

A.

Finance Commission

This page left blank intentionally.



FINANCE COMMISSION OF TEXAS

MEETING DATEApril 20, 2018

MEETING LOCATIONState 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 DATESJune 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*

This page left blank intentionally.

FINANCE COMMISSION AGENDA

Friday, April 20, 2018

8:30 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.3 will take up the following agenda items with NO DISCUSSION as notated in bold and italicized A1, B2 and D2

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 February 16, 2018 Finance Commission Meeting***
2. General Public Comment
3. Consent Agenda
4. Finance Commission Operations
5. Discussion of and Possible Vote to Take Action on the Texas Sunset Advisory Commission Staff Report
6. Audit Committee Report
 - A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' February 28, 2018 Investment Officer Reports
 1. Texas Department of Banking
 2. Department of Savings and Mortgage Lending
 3. Office of Consumer Credit Commissioner
 - B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2018 Second Quarter Financial Statements
 1. Texas Department of Banking
 2. Department of Savings and Mortgage Lending
 3. Office of Consumer Credit Commissioner
 - C. Discussion of and Possible Vote to Recommend that the Finance Commission Approve the Reserve and Expenditure of Funds for Building Deferred Maintenance

7. Discussion of and Possible Vote to Take Action on the Finance Commission Agencies' Fiscal Year 2018 Mid-Term Accomplishment Reports
8. Discussion of the Report of the Financial Condition of the State Banking System
(*Note: Report provided separately*)
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
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
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

B. 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 Adoption of Amendments to 7 TAC, Part 2, §33.27 Concerning Fees for Money Service Business Licenses***
3. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 2, Chapter 33, §§33.23, 33.31, 33.35, and 33.51 Concerning Money Services Businesses
4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 1, Chapter 3, §§3.4, 3.23, 3.36, 3.43, 3.44, 3.52, 3.55, and 3.92 Concerning State Bank Regulation
5. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

C. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

1. Industry Status and Departmental Operations - State Savings Bank Activity: a) Industry Status; b) State Savings Bank Charter and Application Activity; c) Other Items
2. Industry Status and Departmental Operations – Mortgage Lending Activity: a) Residential Mortgage Loan Originators; b) Mortgage Examination; c) Consumer Complaints; and d) Other Items

3. Fiscal/Operations Activity: a) Funding Status/Audits/Financial Reporting; b) Staffing; and c) Other Items
4. Legal Activity: a) Enforcement; b) Gift Reporting; and c) Legislative Activities
5. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

D. OFFICE OF CONSUMER CREDIT COMMISSIONER

1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities
2. *Discussion of and Possible Vote to Take Action on the Adoption of Amendments, New Rules, and a Repeal in 7 TAC, Part 5, Chapter 85, Subchapter B Concerning Rules for Crafted Precious Metal Dealers*
3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments in 7 TAC, Part 5, Chapter 84, Concerning Motor Vehicle Installment Sales
4. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

Lynn Rowell d/b/a Beaumont Greenery, 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

State of Texas v. Cash Auto Sales, Inc. f/k/a Larry Lake d/b/a Cash Auto Sales and VIP Finance of Texas, Inc. f/k/a Travis Lake d/b/a VIP Finance; Cause No. 05-18-00198-CV, in the Court of Appeals for the Fifth Judicial District, Dallas, Texas

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.

This page left blank intentionally.

**MINUTES OF THE
FINANCE COMMISSION MEETING
Friday, February 16, 2018**

The Finance Commission of Texas convened at 9:13 a.m. on February 16, 2018 with the following members present:

Finance Commission Members in Attendance:

Stacy G. London, Chairman
Jay Shands, Vice Chairman
Bob Borochoff
Hector Cerna
Molly Curl
Phillip Holt
Will Lucas
Vince Puente

Finance Commission Chairman Stacy G. London announced a quorum with eight members present.

Stacy G. London made a motion to excuse Lori McCool, Matt Moore, and Paul Plunkett from the Finance Commission meeting held on February 16, 2018. There were no objections and the motion passed unanimously. (00:45)

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
A. FINANCE COMMISSION MATTERS		
1. Review and Approval of the Minutes of the December 15, 2017 Finance Commission Meeting	On Consent Agenda – Item A1 This item Approved on the Consent Agenda.	1:49 start of discussion
2. Review and Approval of the Minutes of the December 15, 2017 Study Committee Meeting	On Consent Agenda – Item A2 This item Approved on the Consent Agenda.	1:55 start of discussion
3. General Public Comment	No Action Required.	1:59 start of discussion
4. Consent Agenda – Items A1, A2, A8, C2, C3, D2-D4	Will Lucas made a motion to Approve Consent Agenda items A1, A2, A8, C2, C3, and D2-D4. Phillip Holt seconded and the motion passed.	4:23 start of discussion 4:59 vote
5. Finance Commission Operations	No Action Required.	8:23 start of discussion
6. Audit Committee Report		2:49 start of discussion

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<p>A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' November 30, 2017 Investment Officer Reports</p> <ol style="list-style-type: none"> 1. Department of Savings and Mortgage Lending 2. Office of Consumer Credit Commissioner 3. Texas Department of Banking 	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies' November 30, 2017 Investment Officer Reports passed.</p>	<p>2:51 start of discussion 3:12 vote</p>
<p>B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2018 First Quarter Financial Statements</p> <ol style="list-style-type: none"> 1. Department of Savings and Mortgage Lending 2. Office of Consumer Credit Commissioner 3. Texas Department of Banking 	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies' 2018 First Quarter Financial Statements passed.</p>	<p>3:44 start of discussion 3:47 vote</p>
<p>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</p>	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Proposal for the Department of Savings and Mortgage Lending to contribute \$750,000.00 to the Texas Financial Education Endowment Fund passed.</p>	<p>3:54 start of discussion 4:03 vote</p>
<p>7. Discussion of and Possible Vote to Take Action on Revisions of the Finance Commission's Liquidity Policy</p>	<p>Phillip Holt made a motion to Approve the Revisions of the Finance Commission's Liquidity Policy. Molly Curl seconded and the motion passed.</p>	<p>13:04 start of discussion 21:50 vote</p>
<p>8. <i>On Consent</i></p>	<p>On Consent Agenda – Item A8 This item Approved on the Consent Agenda.</p>	<p>n/a</p>
<p>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</p>	<p>Vince Puente made a motion to Approve the Adoption of Amendments, a New Section, and a Repeal in 7 TAC, Part 8,</p>	<p>22:10 start of discussion 32:32 vote</p>

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
Home Equity Lending	Chapter 153, Concerning Home Equity Lending. Hector Cerna seconded and the motion passed.	
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	Deferred to Executive Session – no vote taken.	n/a
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	Deferred to Executive Session – no vote taken.	n/a
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	Deferred to Executive Session – no vote taken.	n/a
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	No Action Required.	33:16 start of discussion

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
2. Discussion of and Possible Vote to Take Action on Annual Assessments to be Paid by the Texas State Savings Banks	Phillip Holt made a motion to Approve the Annual Assessments to be Paid by the Texas State Savings Banks. Jay Shands seconded and the motion passed.	38:37 start of discussion 38:53 vote
3. 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.	38:56 start of discussion
4. Fiscal/Operations Activity: a) Funding Status/Audits/Financial Reporting; b) Staffing; and c) Other Items	No Action Required.	52:40 start of discussion
5. Legal Activity: a) Enforcement; b) Gift Reporting; and c) Legislative Activities	No Action Required.	53:04 start of discussion
6. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Action Required.	n/a
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	No Action Required.	1:01:14 start of discussion
2. <i>On Consent</i>	On Consent Agenda – Item C2 This item Approved on the Consent Agenda.	n/a
3. <i>On Consent</i>	On Consent Agenda – Item C3 This item Approved on the Consent Agenda.	n/a

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<p>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</p>	<p>Will Lucas made a motion to Approve the Proposal and Publication for Comment of Amendments in 7 TAC, Part 5, Chapter 84, Concerning Motor Vehicle Installment Sales. Jay Shands seconded and the motion passed.</p>	<p>1:17:30 start of discussion 1:47:05 vote</p>
<p>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</p>	<p>Phillip Holt made a motion to Approve 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. Vince Puente seconded and the motion passed.</p>	<p>1:47:16 start of discussion 1:53:28 vote</p>
<p>6. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation</p> <p><i>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</i></p> <p><i>Ernest Polk v. Texas Office of Consumer Credit Commissioner; Cause No. 2018-04375, in the 281st Judicial District Court of Harris County, Texas</i></p>	<p>No Action Required.</p>	<p>n/a</p>
<p>D. TEXAS DEPARTMENT OF BANKING</p>		
<p>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)</p>	<p>No Action Required.</p>	<p>1:54:12 start of discussion</p>

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
Administrative and Fiscal Division Activities; f) Strategic Support Division Activities; g) Legal Division Activities; h) Legislative Activities; and i) General Items of Interest		
2. On Consent	On Consent Agenda – Item D2. This item Approved on the Consent Agenda.	n/a
3. On Consent	No Action Required. On Consent Agenda – Item D3. This item Approved on the Consent Agenda.	n/a
4. On Consent	No Action Required. On Consent Agenda – Item D4. 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

Chairman Stacy G. London called for an Executive Session at 11:35 a.m. (2:07:06) *on the audio file*). The open meeting resumed at 11:55 a.m. (2:07:51) *on the audio file*).

There being no further business, Chairman Stacy G. London adjourned the meeting of the Finance Commission at 11:58 a.m. (2:10:32) *on the audio file*).

Stacy G. London, Chairman
Finance Commission of Texas

Charles G. Cooper, Executive Director
Finance Commission of Texas

Anne Benites, Executive Assistant
Finance Commission of Texas

Finance Commission of Texas

Consent Agenda

April 20, 2018

A. Finance Commission Matters

1. Review and Approval of the Minutes of the February 16, 2018 Finance Commission Meeting

B. Texas Department of Banking

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 2, §33.27 Concerning Fees for Money Service Business Licenses

D. Office of Consumer Credit Commissioner

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

Future Meetings Rule Schedule

Rules	Short Title/Purpose	Projected Proposal Date for Presentation to Finance Commission	Agency
7 TAC §80.201	Loan Status Forms – update language and provide clarification	August 17, 2018	SML
7 TAC §81.201	Loan Status Forms – update language and provide clarification	August 17, 2018	SML



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705

512-475-1300 / 877-276-5554

www.dob.texas.gov

MEMORANDUM

TO: The Finance Commission

FROM: Charles G. Cooper, Commissioner

DATE: March 30, 2018

RE: Department of Banking Priorities for Fiscal Year 2018 with Mid Year Accomplishments

I. LEGISLATIVE – *State and National Legislative Issues*

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

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

Update:

- *Maintained regular contact with state and federal legislative committees.*
- *Commissioner Cooper testified at the House Investments and Financial Services hearing on January 31, 2018 regarding the impact of Hurricane Harvey on financial institutions.*

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

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

Update:

- *Updates provided to members at each Finance Commission meeting and members are provided by email copies of any Commissioner testimony.*
- *Members are updated each meeting about the impact of Hurricane Harvey on regulated entities.*

- I.3 **Objective:** Implement laws and initiatives of the 85th Texas Legislature that directly affect the agency or its regulated entities.

Measure: Update policies, procedures, and rules as necessary to implement legislation from the 85th Session. Monitor interim charges and provide input as requested.

Update:

- *Updates have been made in the contracting area related to legislative changes as well as rules for implementation of depository agent licensing related to the Bullion Depository legislation.*
- *Interim charge hearings are to begin in April.*

- I.4 Objective: Complete the Sunset Review process. Provide Finance Commission members updates on the review.

Measure: Timely file all required documents and reports as requested for the Sunset review and make staff available for interviews and inquiries. Provide timely updates to the Finance Commission on the Sunset process.

Update:

- *The agency timely completed the Self-Evaluation Report, complied with all document and meeting requests and coordinated Sunset's participation in requested examinations.*

II. REGULATORY ACTIVITIES – Examination Activity and Enforcement Actions

- II.1 Objective: Efficiently structure the agency to meet performance measures (See Attachment A for all performance measures)

Measure: Continue to meet or exceed the strategic planning goals for performance measures. Successfully obtain reaccreditation from CSBS for the Bank and Trust Division. Quarterly, report results to the Finance Commission.

Update:

- *All key performance measures were met through February 28, 2018, except applications processed. The number of filings completed was lower than expected due to the Department receiving fewer filings; no objection letter requests and subsidiary notice filings, in particular.*
- *Maintenance of CSBS Accreditation by the Bank and Trust Division is a performance measure, and planning for the on-site portion of the CSBS Accreditation review is ongoing. The reaccreditation process will begin in the summer of 2018 and the onsite review will occur in October 2018. The Self Evaluation Report is due August 31, 2018.*

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

Measure: Maintain active contact with other states individually and through regulatory associations (CSBS and MTRA), trade associations (IBAT and TBA) and frequent contact with federal regulators so as to be aware of events, decisions, other state and

federal policies and other areas of actual or potential impact to the Department's regulatory functions or the industry. Take proactive steps to respond as issues arise affecting the industries or our supervisory duties.

Update:

- *Agency staff participated in a number of committees, panels, and speaking engagements during the first half of the fiscal year. These engagements included FDIC Outreach panels in Austin and Dallas, IBAT's Tour de Texas Town Hall meetings, and TBA regulatory panels. Additionally, staff participated on nationwide committees including the CSBS State Examiner Review Team Committee, the CSBS Foreign Bank Committee, the CSBS State Supervisory Processes Committee, MSB Licensing and the FFIEC BSA Task Force. Finally, the Director of Information Security often participates in multiple Cyber Security speaking engagements across the nation.*
- *The agency is an active member of the MTRA and the MMET. Commissioner Cooper was re-elected as Chair of MMET and Director Reese was elected to serve on the MTRA Board of Directors.*
- *On January 12, 2018, the Agency signed on to a cooperative multi-state licensing compact to standardize key elements of the licensing process for MSBs. The multi-state compact is the latest step among state regulators toward an integrated system of licensing and supervision for MSBs. Agency personnel are active in working with the MSB Licensing Agreement Working Group to implement the enhanced licensing process outlined in the compact.*

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

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

Update:

- *Agency staff members continue to closely monitor risk profiles of the institutions we regulate through ongoing off-site monitoring. Through the first half of fiscal year 2018, we continued monitoring 21 institutions that had oil and gas credit concentrations, researched bank performance for institutions located in areas affected by Hurricane Harvey, prepared monthly concentration in lending reports, and prepared quarterly mortgage related activity reports. All reports are reviewed for adverse trends and red flags in high-risk areas. Further, the BSA examiners monitor Suspicious Activity Reports from large institutions and IT examiners participate in multi-state examinations for large service providers. Finally, on-going monitoring*

through our quarterly off-site monitoring program helps to identify increased risks in between exam cycles.

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

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

Update

- *Agency staff stayed apprised of the impact to financial institutions of Hurricane Harvey by placing multiple calls to banks directly affected by the storm in the days and weeks after the hurricane hit, and by keeping close contact with banks in the months after to discuss how customers were affected and the impact to loan defaults and past due credits. The Department provided guidance to the industry on how banks should handle new home equity loan requests as well as existing loan renewals in an Industry Notice in October. Commissioner Cooper testified before the House Committee on Investments and Financial Services on January 31, 2018, regarding our response during Hurricane Harvey and the aftermath of the banking industry in the affected region. Finally, staff provided input into financial institution letters the FDIC published relating to regulatory relief and examination guidance in the areas affected by the hurricane.*
- *Participated in IBAT and TBA meetings and seminars, other regulatory panel engagements, and spoke at graduate banking schools.*
- *In February 2018, all examination staff participated in accounting training to better assist bankers with implementation of new accounting guidance called the Current Expected Credit Loss methodology, or CECL. Though this new accounting guidance is not required to be implemented for several months, financial institutions will need to begin initial steps to transition in 2018.*
- *MSB staff participated in a working group of state MSB regulators to collectively review and make revisions/enhancements to the MTRA Examination Workprogram.*
- *MSB staff participated in a working group established by CSBS to provide feedback and to share ideas related to the ongoing development of the State Examination System (SES).*
- *MSB staff provided feedback on the BSA/AML Self-Assessment Tool form developed by CSBS and state regulators for MSBs to help institutions better identify, monitor and communicate BSA/AML risk.*

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

Measure: Monitor for and investigate illegal activity, and when necessary, initiate appropriate regulatory enforcement actions against licensed and/or unlicensed entities to ensure compliance with applicable statutes and rules to protect the rights and interests of consumers.

Update:

- *The agency's staff monitors and pursues illegal activity in the following ways:*
 - *Ongoing monthly monitoring of SAR reports;*
 - *Pursuing prohibition orders when warranted;*
 - *Reviewing information for cases involving stolen bank identity, fraudulent crypto-currency bank, and fraudulent mortgage service companies that all require communication with other federal and state banking agencies across the country.*
- *Issued one order against an unauthorized entity purporting to be a bank.*
- *Issued seven orders against money service businesses.*
- *Issued two orders against prepaid funeral contract sellers.*
- *Issued one order against a perpetual care cemetery.*
- *Issued two prohibition orders against bank officers.*
- *Coordinated with federal law enforcement on three matters involving illegal MSB activities.*
- *Notified seven MSB entities that may be engaged in money transmission without a license, and as a result:*
 - *One company was issued a C & D Order;*
 - *Three companies responded and provided documentation that is currently being reviewed by the Legal Division;*
 - *One company was notified it will need to obtain a license but deadline to file has not yet expired; and*
 - *The response due date for two companies have not yet expired.*

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

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

Update:

- *Consumer assistance activity is reported at each Finance Commission meeting. We also have updated our reporting to include inquiries.*

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

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

Update:

- *Revised Examiner Bulletins (XB) for Bank & Trust examination staff:*
 - *XB 2018-03 IT - Guidelines for Procedures and Work Paper Documentation for Information Technology Examinations.*
 - *XB 2018-02 TR - Guidelines for Procedures and Work Paper Documentation for Trust Examinations.*

- *XB 2018-01 CML - Guidelines for Procedures and Work Paper Documentation for Commercial Examinations.*
- *Revised Administrative Memorandum 2015 - Work Paper Organization, Retention, and Review for Bank & Trust examination staff.*
- *Reviewed and revised nine commercial examination procedures: Planning & Control; Audit; Borrowed Funds; Collections; Funds Management; Loans & Leases; Management; Retail Sale of Nondeposit Products; and Other Supervisory Issues.*
- *Reviewed and revised six trust examination procedures: Planning & Control; Compliance; Trust Company Management; Trust Company Earnings; Trust Company Liquidity; and Exempt Trust Company.*
- *Reviewed and revised the IT Planning & Control procedure.*
- *Regularly update examination reference materials for commercial, trust and IT examiners.*
- *Promptly notified Bank & Trust staff of the above revisions.*
- *Reviewed and revised one insurance-funded and one trust-funded PFC examination procedure for additional clarification. Notified staff in a timely manner.*
- *Reviewed and revised two PCC examination procedures for additional clarification. Notified staff in a timely manner.*

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

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

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

Update:

- *New Supervisory Memorandums (SM):*
 - *SM 1042 – Effect of Criminal Convictions on Licensing (October).*
- *Administrative Memorandum (AM):*
 - *AM 2016 – Investment Policy for Funds Under the Oversight of the Guaranty Fund Advisory Council (November).*

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

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

Update:

- *Rule amendments and new rules were adopted to:*
 - *Implement recent statutory changes regarding applications for change of control of a state bank.*

- *Establish new licensing requirements for bullion depository agents.*
- *Clarify what fees a new MSB license holder must pay to maintain its license.*

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

Measure: Provide financial education material to the banking and money service business industry as requested, in addition to hosting informational webinars. Continue active participation in financial education groups and events. Provide outreach to regulated industries as needed or requested.

Update:

- *On September 15, 2017, Commissioner Cooper and the Financial Education Coordinator participated in the Jump\$tart Membership Roundup Meeting held in Austin, Texas. On November 9, 2017, the Financial Education Coordinator participated in the Jump\$tart Membership Roundup Meeting held at the Federal Reserve Bank of Dallas, Houston Branch.*
- *The Financial Education Coordinator attended the Jump\$tart National Educator Conference in November 2017 held in Washington, D.C. The conference focused on youth financial education on a national level.*
- *On September 28, 2017, the Texas Department of Banking hosted a webinar on elderly abuse financial education.*
- *On October 26, 2017, the Texas Department of Banking hosted a webinar on guidance on Texas Permissible Investment Reports and legislative changes for the money services businesses industry.*

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

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

Measure: Actively recruit entry level positions at state universities and colleges by attending no less than six job fair events and supporting banking programs at Texas universities. Promptly post vacancies. Update personnel policy and procedures to comply with changes due to legislation and judicial decisions.

Update:

- *Seventeen jobs were posted from September 1, 2017 through February 28, 2018.*
- *Two Commercial Financial Examiners and one Trust Financial Examiner were hired for Bank and Trust Supervision from external postings.*
- *Two Attorneys were hired to fill vacant positions in Legal.*
- *One Program Specialist was hired for Division of Strategic Support.*
- *The agency has attended 11 recruiting fairs around the state.*

IV.2 **Objective:** Strive to attain full staffing, with an emphasis on employee retention and staff diversity. Promote junior staff involvement in new responsibilities to better enable seamless transition into senior staff positions as vacancies occur. Continue efforts to

be proactive in competitive salary administration. Obtain feedback from the employee advisory council.

Measure: Continue to improve examination staff retention by addressing major issues that contribute to non-retirement resignations, with a goal to have non-retirement turnover not exceed 8% for the fiscal year. Given the significant percentage of Department employees that are retirement-eligible, be proactive with succession planning development including temporary rotations to Headquarters for Review duties and providing leadership training. Maintain a competitive examiner salary program compared to the FDIC by maintaining a 90% minimum level of equivalency. Implement, when feasible, recommendations of the Employee Advisory Council.

Update:

- *Agency fiscal year 2018 turnover rate through February 28, 2018 is 6.18%; Agency turnover excluding retirements is 5.06%.*
- *Financial Examiner fiscal year 2018 rate through February 28, 2018 is 5.65%; Financial Examiner turnover excluding retirements is 4.03%.*
- *Through February 28, 2018, the agency has hired six new employees and lost eleven.*

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

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

Update:

- *The Department has updated the Closed Account Notification System (CANS), Authorized Contact and Email System (ACES), and PFC Renewal Application to the new .NET platform. Moving applications to .NET allows the applications to run on modern web browsers.*
- *The Department has upgraded its Office software to Office 365. By using Office 365 the Department not only upgraded their Office software from 2010 to 2016, but also has the advantage of the post office which is now managed and backed up by Microsoft.*
- *Upgraded the headquarters' phone system to DIR's new VOIP system. DIR is replacing the State's phone system and every State agency that uses this system must upgrade.*
- *Started the process of replacing all desktop and laptop computers in the headquarters' office and some of the field computers that have met their useful life.*
- *The PFC/PCC part of the Special Audit's SARA program has been completed. Final testing has been done and the program is now fully implemented.*
- *Added new features to Bank & Trust's EDISON, Corporates' CATS and Corporate Request systems.*
- *Started the redesign of DSS's complaint system (CHIPS).*

- *Installed a badging door locking system in all offices. This badging system eliminates the need for keys and allows controlled access to all offices through the system.*

IV.4 Objective: Safeguard the integrity of data and information technology networks and systems from unauthorized access or use and ensure they are available during an emergency.

Measure: Perform an annual information security risk assessment (external every three years) and initiate corrective actions to maintain data integrity and minimize the risk of unauthorized access or use. Conduct an annual test of the Department's disaster recovery plan to ensure operations will function appropriately and continue periodic intrusion testing by the Department of Information Resources.

Update:

- *Cyber Security training completed for all Department employees.*
- *The Department went through another successful penetration test. The test confirmed that the Department's internet presence is safe and secure.*
- *The Department continues to update the Disaster Recovery (DR) site. The DR site is in the San Antonio regional office.*
- *Updated Section 14 of the Personnel manual to include new state mandates and rules.*

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

Measure: Provide core required training courses to financial examiners in the FE I – FE III series so they can progress in the financial examiner series. Prepare examiners adequately to pass the commissioning test.

Update:

- *An internal Credit School was held the week of February 5, 2018 in Arlington, Texas for assistant bank examiners.*
- *A total of eight individual examiner commissioning panels have been conducted through February 28, 2018.*

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

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

Update:

- *Monthly financial statements are provided to all divisions for review and to the Finance Commission each quarter.*
- *For the first six months of fiscal year 2018, revenues were 105.2% of budget and expenditures were 94.1% of budget.*
- *Cash reserves are within policy guidelines.*

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

Measure: Report on improvements identified and implemented.

Update:

- *Various policies including the Travel Policy were updated to comply with current practice and/or new requirements.*

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

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

Update:

- *The agencies continue to evaluate properties provided by the broker.*
- *A meeting was held with the broker in February 2018.*
- *Commissioners continue talks with other parties regarding the timeline for the Camp Hubbard sight.*

- IV.9 Objective: Comply with the directives of the State Office of Risk Management and the Department of Public Safety regarding the Business Continuity Plan.

Measure: Ensure yearly update and exercise of the Plan.

Update:

- *An exercise related to the Plan was conducted in January 2018 with good results. An after-action report and a corrective action plan were produced to mitigate minor issues encountered during the exercise. The yearly Plan update was submitted to the State Office of Risk Management in January 2018.*

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



DEPARTMENT of SAVINGS & MORTGAGE LENDING

Caroline C. Jones, Commissioner

Memorandum

To: The Finance Commission

From: Caroline C. Jones

Date: April 20, 2018

Re: Agency Priorities for Mid-Year 2018

I. Legislative Items

I.1 Objective: Monitor federal legislation and regulations that may affect the Department or its regulated entities.

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

Status: *During the first half of FY18, the Department monitored legislation and regulations at the federal level and as appropriate reported information to the Finance Commission as well as to its regulated industries.*

I.2 Objective: Monitor interim charges that may affect the Department or its regulated entities.

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

Status: *Commissioner Jones testified at an Interim Hearing of the Senate Business & Commerce Committee on November 1, 2017 and an Interim Hearing of the House Investments and Financial Services Committee on January 31, 2018. Both hearings related to the impact of Hurricane Harvey.*

I.3 Objective: Sunset review process.

Measure: Provide documents and information as requested to the Sunset Commission. Promptly communicate with Sunset staff regarding information about the Department. Provide regular updates to the Finance Commission regarding the review process.

Status: *Department staff has provided various documents and information to Sunset Commission staff as requested. Various Department staff members have been interviewed by Sunset staff. Sunset staff attended a Thrift examination.*

II. Regulatory Items

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

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

Status: *The Department monitors the thrift industry's risk profiles and provides information to the Finance Commission on a regular basis. The Department is actively engaged in determination of necessary supervisory action and taking appropriate supervisory action during on-site examinations and off-site reviews. Compliance with existing enforcement actions is monitored through quarterly reports from the thrifts and on-site visitations and examinations.*

II.2 Objective: Retain prompt resolution times on consumer complaints.

Measure: Provide updates to the Finance Commission on the aging of complaints. Regularly review any complaints open over 120 days to identify issues preventing the timely closing of complaints.

Status: *As of February 28, 2018, 89% of the open consumer complaints were aged less than 90 days. The Director of Mortgage Examinations reviews any complaints that are open for more than 120 days. Aging of complaints is reported to the Finance Commission on a quarterly basis.*

II.3 Objective: Continue to participate in the development and implementation of home equity interpretations.

Measure: Continue participation in meetings of the Home Equity Lending Working Group, comprised of representatives from the Department, the Office of Consumer Credit Commissioner, the Department of Banking and the Credit Union Department.

Status: *During the first half of FY18, the Department participated in the Home Equity Lending Working Group's work on Home Equity rules to implement the constitutional amendments enacted through Proposition 2. The proposed rules were presented to the Finance Commission at its December 2017 meeting and adopted at its February 2018 meeting.*

II.4 Objective: Continue to remain active and involved at the national level on supervisory issues affecting savings banks and the mortgage industry.

Measure: Maintain active contact with other states, regulatory associations (e.g. ACSSS, CSBS, AARMR, and NACCA), trade associations, (e.g. TBA, IBAT, TMBA, ATMP, and TAR) and federal regulators in order to be aware of events, decisions, other state and federal policies and other areas of actual and potential impact on the Department's regulatory functions or the industries. Take proactive steps to respond as issues arise affecting the industries or supervisory duties.

Status: *Members of the Department's management team serve in leadership positions on several national associations and committees. These include: the American Council of State Savings Supervisors, (Board Chair), the American Association of Residential Mortgage Regulators, (Board President), and serve on the board of the State Regulatory Registry. The Commissioner serves on the Federal Financial Institutions Examination Council (FFIEC) through the State Liaison Committee and on Financial and Banking Information Infrastructure Committee (FBIIC). Both FFIEC and FBIIC provide opportunities for active contact with federal counterparts. Several staff members serve on Conference of State Bank Supervisors working groups. The Department participated in the FDIC Dallas Region Annual Regulator Meeting and the FDIC Banker Outreach. The Department stays in contact with the relevant state trade associations and has made eight presentations to various statewide and local chapters of trade associations. The Commissioner has met with representatives from the Mortgage Bankers Association in Washington D.C.*

II.5 Objective: Continue to cooperate and build relationships with the CFPB, FDIC, FRB, and other federal agencies, as appropriate, on examinations, supervision, and consumer complaint resolution issues. Monitor federal rule writing activity and interpretations of existing statutes.

Measure: Report to the Finance Commission on the frequency of interaction with federal agencies in all of the above listed activities as well as meetings.

Status: *The Department, through its joint examination process, has a continual relationship and contact with the FDIC and FRB on examination, supervision, and consumer complaint issues. On an as needed basis, the Director of Mortgage Examinations and representatives with the CFPB discuss issues relating to the mortgage industry.*

II.6 Objective: Continue compliance examinations of mortgage companies and Residential Mortgage Loan Originators, licensed under Finance Code, Chapters 156 and 157, respectively; to ensure that licensees are in compliance with applicable laws and regulations when conducting business with Texas consumers. Analyze recurring examination findings and take steps to communicate best practices to the mortgage industry.

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

Status: *As of February 28, 2018, the Department conducted 220 examinations of mortgage entities covering 6,677 mortgage loan originators. The Department provides the overall top violations to industry at various opportunities, including presentations to statewide and local associations, the Department's Mortgage Seminar, and at Mortgage Industry Advisory Committee meetings. The Department issued formal and informal enforcement actions as deemed necessary.*

III. Policy and Rule Development

III.1 Objective: Develop any rules necessary to implement statutory changes passed by the Legislature.

Measure: Obtain Finance Commission adoption of implementing rules. Include stakeholders in rule development process.

Status: *During first half of FY18, amendments to 7 TAC Chapter 80 and Chapter 81 were proposed to and adopted by the Finance Commission. These amendments provided clarification and some technical clean-up.*

IV. Industry Outreach and Communication

IV.1 Objective: Provide pertinent information to regulated industries through a variety of means both electronic and face to face as deemed appropriate and efficient.

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

Status: *During the first half of FY18, the Commissioner and other Department representatives have provided updates to industry at eight face to face opportunities. These include presentations to local mortgage associations, regulatory panels at state trade association events, Mortgage Industry Advisory Committee meetings, 10th annual Thrift Industry Day, and the 5th annual Mortgage Seminar.*

Various Department representatives discuss issues related to the industries via individual face to face meetings, conference calls and electronic means as deemed necessary and appropriate. The Commissioner made Commissioner visits to six state savings banks in the first half of FY18.

V. Agency Management

V.1 Objective: Recruit and train personnel with the appropriate skill set necessary to meet the Department's short and long term needs. Train and cross-train employees as needed to minimize knowledge loss due to employees' retirement or separation and to prepare for

workload shifts due to changes in regulated industries and/or technology. Provide and promote opportunities for staff professional development.

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

Status: *Over 70% of personnel have received training or professional development during the first half of FY18. One position has been filled. In the first half of FY18, the Department had no turnover.*

V.2 Objective: Meet or exceed 90% of the key performance measures, within the Department's control. Strive to reduce deficiencies, if any, in the performance measures outside the Department's control.

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

Status: *The Department has reported on its four key measures to the Finance Commission on a quarterly basis. As of the second quarter of FY18, the Department has met or exceeded all of these key measures. The Department expects to meet or exceed all the output measures for the fiscal year.*

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

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

Status: *During the first half of FY18, the Department has been under review by the Sunset Commission. Sunset's review began in September 2018.*

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

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

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

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

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

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

V.6 Objective: Continue to work towards a long term solution to address headquarters space and parking needs.

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

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

Office of Consumer Credit Commissioner

Agency Priorities – Mid-Year Report

FY 2018

1. LEGISLATIVE

1.1. Mandated Studies.

1.1.1. Objective: Legislative Interim Studies. The agency expects to participate in interim studies and provide resource information and research. Generally interim studies in each house encompass some area within the agency's jurisdiction or area of knowledge.

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

Status: *An interim hearing for the House Investments and Financial Services committee to address Hurricane Harvey issues was held on January 31st. The OCCC testified regarding the impact Hurricane Harvey had on agency regulated industries and the agency's guidance to pawnshops and other lenders. Testimony also discussed the effects on consumers and lenders in the mortgage and home equity markets.*

1.2. Sunset Review

1.2.1. Objective: Provide Requested Information for Sunset Review Process. The agency's scheduled sunset date is September 1, 2019. The agency will be under review by the Sunset Commission in the 2018-2019 review cycle. The process includes a self-evaluation by the agency, review by Sunset staff, public hearings, and recommended legislative action.

Measure: Prepare self-evaluation report and respond to requests for information from the Sunset Commission. Maintain communication with Sunset staff to convey information about the agency and its mission.

Status: *The agency submitted its self-evaluation report on September 1st, and has responded to numerous requests for information from the Commission. Staff continues to communicate regularly with Sunset staff throughout this process.*

2. REGULATORY ACTIVITIES

2.1. Regulated Entities.

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

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

Status:

License	Compliance Status as of 2/28/18	Enforcement
<i>Pawn</i>	<i>99.24% acceptable level of compliance.</i>	<i>51 enforcement actions closed — 48 injunctive actions 3 administrative penalty actions</i>
<i>Regulated Loans</i>	<i>86.73 % acceptable level of compliance.</i>	<i>2 enforcement actions closed — 2 injunctive actions</i>
<i>Property Tax Loans</i>	<i>94.12% acceptable level of compliance.</i>	<i>1 enforcement action closed — 1 injunctive action</i>
<i>Credit Access Business</i>	<i>83.61% acceptable level of compliance.</i>	<i>23 enforcement actions closed — 20 injunctive actions 3 administrative penalty actions</i>
<i>Motor Vehicle Sales Finance</i>	<i>90.88% acceptable level of compliance.</i>	<i>27 enforcement actions closed — 10 injunctive actions 17 administrative penalty actions</i>

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

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

Status: *The agency has completed 2,074 examinations at mid-year which is 102.7% of the prorata goal and 49% of the annual goal for the fiscal year. The overall compliance rate is 90.74% for all five examination areas combined. Restitution from examinations conducted is \$3,659,450 as of February 28, 2018. During this period, the agency closed 104 enforcement actions concerning the five examination areas. The 104 closed cases include 81 injunctive actions and 23 administrative penalty actions.*

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

Measure: Reporting on improvements and training sessions held for examiners to communicate enhancements to the ACE Examination Tool.

Status: *Refinement and enhancement of the (ACE) tool continues to make progress. Ongoing change management meetings are held regularly to discuss and prioritize refinements to the system.*

2.2. Licensing.

2.2.1. Objective: Process 80% of license applications within 60 days from received date to completion date. Work with industry and stakeholders to encourage 85% of external pawn employee applicants to submit applications online. Digitize all historical license information into accessible database.

Measure: Report on license activities, benchmarks, application processing status, and imaging project.

Status: *So far in FY 2018 the licensing department has processed 68% of applications within 60 days of receipt. Management expects that percentage to increase in the second half of the fiscal year as pending volume drops and staff continues training on application processing. Additionally, approximately 76% of pawn employee applications are submitted online by external ALECS users. As an increasing number of pawn employees submit applications online, that percentage will increase throughout the duration of FY 18. The department continues to consolidate and prepare documents in order to effectively digitize historical licensing data, while also imaging files and adding to digitized archival documents in ALECS.*

3. POLICY AND RULE DEVELOPMENT

3.1. Agency Rules.

3.1.1. Objective: Rule Review. Complete rule reviews of 7 TAC Chapter 83, Subchapter B, Rules for Credit Access Businesses (last reviewed FY 2014) ; 7 TAC Chapter 85, Subchapter B, Rules for Crafted Precious Metal Dealers (last reviewed FY 2014); and 7 TAC Chapter 88, Consumer Debt Management Services (last reviewed FY 2014).

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

Status: *The first two rule review areas in the initial FY 2018 priorities report inadvertently listed the incorrect subchapters scheduled for review. The rule reviews for Chapter 83, Subchapter B, Rules for Credit Access Businesses and Chapter 85, Subchapter B, Rules for Crafted Precious Metal Dealers were previously completed and reported. Next up for rule review are Chapter 83, Subchapter A, Rules for Regulated Lenders and Chapter 85, Subchapter A, Rules of Operation for Pawnshops (both last reviewed FY 2014). The regulated lender and pawnshop rule reviews are pending scheduling either in late FY 2018 or early FY 2019.*

The commission adopted the completed rule review of Chapter 88, Consumer Debt Management Services, at its December 2017 meeting, with the proposal of associated amendments being approved for publication at that time. The amendments generally relate to the following issues: registration procedure updates, recordkeeping and disclosure, clarification, and technical corrections. The debt management rule review

amendments were adopted by the commission at its February 2018 meeting, and became effective on March 8, 2018.

- 3.1.2. Objective:** Rule Development. Work with interested stakeholders from all stakeholder groups to clarify and improve rules as issues arise during licensing, complaints, investigations, examinations, enforcement actions, or from other sources. Continue to hold and refine stakeholder webinars to increase stakeholder engagement in rule development process. Draft rule amendments as appropriate.

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

Status: *During the first two quarters of FY 2018, the agency worked with stakeholders to develop rules achieving the following purposes: to implement legislation concerning preclicensing education for residential mortgage loan originators (RMLOs), to clarify that the administrative fee may be financed in regulated loans, and to implement constitutional amendments regarding home equity loans. The agency distributed three precomment drafts and held one stakeholder meeting, including webinar participation. Stakeholder input provided invaluable assistance in refining the amendments ultimately adopted by the commission at its December 2017 meeting (RMLOs), and its February 2018 meeting (administrative fee and home equity).*

The agency has continued the stakeholder engagement process in the development of rules scheduled to be presented for adoption at the commission's April meeting. In developing rules regarding motor vehicle recordkeeping and the registration system transition for crafted precious metal dealers, the agency has distributed three precomment drafts and held two additional stakeholder webinars.

4. CONSUMER ISSUES / COMMUNICATION & OUTREACH STRATEGIES

4.1 Texas Financial Education Endowment Fund (TFEE).

- 4.1.1. Objective:** Manage grant solicitation, application review, selection, reporting and funding for the FY 2018-2019 grant cycle.

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

Status: *The TFEE website posted resources and information for the 2018-19 Grant Cycle including: applicant guidelines and instructions, grant application, directory of Grant Advisory Committee members, and a webinar reviewing the program. Applications were received from twenty-three organizations requesting more than \$830,000 in funds. After a rigorous review process, nine organizations were selected to receive grants, and a total of \$250,000 in funds was awarded to recipients distributed statewide. Grant agreements were signed and executed. Press releases announcing grant recipients were sent to various*

media outlets throughout the state. In addition, a risk assessment was developed to determine appropriate monitoring methods. Investment policies were updated, conforming OCCC and Finance Commission (FC) policies to the policies of the Texas Treasury Safekeeping Trust Company (TTSTC). The FC received a fund update from the TTSTC CEO at the February meeting regarding the investment portfolio of TFEE.

4.2 Financial Literacy

- 4.2.1. Objective:** Identify underserved populations in need of financial literacy and provide financial literacy education to new demographics of consumers by collaborating with local agencies.

Measure: Report on number of people and programs reached.

Status: *Agency staff has been actively seeking new partnerships to provide financial education to diverse demographics in underserved populations and has begun building relationships with underserved populations, specifically within the senior community. At mid-year, staff is at 51.08% of the goal and staff is currently on track to meet or exceed goal.*

4.3. Industry

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

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

Status: *At mid-year, staff is working on a quarterly industry stakeholders' newsletter featuring education and regulatory compliance issues addressing specific industry topics. This objective is on schedule to be completed before the end of the fiscal year. In addition, over 400 licensees have benefited from education and regulatory compliance trainings provided by the Consumer Protection Department.*

- 4.3.2. Objective:** Conduct initial planning and design on customer feedback module.

Measure: Report on progress and necessary tools needed to develop module.

Status: *The initial meeting was held with IT staff to plan execution of a customer feedback module. Draft questions are currently under review and completion is anticipated by the end of the fiscal year.*

5. AGENCY MANAGEMENT

5.1. Performance Measures.

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

Measure: Continue to meet or exceed the strategic planning goals for key performance measures, including attainment of at least 7 out of 9 key performance targets. Report results to Finance Commission on a quarterly basis.

Status: *The agency is currently on track to meet or exceed 7 of the 9 key performance targets.*

5.2. Human Resources.

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

Measure: Thoroughly review exit interviews to identify improvements to support retention. Report on turnover ratio and cross-training initiatives. Maintain competitive financial examiners salaries compared to peers.

Status: *At mid-year, the agency had 82 FTEs out of a possible 91 allowed. Currently, turnover is 7.3%. Out of the eligible Financial Examiners (FE) within the FE II series that met the time and experience criteria, one successfully passed the certification and was promoted to FE III within the FE series. Staff continues to review methods of improving communication.*

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

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

Status: *Examiners attended annual training earlier in the fiscal year where an in-depth curriculum was presented, providing 34 of the 40 minimum required hours, including training on rule changes from the state and federal government. Other training opportunities include: National Association of Consumer Credit Administrators (NACCA) Examiner's School, as well as OCCC-led classroom trainings. At mid-year, financial examiners (49) have attained a total of 1,895.5 training hours. All newly hired Financial*

Examiners receive eight weeks of introductory classroom training before moving into the field. Also, staff is currently working on improving methods to communicate training opportunities for non-examination staff. Administrative staff is planning to attend professional or job related training, such as computer-related software courses. One manager attended the Governor's Center for Management Development training. This report will be updated at year-end.

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

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

Status: *At mid-year, several seminars were scheduled for March to assist supervisors with their duties, providing insights on how to manage employee performance. This training will focus on goal setting, coaching, evaluating performance, and feedback. The class will be available to all senior staff, supervisors, assistant supervisors and managers. Report on progress will be given at the end of the fiscal year.*

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

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

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

Status: *The agency monitors and timely reviews the financial status through monthly Operating Statements and Budget Analysis reports. These reports are also reviewed on a quarterly basis by the Finance Commission. Financial performance in the year was within the budgeted levels as established by the Finance Commission.*

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

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

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

5.4. Information Technology.

- 5.4.1. Objective: Legacy Modernization.** Continue enhancements to the Application, Licensing, Examination, Compliance System (ALECS), improving functionality and security.

Measure: Reporting on development and milestones.

Status: *The implementation of database encryption of certain sensitive data to enhance security has been completed and staff is in the process of making additional security enhancements. The agency is moving forward with a new project to add a registration type, Crafted Precious Metals Dealers, to ALECS. Work is ongoing for other high priority maintenance issues.*

- 5.4.2 Objective: Increase Agency Security Posture.** Using the recommendations developed by the external DIR-contracted vendor during the security assessment in FY17, the OCCC will move toward increasing agency maturity levels for objectives in the Texas Cybersecurity Framework.

Measure: Activity reporting on the roadmap with timelines for implementation of recommendations: The OCCC will implement all mid-term recommendations within FY18. Long-term recommendations will be evaluated for implementation by the end of FY 2018.

Status: *The OCCC is on track to implement all mid-term recommendations within FY18. Long-term recommendations will be evaluated for implementation by the end of FY 2018.*

B.

Texas Department of Banking

This page left blank intentionally.



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: April 6, 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	238	\$254.8				
# Trust Co. (1)	19	\$101.4	17	\$108.5	18	\$110.0	17	\$105.7				
# FBA/FBB	10	\$70.0	10	\$56.1	8	\$64.7	7	\$66.8				
Examinations Performed												
Banks	105		103		24		25					
Trust Co.	31		26		6		4					
FBA/FBB	2		3		0		0					
Bank Uniform Financial Institution Composite Ratings												
1	126	51.0%	123	51.3%	121	50.4%	117	49.2%				
2	109	44.1%	104	43.3%	105	43.8%	108	45.4%				
3, 4, & 5	12	4.9%	12	5.0%	13	5.4%	12	5.0%				
Non-Rated	0	-	1	0.4%	1	0.4%	1	0.4%				

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

The Department considers any bank with a Uniform Financial Institutions Composite Rating of 3, 4, or 5, to be a problem bank. As of this writing, problem institutions total 11, a level which is consistent with last fiscal year-end and 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.

Summary of the Bank & Trust Supervision Division Activities

Page 2

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	2		
Informal	19	23	23	21		
Banks - Bank Secrecy Act (BSA)						
Formal	0	0	0	0		
Informal	0	2	1	1		
Banks - Information Technology (IT)						
Formal	0	0	0	0		
Informal	0	2	2	2		
Trust Departments of Banks and Trust Companies						
Formal	0	0	0	0		
Informal	3	1	1	1		
Total Enforcement Actions Outstanding						
Formal	0	2	2	2		
Informal	22	28	27	25		
Total	22	30	29	27		

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 – Feb 2018)
Commercial Banks (All / DOB Only)	91% / 98%	95% / 97%
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 six months of fiscal year 2018, four bank examinations were started outside of policy guidelines, averaging 15 days late. One late exam was the responsibility of the Department (1 day late) and three were the responsibility of the FDIC (averaging 19 days late). 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 three banks were also late for FDIC information technology examinations.

Division Highlights

- **Oil and Gas**—Banks with significant oil and gas (O&G) exposure continue to reflect modest improvements in asset quality metrics as problem borrowers are able to improve their financial circumstances or banks are successful in liquidating collateral to repay the outstanding debt. The Permian Basin area appears to be recovering in an impressive fashion, based upon discussions with area bankers, employment increases, heightened oil production, and an expanded rig count. Due to improvement in the energy sector, the Department discontinued quarterly monitoring on the 21 banks agency staff had identified as having significant O&G exposure. However, even though specific bank monitoring was discontinued, agency staff will continue to closely watch developments in the industry, including changes in commodity prices and rig counts. In addition, special O&G examination procedures, called the Oil and Gas Work Program, will continue to be completed by examiners at banks deemed heavily dependent on this industry.
- **Hurricane Aftermath and Preparedness**—According to the National Hurricane Center, Hurricane Harvey caused more than \$125 billion in damage, which is more than any other natural disaster in U.S. history except Hurricane Katrina. Months after Hurricane Harvey, some displaced families have still not been able to return to their homes. In addition, the financial impact to many businesses, farmers and consumers could remain a burden for years. In spite of these devastating effects, banks located in areas affected by Hurricane Harvey report no significant or prolonged exposure to their operations or financial performance. Preparations for the coming hurricane season have begun, and division staff participated in meetings with other state and federal regulators to revise regulatory response procedures. In addition, as part of the Department's strategic planning process, division staff met with other divisions to review potential changes to the *Texas Finance Code* that might assist regulated entities and agency staff during the next hurricane.
- **Examiners Council (EC) Meeting:** The EC is a select group of commercial field examiners that meet at least once each year to review the consistency and quality of examination work papers and discuss perceived concerns with examination procedures. EC members also serve as liaison representatives between the field staff, regional office staff and headquarters personnel to consider and make recommendations for change to existing commercial examination procedures and work paper organization practices. The EC met in Austin the week of March 26, 2018 to perform these tasks.
- **Special Operations and Conferences:**
 - In February and March, Director Purdom participated in the Independent Bankers Association of Texas Regional Meetings held in various cities throughout the state.
 - Review Examiner Wu participated in a bank regulatory panel held at the Texas Bankers Association Lending School in Austin on February 14, 2018.
 - Regional office and Austin Headquarters staff participated in training provided by BKD, LLC on changes in accounting treatment relating to banks' reserve for potential loan loss calculations. 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. An Industry Notice to bankers detailing the Department's expectations regarding CECL implementation was issued

Summary of the Bank & Trust Supervision Division Activities

Page 4

on March 26, 2018. This guidance, entitled, *Preparing for the Implementation of the Current Expected Credit Losses Methodology*, can be found on the Department's website:

<http://www.dob.texas.gov/public/uploads/files/news/Industrynotices/in2018-01.pdf>

- The week of March 5, 2018, Commissioner Cooper, Deputy Commissioner Newberg and other staff members participated in the CSBS Government Relations Fly-in held in Washington, D.C.
- On April 4, 2018, Commissioner Cooper presented testimony to the Texas House of Representatives – Business and Industry Committee, about Interim Charge #4, which requires a study of the impact of data breaches or theft on Texas consumers and businesses. The recorded video broadcast of the committee meeting can be found at the following website:

<http://www.house.state.tx.us/video-audio/committee-broadcasts/>



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705

512-475-1300 / 877-276-5554

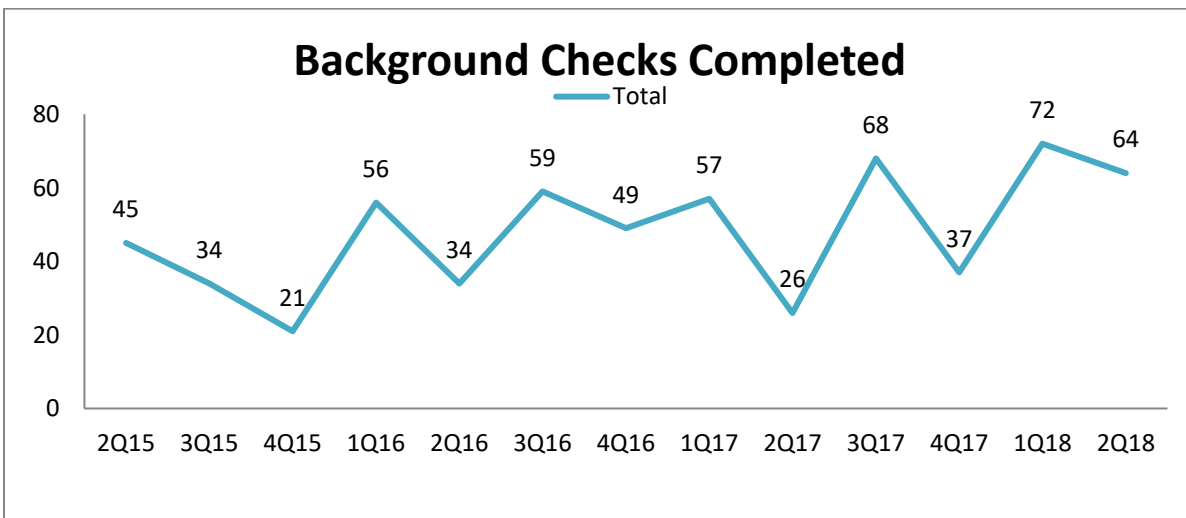
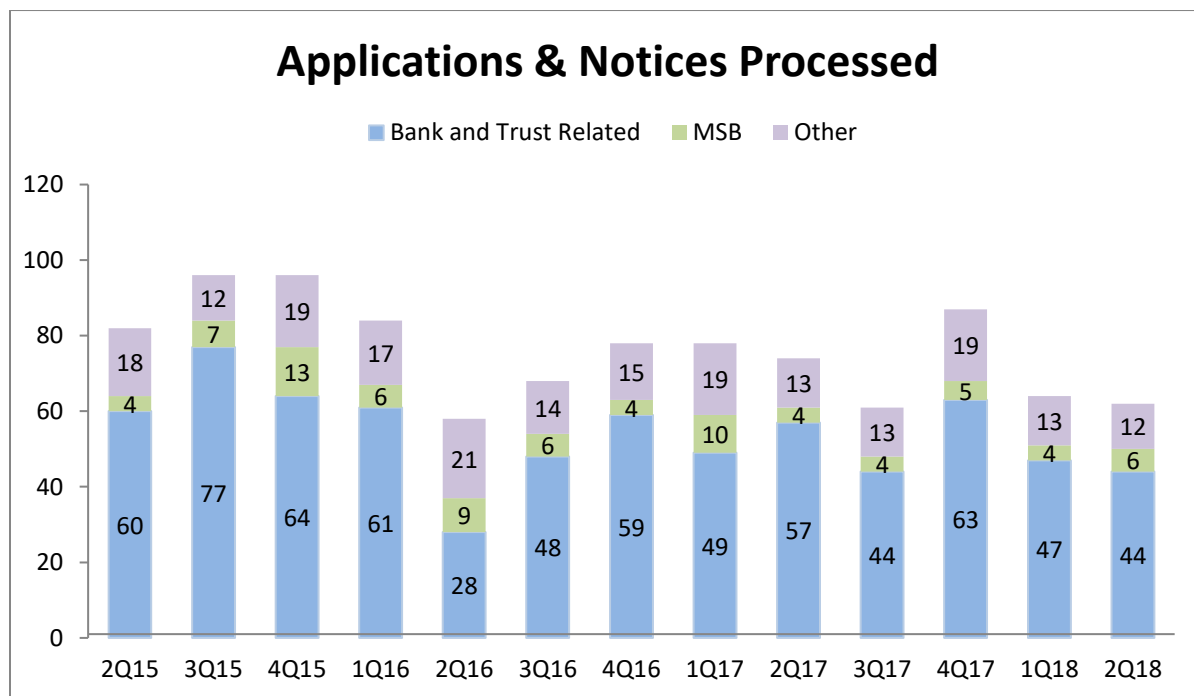
www.dob.texas.gov

To: Finance Commission Members

From: Daniel Frasier, Director of Corporate Activities *DF*

Date: April 5, 2018

Subject: Summary of the Corporate Division Activities



Entities/Activities	Applications and Notices Under Review (as of April 3, 2018)
Bank Related	20
Trust Companies	4
Money Services Business (MSB)	16
Others	3
Totals	43

Division Highlights

- The volume of substantive bank filings received is high and remains elevated since December 2017 due to change of control, merger and conversion related applications being received and processed by Corporate. The number of MSB applications received has jumped as well within the last two months. We continue to see MSB license applications for new entrants as well as established unlicensed operating entities that have recently come to our attention.
- Charter, Conversion, and Merger Activity – The following transaction has consummated since Corporate’s last report to the Finance Commission:
 - *Banks*
 - Southwest Bank, Fort Worth, Texas, merged into Simmons Bank, Pine Bluff, Arkansas
- Conferences, Conventions, and Committee Meetings – Corporate participated in the following meetings since the last report to the Finance Commission:
 - Corporate Analyst Xazel Garcia attended the Nationwide Multistate Licensing System conference in New Orleans, Louisiana, February 6 through February 9, 2018
 - Senior Corporate Analyst Mark Largent attended the IBAT Regional Meeting in La Grange, Texas, on March 6, 2018



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: Russell Reese, Director of Special Audits *Russell Reese*

Date: April 3, 2018

Subject: Summary of the Special Audits Division Activities

Special Audits			FY 2018							
Entity	FY 2017		1 st		2 nd		3 rd		4 th	
Industry Profile (# / Assets (billions))										
Money Services Businesses (MSB)	156	\$113.8	156	\$113.8	159	\$113.8				
Prepaid Funeral Contract (PFC)	375	\$3.9	373	\$4.0	374	\$4.0				
Perpetual Care Cemeteries (PCC)	242	\$332.9	242	\$338.0	242	\$341.6				
Cemetery Brokers (CB)	14	n/a	14	n/a	14	n/a				
Private Child Support Enforcement Agencies (PCSEA)	10	n/a	10	n/a	10	n/a				
Check Verification Entities (CVE)	2	n/a	2	n/a	2	n/a				
Bullion Depository Agent (BDA)	*	*	0	n/a	0	n/a				
Examinations Performed										
MSB	104		24		31					
MSB Limited Scope	3		0		0					
MSB Accepted other State	7		4		2					
PFC	284		64		46					
PFC Limited Scope	2		0		4					
PCC	172		43		59					
PCC Limited Scope	4		1		2					
Ratings (# / %) Assigned to All Regulated Entities										
1	303	40%	292	38.7%	289	38.2%				
2	384	51%	391	51.8%	386	51.1%				
3,4, & 5	70	9%	72	9.5%	81	10.7%				
Noncompliance with Examination Priorities (Past Due)										
MSB	5		12		9					
PFC	4		2		3					
PCC	5		3		2					

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 nine MSB past due examinations are on average 1.4 months past due.
- The two PCC past due examinations are on average five days past due and the three PFC past due examinations are on average two months past due.
- Our current examination schedule reflects that one of the past due PCC/PFC examinations was completed in March 2018 and the remaining four past due PCC/PFC examinations will be completed in April 2018.
- Our current examination schedule reflects that four of the past due MSB examinations were completed in March 2018, three will be completed in April 2018, and the two remaining will be completed in May 2018.
- Special Audits met or exceeded all performance measures for the second quarter of FY 18.

Division Activities

On March 19th, Deputy Commissioner Newberg and Director Reese gave presentations on perpetual care regulations to the members of the Texas Cemeteries Association (TCA) during their 2018 Annual Convention in Bastrop, Texas.

MSB Financial Examiners met in Round Rock the week of April 2nd to discuss current events in the industry and to receive additional training on performing examinations and submitting compliant examination reports.

We continue to utilize staff resources to monitor for and investigate illegal activity, and when necessary, initiate appropriate regulatory enforcement actions against unlicensed entities to ensure compliance with applicable rules and regulation to protect the rights and interests of Texas consumers. During the first six months of FY18, these investigations have resulted in enforcement actions against three companies and the assessment of \$442,874 in fines and penalties.

The 2017 Special Audits “Rate the Department” survey was recently completed. We only received 40 survey responses from the industry, or 5.5% of the total number of Special Audits license holders surveyed. Most of the comments received were very positive. Also, the low number of survey responses received is generally a good indicator the majority of the industry is satisfied on how we are performing our duties. However, the survey results will be discussed with staff to elicit feedback on comments received and to brainstorm on how we can attempt to increase industry participation on future surveys.

Actual Performance for Output/Efficiency Measures

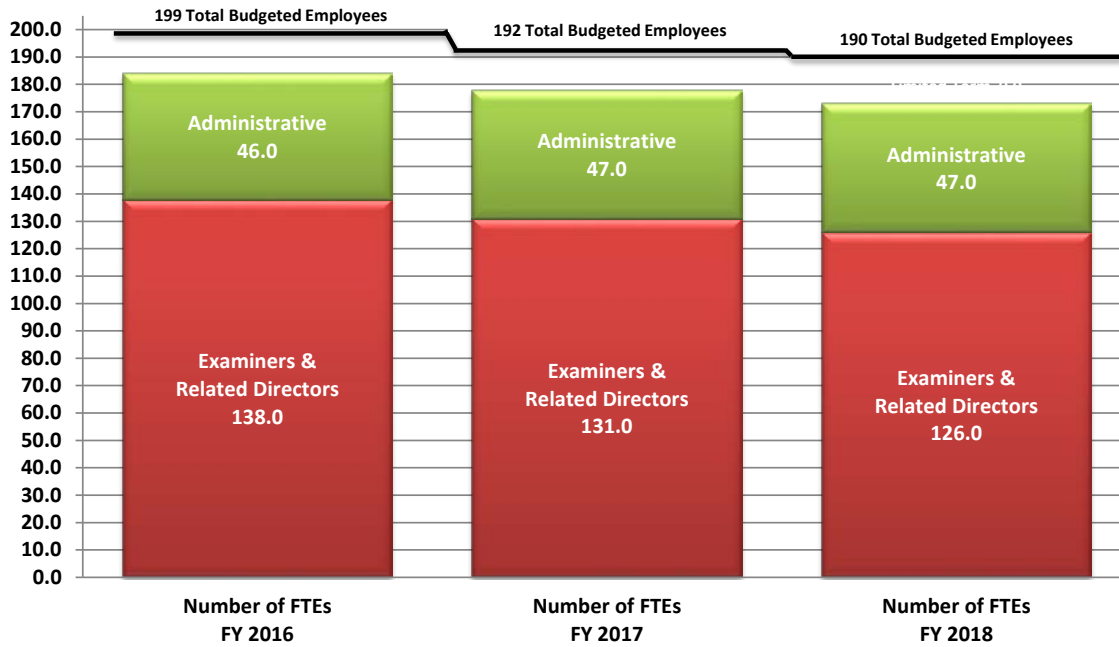
Fiscal Year 2018

For Period Ending February 2018

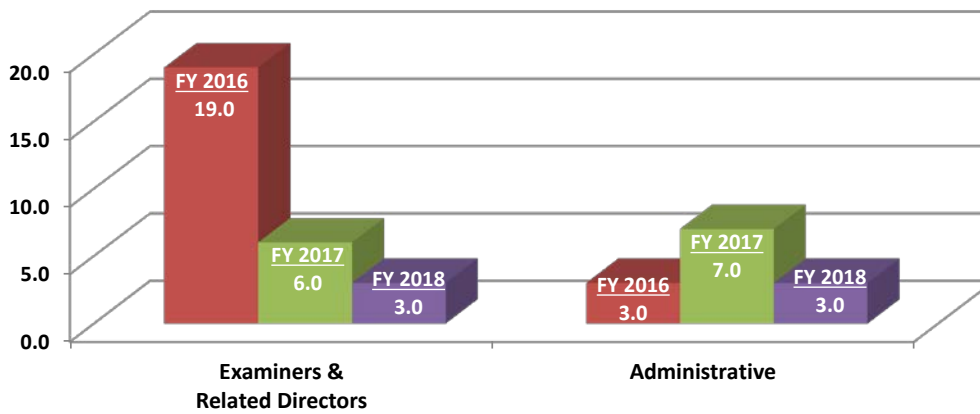
Type/Strategy/Measure	2018 Target	2018 Quarter	2018 YTD	Percent of Annual Target
Output Measures-Key				
1-1-1	BANK EXAMINATION			
	1. # BANK EXAMINATIONS PERFORMED			
Quarter 1	95	24	24	25.26%
Quarter 2	95	25	49	51.58%
	2. # TRUST/IT EXAMINATIONS PERFORMED			
Quarter 1	208	49	49	23.56%
Quarter 2	208	54	103	49.52%
1-2-1	NON-BANK EXAMINATION			
	1. # SPECIAL AUDIT LICENSEES EXAMINED			
Quarter 1	560	136	136	24.29%
Quarter 2	560	144	280	50.00%
1-3-1	APPLICATION PROCESSING			
	1. # LICENSE APPLICATIONS COMPLETED			
Quarter 1	307	64	64	20.85%
Quarter 2	307	62	126	41.04%
The number of filings completed for the quarter was lower than expected due to the Department receiving fewer filings than expected; no objection letter requests and subsidiary notice filings in particular.				

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

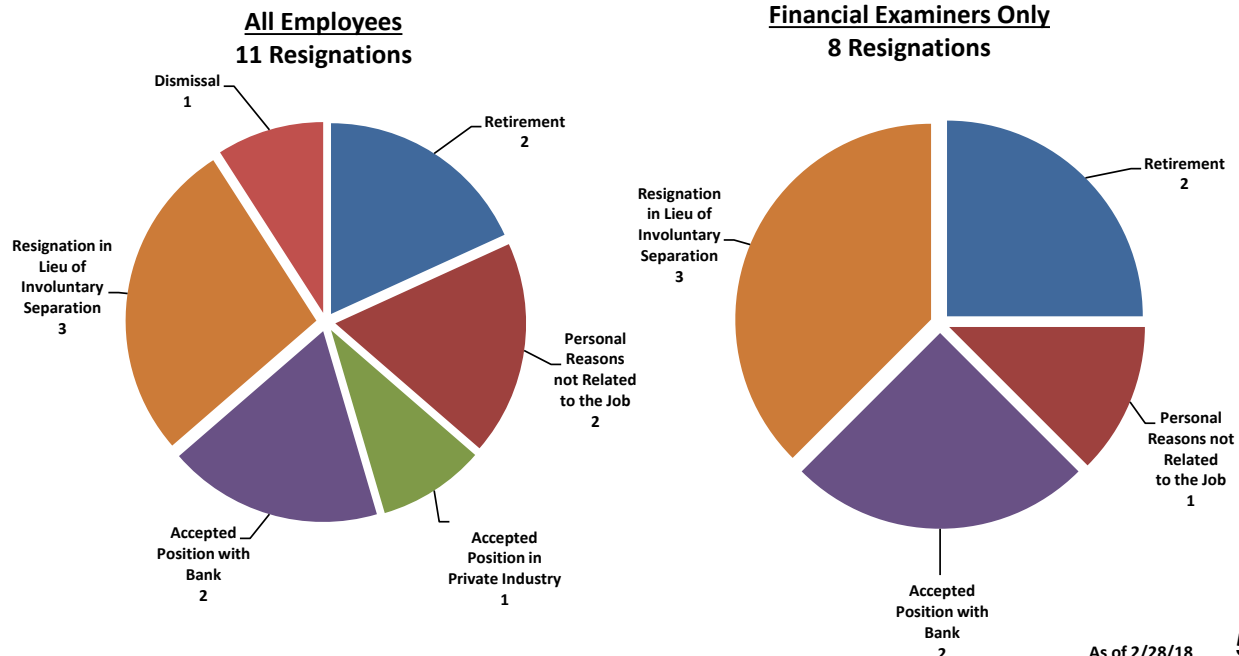
Texas Department of Banking
Employee Data for Fiscal Years 2016, 2017 and 2018 as of 2/28/18



New Hire Data for Fiscal Years 2016, 2017 and 2018



FY 2018 Employee Turnover Reasons





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

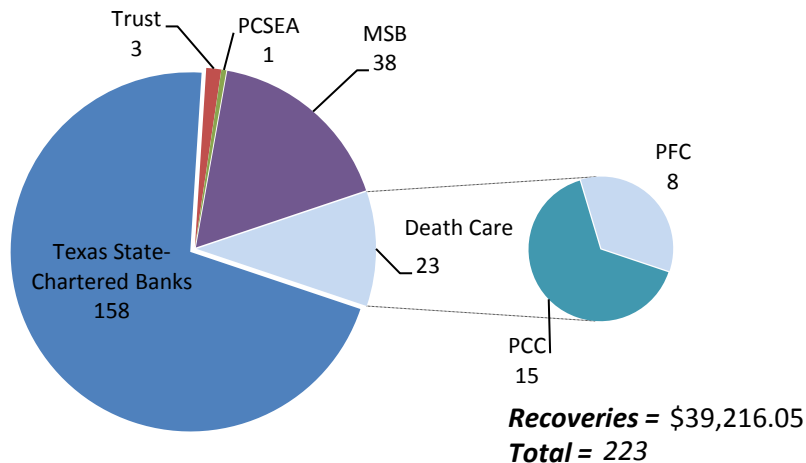
To: Finance Commission Members

From: Wendy Rodriguez, Director of Strategic Support *WR*

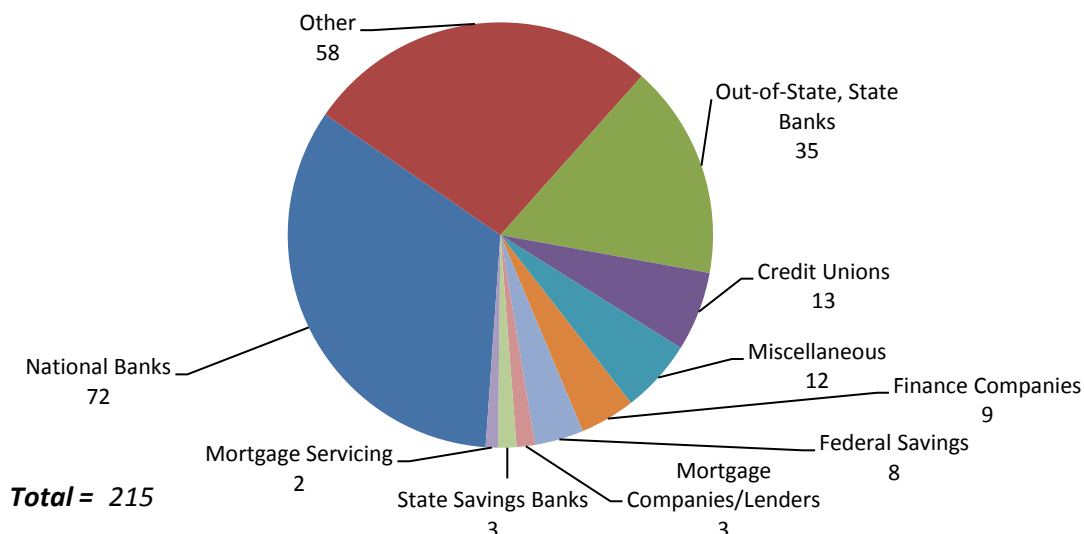
Date: April 1, 2018

Subject: Summary of the Strategic Support Division Activities

Jurisdictional Complaints September 2017 - February 2018

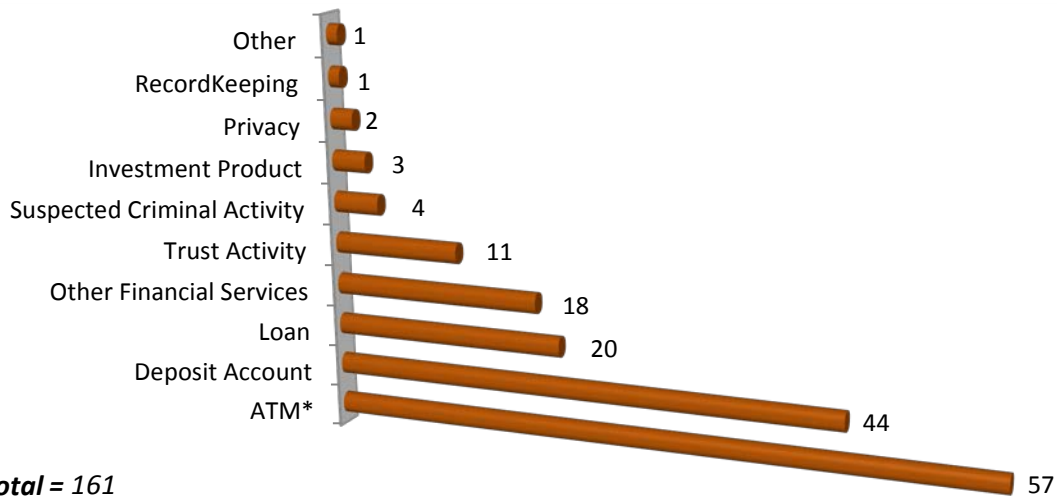


Complaints Against Non-Jurisdictional Entities September 2017 - February 2018



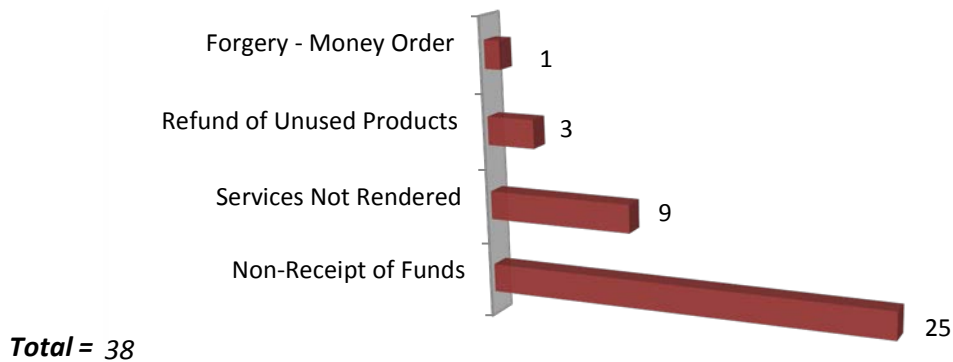
On occasion, consumers do not provide the name of the entity they need assistance with. In these situations, the communication is categorized in the "Other" category.

State-Chartered Banks and Trust Companies Complaints by Type September 2017 - February 2018

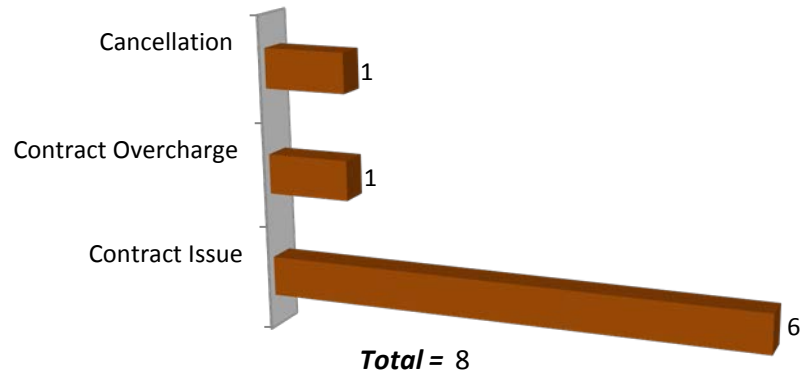


*Activity related to annual privacy notice containing the Department's contact information. Consumer complaints range from needing clarification of the notice to account balance issues and card related problems.

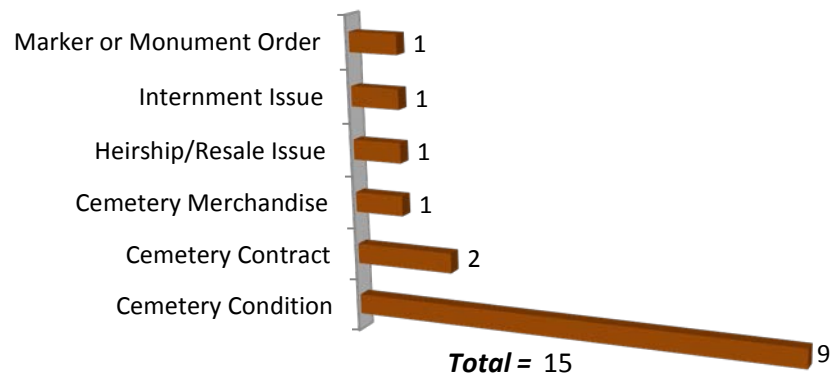
Money Services Businesses Complaints by Type September 2017 - February 2018



**Prepaid Funeral Contract Sellers
Complaints by Type
September 2017 - February 2018**



**Perpetual Care Cemeteries
Complaints by Type
September 2017 - February 2018**



Average Number of Days to Close a Written Complaint

Type	Sept. 2017 – Feb. 2018
State-Chartered Banks	15
Trust	5
PCSEA	N/A
PFC/PCC	31
MSB	40

CANS ACTIVITY

January 1, 2014 – March 30, 2018

Entity	Enrolled	Compromised Accounts Reported
Texas State-Chartered Banks	216	1,062
Texas State-Chartered Savings Banks	26	72
Federal Savings Banks	10	81
State Credit Unions	132	1,041
Federal Credit Unions	229	730
National Banks	170	291
Out-of-State State-Chartered Banks	13	87
Out-of-State National Banks	6	15
Total	802	3,379

Bank Examination Testing System (BETS) Activity

Number of Candidates Passing Each Phase

	FY 2015	FY 2016	FY 2017	FY 2018 (As of 03/31/18)
I. General Knowledge	8	9	8	4
II. Loan Analysis	2	4	3	3
III. Panel	4	3	2	0
IV. Test Bank	4	2	3	1
Total FE3	19	18	24	29

Promotions

From FE3 to FE4 (Commissioned Examiner)	4	2	3	0
--	---	---	---	---

Other Divisional Items:

- *Publications or Reports*
 - The March 2018 edition of the Condition of the Texas State Banking System report is available with financial data as of December 31, 2017.

- Strategic Plan for Fiscal Years 2019-2023
 - The [instructions](#) for the agency's Strategic Plan were released on March 7, 2018. The instructions did not change dramatically from the previous biennium; however, the final product must be submitted by Friday, June 8, 2018. The agency is working on a draft that will be presented to the Strategic Planning Committee on May 21, 2018.
- Various agency publications were updated in March 2018, including the [Agency Profile](#), [Top 100 Banks in Texas](#), and the [Overall Texas Banking Activity](#).
- *Sunset Review*
 - The Department of Banking wrapped up its on-site review with the Sunset Review Team and attended the exit meeting on April 3, 2018.
 - The final Sunset Review report will be published and available on the Sunset Commission's website on April 19, 2018.
- *Examiner's Council*
 - The Examiner's Council met the week of March 26, 2018 to discuss a variety of topics, including reviewing examination procedures for possible modifications to incorporate changes in the regulatory environment and the work paper review program.
- *Policy Updates*
 - The Department's Fraud Prevention Policy in the Personnel Policy and Procedures Manual was updated with clarifying language.
 - Supervisory Memorandum 1003, Examination Frequency for State-chartered Banks, was revised to allow an exception for the start date of a trust department examination.
 - Supervisory Memorandum 1004, Examination Frequency for State-chartered Trust Companies, was revised to include the scope and frequency for a trust company affiliated with a bank or bank holding company that is regulated by the Department or one of the three federal bank regulators.
- Examiner Bulletins Updated
 - XB 2018-04, IT Related Examination Procedures for Bank & Trust, was updated to incorporate the new IT examination program, InTREx.
 - XB 2018-05, Maintaining Work Papers in Document Manager, was updated to clarify the processes for maintaining various types of examination work papers in Document Manager.

- *Website Statistics between September 1, 2017 through February 28, 2018*
 - The Texas Department of Banking website had 364,476 page views. The top three pages were the entity search (8,185 page views), Top 100 Banks in Texas (7,641 page views), and Applications & Forms (6,362 page views). The financial education webpage had 1,596 page views during the same period. Users are accessing the site via desktop (39,775), mobile (38,619), and tablet devices (2,922).
 - The Finance Commission website had 21,768 page views. The top three visited pages were Home Equity (3,300 page views), Membership (1,788 page views), and Reports (823 page views). Users are accessing the site via desktop (5,074), mobile (1,405), and tablet devices (267).
 - The Electronic Crimes Task Force website had 2,725 page views. The top three visited pages were Ask a Question (197 page views), CATO (180 page views), and CATO Tools & Resources (139 page views). Users are accessing the site via mobile (574), desktop (345), and tablet devices (40).
 - The Texas Prepaid Funeral Contracts website had 24,900 page views. The top three pages were Prepaid Planning Brochure (2,385 page views), FAQs (1,067 page views), and General Information (906 page views). Users are accessing the site via desktop (6,314), mobile (4,292), and tablet devices (1,048).



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705

512-475-1300 / 877-276-5554

www.dob.texas.gov

Memorandum

TO: Finance Commission Members
FROM: Catherine Reyer, General Counsel
DATE: April 2, 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. Recent filings indicate that the estate may be insolvent.

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 February, 2019.

Gifts

The Department received a scholarship from the State Regulation Registry LLC, a wholly owned subsidiary of CSBS, to send Xazel Garcia to the NMLS Annual Conference in February. The scholarship (total value \$1,924.32) covered the cost of the airfare, lodging, and conference registration.

Orders Issued 2/1/18 – 3/31/18

Since the last Legal Division memo was submitted, the Commissioner issued three enforcement orders, all of which are final public orders:

Special Audits

- Order No. 2018-006, dated 2/9/2018; Order to Cease and Desist Activity, Otti Money Exchange, Inc., Brownsville, TX
- Order No. 2018-007, dated 2/9/2018; Order to Cease and Desist Activity, Maria Cuellar dba Cuellar Casa de Cambio, Brownsville, TX
- Order No. 2018-008, dated 2/26/2018; Order Refusing to Renew the Certificate of Authority and Taking Other Appropriate Action, Foresthaven Cemetery Corporation, Sugar Land, TX

Quarterly Order Activity

BANK				
Type of Action	1st	2nd	3rd	4th
Consent Order	0	0		
Cease & Desist	0	1		
Supervision	0	0		
Prohibition	1*	1		
Total	1	2		
TRUST COMPANY				
Consent Order	0	0		
Cease & Desist	0	0		
Supervision	0	0		
Prohibition	0	0		
Total	0	0		
MONEY SERVICE BUSINESS				
Consent Order	1	2		
Cease & Desist	0	4		
Total	1	6		
PERPETUAL CARE CEMETERY				
Consent Order	0	0		
Cease & Desist	0	0		
Refusal to Renew Cert/Auth	0	1		
Total	0	1		

PREPAID FUNERAL CONTRACT				
Consent Order	2	0		
Cease & Desist	0	0		
Conversion	0	0		
Total	2	0		

*This prohibition order is the subject of a contested case hearing, and therefore is not yet effective.

This page left blank intentionally.

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 2, Chapter 33, §33.27 Concerning Fees for Money Service Business Licenses

PURPOSE: Amendments to §33.27 clarify what fees a new license holder must pay to maintain its license. The amendments eliminate §33.27(h)(3), and clarify in §33.27(e)(3) that a new license holder that has not yet filed its first annual report would only have to pay an examination fee of \$75 per hour for each examiner and all associated travel expenses as its annual assessment.

RECOMMENDED ACTION: No comments were received regarding the proposed amendments to 7 TAC §33.27. The Department recommends that the Commission approve adoption of the amendments without changes to the proposal as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we adopt the amendments to 7 TAC, Chapter 33, §33.27 without changes to the proposal as previously published in the *Texas Register*.

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

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §33.27, concerning fees, assessments and reimbursements without changes to the proposed text as published in the January 19, 2018, issue of the *Texas Register* (43 TexReg 308). The amended rule will not be republished.

Texas Finance Code, §151.207(b)(1) requires a money service business license holder to pay an annual license fee in an amount established by commission rule in order to maintain its license. The department currently has two rules that address what a new license holder that has not yet filed its first annual report must pay to maintain its license. Current §33.27(e)(3) provides that a new license holder that has not yet filed its first annual report must pay the minimum annual assessment as specified by §33.27(e)(1) or (2). In addition, current §33.27(h)(3) provides that a new license holder that has not yet filed its first annual report must pay an examination fee of \$75 per hour for each examiner and all associated travel expenses, and that portion of this fee attributable to hourly charges shall be reduced by an amount equal to 50 percent of the annual assessment the license holder paid pursuant to §33.27(e)(3). Having these two rules in different subsections could be confusing to new license holders, particularly because §33.27(h)(3) has to do with the fee to maintain a license, but is under the subsection related to “other fees.” Furthermore, the department believes it is more reasonable not

to require a new license holder pay the minimum annual assessment shortly after it has paid a \$10,000 application fee.

The amendments to §33.27 eliminate §33.27(h)(3) under the other fees subsection, and modify §33.27(e)(3) in the subsection on fees to maintain a license to clarify that a new license holder that has not yet filed its first annual report would only have to pay an examination fee of \$75 per hour for each examiner and all associated travel expenses as its annual assessment.

The department received no comments regarding the proposed amendments.

The amendments are adopted pursuant to Finance Code, §151.102, which authorizes the commission to adopt rules to administer and enforce Chapter 151, and under Finance Code, §151.207(b)(1) which authorizes the commission to establish an annual license fee by rule.

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

(a) Does this section apply to me? This section applies if you hold a money transmission, currency exchange or depository agent license issued under Finance Code, Chapter 151, or are an applicant for a new money transmission, currency exchange or depository agent license, as applicable. This section also applies if you are a person other than a license holder or applicant and are investigated under the authority of Finance Code, §151.104.

(b) Definitions.

(1) "Annual Assessment"--the fee assessed annually to pay the costs incurred by

the department to examine a license holder and administer Finance Code, Chapter 151, including the annual license fee required by Finance Code, §151.207(b)(1).

(2) "Examination"--the process, either by on-site or off-site review, of evaluating the books and records of a license holder under the authority of Finance Code, §151.601, relating to its money services activities. For purposes of this section, the term does not include an investigation conducted under the authority of Finance Code, §§151.104, 151.305, or 151.505.

(c) What provisions of Finance Code, Chapter 151, authorize the fees, assessments, and reimbursements required under this section? The fees, assessments, and reimbursements established by or required under this section are authorized by one or more of the following provisions of Finance Code, Chapter 151: §§151.102(a)(5), 151.104(e), 151.207(b)(1), 151.304(b)(1), 151.306(a)(5), 151.504(b)(1), 151.605(c)(3), 151.605(i), 151.855(b)(1), and 151.857(a)(5).

(d) What fees must I pay to obtain a new license?

(1) You must pay a non-refundable \$10,000 application fee to obtain a new money transmission license, a non-refundable \$5,000 application fee to obtain a currency exchange license or a non-refundable \$5,000 application fee to obtain a depository agent license. You may also be required to pay the following additional fees:

(A) If the commissioner determines that it is necessary to conduct an on-site investigation of your business, you

must pay a non-refundable investigation fee at a rate of \$75 per hour for each department examiner required to conduct the investigation and all associated travel expenses;

(B) If the commissioner determines that it is necessary to employ a third-party screening service to assist with the investigation of your license application, you must pay the department for the reasonable costs for the third-party investigation; and

(C) If the commissioner determines it is necessary to perform background checks using fingerprint identification records, you must either submit payment for the costs of this service at the time you file your application or pay the department upon request.

(2) To apply for a temporary money transmission license authorized under Finance Code, §151.306, you must pay a non-refundable \$2,500 temporary license application fee in addition to the fees required under paragraph (1) of this subsection.

(3) To apply for a temporary depository agent license authorized under Finance Code, §151.857, you must pay a non-refundable \$2,500 temporary license application fee in addition to the fees required under paragraph (1) of this subsection.

(4) The commissioner may reduce the fees required under paragraphs (1), (2) or (3) of this subsection, if the commissioner determines that a lesser amount than would otherwise be collected is necessary to administer and enforce Finance Code, Chapter 151, and this chapter.

(e) What fees must I pay to maintain my money transmission or currency exchange license? You must pay your annual assessment. Subject to paragraph (3) of this subsection, the amount of your annual assessment is determined based on the total annual dollar amount of your Texas money transmission and or currency exchange transactions, as applicable, as reflected on your most recent annual report filed with the department under Finance Code, §151.207(b)(2).

(1) If you hold a currency exchange license, you must pay the annual assessment specified in the following table:

Figure: 7 TAC §33.27(e)(1) (No change.)

(2) If you hold a money transmission license, you must pay the annual assessment specified in the following table:

Figure: 7 TAC §33.27(e)(2) (No change.)

(3) If you are a new license holder and have not yet filed your first annual report under Finance Code, §151.207(b)(2), you must pay an examination fee of \$75 per hour for each examiner and all associated travel expenses for an examination.

(f) What fees must I pay to maintain my depository agent license? You must pay your annual license fee. The amount of your annual license fee is the cost of your annual examination, which is calculated at a rate of \$75 per hour for each examiner and all associated travel expenses for an examination. The annual license fee will be calculated in this manner for all license fees owed from September 1, 2017 to August 31, 2019.

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

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

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

(3) If the department's review of your change of control application or prior determination request requires more than eight employee hours, you must pay an additional review fee of \$75.00 per employee hour for every hour in excess of eight hours.

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

(h) What fees must I pay in connection with a department investigation?

(1) If the commissioner considers it necessary or appropriate to investigate you or another person in order to administer and enforce Finance Code, Chapter 151, as

authorized under §151.104, you or the investigated person must pay the department an investigation fee calculated at a rate of \$75.00 per employee hour for the investigation and all associated travel expenses.

(2) If the commissioner determines that it is necessary to employ a third-party screening service to assist with an investigation, you must pay the department for the costs incurred for the third-party investigation.

(3) If the commissioner determines it is necessary to perform background checks using fingerprint identification records in an investigation, you must pay the department the costs incurred for this service.

(i) What other fees must I pay?

(1) If the department does not receive your completed annual report on or before the due date prescribed by the commissioner under Finance Code, §151.207, you must pay a late fee of \$100 per day for each business day after the due date that the department does not receive your completed annual report.

(2) If more than one examination is required in the same fiscal year because of your failure to comply with Finance Code, Chapter 151, this chapter, or a department directive, you must pay for the additional examination at a rate of \$75 per hour for each examiner required to conduct the additional examination and all associated travel expenses. A fiscal year is the 12-month period from September 1st of one year to August 31st of the following year.

(3) If the department travels out-of-state to conduct your examination, you must pay for all associated travel expenses.

(4) If the commissioner determines it is necessary to conduct an on-site examination of your authorized delegate to ensure your compliance with Finance Code, Chapter 151, you must pay an examination fee of \$75 per hour for each examiner and any associated travel expenses.

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

(1) You must pay the license application fees required under subsection (d)(1) - (3), of this section at the time you file your application for a license.

(2) The department will bill you by written invoice for any investigation and third-party screening service fees under subsection (d)(1)(A), (B), or (C) of this section. You must pay the fees within 10 days of receipt of the department's written invoice.

(3) Your annual assessment required under subsection (e) of this section may be billed in quarterly or fewer installments in such periodically adjusted amounts as reasonably necessary to pay for the costs of examination and to administer Finance Code, Chapter 151. You must pay the annual assessment fee by ACH debit, or by another method if directed to do so by the department. At least 15 days prior to the scheduled ACH transfer, the department will send you a notice specifying the amount of the payment due and the date the department will initiate payment by ACH debit. The commissioner may decrease your annual assessment if it is determined that a lesser amount than would

otherwise be collected is necessary to administer the Act.

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

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

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

(7) The department will bill you for any additional examination fees required under subsection (i)(2), (3), (4), or (5) of this section by written invoice. You must pay this additional examination fee within 10 days of receipt of the department's written invoice.

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

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

(1) This subsection applies only if you hold a currency exchange license. If you are experiencing financial difficulties, you may be able to obtain a temporary reduction in the amount of your annual assessment for one year by meeting the requirements of this subsection.

(2) To request a reduction in your annual assessment, you must file a written application as described in paragraph (2)(A) of this subsection and the commissioner must find that your application satisfies the requirements described in paragraph (2)(B) of this subsection. If the commissioner decides to reduce your annual assessment, the commissioner has discretion to determine the amount of the reduction.

(A) To request a reduction in your annual assessment, you must:

(i) file a written application with the department not later than 10 days before the date the current annual assessment is due, accompanied by a written business recovery plan and other supporting documentation sufficient to demonstrate that you satisfy each factor described in paragraph (2)(B) of this subsection; and

(ii) file any additional documentation the department requests not later than the seventh day after the date you receive the written request.

(B) The commissioner will not reduce your annual assessment unless the commissioner finds, based on your application and supporting documentation, that:

(i) Your payment of the full assessment will cause you to become financially insolvent, and your current or impending financial condition is temporary and you reasonably expect to have the ability to pay your annual assessment in full by at least the third year after the year in which your request is made, based on a written

business recovery plan that is reasonable and attainable; or

(ii) your business is temporarily closed during the annual assessment period and you have conducted no currency exchange activities during that period.

This page left blank intentionally.

3. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Chapter 33, §§33.23, 33.31, 33.35, and 33.51 Concerning Money Services Businesses

PURPOSE: Amendments to Chapter 33 are proposed to provide clarity with respect to existing policies and mirror applicable federal regulation. Section 33.23 as amended clarifies the Department's interpretation of an existing permissible investment under Section 151.309 of the Texas Finance Code to allow a money transmitter to include the appropriate assets in meeting its statutory requirement to maintain permissible investments. Section 33.31 as amended clarifies the documentation an alien may use to provide customer information. This change mirrors the federal requirements as clarified in FINCEN Ruling FIN-2014-R003. Two amendments are proposed to Section 33.35. Subsection (d)(1) as amended includes a reference to digital wallets as a stored value product, which clarifies the Department's interpretation of "stored value products." Subsection (d)(3), which refers to to-be-adopted federal rules, is being deleted because the Department of Treasury adopted specific recordkeeping requirements for stored value transactions subsequent to the adoption of §33.35 of Title 7 of the Texas Administrative Code. Section 33.51 as amended clarifies when a money services business license holder is required to include the consumer complaint notice on its website.

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

RECOMMENDED MOTION: I move that we publish the proposed amendments to 7 TAC, Chapter 3, §§33.23, 33.31, 33.35, and 33.51 in the *Texas Register*.

***Title 7. Banking and Securities
Part 2. Finance Commission of Texas
Chapter 33. Money Services Businesses
7 TAC, §§33.23, 33.31, 33.35, 33.51***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §33.23, concerning additional provisions that apply to permissible investments; §33.31, concerning record retention relating to currency exchange transactions; §33.35, concerning record retention relating to money transmission transactions; and §33.51, concerning providing information to customers on how to file a complaint. The amended rules are proposed to provide clarity with respect to existing policies and mirror applicable federal regulation.

Section 33.23 discusses the permissible investment requirement for a money transmitter under §151.309 of the Texas Finance Code. Section 33.23 as amended clarifies the department's interpretation of an existing permissible investment under the statute to allow a money transmitter to include the appropriate assets in meeting its statutory requirements.

Section 33.31 explains what records a currency exchanger must retain with respect to a currency exchange transaction. Section 33.31 as amended clarifies the documentation an alien may use to provide customer information. This change mirrors the federal requirements as clarified in FINCEN Ruling FIN-2014-R003.

Section 33.35 pertains to record retention requirements relating to money transmission transactions. Section 33.35 as amended includes a reference to digital wallets as a

stored value product and removes a provision that refers to to-be-adopted federal rules that were subsequently adopted. The change in subsection (d)(1) does not expand the existing regulation, it merely clarifies the department's interpretation of digital wallets/e-wallets as "stored value products." Subsection (d)(3) is being deleted because the Department of Treasury adopted specific recordkeeping requirements for stored value transactions subsequent to the adoption of §33.35 of this title.

Section 33.51 addresses when and how a money services business must provide customers with the information necessary to file a complaint with the department. Section 33.51 as amended clarifies when a money services business license holder is required to include the consumer complaint notice on its website.

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

Ms. Newberg also has determined that, for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is greater clarity of the rules to which money services businesses are subject.

For each year of the first five years that the rules will be in effect, there will be no economic costs to persons required to comply with the rules as proposed.

For each year of the first five years that the rules will be in effect, the rules will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; and
- positively or adversely affect this state's economy.

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

To be considered, comments on the proposals must be submitted no later than 5:00 p.m. on June 4, 2018. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amendments are proposed under Finance Code, §151.102, which authorizes the commission to adopt rules to administer and enforce Texas Finance Code, Chapter 151.

Finance Code, Chapter 151, is affected by the proposed amended sections.

§33.23. What Additional Provisions Apply to Permissible Investments?

(a) – (e) (No change.)

(f) For the purpose of satisfying a license holder's permissible investments requirement under Tex. Fin. Code Ann. §151.309, the Department interprets "cash in demand or interest-bearing accounts with a federally insured depository institution" to include funds held by a license holder's depository institution after being withdrawn from the license holder's account for transmission to satisfy the license holder's outstanding money transmission obligation.

§33.31. What Records Must I Keep Related to Currency Exchange Transactions?

(a) – (b) (No change.)

(c) What specific records must I keep related to currency exchange?

(1) With respect to currency exchange transactions in an amount in excess of \$1,000, you must keep a record for each transaction that contains:

(A) the customer and transaction information required under 31 CFR §1022.410(b)(3), provided that, if your customer does not have a taxpayer identification number (e.g., social security, employee identification number) or passport number and is an alien, you may provide ~~use~~ the number and description of an alternate valid entry document issued by a U.S. Federal or state government, such as a border crossing card ~~[alien identification card]~~

~~or other official document evidencing your customer's foreign nationality or residence, such as foreign driver's license or foreign voter registration card]; and~~

(B) – (H) (No change.)

(2) – (3) (No change.)

(d) (No change.)

§33.35. What Records Must I Keep Related to Money Transmission Transactions?

(a) – (c) (No change.)

(d) What specific records must I keep related to the issuance and sale of stored value products?

(1) This subsection applies to transactions in which you issue or sell, as a license holder or the authorized delegate of a license holder, as applicable, stored value products (e.g., cards, devices, services, digital wallets/e-wallets) in any amount for currency or an instrument payable in currency.

(2) You must maintain transaction records regarding each stored value transaction that are appropriate for your business activities and the type of stored value product you issue or sell. The records must be sufficient to enable the department to determine the volume of your stored value transactions and the amount of your outstanding stored value liability.

~~[(3) The BSA and 31 CFR Chapter X impose certain requirements upon money services businesses that issue, sell and redeem stored value products. As of the effective date of this section, however, the~~

~~United States Department of Treasury has not adopted specific recordkeeping requirements for stored value transactions. You must comply with applicable BSA and other federal recordkeeping requirements when and as such requirements are adopted by the Department of Treasury.]~~

(e) – (g) (No change.)

§33.51. How do I Provide Information to My Customers about How to File a Complaint?

(a) – (d) (No change.)

(e) How and where must I provide the required notice?

(1) (No change.)

(2) If you maintain a website by which a customer may remit money for transmission, complete a depository agent services transaction or obtain information about ~~[you or]~~ the customer's transaction or an existing account, you must include the required notice on your website. The notice must be prominently displayed on the initial page the customer uses to initiate the remittance, transaction or access the information, or on a page available no more than one link from the initial page. The link must clearly describe the information available by clicking the link, e.g., "Texas customers click here for information about filing complaints about our money transmission or currency exchange product or service" or "Customers click here for information about filing complaints about our depository agent services."

(3) – (4) (No change.)

(f) – (h) (No change.)

4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Chapter 3, §§3.4, 3.23, 3.36, 3.43, 3.44, 3.52, 3.55, and 3.92 Concerning State Bank Regulation

PURPOSE: Amendments to Chapter 3 are proposed to remove transitional provisions no longer necessary and to correct statutory references and certain scrivener's errors. As amended, §3.4 corrects the reference to 12 U.S.C. §1831o; §3.23 and §3.44 correct the references to §15.2 regarding the filing fee required by Title 7 of the Texas Administrative Code to include the correct title of the section; §3.36 removes the transitional provision regarding annual assessments established for the fiscal year beginning September 1, 2015; §3.43 corrects the reference to 204.104(b) of the Texas Finance Code to control the authorized sources of deposits for foreign bank branches or agencies; §3.52 and §3.55 correct the abbreviation of the Federal Financial Examination Council, as referenced; and §3.92 corrects the misspelling of the unit of measurement for compliance with the standards for lighting at unmanned teller machines.

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

RECOMMENDED MOTION: I move that we publish the proposed amendments to 7 TAC, Chapter 3, §§3.4, 3.23, 3.36, 3.43, 3.44, 3.52, 3.55, and 3.92 in the *Texas Register*.

***Title 7. Banking and Securities
Part 1. Finance Commission of Texas
Chapter 3. State Bank Regulation
7 TAC, §§3.4, 3.23, 3.36, 3.43, 3.44, 3.52,
3.55, 3.92***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §3.4, concerning foreign banking; §3.23, concerning exercise of trust powers; §3.36, concerning annual assessments and specialty examination fees; §3.43, concerning credit balance of funds; §3.44, concerning statements of registration, notices and filings related to foreign bank representative offices; §3.52, concerning general definitions; §3.55, concerning calculation of liabilities; and §3.92, concerning user safety at unmanned teller machines. The proposals remove transitionary provisions that are no longer necessary and correct statutory references and certain scrivener errors.

Section 3.4 cites to 12 U.S.C. §1831 to incorporate the federal definition of “well capitalized.” Section 3.4 as amended corrects the statutory reference for the federal definition to 12 U.S.C. §1831o.

Section 3.23 references the filing fee required by §15.2 of this title. Section 3.23 as amended corrects the reference to include the correct title of the section.

Section 3.36 includes a transitionary provision regarding annual assessments established for the fiscal year beginning September 1, 2015. Section 3.36 as amended removes the transitionary provision.

Section 3.43 references §204.104(b), of the Texas Finance Code to control the

authorized sources of deposits for foreign bank branches or agencies. Section 3.43 as amended corrects the reference to include the correct section of the Texas Finance Code.

Section 3.44 references the filing fee required by §15.2 of this title. Section 3.44 as amended corrects the reference to include the correct title of the section.

Section 3.52 references the Federal Financial Examination Council. Section 3.52 as amended corrects the reference to include the correct abbreviation of the entity.

Section 3.55 references the Federal Financial Examination Council. Section 3.55 as amended corrects the reference to include the correct abbreviation of the entity.

Section 3.92 describes the conditions for measuring compliance with the standards for lighting at unmanned teller machines. Section 3.92 as amended corrects a misspelling of the unit of measurement.

Robert L. Bacon, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rules.

Mr. Bacon also has determined that, for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is greater clarity of the rules to which state-chartered banks are subject.

For each year of the first five years that the rules will be in effect, there will be no

economic costs to persons required to comply with the rules as proposed.

For each year of the first five years that the rules will be in effect, the rules will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; and
- positively or adversely affect this state's economy.

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

To be considered, comments on the proposals must be submitted no later than 5:00 p.m. on June 4, 2018. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amendment to §3.4 is proposed under Finance Code, §31.003(a), which provides that the commission may adopt rules to accomplish the purposes of Title 3, Subtitle

A and Chapters 11, 12, and 13 of the Texas Finance Code, including rules necessary or reasonable to:

- (1) Implement and clarify this subtitle and Chapters 11, 12, and 13;
- (2) Preserve or protect the safety and soundness of state banks;
- (3) Grant at least the same rights and privileges to state banks that are or may be granted to national banks domiciled in this state;
- (4) Recover the cost of maintaining and operating the department and the cost of enforcing this subtitle and other applicable law by imposing and collecting ratable and equitable fees for notices, applications, and examinations; and
- (5) Facilitate the fair hearing and adjudication of matters before the banking commissioner and the finance commission.

No statute, article or code is affected by the proposed amended section.

§3.4. Foreign Banking.

(a) Any state-chartered bank that is well-capitalized as defined by Section 38, Federal Deposit Insurance Act, 12 United States Code (USC), §1831o [~~§1831~~] may file an application with the banking commissioner for permission to exercise, upon such conditions as may be prescribed by the banking commissioner, the following powers:

- (1) – (3) (No change.)

(b) – (c) (No change.)

The amendment to §3.23 is proposed under Finance Code, §31.003(a)(2), which authorizes the commission to adopt rules necessary or reasonable to preserve or protect the safety and soundness of state banks. The amendment to §3.36 is proposed under Finance Code, §31.003(a)(4) and §31.106, which authorize the commission to adopt rules necessary or reasonable to recover the cost of supervision and regulation by imposing and collecting ratable and equitable fees.

Finance Code, §32.001 and §32.101, are affected by proposed amended §3.23. Finance Code, §31.106, is affected by proposed amended §3.36.

§3.23. Exercise of Trust Powers.

(a) – (b) (No change.)

(c) A state bank described in subsection (b) of this section that intends to offer and provide trust services shall submit a notice to the banking commissioner describing the proposed trust services and the anticipated date for initiation of such services. In addition, the bank must submit:

(1) – (3) (No change.)

(4) if the bank's certificate of formation does not authorize the bank to exercise the trust powers necessary to provide the proposed trust services, an application for amendment of its certificate of formation pursuant to Finance Code, §32.101, accompanied by the filing fee required by §15.2 of this title (relating to Filing and Investigation Fees) [~~Fees and Cost Deposits~~]; and

(5) (No change.)

(d) (No change.)

§3.36. Annual Assessments and Specialty Examination Fees.

(a) – (c) (No change.)

(d) Annual assessment. Effective September 1 of each year, the department will establish the annual assessment for each bank, foreign bank branch, and foreign bank agency under subsections (f) and (g) of this section.

(1) – (3) (No change.)

~~[(4) Notwithstanding paragraph (1) of this subsection, the annual assessment established for the fiscal year beginning September 1, 2015, must be recalculated for each bank on March 1, 2016, using the revised table in §3.37(a). The two remaining quarterly installments due on or before March 15 and June 15, 2016, must be based on the recalculated assessment. In other words, subject to possible reduction under Subsection (g) of this section, the quarterly installments due on or before March 15 and June 15, 2016, will each be in an amount equal to 25 percent of the assessment as recalculated on March 1, 2016.]~~

(e) – (i) (No change.)

The amendments to §3.43 and §3.44 are proposed under Finance Code, §31.003(a), which provides that the commission may adopt rules to accomplish the purposes of Title 3, Subtitle A and Chapters 11, 12, and 13 of the Texas Finance Code, including rules necessary or reasonable to:

- (1) Implement and clarify this subtitle and Chapters 11, 12, and 13;
- (2) Preserve or protect the safety and soundness of state banks;
- (3) Grant at least the same rights and privileges to state banks that are or may be granted to national banks domiciled in this state;
- (4) Recover the cost of maintaining and operating the department and the cost of enforcing this subtitle and other applicable law by imposing and collecting ratable and equitable fees for notices, applications, and examinations; and
- (5) Facilitate the fair hearing and adjudication of matters before the banking commissioner and the finance commission.

Finance Code, Chapter 204, is affected by the proposed amended sections.

§3.43. Credit Balance of Funds.

(a) A foreign bank branch or agency may not receive deposits except as specifically authorized under the Finance Code, §204.105(b) [~~§204.104(b)~~]. A foreign bank branch or agency may receive funds from a person and maintain a credit balance in accordance with the Finance Code, §204.105(b) [~~§204.104(b)~~].

(b) – (c) (No change.)

§3.44. Statements of Registration, Notices and Filings Related to Foreign Bank Representative Offices.

(a) – (b) (No change.)

(c) Statement of registration. To establish a representative office in this state, a foreign bank shall file with the banking commissioner a statement of registration on the form prescribed by the department. The statement of registration must:

(1) – (2) (No change.)

(3) be accompanied by the registration fee established in §15.2(b) of this title (relating to Filing and Investigation Fees) [~~Fees and Cost Deposits~~].

(d) (No change.)

(e) Separate statement of registration required. A statement of registration must be filed for each representative office a foreign bank establishes in this state. If a foreign bank has established an initial representative office in accordance with this section, the banking commissioner may waive one or more of the informational requirements of the statement of registration form with respect to any additional Texas representative office the foreign bank seeks to establish. However, payment of the registration fee provided for in §15.2(b) of this title (relating to Filing and Investigation Fees) [~~Fees and Cost Deposits~~] may not be waived.

(f) (No change.)

The amendments to §3.52 and §3.55 are proposed under Finance Code, §201.003, which authorizes the commission to adopt rules necessary or reasonable to implement and clarify Title 3, Subtitle G of the Finance Code and Finance Code, §204.113 and §204.114, which authorize the commission to adopt rules concerning asset pledge and maintenance requirements applicable to a

foreign bank that maintains a Texas state branch or agency.

Finance Code, §204.113 and §204.114, are affected by the proposed amended sections.

§3.52. General Definitions.

Unless defined otherwise in this section, words and terms used in this subchapter that are defined in Finance Code, §31.002, have the same meanings as defined in the Finance Code. The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise:

(1) (No change.)

(2) Call Report--The FFIEC [~~FFEIC~~] quarterly, consolidated report of assets and liabilities of United States branches and agencies of foreign banks, currently reported on FFIEC 002.

(3) – (10) (No change.)

§3.55. Calculation of Liabilities.

(a) Calculation of liabilities in accordance with Call Report. For purposes of §3.53(b), and except as otherwise provided in this subchapter, a foreign bank must:

(1) calculate the nonrelated deposit liabilities and nonrelated other liabilities of its Texas state branch or agency in accordance with the instructions in the FFIEC [~~FFEIC~~] Call Report; and

(2) (No change.)

(b) (No change.)

The amendments to §3.92 are proposed under Finance Code, §59.310, which authorizes the commission to adopt rules to implement Subchapter D of the Finance Code, Chapter 59 (§§59.301 – 59.310).

Finance Code, §59.310, is affected by the proposed amended section.

§3.92. User Safety at Unmanned Teller Machines.

(a) (No change.)

(b) Measurement of candlefoot [~~candle foot~~] power. For purposes of measuring compliance with the Finance Code, §59.307, candlefoot [~~candle-foot~~] power should be determined under normal, dry weather conditions, without complicating factors such as fog, rain, snow, sand or dust storm, or other similar condition.

(c) – (h) (No change.)

C.

**Department of Savings
and
Mortgage Lending**

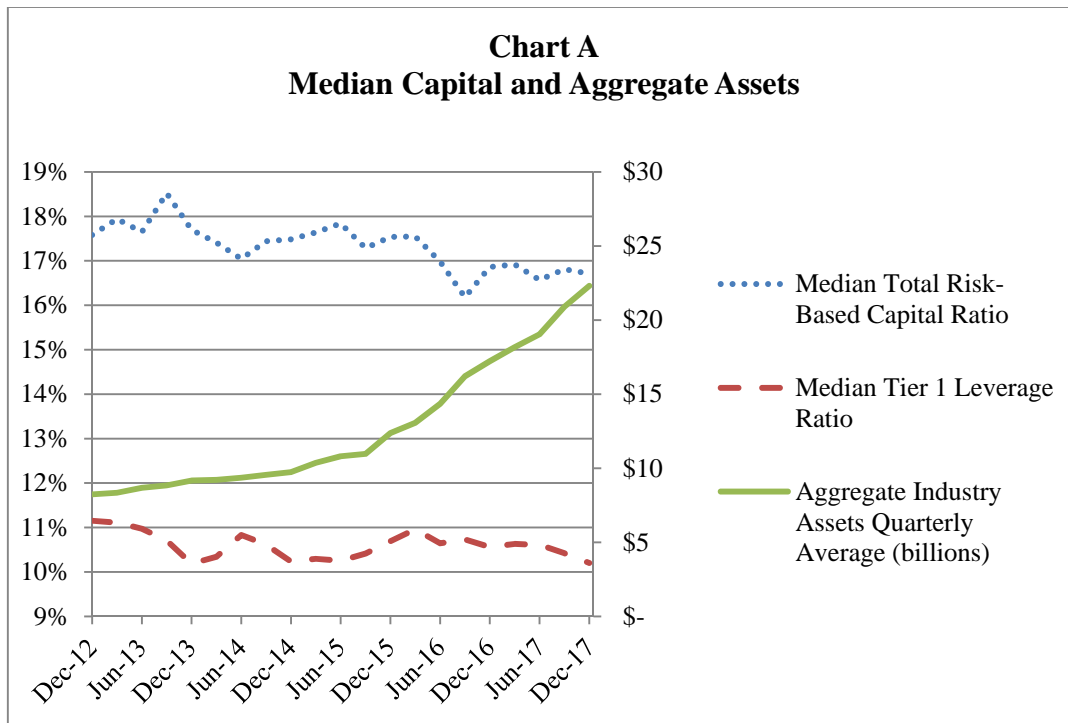
This page left blank intentionally.

C. Texas Department of Savings and Mortgage Lending

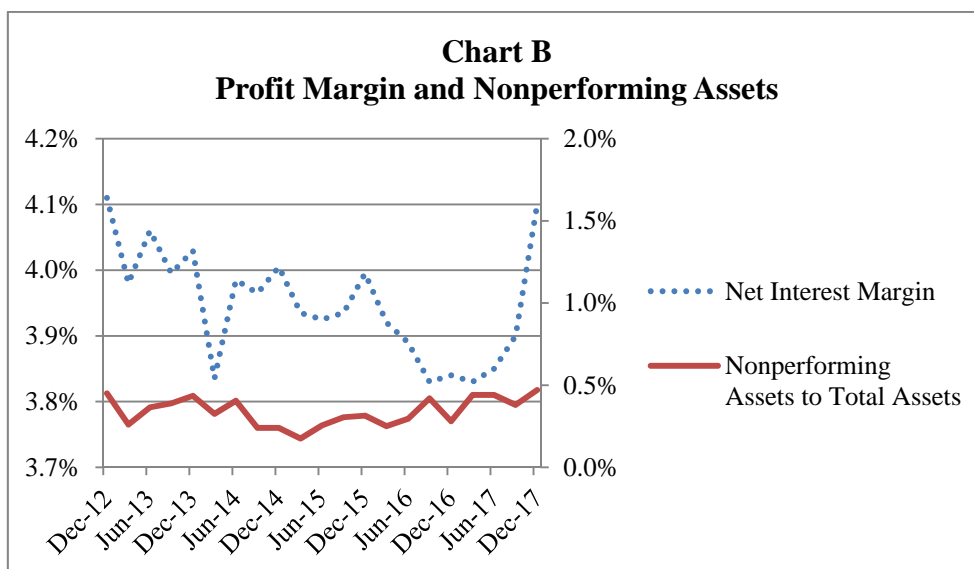
1. Industry Status and Departmental Operations – State Savings Bank Activity:

a. Industry Status

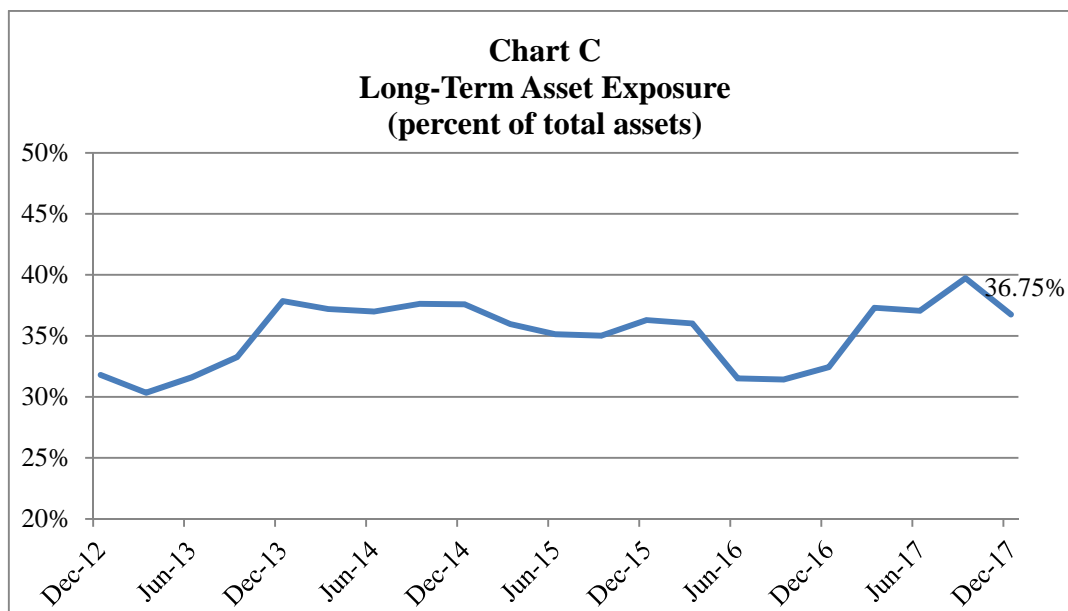
As of December 31, 2017, there were 25 state savings banks totaling \$23.1 billion in total assets. The average asset size of the median state savings bank (“SSB”) grew in the last four quarters from \$307.2 million to \$316.8 million. This continues a trend extending more than five years in the industry. After some decline in the risk-based capital ratio due to increased lending from late 2013 to late 2015, capital protection has kept pace with assets in 2017 through earnings and contributions. The median total risk-based capital ratio (Chart A) is 16.71% and the median leverage capital protection is now 10.20%.



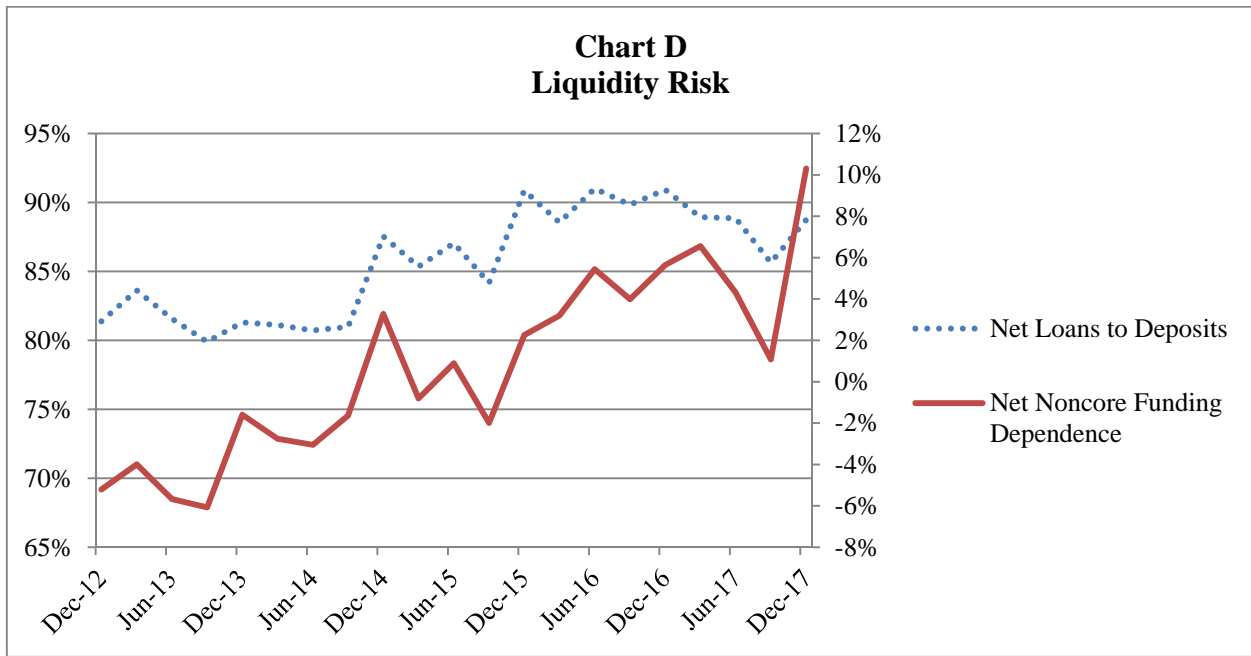
The median net interest margin continues to recover in the fourth quarter of 2017 (Chart B) to 4.10%, which is up from one year before at 3.84%. Nonperforming asset levels increased slightly in the fourth quarter of 2017 but remain low at 0.47% of total assets.



The Department continues to monitor various local, state, and national data sources to best understand the risks facing the industry and individual savings banks. Economic conditions, cybersecurity, market risk, lending concentrations, and liquidity risk all continue to be areas of focus. Market risk, as evidenced by long-term asset exposure (Chart C), had been noticeably elevated from late 2013 through early 2016. There was a substantial decrease in exposure to long-term assets during 2016 with increased short-term lending; however, the trend is back to the previous higher levels. There remain a small number of outlier institutions with higher long-term asset exposure; however these are generally operating within historical norms of ten years or more.



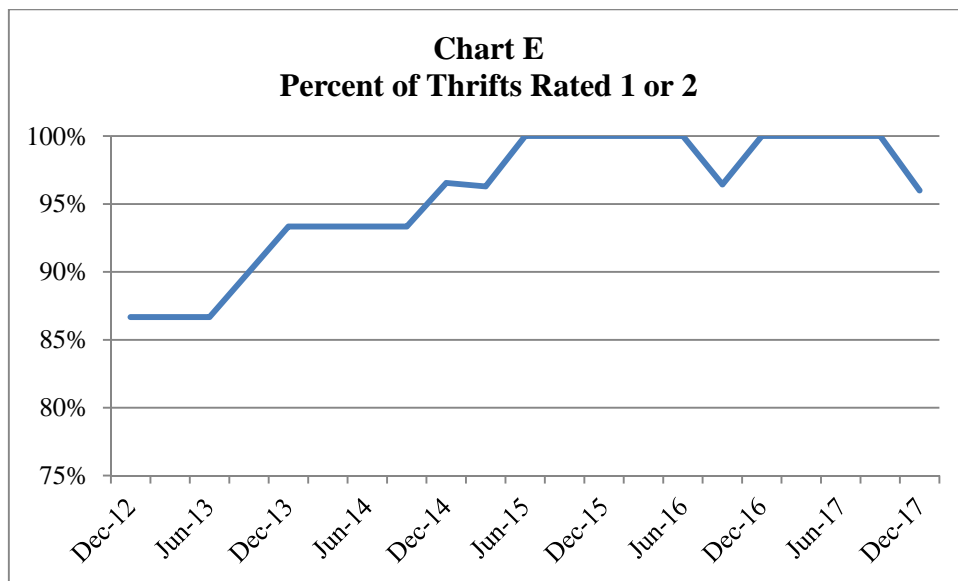
Liquidity risk remains elevated and sharply increasing in Texas thrifts (Chart D), as indicated by the Net Noncore Funding Dependence (NNCFD) Ratio, a measure of the funding of long-term assets using potentially volatile liabilities such as uninsured and brokered deposits, and borrowings, and the loan-to-deposit ratio; a measure of the use of deposits to fund lending activities. The median NNCFD Ratio has increased from 5.64% to 10.31% in the last four quarters, but remains manageable. However, almost fifty percent of the industry is over 10%, with close monitoring of each individual circumstance.



The loan-to-deposit ratio also remains elevated at 88% with 28% of the industry over 100%, a traditional benchmark measure of liquidity risk.

All SSBs are subject to quarterly offsite reviews inclusive of liquidity risk. Those with the highest risk profiles receive enhanced scrutiny at examinations and may receive more frequent examinations and/or corrective direction as needed.

All SSBs except one at December 31, 2017, were rated a Composite 1 or 2 (Chart E). There are two formal outstanding enforcement actions.



b. Savings Bank Charter and Merger Activity

On January 22, 2018, notice was received of the intent of Independent Bank, McKinney, Texas, to acquire Integrity Bank, SSB, Houston, Texas. The merger is intended to occur in the second quarter of 2018.

c. Other Items

Commissioner Jones served on the regulatory panel at the Texas Banker Association's Legal Conference on April 6, 2018

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

a. Residential Mortgage Loan Originators

Current Licensing Population:

License Type As of 03/31/2018	Approved		
	Entity (MU1)	Branch (MU3)	MLO (MU4)
<i>Auxiliary</i>	8	n/a	
<i>CUSO</i>	4	2	
<i>FSC</i>	1	n/a	
<i>Independent Contractor</i>	99	n/a	
<i>Mortgage Company</i>	1,153	541	
<i>Mortgage Banker</i>	408	2,721	
<i>Mortgage Servicer</i>	173	n/a	
Totals	1,846	3,264	25,742

The license renewal and reinstatement period ended February 28, 2018; any license that had not requested renewal or reinstatement expired. There were 71 company, 106 branch, and 4,241 individual licenses that expired. As of the second quarter 4,287 applications had been processed. For the first half of FY18, the Department received 4,718 applications and 54,077 other related filings – record amendments, sponsorship changes, etc.

b. Mortgage Examinations

During the first half of FY18, a total of 220 examinations were conducted covering 6,677 individual licensees.

The number of examinations is slightly lower when compared to the same period in FY17. The number of individual licensees covered increased by 50%. The increase in the number of licensees covered is a direct result of one large entity operation being examined during the second quarter which accounted for 47% of the fiscal year total.

The chart below provides a historical breakdown of mortgage examination results by compliance rating for the past two fiscal years and the first half of FY18. The stratification of examination ratings, during the first six months of FY18, has remained fairly consistent as compared to the same

time period during FY17 with the combined 1 & 2 rated examinations being 60% for FY18 and 61% for FY17. There was one 5 rated examinations issued during the first half of FY18.

Mortgage Examination Compliance Ratings											
	# Mortgage Exams	Rated "1"	%	Rated "2"	%	Rated "3"	%	Rated "4"	%	Rated "5"	%
Fiscal Year 2016											
9/1/15 - 8/31/16	488	50	10%	215	44%	173	36%	46	9%	4	1%
Fiscal Year 2017											
9/1/16 - 8/31/17	476	62	13%	214	45%	156	32%	41	9%	4	1%
Year to Date Fiscal Year 2018											
9/1/17 -2/28/18	220	25	11%	107	49%	60	27%	27	12%	1	>1%

c. Consumer Complaints/Legal Issues

During the first half of FY18, a total of 562 consumer complaints were received. This represents a 13% increase when compared to the same period in FY17 with loan servicing complaints accounting for approximately 68% of the total number of complaints received. As of February 28, 2018, there were a total of 72 open consumer complaints with 89% of the complaints being aged less than 90 days.

d. Other Items

Commissioner Jones spoke at the Texas Mortgage Round-Up on February 13, 2018.

Mortgage Industry Advisory Committee – March 14, 2018 Meeting

On March 14, 2018 MIAC held a regularly scheduled meeting. At this meeting the Department provided updates on the Department's activities and answered questions from the committee members. The agenda for the meeting was as follows:

AGENDA

1. Welcome – Commissioner
2. Review of Department's General Status of Originator Licensing and Registration Activity:
 - Licensing – Director of Licensing
 - Examinations and Complaints – Supervisory Compliance Examiner
 - Enforcement – Legal Counsel
3. General Discussion:
 - Conditional Qualification and Approval Letters
4. Open Forum
5. Upcoming Meetings:
 - July 18, 2018

Adjourn - Commissioner

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					
Quarter 1	22	6	6	27.27%	
Quarter 2	22	4	10	45.45%	
2-1-1 Mortgage Regulation					
1. Number of Applications Processed					
Quarter 1	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.					
Quarter 2	7,500	2,014	4,287	57.16%	*
The number of applications submitted is outside the Department's control; therefore, the number of applications processed is ultimately affected in the same manner.					
2. Number of Licensees Examined					
Quarter 1	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.					
Quarter 2	4,500	4,582	6,677	148.38%	*
Of the examinations completed during the quarter, one of the examined entities consisted of large number of MLOs, which accounted for 68% of the total number of licensees examined during the quarter.					
3-1-1 Consumer Responsiveness					
1. Number of Consumer Complaints Completed					
Quarter 1	975	259	259	26.56%	
Quarter 2	975	277	536	54.97%	

*Varies by 5% or more from target.

3. Fiscal/Operations Activity:

a. Funding Status/Audits/Financial Reporting

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

b. Staffing

As of April 1, 2018, the Department was staffed at 55 regular full time employees with 61 FTEs available. One financial examiner joined the Thrift section of the Department.

Below is the status of the Department's vacancies:

Vacancy Status	
Financial Examiner I/II – Thrift	Open - Reviewing applications
Financial Examiner IV/V – Thrift	Open - Reviewing applications

There was 0% turnover during the first and the second quarter of the fiscal year.

c. Other Items

Department staff continues to provide information to Sunset staff as requested. Sunset Commission has public hearings scheduled for May 23 – 24, 2018 and decision hearings are scheduled for August 29 – 30, 2018.

4. Legal Activities:

SOAH Cases:

Case No. 450.17.5613 Department of Savings and Mortgage Lending v. Anthony Spencer Lozano

The Department had denied the RMLO license application of Anthony Spencer Lozano on the grounds that he had failed to establish that he was of good moral character. Mr. Lozano appealed the license denial. A contested SOAH hearing was held before an administrative law judge on December 13, 2017. A proposal for decision was issued by the SOAH administrative law judge on February 20, 2018, finding that Mr. Lozano's application for licensure be denied. On March 23, 2018, the commissioner adopted the findings of the proposal for decision and the license is hereby denied.

Case No. 450.17.5614 Department of Savings and Mortgage Lending v. Kederio Ainsworth

The Department denied the RMLO license application of Kederio Ainsworth on the grounds that he had failed to establish that he was of good moral character. Mr. Ainsworth appealed the license denial. A contested SOAH hearing was held before an administrative law judge on March 15, 2018. The administrative law judge has 60 days from that date to enter the proposal for decision in this matter.

Case No. 450.16.2838 Department of Savings and Mortgage Lending v. Sammy Trantham

The Department received a favorable decision from the SOAH administrative law judge. On March 9, 2018, the Department received a settlement offer from applicant's Counsel. The parties are discussing the offer.

Gift Reporting:

On February 5 - 9, 2018, the State Regulatory Registry, LLC provided a scholarship for the 2018 NMLS Annual Conference, covering registration, airfare, and hotel. The value of the scholarship was \$1,797.

Litigation:

Case No. D-1-GN-17-005803 Department of Savings and Mortgage Lending v. VPW & Associates

LLC, et al. Two defendants were served in this matter and did not file an answer to the lawsuit. The Attorney General's Office drafted a Motion for Default Judgement on March 28, 2018.

Other Items:

The Home Equity rules adopted by the Finance Commission and Credit Union Commissions were effective March 29, 2018.

This page left blank intentionally.

D.

**Office of Consumer
Credit Commissioner**

This page left blank intentionally.

Consumer Protection and Consumer Assistance Report

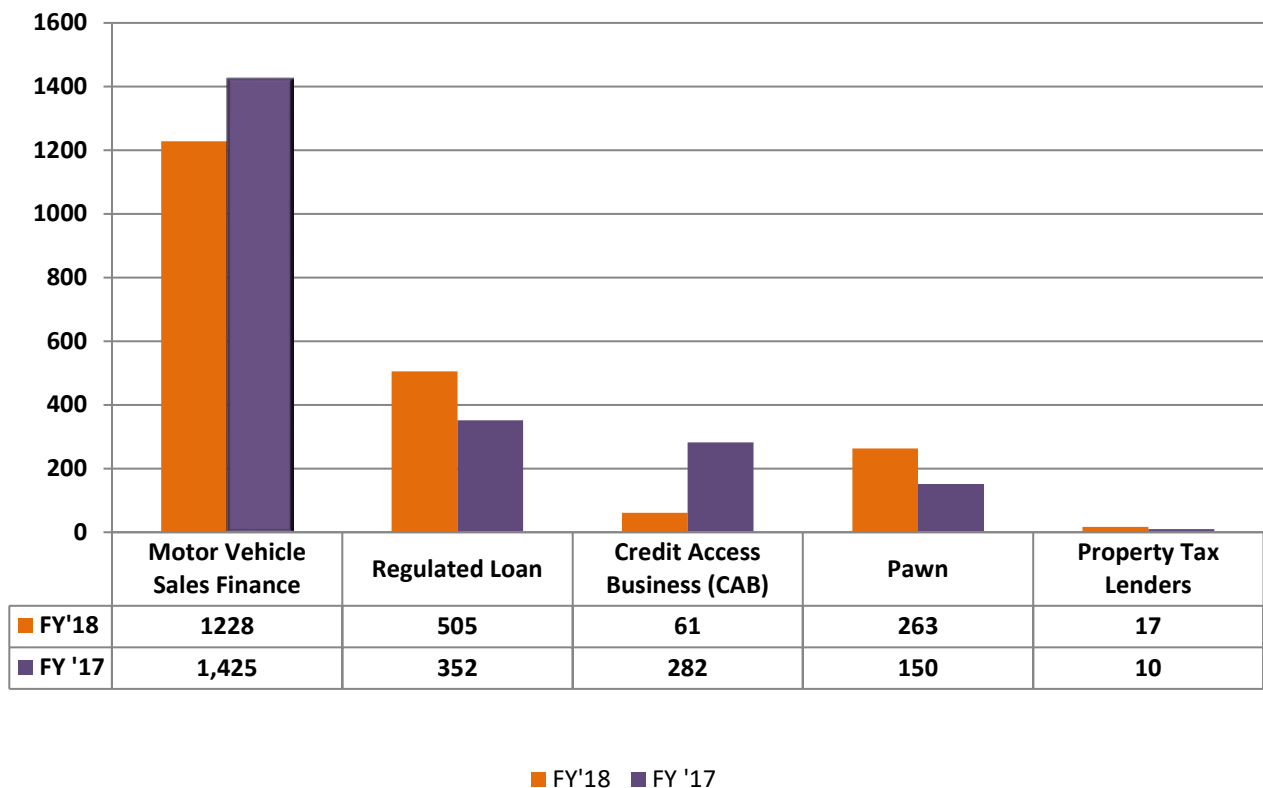
Rudy Aguilar, Director of Consumer Protection

A total of 2,074 examinations have been completed through the end of February. The over-all examination progress is ahead of the pro rata goal of 2,019 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 the certification process to conduct Motor Vehicle Sales Finance examinations.

Seven field examiners are receiving on-the-job training in the field to conduct Credit Access Business examinations. Upon completion of their training, the examiners will be certified by senior examiner observation to conduct Credit Access Business examinations.

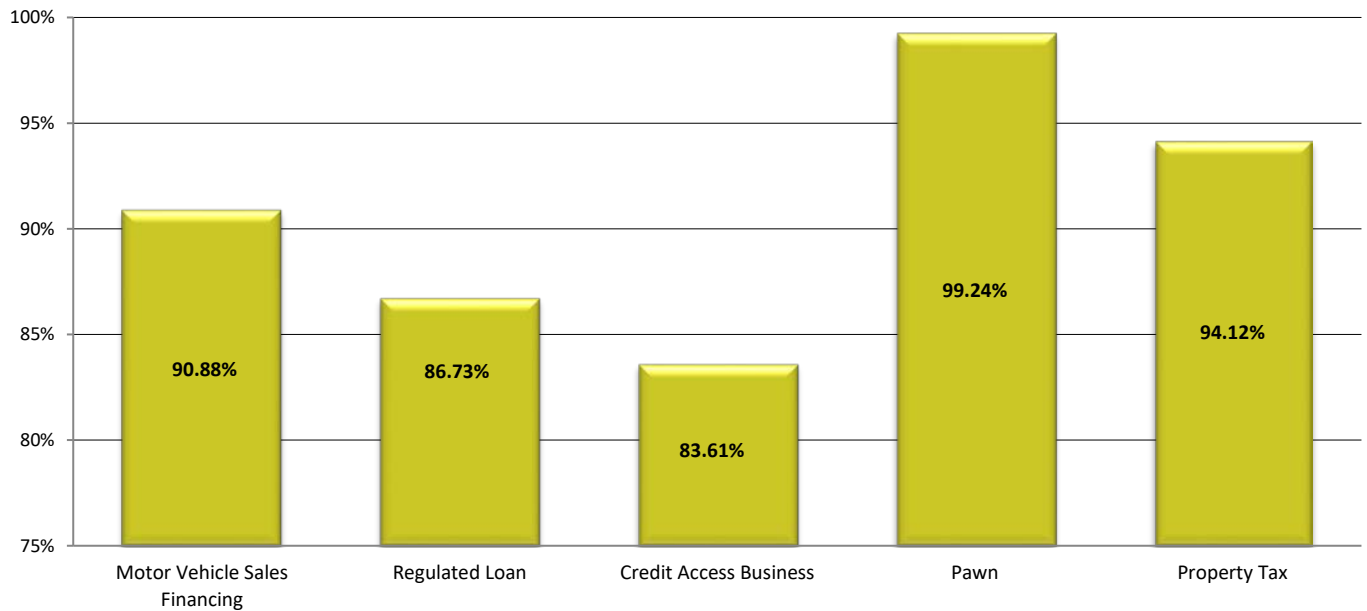
Examinations Conducted: Sept - Feb Fiscal Year Comparison



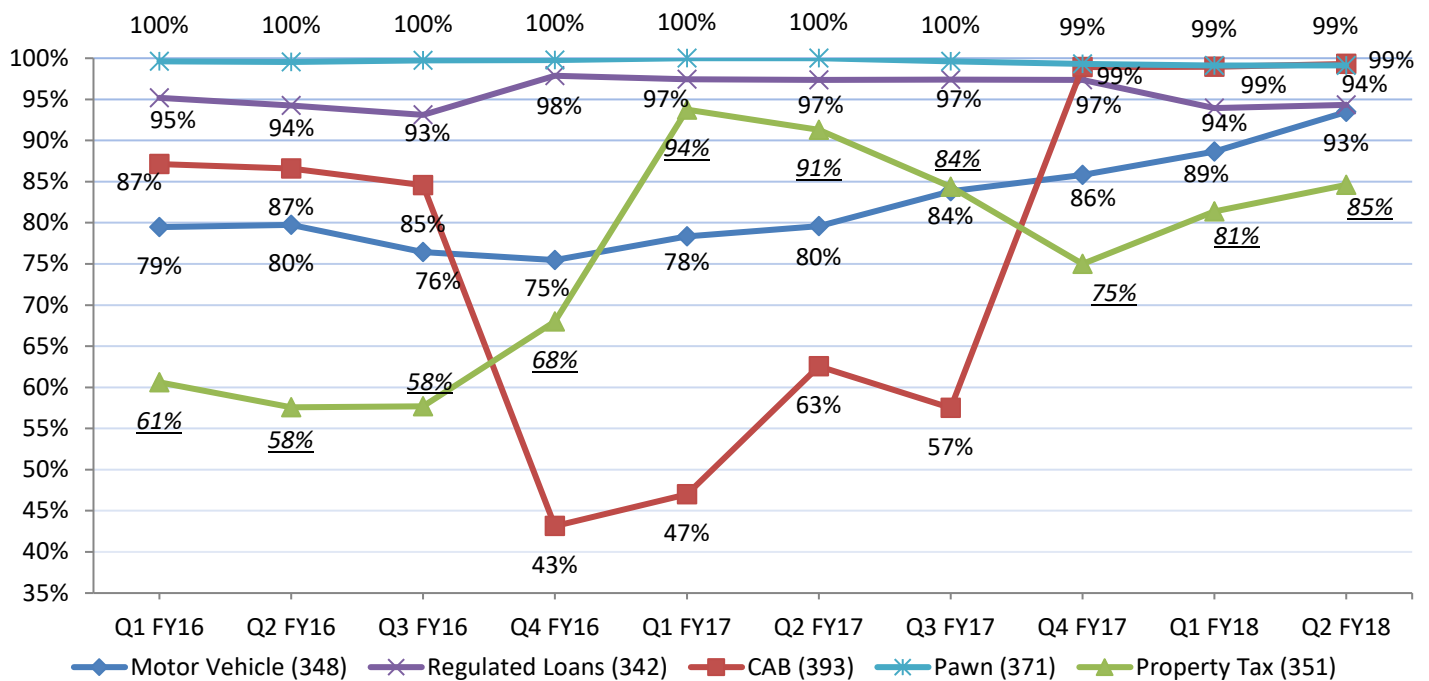
Examinations in this fiscal year continue to reflect a relatively high level of compliance in all license types at this point.

The agency submitted its 2018 annual Conference of State Bank Supervisors Mortgage Accreditation Update on March 29th.

Acceptable Level of Compliance FY '18 (Sept 2017 - Feb 2018)



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

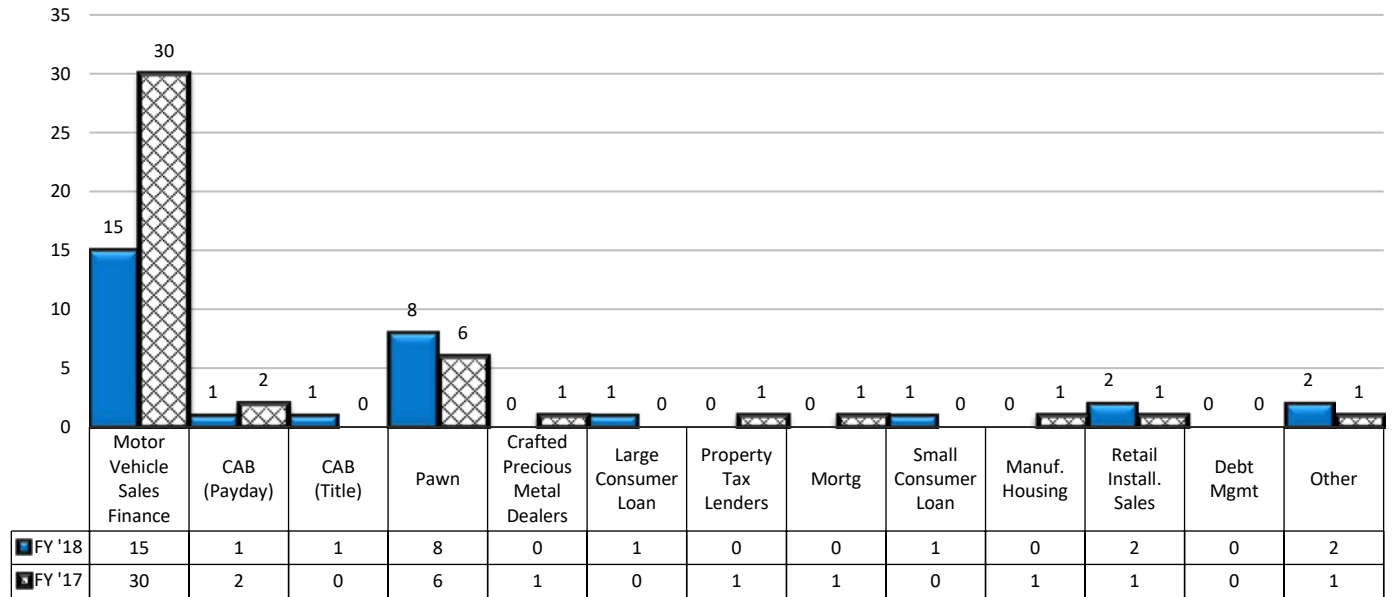


Investigations

Investigations Completed

FY '18 (Sept 2017 - Feb 2018) Total: 31

FY '17 (Sept 2016 - Feb 2017) Total: 44

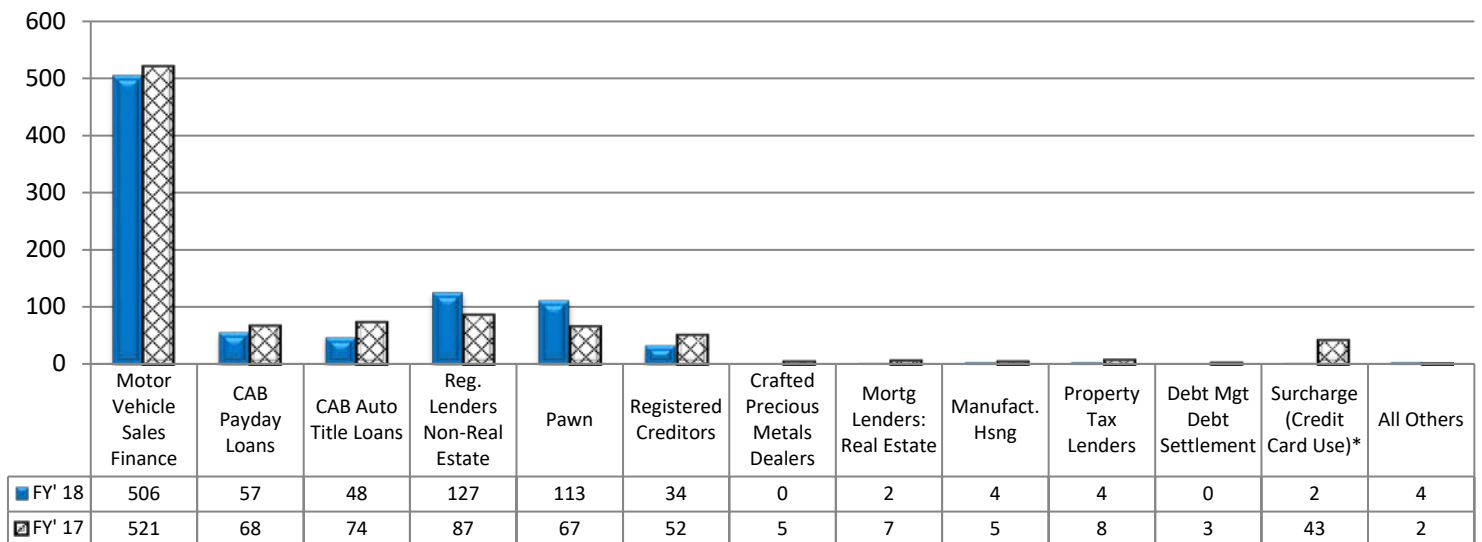


Consumer Assistance

Complaints Processed

FY '18 (September 2017-February 2018) Total: 901

FY '17(September 2016-February 2017) Total:942

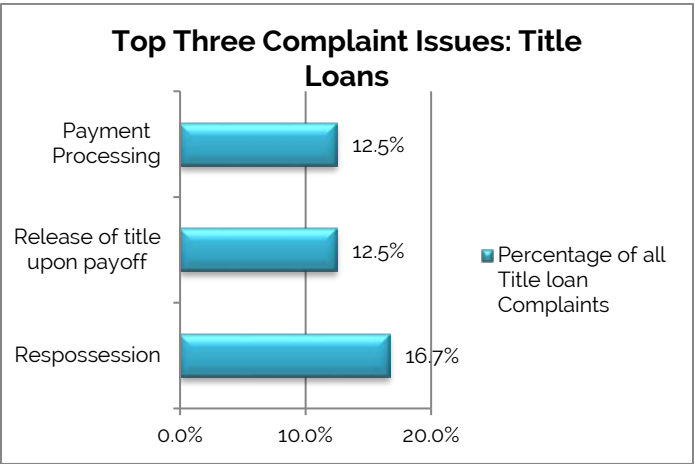
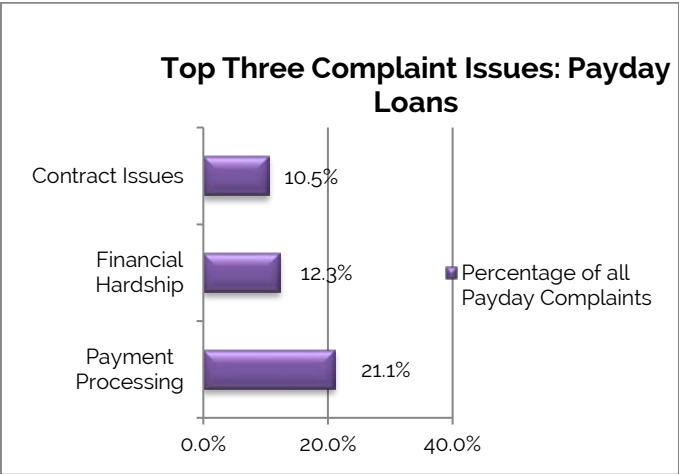
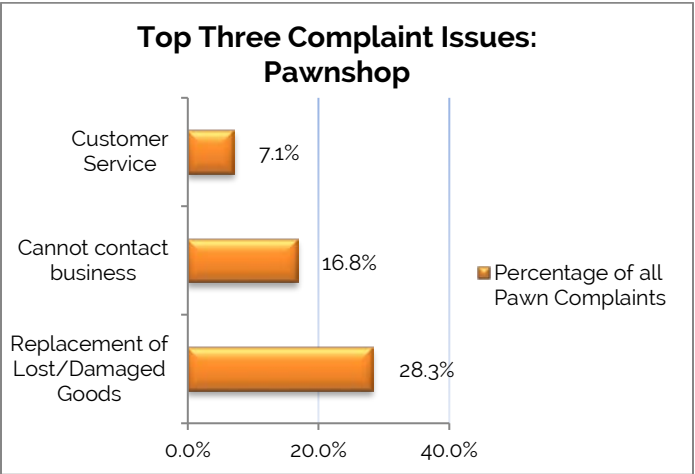
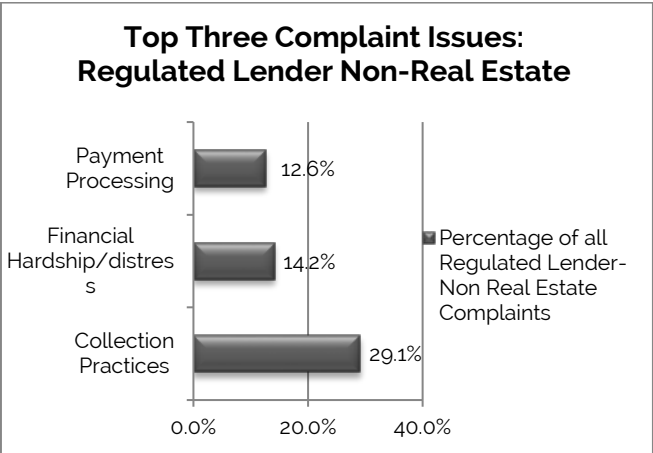
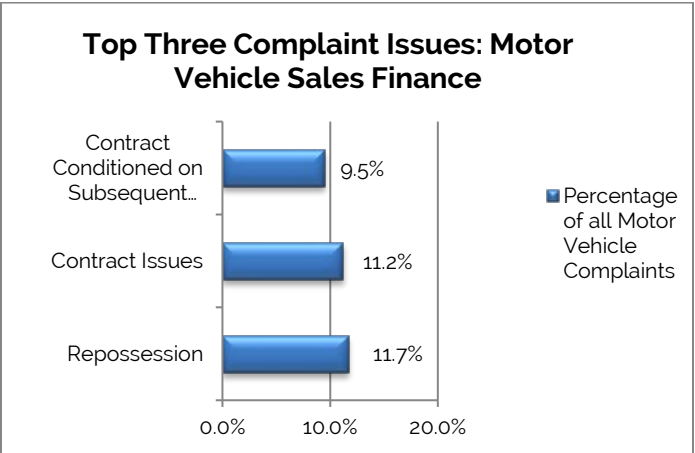


*Surcharge no longer regulated by OCC

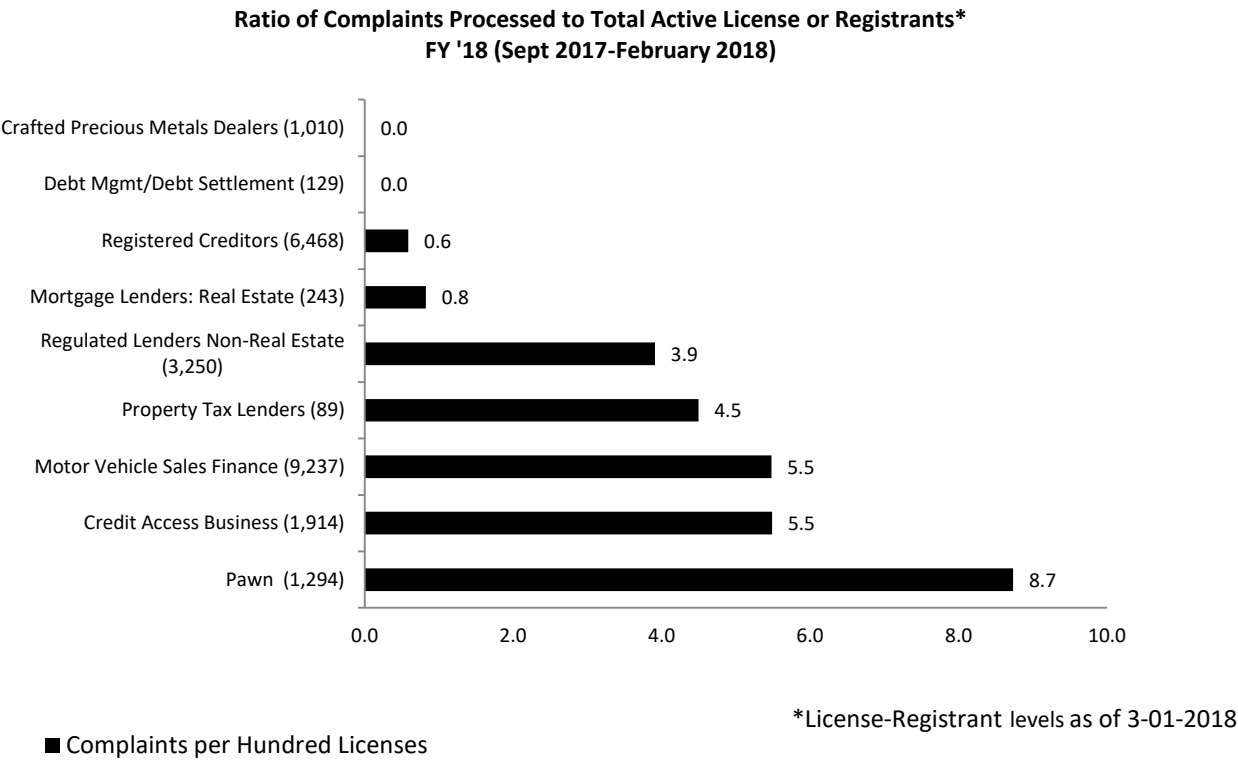
The top four areas of complaints are (1) Motor Vehicle Sales Finance (MVSF), (2) Regulated Lenders Non-Real Estate, (3) Pawn, and (4) Credit Access Business (CAB).

MVSF complaints were the largest complaint category at 56.2%. The second largest number of complaints came from Regulated Lenders Non-Real Estate at 14.1%. The third largest category of complaints came from Pawn at 12.5%. The fourth largest category was CAB complaints. Collectively, CAB complaints are 11.7%; separately, these are at 6.3% for payday loans and 5.3% 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. The ranking order is consistent with the last reporting period.



CAB Reporting Update

Summaries of CAB reports through 2017 are available on the OCCC website. Presented are selected statistics of both Annual and Quarterly reports through the years. Total loan volume has decreased 30% in dollars and 33% in total transactions since 2012. Primary factors of the decrease include consolidation in the industry and an increase in installment lending that leads to less refinance activity. Although overall loan volume continues to decrease, loan volume reported by out of state locations has risen from 14% in 2012 to 26% in 2017.

Data Highlights (All Loan Types) Calendar Year	2017	2016	2015	2014	2013	2012
Number of new Payday Loans	2,188,175	2,340,093	2,410,917	2,451,568	2,543,855	2,660,270
Number of new Auto Title Loans	294,867	269,267	328,520	367,518	473,194	475,681
Percentage of Payday Loans due in multiple installments	45%	42%	40%	35%	27%	16%
Percentage of Auto Title Loans due in multiple installments	39%	41%	30%	18%	15%	17%
Number of vehicles repossessed under all Auto Title Loans	32,308	32,077	37,296	44,052	36,918	37,062
Total Number of Loans and Refinances -Payday	4,351,223	4,730,285	5,288,723	5,755,320	6,100,523	6,730,342
Total Number of Loans and Refinances -Title	1,057,814	1,168,041	1,497,302	1,714,821	1,382,469	1,324,277
Total \$ Loaned by All Licensees (in billions) ¹	\$3.28 B	\$3.60 B	\$4.10 B	\$4.28 B	\$4.26 B	\$4.68 B
Total \$ Loaned by Out of State Licensees (in millions)	\$839 M	\$813 M	\$747 M	\$704 M	\$662 M	\$671 M

Payday Loans Calendar Year	Single Installment			Multiple Installment		
	2017	2016	2015	2017	2016	2015
Average loan amount	\$460	\$449	\$476	\$593	\$561	\$540
Average fee per \$100 borrowed	\$24.05	\$23.76	\$23.58	\$153.59	\$165.88	\$166.38
Average original term (in days)	20	18	19	150	159	160
Estimated APR ²	458%	494%	463%	526%	558%	559%

Title Loans Calendar Year	Single Installment			Multiple Installment		
	2017	2016	2015	2017	2016	2015
Average loan amount	\$1,288	\$1,241	\$1,308	\$1,071	\$1,219	\$1,083
Average fee per \$100 borrowed	\$17.84	\$16.79	\$16.96	\$131.44	\$100.30	\$89.91
Average original term (in days)	30	30	30	157	160	169
Estimated APR ²	229%	217%	216%	460%	365%	331%

¹ Total loaned includes new loans and refinances across all types (payday and title).

² APR includes assumptions on equal payments and length of payment periods.



Licensing Report- April 2018

Mirand Zepeda, Manager

Renewals

Renewal for both refund anticipation loan registrants and debt management and settlement providers registrants ended in the second quarter of FY 2018. Almost all renewals were submitted online via ALECS and renewal rates coincided with agency projections.

Pawn shops and pawn employees have renewal beginning in June. The department is currently preparing to open renewal in May in order to give licensees ample time to renew.

Applications Processing

Licensing staff made significant strides to diminish the number of pending applications in February and March. The department has processed over 450 applications in the calendar year to date and surpassed team goals. Staff will continue to focus on creating efficiencies and collaborate on analyzing processing data.

Other Updates

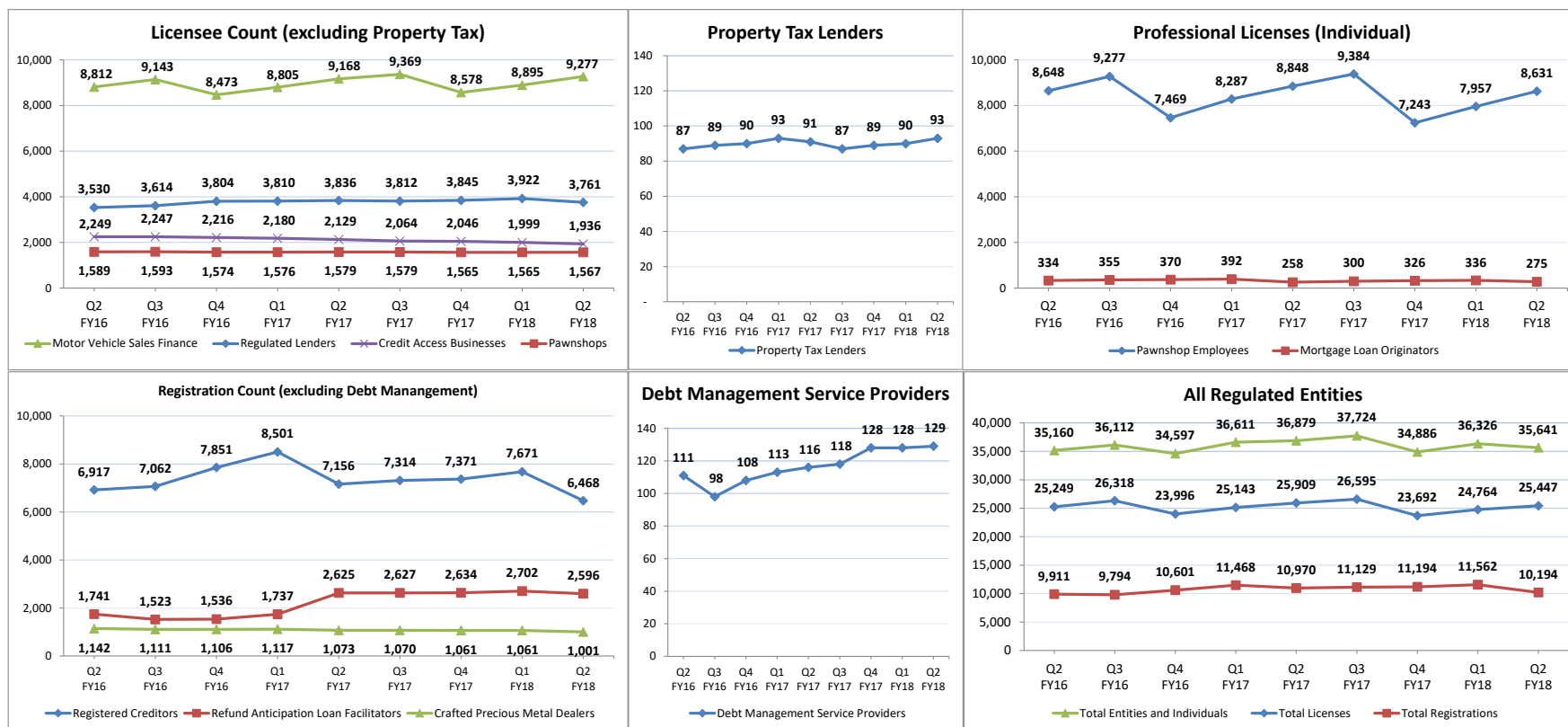
The licensing manager attended the Nationwide Mortgage Licensing System Annual Conference and Training in February and learned about enhancements coming in NMLS 2.0, while interacting with other regulators and industry groups from across the country.

Transitioning Crafted Precious Metals Dealers into ALECS continues development, with essential internal staff communicating and planning with IT vendors to launch in July of 2018.

Regulated Entity Population Trends

The following charts reflect the number of OCCC regulated entities at the end of each quarter in fiscal years 2016 and 2017 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 (IFS) Committee met on January 31 to review the impact of Hurricane Harvey on financial institutions and study how Harvey impacted consumers and lenders in the mortgage and home equity markets. Commissioner Pettijohn testified that most licensees affected were very well prepared and able to return to business relatively quickly.

As part of the strategic planning process, the agency selected a sample of its customer base to participate in the Customer Engagement and Consumer Assistance Surveys. These surveys were available to participants during the month of March 2018 and response rates were slightly higher than those of previous surveys. Staff will continue to work on the 2019-2023 Strategic Plan in the upcoming months.

On March 19, the first Sunset Commission meeting of the 2018-2019 term was held. The Commission will review 31 agencies and its Chairman, Senator Birdwell, emphasized that the focus would rest chiefly on functional performance and efficiency of state agencies. The Sunset Commission has released the hearing schedule. The public hearing for the Finance Commission agencies is scheduled for May 23-24.

The Agency participated in an exit conference with Sunset Staff on April 3.

Agency staff continues to provide a combination of live presentations and communication through various channels to regulated entities. At mid-year, 749 industry participants attended staff presentations regarding compliance matters and the regulatory role and responsibilities of the agency at training seminars hosted by other organizations.

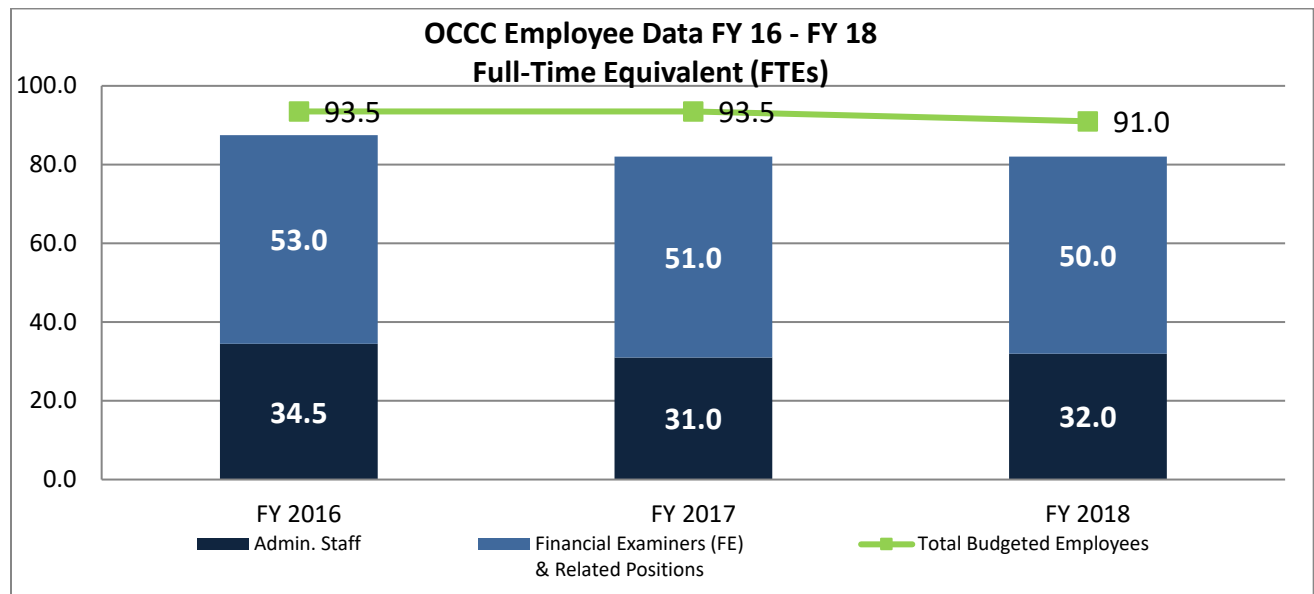
On February 11, William Purce, Senior Review Examiner, presented topics of interest to the Texas Motorcycle Dealers Association in Austin. Senior Examiner Christine Graham presented Motor Vehicle Sales Finance training on March 22 at the Texas Department of Motor Vehicles (TxDMV) Dealer Training in Abilene and Eric Fancher participated at the Dealer Training for the TxDMV on February 15, in Waco.

HUMAN RESOURCES

At the end of Q2, the OCCC had the following vacant positions at Austin Headquarters: (1) Accountant II-III, (1) Investigator I and (1) System Support Specialist II. Since then, all positions have been filled.

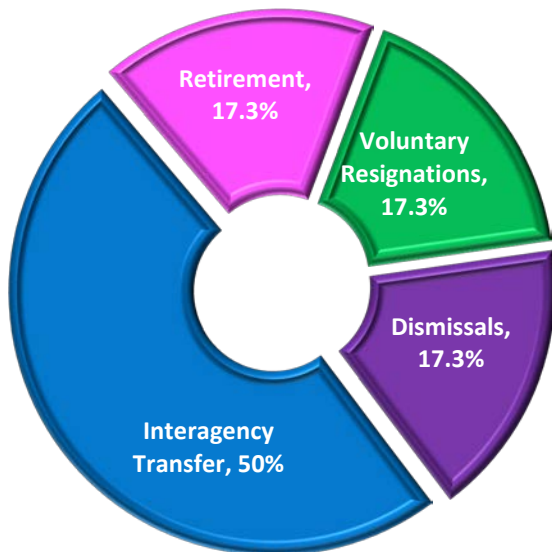
During this same period, the Agency had four separations: (2) Financial Examiner (Interagency transfer & dismissal) (1) Investigator I (resignation).

Recruiting efforts are focused on filling all current open positions within the Agency using different job posting websites to expand outreach.

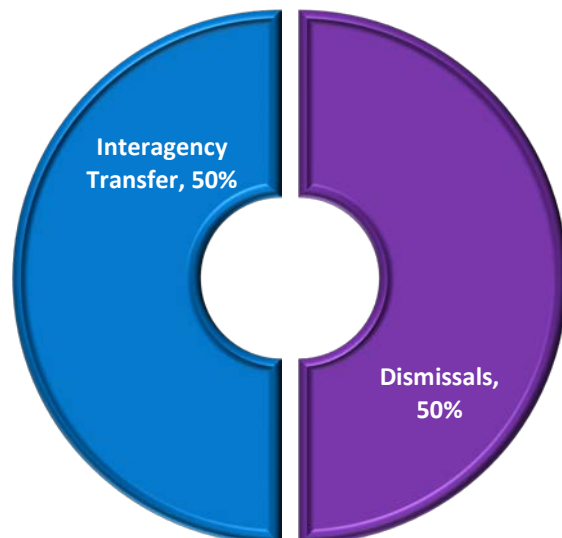


At the end of Q2, the OCCC had 82 FTEs and experienced an overall turnover of 7.41%, with the goal being under 15%.

FY'18 Turnover Categories – All Employees
 (9/01/17 – 2/28/18)
 6 Total



FY'18 Turnover Categories – FE Series
 (9/01/17 – 2/28/18)
 2 Total



On March 21, senior staff, supervisors, assistant supervisors and managers participated in an all-day Management Training Course. The training focused on goal setting, coaching, evaluating performance, and feedback.

ADMINISTRATION

FINANCIAL LITERACY

During December through March, the Financial Literacy Specialist completed a “train-the-trainer” program to become an eligible educator through OCCC partner Financial Literacy Coalition of Central Texas (FLCCT). FLCCT is a non-profit organization devoted to teaching people how to manage their personal finances. By utilizing partnerships with FLCCT, Junior Achievement and WellMed Senior Centers, the Financial Literacy Specialist provided eight new financial education presentations. These presentations reached an additional 144 Texas consumers, providing information on various topics such as credit basics, elderly financial exploitation and savings and checking accounts, bringing the total to 203 financial education participants to date for FY 2018. By the end of March, the Financial Literacy Specialist met 62% of the yearly participation goal. Additional presentations have been scheduled with these partners later in the year.

In addition, 13 new contacts were made with organizations across Texas to promote financial education and resources. A total of 17 contacts (57% of the yearly goal) have been made to date during FY 2018. These organizations include afterschool programs, elderly centers, resource centers and financial literacy organizations. In the next quarters, the Financial Literacy Specialist will focus on bringing financial education presentations to the underserved populations of north Texas.

During Q2, the Financial Literacy Specialist sought out membership with multiple financial literacy organizations in Austin. These organizations will allow the specialist to learn of new outreach opportunities, become active in financial literacy events around Austin, and learn about and share financial education best practices. One new organization joined is the Financial Literacy Committee of the Alliance for Economic Inclusion (AEI). AEI supports the goal of promoting widespread availability and use of safe, affordable, and sustainable financial products from insured depository institutions that help people achieve financial stability and build wealth. The committee will meet again in June to decide on yearly goals.

Lastly, the department continues to promote the importance of financial education and has updated the list of resources offered by the Agency. These will be released this month for Financial Literacy Month.



Accounting & IT Reports

Accounting

The Accounting Department attended an Accounting Policy Meeting conducted by staff of the Comptroller of Public Accounts to hear about the recent updates on the Annual Financial Reporting process and Prompt Payment Policies. The department worked on record retention clean-up. The department became fully staffed during this time period and is preparing to revise the travel policy.

Information Technology

Legacy Modernization

The agency continues to work through ALECS maintenance issues and enhancements during vendor supported maintenance. Contracted maintenance is scheduled to end April 30, 2018. At this time staff anticipates executing a new contract for hourly support to address pending issues.

A contract has been executed to add Crafted Precious Metals registration to the ALECS portal, with a kickoff meeting scheduled for mid-April. 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, although this project has been delayed due to other priorities.

OCCC has installed a new virtual host and NAS (Network Attached Storage). Staff is in the process of finalizing configuration of the on-premises network servers to provide redundancy for all situations in which the building has power and the internet circuit is up.

The agency has submitted the Information Resources Deployment Review (IRDR) prior to the March 31 deadline as required by DIR.

VoIP

OCCC has deployed Voice over Internet Protocol (VoIP) for the majority of agency phones. The transition will be complete as soon as DIR completes the setup of the Automatic Call Distribution (ACD) groups for the licensing and consumer assistance areas and phones are deployed. Staff is to attend training on the new Finesse system for these groups on April 10.

Security

The OCCC Security Committee (SPCC) continues to make progress on the agency's security roadmap, including new and revised policies and procedures, training requirements, and software/hardware policies.

SPCC has completed 35 (97%) short term recommendations, with 1 item still in progress. There are 12 mid-term recommendations, of which 11 are in progress.

General

The Agency has hired an additional IT staff member, who began work March 26, 2018.



Legal Department Report

Michael Rigby, General Counsel

April 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.

The OCCC adopted the ALJ's recommendation and issued a final order affirming the injunctive order. On March 28, 2018, the OCCC's order became final and enforceable after AJ's Nice Cars did not timely file a Motion for Rehearing.

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 March 31, 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 March 31, 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	26	37	1	0
Pawnshop Employee License	32	69	0	0
Credit Access Business License	20	47	25	1
Motor Vehicle Sales Finance License	11	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	93	230	157	25
Administrative Penalty Actions				
Regulated Loan License	0	13	0	73
Pawnshop License	3	3	40	4
Pawnshop Employee License	0	0	1	4
Credit Access Business License	4	23	97	136
Motor Vehicle Sales Finance License	17	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	24	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	117	388	458	388

From January 16, 2018, to March 31, 2018, the OCCC:

- issued 42 final orders,
- opened nine cases in order to assess administrative penalties,
- opened 13 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 April 1, 2018 and May 31, 2018.

Administrative Rule Report

At the April meeting, the OCCC is presenting two rule actions:

- An adoption of amendments regarding recordkeeping for motor vehicle sales finance licensees.
- An adoption of amendments regarding registration procedures for crafted precious metal dealers.

At upcoming meetings, the OCCC plans to present rule actions regarding the following issues:

- Amendments regarding regulated lenders, resulting from rule review.
- Amendments regarding pawnbrokers, resulting from rule review.

Litigation

State of Texas v. Cash Auto Sales, Inc. and VIP Finance of Texas, Inc.

In 2017, the OCCC issued an Order to Cease and Desist, to Take Affirmative Action, and to Make Restitution against VIP Finance of Texas, Inc. The OCCC alleges that VIP violated the Texas Finance Code by engaging in unlicensed regulated lending, engaging in unlicensed motor vehicle sales finance, requiring the purchase of automobile clubs in credit transactions, and charging unreasonable automobile club fees.

VIP argues that the OCCC's enforcement action is barred because of a 1998 judgment, in which a Dallas district court held that VIP was not violating the Texas Credit Code and dismissed the State's claims against VIP. On February 8, 2018, VIP filed an application with the Dallas district court for a temporary restraining order, temporary injunction, and permanent injunction against the OCCC. The district court granted the temporary restraining order. The State filed a plea to the jurisdiction in the district court, arguing that the court does not have jurisdiction over the case.

On February 22, the Dallas district court denied the State's plea to the jurisdiction and issued a temporary injunction. The State has appealed both the denial of the plea to the jurisdiction and the temporary injunction to the Fifth Court of Appeals in Dallas. The temporary injunction remains in effect during the pendency of the State's appeal to the court of appeals. The hearing that was originally scheduled before the State Office of Administrative Hearings (SOAH) has been abated.

The OCCC is represented in the district court and court of appeals by the Financial Litigation and Charitable Trusts division of the Office of the Attorney General. The SOAH case number is 466-18-1803. The district court case number is DC-96-11528. The court of appeals case number is 05-18-00198-CV.

State of Texas v. Student Loan Relief, LLC, et al.

In October 2017, the Consumer Protection Division of the Office of the Attorney General filed a lawsuit in Travis County district court against Student Loan Relief, LLC, Student Loan Relief of Texas, Inc., Your Student Loan Relief Organization, and Jason Spencer alleging violations of the Deceptive Trade Practice Act (DTPA) and Chapter 394 of the Texas Finance Code. The attorney general represents the OCCC in seeking relief as to the violations of Chapter 394.

The lawsuit alleges that Student Loan Relief and its Chairman and CEO Jason Spencer, in his individual capacity, violated the DTPA and Chapter 393 by: (1) providing debt management services to Texas consumers without registering with the OCCC, (2) engaging in false and deceptive advertising, (3) charging

premature or unauthorized fees, (4) misappropriating or misapplying loan payments, (5) requesting loan deferments or forbearances without permission, and (6) failing to provide refunds or cease withdrawals.

As of March 20, 2018, Student Loan Relief has not filed an answer in the suit. Jason Spencer individually has filed an answer and has requested to transfer venue to Dallas County. A hearing date has not been set yet on the motion to transfer venue. The full style of the Texas case is *State of Texas v. Student Loan Relief, LLC, Student Loan Relief of Texas, Inc., Your Student Loan Relief Organization, and Jason Spencer*. The case number is D-1-GN-17-005516, filed in the 353rd District Court of Travis County, Texas.

CAB Municipal Ordinance Litigation

Two pending cases involve challenges to the City of Austin's credit access business (CAB) ordinance. The City of Austin brought the cases against ACSO of Texas, LP d/b/a Advance America and The Money Store, LP d/b/a Speedy Cash. The City alleges that these CABs violated the ordinance's limit on the number of installment payments under a payday or title loan. The CABs allege that the ordinance is preempted by Section 393.602(b) of the Texas Finance Code. The City appealed the Austin municipal court's dismissal of the two cases. A 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.

ACSO initially appealed its case to the Third Court of Appeals in Austin, but on January 3, 2018, the court of appeals granted ACSO's motion for dismissal (case number 03-17-00668-CR). A trial for ACSO is currently set for May 9, 2018 in Austin municipal court.

The Money Store also appealed its case to the court of appeals, but the court of appeals dismissed this case on February 22, 2018 (case number 03-17-00675-CR). The court of appeals held that it does not have jurisdiction to hear the appeal because the municipal court has not imposed a fine or conviction. The court of appeals also dismissed The Money Store's petition for a writ of mandamus against the Travis County Court at Law on March 30, 2018 (case number 03-18-00176-CV).

Advisory Bulletins

From January 16, 2018 to March 31, 2018, the OCCC did not issue any new advisory bulletins.

Official Interpretation Requests

From January 16, 2018 to March 31, 2018, the OCCC did not receive any requests for official interpretations.

As of March 31, 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 OCCC is awaiting the Finance Commission's adoption of motor vehicle recordkeeping rule amendments at the April 2018 meeting before determining how to address the request.

Public Information Requests

From January 16, 2018 to March 31, 2018, the OCCC received 36 requests for information under the Texas Public Information Act, with no referrals to the Office of the Attorney General.

Gifts Received by the OCCC

The State Regulatory Registry LLC provided one scholarship to attend the 2018 NMLS Annual Conference, valued at \$2,143.

Rule Item/Purpose	Proposal Date	Adoption Date
<p>Motor Vehicle Installment Sales - Adopt Amendments 7 TAC, Part 5, Chapter 84 - §§84.707, 84.708, & 84.709</p> <p>To clarify recordkeeping procedures</p> <p><i>First precomment draft distributed November 15, 2017</i> <i>Stakeholder meeting and webinar held January 12, 2018</i> <i>Second precomment draft distributed January 17, 2018</i> <i>Official comment period ended April 2, 2018</i></p>	02/16/18	Presented for Adoption 04/20/18
<p>Rules for Crafted Precious Metal Dealers - Adopt Amendments, New Rules, & Repeal 7 TAC, Part 5, Chapter 85, Subchapter B</p> <p>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</p> <p><i>Precomment draft distributed January 12, 2018</i> <i>Stakeholder meeting and webinar held January 26, 2018</i> <i>Official comment period ended April 2, 2018</i></p>	02/16/18	Presented for Adoption 04/20/18
<p>Rules for Regulated Lenders - Rule Review 7 TAC, Part 5, Chapter 83, Subchapter A</p> <p>To conduct standard rule review under Tex. Gov' t Code, §2001.039; to update licensing procedures and make technical corrections</p>	TBD	
<p>Rules of Operation for Pawnshops - Rule Review 7 TAC, Part 5, Chapter 85, Subchapter A</p> <p>To conduct standard rule review under Tex. Gov' t Code, §2001.039; to update licensing procedures and make technical corrections</p>	TBD	

D. OFFICE OF CONSUMER CREDIT COMMISSIONER

2. Discussion of and Possible Vote to Take Action on the Adoption 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 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 without changes as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve 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) adopts amendments to §§85.1002, 85.1003, 85.1004, 85.1005, 85.1008, 85.1011, and 85.2002; adopts new 85.1007 and 85.1012; and adopts the repeal of 85.1007 in Subchapter B of 7 TAC, Chapter 85, concerning the registration of crafted precious metal dealers.

The commission adopts the amendments to §§85.1002, 85.1003, 85.1004, 85.1008, 85.1011, and 85.2002; adopts new 85.1007 and 85.1012; and adopts the repeal of 85.1007 without changes to the proposed text as published in the March 2, 2018, issue of the *Texas Register* (43 TexReg 1203).

The commission received no written comments on the proposal.

The purpose of the adopted 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 adopted changes to each section are provided in the following paragraphs.

Section 85.1002 outlines the requirements to file a new application. Adopted 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, amendments remove unnecessary language related to the current registration system that is being replaced. In particular, the phrase "online Metals Registration Program" has been deleted from subsections (a) and (b). In subsection (c)(3), the requirement to provide a list of locations has also been deleted, as each permanent and temporary location will be registered separately by the crafted precious metal dealer.

In §85.1002(c)(4), an amendment removes the requirement to provide hours of operation for temporary locations. Additionally, duplicative language regarding responsible persons has been deleted.

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. Former subsections (b) and (c) have been deleted to update registration procedures, as they relate

to application notification and withdrawal procedures that are no longer needed.

Also in §85.1003, an 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. An adopted 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 language of former §85.1005 has been reorganized into adopted subsection (c), regarding the OCCC's reasonable reliance on the dealer's mailing and e-mail addresses currently on file. The 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 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 has been repealed and replaced with a revised and reorganized rule that reflects the amended procedures for annual renewals. The new rule incorporates renewal and expiration based on the calendar year, as opposed to being based on the anniversary date of each particular registration.

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

Several changes have been adopted in new §85.1007(c) concerning the late renewal process for permanent locations. In subsection (c)(1), there is 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 is 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 adopted subsection (c)(3) (former (c)(2)).

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

Section 85.1008 concerns temporary location amendments. Adopted 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 adopted in §85.1002. Additionally, language related to renewal of a temporary

location has been deleted, as temporary locations will not be renewable under adopted 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 adoption. The amendments in §85.1011 relate to updating the process to be used regarding renewal, amendments, and relocation.

Adopted 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. An adopted amendment to §85.2002(b) deletes former 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 adoption 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.

The rule changes are adopted 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 adopted under Texas Occupations Code, §1956.0612(f), which authorizes the Consumer Credit Commissioner to prescribe the registration form.

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

Issued in Austin, Texas on April 20, 2018.

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

D. OFFICE OF CONSUMER CREDIT COMMISSIONER

3. Discussion of and Possible Vote to Take Action on the Adoption 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 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 with changes as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve 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) adopts amendments to 7 TAC, Chapter 84, §§84.707, 84.708, and 84.709, concerning Motor Vehicle Installment Sales.

The commission adopts the amendments to §§84.707, 84.708, and 84.709 with changes to the proposed text as published in the March 2, 2018, issue of the *Texas Register* (43 TexReg 1199).

The commission received one official written comment on the proposal from the Texas Automobile Dealers Association (TADA). The comment opposes adoption of the requirement in proposed §84.707(d)(2)(Q) to maintain a copy of the privacy notice. The commission's response to this comment is discussed later in this adoption, following the explanation of this proposed provision.

In addition to the official comment from TADA, the commission received a comment from the Texas Independent Automobile Dealers Association (TIADA) after the deadline for submitting official comments at 5:00 p.m. on April 2, 2018. This comment opposes adoption of the requirements in proposed §84.707(d)(2)(Q) and §84.708(e)(2)(V) to maintain a copy of the privacy notice. Because the TIADA comment was submitted after the official comment deadline, the commission considers it to be an informal comment. The commission's response to this informal comment is discussed later in this adoption, following the explanation of this proposed provision.

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 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 adoption, and the agency appreciates the thoughtful input provided by stakeholders.

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, an 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 Office of Consumer Credit Commissioner (OCCC). It is important for a licensee to have a complete master copy of each debt cancellation agreement form it uses, in order to ensure that the licensee can comply with its responsibilities under the agreement. This is also a prudent business practice. 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 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.

In the proposed rule amendments published in the *Texas Register*, proposed new §§84.707(d)(2)(Q), 84.708(e)(2)(V), and 84.709(e)(2)(K) would have specified 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 explained 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.

The official commenter opposes the requirement in §84.707(d)(2)(Q) to maintain a copy of the privacy notice. The commenter states: "The Federal Trade Commission (FTC) has jurisdiction and enforcement authority regarding the GLB privacy notice and the OCCC's jurisdiction does not extend to a requirement regarding this federal statute or its implementing regulations. . . . The GLB privacy notice is not part of a retail installment transaction and should not be included in the agency's audit and examination. . . . The privacy notice is not a form that enables the agency to determine if the license holder is complying with [Chapter 348 of the Texas Finance Code] as [Chapter 348's] purpose is motor vehicle retail installment transactions

and the privacy notice is a discussion of the dealership's privacy practices--not financing terms or itemized charges. . . . The FTC is the agency with jurisdiction over the use, language, interpretation, enforcement, and retention of the privacy notice. . . . The FTC does not require a financial institution to retain a copy of the privacy notice in its files. . . . Finally, a federal privacy notice does not pertain to a Chapter 348 retail installment transaction merely because it describes how a licensee uses personal financial information."

Similarly, the informal commenter argues that the federal privacy notice is outside of the OCCC's jurisdiction, and that the proposed amendments impose additional requirements not present in federal law. For this reason, the informal commenter opposes the requirements to maintain the privacy notice in both proposed §84.707(d)(2)(Q) and proposed §84.708(e)(2)(V).

The adoption does not include the requirements to maintain the privacy notice that appeared in proposed §§84.707(d)(2)(Q), 84.708(e)(2)(V), and 84.709(e)(2)(K). The commenters correctly state that the Gramm-Leach-Bliley Act and its implementing regulations do not require motor vehicle licensees to maintain a copy of the privacy notice. The commission has determined that the amendments requiring a motor vehicle licensee to maintain the privacy notice are unnecessary at this time.

The commission disagrees with the commenters' statements that the privacy notice is entirely outside the OCCC's authority, and also disagrees with the commenters' statements that the privacy notice does not pertain to Chapter 348 transactions. First, privacy notices pertain to retail installment transactions because the practice of entering retail installment transactions causes a person

to be subject to the requirements for privacy notices. *See* Federal Trade Commission, FTC's Privacy Rule and Auto Dealers: FAQs (Jan. 2005) (explaining that the "Privacy Rule applies to car dealers who: Extend credit to someone (for example, through a retail installment contract)"). Second, the privacy notice describes how the licensee will use the buyer's personal financial information obtained in connection with the retail installment transaction. Third, under Texas Finance Code, §11.307(b), the commission has the authority to require any entity regulated by the OCCC to include information on filing complaints with the OCCC in a privacy notice required under the Gramm-Leach-Bliley Act. For motor vehicle licensees, this complaint notice is currently required to be included in the retail installment contract under 7 TAC §86.101. Section 11.307(b) acknowledges that the commission has authority to require licensees to add text to the federal privacy notice. This authority necessarily relates to the OCCC's authority under Chapter 348 and shows that the privacy notice pertains to Chapter 348 retail installment transactions. The OCCC will consider whether future rulemaking is appropriate to implement Section 11.307(b) and require a complaint notice in motor vehicle licensees' privacy notices.

As part of its current examination procedures for motor vehicle licensees, the OCCC reviews the licensee's compliance with the privacy notice requirements of the Gramm-Leach-Bliley Act and its implementing regulations. If the OCCC finds that a licensee is violating these requirements, the agency instructs the licensee about the violation in the exam report. Violations of privacy notice requirements were one of the five most common types of violations cited in OCCC exam reports for motor vehicle licensees during fiscal year 2017. These

violations include licensees that do not provide the privacy notice at all, licensees that provide a noncompliant notice, and licensees that provide a notice that does not accurately describe the licensee's practices. The commission and OCCC believe that these examination instructions are appropriate and consistent with the OCCC's general responsibility to determine that a licensee has the financial responsibility and general fitness to operate lawfully and fairly, as provided by Texas Finance Code, §348.504. The OCCC intends to continue instructing licensees if it discovers violations of the privacy notice requirements during an examination. It is a best practice for licensees to be able to reproduce the privacy notice that they provide to consumers, in order to show that they are complying with federal law.

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 the licensee can demonstrate compliance with the provisions of the Texas Finance Code that limit authorized charges.

These 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, 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 adopted 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.)

(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.)

(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) [~~H~~] 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.)

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

Issued in Austin, Texas on April 20, 2018.

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



April 2, 2018

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

VIA EMAIL laurie.hobbs@occc.texas.gov
Rule.comments@occc.texas.gov

Dear Ms. Hobbs:

On behalf of TIADA, I appreciate the opportunity to comment upon the OCCC's proposed amendments to motor vehicle recordkeeping rules, issued March 2, 2018.

TIADA does not support the adoption of the proposed rule amendments to §84.708(e)(2)(V) and §84.707(d)(2)(Q). Both of these rule amendments would authorize the OCCC to require motor vehicle seller finance license holders to retain a copy of the federally mandated privacy notice in a customer's file.

Federal Privacy Notice Outside of OCCC Jurisdiction

Jurisdiction for enforcing Regulation P, which applies to automotive dealers who finance in-house, lies with the Consumer Financial Protection Bureau. The Federal Trade Commission has jurisdiction for enforcing the GLB privacy notice, which applies to those automotive dealers who assign retail installment sales contracts. The FTC Act specifically reserves authority to examine privacy policies and practices to the FTC and the CFPB. There is no such reservation to state finance commissions.

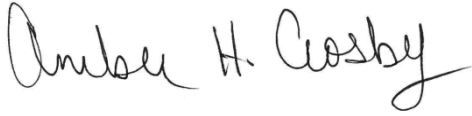
While the Texas Finance Code authorizes the OCCC to require licensees to maintain certain records with respect to a licensee's compliance with Chapter 348, that authorization does not extend to how a licensee handles other aspects of its business. Privacy notices do not discuss financing terms or itemized charges. Privacy notice discusses how an entity collects and shares personal information. Thus, the privacy notice is not part of a retail installment sales transaction. Information sharing is not an issue over which the Texas Finance Code delegates jurisdiction to the OCCC.

Proposed Amendments Impose More Requirements than Federal Law Allows

The proposed rule amendments referenced above impose an additional requirement not present in the FTC Act. The FTC Act does not require financial institutions to maintain a copy of the model privacy notice in each transaction file, nor in a general business file. The CFPB and the FTC determine when, to whom, and in what manner a privacy notice is given. The OCCC cannot add to these requirements without a specific granting of jurisdiction to do so by the CFPB and the FTC.

As always, the association welcomes the opportunity to engage in productive stakeholder dialogue with the agency. Based upon such dialogue, TIADA requests that the Finance Commission decline to adopt the proposed amendment to 7 TAC §84.708(e)(2)(V) and to 7 TAC §84.707(d)(2)(Q).

Sincerely,

A handwritten signature in black ink that reads "Amber H. Crosby". The signature is fluid and cursive, with the first name "Amber" being the most prominent.

Amber Hackett Crosby
Director of Dealer Compliance and Education
Texas Independent Automobile Dealers Association
800.442.5944 o / 214.566.0555 m



1108 Lavaca, Suite 800
Austin, Texas 78701
Phone: 512-476-2686
www.tada.org

March 30, 2018

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

Sent via email: rule.comments@occc.texas.gov

Re: *Proposed Amendment*
Subchapter G. Examinations
7 TAC § 84.707. Files and Records Required
(Retail Sellers Assigning Retail Installment Sales Contracts)
43 *TexReg* 1199 - 1203 (March 2, 2018)

Dear Ms. Hobbs:

On behalf of the Texas Automobile Dealers Association (TADA), an association comprised of franchised new motor vehicle and truck dealers, please accept the following comments regarding the proposed rule 7 TAC § 84.707, as published in the March 2, 2018, *Texas Register*.

TADA requests that the proposed rule amending § 84.707(d)(2)(Q) not be adopted. The proposal causes the privacy notice as provided for under the Gramm-Leach Bliley (GLB) Act, 15 U.S.C. §§ 6801-6809 and its implementing regulations, 16 C.F.R. Part 313 and Regulation P, 16 C.F.R. Part 1016, to become a required document that must be retained in the retail installment transaction file or a required document in the licensee's general business files for purposes of review and audit by the OCCC.

The Federal Trade Commission (FTC) has jurisdiction and enforcement authority regarding the GLB privacy notice and the OCCC's jurisdiction does not extend to a requirement regarding this federal statute or its implementing regulations. As the FTC is the enforcement authority regarding the GLB privacy notice, TADA requests that the proposed rule amending § 84.707(d)(2)(Q) not be adopted.

Proposed Amendment 7 TAC § 84.707.

Files and Records Required

(Retail Sellers Assigning Retail Installment Sales Contracts)

The OCCC's record-keeping rule (for retail sellers who assign their retail installment sales contracts) requires a licensee to maintain certain records with respect to "the licensee's compliance with Texas Finance Code, Chapter 348 for each motor vehicle retail installment sales contract made, acquired, serviced, or held under Chapter 348 and make those records available for examination."¹

According to subsection (b), § 84.707, the current rule requires a licensee to maintain records for the OCCC's examination which are necessary for compliance with Chapter 348. Motor Vehicle Installment Sales, Finance Code.

A record that is completed by a licensee but which is not necessary for compliance with Chapter 348, Finance Code and thus not a part of a retail installment sales contract, is not a document that may be audited and examined by the OCCC. The GLB privacy notice is not a part of a retail installment transaction and should not be included in the agency's audit and examination record-keeping rule.

Finance Code

With respect to the Finance Code, a license holder's statutory record and document retention requirement provides:

§ 348.517. License Holder's Records; Document Retention Requirements

(a) A license holder shall maintain a **record of each retail installment transaction made under this chapter** as is necessary to enable the commissioner to determine whether the license holder is **complying with this chapter**.

(b) A license holder shall keep the record until the later of:

- (1) the fourth anniversary of the date of the retail installment transaction; or
- (2) the second anniversary of the date on which the final entry is made in the record.

(c) A **record described by Subsection (a)** must be **prepared in accordance with accepted accounting practices**.

(d) The commissioner shall accept a license holder's system of records if the system discloses the information reasonably required under Subsection (a).

¹7 Tex. ADMIN. CODE § 84.707(b).

(e) A license holder shall keep each obligation signed by a retail buyer at an office in this state designated by the license holder unless the obligation is transferred under an agreement that gives the commissioner access to the obligation.²
(Emphasis added.)

The records required to be kept by a license holder in order to comply with “this chapter” pertains to Chapter 348, Motor Vehicle Installment Sales, Finance Code. The records that are necessary for the commissioner to determine compliance are the records of a “retail installment transaction.”

A “retail installment transaction” means “a transaction in which a retail buyer purchases a motor vehicle from a retail seller other than principally for the purpose of resale and agrees with the retail seller to pay part or all of the cash price in one or more deferred installments.”³

In addition, these records are required to be prepared in accordance with accepted accounting practices and retained for a specific period of time in an office accessible to the commissioner.

If a document that is used by a license holder does not pertain to Chapter 348, Motor Vehicle Installment Sales and a retail installment transaction, then that document, report, record, or form should not be a required document for review and audit by the OCCC.

Rule for Record-keeping Requirements

The agency currently requires a retail seller that assigns retail installment sales contracts to maintain numerous records and reports in accordance with Title 7, Part 5, Chapter 84, Subchapter G., Rule §84.707. These record-keeping requirements include:

1. Retail installment sales transaction report.

Each licensee must maintain records sufficient to produce a retail installment sales transaction report that contains a list of each Chapter 348 retail installment sales contract entered into by the licensee.⁴

This report must contain the following:

- (i) The date of contract or date of sale (day, month, and year);
- (ii) The retail buyer’s name(s);
- (iii) a method of identifying the vehicle, such as the last 6 digits of

²TEX. FIN. CODE ANN. § 348.517 (Vernon 2016).

³*Id.* at § 348.001(7) (Vernon Supp. 2017).

⁴7 Tex. ADMIN. CODE § 84.707(d)(1).

the VIN or the stock number; and,

(iv) the account number, if the retail seller assigns an account number.⁵

2. Dealer's Motor Vehicle Inventory Tax Statement option.

A licensee may utilize a copy of the Dealer's Motor Vehicle Inventory Tax Statement (VIT Statement) that is submitted to the Texas Comptroller of Public Accounts if 2 conditions are met when the VIT Statement is provided to the commissioner's representative:

(I) On the submitted VIT statement, the licensee highlights, marks with abbreviations, which transactions were cash and which were retail installment sales transactions; and,

(II) The licensee supplements the VIT statement with the identification of all transactions in which VIT was not charged or collected.⁶

3. Retail installment sales transaction file.⁷

(i) the retail installment sales contract as signed by buyer and seller;

(ii) a buyer's order, if applicable;

(iii) the credit application and any other information used in evaluating the credit;

(iv) the Texas Department of Motor Vehicles' Title Application Receipt, Tax Assessor's Tax Collector's Receipt for Title Application/Registration/ Motor Vehicle Tax receipt;

(v) agreements/disclosures signed by the buyer applicable to the retail installment sales transaction;

(vi) signed and filed Texas Department of Motor Vehicles/Texas Comptroller of Public Accounts Application for Texas Certificate of Title, if applicable;

(vii) Texas Comptroller of Public Accounts Texas Motor Vehicle Sales Tax Exemption Certificate, if applicable;

(viii) signed Power of Attorney, if applicable;

(ix) signed Texas Department of Motor Vehicles County of Title Issuance form;

(x) Down payment documents including:

1. Receipts for down payment;

2. Promissory notes;

⁵7 TEX. ADMIN. CODE § 84.707(d)(1)(D).

⁶7 TEX. ADMIN. CODE § 84.707(d)(1)(C).

⁷7 TEX. ADMIN. CODE § 84.707(d)(2) requires the retail installment sales transaction file to "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. . ."

- 3. Rebate documents;
- 4. Payoff documents.
- (xi) Disclosure of Equity in Trade-In Motor Vehicle, if applicable;
- (xii) Documents evidencing a disbursement of funds for money advanced;
- (xiii) Certificates of insurance;
- (ix) Copy of debt cancellation agreement;
- (x) Certificates of coverage for ancillary products;
- (xi) Separate disclosures for Truth in Lending Act (TILA) if not incorporated on the retail installment contract;
- (xii) Cosigner notice;
- (xiii) Safety and emissions inspection work order, inspection receipt;
- (xiv) Trade-in credit agreement copy with evidence of the contractual liability reimbursement policy and documentation of any refund; evidence of any credit applied and documentation used to process a claim, if applicable;
- (xv) Depreciation benefit optional member program copy with evidence of any credit applied and documentation to process the benefit, if applicable.
- (xvi) Assignment information showing the name of the retail buyer, the account number, date of assignment, and the name and address for the assignee.

Many of the above-required documents listed within the agency's record-keeping rule are promulgated and audited by other agencies, such as the Texas Comptroller of Public Accounts, the Texas Department of Motor Vehicles, and the Texas Department of Public Safety and are controvertible as a mandated record for the OCCC to audit.

To continue to expand the list of required record-keeping documents and forms for OCCC audit, especially forms audited, mandated and promulgated by other agencies, is questionable. Section 348.517(a) specifies that "a license holder shall maintain a record of each retail installment transaction made under this chapter as is necessary to enable the commission to determine whether the license holder is complying with this chapter."

The privacy notice is not a form that enables the agency to determine if the license holder is complying with this chapter as this chapter's purpose is motor vehicle retail installment transactions and the privacy notice is a discussion of the dealership's privacy practices—not financing terms or itemized charges.

Gramm-Leach-Bliley Privacy Notice

Proposing to add to the list of required records is a privacy notice that is adopted and promulgated and agreed upon by eight federal regulatory agencies. The final model privacy notice form allows a consumer to compare privacy practices of different financial institutions and its

purpose is to give a consumer a better understanding as to how a financial institution collects and shares information about its consumers.

The Gramm-Leach-Bliley Act was passed by Congress in 1999 and the federal Financial Services Regulatory Relief Act of 2006 amended the GLB Act to require certain federal agencies to develop a model privacy form. The model form as of January 1, 2011, provides a “safe harbor” for a financial institution.⁸

Since 2001, members of TADA have provided a privacy notice pursuant to the Federal Trade Commission’s Privacy Rule, to certain of their customers describing the ways they collect and share customer information. The FTC is responsible for enforcing the Privacy of Consumer Financial Information Rule which implements the GLB Act and using a model form gives a “safe harbor” protection under both the FTC Privacy Rule and the Fair Credit Reporting Act (FCRA).

The FTC is the agency with jurisdiction over the use, language, interpretation, enforcement, and retention of the privacy notice. The FTC determines when and to whom a privacy notice is given.

The FTC does not require a financial institution to retain a copy of the privacy notice in its files. Requiring a copy to be retained in either each deal file or in a general business file does not afford a consumer any greater protection than the notice that is given or mailed.

The OCC cannot change the language on the form. The OCC cannot determine when and to whom the privacy notice is given. The OCC cannot add to or subtract from the FTC “safe harbor” privacy notice form.

The adoption of rules under Chapter 348 is allowed to:

1. Enforce Chapter 348; or
2. Modify the standard form as required by Section 348.0091 [Disclosure of Equity form] to:
 - (A) conform to the provisions of the Truth in Lending Act or a regulation issued under authority of that Act;
 - (B) address any official commentary or other interpretation by a federal agency relating to the Truth in Lending Act or a regulation issued under authority of that Act; or
 - (C) address a judicial interpretation by a state or federal court relating to

⁸The final model privacy form was developed jointly by the Board of Governors of the Federal Reserve System, Commodity Futures Trading Commission, Federal Deposit Insurance Corporation, Federal Trade Commission, National Credit Union Administration, Office of the Comptroller of the Currency, Office of Thrift Supervision, and Securities and Exchange Commission.

the Truth in Lending Act or a regulation issued under authority of that Act.⁹

The federal privacy notice as a proposed required form for OCCC audit is not a form that is applicable to a retail installment transaction—it is a form that discloses collecting and sharing personal information. Neither is the federal privacy notice a part of § 348.0091. Section 348.0091 is a statute requiring the use of a Disclosure of Equity in Trade-in Motor Vehicle form and its compliance with the federal Truth in Lending Act (TILA).

Advocating that the statutory provisions of § 348.008 and §348.009 allow for the proposed rule requirement that the GLB privacy notice be a required record for OCCC audit purposes does not comport with the statute.¹⁰

Section 348.008 states that a loan or interest statute other than Chapter 303 does not apply to a retail installment transaction and that except as provided by Chapter 348, an applicable statute, including the Business & Commerce Code or a principle of common law, continues to apply to a retail installment transaction unless Chapter 348 displaces that applicable statute.¹¹ Section 348.008 is not applicable to the GLB privacy notice as the privacy notice does not concern a loan or interest statute nor is there an issue regarding its application.

Section 348.009 discusses the applicable federal disclosure requirements under Regulation Z, specifically the variable rate disclosures and their application to a retail installment transaction as well as the statement that if a disclosure requirement of Chapter 348 and federal law conflicts or are inconsistent, the federal law controls.¹² Section 348.009 is not applicable to the privacy notice

⁹*Id.* § 348.513.

¹⁰43 Tex. Reg. 1200 (March 2, 2018).

¹¹§ 348.008. Applicability of Other Statutes to Retail Installment Transaction

(a) A loan or interest statute of this state, other than Chapter 303, does not apply to a retail installment transaction.

(b) Except as provided by this chapter, an applicable statute, including Title 1, Business & Commerce Code, or a principle of common law continues to apply to a retail installment transaction unless it is displaced by this chapter.

(Vernon 2016).

¹²§ 348.009. Federal Disclosure Requirements Applicable.

(a) The disclosure requirements of 12 C.F.R. Part 226 (Regulation Z) adopted under the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) And specifically 12 C.F.R. Section 226.18(f), regarding variable rate disclosures, apply according to their terms to retail installment transactions.

(b) If a disclosure requirement of **this chapter** and one of a federal law, including a regulation or an interpretation of law, are inconsistent or conflict, federal law controls and the inconsistent or

as the notice is not a part of Regulation Z or a variable rate disclosure. There is no conflict as the Finance Code has no privacy notice requirement in Chapter 348 and the GLB privacy notice is a federal notice and federal law controls under § 348.009.

The agency's responsibility regarding a licensee's financial responsibility and general fitness for operating in a lawful and fair manner and the concern that a licensee's forms and contracts are appropriate as a part of the licensee approval process¹³ does not bootstrap a form into a required record-keeping form. The financial responsibility and general fitness for operating concern a "retail installment transaction," not a licensee's privacy notice, especially a notice that is a "safe harbor" model form.

Finally, a federal privacy notice does not pertain to a Chapter 348 retail installment transaction merely because it describes how a licensee uses personal financial information. The Finance Code sets out when the Finance Commission may adopt rules for Chapter 348—to enforce it and to modify the Disclosure of Equity in Trade-In Motor Vehicle form.¹⁴ Adopting a rule outside of the stated statutory authority is *ultra vires*.

Conclusion

The Texas Legislature directs which records must be maintained by a license holder—"a record of each retail installment transaction that is necessary to enable the commissioner to determine whether the license holder is complying with this chapter."¹⁵

"This chapter" is limited to Chapter 348, Finance Code and retail installment transactions. As the federal privacy notice is given to allow a consumer to compare the privacy practices of different financial institutions, the privacy notice does not concern itself with cash price; itemized charges; documentary fees; time price differential; Regulation Z; TILA; trade-ins; conditional delivery; assignment; the retail installment contract; refinancing; insurance; debt cancellation agreements; service contracts; automobile club membership; or repossession.

The federal privacy notice, given to a consumer since 2001 by a financial institution, and now a form with a "safe harbor," is not a form that needs to be audited by the OCC.

conflicting disclosures required by this chapter need not be given.
(Emphasis added.) (Vernon 2016).

¹³43 Tex. Reg. 1200 (March 2, 2018).

¹⁴*Id.* § 348.513.

¹⁵*Id.* § 348.517.

The list of documents required to be maintained and given to audit by the agency is ample and not adding to the list a form that does not impact a retail installment transaction is “good government.”

TADA requests that the Finance Commission not to adopt proposed 7 TAC § 84.707(d)(2)(Q) as proposed in the March 2, 2018, *Texas Register*.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen Phillips", with a stylized, flowing script.

Karen Phillips
General Counsel/EVP

Attached:

- Tab 1: November 29, 2017 Pre-Comment Letter
- Tab 2: January 128, 2018 Second Pre-Comment Letter
- Tab 3: Instructions for Using the Privacy Notice Online Form Builder for Forms 1 - 6, as provided by the FTC.
- Tab 4: Sample Model Privacy Notice Forms

TAB 1



1108 Lavaca, Suite 800
Austin, Texas 78701
Phone: 512-476-2686
www.tada.org

November 29, 2017

Ms. Laurie Hobbs
Assistant General Counsel
Office of Consumer Credit Commissioner
2601 North Lamar Blvd.
Austin, TX 78705-4207

Sent via email: laurie.hobbs@occc.texas.gov

Re: Pre-comment Draft Rule Amendments–7 TAC §§ 84.707

Dear Ms. Hobbs:

On behalf of the Texas franchised motor vehicle dealers, please accept the following comments from the Texas Automobile Dealers Association (TADA) regarding the pre-comment draft rule amendments to 7 TAC §§ 84.707, 84.708, and 84.709, and as received on November 15, 2017.

TADA appreciates the opportunity to comment upon and if requested, to discuss the draft and the need for the Office of Consumer Credit Commissioner's (OCCC) proposal. TADA's comments are focused on the proposed amendments to § 84.707, as the vast majority of transactions by the members of TADA are in regards to a "retail seller assigning retail installment sales contracts."

Pre-Comment Draft 7 TAC §§ 84.707

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

1. Proposed amendment adding "complete" regarding a retail installment contract–§84.707(d)(2)(A)(i)

"... The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) for all retail installment sales transactions:

(i) the **complete** retail installment sales contract signed by the retail buyer and the retail seller as required by Texas Finance Code, § 348.101."

The general requirements for a retail installment contract as set forth in the Texas Finance Code § 348.101 and referenced in the above draft proposed amendment, provide:

- (a) A retail installment contract is required for each retail installment transaction.
A retail installment contract may be more than one document.
- (b) A retail installment contract must be:
 - (1) in writing;
 - (2) dated;
 - (3) signed by the retail buyer and retail seller; and
 - (4) completed as to all essential provisions before it is signed by the retail buyer except as provided by Subsection (d).
- (c) The printed part of a retail installment contract, other than instructions for completion, must be in at least eight-point type unless a different size of type is required under this subchapter.
- (d) If the motor vehicle is not delivered when the retail installment contract is executed, the following information may be inserted after the contract is executed:
 - (1) the identifying numbers or marks of the vehicle or similar information; and
 - (2) the due date of the first installment.

The intent of the proposed amendment is unclear. "Complete" retail installment contract suggests either a new interpretation as to what is essential to a retail installment contract before it is signed or it may imply including additional unknown records to the currently required records that must be maintained in a retail installment sales transaction file. Alternatively, the agency may have another interpretation of what is intended by proposing the insertion of "complete" as it applies to a retail installment sales contract.

Adding the word "complete" to modify the retail installment sales contract signed by the buyer and seller, as required by Texas Finance Code § 348.101, does not give defined guidance to the regulated license holders.

Since the statute, Finance Code § 348.101, describes the statutory requirements for the necessary completion of a retail installment contract, the proposed addition of "complete" to the rule appears unnecessary. Section 348.101(b)(4) requires that a retail installment contract must be "completed as to all essential provisions" before it is signed by the retail buyer. What is an "essential provision" is an area that may require additional explanation via rule-making.

The ambiguity created by adding the adjective "complete" to a signed retail installment contract that must be completed as to all essential provisions before it is signed by the retail buyer, does not allow for any clarity or specificity to the agency's record keeping requirements.

Currently, the statute requires the contract to be in writing; dated; signed by both buyer and seller; and complete as to all essential provisions before it is signed by the buyer except as allowed if the vehicle is not delivered when the contract is executed; and then the VIN or other identifying vehicle numbers or marks as well as when the first installment is due may be added after execution of the contract.

Inserting “complete” into the rule has the potential for conflicting interpretations which can lead to inconsistent enforcement as well as misunderstanding.

If it is found to be consequential to amend the rule, TADA suggests tracking the statute so that the rule states:

(A) for all retail installment sales transactions:

(i) the retail installment contract is complete as to all essential elements and signed by the retail buyer and the retail seller as required by Texas Finance Code, § 348.101; . . .

If necessary, defining the “essential elements” that are to be completed on a retail installment contract is an avenue for the agency to consider; however, adding the adjective “complete” to a retail installment contract is neither clear nor specific in its guidance to the regulated community—it introduces the potential to generate confusion; inconsistent enforcement; and indistinctness.

2. Proposed amendment adding “complete” copy of a debt cancellation agreement—§84.707(d)(2)(J)

“ . . . The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

. . .

(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.”

The individual consumer-specific provisions regarding a debt cancellation agreement, such as the cost of the debt cancellation agreement, the duration of the agreement, the parties to the agreement, and other relevant terms, should be included within each consumer’s individual retail installment sales transaction file in which a debt cancellation agreement is purchased; however, the standardized text that is a part of the agreement does not appear to be a necessary required record to be included in each transaction file as approved debt cancellation agreements are on file with the OCCC.

A debt cancellation agreement form must be submitted to the commissioner for approval under Texas Finance Code § 348.604(a). If the debt cancellation agreement form is approved by the commissioner, the form should be accessible by any OCCC employee, including an auditor or investigator. In addition, the approved form is public information subject to disclosure under Chapter 552, Government Code.¹

Since the debt cancellation agreement is on file with the OCCC, an OCCC auditor should be able to access the agreement without the need for it to be maintained in each buyer's retail installment sales transaction file.

TADA agrees that each consumer's unique terms and information regarding the purchase of the product are necessary information to be included within each file; however, this buyer-specific information should be adequate to satisfy the agency's record keeping requirements as each auditor can access the approved debt cancellation agreement form that has been approved by the commissioner.

3. Proposed amendment adding the federal Gramm-Leach Bliley Act privacy notice to retail installment sales transaction file—§84.707(d)(2)(O)

"...The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

...

(O) 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.

A license holder with the OCCC is required to maintain a record of each retail installment transaction that is made under this chapter² as is necessary to enable the commissioner to determine whether the license holder is complying with this chapter.³

The Finance Commission is given the authority to adopt rules to:

1. Enforce Chapter 348; or
2. Modify the standard form as required by § 348.0091 to:

¹TEXAS FINANCE CODE § 348.604(f) (Vernon's 2016).

²*Id.* Chapter 348.

³*Id.* § 348.517(a).

- (A) conform to the provisions of the Truth in Lending Act (15 U.S.C. §§ 1601, et seq.) or a regulation issued under authority of that Act;
- (B) address any official commentary or other interpretation by a federal agency relating to the Truth in Lending Act or a regulation issued under authority of that Act; or
- (c) address a judicial interpretation by a state or federal court relating to the Truth in Lending Act or a regulation issued under authority of that Act.⁴

The federal disclosure requirements discussed in § 348.009 reference 12 C.F.R. Part 226 (Regulation Z) adopted under the Truth in Lending Act (15 U.S.C. §§ 1601, et seq.) and specifically 12 C.F.R. § 226.18(f), regarding variable rate disclosures, which apply according to their terms to retail installment contracts. If a Texas Finance Code Chapter 348 disclosure requirement and one of a federal law, including a regulation or an interpretation of law, are inconsistent or conflict, federal law controls and the inconsistent or conflicting disclosures required by Chapter 348 need not be given.⁵

The proposed amendment regarding the federal privacy notice referenced under the Gramm-Leach-Bliley Act is enforced by the Federal Trade Commission (FTC).⁶ The FTC requires a financial institution to give a privacy notice and an opt-out notice under certain conditions.

The rules governing the notice and opt-out are promulgated and adopted by the FTC; the FTC determines when a notice is required to be given and to whom. The examples and sample clauses are not exclusive; however, it is the FTC that determines compliance⁷ as well as the information that must be included in a privacy notice.⁸ In addition, the FTC provides for a notice to be given electronically, if the consumer agrees, or by hand-delivery or by mail.⁹

The regulations do not require a financial institution to retain a copy in its files each time the same notice is given to a “consumer” or “customer” and as is required by the OCC’s proposed draft amendment.

⁴*Id.* § 348.513.

⁵*Id.* § 348.009.

⁶16 C.F.R. § 313.1.

⁷*Id.* at § 313.2.

⁸*Id.* at § 313.6.

⁹*Id.* at § 313.9.

The federal Gramm-Leach-Bliley Act privacy regulation relating to state laws allows:

(a) In General. The FTC regulations may not be construed as superseding, altering, or affecting any statute, regulation, order, or interpretation in effect in any State, except to the extent that such State statute, regulation, order, or interpretation is inconsistent with the regulations, and then only to the extent of the inconsistency.

(b) Greater protection under State law. For purposes of this section, a State statute, regulation, order or interpretation is not inconsistent with the provisions of this part if the protection such statute, regulation, order, or interpretation affords any consumer is greater than the protection provided under this part, as determined by the Commission on its own motion or upon the petition of any interested party, after consultation with the applicable functional regulator or other authority.¹⁰

Enforcing the federal Gramm-Leach-Bliley Act privacy regulation is not a state function granted by the Legislature to the OCCC. The federal disclosure requirements referenced in Chapter 348 of the Texas Finance Code reference the Truth in Lending Act and Regulation Z, i.e., 15 U.S.C. §§ 1601, et seq. and 12 C.F.R. Part 226, respectively; thus, the federal Gramm-Leach-Bliley Act privacy regulation relating to state laws is not at issue.

The Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801-6809 and regulations, 16 C.F.R Part 313 are not a part of the Truth in Lending Act and Regulation Z. As such, the agency's proposal to require a copy of the privacy notice that is given to each required "consumer" or "customer" and maintain a copy in each retail installment sales transaction file appears to be outside the agency's authority.¹¹

TADA appreciates an OCCC auditor or examiner reminding a licensee of the federal privacy notice; however, requiring a copy of the same notice in each retail sales transaction file is not only outside of the agency's scope and an additional requirement not imposed by the FTC, but it is not an optimum use of the state's or a license holder's resources.

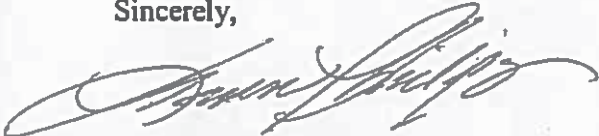
¹⁰*Id.* at § 313.17.

¹¹Regulation P, included in the proposed amendment, is not discussed in TADA's comments as it is enforced by the Consumer Financial Protection Bureau (CFPB) which has jurisdiction over automobile dealers who make direct loans to consumers and who do not traditionally transfer their loans to third parties; whereas, TADA's members are under the FTC. The FTC has exclusive jurisdiction over those dealers who routinely assign financing to third parties.

Ms. Laurie Hobbs
November 29, 2017
page 7

TADA appreciates the opportunity to comment upon the pre-comment draft and if there is any question regarding, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen Phillips", with a large, stylized flourish extending from the end of the signature.

Karen Phillips
General Counsel/EVP

TAB 2



1108 Lavaca, Suite 800
Austin, Texas 78701
Phone: 512-476-2686
www.tada.org

January 28, 2018

Ms. Laurie Hobbs
Assistant General Counsel
Office of Consumer Credit Commissioner
2601 North Lamar Blvd.
Austin, TX 78705-4207

Sent via email: rule.comments@occc.texas.gov
laurie.hobbs@occc.texas.gov

Re: Motor Vehicle Recordkeeping Rules: Second Pre-comment Draft
(January 17, 2018)

Dear Ms. Hobbs:

On behalf of TADA, I appreciate the opportunity to comment upon the OCCC's second pre-comment draft motor vehicle recordkeeping rules as received January 17, 2018.

The second proposed recordkeeping rule draft recognizes the redundancy and prodigal use of resources in retaining the same "boilerplate" document, specifically the identical Gramm-Leach-Bliley privacy notice and debt cancellation agreement provisions, in each deal file.

As in the November 29, 2017 letter and January 12th meeting, today's comments are again focused on the proposed rules in 7 TAC § 84.707, as TADA's members typically assign their retail installment sales contracts.

Pre-Comment Draft 7 TAC § 84.707

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

Debt Cancellation Agreement Form

The second draft proposed for 7 TAC §84.707(d)(2)(J) allows a licensee to retain a "complete master copy of each debt cancellation agreement form" used during the required record retention period if in the "licensee's general business files, policies and procedures show a verifiable method for ensuring that the master copy of the debt cancellation agreement accurately reflects the debt

Ms. Laurie Hobbs
January 28, 2018
page 2

cancellation agreement used in each individual transaction.”

Examples of the agency’s determination of what is a “verifiable method” is requested in order for a licensee to put into practice what the agency expects when undergoing an audit.

As stated in the November 29, 2017 comments, since a debt cancellation agreement form must be submitted to the OCCC for approval under Texas Finance Code (a), each form that is approved is accessible by the OCCC and is public information under Chapter 552, Government Code.

Although there may be numerous forms approved by the agency and retrieving a specific form may be difficult for the agency; yet, guidance regarding the agency’s expectation for a licensee’s required “verifiable method” as well as adequate notice to licensees of the rule is requested regarding the proposal.

Gramm-Leach Bliley Privacy Notice

The second proposed pre-comment draft, 7 TAC § 84.707(d)(2)(Q), states that as an alternative to maintaining the same privacy notice in each retail installment sales transaction file, the licensee may maintain the following two instruments in its general business files:

1. A “complete master copy” of the privacy notice form; and,
2. Policies and procedures that show a “verifiable method” for ensuring the master copy accurately reflects the notice in each transaction.

TADA again demurs to the OCCC’s oversight regarding the federal Gramm-Leach-Bliley privacy notice. The federal Gramm-Leach-Bliley privacy notice is a requirement of the Federal Trade Commission (FTC) and concerns expressed in the November 29, 2017 comments and January 12th hearing carry forward and are again re-urged.

Suggestions and examples of compliance regarding a “verifiable method” are requested for compliance and audit purposes. In addition, adequate notice to licensees is requested.

If you have any question or would like to discuss, please do not hesitate to contact me.

Sincerely,



Karen Phillips
General Counsel/EVP

TAB 3

Instructions for using the Privacy Notice Online Form Builder

1. Select your form, based on (1) whether you provide an opt out , (2) whether you include affiliate marketing, and (3) whether you use a mail-back form:

If you provide an opt out and you want to include affiliate marketing, use [Form 1](#).

If you provide an opt out and you do not want to include affiliate marketing, use [Form 2](#).

If you do not provide an opt out and you want to include affiliate marketing, use [Form 3](#).

If you do not provide an opt out and you do not want to include affiliate marketing, use [Form 4](#).

If you provide an opt out, you want to include affiliate marketing, and you have a mail-back form, use [Form 5](#).

If you provide an opt out, you do not want to include affiliate marketing, and you have a mail-back form, use [Form 6](#).

2. The PDF forms have fillable areas, indicated by the shaded boxes outlined in red. Place your cursor in the box and fill in the appropriate text.

The mail-back forms also include shaded boxes for optional text. These forms are designed to be printed on 8½ x 14 inch paper. To create the square for the opt-out provisions in the mail back form, use the square bracket and underline keys, followed by the text as provided in the rule. For example:

☐ Do not share my personal information with nonaffiliates to market their products and services to me.

To learn more about the required text for each section, see the final rule notice published in the *Federal Register* on December 1, 2009 (pp. 62890–62994). The notice is available in PDF format at www.ftc.gov/privacy/privacyinitiatives/PrivacyModelForm_FR.pdf or in HTML format at www.gpo.gov/fdsys/pkg/FR-2009-12-01/html/E9-27882.htm.

For institutions supervised by the following agencies, information required to fill in the forms is detailed beginning on the *Federal Register* page number specified below:

<u>Supervising Agency</u>	<u>Page</u>
Office of the Comptroller of the Currency	62916
Federal Reserve System	62925
Federal Deposit Insurance Corporation	62935
Office of Thrift Supervision	62945
National Credit Union Administration	62955
Federal Trade Commission	62965
Commodity Futures Trading Commission	62974
Securities and Exchange Commission	62984

3. If you have questions about the forms or any of the information required to fill in the designated areas, contact your federal regulator listed on p. 62890 of the *Federal Register* Notice.

4. If you have technical problems accessing these forms, please use the [Contact Us](#) link at the bottom of the page. Please provide a phone number where we can reach you.

http://www.federalreserve.gov/bankinfo/privacy_notice_instructions.pdf

September 3, 2010

TAB 4

FACTS**WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?**

Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: <ul style="list-style-type: none"> ■ Social Security number and [income] ■ [account balances] and [payment history] ■ [credit history] and [credit scores]
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does [name of financial institution] share?	Can you limit this sharing?
For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

To limit our sharing	<ul style="list-style-type: none"> ■ Call [phone number]—our menu will prompt you through your choice(s) ■ Visit us online: [website] or ■ Mail the form below <p>Please note:</p> <p>If you are a <i>new</i> customer, we can begin sharing your information [30] days from the date we sent this notice. When you are <i>no longer</i> our customer, we continue to share your information as described in this notice.</p> <p>However, you can contact us at any time to limit our sharing.</p>
-----------------------------	--

Questions?	Call [phone number] or go to [website]
-------------------	--

Mail-in Form										
Leave Blank OR (If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below.) <input type="checkbox"/> Apply my choices only to me	Mark any/all you want to limit:									
	<input type="checkbox"/> Do not share information about my creditworthiness with your affiliates for their everyday business purposes.									
	<input type="checkbox"/> Do not allow your affiliates to use my personal information to market to me.									
	<input type="checkbox"/> Do not share my personal information with nonaffiliates to market their products and services to me.									
	<table border="1"> <tr> <td>Name</td> <td></td> </tr> <tr> <td>Address</td> <td></td> </tr> <tr> <td>City, State, Zip</td> <td></td> </tr> <tr> <td>[Account #]</td> <td></td> </tr> </table>	Name		Address		City, State, Zip		[Account #]		Mail to: [Name of Financial Institution] [Address1] [Address2] [City], [ST] [ZIP]
Name										
Address										
City, State, Zip										
[Account #]										

Who we are	
Who is providing this notice?	[insert]
What we do	
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. [insert]
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you <ul style="list-style-type: none"> ■ [open an account] or [deposit money] ■ [pay your bills] or [apply for a loan] ■ [use your credit or debit card] [We also collect your personal information from other companies.] OR [We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]
Why can't I limit all sharing?	Federal law gives you the right to limit only <ul style="list-style-type: none"> ■ sharing for affiliates' everyday business purposes—information about your creditworthiness ■ affiliates from using your information to market to you ■ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]
What happens when I limit sharing for an account I hold jointly with someone else?	[Your choices will apply to everyone on your account.] OR [Your choices will apply to everyone on your account—unless you tell us otherwise.]
Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. <ul style="list-style-type: none"> ■ [affiliate information]
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. <ul style="list-style-type: none"> ■ [nonaffiliate information]
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. <ul style="list-style-type: none"> ■ [joint marketing information]
Other important information	
[insert other important information]	

FACTS

WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?

Why?

Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.

What?

The types of personal information we collect and share depend on the product or service you have with us. This information can include:

- Social Security number and [income]
- [account balances] and [payment history]
- [credit history] and [credit scores]

When you are *no longer* our customer, we continue to share your information as described in this notice.

How?

All financial companies need to share **customers'** personal information to run their everyday business. In the section below, we list the reasons financial companies can share their **customers'** personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does [name of financial institution] share?	Can you limit this sharing?
For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

Questions?

Call [phone number] or go to [website]

Who we are

Who is providing this notice?

[insert]

What we do

How does [name of financial institution] protect my personal information?

To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings.

[insert]

How does [name of financial institution] collect my personal information?

We collect your personal information, for example, when you

- [open an account] or [deposit money]
- [pay your bills] or [apply for a loan]
- [use your credit or debit card]

[We also collect your personal information from other companies.] **OR**
[We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]

Why can't I limit all sharing?

Federal law gives you the right to limit only

- sharing for affiliates' everyday business purposes—information about your creditworthiness
- affiliates from using your information to market to you
- sharing for nonaffiliates to market to you

State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]

Definitions

Affiliates

Companies related by common ownership or control. They can be financial and nonfinancial companies.

- [affiliate information]

Nonaffiliates

Companies not related by common ownership or control. They can be financial and nonfinancial companies.

- [nonaffiliate information]

Joint marketing

A formal agreement between nonaffiliated financial companies that together market financial products or services to you.

- [joint marketing information]

Other important information

[insert other important information]