

A.

Finance Commission

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FINANCE COMMISSION OF TEXAS

MEETING DATEDecember 11, 2020

MEETING LOCATIONVia Webinar

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

FUTURE MEETING DATESFebruary 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, December 11, 2020

9:00 a.m.

or Upon Adjournment of the Audit Committee Meeting

Via Webinar

Due to Governor Greg Abbott's March 13, 2020 proclamation of a state of disaster affecting all counties in Texas due to the Coronavirus (COVID-19) and the Governor's March 16, 2020 suspension of certain provisions of the Texas Open Meetings Act, the December 11, 2020 meeting of the Finance Commission of Texas will be held via webinar/telephonic conference call, as authorized under Texas Government Code section 551.125.

Members of the public who would like to participate in this meeting will need to register at www.fc.texas.gov. An electronic copy of the agenda is now available at www.fc.texas.gov, and a copy of the meeting materials will be available on December 3, 2020 at www.fc.texas.gov. To access the recording visit www.fc.texas.gov after December 11, 2020.

Section A.3 will take up agenda items A1, B2, C2 – C4 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 October 16, 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' Fiscal Year 2021 Internal Auditor's Risk Assessment and Audit Plan

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

6. Status Report on Implementation of Sunset Recommendations

A. Compliance with Sunset Legislation

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

B. Sunset Recommendation 2.4 – Direct the Finance Commission to Analyze and Report on the Implementation of their New Fund Balance Policy Adopted in February 2018

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

B. OFFICE OF CONSUMER CREDIT COMMISSIONER

1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities
2. *Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 5, Chapter 84, Concerning Motor Vehicle Installment Sales, Resulting from Rule Review*
3. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

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

C. TEXAS DEPARTMENT OF BANKING

1. Industry Status and Departmental Operations: a) Current Issues Affecting Department's Regulated Entities; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Non-Depository Supervision Division Activities; e) Administrative, Staffing and Fiscal Division Activities; f) Strategic Support Division Activities including Consumer Complaint Data; g) Legal Division Activities including Enforcement Activity and Gift Reporting; and h) Legislative Activities
2. *Discussion of and Possible Vote to Take Action on the Reappointment of Wallace Jones as the Industry Representative to the Guaranty Fund Advisory Council for the Period January 1, 2021 to December 31, 2022*
3. *Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §19.51, Concerning Other Real Estate Owned by Trust Companies*
4. *Discussion of and Possible Vote to Take Action on the Adoption of Amendment to 7 TAC §3.37, Concerning Calculation of Annual Assessment for Banks*
5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §33.13, Concerning Refund of MSB License Application Fees
6. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

D. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

1. Industry Status and Departmental Operations: a) 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 the Adoption of Amendments to 7 TAC §79.1 and §79.2, Concerning Residential Mortgage Loan Servicers, Resulting from Rule Review*
3. *Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 4, 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 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisitions, and Conversion, Chapter 71, Change of Control, Chapter 73, Subsidiary Corporations, Chapter 75, Applications, Chapter 76, Miscellaneous, and Chapter 77, Loans, Investments, Savings and Deposits, Resulting from Rule Review*
4. Discussion of and Possible Vote to Take Action on the Adoption 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
5. Discussion of and Possible Vote to Take Action on the Adoption 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
6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments, New Rules, and Repeals in 7 TAC, Part 4, Chapter 75, Concerning Applications, Resulting from Rule Review
7. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments, and Repeals in 7 TAC, Part 4, Chapter 76, Concerning Miscellaneous, Resulting from Rule Review
8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §77.10, Concerning Non-Real Estate Commercial Loans, Resulting from Rule Review
9. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

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

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

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**MINUTES OF THE
FINANCE COMMISSION MEETING
Friday, October 16, 2020**

The Finance Commission of Texas convened at 9:01 a.m. on October 16, 2020 with the following members present:

Finance Commission Members in Attendance:

George “Cliff” McCauley, Vice Chairman
Hector Cerna
Molly Curl
Larry Long

Will Lucas
Sharon McCormick
Vince Puente
Laura Warren

Vice Chairman Cliff McCauley made a motion to excuse Chairman Phillip Holt, Bob Borochoff and Robin Armstrong from the Finance Commission meeting held on October 16, 2020. There were no objections and the motion passed unanimously. (:44 on audio file).

Vice Chairman Cliff McCauley announced there was a quorum with eight members present. (1:59 on audio file).

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
A. Finance Commission Matters		
1. Review and Approval of the Minutes of the August 21, 2020 Finance Commission Meeting	On Consent Agenda – Item A1 This item Approved on the Consent Agenda.	n/a
2. General Public Comment	No Action Required.	2:09 start of discussion
3. Consent Agenda – Items A1, and D2 – D3	Will Lucas made a motion to Approve Consent Agenda items A1, and D2 – D3. Laura Warren seconded and the motion passed.	2:57 start of discussion 3:48 Vote
4. Finance Commission Operations	No Action Required.	4:17 start of discussion
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	Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies’ 2020 Fourth Quarter Investment Officer Reports passed.	9:54 start of discussion 10:01 Vote
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	Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies’ 2020 Fourth Quarter Financial Statements passed.	10:33 start of discussion 10:41 Vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<p>6. Status Report on Implementation of Sunset Management Recommendations</p> <p>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.”</p> <p>B. Other Sunset Management Recommendations</p> <ol style="list-style-type: none"> 1. Finance Commission of Texas 2. Texas Department of Banking 3. Department of Savings and Mortgage Lending 4. Office of Consumer Credit Commissioner 	No Action Required.	11:10 start of discussion
<p>7. Discussion of the Condition of the Texas State Banking System Report</p>	No Action Required.	22:34 start of discussion
<p>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</p>	<p>Laura Warren made a motion to Approve 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. Sharon McCormick seconded and the motion passed.</p>	<p>24:18 start of discussion</p> <p>24:44 Vote</p>
<p>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</p>	<p>Larry Long made a motion to Approve 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. Molly Curl seconded and the motion passed.</p>	<p>25:20 start of discussion</p> <p>28:33 Vote</p>
<p>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</p>	No Discussion.	n/a
<p>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</p>	No Discussion.	n/a

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
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	No Discussion.	n/a
13. Discussion of and Consultation on Security Audit, Possible Issue Related to Confidential or Sensitive Information, Security Breach Audit and Assessment, or Security Assessments or Deployment Related to Information Resources Technology as Authorized by Tex. Govt. Code Secs. 551.076 and 551.089	No Discussion.	n/a
B. Texas Department of Banking		
1. Industry Status and Departmental Operations: a) Current Issues Affecting Department's Regulated Entities; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Non-Depository Supervision Division Activities; e) Administrative, Staffing and Fiscal Division Activities; f) Strategic Support Division Activities including Consumer Complaint Data; g) Legal Division Activities including Enforcement Activity and Gift Reporting; and h) Legislative Activities	No Action Required.	29:29 start of discussion
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	Laura Warren made a motion to Approve the Proposal and Publication for Comment of Amendments to 7 TAC §19.51, Concerning Other Real Estate Owned by Trust Companies. Sharon McCormick seconded and the motion passed.	53:21 start of discussion 54:55 Vote
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	Molly Curl made a motion to Approve the Proposal and Publication for Comment of Amendment to 7 TAC §3.37, Concerning Calculation of Annual Assessment for Banks. Will Lucas seconded and the motion passed.	55:40 start of discussion 57:07 Vote
4. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Discussion.	n/a

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
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	No Action Required.	57:51 start of discussion
2. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Discussion.	n/a
D. Office of Consumer Credit Commissioner		
1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities	No Action Required.	1:23:57 start of discussion
2. On Consent	On Consent Agenda – Item D2 This item Approved on the Consent Agenda.	n/a
3. On Consent	On Consent Agenda – Item D3 This item Approved on the Consent Agenda.	n/a
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	Testimony was provided by Rachana Chhin on behalf of Texas Catholic Conference of Bishops and Ann Baddour on behalf of Texas Appleseed. Laura Warren made a motion to Approve 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. Sharon McCormick seconded and the motion passed.	1:50:55 start of discussion 2:09:38 Vote
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	Larry Long made a motion to Approve the Adoption of Amendments and a New Rule in 7 TAC, Part 5, Chapter 89, Concerning Property Tax Lenders. Laura Warren seconded and the motion passed.	2:10:48 start of discussion 2:12:59 Vote
6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 5, Chapter 84, Concerning Motor Vehicle Installment Sales, 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 84, Concerning Motor Vehicle Installment Sales, Resulting from Rule Review. Molly Curl seconded and the motion passed.	2:14:37 start of discussion 2:18:23 Vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
7. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation <i>Ernest Polk v. Texas Office of Consumer Credit Commissioner; Cause No. 2018-04375, in the 281st Judicial District Court of Harris County, Texas</i>	No Discussion.	n/a

Vice Chairman Cliff McCauley called for an Executive Session at 11:21 a.m. (2:19:11 on the audio file). The open meeting resumed at 11:53 a.m. (2:20:30 on the audio file).

There being no further business, Vice Chairman Cliff McCauley adjourned the meeting of the Finance Commission at 11:54 a.m. (2:21:17 on the audio file).

Cliff McCauley, Vice Chairman
Finance Commission of Texas

Charles G. Cooper, Executive Director
Finance Commission of Texas

Brenda Medina, Executive Assistant
Finance Commission of Texas

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Finance Commission of Texas

Consent Agenda

December 11, 2020

A. Finance Commission Matters

1. Review and Approval of the Minutes of the October 16, 2020 Finance Commission Meeting

B. Office of Consumer Credit Commissioner

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

C. Texas Department of Banking

2. Discussion of and Possible Vote to Take Action on the Reappointment of Wallace Jones as the Industry Representative to the Guaranty Fund Advisory Council for the Period January 1, 2021 to December 31, 2022
3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §19.51, Concerning Other Real Estate Owned by Trust Companies
4. Discussion of and Possible Vote to Take Action on the Adoption of Amendment to 7 TAC §3.37, Concerning Calculation of Annual Assessment for Banks

D. Department of Savings and Mortgage Lending

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §79.1 and §79.2, Concerning Residential Mortgage Loan Servicers, Resulting from Rule Review
3. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 4, 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 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisitions, and Conversion, Chapter 71, Change of Control, Chapter 73, Subsidiary Corporations, Chapter 75, Applications, Chapter 76, Miscellaneous, and Chapter 77, Loans, Investments, Savings and Deposits, Resulting from Rule Review

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Implementation Chart
Office of Consumer Credit Commissioner (OCCC)

[H.B. 1442 by Paddie \(Hall\)](#)

[Staff Report with Final Results](#)

Page 3, Line 19	1.3	Continue OCCC for 12 years, until 2031.	No Action Necessary
Page 28, Line 27; Page 31, Line 25 to Page 32, Line 1; Page 32, Line 4 to Page 33, Line 23; Page 34, Line 6 to Page 35, Line 23; Page 37, Line 14; Page 45, Line 3; Page 45, Line 10 to Page 46, Line 6	3.1	Specify that a pawnbroker is responsible for the acts of a pawnbroker's officers, directors, employees, and agents in the conduct of the pawnshop business. Allow pawnshop owners to opt to hire licensed pawn employees, but does not require all pawnshop employees be licensed. Clarify existing pawnshop licenses continue in effect and can be renewed if the pawnbroker opts to continue pawnshop employee licensure.	Complete The OCCC implemented this recommendation by updating terminology and provisions throughout the rules in 7 Texas Administrative Code Chapter 85 to specify that pawnshop employee licenses are optional. Documentation: 1. Link to rules, 7 T.A.C. Chapter 85: https://texreg.sos.state.tx.us/public/readtac\$xt.ViewTAC?tac_view=5&ti=7&pt=5&ch=85&sch=A
Page 29, Line 19; Page 34, Lines 1–2; Page 36, Line 17; Page 37, Line 14; Page 45, Line 2	5.1	Remove subjective licensure provisions for pawnshops and pawnshop employees.	Complete The OCCC no longer evaluates an applicant's moral character in approving an optional pawnshop employee license. To implement this recommendation references to "good moral character" were removed in Texas Finance Code Section 371.052 and throughout the rules in 7 Texas Administrative Code Chapter 85. Documentation: 1. Link to Statute, Texas Finance Code Section 371.052: https://statutes.capitol.texas.gov/Docs/FI/htm/FI.371.htm#371.052 2. Link to rules, 7 T.A.C. Chapter 85: https://texreg.sos.state.tx.us/public/readtac\$xt.ViewTAC?tac_view=5&ti=7&pt=5&ch=85&sch=A

Implementation Chart
Office of Consumer Credit Commissioner (OCCC)

[H.B. 1442 by Paddie \(Hall\)](#)

[Staff Report with Final Results](#)

Bill Reference	Recommendation Number	Bill Provision	Implementation Status
Page 5, Lines 13–27 and throughout the bill	5.2	Authorize OCCC to provide biennial license renewals for registrants and licensees.	<p>Complete</p> <p>The OCCC is now authorized under Texas Finance Code 14.112 to issue licenses for a period not to exceed two years. The OCCC conducted stakeholder meetings where feedback on biennial license renewals was solicited. After reviewing stakeholder feedback, the Finance Commission adopted rules setting an annual term for each license and registration type. These rules are codified at 7 Texas Administrative Code Sections 2.201, 83.403, 83.4002, 84.617, 85.104, 85.1007, 86.103, 87.107, 88.201, and 89.403. The OCCC continues to evaluate options for license terms. The authority granted by the statute is merely discretionary and is not mandatory.</p> <p>Documentation:</p> <ol style="list-style-type: none"> 1. Link to Texas Finance Code Section 14.112: https://statutes.capitol.texas.gov/Docs/FI/htm/FI.14.htm#14.112 2. Link to rules, T.A.C. Title 7: https://texreg.sos.state.tx.us/public/readtac\$ext.ViewTAC?tac_view=2&ti=7

Implementation Chart
Office of Consumer Credit Commissioner (OCCC)

[H.B. 1442 by Paddie \(Hall\)](#)

[Staff Report with Final Results](#)

Bill Reference	Recommendation Number	Bill Provision	Implementation Status
Page 2, Line 14 to Page 3, Line 13	5.3	Update the agency's complaint processing provisions to meet the Sunset Commission's standard across-the-board requirements.	<p>Complete</p> <p>The OCCC adopted 7 Texas Administrative Code Section 82.4 to detail all phases of the agency's complaint investigation and resolution process.</p> <p>Documentation:</p> <ol style="list-style-type: none"> 1. Link to 7 T.A.C. Section 82.4: https://texreg.sos.state.tx.us/public/readtac\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=7&pt=5&ch=82&rl=4 2. Complaints and Inquiries Processing Procedures
Page 8, Lines 2–9	5.4	Allow OCCC to disclose complaint information with consent of the person who provided the information, and authorize OCCC to disclose summary complaint resolution information to a complainant.	<p>Complete</p> <p>The OCCC instituted a verbal disclosure for oral complaints and revised the written complaint form and online complaint module entry fields to include authorization to disclose complaint information.</p> <p>Documentation:</p> <ol style="list-style-type: none"> 1. Complaints and Inquiries Processing Procedures 2. Link to Online Complaint Module Entry Field: https://alecs.occ.occ.texas.gov/Complaint/LogLicenseComplaint# 3. Link to Complaint Form: https://occ.occ.texas.gov/sites/default/files/uploads/pub/2019-05_consumercomplaintform.pdf

Implementation Chart
Office of Consumer Credit Commissioner (OCCC)

[H.B. 1442 by Paddie \(Hall\)](#)

[Staff Report with Final Results](#)

Bill Reference	Recommendation Number	Bill Provision	Implementation Status
Page 8, Lines 12–20	5.5	Authorize OCCC to open an investigation immediately upon reasonable suspicion of a violation.	<p>Complete</p> <p>The OCCC immediately assigns an issue to an investigation if the OCCC has a written complaint or reasonable cause to believe that the person has violated a statute enforced by the OCCC. The investigation referral and assignment is processed by the Agency's workflow management system. References to waiting for a response from the entity under investigation were removed.</p> <p>Documentation:</p> <ol style="list-style-type: none"> 1. Link to Texas Finance Code Section 14.202: https://statutes.capitol.texas.gov/Docs/FI/htm/FI.14.htm#14.202
Page 6, Line 5 to Page 7, Line 20	5.7	Give OCCC standard authority to take action against crafted precious metal dealers violating state regulations.	<p>Complete</p> <p>Texas Finance Code Section 14.201(5) was updated to include the investigation and enforcement authority for crafted precious metal dealers.</p> <p>Documentation:</p> <ol style="list-style-type: none"> 1. Link to Texas Finance Code Section 14.201(5): https://statutes.capitol.texas.gov/Docs/FI/htm/FI.14.htm#14.201

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Bill Reference	Recommendation Number	Bill Provision	Implementation Status
Page 13, Lines 14–17; Page 15, Line 26 to Page 16, Line 1; Page 17, Lines 14–16; Page 18, Lines 6–8; Page 17, Lines 8–10; Page 18, Lines 6–8; Page 19, Line 26 to Page 20, Line 2; Page 23, Line 15 to Page 24, Line 2; Page 25, Lines 20–22; Page 27, Lines 6–9; Page 31, Lines 19–22; Page 39, Lines 1–4; Page 40, Lines 24–26; Page 43, Lines 3–4; Page 43, Line 27 to Page 44, Line 8	5.8	Authorize OCCC to deny renewal applications for noncompliant licensees and registrants when appropriate.	<p>Complete</p> <p>Various sections throughout the Finance Code were added or amended to authorize the OCCC to refuse renewals when appropriate. These amendments were codified at Texas Finance Code Sections 342.1555, 345.351(d), 347.451(e), 347.4515(e), 348.5065, 351.1535, 352.003(f), 353.5065, 371.0645, 371.107, 393.6115, and 394.204(j-1), and Texas Occupations Code Section 1956.0612(h).</p> <p>Documentation:</p> <ol style="list-style-type: none"> Link to Texas Statutes: https://statutes.capitol.texas.gov/
Page 9, Lines 16–27	5.9	Standardize OCCC’s burden of proof for ordering restitution in all regulatory programs.	<p>Complete</p> <p>Texas Finance Code Section 14.251(b) was amended to state that the OCCC “may order the following businesses or other persons to pay restitution to an identifiable person.” The phrase “injured by the violation” was removed from this provision.</p> <p>Documentation:</p> <ol style="list-style-type: none"> Link to Texas Finance Code Section 14.251(b): https://statutes.capitol.texas.gov/Docs/FI/htm/FI.14.htm#14.251

Implementation Chart
Office of Consumer Credit Commissioner (OCCC)

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[Staff Report with Final Results](#)

Bill Reference	Recommendation Number	Bill Provision	Implementation Status
Page 10, Lines 1–3	5.10	Authorize OCCC to order crafted precious metal dealers to pay consumer restitution.	<p>Complete</p> <p>Texas Finance Code Section 14.251(b)(3) was added to specify that the OCCC may order “a person who violates or causes a violation of Subchapter B, Chapter 1956, Occupations Code, or a rule adopted under that subchapter” to pay restitution.</p> <p>Documentation:</p> <ol style="list-style-type: none"> Link to Texas Finance Code Section 14.251(b): https://statutes.capitol.texas.gov/Docs/FL/htm/FL.14.htm#14.251
Page 4, Line 9 to Page 5, Line 4	7.2	Apply the Sunset across-the-board recommendation regarding alternative dispute resolution to the finance agencies.	<p>Complete</p> <p>The OCCC, in conjunction with the Department of Banking and Savings and Mortgage Lending, implemented this recommendation by adopting 7 Texas Administrative Code Section 5.103.</p> <p>Documentation:</p> <ol style="list-style-type: none"> Link to Rules, 7 T.A.C. Section 5.103 https://texreg.sos.state.tx.us/public/readtac\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=7&pt=1&ch=5&rl=103

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[Staff Report with Final Results](#)

Bill Reference	Recommendation Number	Bill Provision	Implementation Status
Page 5, Lines 5–12	7.3	Authorize OCCC to establish advisory committees by rule.	<p>Complete</p> <p>Texas Finance Code Section 14.111 was added to authorize the commissioner to appoint advisory committees.</p> <p>Documentation:</p> <ol style="list-style-type: none"> Link to Texas Finance Code Section 14.111: https://statutes.capitol.texas.gov/Docs/FI/htm/FI.14.htm#14.111
Page 1, Line 9 to Page 2, Line 5	Added by the Legislature	Streamline requirements that OCCC report on financial services offered to agricultural and small businesses, removes requirement that OCCC track locations of lenders, develop models for providing lower cost alternatives to borrowers.	<p>Complete</p> <p>The OCCC publishes a Report on Availability, Quality, and Pricing of Certain Financial Services and Consumer Loan Products on a yearly basis. The most recent report was published on December 1, 2019.</p> <p>Documentation:</p> <ol style="list-style-type: none"> Link to December 1, 2019 Report https://occc.texas.gov/sites/default/files/uploads/reports/2019_study_consumer_loan_products.pdf
Page 2, Lines 9–10	Added by the Legislature	Streamline hiring most qualified candidates.	<p>Complete</p> <p>Texas Finance Code 14.059(b) has removed the requirement for the OCCC to post non-entry level positions for at least 10 days before public posting and allows for concurrent postings.</p> <p>Documentation</p> <ol style="list-style-type: none"> Link to Texas Finance Code Section 14.059(b): https://statutes.capitol.texas.gov/Docs/FI/htm/FI.14.htm#14.059

Implementation Chart
Office of Consumer Credit Commissioner (OCCC)

[H.B. 1442 by Paddie \(Hall\)](#)

[Staff Report with Final Results](#)

Bill Reference	Recommendation Number	Bill Provision	Implementation Status
Page 10, Lines 25–26; Page 11, Line 26 to Page 12, Line 3; Page 14, Lines 13–24; Page 16, Lines 6–14; Page 18, Lines 11–13; Page 21, Lines 14–16; Page 22, Lines 11–15; Page 26, Lines 9–11; Page 29, Lines 11–12; Page 38, Lines 3–4	Added by the Legislature	Clarifies that OCCC has regulatory authority over all regulated loans made to persons located in Texas at the time the loan is made.	Complete Texas Finance Code Chapters 342, 345, 346, 347, 348, 351, 352, 353, 371, 393, and 394 were updated to include provisions that the OCCC has authority over transactions made to persons located in Texas at the time the transaction is made. Documentation: 1. Link to Texas Statutes: https://statutes.capitol.texas.gov/
Page 44, Lines 15–25	Added by the Legislature	Allows flexibility in crafted precious metal dealer reporting format.	Complete Texas Occupations Code Section 1956.063(c-1) was added to explain that a dealer may submit the list described by Section 1956.062 to satisfy the reporting requirement under Section 1956.063. Documentation: 1. Link to Texas Occupations Code Section 1956.063: https://statutes.capitol.texas.gov/Docs/OC/htm/OC.1956.htm#1956.063

Implementation Chart
Finance Commission, Department of Banking, and Department of Savings and Mortgage Lending

[S.B. 614 by Nichols \(Lambert\)](#)

[Staff Report with Final Results](#)

Bill Reference	Recommendation Number	Bill Provision	Implementation Status
Page 1, Line 14	1.2	Continue the Finance Commission for 12 years, until 2031.	<p><i>Completed – <u>S.B. 614</u></i></p> <p><i>Documentation:</i></p> <ul style="list-style-type: none"> • <u>Texas Finance Code §11.108</u> – reflects commission would be abolished September 1, 2031.
Page 7, Lines 9–10	1.1	Continue the Department of Savings and Mortgage Lending (SML) for 12 years, until 2031.	<p><i>No action required by Department of Banking. See Department of Savings and Mortgage Lending response.</i></p>
Page 4, Line 15	1.2	Continue the Department of Banking (DOB) for 12 years, until 2031.	<p><i>Completed – <u>S.B. 614</u></i></p> <p><i>Documentation:</i></p> <ul style="list-style-type: none"> • <u>Texas Finance Code §12.109</u> – reflects office would be abolished September 1, 2031.
Page 21, Line 9 to Page 25, Line 2; Page 26, Lines 10–11; Page 27, Line 9 to Page 28, Line 1	3.2	Discontinue registration of cemetery brokers.	<p><i>Completed.</i></p> <p><i>The Department of Banking recommended the adoption of the repeal of 7 TAC, Part 2, Chapter 24, §§24.1 – 24.4, relating to cemetery brokers. The recommendation was presented at the June 21, 2019 Finance Commission of Texas meeting and adopted at the August 16, 2019 meeting. The final/adopted repeal was effective September 8, 2019. [44 TexReg 4707-4708]</i></p> <p><i>In August 2019, registered cemetery brokers were notified in writing that they are no longer required to register with the Department.</i></p> <p><i>Documentation:</i></p> <ul style="list-style-type: none"> • <u>Finance Commission Meeting packet page 11</u> – August 16, 2019 Meeting • <u>Finance Commission Audio</u> – August 16, 2019 Meeting.

Implementation Chart
Finance Commission, Department of Banking, and Department of Savings and Mortgage Lending

S.B. 614 by Nichols (Lambert)

Staff Report with Final Results

Bill Reference	Recommendation Number	Bill Provision	Implementation Status
Page 17, Lines 15–16; Page 18, Line 4 to Page 20, Line 26; Page 26, Lines 5–9; Page 27, Line 9 to Page 28, Line 1	3.3	Discontinue registration of private child support enforcement agencies.	<p><i>Completed.</i></p> <p><i>The Department of Banking recommended the adoption of the repeal of 7 TAC, Chapter 31, Part 2, §§31.1 –31.115, relating to private child support enforcement agencies. The recommendation was presented at the August 16, 2019 Finance Commission of Texas meeting and adopted at the October 18, 2019 meeting. The final/adopted repeal was effective November 7, 2019. [44 TexReg 6520-6522]</i></p> <p><i>In August 2019, registered private child support enforcement agencies (PCSEA) were notified in writing that they are no longer required to register with the Department.</i></p> <p><i>Any surety bond held by the Department was returned to the appropriate registered PCSEAs as well.</i></p> <p><i>Documentation:</i></p> <ul style="list-style-type: none"> • <i>Finance Commission Meeting packet page 6 – October 18, 2019 Meeting</i> • <i>Finance Commission Audio – October 18, 2019 Meeting.</i>

Implementation Chart
Finance Commission, Department of Banking, and Department of Savings and Mortgage Lending

[S.B. 614 by Nichols \(Lambert\)](#)



[Staff Report with Final Results](#)

Bill Reference	Recommendation Number	Bill Provision	Implementation Status
Page 11, Lines 16–23; Page 25, Lines 5–23; Page 27, Lines 1–8	4.1	Authorize DOB to establish license terms in rule for death care service licensees.	<p><i>Completed.</i></p> <p><i>The Department of Banking drafted amendments to 7 TAC, Part 2, Chapter 25, §§25.13, 25.23 and 25.24 relating to assessments on Prepaid Funeral Contract Sellers and 7 TAC, Part 2, Chapter 26, §26.1 relating to assessments on Perpetual Care Cemeteries. The amended rules were presented at the June 21, 2019 Finance Commission of Texas meeting. The rules were adopted at the August 16, 2019 meeting and became effective on September 8, 2019. [44 TexReg 4708-4709]</i></p> <p><i>Documentation:</i></p> <ul style="list-style-type: none"> • <u>Finance Commission Meeting packet page 10 and 11 – August 16, 2019 Meeting</u> • <u>Finance Commission Audio – August 16, 2019 Meeting.</u> • <u>7 TAC, Part 2, Chapter 25, §§25.13, 25.23 and 25.24</u> • <u>7 TAC, Part 2, Chapter 26, §26.1</u>
Page 3, Line 2 to Page 4, Line 9.	4.2	Update DOB’s complaint processing provisions to meet the Sunset Commission’s standard across-the-board requirements.	<p><i>Completed.</i></p> <p><i>The Department of Banking drafted new rules pertaining to procedures for handling complaints to align with the Sunset Advisory Commission’s Licensing and Regulation Model guidelines. The new rules, 7 TAC, Part 2, Chapter 11, §§11.10, 11.11 and 11.12, were presented at the June 21, 2019 Finance Commission of Texas meeting, adopted at the August 16, 2019 meeting, and became effective on September 8, 2019. [44 TexReg 4706-4707]</i></p> <p><i>Documentation:</i></p> <ul style="list-style-type: none"> • <u>Finance Commission Meeting packet page 10 – August 16, 2019 Meeting</u> • <u>7 TAC, Part 2, Chapter 11, §§11.10, 11.11 and 11.12</u>

Implementation Chart
Finance Commission, Department of Banking, and Department of Savings and Mortgage Lending

[S.B. 614 by Nichols \(Lambert\)](#)

[Staff Report with Final Results](#)

Bill Reference	Recommendation Number	Bill Provision	Implementation Status
Page 2, Lines 24–25; Page 8, Line 26 to Page 11, Line 13; Page 12, Line 22 to Page 13, Line 4; Page 14, Line 3 to Page 16, Line 27; Page 26, Line 4	4.3	Update outdated appeals provisions to align with the Administrative Procedure Act.	<p><i>Completed.</i></p> <p><i>Accomplished via statutory change through deletion of all references to appeals to the Texas Finance Commission.</i></p> <p><i>Documentation</i></p> <ul style="list-style-type: none"> • <u>S.B. 614</u>
Page 12, Line 7–8	6.1	Remove unnecessary, subjective licensure provisions for residential mortgage loan originators.	<i>No action required by Department of Banking. See Department of Savings and Mortgage Lending response.</i>
Page 5, Line 24 to Page 7, Line 2; Page 26, Line 3	6.2	Update SML’s complaint processing provisions to meet the Sunset Commission’s standard across-the-board requirements.	<i>No action required by Department of Banking. See Department of Savings and Mortgage Lending response.</i>
Page 1, Line 17 to Page 2, Line 5 Page 26, Lines 13–27	7.1	<p>Update the standard across-the-board requirement related to Finance Commission member training. Require each Finance Commission member to attest to receiving and annually reviewing the training manual.</p> <p>Allow the commissioners of the finance agencies to collaborate and jointly create one training manual that includes the information applicable to each agency.</p> <p>Sets December 1, 2019 deadline for acknowledgment of receipt and review of manual.</p>	<p><i>Completed.</i></p> <p><i>A consolidated Training Manual was presented to the members of the Finance Commission of Texas at the October 18, 2019 meeting.</i></p> <p><i>Members provided their acknowledgement of review and receipt before December 1, 2019.</i></p> <p><i>Documentation:</i></p> <div style="text-align: center;">  Acknowledgements </div> <div style="text-align: center;">  FC Training Manual 2019.pdf </div>

Implementation Chart
Finance Commission, Department of Banking, and Department of Savings and Mortgage Lending

S.B. 614 by Nichols (Lambert)

Staff Report with Final Results

Bill Reference	Recommendation Number	Bill Provision	Implementation Status
Page 4, Line 18 to Page 5, Line 13; Page 7, Line 13 to Page 8, Line 9	7.2	Apply the Sunset across-the-board recommendation regarding alternative dispute resolution to the finance agencies.	<p><i>7 TAC Ch. 5 – Alternate Dispute Resolution Policy and Negotiated Rulemaking, and amendments to 7 TAC Ch. 9 concerning Procedures for Contested Case Hearings, Appeals, and Rulemakings were presented to Finance Commission of Texas at the October 18, 2019 meeting, adopted at the December 13, 2019 meeting, and became effective January 2, 2020. [44 TexReg 8230-8232]</i></p> <p><i>Documentation:</i></p> <ul style="list-style-type: none"> • <i>Finance Commission Meeting packet page 5 – December 13, 2019</i> • <i>Finance Commission Meeting audio – December 13, 2019</i>
Page 5, Line 14–21 Page 8, Lines 10–20	7.3	Authorize the finance agencies to establish advisory committees in rule as needed.	<p><i>Completed.</i></p> <p><i>Accomplished via statutory change.</i></p> <p><i>Documentation:</i></p> <ul style="list-style-type: none"> • <i>Texas Finance Code §11.113 – Advisory Committees</i>

Implementation Chart
Finance Commission, Department of Banking, and Department of Savings and Mortgage Lending

[S.B. 614 by Nichols \(Lambert\)](#)

[Staff Report with Final Results](#)

Bill Reference	Recommendation Number	Bill Provision	Implementation Status
Page 1, Line 14	1.2	Continue the Finance Commission for 12 years, until 2031.	No action necessary.
Page 7, Lines 9–10	1.1	Continue the Department of Savings and Mortgage Lending (SML) for 12 years, until 2031.	No action necessary.
Page 4, Line 15	1.2	Continue the Department of Banking (DOB) for 12 years, until 2031.	Not applicable to SML.
Page 21, Line 9 to Page 25, Line 2; Page 26, Lines 10–11; Page 27, Line 9 to Page 28, Line 1	3.2	Discontinue registration of cemetery brokers.	Not applicable to SML.
Page 17, Lines 15–16; Page 18, Line 4 to Page 20, Line 26; Page 26, Lines 5–9; Page 27, Line 9 to Page 28, Line 1	3.3	Discontinue registration of private child support enforcement agencies.	Not applicable to SML.
Page 11, Lines 16–23; Page 25, Lines 5–23; Page 27, Lines 1–8	4.1	Authorize DOB to establish license terms in rule for death care service licensees.	Not applicable to SML.
Page 3, Line 2 to Page 4, Line 9.	4.2	Update DOB’s complaint processing provisions to meet the Sunset Commission’s standard across-the-board requirements.	Not applicable to SML.
Page 2, Lines 24–25; Page 8, Line 26 to Page 11, Line 13; Page 12, Line 22 to Page 13, Line 4; Page 14, Line 3 to Page 16, Line 27; Page 26, Line 4	4.3	Update outdated appeals provisions to align with the Administrative Procedure Act.	Not applicable to SML.

Implementation Chart
Finance Commission, Department of Banking, and Department of Savings and Mortgage Lending

S.B. 614 by Nichols (Lambert)

Staff Report with Final Results

Bill Reference	Recommendation Number	Bill Provision	Implementation Status
Page 12, Line 7–8	6.1	Remove unnecessary, subjective licensure provisions for residential mortgage loan originators.	<p>Completed Tex. Fin. Code § 157.012(c)(1), effective September 1, 2019, amended to delete the reference to the subjective “good moral character”.</p> <p>Documentation:</p> <ol style="list-style-type: none"> 1. Link to Tex. Fin. Code § 157.012(c)(1) https://statutes.capitol.texas.gov/Docs/FI/htm/FI.157.htm#157.012
Page 5, Line 24 to Page 7, Line 2; Page 26, Line 3	6.2	Update SML’s complaint processing provisions to meet the Sunset Commission’s standard across-the-board requirements.	<p>Completed 7 Tex. Fin. Code new chapter 52, subchapter A, effective September 5, 2019, (44 TexReg 4709) subchapter B (44 TexReg 8240) and C effective January 2, 2019 (44 TexReg 8241).</p> <p>Documentation:</p> <ol style="list-style-type: none"> 1. Link to rules, 7 TAC, Chapter 52, Subchapter A https://texreg.sos.state.tx.us/public/readtac\$ext.VIEWTAC?tac_view=5&ti=7&pt=4&ch=52&sch=A&rl=Y
Page 1, Line 17 to Page 2, Line 5 Page 26, Lines 13–27	7.1	Update the standard across-the-board requirement related to Finance Commission member training. Require each Finance Commission member to attest to receiving and annually reviewing the training manual. Allow the commissioners of the finance agencies to collaborate and jointly create one training manual that includes the information applicable to each agency. Sets December 1, 2019 deadline for acknowledgment of receipt and review of manual.	<p>Completed Finance Commission policies updated December 2018 to include the training requirements. Training manual created and updated regularly as needed.</p> <p>Documentation:</p> <ol style="list-style-type: none"> 1. Finance Commission Policies, pg 20 https://www.fc.texas.gov/sites/default/files/policies/polipro.pdf 2. FC Training Manual, SML’s section <i>See FC Manual submitted by DOB. We can resubmit if necessary.</i>

Implementation Chart
Finance Commission, Department of Banking, and Department of Savings and Mortgage Lending

[S.B. 614 by Nichols \(Lambert\)](#)

[Staff Report with Final Results](#)

Bill Reference	Recommendation Number	Bill Provision	Implementation Status
Page 4, Line 18 to Page 5, Line 13; Page 7, Line 13 to Page 8, Line 9	7.2	Apply the Sunset across-the-board recommendation regarding alternative dispute resolution to the finance agencies.	<p>Completed 7 Tex. Admin. Code § 5.103, effective January 2, 2020, (44 TexReg 8230) now provides for the finance agencies to use alternative dispute resolution procedures under the Texas Government Code. 7 Tex. Admin. Code § 52.20, effective January 2, 2020 (44 TexReg 8240) applicable to the Department of Savings and Mortgage Lending also provides for the negotiation of settlements of administrative appeals, including mediation under the Tex. Admin. Code.</p> <p>Documentation:</p> <ol style="list-style-type: none"> Link to rule 7 TAC § 5.103: https://texreg.sos.state.tx.us/public/readtac\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=7&pt=1&ch=5&rl=103 Link to rule 7 TAC § 52.20: https://texreg.sos.state.tx.us/public/readtac\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=7&pt=4&ch=52&rl=20
Page 5, Line 14–21 Page 8, Lines 10–20	7.3	Authorize the finance agencies to establish advisory committees in rule as needed.	<p>Completed Tex. Fin. Code § 13.018, effective September 1, 2019, now provides that the commissioner may appoint advisory committee. 7 Tex. Admin. Code § 52.30(a), effective January 2, 2019 (44 TexReg 8241) now provides that advisory committees shall be automatically abolished on September 1, 2031.</p> <p>Documentation:</p> <ol style="list-style-type: none"> Link to Fin. Code § 13.018 https://statutes.capitol.texas.gov/Docs/FI/htm/FI.13.htm#13.018 Link to rules, 7 TAC § 52.30(a) https://texreg.sos.state.tx.us/public/readtac\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=7&pt=4&ch=52&rl=30

The Finance Commission of Texas

Phillip A. Holt, Chairman
George (Cliff) McCauley, Vice Chair
Robin Armstrong, M.D.
Robert (Bob) Borochoff
Hector J. Cerna
Margaret (Molly) Curl
Larry Long
William (Will) Lucas
Sharon McCormick
Vincent E. Puente
Laura Nassri Warren

October 29, 2020

The Honorable Greg Abbott
Governor's Office
P.O. Box 12428
Austin, Texas, 78711-2428

The Honorable Dan Patrick
Lt. Governor's Office
P.O. Box 12068
Austin, Texas 78711-2068

The Honorable Dennis Bonnen
Speaker of the House
P.O. Box 2910
Austin, Texas 78768-2910

Jennifer Jones
Executive Director
Sunset Advisory Commission
P.O. Box 13066
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RE: Sunset Management Recommendation Related to Finance Commission Agencies: Texas
Department of Banking, Department of Savings and Mortgage Lending, and Office of
Consumer Credit Commissioner

In response to Sunset Management Action Recommendation 2.4, which directs the Finance Commission of Texas (Finance Commission) to analyze and report on the implementation of their fund balance policy adopted in February 2018¹, we are providing each finance agency's change in total fund balance, the types of funds reserved, and methodologies by which the agencies reduced their fund balances.

¹ Finance Commission of Texas, [Finance Commission Meeting Packet February 16, 2018](#)

The Finance Commission adopted a liquidity policy² in February 2018, which directs the finance agencies to maintain adequate levels of cash reserves for the purpose of mitigating current and future risks and ensuring consistent and adequate levels of regulation. Reserved funds include long-term facilities planning, payables (net of receivables), and lump sums for retirements. This could potentially include other items such as building maintenance or information technology expenditures depending on expected needs within the near term.

The policy limits unreserved funds to no less than two months and no more than six months of budgeted operating expenditures. If unreserved funds are projected to fall below the two months of budgeted operating expenditures, the finance agency must create a plan to replenish the amount. If unreserved funds are projected to exceed six months for four consecutive quarters, the finance agency must create a fund reduction plan. The liquidity report, and any required plan, is presented to the Finance Commission on a quarterly basis.

The Department of Banking and the Office of Consumer Credit Commissioner are operating within the liquidity policy. The Department of Savings and Mortgage Lending's unreserved funds have been over the six months of budgeted operating expenditures for the last four quarters. The 2021 budget for the Department of Savings and Mortgage Lending approved in August included measures to bring the Department within policy guidelines. These measures will be reviewed at upcoming meetings of the Finance Commission to ensure future compliance with the policy.

The status of each finance agency's liquidity position is detailed below.

Department of Banking

As of August 31, 2020, the Department of Banking's liquidity report³ reflected 2.46 months of unreserved cash for fiscal year 2020, which is slightly less than was reported on August 31, 2019 of 2.51 months. At the end of fiscal year 2018, the Department's liquidity report reflected 2.41 months of unreserved cash. Since the policy was adopted, the unreserved balance has been well within the policy guidelines with an average of 3.28 months.

During the yearly agency budget process, each divisional area is tasked with creating their budget using historical, current, and forecast information, and incorporating the strategic planning initiatives and agency priorities. Cost centers for each industry are reviewed to ensure each industry is covering its related costs. The Department periodically reviews its financial position to determine if any reductions in assessments are warranted. This budget process ensures that the Department maintains adequate liquidity and stays with the policy guidelines set forth by the Finance Commission.

Department of Savings and Mortgage Lending

As of August 31, 2020, the Department of Savings and Mortgage Lending's liquidity report³ reflected an unreserved cash balance of 6.8 months of budgeted operating expenditures, which

² Finance Commission of Texas [Policies and Procedures, page 31 – Liquidity Policy](#)

³ Finance Commission of Texas, [Audit Committee Meeting Packet October 16, 2020](#)

represents an increase from the unreserved cash balance of 5.99 months reported at the end of fiscal year 2019.

During its annual budget process, the Department analyzes its financial position in detail and determines the level of fees to be assessed to the regulated industries during the following year, so that each industry covers the anticipated cost of its regulation. In order to ensure transparent, consistent and predictable level of assessments throughout the fiscal year in accordance with Sunset's recommendations and Finance Commission's Budgeting Policy, the Department does not adjust its fees more often than annually.

While the Department had not previously projected that its unreserved cash balance would exceed six months of budgeted operating expenditures for four consecutive quarters, as a result of regulated industries' growth and the impact of the pandemic, the Department generated excess funds during fiscal year 2020 and maintained such balance for the last four quarters.

The Department created and started implementing a plan to reduce cash reserves immediately. As a part of the plan, in preparing the budget for fiscal year 2021, the Department proposed to reduce the thrift industry's assessments by 30% and multiple license and registration fees between 6.7% and 16.7%. The Finance Commission approved those reductions at its August 19, 2020 meeting.

After the first quarter of fiscal year 2021 is closed and the Department's current financial position is analyzed, the plan to reduce cash reserves will be updated accordingly and presented to the Finance Commission at its February 2021 meeting.

The Department continues to monitor its actual revenues and expenditures on an ongoing basis and to utilize all available mechanisms to keep the unreserved cash balance within policy guidelines, without compromising its ability to perform the Department's regulatory functions as authorized by the Texas Legislature.

Office of Consumer Credit Commissioner

As of August 31, 2020, the Office of Consumer Credit Commissioner's liquidity report⁴ reflected 5.9 months of unreserved cash for fiscal year 2020 which is within the policy guidelines. The Office of Consumer Credit Commissioner's renewal cycles impact cash flow seasonally with large fund balances following renewal cycles which are then expended during the term of the license. The Office of Consumer Credit Commissioner adjusted the renewal cycle for motor vehicles sales finance licenses following the sunset process. The adjustment resulted in an extension of the 2019-2020 license term from 12 months to 15 months, without any additional expense to the licensee. The adjustment aligned the renewal cycle more effectively within the fiscal year. The adjustment also supported the reduction of the fund balance from its August 31, 2019 level at 7.8 months (seasonally impacted by a recent renewal cycle) to within the policy guidelines by the end of fiscal year 2020.

During the budget process, the Office of Consumer Credit Commissioner carefully forecasts the projected fee revenues necessary for each industry segment with the projected expenses allocated to each industry segment. The Office of Consumer Credit Commissioner also attempts to ensure the predictability and consistency of assessments and any associated discounts while balancing

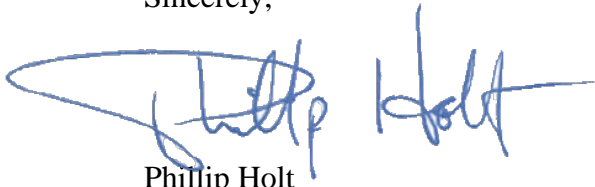
⁴ Finance Commission of Texas, [Audit Committee Meeting Packet October 16, 2020](#)

liquidity needs and compliance with the policy guidelines, however pandemic concerns along with growth and reductions within regulated industry segments have been highly variable and difficult to accurately project.

The Finance Commission and finance agencies will continue to exercise fiscal discipline and restraint to provide exemplary regulation at the highest level of efficiency and lowest possible costs. We pride ourselves in being good stewards of our financial resources as we exercise this important regulatory responsibility over the financial markets in Texas.

If you have any questions or concerns, please contact Executive Director Charles G. Cooper at 512-475-1325 or by email at ccooper@dob.texas.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Phillip Holt", with a large, stylized initial "P" and "H".

Phillip Holt
Chairman

B.

**Office of Consumer Credit
Commissioner**

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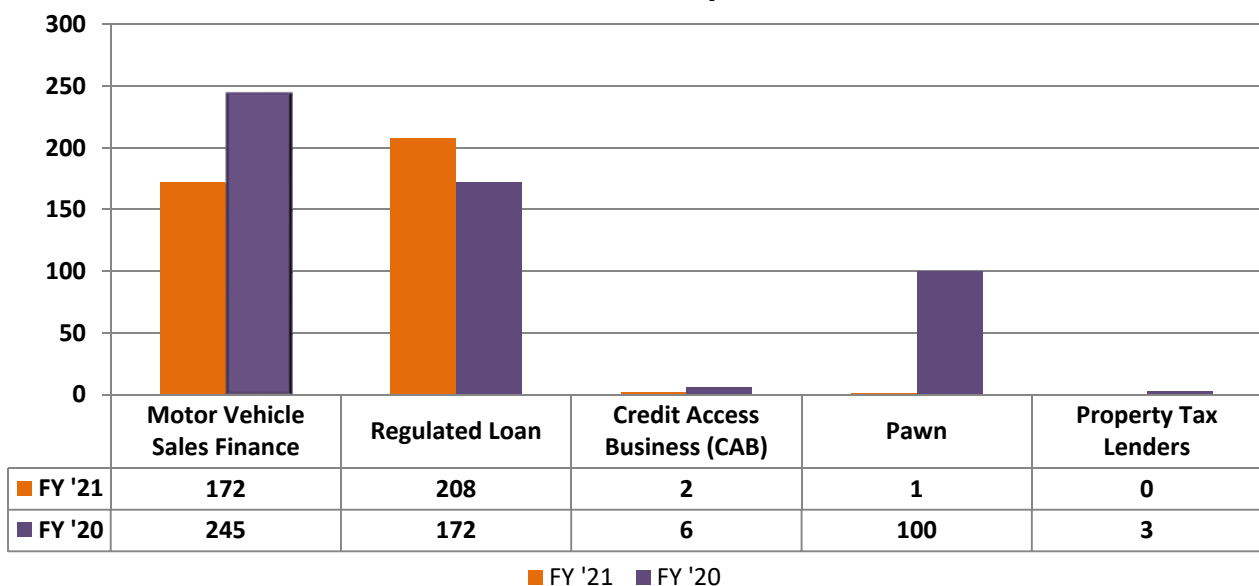
Consumer Protection and Consumer Assistance Report

As noted in the October 2020, Finance Commisison report, the agency is committed to further developing and refining its capabilities to conduct remote examinations. In support of this initiative, the Examination and Enforcement Department has provided detailed training to its field-based examiners and supervisors, and created management and reporting structures to ensure that the remote examinations are completed in a timely, effective, and efficient manner. Examiners-in-Charge (EICs) and Single Points of Contact (SPOCs) have been identified to handle the remote examinations and have been tasked to determine the most effective, efficient, and appropriate way to conduct the remote examinations of these identified companies.

The design of these remote examinations will vary among the companies because of their unique capabilities and limitations to support remote examinations. The IT department has developed and implemented a Secure File Transfer channel to support the production and submission of records related to these remote examinations. Examiners have been issued additional equipment such as scanners and second video monitors to support remote examinations.

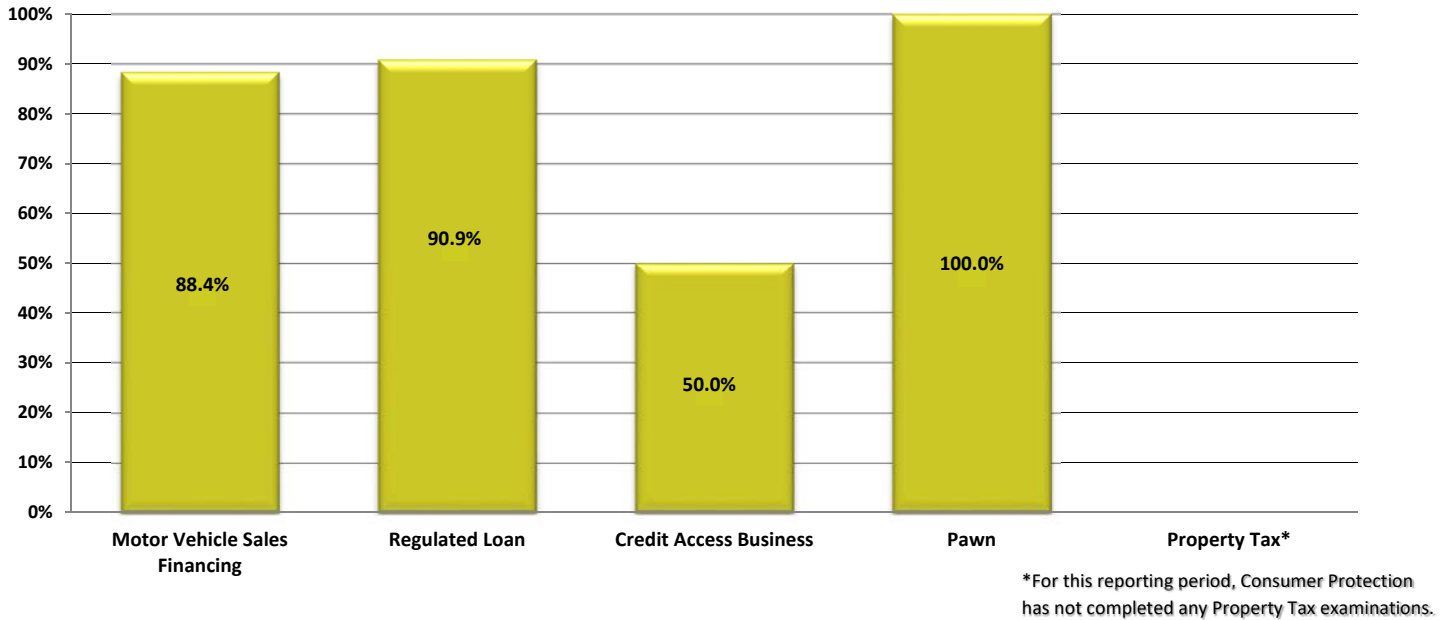
The EICs and SPOCs are supported by Austin and field-based senior examination staff to ensure that the appropriate approaches and strategies are developed and implemented to conduct these remote examinations. So far during the first quarter of Fiscal Year 2021, the agency has conducted 94 remote examinations. The agency is on track to meet its production targets for fiscal year 2021.

Examinations Conducted: Sept - Oct Fiscal Year Comparison

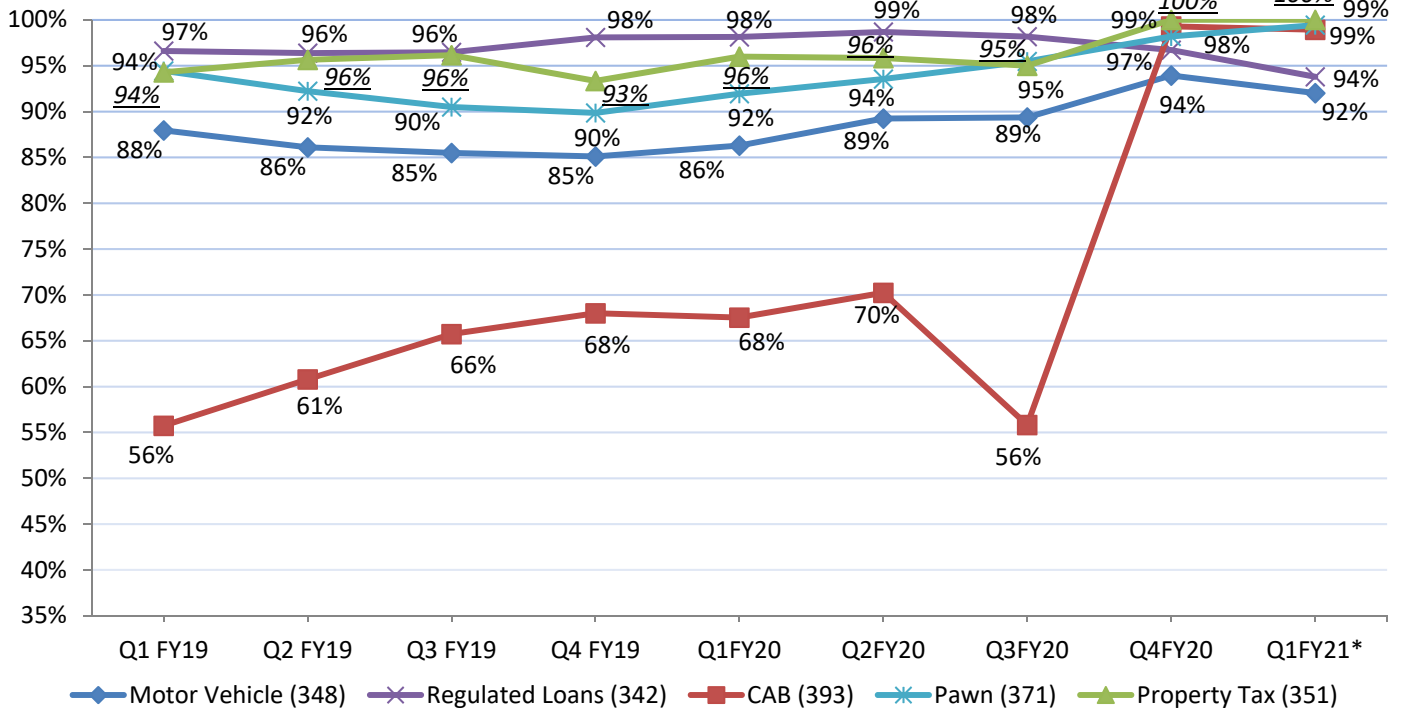


The second chart below denotes the acceptable level of compliance on a trailing 12-month basis through the end of October 2020.

Acceptable Level of Compliance FY '21 (Sept 2020 - Oct 2020)



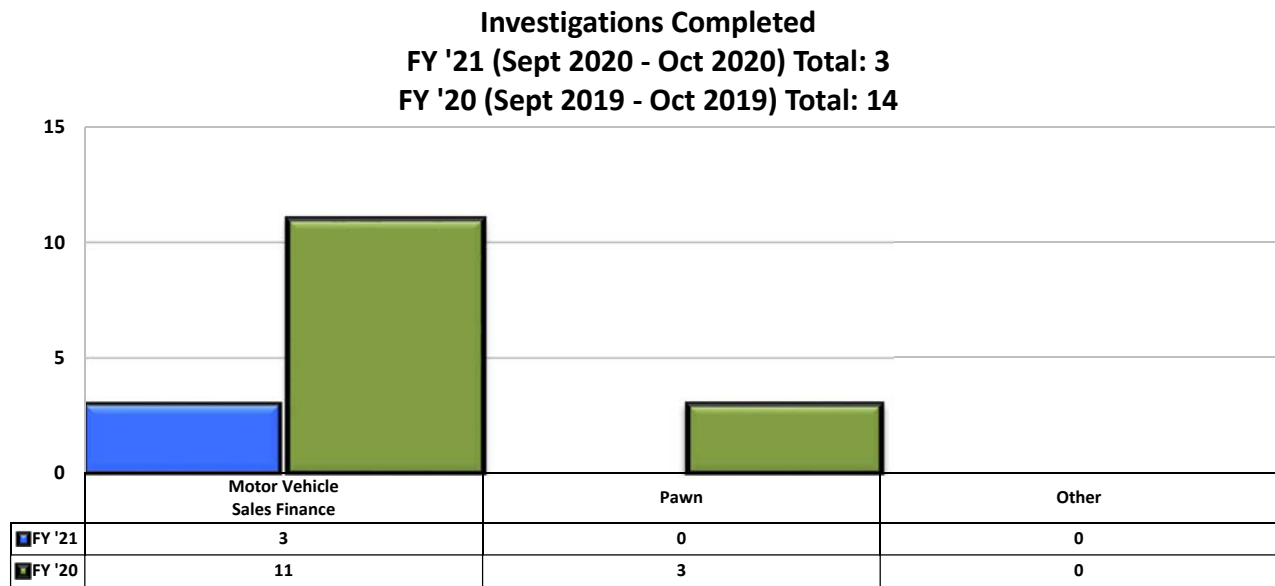
Acceptable Compliance Levels - Trailing 12 Months (at quarter end)



*As of 10/31/2020

Investigations

For FY 2021, the agency has completed 3 investigations, 5.5% of the FY 2021 goal of 55. Motor Vehicle Sales Finance comprises 100% of the overall number of investigations.

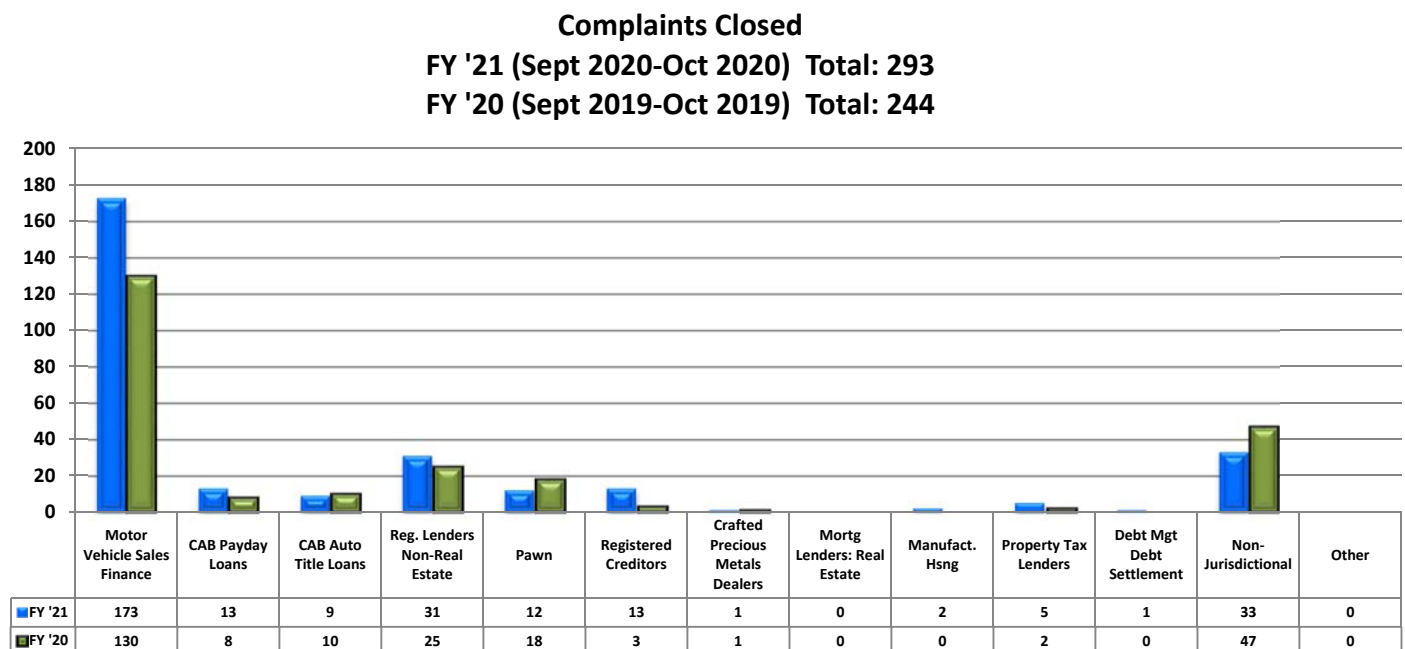


Consumer Assistance

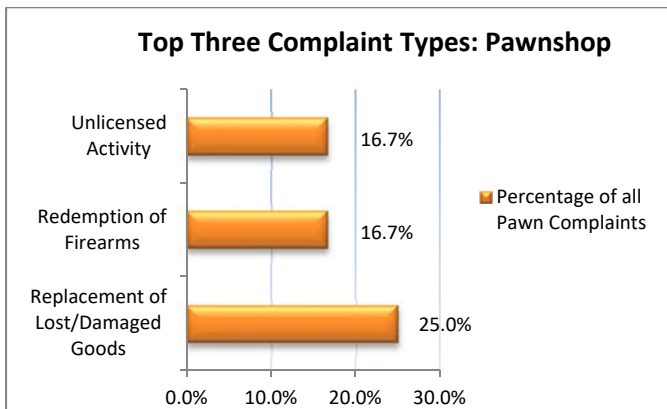
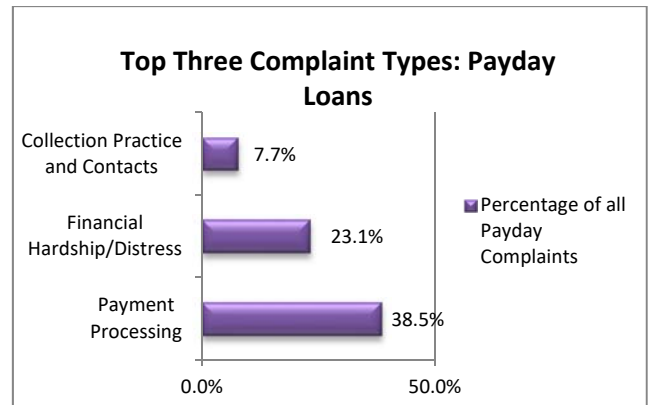
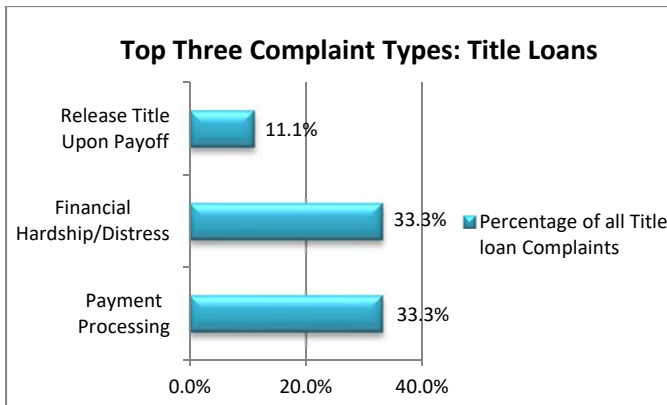
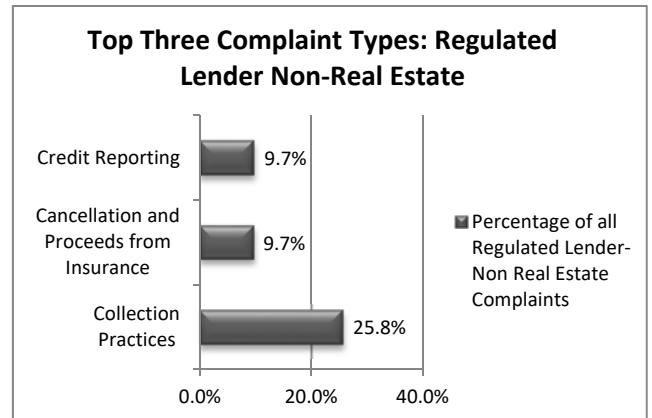
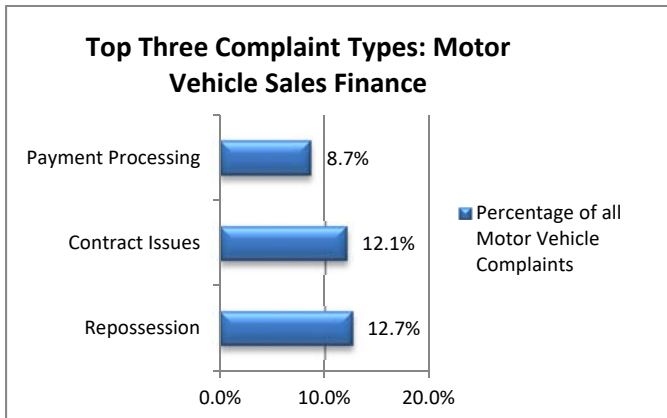
For this period, 293 complaints were closed of which 33 were classified as non-jurisdictional.

The top four areas of jurisdictional complaints are (1) Motor Vehicle Sales Finance (MVSF), (2) Regulated Lenders Non-Real Estate, (3) Credit Access Business (CAB) , (4) Registered Creditors, and (5) Pawn.

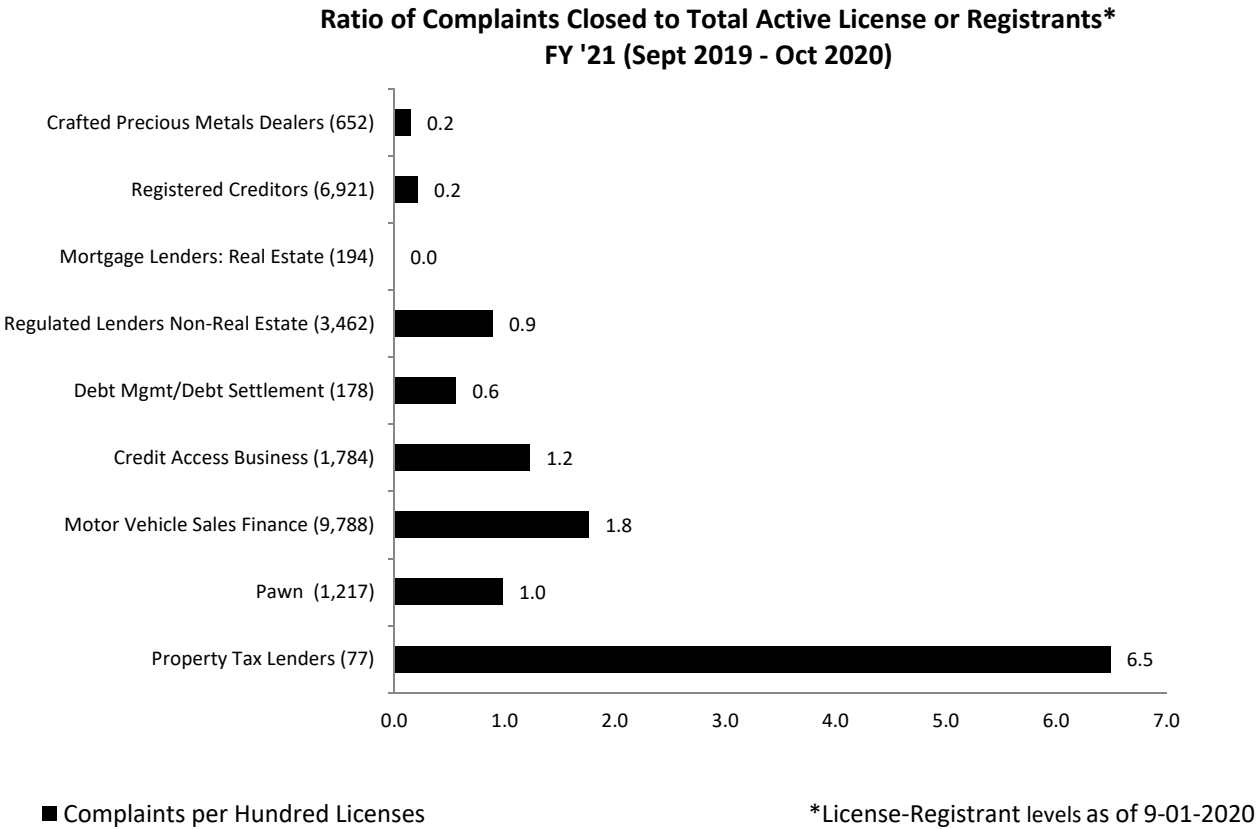
MVSF complaints were the largest complaint category at 59.0%. The second largest number of complaints came from Regulated Lenders Non-Real Estate at 10.6%. The third largest category was CAB complaints at 7.5% collectively; separately, these are 4.4% for payday loans and 3.1% for title loans. The fourth and fifth largest categories were registered creditors at 4.4% followed closely by Pawnshops at 4.1%.



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



Comparison of complaints processed to the number of active license or registrant population is noted on the chart below. The highest ratio involved Property Tax Lenders, followed by Motor Vehicle Sales Finance as the second highest, Credit Access Business as the third, and Pawn as the fourth highest.



CAB Reporting Update

CAB data for the first three quarters of 2020 has been reported by licensees and compiled. Selected statistics from Q1-Q3 (Jan-Sept) of the last six years are compared in the chart below. The effects of Covid-19 largely impacted Q2 and Q3 activities. The data reports indicate total transaction volume (loans and refinances) decreased by 32% in the first three quarters of 2020 compared to 2019. A combination of store closures, declining applications, hardship concessions, and government CARES Act payments effected CAB volume.

Data Highlights (All Loan Types) Q1-Q3 Comparison	2020	2019	2018	2017	2016	2015
Number of new payday loans	1,093,086	1,612,428	1,563,242	1,598,074	1,693,477	1,762,942
Number of new auto title loans	141,051	215,925	245,228	214,454	208,922	249,770
Percentage of payday loans due in multiple installments	63%	56%	52%	45%	41%	39%
Percentage of auto title loans due in multiple installments	53%	61%	53%	40%	39%	27%
Number of vehicles repossessed under all auto title loans	25,916	32,763	27,210	23,052	24,494	28,365
Total number of locations reporting activity	1,564	1,723	1,786	1,889	1,933	2,549

Payday Loans Q1-Q3	Single Installment			Multiple Installment		
	2020	2019	2018	2020	2019	2018
Number of consumers obtaining loans	276,902	488,908	519,736	616,723	820,017	725,458
Number of new loans	399,241	702,074	750,973	693,845	910,354	812,269
Number of total refinances ¹	492,241	780,786	1,094,106	169,297	280,023	225,229
Average loan amount	\$452	\$451	\$467	\$596	\$672	\$615
Average fee per \$100 borrowed	\$23	\$23	\$24	\$136	\$139	\$137
Average original term (in days)	21	22	21	148	150	143
Average Fee Converted to a Daily Rate ²	1.08%	1.04%	1.11%	0.92%	0.93%	0.96%

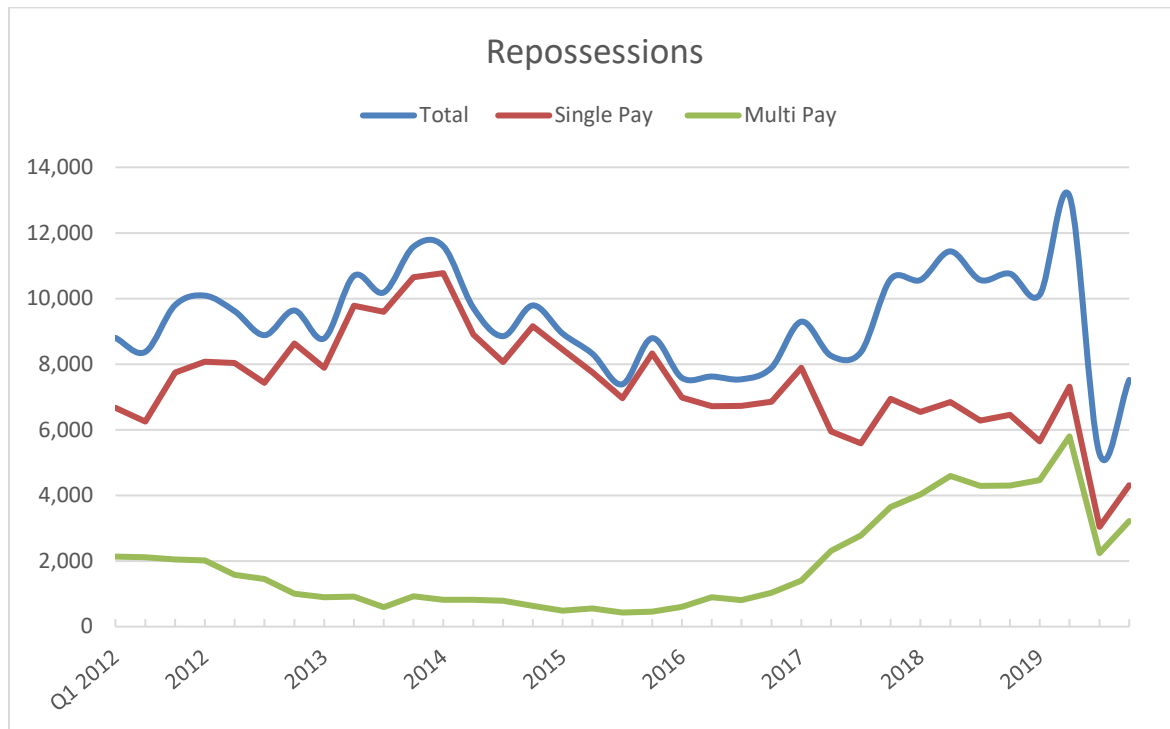
Title Loans Q1-Q3	Single Installment			Multiple Installment		
	2020	2019	2018	2020	2019	2018
Number of consumers obtaining loans	52,612	76,504	98,031	69,913	123,405	123,541
Number of new loans	66,727	85,083	114,430	74,324	130,842	130,798
Number of total refinances ¹	370,125	471,157	475,261	95,402	117,913	102,363
Average loan amount	\$1,430	\$1,690	\$1,325	\$1,251	\$1,260	\$1,190
Average fee per \$100 borrowed	\$15	\$15	\$16	\$112	\$117	\$115
Average original term (in days)	30	30	30	158	156	154
Average Fee Converted to a Daily Rate ²	0.50%	0.51%	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. Repossessions rebounded slightly in Q3 of 2020 but were still below historical norms. These totals will continue to be monitored closely.





Licensing Report- December 2020

Mirand Diamond, Director of Licensing & Finance

Renewals

Renewal for motor vehicle sales finance licenses and commercial motor vehicle sales finance licenses closed October 31, with 87% of the industry group renewing their license.

The department is currently going through the renewal period for credit access businesses, regulated lenders, and property tax lenders. Renewal for these industry groups opened early online in November and will continue through December 31. Regulated lenders received a discount of 35% on the annual assessment.

Registration renewal for crafted precious metal dealers and refund anticipation loan facilitators is also ongoing.

Applications Processing

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

The volume of incoming applications remains near 140 monthly on average in FY 2021, holding steady as related to prior fiscal years.

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

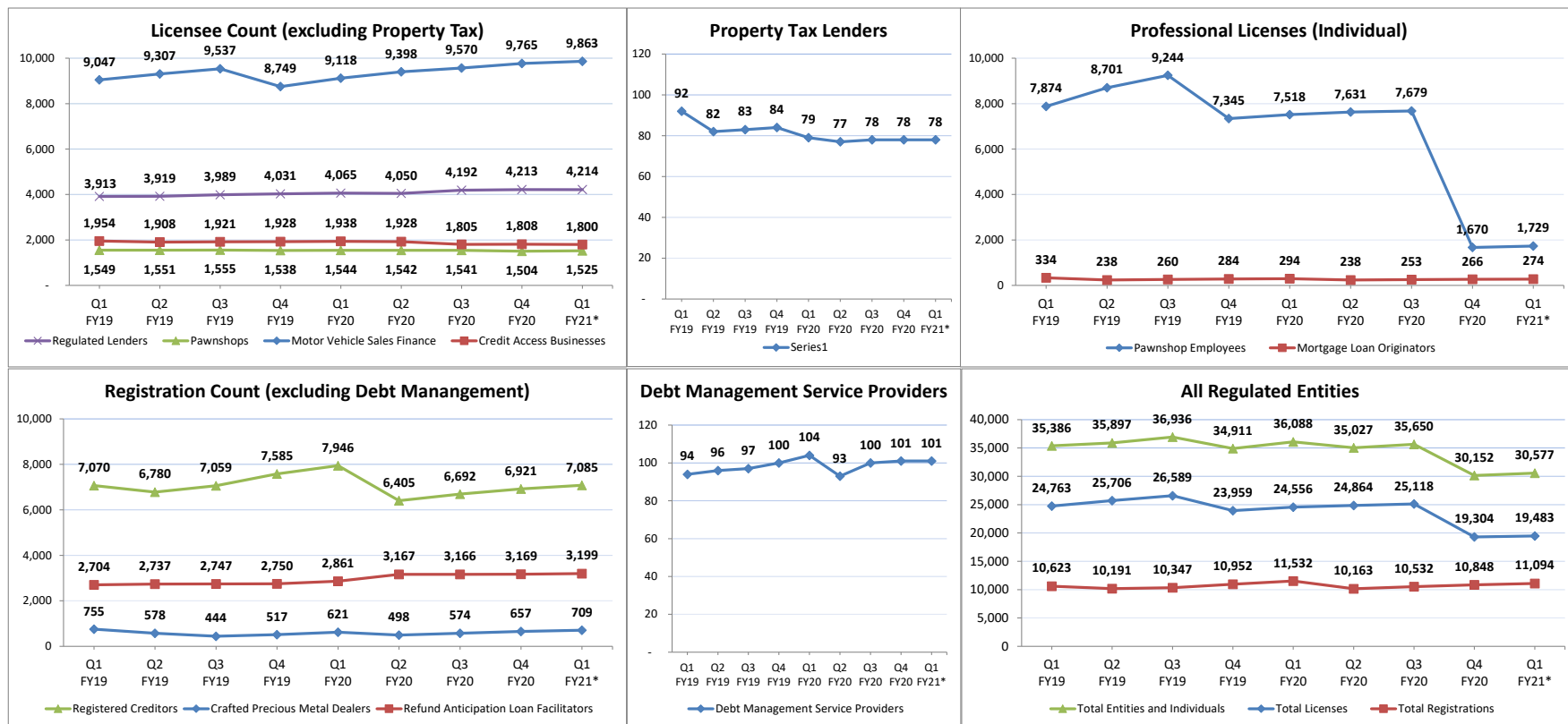
Other Updates

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

Regulated Entity Population Trends

The following charts reflect the number of OCCC regulated entities at the end of each quarter in fiscal years 2019 and 2020 to current data.

Number of OCCC Regulated Entities Quarterly Comparison of FY19-21



* Data through 11-02-2020



ADMINISTRATION REPORT

COMMUNICATIONS

The agency continues to explore tools for remote engagement as we move towards the end of 2020. Platforms such as GoToMeeting and Zoom have allowed for virtual communication with remote staff on a regular and ongoing basis. Additionally, the agency continues to provide presentations to regulated entities and other regulatory groups as follows:

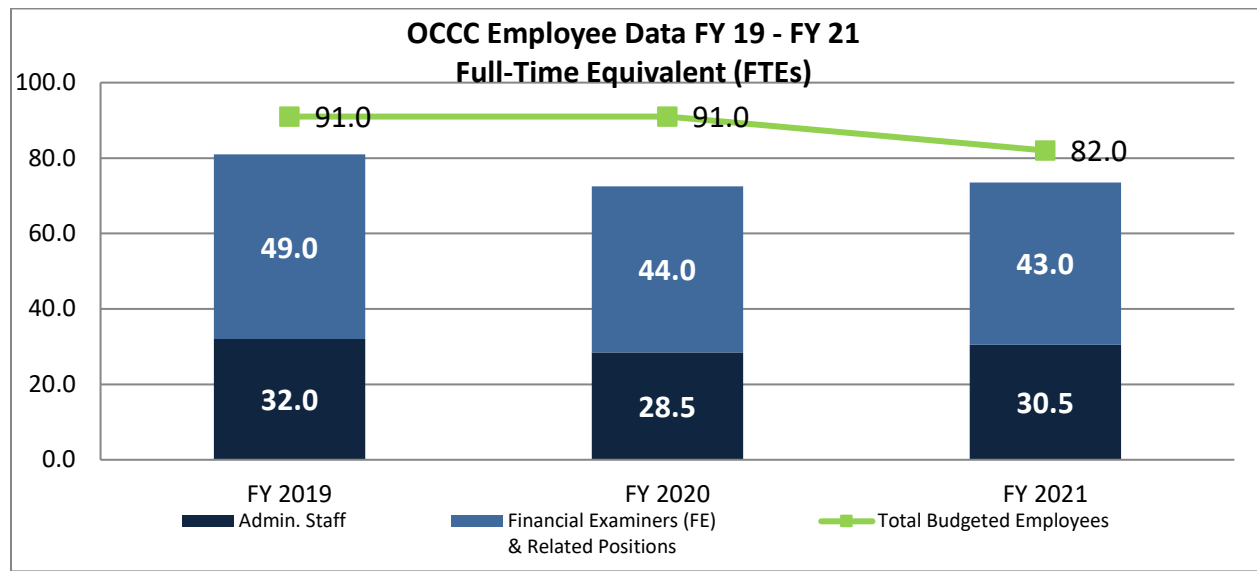
- On October 15th, Financial Examiner Eric Fancher addressed the Texas Department of Motor Vehicles (DMV) training by webinar.
- On October 29, Commissioner Pettijohn spoke at a virtual DFW community town hall event sponsored by OneMain Financial – Financial Tools and Information in the Age of COVID-19.
- On November 5th, Financial Examiner Eric Fancher addressed the Texas Department of Motor Vehicles (DMV) training by webinar.

HUMAN RESOURCES

At the beginning of FY21, the OCCC was staffed with a total of 73.5 FTEs (73 full-time equivalents and one part-time). Currently the agency has the following posted vacancy.

Vacancy	Status
Financial Analyst II (Austin)	Active – Accepting Applications

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



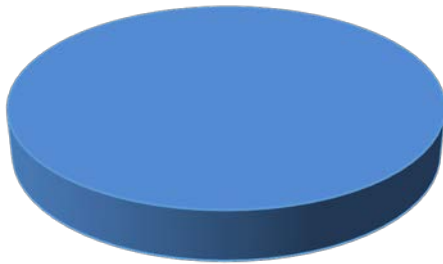
The turnover rate as of September 2020 is 1.3%, and the chart below represents FY21 data.

OCCC Turnover Categories

FY 21 - All Employees

(09/01/2020 - 11/16/2020)

1 total - 1 Voluntary Resignation



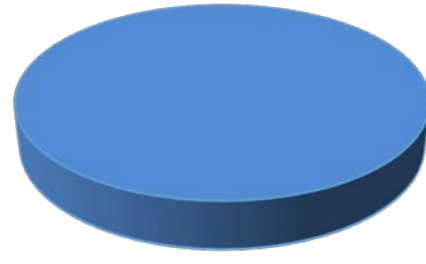
Voluntary Resignation

OCCC Turnover Categories

FY 21 - FE Series

(09/01/2020 - 11/16/2020)

1 total - 1 Voluntary Resignation



Voluntary Resignation

The Employee Policies & Procedures Manual Version 2.05 was updated October 2020, to reflect Voting Leave changes, the Information Technology Policies and Procedures Manual were updated to incorporate the IT security password policy and construction guidelines. Policies are regularly monitored to ensure compliance with local, state and federal law.

All agency employees continue to participate in regular Cyber Security Training.

FINANCIAL EDUCATION

During October and November, the agency hosted several financial education webinars over various topics, including budgeting, finances for young adults, avoiding senior exploitation, and credit 101. These webinars provided direct educational services to 114 individuals. Additionally, in November the OCCC and Department of Banking partnered to host a webinar entitled, “Applying for Credit” that 62 individuals attended. The joint webinar was successful and the agency looks forward to future financial education collaboration opportunities.

TTEE’s 2020-2021 second period is ending on December 31, 2020 and reimbursement requests and reports are due from grant award recipients by the end of January. The 2nd period’s semi-annual report will be published in late February 2021.

INFORMATION TECHNOLOGY

Cybersecurity

IT migrated the Micro Focus GroupWise email security system, GWAVA, to the current version 7, renamed Secure Messaging Gateway (SMG7). Concurrent with this upgrade, TLS (Transport Layer Security) was implemented for the GroupWise installation, improving communication compatibility, as TLS continues to expand worldwide.

IT has begun both a network penetration test, and the bi-annual cybersecurity audit. Depending upon dates of completion, reviews and plans will be presented to the Finance Commission during the first half of CY’21.

Technology modernization and deployment

New laptops continue to be configured and provisioned, updating the oldest or replacing the most problematic endpoints in the agency fleet. Everyone in the field or significantly WFH now has integrated camera capability.

As WFH continues to be standard procedure, IT has provisioned additional monitors to personnel in need of more screen area than a single laptop affords. Ongoing evolution of video signal standards is currently converging on HDMI connectivity, increasingly obviating VGA, DVI, and DisplayPort, and necessitating keeping the agency’s monitor technology current.

The agency has begun preparation work and instructional meetings for transitioning accounting activities to CAPPS integration with the Comptroller’s Office.

Training

An agency-wide assignment of content regarding cybersecurity and phishing awareness was 100% completed.

Compliance

The annual vulnerability assessment report was submitted to the State Auditor's Office.

The annual PCI compliance form was submitted to DIR.

Semi-annual CPA accesses were reviewed, adjusted as needed, and the attestation form submitted.



Accounting Report- December 2020

Mirand Diamond, Director of Licensing & Finance

Staffing

The accounting department has a new accountant that started with the agency at the beginning of December. Everyone in the department will contribute to training and orienting him with various tasks.

CAPPS

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

Procedures

The department continues its identification of certain tasks that require an update or review of procedures. An inventory of procedures will be updated and supplemented as other tasks are identified or procedures are completed.

Other Items

The Accounting department has begun working on preparation of 1099 and W-2 tax documents for the end of 2020. The department has also begun preparing the Annual Report of Non-Financial Data which is due December 31.



Legal Department Report

Michael Rigby, General Counsel

December 2020

Enforcement Report

Orders for Reporting Violations

In October 2020, the OCCC issued 44 orders against regulated lenders that did not timely and accurately file their 2019 annual reports by June 1, 2020. Of these 44 orders, 26 were injunctions requiring the licensee to file timely and accurate reports, and 18 imposed an administrative penalty for violating a previous injunction. These reports are normally due on May 1. However, because of the COVID-19 pandemic, the OCCC issued an advisory bulletin explaining that it would not take action against regulated lenders that filed reports by June 1. These orders were issued against licensees that failed to meet the extended June 1 deadline.

In November 2020, the OCCC issued 44 orders against pawnshops that did not timely and accurately file their 2019 annual reports by July 31, 2020. Of these 44 orders, 30 were injunctions requiring the licensee to file timely and accurate reports, and 14 imposed an administrative penalty for violating a previous injunction.

Performance Report

The following table summarizes enforcement actions closed by the OCCC during the last four fiscal years. These figures reflect enforcement actions that have been fully resolved by formal order, informal resolution, or dismissal. Actions that are still pending are not included in the table.

Enforcement Actions Closed as of November 30, 2020				
	FYTD 2021	FY 2020	FY 2019	FY 2018
Crafted Precious Metal Dealer	0	1	0	0
Credit Access Business	19	27	53	27
Debt Management Provider	0	9	10	5
Manufactured Housing	0	0	0	0
Motor Vehicle Sales Finance	3	54	20	19
Motor Vehicle Sales Finance Commercial	0	0	0	0
Pawnshop	18	44	82	39
Pawnshop Employee	0	0	67	48
Property Tax Lender	0	1	8	2
Registered Creditor	0	1	0	1
Regulated Lender	22	49	22	12
Residential Mortgage Loan Originator	0	0	0	1
Total Injunction Actions	62	186	262	154
Crafted Precious Metal Dealer	0	1	0	0
Credit Access Business	6	11	14	6
Debt Management Provider	0	3	0	1
Motor Vehicle Sales Finance	4	13	19	26
Pawnshop	0	29	12	6
Pawnshop Employee	0	0	0	0
Property Tax Lender	0	3	6	6
Regulated Lender	7	18	7	0
Residential Mortgage Loan Originator	0	0	0	0
Total Administrative Penalty Actions	17	78	58	45
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
Total Revocation / Suspension Actions	1	3	2	1
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
Total App. Denial and Protest Actions	0	3	2	0
Total Actions Closed	80	270	324	200

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

September 1, 2020, through November 30, 2020	
Cases Opened	112
Cases Closed	80
Average Number of Days to Close an Enforcement Action	90
Contested Cases Referred to SOAH	0
Contested Cases Heard at SOAH	0
Enforcement Actions Taken	69

The OCCC has no SOAH hearings scheduled between December 1, 2020, and January 31, 2021.

Rule Actions

At the December meeting, the OCCC is presenting one rule action:

- Adoption of amendments to 7 TAC Chapter 84 (relating to motor vehicle sales finance), resulting from rule review.

Federal Rulemaking

OCC True Lender Rule

On October 27, 2020, the Office of the Comptroller of the Currency (OCC) issued a final rule identifying the “true lender” in loans where a bank partners with another company. The OCC’s rule states that a national bank makes a loan if it is named as the lender in the loan agreement or funds the loan. The proposal rejects the “predominant economic interest” standard used by some state courts. *See, e.g., CashCall, Inc. v. Morrissey*, 2014 W. Va. LEXIS 587 (W. Va. 2014) (finding that CashCall was true lender of unsecured consumer loans, despite loan contracts listing the bank as the lender, because CashCall purchased all loans from the bank within three days of origination and bore the economic risk of the loans). The rule’s effective date is December 29, 2020.

CFPB Debt Collection Rule

On October 30, 2020, the Consumer Financial Protection Bureau (CFPB) issued a final rule to implement the federal Fair Debt Collection Practices Act, which protects consumers against harassment by third-party debt collectors. The rule generally limits collectors to no more than seven attempts by telephone per week to reach a consumer about a specific debt. The rule also allows consumers to opt out of future communications by email or text message. The CFPB has stated that it intends to issue a second debt collection final rule focused on consumer disclosures in December 2020. The first rule action is scheduled to be effective one year after it is published in the *Federal Register*, but the CFPB has said that it will consider adjusting this effective date to harmonize the effective dates of the two rule actions.

CFPB Payday Loan Disclosure Testing

On November 12, 2020, the CFPB announced that it had hired a contractor to conduct consumer interviews for a CFPB-designed payday loan disclosure. The CFPB anticipates that this disclosure testing will be completed by September 2021. The CFPB is currently seeking initial comments on the process for gathering information. These comments are due by December 14, 2020.

Advisory Bulletins

From October 1, 2020 to November 30, 2020, the OCCC did not issue any new advisory bulletins.

During this period, the OCCC revised five previously issued advisory bulletins describing COVID-19 emergency measures for OCCC licensees, to explain that the bulletins' guidance is in effect through December 31.

On November 30, the Joint Financial Regulatory Agencies (OCCC, Texas Department of Banking, Texas Department of Savings and Mortgage Lending, and Texas Credit Union Department) revised a previously issued advisory bulletin describing COVID-19 emergency measures for home equity lenders. The revised bulletin discusses home equity interpretation amendments recently adopted by the Finance Commission and Credit Union Commission, relating to modifications and closing locations.

Official Interpretation Requests

From October 1, 2020 to November 30, 2020, the OCCC did not receive any requests for official interpretations. As of November 30, 2020, there were no pending requests for official interpretations.

Public Information Requests

October 1, 2020, through November 30, 2020	
Requests Received	32
Requests Closed	34
Requests Withdrawn	2
Requests Referred to Office of Attorney General	0
Average Number of Days to Address a Public Information Request	2.3

Gifts Received by the OCCC

From October 1, 2020 to November 30, 2020, the OCCC received no gifts.




Finance Commission Agencies Bill Status Report

11-25-2020 - 15:42:38

 - Action in the date range  - Link to Related Information () - Priority


OCCC Finance Commission Report

 **HB 206** Bernal, Diego(D) Relating to credit services organizations and extensions of consumer credit facilitated by credit services organizations.

Companions: [HB 242](#) Bernal, Diego (Refiled from 86R Session)

Remarks: Amends Ch. 393, Fin. Code. Limits the amount of an extension of credit based on the consumer's income (or the vehicle's value for a title loan). Limits the number of refinances and number of installments for payday and title loans. Requires a CAB to review documentation establishing a consumer's income, and lists acceptable forms of documentation, including a payroll document, a paycheck, a bank statement, and a W-2. Prohibits a CAB from assisting a consumer in obtaining loans other than payday or title loans. Prohibits a CAB from transferring its license. Provides that local ordinances regulating CABs are not preempted if they are compatible with and equal to or more stringent than a requirement imposed by Chapter 393. Provides that Chapter 393 applies to extensions of credit made to consumers who are located in Texas, regardless of whether the extension of credit was made in person. Requires a CAB to provide copies of the contract and other documents in English and in any other language in which the contract is negotiated. Requires the CAB disclosure to be available in English and Spanish, and to refer to nonprofit agencies that provide financial education or cash assistance. Provides record retention requirements for CABs.

Bill History: 11-09-20 H Filed

 **HB 417** Walle, Armando(D) Relating to the threat or pursuit of criminal charges against a consumer in association with certain extensions of consumer credit.

Remarks: Amends Ch. 393, Fin. Code. Prohibits a CAB from filing criminal complaints, referring consumers to prosecutors, or threatening to refer consumers to prosecutors, unless the CAB possesses extrinsic evidence sufficient to prove a violation of the Penal Code provisions on theft or issuance of a bad check. Provides that evidence of a

denied or returned payment due to insufficient funds or account closure is not extrinsic evidence of these offenses. Provides civil remedies against a CAB that violates these provisions.

Bill History: 11-09-20 H Filed

 **HB 437 (3)** **Goodwin, Vikki(D)**

Relating to personal financial literacy courses for high school students in public schools.

Remarks: Amends Ch. 28, Educ. Code. Currently, the Education Code requires Texas high schools to offer personal financial literacy as a one-half elective credit. This bill removes the word "elective," adds a one-half credit in personal financial literacy to the list of curriculum requirements that high school students must successfully complete, and changes the number of required elective credits from five to four and one-half.

Bill History: 11-10-20 H Filed

Total Bills: 3

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B. OFFICE OF CONSUMER CREDIT COMMISSIONER

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 5, Chapter 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 adoption of the amendments to 7 TAC Chapter 84.

RECOMMENDED MOTION: I move that the Finance Commission approve the adoption of the amendments to 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) adopts 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 Model Contract; Permissible Changes) in 7 TAC, Chapter 84, concerning Motor Vehicle Installment Sales.

The commission adopts the amendments without changes to the proposed text as published in the October 30, 2020, issue of the *Texas Register* (45 TexReg 7681).

The commission received no written comments on the proposal.

The rules in 7 TAC Chapter 84 govern motor vehicle sales finance. In general, the purpose of the 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.

An amendment to §84.201 corrects a typographical error in figure 7 TAC §84.201(d)(2)(B)(iii), which shows maximum effective rates of time price differential. Another amendment at §84.201(d)(3)(E)(iii) updates a reference to the title of 7 TAC §84.809, as discussed later in this adoption.

Amendments to §84.604 clarify the responsibility of a transferor and transferee, in the event of a license transfer or a new application on transfer of ownership. The adopted 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). An amendment to subsections (e)(5)(B) removes 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) 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 amendments are intended to ensure that licensees are aware of their responsibilities.

An amendment to §84.611(e)(3) corrects 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.

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 amendments to §84.613 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 §84.613 implement these statutory changes from HB 1342. Other amendments to §84.613 include

technical corrections, clarifying changes, and updates to citations.

Amendments to §84.707 deal with recordkeeping requirements for retail sellers that assign retail installment contracts. Amendments to subsections (b) and (d)(2)(Q) 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 changes to §84.707 correct lettering and internal references.

Amendments to §84.708 deal with recordkeeping requirements for retail sellers that collect installments on retail installment contracts. Amendments to subsections (b) and (e)(2)(V) 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. An amendment to subsection (e)(7) explains 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 changes to §84.708 correct lettering and internal references.

Amendments to §84.709 deal with recordkeeping requirements for holders that take assignment of retail installment contracts. An amendment to subsection (e)(7) explains 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 changes to §84.709 correct lettering and internal references.

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.

Amendments to §84.803 deal with the relationship between federal law and the rules governing submission of plain language contracts. The amendments 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." Amendments to current subsections (d) and (e) 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.

An amendment to §84.809 adds 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.

The rule changes are adopted 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 adopted 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 adoption 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

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 amended figure.}

(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.)

(E) Application of payments.

(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.

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

Issued in Austin, Texas on December 11, 2020.

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

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%	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%

C.

Texas Department of Banking

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Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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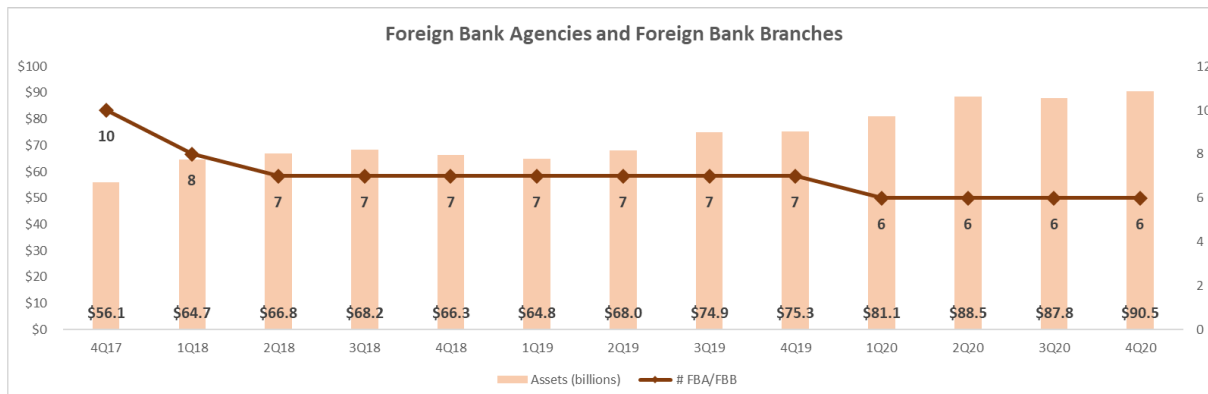
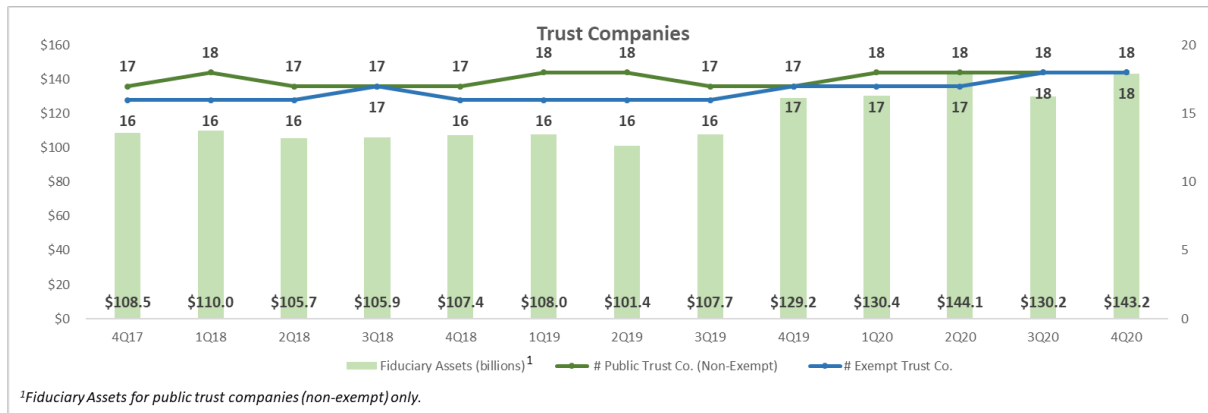
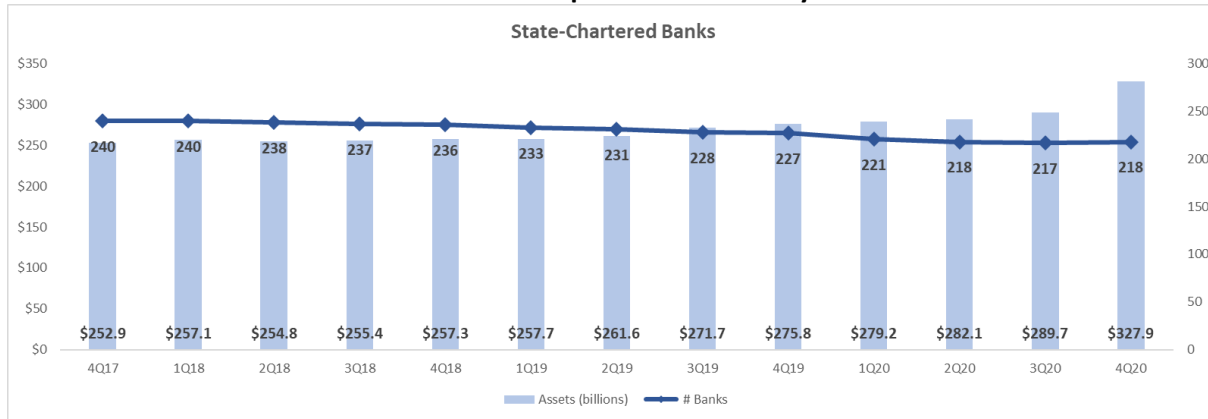
To: Finance Commission Members

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

Date: November 25, 2020

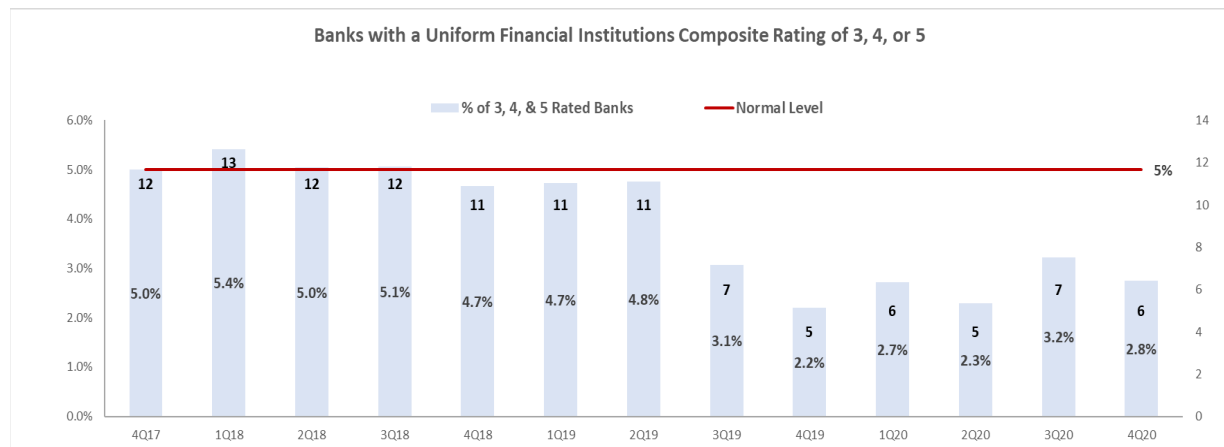
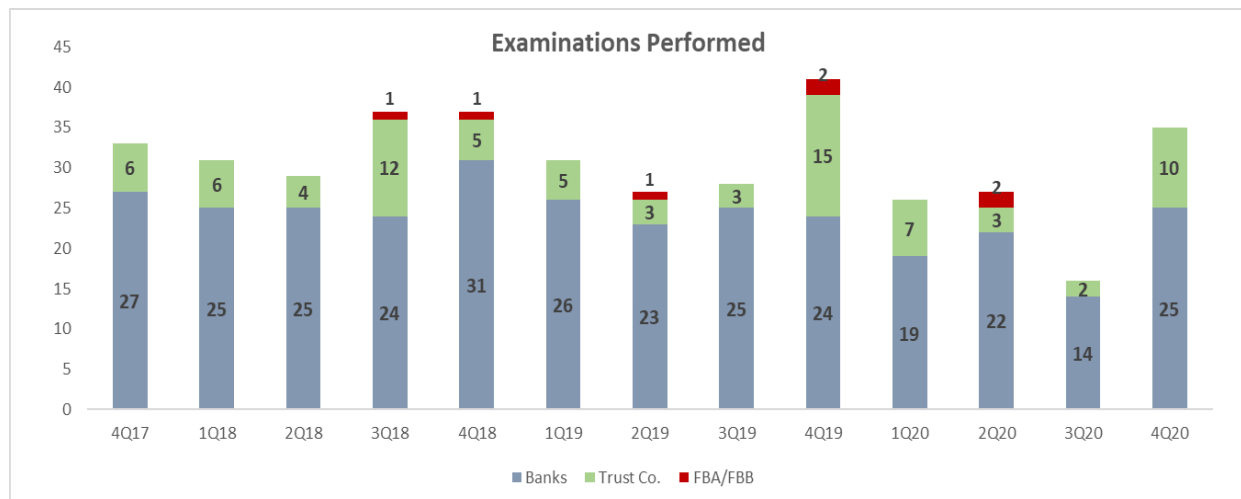
Subject: Summary of the Bank & Trust Supervision Division Activities

Bank and Trust Supervision – Industry Profiles



Summary of the Bank & Trust Supervision Division Activities

Page 2



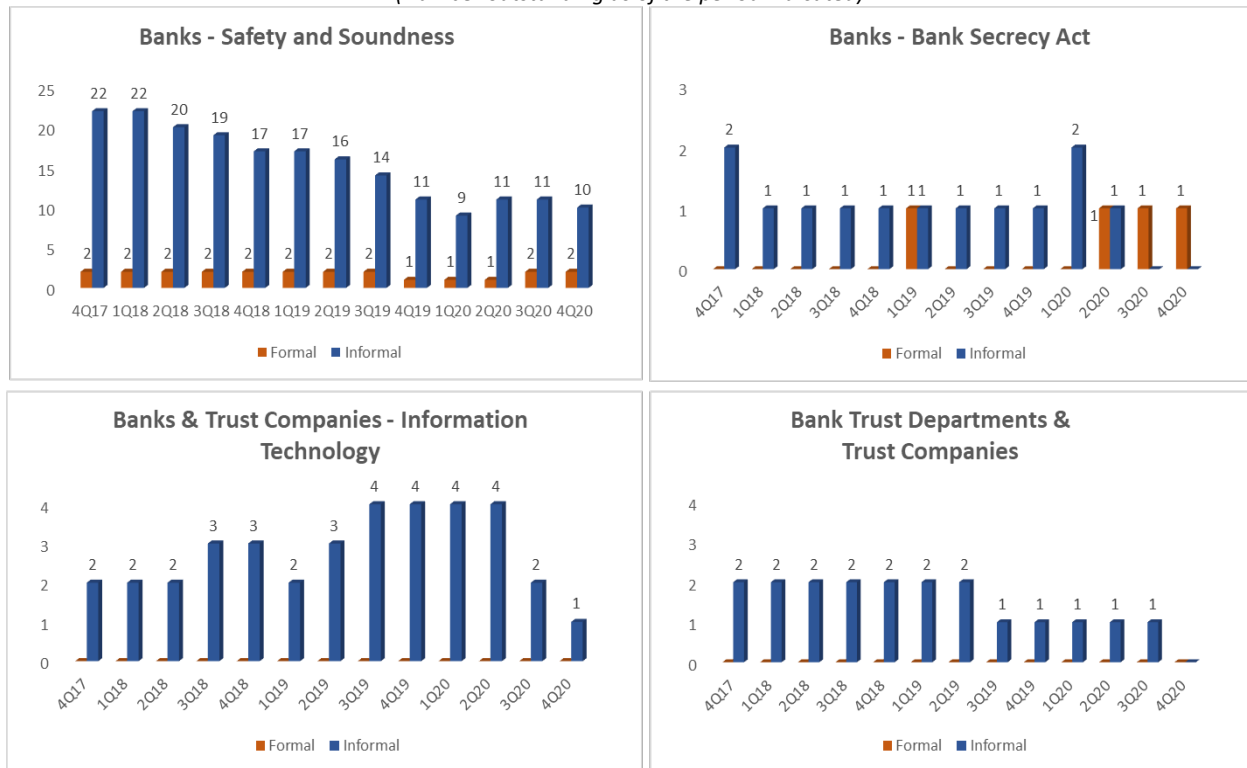
The Department considers any bank with a Uniform Financial Institutions Composite Rating of 3, 4, or 5, to be a problem bank. The number of problem banks remains below what we consider to be a normal range of between 3% and 5% of the total number of institutions. While we continue to expect the number of problem banks to increase due to the economic fallout from the COVID-19 pandemic, we are cautiously optimistic that the increase will be at a pace and to a level lower than initially anticipated. Additional stimulus money provided by the United States Congress would mitigate such increase, but the likelihood and timing of any additional stimulus remains unknown.

Summary of the Bank & Trust Supervision Division Activities

Page 3

Enforcement Actions Outstanding by Type

(Number outstanding as of the period indicated)



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

Compliance with Examination Priorities Percent of Examinations Conducted within Department Guidelines		
Entity Type	FY 2020	FY 2021 (YTD – Oct. 2020)
Commercial Banks (All / DOB Only)	96% / 94%	90% / 82%
IT	97% / 97%	97% / 100%
Trust	100% / 100%	100% / 100%
Foreign Banks (FRB)	67%	50%
Trust Companies (DOB)	67%	100%
IT	100%	100%

The division is meeting examination priorities for FY 2021 for IT and trust but is outside of guidelines for commercial and foreign bank examinations. Of the 11 commercial banks examined by the Department thus far in fiscal year 2021, two are past due an average of 18 days. Compliance with examination priorities for foreign bank entities is expected to remain a challenge through much of fiscal year 2021 as

these examinations are conducted jointly with the Federal Reserve, who is focusing examination efforts on perceived higher risk entities.

Division Highlights

- **COVID-19 Update:**

- o All examinations continue to be performed offsite 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. The Department maintains regular communication with regulated entities and performs offsite monitoring of key financial metrics.
- o The impact of the COVID-19 pandemic to bank loan portfolios has thus far been muted. However, circumstances could change and would result in increased stress on loan portfolios leading to a rise in past due loans. Most of our banks provided loan deferrals at the onset of the pandemic to help their customers cope with the situation. Subsequently, feedback from bankers is that a large portion of the deferrals are returning to original payment terms. Additional federal stimulus payments, which could improve collection probabilities, remains uncertain.

- **Self-Assessment Tool for Mitigating the Risks of Ransomware**

Ransomware has become a top cybersecurity threat for the financial services industry. On October 13, 2020, the Department issued [Industry Notice 2020-13](#), Self-Assessment Tool for Mitigating the Risks of Ransomware. This notice introduces the Ransomware Self-Assessment Tool, which is a brief questionnaire that provides banks with an overview of their preparedness to identify, protect, detect, respond, and recover from a ransomware attack. The tool helps bankers evaluate their current cybersecurity operations as it relates to ransomware and identify areas for improvement. The Director of IT Security Examinations Phillip Hinkle initiated the development and implementation of the self-assessment tool in cooperation with the Conference of State Bank Supervisors (CSBS), the Bankers Electronic Crimes Taskforce and the United States Secret Service. The tool is already being used in tabletop exercises organized in partnership with the U. S. Department of the Treasury and CSBS. Work on a non-bank entity version of the tool is currently in process.

- **Special Operations and Conferences:**

- o Beginning on October 5, 2020, many Department staff attended sessions of the Independent Bankers Association of Texas (IBAT) Annual Convention that was held virtually this year. Commissioner Charles Cooper represented the Department as a panelist in the Regulator War Room portion of the conference.
- o On October 14, 2020, Commissioner Charles Cooper participated in the first FDIC Advisory Committee of State Regulators. The committee discussed and received updates on a range of policy issues regarding the regulation of state-chartered financial institutions throughout the United States.

- o On October 14, 2020, Deputy Commissioner Kurt Purdom and Assistant Examiner Trey Gonzalez gave a virtual presentation to the Texas A&M University Banking Program students covering the bank regulatory framework and developing risks within the banking system.
- o On October 29, 2020, Deputy Commissioner Kurt Purdom participated virtually in a Texas A&M University Banking Program Advisory Board meeting. Mr. Purdom also participated virtually in an Executive Council Meeting of the Banking Program on November 17, 2020.
- o On November 2, 2020, Director of IT Security Examinations Phillip Hinkle helped facilitate a Ransomware Tabletop Exercise in collaboration with the U. S. Department of the Treasury and CSBS. This was the first of more planned exercises. Approximately 70 bankers from across the United States participated in this exercise.
- o On November 10, 2020, Commissioner Charles Cooper and Deputy Commissioner Kurt Purdom participated virtually in a CSBS District IV meeting. Deputy Commissioner Purdom temporarily served as Chairman of District IV until a replacement was named during this meeting; Mr. Purdom will continue to serve as Vice Chairman of District IV.



Charles G. Cooper
Commissioner

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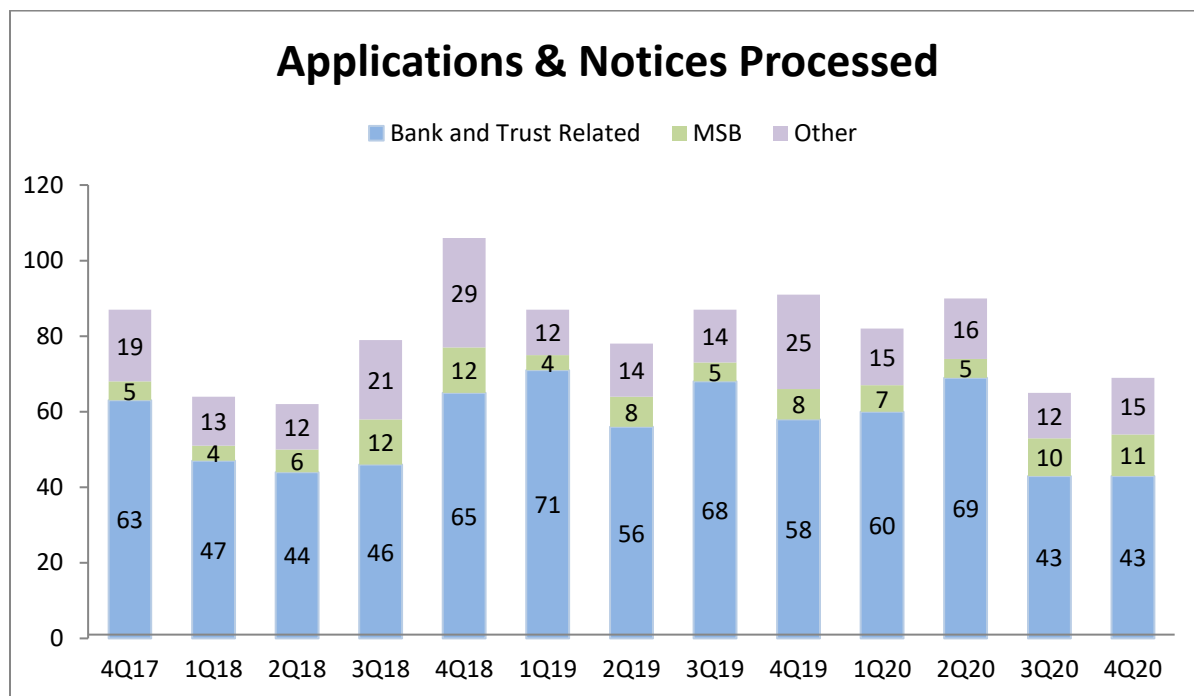
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To: Finance Commission Members

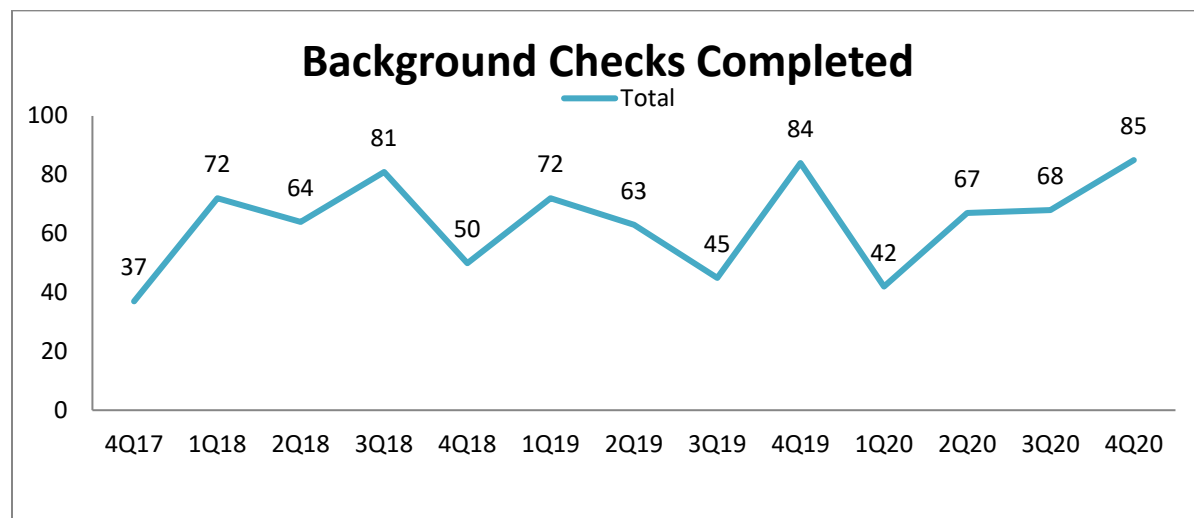
From: Mark Largent, Director of Corporate Activities

Date: November 25, 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 November 24, 2020)
Bank Related	27
Trust Companies	5
Money Services Business (MSB)	25
Others	3
Totals	60

Division Highlights

- Application volume remains robust and at the level reported at the last Finance Commission meeting. Compared to our last report submitted, the Corporate Division's filings presently under review by category type changed by:
 - Bank related decreased 2 (7%)
 - Trust company decreased 1 (17%)
 - MSB related increased 1 (4%)
 - Other increased 2 (200%)
- **Charter, Conversion, and Merger Activity** – Since the last report to the Finance Commission, the following transactions have consummated:
 - *Banks*
 - The Bank of San Antonio, San Antonio, Texas, completed its affiliated mergers with The Bank of Austin, Austin, Texas, and Texas Hill Country Bank, Bandera, Texas [no change in state banking assets].
 - *Trust Companies*
 - None.



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To: Finance Commission Members

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

Date: December 1, 2020

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

			FY 2021							
Entity	FY 2020		1 st		2 nd		3 rd		4 th	
Industry Profile (# / Assets (billions))										
Money Services Businesses (MSB)	171	\$163.4	*	*						
Prepaid Funeral Contract (PFC)	353	\$4.3	*	*						
Perpetual Care Cemeteries (PCC)	243	\$376.5**	*	*						
Check Verification Entities (CVE)	2	n/a	*	*						
Examinations Performed										
MSB	93		*							
MSB Limited Scope	2		*							
MSB Accepted other State	12		*							
PFC	263		*							
PFC Limited Scope	0		*							
PCC	179		*							
PCC Limited Scope	1		*							
Ratings (# / %) Assigned to All Regulated Entities										
1	298	39.84%	*	*						
2	391	52.27%	*	*						
3	56	7.49%	*	*						
4 & 5	3	0.40%	*	*						
Noncompliance with Examination Priorities (Past Due)										
MSB	14		*							
PFC	2		*							
PCC	0		*							

NOTES:

*First quarter Fiscal Year 2021 data has not been finalized and will be provided in the division's next summary.

** PCC \$ amounts reflected in the millions.

Limited scope examinations do not receive a rating.

Examination Activities

- NDS continues to perform remote examinations in coordination with license holders without a material impact to the scope and the examination priorities. Although NDS has not finalized its analysis related to examination performance compliance, it is anticipated that all NDS performance measures will be met for the first quarter of Fiscal Year 2021.
- The division is on course to perform its first pilot examination of an MSB utilizing the State Examination System (SES) as part of a coordinated multi-state examination in January 2021. SES is a new examination management system developed by the Conference of State Bank Supervisors (CSBS) intended to facilitate Money Service Business (MSB) examinations by improving communication and coordination among the states and licensees.

Division Activities

- Since field examiners are conducting examinations remotely, ongoing conference calls and virtual meetings are being conducted to ensure staff is kept informed of recent Departmental developments. Examiners are also provided the opportunity to present administrative and examination topics for discussion. These meetings are beneficial in maintaining lines of communication open between the office and field examiners.
- During the week of October 19th, all PFC/PCC examiners attended the North American Death Care Regulators Association Virtual Annual Meeting & Training Seminar. The meeting provided a forum for death care state regulators to listen to industry-related presentations and to discuss matters affecting the death care industry.
- Division staff continues to monitor for, and investigate, activities conducted in non-compliance with applicable regulations. During this reporting period, NDS issued regulatory enforcement actions against entities offering and conducting MSB activities in violation of applicable rules and regulations to protect the rights and interests of Texas consumers.
- NDS staff continues to participate in various Multi-state MSB Examination Task Force (MMET) and Money Transmitters Regulators Association (MTRA) committees. In addition, Assistant Deputy Commissioner Reese continues to be an active member of the Regulator-Industry Clearing House Working Group and the Federal MSB Legislation Working Group. Both working groups work in collaboration with CSBS to promote uniformity in the licensing and supervision of MSBs by developing model practices and laws.
- During the week of November 9th, the division underwent the virtual CSBS MSB Accreditation Program review. The CSBS assigned Review Team reviewed the agency's responses and documentation previously submitted with the Self-Evaluation Questionnaire and conducted various virtual staff interviews. The team conducted a closing meeting on November 13, 2020 with several key agency personnel. Although a final accreditation report from CSBS will be issued 30-45 days after the CSBS Performance Standards Committee approves the results, the Review Team indicated that our agency met all standards, and earned accolades on several standards reviewed.



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Memorandum

To: Finance Commission Members

From: Lori Wright, Director of Human Resources

Date: November 19, 2020

Subject: Summary of the Human Resources Division Activities

Human Resources Fiscal Year 2021 Activities

Active Postings				
<i>Number of Positions</i>	<i>Position</i>	<i>Division</i>	<i>Status</i>	<i>Activities</i>
1	Staff Services Officer III-V	Administrative Services	Open Until Filled	
1	Law Clerk	Legal	Closed	Interviews
1	Financial Examiner I-II	NDS-MSB	Closed	Secondary Screening

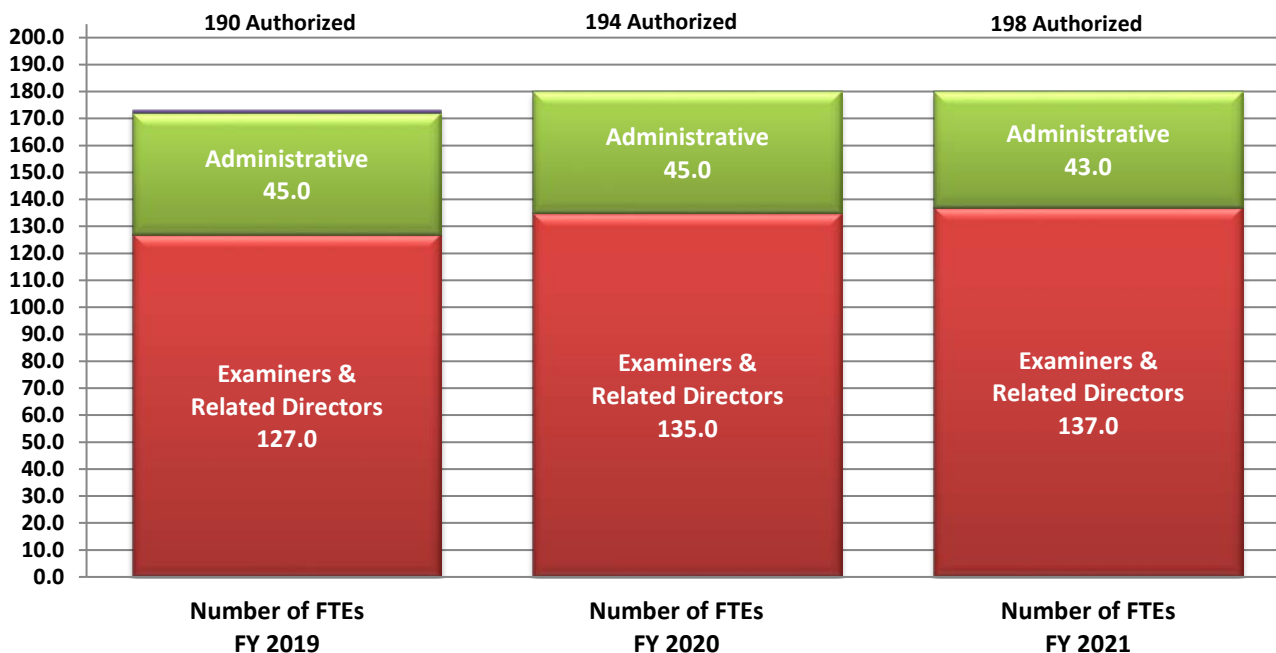
Compensation Project

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.

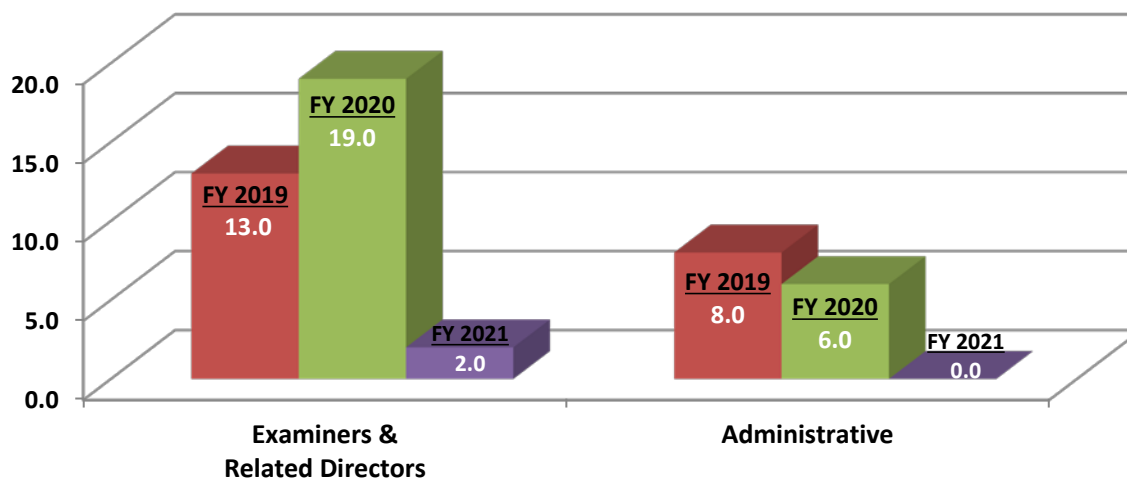
COVID-19

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 2019, 2020 and 2021 as of 10/31/2020



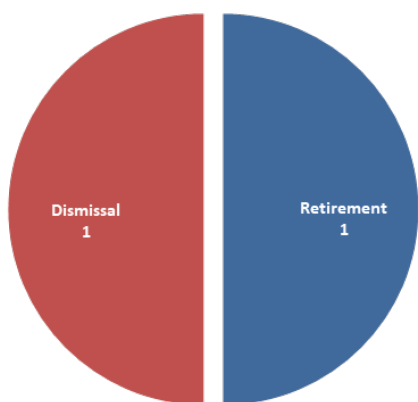
New Hire Data for Fiscal Years 2019, 2020 and 2021



FY 2021 Employee Turnover Reasons

All Employees
2 Resignations

Financial Examiners Only
0 Resignations



As of 10/31/2020




Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

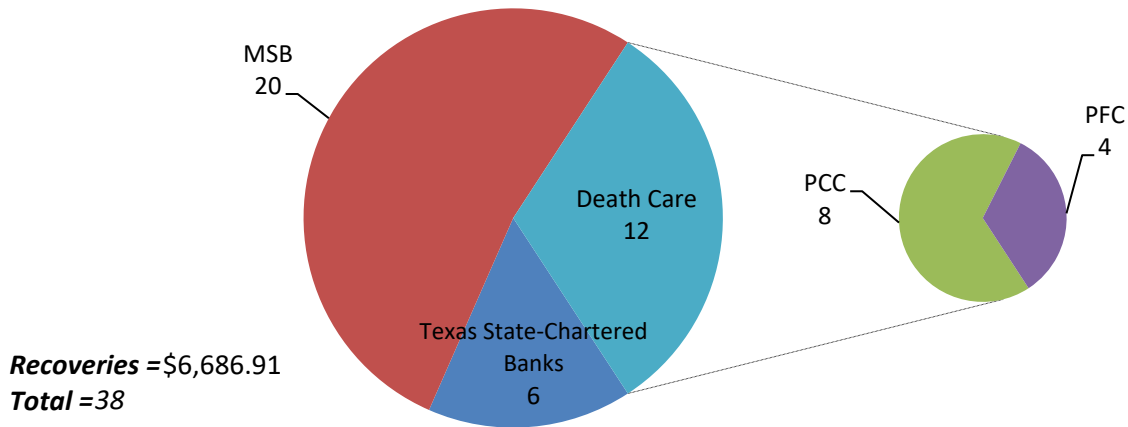
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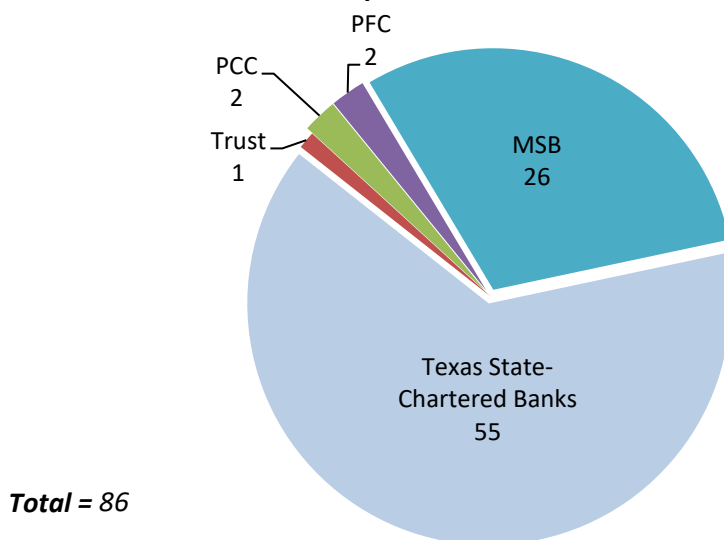
www.dob.texas.gov

To: Finance Commission Members
From: Michelle N. Hodge, Director of Strategic Support 
Date: November 20, 2020
Subject: Summary of the Strategic Support Division Activities

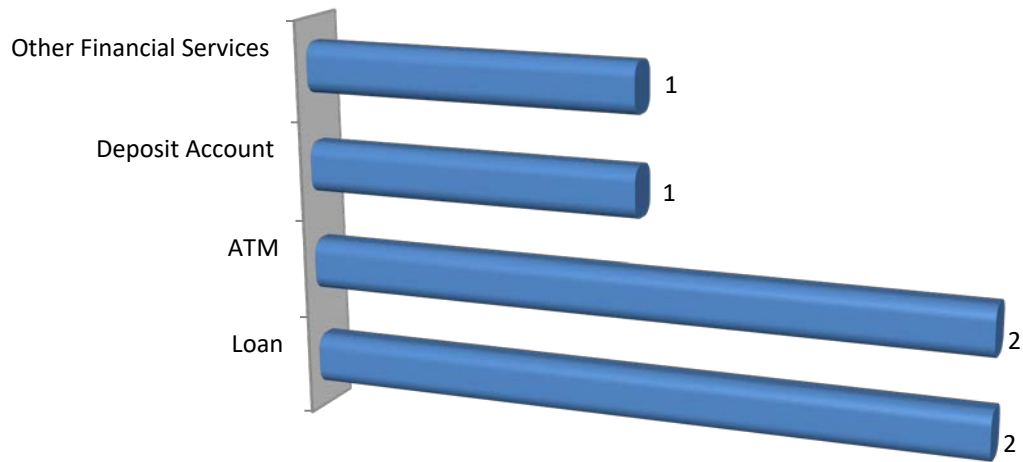
Jurisdictional Written Complaints September 2020 - October 2020



Inquiries on Jurisdictional Entities September 2020 - October 2020

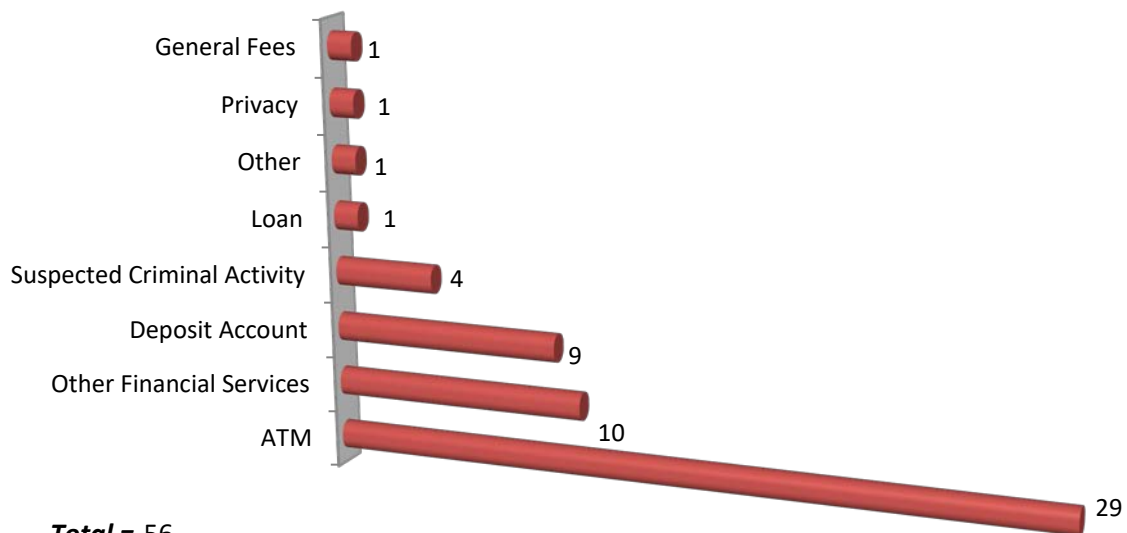


**State-Chartered Banks and Trust Companies
Written Complaints by Type
September 2020 - October 2020**



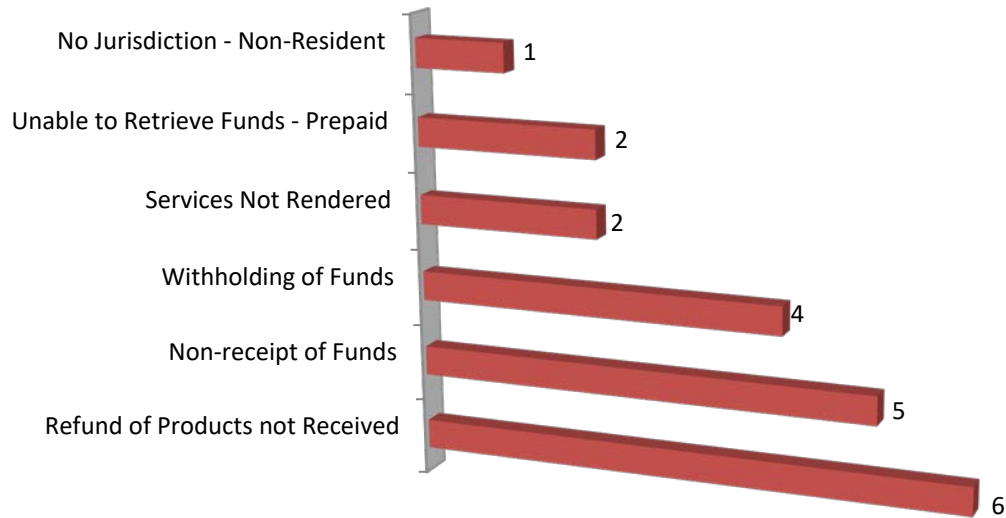
Total = 6

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



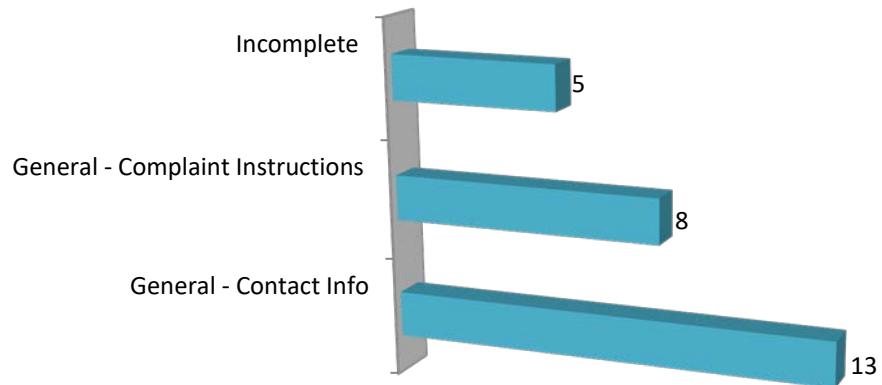
Total = 56

**Money Services Businesses
Written Complaints by Type
September 2020 - October 2020**



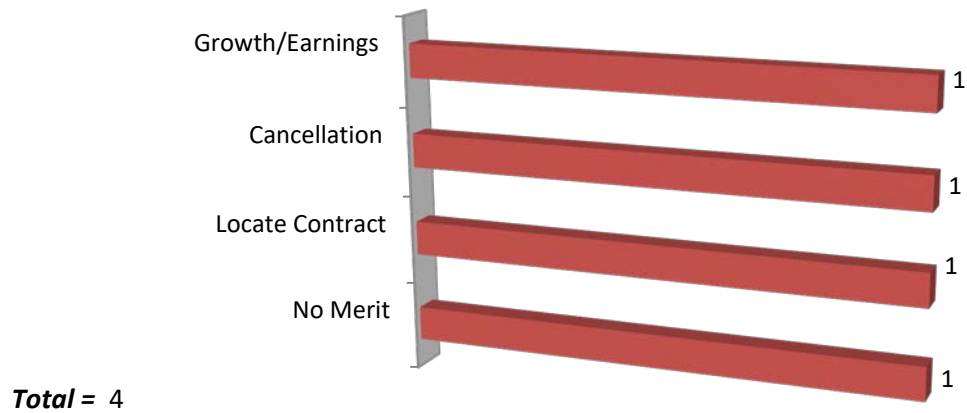
Total = 20

**Money Services Businesses
Inquiries by Type
September 2020 - October 2020**

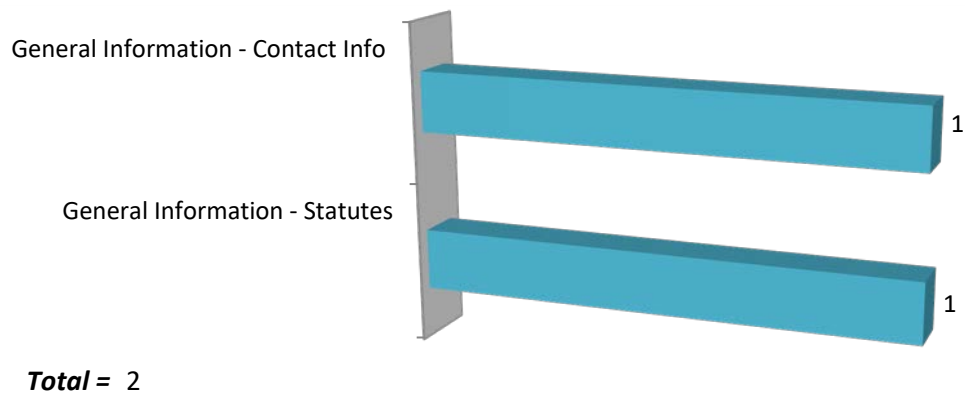


Total = 26

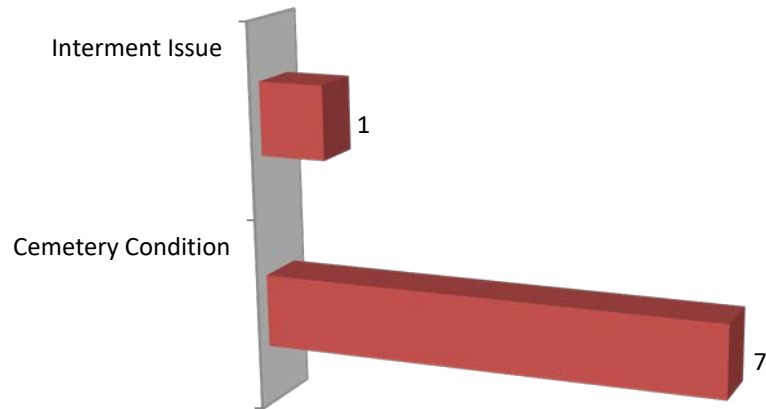
**Prepaid Funeral Contract Sellers
Written Complaints by Type
September 2020 - October 2020**



**Prepaid Funeral Contract Sellers
Inquiries by Type
September 2020 - October 2020**

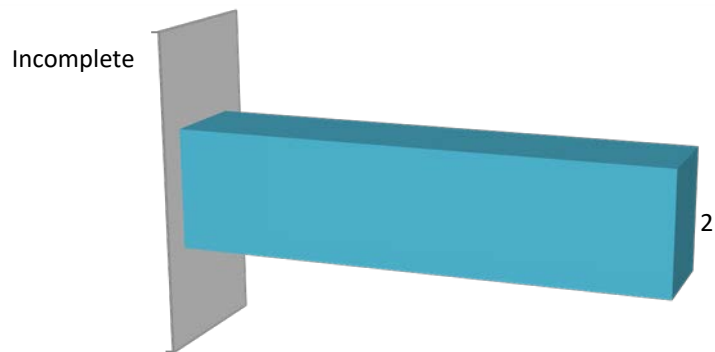


**Perpetual Care Cemeteries
Written Complaints by Type
September 2020 - October 2020**



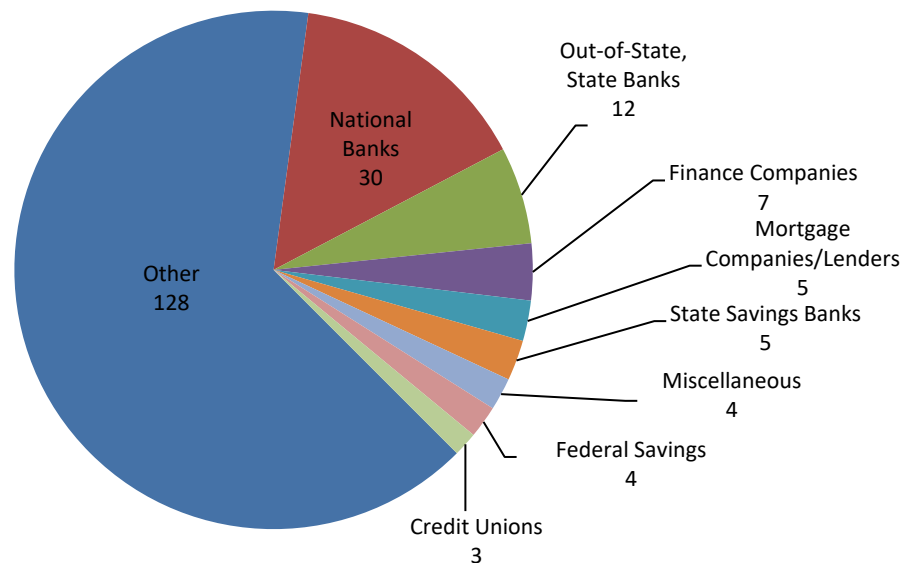
Total = 8

**Perpetual Care Cemeteries
Inquiries by Type
September 2020 - October 2020**



Total = 2

Complaints and Inquiries Against Non-Jurisdictional Entities September 2020 - October 2020



Total = 198

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

First Quarter FY 2021 data is not available.

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

Closed Account Notification System (CANS) ACTIVITY

January 1, 2017 – November 20, 2020

Entity	Enrolled	Compromised Accounts Reported
Texas State-Chartered Banks	193	460
Texas State-Chartered Savings Banks	24	56
Federal Savings Banks	10	1
State Credit Unions	132	798
Federal Credit Unions	229	413
National Banks	170	151
Out-of-State State-Chartered Banks	12	166
Out-of-State National Banks	6	1
Total	776	2,046

Bank Examination Testing System (BETS) Activity

Number of Candidates Passing Each Phase

	FY 2018	FY 2019	FY 2020	FY 2021
I. General Knowledge	6	3	4*	1
II. Loan Analysis	3	5	7	N/A
III. Panel	2	5	10	1
IV. Test Bank	3	4	7	2
Total FE3	22	19	15	21

Promotions

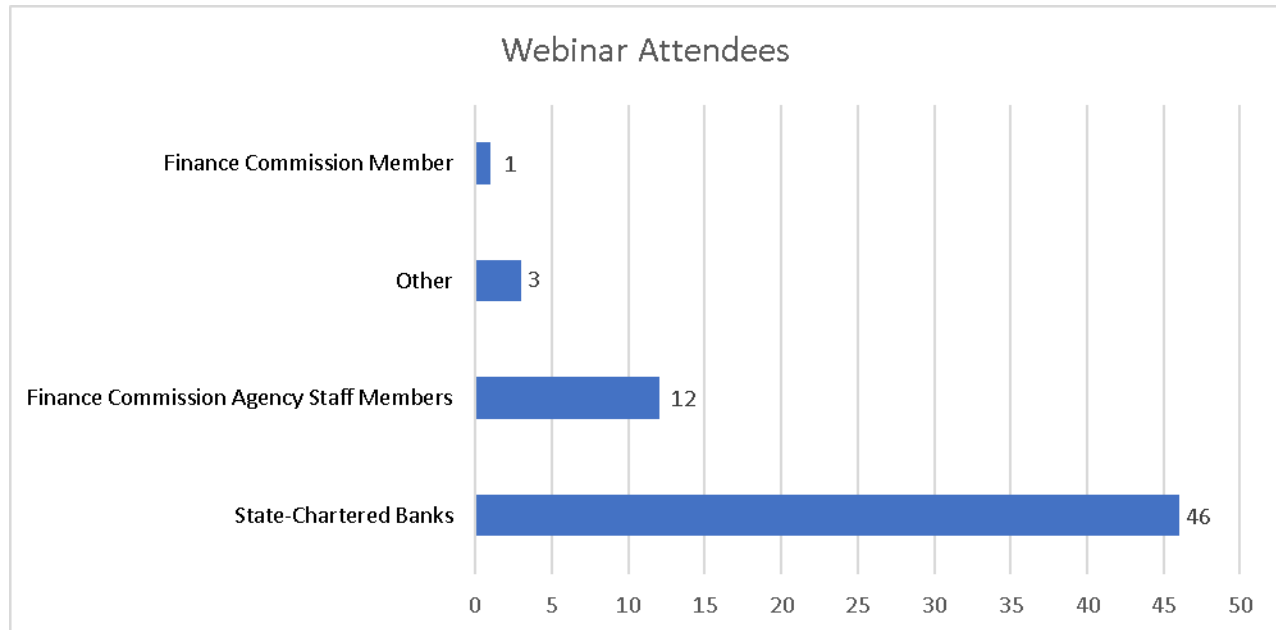
Commissioned Examiners	2	5*	7	2
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*Includes a FE V Credit Specialist

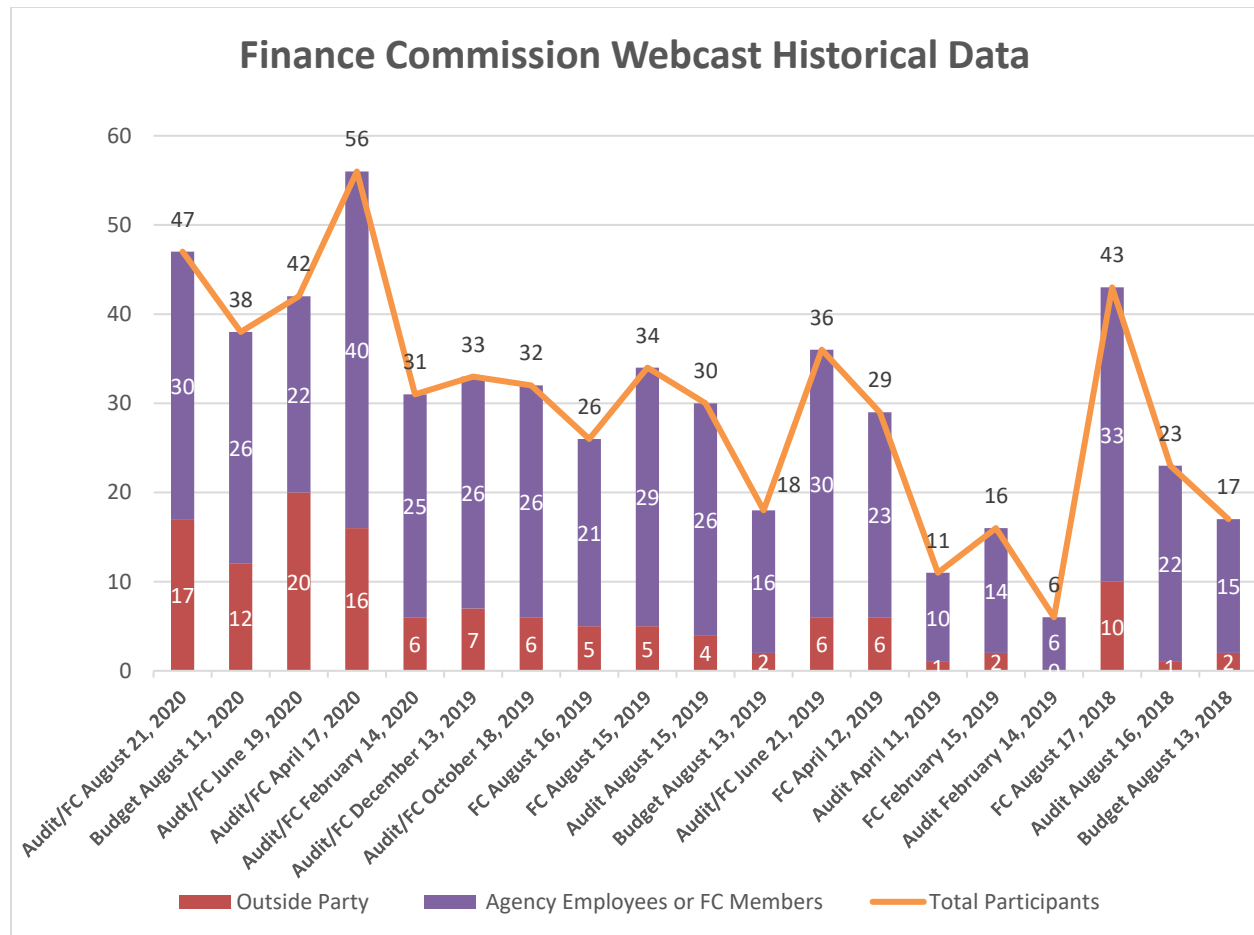
Other Divisional Items:

- *87th Legislative Session*
 - The 87th Legislative session begins on Tuesday January 12, 2021. Pre-filing of bills for the upcoming session began on Monday, November 9, 2020. There were 545 bills filed on the first day.
- *Financial Education*
 - The Department's [financial education brochure](#) was updated in October 2020. The brochure outlines the importance of financial literacy and highlights a variety of resources available to bankers, community organizations, and individuals of all ages. Many other resources relating to financial literacy are available on the Department's Financial Education [web page](#).
 - Financial Education Webinar: Applying for Credit

- On Tuesday, November 10, 2020, the Department held a joint financial education webinar “Applying for Credit” with the OCC. It was a 45-minute webinar that was led by the Department’s Houston Regional Director Jacqueline T. Willardson and the OCC’s TFEE Grant and Financial Education Coordinator Andrea Johnson.
- The webinar had 62 participants. The participants are summarized in the following chart:



- *Personnel and Policies Manual Updates*
 - Revised Supervisory Memorandums (SM)
 - SM 1008 – Policy for Other Real Estate Owned (October)
 - Revised Examiner Bulletin (XB)
 - XB 2020-04 Supplement – BSA/AML Transaction Testing and Other Reviews During an Off-Site Examination for Banks (October)
- *Examination Procedure Updates*
 - Management Procedure for Banks (October)
 - Management Procedure for Trust Departments and Trust Companies (October)
 - Earnings Procedure for Trust Departments and Trust Companies (October)
- *Staff Training*
 - Barbara Winters attended the FFIEC Emerging Issues virtually. (October)
 - Juan Renteria attended the FFIEC Consumer Compliance Conference virtually. (October)
 - Michelle Hodge attended the e-Records Conference 2020 virtually. (November)



* 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

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Memorandum

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

Litigation

Daniel J. Shea v. Mid-America Mortgage, Inc., Hon. Greg Abbott, and Philip A. Holt; Cause No. 2019-22261, in the 55th Judicial District Court of Harris County, Texas. This case was filed in July 2020, alleging wrongful denial of the plaintiff's application to obtain cash-out refinancing of his home. We have obtained representation on behalf of Chairman Holt through the Office of the Attorney General (OAG). On 9/10/20 the OAG filed a plea to the jurisdiction; hearing was held 10/5/2020. To date, the judge has not ruled on that plea. On 11/13/20, the plaintiff filed a fourth amended petition seeking a declaration that the state prohibition on cash-out refinancing is preempted under federal law. OAG response is pending.

E. Edward Okpa vs. Charles G. Cooper, Texas Banking Commissioner, Texas Department of Banking, Cause No. D-1-GN-20-005368, in the 53rd Judicial District Court of Travis County, Texas. This case was filed September 28, 2020, seeking a declaratory judgment that the plaintiff's proposed business model would not require a money transmission license under the Texas Finance Code. We have obtained representation through the OAG. On 10/30/20 the parties entered into an agreement whereby the answer to the petition would be extended until January 29, 2021, which would give the plaintiff time to submit the information needed by the Department to issue a formal determination as to whether a money transmission license would be required.

Pending Contested Cases

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

Orders Issued 10/1/20 – 11/30/20

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

Non-Depository Supervision

- Consent Order dated October 19, 2020; Global Escrow Solutions, Austin, TX
- Consent Order dated October 27, 2020; South Dakota Trust Company, Sioux Falls, SD
- Consent Order dated November 2, 2020; Cash Register Services, Inc. dba Truno Retail Technology Solutions, Lubbock, TX
- Consent Order dated November 4, 2020; DCS Holdings Group, LLC, St. Charles, MO
- Consent Order dated November 17, 2020; Bitstamp USA, Inc., London, UK

Bank and Trust Supervision

- Consent Order dated October 8, 2020; Lacie S. Orsak, Bulverde, TX

Public Information Requests

From October 1, 2020 through November 30, 2020, staff received and responded to 22 requests for public information held by the Department. During the same period, we received and responded to one public information request addressed to the Finance Commission.

Gifts

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

FY 2021 Quarterly Order Activity

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



DEPARTMENT OF BANKING LEGISLATIVE REPORT TO FINANCE COMMISSION

11-30-2020

DOB-FC Report

[HB 70](#)

[Swanson, Valoree\(R\)](#)

Relating to legislative review and approval of certain state agency rules.

Companions: [HB 112](#) Swanson, Valoree (Refiled from 86R Session)

Remarks: HB 70 amends Chapter 2001 of the Government Code by adding section 2001.0321. The bill provides for legislative review and approval of state agency rules. The bill only applies to a rule that would have an economic impact of \$20 million or more and is not an emergency rule. This would only take effect if the constitutional amendment proposed in HJR 6 is approved by voters.

Bill History: 11-09-20 H Filed

[HB 327](#)

[Howard, Donna\(D\)](#)

Relating to the Internet broadcast or audio recording of certain open meetings.

Remarks: HB 327 amends Chapter 551 of the Government Code by adding sections 551.024 and 551.025. Section 551.024 adds internet broadcast and archive of open meeting requirements for a state governmental agency under the executive or legislative branch with general appropriations of greater than \$10 million and 100 or more full-time employees.

Section 551.025 would apply to a state agency under the executive or legislative branch that does not meet the requirements in Section 551.024. This section would require state agencies to post the audio recording of an open meeting on the internet no later than the 7th day after an open meeting is held. The agency would also be required to post the notice of the open meeting on its website within the required time frames.

Agencies under Section 551.024 and Section 551.025 are exempt from the requirements in those sections in the event of a catastrophe or a technical breakdown which prevents the agency from complying. Following the catastrophe or technical breakdown, the governmental body shall make all efforts to make the required recordings available in a timely manner. Applies only to an open meeting held on or after September 1, 2023.

Bill History: 11-09-20 H Filed

[HB 590](#)

[Turner, Chris\(D\)](#)

Relating to public access to personal financial statements filed by public officials and candidates.

Remarks: HB 590 amends Section 572.032 of the Government Code. The bill would require that the Texas Ethics Commission make the financial statements filed by public officials available on their website within the time frames required. The Ethics Commission

BANKING DEPARTMENT- LEGISLATIVE REPORT TO FC

is not required to make available on their website the financial statements that may be destroyed or are required to be destroyed per 572.032(c). The bill would repeal 572.032(b) which requires the Ethics Commission to obtain and retain information on a person requesting to see a financial statement within the first year the statement was filed.

This bill would apply to members of the Finance Commission and the three agency commissioners.

Bill History: 11-17-20 H Filed

[HB 641](#)

[Raymond, Richard\(D\)](#)

Relating to an annual state budget and legislative budget sessions in even-numbered years and to political contributions made during a legislative session.

Remarks: HB 641 would amend Chapters 301, 316, 317, 322, and 403 of the Government Code and Chapter 253 of the Election Code.

The amendments would provide that in each even-numbered year, the legislature would convene in budget session at 12 noon on the third Tuesday in April.

The amendments would also require each state agency that sets the fees charged by that agency to cover administrative costs, to review the amounts charged as fees on an annual basis, rather than biennial. The agency would also review the fees before the beginning of each state fiscal year and incorporate its recommendations based on that review in its budget request submitted to the Legislative Budget Board (LBB) and the budget division of the governor 's office.

The LBB and the Texas Legislative Council will study how the implementation of annual state budgets may affect the laws and operations of state government and adopt recommendations for legislative and administrative actions necessary to implement an annual budget effectively. The LBB would make its initial recommendations no later than November 1, 2022.

The amendments also address limits on political contributions and contributions to legislative caucuses during and following a budget session of the legislature.

The amendments addressing the study by the LBB and political contributions would take effect on January 1, 2022. The amendments to all other sections of this Act would take effect September 1, 2023.

Bill History: 11-24-20 H Filed

[HB 645](#)

[Raymond, Richard\(D\)](#)

Relating to honesty in state taxation.

Remarks: HB 645 amends the Tax Code by adding Chapter 102, Honesty in State Taxation. The proposed new chapter defines regulatory tax to include a fee, surcharge, assessment, fine, penalty or any other charge imposed by the state for a primary purpose other than to raise revenue for general purposes including a charge

BANKING DEPARTMENT- LEGISLATIVE REPORT TO FC

imposed for the reasonable regulatory cost to this state related to the issuance of a license or permit, the performance of an investigation, inspection, or audit, or the enforcement of a state law or order.

The legislature and legislative council would be directed to change a reference to a state charge that is not correctly identified as a state tax when amending the state law containing the reference.

A state agency would not identify a state tax, including regulatory tax, as another type of state charge such as a "fee", "assessment", "fine" or "penalty" when proposing or adopting the agency's rules, reference materials, publications, and electronic media. Reference to a state charge that is not correctly identified as a state tax would be changed when amending the agency's rules, reference materials, publications, and electronic media.

The bill would also add a section to Chapter 325 of the Government Code. As part of the sunset review of a state agency, the sunset commission shall consider and make recommendations regarding statutory revisions necessary to correctly identify state charges as state taxes.

Bill History: 11-24-20 H Filed

[HJR 6](#)

[Swanson, Valoree\(R\)](#)

Proposing a constitutional amendment authorizing the legislature to provide for legislative review or approval of state agency rules.

Companions: [HJR 88](#) Swanson, Valoree (Refiled from 86R Session)
[HJR 149](#) Toth, Steve (Refiled from 86R Session)

Remarks: HJR 6 would amend Article II of the Texas Constitution by adding Section 2 to authorize the legislature to provide for legislative review or approval of rules adopted by agencies in the executive department. The amendment would allow the legislature to enact a general law that prescribes procedures regarding rules; conditions for rules to take effect; provide for suspension, repeal, or expiration of rules; or delegate powers to either legislative house, including committees. Only an elected member of the legislature may participate in the approval of rules adopted by agencies in the executive department. The proposed constitutional amendment would be submitted to voters on November2, 2021.

Bill History: 11-09-20 H Filed

[HJR 34](#)

[Raymond, Richard\(D\)](#)

Proposing a constitutional amendment providing for an annual state budget and annual legislative sessions for budget purposes.

Companions: [HJR 15](#) Raymond, Richard (Refiled from 86R Session)

Remarks: HJR 34 proposes a constitutional amendment to Articles III, IV, VII, and VIII of the Texas Constitution.

The amendments would, in part, add the requirement that the Legislature meet every odd-numbered year in regular session and every even-numbered year in budget session. Each member

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would also receive a per diem for each day during each budget session. A budget session of the legislature would not exceed 60 days, except that the legislature by majority vote of each house may extend a budget session by not more than 30 days.

When convened in budget session, a house of the legislature may not consider a bill or proposed constitutional amendment on a matter other than (1) appropriations, transfers of state money among funds and accounts, or state revenue; or (2) an emergency matter submitted by the governor in a special message to the legislature.

A budget session would be treated in the same manner as a special session of the legislature. A budget session would be convened at noon on the third Tuesday in April.

The legislature would also be allowed to call an election during a budget session of the legislature.

The amendments also address other actions required of the Texas Comptroller of Public Accounts, the Governor, the Legislature, and the State Board of Education related to the change from a state fiscal biennium to a state fiscal year.

The constitutional amendment providing for an annual state budget and annual legislative sessions for budget purposes would take effect September 1, 2023 if approved by the voters at the election to be held November 2, 2021.

Bill History: 11-24-20 H Filed

[HJR 36](#)

[Raymond, Richard\(D\)](#)

Proposing a constitutional amendment providing honesty in state taxation.

Companions: [HJR 16](#) Raymond, Richard (Refiled from 86R Session)

Remarks: HJR 36 proposes a constitutional amendment to Article VIII of the Texas Constitution. The amendment would add a new section to include the definition of a regulatory tax as a fee, levy, surcharge, assessment, fine, penalty, or other charge of any kind imposed by the state, regardless of when the law imposing the charge was enacted or whether the revenue from the charge is dedicated for a primary purpose other than to raise revenue for general purposes. This would include, among other charges,

(1) a charge imposed for the reasonable regulatory cost to this state related to the issuance of a license or permit, the performance of an investigation, inspection, or audit, or the enforcement of a state law or order; and (2) a fine, penalty, or other monetary charge imposed by this state for or in connection with a violation of a state law or order.

After November 2, 2021, the legislature may not enact a general law that imposes a state tax, including a regulatory tax, or amends the provisions relating to a state tax, including a regulatory tax, if the enacted or amended provisions relating to

BANKING DEPARTMENT- LEGISLATIVE REPORT TO FC

the tax identify the tax as another type of charge such as a "fee," "levy," "surcharge," "assessment," "fine," or "penalty."

Not later than January 1, 2024, the legislature shall revise every reference in state statute to a fee, levy, surcharge, assessment, fine, penalty, or other charge of any kind imposed by this state for a primary purpose other than to raise revenue for general purposes to refer to the charge as a "regulatory tax."

Beginning January 1, 2024, a regulatory tax identified in statute as another type of charge such as a "fee," "levy," "surcharge," "assessment," "fine," or "penalty" is void and may not be collected.

This proposed constitutional amendment would be submitted to the voters at an election to be held November 2, 2021.

Bill History: 11-24-20 H Filed

[SB 86](#)

[Miles, Borris\(D\)](#)

Relating to reporting requirements for bank loans made to African American-owned businesses.

Remarks: SB 86 amends the Finance Code by adding Chapter 272. The bill would require banks to file a report to the Finance Commission (FC) on March 1 of each year regarding loans made to a business that is majority owned by one or more African Americans during the previous calendar year. The banks must report (1) the total dollar value of loans made to African American-owned businesses, and (2) the amount loaned to African American-owned businesses as a percentage of the total amount of loans made to businesses during that calendar year.

The banking commissioner would publish and maintain the information from the reports disaggregated by bank on the Department's website. The FC would adopt rules to implement this chapter.

Bill History: 11-09-20 S Filed

[SB 150](#)

[Powell, Beverly\(D\)](#)

Relating to the procedure for adoption by a state agency of rules that may have an adverse economic effect on small businesses, micro-businesses, and rural communities.

Companions: [HB 415](#) Guerra, Bobby (Refiled from 86R Session)

Remarks: SB 150 amends Section 2006.002 of the Government Code and outlines the procedures a state agency must follow when made aware after publishing a notice of proposed rule, that the rule may have an adverse economic effect on small businesses and rural communities. The agency would be required to prepare an economic impact statement and regulatory flexibility analysis, publish both the statement and analysis in the Texas Register as an amendment to the rule, and provide copies of the statement and analysis to the appropriate standing committee of the legislature charged with reviewing the proposed rule.

Bill History: 11-09-20 S Filed

BANKING DEPARTMENT- LEGISLATIVE REPORT TO FC

Total Bills: 10

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The Pre Need Corp.

588 N. Main

Giddings, Texas 78942

I have been employed by Phillips & Luckey Funeral Homes and Pre Need Corporation for over 40 years. I have worked my way up through the company and today I own 78% of both companies. In 1985 my father wanted to retire and I took over as manager of the funeral home and started working closer with the Pre Need Corporation and in 1992 I was named President of both corporations.

Some of the duties I have with the Pre Need Corp. are reviewing all new contracts to make sure they have been written properly and matured contracts that all documents are in the matured files. I am very involved in our audits working hard to achieve a 1 rating, I feel a 2 rating is a little disappointing but acceptable. With our accountant we review our investments and make changes when necessary. I also work with our employees so they better understand the proper way to complete a contract.

On the personal side I have lived most of my life in Rockdale, I am married with one child and she works for me. I have served our city as a business person, served on Rockdale City Council and as Mayor, served a number of years with our Chamber of Commerce Board, and a number of different committees and advisory groups. I currently am serving on the Board of Directors with Classic Bank, NA. and as a Deacon in our church.

Wallace Jones
Phillips & Luckey Co., Inc./Pre Need Corp.

3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §19.51, Concerning Other Real Estate Owned by Trust Companies

PURPOSE: Amendments to §19.51 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 amendments also reduce the scope of the OREO appraisal rule by raising the recorded book value threshold for OREO subject to the rule. Specifically, the amendments only require an initial appraisal, and then re-appraisal every three years, of OREO with recorded book values of more than \$500,000, raising the existing threshold from \$250,000. The amendments also clarify that the primary scope of the OREO appraisal rule is limited to OREO acquired with restricted capital.

RECOMMENDED ACTION: No comments were received regarding the proposed amendments to 7 TAC §19.51. The Department recommends that the Commission approve adoption of the amendments without changes to the proposal as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we adopt the amendments to 7 TAC §19.51 without changes to the proposal as previously published in the *Texas Register*.

***Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 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), adopts amendments to §19.51, concerning other real estate owned (OREO). The amendments are adopted without changes to the proposed text as published in the October 30, 2020, issue of the *Texas Register* (45 TexReg 7678). The amended rule will not be republished.

REASONED JUSTIFICATION

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

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

The amendments also clarify that the primary scope of the OREO appraisal rule is limited to OREO acquired with restricted capital.

**SUMMARY OF PUBLIC COMMENTS &
RESPONSES THERETO**

No public comments regarding the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted pursuant to Texas Finance Code (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.

RULE AMENDMENTS

§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 days of the date of acquisition, unless extended by the banking commissioner. An evaluation may be substituted for an appraisal if the recorded book value of the OREO is \$500,000 or less.

(2) An additional appraisal or evaluation is not required when a 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.

(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.)

4. Discussion of and Possible Vote to Take Action on the Adoption of Amendment to 7 TAC §3.37, Concerning Calculation of Annual Assessment for Banks

PURPOSE: The amendment to §3.37 updates the bank assessment calculation table incorporated into §3.37(a) to the inflation-adjusted version effective as of September 1, 2020. The amendment also corrects typographical errors in existing §3.37(b)(1).

After publication of the proposed amendment, the Department noted an obsolete reference in §3.37(b)(1) to the initiation of inflationary adjustments on September 1, 2017, continuing thereafter on each September 1. This statement is revised in this adoption to refer only to the adjustments to be made each September 1.

RECOMMENDED ACTION: No comments were received regarding the proposed amendment to 7 TAC §3.37. The Department recommends that the Commission approve adoption of the amendment with one nonsubstantive change to the proposed text as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we adopt the amendment to 7 TAC §3.37 with one nonsubstantive change to the proposed text as previously published 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), adopts an amendment to §3.37 concerning the calculation of annual assessment for banks. The amendment is adopted with a nonsubstantive change to the proposed text as published in the October 30, 2020, issue of the *Texas Register* (44 TexReg 7677). The amended rule will be republished.

Section 3.37 is 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 to substitute a current assessment calculation table. In addition, the amendment as proposed corrects typographical errors in existing §3.37(b)(1).

The department received no comments regarding the proposed amendment. However, the department noted an obsolete reference in §3.37(b)(1) to the initiation of inflationary adjustments on September 1, 2017, continuing thereafter on each September 1. This statement is revised in this adoption to refer only to the adjustments to be made each September 1.

The amendment is adopted pursuant to Texas Finance Code (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.

§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:

Figure: 7 TAC §3.37(a)

(b) Required adjustments for inflation. In this section, "GDPIPD" means the Gross Domestic Product Implicit Price Deflator, published quarterly by the Bureau of Economic Analysis, United States Department of Commerce. The "annual GDPIPD factor" is equal to the percentage change in the GDPIPD index values published for the first quarter of the current year compared to the first quarter of the

previous year (the March-to-March period immediately preceding the calculation date), rounded to a hundredth of a percent (two decimal places).

(1) ~~Each~~ ~~[Beginning]~~ September 1, ~~[2017, and each September 1 thereafter,]~~ the table in subsection (a) of this section, as most recently revised before such date pursuant to this subsection, is revised as follows:

(A) 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 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 factor, rounded to whole dollars; and

(C) each base assessment amount listed in Step 4 for assessable asset groups 2 through 14 is adjusted to an amount equal to the maximum annual assessment possible for the next lower assessable asset group (without surcharge), rounded to whole dollars. For example, the base assessment amount for assessable asset group 2 is equal to the annual assessment (without surcharge) calculated under assessable asset group 1 for a bank with exactly \$10 million in assessable assets.

(2) Not later than August 1 of each year, the department shall calculate and prepare a revised table reflecting the inflation-adjusted values to be applied effective the following September 1, and

shall provide each state bank with notice of and access to the revised table. At least once 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, and for such other purposes as may be appropriate.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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 marginal assessment rate :	0.851675	0.483220	0.229529	0.224697	0.217448	0.132885	0.089395
4.	Add this result to the base assessment amount :	\$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 marginal assessment rate :	0.079732	0.072483	0.058173	0.034656	0.022280	0.014853	0.009902
4.	Add this result to the base assessment amount :	\$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

5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §33.13, Concerning Refund of MSB License Application Fees

PURPOSE: Amendments to §33.13(d)(2) would eliminate the ambiguity of the term “promptly” by requiring the applicant to submit missing items within 10 days of the department receiving the application and removes reference to a “subsequent application.” The proposed amendment to §33.13(d)(2) also clarifies that the department will refund an application fee if the missing items are not submitted within 10 days. Thus, as proposed, §33.13(d)(2) will allow the department to either: (1) return an application and refund the application fee; or (2) apply the fee to the application within 10 days if missing items are submitted. If missing items are not submitted within 10 days, the department will return the application and refund the fee.

Amendments to §33.13(f) would clarify at which point in the application process the application fee becomes non-refundable if the applicant withdraws the application. If amended, §33.13(f) will provide that the application fee will not be refunded after the applicant responds to the department’s initial request for additional information pursuant to §33.13(e)(1). Thus, as proposed, after the department has requested additional information, an applicant will have the option to either: (1) allow the department to continue to process the application but not receive a refund if the application is later withdrawn; or (2) withdraw their application at that time and receive a refund.

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

RECOMMENDED MOTION: I move that we publish the proposed amendments to 7 TAC Chapter 33, §33.13 in the *Texas Register*.

Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 33. Money Services Businesses
7 TAC §33.13

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend Chapter 33, §33.13 concerning how to obtain a new license and the deadlines associated with applications. The amended rule is proposed to clarify the accepted payment form and refund of money services businesses (MSB) license application fees.

Amendments to §33.13(d)(1)(B)

Current §33.13(d)(1)(B) requires a MSB license applicant to submit the application fee in the form of a check. In practice, an applicant will often submit the fee through the Nationwide Multistate Licensing System and Registry (NMLS). The proposed amendment clarifies that an applicant may submit the fee either through the NMLS or in the form of a check.

Amendments to §33.13(d)(2)

Current §33.13(d)(2) allows the department to return an MSB license application before processing if the application is missing one of the items required by §33.13(d)(1), such as the application fee, search firm reports, or financial statements. The department can determine if one of these items is missing with an initial cursory review of the application. If the application fee is submitted, but other items are missing, current §33.13(d)(2) allows the department to either return the application fee or apply it to a “promptly” submitted “subsequent application” containing the missing items. In

most cases where the department receives an application missing the required items, an applicant submits the missing items within several business days and before the department returns the application or fee; therefore, the department applies the fee to the initial application and no subsequent application is submitted. If a subsequent application or the missing items are not submitted promptly, it is unclear under current §33.13(d)(2) whether the department is required to refund the fee

Proposed amended §33.13(d)(2) eliminates the ambiguity of the term “promptly” by requiring the applicant to submit missing items within 10 days of the department receiving the application and removes reference to a “subsequent application.” The proposed amendment to §33.13(d)(2) also clarifies that the department will refund an application fee if the missing items are not submitted within 10 days. Thus, as proposed, §33.13(d)(2) will allow the department to either: (1) return an application and refund the application fee; or (2) apply the fee to the application within 10 days if missing items are submitted. If missing items are not submitted within 10 days, the department will return the application and refund the fee.

Amendments to §33.13(f)

When an application contains all required items and is not returned, the department must process and investigate the application before it is accepted for filing. This often involves making a request for additional information from the applicant pursuant to §33.13(e)(1). After reviewing the additional information, the department can make follow-up requests for additional information pursuant to §33.13(f)(3). If the applicant does not provide the requested information, the

PROPOSED AMENDMENTS TO 7 TAC §33.13
Page 2 of 4

application can be considered abandoned pursuant to TAC §33.13(g)(1), and the application fee is not refunded pursuant to §33.13(g)(2). After the department has fully processed and investigated an application, the department accepts the application for filing, and the application fee is non-refundable pursuant to §33.27(d)(1).

In a limited number of cases, an applicant withdraws the application and demands a refund of the fee after the department has made multiple requests for additional information and expended significant resources processing it, but before the department has accepted it for filing. Current §33.13 does not explicitly give the department the right to keep the application fee in these situations.

Proposed amended §33.13(f) clarifies at what point in the application process the application fee becomes non-refundable if the applicant withdraws the application. As amended, §33.13(f) provides that the application fee will not be refunded after the applicant responds to the department's initial request for additional information pursuant to §33.13(e)(1). Thus, as proposed, after the department has requested additional information, an applicant will have the option to either: (1) allow the department to continue to process the application but not receive a refund if the application is later withdrawn; or (2) withdraw their application at that time and receive a refund.

Russell Reese, Assistant Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed rule is in effect, there will be minimal fiscal implications for state government as a result of enforcing or administering the rule.

Mr. Reese has also determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is that MSB license applicants will know with greater certainty whether their application fee is refundable or non-refundable, and may make an informed decision about whether to proceed with the application or withdraw it.

For each year of the first five years that the rule will be in effect, there will be minimal economic costs to persons required to comply with the rule as proposed.

For each year of the first five years that the rule will be in effect, the rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not create a new regulation;
- will not expand, limit or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability;
- will not positively or adversely affect this state's economy; and
- will not require an increase or decrease in fees paid to the agency for an individual MSB license application but may increase or decrease the aggregate fees collected by the agency depending on how many applications require a fee refund.

PROPOSED AMENDMENTS TO 7 TAC §33.13
Page 3 of 4

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

To be considered, comments on the proposed amendments must be submitted no later than 5:00 p.m. on January 25, 2021. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amendments to Chapter 33 are proposed under Texas Finance Code §151.102, which authorizes the commission to adopt rules for the regulation of money services businesses.

Finance Code, §151.304 is affected by the proposed amendments.

§33.13 How Do I Obtain a New License and What are the Deadlines Associated with Applications?

(a) - (c) (No change.)

(d) What is required for the department to begin processing my application?

(1) Your application must provide and be accompanied by the following at the time you submit the application to the department:

(A) your signature or the signature of your duly authorized officer, as applicable, sworn to before a notary, affirming that the information in the application and accompanying documentation is true;

(B) an application fee, in the amount

established by commission rule, in the form of a check payable to the Texas Department of Banking or through the Nationwide Multistate Licensing System and Registry;

(C) all required search firm reports; and

(D) if you are applying for a money transmission license:

(i) security in the amount of at least \$300,000 that complies with Finance Code, §151.308, and an undertaking to increase the amount of the security if additional security is required under that section; and

(ii) an audited financial statement demonstrating that you satisfy the minimum net worth requirement established by Finance Code, §151.307(a), and that, if the license is issued, you are likely to maintain the required minimum; or

(E) if you are applying for a currency exchange license:

(i) security in the amount of \$2,500 that complies with Finance Code, §151.308; and

(ii) a financial statement demonstrating your solvency.

(2) The department may refuse to process and may return to you an application submitted without all the items identified in paragraph (1) of this subsection. If you submit your application fee, but fail to include one or more of the other items identified in paragraph (1) of this subsection, the department will return the application and refund the fee or, if you submit the missing items within 10 days of the department receiving your application, apply the fee to your application. ~~[or refund the fee or, if you promptly submit an application that includes~~

PROPOSED AMENDMENTS TO 7 TAC §33.13
Page 4 of 4

~~the missing items, apply the fee to your subsequent application.] If the missing items are not received within 10 days of the department receiving your application, the department will return the application and refund the fee.~~

application fee will not be refunded if you withdraw your application.

(g) – (j) (No change.)

(e) (No change.)

(f) When must I provide the additional information the department requires to consider my application complete and to accept it for filing?

(1) Subject to paragraph (2) of this subsection, the department must receive all information required to consider your application complete and to accept it for filing on or before the 61st day after the date the department receives your initial application.

(2) Upon a finding of good and sufficient cause, the banking commissioner shall grant an applicant additional time to complete the application. Extensions will be communicated to the applicant before the expiration of the filing period.

(3) After reviewing the information you provide in response to the department's initial request for additional information, the department may determine that still more information is required to consider your application complete and to accept it for filing. The department will notify you in writing if further information is required and specify the date by which the department must receive the information.

(4) After the department receives any information you provide in response to the department's initial request for additional information under subsection (e)(1), the

D.

**Department of Savings and
Mortgage Lending**

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D. Department of Savings and Mortgage Lending

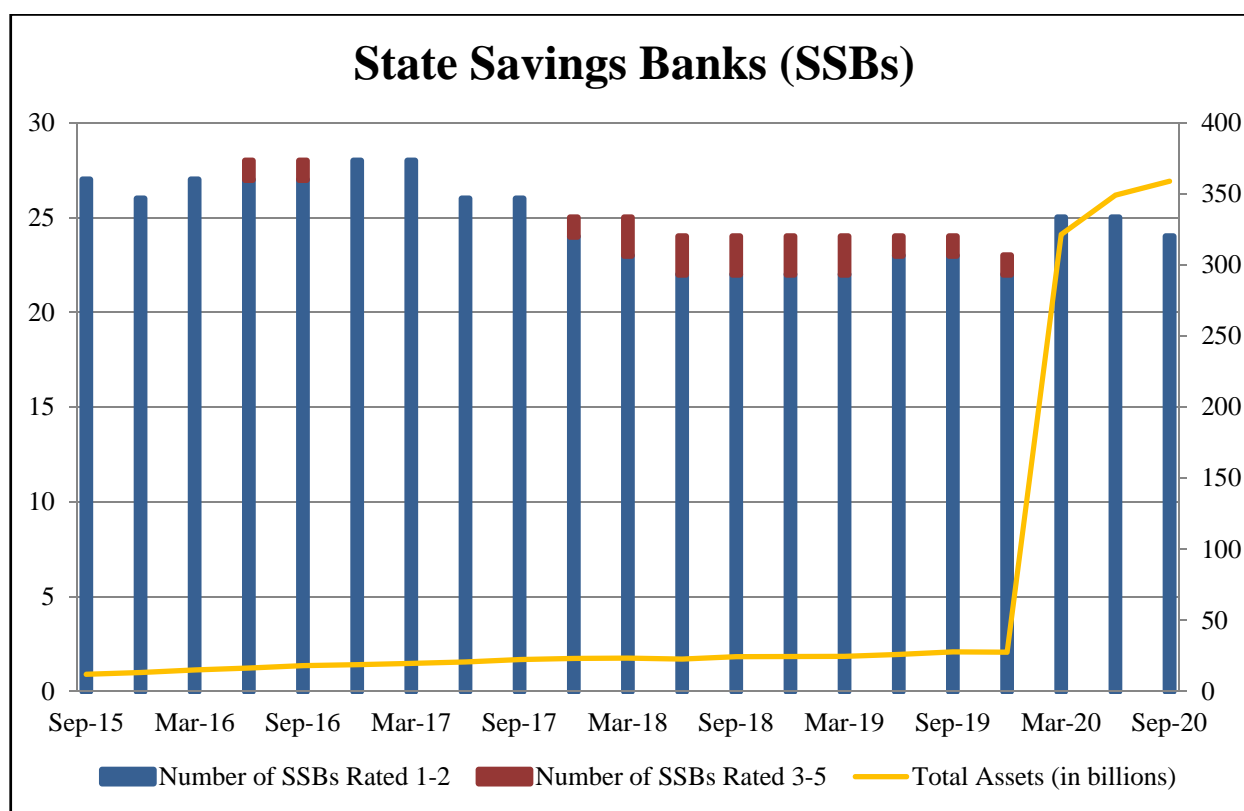
- 1. Industry Status and Departmental Operations: a) Thrift Regulation Division Activities; b) Mortgage Regulation Division Activities; c) Operations Division Activities; d) Legal Division Activities, including Consumer Complaints and Gift Reporting; and e) Legislative Activities**

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.

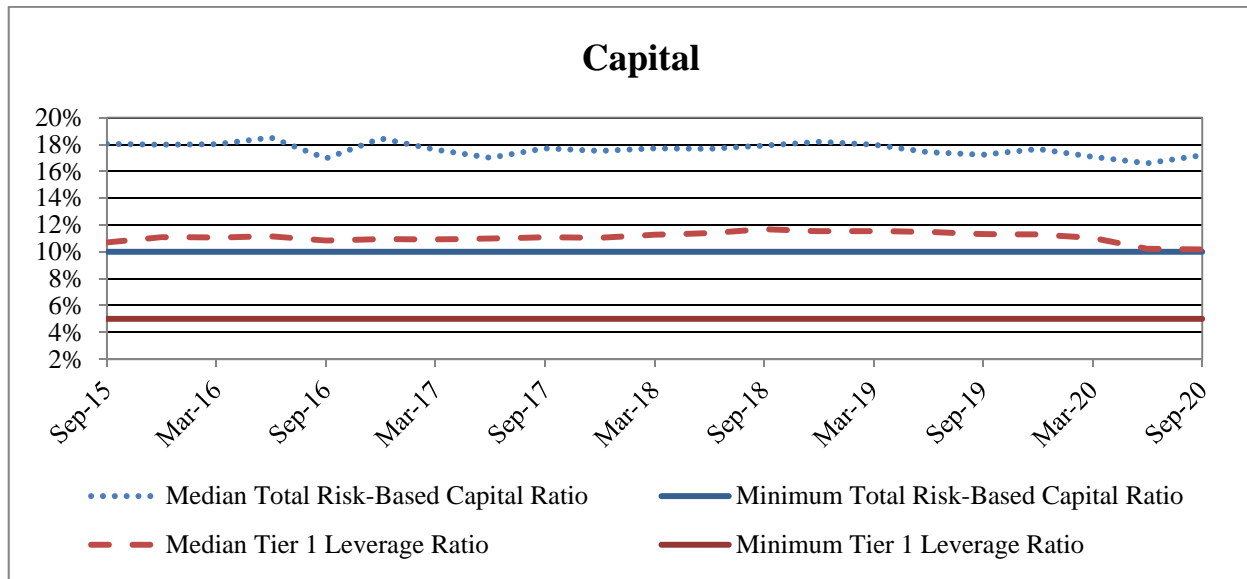
The Department conducts bank examinations to ensure confidence in the banking system using the Uniform Financial Institutions Rating System (UFIRS). Banks with a UFIRS rating of 1 or 2 are considered well rated. The industry continues to grow in assets that totaled \$359 billion as of September 30, 2020. The industry remains sound with all banks well rated.



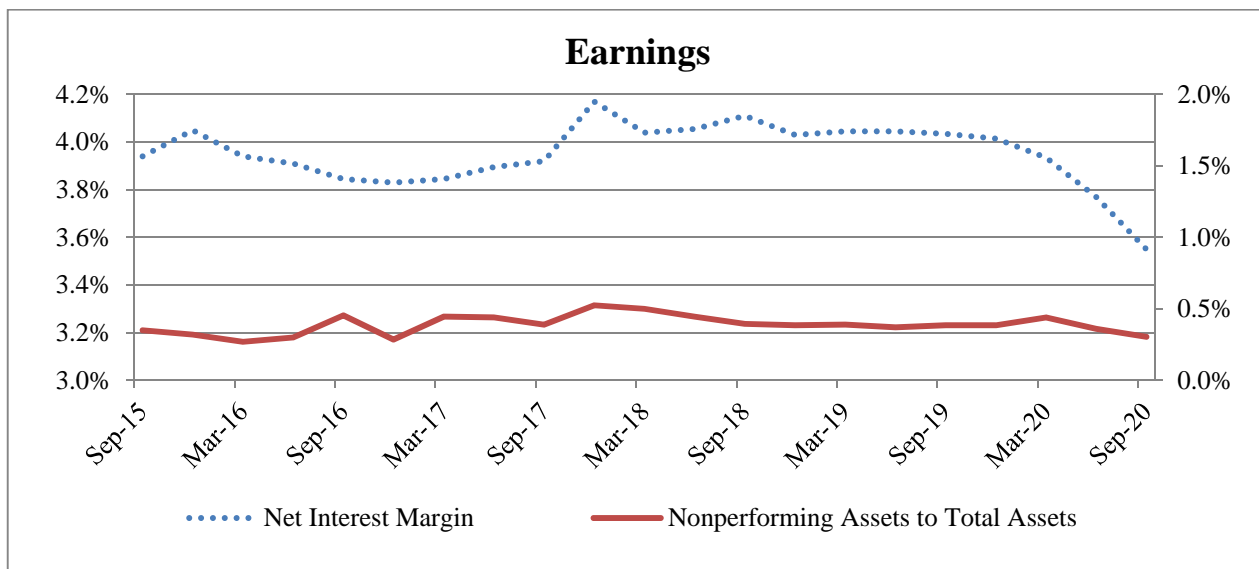
All SSBs are subject to quarterly offsite reviews. Those with the highest risk profiles receive enhanced scrutiny, as warranted, with targeted visitations, accelerated examinations, and/or corrective actions. Below are specific areas that the Department monitors in relation to changes in the state and 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 September 30, 2020, all

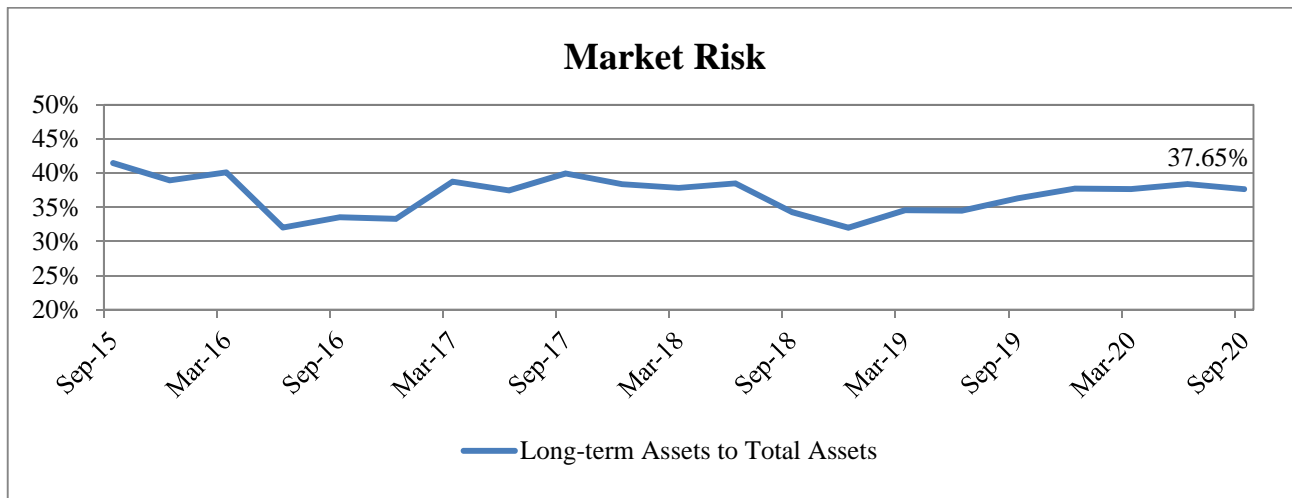
SSBs remain well above regulatory capital minimums. The portfolio median total risk-based capital ratio and median leverage capital protection have remained generally consistent and are now 17.20% and 10.18%, respectively.



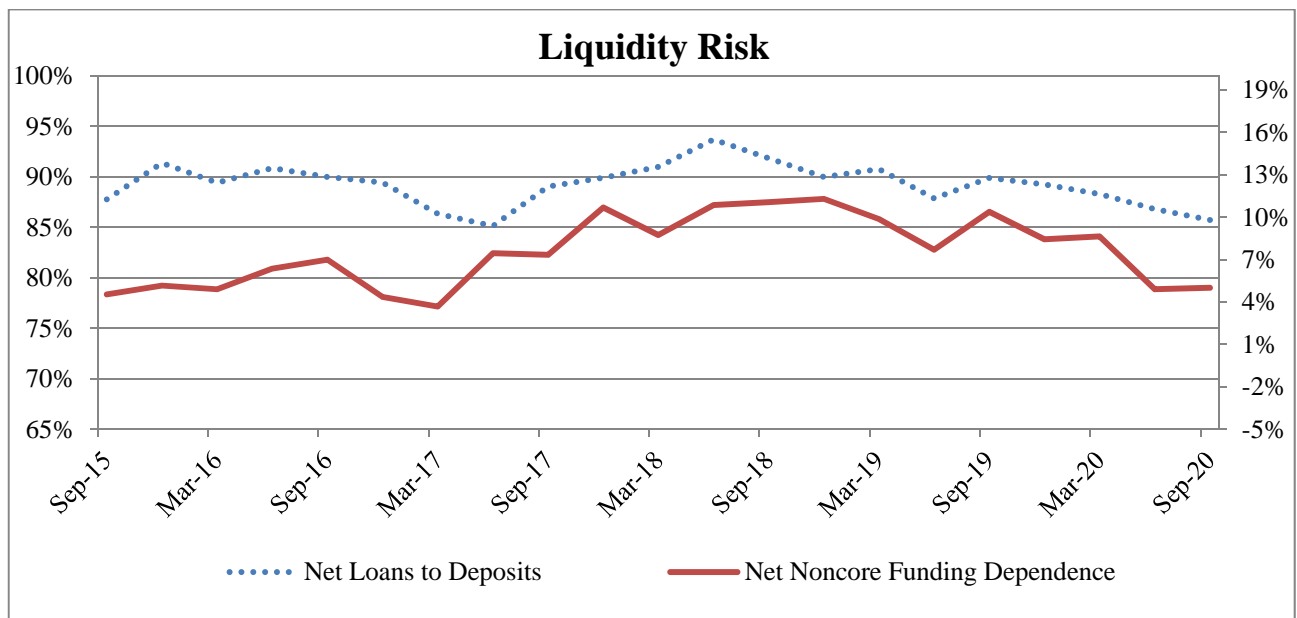
The earnings indicator is the initial safeguard against the risk of engaging in the banking business, and is the first line of defense against capital depletion resulting from shrinkage in asset value. Earnings performance should allow the bank to remain competitive by providing the resources required to implement management's strategic initiatives. The net interest or profit margin is 3.55%. Nonperforming asset levels remain low at 0.31% 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 savings bank. As of September 30, 2020, long-term assets to total assets ratio decreased to 37.65% and 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 5%. The loan-to-deposit ratio, a measure of the use of deposits to fund lending activities, at 85.73% is down from the previous four quarters.



Thrift Examinations Activity Report

Due to COVID-19, thrift examinations continue to be conducted off-site.

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.

On October 2, 2020, an application to charter Capital Mortgage Bank, SSB and a merger application of Bison State Bank, Bison, Kansas into Capital Mortgage Bank, SSB were received. The applications are currently under review.

Outreach and Training

Commissioner Jones is serving on TBA's ATM "Smash and Grab" Task Force. The Task Force includes Texas bank executives and security professionals representing national banks, state savings banks, state commercial banks, law enforcement, regulators, insurance providers, and ATM industry representatives. The Task Force met virtually for the first time on November 16, 2020. The Task Force members shared information about this issue from various perspectives and will continue such discussions in order to provide awareness and support to the Texas banking industry. State savings bank representatives on the Task Force are Will Lucas, President and CEO of Shelby Savings Bank, SSB and Randy McCauley, President & CEO of Providence Bank of Texas, SSB.

b) Mortgage Regulation Division Activities

Industry Status

License/Registration Type	Approved Count as of		% Change
	8/31/2020	10/31/2020	
Mortgage Banker	413	415	0%
Mortgage Company	1,639	1,676	2%
Residential Mortgage Loan Servicer	207	214	3%
Independent Contractor Company	195	208	7%
Credit Union Subsidiary Organization	3	3	0%
Auxiliary Mortgage Loan Activity Company	3	3	0%
Financial Services Company	1	0	-100%
<i>Subtotal Entity Licenses</i>	2,461	2,519	2%
Mortgage Banker Branches	3,246	3,328	2%
Mortgage Company Branches	902	935	4%
Credit Union Subsidiary Organization Branches	2	2	0%
<i>Subtotal Branch Licenses</i>	4,150	4,265	3%
Mortgage Loan Originator	32,238	33,505	4%
<i>Subtotal Individual Licenses</i>	32,238	33,505	4%
Total Count of Licenses/Registrations	38,849	40,289	4%

Licensing Activity Report

The renewal period for all licenses and registrations began on November 1st and runs through December 31st. Companies that have not filed or have outstanding deficiencies related to mortgage call reports and individuals that have not completed the required continuing education will not be able to submit renewal until the issue(s) are resolved. The reinstatement period runs from January 1st through February 28th. Companies or individuals that fail to reinstate before February 28th will have to restart the application process.

Mortgage Examination Activity Report

Due to COVID-19, mortgage examinations continue to be conducted off-site.

Outreach and Training

Commissioner Jones spoke on residential mortgage topics at the following virtual events:

- October 13, 2020 - Texas Legislative staffers at a TBA Financial Series with Dayna McElreath of Mutual of Omaha Mortgage and Vice President of the TMBA Board;
- October 21, 2020 - Austin Metropolitan Breakfast Club on the residential mortgage industry.

Commissioner Jones and Director of Mortgage Regulation Florence attended the Mortgage Bankers Association's 2020 Convention held October 19 – 21, 2020.

The Department's 8th Annual Mortgage Industry Seminar was held on November 17th in conjunction with the Texas Mortgage Banker Association Mortgage Symposium.



The banner features the text "8th Annual MORTGAGE INDUSTRY SEMINAR" and "Tuesday, November 17, 2020". It is flanked by images of the Texas State Capitol and the Texas Mortgage Bankers Association seal.

3:30 – 3:35	Welcome Comments <i>Commissioner Caroline C. Jones</i>
3:35 – 3:45	NMLS Mortgage Data <i>Supervisory Compliance Examiner– Justin Accola</i>
3:45 – 4:00	SML Mortgage Examination Data <i>Supervisory Compliance Examiner – Bill Poe</i>
4:00 – 4:15	Examination Best Practices <i>Chief Mortgage Examiner – Ellena Meier</i>
4:15 – 4:25	Consumer Complaints <i>General Counsel – Ernest Garcia</i>
4:25 – 4:35	Enforcement Actions <i>Associate General Counsel – Devyn Wills</i>
4:35 – 4:45	Licensing Update <i>Director of Mortgage Regulation – Tony Florence</i>
4:45– 4:55	Open Forum
4:55 – 5:00	Closing Comments <i>Commissioner Caroline C. Jones</i>

All of the above events were held virtually.

c) Operations Division Activities

Risk Management

The Department continues to be fully functional, despite COVID-19. Austin office presence is at no more than 50% in the office at any given time. Hygienic supplies are provided in the office and all necessary precautions are adhered to. All office staff is equipped to work remotely.

Mortgage and thrift examinations field staff continues to perform only off-site activities.

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 of the situation.

Accounting, Budget, and Financial Reporting

Staff is working on closing out the first quarter of year 2021.

As a self-directed semi-independent agency, the Department of Savings and Mortgage Lending submitted annual financial information required under Finance Code, Section 16.005(c), for fiscal year 2020, and biennial agency activities information required under Finance Code, Section 16.005(b), for fiscal years 2019 and 2020, to oversight agencies and members of the legislature.

The Department has responded to a data request from the State Auditor's Office Classification Section on the agency's salary actions for fiscal years 2019 and 2020. The information is used to prepare Legislative Workforce Summaries provided to the Legislature during the upcoming legislative session.

CAPPS Implementation – Staff participates in weekly work sessions related to each CAPPS Financials Module. During these sessions, the Comptroller's office CAPPS teams and Department's staff discuss CAPPS functionality and perform fit/gap analysis of the applicability to the existing Department's business processes. The discovery phase will be completed during the month of December. The prototyping phase begins in January 2021.

Legislative Activity – Staff has begun to review and analyze pre-filed bills for impact on the agency and the regulated industries.

Audit

The annual risk assessment was completed by Garza/Gonzales and associates. The report can be found elsewhere in the packet.

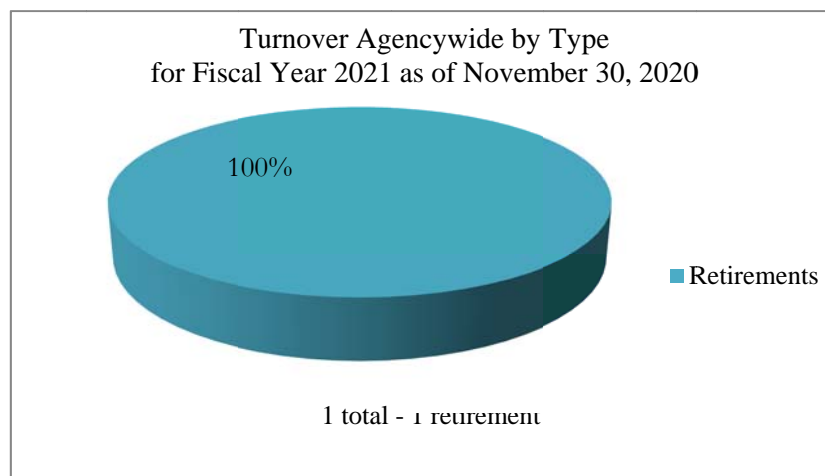
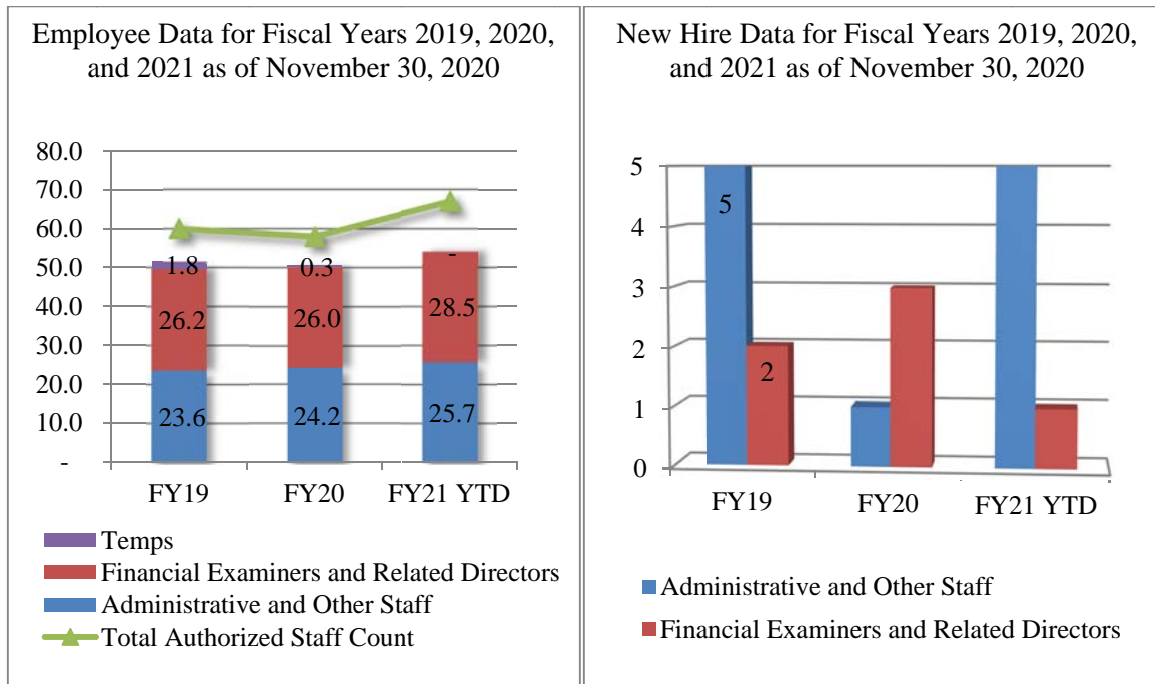
Human Resources

As of November 30, 2020, the Department was staffed at 56 regular full-time and 1 part-time employees. During the months of October and November, one Legal Assistant, a Licensing Manager and a Systems Support Specialist joined the Department. The Department had one retirement during the first quarter for fiscal year 2021.

Below is the status of the Department's vacancies:

Vacancy Status	
Systems Support Specialist II/III	Filled
Financial Examiner V – Thrift - 2	Collecting and reviewing applications, interviewing
Financial Examiner VI – Thrift - 3	

Staffing Charts as of November 30, 2020



Outreach and Training

An agency-wide training was held virtually October 27-29. The training featured presentations from external speakers and Department's staff on relevant technical, regulatory, and wellness topics.

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

Consumer Complaints Activity Report

During September and October of FY21, a total of 254 complaints were received. This represents a 9% increase when compared to the same time period for FY20. Loan servicing complaints represented 61% of the total number of complaints received. As of November 19, 2020, there were 52 open complaints with 96% of these complaints aged less than 90 days.

Legal and Enforcement Activity Report

Enforcement Orders

During this time period, the commissioner issued 19 enforcement orders.

In September 2020, the Department issued 12 orders related to violations cited during company examination audits. Of these orders, six were formal advisory letters, two were Letters of Reprimand, three were Orders to Take Affirmative Action and one was an Agreed Order. Four of these orders imposed an administrative penalty for the violations cited during the audit. Of these 12 orders issued two have been appealed.

In October 2020, the Department issued seven orders related to violations cited during company examination audits. Of these orders, one was a formal advisory letter, three were Orders to Cease and Desist and the remaining three orders were Orders to Take Affirmative Action, which imposed an administrative penalty for the violations cited during the audit. Of these orders there have been no appeals.

During September 2020, two RMLO license denials were appealed and referred to enforcement. One applicant has been granted a conditional license.

During the period of September and October 30, 2020, the Department did not issue any orders related to complaint investigations.

Recovery Fund Applications

The Department received one recovery fund application since the last Finance Commission Meeting on October 16, 2020. The application has been denied.

Contested State Office of Administrative Hearings (SOAH) Cases

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 the falsification of the 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 issued her proposal for decision recommending that the application for license be denied. On October 23, 2020, the commissioner issued her final order adopting the ALJ's proposal for decision.

Case No. 450 20-4631 *Department of Savings and Mortgage Lending v. Taufik Abuchaibe.*

The department denied the RMLO license application of Taufik Abuchaibe based on felony convictions involving fraud, dishonesty, breach of trust, and money laundering. On September 18, 2020, the Department filed a Motion for Summary Disposition. Mr. Abuchaibe filed a response on October 2, 2020, to which the Department filed objections on October 8, 2020. On October 15,

2020 the ALJ issued Order No. 1 Granting the Department's Motion for Summary Disposition and Canceling Hearing, closing the record and finding that there are no genuine issues of material fact and that the Department is entitled to a decision in its favor as a matter of law. The Department is awaiting issuance of the ALJ's proposal for decision which is typically issued within 60 days of the order.

Currently, the department has one case pending at SOAH. The next contested case hearing is presently scheduled for December 18, 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 disputes recently. Trien's deposition and several others were taken in September 2020. On November 9, 2020, the Parties participated in a mediation and have agreed to settle all matters in controversy, subject to final Division and Executive Office approval of the OAG. Mr. Trien and his counsel have agreed to permanent injunctive terms; consumer damages, civil penalties and attorneys' fees, some of which will be deemed non-dischargeable. The injunctive terms will include provisions that prohibit Mr. Trien from originating or servicing residential mortgage loans.

Case No: D-1-GN-19-0080190 Jon Douglas Black v. Department of Savings and Mortgage Lending, before the 353rd Judicial District Court of Travis County, Texas.

The case relates to a Final Order denying licensure signed by the commissioner on September 18, 2019 (subsequent to a contested SOAH proceeding). Mr. Black appealed the administrative order, by filing his petition in district court. Thereafter Mr. Black filed his brief. On April 7, 2020, the Texas Attorney General's Office filed the (SML) appellee brief. The district court 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. The deadline to appeal was October 30, 2020, and no appeal was filed.

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's defaulted by not filing an Answer on November 13, 2020. The Attorney General's office anticipates filing a motion for default judgment before November 30, 2020.

Case No: D-1-GN-20-004218 *State of Texas v. Peter Wagner* – The department had entered into a settlement agreement, whereby Mr. Wagner was to make certain restitution payments to consumers for his unlicensed residential loan modification activity. In May 2020, Mr. Wagner defaulted on his installment payments 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 filed his answer. Discovery has been exchanged. The Attorney General’s office filed a motion for summary judgement on November 23, 2020. A hearing on the motion is scheduled to occur on January 14, 2021.

Public Information Requests

Between September and October 2020, the Department received and responded to 18 public information / open records requests. During this period, no requests have been forwarded to the Attorney General’s Office for a ruling.

Rulemaking

SML Future Rule Activity		
Rule	Short Title/Purpose	Projected Date for Presentation
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 since the last Finance Commission Meeting on October 16, 2020.

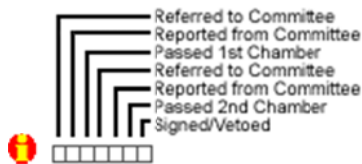
e) Legislative Activities

Staff has begun to review and analyze pre-filed bills for impact on the agency and the regulated industries.



SML FINANCE COMMISSION LEGISLATIVE REPORT

11-30-2020 - 13:05:11



[HB 70](#) [Swanson, Valoree\(R\)](#) Relating to legislative review and approval of certain state agency rules.



Companions: [HB 112](#) () (Refiled from 86R Session)

Specific Remarks: NEW: Relating to legislative review and approval of certain state agency rules. This would add a section to Chapter 2001 of the Government Code to require a committee of the legislature to review and unanimously vote on an agency rule proposal. This would only apply if the rule was not an emergency rule, and only if the economic impact of the rule would exceed \$20 million or more. This would only be enacted if the constitutional amendment referenced in HJR 6 was passed in November 2021.

Bill History: 11-09-20 H Filed

[HB 216](#) [Ortega, Lina\(D\)](#) Relating to residential mortgage loans, including the financing of residential real estate purchases by means of a wrap mortgage loan.



Specific Remarks: NEW: Poses to create a new Chapter 159 within the Texas Finance Code, to be administered by the Department. Chapter 159 would address wrap mortgage loans. The bills also seek to amend the eligibility for licensing exemption sections within Chapters 156, 157 and 180 (to read the same as the proposed exemption language in Chapter 159), to allow the Commissioner of the Department to determine when two or more owners have "substantially common ownership".

Bill History: 11-09-20 H Filed

[HB 590](#) [Turner, Chris\(D\)](#) Relating to public access to personal financial statements filed by public officials and candidates.



Bill History: 11-17-20 H Filed

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Relating to residential mortgage loans, including the financing of residential real estate purchases by means of a wrap mortgage loan.

NEW: This bill proposes to create a new Chapter 159 within the Texas Finance Code, to be administered by the Department. Chapter 159 would address wrap mortgage loans. The bills also seek to amend the eligibility for licensing exemption sections within Chapters 156, 157 and 180 (to read the same as the proposed exemption language in Chapter 159), to allow the Commissioner of the Department to determine when two or more owners have “substantially common ownership”.

11-09-20 S Filed

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Relating to reporting requirements for bank loans made to African American-owned businesses.

NEW: Relating to reporting requirements for bank loans made to African American-owned businesses. This bill seeks to add Chapter 272 of the Finance Code to include a requirement that banks send an annual report to the Finance Commission detailing the amount of loans made to businesses that are majority African American owned.

11-09-20 S Filed

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Relating to the procedure for adoption by a state agency of rules that may have an adverse economic effect on small businesses, micro-businesses, and rural communities.

HB 415 () (Refiled from 86R Session)

NEW: Relating to the procedure for adoption by a state agency of rules that may have an adverse economic effect on small businesses, micro-businesses, and rural communities. This would amend Chapter 2006 of the Government Code and would be initiated after an agency publishes a rule proposal in the Texas Register and becomes aware after the fact that the rule would have an adverse effect on small businesses and/or rural communities. It would require a state agency to prepare an economic impact statement and a regulatory flexibility analysis, publish it in the Texas Register as an amendment to the proposed rule, and provide the statement and analysis to the applicable standing committee for rule review.

11-09-20 S Filed

2. ***Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §79.1 and §79.2, Concerning Residential Mortgage Loan Servicers, Resulting from Rule Review.***

PURPOSE: The purpose of the amendments to 7 TAC §79.1 and §79.2 is to implement changes resulting from the Department's periodic review of its rules contained in 7 TAC Chapter 79, conducted pursuant to Government Code §2001.039.

RECOMMENDED ACTION: The Department recommends that the Finance Commission approve adoption of the amendments, without changes to the proposed text as published in the *Texas Register*.

RECOMMENDED MOTION: I move that the Finance Commission approve adoption of the amendments to 7 TAC §79.1 and §79.2.

ADOPTION OF AMENDMENTS
7 TAC CHAPTER 79
PAGE 1 OF 1

TITLE 7. BANKING AND SECURITIES

**PART 4. DEPARTMENT OF SAVINGS
AND MORTGAGE LENDING**

**CHAPTER 79. RESIDENTIAL
MORTGAGE LOAN SERVICERS**

SUBCHAPTER A. REGISTRATION

7 TAC §79.1, §79.2

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts amendments to existing rules at Title 7, Texas Administrative Code (TAC), Part 4, Chapter 79, Subchapter A, §79.1 and §79.2, without changes to the text published in the September 4, 2020 issue of the *Texas Register* (45 TexReg 6197).

Explanation of and Justification for the Rule

The rules under 7 TAC Chapter 79 implement Finance Code Chapter 158, Residential Mortgage Loan Servicers. The rule amendments were identified during the department's periodic review of Chapter 79, conducted pursuant to Government Code §2001.039. The rule amendments make changes to modernize and update the rules including: adding and replacing existing language to improve clarity and readability; removing unnecessary provisions; updating terminology; and eliminating a form published by rule.

Summary of Public Comments

Publication of the department's proposal to amend 7 TAC §79.1 and §79.2 recited a deadline of 30 days to receive public

comments, or October 4, 2020. A public hearing in accordance with Government Code §2001.029 was not required. No public comments were received.

Statutory Authority

The rule amendments are adopted under the authority of Finance Code §158.003 which authorizes the commission to adopt rules necessary for the purposes of or to ensure compliance with Finance Code Chapter 158.

Adoption of the rule amendments affects the statutes contained in Finance Code Chapter 158.

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3. *Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC 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 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisitions, and Conversion, Chapter 71, Change of Control, Chapter 73, Subsidiary Corporations, Chapter 75, Applications, Chapter 76, Miscellaneous, and Chapter 77, Loans, Investments, Savings and Deposits, Resulting from Rule Review.*

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

The required notice of the proposed review of 7 TAC Chapters 51, 53, 57, 61, 63, 64, 65, 67, 69, 71, 73, and 75 - 77 was published in the *Texas Register* on October 25, 2019 (44 TexReg 6377). No comments were received in response to the notice.

The Department believes the reasons for initially adopting the rules in 7 TAC Chapters 51, 53, 57, 61, 63, 64, 65, 67, 69, 71, 73, and 75 - 77 continue to exist and should be readopted.

RECOMMENDED ACTION: The Department recommends that the Commission finds that the reasons for initially adopting the rules in 7 TAC Chapters 51, 53, 57, 61, 63, 64, 65, 67, 69, 71, 73, and 75 - 77 continue to exist and readopt such rules.

RECOMMENDED MOTION: I move that the rules in 7 TAC Chapters 51, 53, 57, 61, 63, 64, 65, 67, 69, 71, 73, and 75 - 77 be readopted.

ADOPTION OF RULE REVIEW
7 TAC CHAPTERS 51, 53, 57, 61, 64, 65, 67, 69, 71, 73, AND 75 - 77
PAGE 1 OF 1

Department of Savings and Mortgage Lending

Title 7, Part 4

The Department of Savings and Mortgage Lending (department), on behalf of the Finance Commission of Texas (commission), has completed its review of the following chapters of the Texas Administrative Code (TAC), Title 7, Part 4:

Chapter 51, Charter Applications (§§51.1 - 51.15);

Chapter 53, Additional Offices (§§53.1 - 53.10, 53.17, and 53.18);

Chapter 57, Change of Office Location or Name (§§57.1 - 57.4);

Chapter 61, Hearings (§§61.1 - 61.3);

Chapter 63, Fees and Charges (§§63.1 - 63.9, 63.11 - 63.13, 63.15);

Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints (§§64.1 - 64.10);

Chapter 65, Loans and Investments (§§65.1 - 65.24);

Chapter 67, Savings and Deposit Accounts (§§67.1 - 67.17);

Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion (§§69.1 - 69.11);

Chapter 71, Change of Control (§§71.1 - 71.8);

Chapter 73, Subsidiary Corporations (§§73.1 - 73.6);

Chapter 75, Applications (§§75.1 - 75.3, 75.5 - 75.10; 75.25 - 75.27, 75.31 - 75.36, 75.38, 75.39, 75.41; 75.81 - 75.91, 75.121 - 75.127);

Chapter 76, Miscellaneous (§§76.1 - 76.7, 76.12, 76.21 - 76.26, 76.41 - 76.47, 76.61, 76.71 - 76.73, 76.121, 76.122); and

Chapter 77, Loans, Investments, Savings and Deposits (§§77.1 - 77.11, 77.31, 77.33, 77.115, 77.116).

The review of 7 TAC Chapters 51, 53, 57, 61, 63, 64, 65, 67, 69, 71, 73, and 75 - 77 was conducted in accordance with Government Code §2001.039. Notice of the review was published in the October 25, 2019 issue of the *Texas Register* (44 TexReg 6377). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting the rules reviewed continue to exist and readopts 7 TAC Chapters 51, 53, 57, 61, 63, 64, 65, 67, 69, 71, 73, and 75 - 77.

Iain Berry

Associate General Counsel

Department of Savings and Mortgage Lending

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4. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §§ 80.1, 80.2, 80.200, 80.202 – 80.206, 80.300, and 80.301, Concerning Texas Residential Mortgage Loan Companies, Resulting from Rule Review.

PURPOSE: The purpose of the amendments in 7 TAC Chapter 80 is to implement changes resulting from the Department's periodic review of its rules, conducted pursuant to Government Code §2001.039.

RECOMMENDED ACTION: The Department recommends that the Finance Commission approve adoption of the amendments to 7 TAC Chapter 80, with changes to the text of the amendments as published in the *Texas Register*. The changes recommended by the Department on adoption relate to 7 TAC § 80.1, concerning Definitions. Specifically, the Department recommends that proposed paragraph (12), concerning the definition for "offers or negotiates the terms of a residential mortgage loan," as that term is used in Tex. Fin. Code §156.002(14) be changed to eliminate subparagraph (D) as proposed, and that subparagraph (C) be changed to reflect that it is the last subparagraph under paragraph (12).

RECOMMENDED MOTION: I move that the Finance Commission approve adoption of the amendments in 7 TAC Chapter 80, including the changes recommended by the Department to the proposed text as previously published in the *Texas Register*.

ADOPTION OF AMENDMENTS
7 TAC CHAPTER 80
PAGE 1 OF 8

TITLE 7. BANKING AND SECURITIES

**PART 4. DEPARTMENT OF SAVINGS
AND MORTGAGE LENDING**

**CHAPTER 80. TEXAS RESIDENTIAL
MORTGAGE LOAN COMPANIES**

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts amendments to existing rules at Title 7, Texas Administrative Code (TAC), Part 4, Chapter 80, Subchapter A, §80.1 and §80.2; Subchapter C, §§80.200, 80.202 - 80.206; and Subchapter D, §80.300 and §80.301. The commission's proposal for the amendments was published in the September 25, 2020 issue of the *Texas Register* (45 TexReg 4439). Amended §80.2 is adopted with changes to the published text and is republished to reflect such changes. The changes to amended §80.2 regulate no new parties and affect no new subjects of regulation. As a result, the rule will not be republished as a proposed rule for comment. The other rule amendments in the proposal are adopted without changes to the text as published in the *Texas Register*.

**Explanation of and Justification for the
Rules**

The rules under 7 TAC Chapter 80 implement Finance Code, Chapter 156, Residential Mortgage Loan Companies (Chapter 156). The adopted rules were identified during the department's periodic review of 7 TAC Chapter 80, conducted pursuant to Government Code, §2001.039.

*Definition of a Residential Mortgage Loan
Originator Changes*

The adopted rules add several new definitions to §80.2 related to the definition of a residential mortgage loan originator. The adopted rules add a new definition for "originator," to adopt by reference the statutory definition for residential mortgage loan originator in Chapter 156, allowing for use of that shortened term throughout the rules, improving readability and reducing word count. The adopted rules add a definition for the phrase "takes a residential loan application," as used in Finance Code, §156.002(14), for purposes of determining when an individual is acting as a residential mortgage loan originator. The adopted rules add a definition for the term "application" to further define and clarify when an individual has received information constituting a residential mortgage loan application for that same purpose. The adopted rules also add a definition for the phrase "offers or negotiates the terms of a residential mortgage loan," as used in Finance Code, §156.002(14) for purposes of determining when an individual is acting as a residential mortgage loan originator. The adopted rules add a definition for "compensation" for that same purpose.

Other Definitions Changes

The adopted rules make other changes to the definitions section in §80.2. The adopted rules eliminate the existing definition for "one-to-four family residential real property," the subject matter of which is generally replaced by adding two new definitions for "dwelling" and "residential real estate," terms which are used in Finance Code, Chapter 156. The adopted rules also eliminate the existing definition for "criminal offense," used in evaluating an

ADOPTION OF AMENDMENTS
7 TAC CHAPTER 80
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individual's fitness and eligibility to be licensed by the department as a residential mortgage loan originator, as being unnecessary in the rules chapter pertaining to mortgage companies. The adopted rules also add the following new definitions: "mortgage applicant," "mortgage company," "person," and "social media site."

Required Disclosures and Advertising Changes

The adopted rules make changes to the disclosures a mortgage company or its sponsored originator are required to make, as provided by §80.200. The adopted rules limit existing disclosure requirements by eliminating the requirement for a licensed mortgage company to post disclosures at its physical office. Existing requirements for posting disclosures on a website are clarified to expressly include a social media site of the mortgage company. The adopted rules impose a new requirement to disclose Nationwide Mortgage Licensing System and Registry (NMLS) identification information on all correspondence from a mortgage company or sponsored originator. The adopted rules also limit existing disclosure requirements in connection with a mortgage company's physical office, as provided by §80.206, by eliminating the requirement that a mortgage company post its hours of operation at such physical office. The adopted rules make changes to the advertising requirements imposed on mortgage companies by rule, contained in §80.203. The adopted rules limit existing advertising requirements by eliminating the requirement that a mortgage company recite the address of its physical office in Texas when making an advertisement. The adopted rules further alter requirements for advertising including by: clarifying an existing requirement that advertisements on

social media sites are subject to the rules; limiting existing advertising requirements by allowing a mortgage company to promote its website address on certain promotional items deemed by rule not to constitute an advertisement; clarifying that signs on the premises of a mortgage company are not subject to the advertising requirements; and clarifying that a mortgage company may advertise directly, and need not advertise by and through an originator sponsored by the mortgage company.

Duties and Responsibilities Changes

The adopted rules make changes to the duties and responsibilities imposed on licensed mortgage companies by rule, contained in §80.202. The provisions of existing subsection (a) are eliminated and replaced with language causing each discrete act contained in the paragraphed list under subsection (a) to be deemed a violation of the prohibition against a mortgage company engaging in fraudulent and dishonest dealings pursuant to Tex. Fin. Code §156.303(a)(3). The prohibition against disparaging a source of income for a mortgage loan, contained in existing subsection (b), paragraph (3), is clarified to include the more likely and harmful scenario where the source of funds is inflated to secure loan approval. The provisions of existing subsection (b) are eliminated and replaced with language causing each discrete act contained in the paragraphed list under subsection (b) to be deemed a violation of the prohibition against a mortgage company engaging in improper dealings pursuant to Tex. Fin. Code §156.303(a)(3). Existing subsection (b), paragraph (3), which prohibits a mortgage company from representing to a mortgage applicant that a fee payable to the mortgage company operates as a discount point for the

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7 TAC CHAPTER 80
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transaction, is clarified to prohibit any similar representation that such fee confers a financial benefit on the mortgage applicant, except in the limited circumstances set forth in the subparagraphs under existing subsection (b), paragraph (3). The provisions of existing subsection (b), paragraph (3), subparagraph (D), requiring a mortgage company to respond accurately to a question about the scope and nature of its services and any costs, are eliminated and the subject matter replaced with a new subsection (b), paragraph (4), requiring a mortgage company to respond within a reasonable time to questions from a mortgage applicant. A new subsection (d) is added to offer additional guidance on the existing requirement barring the splitting of origination fees with a mortgage applicant except in the narrow circumstances elucidated by the Consumer Financial Protection Bureau (CFPB) in Regulation X. In order to aid enforcement and prevent evasion of the requirement by those individuals who are acting in the dual capacity of an originator sponsored by the mortgage company and a real estate broker or sales agent licensed under Occupations Code, Chapter 1101, the adopted rules create a rebuttable presumption that a rebate or other transfer to the mortgage applicant made after closing is derived from his or her role as originator (a violation), and, conversely, not derived from his or her role as real estate broker or sales agent.

Books and Recordkeeping Changes

The adopted rules make various changes to the requirements for a mortgage company and its sponsored originator to keep books and records, contained in §80.204. The adopted rules clarify the existing requirement that a mortgage company or its sponsored originator maintain a copy of the

mortgage loan application signed by both the originator and the mortgage applicant. The adopted rules also expand existing requirements that a mortgage company maintain a log of its mortgage transactions including by requiring that such log describe the purpose for the loan and the owner's intended occupancy of the real estate securing the mortgage loan. The adopted rules also impose a new requirement to maintain records establishing the physical office of the mortgage company, and other more minor such changes.

Other Modernization and Update Changes.

The adopted rules make changes to modernize and update the rules including: adding and replacing language for clarity and to improve readability; removing unnecessary or duplicative provisions; and updating terminology.

Summary of Public Comments

Publication of the commission's proposal for the rule amendments recited a deadline of 30 days to receive public comments, or October 25, 2020. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

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**SUBCHAPTER A. GENERAL
PROVISIONS**

7 TAC §80.1, §80.2

Statutory Authority

The adopted rules are adopted under the authority of Finance Code §156.102, which authorizes the commission to adopt rules

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7 TAC CHAPTER 80
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necessary for the intent of or to ensure compliance with Finance Code, Chapter 156, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

The adopted rules affect the statutes contained in Finance Code Chapter 156.

§80.2.Definitions.

As used in this chapter, and in the Commissioner's administration and enforcement of Finance Code, Chapter 156, the following terms have the meanings indicated:

(1) "Application," as used in Tex. Fin. Code §156.002(14) and paragraph (20) of this section means a request, in any form, for an offer (or a response to a solicitation for an offer) of residential mortgage loan terms, and the information about the mortgage applicant that is customary or necessary in a decision on whether to make such an offer, including, but not limited to, a mortgage applicant's name, income, social security number to obtain a credit report, property address, an estimate of the value of the real estate, and/or the mortgage loan amount.

(2) ~~[(1)]~~ "Branch office," as used in Tex. Fin. Code § 156.2041(a)(4), ["Branch Office"] means any office that is separate and distinct from the mortgage company's principal place of business of record with NMLS [headquarters location], whether located in Texas or not, which conducts mortgage business on residential real estate located in [the state of] Texas.

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

(4) ~~[(3)]~~ "Commissioner's designee" means an employee of the Department performing his or her assigned duties or such other person as the Commissioner may designate in writing. A Commissioner's designee is deemed to be the Commissioner's authorized "personnel or representative" as such term is used in Finance Code, Chapter 156.

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

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

(6) ~~[(5)]~~ "Control person [Person]" means an individual that directly or indirectly exercises control over a mortgage company. Control is defined by the power, directly or indirectly, to direct the management or policies of a mortgage company, whether through ownership of securities, by contract, or otherwise. Control person includes any [Any] person that:

(A) is a director, general partner or executive officer;

(B) directly or indirectly has the right to vote 10% or more of a class of a voting security or has the power to sell or direct the sale of 10% or more of a class of voting securities;

(C) in the case of an LLC, is a managing member; or

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(D) in the case of a partnership, has the right to receive upon dissolution, or had contributed, 10% or more of the partnership's capital assets[, is presumed to control that company].

~~[(6) "Criminal Offense" means any violation of any state or federal criminal statute which;]~~

~~[(A) involves theft, misappropriation, or misapplication, of monies or goods in any amount;]~~

~~[(B) involves the falsification of records, perjury, or other similar criminal offenses indicating dishonesty;]~~

~~[(C) involves the solicitation of, the giving of, or the taking of bribes, kickbacks, or other illegal compensation;]~~

~~[(D) involves deceiving the public by means of swindling, false advertising or the like;]~~

~~[(E) involves acts of moral turpitude and violation of duties owed to the public including, but not limited to, the unlawful manufacture, distribution, or trafficking in a controlled substance, dangerous drug, or marijuana;]~~

~~[(F) involves acts of violence or use of a deadly weapon;]~~

~~[(G) when considered with other violations committed over a period of time appears to establish a pattern of disregard for, a lack of respect for, or apparent inability to follow, the criminal law; or]~~

~~[(H) involves any other crime which the Commissioner determines has a reasonable relationship to whether a person is fit to~~

~~serve as an originator in a manner consistent with the purposes of Finance Code, Chapter 157 and the best interest of the State of Texas and its residents.]~~

(7) (No change.)

(8) "Dwelling" means a residential structure that contains one to four units and is attached to residential real estate. The term includes an individual condominium unit, cooperative unit, or manufactured home, if it is used as a residence.

(9) "Mortgage applicant" has the meaning assigned by Tex. Fin. Code §156.002 and includes a person who contacts a mortgage company or its sponsored originator in response to a solicitation to obtain a residential mortgage loan, and a person who has not completed or started completing a formal loan application on the appropriate form (e.g. , Fannie Mae's Form 1003 Uniform Residential Loan Application), but has submitted financial information constituting an application, as provided by paragraph (1) of this section.

~~[(9) "One to four family residential real property" means improved or unimproved real property, or any portion of or interest in any such real property, on which a one to four family dwelling, including a manufactured home, is being or is to be constructed or situated.]~~

(10) "Mortgage company" means, for the purposes of this chapter, a "residential mortgage loan company" as that term is defined by Tex. Fin. Code §156.002.

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

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(12) "Offers or negotiates the terms of a residential mortgage loan," as used in Tex. Fin. Code §156.002(14) means, among other things, when an individual:

(A) arranges or assists a mortgage applicant or prospective mortgage applicant in obtaining or applying to obtain, or otherwise secures an extension of consumer credit for another person, in connection with obtaining or applying to obtain a residential mortgage loan;

(B) presents for consideration by a mortgage applicant or prospective mortgage applicant particular residential mortgage loan terms (including rates, fees and other costs); or

(C) communicates directly or indirectly with a mortgage applicant or prospective mortgage applicant for the purpose of reaching a mutual understanding about particular residential mortgage loan terms.

(13) "Originator" has the meaning assigned by Tex. Fin. Code §156.002 in defining "residential mortgage loan originator." Paragraphs (12) and (20) of this section do not affect the applicability of such statutory definition. Individuals who are specifically excluded under such statutory definition, as provided by Tex. Fin. Code §180.002(19)(B), are excluded under this definition and for purposes of this chapter. Persons who are exempt from licensure as provided by Tex. Fin. Code §180.003 are exempt for purposes of this chapter, except as otherwise provided by Tex. Fin. Code §180.051.

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

(15) [(40)] "Physical Office" means an actual office where the business of mortgage lending and/or the business of taking or soliciting residential mortgage loan applications is [are] conducted.

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

(17) [(42)] "Residential Mortgage Loan" has the meaning assigned by Tex. Fin. Code [shall have the same meaning as that provided in Finance Code,] §180.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan which is secured by a structure that is suitable for occupancy as a dwelling [one-to-four family residence], but is used for a commercial purpose such as a professional office, [beauty] salon, or other non-residential use, and is not used as a residence.

(18) "Residential real estate" has the meaning assigned by Tex. Fin. Code §156.002 and includes both improved or unimproved real estate or any portion of or interest in such real estate on which a dwelling is or will be constructed or situated.

(19) "Social media site" means any digital platform accessible by a mortgage applicant

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or prospective mortgage applicant where the mortgage company or sponsored originator does not typically own the hosting platform but otherwise exerts editorial control or influence over the content within their account, profile, or other space on the digital platform, from which the mortgage company or sponsored originator posts commercial messages or other content designed to solicit business.

(20) "Takes a residential mortgage loan application," as used in Tex. Fin. Code §156.002(14) in defining "residential mortgage loan originator" means when an individual receives a residential mortgage loan application for the purpose of facilitating a decision on whether to extend an offer of residential mortgage loan terms to a mortgage applicant or prospective mortgage applicant, whether the application is received directly or indirectly from the mortgage applicant or prospective mortgage applicant, and regardless of whether or not a particular lender has been identified or selected.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry

Associate General Counsel

Department of Savings and Mortgage Lending

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SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

7 TAC §§80.200, 80.202 - 80.206

Statutory Authority

The adopted rules are adopted under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code, Chapter 156, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

The adopted rules affect the statutes contained in Finance Code Chapter 156.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry

Associate General Counsel

Department of Savings and Mortgage Lending

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SUBCHAPTER D. COMPLIANCE AND ENFORCEMENT

7 TAC §80.300, §80.301

Statutory Authority

The adopted rules are adopted under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code, Chapter 156, and as required to carry out the

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intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

The adopted rules affect the statutes contained in Finance Code Chapter 156.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry

Associate General Counsel

Department of Savings and Mortgage
Lending

5. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §§81.1 - 81.3, 81.200, 81.202 – 81.206, 81.300 and 81.301, Concerning Mortgage Bankers and Residential Mortgage Loan Originators, Resulting from Rule Review.

PURPOSE: The purpose of the amendments in 7 TAC Chapter 81 is to implement changes resulting from the Department's periodic review of its rules, conducted pursuant to Government Code §2001.039.

RECOMMENDED ACTION: The Department recommends that the Finance Commission adopt the amendments to 7 TAC Chapter 81, with changes to the text of the amendments as published in the *Texas Register*. The changes recommended by the Department on adoption relate to 7 TAC § 81.1, concerning Definitions. Specifically, the Department recommends that proposed paragraph (12), concerning the definition for "offers or negotiates the terms of a residential mortgage loan," as that term is used in Tex. Fin. Code §157.002(6) and §180.002(19) be changed to eliminate subparagraph (D) as proposed, and that subparagraph (C) be changed to reflect that it is the last subparagraph under paragraph (12).

RECOMMENDED MOTION: I move that the Finance Commission approve adoption of the amendments in 7 TAC Chapter 81, including the changes recommended by the Department to the proposed text as previously published in the *Texas Register*.

ADOPTION OF AMENDMENTS
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TITLE 7. BANKING AND SECURITIES

**PART 4. DEPARTMENT OF SAVINGS
AND MORTGAGE LENDING**

**CHAPTER 81. MORTGAGE BANKERS
AND RESIDENTIAL MORTGAGE LOAN
ORIGINATORS**

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts amendments to existing rules at Title 7, Texas Administrative Code (TAC), Part 4, Chapter 81, Subchapter A, §§81.1 - 81.3; Subchapter C, §§81.200, 81.202 - 81.206; and Subchapter D, §81.300 and §81.301. The commission's proposal for the amendments was published in the September 25, 2020 issue of the *Texas Register* (45 TexReg 6649). Amended §81.2 is adopted with changes to the published text and is republished to reflect such changes. The changes to amended §81.2 regulate no new parties and affect no new subjects of regulation. As a result, the rule will not be republished as a proposed rule for comment. The other rule amendments in the proposal are adopted without changes to the text as published in the *Texas Register*.

Explanation of and Justification for the Rules

The rules under 7 TAC Chapter 81 implement Finance Code Chapter 156, Mortgage Bankers and Residential Mortgage Loan Originators (Chapter 157), and Chapter 180, Residential Mortgage Loan Originators (Texas SAFE Act), with respect to person regulated under Chapter 157. The adopted rules were identified during the department's periodic review of 7 TAC Chapter 81,

conducted pursuant to Government Code, §2001.039.

*Definition of a Residential Mortgage Loan
Originator Changes*

The adopted rules add several new definitions to §81.2 related to the definition of a residential mortgage loan originator. The adopted rules eliminate the existing definition for "residential mortgage loan originator," the subject matter of which is replaced by adding a new definition for "originator," to adopt by reference the statutory definition for residential mortgage loan originator in Chapter 157 and the Texas SAFE Act, allowing for use of that shortened term throughout the rules, improving readability and reducing word count. The adopted rules add a definition for the phrase "takes a residential loan application," as used in Finance Code, §157.002(6) and §180.002(19) for purposes of determining when an individual is acting as a residential mortgage loan originator. The adopted rules add a definition for the term "application" to further define and clarify when an individual has received information constituting a residential mortgage loan application for that same purpose. The adopted rules also add a definition for the phrase "offers or negotiates the terms of a residential mortgage loan," as used in Finance Code, §157.002(6) and §180.002(19) for purposes of determining when an individual is acting as a residential mortgage loan originator. The adopted rules add a definition for "compensation" for that same purpose.

Other Definitions Changes

The adopted rules make other changes to the definitions section in §81.2. The adopted rules add the following new definitions: "dwelling," "mortgage applicant," "mortgage

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company," "Nationwide Mortgage Licensing System and Registry," "Recovery Fund," "residential real estate," and "social media site."

Required Disclosures and Advertising Changes

The adopted rules make changes to the disclosures a mortgage banker or originator is required to make, as provided by §81.200. The adopted rules limit existing disclosure requirements by eliminating the requirement for a mortgage banker or originator to post disclosures at a physical office. Existing requirements for posting disclosures on a website are clarified to expressly include a social media site of the mortgage banker or originator. The adopted rules impose a new requirement to disclose Nationwide Mortgage Licensing System and Registry (NMLS) identification information on all correspondence from an originator. The adopted rules also limit existing requirements in connection with a mortgage banker's physical office, as provided by 7 TAC §81.206, by eliminating the requirement that a mortgage banker post its hours of operation at such physical office. The adopted rules make changes to the advertising requirements imposed on mortgage bankers and originators by rule, contained in §81.203. The adopted rules limit existing advertising requirements by eliminating the requirement that a mortgage banker or its sponsored originator recite the mortgage banker's address when making an advertisement. The adopted rules further alter requirements for advertising including by: clarifying an existing requirement that advertisements on social media sites are subject to the rules; limiting existing advertising requirements by allowing a mortgage banker or originator to promote a website address on certain promotional items deemed by rule not to

constitute an advertisement; clarifying that signs on the premises of a mortgage banker or originator are not subject to the advertising requirements; and clarifying that a mortgage banker may advertise directly, and need not advertise by and through an originator sponsored by the mortgage banker.

Duties and Responsibilities Changes

The adopted rules make changes to the duties and responsibilities imposed on mortgage bankers and originators by rule, contained in §81.202. The provisions of existing subsection (a) are eliminated and replaced with language causing each discrete act contained in the paragraphed list under subsection (a) to be deemed a violation of the prohibition against a mortgage banker or originator engaging in fraudulent and dishonest dealings pursuant to Tex. Fin. Code §157.009(d) and §157.024(a)(3), deceptive practices for purposes of Tex. Fin. Code §180.153(2), and a scheme to defraud a person for purposes of Tex. Fin. Code §180.153(1). The prohibition against disparaging a source of income for a mortgage loan, contained in existing subsection (a), paragraph (3), is clarified to include the more likely and harmful scenario where the source of funds is inflated to secure loan approval. The provisions of existing subsection (b) are eliminated and replaced with language causing each discrete act contained in the paragraphed list under subsection (b) to be deemed a violation of the prohibition against a mortgage banker or originator engaging in improper dealings pursuant to Tex. Fin. Code §157.009(d) and §157.024(a)(3), and unfair practices for purposes of Tex. Fin. Code §180.153(2). Existing subsection (b), paragraph (3), which prohibits a mortgage banker or originator from representing to a mortgage applicant that a fee payable to the mortgage banker or

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originator operates as a discount point for the transaction, is clarified to prohibit any similar representation that such fee confers a financial benefit on the mortgage applicant, except in the limited circumstances set forth in the subparagraphs under existing subsection (b), paragraph (3). The provisions of existing subsection (d), requiring an originator to respond accurately to a question about the scope and nature of his or her services, are eliminated and the subject matter replaced with a new subsection (b), paragraph (4), requiring a mortgage banker or originator to respond within a reasonable time to reasonable questions from a mortgage applicant. New provisions are inserted in subsection (d) to offer additional guidance on the existing requirement barring the splitting of origination fees with a mortgage applicant except in the narrow circumstances elucidated by the Consumer Financial Protection Bureau (CFPB) in Regulation X. In order to aid enforcement and prevent evasion of the requirement by those individuals who are acting in the dual capacity of an originator and a real estate broker or sales agent licensed under Occupations Code, Chapter 1101, the adopted rules create a rebuttable presumption that a rebate or other transfer to the mortgage applicant made after closing is derived from his or her role as originator (a violation), and conversely, not derived from his or her role as real estate broker or sales agent.

Books and Recordkeeping Changes

The adopted rules make various changes to the requirements for a mortgage banker or originator to keep books and records, contained in §81.204. The adopted rules clarify the existing requirement that a mortgage banker or originator maintain a copy of the mortgage loan application signed by both the originator and the mortgage

applicant. The adopted rules also expand existing requirements that a mortgage banker or originator maintain a log of mortgage transactions including by requiring that such log describe the purpose for the loan and the owner's intended occupancy of the real estate securing the mortgage loan.

Other Modernization and Update Changes.

The adopted rules make changes to modernize and update the rules including: adding and replacing language for clarity and to improve readability; removing unnecessary or duplicative provisions; and updating terminology.

Summary of Public Comments

Publication of the commission's proposal for the rule amendments recited a deadline of 30 days to receive public comments, or October 25, 2020. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.



SUBCHAPTER A. GENERAL
PROVISIONS

7 TAC §§81.1 - 81.3

Statutory Authority

This proposal is made under the authority of Finance Code §157.0023 and §180.004, which authorizes the commission to adopt rules necessary to implement or fulfill the purposes of Chapter 157 and the Texas SAFE Act, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

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This proposal affects the statutes contained in Finance Code, Chapter 157 and Chapter 180.

§81.2.Definitions.

As used in this chapter, and in the Commissioner's administration and enforcement of Finance Code, Chapter 157 and Chapter 180, the following terms have the meanings indicated:

(1) "Application," as used in Tex. Fin. Code §§157.002(6) and 180.002(19), and paragraph (19) of this section means a request, in any form, for an offer (or a response to a solicitation for an offer) of residential mortgage loan terms, and the information about the mortgage applicant that is customary or necessary in a decision on whether to make such an offer, including, but not limited to, a mortgage applicant's name, income, social security number to obtain a credit report, property address, an estimate of the value of the real estate, and/or the mortgage loan amount.

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

(3) [(2)] "Commissioner's designee" means an employee of the Department performing his or her assigned duties or such other person as the Commissioner may designate in writing. A Commissioner's designee is deemed to be the Commissioner's authorized "personnel or representative" as such term is used in Finance Code, Chapter 157.

(4) [(3)] "Criminal Offense" means any violation of any state or federal criminal statute which:

(A) involves theft, misappropriation, or misapplication, of monies or goods in any amount;

(B) involves the falsification of records, perjury, or other similar criminal offenses indicating dishonesty;

(C) involves the solicitation of, the giving of, or the taking of bribes, kickbacks, or other illegal compensation;

(D) involves deceiving the public by means of swindling, false advertising or the like;

(E) involves acts of moral turpitude and violation of duties owed to the public including, but not limited to, the unlawful manufacture, distribution, or trafficking in a controlled substance, dangerous drug, or marijuana;

(F) involves acts of violence or use of a deadly weapon;

(G) when considered with other violations committed over a period of time appears to establish a pattern of disregard for, a lack of respect for, or apparent inability to follow, the criminal law; or

(H) involves any other crime which the Commissioner determines has a reasonable relationship to whether a person is fit to serve as an originator in a manner consistent with the purposes of Finance Code, Chapter 157 and the best interest of the State of Texas and its residents.

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

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(6) [(4)] "Department" means the Department of Savings and Mortgage Lending.

(7) "Dwelling" means a residential structure that contains one to four units and is attached to residential real estate. The term includes an individual condominium unit, cooperative unit, or manufactured home, if it is used as a residence.

(8) "Mortgage applicant" means an applicant for a residential mortgage loan or a person who is solicited (or contacts a mortgage banker or originator in response to a solicitation) to obtain a residential mortgage loan, and includes a person who has not completed or started completing a formal loan application on the appropriate form (e.g., Fannie Mae's Form 1003 Uniform Residential Loan Application), but has submitted financial information constituting an application, as provided by paragraph (1) of this section.

(9) [(5)] "Mortgage banker" has the meaning assigned by Tex. Fin. Code [shall have the same meaning as that provided in Finance Code] §157.002.

~~[(6) "Physical Office" means an actual office where the business of mortgage lending and/or the business of taking or soliciting residential mortgage loan applications are conducted.]~~

(10) "Mortgage company" means, for the purposes of this chapter, a "residential mortgage loan company" as that term is defined by Tex. Fin. Code §157.002.

(11) "Nationwide Mortgage Licensing System and Registry" or "NMLS" has the meaning assigned by Tex. Fin. Code §157.002 and §180.002.

(12) "Offers or negotiates the terms of a residential mortgage loan," as used in Tex. Fin. Code §157.002(6) and §180.002(19) means, among other things, when an individual:

(A) arranges or assists a mortgage applicant or prospective mortgage applicant in obtaining or applying to obtain, or otherwise secures an extension of consumer credit for another person, in connection with obtaining or applying to obtain a residential mortgage loan;

(B) presents for consideration by a mortgage applicant or prospective mortgage applicant particular residential mortgage loan terms (including rates, fees and other costs); or

(C) communicates directly or indirectly with a mortgage applicant or prospective mortgage applicant for the purpose of reaching a mutual understanding about particular residential mortgage loan terms.

(13) "Originator" has the meaning assigned by Tex. Fin. Code §157.002 and §180.002 in defining "residential mortgage loan originator." Paragraphs (12) and (19) of this section do not affect the applicability of such statutory definition. Individuals who are specifically excluded under such statutory definition, as provided by Tex. Fin. Code §180.002(19)(B), are excluded under this definition and for purposes of this chapter. Persons who are exempt from licensure as provided by Tex. Fin. Code §180.003 are exempt for purposes of this chapter, except as otherwise provided by Tex. Fin. Code §180.051.

(14) "Physical office" means an actual office where the business of mortgage lending and/or the business of taking or soliciting

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residential mortgage loan applications is conducted.

(15) "Recovery Fund" means the fund administered and maintained by the Commissioner for the recovery of actual damages by persons aggrieved by a licensed residential mortgage loan originator, established pursuant to Tex. Fin. Code §13.016.

(16) [(7)] "Residential mortgage loan" has the meaning assigned by Tex. Fin. Code §157.002 and [shall have the meaning as provided in Finance Code,] §180.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan which is secured by a structure that is suitable for occupancy as a dwelling [one to four family residence], but is used for a commercial purpose such as a professional office, [beauty] salon, or other non-residential use, and is not used as a residence.

(17) "Residential real estate" has the meaning assigned by Tex. Fin. Code §180.002 and includes both improved or unimproved real estate or any portion of or interest in such real estate on which a dwelling is or will be constructed or situated.

(18) "Social media site" means any digital platform accessible by a mortgage applicant or prospective mortgage applicant where the mortgage banker or sponsored originator does not typically own the hosting platform but otherwise exerts editorial control or influence over the content within their account, profile, or other space on the digital platform, from which the mortgage banker or sponsored originator posts commercial messages or other content designed to solicit business.

(19) "Takes a residential mortgage loan application," as used in Tex. Fin. Code §157.002(6) and §180.002(19) in defining "residential mortgage loan originator" means when an individual receives a residential mortgage loan application for the purpose of facilitating a decision on whether to extend an offer of residential mortgage loan terms to a mortgage applicant or prospective mortgage applicant, whether the application is received directly or indirectly from the mortgage applicant or prospective mortgage applicant, and regardless of whether or not a particular lender has been identified or selected.

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

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry

Associate General Counsel

Department of Savings and Mortgage Lending

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SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

7 TAC §§81.200, 81.202 - 80.206

Statutory Authority

This proposal is made under the authority of Finance Code §157.0023 and §180.004, which authorizes the commission to adopt

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rules necessary to implement or fulfill the purposes of Chapter 157 and the Texas SAFE Act, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

Iain A. Berry

Associate General Counsel

Department of Savings and Mortgage
Lending

This proposal affects the statutes contained in Finance Code Chapter 157, and Chapter 180.

Iain A. Berry

Associate General Counsel

Department of Savings and Mortgage
Lending



**SUBCHAPTER D. COMPLIANCE AND
ENFORCEMENT**

7 TAC §81.300, 81.301

Statutory Authority

This proposal is made under the authority of Finance Code §157.0023 and §180.004, which authorizes the commission to adopt rules necessary to implement or fulfill the purposes of Chapter 157 and the Texas SAFE Act, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

This proposal affects the statutes contained in Finance Code Chapter 157, and Chapter 180.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments, New Rules, and Repeals in 7 TAC Part 4, Chapter 75, Concerning Applications, Resulting from Rule Review.

PURPOSE: The purpose of the amendments, new rules, and repeals in 7 TAC Chapter 75 is to implement changes resulting from the Department's periodic review of its rules contained in Chapter 75, conducted pursuant to Government Code §2001.039. An explanation and a justification for the amendments, new rules, and repeals is contained in the proposed preamble for the rule proposal.

RECOMMENDED ACTION: The Department requests that the Finance Commission approve the amendments, new rules, and repeals for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that the Finance Commission approve for publication and comment the proposed amendments, new rules, and repeals in 7 TAC Chapter 75.

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TITLE 7. BANKING AND SECURITIES

**PART 4. DEPARTMENT OF SAVINGS
AND MORTGAGE LENDING**

CHAPTER 75. APPLICATIONS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal the following rules in 7 Texas Administrative Code (TAC) Chapter 75: Subchapter A, §§75.5, 75.7, and 75.9; Subchapter C, §75.34; Subchapter D, §§75.84 - 75.86; and Subchapter E, §75.121 and §75.125. The commission further proposes to repeal and simultaneously replace with a new rule, concerning the same or similar subject matter, the following rules in 7 TAC Chapter 75: Subchapter A, §§75.1 - 75.3, 75.6, and 75.10; Subchapter C, §75.31 and §75.35; Subchapter D, §75.83 and §75.90; and Subchapter E, §75.123. The commission further proposes amendments to existing rules in 7 TAC Chapter 75, as follows: Subchapter A, §75.8; Subchapter B, §§75.25 - 75.27; Subchapter C, §§75.32, 75.33, 75.36 - 75.39, and 75.41. The commission further proposes new rules in Chapter 75 as follows: new Subchapter F, §§75.201 - 75.203. This proposal and the rules as repealed, amended, or added as a new rule by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 75 partially implement Finance Code Subtitle C, the Texas Savings Bank Act. The proposed rules were identified during the department's periodic review of 7 TAC Chapter 75,

conducted pursuant to Government Code, §2001.039.

Changes Concerning Additional Offices

Finance Code §92.063 requires a savings bank to obtain the approval of the department's commissioner (commissioner) in order to establish an office other than the savings bank's home office approved under its banking charter. Existing §75.31, among other things, reasserts the requirements of Finance Code §92.063. The proposed rules, if adopted, would repeal and replace existing §75.31. Proposed new §75.31 (repealed and replaced), at subsection (e), contains a list of activities that, when performed at a location other than the home or a branch office of a savings bank, is deemed by rule not to constitute an additional office of the savings bank requiring prior approval of the commissioner to establish. Existing §75.32, concerning Types of Additional Offices, describes specific types of additional offices other than a home or a branch office that are recognized by the commissioner and require the commissioner's prior approval to establish. Existing §75.32(a) is amended to eliminate loan production offices, administrative offices, and deposit production offices as "additional offices" for purposes of the Texas Savings Bank Act, to correspond with the activities typically performed at these offices becoming sanctioned to be performed at a location other than an approved home or branch office, as provided by new § 75.31 (repealed and replaced). Other sanctioned activities in new §75.31 (repealed and replaced) include the operation of automated or remote banking equipment such as ATMs, advertising, the operation of information technology equipment, participation at trade association

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and community events, and the provision of customer service ancillary to banking functions. Proposed new §75.31 (repealed and replaced) requires a savings bank seeking to permanently close an approved office to comply with the notice requirements of federal law and provide the department with a copy of such notice. Proposed new §75.31 (repealed and replaced) also clarifies that upon closure of the office, any prior approval to have opened such office is deemed revoked and a savings bank seeking to reopen such office must seek new approval in order to do so.

Changes Concerning the Selling of Assets

Under existing §75.81, concerning Reorganization, Merger, Consolidation or Purchase and Assumption Transaction, sale of a savings bank's assets made "in bulk [and not] in the ordinary course of business" constitutes a purchase and assumption transaction under the rule, requiring application with the department and approval from the commissioner. The proposed rules, if adopted, would amend §75.81 such that the selling of assets in this fashion is no longer considered to constitute a purchase and assumption transaction under the rule.

Changes Concerning Application Procedures

The proposed rules make various changes concerning how applications are filed with the department. The proposed rules, if adopted, would create a new Subchapter F, concerning General Provisions, designed to contain requirements of general applicability in the chapter. Existing §75.121, concerning Definitions, containing definitions applicable to the entirety of Chapter 75, is repealed and

its subject matter addressed by new Subchapter E, §75.201, concerning Definitions. Proposed new §75.201 would largely reconstitute the definitions in existing §75.121, however, new definitions are added for the terms "FDIC" and "managing officer," as that term is used in Finance Code §92.055. The existing rules in Chapter 75 provide that, for most application types, the applicant must publish a public notice of the application in a newspaper of general circulation in the county or counties affected by the relief sought by the application. A new §75.203 is added in new Subchapter F to establish uniform requirements for making such notices. The existing rules for each application type are also changed (amended, or by repeal and replacement of the rule) to clarify and establish by rule the county or counties where the public notice must be published.

Changes Concerning Hearings on Applications

Existing §75.10, concerning Change of Name, §75.33, concerning Branch Office Applications, §75.35, concerning Mobile Facilities, §75.38, concerning Change of Home or Branch Office Location, and §75.83, concerning Notice of Hearing (reorganization, merger, or consolidation), create processes and procedures governing how hearings are conducted for each application type addressed by each such rule by referring to and adopting the processes and procedures governing charter applications, contained in existing Chapter 75, Subchapter A. The proposed rules, if adopted, would establish separate processes and procedures specific to each such rule, rather than by adopting by reference the processes and procedures applicable to

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charter applications. Existing §75.7, concerning Motions for Rehearing, which establishes certain timelines for a motion for rehearing made pursuant to Finance Code §91.006, is repealed, and its subject matter addressed by new Subchapter F, §75.203, concerning Motions for Rehearing. Proposed new §75.203 also extends the time period for filing a reply to a motion for hearing from 25 days after the date the order was signed under existing §75.7, to 30 days after the date the order was signed.

Other Modernization and Update Changes.

The proposed rules, if adopted, would make changes to modernize and update the rules including: adding and replacing language for clarity and to improve readability; removing unnecessary or duplicative provisions; and updating terminology.

Fiscal Impact on State and Local Government

Antonia Antov, director of operations for the department (director), has determined that for the first five-year period the proposed rules are in effect, there are no foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the proposed rules. The director has further determined that for the first five-year period the proposed rules are in effect, there will be no foreseeable losses or increases in revenue for local governments as a result of enforcing or administering the proposed rules. The director has further determined that for the first five-year period the proposed rules are in effect, there will be no foreseeable losses or increases in revenue for the state or local governments as a result

of enforcing or administering the proposed rules.

Public Benefits

Stephany Trotti, deputy commissioner and director of thrift for the department (deputy commissioner) has determined that for each of the first five years the proposed rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to have rules that are easier to read and understand. The proposed rules related to Changes Concerning Additional Offices and Changes Concerning the Selling of Assets will benefit the public by reducing the number of applications and other requests for approval the department receives and processes in connection with operations of a saving bank that do not typically raise supervisory concerns, allowing the department to reallocate and better utilize its resources in its examination functions to detect violations of law or other potentially unsafe or unsound practices by a savings bank, thereby better protecting those members of the public that do business with a Texas-chartered savings bank.

Probable Economic Costs to Persons Required to Comply with the Proposed Rules

The deputy commissioner has determined that for the first five years the proposed rules are in effect, there are no substantial economic costs anticipated to persons required to comply with the proposed rules.

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed and semi-independent agency and thus not subject to

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the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do create a new regulation (rule requirement). The proposed rules related to Changes Concerning Additional Offices create a new requirement for a savings bank to provide the commissioner with a copy of the notice it is already required to make under applicable federal law when closing an office; (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules related to Changes Concerning Application Procedures expand an existing rule requirement by requiring that a savings bank supplement their application with any information it provides to the appropriate federal banking agency in connection with the relief sought by such application. The proposed rules related to Changes Concerning Additional Offices limit an existing rule requirement by allowing a savings bank to perform certain activities at a location other than its home or a branch office, without seeking approval of the commissioner. The proposed rules related to Changes Concerning the Selling of Assets

limit an existing rule requirement for a savings bank to make an application and seek approval of the commissioner when it seeks to engage in a purchase and assumption transaction by providing that a sale of assets does not constitute such a transaction (but not eliminating prior approval for such transactions entirely). The proposed rules related to Changes Concerning Additional Offices repeal an existing rule requirement for a savings bank to obtain the approval of the commissioner prior to establishing a loan production office, administrative office, or a deposit production office. While a number of other rules are repealed under the proposed rules, the subject matter for such rules is addressed by new rules being simultaneously proposed, and as a result, no other existing rule requirements are ultimately repealed by the proposed rules; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

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

Fiscal Impact on Small and Micro-Businesses, and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility

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analysis, as provided by Government Code §2006.002, are not required.

Takings Impact Assessment

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

Public Comments

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

SUBCHAPTER A. CHARTER APPLICATIONS

7 TAC §§75.1 - 75.3, 75.5 - 75.7, 75.9, 75.10

Statutory Authority

This proposal is made under the authority of Finance Code §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks.

This proposal affects the statutes contained in Finance Code, Subtitle C, the Texas State Savings Bank Act.

§75.1. Application for Permission to Organize a State Savings Bank.

§75.2. Hearing on Charter Application.

§75.3. Publication of Notice of Charter Application.

§75.5. Filing of Proof of Publication.

§75.6. Time of Decision on Charter Application.

§75.7. Motions for Rehearing.

§75.9. Notice to Applicants.

§75.10. Change of Name.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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

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7 TAC §§75.1 - 75.3, 75.6, 75.8, 75.10

Statutory Authority

This proposal is made under the authority of Finance Code §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and

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to protect public investment in Texas-chartered savings banks. 7 TAC §§75.1 - 75.3 and 75.6 are proposed under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraph (2) of that subsection; Chapter 92, Subchapter B; §92.203; and §92.601(b). 7 TAC §75.8 is proposed under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraphs (2) and (14) of that subsection; §92.051; §92.060; and §92.058. 7 TAC §75.10 is proposed under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraphs (2) and (14) of that subsection; and §92.063.

This proposal affects the statutes contained in Finance Code, Subtitle C, the Texas State Savings Bank Act.

§75.1. Application for Savings Bank Charter.

(a) The charter application and all required supporting information must be executed by the proposed incorporators of the proposed savings bank which must consist of at least five adult residents of this state and must include all of the information required by Tex. Fin. Code §92.051. The application must include a request for a corporate name to be approved by the Commissioner. The application must include the proposed home office of the savings bank, the identity and qualifications of the proposed managing officer(s), and any additional information the Commissioner deems to be necessary or prudent to enable the Commissioner to determine the matters set forth in Tex. Fin. Code §92.058.

(b) No application to incorporate a savings bank will be approved unless the application

and evidence produced at a hearing, if one is required, satisfy the Commissioner that the proposed savings bank has received subscriptions for capital stock and paid-in surplus in the case of a capital stock savings bank, or pledges for savings liability and expense fund in the case of a mutual savings bank, in an amount not less than the greater of the amount required to obtain insurance of deposit accounts by the FDIC or the amount required of a national bank. No savings bank with an approved charter may open or do business as a savings bank until the Commissioner certifies that the Commissioner has received satisfactory proof that the amounts of capital stock and additional paid-in capital, or the savings liability and expense fund, as set forth in this section, have been received by the savings bank in cash, free of encumbrance.

§75.2. Publication of Notice of Charter Application.

A charter application is deemed to be a complete application for purposes of Tex. Fin. Code §92.057 at the time the Department notifies the applicant that the application is complete and has been accepted for filing, as provided by §75.202 of this title (relating to Application Filing Requirements). Upon receipt of such notice, the proposed incorporators must publish a public notice of the charter application, as provided by §75.203 of this title (relating to Public Notice of Application), which must be published in the county where the proposed savings bank will have its home office. Such notice, when properly effected, is deemed to be the Commissioner's public notice of the

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application for purposes of Tex. Fin. Code §92.057.

§75.3. Hearing on Charter Application.

If a charter application is protested or a hearing on the application is otherwise requested, the Commissioner will set a hearing on the application within 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title.

§75.6. Time of Decision on Charter Application.

To the extent a hearing on the charter application is required, the Commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision. Only then will the hearing be deemed to have ended for purposes of Tex. Fin. Code §92.058. If a hearing on the charter application is not required, the Commissioner will render a decision within 30 days after the time period for protesting or requesting a hearing on the application lapsed, as provided by Tex. Fin. Code §92.057.

§75.8. Identification of Office Site; Temporary Location and Community.

(a) In connection with any application for a charter or for an additional office, the proposed office site must ~~[shall]~~ be identified with such particularity so as to exactly locate it within the community to be served.

(b) The Commissioner ~~[commissioner]~~ may approve opening and operating a temporary facility for an approved charter or additional office, provided that such facility is within the 1/2-mile radius of the approved permanent site and, further, provided that the operation of the temporary facility will cease immediately upon the permanent facility being completed for occupancy, but in any event no longer than 18 months, unless extended in writing by the Commissioner ~~[commissioner]~~.

(c) In connection with any application for a charter or for an additional office, the term "community" as used in the Texas Savings Bank Act means the ~~[shall be considered to mean that]~~ geographical area surrounding the ~~[so situated with respect to the]~~ proposed location within which persons would be reasonably anticipated to ~~[that persons residing in such area could]~~ patronize the proposed office in the ordinary course of their business.

§75.10. Change of Name Application.

(a) Application for Change of Name. A savings bank may not change its name without the prior approval of the Commissioner, and a savings bank may not operate under any name which has not been approved by the Commissioner. The Commissioner may not approve an application by a savings bank to change its name unless the Commissioner finds from the information furnished with the application, the evidence produced at the hearing, if one is required, and Department records that the proposed change of name meets the applicable requirements of the

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Texas Savings Bank Act and this chapter, and does not violate other applicable law.

(b) Public Notice. An applicant seeking to change its name must publish a public notice of the application as provided by §75.203 of this title (relating to Public Notice of Application), which must be published in the county where the savings bank has its home office.

(c) Request for Hearing; Deadline to Protest. A person affected by the proposed name change may protest or otherwise request a hearing on the change of name application, as provided by Tex. Fin. Code §92.063. Any person affected by the proposed name change and desiring to protest the application or otherwise request a hearing on the application must file a written protest with the Department within 10 days from the date the public notice was made as provided by subsection (b) of this section, otherwise, any right or opportunity by such person to protest or have a hearing on the application under Tex. Fin. Code §92.063 is deemed to be waived.

(d) Persons Affected by the Change of Name. A person is affected by a change of name for purposes of Tex. Fin. Code §92.063 only if the requested name change, if granted, would result in the savings bank's name being substantially or deceptively similar to the party alleged to be affected, or is otherwise reasonably anticipated to create confusion in the marketplace involving the party alleged to be affected. A person requesting a hearing on a change of name application must allege and provide information in support of their request indicating they are a person that might be affected by the proposed name

change as provided by this section. The Commissioner in his or her sole discretion will review the request for hearing and determine if the person might be affected so as to require a hearing under Tex. Fin. Code §92.063.

(e) Hearing. If a hearing is required, the Commissioner will set a hearing on the application within 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title.

(f) Time of Decision. To the extent a hearing on the application is required, the Commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without a hearings officer amending the proposal for decision. If a hearing on the application is not required, the Commissioner will render a decision within 30 days after the time period for protesting or requesting a hearing on the application lapsed, as provided by subsection (c) of this section.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Lending

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SUBCHAPTER B. EXPEDITED APPLICATIONS

7 TAC §§75.25 - 75.27

Statutory Authority

This proposal is made under the authority of Finance Code §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §§75.25 - 75.27 are proposed under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraph (2) of that subsection.

This proposal affects the statutes contained in Finance Code, Subtitle C, the Texas State Savings Bank Act.

§75.25. Eligible Institution.

An eligible institution is a financial institution that:

- (1) is well capitalized as defined by 12 C.F.R. §324.403 [~~in 12 CFR §325.103~~];
- (2) received a composite rating of either 1 or 2 as defined by the Uniform Financial Institutions Rating System (CAMELS) at the most recent examination by the Department [~~department~~] or federal regulatory agencies, and management is rated either 1 or 2;
- (3) received a CRA and compliance rating of satisfactory or above at the savings bank's

most recent inspection by the appropriate federal banking [~~regulatory~~] agency;

(4) is not operating in violation of a regulatory condition or directive imposed by the state or federal banking regulatory agency; and,

(5) is not operating under a supervisory action of, or a plan for remedial or corrective action imposed by, [~~memorandum of understanding, order to cease and desist, or other state or federal supervisory enforcement order issued by~~] a state or federal banking [~~regulatory~~] agency.

§75.26. Expedited Applications.

(a) An eligible institution as defined in §75.25 of this title (relating to Eligible Institution) may file an expedited filing in lieu of an application required pursuant to §75.33 of this title (relating to Branch Office Applications), §75.35 of this title (relating to Mobile Facilities), §75.38 of this title (relating to Change of Home or Branch Office Location), or §75.81 of this title (relating to Reorganization, Merger, Consolidation or Purchase and Assumption Transaction), and simultaneously tender the required filing fee pursuant to Chapter 76, §§76.91 - 76.110 [~~76.99~~] of this title (relating to Fees and Charges).

(b) An expedited filing must include the following items, unless waived in writing by the Commissioner [~~commissioner~~]:

- (1) a detailed description of the transaction;
- (2) a pro forma balance sheet and income statement for all parties to the transaction, including adjustments, reflecting the proposed transaction as of the most recent

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quarter ended immediately prior to the filing of the application, demonstrating that the resulting state savings bank is well capitalized as defined by 12 C.F.R. §324.403, including pro forma financials for the first four quarters after the effective date of the transaction ~~[in 12 CFR §325.103];~~

(3) a certified resolution of the board and, if required, shareholders approving the proposed transaction;

(4) copies of all other required regulatory notices or filings submitted concerning the transaction; and

(5) evidence satisfactory to the Commissioner that a public notice of the application has been published and effected as provided by §75.203 of this title (relating to Public Notice of Application), published in each county where a non-expedited application is required to be published ~~[a copy of the public notice published in conformity with the section of this subsection that would apply had the applicant not filed an expedited filing].~~

(c) The Commissioner will render a decision on the expedited application within [commissioner shall approve or deny an expedited filing on or before a date that is] 30 days after the date the expedited filing is [deemed] complete and has been accepted for filing, as provided by §75.202 of this title (Relating to Application Filing Requirements). The foregoing notwithstanding, the Commissioner may, at any time before the time period to render a decision on the application has expired, elect to refer the expedited application to a hearing, at which point consideration of the application will proceed in the same fashion

as a non-expedited application [commissioner may, in the exercise of discretion, before the expiration of the period for decision, give the applicant written notice that the commissioner will convene a hearing to obtain evidence related to the application, and the decision will thereafter be made in accordance with §§76.71—76.73 of this title (relating to Hearings)].

(d) The applicant bears the burden to supply all material information necessary to enable the Commissioner ~~[commissioner]~~ to make a fully informed decision regarding the expedited filing, including but not limited to, the applicant's eligibility to make the application on an expedited basis in accordance with §75.25 of this title (relating to Eligible Institution).

§75.27. Denial of Expedited Treatment.

(a) The Commissioner ~~[commissioner]~~ may deny expedited filing treatment to an otherwise eligible applicant if the Commissioner determines within his or her sole discretion ~~[applicant, in the exercise of discretion, if the [commissioner finds]]~~ that the proposed transaction involves significant policy, supervisory, or legal issues; is contingent upon other statutory or regulatory approval; results in an entity that is not a financial institution; or involves an entity that is not domiciled in Texas.

(b) The Commissioner will ~~[commissioner shall]~~ provide written notification to the applicant within 15 days after the date the expedited filing is complete and has been accepted for filing, as provided by §75.202 of this title (relating to Application Filing Requirements) ~~[receipt of the application]~~ if expedited filing treatment is denied,

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indicating the reason for denial. ~~[Notification is effective when mailed by the commissioner and is not subject to appeal.]~~

(c) A decision of the Commissioner to deny expedited treatment is final and may not be appealed.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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

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SUBCHAPTER C. ADDITIONAL OFFICES

7 TAC §§75.31, 75.34, 75.35

Statutory Authority

This proposal is made under the authority of Finance Code §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks.

This proposal affects the statutes contained in Finance Code, Subtitle C, the Texas State Savings Bank Act.

§75.31. Establishment and Operations of Additional Offices.

§75.34. Loan Production Offices (Loan Offices), Administrative Offices, and Deposit Production Offices.

§75.35. Mobile Facilities.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Associate General Counsel
Department of Savings and Mortgage Lending

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SUBCHAPTER C. ADDITIONAL OFFICES

7 TAC §§75.31 - 75.33, 75.35, 75.36, 75.38, 75.39, 75.41

Statutory Authority

This proposal is made under the authority of Finance Code §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §§75.31 - 75.33, 75.35, 75.36, 75.38, 75.39 and 75.41 are proposed under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in

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paragraphs (2) and (14) of that subsection; and §92.063. 7 TAC §75.36 is also proposed under the authority of, and to implement, Finance Code §92.352.

This proposal affects the statutes contained in Finance Code, Subtitle C, the Texas State Savings Bank Act.

§75.31. Approval of Offices Required; Closing an Office; Activities Not Requiring an Approved Office.

(a) Approval Required. No savings bank may establish, maintain, or relocate its home office, or an additional office, as provided by §75.32 of this title (relating to Types of Additional Offices), without the prior written approval of the Commissioner, except as otherwise provided by §75.38 of this title (relating to Change of Home or Additional Office Location). A savings bank's home office is the place where a savings bank has its headquarters and from which all of its operations are directed.

(b) Ancillary Facilities. An authorized or approved office of a savings bank is the place where the business of the savings bank is conducted, and with the prior written consent of the Commissioner may include facilities ancillary thereto for the extension of the savings bank's services to the public. Any authorized or approved office of a savings bank also means, with the prior written consent of the Commissioner, separate quarters or facilities to be used by the savings bank for the purpose of performing service functions in the efficient conduct of its business.

(c) Notice of Home Office. All offices of a savings bank which are located outside the county of the domicile of its home office must display a sign which is suitable to advise the public of the type of additional office which is located therein and the location of the home office of such savings bank.

(d) Closing an Office. Before closing an approved branch or other office, other than a temporary closure as provided by §75.39 of this title (relating to Temporary Closing of Additional Offices), or an emergency closure, as provided by Tex. Fin. Code §93.011, a savings bank must comply with the notice requirements of federal law, and provide the Commissioner with a copy of the closing notice filed with the appropriate federal banking agency upon filing such notice. A savings bank must provide the Commissioner with confirmation within 10 days after the actual closing date. Once closed, prior written approval from the Commissioner to operate a branch or other office is deemed revoked, and a savings bank may not reopen the branch or other office without seeking new approval from the Commissioner.

(e) Activities Not Requiring an Approved Office. The following activities of a savings bank, or any combination thereof, may be performed at a location other than the home or a branch office and such location does not constitute an "additional office" requiring notice to or the prior approval of the Commissioner for purposes of Tex. Fin. Code §92.063:

(1) Automated or remote activities. A savings bank may engage in limited banking activities through infrastructure and

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equipment by automated or remote means, including use of an automated teller machine (ATM), automated loan machine, automated device for receiving deposits (remote deposit capture), or other remote service unit.

(2) Loan production activities. A savings bank may engage in loan production activities including taking loan applications, making a credit decision, accepting payments on loans, or managing or selling real estate owned by the institution in connection with such loans, unless such activity conflicts with applicable state or federal law.

(3) Administrative activities (administrative offices). A savings bank may establish or maintain administrative offices to perform the internal operations of the bank, provided the savings bank does not conduct banking activities.

(4) Advertising and marketing. A savings bank may advertise and market itself to the public including soliciting deposits, providing information about the financial products of the savings bank, and assisting persons in completing application forms to open a deposit account, provided the savings bank does not conduct banking activities.

(5) Trade association participation; community events and engagement. A savings bank may participate in trade association events promoting the banking or financial services industry broadly. A savings bank may also host, attend, or otherwise participate in community events, provided the savings bank does not conduct banking activities at such event.

(6) Information technology (IT) infrastructure. A savings bank may operate

information technology infrastructure or equipment including the placement of IT infrastructure in a data center, the hosting or processing of a website or data by a third party IT service provider, or such other physical presence tied to the IT infrastructure of the savings bank.

(7) Ancillary customer service activities. A savings bank may engage in customer service activities ancillary to its banking functions including relating to accessing or using its website or a software application.

§75.32. Types of Additional Offices.

Subject to the provisions of §§75.31 - 75.33, 75.35, 75.36, 75.38, 75.39, and 75.41 of this chapter, the following types of additional offices may be established and maintained by a savings bank:

(1) branch offices at which the savings bank may transact any business that could be done in the home office;

~~[(2) loan production offices (loan offices) at which the savings bank may transact business, as provided by §75.34(a) of this chapter, but at which no other business of the savings bank is transacted;]~~

(2) [(3)] mobile facilities at which the savings bank may transact any business of the institution which could be done in the home office. A detailed record of the transactions at such facility must ~~[shall]~~ be maintained; and

~~[(4) administrative offices at which the savings bank may transact administrative functions of the institution, as provided by §75.34(b) of this chapter. Such office may be~~

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~~located separate and apart from the location of any other facility of the savings bank;~~

(3) ~~[(5)]~~ courier/messenger service to transport items relevant to the bank's transactions with its customers, including courier services between financial institutions; ~~[and]~~

~~[(6) deposit production offices at which the savings bank may transact business, as provided by §75.34(e) of this chapter, but at which no other business of the savings bank is transacted.]~~

§75.33. Branch Office Applications.

(a) Each application for permission to establish a branch office must ~~[shall]~~ state the proposed location thereof; the personnel and office facilities to be provided; and the estimated cost and projected profits of such office. ~~[Each application for a branch office shall be set for hearing, notice given, hearing held, and decision reached in the same manner and within the time as provided in this chapter for new charter applications and the hearing may be dispensed with under the same conditions.]~~

(b) All statements of fact tendered to the Commissioner ~~[commissioner]~~ in connection with branch office application must be subscribed and sworn to before a notary ~~[signed and sworn to]~~.

(c) The Commissioner ~~[commissioner]~~ may not approve an application for a branch office unless the Commissioner determines ~~[commissioner shall have affirmatively found]~~ from the information ~~[data]~~ furnished with the application, the evidence produced ~~[adduced]~~ at the hearing, if one is required, and Department ~~[department]~~ records that:

(1) The operation and condition of the applying savings bank affords no basis for supervisory objection.

(2) The character, responsibility and general fitness of the current management of the applicant are such as to warrant belief that the branch office will be operated in accordance with the Act.

(3) The financial effect of establishing and operating the proposed office will not adversely affect the safe and sound operation of the applying savings bank.

(d) The branch office facility will commence operation within a period of 12 months after the date of approval unless an extension is granted, in writing, by the Commissioner ~~[commissioner]~~. No more than one 12-month extension will be approved by the Commissioner ~~[commissioner]~~, unless good cause for such extension is shown. At the end of any approved extension, if the office has not been opened, the approval ~~[authority]~~ for such office is deemed revoked and a new application must be made ~~[shall be forfeited]~~.

(e) A branch office application is also required if a state savings bank would like to establish and operate a courier/messenger service pursuant to §75.32 ~~[\$75.32(5)]~~ of this title (relating to Types of Additional Offices).

(f) Public Notice. An applicant seeking to establish a branch office must publish a public notice of the application as provided by §75.203 of this title (relating to Public Notice of Application), which must be published both in the county where the proposed branch office is to be located and in the county where the savings bank has its home office.

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(g) Request for Hearing; Deadline to Protest. A person affected by the proposed establishment of a branch office may protest or otherwise request a hearing on the branch office application, as provided by Tex. Fin. Code §92.063. Any person affected by the proposed establishment of a branch office and desiring to protest the application or otherwise request a hearing on the application must file a written protest within the Department within 10 days from the date the public notice was made as provided by subsection (f) of this section, otherwise any right or opportunity by such person to protest or have a hearing on the application under Tex. Fin. Code §92.063 is deemed to be waived.

(h) Hearing. If a hearing is required, the Commissioner will set a hearing on the application within 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title.

(i) Time of Decision. To the extent a hearing on the application is required, the Commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exception has lapsed without the hearings officer amending the proposal for decision. If a hearing on the application is not required, the Commissioner will render a decision within 30 days after the time period for protesting or requesting a hearing on the

application lapsed, as provided by subsection (g) of this section.

§75.35. Mobile Facilities.

(a) Each application for permission to establish a mobile facility must state the proposed location(s) at and times during which the facility will operate; the need therefor; the personnel and office facilities to be provided and the estimated expense of such facility. An application for permission to establish a mobile facility may not be approved unless the Commissioner determines from the information furnished with the application, the evidence produced at the hearing, if one is required, and Department records, all requirements for approval of a branch office have been met.

(b) Public Notice. An applicant seeking to establish a mobile facility must publish a public notice of the application as provided by §75.203 of this title (relating to Public Notice of Application), which must be published in the county or counties where the proposed mobile facility is to be operating and in the county where the savings bank has its home office.

(c) Request for a Hearing; Deadline to Protest. A person affected by the proposed establishment of a mobile facility may protest or otherwise request a hearing on the mobile facility application, as provided by Tex. Fin. Code §92.063. Any person affected by the proposed establishment of a mobile facility and desiring to protest the application or otherwise request a hearing on the application must file a written protest with the Department within 10 days from the date the public notice was made as provided by subsection (b) of this section, otherwise any

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right or opportunity by such person to protest or have a hearing on the application under Tex. Fin. Code §92.063 is deemed to be waived.

(d) Hearing. If a hearing is required, the Commissioner will set a hearing on the application within 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title.

(e) Time of Decision. To the extent a hearing on the application is required, the Commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision. If a hearing on the application is not required, the Commissioner will render a decision within 30 days after the time period for protesting or requesting a hearing on the application lapsed, as provided by subsection (c) of this section.

(f) Operation of a Mobile Facility. Mobile facilities must be operated consistent with the following requirements:

(1) Such facility may be operated only at locations approved by the Commissioner, each of which must at all times be appropriately identified at the site and on the facility, within 100 miles of the institution's home office or a branch office.

(2) Each application must show that adequate safeguards exist for the security of

such mobile facility and its contents. The Commissioner may require additional safeguards, if in the Commissioner's opinion the proposed safeguards are inadequate.

§75.36. [~~Designation as and~~] Exemption for Supervisory Sale.

(a) Designation as a Supervisory Sale [~~supervisory sale~~]. The Commissioner [~~commissioner~~] may designate a purchase of additional offices and/or assets by a savings bank from another financial institution to be a supervisory purchase when:

(1) the Commissioner [~~commissioner~~] has placed the selling institution under voluntary supervisory control or under conservatorship; or

(2) the Commissioner [~~commissioner~~] has determined that the selling institution is in an unsafe condition; or

(3) the FDIC [~~Federal Deposit Insurance Corporation~~] has determined, and notified the Commissioner [~~commissioner~~], that one or more of the grounds specified in the Federal Deposit Insurance Act, for appointment of a conservator or receiver, exist with respect to the selling institution, or the proposed transaction is necessary to prevent the failure or possible failure of the selling institution. For purposes of this section, the term "unsafe condition" means [~~shall mean~~] that the selling institution is insolvent or is in imminent danger of insolvency, or that there has been a substantial dissipation of assets or earnings due to any violation or violations of applicable law, rules, or regulations, or to any unsafe or unsound condition to transact business in that there has been a substantial reduction of its capital; or that the institution

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and its directors and officers have violated any material condition of its charter or bylaws, the terms of any order issued by the Commissioner [~~commissioner~~] or any agreement between the institution and the Commissioner [~~commissioner~~]; or that the institution, its directors, or officers have concealed or refused to permit examination of the books, papers, accounts, records, and affairs of the institution by the Commissioner [~~commissioner~~] or other duly authorized personnel of the department; or any other conditions affecting the institution which the Commissioner [~~commissioner~~] and the board of directors of the institution agree place the institution in an unsafe condition.

(b) Exemption for a supervisory sale. Whenever the Commissioner [~~commissioner~~] designates the purchase of additional offices and/or assets by a savings bank from another financial institution to be a supervisory purchase, the sections relating to the contents of applications for additional offices and the findings necessary for approval, §§75.31 – 75.33, 75.35, 75.36, 75.38, 75.39 and 75.41 of this title (relating to Additional Offices), are not [~~shall not be~~] applicable, and such purchase must [~~shall~~] be effected in accordance with this section.

§75.38. Change of Home or Additional Office [~~Branch Office~~] Location.

(a) A savings bank may not move its home office or any additional office, as provided by §75.32 of this title (relating to Types of Additional Offices), [~~branch office~~] beyond its immediate vicinity without prior approval of the Commissioner [~~commissioner~~]. Immediate vicinity is the area included within a radius or distance of one mile from

the present location of such office. Any relocation within the immediate vicinity as defined in this section will require the approval of the Commissioner [~~commissioner~~], if the office to be relocated has not been open for business at its present location for more than two years. If the existing office has been opened for more than two years, prior written notice must [~~shall~~] be provided to the Commissioner [~~commissioner~~] asserting the relocation is in the immediate vicinity.

(b) Notwithstanding subsection (a) of this section, a savings bank may retain its existing home office as a branch office and relocate its home office to another established branch office by providing the Commissioner [~~commissioner~~] with prior written notice. Upon such notification, the establishment of such office is [~~shall be~~] deemed to be an approved branch [~~administrative~~] office of the savings bank.

(c) Each application for prior approval, or prior written notice, whichever is applicable, must [~~shall~~] provide, the existing and new branch location's address; a description of the land and building to be built or leased and terms thereof; estimates of the cost of removal to and maintenance of the new location; whether any affiliated parties are involved in transactions regarding the purchase, sale, construction, or lease of the new proposed office; evidence of the bank board's approval of the relocation; and any other information as deemed necessary by the Commissioner [~~commissioner~~].

~~[(d) An application to move an office location shall be set for hearing by the commissioner and notice given as provided for new charter~~

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~~applications, and the hearing may be dispensed with by the commissioner under the same conditions.]~~

(d) ~~[(e)]~~ The Commissioner ~~[commissioner]~~ may not approve an application to move or relocate any office of a savings bank, unless the Commissioner determines ~~[commissioner finds]~~ from the information ~~[data]~~ furnished with the application, the evidence produced ~~[adduced]~~ at the hearing, if one is required, and Department ~~[department]~~ records, all requirements ~~[of the findings necessary]~~ for approval of a branch office have been met.

(e) Public Notice. An applicant seeking to change the location of the home office must publish a public notice of the application as provided by §75.203 of this title (relating to Public Notice of Application), which must be published in the county where the office is presently located, the county where the proposed new location is to be located, and the county where the savings bank has its home office.

(f) Request for Hearing; Deadline to Protest. A person affected by the proposed change in home or branch office location may protest or otherwise request a hearing on the branch office application, as provided by Tex. Fin. Code §92.063. Any person affected by the proposed change in home or branch office location and desiring to protest the application or otherwise request a hearing on the application must file a written protest with the Department within 10 days from the date the public notice was made as provided by subsection (e) of this section, otherwise any right or opportunity by such person to protest or have a hearing on the application

under Tex. Fin. Code §92.063 is deemed to be waived.

(g) Hearing. If a hearing is required, the Commissioner will set a hearing on the application within 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title.

(h) Time of Decision. To the extent a hearing on the application is required, the Commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal or decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision. If a hearing on the application is not required, the Commissioner will render a decision within 30 calendar days after the time period for protesting or requesting a hearing on the application lapsed, as provided by subsection (f) of this section.

§75.39. Temporary Closing of Additional Offices.

In the event a savings bank closes any additional office of any type on a temporary basis, said office must be reopened within 12 months or less, unless otherwise extended by written authorization of the Commissioner. In the event such office is not reopened within the allotted 12-month period, or the longer period established by the Commissioner, if applicable, the Commissioner's approval to establish such office for purposes of §75.31 of this title (relating to Additional Offices; Activities Not

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Requiring an Approved Office) is deemed revoked [~~such authorization for the office shall be forfeited~~]. Written notice of any temporary closing must [~~shall~~] be furnished to the Commissioner [~~commissioner~~] within 10 days of such closing, and no additional office may reopen [~~shall be deemed to have reopened~~] until the Commissioner [~~commissioner~~] receives written notification within 10 days of such reopening. The permanent closing of an office must comply with the requirements of §75.31(d) of this title (relating to Additional Offices; Activities Not Requiring an Approved Office).

§75.41. Offices in Other States or Territories.

To the extent permitted by the laws of the state or territory in question, and subject to this chapter, a savings bank may establish branch offices [~~and loan production offices~~] in any state or territory of the United States. Each application for permission to establish such a branch office must [~~or loan production office shall~~] comply with the applicable requirements of this chapter, and must [~~shall~~] include a certified copy of an order from the appropriate state or territorial regulatory authority approving the office or unit, or other evidence satisfactory to the Commissioner [~~commissioner~~] that all state or territorial regulatory requirements have been satisfied. Each such application must [~~shall~~] be set for hearing, if applicable, notice given, hearing held, if applicable, and decision reached in the same manner and within the time provided by §75.33 (relating to Branch Office Applications) [~~in this chapter for similar applications for offices in this state~~]. The Commissioner [~~commissioner~~]

may not approve such an application unless the Commissioner determines [~~commissioner finds~~] from the information [~~data~~] furnished with the application, the evidence produced [~~adduced~~] at the hearing, if one is required [~~applicable~~], and Department [~~department~~] records that all requirements of this chapter applicable to the office have been met, and that all applicable requirements of the laws of the state or territory in question have been met.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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

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SUBCHAPTER D. REORGANIZATION,
MERGER, CONSOLIDATION,
CONVERSION, PURCHASE[;] AND
ASSUMPTION OR [~~AND~~] ACQUISITION

7 TAC §75.83, §75.90

Statutory Authority

This proposal is made under the authority of Finance Code §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and

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to protect public investment in Texas-chartered savings banks. This proposal affects the statutes contained in Finance Code, Subtitle C, the Texas State Savings Bank Act.

This proposal affects the statutes contained in Finance Code, Subtitle C, the Texas State Savings Bank Act.

§75.83. Notice and Hearing.

§75.90. Conversion into a Savings Bank.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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

◆ ◆ ◆

7 TAC §§75.81 - 75.83, 75.87 - 75.91

Statutory Authority

This proposal is made under the authority of Finance Code §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §§75.81 - 75.83 and 75.88 are proposed under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject

matters outlined in paragraphs (2) and (13) of that subsection; and Chapter 92, Subchapters C and H. 7 TAC §75.88 is also proposed under the authority of, and to implement, Finance Code Chapter 92, Subchapter I. 7 TAC §75.89 is proposed under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraphs (2) and (13) of that subsection; and Chapter 92, Subchapter F. 7 TAC §75.90 is proposed under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraphs (2) and (13) of that subsection; and Chapter 92, Subchapter G. 7 TAC §75.91 is proposed under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraphs (2) and (13) of that subsection; and §92.052.

This proposal affects the statutes contained in Finance Code, Subtitle C, the Texas State Savings Bank Act.

§75.81. Reorganization, Merger, Consolidation or Purchase and Assumption Transaction.

(a) Reorganization, merger or conversion of a state savings bank into another type of financial institution charter is governed by the ~~[shall be exclusively subject to the]~~ provisions of §75.89 of this title (relating to Reorganization, Merger or Conversion to Another Financial Institution Charter), and not the requirements of this section. ~~[Such a transaction shall not be subject to the procedures and requirements set forth in this section.]~~

(b) Any savings bank seeking to reorganize, merge, and/or consolidate or to engage in a purchase and assumption transaction in

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which the resulting institution will be a state savings bank must ~~[shall]~~ do so pursuant to a plan adopted by the board of directors and filed with the Commissioner ~~[commissioner]~~ as a part of an application for approval. Purchase and assumption transactions include purchases ~~[or sales]~~ of assets, deposit accounts or other liabilities in bulk not made in the ordinary course of business.

§75.82. Form and Content of Application.

~~[(a)]~~ The application for approval of the plan must ~~[shall be titled "Application to Reorganize, Merge and/or Consolidate" and shall]~~ contain: proof that the plan was adopted by the board of directors of each institution involved; documentation showing that the plan has been approved by each institution by a majority of the total vote the members or shareholders of each are entitled to cast; a statement that the corporate continuity of the resulting institution will ~~[shall]~~ possess the same incidents as that of a savings bank which has converted in accordance with the Texas Savings Bank Act; and a statement identifying the home office of the resulting institution. A true copy of the plan, as adopted, must ~~[shall]~~ be filed as part of the application. All documents and their contents must be subscribed and sworn to before a notary ~~[shall be subscribed and sworn to by an officer of each institution involved under the sanction of an oath, or such affirmation as is by law equivalent to an oath, made before an officer authorized to administer oaths].~~

~~[(b) The commissioner shall furnish approved forms of application. The forms are available from the department at 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705.]~~

§75.83. Notice and Hearing.

(a) Public Notice. An applicant seeking reorganization, merger, consolidation, conversion, purchase and assumption or acquisition must publish a public notice of the plan and application as provided by §75.203 of this title (relating to Public Notice of Application), which must be published in each county in which a financial institution participating in the plan has its home office. Such notice, when properly effected, is deemed to be the Commissioner's public notice of the plan and application for purposes of Tex. Fin. Code §92.352.

(b) Request for Hearing; Deadline to Protest. Any interested person desiring to protest the plan and application or otherwise request a hearing on the plan and application must file a written protest with the Department within 10 days from the date the public notice was made, as provided by subsection (a) of this section, otherwise any right or opportunity by such person to protest or have a hearing on the application under Tex. Fin. Code §92.352 is deemed to be waived.

(c) Hearing. If a hearing is required, the Commissioner will set a hearing on the plan and application within 60 days after the date the protest or request for hearing and the required fee are received, unless the Commissioner determines that the provision set forth in §75.87 of this title apply, and the merger is designated as a supervisory merger for purposes of Tex. Fin. Code §92.352(e). The hearing is governed by the procedural requirements concerning contested cases set forth in Government Code Chapter 2001 and Chapter 9 of this title.

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(d) Time of Decision. To the extent a hearing on the plan and application is required, the Commissioner will render a decision within 30 days after the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision. If a hearing on the plan and application is not required, the Commissioner will render a decision within 30 days after the time period for requesting a hearing on the plan and application lapsed, as provided by subsection (b) of this section, unless the Commissioner establishes a longer time period, with written notice to the applicant.

§75.87. [~~Designation as and~~] Exemption for Supervisory Merger.

(a) The Commissioner [~~commissioner~~] may designate a merger to be a supervisory merger when:

(1) the Commissioner [~~commissioner~~] has placed one or more of the savings banks involved under voluntary supervisory control or under conservatorship pursuant to the Texas Savings Bank Act; or

(2) the Commissioner [~~commissioner~~] has determined that one or more of the savings banks involved is in an unsafe condition; or

(3) the FDIC [~~Federal Deposit Insurance Corporation~~] has determined, and certified to the Commissioner [~~commissioner~~], that the merger of one or more of the institutions involved is necessary to prevent the failure or possible failure of the said institution.

(b) For purposes of this section, unsafe condition means [~~shall mean~~] that the savings

bank (or savings banks) is insolvent or is in imminent danger of insolvency, or that there has been a substantial dissipation of assets or earnings due to any violation or violations of applicable law, rules, or regulations, or to any unsafe or unsound practice or practices; or that the savings bank is in an unsafe and unsound condition to transact business in that there has been a substantial reduction of its capital; or that the savings bank and its directors and officers have violated any material conditions of its charter or bylaws, the terms of any order issued by the Commissioner [~~commissioner~~], or any agreement between the savings bank and the Commissioner [~~commissioner~~]; or that the savings bank, its directors, and officers have concealed or refused to permit examination of the books, papers, accounts, records, and affairs, of the savings bank by the Commissioner [~~commissioner~~] or other duly authorized personnel of the Department [~~department~~]; or any other condition affecting the savings bank which the Commissioner [~~commissioner~~] and the board of directors of the savings bank agree place the savings bank in an unsafe condition.

(c) When the Commissioner [~~commissioner~~] designates a merger to be a supervisory merger, the provisions of this chapter relating to reorganization, merger, [~~and/or~~] consolidation or purchase and assumption, §§75.81 - 75.83 [~~75.86~~] of this title (relating to Reorganization, Merger, Consolidation or Purchase and Assumption Transaction; Form and Content of Application; and Notice and Hearing) are not applicable, and the merger will instead be effected pursuant to this section [~~Filing of Plan; Form and Content of Application; Notice and Hearing;~~

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~~Publication; Time of Decision; and Appeal)) shall not be applicable, and the merger shall be effected pursuant to this section].~~

§75.88. Acquisitions Involving Financial Institutions in Other States or Territories.

To the extent permitted by the laws of the state or territory in question, and subject to this chapter, a savings bank may acquire, by merger or purchase of stock, a financial institution incorporated under the laws of another state. Each such application must ~~[shall]~~ comply with the applicable requirements of this chapter, and must ~~[shall]~~ include a certified copy of an order from the appropriate state regulatory authority approving the merger or acquisition, or other evidence satisfactory to the Commissioner ~~[commissioner]~~ that all state regulatory requirements have been satisfied. Each such application must ~~[shall]~~ be set for hearing, if applicable, notice given, hearing held, if applicable, and decision reached in the same manner and within the time provided by §75.83 (relating to Notice and Hearing) ~~[in this chapter for a similar application involving another savings bank in this state]~~. The Commissioner may not ~~[commissioner shall]~~ approve such an application unless the Commissioner determines ~~[if the commissioner finds]~~ from the information ~~[data]~~ furnished with the application, the evidence produced ~~[adduced]~~ at the hearing, if one is required, and Department ~~[department]~~ records, that all requirements of this chapter applicable to the proposed merger or acquisition have been met, and that all applicable requirements of the laws of the state or territory in question have been met.

§75.89. Reorganization, Merger or Conversion to Another Financial Institution Charter.

(a) A savings bank is authorized to reorganize, merge, or convert into another type of financial institution charter subject to applicable law and regulation relating to the type of charter which will ~~[shall]~~ be held by the resulting institution.

(b) The Commissioner must ~~[commissioner shall]~~ be given written notice of the intention of the savings bank to reorganize, merge or convert no less than 30 days prior to the proposed transaction.

(c) The savings bank must ~~[shall]~~ file with the Commissioner ~~[commissioner]~~:

(1) a copy of the application filed with the appropriate banking agency having jurisdiction over the surviving financial institution;

(2) a certified copy of all minutes of meetings of the board of directors, shareholders or members;

(3) a publisher's certificate certifying the publication of the notice required to be published by the appropriate banking agency; and

(4) evidence to ensure that no undue harm will ~~[shall]~~ be caused to the public interest or to any other existing financial institution.

(d) The Commissioner is ~~[Upon the receipt of all of the preceding information and any required filing fee, the commissioner shall be]~~ deemed to have consented to the reorganization, merger or conversion into another type of financial institution charter at the time the Department notifies the savings

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bank that the filing made in accordance with this section is complete and has been accepted for filing, as provided by §75.202 of this title (relating to Application Filing Requirements). Upon compliance with the provisions of this section and the granting of a successor charter by the appropriate banking agency, a copy of which ~~must~~ [shall] be filed with the Commissioner [commissioner], the savings bank receiving the new charter ceases to exist as a savings bank and will no longer be subject to the jurisdiction of the Commissioner [commissioner]. The foregoing notwithstanding, the Commissioner must receive the original charter certificate or a certified affidavit of lost certificate in order to be released from the requirement to pay annual assessments, as provided by §76.98 of this title (relating to Annual Assessments.)

§75.90. Conversion into a Savings Bank.

(a) The Commissioner may authorize any financial institution to convert itself into a savings bank in a manner consistent with the provisions of applicable law and regulations of the institution.

(b) Plan and Application. In order to obtain such authorization, the converting institution's board of directors must approve and authorize the filing of a conversion plan and application. Upon approval of the conversion plan, the plan must be approved by a majority vote of the members or shareholders of the financial institution entitled to vote at any annual or special meeting called to consider such conversion, a resolution declaring that the savings bank will be so converted, which resolution, verified by affidavit of the secretary or an

assistant secretary, must be filed with the Commissioner and mailed to the appropriate banking agency within 10 days after the date of its adoption. At the meeting to vote on a conversion to a domestic savings bank, the members or stockholders must also vote on the directors of the savings bank. The proposed directors must execute an application for savings bank charter as provided by Finance Code Chapter 92 Chapter 92, Subchapter B, and §75.1 of this title (relating to Application for Savings Bank Charter).

(c) Review by Commissioner; Approval. The Commissioner, on receipt of the application and verified copy of the minutes, will conduct an examination of the financial institution seeking conversion. Following the examination, the Commissioner will approve the conversion without a hearing if the Commissioner determines that the converting financial institution is in sound condition and meets all standards, conditions, and requirements of Finance Code Chapter 92, Subchapter B, and §§75.1 - 75.3 and 75.6 of this title (relating to Application for Savings Bank Charter; Hearing on Charter Application; Publication of Notice of Charter Application; and Time of Decision on Charter Application). On approval of the conversion, the saving bank's charter is deemed to include a paragraph stating that the savings bank is incorporated by conversion from another financial institution, as required by Tex. Fin. Code §92.303(c).

(d) Review by Commissioner; Approval. An applicant is entitled to a hearing under the Chapter 2001 of the Texas Government Code if the Commissioner denies an application to

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convert and a written request for a hearing is delivered to the Commissioner within 10 days after the date of denial. A hearings officer designated by the Commissioner will hold the hearing. The Commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision. Only then will the hearing be deemed to be completed for purposes of Tex. Fin. Code §92.304.

§75.91. Mutual to Stock Conversion.

(a) [~~Applications for conversion from a mutual to stock form of ownership shall be filed with the commissioner on forms approved by the commissioner.~~] The application for mutual to stock conversion must [shall] include:

- (1) a plan of conversion;
- (2) amendments to the savings bank's certificate of formation [~~articles of incorporation~~] and bylaws;
- (3) a copy of the proxy and soliciting materials to be used; and
- (4) such other information the Commissioner [~~commissioner~~] may require.

(b) The plan of conversion must ~~[shall]~~ provide:

- (1) a comprehensive description of the nontransferable subscription rights received each eligible accountholder, including details on oversubscriptions;
- (2) that the shares of the converting savings bank be offered to persons with subscription

rights and management, in that order, and that any remaining shares will ~~[shall]~~ be sold either in a public offering through an underwriter or directly by the converting savings bank in a direct community offering;

(3) that a direct community offering by the converting savings bank will ~~[shall]~~ give a preference to natural persons residing in the counties in which the savings bank has an office;

(4) that the sale price of the shares of capital stock to be sold in the conversion will ~~[shall]~~ be a uniform price determined in accordance with paragraph (1) of this subsection, and ~~[shall]~~ specify the underwriting and/or other marketing arrangements to be made;

(5) that the conversion must be completed within 24 months from the date the savings bank members approve the plan of conversion;

(6) that each savings accountholder of the converting savings bank will ~~[shall]~~ receive, without payment, a withdrawable savings account or accounts in the converted savings bank equal in withdrawable amount to the withdrawal value of such accountholder's savings account or accounts in the converting savings bank;

(7) for an eligibility record date;

(8) that expenses incurred in the conversion are ~~[shall be]~~ reasonable;

(9) that the converting savings bank may ~~[shall]~~ not loan funds or otherwise extend credit to any person to purchase the capital stock of the savings bank;

(10) that the proxies held with respect to voting rights in the savings bank will not be

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voted regarding the conversion, and that new proxies will be solicited for voting on the proposed plan of conversion; and

(11) the amount of the deposit of an accountholder will ~~[shall]~~ be the total of the deposit balances in the accountholder's savings accounts in the converting savings bank as of the close of business on the eligibility record date. The plan of conversion may provide that the total deposit balances of less than \$50 (or any lesser amounts) will ~~[shall]~~ not be considered for purposes of paragraph (6) of this subsection.

(c) A plan of conversion must ~~[shall]~~ be adopted by not less than two-thirds of the savings bank's board of directors.

(d) Upon determining that an application for conversion is properly executed and is not materially incomplete, the Commissioner ~~[commissioner]~~ will advise the savings bank, in writing, to publish a notice of the filing of the application. Promptly after receipt of the advice, the savings bank must ~~[shall]~~ prominently post the notice in each of its offices and publish the notice in a newspaper printed in the English language and having general circulation in each community in which an office of the savings bank is located, as follows.

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(e) Promptly after publication of the notice or notices prescribed in subsection (d) of this section, the savings bank must ~~[shall]~~ file one copy of the notice together with an affidavit of publication from each publisher with the Commissioner ~~[commissioner]~~.

(f) Following approval of the application for conversion by the Commissioner

~~[commissioner]~~, the plan of conversion must ~~[shall]~~ be submitted to the members at an annual or special meeting and the plan must ~~[shall]~~ be approved, in person or by proxy, by at least a majority of the total outstanding votes of the members of the savings bank.

(g) No offer to sell securities of a savings bank pursuant to a plan of conversion may be made prior to Commissioner's ~~[commissioner's]~~ approval of the:

(1) application for conversion;

(2) proxy statement; and

(3) offering circular.

(h) Within 45 days:

(1) of the date of the mailing of the subscription form, the subscription rights must be exercised;

(2) after the last day of the subscription period, the sale of all shares of capital stock of the converting savings bank to be made under the plan of conversion, including any sale in a public offering or direct community marketing, must ~~[shall]~~ be completed.

(i) The converting savings bank must ~~[shall]~~ pay interest at not less than the savings account interest rate on all amounts paid in cash or by check or money order to the savings bank to purchase shares of capital stock in the subscription offering or direct community offering from the date payment is received by the savings bank until the conversion is completed or terminated.

(j) For the purpose of this rule, the public offering and a direct community offering is ~~[shall be]~~ deemed to commence upon the declaration of effectiveness by the

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Commissioner [~~commissioner~~] of the final offering circular.

(k) The Commissioner [~~commissioner~~] may grant a written waiver from any requirement of [~~for~~] this rule.

(l) For the purposes of this rule:

(1) the term "control" means the possession, directly or indirectly, of the power to direct or cause direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise;

(2) the term "person" includes an individual, a group acting in concert, a corporation, a partnership, a savings bank, a trust, any unincorporated organization, or a government or political subdivision thereof.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER E. CHANGE OF
CONTROL

7 TAC §§75.121, 75.123, 75.125

Statutory Authority

This proposal is made under the authority of Finance Code §11.302(a) which authorizes

the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks.

This proposal affects the statutes contained in Finance Code, Subtitle C, the Texas State Savings Bank Act.

§75.121. Definitions.

§75.122. Acquisition of a Savings Bank.

§75.125. Application for Approval of the Acquisition of Control of a Savings Bank.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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

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7 TAC §§75.122 - 75.124, 75.126, 75.127

Statutory Authority

This proposal is made under the authority of Finance Code §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and

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regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §§75.122 - 75.124, 75.126 and 75.127 are proposed under the authority, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraphs (2) and (10) of that subsection; and Chapter 92, Subchapter L. 7 TAC §75.122 is also proposed under the authority of Finance Code §96.002(b).

This proposal affects the statutes contained in Finance Code, Subtitle C, the Texas State Savings Bank Act.

§75.122. Acquisition of a Savings Bank.

The following procedures must [~~shall~~] be followed when a person desires to acquire control of a savings bank.

(1) No person other than the issuer may [~~shall~~] make a public tender offer for, solicitation or a request or invitation for tenders of, or enter into and consummate any agreement to exchange securities for, seek to acquire, or acquire in the open market or by means of a privately negotiated agreement or contract, any voting security or any security convertible into a voting security of a savings bank if, after the consummation thereof, such person would directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such savings bank, unless such person has filed with the Commissioner [~~commissioner~~] all of the following information on an application form approved by the Commissioner [~~commissioner~~] and which application form is deemed by the Commissioner [~~commissioner~~] to be complete and has received a written order from the

Commissioner [~~commissioner~~] approving such acquisition or change of control:

(A) the background and identity of the applicant, if said applicant and any affiliate is an individual, or all persons who are directors, executive officers, or owners of 10% or more of the voting securities of the applicant if the applicant is not an individual. Said filing must [~~shall~~] contain the following information:

- (i) name and address;
- (ii) present principal business activity, occupation, or employment including position and office held and the name, principal business, and address of any corporation or other organization in which such employment is carried on;
- (iii) material occupations, positions, offices, or employments previously held by the individual, giving the starting and ending dates of each and the name, principal business, and address of any business corporation or other organization in which each such occupation, position, office, or employment was carried on, indicating if any such occupation, position, office, or employment required licensing by or registration with any federal, state, or municipal governmental agency;
- (iv) whether such individual is presently charged with or has ever been convicted of a violation of law in a criminal proceeding (excluding minor traffic violations) and, if so, giving the date, nature of conviction, name and location of the court, and penalty imposed or other disposition of the case;
- (v) whether such individual has been or is a party to any federal, state, or municipal court

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lawsuit in which such individual is or was alleged to have violated any federal or state statutes or regulation, and, if so, giving the date, style of the suit, case number, court location, and disposition of the suit;

(vi) whether any such individual has been or is a party to any federal, state, or municipal governmental agency administrative actions in which such individual was or is alleged to be in violation of any governmental agency statute or regulation, and, if so, giving the date, nature of the action, name and location of the governmental agency, and disposition of the case; and any other relevant information requested by the Commissioner [~~commissioner~~];

(B) if the applicant is not an individual, the nature of its business operations for the past five years or for such lesser period as such applicant and any predecessors thereof [~~shall~~] have been in existence;

(C) description of the interrelationships between the applicant and all affiliates of the applicant;

(D) nature, identity, source, and amount of funds or other consideration used or to be used in effecting the acquisition of control, and, if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained, there must [~~shall~~] be a description of the transaction, the names of the parties, and all arrangements, or other understanding with such parties, including all arrangements, agreements, or understandings in regard to repayment of the funds;

(E) any plans or proposals which the applicant may have to declare dividends to liquidate such savings banks, to sell its assets,

or to merge it with any person or persons or to make any other material change in its business operations or corporate structure or management, including modifications in or plans to enter into any management contracts, and any financial or employment guarantees given to present and contemplated management;

(F) the terms and conditions of any proposed acquisition and the manner in which the acquisition is to be made;

(G) the number of shares of the savings bank's voting securities (including securities convertible or evidencing rights to acquire voting securities) which the applicant, its affiliates, affiliated persons, and any other related person plans to acquire, and the terms of the offer, request, invitation, agreement, or acquisition;

(H) a description of any contracts, arrangements, or understandings with respect to any voting security of the savings bank in which the applicant, its affiliates, or any related person is involved;

(I) copies of any contracts, agreements, or other documents which the Commissioner [~~commissioner~~] determines are relevant to the review of the application; and

(J) any other relevant information requested by the Commissioner [~~commissioner~~].

(2) If the person required to file the information referred to in this section is a partnership, limited partnership, syndicate, trust, or other group, the Commissioner [~~commissioner~~] may require that the information must [~~shall~~] be given [~~with respect~~] to:

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(A) each partner of such partnership or limited partnership;

(B) each member of such syndicate or group; and

(C) each person who controls such partner or member.

(3) If the person required to file the information referred to in this section is a corporation, the Commissioner [~~commissioner~~] may require that the information called for must [~~shall~~] be given with respect to such corporation and each officer and director of such corporation and each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding voting securities of such corporation.

(4) The transaction for acquisition of control of a savings bank may not be consummated until the Commissioner [~~commissioner~~] approves the application for acquisition of control. The application will be processed and considered in accordance with Tex. Fin. Code §92.556 and §92.557. [~~The commissioner shall render a decision within 60 days after the application required by paragraph (1) of this section has been filed with and deemed complete by the commissioner. The commissioner shall deny an application for acquisition of control of a savings bank if the commissioner finds any of the following:~~

(A) ~~the acquisition would substantially lessen competition or would in any manner be in restraint of trade and would result in a monopoly or would be in furtherance of a combination or conspiracy to monopolize or attempt to monopolize the savings and loan~~

~~or the savings bank industry in any part of the state, unless the commissioner also finds that the anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of acquisition in meeting the convenience and needs of the community to be served and that the proposed acquisition is not a violation of any law of this state or the United States;~~

(B) ~~the poor financial condition of any acquiring party might jeopardize the financial stability of the savings bank being acquired;~~

(C) ~~plans or proposals to liquidate or sell the savings bank or its assets are not in the best interest of the savings bank;~~

(D) ~~the experience, ability, standing, competence, trustworthiness, or integrity of the applicant is such that the acquisition would not be in the best interest of the savings bank;~~

(E) ~~the savings bank will not be solvent, have adequate capital structure, or be in compliance with the laws of this state after the acquisition;~~

(F) ~~the applicant has failed to furnish all of the information pertinent to the application reasonably requested by the commissioner;~~

(G) ~~the acquisition would result in the violation of any law or regulation or it has been evidenced that the applicant, affiliates, or affiliated persons may cause to be abused the fiduciary responsibility held by the savings bank or other demonstration or untrustworthiness of the applicant, affiliates, or affiliated persons which would affect the savings bank has been evidenced; or~~

(H) ~~the applicant is not acting in good faith.~~

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~~(5) If any material change occurs in the facts set forth in the application and any documents filed with the department, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner within three business days after the person learns of such change.]~~

§75.123. Notice and Hearing.

(a) Public Notice. An applicant timely requesting a hearing on the Commissioner's decision to deny the application must publish a public notice of the application as provided by §75.203 of this title (relating to Public Notice of Application), which must be published in the county where the savings bank has its home office. Such notice, when properly effected is deemed to be the Commissioner's public notice of the application for purposes of Tex. Fin. Code §92.557.

(b) Hearing. If a hearing is required, the Commissioner will set a hearing on the denial within 60 days after the date the request for a hearing on the denial was received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title.

(c) Time of Decision. To the extent a hearing on the Commissioner's decision to deny the application is required, the Commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision, unless

the Commissioner establishes a longer time period, with written notice to the applicant.

§75.124. Retention of Control.

(a) The following conditions affecting any controlled savings bank, regardless of when or how such control has been acquired, are grounds for the Commissioner [~~commissioner~~] to investigate, seek to enjoin, or set aside any change of control of a savings bank, if the Commissioner [~~commissioner~~] deems the transfer to be against the public interest:

(1) the violation of any law, these regulations, abuse of the fiduciary responsibility held by a savings bank, or other demonstration of untrustworthiness by the savings bank, its holding company, or any controlling person, affiliates, affiliated persons, or any of the officers or directors which would affect the savings bank; or

(2) the violation of any antitrust law of this state by the savings bank, the holding company, or any affiliate.

(b) The Commissioner [~~commissioner~~] may require the submission of such information as necessary to determine whether any retention of control complies with the law of this state, as a condition of approval of such retention of control.

(c) The Commissioner [~~commissioner~~] may, when it appears that a change of control may have taken place without prior approval, call a hearing to determine whether there has been in fact a change of control or whether any unauthorized person, or persons, having no apparent ownership interest in the savings bank, acting alone or in concert with others, effectively have indirect controlling or

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dominating influence over the management or policies of a savings bank. If the Commissioner [~~commissioner~~] finds that such unauthorized control exists, the Commissioner [~~commissioner~~] may, after notice and hearing, issue an order requiring immediate divestiture by certain persons or unapproved or indirect control, or the Commissioner [~~commissioner~~] may issue any other supervisory order the Commissioner [~~commissioner~~] deems appropriate.

§75.126. Abeyance of Other Applications.

When an application for approval of acquisition of control of a savings bank has been received by the Commissioner [~~commissioner~~] and the savings bank also has other applications on file with the commissioner, such applications may, at the Commissioner's [~~commissioner's~~] discretion, be held in abeyance until the change of control application has been disposed of [~~by the commissioner~~].

§75.127. Exempt Transactions.

The following transactions are exempt from the application requirements of Chapter 75, Subchapter E of this title (relating to Change of Control) [~~this section~~]:

(1) control of an insured institution acquired solely as a result of foreclosure on the stock of a savings bank which secures a loan contracted for in good faith, where such loan was made in the ordinary course of business of the lender, provided that the acquisition of control pursuant to such foreclosure is reported to the Commissioner [~~commissioner~~] within 30 days and provided further that the acquiror may [~~shall~~] not retain such control for more than one year from the

date on which such control was acquired. The Commissioner [~~commissioner~~] may, upon application by the acquiror, extend such one-year period from year to year for an additional period of time, not to exceed three years, if the Commissioner [~~commissioner~~] finds such extension is warranted and would not be detrimental to the public interest. Nothing in this subsection prevents [~~shall prevent~~] such acquiror from filing an application pursuant to this chapter for permanent approval of the acquisition of control;

(2) control of an insured institution acquired through a percentage increase in stock ownership following a pro-rata stock dividend or stock split, if the proportional interest of the recipients remains substantially the same;

(3) acquisition of additional stock of a savings bank by any person who has held power to vote 25% or more of any class of voting stock in such savings bank continuously for the three-year period preceding such acquisition, or has maintained control of the savings bank continuously since acquiring control in compliance with the provisions of law or regulation then in effect provided that such acquisition is consistent with any conditions imposed in connection with such acquisition of control and with the representations made by the acquiror in its application.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry

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Associate General Counsel
Department of Savings and Mortgage
Lending

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SUBCHAPTER F. GENERAL
PROVISIONS

7 TAC §§75.201 - 75.203

Statutory Authority

This proposal is made under the authority of Finance Code §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §§75.202 and 75.203 are proposed under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraph (2) of that subsection. 7 TAC §75.201 is also proposed under the authority of, and to implement, Finance Code §92.055. 7 TAC §75.203 is also proposed under the authority of, and to implement, Finance Code: §92.057(a)(1); §92.352(a)(1); and §92.557(d).

This proposal affects the statutes contained in Finance Code, Subtitle C, the Texas State Savings Bank Act.

§75.201. Definitions.

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

(1) Affiliate - An affiliate of, or person affiliated with, a person that directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with, the person specified.

(2) Affiliated person -

(A) a director, officer, or controlling person of such savings bank;

(B) a spouse of a director, officer, or controlling person of such savings bank;

(C) a member of the immediate family of a director, officer, or controlling person of such savings bank who is a director or officer of any subsidiary of such savings bank or of any holding company affiliate of such savings bank;

(D) any corporation or organization (other than the savings bank or a corporation or organization through which the savings bank operates) of which a director, officer, or controlling person of such savings bank: (i) is an officer; (ii) is a general partner; (iii) is a limited partner who, directly or indirectly, either alone or with their spouse and the members of their immediate family who are also affiliated persons of the savings bank, owns an interest of 10% or more in the partnership (based on the value of their

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contribution) or who, directly or indirectly with other directors, officers, and controlling persons of such savings bank and their spouses and their immediate family members who are also affiliated persons of the savings bank, owns an interest of 25% or more in the partnership; or (iv) directly or indirectly, either alone or with their spouse and the members of their immediate family who are also affiliated persons of the savings banks, owns or controls 10% or more of any class of equity securities or owns or controls, with other directors, officers, and controlling persons of such savings bank and their spouses and their immediate family members who are also affiliated persons of the savings bank, 25% or more of any class of equity securities; and

(E) any trust or other estate in which a director, officer, or controlling person of such savings bank or the spouse of such person has a substantial beneficial interest or as to which such person or their spouse serves as trustee or in a similar fiduciary capacity.

(3) Commissioner - The Savings and Mortgage Lending Commissioner appointed under Finance Code, Chapter 13.

(4) Control (including the terms controlling, controlled by, and under common control with) - The possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a savings bank by either direct or indirect means. Control is deemed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds irrevocable proxies representing 25% or more of the voting securities of a savings bank.

(5) FDIC - The Federal Deposit Insurance Corporation.

(6) Issuer - The savings bank which has issued the security in question.

(7) Managing officer - An individual designated by the board of directors as being responsible for, and having the authority to direct, the day-to-day operations of the savings bank. The managing officer must have sufficient banking experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that, under the management and supervision of the managing officer, the savings bank will operate in compliance with applicable law and that success of the savings bank is probable.

(8) Person - An individual, corporation, a partnership, an association, a joint stock company, a trust, an

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unincorporated organization, any similar entity, or any combination of the foregoing acting in concert.

(9) Savings bank - includes all savings banks organized or chartered under the laws of this state. For purposes of this chapter, savings bank includes any other person controlling a savings bank.

(10) Voting security - includes any security convertible into or evidencing a right to acquire a voting security.

§75.202. Application Filing Requirements.

(a) Scope; Application. Applications and other filings submitted to the Department must comply with the requirements of this section.

(b) Application Forms. All applications must be made on the current form for the application prescribed by the Commissioner.

(c) Incomplete Filings; Notice of Acceptance; Deemed Withdrawal. An application or other filing with the Department will only be deemed submitted if it is complete. An application or other filing is complete only if all required information and supporting documentation is included and all required fees have been received. Within 30 days of receipt of an application or other filing requesting authorization or other relief from the Commissioner pursuant to this title, and for which a filing fee is charged pursuant to Chapter 76, Subchapter F of this title (relating to Fees and Charges), the Commissioner or the Commissioner's designee will issue a written notice to the applicant or filer informing them either that

the application is complete and accepted for filing, or that the application or filing is incomplete and specifying the information required to render the application or filing complete. The application or filing may be deemed withdrawn and the applicable fee forfeited if, within 30 days of being notified the application or filing was incomplete, the applicant or filer fails to provide to the Department the supplemental information or supporting documentation necessary to render the application or filing complete.

(d) Duty to Supplement. Even after being notified of the filing being complete, the applicant has a continuing obligation and duty to supplement the filing with any information or other supporting documentation the Commissioner determines to be necessary to render a decision on the application, upon written request. The applicant must provide to the Department any information or supporting documentation submitted to the appropriate federal banking regulator in connection with the relief sought by the application not previously provided to the Department.

(e) Duty to Amend. If a material change occurs in the facts contained in or information furnished in support of the application, the applicant must file an amended application or otherwise supplement the application to address the material change. The applicant must endeavor to resolve any potential changes or amendments to the application prior to publishing public notice of the application, as provided by §75.203 of this title (relating to Public Notice of Application). Amendments made after publication of such notice may require the notice to be re-published, as determined in the sole discretion of the

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Commissioner, with written notice to the applicant.

§75.203. Public Notice of Application.

An application for which notice to the public is required to be published must comply with the requirements of this section. The notice must be made using language and content preapproved by the Commissioner prior to publishing. The notice must be submitted to the publisher for publication within 15 days after the date the applicant receives notice that the application is complete and accepted for filing, as provided by §75.202(c) of this title (relating to Application Filing Requirements). The notice must be published in an English language newspaper of general circulation in each county required by the rule(s) governing such application. The applicant must, within 10 days after publishing the notice, provide the Commissioner with a publisher's affidavit evidencing that the notice was properly published in conformity with this section. The notice is deemed properly effected when the appropriate notice has been published in conformity with this section, and more than 10 days have elapsed.

§75.204. Motions for Rehearing.

A motion for rehearing pursuant to Tex. Fin. Code §91.006 must be filed not later than the 14th day after the date the decision or order that is the subject of the motion is signed. A copy of the motion for rehearing must be served on all parties who made an appearance or otherwise submitted a filing in the proceeding, and the motion must include a certificate of service reciting the parties served and the method of service. A party must file a reply to the motion for rehearing,

if any, not later than the 30th day after the date the decision or order that is the subject of the motion is signed. The Commissioner must act on the motion for hearing not later than the 45th day after the date the decision or order that is the subject of the motion for rehearing is signed or the motion for rehearing is deemed overruled by operation of law.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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

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7. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments, and Repeals in 7 TAC Part 4, Chapter 76, Concerning Miscellaneous, Resulting from Rule Review.

PURPOSE: The purpose of the amendments, and repeals in 7 TAC Chapter 76 is to implement changes resulting from the Department's periodic review of its rules contained in Chapter 75, conducted pursuant to Government Code §2001.039. An explanation and a justification for the amendments, and repeals is contained in the proposed preamble for the rule proposal.

RECOMMENDED ACTION: The Department requests that the Finance Commission approve the amendments, and repeals for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that the Finance Commission approve for publication and comment the proposed amendments, and repeals in 7 TAC Chapter 75.

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TITLE 7. BANKING AND SECURITIES

**PART 4. DEPARTMENT OF SAVINGS
AND MORTGAGE LENDING**

CHAPTER 76. MISCELLANEOUS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal the following rules in 7 Texas Administrative Code (TAC) Chapter 76: Subchapter A, §76.3; Subchapter D, §76.61; Subchapter E, §§76.71 - 76.73; and Subchapter G, §76.121. The commission further proposes amendments to existing rules in 7 TAC Chapter 76, as follows: Subchapter A, §§76.1 - 76.7, and 76.12; Subchapter B, §§76.21 - 76.26; Subchapter C, §§76.41 - 76.47; Subchapter F, §§76.91 - 76.103, and 76.105 - 76.110; and Subchapter H, §76.122. This proposal and the rules as repealed or amended by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 76 partially implement Finance Code Subtitle C, the Texas Savings Bank Act. The proposed rules were identified during the department's periodic review of 7 TAC Chapter 76, conducted pursuant to Government Code, §2001.039.

Notice to Consumers Changes

Existing §76.122, concerning Savings Bank Complaint Notices, requires Texas-chartered savings banks to make a disclosure to consumers concerning the department's regulatory oversight and the ability to file

complaints with the department. The proposed rules, if adopted, would clarify the existing requirement for a savings bank to make a disclosure on its website by clarifying that the requirement applies only to websites accessible by the public and further clarifying how to conspicuously display such notice on a website in order to comply with the rule.

Books and Records Changes

Existing §76.1, concerning Location of Books and Records, addresses how and where a savings bank keeps its books and records. The proposed rules, if adopted, would amend §76.1 to clarify that a savings bank must comply with the applicable requirements of federal law in making and keeping its books and records, and require that records be kept in accordance with established best practices of the Federal Financial Institution Examination Council. Amended §76.3 further clarifies that, while records may be kept at a location other than the savings bank's home office, the savings bank must ensure that a complete set of its records is readily accessible at the home office. The title of §76.1 is also amended to better reflect the subject matter of the rule as amended. Existing §76.3 authorizes a savings bank to keep copies of its records, including by electronic means. The proposed rules, if adopted, would repeal existing §76.3, and consolidate its subject matter in amended §76.1, which provides that records may be kept in an electronic, digital, or magnetic format.

Changes Concerning Reports from a Holding Company

Existing §76.42, concerning Reports, requires holding companies and their

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subsidiaries to file reports with the commissioner including any reports or other information it is required to file with the appropriate federal banking agency. The proposed rules, if adopted, would clarify that a holding company need not file with the commissioner reports it has filed with the appropriate federal banking agency that are publicly available.

Change of Control Fee Changes

Existing §76.101, concerning Fee for Change of Control, establishes the fee for making an application for change of control of a savings bank in accordance with Finance Code Chapter 92, Subchapter L. The proposed rules, if adopted, would lower the applicable fee from \$10,000 to \$5,000.

Changes Concerning Hearings on Applications

Existing §§76.71 - 76.73, concerning Hearings Officer, Rules of Procedure for Contested Hearings, and Publication of Hearing Notice, respectively, establish certain processes and procedures governing adjudicative hearings (contested cases) on applications filed with the commissioner. The proposed rules, if adopted, would repeal these rules to coincide with a separate rulemaking action proposed for 7 TAC Chapter 75, wherein the subject matter of existing §§76.71 - 76.73 would, if adopted, be addressed in such chapter.

Other Modernization and Update Changes.

The proposed rules, if adopted, would make changes to modernize and update the rules including: adding and replacing language for clarity and to improve readability; removing

unnecessary or duplicative provisions; and updating terminology.

Fiscal Impact on State and Local Government

Antonia Antov, director of operations for the department (director), has determined that for the first five-year period the proposed rules are in effect, there are no foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the proposed rules. The director has further determined that for the first five-year period the proposed rules are in effect, there will be no foreseeable losses or increases in revenue for local governments as a result of enforcing or administering the proposed rules. The director has further determined that for the first five years the proposed rules are in effect there will be no foreseeable losses or increases in revenue to the state overall and that would impact the general revenue fund. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the department because the department is a self-directed, semi-independent agency that does not receive legislative appropriations. The foregoing notwithstanding, the director has further determined that for the first five-year period the proposed rules are in effect, there will be a probable decrease in revenue to the department in connection with the proposed rules related to Change of Control Fee Changes because, if the proposed rules are adopted, the department will collect fewer fees in connection with applications for change of control of a savings bank. The department, on average over the previous ten years, has received one application for change of control of a savings bank per year. Assuming the department continues to

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receive and process an average of one application for change of a control of a savings bank per year, the department estimates that it will realize a reduction in revenue of approximately \$5,000 in each of the first five years the proposed rules are in effect, and \$25,000 in the first five-year period the proposed rules are in effect. The anticipated reduction in fees collected by the department in connection with such applications will not hinder the department's operations or require increases in other fees imposed by the department, or commensurate reductions in staff or other resources of the department.

Public Benefits

Stephany Trotti, deputy commissioner and director of thrift for the department (deputy commissioner) has determined that for each of the first five years the proposed rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to have rules that are easier to read and understand.

Probable Economic Costs to Persons Required to Comply with the Proposed Rules

The deputy commissioner has determined that for the first five years the proposed rules are in effect, there are no substantial economic costs anticipated to persons required to comply with the proposed rules.

One-for-One Rule Analysis

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

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency; (4) the proposed rules do require an increase or decrease in fees paid to the agency. The proposed rules related to Change of Control Fee Changes lower the fee for filing an application for change of control of a savings bank from \$10,000 to \$5,000, thereby decreasing fees paid to the agency for such applications; (5) the proposed rules do create a new regulation (rule requirement). The proposed rules related to Books and Records Change create a new requirement for a savings bank to comply with applicable federal law and the requirements of the appropriate federal banking agency with respect to making and maintaining its books and records. The requirement is a new rule requirement, but merely imposes by rule an existing requirement imposed by federal law and the appropriate federal banking agency; (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules related to Changes Concerning Hearings on Applications repeal existing requirements within such rules governing contested cases; however, such requirements merely restate or reassert requirements existing elsewhere by rule or statute, and as a result, such requirements will continue to exist should the proposed rules be adopted. The proposed

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rules repeal the requirements of existing 7 TAC §76.61, concerning Foreign Savings Banks. The proposed rules repeal the requirements of existing §76.121, concerning Application of the Statutory Parity Provision; however, such requirements merely restate or reassert the statutory provisions of Finance Code §93.008, without providing any additional clarity or guidance; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

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

Fiscal Impact on Small and Micro-Businesses, and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code §2006.002, are not required.

Takings Impact Assessment

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

Public Comments

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

**SUBCHAPTER A. BOOKS, RECORDS,
ACCOUNTING PRACTICES,
FINANCIAL STATEMENTS AND
RESERVES**

7 TAC §76.3

Statutory Authority

This proposal is made under the authority of Finance Code §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks.

This proposal affects the statutes contained in Finance Code Subtitle C, the Texas State Savings Bank Act.

§76.3. Reproduction and Destruction of Records.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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

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7 TAC §§76.1, 76.2, 76.4 - 76.7, 76.12

Statutory Authority

This proposal is made under the authority of Finance Code §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §76.1 is proposed under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraphs (3) and (5) of that subsection; §92.201; and §96.056. 7 TAC §76.2 is proposed under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraphs (3) and (4) of that subsection; and §92.201. 7 TAC §76.4 is proposed under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraphs (7) and (11) of that subsection; §96.051; and §96.053. 7 TAC §76.5 is proposed under the authority of, and to implement, Finance Code §96.002(a), for those specific subject matters outlined in paragraph (11) of that subsection. 7 TAC §76.6 is proposed under the authority of, and to implement, Finance Code §96.002(a), for those specific subject matters outlined in paragraph (9) of that subsection. 7

TAC §76.7 is proposed under the authority of, and to implement, Finance Code §96.002(a), for those specific subject matters set forth in paragraph (11) of that subsection. 7 TAC §76.12 is proposed under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraph (11) of that subsection; §92.051(b)(2); §92.058(c)(2); §92.062; §92.157; and §92.205.

This proposal affects the statutes contained in Finance Code, Subtitle C, the Texas State Savings Bank Act.

§76.1. [~~Location of~~] Books and Records.

A savings bank must create and maintain books and records of its operations, including complete minutes of the meetings of its members and the board of directors, and actions taken by written consent in lieu of such meetings. Records must be maintained in compliance with the applicable requirements of the appropriate federal banking agency and established industry best practices promoted by the Federal Financial Institution Examination Counsel. Records must be accurate, complete, current, legible, readily accessible, and readily sortable. A state savings bank may store original records or copies of records at a location other than the home office; however, a savings bank must ensure that a complete set of its books and records is readily accessible at the home office at all times so as to facilitate the examination of the savings bank by the Commissioner at the home office. A savings bank may maintain copies of its books and records in an electronic, digital, or magnetic format. A true and correct copy of an original record stored in an electronic, digital, or

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magnetic format is deemed to be an original record.

~~[Unless otherwise authorized by the commissioner, a savings bank shall keep at its home office correct and complete books of account and minutes of the meeting of members and directors. Complete records of all business transacted at the home office shall be maintained at the home office. Records of business transacted at any branch or agency office may be kept at such branch or agency office; provided, that control records of all business transacted at any branch or agency office shall be kept at the home office. A savings bank may keep duplicate electronic records offsite as a part of its business continuity planning if done in a manner meets applicable regulatory requirements, including those provided by the Federal Deposit Insurance Corporation and the Federal Financial Institution Examination Council.]~~

§76.2. Accounting Practices.

Every savings bank must ~~[shall]~~ use such forms and observe such accounting principles and practices as the Commissioner ~~[commissioner]~~ may require from time to time.

§76.4. Financial Statements; Annual Reports; Audits.

For safety and soundness purposes, within 90 days of its fiscal year end, each savings bank~~[, regardless of asset size,]~~ is required to submit to the Department the results and findings of an independent audit of its financial statements and all correspondence reasonably related to the audit. The audit is to be performed in accordance with generally accepted auditing standards and the

provisions of the FDIC set forth in 12 C.F.R. §363.2 and §363.3 ~~[42-CFR]~~, with the exception of any matters specifically addressed by this section, the Texas Savings Bank Act, or its related rules.

§76.5. Misdescription of Transactions.

No savings bank may ~~[by any system of account or any device of bookkeeping shall]~~, either directly or indirectly, knowingly make any entry on ~~[upon]~~ its books that is not accurate or otherwise fails to appropriately describe the transaction, or withholds information material to the transaction ~~[truly descriptive of the transaction which causes the entry].~~

§76.6. Charging Off or Setting Up Reserves against Bad Debts.

The Commissioner ~~[commissioner]~~, after a determination of value, may order that assets in the aggregate, to the extent that such assets have depreciated in value, or to the extent the value of such assets, including loans, are overstated in value for any reason, be charged off, or that a special reserve or reserves equal to such depreciation or overstated value be established in accordance with Generally Accepted Accounting Principles (GAAP).

§76.7. Examinations.

(a) The Commissioner will ~~[commissioner shall]~~ examine every state savings bank once in each year, or more frequently if the Commissioner ~~[commissioner]~~ determines that the condition of the savings bank justifies more frequent attention to enforce the Texas Savings Bank Act. The Commissioner ~~[commissioner]~~ may defer an examination for not more than six months if the Commissioner ~~[commissioner]~~ considers the

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deferment appropriate to the efficient enforcement of the Texas Savings Bank Act and consistent with the safe and sound operation of the institution.

(b) An examination under this section may be performed jointly or in conjunction with an examination by the saving bank's appropriate federal banking agency. The Commissioner ~~[Federal Deposit Insurance Corporation or any other federal depository institutions regulatory agency having jurisdiction over a savings bank, and/or the commissioner]~~ may accept an examination made by such federal banking agency in lieu of an examination pursuant to this section.

§76.12 Bylaws

(a) The bylaws of a [state] savings bank must ~~[shall]~~ contain sufficient provisions to govern the institution in accordance with the Texas Savings Bank Act, the Texas Business Organizations Code, and other applicable laws, rules and regulations, or the certificate of formation ~~[articles of incorporation]~~. Bylaws may contain a provision which permits such bylaws to be adopted, amended, or repealed by either a majority of the shareholders or a majority of the board of directors of the savings bank. Bylaw amendments may not take effect before being filed with and approved by the Commissioner ~~[commissioner]~~.

(b) A [state] savings bank is specifically authorized to adopt in its bylaws a provision which limits the liability of directors as contained in the Texas Business Organizations Code to the same extent permitted under state law for banks and savings and loan associations. Such bylaw

provision is optional and within the discretion of the [state] savings bank.

(c) Other optional bylaws may be adopted by a state savings bank with the approval of the Commissioner ~~[commissioner]~~.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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



SUBCHAPTER B. CAPITAL AND
CAPITAL OBLIGATIONS

7 TAC §§76.21 - 76.26

Statutory Authority

This proposal is made under the authority of Finance Code §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §76.21 and §76.22 are proposed under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters set forth in paragraphs (1) and (11) of that subsection; §92.052(b); §92.053(b); §92.054; §92.102; and §92.203. 7 TAC §76.23 is proposed under the authority of, and to implement, Finance Code: 96.002(a), for those specific

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subject matters set forth in paragraphs (1) and (11) of that subsection; §92.203; and Chapter 96, Subchapter C. 7 TAC §§76.24 - 76.26 is proposed under the authority of, and to implement, Finance Code: 96.002(a), for those subject matters set forth in paragraph (11); and §93.004(b).

This proposal affects the statutes contained in Finance Code, Subtitle C, the Texas State Savings Bank Act.

§76.21. Capital Requirements.

(a) Unless the context clearly indicates otherwise, when used in this chapter, "Capital" for a savings bank includes (as applicable) the amount of its issued and outstanding common stock, preferred stock (to the extent such preferred stock may be considered a part of the savings bank's capital under Generally Accepted Accounting Principles) plus any retained earnings and additional paid-in capital as well as such other items as the Commissioner [~~commissioner~~] may approve in writing for inclusion as capital.

(b) Minimum capital requirement. Each savings bank must [~~shall~~] maintain capital at levels which are required for institutions whose accounts are insured by the Federal Deposit Insurance Corporation.

§76.22. Increase or Decrease of Minimum Capital Requirements.

(a) The Commissioner [~~commissioner~~] may increase or decrease the minimum capital requirement set forth in this chapter[~~7~~] upon written application by a savings bank or by supervisory directive if the Commissioner determines [~~commissioner shall have affirmatively found from the data available~~

~~and/or the application and supplementary information submitted therewith~~] that:

(1) the savings bank's failure to meet the minimum capital requirement, if applicable, is not due to unsafe and unsound practices in the conduct of the affairs of the savings bank, a violation of any provision of the certificate of formation [~~articles of incorporation~~] or bylaws of the savings bank, or a violation of any law, rule, or supervisory action [~~order~~] applicable to the savings bank or any condition that the Commissioner [~~commissioner~~] has imposed on the savings bank by written order or agreement. For purposes of this chapter, unsafe and unsound practices means [~~shall mean~~], with respect to the operation of a savings bank, any action or inaction that is likely to cause insolvency or substantial dissipation of assets or earnings or to otherwise reduce the ability of the savings bank to timely satisfy withdrawal requests of savings account holders, including, without being limited to, excessive operating expenses, excessive growth, high-risk or undiversified investment positions [~~highly speculative ventures, excessive concentrations of lending in any one area~~], and non-existent or poorly followed lending and underwriting policies, procedures, and guidelines;

(2) the savings bank is well managed. In determining whether the [~~applying~~] savings bank is well managed, the Commissioner [~~commissioner~~] may consider:

(A) management's record of operating the savings bank;

(B) management's record of compliance with laws, regulations, directives, orders, and agreements;

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(C) management's timely recognition and correction of regulatory violations, unsafe and unsound practices, or other weaknesses identified through the examination or supervisory process;

(D) management's ability to operate the savings bank in changing economic conditions; and

(E) such other factors as the Commissioner [~~commissioner~~] may deem necessary to properly evaluate the quality of the savings bank's management; and

(3) the savings bank has submitted a plan acceptable to the Commissioner [~~commissioner~~] for restoring capital within a reasonable period of time. Such plan must [~~shall~~] describe the means and schedule by which capital will be increased. The plan must [~~shall~~] also specifically address restrictions on dividend levels; compensation of directors, executive officers, or individuals having a controlling interest; asset and liability growth; and payment for services or products furnished by affiliated persons as defined in Chapter 77 of this title. The plan must [~~shall~~] provide for improvement in the savings bank's capital on a continuous or periodic basis from earnings, capital infusions, liability and asset shrinkage, or any combination thereof. A plan that projects no significant improvement in capital until near the end of the waiver or variance period or that does not appear to the Commissioner [~~commissioner~~] to be reasonably feasible will not be acceptable. The Commissioner [~~commissioner~~] may require modification of the savings bank's plan in order for the institution to receive or to continue to receive such waiver or variance.

(b) Any savings bank which receives an increase or decrease of its minimum capital requirement from the Commissioner [~~commissioner~~] must file quarterly progress reports regarding compliance with its capital plan. The Commissioner [~~commissioner~~] may require more frequent reports. Any contemplated action that would represent a material variance from the plan that must be submitted to the Commissioner [~~commissioner~~] for approval.

(c) With respect to the granting of any waiver or variance of the minimum capital requirement, the Commissioner [~~commissioner~~] may impose any condition, limitation, or restriction on such increase or decrease as the Commissioner [~~commissioner~~] may deem necessary to ensure compliance with law and regulations and to prevent unsafe and unsound practices.

(d) The Commissioner [~~commissioner~~] may withdraw or modify any increase or decrease granted pursuant to this section if:

(1) the institution fails to comply with its capital plan;

(2) the increase or decrease was granted contingent upon the occurrence of events that do not subsequently occur;

(3) the savings bank undergoes a change of control or a material change in management that was not approved by the Commissioner [~~commissioner~~];

(4) the savings bank engages in practices inconsistent with achieving its minimum capital requirement;

(5) information is discovered that was not made available to the Commissioner

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[~~commissioner~~] at the time that the increase or decrease was granted and that indicates that the increase or decrease should not have been granted;

(6) the savings bank engages in unsafe and unsound practices, violates any provision of its certificate of formation [~~articles of incorporation~~] or bylaws, or violates any law, rule, or supervisory order applicable to the savings bank or any condition that the Commissioner [~~commissioner~~] has imposed upon the savings bank by written order or agreement;

(7) the savings bank fails to submit the reports required by this section.

§76.23. Business Plans.

(a) All savings banks whose operations are considered by the Commissioner [~~commissioner~~] unsafe or unsound pursuant to the Texas Savings Bank Act or which have total capital less than the amount required under §76.21 of this title (relating to Capital Requirements) or §76.22 of this title (relating to Increase or Decrease of Minimum Capital Requirements) must [~~shall~~] develop a business plan and have such business plan available for review by the examiners. The period covered by the business plan must be at least one year [~~shall not be less than one year~~], but may be for so long as the Commissioner [~~any greater number of periods that the commissioner~~] may require.

(b) The savings bank's business plan will [~~shall~~] be reviewed to determine its continued viability in accordance with current economic conditions and approved or revised, as determined by its board of directors, at least annually.

§76.24. Capital Notes and Debentures.

No savings bank may issue and sell its capital notes or debentures without the prior written approval of the Commissioner [~~commissioner~~] and subject to any conditions the Commissioner [~~commissioner~~] may impose with regard to safety and soundness and maintenance of adequate financial condition particularly in areas of preservation of capital, quality of earnings, and adequacy of reserves.

§76.25. Provisions for Issuance of Secured or Unsecured Capital Obligations.

A savings bank may, by resolution of its board of directors and with prior approval of the Commissioner [~~commissioner~~], issue capital notes, debentures, bonds, or other secured or unsecured capital obligations, which may be convertible in whole or in part to shares of permanent reserve fund stock, or may be issued with warrants attached, to purchase at a future date, shares of permanent reserve fund stock of the issuing savings bank, provided:

(1) the savings bank provides adequate proof to the satisfaction of the Commissioner [~~commissioner~~] that the holders of such obligations will receive properly amortized payments of both principal and interest at regularly stated intervals, or that proper provision is made for sinking fund allocations to retire all principal of and interest on such obligations; and

(2) sufficient evidence is furnished to the Commissioner [~~commissioner~~] as to the need and utilization of such funds by the savings bank in a profitable manner.

§76.26. Joint Issuance of Capital Obligations.

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On the same terms and conditions as stated in §76.25 of this title (relating to Provisions for Issuance of Secured or Unsecured Capital Obligations), a savings bank may, by resolution of its board of directors and with prior approval of the Commissioner [~~commissioner~~], join other savings banks in the joint issuance of capital notes, debentures, bonds, or other secured or unsecured capital obligations if it meets the terms and conditions of §76.25 of this title.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Associate General Counsel
Department of Savings and Mortgage
Lending

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SUBCHAPTER C. HOLDING
COMPANIES

7 TAC §§76.41 - 76.47

Statutory Authority

This proposal is made under the authority of Finance Code §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §§76.41 -

76.47 are proposed under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraphs (11) and (15) of that subsection; and §97.002. 7 TAC §76.41 is further proposed under the authority of, and to implement, Finance Code §97.002. 7 TAC §76.42 is further proposed under the authority of, and to implement, Finance Code §97.004. 7 TAC §76.43 is further proposed under the authority of, and to implement, Finance Code §97.005. 7 TAC §76.44 is further proposed under the authority, and to implement, Finance Code §97.006. 7 TAC §76.45 is further proposed under the authority of, and to implement, Finance Code §97.007. 7 TAC §76.46 is further proposed under the authority of, and to implement, Finance Code §97.003. 7 TAC §76.47 is further proposed under the authority of, and to implement, Finance Code, Chapter 98, Subchapter B.

This proposal affects the statutes contained in Finance Code, Subtitle C, the Texas State Savings Bank Act.

§76.41. Registration.

A holding company must [~~shall~~] register with the Commissioner [~~commissioner~~] on forms prescribed by the Commissioner [~~commissioner~~] within 90 days after the date of becoming a holding company. The forms must include information on the financial condition, ownership, operations, management, and intercompany relations of the holding company and its subsidiaries, and on related matters the Commissioner [~~commissioner~~] finds necessary and appropriate. On application, the Commissioner [~~commissioner~~] may extend the time within which a holding company is

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required to ~~[shall]~~ register and file the required information.

§76.42. Reports.

Each holding company and each subsidiary of a holding company, other than a savings bank, must ~~[shall]~~ file with the Commissioner ~~[commissioner]~~ reports required by the Commissioner ~~[commissioner]~~. The reports must be made under oath and must be in the form and for the periods prescribed by the Commissioner ~~[commissioner]~~. Each report must contain information concerning the operations of the holding company and its subsidiaries as the Commissioner ~~[commissioner]~~ may require. A holding company must ~~[shall]~~ file with the Commissioner ~~[commissioner]~~ copies of any filings, documents, statements, or reports required to be filed with the appropriate federal banking agency, unless such filing, document, statement, or report is publicly available ~~[regulatory authorities]~~.

§76.43. Books and Records.

Each holding company must ~~[shall]~~ maintain books and records as may be prescribed by the Commissioner ~~[commissioner]~~. The records must be created and maintained in accordance with the requirements of §76.1 of this title (relating to Books and Records), pertaining to savings banks.

§76.44. Examinations.

Each holding company and each subsidiary of a holding company is subject to examinations as the Commissioner ~~[commissioner]~~ may prescribe. The holding company must ~~[shall]~~ pay the cost of an examination. The confidentiality provisions of Tex. Fin. Code §96.356 ~~[the Texas~~

~~Savings Bank Act, §96.356, shall]~~ apply to this section. The Commissioner ~~[commissioner]~~ may furnish examination and other reports to any appropriate governmental department, agency, or instrumentality of this state, another state, or the United States. For purposes of this section, the Commissioner ~~[commissioner]~~, to the extent deemed feasible, may use reports filed with or examinations made by appropriate federal agencies or regulatory authorities of other states.

§76.45. Agent for Service of Process.

The Commissioner ~~[commissioner]~~ may require a holding company or a person, other than a corporation, connected with a holding company to execute and file a prescribed form of irrevocable appointment of agent for service of process.

§76.46. Release from Registration.

The Commissioner ~~[commissioner]~~ at any time, on the Commissioner's ~~[commissioner's]~~ own motion or on application, may release a registered holding company from a registration made by the company if the Commissioner ~~[commissioner]~~ determines that the company no longer controls a savings bank.

§76.47. Mutual Holding Companies.

(a) A savings bank may reorganize as a mutual holding company by complying with the provisions of Tex. Fin. Code §§97.051 - 97.053 ~~[Finance Code Chapter 97, Subchapter B (Finance Code §97.051)]~~. The savings bank must ~~[shall]~~ provide to the Commissioner ~~[commissioner]~~ an application to reorganize in a form specified by the Commissioner ~~[commissioner]~~. The

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applicant must ~~[shall]~~ provide one signed original and at least one copy of the application together with complete exhibits. The application must ~~[shall]~~ include:

(1) the proposed certificate of formation ~~[two copies of the articles of incorporation]~~ for the proposed subsidiary savings bank which must ~~[shall]~~ comply with the requirements of Tex. Fin. Code ~~[Finance Code]~~ §92.051 and §92.052 or §92.053, as applicable;

(2) the proposed ~~[two copies of the]~~ bylaws for the proposed subsidiary;

(3) ~~[two copies of]~~ the proposed restated certificate of formation ~~[articles of incorporation]~~ and bylaws of the mutual holding company;

(4) the complete plan of reorganization;

(5) a certification by the president or secretary as to how that the reorganization, including the amendments to the certificate of formation ~~[articles of incorporation]~~ and bylaws of the mutual holding company have been approved by a majority of the members or shareholders of the reorganizing savings bank in accordance with Finance Code Chapter 97, Subchapter B.

(6) A fee ~~[which shall be]~~ in the amount of the fee required for the conversion of a mutual savings bank into a stock savings bank under §76.106 of this title (relating to Fee for Mutual to Stock Conversion).

(b) On receipt of the application, the Commissioner ~~[commissioner]~~ may conduct an examination of the applicant savings bank.

(c) The Commissioner ~~may~~ ~~[commissioner shall]~~ approve the reorganization without a

hearing if the Commissioner ~~[commissioner]~~ determines:

(1) that the resulting savings bank will be in sound condition and meets all requirements of Finance Code Chapter 92, Subchapter B, and relevant rules of the Commissioner ~~[commissioner]~~ and the Finance Commission; and

(2) the applicant has received all approvals required under federal law for the creation of a bank or thrift holding company.

(d) If the Commissioner ~~[commissioner]~~ denies an application to reorganize, the applicant may appeal in the same manner as provided in Tex. Fin. Code ~~[Finance Code]~~ §92.304.

(e) A mutual holding company may establish a subsidiary holding company as a direct subsidiary to hold 100% of the stock of its savings bank subsidiary in accordance with the provisions of this subsection.

(1) The subsidiary holding company may be established either at the time of the initial mutual holding company reorganization or at a subsequent date, subject to the approval of the Commissioner ~~[Department]~~.

(2) For the purposes of Tex. Fin. Code ~~[Finance Code]~~ §97.053(a)(3) and (4), the subsidiary holding company will ~~[shall]~~ be treated as a savings bank issuing stock and must comply with ~~[shall be subject to]~~ the requirements of those sections. The mutual holding company parent must at all times own more than fifty percent (50%) of the outstanding stock of the subsidiary holding company.

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(3) The certificate of formation [~~charter~~] and by-laws of a subsidiary holding company must be approved by the Commissioner [~~Department~~] and may only be amended with the prior approval of the Commissioner [~~Department~~].

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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

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**SUBCHAPTER D. FOREIGN SAVINGS
BANKS**

7 TAC §76.61

Statutory Authority

This proposal is made under the authority of Finance Code §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks.

This proposal affects the statutes contained in Finance Code Subtitle C, the Texas State Savings Bank Act.

§76.61. Foreign Savings Banks.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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

♦ ♦ ♦

SUBCHAPTER E. HEARINGS

7 TAC §76.71 - 76.73

Statutory Authority

This proposal is made under the authority of Finance Code §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. This proposal affects the statutes contained in Finance Code, Subtitle C, the Texas State Savings Bank Act.

This proposal affects the statutes contained in Finance Code, Subtitle C, the Texas State Savings Bank Act.

§76.71. Hearings Officer.

§76.72. Rules of Procedure for Contested Hearings.

§76.73. Publication of Hearing Notice.

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The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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



SUBCHAPTER F. FEES AND CHARGES

**7 TAC §§76.91 - 76.97, 76.99 - 76.103,
76.105 - 76.110.**

Statutory Authority

This proposal is made under the authority of Finance Code §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §§76.91 - 76.97, 76.99 - 76.103, 76.105 - 76.110 are proposed under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraph (2) of that subsection; §91.007; and 16.003(c). 7 TAC §76.91 is further proposed under the authority of, and to implement, Finance Code §92.051(a)(2). 7 TAC §76.92 is further proposed under the authority of, and to implement, Finance Code §92.063. 7 TAC §76.97 is further proposed under the authority of, and to implement, Finance Code §93.004(b). 7 TAC §76.107 is

further proposed under the authority of, and to implement, Finance Code §97.001.

This proposal affects the statutes contained in Finance Code, Subtitle C, the Texas State Savings Bank Act.

§76.91. Fee for Charter Application.

Applicants for new charters for savings banks must ~~[shall]~~ pay a fee of \$10,000. ~~[This fee shall be paid at the time of filing and shall include the cost of filing and processing of said application.]~~ In addition, the applicant must ~~[shall]~~ pay the cost of a formal record and any cost incurred by the Department ~~[department]~~ in connection with the hearing, investigation, and travel expenses.

§76.92. Fee for Branch Office.

Applicants for branch offices under §75.33 of this title (relating to Branch Office Applications) must ~~[shall]~~ pay a fee of \$1,500. ~~[This fee shall be paid at the time of filing and shall include the cost of filing, and processing of said application.]~~ In addition, the applicants must ~~[shall]~~ pay ~~[the cost of a formal record and]~~ any cost incurred by the Department ~~[department]~~ in connection with the hearing, investigation and travel expenses.

§76.93. Fee for Mobile Facility.

Applicants for a mobile facility under §75.35 of this title (relating to Mobile Facilities) must ~~[shall]~~ pay a fee of \$500 plus \$100 for each location. ~~[This fee shall be paid at the time of filing and shall include the cost of filing, processing, and hearing of said application.]~~ In addition, the applicants must ~~[shall]~~ pay the cost of a formal record and any cost incurred by the Department ~~[department]~~

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in connection with the hearing, investigation, and travel expenses.

§76.94. Fee for Change of Name or of Location.

Applicants for change of name or change of location of any branch office, approved or existing, ~~[shall]~~ pay a fee of \$500. ~~[This fee shall be paid at the time of filing and shall include the cost for filing, processing, and hearing of said application.]~~ In addition, the applicants must ~~[shall]~~ pay ~~[the cost of a formal record]~~ and any cost incurred by the Department ~~[department]~~ in connection with the hearing, investigation and travel expenses.

§76.95. Fee for Special Examination or Audit.

Each savings bank subject to a special examination may be required to ~~[shall]~~ pay to the Department ~~[department]~~ an examination fee based upon a daily rate of \$325 for each examiner engaged in the examination of the affairs of such institution. For the purposes of this section, a special examination includes ~~[shall include]~~ only those examinations which the Commissioner ~~[commissioner]~~ conducts or causes to have conducted after the institution has completed one annual examination or such other additional examinations as the Commissioner ~~[commissioner]~~ deems to be necessary. This special examination fee will ~~[shall]~~ not be charged for an institution's annual regular examination.

§76.96. Fee for Certificate of Formation ~~[Charter]~~ and Bylaw Amendments.

The Commissioner will ~~[commissioner shall]~~ collect a filing fee of \$100 for each request

for approval of amendments to the certificate of formation or ~~[amendment to a charter or to]~~ the bylaws of a savings bank.

§76.97. Fee for Permission To Issue Capital Obligations.

The Commissioner will ~~[commissioner shall]~~ collect a filing fee of \$1,000 for each application by a savings bank for permission to issue capital notes, debentures, bonds, or other capital obligations to cover processing and investigation of such applications.

§76.99. Fee for Reorganization, Merger, and Consolidation.

(a) Any savings bank seeking to reorganize, merge, and/or consolidate, pursuant to the Texas Savings Bank Act, Subchapter H, and §§75.81 - 75.83, 75.85, 75.87 and 75.88 of this title must ~~[shall]~~ pay to the Commissioner ~~[commissioner]~~, at time of filing its plan, a fee of \$2,500 for each financial institution involved in a plan of reorganization, merger and/or consolidation. For each financial institution involved in a plan filed for a purchase and assumption acquisition, a fee of \$2,000 must ~~[shall]~~ be paid to the Commissioner ~~[commissioner]~~. No fee is required for a reorganization, merger, or consolidation pursuant to §75.89 of this title (relating to Reorganization, Merger or Conversion to Another Financial Institution Charter) where the resulting institution is not a state savings bank. No additional fee is required for an interim charter to facilitate a transaction under §§75.81 - 75.83, 75.85, 75.87 and 75.88 of this title.

(b) The fee set forth in subsection (a) of this section covers ~~[shall cover]~~ the cost of filing

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and processing with respect to the plan. In addition, such savings bank must ~~[shall]~~ pay ~~[the cost of a formal record, if applicable,]~~ any cost incurred by the Department ~~[department]~~ in connection with the hearing, investigation, and travel expenses.

§76.100. Fees for Expedited Applications.

Applicants for expedited applications under §75.26 of this title (relating to Expedited Applications) must ~~[shall]~~ pay the following fees:

(1) branch office - \$500;

(2) mobile facilities - \$500;

(3) office relocation - \$250;

(4) reorganization, merger or consolidation - \$2,500; and

(5) purchase and assumption transactions - \$2,000

~~[branch office \$500; mobile facilities \$500; office relocation \$250; reorganization, merger or consolidation \$2,500; and purchase and assumption transactions \$2,000. [All fees shall be paid at the time of filing and shall include the cost of filing, processing, and hearing of said application].~~

§76.101. Fee for Change of Control.

The Commissioner will ~~[commissioner shall]~~ collect a filing fee of \$5,000 ~~[\$10,000]~~ for each change of control application filed pursuant to §75.122 ~~[[§75.121—75.127]~~ of this title (relating to Acquisition of a Savings Bank) ~~[Change of Control]~~ and \$2,500 for rebuttal of control of a savings bank or rebuttal of concerted action.

§76.102. Fee for Subsidiaries.

The Commissioner will ~~[commissioner shall]~~ collect a fee of \$1,500 for each application by a savings bank for permission to make an initial investment in a subsidiary corporation pursuant to §§77.91 - 77.95 of this title (relating to Authorized Loans and Investments) to cover the processing and investigation of such applications, and an additional fee of \$100 for each office other than the home office of a subsidiary that is applied for. The Commissioner will ~~[commissioner shall]~~ collect a fee of \$500 for service corporation application to engage in a new activity; \$300 for redesignation of an operating subsidiary; and \$100 for each application by a savings bank to change the name of a subsidiary or the location of a subsidiary office.

§76.103. Fee for Charter Application under 7 TAC §75.36.

The Commissioner will ~~[commissioner shall]~~ collect a filing fee of \$500 for the processing of an application for a charter for a savings bank where the sole purpose of such application is the purchase of the assets, assumption of liabilities, and continuation of the business of any institution deemed by the Commissioner ~~[commissioner]~~ to be in an unsafe condition, pursuant to §75.36 of this title (relating to ~~[Designation as and]~~ Exemption for Supervisory Sale).

§76.105. Fee for Conversion into a Savings Bank.

The Commissioner will ~~[commissioner shall]~~ collect a filing fee for each application filed pursuant to §75.90 of this title (relating to Conversion into a Savings Bank) for conversion into a savings bank, as follows, based on the size of its total assets:

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(1) \$0 - 125 million - \$2,500;

(2) \$125 - 500 million - \$5,000;

(3) \$500 million - 1 billion - \$10,000; and

(4) Over 1 billion - \$15,000

~~[pursuant to the following schedule: \$0 — 125 million \$2,500; \$125 — 500 million \$5,000; \$500 million — 1 billion \$10,000; and Over 1 billion \$15,000].~~

§76.106. Fee for Mutual to Stock Conversion.

The Commissioner will ~~[commissioner shall]~~ collect a filing fee of \$7,500 for each application filed pursuant to §75.91 of this title (relating to Mutual to Stock Conversion) for conversion into a stock savings bank.

§76.107. Fee for Holding Company Registration.

The Commissioner will ~~[commissioner shall]~~ collect a filing fee of \$2,000 for each application filed pursuant to §76.41 of this title (relating to Holding Companies) for ~~[as]~~ registration of a holding company.

§76.108. Fees for Public Information Requests.

(a) The fees for copies of records of the Department ~~[department]~~ which are subject to public examination pursuant to Chapter 552 of the Texas Government Code will be assessed ~~[shall]~~ in accordance with Tex. Gov't Code ~~[Texas Government Code]~~ §552.262, be those adopted by rules of the attorney general.

(b) All requests will be treated equally. Charges may be waived at the Commissioner's ~~[commissioner's]~~ discretion.

(c) If records are requested to be inspected instead of receiving copies, access will be by appointment only during regular business hours of the Department ~~[department]~~ and will be at the discretion of the Commissioner ~~[commissioner]~~.

(d) Confidential documents will not be made available for examination or copying except under court order or as otherwise permitted or required by a rule adopted under this title or other applicable law.

(e) All public information requests will be referred to the Commissioner's ~~[commissioner's]~~ designee before the Department ~~[department]~~ will release the information.

§76.109. Fee for Protest Filing.

~~[(a)]~~ A person or entity filing a protest to an application must ~~[shall]~~ pay a fee of \$2,500 simultaneously with such protest filing. The purpose of this fee is to partially offset the Department's ~~[department's]~~ increased cost of processing an application and reduce costs incurred by the applicant that result solely from the protest.

~~[(b) Additionally, the Administrative Law Judge for a contested hearing may allocate costs incurred by the department to the parties pursuant §76.72 of this title (relating to Rules of Procedure for Contested Hearings). In such cases, the fee paid pursuant to subsection (a) of this section shall be applied toward payment of the protestant's allocation of hearing costs; however, no amount will be refunded and any additional amounts will be billed.~~

~~(c) Notwithstanding the provisions of subsection (a) of this section, a member of the~~

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~~general public allowed to testify under oath or affirmation in a contested case, who is not deemed a party by the Administrative Law Judge under the provisions incorporated by §76.72 of this title is not subject to this fee.]~~

§76.110. Fees Nonrefundable.

All filing fees must be paid at the time of filing and are nonrefundable. Except for fees established by statute, the Commissioner [commissioner] may exercise discretion to reduce or waive any filing fee and will [shall] charge fees on a consistent and nondiscriminatory basis.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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

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**SUBCHAPTER G. STATEMENTS OF
POLICY**

7 TAC §76.121

Statutory Authority

This proposal is made under the authority of Finance Code §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and

to protect public investment in Texas-chartered savings banks.

This proposal affects the statutes contained in Finance Code, Subtitle C, the Texas State Savings Bank Act.

§76.121. Application of the Statutory Parity Provision.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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

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**SUBCHAPTER H. COMPLAINT
PROCEDURES**

7 TAC §76.122

Statutory Authority

This proposal is made under the authority of Finance Code §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §76.122 is proposed under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in

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paragraph (11) of that subsection; §96.054; and Chapter 96, Subchapter C.

This proposal affects the statutes contained in Finance Code, Subtitle C, the Texas State Savings Bank Act.

§76.122. Savings Bank Complaint Notices.

(a) Definitions.

(1) "Privacy notice" means any notice which a state savings bank gives regarding a consumer's right to privacy, regardless of whether it is required by a specific state or federal law or given voluntarily.

(2) "Required notice" means a notice in a form set forth or provided for in subsection (b)(1) of this section.

(b) Notice of how to file complaints.

(1) In order to let its consumers know how to file complaints, state savings banks must use the following notice: The (name of state savings bank) is chartered under the laws of the State of Texas and by state law is subject to regulatory oversight by the Department of Savings and Mortgage Lending. Any consumer wishing to file a complaint against the (name of state savings bank) should contact the Department of Savings and Mortgage Lending through one of the means indicated below: In Person or by ~~[U.S.]~~ Mail: 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294, Phone ~~[Telephone No.]~~: (877) 276-5550, Fax ~~[No.]~~: (512) 936-2003, or through ~~[via electronic submission on]~~ the Department's website at www.sml.texas.gov ~~[http://www.sml.texas.gov/consumerinformation/tdsml_consumer_complaints.html]~~.

(2) A required notice must be included in each privacy notice that a state savings bank sends out.

(3) Regardless of whether a state savings bank is required by any state or federal law to give privacy notices, each state savings bank must take appropriate steps to let its consumers know how to file complaints by giving them the required notice in compliance with paragraph (1) of this subsection.

(4) The following measures are deemed to be appropriate steps to give the required notice:

(A) In each area where a state savings bank conducts business on a face-to-face basis, the required notice, in the form specified in paragraph (1) of this subsection, must be conspicuously posted. A notice is deemed to be conspicuously posted if a customer with 20/20 vision can read it from the place where he or she would typically conduct business or if it is included on a bulletin board, in plain view, on which all required notices to the general public (such as equal housing posters, licenses, Community Reinvestment Act notices, etc.) are posted.

(B) For customers who are not given privacy notices, the state savings bank must give the required notice when the customer relationship is established.

(C) The required notice must be posted on each website of the savings bank that is accessible by the public and either used to conduct banking activities or from which the savings bank advertises to solicit such business. The required notice is deemed to be conspicuously posted on a website when it is displayed on the initial or home page of the

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website (typically the base-level domain name) or is otherwise contained in a linked page with the link to such page prominently displayed on such initial or home page. [If a state savings bank maintains a website, the required notice must be included in a screen which the consumer must view whenever the site is accessed].

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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

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8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §77.10 Concerning Non-Real Estate Commercial Loans, Resulting from Rule Review.

PURPOSE: The purpose of the amendments to 7 TAC §77.10 is to implement changes resulting from the Department's periodic review of its rules contained in Chapter 77, conducted pursuant to Government Code §2001.039. An explanation and a justification for the amendments is contained in the proposed preamble for the rule proposal.

RECOMMENDED ACTION: The Department requests that the Finance Commission approve the amendments for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that the Finance Commission approve for publication and comment the proposed amendments to 7 TAC §77.10.

TITLE 7. BANKING AND SECURITIES

**PART 4. DEPARTMENT OF SAVINGS
AND MORTGAGE LENDING**

**CHAPTER 77. LOANS, INVESTMENTS,
SAVINGS, AND DEPOSITS**

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes amendments to existing 7 TAC §77.10. This proposal and the rule as amended by this proposal are referred to collectively as the "proposed rule."

Explanation of and Justification for the Rule

Existing 7 TAC §77.10 partially implements Finance Code Subtitle C, the Texas Savings Bank Act, and specifically §94.002 of such act. The proposed rule was identified during the department's periodic review of 7 TAC Chapter 77, conducted pursuant to Government Code, §2001.039.

Existing §77.10, concerning Non-Real Estate Commercial Loans, determines the circumstances under which and requirements for a savings bank to engage in commercial real estate loans. The proposed rule, if adopted, would amend the rule to clarify within the text of the rule that the rule pertains only to commercial loans.

**Fiscal Impact on State and Local
Government**

Antonia Antov, director of operations for the department (director), has determined that for the first five-year period the proposed rule is in effect, there are no foreseeable increases or reductions in costs to the state or local

governments as a result of enforcing or administering the proposed rule. The director has further determined that for the first five-year period the proposed rule is in effect, there will be no foreseeable losses or increases in revenue for the state or local governments as a result of enforcing or administering the proposed rule.

Public Benefits

Stephany Trotti, deputy commissioner and director of thrift for the department (deputy commissioner) has determined that for each of the first five years the proposed rule is in effect, the public benefit anticipated as a result of enforcing the proposed rule will be to have a rule that is easier to understand.

**Probable Economic Costs to Persons
Required to Comply with the Proposed Rule**

The deputy commissioner has determined that for the first five years the proposed rule is in effect, there are no substantial economic costs anticipated to persons required to comply with the proposed rule.

One-for-One Rule Analysis

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

Government Growth Impact Statement

For each of the first five years the proposed rule is in effect, the department has determined the following: (1) the proposed rule does not create or eliminate a government program; (2) implementation of

PROPOSED AMENDMENT

7 TAC §77.10

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the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency; (4) the proposed rule does not require an increase or decrease in fees paid to the agency; (5) the proposed rule does not create a new regulation (rule requirement); (6) the proposed rule does not expand, limit, or repeal an existing regulation (rule requirement); (7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and (8) the proposed rule does not positively or adversely affect this state's economy.

Local Employment Impact Statement

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

Fiscal Impact on Small and Micro-Businesses, and Rural Communities

The proposed rule will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code §2006.002, are not required.

Takings Impact Assessment

There are no private real property interests affected by the proposed rule. As a result,

preparation of a takings impact assessment, as provided by Government Code §2007.043, is not required.

Public Comments

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

Statutory Authority

This proposal is made under the authority of Finance Code §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §77.10 is also proposed under the authority of, and to implement Finance Code §94.002.

This proposal affects the statutes contained in Finance Code Subtitle C, the Texas State Savings Bank Act.

SUBCHAPTER A. AUTHORIZED LOANS AND INVESTMENTS

7 TAC §77.10

§77.10. Non-Real Estate Commercial Loans.

A savings bank may lend and invest not more than 40% of its total assets in non-real estate

commercial loans for business, corporate, or agricultural purposes. The amount of each letter of credit or other unfunded commitment to make a non-real estate commercial loan shall be included in computing this limitation. Prior to funding a loan under this section, a savings bank shall comply with the requirements of §77.31(a) of this title (relating to Loan Documentation).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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

9. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation.

None.

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