

**A.**

**Finance Commission**

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## FINANCE COMMISSION OF TEXAS

**MEETING DATE** .....December 13, 2019

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

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

**FUTURE MEETING DATES** .....February 14, 2020  
April 17, 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, December 13, 2019  
8:30 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, C6 – C8 and 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 October 18, 2019 Finance Commission Meeting***
2. General Public Comment
3. Consent Agenda
4. Finance Commission Operations
5. Audit Committee Report
  - A. 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 Take Action on the Adoption 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
7. Discussion of and Possible Vote to Take Action on the Re-Adoption after Rule Review of 7 TAC, Chapter 155, Payoff Statements
8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to the Payoff Statement Form found at 7 TAC, Chapter 155 Payoff Statements, §155.2(c)(6)
9. Discussion of and Possible Vote to Take Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Duties and Compensation of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to the Duties and Compensation of Persons Holding the Position of Agency Commissioner Positions, and Other Staff
10. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to §551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property

11. Discussion and Consultation with Attorney and Possible Vote to Take Action Pursuant to §551.071, Texas Government Code, for the Purpose of Seeking the Advice or Attorney-client Privileged Communications from our Attorneys, Including Matters 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
12. Discussion of and Consultation on Security Audit, Possible Issue Related to Confidential or Sensitive Information, Security Breach Audit and Assessment, or Security Assessments or Deployment Related to Information Resources Technology as Authorized by Tex. Govt. Code Secs. 551.076 and 551.089

**B. OFFICE OF CONSUMER CREDIT COMMISSIONER**

1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities
2. Discussion of and Possible Vote to Take Action on 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
3. 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*

**C. TEXAS DEPARTMENT OF BANKING**

1. Industry Status and Departmental Operations: a) Current Issues Affecting Department's Regulated Entities; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Non-Depository Supervision Activities; e) Administrative, Staffing and Fiscal Division Activities; f) Strategic Support Division Activities including Consumer Complaint Data; g) Legal Division Activities including Enforcement Activity and Gift Reporting; and h) Legislative Activities
2. Discussion of and Possible Vote to Take Action on the Reappointment of Rebecca Ann Motley as the Consumer Representative and the Reappointment of Amy Biggs as the Insurance Industry Representative to the Guaranty Fund Advisory Council for the Period January 1, 2020 to December 31, 2021
3. Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC §3.24 Concerning Notice of Cybersecurity Incident (State Banks)
4. Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC §17.5 Concerning Notice of Cybersecurity Incident (State Trust Companies)
5. Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC §33.30 Concerning Notice of Cybersecurity Incident (Money Services Businesses)
6. ***Discussion of and Possible Vote to Take Action on the Adoption of Amendment to 7 TAC §6.1 Concerning Banking Development Districts***
7. ***Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 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 Concerning Corporate Activities***

8. *Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §§21.2, 21.6, 21.7, 21.42, 21.43, 21.61, 21.74 Concerning Trust Company Corporate Activities*
9. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC §33.54 Concerning Exemption for Registered Securities Dealers and Agents
10. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation  
*E. Mex. Financial Services, Inc. v. Charles G. Cooper, Texas Banking Commissioner; Cause No. D-1-GN-19-003237, in the 200<sup>th</sup> District Court of Travis County, Texas*

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

1. Industry Status and Departmental Operations – State Savings Bank Activity: a) Industry Status; and b) State Savings Bank Charter and Application Activity
2. Industry Status and Departmental Operations – Mortgage Lending Activity: a) Residential Mortgage Loan Originators; b) Mortgage Examination; and c) Consumer Complaints
3. Fiscal and Departmental Operations: a) Funding Status/Audits/Financial Reporting; and b) Staffing
4. Legal Activity: a) Enforcement; b) Gift Reporting; and c) Legislative Activities
5. *Discussion of and Possible Vote to Take Action on the Adoption of 7 TAC, Chapter 52, New Subchapter B Hearings and Appeals, and New Subchapter C Advisory Committees*
6. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

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

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

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**MINUTES OF THE  
FINANCE COMMISSION MEETING  
Friday, October 18, 2019**

The Finance Commission of Texas convened at 9:01 a.m. on October 18, 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              | Robin Armstrong         |
| Will Lucas                |                         |

Finance Commission Chairman Paul Plunket announced a quorum with nine members present. (:17 on audio file).

Chairman Paul Plunket made a motion to excuse Molly Curl and a motion to excuse Vince Puento from the Finance Commission meeting held on October 18, 2019. There were no objections and both motions passed unanimously. (:25 on audio file).

| AGENDA ITEM   | ACTION  | LOCATION ON AUDIO FILE                          |
|---|---|---|
| <b>A. Finance Commission Matters</b>  |   |   |
| 1. Review and Approval of the Minutes of the August 15-16, 2019 Finance Commission Meetings | <b>On Consent Agenda – Item A1</b>  | 2:28<br>start of discussion                     |
| 2. General Public Comment   | No Action Required.   | 2:05<br>start of discussion                     |
| 3. Consent Agenda – Item A1   | Stacy London made a motion to Approve Consent Agenda item A1. Phillip Holt seconded, and the motion passed. | 2:28<br>start of discussion<br><br>2:59<br>vote |
| 4. Finance Commission Operations  | No Action Required.   | 3:27<br>start of discussion                     |

| AGENDA ITEM   | ACTION   | LOCATION ON AUDIO FILE                                     |
|---|--|--|
| <b>5. Audit Committee Report</b>  |  |  |
| <p>A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' August 31, 2019 Investment Officer Reports</p> <ol style="list-style-type: none"> <li>1. Texas Department of Banking</li> <li>2. Department of Savings and Mortgage Lending</li> <li>3. Office of Consumer Credit Commissioner</li> </ol> | <p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies' August 31, 2019 Investment Officer Reports passed.</p>   | <p>4:07<br/>start of discussion</p> <p>4:33<br/>Vote</p>   |
| <p>B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2019 Fourth Quarter Financial Statements</p> <ol style="list-style-type: none"> <li>1. Texas Department of Banking</li> <li>2. Department of Savings and Mortgage Lending</li> <li>3. Office of Consumer Credit Commissioner</li> </ol>   | <p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies' Fourth Quarter Financial Statements passed.</p>  | <p>4:47<br/>start of discussion</p> <p>4:56<br/>Vote</p>   |
| <p>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</p>  | <p>To participate as a member of the Audit Committee, Chairman Paul Plunket turned over the meeting to Vice Chairman Phillip Holt. Acting in the capacity as an Audit Committee member, Chairman Plunket made a motion to amend the primary motion (primary amendment) with the language that the Finance Commission Approve Garza/Gonzalez &amp; Associates as the Internal Auditor for the Finance Commission Agencies for Fiscal Year 2020. Cliff McCauley seconded, but the motion failed. Returning to the primary motion, Vice Chairman Holt made a motion that the Finance Commission Approve that the Audit Committee interview the three respondents and have them make presentations during the month of November (2019) before a final decision is made, and the motion passed.</p> | <p>5:09<br/>start of discussion</p> <p>20:55<br/>Vote</p>  |
| <p>6. Discussion of and Possible Vote to Accept the Report on the Financial Condition of the State Banking System</p>   | <p>Hector Cerna made a motion to Accept the Report on the Financial Condition of the State Banking System. Will Lucas seconded and the motion passed.</p>  | <p>26:38<br/>start of discussion</p> <p>26:45<br/>Vote</p> |

| AGENDA ITEM   | ACTION   | LOCATION ON AUDIO FILE                            |
|---|--|---|
| 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  | Stacy London made a motion to Accept 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. Lori McCool seconded and the motion passed.  | 27:07<br>start of discussion<br><br>27:14<br>Vote |
| 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."  | Cliff McCauley made a motion to Approve 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." Stacy London seconded and the motion passed.                                   | 27:43<br>start of discussion<br><br>30:17<br>Vote |
| 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   | Will Lucas made a motion to Approve 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. Phillip Holt seconded and the motion passed. | 32:06<br>start of discussion<br><br>47:19<br>Vote |
| 10. Discussion of and Possible Vote to Take Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Duties and Compensation of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to the Duties and Compensation of Persons Holding the Position of Agency Commissioner Positions, and Other Staff | Deferred to Executive Session – no vote taken.   | n/a   |

| AGENDA ITEM  | ACTION  | LOCATION ON AUDIO FILE                          |
|--|---|---|
| 11. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to §551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property  | Deferred to Executive Session – no vote taken.  | n/a   |
| 12. Discussion and Consultation with Attorney and Possible Vote to Take Action Pursuant to §551.071, Texas Government Code, for the Purpose of Seeking the Advice or Attorney-client Privileged Communications from our Attorneys, Including Matters Related to the Potential Financial Exposure of the Finance Commission Agencies 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   |
| 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  | Deferred to Executive Session – no vote taken.  | n/a   |
| <b>B. Texas Department of Banking</b>  |   |   |
| 1. Industry Status and Departmental Operations: a) Current Issues Affecting Department’s Regulated Entities; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Special Audits Division Activities; e) Administrative, Staffing and Fiscal Division Activities; f) Strategic Support Division Activities including Consumer Complaint Data; g) Legal Division Activities including Enforcement Activity and Gift Reporting; and h) Legislative Activities | No Action Required.   | 48:16<br>start of discussion                    |
| 2. <b>Consent Agenda – Item B2</b>   | Stacy London made a motion to Approve Consent Agenda item B2. Phillip Holt seconded, and the motion passed. | 2:28<br>start of discussion<br><br>2:59<br>Vote |

| AGENDA ITEM   | ACTION   | LOCATION ON AUDIO FILE                                |
|---|--|---|
| 3. <b>Consent Agenda – Item B3</b>  | Stacy London made a motion to Approve Consent Agenda item B3. Phillip Holt seconded, and the motion passed.  | 2:28<br>start of discussion<br><br>2:59<br>Vote       |
| 4. <b>Consent Agenda – Item B4</b>  | Stacy London made a motion to Approve Consent Agenda item B4. Phillip Holt seconded, and the motion passed.  | 2:28<br>start of discussion<br><br>2:59<br>Vote       |
| 5. <b>Consent Agenda – Item B5</b>  | Stacy London made a motion to Approve Consent Agenda item B5. Phillip Holt seconded, and the motion passed.  | 2:28<br>start of discussion<br><br>2:59<br>Vote       |
| 6. <b>Consent Agenda – Item B6</b>  | Stacy London made a motion to Approve Consent Agenda item B6. Phillip Holt seconded, and the motion passed.  | 2:28<br>start of discussion<br><br>2:59<br>Vote       |
| 7. <b>Consent Agenda – Item B7</b>  | Stacy London made a motion to Approve Consent Agenda item B7. Phillip Holt seconded, and the motion passed.  | 2:28<br>start of discussion<br><br>2:59<br>Vote       |
| 8. <b>Consent Agenda – Item B8</b>  | Stacy London made a motion to Approve Consent Agenda item B8. Phillip Holt seconded, and the motion passed.  | 2:28<br>start of discussion<br><br>2:59<br>Vote       |
| 9. <b>Consent Agenda – Item B9</b>  | Stacy London made a motion to Approve Consent Agenda item B9. Phillip Holt seconded, and the motion passed.  | 2:28<br>start of discussion<br><br>2:59<br>Vote       |
| 10. Discussion 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 | Stacy London made a motion to Approve the Proposal and Publication for Comment of Amendment to 7 TAC, Part 1, Chapter 6, §6.1 Concerning Banking Development Districts. Cliff McCauley seconded and the motion passed. | 1:08:44<br>start of discussion<br><br>1:10:07<br>Vote |

| AGENDA ITEM  | ACTION  | LOCATION ON AUDIO FILE                                |
|--|---|---|
| 11. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 2, Chapter 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             | Stacy London made a motion to Approve 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. Lori McCool seconded and the motion passed. | 1:10:35<br>start of discussion<br><br>1:13:19<br>Vote |
| 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  | Will Lucas made a motion to Approve 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. Stacy London seconded and the motion passed.                                     | 1:14:34<br>start of discussion<br><br>1:15:12<br>Vote |
| 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  | Rule was removed from agenda. No action taken.  | n/a   |
| 14. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation<br><br><i>E. Mex. Financial Services, Inc. v. Charles G. Cooper, Texas Banking Commissioner; Cause No. D-1-GN-19-003237</i> , in the 200 <sup>th</sup> District Court of Travis County, Texas | No Action Required.   | n/a   |

Chairman Paul Plunket called for a break at 10:17 a.m. (1:16:22 on the audio file). The open meeting resumed at 10:35 a.m. (1:16:33 on the audio file).

| AGENDA ITEM   | ACTION  | LOCATION ON AUDIO FILE                                |
|---|---|---|
| <b>C. Department of Savings and Mortgage Lending</b>  |   |   |
| 1. Industry Status and Departmental Operations – State Savings Bank Activity: a) Industry Status; and b) State Savings Bank Charter and Application Activity                                    | No Action Required.   | 1:16:48<br>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.   | 1:21:09<br>start of discussion                        |
| 3. Fiscal and Departmental Operations: a) Funding Status/Audits/Financial Reporting; and b) Staffing  | No Action Required.   | 1:29:35<br>start of discussion                        |
| 4. Legal Activity: a) Enforcement; b) Gift Reporting; and c) Legislative Activities   | No Action Required.   | 1:32:54<br>start of discussion                        |
| 5. <b>Consent Agenda – Item C5</b>  | Stacy London made a motion to Approve Consent Agenda item C5. Phillip Holt seconded, and the motion passed.   | 2:28<br>start of discussion<br><br>2:59<br>Vote       |
| 6. <b>Consent Agenda – Item C6</b>  | Stacy London made a motion to Approve Consent Agenda item C6. Phillip Holt seconded, and the motion passed.   | 2:28<br>start of discussion<br><br>2:59<br>Vote       |
| 7. <b>Consent Agenda – Item C7</b>  | Stacy London made a motion to Approve Consent Agenda item C7. Phillip Holt seconded, and the motion passed.   | 2:28<br>start of discussion<br><br>2:59<br>Vote       |
| 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 | Stacy London made a motion to Approve the Proposal and Publication for Comment of New 7 TAC, Part 4, Chapter 52 Concerning Hearings, Appeals and Informal Settlement Conferences. Lori McCool seconded and the motion passed. | 1:50:31<br>start of discussion<br><br>1:53:23<br>Vote |

| AGENDA ITEM   | ACTION   | LOCATION ON AUDIO FILE                                |
|---|--|---|
| 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   | Stacy London made a motion to Approve the Adoption of Amendments to 7 TAC, Part 4, Chapter 80, §80.201 Concerning Loan Status Forms, as amended with changes. Phillip Holt seconded and the motion passed.   | 1:54:02<br>start of discussion<br><br>2:12:59<br>Vote |
| 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  | Stacy London made a motion to Approve the Adoption of Amendments to 7 TAC, Part 4, Chapter 81, §81.201 Concerning Loan Status Forms, as amended with changes. Cliff McCauley seconded and the motion passed. | 2:13:41<br>start of discussion<br><br>2:15:50<br>Vote |
| 11. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation  | No Action Required.  | n/a   |
| <b>D. Office of Consumer Credit Commissioner</b>  |  |   |
| 1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities | No Action Required.  | 2:16:32<br>start of discussion                        |
| 2. <b>Consent Agenda – Item D2</b>  | Stacy London made a motion to Approve Consent Agenda item D2. Phillip Holt seconded, and the motion passed.  | 2:28<br>start of discussion<br><br>2:59<br>Vote       |
| 3. <b>Consent Agenda – Item D3</b>  | Stacy London made a motion to Approve Consent Agenda item D3. Phillip Holt seconded, and the motion passed.  | 2:28<br>start of discussion<br><br>2:59<br>Vote       |
| 4. <b>Consent Agenda – Item D4</b>  | Stacy London made a motion to Approve Consent Agenda item D4. Phillip Holt seconded, and the motion passed.  | 2:28<br>start of discussion<br><br>2:59<br>Vote       |



| AGENDA ITEM   | ACTION  | LOCATION ON AUDIO FILE                          |
|---|---|---|
| 5. <b>Consent Agenda – Item D5</b>  | Stacy London made a motion to Approve Consent Agenda item D5. Phillip Holt seconded, and the motion passed. | 2:28<br>start of discussion<br><br>2:59<br>Vote |
| 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  | No Action Required.   | n/a   |
| 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  | No Action Required.   | n/a   |
| 8. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation<br><br><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><br><br><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 an Executive Session at 11:59 a.m. *(2:42:59 on the audio file)*. The open meeting resumed at 12:38 p.m. *(2:43:49 on the audio file)*.

There being no further business, Chairman Paul Plunket adjourned the meeting of the Finance Commission at 12:38 p.m. *(2:44:43 on the audio file)*.

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Paul W. Plunket, Chairman  
Finance Commission of Texas

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Charles G. Cooper, Executive Director  
Finance Commission of Texas

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Brenda Medina, Executive Assistant  
Finance Commission of Texas

# Finance Commission of Texas

## Consent Agenda

December 13, 2019

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

1. Review and Approval of the Minutes of the October 18, 2019 Finance Commission Meeting

### **C. Texas Department of Banking**

6. Discussion of and Possible Vote to Take Action on the Adoption of Amendment to 7 TAC §6.1 Concerning Banking Development Districts
7. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 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 Concerning Corporate Activities
8. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §§21.2, 21.6, 21.7, 21.42, 21.43, 21.61, 21.74 Concerning Trust Company Corporate Activities

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

5. Discussion of and Possible Vote to Take Action on the Adoption of 7 TAC, Chapter 52, New Subchapter B Hearings and Appeals, and New Subchapter C Advisory Committees

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**A. FINANCE COMMISSION MATTERS**

6. Discussion of and Possible Vote to Take Action on the Adoption 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 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, with changes to what was previously published in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we approve 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) adopts amendments to §5.101 (relating to Employee Training and Education Assistance Programs) and adopts 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.

The commission adopts the amendments and new rules without changes to the proposed text as published in the November 1, 2019, issue of the *Texas Register* (44 TexReg 6472).

The commission received no written comments on the proposal.

In general, the purpose of the adopted 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 adopted 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.

Adopted 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 adopted amendment to §5.101 repeals the definition of "finance agencies" in Chapter 5, because this definition is being moved to adopted new §5.100.

Adopted 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.

Adopted 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.

The rule changes are adopted 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 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 adoption are contained in Texas Finance Code, Chapters 12, 13, and 14.

*7 TAC, Part 1, Chapter 9*

The Finance Commission of Texas (commission) adopts amendments to §9.82 (relating to Petitions to Initiate Rulemaking

Proceedings); adopts new §9.85 (relating to Negotiated Rulemaking); adopts 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 adopts the relettering of the titles of Subchapters D and E in 7 TAC, Chapter 9, concerning Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings.

The commission adopts new §9.85; the repeal of §§9.51, 9.52, 9.54, 9.55, 9.56, and 9.57; and the relettering of the titles of Subchapters D and E in 7 TAC, Chapter 9, without changes to the proposed text as published in the November 1, 2019, issue of the *Texas Register* (44 TexReg 6475).

The commission adopts the amendments to §9.82 with changes to the proposed text as published in the November 1, 2019, issue of the *Texas Register* (44 TexReg 6475).

The commission received no written comments on the proposal.

In general, the purpose of the adopted 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 adopted repeal of Subchapter C of 7 TAC, Chapter 9 will 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 adopted 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 adopted repeal of Subchapter C of Chapter 9 implements HB 1442 and SB 614 by eliminating provisions relating to appeals to the commission. The adopted amendments will also reletter Subchapters D and E as a result of the repeal of Subchapter C.

The adopted amendments to §9.82 relate to petitions to initiate rulemaking proceedings. In subsection (a), the adopted amendment will add any request to engage in negotiated rulemaking to the list of items that a petition to initiate rulemaking must include. Adopted new subsection (b) explains that an agency receiving a petition will present the petition and a recommendation to the commission. Adopted 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.

In the original proposal, the title of §9.82 was not amended, and would have remained as "Petitions To Initiate Rulemaking Proceedings." After the proposal was submitted to the Texas Register, staff of the Texas Register recommended replacing "To" with "to" in this title. Based on this recommendation, the adopted amendments replace "To" with "to" in this title, so that §9.82 will be titled "Petitions to Initiate Rulemaking Proceedings."

Adopted 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 adopted 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.

The rule changes are adopted 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 adoption 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.]*~~

ADOPT AMENDMENTS, NEW RULES, & REPEALS

7 TAC CHAPTERS 5 AND 9

~~[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 [F] 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.

**Certification**

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

Issued in Austin, Texas on December 13, 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

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**A . FINANCE COMMISSION MATTERS**

- 7 . Discussion of and Possible Vote to Take Action on the re-adoption after rule review of 7 TAC, Chapter 155, Payoff Statements.

**PURPOSE:** A rule review was conducted pursuant to Government Code, §2001.039, and in coordination with the Texas Department of Banking (DOB) and the Office of the Consumer Credit Commissioner (OCCC).

SML, DOB, and OCCC conducted a rule review of 7 TAC Chapter 155 and determined that the reasons for initially adopting the rules continues to exist and that such 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 155 continue to exist and that the Commission readopted these rules.

**RECOMMENDED MOTION:** I move that we find that the reasons for initially adopting the rules in 7 TAC, Chapter 155 continue to exist, and that those rules be readopted.

**Title 7. Banking and Securities**  
**Part 8. Joint Financial Regulatory Agencies**  
**Chapter 155. Payoff Statements**  
**7 TAC §§155.1 - 155.3**

counsel and found to be a valid exercise of the agency's legal authority.

Ernest C. Garcia  
General Counsel  
Department of Savings and Mortgage Lending

The Finance Commission of Texas (Commission), after reviewing and considering for re-adoption, revision, or repeal, Chapter 155 of Texas Administrative Code, Title 7, in its entirety (7 TAC §§155.1 - 155.3), adopts the review of Chapter 155, concerning Payoff Statements, in accordance with Texas Government Code §2001.039.

The proposed notice of intent to review rules was published in the October 25, 2019, issue of the Texas Register (44 TexReg 6377).

No comments were received on the proposed rule review.

The Commission has assessed whether the reasons for adopting or readopting the rules continue to exist. The Commission finds that the rules in Chapter 155 are needed, reflect current legal and policy considerations, and reflect current procedures. The reasons for initially adopting the rules continue to exist. The Commission, therefore, readopts Chapter 155 in its entirety in accordance with the requirements of Texas Government Code, Section 2001.039.

However, the Commission has determined a certain section should be amended and will propose changes in a separate section of the *Texas Register*. This concludes the review of 7 TAC Chapter 155.

**Certification**

The agency hereby certifies that the readoption has been reviewed by legal



**A . FINANCE COMMISSION MATTERS**

- 8 . Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to the Payoff Statement form found at 7 TAC, Chapter 155 Payoff Statements, §155.2(c)(6).

**PURPOSE:** The amendments to the form is proposed as a result of the rule review that was conducted pursuant to Government Code, §2001.039 and in coordination with the Texas Department of Banking (DOB) and the Office of the Consumer Credit Commissioner (OCCC).

Non-substantive formatting amendments are proposed to the form to make the version found in the Texas Register more user friendly and consistent with the version found on the Department of Savings and Mortgage Lending’s website.

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

**RECOMMENDED MOTION:** I move that we publish the proposed amendments to the form found at 7 TAC §155.2(c)(6) in the *Texas Register* for comment.

**Title 7. Banking and Securities  
Part 8. Joint Financial Regulatory  
Agencies  
Chapter 155. Payoff Statements  
7 TAC §§155.1 - 155.3**

On behalf of the Finance Commission of Texas (commission), the Department of Savings and Mortgage Lending (SML), after reviewing and considering for re-adoption, revision, or repeal, Chapter 155 of Texas Administrative Code, Title 7, in its entirety (7 TAC §§155.1 - 155.3), proposes an amendment to the form/image/graphic found at 7 TAC §155.2(c)(6).

Chapter 155 concerns payoff statements. Non-substantive formatting amendments are proposed to the form to make the version found in the Texas Register more user friendly and consistent with the version found on the Department of Savings and Mortgage Lending's website.

The review was conducted pursuant to Government Code, §2001.039 and in coordination with the Texas Department of Banking (DOB) and the Office of the Consumer Credit Commissioner (OCCC).

SML, OCCC, and DOB held a stakeholder meeting and webinar regarding the rule review. SML, OCCC, and DOB received five informal written precomments, none of which proposed making any changes to the rules under review.

During the review, SML, OCCC, and DOB determined that the reasons for initially adopting the sections under review continue to exist, as the statute requiring it still exists, and Chapter 155 should be readopted with a minor formatting amendment to the

form/image/graphic found at 7 TAC §155.2(c)(6).

Ernest Garcia of SML, Christina Cuellar Hoke of the OCCC, and Jesse Moore of the DOB, have determined that for the first five-year period the proposed amended form is in use, there will be no fiscal implications for state or local government as a result of administering the amended optional form.

Ernest Garcia of SML, Huffman Lewis of the OCCC, and Jesse Moore of the DOB, have determined that for each year of the first five years the amended form is in use, the public benefits anticipated as a result of amending the form will be that the version found in the Texas Register will be more user friendly and consistent with the version found on the Department of Savings and Mortgage Lending's website. Further, that there is no anticipated cost to persons who are required to comply with the rule changes as proposed, and there will be no adverse economic effect on rural communities or small or micro-businesses. These determinations are in part based on stakeholder feedback indicating that a substantially similar form is already in use and/or a substantially similar fillable form is currently in use and available on SML's website. SML, OCCC, and DOB invite comments from stakeholders who believe there will be cost associated with the proposed amended form.

During the first five years the proposed amended form will be in use, the form will not create or eliminate a government program.

Implementation of the proposed amended form 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 SML, the OCCC, 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 amended form makes minor formatting amendments to an existing form. The proposed amended form does not expand, limit, or repeal an existing regulation. The proposed amended form does not increase or decrease the number of individuals subject to the rules' applicability. The agencies do not anticipate that the proposed amended form will have an effect on the state's economy, or any local economies.

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

The amendments to the form are proposed under Finance Code § 343.106(b), which provides that the Finance Commission shall adopt rules governing requests by title insurance companies for payoff information from mortgage servicers related to home loans and the provision of that information,

including rules prescribing a standard payoff statement form.

Other statutes affected by the proposed new rules are found in Finance Code Chapter 343.

<Figure: 7 TAC §155.2(c)(6)>

### **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.

Ernest C. Garcia  
General Counsel  
Department of Savings and Mortgage  
Lending

# PAYOFF STATEMENT FORM

Name of Mortgage Servicer \_\_\_\_\_ REQUEST DATE: \_\_\_/\_\_\_/\_\_\_\_\_  
 Name of Representative \_\_\_\_\_  
 Street or E-mail Address \_\_\_\_\_ SENT BY:  Mail  E-mail  
 City, State, Zip Code \_\_\_\_\_  Facsimile

## LOAN INFORMATION

MORTGAGOR: \_\_\_\_\_ NEXT PAYMENT DUE DATE: \_\_\_/\_\_\_/\_\_\_\_\_  
 COLLATERAL: \_\_\_\_\_ Loan Type: \_\_\_\_\_

## AMOUNT DUE

THIS STATEMENT REFLECTS THE TOTAL AMOUNT DUE UNDER THE TERMS OF THE NOTE/SECURITY INSTRUMENT THROUGH THE CLOSING DATE WHICH IS \_\_\_/\_\_\_/\_\_\_\_\_. If this obligation is not paid in full by this date, then you should obtain from us an updated payoff amount before closing.

Total Principal, Interest, and other amounts due under the Note/Security Instrument:

|                                |    |       |
|--------------------------------|----|-------|
| Unpaid Principal Balance:      | \$ | _____ |
| Interest through ___/___/_____ | \$ | _____ |
| Less Reductions in amount due  | \$ | _____ |
| _____                          | \$ | _____ |
| _____                          | \$ | _____ |
| _____                          | \$ | _____ |
| _____                          | \$ | _____ |
| <b>TOTAL AMOUNT DUE:</b>       | \$ | _____ |

## WHERE TO SUBMIT PAYOFF FUNDS

|                      |   |                       |                  |
|----------------------|---|-----------------------|------------------|
| <b>WIRE TRANSFER</b> | Beneficiary Name: _____                   | <b>OVERNIGHT MAIL</b> | Attention: _____ |
|                      | Beneficiary/Receiving Bank: _____         |                       | Company: _____   |
|                      | Beneficiary Bank ABA: _____               |                       | Address: _____   |
|                      | Beneficiary Bank Account: _____           |                       | _____            |
|                      | Special Information to Beneficiary: _____ |                       | _____            |
|                      | _____                                     |                       | _____            |

## LEGAL NOTICES

**TEXAS FINANCE CODE § 343.106 REQUIRES PAYOFF STATEMENT CONTAIN CLOSING DATE AND DATE THROUGH WHICH PAYOFF AMOUNT IS VALID. THESE REQUIREMENTS CANNOT BE DELETED FROM PAYOFF STATEMENT.**

**ANY AMOUNT HELD IN ESCROW AT CLOSING WILL BE SETTLED IN ACCORDANCE WITH APPLICABLE FEDERAL LAW.**

**TEXAS FINANCE CODE § 343.106 REQUIRES THE IMPLEMENTING RULE TO ALLOW MORTGAGE SERVICERS AT LEAST SEVEN (7) BUSINESS DAYS FROM THE DATE OF RECEIPT OF PAYOFF REQUEST TO RESPOND TO A REQUEST MADE UNDER THE STATUTE.**

This is an Adjustable Rate Mortgage. Under the terms of this loan the next Change Date for the interest rate charged is \_\_\_/\_\_\_/\_\_\_\_\_. We will only issue a payoff good through the next Change Date. If the closing date is past the next Change Date an updated Payoff Statement from us will be required.

If loan has quotable per diem interest, then “Funds received after \_\_\_/\_\_\_/\_\_\_\_\_ will be subject to an additional \$ \_\_\_\_\_ of interest per day.” FUNDS MUST BE RECEIVED BY \_\_\_\_\_ FOR SAME-DAY PROCESSING. PAYOFFS ARE NOT POSTED ON WEEKENDS OR HOLIDAYS. INTEREST WILL BE ADDED TO THE ACCOUNT FOR THESE DAYS.

NOTE: This Note/Security Instrument is due for payment on \_\_\_/\_\_\_/\_\_\_\_\_. If payment is not received within \_\_\_\_\_ days of the current payment due date, a late charge of \$\_\_\_\_\_ will be assessed. Please add that amount to the payoff total.

Escrow Disbursement Amounts & Dates:

| Description(s): | Amount(s) Held: | Next Disbursement Date(s): |
|-----------------|-----------------|----------------------------|
| _____           | \$ _____        | _____                      |
| _____           | \$ _____        | _____                      |
| _____           | \$ _____        | _____                      |

Release of Lien Processing:

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**B.**

**Office of Consumer Credit  
Commissioner**

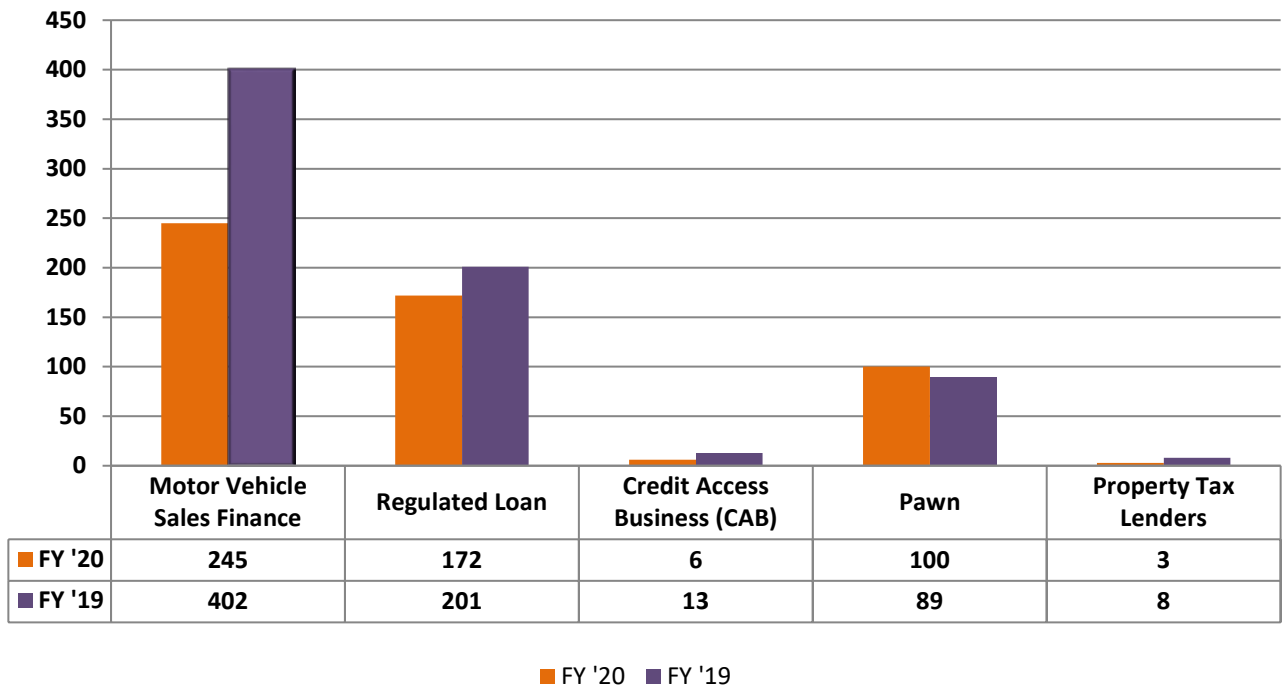
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## Consumer Protection and Consumer Assistance Report

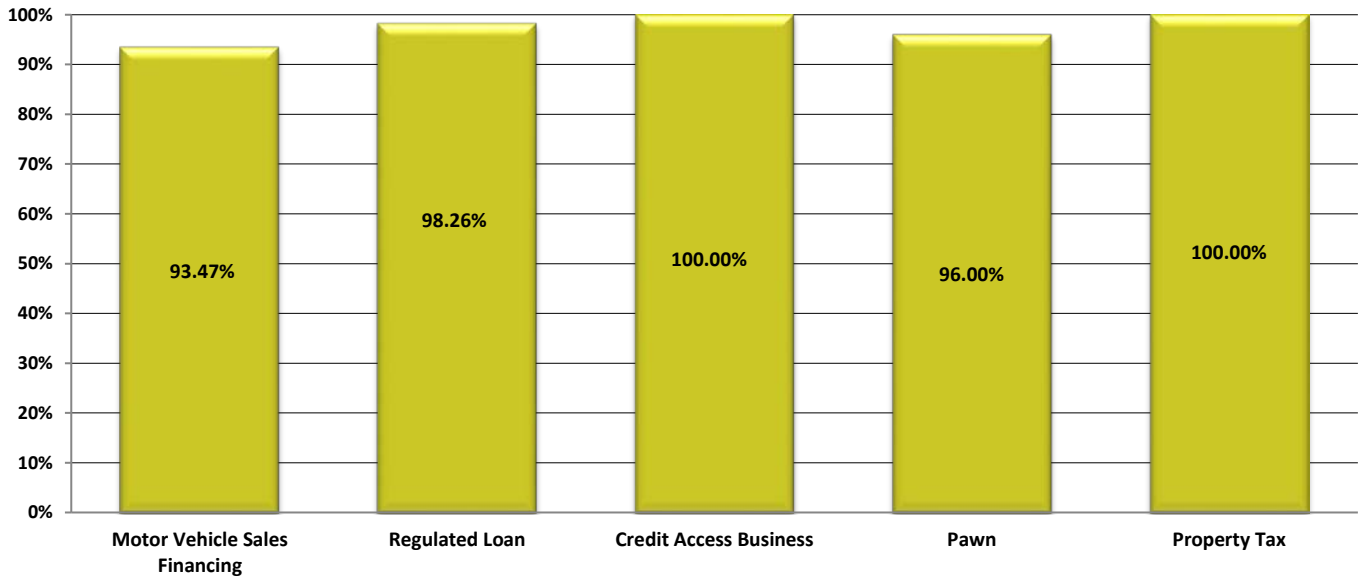
The overall examination process is below target, fiscal year-to-date. October and November focused on field training and certification of five examiners in Regulated Lender, Chapter 342-E examinations. A group of nine examiners attended classroom training in November for Credit Access Business, Chapter 393 examinations. In October, six additional examiners were certified in Regulated lender, Chapter 342-F and Pawnshops, Chapter 371 examinations. A large Credit Access Business enterprise exam is near completion, representing 20% of the FY20 target.

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

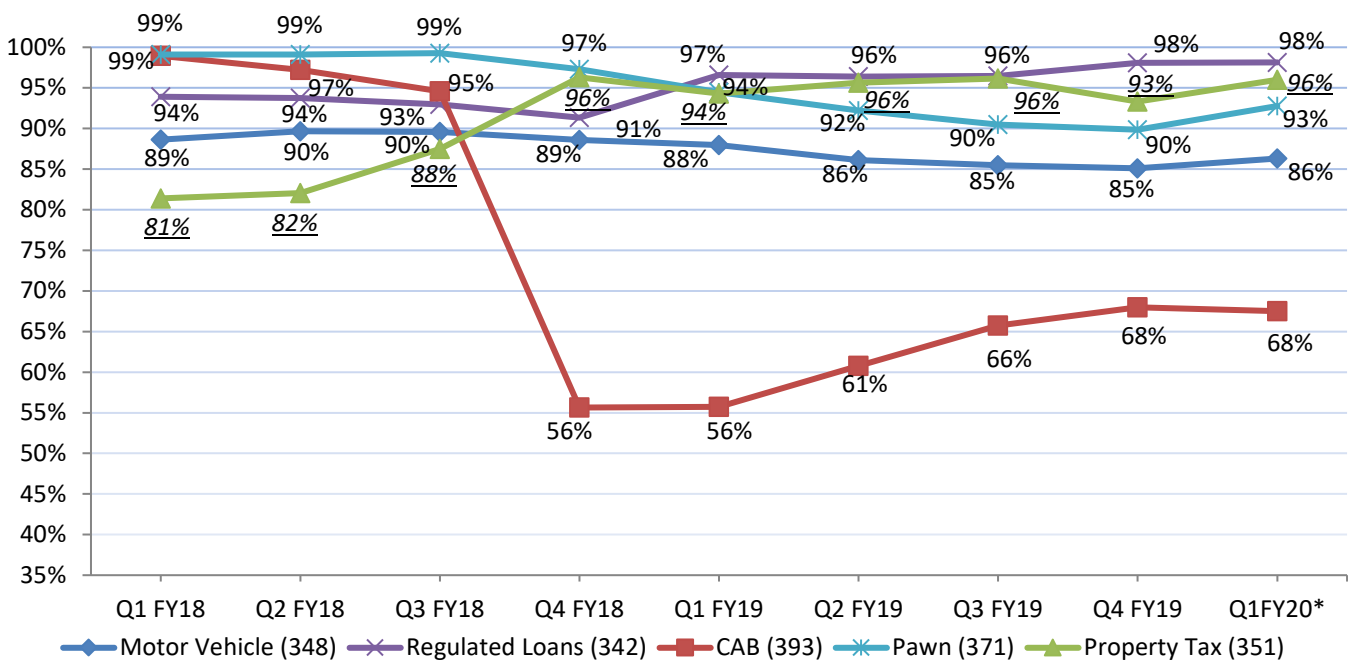


The acceptable level of compliance for all examinations is charted below. The first chart below shows the acceptable level of compliance for examinations conducted in FY 2020. All license types were above 85%. The second chart below denotes the acceptable level of compliance on a trailing 12 month basis through the end of October 2019.

### Acceptable Level of Compliance FY '20 (Sept 2019 - Oct 2019)



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



\*As of 10/31/2019

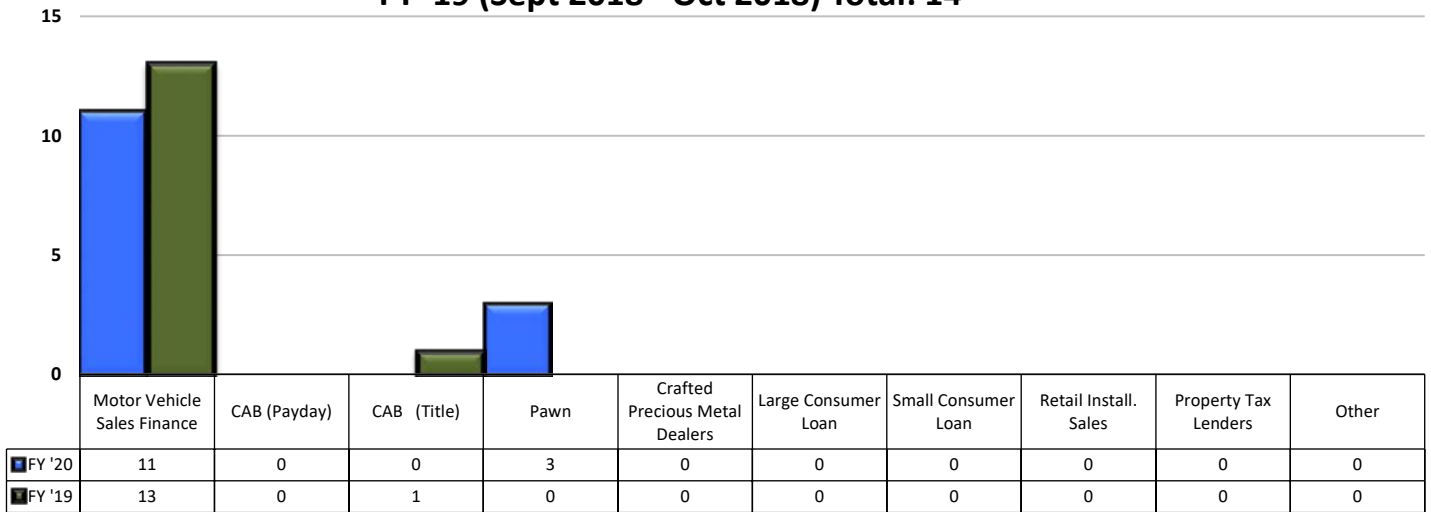
Investigations

For FY 2020, the agency completed 14 investigations, 17.5% of the FY 2020 goal of 80. Motor Vehicle Sales Finance was the largest category, comprising 78.57 % of the overall number of investigations.

**Investigations Completed**

**FY '20 (Sept 2019 - Oct 2019) Total: 14**

**FY '19 (Sept 2018 - Oct 2018) Total: 14**



Consumer Assistance

For this period, 244 complaints were processed, of which 47 were classified as non-jurisdictional.

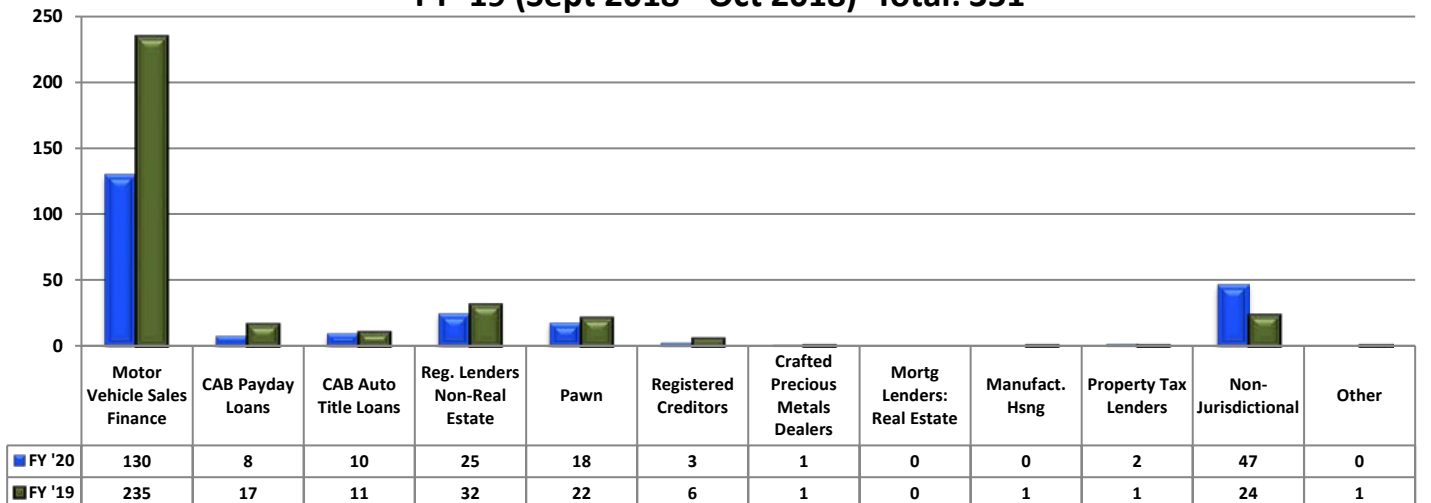
The top four areas of jurisdictional complaints are (1) Motor Vehicle Sales Finance (MVSF), (2) Regulated Lenders Non-Real Estate (3) Pawn and (4) Credit Access Business (CAB).

MVSF complaints were the largest complaint category at 53.3%. The second largest number of complaints came from Regulated Lenders Non-Real Estate at 10.2%. The third largest category of complaints came from Pawn at 7.4% complaints. The fourth largest category was CAB complaints at 7.4% collectively; separately, these are 4.1% for title loans and 3.3% for payday loans.

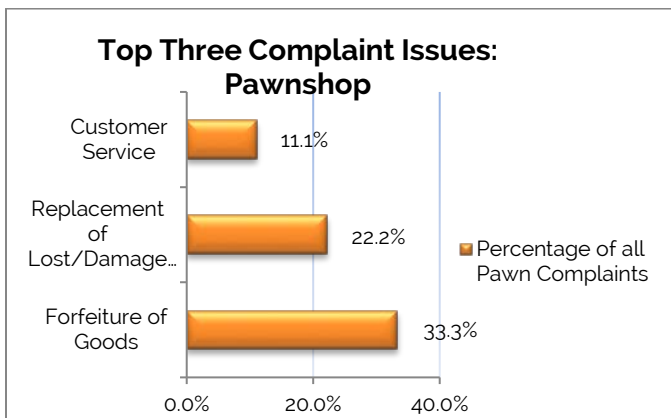
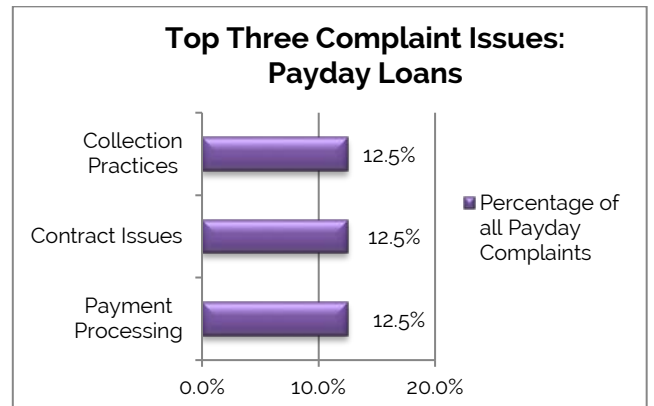
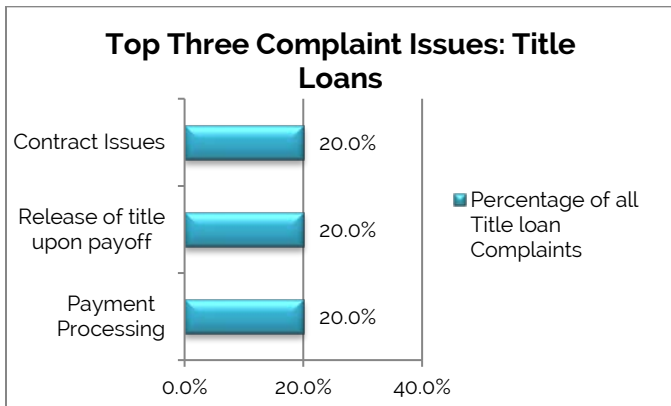
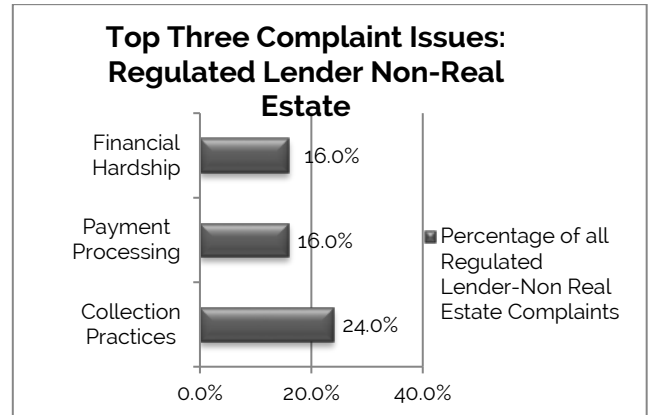
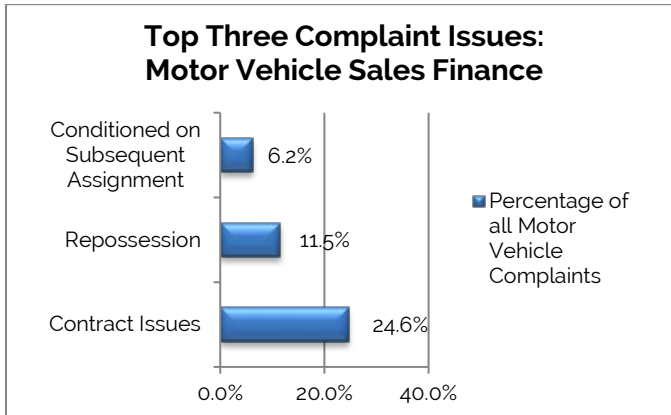
**Complaints Processed**

**FY '20 (Sept 2019 - Oct 2019) Total: 244**

**FY '19 (Sept 2018 - Oct 2018) Total: 351**

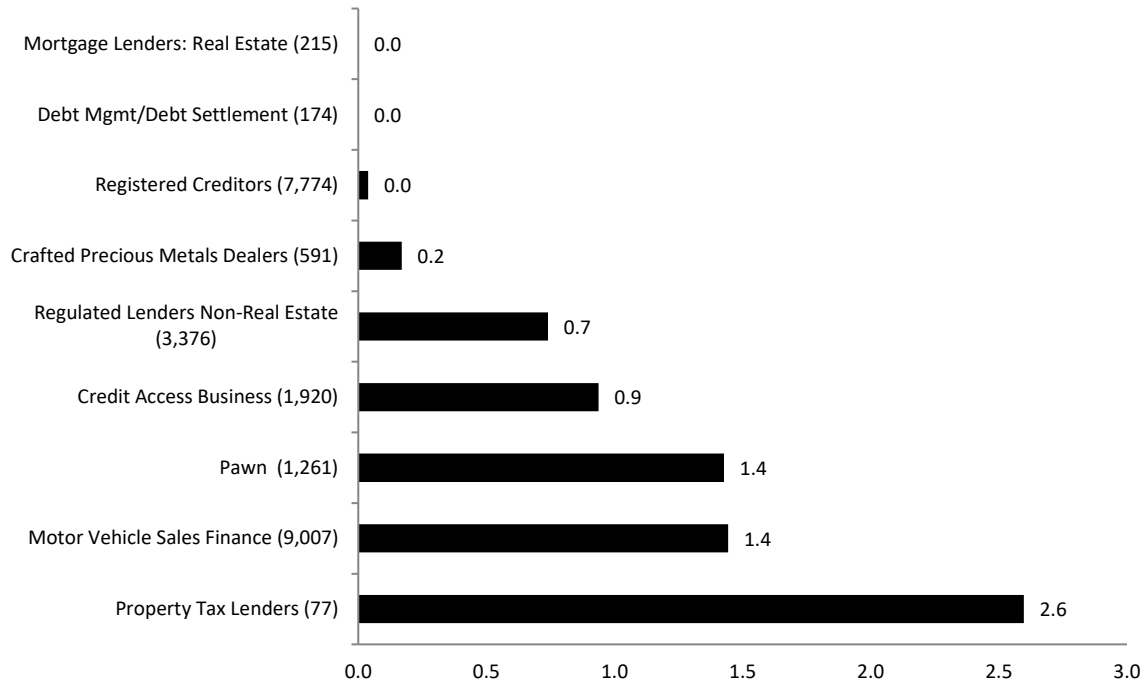


Each of the following charts represent the three top complaint areas per license type:



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 '20 (Sept 2019 - Oct 2019)**



■ Complaints per Hundred Licenses

\*License-Registrant levels as of 11-01-2019



## **Licensing Report- December 2019**

*Mirand Diamond, Director*

### Renewals

Renewal for Registered Creditors is currently open and ongoing. The department estimates that approximately 75% of registrants will renew, and that 90% of these renewals will be completed online.

Additionally renewal for regulated lenders, property tax lenders and credit access businesses will be open until December 31st. The department anticipates increased call volume to provide technical support to licensees and will send reminders via email and mail. It is estimated that 90% of these renewals will be completed online.

### Applications Processing

The department continues to monitor incoming volume of business license applications, and the average number of applications submitted monthly remains near 140. The total number of pending applications remains at a manageable level. The licensing team continues to collaborate on processes and efficiency creation.

Additionally departmental management is surveilling pawn employee application volume, and is working in coordination with industry groups to inform stakeholders on changes created by the optional pawn employee licensing program. Currently 29% of active pawnshop master files have opted into pawn employee licensing.

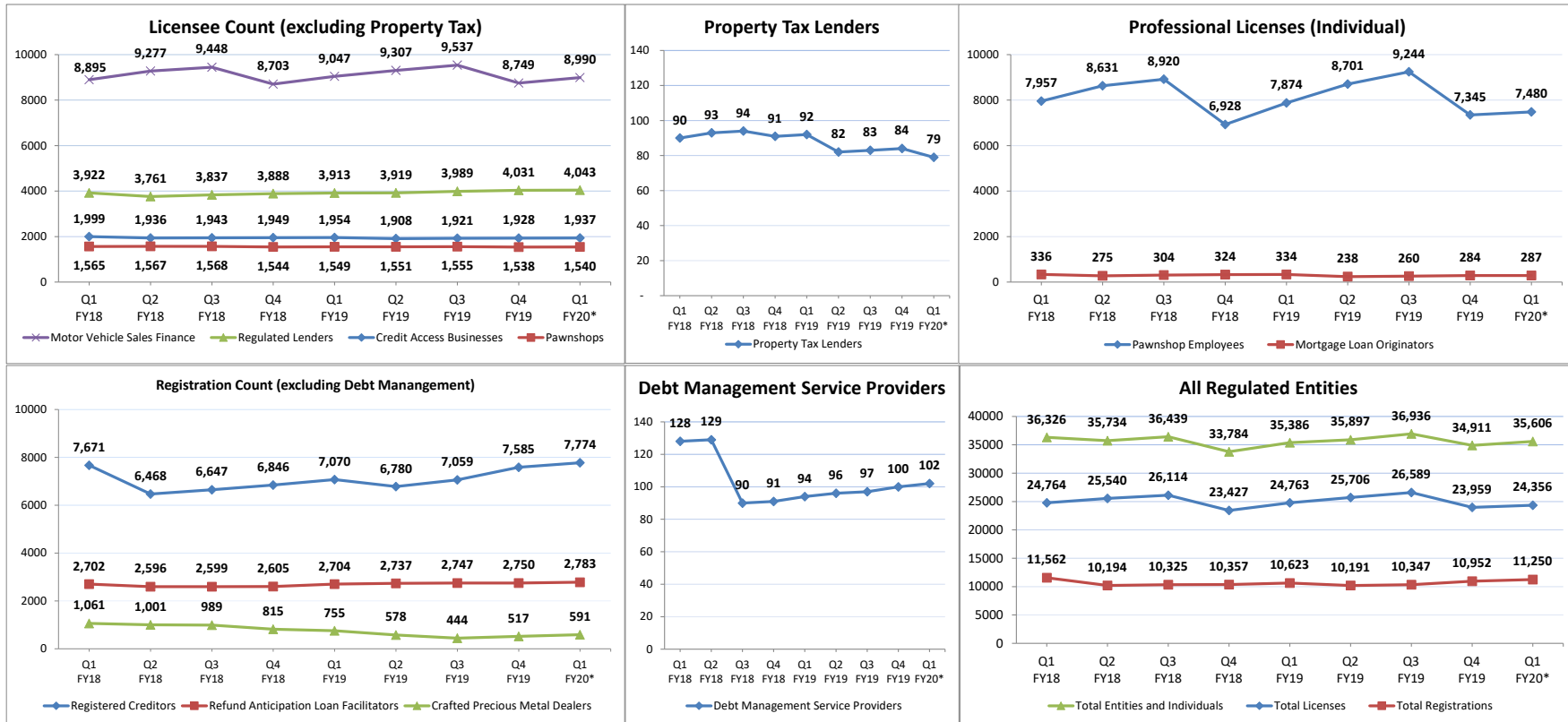
### Other Updates

Two members of the licensing department plan to attend the NMLS annual conference and training in February 2020 to learn more about recent changes to the system and represent the agency to engage with industry participants.

### Regulated Entity Population Trends

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

## Number of OCCC Regulated Entities Quarterly Comparison of FY18-20



\*Data as of 11/1/2019



**ADMINISTRATION REPORT**

**COMMUNICATIONS**

The agency’s communication team continues to collaborate and discuss ideas for enhancing internal and external communication. As part of this communication strategy, the agency employee newsletter was recently reviewed and updated. Additionally, agency staff continues to provide a combination of live presentations and communication through various channels to regulated entities and other regulatory groups.

- On October 1, 2019 Director of Consumer Protection Huffman Lewis and Financial Examiner Eric Fancher presented at the National Association of Consumer Credit Administrators (NACCA) Examiner School in Columbus, OH.
- On October 31, 2019 Financial Examiner Eric Fancher presented at the Department of Motor Vehicles (DMV) Seminar in Tyler.
- On November 12, 2019 Senior Supervising Examiner William Purce presented at the Texas Department of Housing and Community Affairs in Austin.
- On November 12, 2019 Director of Consumer Protection Huffman Lewis presented at the Houston Independent Automobile Dealers Association meeting in Houston.
- On November 21, 2019 Financial Examiner Carlos Garcia presented at the DMV Seminar in Corpus Christi.

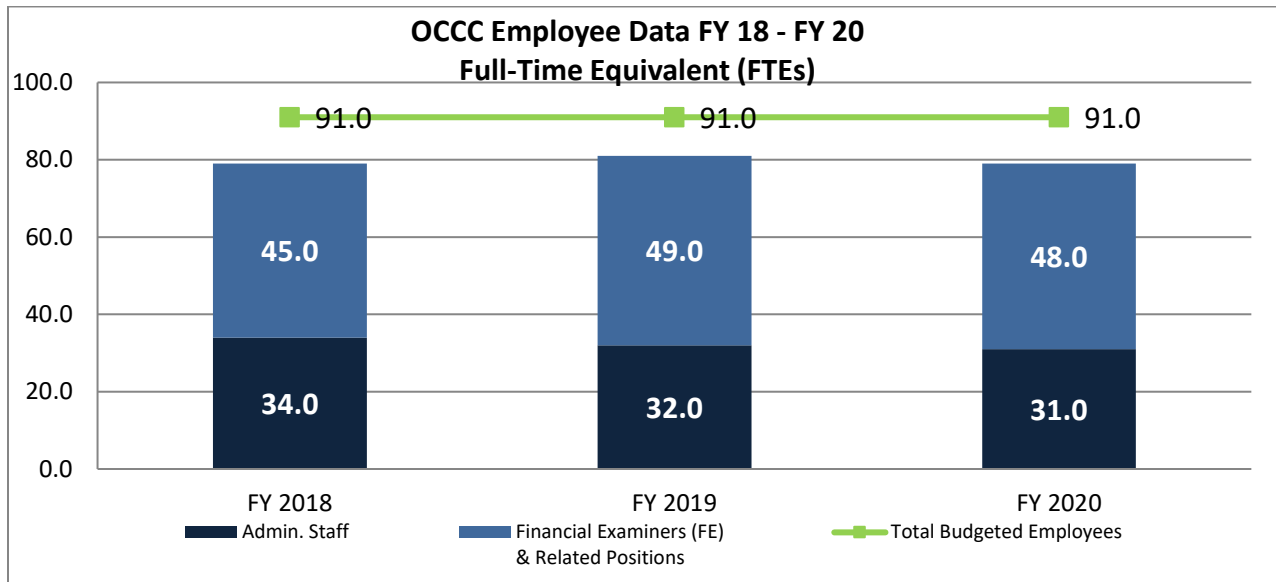
**HUMAN RESOURCES**

At the beginning of FY20, the OCCC was staffed with a total of 81 FTEs (fulltime equivalent). Currently the agency is seeking to fill the following position:

| Vacancy                             | Status                          |
|-------------------------------------|---------------------------------|
| <b>Accountant III-IV (1-Austin)</b> | Active – Accepting Applications |

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





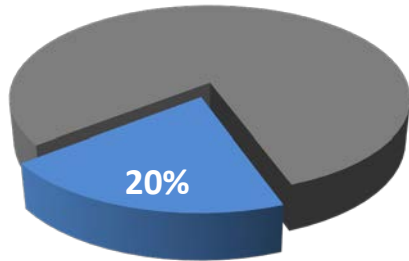
The current turnover rate is 5.9%, and the chart below represents FY20 data.

### OCCC Turnover Categories

#### FY 20 - All Employees

(09/01/19 - 11/30/19)

5 total - 1 Interagency Transfer, 4 Voluntary Resignations.



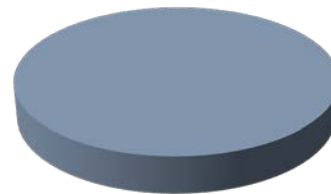
■ Interagency Transfer ■ Voluntary Resignation

### OCCC Turnover

#### FY 20 - FE Series

(09/01/19 - 11/30/19)

1 total - 1 Voluntary Resignation.



■ Voluntary Resignation

OCCC launched the Survey of Employee Engagement, administered by the Institute for Organizational Excellence on November 4, 2019. The survey ended on November 22, 2019, with an 86.1% participation rate, surpassing the 2017 participation rate of 85.7%.

## **FINANCIAL EDUCATION**

The Financial Education Department established relationships with three Community Centers to assist in providing Financial Education. The Financial Education Coordinator delivered three presentations in November 2019 that provided direct education services to 134 individuals. The presentations were delivered at the Watauga Community Center, Watauga, the Alicia Trevino Lopez Senior One-Stop Center, San Antonio and the Elvira Cisneros Senior Community Center, San Antonio.

On October 24, 2019 the Commissioner and the Financial Education Department attended an event in Austin associated with Financial Inclusion Week. Additionally, on November 13<sup>th</sup> the agency's Grant and Financial Education Coordinator participated in a Texas Jump\$Start meeting and will assist the organization as it relates to state agency outreach in financial education.

The 2020-2021 TFEE Grant Cycle application remains open until December 31, 2019. The agency is currently receiving applications and is continuing outreach efforts to promote TFEE to support state-wide financial capability and consumer credit building activities.

## **INFORMATION TECHNOLOGY**

### **Compliance**

OCCC assessed its PCI compliance and submitted the affirmative result through DIR.

### **Hardware and Systems**

The update to the Windows-based operating system for the second network server is in progress.

### **Security & Software**

IT is progressing on a comprehensive security evaluation, pursuant to a program for hardening the agency posture. One expedient change has been to the Windows password policy, which now mandates a larger minimum character count.

The entire agency staff completed training campaigns in privacy, safety, and cybersecurity.



### **Accounting Report**

*Christina Cuellar Hoke, Manager*

The Accounting department has begun working on preparation of 1099 and W-2 tax documents for the end of 2019. Accounting staff attended training on 1099 preparation and quarterly reconciliations presented by the Comptroller's Office. The department has also begun preparing the Annual Report of Non-Financial Data, due December 31.

The department has also been working with SML and DOB to standardize the financial reporting format for reports to the Finance Commission.



## **Legal Department Report**

*Michael Rigby, General Counsel*

December 2019

### **Enforcement Report**

#### **Crafted Precious Metal Dealer Agreed Order**

In November 2019, the OCCC entered an agreed order with JBS Distributors LLC d/b/a King's Jewelry, a registered crafted precious metal dealer. The agreed order resolved a contested case that was pending before the State Office of Administrative Hearings (SOAH docket no. 466-19-7015). The OCCC initiated the enforcement action because JBS Distributors failed to file required transaction reports with local law enforcement, as required by Chapter 1956 of the Texas Occupations Code and its implementing rules. Under the agreed order, JBS Distributors agreed to pay a \$500 administrative penalty, to cease and desist failing to file required transaction reports, and to provide the OCCC with an amended version of its transaction report form including all required elements.

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

In October 2019, the OCCC issued 61 enforcement orders against pawnshops that did not timely and accurately file their 2018 annual reports by the deadline of July 31, 2019. Of these orders, 40 were injunctions requiring the licensees to file timely and accurate reports, and 21 imposed an administrative penalty for violating a previous injunction.

Also in October, the OCCC issued 9 orders against credit access businesses that did not timely and accurately file their 2019 second quarter reports by the deadline of July 31, 2019. Of these orders, 6 were injunctions requiring the licensees to file timely and accurate reports, and 3 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 November 30, 2019 |            |            |            |            |
|--|------------|------------|------------|------------|
|  |            |            |            |            |
| <b>Injunction Actions</b>                          |            |            |            |            |
| Crafted Precious Metal Dealer                      | 0          | 0          | 0          | 0          |
| Credit Access Business                             | 8          | 53         | 27         | 47         |
| Debt Management Provider                           | 4          | 10         | 5          | 2          |
| Manufactured Housing                               | 0          | 0          | 0          | 1          |
| Motor Vehicle Sales Finance                        | 15         | 20         | 19         | 31         |
| Pawnshop   | 1          | 82         | 39         | 37         |
| Pawnshop Employee                                  | 0          | 67         | 48         | 69         |
| Property Tax Lender                                | 0          | 8          | 2          | 2          |
| Registered Creditor                                | 0          | 0          | 1          | 1          |
| Regulated Lender                                   | 46         | 22         | 12         | 37         |
| Residential Mortgage Loan Originator               | 0          | 0          | 1          | 1          |
| <b>Total Injunction Actions</b>                    | <b>74</b>  | <b>262</b> | <b>154</b> | <b>230</b> |
| <b>Administrative Penalty Actions</b>              |            |            |            |            |
| Crafted Precious Metal Dealer                      | 0          | 0          | 0          | 0          |
| Credit Access Business                             | 1          | 14         | 6          | 23         |
| Debt Management Provider                           | 0          | 0          | 1          | 0          |
| Motor Vehicle Sales Finance                        | 5          | 19         | 26         | 106        |
| Pawnshop   | 6          | 12         | 6          | 3          |
| Pawnshop Employee                                  | 0          | 0          | 0          | 0          |
| Property Tax Lender                                | 1          | 6          | 6          | 2          |
| Regulated Lender                                   | 13         | 7          | 0          | 13         |
| Residential Mortgage Loan Originator               | 0          | 0          | 0          | 0          |
| <b>Total Administrative Penalty Actions</b>        | <b>26</b>  | <b>58</b>  | <b>45</b>  | <b>147</b> |
| <b>Revocation / Suspension Actions</b>             |            |            |            |            |
| Crafted Precious Metal Dealer                      | 0          | 0          | 0          | 0          |
| Credit Access Business                             | 0          | 1          | 0          | 3          |
| Motor Vehicle Sales Finance                        | 0          | 0          | 1          | 2          |
| Pawnshop   | 0          | 0          | 0          | 1          |
| Pawnshop Employee                                  | 0          | 1          | 0          | 1          |
| Property Tax Lender                                | 0          | 0          | 0          | 0          |
| Regulated Lender                                   | 0          | 0          | 0          | 1          |
| Residential Mortgage Loan Originator               | 0          | 0          | 0          | 0          |
| <b>Total Revocation / Suspension Actions</b>       | <b>0</b>   | <b>2</b>   | <b>1</b>   | <b>8</b>   |
| <b>Application Denial and Protest Actions</b>      |            |            |            |            |
| Credit Access Business                             | 0          | 0          | 0          | 0          |
| Motor Vehicle Sales Finance                        | 1          | 2          | 0          | 1          |
| Pawnshop   | 0          | 0          | 0          | 1          |
| Pawnshop Employee                                  | 0          | 0          | 0          | 0          |
| Property Tax Lender                                | 0          | 0          | 0          | 0          |
| Regulated Lender                                   | 0          | 0          | 0          | 0          |
| Residential Mortgage Loan Originator               | 0          | 0          | 0          | 1          |
| <b>Total App. Denial and Protest Actions</b>       | <b>1</b>   | <b>2</b>   | <b>0</b>   | <b>3</b>   |
| <b>Total Actions Closed</b>                        | <b>101</b> | <b>324</b> | <b>200</b> | <b>388</b> |

The OCCC updated its performance measures for fiscal year 2020. The table below includes data on new items the legal department is tracking. A level is assigned to each case based upon its complexity. Each level has a target completion time.

- Level 1 – Basic cases include reporting violations worked in batches, and agreed orders to resolve unlicensed activity. The completion goal is 90 days.
- Level 2 – Moderate cases include those associated with an exam, investigation, or complaint. The completion goal is 180 days.
- Level 3 – Advanced cases are those where a hearing has been requested or there is a significant risk of hearing. The completion goal is 365 days.
- Level 4 – These cases have been referred, or are at significant risk of being referred, to the Attorney General’s Office for representation. The completion goal is 730 days.

| September 1, 2019, through November 30, 2019           |     |
|--|-----|
| Cases Opened   | 7   |
| Cases Closed by Complexity Level                       | 101 |
| Level 1  | 79  |
| Level 2  | 17  |
| Level 3  | 5   |
| Level 4  | 0   |
| Average Number of Days to Close and Enforcement Action | 147 |
| Cases referred to SOAH                                 | 0   |
| Contested Cases Heard at SOAH                          | 0   |
| Enforcement Actions Taken                              | 92  |

The OCCC has no hearings scheduled between December 1, 2019, and January 31, 2020.

### **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 November 7, VIP filed a petition for review with the Texas Supreme Court to appeal the case.

The OCCC is represented in the case 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. The Texas Supreme Court case number is 19-0999.

### **Rule Actions**

At the December meeting, the OCCC (on behalf of all three finance agencies) is presenting a rule action for adoption relating to negotiated rulemaking, alternative dispute resolution, and Finance Commission appeals, to implement the Sunset legislation for the finance agencies.

In February 2020, the OCCC plans to present rule actions to readopt 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 Opinions and Requests**

#### ***Opinion No. KP-0277 (Credit Services Organizations)***

The Texas attorney general issued opinion no. KP-0277 on November 1, 2019. The opinion concluded that Chapter 393 of the Texas Finance Code does not restrict a credit services organization (CSO) from assisting a consumer to obtain an extension of consumer credit in forms other than a deferred presentment transaction or motor vehicle title loan. However, the attorney general declined to reach a conclusion as to whether Chapter 393 allows a CSO to assist a consumer to obtain an extension of credit in the form of a "signature loan" without providing any security in the form of a personal check, authorization to debit a deposit account, or a motor vehicle title.

#### ***Opinion Request No. RQ-0302-KP (Motor Vehicle Sales Financing)***

The attorney general received request RQ-0302-KP on September 3, 2019. The requestor, a state senator, asks whether a depreciation benefit optional membership program under Chapter 1304 of the Texas Occupations Code may be purchased in a motor vehicle cash sale or lease. On October 28, the OCCC filed a brief with the attorney general explaining the distinctions among retail installment transactions, cash sales, and leases. The attorney general is expected to issue an opinion in response to this request by March 2, 2020.

#### ***Opinion Request No. RQ-0306-KP (Pawnshops)***

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 OCC’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.

**Governor’s Office Request**

On October 8, 2019, Governor Greg Abbott sent a letter to state agency heads, requesting that each agency report on occupational licensing. The OCC responded to this letter on November 26.

**Federal Rulemaking**

***OCC and FDIC Interest Rate Authority Rules***

Federal law allows a bank to export the usury limitations of its home state, meaning that the bank can use its home state’s interest rate limitations when it makes loans to residents of other states. On November 18, 2019, the Office of the Comptroller of the Currency (OCC), the federal agency that regulates national banks, proposed rules on the permissible interest rate when a national bank transfers a loan to another entity. On November 19, the Federal Deposit Insurance Corporation (FDIC) proposed a similar rule for FDIC-insured state banks. These proposed federal rules would provide that if a bank makes a loan, the authorized interest rate for the loan is not affected by the loan’s subsequent assignment, even if the loan is assigned to a nonbank entity. In their proposals, the OCC and FDIC stated that the proposed rules are intended to address uncertainty resulting from *Madden v. Midland Funding, LLC*, 786 F.3d 246 (2d Cir. 2015), in which the Second Circuit held that nonbank assignees are not entitled to protection under the National Bank Act.

**Advisory Bulletins**

From October 1, 2019 to November 30, 2019, the OCC did not issue any advisory bulletins.

**Official Interpretation Requests**

From October 1, 2019 to November 30, 2019, the OCC did not receive any requests for official interpretations. As of November 30, 2019, there were no pending requests for official interpretations.

**Public Information Requests**

| <b>September 1, 2019, through November 30, 2019</b>            |     |
|--|-----|
| Requests Received  | 42  |
| Requests Closed  | 40  |
| Requests Withdrawn   | 0   |
| Requests Referred to Office of Attorney General                | 0   |
| Average Number of Days to Address a Public Information Request | 2.4 |



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

The Conference on Consumer Finance Law (CCFL) allowed two OCCC staff attorneys to attend the CCFL's Annual Consumer Financial Services Conference without charge. The conference took place in Fort Worth on November 7 and 8, 2019. The CCFL's website stated: "There will be no charge for in-house or corporate counsel or their staff." The CCFL considered the OCCC's staff attorneys to be in-house counsel who could attend the conference without charge. If the OCCC had been required to pay the registration fees for two employees, the total fee amount would have been \$1,090.

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**C.**

**Texas Department of Banking**

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Charles G. Cooper  
Commissioner

# TEXAS DEPARTMENT OF BANKING

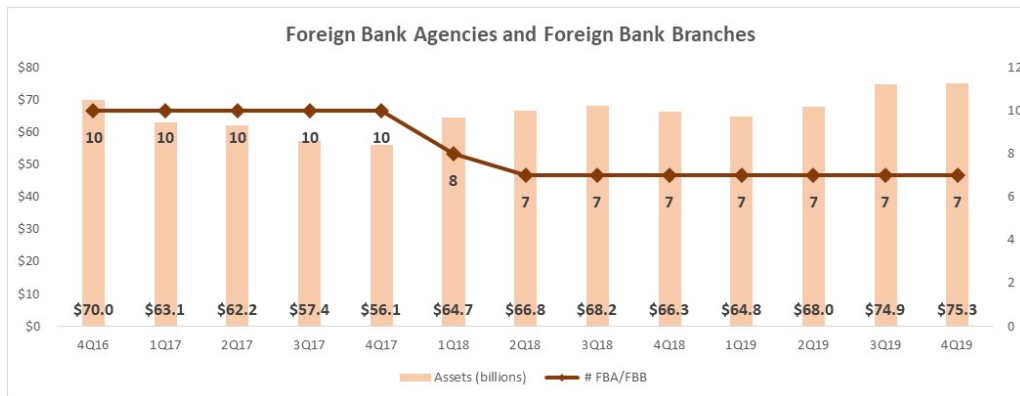
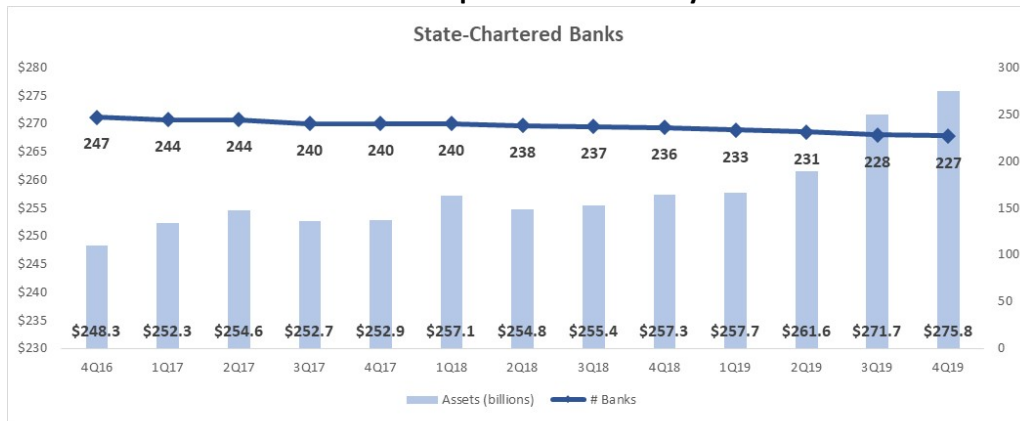
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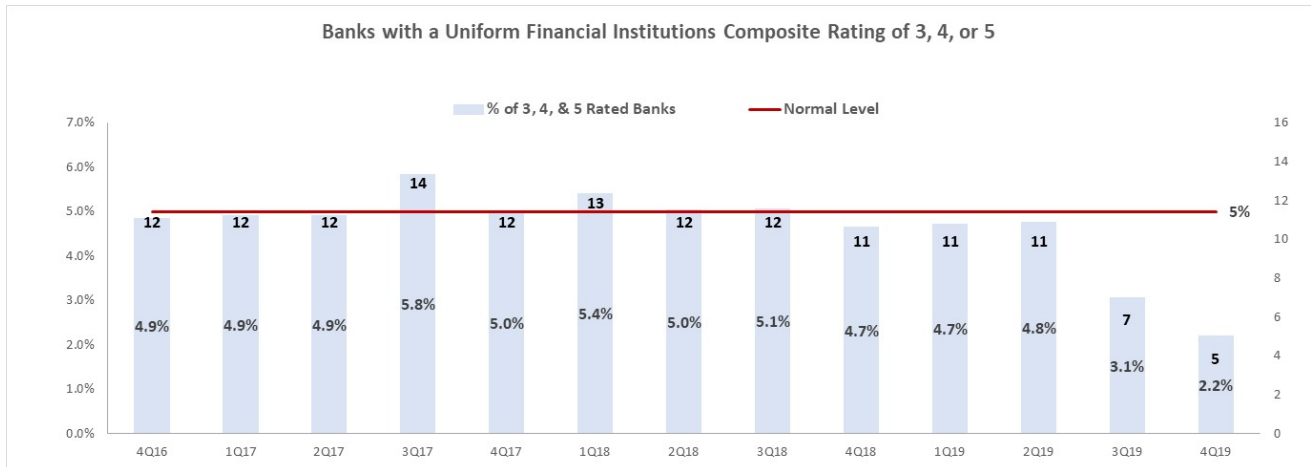
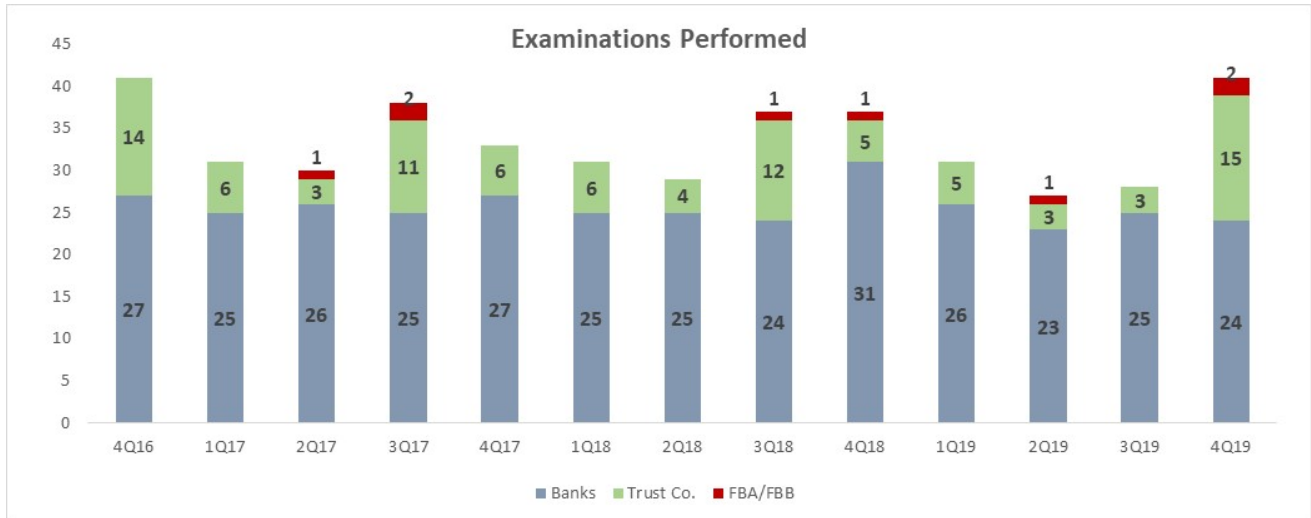
512-475-1300 / 877-276-5554

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

To: Finance Commission Members  
 From: Daniel Frasier, Director of Bank & Trust Supervision *DBF*  
 Date: November 26, 2019  
 Subject: Summary of the Bank & Trust Supervision Division Activities

## Bank and Trust Supervision – Industry Profiles

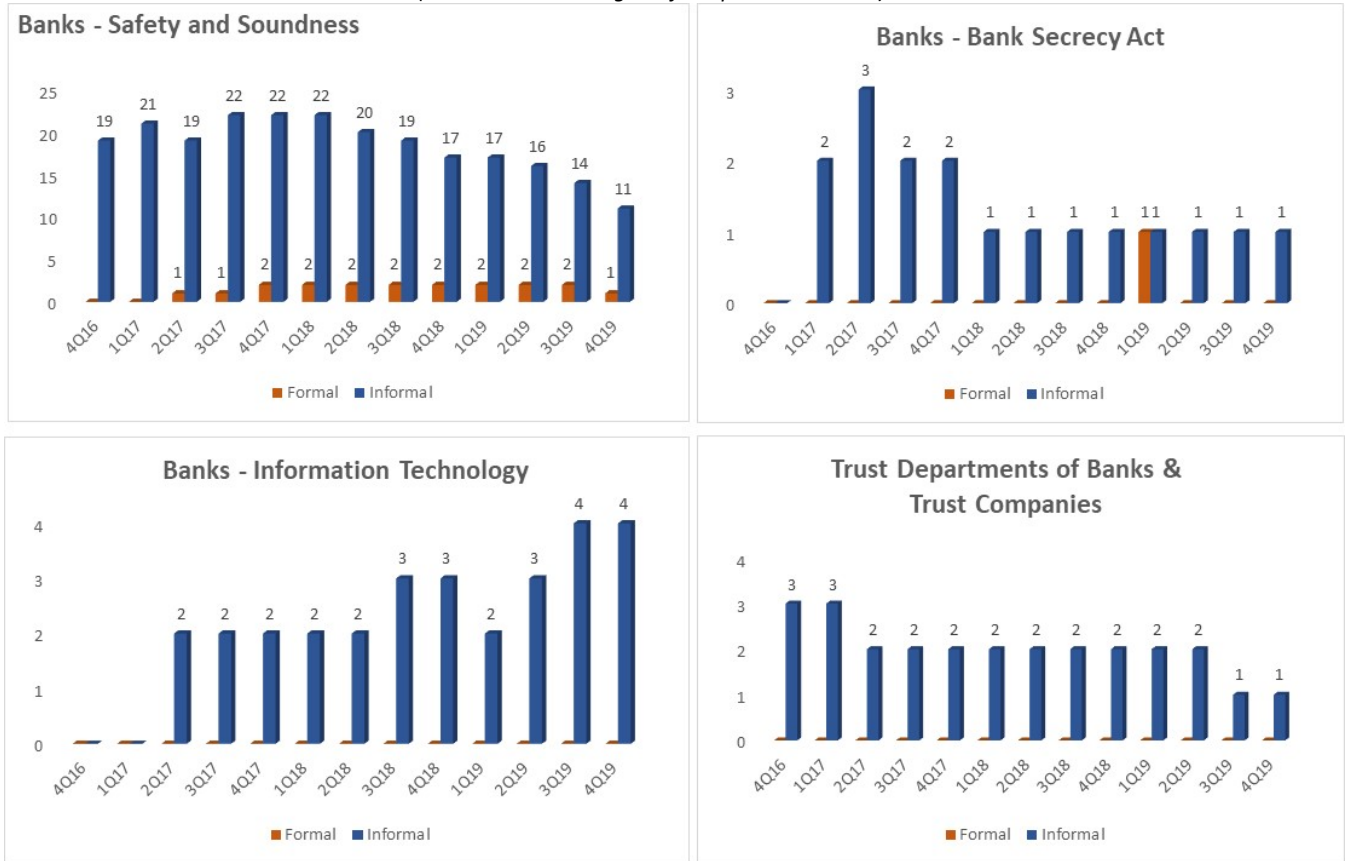




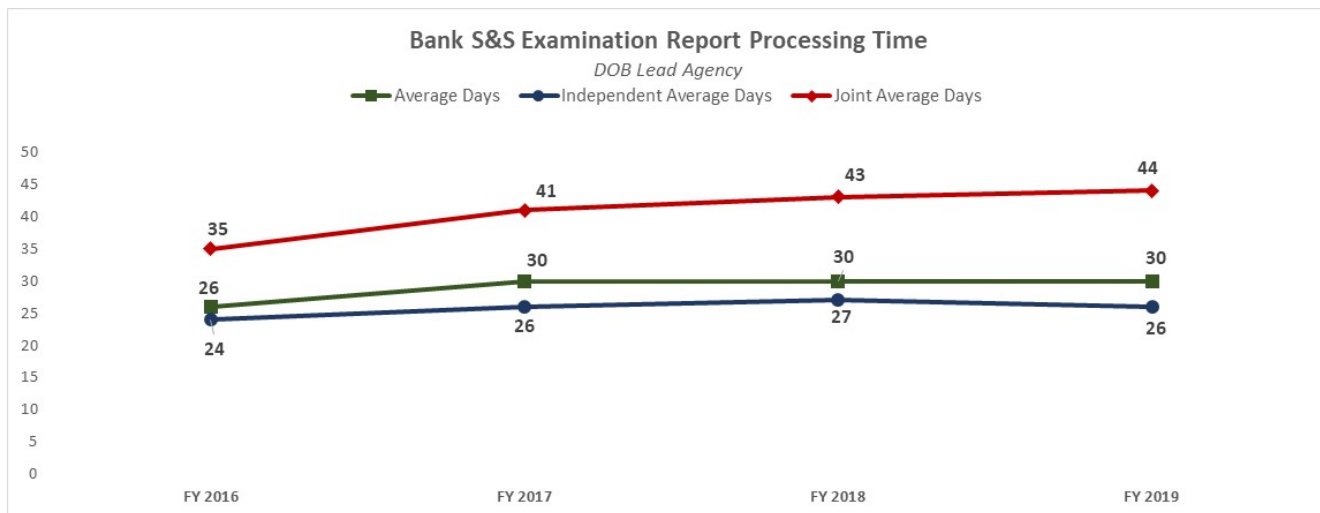
The Department considers any bank with a Uniform Financial Institutions Composite Rating of 3, 4, or 5, to be a problem bank. As noted in our previous report to the Finance Commission, the number of problem institutions declined during the 4<sup>th</sup> fiscal quarter of 2019. This decline in problem 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 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 average number of days to complete processing of bank safety and soundness reports 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 on 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 for joint examinations due to two regulators needing time to review and edit the reports.

| Compliance with Examination Priorities<br>Percent of Examinations Conducted within Department Guidelines |           |                              |
|--|-----------|------------------------------|
| Entity Type  | FY 2019   | FY 2020<br>(YTD – Oct. 2019) |
| <b>Commercial Banks<br/>(All / DOB Only)</b>   | 93% / 92% | 100% / 100%                  |
| <b>IT</b>  | 96% / 96% | 100% / 100%                  |
| <b>Trust</b>   | 93% / 94% | 100% / -                     |
| <b>Foreign Banks (FRB)</b>   | 100%      | 100%                         |
| <b>Trust Companies (DOB)</b>   | 48%       | 67%                          |
| <b>IT</b>  | 92%       | 100%                         |

As noted in our October report to the Finance Commission, 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 experienced trust examiners and temporary operational changes have allowed us to make good



headway. For the first two months of fiscal year 2020, all trust departments and only one trust company was not conducted within policy guidelines. Barring any unexpected setbacks, we expect to be current by the end of the second fiscal quarter of 2020.

### Division Highlights

- The Department hosted a live Ask the Fed webinar at the Austin Headquarters Office on November 8, 2019. The topic of the webinar was “Basics of Fintech: Artificial Intelligence and Machine Learning.” The event was attended by several Department staff member from several divisions.
- The Department hosted a training session at the Austin Headquarters Office on Current Expected Credit Loss (CECL). This training session was attended by approximately 30 staff from the Department of Banking, Department of Savings and Mortgage Lending and the FDIC. This in-person training session, which was led by FDIC instructors, provided six hours of instruction for regulators concerning CECL.
- **Special Operations and Conferences:**
  - Deputy Commissioner Purdom participated in several events sponsored by the Texas A&M Banking Program held in College Station starting on October 23, 2019.
  - Review Examiner Melissa Dvoracek represented the Department on the regulatory panel at the Texas Banker’s Association Internal Audit School held in Farmers Branch on October 24, 2019.
  - Review Examiner Michelle Hodge attended the semi-annual meeting of the Texas Tech University School of Banking Advisory Board in Farmers Branch on October 25, 2019.
  - On October 30, 2019, Commissioner Cooper, Deputy Commissioner Purdom, and Directors Frasier, Largent and Robinson participated in the 2019 FDIC Banker Outreach program held in Austin.
  - Commissioner Cooper attended the Banker Forum at the Federal Reserve Bank of Dallas on October 31, 2019.
  - On November 1, 2019, Commissioner Cooper, Regional Director Walker, Regional Review Examiner Susany, Director Hinkle, and Review Examiner Dvoracek participated in the 2019 FDIC Banker Outreach in Dallas.
  - Commissioner Cooper participated in the Financial Stability Oversight Council (FSOC) meeting held in Washington, D.C. on November 7<sup>th</sup>. FSOC was created as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act to identify risks to the financial system and coordinate responses to any threats. Commissioner Cooper was named the State Banking Representative to FSOC in November of 2018.
  - Beginning November 10, 2019, Chief IT Examiner Ruth Norris attended the FI Fintech Conference in Fredericksburg. This conference hosted bankers, technology vendors, and regulators, which covered technology and cybersecurity issues important to bankers.
  - Regional Director Reed represented the Department on a regulator panel at the Agriculture Bankers Conference hosted by American Bankers Association in Dallas on November 12, 2019.

- Beginning November 12, 2019, Deputy Commissioner Purdom and Director Frasier attended the FDIC and State Leadership Meeting in Dallas. Issues discussed included banking industry risks, the economy, examination processes, and examiner training.
- The 2019 Commissioner's Post Examination Survey responses are available on the agency's [website](#). The purpose of the survey is to solicit input regarding the division's examination processes. The division received 144 total responses in fiscal year 2019 and most of the responses reflect either "strongly agree" or "agree" ratings.



# TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705

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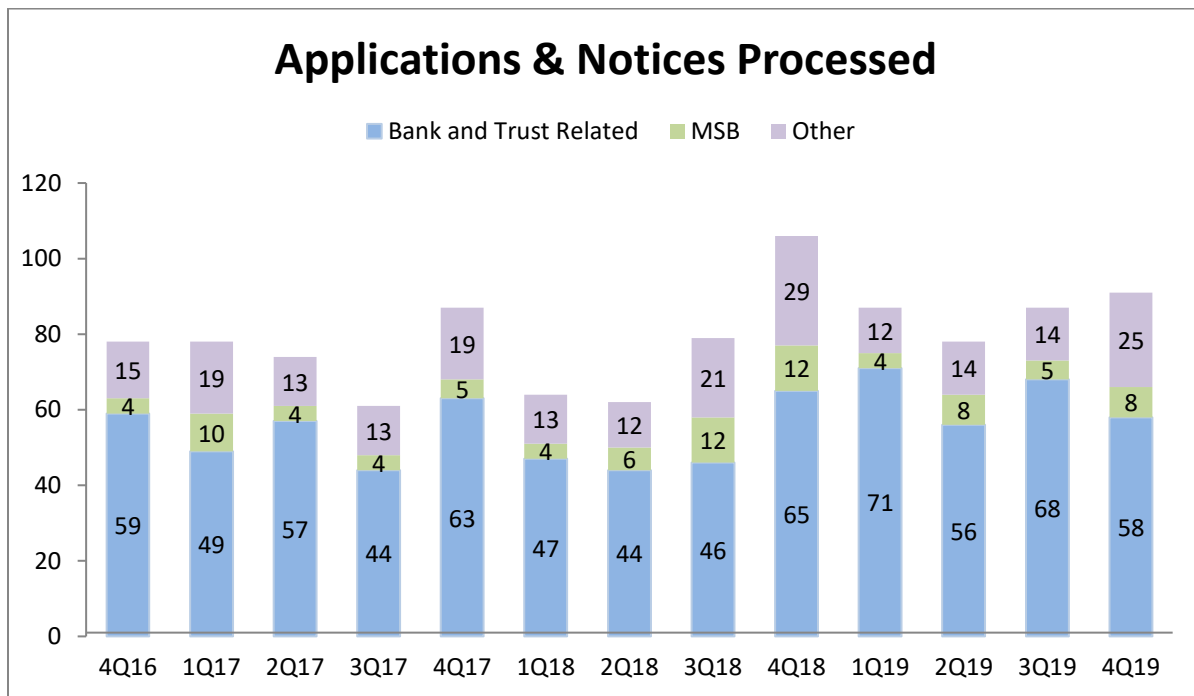
Charles G. Cooper  
Commissioner

To: Finance Commission Members

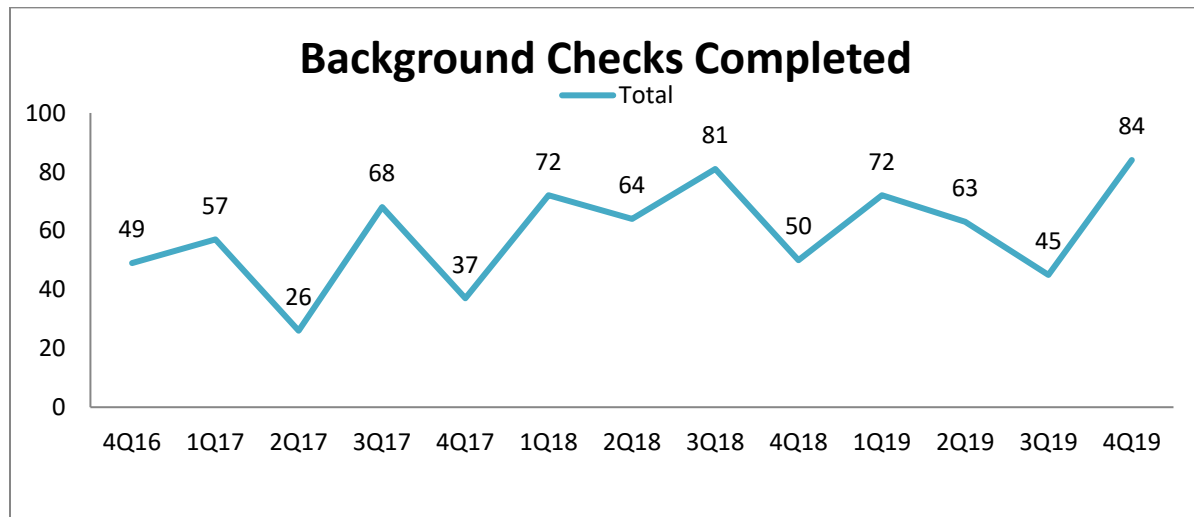
From: Mark Largent, Director of Corporate Activities *Mark R. Largent*

Date: November 26, 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<br>(as of November 25, 2019) |
|-------------------------------|--|
| Bank Related                  | 31   |
| Trust Companies               | 7  |
| Money Services Business (MSB) | 16   |
| Others                        | 3  |
| <b>Totals</b>                 | <b>57</b>  |

### Division Highlights

- Application volume continues to be significant and has increased from 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 increased 14 (82%)
  - Trust company was unchanged 0 (0%)
  - MSB related decreased 2 (11%)
  - Other was unchanged 0 (0%)
- Since the Corporate Division's last report to the Finance Commission, an individual with significant bank regulatory and legal experience was hired to help with the increased workload.
- Interstate Bank, ssb, Perryton, Texas, is set to convert from a state savings bank charter to a Texas state bank charter under the name of Interstate Bank on December 2, 2019 [estimated gain in state banking assets of approximately \$200 million].
- **Charter, Conversion, and Merger Activity** – Since the last report to the Finance Commission, the following transactions have consummated:
  - *Banks*
    - Preferred Bank, fsb, Houston, Texas merged into Texas First Bank, Texas City, Texas [estimated gain in state banking assets of approximately \$282 million].
    - FNB New Mexico, Clayton, New Mexico merged into AimBank, Littlefield, Texas [estimated gain in state banking assets of approximately \$265 million].
    - The First National Bank of Paducah, Paducah, Texas merged into Wellington State Bank, Wellington, Texas [estimated gain in state banking assets of approximately \$39 million].
    - Prosperity Bank, El Campo, Texas completed its acquisition merger of LegacyTexas Bank, Plano, Texas [no change in state banking assets].
    - City Bank, Lubbock, Texas completed its acquisition merger of West Texas State Bank, Odessa, Texas [no change in state banking assets].
    - Citizens State Bank, Tyler, Texas merged into Spirit of Texas Bank, SSB, College Station, Texas [estimated loss in state banking assets of approximately \$347 million].

- *Trust Companies*
  - Liberty Trust Company, Ltd., Sioux Falls, South Dakota converted from a South Dakota trust company to a Texas trust company [estimated gain of fiduciary assets of approximately \$732 million].
- **Conferences, Conventions, and Committee Meetings** – Since the last report to the Finance Commission, Corporate Division personnel have participated in the following:
  - Director Mark Largent represented the Department at the 2019 FDIC Outreach Program held in Austin, Texas on October 30<sup>th</sup>.



Charles G. Cooper  
Commissioner

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To: Finance Commission Members

From: Jesus "Jesse" Saucillo, Director of Non-Depository Supervision *JS*

Date: December 2, 2019

Subject: Summary of Non-Depository Supervision Activities

| Entity  | FY 2019 |            | FY 2020         |   |                 |  |                 |  |                 |  |
|---|---------|------------|-----------------|---|-----------------|--|-----------------|--|-----------------|--|
|   |         |            | 1 <sup>st</sup> |   | 2 <sup>nd</sup> |  | 3 <sup>rd</sup> |  | 4 <sup>th</sup> |  |
| <b>Industry Profile (# / Assets (billions))</b>             |         |            |                 |   |                 |  |                 |  |                 |  |
| Money Services Businesses (MSB)                             | 171     | \$140.5    | *               | * |                 |  |                 |  |                 |  |
| Prepaid Funeral Contract (PFC)                              | 359     | \$4.2      | *               | * |                 |  |                 |  |                 |  |
| Perpetual Care Cemeteries (PCC)                             | 241     | \$365.3 ** | *               | * |                 |  |                 |  |                 |  |
| Check Verification Entities (CVE)                           | 2       | n/a        | *               | * |                 |  |                 |  |                 |  |
| <b>Examinations Performed</b>                               |         |            |                 |   |                 |  |                 |  |                 |  |
| MSB   | 101     |            | *               |   |                 |  |                 |  |                 |  |
| MSB Limited Scope   | 2       |            | *               |   |                 |  |                 |  |                 |  |
| MSB Accepted other State                                    | 13      |            | *               |   |                 |  |                 |  |                 |  |
| PFC   | 260     |            | *               |   |                 |  |                 |  |                 |  |
| PFC Limited Scope   | 5       |            | *               |   |                 |  |                 |  |                 |  |
| PCC   | 184     |            | *               |   |                 |  |                 |  |                 |  |
| PCC Limited Scope   | 2       |            | *               |   |                 |  |                 |  |                 |  |
| <b>Ratings (# / %) Assigned to All Regulated Entities</b>   |         |            |                 |   |                 |  |                 |  |                 |  |
| 1   | 276     | 36.56%     | *               | * |                 |  |                 |  |                 |  |
| 2   | 409     | 54.17%     | *               | * |                 |  |                 |  |                 |  |
| 3   | 60      | 7.95%      | *               | * |                 |  |                 |  |                 |  |
| 4 & 5   | 10      | 1.32%      | *               | * |                 |  |                 |  |                 |  |
| <b>Noncompliance with Examination Priorities (Past Due)</b> |         |            |                 |   |                 |  |                 |  |                 |  |
| MSB   | 14      |            | *               |   |                 |  |                 |  |                 |  |
| PFC   | 3       |            | *               |   |                 |  |                 |  |                 |  |
| PCC   | 1       |            | *               |   |                 |  |                 |  |                 |  |

**NOTES:**

\* First quarter Fiscal Year 2020 data has not been finalized but will be provided in the division's next summary.

\*\* PCC \$ amounts reflected in the millions.

Limited scope examinations do not receive a rating.

## **Division Activities**

On October 16<sup>th</sup>, Assistant Deputy Commissioner (ADC) Russell Reese attended the Suspicious Activity Report (SAR) review team meeting in Austin, TX. The SAR review team consists of local, state and federal investigators, analysts and prosecutors that review locally filed SARs. ADC Reese participates in these meetings every other month and provides feedback related to the industries regulated by our Department.

On November 8<sup>th</sup>, division staff attended part four of the Federal Reserve's five-part series on financial technology. The session titled Basics of Fintech: Artificial Intelligence and Machine Learning was held at the Department's office in Austin, TX.

On November 13<sup>th</sup>, a Prepaid Funeral Guaranty Fund Advisory Council telephonic meeting was held to discuss and approve the proposed amendments to the Investment Policy made during the 86th Texas Legislature.

In November, an MSB Financial Examiner resigned and the posting to fill this position recently closed. We anticipate interviewing applicants in the near future to fill the vacancy.

Effective December 2<sup>nd</sup>, the Special Audits Division was renamed Non-Depository Supervision. The name change more accurately defines the division's supervisory responsibilities and it also reflects the Department's goal of aligning our non-depository supervision processes with other state regulators and the Conference of State Bank Supervisors' Vision 2020, a national initiative aimed at modernizing state regulation of non-banks, including fintech firms.



Charles G. Cooper  
Commissioner

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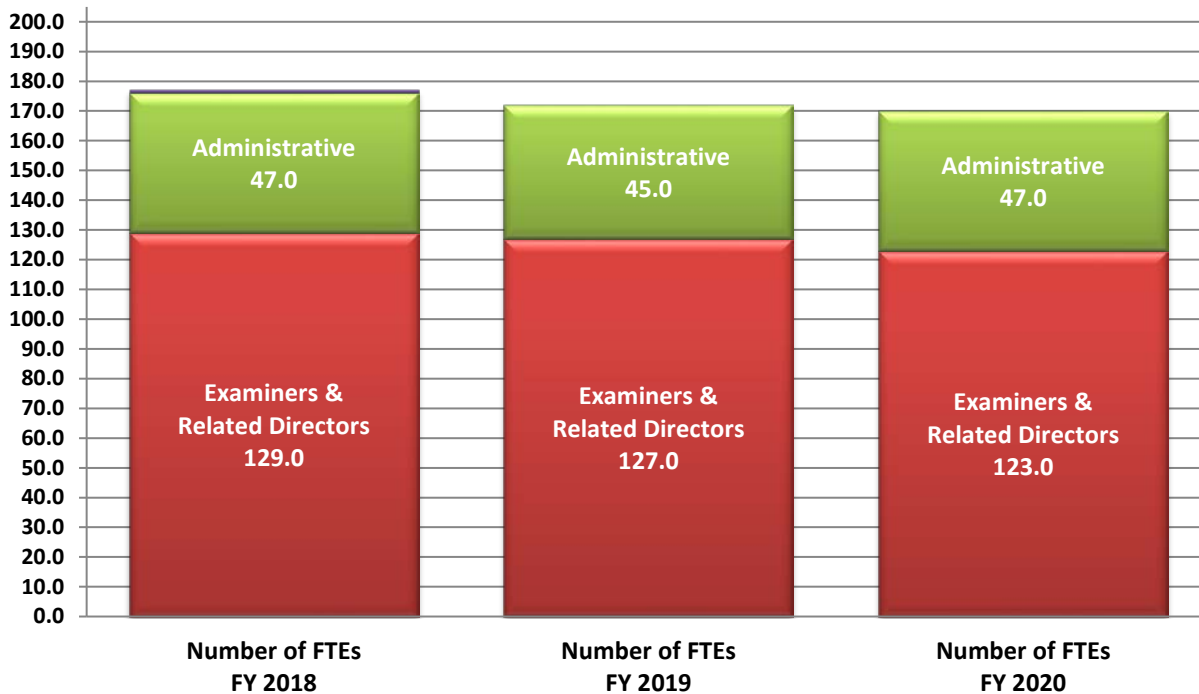
**Memorandum**

**To:** Finance Commission Members  
**From:** Lori Wright, Director Human Resources  
**Date:** December 13, 2019  
**Subject:** Summary of the Human Resources Division Activities

**Human Resources Fiscal Year 2020 Activities as of 11/30/2019**

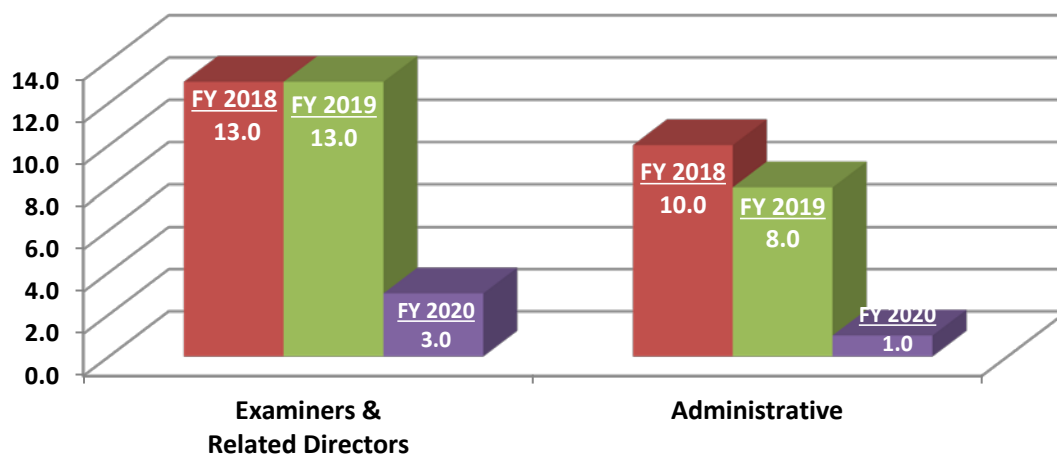
| Active Postings                   |                   |                        |
|-----------------------------------|-------------------|------------------------|
| Position                          | Status            | Activities             |
| Financial Examiner IV-VII (Trust) | Open Until Filled | Screening Applications |
| Financial Examiner I (MSB)        | Close 12/6/2019   | Screening Applications |
| Financial Examiner IV-V           | Open Until Filled | Perpetual Posting      |
| Financial Examiner VI-VII         | Open Until Filled | Perpetual Posting      |

**Employee Data for Fiscal Years 2018, 2019, and 2020**



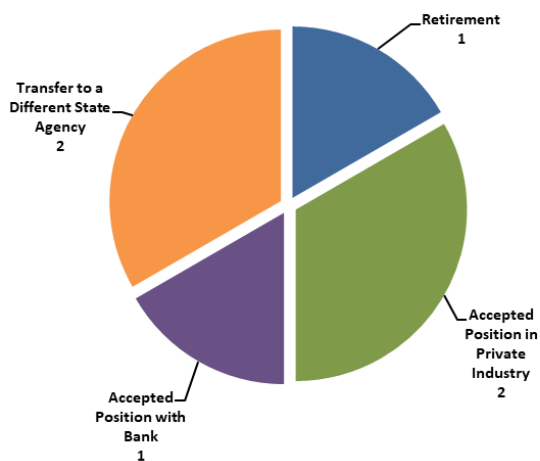


### New Hire Data for Fiscal Years 2018, 2019, and 2020

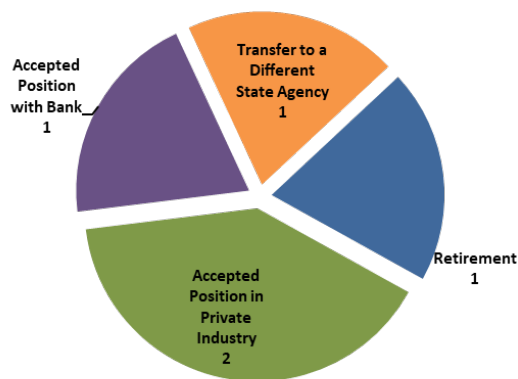


### FY 2020 Employee Turnover Reasons

All Employees  
6 Resignations



Financial Examiners Only  
5 Resignations





Charles G. Cooper  
Commissioner

## TEXAS DEPARTMENT OF BANKING

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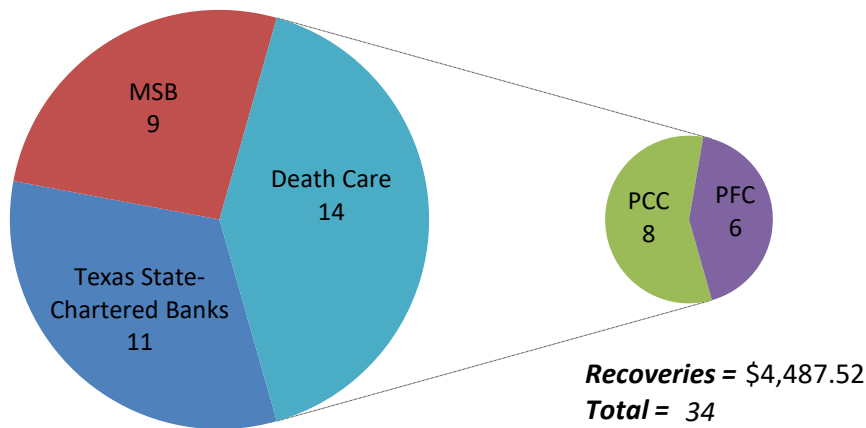
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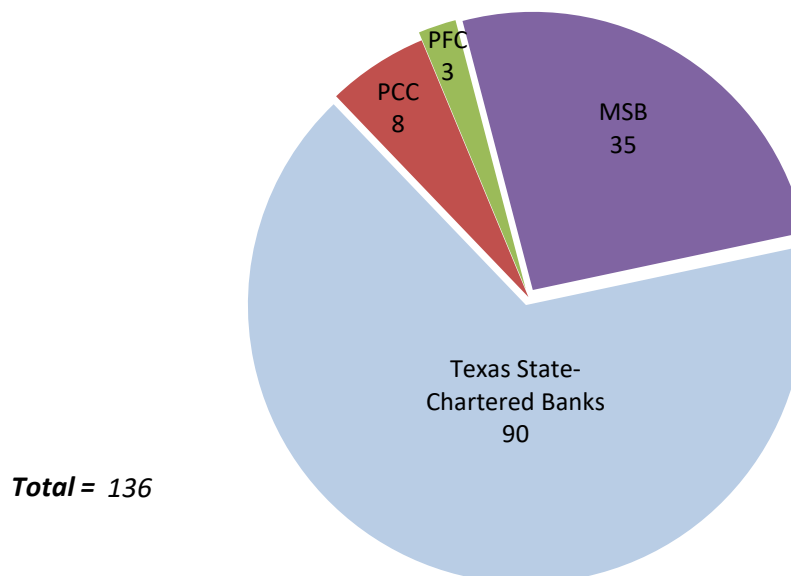
**To:** Finance Commission Members  
**From:** Wendy Rodriguez, Chief Operating Officer *WR*  
**Date:** December 1, 2019  
**Subject:** Summary of the Strategic Support Division Activities

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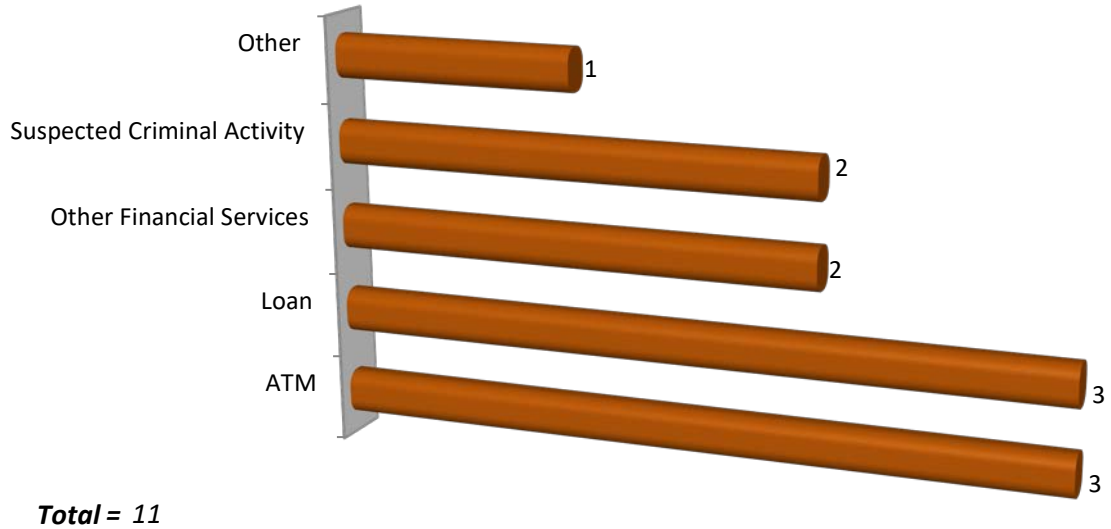
### Jurisdictional Written Complaints September 2019 - October 2019



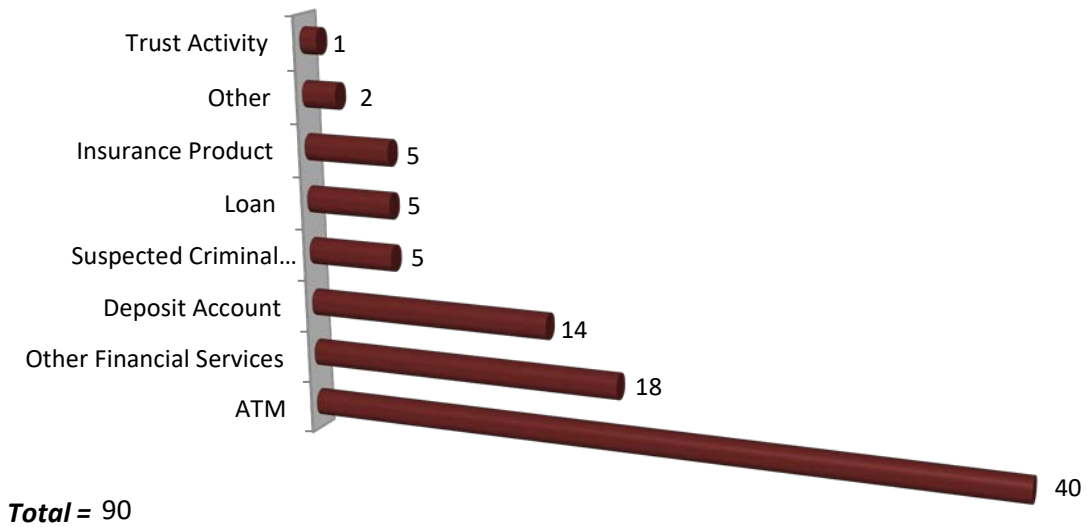
### Inquiries on Jurisdictional Entities September 2019 - October 2019



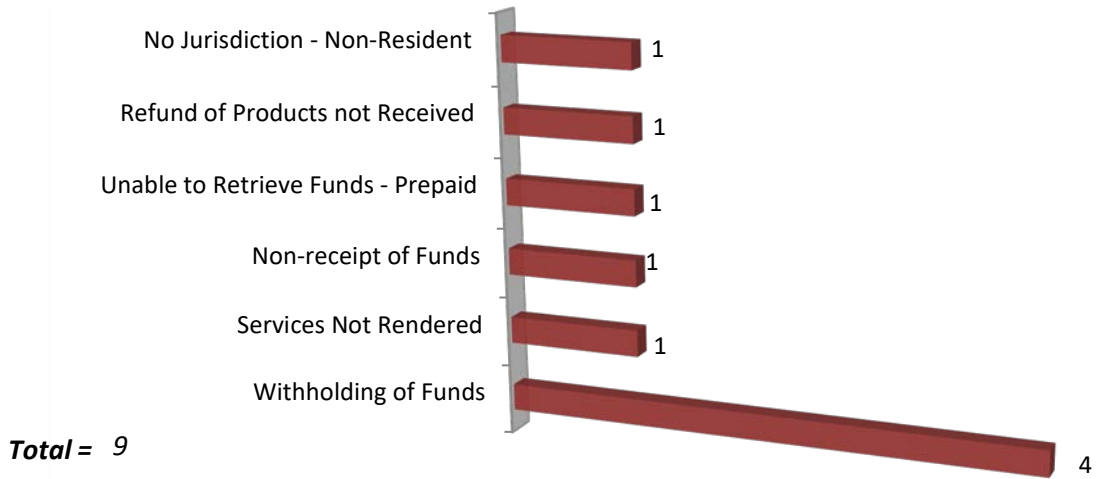
**State-Chartered Banks and Trust Companies  
Written Complaints by Type  
September 2019 - October 2019**



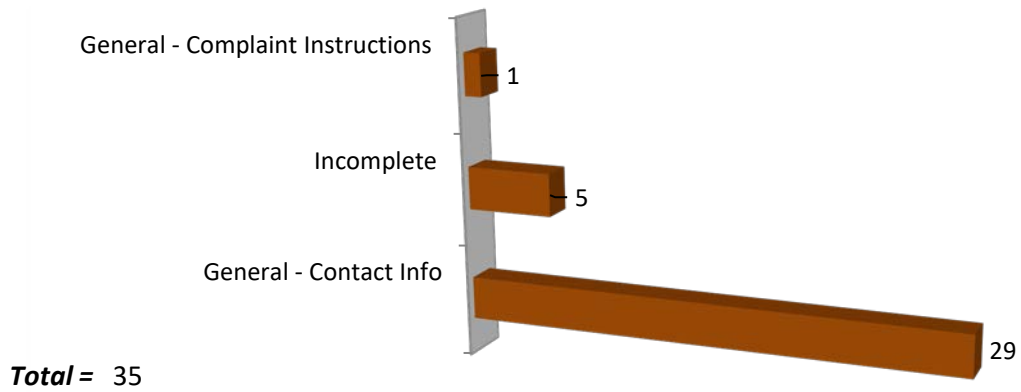
**State-Chartered Banks and Trust Companies  
Inquiries by Type  
September 2019 - October 2019**



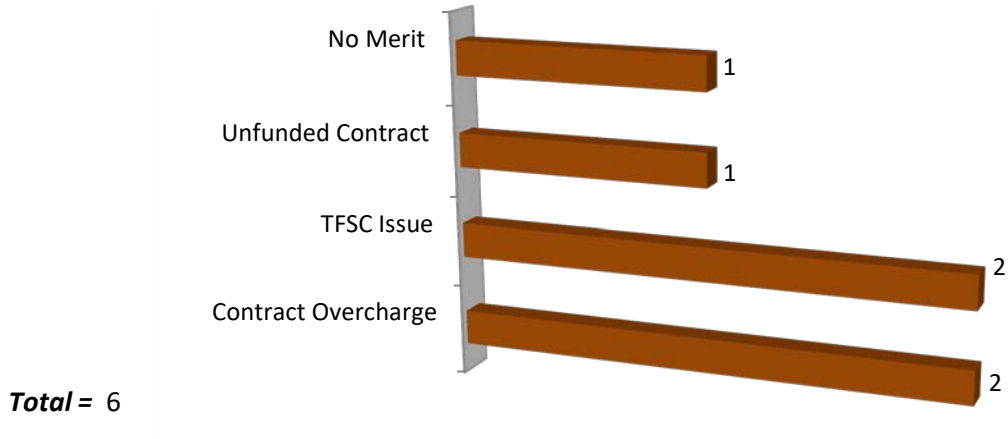
### Money Services Businesses Written Complaints by Type September 2019 - October 2019



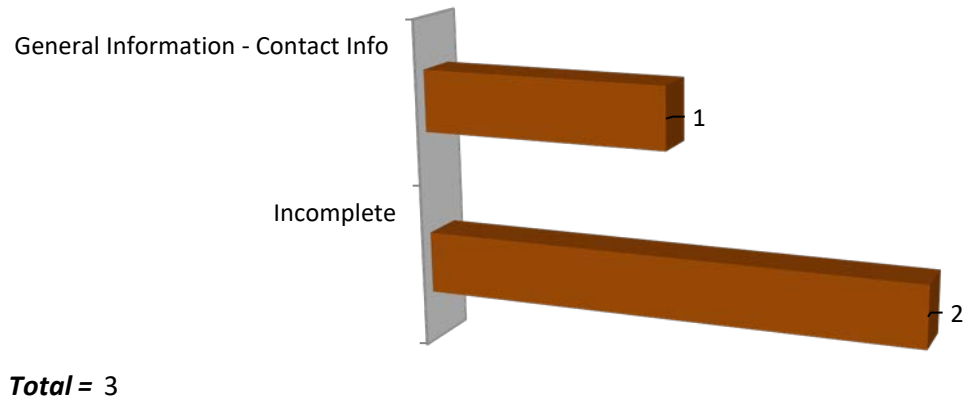
### Money Services Businesses Inquiries by Type September 2019 - October 2019



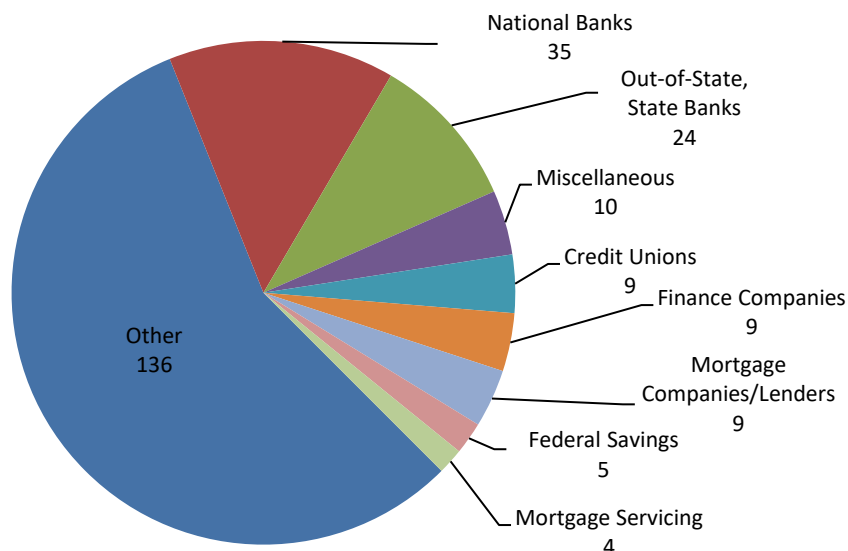
**Prepaid Funeral Contract Sellers  
Written Complaints by Type  
September 2019 - October 2019**



**Prepaid Funeral Contract Sellers  
Inquiries by Type  
September 2019 - October 2019**



### Complaints and Inquiries Against Non-Jurisdictional Entities September 2019 - October 2019



**Total = 241**

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

First Quarter FY 2020 data is not available.

|  | 1st Qtr | 2nd Qtr | 3rd Qtr | 4th Qtr |
|--|---------|---------|---------|---------|
| <b>State-Chartered Banks</b>                             |         |         |         |         |
| Avg. Number of Days to Close a Written Complaint         | N/A     | N/A     | N/A     | N/A     |
| Percentage of Written Complaints Resolved Within 90 days | N/A     | N/A     | N/A     | N/A     |
| Number of Written Complaints Resolved                    | N/A     | N/A     | N/A     | N/A     |
| <b>Trust</b>   |         |         |         |         |
| Avg. Number of Days to Close a Written Complaint         | N/A     | N/A     | N/A     | N/A     |
| Percentage of Written Complaints Resolved Within 90 days | N/A     | N/A     | N/A     | N/A     |
| Number of Written Complaints Resolved                    | N/A     | N/A     | N/A     | N/A     |
| <b>PCSEA</b>   |         |         |         |         |
| Avg. Number of Days to Close a Written Complaint         | N/A     | N/A     | N/A     | N/A     |
| Percentage of Written Complaints Resolved Within 90 days | N/A     | N/A     | N/A     | N/A     |
| Number of Written Complaints Resolved                    | N/A     | N/A     | N/A     | N/A     |
| <b>PFC/PCC</b>   |         |         |         |         |
| Avg. Number of Days to Close a Written Complaint         | N/A     | N/A     | N/A     | N/A     |
| Percentage of Written Complaints Resolved Within 90 days | N/A     | N/A     | N/A     | N/A     |
| Number of Written Complaints Resolved                    | N/A     | N/A     | N/A     | N/A     |
| <b>MSB</b>   |         |         |         |         |
| Avg. Number of Days to Close a Written Complaint         | N/A     | N/A     | N/A     | N/A     |
| Percentage of Written Complaints Resolved Within 90 days | N/A     | N/A     | N/A     | N/A     |
| Number of Written Complaints Resolved                    | N/A     | N/A     | N/A     | N/A     |

### Closed Account Notification System (CANS) ACTIVITY

January 1, 2016 – November 19, 2019

| Entity                              | Enrolled   | Compromised Accounts Reported |
|-------------------------------------|------------|-------------------------------|
| Texas State-Chartered Banks         | 201        | 641                           |
| Texas State-Chartered Savings Banks | 23         | 58                            |
| Federal Savings Banks               | 10         | 1                             |
| State Credit Unions                 | 132        | 904                           |
| Federal Credit Unions               | 229        | 483                           |
| National Banks                      | 170        | 203                           |
| Out-of-State State-Chartered Banks  | 12         | 150                           |
| Out-of-State National Banks         | 6          | 1                             |
| <b>Total</b>                        | <b>783</b> | <b>2,441</b>                  |

### Bank Examination Testing System (BETS) Activity

Number of Candidates Passing Each Phase

|                      | FY 2017   | FY 2018   | FY 2019   | FY 2020<br>As of 11/25/19 |
|----------------------|-----------|-----------|-----------|---------------------------|
| I. General Knowledge | 8         | 6         | 3         | 2                         |
| II. Loan Analysis    | 3         | 3         | 5         | 1                         |
| III. Panel           | 2         | 2         | 5         | 0                         |
| IV. Test Bank        | 3         | 3         | 4         | 2                         |
| <b>Total FE3</b>     | <b>24</b> | <b>22</b> | <b>19</b> | <b>20</b>                 |

#### Promotions

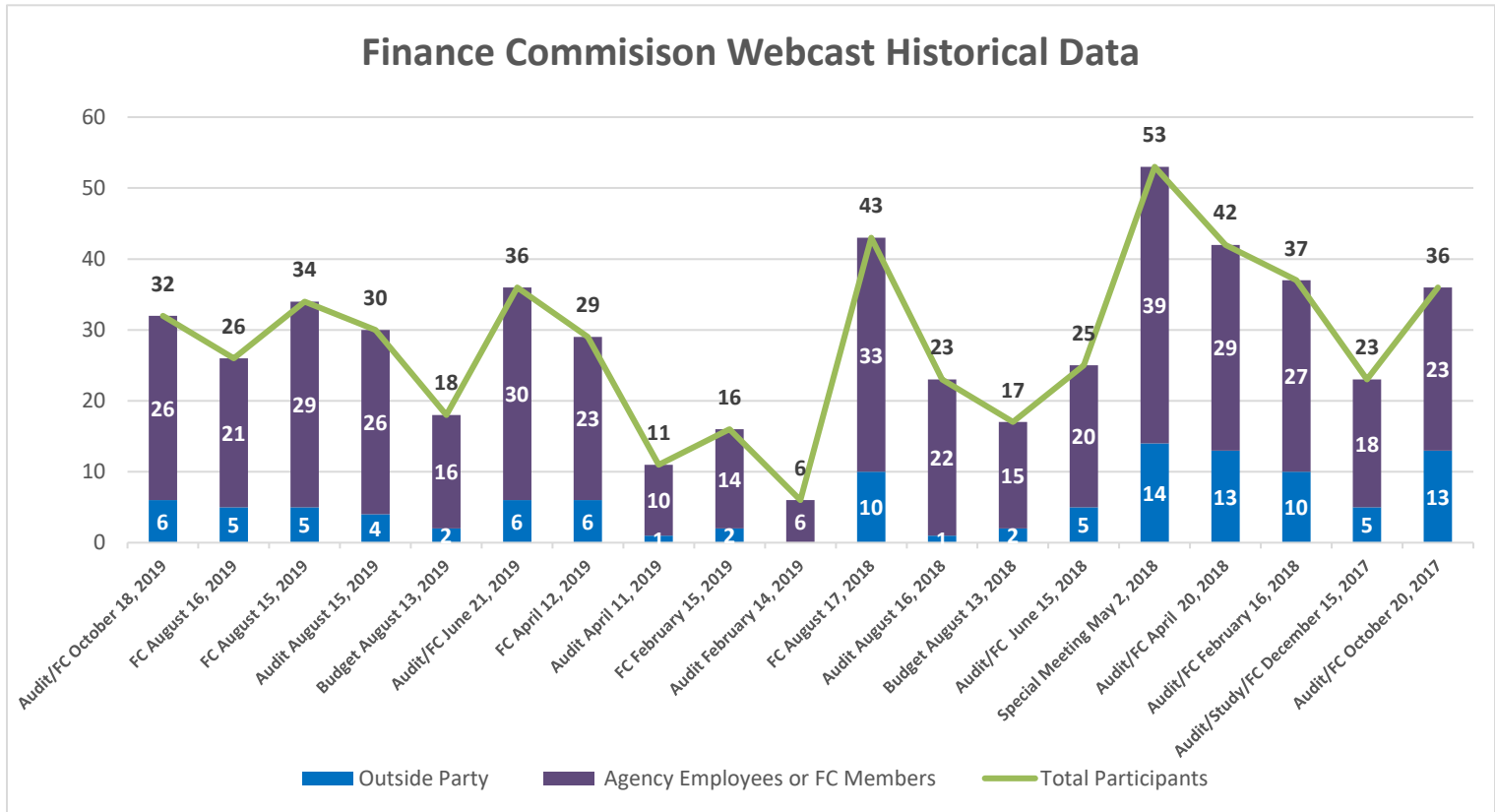
|                               |   |   |    |   |
|-------------------------------|---|---|----|---|
| <b>Commissioned Examiners</b> | 3 | 2 | 5* | 0 |
|-------------------------------|---|---|----|---|

\*Includes a FE V Credit Specialist

#### Other Divisional Items:

- *Personnel and Policies Manual Updates*
  - Personnel Manual
    - Section 3 Training was updated in October 2019. Updates include a revision of training courses for examination staff and a new commissioning track for Bank Secrecy Act (BSA), as well as a modification to the trust commissioning track.
  - Revised Administrative Memorandums (AM)
    - AM 2009 – Examination Report Submission and Processing
    - AM 2011 – Subpoenas
    - AM 2015 – Work Paper Organization, Retention and Review
    - AM 2016 – Investment Policy for Funds Under the Oversight of the Guaranty Fund Advisory Council
    - AM 2043 – Visitations and Interim Risk Examination and Assessment Programs

- Revised Examiner Bulletins (XB)
  - XB 2019-07 Guidelines for Imaging Examination Work Papers
- Examination Procedures
  - All examination procedures for Commercial, Trust, and IT were modified to reflect changes to the Summary of Findings form at the end of each procedure.



\* Webcast data is not available for the October 2018 and December 2018 meetings held at the capitol.





Charles G. Cooper  
Commissioner

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### Memorandum

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

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#### **Pending Contested Cases**

*In the Matter of E. Mex. Financial Services, Inc., Laredo, Texas;* Docket No. BM-1904-18-029. In January 2019, the Department issued an order to cease and desist activity against this currency exchange license holder based on 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. Settlement negotiations are ongoing. In June 2019, 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 sought to enjoin the Department from using its contracted administrative law judge in the license revocation case. Motion for Summary Judgment hearing was held October 29, 2019; on November 13, 2019, Judge Karen Crump issued an order denying E. Mex.'s motion, and granting the Department's motion for summary judgment.

*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. 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 based on evidence showing that Hernandez had improperly canceled multiple trust-funded prepaid funeral benefits contracts. Hearing has been postponed as settlement discussions are continuing.

#### **Gifts**

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

#### **Orders Issued 10/1/19 – 11/30/19**

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

##### ***Bank and Trust***

- Order Prohibiting Further Participation dated October 24, 2019; Consuelo "Connie" Martinez, Missouri City, TX

**Non-Depository Supervision**

- Consent Order dated November 14, 2019; Robles Mortuaries, Inc., dba Sunset Memorial Oaks Cemetery, Richard D. Robles and Rudy D. Robles, Jr., Del Rio, TX

**FY 2020 To Date Quarterly Order Activity**

| <b>BANK</b>                     |            |            |            |            |
|---------------------------------|------------|------------|------------|------------|
| <b>Type of Action</b>           | <b>1st</b> | <b>2nd</b> | <b>3rd</b> | <b>4th</b> |
| Consent Order                   | 0          | 0          | 0          | 0          |
| Cease & Desist                  | 0          | 0          | 0          | 0          |
| Supervision                     | 0          | 0          | 0          | 0          |
| Prohibition                     | 2          | 0          | 0          | 0          |
| Total                           | 2          | 0          | 0          | 0          |
| <b>TRUST COMPANY</b>            |            |            |            |            |
| 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          |
| <b>MONEY SERVICES BUSINESS</b>  |            |            |            |            |
| Consent Order                   | 0          | 0          | 0          | 0          |
| Cease & Desist                  | 1          | 0          | 0          | 0          |
| Total                           | 1          | 0          | 0          | 0          |
| <b>PERPETUAL CARE CEMETERY</b>  |            |            |            |            |
| Consent Order                   | 0          | 0          | 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          | 0          | 0          | 0          |
| <b>PREPAID FUNERAL CONTRACT</b> |            |            |            |            |
| Consent Order                   | 1          | 0          | 0          | 0          |
| Cease & Desist                  | 0          | 0          | 0          | 0          |
| Conversion                      | 0          | 0          | 0          | 0          |
| Total                           | 1          | 0          | 0          | 0          |

## **Rebecca Ann Motley**

Rebecca Ann Motley has been a funeral consumer advocate for over 8 years in the DFW area, as well as representing consumers statewide in the capitol and legislature. Ms. Motley's focus is to help the underserved and vulnerable of us who need help during the period of grief and transition of the death care experience.

Rebecca serves on the Board of Directors of the Funeral Consumers Alliance of North Texas and has responded to hundreds of consumer questions over the years by telephone, email and in person. She has also helped teach a recurring retired Seniors Course on death care at Richland College in Dallas, Texas.

Ms. Motley currently serves as the Consumer Representative on the Texas Department of Banking Guaranty Fund Advisory Council. She has actively participated in its meetings, issues and progressive changes. Complicated consumer issues have arisen concerning Prepaid Funeral Contracts that have benefited from the consumer advocacy perspective; to find a fair and just solution.

As a grandmother, mother and spouse, Rebecca spends her special time with grandchildren, art, healthy cooking, landscaping, travel and good books. Her passion is serving others with a warm heart and thoughtful conversations.

## **Amy Biggs**

Amy Biggs is the Vice President of Operations for Funeral Directors Life Insurance Company. Funeral Agency, Inc., an affiliate of Funeral Directors Life, has had an insurance funded prepaid funeral benefits permit with the Department since 1982. Amy has over 20 years managerial and supervisory level experience as an operations supervisor at Funeral Directors Life with emphasis in new business underwriting, commissions, prepaid funeral contracts, and policy administration. Amy's analytical, organizational, and planning skills are an asset to the funeral homes, agents, and policyholders she serves. In her current role with Funeral Directors Life, Amy oversees the daily operations including Claims, New Business, Customer Care, and Document Processing departments. Amy attended Cisco College and enjoys volunteering with Meals on Wheels and the Jim Ned Valley Heritage Preservation.

3. Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC §3.24 Concerning Notice of Cybersecurity Incident

**PURPOSE:** New 7 TAC §3.24 will require a state bank to notify the banking commissioner promptly if it experiences a cybersecurity incident in its information systems that meets specific standards after investigation. Edits have been made to the proposed rule in response to comments received.

**RECOMMENDED ACTION:** Comments were received regarding new 7 TAC §3.24 from the Texas Bankers Association and the Independent Bankers Association of Texas. Nonsubstantive changes were made to the proposed rule in response to comments as described in the adoption preamble. The Department recommends that the Commission approve adoption of the new rule with changes to the proposal as previously published in the *Texas Register*. The Department also recommends that the Commission approve republication of the revised new rule in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we adopt new 7 TAC §3.24 with nonsubstantive changes to the proposal as previously published in the *Texas Register*. I also move that we republish the revised new rule in the *Texas Register*.

***Title 7. Banking and Securities***  
***Part 1. Finance Commission of Texas***  
***Chapter 3. State Bank Regulation***  
***Subchapter B. General***  
***7 TAC §3.24***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts new 7 TAC §3.24, concerning required notice of cybersecurity incident. The section is being adopted with clarifying, nonsubstantive changes to the proposed text as published in the July 5, 2019 issue of the *Texas Register* (44 Tex. Reg. 3381). The new rule will be republished in the *Texas Register*.

Millions of Americans, throughout the country, have been victims of identity theft. Identity thieves misuse personal information they obtain from a number of sources, including financial institutions, to perpetrate identity theft. Federal law strongly encourages financial institutions to take preventative measures to safeguard customer information against attempts to gain unauthorized access to the information, and further directs financial institutions to develop and implement a risk-based response program to address incidents of unauthorized access to customer information in customer information systems that occur despite preventative measures, see 15 U.S.C. 6801; also see, e.g., 12 C.F.R. part 208, Appendix D-2 (Federal Reserve System), and 12 CFR part 364, Appendix B (Federal Deposit Insurance Corporation).

Further, organizations across all industries are facing a surge of ransomware attacks launched by cybercriminals. New types of ransomware principally causing this surge have the potential to cause significantly

more business disruption and difficulty restoring computer data and networks. Attackers are also often demanding steeper amounts and are targeting small and medium-sized companies in addition to the larger organizations that often make headlines. Confidential business information, trade secrets, organizational strategies and financial information are all vulnerable to loss, either directly or through compromise of a cloud-based service provider.

New §3.24 requires a state bank to notify the banking commissioner promptly if it experiences a material cybersecurity incident in its information systems, whether maintained by the bank or by an affiliate or third party service provider at the direction of the bank. Regulatory oversight of a state bank's remediation and compliance efforts in response to a material cybersecurity incident can better inform the examination process applicable to all state banks, resulting in stronger and more secure protection of sensitive customer information and other confidential information.

Subsection (a) provides definitions. "Cybersecurity incident" is defined by §3.24(a)(1) without regard to materiality and in a manner consistent with current federal guidance as essentially an observed irregularity that must be investigated to determine if information has been accessed, damaged and/or stolen. Most cybersecurity incidents will not result in a notice to the commissioner. Materiality is determined with reference to the circumstances under which a notice is required by subsection (b). Finally, the definition is designed to encompass incidents regarding an information system maintained by a service provider on behalf of the bank.

Section 3.24(a)(2) defines "information system" more broadly than current federal guidance, which is limited to systems that handle sensitive customer information. However, there are other types of sensitive data that can have a detrimental impact on a bank if accessed without authorization, including confidential business information, trade secrets, organizational strategies and financial information. Further, a breach of specialized systems such as electronic banking systems, industrial/process controls systems, telephone switching and environmental control systems can have a material adverse effect on a bank's operations and financial performance.

Subsection (b) requires a state bank to notify the banking commissioner as soon as practicable but prior to customer notification, and no later than 15 days following the bank's determination that an investigated cybersecurity incident will likely (1) require notice or a report to a regulatory or law enforcement agency other than the department, (2) require a data breach notification to one or more customers of the bank under applicable law, or (3) adversely impact, at least temporarily, the ability of the bank to effect customer transactions, accurately report customer transactions, or otherwise conduct bank business.

Subsection (c) specifies the information required to be submitted in the confidential notice, to the extent known at the time of submission. The purpose of the notice is not to provide comprehensive information regarding the incident, but rather to provide a confidential early warning to (1) ensure the commissioner is informed of the basic circumstances before receiving related consumer complaints and calls from elected

officials, and (2) enable the department to monitor the bank's incident response and provide guidance if warranted. While examiners with the department have sophisticated expertise and can assist if warranted, the section does not authorize the department to directly conduct or interfere with the bank's incident response. The required notice is confidential pursuant to Finance Code §31.301.

Subsection (d) acknowledges that the filing of a suspicious activity report (SAR) may be required under federal law. While a SAR filing can be a triggering event to required notice under §3.24(b)(1), subsection (d) cautions that the bank should not mention or discuss any SAR filing in the submitted notice.

New subsection (e), not part of the original proposal, advises a state bank that the notice requirement imposed by new §3.24 must be incorporated into the bank's written incident response plan, maintained as part of the bank's information security program. Federal guidance already includes a requirement to notify a bank's primary federal regulator prior to any notification to customers, see, e.g., 12 C.F.R. part 364, Appendix B, Supplement A, paragraph II.A.1.b.

The commission received comments from the Texas Bankers Association (TBA) and the Independent Bankers Association of Texas (IBAT). Both TBA and IBAT were supportive of the intent of the proposal but requested consideration of certain changes and clarifications.

TBA believes the proposed definition of "cybersecurity incident" is overly broad

given the number of daily attacks attempted on banks, sometimes in the thousands each day, because many of these attempts have the potential to "jeopardize the cybersecurity of the information system or the information the system processes," as stated in the proposal. Under this definition, the commissioner could be inundated by cybersecurity incident reports because compliance officers would rather overreport than underreport. TBA suggests that the definition could be improved if made more specific and consequence-focused.

The department disagrees but acknowledges that additional explanation is appropriate. In the information security literature, the thousands of daily, attempted attacks on an information system are called "events." An event is elevated to an "incident" if the observed irregularity must be further investigated to determine if information has been accessed, damaged and/or stolen. The existence of an incident, as defined by §3.24(a)(1), triggers an investigation, and an incident is reportable only if the bank concludes, based on its investigation, that a consequence listed in §3.24(b)(1) through (3) is likely. Thus, only a few cybersecurity incidents are actually reportable.

TBA and IBAT both argue that the 15-day cybersecurity incident notification window is too short to permit a reasonable investigation and should be changed to at least 30 days. The department disagrees and suggests that this objection is based on a misreading of the proposed text. The 15-day cybersecurity incident notification window provided in §3.24(b) does not commence upon detection of the incident, as the comments would imply, but rather begins

when the institution determines, after investigation, that the incident is material, based on the circumstances or consequences detailed in §3.24(b)(1) through (3). Minor wording changes were made to clarify this aspect of the rule.

IBAT requested additional guidance or clarity regarding the materiality test in proposed §3.24(b)(3), which required a notice if the bank concludes that the incident would have "a material adverse effect on the financial performance of the bank or on customers of the bank." The department agrees that this provision is too subjective and uncertain to ensure compliance. As adopted, revised §3.24(b)(3) requires a notice if the bank concludes the incident has an adverse impact on the bank's ability to effect transactions on behalf of customers, to accurately report transactions to customers, or to otherwise conduct bank business, even if temporary. This articulation should be more readily ascertainable than the version as proposed.

Finally, TBA expressed concern with the interplay of the proposed rule and the filing of a SAR, arguing that the language in proposed subsection (d) seems to direct banks to walk straight to the edge of disclosing the SAR filing but not actually disclosing the filing. The department disagrees. The notice content specified by §3.24(c) is relatively brief and simple to accomplish, and does not include a disclosure of the existence of related SAR filings, if any. Section 3.24(d) is merely precautionary because acknowledging the existence of a SAR is potentially a criminal offense under federal law.



Texas law provides that, to be considered nonsubstantive, changes made in the adopted version of a rule must not adversely affect the rights of affected parties as compared to the proposal or affect persons who would not have been impacted by the rule as proposed. While numerous changes are made to the proposed text of §3.24, the scope of the rule has not changed. The revisions more precisely tailor the section and provide additional explanation and clarification regarding specific attributes of the rule, thus enhancing the rights of affected parties as compared to the proposal. The commission thus concludes the changes to §3.24 are nonsubstantive and do not require re-proposal.

The new rule is adopted under Finance Code, §31.003(a)(2), which authorizes the commission to adopt rules necessary or reasonable to preserve or protect the safety and soundness of state banks. As required by Finance Code, §31.003(b), in adopting the new rule, the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive position of state banks with regard to national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development in this state.

*§3.24. Notice of Cybersecurity Incident.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) "Cybersecurity incident" means any observed occurrence in an information system, whether maintained by the bank or by an affiliate or third party service provider at the direction of the bank, that:

(A) jeopardizes the cybersecurity of the information system or the information the system processes, stores or transmits; or

(B) violates the security policies, security procedures or acceptable use policies of the information system owner to the extent such occurrence results from unauthorized or malicious activity.

(2) "Information system" means a set of applications, services, information technology assets or other information-handling components organized for the collection, processing, maintenance, use, sharing, dissemination or disposition of electronic information, including the operating environment as well as any specialized system such as electronic banking systems, industrial/process control systems, telephone switching and private branch exchange systems, and environmental control systems.

(b) Notice required. A state bank shall notify the banking commissioner and submit the information required by subsection (c) of this section as soon as practicable but prior to customer notification, and not later than 15 days following the bank's [a] determination that a cybersecurity incident ~~[has occurred]~~ regarding the bank's information system ~~;~~ ~~whether maintained by the bank or by an affiliate or third party service provider at the direction of the bank, that~~ will likely:

(1) require submission of a notice or report to a state or federal regulatory or law enforcement agency or to a self-regulatory body other than the notice required by this section;

(2) require sending a data breach notification to customers of the bank under applicable state or federal law, including Business and Commerce Code, §521.053, or a similar law of another state; or

(3) adversely impact, at least temporarily, the ability of the bank to effect transactions on behalf of customers, accurately report transactions to customers, or otherwise conduct bank business [~~cause a material adverse effect on the financial performance of the bank or on customers of the bank~~].

(c) Content of notice. The confidential notice required by subsection (b) of this section must include, to the extent known at the time of submission:

(1) a brief description of the cybersecurity incident, including the approximate date of the incident, the date the incident was discovered, and the nature of any data that may have been illegally obtained or accessed;

(2) subject to subsection (d) of this section, a list of the state and federal regulatory agencies, self-regulatory bodies, and foreign regulatory agencies to whom notice has been or will be provided; and

(3) the name, address, telephone number, and email address of the employee or agent of the bank from whom additional

information may be obtained regarding the incident.

(d) Omission of certain information. The filing of a suspicious activity report (SAR) related to the cybersecurity incident under applicable federal law constitutes a notice described by subsection (b)(1) of this section. However, the bank should not reference or mention the filing of a SAR in the notice filed with the commissioner.

(e) Incident response plan. The notice requirement imposed by this section must be incorporated into the bank's written incident response plan, maintained as part of the bank's information security program.

4. Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC §17.5 Concerning Notice of Cybersecurity Incident

**PURPOSE:** New 7 TAC §17.5 will require a state trust company to notify the banking commissioner promptly if it experiences a cybersecurity incident in its information systems that meets specific standards after investigation. Edits have been made to the proposed rule in response to comments received.

**RECOMMENDED ACTION:** A comment letter was received regarding new 7 TAC §17.5 from the Texas Bankers Association. Nonsubstantive changes were made to the proposed rule in response to this comment as described in the adoption preamble. In addition, because comments received on a similar proposal affecting state banks could validly be applied to this proposal, the Department made similar revisions to §17.5, also as described in the adoption preamble. The Department recommends that the Commission approve adoption of the new rule with nonsubstantive changes to the proposal as previously published in the *Texas Register*. The Department also recommends that the Commission approve republication of the revised new rule in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we adopt new 7 TAC §17.5 with nonsubstantive changes to the proposal as previously published in the *Texas Register*. I also move that we republish the revised new rule in the *Texas Register*.

***Title 7. Banking and Securities***  
***Part 2. Texas Department of Banking***  
***Chapter 17. Trust Company Regulation***  
***Subchapter A. General***  
***7 TAC §17.5***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts new 7 TAC §17.5, concerning required notice of cybersecurity incidents. The section is being adopted with clarifying, nonsubstantive changes to the proposed text as published in the July 5, 2019 issue of the *Texas Register* (44 Tex. Reg. 3384). The new rule will be republished in the *Texas Register*.

Millions of Americans, throughout the country, have been victims of identity theft. Identity thieves misuse personal information they obtain from a number of sources, including financial institutions, to perpetrate identity theft. Federal law strongly encourages financial institutions to take preventative measures to safeguard customer information against attempts to gain unauthorized access to the information, and further directs financial institutions to develop and implement a risk-based response program to address incidents of unauthorized access to customer information in customer information systems that occur despite preventative measures, see 15 U.S.C. 6801; also see 16 C.F.R. §314.4. Revisions proposed by the Federal Trade Commission (FTC) in 2019 will explicitly require covered financial institutions, including trust companies, to develop an incident response plan as part of their information security programs in proposed 16 C.F.R. §314.4(h), see the April 4, 2019 edition of the *Federal Register* (84 Fed. Reg. 13158, at 13169). In connection with the proposal, the FTC stated

that, for many financial institutions, satisfying the current requirement to have a reasonable information security program (16 C.F.R. §314.4(b)) would necessarily require development of an incident response plan, see 84 Fed. Reg. at 13169.

Further, organizations across all industries are facing a surge of ransomware attacks launched by cybercriminals. New types of ransomware principally causing this surge have the potential to cause significantly more business disruption and difficulty restoring computer data and networks. Attackers are also often demanding steeper amounts and are targeting small and medium-sized companies in addition to the larger organizations that often make headlines. Confidential business information, trade secrets, organizational strategies and financial information are all vulnerable to loss, either directly or through compromise of a cloud-based service provider.

New §17.5 will require a state trust company to notify the banking commissioner promptly if it experiences a material cybersecurity incident in its information systems, whether maintained by the trust company or by an affiliate or third party service provider at the direction of the trust company. Regulatory oversight of a state trust company's remediation and compliance efforts in response to a material cybersecurity incident can better inform the examination process applicable to all state trust companies, resulting in stronger and more secure protection of sensitive customer information and other confidential information.

Subsection (a) provides definitions. "Cybersecurity incident" is defined by

§17.5(a)(1) in a manner consistent with current federal guidance as essentially an observed irregularity that must be investigated to determine if information has been accessed, damaged and/or stolen. Most cybersecurity incidents will not result in a notice to the commissioner. Materiality is determined with reference to the circumstances under which a notice is required by subsection (b). Finally, the definition is designed to encompass incidents regarding an information system maintained by a service provider on behalf of the state trust company.

Section 17.5(a)(2) defines "information system" more broadly than current federal guidance, which is limited to systems that handle sensitive customer information. Beyond sensitive customer information, there are other types of sensitive data that can have a detrimental impact on a trust company if breached, including confidential business information, trade secrets, organizational strategies and financial information. Further, a breach of specialized systems such as telephone switching or exchange systems and environmental control systems can have a material adverse effect on a trust company's operations and financial performance.

Subsection (b) requires a state trust company to notify the banking commissioner as soon as practicable but prior to client notification, and no later than 15 days following the trust company's determination that an investigated cybersecurity incident will likely (1) require notice or a report to a regulatory or law enforcement agency other than the department, (2) a data breach notification to clients of the trust company under applicable law, or (3) adversely impact, at least temporarily, the ability of the

state trust company to effect transactions on behalf of its clients or beneficiaries of trusts and custodial arrangements handled by the trust company, accurately report transactions to clients and beneficiaries, or otherwise conduct trust company business.

Subsection (c) specifies the information required to be submitted in the notice, to the extent known at the time of submission. The purpose of the notice is not to provide comprehensive information regarding the incident, but rather to provide a confidential early warning to (1) ensure the commissioner is informed of the basic circumstances before receiving related consumer complaints and calls from elected officials, and (2) enable the department to monitor the trust company's incident response and provide guidance if appropriate. While examiners with the department have sophisticated expertise and can assist if warranted, the section does not authorize the department to directly conduct or interfere with the trust company's incident response. The required notice is confidential pursuant to Finance Code §181.301.

Subsection (d) acknowledges that the filing of a suspicious activity report (SAR) may be required under federal law. While a SAR filing can be a triggering event to required notice under §17.5(b)(1), subsection (d) cautions that the trust company should not mention or discuss any SAR filing in the submitted notice.

New subsection (e), not part of the original proposal, advises a state trust company that the notice requirement imposed by new §17.5 must be incorporated into the written incident response plan it maintains as part of the information security program required by 16 C.F.R. §314.4.

Subsection (f), originally proposed as subsection (e), provides an exemption from the notification requirement for a family trust company that is exempt under Finance Code, §182.011.

The commission received comments from the Texas Bankers Association (TBA). TBA was supportive of the intent of the proposal but requested consideration of certain changes and clarifications. In addition, the commission received comments on a similar proposed rule affecting state banks, and those comments influenced several improvements to this rule.

TBA believes the proposed definition of "cybersecurity incident" is overly broad given the number of daily attacks attempted on financial institutions, sometimes in the thousands each day, because many of these attempts have the potential to "jeopardize the cybersecurity of the information system or the information the system processes," as stated in the proposal. Under this definition, the commissioner could be inundated by cybersecurity incident reports because compliance officers would rather overreport than underreport. TBA suggests that the definition could be improved if made more specific and consequence-focused.

The department disagrees but acknowledges that additional explanation is appropriate. In the information security literature, the thousands of daily, attempted attacks on an information system are called "events." An event is elevated to an "incident" if the observed irregularity must be further investigated to determine if information has been accessed, damaged and/or stolen. The existence of an incident, as defined by §17.5(a)(1), triggers an

investigation, and an incident is reportable only if the trust company concludes, based on its investigation, that a consequence listed in §17.5(b)(1) through (3) is likely. Thus, only a few cybersecurity incidents are actually reportable.

TBA argues that the 15-day cybersecurity incident notification window is too short to permit a reasonable investigation and should be changed to at least 30 days. The department disagrees and suggests that this objection is based on a misreading of the proposed text. The 15-day cybersecurity incident notification window provided in §17.5(b) does not commence upon detection of the incident, as the comments would imply, but rather begins when the institution determines, after investigation, that the incident is material, based on the circumstances or consequences detailed in §17.5(b)(1) through (3). Minor wording changes were made to clarify this aspect of the rule.

Based on concerns expressed by another commenter, the department determined that proposed §17.5(b)(3), which required a notice if the incident would have a material adverse effect on the financial performance of the trust company or on clients or beneficiaries, was too subjective and uncertain to ensure compliance. As adopted, revised §17.5(b)(3) requires a notice if the trust company concludes the incident has an adverse impact on its ability to effect transactions on behalf of clients or beneficiaries of trusts or custodial arrangements handled by the trust company, to accurately report transactions to clients and beneficiaries, or to otherwise conduct trust company business, even if temporary.

This articulation should be more readily ascertainable than the version as proposed.

Finally, TBA expressed concern with the interplay of the proposed rule and the filing of a SAR, arguing that the language in proposed subsection (d) seems to direct a trust company to walk straight to the edge of disclosing the SAR filing but not actually disclosing the filing. The department disagrees. The notice content specified by §17.5(c) is relatively brief and simple to accomplish, and does not include a disclosure of the existence of related SAR filings, if any. Section 17.5(d) is merely precautionary because acknowledging the existence of a SAR is potentially a criminal offense under federal law.

Texas law provides that, to be considered nonsubstantive, changes made in the adopted version of a rule must not adversely affect the rights of affected parties as compared to the proposal or affect persons who would not have been impacted by the rule as proposed. While numerous changes are made to the proposed text of §17.5, the scope of the rule has not changed, the revisions more precisely tailor the section in response to comments noting unintended results of the proposed language or requesting additional clarification regarding specific attributes of the rule, thus enhancing the rights of affected parties as compared to the proposal. The commission thus concludes the changes to §15.5 are nonsubstantive and do not require re-proposal.

The new rule is adopted under Finance Code, §181.003(a)(2), which authorizes the commission to adopt rules necessary or reasonable to preserve or protect the safety and soundness of state trust companies.

*§17.5. Notice of Cybersecurity Incident.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) "Cybersecurity incident" means any observed occurrence in an information system, whether maintained by the trust company or by an affiliate or third party service provider at the direction of the trust company, that:

(A) jeopardizes the cybersecurity of the information system or the information the system processes, stores or transmits; or

(B) violates the security policies, security procedures or acceptable use policies of the information system owner to the extent such occurrence results from unauthorized or malicious activity.

(2) "Information system" means a set of applications, services, information technology assets or other information-handling components organized for the collection, processing, maintenance, use, sharing, dissemination or disposition of electronic information, including the operating environment as well as any specialized system such as telephone switching or exchange systems and environmental control systems.

(b) Notice required. A state trust company shall notify the banking commissioner and submit the information required by subsection (c) of this section as soon as practicable but prior to customer notification, and not later than 15 days following the trust company's [a]

determination that a cybersecurity incident ~~[has occurred]~~ regarding the trust company's information system ~~[, whether maintained by the trust company or by an affiliate or third party service provider at the direction of the trust company, that]~~ will likely:

(1) require submission of a notice or report to another state or federal regulatory agency or to a self-regulatory body other than the notice required by this section;

(2) require sending a data breach notification to trust company clients ~~[of]~~ or beneficiaries of trusts and custodial arrangements handled by the trust company under applicable state or federal law, including Business and Commerce Code, §521.053, or a similar law of another state; or

(3) adversely impact, at least temporarily, the ability of the state trust company to effect transactions on behalf of its clients or beneficiaries of trusts and custodial arrangements handled by the trust company, accurately report transactions to clients and beneficiaries, or otherwise conduct trust company business ~~[cause a material adverse effect on:~~

~~[(A) the financial performance of the trust company; or~~

~~[(B) clients or beneficiaries of trusts and custodial arrangements handled by the trust company].~~

(c) Content of notice. The confidential notice required by subsection (b) of this section must include, to the extent known at the time of submission:

(1) a brief description of the cybersecurity incident, including the approximate date of the incident, the date the incident was discovered, and the nature of any data that may have been illegally obtained or accessed;

(2) subject to subsection (d) of this section, a list of the state and federal regulatory agencies, self-regulatory bodies, and foreign regulatory agencies to whom notice has been or will be provided; and

(3) the name, address, telephone number, and email address of the employee or agent of the trust company from whom additional information may be obtained regarding the incident.

(d) Omission of certain information. The filing of a suspicious activity report (SAR) related to the cybersecurity incident under applicable federal law constitutes a notice described by subsection (b)(1) of this section. However, the trust company should not reference or mention the filing of a SAR in the notice filed with the commissioner.

(e) Incident response plan. The notice requirement imposed by this section must be incorporated into the trust company's written incident response plan, maintained as part of the trust company's information security program.

(f) Exemptions. This section does not apply to a state trust company that is exempt under Finance Code, §182.011.



5. Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC §33.30 Concerning Notice of Cybersecurity Incident

**PURPOSE:** New 7 TAC §33.30 will require a licensed money services business to notify the banking commissioner promptly if it experiences a cybersecurity incident in its information systems that meets specific standards after investigation. Edits have been made to the proposed rule in response to comments received.

**RECOMMENDED ACTION:** No comments were received regarding proposed 7 TAC §33.30. A comment received from a licensee before publication of the proposal is addressed in the adoption preamble. In addition, because comments received on a similar proposal affecting state banks could validly be applied to this proposal, the Department made similar revisions to §33.30, as described in the adoption preamble. The Department recommends that the Commission approve adoption of the new rule with nonsubstantive changes to the proposal as previously published in the *Texas Register*. The Department also recommends that the Commission approve republication of the revised new rule in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we adopt new 7 TAC §33.30 with nonsubstantive changes to the proposal as previously published in the *Texas Register*. I also move that we republish the revised new rule in the *Texas Register*.

***Title 7. Banking and Securities***  
***Part 2. Texas Department of Banking***  
***Chapter 33. Money Services Businesses***  
***7 TAC §33.30***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts new 7 TAC §33.30, concerning required notice of cybersecurity incidents. The section is being adopted with clarifying, nonsubstantive changes to the proposed text as published in the July 5, 2019 issue of the *Texas Register* (44 Tex. Reg. 3391). The new rule will be republished in the *Texas Register*.

Millions of Americans, throughout the country, have been victims of identity theft. Identity thieves misuse personal information they obtain from a number of sources, including financial institutions, to perpetrate identity theft. Federal law strongly encourages financial institutions to take preventative measures to safeguard customer information against attempts to gain unauthorized access to the information, and further directs financial institutions to develop and implement a risk-based response program to address incidents of unauthorized access to customer information in customer information systems that occur despite preventative measures, see 15 U.S.C. 6801; also see 16 C.F.R. §314.4. Revisions proposed by the Federal Trade Commission (FTC) in 2019 will explicitly require covered financial institutions, including money services businesses, to develop an incident response plan as part of their information security programs in proposed 16 C.F.R. §314.4(h), see the April 4, 2019 edition of the *Federal Register* (84 Fed. Reg. 13158, at 13169). In connection with the proposal, the FTC stated that, for many financial

institutions, satisfying the current requirement to have a reasonable information security program (16 C.F.R. §314.4(b)) would necessarily require development of an incident response plan, see 84 Fed. Reg. at 13169.

Further, organizations across all industries are facing a surge of ransomware attacks launched by cybercriminals. New types of ransomware principally causing this surge have the potential to cause significantly more business disruption and difficulty restoring computer data and networks. Attackers are also often demanding steeper amounts and are targeting small and medium-sized companies in addition to the larger organizations that often make headlines. Confidential business information, trade secrets, organizational strategies and financial information are all vulnerable to loss, either directly or through compromise of a cloud-based service provider.

New §33.30 will require a money services licensee under Texas Finance Code, Chapter 151, to notify the banking commissioner promptly if it experiences a material cybersecurity incident in its information systems, whether maintained by the licensee or by an affiliate or third party service provider at the direction of the licensee. This notice requirement should be incorporated into the licensee's written incident response plan. Regulatory oversight of a licensee's remediation and compliance efforts in response to a material cybersecurity incident can better inform the examination process applicable to all licensees, resulting in stronger and more secure protection of sensitive customer information and other confidential information.

Subsection (a) provides definitions of "cybersecurity incident" and "information system." The term "you" is also defined to mean a holder of a license issued under Texas Finance Code, Chapter 151.

"Cybersecurity incident" is defined by §33.30(a)(1) in a manner consistent with currently applicable federal guidance as essentially an observed irregularity that must be investigated to determine if information has been damaged or stolen. Most cybersecurity incidents will not result in a notice to the commissioner. Materiality is determined with reference to the circumstances under which a notice is required by subsection (b). Finally, the definition is designed to encompass incidents regarding an information system maintained by a service provider on behalf of the licensee.

Section 33.30(a)(2) defines "information system" more broadly than current federal guidance, which is limited to systems that handle sensitive customer information.

Subsection (b) requires a licensee to notify the banking commissioner as soon as practicable but prior to customer notification, and no later than 15 days following the licensee's determination that an investigated cybersecurity incident will likely (1) require notice or a report to a regulatory or law enforcement agency other than the department, (2) a data breach notification to customers under applicable law, or (3) adversely impact, at least temporarily, the ability of the licensee to effect transactions on behalf of its customers, accurately report transactions to customers, or otherwise conduct licensee business.

Subsection (c) specifies the information required to be submitted in the notice, to the extent known at the time of submission. The purpose of the notice is not to provide comprehensive information regarding the incident, but rather to provide a confidential early warning to (1) ensure the commissioner is informed of the basic circumstances before receiving related consumer complaints and calls from elected officials, and (2) enable the department to monitor the licensee's incident response and provide guidance if appropriate. While examiners with the department have sophisticated expertise and can assist if warranted, the section does not authorize the department to directly conduct or interfere with the licensee's incident response. The required notice is confidential pursuant to Finance Code §151.606.

Subsection (d) acknowledges that the filing of a suspicious activity report (SAR) may be required under federal law. While a SAR filing can be a triggering event to required notice under §33.30(b)(1), subsection (d) cautions that the licensee should not mention or discuss any SAR filing in the submitted notice.

New subsection (e), not part of the original proposal, advises a licensee that the notice requirement imposed by new §33.30 must be incorporated into the written incident response plan it maintains as part of the information security program required by 16 C.F.R. §314.4.

The commission received no comments for or against adoption of proposed §33.30. However, the department circulated the proposal for pre-comment before the commission authorized publication of the proposal in the *Texas Register* for comment.

A current licensee suggested that the information to be protected should be limited to personally identifiable information of consumers to be consistent with federal law and guidance. The department disagreed with this comment. In addition to personally identifiable information of consumers, there are other types of sensitive data that can have a detrimental impact on a licensee if stolen or compromised, including confidential business information, trade secrets, organizational strategies and financial information. Further, a breach of specialized systems such as telephone switching or exchange systems and environmental control systems can have a material adverse effect on a licensee's operations and financial performance.

Although no comments were received regarding proposed §33.30, the department received comments on similar rules proposed for state banks and trust companies that noted possible issues regarding how to determine the materiality of an incident. Commenters also requested additional clarification regarding specific attributes of the rule text. The department agreed with some of these concerns and revised the proposals to better define a materiality standard and to provide greater clarity. Because those concerns could validly be raised regarding this proposal, the department made similar revisions to §33.30 as described in the succeeding paragraphs.

One commenter believed the proposed definition of "cybersecurity incident" was overly broad given the number of daily attacks attempted on financial institutions, sometimes in the thousands each day, because many of these attempts have the potential to "jeopardize the cybersecurity of the information system or the information the

system processes," as stated in the proposal. The commenter suggested that this definition would cause the commissioner to be inundated by cybersecurity incident reports because compliance officers would rather overreport than underreport. The department disagreed but acknowledges that additional explanation is appropriate. In the information security literature, the thousands of daily, attempted attacks on an information system are called "events." An event is elevated to an "incident" if the observed irregularity must be further investigated to determine if information has been accessed, damaged and/or stolen. The existence of an incident, as defined by §33.30(a)(1), triggers an investigation, and an incident is reportable only if the licensee concludes, based on its investigation, that a consequence listed in §33.30(b)(1) through (3) is likely. Thus, only a few cybersecurity incidents are actually reportable.

Commenters also argued that the 15-day cybersecurity incident notification window is too short to permit a reasonable investigation and should be changed to at least 30 days. The department disagrees and suggests that this objection is based on a misreading of the proposed text. The 15-day cybersecurity incident notification window provided in §33.30(b) does not commence upon detection of the incident, as the comments would imply, but rather begins when the licensee determines, after investigation, that the incident is material, based on the circumstances or consequences detailed in §33.30(b)(1) through (3). Minor wording changes were made to clarify this aspect of the rule.

Based on other concerns expressed by commenters, the department determined that

proposed §33.30(b)(3), which required a notice if the incident would have a material adverse effect on the financial performance of the licensee or on its customers, was too subjective and uncertain to ensure compliance. As adopted, revised §33.30(b)(3) requires a notice if the licensee concludes the incident has an adverse impact on its ability to effect transactions on behalf of its customers, to accurately report transactions to customers, or to otherwise conduct licensee business, even if temporary. This articulation should be more readily ascertainable than the version as proposed.

Finally, one commenter expressed concern with the interplay of the proposed rule and the filing of a SAR, arguing that the language in proposed subsection (d) seems to direct a licensee to walk straight to the edge of disclosing the SAR filing but without actually disclosing the filing. The department disagrees. The notice content specified by §33.30(c) is relatively brief and simple to accomplish, and does not include a disclosure of the existence of related SAR filings, if any. Section 33.30(d) is merely precautionary because acknowledging the existence of a SAR is potentially a criminal offense under federal law.

Texas law provides that, to be considered nonsubstantive, changes made in the adopted version of a rule must not adversely affect the rights of affected parties as compared to the proposal or affect persons who would not have been impacted by the rule as proposed. While numerous changes are made to the proposed text of §33.30, the scope of the rule has not changed. The revisions more precisely tailor the section and provide additional explanation and clarification regarding specific attributes of the rule, thus

enhancing the rights of affected parties as compared to the proposal. The commission thus concludes the changes to §33.30 are nonsubstantive and do not require re-proposal.

The new rule is adopted 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.

*§33.30. Notice of Cybersecurity Incident.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) "Cybersecurity incident" means any observed occurrence in an information system, whether maintained by you or by an affiliate or third party service provider at your direction, that:

(A) jeopardizes the cybersecurity of the information system or the information the system processes, stores or transmits; or

(B) violates the security policies, security procedures or acceptable use policies of the information system owner to the extent such occurrence results from unauthorized or malicious activity.

(2) "Information system" means a set of applications, services, information technology assets or other information-handling components organized for the collection, processing, maintenance, use, sharing, dissemination or disposition of electronic information, including the

operating environment as well as any specialized system such as electronic payment systems, industrial/process control systems, telephone switching and[;] private branch exchange systems and environmental control systems.

(3) "You" means a holder of a money transmission or currency exchange license issued under Finance Code, Chapter 151.

(b) Notice required. You must notify the banking commissioner and submit the information required by subsection (c) of this section as soon as practicable but prior to customer notification, and not later than [~~within~~] 15 days following your [~~a~~] determination that a cybersecurity incident [~~has occurred~~] regarding your information system [~~, whether maintained by you or by your affiliate or a third party service provider at your direction, that~~] will likely:

(1) require you to submit a notice or report [~~of the incident~~] to another state or federal regulatory or law enforcement agency or to a self-regulatory body[;] other than the notice required by this section;

(2) require you to provide a data breach notification to any of your customers under applicable state or federal law, including Business and Commerce Code, §521.053, or a similar law of another state; or

(3) adversely impact, at least temporarily, your ability to effect transactions on behalf of your customers, accurately report transactions to [~~cause a material adverse effect on your financial performance or on any of~~] your customers, or otherwise conduct your business.

(c) The notice required by subsection (b) of this section must include, to the extent known at the time of submission:

(1) a brief description of the cybersecurity incident, including the approximate date of the incident, the date the incident was discovered, and the nature of any data that may have been illegally obtained or accessed;

(2) subject to subsection (d) of this section, a list of the state and federal regulatory agencies, self-regulatory bodies, and foreign regulatory agencies to whom you have provided or will provide notice of the incident; and

(3) the name, address, telephone number, and email address of your employee or agent from whom additional information may be obtained regarding the incident.

(d) Omission of certain information. The filing of a suspicious activity report (SAR) related to the cybersecurity incident under applicable federal law constitutes a notice described by subsection (b)(1) of this section. However, you [~~the licensee~~] should not reference or mention the filing of a SAR in the notice filed with the commissioner.

(e) Incident response plan. The notice requirement imposed by this section must be incorporated into the written incident response plan that you maintain as part of your information security program.

6. Discussion of and Possible Vote to Take Action on the Adoption of Amendment to 7 TAC §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:** No comments were received regarding the proposed amendment to 7 TAC §6.1. The Department recommends that the Commission approve adoption of the amendment without changes to the proposal as previously published in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we adopt the amendment to 7 TAC §6.1 without changes to the proposal as previously published 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), adopts the amendment to 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, without changes to the proposed text as published in the November 1, 2019, issue of the *Texas Register* (44 TexReg 6477). The amended rule will not be republished.

The amendment corrects a citation.

The department received no comments regarding the proposed amendment.

The amendment is adopted 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) This chapter implements Finance Code, Chapter 279, by providing application requirements for a municipality or county that seeks to establish a banking development district in conjunction with a financial institution.

(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, 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) any required regulatory approval for a financial institution that seeks to establish a branch in a banking development district.



7. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 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 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:** No comments were received regarding the proposed amendments to 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 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 §§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 without changes to the proposal as previously published in the *Texas Register*.

**ADOPTION OF AMENDMENTS TO 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**

**Page 1 of 6**

***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), adopts amendments §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 without changes to the proposed text as published in the November 1, 2019, issue of the *Texas Register* (44 TexReg 6477). The amended rules will not be republished.

The department received no comments regarding the proposed amendments.

The amendments are adopted pursuant to Finance Code, §31.003, which provides that the commission may adopt rules necessary or reasonable to accomplish the purposes of the Texas Banking Act.

***§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

(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), for state member banks, or 12 CFR, §345.12(m)(1) and (m)(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

**ADOPTION OF AMENDMENTS TO 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**

**Page 2 of 6**

(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 (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 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 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 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

**ADOPTION OF AMENDMENTS TO 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**

**Page 3 of 6**

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). 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). 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 notice is complete.

(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.

**ADOPTION OF AMENDMENTS TO 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**

**Page 4 of 6**

***§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). 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).

(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). 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.)

**ADOPTION OF AMENDMENTS TO 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**

**Page 5 of 6**

(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). 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) 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). 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). 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). 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.)

**ADOPTION OF AMENDMENTS TO 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**

**Page 6 of 6**

(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 Examination Fees) and §15.2(e) of this title (relating to Filing and Investigation Fees).

(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 fax number 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).

(c) – (e) (No change.)

8. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §§21.2, 21.6, 21.7, 21.42, 21.43, 21.61, 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:** No comments were received regarding the proposed amendments to 7 TAC §§21.2, 21.6, 21.7, 21.42, 21.43, 21.61, 21.74. 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 §§21.2, 21.6, 21.7, 21.42, 21.43, 21.61, 21.74 without changes to the proposal as previously published 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), adopts amendment to §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 without changes to the proposed text as published in the November 1, 2019, issue of the *Texas Register* (44 TexReg 6481). The amended rule will not be republished.

Section 21.7 allows reproductions of application documents to be submitted to the Department by mail, hand delivery, or fax. The adopted amendment allows 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 adopted amendment allows notification by the commissioner to be made by email as well.

The department received no comments regarding the proposed amendments.

Amendments to Chapter 21, Subchapter A, §21.2, §21.6 and §21.7 are adopted

pursuant to 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 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 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);

(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 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.

(c) (No change.)

(d) Page limitations. A reproduction submitted by telephonic document transmission to the department's fax 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 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 adopted pursuant to 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 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 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 adopted pursuant to 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 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

**ADOPTION OF AMENDMENTS TO  
7 TAC §§21.2, 21.6, 21.7, 21.42, 21.43, 21.61, 21.74  
Page 4 of 4**

email address furnished in the application, or by telephonic document transfer to the fax number 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.

9. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC §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 §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 new §33.54, concerning an exemption for registered securities dealers and agents of securities dealers (securities agents). The new rule is proposed to exempt securities dealers and securities 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 agents.

**Summary of Proposed New Rule**

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

Proposed subsection (b) provides that a dealer or an agent of a dealer who, in the course of providing dealer or 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) only conducting money transmission as defined by the Texas Finance Code to the extent reasonable and necessary to provide securities dealer or securities 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 agents include money transmission in their business models and as part of the services provided to their clients. Both securities dealers and securities 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 securities agents. The department does not intend for this rule to exempt securities dealers and securities 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 agents.

Securities dealers and securities agents whose business includes non-securities related activities, that may constitute money transmission under the Texas Finance Code, should submit their business plan for review and obtain a determination letter from the Texas Department of Banking.

**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 agents, that may be passed down to Texas consumers doing business with securities dealers and securities agents, as well as to Texans employed by, or doing business as, securities dealers or securities agents. Additionally, this rule will reduce the regulatory burden faced by securities dealers and securities 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 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 section must be submitted no later than 5:00 p.m. on January 27, 2020. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to [legal@dob.texas.gov](mailto:legal@dob.texas.gov).

Authority

The new rule is proposed under Texas 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; and

(2) only conducting money transmission as defined by Texas Finance Code § 151.301, to the extent reasonable and necessary to provide dealer or dealer agent services for contractual customers as to securities.



**D.**

**Department of Savings and  
Mortgage Lending**

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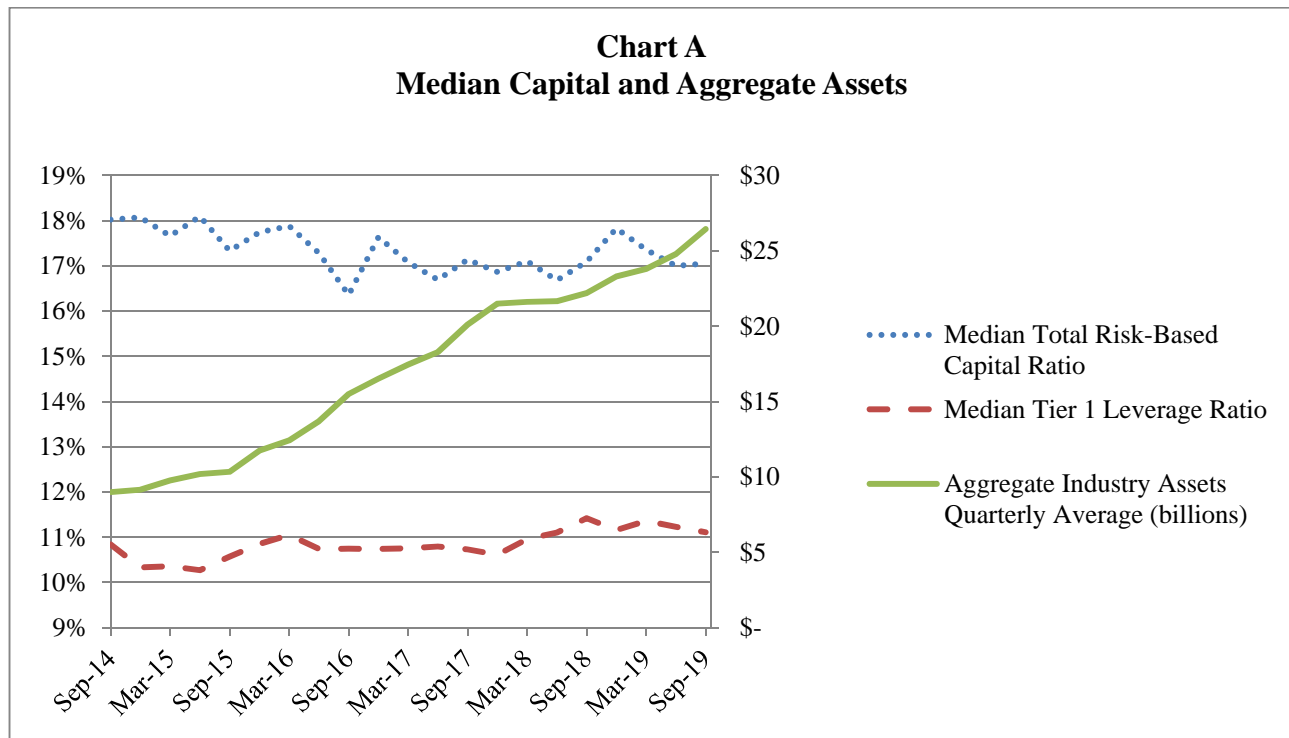
## D. Texas Department of Savings and Mortgage Lending

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

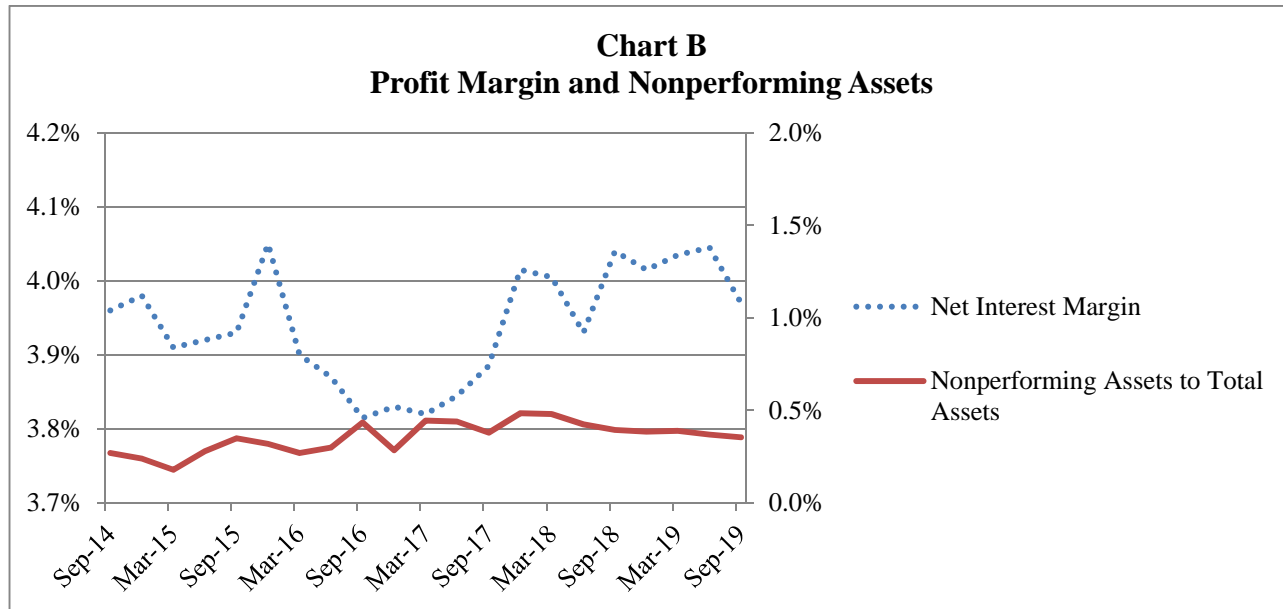
#### a. Industry Status

The Department continues to monitor various local, state, and national data sources to best understand the risks facing the industry and individual savings banks. The information on the following pages provides state savings bank industry information highlighting areas that the Department monitors in relation to changes in the state and national economic environment.

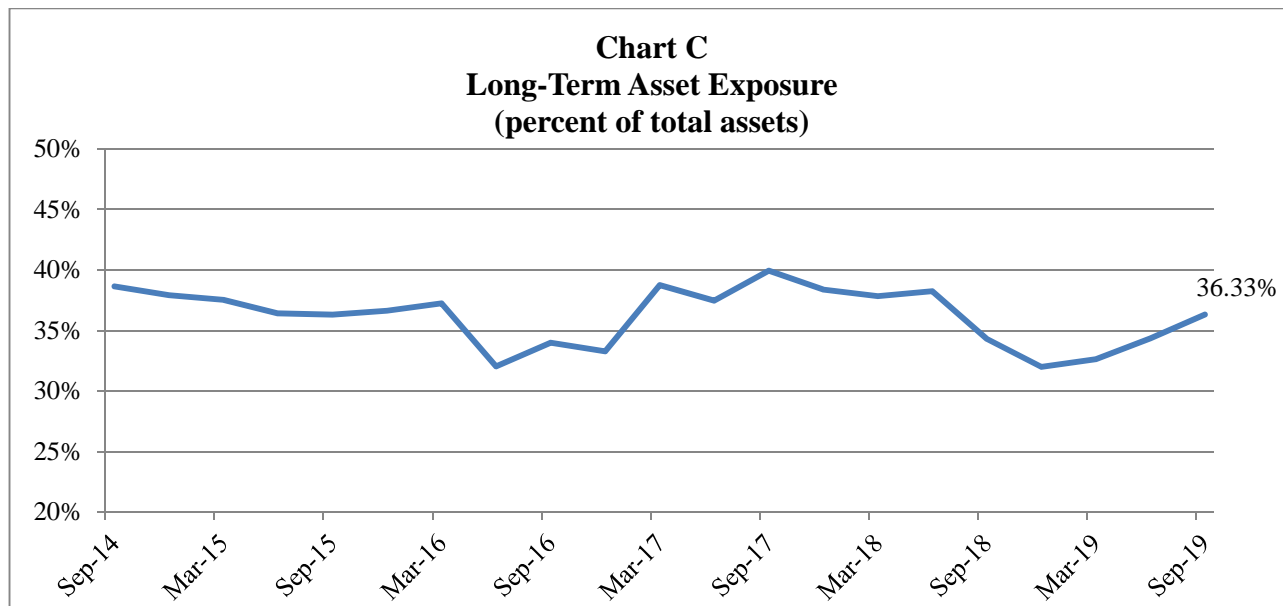
There were 24 state savings banks (SSB) totaling \$26.4 billion in total assets, as of September 30, 2019. The average asset size of the median SSB grew by 3.19% in the last four quarters to \$321.233 million. The median total risk-based capital ratio and median leverage capital (Chart A) protection have remained generally consistent and are now 17.05% and 11.11%, respectively.



The net interest or profit margin (Chart B) remains consistent with the prior year at 3.97%. Nonperforming asset levels remain low at 0.36% of total assets, compared to the prior year at 0.40%.

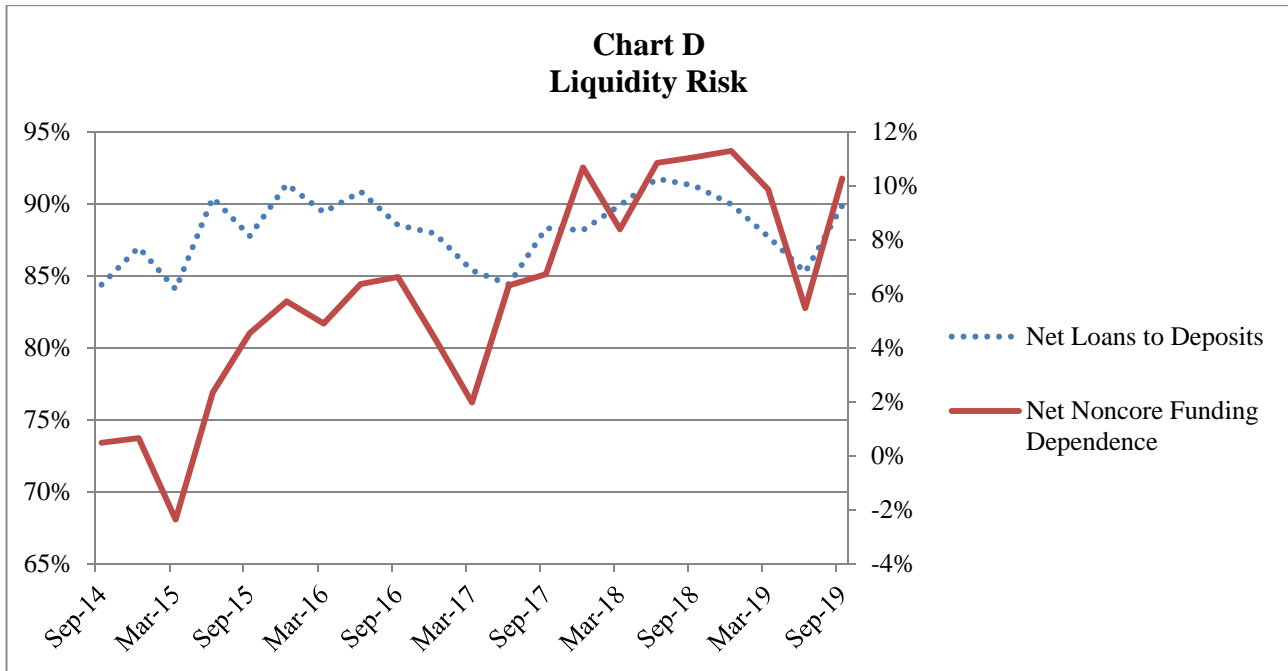


Market risk, as evidenced by long-term asset exposure (Chart C), was noticeably elevated from early 2017 to mid-2018. In early 2019, the exposure again began to rise, however levels are consistent with the trends in long-term asset exposure. There remain a small number of outlier institutions with high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



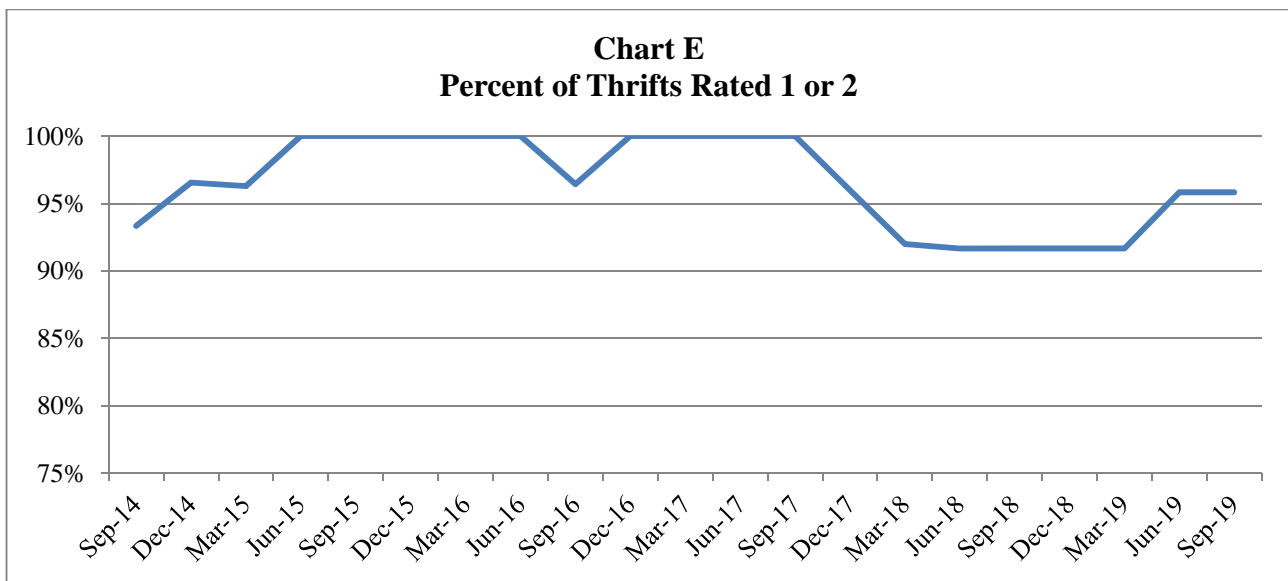
Liquidity risk is moderate in Texas SSBs (Chart D), as indicated by the Net Noncore Funding Dependence (NNCFD) Ratio, a measure of the funding of long-term assets using short-term funding strategies. The median NNCFD Ratio has decreased from 11.06% to 10.27% in the last

four quarters. The loan-to-deposit ratio, a measure of the use of deposits to fund lending activities, is moderate at 89.89% with 21% of the industry over 100%.



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

Ninety-six percent of SSBs at September 30, 2019, were rated a Composite 1 or 2 (Chart E). There was one formal and three informal outstanding enforcement actions.



### **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 has been approved and was effective November 5, 2019.

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

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.

The Department continues to receive and process various other applications.

### **Departmental Operations - Thrift**

Trainees from Sparkasse, a German savings bank, met with Commissioner Jones, Deputy Commissioner Trotti, and the Department's Thrift Supervisory Analysts on October 22, 2019. During the meeting, discussions were had relating to items of mutual interest and the regulation of savings banks, in both the United States and Germany.

Commissioner Jones served on the regulatory panel at the FDIC Banker Outreach on October 30, 2019 in Austin. Additionally, Deputy Commissioner Trotti and the Department's Thrift Supervisory Analysts attended the meeting.

Commissioner Jones served on the regulatory panel at the FDIC Banker Outreach on November 1, 2019 in Dallas.

Deputy Commissioner Trotti participated in the Dallas FDIC Regional Leadership meeting November 12 – 13, 2019.

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

### a. Residential Mortgage Loan Originators

#### Current Licensing Population:

| License Type<br>As of 11/30/2019 | Approved        |                 |              |
|----------------------------------|-----------------|-----------------|--------------|
|                                  | Entity<br>(MU1) | Branch<br>(MU3) | MLO<br>(MU4) |
| <i>Auxiliary</i>                 | 3               | n/a             |              |
| <i>CUSO</i>                      | 4               | 2               |              |
| <i>FSC</i>                       | 1               | n/a             |              |
| <i>Independent Contractor</i>    | 173             | n/a             |              |
| <i>Mortgage Company</i>          | 1,509           | 755             |              |
| <i>Mortgage Banker</i>           | 412             | 3,028           |              |
| <i>Mortgage Servicer</i>         | 206             | n/a             |              |
| <b>Totals</b>                    | <b>2,308</b>    | <b>3,785</b>    |              |

As of November 30, 2019, 4,229 companies/branches and 17,290 individuals had submitted their renewal.

For the first quarter of FY20, the Department received 2,491 applications and 28,844 other filings.

### b. Mortgage Examinations

During the first quarter of FY20, a total of 141 examinations were completed covering 1,525 individual licensees. When compared to the same time period for FY19, the number of examinations is 20% higher and the number of individual licensees covered increased by 38%.

### c. Consumer Complaints

During the first quarter of FY20, a total of 272 complaints were received. This represents a 24% increase when compared to the same time period for FY19. Loan servicing complaints represented 66% of the total number of complaints received. As of November 30, 2019, there were 58 open complaints with 98% of these complaints aged less than 90 days.

### **Departmental Operations - Mortgage**

Director O'Shields spoke to the Greater Houston Association of Mortgage Professionals at its meeting on October 25, 2019.

Commissioner Jones and Director O'Shields attended the Mortgage Bankers Association's national conference in Austin October 26 – 30, 2019.

The Department's 7<sup>th</sup> Annual Mortgage Industry Seminar was held in Frisco on November 11, 2019. The presentations covered licensing, mortgage examinations, enforcement, and consumer

complaints. The presentations were given by senior management, in-house counsel, and three mortgage examiners. The agenda is included in this packet.

Commissioner Jones and Director O'Shields attended AARMR/CSBS's Mortgage Policy Summit meeting on November 13, 2019.





7<sup>th</sup> Annual

**MORTGAGE INDUSTRY SEMINAR**

Monday, November 11, 2019

3:00 – 3:05

**Welcome Comments**  
*Commissioner Caroline C. Jones*

3:05 – 3:15

**NMLS Mortgage Data**  
*Supervisory Compliance Examiner– Justin Accola*

3:15 – 3:30

**SML Mortgage Examination Data**  
*Supervisory Compliance Examiner – Bill Poe*

3:30 – 3:45

**Social Media**  
*Chief Mortgage Examiner – Ellena Meier*

3:45 – 4:00

**Break**

4:00 – 4:10

**Consumer Complaints**  
*Director of Mortgage Examination - Tony Florence*

4:10 – 4:20

**Enforcement Actions**  
*Associate General Counsel –Devyn Wills*

4:20– 4:35

**Licensing Update**  
*Director of Licensing - Steven O'Shields*

4:35 – 4:55

**Open Forum**

5:00

**Closing Comments**  
*Commissioner Caroline C. Jones*

**3. Fiscal/Operations Activity:**

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

Funding Status/Budget – Staff is in the process of closing out the first quarter of FY20.

Financial Reporting – All financial reports have been submitted to oversight agencies, as required.

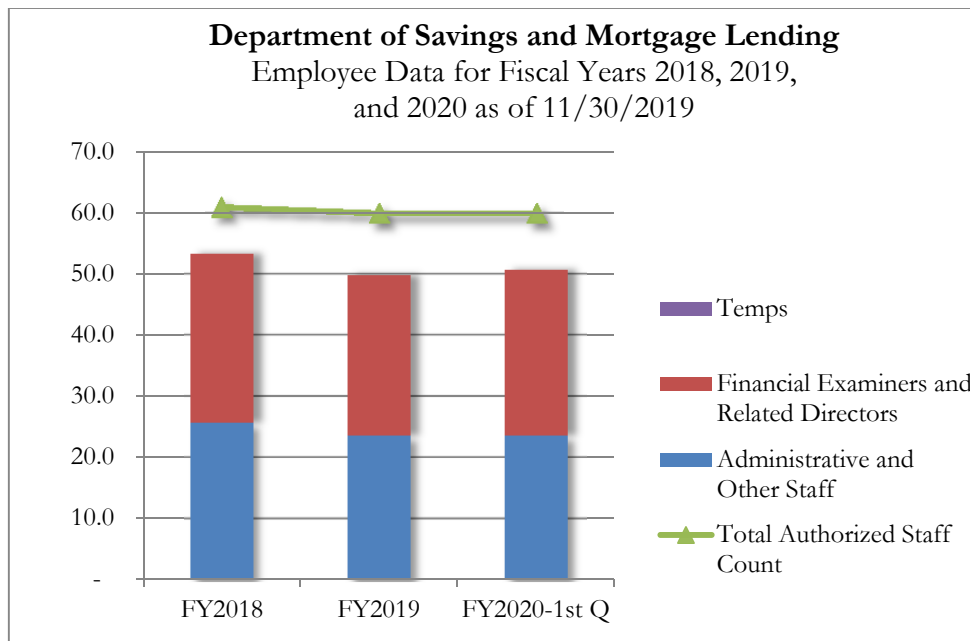
**b. Staffing**

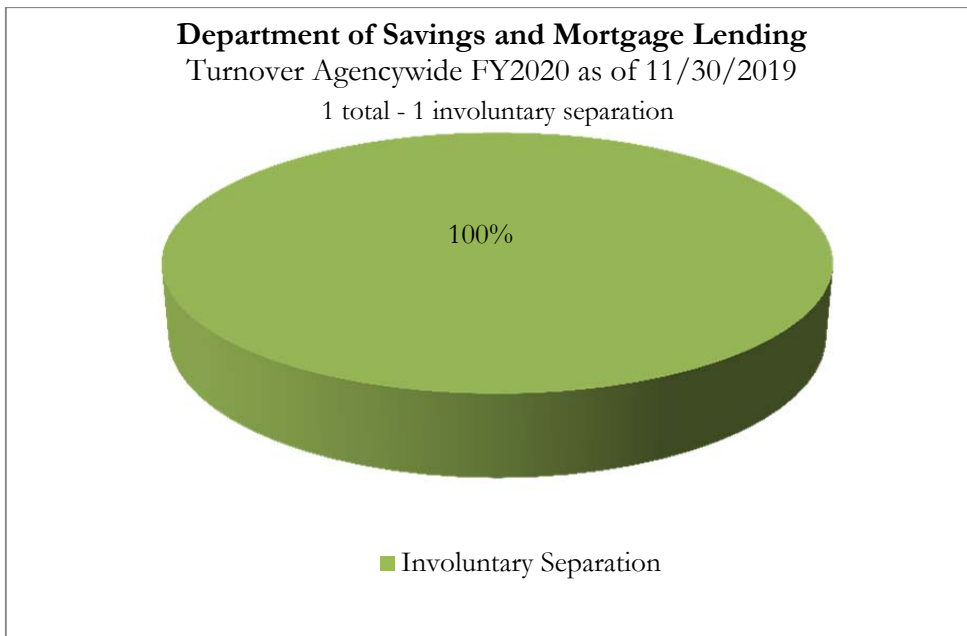
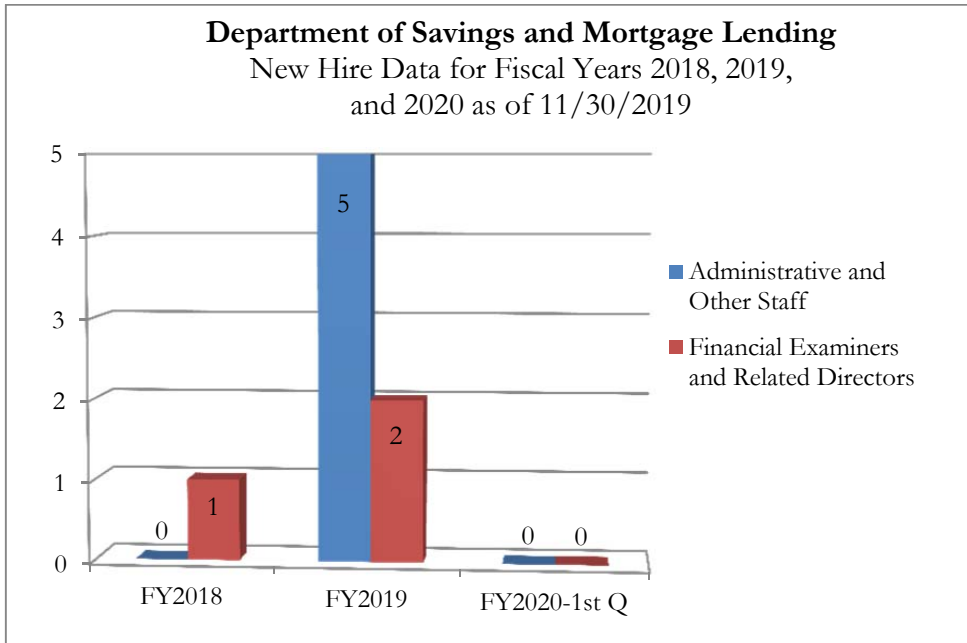
As of November 30, 2019, the Department was staffed at 51 regular full-time and 1 part-time employees. For the first quarter of FY20, the Department had one involuntary termination and no new hires.

Below is the status of the Department’s vacancies:

| Vacancy Status                 |                       |
|--------------------------------|-----------------------|
| Staff Services Specialist I/II | Conducting Interviews |

Staffing Charts as of November 30, 2019





**Departmental Operations**

None

#### 4. Legal Activities:

##### SOAH Cases:

##### Update:

Case No. 450 19-6235; Department of Savings and Mortgage Lending v. Lori McKelvie; Appeal of Enforcement Order: A default hearing before the Administrative Law Judge was held in this matter on October 8, 2019. The Department sought an administrative penalty for unlicensed third party loan processing activity. The ALJ issued a Conditional Order of Default, Dismissal and Remand in this case and on November 20, 2019, the Commissioner signed the Final Order assessing the administrative penalty for the unlicensed activity.

Case No. 450 19-6280; Department of Savings and Mortgage Lending v. Scott M. Marinelli; Appeal of Enforcement Order: Respondent Scott M. Marinelli appealed the Department's Order. On October 8, 2019, the ALJ issued Order No. 3 Partially Granting and Partially Denying the Department's Summary Disposition in this matter. A hearing before the Administrative Law Judge was held on October 18, 2019, in which the ALJ requested that the Department provide select certified court records relating to Mr. Marinelli's various court proceedings. The Department is awaiting a proposal for decision from the ALJ, regarding the extent of any recommended administrative penalty.

##### Gift Reporting:

None

##### Litigation:

Case No. 19-31300-HMC RE: John Hoang Trien, Sr, US Bankruptcy Court; Western District; Chapter 11 Bankruptcy Update:

The Department is being represented by the Texas Attorney General's Office in this proceeding and in continued efforts to prevent Mr. Trien from violating prior orders of the Department. As a result of an examination of the debtor under oath, by representatives of the Attorney General's Office, the debtor Mr. Trien agreed to have a bankruptcy trustee appointed. On November 21, 2019, the U.S. Bankruptcy Judge appointed attorney Robert Sandoval to serve as the trustee. Additional legal action in this matter is being evaluated.

Docket No: D-1-GN-19-00801190; 353<sup>RD</sup> Judicial District Court, Travis County, Texas; RE: Jon Douglas Black v. Department of Savings and Mortgage Lending: The Department issued a Final Order denying Jon Black licensure on September 18, 2019. The Department received a copy of Mr. Black's Original Petition filed in the 353rd Judicial District Court on November 22, 2019, and thereafter referred the matter to the Texas Attorney General's Office for representation. On November 27, 2019, the Department received notice from the Attorney General's Office that the Department's representation in this case was assigned to the Financial Litigation and Charitable Trusts Division. The Department's answer to the lawsuit is due to be filed December 16, 2019.

##### Legislative Activity:

Senate and House interim charges have been issued and the Department has reviewed them for impact. The Department will monitor the interim charges for those that may directly or indirectly effect the Department or the regulated industries.

5. Discussion of and Possible Vote to Take Action on the Adoption of 7 TAC, Chapter 52, New Subchapter B Hearings and Appeals, and New Subchapter C Advisory Committees.

**PURPOSE:** The purpose of new Subchapter B to Chapter 52 is to implement 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 purpose of new Subchapter C to Chapter 52 is 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 adopt the new rule amendments to 7 TAC Chapter 52, §52.20 and §52.30 without changes as previously published in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we adopt and publish the amendments to 7 TAC Chapter 52, §52.20 and §52.30 in the *Texas Register*.

**Title 7. Banking and Securities**  
**Part 4. Department of Savings and Mortgage Lending**  
**Chapter 52. Department Administration**  
**Subchapter B. Hearings and Appeals**  
**7 TAC § 52.20 and**  
**Subchapter C. Advisory Committees**  
**7 TAC § 52.30**

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), adopts new Subchapter B, Hearings and Appeals, and new section 52.20, concerning appeals, hearings, and informal settlement conferences adopts new Subchapter C, Advisory Committees, and new section 52.30, concerning advisory committees and informal conferences, to 7 TAC Chapter 52.

The Finance Commission adopts new Chapter 52, Subchapter B, Hearings and Appeals, and new 52.20, without changes to the proposed text as published in the November 1, 2019 issue of the Texas Register (44 Tex. Reg. 6483) and adopts new Chapter 52, Subchapter C, Advisory Committees, and new 52.30, without changes to the proposed text as published in the November 1, 2019 issue of the Texas Register (44 Tex. Reg. 6484). The rules will not be republished.

The Department received no comments on the proposals.

The Department distributed a draft of the rules to the Office of the Governor, who had no comments on the rules. The Department also held a stakeholder meeting to which it

did not receive any formal written precomments, but did receive verbal feedback. The Department appreciates the thoughtful input provided by stakeholders and believe that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

The new rules in Subchapter B are adopted to provide consistent procedures for resolving complaints concerning entities and individuals regulated by the department. The new rules are adopted 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 new rules implement the applicable recommendations contained in the Sunset Model.

The rules in Subchapter C are adopted 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 adopted under Government Code § 2001.004, which provides the authority to adopt rules of practice stating the nature and requirements of all available formal and informal

procedures, Finance Code § 11.307, which provides that the finance commission shall adopt rules applicable to each entity regulated by the department relating to consumer complaints, Finance Code § 13.011, which provides that the savings and mortgage lending commissioner shall prepare information concerning the department's regulatory functions and consumer complaint resolution procedures, Finance Code § 96.002, which provides that the finance commission may adopt rules necessary to supervise and regulate savings banks and to protect public investment in savings banks, Finance Code § 156.102, which provides that the finance commission may adopt and enforce rules necessary for the intent of or to ensure compliance with Chapter 156, Finance Code § 157.0023, which provides that the finance commission may adopt and enforce rules necessary for the intent of or to ensure compliance with Chapter 157, Finance Code § 158.003, which provides that the finance commission may adopt rules necessary to ensure that residential mortgage loan servicers comply with federal and state laws, rules, and regulations, Finance Code § 180.004, which provides that the finance commission may implement rules necessary to comply with Chapter 180 and Finance Code § 13.018, which provides that the commissioner may appoint advisory committees to assist the department and commissioner in performing their duties.

Other statutes affected by the 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).

**§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 amendments and found it to be within the state agency's legal authority to adopt.

Ernest C. Garcia  
General Counsel  
Department of Savings and Mortgage Lending