

A.

Finance Commission

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FINANCE COMMISSION OF TEXAS

MEETING DATEJune 19, 2020

MEETING LOCATIONVia Webinar

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

FUTURE MEETING DATESAugust 21, 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.*

Meeting Accessibility. Under the Americans with Disabilities Act, the agency will accommodate special needs. Those requesting auxiliary aids or services should notify the Finance Commission of Texas Administrator several days prior to the meeting using the contact information above by mail, telephone, or email.

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FINANCE COMMISSION AGENDA

Friday, June 19, 2020
9:00 a.m.
or Upon Adjournment of the Audit Committee Meeting
Via Webinar

Due to Governor Greg Abbott's March 13, 2020 proclamation of a state of disaster affecting all counties in Texas due to the Coronavirus (COVID-19) and the Governor's March 16, 2020 suspension of certain provisions of the Texas Open Meetings Act, the June 19, 2020 meeting of the Finance Commission of Texas will be held via webinar/telephonic conference call, as authorized under Texas Government Code section 551.125.

Members of the public who would like to participate in this meeting will need to register at www.fc.texas.gov. An electronic copy of the agenda is now available at www.fc.texas.gov, and a copy of the meeting materials will be available on June 11, 2020 at www.fc.texas.gov. To access the recording visit www.fc.texas.gov after June 19, 2020.

Section A.3 will take up agenda items A1, B2 – B4, and C2 with NO DISCUSSION as notated in bold and italicized

Public comment on any agenda item or issue under the jurisdiction of the Finance Commission of Texas 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 April 17, 2020 Finance Commission Meeting***
2. General Public Comment
3. Consent Agenda
4. Finance Commission Operations
5. Audit Committee Report
 - A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action to Reapprove the Internal Auditor Contract for Garza/Gonzalez & Associates for Fiscal Year 2021
6. Strategic Planning Committee Report
 - A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2021-2025 Strategic Plans
 1. Office of Consumer Credit Commissioner
 2. Texas Department of Banking
 3. Department of Savings and Mortgage Lending
 - B. Discussion of the Finance Commission of Texas 2021-2025 Strategic Plan
7. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, §155.2, Concerning Payoff Statement Form

8. Discussion of and Possible Vote to Take Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Duties and Compensation of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to the Duties and Compensation of Persons Holding the Position of Agency Commissioner Positions, and Other Staff
9. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to §551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property
10. Discussion of 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
11. Discussion of and Consultation on Security Audit, Possible Issue Related to Confidential or Sensitive Information, Security Breach Audit and Assessment, or Security Assessments or Deployment Related to Information Resources Technology as Authorized by Tex. Govt. Code Secs. 551.076 and 551.089

B. OFFICE OF CONSUMER CREDIT COMMISSIONER

1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities
2. *Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 5, Chapter 90, Concerning Chapter 342, Plain Language Contract Provisions, Resulting from Rule Review*
3. *Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 5, Chapter 83, Subchapter B, Concerning Rules for Credit Access Businesses, Resulting from Rule Review*
4. *Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 5, Chapter 85, Subchapter B, Concerning Rules for Crafted Precious Metal Dealers, Resulting from Rule Review*
5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments, a New Rule, and a Repeal in 7 TAC, Part 5, Chapter 83, Subchapter B, Concerning Rules for Credit Access Businesses, Resulting from Rule Review
6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of the Repeal of §85.1012 in 7 TAC, Part 5, Chapter 85, Subchapter B, Concerning Rules for Crafted Precious Metal Dealers, Resulting from Rule Review
7. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments and a New Rule in 7 TAC, Part 5, Chapter 89, Concerning Property Tax Lenders
8. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

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

State of Texas v. Cash Auto Sales, Inc. f/k/a Larry Lake d/b/a Cash Auto Sales and VIP Finance of Texas, Inc. f/k/a Travis Lake d/b/a VIP Finance; Case No. 19-0999, in the Supreme Court of 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 Division Activities; e) Administrative, Staffing and Fiscal Division Activities; f) Strategic Support Division Activities including Consumer Complaint Data; g) Legal Division Activities including Enforcement Activity and Gift Reporting; and h) Legislative Activities
2. *Discussion of and Possible Vote to Take Action on the Adoption of Amendment to 7 TAC §33.27 Concerning Fees for Money Services Businesses Licenses*
3. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §12.91 Concerning Other Real Estate Owned
4. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

D. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

1. Industry Status and Departmental Operations: a) State Savings Bank Examinations and Supervision Division Activities; b) Mortgage Licensing Division Activities; c) Mortgage Examinations Division Activities; d) Consumer Complaints Division Activities; e) Administration and Finance Division Activities; f) Legal Division Activities, including Gift Reporting; and g) Legislative Activities
2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §77.73 Concerning Investment in Banking Premises and Other Real Estate Owned
3. Discussion of and Possible Vote to Take Action on the Re-Adoption of 7 TAC, Chapter 79, Residential Mortgage Loan Servicers (§§79.1 - 79.5, 79.20, 79.30, 79.40, 79.50), Chapter 80, Texas Residential Mortgage Loan Companies (§§80.1 - 80.5, 80.100, 80.102 - 80.104, 80.106, 80.107, 80.200 - 80.206, 80.300 - 80.302), and Chapter 81, Mortgage Bankers and Residential Mortgage Loan Originators (§§81.1 - 81.5, 81.100 - 81.109, 81.200 - 81.206, 81.300 - 81.302), Resulting from Rule Review
4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §76.98, Concerning Annual Fee To Do Business
5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §79.1 and §79.2, Concerning Residential Mortgage Loan Servicers, Resulting from Rule Review
6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §§80.1, 80.2, 80.200, 80.202 - 80.206, and 80.301, Concerning Texas Residential Mortgage Loan Companies, Resulting from Rule Review
7. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §§81.1 - 81.3, 81.200, 81.202 - 81.206, 81.300 and 81.301, Concerning Mortgage Bankers and Residential Mortgage Loan Originators, Resulting from Rule Review
8. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

NOTE: The Finance Commission of Texas 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 of Texas 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, April 17, 2020**

The Finance Commission of Texas convened at 9:32 a.m. on April 17, 2020 with the following members present:

Finance Commission Members in Attendance:

Phillip Holt, Chairman
Bob Borochoff
Hector Cerna
Molly Curl
Stacy G. London

Will Lucas
George “Cliff” McCauley
Lori B. McCool
Vince Puente

Chairman Phillip Holt announced there was a quorum with nine members present. (2:20:53 on audio file). *Note: This was a correction to the original announcement of ten members present.*

Chairman Phillip Holt made a motion to excuse Dr. Robin Armstrong from the Finance Commission meeting held on April 17, 2020. There were no objections and the motion passed unanimously. (:10 on audio file).

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
A. Finance Commission Matters		
1. Review and Approval of the Minutes of the February 14, 2020 Finance Commission Meeting	On Consent Agenda – Item A1	6:28 start of discussion
2. General Public Comment	No Action Required.	5:40 start of discussion
3. Consent Agenda – Item A1	Vince Puente made a motion to Approve Consent Agenda item A1. Stacy London seconded and the motion passed.	6:22 start of discussion 6:52 vote
4. Finance Commission Operations	No Action Required.	7:31 start of discussion
5. Report on COVID–19 from the Finance Commission Agencies	No Action Required.	9:10 start of discussion

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
6. Audit Committee Report		
<p>A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' Fiscal Year 2020 Internal Auditor's Risk Assessment and Audit Plan</p> <ol style="list-style-type: none"> 1. Texas Department of Banking 2. Department of Savings and Mortgage Lending 3. Office of Consumer Credit Commissioner 	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to approve the Agencies' Fiscal Year 2020 Internal Auditor's Risk Assessment and Audit Plan passed.</p>	<p>51:05 start of discussion</p> <p>51:25 Vote</p>
<p>B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' February 29, 2020 Investment Officer Reports</p> <ol style="list-style-type: none"> 1. Texas Department of Banking 2. Department of Savings and Mortgage Lending 3. Office of Consumer Credit Commissioner 	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to approve the Agencies' February 29, 2020 Investment Officer Reports passed.</p>	<p>56:32 start of discussion</p> <p>56:52 Vote</p>
<p>C. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2020 Second Quarter Financial Statements</p> <ol style="list-style-type: none"> 1. Texas Department of Banking 2. Department of Savings and Mortgage Lending 3. Office of Consumer Credit Commissioner 	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to approve the Agencies' 2020 Second Quarter Financial Statements passed.</p>	<p>57:13 start of discussion</p> <p>57:31 Vote</p>
<p>D. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Reduction of Assessment Rates, and the Reserve and Expenditure of Funds for Thrift Examination and Supervision for FY2020, as needed, in Connection with the Charles Schwab Bank, SSB and Charles Schwab Premier Bank, SSB Conversions</p>	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to approve the Reduction of Assessment Rates, and the Reserve and Expenditure of Funds for Thrift Examination and Supervision for FY2020, as needed, not to exceed \$100,000, in Connection with the Charles Schwab Bank, SSB and Charles Schwab Premier Bank, SSB Conversions passed.</p>	<p>57:50 start of discussion</p> <p>58:31 Vote</p>

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
7. Status Report on Implementation of Finance Commission Directive on 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.”	No Action Required.	58:56 start of discussion
8. Discussion of the Process for the 2021-2025 Strategic Plans for the Finance Commission Agencies	No Action Required.	1:02:09 start of discussion
9. Discussion of and Possible Vote to Take Action on the Finance Commission Agencies’ Fiscal Year 2020 Mid-Term Accomplishment Reports	Stacy London made a motion to Approve the Finance Commission Agencies’ Fiscal Year 2020 Mid-Term Accomplishment Reports. Molly Curl seconded and the motion passed.	1:05:19 start of discussion 1:05:48 Vote
10. Discussion of the Condition of the Texas State Banking System Report <i>(Note: Report provided separately)</i>	No Action Required.	1:06:24 start of discussion
11. 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.	1:06:54 start of discussion
12. 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.	1:07:47 start of discussion
13. Discussion of 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.	1:08:38 start of discussion

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
14. 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
15. Discussion of and Consultation on Matters Made Confidential by Law as Authorized by Tex. Govt. Code Sec. 551.0811	Deferred to Executive Session – no vote taken.	1:09:12 start of discussion
B. Texas Department of Banking		
1. Industry Status and Departmental Operations: a) Current Issues Affecting Department's Regulated Entities; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Non-Depository Supervision Division Activities; e) Administrative, Staffing and Fiscal Division Activities; f) Strategic Support Division Activities including Consumer Complaint Data; g) Legal Division Activities including Enforcement Activity and Gift Reporting; and h) Legislative Activities	No Action Required.	1:09:31 start of discussion
2. Consent Agenda – Item B2	Vince Puente made a motion to Approve Consent Agenda item B2. Stacy London seconded and the motion passed.	6:22 start of discussion 6:52 vote
3. Consent Agenda – Item B3	Vince Puente made a motion to Approve Consent Agenda item B3. Stacy London seconded and the motion passed.	6:22 start of discussion 6:52 vote
4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendment to 7 TAC §33.27 Concerning Fees for Money Services Businesses Licenses	Vince Puente made a motion to Approve the amended Proposal and Publication for Comment of Amendment to 7 TAC §33.27 Concerning Fees for Money Services Businesses Licenses. Molly Curl seconded and the motion passed.	1:25:24 start of discussion 1:28:17 Vote
5. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Action Required.	n/a

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
C. Department of Savings and Mortgage Lending		
1. Industry Status and Departmental Operations: a) State Savings Bank Examinations and Supervision Division Activities; b) Mortgage Licensing Division Activities; c) Mortgage Examinations Division Activities; d) Consumer Complaints Division Activities; e) Administration and Finance Division Activities; f) Legal Division Activities, including Gift Reporting; and g) Legislative Activities	No Action Required.	1:29:05 start of discussion
2. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §77.73 Concerning Investment in Banking Premises and Other Real Estate Owned	Molly Curl made a motion to Approve the Proposal and Publication for Comment of Amendments to 7 TAC §77.73 Concerning Investment in Banking Premises and Other Real Estate Owned. Stacy London seconded and the motion passed.	1:49:45 start of discussion 1:57:09 Vote
3. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Action Required.	n/a
D. Office of Consumer Credit Commissioner		
1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities	No Action Required.	1:58:02 start of discussion
2. On Consent – Item D2	Vince Puente made a motion to Approve Consent Agenda item D2. Stacy London seconded and the motion passed.	6:22 start of discussion 6:52 Vote
3. On Consent – Item D3	Vince Puente made a motion to Approve Consent Agenda item D3. Stacy London seconded and the motion passed.	6:22 start of discussion 6:52 Vote
4. On Consent – Item D4	Vince Puente made a motion to Approve Consent Agenda item D4. Stacy London seconded and the motion passed.	6:22 start of discussion 6:52 Vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
5. On Consent - Item D5	Vince Puente made a motion to Approve Consent Agenda item D5. Stacy London seconded and the motion passed.	6:22 start of discussion 6:52 Vote
6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 5, Chapter 90, Concerning Chapter 342, Plain Language Contract Provisions, Resulting from Rule Review	Stacy London made a motion to Approve the Proposal and Publication for Comment of Amendments to 7 TAC, Part 5, Chapter 90, Concerning Chapter 342, Plain Language Contract Provisions, Resulting from Rule Review. Will Lucas seconded and the motion passed.	2:16:21 start of discussion 2:19:13 Vote
7. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation <i>Ernest Polk v. Texas Office of Consumer Credit Commissioner; Cause No. 2018-04375, in the 281st Judicial District Court of Harris County, Texas</i> <i>State of Texas v. Cash Auto Sales, Inc. f/k/a Larry Lake d/b/a Cash Auto Sales and VIP Finance of Texas, Inc. f/k/a Travis Lake d/b/a VIP Finance; Case No. 19-0999, in the Supreme Court of Texas</i>	Deferred to Executive Session – no vote taken.	n/a

Chairman Phillip Holt called for an Executive Session at 11:53 a.m. (2:20:20 on the audio file). The open meeting resumed at 12:20 p.m. (2:20:43 on the audio file).

There being no further business, Chairman Phillip Holt adjourned the meeting of the Finance Commission at 12:22 p.m. (2:22:23 on the audio file).

Phillip Holt, Chairman
Finance Commission of Texas

Charles G. Cooper, Executive Director
Finance Commission of Texas

Brenda Medina, Executive Assistant
Finance Commission of Texas

Finance Commission of Texas

Consent Agenda

June 19, 2020

A. Finance Commission Matters

1. Review and Approval of the Minutes of the April 17, 2020 Finance Commission Meeting

B. Office of Consumer Credit Commissioner

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 5, Chapter 90, Concerning Chapter 342, Plain Language Contract Provisions, Resulting from Rule Review
3. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 5, Chapter 83, Subchapter B, Concerning Rules for Credit Access Businesses, Resulting from Rule Review
4. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 5, Chapter 85, Subchapter B, Concerning Rules for Crafted Precious Metal Dealers, Resulting from Rule Review

C. Texas Department of Banking

2. Discussion of Discussion of and Possible Vote to Take Action on the Adoption of Amendment to 7 TAC §33.27 Concerning Fees for Money Services Businesses Licenses

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Finance Commission Strategic Plan Timeline

Date	Action
July 1, 2020	DOB provides draft Plan to SML and OCCC
July 10, 2020	Comments due from SML and OCCC
July 20, 2020	Provide draft Plan to Strategic Planning Committee and Finance Commission Chair
July 31, 2020	Comments due from Strategic Planning Committee and Finance Commission Chair
August 7, 2020	Provide draft Plan to full Finance Commission
August 7 – 14, 2020	Finance Commission members provide feedback
August 21, 2020	Finance Commission meeting to vote on the Plan

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7. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §155.2, Concerning Payoff Statement Form.

PURPOSE: Section 155.2 governs the requirements for a loan servicer to issue a home loan payoff statement form in response to a request from a title company. The amendments, if adopted, would require a loan servicer, when issuing a payoff statement, to recite the loan number for the loan, or if that information is not available, the original amount of the loan. The proposed amendments are designed to limit the provision of erroneous payoff information when a loan servicer misidentifies the loan for which the payoff statement is meant to be provided. The title of the Subchapter is also updated to better reflect its subject matter. Other modernization changes are made to update the rule and improve readability.

This proposal relates to a previous rule proposal concerning 7 TAC §155.2 published for comment in the January 3, 2020 issue of the *Texas Register* (45 TexReg 162). Specifically, this proposal is made to incorporate proposed revisions received during the public comment period for the initial rule proposal. Given the extent to which the amendments proposed herein deviate from the initial proposal, the Joint Financial Agencies determined re-publishing the rule was appropriate.

However, pursuant to Government Code §2001.027, a published rule proposal is automatically withdrawn after six months, and until that time, the rule is left pending and no further rule proposals concerning the rule may be published. As a result, if this proposal is published for proposal, the initial proposal must be simultaneously withdrawn.

RECOMMENDED ACTION: The Department, on behalf of the Joint Financial Regulatory Agencies, recommends that the Commission: (i) approve publication of the proposed amendments in the *Texas Register* for comment and (ii) simultaneously withdraw the rule concerning §155.2 previously published on January 3, 2020.

RECOMMENDED MOTION: I move that we publish the proposed amendments to 7 TAC §155.2 in the *Texas Register* and simultaneously withdraw the previous proposal published on January 3, 2020.

Title 7. Banking and Securities

Part 8. Joint Financial Regulatory Agencies.

Chapter 155. Payoff Statements.

Subchapter A. Registration.

7 TAC §155.2. Payoff Statement Form.

The Finance Commission (commission), on behalf of the Department of Savings and Mortgage Lending (SML), the Office of the Consumer Credit Commissioner (OCCC), and the Texas Department of Banking (DOB; SML, OCCC, and DOB, collectively, the "joint financial regulatory agencies"), proposes amendments to existing Title 7 Texas Administrative Code (TAC), Part 8, Chapter 155, Subchapter A, §155.2. This proposal and the rule as amended by this proposal are referred to collectively as the "proposed rule."

BACKGROUND AND PURPOSE

7 TAC, Chapter 155 contains the administrative rules of the joint financial regulatory agencies concerning requirements for the creation and delivery of payoff statements for home loans. The proposed rule arises in part from the joint financial regulatory agencies' periodic review of Chapter 155, conducted pursuant to Government Code, §2001.039. The commission, determining that the reasons for initially adopting the rules contained in Chapter 155 continued to exist, readopted such rules in the January 3, 2020 issue of the *Texas Register* (45 TexReg 162). While readopting the rules, the commission contemporaneously proposed amendments to 7 TAC §155.2 (45 TexReg 33). The amendments proposed at that time were limited to non-substantive formatting changes to reconcile differences between the

form published on SML's website and the form embedded in §155.2. However, during the period for public comment to such proposal, the joint financial regulatory agencies received a request from the Texas Land Title Association (commenter) that the payoff statement form be revised to include additional information. Specifically, the commenter requested that, in order for the title company to more easily verify the loan servicer has correctly identified the loan for which the payoff statement was requested, the payoff statement form state the loan number assigned for identification purposes, or if the loan number is not available, the original loan amount. The joint financial regulatory agencies initially determined the comment and proposed revision had merit and that the revision should be considered by the commission for potential adoption. However, the joint financial regulatory agencies further determined that the revisions suggested by the commenter would be best achieved by amending the rule to impose the requirement within the actual text of the rule, in addition to making corresponding changes to the form embedded in the rule. Furthermore, the revisions to the form would be substantive in nature instead of merely non-substantive formatting changes. In consideration of the foregoing, the joint financial regulatory agencies determined it would be prudent to republish the rule to provide additional notice and opportunity for public comment.

SUMMARY OF CHANGES

The proposed rule amends Subchapter A, Registration. A proposed amendment would replace the title of Subchapter A with "Form

PROPOSED AMENDMENTS

7 TAC §155.2

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and Delivery," to better reflect the subchapter's subject matter.

The proposed rule amends §155.2, Payoff Statement Form. Subsection (a) is amended to clarify that a loan servicer may designate a mailing address and a fax number to receive requests for payoff statements. Existing §152.2(b)(3) requires the loan servicer to provide "sufficient information to identify the loan for which the payoff information is provided." §152.2(b)(3) is amended to insert two new subparagraphs requiring that such information include the loan number, or if the loan number is not available, the original amount of the loan. The proposed rule further revises the prescribed form for the payoff statement embedded in §155.2 as a graphic. The proposed rule makes corresponding changes to the form to implement the new requirement for the loan number or original loan amount to be included by adding fields for both pieces of information. The proposed rule also makes formatting revisions to the form to make the form consistent with the payoff statement form published by SML on its website. The proposed rule also amends §155.2 to make terminology and other modernization changes to update the rule and improve readability. These changes include: using updated terminology for transmittal by email and fax; and making minor punctuation changes.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Ernest Garcia, General Counsel of SML, Mirand Diamond, Director of Licensing and Registration for OCCC, and Jesse Moore, Assistant General Counsel for DOB, have determined that for the first five-year period the proposed rule is in effect, there are no

foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the rule. Ernest Garcia of SML, Mirand Diamond of OCCC, and Jesse Moore of DOB further determined that for the first five-year period the proposed rule is in effect, there will be no foreseeable loss in revenue for the state or local governments as a result of enforcing or administering the proposed rule.

PUBLIC BENEFITS

Ernest Garcia of SML, Huffman Lewis, Director of Consumer Protection for OCCC, and Jesse Moore of DOB have determined that for each of the first five years the proposed rule is in effect, the public benefit anticipated as a result of enforcing the proposed rule will be to have an amended payoff statement form with formatting that is more consistent with the form published by SML on its website. The new requirement to state the original loan number or amount of the loan on the form will also promote uniformity among loan servicers in complying with the requirements of existing §155.2(b)(3), thereby promoting familiarity with the form by the public. The uniform provision of identifying information also has the tendency to limit erroneous payoff information when a loan servicer misidentifies the loan for which the payoff statement is meant to be provided, thereby reducing or preventing harm to a member of the public who is a party to a transaction involving a payoff statement.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH THE PROPOSED RULE

Ernest Garcia of SML, Huffman Lewis of OCCC, and Jesse Moore of DOB have determined that for the first five years the proposed rule is in effect, there are no substantial economic costs anticipated to persons required to comply with the proposed rule. A loan servicer may use custom electronic forms in order to fulfill the requirements of existing §155.2. As related *supra*, loan servicers are already required to provide information identifying the loan for which the payoff statement is provided. In meeting existing requirements, loan servicers often include the loan number and the original loan amount, and these loan servicers would not incur any costs in order to comply with the proposed rule. Loan servicers that do not already include the loan number or the original loan amount on their custom electronic forms may be inclined to update such forms to comply with the rule. However, any such costs should only be incurred on a one-time basis and are anticipated to be *de minimis*. Use of custom electronic forms by a loan servicer is not required by the proposed rule, and is discretionary. Moreover, if the proposed rule is adopted, it will include an electronic form the servicer may use to comply with the rule at no cost. Additionally, SML intends to publish a form-fillable version of the form on its website for use at no cost. The text of the new information required by the proposed rule rarely exceeds twenty characters in length. As a result, printed forms preexisting the potential adoption of the proposed rule that do not include the required information may still be used but supplemented with the new required information at no cost. In an effort to discern any potential costs to regulated persons, and to mitigate any such costs, the joint financial

regulatory agencies solicited the comments and feedback of industry stakeholders and other interested persons. Specifically, on February 25, 2020, the joint financial regulatory agencies posted a notice on their respective websites with an initial draft of potential amendments concerning the proposed rule. Such notice specifically solicited comments concerning whether or not there would be costs imposed on regulated persons as a result of the potential amendments. The notice also solicited comments concerning whether regulated persons might benefit from or would be harmed by potential delayed implementation of the potential amendments should they be adopted. The joint regulatory agencies received no written comments within the time prescribed by such notice, or otherwise. The foregoing notwithstanding, the commission and the joint financial regulatory agencies invite comments from stakeholders and interested persons who believe there will be costs imposed on regulated persons associated with adoption of the proposed rule, and whether delayed implementation is helpful or necessary.

ONE-FOR-ONE RULE ANALYSIS

Pursuant to Finance Code §16.002, each of the joint financial regulatory agencies is a self-directed and semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

For each of the first five years the proposed rule is in effect, the joint financial regulatory agencies have determined the following: (1) the proposed rule does not create or eliminate

PROPOSED AMENDMENTS

7 TAC §155.2

PAGE 4 OF 5

a government program; (2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to any of the joint financial regulatory agencies; (4) the proposed rule does not require an increase or decrease in fees paid to the any of the joint financial regulatory agencies; (5) the proposed rule does not create a new regulation (rule); (6) the proposed rule does expand, limit, or repeal an existing regulation (rule). The proposed rule expands an existing rule requiring identifying information for the loan for which a payoff statement is issued by dictating the minimum information required to comply. The proposed rule does not limit or repeal an existing regulation (rule); (7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and (8) the proposed rule does not positively or adversely affect this state's economy.

LOCAL EMPLOYMENT IMPACT STATEMENT

No local economies are substantially affected by the proposed rule. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

FISCAL IMPACT ON SMALL AND MICRO-BUSINESSES, AND RURAL COMMUNITIES

The proposed rule will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons

required to comply with the proposed rule. As a result, preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code §2006.002, are not required.

TAKINGS IMPACT ASSESSMENT

There are no private real property interests affected by the proposed rule. As a result, preparation of a takings impact assessment, as provided by Government Code §2007.043, is not required.

PUBLIC COMMENTS

Written comments regarding the proposed rule may be submitted by mail to Iain A. Berry, Associate General Counsel for SML, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this proposal.

STATUTORY AUTHORITY

This proposal is made under the authority of, and to implement, Finance Code §343.106(b), which requires the commission to 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 that must be used by mortgage servicers to provide payoff statements.

This proposal affects the statutes contained in Finance Code, Chapter 343. No other statute is affected by this proposal.

<rule>

PROPOSED AMENDMENTS

7 TAC §155.2

PAGE 5 OF 5

Subchapter A. Form and Delivery [Registration]

§155.2. Payoff Statement Form.

(a) Requests made pursuant to this chapter shall be in writing and submitted to the mortgage servicer by mail, email ~~[electronic-mail]~~, or fax ~~[facsimile]~~. If the mortgage servicer has designated a specific mailing ~~[physical]~~ address, [§] email ~~[electronic-mail]~~ address, fax number, [§] and/or a specific representative to receive requests made pursuant to this chapter, then requests shall be submitted in accordance with such designation. Requests for a payoff statement shall, at a minimum, include the following:

(1) - (3) (No change.)

(b) Upon receipt of a valid request made under subsection (a) of this section, a mortgage servicer shall provide, in writing, by mail or email ~~[electronic—mail]~~, the payoff statement information for the home loan specified in the request which must be provided on the prescribed payoff statement form, Figure 7 TAC §155.2(c)(6), or in a substantially similar format which contains all elements not indicated as optional on the prescribed payoff statement form. The statement must include the following information:

(1) The proposed closing date for the sale or other transaction, as provided in the request made pursuant to this chapter;

(2) The payoff amount that is valid through the proposed closing date; and

(3) Sufficient information to identify the loan for which the payoff information is provided, including:

(A) the loan number, if available; or

(B) the original amount of the loan, if the loan number is not available.

(c) If applicable, the payoff statement may contain:

(1) Adjustable rate mortgage information;

(2) Per diem amount;

(3) Late charge information;

(4) Escrow disbursement information;

(5) A statement regarding which party is responsible for the release of lien; and

(6) Other information necessary to provide a clear and concise payoff statement.

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.

Iain A. Berry
Associate 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: _____
 LOAN NUMBER: _____ ORIGINAL LOAN AMOUNT: _____

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	\$	_____
_____	\$	_____
_____	\$	_____
_____	\$	_____
_____	\$	_____
TOTAL AMOUNT DUE:	\$	_____

WHERE TO SUBMIT PAYOFF FUNDS

WIRE TRANSFER	Beneficiary Name: _____	OVERNIGHT MAIL	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.

REQUEST TO RESPOND TO A REQUEST MADE UNDER THE STATUTE.
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

OPTIONAL SECTIONS

ORIGINAL LOAN AMOUNT:

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:

B.

**Office of Consumer Credit
Commissioner**

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Consumer Protection and Consumer Assistance Report

The overall examination results remain below target fiscal year to date. As noted in the December and February briefings, significant investments of time and resources in training during the first part of the fiscal year impacted exam production. During the 3rd quarter, as a result of the COVID-19 pandemic, the agency suspended on site examinations effective March 16, 2020. Currently, the agency has two large credit access business (CAB) exams that were suspended during production that represent a total of 82% of the agency's CAB production target for fiscal year 2020. With the cooperation of the two large CABs, the examinations should be completed by August 31, 2020.

Given the unexpected availability of large blocks of time provided by the COVID-19 exam suspension action, the department implemented four major improvement initiatives.

The first initiative, kicked off on March 20, focused on fully implementing a decentralized approach (using field-based examiners) to the Exam Review Program. The agency now has trained 22 qualified examiners who can conduct exam reviews in addition to their examination activities. Between March 16 and May 29, 2020, this initiative resulted in 1,138 exams reviewed and closed with confirmed restitution totaling \$2,049,502.56.

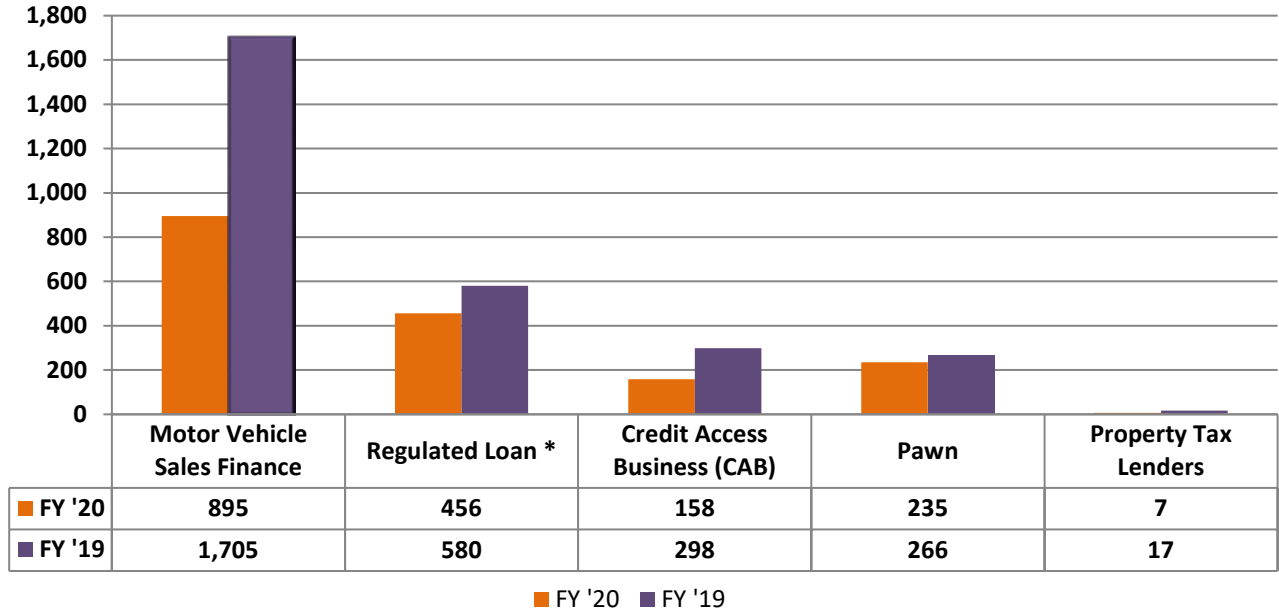
The second initiative, which launched on March 23, 2020, delivered detailed project management training for the field-based examiners to prepare them for Examiner-In-Charge roles conducting remote/desktop exams of out-of-state licensees. Webinar topics included: (1) financial statement analysis; (2) business plan reviews; and (3) approaches to scoping exams based upon reviews of financial statements, websites, complaints, licensing documents (statements of experience and changes of ownership) and other external resources. Training included a sample of frequently asked scoping questions and conversational approaches to be used in contacting these companies to set up and manage remote exams. As a result of the remote exam program initiative, 114 exams were finalized between March 16 and May 29, 2020.

The third initiative undertaken by the department involved a complete review and rewrite of the Exam Comment Library. Between March 16 and May 29, 2020, 400 comments have been researched and rewritten. One hundred approved comments have been entered into the exam comment library. This initiative involved multiple examiners and provided a deliberate academic approach that provided concept reinforcement. The department believes this project will have a large impact on the overall quality of the written report of exam product delivered to licensees.

The fourth initiative involved Senior Exam and Legal staff coordinating on a process improvement initiative that will increase throughput in the entire OCCC system affecting performance measures in both the Consumer Protection Division and the Legal Division. Two test cases are currently in production. Specifically, this process deals with situations in which licensees are not responsive to the examiner or are unwilling to accommodate an examination.

Finally, field-based operations are scheduled and will resume the week of June 15. The first focus will be on motor vehicle sales finance activities at franchised automobile dealerships. The examiners have been issued personal protective equipment and will be using approaches developed in the remote exam project to minimize time on site at the licensed location.

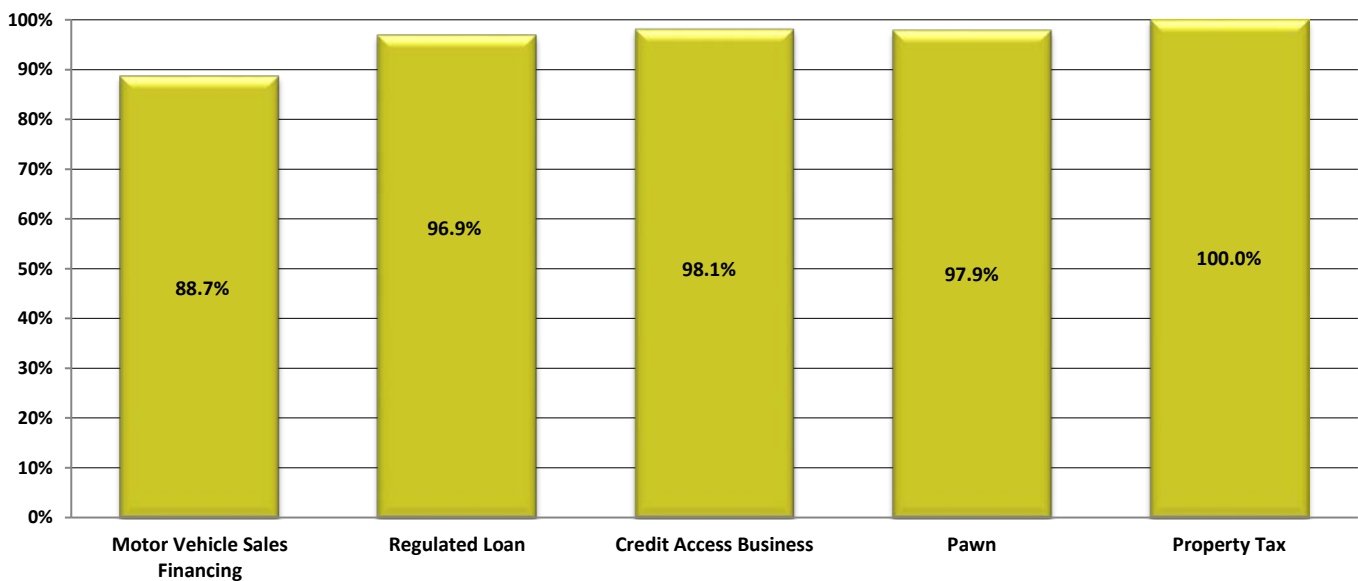
Examinations Conducted: Sept - Apr Fiscal Year Comparison



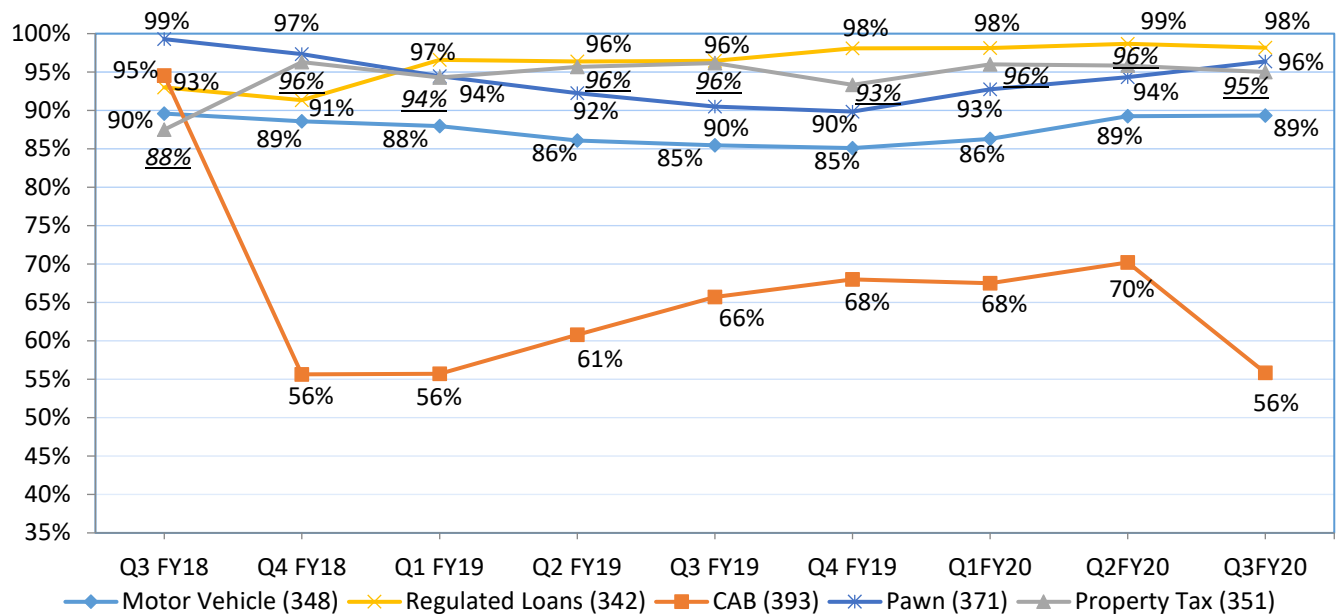
* Due to technical issues in the reporting database two exams were not counted in the second quarter numbers. The additional exams are included in the total number of exams to date.

The second chart below denotes the acceptable level of compliance on a trailing 12-month basis through the end of April 2020. The decrease in the 12-month acceptable level of compliance for Credit Access Business was primarily attributable to the following factors: (1) a large group of compliant exams were no longer included in the 12-month window; (2) a large enterprise-level non-compliant examination was added in the 2019 Q4; and (3) the number of CAB examinations performed in the 12-month period has decreased due to the COVID-19 pandemic.

Acceptable Level of Compliance FY '20 (Sept 2019 - Apr 2020)



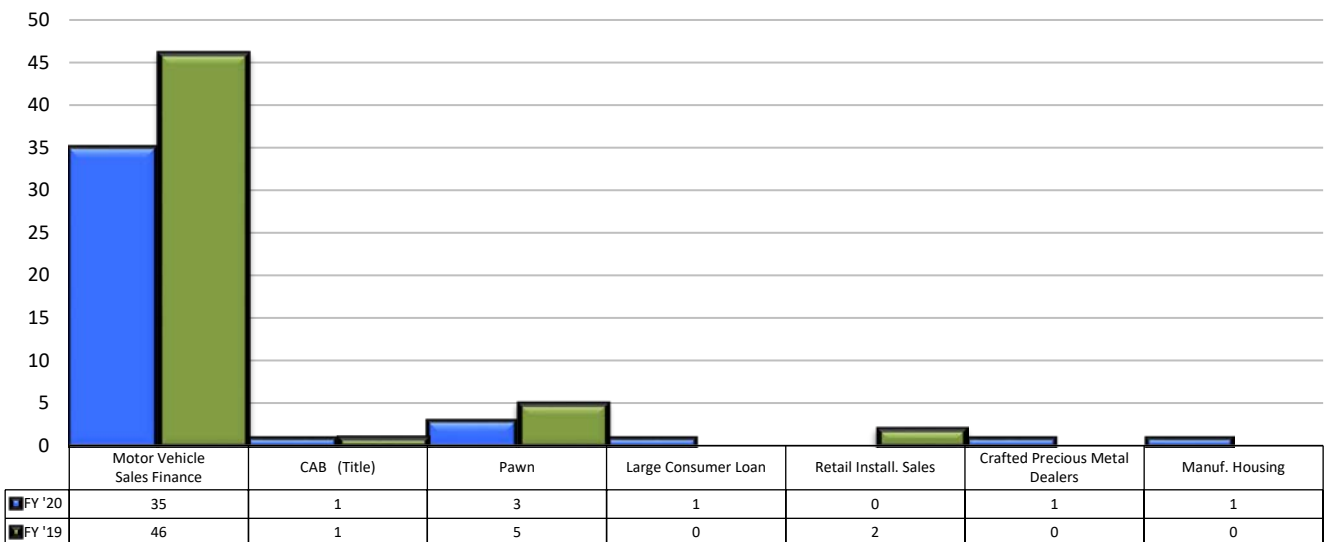
Acceptable Compliance Levels - Trailing 12 Months (at quarter end)



Investigations

For FY 2020, the agency completed 42 investigations, 52.5% of the FY 2020 goal of 80. Motor Vehicle Sales Finance was the largest category comprising 83.3% of the overall number of investigations.

Investigations Completed FY '20 (Sept 2019 - Apr 2020) Total: 42 FY '19 (Sept 2018 - Apr 2019) Total: 54



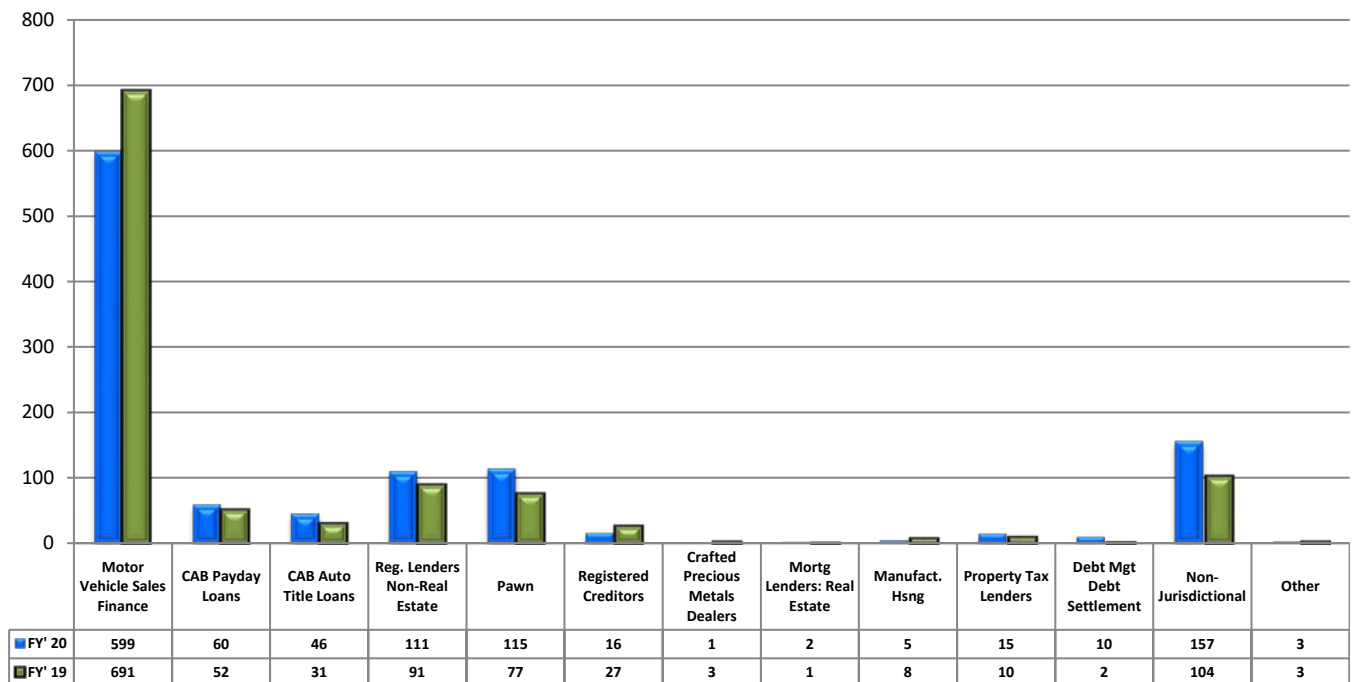
Consumer Assistance

For this period, 1,140 complaints were closed of which 157 were classified as non-jurisdictional.

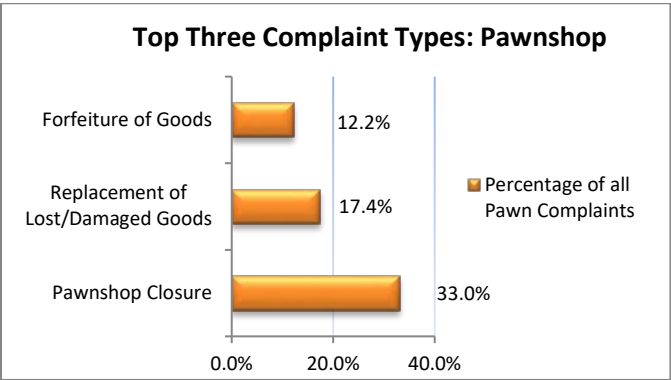
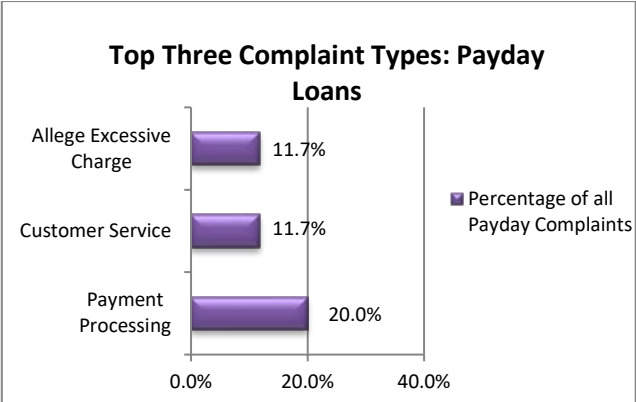
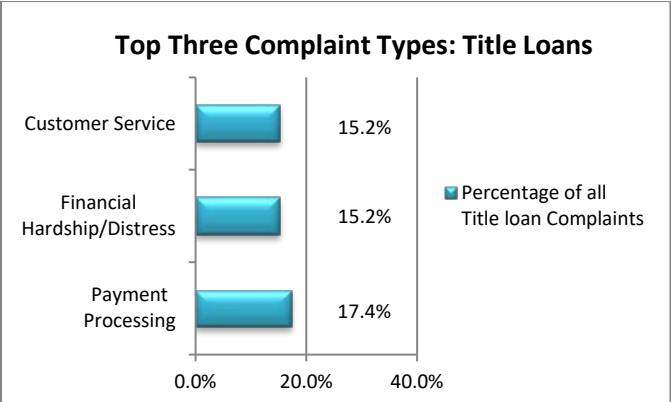
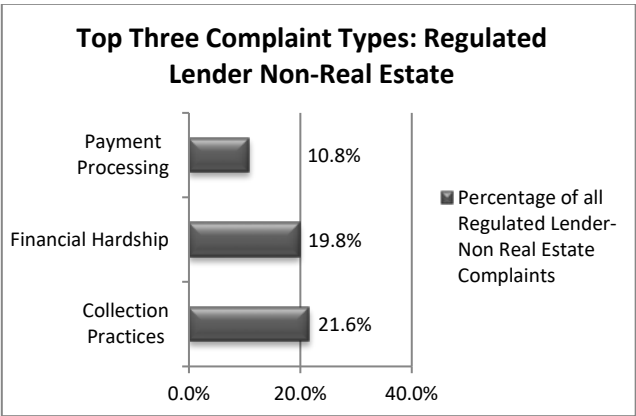
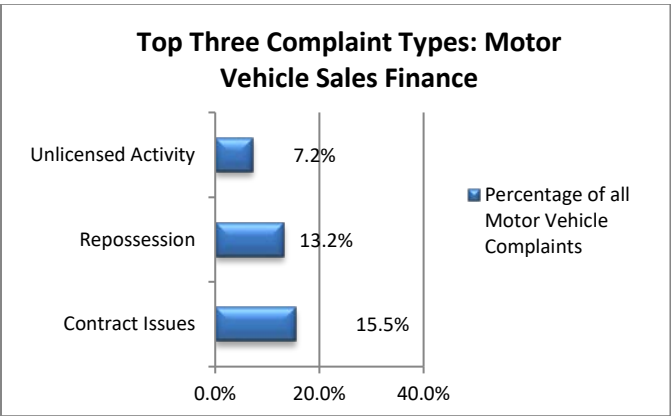
The top four areas of jurisdictional complaints are (1) Motor Vehicle Sales Finance (MVSF), (2) Pawn, (3) Regulated Lenders Non-Real Estate, and (4) Credit Access Business (CAB).

MVSF complaints were the largest complaint category at 52.5%. The second largest number of complaints came from Pawn at 10.1%. The third largest category was Regulated Lenders Non-Real Estate at 9.7%. The fourth largest category came from CAB complaints at 9.3% collectively; separately, these are 5.3% for payday loans and 4.0% for title loans.

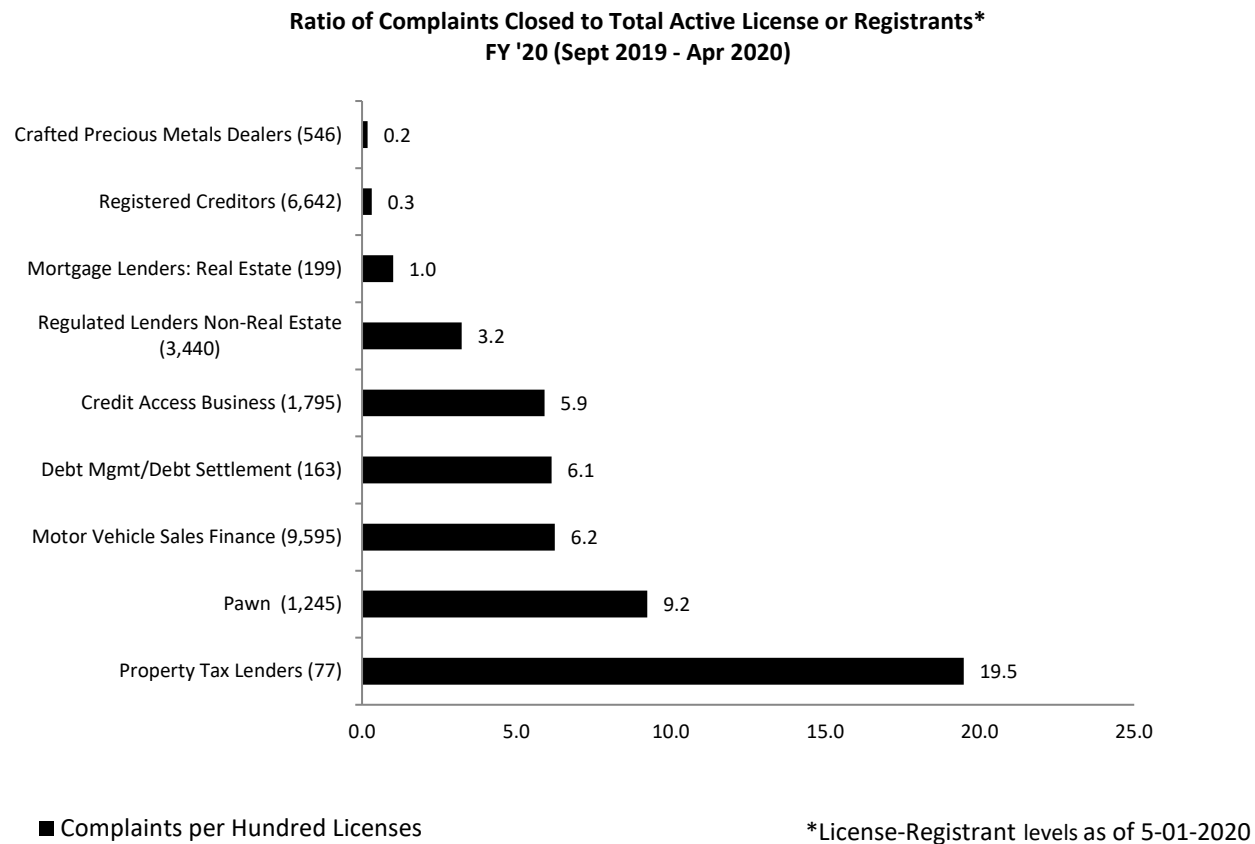
Complaints Closed
FY '20 (Sept 2019 - Apr 2020) Total: 1,140
FY '19 (Sept 2018 - Apr 2019) Total: 1,100



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.





Licensing Report- June 2020

Mirand Diamond, Director

Renewals

Pawn shops and pawn employee renewal has begun. Due to COVID-19 and in order to provide business owners ample time to renew, the renewal period has been extended through July 31. This gives pawn shops an additional month to renew licenses. The renewal period usually ends on June 30th. The OCCC also discounted the assessment fee for renewal by \$100, or approximately 15% which is consistent with the initial budget projections for revenue.

Applications Processing

The department continues to process applications and provide customer service in remote work status.

The total number of pending applications remains at a manageable level. The volume of incoming applications remains near 140 monthly. This monthly average has remained consistent for the past several fiscal years.

While pawn employee application processing continues, the volume of incoming applications has fallen due primarily to optional pawn employee licensing.

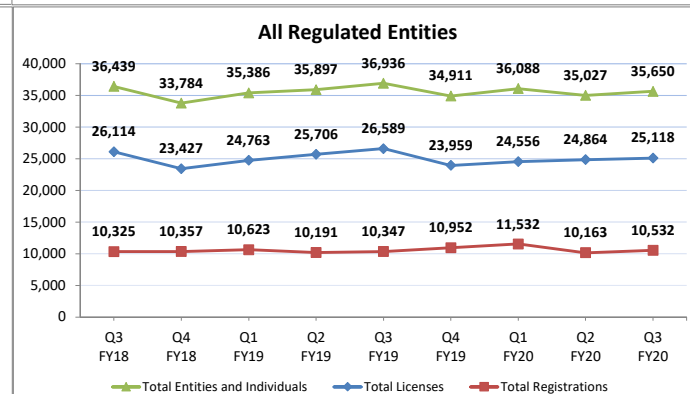
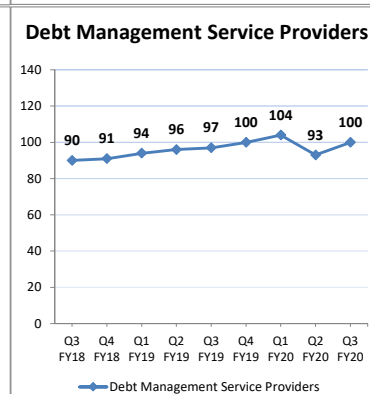
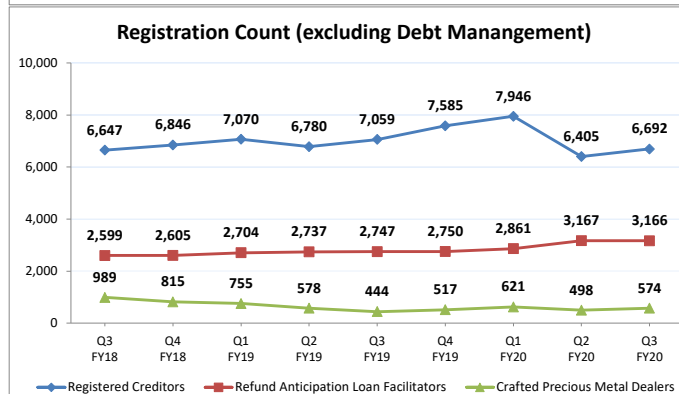
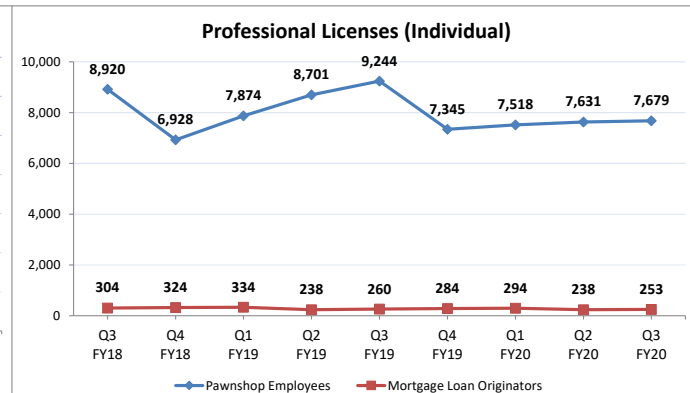
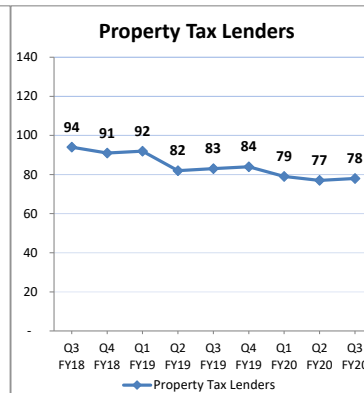
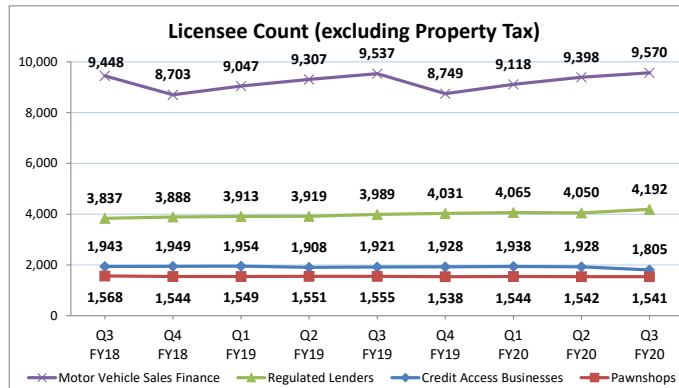
Other Updates

The department continues to work with IT and the agency's change advisory committee to enhance and perfect ALECS.

Regulated Entity Population Trends

The following charts reflect the number of OCCC regulated entities at the end of each quarter in fiscal years 2018 and 2019 to current data.

Number of OCCC Regulated Entities Quarterly Comparison of FY18-20





ADMINISTRATION REPORT

COMMUNICATIONS

On May 1, 2020, Commissioner Pettijohn, Director of Consumer Protection Huffman Lewis, General Counsel Michael Rigby, and Director of Licensing Mirand Diamond conducted an OCCC staff update by webinar. The webinar provided an update on agency operations and discussed available COVID-19 resources as well as steps to help mitigate the spread of the virus in the workplace. Although in-person presentations to regulatory entities and other regulatory groups have been postponed, agency staff did provide two stakeholder meetings by webinar as follows:

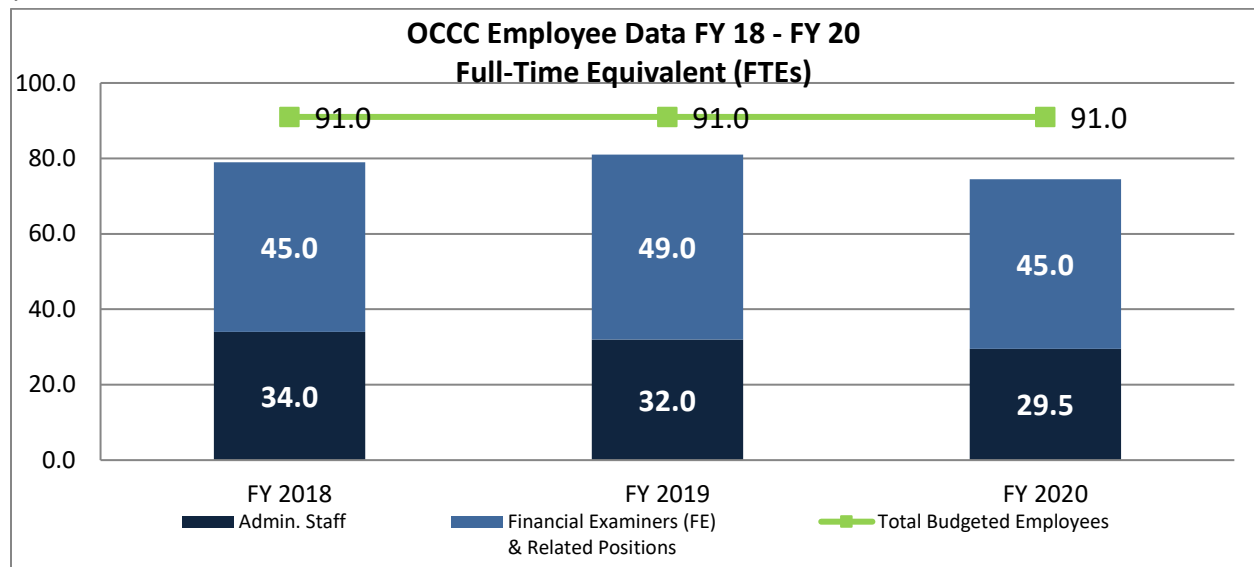
- On May 19, 2020, Deputy General Counsel Matthew Nance conducted a Crafted Precious Metal Dealers Rule Review Stakeholder meeting by webinar.
- On May 20, 2020, Deputy General Counsel Matthew Nance conducted a Credit Access Business Rule Review Stakeholder meeting by webinar.

HUMAN RESOURCES

In this reporting period key measure, activities from February to the end of May 2020, the OCCC is currently staffed with a total of 74.5 FTEs (full-time equivalent and one part-time). Currently the agency does not have any posted vacancies.

Vacancy		Status
No posted vacancies at this time		

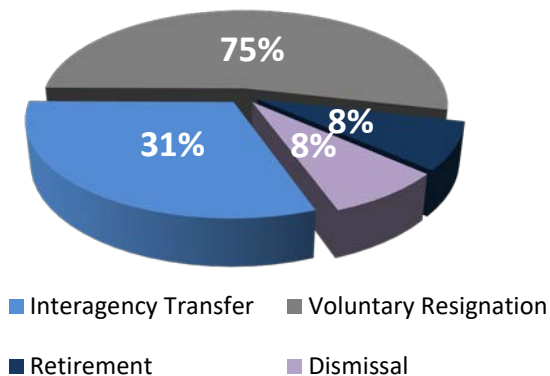
The following chart compares administrative staff vs. financial examiners (FEs) for the last three fiscal years.



The turnover rate as of May 2020 is 16.4%, and the chart below represents FY20 data.

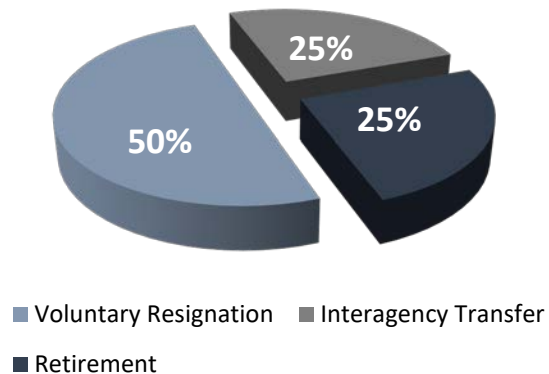
OCCC Turnover Categories
FY 20 - All Employees
 (09/01/19 - 5/31/2020)

13 total - 4 Interagency Transfer, 7 Voluntary Resignations, 1 Retirement and 1 Dismissal.



OCCC Turnover
FY 20 - FE Series
 (09/01/19 - 5/31/2020)

4 total - 2 Voluntary Resignation, 1 Interagency Transfer and 1 Retirement.



In accordance with Families First Coronavirus Response Act (FFCRA) and the Coronavirus Aid, Relief and Economic Security (DARES) Act, the OCCC has established a temporary policy, effective dates April 1, 2020 through December 31, 2020. The Act provides employees with Emergency Paid Sick leave and Emergency Expanded Family and Medical Leave for specified reasons related to COVID-19.

Human Resources updated Policy #509 – Standards of Conduct, and Policy #511 – Separation from Employment. These updates will be reflected in the Employees Manual.

FINANCIAL EDUCATION

The Financial Education Department partnered with Employees Retirement System (ERS) to present three Financial Fitness webinars during April and May. The webinars were well received and provided financial education to over eight-hundred individuals. The agency is planning another budget and credit webinar series in partnership with ERS during the month of August. Currently, the agency is not providing face to face education, but is hopeful to be able to resume in-person financial educational services as soon as possible.

The first period of the 2020-2021 TFEF grant cycle ends on June 30th and report submissions are due at the end of July. Agency staff will be conducting a webinar for grant recipients this month to review submission procedures and reporting requirements.

INFORMATION TECHNOLOGY

Physical Facilities and Hardware

OCCC IT procured and installed a new Cisco firewall with increased VPN capacity as a needed response to greater teleworking demand imposed by the Covid-19 pandemic response. Operation has been seamless from the end-user experience.

Increased teleworking has identified some limitations in the computer fleet, especially relative to the emerging use of videoconferencing. IT has procured twelve new laptops which deployment will prioritize replacing these constrained endpoints.

IT has configured a virtual Windows Server Update Service (WSUS) which downloads Microsoft Windows updates and distributes the latest set to all agency endpoint computers on a monthly, off-hours schedule. This will maintain the computer fleet with a standard operating system. The server is in test and was successful with the May deployment of updates.

Security & Software

All agency VMs using a Linux operating system have been upgraded to SUSE 12 service pack 5, which includes security and operational enhancements.

IT and senior staff completed the bi-annual DIR Security Plan and Vulnerability Assessment and submitted these documents.



Accounting Report- June 2020

Mirand Diamond, Director

Staffing

There have been some recent staffing changes within the accounting department. The previous manager, Christina Cuellar-Hoke, submitted her resignation in May and leadership is deciding how best to fill that position to meet the needs of the accounting department, and the agency as a whole.

Additionally a new Accountant III started with the agency in April and has begun training on various accounting tasks.

Budget

The department has begun preparing for the FY 2021 budget. The accounting staff will gather requests and begin work on the budget in the month of June.

Annual Financial Report

The department has also started planning for the annual financial report. Most staff plan to attend trainings on this topic, provided that cancellations do not occur due to COVID-19.

Procedures

The department has identified tasks that need procedures written, or reviewed and updated. A log of necessary procedures has been drafted and will be updated and supplemented as other tasks are identified or procedures are completed.



Legal Department Report

Michael Rigby, General Counsel

June 2020

Enforcement Report

VIP Finance of Texas, Inc.

On June 1, 2020, the OCCC entered an agreed order with VIP Finance of Texas, Inc., to settle the OCCC's enforcement action against VIP. 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, charging unreasonable automobile club fees, and making false and misleading representations about loan terms. In the agreed order, VIP acknowledges these violations, agrees to immediately cease entering new transactions, agrees to cease doing all business by March 31, 2021 (including collecting on existing transactions), and agrees to file monthly status reports with the OCCC. On June 2, the OCCC filed an unopposed motion to dismiss the pending case in the State Office of Administrative Hearings (SOAH).

In a related case, VIP's lawsuit against the OCCC in Dallas district court has been dismissed. VIP filed its lawsuit in 2018, arguing that the OCCC's enforcement action was barred because of a 1998 Dallas district court judgment. On May 23, 2019, the Dallas court of appeals ruled in the OCCC's favor (case no. 05-18-00198-CV), dismissing the Dallas district court case, reversing the district court's denial of the OCCC's plea to the jurisdiction, and reversing the district court's temporary injunction. VIP filed a petition for review with the Texas Supreme Court to appeal the case, but the Supreme Court denied VIP's petition on April 3, 2020. VIP did not file a motion for rehearing on the denial by the April 20 deadline. On May 13, the Dallas court of appeals issued its mandate dismissing VIP's lawsuit, and issued a bill of costs ordering VIP to pay the OCCC's costs of appeal.

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 May 31, 2020				
	FYTD 2020	FY 2019	FY 2018	FY 2017
Injunction Actions				
Crafted Precious Metal Dealer	0	0	0	0
Credit Access Business	27	53	27	47
Debt Management Provider	9	10	5	2
Manufactured Housing	0	0	0	1
Motor Vehicle Sales Finance	53	20	19	31
Pawnshop	43	82	39	37
Pawnshop Employee	0	67	48	69
Property Tax Lender	0	8	2	2
Registered Creditor	1	0	1	1
Regulated Lender	49	22	12	37
Residential Mortgage Loan Originator	0	0	1	1
Total Injunction Actions	182	262	154	230
Administrative Penalty Actions				
Crafted Precious Metal Dealer	1	0	0	0
Credit Access Business	11	14	6	23
Debt Management Provider	2	0	1	0
Motor Vehicle Sales Finance	9	19	26	106
Pawnshop	29	12	6	3
Pawnshop Employee	0	0	0	0
Property Tax Lender	1	6	6	2
Regulated Lender	18	7	0	13
Residential Mortgage Loan Originator	0	0	0	0
Total Administrative Penalty Actions	71	58	45	147
Revocation / Suspension Actions				
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	1	0	0	1
Residential Mortgage Loan Originator	0	0	0	0
Total Revocation / Suspension Actions	1	2	1	8
App. Denial and Protest Actions				
Credit Access Business	0	0	0	0
Motor Vehicle Sales Finance	3	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
Total App. Denial and Protest Actions	3	2	0	3
Total Actions Closed	257	324	200	388

The table below includes data on performance measures the legal department is tracking.

September 1, 2019, through May 31, 2020	
Cases Opened	137
Cases Closed	257
Average Number of Days to Close an Enforcement Action	135
Cases referred to SOAH	1
Contested Cases Heard at SOAH	1
Enforcement Actions Taken	232

The OCCC has no SOAH hearings scheduled between June 1, 2020, and July 31, 2020.

Litigation

CAB Municipal Ordinance Litigation

TitleMax of Texas, Inc. v. City of Austin is a pending case involving a challenge to the City of Austin's credit access business (CAB) ordinance. The Austin ordinance contains requirements and limitations for payday or title loans obtained by a CAB, including a limit on the number of installment payments. TitleMax alleges that the Austin ordinance is preempted by Chapter 393 of the Texas Finance Code. In November 2019, a Travis County district court ruled against TitleMax, finding that the court had no jurisdiction to hear TitleMax's claims (case no. D-1-GN-19-002613). TitleMax appealed the case to the Austin court of appeals in December 2019. The case was transferred to the Houston court of appeals (1st district), which has scheduled briefing in the case. The case number in the Houston court of appeals is 01-20-00071-CV.

On May 21, the City of Austin amended its ordinance to apply to credit services organizations generally, not just to CABs that obtain payday or title loans.

Home Equity Lending Litigation

On April 24, 2020, the Texas Supreme Court issued a decision in *Federal Home Loan Mortgage Corp. v. Zepeda*, case no. 19-0712. The court found that a lender is entitled to equitable subrogation in a home equity loan, even if it fails to correct a curable defect in the loan documents under Article XVI, Section 50 of the Texas Constitution. Equitable subrogation occurs when a lender pays off a previous valid lien, and allows the lender to step into the prior lienholder's shoes and assume a security interest in the property.

Rule Actions

At the June meeting, the OCCC is presenting the following rule actions:

- Adoption of amendments to 7 TAC Chapter 90 (relating to plain language contracts for regulated loans), resulting from rule review.
- Readoption of Chapter 83, Subchapter B (relating to credit access businesses), as well as proposed amendments to this subchapter, resulting from rule review.
- Readoption of Chapter 85, Subchapter B (relating to crafted precious metal dealers), as well as proposed amendments to this subchapter, resulting from rule review.

- Proposed amendments to Chapter 89 (relating to property tax lenders), concerning sworn documents and payoffs of liens for individual properties.

At future meetings, 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):

- August 2020: Chapter 82 (relating to administration)
Chapter 87 (relating to refund anticipation loan facilitators)
Chapters 151-153 (relating to home equity lending)
- October 2020: Chapter 84 (relating to motor vehicle sales finance)

Federal Rulemaking

OCC Interest Rate Authority Rule

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 May 29, 2020, the Office of the Comptroller of the Currency (OCC), the federal agency that regulates national banks, issued a final rule on the permissible interest rate when a national bank transfers a loan to another entity. The rule provides 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. The rule is scheduled to go into effect on August 3, 2020.

Attorney General Opinions

Opinion No. KP-0306 (Pawnshops and County Emergency Orders)

The Texas attorney general issued opinion no. KP-0306 on May 7, 2020. The opinion was requested on April 21 in response to a Dallas County emergency order that limited pawnshops to charging a 15% APR, limited one customer in a store at a time, and extended the number of days a pawnshop must hold pledged goods.

The attorney general's opinion concludes that a county has no authority to issue an emergency order that limits fees charged by pawnshops and extends the period for holding pledged goods, because the Texas Pawnshop Act provides exclusive authority to the Texas legislature on these issues. This analysis is consistent with a brief that the OCCC filed on April 27 concerning the request. The attorney general also concludes that the limitation on the number of customers conflicts with an executive order of the Texas governor, to the extent that a pawnshop can operate under state and federal guidelines with more than one customer on the premises at a time.

Advisory Bulletins

From April 1, 2020 to May 31, 2020, the OCCC issued one new advisory bulletin. This bulletin was issued jointly by the Joint Financial Regulatory Agencies (OCCC, Texas Department of Banking, Texas Department of Savings and Mortgage Lending, and Texas Credit Union Department). The bulletin includes guidance on coronavirus emergency measures for home equity lending, describing constitutional requirements for modifications and authorized locations for closing a home equity loan.

During April and May, the OCCC also revised its five advisory bulletins to licensees describing coronavirus emergency measures. The OCCC revised the bulletins to explain that the guidance is in effect through June 30, and to allow additional time for licensees to file quarterly and annual reports.

Official Interpretation Requests

From April 1, 2020 to May 31, 2020, the OCCC did not receive any requests for official interpretations. As of May 31, 2020, there were no pending requests for official interpretations.

Public Information Requests

April 1, 2020, through May 31, 2020	
Requests Received	30
Requests Closed	22
Requests Withdrawn	2
Requests Referred to Office of Attorney General	2
Average Number of Days to Address a Public Information Request	1.5

OAG Determination OR2020-12144

The OCCC received a public information request seeking the summary, supplementary documents, and correspondence regarding a complaint filed with the OCCC. This included contracts between the complainant and licensee. The OCCC referred the request of the Office of the Attorney General, and sought to withhold financial information contained in those documents. The OAG agreed that the information was confidential based on the doctrine of common law privacy, which protects information that is highly intimate or embarrassing and not of legitimate concern to the public.

OAG Determination OR2020-13765

The OCCC received a public information request seeking a case file from an enforcement action. This included notes from and information gathered in an investigation, and a referral to the legal department. The OCCC referred the request of the Office of the Attorney General, and sought to withhold those documents. The OAG agreed that the information was confidential based on Texas Finance Code Section 14.2015, making information gathered in an investigation confidential, and the attorney client privilege.

Gifts Received by the OCCC

From April 1, 2020 to May 31, 2020, the OCCC received no gifts.

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B. OFFICE OF CONSUMER CREDIT COMMISSIONER

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 5, Chapter 90, Concerning Chapter 342, Plain Language Contract Provisions, Resulting from Rule Review

PURPOSE: The purpose of the amendments to 7 TAC Chapter 90 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. The amendments are intended to clarify requirements for submitting a non-standard plain language contract, and to provide additional model clauses that licensees may use in contracts for regulated loans under Texas Finance Code, Chapter 342, Subchapter E or F.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the amendments to 7 TAC Chapter 90 without changes to the proposed text previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve the amendments to 7 TAC Chapter 90.

Title 7. Banking and Securities

Part 5. Office of Consumer Credit Commissioner

Chapter 90. Chapter 342, Plain Language Contract Provisions

The Finance Commission of Texas (commission) adopts amendments to §90.104 (relating to Non-Standard Contract Filing Procedures), §90.202 (relating to Contract Provisions), §90.203 (relating to Model Clauses), §90.204 (relating to Permissible Changes), §90.302 (relating to Contract Provisions), §90.303 (relating to Model Clauses), §90.304 (relating to Permissible Changes), §90.404 (relating to Permissible Changes), §90.504 (relating to Permissible Changes), and §90.604 (relating to Permissible Changes), in 7 TAC, Chapter 90, concerning Chapter 342, Plain Language Contract Provisions.

The commission adopts the amendments without changes to the proposed text as published in the May 1, 2020, issue of the *Texas Register* (45 TexReg 2791).

The commission received no written comments on the proposal.

In general, the purpose of the amendments to 7 TAC Chapter 90 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 90 was published in the *Texas Register* on January 31, 2020 (45 TexReg 775). The commission received no comments in response to that notice.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC received one informal precomment on the

rule text draft. The OCCC appreciates the thoughtful input provided by stakeholders.

The amendments are intended to clarify requirements for submitting a non-standard plain language contract, and to provide additional model clauses that licensees may use in contracts for regulated loans under Texas Finance Code, Chapter 342, Subchapter E or F.

The amendments to §90.104(c) provide clarity on the process for submitting a non-standard plain language contract for a regulated loan. These amendments specify that the contract must be submitted in accordance with the OCCC's instructions, and that PDF submissions must be text-searchable, must meet a size requirement, and may not be locked in a manner that prohibits comparison of different versions of the contracts. These amendments are intended to enable OCCC staff to efficiently and effectively review non-standard plain language contract submissions. If a PDF submission is not text-searchable (e.g., scanned paper contract or image-only PDF), or if the PDF has security restrictions that prohibit comparison, this prevents OCCC staff from efficiently and effectively reviewing contracts.

Amendments at §90.202(22) and §90.302(22) specify that the contract for a Subchapter E or Subchapter F loan may include a credit reporting clause. Amendments at §90.203(28) and §90.303(23) include the text of the model credit reporting clause. This text is based on Model Notice B-1 in the Consumer Financial Protection Bureau's Regulation V,

12 C.F.R. pt. 1022, app'x B, which states: "We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report." Amendments also add this clause to the model Subchapter E and Subchapter F model contracts attached as figures to §90.204 and §90.304.

In §90.203(b)(7), amendments update rate bracket amounts for loans under Subchapter E. These amounts are updated annually in the Texas Credit Letter, as provided by Texas Finance Code, §341.203 and §342.201. The updated dollar amounts in the amendments are the amounts that will be in effect starting July 1, 2020, as described in the February 4, 2020 issue of the Texas Credit Letter. In addition, an amendment at §90.203(b)(7)(A) specifies that the clauses in paragraph (A) are for transactions using the add-on method and the scheduled installment earnings method.

Amendments to §90.204, §90.304, §90.404, §90.504, and §90.604 add the phrase "Model Contracts" to the rule titles. These rules include model plain language contracts as attached figures. The amendments to the rule titles will help readers locate model contracts.

The amendments are adopted under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of plain language contracts, and to adopt model plain language contracts. In addition, Texas Finance Code, §342.551 authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342. Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 341 and 342.

Subchapter A. General Provisions

§90.104. Non-Standard Contract Filing Procedures

(a) Non-standard contracts. A non-standard contract is a contract that does not use the model contract provisions. Non-standard contracts submitted in compliance with the provisions of Texas Finance Code, §341.502(c) will be reviewed to determine that the contract is written in plain language.

(b) Certification of readability. Contract filings subject to this chapter must be accompanied by a certification signed by an officer of the licensee or the entity submitting the form on behalf of the licensee. The certification must state that the contract is written in plain language and that the contract can be easily understood by the average consumer. The certification must also state that the contract is printed in an easily readable font and type size, including a list of the typefaces used in the contract, the font sizes used in the contract, and the Flesch-Kincaid Grade Level score of the contract. The OCCC will prescribe the form of the certification.

(c) Filing requirements. Contract filings must be identified as to the transaction type. Contract filings must be submitted in accordance with the OCCC's instructions and the following requirements:

(1) Microsoft Word format. One copy must be submitted in a Microsoft Word format with the document having either a .doc or .docx extension. The Flesch-Kincaid

Grade Level score of the contract must be based on the Microsoft Word readability statistics function for the Microsoft Word version of the contract.

(2) PDF format. One copy must be submitted in a text-searchable PDF format so that the contract may be visually reviewed in its entirety. The page size must be 8.5 inches by 11 inches or 8.5 inches by 14 inches. The PDF may not be locked or restricted in a way that prohibits comparison of different versions of the contract.

(3) No other formats permitted. The OCCC will not accept paper filings or any other unlisted formats for non-standard contract filings.

(4) Maximum Flesch-Kincaid score. The maximum Flesch-Kincaid Grade Level scores for Chapter 342 contract filings are:

(A) grade 8 for Subchapter F (signature loans);

(B) grade 9 for Subchapter E (secured installment loans);

(C) grade 10 for Subchapter G, computed by scoring the note and security document in one continuous Microsoft Word document (home equity loans, second lien purchase money loans, and second lien home improvement contracts).

(d) Contact person. One person shall be designated as the contact person for each filing submitted. Each submission should provide the name, address, phone number, and fax number, if available, of the contact person for that filing. If the contracts are submitted by anyone other than the licensee itself, the contracts must be accompanied by a dated letter which contains a description of

the anticipated users of the contracts and designates the legal counsel or other designated contact person for that filing.

Subchapter B. Secured Consumer Installment Loans (Subchapter E)

§90.202. Contract Provisions

A Chapter 342, Subchapter E contract may include, but is not limited to, the following contract provisions to the extent not prohibited by law or regulation. If the licensee desires to exercise its rights under one of the following provisions, it must include the provision in the contract. A licensee who does not desire to apply a provision is not required to include it in the contract. For example, if a licensee does not take a security interest in the borrower's personal property, the provisions addressing security interests are not required. A licensee may also exclude non-relevant portions of a model clause. For example, a licensee who does not routinely finance certain insurance coverages may omit those non-applicable portions of the model clause. A Chapter 342, Subchapter E contract may contain the following provisions:

(1) - (21) (No change.)

(22) A credit reporting clause;

(23) [(22)] A savings clause stating that if any part of the contract is invalid, the rest of the contract remains valid; and

(24) [(23)] OCCC notice.

§90.203. Model Clauses

(a) Generally. These model clauses are the plain language rendition of contract clauses that have typically been stated in

technical legal terms. Nothing in this regulation prohibits a contract from including provisions that provide more favorable results for the borrower than those that would result from the use of a model clause.

(b) Model clauses for a Chapter 342, Subchapter E secured consumer installment loan contract.

(1) - (6) (No change.)

(7) Finance charge earnings and refund method. The model finance charge earnings and refund method clauses include rate bracket amounts that are updated annually in the Texas Credit Letter. The model finance charge earnings and refund method clause options read:

(A) For contracts using the add-on interest method and the scheduled installment earnings method, Texas Finance Code, §342.201(a):

(i) For use when the administrative fee is paid in cash or is not included in the cash advance on which interest is computed:

Figure: 7 TAC §90.203(b)(7)(A)(i) {See attached amendments.}

(ii) For use when the administrative fee is financed:

Figure: 7 TAC §90.203(b)(7)(A)(ii) {See attached amendments.}

(B) (No change.)

(C) For contracts using the scheduled installment earnings method, Texas Finance Code, §342.201(e):

(i) For use when the interest charge is computed by applying a daily rate to brackets under Texas Finance Code, §342.201(e-1)(1), and the administrative fee is paid in cash or is not included in the cash advance on which interest is computed:

Figure: 7 TAC §90.203(b)(7)(C)(i) {See attached amendments.}

(ii) For use when the interest charge is computed by applying a daily rate to the brackets under Texas Finance Code, §342.201(e-1)(1), and the administrative fee is financed:

Figure: 7 TAC §90.203(b)(7)(C)(ii) {See attached amendments.}

(iii) - (iv) (No change.)

(D) (No change.)

(E) For contracts using the true daily earnings method, Texas Finance Code, §342.201(e):

(i) For use when the interest charge is computed by applying a daily rate to the brackets under Texas Finance Code, §342.201(e-1)(1), and the administrative fee is paid in cash or is not included in the cash advance on which interest is computed:

Figure: 7 TAC §90.203(b)(7)(E)(i) {See attached amendments.}

(ii) For use when the interest charge is computed by applying a daily rate to the brackets under Texas Finance Code, §342.201(e-1)(1), and the administrative fee is financed:

Figure: 7 TAC §90.203(b)(7)(E)(ii) {See attached amendments.}

(iii) - (iv) (No change.)

(8) - (27) (No change.)

(28) Credit reporting. The Fair Credit Reporting Act, 15 U.S.C. §1681s-2(a)(7), generally requires a creditor to provide a notice to a consumer before furnishing negative information to a credit bureau. The model clause for credit reporting reads: "You may report information about my account to credit bureaus. Late payments, missed payments, or other defaults on my account may be reflected in my credit report."

§90.204. *Model Contracts; Permissible Changes*

(a) A licensee may consider making the following types of changes to the secured consumer installment loans plain language model clauses:

(1) - (6) (No change.)

(7) A sample model contract using the scheduled installment earnings method is presented in the following example.

Figure: 7 TAC §90.204(a)(7) {See attached amendments.}

(8) A sample model contract using the true daily earnings method is presented in the following example.

Figure: 7 TAC §90.204(a)(8) {See attached amendments.}

(9) (No change.)

(b) (No change.)

Subchapter C. Signature Loans (Subchapter F)

§90.302. Contract Provisions

A Chapter 342, Subchapter F contract may include, but is not limited to, the following contract provisions to the extent not prohibited by law or regulation. If the licensee desires to exercise its rights under one of the following provisions, it must include the provision in the contract. A licensee who does not desire to apply a provision is not required to include it in the contract. For example, if a licensee does not take a security interest in the borrower's personal property, the provisions addressing security interests are not required. A Chapter 342, Subchapter F contract may contain the following provisions.

(1) - (21) (No change.)

(22) A credit reporting clause;

(23) [~~(22)~~] OCCC notice;

(24) [~~(23)~~] An arbitration agreement;
and

(25) [~~(24)~~] A savings clause stating that if any part of the contract is invalid, all other parts remain valid.

§90.303. Model Clauses

(a) (No change.)

(b) Model clauses for a Chapter 342, Subchapter F signature loan contract.

(1) - (22) (No change.)

(23) Credit reporting. The Fair Credit Reporting Act, 15 U.S.C. §1681s-2(a)(7), generally requires a creditor to provide a notice to a consumer before furnishing negative information to a credit bureau. The model clause for credit reporting reads: "You may report information about my account to credit bureaus. Late payments, missed payments, or other defaults on my account may be reflected in my credit report."

§90.304. Model Contracts; Permissible Changes

(a) A licensee may consider making the following types of changes to the signature loans plain language model clauses:

(1) - (6) (No change.)

(7) A sample model contract using the add-on method is presented in the following example:

Figure: 7 TAC §90.304(a)(7) {See attached amendments.}

(8) A sample model contract using the scheduled installment earnings method is presented in the following example:

Figure: 7 TAC §90.304(a)(8) {See attached amendments.}

(9) A sample model contract using the true daily earnings method is presented in the following example:

Figure: 7 TAC §90.304(a)(9) {See attached amendments.}

(10) (No change.)

(b) (No change.)

Subchapter D. Second Lien Home Equity Loans (Subchapter G)

§90.404. Model Contracts; Permissible Changes

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

Subchapter E. Second Lien Purchase Money Loans (Subchapter G)

§90.504. Model Contracts; Permissible Changes

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

Subchapter F. Second Lien Home Improvement Contracts (Subchapter G)

§90.604. Model Contracts; Permissible Changes

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

Certification

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on June 19, 2020.

Matthew J. Nance
Deputy General Counsel
Office of Consumer Credit Commissioner

Amended Figure 7 TAC §90.203(b)(7)(A)(i)

(Add-on method under §342.201(a), administrative fee not financed)

"Interest will be calculated by using the add-on interest method. Add-on interest is calculated on the full amount of the cash advance and added as a lump sum to the cash advance for the full term of the loan. The interest charge will be:

- \$18.00 per \$100.00 per year on that portion of the cash advance that is \$2,190.00 or less; and
- \$8.00 per \$100.00 per year on that portion of the cash advance that is greater than \$2,190.00 through \$18,250.00.

You base the Finance Charge and the Total of Payments as if I will make each payment on the day it is due. I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. The amount I save will be figured using the scheduled installment earnings method as defined by the Texas Finance Code. I will not get a refund if the amount I save would be less than \$1.00."

Amended Figure 7 TAC §90.203(b)(7)(A)(ii)

(Add-on method under §342.201(a), administrative fee financed)

"The cash advance is \$____. Interest will be calculated by using the add-on interest method. Add-on interest is calculated on the full amount of the cash advance and added as a lump sum to the cash advance for the full term of the loan. The interest charge will be:

- \$18.00 per \$100.00 per year on that portion of the cash advance that is \$2,190.00 or less; and
- \$8.00 per \$100.00 per year on that portion of the cash advance that is greater than \$2,190.00 through \$18,250.00.

You base the Finance Charge and the Total of Payments as if I will make each payment on the day it is due. I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. The amount I save will be figured using the scheduled installment earnings method as defined by the Texas Finance Code. I will not get a refund if the amount I save would be less than \$1.00."

Amended Figure 7 TAC §90.203(b)(7)(C)(i)

(Scheduled installment earnings method under §342.201(e), administrative fee not financed)

"The annual rate of interest is: (1) 30% on the unpaid cash advance that is \$3,650.00 or less; (2) 24% on the unpaid cash advance that is greater than \$3,650.00 through \$7,665.00; and (3) 18% on the unpaid cash advance that is greater than \$7,665.00 through \$18,250.00. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. I will not get a refund if the refund would be less than \$1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment."

Amended Figure 7 TAC §90.203(b)(7)(C)(ii)

(Scheduled installment earnings method under §342.201(e), administrative fee financed)

"The cash advance is \$ _____. The annual rate of interest is: (1) 30% on the unpaid cash advance that is \$3,650.00 or less; (2) 24% on the unpaid cash advance that is greater than \$3,650.00 through \$7,665.00; and (3) 18% on the unpaid cash advance that is greater than \$7,665.00 through \$18,250.00. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code. The unpaid cash advance includes the administrative fee, but does not include late charges and returned check charges. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. I will not get a refund if the refund would be less than \$1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment."

Amended Figure 7 TAC §90.203(b)(7)(E)(i)

(True daily earnings method under §342.201(e), administrative fee not financed)

"The annual rate of interest is: (1) 30% on the unpaid cash advance that is \$3,650.00 or less; (2) 24% on the unpaid cash advance that is greater than \$3,650.00 through \$7,665.00; and (3) 18% on the unpaid cash advance that is greater than \$7,665.00 through \$18,250.00. This interest rate may not be the same as the Annual Percentage Rate. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment."

Amended Figure 7 TAC §90.203(b)(7)(E)(ii)

(True daily earnings method under §342.201(e), administrative fee financed)

"The cash advance is \$____. The annual rate of interest is: (1) 30% on the unpaid cash advance that is \$3,650.00 or less; (2) 24% on the unpaid cash advance that is greater than \$3,650.00 through \$7,665.00; and (3) 18% on the unpaid cash advance that is greater than \$7,665.00 through \$18,250.00. This interest rate may not be the same as the Annual Percentage Rate. The unpaid cash advance includes the administrative fee, but does not include late charges and returned check charges. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment."

Amended Figure: 7 TAC §90.204(a)(7) (342-E Scheduled Installment Earnings Note)

CONSUMER CREDIT DISCLOSURE - PROMISSORY NOTE

ACCOUNT / CONTRACT NO. _____

DATE OF NOTE _____

CREDITOR / LENDER _____

BORROWER _____

ADDRESS _____

ADDRESS _____

"I" and "me" and similar words mean each person who signs as a Borrower. "You" and "your" and similar words mean the Lender.

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate. % \$	FINANCE CHARGE The dollar amount the credit will cost me. \$	Amount Financed The amount of credit provided to me or on my behalf. \$	Total of Payments The amount I will have paid after I have made all payments as scheduled. \$
--	---	--	--

My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due

Security: You will have a security interest in the following described collateral _____.

If checked, Borrower is giving a security interest in:

☐ Motor Vehicle ☐ Property Purchased with the Money from this Loan ☐ Personal Property ☐ Other

Late Charge: If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment.

Prepayment: If I pay off early, I may be entitled to a refund of part of the Finance Charge and I will not have to pay a penalty.

Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

I promise to pay the Total of Payments to the order of you, the Lender. I will make the payments at your address above. I will make the payments on the dates and in the amounts shown in the Payment Schedule. If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment. If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due.

I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled. [Finance Charge Earnings and Refund Method clause]

If I ask for more time to make any payment and you agree, I will pay more interest to extend the payment. The extra interest will be figured under the Finance Commission rules. I agree to pay you a fee of up to \$30 for a returned check. You can add the fee to the amount I owe or collect it separately.

OPTION A

ITEMIZATION OF AMOUNT FINANCED

1. Amount Financed: (2+3+4) \$ _____
2. Amount given to me directly \$ _____
3. Amount paid on my account (Net Balance - Prior Account) \$ _____
4. Amount paid to others on my behalf (A + B + C + D + E + F) \$ _____
(You may be retaining a portion of this amount.)
 - A. Cost of personal property insurance paid to insurance company \$ _____
 - B. Cost of single-interest insurance paid to insurance company \$ _____
 - C. Cost of optional credit insurance paid to insurance company or companies
Life \$ _____
Disability \$ _____
Involuntary Unemployment Insurance \$ _____
Total C: \$ _____
 - D. Non-Filing Insurance paid to insurance company \$ _____
 - E. Official fees paid to government agencies \$ _____
 - F. Payable to: \$ _____
Payable to: \$ _____
Payable to: \$ _____
Total F: \$ _____
5. Prepaid Finance Charge (Administrative Fee) \$ _____

I will be in default if:

- I do not timely make a payment;
- I break any promise I made in this agreement;
- I allow a judgment to be entered against me or the collateral;
- I sell, lease, or dispose of the collateral;
- I use the collateral for an illegal purpose; or
- you believe in good faith that I am not going to keep any of my promises.

If there is more than one Borrower, each Borrower agrees to keep all of the promises in the loan documents.

PROPERTY INSURANCE: I must keep the collateral insured against damage or loss in the amount I owe. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas. If I buy personal property insurance through you, the rate is not fixed or approved by the Texas Department of Insurance.

I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss. If I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. If you obtain collateral protection insurance, you will mail notice to my last known address.

☐ Personal Property Insurance \$ _____ Term _____
☐ Single Interest Insurance (Vehicle) \$ _____ Term _____

Credit insurance is optional.

Credit life insurance, credit disability insurance and involuntary unemployment insurance are not required to obtain credit. They will not be provided unless I sign and agree to pay the extra cost.

☐ Credit Life, one borrower \$ _____ ☐ Credit Life, both borrowers \$ _____ Term _____
☐ Credit Disability, one borrower \$ _____ ☐ Credit Disability, both borrowers \$ _____ Term _____
☐ Credit Involuntary Unemployment Insurance, one borrower \$ _____ Term _____

☐ **If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.**

I want the insurance above.

Borrower's signature: _____ Date: _____

Co-Borrower's signature: _____ Date: _____

I agree:

1. You can mail any notice to me at my last address in your records. Your duty to give me notice will be satisfied when you mail it.
2. I promise that all information I gave you is true.
3. If I am in default, you may require me to repay the entire unpaid principal balance, and any accrued interest at once. You don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe. If you don't enforce your rights every time, you can still enforce them later. If this debt is referred to an attorney for collection, I will pay any attorney fees set by the court plus court costs. (Optional: You may report information about my account to credit bureaus. Late payments, missed payments, or other defaults on my account may be reflected in my credit report.)
4. I understand that you may seek payment from only me without first looking to any other Borrower.
5. I don't have to pay interest or other amounts that are more than the law allows.
6. If any part of this contract is declared invalid, the rest of the contract remains valid.
7. **This written loan agreement is the final agreement between you and me and may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between you and me relating to this loan agreement. Any change to this agreement must be in writing. Both you and I have to sign written agreements.**
8. If I am giving collateral for this loan, I will see the separate security agreement for more information and agreements.
9. Federal law and Texas law apply to this contract.

For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). The lender is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov.

I agree to the terms of this contract. I received a completed copy on _____.

X _____
Borrower
X _____
Borrower

Recibí un resumen del contrato en español. _____
I received a summary of the contract in Spanish.

Amended Figure: 7 TAC §90.204(a)(8) (342-E True Daily Earnings Note)

CONSUMER CREDIT DISCLOSURE - PROMISSORY NOTE

ACCOUNT / CONTRACT NO. _____

DATE OF NOTE _____

CREDITOR / LENDER _____

BORROWER _____

ADDRESS _____

ADDRESS _____

"I" and "me" and similar words mean each person who signs as a Borrower. "You" and "your" and similar words mean the Lender.

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate. % \$	FINANCE CHARGE The dollar amount the credit will cost me. \$	Amount Financed The amount of credit provided to me or on my behalf. \$	Total of Payments The amount I will have paid after I have made all payments as scheduled. \$
--	---	---	---

My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due

Security: You will have a security interest in the following described collateral _____.

If checked, Borrower is giving a security interest in:

☐ Motor Vehicle ☐ Property Purchased with the Money from this Loan ☐ Personal Property ☐ Other

Late Charge: If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment.

Prepayment: If I pay off early, I will not have to pay a penalty.

Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

I promise to pay the cash advance plus the accrued interest to the order of you, the Lender. I will make the payments at your address above. I will make the payments on the dates and in the amounts shown in the Payment Schedule. If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment. [If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due.]

I can make any payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled. [Finance Charge Earnings and Refund Method clause]

If I ask for more time to make any payment and you agree, I will pay more interest to extend the payment. The extra interest will be figured under the Finance Commission rules. I agree to pay you a fee of up to \$30 for a returned check. You can add the fee to the amount I owe or collect it separately.

I will be in default if:

- I do not timely make a payment;
- I break any promise I made in this agreement;
- I allow a judgment to be entered against me or the collateral;
- I sell, lease, or dispose of the collateral;
- I use the collateral for an illegal purpose; or
- you believe in good faith that I am not going to keep any of my promises.

If there is more than one Borrower, each Borrower agrees to keep all of the promises in the loan documents.

OPTION A

ITEMIZATION OF AMOUNT FINANCED

1. Amount Financed: (2+3+4) \$ _____
2. Amount given to me directly \$ _____
3. Amount paid on my account (Net Balance - Prior Account) \$ _____
4. Amount paid to others on my behalf (A + B + C + D + E + F) \$ _____
(You may be retaining a portion of this amount.)
 - A. Cost of personal property insurance paid to insurance company \$ _____
 - B. Cost of single-interest insurance paid to insurance company \$ _____
 - C. Cost of optional credit insurance paid to insurance company or companies
 - Life \$ _____
 - Disability \$ _____
 - Involuntary Unemployment Insurance \$ _____
 - Total C: \$ _____
 - D. Non-Filing Insurance paid to insurance company \$ _____
 - E. Official fees paid to government agencies \$ _____
 - F. Payable to: _____ \$ _____
Payable to: _____ \$ _____
Payable to: _____ \$ _____
Total F: \$ _____
5. Prepaid Finance Charge (Administrative Fee) \$ _____

PROPERTY INSURANCE: I must keep the collateral insured against damage or loss in the amount I owe. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas. If I buy personal property insurance through you, the rate is not fixed or approved by the Texas Department of Insurance.

I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss. If I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. If you obtain collateral protection insurance, you will mail notice to my last known address.

☐ Personal Property Insurance \$ _____ Term _____

☐ Single Interest Insurance (Vehicle) \$ _____ Term _____

Credit insurance is optional.

Credit life insurance, credit disability insurance and involuntary unemployment insurance are not required to obtain credit. They will not be provided unless I sign and agree to pay the extra cost.

☐ Credit Life, one borrower \$ _____ ☐ Credit Life, both borrowers \$ _____ Term _____

☐ Credit Disability, one borrower \$ _____ ☐ Credit Disability, both borrowers \$ _____ Term _____

☐ Credit Involuntary Unemployment Insurance, one borrower \$ _____ Term _____

☐ **If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.**

I want the insurance above.

Borrower's signature: _____ Date: _____

Co-Borrower's signature: _____ Date: _____

I agree:

1. You can mail any notice to me at my last address in your records. Your duty to give me notice will be satisfied when you mail it.
2. I promise that all information I gave you is true.
3. If I am in default, you may require me to repay the entire unpaid principal balance, and any accrued interest at once. You don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe. If you don't enforce your rights every time, you can still enforce them later. If this debt is referred to an attorney for collection, I will pay any attorney fees set by the court plus court costs. (Optional: You may report information about my account to credit bureaus. Late payments, missed payments, or other defaults on my account may be reflected in my credit report.)
4. I understand that you may seek payment from only me without first looking to any other Borrower.
5. I don't have to pay interest or other amounts that are more than the law allows.
6. If any part of this contract is declared invalid, the rest of the contract remains valid.
7. **This written loan agreement is the final agreement between you and me and may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between you and me relating to this loan agreement. Any change to this agreement must be in writing. Both you and I have to sign written agreements.**
8. If I am giving collateral for this loan, I will see the separate security agreement for more information and agreements.
9. Federal law and Texas law apply to this contract.

For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). The lender is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov.

I agree to the terms of this contract. I received a completed copy on _____.

X _____

Borrower

X _____

Borrower

Recibí un resumen del contrato en español. _____

I received a summary of the contract in Spanish.

Amended Figure: 7 TAC §90.304(a)(7) (342-F Add-On Note)

CONSUMER CREDIT DISCLOSURE – PROMISSORY NOTE

ACCOUNT / CONTRACT NO. _____ DATE OF NOTE _____
CREDITOR / LENDER _____ BORROWER _____
ADDRESS _____ ADDRESS _____

"I" and "me" means each person who signs as a Borrower. "You" means the Lender.

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate. %	FINANCE CHARGE The dollar amount the credit will cost me. \$	Amount Financed The amount of credit provided to me or on my behalf. \$	Total of Payments The amount I will have paid after I have made all payments as scheduled. \$
---	---	---	---

My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due

Security: You will have a security interest in the following described collateral _____.

Late Charge: If any part of a payment is unpaid for 10 days after it is due, (Option 1:) the late charge will be 5% of the scheduled payment. OR (Option 2:) you can charge me a late charge. If the amount financed is less than \$100, the late charge will be 5% of the amount of the installment. If the amount financed is \$100 or more, the late charge will be the greater of \$10 or 5% of the amount of the installment.

Prepayment: If I pay off early, I may be entitled to a refund of part of the finance charge.

Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

ITEMIZATION OF THE FINANCE CHARGE	
Acquisition Charge.....	\$ _____
Installment Account Handling Charge.....	\$ _____

ITEMIZATION OF THE AMOUNT FINANCED	
Previous Account.....#	_____
Late Charge on Previous Account.....	\$ _____
Previous Balance.....	\$ _____
Less Refund.....	\$ _____
Net Balance Renewed.....	\$ _____
Cash to me.....	\$ _____
Amount Financed.....	\$ _____

I promise to pay the Total of Payments to the order of you, the Lender. I will make the payments at your address above. I will make the payments on the dates and in the amounts shown in the Payment Schedule. If I don't pay all of the payment within 10 days after it is due, you can charge me a late charge. (Option 1:) The late charge will be 5% of the scheduled payment. OR (Option 2:) If the amount financed is less than \$100, the late charge will be 5% of the amount of the installment. If the amount financed is \$100 or more, the late charge will be the greater of \$10 or 5% of the amount of the installment. If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be at a rate of 18% per year and will begin the day after the final payment becomes due.

I can make a whole payment early. The acquisition charge on this loan will not be refunded if I pay off early. If I pay all I owe before the beginning of the last monthly period, I will save part of the installment account handling charge. You will figure the amount I save by the sum of the periodic balances method. This method is explained in the Finance Commission rules. You don't have to refund or credit any amount less than \$1.00.

If I ask for more time to make any payment and you agree, I will pay more interest to extend the payment. The extra interest will be figured under the Finance Commission rules. I agree to pay you a fee of up to \$30 for a returned check. You can add the fee to the amount I owe or collect it separately.

If I break any of my promises in this document, you can demand that I immediately pay all that I owe. You can also do this if you in good faith believe that I am not going to be willing or able to keep all of my promises. I agree that you don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe.

(Optional: You may report information about my account to credit bureaus. Late payments, missed payments, or other defaults on my account may be reflected in my credit report.)

If I am giving collateral for this loan, I will see the separate security agreement for more information and agreements.

I will keep all of my promises in this document. If there is more than one Borrower, each Borrower agrees to keep all of the promises in the loan document. I promise that all information I gave you is true.

If you don't enforce your rights every time, you can still enforce them later. Federal law and Texas law apply to this contract. I don't have to pay interest or other amounts that are more than the law allows.

Any change to this agreement has to be in writing. Both you and I have to sign it. You can mail any notice to me at my last address in your records. Your duty to give me notice will be satisfied when you mail it.

For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). The lender is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov.

X _____
Borrower

X _____
Co-Borrower

Recibí un resumen del contrato en español. _____
I received a summary of the contract in Spanish.

Amended Figure: 7 TAC §90.304(a)(8) (342-F Scheduled Installment Earnings Note)

CONSUMER CREDIT DISCLOSURE – PROMISSORY NOTE

ACCOUNT / CONTRACT NO. _____ DATE OF NOTE _____
CREDITOR / LENDER _____ BORROWER _____
ADDRESS _____ ADDRESS _____

"I" and "me" means each person who signs as a Borrower. "You" means the Lender.

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate. %	FINANCE CHARGE The dollar amount the credit will cost me. \$	Amount Financed The amount of credit provided to me or on my behalf. \$	Total of Payments The amount I will have paid after I have made all payments as scheduled. \$
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My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due

Security: You will have a security interest in the following described collateral _____.

Late Charge: If any part of a payment is unpaid for 10 days after it is due, (Option 1:) the late charge will be 5% of the scheduled payment. OR (Option 2:) you can charge me a late charge. If the amount financed is less than \$100, the late charge will be 5% of the amount of the installment. If the amount financed is \$100 or more, the late charge will be the greater of \$10 or 5% of the amount of the installment.

Prepayment: If I pay off early, I may be entitled to a refund of part of the finance charge and I will not have to pay a penalty.

Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

ITEMIZATION OF THE FINANCE CHARGE	
Acquisition Charge.....	\$ _____
Interest Charge (Installment Account Handling Charge)...	\$ _____

ITEMIZATION OF THE AMOUNT FINANCED	
Previous Account.....#	_____
Late Charge on Previous Account.....	\$ _____
Previous Balance.....	\$ _____
Less Refund.....	\$ _____
Net Balance Renewed.....	\$ _____
Cash to me.....	\$ _____
Amount Financed.....	\$ _____

I promise to pay the Total of Payments to the order of you, the Lender. I will make the payments at your address above. I will make the payments on the dates and in the amounts shown in the Payment Schedule. I can make a whole payment early.

The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the interest charge (also called the installment account handling charge) by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid principal balance. At the start of the loan, the unpaid principal balance equals the Amount Financed. The unpaid principal balance does not include the acquisition charge, the interest charge, late charges, charges to extend a payment, or returned check fees. You calculate the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply each of my payments in this order: (1) part of the acquisition charge (figured on a straight-line basis under Finance Commission rules), (2) late charges, (3) returned check fees, (4) accrued interest, and (5) the unpaid principal balance. If I pay off the loan in full early, I may save part of the interest charge. However, you can still collect the unpaid acquisition charge, and the acquisition charge will not be refunded. You don't have to refund or credit any amount less than \$1.00.

If I don't pay all of the payment within 10 days after it is due, you can charge me a late charge. (Option 1:) The late charge will be 5% of the scheduled payment. OR (Option 2:) If the amount financed is less than \$100, the late charge will be 5% of the amount of the installment. If the amount financed is \$100 or more, the late charge will be the greater of \$10 or 5% of the amount of the installment. If I don't pay all I owe by the date the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be at a rate of 18% per year and will begin the day after the final payment becomes due. If I ask for more time to make any payment and you agree, I will pay more interest to extend the payment. The extra interest will be figured under the Finance Commission rules. I agree to pay you a fee of up to \$30 for a returned check. You can add the fee to the amount I owe or collect it separately.

If I break any of my promises in this document, you can demand that I immediately pay all that I owe. You can also do this if you in good faith believe that I am not going to be willing or able to keep all of my promises. I agree that you don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe.

(Optional: You may report information about my account to credit bureaus. Late payments, missed payments, or other defaults on my account may be reflected in my credit report.)

If I am giving collateral for this loan, I will see the separate security agreement for more information and agreements.

I will keep all of my promises in this document. If there is more than one Borrower, each Borrower agrees to keep all of the promises in the loan document. I promise that all information I gave you is true.

If you don't enforce your rights every time, you can still enforce them later. Federal law and Texas law apply to this contract. I don't have to pay interest or other amounts that are more than the law allows.

Any change to this agreement has to be in writing. Both you and I have to sign it. You can mail any notice to me at my last address in your records. Your duty to give me notice will be satisfied when you mail it.

For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). The lender is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov.

X _____
Borrower
X _____
Co-Borrower

Recibí un resumen del contrato en español. _____
I received a summary of the contract in Spanish.

Amended Figure: 7 TAC §90.304(a)(9) (342-F True Daily Earnings Note)

CONSUMER CREDIT DISCLOSURE – PROMISSORY NOTE

ACCOUNT / CONTRACT NO. _____ DATE OF NOTE _____
CREDITOR / LENDER _____ BORROWER _____
ADDRESS _____ ADDRESS _____

"I" and "me" means each person who signs as a Borrower. "You" means the Lender.

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate. %	FINANCE CHARGE The dollar amount the credit will cost me. \$	Amount Financed The amount of credit provided to me or on my behalf. \$	Total of Payments The amount I will have paid after I have made all payments as scheduled. \$
---	---	--	--

My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due

Security: You will have a security interest in the following described collateral _____.

Late Charge: If any part of a payment is unpaid for 10 days after it is due, (Option 1:) the late charge will be 5% of the scheduled payment. OR (Option 2:) you can charge me a late charge. If the amount financed is less than \$100, the late charge will be 5% of the amount of the installment. If the amount financed is \$100 or more, the late charge will be the greater of \$10 or 5% of the amount of the installment.

Prepayment: If I pay off early, I will not have to pay a penalty.

Additional Information: See the contract documents for any additional information about nonpayment, default, and any required repayment in full before the scheduled date.

ITEMIZATION OF THE FINANCE CHARGE	
Acquisition Charge.....	\$ _____
Interest Charge (Installment Account Handling Charge)...	\$ _____

ITEMIZATION OF THE AMOUNT FINANCED	
Previous Account.....#	_____
Late Charge on Previous Account.....	\$ _____
Previous Balance.....	\$ _____
Less Refund.....	\$ _____
Net Balance Renewed.....	\$ _____
Cash to me.....	\$ _____
Amount Financed.....	\$ _____

I promise to pay the unpaid principal balance plus the accrued interest to the order of you, the Lender. I will make the payments at your address above. I will make the payments on the dates and in the amounts shown in the Payment Schedule. I can make any payment early.

The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the interest charge (also called the installment account handling charge) by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid principal balance. At the start of the loan, the unpaid principal balance equals the Amount Financed. The unpaid principal balance does not include the acquisition charge, the interest charge, late charges, charges to extend a payment, or returned check fees. You calculate the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. You will apply each of my payments in this order: (1) part of the acquisition charge (figured on a straight-line basis under Finance Commission rules), (2) late charges, (3) returned check fees, (4) accrued interest, and (5) the unpaid principal balance. If I pay off the loan in full early, you can still collect the unpaid acquisition charge, and the acquisition charge will not be refunded.

If I don't pay all of the payment within 10 days after it is due, you can charge me a late charge. (Option 1:) The late charge will be 5% of the scheduled payment. OR (Option 2:) If the amount financed is less than \$100, the late charge will be 5% of the amount of the installment. If the amount financed is \$100 or more, the late charge will be the greater of \$10 or 5% of the amount of the installment. I agree to pay you a fee of up to \$30 for a returned check. You can add the fee to the amount I owe or collect it separately.

If I break any of my promises in this document, you can demand that I immediately pay all that I owe. You can also do this if you in good faith believe that I am not going to be willing or able to keep all of my promises. I agree that you don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe.

(Optional: You may report information about my account to credit bureaus. Late payments, missed payments, or other defaults on my account may be reflected in my credit report.)

If I am giving collateral for this loan, I will see the separate security agreement for more information and agreements.

I will keep all of my promises in this document. If there is more than one Borrower, each Borrower agrees to keep all of the promises in the loan document. I promise that all information I gave you is true.

If you don't enforce your rights every time, you can still enforce them later. Federal law and Texas law apply to this contract. I don't have to pay interest or other amounts that are more than the law allows.

Any change to this agreement has to be in writing. Both you and I have to sign it. You can mail any notice to me at my last address in your records. Your duty to give me notice will be satisfied when you mail it.

For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). The lender is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov.

X _____
Borrower

X _____
Co-Borrower

Recibí un resumen del contrato en español. _____
I received a summary of the contract in Spanish.

B. OFFICE OF CONSUMER CREDIT COMMISSIONER

3. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 5, Chapter 83, Subchapter B, Concerning Credit Access Businesses, Resulting from Rule Review.

PURPOSE: Pursuant to Texas Government Code, §2001.039, the OCCC has completed the review of 7 TAC Chapter 83, Subchapter B and believes that the reasons for initially adopting the rules contained in this chapter continue to exist.

RECOMMENDED ACTION: The OCCC requests that the Finance Commission readopt 7 TAC Chapter 83, Subchapter B following rule review, because the reasons for the rules continue to exist.

RECOMMENDED MOTION: I move that we readopt 7 TAC Chapter 83, Subchapter B following rule review, because the reasons for the rules continue to exist.

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

The Finance Commission of Texas (commission) has completed the rule review of Texas Administrative Code, Title 7, Part 5, Chapter 83, Subchapter B, concerning Rules for Credit Access Businesses, in its entirety. The rule review was conducted under Texas Government Code, §2001.039.

Notice of the review of 7 TAC Chapter 83, Subchapter B was published in the *Texas Register* on March 27, 2020 (45 TexReg 2211). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this subchapter continue to exist.

Before publishing notice of the review in the *Texas Register*, the Office of Consumer Credit Commissioner (OCCC) issued an informal advance notice of the rule review to stakeholders. The OCCC received one informal precomment in response to the advance notice. The OCCC appreciates the thoughtful input provided by stakeholders.

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

As a result of the rule review, the commission finds that the reasons for initially adopting the rules in 7 TAC Chapter 83, Subchapter B continue to exist, and readopts this subchapter in accordance with the requirements of Texas Government Code, §2001.039.

B. OFFICE OF CONSUMER CREDIT COMMISSIONER

4. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 5, Chapter 85, Subchapter B, Concerning Rules for Crafted Precious Metal Dealers, Resulting from Rule Review

PURPOSE: Pursuant to Texas Government Code, §2001.039, the OCCC has completed the review of 7 TAC Chapter 85, Subchapter B, and believes that the reasons for initially adopting the rules contained in this chapter continue to exist.

RECOMMENDED ACTION: The OCCC requests that the Finance Commission readopt 7 TAC Chapter 85, Subchapter B following rule review, because the reasons for the rules continue to exist.

RECOMMENDED MOTION: I move that we readopt 7 TAC Chapter 85, Subchapter B following rule review, because the reasons for the rules continue to exist.

Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 85. Pawnshops and Crafted Precious Metal Dealers
Subchapter B. Rules for Crafted Precious Metal Dealers

The Finance Commission of Texas (commission) has completed the rule review of Texas Administrative Code, Title 7, Part 5, Chapter 85, Subchapter B, concerning Rules for Crafted Precious Metal Dealers in its entirety. The rule review was conducted under Texas Government Code, §2001.039.

Notice of the review of 7 TAC Chapter 85, Subchapter B was published in the *Texas Register* on March 27, 2020 (45 TexReg 2211). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this subchapter continue to exist.

Before publishing notice of the review in the *Texas Register*, the Office of Consumer Credit Commissioner (OCCC) issued an informal advance notice of the rule review to stakeholders. The OCCC received no informal precomments in response to the advance notice.

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

As a result of the rule review, the commission finds that the reasons for initially adopting the rules in 7 TAC Chapter 85, Subchapter B continue to exist, and readopts this subchapter in accordance with the requirements of Texas Government Code, §2001.039.

B. OFFICE OF CONSUMER CREDIT COMMISSIONER

5. Discussion of and Possible Vote to Take Action on the Proposal of Amendments, a New Rule, and a Repeal in 7 TAC, Part 5, Chapter 83, Subchapter B, Concerning Credit Access Businesses, Resulting from Rule Review.

PURPOSE: The purpose of the amendments to 7 TAC Chapter 83 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the amendments to 7 TAC Chapter 83, Subchapter B.

RECOMMENDED MOTION: I move that we approve the amendments, a new rule, and a repeal to 7 TAC Chapter 83, Subchapter B.

Title 7. Banking and Securities

Part 5. Office of Consumer Credit Commissioner

Chapter 83. Regulated Lenders and Credit Access Businesses

Subchapter B. Rules for Credit Access Businesses

The Finance Commission of Texas (commission) proposes amendments to §83.2003 (relating to Attempted Evasion of Applicability of Chapter), §83.4003 (relating to Denial, Suspension, or Revocation Based on Criminal History), §83.5001 (relating to Data Reporting Requirements), §83.5003 (relating to Examinations), §83.5004 (relating to Files and Records Required), and §83.6007 (relating to Consumer Disclosures); proposes new §83.5005 (relating to Separation Between Credit Access Business and Third-Party Lender); and proposes the repeal of §83.4007 (relating to License Reissuance) in 7 TAC, Chapter 83, Subchapter B, concerning Rules for Credit Access Businesses.

The rules in 7 TAC Chapter 83, Subchapter B govern credit access businesses (CABs). In general, the purpose of the proposed rule changes to 7 TAC Chapter 83, Subchapter B is to implement changes resulting from the commission's review of the subchapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 83, Subchapter B was published in the *Texas Register* on March 27, 2020 (45 TexReg 2211). The commission received no comments in response to that notice.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC received five informal precomments on the rule text draft. The OCCC appreciates the thoughtful input provided by stakeholders, and has incorporated changes suggested by

stakeholders into the proposed amendments and new rule.

Proposed amendments to §83.2003 would implement Texas Finance Code, §393.602(c), which prohibits a device-subterfuge, or pretense to evade the application of Texas Finance Code, Chapter 393, Subchapter G. In opinion no. KP-0277 (2019), the Texas attorney general addressed attempts to evade Chapter 393. The attorney general declined to determine whether a particular business practice was a device or subterfuge, stating: "Whether any specific extension of credit is substantially the same as that available to the public, or uses a device, subterfuge, or pretense to evade regulation as a credit access business, are fact questions that this office cannot decide through an attorney general opinion." In examinations, the OCCC has identified credit services organizations (CSOs) asserting that they provide non-CAB loans, and that their loans are not subject to the regulatory requirements for CABs. In some cases, the loans were not deferred presentment transactions or motor vehicle title loans, but the CSO notified consumers that it was a CAB licensed and examined by the OCCC, and that consumers could file complaints with the OCCC. These false and misleading representations are a pretense to evade the Finance Code, because the CSO suggests that the transaction is regulated by the OCCC, while also asserting that the transaction is a non-CAB transaction that the OCCC does not regulate.

The purpose of the proposed amendments to §83.2003 is to make the rule's language

more clear, and to specify practices that the OCCC has identified as a device, subterfuge, or pretense to evade Chapter 393. The list is not exclusive, because new attempts to evade Chapter 393 could arise from new facts. Based on a suggestion from stakeholder precomments, proposed paragraphs (1) and (2) would state that a device, subterfuge, or pretense includes a transaction that is not identified as a deferred presentment transaction or motor vehicle title loan, if the transaction is a deferred presentment transaction or motor vehicle title loan.

Proposed amendments to §83.4003 relate to the OCCC's review of the criminal history of a CAB applicant or licensee. The OCCC is authorized to review criminal history of CAB applicants and licensees under Texas Occupations Code, Chapter 53; Texas Finance Code, §14.109; and Texas Government Code, §411.095. The proposed amendments to §83.4003 would ensure consistency with HB 1342, which the Texas Legislature enacted in 2019. HB 1342 included the following changes in Texas Occupations Code, Chapter 53: (1) the bill repealed a provision that generally allowed denial, suspension, or revocation for any offense occurring in the five years preceding the application, (2) the bill added provisions requiring an agency to consider correlation between elements of a crime and the duties and responsibilities of the licensed occupation, as well as compliance with conditions of community supervision, parole, or mandatory supervision, and (3) the bill removed previous language specifying who could provide a letter of recommendation on behalf of an applicant. Proposed amendments throughout subsections (c) and (f) of §83.4003 would implement these statutory changes from HB 1342. Other proposed amendments to §83.4003 include technical

corrections, clarifying changes, and updates to citations.

The proposal would repeal §83.4007. Currently, §83.4007 requires a licensee to return its license certificate in the event of reissuance of a license. When this section was adopted, it was based on the assumption that the OCCC would issue a paper license certificate. Because the OCCC now issues licenses through an online system, ALECS, this section is no longer necessary.

Proposed amendments to §83.5001 would reflect the OCCC's practices on reporting violations. This section describes the requirement for CABs to provide quarterly and annual reports, implementing Texas Finance Code, §393.627. Currently, §83.5001(e)(2)(A) describes a \$100 administrative penalty for a CAB's first violation. The OCCC's current practice is to issue an injunction for the first reporting violation, not to impose an administrative penalty. Proposed amendments to §83.5001(e) would reflect this. Proposed amendments would also specify that the OCCC may revoke the license of a CAB that fails to pay an administrative penalty resulting from a final order, as provided by Texas Finance Code, §393.614. This situation is rare, and typically occurs when a CAB has ceased doing business without telling the OCCC.

Proposed amendments to §83.5003 would specify the content of witness declarations and records declarations that OCCC examiners obtain from CABs during examinations. The proposed amendments explain that these declarations must substantially comply with Texas Civil Practice and Remedies Code, Chapter 132, which governs unsworn declarations that may be used in lieu of a sworn declaration or

affidavit. The proposed amendments also replace the term "statement" with "declaration," and remove provisions that are not necessary to include in a declaration under Chapter 132.

Proposed amendments to §83.5004(2)(B)(vi), would provide recordkeeping requirements for threats or referrals for criminal prosecution. Currently, this provision requires a CAB to maintain a "criminal charge or complaint filed by" the CAB. In *Henry v. Cash Biz, LP*, 551 S.W.3d 111, 117-18 (Tex. 2018), the Texas Supreme Court found that a CSO did not file a criminal complaint when it forwarded information to a district attorney about checks returned for insufficient funds. The proposed amendments would add text to specify that a CAB must maintain referrals, written statements threatening criminal prosecution, a written summary of any oral statement threatening criminal prosecution, and any information submitted to law enforcement relating to alleged criminal conduct by a consumer. This information will document the CAB's compliance with Texas Finance Code, §393.201(c)(3), which provides that a CAB may not threaten or pursue criminal charges against a consumer in the absence of criminal conduct.

A proposed amendment to §83.5004(3) would state that a CAB must maintain documentation and records of transfers of money between itself and any third-party lender, for the same time period that the CAB must maintain other documentation of its agreements with third-party lenders. This amendment is intended document a CAB's compliance with proposed new §83.5005, described in the next paragraph.

Proposed new §83.5005 describes requirements for separation between a CAB

and a third-party lender. Under Chapter 393, CABs are a type of CSO, and a CSO is defined as a person who obtains for consumers, or assists consumers in obtaining, extensions of credit "by others." Tex. Fin. Code, §393.001(3). In this provision, the phrase "by others" means that a CAB must operate independently from any third-party lender. The OCCC is aware of two published decisions analyzing this separation requirement. First, the Fifth Circuit found that a CSO was sufficiently separate from a third-party lender where the CSO and lender were not the same entity, the CSO applied underwriting criteria selected by the lender (the CSO did not select the underwriting criteria), the CSO fee was not passed on to the lender, and the CSO fee did not directly benefit the lender. *Lovick v. Ritemoney Ltd.*, 378 F.3d 433, 438-42 (5th Cir. 2004). Second, a Texas bankruptcy court found that even though a CSO was a separate entity from a lender, the CSO violated Chapter 393 by falsely stating that it would issue a letter of credit if required by the lender. *In re Grayson*, 488 B.R. 579, 589-92 (Bankr. S.D. Tex. 2012).

Proposed new §83.5005 would implement the CAB-lender separation requirement. The rule is intended to provide clear standards to ensure that CABs operate independently from third-party lenders as required by Chapter 393, and to document a CAB's compliance with this requirement. Subsection (b) would specify requirements that must be satisfied, including a requirement that the CAB and lender be separate legal entities. In response to precomments that the OCCC received, paragraph (3) specifies that a CAB may not perform the functions of a third-party lender except by written agreement, paragraph (7) specifies that a CAB may not act as a general agent of a third-party lender but may act as a

special limited agent, and paragraph (8) specifies that a licensee may not directly or indirectly share fees for CAB services with the lender. Subsection (c) describes additional factors that the OCCC may consider in determining whether a CAB operates independently, and subsection (d) explains that a CAB may not make a false or misleading representation regarding its relationship with a third-party lender.

The proposal also includes amendments to the figures accompanying §83.6007, which are the model forms for the consumer cost disclosure used by CABs. The proposed amendments implement Texas Finance Code, §393.223(a), which authorizes the commission to adopt rules including the disclosure. The proposed amendments include updated information regarding the cost of comparable forms of consumer credit, as well as updated information on patterns of repayment based on 2019 quarterly and annual reports provided by CABs to the OCCC.

Mirand Diamond, Director of Licensing and Registration, has determined that for the first five-year period the proposed rule changes are in effect, there will be no fiscal implications for state or local government as a result of administering the rule changes.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the proposed rule changes are in effect, the public benefits anticipated as a result of the changes will be that the commission's rules will be more easily understood by licensees required to comply with the rules, will better protect consumers, will better enable licensees to comply with Chapter 393 of the Texas Finance Code, and will aid licensees in

preparing disclosures that clearly disclose up-to-date information to consumers.

Additional economic costs may be incurred by persons who are required to comply with the proposed amendments to the consumer disclosure rule at §83.6007. The anticipated costs would include the costs associated with producing new forms, and costs attributable to the loss of obsolete forms inventory. For licensees not using the fillable forms provided by the agency online, any additional economic costs are anticipated to be minimal, with an estimated programming time of less than five hours to produce the updated forms.

The agency has attempted to lessen any potential costs by providing on the agency's website fillable PDF versions of the disclosure forms free of charge. Additionally, the agency is considering a delayed implementation date for use of the revised forms, which will help minimize potential costs and allow use of current forms inventory. In particular, the agency is considering a possible implementation date of March 1, 2021, and invites comments on this issue.

The OCCC does not anticipate economic costs to persons who are required to comply with the other rule changes as proposed.

The agency is not aware of any adverse economic effect on small businesses, micro-businesses, or rural communities resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule changes, the agency invites comments from interested stakeholders and the public on any economic impacts on small businesses, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse

impacts on small businesses, micro-businesses, and rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rule changes do not require an increase or decrease in fees paid to the OCCC. The proposal would create a new regulation at §83.5005 to implement a statutory requirement that a CAB obtain extensions of credit by others. The proposal would expand current §83.2003 to identify acts that constitute a device or subterfuge to evade the subchapter, and would expand current §83.5004 to specify records that CABs must maintain relating to criminal history and third-party lenders. The proposal would limit current §83.4003 by amending grounds on which the OCCC may deny, suspend, or revoke a license on grounds of criminal history. The proposal would repeal current §83.4007, relating to license reissuance. The proposed rule changes do not increase or decrease the number of individuals subject to the rule's applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Matthew Nance, Deputy General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to rule.comments@occc.texas.gov. To

be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of business on the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The rule changes are proposed under Texas Finance Code, §393.622, which authorizes the commission to: (1) adopt rules necessary to enforce and administer Texas Finance Code, Chapter 393, Subchapter G (governing CABs), (2) adopt rules with respect to quarterly reporting by CABs, and (3) adopt rules with respect to the OCCC's examinations of CABs (including review of contracts between CABs and third-party lenders). In addition, Texas Finance Code, §393.223 authorizes the commission to adopt rules regarding the cost disclosure used by CABs.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 393.

Division 2. Authorized Activities

§83.2003. Attempted Evasion of Applicability of Subchapter [~~Chapter~~]

A "device, subterfuge, or pretense to evade the application of this subchapter," [~~of this chapter,~~] as used in Texas Finance Code, §393.602(c), includes:

(1) a transaction that is not identified as a deferred presentment transaction or payday loan, if the transaction is a deferred presentment transaction;

(2) a transaction that is not identified as a motor vehicle title loan, if the transaction is a motor vehicle title loan;

(3) a statement that a person is licensed by the Office of Consumer Credit Commissioner if the person is not licensed;

(4) a statement that a transaction is regulated by the Office of Consumer Credit Commissioner if the transaction is not regulated by the Office of Consumer Credit Commissioner;

(5) a reference in a transaction to a statute or rule regulating deferred presentment transactions or motor vehicle title loans if the transaction is not a deferred presentment transaction or motor vehicle title loan; and

(6) a disclosure or notice to a consumer about a deferred presentment transaction or motor vehicle title loan if the transaction is not a deferred presentment transaction or motor vehicle title loan.

~~[refers to any transaction that in form may appear on its face to be something other than a deferred presentment transaction or a motor vehicle title loan, but in substance meets the definition of a deferred presentment transaction or a motor vehicle title loan as defined in Texas Finance Code, §393.602.]~~

Division 4. License

§83.4003. Denial, Suspension, or Revocation Based on Criminal History

(a) Criminal history record information. After an applicant submits a complete license application, including all required fingerprints, and pays the fees required by §83.3010 of this title (relating to Fees), the

OCCC will investigate the applicant and its principal parties. The OCCC will obtain criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant's fingerprint submission. The OCCC will continue to receive information on new criminal activity reported after the fingerprints have been initially processed.

(b) Disclosure of criminal history. The applicant must disclose all criminal history information required to file a complete application with the OCCC. Failure to provide any information required as part of the application or requested by the OCCC reflects negatively on the belief that the business will be operated lawfully and fairly. The OCCC may request additional criminal history information from the applicant, including the following:

(1) information about arrests, charges, indictments, and convictions of the applicant and its principal parties;

(2) reliable documents or testimony necessary to make a determination under subsection (c) of this section, including letters of recommendation from prosecution, law enforcement, and correctional authorities;

(3) proof that the applicant has maintained a record of steady employment, has supported the applicant's dependents, and has otherwise maintained a record of good conduct; and

(4) proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid or are current.

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been convicted of an offense that directly relates to the duties and responsibilities of a credit access business, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Providing credit access business services involves or may involve making representations to consumers regarding the terms of the contract, receiving money from consumers, remitting money to third parties, maintaining accounts, repossessing property without a breach of the peace, maintaining goods that have been repossessed, collecting due amounts in a legal manner, and compliance with reporting requirements to government agencies. Consequently, the following crimes are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation:

(A) theft;

(B) assault;

(C) any offense that involves misrepresentation, deceptive practices, or making a false or misleading statement (including fraud or forgery);

(D) any offense that involves breach of trust or other fiduciary duty;

(E) any criminal violation of a statute governing credit transactions or debt collection;

(F) failure to file a government report, filing a false government report, or tampering with a government record;

(G) any greater offense that includes an offense described in subparagraphs (A) - (F) of this paragraph as a lesser included offense;

(H) any offense that involves intent, attempt, aiding, solicitation, or conspiracy to commit an offense described in subparagraphs (A) - (G) of this paragraph.

(2) In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.022:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensee.

(3) In determining whether a conviction for a crime renders an applicant or a licensee unfit to be a licensee, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.023:

(A) the extent and nature of the person's past criminal activity;

(B) the age of the person when the crime was committed;

(C) the amount of time that has elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person before and after the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time was served; ~~and~~

(F) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and

(G) ~~[(F)]~~ evidence of the person's current circumstances relating to fitness to hold a license, which may include letters of recommendation ~~[from one or more of the following:]~~

~~[(i) — prosecution, — law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;]~~

~~[(ii) the sheriff or chief of police in the community where the person resides; and]~~

~~[(iii) other persons in contact with the convicted person].~~

(d) Crimes related to character and fitness. The OCCC may deny a license application if the OCCC does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of

the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §393.607(a). In conducting its review of character and fitness, the OCCC will consider the criminal history of the applicant and its principal parties. If the applicant or a principal party has been convicted of an offense described by subsections (c)(1) or (f)(2) of this section, this reflects negatively on an applicant's character and fitness. The OCCC may deny a license application based on other criminal history of the applicant or its principal parties if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. The OCCC will, however, consider the factors identified in subsection (c)(2) - (3) of this section in its review of character and fitness.

(e) Revocation on imprisonment. A license will be revoked on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

(f) Other grounds for denial, suspension, or revocation. The OCCC may deny a license application, or suspend or revoke a license, based on any other ground authorized by statute, including the following:

~~[(1) a conviction for an offense that does not directly relate to the duties and responsibilities of the occupation and that was committed less than five years before the date of application, as provided by Texas Occupations Code, §53.021(a)(2);]~~

(1) [(2)] a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42A.054, or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(2) - (3) [~~§53.021(a)(3) - (4)~~];

(2) [(3)] errors or incomplete information in the license application;

(3) [(4)] a fact or condition that would have been grounds for denying the license application, and that either did not exist at the time of the application or the OCCC was unaware of at the time of application, as provided by Texas Finance Code, §393.614(a)(3); and

(4) [(5)] any other information warranting the belief that the business will not be operated lawfully and fairly, as provided by Texas Finance Code, §393.607(a) and §393.614(a).

{{Section 83.4007 will be repealed.}}

~~[§83.4007. License Reissuance]~~

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

Division 5. Operational Requirements

83.5001. Data Reporting Requirements

(a) Generally. Each licensee must file the required reports described by this section for the prior period's credit access business

activity in a form prescribed by the commissioner and must comply with all instructions relating to submitting the reports. During each calendar year, licensees are required to submit four quarterly reports as provided by Texas Finance Code, §393.627. Additionally, certain quarterly data will be collected by the OCCC on an annual basis under Texas Finance Code, §393.622(a)(1). For purposes of this section, the term "annual report" refers to the quarterly data submitted on an annual basis. Each quarterly or annual report must be completed in accordance with the OCCC's instructions. All information provided on each quarterly or annual report must be accurate and calculated in accordance with the OCCC's instructions.

(b) Due dates.

(1) Quarterly reports. The quarterly reports are due on:

(A) April 30, for transactions conducted during January through March;

(B) July 31, for transactions conducted during April through June;

(C) October 31, for transactions conducted during July through September; and

(D) January 31, for transactions conducted during October through December.

(2) Annual report. The annual report is due on January 31 for transactions conducted during the preceding January through December.

(c) Confidentiality. All individual licensee submissions of data, whether submitted on a quarterly or annual basis, are

confidential in their entirety under the provisions of Texas Finance Code, §393.622(b).

(d) Aggregated public information. The OCCC will publish aggregated data on its website within a reasonable time after each quarterly report and annual report is due.

(e) Enforcement actions. The OCCC may take enforcement actions described by this subsection if a licensee violates this section by failing to file a complete and accurate quarterly or annual report by the applicable deadline.

(1) Injunction. As provided by Texas Finance Code, §14.208(a), if the OCCC has reasonable cause to believe that a licensee has violated this section, it may issue an injunction ordering the licensee to file one or more complete, accurate, and timely quarterly or annual reports.

(2) Administrative penalty. As provided by Texas Finance Code, §14.251, the OCCC may assess an administrative penalty against a licensee that knowingly and wilfully violates Texas Finance Code, §393.627 or this section. In addition, as provided by Texas Finance Code, §14.208(c), the OCCC may impose [assess] an administrative penalty against a licensee that violates an injunction described by paragraph (1).

(3) Cumulative sanctions. The OCCC may impose the following sanctions for violations of this section.

(A) First violation. If the licensee violates this section and has not violated this section during any of the four quarters preceding the violation, then the OCCC may

issue an injunction [administrative penalty is \$100 for each licensed location].

(B) Second violation. If the licensee violates this section during any of the four quarters following a first violation described by subparagraph (A) of this paragraph, then the administrative penalty is \$500 for each licensed location.

(C) Third and subsequent violations. If the licensee violates this section during any of the four quarters following a second violation described by subparagraph (B) of this paragraph, then the administrative penalty is \$1,000 for each licensed location. The \$1,000 administrative penalty applies to subsequent violations that occur during any of the four quarters following a third or subsequent violation described by this subparagraph.

(4) [(3)] Suspension or revocation [for fourth or subsequent violation]. If the licensee violates this section during any of the four quarters following a third or subsequent violation described by subsection (e)(3)(C) of this section [(e)(2)(C)], or if a licensee fails to pay an administrative penalty required by a final administrative penalty order, then the OCCC may suspend or revoke the licensee's license, as provided by Texas Finance Code, §393.614.

83.5003. Examinations

(a) Examination authority. The OCCC may periodically examine each place of business of a licensee and inspect the licensee's transactions and records, including books, accounts, papers, and correspondence, to the extent the transactions and records pertain to business regulated under Texas Finance Code, Chapter 393.

(b) Access to records. A licensee must allow the OCCC to examine the licensee's place of business and make a copy of an item that may be inspected under subsection (a) of this section.

(c) Third-party lender agreements. The OCCC's examination authority includes the authority to review all agreements between a licensee and any third-party lender with which the licensee contracts to provide services under Texas Finance Code, Chapter 393.

(d) Witness declarations [~~statements~~]. In connection with an examination, the OCCC may obtain witness declarations [~~statements~~] that pertain to business regulated under Texas Finance Code, Chapter 393. A witness declaration must substantially comply with Texas Civil Practice and Remedies Code, Chapter 132. [~~A witness statement must be signed and dated, and must include an acknowledgment that the statement may be introduced in an enforcement action in which the licensee is a party.~~]

(e) Records declarations [~~statements~~]. In connection with an examination, the OCCC may obtain declarations [~~statements~~] regarding records maintained by the licensee that pertain to business regulated under Texas Finance Code, Chapter 393. A records declaration must substantially comply with Texas Civil Practice and Remedies Code, Chapter 132 [~~statement must be signed and dated by a witness~~], and must include acknowledgments of the following:

(1) a statement that the witness is the custodian of records [~~of the witness's position and duties~~] at the licensee;

(2) a statement that the witness is familiar with the manner in which records are

created and maintained by virtue of duties and responsibilities;

(3) the number of pages of attached records;

(4) a statement that the records are original records or exact duplicates of the original records;

(5) a statement that the records were made at or near the time of each act, event, condition, opinion, or diagnosis set forth;

(6) a statement the records were made by, or from information transmitted by, persons with knowledge of the matters set forth;

(7) a statement that the records were kept in the course of regularly conducted business activity; and

(8) a statement that it is the regular practice of the business activity to make the records [~~;~~ and]

~~[(9) an acknowledgment that the statement and the accompanying records may be introduced in an enforcement action in which the licensee is a party].~~

§83.5004. Files and Records Required

A licensee must maintain records for each transaction under Texas Finance Code, Chapter 393, and make those records available to the OCCC for examination. The records required by this section may be maintained by using a paper or manual recordkeeping system, electronic recordkeeping system, optically imaged recordkeeping system, or a combination of these types of systems, unless otherwise specified. All records must be prepared and

maintained in accordance with generally accepted accounting principles. If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements prevail only to the extent of the conflict with the provisions of this section.

(1) (No change.)

(2) Consumer's transaction file. A licensee must maintain a paper or electronic transaction file for each individual transaction under Texas Finance Code, Chapter 393, or be able to produce this information within a reasonable amount of time. The transaction file must contain documents that show the licensee's compliance with applicable state and federal law, including Texas Finance Code, Chapter 393. If a substantially equivalent electronic record for any of the following documents exists, a paper copy of the record does not have to be included in the transaction file if the electronic record can be accessed upon request.

(A) (No change.)

(B) The transaction file must include the following documentation if the licensee services or collects a loan in connection with a transaction under Texas Finance Code, Chapter 393, or if the licensee otherwise obtains this documentation in the course of business:

(i) - (v) (No change.)

(vi) Criminal charge records. The transaction file must include complete documentation of any threat of criminal prosecution against a consumer, and must include complete documentation of any criminal referral, charge, or complaint filed

by a licensee against a consumer, showing the licensee's compliance with Texas Finance Code, §393.201(c)(3). This must include any written statement threatening criminal prosecution, a written summary of any oral statement threatening criminal prosecution, any written evidence of criminal conduct, any information submitted to law enforcement relating to alleged criminal conduct by a consumer, a written summary of any oral statement submitted to law enforcement, any police report, and any court records obtained by the licensee.

(vii) - (viii) (No change.)

(C) (No change.)

(3) Agreements between licensee and third-party lender. A licensee must maintain all documentation of its current agreements with third-party lenders, including copies of the agreement, any guarantees or letters of credit, and underwriting guidelines issued by the lender. A licensee must maintain documentation and records of transfers of money between itself and any third-party lender, as described by §83.5005 of this title (relating to Separation Between Credit Access Business and Third-Party Lender). The documentation must show the licensee's compliance with Texas Finance Code, §393.001(3). The licensee may maintain this documentation at a centralized location other than the licensed location or branch office if the agreements apply to multiple locations. However, upon the OCC's request, the licensee must have the ability to promptly obtain or access copies of the complete documentation so that the OCC can examine it. If an agreement terminates, documentation of the agreement must be maintained until the latest of:

(A) four years from the date of the last consumer transaction subject to the agreement;

(B) two years from the date of the final entry made on the consumer's account in the last consumer transaction subject to the agreement;

(C) one year from the date of termination of the agreement; or

(D) the OCC's next examination of the licensee (if the documentation is maintained at a centralized location, this refers to the next examination of the centralized location).

(4) - (8) (No change.)

(9) Index of litigation, criminal charges, and repossessions. A licensee must maintain (or be able to produce within a reasonable period of time) an index of each litigation action and criminal charge or referral filed by or against the licensee, as well as each repossession initiated by the licensee. The index must show the consumer's name, account number, and date of action. Each record in the index must be retained for a period of four years from the date of the transaction, or two years from the date of the final entry made on the consumer's account, whichever is later.

(10) - (12) (No change.)

§83.5005. Separation Between Credit Access Business and Third-Party Lender

(a) Generally. A licensee assists consumers in obtaining extensions of credit by others, as provided by Texas Finance Code, §393.001(3).

(b) Independent operation. A licensee must operate independently from any third-party lender that makes a loan in connection with a transaction under Texas Finance Code, Chapter 393. Independent operation includes the following requirements:

(1) A licensee must be a separate legal entity from any third-party lender that makes a loan in connection with a transaction under Texas Finance Code, Chapter 393.

(2) The individuals who make major operational decisions for a licensee must be different from the individuals who make major operational decisions for any third-party lender.

(3) A licensee may not perform the functions of a third-party lender, except by written agreement.

(4) A licensee may not delegate functions to a third-party lender, except by written agreement.

(5) A licensee may not select the underwriting criteria used in determining whether the lender will make a loan to the consumer, but a licensee may apply underwriting criteria selected by the third-party lender.

(6) A licensee may not lend money to a consumer in connection with a transaction under Texas Finance Code, Chapter 393. In particular, a licensee may not borrow money from another person and then lend that money to a consumer.

(7) A licensee may not act as a general agent of a third-party lender, but may act as a special limited agent under a written agreement with a third-party lender in accordance with this section.

(8) A licensee may not directly or indirectly share fees for credit access business services with a third-party lender. If a third-party lender receives any portion of a fee for credit access business services charged by a licensee, it must be promptly remitted to the licensee.

(9) A licensee must document each transfer of money between itself and a third-party lender, in a manner sufficient to show each amount that was remitted in connection with each transfer. A licensee must maintain sufficient and complete records to show the exact amounts that were earned by the licensee and the third-party lender in connection with a deferred presentment transaction or motor vehicle title loan.

(c) The OCCC may consider the following factors in determining whether a licensee operates independently from a third-party lender in compliance with this section:

(1) the extent of common ownership or control between the licensee and any third-party lender, including common ownership or control resulting from familial relationships between owners and directors of the licensee and any third-party lender;

(2) whether a licensee shares common officers, directors, or employees with a third-party lender;

(3) the sufficiency of documentation of transfers of money between the licensee and a third-party lender; and

(4) whether the licensee's course of performance is consistent with its written agreements with third-party lenders and its agreements with consumers, including

agreements that specify a time within which the licensee will act on a guarantee.

(d) Representations regarding relationship with third-party lender. Under Texas Finance Code, §393.304, a licensee may not make a false or misleading representation in the offer or sale of services. In particular, a licensee may not make a false or misleading representation regarding its relationship with a third-party lender or any guarantee that the licensee provides to a third-party lender on the consumer's behalf. For example, a licensee may not represent that it will enter a letter of credit with the third-party lender if, in its course of performance, it does not actually enter a letter of credit as that term is defined in Texas Business & Commerce Code, §5.102(a)(10). A licensee may not represent that it guarantees repayment to a third-party lender on the consumer's behalf if it does not act on that guarantee as described in its representations.

Division 6. Consumer Disclosures and Notices

§83.6007. Consumer Disclosures

(a) Consumer disclosure for single payment payday loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided and before a financial evaluation occurs in conjunction with a single payment payday loan is presented in the following figure.

Figure: 7 TAC §83.6007(a) {See attached amendments.}

(b) Consumer disclosure for multiple payment payday loan. The required disclosure under Texas Finance Code,

§393.223 to be provided to a consumer before a credit application is provided and before a financial evaluation occurs in conjunction with a multiple payment payday loan is presented in the following figure.

Figure: 7 TAC §83.6007(b) *{See attached amendments.}*

(c) Consumer disclosure for single payment auto title loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided and before a financial evaluation occurs in conjunction with a single payment auto title loan is presented in the following figure.

Figure: 7 TAC §83.6007(c) *{See attached amendments.}*

(d) Consumer disclosure for multiple payment auto title loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided and before a financial evaluation occurs in conjunction with a multiple payment auto title loan is presented in the following figure.

Figure: 7 TAC §83.6007(d) *{See attached amendments.}*

(e) Consumer disclosures required for three to five common examples. For the three to five examples of the most common loans transacted by a credit access business as utilized under §83.6004 of this title (relating to Fee Schedule Content), the business must develop a consumer disclosure for those loan amounts, including appropriate fee information. Three to five examples must be developed for each payday or auto title product sold by the business (e.g., three single payment payday examples of \$300,

\$500, and \$700; three multiple payment auto title examples of \$1,000, \$1,500, and \$2,500). The credit access business should provide the consumer with the example form for the product and amount that most closely relates to the consumer's loan request.

(f) Internet sales. A credit access business must provide the required disclosure to a consumer immediately upon the consumer's arrival at the credit access business's website that includes information about a payday or auto title loan as defined by Texas Finance Code, §393.221. Access to the required disclosure must be clearly visible upon the consumer's arrival at the website. If a consumer is directed to a credit access business's website by another commercial entity that is not required to be licensed as a credit access business, then the credit access business's website to which the consumer is first directed must contain a direct link to the appropriate consumer disclosure as outlined in subsections (a) - (d) of this section. The direct link to the consumer disclosure must be provided before the consumer is required to verify previously provided information, and before the consumer is required to provide additional information.

Certification

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on June 19, 2020.

Matthew J. Nance
Deputy General Counsel
Office of Consumer Credit Commissioner

CAB NAME HERE**Payday Loan****\$_____, One Payment****Cost Disclosure****Cost of this loan:**

Borrowed amount (cash advance)	\$ _____
Interest paid to lender (interest rate: __ %)	\$ _____
Fees paid to <u>CAB name here</u>	\$ _____
Total of payments (if I pay on time)	\$ _____





APR	_____ %
Term of loan	_____

If I pay off the loan in:	I will have to pay interest and fees of approximately:	I will have to pay a total of approximately:
2 Weeks	\$ _____	\$ _____
1 Month	\$ _____	\$ _____
2 Months	\$ _____	\$ _____
3 Months	\$ _____	\$ _____

Cost of other types of loans:

Least Expensive	Credit Cards	Secured Loans	Signature Loans	Pawn Loans	Auto Title Loans	Payday Loans	Most Expensive
	↓	↓	↓	↓	↓	↓	
	25%	30%	89%	180%	238%	370%	Average APR
	\$2.05	\$3.55	\$13.38	\$15.00	\$20.66	\$30.42	Average fees & interest per \$100 borrowed over 1 month

Repayment:

Of 10 people who get a new single-payment payday loan:	
	4 ¾ will pay the loan on time as scheduled (typically before 30 days)
	1 ¼ will renew 1 time before paying off the loan
	1 ½ will renew 2 to 4 times before paying off the loan
	2 ½ will renew 5 or more times or will never pay off the loan

This data is from 2019 reports to the OCCC.

Before getting this loan, ask yourself:

- Do I need to borrow this money?
- Can I pay back the loan **in full** when it is due?
- Can I pay my bills and repay this loan?
- Can I afford late charges if I miss a payment?
- Do I have other credit options?

OCCC notice:

- This company is regulated by the Texas Office of Consumer Credit Commissioner (OCCC).
- OCCC Consumer Helpline: (800) 538-1579, consumer.complaints@occc.texas.gov.
- Visit occc.texas.gov for more information.
- This disclosure is provided under Texas Finance Code Section 393.223.

CAB NAME HERE**Payday Loan**

\$ _____, _____ Payments

Cost Disclosure**Cost of this loan:**

Borrowed amount (cash advance)	\$ _____
Interest paid to lender (interest rate: __ %)	\$ _____
Fees paid to <u>CAB name here</u>	\$ _____
Payment amounts (payments due every _____)	Payments #1-# _____ \$ _____ (Final) Payment # _____ \$ _____
Total of payments (if I pay on time)	\$ _____




APR	_____ %
Term of loan	_____

If I pay off the loan in:	I will have to pay interest and fees of approximately:	I will have to pay a total of approximately:
2 Weeks	\$ _____	\$ _____
1 Month	\$ _____	\$ _____
2 Months	\$ _____	\$ _____
3 Months	\$ _____	\$ _____
_____	\$ _____	\$ _____

Cost of other types of loans:

Least Expensive	Credit Cards	Secured Loans	Signature Loans	Pawn Loans	Auto Title Loans	Payday Loans	Most Expensive
	↓	↓	↓	↓	↓	↓	
	25%	30%	89%	180%	238%	370%	Average APR
	\$2.04	\$3.55	\$13.38	\$15.00	\$20.66	\$30.42	Average fees & interest per \$100 borrowed over 1 month

Repayment:

Of 10 people who get a new multi-payment payday loan:	
	5 will pay the loan on time as scheduled (typically 5 months)
	1 will renew 1 to 4 times before paying off the loan
	4 will renew 5 or more times or will never pay off the loan.

This data is from 2019 reports to the OCCC.

Before getting this loan, ask yourself:

- Do I need to borrow this money?
- Can I pay back the loan **in full** when it is due?
- Can I pay my bills and repay this loan?
- Can I afford late charges if I miss a payment?
- Do I have other credit options?

OCCC notice:

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- This disclosure is provided under Texas Finance Code Section 393.223.

CAB NAME HERE**Auto Title Loan****\$_____, One Payment****Cost Disclosure**

If you miss a payment or make a late payment, your car can be repossessed.

Cost of this loan:

Borrowed amount (cash advance)	\$ _____
Interest paid to lender (interest rate: __ %)	\$ _____
Fees paid to <u>CAB name here</u> (includes a one-time \$__ title fee)	\$ _____
Total of payments (if I pay on time)	\$ _____

APR	_____ %
Term of loan	_____

If I pay off the loan in:	I will have to pay interest and fees of approximately:	I will have to pay a total of approximately:
2 Weeks	\$ _____	\$ _____
1 Month	\$ _____	\$ _____
2 Months	\$ _____	\$ _____
3 Months	\$ _____	\$ _____

Cost of other types of loans:

Least Expensive	Credit Cards	Secured Loans	Signature Loans	Pawn Loans	Auto Title Loans	Payday Loans	Most Expensive
	↓	↓	↓	↓	↓	↓	
	25%	30%	89%	180%	238%	370%	Average APR
	\$2.05	\$3.55	\$13.38	\$15.00	\$20.66	\$30.42	Average fees & interest per \$100 borrowed over 1 month

Repayment:

Of 10 people who get a new single-payment auto title loan:	
	2 will pay the loan on time as scheduled (typically 30 days)
	½ will renew 1 time before paying off the loan
	1½ will renew 2 to 4 times before paying off the loan
	6 will renew 5 or more times or will never pay off the loan

This data is from 2019 reports to the OCCC.

Before getting this loan, ask yourself:

- Do I need to borrow this money?
- Can I pay back the loan **in full** when it is due?
- Can I pay my bills and repay this loan?
- Can I afford late charges if I miss a payment?
- Do I have other credit options?

OCCC notice:

- This company is regulated by the Texas Office of Consumer Credit Commissioner (OCCC).
- OCCC Consumer Helpline: (800) 538-1579, consumer.complaints@occc.texas.gov.
- Visit occc.texas.gov for more information.
- This disclosure is provided under Texas Finance Code Section 393.223.

CAB NAME HERE

Auto Title Loan

\$_____, ____ Payments

Cost Disclosure



If you miss a payment or make a late payment, your car can be repossessed.

Cost of this loan:

Borrowed amount (cash advance)	\$ _____
Interest paid to lender (interest rate: ____ %)	\$ _____
Fees paid to <u>CAB name here</u> (includes a one-time \$____ title fee)	\$ _____
Payment amounts (payments due every _____)	Payments #1-# _____ \$ _____ (Final) Payment # _____ \$ _____
Total of payments (if I pay on time)	\$ _____





APR	_____ %
Term of loan	_____

If I pay off the loan in:	I will have to pay interest and fees of approximately:	I will have to pay a total of approximately:
2 Weeks	\$ _____	\$ _____
1 Month	\$ _____	\$ _____
2 Months	\$ _____	\$ _____
3 Months	\$ _____	\$ _____
_____	\$ _____	\$ _____

Cost of other types of loans:

Least Expensive	Credit Cards	Secured Loans	Signature Loans	Pawn Loans	Auto Title Loans	Payday Loans	Most Expensive
	↓	↓	↓	↓	↓	↓	
	25%	30%	89%	180%	238%	370%	Average APR
	\$2.05	\$3.55	\$13.38	\$15.00	\$20.66	\$30.42	Average fees & interest per \$100 borrowed over 1 month

Repayment:

Of 10 people who get a new multi-payment auto title loan:	
	4 ¾ will pay the loan on time as scheduled (typically 5 - 6 months)
	½ will renew 1 time before paying off the loan
	1 ¼ will renew 2 to 4 times before paying off the loan
	3 ½ will renew 5 or more times or will never pay off the loan

This data is from 2019 reports to the OCCC.

Before getting this loan, ask yourself:

- Do I need to borrow this money?
- Can I pay back the loan **in full** when it is due?
- Can I pay my bills and repay this loan?
- Can I afford late charges if I miss a payment?
- Do I have other credit options?

OCCC notice:

- This company is regulated by the Texas Office of Consumer Credit Commissioner (OCCC).
- OCCC Consumer Helpline: (800) 538-1579, consumer.complaints@occc.texas.gov.
- Visit occc.texas.gov for more information.
- This disclosure is provided under Texas Finance Code Section 393.223.

B. OFFICE OF CONSUMER CREDIT COMMISSIONER

6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment the Repeal of §85.1012 in 7 TAC, Part 5, Chapter 85, Subchapter B, Concerning Rules for Crafted Precious Metal Dealers, Resulting from Rule Review

PURPOSE: The purpose of the repeal of 7 TAC §85.1012 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. The proposed repeal would delete a section that has expired by its own terms.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the proposed repeal of 7 TAC §85.1012 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve for publication and comment the repeal of 7 TAC §85.1012.

Title 7. Banking and Securities

Part 5. Office of Consumer Credit Commissioner

Chapter 85. Pawnshops and Crafted Precious Metal Dealers

Subchapter B. Rules for Crafted Precious Metal Dealers

The Finance Commission of Texas (commission) proposes the repeal of §85.1012 (relating to Registration System Transition), in 7 TAC, Chapter 85, Subchapter B, concerning Rules for Crafted Precious Metal Dealers.

In general, the purpose of the proposed repeal in 7 TAC Chapter 85, Subchapter B is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 85, Subchapter B was published in the *Texas Register* on March 27, 2020 (45 TexReg 2211). The commission received no comments in response to that notice.

The OCCC distributed an early precomment draft of the proposed repeal to interested stakeholders for review, and then held a stakeholder webinar regarding the repeal. The OCCC received no informal precomments on the rule text draft.

The proposed repeal is intended to delete a section of 7 TAC Chapter 85, Subchapter B that expired by its own terms on January 1, 2020. This provision was meant to transition crafted precious metal dealers from a registration system in the Department of Public Safety to one in the OCCC.

Mirand Diamond, Director of Licensing, has determined that for the first five-year period the proposed repeal is in effect, there will be no fiscal implications for state or local government as a result of administering the rule repeal.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the repeal of §85.1012 is in effect, the public benefits anticipated as a result of the change will be that the commission's rules will be more easily understood by crafted precious metal registrants and more in line with current practices.

There is no anticipated cost to individual crafted precious metal dealers who are required to comply with the repeal as proposed.

The OCCC is not aware of any adverse economic effect on small businesses, micro-businesses, or rural communities resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule changes, the OCCC invites comments from interested stakeholders and the public on any economic impacts on small businesses, micro-businesses, and rural communities, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts.

During the first five years the proposal will be in effect, it will not create or eliminate a government program. Implementation of the proposal will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposal will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The

proposal does not require an increase or decrease in fees paid to the OCCC. The proposal does not create a new regulation. The proposal does not expand or limit an existing regulation. The proposal repeals 7 TAC §85.1012. The proposal does not increase or decrease the number of individuals subject to the rule's applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

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

The repeal is proposed under Texas Occupations Code, §1956.0611, which authorizes the commission to adopt rules to implement and enforce Texas Occupations Code, Chapter 1956.

The statutory provisions affected by the proposal are contained in Texas Occupations Code, Chapter 1956.

Division 1. Registration Procedures

~~[§85.1012. Registration System Transition]~~

~~[(a) Registrations on or before June 30, 2018.]~~

~~[(1) Effectiveness of registration. Notwithstanding §85.1007 of this title (relating to Annual Renewal), if a crafted precious metal dealer obtains or renews a registration for a permanent registered location on or before June 30, 2018, the dealer's registration will be effective for one year after the date of the registration, and will expire on the anniversary of the date of registration.]~~

~~[(2) After expiration. After the expiration of a permanent registered location registration obtained on or before June 30, 2018, a dealer must register for a permanent registered location using the OCCC online registration portal in order to continue doing business as a crafted precious metal dealer.]~~

~~[(b) Registrations on or after July 1, 2018.]~~

~~[(1) Transition start date. On or after July 1, 2018, all registrations and renewals for crafted precious metal dealers will be performed through the OCCC online registration portal.]~~

~~[(2) Expiration date. Notwithstanding §85.1007 of this title, if a dealer obtains a registration for a permanent registered location on or before December 31, 2018, then the registration will expire on December 31, 2019.]~~

~~[(e) Expiration of section. This section will expire on January 1, 2020.]~~

Certification

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on June 19, 2020.

Audrey Spalding
Assistant General Counsel
Office of Consumer Credit Commissioner

B. OFFICE OF CONSUMER CREDIT COMMISSIONER

7. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments and a New Rule in 7 TAC Chapter 89, Concerning Property Tax Lenders

PURPOSE: The purpose of the proposed amendments and new rule in 7 TAC Chapter 89 is to remove language suggesting that the sworn document must be recorded, and to specify requirements for payoff of a tax lien for an individual property.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the proposed amendments and new rule in 7 TAC Chapter 89 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve for publication and comment the amendments and new rule in 7 TAC Chapter 89.

Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 89. Property Tax Lenders

The Finance Commission of Texas (commission) proposes amendments to §89.701 (relating to Sworn Document Authorizing Transfer of Tax Lien), and proposes new §89.805 (relating to Payoff for Property Tax Loan Secured by Multiple Properties) in 7 TAC, Chapter 89, concerning Property Tax Lenders.

In general, the purpose of the proposed amendments and new rule in 7 TAC Chapter 89 is to remove language suggesting that the sworn document must be recorded, and to specify requirements for payoff of a tax lien for an individual property (in the case of a property tax loan secured by multiple properties).

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. Stakeholders provided feedback during the webinar, and the OCCC received nine informal precomments on the rule text draft. Based on this feedback, the OCCC distributed a revised precomment draft and received three additional precomments. The OCCC appreciates the thoughtful input provided by stakeholders.

Proposed amendments to §89.701 would remove language suggesting that the sworn document must be recorded. Under Texas Tax Code, §32.06(a-1), in order to authorize a tax lien transfer from a taxing unit to a property tax lender, a property owner must execute a sworn document containing an authorization for payment of taxes, contact information for the property tax lender, and a

description of the property, among other information. Before 2013, Texas Tax Code, §32.065(b)(4) required the sworn document to be recorded in the county's real property records. In 2013, the Texas Legislature passed SB 247, which removed this requirement. Currently, §89.701(a)(2) requires the sworn document to state "that after the document is recorded, it is to be returned to the transferee." Proposed amendments to §89.701(a)(2) and the accompanying figure at §89.701(c) would amend this statement to remove the reference to recording. However, a proposed amendment at §89.701(d)(4) would allow property tax lenders to include this reference if the sworn document will be recorded.

Proposed new §89.805 would provide a method for calculating the amount for a lienholder or mortgage servicer to pay off an individual property, in the case of a property tax loan that is secured by more than one property. In other words, if a property tax loan is secured by properties A, B, and C, and another lienholder holds a lien on property A, the new rule describes how to calculate the amount that the lienholder will pay to release the tax lien on property A. This rule is intended to implement Texas Tax Code, §§32.06(f), 32.06(f-1), and 32.065(b-1), which describe situations where a lienholder or mortgage servicer can obtain a release of a transferred tax lien.

Texas Tax Code, §32.06(f) states: "The holder of a loan secured by a transferred tax lien that is delinquent for 90 consecutive days must send a notice of the delinquency by certified mail on or before the 120th day of delinquency or, if the 120th day is not a

business day, on the next business day after the 120th day of delinquency, to any holder of a recorded preexisting lien on the property. The holder or mortgage servicer of a recorded preexisting lien on property encumbered by a tax lien transferred as provided by Subsection (b) is entitled, within six months after the date on which the notice is sent, to obtain a release of the transferred tax lien by paying the transferee of the tax lien the amount owed under the contract between the property owner and the transferee."

Texas Tax Code, §32.06(f-1) states in part: "If an obligation secured by a preexisting first lien on the property is delinquent for at least 90 consecutive days and the obligation has been referred to a collection specialist, the mortgage servicer or the holder of the first lien may send a notice of the delinquency to the transferee of a tax lien. The mortgage servicer or the first lienholder is entitled, within six months after the date on which that notice is sent, to obtain a release of the transferred tax lien by paying the transferee of the tax lien the amount owed under the contract between the property owner and the transferee."

Texas Tax Code, §32.065(b-1) states: "On an event of default and notice of acceleration, the mortgage servicer of a recorded lien encumbering real property may obtain a release of a transferred tax lien on the property by paying the transferee of the tax lien or the holder of the tax lien the amount owed by the property owner to that transferee or holder."

In proposed new §89.805, subsection (a) describes the scope of the rule, with citations to the three Texas Tax Code provisions containing rights of other lienholders to pay off tax liens. Subsection (b) explains that if a property tax loan is secured by more than one

property, a property tax lender must allow a holder or mortgage servicer to obtain a release for an individual property, by paying the amount owed for the individual property. Subsection (c) describes the method for calculating the amount owed for the individual property. The method is based on the individual property's attributable percentage in relation to the total amount paid to taxing units or governmental entities in connection with the property tax loan. Subsection (c)(4) describes how to calculate post-closing costs that may be included in the payoff amount. Subsection (c)(5) describes the requirement to maintain records, and subsection (c)(6) explains that a property tax lender may charge a lien release fee for each individual property for which a lien is released.

New §89.805 is being proposed in response to complaints that the OCCC received from banks, alleging that property tax lenders overcharged them in connection with payoffs under the Texas Tax Code. Many of these disputes have involved overcharges by the property tax lender and failure to maintain documentation that adequately supports the payoff amount. In some cases, the complaint involved an assertion by the property tax lender that the bank had no right to pay off the tax lien for an individual property. The OCCC has expended significant staff resources to review records spanning multiple years and multiple properties, identify and remove unauthorized charges, and calculate appropriate payoff amounts. The OCCC hopes that the new rule will provide a standard calculation method to avoid these disputes.

In informal precomments, stakeholders were mixed in whether they supported or opposed new §89.805. Some stakeholders,

including an association of banks and a property tax lender, supported the new rule. Some property tax lenders suggested changes to the new rule, and some opposed the new rule. The proposed text includes several changes responding to suggestions from stakeholders. The stakeholders who suggested changes or opposed the rule focused mainly on seven issues.

First, stakeholders emphasized that §89.805 should apply only to payoffs by lienholders or mortgage servicers under Texas Tax Code, §§32.06(f), 32.06(f-1), and 32.065(b-1). In response to these precomments, proposed §89.805(a) specifies that the rule applies only to these three situations.

Second, stakeholders requested confirmation that §89.805 would apply only to property tax loans entered on or after the rule's effective date. The rule will apply only to property tax loans entered on or after the rule's effective date. One stakeholder requested confirmation of this in the rule text itself. The OCCC and commission believe that this is unnecessary, and that this confirmation in the preamble is sufficient.

Third, the precomment drafts included a requirement to disclose the specific dollar amount paid for each property to the property owner before closing. Stakeholders responded that it would be difficult to calculate specific dollar amounts paid for each property, and to list these amounts on a pre-closing disclosure. One stakeholder suggested that this amount could be identified later if needed. In response to these precomments, the proposal does not include this disclosure requirement.

Fourth, stakeholders requested that the rule specify that the lien release fee applies to

each property. In response to this comment, §89.805(c)(6) would specify that the lien release fee applies to each individual property for which a lien is released.

Fifth, stakeholders requested that the rule allow property tax lenders to charge additional types of fees in connection with a payoff, such as attorney fees in bankruptcy to amend pleadings, update court documents, and restart cases, as well as attorney fees to complete a foreclosure. The OCCC believes that this issue is addressed by language in §89.805(c)(4) that allows a portion of post-closing costs described by Texas Finance Code, §351.0021. Any post-closing costs that are not expressly authorized by statute may not be included in the payoff amount.

Sixth, a stakeholder requested that refinances (i.e., new property tax loans that satisfy and replace previous property tax loans) be exempted from new §89.805. The commission declines to put this exemption into the rule. Texas Tax Code, §32.06 and §32.065 do not contain any exemption for refinances. In addition, some of the complaints from banks, as described earlier, resulted from property tax loans that were refinances. Exempting refinances would not achieve the rule's intended purposes.

Seventh, some property tax lenders objected to the rule's core concept that a lienholder can pay off the tax lien for an individual property by paying the amounts associated with the individual property. These property tax lenders argued that the proposed rules would cause property tax lenders to enter fewer loans secured by multiple properties, and would cause property tax lenders to charge higher closing costs. One of these property tax lenders proposed an alternative interpretation of the payoff rights in Texas Tax Code, §§32.06(f),

32.06(f-1), and 32.065(b-1). This property tax lender noted that the Tax Code provisions require the lienholder to pay the "amount owed" for the property tax loan, and interpreted the phrase "amount owed" to mean the full amount owed for all properties under the property tax loan. Under this alternative interpretation, if a property tax loan is secured by properties A, B, and C, and another lienholder holds a lien on property A, the lienholder would have to pay off the full amount owed for properties A, B, and C in order to obtain a release of the tax lien for property A. This property tax lender argued that a lienholder is not entitled to a "partial release."

The commission and the OCCC disagree with this alternative interpretation, because it would frustrate the statutory rights of lienholders and servicers to pay off transferred tax liens. The payoff described in the rule is not a "partial release," but is a full release of the tax lien for an individual property. Texas Tax Code, §§32.06(f), 32.06(f-1), and 32.065(b-1) each refer to the "property" for which the lienholder holds the lien, and refer to the "amount owed" that must be paid in order to exercise the right to pay off the tax lien. The commission and the OCCC understand the phrase "amount owed" to refer to the amount owed for the individual property, and the proposed new rule provides a way to calculate that amount. This reading appropriately enables lienholders to exercise the rights described by the Tax Code, so that they can consolidate amounts owed for the property, reduce costs associated with servicing obligations on the property, and potentially avoid foreclosure.

The proposed alternative interpretation would inappropriately shift costs and risks associated with the property tax loan onto other lienholders. If "amount owed" refers to

the amount owed for all properties, this suggests that lienholders must pay amounts for properties with no connection to their liens, and that the property tax lender can receive the same amount multiple times by requiring multiple lienholders to pay the same amounts. The property tax lenders that object to the rule's core concept seem to be stating that, when they make property tax loans secured by multiple properties, they depend on their ability to restrain other lienholders from paying off individual properties, and depend on the extra revenue that results from lienholders having to pay off multiple properties. To the extent that these practices depend on holding property A captive to a payoff for properties B and C, these practices are not consistent with a lienholder's payoff rights under the Tax Code, and it is entirely appropriate for the rule to specify that these practices are prohibited.

Mirand Diamond, Director of Licensing and Registration, has determined that for the first five-year period the proposed rule changes are in effect, there will be no fiscal implications for state or local government as a result of administering the rule changes.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of the changes will be that the commission's rules will be more easily understood by licensees required to comply with the rules, will better protect consumers, will better enable licensees to comply with Chapter 32 of the Texas Tax Code, and will better enable lienholders to exercise their statutory rights under Chapter 32.

Additional economic costs may be incurred by persons who are required to comply with the proposed new rule at §89.805. The anticipated costs would include the costs associated with updating systems to use the calculation method described in the rule. For licensees that currently allow lienholders to pay off individual properties, any additional economic costs are anticipated to be minimal. The agency has attempted to lessen any potential costs by specifying the limited scope of the rule in proposed §89.805(a). In addition, the new rule will apply only to property tax loans entered on or after the rule's effective date.

In an informal precomment, a property tax lender argued that the rule would lead to increased closing costs for borrowers. This property tax lender argued that the rule will require property tax lenders to make a separate property tax loan for each separate property, and that this will result in increased documentation, resulting in increased closing costs for borrowers. The property tax lender proposed an alternative interpretation of the Tax Code's provisions, under which a lienholder must pay off the entire property tax loan, not just the amount corresponding to the individual property where the lienholder holds a lien. The OCCC disagrees with this argument and interpretation. First, the rule does not prohibit property tax lenders from making property tax loans secured by multiple properties. Second, if there are costs associated with enabling lienholders to pay off liens, these costs are required by the Tax Code, and do not result from the rule. Third, the property tax lender's alternative interpretation would result in increased costs for other lienholders, because it would require lienholders to pay off liens on property that they have no interest in, in order to exercise their statutory rights.

The OCCC does not anticipate economic costs to persons who are required to comply with the proposed amendments to §89.701.

The agency is not aware of any adverse economic effect on small businesses, micro-businesses, or rural communities resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule changes, the agency invites comments from interested stakeholders and the public on any economic impacts on small businesses, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses, micro-businesses, and rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rule changes do not require an increase or decrease in fees paid to the OCCC. The proposal would create a new regulation at §89.805 to describe requirements for a payoff of a property tax loan secured by multiple properties. The proposal would limit current §89.701 by removing language suggesting that the sworn document must be recorded. The proposal would not expand or repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rule's applicability. The agency does not anticipate that the

proposed rule changes will have an effect on the state's economy.

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

The rule changes are proposed under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Tax Code, §32.06 and §32.065, and Texas Finance Code, Chapter 351. In addition, Texas Tax Code, §32.06(a-4) authorizes the commission to adopt rules relating to the reasonableness of closing costs, fees, and other charges permitted under that section, and to prescribe the form and content of the sworn document by rule. Texas Finance Code, §351.0021 authorizes the commission to adopt rules implementing and interpreting that section, which describes limitations on post-closing costs. Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Tax Code, Chapter 32 and Texas Finance Code, Chapter 351.

Subchapter G. Transfer of Tax Lien

§89.701. Sworn Document Authorizing Transfer of Tax Lien

(a) Required information. A sworn document containing all of the required information provided by this subsection meets the requirements of Texas Tax Code, §32.06(a-1). A sworn document under this section must contain the following information:

(1) (No change.)

(2) a statement that [after] the document [~~is recorded, it~~] is to be returned to the transferee;

(3) - (17) (No change.)

(b) (No change.)

(c) Standard sworn document. The standard sworn document under Texas Tax Code, §32.06(a-1) is presented in the following figure.

Figure: 7 TAC §89.701(c) {See attached amendments.}

(d) Permissible changes.

(1) Multiple account transfers. In the case of multiple account transfers, the information required by subsection (a)(6), (7), and (8) of this section may be provided in table or list format as an attachment to the standard form.

(2) Joint owners. In a transfer involving joint owners, additional signature blocks containing the information required by subsection (a)(6), (7), (8), (9), and (15) of this section may be attached to the standard form.

(3) Title. The title of the sworn document may be relocated to the top of the form.

(4) Statement on recording. If the transferee will record the sworn document in the real property records, the transferee may replace "Return to:" with "After recording, return to:" at the top of the form.

Subchapter H. Payoff Statements

§89.805. Payoff for Property Tax Loan Secured by Multiple Properties

(a) Purpose and scope. Under Texas Tax Code, §§32.06(f), 32.06(f-1), and §32.065(b-1), in certain situations where a property tax loan or preexisting mortgage is delinquent or in default, a holder or mortgage servicer of a preexisting lien on a property is entitled to obtain a release of a transferred tax lien, by paying the amount owed under the contract between the property owner and the property tax lender. This section describes how to calculate the amount owed for an individual property where a property tax loan is secured by more than one property. This section applies only to:

(1) a payoff by the mortgage servicer or holder of a recorded preexisting lien due to the delinquency of a property tax loan under Texas Tax Code, §32.06(f);

(2) a payoff by the mortgage servicer or holder of a preexisting first lien due to the delinquency of the obligation secured by a preexisting first lien under Texas Tax Code, §32.06(f-1); and

(3) a payoff by the mortgage servicer of a recorded lien due to default and notice of acceleration of a property tax loan under Texas Tax Code, §32.065(b-1).

(b) Requirement to allow payoff. If a property tax loan is secured by more than one property, a property tax lender must allow a holder or mortgage servicer to obtain a release for an individual property in accordance with Texas Tax Code, §§32.06(f), 32.06(f-1), and §32.065(b-1), by paying the amount owed for the individual property.

(c) Amount owed for individual property.

(1) Calculation of amount owed. A property tax lender must calculate the amount owed for an individual property by adding:

(A) the outstanding principal balance of the loan, multiplied by the attributable percentage for the individual property;

(B) the outstanding interest for the loan, multiplied by the attributable percentage for the individual property;

(C) authorized post-closing costs that are not part of the principal balance, multiplied by the attributable percentage for the individual property, if the costs relate to the property tax loan generally; and

(D) authorized post-closing costs that are not part of the principal balance, if the costs relate specifically to the individual property.

(2) Attributable percentage. To calculate the attributable percentage for an individual property, a property tax lender must divide the total amount paid for the individual property by the total amount paid for all properties in connection with the property tax loan.

(A) A property tax lender must calculate the total amount paid for the individual property by adding:

(i) the total amount paid to taxing units or governmental entities for unpaid taxes, penalties, interest, and collection costs for the individual property in connection with the property tax loan, as shown on the tax receipt; and

(ii) in the case of a property tax loan that is a refinance, any amount paid for the individual property, as shown on the pre-closing disclosure statement.

(B) A property tax lender must calculate the total amount paid for all properties by adding:

(i) the total amount paid to taxing units or governmental entities for unpaid taxes, penalties, interest, and collection costs for all properties in connection with the property tax loan, as shown on the tax receipts; and

(ii) in the case of a property tax loan that is a refinance, the amounts paid for all properties as shown on the pre-closing disclosure statement.

(3) Lower payoff amount. A property tax lender may allow a property owner, holder, or servicer to obtain a release for an amount that is lower than the amount described by paragraphs (1) and (2) of this subsection.

(4) Post-closing costs. A property tax lender may include authorized post-closing costs related solely to the individual property in the amount owed for the individual property. Post-closing costs related to other individual properties may not be included.

Post-closing costs related generally to the property tax loan may be included if multiplied by the attributable percentage. If the property tax lender has charged a post-closing cost that is not expressly authorized by Texas Finance Code, §351.0021, then the property tax lender may not include the cost in the amount owed, and must refund the cost to the property owner.

(5) Recordkeeping. A property tax lender must maintain documentation showing how it calculated the attributable percentage and the amount owed for the individual property. This documentation must be maintained in the property tax loan transaction file for the period described by §89.207 of this title (relating to Files and Records Required).

(6) Lien release fee. In addition to the amount owed for the individual property, a property tax lender may charge a lien release fee described by §89.602 (relating to Fee for Filing Release) for each individual property for which a lien is released.

Certification

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on June 19, 2020.

Matthew J. Nance
Deputy General Counsel
Office of Consumer Credit Commissioner

Amended Figure: 7 TAC §89.701(c)

STATE OF TEXAS
COUNTY OF _____

§
§
§
§

Return [~~After recording, return~~] to:
(Insert TRANSFEREE'S NAME)
(Insert TRANSFEREE'S
STREET ADDRESS)

SWORN DOCUMENT AUTHORIZING TRANSFER OF TAX LIEN

Before me, the undersigned notary, on this day personally appeared (Insert NAME(S) OF OWNER(S) OR AUTHORIZED REPRESENTATIVE(S)), known to me to be the person(s) whose name(s) is/are subscribed below, and being duly sworn, upon oath deposed and stated as follows:

"My name is (Insert NAME(S) OF OWNER(S) OR AUTHORIZED REPRESENTATIVE(S)). I am over 18 years of age and am capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct. I or the entity I represent owns the real property described as follows:

Account No. or Property ID No.: _____
Legal Description: _____
Street Address, if applicable: _____
Amount Paid for Transfer (including taxes, penalties,
interest, and collection costs): \$ _____
Tax Years: _____
Transferee's Name: _____
OCCC Property Tax License Lender No.: _____
OR Exemption Information: _____
Transferee's Street Address: _____

"Pursuant to Texas Tax Code §32.06, I hereby authorize the above-named transferee or transferee's agent (the "Transferee"), to pay all taxes, penalties, interest, and collection costs imposed by any and all local taxing units or their agents on the real property, described above, for the tax years listed above. I further authorize and direct the tax assessor-collector(s) for said taxing units to issue a tax receipt with the collector's seal of office or notarized signature to the Transferee and to certify that the taxes and any penalties and interest on the subject property and collection costs have been paid by the transferee on behalf of the owner, and the tax lien on the owner's property has been transferred to the Transferee.

"I have been given notice that if this property is my homestead and I am disabled, I may be eligible for a tax deferral under Texas Tax Code §33.06."

Property Owner
OR Authorized Representative: Signature _____ Date Signed _____
Printed Name _____ Representative Capacity (if applicable) _____

(Insert NOTARY'S SEAL)

SUBSCRIBED AND SWORN TO BEFORE ME on this, the _____ day of _____, 20____.

Notary Public, State of Texas

C.

Texas Department of Banking

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Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705

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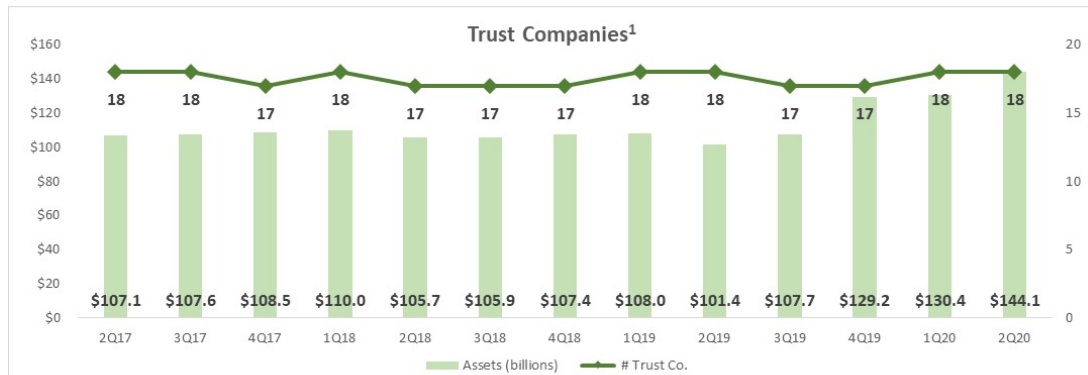
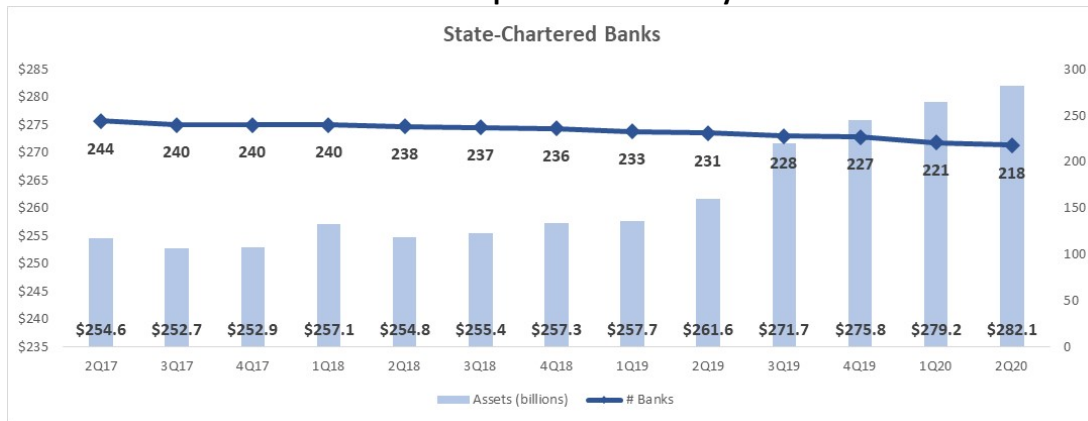
To: Finance Commission Members

From: Daniel Frasier, Director of Bank & Trust Supervision *DBF*

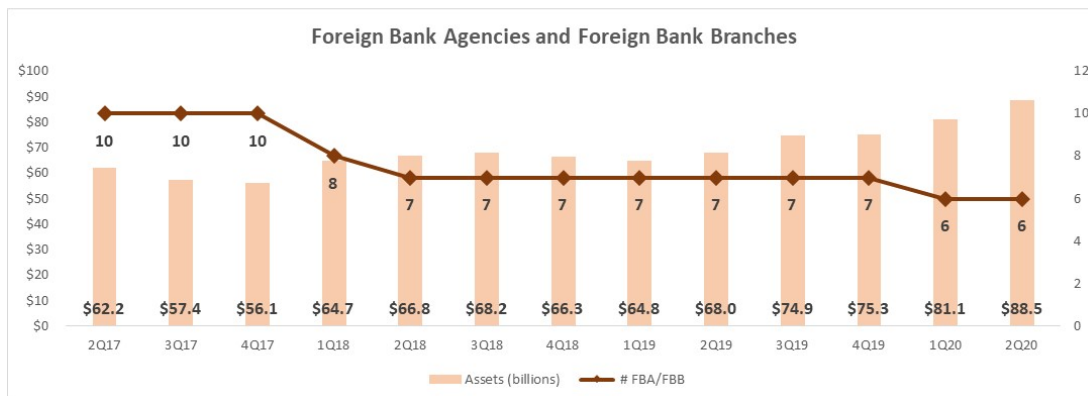
Date: June 5, 2020

Subject: Summary of the Bank & Trust Supervision Division Activities

Bank and Trust Supervision – Industry Profiles

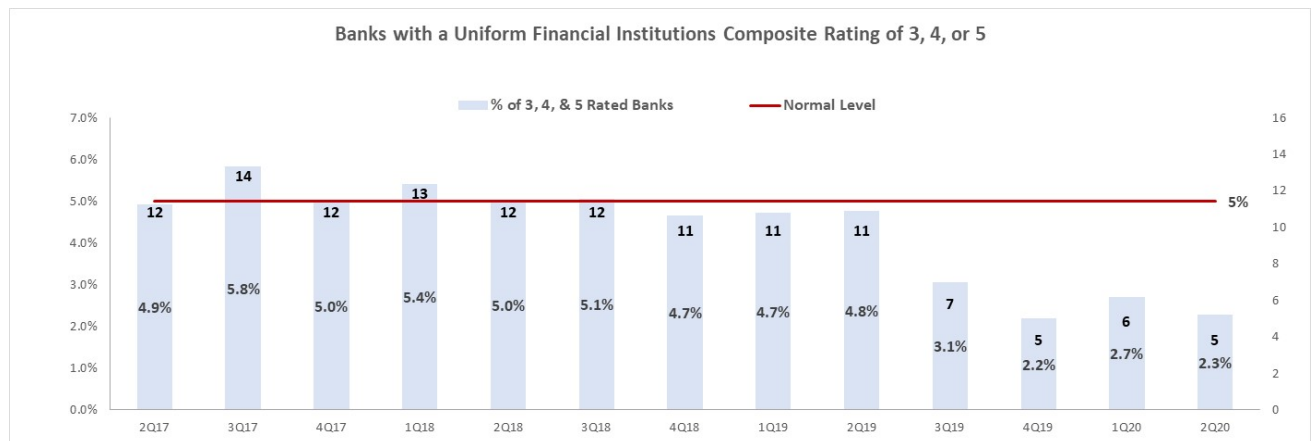
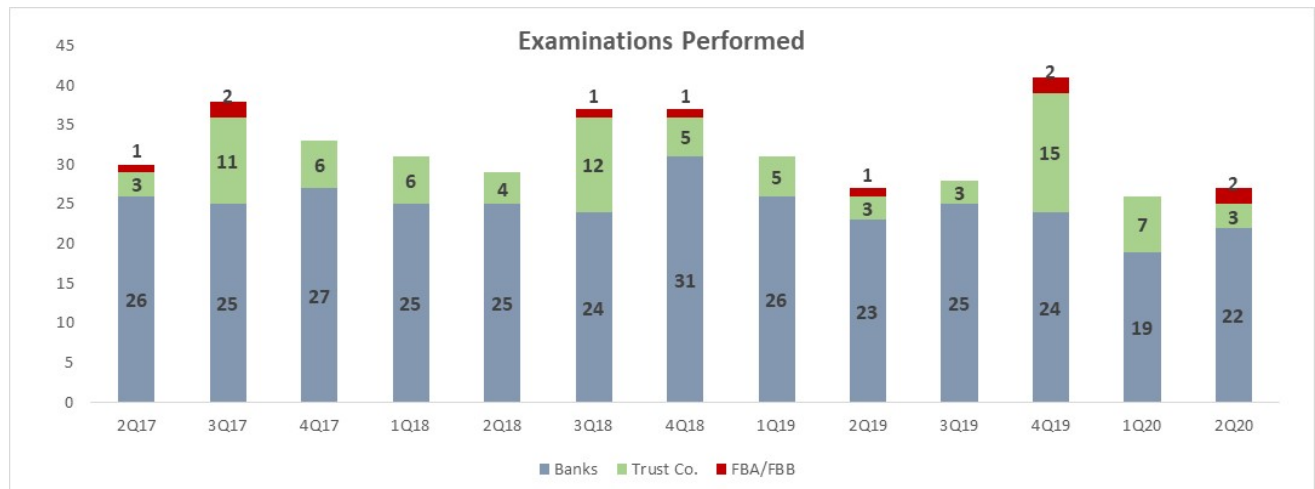


¹Fiduciary assets for public trust companies (non-exempt) only.



Summary of the Bank & Trust Supervision Division Activities

Page 2



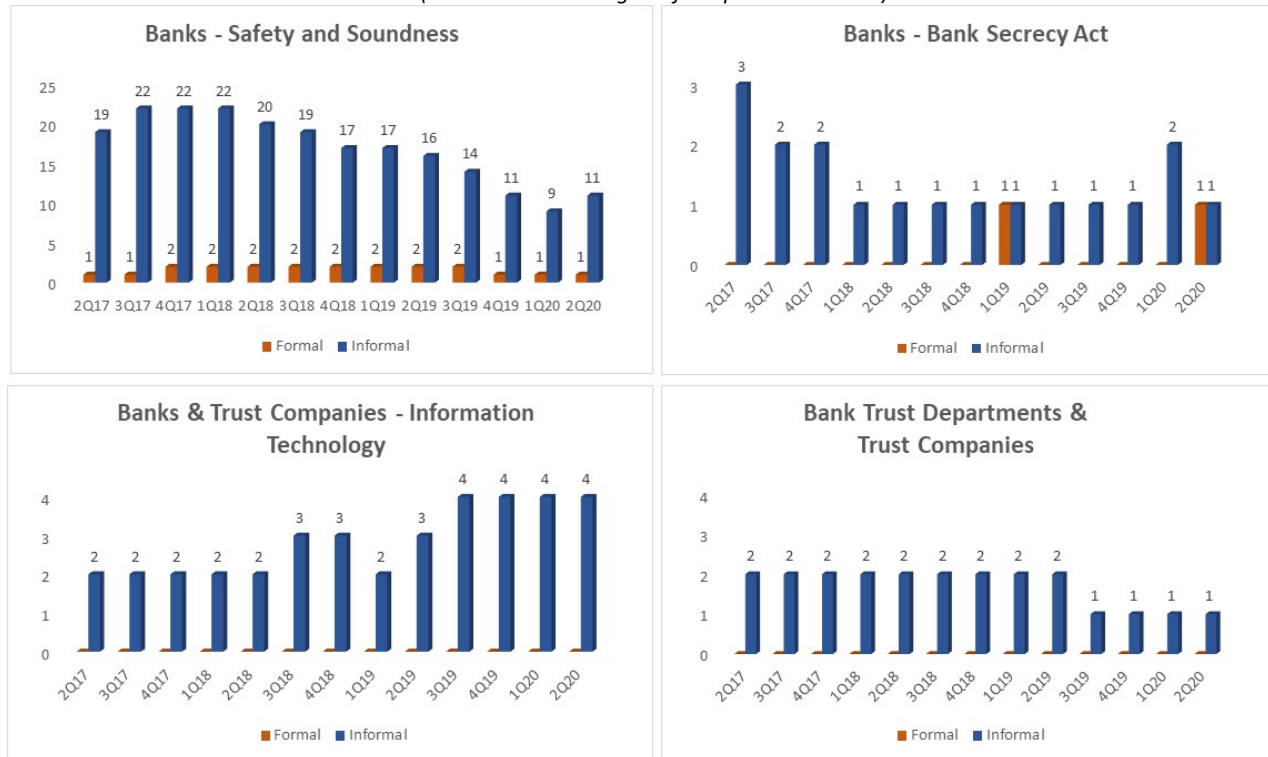
The Department considers any bank with a Uniform Financial Institutions Composite Rating of 3, 4, or 5, to be a problem bank. The number of problem banks continues to remain below what we consider to be a normal range of between 3% and 5% of the total number of institutions. However, the number of problem banks is expected to increase as banks deal with the economic fallout from the COVID-19 pandemic.

Summary of the Bank & Trust Supervision Division Activities

Page 3

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.

Compliance with Examination Priorities		
Percent of Examinations Conducted within Department Guidelines		
Entity Type	FY 2019	FY 2020 (YTD – Apr. 2020)
Commercial Banks (All / DOB Only)	93% / 92%	100% / 100%
IT	96% / 96%	99% / 98%
Trust	93% / 94%	100% / 100%
Foreign Banks (FRB)	100%	100%
Trust Companies (DOB)	48%	64%
IT	92%	100%

Through April 2020, the agency met all examination priorities except for examinations of trust companies. We expect continued improvement in meeting trust company examination priorities going forward as staffing and other obstacles have been largely eliminated. Compliance with commercial bank and foreign bank examination priorities may be challenging through at least the remainder of calendar year 2020 as the Department deals with the fallout from the COVID-19 pandemic. Examination activities were paused for more than two months to allow financial institutions to focus on providing critical financial services to their

customers. While we restarted examination activities, performing examinations completely offsite has its challenges. Additionally, we will take a measured approach restarting our examination processes while the pandemic persists.

Division Highlights

- **COVID-19 Monitoring and Response:** The Department continues to actively monitor and respond to the COVID-19 pandemic. Actions taken in response to the pandemic since the last report to the Finance Commission include:
 - Effective March 16, 2020, new examination activity was suspended, and the Department wrapped up examinations already in process. Examination activities resumed starting June 1, 2020;
 - We reassessed and modified our examination processes and procedures to properly evaluate a bank or trust company's condition while being mindful of the burden an examination places on the institution's staff and resources. To that end, we have modified our examination approach and are focusing on the most relevant examination aspects as conditions dictate. All examinations are being conducted offsite;
 - Offsite bank monitoring capabilities are being continuously enhanced to assess the condition of regulated entities in the changing economic landscape; and
 - Banks and trust companies that have an increased risk of deterioration or have concentrations in loans that may be especially affected by the pandemic are being closely monitored.
- **COVID-19 Communications:** The following is a list of COVID-19 related communications by the Department since the last report to the Finance Commission.
 - The Department issued Industry Notice [2020-07](#), Increased Cyber Activity During Times of Crisis, dated April 8, 2020. The notice alerts institutions about potential cybercriminal activity and provides information regarding how to evaluate cyber security readiness in defense of this increased cyber activity.
 - The Department issued Industry Notice [2020-08](#), Department of Banking Resumes Examination Process in June, dated May 29, 2020. This announcement provided notice to bankers that the Department is resuming examinations.
- **Special Operations and Conferences:**
 - On April 3, 2020, Chief IT Examiner Ruth Norris participated in a Regulatory Panel hosted by the 2020 Knowledge Essential to Your Security (KEYS) conference. The virtual regulatory panel took place despite the cancellation of the physical conference.
 - On April 17, 2020, Director Frasier represented the Department on the virtual Compliance School Regulatory Panel hosted by the Texas Bankers Association.

- Beginning May 19, 2020, Commissioner Cooper, Deputy Commission Purdom, Director Frasier, General Counsel Reyer, Regional Direct Walker and Review Examiner Whitson attended the CSBS State and Federal Supervisory Forum via a video-conference platform spanning three afternoons. This annual event provides a venue for state and federal regulators to discuss supervision related issues and is usually held in person.



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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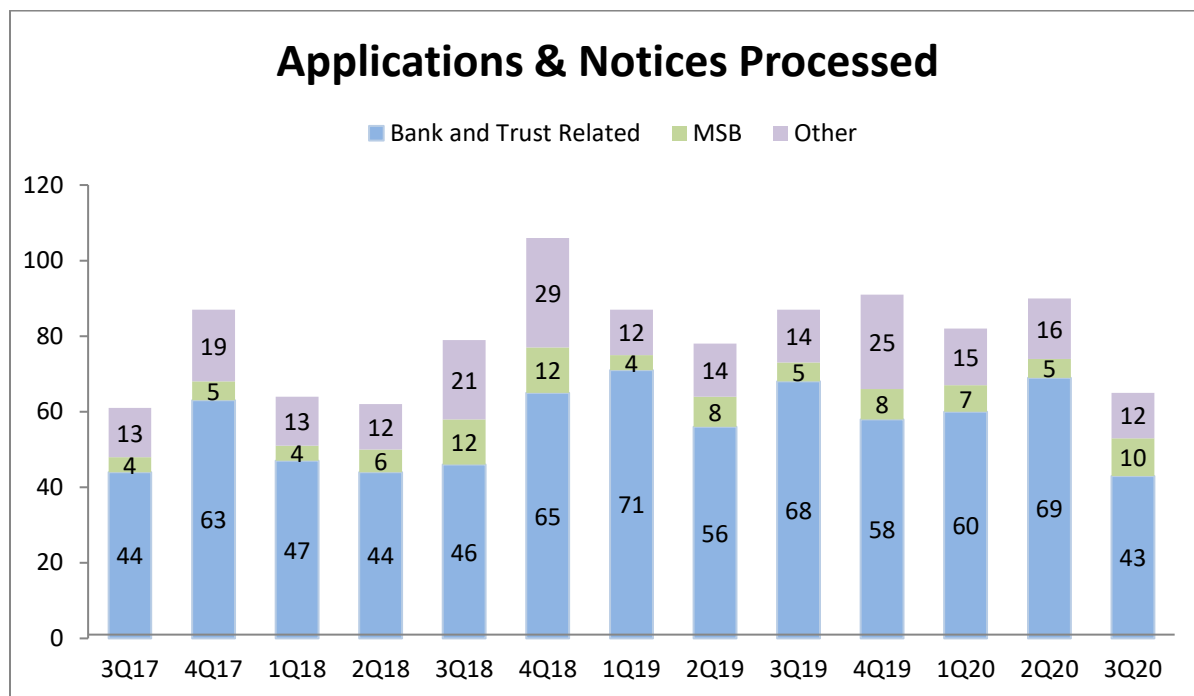
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To: Finance Commission Members

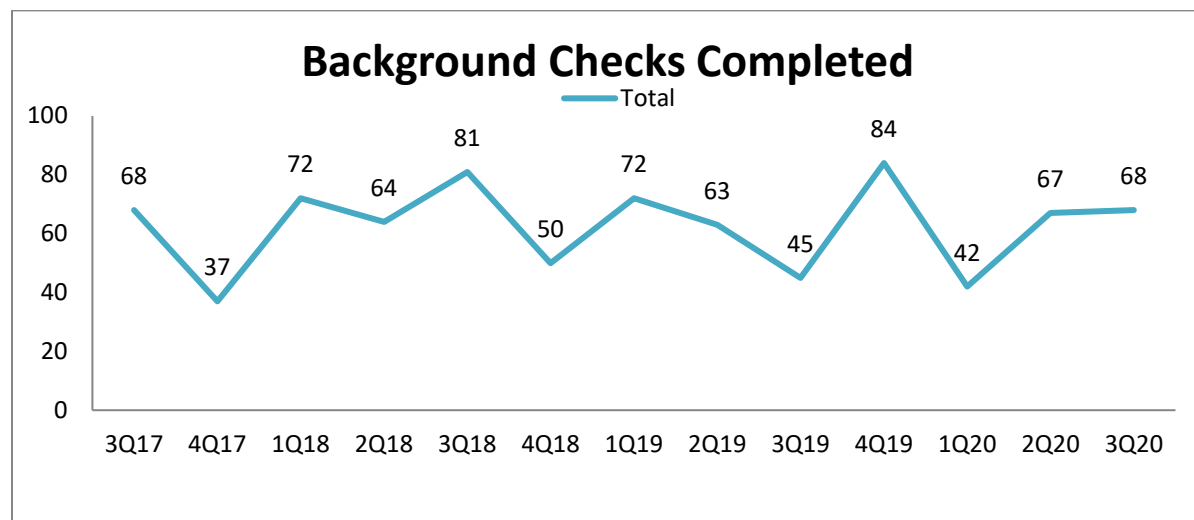
From: Mark Largent, Director of Corporate Activities

Date: June 5, 2020

Subject: Summary of the Corporate Division's Activities



Information on a Fiscal Quarter Basis.



Information on a Fiscal Quarter Basis.

Entities/Activities	Applications and Notices Under Review (as of June 4, 2020)
Bank Related	16
Trust Companies	6
Money Services Business (MSB)	19
Others	2
Totals	43

Division Highlights

- Application volume remains substantial although significantly below the level reported at the last Finance Commission meeting. Compared to our last report submitted, the Corporate Division's filings presently under review by category type changed by:
 - Bank related decreased 15 (48%)
 - Trust company increased 1 (20%)
 - MSB related increased 2 (12%)
 - Other was unchanged 0 (0%)
- **Charter, Conversion, and Merger Activity** – Since the last report to the Finance Commission, the following transactions have consummated:
 - *Banks*
 - First State Bank, Chico, Texas merged into First National Bank, Wichita Falls, Texas [estimated loss in state banking assets of approximately \$185 million].
 - *Trust Companies*
 - Kettleman Trust Company LTA, Midland, Texas, a de novo exempt trust company was added to the state system.



Charles G. Cooper
Commissioner

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To: Finance Commission Members

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

Date: June 5, 2020

Subject: Summary of Non-Depository Supervision (NDS) Activities

			FY 2020							
Entity	FY 2019		1 st		2 nd		3 rd		4 th	
Industry Profile (# / Assets (billions))										
Money Services Businesses (MSB)	171	\$140.5	170	\$140.3	172	\$140.3	*	*		
Prepaid Funeral Contract (PFC)	359	\$4.2	357	\$4.2	355	\$4.2	*	*		
Perpetual Care Cemeteries (PCC)	241	\$365.3 **	241	\$369.4**	241	\$370.6**	*	*		
Check Verification Entities (CVE)	2	n/a	2	n/a	2	n/a	*	*		
Examinations Performed										
MSB	101		19		24		*			
MSB Limited Scope	2		2		0		*			
MSB Accepted other State	13		4		3		*			
PFC	260		53		73		*			
PFC Limited Scope	5		0		0		*			
PCC	184		68		35		*			
PCC Limited Scope	2		0		0		*			
Ratings (# / %) Assigned to All Regulated Entities										
1	276	36.56%	281	37.42%	283	37.78%	*	*		
2	409	54.17%	409	54.46%	410	54.74%	*	*		
3	60	7.95%	50	6.66%	50	6.68%	*	*		
4 & 5	10	1.32%	11	1.46%	6	0.8%	*	*		
Noncompliance with Examination Priorities (Past Due)										
MSB	14		23		18		*			
PFC	3		2		0		*			
PCC	1		2		0		*			

NOTES:

Limited scope examinations do not receive a rating.

* Third quarter fiscal year 2020 data has not been finalized and will be provided in the next summary.

** PCC \$ amounts reflected in the millions.

Division Activities

NDS continues to monitor the effects of COVID-19 on the regulated industries and has developed appropriate supervisory strategies to adapt to current conditions. In coordination with license holders, NDS has implemented a flexible examination approach during this crisis, including the postponement of examinations, and converting all onsite examinations to offsite examinations. Since the last report to the Finance Commission, some of the actions taken include:

- In the MSB area, multi-state coordinated examinations continue in an offsite capacity. Offsite examinations are considered full scope and procedures continue to be performed to verify the safety and soundness of all NDS license holders and to protect the interests of Texas consumers.
- License holders are instructed to upload examination documents and information to the Department's data exchange platform, and communication among examiners and license holders is conducted with mutually acceptable video or other technology. Ongoing communications such as the scheduling of management meetings and discussions of matters arising during examinations continue to be held.
- Although NDS has not yet finalized its analysis related to compliance with examination, with the implementation of modified examination procedures, it is anticipated that NDS will meet or exceed all performance measures for the third quarter of FY 2020.

Impact of COVID-19 on MSBs

- MSBs are generally considered to provide essential financial services but will likely experience decreases in transaction volume and revenue from walk-in business because of COVID-19.
- MSBs offering its services with the use of technology have been able to continue operations and provide their products and services to consumers through their websites and/or mobile phone applications.
- MSBs that offer currency exchange primarily in the U.S./Mexico border will face tougher challenges as face-to-face transactions continue to be restricted. NDS is aware that some MSBs offering currency exchange have temporarily closed all or parts of their businesses due to the restrictions on international travel between the U.S. and Mexico, resulting in consumers obtaining certain services through alternative methods.
- NDS will continue to monitor the current situation and its impact on MSBs, especially currency exchange license holders.

Impact of COVID-19 on PFC/PCC

- The effects of COVID-19 also continue to impact the death care industry since funeral services and burial services, along with face-to-face prepaid funeral and burial sales, have been restricted. As a result, death care providers have continued sales via telephone, mail, or electronic communications.
- The limits on social gatherings have created a new dynamic for families and death care providers resulting in death care providers adapting the way traditional services are offered and delivered. The performance of traditional funeral and graveside memorial services have been augmented with live video presentations or certain portions of services have been postponed for delivery at a future time.

On May 12th, the Nationwide Multistate Licensing System (NMLS) Policy Committee voted to appoint Director of NDS Saucillo, as a member of State Examination System (SES) Steering Committee. The SES Steering Committee is made up of ten state regulators whose main goal is to serve as a consultative body for the ongoing development and policy-making process for SES.

NDS staff also continues to work closely with various organizations, such as CSBS and MTRA, to stay informed of matters affecting our regulated entities. For example, Assistant Deputy Commissioner Reese, continues to participate in a task force comprised of eight state members led by CSBS to continue to develop a standardized MSB model law.

On May 27th, a Prepaid Funeral Guaranty Fund Advisory Council (Council) meeting was held via teleconference. The funds' activities covering March 1, 2019 to February 29, 2020 were discussed and the Council also ratified one claim totaling \$5,400.00 related to Tom G. Walker Funeral Home, Inc., Coleman, Texas, and two claims totaling \$2,932.65 related to El Paso Mission Funeral Home, Inc., El Paso, Texas.

NDS staff continues to monitor for and investigate non-compliant activity, primarily in the MSB area. During this reporting period, NDS initiated regulatory enforcement actions against licensed and unlicensed entities to ensure compliance with applicable rules and regulations, and to protect the rights and interests of Texas consumers who have used the financial services provided by these entities.



TEXAS DEPARTMENT OF BANKING

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Memorandum

To: Finance Commission Members

From: Lori Wright, Director of Human Resources

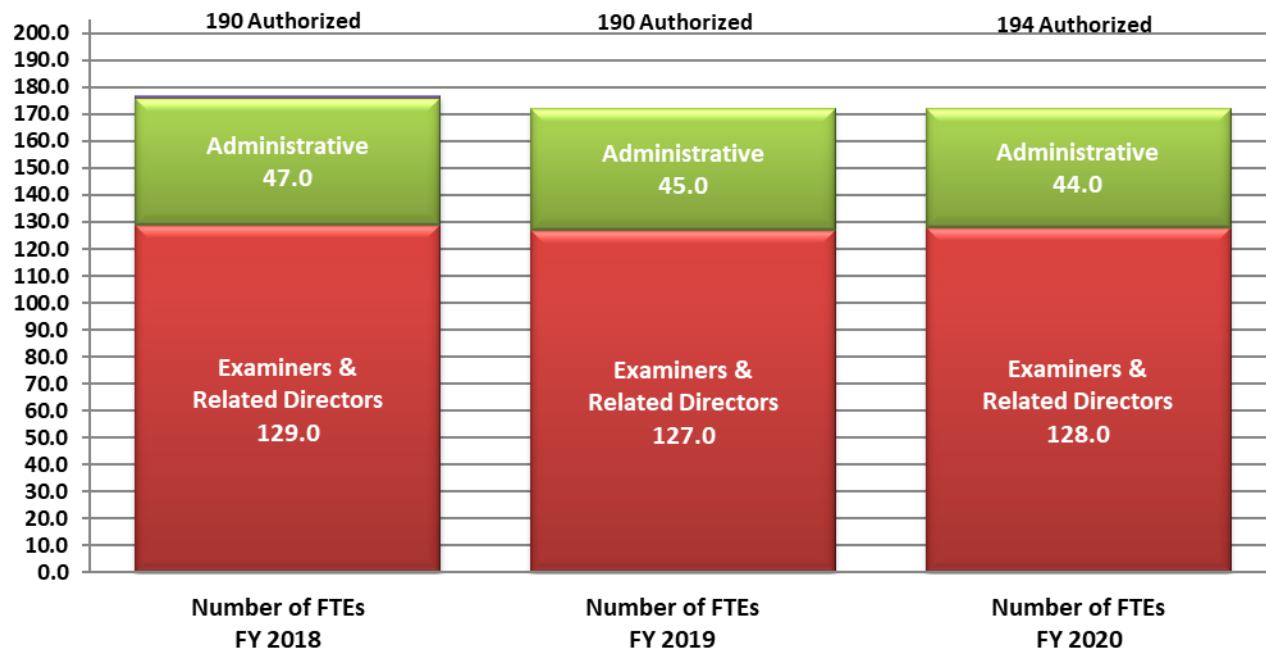
Date: June 5, 2020

Subject: Summary of the Human Resources Division Activities

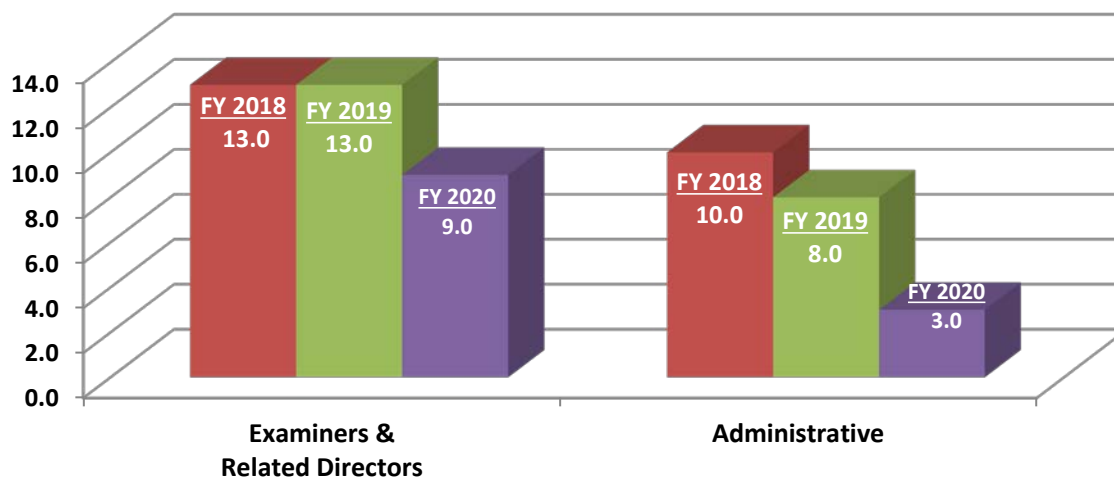
Human Resources Fiscal Year 2020 Activities

Active Postings			
Number of Positions	Position	Status	Activities
1	Program Specialist II (DSS)	Open Until Filled	Open
1	Financial Examiner VII Cybersecurity Risk Specialist	Closed	Filled 6/1/2020
1	Financial Examiner I-III - Assistant Bank Examiner	Closed	Pending Selection
1	Financial Examiner VI-VII Review Examiner	Closed	Offer Pending
3	Financial Examiner I-III -Assistant IT Examiner	Closed	3 Offers Pending
4	Financial Examiner I- Assistant Bank Examiner	Closed	1 Filled 6/1/2020 3 Offers Pending
1	Financial Examiner I – Assistant Trust Examiner	Closed	1 Filled 6/1/2020
1	Financial Examiner VI-VII	Closed	1 Filled 9/1/2020
1	Information Security Officer	Closed	1 Filled 6/22/2020
1	Database Administrator V	Closed	1 Filled 6/22/2020
1	Network Specialist VI	Closed	1 Filled 6/22/2020

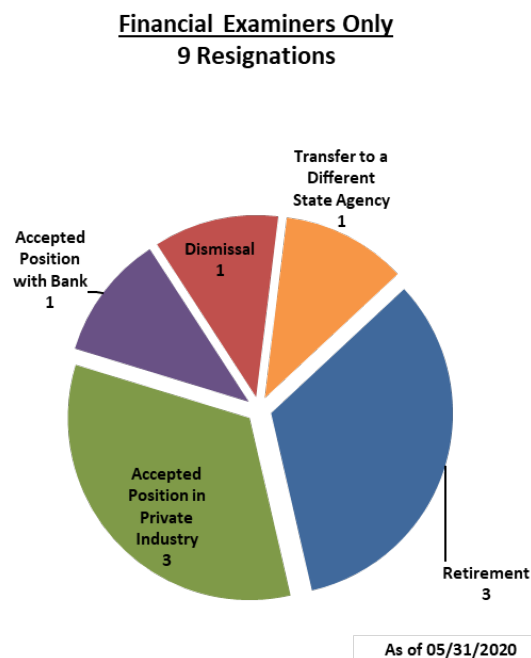
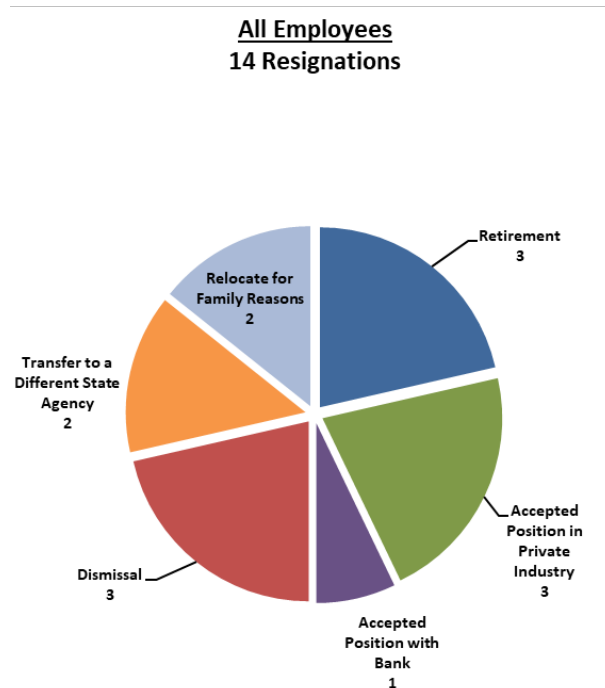
Texas Department of Banking
Employee Data for Fiscal Years 2018, 2019 and 2020 as of
05/31/2020



New Hire Data for Fiscal Years 2018, 2019 and 2020



FY 2020 Employee Turnover Reasons



Other Agency Items:

Compensation Project

Austin Alliance Group is assisting the Department with developing a comprehensive compensation strategy. The project encompasses market salary data analysis, compensation system design, internal and external alignment solutions, identification of career paths, and an effective total compensation program communication plan.

Updated Personnel Policies

Section 8-05A Families First Coronavirus Response Act (April 2020)

Section 6-14 Supervisor Evaluations (June 2020)



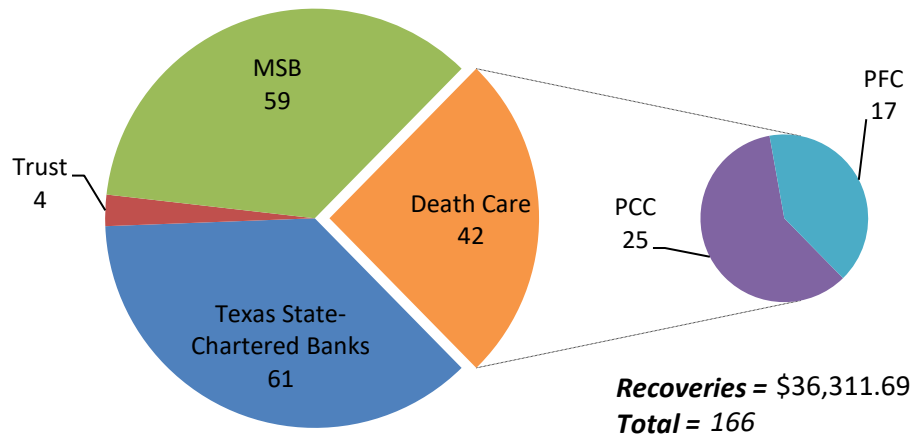
Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

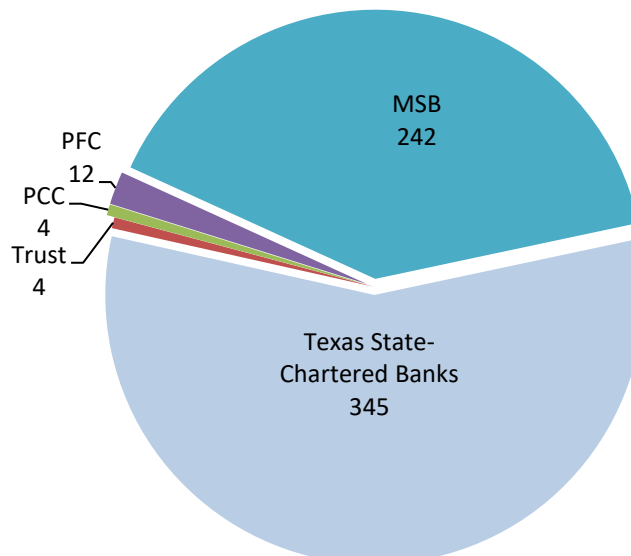
2601 North Lamar Blvd., Austin, Texas 78705
512-475-1300 / 877-276-5554
www.dob.texas.gov

To: Finance Commission Members
From: Michelle Hodge, Director of Strategic Support
Date: June 5, 2020
Subject: Summary of the Strategic Support Division Activities

Jurisdictional Written Complaints September 2019 - April 2020

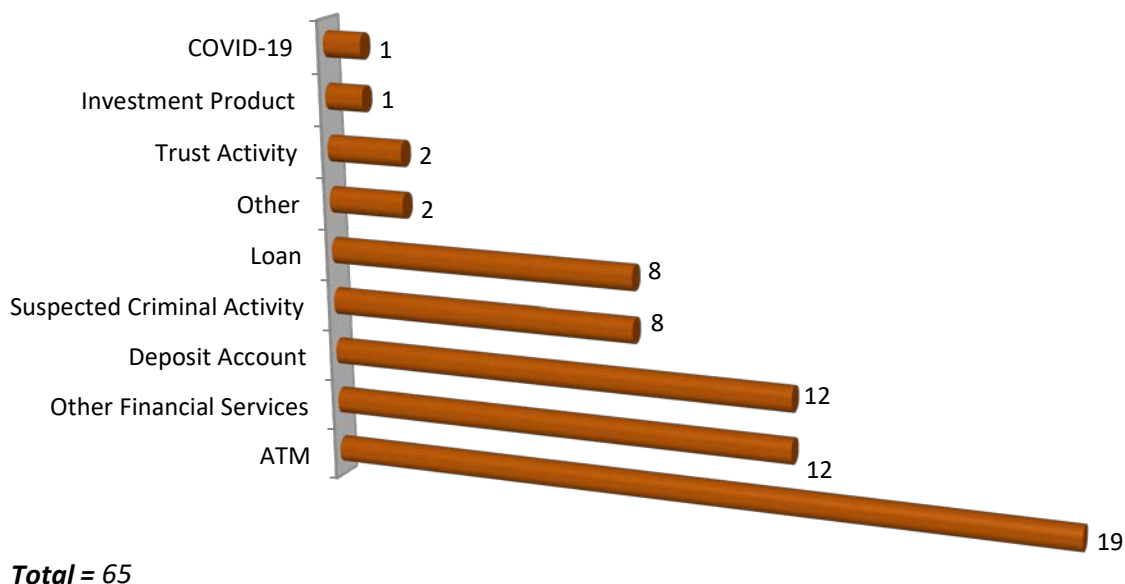


Inquiries on Jurisdictional Entities September 2019 - April 2020

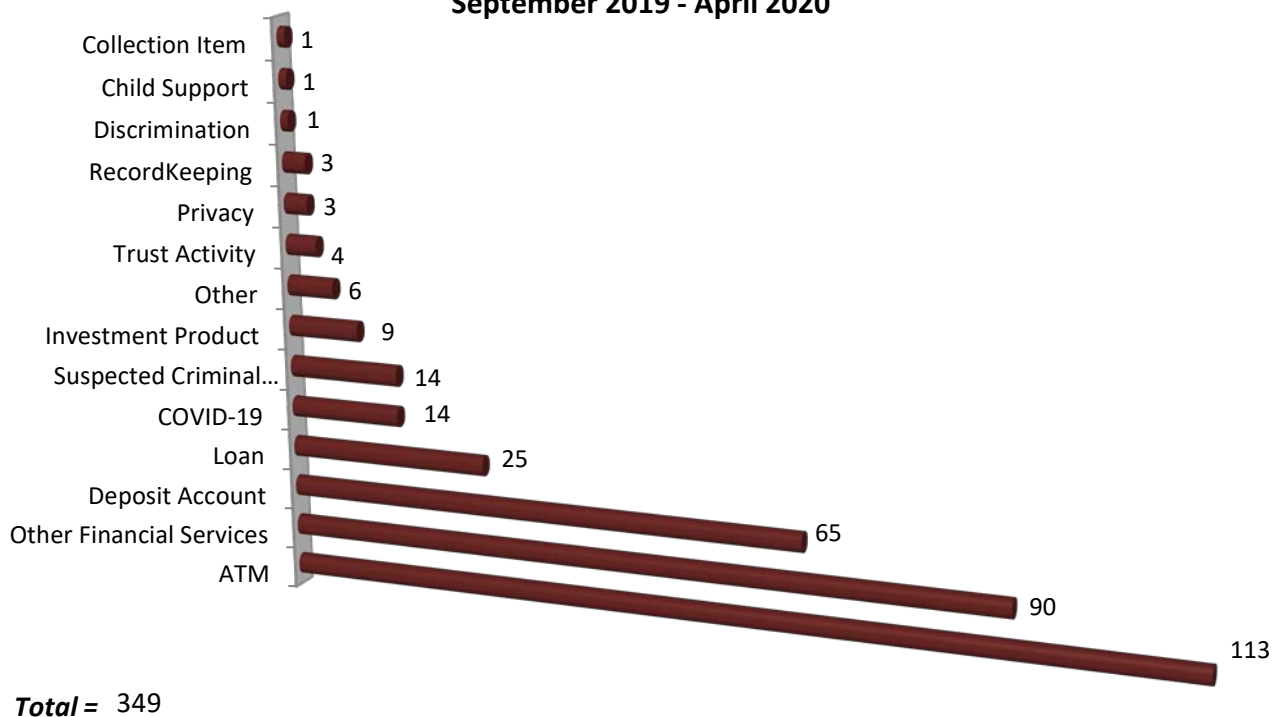


Total = 607

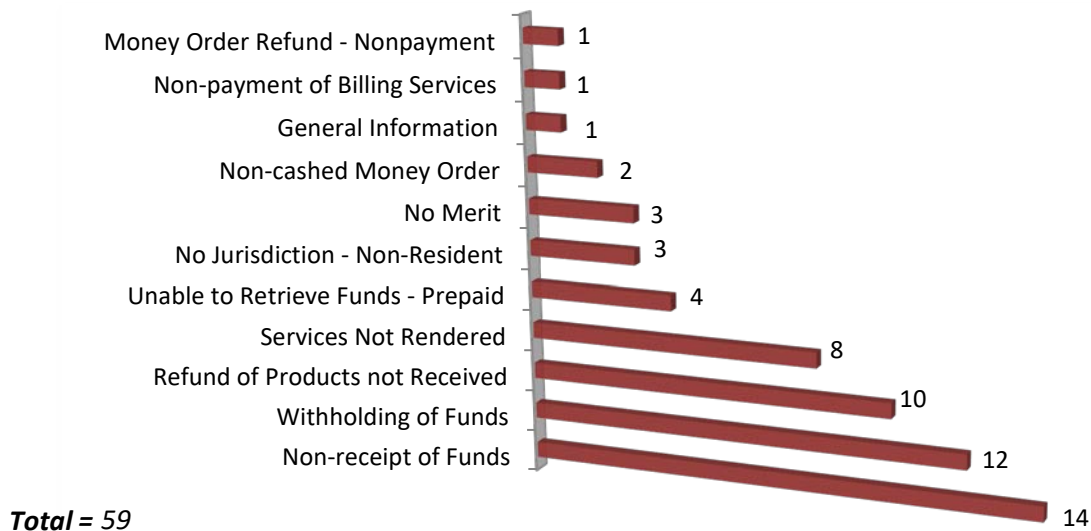
**State-Chartered Banks and Trust Companies
Written Complaints by Type
September 2019 - April 2020**



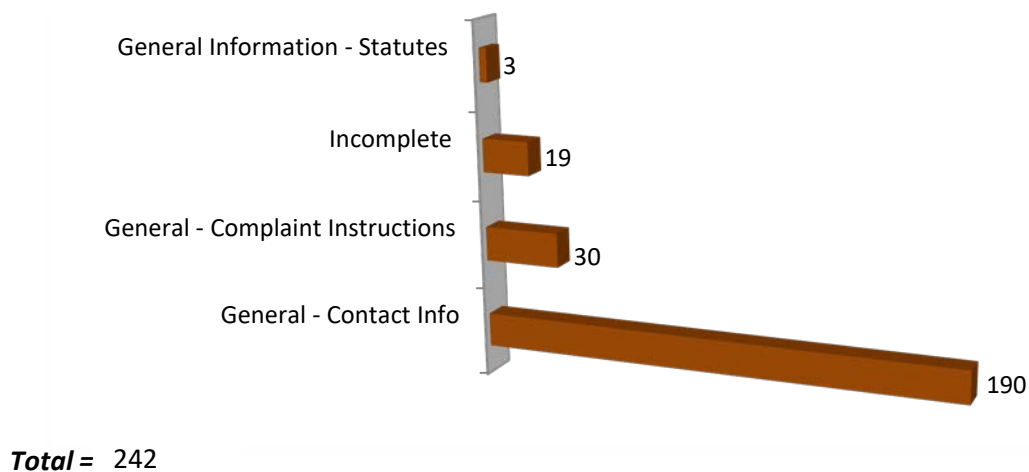
**State-Chartered Banks and Trust Companies
Inquiries by Type
September 2019 - April 2020**



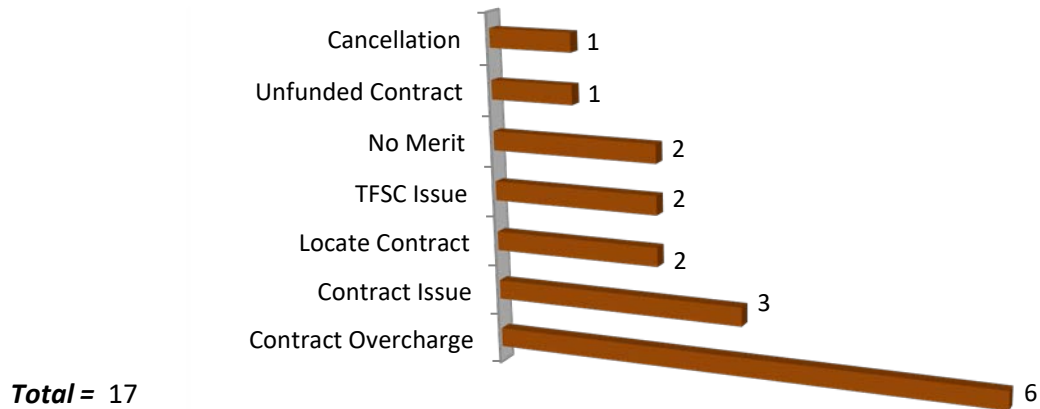
Money Services Businesses Written Complaints by Type September 2019 - April 2020



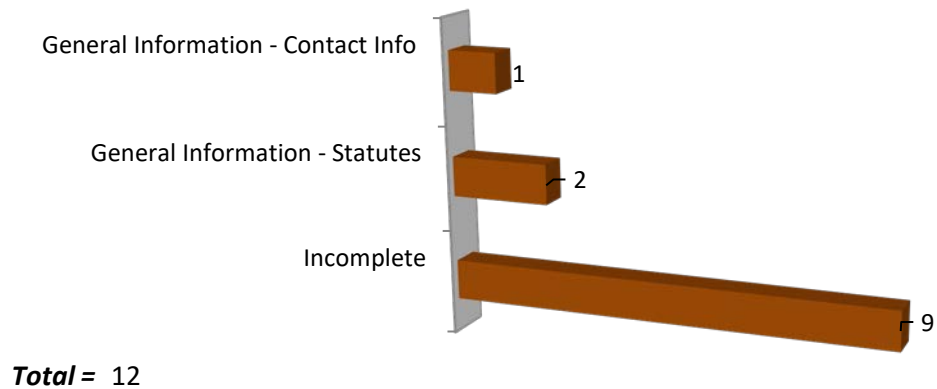
Money Services Businesses Inquiries by Type September 2019 - April 2020



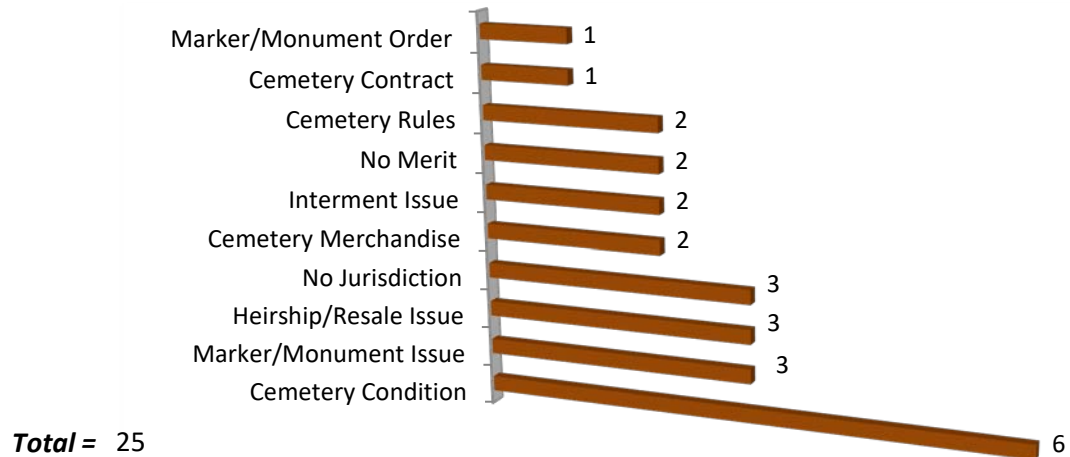
**Prepaid Funeral Contract Sellers
Written Complaints by Type
September 2019 - April 2020**



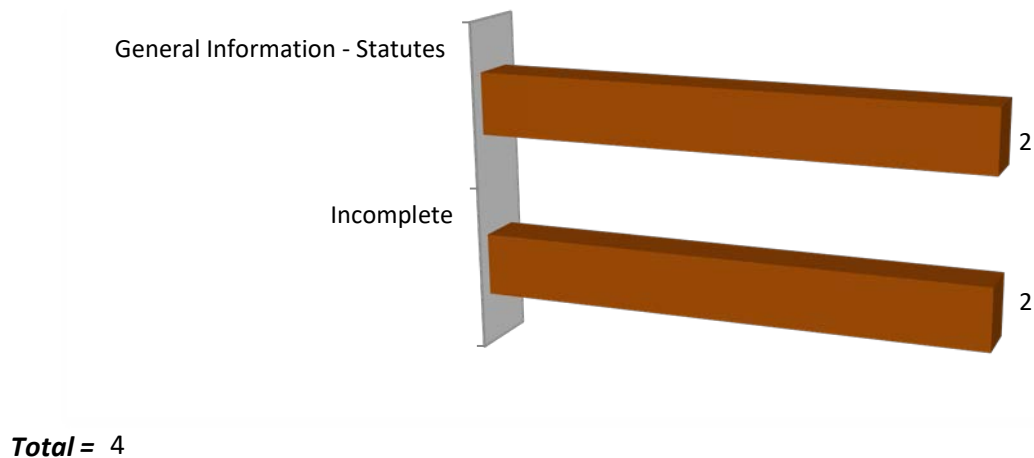
**Prepaid Funeral Contract Sellers
Inquiries by Type
September 2019 - April 2020**



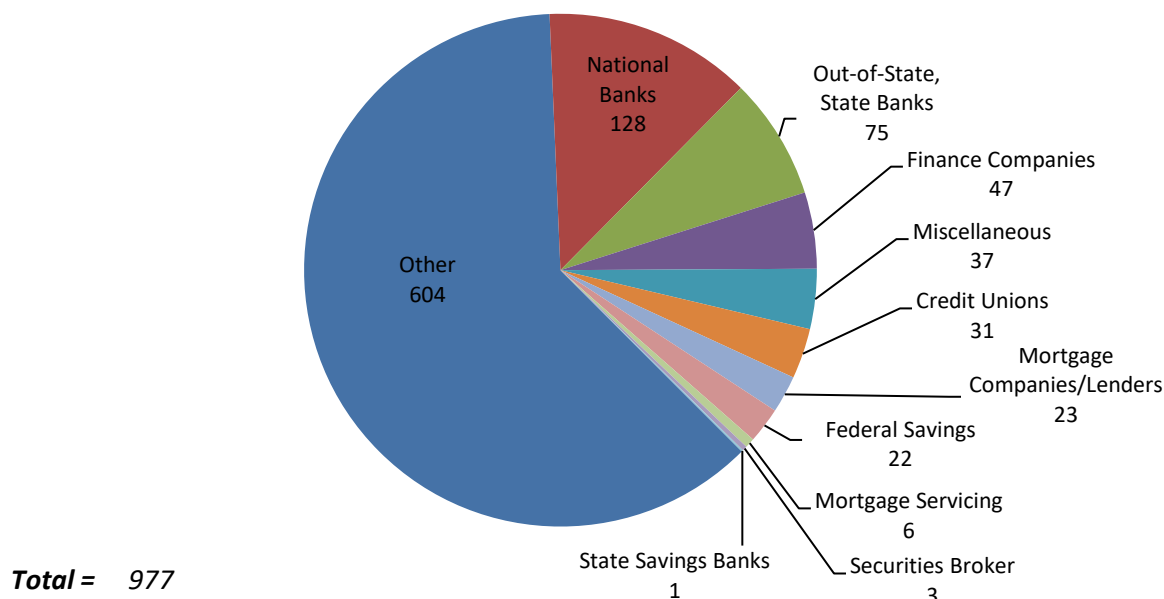
**Perpetual Care Cemeteries
Written Complaints by Type
September 2019 - April 2020**



**Perpetual Care Cemeteries
Inquiries by Type
September 2019 - April 2020**



Complaints and Inquiries Against Non-Jurisdictional Entities September 2019 - April 2020



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.

Complaint Activities Information by Quarter

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr
State-Chartered Banks				
Avg. Number of Days to Close a Written Complaint	12	9	N/A	N/A
Percentage of Written Complaints Resolved Within 90 days	100%	100%	N/A	N/A
Number of Written Complaints Resolved	23	36	N/A	N/A
Trust				
Avg. Number of Days to Close a Written Complaint	12	6	N/A	N/A
Percentage of Written Complaints Resolved Within 90 days	100%	100%	N/A	N/A
Number of Written Complaints Resolved	1	3	N/A	N/A
PFC/PCC				
Avg. Number of Days to Close a Written Complaint	39	28	N/A	N/A
Percentage of Written Complaints Resolved Within 90 days	100%	100%	N/A	N/A
Number of Written Complaints Resolved	25	32	N/A	N/A
MSB				
Avg. Number of Days to Close a Written Complaint	18	28	N/A	N/A
Percentage of Written Complaints Resolved Within 90 days	100%	100%	N/A	N/A
Number of Written Complaints Resolved	16	37	N/A	N/A

*Third quarter performance measure numbers are not yet available

Closed Account Notification System (CANS) ACTIVITY

January 1, 2017 – May 31, 2020

Entity	Enrolled	Compromised Accounts Reported
Texas State-Chartered Banks	194	434
Texas State-Chartered Savings Banks	23	50
Federal Savings Banks	10	1
State Credit Unions	132	743
Federal Credit Unions	229	380
National Banks	170	135
Out-of-State State-Chartered Banks	12	154
Out-of-State National Banks	6	1
Total	776	1,898

Bank Examination Testing System (BETS) Activity

Number of Candidates Passing Each Phase

	FY 2017	FY 2018	FY 2019	FY 2020 As of 05/31/20
I. General Knowledge	8	6	3	4*
II. Loan Analysis	3	3	5	4
III. Panel	2	2	5	6
IV. Test Bank	3	3	4	7
Total FE3	24	22	19	18

Promotions

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

Other Divisional Items:

- COVID – 19 Updates
 - Our [COVID – 19 webpage](#) continues to be updated with information. A few of the recent updates include:
 - [Governor's Strike Force to Open Texas](#)
 - [Governor Abbott Temporarily Allows for Appearance Before Notary Public Via Videoconference For Real-Estate Instruments](#)
 - [Small Business Webinars Series](#)
 - [Assistance for Small Businesses – Paycheck Protection Program \(PPP\)](#)
 - Barbara Winters worked with a team of Bank & Trust Supervision examiners to revise examination procedures and planning documents for commercial, trust, and information technology examinations to be utilized primarily for off-site examinations. The revised examination procedures were posted on the Department's intranet and examination staff was notified of all the changes on June 1, 2020.

- **Publications**

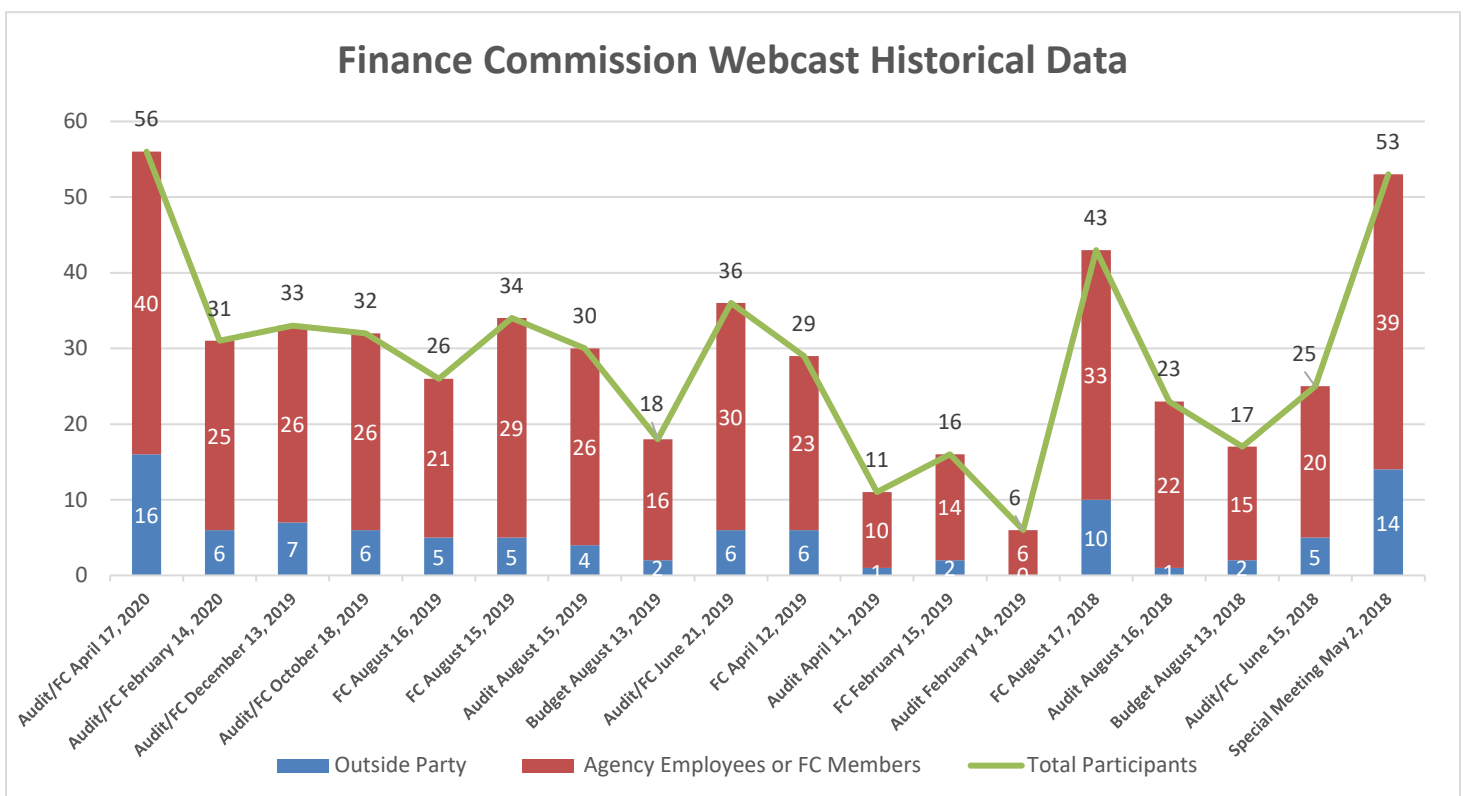
- The Department of Banking Strategic Plan for fiscal years 2021-2025
 - The Strategic Plan which includes the Report on Customer Service and Workforce Plan was submitted to state leadership on June 1, 2020.
- The Strategic Plan for the Finance Commission for fiscal years 2021-2025
 - The Finance Commission Strategic Plan Timeline for drafting and review is included within this Finance Commission submission. The Finance Commission Strategic Plan will be reviewed at the August 21, 2020 Finance Commission meeting.

- **Website Updates**

- Routine security updates for the Department and Finance Commission websites were deployed.

- **Staff Training**

- Juan Renteria and Michelle Hodge attended the Texas Bankers Association's Compliance School virtually.
- COO Wendy Rodriguez and Michelle Hodge attended the Conference of State Bank Supervisors State and Federal Supervisory Forum virtually beginning May 19, 2020 for three afternoons.



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



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705

512-475-1300 / 877-276-5554

www.dob.texas.gov

Memorandum

TO: Finance Commission Members
FROM: Catherine Reyer, General Counsel
DATE: June 1, 2020
RE: Legal Division Update

Pending Contested Cases

In the Matter of Avalon Financial Corp., Westlake, Ohio; Docket No. BM-2001-19-231. Hearing was held March 5, 2020 before Administrative Law Judge Donald Walker to consider an order and penalty against this entity alleged to have engaged in unauthorized money transmission activity in Texas. On April 7, Commissioner Cooper issued a final order against the company, requiring it to pay a \$300,000 for the unlicensed activity and for its continued violation of the previous cease and desist order. The matter has been referred to the Office of the Attorney General for collection of the penalty.

Gifts

The Department has received no gifts since the last Legal Division Update Memo was issued.

Orders Issued 4/1/20 – 5/31/20

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

Bank and Trust

- Consent Order Prohibiting Further Participation dated April 15, 2020; Katelyn Snider, Conroe, TX
- Consent Order Prohibiting Further Participation dated April 24, 2020; Brandon Torres, Laredo, TX

Non-Depository Supervision

- Final Order dated April 7, 2020; Avalon Financial Corp., Westlake, OH
- Emergency Cease and Desist Order dated April 24, 2020; Treasury Vault LLC, Lehi, UT
- Consent Order dated April 24, 2020; Ultimate Software Group, Inc., Weston, FL
- Consent Order dated April 29, 2020; Infinisource, Inc., Coldwater, MI
- Order to Cease and Desist and to Revoke License dated May 7, 2020; Ping Express US, LLC, Dallas, TX*
- Consent Order dated May 11, 2020; PrimePay LLC, West Chester, PA

**This is not a final order; the company has requested an administrative hearing.*

FY 2020 To Date Quarterly Order Activity

BANK				
Type of Action	1st	2nd	3rd	4th
Consent Order	0	1	0	0
Cease & Desist	0	0	0	0
Supervision	0	0	0	0
Prohibition	2	0	3	0
Total	2	1	3	0
TRUST COMPANY				
Consent Order	0	0	0	0
Cease & Desist	0	0	0	0
Supervision	0	0	0	0
Prohibition	0	0	0	0
Total	0	0	0	0
MONEY SERVICES BUSINESS				
Consent Order	0	3	4	0
Cease & Desist	1	0	2	0
Final Order After Hearing	0	0	1	0
Total	1	3	7	0
PERPETUAL CARE CEMETERY				
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
PREPAID FUNERAL CONTRACT				
Consent Order	1	2	0	0
Cease & Desist	0	0	0	0
Conversion	0	0	0	0
Total	1	2	0	0

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendment to 7 TAC §33.27 Concerning Fees for Money Services Businesses Licenses

PURPOSE: Amendment to §33.27, concerning fees that must be paid in connection with a proposed change of control of a money transmission or currency exchange business, corrects an error by replacing language that was inadvertently deleted in a previous rule action.

House Bill 2458, which was passed in the 86th Regular Session of the Texas Legislature, removed all statutory references to licensed depository agents of the Texas Bullion Depository. In August 2019, the Department recommended amendments to multiple rules within Title 7, Texas Administrative Code Chapter 33 to implement HB 2458 by deleting all references to depository agents. The language proposed and approved for deletion in §33.27 inadvertently included all of subsection (g), concerning fees that are required for change of control applications submitted by all money services businesses, not just for applications submitted by depository agents. The Finance Commission approved the amendments for publication in the *Texas Register*, and the amendments were published August 30, 2019. No comments were received during the 30-day comment period. The amendments were adopted on the consent agenda at the Finance Commission meeting on October 18, 2019, and became effective on November 7, 2019. This action is necessary to reinstate the portion of §33.27 that was inadvertently deleted in that prior rule action.

RECOMMENDED ACTION: No comments were received regarding the proposed amendment to 7 TAC §33.27. 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 §33.27 without changes to the proposal as previously published in the *Texas Register*.

Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 33. Money Services Businesses
7 TAC §33.27

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts the amendment to §33.27, concerning fees that must be paid in connection with a proposed change of control of a money transmission or currency exchange business. The amended rule is adopted without changes to the proposed text as published in the May 1, 2020, issue of the *Texas Register* (45 TexReg 2787). The amended rule will not be republished.

House Bill 2458, which was passed in the 86th Regular Session of the Texas Legislature, removed all statutory references to licensed depository agents of the Texas Bullion Depository. In August 2019, the department recommended amendments to multiple rules within Title 7, Texas Administrative Code Chapter 33 to implement HB 2458 by deleting all references to depository agents. The language proposed and approved for deletion in §33.27 inadvertently included all of subsection (g), concerning fees that are required for change of control applications submitted by all money services businesses, not just for applications submitted by depository agents. The Finance Commission approved the amendments for publication in the *Texas Register*, and the amendments were published August 30, 2019. No comments were received during the 30-day comment period. The amendments were adopted on the consent agenda at the Finance Commission meeting on October 18, 2019, and became

effective on November 7, 2019. This action is necessary to reinstate the portion of §33.27 that was inadvertently deleted in that prior rule action.

The department received no comments regarding the proposed amendment.

The amendment is adopted under Texas Finance Code (Finance Code), §151.102, which provides that the commission may adopt rules to administer and enforce Chapter 151, including rules necessary or appropriate to recover the cost of maintaining and operating the department and the cost of administering and enforcing this chapter and other applicable law by imposing and collecting proportionate and equitable fees and costs for notices, applications, examinations, investigations, and other actions required to achieve the purposes of the chapter.

Finance Code, §151.605(c)(3), is affected by the amended section.

§33.27. What Fees Must I Pay to Get and Maintain a License?

(a) – (f) (No change.)

(g) What fees must I pay in connection with a proposed change of control of my money transmission or currency exchange business?

(1) You must pay a non-refundable \$1,000 fee at the time you file an application requesting approval of your proposed change of control.

(2) You must pay a non-refundable \$500 fee to obtain the department's prior determination of whether a person would be considered a person in control and whether a change of control application must be filed. If the department determines that a change of control application is required, the prior determination fee will be applied to the fee required under paragraph (1) of this subsection.

(3) If the department's review of your change of control application or prior determination request requires more than eight employee hours, you must pay an additional review fee of \$75 per employee hour for every hour in excess of eight hours.

(4) The commissioner may reduce the filing fees described in paragraph (1) or (2) of this subsection, if the commissioner determines that a lesser amount than would otherwise be collected is necessary to administer and enforce Finance Code, Chapter 151, and this chapter.

(h) What other fees must I pay?

(1) – (4) (No change.)

(i) How and when do I need to pay for the fees required by this section?

(1) – (3) (No change.)

(4) You must pay the filing fees required by subsection (g) of this section at the time you file your proposed change of control or prior determination request. You must pay any required additional fees within 10 days of receipt of the department's written invoice.

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

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

(7) The department will bill you for any additional examination fees required under subsection (h)(2), (3) or (4) of this section by written invoice. You must pay this additional examination fee within 10 days of receipt of the department's written invoice.

(8) A fee is considered paid as of the date the department receives payment.

(j) What if I cannot afford the annual assessment?

(1) – (2) (No change.)

3. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §12.91 Concerning Other Real Estate Owned

PURPOSE: The proposed amendments to §12.91 would extend the initial deadline for state banks to appraise their other real estate owned (OREO) assets from within 60 days of OREO acquisition to within 90 days and give the Texas Banking Commissioner authority to extend all appraisal deadlines where appropriate. The proposed amendments also reduce the scope of the OREO appraisal rule by raising the recorded book value threshold for OREO subject to the rule. Specifically, the proposed amendments, if adopted, would only require an initial appraisal, and then re-appraisal every three years, of OREO with recorded book values of more than \$500,000, raising the existing threshold from \$250,000.

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

RECOMMENDED MOTION: I move that we publish the proposed amendments to 7 TAC §12.91 in the *Texas Register*.

Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 12. Loans and Investments
Subchapter D. Investments
7 TAC §12.91

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §12.91 of Title 7 of the Texas Administrative Code, concerning other real estate owned. The amended rule is proposed to reduce the scope of the rule with regard to mandatory appraisals of certain real estate assets owned by state banks and to extend various deadlines for those appraisals.

BACKGROUND AND PURPOSE

Section 12.91 regulates “other real estate owned” (OREO). Most typically, OREO consists of interests in real property acquired by state banks through foreclosure or deed-in-lieu of foreclosure.

Among other things, this rule limits the ability of state banks to acquire OREO, prevents state banks from holding OREO indefinitely, and requires state banks to take steps to ensure that their books and records accurately reflect the reasonably fair market value of the OREO. State banks are currently required to obtain formal appraisals of all OREO within 60 days of acquisition unless the recorded book value of the OREO is less than \$250,000 without exception. State banks are required to perform formal, written evaluations of the true market value of all of their OREO assets at least once a year. In addition, for state banks that record OREO assets on their books at values above a certain dollar threshold, a formal re-appraisal of that

OREO is currently required every three years.

Under the current rule, while the department has authority to require additional OREO appraisals, it does not have authority to extend the initial 60-day appraisal deadline or the three-year OREO re-appraisal deadline.

The proposed amendments, if adopted, would extend the initial appraisal deadline from within 60 days of OREO acquisition to within 90 days and give the Texas Banking Commissioner (the commissioner) authority to extend all appraisal deadlines where appropriate.

The proposed amendments also reduce the scope of the OREO appraisal rule by raising the recorded book value threshold for OREO subject to the rule. Specifically, the proposed amendments, if adopted, would only require an initial appraisal, and then re-appraisal every three years, of OREO with recorded book values of more than \$500,000. This raises the existing threshold from \$250,000.

The amendments proposed herein follow similar amendments to similar federal rules adopted jointly by the United States Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve (Board), and the Federal Deposit Insurance Corporation (FDIC) in recent years to their regulations at Title 12 of the Code of Federal Regulations, §§34.43, 225.63, and 323.3, respectively.

The \$250,000 threshold in the department’s current OREO appraisal rule was adopted in 1996 based on these federal regulations regarding valuations of real estate-related

assets. This threshold has not been modified since the rule was promulgated in 1996.

The federal banking agencies recently raised their threshold for requiring formal appraisals of the real estate involved in transactions. The department incorporates by reference the extensive analysis and discussion by the federal banking agencies in adopting the federal amendments, published in the *Federal Register* (Real Estate Appraisals, 84 Fed. Reg. 53,579 (October 8, 2019); Real Estate Appraisals, 83 Fed. Reg. 15,019 (April 9, 2018)).

As was aptly discussed by the federal banking agencies in adopting the federal amendments, real estate prices have risen significantly since the 1990s.

According to national data from the Federal Reserve Commercial Real Estate Price Index, a commercial property that sold for \$250,000 as of June 30, 1994 would be expected to sell for approximately \$760,000 as of December 2016, and the average price of that property during the low-point of the aftermath of the 2008 financial crisis in March 2010 was \$423,000. Data from the Standard & Poor's Case-Shiller Home Price Index and the Federal Housing Finance Agency show similar increases in the prices of residential properties during these time periods.

Taking the foregoing into consideration, the department concurs with the federal banking agencies in concluding that the dollar threshold last established in the 1990s for certain formal real estate appraisal requirements can be raised to the levels in the proposed amendments without resulting in substantially increased risks for state banks.

This would reduce appraisal expenses for state banks.

The proposed amendments would also reduce appraisal requirements for state banks by extending the initial appraisal deadline to within 90 days of OREO acquisition, and permitting extensions of both this deadline and the three-year re-appraisal deadline where appropriate. These changes would not adversely impact bank safety or soundness—expanding the window for initial appraisals by 30 days would not materially reduce initial appraisal accuracy or otherwise negatively affect state banks, and the commissioner would have full discretion to deny or conditionally grant extension requests as appropriate to protect safety and soundness.

SUMMARY OF CHANGES

As discussed above, the proposed amendments, if adopted, would extend the initial appraisal deadline to within 90 days of OREO acquisition and enable the commissioner to extend this deadline and the three-year re-appraisal deadline where appropriate.

The proposed amendments also reduce the scope of the OREO appraisal rule by raising the recorded book value threshold for OREO subject to the rule. Specifically, the proposed amendments, if adopted, would only require initial appraisals and three-year re-appraisals for OREO with recorded book values of more than \$500,000, raising the existing threshold amount from \$250,000.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

W. Kurt Purdom, Deputy Banking Commissioner, has determined that for the first five-year period the proposed amended rule is in effect, there will be no foreseeable increases or reductions in costs or other fiscal implications to state or local government as a result of enforcing or administering the rule as amended.

Mr. Purdom has further determined that for the first five-year period the proposed amended rule is in effect, there will be no foreseeable loss in revenue for state or local government as a result of enforcing or administering the rule as amended.

PUBLIC BENEFITS/COSTS TO REGULATED PERSONS

Mr. Purdom has determined that for each of the first five years the proposed amended rule is in effect, the public benefit anticipated from the amendments to the rule will be reducing regulatory complexity and operating costs for state banks, thereby improving the financial condition of those banks, their returns to investors, and their ability to provide cost-effective financial services to customers.

In addition, the proposed amendments ensure that state banks do not have materially more burdensome regulations with regard to OREO holdings than their federal competitors enjoy. Although the department's current OREO appraisal regulations are reasonable and do not prevent

state banks from exercising the same substantial rights and privileges that federally-chartered banks may exercise regarding OREO assets, the department nevertheless is cognizant that its OREO retention requirements are somewhat more rigid than federal equivalents. The proposed amendments ameliorate that rigidity by doubling the threshold for mandatory appraisals, extending the initial appraisal deadline, and giving the department discretion to further extend all appraisal deadlines.

More importantly, the proposed amendments will not risk the interests of the public by reducing the safety and soundness of state banks—all state banks must still have prudent OREO valuation policies, and the department will continue to have authority under these regulations to require additional appraisals of OREO as deemed necessary to address safety and soundness concerns. Further, state banks are required to limit their OREO holdings to reduce risk and increase safety and soundness, which further reduces any potential impact of the rule amendments upon safety and soundness of state banks.

Mr. Purdom has further determined that for the first five years the rule amendments are in effect, there are no costs anticipated for persons required to comply with the rule as amended. The proposed amendments can only reduce costs to state banks by decreasing the number of mandatory OREO appraisals state banks must conduct. Real estate appraisals are typically significantly more costly than the alternative option of

evaluation in terms of actual expenses and personnel time, so reducing the mandatory appraisals a state bank must pay for will result in savings to the bank. Further, state banks are free to conduct an appraisal rather than an evaluation should the state bank determine that to be more cost-effective or otherwise prudent.

ONE-FOR-ONE RULE ANALYSIS

Pursuant to Texas Finance Code (Finance Code), §16.002, the department is a self-directed and semi-independent agency and thus not subject to the requirements of Texas Government Code (Government Code), §2001.0045. Further, since the proposed amended rule will not increase costs upon any state bank or other regulated person, and is instead amended to reduce costs for compliance, the requirements of Government Code, §2001.0045 would be satisfied if applicable.

GOVERNMENT GROWTH IMPACT STATEMENT

For each of the first five years the proposed amendments are in effect, the department has determined the following: (1) the rule amendments do not create or eliminate a government program; (2) implementation of the rule amendments does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the rule amendments does not require an increase or decrease in future legislative appropriations to the agency; (4) the rule amendments do not require an increase or decrease in fees paid to

the agency; (5) the rule amendments do not create any new regulations; (6) the rule amendments neither expand nor eliminate existing regulations, but do limit existing regulation; and (7) the rule amendments do not increase or decrease the number of individuals subject to the rule's applicability. The proposed rule if amended may positively affect this state's economy by increasing competitiveness and reducing operating costs for state banks.

FISCAL IMPACT ON SMALL AND MICRO-BUSINESSES, AND RURAL COMMUNITIES

Mr. Purdom has determined the rule, if amended, will not have an adverse economic effect on small or micro-businesses, or rural communities because there are no costs or other adverse economic effects to the state banks who are required to comply with the rule. Further, because many state banks are community banks that serve small business and rural areas, the decreased operating costs and increased competitiveness resulting from the proposed amendment may result in positive economic effects on small businesses and rural communities. Moreover, many of the state banks benefitting from the reduced regulatory burden of the proposed amendments are micro-businesses or small businesses.

Because there is no adverse impact on micro-businesses or small businesses from the proposed amendments, the department asserts preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code, §2006.002, are not required.

Mr. Purdom has determined the proposed amendments, if adopted, may indirectly have a minimal adverse economic impact on small and micro-businesses that conduct real estate appraisals. The proposed amendments, if adopted, have the potential to reduce the number of real estate appraisals required by state banks and thereby reduce demand for appraisals, some of which are conducted by small businesses or micro-businesses. However, Mr. Purdom, in accordance with guidelines established by the Office of the Attorney General as provided by Government Code, §2006.002(g), has determined that such potential adverse economic impact only concerns appraisal services not regulated by the department and thus is only indirectly related to the rule amendment, and does not require the additional analysis for a direct adverse economic effect contemplated by Government Code, §2006.002(c).

Further, Mr. Purdom finds that any such loss of business to appraisal firms that are small or micro-businesses from the proposed amendments would be unrelated to the business's status as a small or micro-business. Businesses other than a small- or micro-business performing appraisals will be similarly affected proportionate to the amount of work derived from appraisals performed for state banks.

The department further asserts the public benefits of the proposed rule, as discussed above, outweigh any potential adverse impact on small or micro-businesses.

PUBLIC COMMENTS

To be considered, comments on the proposed amendments must be submitted to the department in writing to within 30 days of publication of this proposal. 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.

STATUTORY AUTHORITY

This proposal is made under the authority of Finance Code §11.301 which authorizes the commission to adopt rules applicable to state banks, and Finance Code, §31.003, which authorizes the commission to adopt rules necessary to preserve or protect the safety and soundness of state banks.

This proposal affects the statutes administered and enforced by the department's commissioner with respect to state banks, contained in Finance Code, Subtitle A. No other statute is affected by this proposal.

§12.91. Other Real Estate Owned.

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

(d) Appraisal requirements.

(1) Subject to paragraph (2) of this subsection, when OREO is acquired, a state bank must substantiate the market value of the OREO by obtaining an appraisal within 90 ~~[60]~~ days of the date of acquisition, unless extended by the banking commissioner. An evaluation may be substituted for an

appraisal if the recorded book value of the OREO is \$500,000 or less [~~less than \$250,000~~].

(2) An additional appraisal or evaluation is not required when a state bank acquires OREO if a valid appraisal or appropriate evaluation was made in connection with the real estate loan that financed the acquisition of the OREO and the appraisal or evaluation is less than one year old.

(3) An evaluation shall be made on all OREO at least once a year. An appraisal shall be made at least once every three years, unless extended by the banking commissioner, on OREO with a recorded book value in excess of \$500,000 [~~\$250,000~~].

(4) Notwithstanding another provision of this section, the banking commissioner may require an appraisal of OREO if the banking commissioner considers an appraisal necessary to address safety and soundness concerns.

(e) - (i) (No change.)

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D.

**Department of Savings and
Mortgage Lending**

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D. Texas Department of Savings and Mortgage Lending

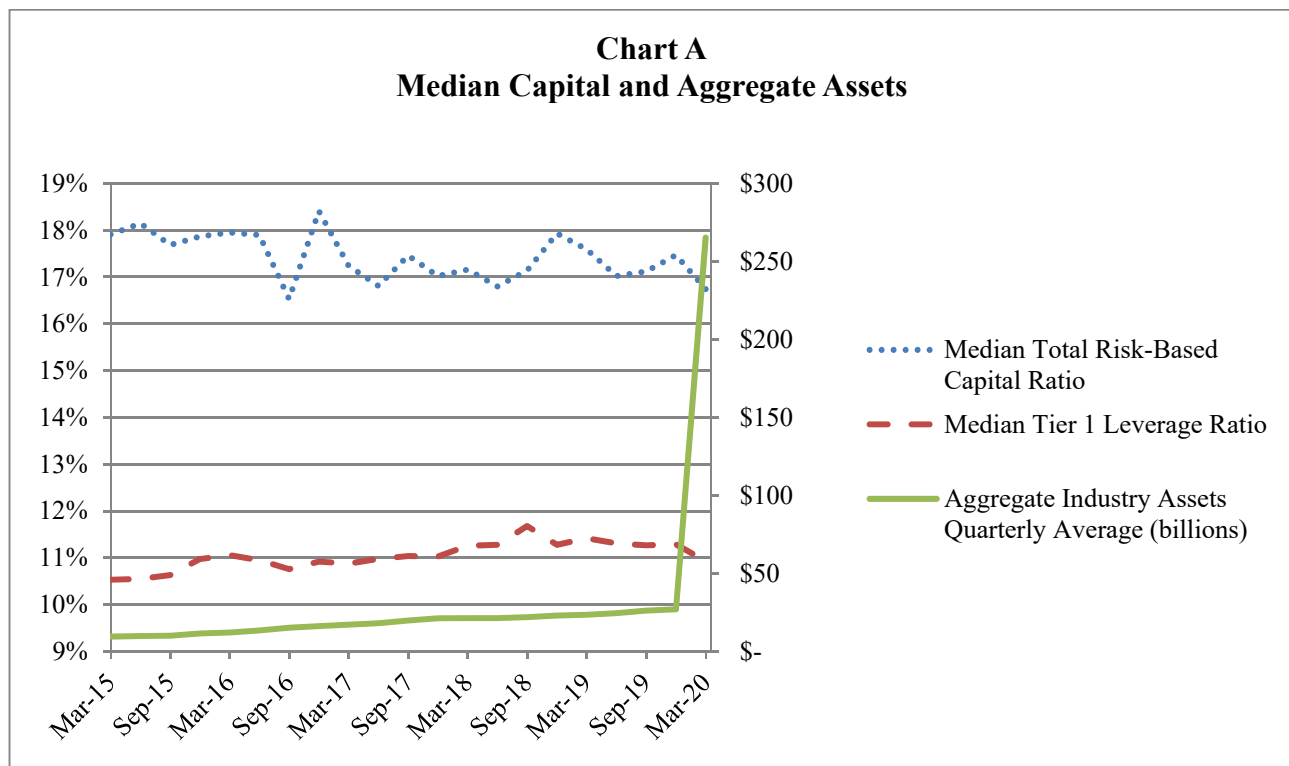
1. **Industry Status and Departmental Operations: a) State Savings Bank Examinations and Supervision Division Activities; b) Mortgage Licensing Division Activities; c) Mortgage Examinations Division Activities; d) Consumer Complaints Division Activities; e) Administration and Finance Division Activities; f) Legal Division Activities, including Gift Reporting; and g) Legislative Activities**

a) State Savings Bank Examinations and Supervision Division Activities

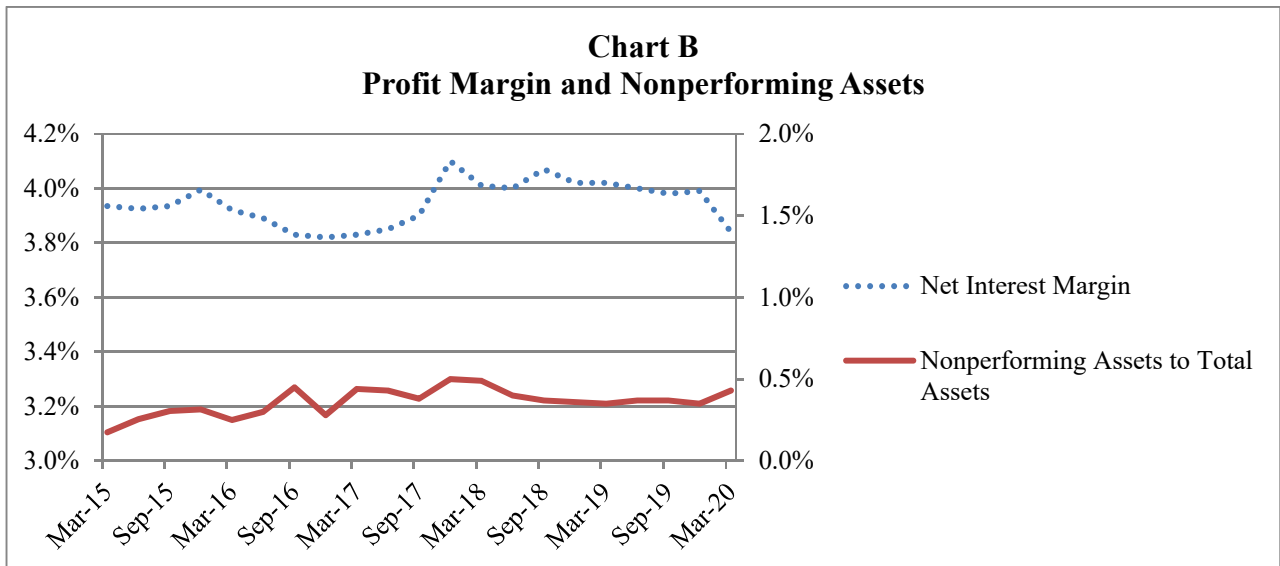
State Savings Bank Industry Status:

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

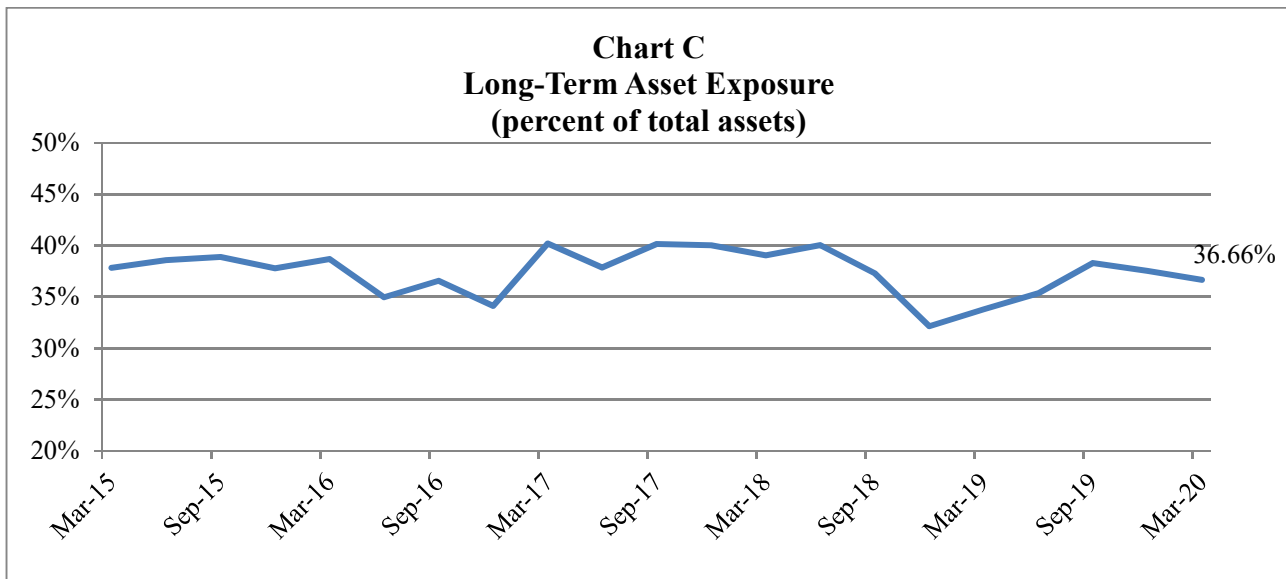
There were 25 state savings banks totaling \$321.5 billion in total assets, as of March 31, 2020. The average asset size of the median state savings bank (“SSB”) grew by 2.56% in the last four quarters to \$342.9 million, exclusive of the two significant conversions on March 20, 2020. The median total risk-based capital ratio and median leverage capital protection have remained generally consistent and are now 16.74% and 10.93%, respectively (Chart A).



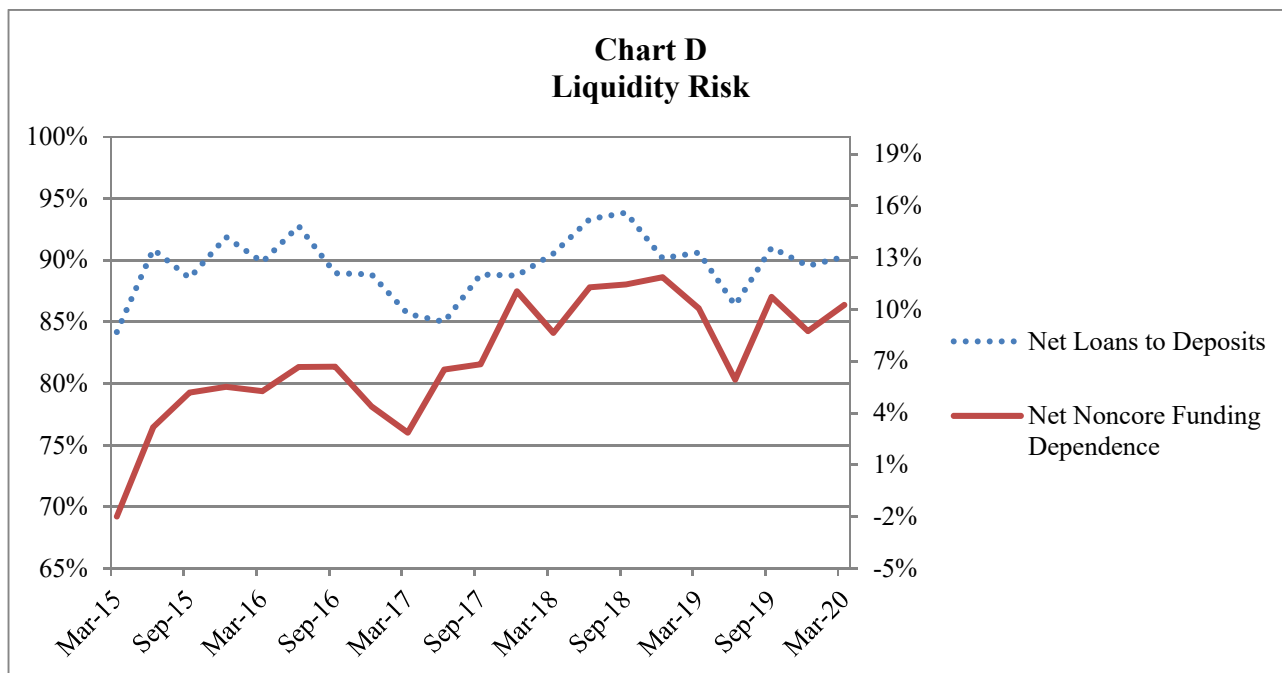
The net interest or profit margin (Chart B) remains consistent with the prior year at 3.84%. Nonperforming asset levels remain low at 0.43% of total assets, compared to the prior year at 0.35%.



Market risk, as evidenced by long-term asset exposure (Chart C), was elevated in the previous quarters but has begun to decrease and is now 36.66%. There remain a small number of outlier institutions with high long-term asset exposure; however, these are generally operating within historical norms of ten years or more.

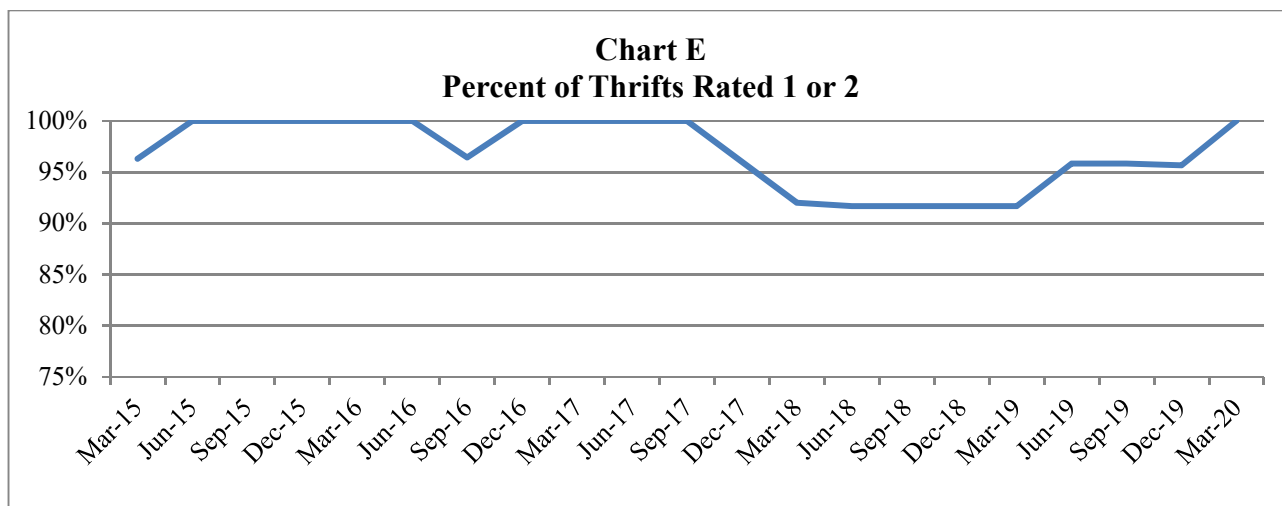


Liquidity risk remains elevated in Texas thrifts (Chart D), as indicated by the Net Noncore Funding Dependence (NNCFD) Ratio, a measure of the funding of long-term assets using short-term funding strategies. The median NNCFD Ratio is 10.26% and has remained over 8% for the previous four quarters. The loan-to-deposit ratio; a measure of the use of deposits to fund lending activities also remains elevated at 90.27%.



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.

All SSBs as of March 31, 2020, were rated a Composite 1 or 2 (Chart E). There is one formal and two informal outstanding enforcement actions.



Savings Bank Charter and Merger Activities:

On June 5, 2020, a registration for the holding company of Charles Schwab, SSB, and Charles Schwab Premier Bank, SSB, was received and is under review.

The Department continues to receive and process various other applications.

Thrift Division Activities:

All savings banks examinations are currently conducted off-site due to COVID-19. To date, no savings banks have requested postponement of an examination.

Deputy Commissioner, Stephany Trotti, virtually attended the CSBS State-Federal Supervisory Forum, May 19-20, 2020.

b) Mortgage Licensing Division Activities

Current Licensing Population:

License Type As of 05/31/2020	Approved		
	Entity (MU1)	Branch (MU3)	MLO (MU4)
<i>Auxiliary</i>	3	n/a	
<i>CUSO</i>	4	2	
<i>FSC</i>	1	n/a	
<i>Independent Contractor</i>	182	n/a	
<i>Mortgage Company</i>	1,579	834	
<i>Mortgage Banker</i>	410	3,155	
<i>Mortgage Servicer</i>	203	n/a	
Totals	2,382	3,991	29,953

Through the 3rd quarter of FY20, the Department received 8,489 new license requests and 86,860 other filings (amendments, sponsorships, etc.). Additionally, as of the 3rd quarter 7,665 applications had been processed.

c) Mortgage Examinations Division Activities

During the first three quarters of FY20 a total of 400 examinations were conducted covering 3,789 individual licensees.

The number of examinations is slightly higher when compared to the same period in fiscal year 2019 but the number of individual licensees covered decreased by 14%. The decrease in the number of licensees covered is a direct result of smaller entities being examined during the third quarter of fiscal year 2020. Seventy-three percent of the entities examined sponsored five or fewer originators. Examinations continue to be conducted off-site due to COVID-19.

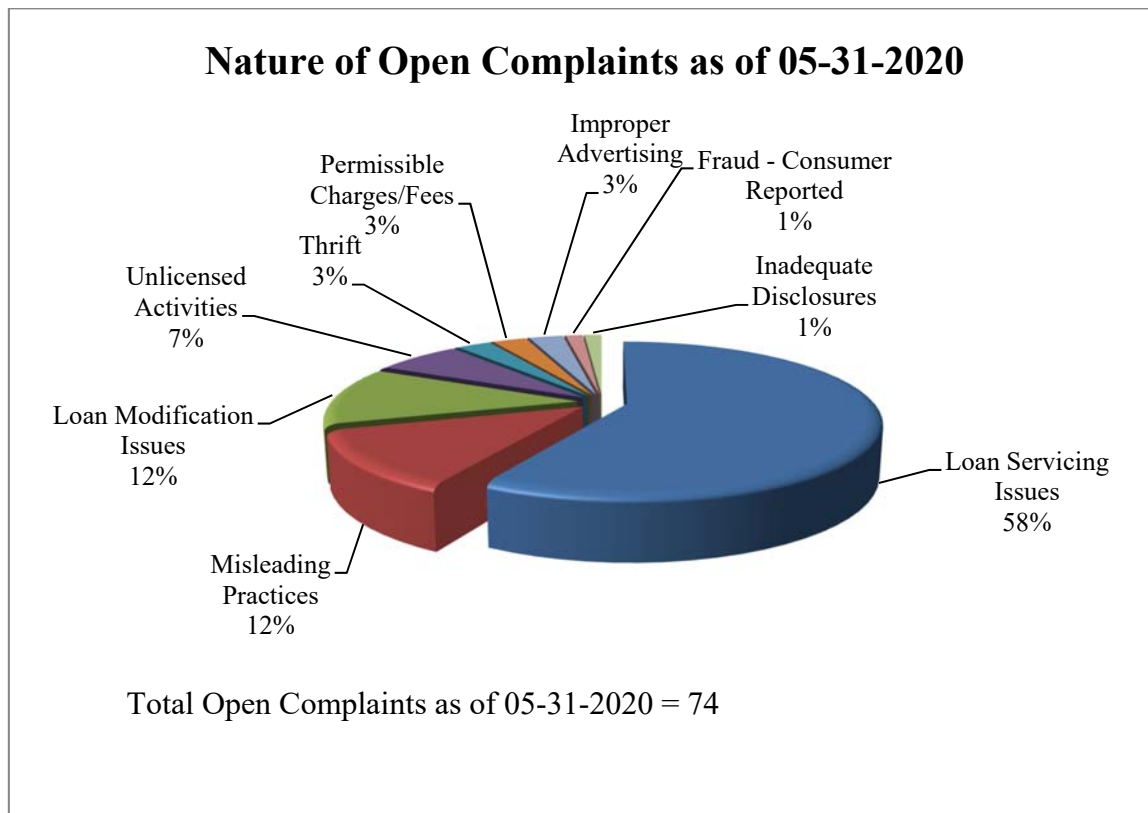
The American Association of Residential Mortgage Regulators annual conference scheduled for August 4-6, 2020 in Savannah, GA has been cancelled because of COVID-19 related issues. A virtual conference will be scheduled for the same time period in August.

d) Consumer Complaints Division Activities

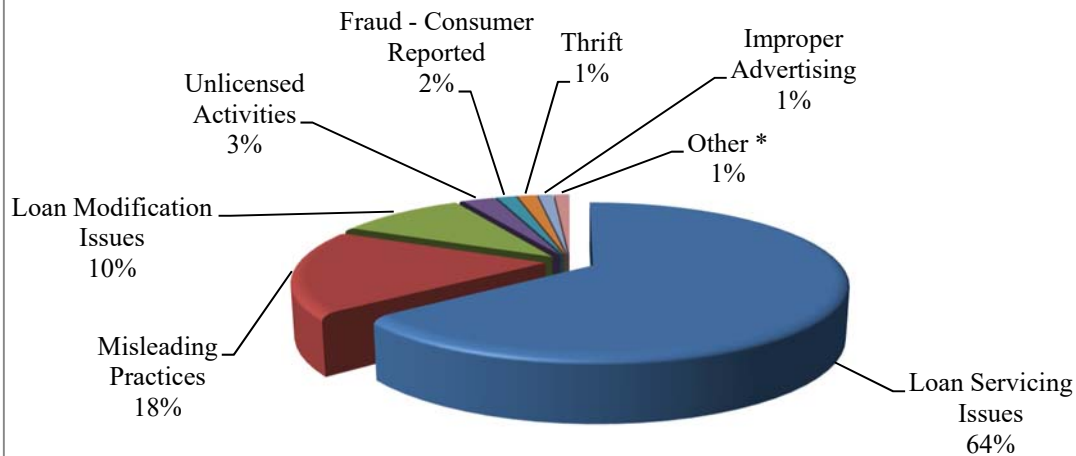
During the first three quarters of FY20, a total of 937 consumer complaints were received. This represents a 29% increase when compared to the same period in fiscal year 2019. Loan servicing complaints accounting for 64% of the total number of complaints received. As of May 31, 2020, there were a total of 74 open consumer complaints with 99% of the complaints being aged less than 90

days. The following charts reflect consumer complaint activity for the first three quarters of fiscal year 2020.

Complaint Activities Information by Quarter – FY20				
	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr
Servicing Complaints				
Average Number of Days to Close a Complaint	25.9	19.8	20.9	
Percentage of Complaints Resolved Within 90 Days	92.0%	96.3%	94.4%	
Number of Servicing Complaints Closed	199	187	234	
Non-Servicing Complaints				
Average Number of Days to Close a Complaint	26.9	16.8	30.3	
Percentage of Complaints Resolved Within 90 Days	90.7%	94.5%	84.0%	
Number of Non-Servicing Complaints Closed	107	109	119	
All Complaints				
Total Complaints Closed	306	296	353	



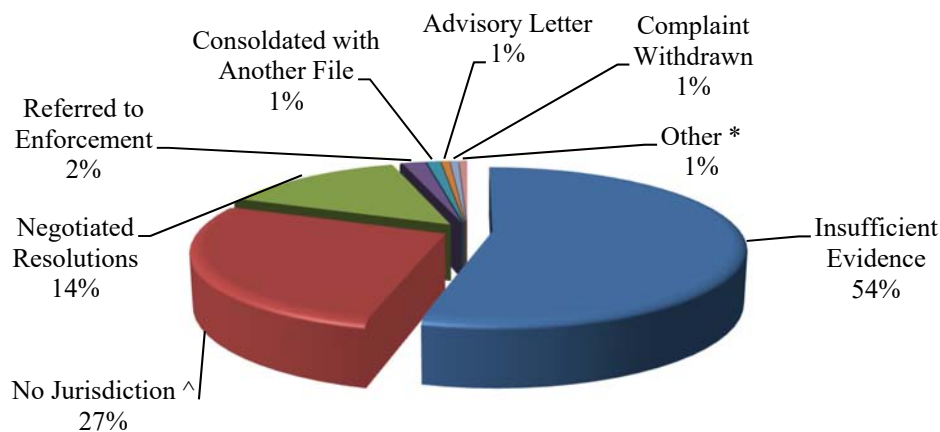
Nature of Complaints Received - through 3rd Qtr FY20



Total Complaints Received through 3rd Qtr FY20 = 937

* The "Other" Category includes: Permissible Charges/Fees, Inadequate Disclosures, Refunds and File Transfers, Bait and Switch, Fraud-Industry Referral, and Sponsorship Issues.

Disposition of Resolved Complaints - through 3rd Qtr FY20



Total complaints resolved through 3rd Qtr FY20 = 955

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

* The "Other" category includes: Information Only, No Investigation, and Referred to Attorney General.

e) Administration and Finance Division Activities

Administration

On June 1, 2020, in accordance with the Texas Government Code, Section 2056.002, the Department's Strategic Plan FY2021 - 2025 was submitted to the Office of the Governor, members of the legislature and oversight agencies, as required.

Risk Management

Under the guidance of Commissioner Jones, Directors Antov and O'Shields, serving as the Risk Manager and the COOP Coordinator, respectively, the Department continues to operate, implementing applicable executive orders, requirements, and guidelines. Additionally, the COOP Committee is strategizing the entry for staff when re-entry is deemed appropriate.

Mortgage and thrift examinations' field staff continues to conduct all examinations off-site. Austin Office staff continues to telework, with minimal presence in the office on any day, adhering to all necessary precautions.

Director O'Shields and Xerxes Pascua, Systems Analyst, continue to work with staff and provide the necessary information resources to ensure that teleworking is effective and efficient.

Director Antov is working with Department of Banking's building management staff to explore and possibly implement additional safety solutions for building doors and front desk set up in order to provide increased staff and visitor protection when building is reopened to the public.

The management team continues to maintain regular communication with staff and to stay informed, and prepares for further development of the COVID-19 situation.

Accounting, Budget, and Financial Reporting

Staff is closing out the 3rd quarter of FY20 and is in the preparation stage of the operating budget for FY2021.

Staff is monitoring the operating budget closely and analyzing the impact of the COVID-19 pandemic and the addition of two new thrift charters.

On March 19, 2020, the Legislative Budget Board issued a letter to all state agencies and universities requesting information on the fiscal impact of the disaster response to COVID-19. In accordance with that request, beginning in April, the Department has submitted monthly reports, including the Department's actual and projected expenditures related to COVID-19.

Purchasing and Procurement

Staff is preparing for the new fiscal year, working with vendors to obtain quotes and updated contracts for services.

Human Resources

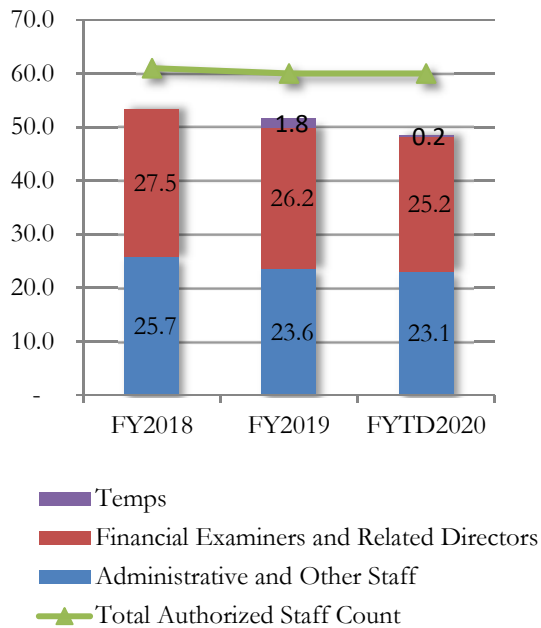
As of June 1, 2020, the Department was staffed at 49 regular full-time and 1 part-time employees. The Department had no separations during the months of April and May.

Below is the status of the Department's vacancies:

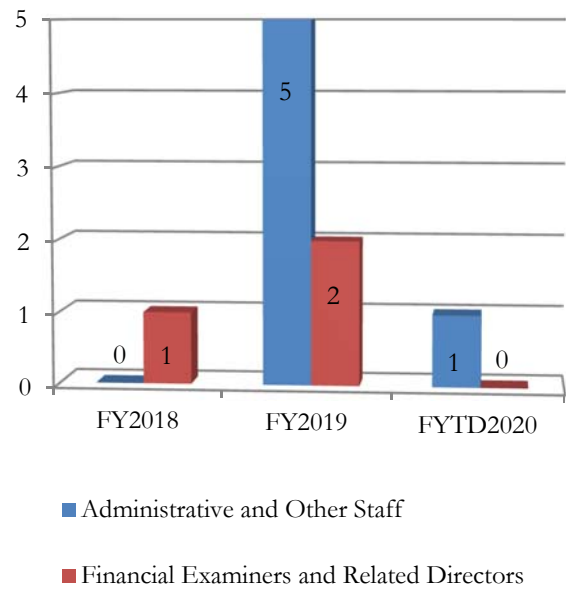
Vacancy Status	
Financial Examiner IV – Thrift - 3	Interviewing
Financial Examiner V – Thrift - 6	Interviewing
Financial Examiner VI – Thrift - 3	Collecting and Reviewing Applications
Investigator II/III – Licensing	Collecting and Reviewing Applications
Administrative Assistant II/III - Complaints	Collecting and Reviewing Applications
Administrative Assistant III/IV – Thrift	Collecting Applications
Legal Assistant II/III	Collecting Applications
Financial Examiner I/II – Mortgage	Closed - postponed

Staffing Charts as of May 31, 2020

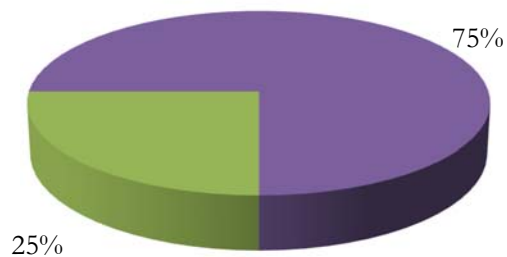
Department of Savings and Mortgage Lending
Employee Data
for FYE 2018, 2019, and 2020 as of May 31, 2020



Department of Savings and Mortgage Lending
New Hire Data
for FY2018, 2019, and 2020 as of May 31, 2020



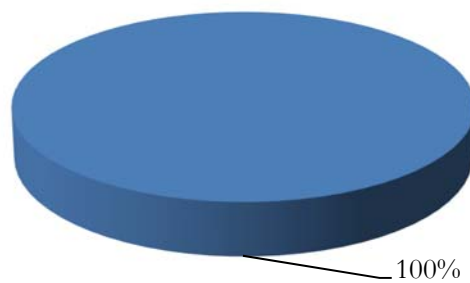
Department of Savings and Mortgage Lending
Turnover Agencywide FY2020 as of May 31, 2020



4 total - 1 involuntary separation and 3 voluntary resignations

■ Involuntary Separation ■ Voluntary Resignation

Department of Savings and Mortgage Lending
Turnover Financial Examiners as of May 31, 2020



3 total - 3 voluntary resignations

■ Voluntary Resignation

As part of the strategic plan, state agencies must conduct a strategic staffing analysis and develop a workforce plan, according to guidelines developed by the state auditor, to address critical staffing and training needs of the agency. In accordance with these requirements, staff prepared and submitted the Department's Workforce Plan for FY2021-2025 to the Office of the Governor, the State Auditor's Office, members of the legislature, and other oversight agencies.

Staff has redesigned and adapted the hiring, interviewing, and new employee onboarding processes so that they can be performed virtually while remaining effective and efficient.

f) Legal Division Activities, including Enforcement Activity and Gift Reporting

Enforcement Orders Issued 3rd Quarter 03/01/2020 - 5/31/2020

During this time period, the Commissioner issued 35 enforcement orders.

In March 2020, the Department issued 13 orders related to violations cited during a company examination audit. Of these orders, two were formal advisory letters and the remaining 11 orders imposed an administrative penalty for the violations cited during the audit. Of these orders four are on appeal.

In April 2020, the Department issued 13 orders related to violations cited during a company examination audit. Of these orders, two were agreed orders to surrender the company/individual license in lieu of further disciplinary action and the remaining 11 orders imposed an administrative penalty for the violations cited during the audit. Of these orders five were formal advisory letters.

In May 2020, the Department issued nine orders related to violations cited during a company examination audit. Of these orders, four were formal advisory letters and one was a letter of reprimand. Of the remaining four orders, the Department rescinded one order and the other three orders imposed an administrative penalty for the violations cited during the audit.

Contested State Office of Administrative Hearings (SOAH) Cases:

Case No. 450 20-3608 Department of Savings and Mortgage Lending v. Forrest Layton.

The Department denied the RMLO license application of Forrest Layton on the grounds that he had failed to satisfy the Commissioner regarding his general fitness and character. On February 10, 2020, Mr. Layton appealed the license denial. The SOAH Administrative Law Judge (ALJ) proceeded to schedule a telephonic contested hearing in the case. However, on June 1, 2020, Mr. Layton filed a motion to request a live hearing. The ALJ reset the hearing to June 23, 2020 and is requiring that it be conducted by video conferencing.

There have been no other contested SOAH hearings held since April 17, 2020.

The Department has a total of four contested SOAH hearings scheduled to be held between June 19, 2020 and August 21, 2020. Currently, SOAH is scheduling all hearings to be held telephonically due to COVID.

Litigation

Case No. 19-31300-HMC In Re: John Hoang Trien and Adversary No. 20-03001 State of Texas v. John Hoang Trien pending before the U.S. Bankruptcy Court for the Western District of Texas, El Paso Division.

The Department sought to enforce past administrative cease and desist orders (issued for unlicensed residential loan origination and unregistered residential loan servicing activity), by enlisting the services of the Texas Attorney General's Office. The subject John Trien however filed a Chapter 11 bankruptcy proceeding. The State of Texas continued its efforts by filing an Adversary Proceeding against Mr. Trien. Bankruptcy Judge Christopher Mott, on the Motion of the United States Trustee's Office, converted the Chapter 11 bankruptcy to a Chapter 7 bankruptcy. This case is now in liquidation not reorganization. In May 2020, the State of Texas filed a motion to amend its adversary complaint against Mr. Trien, which was granted by the court. Within the adversary proceeding Mr. Trien had also filed a motion to strike the amended complaint, as well as a motion for summary judgment and such motions were denied by the court during May 2020. Discovery within the adversary proceeding should conclude by the end of August 2020 and there is a docket call scheduled for September 2020, at which time a trial date will be selected.

Docket No: D-1-GN-19-0080190 Jon Douglas Black v. Department of Savings and Mortgage Lending, pending before the 353rd Judicial District Court of Travis County, Texas.

The case relates to a Final Order denying licensure signed by the Commissioner on September 18, 2019 (subsequent to a contested SOAH proceeding). Mr. Black appealed the administrative order, by filing his petition in district court. Thereafter Mr. Black filed his brief. On April 7, 2020, the Texas Attorney General's Office filed the (SML) appellee brief. The district court had scheduled a hearing to be held on May 14, 2020. However, the court continued the hearing. Counsel for SML was advised to contact the court in mid-June to secure a hearing date. It is now expected that the hearing may be set to be heard mid-July or early August, 2020.

State of Texas v. Scott Marinelli – The Department's final order assessing a penalty for unlicensed loan modification/origination activity has been forwarded to the Texas Attorney General's Office and SML has requested that the Bankruptcy and Collection Division of such office reduce the order to a final judgment and pursue collection efforts. There have been no developments in this case since the last report to the Finance Commission.

State of Texas v. Peter Wagner – The Department had entered into a settlement agreement, whereby Mr. Wagner was to make certain restitution payments to consumers for his unlicensed residential loan modification activity. In May 2020, Mr. Wagner defaulted on his installment payment and the Department has asked the Texas Attorney General’s Financial Litigation and Charitable Trusts Division to reduce the agreement to a district court judgment.

Recovery Fund Disbursements

Claim No. 203002; *In the Matter of Sherman Michael Dodson (NMLS ID: 336050)*

On February 12, 2020, the Commissioner ordered \$12,000 disbursed from the recovery fund to a consumer harmed by the originator who issued an improper prequalification letter to the consumer. The order became final and non-appealable on or about May 8, 2020.

Claim No. 203003; *In the Matter of Lucy L. Gonzalez (NMLS ID: 621690)*

On April 27, 2020, the Commissioner ordered \$2,270 disbursed from the recovery fund to a consumer harmed by the originator who issued an improper prequalification letter to the consumer, and engaged in improper dealings, including by misrepresenting the imminence of the mortgage applicant’s ability to close and failing to timely respond to inquiries by the mortgage applicant. The order became final and non-appealable on or about May 23, 2020.

FY20 Quarterly Enforcement Order Activity as of 3rd Quarter

Type of Action	1st	2nd	3rd
Agreed Order to Surrender License	0	0	2
Agreed Order to Take Affirmative Action	0	2	2
Agreed Order to Cease and Desist	0	3	0
Agreed Order	11	1	0
Advisory Letter	15	16	11
Consent Order	0	0	0
Final Order	2	1	0
Letter of Reprimand	1	1	1
Order to Cease and Desist	12	9	12
Order to Take Affirmative Action	15	8	6
Order of Suspension	3	0	0
Order of Revocation	0	2	0
Order Rescinding Previous Order	1	1	1
Total	60	44	35

Public Information Requests

From March 1, 2020 until May 31, 2020, the Department received and responded to 19 public information / open records requests and of this total, one was forwarded to the Attorney General’s Office for a ruling on applicable exceptions to disclosure, which upheld the Department’s claimed exceptions.

Gifts

No gifts were received during the reporting period.

2. Discussion of and Possible Vote to Take Action on the Adoption of amendments to 7 TAC §77.73, Concerning Investments in Banking Premises and Other Real Estate Owned.

PURPOSE: The amendments, if adopted, would allow a state savings bank to conduct an evaluation on real property valued at \$400,000 or less, raising the existing threshold amount from \$250,000. The amendments mirror and conform to similar amendments adopted jointly by the United States Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve Board (Board), and the Federal Deposit Insurance Corporation (FDIC).

RECOMMENDED ACTION: One comment was received regarding the proposed amendments to 7 TAC §77.73 which was in favor of the amendments. The Department recommends that the Commission approve adoption of the amended rule, without changes to the proposed text as published in the May 1, 2020 issue of the *Texas Register*.

RECOMMENDED MOTION: I move that we adopt the amendments to 7 TAC §77.73 without changes to the proposed text as previously published in the *Texas Register*.

Title 7. Banking and Securities.**Part 4. Department of Savings and Mortgage Lending****Chapter 77. Loans, Investments, Savings, and Deposits****Subchapter A. Authorized Loans and Investments****§77.73. Investment in Banking Premises and Other Real Estate Owned**

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts amendments to 7 Texas Administrative Code (TAC) §77.73, without changes to the proposed text as published in the May 1, 2020 issue of the *Texas Register* (45 TexReg2788). The rule will not be republished.

REASONED JUSTIFICATION

7 TAC §77.73 governs when a state savings bank must perform an appraisal or evaluation of real estate it acquires in satisfaction or partial satisfaction of indebtedness. The amendments raise the threshold for which a state savings bank may elect to perform an evaluation in lieu of a formal appraisal by a certified or licensed appraiser. Specifically, the amendments allow a state savings bank to conduct an evaluation on real property valued at \$400,000 or less, raising the existing threshold amount from \$250,000. The amendments mirror and conform to similar amendments adopted jointly by the United States Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve (Board), and the Federal Deposit Insurance Corporation (FDIC; the OCC, Board, and FDIC, collectively, the federal banking agencies; the amendments, collectively, the federal amendments) to their

regulations at 12 C.F.R. §§34.44, 225.64, and 323.3, respectively. The department incorporates by reference the reasoned justification by the federal banking agencies in adopting the federal amendments, published in the *Federal Register* (Real Estate Appraisals, 84 Fed. Reg. 53,579 (October 8, 2019)). The federal amendments became effective on January 1, 2020. Until the federal amendments were adopted, the previous federal appraisal/evaluation threshold amount of \$250,000 stood unchanged since 1994. Until now, the similar requirements of existing §77.73, meanwhile, have not changed since January 6, 2011. As was aptly discussed by the federal banking agencies in adopting the federal amendments, since 1994, residential real estate prices have risen significantly. In adopting the federal amendments, the federal banking agencies cited data from the Standard & Poor's Case-Shiller Home Price Index (Case-Shiller), estimating that a residential property sold for \$250,000 on June 30, 1994 would have sold for \$643,750 on March 31, 2019. Meanwhile, according to data from the Federal Housing Finance Agency (FHFA), a residential property sold for \$250,000 on June 30, 1994 would have sold for \$621,448 in March 2019. The federal banking agencies also reviewed how the 1994 \$250,000 appraisal/evaluation threshold amount compared to general measures of inflation according to the Consumer Price Index (CPI) and concluded that \$250,000 of consumer cost as of July 1, 1994 would equate to a relative consumer cost of \$429,240 as of March 2019. The federal banking agencies also considered estimates for the most recent low point in housing prices in 2011 and determined that a residential property sold for \$250,000 on June 30, 1994 would have sold

for \$445,152 if instead sold on December 31, 2011, according to Case Shiller, and \$414,629, according to the FHFA. Under the CPI, meanwhile, a consumer cost of \$250,000 on July 1, 1994 would equate to a relative consumer cost of \$379,997 in December 2011. Depending on its loans and investments, a state savings bank could acquire real estate subject to the rule that is located in Texas or outside of the state. However, the majority of regulated state savings banks have branches strictly in Texas with operations concentrated in Texas. As a result, for additional context, the department also considered available datasets specific to Texas. According to the FHFA's data specific to the entirety of Texas, a home sold for \$250,000 on June 30, 1994 would have sold for \$735,950 on December 31, 2019; and, on December 31, 2011, \$441,025. According to the Case-Shiller index specific to the Dallas, Texas metropolitan statistical area (the only dataset of Case-Shiller pertaining to Texas), a home sold for \$250,000 in January of 2000 (the oldest available data point) would have sold for \$482,025 in December 2019. The department also considered the Texas A&M Real Estate Center's Texas Home Price Index (HPI), which measures home price appreciation within nine metropolitan statistical areas around Texas. The HPI datasets have different initial report dates for each metropolitan statistical area (MSA), none of which relates back to 1994. As a result, the department performed a hybrid analysis of HPI's data and of FHFA's data specific to each MSA (or the closest proximity thereto) by first calculating the estimated appreciation of costs from June 30, 1994 to the initial report date for each of the HPI's MSAs utilizing the FHFA's data, and then carrying

that figure forward utilizing the HPI's appreciation figures. Both the FHFA and HPI utilize a geometric modeling format but, according to the Texas A&M Real Estate Center, the HPI tends to have a flatter curve due to differences in the underlying data from which the modeling is performed (the FHFA is limited to data from conventional loans while the HPI is not so limited). As a result, when considering the following results, the farther back in time the HPI data extends, the flatter and less appreciated the result, and, conversely, a more recent start date of HPI data resulted in higher appreciation figures due to increased reliance on FHFA data. The results of the department's hybrid analysis of how much a home initially sold in Texas on June 30, 1994 for \$250,000 would have sold for on December 31, 2019, are as follows: (i) Amarillo MSA (oldest HPI data point March 31, 2004) - \$448,106; (ii) Austin/Round Rock MSA (oldest HPI data point March 31, 1999) - \$573,592; (iii) Dallas/Fort Worth/Arlington MSA (oldest HPI data point March 31, 2005) - \$522,020; (iv) Dallas/Plano/Irving MSA (oldest HPI data point March 31, 2005) - \$536,889; (v) El Paso MSA (oldest HPI data point March 31, 2004) - \$407,030; (vi) Fort Worth/Arlington MSA (oldest data point March 31, 2005) - \$523,425; (vii) Houston/The Woodlands/Sugar Land MSA (oldest HPI data point March 31, 2000) - \$493,827; (viii) San Antonio/New Braunfels MSA (oldest HPI data point March 31, 2013) - \$525,153; (ix) Sherman/Denison MSA (oldest HPI data point March 31, 2014) - \$609,033. Taking the foregoing into consideration, the department concurs with the federal banking agencies in asserting that the amendments raising the appraisal/evaluation threshold take a conservative approach, and compliance with

the amended rule should not result in unsafe or unsound banking practices by state savings banks.

SUMMARY OF PUBLIC COMMENTS

Publication of the Department's proposal to amend 7 TAC §77.73 recited a deadline of 30 days in which to receive public comments, or May 31, 2020. A public hearing in accordance with Government Code §2001.029 was not required. The Department received one comment made on behalf of the Independent Bankers Association of Texas indicating that it was in favor of the proposal.

STATUTORY AUTHORITY

Amended 7 TAC §77.73 is adopted under the authority of Finance Code §11.302 which authorizes the commission to adopt rules applicable to state savings banks. Amended 7 TAC §77.73 is also adopted under the authority of Finance Code §96.002(a) which authorizes the commission to adopt rules necessary to supervise and regulate state savings banks and to protect public investment in state savings banks, including for those specific subject matters outlined in paragraphs (4), (11), and (16) of that subsection.

Adoption of 7 TAC §77.73 affects the statutes administered and enforced by the department's commissioner with respect to state savings banks, contained in Finance Code, Subtitle C. No other statute is affected.

<rule>

§77.73. Investment in Banking Premises and Other Real Estate Owned.

(a) - (d) (No change.)

(e) Subject to subsection (f) of this section, when real estate is acquired in accordance with subsection (d) of this section, a state savings bank must substantiate the market value of the real estate by obtaining an appraisal within sixty (60) days of the date of acquisition. An evaluation may be substituted for an appraisal if the recorded book value of the real estate is ~~[less than]~~ \$400,000 ~~[\$250,000]~~ or less. The commissioner may, for good cause shown, grant an extension of time for obtaining an appraisal or evaluation (as appropriate), as described in this subsection.

(f) (No change.)

(g) An evaluation shall be made on all real estate acquired in accordance with subsection (d) of this section at least once a year. An appraisal shall be made at least once every three years on real estate with a recorded book value in excess of \$400,000 ~~[\$250,000]~~.

(h) (No change.)

(i) An appraisal or evaluation made in accordance with this section must be performed in accordance with the standards described by the Federal Deposit Insurance Corporation in 12 C.F.R., Part 323, Subpart A or the Federal Reserve System in 12 C.F.R., Part 225, Subpart G, as applicable.

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.

Iain A. Berry
Associate General Counsel
Department of Savings and Mortgage
Lending

3. Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC Chapter 79, Residential Mortgage Loan Servicers (§§ 79.1 - 79.5, 79.20, 79.30, 79.40, 79.50), Chapter 80, Texas Residential Mortgage Loan Companies (§§80.1 - 80.5, 80.100, 80.102 - 80.104, 80.106, 80.107, 80.200 - 80.206, 80.300 - 80.302), and Chapter 81, Mortgage Bankers and Residential Mortgage Loan Originators (§§81.1 - 81.5, 81.100 - 81.109, 81.200 - 81.206, 81.300 - 81.302), Resulting from Rule Review.

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

The required notice of the proposed review of 7 TAC Chapters 79 - 81 was published in the *Texas Register* on October 25, 2019 (44 TexReg 6377). No comments were received in response to the notice.

The Department believes the reasons for initially adopting the rules in 7 TAC Chapters 79 - 81 continue to exist and should be readopted.

RECOMMENDED ACTION: The Department recommends that the Commission finds that the reasons for initially adopting the rules in 7 TAC Chapters 79 - 81 continue to exist and readopt such rules.

RECOMMENDED MOTION: I move that the rules in 7 TAC Chapters 79 - 81 be readopted.

Title 7. Banking and Securities.
Part 4. Department of Savings and
Mortgage Lending.
Chapters 79 - 81

The Department of Savings and Mortgage Lending (department), on behalf of the Finance Commission of Texas (commission), has completed its review of the following chapters of the Texas Administrative Code (TAC), Title 7, Part 4:

Chapter 79, Residential Mortgage Loan Servicers (§§79.1 - 79.5, 79.20, 79.30, 79.40, 79.50);

Chapter 80, Texas Residential Mortgage Loan Companies (§§80.1 - 80.5, 80.100, 80.102 - 80.104, 80.106, 80.107, 80.200 - 80.206, 80.300 - 80.302); and

Chapter 81, Mortgage Bankers and Residential Mortgage Loan Originators (§§81.1 - 81.5, 81.100 - 81.109, 81.200 - 81.206, 81.300 - 81.302).

The review of 7 TAC Chapters 79 - 81 was conducted in accordance with Government Code §2001.039. Notice of the review was published in the October 25, 2019 issue of the *Texas Register* (44 TexReg 6377). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting the rules reviewed continue to exist and readopts 7 TAC Chapters 79 - 81.

4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §76.98, Annual Fee To Do Business.

PURPOSE: Section 76.98 governs the assessment fees state savings banks pay to the Department for the basic costs of their supervision and examination. The requirements of the existing rule require the assessment to be based on a state savings bank's total assets. The amendments, if adopted, would allow the Department to consider the state savings bank's total risk-weighted assets in determining the assessment. The title of the Subchapter is also updated to better reflect its subject matter.

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

RECOMMENDED MOTION: I move that we publish the proposed amendments to 7 TAC §76.98 in the *Texas Register*.

Title 7. Banking and Securities

Part 4. Department of Savings and Mortgage Lending.

Chapter 76. Miscellaneous.

Subchapter F. Fees and Charges.

7 TAC §76.98. Annual Fee To Do Business.

The Finance Commission (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes amendments to Title 7, Texas Administrative Code (TAC), Part 4, Chapter 76, Subchapter F, §76.98. This proposal and the rule as amended by this proposal are referred to collectively as the "proposed rule."

BACKGROUND AND PURPOSE

7 TAC, Chapter 76 contains the department's rules concerning charges and fees imposed on regulated state savings banks. Existing §76.98 imposes an annual assessment fee on state savings banks to fund the operations of the department and provide for the supervision and examination of state savings banks by the department. Under the requirements of existing §76.98, regulated state savings banks are assessed a fee that is based on their size as reflected by their total assets. By assessing a fee based on asset size, a state savings bank is meant to pay an assessment fee proportionate to the cost of its required supervision and examination. The proposed rule, if adopted, would allow the department to also consider a state savings bank's total risk-weighted assets as a basis on which to establish the amount of its assessment fee. A risk-weighted asset approach takes into consideration not only the state savings bank's asset size, but also the character of its operations as revealed by its investment positions and associated risk profile. The department asserts a risk-

weighted asset approach promotes more equitable fees for state savings banks. A state savings bank taking riskier investment positions is more likely to raise safety and soundness concerns, and typically requires closer supervision and additional scrutiny during examination, leading to increases in attendant costs disproportionate to a similarly-sized state savings bank with equivalent total assets but more conservative investment positions. As a result, the requirements of the existing rule have the tendency to distort the actual costs required for the supervision and examination of regulated state savings banks, and in some instances resulting in inflated assessment fees outsizing the actual cost of regulation. As related herein *infra*, the department anticipates that administering and enforcing the proposed rule will result in reduced assessment fees for regulated state savings banks overall. Existing §79.98 has been in place and stood largely unchanged since its adoption in 2012. The underlying requirements of the rule have been in place since 1993 when they were initially adopted by the department (at that time, the Texas Savings and Loan Department; 7 TAC §79.98; 18 TexReg 6100). With the advent of modern capital requirements based on risk weighting, the department has ready access to data for most state savings banks with which to apply a risk-weighted asset approach in assessing fees. Specifically, implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 at the federal level (Public Law No. 111-203, 124 Stat. 1376, 1435-38 (2010)) and application of the Basel III standards of the Basel Committee for Banking Supervision in federal law means many state savings banks

already regularly report data concerning their total risk-weighted assets for purposes of their minimum capital requirements. Such data may be easily repurposed by the department for use in assessing fees on a risk-weighted asset basis. In consideration of the foregoing, the department determined that assessments based on total risk-weighted assets would result in fees that are equitable and more accurately reflect the true cost of regulation. This proposal seeks to make amendments to §76.98 to effectuate such change.

SUMMARY OF CHANGES

The proposed rule amends Subchapter F, Fees and Charges.

The proposed rule amends §76.98, Annual Fee To Do Business. The current title of the rule is replaced with "Annual Assessments," to better reflect the subject matter of the rule. Additional language is inserted in subsection (a) (which was formerly implied) to clarify when assessments are invoiced and the method by which they should be paid. A new subsection (b) is inserted to add language requiring the determination of assessments based on either total assets or the total risk-weighted assets, as reflected on the state savings bank's call report, or as otherwise voluntarily reported to the department for purposes of calculating the assessment. Other minor terminology and other modernization changes are made throughout the rule to update the rule and improve readability.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Antonia Antov, director of administration and finance for the department, has

determined that for the first five-year period the proposed rule is in effect, there are no foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the proposed rule. Ms. Antov has further determined that for the first five-year period the proposed rule is in effect, there will be no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rule. Ms. Antov has further determined that for the first five years the rule is in effect there will be no foreseeable losses or increases in revenue to the state overall and that would impact the general revenue fund. Implementation of the proposed rule will not require an increase or decrease in future legislative appropriations to the department because the department is a self-directed, semi-independent agency that does not receive legislative appropriations. The foregoing notwithstanding, Ms. Antov further determined that for the first five-year period the proposed rule is in effect, there will be a probable decrease in revenue to the department in the form of reduced assessment fees collected by the department from regulated state savings banks. The anticipated reduction in assessment fees collected will facilitate the department's continued compliance with Finance Code §16.003(c), requiring that the department collect only those amounts necessary for the purposes of carrying out its functions. The anticipated reduction in assessment fees collected by the department will not hinder the department's operations or require increases in other fees imposed by the department, or commensurate reductions in staff or other resources of the department.

PUBLIC BENEFITS

Stephany Trotti, deputy commissioner of the department (deputy commissioner), has determined that for each of the first five years the proposed rule is in effect, the public benefit anticipated as a result of enforcing the proposed rule will be to have a rule that more equitably imposes fees on regulated state savings banks. Since the purpose of such fees is to provide revenue for the department sufficient to supervise and examine regulated state savings banks, the proposed rule more accurately reflects the true cost of regulation, thereby increasing transparency with and accountability to the public concerning the department's operations. As discussed *infra*, the proposed rule also has the potential to reduce costs to regulated persons which may, in turn, confer a reduction of costs on those members of the public who are borrowers of or otherwise do business with a regulated state savings bank.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH THE PROPOSED RULE

The deputy commissioner has determined that for the first five years the proposed rule is in effect, there are no economic costs anticipated to persons required to comply with the proposed rule. The proposed rule has the potential to lower costs for regulated persons by allowing the assessment of annual fees to be conducted on the basis of the state savings bank's total risk-weighted assets, which typically results in lower assessment fees than when made on the basis of total assets.

ONE-FOR-ONE RULE ANALYSIS

Pursuant to Finance Code §16.002, the department is a self-directed and semi-

independent agency and thus not subject to the requirements of Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

For each of the first five years the proposed rule is in effect, the department has determined the following: (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to of the department; (4) the proposed rule does not require an increase in fees paid to the department. As related *supra* the proposed rule will likely result in a reduction in fees paid by most if not all state savings banks to the department; (5) the proposed rule does not create a new regulation (rule requirement); (6) the proposed rule does not expand, limit, or repeal an existing regulation (rule requirement); (7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and (8) the proposed rule does not adversely affect this state's economy and has the potential to positively affect the state's economy as most if not all state savings banks will pay a reduced assessment fee if the proposed rule is adopted.

LOCAL EMPLOYMENT IMPACT STATEMENT

No local economies are substantially affected by the proposed rule. As a result, preparation of a local employment impact statement

pursuant to Government Code §2001.022 is not required.

FISCAL IMPACT ON SMALL AND MICRO-BUSINESSES, AND RURAL COMMUNITIES

The proposed rule will not have an adverse effect on small or micro-businesses, or rural communities because there are no anticipated costs to persons required to comply with the proposed rule. As a result, preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code §2006.002, are not required.

TAKINGS IMPACT ASSESSMENT

There are no private real property interests affected by the proposed rule. As a result, preparation of a takings impact assessment, as provided by Government Code §2007.043, is not required.

PUBLIC COMMENTS

Written comments regarding the proposed rule may be submitted by mail to Iain A. Berry, Associate General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this proposal.

STATUTORY AUTHORITY

This proposal is made under the authority of Finance Code §91.007(1)(A), which requires the commission to adopt rules for fees and charges related to the supervision and examination of state savings banks. This proposal is further made under the authority of Finance Code §16.003(c) which provides

that the department may set the amounts of fees, penalties, charges, and revenues as necessary for the purpose of carrying out the functions of the department.

This proposal affects the statutes administered and enforced by the department's commissioner with respect to state savings banks, contained in Finance Code, Subtitle C. No other statute is affected by this proposal.

<rule>

§76.98. Annual Assessments [~~Fee To Do Business~~].

(a) Annual assessment. All savings banks chartered under the laws of the state and all foreign savings banks under the laws of another state of the United States holding a certificate of authority to do business in this state shall pay to the department an [such] annual assessment fee in an amount determined by the commissioner as provided by subsection (b) and subject to the rate requirements [or assessment and examination fees as are] set by the Finance Commission of Texas. The annual assessment shall be paid in quarterly installments. Upon receipt of a written invoice from the department, the savings bank must pay the assessment fee by electronic/ACH payment, or by another method if directed to do so by the department. The department will maintain on its website information concerning prevailing assessment rates and fees.

(b) Determination of assessment. The assessment [Annual fees and assessments] shall be determined [established] based on either [upon] the total assets or the total risk-weighted assets of the savings bank, whichever results in the lowest applicable

assessment fee. The valuation of assets shall be determined as of [at] the close of the calendar quarter immediately preceding the effective date of the [fee or] assessment. A savings bank's total assets or total risk-weighted assets shall be derived from the savings bank's Federal Financial Institutions Examination Council (FFIEC) consolidated report of condition and income (call report), filed in accordance with federal law. If a savings bank is not required by applicable federal law to disclose its total risk-weighted assets in the call report, the savings bank may voluntarily report to the commissioner information concerning its total risk-weighted assets for purposes of calculating its assessment, which shall be provided to the commissioner in the manner and within the time prescribed by the commissioner; otherwise, the assessment will be based on the savings bank's total assets.

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.

Iain A. Berry
Associate General Counsel
Department of Savings and Mortgage
Lending

5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of amendments to 7 TAC §79.1 and §79.2, Concerning Residential Mortgage Loan Servicers, Resulting from Rule Review.

PURPOSE: This proposal arises from the Department's periodic review of its rules contained in Chapter 79, conducted pursuant to Government Code §2001.039. The rules in Chapter 79 implement Finance Code, Chapter 158, concerning Residential Mortgage Loan Servicers. The amendments would make changes to modernize and update the rules including: adding clarifying language; replacing existing language to improve clarity and readability; replacing existing language with gender neutral language; removing unnecessary provisions (including eliminating statutory references unrelated to Finance Code, Chapter 158); updating terminology; and eliminating a form published by rule.

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

RECOMMENDED MOTION: I move that we publish the proposed amendments to 7 TAC §79.1 and §79.2 in the *Texas Register*.

PROPOSED AMENDMENTS
7 TAC §79.1 AND §79.2
PAGE 1 OF 4

Title 7. Banking and Securities.
Part 4. Department of Savings and Mortgage Lending.
Chapter 79. Residential Mortgage Loan Servicers.
Subchapter A. Registration.
7 TAC §79.1 and §79.2.

The Finance Commission (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes amendments to 7 Texas Administrative Code (TAC), Chapter 79, Subchapter A, §79.1 and §79.2. This proposal and the rules as amended by this proposal are referred to collectively as the "proposed rules."

BACKGROUND AND PURPOSE

The rules under 7 TAC Chapter 79 implement Finance Code, Chapter 158, Residential Mortgage Loan Servicers. The proposed rules were identified during the department's periodic review of Chapter 79, conducted pursuant to Government Code §2001.039. The proposed rules, if adopted, would make changes to modernize and update the rules including: adding clarifying language; replacing existing language to improve clarity and readability; replacing existing language with gender neutral language; removing unnecessary provisions (including eliminating statutory references unrelated to Finance Code, Chapter 158); updating terminology; and eliminating a form published by rule.

SUMMARY OF CHANGES

The proposed rules amend Subchapter A, Residential Mortgage Loan Servicers.

The proposed rules amend §79.1, Definitions. The proposed rules amend the

implied subsection (a) to add language clarifying that the definitions are also used in the department's administration and enforcement of Finance Code, Chapter 158. The definition for commissioner at paragraph (1) is amended to clarify that the commissioner is that individual appointed under Finance Code, Chapter 13. The definition for commissioner's designee at paragraph (2) is amended to replace existing language with gender neutral language and improve readability, and correct a minor error in grammar. The definition for the term "Nationwide Mortgage Licensing System and Registry" is amended to eliminate a definition adopted by reference to a statute unrelated to Finance Code, Chapter 158 and, instead, adopt a definition set forth in the rule. The definition for person is amended to adopt by reference a statutory definition within Finance Code, Chapter 158, and reduce word count. The definition for Act, creating a term for the entirety of Finance Code, Chapter 158, is amended to make it a definition for the two-word phrase "the Act," and thereby organize the definitions by alphabetical order.

The proposed rules amend §79.2, Required Disclosure. Subsection (a) is amended to combine the existing requirements of subsection (a) and (b) concerning the form and content of the required disclosure into one subsection. The graphic and form embedded in the rule after existing subsection (b) is eliminated. Instead, language is added to subsection (a) to state that the department will publish the form on its website. The remaining requirements of existing subsection (b), prohibiting provision of the disclosure by residential mortgage loan servicer registrants when servicing loans

PROPOSED AMENDMENTS
7 TAC §79.1 AND §79.2
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secured by real estate not located in Texas, are restated to improve clarity.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Florence, director of mortgage examination for the department (director), has determined that for the first five-year period the rule is in effect, there are no foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the proposed rules. The director has further determined that for the first five-year period the proposed rules are in effect, there will be no foreseeable losses or increases in revenue for the state or local governments as a result of enforcing or administering the proposed rules.

PUBLIC BENEFITS

The director has determined that for each of the first five years the proposed rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to have rules that are easier to read and understand.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH THE PROPOSED RULES

The director has determined that for the first five years the proposed rules are in effect, there are no substantial economic costs anticipated to persons required to comply with the proposed rules.

ONE-FOR-ONE RULE ANALYSIS

Pursuant to Finance Code §16.002, the department is a self-directed and semi-independent agency and thus not subject to

the requirements of Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do not expand, limit, or eliminate an existing regulation (rule requirement); (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

LOCAL EMPLOYMENT IMPACT STATEMENT

No local economies are substantially affected by the rule. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

FISCAL IMPACT ON SMALL AND MICRO-BUSINESSES, AND RURAL COMMUNITIES

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities, because there are no

PROPOSED AMENDMENTS
7 TAC §79.1 AND §79.2
PAGE 3 OF 4

substantial economic costs anticipated to persons who are required to comply with the proposed rule. As a result, preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code §2006.002, are not required.

TAKINGS IMPACT ASSESSMENT

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment, as provided by Government Code §2007.043, is not required.

PUBLIC COMMENTS

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, Associate General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this proposal.

STATUTORY AUTHORITY

This proposal is made under the authority of Finance Code §158.003, which authorizes the commission to adopt rules necessary for the purposes of or to ensure compliance with Finance Code, Chapter 158.

This proposal affects the statutes contained in Finance Code, Chapter 158. No other statute is affected by this proposal.

<rule>

Subchapter A. Registration.

§79.1. Definitions.

As used in this chapter, and in the Department's administration and

enforcement of Finance Code, Chapter 158,
the following terms have the meanings indicated:

(1) "Commissioner" means the Savings and Mortgage Lending Commissioner appointed under Finance Code, Chapter 13.

(2) "Commissioner's designee" means an employee of the Department performing their ~~[his or her]~~ assigned duties or such other person as the Commissioner may designate in writing. A Commissioner's designee is deemed to be the Commissioner's authorized "personnel or representative" as such term is used in the Act.

(3) (No change.)

(4) "Nationwide Mortgage Licensing System and Registry" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of state residential mortgage loan originators ~~[has the meaning assigned by Finance Code §180.002(12)].~~

(5) "Person" has the meaning assigned by Tex. Fin. Code §158.002 ~~[means an individual, corporation, company, limited liability company, partnership or association].~~

(6) "The ["]Act" means the Residential Mortgage Loan Servicer Registration Act, as provided by Tex. Fin. Code §158.001 ~~[Finance Code, Chapter 158].~~

§79.2. Required Disclosure.

(a) Residential mortgage loan servicer registrants must include a written disclosure

PROPOSED AMENDMENTS
7 TAC §79.1 AND §79.2
PAGE 4 OF 4

of the Department's regulatory oversight on all correspondence provided to the borrower, including all periodic statements. The disclosure shall be in the current form prescribed by the Department and published on its website ~~[For the servicing of residential mortgage loans on real estate located in Texas, pursuant to Texas Finance Code §158.101 a registrant shall provide to the borrower of each residential mortgage loan the disclosure contained in the following figure not later than the 30th day after the registrant begins servicing the loan].~~

(b) The requirements of this section apply only to residential mortgage loan registrants servicing residential mortgage loans secured by real estate located in Texas. Residential mortgage loan servicer registrants servicing mortgage loan secured by real estate not located in Texas shall not include the written disclosure referenced by this rule. ~~[In order to let borrowers know how to file complaints with the Department, Residential Mortgage Loan Servicer registrants servicing residential mortgage loans on real estate located in Texas, must include the disclosure contained in the following figure in all correspondence provided to the borrowers. This written notice shall not be provided regarding the servicing of residential mortgage loans on real estate which is not located in Texas. Registrants servicing residential mortgage loans on real estate located in Texas, shall also post the disclosure in the following figure on their website, with a statement to reflect that such disclosure notice only applies to the residential mortgage loans on real estate located in Texas:~~

Figure: §79.2(b)]

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.

Iain A. Berry
Associate General Counsel
Department of Savings and Mortgage
Lending

6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of amendments to 7 TAC §§80.1, 80.2, 80.200, 80.202 - 80.206, and 80.301, Concerning Texas Residential Mortgage Loan Companies, Resulting from Rule Review.

PURPOSE: This proposal arises from the Department's periodic review of its rules contained in Chapter 80, conducted pursuant to Government Code §2001.039. The rules in Chapter 80 implement Finance Code, Chapter 156, concerning Residential Mortgage Loan Companies. The amendments would add several new definitions to §80.2 related to the definition of a residential mortgage loan originator and make various other changes to the existing definitions. The amendments would make changes to the disclosures a mortgage company and/or its sponsored originator are required to make, and applicable advertising requirements. The amendments would make changes to the duties and responsibilities imposed on licensed mortgage companies by rule, contained in §80.202. The amendments would make various changes to the requirements for a mortgage company and its sponsored originator to keep books and records, contained in §80.204. The amendments would make changes to modernize and update the rules including: adding and replacing language for clarity and to improve readability; replacing existing language with gender neutral language; removing unnecessary or duplicative provisions; and updating terminology.

A more thorough explanation and a summary of the amendments is contained in the proposed preamble for the rule proposal.

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

RECOMMENDED MOTION: I move that we publish the proposed amendments to 7 TAC §§80.1, 80.2, 80.200, 80.202 - 80.206 and 80.301 in the *Texas Register*.

PROPOSED AMENDMENTS
7 TAC §§80.1, 80.2, 80.200, 80.202 - 80.206 AND 80.301
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Title 7. Banking and Securities.
Part 4. Department of Savings and Mortgage Lending.
Chapter 80. Texas Residential Mortgage Loan Companies.
7 TAC §§ 80.1, 80.2, 80.200, 80.202 - 80.206 and 80.301.

The Finance Commission (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes amendments to 7 Texas Administrative Code (TAC), Chapter 80, Subchapter A, §80.1, and §80.2; Subchapter C, §§80.200, 80.202 - 80.206; and Subchapter D, §80.301. This proposal and the rules as amended by this proposal are referred to collectively as the "proposed rules."

BACKGROUND AND PURPOSE

The rules under 7 TAC Chapter 80 implement Finance Code, Chapter 156, Residential Mortgage Loan Companies (Chapter 156). The proposed rules were identified during the department's periodic review of Chapter 80, conducted pursuant to Government Code, §2001.039.

Definition of a Residential Mortgage Loan Originator Changes

The proposed rules, if adopted, add several new definitions to §80.2 related to the definition of a residential mortgage loan originator. The proposed rules eliminate the existing definition for "residential mortgage loan originator," the subject matter of which is replaced by inserting a new definition for "originator," to adopt by reference the statutory definition for residential mortgage loan originator in Chapter 156, allowing for use of that shortened term throughout the rules, improving readability and reducing

word count. The proposed rules insert a definition for the phrase "takes a residential loan application," as used in Finance Code, §156.002(14) for purposes of determining when an individual is acting as a residential mortgage loan originator. The proposed rules add a definition for the term "application" to further define and clarify when an individual has received information constituting a residential mortgage loan application for that same purpose. The proposed rules, if adopted, also add a definition for the phrase "offers or negotiates the terms of a residential mortgage loan," as used in Finance Code, §156.002(14) for purposes of determining when an individual is acting as a residential mortgage loan originator. The proposed rules add a definition for "compensation" for that same purpose.

Other Definitions Changes

The proposed rules, if adopted, make other changes to the definitions section in §80.2. The proposed rules eliminate the existing definition for "one-to-four family residential real property," the subject matter of which is generally replaced by inserting two new definitions for "dwelling" and "residential real estate," terms which are used in Finance Code, Chapter 156 and Chapter 180. The proposed rules also eliminate the existing definition for "criminal offense," used in evaluating an individual's fitness and eligibility to be licensed by the department as a residential mortgage loan originator, as being unnecessary in the rules chapter pertaining to mortgage companies. The proposed rules also add the following new definitions: "mortgage applicant," "mortgage company," "person," and "social media site."

PROPOSED AMENDMENTS
7 TAC §§80.1, 80.2, 80.200, 80.202 - 80.206 AND 80.301
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Required Disclosures and Advertising Changes

The proposed rules, if adopted, would make changes to the disclosures a mortgage company and/or its sponsored originator are required to make, as provided by §80.200. The proposed rules limit existing disclosure requirements by eliminating the requirement for a licensed mortgage company to post disclosures at its physical office. Existing requirements for posting disclosures on a website are clarified to expressly include a social media site of the mortgage company. The proposed rules impose a new requirement to disclose Nationwide Mortgage Licensing System and Registry (NMLS) identification information on all correspondence from a mortgage company or sponsored originator. The proposed rules also limit existing disclosure requirements in connection with a mortgage company's physical office, as provided by §80.206, by eliminating the requirement that a mortgage company post its hours of operation at such physical office. The proposed rules, if adopted, would make changes to the advertising requirements imposed on mortgage companies by rule, contained in §80.203. The proposed rules limit existing advertising requirements by eliminating the requirement that a mortgage company recite the address of its physical office in Texas when making an advertisement. The proposed rules further alter requirements for advertising including by: clarifying an existing requirement that advertisements on social media sites are subject to the rules; limiting existing advertising requirements by allowing a mortgage company to promote its website address on certain promotional items deemed by rule not to constitute an

advertisement; clarifying that signs on the premises of a mortgage company are not subject to the advertising requirements; and clarifying that a mortgage company may advertise directly, and need not advertise by and through an originator sponsored by the mortgage company.

Duties and Responsibilities Changes

The proposed rules, if adopted, would make changes to the duties and responsibilities imposed on licensed mortgage companies by rule, contained in §80.202. The provisions of existing subsection (a) are eliminated and replaced with language causing each discrete act contained in the paragraphed list under subsection (a) to be deemed a violation of the prohibition against a mortgage company engaging in fraudulent and dishonest dealings pursuant to Tex. Fin. Code §156.303(a)(3). Certain acts on such list, which presently require a violation to be a knowing violation, are revised to also include acts committed negligently. The prohibition against disparaging a source of income for a mortgage loan, contained in existing subsection (b), paragraph (3), is clarified to include the more likely and harmful scenario where the source of funds is inflated to secure loan approval. The provisions of existing subsection (b) are eliminated and replaced with language causing each discrete act contained in the paragraphed list under subsection (b) to be deemed a violation of the prohibition against a mortgage company engaging in improper dealings pursuant to Tex. Fin. Code §156.303(a)(3). Existing subsection (a), paragraph (3), which prohibits a mortgage company from representing to a mortgage applicant that a fee payable to the mortgage company operates as a discount

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point for the transaction, is clarified to prohibit any similar representation that such fee confers a financial benefit on the mortgage applicant, except in the limited circumstances set forth in the existing subparagraphs set forth thereunder. The provisions of existing subsection (b), paragraph (3), subparagraph (D), requiring an originator to respond accurately to a question about the scope and nature of their services and any costs, are eliminated and the subject matter replaced with a new subsection (b), paragraph (4), requiring a mortgage company to respond within a reasonable time to questions from a mortgage applicant. A new subsection (d) is inserted to offer additional guidance on the existing requirement barring the splitting of origination fees with a mortgage applicant except in the narrow circumstances elucidated by the Consumer Financial Protection Bureau (CFPB) in Regulation X. In order to aid enforcement and prevent evasion of the requirement by those individuals who are acting in the dual capacity of an originator sponsored by the mortgage company and a real estate broker or sales agent licensed under Occupations Code, Chapter 1101, the proposed rules create a rebuttable presumption that a rebate or other transfer to the mortgage applicant made after closing is derived from their role as originator (a violation), and conversely, not derived from their role as real estate broker or sales agent.

Books and Recordkeeping Changes

The proposed rules, if adopted, would make various changes to the requirements for a mortgage company and its sponsored originator to keep books and records, contained in §80.204. The proposed rules

clarify the existing requirement that a mortgage company or its sponsored originator maintain a copy of the mortgage loan application signed by both the originator and the mortgage applicant. The proposed rules also expand existing requirements that a mortgage company maintain a log of its mortgage transactions including by requiring that such log describe the purpose for the loan and the owner's intended occupancy of the real estate securing the mortgage loan. The proposed rules also impose a new requirement to maintain records establishing the physical office of the mortgage company, and other more minor such changes.

Other Modernization and Update Changes.

The proposed rules, if adopted, would make changes to modernize and update the rules including: adding and replacing language for clarity and to improve readability; replacing existing language with gender neutral language; removing unnecessary or duplicative provisions; and updating terminology.

SUMMARY OF CHANGES

The proposed rules amend Subchapter A, General Provisions.

The proposed rules amend §80.1, Scope. Capitalized terms in the existing implied subsection (a) that have not been reduced to a defined term elsewhere in the rules, are eliminated. Language suggesting Chapter 80 also governs the actions of licensed residential mortgage loan originators is eliminated. A new closing sentence is added to clarify that Chapter 80 should be construed as applying to any company registered with the Department as a financial services company just as if such company were

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licensed by the Department as a mortgage company, as provided by Tex. Fin. Code §156.2012. (Other Modernization and Update Changes)

The proposed rules amend §80.2, Definitions. A new definition for "application" is inserted at paragraph (1) and the existing paragraphs are relocated and renumbered accordingly. Statutory references are added to such definition to indicate its use in determining when an individual is acting as a residential mortgage loan originator. A new definition for "compensation" is inserted at paragraph (5), and the existing paragraphs are relocated and renumbered accordingly. A new definition defining the phrase "offers or negotiates the terms of a residential mortgage loan" for purposes of Tex. Fin. Code §156.002(14) is inserted at paragraph (11), and the existing paragraphs relocated and renumbered accordingly. A new definition "originator" is inserted at paragraph (12) and the existing paragraph is relocated and renumbered accordingly. A new definition for the phrase "takes a residential mortgage loan application" for purposes of Tex. Fin. Code 156.002(14) is inserted at paragraph (15). (Definition of a Residential Mortgage Loan Originator Changes) The existing definition for "company," presently located at paragraph (4), is eliminated and its subject matter replaced with a new definition for "mortgage company," which adopts by reference the statutory definition for residential mortgage company in Chapter 156, and the existing paragraphs renumbered accordingly. The existing definition for "criminal offense" is eliminated. The existing definition for "one-to-four family residential real property," presently located at paragraph

(9), is eliminated and its subject matter replaced with two new definitions for "dwelling" and "residential real estate," and the existing paragraphs renumbered accordingly. A new definition for "mortgage applicant" is inserted at paragraph (8), and the existing paragraphs relocated and renumbered accordingly. A new definition for "person" is inserted at paragraph (13). A new definition for "social media site" is inserted at paragraph (17). (Other Definitions Changes) The implied subsection (a) is amended to add language clarifying that the definitions are also used in the department's administration and enforcement of Finance Code, Chapter 156. The existing definition for "branch office" is relocated and amended to: eliminate capitalization of the term; add a statutory reference which uses the term; eliminate use of the phrase "headquarters location" and, instead, replace with the phrase "principal place of business," used to determine what a branch office is by differentiation with such principal place of business. The existing definition for "commissioner" is relocated and amended to clarify that the commissioner is that individual appointed under Finance Code, Chapter 13. The existing definition for "commissioner's designee" is relocated and amended to use gender-neutral language. (Other Modernization and Update Changes)

The proposed rules amend Subchapter C, Duties and Responsibilities.

The proposed rules amend §80.200, Required Disclosures. Existing subsection (b) is amended to eliminate the requirement that a licensed mortgage company post a notice to consumers in its physical office. The provisions in existing subsection (c), which

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dictate how a mortgage company displays such notice in its physical office, are eliminated. Existing subsection (b) is further amended to expressly require a mortgage company to post the disclosure on its social media site. Existing subsection (b) is further amended to clarify that only websites and social media sites accessible by a consumer and used to conduct business are affected by the rule's requirements. New provisions are inserted in subsection (c) requiring a mortgage company to disclose its NMLS identification number, and, if the correspondence is from a sponsored originator, the NMLS number of that originator. Existing subsection (a) requires that a specific disclosure be made and served on a mortgage applicant upon receipt of a mortgage application. A new subsection (d) is inserted clarifying that a determination of when an application has been received for purposes of the rule will be made in accordance with federal law and the Truth in Lending Act. (Required Disclosures and Advertising Changes) Existing subsection (a) is amended to provide additional notice that the mortgage company must maintain records reflecting delivery of the disclosures required by the rule, as is also provided by existing §80.204. (Books and Recordkeeping Changes) Existing subsection (a) is amended to eliminate language imposing the requirement on residential mortgage loan originators as being duplicative of similar provision in 7 TAC 81.200. (Other Modernization and Update Changes)

The proposed rules amend §80.202, Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings. The existing language of subsection (a) is eliminated and replaced with language

clarifying that the commission of an act in the paragraphed list set forth under subsection (a) constitutes a violation of Tex. Fin. Code §156.303(a)(3). Existing subsection (a), paragraphs (1), (2) and (4), which require that a violation be committed knowingly, are amended to also include violations committed negligently. Existing subsection (a), paragraph (3), establishes a violation for disparaging the source of mortgage loan funds. Such paragraph is amended to insert language establishing a violation for inflating or amending such source of income. Existing subsection (a), paragraph (7), establishing a violation for inducing a party to breach a contract in order to secure a mortgage loan, is eliminated as duplicative of the statutory provisions of Tex. Fin. Code §156.303(a)(9), without offering any additional guidance; and, the remaining paragraphs relocated and renumbered accordingly. The existing language of subsection (b) is eliminated and replaced with language clarifying that commission of an act in the paragraphed list set forth under subsection (b) constitutes a violation of Tex. Fin. Code §156.303(a)(3). Subsection (b), paragraph (3) is amended to clarify that any representation to a mortgage applicant that an origination fee payable to the mortgage company confers a financial benefit on the mortgage applicant is violative of the rule. The provisions of existing subsection (b), paragraph (3), subparagraph (D), requiring an originator to respond accurately to a question about the scope and nature of their services and any costs, are eliminated, and the subject matter replaced with a new subsection (b), paragraph (4), requiring a mortgage company to respond within a reasonable time to questions from a mortgage applicant. A new subsection (d) is

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inserted to offer additional guidance on the existing requirement barring the splitting of origination fees with a mortgage applicant except in the narrow circumstances elucidated by the CFPB in Regulation X. (Duties and Responsibilities Changes) Existing subsection (a), paragraph (1) is amended to use gender neutral language. Existing subsection (a), paragraph (5) is amended to clarify that the federal Real Estate Settlement Procedures Act is implemented by the CFPB in Regulation X. Subsection (b), paragraph (2), subparagraphs (A) - (F) are amended to insert citations to federal law referenced thereunder. Existing Subsection (b), paragraph (3), subparagraph (C) is eliminated and readopted as new subsection (c), and restated with clearer language. (Other Modernization and Update Changes)

The proposed rules amend §80.203, Advertising. The existing language of subsection (b), paragraph (2) is amended to require that an advertisement by a mortgage company include the name and NMLS number of the mortgage company, and the name and NMLS number of the sponsored originator. The existing language of subsection (b), paragraph (2) is further amended to eliminate the requirement that a mortgage company recite the mortgage company's street address in Texas when making an advertisement. Subsection (c) is amended to expressly make certain items subject to the requirements of the rule. Subsection (c) is further amended to allow certain items already exempt from the rule's requirements to include the website address for the mortgage company. Subsection (c) is further amended to clarify that signs located on or adjacent to a mortgage company's

physical office are exempt from the rule's requirements. A new subsection (d) is inserted allowing a mortgage company to directly advertise its services, and clarifies that it need not advertise by and through a sponsored originator. (Required Disclosures and Advertising Changes)

The proposed rules amend §80.204, Books and Records. Subsection (b), paragraph (2) is amended to require the mortgage transaction log maintained by the mortgage company to include the following additional information: the stated purpose for the loan; and a description of the owner's intended occupancy of the subject real estate securing the loan. New provisions are inserted at subsection (b), paragraph (4) to require a mortgage company to maintain records establishing its physical office including the staff members present at such physical office, and documents establishing its right to occupy the physical office and conduct business there. (Books and Recordkeeping Changes) Subsection (a) is amended to insert an introductory header to improve readability. Subsection (a) is further amended to clarify that the rule applies to licensed mortgage companies. Subsection (b) is amended to insert updated terminology. Subsection (b), paragraph (1), subparagraph (A) is amended to clarify that the signed application the mortgage company is required to maintain in its records should be signed by each mortgage applicant and the sponsored originator. Subsection (b), paragraph (1), subparagraph (C) is amended to similarly clarify that the signed disclosure to consumers the mortgage company is required to maintain in its records should be signed by each mortgage applicant and the sponsored originator. Subsections (c) and (d)

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are amended to insert updated terminology. Subsection (e) is amended to insert an introductory header to improve readability, and to clarify that violation of the rule may result in disciplinary action broadly, and is not limited to license suspension or revocation. Subsection (f) is amended to insert an introductory header to improve readability. Subsection (g) is eliminated as being duplicative of similar provisions in 7 TAC §81.204 and inappropriate for the rules chapter pertaining to mortgage companies. The existing provisions of subsection (h) are relocated to subsection (g), and further amended to insert an introductory header to improve readability, and updated terminology. The existing provisions of subsection (h), are further amended to clarify that notices regarding records retention should be directed to department staff. (Other Modernization and Update Changes)

The proposed rules amend §80.205, Mortgage Call Reports. Subsection (a) is amended to insert updated terminology. Subsection (b) is amended to insert updated terminology. Subsection (c) is amended to clarify the rule's application to originators sponsored by a mortgage company, and to insert updated terminology. Subsection (d) is amended to insert updated terminology and clarify that a violation of the rule may result in disciplinary action broadly, and is not limited to an administrative penalty. (Other Modernization and Update Changes)

The proposed rules amend §80.206, Physical Office. Subsection (a) is amended to eliminate language requiring a mortgage company to post its hours of operation at its physical office. (Required Disclosures and Advertising Changes) New language is

inserted at subsection (b) to cross reference §80.204 and the proposed new requirement to maintain records reflecting establishment of the mortgage company's physical office, to provide additional notice of such requirement and promote compliance. The existing provisions of subsection (b) meanwhile are relocated to a proposed new subsection (c). (Books and Recordkeeping Changes) The rule is further amended to remove capitalization of the term physical office. Introductory headers are inserted at existing subsection (b) and proposed new subsection (c), to improve readability. The provisions of proposed new subsection (c), derived from those in existing subsection (b), are also restated to improve clarity. (Other Modernization and Update Changes)

The proposed rules amend Subchapter D, Compliance and Enforcement.

The proposed rules amend §80.301, Investigations, Administrative Penalties, and Disciplinary and/or Enforcement Actions. The provisions of existing subsection (c), and (e) - (i) are eliminated as being duplicative of the requirements of the Finance Code, and without offering additional guidance. The provisions of existing subsection (d) are relocated to subsection (c). (Other Modernization and Update Changes)

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Florence, director of mortgage examination for the department (director), has determined that for the first five-year period the rule is in effect, there are no foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the proposed

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rules. The director has further determined that for the first five-year period the proposed rules are in effect, there will be no foreseeable losses or increases in revenue for the state or local governments as a result of enforcing or administering the proposed rules.

PUBLIC BENEFITS

The director has determined that for each of the first five years the proposed rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to have rules that are easier to read and understand. The proposed rules related to Required Disclosures and Advertising Changes will benefit the public by providing additional disclosure of the department's regulatory oversight of mortgage companies, and the public's opportunity to file a complaint with and seek redress from the department for a violation of Chapter 156 or the rules adopted thereunder. Such rule changes will further limit existing requirements enforced by the department, allowing the department to reallocate and better utilize its resources in its examination and enforcement functions, and allowing the department to pursue violations of Chapter 156 that more directly impact the public. The proposed rules related to Duties and Responsibilities Changes clarify and update the duties and responsibilities imposed on a mortgage company by rule, the compliance with which will benefit the public utilizing the services of a mortgage company licensed by the department. The proposed rules related to Books and Recordkeeping Changes will provide the department with additional information when conducting examinations of mortgage companies licensed by the

department, allowing the department to better detect and pursue violations of Chapter 156 while simultaneously streamlining the examinations process for the department and mortgage companies alike.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH THE PROPOSED RULES

The director has determined that for the first five years the proposed rules are in effect, there are no substantial economic costs anticipated to persons required to comply with the proposed rules.

The proposed rules' changes to §80.200 require the inclusion of the mortgage company's NMLS identification information on all correspondence. Since correspondence is tailored to the recipient, it will not place a burden on the mortgage company to add the required information. A mortgage company may be using electronic forms or other pre-printed letterhead to generate correspondence. Those mortgage companies that do not already include the required information on such electronic forms may be inclined to update their electronic forms to more easily comply with the rule. However, any such costs should only be incurred on a one-time basis and are anticipated to be *de minimis*. Moreover, use of electronic forms by a mortgage company is not required by the proposed rules, and is discretionary. Physical letterhead preexisting adoption of the rule that does not include the required information may still be used but with the information added upon tailoring the correspondence for the intended recipient, at no cost.

The proposed rules' changes to §80.204 require a mortgage company to record

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additional information on the mortgage transaction log it is required to make under existing requirements. The additional information is already created and exists as a byproduct of the residential mortgage loan application process. The rule merely requires that the existing information be transposed to the existing mortgage transaction log for review by the department's examiners in the same manner as the other information required on the mortgage transaction log under existing requirements. A mortgage company may be using electronic forms or other pre-printed paper logs for purposes of maintaining its mortgage transaction log. A Mortgage company that use such electronic forms may be inclined to update its electronic forms to more easily comply with the rule. However, any such costs are anticipated to be *de minimis*. Moreover, the use of electronic forms by a mortgage company is not required by the proposed rules, and is discretionary. Physical logs preexisting adoption of the rule may still be used and supplemented with the required information, at no cost.

The proposed rules' changes to §80.204 also require a mortgage company to maintain records concerning its physical office. The requirement to maintain such physical office is imposed by Tex. Fin. Code §156.2041, and not a rule adopted by the department. By establishing such physical office in conformity with the statute, the mortgage company will have already created the underlying information required to be maintained by the rule. The proposed rules merely require that the information be maintained in a form that is readily accessible to the department's examiners when examining the mortgage company, and does not impose a cost.

ONE-FOR-ONE RULE ANALYSIS

Pursuant to Finance Code §16.002, the department is a self-directed and semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do create a new regulation (rule requirement). The proposed rules create a new requirement for mortgage companies to list their NMLS identification number on all correspondence sent to a mortgage applicant. The proposed rules create a new requirement for mortgage companies to maintain records establishing their physical office; (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules expand an existing rule requirement by establishing that certain conduct by a mortgage company constituting a violation of the rules when committed intentionally is also a violation when committed negligently. The proposed rules expand an existing rule requirement by requiring that additional information be included on the required mortgage

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transaction log. The proposed rules limit an existing rule requirement by eliminating the requirement to post disclosures at the physical office of the mortgage company (but not eliminating such disclosures entirely). The proposed rules limit an existing rule requirement by expanding the number of items deemed not to be an advertisement and exempt from the department's advertising requirements, and further allowing such items to recite the website address of the mortgage company. The proposed rules repeal an existing rule requirement that a mortgage company post its hours of operation at its physical office. The proposed rules repeal an existing rule requirement that a mortgage company recite its physical address in Texas when making an advertisement; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

LOCAL EMPLOYMENT IMPACT STATEMENT

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

FISCAL IMPACT ON SMALL AND MICRO-BUSINESSES, AND RURAL COMMUNITIES

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic

impact statement and a regulatory flexibility analysis, as provided by Government Code §2006.002, are not required.

TAKINGS IMPACT ASSESSMENT

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment, as provided by Government Code §2007.043, is not required.

PUBLIC COMMENTS

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, Associate General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this proposal.

STATUTORY AUTHORITY

This proposal is made under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code, Chapter 156, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

This proposal affects the statutes contained in Finance Code, Chapter 156. No other statute is affected by this proposal.

<rule>

Subchapter A. General Provisions.

§80.1. Scope.

This chapter governs the licensing, registration, and conduct of mortgage companies [~~Mortgage Companies~~], financial services companies

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~~[Financial Services Companies], credit union subsidiary organizations [Credit Union Subsidiary Organizations], auxiliary mortgage loan activity companies [Auxiliary Mortgage Loan Activity Companies], and independent contractor loan processors and underwriters [Independent Contractor Loan Processors and Underwriters] under Finance Code, Chapter 156. Pursuant to Tex. Fin. Code §156.2012(b)(7), a company registered with the Department as a financial services company is subject to the requirements of this chapter as if the company were licensed by the Department as a mortgage company and the rules contained in this chapter shall be construed accordingly [This chapter also governs the conduct of Residential Mortgage Loan Originators who are subject to or engage in regulated activities under Finance Code, Chapter 156 and Chapter 180, except for individuals engaged in authorized activity subject to the authority of a regulatory official under Finance Code, §180.251(e). The terms "licensed" and "registered" may be used interchangeably].~~

§80.2. Definitions.

As used in this chapter, and in the Commissioner's administration and enforcement of Finance Code, Chapter 156, the following terms have the meanings indicated:

(1) "Application," as used in Tex. Fin. Code §156.002(14) and paragraph (20) of this section means a request, in any form, for an offer (or a response to a solicitation for an offer) of residential mortgage loan terms, and the information about the mortgage applicant that is customary or necessary in a decision on whether to make such an offer, including, but not limited to, a mortgage applicant's name, income, social security number to obtain a credit report, property address, an estimate of the value of the real estate, and/or the mortgage loan amount [~~"Branch Office" means any office that is separate and distinct from the company's headquarters location, whether located in Texas or not, which~~

~~conducts mortgage business on residential real estate located in the state of Texas].~~

(2) "Branch office," as used in Tex. Fin. Code §156.2041(a)(4), means any office that is separate and distinct from the mortgage company's principal place of business of record with the Nationwide Mortgage Licensing System and Registry, whether located in Texas or not, which conducts mortgage business on residential real estate located in Texas [~~Commissioner" means the Savings and Mortgage Lending Commissioner].~~

(3) "Commissioner" means the Savings and Mortgage Lending Commissioner appointed under Finance Code, Chapter 13 [~~Commissioner's designee" means an employee of the Department performing his or her assigned duties or such other person as the Commissioner may designate in writing. A Commissioner's designee is deemed to be the Commissioner's authorized "personnel or representative" as such term is used in Finance Code, Chapter 156].~~

(4) "Commissioner's designee" means an employee of the Department performing their assigned duties or such other person as the Commissioner may designate in writing. A Commissioner's designee is deemed to be the Commissioner's authorized "personnel or representative" as that term is used in Tex. Fin. Code §156.303. [Company" means, for purposes of this chapter, a residential mortgage loan company, as that term is defined in Finance Code, §156.002." [~~Commissioner" means the Savings and Mortgage Lending Commissioner].~~

(5) "Compensation" includes salaries, bonuses, commissions, and any financial or similar incentive [~~Control Person" means an individual that directly or indirectly exercises control over a company. Control is defined by the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person that:~~

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~~(A) is a director, general partner or executive officer;~~

~~(B) directly or indirectly has the right to vote 10% or more of a class of a voting security or has the power to sell or direct the sale of 10% or more of a class of voting securities;~~

~~(C) in the case of an LLC, managing member; or~~

~~(D) in the case of a partnership, has the right to receive upon dissolution, or had contributed, 10% or more of the capital, is presumed to control that company].~~

(6) "Control person" means an individual that directly or indirectly exercises control over a mortgage company. Control is defined by the power, directly or indirectly, to direct the management or policies of a mortgage company, whether through ownership of securities, by contract, or otherwise. Control person includes any person that:

(A) is a director, general partner or executive officer;

(B) directly or indirectly has the right to vote 10% or more of a class of a voting security or has the power to sell or direct the sale of 10% or more of a class of voting securities;

(C) in the case of an LLC, is a managing member; or

(D) in the case of a partnership, has the right to receive upon dissolution, or had contributed, 10% or more of the partnership's capital assets
~~[Criminal Offense" means any violation of any state or federal criminal statute which:~~

~~(A) involves theft, misappropriation, or misapplication, of monies or goods in any amount;~~

~~(B) involves the falsification of records, perjury, or other similar criminal offenses indicating dishonesty;~~

~~(C) involves the solicitation of, the giving of, or the taking of bribes, kickbacks, or other illegal compensation;~~

~~(D) involves deceiving the public by means of swindling, false advertising or the like;~~

~~(E) involves acts of moral turpitude and violation of duties owed to the public including, but not limited to, the unlawful manufacture, distribution, or trafficking in a controlled substance, dangerous drug, or marijuana;~~

~~(F) involves acts of violence or use of a deadly weapon;~~

~~(G) when considered with other violations committed over a period of time appears to establish a pattern of disregard for, a lack of respect for, or apparent inability to follow, the criminal law; or~~

~~(H) involves any other crime which the Commissioner determines has a reasonable relationship to whether a person is fit to serve as an originator in a manner consistent with the purposes of Finance Code, Chapter 157 and the best interest of the State of Texas and its residents].~~

(7) (No change.)

(8) "Dwelling" means a residential structure that contains one to four units and is attached to residential real estate. The term includes an individual condominium unit, cooperative unit, or manufactured home, if it is used as a residence
~~[Nationwide Mortgage Licensing System and Registry" has the meaning assigned by Finance Code §180.002(12)].~~

(9) "Mortgage applicant" has the meaning assigned by Tex. Fin. Code § 156.002 and includes a person who has not completed or started completing a formal loan application on the appropriate form (e.g., Fannie Mae's Form 1003 Uniform Residential Loan Application), but who has submitted financial information constituting an application, as provided by paragraph (1) of this section
~~[One to four family~~

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~~residential real property" means improved or unimproved real property, or any portion of or interest in any such real property, on which a one-to-four family dwelling, including a manufactured home, is being or is to be constructed or situated].~~

(10) "Mortgage company" means, for the purposes of this chapter, a "residential mortgage loan company" as that term is defined by Tex. Fin. Code §156.002 [Physical Office" means an actual office where the business of mortgage lending and/or the business of taking or soliciting residential mortgage loan applications are conducted].

(11) "Nationwide Mortgage Licensing System and Registry" has the meaning assigned by Tex. Fin. Code §156.002 [Qualifying Individual" shall have the same meaning as that provided in Finance Code, §156.002. Additionally, the license held by the qualifying individual must be held in a status, which authorizes them to conduct regulated activities, and is sponsored by the company for which they are the qualifying individual].

(12) "Offers or negotiates the terms of a residential mortgage loan," as used in Tex. Fin. Code §156.002(14) means, among other things, when an individual:

(A) arranges or assists a mortgage applicant or prospective mortgage applicant in obtaining or applying to obtain, or otherwise secures an extension of consumer credit for another person, in connection with obtaining or applying to obtain a residential mortgage loan;

(B) presents for consideration by a mortgage applicant or prospective mortgage applicant particular residential mortgage loan terms (including rates, fees and other costs);

(C) communicates directly or indirectly with a mortgage applicant or prospective mortgage applicant for the purpose of reaching a mutual understanding about particular residential mortgage loan terms; or

(D) recommends, refers, or steers a mortgage applicant or prospective mortgage applicant to a particular originator, lender, or set of residential mortgage loan terms, in accordance with a duty to or incentive from any person other than the mortgage applicant or prospective mortgage applicant

[Residential Mortgage Loan" shall have the same meaning as that provided in Finance Code, §180.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan which is secured by a structure that is suitable for occupancy as a one to four family residence, but is used for a commercial purpose such as a professional office, beauty salon, or other non-residential use, and is not used as a residence].

(13) "Originator" has the meaning assigned by Tex. Fin. Code §156.002 in defining "residential mortgage loan originator".

(14) "Person" means an individual, corporation, company, limited liability company, partnership or association.

(15) "Physical office" means an actual office where the business of mortgage lending and/or the business of taking or soliciting residential mortgage loan applications is conducted.

(16) "Qualifying Individual" or "qualified individual" has the meaning assigned by Tex. Fin. Code §156.002 in defining "qualifying individual". Additionally, the license held by the Qualifying Individual must be held in a status which authorizes them to conduct regulated activities, and the individual sponsored of record by the mortgage company for which they are the qualifying individual.

(17) "Residential mortgage loan" has the meaning assigned by Tex. Fin. Code §156.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan which is secured by a structure that is suitable for occupancy as a dwelling, but is used for a commercial purpose

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such as a professional office, salon, or other non-residential use, and is not used as a residence.

(18) "Residential real estate" has the meaning assigned by Tex. Fin. Code §156.002 and includes both improved or unimproved real estate or any portion of or interest in such real estate on which a dwelling is or will be constructed or situated.

(19) "Social media site" means any digital platform accessible by a mortgage applicant or prospective mortgage applicant where the mortgage company or sponsored originator does not typically own the hosting platform but otherwise exerts editorial control or influence over the content within their account, profile, or other space on the digital platform, from which the mortgage company or sponsored originator posts commercial messages or other content designed to solicit business.

(20) "Takes a residential mortgage loan application," as used in Tex. Fin. Code §156.002(14) in defining "residential mortgage loan originator" means when an individual receives a residential mortgage loan application for the purpose of facilitating a decision on whether to extend an offer of residential mortgage loan terms to a mortgage applicant or prospective mortgage applicant, whether the application is received directly or indirectly from the mortgage applicant or prospective mortgage applicant, and regardless of whether or not a particular lender has been identified or selected.

Subchapter C. Duties and Responsibilities.

§80.200. Required Disclosures.

(a) Specific Notice to Applicant. A mortgage company or its sponsored originator [An originator sponsored under Finance Code, Chapter 156] shall provide [include] the following notice[~~, Figure: 7 TAC §80.200(a),~~] to a residential mortgage loan applicant with an

initial application for a residential mortgage loan, and the mortgage company shall maintain in its records evidence of the timely delivery of such notice:

Figure: 7 TAC §80.200(a)

(b) Posted Notice on Mortgage Company Websites and Social Media Sites. A mortgage [At each physical office, and on its website, a] company or its sponsored [an] originator shall [conspicuously] post in conspicuous fashion the following notice on each website and social media site of the mortgage company or sponsored originator that is accessible by a mortgage applicant or prospective mortgage applicant and either used to conduct residential mortgage loan origination business by the mortgage company or sponsored originator, or from which the mortgage company or sponsored originator advertises to solicit such business, as provided by §80.203 of this title:

Figure: 7 TAC §80.200(b)

(c) Disclosures in Correspondence. A mortgage company shall provide the following information on all correspondence sent to a mortgage applicant: [A notice is deemed to be conspicuously posted under subsection (b) of this section if a customer with 20/20 vision can read it from each place where he or she would typically conduct business or if it is included on a bulletin board, in plain view, on which all required notices to the general public (such as equal housing posters, licenses, etc.) are posted. If applicable a notice is deemed conspicuously posted if prominently displayed on the website.]

(1) the name of the mortgage company, followed by the mortgage company's Nationwide Mortgage Licensing System and Registry (NMLS) identification number; and

(2) if the correspondence is from a sponsored originator, the name of the sponsored originator, followed by the sponsored originator's NMLS identification number.

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(d) The determination of what constitutes a mortgage application for purposes of triggering the notice required by subsection (a) of this section shall be made in accordance with applicable federal law determining what constitutes an application for purposes of the Truth in Lending Act, as implemented and defined by the Consumer Financial Protection Bureau in Regulation Z (12 C.F.R. §1026.2).

(e) the notice required by subsection (b) of this section is deemed to be conspicuously posted on a website when it is displayed on the initial or home page of the website (typically the base-level domain name) or is otherwise contained in a linked page with the link to such page prominently displayed on such initial or home page. The notice required by subsection (b) of this section is deemed to be conspicuously posted on a social media site when it is readily apparent or easily accessible to the mortgage applicant or prospective mortgage applicant upon visiting the home page, profile page, account page, or similar, on such social media site, without the necessity to review various historical content posted by the mortgage company or sponsored originator in order to derive the information required by the notice, which may include an interactive link to the information with such link prominently displayed on such home page, profile page, account page, or similar.

§80.202. Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings.

(a) False, Misleading or Deceptive Practices. The following conduct by a mortgage company constitutes fraudulent and dishonest dealings for purposes of Tex. Fin. Code § 156.303(a)(3) [No company or originator may]:

(1) knowingly or negligently misrepresenting the mortgage company or its sponsored originator's [his or her] relationship to a mortgage applicant or any other party to an actual or proposed residential mortgage loan transaction;

(2) knowingly or negligently misrepresenting or understating [understate] any cost, fee, interest rate, or other expense in connection with a mortgage applicant's applying for or obtaining a residential mortgage loan;

(3) overstating, inflating, altering, amending, or disparaging [disparage] any source or potential source of residential mortgage loan funds in a manner which knowingly disregards the truth or makes any knowing and material misstatement or omission;

(4) knowingly or negligently participating [participate] in or permitting [permit] the submission of false or misleading information of a material nature to any person in connection with a decision by that person whether or not to make or acquire a residential mortgage loan;

(5) as provided for by the Real Estate Settlement Procedures Act and Regulation X [its implementing regulations], brokering, arranging [arrange], or making [make] a residential mortgage loan in which the mortgage company [or originator] retains fees or receives other compensation for services which are not actually performed or where the fees or other compensation received bear no reasonable relationship to the value of services actually performed;

(6) recommending [recommend] or encouraging [encourage] default or delinquency or continuation of an existing default or delinquency by a mortgage applicant on any existing indebtedness prior to closing a residential mortgage loan which refinances all or a portion of such existing indebtedness;

(7) altering any document produced or issued by the Department, unless otherwise permitted by statute or a rule of the Department [induce or attempt to induce a party to a contract to breach that contract so the person may make a residential mortgage loan];

(8) engaging in any other practice which the Commissioner, by published interpretation, has

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~~determined to be false, misleading, or deceptive [alter any document produced or issued by the department, unless otherwise permitted by statutory regulation; or~~

~~(9) engage in any other practice which the Commissioner, by published interpretation, has determined to be false, misleading, or deceptive].~~

(b) Improper Dealings. The following conduct by a mortgage company constitutes improper dealings for purposes of Tex. Fin. Code ~~[The term "improper dealings" in Finance Code,]~~ §156.303(a)(3) ~~[includes, but is not limited to the following]:~~

(1) Acting negligently in performing an act for which a person is required under Finance Code, Chapter 156 to hold a license;

(2) Violating any provision of a local, State of Texas, or federal, constitution, statute, rule, ordinance, regulation, or final court decision that governs the same activity, transaction, or subject matter that is governed by the provisions of Finance Code, Chapter 156 or this chapter including, but not limited to, the following:

(A) Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.);

(B) Regulation X (12 C.F.R. §1024 et seq.);

(C) Consumer Credit Protection Act, Truth in Lending Act (15 U.S.C. §1601 et seq.);

(D) Regulation Z (12 C.F.R. §1026 et seq.);

(E) Equal Credit Opportunity Act (15 U.S.C. §1691 et seq.);

(F) Regulation B; (12 C.F.R. §1002 et seq.) and

(G) Texas Constitution, Article XVI, §50.

(3) Representing to a mortgage applicant that a charge or fee which is payable to the mortgage company [or originator] is a "discount point" or otherwise confers a financial benefit on the mortgage applicant unless the loan closes and:

(A) The mortgage company [or originator] is the lender in the transaction. For purposes of this paragraph, the mortgage company [or originator] is deemed to be the lender if the company or originator, is the payee as evidenced on the face of the note or other written evidence of indebtedness; or

(B) The mortgage company [or originator,] is not the lender, but demonstrates by clear and convincing evidence that the lender has charged or collected discount point(s) or other fees which the mortgage company actually paid [or originator has remitted] to the lender on behalf of the mortgage applicant, to buy down the interest rate on a residential mortgage loan.

~~[(C) A company or an originator engages in a false, misleading or deceptive practice or improper dealings when in connection with the origination of a residential mortgage loan:~~

~~(i) The company or originator offers other goods or services to a consumer in a separate but related transaction and the company or originator engages in a false misleading or deceptive practice in the related transaction; or~~

~~(ii) The sponsor of an originator who offers other goods or services to a consumer in a separate but related transaction and the person engages in a false, misleading or deceptive practice in the related transaction; and the sponsor knew or should have known of the transaction.~~

~~(D) An originator receiving a verbal or written inquiry about his or her services shall respond accurately to any questions about the scope and nature of such services and any costs.]~~

(c) Related Transactions. A mortgage company or sponsored originator engages in fraudulent and deceptive dealings for purposes of Tex. Fin. Code §156.303(a)(3) when, in connection with the origination of a residential mortgage loan:

(1) The mortgage company or sponsored originator offers other goods or services to a consumer in a separate but related transaction and

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the mortgage company or sponsored originator engages in a false misleading or deceptive practice in the related transaction; or

(2) The mortgage company or sponsored originator affiliates with another person that provides goods or services to a consumer in a separate but related transaction, and the affiliated person performs false, misleading or deceptive acts, and the mortgage company or sponsored originator to the mortgage transaction knew or should have known of the false, misleading or deceptive acts of the affiliated person and failed to take appropriate steps to prevent or limit such false, misleading or deceptive acts.

(d) Sharing or Splitting Origination Fees with the Mortgage Applicant. A mortgage company or sponsored originator may not offer or agree to share or split any residential mortgage loan origination fees with a mortgage applicant, rebate all or part of an origination fee to a mortgage applicant, reduce their established compensation to benefit a mortgage applicant, or otherwise provide money, a cash equivalent, or anything of value to a mortgage applicant in connection with providing mortgage loan origination services unless otherwise allowable as provided by Regulation X. A sponsored originator acting in the dual capacity of an originator and real estate broker or sales agent licensed under Occupations Code, Chapter 1101 may rebate their fees legitimately earned and derived from their real estate brokerage or sales agent services to the extent allowable under applicable law governing real estate brokers or sales agents; provided, the payment or other transfer described herein occurs as a part of closing and is properly reflected in the closing disclosure for the transaction. If a payment or other transfer described herein by a mortgage company or sponsored originator acting in the dual capacity of an originator and real estate broker or sales agent occurs after closing, a rebuttable presumption exists that the payment or transfer is derived from the sponsored originator's fees for mortgage origination

services, and constitutes an improper sharing or splitting of fees with the mortgage applicant. The rebuttable presumption created by this subsection may only be overcome by clear and convincing evidence established by the mortgage company or sponsored originator that the payment or transfer is instead derived from fees for real estate brokerage or sales agent services. A violation of this subsection (d) shall be deemed to constitute improper dealings for purposes of Tex. Fin. Code §156.303(a)(3).

§80.203. Advertising.

(a) A mortgage company or sponsored originator that ~~[Licensees who]~~ advertises rates, terms, or conditions must comply with the disclosure requirements of Regulation Z.

(b) Any advertisement of residential mortgage loans or for residential mortgage loan origination services which is ~~[are]~~ offered by or through a mortgage company or sponsored originator shall conform to the following requirements:

(1) An advertisement shall be made only for such products and terms as are actually available and, if their availability is subject to any material requirements or limitations, the advertisement shall specify those requirements or limitations.

(2) Except as provided in subsections (c) and (d) of this section the advertisement shall contain:

(A) the name of the mortgage company ~~[originator]~~ followed by the mortgage company's Nationwide Mortgage Licensing System and Registry (NMLS) identification number ~~[name of the sponsoring mortgage company as designated in the records of the Commissioner as of the date of the advertisement]; and~~

(B) the name of the sponsored originator followed by the sponsored originator's NMLS ~~[originator's Nationwide Mortgage Licensing System and Registry]~~ identification number. ~~}; and]~~

~~[(C) the company's physical office or branch office street address in Texas.]~~

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(3) An advertisement shall not make any statement or omit to make any statement the result of which is to present a misleading or deceptive impression to consumers.

(4) An advertisement shall otherwise comply with applicable state and federal disclosure requirements.

(c) For purposes of this section, an advertisement means a commercial message in any medium that promotes directly or indirectly, a residential mortgage loan ~~[credit]~~ transaction or is otherwise designed to solicit residential mortgage loan origination business for the mortgage company or sponsored originator. This includes "flyer," business cards, or other handouts, and commercial messages delivered by and through a social media site. However, the requirements of subsection (b)(2) of this section shall not apply to:

(1) any advertisement which indirectly promotes a credit transaction and which contains only the name of the mortgage company or sponsored originator and ~~[does]~~ not ~~[contain]~~ any contact information with the exception of a website address, such as [the inscription of the name] on [a] coffee mugs, pencils, shirts or other clothing (including company uniforms and sponsored youth league jerseys), or other promotional items of nominal value; [or]

(2) any rate sheet, pricing sheet, or similar proprietary information provided to realtors, builders, and other commercial entities that is not intended for distribution to consumers; or [-]

(3) signs located on or adjacent to the mortgage company's physical office.

(d) Advertising Directly by a Mortgage Company. The provisions of subsection (b) notwithstanding, a mortgage company may advertise directly to the public and not by and through a sponsored originator, and the requirements of subsection (b)(2)(B) of this section shall not apply to such advertisements. An advertisement posted, promoted, disseminated,

distributed, delivered, or otherwise made by an originators sponsored by the mortgage company shall not be considered an advertisement made directly by a mortgage company for purposes of this subsection.

§80.204. Books and Records.

(a) Maintenance of Records, Generally. In order to assure that each licensee will have all records necessary to enable the Commissioner or the Commissioner's designee to investigate complaints and discharge their responsibilities under Finance Code, Chapter 156 and this chapter, each mortgage company or sponsored originator shall maintain records as set forth in this section. The particular format of records to be maintained is not specified. However, they must be accurate, complete, current, legible, readily accessible, and readily sortable. Records maintained for other purposes, such as compliance with other state and federal laws, will be deemed to satisfy these requirements if they include the same information.

(b) Mortgage Application Records. Each mortgage company or sponsored originator is required to maintain, at the location specified in their official record on file with the D[~~d~~]epartment, the following books and records:

(1) Residential Mortgage Loan File. For each residential mortgage loan application received the residential mortgage loan file shall contain at a minimum the following:

(A) a copy of the initial ~~[signed and dated]~~ residential mortgage loan application (including any attachments, supplements, or addenda thereto), signed and dated by each mortgage loan applicant and the sponsored originator;

(B) ~~[either]~~ a copy of the signed closing statement or integrated closing disclosure, documentation of the timely denial, or other documentation evidencing the disposition of the application for a residential mortgage loan;

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(C) a copy of the ~~[signed and dated]~~ disclosure statement required by Tex. Fin. Code §§156.004 [Finance Code, Chapter 156] and §80.200(a) of this title, signed and dated by each mortgage applicant and the sponsored originator ~~[chapter]~~;

(D) a copy of each item of correspondence, all evidence of any contractual agreement or understanding (including, but not limited to, any interest rate lock~~[-in]~~s or loan commitments), and all notes and memoranda of conversations or meetings with any mortgage applicant or any other party in connection with that residential mortgage loan application or its ultimate disposition;

(E) a copy of the notice to mortgage applicants required by Tex. Fin. Code ~~[Finance Code]~~, §343.105;

(F) a copy of both the initial Good Faith Estimate and the initial Good Faith Estimate fee itemization worksheet, if applicable; and

(G) a copy of the initial integrated loan estimate disclosure, if applicable.

(2) Mortgage Transaction Log. A mortgage transaction log, maintained on a current basis (which means that all entries must be made within no more than seven days from the date on which the matters they relate to occurred), setting forth, at a minimum:

(A) the name and contact information of each mortgage applicant ~~[and how to contact them]~~;

(B) the date of the initial residential mortgage loan application;

(C) a description of the purpose for the loan (e.g., purchase, refinance, construction, etc.) ~~[description of the disposition of the application for a residential mortgage loan]~~;

(D) a description of the owner's intended occupancy of the subject real estate (e.g., primary residence, secondary residence, investment property (no occupancy), etc.) ~~[identity of the~~

~~person or entity who initially funded and/or acquired the residential mortgage loan]~~; ~~[and]~~

(E) a description of the disposition of the residential mortgage loan application; ~~[full name of the originator and their Nationwide Mortgage Licensing System and Registry identification number.]~~

(F) the identity of the person who initially funded and/or acquired the residential mortgage loan; and

(G) the full name of the sponsored originator and their Nationwide Mortgage Licensing System and Registry (NMLS) identification number.

(3) General Business Records. General business records include the following:

(A) all checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and cancelled checks (or copies thereof) relating to the residential mortgage loan origination ~~[lending]~~ business;

(B) complete records (including invoices and supporting documentation) for all expenses and fees paid on behalf of a mortgage applicant, including a record of the date and amount of all such payments actually made by each mortgage applicant;

(C) copies of all federal tax withholding forms, reports of income for federal taxation, and evidence of payments to all mortgage company employees, independent contractors and all others compensated by such mortgage company ~~[originator]~~ in connection with the residential mortgage loan origination ~~[lending]~~ business;

(D) copies of all written complaints or inquiries (or summaries of any verbal complaints or inquiries) along with any and all correspondence, notes, responses, and documentation relating thereto and the disposition thereof;

(E) copies of all contractual agreements or understandings with third parties in any way relating to a residential mortgage loan

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transaction ~~[lending services]~~ including, but not limited to, any delegations of underwriting authority, any agreements for pricing of goods or services, investor contracts, or employment agreements;

(F) copies of all reports of audits, examinations, inspections, reviews, investigations, or other similar matters performed by any third party, including any regulatory or supervisory authorities; and

(G) copies of all advertisements in the medium (e.g., recorded audio, video, and print) in which they were published or distributed.

(4) Records Establishing Physical Office. A mortgage company must create and maintain records establishing its physical office including:

(A) records reflecting the names and contact information for persons serving as staff for the mortgage company assisting customers at the physical office; and

(B) records reflecting the mortgage company's right to access and conduct business of the mortgage company at the physical office (e.g., a lease agreement or deed).

(c) A mortgage company and/or sponsored originator shall maintain such other books and records as may be required to evidence compliance with applicable state and federal laws and regulations including, but not limited to: the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, and the Truth in Lending Act.

(d) A mortgage company and/or sponsored originator shall maintain such other books and records as the Commissioner or the Commissioner's designee may from time to time specify in writing.

(e) Production of Records; Disciplinary Action. All books and records required by this section shall be maintained in good order and shall be produced for the Commissioner or the Commissioner's designee upon request. Failure to

produce such books and records upon request, after a reasonable time for compliance, may result in disciplinary action including, but not limited to, ~~[be grounds for]~~ suspension or revocation of a license.

(f) Records Retention Period. All books and records required by this section shall be maintained for three years or such longer period(s) as may be required by applicable state and/or federal laws and regulations.

(g) Records Retention Dissolution. Upon termination of operations, the mortgage company shall notify the Department, in writing, within ten days, where the required records will be maintained for the prescribed periods. If such records are transferred to another mortgage company licensed by the Department, the transferee shall, in writing, within ten days of accepting responsibility for maintaining such records, notify the Department ~~[An originator may meet applicable recordkeeping requirements if his or her sponsoring company maintains the required records].~~

~~[(h) Upon termination of operations, the licensee shall notify the Commissioner, in writing, within ten days where the required records will be maintained for the prescribed periods. If such records are transferred to another licensee the transferee shall, in writing, within ten days of accepting responsibility for maintaining such records, notify the Commissioner.]~~

§80.205. Mortgage Call Reports.

(a) Call Report.

(1) A mortgage company must ~~[shall]~~ file a mortgage call report on a quarterly basis. The filing deadlines are set by the Nationwide Mortgage Licensing System and Registry (NMLS).

(2) A call report is required to be filed for each quarter a license is held, including partial quarters.

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(3) The call report must ~~[shall]~~ be submitted through and in the manner and form prescribed by NMLS ~~[the Nationwide Mortgage Licensing System and Registry]~~.

(b) Statement of Condition Report.

(1) A mortgage company must ~~[shall]~~ file a statement of condition on an annual basis.

(2) A statement of condition report is required to be filed for each year a license is held, including partial years.

(3) The statement of condition report must ~~[shall]~~ be submitted through and in the manner and form prescribed by NMLS ~~[the Nationwide Mortgage Licensing System and Registry]~~.

(c) Submission of a call report or statement of condition report, by a mortgage company~~;~~ satisfies the requirements of an originator sponsored by the mortgage company to submit a mortgage call report, as required by Tex. Fin. Code ~~[under Finance Code,]~~ §180.101 for the period of sponsorship, provided that the sponsored originator's information is included in the report.

(d) Failure to file a mortgage call report or a statement of condition report may result in disciplinary ~~[administrative]~~ action, including, but not limited to, imposition ~~[which includes the assessment]~~ of an administrative penalty.

§80.206. Physical Office.

(a) A physical office ~~[Physical Office]~~ must:

(1) have a physical or street address. A post office box or other similar designation will not suffice.

(2) be accessible to the general public as a place of business and must hold itself open on a regular basis ~~[during posted hours. The hours of business must be posted in a manner to give effective notice to walk up traffic as to the hours of opening and closing. Normally this will require posting of the hours on an exterior door or window of the office. In those instances where the physical office is in a shared office suite or~~

~~building, the hours may be posted in a common lobby or reception area].~~

(3) have at least one ~~[(4)]~~ staff member present to assist customers during the hours in which the physical office ~~[Physical Office]~~ is open.

(b) Records Establishing Physical Office. A mortgage company must create and maintain records establishing the mortgage company's physical office, as provided by §80.204 of this title. ~~[The Physical Office of a licensee need not be the location at which such person's required records are maintained, but the location at which such required records are maintained must be accessible to the Commissioner or the Commissioner's designee for inspection during normal business hours].~~

(c) Company Records. The physical office need not be the location where required records are maintained; however, the location where such required records are maintained must be accessible to the Commissioner or the Commissioner's designee for inspection during normal business hours.

Subchapter D. Compliance and Enforcement.

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

(a) Investigations will be conducted as deemed appropriate in light of all the relevant facts and circumstance then known. Such investigation may include any or all of the following:

(1) review of documentary evidence;

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

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

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

(b) The Commissioner may, upon a finding of reasonable cause, investigate a licensee or registrant to determine whether they are complying with Finance Code, Chapter 156 and this chapter.

(c) Reasonable cause will be deemed to exist if the Commissioner has received information from a source the Commissioner has no reason to believe to be other than reliable, including documentary or other evidence or information indicating facts which a prudent person would deem worthy of investigation as a violation of Finance Code, Chapter 156 ~~[The Commissioner may conduct an undercover or covert investigation only if the Commissioner, after due consideration of the circumstances, determines that the investigation is necessary to prevent immediate harm and to carry out the purposes of Finance Code, Chapter 156].~~

~~(d) Reasonable cause will be deemed to exist if the Commissioner has received information from a source he or she has no reason to believe to be other than reliable, including documentary or other evidence or information, indicating facts which a prudent person would deem worthy of investigation as a violation of Finance Code, Chapter 156.~~

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

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

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

~~(h) The Commissioner may, after giving notice and an opportunity for hearing, impose against any person who violates a cease and desist order, an administrative penalty in an amount not to exceed \$1,000 for each day on which the violation is continuing. In addition to any other remedy provided for by law, the Commissioner may institute in District Court for Travis County an action for injunctive relief and/or to collect the administrative penalty. A bond is not required of the Commissioner with respect to any request for injunctive relief under this subsection.~~

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

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.

Iain A. Berry
Associate General Counsel
Department of Savings and Mortgage
Lending

7. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of amendments to 7 TAC §§81.1 - 81.3, 81.200, 81.202 - 81.206, 81.300 and 81.301, Concerning Mortgage Bankers and Residential Mortgage Loan Originators, Resulting from Rule Review.

PURPOSE: This proposal arises from the Department's periodic review of its rules contained in Chapter 81, conducted pursuant to Government Code §2001.039. The rules in Chapter 81 implement Finance Code, Chapter 157, concerning Mortgage Bankers and Residential Mortgage Loan Originators, and Chapter 180, concerning Residential Mortgage Loan Originators, with respect to individuals licensed under Finance Code, Chapter 157. The amendments would add several new definitions to §81.2 related to the definition of a residential mortgage loan originator and make various other changes to the existing definitions. The amendments would make changes to the disclosures a mortgage banker or originator are required to make, and applicable advertising requirements. The amendments would make changes to the duties and responsibilities imposed on mortgage bankers and originators by rule, contained in §81.202. The amendments would make various changes to the requirements for a mortgage banker or originator to keep books and records, contained in §81.204. The amendments would make changes to modernize and update the rules including: adding and replacing language for clarity and to improve readability; replacing existing language with gender neutral language; removing unnecessary or duplicative provisions; and updating terminology.

A more thorough explanation and a summary of the amendments is contained in the proposed preamble for the rule proposal.

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

RECOMMENDED MOTION: I move that we publish the proposed amendments to 7 TAC §§81.1 - 81.3, 81.200, 81.202 - 81.206, 81.300 and 81.301 in the *Texas Register*.

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Title 7. Banking and Securities.

Part 4. Department of Savings and Mortgage Lending.

Chapter 81. Mortgage Bankers and Residential Mortgage Loan Originators.

7 TAC §§ 81.1 - 81.3, 81.200, 81.202 - 80.206, 81.300 and 81.301.

The Finance Commission (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes amendments to 7 Texas Administrative Code (TAC), Chapter 81, Subchapter A, §§81.1 - 81.3; Subchapter C, §§81.200, 81.202 - 81.206; and Subchapter D, §81.300, and §81.301. This proposal and the rules as amended by this proposal are referred to collectively as the "proposed rules."

BACKGROUND AND PURPOSE

The rules under 7 TAC Chapter 81 implement Finance Code, Chapter 157, Mortgage Bankers and Residential Mortgage Loan Originators (Chapter 157), and Chapter 180, Residential Mortgage Loan Originators (Texas SAFE Act), with respect to individuals licensed under Chapter 157. The proposed rules were identified during the department's periodic review of Chapter 81, conducted pursuant to Government Code, §2001.039.

Definition of a Residential Mortgage Loan Originator Changes

The proposed rules, if adopted, add several new definitions to §81.2 related to the definition of a residential mortgage loan originator. The proposed rules eliminate the existing definition for "residential mortgage loan originator," the subject matter of which is replaced by inserting a new definition for

"originator," to adopt by reference the statutory definition for residential mortgage loan originator in Chapter 157 and the Texas SAFE Act, allowing for use of that shortened term throughout the rules, improving readability and reducing word count. The proposed rules add a definition for the phrase "takes a residential loan application," as used in Finance Code, §157.002(6) and §180.002(19) for purposes of determining when an individual is acting as a residential mortgage loan originator. The proposed rules add a definition for the term "application" to further define and clarify when an individual has received information constituting a residential mortgage loan application for that same purpose. The proposed rules, if adopted, also add a definition for the phrase "offers or negotiates the terms of a residential mortgage loan," as used in Finance Code, §157.002(6) and §180.002(19) for purposes of determining when an individual is acting as a residential mortgage loan originator. The proposed rules add a definition for "compensation" for that same purpose.

Other Definitions Changes

The proposed rules, if adopted, make other changes to the definitions section in §81.2. The proposed rules add the following new definitions: "dwelling," "mortgage applicant," "mortgage company," "Nationwide Mortgage Licensing System and Registry," "Recovery Fund," "residential real estate," and "social media site."

Required Disclosures and Advertising Changes

The proposed rules, if adopted, would make changes to the disclosures a mortgage banker or originator is required to make, as provided

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by §81.200. The proposed rules limit existing disclosure requirements by eliminating the requirement for a mortgage banker or originator to post disclosures at a physical office. Existing requirements for posting disclosures on a website are clarified to expressly include a social media site of the mortgage banker or originator. The proposed rules impose a new requirement to disclose Nationwide Mortgage Licensing System and Registry (NMLS) identification information on all correspondence from an originator. The proposed rules also limit existing requirements in connection with a mortgage banker's physical office, as provided by §81.206, by eliminating the requirement that a mortgage banker post its hours of operation at such physical office. The proposed rules, if adopted, would make changes to the advertising requirements imposed on mortgage bankers and originators by rule, contained in §81.203. The proposed rules limit existing advertising requirements by eliminating the requirement that a mortgage banker or its sponsored originator recite the mortgage banker's address when making an advertisement. The proposed rules further alter requirements for advertising including by: clarifying an existing requirement that advertisements on social media sites are subject to the rules; limiting existing advertising requirements by allowing a mortgage banker or originator to promote a website address on certain promotional items deemed by rule not to constitute an advertisement; clarifying that signs on the premises of a mortgage banker or originator are not subject to the advertising requirements; and clarifying that a mortgage banker may advertise directly, and need not

advertise by and through an originator sponsored by the mortgage banker.

Duties and Responsibilities Changes

The proposed rules, if adopted, would make changes to the duties and responsibilities imposed on mortgage bankers and originators by rule, contained in §81.202. The provisions of existing subsection (a) are eliminated and replaced with language causing each discrete act contained in the paragraphed list under subsection (a) to be deemed a violation of the prohibition against a mortgage banker or originator engaging in fraudulent and dishonest dealings pursuant to Tex. Fin. Code §157.009(d) and §157.024(a)(3), deceptive practices for purposes of Tex. Fin. Code §180.153(2), and a scheme to defraud a person for purposes of Tex. Fin. Code §180.153(1). Certain acts on such list, which presently require a violation to be a knowing violation, are revised to also include acts committed negligently. The prohibition against disparaging a source of income for a mortgage loan, contained in existing subsection (a), paragraph (3), is clarified to include the more likely and harmful scenario where the source of funds is inflated to secure loan approval. The provisions of existing subsection (b) are eliminated and replaced with language causing each discrete act contained in the paragraphed list under subsection (b) to be deemed a violation of the prohibition against a mortgage banker or originator engaging in improper dealings pursuant to Tex. Fin. Code §157.009(d) and §157.024(a)(3), and unfair practices for purposes of Tex. Fin. Code §180.153(2). Existing subsection (b), paragraph (3), which prohibits a mortgage banker or originator from representing to a mortgage applicant

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that a fee payable to the mortgage banker or originator operates as a discount point for the transaction, is clarified to prohibit any similar representation that such fee confers a financial benefit on the mortgage applicant, except in the limited circumstances set forth in the existing subparagraphs set forth thereunder. The provisions of existing subsection (b), paragraph (3), subparagraph (D), requiring a mortgage banker or originator to respond accurately to a question about the scope and nature of their services and any costs, are eliminated and the subject matter replaced with a new subsection (b), paragraph (4), requiring a mortgage banker or originator to respond within a reasonable time to questions from a mortgage applicant. A new subsection (d) is inserted to offer additional guidance on the existing requirement barring the splitting of origination fees with a mortgage applicant except in the narrow circumstances elucidated by the Consumer Financial Protection Bureau (CFPB) in Regulation X. In order to aid enforcement and prevent evasion of the requirement by those individuals who are acting in the dual capacity of an originator and a real estate broker or sales agent licensed under Occupations Code, Chapter 1101, the proposed rules create a rebuttable presumption that a rebate or other transfer to the mortgage applicant made after closing is derived from their role as originator (a violation), and conversely, not derived from their role as real estate broker or sales agent.

Books and Recordkeeping Changes

The proposed rules, if adopted, would make various changes to the requirements for a mortgage banker or originator to keep books

and records, contained in §81.204. The proposed rules clarify the existing requirement that a mortgage banker or originator maintain a copy of the mortgage loan application signed by both the originator and the mortgage applicant. The proposed rules also expand existing requirements that a mortgage banker or originator maintain a log of mortgage transactions including by requiring that such log describe the purpose for the loan and the owner's intended occupancy of the real estate securing the mortgage loan.

Other Modernization and Update Changes.

The proposed rules, if adopted, would make changes to modernize and update the rules including: adding and replacing language for clarity and to improve readability; replacing existing language with gender neutral language; removing unnecessary or duplicative provisions; and updating terminology.

SUMMARY OF CHANGES

The proposed rules amend Subchapter A, General Provisions.

The proposed rules amend §81.1, Scope. Language conflating licensed and registered status concerning application of Chapter 81 is eliminated.

The proposed rules amend §81.2, Definitions. A new definition for "application" is inserted at paragraph (1) and the existing paragraphs are relocated and renumbered accordingly. Statutory references are added to such definition to indicate its use in determining when an individual is acting as a residential mortgage loan originator. A new definition for

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"compensation" is inserted at paragraph (5), and the existing paragraphs are relocated and renumbered accordingly. A new definition defining the phrase "offers or negotiates the terms of a residential mortgage loan" for purposes of Tex. Fin. Code §157.002(6) and §180.002(19) is inserted at paragraph (12). A new definition for "originator" is inserted at paragraph (13). A new definition for the phrase "takes a residential mortgage loan application" for purposes of Tex. Fin. Code §157.002(6) and §180.002(19) is inserted at paragraph (19). (Definition of a Residential Mortgage Loan Originator Changes) A new definition for "dwelling" is added at paragraph (7), and the existing paragraphs are relocated and renumbered accordingly. A new definition for "mortgage applicant," which adopts by reference the statutory definition assigned by Tex. Fin. Code § 156.002, is added at paragraph (8) and the existing paragraphs are relocated and renumbered accordingly. A new definition for "mortgage company," which adopts by reference the statutory definition for residential mortgage company in Chapter 157, is added at paragraph (10). A new definition for "Nationwide Mortgage Licensing System and Registry," which adopts by reference the statutory definition assigned by Chapter 157 and the Texas SAFE Act, is added at paragraph (11). A new definition for "social media site" is inserted at paragraph (18). (Other Definitions Changes) The existing implied subsection (a) is amended to add language clarifying that the definitions are also used in the department's administration and enforcement of Chapter 157 and the Texas SAFE Act. The existing definition for "commissioner" is relocated and amended to clarify that the commissioner

is that individual appointed under Finance Code, Chapter 13. The existing definition for "commissioner's designee" is relocated and amended to use gender-neutral language. (Other Modernization and Update Changes)

The proposed rules amend §81.3, Interpretations. The existing implied subsection (a) is amended to add language clarifying that the commissioner may also publish written interpretations of the Texas SAFE Act, in addition to Chapter 157.

The proposed rules amend Subchapter C, Duties and Responsibilities.

The proposed rules amend §80.200, Required Disclosures. The language of existing subsection (b) is eliminated and replaced with new language imposing the requirement for a mortgage company to make disclosures, as provided by §80.200(a) of this title, on the originators sponsored by such mortgage company. Existing subsection (c) is amended to eliminate the requirement that a mortgage banker or originator post a notice to consumers at a physical office. The provisions in existing subsection (d), which dictate how a mortgage banker or originator displays such notice at a physical office, are eliminated, and replaced with new language imposing the requirement for a mortgage company to make disclosures on its website and social media sites, as provided by §80.200(b) of this title, on the originators sponsored by such mortgage company. Existing subsection (c) is further amended to expressly require a mortgage banker to post the disclosure required by §80.200 on its social media site and to clarify that only websites and social media sites accessible by a consumer and used to conduct business are affected by the rule's requirements. New

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provisions are inserted in subsection (e) requiring an originator to disclose their NMLS identification number on correspondence sent to a mortgage applicant. A new subsection (f) is inserted clarifying that a determination of when an application has been received for purposes of the rule will be made in accordance with federal law and the Truth in Lending Act. (Required Disclosures and Advertising Changes) The subject matter of existing subsection (b), providing additional notice that a mortgage banker is required to maintain records evidencing delivery of required disclosures, as required by §81.204 of this title, is eliminated and addressed with new language inserted in subsection (a). Subsection (b) is further amended to impose the requirement that an originator sponsored by a mortgage company maintain records reflecting delivery of the disclosures required §80.200(a) of this title, as provided by existing §81.204 of this title. (Books and Recordkeeping Changes)

The proposed rules amend §81.202, Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings. The existing language of subsection (a) is eliminated and replaced with language clarifying that the commission of an act in the paragraphed list set forth under subsection (a) constitutes a violation of Tex. Fin. Code §§157.009(d), 157.024(a)(3), and 180.153(1). Existing subsection (a), paragraphs (1), (2) and (4), which require that a violation be committed knowingly, are amended to also include violations committed negligently. Existing subsection (a), paragraph (3), establishes a violation for disparaging the source of mortgage loan funds. Such paragraph is amended to insert language establishing a violation for inflating

or amending such source of income. Existing subsection (a), paragraph (7), establishing a violation for inducing a party to breach a contract in order to secure a mortgage loan, is eliminated as duplicative of the statutory provisions of Tex. Fin. Code §157.024(a)(7) without offering any additional guidance, and the remaining paragraphs relocated and renumbered accordingly. The existing language of subsection (b) is eliminated and replaced with language clarifying that commission of an act in the paragraphed list set forth under subsection (b) constitutes a violation of Tex. Fin. Code §§157.009(d), 157.024(a)(3), and 180.153(2). Subsection (b), paragraph (3) is amended to clarify that any representation to a mortgage applicant that an origination fee payable to the mortgage banker or mortgage company confers a financial benefit on the mortgage applicant is violative of the rule. The provisions of existing subsection (d) requiring an originator to respond accurately to a question about the scope and nature of their services and any costs, are eliminated, and the subject matter replaced with a new subsection (b), paragraph (4), requiring a mortgage banker or originator to respond within a reasonable time to questions from a mortgage applicant. A new subsection (d) is inserted to offer additional guidance on the existing requirement barring the splitting of origination fees with a mortgage applicant except in the narrow circumstances elucidated by the CFPB in Regulation X. (Duties and Responsibilities Changes) Existing subsection (a), paragraph (1) is amended to use gender neutral language. Existing subsection (a), paragraph (5) is amended to clarify that the federal Real Estate Settlement Procedures Act is

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implemented by the CFPB in Regulation X. Subsection (b), paragraph (2), subparagraphs (A) - (F) are amended to insert citations to federal law referenced thereunder. Existing Subsection (c), which establishes a violation for engaging in fraudulent dealings in a transaction related to the mortgage application, is restated with clearer language and eliminates duplicative language in existing subparagraph (3) thereunder. (Other Modernization and Update Changes)

The proposed rules amend §80.203, Advertising. The existing language of subsection (b), paragraph (2) is amended to require that an advertisement by a mortgage banker or mortgage company include the name and NMLS number of the mortgage banker or mortgage company, and the name and NMLS number of the sponsored originator. The existing language of subsection (b), paragraph (2) is further amended to eliminate the requirement that a mortgage banker recite the mortgage banker's street address in Texas when making an advertisement. Subsection (c) is amended to expressly make certain forms of advertising subject to the requirements of the rule, including physical printed handouts and messages delivered through a social media site. Subsection (c) is further amended to allow promotional items already exempt from the rule's requirements to include the website address for the mortgage banker or originator. Subsection (c) is further amended to clarify that signs located on or adjacent to a mortgage banker's or originator's physical office are exempt from the rule's requirements. A new subsection (d) is inserted allowing a mortgage banker to directly advertise its services, and clarifies that it need not advertise by and through a

sponsored originator. (Required Disclosures and Advertising Changes)

The proposed rules amend §80.204, Books and Records. Subsection (b), paragraph (2) is amended to require the mortgage transaction log maintained by an originator to include the following additional information: the stated purpose for the loan; and a description of the owner's intended occupancy of the subject real estate securing the loan. (Books and Recordkeeping Changes) Subsection (a) is amended to insert an introductory header to improve readability. Subsection (b) is amended to insert an introductory header. Subsection (b), paragraph (1), subparagraph (A) is amended to clarify that the signed application the originator is required to maintain in their records should be signed by each mortgage applicant and the originator. Subsection (b), paragraph (1), subparagraph (C) is amended to similarly clarify that the signed disclosure to consumers a mortgage company is required to maintain in its records should be signed by each mortgage applicant and the sponsored originator. Subsection (e) is amended to insert an introductory header to improve readability, and to clarify that violation of the rule may result in disciplinary action broadly, and is not limited to license suspension or revocation. Subsection (f) is amended to insert an introductory header to improve readability. Subsection (g) is amended to include gender neutral language. Subsection (h) amended to insert an introductory header to improve readability, and to clarify that notices regarding records retention should be directed to department staff. (Other Modernization and Update Changes)

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The proposed rules amend §80.205, Mortgage Call Reports. Subsection (a) is amended to insert updated terminology. Subsection (b) is amended to insert updated terminology. Subsection (c) is amended to clarify the rule's application to originators sponsored by a mortgage banker, and to insert updated terminology. Subsection (d) is amended to insert updated terminology and clarify that a violation of the rule may result in disciplinary action broadly, and is not limited to an administrative penalty. (Other Modernization and Update Changes)

The proposed rules amend §80.206, Physical Office. Subsection (a) is amended to eliminate language requiring a mortgage banker to post its hours of operation at a physical office. (Required Disclosures and Advertising Changes) The existing provisions of subsection (b), clarifying that an originator sponsored by a mortgage banker need not store their books and records at a physical office, are eliminated as unnecessary. (Books and Recordkeeping Changes) The rule is further amended to remove capitalization of the term physical office. (Other Modernization and Update Changes)

The proposed rules amend Subchapter D, Compliance and Enforcement.

The proposed rules amend §81.300, Examinations. Subsection (a) is amended to clarify that the rule applies to all originators licensed by the department, and not just those sponsored by a mortgage banker. Subsection (a) is further amended to insert updated terminology. Subsection (b) is amended to insert an introductory header to improve readability, and is restated with updated terminology. Subsection is amended to insert

updated terminology. Subsections (d) and (e) are amended to use gender-neutral language. Subsection (f) is amended to insert an introductory header to improve readability. Subsection (g) is amended to insert an introductory header to readability, and is restated with updated terminology. Subsection (h) is amended to insert an introductory header to readability, and is restated with updated terminology. (Other Modernization and Update Changes)

The proposed rules amend §81.301, Investigations, Administrative Penalties, and Disciplinary and/or Enforcement Actions. The provisions of existing subsection (c) are eliminated as being duplicative of the requirements of the Finance Code, and without offering additional guidance. The provisions of existing subsection (d) are relocated to subsection (c). (Other Modernization and Update Changes)

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Florence, director of mortgage examination for the department (director), has determined that for the first five-year period the rule is in effect, there are no foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the proposed rules. The director has further determined that for the first five-year period the rule is in effect, there will be no foreseeable losses or increases in revenue for the state or local governments as a result of enforcing or administering the proposed rules.

PUBLIC BENEFITS

The director has determined that for each of the first five years the proposed rules are in

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effect, the public benefit anticipated as a result of enforcing the proposed rules will be to have rules that are easier to read and understand. The proposed rules related to Required Disclosures and Advertising Changes will benefit the public by providing additional disclosure of the department's regulatory oversight of mortgage bankers and originators, and the public's opportunity to file a complaint with and seek redress from the department for a violation of Chapter 157 or the Texas SAFE Act, or the rules adopted thereunder. Such rule changes will further limit existing requirements enforced by the department, allowing the department to reallocate and better utilize its resources in its examination and enforcement functions, allowing the department to pursue violations of Chapter 157 and the Texas SAFE Act that more directly impact the public. The proposed rules related to Duties and Responsibilities Changes clarify and update the duties and responsibilities imposed on a mortgage banker or originator by rule, the compliance with which will benefit the public utilizing the services of a mortgage banker registered with or an originator licensed by the department. The proposed rules related to Books and Recordkeeping Changes will provide the department with additional information when conducting examinations of mortgage bankers registered with or originators licensed by the department, allowing the department to better detect and pursue violations of Chapter 157 and the Texas SAFE Act while simultaneously streamlining the examinations process for the department and mortgage bankers and originators alike.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH THE PROPOSED RULES

The director has determined that for the first five years the proposed rules are in effect, there are no substantial economic costs anticipated to persons required to comply with the proposed rules.

The proposed rules' changes to §81.200 require the inclusion of the originator's NMLS identification information on all correspondence. Since correspondence is tailored to the recipient, it will not place a burden on the originator to add the required information. An originator may be using electronic forms or other pre-printed letterhead to generate correspondence. Those originators that do not already include the required information on such electronic forms may be inclined to update their electronic forms to more easily comply with the rule. However, any such costs should only be incurred on a one-time basis and are anticipated to be *de minimis*. Moreover, use of electronic forms is not required by the proposed rules, and is discretionary. Physical letterhead preexisting adoption of the rule that does not include the required information may still be used but with the information added upon tailoring the correspondence for the intended recipient, at no cost.

The proposed rules' changes to §80.204 require a mortgage banker or originator to record additional information on the mortgage transaction log it is required to make under existing requirements. The additional information is already created and exists as a byproduct of the residential mortgage loan application process. The rule merely requires that the existing information

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be transposed to the existing mortgage transaction log for review by the department's examiners in the same manner as the other information required on the mortgage transaction log under existing requirements. A mortgage banker or originator may be using electronic forms or other pre-printed paper logs for purposes of maintaining its mortgage transaction log. A mortgage banker or originator that uses such electronic forms may be inclined to update their electronic forms to more easily comply with the rule. However, any such costs are anticipated to be *de minimis*. Moreover, the use of electronic forms is not required by the proposed rules, and is discretionary. Physical logs preexisting adoption of the rule may still be used and supplemented with the required information, at no cost.

ONE-FOR-ONE RULE ANALYSIS

Pursuant to Finance Code §16.002, the department is a self-directed and semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency; (4) the proposed rules do not require an increase

or decrease in fees paid to the agency; (5) the proposed rules do create a new regulation (rule requirement). The proposed rules create a new requirement for originators to list their NMLS identification number on all correspondence sent to a mortgage applicant; (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules expand an existing rule requirement by establishing that certain conduct by a mortgage banker or originator constituting a violation of the rules when committed intentionally is also a violation when committed negligently. The proposed rules expand an existing rule requirement by requiring that additional information be included on the required mortgage transaction log. The proposed rules limit an existing rule requirement by eliminating the requirement to post disclosures at a physical office of the mortgage banker (but not eliminating such disclosures entirely). The proposed rules limit an existing rule requirement by expanding the number of items deemed not to be an advertisement and exempt from the department's advertising requirements, and further allowing such items to recite the website address of the mortgage banker or originator. The proposed rules repeal an existing rule requirement requiring that a mortgage banker post its hours of operation at a physical office. The proposed rules repeal an existing rule requirement that a mortgage banker recite a physical address when making an advertisement; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

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LOCAL EMPLOYMENT IMPACT STATEMENT

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

FISCAL IMPACT ON SMALL AND MICRO-BUSINESSES, AND RURAL COMMUNITIES

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated costs to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code §2006.002, are not required.

TAKINGS IMPACT ASSESSMENT

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment, as provided by Government Code §2007.043, is not required.

PUBLIC COMMENTS

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, Associate General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this proposal.

STATUTORY AUTHORITY

This proposal is made under the authority of Finance Code §157.0023 and §180.004,

which authorizes the commission to adopt rules necessary to implement or fulfill the purposes of Chapter 157 and the Texas SAFE Act, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

This proposal affects the statutes contained in Finance Code, Chapters 156 and 180. No other statute is affected by this proposal.

<rule>

Subchapter A. General Provisions.

§81.1. Scope.

This chapter governs the licensing, registration, and conduct of residential mortgage loan originators and mortgage bankers under Finance Code, Chapters 157 and [Chapter] 180, except for individuals engaged in authorized activity subject to the authority of a regulatory official under Tex. Fin. Code [Finance Code,] §180.251(c). [The terms "licensed" and "registered" may be used interchangeably.]

§81.2. Definitions.

As used in this chapter, and in the Commissioner's administration and enforcement of Finance Code, Chapters 157 and 180, the following terms have the meanings indicated:

(1) "Application," as used in Tex. Fin. Code §§157.002(6) and 180.002(19), and paragraph (19) of this section means a request, in any form, for an offer (or a response to a solicitation for an offer) of residential mortgage loan terms, and the information about the mortgage applicant that is customary or necessary in a decision on whether to make such an offer, including,

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but not limited to, a mortgage applicant's name, income, social security number to obtain a credit report, property address, an estimate of the value of the real estate, and/or the mortgage loan amount [Commissioner" means the Savings and Mortgage Lending Commissioner].

(2) "Commissioner" means the Savings and Mortgage Lending Commissioner appointed under Finance Code, Chapter 13 [Commissioner's designee" means an employee of the Department performing his or her assigned duties or such other person as the Commissioner may designate in writing. A Commissioner's designee is deemed to be the Commissioner's authorized "personnel or representative" as such term is used in Finance Code, Chapter 156].

(3) "Commissioner's designee" means an employee of the Department performing their assigned duties or such other person as the Commissioner may designate in writing. A Commissioner's designee is deemed to be the Commissioner's authorized "personnel or representative" as that term is used in Tex. Fin. Code, Chapter 157.024 [Criminal Offense" means any violation of any state or federal criminal statute which:

(A) involves theft, misappropriation, or misapplication, of monies or goods in any amount;

(B) involves the falsification of records, perjury, or other similar criminal offenses indicating dishonesty;

(C) involves the solicitation of, the giving of, or the taking of bribes, kickbacks, or other illegal compensation;

(D) involves deceiving the public by means of swindling, false advertising or the like;

(E) involves acts of moral turpitude and violation of duties owed to the public including, but not limited to, the unlawful manufacture, distribution, or trafficking in a controlled substance, dangerous drug, or marijuana;

(F) involves acts of violence or use of a deadly weapon;

(G) when considered with other violations committed over a period of time appears to establish a pattern of disregard for, a lack of respect for, or apparent inability to follow, the criminal law; or

(H) involves any other crime which the Commissioner determines has a reasonable relationship to whether a person is fit to serve as an originator in a manner consistent with the purposes of Finance Code, Chapter 157 and the best interest of the State of Texas and its residents].

(4) "Criminal Offense" means any violation of any state or federal criminal statute which:

(A) involves theft, misappropriation, or misapplication, of monies or goods in any amount;

(B) involves the falsification of records, perjury, or other similar criminal offenses indicating dishonesty;

(C) involves the solicitation of, the giving of, or the taking of bribes, kickbacks, or other illegal compensation;

(D) involves deceiving the public by means of swindling, false advertising or the like;

(E) involves acts of moral turpitude and violation of duties owed to the public including, but not limited to, the unlawful manufacture, distribution, or trafficking in a

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controlled substance, dangerous drug, or marijuana;

(F) involves acts of violence or use of a deadly weapon;

(G) when considered with other violations committed over a period of time appears to establish a pattern of disregard for, a lack of respect for, or apparent inability to follow, the criminal law; or

(H) involves any other crime which the Commissioner determines has a reasonable relationship to whether a person is fit to serve as an originator in a manner consistent with the purposes of Finance Code, Chapter 157 and the best interest of the State of Texas and its residents [Department" means the Department of Savings and Mortgage Lending].

(5) "Compensation" includes salaries, bonuses, commissions, and any financial or similar incentive [Mortgage banker" shall have the same meaning as that provided in Finance Code, §157.002].

(6) "Department" means the Department of Savings and Mortgage Lending [Physical Office" means an actual office where the business of mortgage lending and/or the business of taking or soliciting residential mortgage loan applications are conducted].

(7) "Dwelling" means a residential structure that contains one to four units and is attached to residential real estate. The term includes an individual condominium unit, cooperative unit, or manufactured home, if it is used as a residence [Residential mortgage loan" shall have the same meaning as provided in Finance Code, §180.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such

loans. The term does not include a loan which is secured by a structure that is suitable for occupancy as a one to four family residence, but is used for commercial purpose such as a professional office, beauty salon, or other non-residential use, and is not used as a residence].

(8) "Mortgage applicant" means an applicant for a residential mortgage loan or a person who is solicited to obtain a residential mortgage loan, and includes a person who has not completed or started completing a formal loan application on the appropriate form (e.g., Fannie Mae's Form 1003 Uniform Residential Loan Application), but who has submitted financial information constituting an application, as provided by paragraph (1) of this section [Residential mortgage loan originator" has the meaning assigned in Finance Code, §180.002].

(9) "Mortgage banker" has the meaning assigned by Tex. Fin. Code §157.002.

(10) "Mortgage company" means, for the purposes of this chapter, a "residential mortgage loan company" as that term is defined by Tex. Fin. Code §157.002.

(11) "Nationwide Mortgage Licensing System and Registry" has the meaning assigned by Tex. Fin. Code §157.002 and §180.002.

(12) "Offers or negotiates the terms of a residential mortgage loan," as used in Tex. Fin. Code §157.002(6) and §180.002(19) means, among other things, when an individual:

(A) arranges or assists a mortgage applicant or prospective mortgage applicant in obtaining or applying to obtain, or otherwise secures an extension of consumer credit for

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another person, in connection with obtaining or applying to obtain a residential mortgage loan;

(B) presents for consideration by a mortgage applicant or prospective mortgage applicant particular residential mortgage loan terms (including rates, fees and other costs);

(C) communicates directly or indirectly with a mortgage applicant or prospective mortgage applicant for the purpose of reaching a mutual understanding about particular residential mortgage loan terms; or

(D) recommends, refers, or steers a mortgage applicant or prospective mortgage applicant to a particular originator, lender, or set of residential mortgage loan terms, in accordance with a duty to or incentive from any person other than the mortgage applicant or prospective mortgage applicant.

(13) "Originator" has the meaning assigned by Tex. Fin. Code §157.002 and §180.002 in defining "residential mortgage loan originator."

(14) "Physical office" means an actual office where the business of mortgage lending and/or the business of taking or soliciting residential mortgage loan applications is conducted.

(15) "Recovery Fund" means the fund administered and maintained by the Commissioner for the recovery of actual damages by persons aggrieved by a licensed residential mortgage loan originator, established pursuant to Tex. Fin. Code §13.016.

(16) "Residential mortgage loan" has the meaning assigned by Tex. Fin. Code §157.002 and §180.002 and includes new loans and renewals, extensions,

modifications, and rearrangements of such loans. The term does not include a loan which is secured by a structure that is suitable for occupancy as a dwelling, but is used for a commercial purpose such as a professional office, salon, or other non-residential use, and is not used as a residence.

(17) "Residential real estate" has the meaning assigned by Tex. Fin. Code §180.002 and includes both improved or unimproved real estate or any portion of or interest in such real estate on which a dwelling is or will be constructed or situated.

(18) "Social media site" means any digital platform accessible by a mortgage applicant or prospective mortgage applicant where the mortgage banker or sponsored originator does not typically own the hosting platform but otherwise exerts editorial control or influence over the content within their account, profile, or other space on the digital platform, from which the mortgage banker or sponsored originator posts commercial messages or other content designed to solicit business.

(19) "Takes a residential mortgage loan application," as used in Tex. Fin. Code §157.002(6) and §180.002(19) in defining "residential mortgage loan originator" means when an individual receives a residential mortgage loan application for the purpose of facilitating a decision on whether to extend an offer of residential mortgage loan terms to a mortgage applicant or prospective mortgage applicant, whether the application is received directly or indirectly from the mortgage applicant or prospective mortgage applicant, and regardless of whether or not a particular lender has been identified or selected.

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§81.3. Interpretations.

In order to provide clarification as to how Finance Code, Chapters 157 and 180 will be construed and implemented, the Commissioner may, from time to time, publish written interpretations of Finance Code, Chapters 157 and 180, and this chapter.

Subchapter C. Duties and Responsibilities.

§81.200. Required Disclosures.

(a) Specific Notice to Applicant by Mortgage Banker. An originator sponsored by a mortgage banker under Finance Code, Chapter 157 shall provide ~~[include]~~ the following notice~~[, Figure: 7 TAC §81.200(a),]~~ to a residential mortgage loan applicant with an initial application for a residential mortgage loan, and the mortgage banker and its sponsored originator shall maintain in their records, evidence of timely delivery of such disclosure:

Figure: 7 TAC §81.200(a)

(b) Specific Notice to Applicant by Mortgage Company. An originator sponsored by a mortgage company under Finance Code, Chapter 156 shall provide a residential mortgage loan applicant with the notice required by §80.200(a) of this title at the time of the initial application for a residential mortgage loan and shall maintain or otherwise ensure the mortgage company maintains in its records, evidence of timely delivery of such disclosure ~~[A mortgage banker or originator shall maintain in its records evidence of timely delivery of the disclosure in subsection (a) of this section].~~

(c) Posted Notice on Mortgage Banker

Websites and Social Media Sites. A mortgage banker or its sponsored originator shall post in conspicuous fashion the following notice on each website and social media site of the mortgage banker or sponsored originator that is accessible by a mortgage applicant or prospective mortgage applicant and either used to conduct residential mortgage loan origination business by the mortgage banker or sponsored originator, or from which the mortgage banker or sponsored originator advertises to solicit such business, as provided by §81.203 of this title ~~[At each physical office, and on its website, a mortgage banker or an originator shall conspicuously post the following notice]:~~

Figure: 7 TAC §81.200(c)

(d) Posted Notice on Mortgage Company Websites and Social Media Sites. An originator sponsored by a mortgage company under Finance Code, Chapter 156 shall comply with the requirements of §80.200(b) of this title ~~[A notice is deemed to be conspicuously posted under subsection (c) of this section if a customer with 20/20 vision can read it from each place where he or she would typically conduct business or if it is included on a bulletin board, in plain view, on which all required notices to the general public (such as equal housing posters, licenses, etc.) are posted. If applicable, a notice is deemed conspicuously posted if prominently displayed on the website].~~

(e) Disclosures in Correspondence. An originator shall provide the following information on all correspondence sent to a mortgage applicant:

(1) the name of the mortgage banker or mortgage company sponsoring the originator, followed by its Nationwide Mortgage

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Licensing System and Registry (NMLS) identification number; and

(2) the name of the originator, followed by the originator's NMLS identification number.

(f) The determination of what constitutes a mortgage application for purposes of triggering the notice required by subsections (a) and (b) of this section shall be made in accordance with applicable federal law determining what constitutes an application for purposes of the Truth in Lending Act, as implemented and defined by the Consumer Financial Protection Bureau in Regulation Z (12 C.F.R. §1026.2).

(g) The notice under subsection (c) of this section is deemed to be conspicuously posted on a website when it is displayed on the initial or home page of the website (typically the base-level domain name), or is otherwise contained in a linked page with the link to such page prominently displayed on such initial or home page. The notice under subsection (c) of this section is deemed to be conspicuously posted on a social media site when it is readily apparent or otherwise easily accessible to the mortgage applicant or prospective mortgage applicant upon visiting the home page, profile page, account page, or similar, on such social media site, without the necessity to review various historical content posted by the mortgage banker or sponsored originator in order to derive the information required by the notice, which may include an interactive link to the information with such link prominently displayed on such home page, profile page, account page, or similar.

§81.202. Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings.

(a) False, Misleading or Deceptive Practices. The following conduct by a mortgage banker or an originator constitutes fraudulent and dishonest dealings for purposes of Tex. Fin. Code §157.009(d) and §157.024(a)(3), deceptive practices for purposes of Tex. Fin. Code §180.153(2), and a scheme to defraud a person for purposes of Tex. Fin. Code §180.153(1): [No originator may]:

(1) knowingly or negligently misrepresenting one's [his or her] relationship to a residential mortgage loan applicant or any other party to an actual or proposed residential mortgage loan transaction;

(2) knowingly or negligently misrepresenting or understating [understate] any cost, fee, interest rate, or other expense in connection with a residential mortgage loan applicant's applying for or obtaining a residential mortgage loan;

(3) overstating, inflating, altering, amending or disparaging [disparage] any source or potential source of residential mortgage loan funds in a manner which knowingly disregards the truth or makes any knowing and material misstatement or omission;

(4) knowingly or negligently participating [participate] in or permitting the submission of false or misleading information of a material nature to any person in connection with a decision by that person whether or not to make or acquire a residential mortgage loan;

(5) as provided for by the Real Estate Settlement Procedures Act and Regulation X [its implementing regulations], brokering, arranging [arrange], or making [make] a residential mortgage loan in which the originator retains fees or receives other

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compensation for services which are not actually performed or where the fees or other compensation received bear no reasonable relationship to the value of services actually performed;

(6) recommending or encouraging ~~[encourage]~~ default or delinquency or continuation of an existing default or delinquency by a residential mortgage applicant on any existing indebtedness prior to closing a residential mortgage loan which refinances all or a portion of such existing indebtedness;

(7) altering any document produced or issued by the Department, unless otherwise permitted by statute or a rule of the Department ~~[induce or attempt to induce a party to a contract to breach that contract so the person may make a residential mortgage loan];~~

(8) engaging in any other practice which the Commissioner, by published interpretation, has determined to be false, misleading, or deceptive. ~~[alter any document produced or issued by the department, unless otherwise permitted by statute or regulation; or]~~

~~[(9) engage in any other practice which the Commissioner, by published interpretation, has determined to be false, misleading, or deceptive.]~~

(b) Improper and Unfair Dealings. The following conduct by a mortgage banker or an originator constitutes improper dealings for purposes of Tex. Fin. Code §157.009(d) and §157.024(a)(3), and unfair practices for purposes of Tex. Fin. Code § 180.153(2) ~~[The term "improper dealings" in Finance Code, §157.024(a)(3) includes, but is not limited to the following]:~~

(1) Acting negligently in performing an act for which a person is required under Finance Code, Chapter 157 to hold a license;

(2) Violating any provision of a local, State of Texas, or federal, constitution, statute, rule, ordinance, regulation, or final court decision that governs the same activity, transaction, or subject matter that is governed by the provisions of Finance Code, Chapters 157 or 180, or this chapter, including, but not limited to, the following:

(A) Real Estate Settlement Procedures Act (12 U.S.C. §2601 *et seq.*);

(B) Regulation X (12 C.F.R. §1024 *et seq.*);

(C) Consumer Credit Protection Act, Truth in Lending Act (15 U.S.C. §1601 *et seq.*);

(D) Regulation Z (12 C.F.R. §1026 *et seq.*);

(E) Equal Credit Opportunity Act (15 U.S.C. §1691 *et seq.*);

(F) Regulation B (12 C.F.R. §1002 *et seq.*); and

(G) Texas Constitution, Article XVI, §50.

(3) Representing to a mortgage applicant that a charge or fee which is payable to the mortgage banker or originator is a "discount point" or otherwise confers a financial benefit on the mortgage applicant unless the loan closes and:

(A) the mortgage banker or mortgage company sponsoring the originator is the lender in the transaction. For purposes of this paragraph, the mortgage banker or mortgage company sponsoring the originator is deemed to be the lender if such entity is the payee as

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evidenced on the face of the note or other written evidence of indebtedness; or

(B) the mortgage banker or mortgage company sponsoring the originator is not the lender, but demonstrates by clear and convincing evidence that the lender has charged or collected discount point(s) or other fees which the mortgage banker or mortgage company sponsoring the originator has actually paid to the lender on behalf of the mortgage applicant, to buy down the interest rate on a residential mortgage loan.

(4) Failing to accurately respond within a reasonable time period to reasonable questions from a mortgage applicant concerning the scope and nature of the mortgage banker or originator's services and any costs.

(c) Related Transactions. A mortgage banker or originator engages in a fraudulent and deceptive dealings for purposes of Tex. Fin. Code §157.009(d) and §157.024(a)(3), deceptive practices for purposes of Tex. Fin. Code §180.153(2), and a scheme to defraud a person for purposes of Tex. Fin. Code §180.153(1) if, [false, misleading or deceptive practice or improper dealings] when in connection with the origination of a mortgage loan:

(1) The mortgage banker or originator offers other goods or services to a consumer in a separate but related transaction and the mortgage banker or originator engages in a false misleading or deceptive practice in the related transaction; or

(2) The mortgage banker or originator affiliates with another person that provides goods or services to a consumer in a separate but related transaction and the affiliated

person performs false, misleading or deceptive acts, and the mortgage banker or originator to the mortgage transaction knew or should have known of the false, misleading or deceptive acts. [The originator offers other goods or services to a consumer in a separate but related transaction and the mortgage banker or originator engages in a false, misleading or deceptive practice in the related transaction, and the mortgage banker knew or should have known of the transaction; or]

[(3) A mortgage banker or originator affiliates with a second originator who offers other goods or services to a consumer in a separate but related transaction, and the second originator engages in a false, misleading or deceptive practice in the related transaction when the mortgage banker or originator participates with the second originator in the separate transaction or when the mortgage banker allows the second originator to originate loans in the name of the mortgage banker and the mortgage banker knew or should have known of the related transaction performed by the second originator;]

(d) Sharing or Splitting Origination Fees with the Mortgage Applicant. A mortgage banker or originator may not offer or agree to share or split any loan origination fees with a mortgage applicant, rebate all or a part of an origination fee to a mortgage applicant, reduce their established compensation to benefit a mortgage applicant, or otherwise provide money, a cash equivalent, or anything of value to a mortgage applicant in connection with providing mortgage loan origination services unless otherwise allowable as provided by Regulation X. An originator acting in the dual capacity of an originator and real estate sales broker or agent licensed under Occupations Code,

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Chapter 1101 may rebate their fees legitimately earned and derived from their real estate brokerage or sales agent services to the extent allowable under applicable law governing real estate brokers or sales agents; provided, the payment or other transfer described herein occurs as a part of closing and is properly reflected in the closing disclosure for the transaction. If a payment or other transfer described herein by an originator acting in the dual capacity of an originator and real estate broker or sales agent occurs after closing, a rebuttable presumption exists that the payment or transfer is derived from the originator's fees for mortgage origination services, and constitutes an improper sharing or splitting of fees with the mortgage applicant. The rebuttable presumption created by this subsection may only be overcome by clear and convincing evidence established by the mortgage banker or originator that the payment or transfer is instead derived from fees for real estate brokerage or sales agent services. A violation of this subsection (d) shall be deemed to constitute improper dealings for purposes of Tex. Fin. Code §157.009(d) and §157.024(a)(3), and unfair practices for purposes of Tex. Fin. Code §180.153(2) [An originator receiving a verbal or written inquiry about his or her services shall respond accurately to any questions about the scope and nature of such services and any costs].

§81.203. Advertising.

(a) A mortgage broker or originator that [Licensees who] advertises rates, terms, or conditions must comply with the disclosure requirements of Regulation Z.

(b) Any advertisement of residential mortgage loans or for residential mortgage loan origination services which is [are]

offered by or through a mortgage banker or originator shall conform to the following requirements:

(1) An advertisement shall be made only for such products and terms as are actually available and, if their availability is subject to any material requirements or limitations, the advertisement shall specify those requirements or limitations;

(2) Except as provided in subsections (c) and (d) of this section, the advertisement shall contain:

(A) the name of the mortgage banker or mortgage company followed by its Nationwide Mortgage Licensing System and Registry (NMLS) identification number ~~[originator followed by the name of the sponsoring mortgage banker, as designated in the records of the Commissioner as of the date of the advertisement]; and~~

(B) the name of the sponsored originator followed by the sponsored originator's NMLS identification number. ~~[originator's Nationwide Mortgage Licensing System and Registry identification number; and]~~

~~[(C) the mortgage banker's physical office address. If a physical office exists in this State, the advertisement must contain that address; otherwise, it must contain the address of a location registered with the department.]~~

(3) An advertisement shall not make or omit any statement the result of which is to present a misleading or deceptive impression to consumers; and

(4) An advertisement shall otherwise comply with applicable state and federal disclosure

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requirements.

(c) For purposes of this section, an advertisement means a commercial message in any medium that promotes directly or indirectly, a residential mortgage loan or is otherwise designed to solicit residential mortgage loan business for the mortgage banker or originator. This includes "flyers," business cards, or other handouts, and commercial messages delivered by and through a social media site [credit transaction]. However, the requirements of subsection (b)(2) of this section shall not apply to:

(1) any advertisement which indirectly promotes a credit transaction and which contains only the name of the mortgage banker or originator and ~~[does]~~ not ~~[contain]~~ any contact information with the exception of a website address, such as [the inscription of the name] on [a] coffee mugs, pencils, shirts or other clothing (including company uniforms and sponsored youth league jerseys), or other promotional items of nominal value; [or]

(2) any rate sheet, pricing sheet, or similar proprietary information provided to realtors, builders, and other commercial entities that is not intended for distribution to consumers; or [-]

(3) signs located on or adjacent to the mortgage banker or originator's physical office.

(d) Advertising Directly by a Mortgage Banker. The provisions of subsection (b) notwithstanding, a mortgage banker may advertise directly to the public and not by and through a sponsored originator, and the requirements of subsection (b)(2)(B) of this section shall not apply to such advertisements. An advertisement posted,

promoted, disseminated, distributed, delivered, or otherwise made by an originator sponsored by the mortgage banker shall not be considered an advertisement made directly by a mortgage banker for the purposes of this subsection.

§81.204. Books and Records.

(a) Maintenance of Records, Generally. In order to assure that each licensee will have all records necessary to enable the Commissioner or the Commissioner's designee to investigate complaints and discharge their responsibilities under Finance Code, Chapters 157 and 180, and this chapter, each originator shall maintain records as set forth in this section. The particular format of records to be maintained is not specified. However, they must be accurate, complete, current, legible, readily accessible, and readily sortable. Records maintained for other purposes, such as compliance with other state and federal laws, will be deemed to satisfy these requirements if they include the same information.

(b) Mortgage Application Records. Each originator is required to maintain, at the location specified in their official record on file with the Department ~~[department]~~, the following books and records:

(1) Residential Mortgage Loan File. A residential mortgage loan file for each mortgage loan application received; each file shall contain at a minimum the following:

(A) a copy of the initial ~~[signed and dated]~~ mortgage loan application (including any attachments, supplements, or addenda thereto), signed and dated by each mortgage applicant and the originator;

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(B) ~~[either]~~ a copy of the signed closing statement or integrated closing disclosure, documentation of the timely denial, or other documentation evidencing the disposition of the application for a residential mortgage loan;

(C) for an originator sponsored by a mortgage banker, a copy of the disclosure statement required by Tex. Fin. [Finance] Code[§] §157.0021 and §81.200(a) of this title; or, for an originator sponsored by a mortgage company, a copy of the disclosure statement required by Tex. Fin. Code §156.004 and §80.200(a) of this title [chapter];

(D) a copy of each item of correspondence, all evidence of any contractual agreement or understanding (including, but not limited to, any interest rate locks ~~[lock-ins]~~ or loan commitments), and all notes and memoranda of conversations or meetings with any mortgage applicant or any other party in connection with that residential mortgage loan application or its ultimate disposition;

(E) a copy of the notice to mortgage applicants required by Tex. Fin. [Finance] Code [§] §343.105;

(F) a copy of both the initial Good Faith Estimate and the initial Good Faith Estimate fee itemization worksheet, if applicable; and

(G) a copy of the initial integrated loan estimate disclosure, if applicable.

(2) Mortgage Transaction Log. A residential mortgage transaction log, maintained on a current basis, which means that all entries must be made within no more than seven days from the date on which the matters they relate to occurred, setting forth, at a minimum:

(A) the name and contact information of each mortgage applicant ~~[and how to contact them];~~

(B) the date of the initial residential mortgage loan application;

(C) a description of the purpose for the loan (e.g., purchase, refinance, construction, etc.) ~~[description of the disposition of the application for a residential mortgage loan];~~

(D) a description of the owner's intended occupancy of the subject real estate (e.g., primary residence, secondary residence, investment property (no occupancy), etc.) ~~[identity of the person or entity who initially funded and/or acquired the residential mortgage loan and information as to how to contact them]; [and]~~

(E) a description of the disposition of the application for a residential mortgage loan; [full name of the originator and their Nationwide Mortgage Licensing System and Registry identification number.]

(F) the identity of the person who initially funded and/or acquired the residential mortgage loan; and

(G) the full name of the originator and their Nationwide Mortgage Licensing and Registry (NMLS) identification number

(3) General Business Records. General business records include the following:

(A) all checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and cancelled checks (or copies thereof) relating to the residential mortgage loan origination business;

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(B) complete records (including invoices and supporting documentation) for all expenses and fees paid on behalf of a [residential] mortgage ~~[loan]~~ applicant, including a record of the date and amount of all such payments actually made by each applicant;

(C) copies of all federal tax withholding forms, reports of income for federal taxation, and evidence of payments to all mortgage banker employees, independent contractors and others compensated by such originator in connection with the residential mortgage loan origination ~~[lending]~~ business;

(D) copies of all written complaints or inquiries (or summaries of any verbal complaints or inquiries) along with any and all correspondence, notes, responses, and documentation relating thereto and the disposition thereof;

(E) copies of all contractual agreements or understandings with third parties in any way relating to a residential mortgage loan transaction ~~[lending services]~~ including, but not limited to, delegations of underwriting authority, price agreements for goods or services, investor contracts, or employment agreements;

(F) copies of all reports of audits, examinations, reviews, investigations, or other similar matters performed by any third party, including any regulatory or supervisory authorities; and

(G) copies of all advertisements in the medium (e.g., recorded audio, video, and print) in which they were published or distributed.

(c) Each originator shall maintain such other books and records as may be required to

evidence compliance with applicable state and federal laws and regulations including, but not limited to, the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, and the Truth in Lending Act.

(d) Each originator shall maintain such other books and records as the Commissioner or the Commissioner's designee may from time to time specify in writing.

(e) Production of Records; Disciplinary Action. All books and records required by this section shall be maintained in good order and shall be produced for the Commissioner or the Commissioner's designee upon request. Failure to produce such books and records upon request, after a reasonable time for compliance, may result in disciplinary action including, but not limited to, [be grounds for] suspension or revocation of a license.

(f) Records Retention Period. All books and records required by this section shall be maintained for three years or such longer period(s) as may be required by applicable state and/or federal laws and regulations.

(g) An originator may meet applicable recordkeeping requirements if their ~~[his or her]~~ sponsoring mortgage banker or mortgage company maintains the required records. Upon termination of a mortgage banker's sponsorship of an originator, that originator's records shall remain with the mortgage banker or be transferred to the new sponsoring mortgage banker. Upon written request from a former originator, a former mortgage banker may release to their ~~[his or her]~~ former originator copies of records relating to residential mortgage loans handled by such former originator.

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(h) Records Retention after Dissolution. Upon the termination of operations as a mortgage banker or an originator, the mortgage banker or originator shall notify the Department [~~Commissioner~~], in writing, within ten days where the required records will be maintained for the prescribed periods. If such records are transferred to another mortgage banker registered with the Department, the transferee shall, in writing, within ten days of accepting responsibility for maintaining such records, notify the Department [~~Commissioner~~].

§81.205. Mortgage Call Reports.

(a) Call Report.

(1) A mortgage banker shall file a mortgage call report on a quarterly basis. The filing deadlines are set by the Nationwide Mortgage Licensing System and Registry (NMLS).

(2) A call report is required to be filed for each quarter a license is held, including partial quarters.

(3) The call report must [~~shall~~] be submitted through and in the manner and form prescribed by NMLS [~~the Nationwide Mortgage Licensing System and Registry~~].

(b) Statement of Condition Report.

(1) A mortgage banker must [~~shall~~] file a statement of condition on an annual basis.

(2) A statement of condition report is required to be filed for each year a license is held, including partial years.

(3) The statement of condition report must [~~shall~~] be submitted through and in the

manner and form prescribed by NMLS [~~the Nationwide Mortgage Licensing System and Registry~~].

(c) Submission of a call report or statement of condition report, by a mortgage banker, satisfies the requirements of an originator sponsored by the mortgage banker to submit a mortgage call report, as required by Tex. Fin. Code [~~under Finance Code,~~] §180.101 for the period of sponsorship, provided that the sponsored originator's information is included in the report.

(d) Failure to file a mortgage call report or statement of condition report may result in disciplinary [~~administrative~~] action[~~s~~] including, but not limited to, [which includes ~~the assessment~~] of an administrative penalty.

§81.206. Physical Office.

(a) A physical office [~~Physical Office~~] must:

(1) have a physical or street address. A post office box or other similar designation will not suffice.

(2) be accessible to the general public as a place of business and must hold itself open on a regular basis [~~during posted hours. The hours of business must be posted in a manner to give effective notice to walk up traffic as to the hours of opening and closing. Normally this will require posting of the hours on an exterior door or window of the office. In those instances where the physical office is in a shared office suite or building, the hours may be posted in a common lobby or reception area.~~].

(3) have at least one [(1)] staff member present to assist customers during the hours in which the physical office [~~Physical Office~~]

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is open.

~~[(b) The Physical Office of a licensee need not be the location at which such person's required records are maintained, but the location at which such required records are maintained must be accessible to the Commissioner or the Commissioner's designee for inspection during normal business hours].~~

Subchapter D. Compliance and Enforcement.

§81.300. Examinations.

(a) The Commissioner, or the Commissioner's designee(s), ~~[operating through the department staff and such others as the Commissioner may, from time to time, designate]~~ will conduct periodic examinations of an originator ~~[sponsored by mortgage bankers]~~ as the Commissioner deems necessary.

(b) Notice of Examination. Except when the D[~~e~~]partment determines that giving advance notice would impair the examination, the D[~~e~~]partment will give the originator and/or the entity sponsoring the originator ~~[mortgage banker]~~ advance notice of each examination. Such notice will be sent to the ~~[contact person's]~~ address ~~[of record]~~ or email [e-mail] address of record [on file] with the Nationwide Mortgage Licensing System and Registry (NMLS) [department] and will specify the date on which the D[~~e~~]partment's examiners are scheduled to begin [will commence] the examination. Failure ~~[of the mortgage banker]~~ to actually receive the notice will not be grounds for delay or postponement of the examination. The notice will include a list of the documents and records the originator

~~[mortgage banker]~~ should have available for the examiners to review.

(c) Examinations will be conducted to determine compliance with Finance Code, Chapters 157 and 180, and this chapter. The examination will specifically address whether:

(1) All persons conducting residential mortgage loan origination activities ~~[activity]~~ are properly licensed and sponsored;

(2) All locations at which such activities are conducted are properly licensed and registered with NMLS;

(3) All required books and records are being maintained in accordance with §81.204 of this title ~~[chapter]~~;

(4) Legal and regulatory requirements applicable to the originator ~~[originators or the originator's residential mortgage business]~~ are being properly followed; and

(5) Other matters as the Commissioner may deem necessary or advisable to carry out the purposes of Finance Code, Chapters 157 and 180.

(d) The examiners will review a sample of residential mortgage loan files identified by the examiner and randomly selected from the originator's residential mortgage transaction log. The examiner may expand the number of files to be reviewed if, in their ~~[his or her]~~ discretion, conditions warrant.

(e) The examiners may require an originator, at their ~~[his or her]~~ own cost, to make copies of loan files or such other books and records as the examiners deem[s] appropriate for the preparation of or inclusion in the examination

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report.

(f) Confidentiality. The work__papers, compilations, findings, reports, summaries, and other materials, in whatever form, relating to an examination conducted under this section, shall be maintained as confidential except as required or expressly permitted by law.

(g) Failure to Cooperate; Disciplinary Action. Failure of an originator to cooperate with the examination or failure to grant the examiners access to books, records, documents, operations, and facilities may result in disciplinary ~~[will subject the originator and any mortgage banker employer to enforcement]~~ action[s ~~by the Commissioner,~~] including, but not limited to, imposition of an administrative penalty ~~[penalties]~~.

(h) Reimbursement for Costs. When the ~~D[d]~~epartment must travel outside of Texas ~~[out of state]~~ to conduct an examination of an originator[,], because that originator maintains required records at a location outside of Texas ~~[the state]~~, the originator will be required to reimburse the ~~D[d]~~epartment for the actual costs incurred ~~by the D[d]epartment [incurs]~~ in connection with such ~~[out of state]~~ travel including, but not limited to, transportation, lodging, meals, ~~[employee travel time, telephone and facsimile]~~ communications, courier service and any other reasonably related costs.

§81.301. Investigations.

(a) Investigations will be conducted as deemed appropriate in light of all the relevant facts and circumstances then known. Such investigation may include any or all of the following:

(1) review of documentary evidence;

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

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

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

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

(c) Reasonable cause will be deemed to exist if the Commissioner has received information from a source he or she has no reason to believe to be other than reliable, including documentary or other evidence or information, indicating facts which a prudent person would deem worthy of investigation as a violation of Finance Code, Chapter 157 ~~[The Commissioner may conduct an undercover or covert investigation only if the Commissioner, after due consideration of the circumstances, determines that the investigation is necessary to prevent immediate harm and to carry out the purposes of Finance Code, Chapter 157].~~

~~[(d) Reasonable cause will be deemed to exist if the Commissioner has received information from a source he or she has no reason to believe to be other than reliable,~~

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~~including documentary or other evidence or information, indicating facts which a prudent person would deem worthy of investigation as a violation of Finance Code, Chapter 157.]~~

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.

Iain A. Berry
Associate General Counsel
Department of Savings and Mortgage
Lending