A.

Finance Commission

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FINANCE COMMISSION OF TEXAS

MEETING DATE .....February 16, 2018

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

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

FUTURE MEETING DATES ..... April 20, 2018
June 15, 2018
August 17, 2018
October 19, 2018
December 14, 2018

*** 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 Texas Finance Commission 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, February 16, 2018
8:45 a.m. or upon adjournment of the Audit Committee (whichever is later)
Finance Commission Building
William F. Aldridge Hearing Room
2601 N. Lamar Blvd.
Austin, Texas 78705

Section A.4 will take up the following agenda items with NO DISCUSSION as notated in bold and italicized A1, A2, A8, C2, C3, D2-D4

Public comment on any agenda item or issue under the jurisdiction of the Finance Commission agencies is allowed unless the comment is in reference to a rule proposal for which the public comment period has ended. However, upon majority vote of the Commission, public comment may be allowed related to final rule adoption.

A. FINANCE COMMISSION MATTERS

1. ***Review and Approval of the Minutes of the December 15, 2017 Finance Commission Meeting***

2. ***Review and Approval of the Minutes of the December 15, 2017 Study Committee Meeting***

3. General Public Comment

4. Consent Agenda

5. Finance Commission Operations

6. Audit Committee Report

   A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' November 30, 2017 Investment Officer Reports

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

   B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2018 First Quarter Financial Statements

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

   C. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Proposal for the Department of Savings and Mortgage Lending to contribute $750,000.00 to the Texas Financial Education Endowment Fund

7. Discussion of and Possible Vote to Take Action on Revisions of the Finance Commission's Liquidity Policy

8. ***Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC, Part §10.40 Concerning Enhanced Contract and Performance Monitoring; Website Posting***

9. Discussion of and Possible Vote to Take Action on the Adoption of Amendments, a New Section, and a Repeal in 7 TAC, Part 8, Chapter 153, Concerning Home Equity Lending

10. Discussion of and Possible Vote to Take Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Duties and Compensation of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to the Duties and Compensation of Persons Holding the Position of Agency Commissioner Positions, and Other Staff

11. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to §551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property

12. Discussion 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

B. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

1. Industry Status and Departmental Operations - State Savings Bank Activity: a) Industry Status; b) State Savings Bank Charter and Application Activity; c) Other Items

2. Discussion of and Possible Vote to Take Action on Annual Assessments to be Paid by the Texas State Savings Banks

3. Industry Status and Departmental Operations – Mortgage Lending Activity: a) Residential Mortgage Loan Originators; b) Mortgage Examination; c) Consumer Complaints; and d) Other Items

4. Fiscal/Operations Activity: a) Funding Status/Audits/Financial Reporting; b) Staffing; and c) Other Items

5. Legal Activity: a) Enforcement; b) Gift Reporting; and c) Legislative Activities

6. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

C. OFFICE OF CONSUMER CREDIT COMMISSIONER

1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities

2. ***Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 5, §83.503 & §90.203 Concerning Regulated Lenders & Plain Language Contract Provisions***

3. ***Discussion of and Possible Vote to Take Action on the Adoption of Amendments and a Repeal in 7 TAC, Part 5, Chapter 88, Concerning Consumer Debt Management Services, Resulting from Rule Review***

4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments in 7 TAC, Part 5, Chapter 84, Concerning Motor Vehicle Installment Sales

5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments, New Rules, and a Repeal in 7 TAC, Part 5, Chapter 85, Subchapter B, Concerning Rules for Crafted Precious Metal Dealers

6. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

   Lynn Rowell d/b/a Beaumont Greenery, MPC Data and Communications, Inc., Micah Cooksey, NXT Properties, Inc., Mark Harken, Montgomery Chandler, Inc., Paula Cook, Townsley Designs, LLC, and Shonda Townsley v. Ken Paxton, in his official capacity as Attorney General of the State of Texas; Cause No. 1:14-cv-00190-LY, in the United States District Court, Western District of Texas, Austin Division

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

D. TEXAS DEPARTMENT OF BANKING

1. Industry Status and Departmental Operations: a) Items of Interest from the Commissioner's Office; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Special Audits Division Activities; e) Administrative and Fiscal Division Activities; f) Strategic Support Division Activities; g) Legal Division Activities; h) Legislative Activities; and i) General Items of Interest

2. ***Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 2, Chapter 33, Concerning Money Services Businesses, Resulting from Rule Review***

3. ***Discussion of and Possible Vote to Take Action on the Re-Adoption of 7 TAC, Part 1, Chapter 3, Concerning State Bank Regulation, Resulting from Rule Review***

4. ***Discussion of and Possible Vote to Take Action on the Re-adoption of the Completed Rule Review of 7 TAC, Part 2, Chapter 24, Concerning Cemetery Brokers***

5. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

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

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

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MINUTES OF THE
FINANCE COMMISSION MEETING
Friday, December 15, 2017

The Finance Commission of Texas convened at 9:00 a.m. on December 15, 2017 with the following members present:

Finance Commission Members in Attendance:
Stacy G. London, Chairman
Jay Shands, Vice Chairman
Hector Cerna
Molly Curl
Phillip Holt
Will Lucas
Lori McCool
Matt Moore
Paul Plunket
Vince Puente

Finance Commission Chairman Stacy G. London announced a quorum with ten members present. (00:15) start of discussion)

Stacy G. London made a motion to excuse Bob Borochoff from the Finance Commission meeting held on December 15, 2017. There were no objections and the motion passed unanimously. (00:35)

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
1. Review and Approval of the Minutes of the October 20, 2017 Finance Commission Meeting	**On Consent Agenda – Item A1** This item Approved on the Consent Agenda.	2:10 start of discussion
2. General Public Comment	No Action Required.	2:25 start of discussion
3. Consent Agenda – Items A1, B2-B3, C3-C4, & D5-D8	Jay Shands made a motion to Approve Consent Agenda items A1, B2-B3, C3-C4, & D5-D8. Phillip Holt seconded and the motion passed.	2:32 start of discussion 3:01 vote
4. Finance Commission Operations	No Action Required.	3:29 start of discussion
5. Audit Committee Report		4:33 start of discussion

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' Fiscal Year 2018 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	Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies' Fiscal Year 2018 Internal Auditor's Risk Assessment and Audit Plan passed.	4:38 start of discussion 4:46 vote
6. Study Committee Report		5:09 start of discussion
A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on Revisions of the Finance Commission's Policies and Procedures	Coming upon Recommendation from the Study Committee, no second is required and the motion to Approve the Revisions of the Finance Commission's Policies and Procedures as amended passed.	5:12 start of discussion 5:18 vote
7. Discussion of the Process for the 2019 – 2023 Strategic Plans for the Finance Commission Agencies	No Action Required.	5:35 start of discussion
8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC, Part 1, §10.40 Concerning Enhanced Contract and Performance Monitoring; Website Posting	Molly Curl made a motion to Approve the Proposal and Publication for Comment of New 7 TAC, Part 1, §10.40 Concerning Enhanced Contract and Performance Monitoring; Website Posting as amended with the removal of subparagraph (E). Lori McCool seconded, and the motion passed.	10:29 start of discussion 13:43 vote
9. Discussion of and Possible Vote to Take Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Duties and Compensation of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to the Duties and Compensation of Persons Holding the Position of Agency Commissioner Positions, and Other Staff	Deferred to Executive Session – no vote taken.	n/a

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
10. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to §551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property	Deferred to Executive Session – no vote taken.	n/a
11. Discussion and Consultation with Attorney and Possible Vote to Take Action Pursuant to §551.071, Texas Government Code, for the purpose of seeking the advice or attorney-client privileged communications from our attorneys, including matters related to the potential financial exposure of the Finance Commission Agencies and their officers and the Finance Commission and its officers and including matters of pending and contemplated litigation	Deferred to Executive Session – no vote taken.	n/a
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.	14:16 start of discussion
2. ***On Consent***	**On Consent Agenda – Item B2** This item Approved on the Consent Agenda.	n/a
3. ***On Consent***	**On Consent Agenda – Item B3** This item Approved on the Consent Agenda.	n/a

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments and a Repeal in 7 TAC, Part 5, Chapter 88, Concerning Consumer Debt Management Services, Resulting from Rule Review	Jay Shands made a motion to Approve the Proposal and Publication for Comment of Amendments and a Repeal in 7 TAC, Part 5, Chapter 88, Concerning Consumer Debt Management Services, Resulting from Rule Review. Lori McCool seconded and the motion passed.	48:03 start of discussion 51:46 vote
5. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation *Lynn Rowell d/b/a Beaumont Greenery, MPC Data and Communications, Inc., Micah Cooksey, NXT Properties, Inc., Mark Harken, Montgomery Chandler, Inc., Paula Cook, Townsley Designs, LLC, and Shonda Townsley v. Ken Paxton, in his official capacity as Attorney General of the State of Texas*; Cause No. 1:14-cv-00190-LY, in the United States District Court, Western District of Texas, Austin Division	No Action Required.	n/a
C. TEXAS DEPARTMENT OF BANKING		
1. Industry Status and Departmental Operations: a) Items of Interest from the Commissioner's Office; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Special Audits Division Activities; e) Administrative and Fiscal Division Activities; f) Strategic Support Division Activities; g) Legal Division Activities; h) Legislative Activities; and i) General Items of Interest	No Action Required.	52:25 start of discussion
2. Discussion of and Possible Vote to Take Action on the Reappointment of Rebecca Ann Motley as the Consumer Representative and the Appointment of Amy Biggs as the Insurance Industry Representative to the Guaranty Fund Advisory Council for the Period January 1, 2018 to December 31, 2019	Matt Moore made a motion to approve the Reappointment of Rebecca Ann Motley as the Consumer Representative and the Appointment of Amy Biggs as the Insurance Industry Representative to the Guaranty Fund Advisory Council for the	1:18:32 start of discussion 1:19:43 vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
	Period January 1, 2018 to December 31, 2019. Phillip Holt seconded and the motion passed.	
3. ***On Consent***	**On Consent Agenda – Item C3** This item Approved on the Consent Agenda.	n/a
4. ***On Consent***	**On Consent Agenda – Item C4** This item Approved on the Consent Agenda.	n/a
5. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Action Required.	n/a
D. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING		
1. Industry Status and Departmental Operations – State Savings Bank Activity: a) Industry Status; b) State Savings Bank Charter and Application Activity; c) Other Items	No Action Required.	1:22:33 start of discussion
2. Industry Status and Departmental Operations – Mortgage Lending Activity: a) Residential Mortgage Loan Originators; b) Mortgage Examination; c) Consumer Complaints; and d) Other Items	No Action Required.	1:30:50 start of discussion
3. Fiscal/Operations Activity: a) Funding Status/Audits/Financial Reporting; b) Staffing; and c) Other Items	No Action Required.	n/a
4. Legal Activity: a) Enforcement; b) Gift Reporting; and c) Legislative Activities	No Action Required.	1:40:05 start of discussion

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
5. ***On Consent***	**On Consent Agenda – Item D5.** This item Approved on the Consent Agenda.	n/a
6. ***On Consent***	**On Consent Agenda – Item D6.** This item Approved on the Consent Agenda.	n/a
7. ***On Consent***	**On Consent Agenda – Item D7.** This item Approved on the Consent Agenda.	n/a
8. ***On Consent***	**On Consent Agenda – Item D8.** This item Approved on the Consent Agenda.	n/a
9. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No action Required.	n/a

Chairman Stacy G. London called for an Executive Session at 11:20 a.m. *(1:44:48) on the audio file).* The open meeting resumed at 12:50 p.m. (1:45:10) *on the audio file).*

There being no further business, Chairman Stacy G. London adjourned the meeting of the Finance Commission at 12:50 p.m. *(1:45:22) on the audio file).*

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Stacy G. London, Chairman
Finance Commission of Texas

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Charles G. Cooper, Commissioner
Texas Department of Banking

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Anne Benites, Executive Assistant
Finance Commission of Texas

MINUTES OF THE
STUDY COMMITTEE MEETING
Friday, December 15, 2017

The Study Committee of the Finance Commission of Texas convened at 8:27 a.m. on December 15, 2017, with the following members present:

Study Committee Members in Attendance:
Phillip Holt, Chairman
Paul Plunket
Hector Cerna

Additional Members in Attendance:
Stacy G. London
Jay Shands
Molly Curl
Will Lucas
Lori McCool
Vince E. Puente

Study Committee Chairman Holt announced that there was a quorum of the Study Committee of the Finance Commission of Texas with three members present.

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on Revisions of the Finance Commission's Policies and Procedures	Paul Plunket made a motion to Recommend that the Finance Commission Approve the Revisions of the Finance Commission's Policies and Procedures as amended. Hector Cerna seconded and the motion passed.	00:21 start of discussion 11:44 vote

There being no further business of the Study Committee of the Finance Commission of Texas, Phillip Holt adjourned the meeting at 8:39 a.m. (12:14*) on the audio file)*

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Phillip Holt, Study Committee Chair
Finance Commission of Texas

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Charles G. Cooper, Commissioner
Texas Department of Banking

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Anne Benites, Executive Assistant
Finance Commission of Texas

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Finance Commission of Texas

Consent Agenda

February 16, 2018

A. **Finance Commission Matters**

1. Review and Approval of the Minutes of the December 15, 2017 Finance Commission Meeting

2. Review and Approval of the Minutes of the December 15, 2017 Study Committee Meeting

8. Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC, Part §10.40 Concerning Enhanced Contract and Performance Monitoring; Website Posting

C. Office of Consumer Credit Commissioner

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 5, §83.503 & §90.203 Concerning Regulated Lenders & Plain Language Contract Provisions

3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments and a Repeal in 7 TAC, Part 5, Chapter 88, Concerning Consumer Debt Management Services, Resulting from Rule Review

D. Texas Department of Banking

2. Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 2, Chapter 33, Concerning Money Services Businesses, Resulting from Rule Review

3. Discussion of and Possible Vote to Take Action on the Re-Adoption of 7 TAC, Part 1, Chapter 3, Concerning State Bank Regulation, Resulting from Rule Review

4. Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 2, Chapter 24, Concerning Cemetery Brokers, Resulting from Rule Review

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LIQUIDITY POLICY

Policy Statement

The long-term financial stability and health of the finance agencies require a liquidity policy to ensure that the finance agencies preserve the capacity to provide adequate regulatory oversight. The finance agencies must maintain adequate levels of cash reserves for the purpose of mitigating current and future risks and ensuring consistent and adequate levels of regulation of the industries and services provided to Texas citizens. As self-directed, semi-independent finance agencies, it is essential that this policy provides accountability and transparency in guiding the finance agencies in setting goals and terms and conditions for cash reserves. This policy is not intended to be a policy related to the GAAP fund balance of a finance agency reported in the Annual Financial Report or GAAP accounting but rather a policy to ensure the finance agencies maintain adequate levels of liquidity that will position the finance agencies to respond to increases in the need for regulatory action, avoid cash flow stress, make planned capital purchases and generally maintain financial flexibility and plan for future needs.

The amount of cash reserves for each finance agency will differ depending on the finance agency's predictability of revenues, volatility of expenditures, timing of cash flows, and potential exposure to significant one-time outlays.

Reserved cash should prudently include amounts for, but not be limited to:

1. amounts necessary to address probable, quantifiable, and non-routine needs related to building maintenance or improvement, or information technology or cybersecurity projects. These outlays may span more than one fiscal year.
2. Amounts for long-term facilities master planning, e.g. funds for building acquisition. These outlays may span more than one year.
3. amounts owed or obligated by the fiscal period end for payroll, goods and services for which the finance agency has not yet made payment. Accounts receivable for the same period may be netted against this amount.
4. lump sum vacation benefits for retirement eligible employees,
5. amounts for a specific purpose by a decision and a vote by the Finance Commission to fund a new or expand an existing program under the finance agencies, e.g. the Texas Educational Endowment Fund.
6. any other necessary amounts to manage risk and cash flow or maintain adequate levels of regulation and services that are probable, quantifiable and non-routine,

The remaining funds are considered Unreserved funds and can be used for current or future operations. This category should be at least two, but no more than six, months of budgeted operating expenditures of the

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contingency FTE(s) – amounts necessary to employ and retain additional staff as needed to address rapid growth in the regulated industries, increased incidents of regulatory and supervisory concerns regarding compliance or safety and soundness, state or federal mandates, or any other events that may occur in the industries under the finance agencies' jurisdiction to the extent that additional staff is needed to maintain adequate regulation of the industries.

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finance agency (excluding any extraordinary budget items). Seasonal fluctuations may cause this category to be larger at certain times of the fiscal year.

If the Unreserved funds of a finance agency is projected to exceed the six months of budgeted operating expenditures for four consecutive quarters, the finance agency shall create a plan to reduce the excess amount.

If the Unreserved funds of a finance agency is projected to fall below the two months of budgeted operating expenditures, the finance agency shall create a plan to replenish the amount.

The amounts included in the liquidity reports are based on each finance agency's best estimate and should be reviewed and adjusted as needed by finance agency's staff. The finance agencies will present their liquidity reports and any required plan reports to the Finance Commission quarterly. Measurement of the level of liquidity should be applied within the context of long-term forecasting, thereby avoiding the risk of placing too much emphasis upon the level of unreserved funds at any one time.

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LIQUIDITY POLICY

Policy Statement

The long-term financial stability and health of the finance agencies require a liquidity policy to ensure that the finance agencies preserve the capacity to provide adequate regulatory oversight. The finance agencies must maintain adequate levels of cash reserves for the purpose of mitigating current and future risks and ensuring consistent and adequate levels of regulation of the industries and services provided to Texas citizens. As self-directed, semi-independent finance agencies, it is essential that this policy provides accountability and transparency in guiding the finance agencies in setting goals and terms and conditions for cash reserves. This policy is not intended to be a policy related to the GAAP fund balance of a finance agency reported in the Annual Financial Report or GAAP accounting but rather a policy to ensure the finance agencies maintain adequate levels of liquidity that will position the finance agencies to respond to increases in the need for regulatory action, avoid cash flow stress, make planned capital purchases and generally maintain financial flexibility and plan for future needs.

The amount of cash reserves for each finance agency will differ depending on the finance agency's predictability of revenues, volatility of expenditures, timing of cash flows, and potential exposure to significant one-time outlays.

Reserved cash should prudently include amounts for, but not be limited to:

1. amounts necessary to address probable, quantifiable, and non-routine needs related to building maintenance or improvement, or information technology or cybersecurity projects. These outlays may span more than one fiscal year.

2. amounts for long-term facilities master planning, e.g. funds for building acquisition. These outlays may span more than one year.

3. amounts owed or obligated by the fiscal period end for payroll, goods and services for which the finance agency has not yet made payment. Accounts receivable for the same period may be netted against this amount.

4. lump sum vacation benefits for retirement eligible employees.

5. amounts for a specific purpose by a decision and a vote by the Finance Commission to fund a new or expand an existing program under the finance agencies, e.g. the Texas Educational Endowment Fund.

6. any other necessary amounts to manage risk and cash flow or maintain adequate levels of regulation and services that are probable, quantifiable and non-routine.

The remaining funds are considered Unreserved funds and can be used for current or future operations. This category should be at least two, but no more than six, months of budgeted operating expenditures of the finance agency (excluding any extraordinary budget items). Seasonal fluctuations may cause this category to be larger at certain times of the fiscal year.

If the Unreserved funds of a finance agency is projected to exceed the six months of budgeted operating expenditures for four consecutive quarters, the finance agency shall create a plan to reduce the excess amount.

If the Unreserved funds of a finance agency is projected to fall below the two months of budgeted operating expenditures, the finance agency shall create a plan to replenish the amount.

The amounts included in the liquidity reports are based on each finance agency's best estimate and should be reviewed and adjusted as needed by finance agency's staff. The finance agencies will present their liquidity reports and any required plan reports to the Finance Commission quarterly. Measurement of the level of liquidity should be applied within the context of long-term forecasting, thereby avoiding the risk of placing too much emphasis upon the level of unreserved funds at any one time.

A. FINANCE COMMISSION MATTERS

8. Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC, Part 1, §10.40 Concerning Enhanced Contract and Performance Monitoring; Website Posting

PURPOSE: The purpose of the new rule is to place into regulation the finance agencies' procedures concerning contracts for the purchase of goods or services from private vendors.

RECOMMENDED ACTION: The agencies request that the Finance Commission approve new 7 TAC §10.40 without changes as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve new 7 TAC §10.40.

Title 7. Banking and Securities
Part 1. Finance Commission of Texas
Chapter 10. Contract Procedures
Subchapter C. Contract Monitoring
§10.40. Enhanced Contract and Performance Monitoring; Website Posting

The Finance Commission of Texas (commission) adopts new 7 TAC §10.40, concerning enhanced contract and performance monitoring, and the posting of certain contracts on finance agency websites.

The commission adopts new §10.40 without changes to the proposed text as published in the December 29, 2017, issue of the *Texas Register* (42 TexReg 7485).

The commission received no written comments on the proposal.

The purpose of adopted new §10.40 is to place into regulation the finance agencies' procedures concerning contracts for the purchase of goods or services from private vendors. The finance agencies are the Texas Department of Banking, the Texas Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner.

Subsection (a) states the purpose of the new rule, which provides the procedures applied by the finance agencies concerning contracts for the purchase of goods or services from private vendors.

Subsection (b) outlines the applicability of the rule to finance agency contracts made public or entered into on or after September 1, 2015. Additionally, §10.40(b)(3) lists the types of documents not subject to enhanced monitoring under the rule, as provided by Texas Government Code, §2261.253(d).

Subsection (c) describes the general procedures for contract evaluation and monitoring, including the use of finance agency policies and contract management handbooks and notice to the commission.

Subsection (d) provides for the posting of certain contracts under Texas Government Code, §2261.253(a), as well as the redaction of confidential information under §2261.253(e) prior to posting. The authorization to redact confidential information from these contracts was recently added by the Texas Legislature with the enactment of Senate Bill 533, effective September 1, 2017.

The new rule is adopted under Texas Government Code, §2261.253(c), which requires each state agency to adopt rules establishing a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the agency's governing body.

The statutory provisions affected by the adopted new rule are contained in Texas Government Code, Chapter 2261.

§10.40. Enhanced Contract and Performance Monitoring; Website Posting.

(a) Purpose. Under Texas Government Code, §2261.253, the finance agencies apply the following procedures concerning contracts for the purchase of goods or services from private vendors.

(b) Applicability.

(1) Finance agencies. This section applies to the agencies governed by the Finance Commission of the State of Texas: the Texas Department of Banking, the Texas Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner.

(2) Date of contracts subject to enhanced monitoring. This section applies to the following:

(A) contracts for which the request for bids or proposal is made public on or after September 1, 2015; and

(B) for contracts exempt from competitive bidding, contracts entered into on or after September 1, 2015.

(3) Documents not subject to enhanced monitoring. This section does not apply to:

(A) memoranda of understanding;

(B) interagency contracts;

(C) interlocal agreements; or

(D) contracts that do not involve a cost.

(c) Contract evaluation and monitoring.

(1) Use of finance agency policies and contract management handbook. Contracts are evaluated and monitored in accordance with each respective finance agency's policies and contract management handbook. Each finance agency maintains a contract management handbook in accordance with Texas Government Code, §2261.256.

(2) Finance Commission notice. If a finance agency identifies a contract that requires enhanced monitoring, the finance agency will notify the Finance Commission in accordance with its policies and contract management handbook. The finance agency will include in the notification any serious issues or risks identified with the contract.

(d) Website posting.

(1) Posting on finance agency website. Each finance agency will post on its website contracts that meet the posting requirements provided by Texas Government Code, §2261.253(a).

(2) Redaction of confidential information. Before posting the contracts under paragraph (1) of this subsection, each finance agency must redact information that is confidential by law, information excepted from public disclosure by the Texas Public Information Act (Texas Government Code, Chapter 552), and the social security number of any individual in accordance with Texas Government Code, §2261.253(e).

Certification

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

Issued in Austin, Texas on February 16, 2018.

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A. FINANCE COMMISSION MATTERS

9. Discussion of and Possible Vote to Take Action on the Adoption of Amendments, a New Section, and a Repeal in 7 TAC, Part 8, Chapter 153, Concerning Home Equity Lending

PURPOSE: The main purpose of the adoption is to implement SJR 60, passed by the Texas Legislature in 2017. SJR 60 amends Section 50 and applies to home equity loans entered on or after January 1, 2018.

RECOMMENDED ACTION: The agencies request that the Finance Commission approve the amendments, new section, and repeal in 7 TAC, Chapter 153 with changes as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve the amendments, new section, and repeal in 7 TAC, Chapter 153.

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

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") adopt amendments to the following home equity lending interpretations: §§153.1, 153.5, 153.14, 153.17, 153.84, and 153.86; adopt new §153.45; and adopt the repeal of §153.87, in 7 TAC, Chapter 153, concerning Home Equity Lending.

The commissions adopt the amendments to §§153.1, 153.5, 153.14, 153.17, 153.84, and 153.86; and adopt the repeal of §153.87 without changes to the proposed text as published in the November 24, 2017 issue of the *Texas Register* (42 TexReg 6580).

The commissions adopt new §153.45 with changes to the proposed text as published in the November 24, 2017 issue of the *Texas Register* (42 TexReg 6580). The changes are a result of official comments that the commissions received.

The commissions received nine written comments on the proposal from the following parties: AmeriHome Mortgage Company, LLC; BairdLaw, PLLC; Black, Mann & Graham L.L.P.; Independent Bankers Association of Texas; Randolph-Brooks Federal Credit Union; Texas Bankers Association; Texas Mortgage Bankers Association; and two individuals.

One comment expresses general support for the amendments as proposed. Eight comments include recommendations relating to new §153.45 and the refinance of a home equity loan to a non-home-equity loan. These recommendations relate primarily to three issues: (1) the limitation on funds advanced and the exclusion for actual costs, (2) the date of the loan application for purposes of the requirement to provide a disclosure within three days of the application, and (3) the date on which a mailed disclosure is considered to be provided to the owner for purposes of the three-day requirement.

Some of the comments also include questions and recommendations on the following issues that were not addressed in the proposal: (1) the timing of disclosures for loans closed during the first 12 days of January 2018, (2) the law applicable to home equity lines of credit closed before January 1, 2018, and (3) the effect of SJR 60 on the property tax designation for agricultural property.

The commissions' responses to the official comments on new §153.45 are included in the purpose discussion for that section. The comments on the other three issues are discussed after the purpose discussions for the amendments that are part of this action.

The adoption applies the administrative interpretation of the home equity lending provisions of Article XVI, Section 50 of the Texas Constitution ("Section 50") allowed by Section 50(u) and Texas Finance Code, §11.308 and §15.413.

The main purpose of the adoption is to implement SJR 60, passed by the Texas Legislature in 2017. SJR 60 amends Section 50 and applies to home equity loans entered on or after January 1, 2018.

SJR 60's constitutional amendments relate primarily to six issues. First, SJR 60 amends Section 50(a)(6)(E) by replacing the current three percent fee limitation with a two percent limitation, and specifying that four types of fees are not included in the limitation: an appraisal fee, a property survey fee, a mortgagee title insurance premium, and a title report fee. Second, SJR 60 amends Section 50(a)(6)(I) by removing the current prohibition on a home equity loan for agricultural property. Third, SJR 60 amends Section 50(a)(6)(P) by adding certain subsidiaries of depository institutions to the list of lenders authorized to make home equity loans, and replacing a reference to a "mortgage broker" with "mortgage banker or mortgage company." Fourth, SJR 60 amends Section 50(f) by allowing a home equity loan to be refinanced as a non-home-equity loan if four conditions are met: a one-year timing limitation, a limitation on advance of additional funds, an 80% loan-to-value limitation, and a required disclosure to the property owner. Fifth, SJR 60 amends Section 50(g) to make conforming changes to the required 12-day consumer disclosure. Sixth, SJR 60 amends Section 50(t)(6) by removing the 50% limitation on additional debits or advances for a home equity line of credit.

After the legislature passed SJR 60, the Texas Department of Banking, the Texas Department of Savings and Mortgage Lending, the Office of Consumer Credit Commissioner, and the Texas Credit Union Department ("agencies") circulated an initial precomment draft of proposed changes to interested stakeholders. The agencies then held a stakeholder meeting where attendees provided oral precomments. In addition, the agencies received four informal written precomments from stakeholders. Certain concepts recommended by the precommenters were incorporated into the proposal, and the agencies appreciate the thoughtful input provided by stakeholders.

The individual purposes of the amendments, new section, and repeal are provided in the following paragraphs.

The adopted amendments to §§153.1, 153.5, and 153.14 implement SJR 60's amendments to Section 50(a)(6)(E). As discussed previously, SJR 60 amends Section 50(a)(6)(E) by replacing the current three percent fee limitation with a two percent limitation, and specifying that certain types of fees are not included in the limitation.

An amendment to §153.1(15) replaces the phrase "three percent limitation" with "two percent limitation."

In §153.5, amendments to the introductory paragraph reflect SJR 60's amendments to Section 50(a)(6)(E). Throughout §153.5, amendments replace the phrase "three percent limitation" with "two percent limitation." Amendments to paragraph (3)(B) in §153.5 replace the phrase "legitimate discount points" with "bona fide discount points," reflecting SJR 60's exclusion of bona fide discount points from the two percent limitation. In paragraph (7), regarding third-party charges, an amendment moves a sentence providing an example of a third-party charge in order to provide better clarity. The amendment also removes the phrase "mortgage brokers' fees" from paragraph (7), reflecting SJR 60's removal of the phrase "mortgage broker" from Section 50. This amendment also responds to precomments stating that the phrase "mortgage brokers' fees" is no longer necessary. Amendments to paragraph (8), regarding charges to evaluate, conform to

SJR 60's amendments on fees for appraisals, surveys, and title reports.

Adopted new paragraphs (13)-(16) in §153.5 identify the four types of fees that may be excluded from the two percent limitation under SJR 60's amendments to Section 50(a)(6)(E): an appraisal fee, a property survey fee, a mortgagee title insurance premium, and a title report fee.

Adopted §153.5(13) states that an appraisal must be performed by a person who is not an employee of the lender, and that the excludable appraisal fee is limited to the fee paid to the appraiser for completion of the appraisal, not the fee for appraisal management services. This paragraph is based on Section 50(a)(6)(E)(i) of SJR 60, which states that the two percent limitation excludes a fee for "an appraisal performed by a third party appraiser." Under Texas Occupations Code, §1104.158(a), an appraisal management company must "separately state the fees: (1) paid to an appraiser for the completion of an appraisal; and (2) charged by the company for appraisal management services" in reporting to a client. Adopted paragraph (13) specifies that only the first of these two fees, the fee paid to the appraiser for the completion of the appraisal, may be excluded from the two percent limitation. At the stakeholder meeting, one attendee asked whether a fee for an evaluation that is not an appraisal may be excluded. This fee would be subject to the two percent limitation under adopted §153.5(8), which provides that charges to evaluate are generally subject to the two percent limitation, and would not be excludable under adopted §153.5(13), which provides an exception to this general requirement for certain appraisal fees.

Adopted §153.5(14) states that a fee for a property survey performed by a state registered or licensed surveyor is not a fee subject to the two percent limitation, and that the property survey must be performed by a person who is licensed or registered under Texas Occupations Code, Chapter 1071. This paragraph is based on Section 50(a)(6)(E)(ii) of SJR 60, which states that the two percent limitation excludes a fee for "a property survey performed by a state registered or licensed surveyor."

Adopted §153.5(15) states that an excludable premium for title insurance is limited to the applicable basic premium rate for title insurance published by the Texas Department of Insurance (TDI), plus authorized premiums for applicable endorsements, and that rules adopted by TDI govern the applicability of endorsements and the authorized amount for each premium. This paragraph is based on Section 50(a)(6)(E)(iii) of SJR 60, which states that the two percent limitation excludes a fee for "a state base premium for a mortgagee policy of title insurance with endorsements established in accordance with state law."

One precommenter recommends removing the applicability requirement in §153.5(15)(C), which states that any endorsements must be applicable to the mortgagee policy for the equity loan. TDI has identified various endorsements that may be used to modify a title insurance policy, and has established premiums for each type of endorsement. The endorsements are described in TDI's Title Insurance Basic Manual. The authorized endorsements include Form T-42 (insuring against loss due to failure to comply with Section 50's requirements for home equity loans), as well as endorsements relating to

minerals, condominiums, balloon mortgages, and other issues. The applicability requirement in adopted §153.5(15)(C) is intended to capture the concept that a lender should not charge the property owner a premium for an endorsement that does not apply to the transaction. For example, if the property is not a manufactured home, then the property owner should not be required to pay a premium for a manufactured housing endorsement, Form T-31. Similarly, if the loan is not a home equity line of credit, then the property owner should not be required to pay a premium for a future advance or revolving credit endorsement, Form T-35. As stated in paragraph (15), TDI's rules govern the applicability of endorsements.

At the stakeholder meeting, one attendee explained that some lenders might make amendments to title insurance policies, and that these "amendments" are not necessarily endorsements for which TDI's rules authorize a premium. The commissions believe that adopted §153.5(15) appropriately defers to TDI's rules regarding the applicability of endorsements and authorized amount of the premium. TDI's rules, not the labels used by the parties, will determine whether the endorsement is authorized.

Adopted §153.5(16) states that an excludable fee for a title report must be less than the applicable basic premium rate for title insurance, and that the title report fee may not be excluded if the equity loan is covered by a mortgagee policy of title insurance. This paragraph is based on Section 50(a)(6)(E)(iv) of SJR 60, which states that the two percent limitation excludes a fee for "a title examination report if its cost is less than the state base premium for a mortgagee policy of title insurance without endorsements established in accordance with state law." The agencies understand that this fee is intended to be excluded in transactions where the lender obtains a title report instead of a mortgagee policy of title insurance. In addition, adopted §153.5(16)(C) explains that the fee must comply with applicable law, including Texas Finance Code, §342.308(a)(1), which limits title examination fees for certain secondary mortgages.

One precommenter makes the following recommendation regarding paragraph (16): "Rather than require that such report fee be less than the state base premium without endorsements, it would be more appropriate to provide that it cannot exceed the state base premium for a mortgagee policy with endorsements." The commissions disagree with this recommendation. Section 50(a)(6)(E)(iv) of SJR 60 states that the two percent limitation excludes a fee for "a title examination report if its cost is less than the state base premium for a mortgagee policy of title insurance without endorsements established in accordance with state law." The plain language of this provision requires the title report fee to be less than the state base premium for title insurance without endorsements.

In the initial precomment draft sent to stakeholders, paragraphs (13), (14), (15), and (16) each included a statement that the relevant fee "must comply with applicable law." This phrase was based on existing interpretations in current §153.5, which state that certain fees may be charged "to the extent authorized by applicable law" or that the lender "must comply with applicable law." Two precommenters recommended removing or amending this phrase, arguing that it is unnecessary or could create confusion. At the stakeholder meeting, one

attendee recommended removing the phrase "must comply with applicable law" in paragraphs (14) and (15), while acknowledging that it is appropriate to state that a surveyor must be licensed under the Texas Occupations Code. The attendee recommended a provision-by-provision approach to using the phrase. In response to these precomments, adopted §153.5 does not include the phrase "must comply with applicable law" in paragraphs (13), (14), and (15), which relate to services performed by third parties, but includes the phrase in paragraph (16) regarding the title report, where the commissions believe that the phrase is appropriate.

An adopted amendment to §153.14(2)(D) replaces the phrase "3% fee cap" with "two percent limitation."

In §153.17, regarding lenders that are authorized to make home equity loans, adopted amendments to the introductory paragraph reflect SJR 60's amendments to Section 50(a)(6)(P). Adopted amendments to §153.17(3) remove a reference to a "mortgage broker" and specify that a person licensed under Texas Finance Code, Chapter 157 is a person regulated as a mortgage banker for purposes of Section 50(a)(6)(P)(vi).

Adopted new §153.45 describes the permissible ways in which a home equity loan can be refinanced, in accordance with Section 50(f) as amended by SJR 60. Paragraphs (1)-(4) of the new section describe the four conditions that must be met to refinance a home equity loan as a non-home-equity loan under Section 50(f)(2) of SJR 60.

Adopted §153.45(1) explains that the refinance may not be closed before the first anniversary of the closing date of the home equity loan, and that the closing date of the refinance is the date on which the owner signs the loan agreement for the refinance. This paragraph is based on Section 50(f)(2)(A) of SJR 60, which provides the following condition that must be met to refinance a home equity loan as a non-home-equity loan: "the refinance is not closed before the first anniversary of the date the extension of credit was closed." The statement regarding the closing date of the refinance is based on the definition of "closing" in current §153.1(3). One commenter agrees with this provision and expresses support for the statement in §153.45(1) that the closing date is the date on which the owner signs the loan agreement.

Adopted §153.45(2) describes the limitation on the advance of additional funds for the refinance. This paragraph is based on Section 50(f)(2)(B) of SJR 60, which provides the following condition that must be met to refinance a home equity loan as a non-home-equity loan: "the refinanced extension of credit does not include the advance of any additional funds other than: (i) funds advanced to refinance a debt described by Subsections (a)(1) through (a)(7) of this section; or (ii) actual costs and reserves required by the lender to refinance the debt." Adopted §153.45(2)(A) explains that actual costs must be identifiable, must be actually required by the lender, and must comply with any applicable limitations on costs. Adopted §153.45(2)(B) explains that reserves (e.g., an escrow account for taxes and insurance) must be actually required by the lender to refinance the debt, and must comply with applicable law. The commissions believe that the statement that the reserves "must comply with applicable law" is appropriate in this provision to

ensure that the lender complies with any laws governing reserve accounts, such as the escrow requirements in Regulation X, 12 C.F.R. §1024.17, and Regulation Z, 12 C.F.R. §1026.35(b).

One commenter suggests that the phrase "refinanced extension of credit" in proposed §153.45(2) is a typographical error, and that this phrase should be replaced with "refinance of the extension of credit" in order to clarify that this provision refers to the refinance of the home equity loan, rather than the home equity loan being refinanced. In response to this comment, the phrase "refinanced extension of credit" has been replaced with "refinance" in this adoption. This makes it clear that §153.45(2) refers to requirements for the refinance, not requirements for the home equity loan that is being refinanced.

Four commenters specifically address the limitation on the advance of additional funds and the exclusion for actual costs. These comments are addressed in the following paragraphs.

One commenter expresses concern about how the interpretation in §153.45(2) applies to costs that the borrower pays at or before closing. The commenter states: "A lender does not ordinarily 'incur' the cost of the title premium, survey, appraisal, attorney fees, or other charges connected to a home loan. The lender does require the borrower to pay these charges at or before closing. . . . The proposed interpretation creates unnecessary ambiguity as to whether an origination charge required by and paid to the lender is a cost 'actually incurred by the lender.'"

Since the proposal, in response to this comment, changes have been made to §153.45(2), to add the phrase "In order to be included in the funds advanced for the refinance" at the beginning of subparagraphs (A) and (B), and to add new subparagraph (C) explaining that amounts that the owner pays before or at closing are not advanced by the lender, and are not subject to the limitation on the advance of additional funds. These changes clarify that the types of costs identified by the commenter, which are paid at or before closing, are not subject to the limitation on funds advanced.

Three commenters expressed additional concerns about the phrase "actually incurred" in proposed §153.45(2)(A). Two of these commenters recommend removing the statement in proposed §153.45(2)(A) that costs must be "actually incurred by the lender." These two commenters state that the phrase "actual costs" in Section 50(f)(2)(B)(ii) refers to costs required by the lender to refinance the debt, and recommend replacing "incurred" with "required" in §153.45(2)(A). Another commenter recommends removing the word "actually" before "incurred" and amending §153.45(2)(A) to state that actual costs "must be incurred by the lender, directly or indirectly, whether paid to lender or third party in conjunction with refinance transaction."

Since the proposal, in response to these comments, a change has been made to §153.45(2)(A), to replace "must be actually incurred by the lender" with "must be actually required by the lender to refinance the debt." The commissions believe that this requirement, combined with the requirements that costs must be identifiable and must comply with any applicable cost limitations, appropriately reflects the lender's ability to advance "actual costs . . .

required by the lender to refinance the debt" under Section 50(f)(2)(B)(ii).

Adopted §153.45(3) describes the 80% loan-to-value limitation for the refinance. This paragraph is based on Section 50(f)(2)(C) of SJR 60, which provides the following condition that must be met to refinance a home equity loan as a non-home-equity loan: "the refinance of the extension of credit is of a principal amount that when added to the aggregate total of the outstanding principal balances of all other indebtedness secured by valid encumbrances of record against the homestead does not exceed 80 percent of the fair market value of the homestead on the date the refinance of the extension of credit is made." Subparagraphs (A), (B), and (C) in proposed §153.45(3) describe the method of calculating the principal amount of the refinance and the principal balance of other outstanding debt. These subparagraphs are based on current §153.3, which describes the 80% loan-to-value limitation for home equity loans.

One commenter asks whether an estimated value may be used for the fair market value of the property in transactions where the lender has submitted an estimated value and exercised an appraisal waiver through a government-sponsored enterprise (GSE). The commenter states: "One of the key questions that has arisen as we work to implement SJR 60 is that of (f)(2) loans and the applicability of GSE appraisal waivers, specifically Fannie Mae Property Inspection Waivers and Freddie Mac Automated Collateral Evaluation. As you may know, the eligibility for such a waiver is determined by Fannie Mae's Desktop Underwriter or Freddie Mac's Loan Product Advisor. If the waiver is exercised by the lender, the GSEs accept the estimated value submitted by the lender. The GSEs expressly prohibit a lender from exercising such a waiver if the lender has obtained an appraisal. . . . So the question is, can a lender exercise a GSE appraisal waiver and still meet the 80% of fair market value requirement?" Unlike Section 50(h), which applies to home equity loans, Section 50(f)(2) does not identify the specific types of appraisals or value estimates that lenders may rely on to establish the fair market value of the property. For this reason, the commissions decline to adopt an interpretation on this issue at this time. The agencies intend to monitor this issue to determine whether an interpretation is appropriate.

One precommenter recommends adding the following subparagraph (D) in §153.45(3): "On a closed-end multiple advance refinance, the principal balance also includes contractually obligated future advances not yet disbursed." The commissions disagree with this recommendation. Section 50(f)(2)(B) of SJR 60 limits the advance of funds to the amount refinanced, actual costs, and required reserves. It does not appear that the legislature intended for the Section 50(f)(2) refinance to include multiple future advances.

One commenter requests "greater clarity regarding the advancement of additional funds. Specifically, if a borrower has an existing HELOC which closed over one year ago, is there a seasoning requirement for advanced funds? For example, assuming an applicant has an existing $100,000 HELOC that closed over one year ago with a current balance of $80,000, would the applicant be able to draw an additional $20,000 prior to closing and refinance a $100,000? Or would the applicant only be permitted to refinance

the $80,000 balance? Additionally, if there is a limit on seasoning of funds, would the lender be required to obtain statements regarding HELOC activity for the prior 12 months to determine compliance with the rule?" This comment is unclear. Specifically, it is unclear whether the commenter is asking about the one-year requirement in Section 50(f)(2)(A), the limitation on advance of funds in Section 50(f)(2)(B), or the 80% loan-to-value limitation in Section 50(f)(2)(C), and it appears that the commenter has not provided sufficient information to determine whether the lender has complied with these three requirements in the hypothetical situation. Current §153.85(b) specifies that the time the extension of credit is established for a home equity line of credit refers to the date of closing, so clarification on this issue is unnecessary. In addition, Section 50(f)(2)(C) clearly states that the fair market value for the 80% loan-to-value limitation is the value on the date the refinance is made, so clarification on this issue is unnecessary. For these reasons, the commissions decline to address this comment.

Adopted §153.45(4) describes the requirement to provide a disclosure to the owner in connection with the refinance. This paragraph is based on Section 50(f)(2)(D) of SJR 60, which provides the following condition that must be met to refinance a home equity loan as a non-home-equity loan: "the lender provides the owner the following written notice on a separate document not later than the third business day after the date the owner submits the loan application to the lender and at least 12 days before the date the refinance of the extension of credit is closed . . . ." Section 50(f)(2)(D) then includes the text of the required refinance disclosure, which provides important information about the consumer protections that a borrower loses by agreeing to refinance a home equity loan into a non-home-equity loan.

Adopted §153.45(4)(A) explains that submission of a loan application to an agent of the lender is submission to the lender, and that a loan application may be given orally or electronically. This provision is based on the current interpretation at §153.12 relating to the closing date for home equity loans.

Five commenters recommend specifying that the date on which the loan application is submitted for purposes of the three-day period in Section 50(f)(2)(D). These commenters explain that a lender might not know, at the time of application, whether the applicant is applying specifically for a refinance of a home equity loan to a non-home-equity loan under Section 50(f)(2). According to the commenters, this means that the lender might not know whether it is required to provide the refinance disclosure within three business days of the application. One of the five commenters states that in the absence of additional clarification in the interpretations, lenders will either "provide the refinance disclosure to every owner applying for the refinance of an existing home mortgage," or will "have the initial application withdrawn or denied when it is discovered that the existing loan is an (a)(6) loan, and require the consumer to submit a new application."

Since the proposal, in response to these comments, subparagraph (B) has been added to §153.45(4) to specify the date on which the loan application is submitted for purposes of the three-day period in Section 50(f)(2)(D). As adopted, §153.45(4)(B) explains that the application is submitted on the date the owner submits a loan application specifically for a refinance of a

home equity loan to a non-home-equity loan. If the owner initially applies for another type of loan, then the application is considered submitted on the earliest of: (1) the date the owner modifies the application to specify that it is for a refinance of a home equity loan to a non-home-equity loan, or (2) the date the owner submits a new application specifically for a refinance of a home equity loan to a non-home-equity loan.

Adopted §153.45(4)(D) describes the time period for providing the refinance disclosure to comply with the three-day and 12-day periods in Section 50(f)(2)(D). Adopted §153.45(4)(C) states that if a lender mails the refinance disclosure to the owner, the lender must allow a reasonable period of time for delivery, and that a period of three calendar days, not including Sundays and federal legal public holidays, constitutes a rebuttable presumption for sufficient mailing and delivery. This subparagraph is similar to current §153.51(1), which provides a rebuttable presumption for the 12-day consumer disclosure under Section 50(g).

Four commenters recommend including a statement that the refinance disclosure must be delivered or placed in the mail no later than the third business day after the application. The four commenters explain that it would be difficult or costly for lenders to mail the refinance disclosure on the same day the application is submitted, or to restart the application process in order to meet the three-day deadline. Three of commenters support this recommendation by comparison to federal Regulation Z's requirement to provide a loan estimate within three days of the application. For mortgage loans, Regulation Z requires a creditor to "provide" the consumer with a loan estimate disclosure, and states that the creditor "shall deliver or place in the mail [the loan estimate] . . . not later than the third business day after the creditor receives the consumer's application." 12 C.F.R. §1026.19(e)(1)(i), (iii). One commenter cites a similar requirement for appraisals in Regulation B, which states that the creditor "shall mail or deliver [notice of right to receive appraisals] to an applicant, not later than the third business day after the creditor receives an application for credit that is to be secured by a first lien on a dwelling." 12 C.F.R. §1002.14(a)(1). Another commenter cites Rule 21a of the Texas Rules of Civil Procedure. Under Rule 21a, service by mail "is complete upon deposit of the document, postpaid and properly addressed, in the mail or with a commercial delivery service." Tex. R. Civ. P. 21a(b)(1). If a party receives notice by mail, three days are generally added to any deadlines that apply to the recipient. Tex. R. Civ. P. 21a(c). A party may offer proof that the document was not received within three days from the date it was placed in the mail, in which case a court may extend an applicable deadline. Tex. R. Civ. P. 21a(e).

Since the proposal, in response to these comments, two sentences have been added to §153.45(4)(D), to specify that the lender must deliver the disclosure or place it in the mail no later than the third business day after the owner submits the loan application, and that the disclosure must be delivered to the owner at least 12 days before the refinance is closed. The three-day deadline under adopted §153.45(4)(D) is consistent with the similar deadlines for the loan estimate and appraisal notice under federal law, as discussed above. Certain lenders will be able to mail the refinance disclosure at the same time as the federal disclosures, helping to minimize costs. Adopted §153.45(4)(D) is also consistent with Rule

21a of the Texas Rules of Civil Procedure, which considers service to occur when a document is placed in the mail. At the same time, by specifying that the disclosure must be delivered at least 12 days before the refinance is closed, adopted §153.45(4)(D) helps ensure that the owner has a full 12 days to consider the important information in the refinance disclosure before closing the refinance. Adopted §153.45(4)(D) helps ensure that the borrower receives the important information in the refinance disclosure promptly after filing a loan application, and that the borrower has a full 12 days to consider this information before closing the refinance. In addition, the owner's ability to rebut the three-day presumption of delivery is consistent with Rule 21a and with the similar rebuttable presumption for home equity loans in current §153.51(1), which was upheld by the Texas Supreme Court in *Finance Commission of Texas v. Norwood*, 418 S.W.3d 566, 589 (Tex. 2013).

In response to a precomment, adopted §153.45(4)(E) provides that one copy of the refinance disclosure may be provided to married owners. Adopted §153.45(4)(F) explains that the refinance disclosure is only a summary of substantive rights governed by the constitution. Adopted §153.45(4)(G) explains that a lender may rely on an established system of verifiable procedures to evidence compliance with paragraph (4).

Adopted §153.45(4)(H) explains that the Finance Commission will publish a Spanish translation of the refinance disclosure on its website, and that a lender whose discussions with the owner are conducted primarily in Spanish may provide the Finance Commission's Spanish translation to the owner. These provisions are based on interpretations for the 12-day consumer disclosure in current §153.12 and §153.51. The agencies circulated an initial draft Spanish translation of the refinance disclosure to stakeholders, and have posted a final version of the Spanish disclosure on the Finance Commission's website.

Two commenters recommend including a statement that the Spanish disclosure is optional. These two commenters note that Section 50(f)(2) does not include a requirement to provide the Spanish disclosure, as opposed to Section 50(g), which requires the consumer disclosure for home equity loans to be provided to the borrower in the language in which discussions were conducted. Since the proposal, in response to these comments, a statement has been added to §153.45(4)(H) to clarify that the Spanish translation is not required by Section 50(f)(2).

One commenter recommends amending §153.45 to add a cure for failure to comply with Section 50(f)(2). The commenter proposes several methods of curing violations of the conditions in Section 50(f)(2) based on the methods for curing home equity loan violations in Section 50(a)(6)(Q)(x), including payment to the owner of any amount exceeding the limitation on funds advanced, sending an acknowledgement that the lien is valid only in the amount that does not exceed the 80% loan-to-value limitation, sending written notice modifying terms, and a $1,000 refund with a right to refinance. The commenter proposes that if the lender timely corrects the violation, then the violation does not invalidate the lien. The commissions decline to add the commenter's recommended language. Unlike Section 50(a)(6), Section 50(f)(2) does not include any provisions authorizing a cure of a violation. It is outside the intended scope of the interpretations to

add a cure method that is not described in the constitution.

One precommenter suggests specifying that a home equity line of credit may be refinanced as a non-home-equity loan under Section 50(f)(2). The commissions believe that this addition is unnecessary. Home equity lines of credit are a type of home equity loan under Section 50, and are subject to the same requirements as other home equity loans unless the constitution specifies otherwise. Adding the precommenter's suggested language could raise other questions about whether home equity lines of credit are subject to general requirements for home equity loans.

In addition to the amendments discussed previously, SJR 60 adds Section 50(f-1), stating: "An affidavit executed by the owner or the owner's spouse acknowledging that the requirements of Subsection (f)(2) of this section have been met conclusively establishes that the requirements of Subsection (a)(4) of this section have been met." When the agencies circulated the initial precomment draft of the amendments, the agencies asked whether an interpretation is needed regarding the content of the affidavit and the manner of its execution. The agencies received mixed responses on this issue. One precommenter recommends an interpretation on what would satisfy the affidavit provision. Another precommenter states that the commissions should not adopt an interpretation on this issue "because an affidavit is defined by §312.011(1), Chapter 312, Government Code, and the manner of its execution is subject to subsection 50(a)(6)(N)." This same precommenter recommends "that the Commissions propose an Interpretation to address the cure of a defective (f)(2) refinance pursuant to their authority under Subsection (u) to interpret Subsections (a)(6) and (f)," but the precommenter does not identify the constitutional basis for the cure or what the cure should entail. At the stakeholder meeting, one attendee stated that the commissions did not necessarily need to promulgate the affidavit, but the attendee believed it would be helpful to have a title for the affidavit. The agencies intend to monitor this issue to determine whether an interpretation is appropriate.

The adopted amendments to §153.84 and §153.86, together with the repeal of §153.87, implement SJR 60's amendments to Section 50(t)(6). As discussed previously, SJR 60 amends Section 50(t)(6) by removing the 50% limitation on additional debits or advances for a home equity line of credit. Adopted amendments to §153.84 and §153.86 remove references to the 50% limitation in Section 50(t)(6) while maintaining references to the overall 80% loan-to-value limitation in Sections 50(a)(6)(B) and 50(t)(5), which SJR 60 did not amend. Section 153.87 is being repealed because it relates solely to the 50% limitation that SJR 60 removes.

One commenter recommends an interpretation for loans originated during January 2018, stating that "both new disclosures [under Section 50(a)(6) and (f)(2)] are effective with loans originated on and after January 1, 2018. [Section 50(a)(6)] loans originated (ie application taken) prior to January 1, 2018 may be closed using the existing [Section 50(a)(6)] disclosure no matter that they close after January 1, 2018." The commissions decline to address loans originated during January 2018 as part of this adoption, because January 2018 has already passed, and this adoption will not be effective until March 2018 at the earliest.

The agencies addressed this issue in a joint statement on the passage of SJR 60, explaining that the safest course for lenders would be to wait until January 1, 2018 to begin providing updated disclosures under SJR 60, and to wait until January 13 at the earliest to begin originating loans. This statement is based on opinion DM-452 (1997), in which the Texas attorney general concluded that if a lender provided the required 12-day notice for home equity loans 12 days before January 1, 1998, and closed the loan on January 1, then the loan would not be enforceable under the constitution, because the disclosure was not "prescribed by" the constitutional amendment that went into effect on January 1, 1998. Because this issue was addressed in the agencies' joint statement, and because January 2018 has already passed, the commissions decline to address the issue in this adoption.

One commenter asks the following question: "Are existing HELOC's closed prior to 1/1/2018 required to be governed under the 50% LTV rule?" Subsection (c) of SJR 60's temporary provision explains that SJR 60's changes apply to a home equity loan made on or after January 1, 2018. This means that previous law applies to home equity loans made before January 1, 2018. In particular, the 50% limitation on additional advances in previous Section 50(t)(6) applies to home equity lines of credit made before January 1, 2018. The commissions believe that this issue is clearly addressed in SJR 60's temporary provision, and decline to adopt an interpretation on this issue.

One precommenter recommends that the commissions issue an interpretation of SJR 60's temporary provision, specifying that the changes made by SJR 60 continue after January 1, 2019. The commissions believe that this interpretation is unnecessary. The legislature clearly intended for the amendments in SJR 60 to continue in effect beyond December 31, 2018, and would have made a clearer statement if it intended for all of the amendments in SJR 60 to expire on December 31, 2018.

One commenter requests guidance on how the property tax designation for agricultural property should be interpreted after SJR 60. Before SJR 60, Section 50(a)(6)(I) generally prohibited a home equity loan on property designated for agricultural use, unless the property was used primarily for the production of milk. SJR 60 removes this prohibition. Currently, the Texas Tax Code contains an exception to the general property tax designation for agricultural property, stating: "On or after January 1, 2008, an individual is not entitled to have land designated for agricultural use if the land secures a home equity loan described by Section 50(a)(6), Article XVI, Texas Constitution." Tex. Tax Code §23.42(a-1). The commissions decline to adopt an interpretation on this issue. The commenter's question is outside the intended scope of the home equity interpretations, because it is an issue of interpreting the Texas Tax Code, not the constitution. The applicability of property tax designations is determined by the Texas Legislature and the Texas Comptroller of Public Accounts, which has rulemaking authority regarding those exemptions, and is not determined by the commissions. However, the commissions recognize that this is an important issue and encourage lenders to contact the comptroller or local taxing authorities if they have any questions about the applicability of property tax designations.

The amendments, new section, and repeal are adopted under Article XVI, Section 50(u) of the Texas Constitution and Texas Finance Code, §11.308 and §15.413, which authorize the commissions to adopt interpretations of Article XVI, Section 50(a)(5)-(7), (e)-(p), (t), and (u) of the Texas Constitution.

The constitutional provisions affected by the adoption are contained in Article XVI, Section 50 of the Texas Constitution.

§153.1. Definitions.

Any reference to Section 50 in this interpretation refers to Article XVI, Texas Constitution, unless otherwise noted. These words and terms have the following meanings when used in this chapter, unless the context indicates otherwise:

(1) - (14) (No change.)

(15) Two [~~Three~~] percent limitation--the limitation on fees in Section 50(a)(6)(E).

§153.5. Two [~~Three~~] percent fee limitation: Section 50(a)(6)(E).

An equity loan must not require the owner or the owner's spouse to pay, in addition to any interest or any bona fide discount points used to buy down the interest rate, any fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, two [~~three~~] percent of the original principal amount of the extension of credit, excluding fees for an appraisal performed by a third party appraiser, a property survey performed by a state registered or licensed surveyor, a state base premium for a mortgagee policy of title insurance with endorsements established in accordance with state law, or a title examination report if its cost is less than the state base premium for a mortgagee policy of title insurance without endorsements established in accordance with state law.

(1) Optional Charges. Charges paid by an owner or an owner's spouse at their sole discretion are not fees subject to the two [~~three~~] percent [~~fee~~] limitation. Charges that are not imposed or required by the lender, but that are optional, are not fees subject to the two [~~three~~] percent limitation. The use of the word "require" in Section 50(a)(6)(E) means that optional charges are not fees subject to the two [~~three~~] percent limitation.

(2) Optional Insurance. Insurance coverage premiums paid by an owner or an owner's spouse that are at their sole discretion are not fees subject to the two [~~three~~] percent limitation. Examples of these charges may include credit life and credit accident and health insurance that are voluntarily purchased by the owner or the owner's spouse.

(3) Charges that are Interest. Charges an owner or an owner's spouse is required to pay that constitute interest under §153.1(11) of this title (relating to Definitions) are not fees subject to the two [~~three~~] percent limitation.

(A) Per diem interest is interest and is not subject to the two [~~three~~] percent limitation.

(B) Bona fide [~~Legitimate~~] discount points are interest and are not subject to the two [~~three~~] percent limitation. Discount points are bona fide [~~legitimate~~] if the discount points truly correspond to a

reduced interest rate and are not necessary to originate, evaluate, maintain, record, insure, or service the equity loan. A lender may rely on an established system of verifiable procedures to evidence that the discount points it offers are bona fide [~~legitimate~~]. This system may include documentation of options that the owner is offered in the course of negotiation, including a contract rate without discount points and a lower contract rate based on discount points.

(4) Charges that are not Interest. Charges an owner or an owner's spouse is required to pay that are not interest under §153.1(11) of this title are fees subject to the two [~~three~~] percent limitation.

(5) Charges Absorbed by Lender. Charges a lender absorbs, and does not charge an owner or an owner's spouse that the owner or owner's spouse might otherwise be required to pay are unrestricted and not fees subject to the two [~~three~~] percent limitation.

(6) Charges to Originate. Charges an owner or an owner's spouse is required to pay to originate an equity loan that are not interest under §153.1(11) of this title are fees subject to the two [~~three~~] percent limitation.

(7) Charges Paid to Third Parties. Charges an owner or an owner's spouse is required to pay to third parties for separate and additional consideration for activities relating to originating an equity loan are fees subject to the two [~~three~~] percent limitation. For example, these charges include attorneys' fees for document preparation to the extent authorized by applicable law. Charges that [~~those~~] third parties absorb, and do not charge an owner or an owner's spouse that the owner or owner's spouse might otherwise be required to pay are unrestricted and not fees subject to the two [~~three~~] percent limitation. [~~Examples of these charges include attorneys' fees for document preparation and mortgage brokers' fees to the extent authorized by applicable law.~~]

(8) Charges to Evaluate. Charges an owner or an owner's spouse is required to pay to evaluate the credit decision for an equity loan, that are not interest under §153.1(11) of this title, are fees subject to the two [~~three~~] percent limitation. Examples of these charges include fees collected to cover the expenses of a credit report, [~~survey,~~] flood zone determination, tax certificate, [~~title report,~~] inspection, or appraisal management services.

(9) Charges to Maintain. Charges paid by an owner or an owner's spouse to maintain an equity loan that are not interest under §153.1(11) of this title are fees subject to the two [~~three~~] percent limitation if the charges are paid at the inception of the loan, or if the charges are customarily paid at the inception of an equity loan but are deferred for later payment after closing.

(10) Charges to Record. Charges an owner or an owner's spouse is required to pay for the purpose of recording equity loan documents in the official public record by public officials are fees subject to the two [~~three~~] percent limitation.

(11) Charges to Insure an Equity Loan. Premiums an owner or an owner's spouse is required to pay to insure an equity loan are fees subject to the two [~~three~~] percent limitation. Examples of these charges include title insurance and mortgage insurance protection, unless the premiums are otherwise excluded under paragraph (15) of this section.

(12) Charges to Service. Charges paid by an owner or an owner's spouse for a party to service an equity loan that are not interest under §153.1(11) of this title are fees subject to the two [~~three~~] percent limitation if the charges are paid at the inception of the loan, or if the charges are customarily paid at the inception of an equity loan but are deferred for later payment after closing.

(13) Exclusion for Appraisal Fee. A fee for an appraisal performed by a third party appraiser is not a fee subject to the two percent limitation. The appraisal must be performed by a person who is not an employee of the lender. The excludable appraisal fee is limited to the amount paid to the appraiser for the completion of the appraisal, and does not include an appraisal management services fee described by Texas Occupations Code, §1104.158(a)(2).

(14) Exclusion for Property Survey Fee. A fee for a property survey performed by a state registered or licensed surveyor is not a fee subject to the two percent limitation. The property survey must be performed by a person who is licensed or registered under Texas Occupations Code, Chapter 1071.

(15) Exclusion for Title Insurance Premium. A state base premium for a mortgagee policy of title insurance with endorsements established in accordance with state law is not a fee subject to the two percent limitation.

(A) The excludable premium is limited to the applicable basic premium rate for title insurance published by the Texas Department of Insurance, plus authorized premiums for applicable endorsements.

(B) Any mortgagee policy for the equity loan must be provided by a company authorized to do business in this state.

(C) If additional premiums for endorsements are charged, the endorsements must be applicable to the mortgagee policy for the equity loan. Rules adopted by the Texas Department of Insurance govern the applicability of endorsements and the authorized amount of the premium for each endorsement.

(16) Exclusion for Title Examination Report Fee. A fee for a title examination report is not a fee subject to the two percent limitation if its cost is less than the state base premium for a mortgagee policy of title insurance without endorsements established in accordance with state law.

(A) The excludable fee must be less than the applicable basic premium rate for title insurance published by the Texas Department of Insurance, not including any additional premiums for endorsements.

(B) The fee for a title examination report may not be excluded from the two percent limitation if the equity loan is covered by a mortgagee policy of title insurance.

(C) The fee must comply with applicable law. If the equity loan is a secondary mortgage loan under Texas Finance Code, Chapter 342, then the fee is limited to a reasonable fee for a title examination and preparation of an abstract of title by an attorney who is not an employee of the lender, or a title company or property search company authorized to do

business in this state, as provided by Texas Finance Code, §342.308(a)(1).

(17) [~~(13)~~] Secondary Mortgage Loans. A lender making an equity loan that is a secondary mortgage loan under Texas Finance Code, Chapter 342 [~~of the Texas Finance Code~~] may charge only those fees permitted in Texas Finance Code, [~~TEX. FIN. CODE,~~] §§342.307, 342.308, and 342.502. A lender must comply with the provisions of Texas Finance Code, Chapter 342 [~~of the Texas Finance Code~~] and the constitutional restrictions on fees in connection with a secondary mortgage loan made under Texas Finance Code, Chapter 342 [~~of the Texas Finance Code~~].

(18) [~~(14)~~] Escrow Funds. A lender may provide escrow services for an equity loan. Because funds tendered by an owner or an owner's spouse into an escrow account remain the property of the owner or the owner's spouse those funds are not fees subject to the two [~~three~~] percent limitation. Examples of escrow funds include account funds collected to pay taxes, insurance premiums, maintenance fees, or homeowner's association assessments. A lender must not contract for a right of offset against escrow funds pursuant to Section 50(a)(6)(H).

(19) [~~(15)~~] Subsequent Events. The two [~~three~~] percent limitation pertains to fees paid or contracted for by an owner or owner's spouse at the inception or at the closing of an equity loan. On the date the equity loan is closed an owner or an owner's spouse may agree to perform certain promises during the term of the equity loan. Failure to perform an obligation of an equity loan may trigger the assessment of costs to the owner or owner's spouse. The assessment of costs is a subsequent event triggered by the failure of the owner's or owner's spouse to perform under the equity loan agreement and is not a fee subject to the two [~~three~~] percent limitation. Examples of subsequent event costs include contractually permitted charges for force-placed homeowner's insurance costs, returned check fees, debt collection costs, late fees, and costs associated with foreclosure.

(20) [~~(16)~~] Property Insurance Premiums. Premiums an owner or an owner's spouse is required to pay to purchase homeowner's insurance coverage are not fees subject to the two [~~three~~] percent limitation. Examples of property insurance premiums include fire and extended coverage insurance and flood insurance. Failure to maintain this insurance is generally a default provision of the equity loan agreement and not a condition of the extension of credit. The lender may collect and escrow premiums for this insurance and include the premium in the periodic payment amount or principal amount. If the lender sells insurance to the owner, the lender must comply with applicable law concerning the sale of insurance in connection with a mortgage loan.

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

An equity loan may not be closed before the first anniversary of the closing date of any other equity loan secured by the same homestead property.

(1) (No change.)

(2) Section 50(a)(6)(M)(iii) does not prohibit modification of an equity loan before one year has elapsed since the loan's closing date. A modification of a home

equity loan occurs when one or more terms of an existing equity loan is modified, but the note is not satisfied and replaced. A home equity loan and a subsequent modification will be considered a single transaction. The home equity requirements of Section 50(a)(6) will be applied to the original loan and the subsequent modification as a single transaction.

(A) - (C) (No change.)

(D) The two percent limitation [~~3% fee cap~~] required by Section 50(a)(6)(E) applies to the original home equity loan and any subsequent modification as a single transaction.

§153.17. Authorized Lenders: Section 50(a)(6)(P).

An equity loan must be made by one of the following that has not been found by a federal regulatory agency to have engaged in the practice of refusing to make loans because the applicants for the loans reside or the property proposed to secure the loans is located in a certain area: a bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States, including a subsidiary of a bank, savings and loan association, savings bank, or credit union described by this section; a federally chartered lending instrumentality or a person approved as a mortgagee by the United States government to make federally insured loans; a person licensed to make regulated loans, as provided by statute of this state; a person who sold the homestead property to the current owner and who provided all or part of the financing for the purchase; a person who is related to the homestead owner within the second degree of affinity and consanguinity; or a person regulated by this state as a mortgage banker or mortgage company [~~broker~~].

(1) - (2) (No change.)

(3) A person who is licensed under Texas Finance Code, Chapter 156 is a person regulated by this state as a mortgage company [~~broker~~] for purposes of Section 50(a)(6)(P)(vi). A person who is registered under Texas Finance Code, Chapter 157 is a person regulated by this state as a mortgage banker for purposes of Section 50(a)(6)(P)(vi).

(4) (No change.)

§153.45. Refinance of an Equity Loan: Section 50(f).

A refinance of debt secured by the homestead, any portion of which is an extension of credit described by Subsection (a)(6) of Section 50, may not be secured by a valid lien against the homestead unless either the refinance of the debt is an extension of credit described by Subsection (a)(6) or (a)(7) of Section 50, or all of the conditions in Section 50(f)(2) are met.

(1) One Year Prohibition. To meet the condition in Section 50(f)(2)(A), the refinance may not be closed before the first anniversary of the closing date of the equity loan. For purposes of this section, the closing date of the refinance is the date on which the owner signs the loan agreement for the refinance.

(2) Advance of Additional Funds. To meet the condition in Section 50(f)(2)(B), the refinance may not include the advance of any additional funds other than funds advanced to refinance a debt described by Subsections (a)(1) through

(a)(7) of Section 50, or actual costs and reserves required by the lender to refinance the debt.

(A) In order to be included in the funds advanced for the refinance, actual costs must be identifiable, must be actually required by the lender to refinance the debt, and must comply with any applicable limitations on costs.

(B) In order to be included in the funds advanced for the refinance, reserves (e.g., an escrow account for taxes and insurance) must be actually required by the lender to refinance the debt, and must comply with applicable law.

(C) Amounts that the owner pays before or at closing (e.g., through cash, check, or electronic funds transfer) are not advanced by the lender, and are not subject to the limitation on the advance of additional funds.

(3) 80 Percent Limitation on Loan Amount. To meet the condition in Section 50(f)(2)(C), the refinance of the extension of credit must be of a principal amount that when added to the aggregate total of the outstanding principal balances of all other indebtedness secured by valid encumbrances of record against the homestead does not exceed 80 percent of the fair market value of the homestead on the date the refinance of the extension of credit is made.

(A) The principal amount of the refinance is the sum of the amount advanced and any charges at the inception of the refinance, to the extent these charges are financed in the principal amount of the refinance.

(B) The principal balance of all outstanding debt secured by the homestead on the date the refinance is made determines the maximum principal amount of the refinance.

(C) The principal amount of the refinance does not include interest accrued after the date the refinance is made (other than any interest capitalized and added to the principal balance on the date the refinance is made), or other amounts advanced by the lender after closing as a result of default, including for example, ad valorem taxes, hazard insurance premiums, and authorized collection costs, including reasonable attorney's fees.

(4) Refinance Disclosure. To meet the condition in Section 50(f)(2)(D), the lender must provide the refinance disclosure described in Section 50(f)(2)(D) to the owner on a separate document not later than the third business day after the date the owner submits the loan application to the lender and at least 12 days before the date the refinance of the extension of credit is closed.

(A) Submission of a loan application to an agent acting on behalf of the lender is submission to the lender. A loan application may be given orally or electronically.

(B) For purposes of Section 50(f)(2)(D), the application is submitted on the date the owner submits a loan application specifically for a refinance of a home equity loan to a non-home-equity loan. If the owner initially applies for another type of loan, then the application is considered submitted on the earliest of:

(i) the date the owner modifies the application, orally or in writing, to specify that it is for a refinance of a home equity loan to a non-home-equity loan; or

(ii) the date the owner submits a new application specifically for a refinance of a home equity loan to a non-home-equity loan.

(C) For purposes of determining the earliest permitted closing date, the next succeeding calendar day after the date that the lender provides the owner a copy of the required refinance disclosure is the first day of the 12-day waiting period. The refinance may be closed at any time on or after the 12th calendar day after the lender provides the owner a copy of the required refinance disclosure.

(D) The lender must deliver the refinance disclosure or place it in the mail no later than the third business day after the owner submits the loan application. The refinance disclosure must be delivered to the owner at least 12 days before the refinance is closed. If a lender mails the refinance disclosure to the owner, the lender must allow a reasonable period of time for delivery. A period of three calendar days, not including Sundays and federal legal public holidays, constitutes a rebuttable presumption for sufficient mailing and delivery.

(E) One copy of the required refinance disclosure may be provided to married owners.

(F) The refinance disclosure is only a summary of the owner's rights, which are governed by the substantive terms of the constitution. The substantive requirements prevail regarding a lender's responsibilities in an equity loan or refinance. A lender may supplement the refinance disclosure to clarify any discrepancies or inconsistencies.

(G) A lender may rely on an established system of verifiable procedures to evidence compliance with this paragraph.

(H) The Finance Commission will publish a Spanish translation of the refinance disclosure on its website. A lender whose discussions with the owner are conducted primarily in Spanish may provide the Finance Commission's Spanish translation to the owner, although the Spanish translation is not required by Section 50(f)(2).

§153.84. Restrictions on Devices and Methods to Obtain a HELOC Advance: Section 50(t)(3).

A HELOC is a form of an open-end account that may be debited from time to time, under which credit may be extended from time to time and under which an owner is prohibited from using a credit card, debit card, or similar device, or preprinted check unsolicited by the borrower to obtain a HELOC advance.

(1) A lender may offer one or more non-prohibited devices or methods for use by the owner to request an advance. Permissible methods include contacting the lender directly for an advance, telephonic fund transfers, and electronic fund transfers. Examples of devices that are not prohibited include prearranged drafts, preprinted checks requested by the borrower, or written transfer instructions. Regardless of the permissible method or device used to obtain a HELOC advance, the amount of the advance must comply with:

(A) the advance requirements in Section 50(t)(2); and

(B) the loan to value limits in Section 50(t)(5). [~~; and~~]

[~~(C) the debit or advance limits in Section 50(t)(6).~~]

(2) - (3) (No change.)

§153.86. Maximum Principal Amount Extended under a HELOC: Section 50(t)(5).

A HELOC is a form of an open-end account that may be debited from time to time, under which credit may be extended from time to time and under which the maximum principal amount that may be extended under the account, when added to the aggregated total of the outstanding principal balances of all indebtedness secured by the homestead on the date the extension of credit is established, cannot exceed 80 percent of the fair market value of the homestead on the date the extension of credit is made.

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

(4) For purposes of calculating the maximum principal balance [~~limits and thresholds~~] under Section 50(t)(5) [~~and (6)~~], the outstanding principal balance of all other debts secured by the homestead is the principal balance outstanding of all other debts secured by the homestead on the date of the closing of the HELOC.

§153.87. Maximum Principal Amount of Additional Advances under a HELOC: Section 50(t)(6). **{{Section 153.87 will be repealed.}}**

Certification

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

Issued in Austin, Texas on February 16, 2018.

Leslie Pettijohn
Consumer Credit Commissioner
Joint Financial Regulatory Agencies

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AmeriHome Mortgage Company, LLC
21215 Burbank Boulevard, 4th Floor
Woodland Hills, CA 91367

December 21, 2017
RE: Interpretation Amendments, SJR 60

VIA ELECTRONIC DELIVERY

To Whom It May Concern:

AmeriHome Mortgage Company, LLC appreciates the opportunity to comment on the Interpretation Amendments to SJR 60.

One of the key questions that has arisen as we work to implement SJR 60 is that of (f)(2) loans and the applicability of GSE appraisal waivers, specifically Fannie Mae Property Inspection Waivers and Freddie Mac Automated Collateral Evaluation. As you may know, the eligibility for such a waiver is determined by Fannie Mae's Desktop Underwriter or Freddie Mac's Loan Product Advisor. If the waiver is exercised by the lender, the GSEs accept the estimated value submitted by the lender. The GSEs expressly prohibit a lender from exercising such a waiver if the lender has obtained an appraisal.

Section 50(f)(2)(C) of SJR 60 states, "the refinance of the extension of credit is of a principal amount that when added to the aggregate total of the outstanding principal balances of all other indebtedness secured by valid encumbrances of record against the homestead does not exceed 80 percent of the fair market value of the homestead on the date the refinance of the extension of credit is made." So the question is, can a lender exercise a GSE appraisal waiver and still meet the 80% of fair market value requirement?

For a 50(a)(6) loan, the industry requires an appraisal specifically because Section 50(h) states that a lender may conclusively rely on the value stated in the acknowledgment of fair market value when the value is determined by an appraisal when required by state or federal requirements. That said, an (f)(2) refinance is not a 50(a)(6) lien, but a 50(a)(4), and as such, it appears that the protections in 50(h) will not apply.

SJR 60 does provide lender protection under the (f-1) affidavit, i.e., "an affidavit executed by the owner or the owner's spouse acknowledging that the requirements of Subsection (f)(2) of this section have been met conclusively establishes that the requirements of Subsection (a)(4) of this section have been

met." Nevertheless, we believe based on our work and discussions with other industry participants, including outside counsel, that there is an open question as to whether an owner can provide such an affidavit absent an appraisal. On one hand, there may be an interpretation that 50(h) suggests that an appraisal is required. On the other, there are federal examples, such as Reg Z, that contemplate a lender using an estimate of value provided by the consumer.

We, and I believe the rest of the industry, would greatly appreciate it if the Joint Agencies would provide specific guidance as to the applicability of GSE appraisal waivers in meeting the new (f)(2) requirements.

Thank you for your consideration,

Dyon Taylor
SVP, Credit Administration

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From: BairdLaw, PLLC

Re: Interpretation of 3-day timing requirement for 50(f)(2) Refinance of existing Home Equity loan

The recently adopted constitutional amendments to Texas' Home Equity law were a welcome response to challenges not foreseen when the original Home Equity provisions were passed in 1997. One of the recurring problems with the original law was that a Home Equity loan could only be refinanced as another Home Equity loan, that "*once a Home Equity, always a Home Equity*". This requirement resulted in homeowners not being able to refinance their Home Equity loans with conventional mortgage and consequently, not being able to take advantage of historically low interest rates. That dilemma was solved by the passage of §50(f)(2), which allows the homeowner to refinance their Home Equity loan into a conventional mortgage provided the lender complies with certain requirements.

50(f)(2) Notice: 3-Day Timing Requirement

One of those requirements under 50(f)(2) is that the lender must provide to the applicant/homeowner who seeks to refinance their Home Equity loan as a conventional mortgage a particular disclosure "*not later than the 3rd business day after application…*". Failure to provide the 3-day may jeopardize the lender's lien and there is currently no cure provision for the failure to provide the 50(f)(2) notice within the 3-day period.

This 3-day timing requirement creates difficulties for lenders under certain circumstances:

1. **If the applicant applies for a Home Equity loan to pay off an existing Home Equity loan, the lender would provide the regular Home Equity notice. If the applicant subsequently changes their mind and decides to refinance the existing Home Equity loan as a**

conventional mortgage, the lender would not have provided the proper 50(f)(2) notice within the 3-day disclosure period.

2. **If the applicant applies for a conventional refinance, unaware that their current loan is a Home Equity loan, the lender will not discover the existence of the Home Equity loan until after the title search/commitment has been delivered and reviewed. The lender would not have provided the proper 50(f)(2) notice within the 3-day disclosure period.**

3. **The lender may attempt to cover these possibilities by providing the 50(f)(2) Notice on every refinance or Home Equity loan application, but that will likely confuse the applicant and create uncertainty. Adding extraneous notices to the consumer's initial application package undermines the goal of creating a streamlined and transparent application process.**

4. **Alternatively, the lender may require that the applicant withdraw their original application and reapply under 50(f)(2). This conservative approach would be a burden for the consumer and would add additional costs to the loan process, costs that will ultimately be paid by the consumer.**

We request an interpretation to 50(f)(2) that allows the lender to provide the 50(f)(2) Notice within 3 days after notice to the lender that the applicant intends to refinance their Home Equity loan as a conventional loan.

BLACK | MANN & GRAHAM L.L.P.

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December 15, 2017

Laurie B. Hobbs, Assistant General Counsel
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Re: Comments to the Proposed Interpretation §153.45 in 7 TAC Chapter 153 Implementing SJR 60 published in the *Texas Register* (Vol. 42, No. 47) on November 24, 2017.

Dear Ms. Hobbs:

The purpose of this letter is to comment on proposed Interpretation §153.45 implementing the amendment made by SJR 60 to Section 50(f), Article XVI, of the Texas Constitution.

1. §153.45(2)(A) Advance of Additional Funds. Section 50(f)(2)(B)(ii) states "the refinanced [*sic*] extension of credit does not include the advance of any additional funds other than: …(ii) actual costs … *required* by the lender to refinance the debt[.]" **(Emphasis added.)** Proposed §153.45(2)(A) states that these actual costs "must be actually *incurred* by the lender" **(emphasis added)**, which is at variance with the wording of Section 50(f)(2)(B)(ii) – *i.e.*, "required" and "incurred" do not have the same meaning. *See* Webster's Collegiate Dictionary (11th ed. 2003) (defining "required" as "to claim or ask for by right and authority" and "to demand as necessary or essential"; and defining "incurred" as "to become liable or subject to"). As written, §153.45(2)(A) would preclude legitimate costs paid to the lender – for example, an origination fee or bona fide discount points – because these costs are not "incurred" by the lender but are "required" by the lender. We ask the Commissions to replace the word "incurred" with the word "required" (or a word with the same meaning), so that §153.45(2)(A) does not conflict with Section 50(f)(2)(B)(ii).

2. §153.45(2)(B) Advance of Additional Funds. The beginning clause in Section 50(f)(2)(B) contains a typographical error. It reads "the *refinanced* extension of credit does not include the advance of any additional funds other than [.]" **(Emphasis added.)** It should read "the *refinance of the* extension of credit . . . " to be consistent with the other provisions in Section 50(f)(2), which use "refinance," "refinance of the extension of credit," or other similar words to properly distinguish the Section 50(f)(2) refinance from the home equity loan being refinanced. The first sentence in §153.45(2) repeats this typographical error. We recommend that the words "refinanced extension of credit" in §153.45(2) be replaced with "refinance of the extension of credit" to correct this error.

3. §153.45 (*No Cure of a Failure to Comply).* There are no cure provisions if a refinance does not meet all the requirements of Section 50(f)(2). Also, a court could struggle with weighing an affidavit executed pursuant to Section 50(f-1) that "conclusively establishes" that the requirements have been met against clear evidence to the contrary (for example, the appraisal shows LTV is over 80%). An additional cure problem arises under Section 50(f)(2) if the underlying home equity loan being refinanced as a Section 50(a)(4) loan is void due to an uncured Section 50(a)(6) violation, which will make the Section 50(f)(2) refinance also void. For these reasons, we recommend that the Commissions amend §153.45 to provide for the cure of a defective Section 50(f)(2)

(4 pages)

refinance pursuant to their constitutional authority under Section 50(u) to interpret Sections 50(a)(6) and (f), which, in pertinent part, states, "[a]n act or omission does not violate a provision included in … [Section 50(f)(2)] if the act or omission conforms to an Interpretation of the provision that is: … (2) made by … [the Commissions] … ." The proposed cure amendment could be modeled after Section 50(a)(6)(Q)(x) and read, for example, as follows:

> (5) Refinance Cure. The lender or any holder of the note for the refinance of the extension of credit shall forfeit all principal and interest of the refinance if the lender or holder fails to comply with the lender's or holder's obligations under the refinance and fails to correct the failure to comply not later than the 60th day after the date the lender or holder is notified by the borrower of the lender's failure to comply by:
>
> (A) paying to the owner an amount equal to the amount that exceeds the advance of funds or actual costs or reserves authorized by Section 50(f)(2)(B);
>
> (B) sending the owner a written acknowledgement that the lien is valid only in the amount that the refinance of the extension of credit does not exceed the percentage described by Section 50(f)(2)C);
>
> (C) sending the owner a written notice modifying any other amount, percentage, term, or other provision prohibited by Section 50(f)(2) to a permitted amount, percentage, term, or other provision and adjusting the account of the borrower to ensure that the borrower is not required to pay more than an amount permitted by Section 50(f)(2) and is not subject to any other term or provision prohibited by Section 50(f)(2); or
>
> (D) if the failure to comply with Section 50(f)(2) cannot be cured under subparagraphs (A)-(C) of this paragraph (5), curing the failure to comply by a refund or credit to the owner of $1,000 and offering the owner the right to refinance the original refinance of the extension of credit with the lender or holder for the remaining term of the loan at no cost to the owner on the same terms, including interest, as the original refinance of the extension of credit with any modifications necessary to comply with Section 50(f)(2) or on terms on which the owner and the lender or holder otherwise agree that comply with Section 50(f)(2) by placing the offer in the mail, other delivery carrier, or delivering the offer in person to the owner.
>
> (6) Effect of a Refinance Cure.
>
> (A) If the lender or holder timely corrects a violation of Section 50(f)(2) as provided in Paragraph (5), then the violation does not invalidate the lien.
>
> (B) A lender or holder who complies with Paragraph (5) to cure a violation before receiving notice of the violation from the borrower receives the same protection as if the lender had timely cured after receiving notice.
>
> (C) A borrower's refusal to cooperate fully with an offer that complies with

> Paragraph (5) to modify or refinance an equity loan does not invalidate the lender's protection for correcting a failure to comply.
>
> (D) After the borrower accepts an offer to modify or refinance, the lender must make a good faith attempt to modify or refinance within a reasonable time not to exceed 90 days.

4. §153.45(4)(G) *(Spanish Language Refinance Disclosure).* Unlike Section 50(g), Section 50(f)(2) does not require a separate refinance disclosure in Spanish or any other language. As written, §153.45(4)(G) is confusing because there is no constitutional requirement for it and also because §153.45(4)(G) does not provide for the time or manner of its use. For these reasons, §153.45(4)(G) should either be removed or revised to clarify that the use of an additional refinance disclosure in Spanish is optional.

5. §153.45(4) Refinance Disclosure. This comment addresses our concerns regarding the Commissions' preamble statements in 42 TexReg 6583 explaining that "provide" as used in Section 50(f)(2)(D) means the owner must receive the refinance disclosure within the three business day period specified in Section 50(f)(2)(D). These preamble statements are incompatible with the three business day period to provide the Loan Estimate under the Federal disclosure regulations in §1026.19(e) of Regulation Z.

- Subsection 1026.19(e)(1)(i) states "the creditor shall provide the consumer with good faith estimates of the [Loan Estimate]."
- Subsection 1026.19(e)(1)(iii)(A) states "[t]he creditor shall deliver or place in the mail the disclosures required under paragraph (e)(1)(i) of this section not later than the third business day after the creditor receives the consumer's application … ."
- Comment 19(e)(1)(iii)-1 interprets this three business day requirement by giving the following example: "if an application is received on Monday, the creditor satisfies this requirement by either hand delivering the disclosures on or before Thursday, or placing them in the mail on or before Thursday, assuming each weekday is a business day."
- Subsection 1026.19(e)(1)(iv) states "[i]f any disclosures required under paragraph (e)(1)(i) of this section are not provided to the consumer in person, the consumer is considered to have received the disclosures three business days after they are delivered or placed in the mail."

Section 50(f)(2)(D), §153.45(4) and §1026.19(e)(1) all use the word "provide" and also use substantially the same language in describing the three business day requirement for providing the applicable disclosure (the only difference being that comment 19(e)(1)(iii)-1 defines business day differently).

We believe it is more reasonable that the drafters of Section 50(f)(2)(D) used the word "provide" to mean "to supply or make available" (as defined by Webster's New Collegiate Dictionary (11th ed. 2003) cited in the preamble) in the sense of initiating a common and acceptable business process routinely used by lenders – *i.e.*, E-Sign, physical delivery or place in U.S. mail – to effect actual receipt of the refinance disclosure by the owner, which is consistent with the above cited Federal disclosure regulations for providing the Loan Estimate. Further, in the context used in

Section 50(f)(2)(D), the definition of "provide" is broader than the definition of "receive" (Merriam-Webster's Collegiate Dictionary (11th ed. 2003) defining "receive" as "to come into possession of: acquire"). Thus, if the drafters meant that the refinance disclosure must be received within the three business days after submission of the application, they would have made that clear. See *Doody v. Ameriquest Mort. Co.*, 49 S.W.3d 342, 344 (Tex. 2001) "(When interpreting our state constitution, we rely heavily on its literal text and must give effect to its plain language. *Stringer v. Cendant Mortgage Corp.*, 23 S.W.3d 353, 355 (Tex.2000); *Republican Party of Tex. v. Dietz*, 940 S.W.2d 86, 89 (Tex.1997). We strive to give constitutional provisions the effect their makers and adopters intended. See *Stringer*, 23 S.W.3d at 355; *City of El Paso v. El Paso Cmty. Coll. Dist.*, 729 S.W.2d 296, 298 (Tex.1986))."

We would also note that the Commissions reliance on *Norwood* for authority requiring receipt of the refinance disclosure within three business days of loan application submission is misplaced. *Norwood* dealt with receipt of the 50(g) disclosure by the owner 12 days before closing. Lenders routinely require evidence of receipt – usually by requiring a copy of a signed and dated disclosure – before proceeding to closing. If the time period is not met, the lender is able to reschedule the closing to a later date that complies with the 12-day cooling off period without violating this constitutional provision. Not so with the three business day receipt of the refinance disclosure for the following reasons: (1) the time period is too short to provide a second refinance disclosure within that time period if the first disclosure is not received, and (2) unlike the 50(g) requirement, once missed, the refinance disclosure time period cannot be restarted.

Based on the above, we ask that the Commissions revise their preamble statements concerning this issue so that they do not conflict with the three business day requirement for providing the Loan Estimate in §1026.19(e)(1) of Regulation Z. Otherwise, if the Commissions continue to informally interpret the word "provide" to require actually receipt by the owner within the three business day period, the availability of these new Section 50(f)(2) refinances will be restricted because lenders will have difficulty complying with such a short time period and also will cause numerous inadvertent violations of this requirement, for which there is no cure.

We appreciate the opportunity to provide the Commissions with the above comments on proposed Interpretation §153.45.

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

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

Laurie Hobbs - Comments on Home Equity Lending Interpretations published in Texas Register November 24, 2017

From: Karen Neeley Email Redacted >
To: "Laurie B. Hobbs (laurie.hobbs@occc.state.tx.us)" <laurie.hobbs@occc.sta...
Date: 12/21/2017 5:41 PM
Subject: Comments on Home Equity Lending Interpretations published in Texas Register November 24, 2017
Cc: Email Redacted " Email Redacted

The following comments are made on behalf of the Independent Bankers Association of Texas, a trade association representing approximately 400 independent community banks domiciled in Texas. Most of these banks make home equity loans. However, many of the banks that have not entered this market are likely to do so following the Constitutional amendments that will be effective January 1, 2018. Thus, virtually all members will be affected by these interpretations.

Also, a number of member banks have already raised questions about the issues addressed in these interpretations as well as some issues that could be clarified. Our comments are intended to help create the best framework possible for both community banks and customers with regard to home equity lending. We support the revisions made to the existing interpretations and believe that they will help financial institutions by clarifying which services or products will be excluded from the new fee cap.

Our comments are directed at the new interpretation 7 TAC 153.45, Refinance of an Equity Loan: Section 50(f).

First, we strongly support the clarification in (1) as to the meaning of "closing date." This issue has already been raised by IBAT members who agree that "closing date" must be the date the owners sign the loan agreement. This is consistent with the concept in Regulation Z, particularly the TRID rules. (See 12 CFR 1026.38(a)(3)(ii) for closing date, which is defined in 1026.2(a)(13) as the time that a consumer becomes contractually obligated on a credit transaction.)

Next, we respectfully disagree with the section (2)(A) regarding "actual costs." This is inconsistent with the language in the Constitution, Article XVI, Section 50(f). The Constitution merely refers to actual costs "required by the lender to refinance the debt." In a typical residential mortgage loan, the costs typically include an origination fee. It is required by the lender but would not appear to meet this interpretation as a cost that is "actually incurred by the lender." This proposed interpretation should be revised to use the Constitutional term-"required"-rather than inserting a standard that is not supported by the law.

Our most significant concerns, however, involve the refinance disclosure. We have already had numerous questions as to the meaning of the term "application." This word is defined in different ways in Regulation B, Regulation Z-with different explanations for residential mortgage loans, and in HMDA. Because Regulation Z in the TRID rules also requires delivery of certain disclosures (the

loan estimate) not later than the third business day after the creditor receives the consumer's application, logically the delivery requirements there should be illustrative in interpreting the 50(f) requirement. Section 1026.19(e) also states that the creditor "shall provide the consumer with good faith estimates of the [costs]." The CFPB official interpretation for this is as follows:

> The disclosures required by § 1026.19(e)(1)(i) must be delivered not later than three business days after the creditor receives the consumer's application. For example, if an application is received on Monday, the creditor satisfies this requirement by either hand delivering the disclosures on or before Thursday, or placing them in the mail on or before Thursday, assuming each weekday is a business day.

Similarly, Regulation B provides in 12 CFR 1002.14(2) that the creditor "shall mail or deliver to an applicant, not later than the third business day after the creditor receives an application [for residential mortgage credit] a specific disclosure relating to the right to receive a copy of all written appraisals developed in connection with the application. This timing is consistent with the Reg Z delivery of the Loan Estimate.

IBAT strongly urges the Commissions to adopt the Reg Z interpretation as its interpretation as well. As we read the current proposal, a creditor would have to put the refinance disclosure form in the mail the same day that an application was received in order to meet the three day requirement, using the mailbox rule. By using the Reg Z interpretation, the Commissions would provide creditors with a disclosure delivery requirement for the refinance disclosure that is consistent with the delivery rules for the Loan Estimate and notice of right to a copy of the appraisal. There is no benefit to the consumer in having these items sent at different times, and there is a regulatory and real out of pocket cost in having potentially different times. Furthermore, at the time of application, the creditor may not realize that the loan being refinanced from another institution is in fact a home equity loan. At least one IBAT member has reported that this has happened in the past, causing the transaction to be withdrawn and re-started. Clearly banks will need to implement processes to identify refi's as seasoned home equity transactions. Including a more reasonable-and consistent-time frame for "providing" the notice will assist in this process.

Thank you for providing a Spanish translation of the refinance disclosure. As banks reach out to their Hispanic market, this will be helpful. However, please make it clear in the Interpretations that, unlike the Notice Concerning Extensions of Credit, there is no legal requirement to delivering this notice in a language other than English.

Thank you for this opportunity to comment. Your prompt attention to these Interpretations to implement the Constitutional changes is greatly appreciated!

Karen M. Neeley

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RBFCU

December 22, 2017

Laurie Hobbs
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Office of Consumer Credit Commissioner
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RE: SJR 60

Dear Ms. Hobbs,

On behalf of Randolph-Brooks Federal Credit Union (RBFCU), this letter is being submitted in response to the Finance Commission of Texas and the Texas Credit Union Commission's proposed amendments to implement SJR 60 passed by the Texas Legislature in 2017. We greatly appreciate the opportunity to comment.

Timing of the Refinance Disclosure

Effective January 1, 2018, Section 50(f)(2) to article XVI, Section 50 of the Constitution will permit a rate/term refinance of a home equity loan as long as the refinance loan meets certain requirements. One requirement is the lender must provide the homestead owner with a Notice Concerning Extension of Credit (notice) disclosure on a separate document not later than the third business day after the date the owner submits the loan application to the lender and at least 12 days before the refinance loan is closed. RBFCU believes this requirement to provide this notice within 3 business days of application will present a significant compliance challenge for lenders. In addition, without properly complying with the requirement, a credit union will not have a valid lien against the homestead.

The major issue regarding the disclosure is that credit unions may lack the necessary information to provide the disclosure within the three day requirement. In many cases, a lender may not discover that the loan being refinanced is a 50(a)(6) home equity until they receive the title commitment by which time it is too late to provide the 12-day notice. Additionally, based on the home equity interpretations issued by the Texas Finance Commission and Texas Credit Union Commission, the term "provide" is interpreted as "received." As such, credit unions must ensure that the homestead owner actually receives the disclosure within three business days. This creates a significant regulatory burden to the credit union as they lack the necessary information to comply with the rule, and they must immediately send the notice disclosure to ensure delivery occurs within three days. As written, this creates an onerous burden to the credit union.

RBFCU

To address this issue, RBFCU would like to see a curative safe harbor for lenders in situations when they lack the information necessary to provide the notice disclosure. Absent a safe harbor, it appears that lenders must always include an addendum to the loan application which contains the notice disclosure and include a statement within the addendum advising the borrower that they can disregard the notice disclosure if the existing lien is not a 50(a)(6) home equity loan. If no safe harbor is created, then lenders may have to decline the loan once they become aware that it is 50(a)(6) home equity loan. In this case, the borrower would have to start over with a new application and this places members in the unfortunate position of having to begin the reapplication process.

Provide vs. Received

RBFCU also respectfully requests the term "provide" be interpreted as "delivered or placed in the mail" consistent with the TRID standard. This will harmonize the definition with mortgage industry standards and better suit credit unions in cases where an application is received electronically or in the mail. In these cases, it will be extremely burdensome for the credit union to ensure compliance if the Commission enforces the current definition. For this reason, we hope the Commission will reconsider and change the definition of "provide" to the TRID definition of "delivered or placed in the mail."

Advancing Additional funds

RBFCU is seeking greater clarity regarding the advancement of additional funds. Specifically, if a borrower has an existing HELOC which closed over one year ago, is there a seasoning requirement for advanced funds? For example, assuming an applicant has an existing $100,000 HELOC that closed over one year ago with a current balance of $80,000, would the applicant be able to draw an additional $20,000 prior to closing and refinance a $100,000? Or would the applicant only be permitted to refinance the $80,000 balance? Additionally, if there is a limit on seasoning of funds, would the lender be required to obtain statements regarding HELOC activity for the prior 12 months to determine compliance within the rule?

80% Rule for HELOC's

The rule appears to only apply to HELOC's closed on or after 1/1/2018. Are existing HELOC's closed prior to 1/1/2018 required to be governed under the 50% LTV rule?

50(a)(6)(I) – removes the current prohibition on a home equity loan for agricultural property.

Under Texas Tax Code 23.42(a-1), on or after January 1, 2008, an individual is not entitled to have land designated for agriculture use if the land secures a home equity loan described by Section 50(a)(6), Article XVI of the Texas Constitution. RBFCU is seeking clarity on whether this conflict with the tax code means an owner will automatically lose their property tax agriculture exemption and/or be subject to roll back taxes by placing a home equity lien on their agriculture exempt property?

RBFCU

Conclusion

RBFCU would like to thank you again for the opportunity to comment. We hope the Commission will consider a safe harbor rule for credit unions that lack the necessary information to provide the notice disclosure. Additionally, we appreciate additional clarity given on the above mentioned issues.

Sincerely,

Victor Williams
Senior Vice President – Mortgage
Randolph Brooks Federal Credit Union

December 22, 2017

Laurie B. Hobbs,
Assistant General Counsel
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RE: Comments on the proposed new §153.45 found in 7 TAC, Chapter 153, concerning Home Equity Lending

Dear Ms. Hobbs:

John Fleming with the Texas Mortgage Bankers Association (TMBA) shared his group's comments on the above-referenced proposal amendment to the Texas Administrative Code. Rather than repeat all that his group has said, the Texas Bankers Association (TBA) will echo what we believe are the most salient points.

TBA and a number of interested stakeholders groups (TAR, TMBA, IBAT, TFB, and the Texas Credit Union Association) worked with Chairmen Parker and Hancock on home equity language we believe will better serve Texas borrowers. That language, unanimously passed by both houses of the Legislature as SJR 60, went to Texas voters last month, and was passed with more than 68% of the vote. The Constitutional language that becomes effective on January 1 is deliberate and much thought was given to each of the words included so that little to no ambiguity existed among borrowers, lenders, or regulators when contemplating the plain language of the amendment.

Unfortunately, we believe that the proposed interpretations for new §153.45, as they were published in the *Texas Register* (Vol. 42, No. 47) do not accurately reflect the will of the amendment's authors or the legislators who voted in support of it and, if adopted as proposed, will unnecessarily introduce ambiguity into the home equity lending process. Like the TMBA, we are specifically concerned about 7 TAC Section 153.45(2)(A) and 7 TAC Section 153.45(4) because we do not believe they reflect the legislature's intent.

We would be happy to visit with you in greater detail about the above but we do not wish to belabor points that have already been made.

Thank you for taking these views under consideration.

Sincerely,

J. Eric T. Sandberg, Jr.
President & CEO

TEXAS MORTGAGE BANKERS ASSOCIATION

December 22, 2017

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Re: Comments to the Proposed Interpretation §153.45 in 7 TAC Chapter 153 Implementing SJR 60 published in the *Texas Register* (Vol. 42, No. 47) on November 24, 2017.

Dear Ms. Hobbs:

I am writing on behalf of the Texas Mortgage Bankers Association (TMBA) and its more than 260 member companies. Our members include the largest banks in the country, regional and community banks, federal and state chartered thrifts, bank mortgage subsidiaries, credit unions, and independent mortgage bankers. TMBA is pleased to have worked closely with stakeholders (including the Texas Association of Realtors, Texas Bankers Association, Independent Bankers Association of Texas, and the Cornerstone League of Credit Unions), legislative author and sponsor Senator Hancock and Representative Parker in developing SJR 60. The 85th Legislature sent this constitutional amendment to the citizens with a Senate vote of 30-0 and a House vote of 143-0. We are pleased that the citizens of Texas passed this constitutional amendment with over 68% voter approval. We hope that the Joint Financial Regulatory Commissions will consider this overwhelming level of support by the Legislature and Texas citizens to insure that the interpretations facilitate the implementation of the legislative intent of SJR 60 to provide Texas consumers expanded choices in connection with managing the equity in their homes. Over the last fifteen years, I have observed that the most frequent consumer complaints made to TMBA relating to home equity lending are the limitation on consumer choice under home equity law. We are concerned that the proposed interpretations may frustrate some of the intended purposes of SJR 60 to expand consumer choice.

Our comments will address the interpretations relating to implementation of new 50(f) (2), the refinancing of an (a) (6) loan as a non-home equity loan. The purpose of these new provisions of the Constitution is to expand informed consumer choice. It permits a consumer to choose whether to refinance an existing home equity loan as a home equity loan, or to refinance on better terms as a non-home equity loan. The interpretations should facilitate the consumer exercising its options under this new provision without imposing burdens not intended by the legislature.

7 TAC Section 153.45(2) (A) relating to the advance of additional funds

As proposed, the interpretation requires that the costs advanced "must actually be incurred by the lender." To this extent the interpretation adds language not found in the Constitutional provisions. A lender does not ordinarily "incur" the cost of the title premium, survey, appraisal, attorney fees, or other charges connected to a home loan. The lender does require the borrower to pay these charges at or before closing. Because the lender does not pay these fees, it is questionable as to whether they are thus "actually incurred" by the lender as that term may be interpreted in the proposed version of this section. Additionally, normal closing costs for a home loan would include an origination charge payable to the lender. The proposed interpretation creates unnecessary ambiguity as to whether an origination charge required by and paid to the lender is a cost "actually incurred by the lender."

Unlike the fee cap in 50(a)(6) that limits what a lender may *charge* a consumer, the provisions of (f)(2)(B)(ii) do not limit what the lender may charge in connection with a refinance of an (a)(6) loan as a non- home equity loan. The new (f) (2)(B)(ii) Constitutional provision limits what the lender may *advance and include* as part of the new principal balance of the refinanced extension of credit. The consumer is protected because the total indebtedness secured by the homestead may not exceed 80% of the property's value at the time of the refinance. The Constitution provides the consumer two choices as to payment of costs related to the refinance. The consumer may pay these charges out of pocket at closing. Alternatively, the consumer may elect to have closing costs included as part of the refinanced extension of credit. The proposed interpretation would restrict this consumer choice to have the lender advance these costs as part

of the refinanced loan, and would increase the out of pocket cost of the consumer that wished to take advantage of the new (f) (2) refinance option. Therefore, we would request that proposed 153.45(2) (A) track the language as found in the Constitution.

7 TAC 153.45(4) Refinance Disclosure

We believe that the interpretation should address what constitutes an application; and when an application for a refinance under 50 (f) (2) is submitted. Our members inform us that frequently a consumer wishing to refinance a home mortgage loan is not aware that their existing mortgage loan is a home equity loan. As a result, the initial application may submitted for a traditional "rate and term" refinance. It is only after the lender receives a title report from the title company, that the lender and consumer become aware that the existing loan is a home equity loan. Ordinarily this will be later than three days from submission of the initial application. In the absence of further clarification in the proposed interpretations, we have been informed that lenders will adopt one of two possible approaches. Some lenders anticipate that they will provide the refinance disclosure to every owner applying for the refinance of an existing home mortgage in order to avoid missing the 3 business day deadline if it is later discovered the existing loan is an (a)(6) loan. This may confuse consumers that are refinancing a purchase money loan or other non-home equity loan as to why they are getting a notice that may not apply to their refinancing request. The only other apparent alternative is to have the initial application withdrawn or denied when it is discovered that the existing loan is an (a)(6) loan, and require the consumer to submit a new application in order to permit timely delivery of the (f)(2) refinance disclosure. This may be avoided by an interpretation that clarifies that in the context of a refinance under (f)(2), an application is not submitted until the consumer submits an application clearly specifying that it is an application for an (f)(2) refinance. Language similar to the following should be considered: "A loan application is not considered submitted by the owner for purposes of this section unless and until the underlying loan being refinanced is identified as an existing 50(a)(6) loan, either by the owner or otherwise, and the owner subsequently requests that the existing 50(a)(6) loan be refinanced as provided in 50(f)(2)."

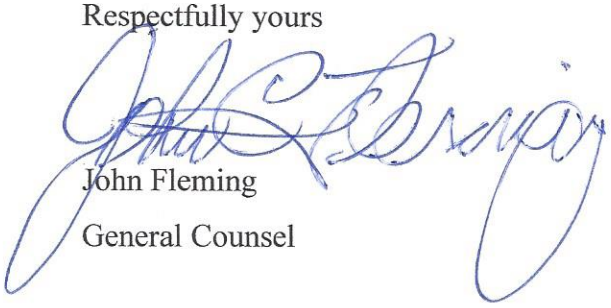
We have received the comments provided by Black, Mann, and Graham relating to proposed 153.45(4) as to the interpretation of the word "provide". TMBA agrees with that law firm's analysis of how to interpret the word "provide". Additionally, we would urge review of this in light of the Texas Rule of Civil Procedure Rule 21a, Method of Service (that may have served as one of the sources for the current interpretations under 153.51). Under that provision a party has properly met its deadlines to complete service if it has mailed its motion, response, or other notice on or before any established deadline. On the other hand, the receiving party is presumed to have received the document three days later in order to calculate any response deadline of the recipient. The existing interpretation under 153.51 is meant to address only when the closing of a home equity loan may occur, that is the period for calculating when the 12 days following notice has occurred. There is no requirement that it be given within a specified time relating to the receipt of the application as in (f) (2). Under the existing interpretations, a home equity loan closing date can always be delayed in order for lenders to comply with the 12-waiting period; however, if the same interpretation for the word "provide" were to apply to the (f)(2)(D) refinance disclosure, lenders cannot restart the clock on the three day delivery requirement as proposed by the interpretation without obtaining a new application from the consumer.

The preamble and current proposed interpretation will severely limit lenders in how mail can be used to provide the (f) (2) notice. Not all consumers will be equipped to receive electronic notices and disclosures, and will be receiving notices by mail. The only cure for failure to meet the three day requirement would be to start the process over with a new application or alternatively only offering a consumer the choice of refinancing as an (a)(6) loan. This would not be in keeping with the legislature's intent to expand and facilitate consumer choice.

We would urge that 153.45(4)(C) be amended to adopt the language from Reg Z Section 1026.19(e) as to how and when a lender provides this disclosure for purposes of meeting the

three day requirement. The interpretation may (and should) retain the language as to how to calculate when the closing of the refinance loan may occur.

Respectfully yours



John Fleming

General Counsel

Laurie Hobbs - Home equity law change

From: Dave Motley < Email Redacted >
To: "'laurie.hobbs@occc.texas.gov'" <laurie.hobbs@occc.texas.gov>
Date: 12/3/2017 12:24 PM
Subject: Home equity law change
Cc: Email Redacted >, Allen Maulsby < Email Redacted

While generally applauding the law change allowing TX Section 50 a6 to be refinanced into a "simple" rate and term refinance (Section 50 f2) with no new money being advanced, the implementing rules appear to create a "catch-22" in which Lenders cannot originate new loans under the old rules or the new rules for a period of time.
As we understand the rule,

1) Loan applications for the refinance of an a6 loan (as an a6 loan) that cannot be consummated prior to 12.31.17 are subject to the new a6 disclosure that cannot be used until the first business day of January 2018 (January 2). This effectively forces us to stop taking applications for these loans no later than 12 days before the end of the year. One solution that you could offer would be this; Can the lender provide the new a6 disclosure and re-disclose the LE (or CD if already issued) on January 2 and then close the loan 12 days later, and still be considered in compliance with the new rule? YES or NO.
   Allowing this would allow Lenders to continue to take loan applications for the rest of the month and still close the loan in accordance with the new rules, although such closing would be delayed until at least 12 days after January 2.
2) No applications for the "f2" loan may be taken until January 2, since the new disclosure cannot be provided to the borrower until that time AND the new disclosure must be provided within 3 days of loan application.

A simpler way to handle this would be to say that both new disclosures (a6 and f2) are effective with loans originated on and after January 1, 2018. Tx a6 loans originated (ie application taken) prior to January 1, 2018 may be closed using the existing Sec 50 a6 disclosure no matter that they close after January 1, 2018.

We appreciate your quick response as we are trying to implement procedures to address our customers desires.
Thank you
David

J. David Motley
President, Colonial Companies
O 817-390-2091| 2626A West Freeway | Fort Worth, TX 76102
Email Redacted

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Laurie Hobbs - Comments on the Proposed Amendments, New & Repeal of 7 TAC, Chapter 153

From: Christine Sisseck Email Redacted >
To: "laurie.hobbs@occc.texas.gov" <laurie.hobbs@occc.texas.gov>
Date: 12/4/2017 1:29 PM
Subject: Comments on the Proposed Amendments, New & Repeal of 7 TAC, Chapter 153

TO: Laurie Hobbs, Assistant General Counsel
Office of Consumer Credit Commissioner
2601 North Lamar Boulevard
Austin, TX 78705-4207

RE: Comments on the Proposed Amendments, New & Repeal of 7 TAC, Chapter 153

Ms. Hobbs:

I am writing to request that the Proposed Amendments for 7 TAC, Chapter 153 provide further clarification related to two items in §153.45 - Refinance of an Equity Loan: Section 50(f), advance of additional funds and refinance disclosure.

§153.45(2)(A) - Refinance of an Equity Loan, Advance of Additional Funds:

Under §153.45(2)(A), it states *"Actual costs must be identifiable, must be **actually incurred by the lender**."*. I would appreciate clarification as to what *"actually incurred"* means in this interpretative rule. Does the reference to *"actually incurred"* mean payable directly to Lender or charged directly to the Lender? For example, a fee for closing services payable to a third-party title company may actually be incurred on the transaction but is not actually payable to the lender nor is it actually charged directly to the lender but is actually required by the lender in order to complete the settlement of the transaction. Could the interpretative rule strike the word "actually" since the term "Actual costs" has already been stated? Could the interpretative rule be revised to indicate something similar to "*must be incurred by the lender, directly or indirectly, whether paid to lender or third party in conjunction with refinance transaction."*?

§153.45(4) - Refinance of an Equity Loan, Refinance Disclosure:

Under §153.45(4), it states *".lender must provide the refinance disclosure described in Section 50(f)(2)(D) to the owner on a separate document not later than the third business day after the date the owner submits the loan application to the lender."*. Unfortunately, the reality is that a lender may not know at the time of application if the refinance loan is paying off an existing home equity loan; or the owner does not remember what type of lien they have against the property. It may not be apparent at the time of application that an existing home equity lien is being paid off until such time a title commitment is received by the lender after application has been made. Is there any cure for the timing of this disclosure upon lender having actual knowledge that an equity loan is being paid off with a non-equity loan? If not, may lenders provide the refinance disclosure required under Section 50(f)(2)(D) as an abundance of caution on all non-equity refinances against a Texas homestead in order to comply with the timing requirements?

Thank you for your consideration in further clarifying these items.

Thank you. We appreciate your business.

Christine Sisseck
Operations Manager
Schwartz & Associates
972.562.1966 Ext. 137
972.569.4747 Fax
www.docsdirect.com
Email Redacted

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B.

Department of Savings and Mortgage Lending

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B. Texas Department of Savings and Mortgage Lending

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

a. Industry Status

The financial data on Texas state thrifts had not been finalized by the FDIC prior to the preparation of this report. A report on the 4th quarter of calendar year 2017 will be presented at the next meeting of the Finance Commission.

As of December 31, 2017, there are 25 state savings banks, all but one of which are rated a Composite 1 or 2. There is one outstanding formal enforcement action. The Department continues to monitor various local, state, and national data sources for risks facing the industry and individual savings banks. Economic conditions, cybersecurity, interest rate risk, lending concentrations, and liquidity risk all continue to be areas of focus.

b. Savings Bank Charter and Merger Activity

On August 21, 2017, application was received from TBK Bank, SSB, Dallas, Texas, to acquire Valley Bank & Trust, Brighton, Colorado. An order approving the application was issued in November 2017, with an effective date of December 9, 2017.

On January 22, 2018, notice was received of the intent of Independent Bank, McKinney, Texas, to acquire Integrity Bank, SSB, Houston, Texas.

c. Other Items

Commissioner Jones was re-elected Board Chair of the American Council of State Savings Supervisors (ACSSS) and will continue to serve as the ACSSS representative on the State Liaison Committee (SLC) of the Federal Financial Institution Council (FFIEC). She also continues to serve on the Financial & Banking Information Infrastructure Committee (FBIIC) as the ACSSS representative.

2. Discussion of and Possible Vote to Take Action on the Annual Assessments to be Paid by the Texas State Savings Banks.

ANNUAL FEE ASSESSMENT RATES - CURRENT

Current Assessment Schedule* - Effective March 1, 2017

Assets Over	Not Over	Amount	Plus	Over
$0	$2 million	$6,165	0.000000000	$0
2 million	20 million	6,165	0.000243398	$2 million
20 million	100 million	10,546	0.000194717	20 million
100 million	200 million	26,123	0.000126561	100 million
200 million	1 billion	38,779	0.000107091	200 million
1 billion	2 billion	124,451	0.000087619	1 billion
2 billion	6 billion	212,070	0.000077883	2 billion
6 billion	20 billion	523,602	0.000066270	6 billion

20 billion	40 billion	1,451,382	0.000049920	20 billion
40 billion	250 billion	2,449,782	0.000039004	40 billion
250 billion		10,640,622	0.000038613	250 billion

* Maintains 50% of the Office of the Comptroller of the Currency's Annual Assessment, OCC 2016-43 – adjustment for inflation 1.2% for 2017.

Condition premium, assessed in addition to the regular assessment**

CAMEL < 3	0 % of regular assessment
CAMEL = 3	50 % of regular assessment
CAMEL > 3	100 % of regular assessment

**No change from prior year.

ANNUAL FEE ASSESSMENT RATES - NEW

Current Assessment Schedule* - Effective March 1, 2018**

Assets Over	Not Over	Amount	Plus	Over
$0	$2 million	$6,165	0.000000000	$0
2 million	20 million	6,165	0.000243398	$2 million
20 million	100 million	10,546	0.000194717	20 million
100 million	200 million	26,123	0.000126561	100 million
200 million	1 billion	38,779	0.000107091	200 million
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20 billion	40 billion	1,451,382	0.000049920	20 billion
40 billion	250 billion	2,449,782	0.000039004	40 billion
250 billion		10,640,622	0.000038613	250 billion

* Maintains 50% of the Office of the Comptroller of the Currency's Annual Assessment, OCC 2017-60 – no adjustment for inflation for 2018.

Condition premium, assessed in addition to the regular assessment**

CAMEL < 3	0 % of regular assessment
CAMEL = 3	50 % of regular assessment
CAMEL > 3	100 % of regular assessment

**No change from prior year.

3. Industry Status and Departmental Operations – Mortgage Lending Activity:

a. Residential Mortgage Loan Originators

Current Licensing Population:

License Type As of 01/31/2018	Approved		
	Entity (MU1)	Branch (MU3)	MLO (MU4)
Auxiliary	8	n/a	
CUSO	4	2	
FSC	1	n/a	
Independent Contractor	96	n/a	
Mortgage Company	1,137	529	
Mortgage Banker	404	2,641	
Mortgage Servicer	167	n/a	
Totals	**1,817**	**3,172**	**24,180**

The Department is currently in the "Reinstatement" period of renewals, which runs from January 1 through February 28, and allows those licensees that did not timely renew, the ability to request reinstatement of their license. If they did not timely renew, their license status went to "Terminated-Failed to Renew." As of January 31, 2018, the Department had received 448 reinstatement requests. Prior to the reinstatement period, the Department received renewal requests from 22,958 individuals, and 4,683 companies and branches. Additionally, between November and December, the renewal period, the Department received 19,926 amendment filings and 1,501 new license requests.

b. Mortgage Examinations

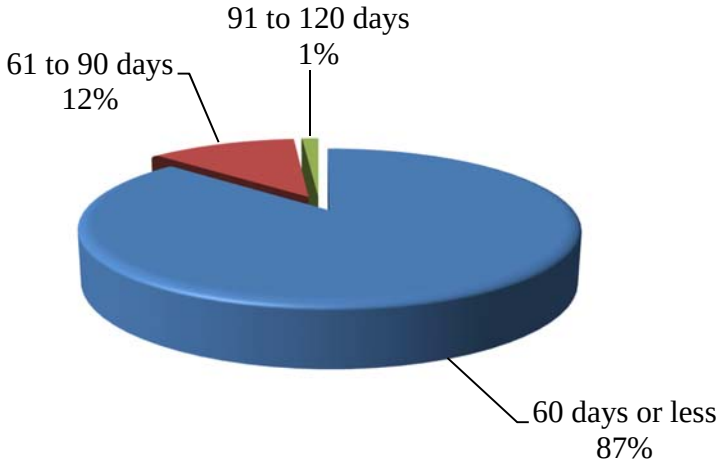
Through the end of the 1st quarter of FY18, a total of 106 examinations were conducted covering 2,095 individual licensees. The examinations are continuing to identify various degrees of unlicensed/unauthorized activity and the issuance of incomplete conditional qualification/approval letters.

c. Consumer Complaints/Legal Issues

The following charts reflect the consumer complaint information through the end of the 1st quarter of FY18. The aging of the open complaints remains within the target range with no open complaints over 180 days. Open complaint aging has remained within acceptable ranges with 99% being aged less than 90 days.

Loan Servicing complaints continue to be the largest complaint category accounting for 66% of the total number of complaints received in the 1st quarter of FY18. This represents a 6% increase when compared to the same reporting period in FY17. The total number of complaints received in the 1st quarter of FY18 increased 16% when compared to the same period in FY17.

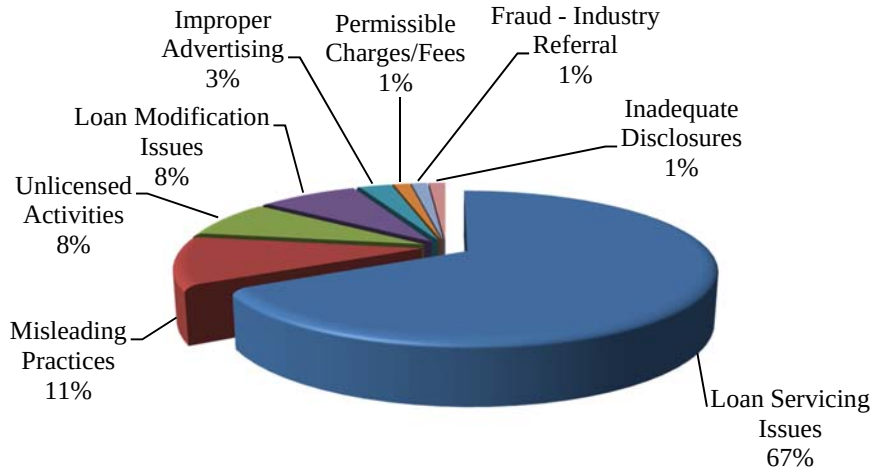
Aging of Open Complaints as of 11/30/2017



Total Open Complaints as of 11-30-2017 = 76

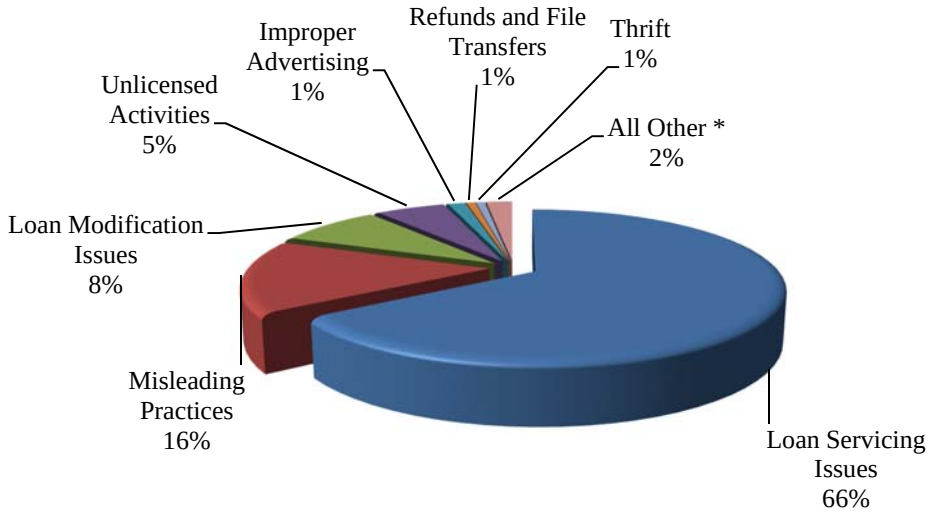
The next two charts show the nature of the complaints remaining open as well as the nature of all complaints received during the 1st quarter of FY18.

Nature of Open Complaints as of 11/30/2017



Total Open Complaints as of 11-30-2017 = 76

Nature of Complaints Received - 1st Quarter FY18

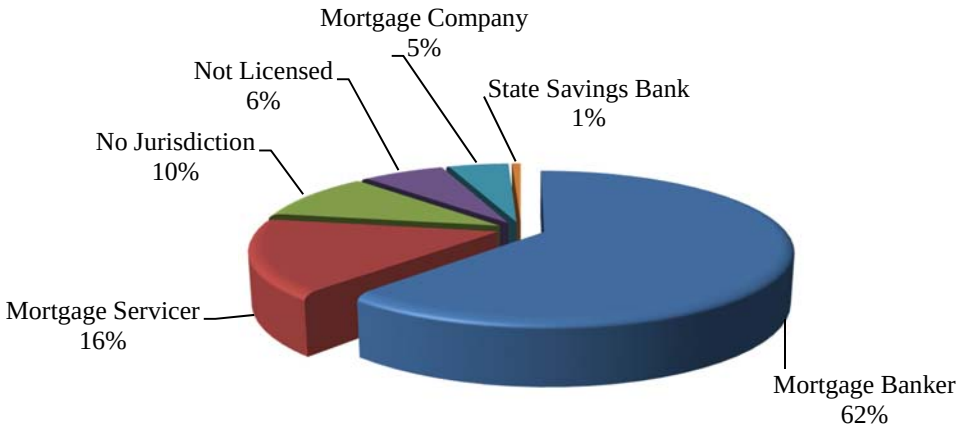


Total Complaints Received in FY18 Year-to-Date = 288

* The "All Other" Category includes: Identity Theft, Fraud-Industry Reported, Inadequate Disclosures, and Permissible Charges/Fees.

The final chart shows complaints received sorted by license type.

Respondent License Types-Complaints Received Year-to-Date FY18



Total Complaints Received Year-to-Date FY18 = 288

d. Other Items

Commissioner Jones spoke at the first Texas Home & Mortgage Symposium held by the Texas Land Developers Association and the Seller Finance Coalition on January 25, 2018.

Commissioner Jones, Director of Mortgage Examination, Tony Florence, and Director of Licensing Steven O'Shields, attended the NMLS annual conference the week of February 5, 2018.

Actual Performance for Output Measures

Type/Strategy/Measure	2018 Target	2018 Actual	2018 YTD	Percent of Annual Target	
Output Measures-Key					
1-1-1 Thrift Safety and Soundness					
1. Number of Examinations Performed	22	6	6	27.27%	
2-1-1 Mortgage Regulation					
1. Number of Applications Processed	7,500	2,273	2,273	30.31%	*
The number of applications submitted is outside the Department's control; therefore, the number of applications processed is ultimately affected in the same manner.					
2. Number of Licensees Examined	4,500	2,095	2,095	46.56%	*
Of the examinations completed during the quarter, three of the examined entities consisted of large numbers of MLOs. These three examinations accounted for 48% of the total number of licensees examined during the quarter.					
3-1-1 Consumer Responsiveness					
1. Number of Consumer Complaints Completed	975	259	259	26.56%	

*Varies by 5% or more from target.

MBA NEWSLINK®
THE DAILY NEWSLETTER OF THE MORTGAGE BANKERS ASSOCIATION

90-Day Delinquencies Jump Again as Hurricane Fallout Continues

Mike Sorohan **msorohan@mba.org**
January 24, 2018

Black Knight, Jacksonville, Fla., said another 60,000 mortgages became 90 days delinquent in December, driven by both continued hurricane-related fallout as well as upward seasonal and calendar-related pressures.

The company's First Look Mortgage Monitor reported 142,700 90+ days delinquent loans attributed to Hurricanes Harvey and Irma, representing 20 percent of all severely delinquent loans nationwide. The report attributed 102,500 severely delinquent loans in affected areas of Florida and Georgia to Hurricane Irma, while another 40,200 resulted from Hurricane Harvey in southeastern Texas.

The report said Florida has now overtaken Mississippi as the state with the largest share of severely delinquent mortgages

Meanwhile, Black Knight said the overall delinquency rate (representing loans 30 or more days past due, but not yet in active foreclosure) also rose another 3.47 percent in December to 4.71 percent, its highest level since early 2016. December's 6.54 percent year-over-year rise marked the fourth consecutive month of annual increases to the national delinquency rate.

Despite the rise in 90-day delinquencies, the report said foreclosure starts hit a post-recession low in December at 44,500. The inventory of loans in active foreclosure continues to improve, falling 152,000 from last year for a 32 percent annual decline.

Black Knight reported properties 30 or more days past due, but not in foreclosure at 2.412 million, up by 88,000 from November and up by 164,000 from a year ago. Properties 90 or more days past due, but not in foreclosure totaled 726,000, up by 60,000 from November and up by 44,000 from a year ago.

The report said properties in foreclosure pre-sale inventory fell to 331,000, down by 6,000 from November and down by 152,000 from a year ago. Properties 30 or more days past due or in foreclosure totaled 2.743 million, up by 82,000 from November and up by 12,000 from a year ago.

Black Knight said states with the highest rate of non-current mortgages were Mississippi, Louisiana, Florida, Alabama and West Virginia; states with the lowest rates were Colorado, North Dakota, Oregon, Washington and Idaho.

4. Fiscal/Operations Activity:

a. Funding Status/Audits/Financial Reporting

Funding Status/Budget – Staff has closed out the 1st quarter of FY18. The reports are located elsewhere in this packet.

b. Staffing

As of February 1, 2018, the Department was staffed at 54 regular full time employees with 61 FTEs available.

Below is the status of the Department's vacancies:

Vacancy Status	
Financial Examiner I/II – Thrift (2)	Open – Interviews Concluded
Financial Examiner IV/V – Thrift	Open – Interviews in Progress
License and Permit Specialist II/III	Open - Reviewing applications

There was 0% turnover during the 1st quarter of the fiscal year.

c. Other Items

Sunset staff observed a state savings bank examination in December, 2017.

5. Legal Activities:

SOAH Cases:
There have been no contested SOAH hearings since the date of the December 2017 Finance Commission meeting.

Case No. 450-17-5613 *Department of Savings and Mortgage Lending v. Anthony Spencer Lozano.* This appeal of a residential mortgage loan originator (RMLO) license denial case was heard before SOAH on December 13, 2017. The Department is expecting the ALJ's Proposal for Decision in this matter on or about February 13, 2018.

Case No. 450-16-2838 *Department of Savings and Mortgage Lending v. Sammy Trantham.* Counsel for the two parties have been regularly updating the court on their progress. On December 29, 2017, Counsel for both parties filed a Third Joint Status Report with the SOAH ALJ and on January 10, 2018, Counsel for the Petitioner learned he would be out on extended leave due to family matters and Counsel for both parties filed a Fourth Joint Status Report requesting that the next status report be filed with the ALJ no later than March 23, 2018.

Litigation:
Case No. D-1-GN-17-005803 *Dept. of Savings and Mortgage Lending v. VPW & Associates, LLC, et al.* Suit filed and pending before the 353rd Judicial District Court of Travis County, seeking to enforce two cease and desist orders. One defendant has been served with citation thus far. Defendant's answer is due February 19, 2018.

Multistate penalty:

On December 29, 2017, PHH Mortgage Corporation, entered into a settlement agreement and consent order with Texas and the respective state mortgage regulatory agencies of 44 other states and the District of Columbia to resolve allegations that PHH Mortgage Corporation improperly serviced mortgage loans. The agreement requires PHH to maintain procedures designed to ensure that PHH has complied with all regulatory requirements of each individual state mortgage regulator and to adhere to certain mortgage servicing standards beginning no later than January 1, 2018. Under the agreement over $31 million is to be paid by PHH to a Settlement Administrator, and the Administrator will then distribute cash payments to various borrowers. In addition, PHH was required to pay over $8 million in administrative penalties, with $159,967 to be paid to each participating state. Regarding the $159,967 paid to Texas, the Department of Savings and Mortgage Lending received $79,983.50 and the Office of the Consumer Credit Commissioner received $79,983.50.

Gift Reporting:

There have been no gifts to report since the last report to the Finance Commission in December 2017.

Legislative:

Commissioner Jones testified at the House Investments & Financial Services Committee January 31, 2018 Interim Hearing related to Hurricane Harvey.

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C.

Office of Consumer Credit Commissioner

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Consumer Protection and Consumer Assistance Report

Rudy Aguilar, Director of Consumer Protection

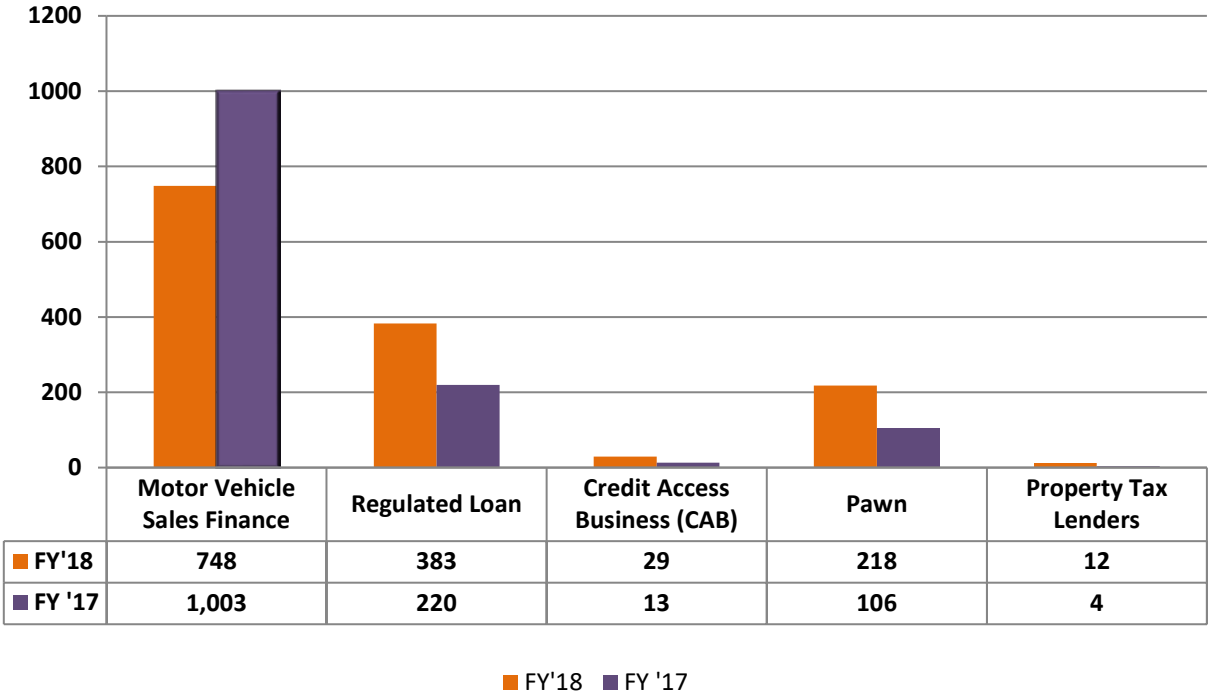
A total of 1390 examinations have been completed to the end of December. The over-all examination progress is ahead of the pro rata goal of 1373 examinations. Several enterprise examinations are scheduled, which will help reach the goal for those license types lagging in respect to pro rata progress.

The latest class of new examiners has completed initial classroom instruction. They will continue their field training with experienced examiners.

A class of examiners will receive continuing training in Credit Access Business examinations in February. Upon completion the examiners will be tested for certification in Credit Access Business examinations.

Additionally, examiners that qualify for the Financial Examiner III certification process will be tested in February 2018.

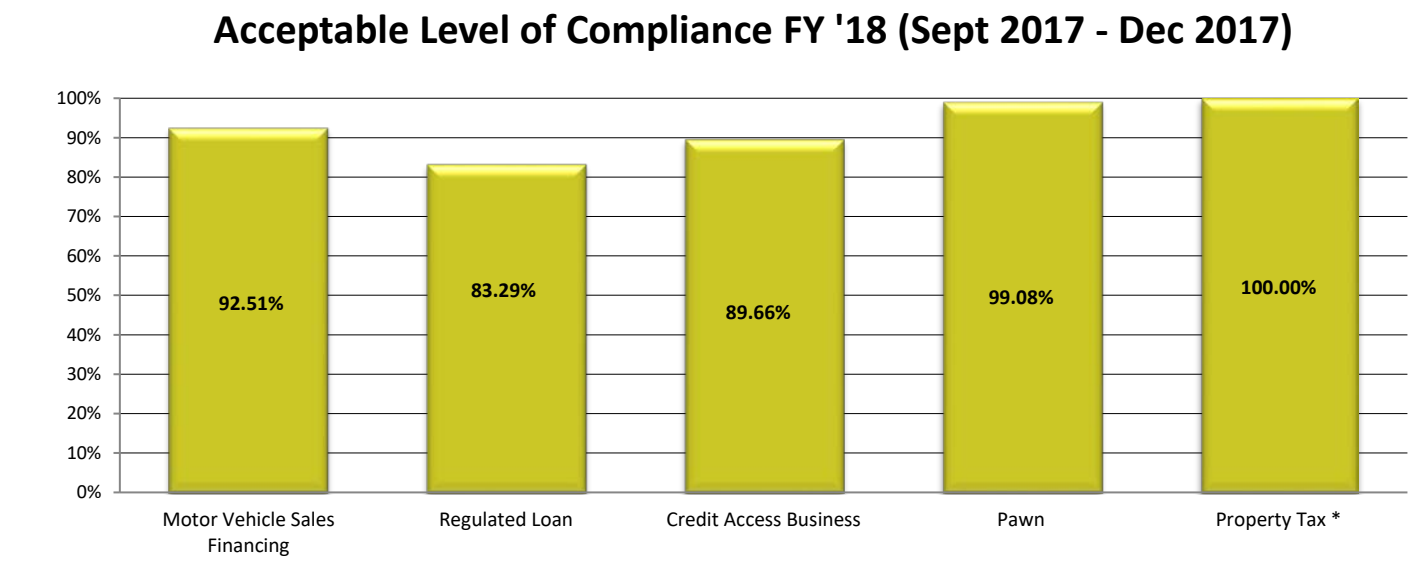
Examinations Conducted: Sept - Dec
Fiscal Year Comparison

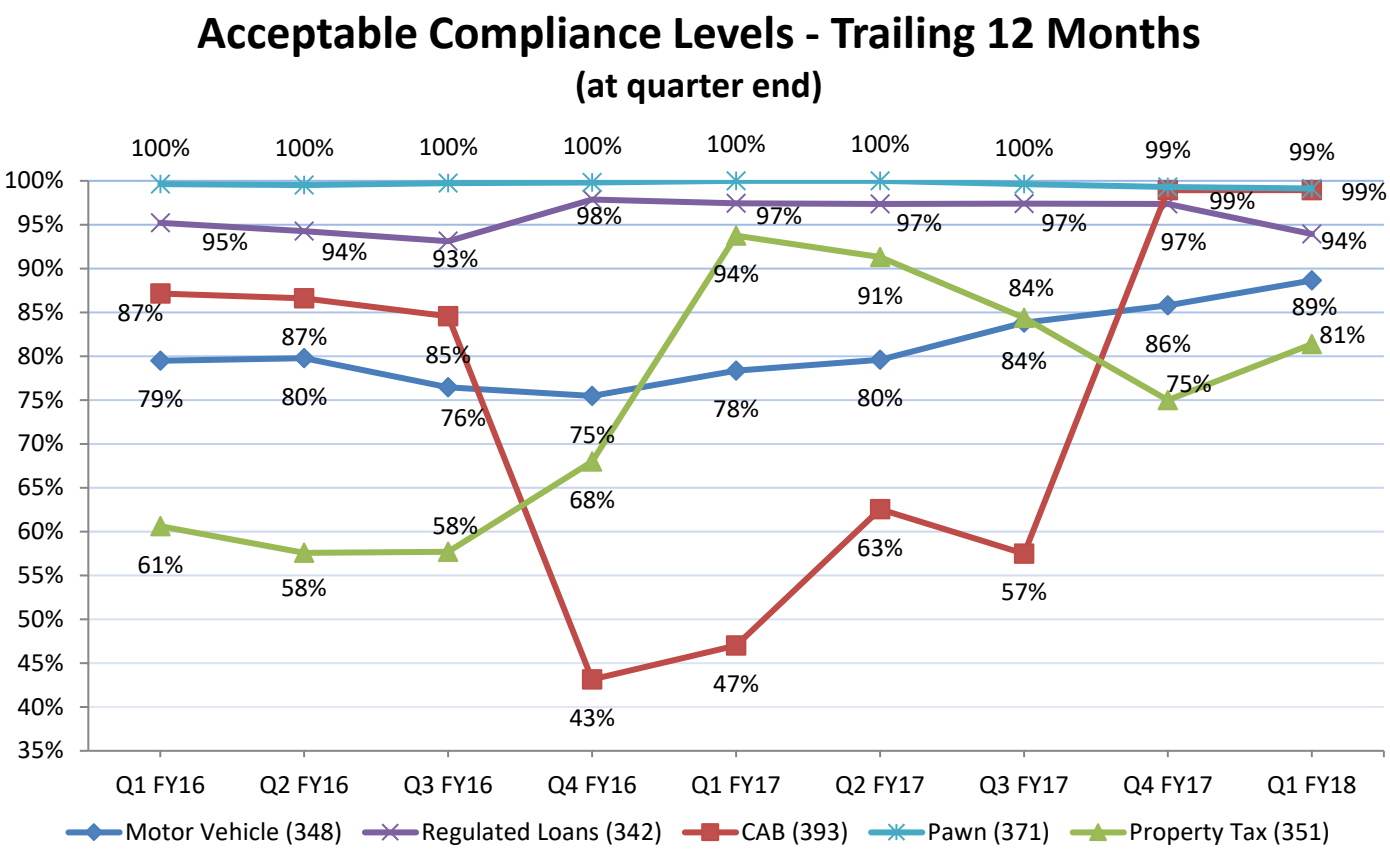


	Motor Vehicle Sales Finance	Regulated Loan	Credit Access Business (CAB)	Pawn	Property Tax Lenders
FY'18	748	383	29	218	12
FY '17	1,003	220	13	106	4

Director Aguilar presented the Motor Vehicle Sales Finance training at the January 2018 Texas Department of Motor Vehicles dealer training in San Antonio.

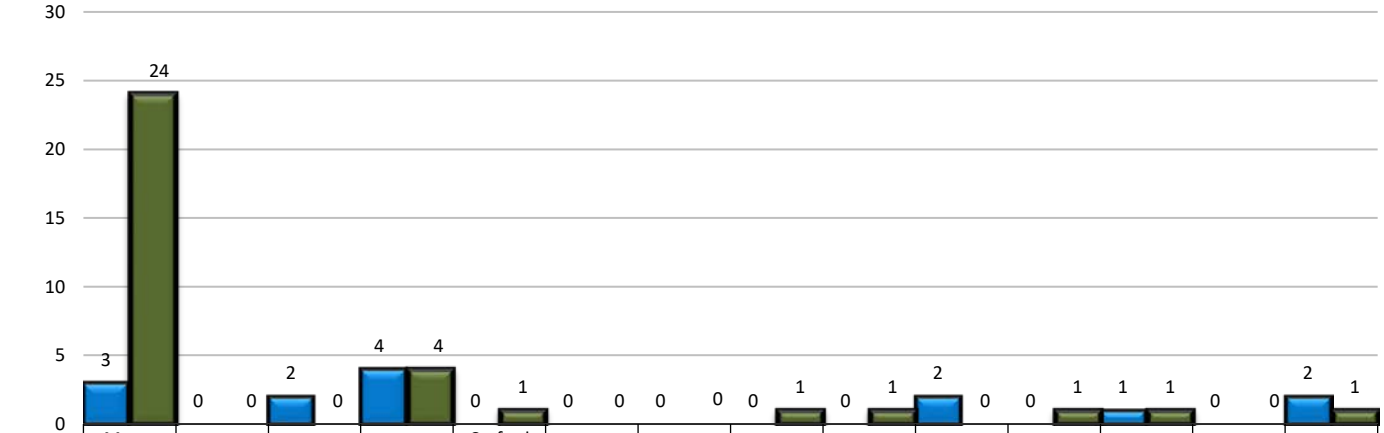
Examinations in this fiscal year reflect a relatively high level of compliance in all license types at this point.





Investigations

Investigations Completed
FY '18 (Sept 2017 - Dec 2017) Total: 14
FY '17 (Sept 2016 - Dec 2016) Total: 34

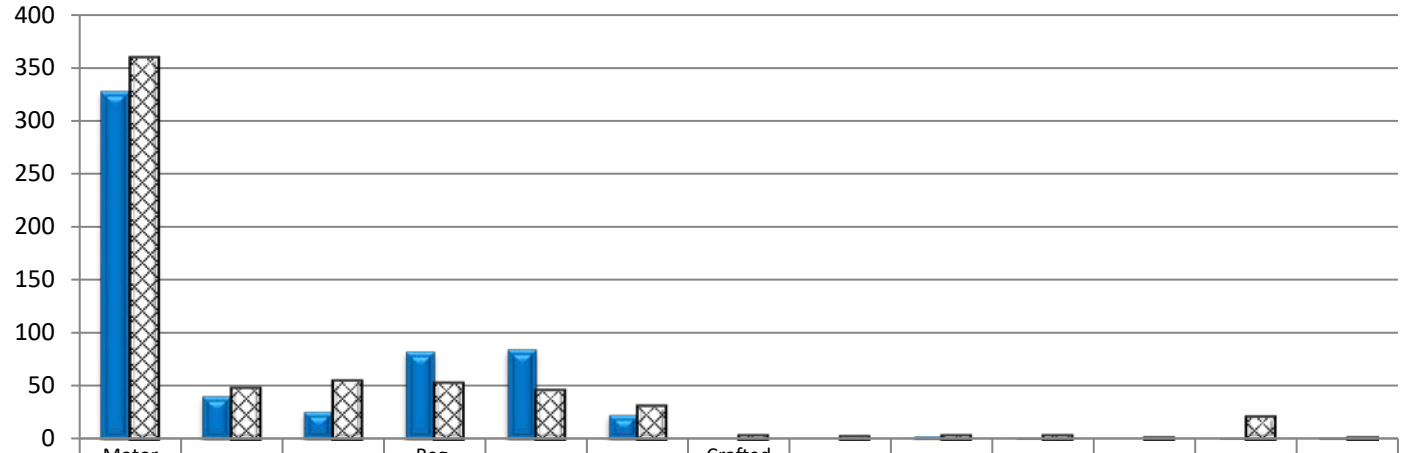


	Motor Vehicle Sales Finance	CAB (Payday)	CAB (Title)	Pawn	Crafted Precious Metal Dealers	Surchg *	Large Consumer Loan	Property Tax Lenders	Mortg	Small Consumer Loan	Manuf. Housing	Retail Install. Sales	Debt Mgmt	Other
FY '18	3	0	2	4	0	0	0	0	0	2	0	1	0	2
FY '17	24	0	0	4	1	0	0	1	1	0	1	1	0	1

*Surcharge no longer regulated by OCCC

Consumer Assistance

Complaints Processed
FY '18 (September 2017-December 2017) Total: 593
FY '17 (September 2016-December 2016) Total: 639

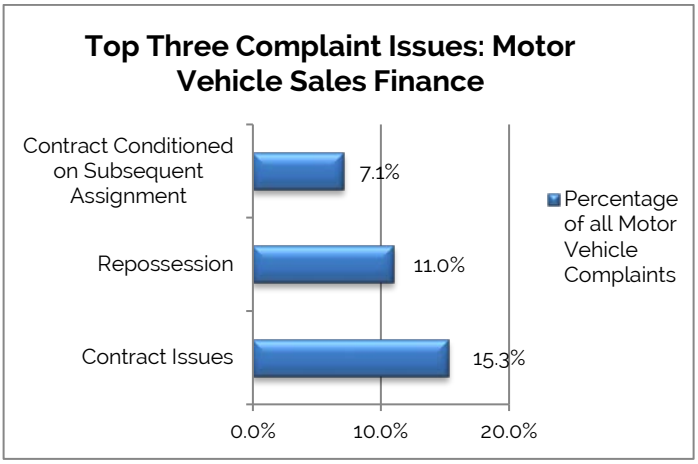


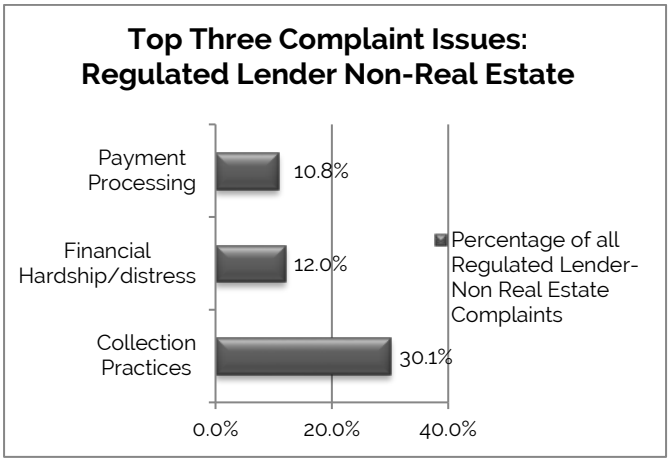
	Motor Vehicle Sales Finance	CAB Payday Loans	CAB Auto Title Loans	Reg. Lenders Non-Real Estate	Pawn	Registered Creditors	Crafted Precious Metals Dealers	Mortg Lenders: Real Estate	Manufact. Hsng	Property Tax Lenders	Debt Mgt Debt Settlement	Surcharge (Credit Card Use)*	All Others
FY' 18	328	41	26	83	85	23	0	0	3	1	0	1	2
FY' 17	360	49	56	54	47	32	4	3	4	4	2	22	2

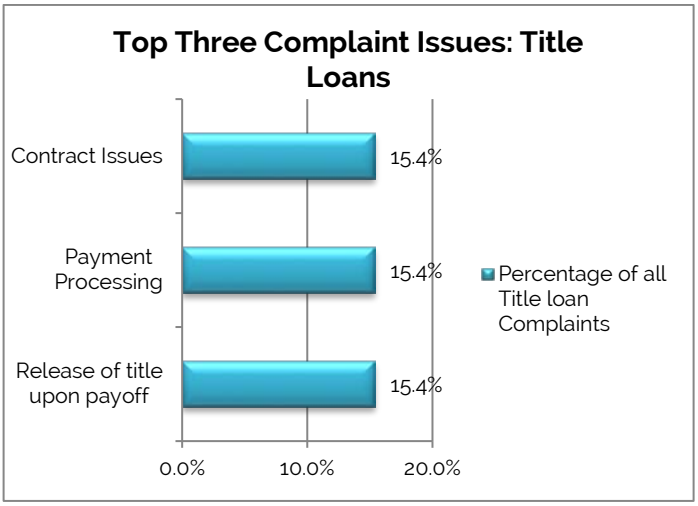
The top four areas of complaints are (1) Motor Vehicle Sales Finance (MVSF), (2) Pawn, (3) Regulated Lenders Non-Real Estate, and (4) Credit Access Business (CAB).

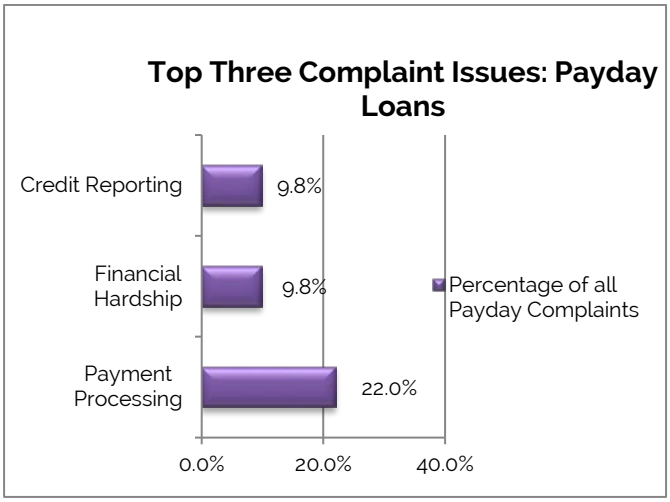
MVSF complaints were the largest complaint category at 55.3%. The second largest number of complaints came from Pawn at 14.3%. The top two categories of complaints in the Pawnshop area are related to the effects of Hurricane Harvey. The third largest category of complaints came from Regulated Lenders Non-Real Estate at 14.0%. The fourth largest category was CAB complaints. Collectively, CAB complaints are 11.3%; separately, these are at 6.9% for payday loans and 4.4% for title loans.

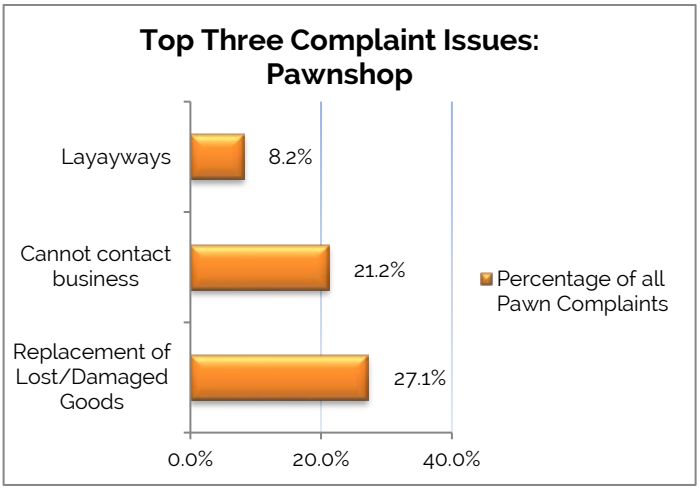
Each of the following charts represents the three top complaint areas by license type:



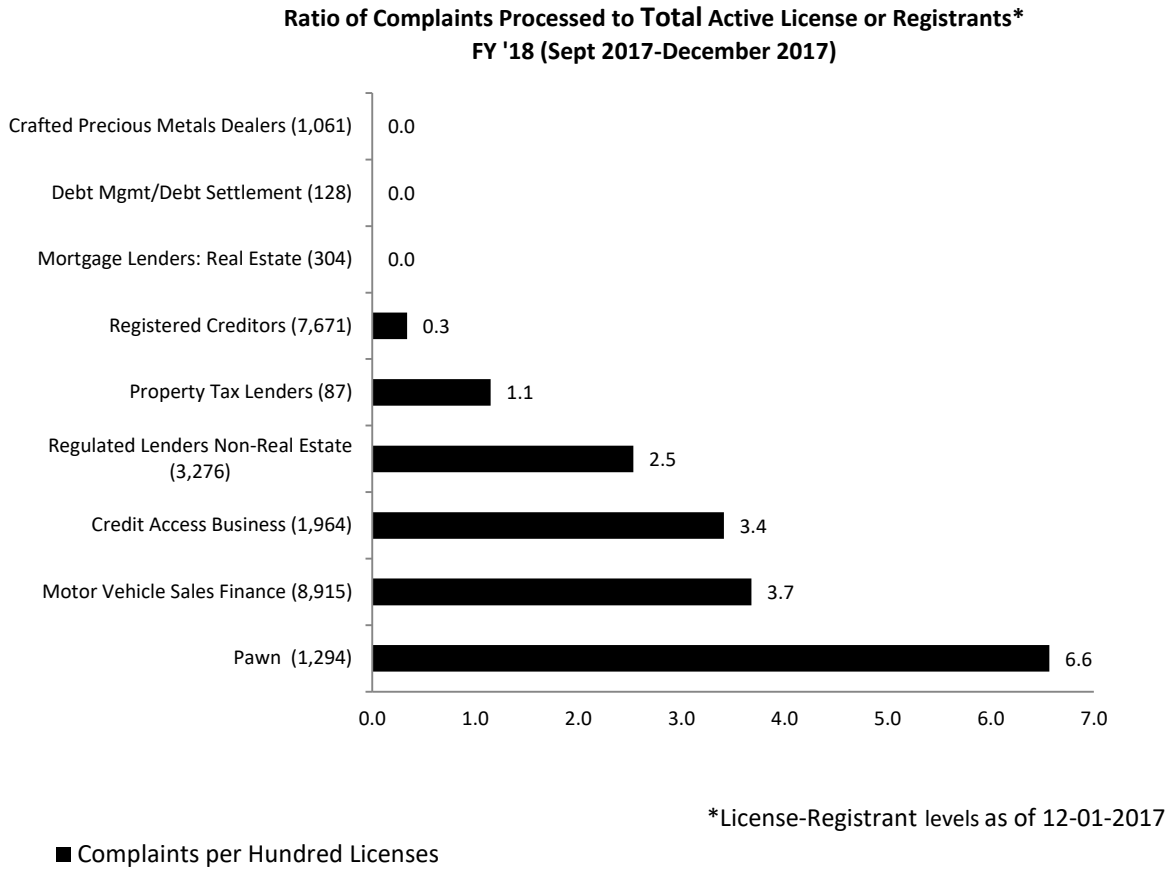








Comparison of complaints processed to the number of active license or registrant population is noted on the chart below. The highest ratio involved Pawn followed by MVSF as the second highest, Credit Access Business as the third and Regulated Lenders Non-Real Estate as the fourth highest.



Licensing Report- January 2018

Mirand Zepeda, Manager

Renewals

The renewal period for Credit Access Businesses, Regulated Lenders, and Property Tax Lenders ended on December 31st. More than 96% of licensed CABs renewed, with approximately the same amount of Regulated Lenders renewing. The department estimates that 85% of property tax lenders renewed, and the reinstatement period for both property tax licenses and regulated lenders extends through June. Roughly 83% of renewals were completed online through ALECS.

Currently renewal for both refund anticipation loan registrants and debt management and settlement providers is open.

Applications Processing

In Q1 of FY 18, processing goals were set in order to diminish the volume of pending applications. These goals will continue through most of Q2 and were an increase from previous processing goals. Management continues to analyze application volume and productivity, and anticipates decreases in pending applications in Q2. The department continues to receive approximately 140 business applications monthly.

Other Updates

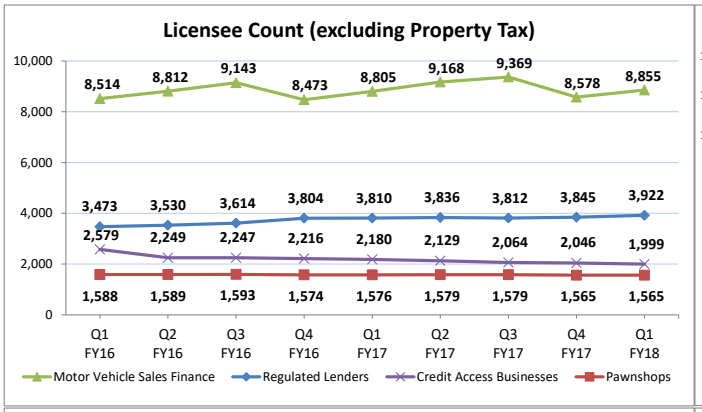
A representative from the department is attending the Nationwide Mortgage Licensing System annual conference and training in February.

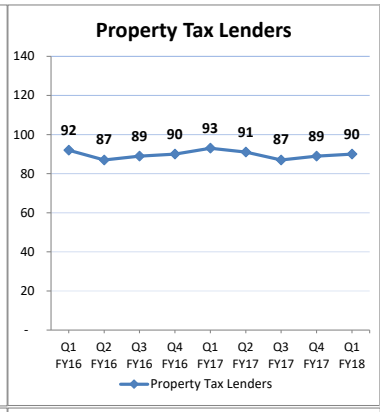
Additionally, in continuation of the project to bring crafted precious metals dealers into ALECS, the agency held a stakeholders meeting to inform this industry group of the transition and seek feedback.

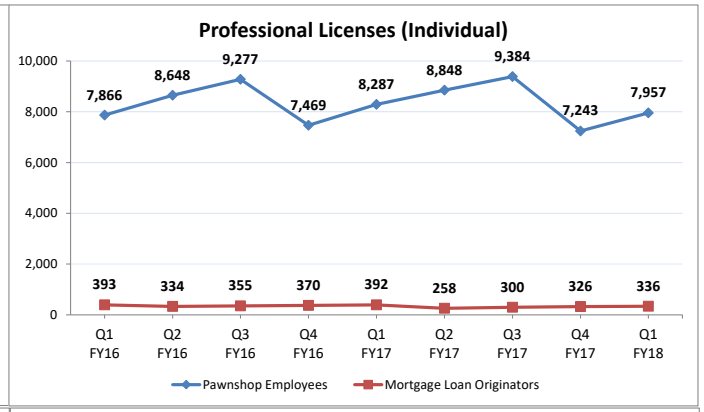
Regulated Entity Population Trends

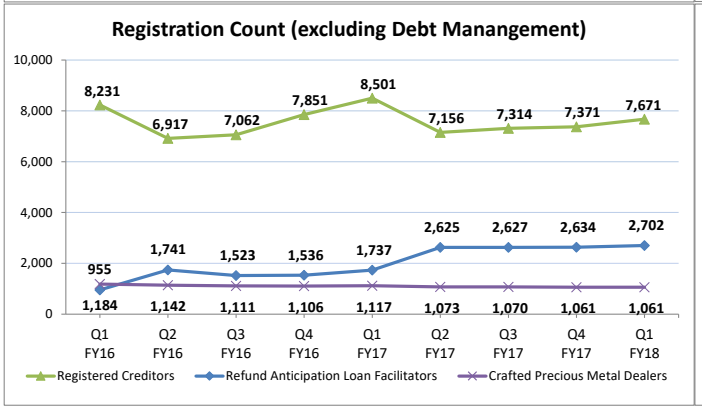
The following charts reflect the number of OCCC regulated entities at the end of each quarter in fiscal years 2015 and 2016 to current data.

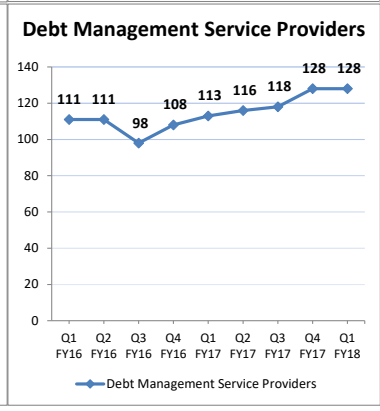
Number of OCCC Regulated Entities
Quarterly Comparison of FY 16-18

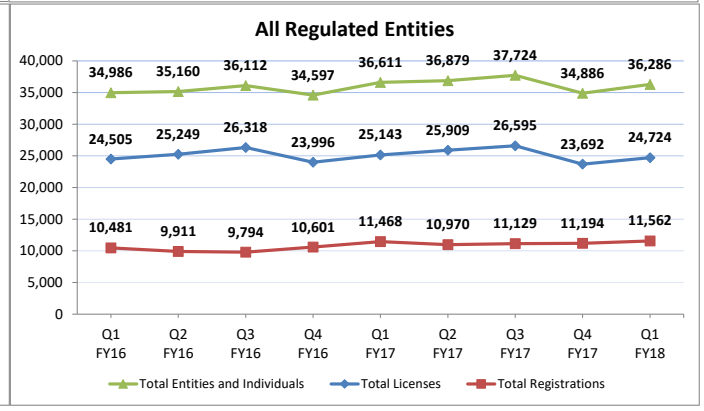












Communications, Human Resources & Administration Report

Juan V. Garcia, Director of Strategic Communications, Administration and Planning

COMMUNICATIONS

The Investment and Financial Services Committee has a hearing scheduled for January 31 regarding the impact Hurricane Harvey had on financial institutions and how it affected consumers and lenders in the mortgage and home equity markets. The OCCC will provide testimony to the committee on its interim charge.

Agency staff continues to provide a combination of live presentations and communication through various channels. For FY 2018 Q1, 331 industry participants attended staff presentations regarding compliance matters and the regulatory role and responsibilities of the agency at training seminars hosted by other organizations.

On January 10, William Purce, Senior Review Examiner, presented to dealers at the Manufactured Housing Division of the Texas Department of Housing and Consumer Affairs in Austin.

Rudy Aguilar, Director of Consumer Protection participated at the Dealer Training for the Texas Department of Motor Vehicles on January 18, in San Antonio.

On January 29, Commissioner Pettijohn participated in a panel with other state regulators at the American Financial Services Association Law & Compliance Symposium.

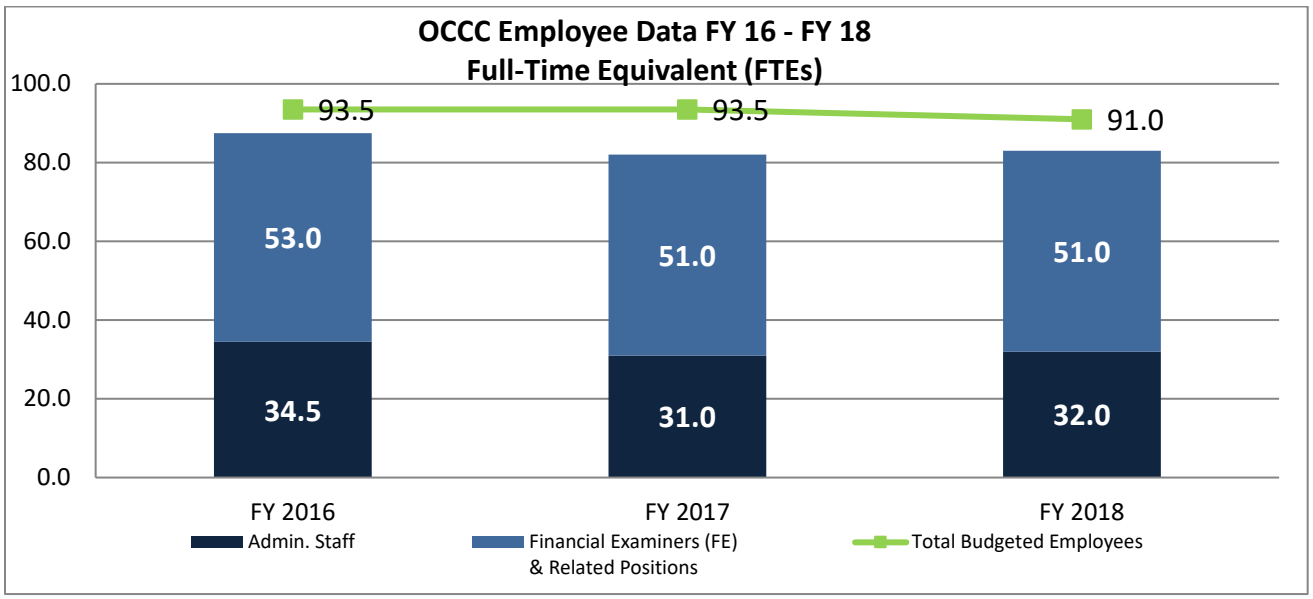
On January 23, Sunset Staff accompanied Financial Examiner III Kathy Kline to an examination to get a better understanding of the industry and the examination process. In addition, on January 26, Sunset Staff accompanied Commissioner Pettijohn and Financial Examiner IV Christine Graham on site visits to two licensees representing different market segments.

HUMAN RESOURCES

For this reporting period (December and January), the OCCC had the following vacant positions at Austin Headquarters: (1) Accountant II-III, (1) Investigator I and (1) System Support Specialist II.

During this same period, the Agency had two separations within the Financial Examiner series.

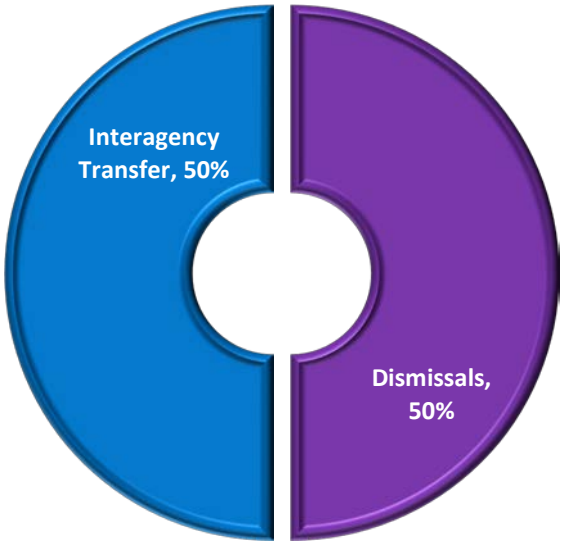
Recruiting efforts are focused on filling all current open positions within the Agency.



As of January 31, the OCCC had 83 FTEs and experienced an overall turnover of 6.02%, with the goal being under 15%.

FY'18 Turnover Categories – All Employees
(9/01/17 – 1/31/18)
5 Total

FY'18 Turnover Categories – FE Series
(9/01/17 – 1/31/18)
2 Total



ADMINISTRATION

FINANCIAL LITERACY

Financial Literacy staff continues efforts to educate Texas consumers by presenting and attending events. During the months of Q1 for FY 2018, the Financial Literacy Specialist provided 59 Texas consumers with consumer education presentations. In addition, a previous contact connected the Financial Literacy Specialist with program directors of senior centers across the state and assisted with the scheduling of additional financial education presentations at Harlingen Senior Center and Northeast Senior Center, for the coming months.

The Financial Literacy Specialist has been diligent in reaching out to numerous organizations throughout Texas to promote financial education and has coordinated new partnerships. As a result, the agency will be partnering with the Financial Literacy Coalition of Central Texas (FLCCT) to provide financial education to adults. FLCCT is a non-profit organization devoted to teaching people how to manage their personal finances. This organization will connect the Financial Literacy Specialist with multiple volunteer teaching opportunities across Central Texas. Also, the Financial Literacy Specialist has partnered with Junior Achievement (JA). With the help of JA, the Financial Literacy Specialist will be providing a six-week long financial literacy course to middle school students.

Lastly, the department continues to promote the importance of financial education and is hopeful that these partnerships will contribute to meeting quarterly goals by the end of Q2.

Accounting & IT Reports

Accounting

The Accounting Department finished the completion of the FY 2017 Annual Non-Financial Report and submitted it to the required agencies within the time frame given. The department is in the process of training and cross training staff. The process of completing W-2's was finished before the appointed deadline. The preparation of 1099's is in progress, and will be completed before the end of January.

Information Technology

LEGACY MODERNIZATION

Staff continues to work through ALECS maintenance issues and enhancements during vendor supported maintenance.

Requirements gathering has been completed in order to add Crafted Precious Metals registration to the ALECS portal, so that it can be removed from the DPS hosted site. The project should be completed by the end of fiscal year 2018.

The agency's in-house programmer continues development for the new Human Resources database. Currently the OCCC uses spreadsheets to track and maintain Human Resources data. This project had been delayed due to other priorities.

OCCC has installed a new virtual host and NAS (Network Attached Storage). The agency is in the process of configuring and upgrading all network servers to run in a virtualized, NAS environment to provide redundancy for all situations in which the building has power and the internet circuit is up.

The agency completed and submitted the Application Portfolio Management report as required by DIR.

VoIP-Voice over Internet Protocol
OCCC has completed and successfully tested all prerequisites for the transition to VoIP. The agency requires several new data drops to accommodate VoIP requirements. The transition will be completed as soon as DIR is able to schedule deploying the new telephone equipment.

SECURITY

The OCCC Security Committee (SPCC) continues to make progress on the security roadmap, including new and revised policies and procedures, training requirements, and software/hardware policies. Work is currently underway on medium-term items primarily related to risk assessment.

OFFICE OF CONSUMER CREDIT COMMISSIONER
EXECUTIVE SUMMARY

As of November 30, 2017

	FY 2016	FY 2017	FISCAL YEAR 2018				
			1st QTR	2nd QTR	3rd QTR	4th QTR	FYTD
CONSUMER PROTECTION							
Monies Returned to Consumers (000)	13,657	20,593	2,158				2,158
Regulated Lenders Examinations	891	1,207	321				321
Property Tax Lender Examinations	25	32	12				12
Pawnshop Examinations	484	575	188				188
Motor Vehicle Examinations	2,181	2,354	555				555
Credit Access Businesses Examinations	707	652	18				18
CONSUMER ASSISTANCE							
Telephone Complaints Received	1,177	986	220				220
Written Complaints Received	878	1,111	246				246
Total Complaints Processed	2,160	2,130	446				446
% of Written Complaints Closed within 90 Calendar Days	94.46%	91.83%	83.69%				83.69%
ADMINISTRATIVE ENFORCEMENT ACTIONS							
Originated	410	371	81				81
Finalized	459	389	29				29
LICENSING AND REGISTRATION							
Licenses							
Regulated Loan Licenses	3,804	3,845	3,922				3,922
Pawnshop Licenses	1,574	1,565	1,565				1,565
Pawnshop Employee Licenses	7,469	7,243	7,957				7,957
Commercial MV Sales Fin. Licenses	29	39	40				40
Motor Vehicle Sales Finance Licenses	8,444	8,539	8,855				8,855
Property Tax Loan Licenses	90	89	90				90
Mortgage Loan Originators	370	326	336				336
Credit Access Business Licenses	2,216	2,046	1,999				1,999
Registrations							
Registered Creditors	7,851	7,371	7,671				7,671
Crafted Precious Metal Dealers	1,106	1,061	1,061				1,061
Debt Management Service Providers	108	128	128				128
Refund Anticipation Loan Facilitators	1,536	2,634	2,702				2,702
Applications							
Business -- New	1,642	1,522	358				358
Business -- Change of Ownership	259	138	21				21
Pawnshop Employees -- New	3,253	3,133	832				832
HUMAN RESOURCES DATA							
Field Examiners Staffing	45	41	44				44
Total Staffing	86.5	82	86				86

OCCC Actual Performance for Output/Efficiency Measures

Fiscal Year 2018

For Period Ending November 2017

Type/Strategy/Measure	2018 Target	2018 1st Quarter	2018 YTD	Percent of Annual Target
Output Measures-Key				
1-1-1 COMPLAINT RESOLUTION				
1. # COMPLAINTS CLOSED				
Quarter 1	2,100	440	440	20.95%
2. # INVESTIGATIONS CLOSED				
Quarter 1	80	14	14	17.50%

The number of closed investigations in the first quarter of fiscal year 2018 is lower than the pro rata goal for the following reasons. Effective September 1, 2017, the enforcement authority for credit card surcharges was transferred from the Office of Consumer Credit Commissioner to the Office of the Attorney General. There are no more investigations for this product category. Additionally, the largest investigation category has historically been Chapter 348 investigations. For the past three years, this product category has averaged 56.6% of all investigations closed. From fiscal year 2016 to fiscal year 2017, there was a 26% drop in unlicensed Chapter 348 complaints received by the agency. These complaints often result in investigations. Finally, all areas of examination acceptable level of compliance are trending upward. The higher levels of compliance across the regulated industries results in fewer investigations into possible violations of the Texas Finance Code or applicable regulations.

2-1-1 EXAMINATION AND ENFORCEMENT				
1. # COMPLIANCE EXAMINATIONS PERFORMED				
Quarter 1	4,200	1,094	1,094	26.05%
2-2-1 LICENSING				
1. # BUSINESS APPLICATIONS PROCESSED				
Quarter 1	1,600	358	358	22.38%
2. # PAWN EMPLOYEE LICENSE APPLICATIONS PROCESSED				
Quarter 1	2,800	832	832	29.71%
3-1-1 # CONSUMERS RECEIVING FINANCIAL EDUCATION				
Quarter 1	325	59	59	18.15%

The first quarter of FY 2018 required heavy concentration on preparing and reviewing TFEE Grant templates and reports, and selecting new recipients for the third cycle. In addition, attendance at the one of the three financial education workshops conducted in Q1 was lower than anticipated. The financial education department attempts to recruit groups of 20 or more; however the agency is committed to providing resources to all organizations regardless of their program size. With the new TFEE funding cycle commencing January 1, 2018, staff will be able to focus on achieving financial education goals by the end of Q2.

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

Legal Department Report

Michael Rigby, General Counsel

February 2018

Enforcement Report

Motor Vehicle Sales Finance – Injunction

On March 14, 2017, the OCCC issued an injunction against AJ's Nice Cars, Inc. for six violations of the Texas Finance Code, the Truth in Lending Act, and their respective implementing regulations. The injunction requires AJ's Nice Cars to cease and desist, to take affirmative action, and to make restitution.

On August 1, 2017, a hearing was held on the merits at the State Office of Administrative Hearings (SOAH) before an Administrative Law Judge. AJ's Nice Cars appeared and was represented by counsel at the hearing. On September 26, 2017, the Administrative Law Judge issued a proposal for decision recommending that the Commissioner uphold the injunction as to five of the six violations.

On January 4, 2018, the ALJ's recommendation was adopted and a final order was issued affirming the injunctive order. AJ's Nice Cars has 25 days from the date of the final order to file a Motion for Rehearing with the OCCC.

Performance Report

The following table summarizes enforcement actions closed by the OCCC during the last three fiscal years, and the current fiscal year-to-date as of January 15, 2018. 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 January 15, 2018				
	FYTD 2018	**FY 2017**	**FY 2016**	**FY 2015**
Revocation / Suspension Actions				
Regulated Loan License	0	1	1	27
Pawnshop License	0	1	3	2
Pawnshop Employee License	0	1	2	2
Credit Access Business	0	3	2	1
Motor Vehicle Sales Finance License	0	2	9	4
Property Tax Loan License	0	0	0	0
Crafted Precious Metal Dealer	0	0	0	2
Total Revocation / Suspension Actions	**0**	**8**	**17**	**38**

Injunction Actions				
Regulated Loan License	2	37	88	1
Pawnshop License	9	37	1	0
Pawnshop Employee License	9	69	0	0
Credit Access Business License	15	47	25	1
Motor Vehicle Sales Finance License	10	31	18	12
Property Tax Loan License	1	2	16	1
Crafted Precious Metal Dealer	0	0	0	3
Registered Creditor (Ch. 345)	0	1	1	0
Manufactured Housing (Ch.347)	0	1	0	0
Debt Management Services (Ch.394)	0	2	1	6
Credit Card Surcharge (Ch. 339)	0	2	7	1
Residential Mortgage Loan Originator	1	1	0	0
Total Injunction Actions	**47**	**230**	**157**	**25**
Administrative Penalty Actions				
Regulated Loan License	0	13	0	73
Pawnshop License	1	3	40	4
Pawnshop Employee License	0	0	1	4
Credit Access Business License	2	23	97	136
Motor Vehicle Sales Finance License	15	106	129	76
Property Tax Loan License	0	2	3	8
Crafted Precious Metal Dealer	0	0	2	0
Residential Mortgage Loan Originator	0	0	1	0
Total Administrative Penalty Actions	**18**	**147**	**273**	**301**
Application Denial and Protest Actions				
Regulated Loan License	0	0	0	0
Pawnshop License	0	1	1	0
Pawnshop Employee License	0	0	7	13
Credit Access Business License	0	0	0	2
Motor Vehicle Sales Finance License	0	1	3	8
Property Tax Loan License	0	0	0	0
Residential Mortgage Loan Originator	0	1	0	1
Total App. Denial and Protest Actions	**0**	**3**	**11**	**24**
Total Enforcement Actions Closed	**65**	**388**	**458**	**388**

From December 1, 2017 to January 15, 2018, the OCCC:

- issued 23 final orders,
- opened four cases in order to assess administrative penalties,
- opened 35 cases in order to issue injunctions,
- issued no assurances of voluntary compliance,
- participated in no contested case hearings, and
- dismissed no contested case hearings.

The OCCC has one hearing scheduled between January 16, 2018 and March 30, 2018.

Administrative Rule Report

At the February meeting, the OCCC is presenting six rule actions:

- An adoption of a new rule regarding enhanced contract and performance monitoring, and the posting of certain contracts on finance agency websites.
- An adoption of amendments to interpretations on home equity lending, implementing recent amendments that Texas voters approved in the constitutional amendment election on November 7, 2017.
- An adoption of amendments on including the administrative fee for a Chapter 342, Subchapter E loan in the loan's principal balance.
- An adoption of amendments regarding debt management services providers, updating registration procedures, recordkeeping and disclosure requirements, and providing clarification and technical corrections, resulting from rule review.
- A proposal of amendments regarding recordkeeping for motor vehicle sales finance licensees.
- A proposal of amendments regarding registration procedures for crafted precious metal dealers.

Litigation

PHH Mortgage Corporation Multistate Consent Order

On December 29, 2017, PHH Mortgage Corporation entered a consent order with Texas and 44 other states. The consent order resolved claims that PHH engaged in unlawful conduct in the servicing of residential mortgage loans between 2009 and 2012. Texas received $159,967 of the total amount that PHH agreed to pay to participating states in connection with the consent order, with the OCCC and the Texas Department of Savings and Mortgage Lending each receiving $79,983.50.

CAB Municipal Ordinance Litigation

A Travis County Court at Law has ruled in favor of the City of Austin in two cases relating to Austin's credit access business (CAB) ordinance. The two cases were brought against ACSO of Texas, LP d/b/a Advance America and The Money Store, LP d/b/a Speedy Cash. The City of Austin alleged the CABs violated the ordinance's limit on the number of installment payments under a payday or title loan. The CABs alleged the ordinance is preempted by Section 393.602(b) of the Texas Finance Code. The Travis County Court at Law reversed the municipal court, and held that that the ordinance is not preempted and can be harmonized with state law.

In October 2017, the CABs appealed these cases to the Third Court of Appeals in Austin. On January 3, 2018, the court of appeals granted ACSO's motion for dismissal (case number 03-17-00668-CR). The Money Store's case is currently pending in the court of appeals (case number 03-17-00675-CR), and its brief was due on February 12.

Federal Rulemaking

CFPB Payday Loan Rule

On January 16, 2018, the CFPB announced that it intends to reconsider the "Payday, Vehicle Title, and Certain High-Cost Installment Loans" rule ("Payday Rule"). The Payday Rule became effective on January 16, 2018, although most provisions of the rule do not require compliance until August 19, 2019. The Payday Rule was adopted by the CFPB in November 2017, and contains ability-to-repay requirements and payment-withdrawal requirements for certain short-term and long-term consumer loans.

The deadline to file an application to become a registered information system ("RIS") under the Payday Rule is April 16, 2018. However, the CFPB also announced that it would entertain waiver requests from entities seeking an extended deadline to file the RIS application.

Advisory Bulletins

From December 1, 2017 to January 15, 2018, the OCCC did not issue any new advisory bulletins.

Official Interpretation Requests

From December 1, 2017 to January 15, 2018, the OCCC did not receive any requests for official interpretations.

As of January 15, 2018, there was one pending official interpretation request. The request asks whether a motor vehicle licensee is required to retain the federal privacy notice as part of the retail installment sales transaction file. The request was published in the Texas Register on December 1, 2017. The OCCC did not receive any comments on the request during the 31-day public comment period. The OCCC plans to address this issue through rule amendments rather than an official interpretation. This issue is addressed in the proposal of amendments regarding recordkeeping for motor vehicle sales finance licensees, which the OCCC is presenting at the February meeting.

Public Information Requests

From December 1, 2017 to January 15, 2018, the OCCC received 20 requests for information under the Texas Public Information Act, with no referrals to the Office of the Attorney General.

Gifts Received by the OCCC

From December 1, 2017 to January 15, 2018, the OCCC did not receive any gifts.

Legislative Bill No. and Description	Rule Item/Purpose	Proposal Date	Adoption Date
Senate Bill 533 Relating to governmental entity contracting and procurement	**Contract Procedures** - *Adopt New Rule* 7 TAC, Part 1, Chapter 10 - §10.40 To place into regulation the finance agencies' procedures concerning contracts for the purchase of goods or services from private vendors	12/15/17	Presented for Adoption 02/16/18
Senate Joint Resolution 60 Proposing a constitutional amendment establishing a lower amount for expenses that can be charged to a borrower and removing certain financing expense limitations for a home equity loan, establishing certain authorized lenders to make a home equity loan, changing certain options for the refinancing of home equity loans, changing the threshold for an advance of a home equity line of credit, and allowing home equity loans on agricultural homesteads	**Home Equity Lending** - *Adopt Amendments, New Section, & Repeal* 7 TAC, Part 8, Chapter 153 To implement SJR 60, which amends Article XVI, Section 50 of the Texas Constitution and applies to home equity loans entered on or after January 1, 2018 *Precomment draft distributed September 13, 2017* *Stakeholder meeting and webinar held September 25, 2017* *Texas voters approved SJR 60 in Constitutional Amendment Election November 7, 2017* *Proposal published in Texas Register November 24, 2017* *Comment period ended December 25, 2017* *To be presented for adoption by Credit Union Commission March 9, 2018*	10/20/17	Presented for Adoption by Finance Commission 02/16/18
Not applicable	**Rules for Regulated Lenders** - *Adopt Amendments* 7 TAC, Part 5, §83.503, Administrative Fee **Chapter 342, Plain Language Contract Provisions**- *Adopt Amendments* 7 TAC, Part 5, §90.203, Model Clauses To specify that in a consumer loan under Texas Finance Code, Chapter 342, Subchapter E, the administrative fee may be included in the cash advance or principal balance on which interest is computed *Precomment draft distributed September 15, 2017* *Texas Register published rule text November 3, 2017* *Texas Register published figures November 17, 2017* *Comment period ended December 18, 2017*	10/20/17	Presented for Adoption 02/16/18

Legislative Bill No. and Description	Rule Item/Purpose	Proposal Date	Adoption Date
Not applicable	**Consumer Debt Management Services** - *Adopt Amendments & Repeal* 7 TAC, Part 5, Chapter 88 To conduct standard rule review under Tex. Gov' t Code, §2001.039; to update registration procedures, recordkeeping and disclosures; to provide clarification; and to make technical corrections *Precomment draft distributed November 17, 2017*	12/15/17	Presented for Adoption 02/16/18
Not applicable	**Motor Vehicle Installment Sales** - *Proposed Amendments* 7 TAC, Part 5, Chapter 84 - §§84.707, 84.708, & 84.709 To clarify recordkeeping procedures *First precomment draft distributed November 15, 2017* *Stakeholder meeting and webinar held January 12, 2018* *Second precomment draft distributed January 17, 2018*	02/16/18	
Not applicable	**Rules for Crafted Precious Metal Dealers** - *Proposed Amendments, New Rules, & Repeal* 7 TAC, Part 5, Chapter 85, Subchapter B To implement the registration system transition to the OCCC's online registration portal; to update and streamline registration procedures; to require current application and contact information; to update late renewal procedures; and to make technical corrections *Precomment draft distributed January 12, 2018* *Stakeholder meeting and webinar held January 26, 2018*	02/16/18	

C. OFFICE OF CONSUMER CREDIT COMMISSIONER

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 5, §83.503 & §90.203, Concerning Regulated Lenders & Plain Language Contract Provisions

PURPOSE: The purpose of the rule amendments is to specify that in a consumer loan under Texas Finance Code, Chapter 342, Subchapter E, the administrative fee may be included in the cash advance or principal balance on which interest is computed.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the amendments to 7 TAC §83.503 & §90.203 with changes as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve the amendments to 7 TAC §83.503 & §90.203.

Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 83. Regulated Lenders and Credit Access Businesses
Chapter 90. Chapter 342, Plain Language Contract Provisions

The Finance Commission of Texas (commission) adopts amendments to §83.503 in Chapter 83, concerning Regulated Lenders and Credit Access Businesses, and §90.203 in Chapter 90, concerning Chapter 342, Plain Language Contract Provisions.

The commission adopts the amendments to §83.503 without changes to the proposed text as published in the November 3, 2017, issue of the *Texas Register* (42 TexReg 6081).

The commission adopts the amendments to §90.203 with changes to the proposed text as published in the November 3, 2017, issue of the *Texas Register* (42 TexReg 6081) and the November 17, 2017 issue of the *Texas Register* (42 TexReg 6525). Due to an error by the *Texas Register*, the figures in the proposed amendments to §90.203 were included in the November 17 issue, rather than the November 3 issue.

The commission received two comments on the proposal: one from the Independent Bankers Association of Texas, and another from an individual. Both comments support the amendments as proposed.

In 2013, the Texas Legislature passed SB 1251, which amended Texas Finance Code, §342.201 to provide that the Subchapter E administrative fee is not considered interest, and authorized the commission to set the maximum amount of the administrative fee. The administrative fee is a flat, nonrefundable charge paid to the lender. The commission adopted a rule at current 7 TAC §83.503(1), specifying that the maximum amount of the administrative fee is $100. Since 2013, the agency has received questions from stakeholders about whether the administrative fee can be included in the cash advance or principal balance on which interest is computed. This issue is not addressed in the current rules.

The agency circulated an early draft of the rule changes to interested stakeholders. The agency received two informal written precomments, both supporting the draft as written.

Adopted §83.503(5) explains that the administrative fee may be included in the cash advance or principal balance on which interest is computed. This amendment is consistent with Texas Finance Code, §342.201(f), which specifies that the administrative fee is not interest. The amendment is also consistent with the definition of "cash advance" in Texas Finance Code, §341.001(3), which includes an "amount that is paid at the borrower's direction or request, on the borrower's behalf, or for the borrower's benefit." In addition, the amendment is consistent with Texas case law governing the calculation of the principal balance for a loan. *See Tanner Dev. Co. v. Ferguson*, 561 S.W.2d 777, 782 (Tex. 1977) (holding that the true principal of a loan is calculated by subtracting interest from the amount advanced to the borrower).

Adopted amendments to §90.203(b)(7) add model plain language clauses to be used

in transactions where the lender finances the administrative fee. Lenders that do not finance the administrative fee will be able to continue using the other model clauses currently in §90.203(b)(7). The amendments specify that the current model clauses should be used when the administrative fee is paid in cash or is not included in the cash advance on which interest is computed. The current model clauses are amended to include updated rate bracket amounts under Texas Finance Code, §342.201. The amendments also add new clauses to be used when the administrative fee is financed. Each of the new clauses includes a statement of the amount of the cash advance, in order to ensure that the contract discloses the specific amount on which interest will be computed.

The proposal contained a typographical error in the current text of §90.203(b)(7)(D), improperly using the phrase "scheduled installment earnings method" instead of "true daily earnings method." The error has been corrected in this adoption. The correction does not affect any of the new text added by the adoption.

Figures in §90.203(b)(7)(A), (b)(7)(C), and (b)(7)(E), have been amended and renumbered as (b)(7)(A)(i), (b)(7)(C)(i), and (b)(7)(E)(i). New figures have been added at §90.203(b)(7)(A)(ii), (b)(7)(C)(ii), and (b)(7)(E)(ii), for use when the administrative fee is financed.

The amendments are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, the amendment to §83.503 is adopted under Texas Finance Code, §342.551, which authorizes the commission to adopt rules to enforce Chapter 342. The amendments to §90.203 are adopted under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of plain language contracts for loans under Chapter 342.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, §341.502 and §342.201.

Chapter 83. Regulated Lenders and Credit Access Businesses

§83.503. Administrative Fee.

An authorized lender may collect an administrative fee pursuant to Texas Finance Code, §342.201(f), on interest-bearing and precomputed loans.

(1) - (4) (No change.)

(5) The administrative fee may be included in the cash advance on which interest is computed under Texas Finance Code, §342.201(a) or (e). The administrative fee may be included in the principal balance on which interest is computed under Texas Finance Code, §342.201(d).

Chapter 90. Chapter 342, Plain Language Contract Requirements

§90.203. Model Clauses.

(a) (No change.)

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

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

(7) Finance charge earnings and refund method. The model finance charge

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

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

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

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

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

Figure: 7 TAC §90.203(b)(7)(A)(ii) *{New figure.}*

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

(i) For use when the administrative fee is paid in cash or is not included in the principal balance on which interest is computed: "The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. I will not get a refund if the refund would be less than $1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment."

(ii) For use when the administrative fee is financed: "The cash advance is $____. The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. The unpaid cash advance includes the administrative fee, but does not include late charges and returned check charges. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. I will not get a refund if the refund would be less than $1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment."

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

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

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

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

Figure: 7 TAC §90.203(b)(7)(C)(ii) *{New figure.}*

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

(i) For use when the administrative fee is paid in cash or is not included in the principal balance on which interest is computed: "The annual rate of interest is _____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment."

(ii) For use when the administrative fee is financed: "The cash advance is $____. The annual rate of interest is _____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment."

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

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

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

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

Figure: 7 TAC §90.203(b)(7)(E)(ii) *{New figure.}*

(8) - (27) (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 February 16, 2018.

Laurie B. Hobbs
Assistant General Counsel
Office of Consumer Credit Commissioner

Amended Figure 7 TAC §90.203(b)(7)(A)(i) [~~§90.203(b)(7)(A)~~]
(Add-on method under §342.201(a), administrative fee not financed)

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

- $18.00 per $100.00 per year on that portion of the cash advance that is $2,070 [~~$2,010~~] or less; and

- $8.00 per $100.00 per year on that portion of the cash advance that is greater than $2,070 [~~$2,010~~] through $17,250 [~~$16,750~~].

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

New Figure 7 TAC §90.203(b)(7)(A)(ii)
(Add-on method under §342.201(a), administrative fee financed)

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

- $18.00 per $100.00 per year on that portion of the cash advance that is $2,070 or less; and

- $8.00 per $100.00 per year on that portion of the cash advance that is greater than $2,070 through $17,250.

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

Amended Figure 7 TAC §90.203(b)(7)(C)(i) [~~§90.203(b)(7)(C)~~]
(Scheduled installment earnings method under §342.201(e), administrative fee not financed)

"The annual rate of interest is: (1) 30% on the unpaid cash advance that is $3,450.00 [~~$3,350.00~~] or less; (2) 24% on the unpaid cash advance that is greater than $3,450.00 [~~$3,350.00~~] through $7,245.00 [~~$7,035.00~~]; and (3) 18% on the unpaid cash advance that is greater than $7,245.00 [~~$7,035.00~~] through $17,250 [~~$16,750~~]. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. I will not get a refund if the refund would be less than $1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment."

New Figure 7 TAC §90.203(b)(7)(C)(ii)
(Scheduled installment earnings method under §342.201(e), administrative fee financed)

"The cash advance is $____. The annual rate of interest is: (1) 30% on the unpaid cash advance that is $3,450.00 or less; (2) 24% on the unpaid cash advance that is greater than $3,450.00 through $7,245.00; and (3) 18% on the unpaid cash advance that is greater than $7,245.00 through $17,250.00. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code. The unpaid cash advance includes the administrative fee, but does not include late charges and returned check charges. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. I will not get a refund if the refund would be less than $1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment."

Amended Figure 7 TAC §90.203(b)(7)(E)(i) [~~§90.203(b)(7)(E)~~]
(True daily earnings method under §342.201(e), administrative fee not financed)

"The annual rate of interest is: (1) 30% on the unpaid cash advance that is $3,450.00 [~~$3,350.00~~] or less; (2) 24% on the unpaid cash advance that is greater than $3,450.00 [~~$3,350.00~~] through $7,245.00 [~~$7,035.00~~]; and (3) 18% on the unpaid cash advance that is greater than $7,245.00 [~~$7,035.00~~] through $17,250 [~~$16,750~~]. This interest rate may not be the same as the Annual Percentage Rate. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment."

New Figure 7 TAC §90.203(b)(7)(E)(ii)
(True daily earnings method under §342.201(e), administrative fee financed)

"The cash advance is $____. The annual rate of interest is: (1) 30% on the unpaid cash advance that is $3,450.00 or less; (2) 24% on the unpaid cash advance that is greater than $3,450.00 through $7,245.00; and (3) 18% on the unpaid cash advance that is greater than $7,245.00 through $17,250. This interest rate may not be the same as the Annual Percentage Rate. The unpaid cash advance includes the administrative fee, but does not include late charges and returned check charges. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment."

Laurie Hobbs - 7 TAC sec. 83.503 Proposal

From: Karen Neeley Email Redacted >
To: "Laurie B. Hobbs (laurie.hobbs@occc.state.tx.us)" <laurie.hobbs@occc.sta...
Date: 10/24/2017 10:33 AM
Subject: 7 TAC sec. 83.503 Proposal

The following comment is filed on behalf of the Independent Bankers Association of Texas. Virtually all of its members make small consumer loans under chapter 342, Texas Finance Code and use the authorization to charge an administrative fee found in section 342.201. Based on feedback from IBAT members, it is our conclusion that consumers prefer to finance the administrative fee rather than pay it separately. The proposed amendment to 7 TAC 83.503, which makes it clear that the administrative fee may be included in the cash advance, is a welcome addition to the rule. Thank you for this clarification.

Karen M. Neeley

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December 8, 2017

Ms. Laurie Hobbs
Assistant General Counsel
Office of Consumer Credit Commissioner
2601 N. Lamar Blvd.
Austin, Texas 78705

Via email: laurie.hobbs@occc.texas.gov

Re: Comments to OCCC's Proposed Amendments to 7 TEX. ADMIN. CODE §§ 83.503 & 90.203—Secured Consumer Installment Loans (Subchapter E)

Dear Ms. Hobbs:

These written comments are in response to the proposed amendments to 7 TEX. ADMIN. CODE §§ 83.503 and 90.203, as originally published in the *Texas Register* on November 3, 2017, with a correction published in the *Texas Register* on November 17, 2017. Comments must be received on or before 5:00 p.m. central time on the 31st day after the date the proposed amendments are published in the *Texas Register*, which is December 18, 2017. Thus, these comments are timely filed.

The proposed rule amendments address whether and how a regulated lender making a loan under Chapter 342, Subchapter E of the Texas Finance Code can include the administrative fee authorized by TEX. FIN. CODE § 342.201(f) in the cash advance or unpaid principal balance upon which interest is computed. As attorneys for numerous Texas-licensed regulated lenders, we have received this question on several occasions. Because it is critically important for regulated lenders to properly charge interest, the question deserves regulatory certainty. We appreciate the OCCC taking the initiative to provide that certainty and to facilitate compliance.

We believe the OCCC has properly crafted a rule to address this issue and do not suggest changes to the draft rule. Instead, we provide legal authorities and arguments for why this rule amendment is necessary and proper.

Legal Authorities and Arguments

Section 342.201(f) of the Texas Finance Code permits the inclusion of an administrative fee in Subchapter E loan contracts.[1] Prior to July 10, 2014, the Rules for Regulated Lenders ("Rules") specifically prohibited the assessment of interest on an administrative fee "if the

[1] "A loan contract under this subchapter may provide for an administrative fee . . ." TEX. FIN. CODE § 342.201(f). *See also* 7 TEX. ADMIN. CODE § 83.503(1).

assessment caused the total amount of interest to exceed the maximum amount authorized under Texas Finance Code, Chapter 342."[2] But effective July 10, 2014, the Rules were amended to remove the prohibition on charging interest on administrative fees.[3] The Legislature's amendment of TEX. FIN. CODE § 342.201(f) the year prior precipitated this change in the Rules.[4] The Legislature amended § 342.201 to allow the Texas Finance Commission to increase the maximum administrative fee under that section.[5] To avoid potential issues with delegation of authority over interest rates and the usury laws, the amendment also clarified that "[a]n administrative fee is not interest."[6]

As a result of these statutory and regulatory amendments, regulated lenders can charge interest on an administrative fee that is included in a loan made pursuant to Chapter 342, Subchapter E. However, without a clear rule or official interpretation from the OCCC, it has been difficult for regulated lenders to gain certainty of compliance.

The OCCC's proposed rule is consistent with the Texas Finance Code. If the administrative fee were interest, authorized lenders would have to charge lower interest rates than those allowable under § 342.201, or risk running afoul of State usury laws.[7] But the Legislature made clear that such fees are not interest. In addition, the statute expressly provides that "[t]he administrative fee is considered earned when the loan is made or refinanced and is not subject to refund."[8] The administrative fee is therefore owed on the date the loan is made and, if not paid in cash, is paid out of, and included in, any advance or principal balance. Because the fees are not interest and are earned and owed on the date of the loan and, if not paid in cash are paid by the consumer out of any advance, it follows that authorized lenders can include those fees in the portion of a Chapter 342, Subchapter E consumer loan upon which interest is computed.

[2] 7 TEX. ADMIN. CODE § 83.503(4) (2006).

[3] 39 Tex. Reg. 5142 (2014).

[4] *See* Acts 2013, 83rd Leg., R.S., ch. 784 (S.B. 1251), §§ 2 & 3, eff. Sept. 1, 2013.

[5] Senate Research Center, Bill Analysis, Tex. S.B. 1251, 83rd Leg., R.S. (2013).

[6] *See id*. *See also* TEX. FIN. CODE § 342.201(f) (current).

[7] *See, e.g., Bair Chase Prop. Co., LLC v. S & K Dev. Co., Inc.*, 260 S.W.3d 133, 138–39 (Tex. App.—Austin 2008, pet. denied) (explaining that the Legislature fixes maximum interest rates as constitutionally authorized, and contracts exceeding those rates are "usurious" and illegal).

[8] TEX. FIN. CODE § 342.201(f).

This conclusion is bolstered by the fact that the Texas Finance Code and the Rules expressly prohibit including an acquisition charge in "[t]he cash advance or principal balance of a loan contract under [Chapter 342, Subchapter F]."[9]

The Legislature knew how to prohibit the inclusion of an administrative fee in a loan, but chose not to do so for Subchapter E loans. A court or administrative agency should not read language into a statute that the Legislature didn't include.[10] Rather, we must presume the Legislature chose a statute's words with care, including or excluding words and phrases with a particular purpose in mind.[11] Hence, an appropriate conclusion is that an administrative fee can be included in the portion of a loan upon which interest is charged under Chapter 342, Subchapter E.

Conclusion

The law authorizes a regulated lender to include TEX. FIN. CODE § 342.201(f)'s administrative fee in the cash advance or principal balance of a Chapter 342, Subchapter E consumer loan. The Texas Finance Commission has authority and jurisdiction to make this clear by rulemaking, thereby providing regulatory certainty and facilitating compliance for regulated lenders in Texas. We believe the OCCC's proposed rule amendments properly provide clarity on this issue.

Thank you for your consideration of these comments. Please do not hesitate to contact me with any questions.

Sincerely,

Carl R. Galant

CRG/bdk

[9] 7 TEX. ADMIN. CODE § 83.606(c) & TEX. FIN. CODE § 342.260(b) (both refer to the "acquisition charge," which is equivalent to the administrative fee under Subchapter E).

[10] *See City of Rockwall v. Hughes*, 246 S.W.3d 621, 628 (Tex. 2008).

[11] *See Tex. Lottery Comm'n v. First State Bank of DeQueen*, 325 S.W.3d 628, 635 (Tex. 2010); *see also Cadena Comercial USA Corp. v. Texas Alcoholic Beverage Comm'n*, 518 S.W.3d 318, 325-326 (Tex. 2017) ("We presume the Legislature 'chooses a statute's language with care, including each word chosen for a purpose, while purposefully omitting words not chosen.'") (*citing TGS–NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432, 439 (Tex. 2011)).

C. OFFICE OF CONSUMER CREDIT COMMISSIONER

3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments and a Repeal in 7 TAC, Chapter 88, Concerning Consumer Debt Management Services, Resulting from Rule Review

PURPOSE: The purpose of the amendments to 7 TAC, Chapter 88 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. The rule changes primarily relate to four areas: (1) registration procedure updates, (2) recordkeeping and disclosure, (3) clarification, and (4) technical corrections.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the amendments and proposed repeal in 7 TAC, Chapter 88 without changes as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve the amendments and proposed repeal in 7 TAC, Chapter 88.

Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 88. Consumer Debt Management Services

The Finance Commission of Texas (commission) adopts amendments to 7 TAC, Chapter 88, §§88.101 - 88.105, 88.107, 88.108, 88.110, 88.201, 88.202, and 88.302, concerning Consumer Debt Management Services. The commission also adopts the repeal of 7 TAC §88.106. The adopted changes affect rules contained in Subchapter A, concerning Registration Procedures; Subchapter B, concerning Annual Requirements; and Subchapter C, concerning Operational Requirements.

The commission adopts the amendments to §§88.101 - 88.105, 88.107, 88.108, 88.110, 88.201, 88.202, and 88.302; and adopts the repeal of §88.106 without changes to the proposed text as published in the December 29, 2017, issue of the *Texas Register* (42 TexReg 7487).

The commission received no written comments on the proposal.

In general, the purpose of the amendments to 7 TAC, Chapter 88 is to implement changes resulting from the commission's review of Chapter 88 under Texas Government Code, §2001.039. The notice of intention to review 7 TAC, Chapter 88 was published in the *Texas Register* on November 3, 2017, (42 TexReg 6211). The agency did not receive any comments on the notice of intention to review.

The adopted rule changes primarily relate to four areas: (1) registration procedure updates, (2) recordkeeping and disclosure, (3) clarification, and (4) technical corrections.

The agency that enforces these rules, the Office of Consumer Credit Commissioner (OCCC), circulated an early draft of proposed changes to interested stakeholders. The OCCC did not receive any informal written precomments on the draft.

Any Chapter 88 rule not included in this adoption will be maintained in its current form. The individual purposes of the amendments to each section and the purpose of the repeal are provided in the following paragraphs.

Regarding Subchapter A, concerning Registration Procedures, many of the adopted amendments update the rules to conform to current practice, including the use of the OCCC's online registration portal. Several amendments align the rules with the OCCC's current registration practice and use language similar to that adopted by the commission in other areas regulated by the OCCC.

In §88.101, definitions for "Commissioner" and "OCCC" have been added throughout the chapter. The remaining definition of "Principal party" has been renumbered accordingly.

Section 88.102 outlines the requirements to file a new application. Adopted amendments to §88.102(a) remove unnecessary language and add references to the agency's acronym, OCCC. The agency believes that the use of "OCCC" provides better clarity to the rules when the context calls for action by the agency, as opposed to the commissioner specifically.

Corresponding changes to further use this terminology are included throughout Chapter 88. The following provisions include amendments to replace "commissioner" or "commissioner's" with a reference to the OCCC: §§88.102(a) and (b)(5), 88.103(b)(1) and (c), 88.105, 88.201(3), 88.202(a)-(c), and 88.302(a)-(b).

Adopted amendments in §88.102(b) provide a general description of application items that better align with the OCCC's online registration portal. These phrases replace the titles of paper forms that are no longer used.

In §88.102(b)(3)(B), adopted amendments remove the current requirement to list spouses with community property interests as principal parties. These amendments help streamline the registration process and reduce regulatory burden. The amendments also make the application process simpler and more straightforward for applicants. If requested by the OCCC, applicants would still have to disclose the names of principal parties' spouses under §88.102(b)(3)(B)(iv).

Adopted amendments to §88.102(b)(3)(B) adding clauses (iii) through (vii) update the disclosure of owners and principal parties to outline the application information that must be submitted for different entity types (i.e., limited liability companies, proprietorships, partnerships, and trusts or estates). These amendments provide better clarity to applicants regarding the ownership information necessary as it relates to each ownership structure.

Also in §88.102, adopted amendments to subsection (b)(4) provide clearer guidance for applicants on the required registered agent information that must be submitted with an application.

Section 88.103 describes how an application for a debt management services provider registration is processed. Subsections (a) and (f) contain amendments to provide clarity and improve grammar and readability. Additionally, subsections (b) and (c) include amendments to incorporate the terminology change described earlier under §88.102.

Section 88.104 relates to a provider's duty to update information. The current language of §88.104 has been reorganized into subsection (a) as adopted, providing better clarity and grammar. The addition of subsection (b) explains that applicants and registrants must keep their contact information up-to-date. This provision are intended to ensure that the agency can contact registrants, and so that the agency can carry out its responsibility to monitor providers and ensure compliance, as provided by Texas Finance Code, §394.214.

Section 88.105 contains technical corrections as described earlier in the discussion regarding §88.102.

Section 88.106 has been repealed, as an inactive operation status is not currently used by debt management services providers.

Section 88.107 outlines the required fees for debt management services providers. A corresponding amendment to the repeal of §88.106 is contained in §88.107(c), removing inactive status from the list of registration amendments. In addition, the phrase "sent by mail" has been added to §88.107(d). As providers print their own registrations through the OCCC's online portal, a $10 charge is only applicable if the registrant requests that the OCCC send a duplicate registration by mail.

Technical corrections are contained in §88.108 regarding public records. The amendments use the acronym "OCCC" and

also update the name of the agency that oversees state records, the Texas State Library and Archives Commission.

Adopted amendments to the criminal history rule at §88.110 provide clarification and updates. In §88.110(b)(4), an amendment would clarify that any costs or fees due may be paid or current. In subsection (c), the amendments improve formatting and outline clearer guidance regarding the list of offenses directly related to the occupation of being a debt management services provider. Additionally, a statutory citation update is included in §88.110(f)(2).

Sections 88.201 and 88.202 contain terminology changes as described earlier in the discussion regarding §88.102. In §88.202(b)(1), an amendment would allow the OCCC to establish a procedure for a provider to certify current use of documents previously submitted with the provider's annual report. In further development of the OCCC's online portal, this amendment provides increased flexibility in the annual report process.

Adopted amendments to the recordkeeping rule at §88.302 add subsection (c), which explains that providers must maintain a file for each debt management plan, including a copy of the debt management services agreement and an account history. These amendments are intended to provide clarity and guidance regarding the records required by Texas Finance Code, §394.205.

The addition of subsection (d) to §88.302 requires debt management services providers to provide a notice explaining how consumers can file a complaint with the OCCC and is similar to notices required for other OCCC licensees and registrants. Subsection (d) describes the content of the OCCC notice, which includes the provider's contact information and the OCCC's contact information.

The adopted notice in §88.302(d) may be included in the provider's privacy notice or in its agreement required by Texas Finance Code, §394.209. This requirement is based on Texas Finance Code, §11.307(b), which provides that the commission shall adopt rules requiring regulated entities to include complaint notices on legally required privacy notices. Because debt management services providers perform credit counseling services, they are required to provide privacy notices to consumers under federal law, as provided by Regulation P, 12 C.F.R. §1016.3(l)(3)(ii)(L) and §1016.4(a).

These amendments and repeal are adopted under Texas Finance Code, §394.214, which authorizes the commission to adopt rules to carry out Texas Finance Code, Chapter 394, Subchapter C. The amendments in §88.302(d) are adopted under Texas Finance Code, §11.307(b), which provides that the commission shall adopt rules requiring regulated entities to include complaint notices on legally required privacy notices.

The statutory provisions affected by the adopted amendments and repeal are contained in Texas Finance Code, Chapter 11 and Chapter 394, Subchapter C.

Title 7, Texas Administrative Code

Chapter 88, Consumer Debt Management Services

Subchapter A. Registration Procedures

§88.101. Definitions [~~Definition~~].

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 394, Subchapter C, have the same meanings as defined in Chapter 394. The following terms [~~term~~], when used in this chapter, will have the following meaning, unless the context clearly indicates otherwise.

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

(2) OCCC--The Office of Consumer Credit Commissioner.

(3) Principal party--All adult individuals with a substantial relationship to the proposed debt management services business of the applicant. Individuals with a substantial relationship to the proposed debt management services business of the applicant include:

(A) [~~(1)~~] corporate officers, including the Chief Executive Officer or President, the Chief Financial Officer or Treasurer, and those with substantial responsibility for debt management services operations or compliance with the Finance Code;

(B) [~~(2)~~] shareholders owning 10% or more of the outstanding voting stock; or

(C) [~~(3)~~] owners, trustees, or governing persons of other organizational entities applying for registration under this chapter.

§88.102. Filing of New Application.

(a) An application for issuance of a new debt management services provider registration must be submitted as prescribed by the OCCC [~~commissioner~~] at the date of filing and in accordance with the OCCC's [~~commissioner's~~] instructions. Applications may be submitted electronically [~~by Internet or e-mail, or by mail~~].

(b) The application must include the following required forms and filings. All questions must be answered.

(1) Application for registration [~~Registration of Debt Management Services Provider~~].

(A) - (C) (No change.)

(2) Application questionnaire [~~Questionnaire for Debt Management Services Provider~~]. All applicable questions must be answered.

(3) Owners and principal parties. [~~Disclosure of Owners and Principal Parties of Debt Management Services Provider.~~]

(A) Detailed ownership and for-profit affiliate disclosure of nonprofit or tax exempt organizations. If the applicant is a nonprofit or tax exempt organization, a detailed description of the ownership interest of each officer, director, agent, or employee of the applicant must be provided. Any member of the immediate family of an officer, director, agent, or employee of the applicant, in a for-profit affiliate or subsidiary of the applicant, or in any other for-profit business entity that provides services to the applicant or to a consumer in relation to the applicant's debt management services business must also be provided.

(B) Ownership disclosure. The section inquiring about owners requires an answer based upon the applicant's entity type. [~~If an individual's interest in an entity is community property, then spouses with a~~

~~community property interest must also be listed. If the business interest is owned by a married individual as separate property, then a statement authenticating that fact must be provided.~~]

(i) All entity types. All applicants must disclose the name and home address of each officer and director of the applicant and each person that holds at least a 10% ownership interest in the applicant.

(ii) Corporations. All shareholders holding 10% [~~5%~~] or more voting stock must be named. If a parent corporation is the sole or part owner of the proposed business, a narrative or diagram must be provided that describes each level of ownership and management. This narrative or diagram must include the names of all officers, directors, and stockholders owning 10% [~~5%~~] or more stock at each level.

(iii) Limited liability companies. Each "manager," "officer," and "member" owning 10% or more of the company, as those terms are defined in Texas Business Organizations Code, §1.002, and each agent owning 10% or more of the company must be listed. If a member is a legal entity and not a natural person, a narrative or diagram must be included that describes each level of ownership of 10% or greater. [~~Other organizations. The owners, trustees, or governing persons must be named.~~]

(iv) Proprietorships. The applicant must disclose the name of any individual holding an ownership interest in the business and the name of any individual responsible for operating the business. If requested, the applicant must also disclose the names of the spouses of these individuals.

(v) General partnerships. Each partner must be listed and the percentage of ownership stated. If a general partner is wholly or partially owned by a legal entity and not a natural person, a narrative or diagram must be included that lists the names and titles of all meeting the definition of "managerial official," as contained in Texas Business Organizations Code, §1.002, and a description of the ownership of each legal entity must be provided. General partnerships that register as limited liability partnerships should provide the same information as that required for general partnerships.

(vi) Limited partnerships. Each partner, general and limited, fulfilling the requirements of subclauses (I) - (III) of this clause must be listed and the percentage of ownership stated.

(I) General partners. The applicant should provide the complete ownership, regardless of percentage owned, for all general partners. If a general partner is wholly or partially owned by a legal entity and not a natural person, a narrative or diagram must be included that lists the names and titles of all meeting the definition of "managerial official," as contained in Texas Business Organizations Code, §1.002, and a description of the ownership of each legal entity must be provided.

(II) Limited partners. The applicant should provide a complete list of all limited partners owning 10% or more of the partnership.

(III) Limited partnerships that register as limited liability partnerships. The applicant should provide the same information as that required for limited partnerships.

(vii) Trusts or estates. Each trustee or executor, as appropriate, must be listed.

(4) Registered agent. The registered agent must be provided by each applicant. The registered agent is the person or entity to whom any legal notice may be delivered. The agent must be a Texas resident and list an address for legal service. If the registered agent is a natural person, the address must be a different address than the business location address. If the applicant is a corporation or a limited liability company, the registered agent should be the one on file with the Office of the Texas Secretary of State. If the registered agent is not the same as the agent filed with the Office of the Texas Secretary of State, then the applicant must submit a certification from the secretary of the company identifying the registered agent. [~~Statutory Agent Disclosure. The statutory agent is the person or entity to whom any legal notice may be delivered. The agent must list a Texas address for legal service. If the statutory agent is an individual, the address must be a residential address.~~]

(5) Surety bond or insurance. An applicant must file with the OCCC [~~commissioner~~] either:

(A) - (B) (No change.)

(6) - (8) (No change.)

(9) Fingerprints.

(A) The applicant must provide a complete set of legible fingerprints for each person meeting the definition of "principal party" in §88.101 of this title (relating to Definitions [~~Definition~~]). All fingerprints must be submitted in a format prescribed by the OCCC and approved by the Texas Department of Public Safety and the Federal Bureau of Investigation.

(B) For limited partnerships, if the owners and principal parties [~~Disclosure of Owners and Principal Parties~~] under paragraph (3) of this subsection does not produce a natural person, the applicant must provide a complete set of legible fingerprints for individuals who are associated with the general partner as principal parties.

(C) - (E) (No change.)

§88.103. Processing of Application.

(a) Initial review. The agency will generally respond to incomplete applications within 14 calendar days of receipt stating that the application is incomplete and specifying the information required for acceptance.

(b) Complete application. An application is complete when:

(1) it conforms to the rules and the OCCC's [~~commissioner's~~] published instructions;

(2) - (3) (No change.)

(c) Failure to complete application. If a complete application has not been filed with the OCCC [~~commissioner~~] within 30 days after notice of deficiency has been sent to the applicant, the application may be denied.

(d) - (e) (No change.)

(f) Processing time.

(1) A registered provider application [~~The commissioner~~] will ordinarily be approved or denied [~~approve or deny a registered provider application~~] within a

maximum of 60 days after the date of filing of a completed application.

(2) More time may be taken [~~The commissioner may take more time~~] where good cause exists, as defined by Texas Government Code, §2005.004, for exceeding the established time period in paragraph (1) of this subsection.

§88.104. Updating Application and Contact Information [~~Amendments to Pending Application~~].

(a) Applicant's updates to registered provider application information. Before an application for registration is approved, an applicant must report to the OCCC any [~~Upon discovery of new or changed information, each applicant must provide the commissioner with information supplemental to that contained in the applicant's original application documents. Any action, fact, or~~] information that would require a materially different answer than that given in the original registered provider application and which relates to the qualifications for registration [~~must be reported to the commissioner~~] within 14 calendar [~~10 business~~] days after the person has knowledge of the [~~action, fact or~~] information.

(b) Contact information. Each applicant or registered provider is responsible for ensuring that all contact information on file with the OCCC is current and correct, including all mailing addresses, all phone numbers, and all e-mail addresses. It is a best practice for registered providers to regularly review contact information on file with the OCCC to ensure that it is current and correct.

§88.105. Relocation of Registered Provider Location.

A registered provider may move the business office from the registered provider location to any other location by giving notice of intended relocation to the OCCC [~~commissioner~~]. The notice must include the present address of the registered provider location, the contemplated new address of the registered provider location, and the approximate date of relocation.

[*~~§88.106. Designation of Inactive Status.~~*]

[~~A registered provider may cease operating under a debt management services provider registration and render the registration inactive by giving notice of the cessation of operations to the commissioner. Notification must be filed on the Registration Amendment Form for Debt Management Services Provider.~~]

§88.107. Fees.

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

(c) Registration amendments. A fee of $25 must be paid each time a registered provider amends a registration by changing the assumed name of the registered provider[~~,~~ ~~inactivating an active registration,~~] or relocating the registered provider location.

(d) Registration duplicates sent by mail. The fee for a registration duplicate to be sent by mail is $10.

(e) - (f) (No change.)

§88.108. Applications and Notices as Public Records.

Once a registration application or notice is filed with the OCCC [~~Office of Consumer Credit Commissioner (OCCC)~~], it becomes a "state record" under Texas Government Code, §441.180(11), and "public information" under Government Code, §552.002. Under Government Code, §§441.190, 441.191 and 552.004, the original applications and notices must be preserved as "state records" and "public information" unless destroyed with the approval of the director and librarian of the Texas State Library and Archives Commission [~~State Archives and Library Commission~~] under Government Code, §441.187. Under Government Code, §441.191, the OCCC may not return any original documents associated with a debt management services provider application or notice to the applicant or registered provider. An individual may request copies of a state record under the authority of the Texas Public Information Act, Government Code, Chapter 552.

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

(a) (No change.)

(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) - (3) (No change.)

(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 registered occupation. The OCCC may deny a registration application, or suspend or revoke a registration, if the applicant or registrant has been convicted of an offense that directly relates to the duties and responsibilities of a debt management services provider, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Providing debt management services involves making representations to consumers regarding the terms of the services, holding money entrusted to the provider, remitting money to third parties, [~~and~~] collecting charges in a legal manner, and compliance with reporting requirements to government agencies. Consequently, the following crimes are directly related to the duties and responsibilities of a registered provider and may be grounds for denial, suspension, or revocation: [~~crimes involving the misrepresentation of costs or benefits of a product or service, the improper handling of money or property entrusted to the person, failure to file a governmental report or filing a false report, or the use or threat of force against another person are directly related to the duties and responsibilities of a registrant 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 transaction 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) - (3) (No change.)

(d) - (e) (No change.)

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

(1) (No change.)

(2) a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42A.054 [~~art. 42.12, §3g~~], or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(3)-(4);

(3) - (5) (No change.)

Subchapter B. Annual Requirements

§88.201. Annual Renewal.

Not later than February 1, a registered debt management services provider may renew its registration by providing the following:

(1) an annual report, according to §88.202 of this title (relating to Annual Report);

(2) the fees required by §88.107(e) of this title (relating to Fees); and

(3) any other information required by the OCCC [~~commissioner~~].

§88.202. Annual Report.

(a) Each authorized debt management services provider must file an annual report under this section and must comply with all instructions from the OCCC [~~commissioner~~] relating to submitting the report.

(b) Each year, at the time of annual renewal, an authorized debt management services provider must file with the OCCC [~~commissioner~~], in a form prescribed by the OCCC [~~commissioner~~], a report that contains the following:

(1) the information required by Texas Finance Code, §394.205 (the OCCC may allow a provider to certify current use of previously submitted information required by this paragraph);

(2) - (3) (No change.)

(c) Upon request by the OCCC [~~commissioner~~], the provider must provide any other information the commissioner deems relevant concerning the provider's business and operations during the preceding calendar year.

Subchapter C. Operational Requirements

§88.302. Recordkeeping.

(a) Generally. A provider must maintain records required by Texas Finance Code, §394.205 by using either a paper or manual recordkeeping system, electronic recordkeeping system, or optically imaged recordkeeping system unless otherwise specified by statute or regulation. All required books and records must be reasonably available for inspection at any time by OCCC staff [~~the commissioner or the commissioner's authorized representatives~~].

(b) Availability of records. The OCCC [~~commissioner~~] may require that the provider make records available in the State of Texas for examination purposes.

(c) Debt management plan file. A licensee must maintain a paper or electronic file for each individual debt management plan under Texas Finance Code, Chapter 394, or be able to produce this information within a reasonable amount of time. The file must be maintained for at least three years after the date of the last service on the plan, as provided by Texas Finance Code, §394.205(a). The file must include the following documentation for each debt management plan:

(1) the written debt management services agreement described by Texas Finance Code, §394.209;

(2) any written educational information provided to the consumer under Texas Finance Code, §394.208(a)(1);

(3) the individualized financial analysis and initial debt management plan described by Texas Finance Code, §394.208(a)(2);

(4) an account history showing each payment made by the consumer, each amount charged by the provider, and each amount that the provider has disbursed to a creditor;

(5) any privacy notice provided under the Gramm-Leach-Bliley Act, 15 U.S.C. §§6801-6809, and Regulation P, 16 C.F.R. Part 1016;

(6) any document signed by the consumer in connection with the plan;

(7) any other documentation created or obtained by the provider in connection with the debt management plan.

(d) OCCC notice. A debt management services provider must provide the following notice to each consumer: "For questions or complaints about this transaction, contact the debt management services provider, (insert name of provider), at (insert provider's phone number and, at provider's option, one or more of the following: mailing address, fax number, website, e-mail address). The Office of Consumer Credit Commissioner (OCCC) is a state agency, and it enforces certain laws that apply to the provider. If a complaint or question cannot be resolved by contacting the provider, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov." A provider must provide this notice by one or both of the following methods:

(1) including the notice on each privacy notice that the provider is required to

provide to a consumer under state or federal law; or

(2) including the notice on each written agreement that the provider is required to provide to a borrower under Texas Finance Code, §394.209.

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 February 16, 2018.

Laurie B. Hobbs
Assistant General Counsel
Office of Consumer Credit Commissioner

C. OFFICE OF CONSUMER CREDIT COMMISSIONER

4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments in 7 TAC, Chapter 84, Concerning Motor Vehicle Installment Sales

PURPOSE: The purpose of the amendments to 7 TAC, Chapter 84 is to update and clarify rules regarding recordkeeping for motor vehicle retail installment transactions. The proposed amendments will help ensure that licensees maintain records that are necessary to verify compliance with the law, while also allowing some flexibility to account for the recordkeeping practices of licensees.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the amendments in 7 TAC, Chapter 84 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve for publication and comment the amendments in 7 TAC, Chapter 84.

Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 84. Motor Vehicle Installment Sales

The Finance Commission of Texas (commission) proposes amendments to 7 TAC, Chapter 84, §§84.707, 84.708, and 84.709, concerning Motor Vehicle Installment Sales. The proposed changes affect rules contained in Subchapter G, concerning Examinations.

In general, the purpose of the amendments to 7 TAC, Chapter 84 is to update and clarify rules regarding recordkeeping for motor vehicle retail installment transactions. The proposed amendments will help ensure that licensees maintain records that are necessary for the Office of Consumer Credit Commissioner (OCCC) to verify compliance with the law, while also allowing some flexibility to account for the recordkeeping practices of licensees.

The agency circulated an early draft of proposed changes to interested stakeholders. The agency then held a stakeholder meeting where attendees provided oral precomments. Based on input from stakeholders, the agency circulated a second draft of the proposed changes. In total, the agency received five written precomments. Certain concepts recommended by stakeholders have been incorporated into this proposal, and the agency appreciates the thoughtful input provided by stakeholders.

Proposed amendments to §§84.707(d)(2)(J), 84.708(e)(2)(K), and 84.709(e)(2)(D) specify an alternative method for maintaining copies of debt cancellation agreements. The amendments add the word "complete," in order to specify that a licensee is generally required to maintain a complete copy of the debt cancellation agreement in the retail installment sales transaction file. In addition, a proposed amendment to §84.708(e)(2)(D) adds the phrase "or takes assignment of" to specify that a licensee is required to maintain any debt cancellation agreement that it takes assignment of. As an alternative to the general requirement to maintain the complete agreement in the transaction file, the amendments allow a licensee to maintain any page of the agreement with transaction-specific information, a general master copy of the agreement, and policies and procedures to ensure that the master copy accurately reflects what was used in individual transactions. The alternative method for maintaining agreements is based on precomments in which stakeholders explained that it is typical for licensees to maintain only the first page of a debt cancellation agreement (containing signatures and transaction-specific information) in a particular transaction file, and to maintain a master copy of the agreement in general business files.

One precommenter requests guidance about what would constitute a verifiable method for ensuring that the master copy of the debt cancellation agreement is accurate, and noted that approved debt cancellation agreements are maintained by the OCCC. It is important for a licensee to have a complete copy of each debt cancellation agreement form it uses, in order to ensure that the licensee can comply with its responsibilities under the agreement. For example, the text of the debt cancellation agreement will state the method for calculating refunds, and this will determine how the licensee should calculate the refund in the event of prepayment in full

of the retail installment contract. Tex. Fin. Code §354.004(10), §354.007(f). Licensees should not rely on the OCCC to re-create the version of the agreement that was used in a particular transaction. If licensees do not maintain at least a master copy of the debt cancellation agreement, then there is no way for the OCCC to verify that licensees are using approved agreements. Regarding the verifiable method for ensuring accuracy, the method could vary depending on whether a licensee uses a paper system, an electronic system, or a combination. The policies and procedures should describe how the licensee verifies that the master copy is the same version of the agreement that was provided to a particular buyer. In the case of retail sellers that offer debt cancellation agreements, this could include an explanation of how a particular buyer's agreement is generated from the master copy. If a licensee uses multiple forms or multiple revisions of the same form, then the licensee's policies and procedures should include some form of version control, to ensure that the licensee has accounted for differences among forms and can identify the specific form used in any particular transaction.

Proposed new §§84.707(d)(2)(Q), 84.708(e)(2)(V), and 84.709(e)(2)(K) specify that a licensee must maintain any privacy notice provided under the Gramm-Leach-Bliley Act, 15 U.S.C. §§6801-6809, and its implementing regulations. The proposal explains that a licensee must either maintain any privacy notice in the transaction file, or must maintain a general master copy of the notice and policies and procedures to ensure that the master copy accurately reflects what was used in individual transactions.

These amendments regarding the privacy notice are a response to an official interpretation request that the agency received from a law firm representing a client that provides training to licensed motor vehicle dealers. The requestor asks whether a privacy notice must be maintained in the retail installment sales transaction file. The request was published in the *Texas Register* on December 1, 2017 (42 Tex Reg 6832). The agency did not receive any briefs or proposals on the request by the 31-day deadline. The agency requested additional information from stakeholders on how to maintain copies of privacy notices. In a precomment, one stakeholder explains: "Privacy notices are not stored with individual customer accounts because the notice is not unique and is provided to every customer. Licensees maintain the current version of the privacy notice, as well as past notices." Based on this precomment, the proposed amendments allow a licensee to either maintain the privacy notice in the transaction file, or to maintain a general copy together with policies and procedures. As with the debt cancellation agreements described previously, if a licensee uses multiple forms or multiple revisions of the same form, then the licensee's policies and procedures should include some form of version control, to ensure that the licensee has accounted for differences among forms and can identify the specific form used in any particular transaction.

One precommenter questions the OCCC's authority to require licensees to keep the privacy notice, because the privacy notice is a federal requirement and is not specifically described by Texas Finance Code, Chapter 348. The OCCC believes that the commission and OCCC have this authority for three reasons. First, Texas Finance Code, §348.008(b) and §348.009(b) explain that applicable statutes and federal disclosure requirements apply to a Chapter 348 retail installment transaction. Second, the OCCC has a responsibility to determine that the

financial responsibility and general fitness of licensees are sufficient to warrant the belief that the business will be operated lawfully and fairly, and that the forms and contracts used by licensees are appropriate and adequate to protect the interests of buyers. Tex. Fin. Code §348.504(a)-(b). These determinations are part of the license approval process, and if the OCCC later discovers that these conditions have not been met, then the OCCC has the authority to revoke the business's license. Tex. Fin. Code §348.508(3). Third, the OCCC has statutory authority to "investigate the license holder's transactions and records, including books, accounts, papers, and correspondence, to the extent the transactions and records pertain to the business regulated under this chapter." Tex. Fin. Code §348.514. A privacy notice pertains to a Chapter 348 retail installment transaction, because it describes how the licensee will use the buyer's personal financial information obtained in connection with the transaction. For these reasons, rules requiring licensees to maintain privacy notices are consistent with the commission's authority to adopt rules to enforce Chapter 348, as provided by Texas Finance Code, §11.304 and §348.513(a)(1).

Proposed amendments to §84.708(e)(3)(A)(iv) and §84.709(e)(3)(A)(iv) specify that a licensee must maintain payment histories with itemized payment entries and payment breakdowns. The purpose of these amendments is to ensure that OCCC staff can verify that the licensee has complied with the provisions of the Texas Finance Code that limit authorized charges.

Christina Cuellar Hoke, Manager of Accounting, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of administering the amendments.

Rudy Aguilar, Director of Consumer Protection, has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be that the commission's rules will be more easily understood by licensees required to comply with the rules, and will be more easily enforced. In addition, the amendments will provide additional flexibility to account for different ways in which licensees maintain records.

The agency anticipates that any cost to persons who are required to comply with the amendments will be minimal. In general, licensees are already required to maintain retail installment transaction records under current §84.707(d)(2), §84.708(e)(2), and §84.709(e)(2), which require licensees to "maintain documents which show the licensee's compliance with applicable law . . . includ[ing] applicable state and federal laws and regulations." At the stakeholder meeting and in precomments, stakeholders indicated that licensees are currently maintaining portions of debt cancellation agreements with transaction-specific information, are currently maintaining master copies of privacy notices, and are currently able to produce payment histories in response to an examination or investigation. Based on these current practices identified by stakeholders, the agency anticipates that any additional cost of complying with the proposed amendments will be minimal.

For licensees that do not have current policies and procedures to address recordkeeping of debt cancellation agreements and privacy notices, there may be some labor costs related to developing policies and training employees. These costs could vary among licensees, but it is anticipated that any labor costs would be minimal. It is important

to note that debt cancellation agreements are an optional product. Licensees have the option of not offering debt cancellation agreements, in which case there will be no costs incurred for those licensees to maintain the agreements. Some of the costs of recordkeeping are offset by the commission received by the retail seller for offering and selling a debt cancellation agreement. In some other cases, a holder also receives a portion of the debt cancellation agreement fee, which can also offset some recordkeeping costs for the holder.

In order to obtain more complete information, the agency would like to invite comments from licensees on any costs involved to comply with the proposed amendments, as well as any alternatives to lessen those costs while achieving the purpose of the proposed amendments.

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

During the first five years the proposed amendments will be in effect, the amendments will not create or eliminate a government program. Implementation of the amendments will not require the creation of new employee positions or the elimination of existing employee positions. The proposed rule changes do not require an increase or decrease in fees paid to the agency. The proposal amends §§84.707, 84.708, and 84.709, resulting in certain requirements that are expanded and certain requirements that are limited, as discussed previously in this proposal. The proposal does not repeal any existing regulations. The proposed rule changes do not increase or decrease the number of individuals subject to the motor vehicle regulations in Chapter 84. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of business on the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

These amendments are proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 348.

Title 7, Texas Administrative Code

Chapter 84, Motor Vehicle Installment Sales

§84.707. Files and Records Required (Retail Sellers Assigning Retail Installment Sales Contracts).

(a) - (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) - (I) (No change.)

(J) for a retail installment sales transaction in which the licensee issues a debt cancellation agreement, a complete copy of the debt cancellation agreement provided to the retail buyer. As an alternative to maintaining a complete copy of the debt cancellation agreement in the retail installment sales transaction file, the licensee may maintain all of the following:

(i) in the retail installment sales transaction file, a copy of any page of the debt cancellation agreement with a signature, a transaction-specific term, the cost of the debt cancellation agreement, or any blank space that has been filled in;

(ii) in the licensee's general business files, a complete master copy of each debt cancellation agreement form used by the licensee during the period described by paragraph (7) of this subsection;

(iii) in the licensee's general business files, policies and procedures that show a verifiable method for ensuring that the master copy of the debt cancellation agreement accurately reflects the debt cancellation agreement used in each individual transaction.

(K) - (P) (No change.)

(Q) any privacy notice provided under the Gramm-Leach-Bliley Act, 15 U.S.C. §§6801-6809, and its implementing regulations, the Federal Trade Commission's Privacy Rule, 16 C.F.R. Part 313, and Regulation P, 16 C.F.R. Part 1016. As an alternative to maintaining the privacy notice in the retail installment sales transaction file, the licensee may maintain both of the following in its general business files:

(i) a complete master copy of each privacy notice form used by the licensee during the period described by paragraph (7) of this subsection;

(ii) policies and procedures that show a verifiable method for ensuring that the master copy of the privacy notice

accurately reflects the privacy notice used in each individual transaction.

(3) - (7) (No change.)

§84.708. Files and Records Required (Retail Sellers Collecting Installments on 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) - (J) (No change.)

(K) for a retail installment sales transaction in which the licensee issues a debt cancellation agreement, a complete copy of the debt cancellation agreement provided to the retail buyer. As an alternative to maintaining a complete copy of the debt cancellation agreement in the retail installment sales transaction file, the licensee may maintain all of the following:

(i) in the retail installment sales transaction file, a copy of any page of the debt cancellation agreement with a signature, a transaction-specific term, the cost of the debt cancellation agreement, or any blank space that has been filled in;

(ii) in the licensee's general business files, a complete master copy of each debt cancellation agreement form used by the licensee during the period described by paragraph (10) of this subsection;

(iii) in the licensee's general business files, policies and procedures that show a verifiable method for ensuring that the master copy of the debt cancellation agreement accurately reflects the debt cancellation agreement used in each individual transaction.

(L) - (U) (No change.)

(V) any privacy notice provided under the Gramm-Leach-Bliley Act, 15 U.S.C. §§6801-6809, and Regulation P, 16 C.F.R. Part 1016. As an alternative to maintaining the privacy notice in the retail installment sales transaction file, the licensee may maintain both of the following in its general business files:

(i) a complete master copy of each privacy notice form used by the licensee during the period described by paragraph (10) of this subsection;

(ii) policies and procedures that show a verifiable method for ensuring that the master copy of the privacy notice accurately reflects the privacy notice used in each individual transaction.

(3) Account record for each retail installment sales contract (including payment and collection contact history). A separate paper, or an electronic record, must be maintained covering each retail installment sales contract. The paper or electronic account record must be readily available by reference to either a retail buyer's name or account number.

(A) Required information. The account record for each retail installment sales contract must contain at least the following information, unless stated otherwise:

(i) - (iii) (No change.)

(iv) payment history information:

(I) itemized payment entries showing date payment received; dual postings are acceptable if date of posting is other than date of receipt;

(II) for a transaction using the true daily earnings method, if requested during an examination or investigation, a breakdown for each payment showing the amount applied toward principal, time price differential, late charges, and any other charges;

(III) [~~(II)~~] if requested during an examination or investigation, a payoff amount that denotes amounts applied to principal, time price differential, default, deferment, or other authorized charges;

(v) - (vi) (No change.)

(B) (No change.)

(4) - (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) - (C) (No change.)

(D) for a retail installment sales transaction in which the licensee issues or takes assignment of a debt cancellation agreement, a complete copy of the debt cancellation agreement provided to the retail buyer. As an alternative to maintaining a complete copy of the debt cancellation agreement in the retail installment sales transaction file, the licensee may maintain all of the following:

(i) in the retail installment sales transaction file, a copy of any page of the debt cancellation agreement with a signature, a transaction-specific term, the cost of the debt cancellation agreement, or any blank space that has been filled in;

(ii) in the licensee's general business files, a complete master copy of each debt cancellation agreement form used by the licensee during the period described by paragraph (9) of this subsection;

(iii) in the licensee's general business files, policies and procedures that show a verifiable method for ensuring that the master copy of the debt cancellation agreement accurately reflects the debt cancellation agreement used in each individual transaction.

(E) - (J) (No change.)

(K) any privacy notice provided under the Gramm-Leach-Bliley Act, 15 U.S.C. §§6801-6809, and Regulation P, 16 C.F.R. Part 1016. As an alternative to maintaining the privacy notice in the retail installment sales transaction file, the licensee may maintain both of the following in its general business files:

(i) a complete master copy of each privacy notice form used by the licensee during the period described by paragraph (9) of this subsection;

(ii) policies and procedures that show a verifiable method for ensuring that the master copy of the privacy notice accurately reflects the privacy notice used in each individual transaction.

(3) Account record for each retail installment sales contract (including payment and collection contact history). A separate paper, or an electronic record, must be maintained covering each retail installment sales contract. The paper or electronic account record must be readily available by reference to either a retail buyer's name or account number.

(A) Required information. The account record for each retail installment sales contract must contain at least the following information, unless stated otherwise:

(i) - (iii) (No change.)

(iv) payment history information:

(I) itemized payment entries showing date payment received; dual postings are acceptable if date of posting is other than date of receipt;

(II) for a transaction using the true daily earnings method, if requested during an examination or investigation, a breakdown for each payment showing the amount applied toward principal, time price differential, late charges, and any other charges;

(III) if requested during an examination or investigation, a payoff amount that denotes amounts applied to

principal, time price differential, default, deferment, or other authorized charges;

(v) - (vi) (No change.)

(B) - (C) (No change.)

(4) - (9) (No change.)

(f) (No change.)

Certification

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

Issued in Austin, Texas on February 16, 2018.

Laurie B. Hobbs
Assistant General Counsel
Office of Consumer Credit Commissioner

C. OFFICE OF CONSUMER CREDIT COMMISSIONER

5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments, New Rules, and a Repeal in 7 TAC, Chapter 85, Subchapter B, Concerning Rules for Crafted Precious Metal Dealers

PURPOSE: The purpose of the proposed rule changes is to implement the registration system transition to the OCCC online registration portal, to update and streamline registration procedures, to require current application and contact information, to update late renewal procedures, and to make technical corrections.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the amendments, new rules, and repeal in 7 TAC, Chapter 85, Subchapter B for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve for publication and comment the amendments, new rules, and repeal in 7 TAC, Chapter 85, Subchapter B.

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

The Finance Commission of Texas (commission) proposes amendments to §§85.1002, 85.1003, 85.1004, 85.1008, 85.1011, and 85.2002; proposes new 85.1007 and 85.1012; and proposes the repeal of 85.1007 in Subchapter B of 7 TAC, Chapter 85, concerning the registration of crafted precious metal dealers.

The purpose of the proposed rule changes is to implement the registration system transition to the Office of Consumer Credit Commissioner's (OCCC) online registration portal, to update and streamline registration procedures, to require current application and contact information, to update late renewal procedures, and to make technical corrections.

The OCCC circulated an early draft of proposed changes to interested stakeholders, and then held a stakeholder meeting and webinar regarding the registration system transition and accompanying rule changes. The OCCC did not receive any informal oral or written precomments on the rule text draft.

The individual purposes of the proposed changes to each section are provided in the following paragraphs.

Section 85.1002 outlines the requirements to file a new application. Proposed amendments throughout §85.1002 add references to the agency's acronym, OCCC. The agency believes that the use of "OCCC" will provide better clarity to the rules when the context calls for action by the agency, as opposed to the commissioner specifically.

Also in §85.1002, proposed amendments remove unnecessary language related to current registration system that is being replaced. In particular, the phrase "online Metals Registration Program" is proposed for deletion from subsections (a) and (b). In subsection (c)(3), the requirement to provide a list of locations would also be deleted, as each permanent and temporary location will be registered separately by the crafted precious metal dealer.

In §85.1002(c)(4), a proposed amendment removes the requirement to provide hours of operation for temporary locations. Additionally, duplicative language regarding responsible persons is proposed for deletion.

Section 85.1003 concerns the processing of an application. Corresponding changes to those described under §85.1002 are also included in §85.1003(a)(1) to continue use of the agency's acronym. Current subsections (b) and (c) are proposed for deletion to update registration procedures, as they relate to application notification and withdrawal procedures that are no longer needed.

Also in §85.1003, a proposed amendment describes how a crafted precious metal dealer must print its registration certificate and display it in accordance with current rule §85.1006.

Section 85.1004 concerns the relocation of a permanent registered location. A proposed amendment to this section removes references to the DPS system and updates the process for relocating a permanent registered location.

Section 85.1005 relates to notice requirements for a registered dealer. The current language of §85.1005 has been reorganized into proposed subsection (c), regarding the OCCC's reasonable reliance on the dealer's mailing and e-mail addresses currently on file. The proposed addition of subsection (a) requires a dealer to notify the OCCC of material changes in application information, including a change in assumed name or the person responsible for day-to-day operations. The proposed addition of subsection (b) explains that each dealer must keep its contact information up-to-date. This provision is intended to ensure that the agency can contact registered dealers, and so that the agency can carry out its responsibility to monitor dealers and ensure compliance, as provided by Texas Occupations Code, §1956.0613.

Section 85.1007 is proposed for repeal to be replaced with a revised and reorganized rule that reflects the amended procedures for annual renewals. The new rule incorporates renewal and expiration based on calendar year, as opposed to being based on the anniversary date of each particular registration.

Proposed new §85.1007(a) outlines annual renewal generally for permanent registered locations. Each calendar year after initial registration, a dealer must renew permanent locations, as these locations will expire on December 31 of each year.

In proposed new §85.1007(b), the information necessary to complete the renewal procedure is described, including required fees and other necessary information.

Several changes are proposed in new §85.1007(c) concerning the late renewal process for permanent locations. In subsection (c)(1), there would be no additional late renewal fee if a dealer renews by the 30th day after expiration (i.e., January 30 of the following year). Under subsection (c)(2), if a dealer renews between 31 and 180 days after expiration, there would be a late renewal fee of $50. This maintains the current late renewal fee, but extends the late renewal period by 30 days. The requirement to obtain a new permanent registered location if not renewed by the late renewal deadline is maintained in proposed subsection (c)(3) (current (c)(2)).

The administrative penalty provision authorized by Texas Occupations Code, §1956.0615 has been maintained in proposed §85.1007(d) (current (c)(3)). Proposed §85.1007(e) adds a specific statement that a registration for a temporary location is not renewable.

Section 85.1008 concerns temporary location amendments. Proposed amendments to this section revise language to relocate a temporary location, and remove the requirement to provide hours of operation for temporary locations, consistent with the change proposed in §85.1002. Additionally, language related to renewal of a temporary location is proposed for deletion, as temporary locations will not be renewable under proposed new §85.1007.

Section 85.1011 outlines the fees required for permanent and temporary

locations, as well as amendments to each type of registration. The dollar amounts required for all registration fees have been maintained in this proposal. The proposed amendments in §85.1011 relate to updating the process to be used regarding renewal, amendments, and relocation.

Proposed new 85.1012 is a temporary rule specifically related to the registration system transition. Subsection (a) describes how registrations obtained on or before June 30, 2018 will be effective for one year, and will expire on the anniversary of the registration. Subsection (b) outlines the registration start date of July 1, 2018, and the first renewal period under the OCCC online portal with registrations expiring on December 31, 2019. Subsection (c) states that §85.1012, i.e. the rule itself, would expire on January 1, 2020.

Section 85.2002 outlines the process for submitting required transaction reports to local law enforcement. Under Texas Occupations Code, §1956.062(d)(2) and §1956.063, a crafted precious metal dealer is required to submit a report to local law enforcement for each transaction no later than 48 hours after the transaction. A proposed amendment to §85.2002(b) deletes current paragraph (3), which states that a dealer may submit transaction reports through the Metals Registration Program. Crafted precious metal dealers do not currently report individual transactions through DPS's system. The proposal retains the provisions in current §85.2002(b)(1) and (2) stating that the dealer may submit transaction reports to local law enforcement by paper or electronically, in a manner agreed to by local law enforcement.

Christina Cuellar Hoke, Manager of Accounting, has determined that for the first five-year period the rule changes are in effect there will be no anticipated costs for state or local government as a result of administering the rule changes. Any costs associated with the registration system change are part of normal operating expenditures and have been previously allocated as part of the OCCC's budget to manage and regulate the crafted precious metal dealer industry.

Ms. Hoke has also determined that for the first five-year period the rule changes are in effect there will be a small decline in the agency's revenue as a result of administering the rule changes. The proposed rule changes as drafted will transition registrants from an anniversary date renewal process to a calendar year renewal process. In order to accomplish the transition, registrants who establish registration on or before June 30, 2018, will need to renew at their one-year anniversary expiration, and renew in December 2019. Registrants currently have the option to renew 60 days before and 60 days following the anniversary date. Registrants who renew on or after July 1, 2018 will renew by December 31, 2019. Ms. Hoke has determined that the net effect of these staggered renewal dates is a projected decline in revenue to the OCCC of $3,300 for fiscal year 2019 (the first fiscal year these rule changes are in effect). After the December 31, 2019 renewal cycle and for the remaining four fiscal years the rule changes are in effect, all renewal cycles will be synchronized and annual registration revenue will normalize to its previous level.

Additionally, Ms. Hoke has determined that for the first five-year period the rule changes are in effect there will be no fiscal implications overall for local government as a result of administering the rule changes.

Rudy Aguilar, Director of Consumer Protection, has determined that for each year of the first five years the rule changes are in effect, the public benefits anticipated as a result of the changes will be that the commission's rules will be more easily understood by applicants and registrants, will create increased efficiencies, will reflect current registration procedures, and will be more easily enforced. The proposed amendments to §85.1005 requiring updated application and contact information will result in the agency's enhanced ability to fulfill its regulatory duties. Additionally, all of the proposed rule changes relating to the transition will benefit crafted precious metal dealers, as the OCCC online portal will be better able to assist dealers with the registration process.

Additional economic costs may be incurred in order for registrants to comply with this proposal. The agency anticipates that any costs resulting from the proposal would be minimal and involve complying with proposed new §85.1007 and §85.1012, which requires registrants to transition from an anniversary date renewal process to a calendar year renewal process.

The potential economic costs to comply with the proposal will depend on the anniversary renewal date for the particular dealer's permanent location registration. Registrants who establish registration on or before June 30, 2018, will need to renew at their one-year anniversary expiration, and renew in December 2019. Registrants who renew on or after July 1, 2018 will renew by December 31, 2019.

The anticipated costs for dealers who will renew before June 30 will be $50 for each permanent registered location that could have a renewal cycle between 6 and 11 months.

Dealers with an anniversary renewal date on or after July 1, 2018 will receive the benefit of a registration for longer than a 12-month period. For example, if a dealer's current registration will expire on July 31, 2018 under the anniversary date renewal process, the registration would have expired on July 31, 2019. However, under proposed §85.1012(b)(2), the registration for this dealer would not expire until December 31, 2019. Hence, this dealer's renewal fee would have paid for 17 months, as opposed to 12 months.

The OCCC believes that the registration system transition implemented by the proposed rule changes is necessary so that the agency can provide enhanced customer service to dealers regarding the registration process, and allow the agency more direct access to registration data. In addition, the agency has maintained the registration fee amounts in §85.1011 to better enable dealers to adjust the timing change of their renewal while budgeting for the same fees.

For all registered dealers, regardless of anniversary renewal date, there may be some minimal anticipated costs to train personnel regarding the OCCC online registration portal and calendar year renewal process. These costs will vary widely among registrants depending on the number of employees who must be trained, as well as the labor costs associated with supervisors or other personnel assigned to renew or maintain the registrations for a crafted precious metal dealer.

For those dealers who may need to use the late renewal process in proposed new §85.1007(c), certain benefits are included in

the revised late renewal procedure. First, §85.1007(c)(1) as proposed removes the late renewal fee if the dealer renews its registration by the 30th day after expiration (i.e., on or before January 30). Additionally, proposed §85.1007(c)(2) extends the late renewal period by 30 days from the current rule, while maintaining the late renewal fee.

Overall, the agency anticipates that any costs involved to comply with proposed new §85.1007 and §85.1012 will be minimal for most registrants. As noted earlier, the anticipated costs for all dealers may involve personnel training, and for certain dealers, $50 for each permanent registered location that has a shorter renewal cycle.

In order to obtain more complete information, the agency would like to invite comments from registrants on any costs involved to comply with proposed rule changes, as well as any alternatives to lessen those costs while achieving the purpose of the proposal.

The agency believes that the majority of crafted precious metal dealers affected by the proposal are small or micro-businesses, between 500 to 1,500 registered dealers. The agency also believes that some dealers are located in rural communities, between 0 to 50 registered locations, an estimate of less than 0.05% of the total registered dealers. As described in the preceding paragraphs, the minimal costs of personnel training and the impact of a shorter registration period for certain dealers may have an economic impact on small business, micro-businesses, or rural communities resulting from this proposal. The agency does not believe the economic impact to be adverse on small or micro-businesses as compared to the impact on large businesses.

To minimize potential costs and any adverse impact on small business, micro-businesses, or rural communities, the OCCC licensing staff is available by phone and email for assistance throughout the registration system transition and thereafter. Shortly before the July 1, 2018 transition date, the OCCC plans to obtain the most current registration list and will provide notice to all registrants before the OCCC portal is activated, and before the December 31, 2019 first renewal period.

In order to obtain more complete information concerning the economic effect of these rule changes, the agency invites comments from interested stakeholders and the public on any economic impact on small business, micro-businesses, or rural communities not described in this proposal. The agency also invites comments on any alternative methods of achieving the purpose of this proposal to minimize the impact on small business, micro-businesses, or rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. The proposed rule changes result in a decrease of $3,300 in fees paid to the agency during fiscal year 2019. The proposal creates new §85.1012, a temporary rule that would expire on January 1, 2020, after the registration system transition. The proposal amends §§85.1002, 85.1003, 85.1004, 85.1008, 85.1011, and 85.2002, resulting in certain requirements that are expanded and certain requirements that are limited, as discussed previously in this proposal. The proposal repeals and replaces the current rule at §85.1007,

resulting in certain requirements that are expanded and certain requirements that are limited, as discussed previously in this proposal. The proposed rule changes do not increase or decrease the number of individuals subject to the crafted precious metal dealer regulations in Chapter 85, Subchapter B. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of business on the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The rule changes are proposed under Texas Occupations Code, §1956.0611, which authorizes the Finance Commission to adopt rules necessary to implement and enforce Texas Occupations Code, Chapter 1956, Subchapter B, regarding Sale of Crafted Precious Metal to Dealers. The rule changes are also proposed under Texas Occupations Code, §1956.0612(f), which authorizes the Consumer Credit Commissioner to prescribe the registration form.

The statutory provisions affected by the proposed rule changes are contained in Texas Occupations Code, Chapter 1956, Subchapter B, concerning Sale of Crafted Precious Metal to Dealers.

Title 7, Texas Administrative Code

Chapter 85, Pawnshops and Crafted Precious Metal Dealers

Subchapter B. Rules for Crafted Precious Metal Dealers

Division 1. Registration Procedures

§85.1002. Filing of New Application.

(a) New application. An application for issuance of a new crafted precious metal dealer registration must be submitted as prescribed by the OCCC [~~commissioner~~] at the date of filing and in accordance with the OCCC's [~~commissioner's~~] instructions.

(b) Required submission to OCCC [~~online Metals Registration Program~~]. Each application for a new crafted precious metal dealer registration must be filed with the OCCC [~~online Metals Registration Program~~].

(c) Required information. The application must include the following information and any other information required by the OCCC [~~commissioner~~]. All questions must be answered.

(1) Responsible persons. The application must list the person responsible for the day-to-day operation of the applicant's permanent registered location and a responsible person for each temporary location.

(2) Assumed names. For any applicant that does business under an "assumed name" as that term is defined in

Texas Business and Commerce Code, §71.002, the applicant must provide all assumed names used.

(3) Permanent registered location required. [~~List of locations. Each applicant must provide a list of each location in this state at which the person will conduct business as a crafted precious metal dealer.~~] A dealer must have at least one, and may have more than one, permanent registered location. If none of a dealer's locations satisfies the permanent registered location definition contained in §85.1001 of this title (relating to Definitions), the dealer must designate one location to be the permanent registered location.

(4) Temporary locations. For each temporary location, the dealer must provide the approximate dates [~~and hours~~] of operation at each [~~in the~~] temporary location [~~and the name of the person responsible for on-site operations and compliance with applicable laws~~].

§85.1003. Processing of Application.

(a) Complete application. An application is complete when:

(1) the application conforms to the rules and the OCCC's [~~commissioner's~~] published instructions;

(2) all fees have been paid; and

(3) all requests for additional information have been satisfied.

[~~(b) Notification. Within 30 days of receiving an incomplete application for registration, the OCCC will provide written notice to the applicant stating that the application is incomplete and specifying the additional information required for completion.~~]

[~~(c) Application considered withdrawn. If the OCCC requests additional information required to complete an application and the applicant does not respond within 30 days, the application will be considered withdrawn. If an application is considered withdrawn, then the applicant must reapply under §85.1002 of this title (relating to Filing of New Application) in order to obtain a registration.~~]

(b) [~~(d)~~] Certificate. When an application is complete, the OCCC will issue a notice to [~~certificate of registration~~] to the crafted precious metal dealer. The crafted precious metal dealer must print its registration certificate through the OCCC online registration portal and display its registration in accordance with §85.1006 of this title (relating to Registration Display).

§85.1004. Relocation of Registered Location.

A registered crafted precious metal dealer may amend a registration to relocate a permanent registered location [~~move a business office from the registered location to any other location by amending the dealer's record in the Metals Registration Program~~]. An amendment fee under §85.1011 of this title (relating to Fees) is required at the time of relocation.

§85.1005. Contact Information and Notice.

(a) Updates to application information. A crafted precious metal dealer must report to the OCCC any information that would require a different answer than that given in the original application within 30 calendar days after the crafted precious metal dealer

has knowledge of the information, if the information relates to any of the following:

(1) the name or any assumed name of the crafted precious metal dealer; or

(2) the person responsible for day-to-day operations at any permanent or temporary location.

(b) Contact information. Each crafted precious metal dealer is responsible for ensuring that all contact information on file with the OCCC is current and correct, including all mailing addresses, all phone numbers, and all e-mail addresses. It is a best practice for crafted precious metal dealers to regularly review contact information on file with the OCCC to ensure that it is current and correct.

(c) Notice. The OCCC may rely on the mailing and e-mail addresses currently on file for all purposes relating to notification. The failure to maintain a current mailing or e-mail address with the OCCC is not a defense to any action based on a crafted precious metal dealer's failure to respond to the OCCC.

§85.1007. Annual Renewal. {{This section will replace current §85.1007, which will be repealed.}}

(a) Generally. For each calendar year following the initial registration for a permanent registered location, a crafted precious metal dealer must renew the registration annually. A registration for a permanent registered location expires on December 31 of each year.

(b) Renewal procedure. A crafted precious metal dealer may renew its registration for a permanent registered location by providing the following:

(1) the fees required by §85.1011 of this title (relating to Fees); and

(2) any information required by the OCCC.

(c) Late renewal.

(1) If a crafted precious metal dealer renews its registration on or before the 30th day following expiration (i.e., on or before January 30), then there is no late renewal fee.

(2) If a crafted precious metal dealer renews its registration after the 30th day following expiration, but on or before the 180th day following expiration, then the dealer must pay a late renewal fee of $50 for each permanent registered location, in addition to the fees described by §85.1011 of this title.

(3) A registration for a permanent registered location may not be renewed after the 180th day following expiration. In order to obtain a registration, the crafted precious metal dealer must reapply under §85.1002 of this title (relating to Filing of New Application).

(d) Administrative penalty. If a person has engaged in the purchase of crafted precious metal while its registration was not effective, the person may be subject to an administrative penalty under Texas Occupations Code, §1956.0615.

(e) Temporary locations. A registration for a temporary location is not renewable.

§85.1008. Temporary Location Amendments.

A dealer may amend a registration to relocate a temporary location [~~to add one or more temporary locations~~] after the initial application [~~or after a renewal~~]. In order to amend its registration, a dealer must provide:

(1) the fee required by §85.1011 of this title (relating to Fees);

(2) the approximate dates [~~and hours~~] of operation for each temporary location; and

(3) the name of the person responsible for on-site operations and compliance with applicable laws at each temporary location.

§85.1011. Fees.

(a) Fee for permanent registered locations. In connection with a new application or an annual renewal, a crafted precious metal dealer must pay a $50 fee for each permanent registered location.

(b) Fee for temporary locations. In connection with a new application for a temporary location [~~or an annual renewal~~], a crafted precious metal dealer must pay a $25 fee for each temporary location.

(c) Amendments to permanent registered location. In order to amend a registration by changing the assumed name of the registrant or relocating a permanent registered location, a crafted precious metal dealer must pay a $25 fee.

(d) Amendments to temporary location [~~Temporary location additions~~]. In order to amend a registration by relocating a temporary location [~~to add one or more temporary locations after the initial application or after a renewal~~], a crafted precious metal dealer must pay a fee of $25 for each amended [~~added~~] location.

(e) Fees nonrefundable, nontransferable, and not prorated. All fees paid relating to a crafted precious metal dealer's registration with the OCCC are nonrefundable and nontransferable. All fees are fixed and will not be prorated based on the date of the dealer's application.

(f) Nonsufficient funds fee. As provided by Texas Business and Commerce Code, §3.506, the OCCC may charge a fee for nonsufficient funds if an applicant provides a payment device that is dishonored.

§85.1012. Registration System Transition.

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

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

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

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

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

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

(c) Expiration of section. This section will expire on January 1, 2020.

§85.2002. Submission of Transaction Report Form and Records.

(a) Copy to seller required. The dealer must provide a complete copy of the transaction report form and any images used under §85.2001(a)(9)(B) of this title (relating to Transaction Report Form and Records) to the seller with respect to that seller's transaction.

(b) Paper or electronic submission. Within 48 hours of each transaction, the dealer must submit, in a manner approved by local law enforcement, either:

(1) a printed copy of the transaction report form and any images used under §85.2001(a)(9)(B) of this title to local law enforcement; or

(2) an electronic copy of the transaction report form and any images used under §85.2001(a)(9)(B) of this title to local law enforcement. [~~; or~~]

[~~(3) an electronic copy of the transaction report form to the online Metals Registration Program. If the dealer submits the form to the Metals Registration Program, then the dealer must also notify local law enforcement in writing, within 48 hours of the transaction, that it has submitted a transaction report form to the Metals Registration Program and provide to local law enforcement either a paper or electronic copy of any images used under §85.2001(a)(9)(B) of this title.~~]

Certification

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

Issued in Austin, Texas on February 16, 2018.

Laurie B. Hobbs
Assistant General Counsel
Office of Consumer Credit Commissioner

D.

Texas Department of Banking

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Charles G. Cooper
Commissioner

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

To: Finance Commission Members

From: Kurt Purdom, Director of Bank & Trust Supervision

Date: February 1, 2018

Subject: Summary of the Bank & Trust Supervision Division Activities

Bank and Trust Supervision					FY 2018							
	8/31/2016		8/31/2017		11/30/2017		2/28/2018		5/31/2018		8/31/2018	
Industry Profile *(# / Assets in billions)*												
# Banks	247	$248.3	240	$252.9	240	$257.1						
# Trust Co. (1)	19	$101.4	17	$108.5	18	$110.0						
# FBA/FBB	10	$70.0	10	$56.1	8	$64.7						
Examinations Performed												
Banks	105		103		24							
Trust Co.	31		26		6							
FBA/FBB	2		3		0							
Bank Uniform Financial Institution Composite Ratings												
1	126	51.0%	123	51.3%	121	50.4%						
2	109	44.1%	104	43.3%	105	43.8%						
3, 4, & 5	12	4.9%	12	5.0%	13	5.4%						
Non-Rated	0	-	1	0.4%	1	0.4%						

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

Problem banks, which the Department considers to be any bank with a Uniform Financial Institutions Composite Rating of 3, 4, or 5, reflect a stable trend. As of this writing, problem institutions total 12. This level is consistent with last fiscal year-end and is well below the peak number of problem banks experienced during the last recession. The level of problem banks is in line with the normal range of between 3% and 5% of the total number of institutions. We anticipate that the number of problem institutions will continue to slowly reduce over the next six months.

Enforcement Actions Outstanding *(Number outstanding as of the date indicated)*			**FY 2018**			
	8/31/2016	**8/31/2017**	**11/30/2017**	**2/28/2018**	**5/31/2018**	**8/31/2018**
Banks - Safety and Soundness						
Formal	0	2	2			
Informal	19	23	23			
Banks - Bank Secrecy Act (BSA)						
Formal	0	0	0			
Informal	0	2	1			
Banks - Information Technology (IT)						
Formal	0	0	0			
Informal	0	2	2			
Trust Departments of Banks and Trust Companies						
Formal	0	0	0			
Informal	3	1	1			
Total Enforcement Actions Outstanding						
Formal	0	2	2			
Informal	22	28	27			
Total	**22**	**30**	**29**			

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 2017**	**FY 2018** *(YTD – December 2017)*
Commercial Banks (All / DOB Only)	91% / 98%	97% / 100%
IT	92% / 100%	96% / 100%
Trust	91% / 100%	100% / 100%
Foreign Banks *(FRB)*	100%	100%
Trust Companies *(DOB)*	100%	100%
IT	100%	100%

Compliance with examination priorities for commercial banks is in line with the agency's goal of completing 90% of examinations within policy guidelines. Through the first four months of fiscal year 2018, two bank examinations were started outside of policy guidelines (averaged 20 days late), both of which were the responsibility of the FDIC. Delays in FDIC examinations were caused by a short-term staffing imbalance that the FDIC reports will be alleviated by planned staff additions. The same two banks were also late for FDIC information technology examinations.

Division Highlights

- **Oil and Gas Update** – Since January of 2015, the Department has closely monitored banks identified as having a significant volume of outstanding loans to oil and gas (O&G) related customers or the bank was located in an area highly dependent on O&G production. The primary methods of monitoring this exposure are quarterly surveys (now down to 21 banks), review of quarterly bank call reports, completion of O&G related work programs during on-site examinations, and following O&G related indicators such as the Texas rig count and the commodity price of West Texas Intermediate (WTI). The survey information captures energy loan volume, charge-offs, adversely classified assets, price deck information, and allowance for loan loss allocations for energy credits. Survey information is also used to determine the scope of the next on-site examination.

  Following the sharp downturn in O&G commodity prices that began in 2014, most banks sought to reduce their exposure to this industry, and most reported reduced lending volumes in quarterly surveys. However, in the second and third quarters of 2017, the majority of reporting banks show a modest increase in O&G related credits, primarily reflecting the improved commodity price (WTI has rebounded to $66 / barrel). Problem O&G loans, which can sometimes take years to resolve, peaked in 2016 for most of the banks, with several banks reporting a peak in the third quarter of 2017.

  For banks with significant O&G exposure, we expect continued improvement in asset quality indicators in 2018, as problem borrowers are able to improve their financial circumstances such that borrowing lines are no longer considered troubled, or banks are successful in liquidating collateral to repay the outstanding debt. Agency staff will continue to closely monitor the impact of energy commodity prices on Texas institutions and continue analyzing trends in affected banks.

- **Special Operations and Conferences**:

  - Several staff members participated in FDIC Banker Outreach meetings held in Austin and Dallas on December 6, 2017 and December 8, 2017, respectively.

  - Commissioner Cooper participated in the CSBS Board Meeting and Supervisors Symposium held in San Diego the week of December 11, 2017.

  - Deputy Commissioner Bacon and other staff members met with a delegation from the Republic of Maldova at the Austin Headquarters Office to discuss bank regulatory structure in Texas.

  - Commissioner Cooper participated in an economic briefing provided by Assistant Vice President and Senior Economist for the Federal Reserve Keith R. Phillips in San Antonio on January 9, 2018.

  - On January 22, 2018, San Antonio Regional Office field examiners participated in training provided by BKD, LLC on changes in accounting treatment of banks' reserve for potential loan losses. The implementation of Financial Accounting Standards Board's Accounting Standards Update (ASU) 2016-13, *Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments,* commonly referred to as the Current Expected Credit Losses (CECL) method, will have a significant impact on the way financial institutions estimate and provide for credit losses. Though implementation is not required for several months, banks will begin planning to transition to CECL by the required implementation date. It is important that examiners understand the requirements of

CECL to better assist banks through this transition. Four more training classes for the Department's examiners are planned for February 2018.

- On January 31, 2018, Commissioner Cooper presented testimony to the Texas House of Representatives – Investments and Pensions Committee, about the Department's response to Hurricane Harvey, recovery efforts initiated in its aftermath and the lessons learned from this event. The President and Chief Executive Office of First Community Bank, Corpus Christi, Wes Hoskins also provided first-hand testimony about their bank's response to this devastating hurricane. Commissioner Cooper's written testimony is available on the Department's website at: https://www.dob.texas.gov/public/uploads/files/news/Testimony/2018/01-31-18t.pdf.

TEXAS DEPARTMENT OF BANKING

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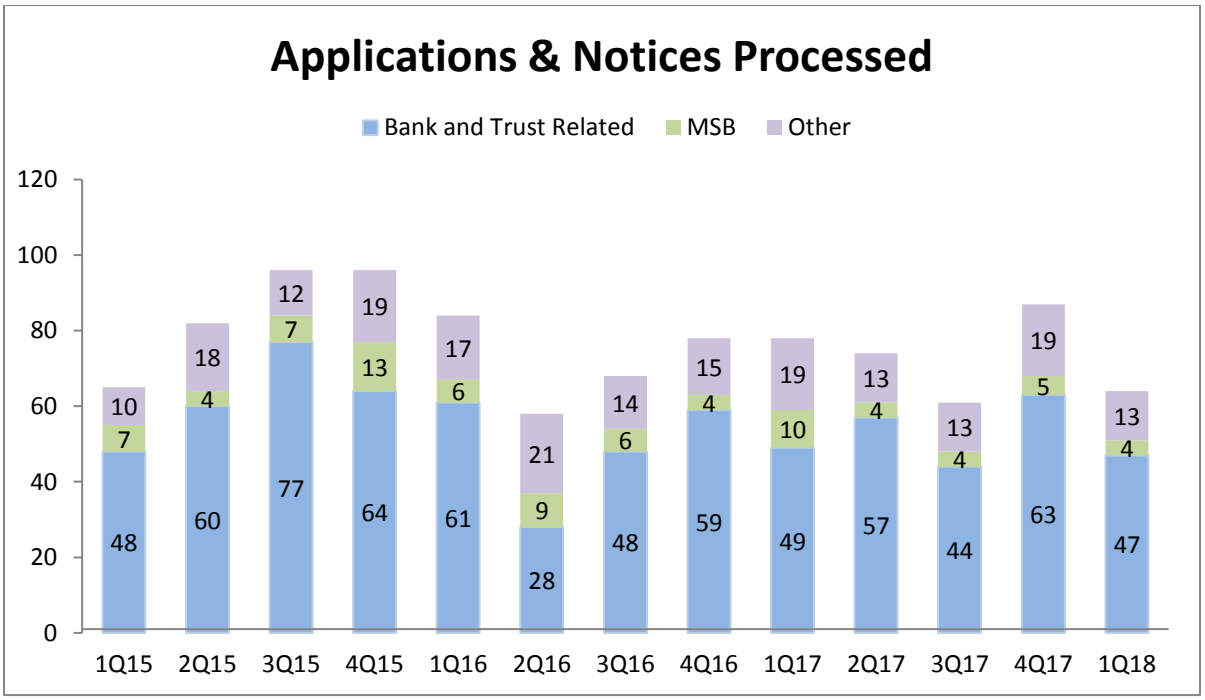
Charles G. Cooper
Commissioner

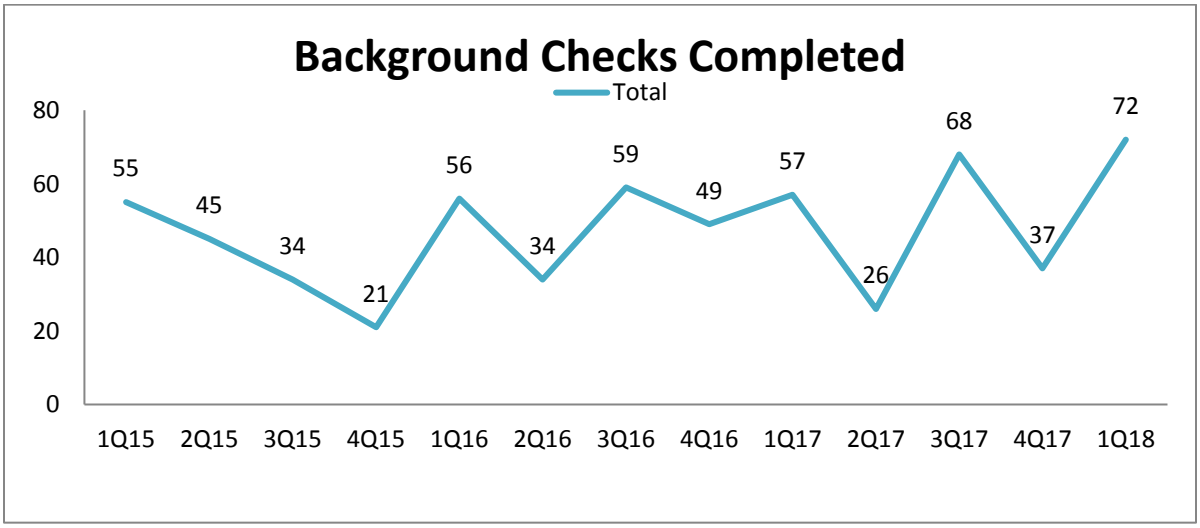
To: Finance Commission Members

From: Daniel Frasier, Director of Corporate Activities DBF

Date: January 31, 2018

Subject: Summary of the Corporate Division Activities





Entities/Activities	Applications and Notices Under Review (as of January 30, 2018)
Bank Related	**11**
Trust Companies	**4**
Money Services Business (MSB)	**11**
Others	**4**
Totals	**30**

Division Highlights

- The volume of substantive bank filings has remained elevated over the last two months due to change of control, merger and conversion applications being received and processed by Corporate. The number of MSB applications received and under review have also increased over the last two months.

- Charter, Conversion, and Merger Activity – The following transactions have consummated since Corporate's last report to the Finance Commission:

    - *Banks*
        - Veritex Community Bank, Dallas, Texas, completed its acquisition merger of Liberty Bank, Hurst, Texas
        - Atascosa Bank, Pleasanton, Texas, converted from a national bank under the name of Atascosa National Bank to a Texas state bank
        - Sage Capital Bank, Gonzales, Texas, converted from a national bank under the name of Sage Capital Bank, National Association to a Texas state bank
        - Commercial State Bank, El Campo, Texas, merged into First Financial Bank, N.A., Abilene, Texas
        - First State Bank Central Texas, Austin, Texas, merged into BancorpSouth Bank, Tupelo, Mississippi
        - MapleMark Bank, Dallas, Texas, converted from a national bank under the name of First National Bank of Edgewood to a Texas state bank

    - *Trust Companies*
        - Argent Trust Company, San Antonio, Texas, merged into Argent Trust Company, Nashville, Tennessee

- Conferences, Conventions, and Committee Meetings – Corporate participated in the following meetings since the last report to the Finance Commission:

    - Director of Corporate Activities Dan Frasier attended the FDIC/TBA 2017 Banker Outreach Program in Austin, Texas, on December 6, 2017
    - Senior Corporate Analyst Mark Largent attended the CSBS Board Meeting and Supervisors Symposium in San Diego, California, December 11 through 14, 2017

Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705
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www.dob.texas.gov

To: Finance Commission Members

From: Russell Reese, Director of Special Audits

Date: February 1, 2018

Subject: Summary of the Special Audits Division Activities

Special Audits			FY 2018							
Entity	**FY 2017**		**1st**		**2nd**		**3rd**		**4th**	
Industry Profile (# / Assets (billions))										
Money Services Businesses (MSB)	156	$113.8	156	$113.8						
Prepaid Funeral Contract (PFC)	375	$3.9	373	$4.0						
Perpetual Care Cemeteries (PCC)	242	$332.9	242	$338.0						
Cemetery Brokers (CB)	14	n/a	14	n/a						
Private Child Support Enforcement Agencies (PCSEA)	10	n/a	10	n/a						
Check Verification Entities (CVE)	2	n/a	2	n/a						
Bullion Depository Agent (BDA)	*	*	0	n/a						
Examinations Performed										
MSB	104		24							
MSB Limited Scope	3		0							
MSB Accepted other State	7		4							
PFC	284		64							
PFC Limited Scope	2		0							
PCC	172		43							
PCC Limited Scope	4		1							
Ratings (# / %) Assigned to All Regulated Entities										
1	303	40%	292	38.7%						
2	384	51%	391	51.8%						
3,4, & 5	70	9%	72	9.5%						
Noncompliance with Examination Priorities (Past Due)										
MSB	5		12							
PFC	4		2							
PCC	5		3							

NOTES:
PCC $ amounts reflected in the millions.
Limited scope examinations do not receive a rating.
*BDA – Bullion Depository Agent (new registration requirement)

Noncompliance with Examination Priorities (Past Due)

- The 12 MSB past due examinations are on average 1.33 months past due.
- The three PCC past due examinations are on average seven days past due and the two PFC past due examinations are on average fourteen days past due.
- Two of the past due PCC/PFC examinations were completed in December 2017 and the remaining three past due PCC/PFC examinations were completed in January 2018.
- Nine of the past due MSB examinations were completed in December 2017, two were completed in January 2018 and the remaining past due examination has been delayed until March 2018 due to coordination with other MTRA state agencies.
- Special Audits met or exceeded all performance measures for the first quarter of FY 18.

Division Activities

During the week of January 8th Director Reese, Review Examiner Saucillo, and Commissioner Cooper attended the annual Multi-State MSB Examination Taskforce (MMET) meeting in San Antonio, Texas. The MMET is the state representative body charged with coordinating and facilitating multistate supervision of MSBs. The MMET consists of ten regulatory representatives appointed by CSBS and MTRA. Commissioner Cooper was reelected as Chair of MMET at this meeting.

The IRS recently requested the Department review the effectiveness, and update as necessary, the current documents exchanged to meet the requirements outlined in the IRS MSB Memorandum of Understanding (MOU). This MOU allows the IRS and states to share confidential information related to MSBs. The MOU requires the IRS and the Department to share data related to Texas based MSBs quarterly. The Department provided the IRS with applicable updates and feedback regarding the current framework.

During the week of February 5th MSB Administrator Gonzales, and other representatives from the Department, will attend the NMLS Annual Conference and Training in New Orleans, Louisiana. The conference is attended by state and federal regulators and licensees and is focused on assisting both new and experienced NMLS users on the system and regulatory compliance issues that affect their organizations.

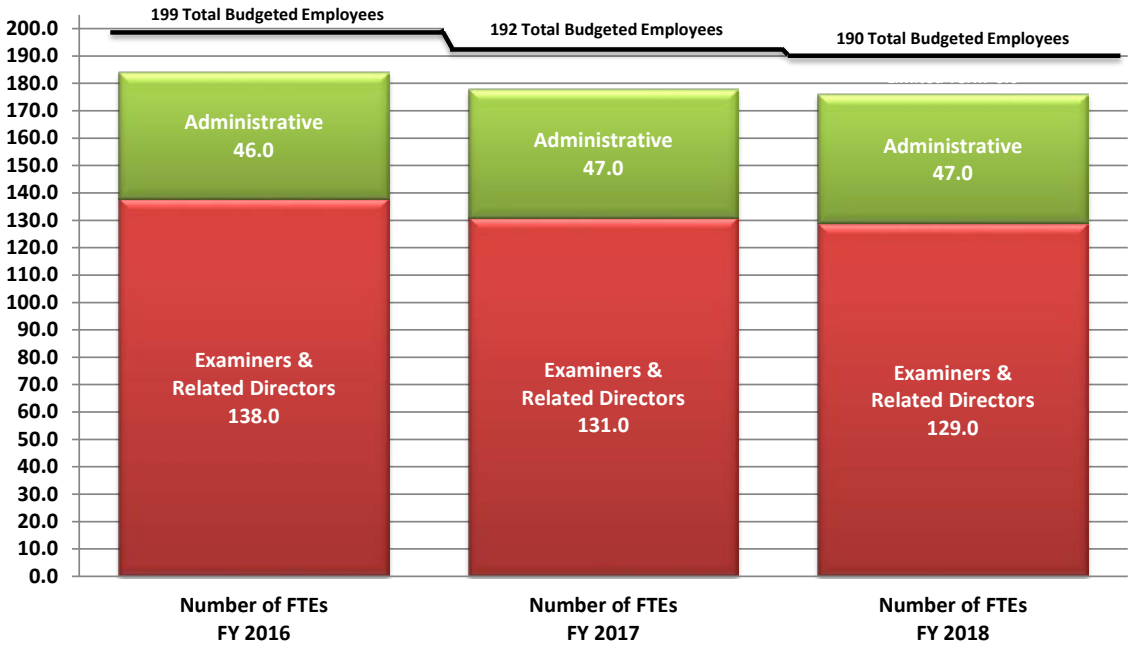
Actual Performance for Output/Efficiency Measures
Fiscal Year 2018
For Period Ending November 2017

Type/Strategy/Measure	2018 Target	2018 Quarter	2018 YTD	Percent of Annual Target
Output Measures-Key				
1-1-1 BANK EXAMINATION				
1. # BANK EXAMINATIONS PERFORMED				
Quarter 1	95	24	24	25.26%
2. # TRUST/IT EXAMINATIONS PERFORMED				
Quarter 1	208	49	49	23.56%
1-2-1 NON-BANK EXAMINATION				
1. # SPECIAL AUDIT LICENSEES EXAMINED				
Quarter 1	560	136	136	24.29%
1-3-1 APPLICATION PROCESSING				
1. # LICENSE APPLICATIONS COMPLETED				
Quarter 1	307	64	64	20.85%

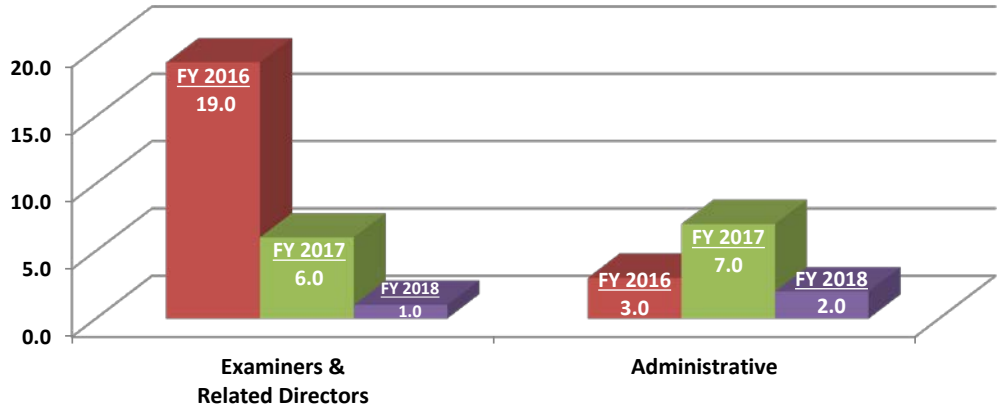
*Note: Variance of 5% from target require explanation.

Texas Department of Banking

Employee Data for Fiscal Years 2016, 2017 and 2018 as of 11/30/17

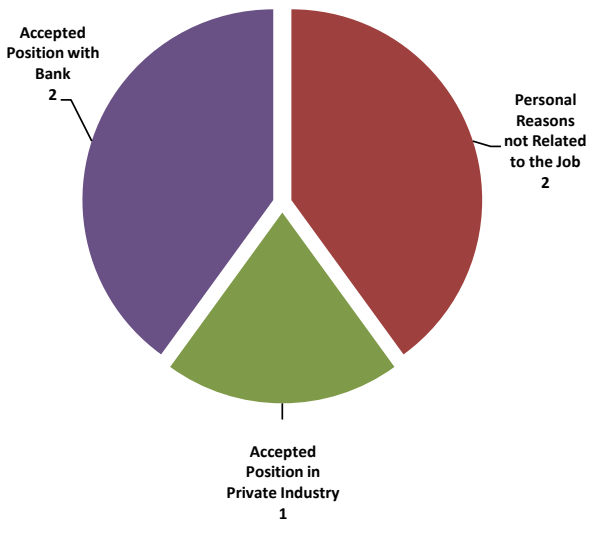


New Hire Data for Fiscal Years 2016, 2017 and 2018

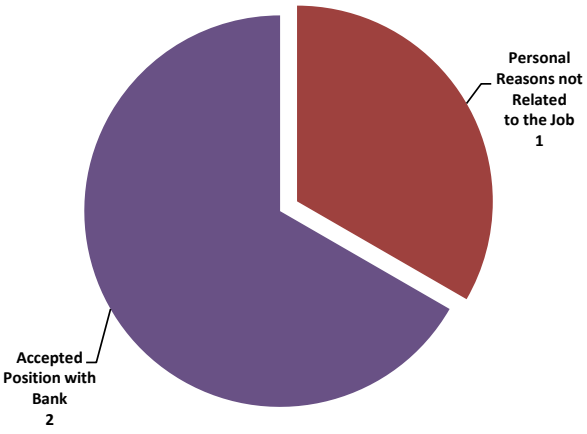


FY 2018 Employee Turnover Reasons

All Employees
5 Resignations



Financial Examiners Only
3 resignations



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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

To: Finance Commission Members

From: Wendy Rodriguez, Director of Strategic Support

Date: February 1, 2018

Subject: Summary of the Strategic Support Division Activities

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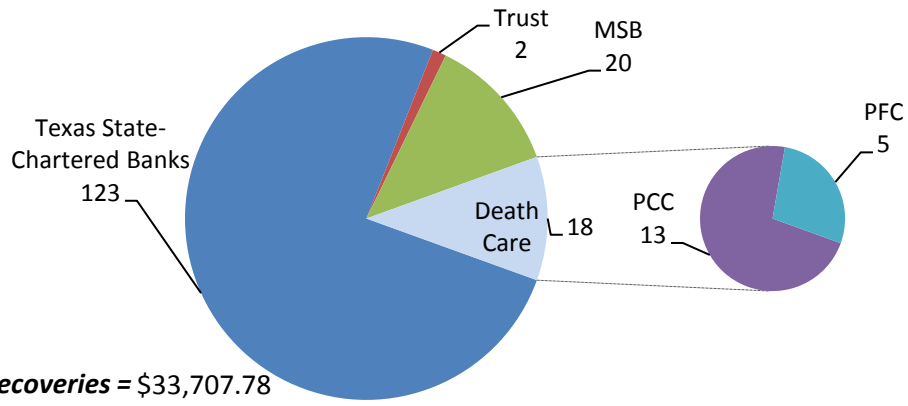
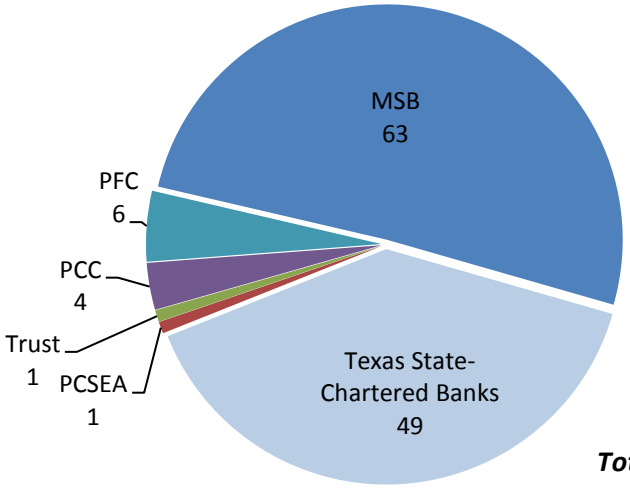
Complaints on Regulated Entities
September 2017 - December 2017



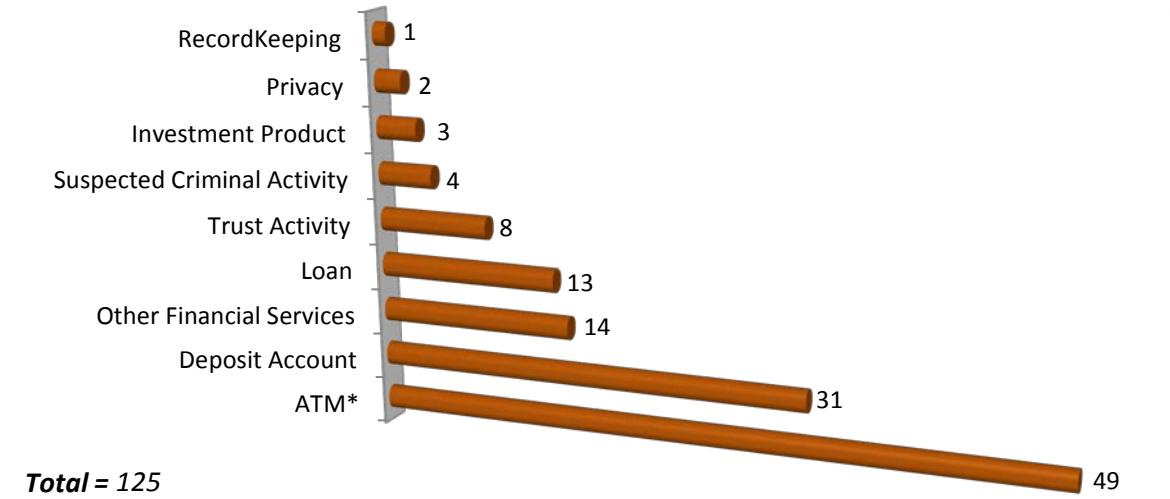
Recoveries = $33,707.78
Total = *163*

Inquiries on Regulated Entities
September 2017 - December 2017



Total = *124*

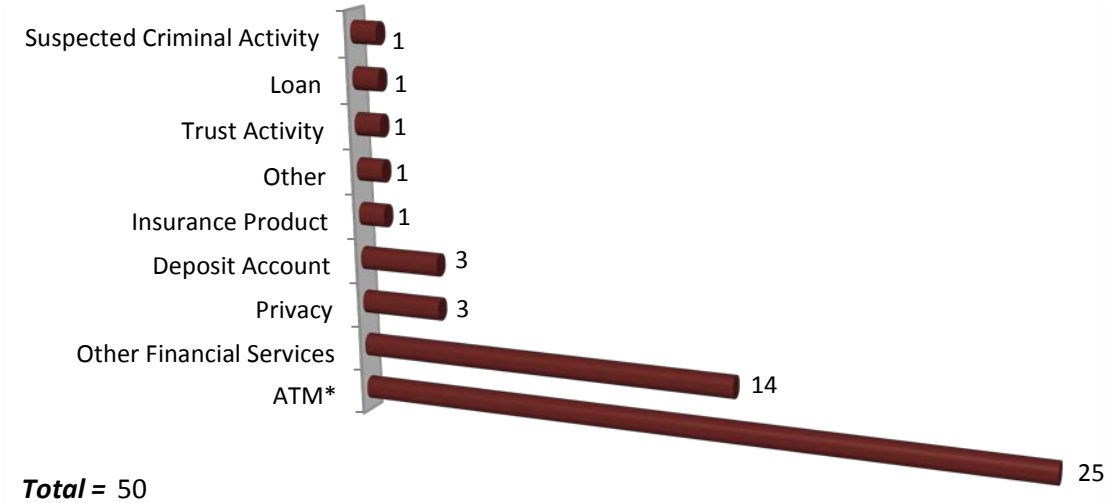
State-Chartered Banks and Trust Companies
Complaints by Type
September 2017 - December 2017



***Total** = 125*

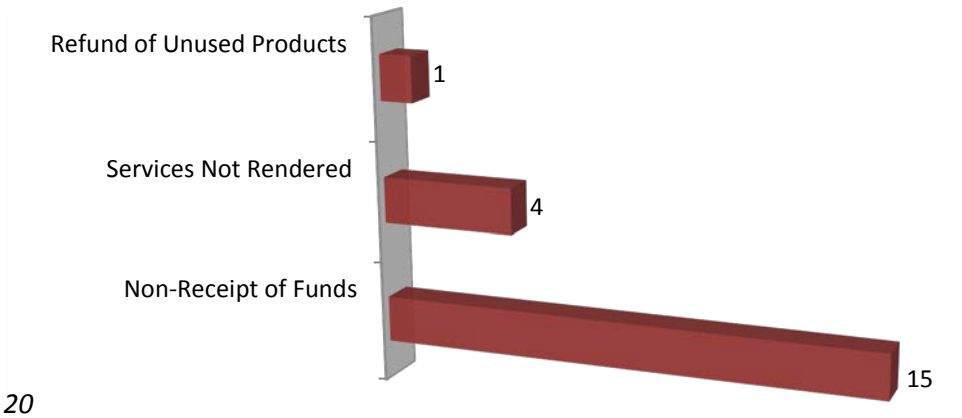
**Activity related to annual privacy notice containing the Department's contact information. Consumer complaints range from needing clarification of the notice to account balance issues and card related problems.*

State-Chartered Banks and Trust Companies
Inquiries by Type
September 2017 - December 2017



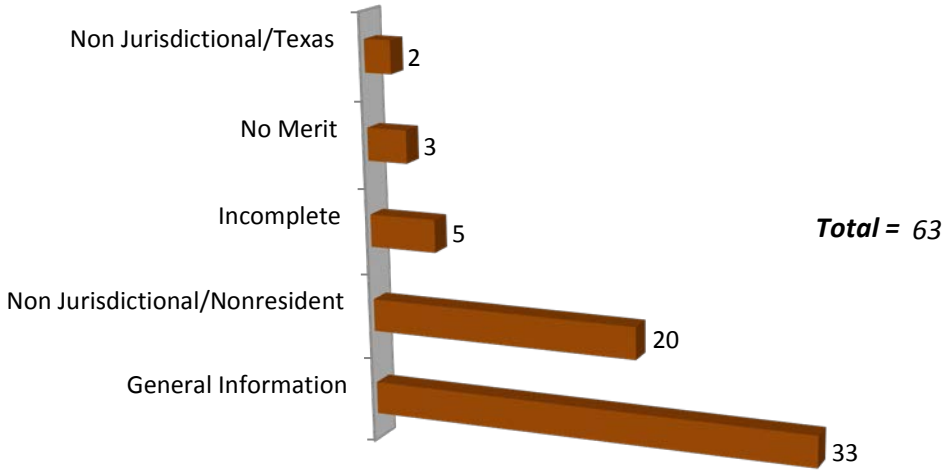
***Total** =* 50

Money Services Businesses
Complaints by Type
September 2017 - December 2017



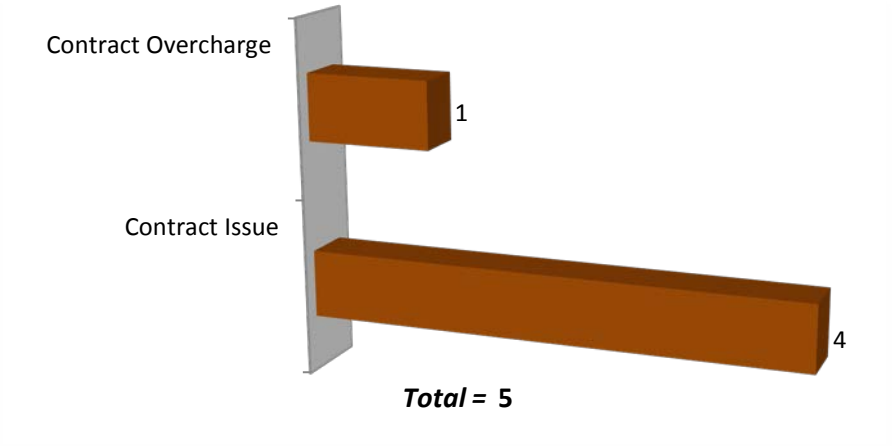
Total = *20*

Money Services Businesses
Inquiries by Type
September 2017 - December 2017



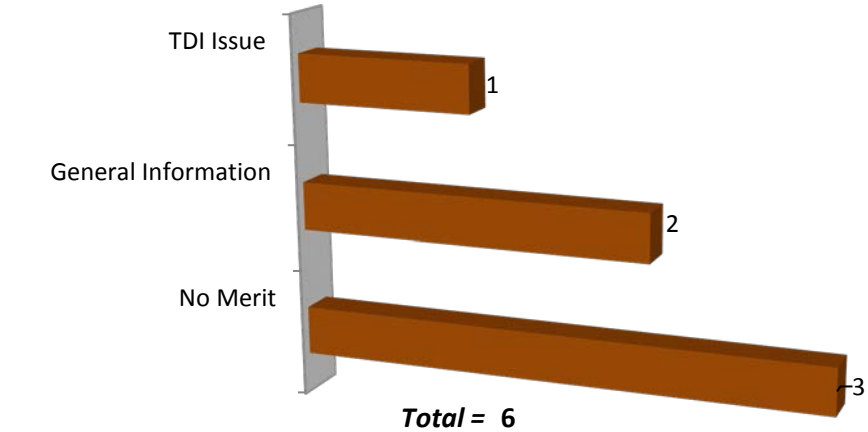
Total = *63*

Prepaid Funeral Contract Sellers
Complaints by Type
September 2017 - December 2017



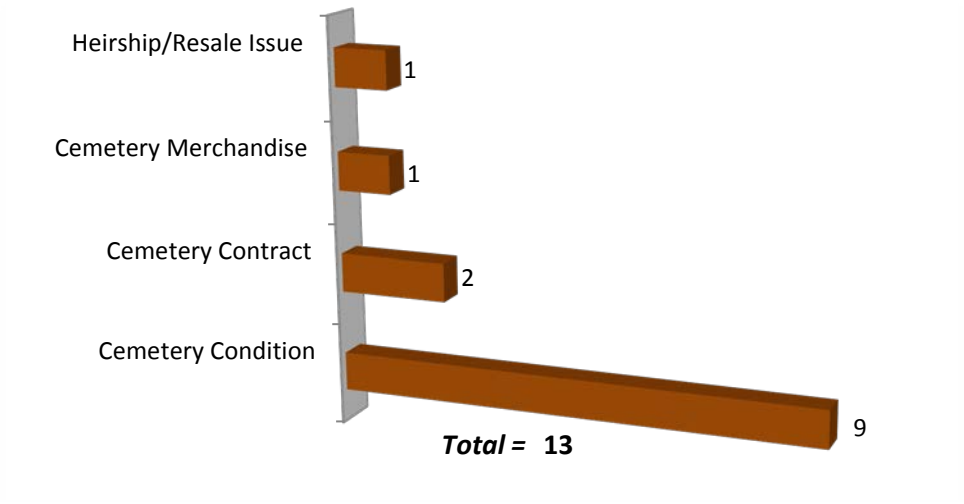
***Total* = 5**

Prepaid Funeral Contract Sellers
Inquiries by Type
September 2017 - December 2017

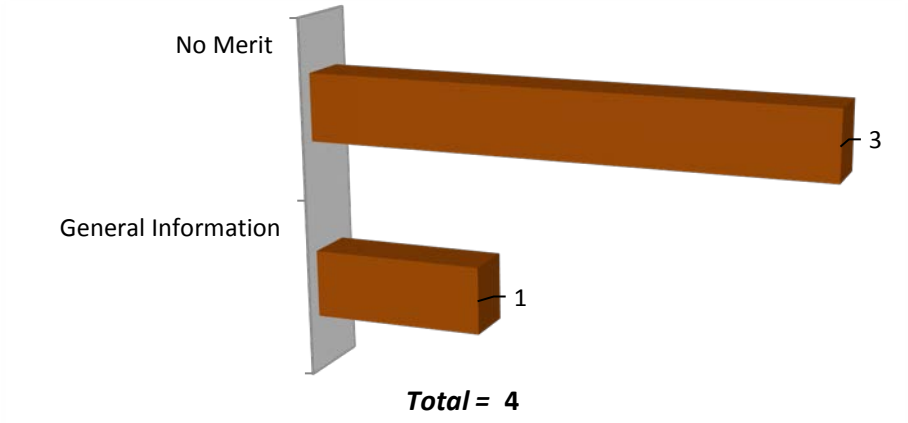


***Total* = 6**

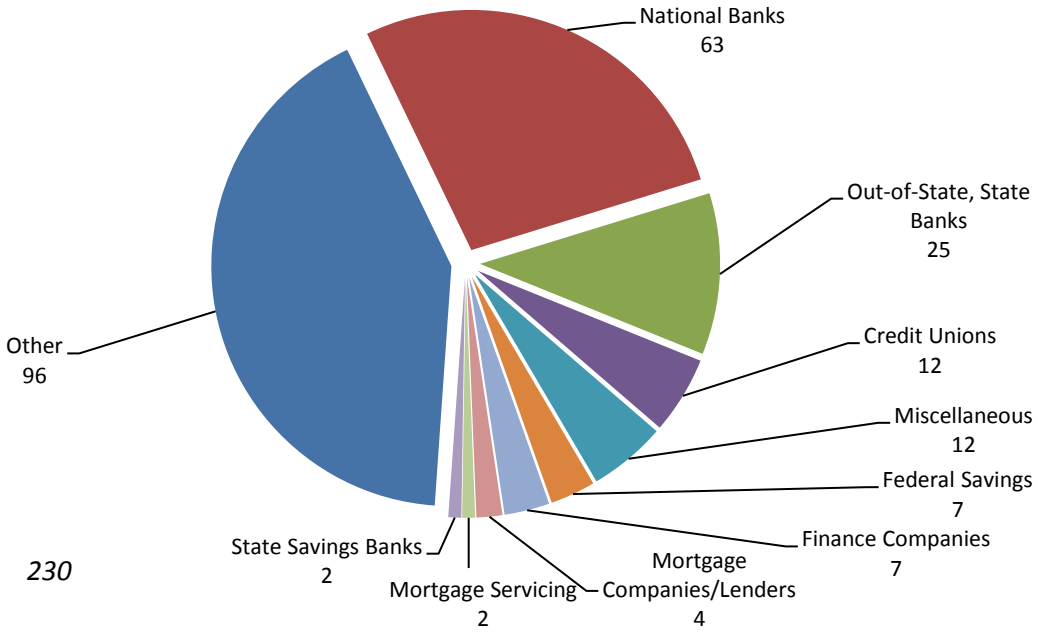
Perpetual Care Cemeteries
Complaints by Type
September 2017 - December 2017



Perpetual Care Cemeteries
Inquiries by Type
September 2017 - December 2017



Complaints and Inquiries Against Nonregulated Entities
September 2017 - December 2017



Total = *230*

On occasion, consumers do not provide the name of the entity they need assistance with. In these situations, the communication is categorized in the "Other" category.

Average Number of Days to Close a Written Complaint

Type	Sept. 2017 – Dec. 2017
State-Chartered Banks	10
Trust	4
PCSEA	N/A
PFC/PCC	28
MSB	40

CANS ACTIVITY
January 1, 2014 – January 29, 2018

Entity	Enrolled	Compromised Accounts Reported
Texas State-Chartered Banks	216	1,037
Texas State-Chartered Savings Banks	26	66
Federal Savings Banks	10	81
State Credit Unions	132	1,012
Federal Credit Unions	229	717
National Banks	170	286
Out-of-State State-Chartered Banks	13	79
Out-of-State National Banks	6	15
Total	**802**	**3,293**

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

	FY 2015	FY 2016	FY 2017	FY 2018 *(As of 01/31/18)*
I. General Knowledge	8	9	8	3
II. Loan Analysis	2	4	3	1
III. Panel	4	3	2	0
IV. Test Bank	4	2	3	0
Total FE3	19	18	24	26

Promotions

From FE3 to FE4 ***(Commissioned Examiner)***	4	2	3	0

Other Divisional Items:

- *Sunset Review*
    - On December 18, 2017, the Department received its second information request from the Sunset Review Team. All requested information was submitted on or before January 10, 2018, as required. In addition, licensing standard worksheets for each regulated entity type were submitted on January 19, 2018.
    - The Sunset Review Team conducted additional interviews the first week of January to better understand divisional processes.
    - The Department's exit meeting with the Sunset Review team and Sunset Commission Director Ken Levine is scheduled for April 3, 2018. A discussion will be held on findings and recommendations.
- *Examination Procedure Revisions*
    - Several procedures were revised based upon Examiner Council recommendations. These procedures include:
        - Commercial Examination Procedures:
        - #4 Borrowed Funds/Liquidity;
        - #10 Funds Management
        - #27 Other Supervisory Issues
        - Examination Request List
        - The Officer's Questionnaire was revised to reflect the recent changes to the FDIC's Officer's Questionnaire.

- *Examiner Bulletins*

    - Three bulletins were issued in January 2018:
        - XB-2018-01 Guidelines for Procedures and Work Paper Documentation Organization for Commercial Examinations
        - XB-2018-02 Guidelines for Procedures and Work Paper Documentation Organization for Trust Examinations
        - XB-2018-01 Guidelines for Procedures and Work Paper Documentation Organization for Information Technology Examinations

- *Finance Commission Website*

    - The redesign of the Finance Commission website is 75% completed. The site will feature a mobile friendly design with an emphasis on ease of use. Content is currently being transferred and will be completed upon final approval of all development features. The new website is expected to be fully functional and launched by April 2018.

Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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Memorandum

TO: **Finance Commission Members**

FROM: **Catherine Reyer, General Counsel**

DATE: **February 1, 2018**

RE: **Legal Division Update**

Litigation

Claim by the Texas Department of Banking against the estate of Felix Trevino Morales, Docket No. 442502, in Probate Court No. 2 of Harris County, Texas. On July 1, 2016, the Department of Banking filed a claim for $12,545.00 against the estate of Felix Trevino Morales. Mr. Morales owned and operated Trevino & Sons Funeral Home in Houston where he sold prepaid funeral benefits without the necessary permit. The Department was seeking restitution to customers who purchased prepaid funeral benefits from Mr. Trevino when he was not authorized to sell them. On March 6, 2017, the Office of Attorney General presented an updated claim to the executrix for $11,005; the claim was accepted on March 9, 2017. The probate case remains active.

Claim by the Texas Department of Banking against the estate of Bobby Royce Bankston, Docket No. P17-13928, in Hopkins County, Texas. Mr. Bankston, as owner and operator of Memorial Monuments and Apple Casket, Sulphur Springs, sold prepaid funeral merchandise to customers without the necessary permit. Mr. Bankston died on November 17, 2016. On November 7, 2017, the Office of Attorney General filed an amended claim against the estate for $94,330.42, which is the amount paid on 61 contracts that are still outstanding. The new owner of the business and the representatives of the estate are attempting to negotiate a resolution for the outstanding purchasers.

Pending Contested Case

The Department has a confidential prohibition matter pending before an administrative law judge. It is set for hearing in August.

Gifts

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

Orders Issued 12/1/17 – 1/31/18

Since the last Legal Division memo was submitted, the Commissioner issued six enforcement orders, all of which are final public orders:

Bank & Trust

- Order No. 2017-022, dated 12/28/2017; Consent Order Prohibiting Further Participation, Imposing a Penalty, and Ordering the Payment of Restitution, Brad Marshall, Cleburne, TX

- Order No. 2018-001, dated 1/5/2018; Order to Cease and Desist Activity, Arisebank, Arisebank Ltd, Arisebank Inc, Abank, Arise Foundation, LLC, Arisecoin Foundation, Dotoji LLC, Jared Rice Sr, Stanley Ford, and Tony Caldevilla, Various Locations

Special Audits

- Order No. 2017-021, dated 12/21/2017; Order to Cease and Desist Activity, CR International Services, LLC aka Currency Return, Appleton, Wisconsin

- Order No. 2018-002, dated 1/8/2018; Consent Order, Anybill Financial Services, Inc., Washington, D.C.

- Order No. 2018-003, dated 1/10/2018; Order to Cease and Desist Activity, Money in a Day, LLC, Manchester, NH

- Order No. 2018-005, dated 1/29/2018; Consent Order, Government Payment Service, Inc. d/b/a GOVPAYNET, Indianapolis, Indiana

Quarterly Order Activity

BANK				
Type of Action	**1st**	**2nd**	**3rd**	**4th**
Consent Order	0			
Cease & Desist	0			
Supervision	0			
Prohibition (not yet effective)	1			
Total	1			
TRUST COMPANY				
Consent Order	0			
Cease & Desist	0			
Supervision	0			
Prohibition	0			
Total	0			
MONEY SERVICE BUSINESS				
Consent Order	1			
Cease & Desist	0			
Total	1			

PERPETUAL CARE CEMETERY				
Consent Order	0			
Cease & Desist	0			
Total	0			
PREPAID FUNERAL CONTRACT				
Consent Order	2			
Cease & Desist	0			
Conversion	0			
Total	2			

2. Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 2, Chapter 33, Concerning Money Services Businesses, Resulting from Rule Review

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

Notice of the proposed review of 7 TAC Chapter 33 was published in the *Texas Register* as required on December 29, 2017 (42 TexReg 7733). The Department received no comments regarding the review.

The Department believes the reasons for initially adopting the rules in Chapter 33 continue to exist and those rules should be readopted.

RECOMMENDED ACTION: The Department requests that the Commission find that the reasons for initially adopting the rules in 7 TAC Chapter 33 continue to exist and that the Commission readopt these rules.

RECOMMENDED MOTION: I move that we find that the reasons for initially adopting the rules in 7 TAC Chapter 33 continue to exist, and that those rules be readopted.

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed its review of Texas Administrative Code, Title 7, Chapter 33 (Money Services Businesses) §§33.3 - 33.53, in its entirety.

Notice of the review of Chapter 33 was published in the December 29, 2017, issue of the *Texas Register* (42 TexReg 7733). No comments were received in response to the notice.

The commission believes the reasons for initially adopting Chapter 33 continue to exist. However, the commission has determined that certain revisions and amendments may be appropriate and necessary. Proposed amendments and revisions to Chapter 33, with discussion of the justification for the proposed changes, will be published in the Texas Register at a later date.

Accordingly, the commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 33 in accordance with the requirements of the Government Code, §2001.039.

3. Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 1, Chapter 3, Concerning State Bank Regulation, Resulting from Rule Review

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

Notice of the proposed review of 7 TAC Chapter 3 was published in the *Texas Register* as required on December 29, 2017 (42 TexReg 7734). The Department received no comments regarding the review.

The Department believes the reasons for initially adopting the rules in Chapter 3 continue to exist and those rules should be readopted.

RECOMMENDED ACTION: The Department requests that the Commission find that the reasons for initially adopting the rules in 7 TAC Chapter 3 continue to exist and that the Commission readopt these rules.

RECOMMENDED MOTION: I move that we find that the reasons for initially adopting the rules in 7 TAC Chapter 3 continue to exist, and that those rules be readopted.

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed its review of Texas Administrative Code, Title 7, Part 1, Chapter 3 (State Bank Regulation), §§3.1 – 3.112, in its entirety.

Notice of the review of Chapter 3 was published in the December 29, 2017, issue of the *Texas Register* (42 TexReg 7734). No comments were received in response to the notice.

The commission believes the reasons for initially adopting Chapter 3 continue to exist. However, the commission has determined that certain revisions and amendments may be appropriate and necessary. Proposed amendments and revisions to Chapter 3, with discussion of the justification for the proposed changes, will be published in the Texas Register at a later date.

Accordingly, the commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 3 in accordance with the requirements of the Government Code, §2001.039.

4. Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 2, Chapter 24, Concerning Cemetery Brokers, Resulting from Rule Review

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

Notice of the proposed review of 7 TAC Chapter 24 was published in the *Texas Register* as required on December 29, 2017 (42 TexReg 7733). The Department received no comments regarding the review.

The Department believes the reasons for initially adopting the rules in Chapter 24 continue to exist and those rules should be readopted.

RECOMMENDED ACTION: The Department requests that the Commission find that the reasons for initially adopting the rules in 7 TAC Chapter 24 continue to exist and that the Commission readopt these rules.

RECOMMENDED MOTION: I move that we find that the reasons for initially adopting the rules in 7 TAC Chapter 24 continue to exist, and that those rules be readopted.

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed its review of Texas Administrative Code, Title 7, Part 2, Chapter 24 (Cemetery Brokers), §§24.1 – 24.4, in its entirety.

Notice of the review of Chapter 24 was published in the December 29, 2017, issue of the *Texas Register* (42 TexReg 7733). No comments were received in response to the notice.

The commission believes the reasons for initially adopting Chapter 24 continue to exist. However, the commission has determined that certain revisions and amendments may be appropriate and necessary. Proposed amendments and revisions to Chapter 24, with discussion of the justification for the proposed changes, will be published in the Texas Register at a later date.

Accordingly, the commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 24 in accordance with the requirements of the Government Code, §2001.039.