

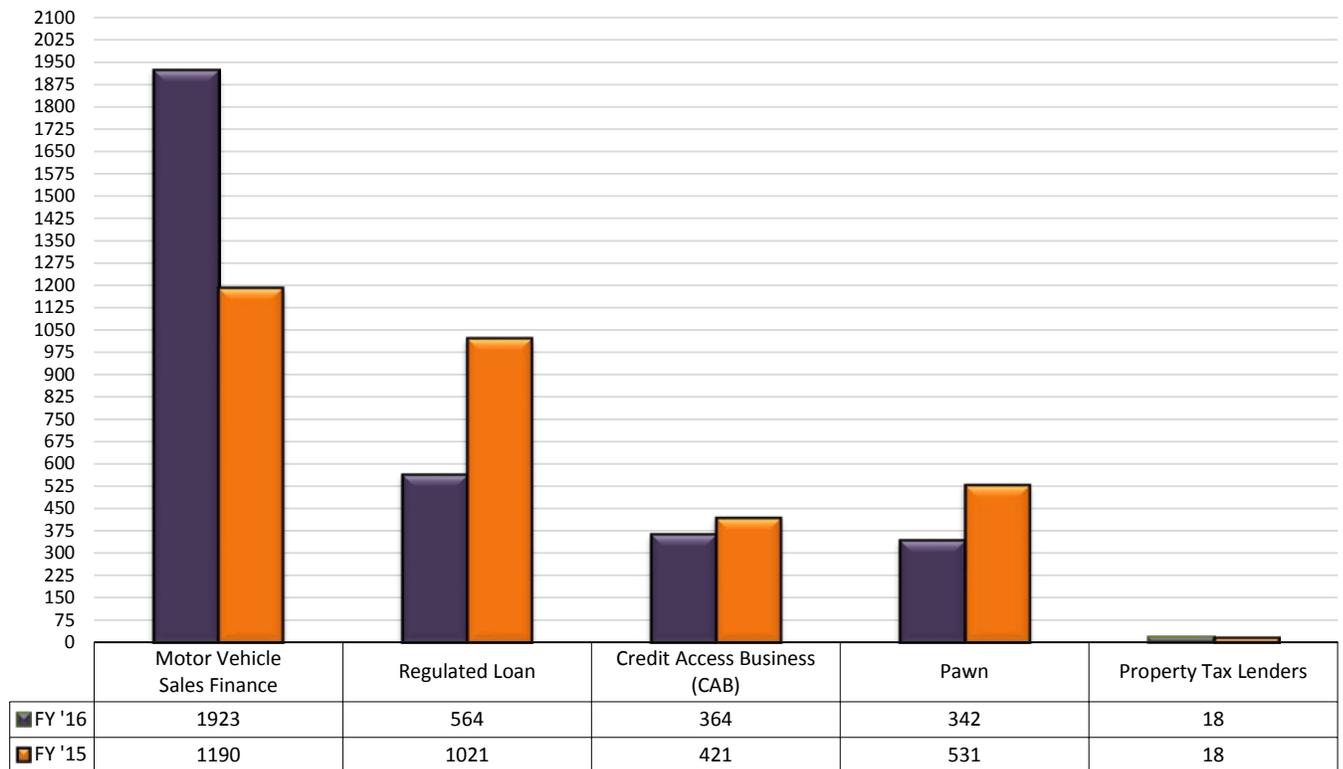


Consumer Protection and Assistance Report

Rudy Aguilar, Director of Consumer Protection

A comparison of examinations conducted in Fiscal Year 2015 (FY '15) and Fiscal Year 2016 (FY '16) is charted below. The concentration of initial examiner training on Motor Vehicle Sales Finance (MVSF), as well as scheduling of examinations in this area, has allowed the agency to meet the FY '16 MVSF goal early in the month of June. Staff will continue to conduct MVSF examinations for training of new examiners as well as to address risk based scheduling, otherwise, examinations for the remainder of the fiscal year will be scheduled in the four other examination areas. It is anticipated the agency will meet examination goals in all areas.

Examinations Conducted: Sept - Jun Fiscal Year Comparison

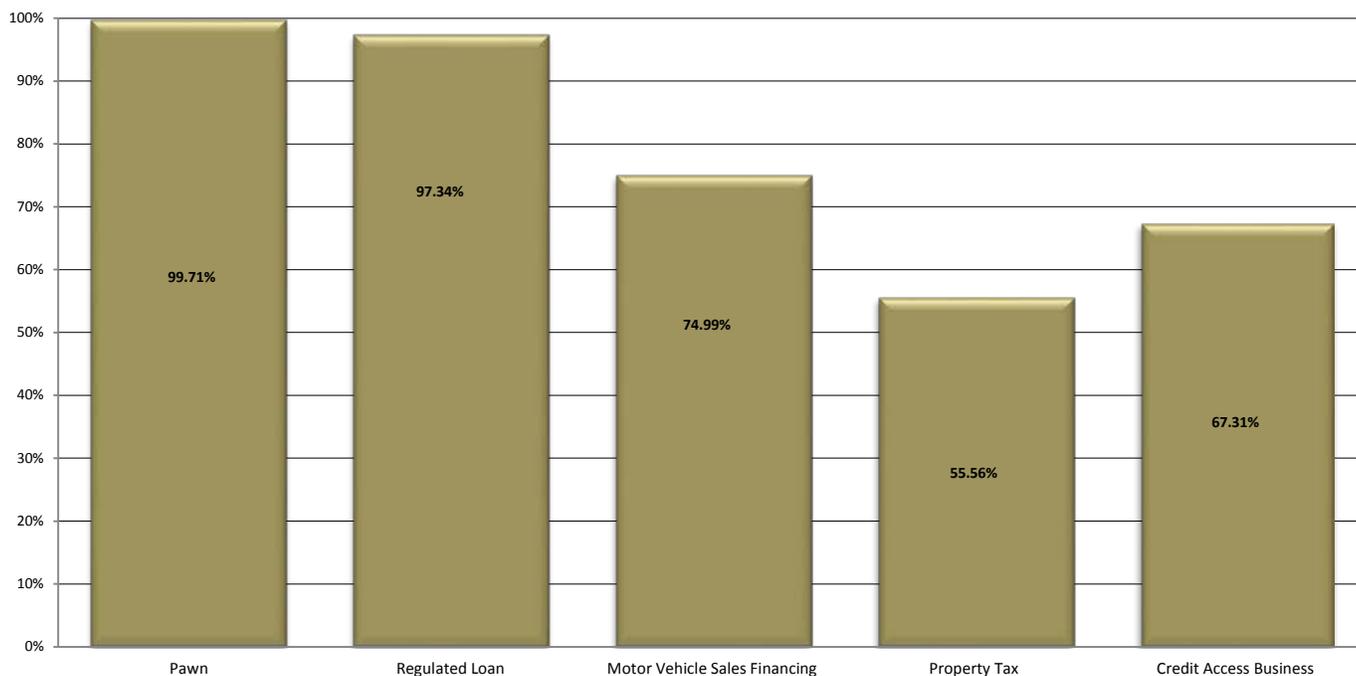


Classroom training was completed on July 22, 2016 for the three newly hired Houston Financial Examiners. All three examiners successfully completed classroom training, having obtained some of the highest test scores to date. These examiners are now participating in the 10-week field training. As with the previous examiner training class, at the conclusion of the 10 week period, these examiners will go through a MVSF exam competency certification process.

Financial Examiner V and Senior Investigator, Dennis Love, will be retiring August 31, 2016. Mr. Love is retiring after 16 years and 5 months service with the agency. His position has been posted.

The chart below notes the acceptable level of compliance in the five examination areas through June 2016. Pawn, Regulated Loan, and MVSF examinations conducted continue to be within the acceptable level of compliance. The acceptable level of compliance in the Property Tax area has improved slightly since the last reporting period. Examinations conducted year to date in the CAB area reflect an 18.52% improvement in level of compliance since the last reporting period.

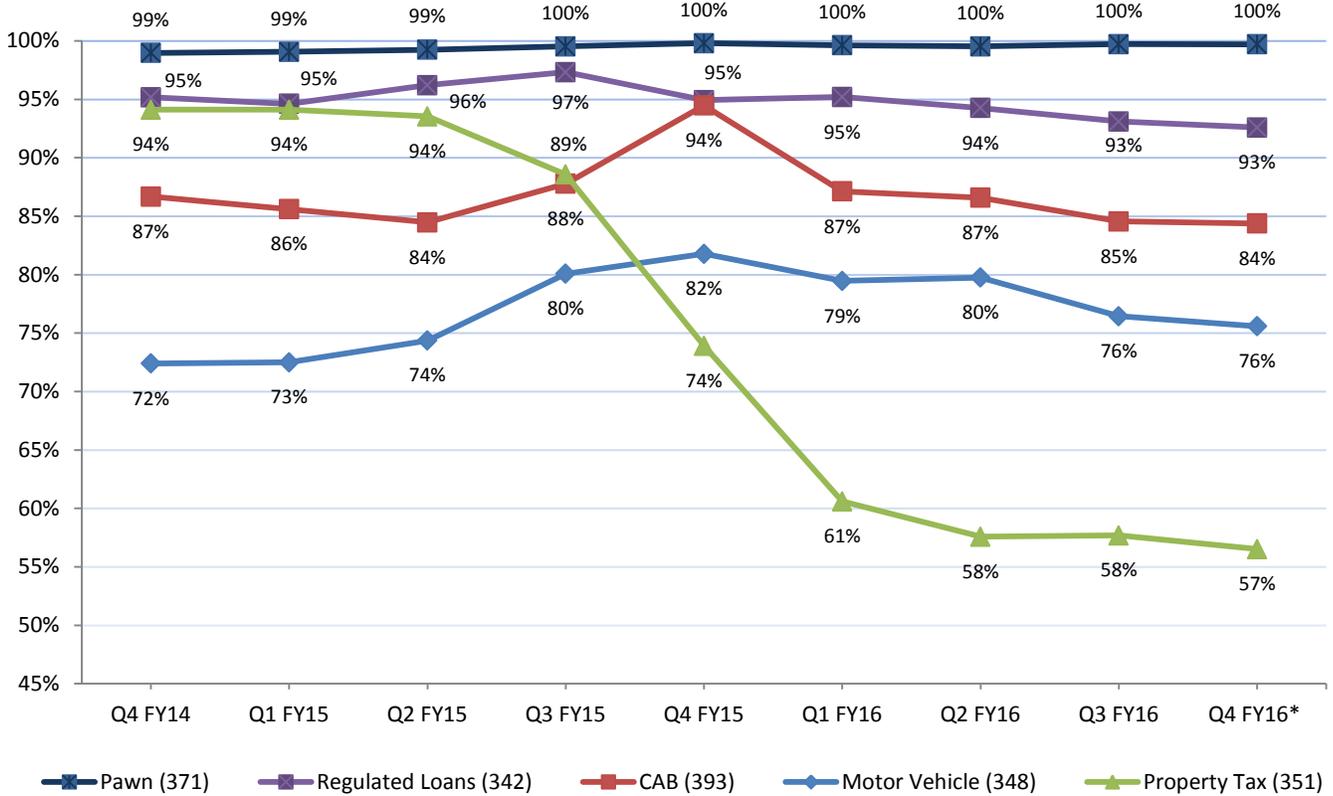
Acceptable Level of Compliance FY '16 (Sept 2015 - Jun 2016)



The chart that follows compares the compliance rates for the five examination areas on a trailing 12 month comparison basis.

Comparison of Acceptable Level of Compliance

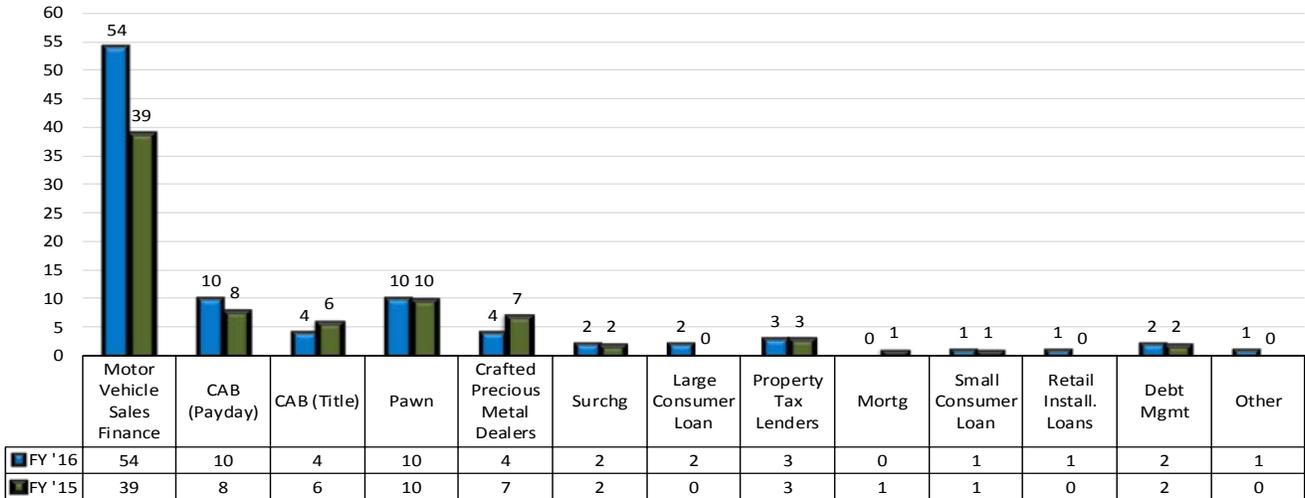
Compliance Rate at Quarter End (computed using trailing 12 months)



*Q4 FY16 (June only)

Investigations

Investigations Completed
FY '16 (Sept 2015 - Jun 2016) Total: 94
FY '15 (Sept 2014 - Jun 2015) Total: 79

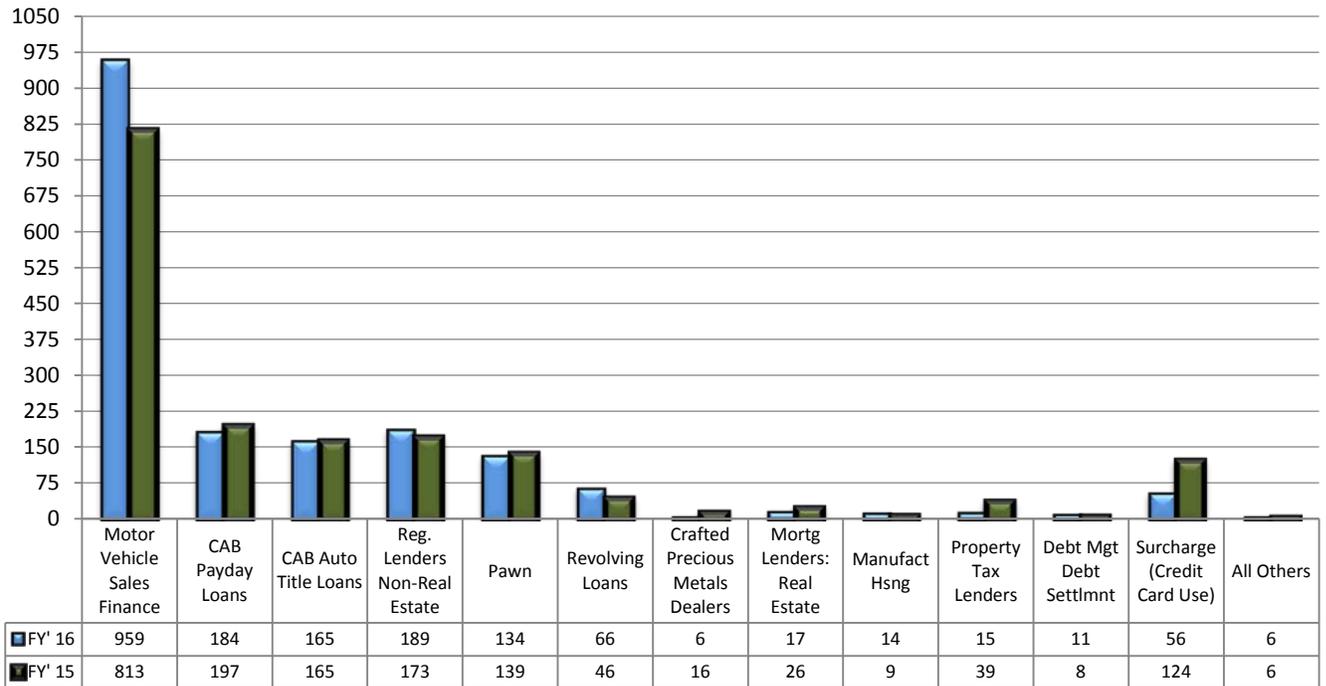


Consumer Assistance

Complaints Processed

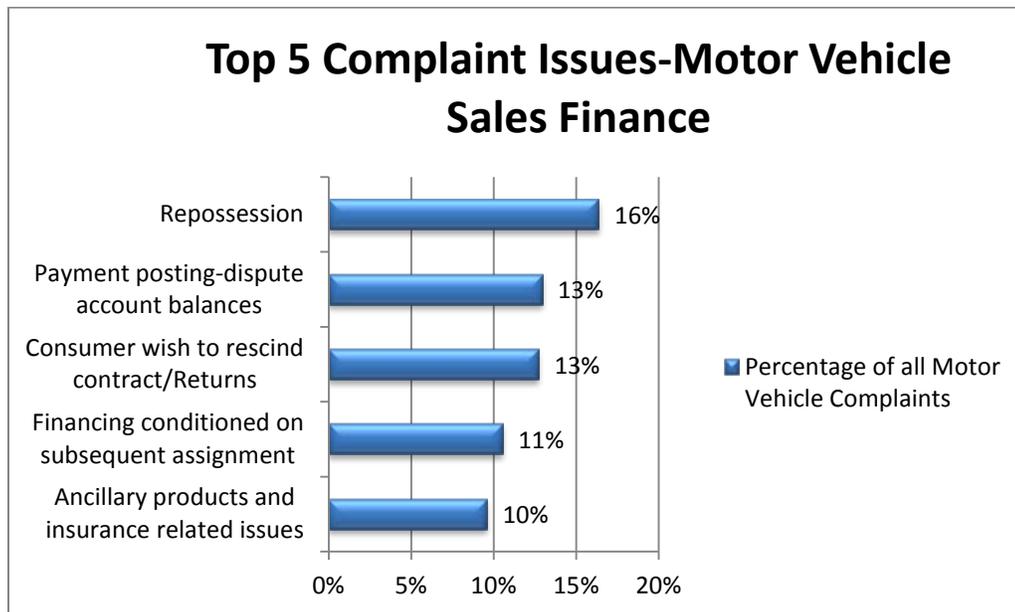
FY '16 (Sept 2015 - Jun 2016) Total: 1,822

FY '15 (Sept 2014 - Jun 2015) Total: 1,761

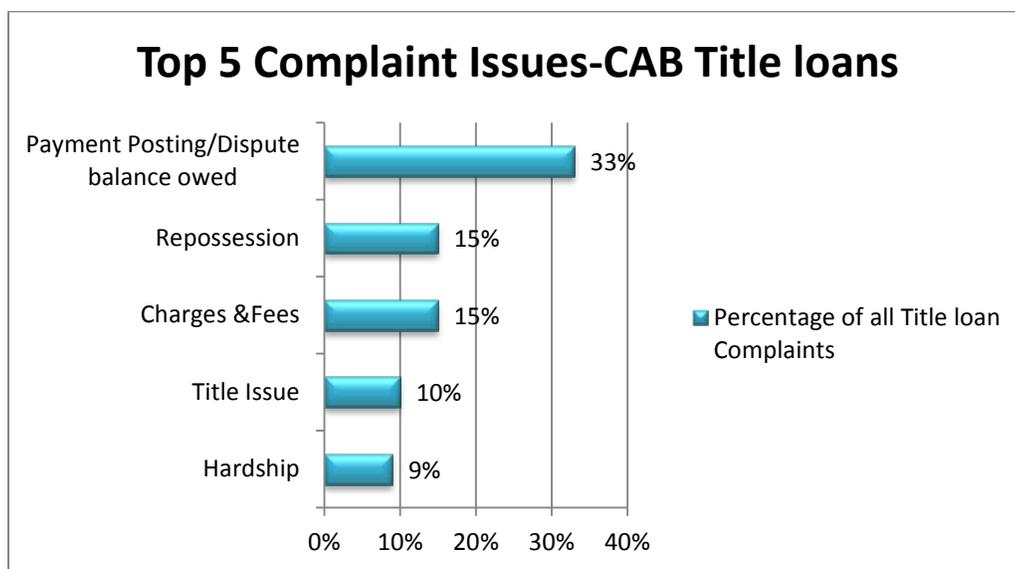
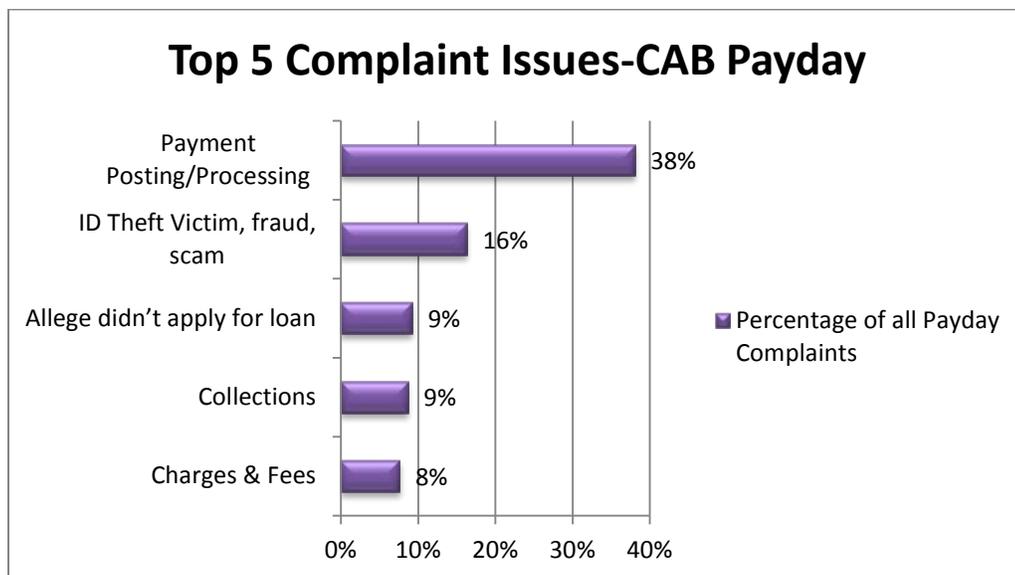


The top four categories of complaints for this reporting period were 1) MVSF, 2) CAB, 3) Regulated Lenders Non-Real Estate, and 4) Pawn.

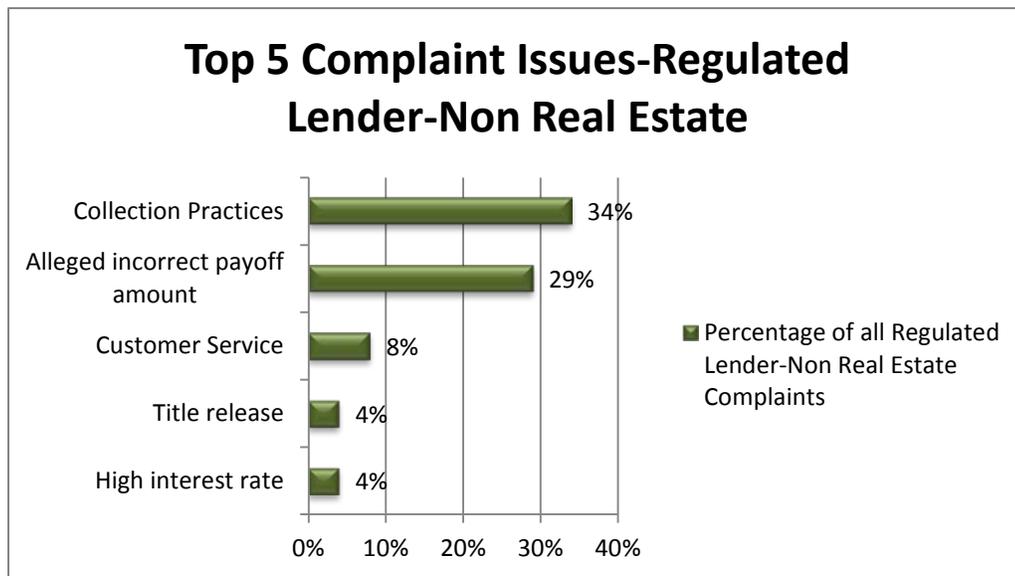
The largest complaint category continues to be MVSF at 52.63% of total complaints. The five most common categories of MVSF complaints are noted in the chart that follows.



CAB Payday and Auto Title Loan complaints were the second largest category of complaints, collectively being 19.16%. Separately, the percentages of total complaints are at 10.10% for Payday loans and 9.06% for Auto Title loans. The five most recurring complaints for CAB Payday and CAB Auto Title are charted separately below.

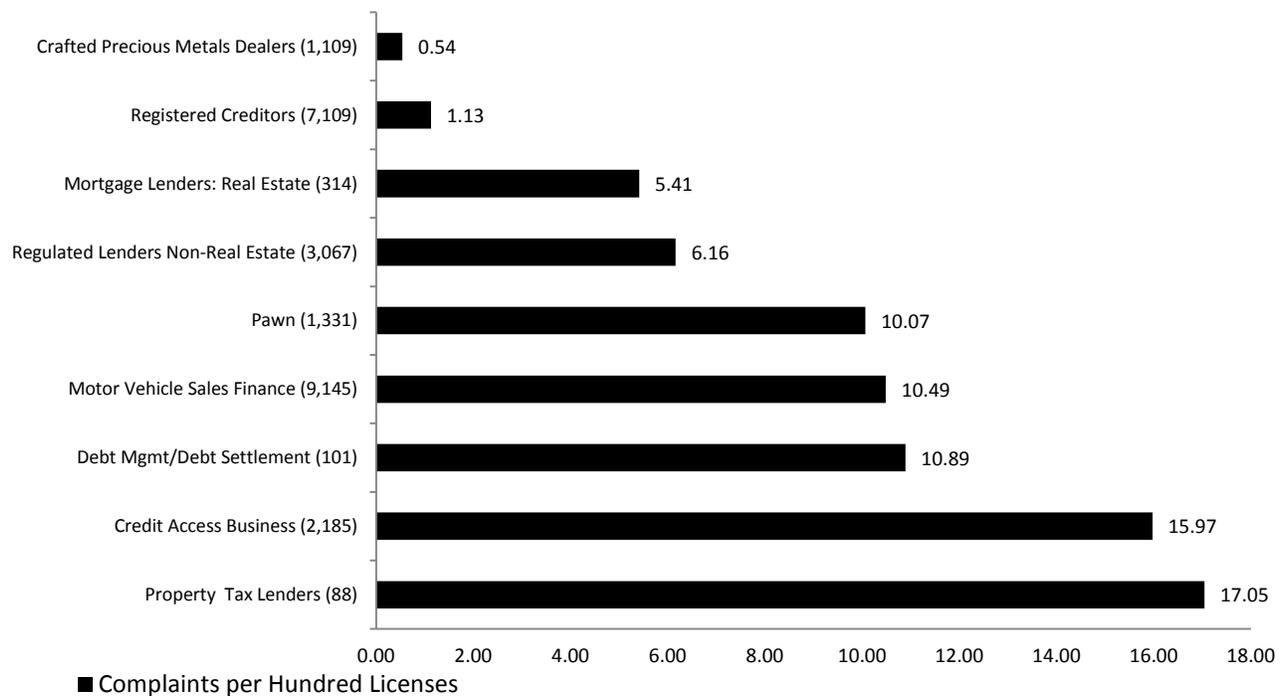


Regulated Lenders Non-Real Estate was the third largest category at 10.37%. The top five categories of complaints for Regulated Lenders Non-Real Estate were identified as collection practices, alleged incorrect payoff amount, customer service issues, release of title, and high interest rate. Percentages for these five categories are charted on the following page.



The ratio of complaints processed to the number of active licenses or registrant population is noted on the chart that follows. The highest ratio of complaints for this reporting period involved Property Tax Lending followed by CAB complaints. Debt Management/Debt Settlement complaints ranked third while the MVSF ratio of complaints to active licenses were fourth.

Ratio of Complaints Processed to Total Active Licenses or Registrants* FY '16 (Sept 2015 - Jun 2016)



*License-Registrant levels as of 07-02-16

CAB Reporting Update

Reports for the 2nd quarter of 2016 were due on 7/31/2016. All reports through the 1st quarter of 2016 are available under the publications section of the OCCC website. The percentage of locations reporting on-time for the 2nd quarter was 98.31%. The 37 locations which filed delinquent reports will face administrative action.



Licensing Report

Mirand Zepeda, Manager

Renewals

Motor vehicle sales finance renewal ended on July 31 with approximately 90% of licensees renewing, which is consistent with budgeted projections. The licensing team was successful in increasing the number of licensees completing renewal through the online platform, ALECS, by providing skillful customer service and guidance through tech support. ALECS made it possible to send renewal notification via email, utilizing immediate communication and access to complete the process outside of normal business hours, a useful tool for the industry. The department continues to process renewals and reinstatements received timely in the mail, and will be sending cancellation notices to licensees who did not renew.

Renewal for pawnshops ended June 30th with a renewal rate of 99% and more than 85% renewing online. The department hopes to carry this online momentum in the industry on to application submission, as pawnshops are the only license group still able to submit paper applications for new licenses.

Applications Processing

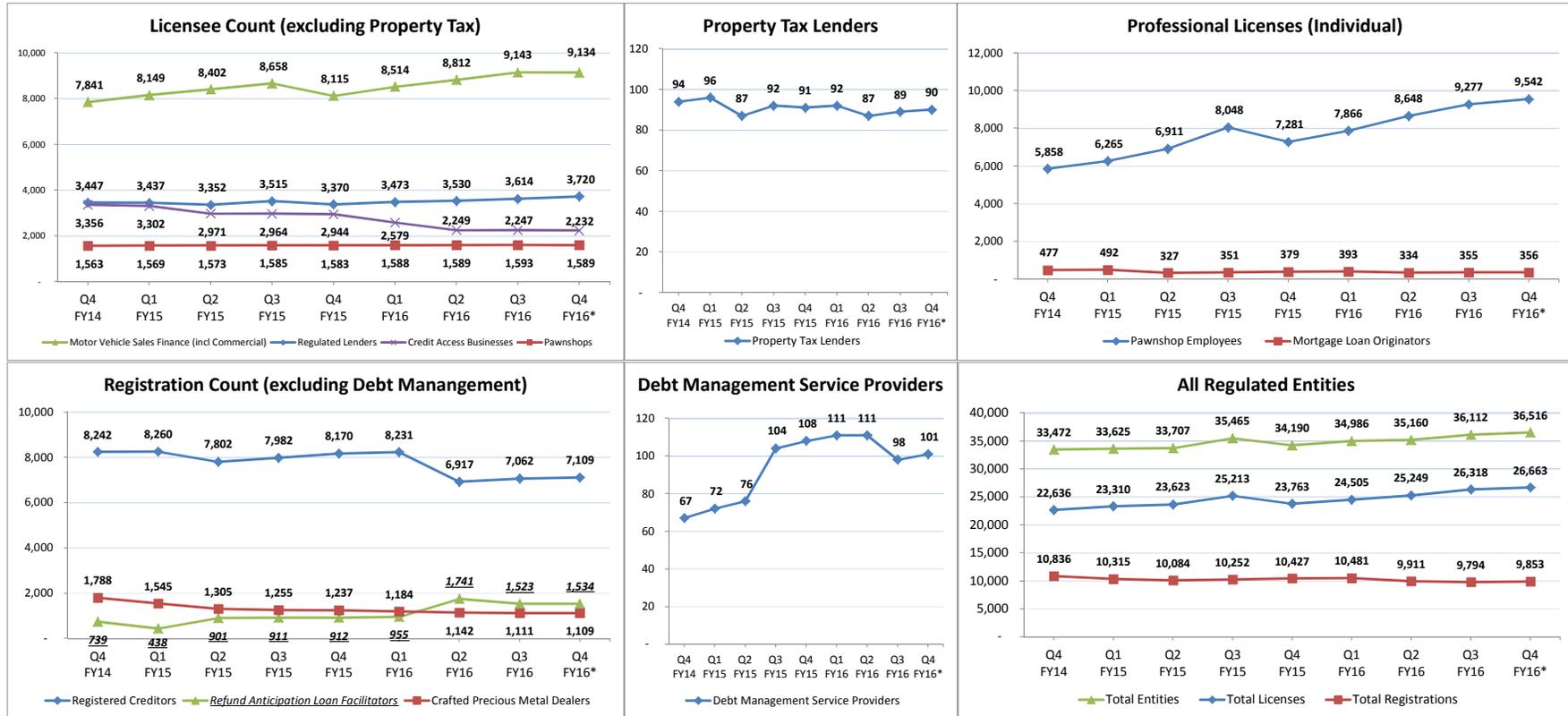
The licensing department is maintaining the goal of pending business application volume at approximately 200 applications or less, a significant accomplishment considering that in June the department received more than 200% of the FY16 average monthly applications volume. That, coupled with other imaging, IT and file consolidation projects, as well as high call volume due to motor vehicle renewal, demonstrates the team's ability to multi-task, while staying focused on application processing.

Pending pawn employee applications did see an increase due to pawn renewal and high call volume, but has averaged to the goal of approximately 300 or less. It is anticipated that more pawnshop licensees will utilize ALECS for application submission, diminishing time spent entering data and increasing application review.

Regulated Entity Population Trends

The following charts reflect the number of OCCC regulated entities at the end of each quarter in fiscal years 2014 and 2015, and the most recent data, as of June 30, 2016.

Number of OCCC Regulated Entities Quarterly Comparison of FY 14 & 15 with Current Data



*data as of 6/30/2016



Communications, Human Resources & Administration Report

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

Strategic Planning /Stakeholder Engagement & Communication/Website Report

On July 12, Commissioner Pettijohn and Rudy Aguilar, Director of Consumer Protection were invited to speak at the annual Texas Consumer Finance Association Conference held in Austin. This group represents Texas small consumer installment lenders. Commissioner Pettijohn gave an agency and industry update and participated in the round table discussions fielding informal questions.

During the June-July period, the agency also provided a number of live presentations to various state agencies and industry stakeholders. All presentations are focused on compliance matters and the regulatory role and responsibilities of the agency.

Huffman Lewis, Financial Examiner, presented to the Laredo Police Department on the topic of Pawn Shop and Used Car Finance Regulatory Operations on June 14. In addition, he participated at the Dealer Training for the Texas Department of Motor Vehicles on June 15 in Laredo and presented a Compliance Review Briefing to the Texas Independent Dealers Association Annual Conference in San Antonio on July 26.

William Purce, Senior Review Examiner, Austin, presented to dealers at the Manufactured Housing Division of the Texas Department of Housing and Consumer Affairs training on July 12 in Austin.

The Office of Consumer Credit Commissioner website received 425,490 page views between September 1, 2015 and July 31, 2016. The top pages on the website include Motor Vehicle Sales Finance (27,191 views) and the industries page (17, 672 views). Our traffic consists of 53.69% organic searches, which consist of Google, Yahoo, Bing, or simply all search engines. From these searches, 38.12% was a result of direct traffic to the website, 8.07% were referrals meaning any other website containing a link to our site, and 0.12% Social/Other Category meaning it derived from social media.

For the period between May 1, 2016 and July 31, 2016, the Agency's top traffic derived from the New Documentary Fee Advisory Bulletin (2,066 views), MVSF Industry page (8,561 views), Debt Collection Practices Industry page (3,913 views), Regulated Lenders Industry page (3,578 views), Publications Section (3,215 views), Interest Rates page (3,172 views) and Pawnshops/Pawn employees Industry page (3,156 views).

The ALECS program website has received 381,593 page views between September 1, 2015 and July 31, 2016. The traffic consists of 75.96% direct traffic, 21.13% organic searches, 2.79% referrals, 0.12% Social/Other Category.

Human Resources

For this reporting period (June-July), the agency had two staff members depart the agency: Customer Service Representative II and Financial Examiner I, (1 retirement and 1 dismissal).

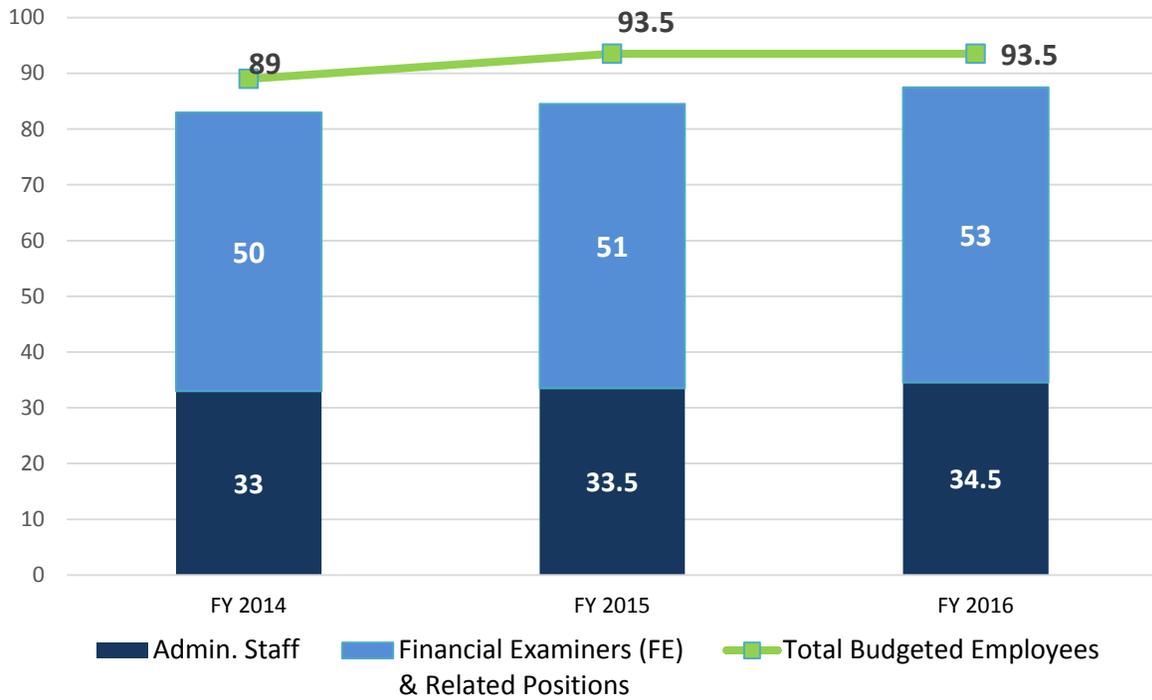
During this same period, the agency hired two (2) Financial Examiners I (Houston Region) and two (2) Administrative Assistant II positions. Four positions were filled for this period, allowing the FTE count to hold steady at 87.5 FTEs.

The current overall turnover ratio is 16.18%. However, when excluding retirement and interagency transfers from the overall ratio, the percentage is 9.25% and 13.64% within the Financial Examiner series.

The Consumer Protection Department is currently evaluating candidates for the positions below and is close to making offers to fill the vacancies.

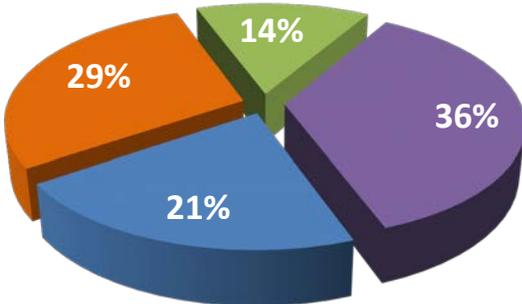
FY 16 Vacancies	
Vacancy	Status
Customer Service Representative II – Austin Headquarters	Active
Financial Examiner (FE) III-IV	Active

OCCC Employee Data FY 14 - FY 16 Full-Time Equivalent (FTEs)



OCCC Turnover Categories FY 16- All Employees

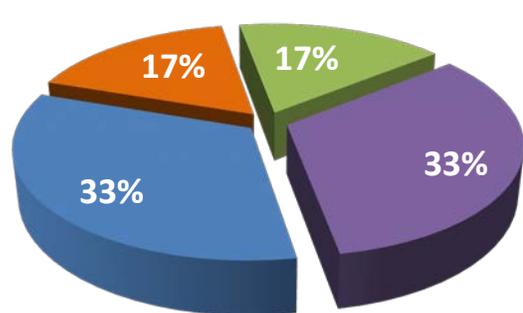
(9/01/15-7/31/16)
 (4 Interagency Transfers, 3 Dismissals, 5 Voluntary Resignations, 2 Retirements)



■ Dismissal ■ Interagency Transfer
 ■ Retirement ■ Voluntary Resignation

OCCC Turnover Categories FY 16- Financial Examiners

(9/01/15-7/31/16)
 (1 Interagency Transfer, 2 Dismissals, 2 Voluntary Resignations, 1 Retirement)



■ Dismissal ■ Interagency Transfer
 ■ Retirement ■ Voluntary Resignation

The Agency had previously reported that SORM had conducted its Risk Management Program Review (RMPR) on May 31. SORM had three items for recommendation: (1) develop an armed intruder policy and include training for staff, (2) develop an indoor air quality (IAQ) plan, and (3) develop a small appliance policy.

With the exception of the armed intruder training to staff that will be conducted at the upcoming annual staff conference, all other items have been completed.

Financial Literacy

To date, Consumer Education staff has provided financial education to 171 Texas consumers. The department is anticipating reaching the FY2016 goal of 325 Texas consumers with upcoming scheduled presentations.

In recent months, several presentations have been given to the senior community encouraging financial planning and providing awareness regarding elder financial exploitation. The agency has made significant outreach to senior centers across Texas and recently presented the financial literacy program to 50 senior activity directors in San Antonio. Additional presentations have been conducted in Austin and Watauga.

The agency also heavily targeted summer recreation programs to conduct financial education sessions for youth. Unfortunately, much of the summer programming is determined early in the year and only one session was held at the Metz Recreation Center in Austin. The financial literacy specialist was successful in developing numerous contacts and expects to be more active in after school programming in the fall.

The program has also been successful in developing a relationship with the outreach team for Travis County Constable. Staff has been invited to represent the agency at two community events and more are scheduled for the fall.

In addition to targeting broad age groups, the focus of the program is to expand its reach across the state of Texas. The financial literacy specialist is actively reaching out to organizations in each Metropolitan Statistical Area. Within the last quarter, the agency has reached out to more than 100 organizations across Texas to seek financial literacy opportunities.



Accounting & IT Reports

Accounting

The accounting department prepared and completed the FY 17 budget. The department is also getting ready for fiscal year-end. The department will be sending employees to Comptroller training on year-end procedures.

The State Auditor's Office will be conducting an audit of the OCCC beginning this month. The audit objectives are to (1) verify the accuracy of certain financial and performance data and the effectiveness of related controls at selected self-directed, semi-independent agencies and (2) evaluate the agencies' processes for setting fees and penalties. The work will include the automated systems and processes that support the functions being audited. Initial interviews have been conducted with agency management.

Information Technology-Legacy Modernization

OCCC has approved the final requirements for all modules of the ACE (Annual Report, Complaint, Examination) compliance tool application. The first module, online Documentary Fee Filing, was launched in July and is in production. Over 950 Motor Vehicle dealers have used the module to file a Documentary Fee notification online. A final build to address minor issues is currently in the test environment and went into production August 2. Overall, the project consists of five component milestones, the first of which is complete, three are in progress and one is pending, with a projected final implementation date of December 30, 2016.

Security

The agency upgraded the firewall appliance and installed new intrusion detection software, Sourcefire. During the past month the appliance has allowed the agency to locate and mitigate several potentially vulnerable computers.

OCCC is utilizing DIR's contract with an external IT security firm to perform a Security and Risk Assessment. The purpose of the project is to assess existing information security process and create a road map to address any gaps and mitigate associated risks. Relevant documents have been shared with the team to assist them in an assessment of OCCC's current state. A kick-off meeting was held August 17, and interviews and meetings with appropriate personnel are scheduled. The project is slated to last six to eight weeks.

OFFICE OF CONSUMER CREDIT COMMISSIONER
EXECUTIVE SUMMARY

As of May 31, 2016

	FY 2014	FY 2015	FISCAL YEAR 2016				
			1st QTR	2nd QTR	3rd QTR	4th QTR	FYTD
CONSUMER PROTECTION							
Monies Returned to Consumers (000)	22,977	8,315	4,348	6,390	1,664		12,402
Regulated Lenders Examinations	1,106	1,065	173	230	143		546
Property Tax Lender Examinations	34	23	10	2	6		18
Pawnshop Examinations	593	533	112	105	114		331
Motor Vehicle Examinations	1,247	1,565	513	539	668		1,720
Credit Access Businesses Examinations	1,031	816	101	12	228		341
CONSUMER ASSISTANCE							
Telephone Complaints Received	1,067	1,186	337	262	290		889
Written Complaints Received	976	1,000	221	209	211		641
Total Complaints Processed	1,915	2,131	650	528	475		1,653
% of Written Complaints Closed within 90 Calendar Days	90.60%	82.47%	95.72%	95.14%	97.11%		95.93%
ADMINISTRATIVE ENFORCEMENT ACTIONS							
Originated	321	472	83	75	183		341
Finalized	335	390	95	89	81		265
LICENSING AND REGISTRATION							
Licenses							
Regulated Loan Licenses	3,447	3,370	3,473	3,530	3,614		3,614
Pawnshop Licenses	1,563	1,583	1,588	1,589	1,593		1,593
Pawnshop Employee Licenses	5,858	7,281	7,866	8,648	9,277		9,277
Commercial MV Sales Fin. Licenses	16	19	25	27	30		30
Motor Vehicle Sales Finance Licenses	7,825	8,096	8,489	8,795	9,113		9,113
Property Tax Loan Licenses	94	91	92	87	89		89
NMLS-Mortgage Loan Originators	477	379	393	334	355		355
Credit Access Business Licenses	3,356	2,944	2,579	2,249	2,247		2,247
Registrations							
Registered Creditors	8,242	8,170	8,231	6,917	7,062		7,062
Crafted Precious Metal Dealers	1,788	1,237	1,184	1,142	1,111		1,111
Debt Management Service Providers	67	108	111	111	98		98
Refund Anticipation Loan Facilitators	739	912	955	1,741	1,523		1,523
Applications							
Business -- New	1,427	1,832	409	469	504		1,382
Business -- Change of Ownership	473	624	139	49	81		269
Pawnshop Employees -- New	2,011	3,010	715	974	950		2,639
HUMAN RESOURCES DATA							
Field Examiners Staffing	42	43	41	40	40		40
Total Staffing	83	85.5	81.5	80.5	85.5		85.5

Office of Consumer Credit Commissioner
Actual Performance for Output/Efficiency Measures

Type/Strategy/Measure	2016 Target	2016 Quarter Actual	2016 YTD	Percent of Annual Target	
Output Measures-Key					
1-1-1	COMPLAINT RESOLUTION				
	1. # COMPLAINTS CLOSED				
Quarter 1	2,100	650	650	30.95%	*
	The agency experienced a 47.5% increase in processed complaints in the motor vehicle finance category over the same quarter in FY '15. This may be partially attributed to a nationwide increase in motor vehicle sales in calendar year 2015.				
Quarter 2	2,100	528	1,178	56.10%	*
	There was a 37.1% increase in processed complaints in the motor vehicle finance category over the first two quarters in FY '15. The increase in motor vehicle sales in calendar year 2015 continues to be a factor in exceeding the overall processed complaint target.				
Quarter 3	2,100	475	1,653	78.71%	
	2. # INVESTIGATIONS CLOSED				
Quarter 1	86	29	29	33.72%	*
	A concerted effort has been made to close older investigations.				
Quarter 2	86	29	58	67.44%	*
	Efforts are being made to hold the average investigation time to less than 180 days and a more dedicated effort is being made to address unlicensed activity.				
Quarter 3`	86	29	87	101.16%	*
	Mr. Dennis Love has announced his retirement effective at the end of the fiscal year. He is being as diligent as possible in processing and closing investigations before his departure.				

2-1-1	EXAMINATION AND ENFORCEMENT				
	1. # COMPLIANCE EXAMINATIONS PERFORMED				
	Quarter 1	4,000	909	909	22.73%
	Quarter 2	4,000	888	1,797	44.93% *
	The agency completed 1,797 examinations as of February 29, which is 89.9% of the prorated goal for mid-year and three examinations shy of the 5% tolerance for performance measures. Six of seven field examiner vacancies have now been filled, with a new examiner class scheduled to begin on April 4, 2016.				
	Quarter 3	4,000	1,159	2,956	73.90%

2-2-1	LICENSING				
	1. # BUSINESS APPLICATIONS PROCESSED				
	Quarter 1	1,875	409	409	21.81%
	Quarter 2	1,875	469	878	46.83%
	Quarter 3	1,875	504	1,382	73.71%
	2. # INDIVIDUAL LICENSES PROCESSED				
	Quarter 1	2,500	715	715	28.60%
	Quarter 2	2,500	974	1,689	67.56% *
	Increased efficiencies in ALECS, a higher volume of incoming pawn employee applications in Q2, and the department filling a vacancy for a license and permit specialist who primarily processes pawn employee applications all contributed to significant gains in individual licenses processed. These numbers will likely even out in Qs 3 & 4 as the department reallocates resources and incoming applications drop back down to average.				
	Quarter 3	2,500	950	2,639	105.56% *

The high volume of incoming individual applications has continued through Q3, while processing and turn-around times have improved efficiencies. Licensees utilizing ALECS for submission of these applications has given the department an opportunity to increase the number of applications processed. Various other duties and tasks occurring in Q4 will potentially take resources away from processing individual licenses, diminishing the variances seen in Qs 2 and 3.

3-1-1	# CONSUMERS RECEIVING FINANCIAL EDUCATION				
	Quarter 1	325	46	46	14.15% *
	The first quarter of FY 2016 required heavy concentration on preparing, reviewing and selecting the second cycle of TFEE funds to new recipients, effective January 2016. With the new funding cycle underway, staff is able to focus on achieving end of fiscal year consumer education goals.				
	Quarter 2	325	39	85	26.15% *
	Staff remained focused on TFEE grant efforts through the end of February, presenting one consumer training in the second quarter before the staff member resigned from the agency in early March. Efforts are underway to fill this position with the goal to reach this measure by the end of the fiscal year.				
	Quarter 3	325	0	85	26.15% *
	This staff position was filled May 2, and concerted efforts are underway to secure speaking engagements before the end of the fiscal year to try and reach the year-end target.				

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



Legal Department Report

Michael Rigby, General Counsel

August 2016

Enforcement Report

Regulated Loan – Annual Report

In May 2016, the OCCC issued an Order to File Timely and Accurate Annual Reports against 88 regulated loan licensees who did not timely file their 2015 Annual Report. The injunctive order directed the licensees to file their 2015 Annual Report within 30 days of receiving the order and to file future annual reports in a timely manner. Regulated loan licensees are statutorily required to file an annual report by May 1 of each year.

Of the 88 late filers, 77 licensees filed their 2015 Annual Report within 30 days and did not request a hearing. One licensee was granted permission to surrender its license. Ten licensees did not file their report or surrender their license. On July 15, 2016, the OCCC issued a Final Order against the 10 licensees, notifying them that the OCCC would assess an administrative penalty against them if their report was not filed within 10 days of receiving the Final Order.

Administrative Rule Report

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

- An adoption of amendments, new rules, and repeals regarding regulated lenders, including the licensing process and technical corrections.
- An adoption of amendments regarding refund anticipation loans, including the registration process and disclosures.
- A proposal of amendments, new rules, and repeals regarding pawnshops, including the licensing process, maintenance of certain disclosures and records related to the Department of Defense's Military Lending Act Rule, and other technical corrections and updates.

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

- Amendments regarding credit access businesses that would require credit access businesses to maintain certain disclosures and records related to the Department of Defense's Military Lending Act Rule, and make other technical corrections and updates related to criminal history and licensing.

Performance Report

The following table summarizes enforcement actions completed by the OCCC during the last three fiscal years, and the current fiscal year-to-date as of July 31, 2016. These figures reflect enforcement actions that have been fully resolved with a final order. Actions that are still pending are not included in the table.

Enforcement Actions Completed as of July 31, 2016				
	FYTD 2016	FY 2015	FY 2014	FY 2013
Revocation / Suspension Actions				
Regulated Loan License	1	27	10	3
Pawnshop License	3	2	1	0
Pawnshop Employee License	2	2	1	3
Credit Access Business	2	1	4	0
Motor Vehicle Sales Finance License	9	4	4	3
Property Tax Loan License	0	0	4	0
Crafted Precious Metal Dealer	0	2	0	0
Total Revocation / Suspension Actions	17	38	24	9
Injunction Actions				
Regulated Loan License	77	1	0	1
Pawnshop License	1	0	0	0
Pawnshop Employee License	0	0	0	0
Credit Access Business License	23	1	4	0
Motor Vehicle Sales Finance License	17	12	8	13
Property Tax Loan License	16	1	2	1
Crafted Precious Metal Dealer	0	3	0	0
Registered Creditor (Ch. 345)	1	0	0	1
Debt Management Services (Ch.394)	1	6	1	1
Credit Card Surcharge (Ch. 339)	6	1	0	0
Residential Mortgage Loan Originator	0	0	2	0
Total Injunction Actions	142	25	17	17
Administrative Penalty Actions				
Regulated Loan License	0	73	121	144
Pawnshop License	40	4	6	10
Pawnshop Employee License	1	4	8	8
Credit Access Business License	91	136	56	53
Motor Vehicle Sales Finance License	123	76	88	113
Property Tax Loan License	3	8	18	12
Crafted Precious Metal Dealer	2	0	1	0
Total Administrative Penalty Actions	260	301	298	340
Application Denial and Protest Actions				
Regulated Loan License	0	0	0	1
Pawnshop License	1	0	0	2
Pawnshop Employee License	7	13	2	25
Credit Access Business License	0	2	0	3

Motor Vehicle Sales Finance License	3	8	0	6
Property Tax Loan License	0	0	0	0
Residential Mortgage Loan Originator	0	1	0	0
Total App. Denial and Protest Actions	11	24	2	37
Total Enforcement Actions Closed	430	388	341	403

From June 1, 2016 to July 31, 2016, the OCCC:

- issued 153 final orders,
- opened 20 cases in order to assess administrative penalties,
- opened four cases in order to issue administrative injunctions,
- participated in no contested case hearings, and
- dismissed one contested case hearing.

The OCCC has two hearings scheduled between August 1, 2016 and September 30, 2016.

Litigation

Rowell v. Pettijohn:

This case is a challenge to the constitutionality of the credit card surcharge prohibition in Section 339.001 of the Texas Finance Code. The plaintiffs have appealed the case to the U.S. Supreme Court. The plaintiffs argue that the credit card surcharge prohibition is an unconstitutional violation of free speech and that it is void for vagueness, under the First and Fourteenth Amendments to the U.S. Constitution. The Fifth Circuit Court of Appeals ruled in the OCCC's favor, holding that the law is a price regulation rather than a speech regulation, and that it is not void for vagueness. *Rowell v. Pettijohn*, 816 F.3d 73 (5th Cir. Mar. 2, 2016). This decision affirmed the district court's ruling, which granted the OCCC's motion to dismiss the lawsuit. *Rowell v. Pettijohn*, No. 1:14-cv-00190-LY, 2015 U.S. Dist. LEXIS 40739 (W.D. Tex. Feb. 4, 2015).

The plaintiffs filed a petition to appeal the case to the U.S. Supreme Court on May 31, 2016. The plaintiffs argue that the Court should hold this case until it rules on the *Expressions Hair Design* case (discussed below), or alternatively, grant review in both this case and *Expressions Hair Design*. On July 5, the OCCC filed a brief in opposition, arguing that the Fifth Circuit's decision was correct and does not warrant review by the Supreme Court. On July 25, the plaintiffs filed a reply brief reaffirming their position. The Court is scheduled to consider the case in conference on September 26, to decide whether it will hear the case in the 2016-2017 term.

The full style of the case is *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. Leslie L. Pettijohn, in her official capacity as Commissioner of the Office of Consumer Credit Commissioner of the State of Texas*. The U.S. Supreme Court's case number is 15-1455, the Fifth Circuit's case number is 15-50168, and the district court's case number is 1:14-cv-00190-LY. The OCCC is being represented by three divisions of the Office of the Attorney General: the Office of Solicitor General; the General Litigation Division; and the Financial Litigation, Tax, and Charitable Trusts Division.

Similar cases have been filed in three other states:

- The Second Circuit upheld New York's credit card surcharge law. *Expressions Hair Design v. Schneiderman*, 808 F.3d 118 (2d Cir. 2015), *reversing* 975 F. Supp. 2d 430 (S.D.N.Y. 2013). The plaintiffs appealed the case to the U.S. Supreme Court on May 12, 2016.
- The Eleventh Circuit struck down Florida's credit card surcharge law. *Dana's R.R. Supply v. Att'y Gen.*, 807 F.3d 1235 (11th Cir. 2015), *reversing* no. 4:14-cv-00134-RH-CAS (N.D. Fla. Sept. 2, 2014). The State of Florida appealed the case to the U.S. Supreme Court on June 6, 2016.
- A federal district court struck down California's credit card surcharge law. *Italian Colors Rest. v. Harris*, 99 F. Supp. 3d 1199 (E.D. Cal. 2015). The State of California has appealed this case to the Ninth Circuit, and the parties have filed their briefs on appeal.

State of Texas v. LowerMyBills, Inc.:

In December 2014, the Consumer Protection Division of the Office of the Attorney General filed a lawsuit in Dallas County district court against Experian Information Solutions, Inc. and LowerMyBills, Inc., a former subsidiary of Experian, alleging violations of the DTPA. The lawsuit sought injunctive relief, restitution, and civil penalties against both companies. In May 2015, the attorney general filed an amended petition alleging violations of Chapter 394 and is representing the OCCC as to those violations.

On January 12, 2016, the parties resolved the case as to Experian. On May 18, 2016, the court granted an agreed motion to abate the case until October 3, 2016, to give the parties more time to explore informal options to resolve the remaining claims against LowerMyBills. The full style of the case is *State of Texas v. LowerMyBills, Inc. and Experian Information Solutions, Inc.* The case number is DC-14-14587, filed in the 14th District Court of Dallas County, Texas.

ACE Cash Express, Inc. v. City of Denton:

Several credit access businesses (CABs) have sued cities, arguing that CAB ordinances are preempted under state law. In June 2015, the Fort Worth court of appeals rejected a challenge to Denton's CAB ordinance, finding that the CAB had not demonstrated a sufficient harm to its property interests to provide a state court with jurisdiction to hear the case. *ACE Cash Express, Inc. v. City of Denton*, No. 02-14-00146-CV, 2015 WL 3523963, 2015 Tex. App. LEXIS 5723 (Tex. App.—Fort Worth June 4, 2015, pet. denied) (mem. op.). On June 17, 2016, the Texas Supreme Court denied ACE Cash Express's petition to review the case. The decision of the court of appeals is now final. The decision of the court of appeals was based partly on a 2014 Dallas court of appeals decision, which rejected a challenge to Dallas's CAB ordinance for similar reasons. *Consumer Serv. Alliance of Tex., Inc. v. City of Dallas*, 433 S.W.3d 796 (Tex. App.—Dallas 2014, no pet.).

Billings v. Propel Financial Services, LLC:

The Fifth Circuit Court of Appeals has ruled that the federal Truth in Lending Act (TILA) does not apply to Texas property tax lenders. *Billings v. Propel Fin. Servs., LLC*, 821 F.3d 608 (5th Cir. Apr. 29, 2016). The court held that a property tax loan does not constitute an extension of credit subject to TILA, because the transfer of an existing tax obligation does not create new debt. Before the Fifth Circuit

reached its decision, federal district judges in San Antonio issued conflicting decisions on this issue. *Compare Billings v. Propel Fin. Servs., LLC*, No. 5:14-cv-00764-OLG, 2014 WL 7448248, 2014 U.S. Dist. LEXIS 179738 (W.D. Tex. Nov. 28, 2014) (holding that TILA does not apply to property tax lenders) *with Thiery v. Texas Tax Solutions, LLC*, No. 5:14-cv-00940-HLH, 2014 WL 7447976, 2014 U.S. Dist. LEXIS 179763 (W.D. Tex. Dec. 19, 2014) (holding that TILA applies to property tax lenders).

The plaintiffs appealed the case to the U.S. Supreme Court on June 29. The Court has requested a response from the property tax lender defendants. The response is due August 29. The Court is scheduled to consider the case in conference on September 26, to decide whether it will hear the case in the 2016-2017 term.

Attorney General Opinion

On June 16, 2016, the Texas attorney general issued opinion no. KP-0095, regarding credit card surcharges for residential leases. The attorney general issued the opinion in response to a request asking whether certain fees imposed by residential landlords violate the credit card surcharge prohibition in Texas Finance Code § 339.001 or the debit card surcharge prohibition in Texas Business & Commerce Code § 604A.002. The requestor argued that processing fees are not prohibited surcharges if they are convenience fees for online payment, or if they are paid to a payment processor that provides multiple services such as document management and contract preparation.

The OCCC filed a brief on the request, arguing that any alternatives to the credit card surcharge prohibition should be strictly limited to five alternatives, consistent with the OCCC's advisory bulletin B15-2: (1) uniform pricing with no surcharge, fee, or discount; (2) a uniform convenience fee for all payments regardless of whether or not made online; (3) a cash discount; (4) an option to pay by credit card with no fee; and (5) a third-party payment processing fee where the seller receives no portion of the fee, there is an arm's-length relationship between the seller and processor limited to processing payments, and multiple payment channels are available to the buyer.

In opinion no. KP-0095, the attorney general determined that a fee charged by an arm's-length third-party vendor likely does not violate the surcharge prohibitions. However, the attorney general stated that if the relationship between the landlord and the processor "blurs the line of autonomy between the parties," there could be a violation of the surcharge prohibitions. The attorney general stated: "Whether any given relationship between a seller and a vendor rises to a problematic level is a question of fact that cannot be addressed in an attorney general opinion."

Rulemaking from Other Agencies

The OCCC is monitoring several rule actions that other agencies have recently proposed or adopted.

CFPB Payday Loan Rule:

On June 2, 2016, the Consumer Financial Protection Bureau (CFPB) proposed a rule with requirements for payday loans, title loans, and other high-cost consumer loans. The rule would apply to short-term consumer loans (*i.e.*, loans where the consumer is required to repay the loan in 45 days or

less). The rule would also apply to longer-term consumer loans that: (1) have a term more than 45 days; (2) have an all-in APR over 36% (this includes certain fees that are not in a normal APR); and (3) require a leveraged payment mechanism (*i.e.*, the right to obtain payment from the consumer's account or payroll) or a security interest in a motor vehicle.

For both types of covered loans, the creditor would have to comply with either: (1) ability-to-repay requirements, under which the creditor must make a reasonable determination that the consumer can repay the loan, based on a review of income, major financial obligations, and borrowing history, or (2) alternative requirements, which limit the loan amount and the number of covered loans a consumer can have outstanding in a period of time. The rule would also put limitations on unsuccessful payment transfers from consumers' accounts, and would generally require creditors to report covered loans to a real-time commercial database for tracking information about covered loans.

The CFPB's deadline for official comments on the rule is October 7, 2016. The CFPB has proposed that the rule will be effective 15 months after a final version of the rule is published in the *Federal Register*.

CFPB Arbitration Rule:

On May 5, 2016, the CFPB proposed a rule with requirements for arbitration agreements for consumer financial products. The rule would prohibit creditors from including a class-action waiver in a pre-dispute arbitration agreement. Arbitration agreements would have to explain that the consumer may file a class action in court and may be a member of a class action.

The CFPB's deadline for official comments on the rule is August 22, 2016. The CFPB has proposed that the rule will begin to apply 211 days after a final version of the rule is published in the *Federal Register*.

CFPB Debt Collection Rule:

On July 28, 2016, the CFPB published an outline of a potential rule that would apply to third-party debt collectors. The rule would include requirements for leaving voicemails, requirements for collection by e-mail or text message, limitations on the frequency of contacts with the consumer, and a prohibition on collecting from a consumer's estate within 30 days after the consumer's death.

The CFPB is preparing to convene a Small Business Review Panel to gather feedback from small businesses on the proposal. After the CFPB seeks input from small businesses and other stakeholders, it will publish the rule and allow an additional period for official comments.

DOD Military Lending Act Rule:

On July 22, 2015, the U.S. Department of Defense adopted amendments to its Military Lending Act Rule at 32 C.F.R. part 232. The amendments expand the scope of the MLA rule, so that it will apply to most consumer loans made to covered military borrowers (including active-duty service members and their dependents). The MLA rule contains several requirements for loans made to covered military borrowers, including the following: (1) the rule prohibits the creditor from making the loan at a military APR over 36% (the MAPR is similar to APR but includes additional charges); (2) the rule requires the

creditor to provide a disclosure about the MLA rule and the MAPR to the borrower; and (3) the rule prohibits the creditor from requiring arbitration. The DOD has established a database that creditors can consult to determine whether a consumer is a covered military borrower. Creditors must comply with the amended MLA rule starting October 3, 2016.

TxDMV Deputy Fee Rule:

On June 27, 2016, the Texas Department of Motor Vehicles adopted rules governing full-service deputies and dealer deputies. A deputy is a person authorized to accept and process applications for motor vehicle title transfers and initial registrations. TxDMV's rule distinguishes between a full-service deputy (a person who has entered an agreement with the county) and a dealer deputy (a person licensed by TxDMV to sell motor vehicles). For title transactions, the rule would allow full-service deputies to charge a fee of \$20 or less, and would allow dealer deputies to charge a fee of \$10 or less. For registrations, the rule would allow full-service deputies to charge a \$9 convenience fee, and would allow both full-service deputies and dealer deputies to retain \$1 from the processing-and-handling fee paid to the county. The new rules replace TxDMV's previous rule, which limited the total deputy fee to \$5. The new rules have an effective date of August 8, 2016, although deputies may continue to operate under the previous rule through December 31, 2016.

Advisory Bulletins

From June 1, 2016 to July 31, 2016, the OCCC issued one advisory bulletin. Bulletin No. 16-5 summarizes documentary fee requirements and provides instructions about how to make documentary fee filings through ALECS.

Interpretation Requests

From June 1, 2016 to July 31, 2016, the OCCC did not receive any requests for official interpretations. There were no pending interpretation requests as of July 31, 2016.

Open Records Requests

From June 1, 2016 to July 31, 2016, the OCCC received 44 requests for information under the Texas Public Information Act, with no referrals to the Office of the Attorney General.

Gifts Received by the OCCC

On June 14, 2016, the National Association of Consumer Credit Administrators waived one registration fee to its 2016 Annual Meeting, valued at \$495.00.

On August 2, 2016, the American Association of Residential Mortgage Regulators waived one registration fee to its 2016 Annual Conference, valued at \$795.00.

OCCC Rule Schedule

August 19, 2016

Rule Item/Purpose	Proposal Date	Adoption Date
<p>Rules for Regulated Lenders - Adopt Amendments, New Rules, & Repeals 7 TAC, Chapter 83, Subchapter A</p> <p>To update rules regarding licensing of regulated lenders; to provide clarification regarding contact information, transfers, criminal history review, definitions, and recordkeeping; and to make technical corrections</p> <p><i>Precomment draft distributed May 4, 2016</i> <i>Stakeholders meeting held May 20, 2016</i></p>	<p>06/10/16</p>	<p>Presented for Adoption 06/10/16</p>
<p>Tax Refund Anticipation Loans - Adopt Amendments & New Rule (from Rule Review) 7 TAC, Chapter 87</p> <p>To clarify the term of registration, require current contact information, implement a statutory late filing fee, and add a required notice</p> <p><i>Precomment draft distributed May 9, 2016</i> <i>Stakeholders meeting held May 23, 2016</i></p>	<p>06/10/16</p>	<p>Presented for Adoption 06/10/16</p>
<p>Rules for Operation of Pawnshops - Proposed Amendments, New Rules, & Repeals 7 TAC, Chapter 85, Subchapter A</p> <p>To update rules regarding the licensing of pawnshops; to provide clarification regarding contact information, transfers, criminal history review, disclosures, and recordkeeping; and to make technical corrections</p> <p><i>Precomment draft distributed July 14, 2016</i> <i>Stakeholders meeting held July 28, 2016</i></p>	<p>08/19/16</p>	
<p>Rules for Credit Access Businesses - Amendments 7 TAC, Chapter 83, Subchapter B</p> <p>To make technical corrections in compliance with recent federal regulations, and to clarify criminal history information of applicants</p>	<p>10/21/16</p>	

D. OFFICE OF CONSUMER CREDIT COMMISSIONER

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments, New Rules, and Repeals in 7 TAC, Chapter 83, Subchapter A, Concerning Rules for Regulated Lenders

PURPOSE: The purpose of the adoption is to update rules regarding the licensing of regulated lenders, and to make technical corrections. The rule changes relate to the following issues: contact information, transfers, criminal history review, definitions, and recordkeeping. Additionally, certain sections are being repealed in order to replace them with reorganized rules.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the amendments, new rules, and repeals in 7 TAC, Chapter 83, Subchapter A with changes as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve the amendments, new rules, and repeals in 7 TAC, Chapter 83, Subchapter A.

Title 7. Banking and Securities

Part 5. Office of Consumer Credit Commissioner

Chapter 83. Regulated Lenders and Credit Access Businesses

Subchapter A. Rules for Regulated Lenders

The Finance Commission of Texas (commission) adopts amendments to §§83.102, 83.301, 83.302, 83.304, 83.306, 83.310, 83.403, and 83.828; adopts new §83.303 and §83.404; and adopts the repeal of §§83.303, 83.404, and 83.405 in 7 TAC, Chapter 83, Subchapter A, concerning Rules for Regulated Lenders.

The commission adopts the amendments to §§83.102, 83.301, 83.302, 83.304, 83.306, 83.310, 83.403, and 83.828; and the repeals of §§83.303, 83.404, and 83.405 without changes to the proposed text as published in the June 24, 2016, issue of the *Texas Register* (41 TexReg 4543).

The commission adopts new §83.303 and §83.404 with changes to the proposed text as published in the June 24, 2016, issue of the *Texas Register* (41 TexReg 4543). The changes are a result of technical corrections to citations.

The commission received no written comments on the proposal.

In general, the purpose of the rule changes in 7 TAC, Chapter 83, Subchapter A is to update rules regarding the licensing of regulated lenders, and to make technical corrections. The adopted rule changes relate to the following issues: contact information, transfers, criminal history review, definitions, and recordkeeping. Additionally, certain sections are being repealed in order to replace them with new, reorganized rules.

The agency circulated an early draft of proposed changes to interested stakeholders.

The agency then held a stakeholders meeting where attendees provided oral precomments. In addition, the agency received one informal written precomment. Certain concepts recommended by the precommenter were incorporated into the proposal, and the agency appreciates the thoughtful input provided by stakeholders.

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

In Section 83.102(3), the definition of "amount financed" has been replaced with a reference to Regulation Z, 12 C.F.R. §1026.18(b). The rule previously contained a specific definition of "amount financed" that applies only to rule provisions on computing earnings, deferments, maximum charges, and refunds of unearned interest. The current rules on these issues do not use the term "amount financed," so the specific definition is unnecessary. However, other rules throughout Chapter 83 use the term "amount financed" to refer to the amount calculated under Regulation Z. For this reason, the amendment replaces the former definition with a reference to Regulation Z.

An adopted change to §83.301(2)(A) amends the definition of "principal party" for sole proprietorships. The amendment removes the statement that proprietors include spouses with a community property interest. In addition, an amendment to §83.302(1)(B)(i) removes the requirement to disclose community property interests and documentation regarding separate property status, and replaces it with a requirement to

disclose the names of the spouses of principal parties if requested. The agency currently spends considerable time requesting information from license applicants to determine the status of spouses' property interests, and explaining these concepts to applicants. These amendments help streamline the licensing process and reduce regulatory burden. The amendments also make the application process simpler and more straightforward for applicants. In specific cases where the spouse is a principal party, the OCCC would be able to request additional information about the spouse under current §83.302(1)(E)-(F).

Section 83.303 is being repealed and replaced with a new rule, with the intent to clarify the requirements when a licensee transfers ownership. Section 83.303 describes what constitutes a transfer of ownership requiring the filing of a transfer application. The adopted new rule largely maintains the requirements under the current rule, including the requirements for filing a license transfer application. In addition to the license transfer application allowed under the current rule, the new rule allows an alternative method for a transfer of ownership: a new license application on transfer of ownership. The new rule describes what the application has to include, the timing requirements, and which parties are responsible at different points in the transfer process. Subsection (a) describes the purpose of the new section. Subsection (b) defines terms used throughout the subsection. In particular, subsection (b)(3) defines the phrase "transfer of ownership," listing different types of changes in acquisition or control of the licensed entity. The precommenter recommended that this definition specify that a transfer of ownership does not include a relocation of

regulated transactions from one licensed location to another. Relocations of regulated transactions are governed by current §83.308(c), which requires licensees to notify debtors that the transactions have been relocated. In response to this recommendation, §83.303(b)(3) as adopted states that a transfer of ownership does not include a relocation of regulated transactions from one licensed location to another licensed location.

Section 83.303(c) specifies that a license may not be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §342.163.

Since the proposal, a change has been made to §83.303(c) in order to provide the correct citation to the Texas Finance Code relating to the transfer or assignment of a license.

Section 83.303(d) provides a timing requirement, stating that a complete license transfer application or new license application on transfer of ownership must be filed no later than 30 days after the transfer of ownership. Subsection (e) outlines the requirements for the license transfer application or new license application on transfer of ownership. These requirements include complete documentation of the transfer of ownership, as well as a complete license application for transferees that do not hold an existing regulated lender license. Subsection (e)(5) explains that the application may include a request for permission to operate.

Subsection (f) provides that the OCCC may issue a permission to operate to the transferee. A permission to operate is a temporary authorization from the OCCC allowing a transferee to operate while final

approval is pending for an application. Subsection (g) specifies the transferee's authority to engage in business if the transferee has filed a complete application including a request for permission to operate. It also requires the transferee to immediately cease doing business if the OCCC denies the request for permission to operate or denies the application.

Subsection (h) describes the situations where the transferor is responsible for business activity at the licensed location, situations where the transferee is responsible, and situations where both parties are responsible. In this subsection, the precommenter made the following recommendations. First, the precommenter recommended against using the phrase "joint and several responsibility," because the precommenter believes that this phrase could lead to confusion. Second, the precommenter recommended against drafting the subsection's paragraphs so that they overlap with each other. Third, the precommenter recommended that this subsection consist of two paragraphs (one for the transferor's responsibility and one for the transferee's responsibility), for the sake of clarity. In response to these recommendations, the three paragraphs in subsection (h) apply to three distinct periods of time: (1) the period before the transferee begins conducting business (when the transferor is responsible), (2) the period after the transferee begins conducting business and before final approval of the application (when the transferor and transferee are each responsible), and (3) the period after final approval (when the transferee is responsible). For the second period, subsection (h)(2) specifies that the transferor and transferee are each responsible. The agency believes that it is appropriate for the rule to specify that the transferor and

transferee are each responsible during this period, which includes any activity performed by the transferee under a permission to operate. In this way, the rule helps ensure that licensees are aware of their responsibilities. The new rule's statement that the transferor is responsible for acts performed during a permission to operate is consistent with the former rule at §83.303(d), which stated: "The transferor must accept full responsibility to any customer and to the OCCC for the licensed business for any acts of the transferee in connection with the operation of the lending business." The permission to operate is a temporary authorization allowing a transferee to operate under a transferor's license while the transferee's application is pending. The OCCC allows the permission-to-operate procedure in order to accommodate transferees that wish to begin doing business after a routine transfer of ownership but before approval of a license application. The alternative would be to prohibit the transferee from engaging in business until after the license application is approved. If a transferor wishes to protect itself from responsibility for the transferee's acts, then the transferor can delay the transfer of ownership until the transferee's application is approved. Alternatively, the transferor can enter an indemnification agreement with the transferee, under which the transferee must reimburse the transferor for losses resulting from the transferee's acts.

In §83.304, concerning Change in Form or Proportionate Ownership, conforming changes have been made corresponding to adopted new §83.303. Throughout subsections (b) and (c), references have been added to the new license application on transfer of ownership.

Adopted amendments to §83.306 clarify the circumstances in which a licensee must notify the OCCC of changes to information in the original license application. The amendments specify that the requirement to provide updated information within 10 days applies before a license application is approved. New §83.306(b) provides that a licensee must notify the OCCC within 30 days if the information relates to the names of principal parties, criminal history, regulatory actions, or court judgments. New §83.306(c) specifies that each applicant or licensee is responsible for ensuring that all contact information on file with the OCCC is current and correct, and that it is a best practice for licensees to regularly review contact information.

An adopted amendment to §83.310(c) provides that a license applicant must pay a fee to a party designated by the Texas Department of Public Safety (DPS) for processing fingerprints, replacing a statement that the fee will be paid to the OCCC. This amendment conforms the rule to the method by which applicants currently provide fingerprint information through DPS's Fingerprint Applicant Services of Texas (FAST) program. Additional amendments to §83.310(d) conform the rule to new §83.303 and add numbered paragraphs for clarity.

Adopted amendments to §83.403 clarify the agency's procedure for providing delinquency notices to licensees that have failed to pay an annual assessment fee. The amendments specify that notice of delinquency is considered to be given when the OCCC sends the notice by mail to the address on file with the OCCC as a master file address, or by e-mail to the address on file with the OCCC (if the licensee has provided an e-mail address).

Adopted new §83.404 specifies the criminal history information collected by the OCCC, outlines factors the OCCC will consider when reviewing criminal history information, and describes grounds for denial, suspension, and revocation of a regulated lender license. This section replaces former §83.404 and §83.405, which are being repealed. Subsection (a) describes the OCCC's collection of criminal history record information from law enforcement agencies. Subsection (b) identifies the criminal history information that the applicant must disclose. Subsection (c) describes the OCCC's denial, suspension, and revocation based on crimes that are directly related to the licensed occupation of regulated lender. Subsection (c)(1) lists the types of crimes that the OCCC considers to directly relate to the duties and responsibilities of being a regulated lender, including the reasons the crimes relate to the occupation, as provided by Texas Occupations Code, §53.025(a). Subsection (c)(2) contains the factors the OCCC will consider in determining whether a criminal offense directly relates to the duties and responsibilities of a licensee, as provided by Texas Occupations Code, §53.022. Subsection (c)(3) provides the mitigating factors the OCCC will consider to determine whether a conviction renders an applicant or licensee unfit, as provided by Texas Occupations Code, §53.023. Subsection (d) describes the OCCC's authority to deny a license application if it does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §342.104(a). Subsection (e) explains that the OCCC will revoke a license on the licensee's imprisonment

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following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

§83.404(f) identifies other grounds for denial, suspension, or revocation, including convictions for specific offenses described by statutory provisions cited in the rule.

Since the proposal, a change has been made to §83.404(f)(2) in order to provide a more complete citation to the Texas Code of Criminal Procedure. As the cited provision is being relocated, the revision includes citations for both the current location and the location effective on January 1, 2017.

An adopted amendment to the recordkeeping rule in §83.828(10)(A) lists documentation and disclosures required under the Department of Defense's Military Lending Act Rule, 32 C.F.R. pt. 232. The Department of Defense's recently adopted amendments to the rule have a required compliance date of October 3, 2016. Under the amended Military Lending Act Rule, lenders will generally be required to provide model disclosures to covered military borrowers. 32 C.F.R. §232.6. The amended rule also specifies documentation that lenders can obtain in order to determine whether a consumer is a covered military borrower. 32 C.F.R. §232.5. The adopted amendments to §83.828(10)(A) specify that licensees are required to maintain these documents and disclosures in the individual borrower's loan file. This file must be maintained for four years from the date of the loan, or two years from the date of the final account entry, whichever is later, under current §83.828(14). However, licensees may keep the documents for a longer period of time if they choose. Additionally, an

amendments to the recordkeeping rule in §83.828(10)(C) update a reference to the Texas Department of Public Safety "Driver's Crash Report" form and correct a typographical error.

The rule changes are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 342.

§83.102. Definitions.

Words and terms used in this subchapter that are defined in Texas Finance Code, Chapter 342 have the same meanings as defined in Chapter 342. The following words and terms, when used in this subchapter, will have the following meanings, unless the context clearly indicates otherwise.

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

(3) Amount financed--The amount calculated in accordance with Regulation Z, 12 C.F.R. §1026.18(b). ~~[of money which is used, forborne, or detained and upon which interest is charged. The cash advance plus any other amounts that are financed by the creditor are included. Any points or other prepaid finance charges, excluding the administrative loan fee, that are not paid at closing and that are financed as part of the transaction are included in the amount financed. This definition is only applicable for the purposes of this subchapter for~~

~~computing earnings, deferments, maximum charges, and determining refunds of unearned interest. It is not intended to be synonymous with the similar term that is used in the Truth in Lending Act (15 U.S.C. §§1601—1667f).]~~

(4) - (30) (No change.)

§83.301. Definitions.

Words and terms used in this subchapter that are defined in Texas Finance Code, Chapter 342, have the same meanings as defined in Chapter 342. The following words and terms, when used in this subchapter, will have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Principal party--An adult individual with a substantial relationship to the proposed lending business of the applicant. The following individuals are principal parties:

(A) a proprietor [~~proprietors, including spouses with community property interest~~];

(B) - (H) (No change.)

§83.302. Filing of New Application.

An application for issuance of a new regulated loan license must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats to facilitate multistate uniformity of applications or in order to accept approved electronic

submissions. Appropriate fees must be filed with the application and the application must include the following:

(1) Required application information. All questions must be answered.

(A) (No change.)

(B) Disclosure of Owners and Principal Parties.

(i) Proprietorships. The applicant must disclose the name of any individual holding an ownership interest in the business and the name of any individual [who owns and who is] responsible for operating the business. If requested, the applicant must also disclose the names of the spouses of these individuals. [All community property interests must also be disclosed. If the business interest is owned by a married individual as separate property, documentation establishing or confirming separate property status must be provided.]

(ii) - (vi) (No change.)

(C) - (K) (No change.)

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

*§83.303. Transfer of License; New License Application on Transfer of Ownership. **{{This section replaces former section 83.303, which is being repealed.}}***

(a) Purpose. This section describes the license application requirements when a licensed entity transfers its license or ownership of the entity. If a transfer of ownership occurs, the transferee must submit either a license transfer application or a new license application on transfer of ownership under this section.

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(b) Definitions. The following words and terms, when used in this section, will have the following meanings:

(1) License transfer--A sale, assignment, or transfer of a regulated loan license.

(2) Permission to operate--A temporary authorization from the OCCC, allowing a transferee to operate under a transferor's license while final approval is pending for a license transfer application or a new license application on transfer of ownership.

(3) Transfer of ownership--Any purchase or acquisition of control of a licensed entity (including acquisition by gift, devise, or descent), or a substantial portion of a licensed entity's assets, where a substantial change in management or control of the business occurs. The term does not include a change in proportionate ownership as defined in §83.304 of this title (relating to Change in Form or Proportionate Ownership) or a relocation of regulated transactions from one licensed location to another licensed location, as described by §83.308(c) of this title (relating to Relocation). Transfer of ownership includes the following:

(A) an existing owner of a sole proprietorship relinquishes that owner's entire interest in a license or an entirely new entity has obtained an ownership interest in a sole proprietorship license;

(B) any purchase or acquisition of control of a licensed general partnership, in which a partner relinquishes that owner's entire interest or a new general partner obtains an ownership interest;

(C) any change in ownership of a licensed limited partnership interest in which:

(i) a limited partner owning 10% or more relinquishes that owner's entire interest;

(ii) a new limited partner obtains an ownership interest of 10% or more;

(iii) a general partner relinquishes that owner's entire interest; or

(iv) a new general partner obtains an ownership interest (transfer of ownership occurs regardless of the percentage of ownership exchanged of the general partner);

(D) any change in ownership of a licensed corporation in which:

(i) a new stockholder obtains 10% or more of the outstanding voting stock in a privately held corporation;

(ii) an existing stockholder owning 10% or more relinquishes that owner's entire interest in a privately held corporation;

(iii) any purchase or acquisition of control of 51% or more of a company that is the parent or controlling stockholder of a licensed privately held corporation occurs; or

(iv) any stock ownership changes that result in a change of control (i.e., 51% or more) for a licensed publicly held corporation occur;

(E) any change in the membership interest of a licensed limited liability company:

(i) in which a new member obtains an ownership interest of 10% or more;

(ii) in which an existing member owning 10% or more relinquishes that member's entire interest; or

(iii) in which a purchase or acquisition of control of 51% or more of any company that is the parent or controlling member of a licensed limited liability company occurs;

(F) any transfer of a substantial portion of the assets of a licensed entity under which a new entity controls business at a licensed location; and

(G) any other purchase or acquisition of control of a licensed entity, or a substantial portion of a licensed entity's assets, where a substantial change in management or control of the business occurs.

(4) Transferee--The entity that controls business at a licensed location after a transfer of ownership.

(5) Transferor--The licensed entity that controls business at a licensed location before a transfer of ownership.

(c) License transfer approval. No regulated loan license may be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §342.163. A license transfer is approved when the OCCC issues

its final written approval of a license transfer application.

(d) Timing. No later than 30 days after the event of a transfer of ownership, the transferee must file a complete license transfer application or new license application on transfer of ownership in accordance with subsection (e). A transferee may file an application before this date.

(e) Application requirements.

(1) Generally. This subsection describes the application requirements for a license transfer application or a new license application on transfer of ownership. A transferee must submit the application in a format prescribed by the OCCC. The OCCC may accept prescribed alternative formats to facilitate multistate uniformity of applications or in order to accept approved electronic submissions. The transferee must pay appropriate fees in connection with the application.

(2) Documentation of transfer of ownership. The application must include documentation evidencing the transfer of ownership. The documentation should include one or more of the following:

(A) a copy of the asset purchase agreement when only the assets have been purchased;

(B) a copy of the purchase agreement or other evidence relating to the acquisition of the equity interest of a licensee that has been purchased or otherwise acquired;

(C) any document that transferred ownership by gift, devise, or descent, such as a probated will or a court order; or

(D) any other documentation evidencing the transfer event.

(3) Application information for new licensee. If the transferee does not hold a regulated loan license at the time of the application, then the application must include the information required for new license applications under §83.302 of this title (relating to Filing of New Application). The instructions in §83.302 of this title apply to these filings.

(4) Application information for transferee that holds a license. If the transferee holds a regulated loan license at the time of the application, then the application must include amendments to the transferee's original license application describing the information that is unique to the transfer event, including disclosure questions, owners and principal parties, and a new financial statement, as provided in §83.302 of this title. The instructions in §83.302 of this title apply to these filings. The responsible person at the new location must file a personal affidavit, personal questionnaire, and employment history, if not previously filed. Other information required by §83.302 of this title need not be filed if the information on file with the OCCC is current and valid.

(5) Request for permission to operate. The application may include a request for permission to operate. The request must be in writing and signed by the transferor and transferee. The request must include all of the following:

(A) a statement by the transferor granting authority to the transferee to operate under the transferor's license while final approval of the application is pending;

(B) an acknowledgement that the transferor and transferee each accept responsibility to any consumer and to the OCCC for any acts performed under the license while the permission to operate is in effect; and

(C) if the application is a new license application on transfer of ownership, an acknowledgement that the transferor will immediately surrender or inactivate its license if the OCCC approves the application.

(f) Permission to operate. If the application described by subsection (e) includes a request for permission to operate and all required information, and the transferee has paid all fees required for the application, then the OCCC may issue a permission to operate to the transferee. A request for permission to operate may be denied even if the application contains all of the required information. The denial of a request for permission to operate does not create a right to a hearing. If the OCCC grants a permission to operate, the transferor must cease operating under the authority of the license. Two companies may not simultaneously operate under a single license. A permission to operate terminates if the OCCC denies an application described by subsection (e).

(g) Transferee's authority to engage in business. If a transferee has filed a complete application including a request for permission to operate as described by subsection (e), by the deadline described by subsection (d), then the transferee may engage in business as a regulated lender. However, the transferee must immediately cease doing business if the OCCC denies the request for permission to operate or denies the application. If the OCCC denies the

application, then the transferee has a right to a hearing on the denial, as provided by §83.307(d) of this title (relating to Processing of Application).

(h) Responsibility.

(1) Responsibility of transferor. Before the transferee begins performing regulated lender activity under a license, the transferor is responsible to any consumer and to the OCCC for all regulated lender activity performed under the license.

(2) Responsibility of transferor and transferee. If a transferee begins performing regulated lender activity under a license before the OCCC's final approval of an application described by subsection (e), then the transferor and transferee are each responsible to any consumer and to the OCCC for activity performed under the license during this period.

(3) Responsibility of transferee. After the OCCC's final approval of an application described by subsection (e), the transferee is responsible to any consumer and to the OCCC for all regulated lender activity performed under the license. The transferee is responsible for any transactions that it purchases from the transferor. In addition, if the transferee receives a license transfer, then the transferee's responsibility includes all activity performed under the license before the license transfer.

§83.304. Change in Form or Proportionate Ownership.

(a) (No change.)

(b) Merger. A merger of a licensee is a change of ownership that results in a new or different surviving entity and requires the

filing of a license transfer application or a new license application on transfer of ownership pursuant to §83.303 of this title (relating to Transfer of License; New License Application on Transfer of Ownership). If the merger of the parent entity of a licensee that leads to the creation of a new entity or results in a different surviving parent entity, the licensee must advise the OCCC in writing of the change within 14 calendar days by filing a license amendment and paying the required fees as provided in §83.310 of this title. Mergers or transfers of other entities with a beneficial interest beyond the parent entity level only require notification within 14 calendar days.

(c) Proportionate ownership.

(1) A change in proportionate ownership that results in the exact same owners still owning the business, and does not meet the requirements described in paragraph (2) of this subsection, does not require a transfer. Such a proportionate change in ownership does not require the filing of a license transfer application or a new license application on transfer of ownership, but does require notification when the cumulative ownership change to a single entity or individual amounts to 5% or greater. No later than 14 calendar days following the actual change, the licensee is required to notify the OCCC in writing of the change in proportionate ownership. This section does not apply to a publicly held corporation that has filed with the OCCC the most recent 10K or 10Q filing of the licensee or the publicly held parent corporation, although a license transfer application or a new license application on transfer of ownership may be required under §83.303 of this title.

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(2) A proportionate change in which an owner that previously held under 10% obtains an ownership interest of 10% or more, requires a transfer under §83.303 of this title.

§83.306. Updating Application and Contact Information [~~Reportable Actions After Application~~].

(a) Applicant's updates to license application information. Before a license application is approved, an applicant must report to the OCCC any [~~Any action, fact, or~~] information that would require a materially different answer than that given in the original license application and that relates to the qualifications for license [~~must be reported~~] within 10 calendar days after the person has knowledge of the [~~action, fact or~~] information.

(b) Licensee's updates to license application information. A licensee must report to the OCCC any information that would require a different answer than that given in the original license application within 30 calendar days after the licensee has knowledge of the information, if the information relates to any of the following:

- (1) the names of principal parties;
- (2) criminal history;
- (3) actions by regulatory agencies; or
- (4) court judgments.

(c) Contact information. Each applicant or licensee 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

licensees to regularly review contact information on file with the OCCC to ensure that it is current and correct.

§83.310. Fees.

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

(c) Fingerprint processing. An applicant must pay a fee to a party designated by the Texas Department of Public Safety for processing fingerprints. The Texas Department of Public Safety and the designated party determine the amount of the fee and whether it is refundable.

(d) [~~e~~] License amendments. A fee of \$25 must be paid each time a licensee amends a license by:

(1) inactivating a license; [;]

(2) activating an inactive license; [;]

(3) changing the assumed name of the licensee; [;]

(4) changing the organizational form or proportionate ownership that results in the exact same individuals or entities still owning the business and does not result in a transfer of ownership described by §83.303(b)(3) of this title (relating to Transfer of License; New Application on Transfer of Ownership; [does not require a transfer under §83.303(a)(4) or (5) of this title (relating to Transfer of License) or §83.304(c)(2) of this title (relating to Change in Form or Proportionate Ownership);]

(5) providing notification of a new parent entity; [;] or

(6) relocating an office.

(e) [~~(f)~~] License duplicates sent by mail. The fee for a license duplicate to be sent by mail is \$10.

(f) [~~(e)~~] Costs of hearings. The commissioner may assess the costs of an administrative appeal pursuant to Texas Finance Code, §14.207 for a hearing afforded under §83.307(d) of this title (relating to Processing of Application), including the cost of the administrative law judge, the court reporter, and agency staff representing the OCCC at a hearing.

(g) [~~(f)~~] Annual renewal and assessment fees.

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

§83.403. Notice of Delinquency in Payment of Annual Assessment Fee.

For purposes of Texas Finance Code, §342.155, and §83.309(d) of this title (relating to License Status), notice of delinquency in the payment of an annual assessment fee is given when the OCCC sends the delinquency notice:

(1) by mail to the address on file with the OCCC as a master file address; or

(2) by e-mail to the address on file with the OCCC as a master file e-mail address, if the licensee has provided a master file e-mail address. [~~delinquency notice is sent to the licensee at the email or mailing address on file with the OCCC.]~~

§83.404. Denial, Suspension, or Revocation Based on Criminal History. **{{This section replaces sections 83.404 and 83.405, both of which are being repealed.}}**

(a) Criminal history record information. After an applicant submits a complete license application, including all required fingerprints, and pays the fees required by §83.310 of this title (relating to Fees), the OCCC will investigate the applicant and its principal parties. The OCCC will obtain criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant's fingerprint submission. The OCCC will continue to receive information on new criminal activity reported after the fingerprints have been initially processed.

(b) Disclosure of criminal history. The applicant must disclose all criminal history information required to file a complete application with the OCCC. Failure to provide any information required as part of the application or requested by the OCCC reflects negatively on the belief that the business will be operated lawfully and fairly. The OCCC may request additional criminal history information from the applicant, including the following:

(1) information about arrests, charges, indictments, and convictions of the applicant and its principal parties;

(2) reliable documents or testimony necessary to make a determination under subsection (c), including letters of recommendation from prosecution, law enforcement, and correctional authorities;

(3) proof that the applicant has maintained a record of steady employment, has supported the applicant's dependents,

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and has otherwise maintained a record of good conduct; and

(4) proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid or are current.

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been convicted of an offense that directly relates to the duties and responsibilities of a licensee under Texas Finance Code, Chapter 342, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Originating, acquiring, or servicing loans under Texas Finance Code, Chapter 342 involves or may involve making representations to consumers regarding the terms of the loan, receiving money from consumers, remitting money to third parties, maintaining accounts, repossessing property without a breach of the peace, maintaining goods that have been repossessed, collecting due amounts in a legal manner, and foreclosing on real property in compliance with state and federal law. Consequently, the following crimes are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation:

(A) theft;

(B) assault;

(C) any offense that involves misrepresentation, deceptive practices, or making a false or misleading statement (including fraud or forgery);

(D) any offense that involves breach of trust or other fiduciary duty;

(E) any criminal violation of a statute governing credit transactions or debt collection;

(F) failure to file a government report, filing a false government report, or tampering with a government record;

(G) any greater offense that includes an offense described in subparagraphs (A) - (F) of this paragraph as a lesser included offense;

(H) any offense that involves intent, attempt, aiding, solicitation, or conspiracy to commit an offense described in subparagraphs (A) - (G) of this paragraph.

(2) In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.022:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensee.

(3) In determining whether a conviction for a crime renders an applicant or a licensee unfit to be a licensee, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.023:

(A) the extent and nature of the person's past criminal activity;

(B) the age of the person when the crime was committed;

(C) the amount of time that has elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person before and after the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time was served; and

(F) evidence of the person's current circumstances relating to fitness to hold a license, which may include letters of recommendation from one or more of the following:

(i) prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;

(ii) the sheriff or chief of police in the community where the person resides; and

(iii) other persons in contact with the convicted person.

(d) Crimes related to character and fitness. The OCCC may deny a license application if the OCCC does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §342.104(a)(1). In conducting its review of character and fitness, the OCCC will consider the criminal history of the applicant and its principal parties. If the applicant or a principal party has been convicted of an offense described by subsections (c)(1) or (f)(2) of this section, this reflects negatively on an applicant's character and fitness. The OCCC may deny a license application based on other criminal history of the applicant or its principal parties if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. The OCCC will, however, consider the factors identified in subsection (c)(2)-(3) of this section in its review of character and fitness.

(e) Revocation on imprisonment. A license will be revoked on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

(f) Other grounds for denial, suspension, or revocation. The OCCC may deny a license application, or suspend or revoke a license, based on any other ground

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authorized by statute, including the following:

(1) a conviction for an offense that does not directly relate to the duties and responsibilities of the occupation and that was committed less than five years before the date of application, as provided by Texas Occupations Code, §53.021(a)(2);

(2) a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42.12, §3g (effective through December 31, 2016), art. 42A.054 (effective January 1, 2017), or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(3)-(4);

(3) errors or incomplete information in the license application;

(4) a fact or condition that would have been grounds for denying the license application, and that either did not exist at the time of the application or the OCCC was unaware of at the time of application, as provided by Texas Finance Code, §342.156(3); and

(5) any other information warranting the belief that the business will not be operated lawfully and fairly, as provided by Texas Finance Code, §342.104(a)(1) and §342.156.

§83.828. *Files and Records Required (Subchapter E and F Lenders).*

(1) - (9) (No change.)

(10) Loan records and documents file.

(A) Generally. A licensee must maintain a loan records and documents file for each individual borrower. The loan

records and documents file must contain all necessary records and documents to evidence compliance with applicable state and federal laws and regulations, including the Equal Credit Opportunity Act and the Truth in Lending Act. The loan records and documents file must include copies of the following records or documents:

(i) - (ix) (No change.)

(x) any written or recorded records relating to repossessions, legal actions, or foreclosure actions regarding the borrower or the borrower's collateral securing the loan; ~~and~~

(xi) any record maintained under the Department of Defense's Military Lending Act Rule, 32 C.F.R. §232.5, regarding whether the borrower is a covered borrower; and

(xii) [~~(xi)~~] any separate disclosures that are required by federal or state law, such as the notice to cosigner required by the Federal Trade Commission's Credit Practices Rule, 16 C.F.R. §444.3, or any mandatory disclosure to a covered borrower under the Department of Defense's Military Lending Act Rule, 32 C.F.R. §232.6.

(B) (No change.)

(C) Supplemental gap waiver agreement records. Each licensee must maintain in the borrower's individual file records supporting the settlements or denials of gap waiver agreement claims reported in the gap w ~~waiver~~ waiver agreement register. The records must include, if applicable:

(i) - (iv) (No change.)

(v) if the accident was not investigated by a law enforcement officer, a copy of the Texas Department of Public Safety "Driver's Crash Report" (Form CR-2) [~~"Driver's Accident Report" (Form ST-2)~~] filed in connection with the total loss of the motor vehicle; and

(vi) (No change.)

(11) - (14) (No change.)

Certification

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

Issued in Austin, Texas on August 19, 2016.

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 and a New Rule in 7 TAC, Chapter 87, Concerning Tax Refund Anticipation Loans, Resulting from Rule Review

PURPOSE: The purpose of the adoption is to implement changes resulting from the commission's review of Chapter 87 under Texas Government Code, §2001.039. The rule changes clarify the term of registration, require that registrants maintain current contact information, implement a statutory late filing fee, and add a required notice that registrants must provide explaining to consumers how they can file a complaint with the agency.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the amendments and new rule in 7 TAC, Chapter 87 without changes as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve the amendments and new rule in 7 TAC, Chapter 87.

*Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 87. Tax Refund Anticipation Loans
§§87.102 - 87.105, 87.107, & 87.201*

The Finance Commission of Texas (commission) adopts amendments and a new rule in 7 TAC, Chapter 87, concerning Tax Refund Anticipation Loans. The commission adopts amendments to §§87.102 - 87.105, and 87.107; and adopts new §87.201.

The commission adopts the amendments and new rule without changes to the proposed text as published in the June 24, 2016, issue of the *Texas Register* (41 TexReg 4551).

The commission received no written comments on the proposal.

In general, the purpose of the revisions to these rules for tax refund anticipation loan facilitators is to implement changes resulting from the commission's review of Chapter 87 under Texas Government Code, §2001.039. The notice of intention to review 7 TAC, Chapter 87 was published in the *Texas Register* on May 6, 2016 (41 TexReg 3317). The agency did not receive any comments on the notice of intention to review.

The agency circulated an early draft of proposed changes to interested stakeholders and then held a stakeholders meeting, including online participation. The agency believes that early participation by stakeholders in the rulemaking process results in more informed and balanced proposals.

The rule changes clarify the term of registration, require that registrants maintain current contact information, implement a statutory late filing fee, and add a required notice that registrants must provide to

consumers explaining how they can file a complaint with the agency.

The individual purposes of the amendments to each rule and of the new rule are provided in the following paragraphs.

Adopted amendments to §87.102(a) remove unnecessary language and add a reference to the agency's name and acronym, Office of Consumer Credit Commissioner (OCCC). The agency believes that the use of "OCCC" provides better clarity to the rules when the context calls for action by the agency, as opposed to the commissioner specifically.

Corresponding changes to further the use of this terminology are included throughout Chapter 87. The following provisions contain adopted amendments to replace the use of "commissioner" or "commissioner's" with a reference to the OCCC: §87.103(a)(1) and §87.104.

Adopted new §87.103(b) explains that an applicant may apply for a registration for the current year or a registration for the following year. Subsection (b) also specifies the effective period of a registration. Although the existing rules in Chapter 87 specify requirements for renewing a registration, they did not specify when the registration is effective or when it expires. Subsection (b) conforms to the agency's current practices and is intended to provide clarity on the effective period of registration.

Adopted new §87.103(c) explains that applicants and registrants must keep their

contact information up-to-date. This provision is intended to ensure that the agency can contact registrants, so that the agency can carry out its responsibility to monitor facilitators and ensure compliance, as provided by Texas Finance Code, §352.005.

Adopted amendments to §87.105(a)-(c) amend the text to provide clarity and consistency. In particular, an amendment to subsection (c) replaces the term "Annual Assessments" with "Renewals," to ensure consistency with other rules in Chapter 87.

Adopted new §87.105(d) specifies that a facilitator must pay a \$250 late filing fee if the facilitator: 1) obtains a new registration after engaging in business as a facilitator (i.e., engages in unregistered activity), or 2) renews a registration for the current year after January 30. This requirement is based on Texas Finance Code, §349.302, which provides a late filing fee of \$250 for obtaining a late registration with the OCCC. Subsection (d) is intended to provide clarity regarding the amount of the late filing fee and the situations where it is required.

Adopted amendments to §87.107(a) conform to other amendments in the adoption. The former December 1 renewal deadline is replaced with a requirement to pay any late filing fee required by §87.105(d). This means that if a facilitator renews a registration for the current year after January 30, the facilitator must pay a \$250 late filing fee in order to renew. The amendments to subsection (a) are intended to clarify renewal requirements and ensure consistency with Texas Finance Code, §349.302.

Adopted new §87.107(b) specifies that a facilitator may not renew a registration that has been expired for more than one year, and that if a registration has been expired for more

than one year, the facilitator must apply for a new registration. This provision is intended to clarify renewal requirements and ensure consistency with other amendments to the rules.

Adopted new §87.201 requires facilitators to provide a notice explaining how consumers can file a complaint with the OCCC. Subsection (a) describes the content of the OCCC notice, which includes the facilitator's contact information and the OCCC's contact information. Subsection (b) explains that the OCCC notice must be provided on either the privacy notice or the written disclosure of fees required under Texas Finance Code, §352.004. This requirement is based on Texas Finance Code, §11.307(b), which provides that the commission shall adopt rules requiring regulated entities to include complaint notices on legally required privacy notices. Because refund anticipation loan facilitators perform tax preparation services, they are required to provide privacy notices to consumers under federal law, as provided by Regulation P, 12 C.F.R. §§1016.3(l)(3)(ii)(H), 1016.3(s)(1), 1016.4(a).

The OCCC believes that new §87.201 is necessary so that consumers and creditors will have the most current contact information for the OCCC, as well as readily available information for consumers explaining how they can file a complaint with the OCCC. Registrants are afforded multiple ways to comply with the new rule: 1) add the OCCC notice to the current federal privacy notice in the box for "Other important information"; 2) add the OCCC notice to the registrant's existing disclosure form under Texas Finance Code, §352.004; or 3) provide the OCCC notice on a new page that is part of one of these two forms.

As stated in the proposal, the OCCC wishes to help registrants minimize potential costs with a delayed implementation date of January 1, 2017, for new §87.201. Accordingly, the agency will allow registrants to continue the use of current forms through December 31, 2016. Starting January 1, 2017, registrants must comply with new §87.201 by adding the OCCC notice to either their existing privacy notice or existing written disclosure provided to consumers.

The delayed implementation date applies only to new §87.201. Thus, the amendments to §§87.102-87.105 and 87.107 will be implemented immediately upon the effective date of these rules, which is anticipated to be on or around September 8, 2016.

The rule changes are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Chapter 14 and Title 4 of the Texas Finance Code. The rule changes are also adopted under Texas Finance Code, §352.003, which authorizes the commission to prescribe procedures for the registration of tax refund anticipation loan facilitators. New §87.201 is adopted under Texas Finance Code, §11.307(b), which provides that the commission shall adopt rules requiring regulated entities to include complaint notices on legally required privacy notices.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 11 and 352.

Subchapter A. Registration Procedures

§87.102. Filing of New Application.

(a) New application. An application for issuance of a new tax refund anticipation loan facilitator registration must be submitted [as

~~prescribed by the commissioner at the date of filing—and] in accordance with the [commissioner's] instructions of the Office of Consumer Credit Commissioner (OCCC).~~

(b) Required information. The application must include the following required information. All questions must be answered.

(1) Application for Registration of Tax Refund Anticipation Loan Facilitator.

(A) Each location in this state at which e-file providers authorized by the Internal Revenue Service file tax returns on behalf of borrowers for whom the facilitator acts to allow the making of a tax refund anticipation loan must be separately registered.

(B) The person responsible for the day-to-day operation of the applicant's proposed business location must be named.

(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.

§87.103. Completion [Processing] of Application and Effective Period of Registration.

(a) Complete application. An application is complete when it:

(1) conforms to the rules and the [commissioner's] published instructions of the Office of Consumer Credit Commissioner (OCCC);

(2) all fees have been paid; and

(3) all requests for additional information have been satisfied.

(b) Effective period. An applicant may apply for a registration for the current year or a registration for the following year.

(1) A registration for the current year is effective beginning on the date the application is complete, and expires on December 31 of the current year.

(2) A registration for the following year is effective beginning on January 1 of the following year, and expires on December 31 of the following year.

(c) Contact information. Each applicant or registrant 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 registrants to regularly review contact information on file with the OCCC to ensure that it is current and correct.

§87.104. Relocation of Registered Location.

A registered tax refund anticipation loan facilitator may move the business office from the registered location to any other location by giving notice of intended relocation to the Office of Consumer Credit Commissioner (OCCC) [~~commissioner~~]. The notice must include the present address of the registered location, the contemplated new address of the registered location, and the approximate date of relocation.

§87.105. Fees.

(a) New registrations. For a new registration, the applicant must pay a [A] \$50 nonrefundable [non-refundable] fee for each

registered location [is assessed each time an application for a new registration under this chapter is filed].

(b) Registration amendments. A registered facilitator must pay a fee of \$25 to amend [must be paid each time a registered facilitator amends] a registration by changing the assumed name of the registrant or relocating an office.

(c) Renewals. For a renewal, the registered facilitator must pay an [Annual assessments. An] annual fixed fee of \$50 [is required] for each registered [tax refund anticipation loan] location.

(d) Late filing fee. As provided by Texas Finance Code, §349.302(b), a facilitator must pay a \$250 late filing fee for each registered location if the facilitator:

(1) obtains a new registration after the facilitator has begun engaging in business as a facilitator; or

(2) obtains a renewal for the current year after January 30.

§87.107. Annual Renewal.

(a) Renewal requirements. A [Not later than December 1, a] registered tax refund anticipation loan facilitator may renew its registration by providing the following:

(1) the renewal fees required by §87.105(c) of this title (relating to Fees); [and]

(2) any late filing fees required by §87.105(d) of this title; and

(3) any other information required by the commissioner.

(b) Expiration. A facilitator may not renew a registration that has been expired for more than one year. If a facilitator's registration has been expired for more than one year, then the facilitator must apply for a new registration under §87.102 of this title (relating to Filing of New Application) in order to obtain a registration.

Subchapter B. Disclosures

§87.201. OCCC Notice.

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

(b) Location of notice. A facilitator must provide the notice described by subsection (a) by one or both of the following methods:

(1) including the notice on each privacy notice that the facilitator is required to provide to a consumer under state or federal law; or

(2) including the notice on each written disclosure that the facilitator is

required to provide to a borrower under Texas Finance Code, §352.004.

Certification

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

Issued in Austin, Texas on August 19, 2016.

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

D. OFFICE OF CONSUMER CREDIT COMMISSIONER

4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments, New Rules, and Repeals in 7 TAC, Chapter 85, Subchapter A, Concerning Rules for Operation of Pawnshops

PURPOSE: The purpose of the proposal is to update pawnshop rules regarding the licensing of pawnshops and to make technical corrections. The proposed rule changes relate to the following issues: contact information, transfers, criminal history review, disclosures and recordkeeping. Additionally, certain sections are being proposed for repeal in order to replace them with reorganized rules.

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

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

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Title 7. Banking and Securities

Part 5. Office of Consumer Credit Commissioner

Chapter 85. Pawnshops and Crafted Precious Metal Dealers

Subchapter A. Rules of Operation for Pawnshops

The Finance Commission of Texas (commission) proposes amendments to §§85.102, 85.104, 85.202, 85.206, 85.208, 85.209, 85.211, 85.305, 85.306, 85.402, 85.405, 85.413, 85.420, 85.423, and 85.702; proposes new §85.205 and §85.601; and proposes the repeal of §§85.205, 85.601, and 85.602 in 7 TAC, Chapter 85, Subchapter A, concerning Rules of Operation for Pawnshops.

In general, the purpose of the rule changes in 7 TAC, Chapter 85, Subchapter A is to update rules regarding the licensing of pawnshops and to make technical corrections. The proposed rule changes relate to the following issues: contact information, license transfers, criminal history review, disclosures, and recordkeeping. Additionally, certain sections are being proposed for repeal in order to replace them with new, reorganized rules.

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

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

In §85.102, the proposal would add a definition of "parent entity," specifying that

this term refers to a direct owner of a licensee or applicant. This definition is intended to clarify the provisions on mergers and license transfers in §85.205 and §85.208, discussed later in this proposal, and is consistent with other OCCC licensing rules. A proposed amendment to current §85.102(11) (proposed §85.102(12)) amends the definition of "principal party" for sole proprietorships. The amendment removes the statement that proprietors include spouses with a community property interest. This amendment conforms to an amendment to the application requirements for sole proprietorships in §85.202(a)(1)(B)(i), discussed later in this proposal.

Proposed amendments to §85.104(b) and (c) clarify the agency's procedure for providing delinquency notices to licensees that have failed to pay an annual assessment fee. The amendments specify that notice of delinquency is considered to be given when the OCCC sends the notice by e-mail to the address on file with the OCCC (if the pawnshop has provided an e-mail address), or by mail to the address on file with the OCCC as a master file address (if the pawnshop has not provided an e-mail address).

An amendment to §85.202(a)(1)(B)(i) removes the requirement to disclose community property interests and documentation regarding separate property status, and replaces it with a requirement to disclose the names of the spouses of principal parties if requested. The agency currently spends considerable time requesting information from license

applicants to determine the status of spouses' property interests, and explaining these concepts to applicants. These amendments will help streamline the licensing process and reduce regulatory burden. The amendments will also make the application process simpler and more straightforward for applicants. In specific cases where the spouse is a principal party, the OCCC would be able to request additional information about the spouse under current §85.202(a)(1)(E)-(F).

Section 85.205 is proposed for repeal and replacement with a new rule, with the intent to clarify the requirements when a licensee transfers ownership. Currently, §85.205 describes what constitutes a transfer of ownership requiring the filing of a transfer application. The proposed new rule largely maintains the requirements under the current rule, including the requirements for filing a license transfer application. In addition to the license transfer application allowed under the current rule, the new rule allows an alternative method for a transfer of ownership: a new license application on transfer of ownership. The new rule describes what the application must include, the timing requirements, and which parties are responsible at different points in the transfer process. Subsection (a) describes the purpose of the new section. Subsection (b) defines terms used throughout the section. In particular, subsection (b)(3) defines the phrase "transfer of ownership," listing different types of changes in acquisition or control of the licensed entity.

Subsection (c) specifies that a license may not be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §371.070. Subsection (d) provides a timing requirement, stating that a complete license

transfer application or new license application on transfer of ownership must be filed no later than 30 days after the transfer of ownership. Subsection (e) outlines the requirements for the license transfer application or new license application on transfer of ownership. These requirements include complete documentation of the transfer of ownership, as well as a complete license application for transferees that do not hold an existing pawnshop license. Subsection (e)(5) explains that the application may include a request for permission to operate.

Subsection (f) provides that the OCCC may issue a permission to operate to the transferee. A permission to operate is a temporary authorization from the OCCC allowing a transferee to operate while final approval is pending for an application. Subsection (g) specifies the transferee's authority to engage in business if the transferee has filed a complete application including a request for permission to operate. It also requires the transferee to immediately cease doing business if the OCCC denies the request for permission to operate or denies the application. Subsection (h) describes the situations where the transferor is responsible for business activity at the licensed location, situations where the transferee is responsible, and situations where both parties are responsible.

In §85.206, concerning Processing of Application, conforming changes are proposed to cite the amended title of §85.205.

In §85.208, concerning Change in Form or Proportionate Ownership, conforming changes are proposed corresponding to proposed new §85.205. Throughout subsections (b) and (c), references have been

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added to the new license application on transfer of ownership. In addition, amendments are proposed in subsection (b) to clarify situations where a merger is a transfer of ownership. The amendments specify that if a licensee is a party to a merger that results in a new or different surviving entity other than the licensee, then the merger is a transfer of ownership, and the licensee must file a license transfer application or new license application. The amendments to subsection (b) are intended to clarify the current rule text and are consistent with the OCCC's current policy.

Proposed amendments to §85.209 clarify the circumstances in which a pawnshop applicant or licensee must notify the OCCC of changes to information in the original license application. The amendments specify that the requirement to provide updated information within 10 days applies before a license application is approved. Proposed new §85.209(c) provides that a licensee must notify the OCCC within 30 days if the information relates to the names of principal parties, criminal history, regulatory actions, or court judgments. Proposed new §85.209(d) specifies that each applicant or licensee is responsible for ensuring that all contact information on file with the OCCC is current and correct, and that it is a best practice for licensees to regularly review contact information. Corresponding changes are proposed in §85.305 for pawnshop employee licensees.

A proposed amendment to §85.211(d) provides that a pawnshop license applicant must pay a fee to a party designated by the Texas Department of Public Safety (DPS) for processing fingerprints. This amendment conforms the rule to the method by which applicants currently provide fingerprint information through DPS's Fingerprint

Applicant Services of Texas (FAST) program. A corresponding change is proposed in §85.306 for pawnshop employee licensees. A proposed amendment to current §85.211(g) (proposed §85.211(h)) adds a tagline for clarity.

A proposed amendment to §85.402(g) relates to the requirement for sequential numbering of electronic pawn tickets. The amendment removes the requirement that the OCCC approve methods of numbering the pawn ticket other than sequential numbering by the form supplier. Instead, the amendment provides that the pawnshop may sequentially number each pawn ticket in accordance with written policies that ensure appropriate management and controls. The amendment is intended to provide pawnshops with flexibility in numbering pawn tickets, while also ensuring that pawnshops properly account for all transactions. Another proposed amendment to §85.402(g) specifies that each of the three parts of the pawn ticket must be numbered with the same sequential number.

Proposed new §85.402(h) requires pawnshops to maintain documentation and disclosures required under the Department of Defense's Military Lending Act (MLA) Rule, 32 C.F.R. pt. 232. The Department of Defense's recently adopted amendments to the MLA Rule have a required compliance date of October 3, 2016. Under the amended MLA Rule, creditors will generally be required to provide model disclosures to covered military borrowers. 32 C.F.R. §232.6. The amended MLA Rule also specifies documentation that creditors can obtain in order to determine whether a consumer is a covered military borrower. 32 C.F.R. §232.5. Proposed new §85.402(h) specifies that licensees are required to maintain these documents and disclosures.

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These records must be maintained for two years from the date of the final entry, like the pawn ticket under current §85.402(b). The two-year requirement is based on Texas Finance Code, §371.152, which requires pawnshops to keep records of pawn transactions for two years from the date of the last recorded event. However, licensees may keep the documents for a longer period of time if they choose.

At the stakeholders meeting, one stakeholder asked whether proposed §85.402(h) would require a particular form for records about whether a consumer is a covered military borrower. The Department of Defense has created a database that lenders can consult to determine whether a consumer is a covered military borrower. Although the MLA Rule provides a safe harbor for lenders who use the database, it provides that a lender may apply its own method to determine whether a consumer is a covered military borrower. 32 C.F.R. §232.5(a). To clarify, proposed §85.402(h) would not require a particular form for records about whether a consumer is a covered military borrower, but it would require licensees to retain any records that they obtain to make that determination.

Several stakeholders raised other questions about how to comply with the MLA Rule. For example, stakeholders asked questions about how to calculate the military annual percentage rate for purposes of the MLA Rule's 36% maximum for loans made to covered military borrowers. Stakeholders also asked questions about obtaining a potential borrower's Social Security number in order to determine whether the borrower is a covered military borrower. These questions are generally outside the scope of the proposed rule amendments. However, the agency intends to publish an advisory

bulletin with guidance on complying with the MLA Rule.

A proposed amendment to §85.405(a)(2) allows licensees to modify the current rule's model pawn ticket, to add the mandatory disclosure to a covered borrower under the MLA Rule, 32 C.F.R. §232.6. One precommenter suggested adding language to the proposed amendment to §85.405(a)(2), to specify that the required disclosure is not required to be on the pawn ticket. In response to this precomment, the proposed amendment explains that a licensee may provide the disclosure on a separate form, as an alternative to including the disclosure on the pawn ticket.

Another precommenter suggested an additional permissible pawn ticket change related to the MLA Rule. The precommenter suggested adding the following sentence to proposed §85.405(a)(2)(B): "A licensee also may modify the pawn ticket to add an inquiry as to whether or not the borrower is a covered borrower." The agency believes that this modification could create confusion. The inquiry might be misunderstood by borrowers and licensees, who could believe that the borrower's statement creates a safe harbor from penalties under the MLA Rule. However, if a licensee creates a specific modification of the pawn ticket, it may submit the non-standard ticket to the OCCC under current §85.405(a)(2)(B) (proposed §85.405(a)(2)(C)), and the OCCC will review the inquiry in the context of the amended pawn ticket.

A proposed amendment to §85.405(a)(6)(A) explains that a handgun license is an acceptable form of identification, as provided by Texas Business and Commerce Code, §506.001(a). Under Section 506.001(a), a person may not

deny the holder of a handgun license issued by the Texas Department of Public Safety access to goods, services, or facilities, because the holder presents a handgun license rather than a driver's license or other acceptable form of personal identification. The Texas Legislature enacted this provision in H.B. 2739 (2015). In the same legislative session, the Legislature enacted an open-carry law, H.B. 910 (2015), which replaced statutory references to the phrase "concealed handgun license" with the phrase "handgun license." The amendment to §85.405(a)(6)(A) is intended to clarify that a Texas handgun license is permissible for a borrower in a pawn transaction, in addition to other forms of photographic identification listed in Texas Finance Code, §371.174(b). The amendment conforms to the OCCC's advisory bulletin no. B15-3 for pawnshops, "Handgun License as a Valid Form of ID." At the stakeholders meeting, one stakeholder asked whether this amendment refers only to Texas handgun licenses, or includes handgun licenses from other states. In response to this question, the proposed text states that a "Texas handgun license issued under Texas Government Code, Chapter 411" is an acceptable form of identification, in order to clarify that this provision refers only to Texas handgun licenses issued by the Texas Department of Public Safety.

Proposed amendments to §85.413 relate to disclosures for consumer complaints about lost or damaged goods. A new figure is proposed to replace current figure 7 TAC §85.413(e)(6), which is a disclosure about the complaint process for lost or damaged goods. The new figure removes the current figure's statement that the pawnshop must provide a copy of the OCCC complaint form to the consumer, and replaces it with a statement explaining that the consumer may file a complaint through the OCCC's

website. The new figure also includes updated contact information for the OCCC. Corresponding changes are proposed to §85.413(h). Currently, subsection (h) provides that the pawnshop must provide a copy of the OCCC complaint form upon request by a person attempting to redeem pledged goods, and figure 7 TAC §85.413(h) contains a copy of the OCCC's complaint form. The amendments to subsection (h) replace these provisions with a statement that a person attempting to redeem lost or damaged goods may file a written complaint with the OCCC, and a statement that the complaint form is available on the OCCC's website. These amendments are intended to ensure that consumers receive disclosures with up-to-date OCCC contact information, and that consumers are encouraged to file any complaints through the OCCC's website.

A proposed amendment to §85.420(b)(2) clarifies hold-period requirements for purchase transactions by pawnshops. Generally, pawnshops are required to hold purchased items for at least 20 days, under current §85.420(b)(1)(A). However, there is an exception to this general requirement in current §85.420(b)(2), which provides that a pawnshop and a law enforcement agency may agree to a hold period of seven days or less if the following conditions are met: (1) information is exchanged electronically, (2) the agreement does not conflict with any local ordinance, and (3) the agreement is submitted to the OCCC in writing. The proposed amendment to §85.420(b)(2) replaces "seven days or less" with "less than 20 days," to clarify that the agreement with the law enforcement agency can be for a period between 7 and 20 days (e.g., a 10-day hold period).

Proposed amendments to §85.423 relate to a notice to consumers about filing complaints with the OCCC. Under current §85.423, pawnshops are generally required to include this notice on the privacy notices that they provide to consumers, unless the pawnshop provides the privacy notice at the same time as the pawn ticket, and the pawn ticket includes a shorter OCCC notice with the agency's phone number. A proposed amendment to §85.423(b) amends the longer OCCC notice to include the OCCC's updated website and e-mail address. In accordance with instructions from the Texas Department of Information Resources, the OCCC has updated its website and e-mail address with the "texas.gov" extension: occc.texas.gov and consumer.complaints@occc.texas.gov. Other revisions have been made to the text of the OCCC notice to provide more clarity to consumers regarding the role of the OCCC in resolving complaints. Previously, this notice has been referenced in the rules as the "Complaints and inquiries notice." To continue the use of the agency's acronym and provide consistency with other rules, this consumer notice has been relabeled as the "OCCC Notice."

Proposed new §85.601 specifies the criminal history information collected by the OCCC, outlines factors the OCCC will consider when reviewing criminal history information, and describes grounds for denial, suspension, and revocation of a pawnshop or pawnshop employee license. This section would replace current §85.601 and §85.602, which are proposed for repeal. Subsection (a) describes the OCCC's collection of criminal history record information from law enforcement agencies. Subsection (b) identifies the criminal history information that the applicant must disclose. Subsection (c) describes the OCCC's denial,

suspension, and revocation based on crimes that are directly related to the licensed occupation of a pawnbroker or pawnshop employee. Subsection (c)(1) lists the types of crimes that the OCCC considers to directly relate to the duties and responsibilities of being a licensee, including the reasons the crimes relate to the occupation, as provided by Texas Occupations Code, §53.025(a). Subsection (c)(2) contains the factors the OCCC will consider in determining whether a criminal offense directly relates to the duties and responsibilities of a licensee, as provided by Texas Occupations Code, §53.022. Subsection (c)(3) provides the mitigating factors the OCCC will consider to determine whether a conviction renders an applicant or licensee unfit, as provided by Texas Occupations Code, §53.023. Subsection (d) describes the OCCC's authority to deny a license application if it does not find that the applicant is of good moral character, or if the applicant does not have the responsibility, character, and fitness to command the confidence of the public, as provided by Texas Finance Code, §371.052(a) and §371.102(b). Subsection (e) explains that the OCCC will revoke a license on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b). Subsection (f) identifies other grounds for denial, suspension, or revocation, including convictions for specific offenses described by statutory provisions cited in the rule.

At the stakeholders meeting, two stakeholders expressed concern about new §85.601's provisions regarding denial of a license application when the applicant provides incomplete or inaccurate

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information on the application. One stakeholder asked whether providing incomplete or inaccurate information would constitute the criminal offense of "filing a false government report" for purposes of proposed §85.601(c)(1)(F). To clarify, the list of directly related offenses in proposed §85.601(c)(1) refers to criminal offenses for which the applicant has been convicted. Providing incomplete or inaccurate information to the OCCC would not constitute an offense under §85.601(c)(1) unless the applicant is actually convicted of an offense in connection with the application. However, providing incomplete or inaccurate information might be a separate basis for denying the application, as specified in §85.601(f)(4). Another stakeholder asked whether the OCCC would continue its policy of providing applicants an opportunity to respond when the OCCC finds that the license application contains incomplete information regarding criminal history. After an applicant files an application, if the OCCC finds criminal history that relates to the occupation or the applicant's moral character, the agency's policy is to send a letter to the applicant providing an opportunity to explain the criminal history. The OCCC intends to continue this policy. However, applicants still have a responsibility to ensure that applications are complete and accurate at the time of submission, so that the OCCC can review applications in a timely and efficient manner. Submitting an incomplete or inaccurate license application reflects negatively on the applicant's responsibility, character, and fitness to hold a license.

Proposed amendments to §85.702(b) include technical corrections relating to the administrative penalty for violating the acceptance of goods provisions in §85.418(a). One amendment replaces

"items" with "item," to clarify that a licensee commits a violation by accepting an item in violation of the acceptance of goods provisions. Another proposed amendment replaces "and" with "or," to clarify that a licensee is subject to a penalty if the licensee violates §85.418(a)(1) or (3).

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the amendments, new rules, and repeals are in effect, there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn has also determined that for each year of the first five years the amendments, new rules, and repeals are in effect, the public benefit anticipated as a result of the rule changes will be that the commission's rules will be more easily understood by licensees required to comply with the rules, and will be more easily enforced. In particular, the rules being repealed and replaced with new, reorganized rules will provide more guidance and clarity to licensees.

Additional economic costs may be incurred in order for licensees to comply with this proposal. The agency anticipates that any costs resulting from the proposal would be minimal, and would involve providing the amended disclosure for lost or damaged goods under §85.413, and providing the amended complaint notice under §85.423.

The OCCC believes that the proposed amendments to §85.413 and §85.423 are necessary so that consumers and pawnshops will have the most current contact information for the OCCC, as well as readily available information for consumers

explaining how they can file a complaint with the OCCC.

For pawnshops that are required to provide the amended disclosure for lost or damaged goods under §85.413, the anticipated costs would include the cost of producing new forms. The agency anticipates that this cost will be minimal for most licensees. The amended disclosure is required only in transactions where a good is lost or stolen and the consumer attempts or offers to redeem, extend, or renew the transaction, as provided by §85.413(e)(6). For most pawnshops, this will be a small number of transactions. In addition, the cost of providing the updated form will be partially offset by the proposed amendment to §85.413(h), which removes the requirement that the pawnshop provide a copy of the OCCC complaint form.

There may also be some costs for pawnshops that are required to provide the amended OCCC complaint notice under §85.423. Overall, the agency anticipates that any costs involved to comply with proposed amendments to §85.423 will be minimal for most licensees. There are several methods by which licensees can comply with amended §85.423. If a licensee provides a privacy notice that includes the current OCCC notice, then it may replace the current OCCC notice with the amended notice. Under this method, the anticipated costs would include the costs associated with producing new forms, and costs attributable to the loss of obsolete forms inventory. The OCCC anticipates that these costs will not exceed \$0.10 per form. Alternatively, if a licensee provides the privacy notice at the same time as the pawn ticket, and the pawn ticket includes the shorter OCCC notice with the agency's phone number, then the licensee may omit

the longer OCCC notice from the privacy notice, as provided by §85.423(b)(4). Under this method, there should not be any costs of complying with amended §85.423, because the licensee is not required to use the amended notice.

In order to obtain more complete information, the agency would like to invite comments from licensees on any costs involved to comply with the proposed amendments to §85.413 and §85.423, as well as any alternatives to lessen those costs while achieving the purposes of the proposed amendments. The agency is considering a delayed implementation date for use of the revised forms, which will help minimize potential costs and allow use of current forms inventory. In particular, the agency is considering a possible implementation date of March 1, 2017, for the proposed amendments to §85.413 and §85.423, and invites comments on this issue.

Other than the proposed amendments to new §85.413 and §85.423, there is no anticipated cost to persons who are required to comply with the rule changes as proposed. The Department of Defense's MLA Rule requires pawnshops to provide the disclosures described in the proposed amendments to §85.402(h) and §85.405(a)(2). In addition, Texas Finance Code, §371.152 requires pawnshops to maintain transaction records for two years from the date of the last recorded event. Any costs of complying with the proposed amendments to §85.402(h) and §85.405(a)(2) are imposed by state and federal law, and are not imposed by the proposed amendments.

The agency is not aware of any adverse economic effect on small businesses as compared to the effect on large businesses

resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule changes, the agency invites comments from interested stakeholders and the public on any economic impact on small businesses, as well as any alternative methods of achieving the purpose of this proposal if the economic effect is adverse to small businesses. Aside from the previously outlined costs to provide the amended disclosure for lost or damaged goods under §85.413, and the costs of providing the amended complaint notice under §85.423, there will be no other effect on individuals required to comply with the rule changes as proposed.

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

The rule changes are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §371.006 grants the Finance Commission the authority to adopt rules to enforce the Texas Pawnshop Act. The proposed amendment to §85.420 is proposed under Texas Finance Code, §371.181(b), which provides that the commission shall adopt rules allowing a pawnshop to assist law

enforcement agencies in locating and recovering stolen property. The proposed amendments to §85.423 are proposed under Texas Finance Code, §11.307(b), which provides that the commission shall adopt rules requiring regulated entities to include complaint notices on legally required privacy notices.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 11 and 371.

§85.102. Definitions.

Words and terms used in this subchapter that are defined in Texas Finance Code, Chapter 371, have the same meanings as defined in that chapter unless the context clearly indicates otherwise. The following words and terms, when used in this subchapter, will have the following meanings unless the context clearly indicates otherwise.

(1) - (8) (No change.)

(9) Parent entity--A direct owner of a licensee or applicant.

(10) [~~9~~] Pawnbroker--A person who has an ownership interest in a pawnshop as shown in an application for a pawnshop license filed with the OCCC. When general duties and prohibitions are described, pawnbroker also includes a pawnshop employee unless the context indicates otherwise.

(11) [~~10~~] Pledged goods--Tangible personal property held by a pawnbroker as collateral for a pawn loan and that has not become the property of the pawnbroker by a taking into inventory due to non-payment of the loan.

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(12) [(11)] Principal party--An adult individual with a substantial relationship to the proposed business of the applicant. The following individuals are principal parties:

(A) a proprietor [~~proprietors, including spouses with community property interest~~];

(B) - (I) (No change.)

§85.104. Renewal Dates of Licenses

(a) (No change.)

(b) Notice of delinquency. If a pawnshop or pawnshop employee does not pay the annual fees by June 1, a written notice of delinquency will be sent by June 15.

(1) If a pawnshop has provided a master file e-mail address to the OCCC, then the OCCC will:

(A) send any notice of delinquency for the pawnshop to the master file e-mail address on file for the pawnshop; and

(B) send any notice of delinquency for an employee of the pawnshop to the employee through the master file e-mail address on file for the pawnshop.

(2) If a pawnshop has not provided a master file e-mail address to the OCCC, then the OCCC will:

(A) send any notice of delinquency for the pawnshop by mail to the master file address on file for the pawnshop; and

(B) send any notice of delinquency for an employee of the pawnshop to the employee by mail through the master file address on file for the pawnshop.

~~[The notice of delinquency will be delivered as follows:]~~

~~[(1) for pawnshops, the notice will be sent to the address of the corporate office on file for the pawnshop;]~~

~~[(2) for pawnshop employees, the notice will be sent to the employee license holder through the corporate office on file for the licensed entity who employs the pawnshop employee.]~~

(c) Expiration of license. A pawnshop license and a pawnshop employee license will expire on the later of June 30 of each year or the 16th day after the written notice of delinquency is given unless the annual fees for the following term have been paid. To be considered timely paid, the fees must be postmarked or submitted by June 30. June 30 is the end of the license term for each year. For purposes of this subsection and §85.210(d) of this title (relating to License Status), notice of delinquency is given when the OCCC sends the delinquency notice by the method described in subsection (b) of this section.

§85.202. Filing of New Application.

(a) An application for issuance of a new pawnshop license must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats in order to accept approved electronic submissions.

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Appropriate fees must be filed with the application, and the application must include the following:

(1) Required application information. All questions must be answered.

(A) (No change.)

(B) Disclosure of Owners and Principal Parties.

(i) Proprietorships. The applicant must disclose the name of any individual holding an ownership interest in the business and the name of any individual [who owns and who is] responsible for operating the business. If requested, the applicant must also disclose the names of the spouses of these individuals. [All community property interest must also be disclosed. If the business interest is owned by a married individual as separate property, documentation establishing or confirming separate property status must be provided.]

(ii) - (vii) (No change.)

(C) - (J) (No change.)

(2) (No change.)

(b) - (c) (No change.)

§85.205. Transfer of License; New License Application on Transfer of Ownership. {{This section would replace current section 85.205, which will be repealed.}}

(a) Purpose. This section describes the license application requirements when a licensed entity transfers its license or ownership of the entity. If a transfer of ownership occurs, the transferee must submit either a license transfer application

or a new license application on transfer of ownership under this section.

(b) Definitions. The following words and terms, when used in this section, will have the following meanings:

(1) License transfer--A sale, assignment, or transfer of a pawnshop license.

(2) Permission to operate--A temporary authorization from the OCCC, allowing a transferee to operate under a transferor's license while final approval is pending for a license transfer application or a new license application on transfer of ownership.

(3) Transfer of ownership--Any purchase or acquisition of control of a licensed entity (including acquisition by gift, devise, or descent), or a substantial portion of a licensed entity's assets, where a substantial change in management or control of the business occurs. The term does not include a change in proportionate ownership as defined in §85.208 of this title (relating to Change in Form or Proportionate Ownership) or a relocation of pawn transactions from one licensed location to another licensed location, as described by §85.203(g) of this title (relating to Relocation). Transfer of ownership includes the following:

(A) an existing owner of a sole proprietorship relinquishes that owner's entire interest in a license or an entirely new entity has obtained an ownership interest in a sole proprietorship license;

(B) any purchase or acquisition of control of a licensed general partnership, in which a partner relinquishes that owner's

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entire interest or a new general partner obtains an ownership interest;

(C) any change in ownership of a licensed limited partnership interest in which:

(i) a limited partner owning 5% or more relinquishes that owner's entire interest;

(ii) a new limited partner obtains an ownership interest of 5% or more;

(iii) a general partner relinquishes that owner's entire interest; or

(iv) a new general partner obtains an ownership interest (transfer of ownership occurs regardless of the percentage of ownership exchanged of the general partner);

(D) any change in ownership of a licensed corporation in which:

(i) a new stockholder obtains 5% or more of the outstanding voting stock in a privately held corporation;

(ii) an existing stockholder owning 5% or more relinquishes that owner's entire interest in a privately held corporation;

(iii) any purchase or acquisition of control of 51% or more of a company that is the parent or controlling stockholder of a licensed privately held corporation occurs; or

(iv) any stock ownership changes that result in a change of control

(i.e., 51% or more) for a licensed publicly held corporation occur;

(E) any change in the membership interest of a licensed limited liability company:

(i) in which a new member obtains an ownership interest of 5% or more;

(ii) in which an existing member owning 5% or more relinquishes that member's entire interest; or

(iii) in which a purchase or acquisition of control of 51% or more of any company that is the parent or controlling member of a licensed limited liability company occurs;

(F) any transfer of a substantial portion of the assets of a licensed entity under which a new entity controls business at a licensed location; and

(G) any other purchase or acquisition of control of a licensed entity, or a substantial portion of a licensed entity's assets, where a substantial change in management or control of the business occurs.

(4) Transferee--The entity that controls business at a licensed location after a transfer of ownership.

(5) Transferor--The licensed entity that controls business at a licensed location before a transfer of ownership.

(c) License transfer approval. No pawnshop license may be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance

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Code, §371.070. A license transfer is approved when the OCCC issues its final written approval of a license transfer application.

(d) Timing. No later than 30 days after the event of a transfer of ownership, the transferee must file a complete license transfer application or new license application on transfer of ownership in accordance with subsection (e). A transferee may file an application before this date.

(e) Application requirements.

(1) Generally. This subsection describes the application requirements for a license transfer application or a new license application on transfer of ownership. A transferee must submit the application in a format prescribed by the OCCC. The OCCC may accept prescribed alternative formats to facilitate multistate uniformity of applications or in order to accept approved electronic submissions. The transferee must pay appropriate fees in connection with the application.

(2) Documentation of transfer of ownership. The application must include documentation evidencing the transfer of ownership. The documentation should include one or more of the following:

(A) a copy of the asset purchase agreement when only the assets have been purchased;

(B) a copy of the purchase agreement or other evidence relating to the acquisition of the equity interest of a licensee that has been purchased or otherwise acquired;

(C) any document that transferred ownership by gift, devise, or descent, such as a probated will or a court order; or

(D) any other documentation evidencing the transfer event.

(3) Application information for new licensee. If the transferee does not hold a pawnshop license at the time of the application, then the application must include the information required for new license applications under §85.202 of this title (relating to Filing of New Application). The instructions in §85.202 of this title apply to these filings.

(4) Application information for transferee that holds a license. If the transferee holds a pawnshop license at the time of the application, then the application must include amendments to the transferee's original license application describing the information that is unique to the transfer event, including the Application for Pawnshop License, Application Questionnaire, Disclosure of Owners and Principal Parties, a new Financial Statement, and a lease agreement or proof of ownership, as provided in §85.202 of this title. The instructions in §85.202 of this title apply to these filings. Other information required by §85.202 of this title need not be filed if the information on file with the OCCC is current and valid.

(5) Request for permission to operate. The application may include a request for permission to operate. The request must be in writing and signed by the transferor and transferee. The request must include all of the following:

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(A) a statement by the transferor granting authority to the transferee to operate under the transferor's license while final approval of the application is pending;

(B) an acknowledgement that the transferor and transferee each accept responsibility to any consumer and to the OCCC for any acts performed under the license while the permission to operate is in effect; and

(C) if the application is a new license application on transfer of ownership, an acknowledgement that the transferor will immediately surrender or inactivate its license if the OCCC approves the application.

(f) Permission to operate. If the application described by subsection (e) includes a request for permission to operate and all required information, and the transferee has paid all fees required for the application, then the OCCC may issue a permission to operate to the transferee. A request for permission to operate may be denied even if the application contains all of the required information. The denial of a request for permission to operate does not create a right to a hearing. If the OCCC grants a permission to operate, the transferor must cease operating under the authority of the license. Two companies may not simultaneously operate under a single license. A permission to operate terminates if the OCCC denies an application described by subsection (e).

(g) Transferee's authority to engage in business. If a transferee has filed a complete application including a request for permission to operate as described by subsection (e), by the deadline described by subsection (d), then the transferee may

engage in business as a pawnshop. However, the transferee must immediately cease doing business if the OCCC denies the request for permission to operate or denies the application. If the OCCC denies the application, then the transferee has a right to a hearing on the denial, as provided by §85.206(g) of this title (relating to Processing of Application).

(h) Responsibility.

(1) Responsibility of transferor. Before the transferee begins performing pawnshop activity under a license, the transferor is responsible to any consumer and to the OCCC for all pawnshop activity performed under the license.

(2) Responsibility of transferor and transferee. If a transferee begins performing pawnshop activity under a license before the OCCC's final approval of an application described by subsection (e), then the transferor and transferee are each responsible to any consumer and to the OCCC for activity performed under the license during this period.

(3) Responsibility of transferee. After the OCCC's final approval of an application described by subsection (e), the transferee is responsible to any consumer and to the OCCC for all pawnshop activity performed under the license. The transferee is responsible for any transactions that it purchases from the transferor. In addition, if the transferee receives a license transfer, then the transferee's responsibility includes all activity performed under the license before the license transfer.

§85.206. Processing of Application.

(a) (No change.)

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(b) Application acceptance. An application will not be accepted until it contains the appropriate fees and substantially all of the items required in accordance with §85.202 of this title (relating to Filing of New Application), §85.203 of this title (relating to Relocation), or §85.205 of this title (relating to Transfer of License; New License Application on Transfer of Ownership) as appropriate.

(c) (No change.)

§85.208. Change in Form or Proportionate Ownership.

(a) (No change.)

(b) Merger.

(1) If a licensee is a party to a merger that results in a new or different surviving entity other than the licensee, then the merger is a transfer of ownership, and the licensee must file a license transfer application or a new license application on transfer of ownership [A merger of a licensee is a change of ownership that results in a new or different surviving entity and requires the filing of a transfer application] pursuant to §85.205 of this title (relating to Transfer of License; New License Application on Transfer of Ownership).

(2) If a licensee's parent entity is a party to a merger that [If the merger of the parent entity of a licensee] leads to the creation of a new entity or results in a different surviving parent entity, the licensee must advise the OCCC in writing of the change within 14 calendar days by filing a license amendment and paying the required fees as provided in §85.211 of this title.

(3) Mergers or transfers of other entities with a beneficial interest beyond the parent entity level only require notification within 14 calendar days in accordance with the OCCC's instructions.

(c) Proportionate ownership.

(1) A change in proportionate ownership that results in the exact same owners still owning the business, and does not meet the requirements described in paragraph (2) of this subsection or the requirements of §85.205(b)(3)(D) or (E) [§85.205(a)(4) or (5)] of this title, does not require a transfer. Such a proportionate change in ownership does not require the filing of a license transfer application or a new license application on transfer of ownership, but does require written notification to the OCCC when the cumulative ownership change to a single entity or individual amounts to 5% or greater. This subsection does not apply to a publicly held corporation that has filed with the OCCC the most recent 10K or 10Q filing of the licensee or the publicly held parent corporation, although a license transfer application or a new license application on transfer of ownership may be required under §85.205 of this title.

(2) (No change.)

(d) (No change.)

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

(a) Supplemental information. Upon request, each applicant must provide information supplemental to that contained in the applicant's original application documents.

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(b) Applicant's updates to license application information. Before a license application is approved, an applicant must report to the OCCC any [Any action, fact, or] information that would require a materially different answer than that given in the original license application and that [which] relates to the qualifications for license [must be reported to the commissioner] within 10 business days after the person has knowledge of the [action, fact, or] information.

(c) Licensee's updates to license application information. A licensee must report to the OCCC any information that would require a different answer than that given in the original license application within 30 calendar days after the licensee has knowledge of the information, if the information relates to any of the following:

- (1) the names of principal parties;
- (2) criminal history;
- (3) actions by regulatory agencies; or
- (4) court judgments.

(d) Contact information. Each applicant or licensee 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 licensees to regularly review contact information on file with the OCCC to ensure that it is current and correct.

§85.211. Fees.

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

(d) Fingerprint processing. An applicant must pay a fee to a party designated by the Texas Department of Public Safety for processing fingerprints. The Texas Department of Public Safety and the designated party determine the amount of the fee and whether it is refundable.

(e) [~~d~~] Annual renewal and assessment fees.

(1) - (5) (No change.)

(f) [~~e~~] License amendments. A fee of \$25 must be paid each time a licensee amends a license by inactivating a license, activating an inactive license in a county with a population of less than 250,000, changing the assumed name of the licensee, changing the organizational form or proportionate ownership that results in the exact same individuals or entities still owning the business and does not require a transfer under §85.205(b)(3)(D) or (E) [~~§85.205(a)(4) or (5)~~] of this title (relating to Transfer of License; New License Application on Transfer of Ownership) or §85.208(c)(2) of this title (relating to Change in Form or Proportionate Ownership), providing notification of a new parent entity, or relocating an office in a county with a population of less than 250,000. An activation or relocation in a county with a population of 250,000 or more will require a \$250 investigation fee and other fees as may be required of a new license applicant.

(g) [~~f~~] License duplicates sent by mail. The fee for a license duplicate to be sent by mail is \$10.

(h) Notice of application. [~~g~~] Each applicant for a new or relocated license will pay \$1.00 to the commissioner for each

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notice of application that is required to be mailed.

(i) ~~[(h)]~~ Costs of hearings. The commissioner or administrative law judge may assess the costs of an administrative appeal pursuant to Texas Finance Code, §14.207 for a hearing afforded under §85.206(g) of this title (relating to Processing of Application), including the cost of the administrative law judge, the court reporter, and agency staff representing the OCCC at a hearing. If it is determined that a protest is frivolous or without basis, then the cost associated with the hearing may be assessed solely to the protesting party.

(j) ~~[(i)]~~ Excess payment of fees. Any excess payment of fees received by the commissioner may be held to offset anticipated fees that may be owed by the licensee or applicant.

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

(a) Supplemental information. Upon request, each applicant must provide information supplemental to that contained in the applicant's original application documents.

(b) Applicant's updates to license application information. Before a license application is approved, an applicant must report to the OCCC any ~~[Any action, fact, or]~~ information that would require a materially different answer than that given in the original license application and ~~that~~ ~~[which]~~ relates to the qualifications for license ~~[must be reported to the commissioner]~~ within 10 business days after

the person has knowledge of the ~~[action, fact, or]~~ information.

(c) Licensee's updates to license application information. A licensee must report to the OCCC any information that would require a different answer than that given in the original license application within 30 calendar days after the licensee has knowledge of the information, if the information relates to any of the following:

- (1) the licensee's name;
- (2) criminal history;
- (3) actions by regulatory agencies; or
- (4) court judgments.

(d) Contact information. Each applicant or licensee 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 licensees to regularly review contact information on file with the OCCC to ensure that it is current and correct.

§85.306. Fees.

(a) (No change.)

(b) Fingerprint processing. An applicant must pay a fee to a party designated by the Texas Department of Public Safety for processing fingerprints. The Texas Department of Public Safety and the designated party determine the amount of the fee and whether it is refundable.

(c) ~~[(b)]~~ Annual renewal fees. The annual renewal fee for a pawnshop employee license is \$15. The fee must be

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paid by June 30 each year. A pawnshop employee license will expire on the later of June 30 or the 16th day after the written notice of delinquency is given unless the annual renewal fee has been paid.

(d) [(e)] License amendments. An employee seeking to amend a license by changing the name of the licensee or relocating to another pawnshop is not required to pay an additional fee. Any relocation requires notice to the OCCC in the format prescribed by the commissioner.

(e) [(d)] License duplicates sent by mail. The fee for a license duplicate to be sent by mail is \$10.

(f) [(e)] Cost of hearings. The commissioner or the administrative law judge may assess the cost of an administrative appeal pursuant to Texas Finance Code, §14.207 for a hearing afforded under §85.304(e) of this title (relating to Processing of Application), including the cost of the administrative law judge, the court reporter, and agency staff representing the OCCC at a hearing.

§85.402. Recordkeeping.

(a) - (f) (No change.)

(g) Requirements of electronic recordkeeping system. In an electronic recordkeeping system, the pawn ticket must be a three-part form. Entries made to the top copy of the pawn ticket must be legible and simultaneously reproduced on the remaining parts. The form must provide a perforated stub to be utilized in labeling and identifying pledged goods. Each part of the pawn ticket must be numbered sequentially by the supplier of the pawn ticket form [~~unless the commissioner approves, in writing, an~~

~~alternative method of numbering the pawn ticket]. As an alternative to sequential numbering by the supplier, the licensee may sequentially number each pawn ticket in accordance with written policies and procedures (maintained by the licensee) that ensure the integrity of the numbering system through appropriate management and accounting controls. The stub and the three parts of the pawn ticket must be numbered simultaneously with the same sequential number. The second part of the pawn ticket (law enforcement copy) may be omitted or properly destroyed (i.e., pawn ticket is completely shredded or incinerated) if the pawn and purchase ticket information is exchanged electronically, directly or indirectly, with the primary law enforcement agency in the jurisdiction that the pawnshop is located.~~

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

(h) Military Lending Act records.

(1) A licensee must maintain any record that the licensee obtains under the Department of Defense's Military Lending Act Rule, 32 C.F.R. §232.5, regarding whether a consumer is a covered borrower. The licensee must maintain the record for at least two years after the last recorded event, as provided by subsection (b).

(2) A licensee must maintain any mandatory disclosure to a covered borrower under the Military Lending Act Rule, 32 C.F.R. §232.6. The licensee must maintain the disclosure for at least two years after the last recorded event, as provided by subsection (b).

§85.405. Pawn Transaction.

(a) Pawn Ticket.

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(1) (No change.)

§85.413. *Lost or Damaged Goods.*

(2) Modifications of pawn ticket.

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

(A) (No change.)

(e) Communications with pledgors.

(B) Military Lending Act disclosure. A licensee may modify the pawn ticket to add the mandatory disclosure to a covered borrower under the Department of Defense's Military Lending Act Rule, 32 C.F.R. §232.6. Alternatively, a licensee may provide the mandatory disclosure on a separate form.

(1) - (5) (No change.)

(6) When an attempt or offer to redeem, renew, or extend a pawn transaction is made and it is known or learned that pledged goods have been lost or damaged, the pledgor must accurately be informed of the facts of the situation, the status of the pledged goods, the pawnbroker's responsibility under Texas Finance Code, Chapter 371, and the pledgor's rights under paragraph (5) of this subsection. A model disclosure is provided in the following example.

(C) [(B)] Other changes. Any other changes to the prescribed forms must be approved, in writing, in advance, by the commissioner.

Figure: 7 TAC §85.413(e)(6) **{{See attached figure, which would replace current figure 7 TAC §85.413(e)(6)}}**

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

(6) Identification of pledgor or seller.

(f) - (g) (No change.)

(A) Proper identification. The pledgor must present a proper form of identification at the time of the pawn transaction. For purposes of this paragraph, any form of identification found in Texas Finance Code, §371.174(b) that is either current or has not been expired for more than one year will be considered acceptable. A Texas handgun license issued under Texas Government Code, Chapter 411 is an acceptable form of identification, as provided by Texas Business and Commerce Code, §506.001(a). A pawnbroker is not required to take a photograph of any pledgor or seller for purposes of identification.

(h) Replacement complaints. A person attempting to redeem lost or damaged goods may file a written complaint with the OCCC. [Upon request by the person attempting to redeem pledged goods, a complaint form issued by the commissioner must be provided.] The complaint form is available on the OCCC's website [provided in the following figure]. The OCCC will begin review of a complaint for lost or damaged items upon receipt of the written complaint.

(B) (No change.)

[Figure: 7 TAC §85.413(h)]

(7) (No change.)

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

(b) - (h) (No change.)

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§85.420. *Purchase Transactions.*

- (a) (No change.)
- (b) Hold period.
 - (1) (No change.)

(2) A reduced hold period of less than 20 days [~~seven days or less~~] may be agreed upon by the pawnbroker and the law enforcement agency if the pawn and purchase ticket information is exchanged electronically. The agreement for a reduced hold period must not conflict with any local ordinance and must be submitted to the commissioner in writing by and through the chief local law enforcement officer for the jurisdiction.

§85.423. *OCCC* [~~Complaints and Inquiries~~] *Notice.*

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

(1) The following notice must be given to let consumers know how to file complaints: "For questions or complaints about this pawn loan, contact (insert name of pawnshop) at (insert pawnshop's phone number and, at pawnshop's option, one or more of the following: mailing address, fax number, website, e-mail address). The pawnshop is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the pawnshop, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov.

Email: consumer.complaints@occc.texas.gov." ["The (your name) is (licensed and examined or registered) under the laws of the State of Texas and by state law is subject to regulatory oversight by the Office of Consumer Credit Commissioner. Any consumer wishing to file a complaint against the (your name) should contact: Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207. Telephone No.: 800/538-1579. Fax No.: 512/936-7610. E mail: consumer.complaints@occc.state.tx.us. Website: www.occc.state.tx.us."]

- (2) - (4) (No change.)

§85.601. Denial, Suspension, or Revocation Based on Criminal History. **{{This section would replace current sections 85.601 and 85.602, both of which would be repealed.}}**

(a) Criminal history record information. After an applicant for a pawnshop license or pawnshop employee license submits a complete license application, including all required fingerprints, and pays the fees required by §85.211 of this title (relating to Fees) or §85.306 of this title (relating to Fees), the OCCC will investigate the applicant and any principal parties. The OCCC will obtain criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant's fingerprint submission. The OCCC will continue to receive information on new criminal activity reported after the fingerprints have been initially processed.

(b) Disclosure of criminal history. The applicant must disclose all criminal history information required to file a complete application with the OCCC. Failure to

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provide any information required as part of the application or requested by the OCCC reflects negatively on the belief that the business will be operated lawfully and fairly. The OCCC may request additional criminal history information from the applicant, including the following:

(1) information about arrests, charges, indictments, and convictions of the applicant and any principal parties;

(2) reliable documents or testimony necessary to make a determination under subsection (c), including letters of recommendation from prosecution, law enforcement, and correctional authorities;

(3) proof that the applicant has maintained a record of steady employment, has supported the applicant's dependents, and has otherwise maintained a record of good conduct; and

(4) proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid or are current.

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a pawnshop license or pawnshop employee license, if the applicant or licensee has been convicted of an offense that directly relates to the duties and responsibilities of a licensee under Texas Finance Code, Chapter 371, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Being a pawnbroker or pawnshop employee involves or may involve representations to borrowers and sellers, receiving money from borrowers, collecting due amounts in a legal manner, maintenance

of accounts to make loans and replace lost or damaged goods, and compliance with reporting requirements to governmental agencies relating to certain transactions including firearms. Consequently, the following crimes are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation:

(A) theft (including receiving or concealing stolen property);

(B) assault;

(C) any offense that involves misrepresentation, deceptive practices, or making a false or misleading statement (including fraud or forgery);

(D) any offense that involves breach of trust or other fiduciary duty;

(E) any criminal violation of a statute governing credit transactions or debt collection;

(F) failure to file a government report, filing a false government report, or tampering with a government record;

(G) any greater offense that includes an offense described in subparagraphs (A) - (F) of this paragraph as a lesser included offense;

(H) any offense that involves intent, attempt, aiding, solicitation, or conspiracy to commit an offense described in subparagraphs (A) - (G) of this paragraph.

(2) In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the OCCC will consider the following factors,

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as specified in Texas Occupations Code, §53.022:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensee.

(3) In determining whether a conviction for a crime renders an applicant or a licensee unfit to be a licensee, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.023:

(A) the extent and nature of the person's past criminal activity;

(B) the age of the person when the crime was committed;

(C) the amount of time that has elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person before and after the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release, or following

the criminal activity if no time was served; and

(F) evidence of the person's current circumstances relating to fitness to hold a license, which may include letters of recommendation from one or more of the following:

(i) prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;

(ii) the sheriff or chief of police in the community where the person resides; and

(iii) other persons in contact with the convicted person.

(d) Crimes related to moral character and fitness.

(1) The OCCC may deny a pawnshop license application if the applicant is not of good moral character, if the applicant does not show that the business will be operated lawfully and fairly, or if the applicant does not show that the applicant or the applicant's owners have the financial responsibility, experience, character, and general fitness to command the confidence of the public, as provided by Texas Finance Code, §371.052(a).

(2) The OCCC may deny a pawnshop employee license if the applicant is not of good moral character and good business repute, or if the applicant does not possess the character and general fitness necessary to warrant the belief that the individual will operate the business lawfully and fairly, as provided by Texas Finance Code, §371.102(b).

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(3) In conducting its review of moral character and fitness, the OCCC will consider the criminal history of the applicant and any principal parties. The OCCC considers the offenses described by subsections (c)(1) and (f)(2) of this section to be crimes involving moral character. If the applicant or a principal party has been convicted of an offense described by subsections (c)(1) or (f)(2) of this section, this reflects negatively on an applicant's moral character. The OCCC may deny a license application based on other criminal history of the applicant or its principal parties if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. The OCCC will, however, consider the factors identified in subsection (c)(2)-(3) of this section in its review of moral character and fitness.

(e) Revocation on imprisonment. A license will be revoked on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

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

(1) a conviction for an offense that does not directly relate to the duties and responsibilities of the occupation and that was committed less than five years before

the date of application, as provided by Texas Occupations Code, §53.021(a)(2);

(2) a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42.12, §3g (effective through December 31, 2016), art. 42A.054 (effective January 1, 2017), or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(3)-(4);

(3) a conviction of a pawnshop licensee or a principal party for an offense directly related to the licensed occupation, as provided by Texas Finance Code, §371.251(a)(6);

(4) errors or incomplete information in the license application;

(5) a fact or condition that would have been grounds for denying the license application, and that either did not exist at the time of the application or the OCCC was unaware of at the time of application, as provided by Texas Finance Code, §371.251(a)(3) and §371.255(2);

(6) a finding by the OCCC that the financial responsibility, experience, character, or general fitness of a pawnshop licensee or a principal party do not command the confidence of the public or warrant the belief that the business will be operated lawfully, fairly, and within the purposes of this chapter, as provided by Texas Finance Code, §371.251(a)(7); and

(7) a finding by the OCCC that the moral character, business repute, and general fitness of a pawnshop employee license holder do not warrant belief that the license holder will operate the business lawfully and fairly, as provided by Texas Finance Code, §371.255(3).

§85.702. *Accepting Prohibited Merchandise.*

(a) (No change.)

(b) Individual violations. A pawnbroker or a pawnshop employee found to have taken an item [~~items~~] in violation of §85.418(a)(1) or [~~and~~] (3) of this title (relating to Acceptance of Goods), is subject to the following penalty:

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

(c) - (d) (No change.)

Certification

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

Issued in Austin, Texas on August 19, 2016.

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



Pledgor Disclosure: Lost or Damaged Goods

You have attempted to claim your pledged goods or to renew or extend your loan. Your pledged goods have been lost or damaged by the pawnshop.

- The pawnshop is required to repair or replace your lost or damaged item. Replacements are required to be with a like kind item. Repair of a damaged item shall return the item to the condition in which it was received by the pawnshop. A pawnshop may, but is not required to, offer you a cash settlement as an alternative.
- Do NOT pay the pawnshop until your item or an acceptable replacement item is available. No additional pawn service charge will be added beyond today, when you attempted to redeem, renew, or extend your loan.
- You may file a complaint with the Office of Consumer Credit Commissioner. A complaint form is available at: <http://occc.texas.gov/consumers/complaint-resolution>
- All replacements of pledged goods are subject to review by the Office of Consumer Credit Commissioner if you believe that a review is necessary for an equitable settlement. If you cannot reach a suitable settlement with the pawnshop, you must seek the Commissioner's review before pursuing a remedy in court. If the Commissioner does not approve a replacement before the 91st day after the date the Commissioner receives your complaint concerning the lost or damaged goods, or if you do not accept the Commissioner's determination, you may seek a remedy in court.
- If multiple items are pledged on a single loan, some of the items may be redeemed. The pawnshop may negotiate for a partial payment to redeem the balance of the pledged goods.

Office of Consumer Credit Commissioner

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