company:

NMLS ID #:

~~[Address: _____]~~

~~[Phone #: _____]~~

Loan Details ~~[(describe as follows)]:~~

Loan Amount:

Interest Rate*:

Term:

Interest Rate Lock Expires (if applicable):

Maximum Loan-to-Value Ratio:

Loan Type and Program:

*Interest rate is subject to change unless it has been locked

~~[Secondary financing terms (if applicable):—~~

~~Optional Information: Points: Origination: _____ Discount: _____~~

~~Commitment: _____ Other (describe): _____]~~

Has a subject property been identified? ~~[Subject Property:]~~ ____ Yes ____ No

~~[Residential mortgage loan originator has received a signed application from the applicant.]~~

Mortgage company ~~[Residential mortgage loan originator]~~ has:

Reviewed prospective applicant's / applicant's credit report and credit score ____ Yes ____ Not applicable

Verified prospective applicant's / applicant's income ____ Yes ____ Not applicable

Verified prospective applicant's / applicant's available cash to close ~~[for down payment and closing costs]~~
____ Yes ____ Not applicable

Verified ~~[Reviewed]~~ prospective applicant's / applicant's debts and other assets ____ Yes ____ Not applicable

Figure: 7 TAC §80.201(b)

Prospective applicant(s) / applicant(s) [Applicant] is **approved** [approved] for the loan provided that [the applicant's] creditworthiness and financial position do not materially change prior to closing and **provided that** [provided that]:

1. The subject property is appraised for an amount not less than \$_____ [;]
2. The lender receives an acceptable [~~does not object to encumbrances to title shown in the~~] title commitment [or survey;]
3. The lender receives an acceptable survey[;]
4. [~~3.~~] The subject property's condition meets lender's requirements[;]
5. [~~4.~~] The subject property is insured in accordance with lender's requirements[;]
6. [~~5.~~] The prospective applicant(s)/ applicant(s) executes all the [~~loan~~] documents lender requires[;] and
7. [6] The following additional conditions are complied with (list):

This conditional approval expires on _____.

Residential Mortgage Loan Originator Name

Mailing address

Phone number

e-mail address

NMLS ID #

10. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 Texas Administrative Code (TAC), Chapter 81 Mortgage Bankers and Residential Mortgage Loan Originators, Subchapter C Duties and Responsibilities, §81.201(a) and (b), concerning Loan Status Forms.

PURPOSE: Amendments to Chapter 81, Subchapter C Duties and Responsibilities, §81.201(a) and (b) addressing mortgage bankers and residential mortgage loan originators, to: (1) make the content of the loan qualification forms or letters used by mortgage loan companies, mortgage bankers and residential mortgage loan originators more uniform; (2) help emphasize to the mortgage applicants that the pre-qualification form is not a loan approval or commitment to lend; (3) make the content of the conditional loan approval forms or letters used by mortgage loan companies, mortgage bankers and residential mortgage loan originators more uniform; and (4) help emphasize to the mortgage applicant that the conditional loan approval form states that the applicant is in fact approved for a mortgage loan, provided that certain conditions are met prior to loan closing.

RECOMMENDED ACTION: The Department recommends that the Commission approve amendments to 7 TAC, Chapter 81, §81.201(a) and (b) with changes to what was published in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve the amendments to 7 TAC Chapter 81, §81.201(a) and (b).

***Title 7. Banking and Securities
Part 4. Department of Savings and
Mortgage Lending
Chapter 81. Mortgage Bankers and
Residential Mortgage Loan Originators
Subchapter C. Duties and Responsibilities
7 TAC §81.201***

The Finance Commission of Texas (the commission) adopts amendments to 7 Texas Administrative Code Chapter 81, Subchapter C, §81.201 concerning loan status forms.

The Finance Commission adopts §81.201 with changes to the proposed text as published in the April 26, 2019 issue of the Texas Register 44 Tex. Reg. 2132. The rules will not be republished.

The commission received numerous comments on the proposed amendments in May of 2019. In addition, a stakeholders meeting was held on September 9, 2019, at which time additional comments were received.

The adoption regarding 7 Tex. Admin. Code § 81.201 is to clarify the usage of conditional pre-qualification and conditional loan approval forms, when such forms are provided by mortgage bankers and residential mortgage loan originators to mortgage applicants or prospective mortgage applicants. Adopted Graphic Form A the conditional pre-qualification letter content and Form B the conditional loan approval letter content: (1) make the content of the conditional pre-qualification forms or letters used by mortgage loan companies, mortgage bankers and residential mortgage loan originators more uniform; (2) help emphasize to the mortgage applicants that the pre-qualification form is not a loan approval or commitment to lend;

(3) make the content of the conditional loan approval forms or letters used by mortgage loan companies, mortgage bankers and residential mortgage loan originators more uniform; and (4) help emphasize to the mortgage applicant that the conditional loan approval form states that the applicant is in fact approved for a mortgage loan, provided that certain conditions are met prior to loan closing.

Public comment received from various individuals, business entities and the Texas Mortgage Bankers Association stated that the effective date of any rule / form amendment should not be effective for 90 to 150 days to allow for systems to be updated with any amended forms. The commission agrees with these comments and therefore the adopted rule amendments will not take effect until May 1, 2020.

Mr. John Fleming on behalf of the Texas Mortgage Bankers Association commented that the proposed language in subparagraph (a) and (b) referencing that there was no requirement for the forms to be issued could lead to confusion regarding voluntary usage of the forms and he suggested alternate language. The commission believes that language in such paragraphs as existing and adopted convey that issuance of the forms is not mandatory, but rather when written confirmation is provided the substance in the loan status forms should be conveyed to an applicant or prospective applicant.

Stacy G. London commented that Forms A and B, should include the contact information of the originator. The commission agrees with such comment and therefore Forms A and B, shall require an originator to provide their mailing address, email address and a phone number as well as

their NMLS number.

Comments received from the Texas Realtors association recommended that any rule amendment state that conditional loan approvals should not be issued absent verification by the company or originator. The commission agrees with this comment and therefore the adopted rule amendment will state this explicitly in subparagraph (b).

Comments received from various individuals, business entities (including Encompass Lending Group) and the Association of Texas Mortgage Professionals, (through both Mr. Everett Ives and Daniel Jara) stated that any amendments should recognize that verifications are often accomplished through automated or electronic means. The commission agrees with these comments and therefore the adopted rule amendments will state explicitly in subparagraph (b) that verifications may be conducted manually or by electronic means.

Comments received from the firm of Pepper Hamilton suggested that the title of Form A should be Conditional Approval or Pre-Approval and that the title to Form B should be changed to Loan Commitment. The commission agrees that it would be helpful to modify the title of Form A for further clarification and as adopted Form A shall be entitled Conditional Pre-Qualification Letter. As to changing the title of Form B to Loan Commitment, the commission believes that such a title would convey more than is intended to a prospective applicant or applicant and therefore as adopted the title to Form B shall remain Conditional Approval Letter.

Mr. Everett Ives on behalf of the Association of Texas Mortgage

Professionals as to Form B commented that the word “encumbrances” in paragraph 2 should be changed to the broader “conditions or exceptions”. Similarly, Stacy G. London commented that the language used could be broader, such as a “title commitment acceptable to lender”. The commission agrees with such comments and therefore the adopted form B deletes the word encumbrances and instead the sentence will read that “[t]he lender receives an acceptable title commitment”.

Mr. Everett Ives on behalf of the Association of Texas Mortgage Professionals as to Form B commented that paragraph 3 could also make reference to ingress, setbacks, easements and shortages in area or deletions on Schedule B of a title commitment. Similarly, Stacy G. London commented that such paragraph should simply read that the “title commitment is acceptable to lender and title company”. The commission agrees that boarder language is preferable and therefor such paragraph shall read “[t]he lender receives an acceptable survey”.

Mr. Everett Ives on behalf of the Association of Texas Mortgage Professionals as well as Wayne King and Paul Marsh of Encompass Lending Group commented that the forms when referring to “loan” documents that the lender may require should be changed to refer to “all” documents that the lender may require as many documents that require signature, such as disclosures, are not strictly “loan” documents. The commission agrees with this comment and therefore the adopted forms in paragraph 6 will refer to all documents a lender may require.

Several comments received stated that depositories were not required to use loan

status forms and placed non depositories at somewhat of a disadvantage as non depositories were required to use loan status forms. However, Tex. Fin. Code §§156.105 and 157.02012 require the Finance Commission to adopt loan status forms applicable to non depositories and there is no jurisdiction to require depositories to use similar forms.

The proposed amendments as published considered adding language that a Form B loan approval form would not be issued until all “credit requirements” had been met. Mr. Everett Ives on behalf of the Texas Mortgage Professionals objected to such phrase as being too broad and thus limiting the possible usage of Form B. John Fleming on behalf of the Texas Mortgage Bankers Association commented that use of such phrase would require further clarification. The commission agrees with such comments and the phrase “credit requirements” will be omitted in reference to Form B, in this adopted version.

The proposed amendments as published contemplated the addition of a subparagraph to state that an individual was required to be licensed to issue a loan status form, but it was thereafter decided that such statement was not required in this rule and it has therefor been omitted from this adopted version. . In addition, the firm of Pepper Hamilton, LLP objected to the inclusion of such language.

The adoption is made under the authority of Texas Finance Code §§11.306 and 157.0023.

The statutory provisions affected by the adoptions are contained in Texas Finance Code, Chapter 157.

7 TAC §81.201

§81.201 Loan Status Forms

(a) Except as otherwise provided by subsection (c) of this section, when provided to a mortgage applicant or prospective mortgage applicant [~~or mortgage applicant~~], written confirmation of conditional pre-qualification shall include the information in Form A, Figure: 7 TAC §81.201(a). This information can be provided by utilizing Form A or an alternate form that includes all of the information found on Form A. There is no requirement to issue a written confirmation of conditional pre-qualification. Form A or an alternate form [~~Either form~~] may be modified by adding any of the following as needed:

Figure: 7 TAC §81.201(a)

- (1) Any additional aspects of the loan as long as not misleading;
- (2) Any additional items that the originator has reviewed in determining conditional qualifications; or
- (3) Any additional terms, conditions, and requirements.

(b) When provided to a mortgage applicant or prospective mortgage applicant, written notification of conditional loan [~~application~~] approval on the basis of credit worthiness, but not on the basis of collateral, shall include the information in Form B, Figure 7: TAC §81.201(b). This information can be provided by utilizing Form B or an alternate form that includes all of the information found on Form B. There is no requirement to issue a written notification of conditional loan approval. Form B or an alternate

~~Either~~ form may be modified by adding the additional information permitted by subsection (a)(1) - (3) of this section, or disclosure of fees charged. A disclosure of fees charged, on Form B or an alternate form, does not serve as a substitute for any fee disclosure required by state or federal laws or regulations. A conditional loan approval should not be issued unless the company or originator has verified that, absent any material changes prior to closing, the mortgage applicant or prospective mortgage applicant has satisfied all loan requirements related to credit, income, assets, and debts. Verification may be conducted manually or by electronic means.

Figure: 7 TAC §81.201(b)

(c) Subsection (a) of this section does not apply to "firm offers of credit," as that term is defined in 15 U.S.C. §1681a(1).

Certification

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

Issued in Austin, Texas, on October 18, 2019.

Ernest C. Garcia
General Counsel
Department of Savings and Mortgage
Lending

Form A

Conditional Pre-Qualification Letter

This is not a loan approval or commitment to lend

Date:

Prospective Applicant(s) / Applicant(s):

Mortgage Banker:

NMLS ID # [Registration Number _____]

[Address _____]

[Phone # _____]

Loan Details [~~describe as follows~~]:

Loan Amount:

Qualifying Interest Rate:

Term:

Maximum Loan-to-Value Ratio:

Loan Type and Description:

~~[Mortgage banker _____ has _____ has not received a signed application for the loan from the prospective applicant]~~

Mortgage banker ___ has ___ has not reviewed the prospective applicant's / applicant's credit report and credit score

~~[Mortgage banker ___ has ___ has not reviewed the prospective applicant's credit score]~~

~~[Mortgage banker has reviewed the following additional items (list):]~~

The prospective applicant(s) / applicant(s) has provided the mortgage banker [~~_____ verbally _____ in writing~~] with the following information [~~about the prospective applicant~~]:

Income _____ Yes _____ No _____ Not applicable

Available cash to close [~~for down payment and payment of closing costs~~] _____ Yes _____ No _____ Not applicable

Debts _____ Yes _____ No _____ Not applicable

~~[Other]~~ Assets _____ Yes _____ No _____ Not applicable

Figure: 7 TAC §81.201(a)

Based on the information that the prospective applicant(s) / applicant(s) has provided, ~~[to the mortgage banker, as described above,]~~ the mortgage banker has determined that the prospective applicant(s) / applicant(s) is eligible and qualified to meet the financial requirements of the loan ~~[Loan]~~.

This is not a loan approval or a commitment to lend on the terms described in the Loan Details section ~~[an approval for the loan].~~

Approval of the loan requires:

1. Receipt of a complete loan application and all supporting documents requested ~~[(1) the mortgage banker to verify the information that the prospective applicant has provided;]~~
2. Lender verification of the information that the prospective applicant(s) / applicant(s) has provided ~~[(2) the prospective applicant's financial status and credit report to remain substantially the same until the loan closes;]~~
3. The prospective applicant's / applicant's financial status and credit report to remain substantially the same until the loan closes ~~[(3) the collateral for the loan (the subject property) to satisfy the lender's requirements (for example, appraisal, title, survey, condition, and insurance);]~~
4. The collateral for the loan to satisfy the lender's requirements ~~[(4) the loan type and terms, as described, to remain available in the market;]~~
5. The loan, as described, to remain available in the market ~~[(5) the prospective applicant to execute loan documents the lender requires, and]~~
6. The prospective applicant(s) / applicant(s) to execute all documents the lender requires ~~[(6) the following additional items (list):]~~
7. The following additional items (list):

This conditional pre-qualification expires on _____

Residential Mortgage Loan Originator Name ~~[Mortgage Banker or Loan Officer]~~

Mailing address

Phone number

e-mail address

NMLS ID #

Form B

Conditional Approval Letter

Date:

Prospective Applicant(s) / Applicant(s):

Mortgage Banker:

NMLS ID # [Registration Number _____]

[Address _____]

[Phone # _____]

Loan Details [(describe as follows):]

[1.] Loan Amount:

[2.] Interest Rate*:

Term:

[3.] Interest Rate Lock Expires (if applicable):

[4.] Maximum Loan-to-Value Ratio:

[5.] Loan Type and Program:

*Interest rate is subject to change unless it has been locked

~~[Secondary financing terms (if applicable):-~~

~~-~~

~~Optional Information: -Points:-~~

~~Origination:-~~

~~Discount:-~~

~~Commitment:-~~

~~Other (describe):-]~~

Has a subject property been identified? _____ Yes _____ No [Subject Property:-]

~~[Mortgage banker has received a signed application from the applicant:-]~~

Mortgage banker has:

Reviewed prospective applicant's / applicant's credit report and credit score: _____ Yes _____ Not applicable

Verified prospective applicant's / applicant's income: _____ Yes _____ Not applicable

Figure: 7 TAC §81.201(b)

Verified prospective applicant's / applicant's available cash to close ~~[for down payment and closing costs]:~~
____ Yes ____ Not applicable

~~Verified~~ ~~[Reviewed]~~ prospective applicant's / applicant's debts and other assets: ____ Yes ____ Not applicable

Prospective applicant(s) / applicant(s) ~~[Applicant]~~ is **approved** for the loan provided that ~~[the applicant's]~~ creditworthiness and financial position do not materially change prior to closing and **provided that** ~~[the following additional conditions are fully satisfied]:~~

1. The subject property is appraised for an amount not less than \$_____ [;]
2. The ~~lender receives an acceptable~~ ~~[mortgage banker does not object to encumbrances to title shown in the title commitment~~ ~~[or survey];~~
3. The lender receives an acceptable property survey[;]
4. [3-] The subject property's condition meets ~~lender's~~ ~~[mortgage banker's]~~ requirements[;]
5. [4-] The subject property is insured in accordance with ~~lender's~~ ~~[mortgage banker's]~~ requirements[;]
6. [5-] The prospective applicant(s) / applicant(s) ~~[applicant]~~ executes all the ~~[loan]~~ documents the ~~lender~~ ~~[mortgage banker]~~ requires ~~[and abides by closing instructions];~~ and
7. [6-] The following additional conditions are complied with (list):

This conditional approval expires on _____.

Residential Mortgage Loan Originator Name ~~[Mortgage Banker]~~

Mailing address

Phone number

e-mail address

NMLS ID #

Ernest Garcia

From: Abby Lee <alee@texasrealtors.com>
Sent: Tuesday, August 20, 2019 2:45 PM
To: Tony Florence
Cc: Ernest Garcia; Kelly Flanagan; Lori Levy
Subject: RE: Revised Rules & Loan Status Forms

Tony,

I apologize for the delay. We've reviewed the latest drafts and do have a few concerns. We also reached out to our members to get their feedback on the proposed changes. Here are our thoughts:

- Although we realize that this is not a new proposed change, we are concerned about the addition of a "No" option in Form B to questions like "Have you verified the prospective applicant's/applicant's income?", as this addition may make this form less meaningful. If a lender can't answer "Yes" or "Not applicable" to these questions, the lender shouldn't be issuing a conditional loan approval. By virtue of issuing conditional loan approval, anything not verified at that point is not applicable, as the lender has represented that the person is conditionally approved on the basis of credit worthiness. Apologies for not bringing this up sooner.
- Would you consider adding something like the following, in lieu of the new sentence added to the subsection (b)? We have concerns that the statement, as written, doesn't clearly convey the lender's accountability for conditional loan approvals issued by the lender.

"A conditional loan approval should not be issued unless the company or originator has verified that, absent any material changes prior to closing, the mortgage applicant or prospective mortgage applicant has satisfied all loan requirements related to credit, income, assets, and debts."

As always, we very much appreciate your consideration and please let me know if you'd like us to jump on a call to discuss any of this further.

Thanks,

Abby Lee

Senior Associate Counsel

D 512-370-2151

alee@texasrealtors.com

texasrealestate.com



Mr. Ernest Garcia
General Counsel
Department of Savings and Mortgage Lending
Via Email

Re: Proposed amendments to 7 TAC 80.201 and 7 TAC 81.201

Mr. Garcia:

I am writing on behalf of the Texas Mortgage Bankers Association (TMBA) relating to the proposed amendments to 7 Texas Administrative Code 80.201 and 7 Texas Administrative Code 81.201, *Loan Status Forms*. As you know, 80.201 applies to mortgage companies (formerly called mortgage brokers under Finance Code Chapter 156) and 81.201 applies to licensed residential mortgage loan originators engaged by mortgage bankers registered under Finance Code Chapter 157. Many of our TMBA members are not subject to either of these rules because they are depositories or subsidiaries or affiliates of depositories. For the most part our non-depository affiliated members are mortgage bankers subject to Chapter 157. Nevertheless, because the rules and the proposed changes are essentially identical, our comments are directed to both 7 TAC 80.201 and 7 TAC 81.201.

At the outset, TMBA commends the Department for its thoughtfulness in addressing the issue of loan status forms. We appreciate the Department convening a pre-comment notice stakeholder meeting last fall that brought together a number of operational people from a broad segment of the mortgage industry to comment on the existing forms and rules. We believe that was a good first step to address these issues.

1. The Final Rule must have a delayed effective date of at least 120 or 150 days after adoption.

Loan originators now use a number of sophisticated software Loan Origination Systems (LOS). These platforms are programmed to generate the current Form A and Form B. In order for lenders to work with their LOS vendors or update their proprietary LOS, sufficient lead time is necessary to study the implications of the new rule, modify the forms, and to otherwise adjust LOS protocols and to train originators, underwriters, and processors on the new changes. Based upon conversations with our members, we believe this will take at a minimum 120 days after adoption of the rule. We believe 150 days is preferable, and would encourage the Department to make an enhanced effort to see that all persons subject to the rule receive early notice.

2. Clarifying language needs to be added to the text of rule 7 TAC 80.201(a) and (b) and 7 TAC 81.201(a) and (b)

Because the Texas promulgated forms are an anomaly (that is a unique requirement of Texas law with

no comparable regulations in any other state according to reports given to me), the forms and their appropriate use have been the source of confusion. Based upon observation, the confusion often stems not from the forms themselves, but because the current text of the rules do not clearly set forth the expectations of the Department. Therefore, our comments are primarily focused on the text of the rules rather than the forms. (We anticipate a number of mortgage lenders, including some of our larger members, may make separate comments relating to the formatting and “usability” of the forms themselves.

A. Clarify the statement “there is no requirement to issue a confirmation...”

Proposed 7 TAC 80.201(a) and 7 TAC 81.201(a) contain the following new language: “There is not requirement to issue a confirmation of conditional pre-qualification” Similar language appears in proposed 80.201(b) and 81.201(b). As written, we expect some originators will argue that the use of these forms or alternative forms complying with the rule is voluntary not mandatory. We would urge the language be revised to read similar to the following: “There is no requirement to issue a confirmation of conditional pre-qualification *provided that the lender or originator does not express or imply that a person has prequalified, conditionally qualified, or has been pre-approved or conditionally approved or used any similar term in a communication with the prospective applicant or borrower without having issued a form that complies with this section.*”

B. Clarify and modify language relating to issuance of Form B, conditional preapproval.

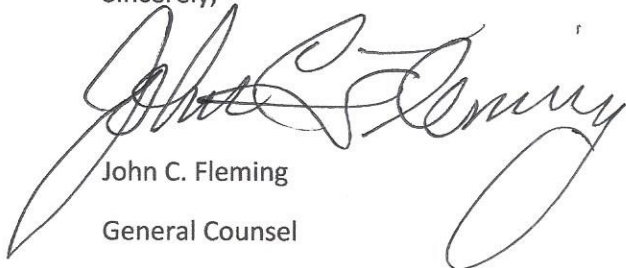
At the stakeholder meeting, several participants commented that Conditional preapproval as that term has been broadly viewed in the industry may now be an obsolete concept because of changes to federal regulations relating to mortgage lending. More specifically, a lender may be in violation of federal consumer regulations if it attempts to verify income, assets, etc., without having received a complete application, having made initial disclosures, and/or receiving a notice to proceed from the prospective applicant. None of this impact is discussed in the proposed rule, but it should be if the Department believes compliance with the federal regulations impacts on when a lender may do the underwriting necessary to issue a pre-approval letter (Form B).

The last two sentences of subparagraph (b) for both 80.201(b) and 81.201(b) should be expanded to more clearly and precisely set forth the Department’s expectations as to what it means by “all credit requirements have been met.” If it is the Department intend to take the position that any blank in the proposed Form B will be taken as a waiver of a specific credit requirement unless checked, then the regulation should expressly say so.

Finally, the proposed changes to the text of subsection (b) on preapproval states that desktop underwriting or automated underwriting does not qualify for “pre-approval.” We understand the reasons for this language, and believe it can be useful. However, considering the rapid advance of technology, the language needs to be modified. For example, the language might read: “Desktop or other automated underwriting *alone* does not qualify the mortgage applicant or prospective mortgage applicant for conditional preapproval *unless the automated underwriting system has integrated verification of income, verification of assets and otherwise performs all of the underwriting as to credit worthiness and no other credit underwriting will be performed.*”

Whatever the final rule adoption may be, we would urge the Department to review this issue again following a period of 12 or 18 months after the rule is implemented in order to make sure these changes are facilitating the needs of Texas consumers.

Sincerely,

A handwritten signature in black ink, appearing to read "John C. Fleming". The signature is written in a cursive style with a large, sweeping initial "J" and a long, trailing flourish at the end.

John C. Fleming

General Counsel

Ernest Garcia

From: John Fleming <john@johnfleminglaw.com>
Sent: Tuesday, May 21, 2019 5:29 PM
To: Ernest Garcia
Cc: Caroline Jones
Subject: Comments re proposed rules 7TAC80.201 and 7TAC81.201

I will be making additional comments most likely, but Texas Mortgage Bankers Association believes the effective date of the amended rule and change in mandated forms should not be less than 120 days -150 days after the date of adoption by the Finance Commission and publication of adoption in the Texas Register.

We believe the Department of Savings and Mortgage Lending will need at least 30 days to send bulletins to all licensed or registered entities and then the entities will need at least 90 days (if not longer) to work with vendors to update Loan Origination Systems to incorporate the revised forms. Prior to adoption the Department should consult with vendors to assist in determining the necessary time.

Sincerely,

John Fleming
General Counsel for Texas Mortgage Bankers Association

John Fleming

Law Office of John Fleming
700 Lavaca, Suite 1400
Austin, Texas 78701
Ph (512) 320-9110
Email: john@johnfleminglaw.com

Ernest Garcia

From: Everett Ives <Everett@atmpros.org>
Sent: Tuesday, June 4, 2019 1:16 PM
To: Ernest Garcia
Subject: Re: Comments on Proposed Rule published April 26, 2019

Ernest,

Thank you for staying on top of this.

I greatly appreciate your offer for a face to face meeting. However, I believe we both can communicate these issues effectively and more efficiently by email. I know you are short on time and I am as well. Having said that, I am willing to take the time to meet face to face if you feel it will result in a better outcome.

I have two additional comments that you may consider:

1) I have been soliciting information from our membership and have found that the majority of our members have stopped issuing Form B, largely because of the rules concerning its use and in some cases because of penalties that have been issued in the past over its use.

In my opinion, this form has a real market need and in fact, I know Realtors frequently demand the form. So, for an Originator to refuse to issue the form in the face of need, I believe there is a problem and I believe the problem is the rule concerning when it can be issued. I believe that the proposed new rule doubles down on the problem with the rule, rather than solving the problem. I am told by many of our members that the proposed rule will not cause them to reconsider issuing Form B.

2) As I read the proposed rule, a Form B cannot properly be issued until a lender does the VVOE (Verbal Verification of Employment). That nearly universally occurs when the loan is in the closing department and within 10 days of closing (as required). Most loans have been "Clear to Close" for at least a few hours or a couple of days when the VVOE is done, meaning the Lender has not been able to communicate in writing the most important information the Borrower wants to hear until several hours or a few days have gone by.

While the rules concerning Form B are well intended, the reality is, Form B is broken and it needs a total overhaul, not a patch.

I believe that when consumers are timely, effectively and fully informed, there are far fewer problems in the industry.

Thank you for your time.

Everett

From: Everett Ives [mailto:consulting@everettives.com]

Sent: Thursday, May 23, 2019 10:29 AM

To: Ruth Wright <RWright@sml.texas.gov>; Caroline Jones <cjones@sml.texas.gov>; Ruth Wright <RWright@sml.texas.gov>

Subject: Comments on Proposed Rule published April 26, 2019

Ernest C. Garcia, General Counsel

Department of Savings and Mortgage Lending

2601 North Lamar, Suite 201

Austin, Texas 78705

I am very concerned about specific language in the Proposed Rule concerning Form B for Mortgage Companies.

Originators licensed as a Mortgage Company use two methods for approving their loans:

- 1) They submit a fully processed file to a wholesaler who has a staff of human underwriters that review the documents submitted and issue written loan approvals with varying degrees of commitment.
- 2) They submit an initial application to an Automated Underwriting System (AUS) that "underwrites" the loan, issues a written loan approval with varying degrees of commitment AND waives many of the Representations and Warrants that lenders make when delivering a loan to Fannie Mae, Freddie Mac or issuing securities of either agency.

Over the past couple of years the industry has begun using advanced AUS systems such as Day One Certainty. The best known brand adaptation of that system is Rocket Mortgage but there are now many systems that use Day One Certainty as the engine behind their branded AUS.

The benefit of this recent technology is that the computer system nearly instantly verifies the information on a loan application, including the Credit, Income and Assets. In some cases the system calculates the value of the home and waives the need for an appraisal. These systems are in use TODAY and they have been rolled out nationwide to brokers and small mortgage companies for their use. I have heard comments that these systems work on roughly 75% of all loans.

The agencies are so confident with these underwriting systems that they waive many of the Representations and Warrants that a Lender makes upon selling a loan.

The point of this is, the language in the Propose Rule fails to recognize the direction the industry is moving and essentially forces any company that wishes to use a Form B to have a human underwriter examine the file first.

Secondly, the following language causes confusion because its meaning is not clear:

A conditional loan approval should not be issued until all credit requirements have been met unless an item is not a condition of the loan.

"Credit Requirements" is a term the industry uses to describe everything in a mortgage file except the appraisal, title documents, closing documents and disclosure documents. The "Verbal Verification of Employment" or VVOE is a credit document and it cannot be done prior to 10 days before closing and is nearly always done after a loan is Clear to Close - or final underwriting approval. A VVOE is certainly a "condition of the loan"

Lastly, the Realtor and Consumer confusion over Form B is greatly aggravated by the almost reckless use by Federal Depositories' MLOs. They are not regulated by this rule and they issue Approval Letters regularly that look very much like Form B, frequently with elements missing for which a Mortgage Company or Mortgage Banker would be in violation of this rule.

In conclusion, please do not finalize this rule without changes. The rule is a step backwards, it creates a competitive disadvantage, it uses confusing language and it fails to recognize the current state of technology. It also is being done at a time when most of the leadership of the industry is too preoccupied with legislative matters to pay attention to this proposed rule.

I respectfully request an opportunity to discuss this with you further.

Everett Ives

--

Everett Ives and Associates
Mortgage Industry Business Consultants
"We Build Mortgage Companies"

Phone: 210-639-3056

Fax: 210-587-2405

Consulting@everettives.com

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JOSEPH N. SMOLENSKY
RESIDENTIAL MORTGAGE LOAN ORIGINATOR
NMLS LICENSE #358045

TEL: (832) 483-5639
FAX: (832) 553-7661

May 28, 2019

Department of Savings and Mortgage Lending
c/o Ernest C. Garcia, General Counsel
2601 North Lamar, Suite 201
Austin, Texas 78705

Re: Comments against proposed Form B changes

Dear Mr. Garcia:

I have concerns with the Proposed Rule change concerning FORM B for mortgage companies. Although unintentional, this revision effectively handicaps the mortgage broker community against their national bank and non-bank competitors. In modern times, RMLO's have two basic methods of securing loan approval:

1. Submitting a loan for human underwriting review
2. Submitting a loan through AUS (automated underwriting systems) DU & LPA

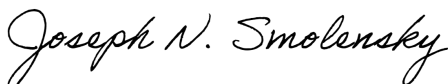
The latter option includes the methodology most currently used by wholesalers for delivering loans to the GSE's, FNMA & FHLMC, along with GNMA loans for FHA & VA. Additional consideration has recently been extended to utilizing AUS for nationwide high-balance FHFA conforming loan limits here in Texas. This broad group represents the vast majority of loans originated, as well as the future of our industry.

My company has been fortunate to be chosen as one of the nationwide beta-testers for Blend Labs new electronic loan application platform. It employs state-of-the-art technology integrate VOA (verification of assets) through major financial institutions, as well as automated employment & income verifications through The Work Number (Equifax). These technologies are now approved for Day One Certainty with the GSE's.

As our industry advances into the future, all of the above technologies mentioned will serve to increase regulatory compliance and decrease incidences of fraud and misrepresentation, which should be the ultimate goal of good public policy. We cannot currently regulate the dot-com non-banks and national mega-banks (outside of the department's oversight) from issuing "pseudo-Form B" approval letters with reckless abandon. As RMLO's we are already held to a much higher standard.

Rather than adopt the current proposed changes, we should increase transparency by incorporating some of these technological innovations into a future FORM B with adequate consideration. I would be honored to share my ideas and insight with the department in a constructive fashion if given the opportunity. In the meantime, please do not finalize this rule in its current form. It would be a step backwards for our already challenged business channel and for Texas consumers at large. Thank you for your consideration.

Yours truly,



Joseph N. Smolensky

Ruth Wright

From: Henry H. Lindner <hlindner@assetmortgage.com>
Sent: Tuesday, May 28, 2019 3:47 PM
To: Ruth Wright
Subject: Proposed Rule Changes to Form B

Department of Savings and Mortgage Lending
c/o Ernest C. Garcia, General Counsel
2601 North Lamar, Suite 201
Austin, Texas 78705

Re: Comments against proposed Form B changes

Dear Mr. Garcia –

I am concerned about specific language in the Proposed Rule concerning Form B for Mortgage Companies.

Licensed Mortgage Originators use two methods for approving their loans:

- 1) They submit a fully processed a staff of human underwriters that review the documents submitted and issue written loan approvals with varying degrees of commitment.
- 2) They submit an initial application to an Automated Underwriting System (AUS) that "underwrites" the loan, issues a written loan approval with varying degrees of commitment AND waives many of the Representations and Warrants that lenders make when delivering a loan to Fannie Mae, Freddie Mac or issuing securities of either agency.

Over the past couple of years the industry has begun using advanced AUS systems such as "Day One Certainty". The best known brand adaptation of that system is Rocket Mortgage but there are now many systems that use Day One Certainty as the engine behind their branded AUS.

The benefit of this recent technology is that the computer system nearly instantly verifies the information on a loan application, including the Credit, Income and Assets. In some cases, the system calculates the value of the home and waives the need for an appraisal. These systems are in use TODAY and they have been rolled out nationwide to brokers and small mortgage companies for their use. I have heard comments that these systems work on roughly 50% to 75% of all files..

The agencies are so confident with these underwriting systems that they waive many of the Representations and Warrants that a Lender makes upon selling a loan.

The point is the language in the Propose Rule fails to recognize the direction the industry is moving and essentially forces any state licensed company that wishes to use a Form B to have a human underwriter examine the file first.

Secondly, the following language causes confusion because its meaning is not clear:

"A conditional loan approval should not be issued until all credit requirements have been met unless an item is not a condition of the loan."

"Credit Requirements" is a term the industry uses to describe everything in a mortgage file except the appraisal, title documents, closing documents and disclosure documents. The "Verbal Verification of Employment" or VVOE is a credit

document and it cannot be done prior to 10 days before closing and is nearly always done after a loan is Clear to Close - or final underwriting approval. A VVOE is certainly a "condition of the loan"

Lastly, the Realtor and Consumer confusion over Form B is greatly aggravated by the almost reckless use by Federal Depositories' MLOs. They are not regulated by this rule and they issue Approval Letters regularly that look very much like Form B, frequently with elements missing for which a Mortgage Company or Mortgage Banker would be in violation of this rule.

In conclusion, please do not finalize this rule without changes. The rule is a step backwards, it creates a competitive disadvantage, it uses confusing language and it fails to recognize the current state of technology. It also is being done at a time when most of the leadership of the industry is too preoccupied with legislative matters to pay attention to this proposed rule.

Sincerely,

Henry H. Lindner

Henry Lindner
NMLS #304514
Asset Mortgage, dba Amcap Mortgage Ltd.

Henry H. Lindner | Branch Manager NMLS# 304514



O: 713.869.5550 | M: 713.252.0449 | F: 713.869.0177
2701 Nicholson Street | Houston, TX 77008
E-mail: hlindner@assetmortgage.com



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Asset Mortgage is a DBA of AmCap Mortgage, Ltd. (NMLS ID# 129122 - www.nmlsconsumeraccess.org/EntityDetails.aspx/COMPANY/129122) Lender.



Ruth Wright

From: Kathryn B. Lindner <kl@assetmortgage.com>
Sent: Tuesday, May 28, 2019 4:20 PM
To: Ruth Wright
Subject: Proposed changes to FORMS A & B

Department of Savings and Mortgage Lending
c/o Ernest C. Garcia, General Counsel
2601 North Lamar, Suite 201
Austin, Texas 78705

Re: Comments against proposed Form B changes

Dear Mr. Garcia,

I am very concerned about specific language in the Proposed Rule concerning Form B for Mortgage Companies.

The following language causes confusion because its meaning is not clear:

“A conditional loan approval should not be issued until all credit requirements have been met unless an item is not a condition of the loan.”

"Credit Requirements" is a term the industry uses to describe everything in a mortgage file except the appraisal, title documents, closing documents and disclosure documents. For example, the "Verbal Verification of Employment" or VVOE is a credit document and it cannot be done prior to 10 days before closing and is nearly always done after a loan is Clear to Close - or final underwriting approval. A VVOE is certainly a "condition of the loan".

Also the term “requirement” seems synonymous with “condition”, so how can a “requirement” not be a “condition” of the loan?

We are a large enough company to have a human underwriter review a loan submission for conditional loan approval prior to a buyer finding a property. In these instances, the underwriter typically identifies conditions that can easily be met during the processing of the loan after a contract is executed, such as a VVOE, credit refresh, reverifying that a company is still in business, etc. Also, it is not uncommon for a Conditional Loan Approval to be subject to the sale and closing of the borrower’s existing property, which often occurs on the same date as the closing of the borrower’s loan for the new property. It seems that we should be able to issue a Conditional Approval Letter under these circumstances, with the inclusion of the “conditions”.

In conclusion, we ask that you clarify the above language which is causing confusion before the rule is implemented.

Kathryn B. Lindner | Branch Manager NMLS# 327940



O: 713.869.5550 | M: 713.553.9818 | F: 713.869.0177
2701 Nicholson Street | Houston, TX 77008
E-mail: kl@assetmortgage.com



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Asset Mortgage is a DBA of AmCap Mortgage, Ltd. (NMLS ID# 129122 - www.nmlsconsumeraccess.org/EntityDetails.aspx/COMPANY/129122) Lender.



Ruth Wright

From: Paul St. Amand <paul@championsschool.com>
Sent: Tuesday, May 28, 2019 2:35 PM
To: Ruth Wright
Subject: Comments against proposed Form B changes

Department of Savings and Mortgage Lending
c/o Ernest C. Garcia, General Counsel
2601 North Lamar, Suite 201
Austin, Texas 78705

Re: Comments against proposed Form B changes

Dear Mr. Garcia –

I am very concerned about specific language in the Proposed Rule concerning Form B for Mortgage Companies.

Originators licensed as a Mortgage Company use two methods for approving their loans:

- 1) They submit a fully processed file to a wholesaler who has a staff of human underwriters that review the documents submitted and issue written loan approvals with varying degrees of commitment.
- 2) They submit an initial application to an Automated Underwriting System (AUS) that "underwrites" the loan, issues a written loan approval with varying degrees of commitment AND waives many of the Representations and Warrants that lenders make when delivering a loan to Fannie Mae, Freddie Mac or issuing securities of either agency.

Over the past couple of years the industry has begun using advanced AUS systems such as "Day One Certainty". The best known brand adaptation of that system is Rocket Mortgage but there are now many systems that use Day One Certainty as the engine behind their branded AUS.

The benefit of this recent technology is that the computer system nearly instantly verifies the information on a loan application, including the Credit, Income and Assets. In some cases, the system calculates the value of the home and waives the need for an appraisal. These systems are in use TODAY and they have been rolled out nationwide to brokers and small mortgage companies for their use. I have heard comments that these systems work on roughly 75% of all loans.

The agencies are so confident with these underwriting systems that they waive many of the Representations and Warrants that a Lender makes upon selling a loan.

The point is the language in the Propose Rule fails to recognize the direction the industry is moving and essentially forces any state licensed company that wishes to use a Form B to have a human underwriter examine the file first.

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Lastly, the Realtor and Consumer confusion over Form B is greatly aggravated by the almost reckless use by Federal Depositories' MLOs. They are not regulated by this rule and they issue Approval Letters regularly that look very much like Form B, frequently with elements missing for which a Mortgage Company or Mortgage Banker would be in violation of this rule.

In conclusion, please do not finalize this rule without changes. The rule is a step backwards, it creates a competitive disadvantage, it uses confusing language and it fails to recognize the current state of technology. It also is being done at a time when most of the leadership of the industry is too preoccupied with legislative matters to pay attention to this proposed rule.

Sincerely,

Paul St. Amand
Director of Champions School of Mortgage Lending
Champions School of Real Estate
5627 Cypress Creek Parkway, Suite 100
Houston, Texas 77069
Office: (281) 893-4484
Cell: (713) 858-4085
paul@championsschool.com



Ruth Wright

From: Manuel Corzo <manuel@corzogroup.com>
Sent: Tuesday, May 28, 2019 1:25 PM
To: Ruth Wright
Cc: Fabian Corzo
Subject: Proposed changes in wording of Conditional Pre Approval letters

I am in disagreement with these changes in an industry over regulated with strict appraisals, underwriters with their own set of extra regulations from their own investors on top of the state mandatory rules to protect the public.

We need more strong,honest and hard working mortgage brokers who can do a better job than any bank providing a service efficiently, on time and with all the compliance required from them from the state and national level.

Everyday you find less and less dedicated mortgage brokers as a result of this over regulation and the consumer home owner is the one that suffer the last consequences of this continuous extra regulations.

Please, consider seriously these changes for the better of our real estate industry.

Sincerely,

--

Manuel Corzo, Realtor

CORZO GROUP 
PROPERTIES

822 Saybrook Lane

Houston, TX 77024

281-250-6387 Cell

832-212-5589 Office

832-213-1153 Fax



Department of Savings and Mortgage Lending
c/o Ernest C. Garcia, General Counsel
2601 North Lamar, Suite 201
Austin, Texas 78705

Re: Comments against proposed Form B changes

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Sincerely,

A handwritten signature in black ink, appearing to read "Paul Marsh". The signature is fluid and cursive, with the first name "Paul" and last name "Marsh" clearly distinguishable.

Paul Marsh
Chief Financial Officer
Encompass Lending Group

Ruth Wright

From: Jill Harris <Jill@designmortgage.com>
Sent: Tuesday, May 28, 2019 11:42 AM
To: Ruth Wright
Subject: Form B Response

Department of Savings and Mortgage Lending
c/o Ernest C. Garcia, General Counsel
2601 North Lamar, Suite 201
Austin, Texas 78705

Re: Comments against proposed Form B changes

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Sincerely,

Jill Harris
Design Mortgage Group, Inc.



Jill Harris

7511 FM 1488
Magnolia, TX 77354
P: 936-521-2000
F: 877-828-2858
Jill@DesignMortgage.com



Department of Savings and Mortgage Lending
c/o Ernest C. Garcia, General Counsel
2601 North Lamar, Suite 201
Austin, Texas 78705

Re: Comments against proposed Form B changes

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Sincerely,


Vicki Nelsen
NMLS #314919

Department of Savings and Mortgage Lending
c/o Ernest C. Garcia, General Counsel
2601 North Lamar, Suite 201
Austin, Texas 78705

Re: Comments against proposed Form B changes

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Sincerely,

Clay Bohannon
NMLS# 291798
Encompass Lending Group

Ruth Wright



From: Wayne King <wking@elgloans.com>
Sent: Tuesday, May 28, 2019 5:26 PM
To: Ruth Wright
Subject: Proposed Form A and B

Ernest,



Good Afternoon!!

Wanted to reach out and let you know that I am in support of the letter that Everett Ives sent to you regarding the specific language in the Proposed Rule concerning Form B. I feel that this is a topic that required further discussion and would be happy and honored to be a part of the discussion.






Best Regards,



Wayne King, CMC, CRMS
President | NMLS: #208523
Encompass Lending Group
23108 Seven Meadows Parkway | Suite 100 | Katy, TX 77494
(281) 644-0062 | phone
(713) 320-9459 | mobile
(832) 968-7562 | fax

[my webpage](#) | [bio](#) | [vCard](#) | [map](#) | [email](#)  

[APPLY NOW](#)
[REFER ME](#)



Lenders are required to provide a copy of the "Your Home Loan Toolkit" to all mortgage loan applicants. Please click on http://files.consumerfinance.gov/f/201503_cfbp_your-home-loan-toolkit-web.pdf to download a copy of this booklet. If you prefer a paper copy, please contact us at 281-693-5363.

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Ruth Wright

From: Marla G Cooper <Marla.G.Cooper@flagstar.com>
Sent: Tuesday, May 28, 2019 11:34 AM
To: Ruth Wright
Subject: Proposed changes on form B

This is not good for the industry! We can have a more effective and less confusing form !

(a) Except as otherwise provided by subsection (d) [~~(e)~~] of this section, when provided to a mortgage applicant or prospective mortgage applicant [~~or mortgage applicant~~], written confirmation of conditional pre-qualification [~~qualification~~] shall include the information in Form A, Figure: 7 TAC §81.201(a). This information can be provided by utilizing Form A or an alternate form that includes all of the information found on Form A. There is no requirement to issue a written confirmation of conditional pre-qualification. Form A or an alternate form [~~Either form~~] may be modified by adding any of the following as needed:

[Attached Graphic](#)

[Figure: 7 TAC §81.201(a)]

- (1) Any additional aspects of the loan as long as not misleading;
- (2) Any additional items that the originator has reviewed in determining conditional qualifications; or
- (3) Any additional terms, conditions, and requirements.

(b) When provided to a mortgage applicant or prospective mortgage applicant, written notification of conditional loan [~~application~~] approval on the basis of credit worthiness, but not on the basis of collateral, shall include the information in Form B, Figure 7: TAC §81.201(b). This information can be provided by utilizing Form B or an alternate form that includes all of the information found on Form B. There is no requirement to issue a written notification of conditional loan approval. Form B or an alternate [~~Either~~] form may be modified by adding the additional information permitted by subsection (a)(1) - (3) of this section, or disclosure of fees charged. A disclosure of fees charged, on Form B or an alternate form, does not serve as a substitute for any fee disclosure required by state or federal laws or regulations. A conditional loan approval should not be issued until all credit requirements have been met unless an item is not a condition of the loan. Desktop or other automated underwriting does not qualify the mortgage applicant or prospective mortgage applicant for conditional approval.

[Attached Graphic](#)

[Figure: 7 TAC §81.201(b)]

(c) An individual is required to be licensed under Finance Code, Chapter 157 if the individual issues or signs a conditional pre-qualification letter of conditional approval letter pursuant to 7 TAC §81.100(a)(5).

(d) [(e)] Subsection (a) of this section does not apply to "firm offers of credit," as that term is defined in 15 U.S.C. §1681a(1).

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

Filed with the Office of the Secretary of State on April 12, 2019

TRD-201901102



What solutions can we craft for you?



Marla Cooper, AVP

Broker/Correspondent Channels

Cell: (713)305-8588

5151 Corporate Drive • Troy, MI 48098

marla.cooper@flagstar.com • wholesale.flagstar.com

Sales Assistants: (866) 372-6601 or centralsalesupport@flagstar.com

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Mr. Daniel Jara
NMLS#296180
5959 West Loop S #470
Bellaire, TX 77401

Department of Savings and Mortgage Lending
c/o Ernest C. Garcia, General Counsel
2601 North Lamar, Suite 201
Austin, Texas 78705

Re: Comments against proposed Form B changes

Dear Mr. Garcia –

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The benefit of this recent technology is that the computer system nearly instantly verifies the information on a loan application, including the Credit, Income and Assets. In some cases, the system calculates the value of the home and waives the need for an appraisal. These systems are in use TODAY and they have been rolled out nationwide to brokers and small mortgage companies for their use. I have heard comments that these systems work on roughly 75% of all loans.

The agencies are so confident with these underwriting systems that they waive many of the Representations and Warrants that a Lender makes upon selling a loan.

The point is the language in the Propose Rule fails to recognize the direction the industry is moving and essentially forces any state licensed company that wishes to use a Form B to have a human underwriter examine the file first.

Secondly, the following language causes confusion because its meaning is not clear:

Mr. Daniel Jara
NMLS#296180
5959 West Loop S #470
Bellaire, TX 77401

“A conditional loan approval should not be issued until all credit requirements have been met unless an item is not a condition of the loan.”

"Credit Requirements" is a term the industry uses to describe everything in a mortgage file except the appraisal, title documents, closing documents and disclosure documents. The "Verbal Verification of Employment" or VVOE is a credit document and it cannot be done prior to 10 days before closing and is nearly always done after a loan is Clear to Close - or final underwriting approval. A VVOE is certainly a "condition of the loan"

Lastly, the Realtor and Consumer confusion over Form B is greatly aggravated by the almost reckless use by Federal Depositories' MLOs. They are not regulated by this rule and they issue Approval Letters regularly that look very much like Form B, frequently with elements missing for which a Mortgage Company or Mortgage Banker would be in violation of this rule.

In conclusion, please do not finalize this rule without changes. The rule is a step backwards, it creates a competitive disadvantage, it uses confusing language and it fails to recognize the current state of technology. It also is being done at a time when most of the leadership of the industry is too preoccupied with legislative matters to pay attention to this proposed rule.

Sincerely,

Daniel Jara

Ruth Wright

From: John Hudson <JHudson@mfsus.com>
Sent: Tuesday, May 28, 2019 3:02 PM
To: Ruth Wright
Subject: Public Comments on Texas Form A and Form B

To whom it concerns,

As a mortgage professional in the great state of TX, I am happy that the Texas Department of Savings and Mortgage Lending and the Texas Finance Commission have noticed some problems with the promulgated Form A conditional prequalification and the Form B conditional approval.

The problems created by the forms that the industry, regulators, and consumers deal with on a daily basis is caused primarily by lack of uniformity in forms given to consumers by loan originators and by the misunderstanding to the definitions surrounding “prequalification” and “approval”.

First in foremost, there should be a standard form for prequalification and approval used by ALL those that originate a mortgage loan. Under the current rules, mortgage bankers and mortgage companies must use the promulgated Form A and Form B. However, if the mortgage loan originator which took the application works for a depository institution, there is no promulgated form to be used. In theory, a loan officer that works for a bank or credit union can write the words “you pre-approved” on a cocktail napkin to be used without recourse. If you really want to create a better environment for consumers, then please require the same forms to be used ALL of those that originate mortgage loans, not just ones that work for a certain type of organization.

Second, the real estate industry itself is responsible for the massive amounts of confusion for consumers. There are many licensed real estate agents that will refuse to accept an offer with a “conditional prequalification” letter because they do not understand the meaning. They will then require the consumer to get a “approval letter”. This leaves the potential homebuyer a couple of options, they can apply for a mortgage with a depository institution and get their “cocktail napkin” approval letter or they can wait for their loan application and all appropriate credit documents to be reviewed by an underwriter for a full credit approval. This is problematic because of the time in which it can take for a loan to be credit approved and the consumer may miss on an opportunity to place a property under contract. Many independent mortgage bankers will not issue a Form B approval until a loan is “clear to close”, meaning it is at the very end of the mortgage loan process.

At the very least, the conditional approval letter should be allowed to be used if an originator has received a automated underwriting approval. This would alleviate many of the problems surrounding the TAC Form A and TAC Form B mortgage forms.

In today’s consumer desire to have instant gratification, mortgage originators must be able to provide the consumer with what they want...otherwise, we are only creating an unfair advantage to large depository and credit union institutions and harming the independent mortgage bankers that employ thousands of Texans and serve countless consumers with their home loan needs.

I am always available for more discussion.

Sincerely,

John H. P. Hudson



John H.P. Hudson, CRMS

Vice President of Production
RMLO NMLS 261659

19707 IH-10 West, Suite 301
San Antonio, TX
78257

Sponsor MFS, NMLS ID 43021

jhudson@mfsus.com

o: (817) 247-4766

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****** WIRE FRAUD ALERT!!!!******

If you receive an email regarding **WIRING INSTRUCTIONS**, do **NOT** send any funds until you **CALL** and verbally verify your instructions directly from your title company. Emails are being compromised every day; **NO EMPLOYEE** from **Mortgage Financial Services** will ever email you with wiring instructions. Do **NOT** fall victim to these scams. **CALL AND VERIFY!!!**

The New York Times Building
37th Floor
620 Eighth Avenue
New York, NY 10018-1405
212.808.2700
Fax 212.286.9806

Scott Samlin
direct dial: 212.808.2728
samlins@pepperlaw.com

May 28, 2019

Via Email

Ernest Garcia, General Counsel

egarcia@sml.texas.gov

Commissioner Caroline C. Jones

cjones@sml.texas.gov

Re: **Proposed Changes to Title 7, Part 4, Chapter 81,
Subchapter C, 7 TAC §81.201**

Dear Sir and Madam:

I am writing to you on behalf of various clients regarding the proposed changes to the conditional pre-qualification and conditional loan approval process for Texas consumers. I would first and foremost like to thank you, on behalf of all Texas-licensed lenders, for taking the time to revisit this important subject and allowing us the opportunity to provide feedback.

In particular, I represent certain non-depository institutions that are licensed as Mortgage Bankers with the Texas Department of Savings and Mortgage Lending. In discussion with these clients on the above references proposed regulatory changes, we endeavor to highlight two very specific areas in which to improve the conditional pre-qualification and conditional loan approval process.

In this effort to more effectively and timely assist Texas consumers, we would like to put forth the following recommendations for your consideration.

1. Depository vs. Non-Depository Issuance of Conditional Approvals

There is a large discrepancy in the requirements for non-depository institutions to issue Conditional Approvals (also known as Pre-Approvals) under 7 TAC §80.201 and 7 TAC §81.201 and those for depository institutions who have no specific requirements.

Under the current regulations and the interpretations of them by the Finance Commission of Texas as well as under the proposed revisions to 7 TAC §80.201 and 7 TAC §81.201, non-depositories are required to evaluate Texas consumers on the basis of credit worthiness prior

Honorable Commissioner Caroline C. Jones and
General Counsel Ernest Garcia

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May 28, 2019

to issuing a Conditional Approval. This entails review of credit, income, assets, liabilities, and other determining factors needed to reach said credit decision. The process to conduct such a review amounts to the borrower being fully underwritten by a qualified and credentialed Loan Underwriter. While conducting such a review helps to ensure that the borrower is, in fact, qualified for the loan for which they are applying, it presents an unfair burden when compared to the process undertaken by depository institutions who issue documents also entitled Conditional Approval or Pre-Approval without conducting such a thorough and detailed review of verifying documentation.

Because depository institutions are not subject to 7 TAC §80.201 and 7 TAC §81.201, they are not bound to adhere to the same requirements prior to issuing a Conditional Approval or Pre-Approval. For this reason, they have an unfair competitive advantage in their ability to provide a Conditional Approval or Pre-Approval to Texas consumers as consumers are not required to provide verifying documentation to the depository institution in order to receive a Conditional Approval or Pre-Approval.

Entities subject to 7 TAC §80.201 and 7 TAC §81.201 are hindered in their ability to assist Texas consumers in a timeframe that is equitable to their depository competitors as a result of the underwriting requirements allocated only to non-depository institutions. To reduce the significant confusion of Texas consumers and to provide both depositories and non-depositories the opportunity to issue equitable documents, it is recommended that the title of promulgated Form A be changed to *Conditional Approval or Pre-Approval*. Similarly, it is recommended that the title of promulgated Form B be changed to *Loan Commitment*.

Revising the title of the forms will significantly reduce the confusion and frustration of Texas consumers as the forms that they request/receive from both depository and non-depository institutions will be equivalent. Additionally, this proposed change will allow non-depository institutions the opportunity to assist Texas consumers in a timeframe that is similar to their depository competitors.

Affording non-depositories institutions the opportunity to issue Conditional Approvals that are interchangeable with those issued by depositories is in the best interest of all Texas consumers seeking to purchase a home as it increases the competition among entities available to assist them at any given time.

With today's competitive real estate market purchasers/borrowers seeking to make an offer on a given property need to do so very quickly. Real Estate Agents, understanding that time

Honorable Commissioner Caroline C. Jones and
General Counsel Ernest Garcia
Page 3
May 28, 2019

is of the essence, will no doubt, encourage consumers to seek a Conditional Approval from a depository institution with the knowledge that the consumer will receive the necessary approval in a much shorter amount of time and with less effort on the consumer's part. This effectively removes non-depository institutions from a substantial portion of the Texas real estate purchase market.

As competition is a healthy motivating factor in the mortgage industry, evening the playing field for depositories and non-depositories is a benefit for Texas consumers as it results in lower rates and fees and promotes superior customer service. For the reasons stated herein, we strongly encourage the Commission to consider altering the name of the Form A and making the additional changes to Form B as redlined in Exhibit A-1 and A-2 which are attached hereto and made a part hereof. Further, it is critical to level the playing field when it comes to the issuance of Conditional Approvals and Pre-Approvals. Currently depository institutions are free to utilize their own forms and processes when it comes to pre-qualification and pre-approval of loans. This causes confusion and uneven application of the regulations.

2. Licensing Requirement to Issue a Conditional Approval

In accordance with 7 TAC §80.100(a)(5) and 7 TAC §81.100(a)(5), an individual must be licensed under Finance Code, Chapter 157 if said individual "issues or signs a prequalification letter or preapproval letter." In this requirement, Texas is an anomaly as no other state requires pre-qualifications and/or pre-approvals to be issued and executed by a licensed individual.

Necessitating that all Conditional Approvals be issued by licensed individuals presents a number of complications, including the potential for error. As Mortgage Loan Originators ("MLO's") are the only individuals that are eligible for licensure in the state, MLO's are therefore the only individuals that may execute and thus issue a Conditional Approval. MLO's do not undergo the same level of training in order to review or underwrite credit, income, assets, liabilities, and other determining factors needed to render said credit decision for purposes of issuing a Conditional Approval.

Promulgated Form B, in its current state, is tantamount to a commitment to lend on the terms and conditions enumerated within the document. As an MLO is not fully qualified to review the documents necessary in order to make such a credit decision, they are not qualified to issue such commitments to lend.

Honorable Commissioner Caroline C. Jones and
General Counsel Ernest Garcia
Page 4
May 28, 2019

For the above reasons, it is recommended that the requirement for Conditional Approvals to be issued by individuals licensed under Finance Code, Chapter 157 be removed. This will ensure that Conditional Approvals are issued by qualified and credentialed Loan Underwriters who have undergone training specific to reviewing a borrower's credit, income, assets, liabilities, and other determining factors needed to render said credit decision.

By placing the responsibility of issuing Conditional Approvals into the hands of qualified Loan Underwriters, consumers can be assured that they do, in fact, qualify for the loan for which they have been given a Conditional Approval and significantly reduces the opportunity for the inappropriate issuance of a Conditional Approval.

For the reasons detailed above, we strongly encourage the Finance Commission of Texas, on behalf of the Department of Savings and Mortgage Lending, to reconsider their position on the issuance of Conditional Approvals and the licensing requirement associated therewith.

We would like to thank you again for the opportunity to submit our comments and recommendations. We welcome any questions or comments that you might have and look forward to the opportunity to better serve Texas consumers.

Sincerely,



Scott Samlin

SS:as

cc: John Fleming via Email

Figure: 7 TAC §80.201(a)

Form A

Conditional Approval Letter

This is not a loan approval or commitment to lend

Date:

~~[Residential Mortgage Loan Originator:]~~

~~[License Number: _____]~~

Prospective Applicant(s)/ Applicant(s):

[Address: _____]

[Phone #: _____]

Mortgage Company:

NMLS ID #:

Loan Details [(describe as follows)]:

Loan Amount:

Qualifying Interest Rate:

Term:

Maximum Loan-to-Value Ratio:

Loan Type and Description:

~~[Residential mortgage loan originator ___ has ___ has not received a signed application for the Loan from the prospective applicant]~~

~~Mortgage company [Residential mortgage loan originator] ___ has ___ has not reviewed the prospective applicant's / applicant's credit report and credit score~~

~~[Residential mortgage loan originator ___ has ___ has not reviewed the prospective applicant's credit score]~~

~~[Residential mortgage loan originator has reviewed the following additional items (list):]~~

The prospective applicant(s) / applicant(s) has provided the mortgage company [residential mortgage loan originator ___ verbally ___ in writing] with the following information [about the prospective applicant]:

Income ___ Yes ___ No ___ Not applicable

Available cash to close [for down payment and payment of closing costs] ___ Yes ___ No ___ Not applicable

Debts ___ Yes ___ No ___ Not applicable

Assets ___ Yes ___ No ___ Not applicable

Based on the information that the prospective applicant(s) / applicant(s) has provided, ~~the mortgage company [to the residential mortgage loan originator as described above, the residential mortgage loan originator]~~ has determined that the prospective applicant(s) / applicant(s) is eligible and qualified to meet the financial requirements of the loan.

This is not a loan approval or a commitment to lend on the terms described in the Loan Details section [an approval for the Loan].

Approval of the loan [~~Loan~~] requires:

1. Receipt of a complete loan application and all supporting documents requested [~~(1) the residential mortgage loan originator to verify the information that the prospective applicant has provided;~~]
2. Lender verification of the information that the prospective applicant(s) / applicant(s) has provided [~~(2) the prospective applicant's financial status and credit report to remain substantially the same until the loan closes;~~]
3. The prospective applicant's / applicant's financial status and credit report to remain substantially the same until the loan closes [~~(3) the collateral for the loan (the subject property) to satisfy the lender's requirements (for example, appraisal, title, survey, condition, and insurance);~~]
4. The collateral for the loan to satisfy the lender's requirements [~~(4) the loan, as described, to remain available in the market;~~]
5. The loan, as described, to remain available in the market [~~(5) the prospective applicant to execute loan documents the lender requires; and~~]
6. The prospective applicant(s) / applicant(s) to execute loan documents the lender requires [~~(6) the following additional items (list);~~]
7. The following additional items (list):

This conditional pre-qualification expires on: _____

Residential Mortgage Loan Originator Name

NMLS ID #

Figure: 7 TAC §80.201(b)

Form B
Loan Commitment Letter

Date:

~~[Residential Mortgage Loan Originator:]~~
~~[License Number: _____]~~

Prospective Applicant(s) / Applicant(s):

Mortgage Company:

NMLS ID #:

~~[Address: _____]~~
~~[Phone #: _____]~~

Loan Details [(describe as follows)]:

Loan Amount:

Interest Rate*:

Term:

Interest Rate Lock Expires (if applicable):

Maximum Loan-to-Value Ratio:

Loan Type and Program:

*Interest rate is subject to change unless it has been locked

~~[Secondary financing terms (if applicable):—~~

~~Optional Information: Points: Origination: _____ Discount: _____~~

~~Commitment: _____ Other (describe): _____]~~

Has a subject property been identified? [Subject Property:] Yes No

~~[Residential mortgage loan originator has received a signed application from the applicant.]~~

Mortgage company [Residential mortgage loan originator] has:

Reviewed prospective applicant's / applicant's credit report and credit score Yes No Not applicable

Verified prospective applicant's / applicant's income Yes No Not applicable

Verified prospective applicant's / applicant's available cash to close [~~for down payment and closing costs~~]
___ Yes ___ No ___ Not applicable

Reviewed prospective applicant's / applicant's debts and other assets ___ Yes ___ No ___ Not applicable

Prospective applicant(s) / applicant(s) [Applicant] is approved [approved] for the loan provided that [~~the applicant's~~] creditworthiness and financial position do not materially change prior to closing and provided that [~~provided that~~].

1. The subject property is appraised for an amount not less than \$ _____ [;]
2. The lender does not object to encumbrances to title shown in the title commitment [~~or survey~~]
3. The subject property's survey shows no encroachments[;]
4. [~~3-~~] The subject property's condition meets lender's requirements[;]
5. [~~4-~~] The subject property is insured in accordance with lender's requirements[;]
6. [~~5-~~] The prospective applicant(s) / applicant(s) executes the loan documents lender requires[;] and
7. [~~6~~] The following additional conditions are complied with (list):

This conditional approval expires on _____.

Loan Underwriter Name
NMLS ID #

Figure: 7 TAC §81.201(a)

Form A

Conditional Approval Letter

This is not a loan approval or commitment to lend

Date:

Prospective Applicant(s) / Applicant(s):

Mortgage Banker:

NMLS ID # [Registration Number _____]

[Address _____]

[Phone # _____]

Loan Details [~~describe as follows~~]:

Loan Amount:

Qualifying Interest Rate:

Term:

Maximum Loan-to-Value Ratio:

Loan Type and Description:

~~[Mortgage banker _____ has _____ has not received a signed application for the loan from the prospective applicant]~~

Mortgage banker _____ has _____ has not reviewed the prospective applicant's / applicant's credit report and credit score

~~[Mortgage banker _____ has _____ has not reviewed the prospective applicant's credit score]~~

~~[Mortgage banker has reviewed the following additional items (list):]~~

The prospective applicant(s) / applicant(s) has provided the mortgage banker [_____ verbally _____ in writing] with the following information [~~about the prospective applicant~~]:

Income _____ Yes _____ No _____ Not applicable

Available cash to close [~~for down payment and payment of closing costs~~] _____ Yes _____ No _____ Not applicable

Debts _____ Yes _____ No _____ Not applicable

[Other] Assets ____ Yes ____ No ____ Not applicable

Based on the information that the prospective applicant(s) / applicant(s) has provided, ~~[to the mortgage banker, as described above,]~~ the mortgage banker has determined that the prospective applicant(s) / applicant(s) is eligible and qualified to meet the financial requirements of the loan ~~[Loan]~~.

This is not a loan approval or a commitment to lend on the terms described in the Loan Details section [an approval for the loan].

Approval of the loan requires:

1. Receipt of a complete loan application and all supporting documents requested ~~[(1) the mortgage banker to verify the information that the prospective applicant has provided;]~~
2. Lender verification of the information that the prospective applicant(s) / applicant(s) has provided ~~[(2) the prospective applicant's financial status and credit report to remain substantially the same until the loan closes;]~~
3. The prospective applicant's / applicant's financial status and credit report to remain substantially the same until the loan closes ~~[(3) the collateral for the loan (the subject property) to satisfy the lender's requirements (for example, appraisal, title, survey, condition, and insurance);]~~
4. The collateral for the loan to satisfy the lender's requirements ~~[(4) the loan type and terms, as described, to remain available in the market;]~~
5. The loan, as described, to remain available in the market ~~[(5) the prospective applicant to execute loan documents the lender requires, and]~~
6. The prospective applicant(s) / applicant(s) to execute loan documents the lender requires ~~[(6) the following additional items (list):]~~
7. The following additional items (list):

This conditional pre-qualification expires on _____

Residential Mortgage Loan Originator Name ~~[Mortgage Banker or Loan Officer]~~

NMLS ID #

Figure: 7 TAC §81.201(b)

Form B

Loan Commitment Letter

Date:

Prospective Applicant(s) / Applicant(s):

Mortgage Banker:

NMLS ID # [Registration Number _____]

[Address _____]

[Phone # _____]

Loan Details [(describe as follows)]:

[1.] Loan Amount:

[2.] Interest Rate*:

Term:

[3.] Interest Rate Lock Expires (if applicable):

[4.] Maximum Loan-to-Value Ratio:

[5.] Loan Type and Program:

*Interest rate is subject to change unless it has been locked

~~[Secondary financing terms (if applicable):-~~

~~Optional Information:- Points:-~~

~~Origination:-~~

~~Discount:-~~

~~Commitment:-~~

~~Other (describe):-]~~

~~Has a subject property been _____ No [Subject Property:]~~

~~[Mortgage banker has received a signed application from the applicant.]~~

Mortgage banker has:

Reviewed prospective applicant's / applicant's credit report and credit score: ____ Yes ____ No ____ Not

applicable

Verified prospective applicant's / applicant's income: Yes No Not applicable

Verified prospective applicant's / applicant's available cash to close [~~for down-payment and closing costs~~]:
 Yes No Not applicable

Reviewed prospective applicant's / applicant's debts and other assets: Yes No Not applicable

Prospective applicant(s) / applicant(s) [Applicant] is **approved** for the loan provided that [~~the applicant's~~] creditworthiness and financial position do not materially change prior to closing and **provided that** [~~the following additional conditions are fully satisfied~~]:

1. The subject property is appraised for an amount not less than \$ _____ [;]
2. The lender [~~mortgage banker~~] does not object to encumbrances to title shown in the title commitment [~~or survey~~]
3. The subject property's survey shows no encroachments[;]
4. [3.] The subject property's condition meets lender's [~~mortgage banker's~~] requirements[;]
5. [4.] The subject property is insured in accordance with lender's [~~mortgage banker's~~] requirements[;]
6. [5.] The prospective applicant(s) / applicant(s) [applicant] executes the loan documents the lender [~~mortgage banker~~] requires [~~and abides by closing instructions~~] and
7. [6.] The following additional conditions are complied with (list):

This conditional approval expires on _____

Loan Underwriter Name [Mortgage Banker]

NMLS ID #

Ruth Wright

From: Elvis Stulting <elvis@primelending.com>
Sent: Tuesday, May 28, 2019 12:34 PM
To: Ruth Wright
Subject: Proposed Form B Changes

Department of Savings and Mortgage Lending
c/o Ernest C. Garcia, General Counsel
2601 North Lamar, Suite 201
Austin, Texas 78705

Re: Comments against proposed Form B changes

Dear Mr. Garcia –

I am very concerned about specific language in the Proposed Rule concerning Form B for Mortgage Companies.

Originators licensed as a Mortgage Company use two methods for approving their loans:

- 1) They submit a fully processed file to a wholesaler who has a staff of human underwriters that review the documents submitted and issue written loan approvals with varying degrees of commitment.
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The point is the language in the Propose Rule fails to recognize the direction the industry is moving and essentially forces any state licensed company that wishes to use a Form B to have a human underwriter examine the file first.

Secondly, the following language causes confusion because its meaning is not clear:

"A conditional loan approval should not be issued until all credit requirements have been met unless an item is not a condition of the loan."

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document and it cannot be done prior to 10 days before closing and is nearly always done after a loan is Clear to Close - or final underwriting approval. A VVOE is certainly a "condition of the loan"

Lastly, the Realtor and Consumer confusion over Form B is greatly aggravated by the almost reckless use by Federal Depositories' MLOs. They are not regulated by this rule and they issue Approval Letters regularly that look very much like Form B, frequently with elements missing for which a Mortgage Company or Mortgage Banker would be in violation of this rule.

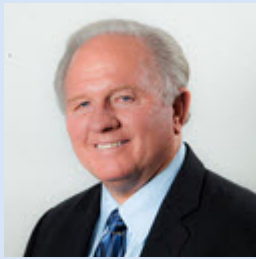
In conclusion, please do not finalize this rule without changes. The rule is a step backwards, it creates a competitive disadvantage, it uses confusing language and it fails to recognize the current state of technology. It also is being done at a time when most of the leadership of the industry is too preoccupied with legislative matters to pay attention to this proposed rule.

Sincerely,

Elvis Stulting
Past President
Texas Association of Mortgage Brokers

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Elvis Stulting
Senior Loan Originator
NMLS: 220139
Office: 281.681.6512
Cell: 713.806.8563
Fax: 866.908.5378
25511 Budde Road
Suite 302
The Woodlands, TX 77380



✉ elvis@primelending.com
📄 lo.primelending.com/elvis



PrimeLending NMLS: 13649. Equal Housing Lender.

PrimeLending, A PlainsCapital Company NMLS # 13649, Equal Housing Lender.

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The author of this email communication is not authorized, and has no intent, to make offers or enter into contracts or agreements via email communications.

Ruth Wright

From: claudia spofford [REDACTED]
Sent: Saturday, May 25, 2019 9:14 AM
To: Ruth Wright
Subject: Form A & B

The changes are very unreasonable & unrealistic.

D.

**Office of Consumer Credit
Commissioner**

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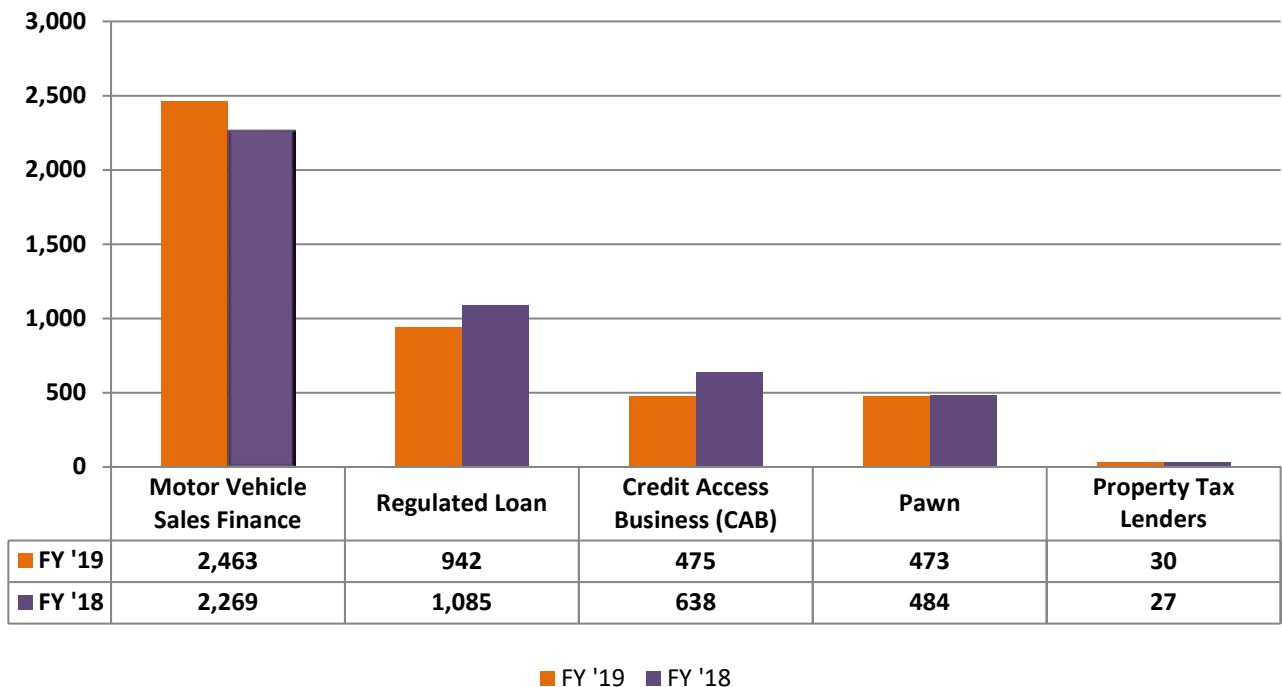
Consumer Protection and Consumer Assistance Report

The Consumer Protection group exceeded the FY 2019 examination completion goal of 4,200, conducting a total of 4,383 examinations. The increased production of examinations was due to: (1) all field-based examiners achieving certification to conduct motor vehicle sales finance examinations; and (2) the completion of several enterprise level examinations.

On September 5th and 6th, a group of financial examiners attended training for Chapter 342-F regulated loan and Chapter 371 pawn transactions. In order to certify these examiners in Chapter 342-F regulated loan and Chapter 371 pawn examinations, field based training is being provided by experienced examiners.

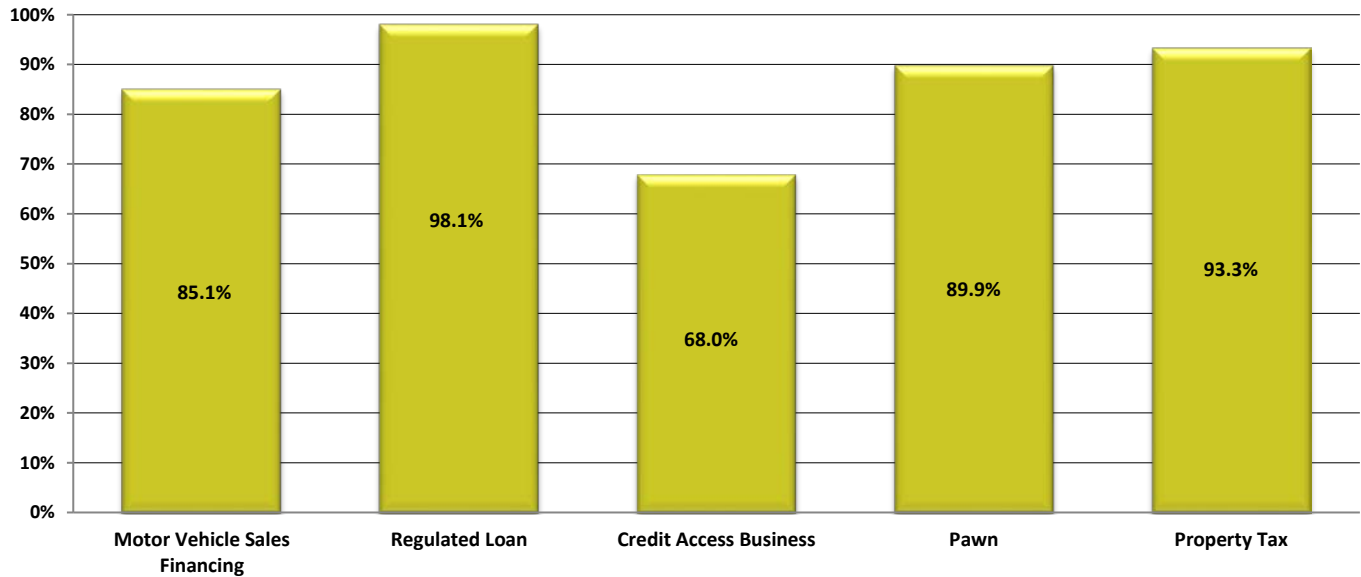
During the week of September 22, 2019, the OCCC held its 2019 Examiner Training School in Kerrville, Texas. The topics of discussion encompassed communication and business writing, implementation of a new exam review program, statutory changes enacted by the Texas 86th Legislature, and examiner-in-charge training for enterprise level examinations.

Examinations Conducted: Sept - Aug Fiscal Year Comparison

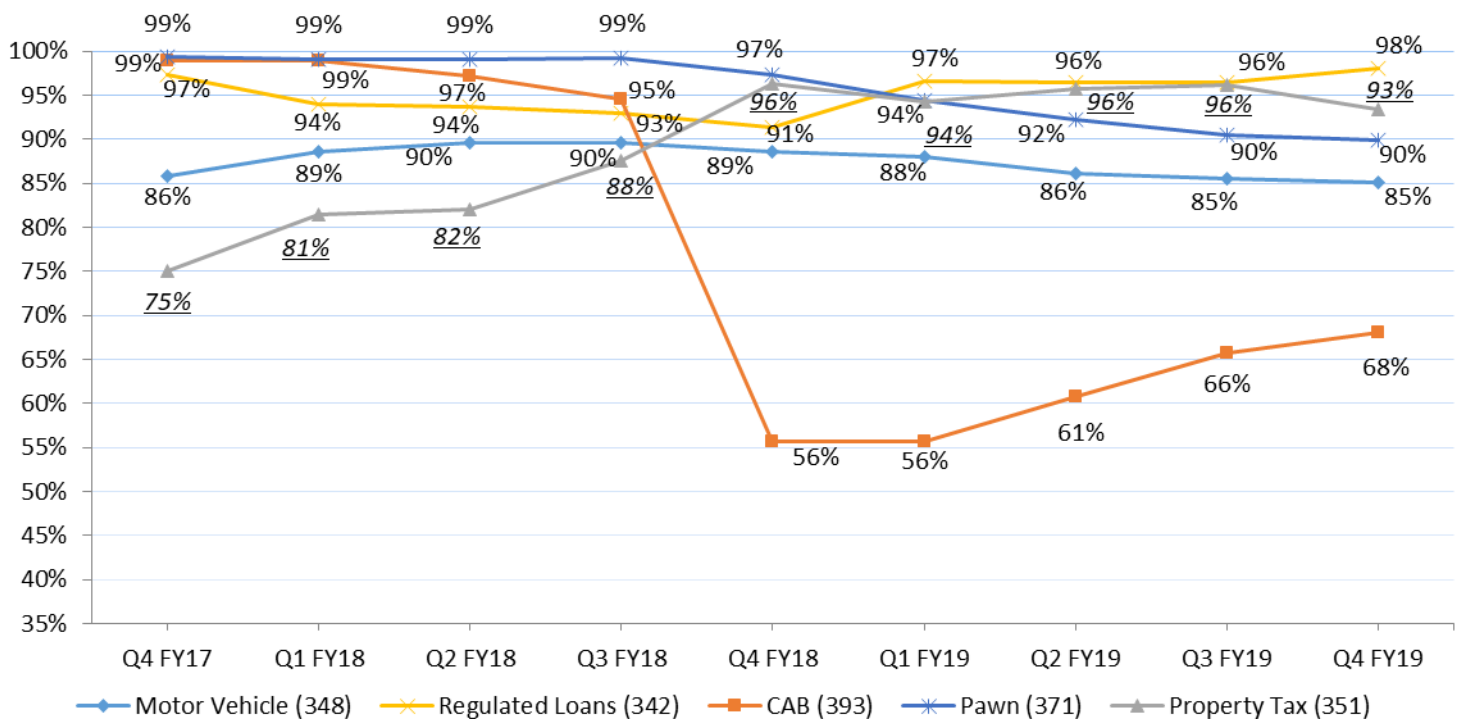


The acceptable level of compliance for all examinations is charted below. The first chart shows the acceptable level of compliance for examinations conducted in FY 2019; four of the license types were above 85% and the fifth was 68%. The second chart denotes the acceptable level of compliance on a trailing 12 month basis through the end of FY 2019.

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



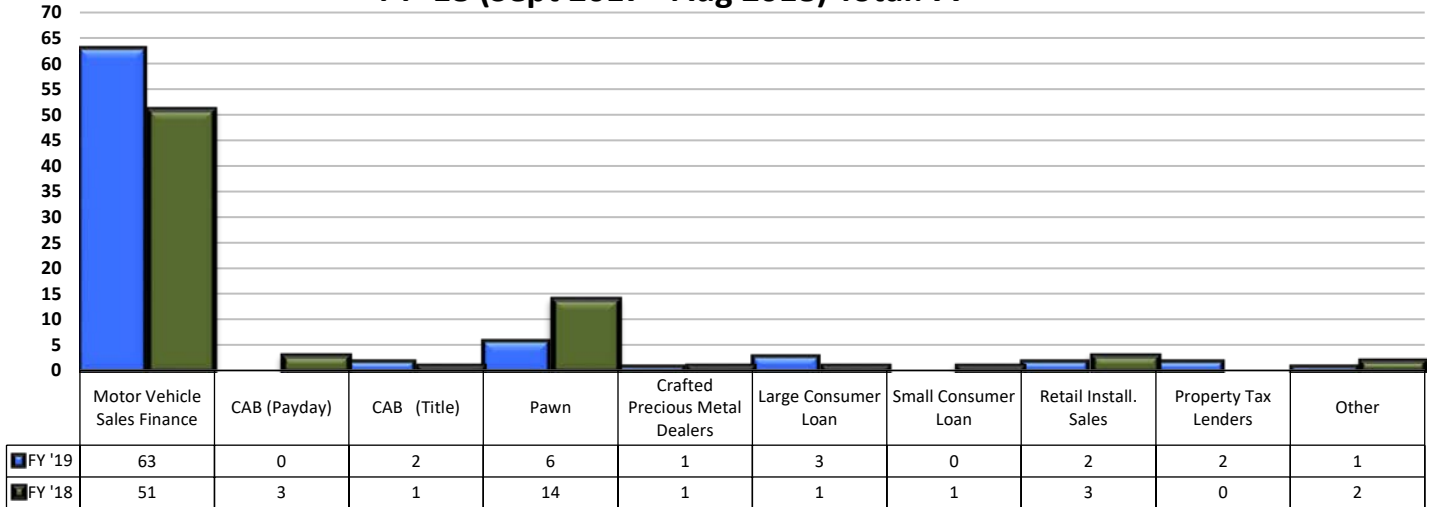
Acceptable Compliance Levels - Trailing 12 Months (at quarter end)



Investigations

For FY 2019, the agency completed 80 investigations, 100% of the FY 2019 goal of 80. Motor Vehicle Sales Finance was the largest category, comprising 78.8% of the overall number of investigations completed for FY 2019, with unlicensed activity as the top issue.

Investigations Completed FY '19 (Sept 2018 - Aug 2019) Total: 80 FY '18 (Sept 2017 - Aug 2018) Total: 77



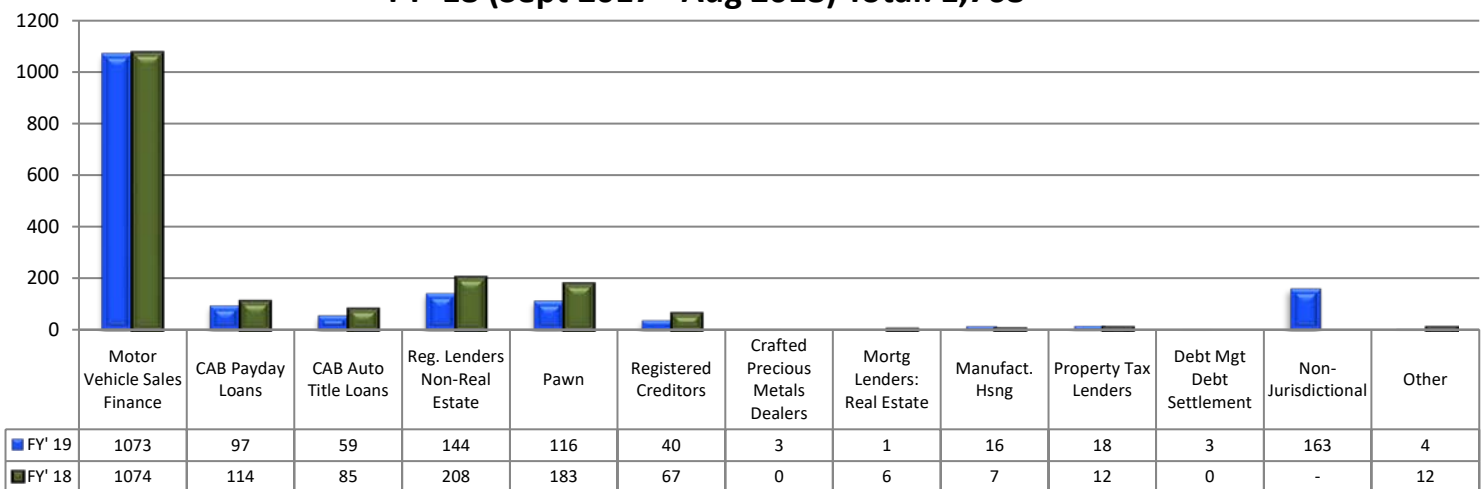
Consumer Assistance

For this period, 1,737 complaints were processed of which 163 were classified as non-jurisdictional.

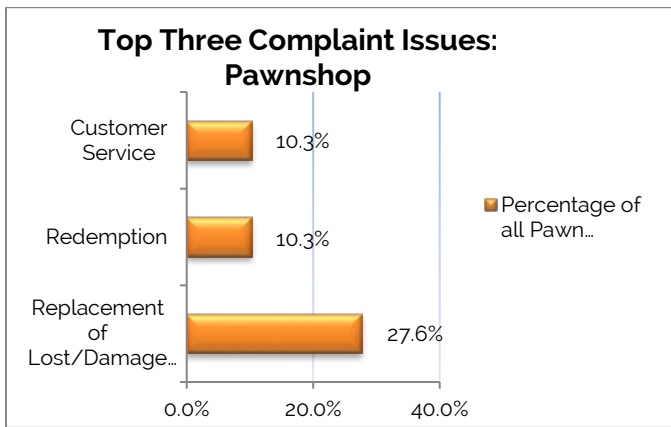
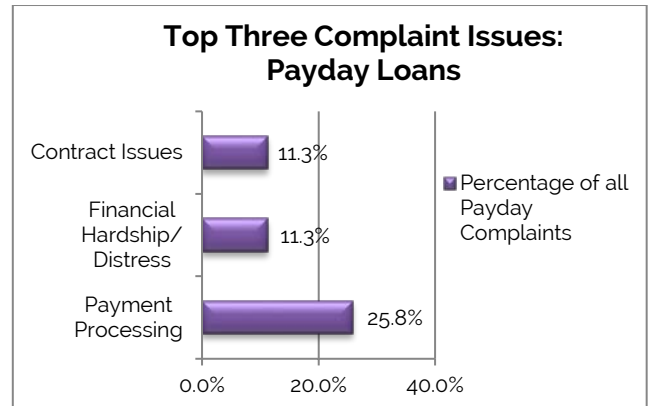
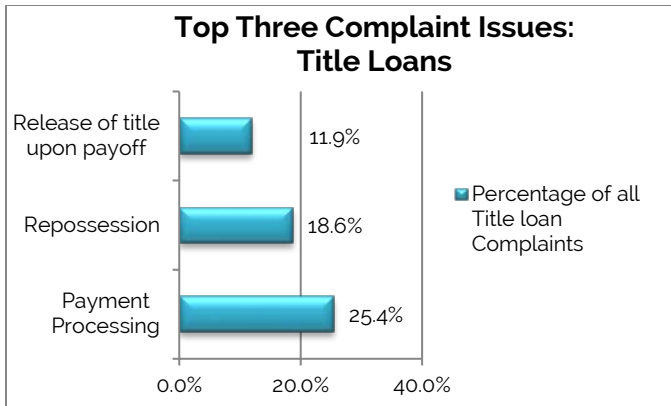
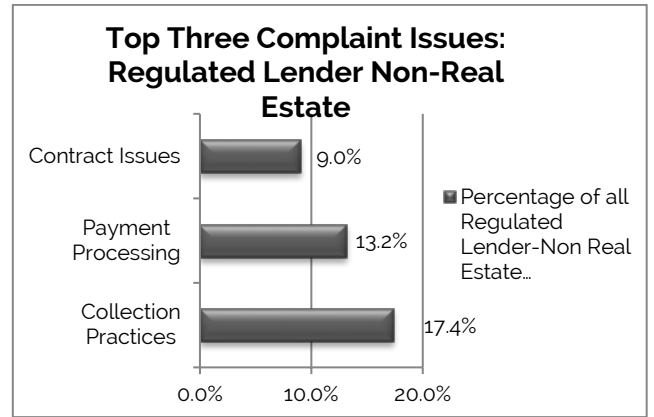
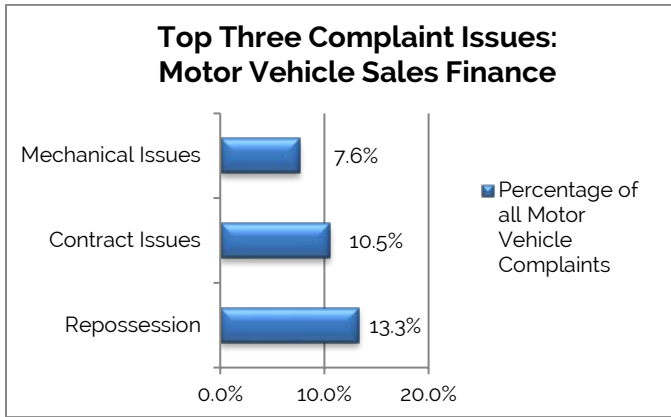
The top four areas of complaints are (1) Motor Vehicle Sales Finance (MVSF), (2) Credit Access Business (CAB), (3) Regulated Lenders Non-Real Estate, and (4) Pawn.

MVSF complaints were the largest complaint category at 61.8%. The second largest number of complaints came from CAB complaints at 9.0% collectively; separately, these are 5.6% for payday loans and 3.4% for title loans. The third largest category of complaints came from Regulated Lenders Non-Real Estate at 8.3%. The fourth largest category was Pawn at 6.7% complaints.

Complaints Processed FY '19 (Sept 2018 - Aug 2019) Total: 1,737 FY '18 (Sept 2017 - Aug 2018) Total: 1,768

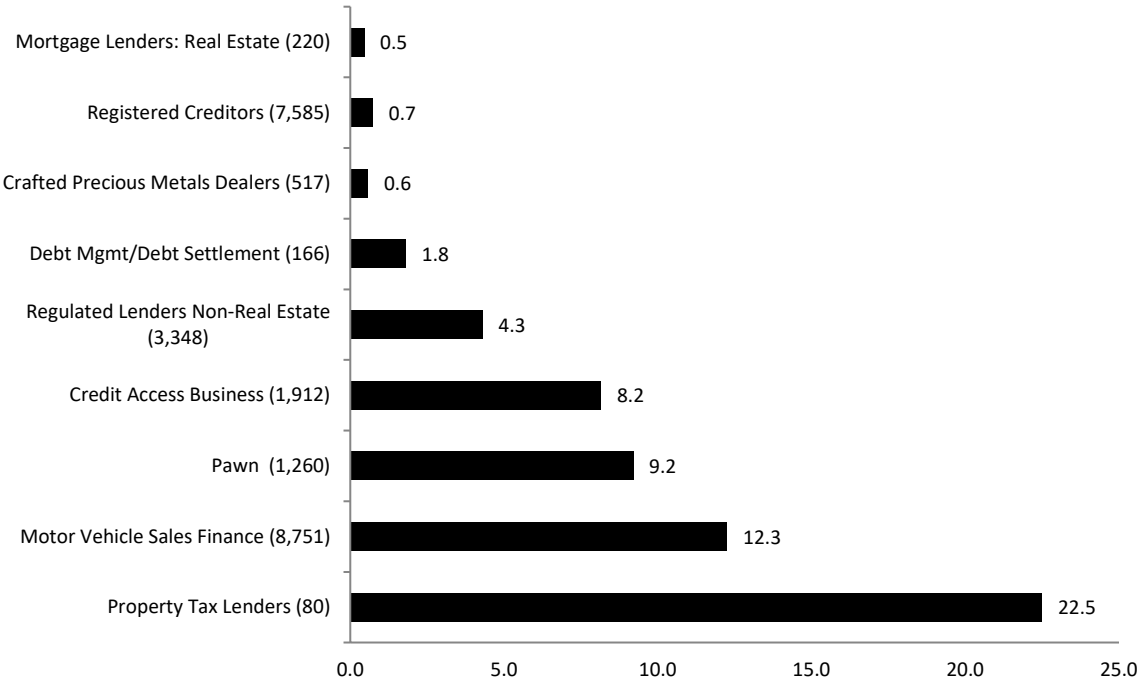


Each of the following charts represent the three top complaint areas per license type:



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.

Ratio of Complaints Processed to Total Active License or Registrants*
FY '19 (Sept 2018 - Aug 2019)



■ Complaints per Hundred Licenses

*License-Registrant levels as of 9-3-2019

CAB Reporting Update

Presented are selected statistics of the first two calendar quarters (Jan-June) data compared through the years. The majority of new loans require multiple payments scheduled to last around five months. Depending on the loan structure, the multiple payments could either be principal reducing or fee only with the principal and interest due at maturity. Also presented in this chart, the fee charged per product takes into account the term of the loan.

Repossession numbers continue to trend upwards coinciding with the move to longer payment terms. Installment loans typically have more affordable payments and default can happen after a few successful payments. Repossessions on those accounts can show up several periods after the loan was made depending on the number of payments made or refinancing activity. The agency will closely monitor that data point to see if it stabilizes or if it creates new compliance risk.

Data Highlights (All Loan Types) Q1 Q2 Comparison	2019	2018	2017	2016	2015	2014
Number of new payday loans	985,394	1,000,386	1,044,152	1,064,650	1,085,393	1,100,247
Number of new auto title loans	140,604	149,006	129,322	133,881	159,680	206,235
Percentage of payday loans due in multiple installments	56%	50%	45%	41%	38%	32%
Percentage of auto title loans due in multiple installments	58%	55%	45%	40%	23%	17%
Number of vehicles repossessed under all auto title loans	22,005	16,620	15,162	15,702	18,575	20,879
Total number of locations reporting activity	1,756	1,832	1,817	2,002	2,575	3,033

Payday Loans Q1-Q2	Single Installment			Multiple Installment		
	2019	2018	2017	2019	2018	2017
Number of consumers obtaining loans	298,848	346,365	409,870	500,444	441,335	416,764
Number of new loans	430,071	502,600	577,829	555,323	497,786	466,323
Number of total refinances ¹	508,144	778,715	939,831	189,423	129,207	137,009
Average loan amount	\$456	\$471	\$461	\$668	\$610	\$569
Average fee per \$100 borrowed	\$23	\$24	\$24	\$132	\$141	\$150
Average original term (in days)	21	22	20	145	144	145
Average Fee Converted to a Daily Rate ²	1.05%	1.11%	1.23%	0.92%	0.97%	1.03%

Title Loans Q1 Q2	Single Installment			Multiple Installment		
	2019	2018	2017	2019	2018	2017
Number of consumers obtaining loans	51,859	58,637	63,347	77,574	76,982	53,628
Number of new loans	58,716	67,486	71,672	81,888	81,520	57,650
Number of total refinances ¹	311,343	294,655	338,540	75,800	64,719	49,053
Average loan amount	\$1,634	\$1,307	\$1,383	\$1,281	\$1,158	\$1,044
Average fee per \$100 borrowed	\$15	\$16	\$16	\$116	\$116	\$132
Average original term (in days)	29	30	30	156	155	156
Average Fee Converted to a Daily Rate ²	0.52%	0.54%	0.55%	0.75%	0.75%	0.84%

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

2 Based on averages, per dollar borrowed a consumer would pay this percentage per day. The APR could be approximated by multiplying this rate by 365; however, it could be significantly higher if the multiple installment loans reduce principal with each payment and the total fees remain the same.



Licensing Report- October 2019

Mirand Diamond, Director

Renewals

Motor vehicle and commercial motor vehicle sales finance license renewal concluded with 90% of licensees renewing and more than 85% of renewals completed online.

Renewal for registered creditors is now open and will continue through the end of November and it is anticipated that 80% of registrants will renew. The department will also begin making preparations for credit access business, property tax lender and regulated lender renewal that will open in November.

Applications Processing

The volume of pending business license applications remains at a manageable level. However staffing changes in the fall will likely have an impact on this volume and it will likely increase in Q2 of fiscal year 2020.

Incoming pawn employee application volume has decreased due to new statutory changes that make pawn employee licensing optional. The goal of pending applications and departmental tasks have been adjusted accordingly.

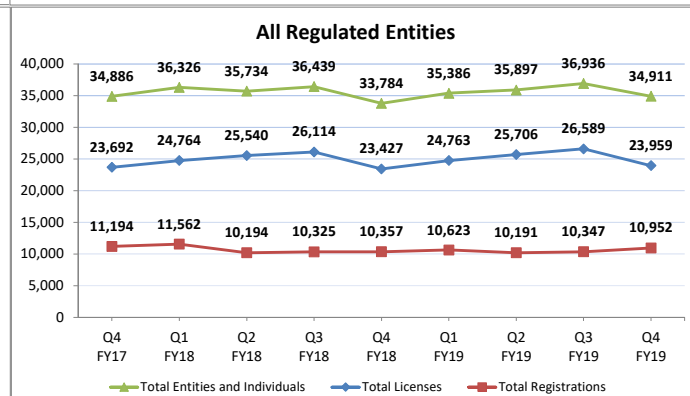
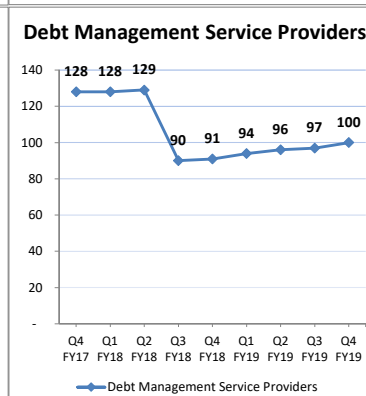
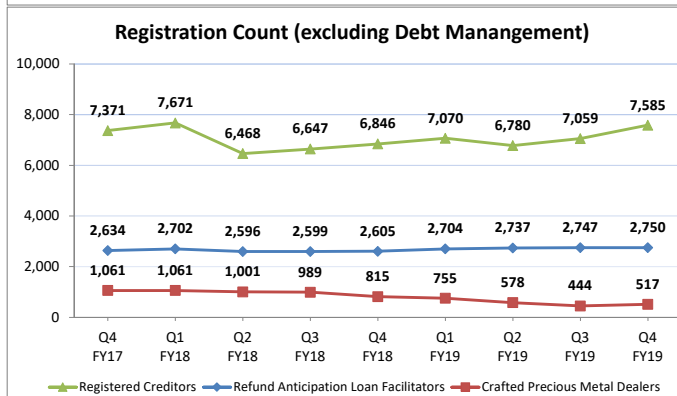
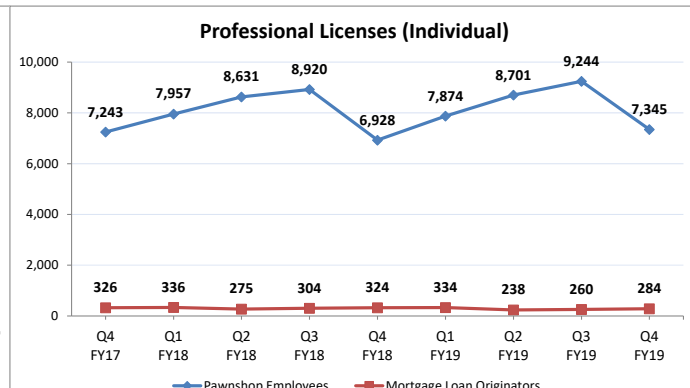
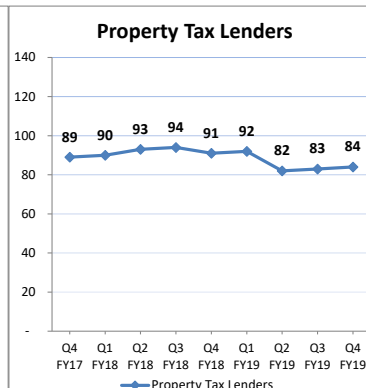
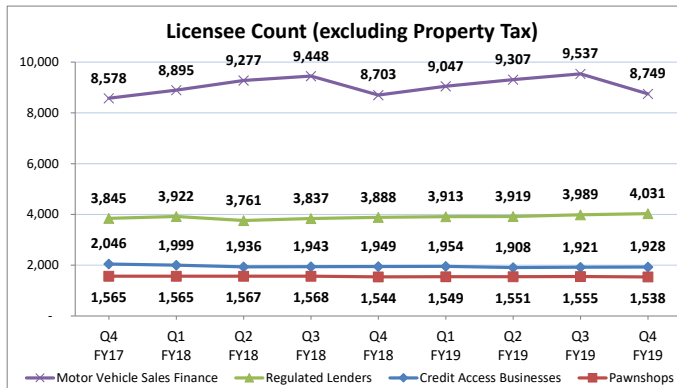
Other Updates

The department launched the program for optional pawn employee licensing in ALECS on Sept 1, which allows pawn shops to choose whether they opt in or out, logs selections and histories, impacts pawn employee application submission and changes informational displays.

Regulated Entity Population Trends

The following charts reflect the number of OCCC regulated entities at the end of each quarter in fiscal years 2017 through 2019.

Number of OCC Regulated Entities Quarterly Comparison of FY17-19





ADMINISTRATION REPORT

COMMUNICATIONS

With the departure of the agency’s communications director, the agency created a communications team consisting of several staff members. This team has been meeting regularly to develop a communications plan for the agency that will enhance and improve its communications internally and with its outside stakeholders. The agency will be participating in its biennial employee engagement survey set to launch in November.

Agency staff continues to provide a combination of live presentations and communication through various channels to regulated entities and other regulatory groups.

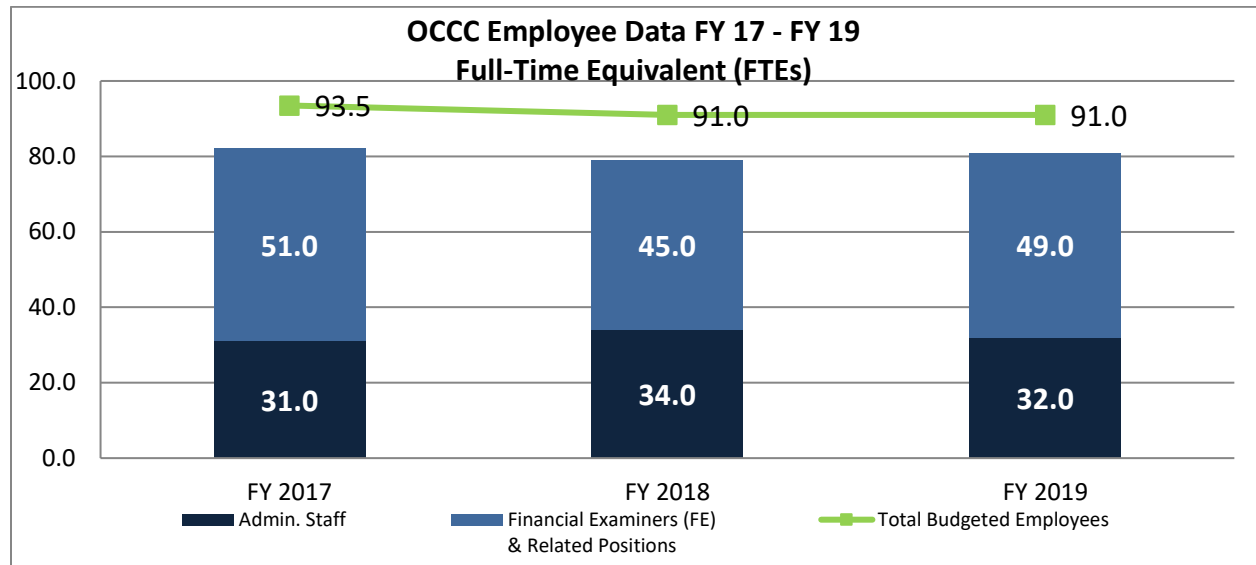
- On August 15th Administrative Review Examiner Joseph Adamek addressed the Texas Department of Motor Vehicles (DMV) training in Austin.
- On August 15th Director of Consumer Protection Huffman Lewis spoke at the Texas Consumer Credit Alliance in Austin.
- On August 27th Senior Supervising Examiner William Purce addressed the Texas Department of Insurance in Austin.
- On September 10th Senior Administrative Examiner William Purce addressed the Texas Department of Housing and Community Affairs in Austin.
- On September 11th Commissioner Pettijohn, Director of Consumer Protection Huffman Lewis and Deputy General Counsel Matthew Nance spoke at the Texas Property Tax Lienholder’s Association annual meeting in Austin.
- On September 11th and 12th Examiner Eric Fancher addressed the Texas Department of Motor Vehicles (DMV) training in Dallas.
- September 30th and October 1st, Director of Consumer Protection Huffman Lewis and Examiner Eric Fancher addressed the National Association of Consumer Credit Administrators (NACCA) Examiner’s School in Columbus, Ohio.

HUMAN RESOURCES

At the end of FY19, the OCCC was staffed with a total of 81 FTEs (fulltime equivalent). Currently the agency is seeking to fill the following positions:

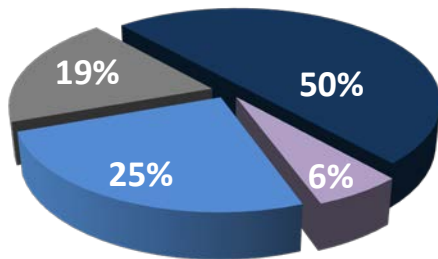
Vacancy	
Administrative Assistant II (Austin)	Active – Accepting Applications

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



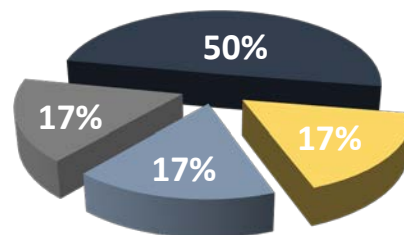
The current turnover rate was 18.9%, and the chart below represents FY19 data.

OCCC Turnover Categories
FY 19 - All Employees
 (09/01/18 - 8/31/19)
 16 total - 4 Interagency Transfer, 8 Voluntary Resignations, 3 Retirements, 1 Dismissal



■ Interagency Transfer ■ Retirement
 ■ Voluntary Resignation ■ Dismissal

OCCC Turnover
FY 19 - FE Series
 (09/01/18 - 8/31/19)
 6 total - 1 Interagency Transfer, 3 Voluntary Resignations, 1 Retirement, 1 Dismissal



■ Interagency Transfer ■ Retirement
 ■ Voluntary Resignation ■ Dismissal

OCCC has implemented the best practices recommendations from the Texas Workforce Commission, Civil Rights Division review regarding the agency personnel policies and procedures system.

FINANCIAL EDUCATION

During Q4, the Financial Education Department provided two Preventing Elderly Exploitation presentations to a combined thirty-one individuals. The presentations were delivered at the Fonteno Senior Education Center and Thomas A. Glazier Senior Education Center in Houston, Texas.

During Fiscal Year 2019, the Financial Education Department provided a total of 19 presentations that reached 337 individuals. As a result, the Financial Education Department exceeded the yearly participation goal at 103.7%.

Texas Financial Education Endowment (TFEE) 2018-2019 Semi-Annual Grant Cycle reports and reimbursements requests were due at the end of July. The agency is currently reviewing and processing these reimbursement requests. The 2020-2021 TFEE Grant Cycle application period is open until December 31, 2019. The agency is currently receiving applications and is participating in outreach efforts to promote TFEE to support state-wide financial capability and consumer credit building activities.

A new Grant Coordinator and Financial Education Specialist began employment with the agency on October 1, 2020. She has a background in communication and has already begun to engage in outreach regarding TFEE and Financial Education.

Information Technology

Compliance

IT implemented the new change management procedure which addresses findings from the internal audit.

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.

Security & Software

Two ALECS modules were developed and released. Pawn Employee Opt-in was released in late August, meeting the September 1 legislative deadline. Industry Reporting was released in late September.



Accounting Report

Christina Cuellar Hoke, Manager

The Accounting department finished preparations and submission of the agency's budget for FY20. A job posting for an Accountant III-IV is now open to fill a position which became vacant during the 4th quarter of FY19. A temporary worker has been contracted to assist the accounting department with certain duties.

The department's completion of the annual cybersecurity training requirement has been met. The Uniform Statewide Payroll/Personnel System (USPS) FY19 year-end rollover into FY20 has been completed. The Accounting department has also finished preparing and submitting the Annual Financial Report for FY19.

OFFICE OF CONSUMER CREDIT COMMISSIONER
EXECUTIVE SUMMARY

As of August 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	103	14,578
Regulated Lenders Examinations	1,207	1,085	266	176	209	291	942
Property Tax Lender Examinations	32	27	10	3	8	9	30
Pawnshop Examinations	575	484	121	57	147	148	473
Motor Vehicle Examinations	2,354	2,269	593	654	650	566	2,463
Credit Access Businesses Examinations	652	638	22	110	191	152	475
CONSUMER ASSISTANCE							
Telephone Complaints Received	986	742	154	78	154	124	510
Written Complaints Received	1,111	1,073	270	227	317	337	1,151
Total Complaints Processed	2,130	1,768	483	341	441	472	1,737
% of Written Complaints Closed within 90 Calendar Days	91.83%	83.72%	85.28%	76.49%	88.25%	89.91%	85.44%
ADMINISTRATIVE ENFORCEMENT ACTIONS							
Originated	371	194	199	38	89	91	417
Finalized	389	200	22	161	70	71	324
LICENSING AND REGISTRATION							
Licenses							
Regulated Loan Licenses	3,845	3,888	3,913	3,919	3,989	4,031	4,031
Pawnshop Licenses	1,565	1,544	1,549	1,551	1,555	1,538	1,538
Pawnshop Employee Licenses	7,243	6,928	7,874	8,701	9,244	7,345	7,345
Commercial MV Sales Fin. Licenses	39	49	52	55	57	49	49
Motor Vehicle Sales Finance Licenses	8,539	8,654	8,995	9,252	9,480	8,700	8,700
Property Tax Loan Licenses	89	91	92	82	83	84	84
Mortgage Loan Originators	326	324	334	238	260	284	284
Credit Access Business Licenses	2,046	1,949	1,954	1,908	1,921	1,928	1,928
Registrations							
Registered Creditors	7,371	6,846	7,070	6,780	7,059	7,585	7,585
Crafted Precious Metal Dealers	1,061	815	755	578	444	517	517
Debt Management Service Providers	128	91	94	96	98	100	100
Refund Anticipation Loan Facilitators	2,634	2,605	2,704	2,737	2,747	2,750	2,750
Applications							
Business -- New	1,522	1,594	417	462	374	426	1,679
Business -- Change of Ownership	138	136	50	23	37	21	131
Pawnshop Employees -- New	3,133	3,135	1,164	1,069	744	663	3,640
HUMAN RESOURCES DATA							
Field Examiners Staffing	41	39	45	45	42	49	49
Total Staffing	82	80	86	87	83	81	81

**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	428	1,252	61.98%				
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.								
Quarter 4	2,020	467	1,719	85.10%	1,762	2,139	2,165	2,131
Although the OCCC has observed an overall decrease in the number of complaints processed in FY18 versus FY19, the number of complex complaints involving Motor Vehicle Sales Finance, Property Tax Loans, and Manufactured Housing transactions have remained nearly the same or have increased. Specifically, year over year, Motor Vehicle Sales Finance transactions have only decreased by one complaint, Property Tax Loan transactions have increased by 6 complaints, and Manufactured Housing transactions have increased by 9 complaints. These types of complaints are complex and require increased agency resources to process and resolve.								
2. # Investigations Closed								
Quarter 1	80	20	20	25.00%				
Quarter 2	80	20	40	50.00%				
Quarter 3	80	21	61	76.25%				
Quarter 4	80	19	80	100.00%	77	90	104	87

**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	
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%					
Quarter 4	4,200	1,166	4,383	104.36%	4,503	4,820	4,288	4,002	
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%					
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.									
Quarter 4	1,445	426	1,679	116.19%	1,594	1,660	1,901	2,226	
The department worked to increase efficiencies, improve communication with applicants and adjust resources to increase business license application processing in FY 19.									
2. # Pawn Employee License Applications Processed									
Quarter 1	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.									
Quarter 2	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.									

**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	
Quarter 3	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.									
Quarter 4	2,700	663	3,640	134.81%	3,135	3,133	3,253	4,438	
In order to process incoming applications and older applications, the licensing department had to increase processing of pawn employee applications in FY 19 and was able to do so by adjusting departmental resources temporarily.									
3-3-1 Financial Education									
1. # Consumers Receiving Financial Education									
Quarter 1	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.									
Quarter 2	325	146	212	65.23%					
As the school year progressed, availability and access to students increased and allowed additional program scheduling.									
Quarter 3	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.									
Quarter 4	325	31	337	103.69%	332	342	230	340	

*Varies by 5% or more from target.

Actual Performance for Outcome Measures

Type/Strategy/Measure	2019 Target	2019 YTD	Percent of Annual Target
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Outcome Measures-Key

1-1 CONSUMER COMPLAINTS

1. % COMPLAINTS RESOLVED WITHIN 90 DAYS	92.00%	85.44%	92.87% *
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The number of complaints resolved within 90 days dropped slightly below the agency’s annual target due to several complaints that required extended processing time due to external factors beyond the agency’s control, such as businesses filing bankruptcy or closing. Additionally, the increase in the number of complaints involving Property Tax Loans and Manufactured Housing transactions resulted in longer complaint processing times due to the complexity of the transactions and the staff resources required to process complaint issues.

2-1 ENSURE COMPLIANCE

1. % EXAMINATIONS IN COMPLIANCE	85.00%	86.61%	101.89%
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2. MONIES RETURNED FROM LICENSEES	\$5,000,000	\$14,578,199	291.56% *
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Performance exceeded the forecasted target for the year. The majority of the restitution (approximately 80%) to Texas consumers was a result of errors found during examinations of licenses in the motor vehicle sales finance area. The motor vehicle sales finance restitution involved debt cancellation agreement refunds, unauthorized collection fees, excessive public official fees (tax, title, and license fees), and excessive inspection fees. Credit access businesses refunded over \$2 million to Texas consumers.

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

OCCC Actual Performance for Non-Key Measures
Fiscal Year 2019
For Period Ending August 31, 2019

Type/Strategy/Measure	2019 Target	2019 YTD	Percent of Annual Target
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Non-Key Measures

A. CONSUMER PROTECTION

A.1.1	MONIES OR CREDITS RETURNED TO CONSUMERS-complaints	\$20,000	\$617,036	3085.2%	*
A.2.1	% OF LICENSEES EXAMINED ANNUALLY	25%	28.1%	112.4%	*
A.2.1	% OF RE-EXAMS RESULTING IN ACCEPTABLE COMPLIANCE RATING	80%	79.9%	99.9%	*
A.2.1	NUMBER OF ADMINISTRATIVE HEARINGS CONDUCTED	6	4	66.7%	*
	The agency was able to resolve some docketed matters before a hearing was conducted.				
A.2.1	NUMBER OF ADVISORY BULLETINS PUBLISHED	6	0	0.0%	*
	The agency did not identify legal or compliance issues that warranted advisory bulletins in FY19.				
A.2.1	NUMBER OF ENFORCEMENT ACTION AND CORRECTIVE ACTION SUMMARIES PUBLISHED	7	6	85.7%	*
	The legal department had anticipated including an additional summary in an industry newsletter, but this newsletter was not sent during FY19.				

B. EFFECTIVE LICENSING AND REGISTRATION

B.1.1	AVERAGE PROCESSING TIME (DAYS) FOR LICENSE APPS	30	54	180.0%	*
	Although the performance has improved from 61 days in 2018 to 54 days in 2019 the goal was not met. Processing time is often increased due to substantially incomplete application submission. However the department will continue to strive for 30 days processing time in order to deliver good customer service and timely issuance of licenses.				
B.1.1	AVERAGE PROCESSING TIME (DAYS) FOR PAWNSHOP EMPLOYEE APPS	30	46	153.3%	*
	The performance improved from 53 days in 2018 to 46 days in 2019, however, the goal was not met. Optional pawn employee licensing will likely contribute to the goal of 30 days processing time being met in FY 20.				
B.1.1	AVERAGE PROCESSING TIME (DAYS) FOR RMLO APPS	15	24	160.0%	*
	Staffing changes coupled with necessary NMLS training led to an increase in processing time for RMLO applications. However the goal of 15 days is an appropriate benchmark for these work items and will remain.				
B.1.1	NUMBER OF REGISTRATIONS PROCESSED	10,500	10,952	104.3%	*
B.1.1	NUMBER OF RMLO APPS PROCESSED	150	71	47.3%	*
	A decrease in the volume of applications received caused the number of RMLO applications processed in FY 19 to decline. The department has adjusted FY 20 expectations accordingly.				

C. FINANCIAL EDUCATION

C.1.1	NUMBER OF TX CONSUMERS REACHED THROUGH AGENCY PARTICIPATION AT COMMUNITY EVENTS, PRESENTATIONS AND ONLINE RESOURCES	1,500	2,913	194.2%	*
C.1.1	NUMBER OF CONTACTS MADE WITH COMMUNITY ORGS AND MEDIA	30	21	70.0%	*
	The agency continues to seek opportunities for outreach with community organizations and media. The agency has established a communication team and recently hired a Program Specialist to expand outreach in this area. The agency anticipates the number of contacts with community organizations and media will trend upwards in the future.				
C.2.2	TOTAL DOLLAR AMOUNT OF GRANT AWARDS DISTRIBUTED WITHIN THE GRANT CYCLE	\$150,000	\$55,094	36.7%	*
	TFEE grant cycles are set on a calendar year and the Agency's cycles are reported on a fiscal year. This presents a challenge in presenting grant-related data. The 3rd semi-annual grant reimbursements are currently in process and have not been included in this report. It is anticipated to be much closer to the goal once all reimbursements have been processed. One grantee has not engaged in any grant-related activities.				
C.2.2	NUMBER OF CONSUMERS SERVED/TRAINED (TFEE)	50,000	10,109	20.2%	*
	TFEE grant cycles are set on a calendar year and the Agency's cycles are reported on a fiscal year. This presents a challenge in presenting grant-related data. Four grantees are currently behind on their participation goal, including one grantee that has not engaged in any grant-related activities. However, five grantees have already exceed their participation goals for the full grant cycle which ends December 31, 2019.				

SCHEDULE C. HUB USAGE

1	NUMBER OF HUB CONTRACTORS AND SUBCONTRACTORS CONTACTED FOR BID PROPOSALS	10	2	20.0%	*
	Bid proposals were only needed for two purchases in FY19.				
2	NUMBER OF HUB CONTRACTS AND SUBCONTRACTS AWARDED	2	2	100.0%	*
3	DOLLAR VALUE OF HUB CONTRACTS AND SUBCONTRACTS AWARDED	\$75,000	\$99,644	132.9%	*

* Varies by 5% or more from target.



Legal Department Report

Michael Rigby, General Counsel

October 2019

Enforcement Report

Contested Case

In August 2019, the OCCC received a proposal for decision from the State Office of Administrative Hearings (SOAH) in the matter of *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 administrative law judge found that the OCCC did not meet its burden of proof in this case. Although the OCCC introduced evidence that the pre-existing lienholder's lien was recorded in the real property records, the judge found that the OCCC did not prove that the lienholder still held a lien on the date of the property tax loan. In the proposal for decision, the judge recommended that the OCCC dismiss its cease-and-desist order and assess no administrative penalty. After receiving the proposal for decision, the OCCC issued an order withdrawing its previous cease-and-desist order and administrative penalty notice.

Orders for Reporting Violations

In August 2019, the OCCC issued 65 enforcement orders against regulated lenders that did not timely and accurately file their 2018 annual reports by the deadline of May 1, 2019. Of these orders, 48 were injunctions requiring the licensees to file timely and accurate reports, and 17 imposed an administrative penalty for violating a previous injunction.

Performance Report

The following table summarizes enforcement actions closed by the OCCC during the last four fiscal years. 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 August 31, 2019				
	FY 2019	FY 2018	FY 2017	FY 2016
Injunction Actions				
Crafted Precious Metal Dealer	0	0	0	0
Credit Access Business	53	27	47	25
Debt Management Provider	10	5	2	1
Manufactured Housing	0	0	1	0
Motor Vehicle Sales Finance	20	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	22	12	37	88
Residential Mortgage Loan Originator	0	1	1	0
Total Injunction Actions	262	154	230	157
Administrative Penalty Actions				
Crafted Precious Metal Dealer	0	0	0	2
Credit Access Business	14	6	23	97
Debt Management Provider	0	1	0	1
Motor Vehicle Sales Finance	19	26	106	129
Pawnshop	12	6	3	40
Pawnshop Employee	0	0	0	1
Property Tax Lender	6	6	2	3
Regulated Lender	7	0	13	0
Residential Mortgage Loan Originator	0	0	0	1
Total Administrative Penalty Actions	58	45	147	273
Revocation / Suspension Actions				
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
Total Revocation / Suspension Actions	2	1	8	17
Application Denial and Protest Actions				
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
Total App. Denial and Protest Actions	2	0	3	11
Total Actions Closed	324	200	388	458

From August 1, 2019 to August 31, 2019, the OCCC:

- closed 23 cases with final orders,
- opened 3 cases in order to assess administrative penalties,
- opened 8 cases in order to issue injunctions,
- opened no cases in order to revoke a license,
- participated in no contested case hearings, and
- opened one case challenging an application denial.

The OCCC has one hearing scheduled between October 1, 2019, and November 30, 2019.

The information above relates to enforcement actions through August 31, 2019. In future reports, the legal department will update the reporting format to track performance measures for FY 2020. The next report in December 2019 will include information for September, October, and November 2019.

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 September 23, the court of appeals denied VIP's motion for rehearing *en banc* (i.e., VIP's motion for all justices on the Dallas court of appeals to rehear the case). VIP's deadline to appeal the case to the Texas Supreme Court is November 7, 2019.

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.

Rule Actions

At the October meeting, the OCCC is presenting the following rule actions for adoption, to implement 2019 legislation:

- amendments to Chapter 83 relating to the single equivalent daily rate for regulated loans (implementing HB 3855),
- amendments to Chapter 86 relating to documentary fees for motor-driven cycles (implementing HB 3171),
- a new rule in Chapter 2 relating to military licensing for residential mortgage loan originators (implementing SB 1200), and
- a new rule in Chapter 85 relating to military licensing for pawnshop employees (implementing SB 1200).

At the October meeting, the OCCC is also presenting (on behalf of all three finance agencies) a proposed rule action relating to negotiated rulemaking, alternative dispute resolution, and finance commission appeals to implement the OCCC's Sunset legislation.

In February 2020, the OCCC plans to present rule actions to re-adopt the following chapters after rule review (and to present proposals of any amendments resulting from the rule review):

- Chapter 2 (relating to residential mortgage loan originators), and
- Chapter 86 (relating to registered creditors).

Attorney General Opinion Requests

In September and October 2019, the OCCC filed briefs to assist the Texas attorney general with two requests for opinions: RQ-0300-KP (regarding credit services organizations) and RQ-0306-KP (regarding pawnshops). In addition, the Texas attorney general has asked the OCCC to file a brief in connection with RQ-0302-KP (regarding authorized methods of sale for a depreciation benefit optional membership program authorized under section 1304.003 of the Occupations Code). This brief is due by October 28, 2019, and the attorney general is expected to issue an opinion by March 2, 2020.

The attorney general received request RQ-0300-KP on July 30, 2019. The requestor, a state representative and committee chair, asked (1) whether a credit services organization can assist a consumer with obtaining an extension of consumer credit in a form other than payday or title loans, and (2) whether a credit services organization can assist a consumer with obtaining an extension of credit in the form of a "signature loan." On September 6, the OCCC filed a brief with the attorney general explaining that Chapter 393 of the Finance Code authorizes an extension of credit in only two forms (a payday loan and a title loan), and does not authorize extensions of consumer credit in any other form. Five other organizations filed briefs consistent with the OCCC's position: the Texas Consumer Finance Association (TCFA), Texas Catholic Conference of Bishops (TCCB) and Christian Life Commission of the Baptist General Convention of Texas (CLC), Texas Fair Lending Alliance (TFLA), the City of Austin, and Hobby Services. Two attorneys filed briefs on behalf of unnamed clients taking a position contrary to the OCCC's position. After the September 6 deadline passed, the Consumer Service Alliance of Texas (CSAT) and one of the attorney's representing an unnamed client filed responsive briefs. The attorney general is expected to issue an opinion by January 27, 2020.

The attorney general received request RQ-0306-KP on September 12, 2019. The requestor, a county attorney, asks whether a city may adopt an ordinance governing secondhand dealers that also operate as pawnshops. The request asks whether the City of College Station has authority to regulate secondhand dealers when those businesses also operate as a pawnshop. The city's ordinance requires pawnbrokers to electronically identify and report goods that they purchase. On October 2, the OCCC filed a brief with the attorney general explaining that the ordinance's identification and reporting requirements appear to be inconsistent with state law and invalid as to pawnbrokers, because the Pawnshop Act includes an unmistakably clear statement of the legislature's exclusive authority over pawnshops. Two other organizations filed briefs consistent with the OCCC's position: Texas Pawn Coalition (TPC) and Texas Association of Pawnbrokers (TAP). The attorney general is expected to issue an opinion in response to this request by March 10, 2020.

Advisory Bulletins

From August 1, 2019 to September 30, 2019, the OCCC issued one advisory bulletin. The bulletin deals with the single equivalent daily rate for regulated loans under HB 3855, passed by the legislature in 2019. The bulletin provides calculation examples showing how lenders can calculate the single equivalent daily rate.

Official Interpretation Requests

From August 1, 2019 to September 30, 2019, the OCCC did not receive any requests for official interpretations. As of September 30, 2019, there were no pending requests for official interpretations.

Public Information Requests

From August 1, 2019 to September 30, 2019, the OCCC received 25 requests for information under the Texas Public Information Act, with no referrals to the Office of the Attorney General.

The OCCC's new performance measures for fiscal year 2020 include efficiency measures related to its handling of public information requests. Beginning December 2019, this section will include additional data about public information requests.

Gifts Received by the OCCC

From August 1, 2019 to September 30, 2019, the OCCC received no gifts.

D. OFFICE OF CONSUMER CREDIT COMMISSIONER

2. Discussion of and Possible Vote to Take Action on the Adoption 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 amendments to §83.501 and §90.203 is to implement HB 3855, which the Texas Legislature passed in the 2019 legislative session. The amendments add a reference to single equivalent daily rate, and add 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 without changes as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve 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

7 TAC, Part 5, Chapter 83

The Finance Commission of Texas (commission) adopts amendments to §83.501 (relating to Maximum Interest Charge) 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 August 30, 2019, issue of the *Texas Register* (44 TexReg 4610).

The commission received no written comments on the proposal.

In general, the purpose of the adopted 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 adopted amendments to §83.501 implement HB 3855 by specifying that a lender may apply the single equivalent daily rate. In subsection (c), an 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). 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 adopted amendments to §90.203.

The amendments to §83.501 are adopted 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 adoption are contained in Texas Finance Code, Chapter 342.

7 TAC, Part 5, Chapter 90

The Finance Commission of Texas (commission) adopts amendments to

§90.203 (relating to Model Clauses) in 7 TAC, Chapter 90, concerning Chapter 342, Plain Language Contract Provisions.

The commission adopts the amendments without changes to the proposed text as published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4614).

The commission received no written comments on the proposal.

In general, the purpose of the adopted 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 adopted 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), 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), 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 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."

The amendments to §90.203 are adopted 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 adoption 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, §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 adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on October 18, 2019.

Matthew J. Nance
Deputy General Counsel
Office of Consumer Credit Commissioner

D. OFFICE OF CONSUMER CREDIT COMMISSIONER

3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to §86.201 in 7 TAC, Part 5, Chapter 86, Concerning Retail Creditors

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

RECOMMENDED MOTION: I move that we approve 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) adopts amendments to §86.201 (relating to Documentary Fee) in 7 TAC, Chapter 86, concerning Retail Creditors.

The commission adopts the amendments without changes to the proposed text as published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4612).

The commission received no written comments on the proposal.

In general, the purpose of the adopted 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 adopted amendments to §86.201 remove the definition of "motor-driven cycle," remove the term "motor-driven cycle" from the definition of "covered land vehicle," and 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.

These amendments are adopted 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 adoption 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 adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on October 18, 2019.

Matthew J. Nance
Deputy General Counsel
Office of Consumer Credit Commissioner

D. OFFICE OF CONSUMER CREDIT COMMISSIONER

4. Discussion of and Possible Vote to Take Action on the Adoption of New §2.108 in 7 TAC, Part 1, Chapter 2, Concerning Residential Mortgage Loan Originators

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

RECOMMENDED MOTION: I move that we approve 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) adopts 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.

The commission adopts new §2.108 without changes to the proposed text as published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4599).

The commission received no written comments on the proposal.

In general, the purpose of 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.

Adopted 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 subsection (e), the OCCC will 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.

The new rule is adopted 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 adoption 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 adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on October 18, 2019.

Matthew J. Nance
Deputy General Counsel
Office of Consumer Credit Commissioner

D. OFFICE OF CONSUMER CREDIT COMMISSIONER

5. Discussion of and Possible Vote to Take Action on the Adoption of New §85.309 in 7 TAC, Part 5, Chapter 85, Subchapter A, Concerning Rules of Operation for Pawnshops

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

RECOMMENDED MOTION: I move that we approve 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) adopts new §85.309 (relating to Military Licensing), in 7 TAC, Chapter 85, concerning Pawnshops and Crafted Precious Metal Dealers.

The commission adopts new §85.309 without changes to the proposed text as published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4611).

The commission received no written comments on the proposal.

In general, the purpose of 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.

Adopted 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 subsection (e), the OCCC will 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. 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.

Regarding the effective date of this new rule, 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 new rule will be December 1, 2019.

The new rule is adopted 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 adoption 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 adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on October 18, 2019.

Matthew J. Nance
Deputy General Counsel
Office of Consumer Credit Commissioner