

**A.**

**Finance Commission**

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## FINANCE COMMISSION OF TEXAS

**MEETING DATE** .....October 16, 2020

**MEETING LOCATION** .....Via Webinar

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

**FUTURE MEETING DATES** .....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, October 16, 2020  
9:00 a.m.  
or Upon Adjournment of the Audit Committee Meeting  
Via Webinar

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**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 October 16, 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](http://www.fc.texas.gov). An electronic copy of the agenda is now available at [www.fc.texas.gov](http://www.fc.texas.gov), and a copy of the meeting materials will be available on October 8, 2020 at [www.fc.texas.gov](http://www.fc.texas.gov). To access the recording visit [www.fc.texas.gov](http://www.fc.texas.gov) after October 16, 2020.

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***Section A.3 will take up agenda items A1 and D2 – D3 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 August 21, 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 Fourth Quarter Investment Officer Reports**

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

#### **B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies’ 2020 Fourth Quarter Financial Statements**

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

6. Status Report on Implementation of Sunset Management Recommendations
  - A. Sunset Recommendation 2.6 – “Direct the Finance Commission to minimize duplication of agency functions and promote more cost-efficient administration of the finance agencies.”
  - B. Other Sunset Management Recommendations
    1. Finance Commission of Texas
    2. Texas Department of Banking
    3. Department of Savings and Mortgage Lending
    4. Office of Consumer Credit Commissioner
7. Discussion of the Condition of the Texas State Banking System Report (*Note: Report provided separately*)
8. Discussion of and Possible Vote to Take Action on the Accomplishment Reports for Fiscal Year 2020 for the Commissioners of the Texas Department of Banking, Department of Savings and Mortgage Lending and the Office of Consumer Credit Commissioner
9. Discussion of and Possible Vote to Take Action on the Adoption 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
10. Discussion of and Possible Vote to Take Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Duties and Compensation of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to the Duties and Compensation of Persons Holding the Position of Agency Commissioner Positions, and Other Staff
11. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to §551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property
12. Discussion 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
13. Discussion of and Consultation on Security Audit, Possible Issue Related to Confidential or Sensitive Information, Security Breach Audit and Assessment, or Security Assessments or Deployment Related to Information Resources Technology as Authorized by Tex. Govt. Code Secs. 551.076 and 551.089

**B. TEXAS DEPARTMENT OF BANKING**

1. Industry Status and Departmental Operations: a) Current Issues Affecting Department’s Regulated Entities; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) 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 Proposal and Publication for Comment of Amendments to 7 TAC §19.51, Concerning Other Real Estate Owned by Trust Companies
3. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendment to 7 TAC §3.37, Concerning Calculation of Annual Assessment for Banks
4. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

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

1. Industry Status and Departmental Operations: a) Thrift Regulation Division Activities; b) Mortgage Regulation Division Activities; c) Operations Division Activities; d) Legal Division Activities, including Consumer Complaints and Gift Reporting; and e) Legislative Activities
2. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

**D. OFFICE OF CONSUMER CREDIT COMMISSIONER**

1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities
2. *Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 5, Chapter 82, Concerning Administration, Resulting from Rule Review*
3. *Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 5, Chapter 84, Concerning Motor Vehicle Installment Sales, Resulting from Rule Review*
4. Discussion of and Possible Vote to Take Action on the Adoption 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
5. Discussion of and Possible Vote to Take Action on the Adoption of Amendments and a New Rule in 7 TAC, Part 5, Chapter 89, Concerning Property Tax Lenders
6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 5, Chapter 84, Concerning Motor Vehicle Installment Sales, Resulting from Rule Review
7. 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*

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

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

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**MINUTES OF THE  
FINANCE COMMISSION MEETING  
Friday, August 21, 2020**

The Finance Commission of Texas convened at 10:03 a.m. on August 21, 2020 with the following members present:

**Finance Commission Members in Attendance:**

Phillip Holt, Chairman	Larry Long
George "Cliff" McCauley, Vice Chairman	Will Lucas
Dr. Robin Armstrong	Sharon McCormick
Bob Borochoff	Vince Puente
Hector Cerna	Laura Warren
Molly Curl	

Chairman Phillip Holt announced there was a quorum with eleven members present. (1:18 on audio file).

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<b>A. Finance Commission Matters</b>		
1. Review and Approval of the Minutes of the June 19, 2020 Finance Commission Meeting	<b>On Consent Agenda – Item A1</b> This item Approved on the Consent Agenda.	2:06 start of discussion
2. General Public Comment	No Action Required.	1:26 start of discussion
3. Consent Agenda – Items A1, A8-A9 and C2-C4	Will Lucas made a motion to Approve Consent Agenda items A1, A8-A9 and C2-C4. Laura Warren seconded and the motion passed.	2:06 start of discussion  2:32 Vote
4. Finance Commission Operations	No Action Required.	3:03 start of discussion
<b>5. Audit Committee Report</b>		
A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2020 Third Quarter Investment Officer Reports	Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies' 2020 Third Quarter Investment Officer Reports passed.	4:11 start of discussion
1. Department of Savings and Mortgage Lending		4:21 Vote
2. Office of Consumer Credit Commissioner		
3. Texas Department of Banking		

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<p>B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Readoption of the Investment Policies for:</p> <ol style="list-style-type: none"> <li>1. Department of Savings and Mortgage Lending</li> <li>2. Office of Consumer Credit Commissioner</li> <li>3. Texas Department of Banking</li> </ol>	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Readoption of the Investment Policies for the Department of Savings and Mortgage Lending, Office of Consumer Credit Commissioner and Texas Department of Banking passed.</p>	<p>5:09 start of discussion</p> <p>5:13 Vote</p>
<p>C. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2020 Third Quarter Financial Statements</p> <ol style="list-style-type: none"> <li>1. Department of Savings and Mortgage Lending</li> <li>2. Office of Consumer Credit Commissioner</li> <li>3. Texas Department of Banking</li> </ol>	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies' 2020 Third Quarter Financial Statements passed.</p>	<p>5:47 start of discussion</p> <p>5:50 Vote</p>
<p>D. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' Fiscal Year 2021 Operating Budgets</p> <ol style="list-style-type: none"> <li>1. Department of Savings and Mortgage Lending</li> <li>2. Office of Consumer Credit Commissioner</li> <li>3. Texas Department of Banking</li> </ol>	<p>Public comment was made by Chris Williston on behalf of the Independent Bankers Association of Texas (IBAT) and Chris Furlow on behalf of the Texas Bankers Association (TBA). Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies' Fiscal Year 2021 Operating Budgets passed.</p>	<p>6:17 start of discussion</p> <p>18:08 Vote</p>
<p>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 &amp; Associates</p>	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Department of Savings and Mortgage Lending's 2020 Annual Internal Audit Report as Prepared and Presented by Garza/Gonzalez &amp; Associates passed.</p>	<p>18:34 start of discussion</p> <p>18:39 Vote</p>
<p>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 &amp; Associates</p>	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Office of Consumer Credit Commissioner's 2020 Annual Internal Audit Report as Prepared and Presented by Garza/Gonzalez &amp; Associates passed.</p>	<p>19:08 start of discussion</p> <p>19:13 Vote</p>
<p>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 &amp; Associates</p>	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Texas Department of Banking's Revenue Accounting Process Audit Report as Prepared and Presented by Garza/Gonzalez &amp; Associates passed.</p>	<p>19:41 start of discussion</p> <p>19:44 Vote</p>
<p>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 &amp; Associates</p>	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Texas Department of Banking's 2020 Annual Internal Audit Report as Prepared and Presented by Garza/Gonzalez &amp; Associates passed.</p>	<p>20:14 start of discussion</p> <p>20:18 Vote</p>

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<b>6. Strategic Planning Committee Report</b>		
A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Finance Commission of Texas 2021-2025 Strategic Plan	Coming upon Recommendation from the Strategic Planning Committee, no second is required and the motion to Approve the Finance Commission of Texas 2021-2025 Strategic Plan passed.	20:50 start of discussion  23:41 Vote
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	Laura Warren made a motion to Approve 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. Cliff McCauley seconded and the motion passed.	24:55 start of discussion  25:13 Vote
<b>8. On Consent</b>	<b>On Consent Agenda – Item A8</b> This item Approved on the Consent Agenda.	n/a
<b>9. On Consent</b>	<b>On Consent Agenda – Item A9</b> This item Approved on the Consent Agenda.	n/a
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	Bob Borochoff made a motion to Approve 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. Laura Warren seconded and the motion passed.	25:54 start of discussion  26:21 Vote
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	No Discussion.	n/a
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	No Discussion.	n/a

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
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	No Discussion.	n/a
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	No Discussion.	n/a
<b>B. Department of Savings and Mortgage Lending</b>		
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.	30:24 start of discussion
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	Bob Borochoff made a motion to Approve the Adoption of Amendments to 7 TAC §76.98, Concerning Annual Fee To Do Business. Laura Warren seconded and the motion passed.	50:32 start of discussion  53:48 Vote
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	Laura Warren made a motion to Approve 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. Sharon McCormick seconded and the motion passed.	54:29 start of discussion  56:05 Vote
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	Molly Curl made a motion to Approve 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. Will Lucas seconded and the motion passed.	56:47 start of discussion  59:59 Vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
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	Molly Curl made a motion to Approve 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. Hector Cerna seconded and the motion passed.	1:00:39 start of discussion  1:06:26 Vote
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	Will Lucas made a motion to Approve 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. Larry Long seconded and the motion passed.	1:07:18 start of discussion  1:09:33 Vote
7. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Discussion.	n/a
<b>C. Office of Consumer Credit Commissioner</b>		
1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities	No Action Required.	1:10:34 start of discussion
<b>2. On Consent</b>	<b>On Consent Agenda – Item C2</b> This item Approved on the Consent Agenda.	n/a
<b>3. On Consent</b>	<b>On Consent Agenda – Item C3</b> This item Approved on the Consent Agenda.	n/a
<b>4. On Consent</b>	<b>On Consent Agenda – Item C4</b> This item Approved on the Consent Agenda.	n/a
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	Vince Puente made a motion to Approve the Proposal and Publication for Comment of Amendments to 7 TAC, Part 5, Chapter 82, Concerning Administration, Resulting from Rule Review. Laura Warren seconded and the motion passed.	1:29:26 start of discussion  1:32:00 Vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
6. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation  <i>Ernest Polk v. Texas Office of Consumer Credit Commissioner; Cause No. 2018-04375, in the 281st Judicial District Court of Harris County, Texas</i>	No Discussion.	n/a
<b>D. Texas Department of Banking</b>		
1. Industry Status and Departmental Operations: a) Current Issues Affecting Department’s Regulated Entities; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) 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.	1:32:47 start of discussion
2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §12.91, Concerning Other Real Estate Owned	Larry Long made a motion to Approve the Adoption of Amendments to 7 TAC §12.91, Concerning Other Real Estate Owned. Sharon McCormick seconded and the motion passed.	1:51:02 start of discussion  1:55:33 Vote
3. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Discussion.	n/a

There being no further business, Chairman Phillip Holt adjourned the meeting of the Finance Commission at 11:59 a.m. (1:56:44 on the audio file).

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Phillip Holt, Chairman  
 Finance Commission of Texas

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Charles G. Cooper, Executive Director  
 Finance Commission of Texas

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Brenda Medina, Executive Assistant  
 Finance Commission of Texas

# Finance Commission of Texas

## **Consent Agenda**

October 16, 2020

**A. Finance Commission Matters**

1. Review and Approval of the Minutes of the August 21, 2020 Finance Commission Meeting

**D. Office of Consumer Credit Commissioner**

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 5, Chapter 82, Concerning Administration, Resulting from Rule Review
3. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 5, Chapter 84, Concerning Motor Vehicle Installment Sales, Resulting from Rule Review

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## October 2020 Status Report on Implementation of Finance Commission Directive on Efficiency Audit

### 1. Budget and Accounting

- a. **Accounts Payable:** The DOB, as performing agency, can perform reconciliation and review of all records required for a payment as well as the data entry of the completed vouchers. The receiving agency would retain final review and approval. The DOB can provide this service to one agency without additional staff.
  - o **Update:** With CAPPs implementation scheduled for fiscal year 2021, the Agencies have agreed to postpone discussion of potential sharing until after transition to CAPPs.
- b. **Alignment/Best Practices:** The Agencies will establish a workgroup to share best practices and align financial reporting to the Finance Commission as much as possible.
  - o Final reporting format as approved by Commissioners was presented at the Audit Committee meeting in February 2020.
  - o **Update:** Staff discussed the alignment of the format and reporting of audit activities to the Finance Commission.

### 2. Complaint Intake

- a. The Agencies will establish a workgroup to explore opportunities to improve customer service, align performance measure reporting, review best practices, federal complaint issues, and emerging trends.
  - o **Performance Measure:**
    - o Operational efficiency measures were developed and aligned between the three Agencies. This included aligning complaint measures and/or adding measures for complaints which were presented at the August 16, 2019, Finance Commission meeting.
  - o **Best Practices/Federal Compliant Issue/Emerging Trends:**
    - o Staff met to discuss aligning reporting to Finance Commission and aligning survey forms.
    - o **Update:** Staff is reviewing the consumer complaint forms utilized by each agency for possible alignment. OCCC is reviewing the frequency of surveying consumers to improved customer service.

### 3. Financial Literacy Program

- a. DOB and the OCCC will work together to define a strategy and deliverables for an agreement to share financial education outreach services.
  - o **Update:** Agency Commissioners and select staff met and discussed working together on a financial education pilot webinar in the Fall of 2020. Staff has held several meetings to coordinate the details.

### 4. Purchasing and Contracting

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

- **Purchasing and Contracting:**
  - Effective March 1, 2020, SML implemented on a trial basis. Status will be reevaluated in September 2020 after two billing cycles are complete.
  - **Update:** DOB and SML evaluated the process after two billing cycles and agreed to continue with the shared service.
- **Explore Other Purchasing Options:**
  - A follow up meeting will be held in the fourth quarter to discuss other possible purchasing and contract opportunities. Interagency agreement modifications may be needed.
  - **Update:** Staff discussed the potential of the DOB procuring personal protective equipment (PPE) for SML and OCCC. The Agencies will discuss further as PPE supplies are exhausted and new supplies are needed.

## 5. Human Resources

- a. The Agencies will establish a workgroup to share best practices and align performance measures in reporting to the Finance Commission to enhance consistency and alignment.
  - **Performance Measures:**
    - Operational efficiency measures were developed and aligned between the three Agencies. The new measure(s) related to turnover were presented at the August 16, 2019, Finance Commission meeting.
  - **Best practices:**
    - Discussion on aligning human resource statistical information reported to Finance Commission.
    - **Update:** Staff met to discuss and compare policies regarding COVID-19, specifically, administration of the FFCRA, return to office, and tracking employee illness.
- b. As the Agencies evaluate the impact and timing of CAPPs, the Agencies will explore the option of DOB offering the following HR services to the other Agencies: (1) benefits coordinator; (2) new employee orientation; (3) employee separation processing; and (4) possibly background checks, if appropriate clearance can be obtained.
  - **CAPPs:**
    - No details on implementation as of March 2020. Agencies are waiting on additional information from the Comptroller's Office.
    - **Update:** The Agencies began the CAPPs Financials implementation in September 2020. CAPPs HR/Payroll deployment project is scheduled to begin in September 2021.
  - **Shared Services:**
    - General discussion held regarding currently shared services – building security, badges, flu clinics, benefits presentations.
    - **Update:** Annually, the Agencies hold a shared flu shot clinic at the Finance Commission building. Due to population restrictions in the building this year, a clinic will not be held, and employees are being encouraged to utilize other means of obtaining vaccinations.

## 6. Information Technology

- a. The Agencies will create a workgroup to review possibilities for shared services, share best practices and strategic alignment, review emerging trends in cybersecurity, and review other ways to enhance IT services.
  - o **IT exploration:**
    - o Three technology areas that could potentially be shared were identified. Discussion was limited to sharing of resources related to Network and Communication Services.
    - o **Update:** Discussion held on exploring web hosting and/or internet services consolidation. Also considering the use of AMP/Umbrella for use by all three Agencies for cybersecurity services. Group will begin meeting monthly to revisit these possibilities.

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Charles G. Cooper  
Commissioner

## **TEXAS DEPARTMENT OF BANKING**

2601 North Lamar Blvd., Austin, Texas 78705

512-475-1300 / 877-276-5554

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

### **MEMORANDUM**

TO: The Finance Commission

FROM: Charles G. Cooper, Commissioner

DATE: October 1, 2020

RE: Department of Banking Priorities for Fiscal Year 2020

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This report is a summary of the activities of the agency for fiscal year 2020. Beginning in March 2020, the Department's operations, including staff resources, were redirected to address the evolving threats of the COVID-19 virus to Texas' financial service providers. This report includes comments about those redirected activities.

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

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

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

##### **Update:**

- *The agency's staff maintained regular contact with state and federal legislative committees.*
- *Introductory meetings have been held with the members of legislature.*
- *COVID-19 Response: Commissioner Cooper worked with the Conference of State Bank Supervisors (CSBS) Legislative Committee to provide information to Congress concerning legislative actions.*
- *On August 28, 2020, Commissioner Cooper responded to request for information from the House Committee on Pensions, Investments, and Financial Services regarding the effects of the pandemic on industry and business operations, and existing statutory and regulatory barriers in responding to COVID-19. (August)*

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

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

**Update:**

- *Important material and updates are provided to members at each Finance Commission meeting and by email.*
- *Members received information on the Texas Treasury Safekeeping Trust Company at the February meeting.*
- *COVID-19 Response: Finance Commission members received copies of Department press releases, industry notices, and a proclamation. Commissioner Cooper issued a proclamation on March 16, 2020 authorizing banks to close all or part of their offices to protect the public health and the most vulnerable population, while ensuring that they can still meet the financial needs of their customers. The Department continues to monitor how banks are responding to the pandemic regarding modifying branch hours, branch activity, etc.*
- *In August, members received information on emergency closing protocols for regulated entities due to the weather events that were impacting Texas.*

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

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

**Update:**

- *Staff monitored interim charges of the Texas House of Representatives and Texas Senate and tracked the topics of relevant committee hearings.*
- *Information on potential interim charges was provided to the Texas House of Representatives and Texas Senate.*

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

Measure: Implement Sunset “Management Actions” by updating or creating rules, policies, performance measures or procedures. Begin implementation of the Finance Commission’s Plan to minimize duplication of agency functions and promote more cost-efficient administration of the finance agencies. Coordinate these efforts with the other Finance Commission agencies.

**Update:**

- *Management Action 2.6, the Finance Commission voted on the agencies’ recommendation and Efficiency Audit at the October 18, 2019 meeting. The Sunset Advisory Commission was provided copies of the Efficiency Audit, the*

*Finance Commission Plan, and combined agency response on December 31, 2019.*

- *Management Action 7.1, a consolidated Training Manual was presented to the members of the Finance Commission of Texas at the October 2019 meeting.*
- *Meetings were held with representatives of OCCC and SML regarding the possible sharing of information technology resources, human resources, accounting, procurement, and consumer complaints.*
- *On April 17, 2020, the Department, along with the other finance agencies, reported their first status report on progress to implement the Finance Commission directive related to Sunset Recommendation 2.6.*

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

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

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

### **Update:**

- *Through August 31, 2020, all key performance measures were met or exceeded with the exception of two measures: the number of bank examinations performed and the percentage of actual expenditures to budgeted expenditures.*
- *The Bank and Trust Division continued to sustain the CSBS requirements to maintain accreditation.*
- *COVID-19 Response: Bank and Trust examinations of supervised entities were suspended effective March 16, 2020 and were being evaluated on a two-week rolling period. Exams in-process continued with work being conducted off-site. As a supportive measure, senior examiners have been assigned to each bank and have provided their contact information to bankers in the event they need immediate contact with the Department. Examinations activities resumed June 1, 2020, with all examinations conducted offsite.*
- *COVID-19 Response: Examination processes and procedures were modified to properly evaluate a bank or trust company's condition while being mindful of the burden an examination places on the institution's staff and resources. This modified examination approach focuses on the most relevant examination aspects as conditions dictate. We maintain the flexibility to be able to expand the procedures when we encounter heightened risk in an institution or circumstances otherwise warrant. Adjustments are made to the procedures as issues surface.*
- *COVID-19 Response: The agency's staff are leveraging the offsite monitoring program, oil and gas risk assessment survey, and other capabilities 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 Response: In coordination with license holders, previously scheduled Non-Depository Supervision (NDS) Division examinations, including coordinated multi-state MSB examinations, were converted to off-site examinations to the extent possible.*
- *NDS personnel prepared documents and submitted them to CSBS in preparation for obtaining a newly created MSB accreditation in the Fall of 2020.*

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

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

**Update:**

- *Commissioner Cooper is serving as the Acting Chair of the Board of Managers of the State Regulatory Registry LLC (SRR). The SRR is responsible for the Nationwide Multistate Licensing System (NMLS) and State Examination System (SES).*
- *The Department participated in the first Large Bank Peer Review Pilot meeting held in Jackson, Mississippi, on September 4 and 5, 2019, and continues to participate in the program post inception. This CSBS led program was initiated to provide state regulators with the ability to achieve a horizontal perspective for supervising banks with total assets greater than \$10 billion. The program provides participating state regulatory agencies with access to compiled data and other examination information common to these larger institutions. This state regulator initiative is similar to a federal agency only program that typically does not share information with state regulators.*
- *Department management met with the leadership of the Texas Bankers Association (TBA) in Austin on September 13, 2019. TBA management shared their strategic vision and priorities, and discussions were held about common concerns.*
- *The Department attended the 2019 Community Banking in the 21<sup>st</sup> Century Research and Policy Conference in St. Louis, Missouri, beginning September 30, 2019. This conference, which is hosted by CSBS, the Federal Reserve Bank of St. Louis, and the FDIC, focused on community banking related research on a wide variety of topics affecting banks including regulation, technology, and funding.*
- *Commissioner Cooper participated in the Financial Stability Oversight Council (FSOC) meeting held in Washington, D.C. on November 7, 2019. FSOC was created as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act to identify risks to the financial system and*



*coordinate responses to any threats. Commissioner Cooper was named the State Banking Representative to FSOC in November of 2018.*

- The Department hosted a training session at the Austin Headquarters Office on Current Expected Credit Loss (CECL). This training session was attended by approximately 30 staff from the Department of Banking, Department of Savings and Mortgage Lending and the FDIC. This in-person training session, which was led by FDIC instructors, provided six hours of instruction for regulators concerning CECL.*
- The Department hosted a live Ask the Fed webinar at the Austin Headquarters Office on November 8, 2019. The topic of the webinar was "Basics of Fintech: Artificial Intelligence and Machine Learning."*
- Department staff participated in the FDIC and State Leadership Meeting held in Dallas on November 12, 2019. Issues discussed included banking industry risks, the economy, examination processes, and examiner training.*
- Department staff members participated in the CSBS Board Meeting and Supervisors Symposium held in Scottsdale, Arizona, beginning December 2, 2019.*
- The agency is an active member of the Multi-State MSB Examination Taskforce (MMET). Commissioner Cooper continues to serve as Chairman of MMET.*
- Commissioner Cooper and Non-Depository Supervision (NDS) Director Saucillo attended the annual MMET meeting in New Orleans, Louisiana the week of January 13, 2020.*
- On February 19, 2020, Commissioner Cooper was named to the FDIC Advisory Committee of State Regulators. The purpose of the committee is to provide a mechanism for state and FDIC regulators to discuss a variety of current and emerging issues that have potential implications for state-chartered banks.*
- Department staff attended the 2020 NMLS Annual Conference and Training event held in San Francisco beginning February 18, 2020.*
- Staff members participated in the IBAT Regional Meetings held in various cities across Texas beginning February 24, 2020.*
- Commissioner Cooper accompanied a delegation of Conference of State Bank Supervisors (CSBS) representatives to the United Kingdom (UK) beginning February 29, 2020. The delegation of state financial services regulators from the United States and representatives met with their counterparts in the UK, including Her Majesty's Treasury, to understand our different regulatory structures, explore areas of commonality, share best supervisory practices and lay the foundation for transatlantic collaboration.*
- Department staff members attended the CSBS State and Federal Supervisory Forum via a video-conference platform spanning three afternoons which began on May 19, 2020. This annual event provides a venue for state and federal regulators to discuss supervision related issues and is typically held in person.*
- On May 12, 2020, the NMLS Policy Committee voted to appoint Director of NDS Saucillo, as a member of State Examination System (SES) Steering Committee. The SES Steering Committee is made up of ten state regulators whose main goal is to serve as a consultative body for the ongoing development and policy-making process for SES, which is a new examination management*

*system developed by CSBS intended to modernize, enhance and standardize the state supervision process.*

- *NDS completed the SES on-boarding process in July/August 2020, which is part of the NMLS Modernization project. Agency MSB examiners also completed the initial training necessary to be able to utilize SES for future examinations.*
- *Assistant Deputy Commissioner (ADC) Reese continues to be an active member of the Regulator-Industry Clearing House Working Group. ADC Reese was also recently appointed to serve in the Federal MSB Legislation Working Group. Both working groups work in collaboration with CSBS to ensure uniformity in the licensing and supervision of MSBs by developing model practices and laws.*
- *Beginning August 4, 2020, agency staff attended the virtual CSBS Deputy Seminar Series sessions that occurred weekly through September 8, 2020.*
- *COVID-19 Response: On March 20, 2020, Commissioner Cooper participated in a TBA podcast titled COVID-19 Update for State-Chartered Banks with Commissioner Charles G. Cooper. The podcast covered a range of topics related to the Department's actions taken in response to the COVID-19 epidemic.*
- *COVID-19 Response: On March 24, 2020, Commissioner Cooper participated in an IBAT webinar titled IBAT Industry Update Webinar which was designed to answer pertinent questions related to the COVID-19 epidemic impact on banks and bank operations.*
- *COVID-19 Response: Commissioner Cooper is a member of the Financial and Banking Information Infrastructure Committee (FBIIC) Coronavirus workgroup which is meeting continuously to review the nations response to COVID-19.*
- *COVID-19 Response: Agency staff has been involved in multiple conference calls with federal and state bank regulatory agencies, CSBS, IBAT, and TBA. Information gathered through contact with supervised institutions and industry developments have been shared with federal agencies.*
- *COVID-19 Response: Commissioner Cooper participated in meetings of the Financial Sector Coronavirus Working Group. This group meets periodically to discuss security issues of financial service providers impacted by COVID-19.*

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

Measure: Perform research, maintain ongoing dialogue with other regulators, and attend training to maintain an understanding of conditions in which our entities operate. Maintain a leading role in the effort to combat cybersecurity threats. Maintain an off-site monitoring program of bank and trust industries while initiating appropriate regulatory responses and actions when applicable. Research and take required actions

against institutions with unacceptable risk profiles to minimize the adverse impact on depositors, shareholders and the banking system in general.

**Update:**

- *Agency staff members closely monitor the risk profiles of the institutions we regulate through on-site examinations. BSA examiners monitor Suspicious Activity Reports from large institutions, and IT examiners participate in multi-state examinations for large service providers. The agency's Director of IT Security Examinations continues to participate in Cybersecurity and Critical Infrastructure Working Group meetings to maintain an awareness of current cybersecurity threats to our institutions. Finally, on-going monitoring through our quarterly off-site monitoring program helps to identify increased risks in between examination cycles.*
- *COVID-19 Response: Agency personnel have been continuously monitoring industry developments and actions taken to effectively meet customers' financial needs.*
- *COVID-19 Response: The Director of IT Security Examinations collaborated with representatives from CSBS and the banking industry to develop a best practices guidance that will assist banks in preventing and dealing with the impact of ransomware attacks, which have become more prevalent after COVID-19.*

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

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

**Update:**

- *For banks, trust companies and foreign bank agencies that have financial instruments tied to London Interbank Offered Rate (LIBOR), Department staff are evaluating their readiness for the transition away from LIBOR. The agency's goal is to ensure that bank management and board members are aware that LIBOR will be eliminated in 2021, and that management is taking necessary steps to transition to a new index.*
- *Bank examination staff continues to evaluate the banking industry's transition to a new accounting requirement related to the calculation of the allowance for loan and lease losses called Current Expected Credit Losses Methodology, or CECL.*
- *NDS staff continues to participate in various MMET and MTRA committees, such as the MTRA Examination Standards Committee tasked with updating the MSB work program and is an active participant. NDS staff contributed to the development of the Networked Supervision plan to assist all states in accessing the networked MSB examination system. NDS staff also continues to participate in quarterly scheduling calls to coordinate multi-state joint MSB examinations, and MTRA Licensing/Emerging Issues calls.*

- *Assistant Deputy Commissioner Reese continues to attend the Suspicious Activity Report (SAR) review team meetings. The SAR review team consists of local, state and federal investigators, analysts and prosecutors that review locally filed SARs every other month.*
- *An agency staff member serves on the Executive Committee and is President of the North American Death Care Regulators Association, which strives to promote a forum for death care regulators to discuss problems affecting the public and death care industry.*
- *The Prepaid Funeral Guaranty Fund Advisory Council held a telephonic meeting to discuss and approve the proposed amendments to the Investment Policy made during the 86th Texas Legislature on November 13, 2019.*
- *On May 27, 2020, a Prepaid Funeral Guaranty Fund Advisory Council meeting was held via teleconference. The funds' activities covering March 1, 2019 to February 29, 2020 were discussed.*
- *COVID-19 Response: Information about COVID-19 is distributed to regulated entities through press releases, industry notices and a proclamation. Critical information is available on a dedicated section of the Department's website.*

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.

**Update:**

- *Agency staff continues to monitor regulated industries and initiate enforcement actions against both licensed and unlicensed entities that are engaging in apparent illegal practices. Through the end of the fiscal year, 31 actions were taken against individuals and entities:*
  - *Issued eight prohibition orders against former bank officers or employees.*
  - *Issued one order installing a supervisor at a bank.*
  - *Issued one consent order against a bank due to unacceptable exam findings.*
  - *Issued one consent order against a bank employee.*
  - *Issued two cease and desist and license revocation orders against licensed money transmitters.*
  - *Issued a final order with monetary penalty following a hearing against an unlicensed money transmitter.*
  - *Issued one consent order with license revocation and monetary penalty against a money transmitter.*
  - *Issued two cease and desist orders against unauthorized money transmitters.*
  - *Issued eleven consent orders against unauthorized money transmitters.*
  - *Issued three consent orders against prepaid funeral contract sellers.*

- *Notified 34 MSB entities that may be engaged in money transmission without a license; information used to determine if enforcement action needed by the Legal Division.*

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

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

**Update:**

- *Consumer assistance activity is reported at each Finance Commission meeting. The report includes the percentage of written complaints resolved in 90 days and the number of written complaints resolved.*
- *One performance measure relating to the number of written complaints closed was not met in fiscal year 2020. If no supporting documentation is submitted with a complaint, the matter is considered an inquiry. Complaint rules adopted in last fiscal year impacted our overall complaint intake and resolution projections for fiscal year 2020.*
- *COVID-19 Response: The agency's consumer assistance staff are closely monitoring consumer activity as it relates to the pandemic. No complaints related to COVID-19 were received in the first half of the year; however, two complaints were received in the second half of the fiscal year.*

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

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

**Update:**

- *Revised Examiner Bulletins (XB) for Bank & Trust examination staff and provided timely communication of the changes to staff.*
  - *XB 2019-06 – Guidelines for Procedures and Work Paper Documentation for Commercial Exams (September)*
  - *XB 2019-05 – Guidelines for Procedures and Work Paper Documentation for IT Exams (September)*
  - *XB 2019-04 – Guidelines for Procedures and Work Paper Documentation for Trust Exams (September)*
  - *XB 2019-07 – Guidelines for Imaging Examination Work Papers (October)*
  - *XB 2020-01 – Guidelines for Procedures and Work Paper Documentation for Commercial Exams (March)*
  - *XB 2020-02 – Guidelines for Procedures and Work Paper Documentation for Trust Exams (March)*

- *XB 2020-03 – Guidelines for Procedures and Work Paper Documentation for Information Technology Exams (March)*
- *Administrative Memorandum (AM) updates related to Bank & Trust and MSB examinations were communicated to staff in a timely manner.*
  - *AM 2043 – Visitations and Interim Risk Examination Assessment Programs (September)*
  - *AM 2015 – Work Paper Organization, Retention and Review (October)*
  - *AM 2009 – Examination Report Submission and Processing (November and January)*
  - *AM 2034 – Examination Due Date Calculation for MSB, PCC, and PFC License Holders (New AM issued in December)*
  - *AM 2028 – Background Checks Conducted in Accordance with Statutory Authority (February)*
  - *AM 2040 – Removal of Confidential FinCEN Data Files (June)*
  - *AM 2005 – Interstate Bank Examinations (July)*
- *Reviewed and revised 32 money transmitter MSB examination procedures related to: Pre-exam; Agent Supervision; Financials; Management; Compliance; Prepaid Access; IT; Texas Specific; and Virtual Currency.*
- *Reviewed and revised 15 currency exchange MSB examination procedures related to: Pre-exam; and Financial Statement reviews.*
- *Examiners' Council performed annual review of bank, trust, and information technology examination work papers as required per Administrative Memorandum 2015. Findings were communicated to examination staff in a timely manner. (January-February)*
- *COVID-19 Response: Revised commercial bank and trust company pre-examination package and examination procedures to provide for off-site examination work.*
- *COVID-19 Response: Reviewed and modified twelve commercial procedures for use during pandemic: Planning & Control, Allowance for Loan and Lease Losses, Audit, Borrowed Funds/Liquidity, Capital Accounts and Dividends, Earnings, Funds Management, Investment Securities, Loans & Leases, Loan Review, Management, and Related Organizations and Bank Holding Company. (May - August)*
- *COVID-19 Response: Created new Bank Owned Life Insurance procedure for use during the pandemic. (May)*
- *COVID-19 Response: Reviewed and modified nine trust procedures for use during the pandemic: Planning & Control; Fiduciary Management; Operations, Internal Controls, & Audits; Fiduciary Earnings, Compliance, Fiduciary Asset Management, Trust Company Capital, Trust Company Asset Quality, and Trust Company Liquidity, (May).*
- *COVID-19 Response: Created two new work programs for information technology for use during the pandemic: Type A Work Program; and Type B & C Work Program (May-July)*
- *COVID-19 Response: Reviewed and modified the information technology planning procedure for use during the pandemic. (May)*
- *COVID-19 Response: Internal Memorandums*

- *The Commissioner issued two memorandums addressing Policy Compliance Issues During Pandemic Event to the Bank and Trust Supervision examiners on May 28, 2020 and the Non-Depository Supervision examiners on June 15, 2020.*

### **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.

**Update:**

- *Supervisory Memorandum (SM) updates issued and communicated to regulated entities and staff in a timely manner.*
  - *SM 1003 – Examination Frequency for State-Chartered Banks (September)*
  - *SM 1029 – Risk Management of Account Takeovers and related Best Practices (September)*
  - *SM 1025 – Level II Full Scope Examinations (November)*

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

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

**Update:**

- *Rules regarding Private Child Support Enforcement Agencies were repealed as part of the implementation of the Sunset bill.*
- *Rules were amended and repealed to remove references to depository agents in implementing HB 2458, which was passed in the 86<sup>th</sup> Legislative Session.*
- *New rules were adopted requiring banks, trust companies, and money services businesses to file cybersecurity incident reports with the Department.*
- *A rule exempting registered broker-dealers from licensure as money transmitters was adopted.*
- *Rules regarding prepaid funeral contracts were amended as part of the required four-year rule review.*
- *A rule setting requirements for banks' procedures regarding other real estate owned (OREO) was amended to increase the amount of time a bank has to obtain an appraisal, and to increase the dollar threshold for OREO subject to the appraisal rule.*

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

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

**Update:**

- *On January 31, 2020, staff participated the 2020 Financial Fitness Greater Austin (FFGA) meeting.*
- *In the [October edition](#) of the Texas Bank Report, the Department featured two state-chartered banks with financial education programs. A separate featured article was written on elder financial exploitation.*
- *Modified the financial education [brochure](#) at the beginning of the fiscal year.*

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

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

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

**Update:**

- *Thirty jobs were posted from September 1, 2019 through August 31, 2020.*
- *Successfully filled key positions in the agency through internal promotion: Assistant Deputy Commissioner; Chief Operating Officer; Director, Non-Depository Supervision; Review Examiner, Non-Depository Supervision; Director, Division of Strategic Support; Regional Director, Houston; Central Point of Contact Large Bank Specialist, Houston.*
- *Promoted five internal applicants to Financial Examiner VII positions through competitive posting.*
- *Filled an Administrative Assistant position in Executive.*
- *Filled two Financial Examiner I positions in Non-Depository Supervision.*
- *Filled one Financial Examiner VI position in Corporate Activities.*
- *Filled eight Financial Examiner positions in Bank and Trust Regional Offices.*
- *Filled four Financial Examiner positions in Bank and Trust- IT.*
- *Filled one Financial Examiner position in Bank and Trust- Trust.*
- *Filled one Financial Examiner- Large Bank Specialist position in Bank and Trust.*
- *Filled one Director position in Management Information Systems (MIS).*
- *Filled four Management Information System vacancies: Systems Administrator VI, Database Administrator V, Information Security Officer, Network Specialist VI.*
- *Employed two summer interns in the Dallas and San Antonio Regional Offices.*
- *Agency representatives attended four recruiting fairs around the state.*



- *Developed Department of Banking LinkedIn page for recruiting to increase talent pool.*
- *Reviewed and updated AM 2002 – Equal Employment Opportunity, Discrimination and Sexual Harassment Policy (September).*
- *Reviewed and updated Section 4 – Employee Actions (September).*
- *Reviewed and updated Section 6 – Performance Management System (January).*
- *COVID-19 Response: Added Section 8-05A – Emergency Paid Sick Leave/Emergency Family and Medical Leave Expansion Act (Families First Coronavirus Response Act) (April).*

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

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

**Update:**

- *Agency fiscal year 2020 turnover rate through August 31, 2020 was 10.85%; Agency turnover excluding retirements was 9.14%. Financial Examiner fiscal year 2020 turnover rate through August 31, 2020 was 9.92%; Financial Examiner turnover excluding retirements was 7.44%.*
- *Through August 31, 2020, the agency has hired twenty-five new employees and lost nineteen employees.*
- *Ten Financial Examiners attended the DOB leadership development program.*
- *Completed the annual performance appraisal process for all employees through NEOGOV.*
- *Completed supervisor evaluations through NEOGOV in June 2020.*
- *Compensation Analysis Project completed. Salary adjustments for fiscal year 2021 made to remain competitive to market.*
- *Financial Examiner and related Directors salaries remain competitive with the FDIC.*
- *Administered UT Survey of Employee Engagement. Received results in February 2020 which are available on the Department's website.*
- *COVID-19 Response: Administered COVID-19 employee survey to assess technological needs for remote work and gauge employee concerns about return to work at Department offices.*

- *Management response to Employee Advisory Council recommendations include: Creation of user guides for internal applications; revisions to AM 2009; and the rescheduling of supervisor evaluations for fourth quarter FY 20.*
- *Evaluated staffing needs as a result of recent conversions.*

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

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

**Update:**

- *The Chief Information Officer met with a technology provider to discuss circuit services and reliability. Requested a dedicated circuit for Nob Hill to correct issues with Access Point that are causing intermittent network outages. The circuit has been implemented, and no new outages have been reported.*
- *Staff met with representatives from the Department of Information Resources and Data Center Services (DCS) to discuss the options of using DCS provided cloud services for website hosting, to improve availability and security posture. Processed a Request for Service (RFS) for a cost-to-value analysis with DCS for cloud hosting services.*
- *Posted and conducted interviews for a Systems Administrator, Network Security Systems Administrator, Database Administrator, and Information Security officer. All positions were filled with individuals who have excellent experience.*
- *Drafted a MIS Division Roadmap, MIS Strategic approach to modernization and support the agency, and Governance procedures. The agency's leadership team has reviewed and approved the artifacts.*
- *The first Information Technology Steering Committee (ITSC) meeting to review and determine the MIS fiscal year 2021 workplan is scheduled for September 22, 2020.*
- *COVID-19 Response: Due to measures employed to limit direct social contact, most of the agency's staff were required to work from home. MIS Division personnel deployed a variety of solutions to allow remote access to employees who are working remotely. MIS is in the process of replacing all desktop computers with mobile devices to posture the Department in a manner which fully supports remote work for all staff. Additionally, MIS has implemented multiple security enhancements which extend to all remote users.*

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.

**Update:**

- *Released required Information Security (IS) Training for all staff and appointed officials. Created a purchase order change notice to require third-party contracted services to comply with HB 3834 requirements. This required training was completed and reported to the Department of Information Resources in accordance with reporting requirements.*
- *Approved the Web Application Vulnerability Scan (WAVS). All WAVS and Controlled Penetration findings from previous vulnerability scans were remediated.*
- *Disaster recovery plan will be updated; the back-up and restore validation is underway. Back-up and restore services were validated. MIS is drafting an updated disaster recovery plan and is planning the migration to cloud services to address disaster recovery needs.*
- *COVID-19 Response: Due to social distancing requirements, portions of the Department's disaster recovery plan were implemented. In addition, employees were warned about new cybersecurity threats relating to the pandemic. MIS has deployed an updated filtering solution which works whether the employee is connected to VPN or not. Additionally, MIS is currently deploying a next generation malware solution to improve our abilities to prevent malware and assist with source identification.*
- *COVID-19 Response: MIS continues to work toward providing a more robust remote work environment. Microsoft Teams was reconfigured to allow for external entity meetings. MIS is also working on network improvements which address service reliability, improve security, and have implemented a procedure to provide staff with solutions to collaborate with banks.*

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

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

**Update:**

- *Forty-one examiners in the Financial Examiner I–III series attended 17 different training courses in the first six months of fiscal year 2020.*
- *In the first half of fiscal year 2020, four examiners received their commission.*
- *Thirty-three examiners in the Financial Examiner I-III series attended 10 different training courses in the second six months of fiscal year 2020.*
- *In the second half of fiscal year 2020, three examiners received their commission.*

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

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

**Update:**

- *Monthly financial statements are provided to all divisions for review and to the Finance Commission each quarter.*
- *Budget variances are analyzed quarterly.*
- *For fiscal year 2020, revenues were 88.8% of budget and expenditures were 88.4% of budget.*
- *Cash reserves are within policy guidelines.*

- 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.

**Update:**

- *Administrative Memorandums (AM) revisions related to internal processes or procedures*
  - *AM 2002 – Equal Employment Opportunity, Discrimination and Sexual Harassment Policy (September)*
  - *AM 2012 – Policy on Utilization of Historically Underutilized Businesses (September)*
  - *AM 2011 – Subpoenas (October)*
  - *AM 2016 – Investment Policy for Funds Under the Oversight of the Guaranty Fund Advisory Council (November)*
  - *AM 2023 – Website (Internet) and DOBIE (Intranet) Maintenance Policy (November)*
  - *AM 2048 – External Website Accessibility Standards (November)*
  - *AM 2013 – Authorization for Release of Confidential Information to Governmental Entity (December)*
  - *AM 2031 – Delegation of Authority (December)*
  - *AM 2003 – Suspicious Activity Reports Filed by the Department (January)*
  - *AM 2025 – Internal Purchasing Procedures (February)*
  - *AM 2016 – Investment Policy for Funds Under the Oversight of the Guaranty Fund Advisory Council (May)*
  - *AM 2031 – Delegation of Authority (July)*
  - *AM 2030 – One-Time Merits (July)*
  - *AM 2049 – Employee Use of Social Media (July)*
  - *AM 2027 – Investment Policy for Funds Under the Oversight of the Finance Commission of Texas (August)*

- *Personnel Manual revision related to internal processes*
  - *Section 4 – Employee Actions (September)*
  - *Section 3 – Training (October)*
  - *Section 14 – Information Technology Standards and Procedures (November)*
  - *Section 6 – Performance Management System (January)*
  - *Section 2 – Fraud Prevention Policy (March)*
  - *Section 6 – Supervisor Evaluations (June)*
  
- *Other mandated publications*
  - [Condition of the Texas State Banking System](#) (September)
  - [Contract Management Guide and Handbook](#) (February)
  - [Condition of the Texas State Banking System](#) (March)

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

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

**Update:**

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

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

Measure: Ensure yearly update and exercise of the Plan.

**Update:**

- *An exercise related to the Plan was conducted in January 2020.*
- *COOP submission schedule was revised by SORM in fiscal year 2020.*
- *The COOP is being updated for the January 2021 submission and will include an updated pandemic plan and COVID-19 agency's operational measures and action plans.*

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

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

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**Memorandum**

**To:** The Finance Commission

**From:** Caroline C. Jones

**Date:** October 1, 2020

**Re:** Agency Priorities for Fiscal Year 2020, as of August 31, 2020

**I. Legislative Items**

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

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

**Status:** *The Department is monitoring Interim Charges and has reported on same to the Finance Commission.*

*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 prepared and submitted its response timely by August 28, 2020.*

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

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

**Status:** *Commissioner Jones and Director O'Shields attended the Mortgage Bankers Association's (MBA) national conference in Austin, October 26-30, 2019, and the AARMR/CSBS Mortgage Policy Summit on November 13, 2019 in Washington, DC.*

*The MBA national conference and the Mortgage Policy Summit provided opportunities to hear from national leaders in the mortgage space about issues facing the mortgage industry and to have conversations with national leaders, industry representatives, and other nonbank mortgage regulators.*

*The department monitored and communicated the developments related to the Paycheck Protection Program and other COVID-19 federal bills/legislation to the state saving bank industry.*

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

**Measure:**

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

**Status:** *In response to Sunset's Management Action 2.6, the Finance Commission voted on the agencies' recommendation and Efficiency Audit at the October 18, 2019 meeting. The Sunset Advisory Commission was provided copies of the Efficiency Audit, the Finance Commission Plan, and the combined agencies response on December 31, 2019.*

*Representatives from the three agencies, (DOB, OCCC, and the Department), have held meetings regarding the possible sharing of information technology resources, human resources, accounting, procurement, and consumer complaints.*

*A status report on the implementation of Finance Commission's Directive on the Efficiency Audit was provided at the April 12, 2020 Finance Commission meeting with future such reports on schedule for FY2021.*

*A consolidated Training Manual was presented to the members of the Finance Commission at its October 2019 meeting in response to Sunset's Management Action 7.1.*

*The rules recommended by Sunset have been presented to and adopted by the Finance Commission.*

## **II. Regulatory Items**

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

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

**Status:** *The Department monitors the thrift industry's risk profiles and reports information to the Finance Commission on a regular basis on items such as Liquidity, Profit Margin, and Non-Performing Assets. The Department actively engaged in on-site and off-site monitoring to determine whether supervisory action was necessary. During the first half of FY20, no enforcement actions were issued. Compliance with existing enforcement actions are monitored through quarterly reports from the thrifts and/or on-site visitations and examinations. The Department has maintained the state savings bank examination schedule as set by Department policy.*



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*Due to COVID-19 all SML's examinations of state savings banks have been conducted fully off-site since March 13, 2020. All savings banks have requested that exams proceed, as scheduled, despite COVID-19. No major issues have been encountered due to off-site examinations.*

*During COVID-19, two large financial institutions, (LFI), Charles Schwab Bank and Charles Schwab Premier Bank, converted from federal savings associations to Texas savings banks and relocated their headquarters from Henderson, Nevada to Westlake, Texas. Those two banks added \$292.6 billion in assets to the Texas thrift industry. The Thrift division reviewed and approved the two conversion applications, created an LFI program, and began continuous monitoring of the institutions with the Federal Reserve Bank of San Francisco and the Federal Reserve Bank of Dallas.*

### Governor's Suspension of Statutory Requirements:

*State savings banks are required to submit an independent audit to the Department of Savings and Mortgage Lending by no later than the 90th day after the date their fiscal year ends, and for many state savings banks that made March 31 their deadline under Texas Finance Code Chapter 96.051 and 7 Texas Administrative Code § 76.4. As a consequence of the COVID-19, state of disaster/emergency declarations SML recommended a suspension of the statute and rules. On March 27, 2020, in accordance with the Texas Government Code Section 418.016, the Office of the Governor suspended such statutes and regulations with the suspension remaining in effect until terminated by the Office of the Governor or until the disaster declaration from March 13, 2020, is lifted or expires.*

**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.

**Status:** *As of August 31, 2020, the Department conducted 524 examinations of mortgage entities covering 5,958 mortgage loan originators. The Department substantially maintained the mortgage examination schedule as set by Department policy. The Department provides the top violations to industry at various opportunities, including presentations to statewide and local associations and at the Department's Mortgage Industry Seminar. The Department issued formal and informal enforcement actions as deemed necessary.*

*All mortgage compliance examinations have been conducted offsite in response to COVID-19 since March 12, 2020. SML's licensees have responded positively to the adjustment. SML has been flexible with its licensees to allow sufficient time to provide requested examination materials. Examinations are rescheduled, if the licensee provides an adequate, COVID-19 related reason, for the extension.*

DEPARTMENT OF SAVINGS AND MORTGAGE LENDING  
Commissioner Caroline C Jones

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

**Measure:** Report on enforcement actions.

**Status:** *As of August 31, 2020, the Department had issued 172 orders - 120 related to examinations and 52 related to complaints.*

**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.

**Status:** *The Department reports to the Finance Commission the aging of complaints on a quarterly basis. As of August 31, 2020, 100% of the open consumer complaints were aged less than 90 days.*

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

**Measure:**

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

**Status:** *No applications for interpretation pursuant to 7 Tex. Admin. Code §151.1 were received in FY20. The Department did not otherwise receive a petition for rulemaking concerning the Joint Financial Regulatory Agencies' rules regarding home equity lending interpretations.*

*On April 1, 2020 the joint financial regulatory agencies, including the Department of Savings and Mortgage Lending, working collaboratively, published Home Equity Lending Guidance: Coronavirus Emergency Measures. On April 22, 2020, the guidance was updated and republished. It reminds home equity lenders of the requirements under Texas Constitution Article XVI Section 50 and encourages lenders to work with borrowers during the pandemic. The guidance states in part that an existing home equity loan can be refinanced into another home equity loan without regard to the one-year seasoning requirement, if the homestead is located in any area declared a disaster by the Governor, if the homeowner requests a closing less than one year from the original closing because of the disaster. With regard to loan closings required to close at the office of a lender, attorney or title company, the guidance states such physical location can include a parking lot location for the purposes of social distancing.*

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

**Measure:**

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

**Status:** *Members of the Department's management team serve in leadership positions on several national associations and committees. These include board members of the American Council of State Savings Supervisors, the American Association of Residential Mortgage Regulators, the State Regulatory Registry, Committee Chair of the Mortgage Testing and Education Board, and a member of the NMLS Policy Committee. Several staff members serve on Conference of State Bank Supervisors working groups.*

*The Department participated in the FDIC's Dallas Region State and Federal Regulators Leadership meeting, the CSBS/AARMR National Mortgage Policy Summit, MBA's Annual Convention, the FDIC Dallas Region standing calls on COVID-19, CSBS standing calls on COVID-19, and other events and interactions as previously reported to the Finance Commission.*

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

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

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

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

**Status:** *On October 25, 2019, the Department published notice of its intent to conduct periodic review of its rules related to savings and loans, state savings banks, and mortgage lending. No comments were received in response to such notice. Subsequently, the Department conducted a thorough review of such rules internally, and has identified numerous potential amendments. Rule review of mortgage chapters found in 7 Texas*

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*Administrative Code, chapters 79, 80 and 81, has been proposed and has been published in Texas Register for public comment. SML plans to recommend adoption of said rules to the Finance Commission at its December 2020 meeting. Rule review of the thrift rule chapters scheduled to be proposed to the Finance Commission at the December 2020 meeting.*

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

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

**Status:** *The following rules were adopted by the Finance Commission during FY20:*

Rule Number	Title	Adopted
7 TAC §76.98	Annual Assessments	August 21, 2020
7 TAC §77.73	Investment in Banking Premises and Other Real Estate Owned	June 19, 2020
7 TAC §52.20	Appeals, Hearings, and Informal Settlement Conferences	December 13, 2019
7 TAC §52.30	Advisory Committees and Informal Conferences	December 13, 2019
7 TAC §79.20	Investigations	October 18, 2019
7 TAC §79.30	Hearings and Appeals	October 18, 2019
7 TAC §80.201	Loan Status Forms	October 18, 2019
7 TAC §80.301	Investigations, Administrative Penalties, and Disciplinary and/or Enforcement Actions	October 18, 2019
7 TAC §80.302	Hearings and Appeals	October 18, 2019
7 TAC §81.110	Licensing of Military Service Members, Military Veterans, and Military Spouses	October 18, 2019
7 TAC §81.201	Loan Status Forms	October 18, 2019

## IV. Industry Outreach and Communication

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

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

**Status:** *The Department stays in contact with the relevant state trade associations. During FY20, the Department served on panels or presented to eleven statewide or local chapters of trade associations, including, but not limited to, Texas Mortgage Round Up, Department's Mortgage Industry Seminar, Department's 12<sup>th</sup> Thrift Industry Day, and IBAT's Annual Convention.*

*Various Department representatives discuss issues related to the industry via individual face to face meetings and electronic means as deemed necessary and appropriate. The*

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*Commissioner and Deputy Commissioner hold a monthly “Emerging Issues” call for State Savings Banks Presidents/CEOs and other staff members from their institutions. The Commissioner has held 24 outreach meetings with all state savings banks*

*Due to COVID-19, during FY2020, the Thrift division utilized multiple communication tools. The Commissioner and Deputy Commissioner held weekly calls with the state savings banks during the first months of COVID-19; email blasts were sent and resources were posted on the website; and all state savings banks were monitored off-site for additional needs. The Commissioner held meetings with all savings banks during FY2020, 19 of which were held remotely due to COVID-19. Due to COVID-19, during FY2020, the Mortgage division utilized multiple communication tools. Virtual presentations with agency updates and COVID-19 updates were made to North Texas Association of Mortgage Professionals; Texas Land Developers Association; and Texas Mortgage Bankers Association. Email blasts were sent to the industry as deemed appropriate and resources were posted on the website.*

### V. Agency Management

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

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

**Status:** *The Department filled four positions and had six separations of employment which resulted in a turnover ratio of under 12%, or under 10% excluding the retirements. Due to COVID-19, the hiring process, from applications and interviews to onboarding, was done remotely.*

*The Department prioritizes staff health and well-being. After closely monitoring the coronavirus outbreak development in January and February, on March 2, 2020, the Department’s management team began its formal pandemic plan review and implementation activities, including:*

- *review of the Department’s business continuity plan and pandemic guidance documents issued by federal and state financial and health agencies;*
- *participation in multiple conference calls led by state and federal agencies and other entities, as appropriate;*
- *evaluation of all business processes critical to the Department’s mission, possible changes to those processes and the potential impact to the Department’s stakeholders and staff;*
- *assessment of information technology resources availability and needs in preparation for implementing a teleworking program for Austin Office staff and transitioning to off-site activities for field staff;*

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- *frequent communication with staff, including updates, reminders for taking precautions, additional health and safety resources.*

*By March 16, 2020, the Department had implemented a teleworking program for all staff, while staying in compliance with Government Code, Sec. 658.010. Additional equipment and information resources were procured and made available to staff in order to ensure business processes remain efficient and effective.*

*As of fiscal year end, in the Austin office there were no more than 25% of staff at any given time. All field staff teleworked 100% of the time. Masks, hand sanitizer, and disinfecting wipes were provided for office staff and additional safety and cleaning protocols were in place in order to reduce exposure and possible contamination of the office space. Related safety and wellness information was provided to all staff on a regular basis.*

*The management team held virtual meetings weekly and maintained regular communication with staff.*

*The Department launched and substantially completed a project, related to an in-depth review of individual job competencies, training and development plans, and competitive pay for each position.*

*During FY20, 100% of personnel received training or professional development.*

**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.

**Status:** *The Department has reported on its four key output measures to the Finance Commission on a quarterly basis. As of the end of FY20, the Department had met or exceeded 75% of these key measures.*

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

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

**Status:** *The Department has reported on all audit activities at every Finance Commission meeting. During FY20, the Department had a Records Management audit with two observations, which were addressed immediately, and a Risk Management Program Review with no recommendations. There are no outstanding items to report from any prior year audits.*

**V.4 Objective:** Monitor the Department's budget and reserve balances as approved by the Finance Commission to maximize the responsiveness and flexibility allowed by the Self-

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Directed Semi-Independent status. Make decisions relating to finances in a fiscally prudent manner. Review expenditures and revenues monthly.

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

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

**V.5 Objective:** Ensure 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.

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

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

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

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

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

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# Office of Consumer Credit Commissioner

## Agency Priorities – Year-End Status Report

FY 2020

### 1. LEGISLATIVE

#### 1.1. Mandated Studies.

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

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

**Status:** *On March 9, 2020, the House Pensions, Investments & Financial Services Committee held a hearing on online lending and the implementation of the OCCC's Sunset legislation. Commissioner Pettijohn provided written and verbal testimony explaining how the OCCC has implemented the Sunset legislation, and explaining the Sunset legislation's clarifications on online lending.*

*On August 4, 2020, the House Pensions, Investments & Financial Services Committee posted a request for information related to the effects of COVID-19 in areas within the committee's jurisdiction. On August 28, Commissioner Pettijohn provided a response that summarized the OCCC's advisory guidance to stakeholders and discussed operational changes resulting from COVID-19.*

#### 1.2. Sunset Review

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

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

**Status:** *The OCCC updated its key performance measures with revisions effective for fiscal year 2020. Several updates allow the Finance Commission to monitor and compare performance across all three finance agencies, as recommended in the Sunset report.*

*The agency updated its online portal, ALECS, to accommodate the statutory change that allows pawnshops to opt into licensure for their employees. The updates were made in time for the September 1, 2019, effective date of the statute.*

*In response to a Sunset-recommended efficiency audit, the OCCC is participating in workgroups with the other Finance Commission agencies to share best practices and discuss potential efficiencies that can be achieved among the agencies.*

*New rules relating to the OCCC's complaint process were adopted by the Finance Commission at the end of fiscal year 2019, and became effective on September 5, 2019.*

*In December 2019, the Finance Commission adopted a rule action to implement provisions from the OCC's Sunset legislation (HB 1442) relating to alternative dispute resolution, negotiated rulemaking, and appeals to the Finance Commission.*

**2. REGULATORY ACTIVITIES**

**2.1. Regulated Entities.**

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

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

**Status as of 8/31/2020:**

<b>License Type</b>	<b>Examination Compliance</b>	<b>Enforcement Activity</b>
<i>Pawnshop</i>	<i>98.2% acceptable level of compliance.</i>	<i>42 injunctive actions 29 administrative penalty actions</i>
<i>Regulated Lender</i>	<i>95.8% acceptable level of compliance.</i>	<i>49 injunctive actions 18 administrative penalty actions 1 license revocation</i>
<i>Property Tax Lender</i>	<i>100% acceptable level of compliance.</i>	<i>1 injunctive action 2 administrative penalty actions</i>
<i>Credit Access Business</i>	<i>98.9% acceptable level of compliance.</i>	<i>27 injunctive actions 11 administrative penalty actions</i>
<i>Motor Vehicle Sales Finance</i>	<i>90.1% acceptable level of compliance.</i>	<i>53 injunctive actions 11 administrative penalty actions 3 application denials</i>

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

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

**Status:** *The agency completed 2,493 examinations in fiscal year 2020 which is 80.9% of the pro rata goal and 62.3% of the annual goal for fiscal year 2020. The overall compliance rate is 93.4% for all five examination areas combined. Restitution from examinations conducted is \$3,701,302.14 as of August 31, 2020. During FY 2020, the agency closed 248 enforcement actions concerning the five license types. The 248 closed cases*

*include 173 injunctive actions, 71 administrative penalty actions, 1 license revocation, and 3 application denials.*

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

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

**Status:** *The Annual Report Build that allows for webform submission in all five industries required to file an annual report has been released and licensees have been using the system to submit reports since Jan. 1. 2020.*

## **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.

**Status:** *The licensing department processed 78% of applications in 60 days or less. This is due to increases in applications with potential unlicensed activity in FY 20, which increased processing times on some applications. Additionally staff training and some complex application issues increased processing time for some applications. With regard to training, the department continues to have monthly trainings, team building, and round table discussions to encourage professional development. Additionally a member of the department attended leadership training and continues to contribute applied lessons to the department.*

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

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

**Status:** *Approximately 53% of active pawn shops have opted to license their pawn employees, which is higher than projected. ALECS has been fully developed to allow pawn shops to opt in or out during the renewal period or at any time the commissioner mandates.*

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

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

**3.1.1. Objective:** Rule Review. Complete rule reviews of 7 TAC, Part 1, Chapter 2, Residential Mortgage Loan Originators Regulated by the Office of Consumer Credit Commissioner

(last reviewed FY 2015); 7 TAC Chapter 86, Retail Creditors (last reviewed FY 2015); and 7 TAC Chapter 90, Plain Language Contract Provisions (last review published FY 2015, adopted FY 2016). The preceding three rule reviews were deferred from FY 2019 due to legislation affecting these chapters. In addition, complete rule reviews of 7 TAC, Part 1, §1.201, Interpretations and Advisory Letters (last reviewed FY 2016); 7 TAC Chapter 82, Administration (last reviewed FY 2016); and 7 TAC Chapter 87, Tax Refund Anticipation Loans (last reviewed FY 2016).

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

**Status:** *The Finance Commission has completed these six rule reviews. In February 2020, the Finance Commission completed the rule reviews of 7 TAC Chapters 2 and 86 by readopting these chapters, with amendments to the chapters proposed in separate rule actions. In April 2020, the Finance Commission completed the rule reviews of Chapters 1 and 90 by readopting these chapters, with amendments to Chapter 90 proposed in a separate rule action. In August 2020, the Finance Commission completed the rule reviews of Chapters 82 and 87 by readopting these chapters, with amendments to Chapter 82 proposed in a separate rule action.*

*In addition to these rule reviews, the Finance Commission completed three other rule reviews in FY 2020. In June 2020, the Finance Commission readopted 7 TAC Chapter 83, Subchapter B, Rules for Credit Access Businesses, and Chapter 85, Subchapter B, Rules for Crafted Precious Metal Dealers, with amendments to these chapters proposed in separate rule actions. In August 2020, the Finance Commission readopted Chapters 151, 152, and 153, relating to home equity lending, with amendments to Chapters 151 and 153 proposed in a separate rule action.*

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

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

**Status:** *The Finance Commission has completed the adoption of rules implementing 2019 legislation. In October 2019, the Finance Commission adopted four rule actions to implement 2019 legislation, relating to the single equivalent daily rate for regulated loans (implementing HB 3855), the documentary fee for motor-driven cycles (implementing HB 3171), and military licensing for residential mortgage loan originators and pawnshop employees (implementing SB 1200). In December 2019, the Finance Commission adopted*

a rule action to implement provisions from the OCCC's Sunset legislation (HB 1442) relating to alternative dispute resolution, negotiated rulemaking, and appeals to the Finance Commission. In June 2020, the Finance Commission proposed amendments relating to payoffs for property tax loans, incorporating feedback from stakeholders and responding to complaints from financial institutions. Before presenting these rules to the Finance Commission, OCCC staff held stakeholder meetings and online webinars to obtain input from stakeholders.

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

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

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

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

**Status:** *The 2018-2019 TFE Impact Report and 2020-2021 TFE first period report were prepared and published and are available online at [tfee.texas.gov](http://tfee.texas.gov). These reports detail fund activities, investment earnings, and grantee highlights. Additionally, TFE staff have created a TFE Facebook and Twitter page to improve communications with stakeholders regarding TFE.*

##### 4.2 Financial Literacy

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

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

**Status:** *The Financial Education Coordinator serves on the board of Texas Jump\$tart and the Financial Education Team attends presentations given by the Financial Literacy Coalition of Central Texas. The OCCC partnered with Employees Retirement System of Texas and the Texas Department of Transportation to deliver a series of nine financial education webinars to Texas citizens. This, combined with partnerships with other organizations, resulted in 18 presentations that reached a total of 2,847 people. The OCCC has started offering webinars to the public through the OCCC website. Additionally, the OCCC is working with the Department of Banking to facilitate a financial education webinar this fall.*

### 4.3. Industry and Stakeholder Outreach

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

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

**Status:** *Agency staff continue to build relationships with stakeholders and regularly work with regulated entities and other interested groups to ensure clear communication. During this fiscal year, agency staff updated agency educational brochures, published ongoing advisory bulletins regarding COVID-19, provided financial education, training, and other presentations to consumer groups, industry, licensees, registrants, and other interested parties..*

## 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.

**Status:** *The OCCC implemented revisions to the performance measures in response to the Sunset recommendations and to seek more consistency with the other FC agencies. Performance levels tracked by several measures were negatively impacted by the necessary change in activities due to COVID-19. At the end of the fiscal year, the OCCC met or exceeded 2 out of 4 key output measures, 2 out of 5 outcome measures, and 1 out of 2 efficiency measures.*

### 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.

**Status:** *As of August 2020, the FY20 turnover rate is 18.9%. While higher than desired, the turnover rate appears to be lower than the overall statewide turnover rate for FY19 which according to the State Auditor's Office was 20.3%. HR staff continues to thoroughly review exit interview comments and the overall general statistics provided from the State Auditor's Office. The OCCC provides internal employment opportunities for current employees and notes that merits and promotions are consistently awarded throughout the year when performance or job duties support such awards. OCCC developed a new Cross-Training Program that began November 2019. OCCC's implementation of the Cross-Training Program has been successful and was a valuable asset especially during COVID-19 as duties and responsibilities shifted in response to agency needs.*

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

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

**Status:** *Examiners attended internal annual training in September 2019 where an in-depth curriculum was presented, providing 32 of the 40 minimum required hours, including training on rule changes from the state and federal government. Other training opportunities include: National Association of Consumer Credit Administrators (NACCA) Examiner's School, State Auditor Classes, Pawn and F Training, Credit Access Business (CAB), Mortgage Training, Property Tax Lending Training, Examiner-in-Charge School, as well as OCCC-led classroom training for several examiners on Mortgage and Property Tax Lending. Further, extended virtual training has been initiated during the suspension of onsite examinations due to COVID-19. Also, staff improved the communication methods to ensure training opportunities for non-examination staff. Administrative staff attended professional or job related training including webinars. Several employees attended the Governor's Center for Management Development training. All agency employees continue to participate in mandated Cyber Security Training. Also, all employees completed safety trainings, including Defensive Driving training during the year.*

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

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

**Status:** *The Employee Policies & Procedures Manual Version 2.04 was updated June 2020, the entire Manual was updated for general edits throughout. Updated Policies include: Equal Employment Opportunity, Workplace Accommodation, Performance Review, and Disciplinary Action to comply with TWC audit best practices recommendations related to EEO Compliance. The Safety and Health Reference Guide, Standards of Conduct Policy, Separation from Employment Policy, Records Management Manual, and Compensation*

*and Timekeeping Policy were also updated. In accordance with Families First Coronavirus Response Act (FFCRA) and the Coronavirus Aid, Relief and Economic Security (DARES) Act, the OCCC established a temporary policy, effective April 1, 2020 through December 31, 2020. The Information Technology Policies and Procedures Manual was updated to incorporate IT security procedures and protocols in June. Policies are regularly monitored to ensure compliance with local, state and federal law.*

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

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

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

**Status:** *The agency monitors and timely reviews the financial status through monthly Operating Statements and Budget Analysis reports. These reports are also reviewed on a quarterly basis by the Finance Commission. Financial performance in the year was within the budgeted levels as established by the Finance Commission. The OCCC transitioned motor vehicle sales finance licenses renewal deadlines to better align the renewal cycle with fiscal reporting requirements. The extension of the 2020 deadline provided additional benefit to licensees while also enabling the OCCC fund balance to move into acceptable compliance with the Finance Commission's liquidity policy.*

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

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

**Status:** *The Finance Commission agencies have continued to actively work on options towards a long term solution for headquarters facilities. The Finance Commission has been regularly briefed on these activities at Finance Commission meetings.*

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

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

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

**Status:** *The change management council has authorized many change requests for the ALECS vendor to execute, including one significant project involving the Principal Party*



*program. IT updates commercial applications as needed to avoid using obsolete or unsupported software, and stay up-to-date on integrated security features.*

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

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

**Status:** *OCCC endpoint computers are all current and actively updated. New models are configured and deployed as older fleet members reach end-of-life. The Windows update virtual server has been operational since July.*

- 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.

**Status:** *OCCC IT continues to implement security measures to enact the roadmap. Annual cybersecurity training was met 100%.*

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

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

**Status:** *Change management integrated Click-Up web application for progress tracking. Requests from the previous Excel-based system were reviewed and, when approved by the change council, entered into the system and addressed. Work undertaken was a variety of small fixes and one project revising the Principal Party program.*

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**A. FINANCE COMMISSION MATTERS**

9. Discussion of and Possible Vote to Take Action on the Adoption 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, new rule, and repeal in 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 adoption of amendments, new rule, and repeal in 7 TAC Chapters 151 and 153.

**RECOMMENDED MOTION:** I move that the Finance Commission approve the adoption of 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") adopt amendments to §151.1 (relating to Application for Interpretation); and adopt 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 commissions adopt the repeal of §151.2, §151.3, §151.4, §151.5, §151.6, and §151.7 as proposed in the September 4, 2020, issue of the *Texas Register* (45 TexReg 6202).

The commissions adopt the amendments to §151.1 with changes to the proposed text as published in the September 4, 2020, issue of the *Texas Register* (45 TexReg 6202).

The commissions received no written comments on the proposed rule changes to 7 TAC Chapter 151. Comments that the commissions received on proposed amendments to 7 TAC Chapter 153 are discussed separately in this issue of the *Texas Register*.

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 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 May 1, 2020, issue of the *Texas Register* (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 appreciate the thoughtful input provided by stakeholders.

Adopted amendments to §151.1 amend current procedures for stakeholders to request interpretations of Section 50 from the commissions. Amendments to §151.1 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 amendments to §151.1 address these issues and provide clear guidelines on how interpretations are requested, proposed, and adopted. The amendment to §151.1(a) explains that the commissions will propose and adopt interpretations in accordance with the rulemaking requirements of the APA. New subsection (b) explains that the agencies may recommend proposed interpretations to the commissions and may seek informal input from stakeholders. New subsection (c) explains that a person may submit an informal request to the agencies, and describes items the request should include. New subsection (d) explains that an interested person may file a petition to initiate rulemaking, and includes citations to the commissions' other rules that govern these petitions. The adoption removes current subsection (b) as unnecessary because of the new guidelines described in subsections (b) through (d). The title of §151.1 is amended to state "Interpretation Procedures," to properly identify the scope of the rule.

Changes have been made in §151.1(d)(1) and (2) to remove a comma in each of these paragraphs, based on input from staff of the *Texas Register*.

The adoption repeals §151.2 and §151.3. As discussed earlier, these sections currently describe the process used when a stakeholder requests an interpretation, and are unnecessary because of the new guidelines described in the amendments to §151.1. The commissions believe that these amendments provide a balanced approach, enabling stakeholders to use informal requests, while also preserving the important statutory right

**ADOPTED AMENDMENTS, NEW RULE, AND REPEALS**  
**7 TAC CHAPTERS 151 AND 153**  
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for an interested person to file a petition for rulemaking under the APA.

The adoption repeals §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 are unnecessary because of the updated language in the amendments to §151.1(a). The commissions believe that these changes simplify Chapter 151 to refer to the APA in a more straightforward manner, and ensure that it is not necessary to update Chapter 151 each time the Texas Legislature amends the APA's rulemaking requirements.

The rule changes are adopted 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 adoption 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") adopt 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 adopt 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.

The commissions adopt the amendments to §153.8, §153.11, §153.14, §153.15, and §153.22 without changes to the proposed text as published in the September 4, 2020, issue of the *Texas Register* (45 TexReg 6204). The text of these sections will not be republished.

The commissions adopt the amendments to §153.41, and adopt new §153.26, with changes to the proposed text as published in the September 4, 2020, issue of the *Texas Register* (45 TexReg 6204).

The commissions received six official comments on the proposal. Two comments were from Black, Mann & Graham, LLP. One comment was from Cornerstone Credit Union League, Independent Bankers Association of Texas, Texas Bankers Association, and Texas Mortgage Bankers Association. One comment was from the Independent Bankers Association of Texas. One comment was from the Texas Mortgage Bankers Association. One comment was from an individual.

The comment from Cornerstone Credit Union League, Independent Bankers Association of Texas, Texas Bankers Association, and Texas Mortgage Bankers Association expressed general support for the proposal, stating that the proposed changes "will provide some extremely helpful clarity to lenders, particularly as to issues that have arisen during this time of pandemic." Each of the six comments recommended changes to certain sections of the proposal. The commissions' responses to these comments

**ADOPTED AMENDMENTS, NEW RULE, AND REPEALS**  
**7 TAC CHAPTERS 151 AND 153**  
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are included following the discussion of each applicable section.

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 May 1, 2020, issue of the *Texas Register* (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.

An amendment to §153.8(1)(C) removes the word "or" to correct a list that unnecessarily includes the word "or" twice.

In an official comment, one commenter recommended deleting the statement in current §153.8(2) that a "guaranty or surety of an equity loan is not permitted." The commenter argued that this provision leads to an absurd result, and that parties other than the owner or owner's spouse should be able

to enter a surety or guaranty to be held personally liable for a home equity loan.

The commissions originally adopted §153.8(2) on the rationale that a guaranty or surety constitutes additional property that would secure the home equity loan, in violation of Section 50(a)(6)(H). *Cf. Smith v. Cash Store Mgmt.*, 195 F.3d 325, 331 (7th Cir. 1999) (holding that a postdated check is "security" for a loan because it creates additional value to the lender). This is a long-standing interpretation going back to the agencies' original 1998 commentary on Section 50, and has not been superseded by subsequent constitutional amendments or court rulings. *See* Joint Financial Regulatory Agencies, *Regulatory Commentary on Equity Lending Procedures*, p. 6 (Oct. 7, 1998). The commissions believe that this rationale is still correct. For this reason, the commissions disagree with the comment and decline to amend current §153.8(2).

Amendments to §153.11 explain that the repayment schedule requirements in Section 50(a)(6)(L)(i) of the Texas Constitution apply at closing. New paragraph (1) explains that this constitutional provision does not prohibit a lender from agreeing with the borrower to certain modifications, and explains that a modification may include a deferment of the original obligation. An amendment at §153.11(2) explains 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 its first official comment, Black, Mann & Graham, LLP recommended adding the new text on modifications to §153.14 instead of §153.11. Section 153.14 deals primarily with the one-year requirement in Section 50(a)(6)(M)(iii), while §153.11 deals primarily with the repayment schedule requirement in Section 50(a)(6)(L)(i). The commissions believe that the new text on modifications relates primarily to the repayment schedule requirement, and therefore appropriately belongs in §153.11. For this reason, the commissions disagree with the comment and have maintained the new text in §153.11.

Another commenter 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 decline to include this text in the adoption, 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). In addition, the first sentence recommended by the commenter is unnecessary, because this concept is sufficiently addressed by the existing text on deferments.

In an informal precomment, one 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)").

Amendments to §153.14 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. 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).

Amendments to §153.15 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. An amendment to §153.15(1) explains that the closing may occur in any area located at the permanent physical address of the lender, attorney, or title company. Amendments to paragraphs (2) and (3) 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.

In its first official comment, Black, Mann & Graham, LLP recommended adding the phrase "or branch office" after "office" in §153.15(2) and (3). The commissions believe that this change is unnecessary because the general term "office" encompasses branch offices and existing §153.15(1) already makes clear that a branch office is included. For this reason, the change is not included in this adoption.

An 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. New §153.22(3) explains 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.

In its second official comment, Black, Mann & Graham, LLP recommended that proposed §153.22(3) be renumbered as a new and separate section and then revised to apply to all notices, disclosures and documents required to be delivered to the owner. In addition to the deliveries described by §153.22, the new section would apply to those described by §153.13 (relating to Preclosing Disclosures: Section 50(a)(6)(M)(ii)), §153.51 (relating to Consumer Disclosure: Section 50(g)), and §153.45 (relating to Refinance of an Equity Loan: Section 50(f)). Alternatively, the commenter recommended that each of the cited sections be separately amended to permit the same type of electronic delivery as would be permitted by proposed §153.22(3). The comment from the Independent Bankers Association of Texas and the comment from the Texas Mortgage Bankers Association also expressed support for this recommendation. In general, the agencies do not object to the concept of providing required disclosures electronically in accordance with state and federal law. However, the suggested changes go significantly beyond the scope of the current proposal and cannot be accomplished within this rulemaking. In the future, the agencies and the commissions will consider whether a new consolidated section or amendments to other sections in Chapter 153 might be appropriate to address this issue.

New §153.26 describes 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. New §153.26(2) explains that the lender may sign the written acknowledgment before or at closing. New §153.26(3) explains that an authorized agent may sign the written acknowledgment on behalf of the lender.

Three of the official comments discussed §153.26 and the written acknowledgment of fair market value. Two of these comments, including the first comment from Black, Mann & Gramm, LLP, referred to the doctrine of last antecedent. Under the doctrine of last antecedent, "a qualifying phrase in a statute or the Texas Constitution must be confined to the words and phrases immediately preceding it to which it may, without impairing the meaning of the sentence, be applied." *Spradlin v. Jim Walter Homes, Inc.*, 34 S.W.3d 578, 581 (Tex. 2000) (applying the doctrine of last antecedent to Texas Constitution, Article XVI, Section 50(a)(5)). Two commenters argue that the doctrine of last antecedent should be applied to Section 50(a)(6)(Q)(ix), and that the phrase "on the date the extension of credit is made" should be read to modify only the immediately preceding phrase "the fair market value of the homestead property." The third official comment, from Cornerstone Credit Union League, Independent Bankers Association of Texas, Texas Bankers Association, and Texas Mortgage Bankers Association, expressed general support for the analysis of §153.26 in the first two comments.

The commissions agree that it is appropriate to apply the doctrine of last antecedent to Section 50(a)(6)(Q)(ix), and that the phrase "on the date the extension of credit is made" modifies only the immediately preceding phrase "the fair market value of the homestead property." In response to these comments, adopted paragraph (1) has been added to §153.26 to explain this concept.

One of the commenters, after discussing the doctrine of last antecedent, recommended including a statement in §153.26 that the lender may sign the written acknowledgment "before, at or after closing." The commenter cited Section 50(a)(6)(Q)(x)(d), which allows a lender to correct a failure to comply with Section 50(a)(6)(Q)(ix) by "obtaining the appropriate signatures" within 60 days after being notified of the failure to comply. The commenter raised questions about whether lenders can rely on the information contained in an appraisal. The commenter also explained that there may be factual questions, not addressed in the interpretations, regarding who is an "authorized agent" of the lender for purposes of §153.26.

The commissions agree that the acknowledgment may be signed before or at closing. The commissions also agree that Section 50(a)(6)(x)(d) allows a lender to correct a failure to comply with Section 50(a)(6)(Q)(ix) by obtaining the appropriate signatures. However, the language suggested by the commenter gives the impression that the lender complies with Section 50(a)(6)(Q)(ix) by signing the acknowledgment at any time after closing. Under Section 50(a)(6)(Q)(ix), a 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." Generally, a lender should have the information it needs to complete and sign the acknowledgment before or at closing. *See* Regulation B Valuations Rule, 12 C.F.R. §1002.14(a)(1) (requiring a creditor, for certain first-lien mortgages, to provide a copy of any appraisal at least three business days before consummation). For this reason, the commissions believe that the proposed text is inappropriate and decline to make the change suggested by the commenter. Regarding the commenter's questions about a lender's ability to rely on an appraisal, this issue is addressed by Section 50(h), which generally allows a lender to "conclusively rely on the written acknowledgment as to the fair market value . . . if . . . the value acknowledged to is the value estimate in an appraisal or evaluation prepared in accordance with a state or federal requirement applicable to [home equity loans]." Regarding the commenter's statement on factual questions about who is an "authorized agent," §153.26 does not require the lender to use an authorized agent, and if a lender is concerned about factual questions that arise from using an authorized agent, then the lender can sign the acknowledgment itself.

In its first comment, Black, Mann & Gramm, LLP recommended removing the word "must" from the introductory paragraph of §153.26. The comment makes this recommendation in connection with the discussion of the doctrine of last antecedent, as discussed earlier. The comment does not explain what the word "must" should be replaced with. The use of the word "must" in §153.26 is consistent with the introductory paragraphs of several other sections currently located throughout 7 TAC Chapter 153, including §153.8, §153.11, and §153.22. The word "must" appropriately reflects that certain conditions must be satisfied in order

for the lender to have a valid lien under Section 50(a)(6). For this reason, the commissions decline to remove the word "must" from this provision.

An amendment to §153.41 removes 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 amendment removes this phrase.

A change has been made to the introductory paragraph of §153.41 to remove the numbers "(1)" and "(2)" within this paragraph, based on input from staff of the *Texas Register*.

The constitutional provisions affected by the adoption 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]~~

~~[(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.]~~

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Page 10 of 15

**{{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]~~

~~[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~~

**ADOPTED AMENDMENTS, NEW RULE, AND REPEALS**  
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~~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; [øø]

(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) [(4)] 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 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) For purposes of Section 50(a)(6)(Q)(ix), the phrase "on the date the extension of credit is made" modifies only the immediately preceding phrase "the fair market value of the homestead property," in accordance with the doctrine of last antecedent.

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

(3) 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 adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on October 16, 2020, and November 6, 2020.

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



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September 9, 2020

Matthew Nance, Deputy General Counsel  
Office of Consumer Credit Commissioner  
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Austin, Texas 78705  
Email: [rule.comments@occc.texas.gov](mailto:rule.comments@occc.texas.gov)

**RE:** Comments to Proposed Interpretations in §§153.11, 153.14, 153.15 and to Proposed §153.26 (7 TAC Chap. 153) Published in the *Texas Register* (Vol. 45, No. 36) on September 4, 2020, by the Finance Commission of Texas and the Texas Credit Union Commission (the “Commissions”).

Dear Mr. Nance:

In response to the above publication of proposed amendments to §§153.8, 153.11, 153.14, 153.15, 153.22, 153.41, and proposed new §153.26, this letter comments on and proposes revisions to §§153.11(1), 153.14(2), 153.15(2) and (3), and proposed new §153.26, as follows:

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

For clarity and conformity with §153.14(2), which states, “[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[,]” we recommend that §153.11(1) be amended as follows: (1) In the first sentence, delete the clause “if the modification does not satisfy and replace the original equity loan and does not create a new extension of credit” and insert in its place “in accordance with §153.14(2).” (2) Move the second sentence to §153.14(2) where it more appropriately belongs.

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

We recommend amending §153.14(2) by adding the second sentence of §153.11(1) as §153.14(2)(E) to read as follows: “(E) A modification of an equity loan 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).” Not only is it more appropriate for this modification language to be added to §153.14(2), it also will align more closely with the Texas Supreme Court’s opinion in *Sims v. Carrington Mortg. Servs., LLC*, 440 S.W.3d 10 (Tex. 2014), which cites §153.14(2) in Footnotes 18, 19 and 20.

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

In order to conform to the first sentence in §153.15(1), we recommend adding “or branch office” to the proposed amendments to §153.15(2) and (3) as follows: “at the permanent physical address of an office or branch office of the lender, an attorney at law, or a title company.”

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

In using the verb “must” in the introductory paragraph, proposed §153.26 appears to require the written acknowledgment to be signed “on the date the extension of credit is made.” That clause in Section 50(a)(6)(O)(ix) does not refer to the date the written acknowledgment is to be signed; it refers to the date of the fair market value of the homestead for the following reasons:

(2 pages)

1. Section 50(a)(6)(B) states an equity loan “is of a principal amount that when added to the aggregate total of the outstanding principal balances of all other indebtedness secured by valid encumbrances of record against the homestead does not exceed 80 percent of the fair market value of the homestead on the date the extension of credit is made[.]”

2. Section 50(a)(6)(Q)(ix) requires only that the owner and lender sign a written acknowledgment of the fair market value of the homestead. This is clear from the following text of its cure provision in Section 50(a)(6)(Q)(x)(d) under which the lender cures the failure to comply by “obtaining the appropriate signatures if the lender fails to comply with Subparagraph (ix) of this paragraph[.]”

3. The doctrine of last antecedent states “a qualifying phrase in a statute or the Constitution must be confined to the words and phrases immediately preceding it to which it may, without impairing the meaning of the sentence, be applied.” See *Spradlin v. Jim Walter Homes, Inc.*, 34 S.W.3d 578, 580 (Tex. 2000) which used the doctrine of last antecedent in construing Section 50(a)(5)(A) through (D) as not applying to the construction of new improvements.

For clarification purposes, we recommend that the verb “must” be deleted from the introductory paragraph and that a subparagraph (3) be added stating that the clause “on the date the extension of credit is made” refers the date of the fair market value of the homestead and not to the date the written acknowledgment is signed.

We appreciate the opportunity to provide the Commissions with the above comments on the proposed amendments to §§153.11, 153.14, 153.15, and to proposed new §153.26.

Sincerely,  
Black, Mann & Graham, L.L.P.

*/s/ David F. Dulock*  
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*For the Firm*



September 30, 2020

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**RE:** Additional Comment to Proposed Amendments to Home Equity Lending Interpretations Published in the *Texas Register* (Vol. 45, No. 36) on September 4, 2020, by the Finance Commission of Texas and the Texas Credit Union Commission (the “Commissions”).

Dear Mr. Nance:

This letter supplements our firm’s September 9, 2020, comment letter commenting on and proposing revisions to the Commissions proposed Home Equity Lending Interpretations in the above publication.

We believe that providing documents electronically in accordance with the Texas Uniform Electronic Transactions Act and the federal E-Sign Act, as the Commissions proposed in new §153.22(3), also would apply to providing notices, disclosures and documents required by other sections of the Home Equity Lending Interpretations – for example, the 12-day consumer disclosure required by §153.12 and §153.51; the preclosing disclosures required by §153.13; and the three business day refinance disclosure required by §153.45.

Therefore, we recommend that proposed §153.22(3) be renumbered as a separate Home Equity Interpretation and amended to apply to all notices, disclosures and documents required to be delivered to the owner by the Home Equity Lending Interpretations, with the caveat that the home equity loan must still close at an authorized location required by §153.15, or that each of the above-cited Home Equity Lending Interpretations be amended to permit the same type of electronic delivery as in proposed §153.22(3).

We appreciate the opportunity to provide the Commissions with the above additional comment on expanding the proposed use of electronic delivery for notices, disclosures and documents required to be provided to owners by other sections of the Home Equity Lending Interpretations.

Sincerely,  
Black, Mann & Graham, L.L.P.

*/s/ David F. Dulock*  
David F. Dulock  
For the Firm

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September 21, 2020

Mr. Matthew Nance  
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2601 N. Lamar Blvd.  
Austin, Texas 78705

Re: Comments on the proposed Home Equity Lending Rule,  
45 *TexReg* 6204, September 4, 2020

Dear Matthew:

In response to the Joint Financial Regulatory Agencies' invitation to provide comments on the proposed amendments to the Home Equity Lending Rules published September 4, 2020, I would offer the following thoughts. Please note that these are my personal thoughts, musings and questions and not that of any client or my firm.

## **§153.8(2) Security of the Equity Loan: Section 50(a)(6)(H)**

§153.8(2) prohibits the personal guaranty of another party (i.e., other than an owner or the owner's spouse) for the reason that the personal guaranty (or liability) of the third party would violate the prohibition on additional real or personal property security for the loan under §50(a)(6)(H). §153.8(2) notes that this prohibition is consistent with §50(a)(6)(C).

Although this has been the position of the Agencies since the original commentary, this position is, and continues to be, inconsistent with the plain language of the Constitution, and in fact, renders two provisions meaningless or at least absurd.

First, §50(a)(6)(C) provides that the loan must be "without recourse for personal liability against each owner and the spouse of each owner, unless the owner or spouse obtained the extension of credit by actual fraud."

Mr. Matthew Nance  
Deputy General Counsel  
Office of the Consumer Credit Commissioner  
September 21, 2020  
Page 2

By its express language, §50(a)(6)(C) excludes personal liability from only an owner or the owner's spouse. If the Rules prohibit personal liability from any other person, then the language "each owner or the spouse of each owner" is rendered meaningless. If the language were intended to exclude any and all other parties from being personally liable, then the provision could have simply said so, rather than limiting the prohibition to only the owner and the owner's spouse.

More importantly, and this is where the real conflict appears, is in connection with a situation where the owner commits actual fraud and becomes personally liable for repayment of the debt. This creates a perfect Catch-22 under §153.8(2) as currently drafted. This is because of the Agencies' position that personal liability equates to additional collateral in violation of §50(a)(6)(H).

If an owner commits actual fraud, then under §50(a)(6)(C) the owner can be (and by most loan documents, is) liable for repayment. The question, then is: Is a home equity loan where the owner commits fraud still a home equity loan. It would seem that in order for the loan to be an enforceable lien, the loan would still need to comply with all of the home equity requirements. The property securing the loan would still be a homestead and the loan would not comply with any of §50(a)(1)-(5), so it would still need to comply with §50(a)(6).

In other words, even in the case of actual fraud, a lender would still need to be an authorized lender, foreclose with a court order and comply with the other requirements in order to have a lien that would be valid and foreclosable. This is where the problem arises.

If personal liability is collapsed with and equated with additional collateral for the loan, then the owner's fraud (and the creation of personal liability for the fraudulent owner) will under §153.8(2) create a fatally defective provision in the home equity loan by taking "additional security" for the loan. In other words, the fact that the owner who committed fraud is now personally liable means that there is now "additional security" for the loan that would invalidate the lender's lien. Of course, this result would be absurd. The owner's fraud cannot serve to void the lender's lien, but that is exactly the result if personal liability is equated with additional security for the loan.

There is a presumption that an entire statute is intended to be effective and, therefore, a court must not read a word, phrase or sentence to be useless or a nullity.<sup>1</sup> In order to give effect to the express language in §50(a)(6)(C), which prohibits personal liability against only the owner and the owner's spouse, and to avoid an absurd and clearly wrong result of an owner's actual fraud voiding the lien, §153.8(2) should be deleted and an unsecured personal guaranty agreement of any third party who is not an owner or the spouse of any owner should be permitted.

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<sup>1</sup> See *Leordeanu v. Am. Protection Ins. Co.*, 330 S.W. 239, 248 (Tex. 2010)

Mr. Matthew Nance  
Deputy General Counsel  
Office of the Consumer Credit Commissioner  
September 21, 2020  
Page 3

**§153.11(1) Repayment Schedule: Section 50(a)(6)(L)(i)**

§50(a)(6)(L)(i) provides that unless the loan is a home equity line of credit (HELOC), the loan must be "scheduled 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.**"

The real issue with §153.11(1) is what may actually be deferred and what may a lender agree to after closing. Since any agreement between the owner and lender must provide for payments that are substantially equal, even interest only payments would not satisfy this requirement. The question, then is what, if anything, may a lender agree to in connection with a modification.

As written, the rule does not answer this question. It would appear that the only option available to a lender in order to agree to substantially equal payments would be to allow the owner to default for as many months as the owner wishes and then at the end of that period enter into an agreement that would capitalize and reamortize the remaining balance to be payable in substantially equal successive periodic installments. In other words, a lender is prohibited from agreeing to any deferral under §153.11(1), the lender can agree only to a modification that capitalizes all amounts due and reamortizes that amount due to be repayable in substantially equal successive periodic installments.

Since the Agencies propose to add the language "at closing," which I trust refers only to the initial closing, it would be helpful to offer guidance that would allow an owner and lender to enter into a modification after closing that would allow for a deferring payments. For example, language could be added to §153.11(1) such as the following:

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.

It may also be appropriate to limit the number of payments that may be deferred in any given time period, for example:

No more than six (6) months of payments may be deferred in any twelve (12) month period.

Understandably, this may exceed (but is not inconsistent with) the express Constitutional language, but in so doing lenders will have guidance that will permit them to enter into reasonable agreements with borrowers that will truly offer the types of relief and forbearance that is consistent with and expressly contemplated by the Agencies in the *Home Equity Lending Guidance: Coronavirus Emergency Measures* revised April 22, 2020, rather than having to defer to their attorney's advice, which will be that any modification must simply provide for substantially equal successive periodic installments in the absence of clarifying language in §153.11(1).



Mr. Matthew Nance  
Deputy General Counsel  
Office of the Consumer Credit Commissioner  
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Page 4

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

§50(a)(6)(B) provides that a home equity loan must not exceed a loan to value ratio of 80% "on the date the extension of credit it made." §50(a)(6)(Q)(ix) requires an owner and lender to sign an acknowledgment of the fair market value of the homestead on the date the extension of credit is made. §50(h) provides that a lender or assignee may conclusively rely on an Acknowledgment of Fair Market Value that is made in accordance with §50(a)(6)(Q)(ix).

In order to understand these requirements, they must be viewed in context with all of the provisions in §50(a)(6). §50(a)(6)(B) makes clear that the determination of the value of the homestead is made and based on the value of the homestead only "on the date the extension of credit is made."

The only reason that an Acknowledgment of Fair Market Value is required by §50(a)(6)(Q)(ix) is in order to determine the value of the homestead "on the date the extension of credit its made" in order to comply with §50(a)(6)(B). That is why §50(a)(6)(Q)(ix) reads as follows:

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**

This is also consistent with and reinforced by 7 T.A.C. §153.1(9), which defines "Fair Market Value" as "the fair market value of the homestead as determined **on the date the extension of credit is made.**"

When you read §50(a)(6)(Q)(ix) in context with §50(a)(6)(B) and 7 T.A.C. §153.1(9) it is clear that the Acknowledgment of Fair Market Value is what enables the lender to conclusively establish the fair market value of the homestead on the date the extension of credit is made pursuant to §50(h) and thereby preclude any issue that the loan does not comply with the 80% loan to value requirement of §50(a)(6)(B).

By rules of statutory construction, the qualifying phrase "on the date the extension of credit is made" follows and applies only to the fair market value of the homestead property. The Texas Supreme Court has held with respect to *Texas Constitution*, Article XVI, Section 50 that "a qualifying phrase in a statute or Constitution must be confined to the words and phrases immediately preceding it to which it may, without impairing the meaning of the sentence, be applied."<sup>2</sup>

Under this *doctrine of last antecedent*, the first phrase "the owner of the homestead and the lender sign a written acknowledgment" appears to relate only to who must sign the Acknowledgment, not when it is signed. The phrase "as to the fair market value of the homestead property on the date the

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<sup>2</sup>*Spradlin v. Jim Walters Homes, Inc.* 34 SW3d 578 (Tex. 2000), addressing the Constitution Article VI, Section 50(a)(5).

Mr. Matthew Nance  
Deputy General Counsel  
Office of the Consumer Credit Commissioner  
September 21, 2020  
Page 5

extension of credit is made," relates to only the relevant date for determining the value so as to comply with §50(a)(6)(B) and §50(h), unrelated to when the lender signs.

If the legislature and the people of the State of Texas had wished to require the owner and lender to sign the Acknowledgment of Fair Market Value on the date the extension of credit was made, then the provision would have been drafted to read as follows:

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

This, however, would not provide any evidence of the value of the homestead on the date the extension of credit was made under §50(a)(6)(B), which is the sole reason for obtaining the Acknowledgment of the Fair Market Value **on the date the extension of credit is made.**

Given the statutory context and application of the rules of construction, it is clear that there is not and never has been a requirement that the Acknowledgment of Fair Market Value be signed by the lender on the date the extension of credit is made.

There is also a practical reason for not requiring a lender to sign at closing. Lenders, many of whom are out of State, cannot reasonably be expected to send an officer or employee to each closing that can occur anywhere in Texas (as long as they occur at one of the three authorized locations for closing). There is really no benefit to an owner to have the lender's officer or employee attend closing for the sole purpose of signing the Acknowledgment of Fair Market Value.

Proposed §153.26(2) would allow two options for addressing this issue:

1. The lender could sign the Acknowledgment "before" closing; or
2. An "authorized agent" could sign the Acknowledgment on behalf of the lender.

Either of these options, however, will not resolve the issue and will serve only to create issues that will surely lead to additional issues and litigation.

If a lender signs an Acknowledgment "before" closing, the lender is signing a statement as to the future value of the homestead. Of course, the appraisal upon which the value is determined will be prepared perhaps weeks before and in any event at least three (3) business days prior to closing in order to satisfy the appraisal delivery requirements of the federal Equal Credit Opportunity Act, Regulation B, 12 C.F.R. §1002.14, and the federal Truth in Lending Act, Regulation Z, 12 C.F.R. §1026.35(c) for a higher-priced mortgage loan.

If the lender signs the Acknowledgment a day or two before closing, representing the value of the homestead on the date of closing, the lender could be making a false representation of value, which

Mr. Matthew Nance  
Deputy General Counsel  
Office of the Consumer Credit Commissioner  
September 21, 2020  
Page 6

could violate applicable State and federal law. For example, if a lender were to sign a statement one or two days prior to closing, and then the afternoon before closing a casualty loss occurs (say a flood, fire, or tornado that destroys the improvements), then has the lender signed a false and misleading statement acknowledging that the property is worth much more than it is actually worth on the scheduled date of closing? How many disclaimers or caveats would need to be added to the closing instructions or what additional procedures would be adequate to avoid the possible ramifications of making a potential false statement of future value in connection with the origination of a mortgage loan?

Similarly, there would be an issue as to whether or not any agent (usually an employee of a title company) is a duly "authorized agent" of the lender. How exactly is an entity to appoint an authorized agent that is neither an officer nor an employee? For each type of entity, this will vary as to just how and whether the lender can establish that the agent was, in fact, duly "authorized" by appropriate action of the lender. For example, will the Board of Directors of a corporate lender be required to adopt a specific resolution for each agent that it will authorize for the sole purpose of signing the Acknowledgment?

Again, the issues of the value of the homestead being acknowledged prior to closing (and certifying the value of the homestead in the future) or of whether or not an agent is indeed properly authorized will occur in the context where there is no benefit whatsoever to the owner in either instance. Neither of the proposed amendments actually address or solve the issue, they simply create new issues for lenders and the courts to ponder and resolve.

Finally, the Constitutional provisions must also be read in context with §50(a)(6)(Q)(x)(d), which expressly provides that a lender may cure the failure of the lender to sign the Acknowledgment by "obtaining the appropriate signatures if the lender fails to comply with Subparagraph (ix) of this paragraph."

If a lender has the right to and may cure a violation of §50(a)(6)(Q)(ix) by simply obtaining its own signature on the Acknowledgment at any time prior to 60 days after the owner notifies the lender of the violation pursuant to §50(a)(6)(Q)(x)(d), then clearly the Acknowledgment of Fair Market Value must be based on the value as of the date of the extension of credit and the lender's signature may be obtained at any time before, at or after closing.

In fact, if a lender signs after closing, as long as the signature is made not later than the 60th day after the date the lender is notified by the borrower of the lender's failure to comply, then the violation is cured pursuant to §50(a)(6)(Q)(x)(d). This is exactly the holding in *Doody et al v. Ameriquest Mortgage Co.*, where the Texas Supreme Court noted that any violation, once cured, is a conforming loan:

We conclude that under the Texas Constitution, if a lender charges closing costs in excess of three percent, but refunds the overcharge within a reasonable time, bringing

Mr. Matthew Nance  
Deputy General Counsel  
Office of the Consumer Credit Commissioner  
September 21, 2020  
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the costs within the range allowed by section 50(a)(6)(E), that cure also validates the lien under section 50(c). We reach this conclusion because we hold that **section 50(a)(6)(Q)(x)'s cure provision applies to all the lender's obligations under the extension of credit. Upon the cure, the lender has established the terms and conditions the lender must satisfy to make a lien valid under section 50(c). Accordingly, the lien meets section 50(c)'s requirement that it is a lien that secures a debt described by this section.**<sup>3</sup>

Although at least one court has gotten this wrong,<sup>4</sup> because the issue was not raised and was stipulated, the Constitutional language and the Texas Supreme Court's interpretation of the Constitution, taken as a whole, make clear that the relevant time (the date of closing) relates **only** to when the fair market value of the homestead is determined and not to when the lender signs the Acknowledgment.

The proposed amendments to §153.26 fly in the face of the plain language and clear context of the Constitutional provisions and long-standing established rules of statutory construction. If adopted, the proposed amendments would create and impose new and additional limitations (and expose lenders to additional risk and liability) that are not included in the Constitution, but are created solely by the Agencies' rule making.

Accordingly, I would suggest the following change to the language in §153.26(1):

(1) A lender may sign before, at or after closing, the written acknowledgment of the value of the homestead on the date the extension of credit is made.

Sincerely,



Robert R. Wisner

RRW:rrw

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<sup>3</sup> 49 S.W.3d 342 (Tex. 2001), emphasis added.

<sup>4</sup> See *Carrington Mortgage Services, LLC v. Hutto*, 2017 WL 592120 (Tex. App. – Houston [14<sup>th</sup> Dist.], February 14, 2017, unpublished opinion and Supplemental Memorandum Opinion 2017 WL 4679286 (Tex. App. – 14<sup>th</sup> Dist.] October 17, 2017).



September 23, 2020

Matthew Nance  
Deputy General Counsel  
Office of Consumer Credit Commissioner 2601 North Lamar Boulevard  
Austin, Texas 78705

Re: Changes to Home Equity Interpretations in 7 TAC Chapter 153

Dear Mr. Nance:

The Cornerstone Credit Union League, Independent Bankers Association of Texas, Texas Bankers Association, and Texas Mortgage Bankers Association appreciate the opportunity to provide comments to the proposed amendments to 7 TAC Chapter 153, home equity interpretations. Collectively, these trade associations represent virtually all the mortgage lenders who engage in home equity lending in Texas.

First, we would like to express our appreciation to you and the other drafters of this proposed rule. We provided precomments as stakeholders. Many of our observations and requests are commemorated in these proposed changes. The revisions will provide some extremely helpful clarity to lenders, particularly as to issues that have arisen during this time of pandemic.

In particular, the changes to §§153.11 and 153.14 appear to track the findings of the Texas Supreme Court in *Sims v. Carrington Mortg. Services* and are extremely helpful regarding modifications. During this pandemic, several federal regulatory interagency guidance documents have encouraged lenders to work with their borrowers who have been adversely affected and to enter into prudent loan modifications. These changes, clarifying the ability to roll in amounts that are past due under the equity loan, including accrued interest, insurance premiums and taxes that have been advanced, are very helpful. Further, it is important to note that the requirement to begin payments within two months is not re-started by a modification.

Next, the changes in §153.14 regarding a state of emergency and in §153.15 regarding location of closing provide significant clarity during this emergency as to the timing for a refinancing and the flexibility for closing locations.

The addition to §153.22 assures that the ability to provide digital documents is clearly authorized. While this is arguably already permitted under the E-SIGN Act, this interpretation creates a critical safe harbor. Again, this pandemic has brought home to all lenders the importance of being able to engage in lending activities electronically—not just through paper. At the same time, consumers are appropriately protected by the requirement that the lender comply with the E-SIGN Act.

Finally, although the clarification in §153.26 regarding the timing for acknowledgement of fair market value provides much needed flexibility, it still does not directly address a fundamental question regarding this acknowledgement. As clearly articulated in comment letters submitted by David Dulock and Robert Wisner, the critical point of this document is the timing of the determination of the fair market value—not the timing of the signing of that document. These signatories have previously filed an amicus curiae brief on this very point with the Texas Supreme Court. Unfortunately, the court did not take the opportunity to directly address this issue. Thus, an interpretation by the Finance Commission consistent with the legal arguments outlined by Dulock is merited and supported by case law.

Again, thank you for your consideration of our precomments and of this letter.

Sincerely,

Cornerstone Credit Union League  
Independent Bankers Association of Texas  
Texas Bankers Association  
Texas Mortgage Bankers Association

## Matthew Nance - RE: home equity interpretations

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**From:** Karen Neeley <kneeley@ibat.org>  
**To:** "Matt Nance - Office of Consumer Credit Commissioner(matthew.nance@occc.texas.gov)" <matthew.nance@occc.texas.gov>  
**Date:** 10/2/2020 2:43 PM  
**Subject:** RE: home equity interpretations  
**Cc:** Celeste Embrey <celeste@texasbankers.com>, John Fleming <john@johnfleminglaw.com>, Steve Scurlock <sscurlock@ibat.org>, "SuzanneYashewski (syashewski@cornerstoneleague.coop)" <syashewski@cornerstoneleague.coop>

---

Dear Mr. Nance:

Our group has become aware of a supplemental comment filed by David Dulock. Please consider this email an endorsement of his comment. As he notes, it would be helpful to have the ESIGN authority clearly applicable to ALL disclosures, notices, and documents.

Thank you for your consideration.



**Independent  
Bankers  
Association  
of Texas**

**Karen Neeley**  
*General Counsel*  
[kneeley@ibat.org](mailto:kneeley@ibat.org)  
[Independent Bankers Association of Texas](http://www.independentbankers.org)  
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**From:** Karen Neeley  
**Sent:** Wednesday, September 23, 2020 3:47 PM  
**To:** Matt Nance - Office of Consumer Credit Commissioner (matthew.nance@occc.texas.gov) <matthew.nance@occc.texas.gov>  
**Cc:** Celeste Embrey <celeste@texasbankers.com>; John Fleming <john@johnfleminglaw.com>; Steve Scurlock <sscurlock@ibat.org>; Suzanne Yashewski (syashewski@cornerstoneleague.coop) <syashewski@cornerstoneleague.coop>  
**Subject:** home equity interpretations

Dear Mr. Nance:

Attached is a joint comment letter from the affected trade associations: Independent Bankers Association of Texas, Texas Bankers Association, Texas Mortgage Bankers Association, and Cornerstone Credit Union League.

Thank you for update of the home equity interpretations. This is timely and very beneficial to both lenders and borrowers. Our specific observations are provided in the attached letter.



**Independent  
Bankers  
Association  
of Texas**

**Karen Neeley**

*General Counsel*

[kneeley@ibat.org](mailto:kneeley@ibat.org)

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## Matthew Nance - RE: home equity interpretations

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**To:** Karen Neeley <[kneeley@ibat.org](mailto:kneeley@ibat.org)>, "Matt Nance - Office of Consumer Credit Commissioner (matthew.nance@occc.texas.gov)" <[matthew.nance@occc.texas.gov](mailto:matthew.nance@occc.texas.gov)>  
**Date:** 10/2/2020 2:46 PM  
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Texas Mortgage Bankers endorses this comment as well.

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**From:** Karen Neeley [[kneeley@ibat.org](mailto:kneeley@ibat.org)]  
**Sent:** Friday, October 02, 2020 2:43 PM  
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**Cc:** Celeste Embrey <[celeste@texasbankers.com](mailto:celeste@texasbankers.com)>; John Fleming <[john@johnfleminglaw.com](mailto:john@johnfleminglaw.com)>; Steve Scurlock <[sscurlock@ibat.org](mailto:sscurlock@ibat.org)>; Suzanne Yashewski ([syashewski@cornerstoneleague.coop](mailto:syashewski@cornerstoneleague.coop)) <[syashewski@cornerstoneleague.coop](mailto:syashewski@cornerstoneleague.coop)>  
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<[syashewski@cornerstoneleague.coop](mailto:syashewski@cornerstoneleague.coop)>

**Subject:** home equity interpretations

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Thank you for update of the home equity interpretations. This is timely and very beneficial to both lenders and borrowers. Our specific observations are provided in the attached letter.



**Independent  
Bankers  
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**Karen Neeley**

*General Counsel*

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**B.**

**Texas Department of Banking**

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Charles G. Cooper  
Commissioner

# TEXAS DEPARTMENT OF BANKING

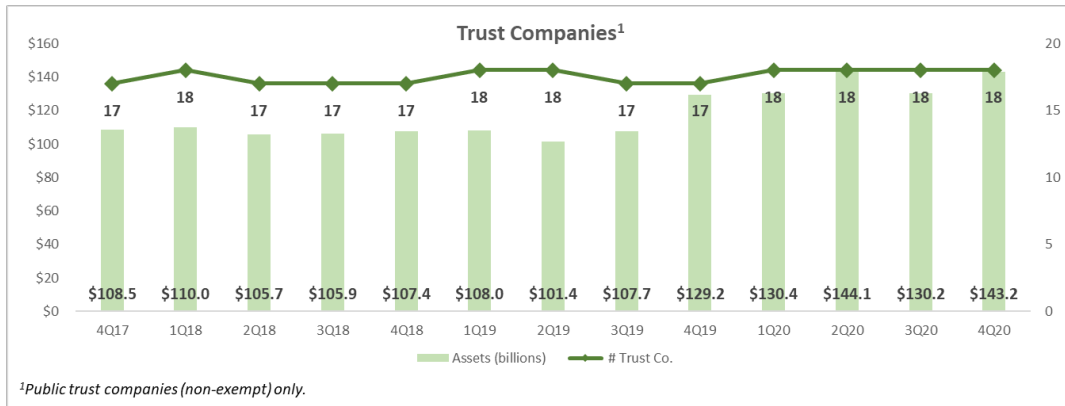
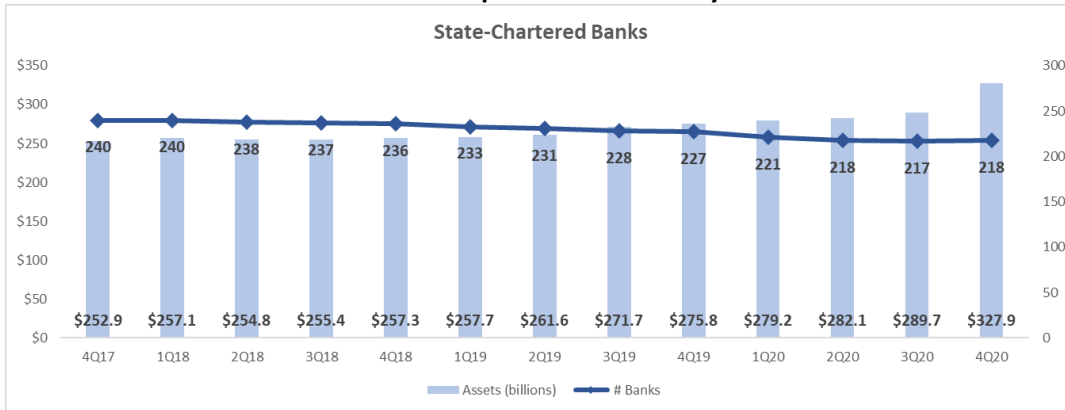
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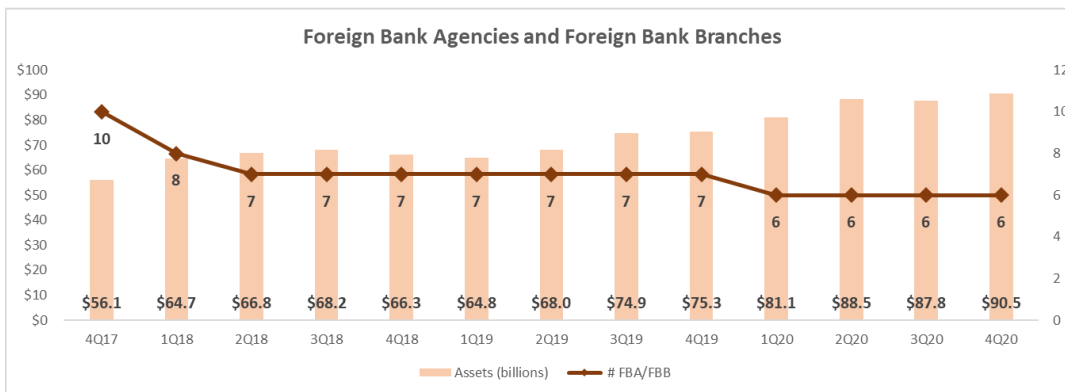
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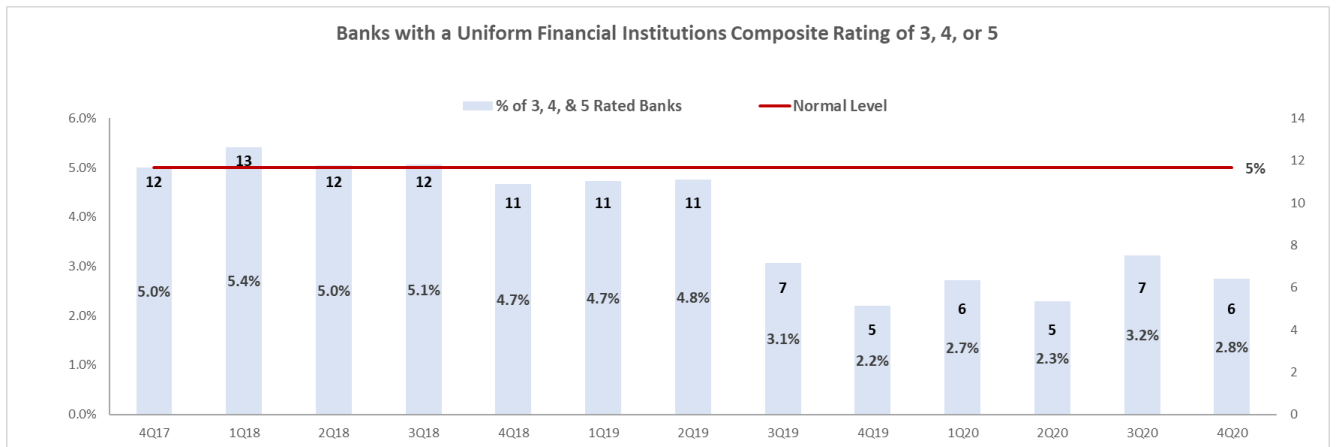
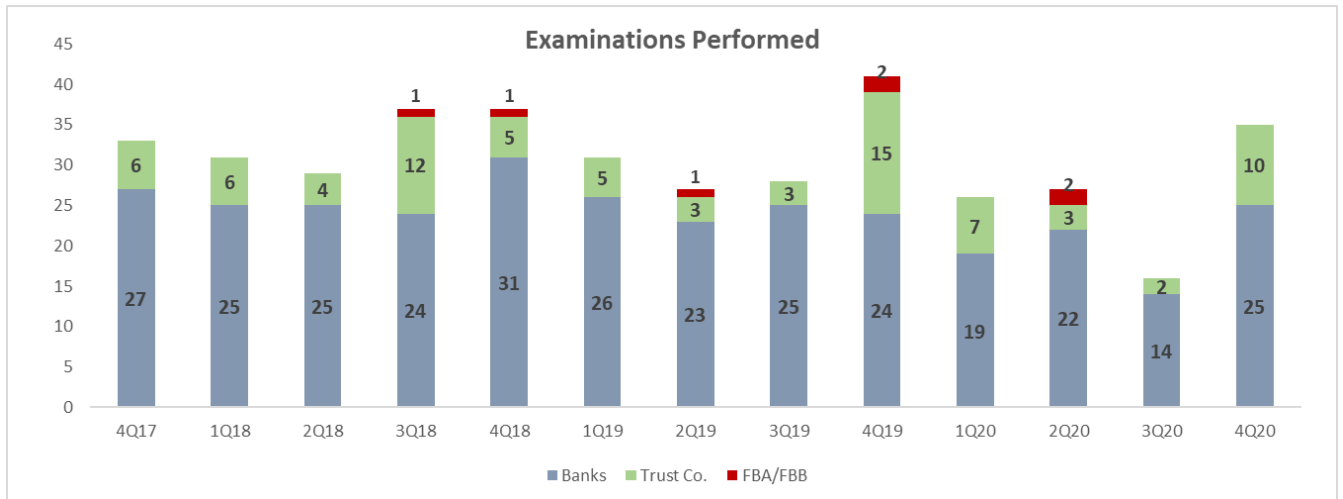
To: Finance Commission Members  
 From: Daniel Frasier, Director of Bank & Trust Supervision *DBF*  
 Date: September 30, 2020  
 Subject: Summary of the Bank & Trust Supervision Division Activities

## Bank and Trust Supervision – Industry Profiles



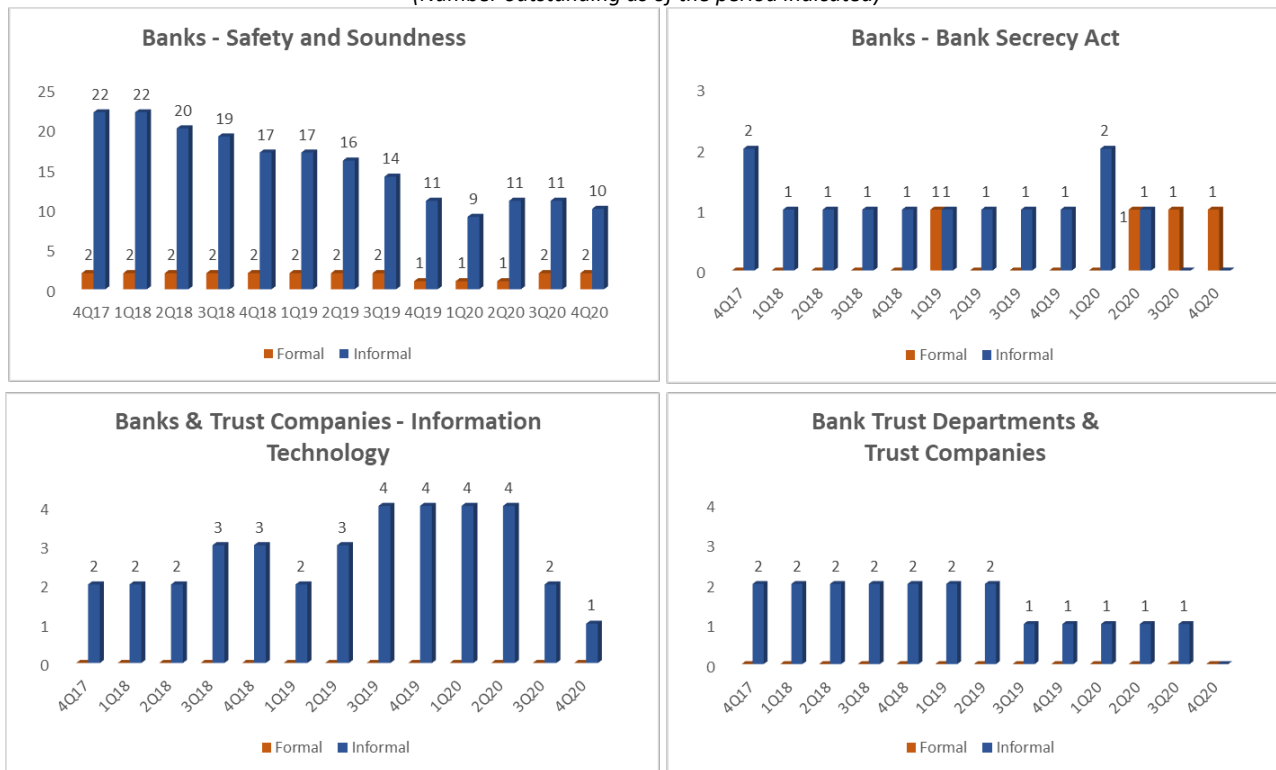
<sup>1</sup>Public trust companies (non-exempt) only.



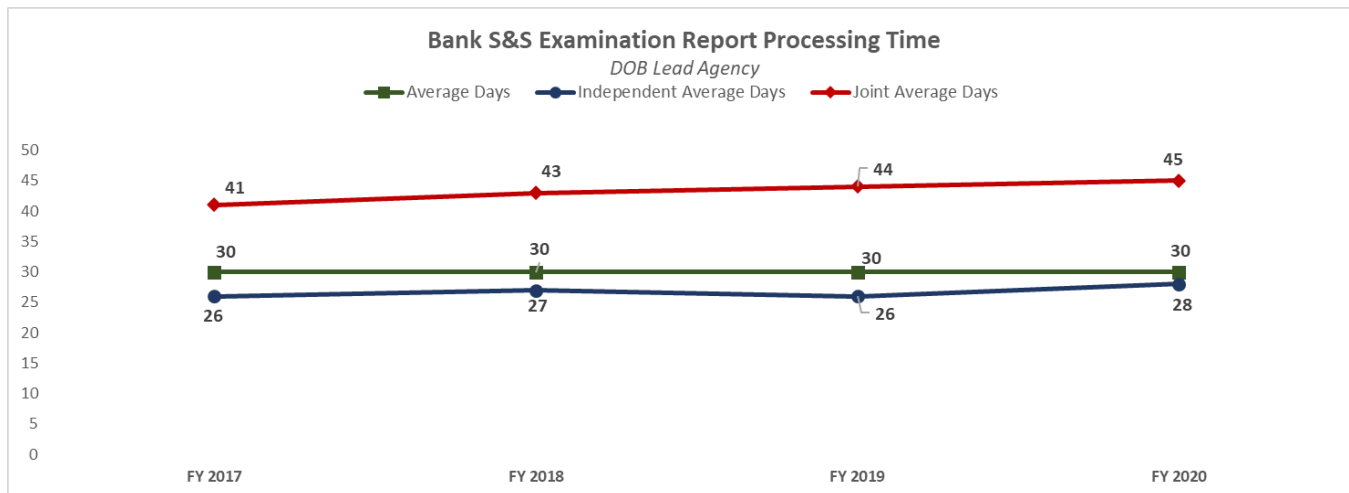


The Department considers any bank with a Uniform Financial Institutions Composite Rating of 3, 4, or 5, to be a problem bank. The number of problem banks continues to remain below what we consider to be a normal range of between 3% and 5% of the total number of institutions. However, we continue to expect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

**Enforcement Actions Outstanding by Type**  
(Number outstanding as of the period indicated)



Formal actions include Orders to Cease and Desist, Consent Orders, Written Agreements and Supervisor Actions. Informal actions include Determination Letters, Memoranda of Understanding, Commitment Letters and Board Resolutions. Compliance actions are not included.



The chart above depicts the number of days necessary to complete the processing of bank safety and soundness reports measured from the time the examination staff leaves the bank until a report is mailed to the bank. Reports for joint examinations on average take longer to process, primarily because joint examinations are typically conducted on larger banks and in problem institutions. Larger banks are typically more complex, and problem institution reports are more voluminous, and the vetting and report review process is more time consuming. Finally, the processing time is extended due to two regulators needing time to review and edit the report.

Compliance with Examination Priorities Percent of Examinations Conducted within Department Guidelines		
Entity Type	FY 2019	FY 2020
Commercial Banks (All / DOB Only)	93% / 92%	96% / 94%
IT	96% / 96%	97% / 97%
Trust	93% / 94%	100% / 100%
Foreign Banks (FRB)	100%	67%
Trust Companies (DOB)	48%	67%
IT	92%	100%

The division met all examination priorities for Fiscal Year 2020 except for examinations of trust companies and foreign bank organizations. The primary cause for not meeting examination priorities for trust companies is due to the COVID-19 induced examination pause in April and May. The six trust companies that were started late this fiscal year averaged 22 days past due. With the examination pause behind us, compliance with examination priorities for the trust companies is expected to be in line with Department guidelines going forward. The one foreign bank exam conducted late in Fiscal Year 2020 was two days late. Compliance with examination priorities for foreign bank entities is expected to remain a challenge through much of Fiscal Year 2021. These foreign bank examinations are conducted jointly with the Federal Reserve which is focusing examination efforts on perceived higher risk entities.

### Division Highlights

- **COVID-19 Update:**
  - o All examinations continue to be performed offsite with limited exceptions as we are taking a cautious approach while the COVID-19 pandemic persists. The Department continues to actively monitor and respond to the changing circumstances brought about by the COVID-19 pandemic.
  - o The impact of the COVID-19 pandemic to bank loan portfolios has thus far been muted. However, circumstances are changing that could result in increased stress on loan portfolios leading to a rise in past due loans. Most of our banks have provided loan deferrals to their customers to help cope with the pandemic, but those deferrals are now running out. Additionally, further COVID relief and federal stimulus payments may not be forthcoming.
- **Tropical Storm Monitoring:** The Department initiated its plans for monitoring and responding to the threat of tropical storms with the approach of Marco, Laura and Beta. [Industry Notice 2020-11 - Emergency Closing of Offices](#) was issued on August 25, 2020, to remind Texas state banks of their options to close branches under state law. After Hurricane Laura made landfall, banks with locations in Laura's path were contacted to assess the impact and offer Departmental assistance. Bankers in the affected areas reported only minor damage and temporary closures brought about by power outages.



- **Banking Commissioner Charles G. Cooper Re-Appointed to FSOC:** Commissioner Charles G. Cooper was re-appointed on September 24, 2020, for a second consecutive term to serve as the state bank representative on the Financial Stability Oversight Council (FSOC). The FSOC consists of federal financial regulators, state regulators, and an independent insurance expert that are charged with identifying risks to the financial stability of the United States; promoting market discipline; and responding to emerging risks to the stability of the United States' financial system.
- **Special Operations and Conferences:**
  - o Review Examiner Travis Graham represented the Department at the FFIEC Ag Lending Conference held virtually beginning on August 25, 2020.
  - o Commissioner Cooper, Deputy Commissioner Kurt Purdom, Chief Operating Officer Wendy Rodriguez, and Director of Non-Depository Supervision Jesse Saucillo represented the Department at the Conference of State Bank Supervisors (CSBS) Virtual Strategic Planning Meeting beginning on September 14, 2020. This meeting provides the Department with an opportunity to help direct the long-term strategic direction of CSBS as well as set priorities for the coming year.
  - o Regional Director Larry Walker participated virtually in the Regulatory Environment Discussion at the Texas Society of CPA Conference held on September 23, 2020.
  - o Commissioner Cooper, Chief Operating Officer Wendy Rodriguez, and Director of Bank and Trust Supervision Dan Frasier attended the 2020 Community Banking in the 21st Century Research and Policy Conference held virtually this year beginning on September 30, 2020. This conference, which is hosted by CSBS, the Federal Reserve Bank of St. Louis, and the Federal Deposit Insurance Corporation (FDIC), focused on a wide variety of topics affecting community banks.



# TEXAS DEPARTMENT OF BANKING

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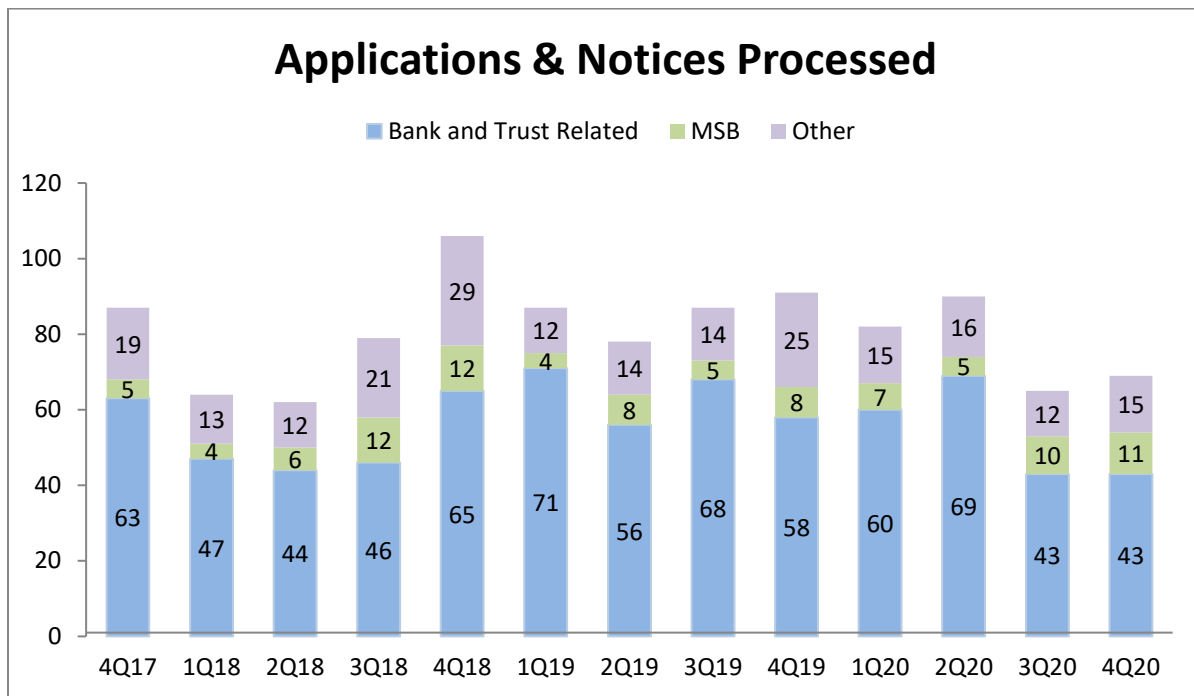
Charles G. Cooper  
Commissioner

To: Finance Commission Members

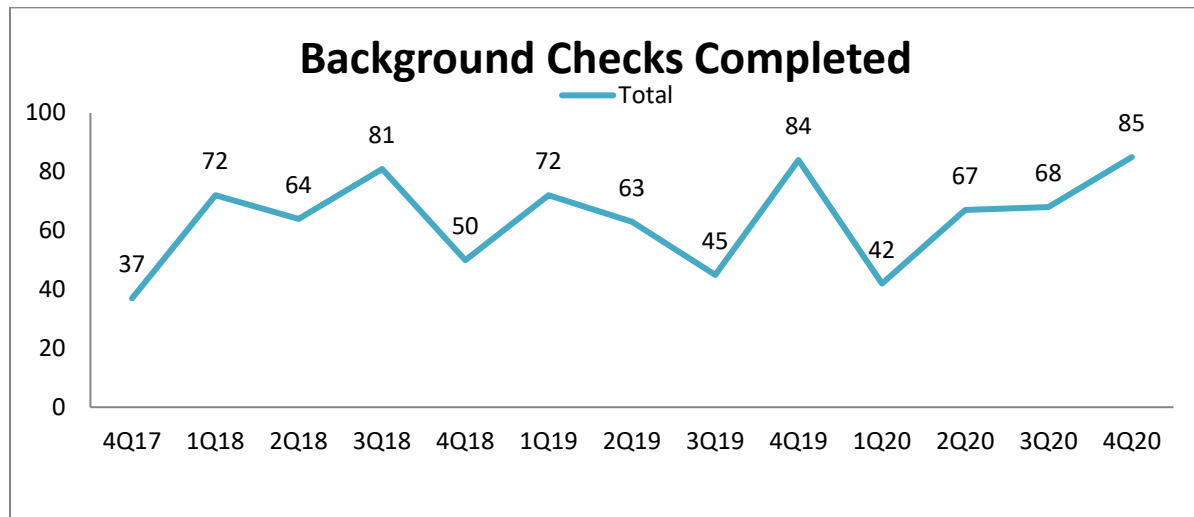
From: Mark Largent, Director of Corporate Activities *Mark N. Largent*

Date: September 30, 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 September 29, 2020)
Bank Related	29
Trust Companies	6
Money Services Business (MSB)	24
Others	1
<b>Totals</b>	<b>60</b>

### Division Highlights

- Application volume remains robust and is 13% 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 7 (32%)
  - Trust company increased 2 (50%)
  - MSB related increased 2 (9%)
  - Other decreased 4 (80%)
  
- The Department approved on September 28, 2020, an application for Beal Bank, SSB, a state savings bank, to convert to a Texas state bank with the name Beal Bank. The Commissioner’s [Order Approving Charter](#) is available on the Department’s website [estimated gain in state banking assets of approximately \$2.1 billion].
  
- **Significant filing**
  - Affiliated Bank, National Association, Bedford, Texas, has applied to convert to a Texas state bank charter under the name of Susser Bank [estimated gain in state banking assets of approximately \$1.2 billion].
  
- **Charter, Conversion, and Merger Activity** – Since the last report to the Finance Commission, the following transactions have consummated:
  - *Banks*
    - CapTex Bank, National Association, Trenton, Texas, converted to a Texas state bank charter under the name of CapTex Bank [estimated gain in state banking assets of approximately \$206 million].
  
  - *Trust Companies*
    - Legacy Trust Company, LTA, Dallas, Texas, completed its voluntary dissolution.
  
- **Conferences, Conventions, and Committee Meetings** – Since the last report to the Finance Commission, Corporate Division personnel have participated in the following: Corporate Analysts Greg Webb, Xazel Garcia, Clara Zamarripa, and Sheon Corley participated on a virtual basis in the 2020 Money Transmitter Regulators Association Annual Conference September 16-17.



Charles G. Cooper  
Commissioner

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To: Finance Commission Members

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

Date: October 1, 2020

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

		FY 2020									
Entity	FY 2019		1 <sup>st</sup>		2 <sup>nd</sup>		3 <sup>rd</sup>		4 <sup>th</sup>		
<b>Industry Profile (# / Assets (billions))</b>											
Money Services Businesses (MSB)	171	\$140.5	170	\$140.3	172	\$140.3	175	\$143.9	171	\$163.4	
Prepaid Funeral Contract (PFC)	359	\$4.2	357	\$4.2	355	\$4.2	354	\$4.3	353	\$4.3	
Perpetual Care Cemeteries (PCC)	241	\$365.3 *	241	\$369.4*	241	\$370.6*	241	\$374.2*	243	\$376.5*	
Check Verification Entities (CVE)	2	n/a	2	n/a	2	n/a	2	n/a	2	n/a	
<b>Examinations Performed</b>											
MSB	101		19		24		23		27		
MSB Limited Scope	2		2		0		0		0		
MSB Accepted other State	13		4		3		3		2		
PFC	260		53		73		85		52		
PFC Limited Scope	5		0		0		0		0		
PCC	184		68		35		35		41		
PCC Limited Scope	2		0		0		0		1		
<b>Ratings (# / %) Assigned to All Regulated Entities</b>											
1	276	36.56%	281	37.42%	283	37.78%	284	37.77%	298	39.84%	
2	409	54.17%	409	54.46%	410	54.74%	412	54.79%	391	52.27%	
3	60	7.95%	50	6.66%	50	6.68%	50	6.65%	56	7.49%	
4 & 5	10	1.32%	11	1.46%	6	0.8%	6	0.79%	3	0.40%	
<b>Noncompliance with Examination Priorities (Past Due)</b>											
MSB	14		23		18		19		14		
PFC	3		2		0		12		2		
PCC	1		2		0		13		0		

**NOTES:**

Limited scope examinations do not receive a rating.

\* PCC \$ amounts reflected in the millions.

## Examination Activities

- Below is a summary of the fourth quarter FY 2020 examination results reflected on page 1.
  - The fourteen MSB past due examinations are on average approximately two months past due, of which, nine were coordinated to be conducted as multi-state joint examinations.
    - Six of the past due MSB examinations were completed in September 2020. The examination schedule reflects that four of the past due examinations will be completed in October and November 2020, and three were delayed to be conducted as multi-state joint examinations. Lastly, one of the past due MSB examinations was delayed due to administrative proceedings.
  - The two PFC past due examinations are on average less than one month past due. One of the past due examinations was conducted in September 2020, and the remaining past due PFC examination was delayed in coordination with the permit holder and will be completed in November 2020.
  - NDS met or exceeded all outcome performance measures for the fourth quarter of FY 2020.
- License holders have been impacted by the unprecedented impacts of the pandemic that have resulted in limited access to facilities and other challenges in day-to-day operations. NDS continues to perform remote examinations in coordination with license holders without a material impact on examination priorities, fulfilling our oversight responsibility and not jeopardizing consumer protection. NDS remains committed to applying flexibility when conducting remote examinations and assesses the reasonableness of a license holder's actions and responses in consideration of the impacts of the pandemic. Examiners continue to communicate and coordinate with license holders via telephone and various other electronic communication options such as video calling.
  - MSBs that primarily rely on brick-and-mortar operations, such as currency exchange in the U.S./Mexico border, have been the most adversely impacted by the reduction of walk-in business. Several currency exchange license holders have reported a decrease in transaction activity that have resulted in reduced revenues. The Department is requiring license holders warranting closer monitoring to submit quarterly updates, including interim financial statements, to the Department for review to ensure ongoing compliance with applicable state and federal regulations.
  - COVID-19 also continues to impact the death care industry due to social gathering restrictions. The death care industry faces difficulties in retaining staffing to maintain day-to-day operations. Given the essential nature of their business and service, the adverse impact has not been considered material or widespread. Death care providers have adapted telephone, mail, or electronic communications, as well as alternative methods in providing its services to consumers, such as live video presentations of traditional and graveside memorial services.

## Division Activities

- Effective September 1<sup>st</sup>, Supervisory Memorandum (SM) 1023 regarding the examination frequency policy for MSBs, and SM 1024 pertaining to the acceptance of MSB Reports of Examinations (ROEs) from regulators in other states were revised. The revisions to the SMs were made to enhance the Department's ability to coordinate and participate in multi-state joint examinations of money transmission license holders, and to further clarify criteria related to the acceptance of ROEs from other state regulators.
- NDS staff continues to participate in the Multi-state 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 completed in coordination with other state MSB supervisory agencies as part of the state led initiative known as the MSB Network Supervision. This initiative applies to 78 of the nation's largest MSBs that are licensed in 40 or more states and is designed to streamline state examinations to ensure the largest MSBs will only be examined once per year beginning in 2021.
- Assistant Deputy Commissioner (ADC) Reese continues to be an active member of the Regulator-Industry Clearing House Working Group. ADC Reese was also recently appointed to serve in the Federal MSB Legislation Working Group. Both working groups work in collaboration with the Conference of State Bank Supervisors (CSBS) to ensure uniformity in the licensing and supervision of MSBs by developing model practices and laws.
- During the week of September 14<sup>th</sup>, Commissioner Cooper, Director Saucillo, and several other Department employees attended the 2020 CSBS Board and Strategic Planning Meeting. The meeting was held remotely with discussions held via video calls. Two primary discussion topics were the MSB Network Supervision and the Workforce of Tomorrow.
- During the week of September 14<sup>th</sup>, Commissioner Cooper, ADC Reese, and Director Saucillo participated on a virtual basis the 2020 MTRA Annual Conference. The conference provided an opportunity for MTRA member states to discuss topics impacting MSB regulation. Presentations impacting MSBs, such as the Cybersecurity Threats Network Supervision, were provided and discussed via virtual meetings.
- An MSB posting to replace an examiner who recently resigned closed on September 30, 2020. We anticipate interviewing applicants in early October 2020 to fill the vacancy.



Charles G. Cooper  
Commissioner

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**Memorandum**

**To:** Finance Commission Members  
**From:** Lori Wright, Director of Human Resources  
**Date:** September 30, 2020  
**Subject:** Summary of the Human Resources Division Activities

**Human Resources Fiscal Year 2020 Activities**

<b>Active Postings</b>				
<b>Number of Positions</b>	<b>Position</b>	<b>Division</b>	<b>Status</b>	<b>Activities</b>
1	Program Specialist II	DSS	Filled	Start Date 1/11/21
1	Law Clerk	Legal	Closed 9/28/20	
1	Program Specialist II (CAPPS Implementation Specialist)	Admin. Svcs.	Closed 10/2/2020	
1	Financial Examiner I-II	NDS-MSB	Closed 9/30/20	

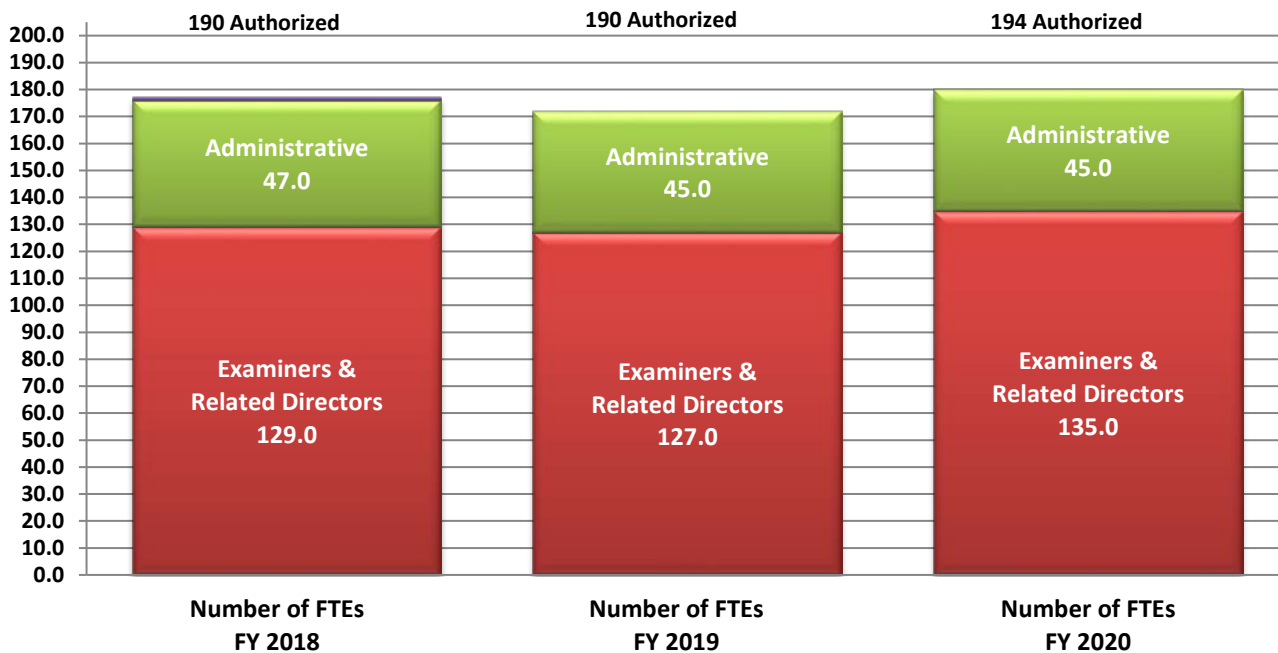
*Compensation Project*

Austin Alliance Group 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 integrated into the Department’s compensation procedures and policies and a communication plan is being developed.

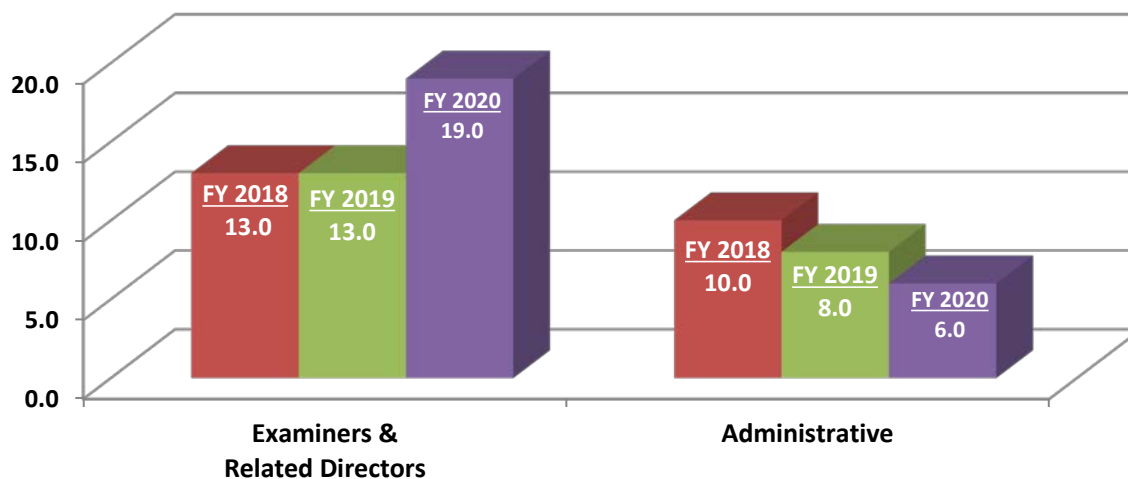
*COVID-19*

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 08/31/2020



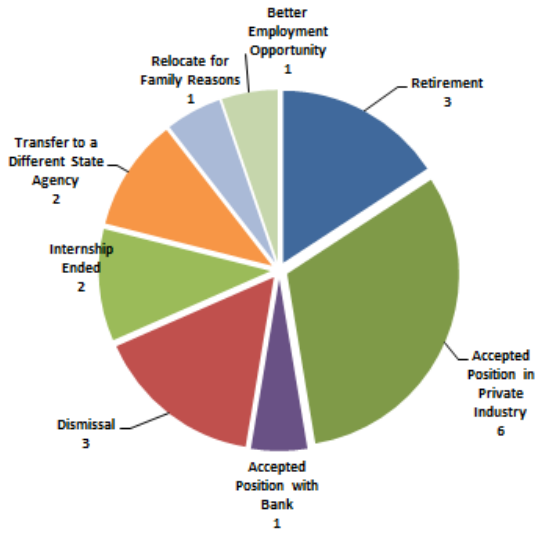
### New Hire Data for Fiscal Years 2018, 2019 and 2020



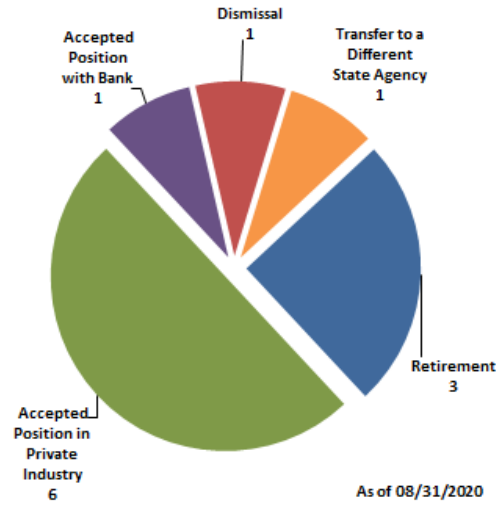


### FY 2020 Employee Turnover Reasons

**All Employees**  
19 Resignations



**Financial Examiners Only**  
12 Resignations



**ACTUAL PERFORMANCE FOR OUTCOME MEASURES**

**TEXAS DEPARTMENT OF BANKING**

**FISCAL YEAR 2020**

**8/31/2020**

**Actual Performance for Outcome Measures**  
**Fiscal Year 2020**  
**For Period Ending August 2020**

Type/Strategy/Measure	2020 Target	2020 YTD	Percent of Annual Target
<b>Outcome Measures - Key</b>			
1-1 QUALITY BANK REGULATION			
1. % BANKS EXAMINED	95.00%	95.80%	100.84%
1-2 QUALITY NON-BANK REGULATION			
1. % MSB LICENSEES EXAMINED	90.00%	91.41%	101.57%
2. % PFC LICENSEES EXAMINED	95.00%	99.43%	104.66%
3. % PCC LICENSEES EXAMINED	95.00%	100.00%	105.26%
The Division's positive variance relates to being fully staffed with a trained and knowledgeable examination workforce for the entire fiscal year.			
1-3 APPLICATION PROCESSING			
1. % B&T, MSB APPS COMPLETED	95.00%	99.62%	104.86%
1-4-1 APPLICATION PROCESSING			
1. % WRITTEN COMPLAINTS CLOSED	100.00%	100.00%	100.00%
1-5 OPERATIONAL EFFICIENCY			
1. % REGULAR EMPLOYEES SEPARATED	11.00%	10.85%	98.64%
3. % ACTUAL EXPENDITURES TO BUDGETED	95.00%	88.40%	93.05%
The variance is due to vacancies (salaries and benefits) and lower travel and training expenditures due to COVID-19.			

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

**ACTUAL PERFORMANCE FOR EXPLANATORY MEASURES**

**TEXAS DEPARTMENT OF BANKING**

**FISCAL YEAR 2020**

**8/31/2020**

**Actual Performance for Explanatory Measures**  
**Fiscal Year 2020**  
**For Period Ending August 2020**

Type/Strategy/Measure	2020 Target	2020 YTD	Percent of Annual Target
<b>Explanatory Measure - Key</b>			
1-1-1 BANK EXAMINATION			
1. % BANKS CLASSIFIED SAFE & SOUND	95.00%	97.25%	102.37%

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

**ACTUAL PERFORMANCE FOR OUTPUT/EFFICIENCY MEASURES**

**TEXAS DEPARTMENT OF BANKING**

**FISCAL YEAR 2020**

**8/31/2020**

**Department of Banking**  
**Actual Performance for Output Measures**  
**Fiscal Year 2020**

Type/Strategy/Measure	2020 Target	2020 Actual	2020 YTD	Percent of Annual Target
<b>Output Measures-Key</b>				
<b>1-1-1 Bank Examination</b>				
<b>1. # Bank Examinations Performed</b>				
Quarter 1	90	19	19	21.11%
Quarter 2	90	23	42	46.67%
Quarter 3	90	14	56	62.22%
Quarter 4	90	25	81	90.00%
FY 2020, Quarter 3 - The number of bank examinations is below the target due to the COVID-19 pandemic hold which postponed examinations.				
FY 2020, Quarter 4 - The number of bank examinations is below the target due to the COVID-19 pandemic hold which postponed examinations in the third fiscal quarter.				
<b>2. # Foreign/Trust/IT Examinations Performed</b>				
Quarter 1	185	42	42	22.70%
Quarter 2	185	57	99	53.51%
Quarter 3	185	41	140	75.68%
Quarter 4	185	54	194	104.86%
<b>1-2-1 Non-Bank Examination</b>				
<b>1. # NDS Licensees Examined</b>				
Quarter 1	550	146	146	26.55%
Quarter 2	550	135	281	51.09%
Quarter 3	550	146	427	77.64%
Quarter 4	550	123	550	100.00%
<b>1-3-1 Application Processing</b>				
<b>1. # License Applications Completed</b>				
Quarter 1	311	81	81	26.05%
Quarter 2	311	97	178	57.23%
Quarter 3	311	71	249	80.06%
Quarter 4	311	78	327	105.14%

FY 2020, Quarter 2 - The number of filings, especially those relating to conversions, mergers, and subsidiaries, exceeded expectations.

FY 2020, Quarter 3 - The number of filings, especially those relating to conversions, mergers, and subsidiaries, exceeded expectations for the first three quarters of the fiscal year.

FY 2020, Quarter 4 - The number of filings relating to Money Services Businesses exceeded expectations for the fiscal 4th quarter and year.

**Comparable Historical Data**  
**for the same time period**  
**FY2019 FY2018 FY2017 FY2016**

	101	32	27	27
	226	47	42	47
	565	124	120	158
	343	104	87	78

\*Varies by 5% or more from target.

**ACTUAL PERFORMANCE FOR NON-KEY MEASURES**

**TEXAS DEPARTMENT OF BANKING**

**FISCAL YEAR 2020**

**8/31/2020**



## Actual Performance for Non-Key Measures Fiscal Year 2020 For Period Ending August 2020

Type/Strategy/Measure	2020 Target	2020 YTD	Percent of Annual Target
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### Non-Key Measures

#### 1-1-1 BANK EXAMINATION

2. % FOREIGN BANK AGENCIES EXAMINED	100.00%	66.67%	66.67%
The number of bank examinations is below the target due to the COVID-19 pandemic hold which postponed examinations.			
3. % TRUST COMPANIES EXAMINED	90.00%	66.67%	74.08%
The number of trust companies receiving examinations when due is significantly lower than the target due to the additional resources being deployed to train new staff members as well as the COVID-19 pandemic hold which postponed examinations in the third fiscal quarter. The examination process was resumed in the fourth quarter (Industry Notice 2020-08).			
4. % PROBLEM INSTITUTIONS WITH APPROPRIATE SUPERVISORY ACTIONS IN PLACE	100.00%	100.00%	100.00%
5. CERTIFICATE OF ACCREDITATION BY CSBS MAINTAINED IN GOOD STANDING	YES	YES	YES
8. AVERAGE COST PER BANK EXAMINATION	\$88,700.00	\$102,710.95	115.80%
The average cost per bank examination is higher than target due to performing less examinations than projected due to the COVID-19 pandemic hold which increased the cost per bank examination.			
9. ASSETS EXAMINED PER EXAMINER DAY (IN MILLIONS)	\$9.00	\$11.51	127.89%
The assets examined per examiner day is higher than target due to greater assets examined than anticipated this fiscal year.			
11. # STATE-CHARTERED BANKS IN TEXAS	218	218	100.00%
12. TOTAL ASSETS IN TEXAS STATE-CHARTERED BANKS (IN BILLIONS)	\$285.00	\$327.90	115.05%
The total assets in Texas state-chartered banks is higher than target due to an increase in total assets related to Paycheck Protection Program loans and the conversion of NexBank, Dallas.			

#### 1-2-1 NON-BANK EXAMINATION

4. % PCC AND PFC APPLICATIONS COMPLETED WITHIN STATUTORY PERIOD	95.00%	100.00%	105.26%
The Division's positive variance relates to being fully staffed with a trained and knowledgeable administrative staff for the entire fiscal year.			
6. AVERAGE DIRECT COST PER PFC AND PCC LICENSEE EXAMINATION	\$2,750.00	\$2,554.56	92.89%
The average cost per prepaid funeral contract and perpetual care cemetery examination is lower than the target due to the division being able to continue to efficiently perform the examinations when due in an off-site capacity, without the typical associated travel expenses.			
7. AVERAGE DIRECT COST PER MSB LICENSEE EXAMINATION	\$9,500.00	\$11,037.32	116.18%

## Actual Performance for Non-Key Measures Fiscal Year 2020 For Period Ending August 2020

Type/Strategy/Measure	2020 Target	2020 YTD	Percent of Annual Target
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### Non-Key Measures

The average cost per money services business is higher than the target due to three examiners being in training in fiscal year 2020. During training, examiners work alongside other more tenured examiners when performing examinations resulting in the division conducting fewer examinations of approximately 8% in FY 2020 when compared to FY 2019.			
8. DOLLAR AMOUNT OF PREPAID FUNERAL CONTRACTS IN FORCE (IN BILLIONS)	\$4.2	\$4.3	102.38%
9. NUMBER OF NDS LICENSEES	750	767	102.27%
10. PERCENTAGE OF NDS LICENSEES CLASSIFIED SAFE AND SOUND	95.00%	99.60%	104.84%

### 1-3-1 APPLICATION PROCESSING

2. # WRITTEN COMPLAINTS CLOSED	370	234	63.24%
If no supporting documentation is submitted with a complaint, the matter is considered an inquiry. Complaint rules adopted in last fiscal year impacted our overall complaint intake and resolution projections for fiscal year 2020.			

### 1-4-1 REGULATORY OVERSIGHT

3. # FC MEETINGS CONVENED	6	6	100.00%
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### 1-5-1 OPERATIONAL EFFICIENCY

2. % REGULAR EMPLOYEES SEPARATED (EXCLUDING RETIREMENTS)	9.00%	9.14%	101.56%
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\*Note: Variance of 5% from target require explanation.




Charles G. Cooper  
Commissioner

# TEXAS DEPARTMENT OF BANKING

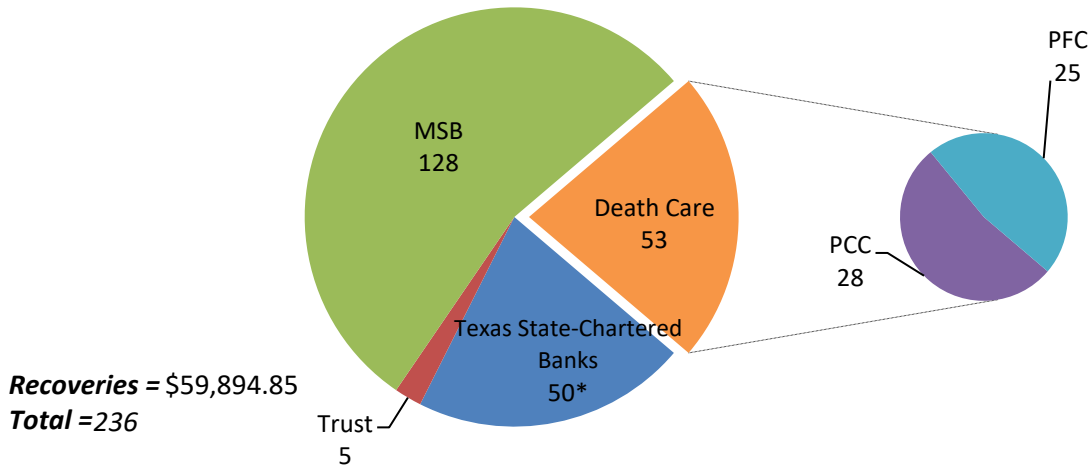
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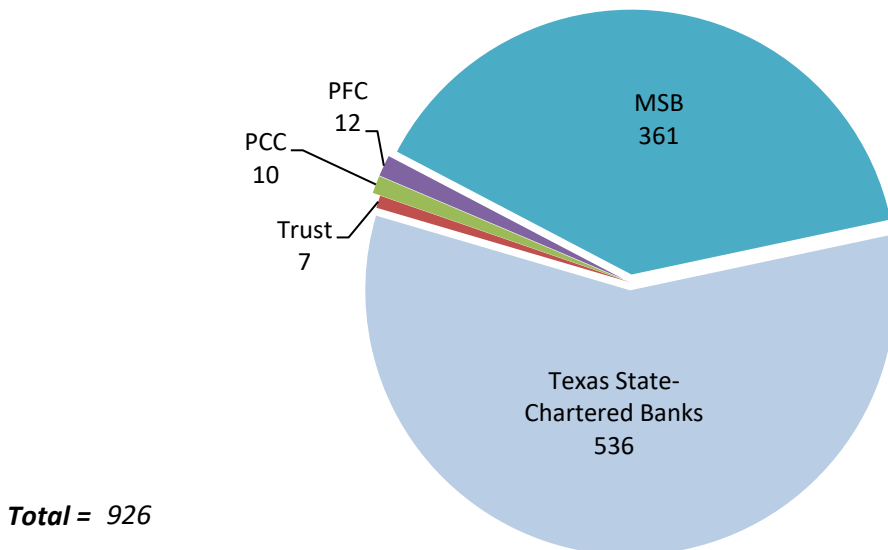
**To:** Finance Commission Members  
**From:** Michelle N. Hodge, Director of Strategic Support   
**Date:** September 30, 2020  
**Subject:** Summary of the Strategic Support Division Activities

## Jurisdictional Written Complaints September 2019 - August 2020

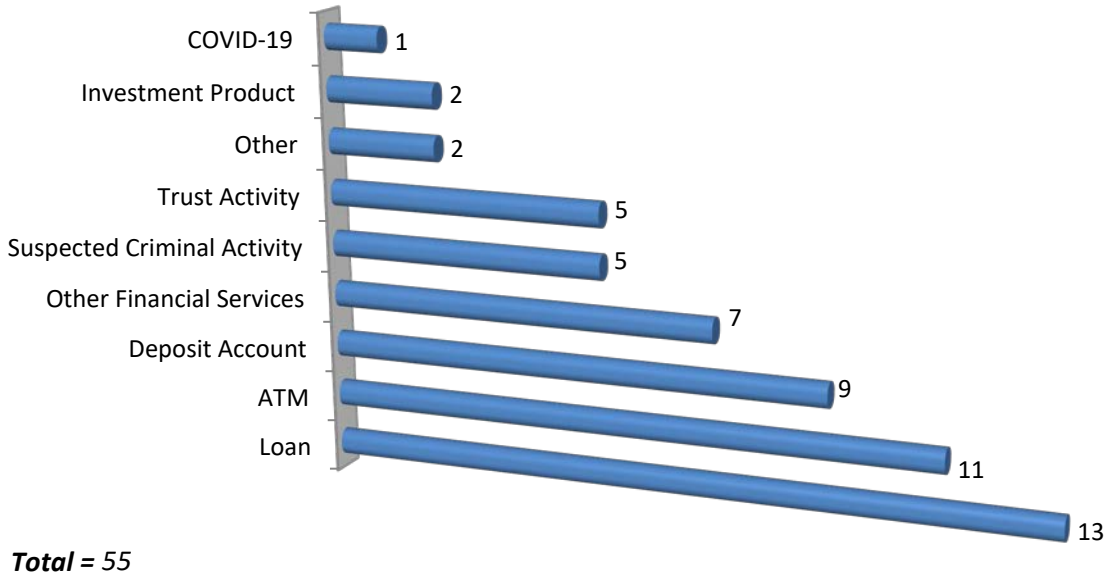


\*This number has been restated as some complaints were recategorized as inquiries.

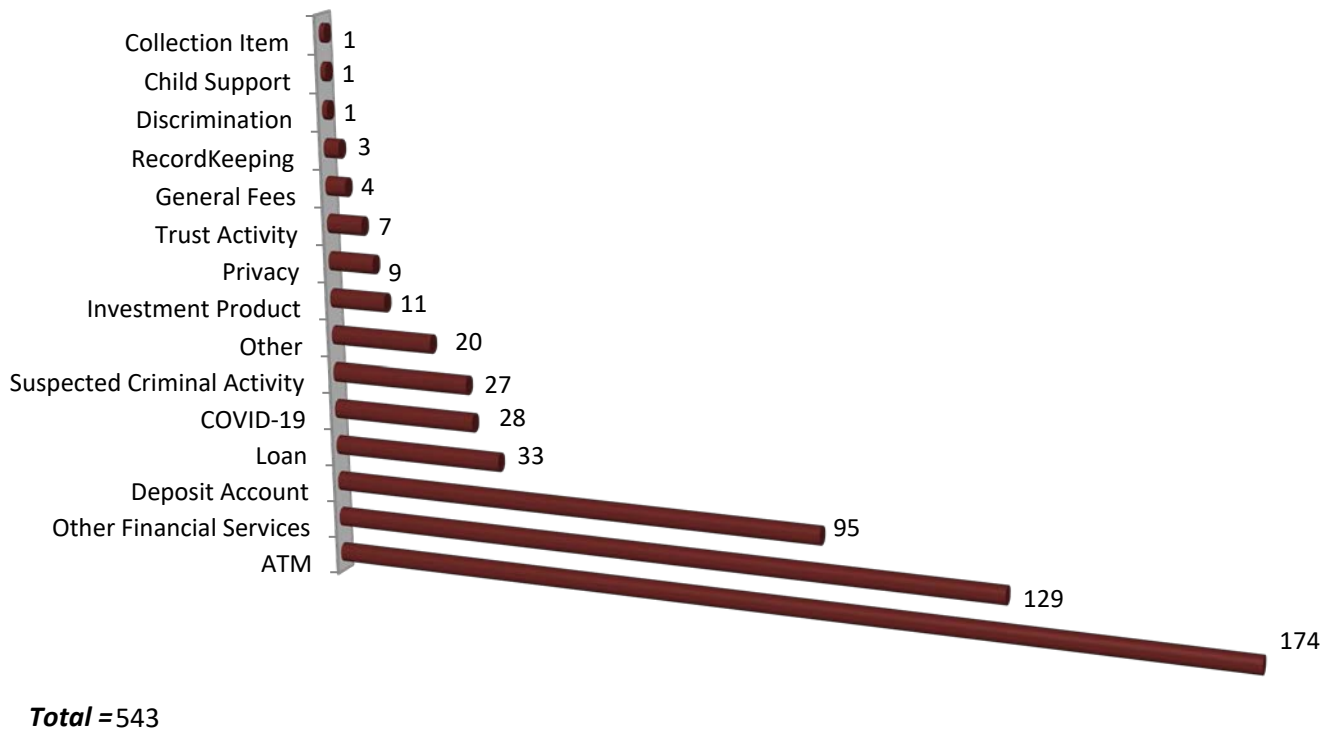
## Inquiries on Jurisdictional Entities September 2019 - August 2020



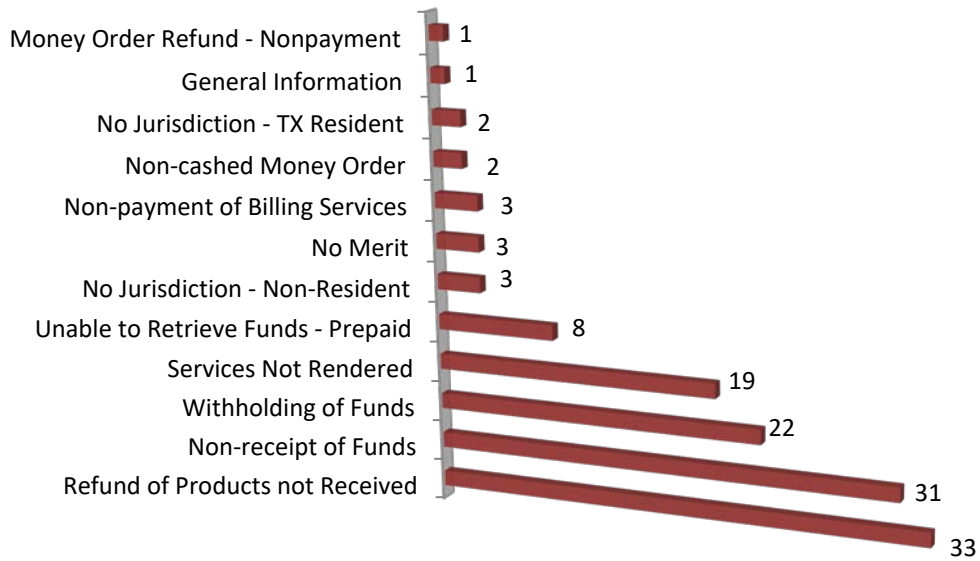
**State-Chartered Banks and Trust Companies  
Written Complaints by Type  
September 2019 - August 2020**



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

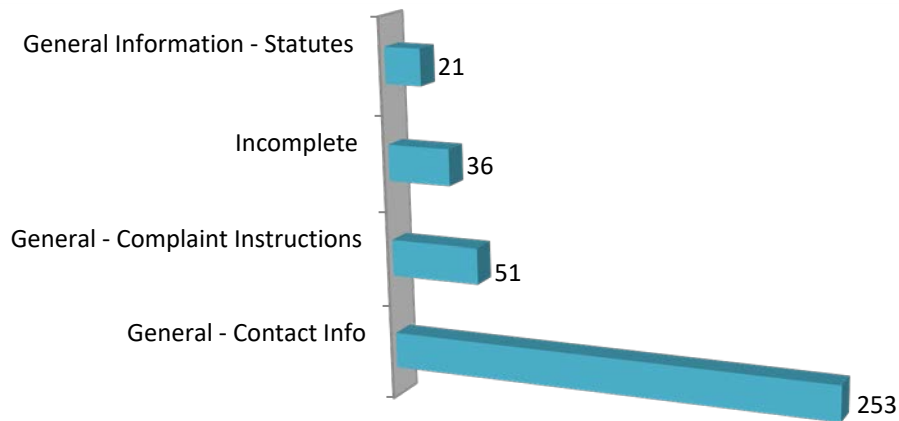


### Money Services Businesses Written Complaints by Type September 2019 - August 2020



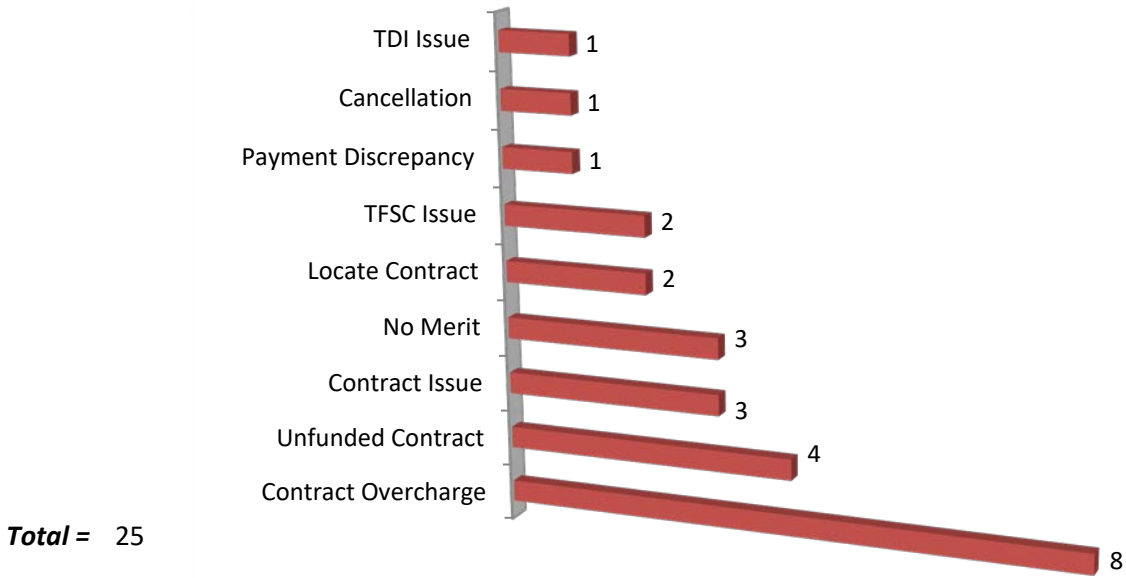
**Total = 128**

### Money Services Businesses Inquiries by Type September 2019 - August 2020

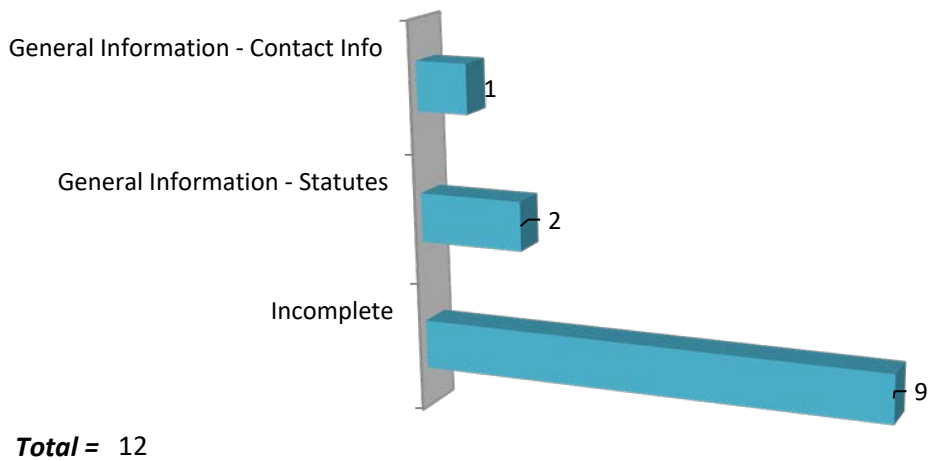


**Total = 361**

### Prepaid Funeral Contract Sellers Written Complaints by Type September 2019 - August 2020



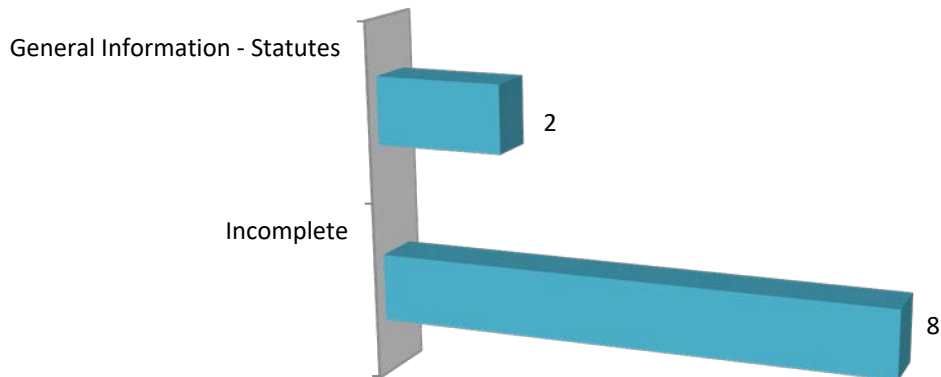
### Prepaid Funeral Contract Sellers Inquiries by Type September 2019 - August 2020



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

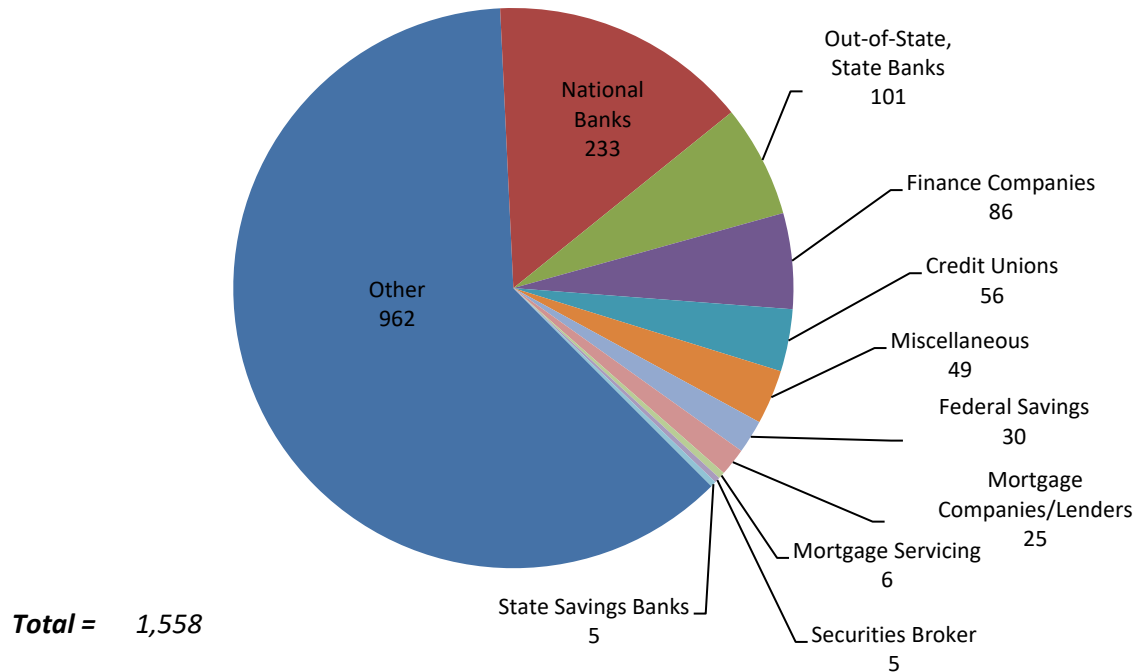


**Perpetual Care Cemeteries  
Inquiries by Type  
September 2019 - August 2020**



**Total = 10**

### Complaints and Inquiries Against Non-Jurisdictional Entities September 2019 - August 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
<b>State-Chartered Banks</b>				
Avg. Number of Days to Close a Written Complaint*	12	9	25	38
Percentage of Written Complaints Resolved Within 90 days	100%	100%	100%	100%
Number of Written Complaints Resolved*	9	18	10	11
<b>Trust</b>				
Avg. Number of Days to Close a Written Complaint*	N/A	8	29	N/A
Percentage of Written Complaints Resolved Within 90 days	100%	100%	100%	100%
Number of Written Complaints Resolved*	1	3	0	1
<b>PFC/PCC</b>				
Avg. Number of Days to Close a Written Complaint	39	28	25	26
Percentage of Written Complaints Resolved Within 90 days	100%	100%	100%	100%
Number of Written Complaints Resolved	25	9	9	10
<b>MSB</b>				
Avg. Number of Days to Close a Written Complaint	18	28	28	28
Percentage of Written Complaints Resolved Within 90 days	100%	100%	100%	100%
Number of Written Complaints Resolved	16	27	32	53

\*This number has been restated as some complaints were recategorized as inquiries.



**Closed Account Notification System (CANS) ACTIVITY**  
January 1, 2017 – September 30, 2020

Entity	Enrolled	Compromised Accounts Reported
Texas State-Chartered Banks	194	444
Texas State-Chartered Savings Banks	24	56
Federal Savings Banks	10	1
State Credit Unions	132	785
Federal Credit Unions	229	402
National Banks	170	148
Out-of-State State-Chartered Banks	12	161
Out-of-State National Banks	6	1
<b>Total</b>	<b>777</b>	<b>1,998</b>

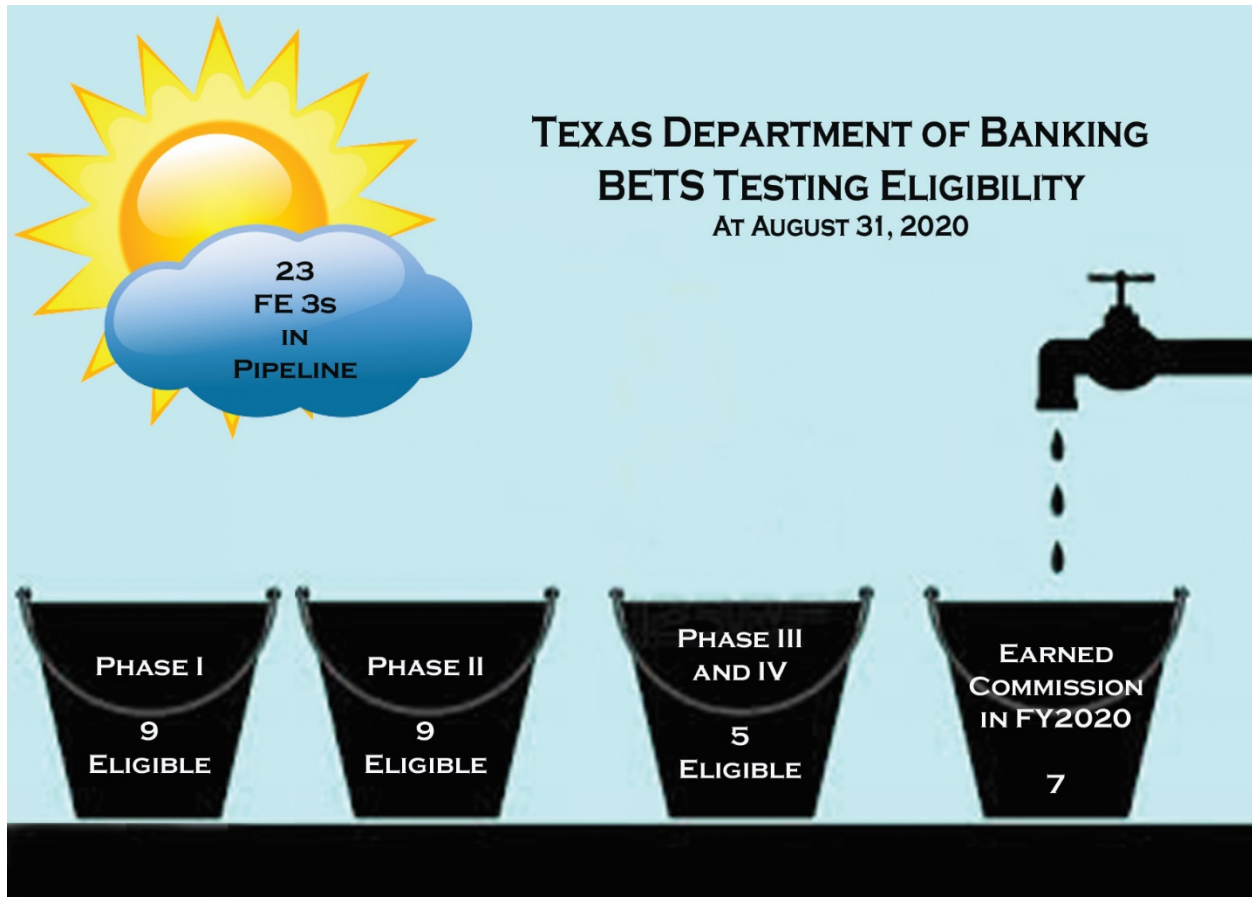
**Bank Examination Testing System (BETS) Activity**  
Number of Candidates Passing Each Phase

	FY 2017	FY 2018	FY 2019	FY 2020
I. General Knowledge	8	6	3	4*
II. Loan Analysis	3	3	5	7
III. Panel	2	2	5	10
IV. Test Bank	3	3	4	7
<b>Total FE3</b>	<b>24</b>	<b>22</b>	<b>19</b>	<b>15</b>

**Promotions**

<b>Commissioned Examiners</b>	3	2	5*	7
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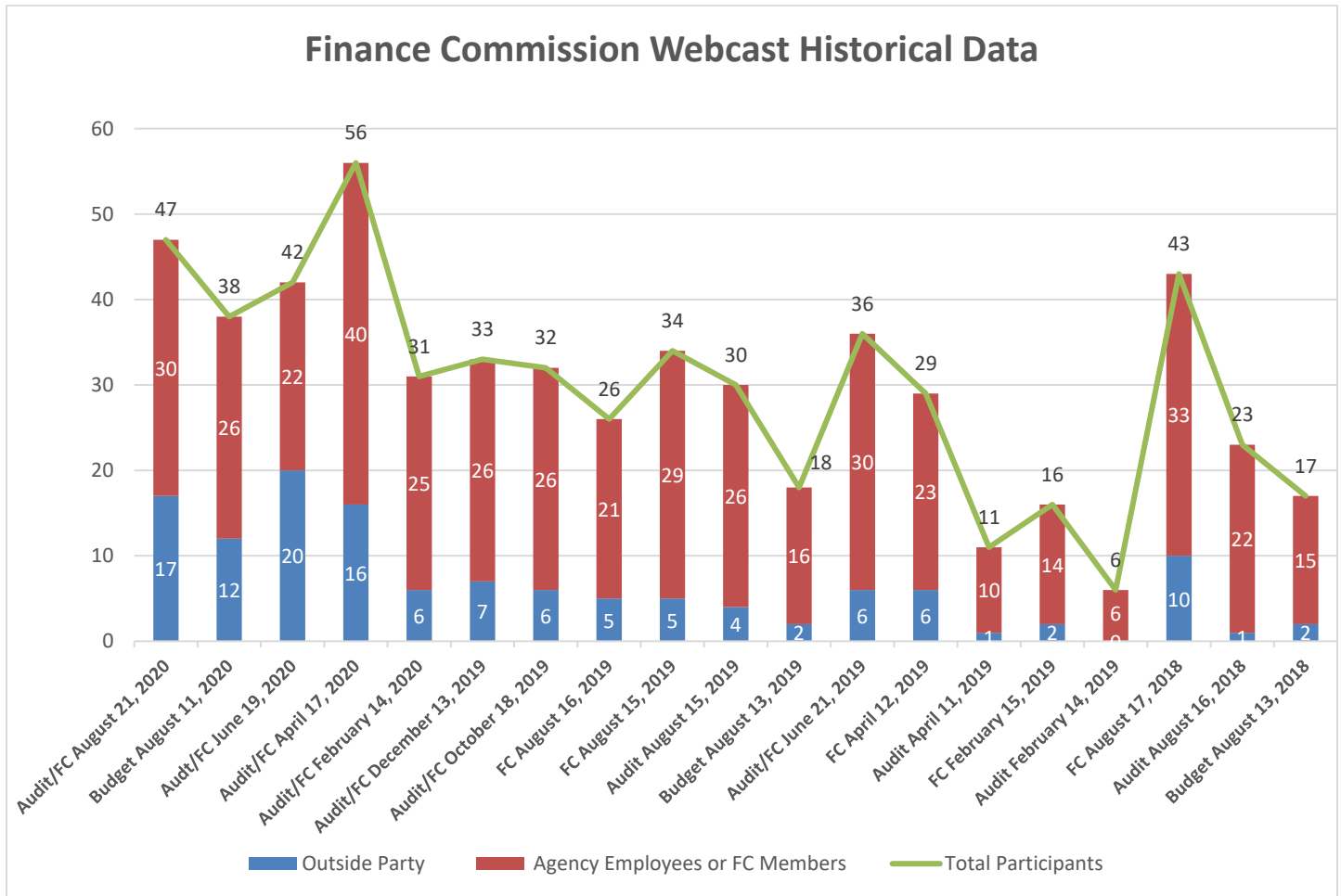
\*Includes a FE V Credit Specialist



**Other Divisional Items:**

- *Publications*
  - The September 2020 edition of the [Texas Bank Report](#) with June 30, 2020 financial data is available on the Department of Banking's website.
  - The September 2020 edition of the [Condition of the Texas State Banking System](#) report is available with financial data as of June 30, 2020.
  - The following were updated with June 30, 2020 financial data:
    - [Agency Profile](#) – An overview of the Department and its regulated and licensed entities.
    - [Texas Banking Activity](#) – Contains all state and national banking activity in Texas.
    - [Top 100 Banks](#) – List of Texas banks by asset size.
- *Personnel and Policies Manual Updates*
  - Revised Administrative Memorandums (AM)
    - AM 2034 – Examination Due Date Calculation for MSBs, PCC, and PFC License Holders (September)
  - Revised Supervisory Memorandums (SM)
    - SM 1023 – Examination Frequency Policy for MSBs (September)
    - SM 1024 – Acceptance of MSB Reports of Examinations (ROEs) from Other State Agencies (September)
  - Revised Examiner Bulletin (XB)
    - XB 2020-04 – BSA/AML Risk-Focused Examination Procedures (September)

- *Website Updates*
  - The Department of Banking and Texas Prepaid Funeral Contracts websites were upgraded to Drupal 8, improving security and speed.
- *Examination Procedure Updates*
  - Exempt Trust Company Procedures (September)
  - Exempt Trust Company Off-Site Procedures (September)
- *Staff Training*
  - Michelle Hodge attended CSBS' Deputy Seminar held over a six-week period during August and September.
- *Website Statistics for Fiscal Year*
  - The Texas Department of Banking website had 279,095-page views of the homepage. The top three pages were the Entity Search (24,866-page views), Applications and Forms (17,016-page views) and Money Service Businesses (16,983-page views). The financial education webpage had 2,147-page views during the same period. Users are accessing the site via desktop (186,335), mobile (97,632), and tablet devices (4,292).
  - The Texas Prepaid Funeral Contracts website had 44,036-page views of the homepage. The top three pages after the home page were Our Purpose (14,383-page views), General Information (5,481-page views), and Prepaid Planning Brochure (5,148-page views). Users are accessing the site via mobile (15,684), desktop (13,500), and tablet devices (1,630).
  - The Finance Commission website had 43,433-page views. The top three visited pages were the Finance Commission Meetings (6,048-page views), 2019 Meetings Archive (1,732-page views), and Home Equity Disclosures (1,403-page views). Users are accessing the site via desktop (7,784), mobile (3,665), and tablet devices (331).



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



Charles G. Cooper  
Commissioner

## **TEXAS DEPARTMENT OF BANKING**

2601 North Lamar Blvd., Austin, Texas 78705

512-475-1300 /877-276-5554

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

### Memorandum

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

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#### **Pending Contested Cases**

There are no cases currently set for administrative hearing. Several investigations are ongoing.

#### **Orders Issued 8/1/20 – 9/30/20**

During this time period, the Commissioner issued four enforcement orders, three of which are public, final and non-appealable<sup>1</sup>:

##### *Non-Depository Supervision*

- Consent Order dated August 24, 2020; GMS Services, Inc. dba FastPay Payroll, Lubbock, TX
- Consent Order dated September 3, 2020; Hashi Money Wiring, LLC, Seatac, WA
- Consent Order dated September 28, 2020; Applied Payroll Solutions, LLC, Lubbock, TX

#### **Public Information Requests**

From August 1, 2020 through September 30, 2020, staff received and responded to 27 requests for public information held by the Department. During this period, we received a ruling on one request that we had previously forwarded to the Attorney General's Office for a ruling on applicable exceptions to disclosure. 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.

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<sup>1</sup> One additional order was issued against a financial institution. The order is confidential by law.

**FY 2020 Quarterly Order Activity**

<b>BANK</b>				
<b>Type of Action</b>	<b>1st</b>	<b>2nd</b>	<b>3rd</b>	<b>4<sup>th</sup></b>
Consent Order	0	1	0	1
Cease & Desist	0	0	0	0
Supervision	0	0	0	0
Prohibition	2	0	3	3
Total	2	1	3	4
<b>TRUST COMPANY</b>				
Consent Order	0	0	0	0
Cease & Desist	0	0	0	0
Supervision	0	0	0	0
Prohibition	0	0	0	0
Total	0	0	0	0
<b>MONEY SERVICES BUSINESS</b>				
Consent Order	0	3	4	4
Cease & Desist	1	0	2	0
Final Order After Hearing	0	0	1	0
Total	1	3	7	4
<b>PERPETUAL CARE CEMETERY</b>				
Consent Order	0	0	0	0
Cease & Desist	0	0	0	0
Refusal to Renew Cert/Auth	0	0	0	0
Final Order after hearing	0	0	0	0
Total	0	0	0	0
<b>PREPAID FUNERAL CONTRACT</b>				
Consent Order	1	2	0	0
Cease & Desist	0	0	0	0
Total	1	2	0	0

# **Texas Department of Banking**

## **Issues for Legislative Consideration – 2021 Session**

### **Banks and Trust Companies**

- Allow commissioner discretion to review change of control applications for persons previously approved
- Provide authority for cease and desist, restitution actions against former bank employees, officers, directors
- Align bank subsidiary activities with FDIC requirements
- Require fiduciary experience for trust companies seeking to convert
- Correct improper cross-references in trust company investment standards

### **Money Services Businesses**

- Add language from model law regarding uniform license requirements
- Designate ROEs, investigations as confidential

### **DOB General**

- Express exemption from TOMA for discussion of banking industry conditions
- Allow for service of process through means other than CM/RRR

2. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §19.51, Concerning Other Real Estate Owned by Trust Companies

**PURPOSE:** The proposed amendments to §19.51 would extend the initial deadline for trust companies to appraise their other real estate owned (OREO) assets from within 60 days of OREO acquisition to within 90 days and give the Texas Banking Commissioner authority to extend all appraisal deadlines where appropriate. The proposed amendments also reduce the scope of the OREO appraisal rule by raising the recorded book value threshold for OREO subject to the rule. Specifically, the proposed amendments, if adopted, would only require an initial appraisal, and then re-appraisal every three years, of OREO with recorded book values of more than \$500,000, raising the existing threshold from \$250,000. The proposed amendments also clarify that the primary scope of the OREO appraisal rule is limited to OREO acquired with restricted capital.

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

**RECOMMENDED MOTION:** I move that we publish the proposed amendments to 7 TAC §19.51 in the *Texas Register*.



***Title 7. Banking and Securities  
Part 2. Texas Department of Banking  
Chapter 19. Trust Company Loans and  
Investments  
Subchapter C. Real Estate  
7 TAC §19.51***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §19.51 of Title 7 of the Texas Administrative Code, concerning other real estate owned. The amended rule is proposed to reduce the scope of the rule with regard to mandatory appraisals of certain real estate assets owned by state trust companies and to extend various deadlines for those appraisals.

**BACKGROUND AND PURPOSE**

Section 19.51 regulates “other real estate owned” (OREO). Among other things, this rule limits the ability of trust companies to acquire OREO using their restricted capital, prevents trust companies from holding such OREO indefinitely, and requires trust companies to take steps to ensure that their books and records accurately reflect the reasonably fair market value of the OREO.

Instances of ownership of OREO by trust companies are currently rare. Presently trust companies are required to obtain formal appraisals of OREO within 60 days of acquisition unless the recorded book value of the OREO is less than \$250,000 without exception. Trust companies are required to perform formal, written evaluations of the true market value of all of their OREO assets at least once a year. In addition, for trust companies that record OREO assets on their

books at values above a certain dollar threshold, a formal re-appraisal of that OREO is currently required every three years.

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

The proposed amendments, if adopted, would extend the initial appraisal deadline from within 60 days of OREO acquisition to within 90 days and give the Texas Banking Commissioner (the commissioner) authority to extend all appraisal deadlines where appropriate. These changes would not adversely impact trust company safety or soundness—expanding the window for initial appraisals by 30 days would not materially reduce initial appraisal accuracy or otherwise negatively affect trust companies, and the commissioner would have full discretion to deny or conditionally grant extension requests as appropriate to protect safety and soundness.

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

These proposed adjustments to the book-value threshold in the trust company OREO appraisal rule follow recent similar amendments by the commission to OREO appraisal rules for state banks and state

savings banks, as published in the September 4, 2020 issue of the *Texas Register* (45 TexReg 6228).

These amendments in turn all follow similar amendments to similar federal rules regarding appraisals of real estate supporting commercial loans adopted jointly by the United States Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve (Board), and the Federal Deposit Insurance Corporation (FDIC) in recent years to their regulations at Title 12 of the Code of Federal Regulations, §§34.43, 225.63, and 323.3, respectively.

The \$250,000 threshold in the department's current OREO appraisal rule was adopted in 1998 based on these federal regulations regarding valuations of real estate-related assets. This threshold has not been modified since the rule was promulgated in 1998.

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

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

According to national data from the Federal Reserve Commercial Real Estate Price Index,

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

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

Finally, the proposed amendments also clarify that the scope of the OREO appraisal rule is limited, and the rule only applies to OREO acquired by a trust company with restricted capital. The Texas Trust Company Act (Trust Company Act), subtitle F of the Texas Finance Code (Finance Code), provides that a trust company may only invest restricted capital in certain limited circumstances, including as permitted by the Trust Company Act or commission rule. Accordingly, the primary scope of the OREO appraisal rule is limited to OREO acquired with restricted capital.

The banking commissioner will continue to have express authority under the OREO appraisal rule to require an appraisal of any OREO held by a trust company if deemed

necessary to address safety and soundness concerns.

Moreover, other safety-and-soundness regulations do exist for OREO acquired by trust companies with secondary capital. Under Finance Code, §184.003(e), a trust company may invest its secondary capital in real property subject to the exercise of prudent judgment and the general Trust Company Act requirements for prudential investment management. Commission rules also require trust companies to comply with regulatory accounting principles in accounting for all OREO investments. *See* 7 TAC §19.51(j)(2).

#### SUMMARY OF CHANGES

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

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

The proposed amendments also clarify that the OREO appraisal rule only applies to OREO acquired by a trust company with restricted capital.

#### FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

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

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

#### PUBLIC BENEFITS/COSTS TO REGULATED PERSONS

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

More importantly, the proposed amendments will not risk the interests of the public by reducing the safety and soundness of trust companies—all trust companies must still have prudent OREO valuation policies in accordance with regulatory accounting

principles, and the department will continue to have authority under these regulations to require additional appraisals of OREO as deemed necessary to address safety and soundness concerns.

Mr. Purdom has further determined that for the first five years the rule amendments are in effect, there are no costs anticipated for persons required to comply with the rule as amended. The proposed amendments can only reduce costs to trust companies by decreasing the number of mandatory OREO appraisals trust companies would need to conduct. Real estate appraisals are typically significantly more costly than the alternative option of evaluation in terms of actual expenses and personnel time, so reducing the mandatory appraisals a trust company must pay for could result in savings to the trust company. Further, trust companies are free to conduct an appraisal rather than an evaluation should the trust company determine that to be more cost-effective or otherwise prudent.

#### 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 Texas Government Code (Government Code), §2001.0045. Further, since the proposed amended rule will not increase costs upon any trust company or other regulated person, and is instead amended to reduce costs for compliance, the requirements of Government Code, §2001.0045 would be satisfied if applicable.

#### GOVERNMENT GROWTH IMPACT STATEMENT

For each of the first five years the proposed amendments are in effect, the department has determined the following: (1) the rule amendments do not create or eliminate a government program; (2) implementation of the rule amendments does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the rule amendments does not require an increase or decrease in future legislative appropriations to the agency; (4) the rule amendments do not require an increase or decrease in fees paid to the agency; (5) the rule amendments do not create any new regulations; (6) the rule amendments neither expand nor eliminate existing regulations, but do limit existing regulation; and (7) the rule amendments do not increase or decrease the number of individuals subject to the rule's applicability. The proposed rule if amended may positively affect this state's economy by increasing competitiveness and reducing operating costs for state trust companies.

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

Mr. Purdom has determined the rule, if amended, will not have an adverse economic effect on small or micro-businesses, or rural communities because there are no costs or other adverse economic effects to the trust companies who are required to comply with the rule. Because there is no adverse impact on micro-businesses or small businesses from

the proposed amendments, the department asserts preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code, §2006.002, are not required.

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

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

The department further asserts the public benefits of the proposed rule, as discussed

above, outweigh any potential adverse impact on small or micro-businesses.

#### PUBLIC COMMENTS

To be considered, comments on the proposed amendment must be submitted no later than 5:00 p.m. on November 30, 2020. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to [legal@dob.texas.gov](mailto:legal@dob.texas.gov).

#### STATUTORY AUTHORITY

This proposal is made under the authority of Finance Code, §11.301, which authorizes the commission to adopt rules applicable to trust companies, and Finance Code, §31.003, which authorizes the commission to adopt rules necessary to preserve or protect the safety and soundness of trust companies.

This proposal affects the statutes administered and enforced by the department's commissioner with respect to trust companies, contained in Finance Code, Subtitle A. No other statute is affected by this proposal.

*§19.51. Other Real Estate Owned.*

(a) - (d) (No change.)

(e) Appraisal requirements.

Paragraphs (1)-(3) of this subsection apply to OREO acquired with the restricted capital of the trust company.

(1) Subject to paragraph (2) of this subsection, when OREO is acquired, a trust company must substantiate the market value of the OREO by obtaining an appraisal within 90 [~~60~~] days of the date of acquisition, unless extended by the banking commissioner. An evaluation may be substituted for an appraisal if the recorded book value of the OREO is \$500,000 or less [~~less than \$250,000~~].

(2) An additional appraisal or evaluation is not required when a trust company acquires OREO if a valid appraisal or appropriate evaluation was made in connection with the real estate loan that financed the acquisition of the OREO and the appraisal or evaluation is less than one year old.

(3) An evaluation shall be made on all OREO at least once a year. An appraisal shall be made at least once every three years, unless extended by the banking commissioner, on OREO with a recorded book value in excess of \$500,000 [~~\$250,000~~].

(4) Notwithstanding another provision of this section, the banking commissioner may require an appraisal of OREO if the banking commissioner considers an appraisal necessary to address safety and soundness concerns.

(f) - (j) (No change.)

3. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendment to 7 TAC §3.37, Concerning Calculation of Annual Assessment for Banks

**PURPOSE:** Section 3.37 is proposed to be amended to update the bank assessment calculation table incorporated into §3.37(a) to the inflation-adjusted version effective as of September 1, 2020. The Department is required to propose amendments to this section at least once every four years in order to substitute a current assessment calculation.

In addition, the proposed amendment will correct typographical errors in existing §3.37(b)(1).

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

**RECOMMENDED MOTION:** I move that we publish the proposed amendment to 7 TAC §3.37 in the *Texas Register*.

***Title 7. Banking and Securities***  
***Part 1. Finance Commission of Texas***  
***Chapter 3. State Bank Regulation***  
***Subchapter B. General***  
***7 TAC §3.37***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §3.37, concerning the calculation of annual assessment for banks. The proposed amendment will update the bank assessment calculation table incorporated into §3.37(a) and correct certain typographical errors in §3.37(b)(1).

Effective November 5, 2015, §3.37 was amended to adjust the manner in which assessments applicable to state banks are calculated, see the October 30, 2015, issue of the *Texas Register* (40 TexReg 7620). The annual assessment for a state bank is calculated as described in §3.37, based on the values in the incorporated bank assessment calculation table as such values are annually adjusted for inflation. The incorporated assessment table therefore becomes obsolete after the first annual adjustment for inflation, although sufficient information is provided in the section to permit a user to calculate updated values for the table. Pursuant to §3.37(b)(2), each year the department is required to "calculate and prepare a revised table reflecting the inflation-adjusted values to be applied effective the following September 1, and ... provide each state bank with notice of and access to the revised table."

Although the section provides the public enough information to verify the department's calculation of inflationary adjustments to the marginal assessment

factor and the base assessment amount for each assessable asset group in the table, the accumulation of sequential annual adjustments will eventually make such verification extraordinarily difficult. For that reason, §3.37(b)(2) further provides that "every four years, the department shall propose amendments to this section for the purpose of substituting a current revised table in subsection (a) of this section..." This proposal will replace the obsolete bank assessment calculation table in §3.37(a) with an updated table reflecting current assessment rates as of September 1, 2020.

In addition, the commission is proposing to amend §3.37(b)(1)(A) and §3.37(b)(1)(B) to correct certain typographical errors. "GDPIPD" is an acronym that stands for "the Gross Domestic Product Implicit Price Deflator," the inflation index used for inflationary adjustments to the assessment table that is published quarterly by the Bureau of Economic Analysis, United States Department of Commerce. Currently, these clauses erroneously refer to "GDIPD."

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

Mr. Purdom has also determined that, for each year of the first five years the rule as proposed to be amended is in effect, the public benefit anticipated as a result of enforcing the rule is simplification of the calculation of currently applicable assessment factors through substitution of a



more current bank assessment calculation table.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed. There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed amendment must be submitted no later than 5:00 p.m. on November 30, 2020. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to [legal@dob.texas.gov](mailto:legal@dob.texas.gov).

The amendment is proposed pursuant to Finance Code §31.003(a)(4) and §31.106, which authorize the commission to adopt rules necessary or reasonable to recover the cost of supervision and regulation by imposing and collecting ratable and equitable fees. As required by Finance Code §31.003(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive position of state banks with regard to national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development in this state.

Finance Code §31.106 is affected by the proposed amendment.

*§3.37. Calculation of Annual Assessment for Banks.*

(a) Bank assessment calculation table. The annual assessment for a state bank is calculated as described in this section and paid as provided by §3.36 of this title (relating to Annual Assessments and Specialty Examination Fees), based on the values in the following table, as such values may be periodically adjusted in the manner provided by Subsection (b) of this section. Certain terms used in this section and in the following table are defined in §3.36(b). The unadjusted values in the following table are effective until September 1, 2021 [~~2017~~]:

Figure: 7 TAC §3.37(a) [~~7 TAC §3.37(a)~~]

(b) (No change.)

(1) (No change.)

(A) each [~~Each~~] marginal assessment factor listed in Step 3 of the table is increased (or decreased) by an amount proportionate to the measure of inflation (or deflation) reflected in the annual GDPIPD [~~GDIPD~~] factor, rounded to six decimal places;

(B) the base assessment amount listed in Step 4 for assessable asset group 1 is increased (or decreased) by an amount proportionate to the measure of inflation (or deflation) reflected in the annual GDPIPD [~~GDIPD~~] factor, rounded to whole dollars; and

(C) (No change.)

(2) (No change.)

Figure: 7 TAC §3.37(a)

*First determine the bank’s assessable asset group, then:*

Steps	Assessment Calculation:	Assessable Asset Group:						
		1	2	3	4	5	6	7
1.	For assessable assets of at least (in thousands)	\$0	\$10,000	\$25,000	\$40,000	\$70,000	\$100,000	\$250,000
	But not greater than (in thousands):	\$10,000	\$25,000	\$40,000	\$70,000	\$100,000	\$250,000	\$1,000,000
2.	Take the total assessable assets over (in thousands):	\$0	\$10,000	\$25,000	\$40,000	\$70,000	\$100,000	\$250,000
3.	And multiply by the <b>marginal assessment rate</b> :	0.851675	0.483220	0.229529	0.224697	0.217448	0.132885	0.089395
4.	Add this result to the <b>base assessment amount</b> :	\$3,006	\$11,523	\$18,771	\$22,214	\$28,955	\$35,478	\$55,411
5.	Multiply the total by the factor corresponding to the bank’s CAMELS composite rating (as defined in §3.36(b)):							
	a. Composite rating of 3, 4, or 5:	2.0	2.0	2.0	2.0	2.0	2.0	2.0
	b. Composite rating of 1 or 2:	1.0	1.0	1.0	1.0	1.0	1.0	1.0
6.	And multiply the total by 0.875 if bank has <u>on-book</u> assets of \$500 million or less and a CAMELS composite rating of 1 or 2.							
Steps	Assessment Calculation:	Assessable Asset Group:						
		8	9	10	11	12	13	14
1.	For assessable assets of at least (in thousands):	\$1,000,000	\$5,000,000	\$10,000,000	\$20,000,000	\$40,000,000	\$60,000,000	\$80,000,000
	But not greater than (in thousands):	\$5,000,000	\$10,000,000	\$20,000,000	\$40,000,000	\$60,000,000	\$80,000,000	-----
2.	Take the total assessable assets over (in thousands):	\$1,000,000	\$5,000,000	\$10,000,000	\$20,000,000	\$40,000,000	\$60,000,000	\$80,000,000
3.	And multiply by the <b>marginal assessment rate</b> :	0.079732	0.072483	0.058173	0.034656	0.022280	0.014853	0.009902
4.	Add this result to the <b>base assessment amount</b> :	\$122,457	\$441,385	\$803,800	\$1,385,530	\$2,078,650	\$2,524,250	\$2,821,310
5.	Multiply the total by the factor corresponding to the bank’s CAMELS composite rating (as defined in §3.36(b)):							
	a. Composite rating of 3, 4, or 5:	2.0	2.0	2.0	2.0	2.0	2.0	2.0
	b. Composite rating of 1 or 2:	1.0	1.0	1.0	1.0	1.0	1.0	1.0

**C.**

**Department of Savings and  
Mortgage Lending**

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## C. Department of Savings and Mortgage Lending

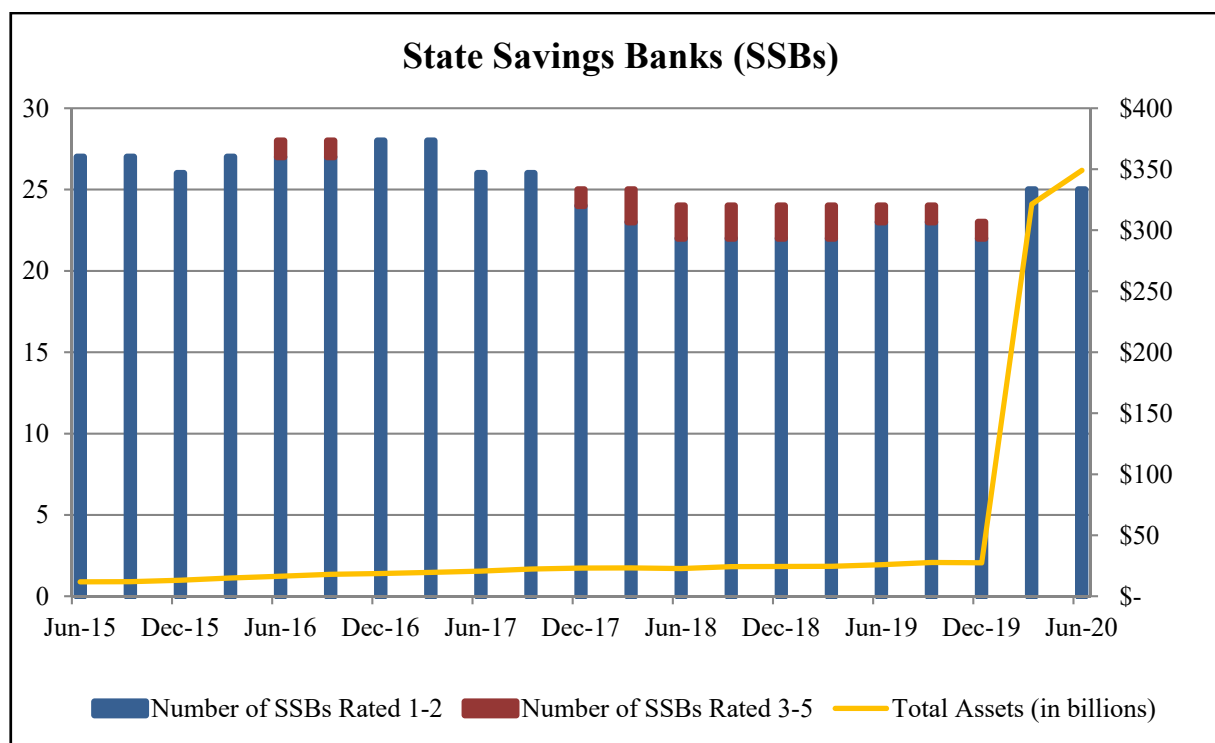
### 1. Industry Status and Departmental Operations:

#### a) Thrift Regulation Division Activities

##### Industry Status

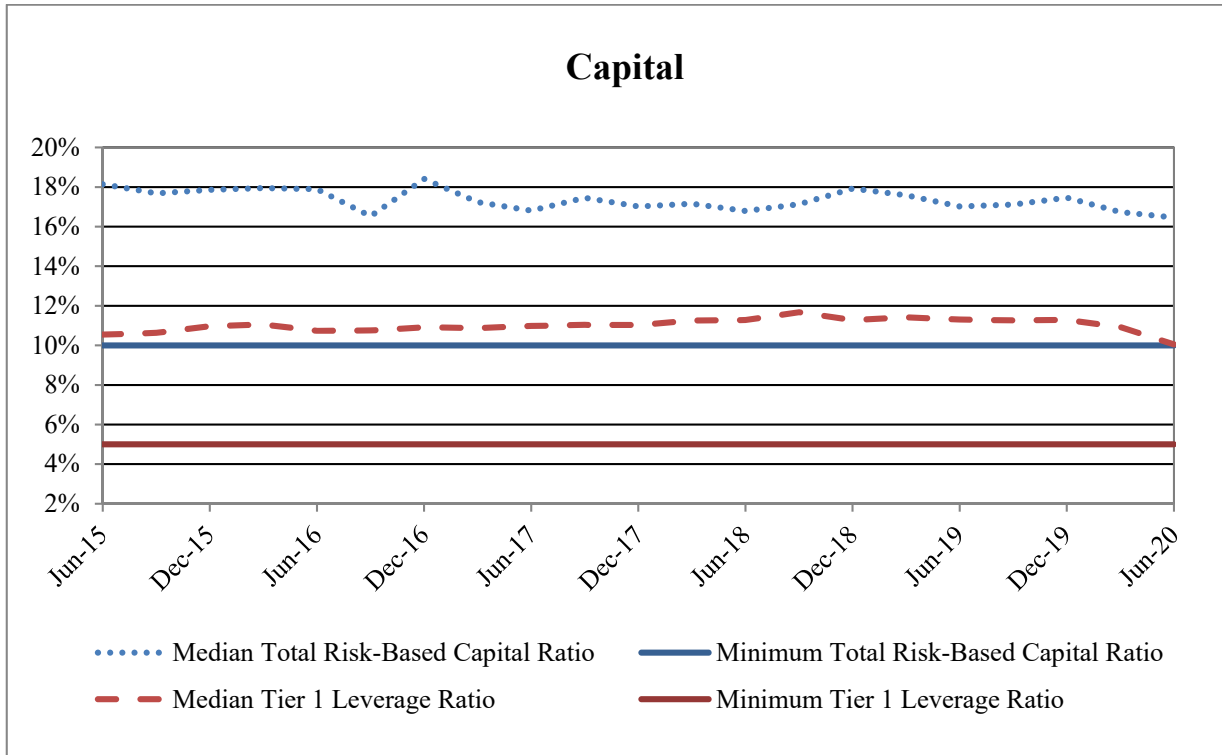
The Department continues to monitor various local, state, and national data sources to best understand the risks facing the industry and individual savings banks.

The Department conducts bank examinations to ensure confidence in the banking system using the Uniform Financial Institutions Rating System (UFIRS). Banks with a UFIRS rating of 1 or 2 are considered well rated. The industry continues to grow in assets that totaled \$349.1 billion as of June 30, 2020. The industry remains sound with all banks well rated.

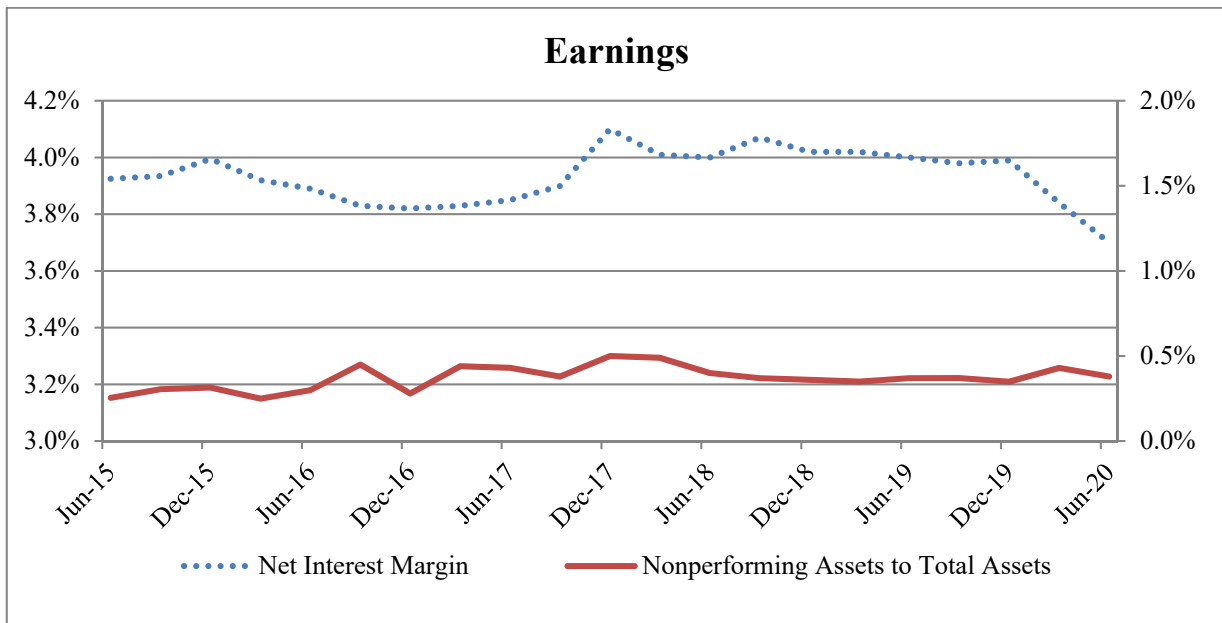


All SSBs are subject to quarterly offsite reviews. Those with the highest risk profiles receive enhanced scrutiny, as warranted, with targeted visitations, accelerated examinations, and/or corrective actions. Below are specific areas that the Department monitors in relation to changes in the state and national economic environment.

Bank capital performs several very important functions, including absorbs losses, promotes public confidence, helps restrict excessive asset growth and provides protection to the depositors. Regulatory capital standards are designed to strengthen the quality and quantity of bank capital and promote a stronger financial industry that is more resilient to economic stress. As of June 30, 2020, all SSBs remain well above regulatory capital minimums. The portfolio median total risk-based capital ratio and median leverage capital protection have remained generally consistent and are now 16.47% and 10.05%, respectively.

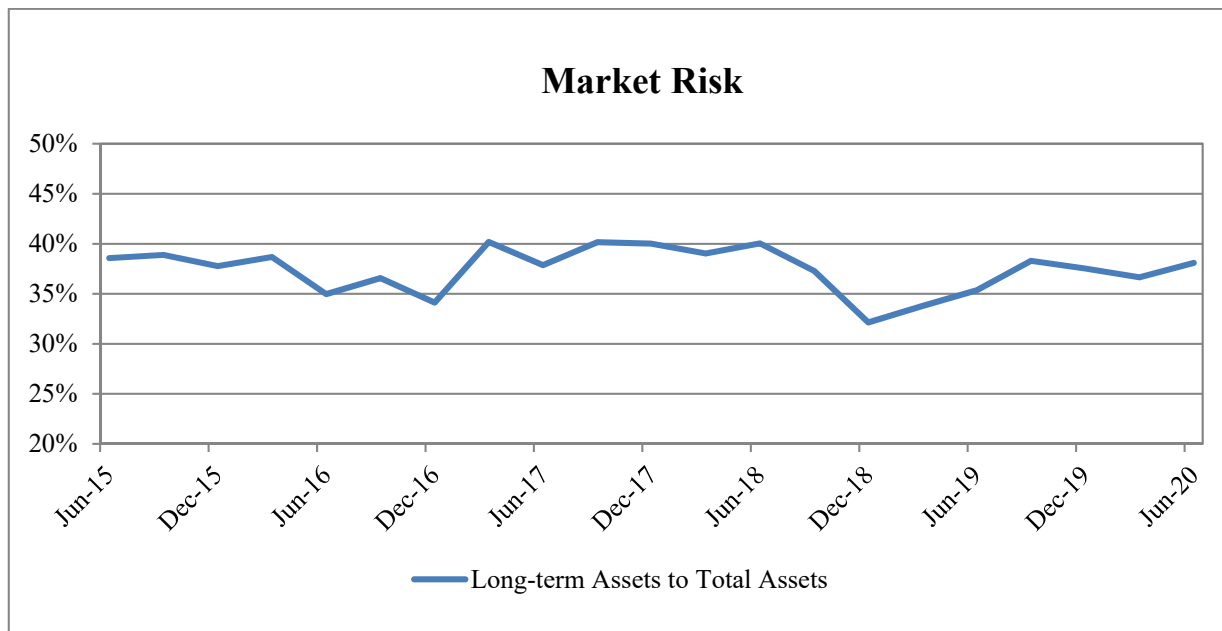


Earnings is the initial safeguard against the risk of engaging in the banking business, and is the first line of defense against capital depletion resulting from shrinkage in asset value. Earnings performance should allow the bank to remain competitive by providing the resources required to implement management’s strategic initiatives. The net interest or profit margin is 3.70%. Nonperforming asset levels remain low at 0.38% of total assets.

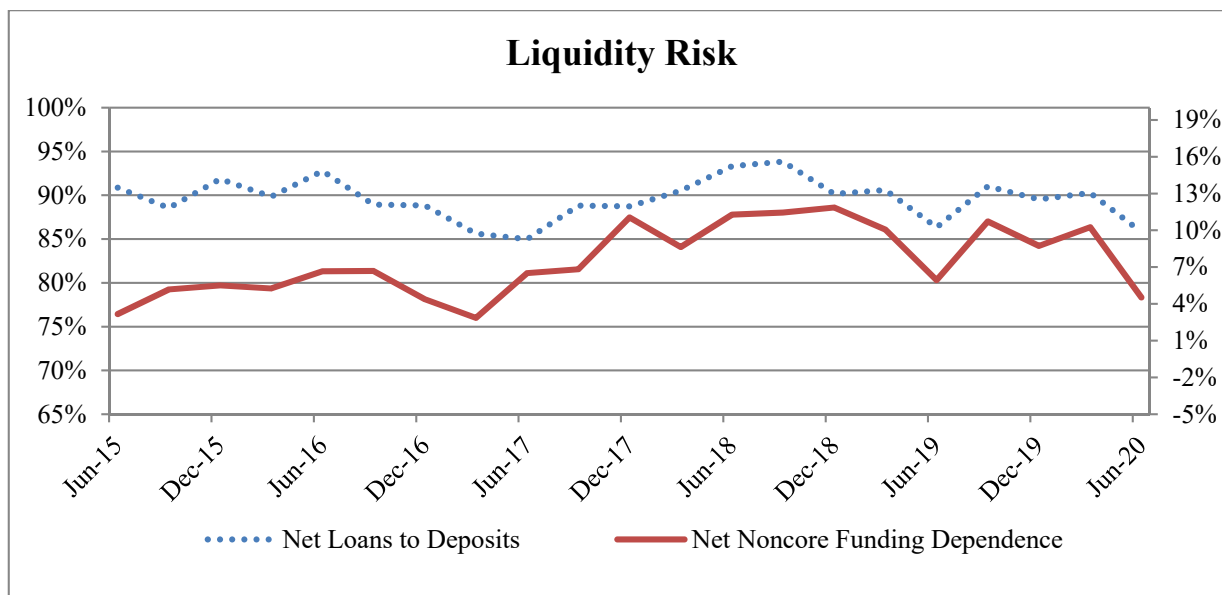


Market risk primarily reflects exposures to changing interest rates over time. Long-term asset exposure can be an indicator to the degree of market risk taken by a state saving bank. As of June

30, 2020, long-term assets to total assets increased to 38.09% but remains manageable. There remain a small number of outlier institutions with high long-term asset exposure; however, these are generally operating within historical norms of ten years or more.

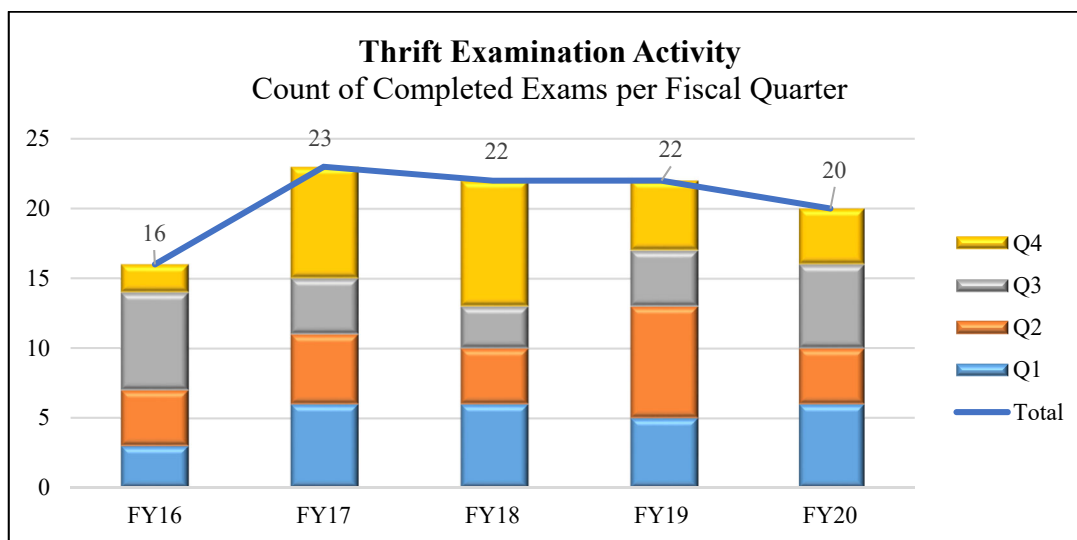


Liquidity risk reflects the bank’s ability to fund assets and meet financial obligations under various scenarios, including adverse conditions. Liquidity risk has declined. The Net Noncore Funding Dependence (NNCFD) Ratio, a measure of the funding of long-term assets using short-term funding strategies, is 4.53%, representing a decline over the previous four quarters. The loan-to-deposit ratio, a measure of the use of deposits to fund lending activities, at 85.82% is also down from the previous four quarters.



### **Thrift Examination Activity Report**

Thrift examination completed four examinations in the 4<sup>th</sup> quarter for a total of 20 for the fiscal year. Beginning in mid-March, all Thrift examinations have been conducted off-site due to COVID-19. There has been no impact on the examination schedule.



### **Thrift Supervision Activity Report**

Thrift Supervision continues to receive and process various requests for approval, including branch, subsidiary, holding company applications, and loan production offices.

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

### **Outreach and Training**

The 13th Annual Thrift Industry Day was held virtually on September 17, 2020. Dr. Lloyd B. Potter, Ph.D., from the Office of the State Demographer was the guest speaker. Thrift Supervision and Examination staff and management made presentations relating to topics of interest to the industry. The agenda is included in the Finance Commission materials.

Commissioner Caroline Jones spoke at the TBA Texas Economic Resilience Summit, September 23-24, 2020, which was held virtually. Deputy Commissioner Stephany Trotti and Supervisory Analyst Teresa Nelson also attended the event.

Commissioner Jones and Deputy Commissioner Trotti, participate in regularly held calls related to COVID-19 with the FDIC Dallas Regional Office (which includes the Federal Reserve Dallas, among others), and with CSBS and other state regulators.

Commissioner Jones attended 2020 Community Banking in the 21<sup>st</sup> Century Research and Policy Conference, virtually held on September 30 - October 1, 2020. Mr. Erik Beguin, CEO of Austin Capital Bank, SSB, attended as the Texas state savings bank representative.



# 13<sup>TH</sup> ANNUAL THRIFT INDUSTRY DAY

THURSDAY, SEPTEMBER 17, 2020

1:00 – 1:10 Welcome and Opening Comments  
*Caroline C. Jones, Commissioner*

1:10 – 2:10 Texas Demographic Trends and Characteristics  
*Lloyd B. Potter, Ph.D., State Demographer*  
*Texas Demographic Center*  
*The University of Texas San Antonio*

2:10 – 2:30 Consumer Compliance  
*Bill Poe, Supervisory Compliance Examiner, CSME*

2:30 – 2:50 Legal Update  
*Ernest Garcia, General Counsel*  
*Devyn F. Wills, Associate General Counsel*

2:50 – 3:10 Industry Trends  
*Keith Zimmerman, Financial Examiner*

3:10 – 3:30 Hot Topics  
*Stephany Trotti, CPA, Deputy Commissioner/Director of Thrifts*

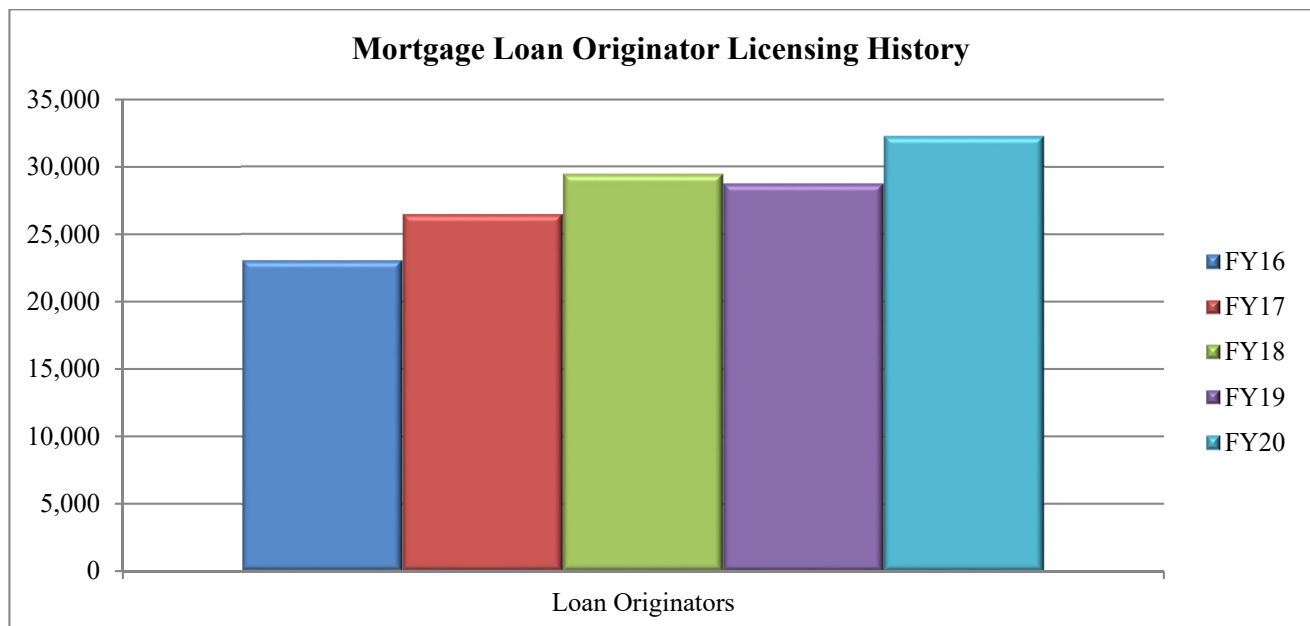
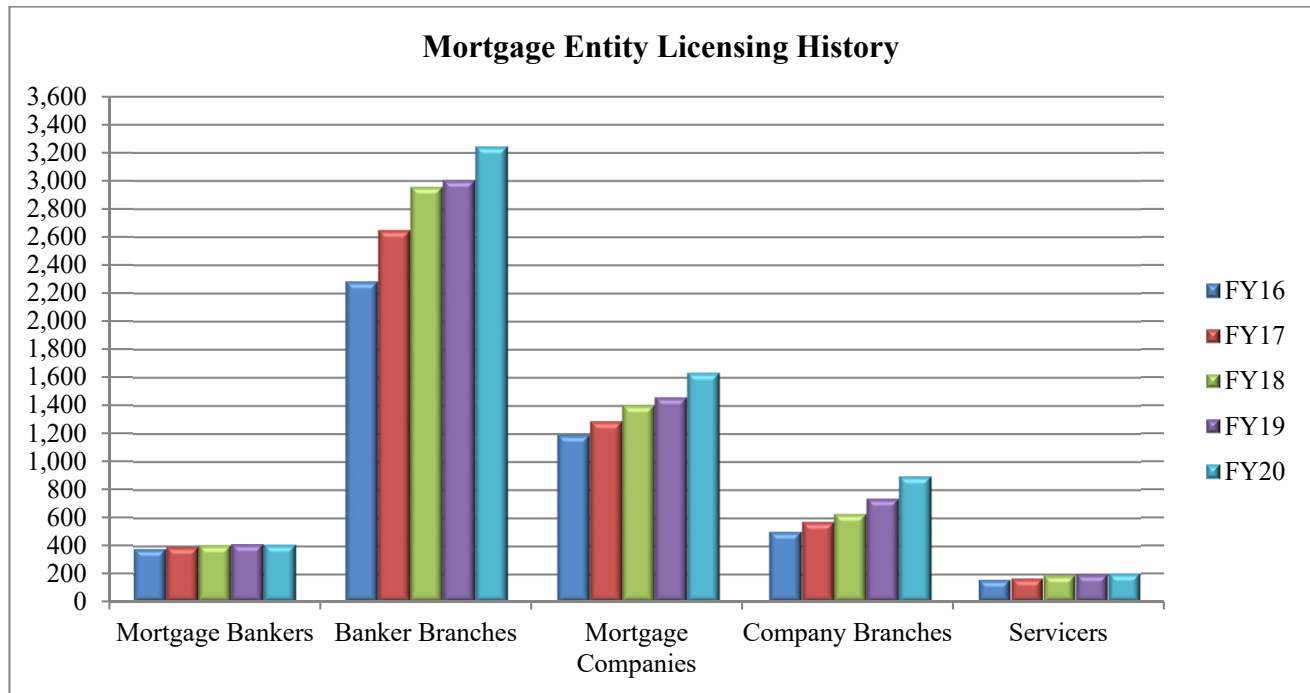
3:30 – 3:40 Closing Comments and Adjournment  
*Caroline C. Jones, Commissioner*

Note: After each presentation, attendees will have the opportunity to submit questions in writing via the Webex Q&A function. Attendees may also use the raise hand feature to be called upon and unmuted if they would like to ask questions verbally.

## b) Mortgage Regulation Division Activities

### Industry Status

The following information provides a five-year history of the mortgage industry in Texas as of fiscal year end.



<b>Approved Status by License Type</b>	<b>8/31/2019</b>	<b>8/31/2020</b>	<b>% Change</b>
Mortgage Banker	412	413	0%
Mortgage Company	1,457	1,639	12%
Residential Mortgage Loan Servicer	197	207	5%
Independent Contractor Company	161	195	21%
Credit Union Subsidiary Organization	4	3	-25%
Auxiliary Mortgage Loan Activity Company	3	3	0%
Financial Services Company	1	1	0%
<b><i>Subtotal Entity Licenses</i></b>	<b>2,235</b>	<b>2,461</b>	<b>10%</b>
Mortgage Banker Branches	3,008	3,246	8%
Mortgage Company Branches	723	902	11%
Credit Union Subsidiary Organization Branches	2	2	0%
<b><i>Subtotal Branch Licenses</i></b>	<b>3,733</b>	<b>4,150</b>	<b>11%</b>
Mortgage Loan Originator	28,718	32,238	12%
<b><i>Subtotal Individual Licenses</i></b>	<b>28,718</b>	<b>32,238</b>	<b>12%</b>
<b>Total Count of Licenses</b>	<b>34,694</b>	<b>38,849</b>	<b>11%</b>

As of August 31, 2020:

- 14% of Texas licensed Mortgage Bankers are based in Texas.
- 71% of Texas licensed Mortgage Companies are based in Texas.
- 49% of Texas licensed Mortgage Servicers are based in Texas.

### **Licensing Activity Report**

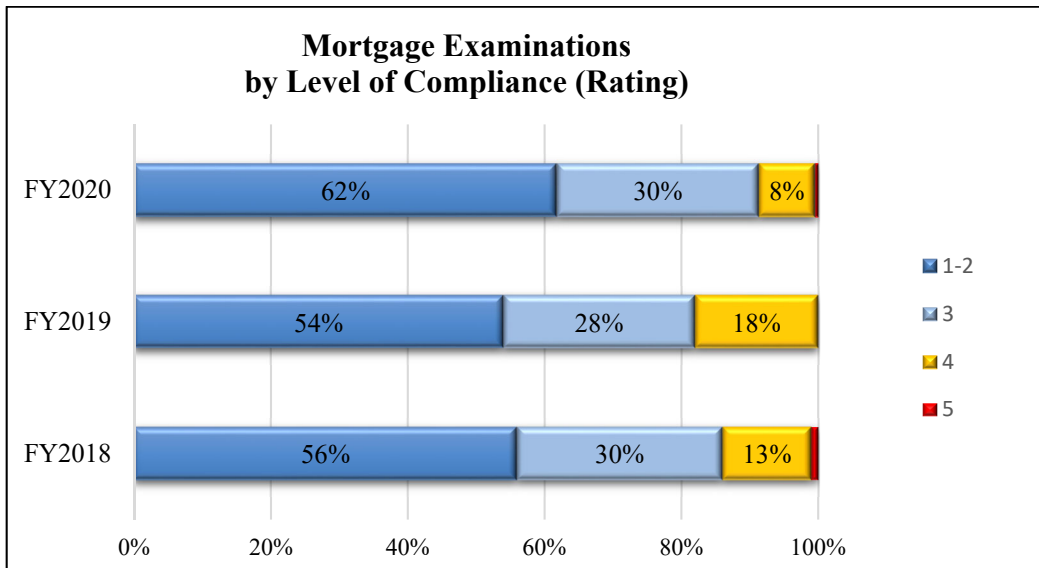
During FY20, the Department received 12,828 applications for licenses and 92,244 other filings (i.e. sponsorships, amendments, etc.). For the same period, the licensing section processed 10,801 applications and numerous other filings, such as 16,948 sponsorship requests.

The licensing section is preparing for the upcoming renewal period, November 1<sup>st</sup> – December 31<sup>st</sup>, 2020. Companies that have not filed mortgage call reports or have related outstanding deficiencies and individuals that have not completed the required continuing education will not be able to submit a renewal until the issues are resolved.

### **Mortgage Examination Activity Report**

During FY20, the Department conducted a total of 524 examinations covering 5,958 individual licensees. The number of examinations is slightly higher when compared to FY19 and the number of individual licensees covered increased by 1%. In 73% of the examinations conducted in FY20, the entities sponsored 5 or fewer originators.

Below is a breakdown of mortgage examination results by compliance rating for FY20. As shown in the chart below, the stratification of examination ratings during FY20 reflects improved compliance when compared to FY18 and FY19.



### **Outreach and Training**

Commissioner Jones spoke at the following virtual events:

- July 8, 2020 - North Texas Association of Mortgage Professionals monthly meeting
- July 30, 2020 - Texas Land Developers Association Summer Series
- August 4, 2020 - Texas Mortgage Bankers Association Board of Directors
- September 10, 2020 - Texas Mortgage Round Up
- September 30, 2020 – Mortgage Banking LiveStream with Mr. Troy Garris of Garris Horn law firm.

Director Tony Florence attended the majority of the events.

### **c) Operations Division Activities**

#### **Risk Management**

Under the guidance of Commissioner Jones and the Risk Manager Director Antov, the Department continues to operate, implementing applicable executive orders, requirements, and guidelines.

Mortgage and thrift examinations field staff continues to perform only off-site activities. Austin Office staff continues to telework, with increasing presence in the office not to exceed 50% on any day, adhering to all necessary precautions.

Director Antov 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 to stay informed, and prepares for further development in the COVID-19 pandemic.

#### **Accounting, Budget, and Financial Reporting**

Staff has closed out FY2020. In compliance with Government Code, Section 2101.011 and in accordance with the requirements established by the Comptroller of Public Accounts, the Department has prepared and submitted the Annual Financial Report to the oversight agencies.

Pursuant to Government Code, Section 403.0147, the Department has submitted information to the Comptroller of Public Accounts identifying implemented programs for which no funding was appropriated for the preceding fiscal year.

Pursuant to Government Code, Section 661.902(d), the Department has reported information to the Comptroller of Public Accounts on emergency leave granted to employees during the prior fiscal year.

CAPPS Implementation – Staff participated in the CAPPS Financials Kickoff meeting on September 8, 2020, and in CAPPS Financials Module Reviews on September 22-24, 2020.

The discovery phase individual agency sessions are scheduled for October 13 and 15, 2020. During these sessions the CAPPS team will demonstrate CAPPS functionality by business process for the purposes of assessing potential impact to the Department’s business processes.

The Department also received a notice from the Comptroller’s office that the CAPPS HR/Payroll deployment project is scheduled to begin on September 1, 2021.

**Audit**

The annual risk assessment is scheduled to be performed during the months of October and November by Garza/Gonzales and associates.

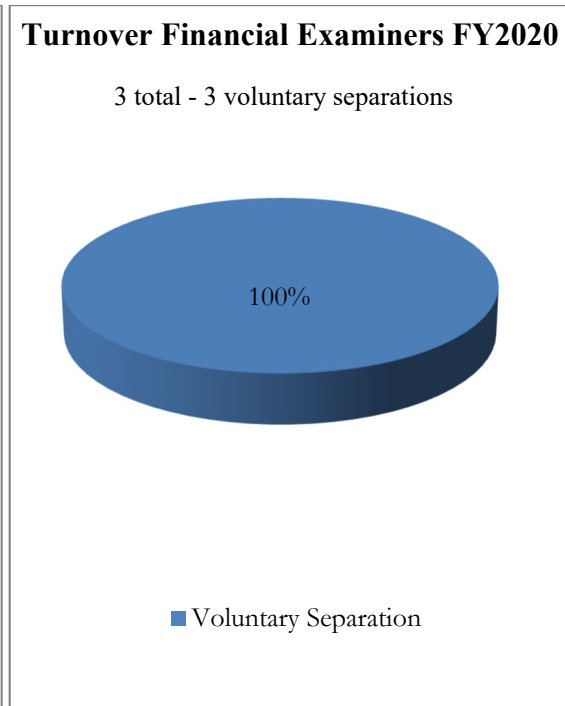
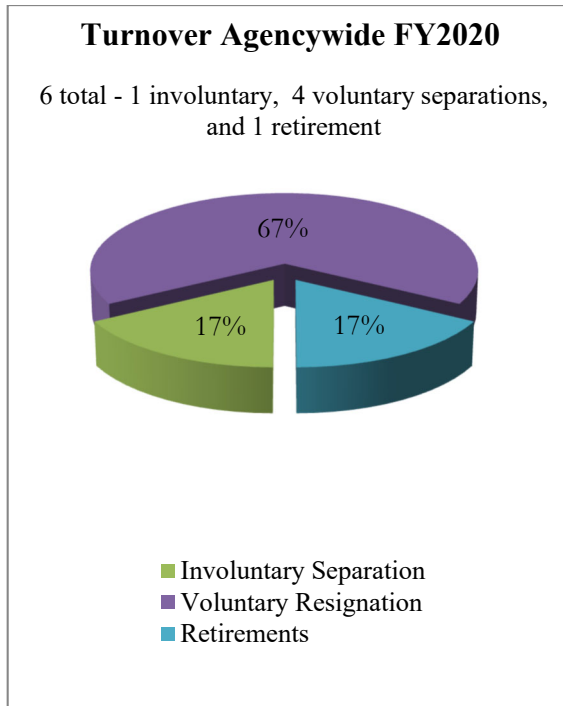
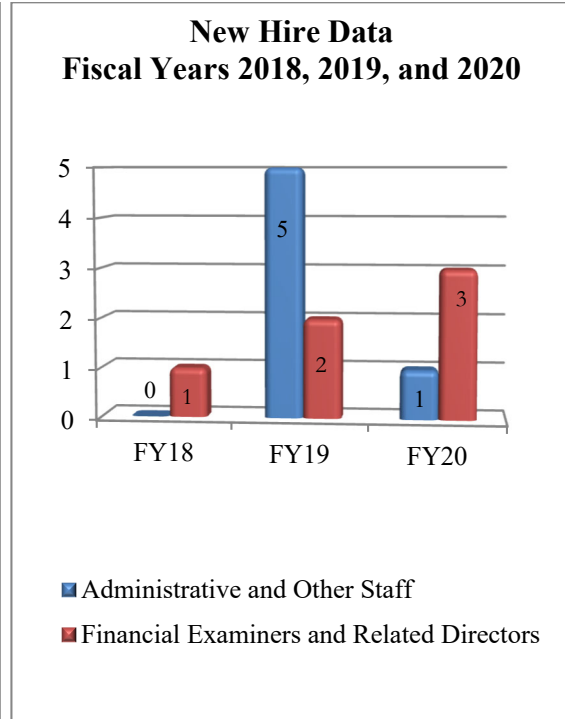
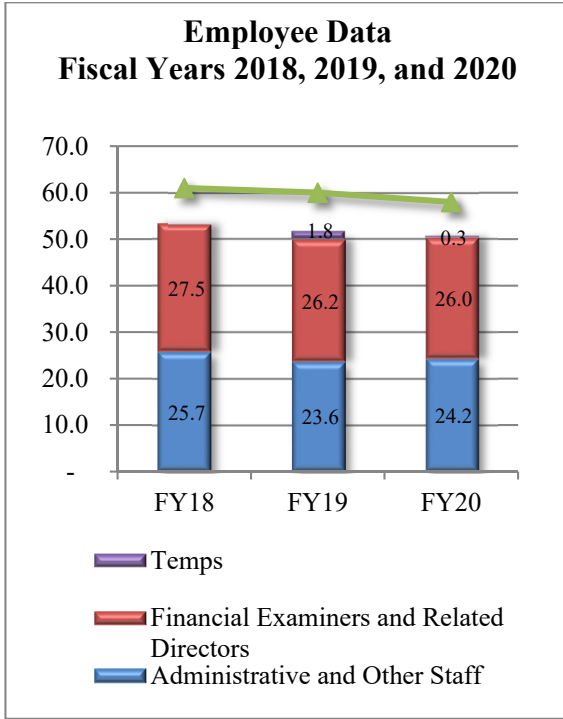
**Human Resources**

As of September 30, 2020, the Department was staffed at 54 employees - 53 full-time and 1 part-time. During the months of August and September, SML hired six employees - two Financial Examiners-Thrift, an Administrative Assistant-Thrift, an Investigator-Licensing, a Legal Assistant, and a Licensing Manager. The latter two hires are scheduled to begin their employment in October. The Department had two departures in August – one retirement and one voluntary separation.

Below is the status of the Department’s vacancies:

Vacancy Status	
Investigator II/III – Licensing	Filled
Financial Examiner IV – Thrift - 1	Filled
Manager-Licensing	Filled
Legal Assistant II/III	Filled
Financial Examiner V – Thrift - 2	Interviewing
Financial Examiner VI – Thrift - 3	Interviewing
License and Permit Specialist II/III	Collecting and reviewing applications
Systems Support Specialist II/III	Collecting and reviewing applications

## Staffing Charts as of August 31, 2020



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

Type/Strategy/Measure	2020	2020	2020	Percent of Annual Target	Comparable Historical Data for the same quarter ending time period			
	Target	Actual	YTD		FY2019	FY2018	FY2017	FY2016
<b>Output Measures-Key</b>								
<b>1-1-1 Thrift Safety and Soundness</b>								
<b>1. Number of State Chartered Savings Institution Examinations Performed</b>								
Quarter 1	21	6	6	28.57%				
Quarter 2	21	4	10	47.62%				
Quarter 3	21	6	16	76.19%				
Quarter 4	21	4	20	95.24%	22	22	23	16
<b>2-1-1 Mortgage Regulation</b>								
<b>1. Number of Applications Processed</b>								
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.								
Quarter 4	7,600	3,136	10,801	142.12%	8,922	10,501	9,190	7,219
The number of applications submitted is outside the Department's control; therefore, the number of applications processed is ultimately affected in the same manner.								
<b>2. Number of Licensees Examined</b>								
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.								

<b>Quarter 3</b>	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.									
<b>Quarter 4</b>	6,600	2,169	5,958	90.27%	*	5,890	9,924	6,253	5,511
During the quarter, 76% of the examinations conducted were of smaller entities, most having fewer than 5 originators being sponsored by the entity.									

**3-1-1 Consumer Responsiveness**

**1. Number of Complaints Closed**

<b>Quarter 1</b>	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.									
<b>Quarter 2</b>	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.									
<b>Quarter 3</b>	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.									
<b>Quarter 4</b>	1,000	309	1,264	126.40%	*	1,024	1,134	1,053	1,143
Complaint dispositions with a resolution of no jurisdiction accounted for 26% 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.



**Department of Savings and Mortgage Lending**  
**Actual Performance for Outcome/Efficiency Measures**

Type/Strategy/Measure	2020 Target	2020 YTD	Percent of Annual Target	
<b>Outcome Measures-Key - Annual Reporting</b>				
<b>1-1-1 Thrift Safety and Soundness</b>				
1. Percentage of State Chartered Savings Institutions Receiving Examination within the Required Timeframes	100%	100%	100.00%	
2. Percentage of Savings Institutions Classified Safe and Sound	90%	100%	111.11%	*
All thrift institutions are well rated, causing the measure to be above projections.				
<b>2-1-1 Mortgage Regulation</b>				
1. Percentage of Satisfactory Levels of Compliance Reported Through Examination	90%	92%	102.22%	
<b>3-1-1 Consumer Responsiveness</b>				
1. Percentage of Complaints Completed within Ten Business Days of Receipt of Complete Information	99%	100%	100.68%	
2. Percentage of Written Complaints Closed within 90 Days	95%	94%	98.42%	
<b>4-1-1 Agency Administration</b>				
1. Percentage of Employees Separated from the Agency	10%	12%	119.50%	*
Separations from the agency exceeded projections. Turnover, excluding retirements, is under 10%.				
2. Percentage of Actual Expenditures to Budgeted Expenditures	95%	93%	97.89%	
<b>Explanatory Measures-Key - Annual Reporting</b>				
<b>1-1-1 Thrift Safety and Soundness</b>				
1. Number of State-Chartered Savings Institutions	24	25	104.17%	
2. Dollar Amount of Assets under Regulation (in Billions)	\$25.3	\$349.10	1,379.84%	*
Conversion of two large financial institutions and growth in the industry caused this measure to be above projections.				

\*Varies by 5% or more from target.

**Department of Savings and Mortgage Lending  
Actual Performance for Non-Key Measures**

Type/Strategy/Measure	2020 Target	2020 YTD	Percent of Annual Target	
<b>Non-Key Measures</b>				
<b>Thrift Safety and Soundness</b>				
<b>01-01 Outcome Measures</b>				
1. Percentage of State Chartered Savings Institution Applications Processed within Statutory Timeframes	100%	100%	100.00%	
<b>Output Measures</b>				
1. Number of State Chartered Savings Institution Applications Processed.	10	18	180.00%	
Increased application activity caused this measure to be above projections.				
<b>Efficiency Measures</b>				
1. Assets Examined Per Examiner Day (in Millions)	\$14.0	\$29.40	210.00%	*
Due to increased examination activity, this measure is above projections.				
2. Average Time (Business Days) to Complete Analysis of Quarterly Financial Data	7	4	57.14%	*
Measure is below target due to efficiency in the process.				
<b>Mortgage Regulation</b>				
<b>02-01 Efficiency Measures</b>				
1. Average Cost Per Application Processed	\$55.00	\$56.28	102.33%	
<b>Explanatory Measures</b>				
1. Total Number of Licensees in an Approved Status	35,000	38,849	111.00%	*
Measure is above target due to growth in the industry and related increased application activity.				
<b>Consumer Responsiveness</b>				
<b>03-01 Efficiency Measures</b>				
1. Average Cost Per Complaint Closed	\$340.00	\$398.83	117.30%	*
Although measure is above projections, actual performance has improved compared to \$445 in FY2019.				

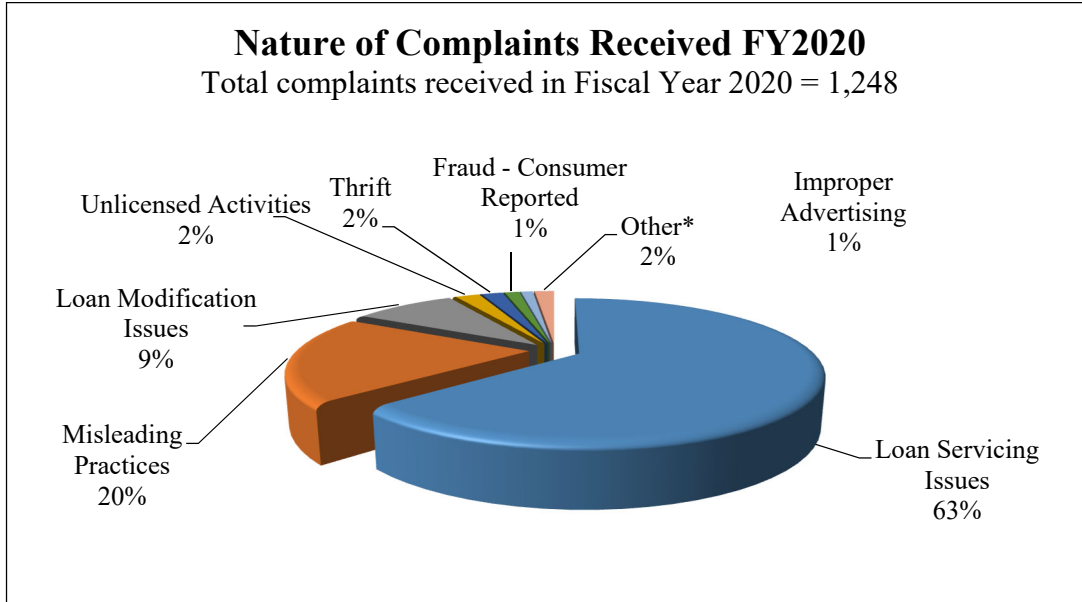
\* Varies by 5% or more from target.

**d) Legal Division Activities, including Consumer Complaints and Gift Reporting**

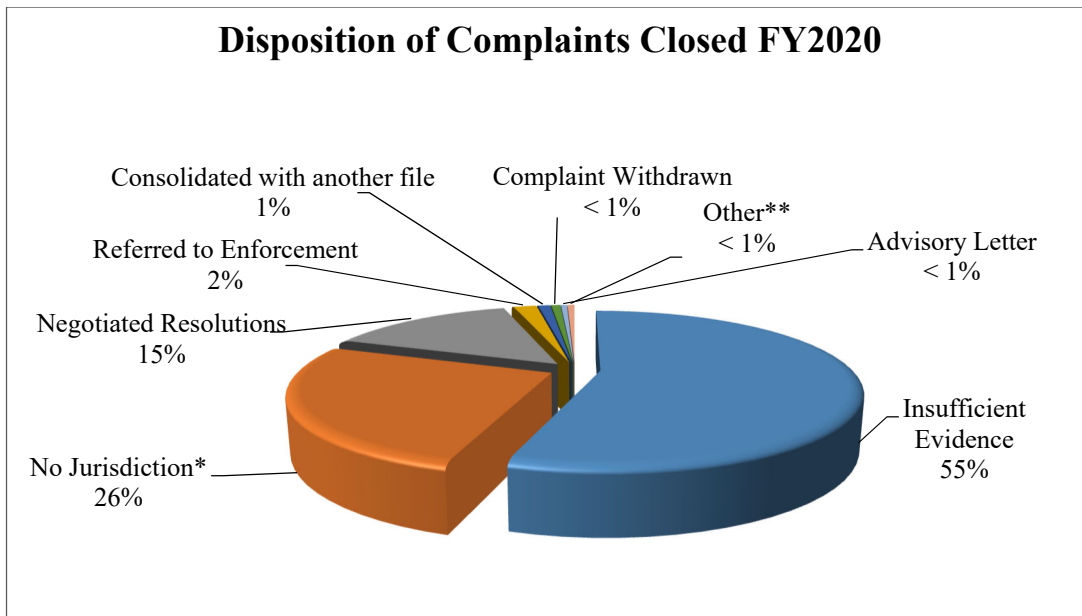
**Consumer Complaints Activity Report**

During FY2020, the Department received a total of 1,248 complaints. This represents a 19% increase when compared to FY19. Loan servicing complaints represented 63% of the total number of complaints received during FY20. As of August 31, 2020, there were 76 open complaints with 100% of these complaints aged 90 days or less.

The charts below show the nature of complaints received, disposition of complaints, and the average number of days to close complaints for FY2020.



\*The "Other" Category includes:  
Permissible Charges/Fees, Refunds and File Transfers, Failure to Pay Appraisers/ Vendors, Fraud-Industry Referral, Inadequate Disclosures, Bait and Switch, and Sponsor Issues.



\*The "No Jurisdiction" category includes:  
No Jurisdiction-Exempt - against exempt entities/individuals  
No Jurisdiction Over Issue - regarding issues outside the Department's authority, and  
No Jurisdiction-License Expired - against entities/individuals with expired licenses.  
\*\*The "Other" category includes:  
Information Only, No Investigation, and Referred to Attorney General

<b>Complaints Information FY2020</b>	<b>1<sup>st</sup> Qtr</b>	<b>2<sup>nd</sup> Qtr</b>	<b>3<sup>rd</sup> Qtr</b>	<b>4<sup>th</sup> Qtr</b>
<b>Servicing Complaints</b>				
Average Number of Days to Close a Complaint	25.9	19.8	20.9	23.1
Percentage of Complaints Resolved Within 90 Days	92.0%	96.3%	94.4%	93.5%
Number of Servicing Complaints resolved	199	187	234	185
<b>Non-Servicing Complaints</b>				
Average Number of Days to Close a Complaint	26.9	16.8	30.3	22.3
Percentage of Complaints Resolved Within 90 Days	90.7%	94.5%	84.0%	93.5%
Number of Non-Servicing Complaints resolved	107	109	119	124
<b>All Complaints</b>				
Total Complaints resolved	306	296	353	309

## **Legal and Enforcement Activity Report**

### **Enforcement Orders**

During the 4<sup>th</sup> quarter of FY2020 (June 1, 2020-August 31, 2020), the Commissioner issued 36 enforcement orders.

In June 2020, the Department issued 9 orders related to violations cited during company examination audits. Of these orders, 4 were formal advisory letters and the remaining 3 orders imposed an administrative penalty for the violations cited during the audit. Of these orders there have been no appeals.

In July 2020, the Department issued 12 orders related to violations cited during company examination audits. Of these orders, 4 were formal advisory letters and the remaining eight orders imposed an administrative penalty for the violations cited during the audit. Of these orders 2 have been appealed and 3 of these orders were rescinded.

In August 2020, the Department issued 2 orders related to violations cited during company examination audits. Of these orders, 1 was an Order to Take Affirmative Action and the remaining was an Agreed Order to Cease and Desist. Both orders imposed an administrative penalty for violations cited during the audit. There have been no appeals.

During July and August 2020, three RMLO license denials were appealed and referred to enforcement. One applicant withdrew his appeal.

Lastly, during the 4<sup>th</sup> quarter of FY20, the Department issued 8 orders related to violations cited during complaint investigations. Of these orders, 4 were Orders to Cease & Desist with 3 relating to unlicensed activity and one for misleading practices; the remaining 4 orders were Agreed Order(s) to Cease & Desist and imposed an administrative penalty for the violations cited during the investigation. Of these orders one has been closed as non-compliant and 2 were rescinded.

<b>Enforcement Activity By Quarter FY2020</b>				
<b>Type of Action</b>	<b>1<sup>st</sup> Qtr</b>	<b>2<sup>nd</sup> Qtr</b>	<b>3<sup>rd</sup> Qtr</b>	<b>4<sup>th</sup> Qtr</b>
Order to Cease and Desist	12	9	12	6
Order to Take Affirmative Action	15	8	6	10
Order of Suspension	3	0	0	0
Order of Revocation	0	2	0	0
Order Rescinding Previous Order	1	1	1	6
Agreed Order	11	1	0	1
Agreed Order to Surrender License	0	0	2	0
Agreed Order to Take Affirmative Action	0	2	2	0
Agreed Order to Cease and Desist	0	3	0	3
Advisory Letter	15	16	11	8
Consent Order	0	0	0	0
Final Order	2	1	0	1
Letter of Reprimand	1	1	1	1
<b>Total</b>	<b>60</b>	<b>44</b>	<b>35</b>	<b>36</b>

### **Recovery Fund Applications**

The Department received three recovery fund applications since the last Finance Commission meeting on August 21, 2020, to date. All three were denied and one of the denials has been appealed. The appealed denial will proceed to a SOAH hearing.

### **Contested State Office of Administrative Hearings (SOAH) Cases**

Case No. 450 20-3608 *Department of Savings and Mortgage Lending v. Forrest Layton*.

The Department denied the RMLO license application of Forrest Layton on the grounds that he had failed to satisfy the Commissioner regarding his general fitness and character. On February 10, 2020, Mr. Layton appealed the license denial. The contested hearing was held via video conference on Monday, June 23, 2020. On August 19, 2020, the Administrative Law Judge (ALJ) issued a proposal for decision with a recommendation to grant the license, and on September 8, 2020, the Commissioner issued the Final Order adopting the proposal for decision.

Case No. 450 20-4260 *Department of Savings and Mortgage Lending v. Stephanie Mari Gonzalez*.

The Department denied the RMLO license application of Stephanie Mari Gonzalez on the grounds that she had failed to satisfy the Commissioner regarding her general fitness and character and that she had falsified her application. On April 28, 2020, Ms. Gonzalez appealed the license denial. The contested hearing was held via video conference on Wednesday, August 26, 2020. On September 23, 2020, the ALJ entered a proposal for decision recommending that the application for license be denied.

Currently, the Department has a total of 5 contested cases pending at SOAH. The next contested case hearing is presently scheduled for October 22, 2020, via the Zoom videoconferencing platform.

### **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 discovery battles recently. Trien's deposition was taken on September 11, 18, and 25, 2020. Docket call is set for February 17, 2020, at which time a trial date will be selected.

Case No. D-1-GN-19-0080190 Jon Douglas Black v. Department of Savings and Mortgage Lending, pending before the 353<sup>rd</sup> 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 held a videoconference hearing on August 18, 2020. On September 21, 2020, counsel for Mr. Black submitted a letter to the district court which contained additional legal argument. On September 28, 2020 the judge ruled, affirming the Department's Decision and Order to deny licensure to Mr. Black.

Case 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 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. A return of service of the citation and petition was filed on September 17, 2020. Defendant has not filed a timely response to the lawsuit. The state will move for a default judgment.

Case No. D-1-GN-20-004218 Department of Savings and Mortgage Lending 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 and the Department asked the Texas Attorney General's Financial Litigation and Charitable Trusts Division to reduce the agreement to a district court judgment. The lawsuit was filed on August 12, 2020. Defendant was served and the defendant filed his answer on September 28, 2020.

### **Public Information Requests**

During the 4<sup>th</sup> quarter of FY20, the Department received and responded to twenty-four public information/open records requests, two of which were forwarded to the Attorney General's Office for a ruling on applicable exceptions to disclosure.

## Rulemaking

SML Future Rule Activity		
Rule	Short Title/Purpose	Projected Date for Presentation
Chapter 79, Residential Mortgage Loan Servicers Chapter 80, Texas Residential Mortgage Loan Companies Chapter 81, Mortgage Bankers and Residential Mortgage Loan Originators	Adoption of amendments resulting from rule review	December 2020
Chapter 51, Charter Applications Chapter 53, Additional Offices Chapter 57, Change of Office Location or Name Chapter 61, Hearings Chapter 63, Fees and Charges Chapter 67, Savings and Deposit Accounts Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion Chapter 71, Change of Control Chapter 73, Subsidiary Corporations	Readoption resulting from rule review	December 2020
Chapter 75, Applications Chapter 76, Miscellaneous Chapter 77, Loans, Investments, Savings, and Deposits	Readoption, proposal for publication of amendments resulting from rule review	December 2020
Chapter 75, Applications Chapter 76, Miscellaneous Chapter 77, Loans, Investments, Savings, and Deposits	Adoption of amendments resulting from rule review	February 2020
Chapter 80, Texas Residential Mortgage Loan Companies Subchapter B, Licensing Chapter 81, Mortgage Banker and Residential Mortgage Loan Originators, §81.2 Definitions, and Subchapter B, Licensing	Proposal for publication of amendments	February 2020

## Gift Reporting

None. The Department has not received any gifts during the period August 21 to September 30, 2020.

### e) Legislative Activities

The Department monitored for any interim charges that directly or indirectly impacted the Department or the regulated industries.

The Department is conferring with representatives of the regulated industries about the upcoming legislative session and in particular regarding any potential statutory amendments to the Texas Finance Code.

If asked by members of the legislature, the Department would be inclined to recommend the following statutory amendments:

Thrift:

- Finance Code §96.055 – examination authority over savings bank third party affiliates;
- Finance Code §97.006 – examination authority over savings bank holding companies.

Mortgage:

- Finance Code §180.002(5) – to correct a reference to an amended federal statute;
- Finance Code §§156.2041, 156.2042 and 156.212 – elimination of physical office requirements to be located in Texas;
- Finance Code §§156.303, 157.024 and 158.103 – to allow for advisory letters in lieu of disciplinary action

Members of the legislature may pre-file bills beginning November 9, 2020.

**2. Discussion of and Possible Action Regarding Anticipated and Pending Litigation:**

None.



**D.**

**Office of Consumer Credit  
Commissioner**

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## **Consumer Protection and Consumer Assistance Report**

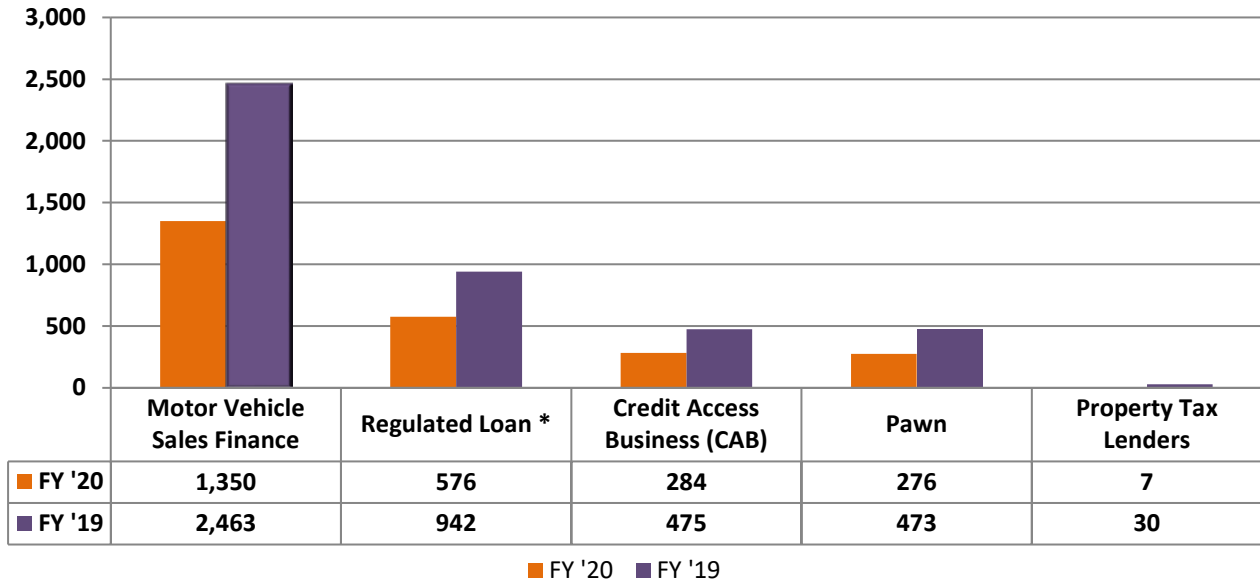
Although the FY '20 examination completion goal was 4,000 exams, the consumer protection group completed 2,493 or 62.3% of its examination goal largely an impact of the COVID-19 pandemic. During the 3<sup>rd</sup> quarter, as a result of the COVID-19 pandemic, the OCCC suspended on-site examinations effective March 16, 2020. As noted in the August 2020 briefing, field based examinations of franchised motor vehicle dealers were resumed on June 15, 2020. Between March 16, 2020 and August 31, 2020, the OCCC completed a series of remote and entries examinations across most regulated industries.

Effective September 1, 2020, field based examinations of Regulated Lenders resumed. The resumption of these field examinations is following the approach used in returning to franchised motor vehicle dealers combining elements of notice, scheduling and remote exam scoping, sampling and production of documents in anticipation of scheduled exam arrival dates.

The OCCC is committed to developing its capabilities to conduct more remote examinations. In support of this commitment, the team has provided detailed training and undertaken company specific studies. Examiners-in-Charge (EICs) and Single Points of Contact (SPOCs) have been identified to handle the examinations of certain specific licensees. EICs and SPOCs will be supported by Austin and Field Senior Staff as they contact these companies to develop approaches for conducting remote examinations. The design of these examinations will vary among the companies and their capabilities to support remote examinations. The IT department developed and implemented a Secure File Transfer channel to support production and submission of records related remote examinations.

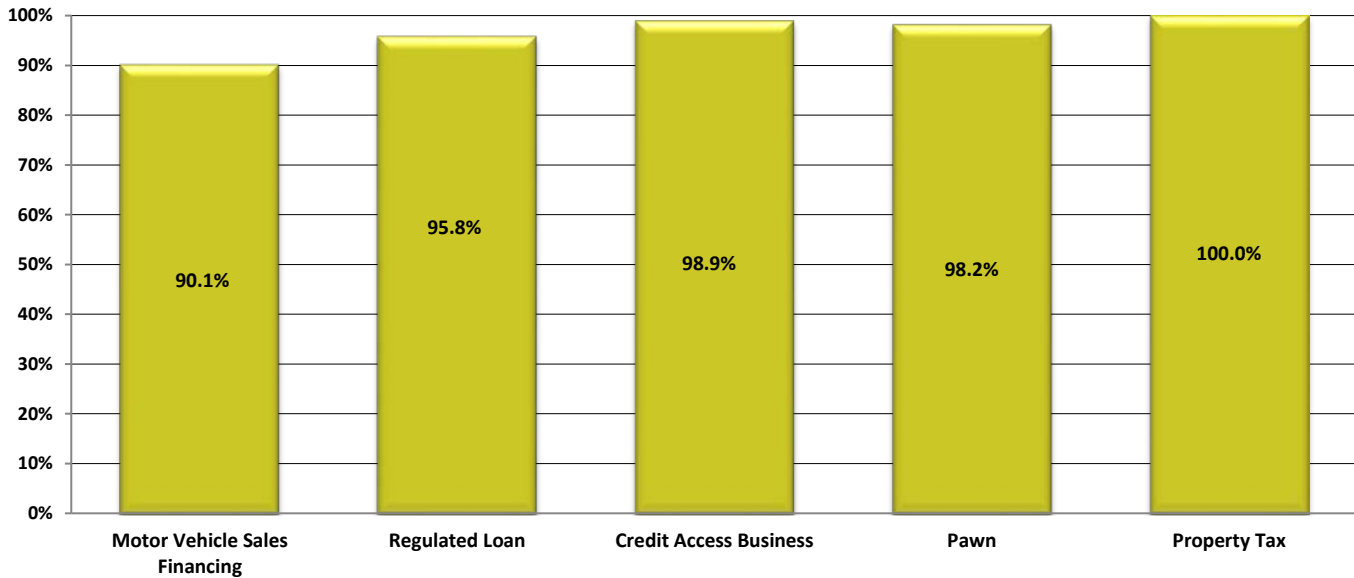
The OCCC was well represented by a total of 19 examiners and investigators at the annual National Association of Consumer Credit Administrators Annual Examiners School. This was a virtual event held the week of September 21, 2020. Also, the OCCC's own internal annual examiner training was held the week of September 28, 2020. The overriding theme of the examiner training was remote examination approaches, project management best practices, and examiner's experiences conducting remote examinations.

## Examinations Conducted: Sept - Aug Fiscal Year Comparison

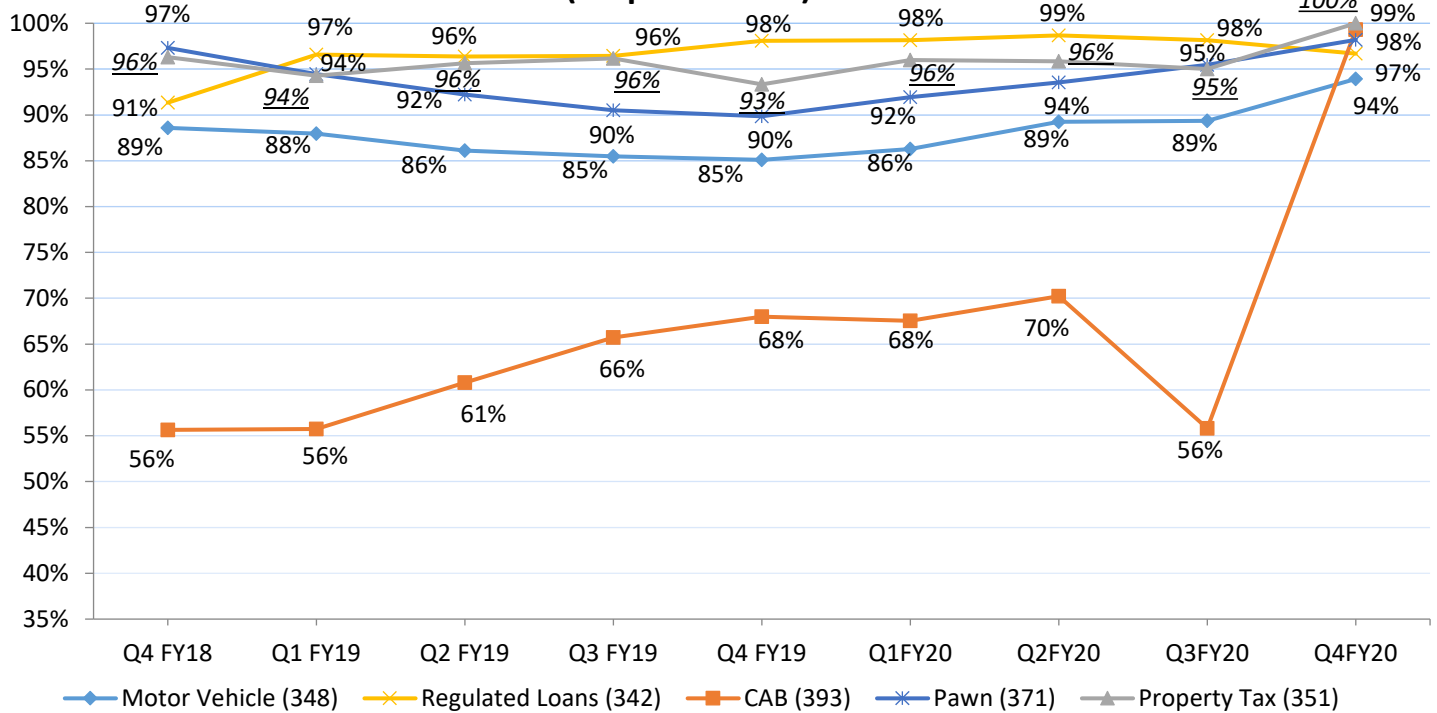


The second chart below denotes the acceptable level of compliance on a trailing 12-month basis through the end of August 2020.

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



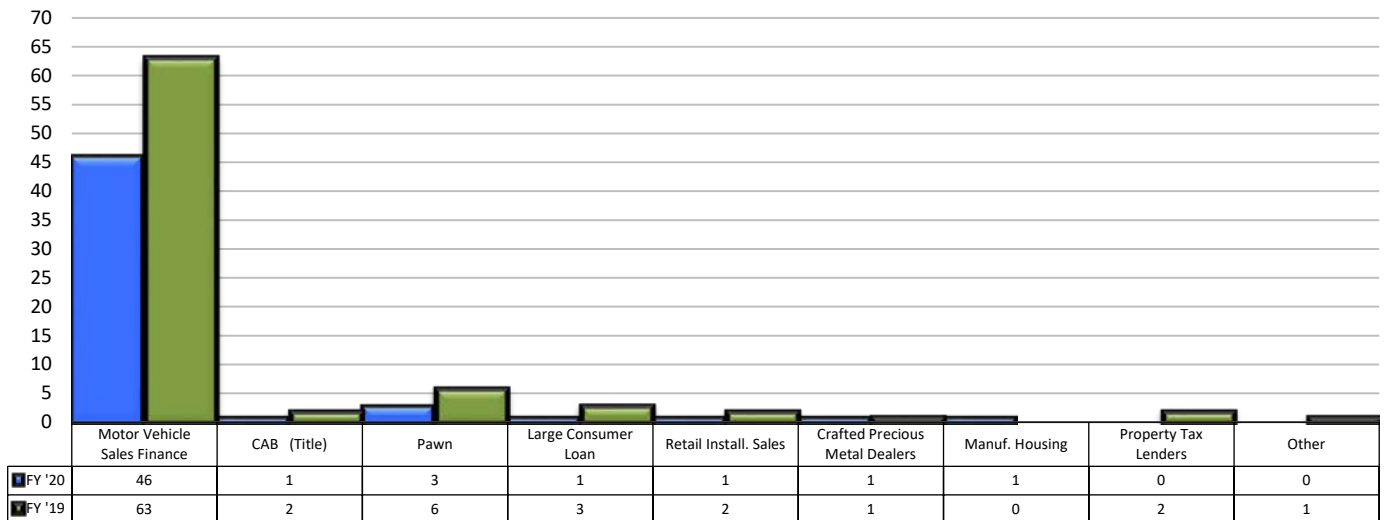
## Acceptable Compliance Levels - Trailing 12 Months (at quarter end)



### Investigations

For FY 2020, the agency completed 54 investigations, 67.5% of the FY 2020 goal of 80. Motor Vehicle Sales Finance was the largest category comprising 85.2% of the overall number of investigations.

### Investigations Completed FY '20 (Sept 2019 - Aug 2020) Total: 54 FY '19 (Sept 2018 - Aug 2019) Total: 80



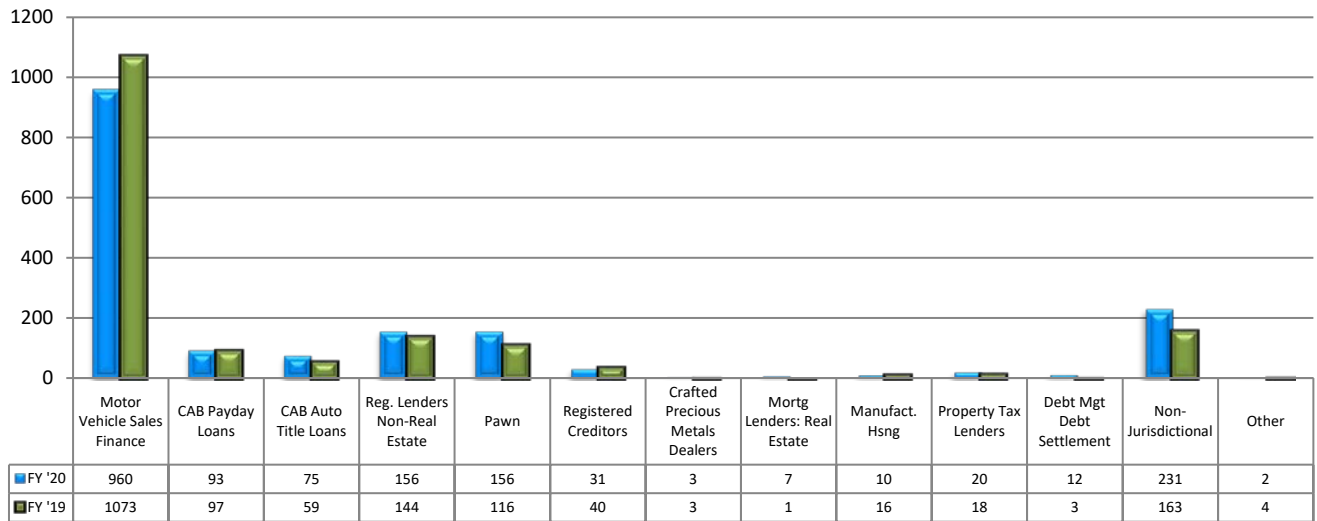
Consumer Assistance

For this period, 1,756 complaints were closed of which 231 were classified as non-jurisdictional.

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

MVSF complaints were the largest complaint category at 54.7%. The second largest number of complaints came from CAB complaints at 9.6% collectively; separately, these are 5.3% for payday loans and 4.3% for title loans. The third largest category was from Regulated Lenders Non-Real Estate at 8.9%. The fourth largest category was Pawn at 8.8%.

**Complaints Closed**  
**FY '20 (Sept 2019 - Aug 2020) Total: 1,756**  
**FY '19 (Sept 2018 - Aug 2019) Total: 1,737**



Fiscal Year 2020: Number of Complaints Closed by Source (Table 1), Subject (Table 2), and Disposition (Table 3)

**Table 1**

Source of Complaint	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	FY 2020
Consumer	372	367	403	409	1,551
Business	2	5	5	3	15
Law Enforcement	0	0	0	0	0
State or Federal Agency	29	44	54	46	173
OCCC	1	1	1	0	3
Whistleblower	0	1	1	0	2
Other	0	0	11	1	12
<b>Total</b>	<b>404</b>	<b>418</b>	<b>475</b>	<b>459</b>	<b>1,756</b>

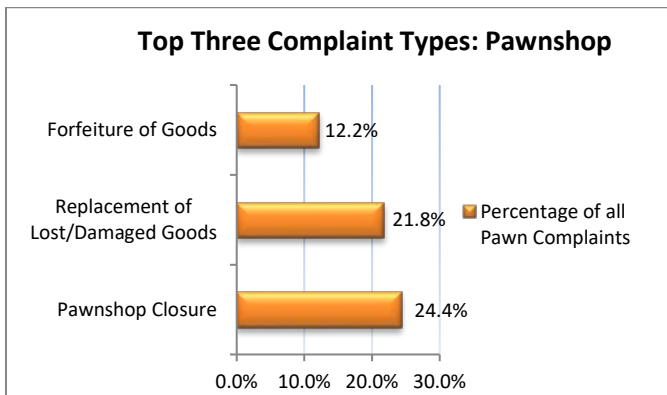
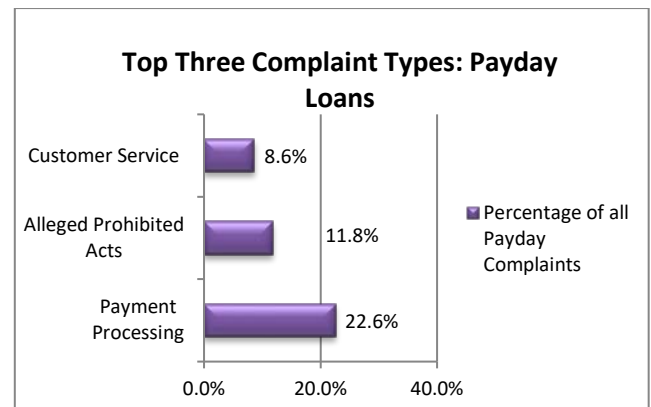
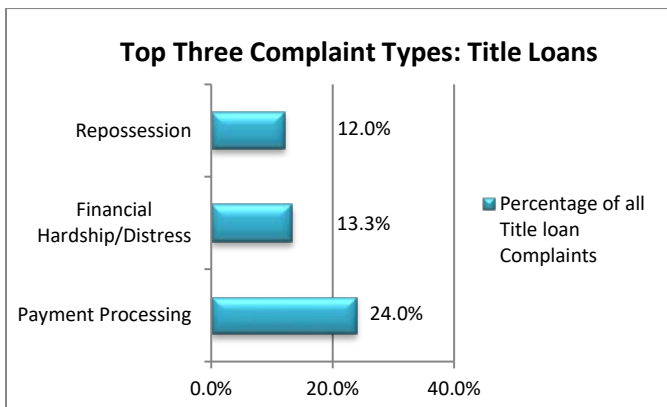
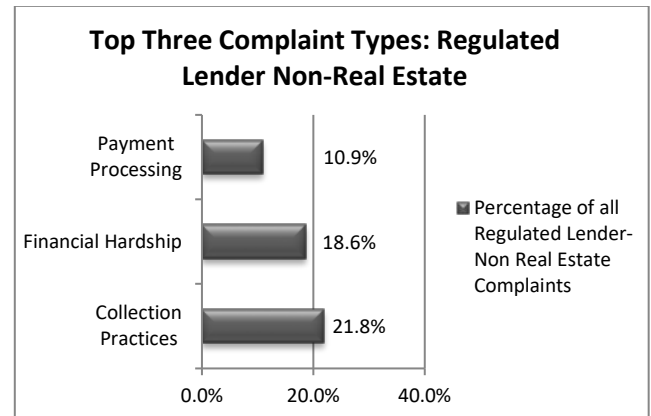
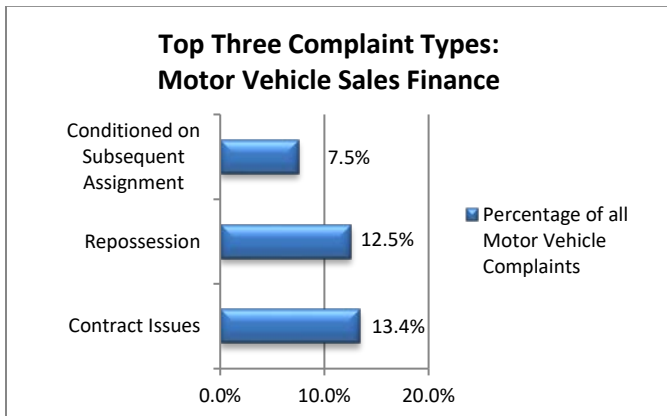
**Table 2**

Subjects	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	FY 2020
Motor Vehicle Sales Finance	208	226	247	278	959
CAB Payday Loans	15	23	38	17	93
CAB Auto Title Loans	17	20	21	17	75
Reg. Lenders Non-Real Estate	41	44	35	36	156
Pawn	34	32	64	26	156
Registered Creditors	6	5	9	10	30
Crafted Precious Metals Dealers	1	0	0	2	3
Mortgage Lenders: Real Estate	0	2	0	5	7
Manufactured. Housing	2	2	1	5	10
Property Tax Lenders	3	6	8	3	20
Debt Management Debt Settlement	0	5	5	2	12
Non-Jurisdictional	76	52	46	57	231
Refund Anticipation Loan	0	0	1	1	2
Other	1	1	0	0	2
<b>Total</b>	<b>404</b>	<b>418</b>	<b>475</b>	<b>459</b>	<b>1,756</b>

**Table 3**

Disposition:	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	FY 2020
Closed to Investigation	7	11	7	2	27
Closed to Legal	0	0	1	1	2
Closed-Action Taken	147	183	238	189	757
Closed-No Violation	86	97	91	79	353
Closed-Administratively	88	75	92	133	388
Closed-Non Jurisdictional	76	52	46	55	229
<b>Total</b>	<b>404</b>	<b>418</b>	<b>475</b>	<b>459</b>	<b>1,756</b>

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



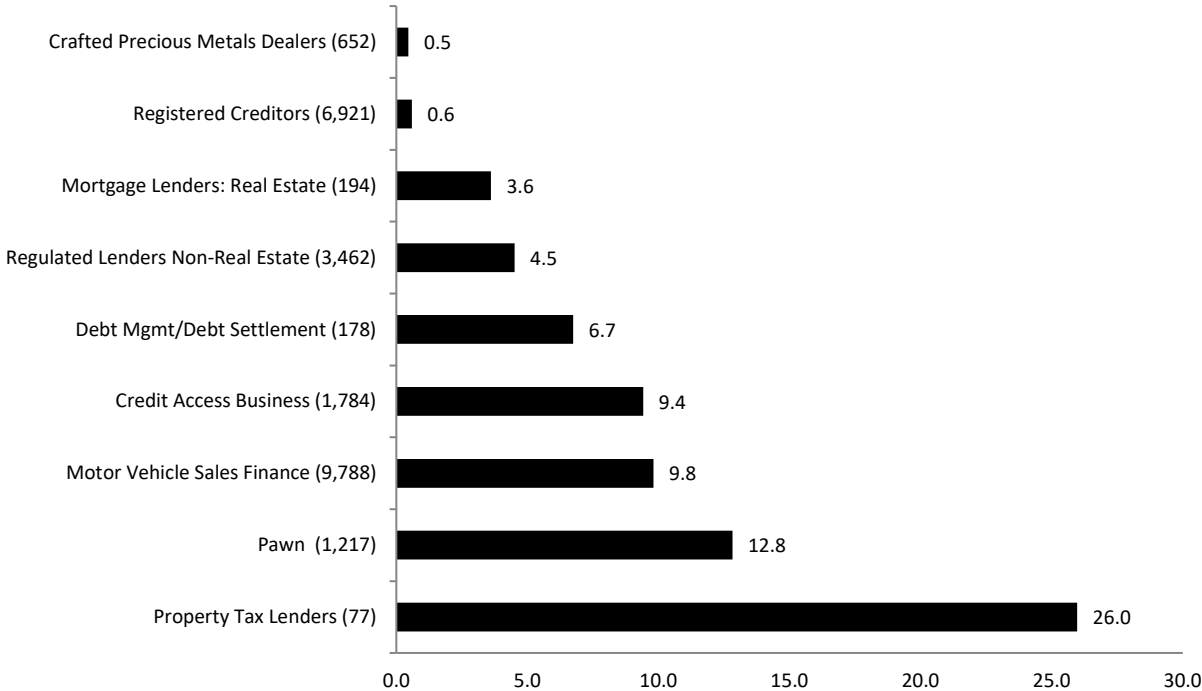
### Consumer Assistance Activities Information by Quarter

Production Targets and Priorities	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	FY 2020
Percentage Written Complaints Closed within 90 days	84.2%	80.2%	88.9%	92.8%	86.6%
Average Number of Days to Close a Complaint	45.4	50.4	42.3	41.5	44.4
Number of Complaints Closed	404	418	475	459	1,756



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, Motor Vehicle Sales Finance as the third, and Credit Access Business as the fourth highest.

**Ratio of Complaints Closed to Total Active License or Registrants\*  
FY '20 (Sept 2019 - Aug 2020)**



■ Complaints per Hundred Licenses

\*License-Registrant levels as of 9-01-2020

## CAB Reporting Update

CAB data for the first half of 2020 has been reported by licensees and compiled. Selected statistics from Q1-Q2 (Jan-June) of the last six years are compared in the chart below. The effects of Covid-19 largely impacted Q2 activities. The Q2 data reports indicate total transaction volume (loans and refinances) decreased by 42% in Q2 compared to Q1 of 2020. A combination of store closures, declining applications, hardship concessions, and government CARES Act payments affected CAB volume.

<b>Data Highlights (All Loan Types) Q1 - Q2 Comparison</b>	<b>2020</b>	<b>2019</b>	<b>2018</b>	<b>2017</b>	<b>2016</b>	<b>2015</b>
Number of new payday loans	704,447	985,394	1,000,386	1,044,152	1,064,650	1,085,393
Number of new auto title loans	89,048	140,604	149,006	129,322	133,881	159,680
Percentage of payday loans due in multiple installments	61%	56%	50%	45%	41%	38%
Percentage of auto title loans due in multiple installments	54%	58%	55%	45%	40%	23%
Number of vehicles repossessed under all auto title loans	18,396	22,005	16,620	15,162	15,702	18,575
Total number of locations reporting activity	1,538	1,756	1,832	1,817	2,002	2,575

<b>Payday Loans Q1 - Q2</b>	<b>Single Installment</b>			<b>Multiple Installment</b>		
	<b>2020</b>	<b>2019</b>	<b>2018</b>	<b>2020</b>	<b>2019</b>	<b>2018</b>
Number of consumers obtaining loans	191,811	298,848	346,365	381,840	500,444	441,335
Number of new loans	276,613	430,071	502,600	427,834	555,323	497,786
Number of total refinances <sup>1</sup>	375,983	508,144	778,715	115,142	189,423	129,207
Average loan amount	\$452	\$456	\$471	\$604	\$668	\$610
Average fee per \$100 borrowed	\$23	\$23	\$24	\$138	\$132	\$141
Average original term (in days)	21	21	22	149	145	144
Average Fee Converted to a Daily Rate <sup>2</sup>	1.07%	1.05%	1.11%	0.93%	0.92%	0.97%

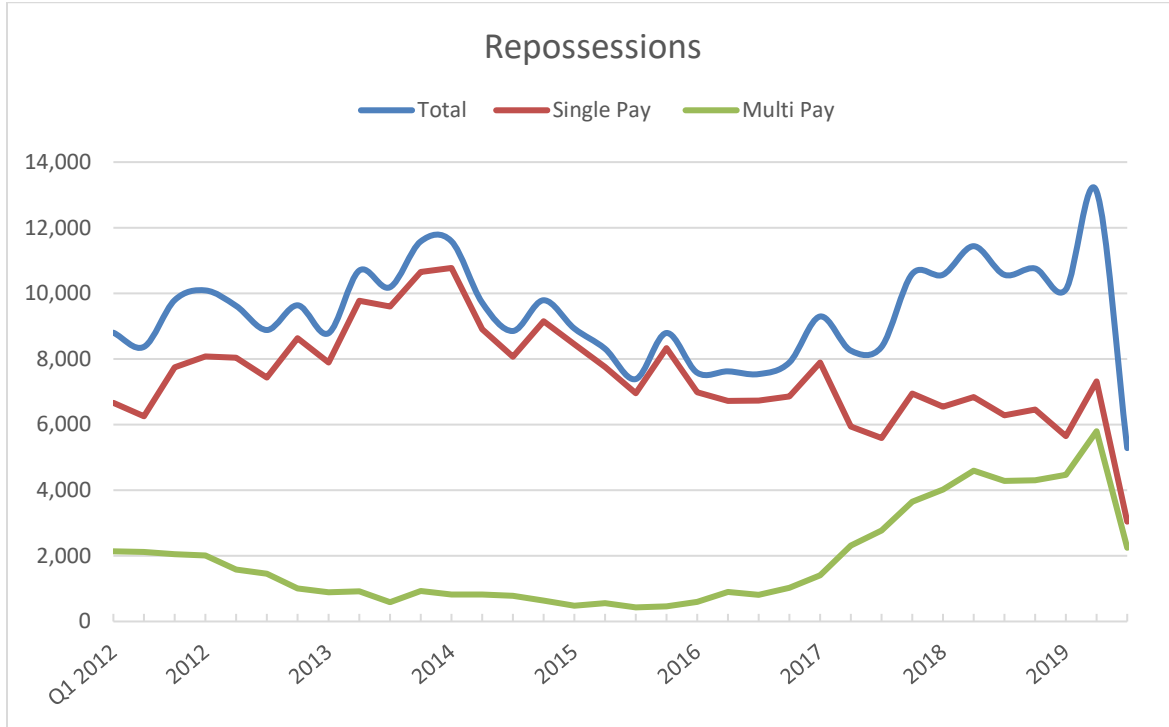
<b>Title Loans Q1 - Q2</b>	<b>Single Installment</b>			<b>Multiple Installment</b>		
	<b>2020</b>	<b>2019</b>	<b>2018</b>	<b>2020</b>	<b>2019</b>	<b>2018</b>
Number of consumers obtaining loans	33,233	51,859	58,637	44,876	77,574	76,982
Number of new loans	41,332	58,716	67,486	47,716	81,888	81,520
Number of total refinances <sup>1</sup>	267,879	311,343	294,655	68,309	75,800	64,719
Average loan amount	\$1,379	\$1,634	\$1,307	\$1,208	\$1,281	\$1,158
Average fee per \$100 borrowed	\$15	\$15	\$16	\$113	\$116	\$116
Average original term (in days)	30	29	30	158	156	155
Average Fee Converted to a Daily Rate <sup>2</sup>	0.50%	0.52%	0.54%	0.71%	0.75%	0.75%

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. Data filed for Q2 of 2020 shows repossessions in the months of April – June dropped 60% from the previous quarter to the lowest single quarterly total. These totals will continue to be monitored closely.





## **Licensing Report- October 2020**

*Mirand Diamond, Director of Licensing & Finance*

### Renewals

The department is currently going through the renewal period for motor vehicle sales finance and commercial motor vehicle sale finance licenses. It is projected that approximately 85% of licensees will renew. The department plans to send renewal information correspondence through email and mailings to all licensees. The renewal period ends October 31<sup>st</sup>.

Additionally, renewal for registered creditors is ongoing and emails and mailed notices have been sent.

The department has begun initial preparation for renewal for credit access businesses, regulated lenders, and property tax lenders. Renewal for these industry groups will likely open online in early November with a deadline of December 31.

### Applications Processing

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

The volume of incoming applications remained near 140 monthly on average in FY 2020. The department projects that volume to continue in FY 2021.

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

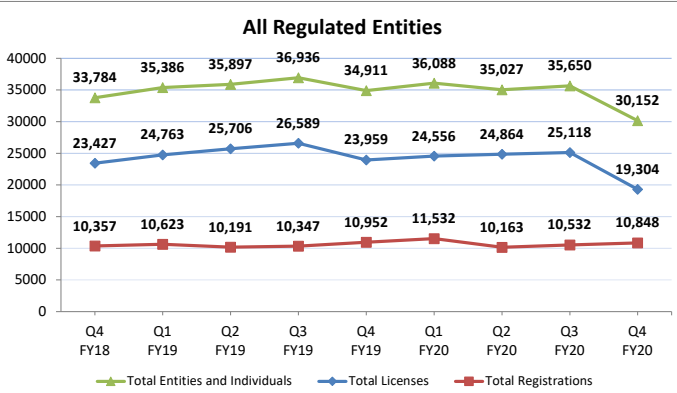
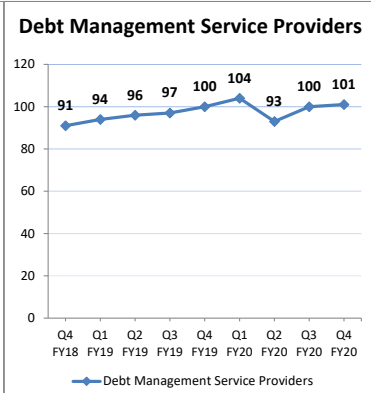
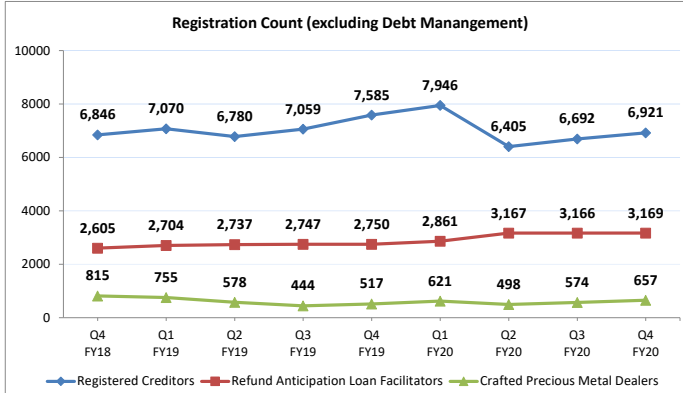
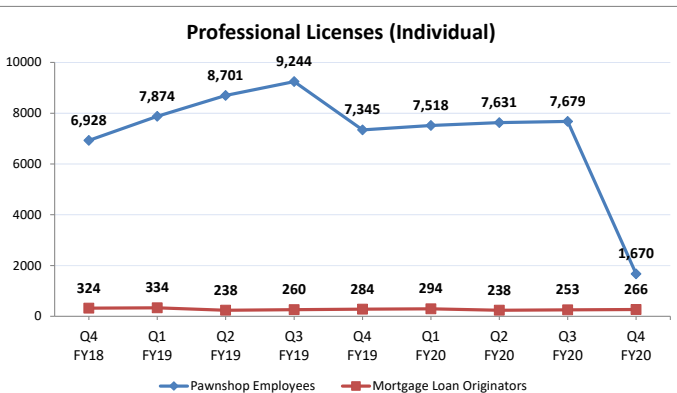
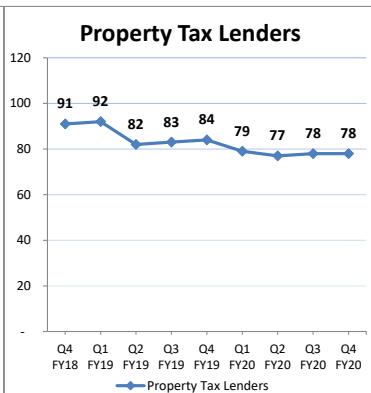
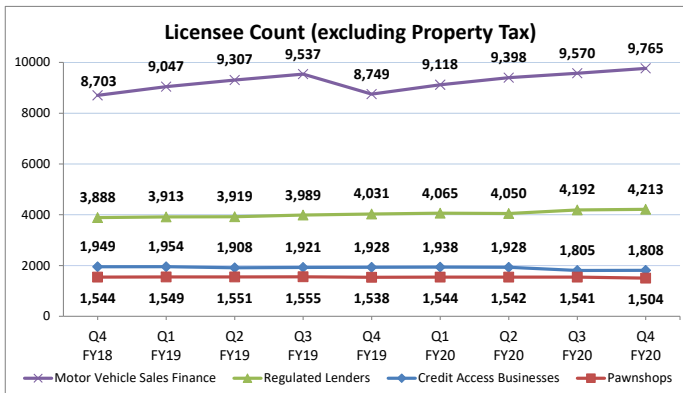
### Other Updates

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





## **ADMINISTRATION REPORT**

### **COMMUNICATIONS**

Agency staff continues to conduct most meetings and training sessions remotely to ensure the health and safety of agency staff. The agency's Information Technology department has worked to confirm that staff have web cameras and screen sharing platforms on computer equipment. This has proven to be an excellent way to enhance staff communication. Additionally, agency staff provided a combination of presentations to regulated entities and other regulatory groups as follows:

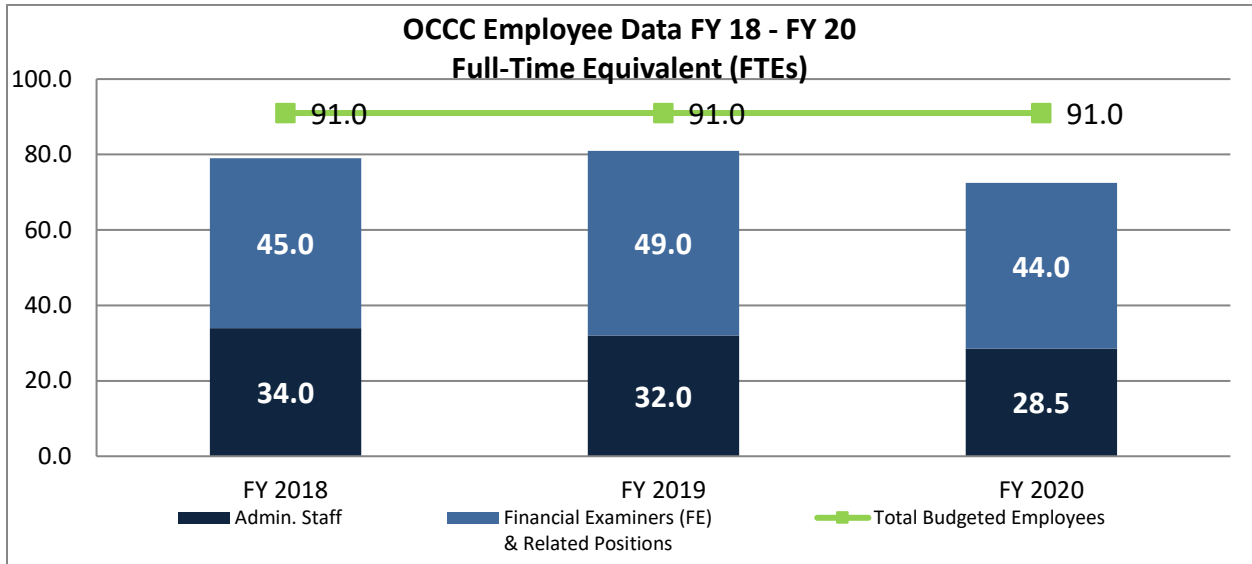
- On August 24<sup>th</sup>, Commissioner Pettijohn addressed the Texas Consumer Credit Coalition by teleconference.
- On August 26<sup>th</sup>, Commissioner Pettijohn gave a virtual presentation to the Texas Consumer Finance Association.
- On September 10<sup>th</sup>, Financial Examiner Eric Fancher addressed the Texas Department of Motor Vehicles (DMV) training by webinar
- On September 15<sup>th</sup>, Senior Supervising Examiner William Purce addressed the Texas Department of Housing and Community Affairs by webinar.
- On September 16<sup>th</sup>, Commissioner Pettijohn, Deputy General Counsel Matthew Nance and Director of Consumer Protection Huffman Lewis spoke at the Texas Property Tax Lienholder's Association annual meeting by webinar.
- On September 17<sup>th</sup>, Deputy General Counsel Matthew Nance conducted a Motor Vehicle Review Stakeholder's Meeting by webinar.
- On September 24<sup>th</sup>, Director of Consumer Protection Huffman Lewis spoke at the NACCA Annual Examiner Training School by webinar.
- On September 24<sup>th</sup>, Commissioner Pettijohn spoke at a virtual Houston Town Hall – Financial Tools and Information in the Age of COVID-19 event sponsored by OneMain Financial.

### **HUMAN RESOURCES**

In this reporting period, activities from the end of July to the end of August 2020, the OCCC is currently staffed with a total of 72.5 FTEs (full-time equivalent and one part-time). Currently the agency has the following posted vacancies.

Vacancy	Status
Administrative Assistant II	Open – Until Filled
Accountant III – IV	Open – Until Filled
Investigator I	Open – Until Filled

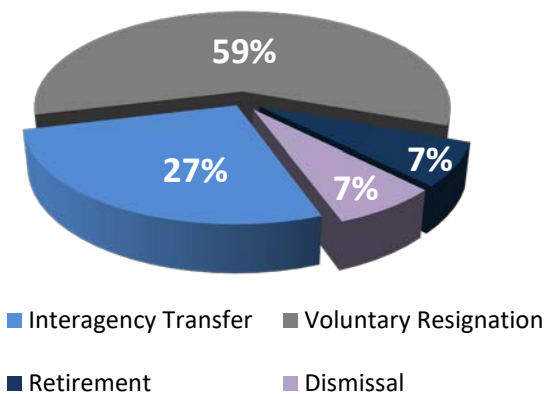
The following chart compares administrative staff vs. financial examiners (FEs) for the last three fiscal years.



The turnover rate as of August 2020 is 18.9%, and the chart below represents FY20 data.

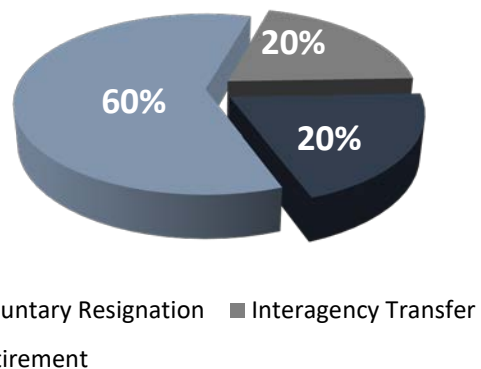
### OCCC Turnover Categories FY 20 - All Employees (09/01/19 - 8/31/2020)

15 total - 4 Interagency Transfer, 9 Voluntary Resignations, 1 Retirement and 1 Dismissal.



### OCCC Turnover FY 20 - FE Series (09/01/19 - 8/31/2020)

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



## **FINANCIAL EDUCATION**

The Financial Education Department continued partnerships with the Employees Retirement System and Texas Department of Transportation to deliver presentations related to budgeting, credit, and building wealth. The presentations were delivered by webinar and reached 1,749 individuals in the fourth quarter. As a result, the Financial Education Department exceeded the yearly participation goal by 880%. The OCCC has started hosting financial education webinars and is marketing these webinars through the agency website, email outreach, and social media platforms. During the month of September, 38 individuals attended the agency's financial education webinar covering budgeting. Additionally the agency is working with the Department of Banking to facilitate a joint financial education webinar this fall.

The TFEE 2018-2019 Impact Report and the First Period TFEE 2020-201 Semi Annual Grant Report are available elsewhere in the meeting materials. The agency has completed processing of the TFEE 2020-2021 first period reimbursement requests which totaled \$39,876.27.

TFEE's 2020-2021 first period was an abbreviated three month period and award recipients spent considerable time and resources pivoting to remote learning options as a result of the pandemic. The Agency expects an increase in activity over the remainder of the grant cycle.

## **INFORMATION TECHNOLOGY**

### **Physical Facilities and Hardware**

IT procured fourteen new laptops in accordance with the normal replacement cycle. These devices are in the process of being configured and deployed. All field personnel now have a camera-integrated laptop and can fully participate in video conferences and webinars. In keeping with pandemic protocol, additional monitors were deployed to WFH-assigned personnel who submitted a request.

Two members of IT virtually attended the Texas Virtual Digital Government Summit, and found the presentation on details for improving on-camera presence to be of particular interest for today's WFH, videoconferencing world. The resources were shared with agency personnel on the internal website.

Annual agency asset inventory completed and certification submitted to the Comptroller in accordance with instructions.

The annual agency user verification was completed.

Filr, a commercially available file-sharing application, has been installed and is in early release. Filr enables licensees to safely transmit files for examinations. Full release will dramatically enhance the functionality of remote file-sharing.

### **Training**

IT drafted and made available tutorials on security for home wifi routers. IT also administered additional staff training requirements related to identifying and preventing phishing attacks.





## **Accounting Report- October 2020**

*Mirand Diamond, Director of Licensing & Finance*

### Staffing

The accounting department is currently interviewing for a vacancy and hopes to fill the vacancy by November.

Additionally the senior staff accountant who has provided a vital role in continuity of accounting operations was promoted to an Accountant V.

### Annual Financial Report

The department has completed and finalized the annual financial report for FY 2020. It has been submitted to all required agencies and posted to the agency website.

### CAPPS

The department continues to make preparations to transition to CAPPS for financial reporting. Trainings and discovery sessions have occurred and more are planned to facilitate a smooth transition in September 2021.

### Procedures

The department continues to identify tasks that need procedures to be written, reviewed or updated.

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

*As of August 31, 2020*

	FY 2018	FY 2019	FISCAL YEAR 2020				
			1st QTR	2nd QTR	3rd QTR	4th QTR	FYTD
<b>CONSUMER PROTECTION</b>							
Monies Returned (000)	5,122	14,578	240	1,104	2,466	581	4,391
Regulated Lenders Examinations	1,085	942	233	171	128	44	576
Property Tax Lender Examinations	27	30	4	2	1	0	7
Pawnshop Examinations	484	473	123	91	21	41	276
Motor Vehicle Examinations	2,269	2,463	434	407	87	422	1,350
Credit Access Businesses Examinations	638	475	128	26	4	126	284
<b>CONSUMER ASSISTANCE</b>							
Telephone Complaints Received	986	510	83	106	149	121	459
Written Complaints Received	1,111	1,151	319	302	332	350	1,303
Total Complaints Closed	2,130	1,737	404	418	475	459	1,756
% of Written Complaints Closed within 90 Calendar Days	91.8%	85.4%	84.2%	80.3%	88.9%	92.8%	86.6%
<b>ADMINISTRATIVE ENFORCEMENT ACTIONS</b>							
Originated	371	417	71	51	15	51	188
Finalized	389	324	101	120	36	13	270
<b>LICENSING AND REGISTRATION</b>							
<b>Licenses</b>							
Regulated Loan Licenses	3,845	4,031	4,065	4,050	4,192	4,213	4,213
Pawnshop Licenses	1,565	1,538	1,544	1,542	1,541	1,504	1,504
Pawnshop Employee Licenses	7,243	7,345	7,518	7,631	7,679	1,670	1,670
Commercial MV Sales Fin. Licenses	39	49	50	49	50	54	54
Motor Vehicle Sales Finance Licenses	8,539	8,700	9,068	9,349	9,520	9,711	9,711
Property Tax Loan Licenses	89	84	79	77	78	78	78
Mortgage Loan Originators	326	284	294	238	253	266	266
Credit Access Business Licenses	2,046	1,928	1,938	1,928	1,805	1,808	1,808
<b>Registrations</b>							
Registered Creditors	7,371	7,585	7,946	6,405	6,692	6,921	6,921
Crafted Precious Metal Dealers	1,061	517	621	498	574	657	657
Debt Management Service Providers	128	100	104	93	100	101	101
Refund Anticipation Loan Facilitators	2,634	2,750	2,861	3,167	3,166	3,169	3,169
<b>Applications</b>							
Business -- New	1,522	1,679	417	487	399	318	1,621
Business -- Change of Ownership	138	131	41	17	15	14	87
Pawnshop Employees -- New	3,133	3,640	327	139	62	102	630
<b>HUMAN RESOURCES DATA</b>							
Field Examiners Staffing	41	49	48	46	45	44	44
Total Staffing	82	81	79	79	75	73	73

**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	Comparable Historical Data for the same time period			
					FY2019	FY2018	FY2017	FY2016
<b>Output Measures-Key</b>								
<b>CONSUMER PROTECTION</b>								
<b>1-1-1</b>	<b>Complaint Resolution</b>							
	<b>1. # Complaints Closed</b>							
<b>Quarter 1</b>	1,800	404	404	22.4%				
<b>Quarter 2</b>	1,800	418	822	45.7%				
<b>Quarter 3</b>	1,800	475	1,297	72.1%				
<b>Quarter 4</b>	1,800	459	1,756	97.6%	1,719	1,762	2,139	2,165
<b>2-1-1</b>	<b>Examination and Enforcement</b>							
	<b>1. # Examinations Completed</b>							
<b>Quarter 1</b>	4,000	922	922	23.1%				
<b>Quarter 2</b>	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, the OCCC has 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.							
<b>Quarter 3</b>	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 allow. The agency currently has 4 unfilled positions, 3 field examiners entry level and one Austin based Sr. Examiner.							
<b>Quarter 4</b>	4,000	633	2,493	62.3%	4,383	4,503	4,820	4,288
	In response to the COVID-19 Pandemic, the agency suspended all field-based examination work on March 16, 2020. Limited field-based examinations resumed June 15, 2020 focused on franchised motor vehicle examinations only. For part of last three quarters, the agency had 4 unfilled positions in the Examination and Enforcement Department, 3 field examiners entry level and one Austin based Sr. Examiner. For these reasons, the agency finalized 2,493 examinations that was less than the targeted goal of 4,000 finalized examinations.							
<b>EFFECTIVE LICENSING &amp; REGISTRATION</b>								
<b>2-2-1</b>	<b>Licensing and Registration</b>							
	<b>1. # Business License Applications Processed</b>							
<b>Quarter 1</b>	1,750	417	417	23.8%				
<b>Quarter 2</b>	1,750	487	904	51.7%				
<b>Quarter 3</b>	1,750	399	1,303	74.5%				
<b>Quarter 4</b>	1,750	318	1,621	92.6%	1,679	1,594	1,660	1,901
	While the department maintained the same volume of incoming applications as previous years, application processing did decrease slightly in the latter part of FY 20 due to staffing changes and increased call volume.							

**FINANCIAL EDUCATION**

**3-3-1 Financial Education**

**1. # People Receiving Direct Educational Services**

**Quarter 1** 325 134 134 41.2% \*

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% \*

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 1,098 337.8% \*

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.

**Quarter 4** 325 1,765 2,863 880.9% \*

The positive variance in the number of consumers receiving financial education is attributable to increased community outreach, the use of webinars to deliver services, and partnerships with other agencies and organizations.

337 332 342 230

\*Varies by 5% or more from target.

**Actual Performance for Key Outcome & Efficiency Measures**

Type/Strategy/Measure	2020 Target	2020 YTD	Percent of Annual Target
<b>Outcome Measures-Key</b>			
<b>CONSUMER PROTECTION</b>			
A.1 CONSUMER COMPLAINTS			
1. % WRITTEN COMPLAINTS CLOSED WITHIN 90 DAYS	85%	86.6%	101.9%
A.2 ENSURE COMPLIANCE			
1. % EXAMINATIONS REPORTING ACCEPTABLE LEVEL OF COMPLIANCE	85%	93.4%	109.9%
Credit access businesses had a substantially higher level of compliance than previous years based upon a reduced number of examinations and two large enterprise examinations that had an acceptable level of compliance.			
2. MONIES RETURNED TO CONSUMERS	\$5,000,000	\$4,390,981	87.8%
Due to the reduction in the number of examinations finalized, the monies returned to consumers was less than previous years.			
<b>EFFECTIVE LICENSING &amp; REGISTRATION</b>			
B.1 1. % BUSINESS LICENSE APPLICATIONS PROCESSED WITHIN 60 DAYS	90%	78%	86.7%
The licensing department saw increases in applications with potential unlicensed activity in FY 20 which increased processing times on some applications. Additionally staffing training and some complex application issues increased processing time for some applications.			
<b>EFFICIENT AND EFFECTIVE AGENCY OPERATION</b>			
C.1 1. % REGULAR EMPLOYEES SEPARATED FROM AGENCY	16%	18.9%	118.1%
Turnover trended higher than expected during FY20. Most of the turnover involved positions among the Austin staff and not those in the examiner classifications.			
<b>Efficiency Measures-Key</b>			
<b>CONSUMER PROTECTION</b>			
A.1 1. AVERAGE NUMBER OF DAYS TO CLOSE AN ENFORCEMENT ACTION	100	134	134.0%
The legal department was able to close several older cases from previous fiscal years, bringing down the overall number of pending cases. In addition, a batch of reporting cases took longer than anticipated. The legal department has since revised its procedures to improve the process.			
<b>EFFECTIVE LICENSING &amp; REGISTRATION</b>			
B.1 2. AVERAGE PROCESSING TIME (DAYS) FOR BUSINESS LICENSE APPS	45	46	102%

\* Varies by 5% or more from quarterly or year-end targets.

**OCCC Actual Performance for Non-Key Measures**  
**Fiscal Year 2020**  
**For Period Ending August 31, 2020**

Type/Strategy/Measure	2020 Target	2020 YTD	Percent of Annual Target	
<b>Non-Key Measures</b>				
<b>A. CONSUMER PROTECTION</b>				
A.1.1	AVERAGE NUMBER OF DAYS FOR ALL COMPLAINTS TO REACH FINAL DISPOSITION	60	55	91.7%
A.1.2	AVERAGE NUMBER OF DAYS TO CLOSE A COMPLAINT	45	45	100.0%
A.1.3	AVERAGE COST PER COMPLAINT	\$275	\$194	70.4%
A.2.1	AVERAGE COST PER EXAMINATION	\$1,250	\$1,996	159.7% *
	The average cost per examination was higher than anticipated because of the reduction in the number of finalized examinations for FY2020. Due to COVID-19 pandemic, the number of finalized examinations was reduced from the projected 4,000 examinations to 2,493 actual examinations.			
A.2.2	% OF LICENSED LOCATIONS AND REGISTERED OFFICES EXAMINED ANNUALLY	20%	15.1%	75.5% *
	because of the covid-19 pandemic, the agency suspended all field-based examinations on March 16, 2020. During the week of June 15, 2020, examiners began conducting field-based examinations of franchised dealers only. Since March 16, 2020, the agency has been conducting more remote-based examinations that are more time intensive to complete than field-based examinations. The suspension of field-based examinations and the transition to more remote-based examinations has reduced the number of finalized examinations to 2,493. The lower number of finalized examinations has reduced the percentage of licensed and registered offices examined annually for the targeted goal of 20%.			
A.2.3	NUMBER OF INVESTIGATIONS COMPLETED	80	54	67.5% *
	Due to COVID-19 pandemic, on-site investigations were suspended from March 16, 2020 to August 31, 2020; therefore, the field work for the on-site investigations was not completed. Without the completed investigation field work, investigations were not closed.			
A.3.1	% OF REPEAT REFERRALS FOR ENFORCEMENT ACTION	13%	26.0%	200.0% *
	Cases dealing with reporting requirements resulted in more repeat referrals than the legal department anticipated.			
A.3.2	% OF ENFORCEMENT ACTIONS CLOSED WITHIN TARGETED TIMEFRAME	70%	56%	80.0% *
	The legal department was able to close several older cases from previous fiscal years, bringing down the overall number of pending cases. In addition, a batch of reporting cases took longer than anticipated. The legal department has since revised its procedures to improve the process.			
A.3.3	NUMBER OF ENFORCEMENT ACTIONS TAKEN	275	246	89.5% *
	The legal department received fewer referrals for enforcement matters than anticipated.			
A.3.4	NUMBER OF CONTESTED CASES HEARD AT SOAH	5	1	20.0% *
	The legal department received fewer requests for hearings than anticipated. The legal department was able to resolve some matters before going to hearing.			
A.3.5	NUMBER OF COMPLIANCE AIDS AND TOOLS PUBLISHED	45	34	75.6% *
	The agency received fewer requests for advisory letters than anticipated. In addition, the agency was able to issue guidance relating to the COVID-19 pandemic through bulletin revisions. Each advisory bulletin was counted only once, and subsequent revisions were not counted as additional compliance aids and tools.			
A.3.6	NUMBER OF INDUSTRY STAKEHOLDER AND OUTREACH EVENTS HOSTED OR ATTENDED BY OCCC STAFF	30	56	186.7%
<b>B. EFFECTIVE LICENSING AND REGISTRATION</b>				
B.1.1	AVERAGE PROCESSING TIME (DAYS) FOR PAWNSHOP EMPLOYEE APPS	30	58	193.3% *
	Processing time for pawn employee applications was higher in FY 20 due to staffing changes specifically in this area. This will likely decrease in FY 21.			
B.1.2	AVERAGE PROCESSING TIME (DAYS) FOR RMLO APPS	15	27	180.0% *
	Applications that are eligible for temporary authority to operate took priority in FY 20 due to new federal legislation that was implemented. This caused applications that were non eligible for temporary authority to sit for a longer amount of time, increasing the days to process an application. Additionally 24% of applications submitted to the OCCC were done so in error in FY 20, so additional time was added to the beginning of the process to allow for those applications submitted in error to be withdrawn by the applicant.			
B.1.3	NUMBER OF PAWNSHOP EMPLOYEE LICENSE APPLICATIONS PROCESSED	900	630	70.0% *
	The agency received fewer applications that projected and therefore was unable to process the number in the measure. This number has been adjusted for FY 21.			
B.1.4	NUMBER OF RMLO APPLICATIONS PROCESSED	60	74	123.3%

\* Varies by 5% or more from target.

**OCCC Actual Performance for Non-Key Measures**  
**Fiscal Year 2020**  
**For Period Ending August 31, 2020**

Type/Strategy/Measure		2020 Target	2020 YTD	Percent of Annual Target	
<b>Non-Key Measures</b>					
<b>C. FINANCIAL EDUCATION</b>					
C.2	% OF TSEE AWARD RECIPIENTS WHO REACHED THEIR CONSUMER PARTICIPATION GOAL WITHIN THE GRANT PERIOD	100%	52.6%	52.6%	*
	TSEE grant cycles are two calendar years and Agency cycles are reported per fiscal year. This presents a challenge in reporting grant-related data. During the 2018-2019 Grant Cycle five out of nine award recipients exceeded their participation goals. The four award recipients who were unable to meet their goals reported issues with staffing and community partnership participation. The 2020-2021 Grant Cycle is currently in progress and award recipients have only submitted reports for one abbreviated period that occurred during the COVID-19 pandemic. The Agency anticipates more outreach will occur in the next three periods of the current grant cycle.				
<b>D. EFFICIENT AND EFFECTIVE AGENCY OPERATION</b>					
D.1	PERCENTAGE OF ACTUAL EXPENDITURES TO BUDGETED EXPENDITURES	95%	85.3%	89.8%	*
	Total expenditures for FY 20 were lower than budget projections due to Covid-19. The agency did not incur certain projected costs such as travel, office utilities and employee training.				
D.2.1	PERCENTAGE OF PUBLIC INFORMATION REQUESTS ADDRESSED WITHIN 5 BUSINESS DAYS	80%	86%	107.5%	
D.2.2	NUMBER OF PUBLIC INFORMATION REQUESTS CLOSED	185	186	100.5%	
D.2.3	NUMBER OF PUBLIC INFORMATION REQUESTS WITHDRAWN	10	6	60.0%	
D.2.4	AVERAGE NUMBER OF DAYS TO ADDRESS A PUBLIC INFORMATION REQUEST	2.6	2.2	84.6%	
D.2.5	NUMBER OF PUBLIC INFORMATION REQUESTS RECEIVED	200	197	98.5%	
<b>SCHEDULE C. HUB USAGE</b>					
1	NUMBER OF HUB CONTRACTORS AND SUBCONTRACTORS CONTACTED FOR BID PROPOSALS	10	3	30.0%	
	Only 1 contract required bids.				
2	NUMBER OF HUB CONTRACTS AND SUBCONTRACTS AWARDED	2	3	150.0%	
3	DOLLAR VALUE OF HUB CONTRACTS AND SUBCONTRACTS AWARDED	\$75,000	\$167,438	223.3%	

\* Varies by 5% or more from target.



## **Legal Department Report**

*Michael Rigby, General Counsel*

October 2020

### **Enforcement Report**

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

In September 2020, the OCCC issued 13 orders against credit access businesses that did not timely and accurately file their 2020 first quarter reports by May 31, 2020. Of these 13 orders, 9 were injunctions requiring the licensee to file timely and accurate reports, and 4 imposed an administrative penalty for violating a previous injunction. These reports are normally due on April 30, 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 May 31.

Also in September 2020, the OCCC issued 12 orders against credit access businesses that did not timely and accurately file their 2020 second quarter reports by July 31, 2020. Of these 12 orders, 10 were injunctions requiring the licensee to file timely and accurate reports, and 2 imposed an administrative penalty for violating a previous injunction.

#### **Orders for Late Pawnshop Employee License Applications**

In September 2020, the OCCC issued 18 orders against pawnshops whose employees filed pawnshop employee license applications more than 75 days after the employee's hire date. Under the Texas Pawnshop Act, if a pawnshop participates in the voluntary pawnshop employee licensing program, then the pawnshop is required to ensure that its employees are licensed, and the employee must file a pawnshop employee license application within 75 days of the employee's start date. The orders instruct the pawnshops to comply with this requirement for any future employees.

### **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 September 30, 2020				
	FYTD 2021	FY 2020	FY 2019	FY 2018
<b>Injunction Actions</b>				
Crafted Precious Metal Dealer	0	1	0	0
Credit Access Business	0	27	53	27
Debt Management Provider	0	9	10	5
Manufactured Housing	0	0	0	0
Motor Vehicle Sales Finance	2	54	20	19
Pawnshop	0	44	82	39
Pawnshop Employee	0	0	67	48
Property Tax Lender	0	1	8	2
Registered Creditor	0	1	0	1
Regulated Lender	0	49	22	12
Residential Mortgage Loan Originator	0	0	0	1
<b>Total Injunction Actions</b>	<b>2</b>	<b>186</b>	<b>262</b>	<b>154</b>
<b>Administrative Penalty Actions</b>				
Crafted Precious Metal Dealer	0	1	0	0
Credit Access Business	0	11	14	6
Debt Management Provider	0	3	0	1
Motor Vehicle Sales Finance	3	13	19	26
Pawnshop	0	29	12	6
Pawnshop Employee	0	0	0	0
Property Tax Lender	0	3	6	6
Regulated Lender	0	18	7	0
Residential Mortgage Loan Originator	0	0	0	0
<b>Total Administrative Penalty Actions</b>	<b>3</b>	<b>78</b>	<b>58</b>	<b>45</b>
<b>Revocation / Suspension Actions</b>				
Crafted Precious Metal Dealer	0	0	0	0
Credit Access Business	1	0	1	0
Motor Vehicle Sales Finance	0	2	0	1
Pawnshop	0	0	0	0
Pawnshop Employee	0	0	1	0
Property Tax Lender	0	0	0	0
Regulated Lender	0	1	0	0
Residential Mortgage Loan Originator	0	0	0	0
<b>Total Revocation / Suspension Actions</b>	<b>1</b>	<b>3</b>	<b>2</b>	<b>1</b>
<b>App. Denial and Protest Actions</b>				
Credit Access Business	0	0	0	0
Motor Vehicle Sales Finance	0	3	2	0
Pawnshop	0	0	0	0
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	0
<b>Total App. Denial and Protest Actions</b>	<b>0</b>	<b>3</b>	<b>2</b>	<b>0</b>
<b>Total Actions Closed</b>	<b>6</b>	<b>270</b>	<b>324</b>	<b>200</b>

The tables below include data on performance measures the legal department is tracking.

<b>September 1, 2019, through August 31, 2020</b>	
Cases Opened	188
Cases Closed	270
Average Number of Days to Close an Enforcement Action	134
Contested Cases Referred to SOAH	1
Contested Cases Heard at SOAH	1
Enforcement Actions Taken	246

<b>September 1, 2020, through September 30, 2020</b>	
Cases Opened	44
Cases Closed	6
Average Number of Days to Close an Enforcement Action	185
Contested Cases Referred to SOAH	0
Contested Cases Heard at SOAH	0
Enforcement Actions Taken	2

The OCCC has no SOAH hearings scheduled between October 1, 2020, and November 30, 2020.

### **Litigation**

#### ***Colorado True Lender Litigation***

On August 7, 2020, the State of Colorado entered a settlement in lawsuits against Avant of Colorado, LLC and Marlette Funding, LLC. The Colorado attorney general alleged that these nonbank companies illegally partnered with out-of-state banks to lend above Colorado’s interest rate limits, and that the companies were the “true lender” because they bore the predominant economic interest in loans. Under the settlement, Avant, Marlette, WebBank, and Cross River Bank agreed not to lend to Colorado consumers at rates above 36%, and agreed to provide consumers with protections required by Colorado law. The companies will pay \$1,050,000 to the State of Colorado for consumer protection efforts, and will make a \$500,000 contribution toward financial education in Colorado.

### **Rule Actions**

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

- Adoption of amendments to 7 TAC Chapters 151 and 153 (relating to home equity lending), resulting from rule review.
- Adoption of amendments to Chapter 83, Subchapter B (relating to credit access businesses), resulting from rule review.
- Adoption of amendments to Chapter 89 (relating to property tax lenders), relating to sworn documents and individual lien payoffs.
- Readoption of Chapter 84 (relating to motor vehicle sales finance), as well as proposed amendments to this chapter, resulting from rule review.

## **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. Earlier this year, the federal Office of the Comptroller of the Currency (OCC) and Federal Deposit Insurance Corporation (FDIC) issued final rules on the permissible interest rate when a national bank transfers a loan to another entity. The rules provide that if a bank makes a loan, the authorized interest rate for the loan is not affected by the loan's subsequent assignment, even if the loan is assigned to a nonbank entity.

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). On August 20, the states of California, Illinois, Massachusetts, Minnesota, New Jersey, New York, North Carolina, and the District of Columbia filed a similar lawsuit against the FDIC (case no. 4:20-cv-05860).

### ***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. Morrisey*, 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). On September 3, 2020, the National Association of Consumer Credit Administrators (NACCA) filed a comment on the proposed rule, expressing concern that the rule would undermine states' ability to protect their citizens from usurious lending practices.

## **Advisory Bulletins**

From August 1, 2020 to September 30, 2020, the OCC did not issue any new advisory bulletins.

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

## **Official Interpretation Requests**

From August 1, 2020 to September 30, 2020, the OCC did not receive any requests for official interpretations. As of September 30, 2020, there were no pending requests for official interpretations.

**Public Information Requests**

<b>August 1, 2020, through September 30, 2020</b>	
Requests Received	37
Requests Closed	35
Requests Withdrawn	1
Requests Referred to Office of Attorney General	0
Average Number of Days to Address a Public Information Request	1.9

**Gifts Received by the OCCC**

From August 1, 2020 to September 30, 2020, the OCCC received no gifts.



## Legislative Issues for 2021

October 2020

### Remote Work from Unlicensed Locations

Currently, various provisions of the Texas Finance Code provide that any regulated activity must occur from a licensed location. Because of the COVID-19 pandemic, businesses are taking action to protect public safety and minimize the spread of the disease. This might include work performed at unlicensed locations (e.g., employees working from home to take loan applications or service loans).

Some stakeholders have discussed the possibility of statutory amendments to the Finance Code, in order to address this issue and allow certain types of work from unlicensed location. If the Legislature considers these amendments in 2021, then the OCCC believes that the following issues are important to consider:

- **Accountability:** Licensing individual locations helps ensure that businesses are accountable to the State of Texas and can oversee their own operations. If businesses can conduct work remotely, it will be important to ensure that the businesses remain accountable.
- **Security:** Financial service providers can access consumers' sensitive personal information, and must be responsible for securing this information. It will be important to ensure that licensees continue to maintain the security of each consumer's personal information, especially when the information is accessed by employees working remotely.
- **Consistency:** The Finance Code's various licensing provisions are generally consistent with each other. In particular, the licensing requirements for regulated lenders, property tax lenders, and credit access businesses are similarly drafted. Ideally, any statutory amendments would generally preserve this consistency, so that neither the licensees engaged in multiple product lines covered by different chapters nor the OCCC is not required to apply a variety of significantly different licensing standards.
- **Fiscal impact:** The OCCC currently receives annual fees based on the number of licensed locations a business has. If businesses reduce the number of licensed locations, it will be important to consider the fiscal impact on the OCCC's revenue.

### Strategic Plan Issues

In its 2021-2025 Strategic Plan, the OCCC identified provisions of the Texas Finance Code that could be amended and modernized.

- **License surrender:** Currently, various provisions of the Finance Code state that a business may surrender its license by delivering the license and written notice of the surrender to the OCCC. These provisions are based on the assumption that the OCCC will issue a physical paper license. An amendment to these provisions, specifying that a licensee may surrender a license by complying with OCCC instructions, would ensure that the OCCC can specify an efficient, appropriate procedure for surrendering licenses electronically.
- **Rulemaking:** One change would amend Section 371.006 of the Finance Code to remove the requirement that the OCCC keep pawnshop rules “in a permanent record book” and mail a copy of a new rule to each license holder. This provision is outdated and redundant with the rule-submission requirements of the Texas Administrative Procedure Act. The change would allow the OCCC to submit pawnshop rules through an efficient online process, without also having to send paper mailings. A similar change would remove the requirement in Section 342.551(c) to maintain regulated lending rules “in a permanent record book.”
- **Hearing requests:** Many provisions of the Finance Code state that the OCCC may take enforcement actions after “notice and an opportunity for a hearing,” but Section 371.255, regarding pawnshop employees, states that the agency may take action after “notice and a hearing.” One change would amend Section 371.255 to specify that the agency may take action after notice and an opportunity for a hearing. This change would ensure that respondents receive due process while maintaining the agency’s ability to resolve cases efficiently. The OCCC’s 2019 Sunset bill included similar changes for other types of enforcement actions.

**D. OFFICE OF CONSUMER CREDIT COMMISSIONER**

2. Discussion of and Possible Vote to Take Action on the Adoption of the Amendments in 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 adoption of amendments to 7 TAC Chapter 82.

**RECOMMENDED MOTION:** I move that the Finance Commission approve the adoption of 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) adopts amendments to §82.1 (relating to Custody of Criminal History Record Information) and §82.2 (relating to Public Information Requests; Charges) in 7 TAC, Chapter 82, concerning Administration.

The commission adopts the amendments without changes to the proposed text as published in the September 4, 2020, issue of the *Texas Register* (45 TexReg 6199).

The commission received no written comments on the proposal.

In general, the purpose of the 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 May 29, 2020, issue of the *Texas Register* (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 adopted 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, the amendments remove the director of strategic communications, administration and planning from the list of employees authorized to access criminal history record information.

In §82.2, the amendments clarify language on submitting public information requests and make terminology more consistent. Throughout §82.2, the amendments would replace current terminology such as "fee" and "cost" with "charge." These changes 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). An amendment removes §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. The amendments to §82.2(e), regarding inspections of records, clarify situations where the OCCC charges for labor or personnel time and does not charge for overhead.

The amendments are adopted 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 adoption 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.

(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.

**Certification**

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

Issued in Austin, Texas on October 16, 2020.

Audrey Spalding  
Assistant General Counsel  
Office of Consumer Credit Commissioner

**D. OFFICE OF CONSUMER CREDIT COMMISSIONER**

3. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 5, Chapter 84, Concerning Motor Vehicle Installment Sales, Resulting from Rule Review

**PURPOSE:** Pursuant to Texas Government Code, §2001.039, the agency has completed the review of 7 TAC Chapter 84, and believe that the reasons for initially adopting the rules contained in these chapters continue to exist.

**RECOMMENDED ACTION:** The agency requests that the Finance Commission readopt 7 TAC Chapter 84 following rule review, because the reasons for the rules continue to exist.

**RECOMMENDED MOTION:** I move that we readopt 7 TAC Chapter 84 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 84. Motor Vehicle Installment Sales*

The Finance Commission of Texas (commission) has completed the rule review of Texas Administrative Code, Title 7, Part 5, Chapter 84, concerning Motor Vehicle Installment Sales, in its entirety. The rule review was conducted under Texas Government Code, §2001.039.

Notice of the review of 7 TAC Chapter 84 was published in the July 31, 2020, issue of the *Texas Register* (45 TexReg 5365). 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 84 continue to exist, and readopts this chapter in accordance with the requirements of Texas Government Code, §2001.039.

**D. OFFICE OF CONSUMER CREDIT COMMISSIONER**

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

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

**RECOMMENDED ACTION:** The agency requests that the Finance Commission approve the adoption of the amendments, a new rule, and a repeal in 7 TAC Chapter 83.

**RECOMMENDED MOTION:** I move that the Finance Commission approve the adoption of the amendments, a new rule, and a repeal in 7 TAC Chapter 83.

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

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

The commission adopts the amendments to §83.5001, §83.5003, and §83.5004, and adopts the repeal of §83.4007, without changes to the proposed text as published in the July 3, 2020, issue of the *Texas Register* (45 TexReg 4441).

The commission adopts the amendments to §83.2003, §83.4003, and §83.6007, and adopts new §83.5005, with changes to the proposed text as published in the July 3, 2020, issue of the *Texas Register* (45 TexReg 4441).

The commission received two written comments on the proposal. The first comment was from the Texas Fair Lending Alliance and Faith Leaders 4 Fair Lending. This comment generally supports the amendments contained in the proposal, but recommends that the commission address further issues in the rules. The second

comment was from the Online Lenders Alliance. This comment recommends changes to new §83.5005 as proposed. The commission's responses to these comments are included following the discussion of each applicable section.

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

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

Amendments to §83.2003 implement Texas Finance Code, §393.602(c), which prohibits a device, subterfuge, or pretense to evade the application of Texas Finance Code, Chapter 393, Subchapter G. In opinion no. KP-0277 (2019), the Texas attorney general addressed attempts to evade Chapter 393. The attorney general declined to determine



whether a particular business practice was a device or subterfuge, stating: "Whether any specific extension of credit is substantially the same as that available to the public, or uses a device, subterfuge, or pretense to evade regulation as a credit access business, are fact questions that this office cannot decide through an attorney general opinion." In examinations, the OCCC has identified credit services organizations (CSOs) asserting that they provide non-CAB loans, and that their loans are not subject to the regulatory requirements for CABs. In some cases, the loans were not deferred presentment transactions or motor vehicle title loans, but the CSO notified consumers that it was a CAB licensed and examined by the OCCC, and that consumers could file complaints with the OCCC. To address these false and misleading representations, the OCCC published an advisory bulletin explaining that it intends to work with the Texas attorney general to address complaints that the OCCC receives about non-CAB loans. OCCC Advisory Bulletin B20-1, CSOs and Non-CAB Loans (Feb. 13, 2020).

The purpose of the amendments to §83.2003 is to make the rule's language more clear, and to specify practices that the OCCC has identified as a device, subterfuge, or pretense to evade Chapter 393. The list is not exclusive, because new attempts to evade Chapter 393 could arise from new facts. Based on a suggestion from stakeholder precomments, paragraphs (1) and (2) state that a device, subterfuge, or pretense includes a transaction that is not identified as a deferred presentment transaction or motor vehicle title loan, if the transaction is a deferred presentment transaction or motor vehicle title loan.

Since the proposal, a change has been made in the amendments to §83.2003. As

originally proposed, §83.2003(3)-(6) included false or misleading representations made in connection with non-CAB loans, such as statements that a transaction is regulated by the OCCC if the transaction is not actually regulated by the OCCC. After further review, the OCCC believes that if it encounters these false and misleading statements, it would be more appropriate to address these statements by working with the Texas attorney general, rather than including these statements in a rule on a device, subterfuge, or pretense to evade Chapter 393. For this reason, the adoption does not include §83.2003(3)-(6) as originally proposed. As explained in advisory bulletin B20-1, all CSOs are subject to the general provisions of Chapter 393, including the enforcement authority of the Texas attorney general and the prohibition on false and misleading representations. The OCCC intends to work with the Texas attorney general to address that the OCCC receives about non-CAB loans. If a CSO makes false or misleading representations, or otherwise violates Chapter 393, this could result in civil liability and enforcement actions by the Texas attorney general.

The comment from the Texas Fair Lending Alliance and Faith Leaders 4 Fair Lending recommends including additional language in §83.2003 stating that a device, subterfuge, or pretense includes "any transaction that in form may appear on its face to be something other than a deferred presentment transaction or motor vehicle title loan, but in substance meets the definition of a deferred presentment transaction or motor vehicle title loan as defined in Texas Finance Code, §393.602." The commission declines to include this additional provision, because the commission believes that the adopted text in §83.2003(1)-(2) already describes these transactions in a clearer manner.

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

Since the proposal, a change has been made in §83.4003(d), to correct an internal reference that should refer to §83.4003(f)(1).

The comment from the Texas Fair Lending Alliance and Faith Leaders 4 Fair Lending recommends "adding a pattern of wrongfully using the criminal justice system to collect on civil debt as a ground for revoking a CAB license under 7 TAC §83.4003(f)." The commission believes that this additional language is unnecessary and

goes beyond the intended scope of §83.4003. This section is intended to describe guidelines for how the OCCC reviews the criminal history of the principal parties of a CAB applicant or licensee, in accordance with Texas Occupations Code, Chapter 53. It is not intended to address every situation where a CAB interacts with criminal law enforcement. The issue of how CABs refer matters for criminal prosecution is addressed elsewhere in this adoption and in Texas Finance Code, §393.201(c)(3), which prohibits a CAB from threatening or pursuing criminal charges in the absence of criminal conduct. If a CAB violates Texas Finance Code, §393.201(c)(3), the OCCC could initiate an appropriate enforcement action under its authority in Texas Finance Code, Chapters 14 and 393, and would not have to rely on §83.4003. If a CAB or its principal party commits a criminal violation of a statute governing credit transactions, and is convicted of the offense, then the OCCC could consider this criminal history under the existing language at §83.4003(c)(1)(E). For these reasons, the commission believes that the additional text is unnecessary.

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

Amendments to §83.5001 relate to reporting violations. This section describes the requirement for CABs to provide quarterly and annual reports, implementing Texas Finance Code, §393.627. Currently, §83.5001(e)(2)(A) describes a \$100 administrative penalty for a CAB's first

violation. Based on a review of its enforcement guidelines, the OCCC believes that a better practice is to issue an injunction for the first reporting violation, not to impose an administrative penalty. For this reason, amendments to §83.5001(e) explain that the OCCC will issue an injunction for the first reporting violation. Amendments also specify that the OCCC may revoke the license of a CAB that fails to pay an administrative penalty resulting from a final order, as provided by Texas Finance Code, §393.614. This situation is rare, and typically occurs when a CAB has ceased doing business without telling the OCCC.

Amendments to §83.5003 specify the content of witness declarations and records declarations that OCCC examiners obtain from CABs during examinations. The amendments explain that these declarations must substantially comply with Texas Civil Practice and Remedies Code, Chapter 132, which governs unsworn declarations that may be used in lieu of a sworn declaration or affidavit. The amendments also replace the term "statement" with "declaration," and remove provisions that are not necessary to include in a declaration under Chapter 132.

The comment from the Texas Fair Lending Alliance and Faith Leaders 4 Fair Lending recommends including a statement in §83.5003 that the declarations must include an "acknowledgement that the statement and the accompanying records may be introduced in an enforcement action in which the licensee is a party," as well as a statement of truthfulness "under penalty of perjury." The commission believes that this text is unnecessary. The amendments are intended to simplify §83.5003, and to ensure that it is not necessary to amend the rule again if the Texas Legislature amends Texas Civil Practice and Remedies Code, Chapter 132.

To the extent that Chapter 132 requires language to be included in the declaration in order for the declaration to be valid and admissible in a hearing, the adopted rule addresses these requirements by requiring the declarations to comply with Chapter 132.

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

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

The comment from the Texas Fair Lending Alliance and Faith Leaders 4 Fair Lending recommends adding requirements to

§83.5004 "regarding the number of declined ACH or debit transactions for accounts where such transactions are authorized by the customer." The comment states: "This information is important to ensure compliance with the recently ratified payment provisions of the Consumer Financial Protection Bureau payday and auto title loan rule, which applies to CAB transaction." The OCCC will monitor this issue to determine whether a future rule amendment is appropriate. The federal rule described by the comment is currently in litigation in a federal district court. *Community Financial Services Association of America and Consumer Services Alliance of Texas v. Consumer Financial Protection Bureau*, case no. 1:19-cv-00295-LY (W.D. Tex.) Existing text in §83.5004 already requires a CAB to maintain "all legally required disclosures provided in connection with the transaction," "complete documentation of all payments made by or to the licensee during the transaction," "any other documentation created or obtained by the licensee in connection with the transaction," and for payday loans, "documentation relating to the personal check or authorization to debit a deposit account accepted in connection with the loan."

New §83.5005 describes requirements for separation between a CAB and a third-party lender. Under Chapter 393, CABs are a type of CSO, and a CSO is defined as a person who obtains for consumers, or assists consumers in obtaining, extensions of credit "by others." Tex. Fin. Code, §393.001(3). In this provision, the phrase "by others" means that a CAB must operate independently from any third-party lender. The OCCC is aware of two published decisions analyzing this separation requirement. First, the Fifth Circuit found that a CSO was sufficiently

separate from a third-party lender where the CSO and lender were not the same entity, the CSO applied underwriting criteria selected by the lender (the CSO did not select the underwriting criteria), the CSO fee was not passed on to the lender, and the CSO fee did not directly benefit the lender. *Lovick v. Ritemoney Ltd.*, 378 F.3d 433, 438-42 (5th Cir. 2004). Second, a Texas bankruptcy court found that even though a CSO was a separate entity from a lender, the CSO violated Chapter 393 by falsely stating that it would issue a letter of credit if required by the lender. *In re Grayson*, 488 B.R. 579, 589-92 (Bankr. S.D. Tex. 2012).

New §83.5005 would implement the CAB-lender separation requirement. The rule is intended to provide clear standards to ensure that CABs operate independently from third-party lenders as required by Chapter 393, and to document a CAB's compliance with this requirement. Subsection (b) would specify requirements that must be satisfied, including a requirement that the CAB and lender be separate legal entities. In response to precomments that the OCCC received, paragraph (3) specifies that a CAB may not perform the functions of a third-party lender except by written agreement, paragraph (7) specifies that a CAB may not act as a general agent of a third-party lender but may act as a special limited agent, and paragraph (8) specifies that a licensee may not directly or indirectly share fees for CAB services with the lender. Subsection (c) describes additional factors that the OCCC may consider in determining whether a CAB operates independently, and subsection (d) explains that a CAB may not make a false or misleading representation regarding its relationship with a third-party lender.

The comment from the Texas Fair Lending Alliance and Faith Leaders 4 Fair Lending expresses concern about the following language in §83.5005(b)(3): "A licensee may not perform the functions of a third party lender, except by written agreement." The comment explains: "If a written agreement could legitimate cooperation that otherwise would be not allowable under statute, that would defeat the purpose of the TFC §393.001(3) that requires independent operation. Additionally, while recognizing that special limited agents are confined in their authority to act in ways that general agent agents are not, that still defeats the purpose of the separation and independent operation requirement if a CAB and a third-party lender could simply invest or designate certain persons to perform particular, limited tasks -- tasks that would otherwise violate the separation requirement but for the agency's allowance in this rule."

In response to this comment, the commission has made a change since the proposal to include the phrase "in accordance with this section" at the end of §83.5005(b)(3) and (4). With this change, adopted §83.5005(b)(3), (4), and (7) describe certain actions that are prohibited unless the CAB has entered a "written agreement" that is "in accordance with this section." In these provisions, the phrase "in accordance with this section" is intended to clarify that a CAB and lender may not use a written agreement to evade requirements described elsewhere in the section.

The comment from the Texas Fair Lending Alliance and Faith Leaders 4 Fair Lending includes three additional suggestions regarding §83.5005. First, the comment recommends revising the rule to include "any estate planning or other documentation necessary to determine

independent operation and that there is no direct or indirect fee sharing." The commission believes that this change is unnecessary, and that the provisions in amended §83.5004 and new §83.5005 should be sufficient to specify that CABs must maintain documentation of their agreements with third-party lenders and any transfers of money. Second, the comment explains that "we are concerned about the second provision under §83.5005 (8) that requires a third-party lender who receives any portion of a fee for CAB services charged by a licensee to promptly remit that to the licensee. This language appears to offer a 'get out of jail free card', allowing parties to share funds until caught and then remedy the situation with no penalty by returning ill-gotten funds." The commission disagrees with the suggestion that the rule creates a "get out of jail free card" in this situation. A CAB that fails to promptly remit money or fails to maintain documentation would be in violation of the rule. Third, the comment states: "We recommend that the regulator include as part of its periodic review and examination processes such contracts and performance under them to ensure that they do not, in substance, violate the proposed rules requiring separation and statutory requirement on extension of credit 'by others.'" The OCCC agrees that compliance with §83.5005 and the CAB-lender separation requirement is appropriately a part of the examination review process.

The comment from the Online Lenders Alliance expresses three concerns regarding §83.5005. First, the comment states that the rule goes beyond the statutory phrase "by others" by including requirements relating to separation and independence. "At a minimum it appears that Proposed § 83.5005 imposes additional burdens, conditions or restrictions that are in excess of the relevant statutory

provisions. For example, the words 'separation' and 'independent' are not found anywhere within the relevant portions of the underlying statute. These concepts are only found in the relevant case law." Second, the comment suggests that the proposal's citations to case law are inappropriate, stating that "the cited cases in support of portions of Proposed § 83.5005 is common law and not statutory law. If the legislature wanted to codify this case law it could have done so through the legislative process, but the legislature has chosen not to codify the issues discussed in the cited case law. Instead, it appears that by adding § 83.5005 to the proposed rules, the Commission is attempting to codify the cited case law, which the Commission may lack the legal authority to do through its rulemaking authority." Third, the comment suggests that if §83.5005 is adopted at all, it should include the following sentence: "A licensee may select the underwriting criteria used in determining whether the licensee will provide a credit enhancement to the third-party lender, and the licensee's underwriting criteria may include the underwriting criteria selected by the third-party lender."

The commission and the OCCC disagree with this comment. The requirement of separation and independence results from a plain-language reading of the phrase "by others" in Texas Finance Code, §393.001(3), and is within the commission's rulemaking authority under Texas Finance Code, §393.622. Courts have analyzed §393.001 and the separation requirement, and it is entirely appropriate for the commission to consider this analysis in adopting a rule that interprets the same section and requirement. In addition, allowing a CAB to decide underwriting criteria would erode an important part of the separation requirement,

and would enable a CAB to evade this requirement and act as a lender.

The adoption includes amendments to the figures accompanying §83.6007, which are the model forms for the consumer cost disclosure used by CABs. The amendments implement Texas Finance Code, §393.223(a), which authorizes the commission to adopt rules including the disclosure. The amendments include updated information regarding the cost of comparable forms of consumer credit, as well as updated information on patterns of repayment based on 2019 quarterly and annual reports provided by CABs to the OCCC. Since the proposal, minor formatting changes have been made to the disclosures contained in the figures accompanying §83.6007, to improve how the information is displayed.

The comment from the Texas Fair Lending Alliance and Faith Leaders 4 Fair Lending expresses concerns about the accuracy of the reporting data used in the amended disclosures, stating: "Given the limitations on currently aggregated data, we continue to urge the regulator to work on improving the accuracy and consistency of data to ensure accurate consumer disclosures. Some of these practices include requiring the regulator to update these model disclosures as they receive amended or corrected data and requesting verification from the licensee of any data that is found to be questionable or unreasonable to ensure that the data in aggregate is as complete, accurate, and thorough as possible." The commission believes that the OCCC has made appropriate efforts in periodically updating the disclosures, using information that is as accurate as possible. At the same time, the OCCC has accounted for the costs for CABs to update forms, as well as the confidentiality of reporting information under §83.5001(c).

The commission and the OCCC will allow a delayed implementation date of March 1, 2021, for all licensees to provide the amended versions of the disclosures under §83.6007. From the rule's effective date through February 28, 2021, licensees may provide consumers with either the previous versions of the disclosures or the amended versions. Starting on March 1, 2021, licensees must provide the amended versions. Regardless of which version of the forms they use, licensees must ensure that their disclosures comply with all requirements in Texas Finance Code, §393.223 and the rule text of §83.6007 and §83.6008 (relating to Permissible Changes). In particular, licensees must ensure that they: (1) use the disclosure corresponding to the correct product (e.g., multiple payment payday loan), (2) provide the disclosure at a time that is both before a credit application is provided and before a financial evaluation occurs, and (3) ensure that the disclosure is completed with all required information.

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

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

*Division 2. Authorized Activities*

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

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

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

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

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

*Division 4. License*

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

(a) Criminal history record information. After an applicant submits a complete license application, including all required fingerprints, and pays the fees required by §83.3010 of this title (relating to Fees), the OCCC will investigate the applicant and its principal parties. The OCCC will obtain criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant's fingerprint submission. The OCCC will continue to receive information

on new criminal activity reported after the fingerprints have been initially processed.

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

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

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

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

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

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

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

(A) theft;

(B) assault;

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

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

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

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

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

(H) any offense that involves intent, attempt, aiding, solicitation, or



conspiracy to commit an offense described in subparagraphs (A) - (G) of this paragraph.

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

(A) the nature and seriousness of the crime;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Crimes related to character and fitness. The OCCC may deny a license application if the OCCC does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §393.607(a). In conducting its review of character and fitness, the OCCC will consider the criminal history of the applicant and its principal parties. If the applicant or a

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

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

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

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

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

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

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

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

**{{Section 83.4007 will be repealed.}}**

~~[§83.4007. License Reissuance]~~

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

*Division 5. Operational Requirements*

*83.5001. Data Reporting Requirements*

(a) Generally. Each licensee must file the required reports described by this section for the prior period's credit access business activity in a form prescribed by the commissioner and must comply with all instructions relating to submitting the reports. During each calendar year, licensees are required to submit four quarterly reports as provided by Texas Finance Code, §393.627. Additionally, certain quarterly data will be

collected by the OCCC on an annual basis under Texas Finance Code, §393.622(a)(1). For purposes of this section, the term "annual report" refers to the quarterly data submitted on an annual basis. Each quarterly or annual report must be completed in accordance with the OCCC's instructions. All information provided on each quarterly or annual report must be accurate and calculated in accordance with the OCCC's instructions.

(b) Due dates.

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

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

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

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

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

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

(c) Confidentiality. All individual licensee submissions of data, whether submitted on a quarterly or annual basis, are confidential in their entirety under the provisions of Texas Finance Code, §393.622(b).

(d) Aggregated public information. The OCCC will publish aggregated data on its

website within a reasonable time after each quarterly report and annual report is due.

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

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

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

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

(A) First violation. If the licensee violates this section and has not violated this section during any of the four quarters preceding the violation, then the OCCC may issue an injunction [administrative penalty is \$100 for each licensed location].

(B) Second violation. If the licensee violates this section during any of the four quarters following a first violation described by subparagraph (A) of this

paragraph, then the administrative penalty is \$500 for each licensed location.

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

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

*83.5003. Examinations*

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

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

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

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

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

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

(2) a statement that the witness is familiar with the manner in which records are created and maintained by virtue of duties and responsibilities;

(3) the number of pages of attached records;

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

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

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

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

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

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

*§83.5004. Files and Records Required*

A licensee must maintain records for each transaction under Texas Finance Code, Chapter 393, and make those records available to the OCCC for examination. The records required by this section may be maintained by using a paper or manual recordkeeping system, electronic recordkeeping system, optically imaged recordkeeping system, or a combination of these types of systems, unless otherwise specified. All records must be prepared and maintained in accordance with generally accepted accounting principles. If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements

prevail only to the extent of the conflict with the provisions of this section.

(1) (No change.)

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

(A) (No change.)

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

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

(vi) Criminal charge records. The transaction file must include complete documentation of any threat of criminal prosecution against a consumer, and must include complete documentation of any criminal referral, charge, or complaint filed by a licensee against a consumer, showing the licensee's compliance with Texas Finance Code, §393.201(c)(3). This must include any written statement threatening criminal prosecution, a written summary of any oral

statement threatening criminal prosecution, any written evidence of criminal conduct, any information submitted to law enforcement relating to alleged criminal conduct by a consumer, a written summary of any oral statement submitted to law enforcement, any police report, and any court records obtained by the licensee.

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

(C) (No change.)

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

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

(B) two years from the date of the final entry made on the consumer's account in

the last consumer transaction subject to the agreement;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) A licensee may not directly or indirectly share fees for credit access business services with a third-party lender. If

a third-party lender receives any portion of a fee for credit access business services charged by a licensee, it must be promptly remitted to the licensee.

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

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

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

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

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

(4) whether the licensee's course of performance is consistent with its written agreements with third-party lenders and its agreements with consumers, including agreements that specify a time within which the licensee will act on a guarantee.

(d) Representations regarding relationship with third-party lender. Under

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

*Division 6. Consumer Disclosures and Notices*

*§83.6007. Consumer Disclosures*

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

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

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

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

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

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

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

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

(e) Consumer disclosures required for three to five common examples. For the three to five examples of the most common loans transacted by a credit access business as utilized under §83.6004 of this title (relating to Fee Schedule Content), the business must develop a consumer disclosure for those loan amounts, including appropriate fee information. Three to five examples must be developed for each payday or auto title product sold by the business (e.g., three single payment payday examples of \$300, \$500, and \$700; three multiple payment auto title examples of \$1,000, \$1,500, and \$2,500). The credit access business should provide the consumer with the example form



for the product and amount that most closely relates to the consumer's loan request.

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

### **Certification**

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

Issued in Austin, Texas on October 16, 2020.

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

# CAB NAME HERE

## Payday Loan

\$\_\_\_\_\_, One Payment

## Cost Disclosure

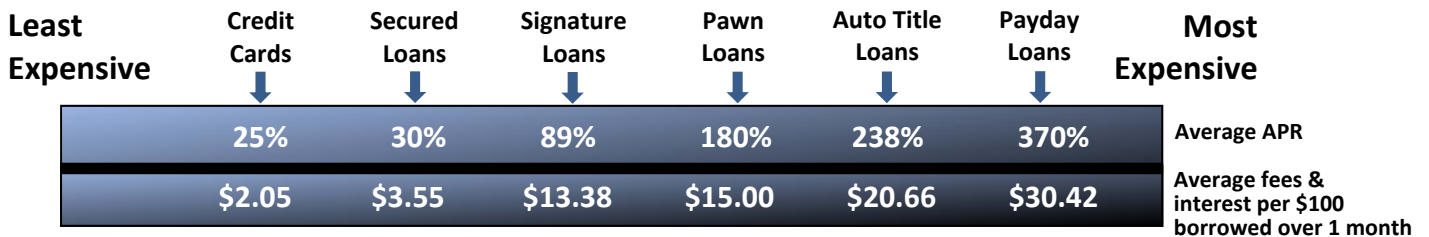
### Cost of this loan:

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





<b>APR</b>	_____ %
<b>Term of loan</b>	_____

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

### Cost of other types of loans:



### Repayment:

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

This data is from 2019 reports to the OCCC.

### Before getting this loan, ask yourself:

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

### OCCC notice:

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

# CAB NAME HERE

## Payday Loan

\$ \_\_\_\_\_, \_\_\_\_\_ Payments

## Cost Disclosure

### Cost of this loan:

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




<b>APR</b>	_____ %
<b>Term of loan</b>	_____

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

### Cost of other types of loans:



### Repayment:

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

This data is from 2019 reports to the OCCC.

### Before getting this loan, ask yourself:

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

### OCCC notice:

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# CAB NAME HERE

## Auto Title Loan

\$\_\_\_\_\_, One Payment

## Cost Disclosure



### You can lose your car.

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

### Cost of this loan:

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

<b>APR</b>	_____ %
<b>Term of loan</b>	_____

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

### Cost of other types of loans:

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

### Repayment:

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

This data is from 2019 reports to the OCCC.

### Before getting this loan, ask yourself:

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

### OCCC notice:

- This company is regulated by the Texas Office of Consumer Credit Commissioner (OCCC).
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- This disclosure is provided under Texas Finance Code Section 393.223.

# CAB NAME HERE

## Auto Title Loan

\$\_\_\_\_\_, \_\_\_\_ Payments

## Cost Disclosure



### You can lose your car.

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

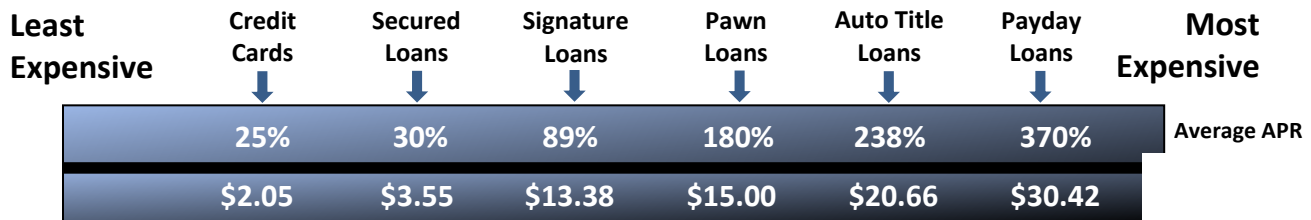
### Cost of this loan:

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





<b>APR</b>	_____ %
<b>Term of loan</b>	_____

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

### Cost of other types of loans:



### Repayment:

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

This data is from 2019 reports to the OCCC.

### Before getting this loan, ask yourself:

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

### OCCC notice:

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



**Texas Fair Lending Alliance**

**Faith Leaders**  
**4 Fair Lending**

July 31, 2020

Matthew Nance, Deputy General Counsel  
Office of the Consumer Credit Commissioner  
Texas Finance Commission  
2601 N Lamar Blvd.  
Austin, TX 78705  
*Sent via email to: [rule.comments@occc.texas.gov](mailto:rule.comments@occc.texas.gov).*  
RE: Draft Rules Review for Credit Access Businesses

Dear Matthew,

We appreciate the opportunity that the Office of Consumer Credit Commissioner (OCCC) has given to our coalition to respond to the draft amendments to §83.2003 (relating to Attempted Evasion of Applicability of Chapter), §83.4003 (relating to Denial, Suspension, or Revocation Based on Criminal History), §83.5001 (relating to Data Reporting Requirements), §83.5003 (relating to Examinations), §83.5004 (relating to Files and Records Required), and §83.6007 (relating to Consumer Disclosures); proposes new §83.5005 (relating to Separation Between Credit Access Business and Third-Party Lender); and proposes the repeal of §83.4007 (relating to License Reissuance) in 7 TAC, Chapter 83, Subchapter B, concerning Rules for Credit Access Businesses.

The Texas Fair Lending Alliance and Faith Leaders 4 Fair Lending is a coalition of community and faith leaders who support regulatory and legislative reforms to protect vulnerable Texans from high-cost loans and promote financial wellbeing. Last May, we submitted our informal pre-comments based on our wide-ranging experience working with borrowers, ministries, and other service providers to encourage the regulator to address predatory payday and auto title lending practices.

We are grateful that, as a result of your initial request for feedback, that the regulator published draft amendments to address some of our concerns, especially regarding the “device, subterfuge, or pretense” rules and the standards on separation between a CAB and a third-party lender. We believe these changes will help address potential circumvention of the Texas Finance Code and applicable Texas Administrative Code rules and promote consumer protections.

However, some of the proposed draft amendments do warrant further clarification to ensure that consumer protections are not lowered or inadvertently create other loopholes. Additionally, we express our disappointment with the agency that not all of our comments were taken under consideration for the rule review, including requests for increased data reporting requirements, explicitly adding a pattern of wrongfully using the criminal justice system to collect on a civil debt as a ground for revoking a CAB license under 7 TAC §83.4003(f), or elaborating rules on an examination process to ensure that a product is not “substantially the same as that available to the public.”

Nevertheless, we respectfully submit these comments in accord with the timeline your agency outlined in the proposed rules published in 24 Tex. Reg. 4411 on July 3, 2020. Given the coronavirus pandemic devastating large swaths of our economy, poor and vulnerable Texans are being impacted the hardest. Your

agency's work is important now more than ever. The coalition assures you of our commitment, continued support, and engagement with this process.

**I. Amending Section 83.2003 to specify practices that are considered “device, subterfuge, or pretense to evade Chapter 393, Subchapter G of the Texas Finance Code.**

We support the agency's proposed amendments to address the “device, subterfuge, or pretense” rules. As stated in our previous comments, we believe this definition must be modified in light of the Attorney General Opinion ([KP-0277](#)). That opinion, addressing a request about the legal status of a “signature loan” offered under the CSO act, asserted that, “Whether any specific extension of credit is substantially the same as that available to the public, or uses a device, subterfuge, or pretense to evade regulation as a credit access business, are fact questions that this office cannot decide through an attorney general opinion.” We believe that opinion opened loopholes for lenders to skirt requirements that governed deferred presentment transactions or motor vehicle title loans.

The agency's proposed draft amendments to address these concerns by enumerating more specific instances in rules of what constitutes “device, subterfuge, or pretense.” Your proposed rules provide 6 specific instances that would expand on that definition:

(1) a transaction that is not identified as a deferred presentment transaction or payday loan, if the transaction is a deferred presentment transaction; (2) a transaction that is not identified as a motor vehicle title loan, if the transaction is a motor vehicle title loan; (3) a statement that a person is licensed by the Office of the Consumer Credit Commissioner if the person is not licensed; (4) a statement that a transaction is regulated by the Office of Consumer Credit Commissioner if the transaction is not regulated by the Office of Consumer Credit Commissioner; (5) a reference in a transaction to a statute or rule regulating deferred presentment transactions or motor vehicle title loans if the transaction is not a deferred presentment transaction or motor vehicle title loan; and (6) a disclosure or notice to a consumer about a deferred presentment transaction or motor vehicle title loan if the transaction is not a deferred presentment transaction or motor vehicle title loan.”

In general, we support the enumeration of examples that would constitute “device, subterfuge, or pretense.” As stated in the Attorney General opinion, analysis of this kind is intensive and very fact specific. Therefore, any elaboration of the rules, as done here, would provide further guidance for the regulator to ensure that applicable rules are being followed and, if necessary, to take enforcement measures when they are not.

We support the new inclusions of proposed paragraphs (1) and (2), based on stakeholder feedback, that would state that a device, subterfuge, or pretense includes a transaction that is not identified as a deferred presentment transaction or motor vehicle title loan, if the transaction is a deferred presentment transaction or motor vehicle title loan. Previously, the rule in Title 7, Chapter 83, Subchapter B, §83.2003 stated that a “device, subterfuge, or pretense” referred to “any transaction that in form may appear on its face to be something other than a deferred presentment transaction or motor vehicle title loan, but in substance meets the definition of a deferred presentment transaction or motor vehicle title loan as defined in Texas Finance Code, §393.602.” We believe that this provision could ensure that transactions not currently anticipated that would, in substance, meet the definition still would fall under the purview of the OCCC and give flexibility to the regulator in the future.

## **II. Amending Section 83.4003 to update language on evaluating criminal history of applicants and licensees, to ensure consistency with HB 1342 (2019).**

In general, we strongly support rules on delineation of grounds for denial, suspension, or revocation of licenses, including on the basis of criminal history of applicants who have engaged in fraudulent or criminal behavior. In our comments, we supported explicitly adding a pattern of wrongfully using the criminal justice system to collect on civil debt as a ground for revoking a CAB license under 7 TAC §83.4003(f), which we believe was authorized by state under a violation of the contract provisions in TFC §393.201(c)(3), which states:

*...a person may not threaten or pursue criminal charges against a consumer related to a check or other debit authorization provided by the consumer as security for a transaction in the absence of forgery, fraud, theft, or other criminal conduct[.]*

The regulator's proposed rules do not directly address our requests on point, although they do require documentation of threats of criminal charges or referrals for prosecution (see §83.5004 comments below). Instead, they seek to conform the rules to HB 1342 (2019). That bill was introduced to promote the legislative intent of persons to obtain gainful employment after the person has (1) been convicted of an offense; and (2) discharged the sentence for that offense. Inter alia, that bill, now law, requires the licensing authority to take into account evidence of a person's compliance with any conditions of community supervision, parole, or mandatory supervision after determining whether a conviction directly relates to the duties and responsibilities of a licensed occupation.

We encourage the regulator, in implementing HB 1342, to ensure continued vigilance and robust processes for assessing denials, suspensions, or revocations of CAB licenses based on convictions related to character and fitness, and the duties and responsibilities of the licensed occupation.

## **III. Repealing Section 83.4007 on license reissuance, based on the assumption that the OCCC would issue a paper license**

In general, we believe the rules in 7 TAC, Chapter 83, Subchapter B, are necessary to ensure the payday industry is held to standards that promote a fair marketplace, protect consumers, and ensure that their financial products are not usurious or run afoul of state laws and the Texas Constitution. As a part of this regulation, we believe that the licensing requirements in 7 TAC §§83.4001-83.4007 should be maintained or strengthened. However, we do not object the proposed draft rules to repeal §83.4007, insofar as the OCCC has expressed that they are no longer relevant, per the agency's practice to now reissue licenses through an online system (ALECS).

## **IV. Amending Sections 83.5001 to reflect OCCC practices on reporting violations.**

In general, the coalition supports the enforcement actions that the OCCC may take if a licensee fails to file a complete and accurate quarterly report or annual report, including cumulative sanctions for violations. Reporting of data is crucial to allow the regulator and stakeholders to know the prevalence and impact of deferred presentment transactions and motor vehicle title loans in our state.

Insofar as the proposed amendments merely codify in rule the practice of the OCCC to issue an injunction for the first reporting violation, rather than an administrative penalty of \$100 under §83.5001(e)(2)(A), we do not oppose it. This does not conflict with TFC §393.224: "The consumer credit commissioner, in accordance with rules adopted by the Finance Commission of Texas, *may* [emphasis added] assess an administrative penalty against a credit access business that knowingly and wilfully [sic] violates this subchapter or a rule adopted under this subchapter in the manner provided by Subchapter F, Chapter 14."



Additionally, we do not oppose the amendments to specify revocations of a license when a CAB fails to pay an administrative penalty resulting from a final order, recognizing that administrative penalties are more punitive in nature than an injunction because they impose a financial penalty on the CAB rather than only requiring a licensee to file one or more reports. This is permissible under TFC §393.614(a)(1): “After notice and opportunity for a hearing, the commissioner may suspend or revoke a license if the commissioner finds that: (1) the license holder failed to pay the license fee, an examination fee, an investigation fee, or another charge imposed by the commissioner under this subchapter.” Even if an instance of this is very rare, it is important to provide within rules an explicit mechanism to effectuate the intent of TFC §393.614.

**V. Amending Section 83.5003 to simplify the content of witness and records declarations obtained in examinations, to be consistent with the requirements for declarations under Chapter 132 of the Texas Civil Practices and Remedies Code**

Recognizing that witness declarations during an examination process by the regulator may be the basis for an enforcement action or other litigation, we support the draft amendments to conform the rules to Chapter 132 of the Texas Civil Practices and Remedies Code (TCP RC), which governs unsworn declarations that may be used in lieu of a sworn declaration or affidavit.

TCP RC §132.001 allows for unsworn declarations to be used in lieu of a written sworn declaration, verification, certification, oath, or affidavit required by statute or required by a rule, order, or requirement adopted as provided by law. TCP RC §132.001(c) (1) and (2) requires that an unsworn declaration be “in writing” and “subscribed by the person making the declaration as true under penalty of perjury,” respectively.

The proposed OCCC draft amendments to §83.5003(d)-(e) would specify the content of witness declarations and records declarations that OCCC examiners obtain from CABs during examinations by changing the current language from “statements” to “declarations” and also require an acknowledgement that the “witness is the custodian of records” at the licensee. This change seems reasonable to conform to the TCP RC. However, we ask the regulator to consider adding back in language from the previous paragraph (9) that was stricken that required an explicit “acknowledgement that the statement and the accompanying records may be introduced in an enforcement action in which the licensee is a party,” as well as language in the draft amendments to a statement on the truthfulness of the declaration “under penalty of perjury” to more explicitly conform with the Code provision cited above.

**VI. Amending Section 83.5004 to clarify recordkeeping requirements for threats or referrals for criminal prosecution.**

In general, we support strengthening the recordkeeping requirements in §83.5004. Records retention is important for the regulator during a review or examination process of a CAB lender. Additionally, they ensure that transactions records undertaken by a CAB are properly maintained. The Texas Supreme Court Case *Henry v. Cash Biz, LP*, 551 S.W.3d 111, 117-18 (Tex. 2018) determined that a CAB did not file a criminal complaint when it forward information to a district attorney about checks returned for insufficient funds. Under current rules, such transfer of information to district attorneys would not need to be maintained for recordkeeping purposes.

However, TFC §393.201(c)(3) states that a contract for services with a CAB must “contain a statement that a person may not threaten or pursue criminal charges against a consumer related to a check or other debit authorization provided by the consumer as security for a transaction in the absence of forgery, fraud, theft, or other criminal conduct.” The current rules require the CAB to keep transactions files of any criminal charge or complaint, but they do not require criminal “referrals.” The new rules would include that and

state that criminal charge records include “complete documentation of any criminal prosecution against a consumer,” “any written statement threatening criminal prosecution, a written summary of any oral statement threatening criminal prosecution,” and “any information submitted to law enforcement relating to alleged criminal conduct by a consumer.”

We also support the addition of language in the draft rules in §83.5004 (3) that requires a licensee to “maintain documentation and records of transfers of money between itself and any third-party lender, as described by §83.5005 of this title (relating to Separation Between Credit Access Businesses and Third-Party Lender).”

Additionally, we propose adding record collection regarding the number of declined ACH or debit transactions for accounts where such transactions are authorized by the customer. This information is important to ensure compliance with the recently ratified payment provisions of the Consumer Financial Protection Bureau payday and auto title loan rule, which applies to CAB transaction.<sup>1</sup> This addition will enable the OCC to ensure compliance with those provisions.

We support these recordkeeping changes because they would provide more complete data and ensure that the contract provisions prohibiting threats or criminal charges against a consumer under TFC §393.201(c)(3) are being followed in practice.

## **VII. Adding a new rule Section 83.5005 with standards on separation between a CAB and a third-party lender**

We support the proposed draft amendments clarifying the separation between CABs and third-party lenders requiring separation between the two entities. Texas Appleseed has [amply documented](#) concerns that exist between multiple third-party lenders and multiple CABs. In many cases, third-party lenders with overlapping interests with CABs are the sole lenders to those CABs. We previously submitted comments in support of rules requiring no common ownership, no common directors, no common officers or employees, nor any common ownership, officers, directors or employees with a first-degree family relationship. This separation is the key legal standard upon which the applicability of Texas usury laws to the CSO fees hinges. The CSO Act limits CSO services to those, “with respect to the extension of credit by others” in TFC §393.001(3). In this provision, the phrase “by others” means that a CAB must operate independently from any third-party lender

The proposed rules require independent operation of a CAB licensee and a third-party lender that makes a transaction under TFC Chapter 393. The proposed draft amendments include requiring them to be separate legal entities, separateness in major operational decisions, functional separation, non-delegation requirements, separateness in underwriting criteria, in money lending, not acting as a general agent, not directly or indirectly sharing fees, and transparency in transfer of money to show the amount remitted in connection with a deferred presentment transaction or motor vehicle title loan.

Furthermore, the proposed rules would implement a CAB-lender separation requirement by providing factors that will be considered in an agency examination of whether a licensee operates independently from a third-party lender, including the extent of common ownership, shared officers, directors, or employees, familial relationships, sufficiency of documentation of transfers, and whether a licensee’s performance is consistent with written agreements. Finally, it also includes prohibitions on false or misleading representations in the offer or sale of services.

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<sup>1</sup> 12 CFR 1041.2, 1041.3, 1041.7–1041.9, 1041.12(a), (b) introductory text, (b)(4)–(5), 1041.13. See: [https://files.consumerfinance.gov/f/documents/cfpb\\_ratification\\_payment-provisions\\_2020-07.pdf](https://files.consumerfinance.gov/f/documents/cfpb_ratification_payment-provisions_2020-07.pdf).

While the rules do not go so far as to altogether prohibit common ownership, officers, directors, or employees within a first-degree family relationship, we generally support these draft amendments that enhance the ability of the regulator to ensure the requirements of TFC §393.001 are being met and provide greater clarity with respect to what factors will be analyzed in making that assessment and to document a CAB’s compliance with this requirement.

However, two provisions concern us greatly, and go counter to the letter of TFC §393.001(3). First, in response to stakeholder feedback in the informal pre-comment period, the agency now specifies in paragraph (3) that a CAB may not perform the functions of a third-party lender “except by written agreement” and specifies in paragraph (7) that a CAB may not act as a general agent of a third-party lender but may act as a “special limited agent.” The previous draft that prohibited CABs and third-party lenders from engaging in a joint venture was removed from paragraph (7). If a written agreement could legitimate cooperation that otherwise would be not allowable under statute, that would defeat the purpose of the TFC §393.001(3) that requires independent operation. Additionally, while recognizing that special limited agents are confined in their authority to act in ways that general agent agents are not, that still defeats the purpose of the separation and independent operation requirement if a CAB and a third-party lender could simply invest or designate certain persons to perform particular, limited tasks – tasks that would otherwise violate the separation requirement but for the agency’s allowance in this rule.

Furthermore, while we support the factors outlined in §83.5005(c) to determine sufficiency of independence, we continue to reiterate our suggestions from the informal pre-comments and request that §83.5005 (6) be added to include, “any estate planning or other documentation necessary to determine independent operation and that there is no direct or indirect fee sharing.” This is important because we were concerned by some of the comments raised in the stakeholder session, contemplating scenarios that could, in fact, violate state law—such as a father operating as a third party lender and a son operating as a CAB. It was asserted that in such instances, estate planning would ensure that the son would have no ownership interest in the third-party lender, but these issues are questions of fact. Without access to the details of each arrangement, the OCCC would not have the information necessary to determine its legality. Another situation raised, of two individuals operating separately as CAB and third-party lender owners, but jointly in a totally separate business venture is another question of fact. A scenario could exist where this arrangement could violate state law. The OCCC needs to have access to information necessary to assess compliance if such relationships exist. Otherwise there could easily be a corporate shell game, where new enterprises are created as a way to hide sharing of funds, undermining the letter of the law. Therefore,

Additionally, we support the OCCC’s paragraph (8) that specifies that a licensee may not directly or indirectly share fees for CAB services with the lender, as we believe the use of language such as “direct and indirect” with regard to fee sharing is justified and supported by law. In assessing fee sharing between the CSO and third-party lender, the *Lovick v. Ritemoney* decision notes that the plaintiff did not allege even an “incidental benefit” to the third-party lender, indicating that even an incidental benefit would be compelling evidence to support fee sharing between the parties. However, we are concerned about the second provision under §83.5005 (8) that requires a third-party lender who receives any portion of a fee for CAB services charged by a licensee to promptly remit that to the licensee. This language appears to offer a “get out of jail free card”, allowing parties to share funds until caught and then remedy the situation with no penalty by returning ill-gotten funds. The statute already includes the high standard of violation, requiring it to be willful. This added language is not necessary and substantially weakens the provision.

Finally, TFC §393.622 allows finance commission to adopt rules to allow the Commissioner to review, as part of a periodic examination, any relevant contracts between a CAB and third-party lender organizations with which they contract or arrange extensions of consumer credit. We recommend that the regulator

include as part of its periodic review and examination processes such contracts and performance under them to ensure that they do not, in substance, violate the proposed rules requiring separation and statutory requirement on extension of credit “by others.”

#### **VIII. Updating Section 83.6007 model disclosures based on preliminary 2019 data**

We support the agency’s proposal to update the model disclosures using the latest data available reported by credit access businesses, including information on patterns of repayment based on the 2019 quarterly and annual reports provided by CABs to the OCCC.

In our previously submitted comment, however, we urged the regulator to increase data reporting requirements under 7 TAC §83.5001-5004. TFC §393.627 requires CABs to file quarterly reports with the OCCC identifying loan activity associated with single and installment deferred presentment (payday) loans, and single and installment auto title loans. Currently, data reflect location-specific activity and each location is treated as an individual reporting unit. Given the unclear aggregation and poor transparency of the data, there is no ability for public verification of the data’s accuracy. The most significant gaps are in the accuracy of the refinance data, the absence of default data, and addressing inconsistencies between quarterly and annual reports.

Given the limitations on currently aggregated data, we continue to urge the regulator to work on improving the accuracy and consistency of data to ensure accurate consumer disclosures. Some of these practices include requiring the regulator to update these model disclosures as they receive amended or corrected data and requesting verification from the licensee of any data that is found to be questionable or unreasonable to ensure that the data in aggregate is as complete, accurate, and thorough as possible.

Respectfully Submitted,

Texas Faith Leaders for Fair Lending and Texas Fair Lending Alliance

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August 3, 2020

Mr. Matthew Nance [via email to [rule.comments@occc.texas.gov](mailto:rule.comments@occc.texas.gov)]  
Deputy General Counsel  
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2601 N. Lamar Blvd.  
Austin, TX 78705

**RE: Comments to Proposed Rules Relating to Credit Access Businesses**

Dear Mr. Nance:

The Online Lenders Alliance (“OLA”) welcomes the opportunity to comment on the proposed rules relating to the Credit Access Businesses (“CABs”) relating to Tex. Admin. Code tit. 7, Chapter 83, Subchapter B (the “Proposed Rules”) issued by the Texas Finance Commission.

OLA is the first trade association for companies offering financial services to consumers through an online platform, with a focus on technology and innovation. Our members represent a growing industry of companies offering loans online and companies that provide services to online lenders, including offering credit services to consumers in the State of Texas. OLA members abide by a rigorous set of Best Practices to ensure their customers are fully informed and treated fairly. OLA represents some of the most innovative financial technology companies committed to the highest standards of conduct, offering online consumer loan products and services with transparent terms that are fully compliant with all federal and state laws.

The OLA is concerned that some of the Proposed Rules by the Finance Commission will create confusion and ambiguity for companies who operate under Ch. 393 of the Texas Finance Code. Specifically, the OLA is concerned with the following provisions in the Proposed Rules:

1. § 83.5005 – Separation Between Credit Access Business and Third-Party Lender.
  - A. § 83.5005 proposes rules that are in excess of the relevant statutory provisions. The underlying statute supporting the Commission’s proposed new rule § 83.5005 (“Proposed § 83.5005”) simply states that a CSO is “a person who provides, or represents that the person can or will provide, for the payment of valuable consideration any of the following services with respect to the extension of consumer credit **by others**: (A) improving a consumer's credit history or rating; (B) obtaining an extension of consumer credit for a consumer; or (C) providing advice or assistance to a consumer with regard to Paragraph (A) or (B).” Tex. Fin. Code, §393.001(3) (*emphasis added*).



The Proposed § 83.5005 is purporting to establish rules in order to interpret the words “by others,” as those words appear in Tex. Fin. Code, §393.001(3). Notwithstanding the fact that “by others” is not ambiguous in any way; the Commission’s Proposed § 83.5005 goes well beyond a normal interpretation of the words “by others” by placing significant substantive parameters around the words “by others.” Had the Texas legislature intended for substantive definitions and restrictions to apply to the words “by others,” the Texas legislature would have done so. By placing these substantive interpretations around the meaning of “by others” that are not expressly contemplated by the underlying statutory provisions of the Texas Finance Code, the Commission appears to be legislating rather than rulemaking.

Where the statutory text is clear, it is determinative of legislative intent, unless enforcing the plain meaning of the statute's words would lead to absurd results. *Entergy Gulf States, Inc. v. Summers*, [282 S.W.3d 433](#), 437 (Tex. 2009). In this case, the plain meaning of the words “by others” is clear and not in need of copious substantive regulations to avoid absurd results.

Additionally, it is well established that generally a rule would be considered invalid if the rule (1) contravenes specific statutory language, (2) is counter to the statute's general objectives, or (3) imposes additional burdens, conditions, or restrictions in excess of or inconsistent with the relevant statutory provisions. *Texas Ass’n of Acupuncture and Oriental Med. v. Texas Bd. of Chiropractic Exam’rs*, 524 S.W.3d 734 (Tex. App. – Austin 2017); see also, *Tex. State Bd. of Exam’rs of Marriage & Family Therapists v. Tex. Med. Ass’n*, 511 S.W.3d 28, 35 (Tex. 2017).

At a minimum it appears that Proposed § 83.5005 imposes additional burdens, conditions or restrictions that are in excess of the relevant statutory provisions. For example, the words “separation” and “independent” are not found anywhere within the relevant portions of the underlying statute. These concepts are only found in the relevant case law.

Furthermore, the cited cases in support of portions of Proposed § 83.5005 is common law and not statutory law. If the legislature wanted to codify this case law it could have done so through the legislative process, but the legislature has chosen not to codify the issues discussed in the cited case law. Instead, it appears that by adding § 83.5005 to the proposed rules, the Commission is attempting to codify the cited case law, which the Commission may lack the legal authority to do through its rulemaking authority. As such, we urge the Commission to review Proposed § 83.5005 and consider either deleting Proposed §83.5005 from the proposed rules or revising Proposed § 83.5005 so that it does not impose any additional burdens, conditions or restrictions on credit services organizations that are in excess of the relevant statutory provisions.

- B. Underwriting Criteria. Under § 83.5005(b)(5), a licensee is restricted from selecting the underwriting criteria used in determining whether the third-party lender will make a loan to the consumer. It is common for CABs to provide a third-party lender with a credit enhancement related to a consumer loan facilitated by the CAB. As a part of the process in determining whether a CAB will provide a credit enhancement to the lender, the CAB may underwrite the consumer to analyze the consumer’s ability to repay the loan from the third-party lender.



If the Commission does not delete § 83.5005 from the proposed rules, then we suggest the following revision to § 83.5005(b)(5):

“(5) A licensee is restricted from selecting the underwriting criteria used in determining whether the third-party lender will make a loan to the consumer, but a licensee may apply underwriting criteria selected by the third-party lender. A licensee may select the underwriting criteria used in determining whether the licensee will provide a credit enhancement to the third-party lender, and the licensee’s underwriting criteria may include the underwriting criteria selected by the third-party lender.”

We appreciate the opportunity to provide input on this regulatory initiative. If you have questions or need additional information, please feel free to contact me at [mary@oladc.org](mailto:mary@oladc.org).

Thank you very much for your consideration,

A handwritten signature in blue ink, appearing to read "Mary Jackson", with a long horizontal flourish extending to the right.

Mary Jackson  
President and CEO  
Online Lenders Alliance

**D. OFFICE OF CONSUMER CREDIT COMMISSIONER**

5. Discussion of and Possible Vote to Take Action on the Adoption of Amendments and a New Rule in 7 TAC, Part 5, Chapter 89, Concerning Property Tax Lenders

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

**RECOMMENDED ACTION:** The agency requests that the Finance Commission approve the adoption of amendments and a new rule in 7 TAC Chapter 89.

**RECOMMENDED MOTION:** I move that the Finance Commission approve the adoption of the amendments and a new rule in 7 TAC Chapter 89.



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

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

The commission adopts the amendments to §89.701 without changes to the proposed text as published in the July 3, 2020, issue of the *Texas Register* (45 TexReg 4450).

The commission adopts new §89.805 with changes to the proposed text as published in the July 3, 2020, issue of the *Texas Register* (45 TexReg 4450).

The commission received one written comment on the proposal from the Independent Bankers Association of Texas, Texas Bankers Association, Texas Mortgage Bankers Association, Cornerstone Credit Union League, and Credit Union Coalition of Texas. The comment generally supports proposed new §89.805, but includes suggested changes regarding the effective date of the rule. The commission's response to this comment is included following the discussion of §89.805.

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

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

Amendments to §89.701 would remove language suggesting that the sworn document must be recorded. Under Texas Tax Code, §32.06(a-1), in order to authorize a tax lien transfer from a taxing unit to a property tax lender, a property owner must execute a sworn document containing an authorization for payment of taxes, contact information for the property tax lender, and a description of the property, among other information. Before 2013, Texas Tax Code, §32.065(b)(4) required the sworn document to be recorded in the county's real property records. In 2013, the Texas Legislature passed SB 247, which removed this requirement. Currently, §89.701(a)(2) requires the sworn document to state "that after the document is recorded, it is to be returned to the transferee." Amendments to §89.701(a)(2) and the accompanying figure at §89.701(c) would amend this statement to remove the reference to recording. However, an amendment at §89.701(d)(4) would allow property tax lenders to include this reference if the sworn document will be recorded.

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

Texas Tax Code, §32.06(f) states: "The holder of a loan secured by a transferred tax lien that is delinquent for 90 consecutive days must send a notice of the delinquency by certified mail on or before the 120th day of delinquency or, if the 120th day is not a business day, on the next business day after the 120th day of delinquency, to any holder of a recorded preexisting lien on the property. The holder or mortgage servicer of a recorded preexisting lien on property encumbered by a tax lien transferred as provided by Subsection (b) is entitled, within six months after the date on which the notice is sent, to obtain a release of the transferred tax lien by paying the transferee of the tax lien the amount owed under the contract between the property owner and the transferee."

Texas Tax Code, §32.06(f-1) states in part: "If an obligation secured by a preexisting first lien on the property is delinquent for at least 90 consecutive days and the obligation has been referred to a collection specialist, the mortgage servicer or the holder of the first lien may send a notice of the delinquency to the transferee of a tax lien. The mortgage servicer or the first

lienholder is entitled, within six months after the date on which that notice is sent, to obtain a release of the transferred tax lien by paying the transferee of the tax lien the amount owed under the contract between the property owner and the transferee."

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

In new §89.805, subsection (a) describes the scope of the rule, with citations to the three Texas Tax Code provisions containing rights of other lienholders to pay off tax liens. Subsection (c) explains that if a property tax loan is secured by more than one property, a property tax lender must allow a holder or mortgage servicer to obtain a release for an individual property, by paying the amount owed for the individual property. Subsection (d) describes the method for calculating the amount owed for the individual property. The method is based on the individual property's attributable percentage in relation to the total amount paid to taxing units or governmental entities in connection with the property tax loan. Subsection (d)(4) describes how to calculate post-closing costs that may be included in the payoff amount. Subsection (d)(5) describes the requirement to maintain records, and subsection (d)(6) explains that a property tax lender may charge a lien release fee for each individual property for which a lien is released.

New §89.805 is being adopted in response to complaints that the OCC received from banks, alleging that property

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

As discussed earlier, the commission received one written comment on the proposal from the Independent Bankers Association of Texas, Texas Bankers Association, Texas Mortgage Bankers Association, Cornerstone Credit Union League, and Credit Union Coalition of Texas. The comment generally supports new §89.805, stating that the rule's methodology is a "practical solution" to the "dilemma" of "property tax loan payoffs in which a consensual lender with a lien on a single property was required to pay off liens on multiple properties in order to protect itself and obtain a release." However, the comment includes suggested changes regarding the effective date of §89.805. The comment states: "We strongly believe that this rule should apply to all payoffs requested after the effective date, not to property tax loans entered into after that date. This would impair existing, statutory property rights. . . . The effective date language is in the preamble rather than the rule. Because of that--and because we believe that it flies in the face of existing statutory rights--we urge you to

clarify this point and add it the rule when published."

In response to this comment, the adoption includes new §89.805(b) describing the effective date of the rule. Subsection (b) explains that §89.805 applies only to property tax loans entered on or after December 1, 2020. The commission believes that with this change, the rule will appropriately specify that the rule's calculation methodology applies to future property tax loans, without affecting statutory rights for existing property tax loans.

In informal precomments, stakeholders were mixed in whether they supported or opposed new §89.805. Some stakeholders, including an association of banks and a property tax lender, supported the new rule. Some property tax lenders suggested changes to the new rule, and some opposed the new rule. The adopted text includes several changes responding to suggestions from stakeholders in informal precomments. The stakeholders who suggested changes or opposed the rule focused mainly on seven issues.

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

Second, stakeholders requested confirmation that §89.805 would apply only to property tax loans entered on or after the rule's effective date. One stakeholder requested confirmation of this in the rule text itself. As discussed earlier, in response to these precomments and the official comment, new §89.805(b) specifies that the rule applies

only to property tax loans entered on or after December 1, 2020, and that the rule does not affect any statutory rights for property tax loans entered before that date.

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

Fourth, stakeholders requested that the rule specify that the lien release fee applies to each property. In response to this comment, §89.805(d)(6) specifies that the lien release fee applies to each individual property for which a lien is released.

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

Sixth, a stakeholder requested that refinances (i.e., new property tax loans that satisfy and replace previous property tax loans) be exempted from new §89.805. The commission declines to put this exemption into the rule. Texas Tax Code, §32.06 and

§32.065 do not contain any exemption for refinances. In addition, some of the complaints from banks, as described earlier, resulted from property tax loans that were refinances. Exempting refinances would not achieve the rule's intended purposes.

Seventh, some property tax lenders objected to the rule's core concept that a lienholder can pay off the tax lien for an individual property by paying the amounts associated with the individual property. These property tax lenders argued that the proposed rules would cause property tax lenders to enter fewer loans secured by multiple properties, and would cause property tax lenders to charge higher closing costs. One of these property tax lenders proposed an alternative interpretation of the payoff rights in Texas Tax Code, §§32.06(f), 32.06(f-1), and 32.065(b-1). This property tax lender noted that the Tax Code provisions require the lienholder to pay the "amount owed" for the property tax loan, and interpreted the phrase "amount owed" to mean the full amount owed for all properties under the property tax loan. Under this alternative interpretation, if a property tax loan is secured by properties A, B, and C, and another lienholder holds a lien on property A, the lienholder would have to pay off the full amount owed for properties A, B, and C in order to obtain a release of the tax lien for property A. This property tax lender argued that a lienholder is not entitled to a "partial release."

The commission and the OCCC disagree with this alternative interpretation, because it would frustrate the statutory rights of lienholders and servicers to pay off transferred tax liens. The payoff described in the rule is not a "partial release," but is a full release of the tax lien for an individual property. Texas Tax Code, §§32.06(f),

32.06(f-1), and 32.065(b-1) each refer to the "property" for which the lienholder holds the lien, and refer to the "amount owed" that must be paid in order to exercise the right to pay off the tax lien. The commission and the OCCC understand the phrase "amount owed" to refer to the amount owed for the individual property, and the new rule provides a way to calculate that amount. This reading appropriately enables lienholders to exercise the rights described by the Tax Code, so that they can consolidate amounts owed for the property, reduce costs associated with servicing obligations on the property, and potentially avoid foreclosure.

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

The rule changes are adopted under Texas Finance Code, §351.007, which

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

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

*Subchapter G. Transfer of Tax Lien*

*§89.701. Sworn Document Authorizing Transfer of Tax Lien*

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

(1) (No change.)

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

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

(b) (No change.)

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

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

(d) Permissible changes.

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

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

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

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

#### *Subchapter H. Payoff Statements*

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

(a) Purpose and scope. Under Texas Tax Code, §§32.06(f), 32.06(f-1), and §32.065(b-1), in certain situations where a property tax loan or preexisting mortgage is delinquent or in default, a holder or mortgage servicer of a

preexisting lien on a property is entitled to obtain a release of a transferred tax lien, by paying the amount owed under the contract between the property owner and the property tax lender. This section describes how to calculate the amount owed for an individual property where a property tax loan is secured by more than one property. This section applies only to:

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

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

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

(b) Effective date. This section applies only to a property tax loan entered on or after December 1, 2020. This section does not affect any statutory rights of a lienholder for a property tax loan entered before December 1, 2020.

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

(d) Amount owed for individual property.

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

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

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

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

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

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

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

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

(ii) in the case of a property tax loan that is a refinance, any amount paid

for the individual property, as shown on the pre-closing disclosure statement.

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

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

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

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

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

(5) Recordkeeping. A property tax lender must maintain documentation showing how it calculated the attributable

percentage and the amount owed for the individual property. This documentation must be maintained in the property tax loan transaction file for the period described by §89.207 of this title (relating to Files and Records Required).

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

### **Certification**

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

Issued in Austin, Texas on October 16, 2020.

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



**Figure: 7 TAC §89.701(c)**

STATE OF TEXAS  
COUNTY OF

§  
§  
§  
§

Return to:  
(Insert TRANSFEREE'S NAME)  
(Insert TRANSFEREE'S  
STREET ADDRESS)

**SWORN DOCUMENT AUTHORIZING TRANSFER OF TAX LIEN**

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

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

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

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

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

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

*(Insert NOTARY'S SEAL)*

SUBSCRIBED AND SWORN TO BEFORE ME on this, the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas



July 7, 2020

Matthew Nance  
Deputy General Counsel  
Office of Consumer Credit Commissioner 2601 North Lamar Boulevard  
Austin, Texas 78705

Re: Proposed 7 TAC Chapter 89

Dear Mr. Nance:

The Independent Bankers Association of Texas, Texas Bankers Association, Texas Mortgage Bankers Association, Cornerstone Credit Union League, and Credit Union Coalition of Texas would appreciate the opportunity to provide pre-comments to proposed amendments to 7 TAC 89.805 as it relates to payoff for property tax loans that are secured by multiple properties. Collectively, these trade associations represent virtually all the mortgage lenders who have consensual liens on property affected by this rule.

First, we would like to express our appreciation to you and the other drafters of this proposed rule. As is noted in the preamble, the banking industry raised its concerns with property tax loan payoffs in which a consensual lender with a lien on a single property was required to pay off liens on multiple properties in order to protect itself and obtain a release. The methodology provided by 7 TAC 89.805 is a practical solution to this dilemma. Thank you for proposing this.

However, we are puzzled by the effective date language. We strongly believe that this rule should apply to all payoffs requested after the effective date, not to property tax loans entered into after that date. This would impair existing, statutory property rights. The preamble to the rule discusses the right of prior consensual lienholders to obtain a release of the property tax lien under certain circumstances. Further, on page 4 of the preamble the OCCC notes that a suggested alternative would “frustrate the statutory rights of lienholders and servicers to pay off transferred tax liens.” Those statutory rights currently exist as collateral with property tax liens encumbering them. Thus, the remedy created by this proposed rule properly acknowledges such rights and allocates repayment amounts.

The effective date language is in the preamble rather than the rule. Because of that—and because we believe that it flies in the face of existing statutory rights—we urge you to clarify this point and add it the rule when published.

Thank you for your consideration.

Sincerely,

Cornerstone Credit Union League  
Credit Union Coalition of Texas  
Independent Bankers Association of Texas  
Texas Bankers Association  
Texas Mortgage Bankers Association

**D. OFFICE OF CONSUMER CREDIT COMMISSIONER**

6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 5, Chapter 84, Concerning Motor Vehicle Installment Sales, Resulting from Rule Review.

**PURPOSE:** The purpose of the amendments to 7 TAC Chapter 84 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 84 for publication in the *Texas Register*.

**RECOMMENDED MOTION:** I move that the Finance Commission approve for publication and comment the amendments in 7 TAC Chapter 84.

*Title 7. Banking and Securities*  
*Part 5. Office of Consumer Credit Commissioner*  
*Chapter 84. Motor Vehicle Installment Sales*

The Finance Commission of Texas (commission) proposes amendments to §84.201 (relating to Time Price Differential), §84.604 (relating to Transfer of License; New License Application on Transfer of Ownership), §84.611 (relating to Fees), §84.613 (relating to Denial, Suspension, or Revocation Based on Criminal History), §84.707 (relating to Files and Records Required (Retail Sellers Assigning Retail Installment Sales Contracts)), §84.708 (relating to Files and Records Required (Retail Sellers Collecting Installments on Retail Installment Sales Contracts)), §84.709 (relating to Files and Records Required (Holders Taking Assignment of Retail Installment Sales Contracts)), §84.802 (relating to Non-Standard Contract Filing Procedures), §84.803 (relating to Relationship with Federal Law), and §84.809 (relating to Permissible Changes) in 7 TAC, Chapter 84, Subchapter B, concerning Motor Vehicle Installment Sales.

The rules in 7 TAC Chapter 84 govern motor vehicle sales finance. In general, the purpose of the proposed rule changes to 7 TAC Chapter 84 is to implement changes resulting from the commission's review of the subchapter under Texas Government Code, §2001.039. The OCCC distributed an advance notice of the rule review, and received one informal comment in response. Notice of the review of 7 TAC Chapter 84 was published in July 31, 2020, issue of the *Texas Register* (45 TexReg 5365). The commission received no comments in response to the published notice.

The OCCC distributed an early precomment draft of proposed changes to

interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC received two informal precomments on the rule text draft. The OCCC appreciates the thoughtful input provided by stakeholders.

A proposed amendment to §84.201 would correct a typographical error in figure 7 TAC §84.201(d)(2)(B)(iii), which shows maximum effective rates of time price differential. Another proposed amendment at §84.201(d)(3)(E)(iii) would update a reference to the title of 7 TAC §84.809, as discussed later in this proposal.

Proposed amendments to §84.604 would clarify the responsibility of a transferor and transferee, in the event of a license transfer or a new application on transfer of ownership. The proposed language is based on the similar rule for regulated lenders at 7 TAC §83.303 (relating to Transfer of License; New License Application on Transfer of Ownership). A proposed amendment to subsections (e)(5)(B) would remove the phrase "joint and several" in referring to the responsibility accepted by the transferor and transferee, in order to use the more straightforward term "responsibility." As amended, the three paragraphs in §84.604(h) would apply to three distinct periods of time: (1) the period before the transferee begins conducting business (when the transferor is responsible), (2) the period after the transferee begins conducting business and before final approval of the application (when the transferor and transferee are each responsible), and (3) the period after final approval (when the transferee is responsible). The proposed amendments are intended to

ensure that licensees are aware of their responsibilities.

A proposed amendment to §84.611(e)(3) would correct a typographical error in a citation that is intended to refer to Texas Finance Code, §348.514. The current rule refers incorrectly to Texas Finance Code, §348.415, a section that does not exist.

Proposed amendments to §84.613 relate to the OCCC's review of the criminal history of a motor vehicle sales finance applicant or licensee. The OCCC is authorized to review criminal history of applicants and licensees under Texas Occupations Code, Chapter 53; Texas Finance Code, §14.109; and Texas Government Code, §411.095. The proposed amendments to §84.613 would ensure consistency with HB 1342, which the Texas Legislature enacted in 2019. HB 1342 included the following changes in Texas Occupations Code, Chapter 53: (1) the bill repealed a provision that generally allowed denial, suspension, or revocation for any offense occurring in the five years preceding the application, (2) the bill added provisions requiring an agency to consider correlation between elements of a crime and the duties and responsibilities of the licensed occupation, as well as compliance with conditions of community supervision, parole, or mandatory supervision, and (3) the bill removed previous language specifying who could provide a letter of recommendation on behalf of an applicant. Proposed amendments throughout subsections (c) and (f) of §84.613 would implement these statutory changes from HB 1342. Other proposed amendments to §84.613 include technical corrections, clarifying changes, and updates to citations.

Proposed amendments to §84.707 deal with recordkeeping requirements for retail sellers that assign retail installment contracts.

Proposed amendments to subsections (b) and (d)(2)(Q) would explain that a retail seller must maintain any conditional delivery agreement signed by a buyer or provided to the buyer. These amendments are intended to ensure that retail sellers maintain documentation to show their compliance with Texas Finance Code, Chapter 348, including Texas Finance Code, §348.013, which governs conditional delivery agreements. Other proposed changes to §84.707 would correct lettering and internal references.

Proposed amendments to §84.708 deal with recordkeeping requirements for retail sellers that collect installments on retail installment contracts. Proposed amendments to subsections (b) and (e)(2)(V) would explain that a retail seller must maintain any conditional delivery agreement signed by a buyer or provided to the buyer. These amendments are intended to ensure that retail sellers maintain documentation to show their compliance with Texas Finance Code, Chapter 348, including Texas Finance Code, §348.013, which governs conditional delivery agreements. A proposed amendment to subsection (e)(7) would explain that the register or report of debt cancellation agreements must include an indication of whether the agreement was satisfied or denied. This amendment is intended to ensure that retail sellers maintain documentation to show their compliance with Texas Finance Code, Chapter 354, governing debt cancellation agreements, and to enable OCCC examiners to review compliance. Other proposed changes to §84.708 would correct lettering and internal references.

Proposed amendments to §84.709 deal with recordkeeping requirements for holders that take assignment of retail installment contracts. A proposed amendment to subsection (e)(7) would explain that the

register or report of debt cancellation agreements must include an indication of whether the agreement was satisfied or denied. This amendment is intended to ensure that holders maintain documentation to show their compliance with Texas Finance Code, Chapter 354, governing debt cancellation agreements, and to enable OCCC examiners to review compliance. Other proposed changes to §84.709 would correct lettering and internal references.

Proposed amendments to §84.802 provide clarity on the process for submitting a non-standard plain language contract for a motor vehicle retail installment transaction. These amendments specify that the contract must be submitted in accordance with the OCCC's instructions, and that PDF submissions must be text-searchable, must meet a size requirement, and may not be locked in a manner that prohibits comparison of different version of the contracts. These amendments are intended to enable OCCC staff to efficiently and effectively review non-standard plain language contract submissions. If a PDF submission is not text-searchable (e.g., scanned paper contract or image-only PDF), or if the PDF has security restrictions that prohibit comparison, this prevents OCCC staff from efficiently and effectively reviewing contracts.

Proposed amendments to §84.803 deal with the relationship between federal law and the rules governing submission of plain language contracts. The proposed amendments would remove current subsection (c), which provides that the term "time price differential" may be substituted for the term "finance charge" as used in the rules' model disclosures, except in those instances where use of that term would be prohibited by controlling federal law, regulation, or interpretation. In an informal

comment to the advance rule review notice, one stakeholder commented that this provision was confusing, based on how the terms "time price differential" and "finance charge" are used elsewhere in Chapter 84. After reviewing the informal comment and the relevant provisions, the commission believes that current subsection (c) is unnecessary, and may lead to confusion by stakeholders because it does not describe any circumstances under which federal Regulation Z, 12 C.F.R. parts 226 and 1026, would allow a creditor to replace the term "finance charge." Proposed amendments to current subsections (d) and (e) would clarify a licensee's authority to replace "principal balance" with "amount financed" in certain situations, and to replace "contract rate" with "annual percentage rate" in certain situations.

A proposed amendment to §84.809 would add the phrase "Model Contract" to the rule title. This rule includes a model plain language contract as an attached figure. The amendment to the rule title will help readers locate the model contract.

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

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of the changes will be that the commission's rules will be more easily understood by licensees required to comply with the rules, will be consistent with legislation recently passed by the legislature, will better protect consumers, will better enable licensees to comply with Chapter 348

of the Texas Finance Code, and will ensure that licensees maintain records to show compliance with Chapter 348.

The OCCC does not anticipate economic costs to persons who are required to comply with the rule changes 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, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses, micro-businesses, and rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rule changes do not require an increase or decrease in fees paid to the OCCC. The proposal would not create a new regulation. The proposal would expand current §84.707, §84.708, and §84.709 to specify records that licensees must maintain relating to conditional delivery agreements and debt cancellation agreements. The proposal would limit current §84.613 by amending grounds on which the OCCC may deny, suspend, or revoke a license on grounds

of criminal history, and would limit current §84.803 to remove a reference to replacing the term "finance charge." The proposal would not repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rule's applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

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

The rule changes are proposed under Texas Finance Code, §348.513, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 348, and under Texas Finance Code §353.513, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 353. The rule changes to §84.802, §84.803, and §84.809 are proposed under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of plain language contracts for retail installment transactions under Chapter 348. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 341, 348, and 353.

*Subchapter B. Retail Installment Contract*

*§84.201. Time Price Differential*

(a) - (c) (No change.)

(d) Method of calculation.

(1) (No change.)

(2) Scheduled installment earnings method. The scheduled installment earnings method can be used for both regular and irregular payment contracts.

(A) (No change.)

(B) Maximum annualized daily rate.

(i) - (ii) (No change.)

(iii) Effective rate. The maximum annualized daily rate cannot exceed the effective rate contained in Figure: 7 TAC §84.201(d)(2)(B)(iii) for the equivalent monthly period and appropriate add-on rate per \$100 determined by the model year designated by the manufacturer of the vehicle. The effective rates contained in Figure: 7 TAC §84.201(d)(2)(B)(iii) are the current maximum annualized daily rate authorized by Texas Finance Code, §348.104 or the alternative simple time price differential rate authorized by Texas Finance Code, §348.105. The alternative simple time price differential rate authorized by Texas Finance Code, §348.105 displayed as an example in Figure: 7 TAC §84.201(d)(2)(B)(iii) is 18% per annum. If the alternative simple time price differential

rate is adjusted according to Texas Finance Code, Chapter 303 and is greater than effective rate contained in Figure: 7 TAC §84.201(d)(2)(B)(iii), the published rate will be highest effective rate.

Figure: 7 TAC §84.201(d)(2)(B)(iii) {See attached amendments.}

(iv) (No change.)

(C) - (D) (No change.)

(3) True daily earnings method. The true daily earnings method can be used for both regular and irregular payment contracts.

(A) - (D) (No change.)

(i) - (ii) (No change.)

(iii) Use of model provision sufficient. While the retail installment contract is not required to use the model provision, use of the model provision found in 7 TAC §84.808(21) (relating to Model Clauses), or a variation of it as allowed under that section or 7 TAC §84.809 (relating to Model Contract; Permissible Changes), is deemed to sufficiently prescribe the method of application of payment.

*Subchapter F. Licensing*

*§84.604. Transfer of License; New License Application on Transfer of Ownership*

(a) - (c) (No change.)

(d) Timing. No later than 30 days after the event of a transfer of ownership, the transferee must file a complete license transfer application or new license application on transfer of ownership in accordance with subsection (e) of this



section. A transferee may file an application before this date.

(e) Application requirements.

(1) - (4) (No change.)

(5) Request for permission to operate. The application may include a request for permission to operate. The request must be in writing and signed by the transferor and transferee. The request must include all of the following:

(A) a statement by the transferor granting authority to the transferee to operate under the transferor's license while final approval of the application is pending;

(B) an acknowledgement that the transferor and transferee each accept [~~joint and several~~] responsibility to any consumer and to the OCCC for any acts performed under the license while the permission to operate is in effect; and

(C) if the application is a new license application on transfer of ownership, an acknowledgement that the transferor will immediately surrender or inactivate its license if the OCCC approves the application.

(f) Permission to operate. If the application described by subsection (e) of this section includes a request for permission to operate and all required information, and the transferee has paid all fees required for the application, then the OCCC may issue a permission to operate to the transferee. A request for permission to operate may be denied even if the application contains all of the required information. The denial of a request for permission to operate does not create a right to a hearing. If the OCCC grants a permission to operate, the transferor must

cease operating under the authority of the license. Two companies may not simultaneously operate under a single license. A permission to operate terminates if the OCCC denies an application described by subsection (e) of this section.

(g) Transferee's authority to engage in business. If a transferee has filed a complete application including a request for permission to operate as described by subsection (e) of this section, by the deadline described by subsection (d) of this section, then the transferee may engage in business under Texas Finance Code, Chapter 348 or 353, as applicable. However, the transferee must immediately cease doing business if the OCCC denies the request for permission to operate or denies the application. If the OCCC denies the application, then the transferee has a right to a hearing on the denial, as provided by §84.608(d) of this title (relating to Processing of Application).

(h) Responsibility.

(1) Responsibility of transferor. Before the transferee begins performing motor vehicle sales finance activity under a license [~~OCCC's final approval of an application described by subsection (e)~~], the transferor is responsible to any consumer and to the OCCC for all motor vehicle sales finance activity performed under the license.

(2) Responsibility of transferor and transferee. If a transferee begins performing motor vehicle sales finance activity under a license before the OCCC's final approval of an application described by subsection (e) of this section, then the transferor and transferee are each responsible to any consumer and to the OCCC for activity performed under the license during this period.

**PROPOSED AMENDMENTS**

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~~(3) [(2)] Responsibility of transferee. After the OCCC's final approval of an application described by subsection (e) of this section [a transferee begins performing motor vehicle sales finance activity under a license], the transferee is responsible to any consumer and to the OCCC for all motor vehicle sales finance activity performed under the license. The [In addition, a] transferee is responsible for any transactions that it purchases from the transferor. In addition, if the transferee receives a license transfer, then the transferee's responsibility includes all activity performed under the license before the license transfer.~~

~~[(3) Joint and several responsibility. If a transferee begins performing motor vehicle sales finance activity under a license before the OCCC's final approval of an application described by subsection (e) (including activity performed under a permission to operate), then the transferor and transferee are jointly and severally responsible to any consumer and to the OCCC. This responsibility applies to any acts performed under the license after the transferee begins performing motor vehicle sales finance activity and before the OCCC's final approval of the license transfer.]~~

*§84.611. Fees*

(a) New licenses.

(1) Investigation fees. A \$200 nonrefundable investigation fee is assessed each time an application for a new license is filed.

(2) Registered office fees. The fee for each registered office is \$25.

(b) License transfers. An applicant must pay a nonrefundable investigation fee of \$200 for the transfer of a license.

(c) Fingerprint processing. An applicant must pay a fee to a party designated by the Texas Department of Public Safety for processing fingerprints. The Texas Department of Public Safety and the designated party determine the amount of the fee and whether it is refundable.

(d) License amendments.

(1) License amendment fees. A fee of \$25 must be paid each time a licensee amends a license by inactivating a license, activating an inactive license, changing the assumed name of the licensee, changing the organizational form or proportionate ownership, providing notification of a new parent entity, or relocating a licensed location.

(2) Registered office amendment fees. The fee for amending or relocating a registered office is \$10.

(e) Annual renewal and assessment fees.

(1) An annual assessment fee is required for each licensee consisting of:

(A) a licensed location fee not to exceed \$460;

(B) a registered office fee not to exceed \$430 per location; and

(C) if necessary, a variable fee based upon the annual dollar volume of retail installment sales contracts originated, acquired, or serviced during the preceding calendar year, as stated in the annual renewal

statement described by paragraph (3) of this subsection.

(2) The maximum annual assessment for each active license will be no more than \$1,200 excluding the registered office fees.

(3) A licensee must file an annual renewal statement in connection with the license renewal. The licensee must provide the statement in a format prescribed by the OCCC and in accordance with the OCCC's instructions. The statement must include the annual dollar volume and number of retail installment sales contracts originated, acquired, or serviced during the preceding calendar year, calculated in accordance with the OCCC's instructions, and any other information required under the OCCC's instructions. The annual renewal statement is collected under the OCCC's examination authority, as provided by Texas Finance Code, §348.514 [~~§348.415~~]. A licensee's annual renewal statement relates to the examination process and is confidential under Texas Finance Code, §14.2015(a) and §348.514(d). However, the OCCC may publish aggregated reports based on the annual renewal statements that it collects.

(f) Licensed location or registered office duplicate certificates sent by mail. The fee for a duplicate certificate sent by mail is \$10.

(g) Costs of hearings. The commissioner may assess the costs of an administrative appeal pursuant to Texas Finance Code, §14.207 for a hearing afforded under §84.608 of this title (relating to Processing of Application), including the cost of the administrative law judge, the court reporter, and agency staff representing the OCCC at a hearing.

*§84.613. Denial, Suspension, or Revocation Based on Criminal History*

(a) Criminal history record information. After an applicant submits a complete license application, including all required fingerprints, and pays the fees required by §84.611 of this title (relating to Fees), the OCCC will investigate the applicant and its principal parties. The OCCC will obtain criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant's fingerprint submission. The OCCC will continue to receive information on new criminal activity reported after the fingerprints have been initially processed.

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

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

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

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

has otherwise maintained a record of good conduct; and

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

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been convicted of an offense that directly relates to the duties and responsibilities of a licensee under Texas Finance Code, Chapter 348 or 353, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Originating, acquiring, or servicing retail installment sales contracts under Texas Finance Code, Chapter 348 or 353, involves or may involve making representations to consumers regarding the terms of the contract, receiving money from consumers, remitting money to third parties, maintaining accounts, repossessing property without a breach of the peace, maintaining goods that have been repossessed, and collecting due amounts in a legal manner. Consequently, the following crimes are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation:

(A) theft;

(B) assault;

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

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

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

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

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

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

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

(A) the nature and seriousness of the crime;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Crimes related to character and fitness. The OCCC may deny a license application if the OCCC does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §348.504(a) and §353.504(a). In conducting its review of character and fitness, the OCCC will consider the criminal history of the applicant and its principal parties. If the applicant or a principal party has been convicted of an offense described by subsections (c)(1) or (f)(1) ~~[(f)(2)]~~ of this section, this reflects negatively on an applicant's character and fitness. The OCCC may deny a license application based on other criminal history of the applicant or its principal parties if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. The OCCC will, however, consider the factors identified in subsection (c)(2) - (3) of this section in its review of character and fitness.

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

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

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

(1) ~~[(2)]~~ a conviction for an offense listed in Texas Code of Criminal Procedure, art. ~~42A.054~~ ~~[42.12, §3g]~~, or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(2) - (3) ~~[§53.021(a)(3) - (4)]~~;

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

(3) ~~[(4)]~~ a fact or condition that would have been grounds for denying the license application, and that either did not exist at the time of the application or the OCCC was unaware of at the time of application, as provided by Texas Finance Code, §348.508(3) and §353.508(3); and

(4) ~~[(5)]~~ any other information warranting the belief that the business will not be operated lawfully and fairly, as provided by Texas Finance Code, §§348.504(a), 348.508, 353.504(a), and 353.508.

*Subchapter G. Examinations*

*§84.707. Files and Records Required (Retail Sellers Assigning Retail Installment Sales Contracts)*

(a) (No change.)

(b) Records required for each retail installment sales transaction. Each licensee must maintain records with respect to the licensee's compliance with Texas Finance Code, Chapter 348 for each motor vehicle retail installment sales contract made, acquired, serviced, or held under Chapter 348 and make those records available for examination. This requirement includes any conditional delivery agreement or retail installment sales contract signed by a retail buyer for a vehicle that has been delivered, including contracts that are subsequently voided or canceled after a seller regains possession and ownership of the vehicle.

(c) (No change.)

(d) Records required.

(1) (No change.)

(2) Retail installment sales transaction file. A licensee must maintain a paper or imaged copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must include copies of

the following records or documents, unless otherwise specified:

(A) for all retail installment sales transactions:

(i) the retail installment sales contract signed by the retail buyer and the retail seller as required by Texas Finance Code, §348.101;

(ii) if prepared by the retail seller, the purchase or buyer's order reflecting a written computation of the cash price of the vehicle and itemized charges, a description of the motor vehicle being purchased, and a description of each motor vehicle being traded in;

(iii) the credit application and any other written or recorded information used in evaluating the application;

(iv) the Texas Department of Motor Vehicles' Title Application Receipt (Form VTR-500-RTS), Tax Assessor's Tax Collector's Receipt for Title Application/Registration/Motor Vehicle Tax handwritten receipt (Form 31-RTS), or similar document evidencing the disbursement of the sales tax, and fees for license, title, and registration of the vehicle;

(v) copies of other agreements or disclosures signed by the retail buyer applicable to the retail installment sales transaction; and

(vi) any records applicable to the retail installment transaction outlined by subparagraphs (B) - (Q) [~~(B) - (L)~~] of this paragraph.

(B) - (P) (No change.)

(Q) any conditional delivery agreement signed by the retail buyer or provided to the retail buyer.

(3) - (7) (No change.)

*§84.708. Files and Records Required (Retail Sellers Collecting Installments on Retail Installment Sales Contracts)*

(a) (No change.)

(b) Records required for each retail installment sales transaction. Each licensee must maintain records with respect to the licensee's compliance with Texas Finance Code, Chapter 348 for each motor vehicle retail installment sales contract made, acquired, serviced, or held under Chapter 348 and make those records available for examination. This requirement includes any conditional delivery agreement or retail installment sales contract signed by a retail buyer for a vehicle that has been delivered, including contracts that are subsequently voided or canceled after a seller regains possession and ownership of the vehicle.

(c) - (d) (No change.)

(e) Records required.

(1) (No change.)

(2) Retail installment sales transaction file. A licensee must maintain a paper or imaged copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's

compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) for all retail installment sales transactions:

(i) the retail installment sales contract signed by the retail buyer and the retail seller as required by Texas Finance Code, §348.101;

(ii) if prepared by the retail seller, the purchase or buyer's order reflecting a written computation of the cash price of the vehicle and itemized charges, a description of the motor vehicle being purchased, and a description of each motor vehicle being traded in;

(iii) the credit application and any other written or recorded information used in evaluating the application;

(iv) the original certificate of title to the vehicle, a certified copy of the negotiable certificate of title, or a copy of the front and back of either the original or certified copy of the title;

(v) the Texas Department of Motor Vehicles' Title Application Receipt (Form VTR-500-RTS), Tax Assessor's Tax Collector's Receipt for Title Application/Registration/Motor Vehicle Tax

handwritten receipt (Form 31-RTS), or similar document evidencing the disbursement of the sales tax, and fees for license, title, and registration of the vehicle;

(vi) copies of other agreements or disclosures signed by the retail buyer applicable to the retail installment sales transaction; and

(vii) any records applicable to the retail installment transaction outlined by subparagraphs (B) - (V) [~~(B) - (Q)~~] of this paragraph.

(B) - (U) (No change.)

(V) any conditional delivery agreement signed by the retail buyer or provided to the retail buyer.

(3) - (6) (No change.)

(7) Debt cancellation agreement for total loss or theft loss records. Each licensee who cancels entire balances or who cancels only partial balances under debt cancellation agreements must maintain a register or be able to generate a report, paper or electronic, that reflects agreements that were either satisfied or denied. This register or report must show the name of the retail buyer, the account number, an indication of whether the agreement was satisfied or denied (e.g., "paid," "denied"), and the date of satisfaction or denial.

(8) - (10) (No change.)

(f) (No change.)

*§84.709. Files and Records Required (Holders Taking Assignment of Retail Installment Sales Contracts)*



(a) - (d) (No change.)

(e) Records required.

(1) (No change.)

(2) Retail installment sales transaction file. A licensee must maintain a paper or imaged copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) for all retail installment sales transactions:

(i) the retail installment sales contract signed by the retail buyer and the retail seller as required by Texas Finance Code, §348.101;

(ii) the credit application and any other written or recorded information used in evaluating the application;

(iii) the original certificate of title to the vehicle, a certified copy of the

negotiable certificate of title, or a copy of the front of either the original or certified copy of the title; and

(iv) any records applicable to the retail installment transaction outlined by subparagraphs (B) - (J) [~~(B) - (I)~~] of this paragraph.

(B) - (J) (No change.)

(3) - (6) (No change.)

(7) Debt cancellation agreement for total loss or theft loss records. Each licensee who cancels entire balances or who cancels only partial balances under debt cancellation agreements must maintain a register or be able to generate a report, paper or electronic, that reflects agreements that were either satisfied or denied. This register or report must show the name of the retail buyer, the account number, an indication of whether the agreement was satisfied or denied (e.g., "paid," "denied"), and the date of satisfaction or denial.

(8) - (9) (No change.)

(f) (No change.)

*Subchapter H. Retail Installment Sales Contract Provisions*

*§84.802. Non-Standard Contract Filing Procedures*

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

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

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

(1) Microsoft Word format. One copy must be submitted in a Microsoft Word format with the document having either a .doc or .docx extension. The Flesch-Kincaid Grade Level score of the contract must be based on the Microsoft Word readability statistics function for the Microsoft Word version of the contract.

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

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

(4) Maximum Flesch-Kincaid score. The maximum Flesch-Kincaid Grade Level score for a Chapter 348 contact filing is grade 11.

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

(e) Commercial vehicle. Pursuant to Texas Finance Code, §341.502(a), a motor vehicle retail installment sales contract involving a commercial vehicle does not have to be submitted in accordance with this section.

*§84.803. Relationship with Federal Law*

(a) Applicability of federal law. The disclosure requirements of the Truth in Lending Act, 15 U.S.C. §§1601 - 1667f, and its implementing regulation, Regulation Z, 12 C.F.R. Parts 226 and 1026, and specifically 12 C.F.R. §226.18(f) and §1026.18(f), regarding variable rate disclosures, apply according to their terms to some retail installment transactions subject to this chapter.

(b) Inconsistency. In the event of any inconsistency or conflict between the disclosure or notice requirements in these provisions and any current or future federal law, regulation, or interpretation, the requirements of the federal law, regulation,

or interpretation will control to the extent of the inconsistency.

~~[(e) The term "time price differential" may be substituted for the term "finance charge" as used in the model disclosures provided by this subchapter, except in those instances where use of that term would be prohibited by controlling federal law, regulation, or interpretation.]~~

(c) Amount financed. In the model clauses provided by this subchapter, a licensee may replace the term "principal balance" with "amount financed" ~~[(d) The term "amount financed" may be substituted for "principal balance"]~~ whenever the amount financed, computed in accordance with federal Regulation Z, is the same as the principal balance computed in accordance with the Texas Finance Code.

(d) Annual percentage rate. In the model clauses provided by this subchapter, a licensee may replace the term "contract rate" with "annual percentage rate" ~~[(e) The term "annual percentage rate" may be substituted for "annual rate" or "contract rate"]~~ whenever the annual percentage rate, computed in accordance with federal Regulation Z, is the same as the contract ~~[annual]~~ rate computed in accordance with the Texas Finance Code.

§84.809. Model Contract; Permissible Changes

(a) - (d) (No change.)

### **Certification**

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

Issued in Austin, Texas on October 16, 2020.

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

Amended Figure: 7 TAC §84.201(d)(2)(B)(iii)

TERM - # OF MONTHS	ADD-ON RATES PER \$100.00 PER ANNUM			
	\$7.50	\$10.00	\$12.50	\$15.00
1	18.0000%	18.0000%	18.0000%	18.0000%
2	18.0000%	18.0000%	18.0000%	19.9452%
3	18.0000%	18.0000%	18.6541%	22.3624%
4	18.0000%	18.0000%	19.8374%	23.7670%
5	18.0000%	18.0000%	20.5996%	24.6655%
6	18.0000%	18.0000%	21.1215%	25.2754%
7	18.0000%	18.0000%	21.4935%	25.7054%
8	18.0000%	18.0000%	21.7659%	26.0160%
9	18.0000%	18.0000%	21.9688%	26.2435%
10	18.0000%	18.0000%	22.1215%	26.4109%
11	18.0000%	18.0000%	22.2367%	26.5338%
12	18.0000%	18.0000%	22.3232%	26.6226%
13	18.0000%	18.0338%	22.3875%	26.6849%
14	18.0000%	18.0812%	22.4340%	26.7265%
15	18.0000%	18.1171%	22.4664%	26.7513%
16	18.0000%	18.1435%	22.4872%	26.7626%
17	18.0000%	18.1621%	22.4985%	26.7628%
18	18.0000%	18.1743%	22.5020%	26.7540%
19	18.0000%	18.1809%	22.4988%	26.7375%
20	18.0000%	18.1830%	22.4901%	26.7148%
21	18.0000%	18.1811%	22.4768%	26.6867%
22	18.0000%	18.1758%	22.4594%	26.6542%
23	18.0000%	18.1677%	22.4387%	26.6178%
24	18.0000%	18.1570%	22.4150%	26.5783%
25	18.0000%	18.1442%	22.3889%	26.5360%
26	18.0000%	18.1294%	22.3605%	26.4915%
27	18.0000%	18.1130%	22.3304%	26.4449%
28	18.0000%	18.0952%	22.2986%	26.3968%
29	18.0000%	18.0761%	22.2654%	26.3472%
30	18.0000%	18.0559%	22.2311%	26.2964%
31	18.0000%	18.0347%	22.1957%	26.2446%
32	18.0000%	18.0126%	22.1594%	26.1920%
33	18.0000%	18.0000%	22.1224%	26.1387%
34	18.0000%	18.0000%	22.0847%	26.0848%
35	18.0000%	18.0000%	22.0464%	26.0305%
36	18.0000%	18.0000%	22.0077%	25.9759%
37	18.0000%	18.0000%	21.9686%	25.9210%
38	18.0000%	18.0000%	21.9292%	25.8659%
39	18.0000%	18.0000%	21.8895%	25.8106%
40	18.0000%	18.0000%	21.8496%	25.7553%
41	18.0000%	18.0000%	21.8095%	25.7000%
42	18.0000%	18.0000%	21.7693%	25.6447%
43	18.0000%	18.0000%	21.7290%	25.5894%
44	18.0000%	18.0000%	21.6886%	25.5343%
45	18.0000%	18.0000%	21.6483%	25.4793%
46	18.0000%	18.0000%	21.6079%	25.4245%
47	18.0000%	18.0000%	21.5676% [21.5679%]	25.3699%
48	18.0000%	18.0000%	21.5273%	25.3155%
49	18.0000%	18.0000%	21.4871%	25.2613%
50	18.0000%	18.0000%	21.4469%	25.2074%

TERM - # OF MONTHS	ADD-ON RATES PER \$100.00 PER ANNUM			
	\$7.50	\$10.00	\$12.50	\$15.00
51	18.0000%	18.0000%	21.4069%	25.1537%
52	18.0000%	18.0000%	21.3670%	25.1003%
53	18.0000%	18.0000%	21.3272%	25.0473%
54	18.0000%	18.0000%	21.2876%	24.9945%
55	18.0000%	18.0000%	21.2481%	24.9420%
56	18.0000%	18.0000%	21.2088%	24.8898%
57	18.0000%	18.0000%	21.1696%	24.8380%
58	18.0000%	18.0000%	21.1307%	24.7865%
59	18.0000%	18.0000%	21.0919%	24.7354%
60	18.0000%	18.0000%	21.0533%	24.6845%
61	18.0000%	18.0000%	21.0149%	24.6341%
62	18.0000%	18.0000%	20.9767%	24.5839%
63	18.0000%	18.0000%	20.9387%	24.5342%
64	18.0000%	18.0000%	20.9009%	24.4847%
65	18.0000%	18.0000%	20.8633%	24.4357%
66	18.0000%	18.0000%	20.8259%	24.3870%
67	18.0000%	18.0000%	20.7888%	24.3386%
68	18.0000%	18.0000%	20.7518%	24.2906%
69	18.0000%	18.0000%	20.7151%	24.2430%
70	18.0000%	18.0000%	20.6786%	24.1957%
71	18.0000%	18.0000%	20.6423%	24.1488%
72	18.0000%	18.0000%	20.6063%	24.1022%
73	18.0000%	18.0000%	20.5705%	24.0559%
74	18.0000%	18.0000%	20.5349%	24.0101%
75	18.0000%	18.0000%	20.4995%	23.9645%
76	18.0000%	18.0000%	20.4643%	23.9194%
77	18.0000%	18.0000%	20.4294%	23.8745%
78	18.0000%	18.0000%	20.3947%	23.8300%
79	18.0000%	18.0000%	20.3602%	23.7859%
80	18.0000%	18.0000%	20.3259%	23.7421%
81	18.0000%	18.0000%	20.2919%	23.6986%
82	18.0000%	18.0000%	20.2581%	23.6555%
83	18.0000%	18.0000%	20.2245%	23.6127%
84	18.0000%	18.0000%	20.1911%	23.5702%

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