

A.

Finance Commission

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FINANCE COMMISSION OF TEXAS

MEETING DATEAugust 21, 2020

MEETING LOCATIONVia Webinar

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

FUTURE MEETING DATESOctober 16, 2020
December 11, 2020
February 19, 2021
April 16, 2021
June 18, 2021
August 20, 2021
October 15, 2021
December 17, 2021

*** 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, August 21, 2020
9:30 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 August 21, 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 August 13, 2020 at www.fc.texas.gov. To access the recording visit www.fc.texas.gov after August 21, 2020.

Section A.3 will take up agenda items A1, A8, A9, and C2 – C4 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 June 19, 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 on the Agencies' 2020 Third Quarter Investment Officer Reports

1. Department of Savings and Mortgage Lending
2. Office of Consumer Credit Commissioner
3. Texas Department of Banking

B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Readoption of the Investment Policies for:

1. Department of Savings and Mortgage Lending
2. Office of Consumer Credit Commissioner
3. Texas Department of Banking

- C. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2020 Third Quarter Financial Statements
 - 1. Department of Savings and Mortgage Lending
 - 2. Office of Consumer Credit Commissioner
 - 3. Texas Department of Banking
- D. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' Fiscal Year 2021 Operating Budgets
 - 1. Department of Savings and Mortgage Lending
 - 2. Office of Consumer Credit Commissioner
 - 3. Texas Department of Banking
- E. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Department of Savings and Mortgage Lending's 2020 Annual Internal Audit Report as Prepared and Presented by Garza/Gonzalez & Associates
- F. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Office of Consumer Credit Commissioner's 2020 Annual Internal Audit Report as Prepared and Presented by Garza/Gonzalez & Associates
- G. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Texas Department of Banking's Revenue Accounting Process Audit Report as Prepared and Presented by Garza/Gonzalez & Associates
- H. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Texas Department of Banking's 2020 Annual Internal Audit Report as Prepared and Presented by Garza/Gonzalez & Associates
- 6. Strategic Planning Committee Report
 - A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Finance Commission of Texas 2021-2025 Strategic Plan
- 7. Discussion of and Possible Vote to Take Action on the Agency Priorities for Fiscal Year 2021 for the Commissioners of the Department of Savings and Mortgage Lending, Office of Consumer Credit Commissioner and the Texas Department of Banking
- 8. ***Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §155.2, Concerning Payoff Statement Form***
- 9. ***Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 8, Chapter 151, Concerning Home Equity Lending Procedures, Chapter 152, Concerning Repair, Renovation, and New Construction on Homestead Property, and Chapter 153, Concerning Home Equity Lending, Resulting from Rule Review***
- 10. Discussion of and Possible Vote to Take Action on the Proposal of Amendments, a New Rule, and a Repeal in 7 TAC, Part 8, Chapter 151, Concerning Home Equity Lending Procedures, and Chapter 153, Concerning Home Equity Lending, Resulting from Rule Review
- 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

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
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
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

B. 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 §76.98, Concerning Annual Fee To Do Business
3. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Chapter 79, Residential Mortgage Loan Servicers, Chapter 80, Texas Residential Mortgage Loan Companies, and Chapter 81, Mortgage Bankers and Residential Mortgage Loan Originators, 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 §79.1 and §79.2, Concerning Residential Mortgage Loan Servicers, Resulting from Rule Review
5. 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, 80.300, and 80.301, Concerning Texas Residential Mortgage Loan Companies, 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 §§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
7. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

C. OFFICE OF CONSUMER CREDIT COMMISSIONER

1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities
2. *Discussion of and Possible Vote to Take Action on the Adoption of 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*
3. *Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 5, Chapter 82, Concerning Administration, Resulting from Rule Review*

4. ***Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 5, Chapter 87, Concerning Tax Refund Anticipation Loans, Resulting from Rule Review***
5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 5, Chapter 82, Concerning Administration, Resulting from Rule Review
6. 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

D. TEXAS DEPARTMENT OF BANKING

1. Industry Status and Departmental Operations: a) Current Issues Affecting Department's Regulated Entities; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) 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 Amendments to 7 TAC §12.91, Concerning Other Real Estate Owned
3. 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.

**MINUTES OF THE
FINANCE COMMISSION MEETING
Friday, June 19, 2020**

The Finance Commission of Texas convened at 9:10 a.m. on June 19, 2020 with the following members present:

Finance Commission Members in Attendance:

Phillip Holt, Chairman
George "Cliff" McCauley, Vice Chairman
Dr. Robin Armstrong
Bob Borochoff
Hector Cerna

Molly Curl
Will Lucas
Sharon McCormick
Laura Warren
Vince Puente

Larry Long

Chairman Phillip Holt announced there was a quorum with eleven members present. *(1:38 on audio file).*

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
A. Finance Commission Matters		
1. Review and Approval of the Minutes of the April 17, 2020 Finance Commission Meeting	On Consent Agenda – Item A1	4:10 start of discussion
2. General Public Comment	No Action Required.	4:20 start of discussion
3. Consent Agenda – Item A1	Laura Warren made a motion to Approve Consent Agenda item A1. Molly Curl seconded and the motion passed.	5:07 start of discussion 5:37 Vote
4. Finance Commission Operations	No Action Required.	6:06 start of discussion
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	Coming upon Recommendation from the Audit Committee, no second is required and the motion to Reapprove the Internal Auditor Contract for Garza/Gonzalez & Associates for Fiscal Year 2021 passed.	15:46 start of discussion 16:04 Vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
6. Strategic Planning Committee Report		
<p>A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2021-2025 Strategic Plans</p> <ol style="list-style-type: none"> 1. Office of Consumer Credit Commissioner 2. Texas Department of Banking 3. Department of Savings and Mortgage Lending 	<p>Public comment was made by Steve Scurlock on behalf of the Independent Bankers Association of Texas (IBAT). Laura Warren made a motion to approve the Agencies' 2021-2025 Strategic Plans. Will Lucas seconded and the motion passed.</p>	<p>16:23 start of discussion</p> <p>26:24 vote</p>
<p>B. Discussion of the Finance Commission of Texas 2021-2025 Strategic Plan</p>	<p>No Action Required.</p>	<p>27:25 start of discussion</p>
<p>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</p>	<p>Vince Puente made a motion to Approve the Proposal and Publication for Comment of Amendments to 7 TAC, §155.2, Concerning Payoff Statement Form. Laura Warren seconded and the motion passed.</p>	<p>30:09 start of discussion</p> <p>42:12 Vote</p>
<p>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</p>	<p>Deferred to Executive Session – no vote taken.</p>	<p>n/a</p>
<p>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</p>	<p>Deferred to Executive Session – no vote taken.</p>	<p>n/a</p>
<p>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</p>	<p>Deferred to Executive Session – no vote taken.</p>	<p>n/a</p>

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
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	Deferred to Executive Session – no vote taken.	n/a
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	No Action Required.	42:56 start of discussion
2. Consent Agenda – Item B2	Laura Warren made a motion to Approve Consent Agenda item B2. Molly Curl seconded and the motion passed.	5:07 start of discussion 5:37 Vote
3. Consent Agenda – Item B3	Laura Warren made a motion to Approve Consent Agenda item B3. Molly Curl seconded and the motion passed.	5:07 start of discussion 5:37 Vote
4. Consent Agenda – Item B4	Laura Warren made a motion to Approve Consent Agenda item B4. Molly Curl seconded and the motion passed.	5:07 start of discussion 5:37 Vote
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	Laura Warren made a motion to Approve 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. Bob Borochoff seconded and the motion passed.	1:09:13 start of discussion 1:15:51 Vote
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	Hector Cerna made a motion to Approve 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. Will Lucas seconded and the motion passed.	1:16:29 start of discussion 1:19:15 vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
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	Vince Puente made a motion to Approve the Proposal and Publication for Comment of Amendments and a New Rule in 7 TAC, Part 5, Chapter 89, Concerning Property Tax Lenders. Laura Warren seconded and the motion passed.	1:19:57 start of discussion 1:26:04 vote
8. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation <i>Ernest Polk v. Texas Office of Consumer Credit Commissioner; Cause No. 2018-04375</i> , in the 281st Judicial District Court of Harris County, Texas <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</i> ; Case No. 19-0999, in the Supreme Court of Texas	No Action Required.	n/a
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	No Action Required.	1:26:48 start of discussion
2. Consent Agenda – Item C2	Laura Warren made a motion to Approve Consent Agenda item C2. Molly Curl seconded and the motion passed.	5:07 start of discussion 5:37 Vote
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	Cliff McCauley made a motion to Approve the Proposal and Publication for Comment of Amendments to 7 TAC §12.91 Concerning Other Real Estate Owned. Hector Cerna seconded and the motion passed.	1:59:16 start of discussion 2:08:01 vote
4. 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
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	No Action Required.	2:08:39 start of discussion
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	Will Lucas made a motion to Approve the Adoption of Amendments to 7 TAC §77.73 Concerning Investment in Banking Premises and Other Real Estate Owned. Laura Warren seconded and there was further discussion. Molly Curl made a motion to amend the primary motion with language that the adopted amendments be published in the Texas Register with appropriate edits to reflect that the appraisal/evaluation threshold be set at \$500,000 and the timeline by which the state savings bank makes the appraisal or evaluation extended from 60 days to 90 days. Laura Warren seconded and the amended motion passed.	2:31:36 start of discussion 2:43:34 vote
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	Removed from agenda – no discussion.	n/a
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	Larry Long made a motion to Approve the Proposal and Publication for Comment of Amendments to 7 TAC §76.98, Concerning Annual Fee To Do Business. Molly Curl seconded and the motion passed.	2:49:23 start of discussion 3:02:07 vote
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	Removed from agenda – no discussion.	n/a

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
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	Removed from agenda – no discussion.	n/a
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	Removed from agenda – no discussion.	n/a
8. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Action Required.	n/a

There being no further business, Chairman Phillip Holt adjourned the meeting of the Finance Commission at 12:20 p.m. (3:08:24 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

August 21, 2020

A. Finance Commission Matters

1. Review and Approval of the Minutes of the June 19, 2020 Finance Commission Meeting
8. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §155.2, Concerning Payoff Statement Form
9. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 8, Chapter 151, Concerning Home Equity Lending Procedures, Chapter 152, Concerning Repair, Renovation, and New Construction on Homestead Property, and Chapter 153, Concerning Home Equity Lending, Resulting from Rule Review

C. Office of Consumer Credit Commissioner

2. Discussion of and Possible Vote to Take Action on the Adoption 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
3. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 5, Chapter 82, Concerning Administration, Resulting from Rule Review
4. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 5, Chapter 87, Concerning Tax Refund Anticipation Loans, Resulting from Rule Review

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DEPARTMENT of SAVINGS & MORTGAGE LENDING

Caroline C. Jones, Commissioner

Agency Priorities for Fiscal Year 2021

I. Legislative Items

I.1 Objective: Monitor legislation, throughout the 87th Legislative Session, that may affect the Department, or its regulated industries; analyze the potential impact, and plan implementation of legislative changes as needed.

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

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

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

I.3 Objective: Monitor federal legislation and regulations that may affect the Department or its regulated entities.

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

I.4 Objective: At Finance Commission direction, continue to explore and collaborate with the other Finance Commission agencies on enhanced sharing opportunities as recommended by Sunset Review.

Measure: Participate in the established workgroups and report the status and progress to the Finance Commission on a semi-annual basis.

II. Regulatory Items

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

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

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

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

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

Measure: Report on enforcement actions.

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

Measure:

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

II.5 Process complete licensing applications and registrations in a timely manner.

Measure:

- a. Monitor the timeliness of licensing process.
- b. Conduct survey of license applicants on a regular basis.

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

Measure:

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

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

II.7 Objective: Remain active and involved at the national level on supervisory issues affecting savings banks and the mortgage industry.

Measure:

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

III. Policy and Rule Development

III.1 Objective: Conduct rule review of all rules related to mortgage licensing. Propose necessary amendments to the rules as necessary.

Measure: Have final action taken, either readoption or repeal, on the rule review and proposal of any amendments needed to these rules.

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

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

IV. Industry Outreach and Communication

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

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

V. Agency Operations

V.1 Objective: Recruit well qualified personnel, while seeking to broaden the Department's workforce diversity. Train and cross-train employees as needed to minimize knowledge loss due to employee departure and to prepare for business needs due to changes in regulated industries and/or technology. Provide and promote opportunities for professional development through individual training plans.

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

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

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

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

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

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

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

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

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

V.6 Objective: Prepare for the deployment of the Centralized Accounting and Payroll/Personnel System (CAPPS) Financials' Core Modules: Asset Management, Accounts Payable, General Ledger, and Purchasing, scheduled for September 2021.

Measure: Provide necessary information and documentation, perform tasks, and participate in onboarding activities, as required by Comptroller of Public Account's CAPPS Financials Team and according to the Interagency Cooperation Contract for CAPPS Services between the Texas Comptroller of Public Account and the Department of Savings and Mortgage Lending.

V.7 Objective: Monitor emergencies, natural disasters, or pandemics as they relate to the Department or its regulated industries.

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

V.8 Objective: Continue to evaluate headquarters space and parking needs in collaboration with the other Finance Commission agencies.

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

**Department of Savings and Mortgage Lending
FY21 Performance Measures**

Attachment A

		FY21 Target	FY20 Target
01-01 Thrift Safety and Soundness			
	Outcome Measures (Annual)		
Key	01 Percentage of State Chartered Savings Institutions Receiving Examination within the Required Timeframes ¹	100%	100%
Key	02 Percentage of Savings Institutions Classified Safe and Sound ¹	90%	90%
Non-Key	04 Percentage of State Chartered Savings Institution Applications Processed within Statutory Timeframes ¹	100%	100%
	Output Measures (Quarterly)		
Key	01 Number of State Chartered Savings Institution Examinations Performed ¹	16	21
Non-Key	04 Number of State Chartered Savings Institution Applications Processed. ²	10	10
	Efficiency Measures (Annual)		
Non-Key	01 Assets Examined Per Examiner Day (in Millions)	\$ 92.0	\$ 14.0
Non-Key	02 Average Time (Business Days) to Complete Analysis of Quarterly Financial Data	7	7
	Explanatory Measure (Annual)		
Key	01 Number of State-Chartered Savings Institutions	23	24
Key	02 Dollar Amount of Assets under Regulation (in Billions)	\$ 325.5	\$ 25.3
02-01 Mortgage Regulation			
	Outcome Measures (Annual)		
Key	01 Percentage of Satisfactory Levels of Compliance Reported Through Examination ³	90%	90%
	Output Measures (Quarterly)		
Key	01 Number of Applications Processed ²	8,600	7,600
Key	02 Number of Licensees Examined ²	5,900	6,600
	Efficiency Measures (Annual)		
Non-Key	01 Average Cost Per Application Processed	\$ 55	\$ 55
	Explanatory Measures (Annual)		
Non-Key	01 Total Number of Licensees in an Approved Status	38,000	35,000
03-01 Consumer Responsiveness			
	Outcome Measures (Annual)		
Key	01 Percent of Complaints Completed within Ten Business Days of Receipt of Complete Information	99%	99%
Key	02 Percentage of Written Complaints Closed within 90 Days ²	95%	95%
	Output Measures (Quarterly)		
Non-Key	01 Number of Complaints Closed ²	1,000	1,000
	Efficiency Measures (Annual)		
Non-Key	01 Average Cost Per Complaint Closed ³	\$ 400	\$ 340
04-01 Agency Administration			
	Outcome Measures (Annual)		
Key	01 Percentage of Employees Separated from the Agency ²	10%	10%
	02 Percentage of Actual Expenditures to Budgeted Expenditures ²	95%	95%

¹ These measures are comparable to similar measures with the Department of Banking

² These measures are comparable to similar measures with the Department of Banking and Office of Consumer Credit Commissioner

³ These measures are comparable to similar measures with the Office of Consumer Credit Commissioner

Office of Consumer Credit Commissioner

Agency Priorities

FY 2021

1. LEGISLATIVE

1.1. 87th Legislative Session

1.1.1. Objective: Monitor legislation that affects industries regulated by the OCCC. Respond to new legislative issues and requests for information or testimony. Develop relationships with legislators and legislative staff. Review or draft legislation as appropriate.

Measure: Respond promptly to legislative requests for information. Provide regular weekly legislative reports to the Finance Commission.

1.2. Sunset Review.

1.2.1. Objective: Provide information requested by the Sunset Advisory Commission in its follow-up review of changes resulting from the Sunset Advisory Commission's staff report and the OCCC's Sunset legislation.

Measure: Provide requested information to Sunset staff. Provide updates on the Sunset review to the Finance Commission.

2. REGULATORY ACTIVITIES

2.1. Regulated Entities.

2.1.1. Objective: Supervise and monitor the jurisdictionally appropriate industry segments for compliance with state and federal law. Investigate illegal activity. Take appropriate enforcement actions to ensure compliance with state and federal law.

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

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

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

2.1.3. Objective: Develop and refine the remote examination program including implementation of secure file transfer (FILR).

Measure: Report on the number of remote examinations completed.

2.2. Licensing.

- 2.2.1. Objective:** Process 90% of license applications within 60 days from received date to completion date. Provide professional development and training opportunities to licensing staff once per quarter.

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

3. POLICY AND RULE DEVELOPMENT

3.1. Rulemaking.

- 3.1.1. Objective:** Complete rule reviews for the following rule chapters: 7 TAC Chapter 7 (relating to the Texas Financial Education Endowment Fund), Chapter 84 (relating to Motor Vehicle Sales Finance), and Chapter 89 (relating to Property Tax Lenders). Work with stakeholders to clarify and improve rules.

Measure: Present rules to the Finance Commission for readoption according to schedule. Propose appropriate rule amendments to the Finance Commission. Request feedback from stakeholders on whether rules should be updated, and conduct webinars on proposed rule amendments.

- 3.1.2. Objective:** Prepare any rule proposals necessary to implement 2021 legislation. Work with stakeholders to seek feedback on proposed rules.

Measure: Present rules to the Finance Commission for proposal and adoption. Request feedback from stakeholders and conduct webinars on proposed rules.

4. CONSUMER ISSUES / COMMUNICATION & OUTREACH STRATEGIES

4.1 Texas Financial Education Endowment Fund (TFEE).

- 4.1.1. Objective:** Manage the TFEE 2020-2021 grant cycle, including monitoring grant award recipients, reporting on grant award program progress, and process reimbursement requests. Promote TFEE for the 2022-2023 grant cycle, review procedures, and receive grant applications for review.

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

4.2 Financial Education

- 4.2.1. Objective:** Identify underserved populations and locations in need of financial education. Provide financial education to new demographics of consumers by collaborating with community organizations, state agencies, non-profit organizations, and consumer advocacy groups. Collaborate with the Department of Banking in the promotion and

delivery of financial education. Expand financial education content online by remote learning and webinar techniques.

Measure: Report on number of people and programs reached.

4.3. Industry and Stakeholder Outreach

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

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

5. AGENCY MANAGEMENT

5.1. Performance Measures.

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

Measure: Continue to meet or exceed the strategic planning goals for key performance measures, including attainment of at least 9 out of 11 key performance targets. Report results to Finance Commission on a quarterly basis.

5.2. Human Resources.

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

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

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

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

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

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

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

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

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

- 5.3.2. Objective:** Transition to the Centralized Accounting Payroll/Personnel System (CAPPS) for the financial module.

Measure: Report on activities related to CAPPS transition and implementation.

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

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

5.4. Information Technology.

- 5.4.1. Objective: Software Modernization and Continuous Improvement.** Ongoing enhancements to the Application, Licensing, Examination, Compliance System (ALECS), improving functionality and security. Consolidation of agency services to one internal directory.

Measure: Reporting on development and milestones.

- 5.4.2 Objective: Hardware Modernization.** Updating and maintaining the OCCC endpoint computer asset deployment and the shared network equipment, with focus on provisioning dispersed workforce as a result of pandemic protocols.

Measure: Reporting on milestones and distribution.

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

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

5.4.4 Objective: Formal Change Management Procedure. Continued use and improvement of the agency's change management procedure, including consistent, collected documentation.

Measure: Reporting of change request documentation metrics and summaries.

FY 21 Performance Measures
Office of Consumer Credit Commissioner

FY 21 Target FY 20 Target

Consumer Protection:

Outcome Measures (Annual)			
Key	Monies returned to consumers	\$2,500,000	5,000,000
Key	Percentage of written complaints closed within 90 days ¹	85%	85%
Key	Percentage of examinations reporting acceptable level of compliance ²	85%	85%
	Percentage of licensed locations and registered offices examined annually	15%	20%
	Percentage of repeat referrals for enforcement action	13%	13%
	Percentage of enforcement actions closed within targeted timeframe	70%	70%
Output Measures (Quarterly)			
Key	Number of complaints closed ¹	1750	1800
Key	Number of examinations completed ¹	2500	4000
	Number of investigations completed	55	80
	Number of enforcement actions taken	275	275
	Number of contested cases heard at SOAH	5	5
	Number of compliance aids and tools published	45	45
	Number of industry stakeholder and outreach events hosted or attended by OCC staff	30	30
Efficiency Measures (Annual)			
	Average number of days for all complaints to reach final disposition	60	60
	Average number of days to close a complaint	45	45
	Average cost per complaint ²	\$180	\$275
	Average cost per examination	\$1,725	\$1,250
Key	Average number of days to close an enforcement action	100	100

Effective Licensing & Registration:

Outcome Measures (Annual)			
Key	Percentage of business license applications processed within 60 days	90%	90%
Output Measures (Quarterly)			
Key	Number of business applications processed ¹	1750	1750
	Number of pawnshop employee license applications processed	600	900
	Number of residential mortgage loan originator licenses processed ¹	60	60
Efficiency Measures (Annual)			
Key	Average processing time (days) for business license applications	45	45
	Average processing time (days) for pawnshop employee applications	30	30
	Average processing time (days) for residential mortgage loan originators	15	15

Efficient and Effective Agency Operation:

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

Financial Education:

Output Measures (Quarterly)			
Key	Number of people receiving direct educational services	775	325
	Percentage of TFEF award recipients who reached their consumer participation goal within the grant period	100	100

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

² These measures are comparable to similar measures with the Department of Savings and Mortgage Lending



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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MEMORANDUM

TO: The Finance Commission

FROM: Charles G. Cooper, Commissioner

DATE: August 5, 2020

RE: Department of Banking Priorities for Fiscal Year 2021

I. LEGISLATIVE – *State and National Legislative Issues*

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

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

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

Measure: Notify Finance Commission members of state legislature committee hearings, actions, and other items of interest on a timely basis. Keep members informed of significant federal laws and policy statements and how supervised entities are affected. Provide sufficient information and materials to give Finance Commission members an overall assessment of our regulated industries.

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

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

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

Measure: Continue with implementation of the Finance Commission’s Plan to minimize duplication of agency functions and promote more cost-efficient administration of the finance agencies. Coordinate these efforts with the other finance agencies.

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

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

Measure: Continue to meet or exceed the strategic planning goals for performance measures. Maintain banking accreditation and obtain the inaugural MSB accreditation from CSBS. Quarterly, report results to the Finance Commission.

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

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

- II.3 **Objective:** Maintain an ongoing awareness of our bank and trust entities’ risk profiles and the condition of the economy in which they operate. Continue ongoing monitoring of individual or systemic conditions, including the economic effects of the COVID-19 pandemic, cybersecurity threats and other high-risk activities which present risks to their financial stability. Monitor and take necessary actions against institutions exhibiting unacceptable risk profiles.

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

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

COVID-19 on our regulated entities and ensure that supervisory activities remain appropriate and effective.

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

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

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

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

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

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

Measure: Monitor regulatory changes and update examination materials and guidance in a timely manner. Perform internal reviews of examination procedures to ensure proper intent and applicability. Timely and regularly communicate updates/changes to examiners. Continue to make examination procedure and process modifications in response to COVID-19.

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

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

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

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

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

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

Measure: Maintain and periodically update the Department's financial education web pages and brochure. Highlight financial institutions with active programs in agency publications. Participate in financial education events or committees when possible.

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

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

Measure: Actively recruit entry level positions at state universities and colleges by attending job fair events (if available) and supporting banking programs at Texas universities. Utilize recruiting platforms that reach a wide talent pool. Promptly post vacancies. Periodically review and update personnel policies and procedures.

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

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

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

Measure: Provide technology tools necessary for staff to perform their job functions efficiently, effectively, and securely. Where appropriate, provide technology solutions that support department wide remote work for an extended period of time in accordance with agency determined limitations. Ensure network, website, and databases function appropriately and without prolonged downtimes.

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

Measure: Perform an annual external information security risk assessment and initiate corrective actions to maintain data integrity and minimize the risk of unauthorized access or use. Continue periodic intrusion testing by the Department of Information Resources for both the network and external facing web resources. Conduct an annual

test of the Department's disaster recovery plan and initiate corrective actions to ensure operations will function appropriately.

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

Measure: Provide core required training courses to financial examiners in the FE I – FE III series so they can progress in the financial examiner series. Adequately prepare assistant examiners to pass the Bank and Trust Supervision commissioning test. Continue agency efforts to provide continuing education to Bank and Trust Supervision commissioned examiners as well as Non-Depository Supervision examiners.

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

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

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

Measure: Report on improvements identified and implemented.

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

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

- IV.9 **Objective:** Comply with the directives of the State Office of Risk Management (SORM) regarding the Continuity of Operations Plan.

Measure: Ensure that updates are made, and the Plan is exercised as determined by SORM.

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

Performance Measures for 2021

Department of Banking

Bank and Trust:

K Outcome Measures (Annual)

			Target 2021	Target 2020
K	01-01.01	Percentage of Banks Receiving Examinations Within Required Timeframes ¹	95.00%	95.00%
	01-01.02	Percentage of Foreign Bank Organizations Receiving Examinations Within Required Timeframes	70.00%	100.00%
	01-01.03	Percentage of Trust Companies Receiving Examinations Within Required Timeframes	85.00%	90.00%
	01-01.04	Percentage of Problem Institutions with Appropriate Supervisory Actions in Place	100.00%	100.00%
	01-01.05	Certificate of Accreditation by CSBS Maintained in Good Standing	YES	YES

K Output Measures (Quarterly)

K	01-01.06	Number of Bank Examinations Performed ¹	89	90
K	01-01.07	# Foreign Bank Organization, Trust Co, Trust Dept, & IT Exams and Other Specialized Reviews Performed	197	185

Efficiency Measures (Annual)

	01-01.08	Average Cost Per Bank Examination	\$98,380.00	\$88,700.00
		Average Cost Per Bank Examination		
	01-01.09	Assets Examined Per Examiner Day (in millions)	\$10.95	\$9.00
		Assets Examined Per Examiner Day (in millions)		

K Explanatory Measure (Annual)

K	01-01.10	Percentage of Banks Classified Safe and Sound ¹	95.00%	95.00%
	01-01.11	Number of Texas State-Chartered Banks	207	218
	01-01.12	Total Assets in Texas State-Chartered Banks (in Billions)	\$319.60	\$285.00

Non-Depository Supervision (NDS):

K Outcome Measures (Annual)

K	01-02.01	Percentage of Money Services Business Licensees Examined By NDS Within Required Timeframes	90.00%	90.00%
K	01-02.02	Percentage of Prepaid Funeral Contract Licensees Examined By NDS Within Required Timeframes	95.00%	95.00%
K	01-02.03	Percentage of Perpetual Care Cemetery Licensees Examined By NDS Within Required Timeframes	95.00%	95.00%
	01-02.04	Percentage of PCC and PFC Applications Processed within Statutory Period	95.00%	95.00%

K Output Measures (Quarterly)

K	01-02.05	Number of NDS Licensees Examined ²	550	550
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Efficiency Measures (Annual)

	01-02.06	Average Direct Cost Per Prepaid Funeral Contract and Perpetual Care Cemetery Licensee Examination.	\$2,750	\$2,750
	01-02.07	Average Direct Cost Per Money Services Business Licensee Examination	\$9,500	\$9,500

Explanatory Measures (Annual)

	01-02.08	Dollar Amount of Prepaid Funeral Contracts in Force (in Billions)	\$4.3	\$4.2
	01-02.09	Number of NDS Licensees	760	750
	01-02.10	Percentage of NDS Licensees Classified Safe and Sound	95.00%	95.00%

Application Processing:

K Outcome Measures (Annual)

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

K	01-03.02	Number of Applications and Notices Processed for Banks, Trust Companies, Money Service Businesses, and Check Verification Companies ²	298	311
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K Outcome Measures (Annual)

K	01-04.01	Percentage of Written Complaints Closed Within 90 Days ²	100.00%	100.00%
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Output Measures (Quarterly)

	01-04.02	Number of Written Complaints Closed ²	225	370
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Regulatory Oversight: (Finance Commission) (Reported Internally)

Output Measures (Quarterly)

	01-04.03	Number of Meetings Convened	6.0	6.0
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Operational Efficiency:

K Outcome Measures (Annual)

K	01-05.01	Percentage of Regular Employees Separated from the Agency ²	11.00%	11.00%
	01-05.02	Percentage of Regular Employees Separated from the Agency (Excluding Retirements)	9.00%	9.00%
K	01-05.03	Percentage of Actual Expenditures to Budgeted Expenditures ²	95.00%	95.00%

¹ These measures are comparable to similar measures with the Department of Savings and Mortgage Lending

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

- 8 . Discussion of and Possible Vote to Take Action on the Adoption 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 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 rulemaking action 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, the amendments incorporate proposed revisions received during the public comment period for the initial rule proposal.

RECOMMENDED ACTION: No comments were received in response to the rule proposal. The Department, on behalf of the Joint Financial Regulatory Agencies, recommends that the Finance Commission approve adoption of the amended rule, without changes to the proposed text as published in the July 3, 2020 issue of the *Texas Register*.

RECOMMENDED MOTION: I move that we adopt the amendments to 7 TAC §155.2 without changes to the proposed text as previously published in the *Texas Register*.

ADOPTION OF AMENDMENTS

7 TAC §155.2

PAGE 1 OF 3

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 of Texas (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"), adopts amendments to existing Title 7 Texas Administrative Code (TAC), Part 8, Chapter 155, Subchapter A, §155.2, without changes to the text as published in the July 3, 2020 issue of the *Texas Register* (45 TexReg 4454).

EXPLANATION OF AND JUSTIFICATION FOR THE RULE

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 amendments arose 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 one comment submitted by the Texas Land Title Association (commenter) requesting 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 determined the comment and proposed revisions had merit and that the revisions should be considered by the commission for potential adoption. The joint financial regulatory agencies further determined that the revisions 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. Given the revisions made substantive changes to the text of the rule and to the form embedded in the rule beyond the non-substantive formatting changes initially proposed, the joint financial regulatory agencies determined it would be prudent to republish the rule as a new rule proposal for public comment. The initial January 3, 2020 proposal was withdrawn at the same time the second proposal affecting the rule was published in the *Texas Register* (45 TexReg 4497). The amendments adopted effectuate the revisions suggested by the commenter, in

ADOPTION OF AMENDMENTS

7 TAC §155.2

PAGE 2 OF 3

addition to the non-substantive formatting amendments proposed in the initial January 3, 2020 proposal.

SUMMARY OF PUBLIC COMMENTS

Publication of the joint financial regulatory agencies' proposal to amend 7 TAC §155.2 recited a deadline of 30 days to receive public comments, or August 2, 2020. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received in response to the proposal.

STATUTORY AUTHORITY

Amended 7 TAC §155.2 is adopted 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.

The adoption of amended 7 TAC §155.2 affects the statutes contained in Finance Code, Chapter 343.

<rule>

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) - (2) (No change.)

(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) - (5) (No change.)

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

Figure: 7 TAC §155.2(c)(6) [~~Figure: 7 TAC §155.2(e)(6)~~]

Certification

The agency certifies that legal counsel has reviewed the proposal and found it to be

ADOPTION OF AMENDMENTS

7 TAC §155.2

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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: _____
 Beneficiary/Receiving Bank: _____
 Beneficiary Bank ABA: _____
 Beneficiary Bank Account: _____
 Special Information to Beneficiary: _____

OVERNIGHT MAIL

Attention: _____
 Company: _____
 Address: _____

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:

A. FINANCE COMMISSION MATTERS

9. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 8, Chapter 151, Concerning Home Equity Lending Procedures, Chapter 152, Concerning Repair, Renovation, and New Construction on Homestead Property, and Chapter 153, Concerning Home Equity Lending, Resulting from Rule Review

PURPOSE: Pursuant to Texas Government Code, §2001.039, the Joint Financial Regulatory Agencies have completed the review of 7 TAC Chapters 151, 152, and 153, and believe that the reasons for initially adopting the rules contained in these chapters continue to exist.

RECOMMENDED ACTION: The Joint Financial Regulatory Agencies request that the Finance Commission readopt 7 TAC Chapters 151, 152, and 153 following rule review, because the reasons for the rules continue to exist.

RECOMMENDED MOTION: I move that we readopt 7 TAC Chapters 151, 152, and 153 following rule review, because the reasons for the rules continue to exist.

Title 7. Banking and Securities

Part 8. Joint Financial Regulatory Agencies

Chapter 151. Home Equity Lending Procedures

Chapter 152. Repair, Renovation, and New Construction on Homestead Property

Chapter 153. Home Equity Lending

The Finance Commission of Texas and the Texas Credit Union Commission (commissions) have completed the rule review of the following chapters in Texas Administrative Code, Title 7, Part 8, in their entirety: Chapter 151, concerning Home Equity Lending Procedures; Chapter 152, concerning Repair, Renovation, and New Construction on Homestead Property; and Chapter 153, concerning Home Equity Lending. The rule review was conducted under Texas Government Code, §2001.039.

Notice of the review of 7 TAC Chapters 151, 152, and 153 was published in the *Texas Register* on May 1, 2020 (45 TexReg 2897). The commission received no comments in response to that notice. The commissions believe that the reasons for initially adopting the rules contained in these chapters continue to exist.

Before publishing notice of the review in the *Texas Register*, the Joint Financial Regulatory Agencies (Texas Department of Banking, Department of Savings and Mortgage Lending, Office of Consumer Credit Commissioner, and Texas Credit Union Department) issued an informal advance notice of the rule review to stakeholders. The agencies received six informal precomments in response to the advance notice. The agencies appreciate the thoughtful input provided by stakeholders.

As a result of stakeholder input and internal review by the agencies, the commissions have determined that certain revisions are appropriate and necessary in 7 TAC Chapters 151 and 153. Those proposed changes are published elsewhere in this issue of the *Texas Register*.

As a result of the rule review, the commissions find that the reasons for initially adopting the rules in 7 TAC Chapters 151, 152, and 153 continue to exist, and readopt these chapters in accordance with the requirements of Texas Government Code, §2001.039.

A. FINANCE COMMISSION MATTERS

10. Discussion of and Possible Vote to Take Action on the Proposal of Amendments, a New Rule, and a Repeal in 7 TAC, Part 8, Chapter 151, Concerning Home Equity Lending Procedures, and Chapter 153, Concerning Home Equity Lending, Resulting from Rule Review.

PURPOSE: The purpose of the amendments to 7 TAC Chapters 151 and 153 is to implement changes resulting from the commission's review of the chapters under Texas Government Code, §2001.039.

RECOMMENDED ACTION: The Joint Financial Regulatory Agencies request that the Finance Commission approve the amendments to 7 TAC Chapters 151 and 153 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve for publication and comment the amendments, new rule, and repeal in 7 TAC Chapters 151 and 153.

Title 7. Banking and Securities
Part 8. Joint Financial Regulatory Agencies
Chapter 151. Home Equity Lending Procedures
Chapter 153. Home Equity Lending

7 TAC, Part 8, Chapter 151

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") propose amendments to §151.1 (relating to Application for Interpretation); and propose the repeal of §151.2 (relating to Review of Request), §151.3 (relating to Initiation of Interpretation Procedure), §151.4 (relating to Notice of Proposed Interpretation), §151.5 (relating to Public Comment), §151.6 (relating to Action on Proposed Interpretation), and §151.7 (relating to Adoption of Interpretation) in 7 TAC, Chapter 151, concerning Home Equity Lending Procedures.

The rules in 7 TAC Chapter 151 govern the procedures for requesting, proposing, and adopting interpretations of the home equity lending provisions of Texas Constitution, Article XVI, Section 50 ("Section 50"). In general, the purpose of the proposed rule changes to 7 TAC Chapter 151 is to implement changes resulting from the commissions' review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 151 was published in the *Texas Register* on May 1, 2020 (45 TexReg 2897). The commissions received no comments in response to that notice.

The rules in 7 TAC Chapter 151 are administered by the Joint Financial Regulatory Agencies ("agencies"), consisting of the Texas Department of Banking, Department of Savings and Mortgage Lending, Office of Consumer Credit Commissioner, and Texas Credit Union

Department. The agencies distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held an online webinar regarding the proposed changes. The agencies received three informal precomments on the rule text draft. The agencies appreciate the thoughtful input provided by stakeholders.

Proposed amendments to §151.1 would amend current procedures for stakeholders to request interpretations of Section 50 from the commissions. Proposed amendments to §151.1 would also specify that the commissions will propose and adopt interpretations in accordance with Texas Government Code, Chapter 2001.

Currently, §151.1, §151.2, and §151.3 describe a procedure for an interested person to request an interpretation. Under this procedure, a person submits a request to the general counsel of the Office of Consumer Credit Commissioner, and the request must include legal and factual information supporting the request. The request is evaluated, and the requestor is notified if the commissions initiate an interpretation.

Currently, §151.4, §151.5, §151.6, and §151.7 describe the procedure for the commissions to propose and adopt interpretations. These provisions explain that notice of the proposed interpretation will be published in the *Texas Register* including an explanation that there will be an opportunity for public comment, that the commissions may adopt or decline to adopt the interpretations at a public meeting, and that an adopted interpretation will include a

reasoned justification, restatement of affected provisions, and certification of legal authority.

There are three issues with the current procedures in §151.1 through §151.7. First, the procedure for requesting interpretations in current §151.1 through §151.3 has not been commonly used by stakeholders. Instead, most feedback about interpretations has come from informal comments resulting from constitutional amendments, litigation, or rule review. Second, the commissions already have separate rules on petitions for rulemaking, in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001 ("APA"). The Finance Commission's rule on petitions for rulemaking is codified at 7 TAC §9.82 (relating to Petitions to Initiate Rulemaking Proceedings), while the Credit Union Commission's rule is codified at 7 TAC §97.500 (relating to Petitions to Initiate Rulemaking Proceedings). The request procedure in §151.1 through §151.3 contains some, but not all, of the requirements for a formal petition for rulemaking, so it is unclear whether these requests must meet the requirements for a petition for rulemaking. Third, §151.4 through §151.7 describe some, but not all, of the APA's requirements for proposing and adopting rules.

The proposed amendments to §151.1 are intended to address these issues and provide clear guidelines on how interpretations are requested, proposed, and adopted. A proposed amendment to §151.1(a) would explain that the commissions will propose and adopt interpretations in accordance with the rulemaking requirements of the APA. Proposed new subsection (b) would explain that the agencies may recommend proposed interpretations to the commissions, and may seek informal input from stakeholders.

Proposed new subsection (c) would explain that a person may submit an informal request to the agencies, and would describe items the request should include. Proposed new subsection (d) would explain that an interested person may file a petition to initiate rulemaking, and would include citations to the commissions' other rules that govern these petitions. The proposal would remove current subsection (b), which would be unnecessary because of the new guidelines described in proposed subsections (b) through (d). The title of §151.1 would be amended to state "Interpretation Procedures," to properly identify the scope of the rule.

The proposal would repeal §151.2 and §151.3. As discussed earlier, these sections currently describe the process used when a stakeholder requests an interpretation, and would be unnecessary because of the new guidelines described in the proposed amendments to §151.1. The commissions believe that these proposed amendments will provide a balanced approach, enabling stakeholders to use informal requests, while also preserving the important statutory right for an interested person to file a petition for rulemaking under the APA.

The proposal would repeal §151.4, §151.5, §151.6, and §151.7. As discussed earlier, these sections currently describe some, but not all, of the requirements for proposing and adopting rules under the APA. These sections would be unnecessary because of the updated language in the proposed amendments to §151.1(a). The commissions believe that these changes would simplify Chapter 151 to refer to the APA in a more straightforward manner, and would ensure that it is not necessary to update Chapter 151 each time the Texas Legislature amends the APA's rulemaking requirements.

PROPOSED AMENDMENTS, NEW RULE, AND REPEALS

7 TAC CHAPTERS 151 AND 153

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Kurt Purdom (Deputy Commissioner, Texas Department of Banking), Antonia Antov (Director of Administration and Finance, Department of Savings and Mortgage Lending), Mirand Diamond (Director of Licensing and Registration, Office of Consumer Credit Commissioner), and John Kolhoff (Commissioner, Texas Credit Union Department) have 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.

Kurt Purdom (Deputy Commissioner, Texas Department of Banking), Tony Florence (Director of Mortgage Examination, Department of Savings and Mortgage Lending), Huffman Lewis (Director of Consumer Protection, Office of Consumer Credit Commissioner), and John Kolhoff (Commissioner, Texas Credit Union Department) have 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 commissions' rules will be more easily understood by stakeholders, and will provide clearer methods for stakeholders to request interpretations.

There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small businesses, micro-businesses, or 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 agencies, because the agencies are self-directed, semi-independent agencies that do not receive legislative appropriations. The proposed rule changes do not require an increase or decrease in fees paid to the agencies. The proposal would not create a new regulation. The proposal would expand current §151.1 to describe methods for submitting an informal or formal request for an interpretation, and would limit §151.1 by removing current language about requests. The proposal would repeal current §151.2, §151.3, §151.4, §151.5, §151.6, and §151.7. The proposed rule changes do not increase or decrease the number of individuals subject to the rules' applicability. The agencies do not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to 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 commissions.

The rule changes are proposed under Texas Finance Code, §11.308 and §15.413, which authorize the commissions to issue interpretations of Texas Constitution, Article XVI, §50(a)(5) - (7), (e) - (p), (t), and (u), subject to Texas Government Code, Chapter 2001.

The constitutional and statutory provisions affected by the proposal are contained in Texas Constitution, Article XVI, §50, and Texas Finance Code, Chapters 11 and 15.

7 TAC, Part 8, Chapter 153

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") propose amendments to §153.8 (relating to Security of the Equity Loan: Section 50(a)(6)(H)), §153.11 (relating to Repayment Schedule: Section 50(a)(6)(L)(i)), §153.14 (relating to One Year Prohibition: Section 50(a)(6)(M)(iii)), §153.15 (relating to Location of Closing: Section 50(a)(6)(N)), §153.22 (relating to Copies of Documents: Section 50(a)(6)(Q)(v)), and §153.41 (relating to Refinance of a Debt Secured by a Homestead: Section 50(e)); and propose new §153.26 (relating to Acknowledgment of Fair Market Value: Section 50(a)(6)(Q)(ix)) in 7 TAC, Chapter 153, concerning Home Equity Lending.

7 TAC Chapter 153 contains the commissions' interpretations of the home equity lending provisions of Texas Constitution, Article XVI, Section 50 ("Section 50"). In general, the purpose of the proposed rule changes to 7 TAC Chapter 153 is to implement changes resulting from the commissions' review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 151 was published in the *Texas Register* on May 1, 2020 (45 TexReg 2897). The commissions received no comments in response to that notice.

The interpretations in 7 TAC Chapter 153 are administered by the Joint Financial Regulatory Agencies ("agencies"), consisting

of the Texas Department of Banking, Department of Savings and Mortgage Lending, Office of Consumer Credit Commissioner, and Texas Credit Union Department. The agencies distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held an online webinar regarding the proposed changes. The agencies received three informal precomments on the rule text draft. The agencies appreciate the thoughtful input provided by stakeholders.

A proposed amendment to §153.8(1)(C) would remove the word "or" to correct a list that unnecessarily includes the word "or" twice.

Proposed amendments to §153.11 would explain that the repayment schedule requirements in Section 50(a)(6)(L)(i) of the Texas Constitution apply at closing. Proposed new paragraph (1) would explain that this constitutional provision does not prohibit a lender from agreeing with the borrower to certain modifications, and would explain that a modification may include a deferment of the original obligation. A proposed amendment at §153.11(2) would explain that the modification does not affect the two-month time period described by Section 50(a)(6)(L)(i).

These amendments to §153.11 are based on the Texas Supreme Court's decision in *Sims v. Carrington Mortg. Servs., LLC*, 440 S.W.3d 10 (Tex. 2014). In *Sims*, the Texas Supreme Court analyzed a modification of a home equity loan where the borrower and lender agreed to capitalize past-due interest, fees, property taxes, and insurance premiums into the principal, and where the modification did not involve the satisfaction or replacement of the original note, an advancement of new funds, or an increase in

the obligations created by the original note. The court held that because the modification was not a new extension of credit, it did not trigger reapplication of the constitutional requirements of Section 50. *Sims*, 440 S.W.3d at 18.

In an informal precomment, one precommenter recommended adding the following two sentences to §153.11 regarding which modifications are permissible: "Any deferment may include no payments or monthly payments in an amount that is less than the amount of accrued interest during the deferment period." and "No more than six (6) months of payments may be deferred in any twelve (12) month period." The commissions have not included this text in the current proposal, because the text appears to go beyond interpreting Section 50 of the Texas Constitution, and could be misunderstood to allow actions that are prohibited by other law. For example, for high-cost home loans, Texas Finance Code, §343.203 generally prohibits negative amortization (i.e., a payment schedule that causes the principal balance to increase).

Another precommenter suggested amending §153.11(1) to state that the two-month time period described by Section 50(a)(6)(L)(i) begins "on the day the loan is funded." Section 50(a)(6)(L)(i) provides that the payments must begin "no later than two months from the date the extension of credit is made." Currently, §153.11(1) explains that the two-month period begins "on the date of closing." The commissions believe that the current text appropriately interprets the word "made" in the context of Section 50(a)(6)(L)(i), and have not included this suggested change in the proposal. *Cf.* Black's Law Dictionary, "make" (11th ed. 2019) (defining "make" to include "caus[ing] (something) to exist" and "legally

perform[ing], as by executing, signing, or delivering (a document)").

Proposed amendments to §153.14 would describe states of emergency. Section 50(a)(6)(M)(iii) of the Texas Constitution generally prohibits a home equity loan from being closed within one year after another home equity loan on the same property, but includes an exception for a state of emergency declared by the president of the United States or the governor of Texas. Proposed amendments to §153.14 would describe this exception and explain that a state of emergency includes a national emergency declared by the president of the United States under the National Emergencies Act, 50 U.S.C. §§1601-1651, and a state of disaster declared by the governor of Texas under Texas Government Code, Chapter 418. The commissions believe that these federal and state statutes describe states of emergency within the meaning of Section 50(a)(6)(M)(iii).

Proposed amendments to §153.15 would describe permissible closing locations. Section 50(a)(6)(N) of the Texas Constitution provides that a home equity loan must be closed only at the office of a lender, an attorney at law, or a title company. Because of the pandemic resulting from the coronavirus and the disease COVID-19, lenders have expressed interest in closing loans in places where they can maintain social distancing, such as an office parking lot. A proposed amendment to §153.15(1) would explain that the closing may occur in any area located at the permanent physical address of the lender, attorney, or title company. Proposed amendments to paragraphs (2) and (3) would add references to the permanent physical address. The commissions believe that these amendments are consistent with the closing location

requirement of Section 50(a)(6)(N), and clarify that lenders have this option to maintain social distancing while closing loans at their offices.

A proposed amendment to §153.22 describes requirements for electronic copies of loan documents. Section 50(a)(6)(Q)(v) of the Texas Constitution requires the lender to provide the owner with a copy of the loan application and all documents signed by the owner at closing. Proposed new §153.22(3) would explain that the lender may provide documents electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents, and would include references to the Texas Uniform Electronic Transactions Act, Texas Business & Commerce Code, Chapter 322, and the federal E-Sign Act, 15 U.S.C. §§7001-7006.

Proposed new §153.26 would describe the acknowledgment of fair market value. Under Section 50(a)(6)(Q)(ix) of the Texas Constitution, the owner of the homestead and the lender must sign a written acknowledgment as to the fair market value of the homestead property on the date the extension of credit is made. Proposed new §153.26(1) would explain that the lender may sign the written acknowledgment before or at closing. Proposed new §153.26(2) would explain that an authorized agent may sign the written acknowledgment on behalf of the lender.

In an informal precomment, one precommenter recommended including a statement in §153.26(1) that the lender may sign the written acknowledgment "before, at or after closing." The commissions agree that the acknowledgment may be signed before or at closing. However, the commissions are uncertain about the legal and practical effects

where the lender signs the acknowledgment after closing. Under Section 50(a)(6)(Q)(ix) of the Texas Constitution, the home equity loan must be "made on the condition that . . . the owner of the homestead and the lender sign a written acknowledgment as to the fair market value of the homestead property on the date the extension of credit is made." The commissions invite official comments on whether the lender can sign the acknowledgment after closing, including the legal and practical effects on the home equity loan if the lender delays or fails to sign the acknowledgment.

A proposed amendment to §153.41 would remove the phrase "or (a)(7)" in the introductory paragraph. Section 50(e) of the Texas Constitution generally provides that if a refinance of debt against the homestead includes additional funds, the refinance must be described by Section 50(a)(6) (i.e., must be a home equity loan). Section 50(e) does not refer to Section 50(a)(7). The phrase "or (a)(7)" in the introductory paragraph of §153.41 appears to be a typographical error. For this reason, the proposed amendment removes this phrase.

Kurt Purdom (Deputy Commissioner, Texas Department of Banking), Antonia Antov (Director of Administration and Finance, Department of Savings and Mortgage Lending), Mirand Diamond (Director of Licensing and Registration, Office of Consumer Credit Commissioner), and John Kolhoff (Commissioner, Texas Credit Union Department) have 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.

Kurt Purdom (Deputy Commissioner, Texas Department of Banking), Tony Florence (Director of Mortgage Examination, Department of Savings and Mortgage Lending), Huffman Lewis (Director of Consumer Protection, Office of Consumer Credit Commissioner), and John Kolhoff (Commissioner, Texas Credit Union Department) have 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 commissions' rules will be more easily understood by stakeholders, and will provide clearer guidance to ensure that lenders comply with Section 50.

There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small businesses, micro-businesses, or 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 agencies, because the agencies are self-directed, semi-independent agencies that do not receive legislative appropriations. The proposed rule changes do not require an increase or decrease in fees paid to the agencies. The proposal would create a new regulation at §153.26 to provide guidance relating to the acknowledgment of fair market value. The proposal would expand current §153.11, §153.14, §153.15, and §153.22 to provide additional guidance to lenders. The proposal would limit §153.41 by removing an incorrect citation. The proposal

would not repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rules' applicability. The agencies do not anticipate that the proposed rule changes will have an effect on the state's economy.

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 commissions.

The rule changes are proposed under Texas Finance Code, §11.308 and §15.413, which authorize the commissions to issue interpretations of Texas Constitution, Article XVI, §50(a)(5) - (7), (e) - (p), (t), and (u), subject to Texas Government Code, Chapter 2001.

The constitutional provisions affected by the proposal are contained in Texas Constitution, Article XVI, §50. No statute is affected by this proposal.

Chapter 151. Home Equity Lending Procedures

§151.1. [~~Application for~~] Interpretation Procedures

(a) Issuing interpretations. The Finance Commission and Credit Union Commission may on their own motion issue interpretations of Section 50(a)(5) - (7), (e) -

(p), and (t), Article XVI of the Texas Constitution. The commissions will propose and adopt interpretations in accordance with the rulemaking requirements of Texas Government Code, Chapter 2001, Subchapter B.

(b) Agency recommendations. The Office of Consumer Credit Commissioner, Department of Banking, or Department of Savings and Mortgage Lending may recommend proposed interpretations to the Finance Commission. The Credit Union Department may recommend proposed interpretations to the Credit Union Commission. The four agencies may seek informal input from stakeholders and the other agencies before recommending a proposed interpretation to the commissions.

(c) Informal request for interpretation. A person may submit an informal request for an interpretation of Section 50(a)(5) - (7), (e) - (p), or (t), Article XVI of the Texas Constitution. An informal request may be submitted to the Office of Consumer Credit Commissioner, Department of Banking, Department of Savings and Mortgage Lending, or Credit Union Department. A request should:

(1) cite the specific provision of the Texas Constitution to be interpreted;

(2) explain the factual and legal context for the request; and

(3) explain the requestor's opinion of how the request should be resolved.

(d) Petition for rulemaking. An interested person may formally request an interpretation of Section 50(a)(5) - (7), (e) - (p), or (t), Article XVI of the Texas Constitution by submitting a petition to initiate rulemaking.

(1) Any petition for the Finance Commission to issue an interpretation must be submitted to the Office of Consumer Credit Commissioner, and must include the information required by §9.82 of this title (relating to Petitions to Initiate Rulemaking Proceedings).

(2) Any petition for the Credit Union Commission to issue an interpretation must be submitted to the Credit Union Department, and must include the information required by §97.500 of this title (relating to Petitions to Initiate Rulemaking Proceedings).

~~[(b) An interested person may submit a request for an interpretation of Section 50(a)(5) - (7), (e) - (p), and (t), Article XVI of the Texas Constitution. All requests must:]~~

~~[(1) be directed to the general counsel for the Office of Consumer Credit Commissioner who will promptly distribute it to the general counsels for the Department of Banking, the Department of Savings and Mortgage Lending, and the Credit Union Department;]~~

~~[(2) contain an explicit statement that an interpretation approved by the Finance Commission and Credit Union Commission is desired;]~~

~~[(3) contain the reference to the specific applicable section, subsection and paragraph of the Texas Constitution of which the interpretation is requested;]~~

~~[(4) state with sufficient particularity the factual and legal context to which the application of the provision is vague or ambiguous; and]~~

PROPOSED AMENDMENTS, NEW RULE, AND REPEALS

7 TAC CHAPTERS 151 AND 153

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~~[(5) indicate the requestor's opinion of how the legal issue should be resolved, the basis for that opinion, an analysis of any relevant court decisions, and all prior interpretations to which the request relates.]~~

{{Section 151.2 will be repealed.}}

~~[§151.2. *Review of Request*]~~

~~[(a) The request for interpretation shall be evaluated to determine:]~~

~~[(1) whether the requestor has complied with the requirements of §151.1(b);]~~

~~[(2) the significance and general application of the interpretation; and]~~

~~[(3) the ambiguity of the constitutional provision.]~~

~~[(b) Reasons for a denial of a request for interpretation will be stated in writing.]~~

{{Section 151.3 will be repealed.}}

~~[§151.3. *Initiation of Interpretation Procedure*]~~

~~[(a) If an interpretation is initiated, the requestor shall be notified in writing.]~~

~~[(b) To ensure that clear and concise formal interpretations are made, it may be necessary to rephrase the original interpretation request. A requestor will be notified in writing if a request is rephrased and a copy of the rephrased request shall be provided to the requestor.]~~

~~[(c) Copies of the request for interpretation will be sent to parties requesting advance notice for their input.]~~

~~[(d) The parties requesting advance notice may provide their input indicating an opinion of how the legal issue should be resolved, the basis for that opinion, an analysis of any relevant court decisions and all prior interpretations to which the request relates.]~~

~~[(e) The input of the parties requesting advance notice will be considered.]~~

{{Section 151.4 will be repealed.}}

~~[§151.4. *Notice of Proposed Interpretation*]~~

~~[If the Finance Commission and the Credit Union Commission propose an interpretation, notice of the proposed interpretation will be published in the Texas Register. The notice of the proposed interpretation shall contain:]~~

~~[(1) A brief explanation of the proposed interpretation;]~~

~~[(2) The text of the proposed interpretation, except any portion omitted under Section 2002.014, Government Code, prepared in a manner to indicate any words to be added or deleted from the current text;]~~

~~[(3) A reference to the section of the constitution interpreted; and]~~

~~[(4) A statement of whether the interpretation is inconsistent with any other interpretations and an explanation of the justification for any inconsistency.]~~

{{Section 151.5 will be repealed.}}

~~[§151.5. *Public Comment*]~~

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~~[Any person may submit comments, briefs or proposals pertaining to the proposed interpretation not later than 30 days following the publication of the proposed interpretation in the Texas Register. The Finance Commission and Credit Union Commission will allow the opportunity for public comment and public hearing as required by Section 2001.029, Government Code.]~~

{{Section 151.6 will be repealed.}}

~~[§151.6. Action on Proposed Interpretation]~~

~~[The Finance Commission and the Credit Union Commission may adopt or decline to adopt the proposed interpretation or remand the proposed interpretation for modification, revision, or additional comment. This action will be conducted at a public meeting.]~~

{{Section 151.7 will be repealed.}}

~~[§151.7. Adoption of Interpretation]~~

~~[The interpretation as finally adopted by the Finance Commission and Credit Union Commission, will include:]~~

~~[(1) a reasoned justification for the interpretation as adopted consisting solely of:]~~

~~[(A) a summary of comments received from parties interested in the interpretation that shows the names of interested parties or associations offering comment on the interpretation and whether they were for or against its adoption;]~~

~~[(B) a summary of the factual basis for the interpretation as adopted which demonstrates a rational connection between~~

~~the factual basis for the interpretation and the interpretation as adopted; and]~~

~~[(C) the reasons why the Finance Commission and Credit Union Commission disagree with party submissions and proposals;]~~

~~[(2) a concise restatement of the particular constitutional provisions under which the interpretation is adopted and of how the Finance Commission and Credit Union Commission interpret the provisions as authorizing or requiring the interpretation; and]~~

~~[(3) a certification that the interpretation, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the Finance Commission's and Credit Union Commission's legal authority.]~~

Chapter 153. Home Equity Lending

§153.8. Security of the Equity Loan: Section 50(a)(6)(H)

An equity loan must not be secured by any additional real or personal property other than the homestead. The definition of "homestead" is located at Section 51 of Article XVI, Texas Constitution, and Chapter 41 of the Texas Property Code.

(1) A lender and an owner or an owner's spouse may enter into an agreement whereby a lender may acquire an interest in items incidental to the homestead. An equity loan secured by the following items is not considered to be secured by additional real or personal property:

(A) escrow reserves for the payment of taxes and insurance;

(B) an undivided interest in a condominium unit, a planned unit development, or the right to the use and enjoyment of certain property owned by an association;

(C) insurance proceeds related to the homestead; ~~or~~

(D) condemnation proceeds;

(E) fixtures; or

(F) easements necessary or beneficial to the use of the homestead, including access easements for ingress and egress.

(2) A guaranty or surety of an equity loan is not permitted. A guaranty or surety is considered additional property for purposes of Section 50(a)(6)(H). Prohibiting a guaranty or surety is consistent with the prohibition against personal liability in Section 50(a)(6)(C). An equity loan with a guaranty or surety would create indirect liability against the owner. The constitutional home equity lending provisions clearly provide that the homestead is the only allowable collateral for an equity loan. The constitutional home equity provisions prohibit the lender from contracting for recourse of any kind against the owner or owner's spouse, except for provisions providing for recourse against the owner or spouse when the extension of credit is obtained by actual fraud.

(3) A contractual right of offset in an equity loan agreement is prohibited.

(4) A contractual cross-collateralization clause in an equity loan agreement is prohibited.

(5) Any equity loan on an urban homestead that is secured by more than ten acres is secured by additional real property in violation of Section 50(a)(6)(H).

§153.11. Repayment Schedule: Section 50(a)(6)(L)(i)

Unless an equity loan is a home equity line of credit under Section 50(t), the loan must be scheduled at closing to be repaid in substantially equal successive periodic installments, not more often than every 14 days and not less often than monthly, beginning no later than two months from the date the extension of credit is made, each of which equals or exceeds the amount of accrued interest as of the date of the scheduled installment.

(1) Section 50(a)(6)(L)(i) does not prohibit a lender from agreeing with a borrower to modify an equity loan if the modification does not satisfy and replace the original equity loan and does not create a new extension of credit. The modification may include a deferment of the borrower's original obligation, and may include amounts that are past due under the equity loan (e.g., accrued but unpaid interest, taxes and insurance).

(2) ~~(1)~~ The two month time period contained in Section 50(a)(6)(L)(i) begins on the date of closing. A modification described by paragraph (1) of this subsection does not affect the two month time period.

(3) ~~(2)~~ For purposes of Section 50(a)(6)(L)(i), a month is the period from a date in a month to the corresponding date in the succeeding month. For example, if a home equity loan closes on March 1, the first installment must be due no later than May 1. If the succeeding month does not have a corresponding date, the period ends on the

last day of the succeeding month. For example, if a home equity loan closes on July 31, the first installment must be due no later than September 30.

(4) [~~(3)~~] For a closed-end equity loan to have substantially equal successive periodic installments, some amount of principal must be reduced with each installment. This requirement prohibits balloon payments.

(5) [~~(4)~~] Section 50(a)(6)(L)(i) does not preclude a lender's recovery of payments as necessary for other amounts such as taxes, adverse liens, insurance premiums, collection costs, and similar items.

§153.14. One Year Prohibition: Section 50(a)(6)(M)(iii)

An equity loan may not be closed before the first anniversary of the closing date of any other equity loan secured by the same homestead property, unless the owner on oath requests an earlier closing due to a state of emergency that has been declared by the president of the United States or the governor as provided by law, and applies to the area where the homestead is located.

(1) Section 50(a)(6)(M)(iii) prohibits an owner who has obtained an equity loan from:

(A) refinancing the equity loan before one year has elapsed since the loan's closing date; or

(B) obtaining a new equity loan on the same homestead property before one year has elapsed since the previous equity loan's closing date, regardless of whether the previous equity loan has been paid in full.

(2) Section 50(a)(6)(M)(iii) does not prohibit modification of an equity loan before one year has elapsed since the loan's closing date. A modification of a home equity loan occurs when one or more terms of an existing equity loan is modified, but the note is not satisfied and replaced. A home equity loan and a subsequent modification will be considered a single transaction. The home equity requirements of Section 50(a)(6) will be applied to the original loan and the subsequent modification as a single transaction.

(A) A modification of an equity loan must be agreed to in writing by the borrower and lender, unless otherwise required by law. An example of a modification that is not required to be in writing is the modification required under the Servicemembers Civil Relief Act, 50 U.S.C. app. §§501-597b.

(B) The advance of additional funds to a borrower is not permitted by modification of an equity loan.

(C) A modification of an equity loan may not provide for new terms that would not have been permitted by applicable law at the date of closing of the extension of credit.

(D) The two percent limitation required by Section 50(a)(6)(E) applies to the original home equity loan and any subsequent modification as a single transaction.

(3) For purposes of Section 50(a)(6)(M)(iii), a state of emergency includes:

(A) a national emergency declared by the president of the United States

under the National Emergencies Act, 50 U.S.C. §§1601-1651; and

(B) a state of disaster declared by the governor of Texas under Texas Government Code, Chapter 418.

§153.15. Location of Closing: Section 50(a)(6)(N)

An equity loan may be closed only at an office of the lender, an attorney at law, or a title company. The lender is anyone authorized under Section 50(a)(6)(P) that advances funds directly to the owner or is identified as the payee on the note.

(1) An equity loan must be closed at the permanent physical address of the office or branch office of the lender, attorney, or title company. The closing office must be a permanent physical address so that the closing occurs at an authorized physical location other than the homestead. The closing may occur in any area located at the permanent physical address of the lender, attorney, or title company (e.g., indoor office, parking lot).

(2) Any power of attorney allowing an attorney-in-fact to execute closing documents on behalf of the owner or the owner's spouse must be signed by the owner or the owner's spouse at the permanent physical address of an office of the lender, an attorney at law, or a title company. A lender may rely on an established system of verifiable procedures to evidence compliance with this paragraph. For example, this system may include one or more of the following:

(A) a written statement in the power of attorney acknowledging the date and place at which the power of attorney was executed;

(B) an affidavit or written certification of a person who was present when the power of attorney was executed, acknowledging the date and place at which the power of attorney was executed; or

(C) a certificate of acknowledgement signed by a notary public under Chapter 121, Civil Practice and Remedies Code, acknowledging the date and place at which the power of attorney was executed.

(3) The consent required under Section 50(a)(6)(A) must be signed by the owner and the owner's spouse, or an attorney-in-fact described by paragraph (2) of this subsection, at the permanent physical address of an office of the lender, an attorney at law, or a title company.

§153.22. Copies of Documents: Section 50(a)(6)(Q)(v)

At closing, the lender must provide the owner with a copy of the final loan application and all executed documents that are signed by the owner at closing in connection with the equity loan.

(1) One copy of these documents may be provided to married owners.

(2) This requirement does not obligate the lender to give the owner copies of documents that were signed by the owner prior to or after closing.

(3) A lender may provide documents electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The Texas Uniform Electronic Transactions Act, Texas Business & Commerce Code, Chapter

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322, and the federal E-Sign Act, 15 U.S.C. §§7001-7006, include requirements for electronic signatures and delivery.

§153.26. Acknowledgment of Fair Market Value: Section 50(a)(6)(Q)(ix)

The owner of the homestead and the lender must sign a written acknowledgment as to the fair market value of the homestead property on the date the extension of credit is made.

(1) A lender may sign the written acknowledgment before or at closing.

(2) An authorized agent may sign the written acknowledgment on behalf of the lender.

§153.41. Refinance of a Debt Secured by a Homestead: Section 50(e)

A refinance of debt secured by a homestead and described by any subsection under Subsections (a)(1)-(a)(5) of Section 50 of the Texas Constitution that includes the advance of additional funds may not be secured by a valid lien against the homestead unless: (1) the refinance of the debt is an extension of credit described by Subsection (a)(6) [~~or (a)(7)~~] of Section 50 of the Texas Constitution; or (2) the advance of all the additional funds is for reasonable costs necessary to refinance such debt or for a purpose described by Subsection (a)(2), (a)(3), or (a)(5) of Section 50 of the Texas Constitution.

(1) Reasonableness and necessity of costs relate to the type and amount of the costs.

(2) In a secondary mortgage loan, reasonable costs are those costs which are

lawful in light of the governing or applicable law that authorizes the assessment of particular costs. In the context of other mortgage loans, reasonable costs are those costs which are lawful in light of other governing or applicable law.

(3) Reasonable and necessary costs to refinance may include reserves or impounds (escrow trust accounts) for taxes and insurance, if the reserves comply with applicable law.

Certification

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

Issued in Austin, Texas on August 7, 2020, and August 21, 2020.

Matthew J. Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
Joint Financial Regulatory Agencies

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B.

**Department of Savings and
Mortgage Lending**

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B. Texas Department of Savings and Mortgage Lending

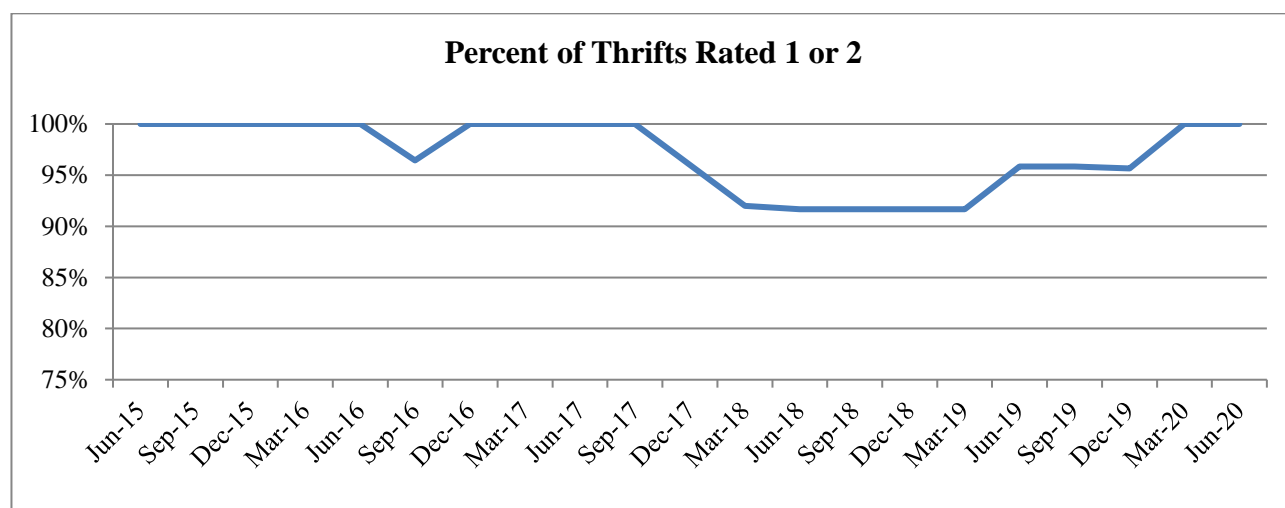
- 1. Industry Status and Departmental Operations: a) State Savings Bank Examinations and Supervision Division Activities; b) Mortgage Licensing Division Activities; c) Mortgage Examinations Division Activities; d) Consumer Complaints Division Activities; e) Administration and Finance Division Activities; 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 June 30, 2020 quarterly financial data on Texas state thrifts had not been finalized by the FDIC prior to the preparation of this report. A detailed report on the second calendar quarter of 2020 will be presented at the next meeting of the Finance Commission.

As of June 30, 2020, there are 24 state savings banks with aggregate assets of \$340.2 billion, exclusive of a conversion subsequent to quarter end. All savings banks are rated a Composite 1 or 2. One formal public enforcement action is outstanding.



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

Savings Bank Charter and Merger Activities:

No merger activity has been received, approved or effective subsequent to the June Finance Commission meeting.

Other activity include:

On July 29, 2020, a branch office application for an office in Englewood, Colorado, was received from TBK Bank, SSB, Dallas, Texas.

On July 30, 2020, a branch office application for an office in Lindale, Texas, was received from Shelby Savings Bank, SSB.

Other supervisory applications are under review.

Thrift Division Activities:

All savings banks examinations are currently conducted off-site due to COVID-19.

Subsequent to the last Finance Commission meeting, Commissioner Jones has completed 10 Commissioner Visits. Due to COVID-19 the visits were conducted remotely.

b) Mortgage Licensing Division Activities

Current Licensing Population:

License Type As of 07/31/2020	Approved		
	Entity (MU1)	Branch (MU3)	MLO (MU4)
<i>Auxiliary</i>	3	n/a	
<i>CUSO</i>	3	2	
<i>FSC</i>	1	n/a	
<i>Independent Contractor</i>	190	n/a	
<i>Mortgage Company</i>	1,620	877	
<i>Mortgage Banker</i>	412	3,227	
<i>Mortgage Servicer</i>	207	n/a	
Totals	2,436	4,106	31,486

The following shows the aggregate Mortgage Call Report information for calendar years 2018, 2019, and 1st Quarter 2020. This information is reported by the licensees.

1 st Quarter CY2020 Mortgage Call Report Data			
	\$ Amount	# Loans	Average \$ Loan
Direct	\$26,769,063,685	111,503	\$240,075
3rd Party	\$4,001,336,158	14,798	\$270,397
CY2019 Mortgage Call Report Data			
	\$ Amount	# Loans	Average \$ Loan
Direct	\$90,324,411,329	392,191	\$230,307
3rd Party	\$12,462,384,057	47,692	\$261,309
CY2018 Mortgage Call Report Data			
	\$ Amount	# Loans	Average \$ Loan
Direct	\$70,730,872,810	330,038	\$214,311
3rd Party	\$8,335,350,406	33,789	\$246,688
Aggregate information as reported by licensees.			

c) Mortgage Examinations Division Activities

During the first three quarters of FY20 a total of 400 examinations were conducted covering 3,789 individual licensees. Due to COVID-19 all examinations were conducted off-site beginning in March 2020.

The number of examinations is slightly higher when compared to the same period in FY19 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 FY20. Seventy-three percent of the entities examined sponsored five or fewer originators and 50% of entities had not previously been examined.

Director Florence was re-elected to the AARMR Board as a Board member-at-large on August 4, 2020.

Mortgage Outreach: On July 8, 2020, Commissioner Jones, Director O'Shields, and Director Florence presented to the North Texas Association of Mortgage Professionals. Due to COVID-19 the presentation was conducted virtually.

Commissioner Jones made a presentation to the Texas Land Developers Association, on July 30, 2020. Due to COVID-19 the presentations was conducted virtually.

On August 4, 2020, Commissioner Jones presented to the Texas Mortgage Bankers Association Board. Due to COVID-19 the presentations was conducted virtually.

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 FY19. Loan servicing complaints accounted 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.

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	

Department of Savings and Mortgage Lending
Actual Performance for Output Measures

Type/Strategy/Measure	2020 Target	2020 Actual	2020 YTD	Percent of Annual Target	
Output Measures-Key					
1-1-1 Thrift Safety and Soundness					
1. Number of State Chartered Savings Institution Examinations Performed					
Quarter 1	21	6	6	28.57%	¹
Quarter 2	21	4	10	47.62%	
Quarter 3	21	6	16	76.19%	
2-1-1 Mortgage Regulation					
1. Number of Applications Processed					
Quarter 1	7,600	2,339	2,339	30.78%	*
The number of applications submitted is outside the Department's control; therefore, the number of applications processed is ultimately affected in the same manner.					
Quarter 2	7,600	2,090	4,429	58.28%	*
The number of applications submitted is outside the Department's control; therefore, the number of applications processed is ultimately affected in the same manner.					
Quarter 3	7,600	3,236	7,665	100.86%	*
The number of applications submitted is outside the Department's control; therefore, the number of applications processed is ultimately affected in the same manner.					
2. Number of Licensees Examined					
Quarter 1	6,600	1,525	1,525	23.11%	
Quarter 2	6,600	1,051	2,576	39.03%	*
During the quarter, 68% of the examinations conducted were of smaller entities, most having fewer than 5 originators being sponsored by the entity. The Department anticipates meeting this target by year end.					
Quarter 3	6,600	1,213	3,789	57.41%	*
During the quarter, 73% of the examinations conducted were of smaller entities, most having fewer than 5 originators being sponsored by the entity. Fifty percent of these entities had not previously been examined.					
3-1-1 Consumer Responsiveness					
1. Number of Complaints Closed					
Quarter 1	1,000	306	306	30.60%	*
Complaint dispositions with a resolution of no jurisdiction or insufficient evidence accounted for 81.4% of the complaints closed. These resolutions are normally less involved and can be closed without an extensive investigation.					
Quarter 2	1,000	296	602	60.20%	*
Complaint dispositions with a resolution of no jurisdiction accounted for 32.7% of the complaints closed. These resolutions are normally less involved and can be closed without an extensive investigation.					
Quarter 3	1,000	353	955	95.50%	*
Complaint dispositions with a resolution of no jurisdiction accounted for 26.3% of the complaints closed. These resolutions are normally less involved and can be closed without an extensive investigation.					

*Varies by 5% or more from target.

¹ The first quarter number has been restated from what was previously reported. The original number reported was 5.

e) Administration and Finance Division Activities

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 under its COVID Plan adhering to all state and applicable local requirements and guidance.

Mortgage and thrift examinations' field staff continue to perform only off-site examinations. Austin Office staff continue to telework with no more than 25% of office staff in the office at any one time and adhering to all necessary precautions and requirements of the Department's COVID Plan.

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.

The management team continues to maintain regular communication with staff and prepares for further COVID related developments.

Accounting, Budget, and Financial Reporting

Staff has closed out the 3rd quarter of FY2020 and has completed the proposed operating budget for FY2021. Preparations for closing out the 4th quarter of FY2020 and preparing for the new fiscal year are underway.

Purchasing and Procurement

Staff has begun preparation for the new fiscal year, working with vendors in obtaining miscellaneous quotes and updated contracts for services.

Audit

Staff responded to information requests related to the internal audit over Records Management area, which was completed in August. The report can be found elsewhere in the package.

Staff has submitted all required materials to the State Office of Risk Management related to the Risk Management Program Review. The review is scheduled for August 18, 2020.

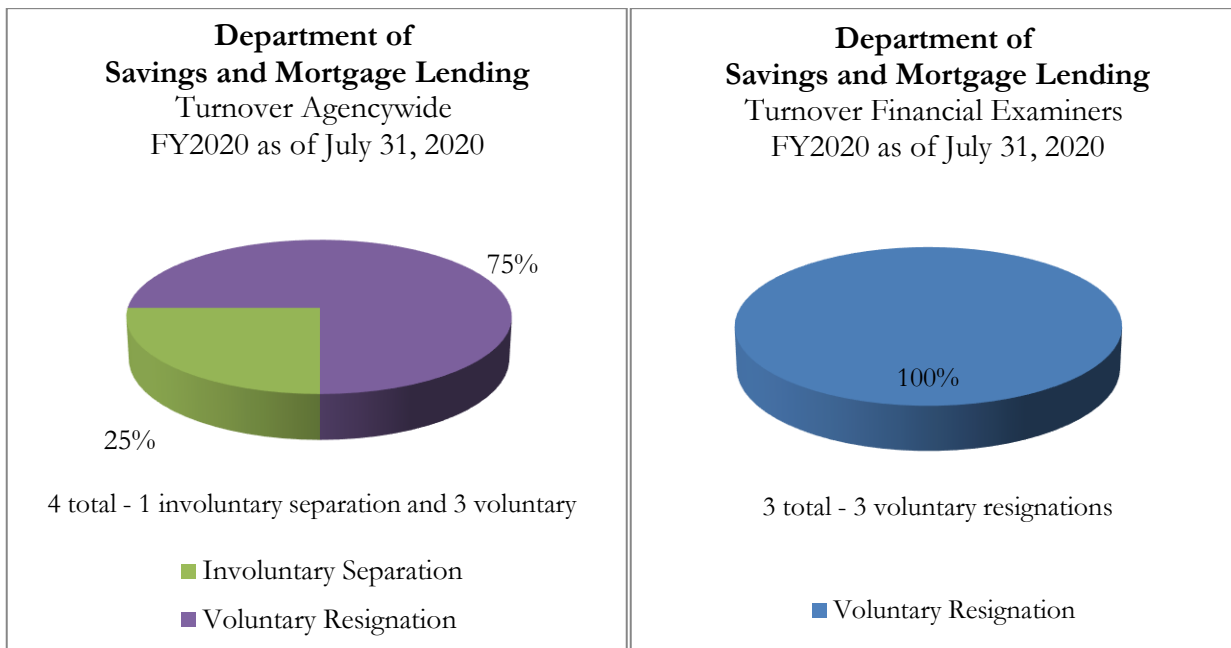
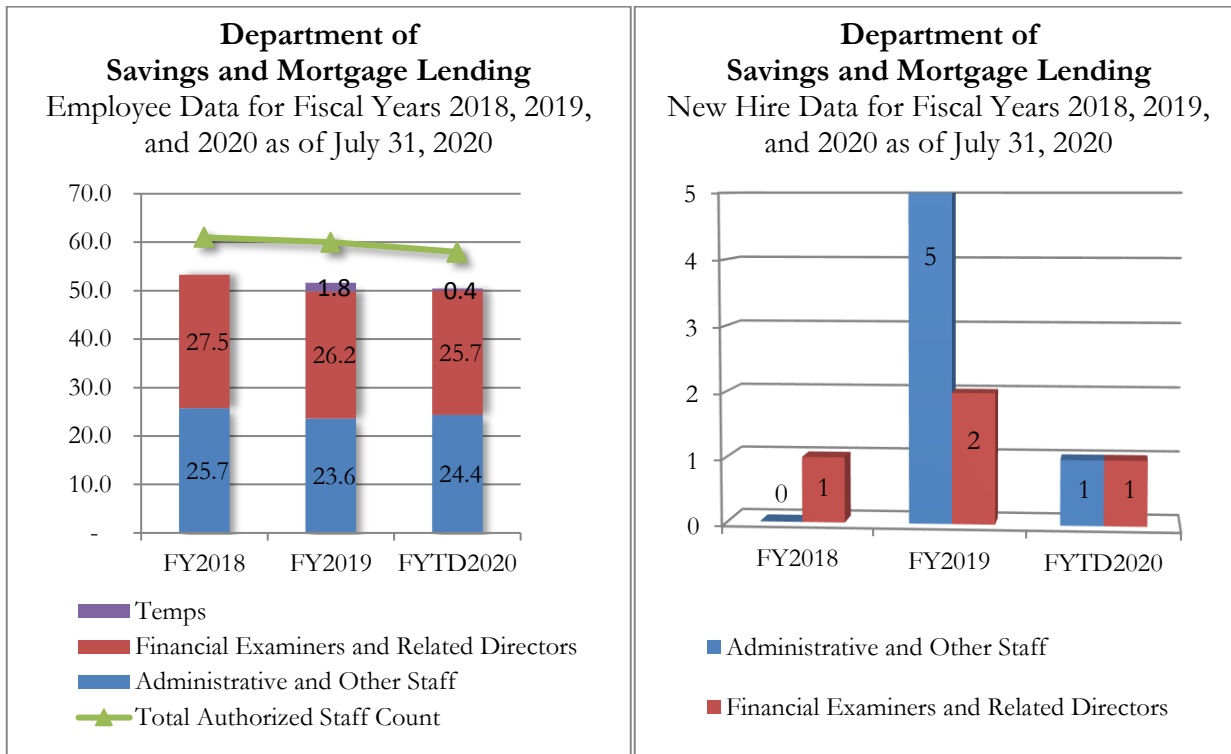
Human Resources

As of August 1, 2020, the Department was staffed at 50 regular full-time and 1 part-time employees. During the month of June, two Financial Examiners-Thrift were hired. The Department had no separations during the months of June and July.

Below is the status of the Department's vacancies:

Vacancy Status	
Financial Examiner V – Thrift – 2	Positions filled
Financial Examiner V – Thrift - 4	Interviewing
Financial Examiner VI – Thrift - 3	Interviewing
Manager-Licensing	Interviewing
Legal Assistant II/III	Interviewing
Financial Examiner IV – Thrift - 2	Collecting and Reviewing Applications
Investigator II/III – Licensing	Collecting and Reviewing Applications

Staffing Charts as of July 31, 2020



f) Legal Division Activities, including Gift Reporting

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 RMLLO 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. Due to COVID the contested hearing was held via video conference on Monday, June 23, 2020. The Department is awaiting issuance of the ALJ's proposal for decision which is typically issued within 60 days of the date of hearing.

Case No. 450 20-1248 Department of Savings and Mortgage Lending v. Lynda Varnell

The Department denied borrower Lynda Varnell's recovery fund claim against PNC Bank/ PNC Financial Services Group, a National Bank, which is not covered under the Recovery Fund. The Department's preliminary determination issued on March 15, 2019, established the claimant was not entitled to relief from the recovery fund. On April 6, 2019, the claimant appealed this decision and the matter was submitted to SOAH. On January 19, 2020, the Department filed its Motion for Summary Disposition in this case, which was granted on February 4, 2020. On March 26, 2020 the ALJ issued her proposal for decision, and on June 22, 2020, the commissioner issued her final order adopting the proposal for decision.

Currently, the Department has a total of 5 contested cases pending at SOAH. The next contested case hearing is presently scheduled for August 26, 2020. Of these pending cases three (3) relate to disputes regarding the applicants' criminal background and two are related to the applicants' ability to demonstrate financial responsibility.

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 (lawsuit within the bankruptcy) 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. There have been numerous recent discovery issues. The state anticipates taking Trien's deposition and several others in August 2020. Docket call is set for December 16, 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, that setting was continued due to the impacts of

Covid-19. The hearing has been reset for August 18, 2020, and will be conducted by videoconference.

Docket No: D-1-GN-20-003919 State of Texas v. Scott Marinelli – The Department’s final order assessing a penalty for unlicensed loan modification / origination activity was 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. On July 29, 2020, the Attorney General’s Bankruptcy and Collection Division filed a lawsuit against Scott Marinelli and shall attempt to perfect service in New Jersey.

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 payments. The Department has requested the Texas Attorney General’s Financial Litigation and Charitable Trusts Division to reduce the agreement to a district court judgment. A lawsuit is expected to be filed in this matter by mid-August.

Enforcement Orders Issued 4th Quarter 06/01/2020 – 7/31/2020

During this time period, the commissioner issued 23 enforcement orders.

In June 2020, as a result of the examination audits of various companies, the Department issued six orders related to violations cited during those company examination audits. Of these orders, four were formal advisory letters and the remaining two orders imposed an administrative penalty for the violations cited during the audit. There have been no appeals of these orders.

In July 2020, as a result of the examination audits of various companies the Department issued 12 orders related to violations cited during those company examination audits. Of these orders, four were formal advisory letters and the remaining eight orders imposed an administrative penalty for the violations cited during the audit. There have been no appeals of these orders.

During June and July 2020, two RMLO license denials were appealed and referred to enforcement. The Department issued one subpoena.

During June and July 2020, As a result of the investigation of complaints submitted, the Department issued five orders related to violations discovered during the complaint investigations. Of these orders, two were Orders to Cease & Desist for unlicensed activity, and the remaining three were Agreed Order(s) to Cease & Desist and imposed an administrative penalty for the violations cited during the investigation. One of these orders has been appealed.

FY 2020 Quarterly Enforcement Order Activity

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

During June and July 2020, the Department received and responded to 21 public information / open records requests. Two have been forwarded to the Attorney General's Office for a ruling on applicable exceptions to disclosure.

Recovery Fund Applications

During June and July 2020, the Department closed two claims to the recovery fund, the orders for which were reported for the Finance Commission's June meeting. Specifically, on June 4, 2020 a claim in the amount of \$12,000.00 was paid to the borrower/consumer concerning the actions of originator Sherman Michael Dodson (NMLS ID 336050) and \$2,270.00 was paid to the borrower/consumer concerning originator the actions of Lucy L. Gonzalez (NMLS ID 621690).

Gifts

No gifts were received during the reporting period.

Legislative Activities

The Department received a Notice of Formal Request for Information from the House Pensions, Investments, and Financial Services Committee requesting written submission of a report relating to the effects of COVID-19. The Department is preparing its response which is due August 28, 2020.

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §76.98, Concerning Annual Fee to do Business.

PURPOSE: 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 existing §76.98, regulated state savings banks are assessed a fee based on their size as reflected by their total assets. The amendments, if adopted, would allow the Department to calculate the annual assessment fee on the basis of a state savings bank's total risk-weighted assets.

RECOMMENDED ACTION: Department staff recommends that certain changes to the text of the amendments as published in the *Texas Register* be made on adoption. The changes include a new subsection (d) establishing maximums to the rates for the assessment fee set by the Finance Commission each year. Specifically, the changes, if adopted, insert a rate schedule in new subsection (d), embedded in the rule as a graphic. The changes, if adopted, would require the Finance Commission, to the extent it later saw fit to exceed such maximum assessment rates, to initiate a rulemaking action to amend the rule and replace the rate schedule embedded in the rule. The Department recommends that the Commission approve adoption of the amended rule, with such changes to the proposed text as published in the July 3, 2020 issue of the *Texas Register*.

RECOMMENDED MOTION: I move that we adopt the amendments to 7 TAC §76.98, including the changes recommended by Department staff to the proposed text as previously published in the *Texas Register*.

ADOPTION OF AMENDMENTS

7 TAC §76.98

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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 of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts amendments to Title 7, Texas Administrative Code (TAC), Part 4, Chapter 76, Subchapter F, §76.98. The rule is adopted with changes to the text published in the July 3, 2020 issue of the *Texas Register* (45 TexReg 4499) and is republished to reflect such changes. The changes regulate no new parties and affect no new subjects of regulation. As a result, the rule will not be republished as a proposed rule for comment.

EXPLANATION OF AND JUSTIFICATION FOR THE RULE

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 amendments 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. The department anticipates that administering and enforcing the amended rule will result in reduced assessment fees for regulated state savings banks overall. Existing §76.98 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 §76.98; 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

ADOPTION OF AMENDMENTS

7 TAC §76.98

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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 more equitable and better reflect the true cost of regulation. The amendments to §76.98 effectuate such change.

SUMMARY OF PUBLIC COMMENTS

Publication of the department's proposal to amend 7 TAC §76.98 recited a deadline of 30 days to receive public comments, or August 2, 2020. A public hearing in accordance with Government Code §2001.029 was not required. The Department received one comment made on behalf of the Texas Bankers Association (TBA) indicating it was in favor of the amendments as initially proposed.

STATUTORY AUTHORITY

Amended 7 TAC §76.98 is adopted 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.

Amended 7 TAC §76.98 is further adopted 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.

The adoption of amended 7 TAC §76.98 affects the statutes administered and enforced by the department's commissioner with respect to state savings banks, contained in Finance Code, Subtitle C.

<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 (c) of this section in accordance with the rate requirements [or assessment and examination fees as are] set by the Finance Commission of Texas, and subject to the maximum assessment rates established by subsection (d) of this section. The department will maintain on its website information concerning current rate requirements.

(b) Payment of Assessment. The annual assessment shall be paid in quarterly installments. Upon receipt of a written invoice from the department, the savings bank shall pay the assessment fee by electronic/ACH payment, or by another

method, if directed to do so by the department.

(c) [(b)] Determination of assessment. The assessment [Annual fees and assessments] shall be determined [established] based on either [upon] the total assets, or total risk-weighted assets of the savings bank, whichever results in the lowest fee being assessed. 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.

(d) Maximum Assessment Rates. The assessment rates set by the Finance Commission of Texas shall not exceed the maximum rates established in the following rate schedule:

Figure: 7 TAC §76.98(d).

within the state agency's legal authority to adopt.

Iain A. Berry
Associate General Counsel
Department of Savings and Mortgage
Lending

Certification

The agency certifies that legal counsel has reviewed the proposal and found it to be

DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

MAXIMUM ANNUAL ASSESSMENT RATE SCHEDULE

Assets Over	Not Over	Amount	Plus	Over
\$0	\$2 million	\$5,548	0.000000000	\$0
2 million	20 million	5,548	0.000219058	2 million
20 million	100 million	9,491	0.000175245	20 million
100 million	200 million	23,510	0.000113940	100 million
200 million	1 billion	34,900	0.000096381	200 million
1 billion	2 billion	112,004	0.000078857	1 billion
2 billion	6 billion	190,861	0.000070094	2 billion
6 billion	20 billion	471,237	0.000059643	6 billion
20 billion	40 billion	1,306,239	0.000044928	20 billion
40 billion	250 billion	2,204,799	0.000035103	40 billion
250 billion		9,576,429	0.000034751	250 billion

3. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC Chapter 79, Residential Mortgage Loan Servicers, Chapter 80, Texas Residential Mortgage Loan Companies, and Chapter 81, Mortgage Bankers and Residential Mortgage Loan Originators, 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 on 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, Residential Mortgage Loan Servicers.

Chapter 80, Texas Residential Mortgage Loan Companies.

Chapter 81, Mortgage Bankers and Residential Mortgage Loan Originators.

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 §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 and replacing existing language to improve clarity and readability; removing unnecessary provisions; updating terminology; and eliminating a form published by rule.

RECOMMENDED ACTION: The Department recommends that the Finance 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
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**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 existing rules at 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."

**EXPLANATION OF AND
JUSTIFICATION FOR THE RULES**

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 and replacing existing language to improve clarity and readability; removing unnecessary provisions; 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 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 defined term for the entirety of Finance Code, Chapter 158, is amended to make it a definition for the two-word phrase "the Act," thereby organizing 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 a single 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 proposed rules are 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 administering or enforcing 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
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substantial economic costs anticipated to persons who are 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 §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.

<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 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" or "NMLS" 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 of the Department's regulatory oversight on all correspondence provided to the borrower,

PROPOSED AMENDMENTS
7 TAC §79.1 AND §79.2
PAGE 4 OF 4

including all periodic statements. The disclosure must 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 loans secured by real estate not located in Texas must not include the written disclosure referenced by this section. ~~[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

5. 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, §80.300, 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; 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 Finance 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, 80.300 and 80.301 in the *Texas Register*.

PROPOSED AMENDMENTS
7 TAC §§80.1, 80.2, 80.200, 80.202 - 80.206, 80.300 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, 80.300 and 80.301.

The Finance Commission (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes amendments to existing rules at 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, §80.300 and §80.301. This proposal and the rules as amended by this proposal are referred to collectively as the "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

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 7 TAC 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. 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,"

PROPOSED AMENDMENTS
7 TAC §§80.1, 80.2, 80.200, 80.202 - 80.206, 80.300 AND 80.301
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"mortgage company," "person," and "social media site."

Required Disclosures and Advertising Changes

The proposed rules, if adopted, would make changes to the disclosures a mortgage company 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). 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 (b), 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

PROPOSED AMENDMENTS
7 TAC §§80.1, 80.2, 80.200, 80.202 - 80.206, 80.300 AND 80.301
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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 subparagraphs under existing subsection (b), paragraph (3). The provisions of existing subsection (b), paragraph (3), subparagraph (D), requiring a mortgage company to respond accurately to a question about the scope and nature of its 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 his or her role as originator (a violation), and conversely, not derived from his or her 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; 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 licensed by the Department as a mortgage

PROPOSED AMENDMENTS
7 TAC §§80.1, 80.2, 80.200, 80.202 - 80.206, 80.300 AND 80.301
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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 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 renumbered accordingly. A new definition for 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 (12), and the existing paragraph renumbered accordingly. 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 156.002(14) is inserted at paragraph (20). (Definition of a Residential Mortgage Loan Originator Changes.) The existing definition for "company" located at paragraph (4) is eliminated and its subject matter replaced with a new definition for "mortgage company" at paragraph (10) which adopts by reference the statutory definition for residential mortgage company in Chapter 156, and the existing paragraphs are renumbered accordingly. The existing definition for "criminal offense" located at paragraph (6) is eliminated. The existing definition for "one-to-four family residential real property" located at paragraph (9) is eliminated and its subject matter replaced with two new definitions for "dwelling" and "residential real estate" inserted at paragraphs

(8) and (18), respectively, and the existing paragraphs are renumbered accordingly. A new definition for "mortgage applicant" is inserted at paragraph (9), replacing the existing definition for "one-to-four family residential real property." A new definition for "person" is inserted at paragraph (14). A new definition for "social media site" is inserted at paragraph (19). (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 renumbered and amended to: eliminate capitalization of the term; add a statutory reference which uses the term; and eliminate use of the phrase "headquarters location" and, instead, replace it 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 renumbered and amended to clarify that the commissioner is that individual appointed under Finance Code, Chapter 13. (Other Modernization and Update Changes.)

The proposed rules amend Subchapter C, Duties and Responsibilities.

The proposed rules amend §80.200, Required Disclosures. 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 dictate how a mortgage company displays such notice in its physical office, are eliminated. Subsection (b) is further amended to expressly require a mortgage company to

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post the disclosure on its social media sites. 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 to clarify 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.) 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 7 TAC §80.204. (Books and Recordkeeping Changes.) Subsection (a) is amended to eliminate language imposing the requirement on residential mortgage loan originators directly as being duplicative of similar provisions in 7 TAC §81.200. Subsection (a) is further amended to insert an introductory heading and use updated terminology. Subsection (b) is amended to add an introductory heading and use updated terminology. The new provisions of subsection (c) include an introductory heading. (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), paragraph (3), establishing a violation for disparaging the source of mortgage loan funds, 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 are 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 (not the mortgage company) to respond accurately to a question about the scope and nature of his or her 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

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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.) 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 (a) is further amended to include an introductory heading. Subsection (b), paragraph (2), subparagraphs (A) - (F) are amended to insert citations to federal law referenced in subsection (b). Subsection (b), paragraph (3), subparagraph (C) is eliminated and restated as new subsection (c), including with clearer language and an introductory heading. Subsection (b) is also amended to include an introductory heading. New subsection (d) includes an introductory heading. (Other Modernization and Update Changes.)

The proposed rules amend §80.203, Advertising. 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 its sponsored originator, if applicable. 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, including physical printed handouts and messages delivered through a social media site. Subsection (c) is further amended to allow certain items already exempt from the rule's existing 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.) Subsection (a) is restated to improve clarity. Subsection (b) is restated to improve clarity and use updated terminology. New subsection (d) includes an introductory heading. (Other Modernization and Update 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 heading. Subsection (a) is further amended to clarify that the rule applies to licensed mortgage companies. Subsection (b) is amended to use 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

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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) are amended to use updated terminology. Subsection (e) is amended to insert an introductory heading, use updated terminology, 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 heading and use updated terminology. The existing provisions of subsection (g) are 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 heading and use updated terminology. The existing provisions of subsection (h), are restated in subsection (g) for additional clarity. (Other Modernization and Update Changes.)

The proposed rules amend §80.205, Mortgage Call Reports. Subsection (a) is amended to use updated terminology. Subsection (b) is amended to use updated terminology. Subsection (c) is amended to clarify the rule's application to originators sponsored by a mortgage company, and to use updated terminology. Subsection (d) is amended to use 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.) A new subsection (b) is proposed to cross reference 7 TAC §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.) Subsection (a) is further amended to remove capitalization of the term physical office, which has not been reduced to a defined term elsewhere in the rules. Proposed new subsection (b), which replaces the existing subsection (b), includes an introductory heading. 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 §81.300, Examinations. Subsection (a) is amended to use updated terminology. Subsection (b) is amended to insert an introductory heading, and is restated with updated terminology. Subsection (c) is amended to use updated terminology. Subsection (c), paragraph (1) is amended to clarify that the scope of examination will include whether the originators are appropriately sponsored by the mortgage company, and whether all branch offices have been registered with

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NMLS. Subsection (d) is amended to use updated terminology. Subsection (e) is amended to use updated terminology. Subsection (f) is amended to insert an introductory heading. Subsection (g) is amended to insert an introductory heading and is restated to clarify that failure to cooperate with the examination will result in disciplinary action broadly and is not limited to an administrative penalty. Subsection (h) is amended to insert an introductory heading, and is restated for clarity, including using updated terminology. (Other Modernization and Update Changes.)

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 a proposed new subsection (c) and further amended to use updated terminology. (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 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.

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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 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

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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 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 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.

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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 [~~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 must 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(c). 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.

(2) [(4)] "Branch office," as used in Tex. Fin. Code § 156.2041(a)(4), ["Branch Office"] means any office that is separate and distinct from the mortgage company's principal place of business of record with NMLS

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~~[headquarters location]~~, whether located in Texas or not, which conducts mortgage business on residential real estate located in ~~[the state of]~~ Texas.

(3) ~~[(2)]~~ "Commissioner" means the Savings and Mortgage Lending Commissioner appointed under Finance Code, Chapter 13.

(4) ~~[(3)]~~ "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) "Company" means, for purposes of this chapter, a residential mortgage loan company, as that term is defined in Finance Code, §156.002.]~~

(5) "Compensation" includes salaries, bonuses, commissions, and any financial or similar incentive.

(6) ~~[(5)]~~ "Control person ~~[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 ~~[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~~[is presumed to control that company]~~.

~~[(6) "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~~

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~~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.

(9) "Mortgage applicant" has the meaning assigned by Tex. Fin. Code § 156.002 and includes a person who contacts a mortgage company or its sponsored originator in response to a solicitation to obtain a residential mortgage loan, and 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 has submitted financial information constituting an application, as provided by paragraph (1) of this section.

~~[(9) One to four family 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.

(11) [(8)] "Nationwide Mortgage Licensing System and Registry" or "NMLS" has the meaning assigned by Tex. Fin. Code §156.002 [Finance Code §180.002(12)].

(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.

(13) "Originator" has the meaning assigned by Tex. Fin. Code §156.002 in defining "residential mortgage loan originator." Paragraphs (12) and (20) of this section do not affect the applicability of such statutory definition. Individuals who are specifically excluded under such statutory definition, as provided by Tex. Fin. Code §180.002(19)(B), are excluded under this definition and for purposes of this chapter. Persons who are exempt from licensure as provided by Tex. Fin. Code §180.003 are exempt for purposes

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of this chapter, except as otherwise provided by Tex. Fin. Code §180.051.

(14) "Person" means an individual, corporation, company, limited liability company, partnership or association.

(15) [(40)] "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 [are] conducted.

(16) [(44)] "Qualifying Individual" or "Qualified Individual" has the meaning assigned by Tex. Fin. Code [shall have the same meaning as that provided in Finance Code,] §156.002 in defining "qualifying individual." [-] Additionally, the license held by the Qualifying Individual [qualifying individual] must be held in a status[-] which authorizes them to conduct regulated activities, and the individual [is] sponsored of record in NMLS by the mortgage company for which they are the Qualifying Individual [qualifying individual].

(17) [(42)] "Residential Mortgage Loan" has the meaning assigned by Tex. Fin. Code [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 dwelling [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.

(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] must provide [shall include] the following notice[~~—~~ Figure: 7 TAC §80.200(a),] to a residential mortgage loan

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applicant with an initial application for a residential mortgage loan, and the mortgage company must maintain in its records evidence of the timely delivery of such disclosure:

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 must ~~[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 must 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 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.

(d) The determination of what constitutes a mortgage application for purposes of triggering the notice required by subsection (a) of this section will 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.

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§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 or its sponsored originator constitutes fraudulent and dishonest dealings for purposes of Tex. Fin. Code § 156.303(a)(3) ~~[No company or originator may]~~:

(1) knowingly misrepresenting the mortgage company's or its sponsored originator's ~~[misrepresent his or her]~~ relationship to a mortgage applicant or any other party to an actual or proposed residential mortgage loan transaction;

(2) knowingly misrepresenting ~~[misrepresent]~~ 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) knowingly 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 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, or making ~~[broker, arrange, or~~

~~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) ~~[(8)]~~ altering ~~[alter]~~ any document produced or issued by the Department, unless otherwise permitted by statute or a rule of the Department.

~~[(7) induce or attempt to induce a party to a contract to breach that contract so the person may make a residential mortgage loan.]~~

(8) ~~[(9)]~~ engaging ~~[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 or its sponsored originator 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,

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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 its sponsored 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 mortgage company or sponsored 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.]~~

(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 company's services and any costs.

(c) Related Transactions. A mortgage company 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 the mortgage company or sponsored

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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 and its sponsored originator must 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) is 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 advertises [~~Licensees who advertise~~] 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 must [~~shall~~] conform to the following requirements:

(1) A mortgage company or sponsored originator may [~~An advertisement shall be made~~] only advertise for such products and terms as are actually available and, if [~~their~~] availability is subject to any material requirements or limitations, the advertisement must [~~shall~~] specify those requirements or limitations.

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(2) Except as provided in subsections ~~[subsection]~~ (c) and (d) of this section the advertisement must ~~[shall]~~ contain:

(A) the name of the mortgage company ~~[originator]~~ followed by the mortgage company's 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.]~~

(3) An advertisement must ~~[shall]~~ not make any statement or omit relevant information ~~[to make any statement]~~ the result of which is to present a misleading or deceptive representation ~~[impression]~~ to consumers.

(4) An advertisement must ~~[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 "flyers," 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 do ~~[shall]~~ not apply to:

(1) any advertisement which indirectly promotes a residential mortgage loan ~~[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 cups ~~[a coffee mug]~~, pens or pencils ~~[pencil]~~, shirts or other clothing (including company uniforms and sponsored youth league jerseys) ~~[jersey]~~, 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 do not apply to such advertisements. An advertisement posted, promoted, disseminated, distributed, delivered, or otherwise made by an originators sponsored by the mortgage company will 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

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discharge their responsibilities under Finance Code, Chapter 156 and this chapter, each mortgage company or sponsored originator must [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 Department [department], the following books and records:

(1) Residential Mortgage Loan File. For each residential mortgage loan application received, the mortgage company must create and maintain a residential mortgage loan file containing, [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;

(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 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. 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.);

(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.);

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(E) ~~[(C)]~~ a description of the disposition of the application for a residential mortgage loan;

(F) ~~[(D)]~~ the identity of the person who initially funded and/or acquired the residential mortgage loan ~~[and information as to how to contact them]~~; and

(G) ~~[(E)]~~ the full name of the originator and his or her NMLS ~~[their Nationwide Mortgage Licensing System and Registry]~~ 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 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 the physical office and conduct business of the mortgage company at such office (e.g., a lease agreement or deed).

(c) A mortgage company and/or sponsored originator must ~~[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.

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(d) A mortgage company and/or sponsored originator must [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 must [shall] be maintained in good order and must [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 must [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 After Dissolution. Within 10 days of terminating operations, a mortgage company must provide the Department with written notice of 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 must provide the Department with written notice within 10 days after receiving such records [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 NMLS [the Nationwide Mortgage Licensing System and Registry].

(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 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,

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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 ~~[(1)]~~ 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.

(c) [(b)] The Physical Office [of a licensee] need not be the location where [at which such person's] required records are maintained; however, [-but] the location where [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 a mortgage company or sponsored ~~[an]~~ originator as the Commissioner deems necessary.

(b) Notice of Examination. Except when the Department [department] determines that giving advance notice would impair the examination, the Department [department] will give the qualifying individual of the mortgage company advance notice of each examination. Such notice will be sent to the qualifying individual's mailing address [of record] or email [e-mail] address of record [on file] with NMLS [the department] and will specify the date on which the Department's [department's] examiners are scheduled to begin the examination. Failure [of the qualifying individual] 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 mortgage company or sponsored originator must make [qualifying individual should have] available to facilitate the examination [for the examiner to review].

(c) Examinations will be conducted to determine compliance with Finance Code,

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Chapter 156 and this chapter, and will specifically address whether:

(1) All persons conducting residential mortgage loan origination activities are properly licensed and sponsored by the mortgage company in NMLS;

(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 §80.204 of this title [~~chapter~~];

(4) Legal and regulatory requirements applicable to the mortgage company and its originators [~~licensees~~] are being properly followed; and

(5) Other matters as the Commissioner may deem necessary or advisable to carry out the purposes of Finance Code, Chapter 156.

(d) The examiners [~~examiner~~] will review a sample of residential mortgage loan files identified by the examiners [~~examiner~~] and randomly selected from the mortgage company's [~~residential~~] mortgage transaction log. The examiner may expand the number of files to be reviewed if, in his or her discretion, conditions warrant.

(e) The examiners [~~examiner~~] may require a mortgage company [~~or an originator~~], at its [~~their~~] own cost, to make copies of loan files or such other books and records as the examiners deem [~~examiner—deems~~] appropriate for the preparation of or inclusion in the examination report.

(f) Confidentiality. The work__papers, compilations, findings, reports, summaries,

and other materials, in whatever form, relating to an examination conducted under this section, will [~~shall~~] be maintained as confidential except as required or expressly permitted by law.

(g) Failure to Cooperate; Disciplinary Action. Failure of a mortgage company or a [~~an~~] sponsored originator to cooperate with the examination or failure to grant the examiners [~~examiner~~] access to books, records, documents, operations, and facilities may result in disciplinary action [~~will subject the company or originator to enforcement actions by the Commissioner,~~] including, but not limited to, imposition of an administrative penalty [~~penalties~~].

(h) Reimbursement for Costs. When the Department [~~department~~] must travel outside of Texas [~~out-of-state~~] to conduct an examination of a mortgage company or a [~~an~~] sponsored originator because the required records are maintained at a location outside of Texas [~~the state~~], the mortgage company or sponsored originator will be required to reimburse the Department [~~department~~] for the actual costs incurred by [~~cost~~] the Department [~~department—incur~~] 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.

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

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

(c) [~~d~~] Reasonable cause will be deemed to exist if the Commissioner has received information from a source the Commissioner

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[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) 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.]~~

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

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

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

~~(h) The Commissioner may, after giving notice and an opportunity for hearing, impose against any person who violates a cease and desist order, an administrative penalty in an amount not to exceed \$1,000 for each day on which the violation is continuing. In addition to any other remedy provided for by law, the Commissioner may institute in District Court for Travis County an action for injunctive relief and/or to collect the administrative penalty. A bond is not required of the Commissioner with respect to any request for injunctive relief under this subsection.~~

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

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~~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

6. 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; 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 existing rules at 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."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

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 persons regulated under Chapter 157. The proposed rules were identified during the department's periodic review of 7 TAC 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

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The proposed rules, if adopted, would make changes to the disclosures a mortgage banker or originator is required to make, as provided 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 7 TAC §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). 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 that a fee payable to the mortgage banker or

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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 subparagraphs under existing subsection (b), paragraph (3). The provisions of existing subsection (d), requiring an originator to respond accurately to a question about the scope and nature of his or her services, 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 reasonable questions from a mortgage applicant. New provisions are inserted in subsection (d) 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 his or her role as originator (a violation), and conversely, not derived from his or her 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; 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. The implied subsection (a) is amended to eliminate language conflating licensed and registered status concerning application of 7 TAC Chapter 81. (Other Modernization and Update Changes.)

The proposed rules amend §81.2, Definitions. A new definition for "application" is inserted at paragraph (1) and the existing paragraphs are 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

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renumbered accordingly. A new definition for 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). The existing definition for "residential mortgage loan originator" located at paragraph (8) is eliminated and its subject matter replaced by a new definition for "originator," 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 inserted at paragraph (7). A new definition for "mortgage applicant," which adopts by reference the statutory definition assigned by Tex. Fin. Code § 156.002, is inserted at paragraph (8), replacing the existing definition for "residential mortgage loan originator". A new definition for "mortgage company," which adopts by reference the statutory definition for residential mortgage company in Chapter 157, is inserted 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 inserted 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 renumbered and amended to clarify that the commissioner

is that individual appointed under Finance Code, Chapter 13. (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. (Other Modernization and Update Changes.)

The proposed rules amend Subchapter C, Duties and Responsibilities.

The proposed rules amend §81.200, 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 7 TAC §80.200(a), 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 7 TAC §80.200(b), 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 the rule on its social media sites 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 provisions are inserted in subsection (e) requiring an

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originator to disclose their NMLS identification number on correspondence sent to a mortgage applicant. A new subsection (f) is inserted to clarify 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 7 TAC §81.204, is eliminated and addressed with new language inserted in subsection (a). Subsection (b) is further amended to clarify that an originator sponsored by a mortgage company must maintain records reflecting delivery of the disclosures required the rule, as provided by existing 7 TAC §81.204. (Books and Recordkeeping Changes.) Subsection (a) is further amended to insert an introductory heading. Subsection (b) is further amended to insert an introductory heading. Subsection (c) is further amended to insert an introductory heading. Subsection (d) is further amended to insert an introductory heading. New subsection (e) includes an introductory heading. (Other Modernization and Update 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),

paragraph (3), establishing a violation for disparaging the source of mortgage loan funds, 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 are 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 originator 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 reasonable questions from a mortgage applicant. New provisions are inserted in subsection (d) 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.) Subsection (a), paragraph (5) is amended to

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clarify that the federal Real Estate Settlement Procedures Act is implemented by the CFPB in Regulation X. Subsection (a) is further amended to insert an introductory heading. Subsection (b), paragraph (2), subparagraphs (A) - (F) are amended to insert citations to federal law referenced in subsection (b). Subsection (b) is further amended to insert an introductory heading. 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 subsection (c), paragraph (3). Subsection (c) is further amended to insert an introductory heading. Subsection (d) is amended to insert an introductory heading. (Other Modernization and Update Changes.)

The proposed rules amend §81.203, Advertising. 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. 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.) Subsection (a) is restated to clarify that the requirements of the rule apply to mortgage bankers. Subsection (b) is amended to use updated terminology. Subsection (c) is amended to use updated terminology. New subsection (d) includes an introductory heading. (Other Modernization and Update Changes.)

The proposed rules amend §81.204, Books and Records. Subsection (b), paragraph (1), subparagraph (C) is amended to require an originator sponsored by a mortgage company to maintain a copy of the disclosure required of mortgage companies by Tex. Fin. Code §156.004 and 7 TAC §80.200. 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 heading and use updated terminology. 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) is further amended to use updated terminology, and an introductory heading is inserted at subsection (b), paragraph (1). Subsection (c) is amended

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to use updated terminology. Subsection (d) is amended to use updated terminology. Subsection (e) is amended to insert an introductory heading, 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 heading. Subsection (g) is amended to clarify that an originator sponsored by a mortgage company meets applicable recordkeeping requirements if the mortgage company maintains such records on their behalf. Subsection (h) is amended to insert an introductory heading, and restated to improve clarity. (Other Modernization and Update Changes.)

The proposed rules amend §81.205, Mortgage Call Reports. Subsection (a) is amended to use updated terminology. Subsection (b) is amended to use updated terminology. Subsection (c) is amended to clarify the rule's application to originators sponsored by a mortgage banker, and to use updated terminology. Subsection (d) is amended to use 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 §81.206, 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.) Having eliminated subsection (b), subsection (a) is amended and converted to an implied subsection (a). Subsection (a) is further amended to remove capitalization of the term physical office, which has not been reduced to a defined term elsewhere in the rules. (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 use updated terminology. Subsection (b) is amended to insert an introductory heading, and is restated with updated terminology. Subsection (c) is amended to use updated terminology. Subsection (c), paragraph (1) is amended to clarify that the scope of examination will include whether the originators are appropriately sponsored by the examined entity, and whether all branch offices have been registered with NMLS. Subsection (d) is amended to use updated terminology. Subsection (e) is amended to use updated terminology. Subsection (f) is amended to insert an introductory heading. Subsection (g) is amended to insert an introductory heading and is restated to clarify that failure to cooperate with the examination will result in disciplinary action broadly and is not limited to an administrative penalty. Subsection (h) is amended to insert an introductory heading, and is restated for clarity, including using updated terminology. (Other Modernization and Update Changes.)

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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 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

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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 §81.204 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 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 requiring that additional information be included on the required mortgage transaction log. The proposed rules limit an existing rule

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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.

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, Chapter 156 and Chapter 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

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bankers under Finance Code, Chapter 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, Chapter 157 and Chapter 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, 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.

(2) [~~(4)~~] "Commissioner" means the Savings and Mortgage Lending Commissioner appointed under Finance Code, Chapter 13.

(3) [~~(2)~~] "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 157.

(4) [~~(3)~~] "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.

(5) "Compensation" includes salaries, bonuses, commissions, and any financial or similar incentive.

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(6) ~~{(4)}~~ Department" means the Department of Savings and Mortgage Lending.

(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.

(8) "Mortgage applicant" means an applicant for a residential mortgage loan or a person who is solicited (or contacts a mortgage banker or originator in response to a solicitation) 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 has submitted financial information constituting an application, as provided by paragraph (1) of this section.

~~{(8) Residential mortgage loan originator" has the meaning assigned in Finance Code, §180.002.}~~

(9) ~~{(5)}~~ "Mortgage banker" has the meaning assigned by Tex. Fin. Code ~~[shall have the same meaning as that provided in Finance 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" or "NMLS" 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 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." Paragraphs (12) and (19) of this section do not affect the applicability of such statutory definition. Individuals who are specifically excluded under such statutory definition, as provided by Tex. Fin. Code §180.002(19)(B), are excluded under this definition and for purposes of this chapter. Persons who are exempt from licensure as provided by Tex. Fin. Code §180.003 are exempt for purposes of this chapter, except as

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otherwise provided by Tex. Fin. Code §180.051.

(14) ~~[(6)]~~ "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 [are]~~ 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) ~~[(7)]~~ "Residential mortgage loan" has the meaning assigned by Tex. Fin. Code §157.002 and ~~[shall have the 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 dwelling ~~[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.

(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.

§81.3. Interpretations.

In order to provide clarification as to how Finance Code, Chapter 157 and Chapter 180 will be construed and implemented, the Commissioner may, from time to time, publish written interpretations of Finance Code, Chapter 157 and Chapter 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 must provide ~~[shall include]~~ the following notice~~[- Figure: 7 TAC §81.200(a)-]~~ to a residential mortgage loan applicant with an initial application for a

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residential mortgage loan, and the mortgage banker and its sponsored originator must 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 must 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 must 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 must 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 must 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 must 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 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 will 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

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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 misrepresenting the mortgage banker's or originator's [misrepresent 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 misrepresenting [misrepresent] 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) knowingly 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 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, or making [broker, arrange, or make] a residential mortgage loan in which the 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 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) [(8)] altering [alter] any document produced or issued by the Department, unless otherwise permitted by statute or a rule of the Department.

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~~[(7) induce or attempt to induce a party to a contract to breach that contract so the person may make a residential mortgage loan.]~~

(8) ~~[(9)]~~ engaging ~~[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, Chapter 157 or Chapter 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 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's 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.

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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 must 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, Chapter 1101 may rebate his or her fees legitimately earned and derived from his or her 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) is 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

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~~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 banker or originator that advertises ~~[Licensees who advertise]~~ 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 must ~~[shall]~~ conform to the following requirements:

(1) A mortgage banker or originator may ~~[An advertisement shall be made]~~ only advertise for such products and terms as are actually available and, if ~~[their]~~ availability is subject to any material requirements or limitations, the advertisement must ~~[shall]~~ specify those requirements or limitations. ~~[;]~~

(2) Except as provided in subsections ~~[subsection]~~ (c) and (d) of this section, the advertisement must ~~[shall]~~ contain:

(A) the name of the mortgage banker or mortgage company followed by its 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 must ~~[shall]~~ not make any statement or omit relevant information ~~[any statement]~~ the result of which is to present a misleading or deceptive representation ~~[impression]~~ to consumers. ~~[; and]~~

(4) An advertisement must ~~[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 banker or originator. This includes "flyers," 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 do ~~[shall]~~ not apply to:

(1) any advertisement which indirectly promotes a residential mortgage loan ~~[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 cups~~ ~~[a coffee mug]~~, pens or pencils ~~[pencil]~~, shirts or other clothing (including company uniforms and sponsored youth league jerseys) ~~[jersey]~~, or other promotional items of nominal value; ~~[or]~~

(2) any rate sheet, pricing sheet, or similar

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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's 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 do not apply to such advertisements. An advertisement posted, promoted, disseminated, distributed, delivered, or otherwise made by an originator sponsored by the mortgage banker will 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 must ~~[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. For each residential mortgage loan application received, the originator must create and maintain a [A] residential mortgage loan file containing, [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;

(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. Code [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

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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 ~~[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.);

(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.);

(E) ~~[(C)]~~ a description of the disposition of the application for a residential mortgage loan;

(F) ~~[(D)]~~ the identity of the person who initially funded and/or acquired the residential mortgage loan ~~[and information as to how to contact them]~~; and

~~(G) [(E)]~~ the full name of the originator and his or her NMLS ~~[their Nationwide Mortgage Licensing System and Registry]~~ 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;

(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;

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(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 must ~~[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 must ~~[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 must ~~[shall]~~ be maintained in good order and must ~~[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 must ~~[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 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 must ~~[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 his or her former originator copies of records relating to residential mortgage loans handled by such former originator.

(h) Records Retention After Dissolution. Within 10 days of terminating operations, ~~[Upon the termination of operations as]~~ a mortgage banker or ~~[an]~~ originator must ~~provide the Department with written notice of [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 must ~~provide the Department with written notice within 10 days after receiving of such records [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 must ~~[shall]~~ file a mortgage call report on a quarterly basis. The filing deadlines are set by NMLS ~~[the Nationwide Mortgage Licensing System and Registry].~~

(2) A call report is required to be filed for

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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~~;~~ including, but not limited to, imposition ~~[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 ~~[(4)]~~ staff member present to assist customers during the hours in which the physical office ~~[Physical Office]~~ 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

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deems necessary.

(b) Notice of Examination. Except when the Department ~~[department]~~ determines that giving advance notice would impair the examination, the Department ~~[department]~~ 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 mailing ~~[contact person's]~~ address ~~[of record]~~ or email ~~[e-mail]~~ address of record ~~[on file]~~ with NMLS ~~[the department]~~ and will specify the date on which the Department's ~~[department'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 must make ~~[mortgage banker should have]~~ available to facilitate the examination ~~[for the examiner to review]~~.

(c) Examinations will be conducted to determine compliance with Finance Code, Chapter 157 and Chapter 180, and this chapter, and ~~[The examination]~~ will specifically address whether:

(1) All persons conducting residential mortgage loan origination activities ~~[activity]~~ are properly licensed and sponsored in NMLS;

(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, Chapter 157 and Chapter 180.

(d) The examiners ~~[examiner]~~ will review a sample of residential mortgage loan files identified by the examiners ~~[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 his or her discretion, conditions warrant.

(e) The examiners ~~[examiner]~~ may require an originator, at his or her own cost, to make copies of loan files or such other books and records as the examiners deem ~~[examiner deems]~~ appropriate for the preparation of or inclusion in the examination report.

(f) Confidentiality. The work papers, compilations, findings, reports, summaries, and other materials, in whatever form, relating to an examination conducted under this section, will ~~[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 ~~[examiner]~~ access to books, records, documents, operations, and facilities may result in disciplinary action ~~[will subject the originator and any mortgage banker employer to enforcement actions by the Commissioner]~~, including, but not limited to, imposition of an administrative penalty ~~[penalties]~~.

PROPOSED AMENDMENTS
7 TAC §§81.1 - 81.3, 81.200, 81.202 - 80.206, §81.300 AND 81.301
PAGE 24 OF 24

(h) Reimbursement for Costs. When the Department ~~[department]~~ must travel outside of Texas ~~[out-of-state]~~ to conduct an examination of an originator~~[;]~~ because the ~~[that originator maintains]~~ required records are maintained at a location outside of Texas ~~[the state]~~, the originator will be required to reimburse the Department ~~[department]~~ for the actual costs incurred by ~~[cost]~~ the Department ~~[department—incur]~~ 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) - (b) (No change.)

(c) ~~[(d)]~~ Reasonable cause will be deemed to exist if the Commissioner has received information from a source the Commissioner ~~[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.

~~[(e) 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.]~~

within the state agency's legal authority to adopt.

Iain A. Berry
Associate General Counsel
Department of Savings and Mortgage
Lending

Certification

The agency certifies that legal counsel has reviewed the proposal and found it to be

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C.

**Office of Consumer Credit
Commissioner**

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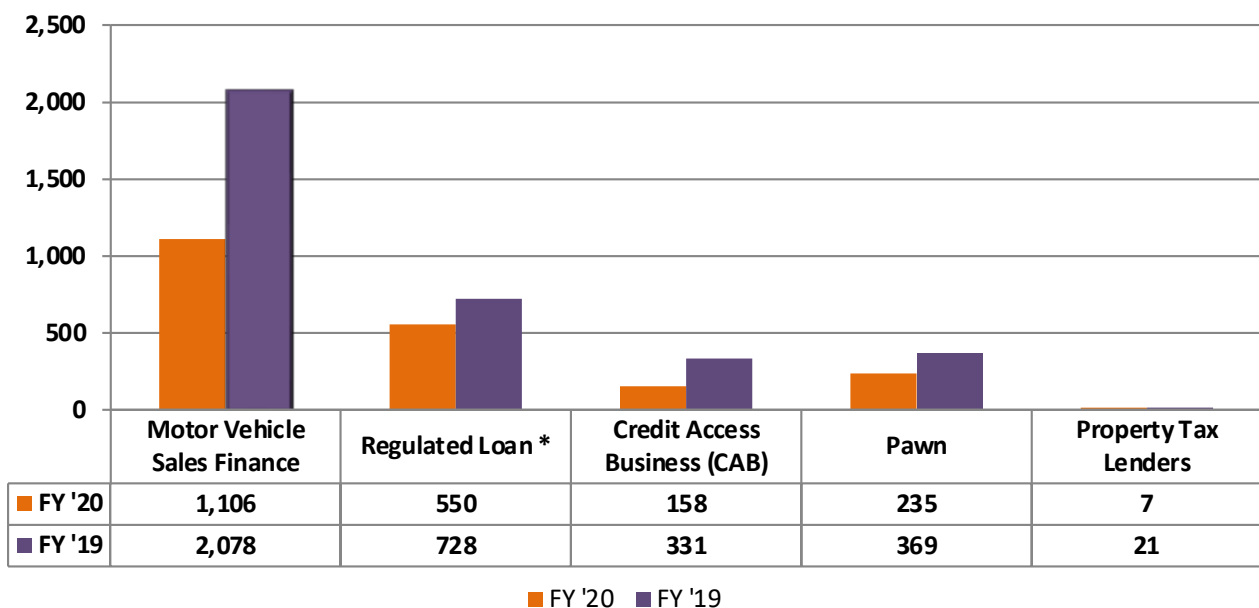
Consumer Protection and Consumer Assistance Report

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.

Field based examinations of franchised motor vehicle dealers resumed the week of June 15, 2020. As of July 31, 2020, the agency has completed the fieldwork for a large Credit Access Business (CAB). The examination report will be issued by August 31, 2020. Another large CAB examination is in progress and being conducted entirely on a remote basis. This CAB exam will finalize before December 31, 2020.

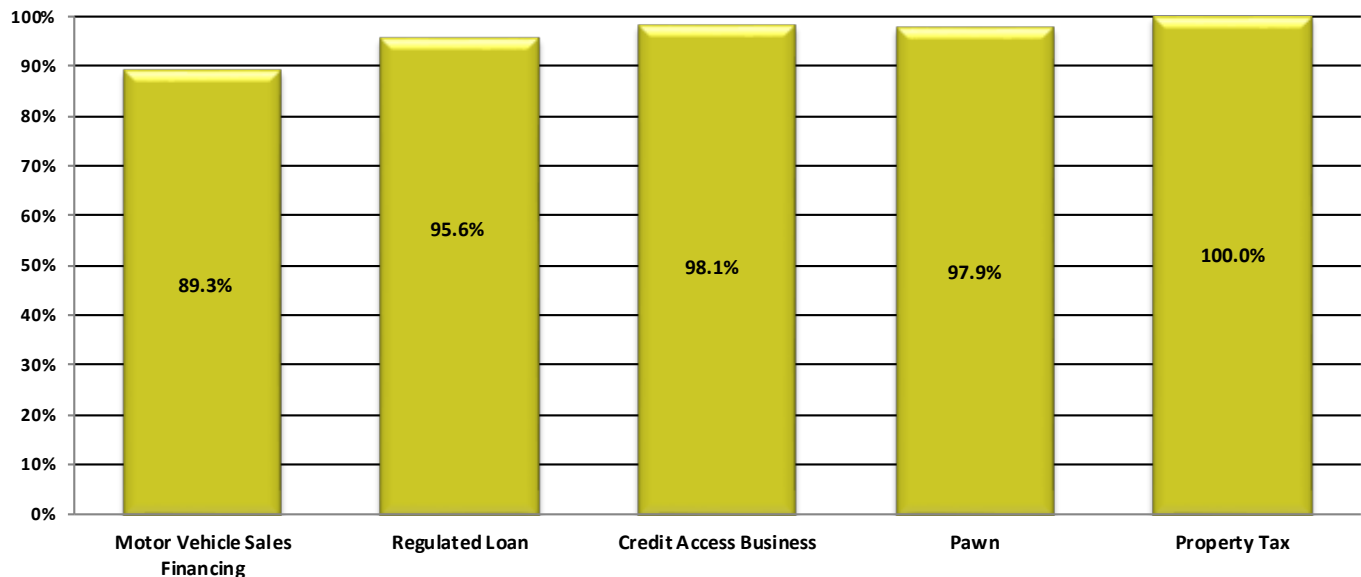
The agency commenced an examination of a large consumer finance entity on August 3, 2020. This examination is utilizing concepts developed during the rollout of the remote exam program in April and lessons learned from the resumption of motor vehicle sales finance examinations. The examination program for this entity will involve a hybrid approach using dedicated company locations and leveraging company technology to examine different offices across the state. The hybrid approach was developed in conjunction with the company's compliance management team and a dedicated OCCC single point of contact. The agency is exploring this approach with other consumer finance lenders; however, it is largely dependent on the technology and process infrastructure of the individual companies. A number of smaller loan companies are less able to support onsite examinations or remote examinations. For these companies, the agency is developing alternative protocols for examinations.

Examinations Conducted: Sept - Jun Fiscal Year Comparison

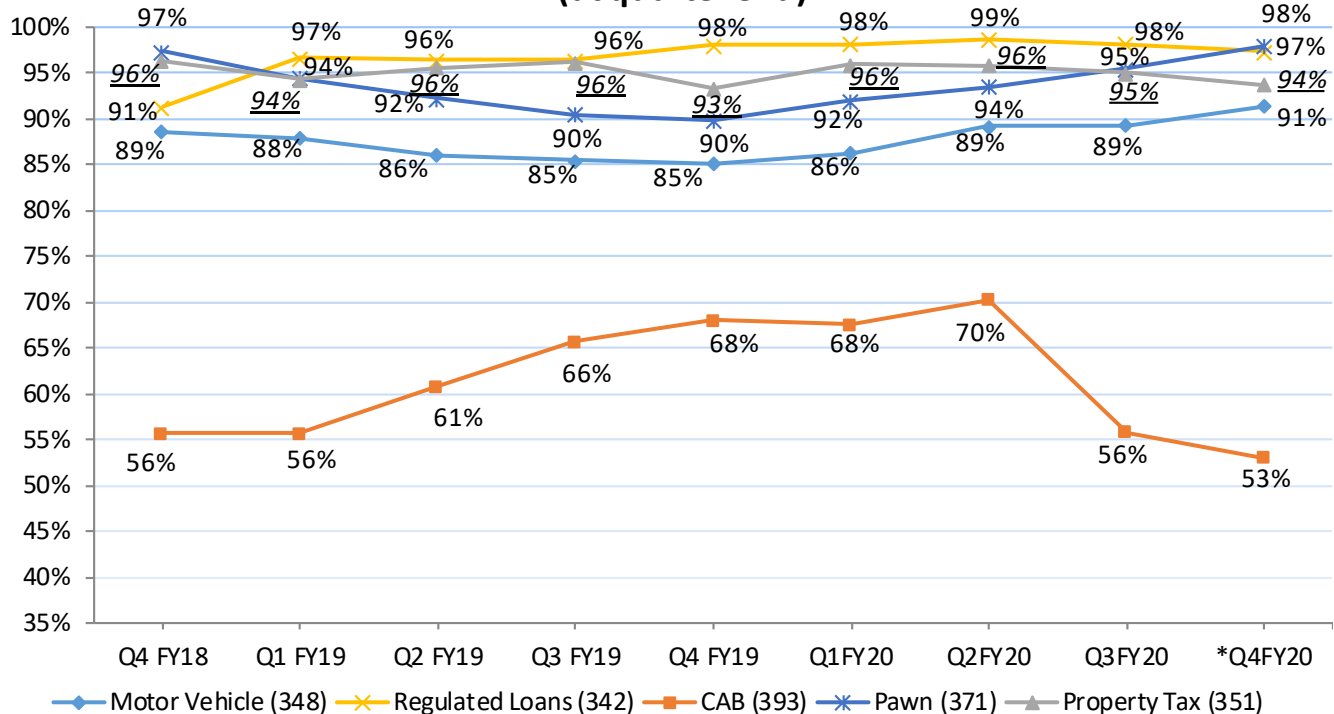


The second chart below denotes the acceptable level of compliance on a trailing 12-month basis through the end of June 2020. The decrease in the 12-month acceptable level of compliance for Credit Access Business was primarily attributable to the following factors: (1) a large group of compliant exams were no longer included in the 12-month window; (2) a large enterprise-level non-complaint 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 - Jun 2020)

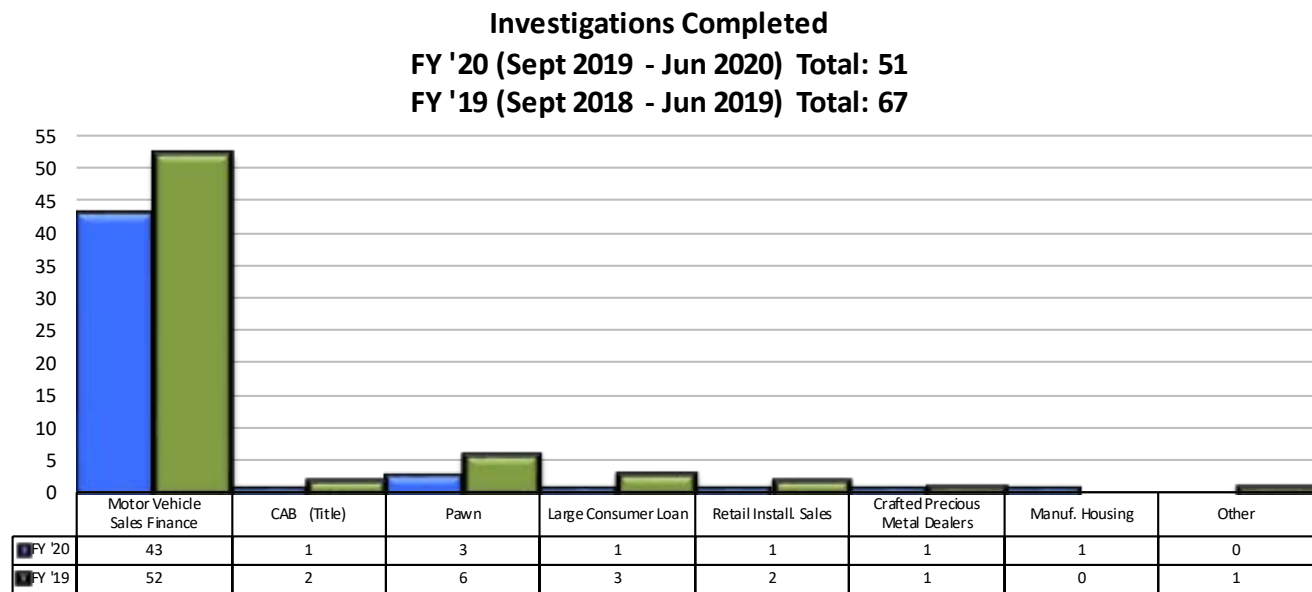


Acceptable Compliance Levels - Trailing 12 Months (at quarter end)



Investigations

For FY 2020, the agency completed 51 investigations, 63.8% of the FY 2020 goal of 80. Motor Vehicle Sales Finance was the largest category comprising 84.3% of the overall number of investigations.

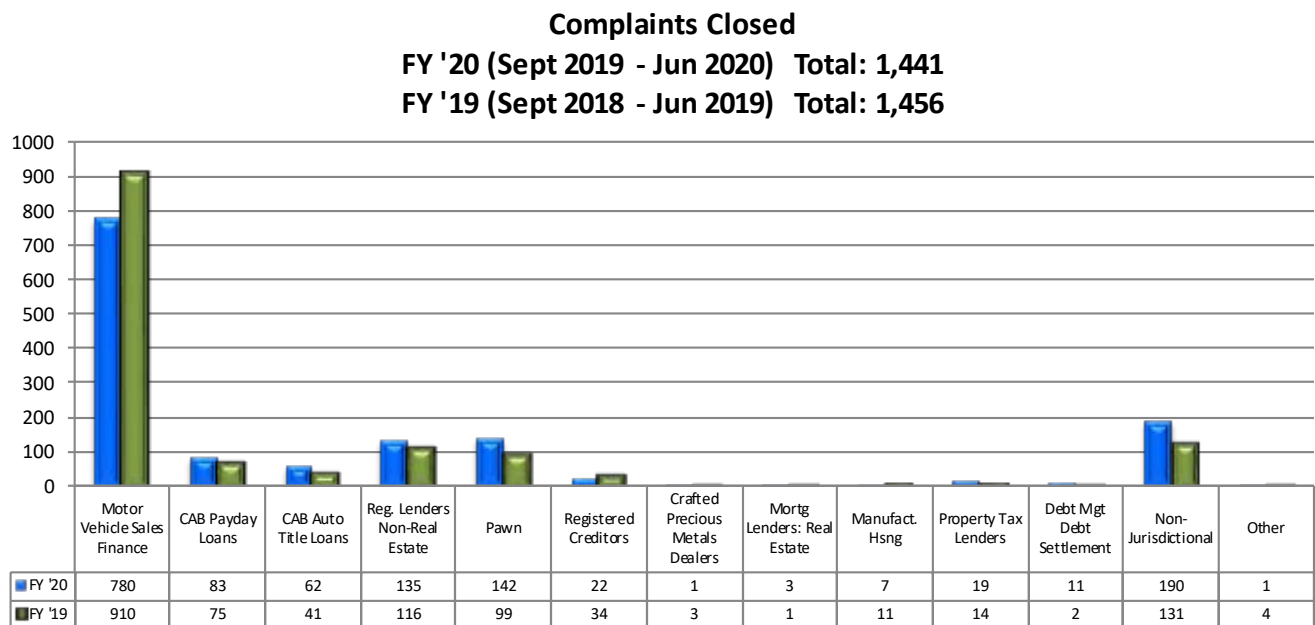


Consumer Assistance

For this period, 1,456 complaints were closed of which 190 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 53.6%. The second largest number of complaints came from CAB complaints at 10.0% collectively; separately, these are 5.7% for payday loans and 4.3% for title loans. The third largest category was from Pawn at 9.8%. The fourth largest category was Regulated Lenders Non-Real Estate at 9.3%.



Fiscal Year '20: 3rd Quarter Complaint Data by Source (Table 1), Subject (Table 2), and Disposition (Table 3) – Sept 1, 2019 – May 31, 2020

Table 1

Source of Complaints	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Consumer	372	367	403	-
Business	2	5	5	-
Law Enforcement	0	0	0	-
State or Federal Agency	29	44	54	-
OCCC	1	1	1	-
Whistleblower	0	1	1	-
Other	0	0	11	-
Total	404	418	475	-

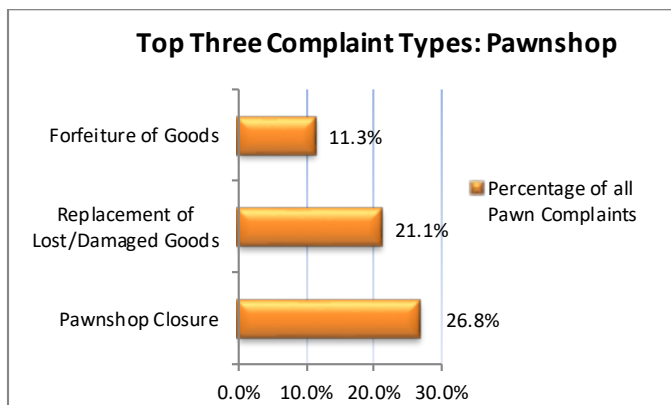
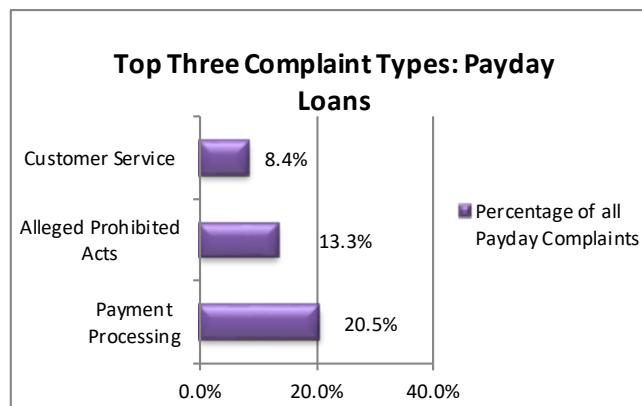
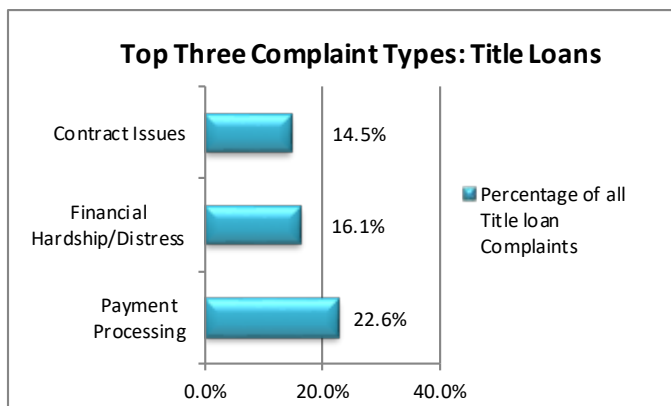
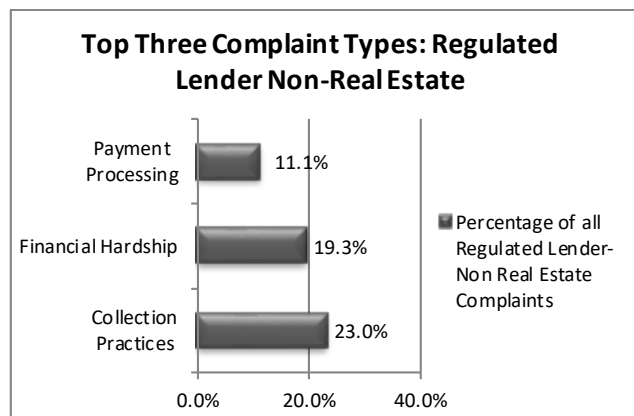
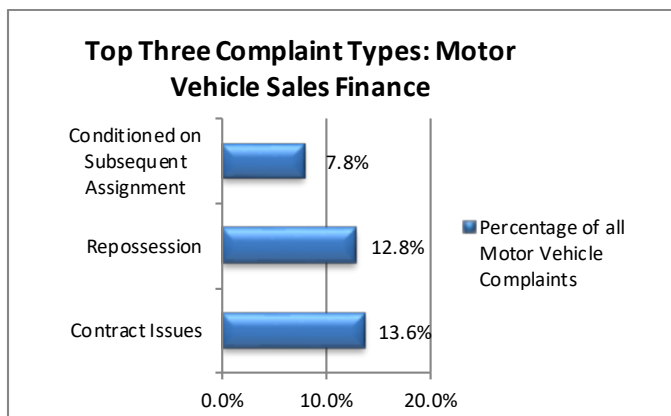
Table 2

Subjects	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Motor Vehicle Sales Finance	208	226	247	-
CAB Payday Loans	15	23	38	-
CAB Auto Title Loans	17	20	21	-
Reg. Lenders Non-Real Estate	41	44	35	-
Pawn	34	32	64	-
Registered Creditors	6	5	9	-
Crafted Precious Metals Dealers	1	0	0	-
Mortgage Lenders: Real Estate	0	2	0	-
Manufactured. Housing	2	2	1	-
Property Tax Lenders	3	6	8	-
Debt Management Debt Settlement	0	5	5	-
Non-Jurisdictional	76	52	46	-
Refund Anticipation Loan	0	0	1	-
Other	1	1	0	-
Total	404	418	475	-

Table 3

Disposition:	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Closed to Investigation	7	11	7	-
Closed to Legal	0	0	1	-
Closed-Action Taken	147	183	238	-
Closed-No Violation	86	97	91	-
Closed-Administratively	88	75	92	-
Closed-Non Jurisdictional	76	52	46	-
Total	404	418	475	-

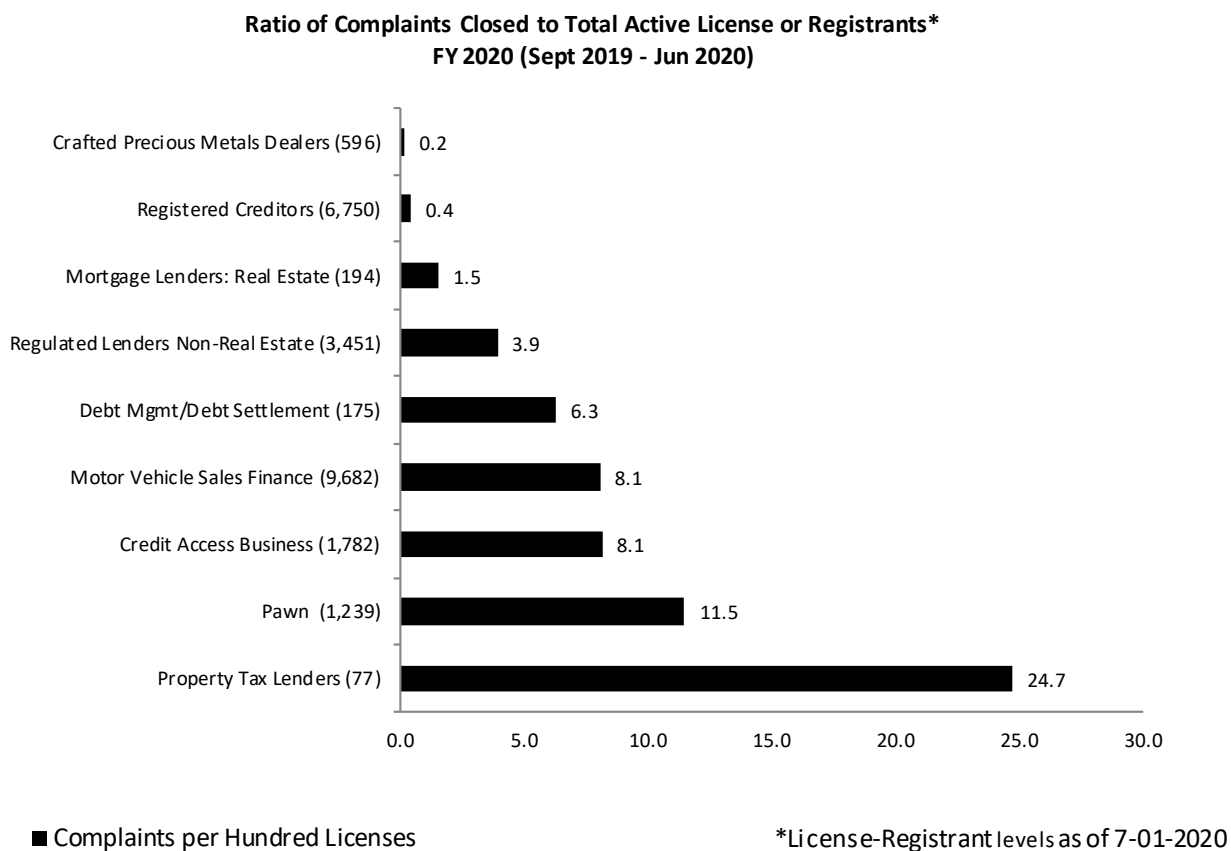
Each of the following charts represent the three top complaint areas per license type:



Consumer Assistance Activities Information by Quarter

Production Targets and Priorities	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Percentage Written Complaints Closed within 90 days	84.2%	80.2%	88.9%	-
Average Number of Days to Close a Complaint	45.4	50.4	42.3	-
Number of Complaints Closed	404	418	475	-

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 Pawn as the second highest, with Credit Access Business and Motor Vehicle Sales Finance tied in the third position.



CAB Reporting Update

Selected statistics from Q1 (Jan-March) of the last six years are compared in the chart below. All data reports through March 31, 2020 are available on the OCCC website. Only a limited number of days from Q1 was affected by Covid-19 but all of Q2 was impacted. Preliminary Q2 data reports indicate total transaction volume (loans and refinances) decreased by 43% in Q2 compared to Q1 of 2020.

Repossession numbers continued to trend upwards in Q1 coinciding with the move to longer payment terms. Installment loans typically have more affordable payments and default can happen after a few successful payments. The repossessions occurring on motor vehicle title loans in Q1 are the highest yet reported for a single quarter.

Data Highlights (All Loan Types) Q1 Comparison		2020	2019	2018	2017	2016	2015
Number of new payday loans		461,052	426,745	453,457	495,132	489,990	493,761
Number of new auto title loans		57,608	67,594	65,167	56,503	58,492	68,531
Percentage of payday loans due in multiple installments		60%	54%	45%	42%	39%	35%
Percentage of auto title loans due in multiple installments		53%	53%	55%	43%	41%	13%
Number of vehicles repossessed under all auto title loans		13,113	11,438	8,256	7,623	8,315	9,722
Total number of locations reporting activity		1,637	1,745	1,841	1,837	2,502	2,613

Payday Loans Q1		Single Installment			Multiple Installment		
		2020	2019	2018	2020	2019	2018
Number of consumers obtaining loans		127,507	133,058	176,333	247,039	211,603	180,724
Number of new loans		184,050	195,470	247,719	277,002	231,275	205,738
Number of total refinances ¹		249,810	263,957	444,954	71,813	87,927	53,428
Average loan amount		\$455	\$468	\$486	\$627	\$650	\$608
Average fee per \$100 borrowed		\$23	\$23	\$24	\$143	\$133	\$145
Average original term (in days)		21	21	22	153	143	149
Average Fee Converted to a Daily Rate ²		1.09%	1.08%	1.11%	0.94%	0.93%	0.98%

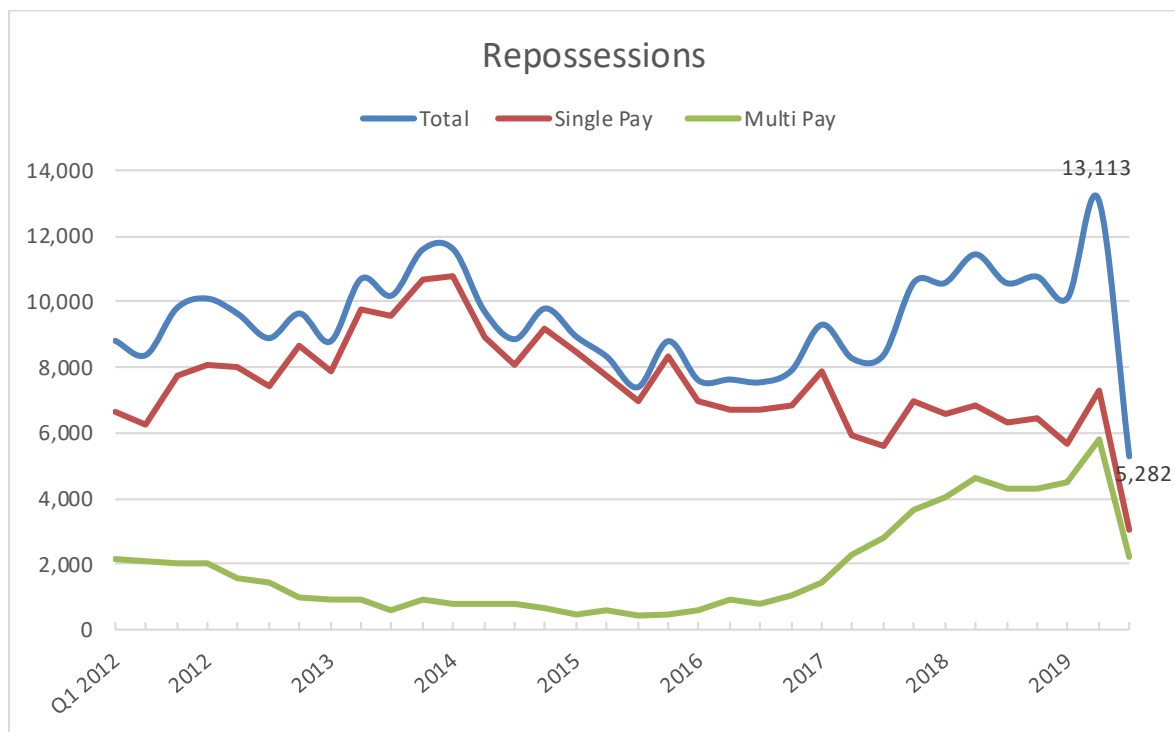
Title Loans Q1		Single Installment			Multiple Installment		
		2020	2019	2018	2020	2019	2018
Number of consumers obtaining loans		21,856	26,277	25,795	28,770	34,208	33,587
Number of new loans		27,120	31,457	29,557	30,488	36,137	35,610
Number of total refinances ¹		150,283	155,119	154,782	36,485	37,929	29,251
Average loan amount		\$1,476	\$1,518	\$1,323	\$1,254	\$1,279	\$1,139
Average fee per \$100 borrowed		\$15	\$15	\$16	\$112	\$118	\$117
Average original term (in days)		30	30	30	157	155	154
Average Fee Converted to a Daily Rate ²		0.50%	0.52%	0.54%	0.71%	0.76%	0.76%

1 Refinance activity represents all renewals, including the renewals of loans that originated in prior quarters.

2 Based on averages, per dollar borrowed a consumer would pay this percentage per day. The APR could be approximated by multiplying this rate by 365; however, it could be significantly higher if the multiple installment loans reduce principal with each payment and the total fees remain the same.

Additional Repossession Information

Quarterly report CAB data capturing repossessions began Jan 1, 2012. Q1 of 2020 surpassed Q4 of 2014 for the highest single total for repossessions. A survey of companies and analysis of preliminary Q2 data found that the increase in repossessions in Q1 was due to certain companies postponing repossessions scheduled for December of 2019 and was not Covid-19 related. Preliminary data filed for Q2 of 2020 shows repossessions in the months of April – June dropped 60% from the previous quarter.





Licensing Report- August 2020

Mirand Diamond, Director of Licensing & Finance

Renewals

Pawn shop and pawn employee renewal has concluded. Approximately 97% of shops renewed and 21% of pawn employees renewed which is mostly due to the transition to optional pawn employee licensing and pawn shop employee turnover. It was anticipated that the pawn employee renewal rate would drop this year and adjustments were made.

The department sent out postcards and multiple emails in June and July to all motor vehicle sales finance licensees reminding them that renewal is now in October. The department continues to prepare for renewal.

Applications Processing

The team continues to maintain all aspects of departmental functionality while working remotely.

The volume of incoming applications remains near 140 monthly on average. Additionally business license application processing and productivity remain high.

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

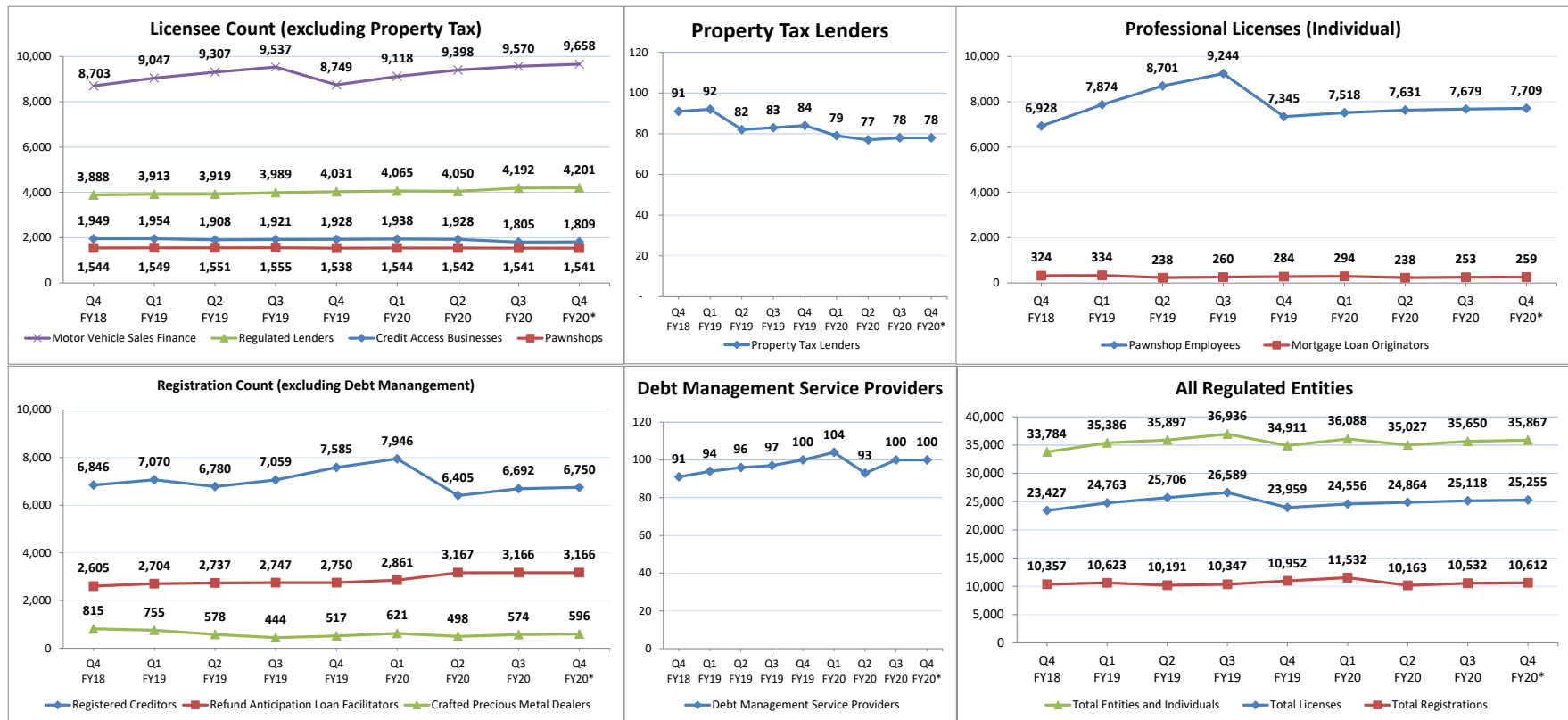
Other Updates

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



*Data as of 7/1/2020



ADMINISTRATION REPORT

COMMUNICATIONS

Although in-person presentations to regulatory entities and other regulatory groups have been suspended due to COVID-19, agency staff conducted two stakeholder meetings by webinar as follows:

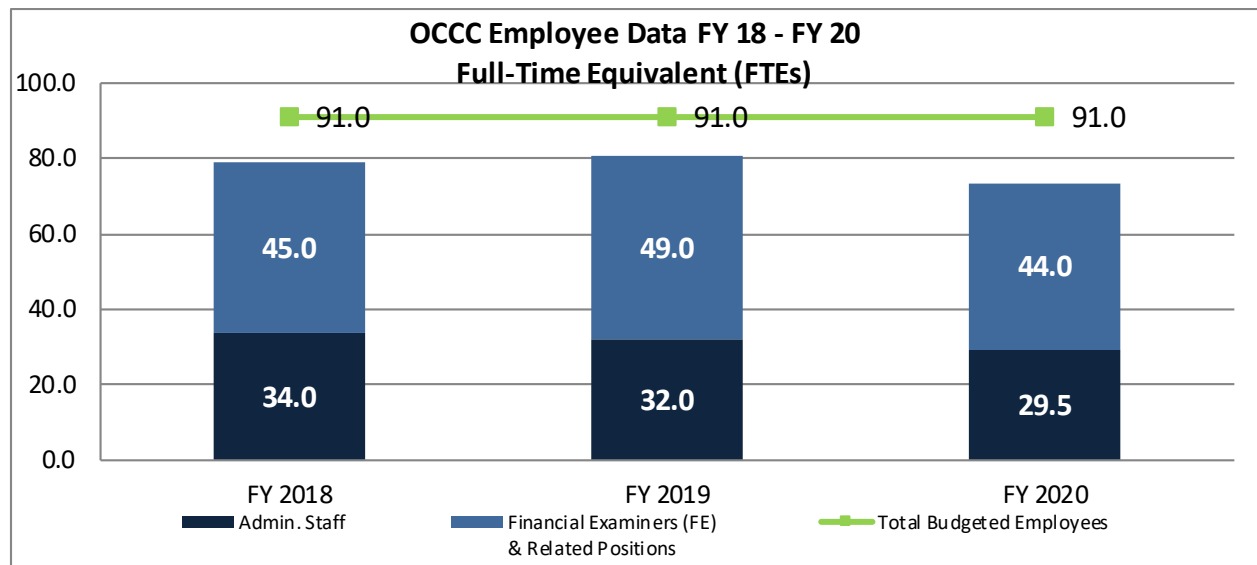
- On July 8, 2020, Deputy General Matthew Nance conducted an Administrative Rule Review Stakeholder Meeting by webinar.
- On July 15, 2020, Deputy General Matthew Nance, in conjunction with the other financial regulatory agencies, conducted a Home Equity Lending Rule Review Stakeholder Meeting by webinar.

HUMAN RESOURCES

In this reporting period covering activities from end of May to the end of July 2020, the OCCC is staffed with a total of 73.5 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	

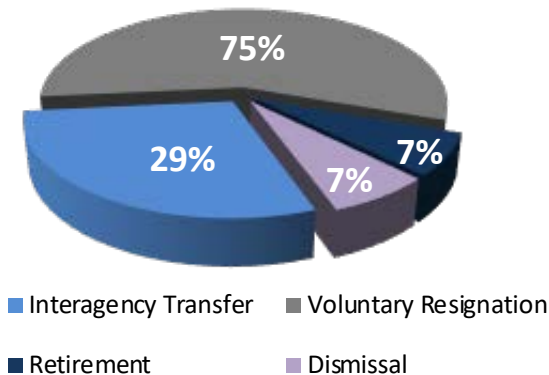
The following chart compares administrative staff vs. financial examiners (FEs) for the last three fiscal years.



The turnover rate as of August 2020 is 17.7%, and the chart below represents FY20 data.

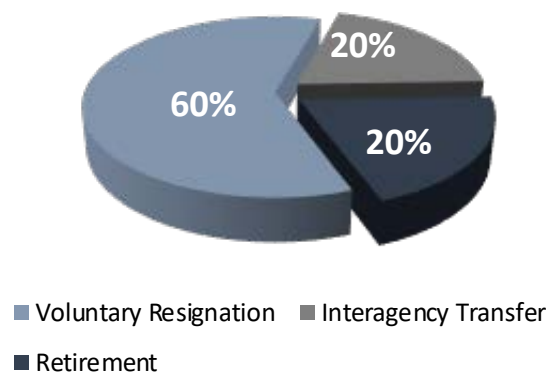
OCCC Turnover Categories FY 20 - All Employees (09/01/19 - 7/31/2020)

14 total - 4 Interagency Transfer, 8 Voluntary Resignations, 1 Retirement and 1 Dismissal.



OCCC Turnover FY 20 - FE Series (09/01/19 - 7/31/2020)

5 total - 3 Voluntary Resignation, 1 Interagency Transfer and 1 Retirement.



The Employee Policies & Procedures Manual Version 2.04 was updated in June 2020 with the implementation of recommendations from the SORM-Risk Management Program Review. A comprehensive Risk, Safety and Health Reference Guide have been added to the OCCC Employee Website along with a new Records Management Policy. Standards of Conduct and Separation from Employment Policies were updated to incorporate legal citations.

FINANCIAL EDUCATION

The Financial Education Department has continued the agency's financial education partnership with Employees Retirement System (ERS) and has three webinars scheduled during the month of August. Eight hundred twenty one combined participants are currently registered for the three webinars. Additionally, the agency has partnered with Texas Department of Transportation (TXDOT) and also has three webinars scheduled during the month of August. The first TXDOT webinar is open for registration and currently has 521 individuals registered to attend.

The webinars cover budgeting, credit, money management, building wealth, setting goals, and planning for retirement. Additionally, the agency received a request from the Texas Attorney General's Office to participate in a virtual wellness fair in the fall to provide financial education information.

Agency staff conducted a webinar with TFEF grant award recipients to review reporting submission requirements on June 24, 2020. The first TFEF 2020-2021 cycle semi-annual reports were due on July 31, 2020. The agency is currently reviewing these reports and reimbursement requests. Additionally, the agency is compiling TFEF 2018-2019 longitudinal reports, which will be available at the October Finance Commission Meeting.



Accounting Report- August 2020

Mirand Diamond, Director of Licensing & Finance

Staffing

Mirand Diamond has been providing oversight and direction for the OCCC's accounting activities on an interim basis since the departure of the former manager. As of August 1, 2020, she assumed these responsibilities on a permanent basis. She will be working to assess workload distribution and fill vacant positions in the coming months. In the meantime, the department is relying on another staff member who is temporarily assigned part-time to augment the accounting staff and will also use temporary contract services to ensure the department's responsibilities are met.

Budget

The department completed and submitted the budget for FY 2021.

Annual Financial Report

The department has begun working on certain components in preparation for the Annual Financial Report. Many tasks and items are scheduled for completion in August in preparation for early deadlines in September.

Centralized Accounting and Payroll/Personnel System (CAPPS) Transition

The OCCC received the initial communication regarding transition to CAPPS. The OCCC is responding to a scoping document questionnaire for CAPPS deployment to assist in initial configuration of the application and early determination of potential scoping issues. Additionally, the agency is responding to a questionnaire regarding current business processes in order to target specific areas to identify how CAPPS will meet business operational needs.

Deployment kickoff is scheduled for September 8, 2020 and is expected to cover an overview of the project, a high-level schedule and a description of the phases of the project, as well as understanding of the expectations and goals of the project. Additionally, financial review sessions are scheduled for September 22 -24 to provide deeper dives into CAPPS functionality by module.

Procedures

The department has identified certain tasks that require an update or review of procedures. An inventory of necessary procedures has been initiated and will be updated and supplemented as other tasks are identified or procedures are completed. Some finalized procedures will be completed in August and documented.

OFFICE OF CONSUMER CREDIT COMMISSIONER
EXECUTIVE SUMMARY

As of May 31, 2020

	FY 2018	FY 2019	FISCAL YEAR 2020				
			1st QTR	2nd QTR	3rd QTR	4th QTR	FYTD
CONSUMER PROTECTION							
Monies Returned (000)	5,122	14,578	240	1,104	2,466		3,810
Regulated Lenders Examinations	1,085	942	233	171	128		532
Property Tax Lender Examinations	27	30	4	2	1		7
Pawnshop Examinations	484	473	123	91	21		235
Motor Vehicle Examinations	2,269	2,463	434	407	87		928
Credit Access Businesses Examinations	638	475	128	26	4		158
CONSUMER ASSISTANCE							
Telephone Complaints Received	986	510	83	106	149		338
Written Complaints Received	1,111	1,151	319	302	332		953
Total Complaints Closed	2,130	1,737	404	418	475		1,297
% of Written Complaints Closed within 90 Calendar Days	91.8%	85.4%	84.2%	80.3%	88.9%		84.6%
ADMINISTRATIVE ENFORCEMENT ACTIONS							
Originated	371	417	71	51	15		137
Finalized	389	324	101	120	36		257
LICENSING AND REGISTRATION							
Licenses							
Regulated Loan Licenses	3,845	4,031	4,065	4,050	4,192		4,192
Pawnshop Licenses	1,565	1,538	1,544	1,542	1,541		1,541
Pawnshop Employee Licenses	7,243	7,345	7,518	7,631	7,679		7,679
Commercial MV Sales Fin. Licenses	39	49	50	49	50		50
Motor Vehicle Sales Finance Licenses	8,539	8,700	9,068	9,349	9,520		9,520
Property Tax Loan Licenses	89	84	79	77	78		78
Mortgage Loan Originators	326	284	294	238	253		253
Credit Access Business Licenses	2,046	1,928	1,938	1,928	1,805		1,805
Registrations							
Registered Creditors	7,371	7,585	7,946	6,405	6,692		6,692
Crafted Precious Metal Dealers	1,061	517	621	498	574		574
Debt Management Service Providers	128	100	104	93	100		100
Refund Anticipation Loan Facilitators	2,634	2,750	2,861	3,167	3,166		3,166
Applications							
Business -- New	1,522	1,679	417	487	399		1,303
Business -- Change of Ownership	138	131	41	17	15		73
Pawnshop Employees -- New	3,133	3,640	327	139	62		528
HUMAN RESOURCES DATA							
Field Examiners Staffing	41	49	48	46	45		45
Total Staffing	82	81	79	79	75		75

Office of Consumer Credit Commissioner
Actual Performance for Output Measures
Fiscal Year 2020

Type/Strategy/Measure	2020 Target	2020 Actual	2020 YTD	Percent of Annual Target	
Output Measures-Key					
CONSUMER PROTECTION					
1-1-1	Complaint Resolution				
	1. # Complaints Closed				
Quarter 1	1,800	404	404	22.4%	
Quarter 2	1,800	418	822	45.7%	
Quarter 3	1,800	475	1297	72.1%	
2-1-1	Examination and Enforcement				
	1. # Examinations Completed				
Quarter 1	4,000	922	922	23.1%	
Quarter 2	4,000	697	1,619	40.5%	*
Examination Production is below target by more than 10%. The agency has invested significant time and resources in training, development and certification of examiners with less than 3 years tenure with the agency. In addition, we have experienced some turnover of experienced examiners who left to pursue opportunities in the private sector. The agency currently has 4 unfilled positions, 3 field examiners entry level and one Austin based Sr. Examiner who left to work at another state agency.					
Quarter 3	4,000	241	1,860	46.5%	*
Examination Production is below target by approximately 29%. Adjustments during the first two quarters are discussed in those reporting segments. In response to the COVID-19 Pandemic, the agency suspended all field examination work on March 16, 2020. Limited field examinations resumed June 15, 2020 focused on franchised motor vehicle examinations only. The agency is resuming site visit exams on a significantly reduced basis as the situation may safely allows. The agency currently has 4 unfilled positions, 3 field examiners entry level and one Austin based Sr. Examiner.					
EFFECTIVE LICENSING & REGISTRATION					
2-2-1	Licensing and Registration				
	1. # Business License Applications Processed				
Quarter 1	1,750	417	417	23.8%	
Quarter 2	1,750	487	904	51.7%	
Quarter 3	1,750	399	1303	74.5%	

*Varies by 5% or more from target.

FINANCIAL EDUCATION

3-3-1 Financial Education

1. # People Receiving Direct Educational Services

Quarter 1	325	134	134	41.2%	*
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The Financial Education Department has exceeded its quarterly target for number of people receiving direct education services. During the first quarter the Financial Education Department provided direct education services to 134 individuals, higher than the target of 81 individuals. Increased community outreach and increased requests for presentations contributed to a higher number of individuals receiving direct education services during this period.

Quarter 2	325	92	226	69.5%	*
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The Financial Education Department has exceeded its target for number of people receiving direct education services. At the end of the second quarter, the financial department provided education services to 226 individuals, higher than the target of 162 individuals. The agency continues to focus on community outreach efforts and as a result has increased the number of financial education presentations delivered.

Quarter 3	325	872	1098	337.8%	*
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The Financial Education Department has exceeded its target for number of people receiving direct education services. At the end of the third quarter, the financial department provided education services to 872 individuals. This was higher than the 3rd quarter target because the agency partnered with Employees Retirement Services (ERS) to conduct three financial education webinars. The webinars were well-liked and highly attended by state employees from all across Texas.

*Varies by 5% or more from target.



Legal Department Report

Michael Rigby, General Counsel

August 2020

Enforcement Report

Contested Case

In June 2020, the OCCC issued a final order following a contested case hearing before the State Office of Administrative Hearings (SOAH). The matter is *Office of Consumer Credit Commissioner v. Billy Joe and Tammy K. Hollingsworth d/b/a Million Dollar Pawn and Gun* (SOAH Docket No. 466-20-1527). Million Dollar Pawn was locked out of its building for failing to pay rent. For this reason, the pawnshop did not maintain normal business hours as required by the Texas Finance Code, and customers were unable to redeem their pledged goods. In October 2019, the OCCC issued an order for Million Dollar Pawn to transfer the pledged goods to another licensed pawnshop within five miles.

Million Dollar Pawn requested a hearing on the OCCC's October 2019 order, and a hearing was held at SOAH on January 3, 2020. On March 11, the SOAH administrative law judge issued a proposal for decision that recommended affirming the OCCC's order. On March 16, the pledged goods were removed from Million Dollar Pawn and transported to another licensed pawnshop within five miles. On June 25, the OCCC issued a final order affirming the administrative law judge's proposal for decision and the OCCC's October 2019 order. Million Dollar Pawn did not request a rehearing within the time period for doing so.

Orders for Reporting Violations

In March 2020, the OCCC issued three orders against property tax lenders that did not timely and accurately file their 2019 annual reports by April 30, 2020. Of these three orders, one was an injunction requiring the licensee to file timely and accurate reports, and two imposed an administrative penalty for violating a previous injunction. These reports are normally due on March 31, but due to the COVID-19 pandemic, the OCCC issued an advisory bulletin explaining that it would not take action against property tax lenders that filed by April 30.

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 July 31, 2020				
	FYTD 2020	FY 2019	FY 2018	FY 2017
Injunction Actions				
Crafted Precious Metal Dealer	1	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	1	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	184	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	11	19	26	106
Pawnshop	29	12	6	3
Pawnshop Employee	0	0	0	0
Property Tax Lender	2	6	6	2
Regulated Lender	18	7	0	13
Residential Mortgage Loan Originator	0	0	0	0
Total Administrative Penalty Actions	74	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	262	324	200	388

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

September 1, 2019, through July 31, 2020	
Cases Opened	156
Cases Closed	262
Average Number of Days to Close an Enforcement Action	134
Cases referred to SOAH	1
Contested Cases Heard at SOAH	1
Enforcement Actions Taken	241

The OCCC has no SOAH hearings scheduled between August 1, 2020, and September 30, 2020.

Litigation

State of Texas v. Education Solutions, LLC

In June 2020, the Office of the Attorney General (OAG) filed a lawsuit in Bexar County district court against Education Solutions, LLC and Christina Randell.

The lawsuit alleges that the defendants engaged in fraudulent acts in their student loan relief business. In particular, the lawsuit alleges that the defendants violated the Deceptive Trade Practice Act and the Texas Finance Code by: (1) making false representations about the benefits of services (including representations about loan forgiveness and reduction), (2) keeping payments that consumers intended to go toward their student loans, (3) providing debt management services without registering with the OCCC, and (4) providing credit services organization services without registering with the Texas Secretary of State.

The lawsuit was filed by the Consumer Protection Division of the OAG. The full style of the Texas case is *State of Texas v. Education Solutions, LLC d/b/a My Education Solutions, LLC and Christina Randell*. The case number is 2020CI10729, in the 407th District Court of Bexar County, Texas.

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 because TitleMax had not shown a threat of irreparable injury to vested property rights (case no. D-1-GN-19-002613). TitleMax appealed the case, and the case was transferred to the Houston court of appeals (case no. 01-20-00071-CV). On July 17, 2020, TitleMax filed its brief, arguing that it has demonstrated a threat to its vested property rights and that the ordinance is preempted by state law. The City of Austin's response brief is due September 16, 2020.

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. TitleMax filed another lawsuit against the City of Austin,

and obtained a temporary restraining order that prohibits the City from enforcing the amended ordinance against TitleMax (case no. D-1-GN-20-003055). A hearing on TitleMax's request for a temporary injunction has been set for August 24, 2020.

CFPB Litigation

There have been recent developments in two lawsuits against the federal Consumer Financial Protection Bureau (CFPB).

The first case is *Seila Law LLC v. CFPB*. In this case, a law firm challenged a civil investigative demand from the CFPB. The law firm argued that the CFPB is unconstitutional because the CFPB's enabling legislation, the Dodd-Frank Act, unconstitutionally deprived the president of removal authority. In June 2020, the U.S. Supreme Court issued a decision holding that the Dodd-Frank Act's for-cause removal provision violates the U.S. Constitution, but also held that this provision could be severed from the Dodd-Frank Act, leaving the rest of the law in effect (case no. 19-7). The court remanded the case back to the district court for further findings about what an appropriate remedy would be, and whether the civil investigative demand was appropriately ratified by the current CFPB director.

The second case is *Community Financial Services Association of America and Consumer Services Alliance of Texas v. CFPB*. This lawsuit is currently pending in the federal district court for the Western District of Texas in Austin (case no. 1:19-cv-00295-LY). The lawsuit is a challenge to the CFPB's Payday Rule, which contains ability-to-repay requirements and payment-withdrawal requirements for certain short-term and long-term consumer loans. The complaint argues that the Payday Rule is unconstitutional, exceeds the CFPB's statutory authority, and violates the federal Administrative Procedure Act. The case was temporarily stayed while the *Seila Law* case was pending. In July 2020, the CFPB issued a final rule to repeal the Payday Rule's ability-to-repay requirements, and issued a ratification of the Payday Rule's payment-withdrawal requirements. On July 24, 2020, the plaintiffs and the CFPB filed a joint motion requesting that the court lift the stay so that the litigation can proceed. The motion explains that the plaintiffs intend to continue challenging the payment-withdrawal requirements.

OCC Fintech Charter Litigation

In 2018, the Office of the Comptroller of the Currency (OCC), the federal agency that regulates national banks, announced that it planned to issue special-purpose national bank charters issued to nonbank financial technology ("fintech") companies. The New York Department of Financial Services (NYDFS) sued the OCC, arguing that this charter was not authorized by the National Bank Act. The federal district court in the Southern District of New York agreed with NYDFS, and held that the OCC lacks power to issue this charter (case no. 1:18-cv-08377-VM). The OCC appealed the decision to the Second Circuit (case no. 19-4271). On July 23, 2020, NYDFS filed its brief in the case, arguing that nonbank companies do not engage in the "business of banking," and that the State of New York would suffer injury if the charter were allowed. Also in July, the National Association of Consumer Credit Administrators and the Conference of State Bank Supervisors, which are associations of state agencies, filed *amicus curiae* briefs with the Second Circuit supporting NYDFS.

Rule Actions

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

- An adoption to repeal a rule in 7 TAC Chapter 85, Subchapter B (relating to crafted precious metal dealers), resulting from rule review.
- Readoption of Chapter 82 (relating to OCCC administration), as well as proposed amendments to this chapter, resulting from rule review.
- Readoption of Chapter 87 (relating to refund anticipation loan facilitators), resulting from rule review.
- Readoption of Chapters 151, 152, and 153 (relating to home equity lending), as well as proposed amendments to Chapters 151 and 153, resulting from rule review.

In October, the OCCC plans to present the following rule actions:

- Readoption of Chapter 84 (relating to motor vehicle sales finance), as well as proposed amendments to this chapter, resulting from rule review.
- Adoption of amendments to Chapter 83, Subchapter B (relating to credit access businesses), resulting from rule review. These amendments were proposed by the Finance Commission in June and have been deferred from the August meeting.
- Adoption of amendments to Chapter 89 (relating to property tax lenders). These amendments were proposed by the Finance Commission in June and have been deferred from the August meeting.

Federal Rulemaking

OCC and FDIC Interest Rate Authority Rules

Federal law allows a bank to export the usury limitations of its home state, meaning that the bank can use its home state's interest rate limitations when it makes loans to residents of other states. On 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. On July 22, the Federal Deposit Insurance Corporation (FDIC) issued a similar final rule for FDIC-insured state banks. On July 29, the states of California, Illinois, and New York filed a federal lawsuit against the OCC in the Northern District of California, alleging that the rule exceeds the OCC's statutory authority and does not comply with the federal Administrative Procedure Act (case no. 4:20-cv-05200).

OCC True Lender Rule

On July 20, 2020, the Office of the Comptroller of the Currency (OCC) issued a proposed rule identifying the "true lender" in loans where a bank partners with another company. The OCC's proposed rule would state that a national bank makes a loan if it is named as the lender in the loan agreement or funds the loan. The proposal rejects the "predominant economic interest" standard used by some state courts. *See, e.g., CashCall, Inc. v. Morrissey*, 2014 W. Va. LEXIS 587 (W. Va. 2014) (finding that CashCall was true lender of unsecured consumer loans, despite loan contracts listing the bank as the lender, because CashCall

purchased all loans from the bank within three days of origination and bore the economic risk of the loans). The deadline for comments on the OCC's proposal is September 3, 2020.

Advisory Bulletins

From June 1, 2020 to July 31, 2020, the OCCC did not issue any new advisory bulletins.

During this period, the OCCC revised four previously issued advisory bulletins describing coronavirus emergency measures, to explain that the bulletins' guidance is in effect through August 31.

Official Interpretation Requests

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

Public Information Requests

June 1, 2020, through July 31, 2020	
Requests Received	38
Requests Closed	41
Requests Withdrawn	1
Requests Referred to Office of Attorney General	0
Average Number of Days to Address a Public Information Request	2.5

Gifts Received by the OCCC

From June 1, 2020 to July 31, 2020, the OCCC received no gifts.

C. OFFICE OF CONSUMER CREDIT COMMISSIONER

2. Discussion of and Possible Vote to Take Action on the Adoption 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

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

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the adoption of the repeal of 7 TAC §85.1012.

RECOMMENDED MOTION: I move that we approve 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) adopts the repeal of §85.1012 (relating to Registration System Transition), in 7 TAC, Chapter 85, Subchapter B, concerning Rules for Crafted Precious Metal Dealers.

The commission adopts the repeal of §85.1012 without changes to the proposed text as published in the July 3, 2020, issue of the *Texas Register* (45 TexReg 4449).

The commission received no written comments on the proposal.

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 adopted repeal deletes 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.

The repeal is adopted 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 adoption 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 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 adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on August 21, 2020.

Audrey Spalding
Assistant General Counsel
Office of Consumer Credit Commissioner

C. OFFICE OF CONSUMER CREDIT COMMISSIONER

3. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 5, Chapter 82, Concerning Administration, Resulting from Rule Review

PURPOSE: Pursuant to Texas Government Code, §2001.039, the OCCC has completed the review of 7 TAC Chapter 82, 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 82 following rule review, because the reasons for the rules continue to exist.

RECOMMENDED MOTION: I move that we readopt 7 TAC Chapter 82 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 82. Administration

The Finance Commission of Texas (commission) has completed the rule review of Texas Administrative Code, Title 7, Part 5, Chapter 82, concerning Administration, in its entirety. The rule review was conducted under Texas Government Code, §2001.039.

Notice of the review of 7 TAC Chapter 82 was published in the *Texas Register* on May 29, 2020 (45 TexReg 3643). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this chapter continue to exist.

As a result of internal review by the Office of Consumer Credit Commissioner, 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 82 continue to exist, and readopts this chapter in accordance with the requirements of Texas Government Code, §2001.039.

C. OFFICE OF CONSUMER CREDIT COMMISSIONER

4. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 5, Chapter 87, Concerning Tax Refund Anticipation Loans, Resulting from Rule Review

PURPOSE: Pursuant to Texas Government Code, §2001.039, the OCCC has completed the review of 7 TAC Chapter 87, 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 87 following rule review, because the reasons for the rules continue to exist.

RECOMMENDED MOTION: I move that we readopt 7 TAC Chapter 87 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 87. Tax Refund Anticipation Loans

The Finance Commission of Texas (commission) has completed the rule review of Texas Administrative Code, Title 7, Part 5, Chapter 87, concerning Tax Refund Anticipation Loans, in its entirety. The rule review was conducted under Texas Government Code, §2001.039.

Notice of the review of 7 TAC Chapter 87 was published in the *Texas Register* on May 29, 2020 (45 TexReg 3643). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this chapter continue to exist.

As a result of the rule review, the commission finds that the reasons for initially adopting the rules in 7 TAC Chapter 87 continue to exist, and readopts this chapter in accordance with the requirements of Texas Government Code, §2001.039.

C. OFFICE OF CONSUMER CREDIT COMMISSIONER

5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 5, Chapter 82, Concerning Administration, Resulting from Rule Review.

PURPOSE: The purpose of the amendments to 7 TAC Chapter 82 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 82.

RECOMMENDED MOTION: I move that we approve the amendments in 7 TAC Chapter 82.

Title 7, Texas Administrative Code
Part 5. Office of Consumer Credit Commissioner
Chapter 82. Administration

The Finance Commission of Texas (commission) proposes amendments to 7 TAC, Chapter 82, concerning Administration.

In general, the purpose of the proposed amendments in 7 TAC Chapter 82 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 82 was published in the *Texas Register* on May 29, 2020 (45 TexReg 3643). The commission received no comments in response to that notice.

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

The proposed amendments are intended to specify employees with access to criminal history information, to specify methods of sending public information request, and to use consistent terminology to refer to charges collected for public information requests.

In §82.1, a proposed amendment would remove the director of strategic communications, administration and planning from the list of employees authorized to access criminal history record information.

In §82.2, proposed amendments would clarify language on submitting public information requests and make terminology

more consistent. Throughout §82.2, proposed amendments would replace current terminology such as "fee" and "cost" with "charge." These changes would make the rule more internally consistent, and more consistent with the term "charge" as used in the Texas Public Information Act, Texas Government Code, Chapter 552, as well as rules adopted by the Office of the Attorney General, such as 1 TAC §70.3 (relating to Charges for Providing Copies of Public Information). A proposed amendment would remove current §82.2(b)(3)(B), which describes requests submitted by fax and includes the OCCC's general fax number. By specifying that requests may be sent to a specified mailing address or to an email address designated by the OCCC, the rule will help ensure that any requests are promptly forwarded to the OCCC's public information officer. Proposed amendments to §82.2(e), regarding inspections of records, would clarify situations where the OCCC charges for labor or personnel time and does not charge for overhead.

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

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the amendments to 7 TAC Chapter 82 are in effect, the public benefits anticipated as a result of the change will be that the commission's rules will use more consistent language and will provide

clearer guidance to stakeholders and OCCC staff.

There is no anticipated cost to individuals who are required to comply with the rule amendments 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 repeal an existing regulation. The proposal amends internal criminal history processes in the OCCC, and amends the means of receiving public information requests. 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 amendments are proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Chapter 14 and Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §14.157 authorizes the commission to adopt rules governing the custody of criminal history record information obtained under Texas Finance Code, Chapter 14, Subchapter D. Texas Government Code, §552.230 authorizes governmental bodies to adopt reasonable rules of procedure under which public information may be inspected and copied.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 14.

§82.1. Custody of Criminal History Record Information

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

(1) Commissioner--The Consumer Credit Commissioner of the State of Texas.

(2) Criminal history record information--Has the meaning provided by Texas Government Code, §411.082(2).

(3) OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

(b) Use of criminal history record information. The OCCC may obtain criminal history record information under Texas Government Code, §411.095 and Texas Finance Code, Chapter 14, Subchapter D. The OCCC's use of criminal history information is limited to evaluating a person described by Texas Government Code, §411.095(a). All criminal history record information received by the OCCC is confidential and is for the exclusive use of the OCCC. The OCCC may not disclose criminal history record information except as provided by Texas Government Code, §411.095(b).

(c) Employee access. Access to criminal history record information maintained by the OCCC will be limited to the following persons:

- (1) the commissioner;
- (2) any assistant commissioner;
- (3) any attorney employed by the OCCC or an assistant attorney general representing the interest of the OCCC;
- (4) employees of the licensing section;
- (5) the director of consumer protection;
- (6) the public information officer;

~~[(7) the director of strategic communications, administration and planning;]~~

(7) [(8)] the human resources specialist;

(8) [(9)] any person appointed to act on behalf of or in the stead of any of the above; and

(9) [(10)] any employee of the OCCC who:

(A) requires access to criminal history record information in order to fulfill the employee's duties; and

(B) is approved by the commissioner or the director of consumer protection to view criminal history record information.

§82.2. Public Information Requests; Charges

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

- (1) Agency or OCCC--The Office of Consumer Credit Commissioner of the State of Texas.
- (2) Commissioner--The Consumer Credit Commissioner of the State of Texas.
- (3) Public information request--A written request made for public information pursuant to Texas Government Code, Chapter 552 (the Texas Public Information Act). Another name for a "public information request" is an "open records request," and these terms may be used synonymously.

(4) Readily available information--Public information that already exists in printed form, or information that is stored electronically, and is ready to be printed or copied without requiring any programming, but not information that is located in two or more separate buildings that are not physically connected with each other or information that is located in a remote storage facility as per Texas Government Code, §552.261.

(5) Standard paper copy--A printed impression on one side of a piece of paper that measures up to 8 1/2 inches by 14 inches. A piece of paper that is printed on both sides will be counted as two copies.

(b) Receipt of public information request.

(1) Generally. Upon receipt of a written public information request ~~that [from a requesting party which]~~ clearly identifies the public information ~~[records]~~ requested to be copied or examined pursuant to Texas Government Code, Chapter 552 (the Texas Public Information Act), the agency will make every reasonable effort to provide the information in the manner requested as quickly as possible without disruption of normal business activities. All requests will be processed in accordance with the Texas Public Information Act, and all requests will be treated equally.

(2) Requests by email directed to OCCC public information officer or designee. Public information requests submitted via email must be sent to the OCCC's ~~[designated]~~ public information officer at an email address designated by the OCCC.

(3) Requests sent by mail or hand delivery ~~[other methods]~~. Public information

requests, other than email requests, may be submitted to the OCCC by mail or hand delivery ~~[as follows:]~~

~~[(A) By mail or hand delivery. Submit the request]~~ to Public Information Officer, Office of Consumer Credit Commissioner, 2601 N. Lamar Blvd., Austin, TX 78705 ~~[-or]~~

~~[(B) By fax. Submit the request to (512) 936-7610].~~

(4) Confidential information. Information that is confidential by law will not be provided except under court order, attorney general directive, or other legal process.

(5) Charge ~~[Fee]~~ waiver or reduction. Charges ~~[Fees]~~ imposed by this section may be waived or reduced at the discretion of the commissioner as per Texas Government Code, §552.267.

(c) Copy and service charges. The cost to any person requesting copies of public information from the OCCC will be the applicable charges established by the Office of the Attorney General under 1 TAC ~~[Title 1, Part 3,]~~ Chapter 70 (relating to Cost of Copies of Public Information). This subsection outlines the OCCC's most common charges to produce copies of public information. These charges may be supplemented or modified as authorized by 1 TAC Chapter 70.

(1) Charges ~~[Fees]~~ not collected. No charge ~~[fee]~~ will be collected for requests resulting in charges of \$5 or less.

(2) Application of charges. The following charges may apply to requests for public information:

(A) \$0.10 copy charge per page if paper copies are requested;

(B) \$15 per hour of labor or personnel time spent to locate (including pulling documentation from archives), compile, manipulate (including redacting mandated confidential information), reproduce, and prepare the information for delivery or inspection;

(C) 20% overhead charge, calculated by multiplying the total personnel cost under subparagraph (B) by 0.20.

(3) Certification. If certification of copies as true and accurate from the OCCC's records, or a certified statement verifying information on record with the OCCC is requested, an additional charge of \$5 per certification will be added to the charges described by this subsection ~~[computed fee]~~. The certification will include the signature of the commissioner, or a designated custodian of records for the information being certified, and the OCCC seal.

(4) Nonstandard copies. The charge ~~[cost]~~ for nonstandard copies will be determined by reference to any recommended standards promulgated by the Office of the Attorney General, 1 TAC ~~[Title 1, Part 3,]~~ Chapter 70 (relating to Cost of Copies of Public Information).

(5) Cost estimates.

(A) Over \$40. If the anticipated charges under this subsection plus anticipated charges under subsection (d) of this section exceed \$40, the agency will send an estimate outlining the estimated cost to fulfill the request as per Texas Government Code, §552.2615.

(B) Over \$100. If the anticipated charges under this subsection plus anticipated charges under subsection (d) of this section exceed \$100, the agency will send a cost estimate as provided in subparagraph (A) of this paragraph. In addition, the agency may require cash prepayment or bond equal to the total anticipated charges prior to providing copies of the requested information, as per Texas Government Code, §552.263.

(d) Delivery charges.

(1) U.S. mail. When public information is required to be mailed, the cost of postage will be added to the charges described by subsection (c) of this section ~~[computed fee]~~.

(2) Expedited delivery. When a requestor asks and the agency agrees to provide public information by overnight delivery service or other expedited delivery, the cost of the service will be added to the charges described by subsection (c) of this section, ~~[computed fee]~~ unless the requestor arranges to pay the delivery charges directly. The agency is not required to provide expedited delivery without payment for the service.

(e) Inspection of records.

(1) Generally. Records access for purposes of inspection will be by appointment only and will only be available during regular business hours of the agency. If the safety of any public record or the protection of confidential information is at issue, or when a request for inspection would be unduly disruptive to the ongoing business of the office, physical access may be denied and the option of receiving copies at the usual charges ~~[fees]~~ will be provided.

Certification

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

Issued in Austin, Texas on August 21, 2020.

Audrey Spalding
Assistant General Counsel
Office of Consumer Credit Commissioner

(2) Redaction of confidential information from paper records. If confidential information must be redacted prior to a requestor's inspection of paper records, \$0.10 per page may be charged to prepare the inspection copies containing the remaining public information.

(3) Labor charges. The agency may assess charges for labor or personnel time, as described by subsection (c)(2) of this section. ~~[Inspection of electronic information. Labor charges may be assessed]~~ if production of the information requires programming or manipulation of data (including redaction). The agency will not charge overhead for an inspection where the requestor does not receive copies of documents. ~~[Overhead is not charged.]~~

(4) Over \$40. If a request for inspection would result in charges under Texas Government Code, §552.271 that exceed \$40, the agency will send an estimate outlining the estimated cost to fulfill the request as per Texas Government Code, §552.2615.

(5) Over \$100. If a request for inspection would result in charges of over \$100, the agency may require a 50% cash prepayment or a bond equal to the total anticipated charges prior to providing access to the requested information, as per Texas Government Code, §552.263 and 1 TAC §70.7 (relating to Estimates and Waivers of Public Information Charges).

(f) Agency officer for public information. The commissioner or the commissioner's designee is the agency's officer for public information.

D.

Texas Department of Banking

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Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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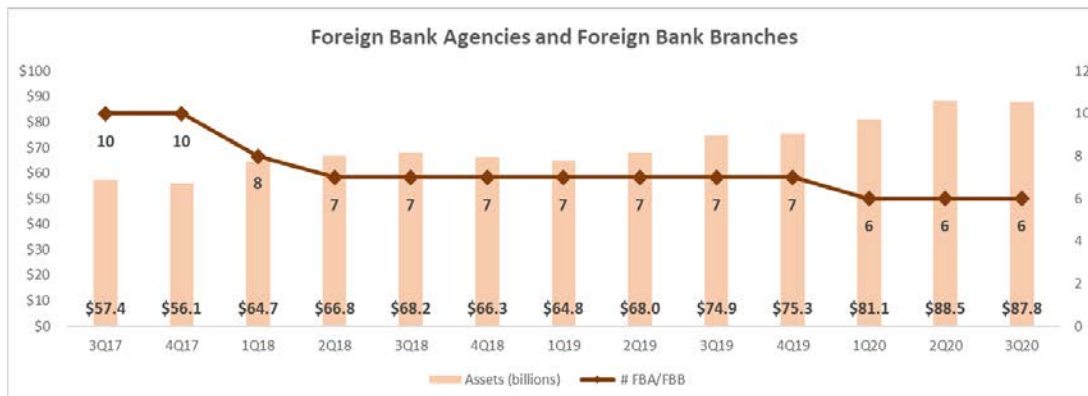
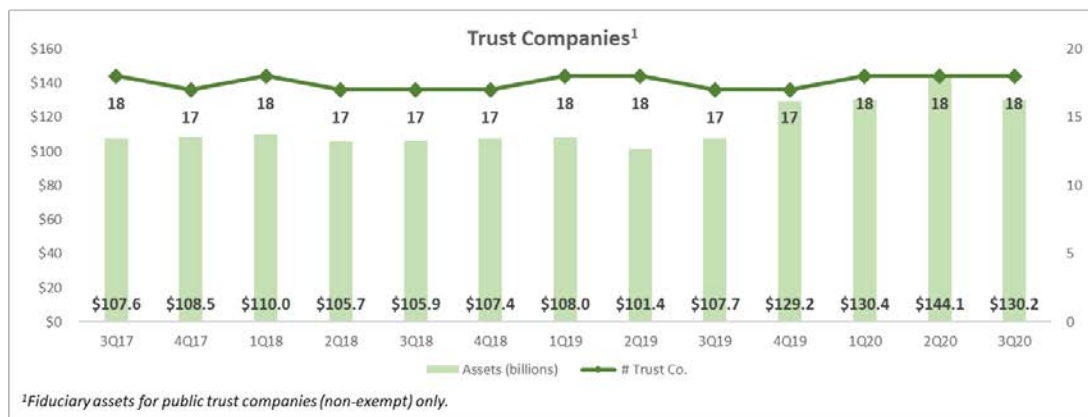
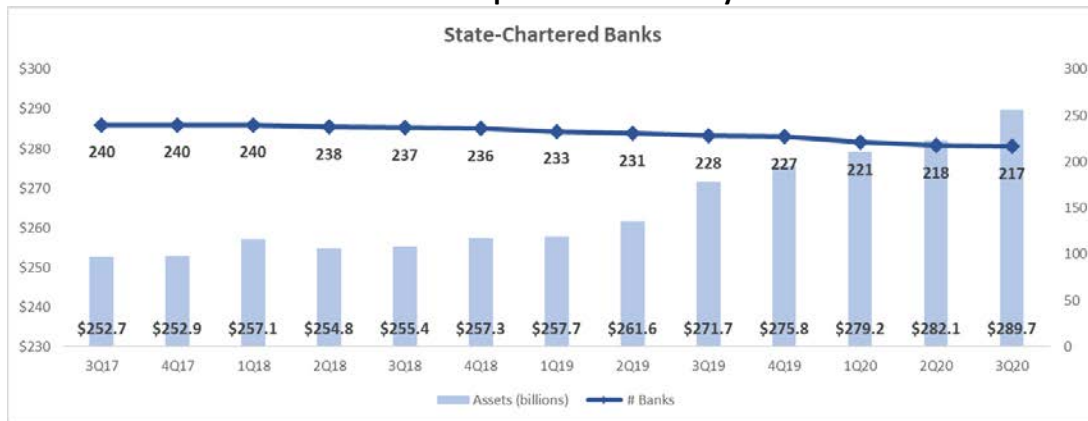
To: Finance Commission Members

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

Date: August 5, 2020

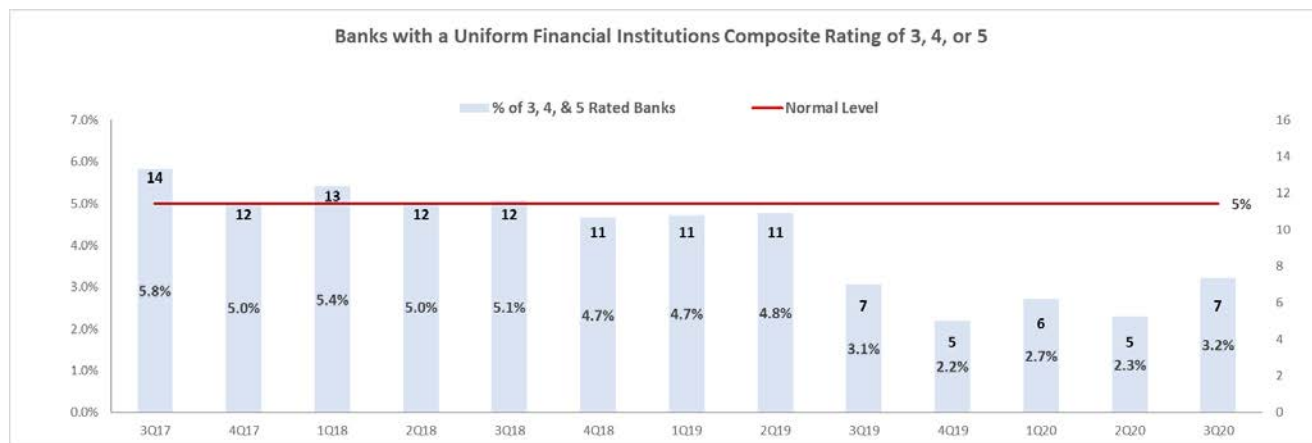
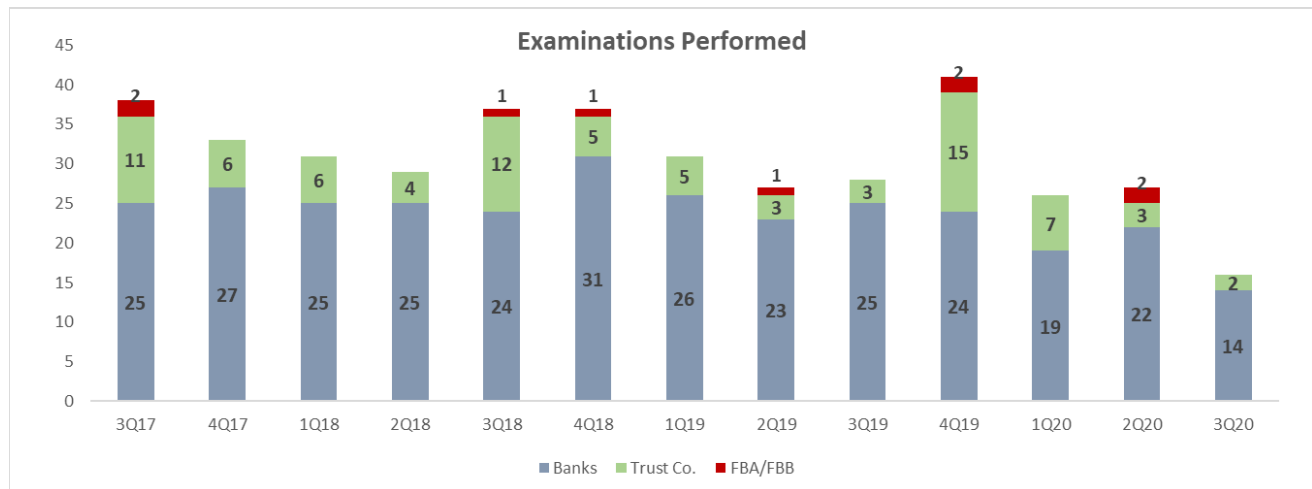
Subject: Summary of the Bank & Trust Supervision Division Activities

Bank and Trust Supervision – Industry Profiles



Summary of the Bank & Trust Supervision Division Activities

Page 2



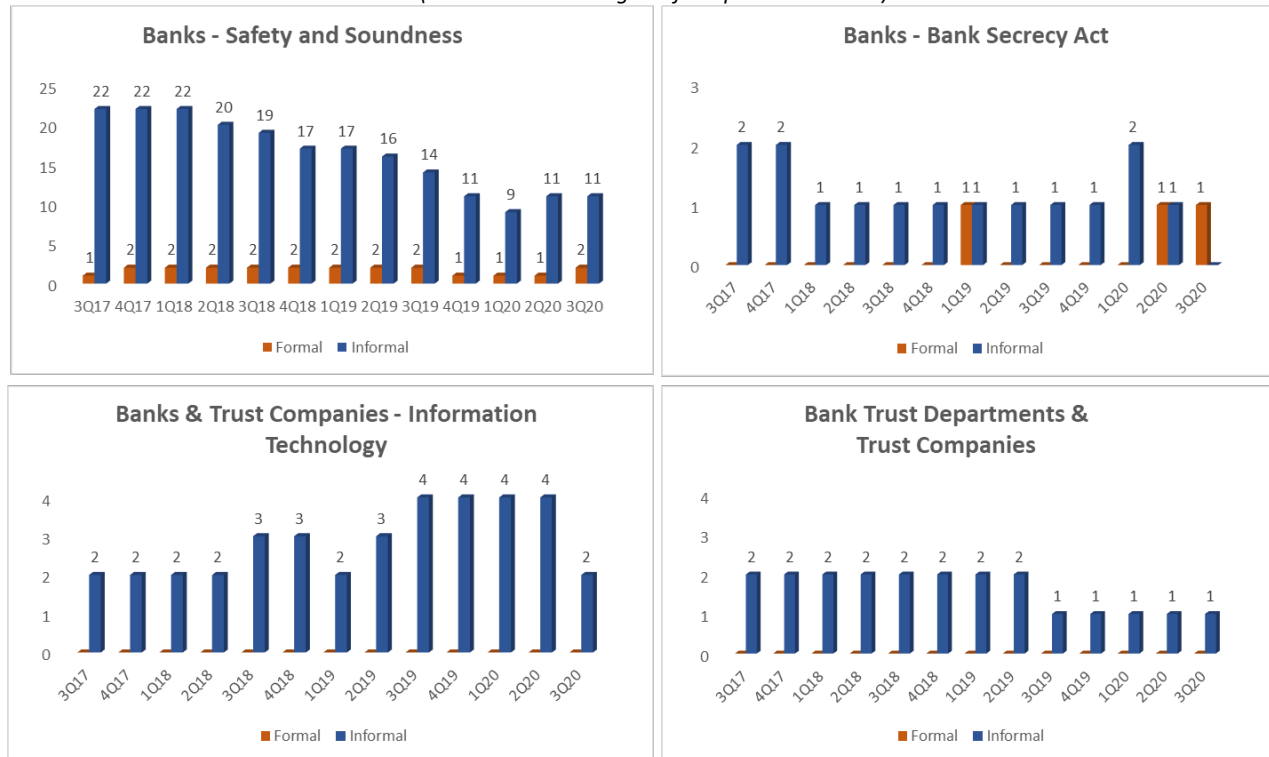
The Department considers any bank with a Uniform Financial Institutions Composite Rating of 3, 4, or 5, to be a problem bank. The number of problem banks continues to remain below what we consider to be a normal range of between 3% and 5% of the total number of institutions. However, the number of problem 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 – June 2020)
Commercial Banks (All / DOB Only)	93% / 92%	97% / 96%
IT	96% / 96%	97% / 96%
Trust	93% / 94%	100% / 100%
Foreign Banks (FRB)	100%	100%
Trust Companies (DOB)	48%	60%
IT	92%	100%

Through June 2020, the agency met all examination priorities except for examinations of trust companies. The examination pause in April and May limited further progress in improving examination priorities for trust companies. The six trust companies that were started late this fiscal year averaged 22 days past due. Compliance with examination priorities may be challenging through at least the remainder of calendar year 2020 as the Department continues to deal with the fallout from the COVID-19 pandemic.

Division Highlights

- **COVID-19 Monitoring and Response:** The Department continues to actively monitor and respond to the changing circumstances brought about by the COVID-19 pandemic. Actions taken in response to the pandemic since the last report to the Finance Commission include:
 - Examination activities were restarted in June after a two-month pause. Currently, all examinations are performed completely offsite and a cautious approach will be taken while the pandemic persists. The health and safety of our staff and the staff of our regulated entities are paramount. Department examiners and financial institution management have capably adapted to the offsite working environment. As a result, examinations have continued without a material impact to our examination priorities;
 - Division examiners continue to use modified examination procedures to evaluate banks and trust companies. Adjustments are made to the procedures as issues surface. We maintain the flexibility to be able to expand the procedures when we encounter heightened risk in an institution or circumstances otherwise warrant; and
 - We are leveraging our offsite monitoring program, oil and gas risk assessment survey, and other capabilities are being continuously enhanced to assess the condition of regulated entities in the changing economic landscape. Projections of problem banks have been developed to help evaluate the impact to required staffing.
- **COVID-19 Communications:** The following COVID-19 related communication was published by the Department since the last report to the Finance Commission.
 - The Department issued Industry Notice [2020-09](#), Interagency Examiner Guidance for Assessing Safety and Soundness Considering the Effect of the COVID-19 Pandemic on Institutions, dated June 23, 2020. The notice alerts institutions to state and federal banking agency guidance that was issued to examiners to assist them in assessing the safety and soundness of financial institutions impacted by the COVID-19 pandemic.
- **Special Operations and Conferences:**
 - On June 25, 2020, Director Dan Frasier represented the Department at the Texas Bankers Association CFO Regulatory Panel Discussion that occurred via video conference.
 - Beginning July 7, 2020, Review Examiner Travis Graham attended the Advanced BSA/AML Specialist Conference held in a virtual setting.
 - On July 21, 2020, Commissioner Cooper participated in the Virtual Financial Literacy Summit representing the Department on the Why Financial Literacy Matters to Bankers, Educators, and Parents panel hosted by the Texas Bankers Association.

- On July 28, 2020, Commissioner Cooper participated virtually in the Regulatory Panel Discussion hosted by the Southwestern Graduate School of Banking.
- Beginning August 4, 2020, Director Frasier, Director Chris Robinson, Regional Director Jacqueline Willardson, Review Examiner Melissa Dvoracek, Review Examiner Travis Graham, Regional Review Examiner Allen Millsap, Regional Review Examiner Tom Susany, and Financial Analyst Krissna Jones, and Financial Analyst Isabel Gutierrez attended the virtual CSBS Deputy Seminar Series session that will occur weekly through September 8, 2020.



Charles G. Cooper
Commissioner

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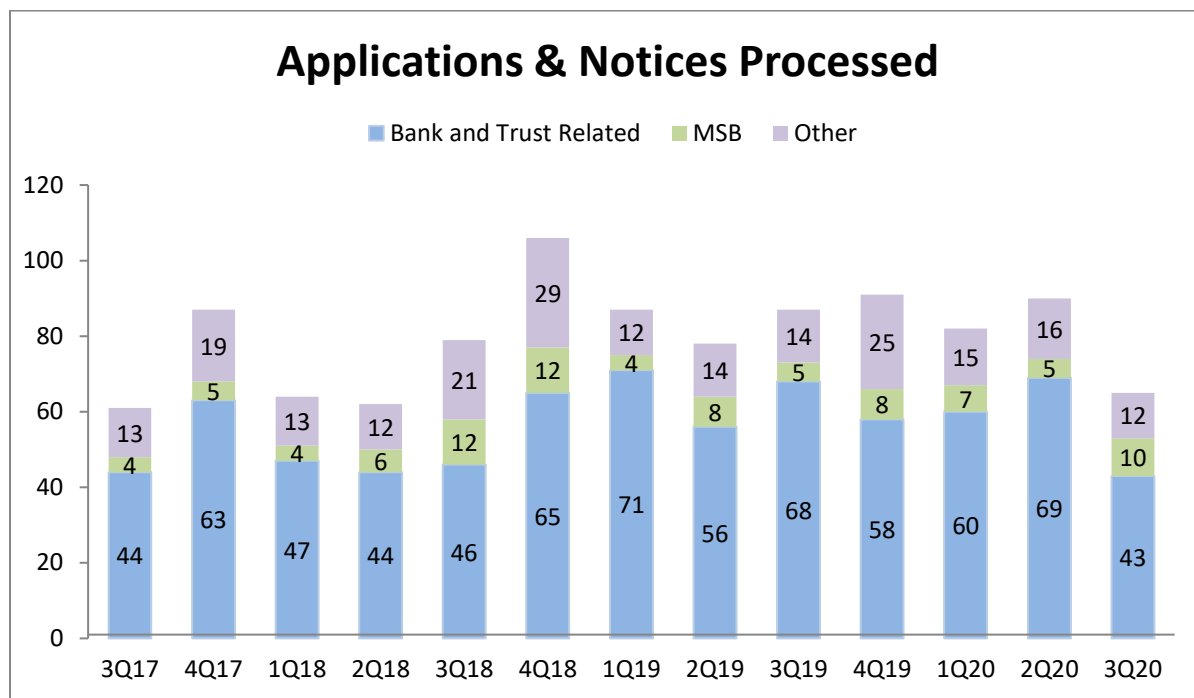
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To: Finance Commission Members

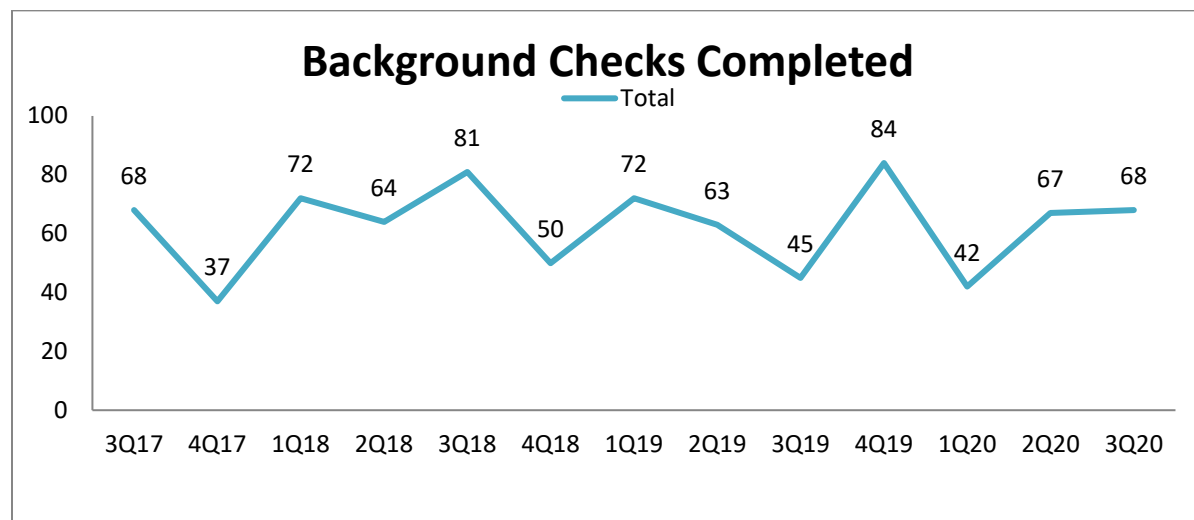
From: Mark Largent, Director of Corporate Activities

Date: August 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 August 4, 2020)
Bank Related	22
Trust Companies	4
Money Services Business (MSB)	22
Others	5
Totals	53

Division Highlights

- Application volume remains substantial and above the level reported at the last Finance Commission meeting. Compared to our last report submitted, the Corporate Division's filings presently under review by category type changed by:
 - Bank related increased 6 (38%)
 - Trust company decreased 2 (33%)
 - MSB related increased 3 (16%)
 - Other increased 3 (150%)
- The Department denied a de novo bank application for TYME Bank, Farmers Branch, Texas. The Commissioner's [Order Denying Charter](#) is available on the Department's website.
- Significant filing**
 - Beal Bank, SSB, Plano, Texas, has applied to convert to a Texas state bank charter under the name of Beal Bank [estimated gain in state banking assets of approximately \$1.7 billion].
- Charter, Conversion, and Merger Activity** – Since the last report to the Finance Commission, the following transactions have consummated:
 - Banks*
 - NexBank, SSB, Dallas, Texas converted to a Texas state bank charter under the name of NexBank [estimated gain in state banking assets of approximately \$9.8 billion].
 - Happy State Bank, Happy, Texas completed its acquisition merger of Centennial Bank, Lubbock, Texas [no change in state banking assets].
 - Trust Companies*
 - None.



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Commissioner

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To: Finance Commission Members

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

Date: August 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	175	\$143.9		
Prepaid Funeral Contract (PFC)	359	\$4.2	357	\$4.2	355	\$4.2	354	\$4.3		
Perpetual Care Cemeteries (PCC)	241	\$365.3 *	241	\$369.4*	241	\$370.6*	241	\$374.2*		
Check Verification Entities (CVE)	2	n/a	2	n/a	2	n/a	2	n/a		
Examinations Performed										
MSB	101		19		24		23			
MSB Limited Scope	2		2		0		0			
MSB Accepted other State	13		4		3		3			
PFC	260		53		73		85			
PFC Limited Scope	5		0		0		0			
PCC	184		68		35		35			
PCC Limited Scope	2		0		0		0			
Ratings (# / %) Assigned to All Regulated Entities										
1	276	36.56%	281	37.42%	283	37.78%	284	37.77%		
2	409	54.17%	409	54.46%	410	54.74%	412	54.79%		
3	60	7.95%	50	6.66%	50	6.68%	50	6.65%		
4 & 5	10	1.32%	11	1.46%	6	0.8%	6	0.79%		
Noncompliance with Examination Priorities (Past Due)										
MSB	14		23		18		19			
PFC	3		2		0		12			
PCC	1		2		0		13			

NOTES:

Limited scope examinations do not receive a rating.

* PCC \$ amounts reflected in the millions.

Examination Activities

- **COVID-19 Monitoring:** NDS continues to monitor the effects of COVID-19 on the MSB, PFC and PCC industries. The health and safety of our staff and the staff of our regulated entities remains a high priority. As a result, in coordination with license holders, NDS conducts all examinations remotely (offsite). In the MSB area, multi-state coordinated full scope examinations continue. Department examiners and license holders have adapted to offsite examinations through the uploading and review of examination documents and information to the Department's data exchange portal or via other electronic platforms; and communicating, including management meetings, exclusively by email, phone, and video conferencing. The Department remains flexible when conducting offsite examinations and adjusts to situations as they arise. For example, additional time to upload requested information is provided, as necessary.

Examinations continue without a material impact to examination priorities as noted below.

- The nineteen MSB past due examinations noted on page 1 are on average one and one-half months past due, of which, eight were coordinated to be conducted as multi-state joint examinations.
 - Six of the past due MSB examinations were completed in June 2020 and two in July 2020. The examination schedule reflects that six of the past due examinations will be completed in August and September 2020. The remaining past due examinations are scheduled to be completed in October 2020. Further, three of the past due MSB examinations were delayed due to ongoing enforcement proceedings.
- The thirteen PCC past due examinations noted on page 1 are on average 19 days past due and the twelve PFC past due examinations are on average one month past due.
 - Three of the past due PCC examinations were completed in July 2020. The examination schedule reflects that the remaining ten examinations will be completed in August 2020.
 - Five of the past due PFC examinations were completed in June and July 2020. The examination schedule reflects that the remaining seven examinations will be completed in August 2020.
- NDS met or exceeded all performance measures for the third quarter of FY 2020.

Division Activities

- The Conference of State Bank Supervisors (CSBS) began offering accreditation of state regulatory agencies that supervise MSBs in 2020. The new MSB Accreditation Program is intended to provide assurances that state agencies meet the highest standards of MSB regulation and supervision. Division staff are gathering information and documents in preparation of the CSBS MSB Accreditation review scheduled for the fall of 2020. Our Department will be one of the first state agencies to go through the new MSB Accreditation.

- NDS 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 to protect the rights and interests of Texas consumers.
- NDS staff continues to participate in Multistate MSB Examination Task Force (MMET) and Money Transmitters Regulators Association (MTRA) quarterly scheduling calls to coordinate multi-state MSB examinations. The Department's MSB examination scheduling is in coordination with other state MSB supervisory agencies. MMET and the MTRA have been working to create a more efficient and effective multi-state scheduling process.
- The Department approved an application to operate a perpetual care cemetery in Hidalgo County, Texas. Certificate of Authority (COA) No. 316 to operate a new perpetual care cemetery was issued on July 2nd. Although the Department routinely processes change of control applications for perpetual care cemeteries, this is the first COA issued to operate a new perpetual care cemetery since 2017.
- In August, an MSB Financial Examiner with seven years of tenure resigned. A posting to fill this vacancy will be published in mid-August.



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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Memorandum

To: Finance Commission Members

From: Lori Wright, Director of Human Resources

Date: August 5, 2020

Subject: Summary of the Human Resources Division Activities

Human Resources Fiscal Year 2020 Activities

Active Postings				
Number of Positions	Position	Division	Status	Activities
1	Program Specialist II	DSS	Filled	Start Date 1/11/21
1	Financial Examiner I	B&T	Filled	Start Date 9/1/20
1	Financial Examiner IV	B&T	Filled	Start Date 9/1/20
1	Financial Examiner VI	B&T (BSA)	Filled	Start Date 9/1/20

Compensation Project

Austin Alliance Group has delivered market salary data, compensation system design, internal and external alignment solutions, identification of career paths, and a total compensation program communication plan to the Department. The solutions and tools provided are being reviewed and will be integrated into the Department's compensation procedures and policies, where applicable.

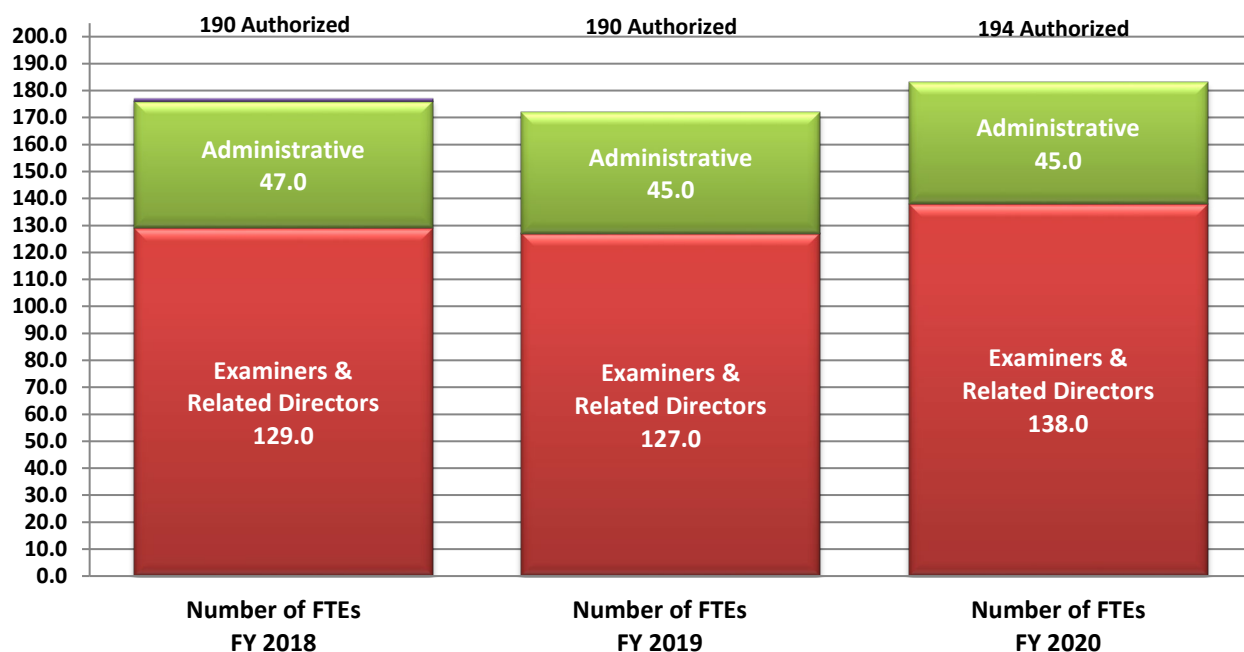
Updated Personnel Policies

Administrative Memorandum 2031 – Delegation of Authority

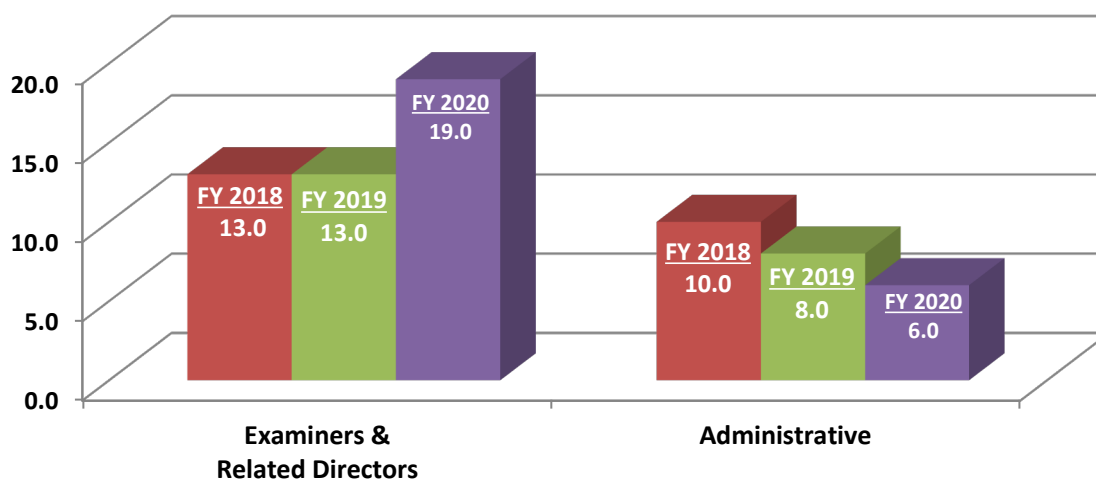
COVID-19

Human Resources continues to track illness, determine FFCRA leave entitlement, and monitor quarantine requirements for Department Staff.

Texas Department of Banking Employee Data for Fiscal Years 2018, 2019 and 2020 as of 07/31/2020

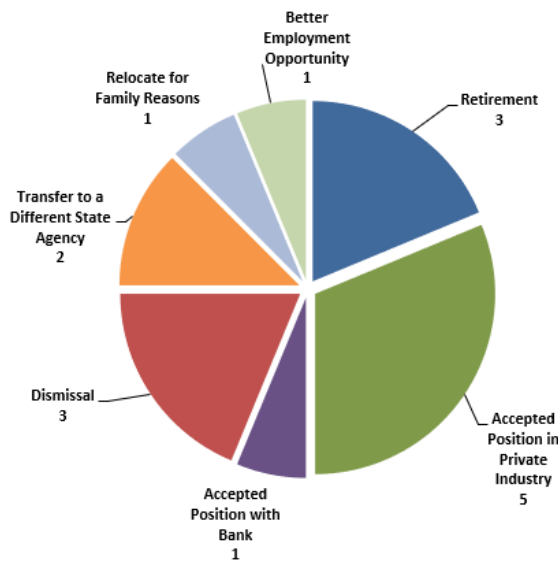


New Hire Data for Fiscal Years 2018, 2019 and 2020

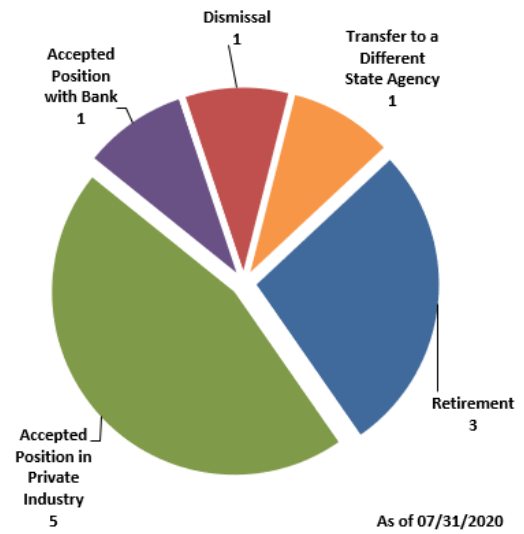


FY 2020 Employee Turnover Reasons

All Employees
16 Resignations



Financial Examiners Only
11 Resignations



As of 07/31/2020

Department of Banking
Actual Performance for Output Measures
Fiscal Year 2020

Type/Strategy/Measure	2020 Target	2020 Actual	2020 YTD	Percent of Annual Target
Output Measures-Key				
1-1-1 Bank Examination				
1. # Bank Examinations Performed				
Quarter 1	90	19	19	21.11%
Quarter 2	90	23	42	46.67%
Quarter 3	90	14	56	62.22%
The number of bank examinations is below the target due to the COVID-19 pandemic hold which postponed examinations.				
2. # Foreign/Trust/IT Examinations Performed				
Quarter 1	185	42	42	22.70%
Quarter 2	185	57	99	53.51%
Quarter 3	185	41	140	75.68%
1-2-1 Non-Bank Examination				
1. # NDS Licensees Examined				
Quarter 1	550	146	146	26.55%
Quarter 2	550	135	281	51.09%
Quarter 3	550	146	427	77.64%
1-3-1 Application Processing				
1. # License Applications Completed				
Quarter 1	311	81	81	26.05%
Quarter 2	311	97	178	57.23%
Quarter 3	311	71	249	80.06%
The number of filings, especially those relating to conversions, mergers, and subsidiaries, exceeded expectations for the first three quarters of the fiscal year.				

*Varies by 5% or more from target.



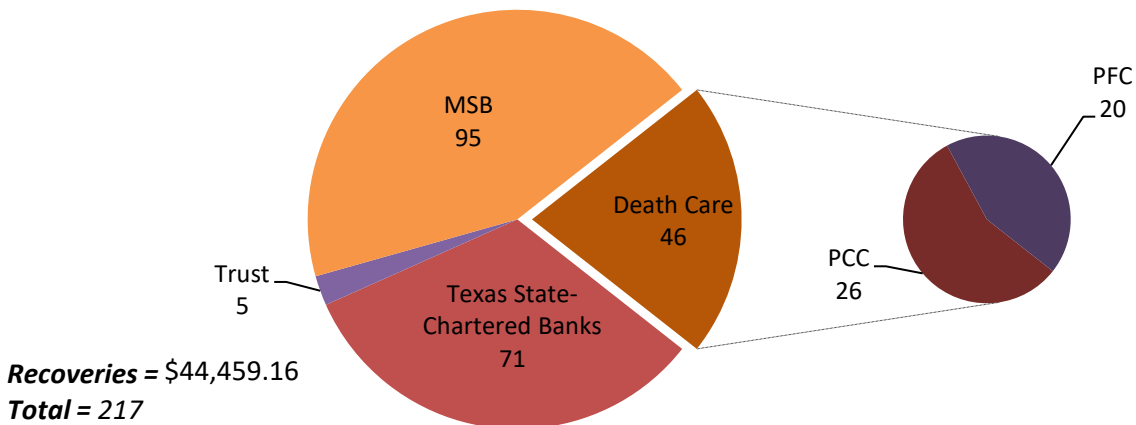
Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

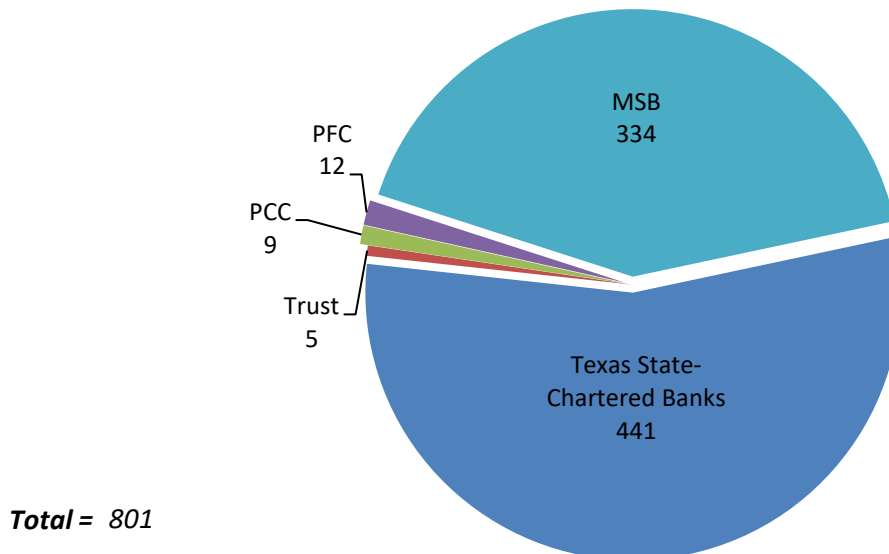
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To: Finance Commission Members
From: Michelle N. Hodge, Director of Strategic Support
Date: August 4, 2020
Subject: Summary of the Strategic Support Division Activities

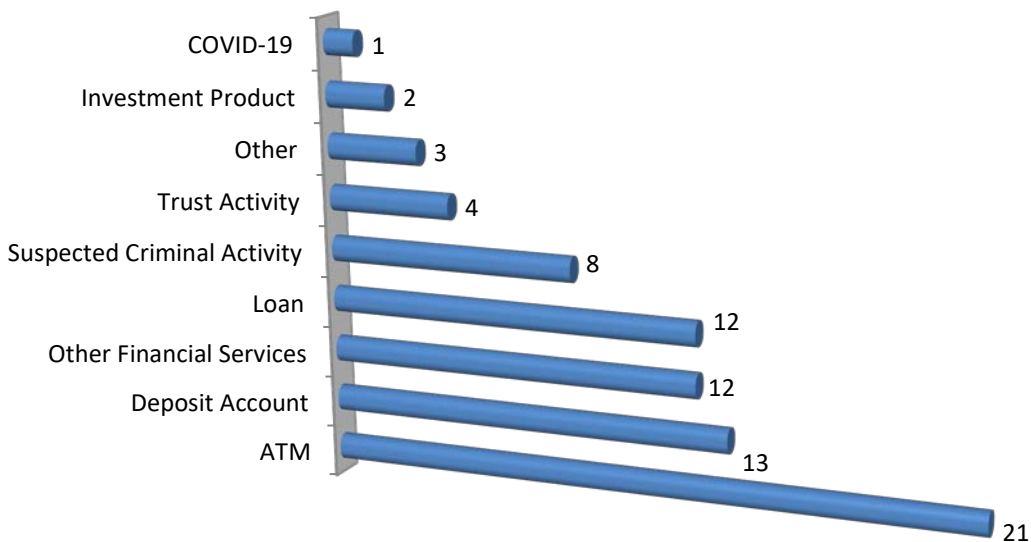
Jurisdictional Written Complaints September 2019 - June 2020



Inquiries on Jurisdictional Entities September 2019 - June 2020

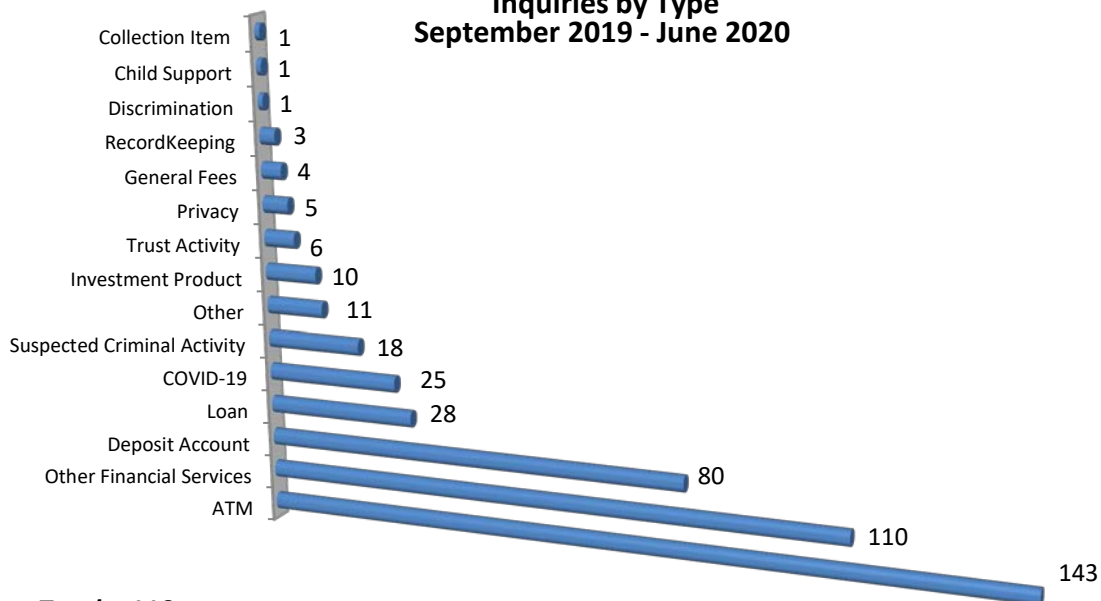


**State-Chartered Banks and Trust Companies
Written Complaints by Type
September 2019 - June 2020**



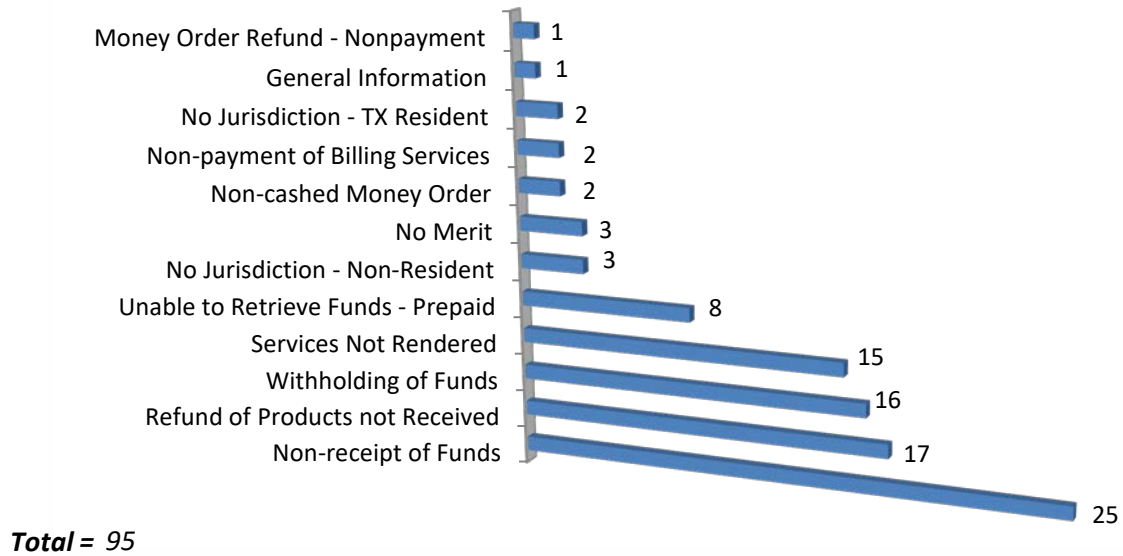
Total = 76

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

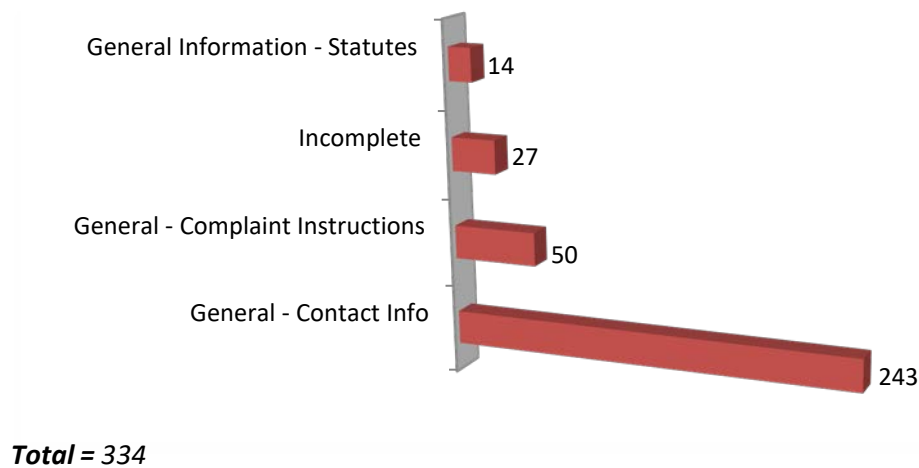


Total = 446

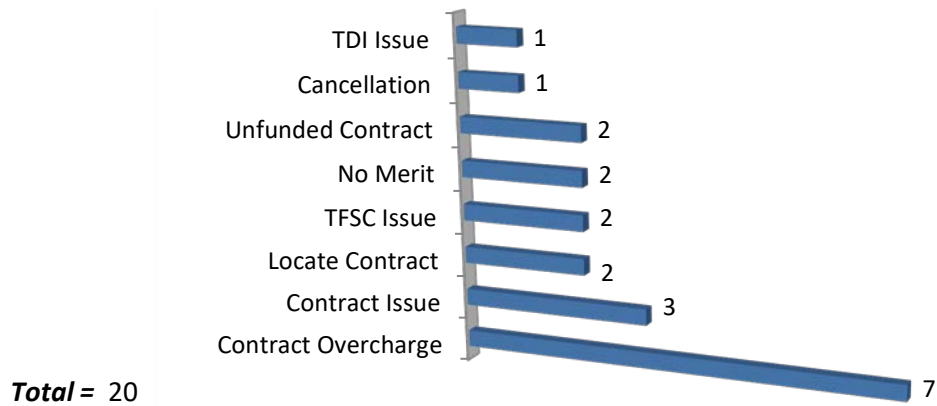
Money Services Businesses Written Complaints by Type September 2019 - June 2020



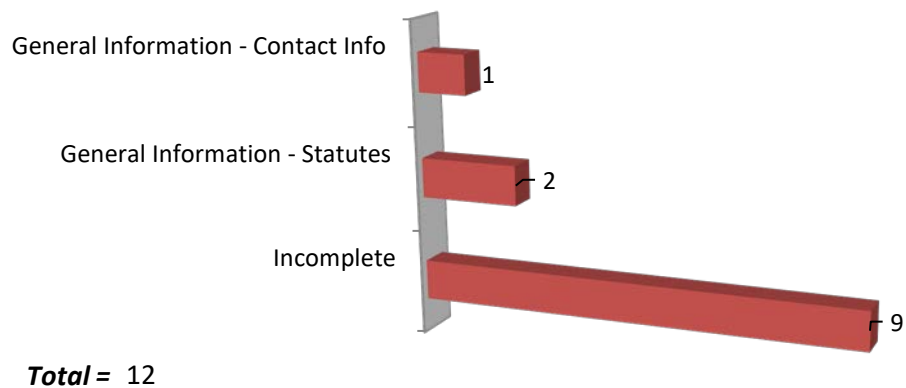
Money Services Businesses Inquiries by Type September 2019 - June 2020



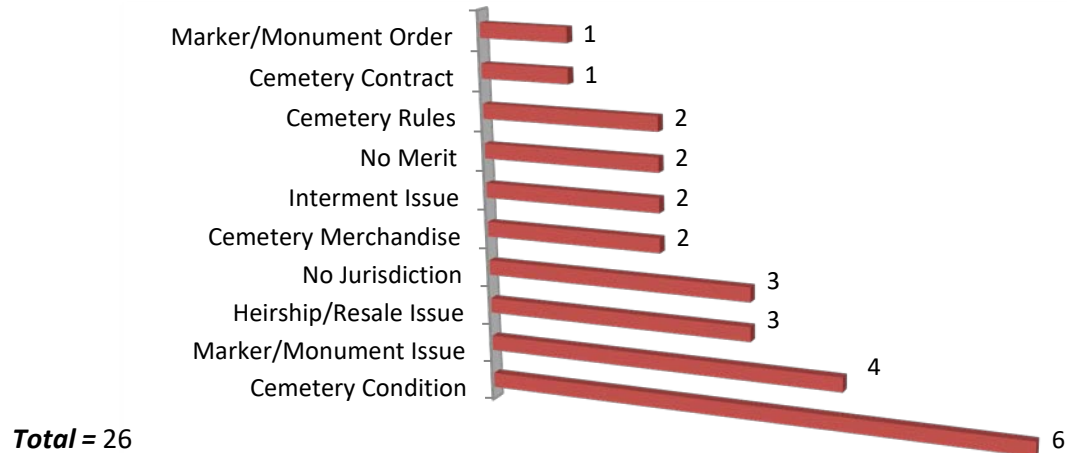
**Prepaid Funeral Contract Sellers
Written Complaints by Type
September 2019 - June 2020**



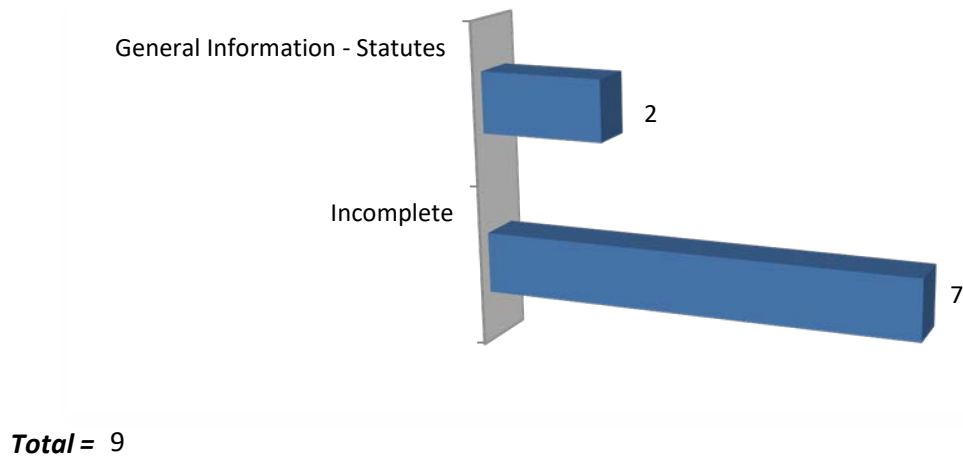
**Prepaid Funeral Contract Sellers
Inquiries by Type
September 2019 - June 2020**



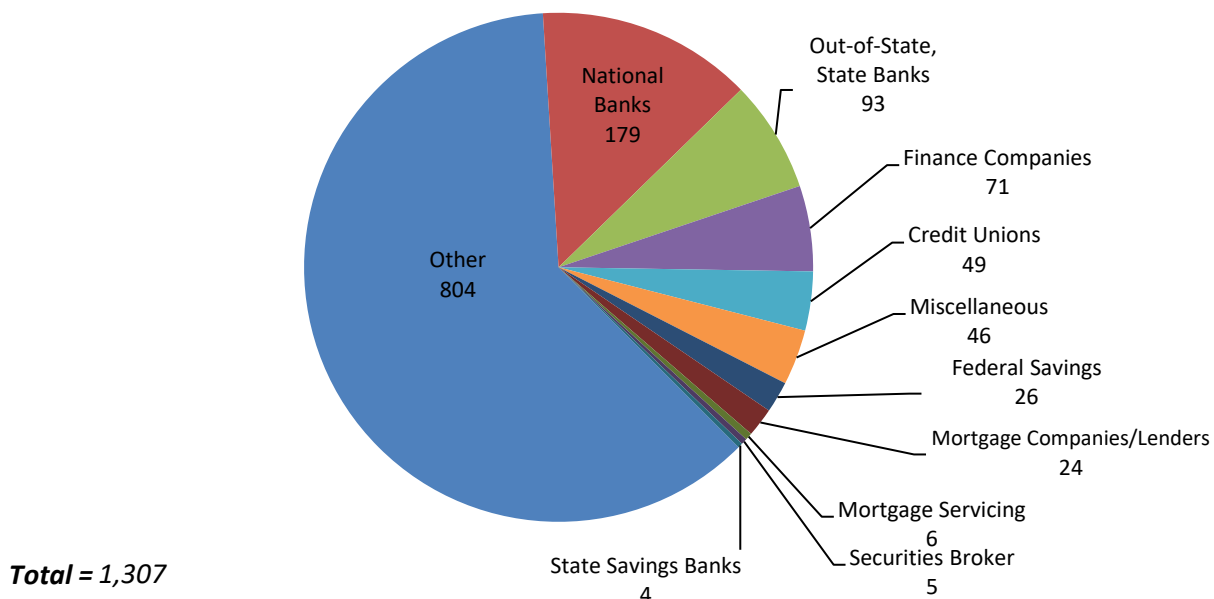
**Perpetual Care Cemeteries
Written Complaints by Type
September 2019 - June 2020**



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



Complaints and Inquiries Against Non-Jurisdictional Entities September 2019 - June 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	16	N/A
Percentage of Written Complaints Resolved Within 90 days	100%	100%	100%	N/A
Number of Written Complaints Resolved	23	36	9	N/A
Trust				
Avg. Number of Days to Close a Written Complaint	12	6	10	N/A
Percentage of Written Complaints Resolved Within 90 days	100%	100%	100%	N/A
Number of Written Complaints Resolved	1	3	0	N/A
PFC/PCC				
Avg. Number of Days to Close a Written Complaint	39	28	25	N/A
Percentage of Written Complaints Resolved Within 90 days	100%	100%	100%	N/A
Number of Written Complaints Resolved	25	32	46	N/A
MSB				
Avg. Number of Days to Close a Written Complaint	18	28	28	N/A
Percentage of Written Complaints Resolved Within 90 days	100%	100%	100%	N/A
Number of Written Complaints Resolved	16	37	95	N/A

*Fourth quarter performance measure numbers are not yet available

Closed Account Notification System (CANS) ACTIVITY

January 1, 2017 – July 31, 2020

Entity	Enrolled	Compromised Accounts Reported
Texas State-Chartered Banks	193	440
Texas State-Chartered Savings Banks	23	53
Federal Savings Banks	10	1
State Credit Unions	132	764
Federal Credit Unions	229	390
National Banks	170	143
Out-of-State State-Chartered Banks	12	157
Out-of-State National Banks	6	1
Total	775	1,949

Bank Examination Testing System (BETS) Activity

Number of Candidates Passing Each Phase

	FY 2017	FY 2018	FY 2019	FY 2020 As of 07/31/20
I. General Knowledge	8	6	3	4*
II. Loan Analysis	3	3	5	5
III. Panel	2	2	5	9
IV. Test Bank	3	3	4	7
Total FE3	24	22	19	15

Promotions

Commissioned Examiners	3	2	5*	7
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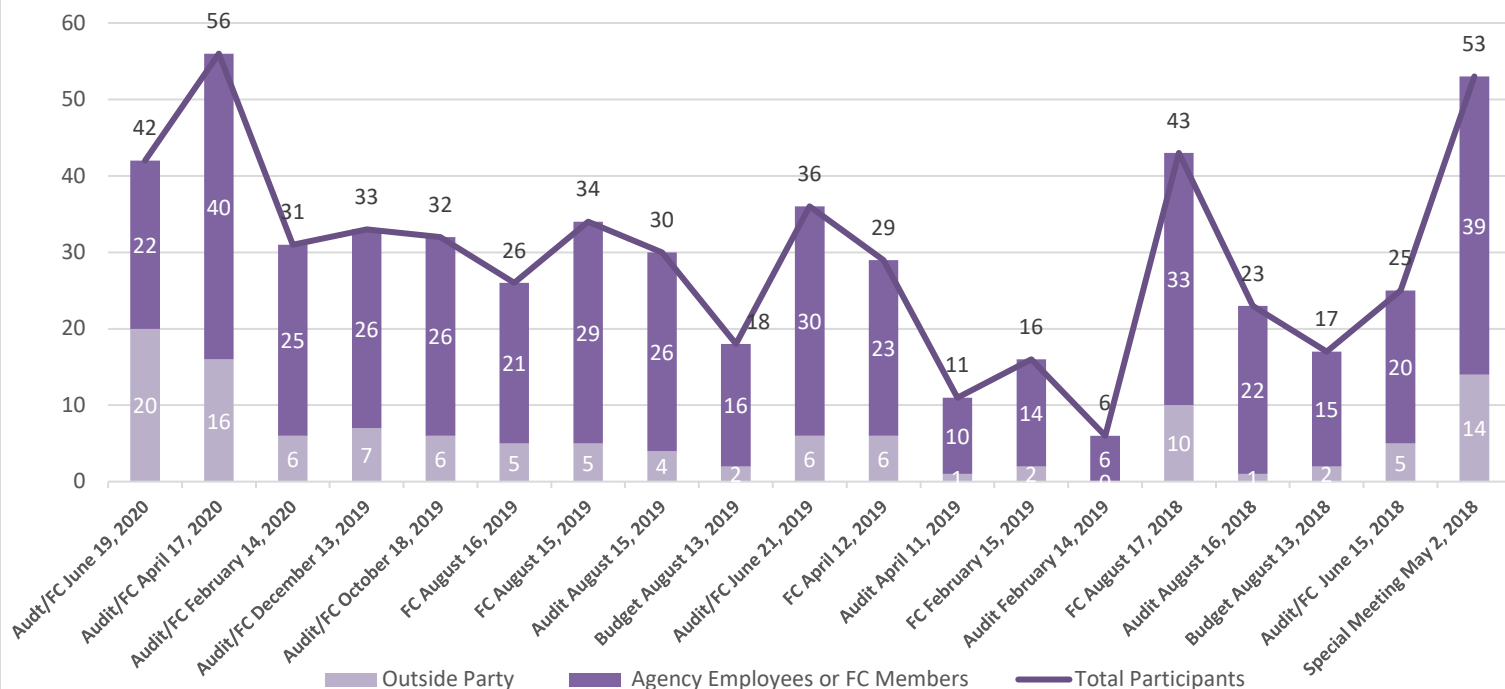
*Includes a FE V Credit Specialist

Other Divisional Items:

- *Virtual Test Bank*
 - A Virtual Test Bank Procedure was implemented to continue the BETS Commissioning Process during the COVID-19 pandemic. The process utilizes the Department's modified examination process allowing for an off-site examination. The Virtual Test Bank is effective for the period of August 1, 2020 through January 31, 2021.
- *COVID – 19 Updates*
 - Our [COVID – 19 webpage](#) continues to be updated with information. A few of the recent updates include:
 - [FIL-64-2020 Interagency Examiner Guidance for Assessing Safety and Soundness Considering the Effect of the COVID-19 Pandemic on Institutions](#)
 - [Joint Statement on Additional Loan Accommodations Related to COVID-19](#)
 - [Main Street Lending Program](#)
 - [CISA – COVID-19 Disinformation Toolkit](#)

- [Federal Eviction Moratoriums](#)
- **Publications**
 - Strategic Plan for the Finance Commission for fiscal years 2021-2025
 - The Finance Commission Strategic Plan will be reviewed for approval by the Finance Commission Members at the August 21, 2020 meeting.
- **Personnel and Policies Manual Updates**
 - Revised Administrative Memorandums (AM)
 - AM 2030 – One-Time Merits (July)
 - AM 2031 – Delegation of Authority (July)
 - AM 2005 – Interstate Bank Examinations (July)
 - AM 2049 – Use of Social Media (July)
- **Website Updates**
 - PHP security updates for all external websites were deployed in July 2020.
- **Staff Training**
 - Barbara Winters attended the virtual FFIEC BSA Specialist Conference and the virtual FFIEC Asset & Wealth Management Forum.

Finance Commission Webcast Historical Data



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



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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Memorandum

TO: Finance Commission Members
FROM: Catherine Reyer, General Counsel
DATE: August 3, 2020
RE: Legal Division Update

Pending Contested Cases

In the Matter of Hashi Money Wiring, LLC, Seatac, WA; Docket No. BM-2002-19-027. Commissioner Cooper issued an Order against this money transmission company to Cease and Desist Activity and to Revoke License for violations noted in an examination. Hearing was set for August 19, 2020. We are negotiating the terms of a Consent Order in which the company will agree to have its license revoked and pay a monetary penalty.

In the Matter of Ping Express US, LLC, Dallas, TX; Docket No. BM-2003-17-205. Commissioner Cooper issued an Order against this money transmission company to Cease and Desist Activity and to Revoke License for violations noted in an examination. The company and its two main principals have been indicted by the US Attorney's office for conspiracy to launder monetary instruments and unlicensed money transmitting. Our hearing on the Cease and Desist/License Revocation order is set for September 16, 2020. Discovery is ongoing.

Orders Issued 6/1/20 – 7/31/20

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

Bank and Trust*

- Consent Order Prohibiting Further Participation dated July 6, 2020; Linda Escamilla, Carrizo Springs, TX
- Consent Order Prohibiting Further Participation dated July 31, 2020; Anita Moody, Lake Creek, TX
- Consent Order Prohibiting Further Participation dated July 31, 2020; Jeannie Swaim, Paris, TX

Non-Depository Supervision

- Consent Order dated June 25, 2020; Asure Software, Inc., Austin, TX
- Consent Order dated June 25, 2020; Treasury Vault LLC, Lehi, UT
- Consent Order dated June 25, 2020; NJ Lotto, LLC, Holmdel, NJ

**One additional order was issued against a financial institution. The order is confidential by law.*

FY 2020 To Date Quarterly Order Activity

BANK				
Type of Action	1st	2nd	3rd	4th**
Consent Order	0	1	0	1
Cease & Desist	0	0	0	0
Supervision	0	0	0	0
Prohibition	2	0	3	2
Total	2	1	3	3
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	3
Cease & Desist	1	0	2	0
Final Order After Hearing	0	0	1	0
Total	1	3	7	3
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
Total	1	2	0	0

** Updated through the date of this memorandum.

Public Information Requests

From June 1, 2020 through July 31, 2020, staff received and responded to 10 requests for public information held by the Department. One of these requests was forwarded to the Attorney General's Office for a ruling on applicable exceptions to disclosure. As of this writing, a ruling on that request is still pending. During the same period, we received no public information requests addressed to the Finance Commission.

Gifts

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

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §12.91, Concerning Other Real Estate Owned

PURPOSE: Amendments to §12.91 extend the initial deadline for state banks to appraise their other real estate owned (OREO) assets to within 90 days of OREO acquisition and give the Texas Banking Commissioner authority to extend all appraisal deadlines where appropriate. The 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 amendments only require an initial appraisal, and then re-appraisal every three years, of OREO with recorded book values of more than \$500,000.

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

RECOMMENDED MOTION: I move that we publish the adopted 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), adopts amendments to §12.91, concerning other real estate owned (OREO) by state banks. The amendments are adopted without changes to the proposed text as published in the July 3, 2020, issue of the *Texas Register* (45 TexReg 4437). The amended rule will not be republished.

REASONED JUSTIFICATION

These amendments extend the initial appraisal deadline to within 90 days of OREO acquisition by state banks and enable the Texas Banking Commissioner (commissioner) to extend this deadline and the three-year re-appraisal deadline where appropriate.

The 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 amendments 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.

SUMMARY OF PUBLIC COMMENTS & RESPONSES THERETO

A comment supporting the adoption of the amendments was received from Independent Bankers Association of Texas (IBAT), which

represents various state banks. IBAT states that the amendments will provide helpful regulatory relief to state banks and are consistent with changes by federal regulators. In addition, IBAT states that the increase from 60 to 90 days for the time to obtain an appraisal on OREO after acquisition will also be helpful for state banks.

One additional comment regarding the amendments was received from International Bancshares Corporation (IBC), which owns a state bank. IBC supports the amendments because they ease regulatory complexity, foster uniformity among the banking industry, give state banks greater opportunities to serve small businesses, and reduce the risks of transactions of OREO from failing where an appraiser is not available.

However, IBC urges the commission to go further and raise the mandatory OREO appraisal threshold to at least \$750,000 or preferably \$1,000,000. IBC notes that the National Credit Union Administration raised analogous OREO appraisal thresholds for credit unions relating to commercial real estate transactions to \$1,000,000 and argues that further increases to the commission's appraisal would allow Texas state banks to more fairly compete with credit unions.

The department believes that raising the threshold further as proposed by IBC would create undesirable risks for the safety and soundness of state banks. Appraisals by licensed or certified appraisers tend to be more accurate, and accurate valuations of OREO owned by state banks is important for

**ADOPTION OF AMENDMENTS TO
7 TAC §12.91
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ensuring the financial soundness of those state banks. In addition, increasing the OREO appraisal threshold to \$500,000 under the amendments is consistent with recent updates to federal bank regulations at Title 12 of the Code of Federal Regulations, §225.63 and §323.3, which now require state banks to obtain appraisals for commercial real estate loans and other commercial real estate transactions with a transaction value of more than \$500,000.

STATUTORY AUTHORITY

The amendments are adopted pursuant to 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.

RULE AMENDMENTS

(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 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.

(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.

(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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