

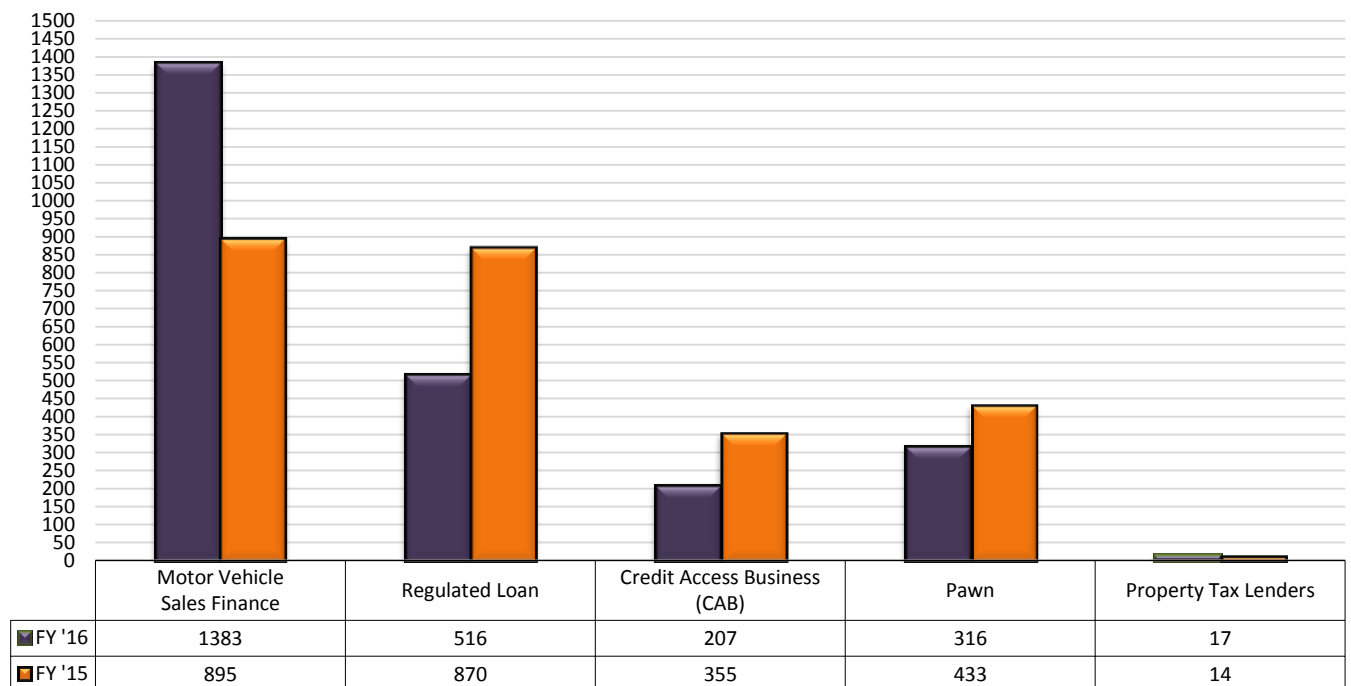


Consumer Protection and Assistance Report

Rudy Aguilar, Director of Consumer Protection

Comparison of examinations conducted for the first eight months of Fiscal Year 2015 (FY '15) and Fiscal Year 2016 (FY '16) are charted below. Recent concentration of effort continues to be in conducting Motor Vehicle Sales Finance (MVSF) examinations. MVSF examinations conducted at the end of April are almost 55% higher in FY '16 than at the same time for FY '15. Examinations conducted in the areas of Credit Access Business (CAB), Pawn, and Regulated Loan is behind the prior year's pace; Property Tax Lenders examinations are slightly ahead of FY '15.

Examinations Conducted: Sept - Apr Fiscal Year Comparison



Classroom training was completed on May 13, 2016 for the six Financial Examiners hired in April. Training for this group of examiners was focused on MVSF and included five weeks of classroom training. This group now moves on to 10 weeks of training in the field. At the conclusion of the 10 week period, these examiners will go through a MVSF exam competency certification process.

The Houston Region Assistant Supervisor position has been filled effective 05/01/16. The position was filled internally through a field examiner promotion.

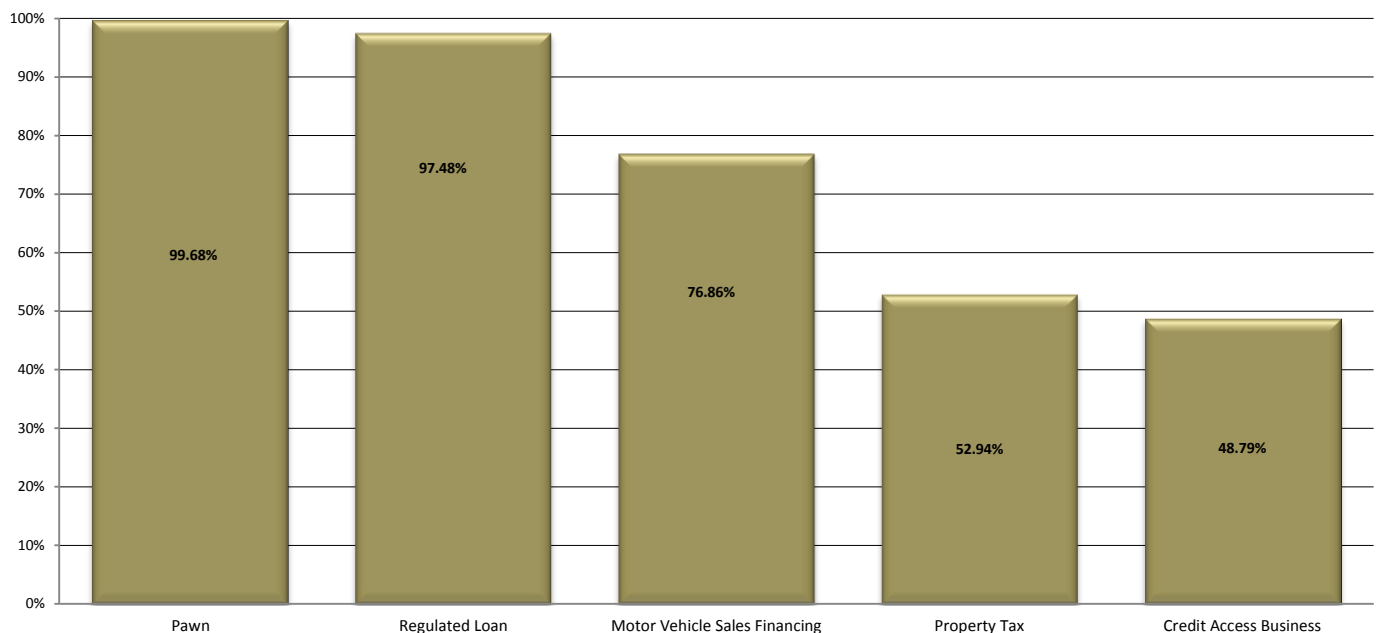
The three remaining field staff vacancies have been filled and the new examiner class will begin training on June 13, 2016. Two of the positions were filled by individuals with previous OCCC experience which should result in a reduced training window before becoming an effective resource.

Sally Ruiz, Customer Service Representative in the Consumer Assistance Section, will be retiring June 30, 2016. Ms. Ruiz is retiring after 17 years and 2 months service with the agency. Her position is in the process of being posted.

The chart below notes the acceptable level of compliance in the five examination areas through April 2016. Pawn, Regulated Loan, and MVSF examinations conducted are within the acceptable level of compliance. Since the prior reporting period, the acceptable level of compliance in the Property Tax and CAB examination area has improved by 19.61% and 18.70% respectively. The levels of compliance for Property Tax and CAB examinations have been affected by our recently adjusted risk based scheduling process. The process uses a more quantitative focused approach which has resulted in resource allocations to some persistent areas of non-compliance.

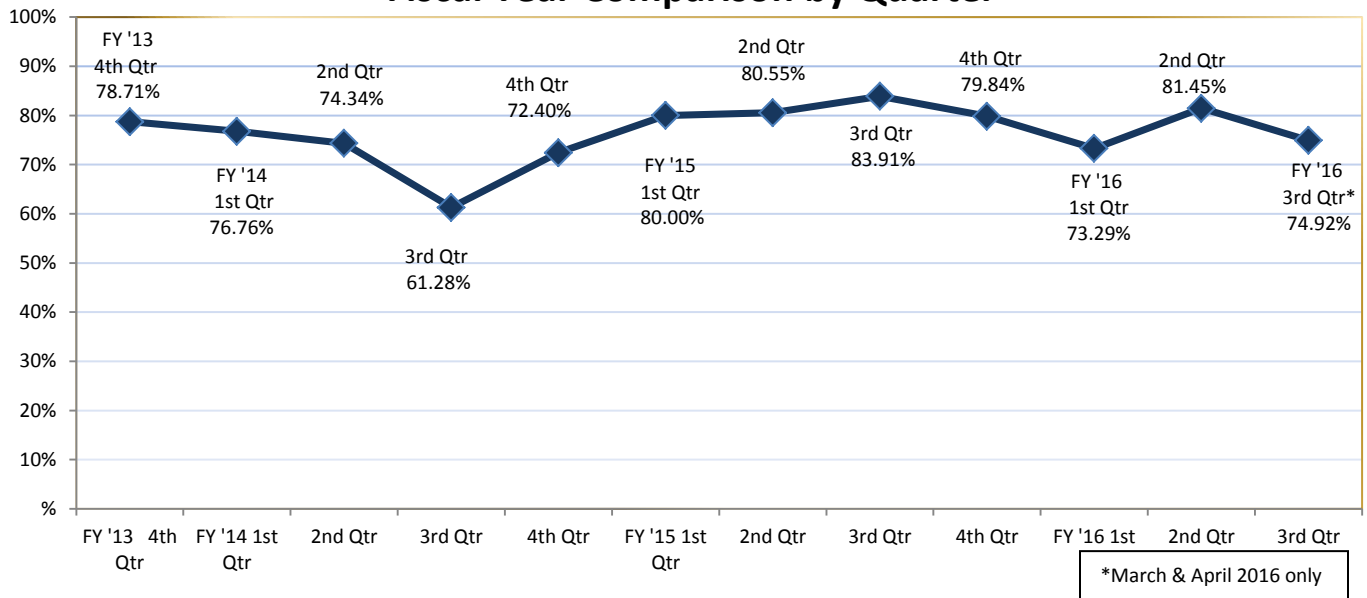
Recently adopted rules have clarified some outstanding issues in Property Tax lending and CAB activities. As we bring licensees into compliance with these rules, the compliance ratings may also be negatively impacted.

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



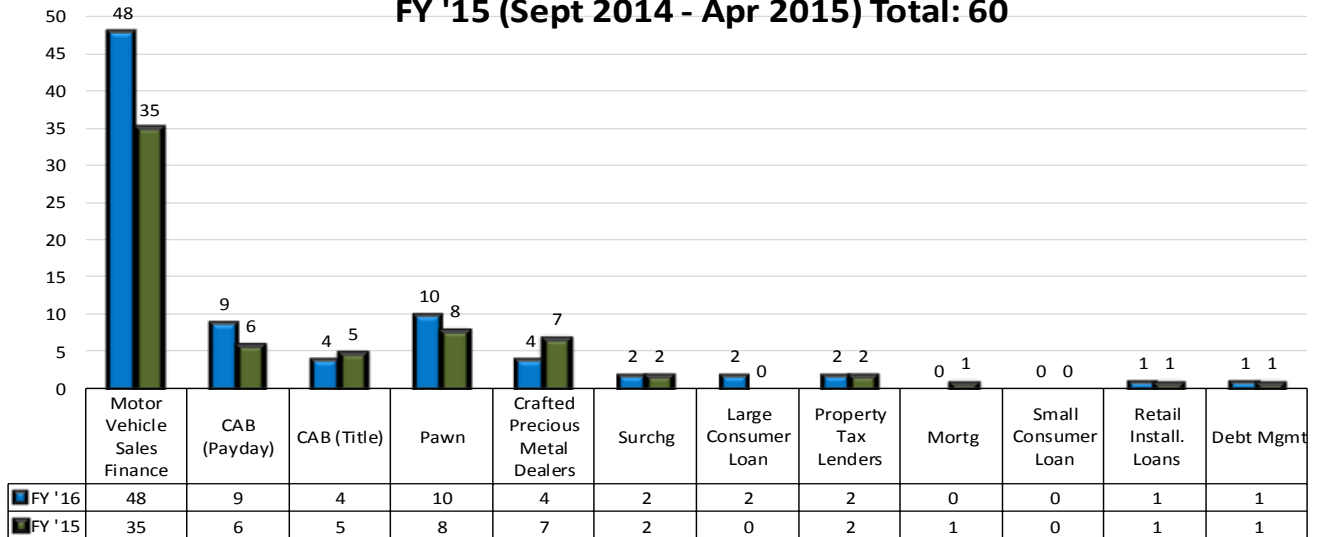
The chart that follows shows a rolling three year comparison of MVSF compliance rates by quarter. Enterprise level examinations in this industry have again had an impact on the acceptable level of compliance. These types of examinations can include more than 50 licensed locations, and, as such, an examination with an unacceptable level of compliance rating is multiplied by the number of licensed locations. Not all related licensed locations fit or benefit from the enterprise approach; however, those that do work out under this approach provide many efficiencies and advantages, but may have an offsetting impact to compliance level ratings.

MVSF: Acceptable Level of Compliance Fiscal Year Comparison by Quarter



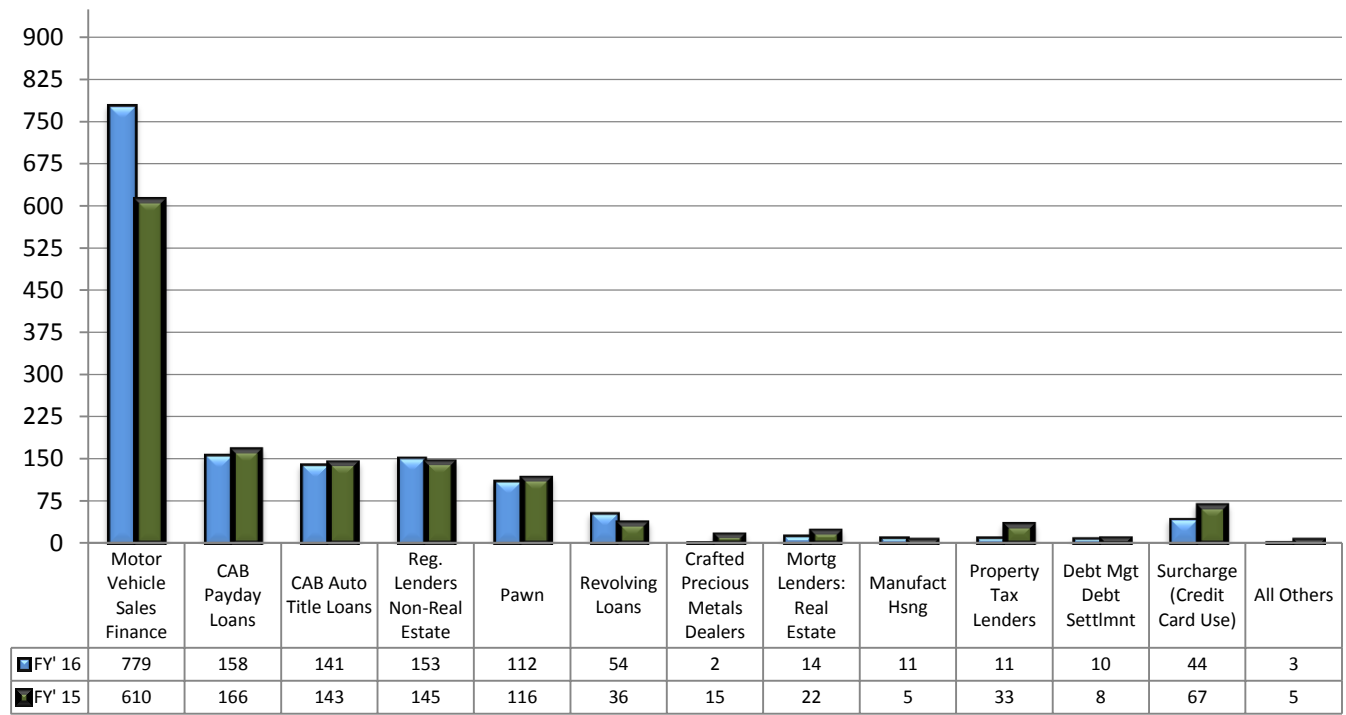
Investigations

Investigations Completed FY '16 (Sept 2015 - Apr 2016) Total: 83 FY '15 (Sept 2014 - Apr 2015) Total: 60



Consumer Assistance

Complaints Processed FY '16 (Sept 2015-Apr 2016) Total: 1,492 FY '15 (Sept 2014-Apr 2015) Total: 1,371



At the end of this reporting period, the highest number of complaints were in the categories of 1) MVSF, (2) CAB, 3) Regulated Lenders Non-Real Estate, and, 4) Pawn.

The largest complaint category was MVSF at 52.21%. The percentage of total complaints for this category is consistent with the previous reporting period which was 51.44%. The MVSF percentage of total complaints has remained. By type, these complaints can be categorized as: repossessions (16%), payment postings/dispute of account balances (13%), consumers wish to rescind contract (13%), issues related to ancillary products and insurance (10%), unlicensed activity (10%), financing conditioned on subsequent assignments (10%), contract issues related to agreed price or terms (7%), title issues (6%), mechanical issues (5%) and charges and fees (2%).

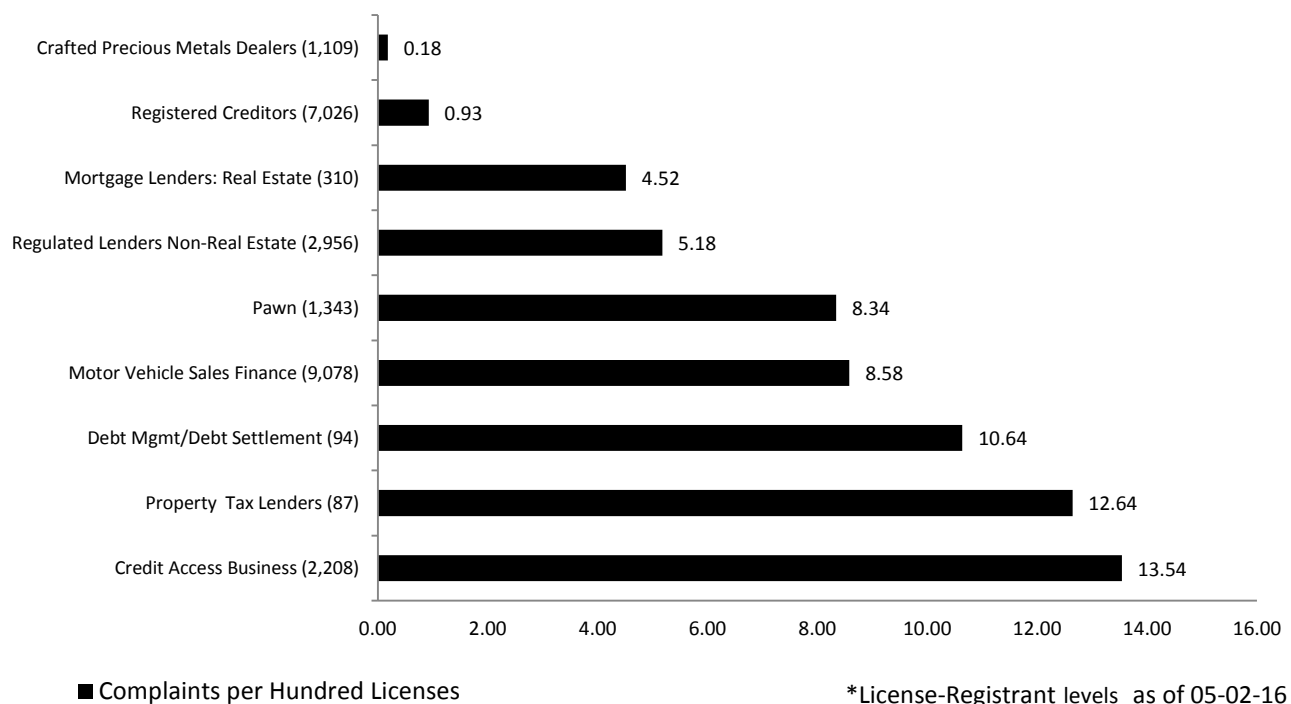
CAB Payday and Auto Title Loan complaints were the second largest category of complaints, collectively being 20.4%. Separately, the percentages of total complaints are at 10.59% for Payday loans and 9.45% for Auto Title loans. CAB payday complaints involved mainly: allegations of improper posting of payments-ACH and dispute of account balances (38%), allegations of ID theft, fraud or scams (16%), allegations that did not apply for loans (9%), collection practices (8%), complaints about fee amounts being charged (7%), issues with staff customer service (6%), and consumers alleging financial hardship and seeking assistance (6%). CAB title loan complaints by type were primarily: allegations of improper posting of payments and balance owed not decreasing (34%), repossessions (15%), charges and fees (15%), release of titles upon payoff (9%), and consumers alleging financial hardship and seeking assistance (8%).

At 10.25% of all complaints processed, Regulated Lenders Non-Real Estate was the third largest category. Primary issues involved allegations of incorrect payoff amount (31%), allegations of abusive collection practices (30%), and issues with staff customer service (9%).

Pawnshop complaints were 7.51% of all processed complaints which made it the fourth largest category. The predominant issues were: replacement of lost/damaged goods (32%), redeeming pawned items (21%), forfeiture of goods (9%), victim assistance in stolen items (7%), monitoring the acceptance of goods (5%) and pawn service charge (4%).

Complaints processed compared to the number of active license or registrant population is noted on the chart below. The highest ratio involved CAB complaints, with Property Tax Lending complaints ratio being the second highest. Debt Management/Debt Settlement and MVSF ratio of complaints to active licenses were third and fourth respectively.

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



CAB Reporting Update

Reports for the 1st quarter of 2016 were filed by 4/30/2016. Presented are selected statistics of January – March (Q1) reports through the years. Consolidation in the industry continues as the number of different stores arranging loans decreased 34% in the last four years. The remaining stores increasingly offer installment loans payable in around six months. These lengthier loans represented 40% of both the new payday and title loans offered during the 1st quarter.

Data Highlights (All Loan Types) Q1 Comparison	2016	2015	2014	2013
Number of new payday loans	489,441	493,761	514,981	572,101
Number of new auto title loans	58,796	68,531	89,707	112,060
Percentage of Payday Loans due in multiple installments	40%	35%	32%	18%
Percentage of Auto Title Loans due in multiple installments	40%	13%	17%	12%
Number of vehicles repossessed under all auto title loans	8,213	9,722	10,693	9,615
Number of locations reporting activity	2,052	2,613	3,078	3,093

Payday Loans Q1	Single Installment		Multiple Installment	
	2016	2015	2016	2015
Number of consumers obtaining loans	214,246	243,309	170,407	152,894
Number of New Loans	296,194	321,217	193,247	172,544
Number of refinances on new loans in the quarter ¹	197,434	233,425	14,460	12,710
Number of total refinances ²	536,275	686,281	65,908	58,329
Average Loan Amount	\$464	\$522	\$565	\$526
Average Fee per \$100 borrowed	\$23.69	\$23.20	\$166.35	\$171.31
Average original term (in days)	17	18	159	160

Title Loans Q1	Single Installment		Multiple Installment	
	2016	2015	2016	2015
Number of consumers obtaining loans	31,561	52,831	21,774	9,031
Number of New Loans	35,424	59,352	23,372	9,179
Number of refinances on new loans in the quarter ¹	21,622	32,978	3,022	1,424
Number of total refinances ²	229,817	369,503	7,676	6,915
Average Loan Amount	\$1,246	\$1,174	\$1,117	\$1,096
Average Fee per \$100 borrowed	\$16.76	\$17.85	\$92.94	\$93.02
Average original term (in days)	30	30	169	161

¹ Refinance activity represents only the renewals occurring in the quarter the loan was originated.

² Refinance activity represents all renewals, including the renewals of loans that originated in prior quarters.



Licensing Report

Mirand Zepeda, Manager

Renewals

Renewal for pawnshops and pawn employees is currently open online and ongoing, with the goal of more than 80% of shops renewing through the online platform, ALECS. The discount rate for pawnshops this year is 15%. As of May 27th, more than 70% of pawnshops have renewed their license, which expires, if not renewed, on July 1. The department anticipates sending fewer renewals through regular mail as more licensees utilize ALECS to complete renewal.

Motor vehicle sales finance renewal will open in June and the department is preparing to provide superior customer service and technical support to licensees. The department forecasts 80% of motor vehicle licensees will renew online.

Applications Processing

The licensing department has reached a significant benchmark by finally meeting the goal of less than 200 pending business applications. Effective use of ALECS, improved processes, and team work are some of the factors that have enabled the department to reach this goal. Additionally, total business applications received is down approximately 25% in March and April. Although the department anticipates receiving a large volume of transfer applications in the near future, reducing pending applications overall makes workload, call volume and a variety of other tasks more manageable, something that will benefit the team and future applicants in the long run.

Pending pawn employee applications are also close to reaching the goal of 300 or less applications pending. Pawn employee renewal may affect these numbers, but a large quantity of anticipated approvals at the beginning of July will lead to a significant drop in pending applications.

With regard to ALECS online accounts, approximately 65% of all licensees have a linked ALECS account, up from 60% in April.

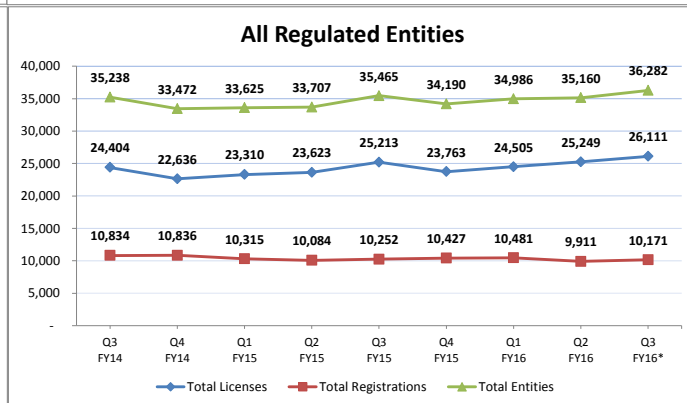
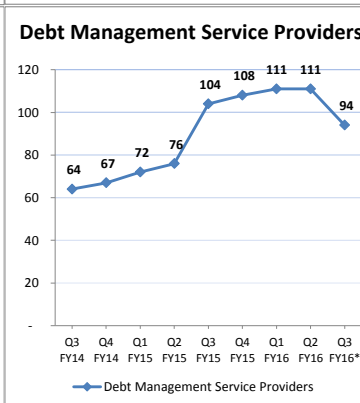
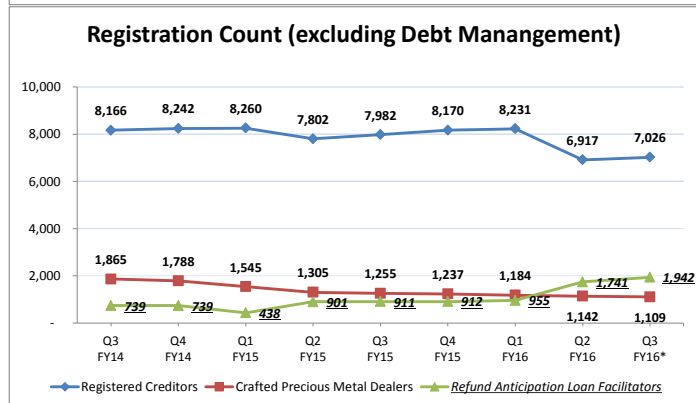
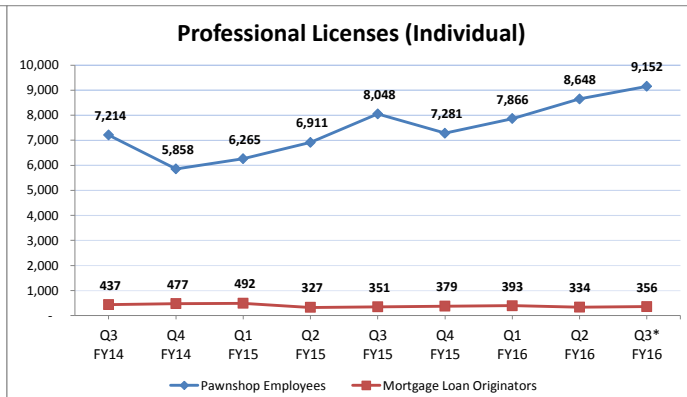
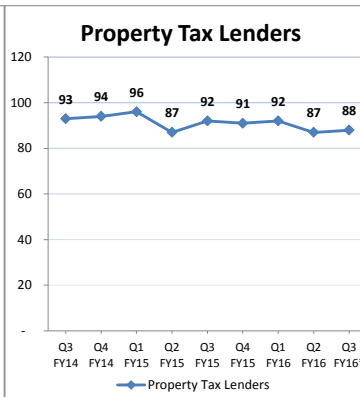
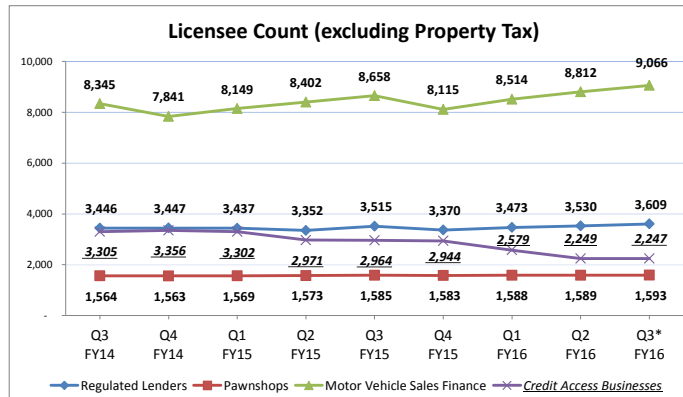
Industry Developments

On April 28, 2016 First Cash Financial Services, Inc. and Cash America International, Inc. announced that they had entered into a definitive merger agreement to combine the two companies. First Cash has 158 pawn licenses and Cash America holds 272 pawn licenses. The combined company, to be known as FirstCash, will have over 2000 locations across four countries. The company will be headquartered in Fort Worth, Texas.

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 quarterly data, as of April 30, 2016.

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





Communications, Human Resources & Administration Report

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

Strategic Planning /Stakeholder Engagement & Communication

On May 19, the agency submitted OCCC's Strategic Plan (Part 1) to the Finance Commission Strategic Planning Committee for review and input. The instructions for completing the agency's strategic plan required a different approach from previous years. This plan focused specifically on agency goals and action plans and how they would support Governor Abbott's five statewide objectives, listed below:

1. Accountable to tax and fee payers of Texas.
2. Efficient such that maximum results are produced with a minimum waste of taxpayer funds, including through the elimination of redundant and non-core functions.
3. Effective in successfully fulfilling core functions, measuring success in achieving performance measures and implementing plans to continuously improve.
4. Providing excellent customer service.
5. Transparent such that agency actions can be understood by any Texan.

A final version of the plan will be presented to the Finance Commission for consideration on June 10, 2016.

Agency staff continue to provide a combination of live presentations and advisory publications to licensees. 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 May 10, 2016 in Austin.

Matthew Nance, Deputy General Counsel, presented an introduction to the OCCC and a litigation update to the Austin Bar Association's Financial Institutions Section on April 26, in Austin.

Huffman Lewis, Financial Examiner, presented at the Dealer Training for the Texas Department of Motor Vehicles on April 20 and 21 in Houston and on May 12, in El Paso.

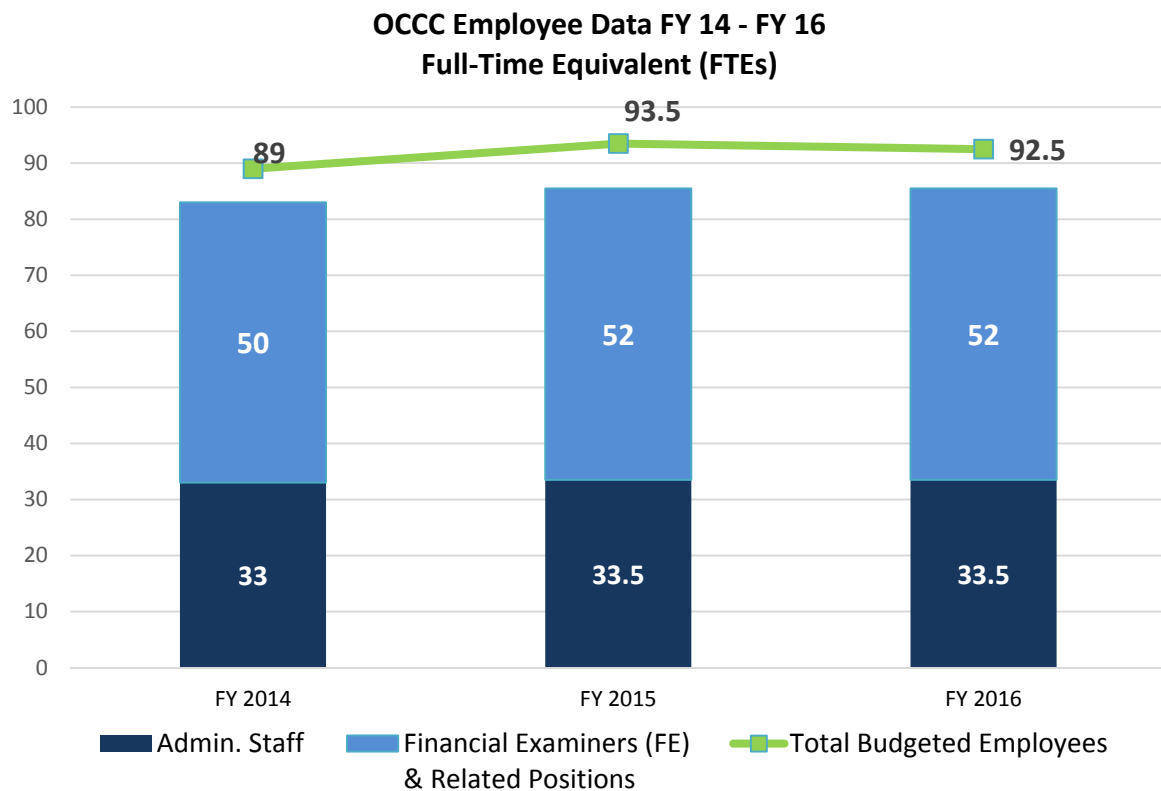
Human Resources

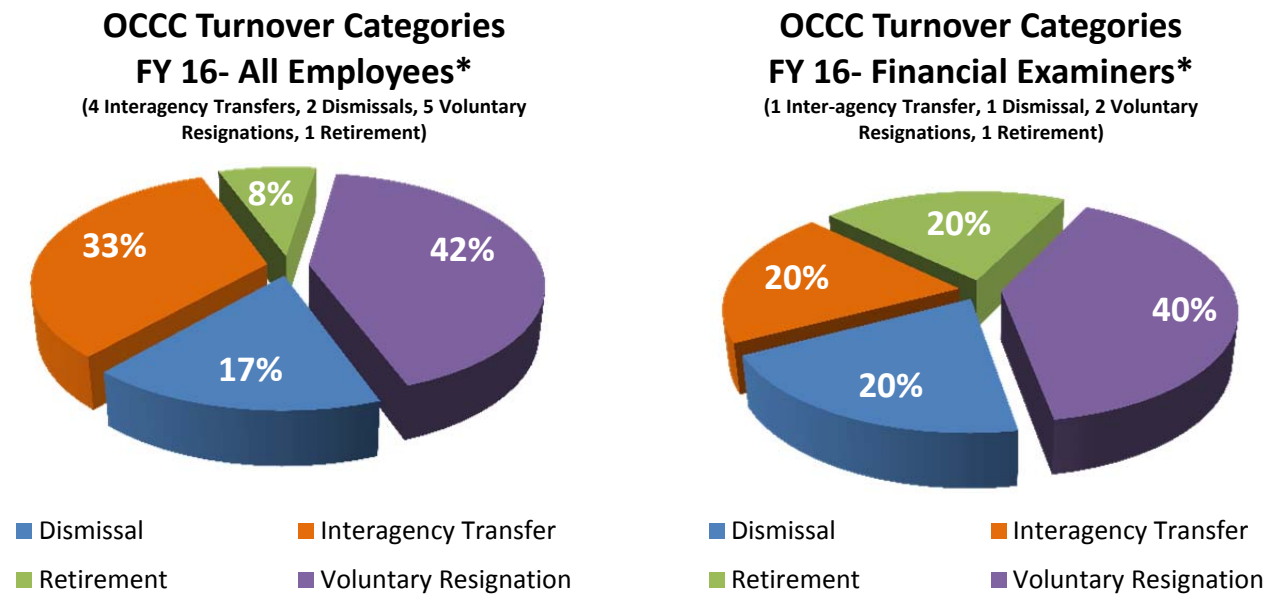
For this reporting period (April-May), the agency had one staff member depart the agency: Administrative Assistant II. However, during this same period, the agency hired a new class of Financial Examiners (six total). Overall, seven positions were filled for this period: (2) Financial Examiners for the Houston Region, (3) Financial Examiners for the Dallas Region, one (1) Financial Examiner for the San Antonio Region. In addition, the agency hired the Financial Literacy & Communications Specialist who has responsibilities for the Texas Financial Education Endowment Grant, allowing the FTE count to hold steady at 85.5 FTEs. The Administrative Assistant II transferred to another state agency. The current

overall turnover ratio is 14.04%. However, when excluding retirement from the overall ratio, the percentage is 12.87% and only 5.85% within the Financial Examiner series.

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

FY 16 Vacancies	
Vacancy	Status
Financial Examiner I – Houston (2 Openings)	Active
Administrative Assistant II – Austin Headquarters (2 Openings)	Active





*September 1, 2015 – May 31, 2015

The Texas Labor Code, Title 5, Subtitle A, Chapter 412, requires the State Office of Risk Management (SORM) to assist state agencies to implement an effective risk management program and to identify the exposures to property and liability losses including workers' compensation losses. On May 31, SORM conducted the Risk Management Program Review (RMPPR) at the OCCC. SORM recommendations were not available at the time this report was prepared.

Financial Literacy

Jessica Salazar, Financial Literacy & Communications Specialist was hired effective May 2, 2016. Current efforts are being focused on training related to providing credit education to consumers.

Ms. Salazar attended the Financial Fitness of Greater Austin (FFGA) Scholarship Award Ceremony on May 18. Discussions are currently being held regarding possible leadership opportunities within FFGA. In addition, she has reached out to several organizations regarding collaboration and speaking opportunities. Catholic Charities of Central Texas, Department of Family Protective Services, and Austin Police Department (APD) Explorers have expressed interest in enhancing financial education for the individuals they serve.



Accounting & IT Reports

Accounting

The department is beginning early budget development preparation. The accounting department has also been providing further detailed accounting reports for other departments and is about to begin work on record retention. New staff members continue to receive more in-depth training on the accounting and leave systems, allowing them to provide effective agency support.

Information Technology-Legacy Modernization

Legacy Modernization

The OCCC signed off on final requirements for the development of the first module of the new compliance application, Online Documentary Fees. The testing module is anticipated to be available during the first week of June. Staff is currently reviewing the final requirements details for Annual/Quarterly Reporting, Consumer Assistance, Investigation and Legal modules and sign off is anticipated to be as scheduled. Development of the Examination module required additional business process engineering and is running two weeks behind schedule.

Security

The agency has upgraded its firewall appliance and installed new intrusion detection software, Sourcefire. This gives the OCCC improved visibility into the network, including applications, services, users and other content to better prevent and control network security issues.

Mobility

The agency is continuing to test features and enhanced functionality available with professional-level tablets, including electronic signatures and imaging, for use by OCCC field examiners. Other alternatives are also being explored which would add improved functionality using auxiliary peripheral devices to augment a standard laptop configuration.



Legal Department Report

Michael Rigby, General Counsel

June 2016

Enforcement Report

Credit Access Business – Quarterly Report

In November 2015, the OCCC assessed an administrative penalty of \$800 against Max Money Enterprises Inc. d/b/a EZMax Loans, et al. for failing to timely file 2015 3rd quarter reports for each of its eight licensed locations. Max Money did not file its 3rd quarter reports on or before October 30, 2015, as required under Tex. Fin. Code § 393.627 and 7 Tex. Admin. Code § 83.5001. Max Money timely requested a hearing on the administrative penalty.

On January 13, 2016, a hearing was held at SOAH before an Administrative Law Judge. On March 9, 2016, the ALJ issued a proposal for decision. The proposal for decision is currently under review by Juan V. Garcia, as the Commissioner's designee.

Pawnshop Employee – Application Denial

In January 2016, the OCCC denied a pawnshop employee license application based on the applicant's criminal history. In 2014, the applicant pleaded guilty to felony burglary and misdemeanor theft. Theft is considered to be a crime of moral character that is directly related to duties and responsibilities of a pawnshop employee.

On February 25, 2016, a hearing was held at SOAH before an Administrative Law Judge. At the hearing, the applicant provided new information regarding his rehabilitation efforts. On April 12, 2016, the ALJ issued a proposal for decision recommending the application be granted. The ALJ held that although the OCCC had clear grounds to deny the application, the applicant's personal circumstances and extensive rehabilitative efforts justified granting the application. After reviewing the proposal for decision, the Commissioner determined that the application should be granted. The pending denial action was closed as moot after the application was granted.

Administrative Rule Report

At the June meeting, the OCCC is presenting four rule actions:

- An adoption of amendments regarding official interpretations and advisory letters, including clarification and technical corrections.
- An adoption of amendments regarding administration, including criminal history information and public information requests.
- A proposal of amendments, new rules, and repeals regarding regulated lenders, including the licensing process and technical corrections.
- A proposal of amendments regarding refund anticipation loans, including the registration process and disclosures.

In addition, the Joint Financial Regulatory Agencies (OCCC, Texas Department of Banking, Texas Department of Savings and Mortgage Lending, and Texas Credit Union Department) are presenting a proposal of amendments to home equity interpretations as a result of rule review. The amendments relate to consumer disclosures, the types of lenders authorized to make home equity loans, and technical corrections.

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

- Amendments regarding pawnshops that would require pawnshops to maintain certain disclosures and records related to the Department of Defense's Military Lending Act Rule, and make other technical corrections and updates.
- 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 May 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 May 31, 2016				
	FYTD 2016	FY 2015	FY 2014	FY 2013
Revocation / Suspension Actions				
Regulated Loan License	1	27	10	3
Pawnshop License	2	2	1	1
Pawnshop Employee License	2	2	1	2
Credit Access Business	2	1	4	0
Motor Vehicle Sales Finance License	8	4	4	3
Property Tax Loan License	0	0	4	0
Crafted Precious Metal Dealer	0	2	0	0

Total Revocation / Suspension Actions	15	38	24	9
Injunction Actions				
Regulated Loan License	0	1	0	1
Pawnshop License	1	0	0	0
Pawnshop Employee License	0	0	0	0
Credit Access Business License	2	1	4	1
Motor Vehicle Sales Finance License	14	12	8	13
Property Tax Loan License	0	1	2	1
Crafted Precious Metal Dealer	0	3	0	0
Registered Creditor (Ch. 345)	1	0	0	1
Debt Management Services (Ch.394)	0	6	1	1
Credit Card Surcharge (Ch. 339)	2	1	0	0
Residential Mortgage Loan Originator	0	0	0	0
Unlicensed Activity – Other Chapters	0	0	2	10
Total Injunction Actions	20	25	17	28
Administrative Penalty Actions				
Regulated Loan License	0	73	121	144
Pawnshop License	38	4	6	9
Pawnshop Employee License	1	4	8	8
Credit Access Business License	89	136	56	52
Motor Vehicle Sales Finance License	88	76	88	112
Property Tax Loan License	3	8	18	12
Crafted Precious Metal Dealer	1	0	1	0
Total Administrative Penalty Actions	220	301	298	337
Application Denial and Protest Actions				
Regulated Loan License	0	0	0	1
Pawnshop License	0	0	0	0
Pawnshop Employee License	7	13	2	25
Credit Access Business License	0	2	0	3
Motor Vehicle Sales Finance License	2	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	9	24	2	35
Total Enforcement Actions Closed	264	388	341	409

From April 1, 2016 to May 31, 2016, the OCCC:

- issued 60 final orders,
- opened 30 cases in order to assess administrative penalties,
- opened 130 cases in order to issue administrative injunctions,
- participated in no contested case hearings, and
- dismissed one contested case hearing.

The OCCC has 2 hearings scheduled between June 1, 2016 and June 30, 2016.

Litigation

Rowell v. Pettijohn:

The Fifth Circuit Court of Appeals has ruled in the OCCC's favor, dismissing a challenge to the constitutionality of the credit card surcharge prohibition in Section 339.001 of the Texas Finance Code. *Rowell v. Pettijohn*, 816 F.3d 73 (5th Cir. Mar. 2, 2016). The plaintiffs argued that the 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 held that the law is a price regulation rather than a speech regulation, and that it is not void for vagueness. 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' deadline to appeal the case to the U.S. Supreme Court is May 31, 2016. The plaintiffs' attorney has stated that the plaintiffs intend to appeal the case by the deadline.

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 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 Second Circuit denied the plaintiffs' motion for rehearing. The plaintiffs filed a petition to appeal 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 Eleventh Circuit denied the State of Florida's motion for rehearing. The state's deadline to appeal the case to the U.S. Supreme Court is 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. filed) (mem. op.). 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.). On September 14, 2015, ACE Cash Express filed a petition for review with the Texas Supreme Court to appeal the case under case number 15-0523. The Texas Supreme Court requested briefs on the merits, and the parties have filed their briefs.

Property Tax Lender TILA Litigation:

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*, No. 14-51326, 2016 U.S. App. LEXIS 7843 (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).

On May 27, the Fifth Circuit denied the plaintiffs' petition for rehearing. The plaintiffs' deadline to appeal the case to the U.S. Supreme Court is August 25, 2016.

Advisory Bulletins

From April 1, 2016 to May 31, 2016, the OCCC issued two advisory bulletins, both related to motor vehicle sales finance.

- Bulletin No. 16-3 describes the OCCC's new system for filing documentary fees through ALECS. The bulletin also explains that the documentary fee amount that does not require a cost analysis will increase to \$150 on June 1.
- Bulletin No. 16-4 describes requirements for deferment charges. The bulletin describes

situations where a written deferment agreement is required and provides examples showing how to calculate the deferment charge disclosed to the buyer.

Interpretation Requests

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

Open Records Requests

From April 1, 2016 to May 31, 2016, the OCCC received 39 requests for information under the Texas Public Information Act, with no referrals to the Office of the Attorney General.

Rule Item/Purpose	Proposal Date	Adoption Date
<p>Interpretations and Advisory Letters - Adopt Amendments (from Rule Review) 7 TAC, Part 1, §1.201</p> <p>To provide clarification, improved grammar, better readability, and technical corrections</p>	04/15/16	Presented for Adoption 06/10/16
<p>Administration - Adopt Amendments (from Rule Review) 7 TAC, Part 5, Chapter 82</p> <p>To update authorized viewers of criminal history information, update public information procedures, clarify the requirements to request a criminal history evaluation letter, clarify the recipients of consumer complaint procedures, and make technical corrections</p>	04/15/16	Presented for Adoption 06/10/16
<p>Tax Refund Anticipation Loans - Adopt Completed Rule Review 7 TAC, Part 5, Chapter 87</p> <p>To adopt the completed rule review under Tex. Gov't Code, §2001.039</p>	Not applicable	Presented for Adoption 06/10/16
<p>Rules for Regulated Lenders - Proposed Amendments, New Rules, & Repeals 7 TAC, Part 5, Chapter 83, Subchapter A</p> <p>To update rules regarding licensing of regulated lenders and to make technical corrections; to provide clarification regarding contact information, transfers, criminal history review, definitions, and recordkeeping</p> <p><i>Precomment draft distributed May 4, 2016</i> <i>Stakeholders meeting held May 20, 2016</i></p>	06/10/16	

Rule Item/Purpose	Proposal Date	Adoption Date
<p>Tax Refund Anticipation Loans - Proposed Amendments & New Rule (from Rule Review) 7 TAC, Part 5, 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>	06/10/16	
<p>Rules for Credit Access Businesses - Amendments 7 TAC, Part 5, 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>	08/19/16	
<p>Rules for Operation of Pawnshops - Amendments 7 TAC, Part 5, Chapter 85, Subchapter A</p> <p>To make technical corrections in compliance with recent state law and federal regulations, and to conform licensing application procedures to other regulated areas</p>	08/19/16	

C. OFFICE OF CONSUMER CREDIT COMMISSIONER

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 1, §1.201, Concerning Interpretations and Advisory Letters, Resulting from Rule Review

PURPOSE: The purpose of the amendments to §1.201 is to implement changes resulting from the commission's review of Part 1, Chapter 1 under Texas Government Code, §2001.039. The changes provide clarification, improved grammar, better readability, and technical corrections.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the amendments to §1.201 without changes as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve the amendments to §1.201.

Title 7. Banking and Securities

Part 1. Finance Commission of Texas

Chapter 1. Consumer Credit Regulation

§1.201. Official Interpretations and Advisory Letters

The Finance Commission of Texas (commission) adopts amendments to §1.201, concerning Interpretations and Advisory Letters.

The commission adopts the amendments without changes to the proposed text as published in the April 29, 2016, issue of the *Texas Register* (41 TexReg 3032).

The commission received no written comments on the proposal.

In general, the purpose of the amendments to §1.201 is to implement changes resulting from the commission's review of Chapter 1 under Texas Government Code, §2001.039. The notice of intention to review 7 TAC, Part 1, Chapter 1 was published in the *Texas Register* on March 11, 2016 (41 TexReg 1980). The agency did not receive any comments on the notice of intention to review.

Overall, the adopted changes provide clarification, improved grammar, better readability, and technical corrections. The purposes of amendments to individual subsections are provided in the following paragraphs.

In subsection (a), the adoption includes a new definition of the term "advisory letter." The definition identifies certain documents that are not advisory letters, such as official interpretations, advisory bulletins, and letters sent in connection with an examination or license application.

In subsection (a), the adoption also amends the definition of "interpretation" to use the term "official interpretation." This reflects the agency's convention of referring to interpretations issued under Texas Finance Code, §14.108 as "official interpretations," and helps avoid confusion with other types of statements that the agency issues. Subsections (a), (b), and (c) contain conforming changes to replace "interpretation" with "official interpretation," and to improve readability and clarity.

In subsection (d), the adoption includes new text for the notice that appears on advisory letters interpreting Texas Finance Code, Title 4, Subtitle A or B. The new text is intended to improve readability and clarity.

The amendments are adopted under Texas Finance Code, §11.304, which authorizes the commission to propose rules to enforce Chapter 14 and Title 4 of the Texas Finance Code. In addition, the adopted amendment to subsection (b)(4) is authorized under Texas Finance Code, §14.107(a), which authorizes the commission to establish reasonable and necessary fees for carrying out the commissioner's powers under Chapter 14.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 14 and Title 4.

§1.201. Official Interpretations and Advisory Letters.

(a) Definitions. The following words and terms, when used in this section, will have the following meanings, unless the context clearly indicates otherwise.

(1) Advisory letter--A letter by the commissioner or an OCCC employee providing an informal advisory response to a question concerning a provision of law. The term does not include:

(A) an official interpretation;

(B) an advisory bulletin addressed to a body of stakeholders;

(C) instructions for submitting required information to the OCCC (e.g., annual report instructions);

(D) a report or study provided to the Texas Legislature or the Finance Commission of Texas; or

(E) a letter sent in connection with an examination, investigation, license or registration application, complaint, or enforcement action.

~~[(1) Advisory letter--A letter by the commissioner or a member of the staff of the Office of Consumer Credit Commissioner providing an informal advisory response to an inquiry concerning provisions of Texas Finance Code, Title 4, Subtitle A or B, and is not an interpretation as defined in paragraph (4) of this subsection.]~~

(2) Agency or OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

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

(4) Official interpretation ~~[Interpretation]~~--A letter issued by the commissioner and approved by the Finance Commission of Texas under ~~[pursuant to]~~ Texas Finance Code, §14.108 interpreting a provision of Texas Finance Code, Title 4, Subtitle A or B in light of ~~[certain]~~ relevant facts provided by a ~~[the]~~ requestor.

(b) Required information for official interpretation request. Any person may submit a request for an official interpretation. All requests must be directed to the commissioner and contain the following items:

(1) Statement requesting official interpretation. The requestor must state explicitly ~~[An explicit statement]~~ that an official interpretation approved by the Finance Commission of Texas is desired.

(2) Description of transaction, facts, and legal issues. The requestor must provide a ~~[A]~~ concise description of the contemplated transaction or activity ~~[contemplated]~~, the legal issue raised, and all facts necessary to reach a conclusion in the matter.

(3) Pending litigation. The requestor must state ~~[A statement]~~ whether, to the best of the requestor's knowledge, the issue to be considered is an issue in pending litigation. Matters in litigation will ordinarily not be answered.

(4) Fee. The agency will charge a \$500 fee ~~[A fee of \$500 will be charged]~~ for an official interpretation to compensate the agency for the expense involved in researching and answering the request. The

ADOPT AMENDMENTS

7 TAC §1.201

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requestor should submit the payment of \$500 ~~[should be submitted]~~ with the request. The agency may ~~[determine and]~~ remit a partial or full refund if deemed appropriate ~~[applicable]~~. The agency may waive the fee.

(5) Additional information. The [A] requestor should ~~[also]~~ identify each provision of law involved, state ~~[and indicate]~~ the requestor's opinion of how the legal issues should be resolved, and state the basis for that opinion, including an analysis of any relevant court decisions or related official interpretations ~~[, as well as, all prior interpretations to which the request relates]~~.

(c) Processing an official interpretation ~~[of]~~ request. Within 10 business days of receiving ~~[receipt of]~~ a valid request under subsection (b), the agency will file ~~[pursuant to this subsection,]~~ the request ~~[will be filed]~~ with the Texas Register for publication. Within 31 calendar days of ~~[Upon]~~ publication in the *Texas Register*, any person ~~[party]~~ may ~~[within 31 calendar days]~~ submit briefs or proposals pertaining to the request.

(1) Official interpretation ~~[Interpretation]~~ not issued. After publication of a valid request for an official interpretation, the agency may decline to issue an official interpretation. A summary of the agency's reasons for deciding not to issue an official interpretation will be published in the *Texas Register*.

(2) Approved official interpretation. If the agency drafts an official interpretation, then the agency will present the official interpretation ~~[The agency may draft an interpretation or a response and present it]~~ to the Finance Commission of Texas for approval ~~[consideration]~~. If the Finance Commission approves the official interpretation, then within ~~[Within]~~ 10 business days of the approval ~~[of an interpretation by the Finance Commission of~~

~~Texas]~~, the agency will file a summary of the official interpretation ~~[will be filed]~~ with the Texas Register for publication. Copies of official interpretations will ~~[shall]~~ contain a statement ~~[notation]~~ of approval and the date of action by the Finance Commission ~~[of Texas]~~.

(d) OCCC advisory letters. If the OCCC sends an advisory letter concerning a provision of Texas Finance Code, Title 4, Subtitle A or B, then the advisory letter will include the following statement: "This advisory letter is not an official interpretation approved by the Finance Commission of Texas. The requirements for requesting an official interpretation are in Title 7, Section 1.201(b) of the Texas Administrative Code." ~~[Each advisory letter issued by the OCCC must contain the following notation: "This advisory letter is not an interpretation approved by the Finance Commission of Texas pursuant to Texas Finance Code, §14.108. If an interpretation approved by the Finance Commission of Texas is desired, then an interpretation should be requested pursuant to the procedures set forth in 7 Texas Administrative Code, §1.201(b)]."~~

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 June 10, 2016.

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

C. OFFICE OF CONSUMER CREDIT COMMISSIONER

3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 5, Chapter 82, Concerning Administration, Resulting from Rule Review

PURPOSE: The purpose of the amendments to these administrative rules is to implement changes resulting from the commission's review of Chapter 82 under Texas Government Code, §2001.039. The amendments update authorized viewers of criminal history information, update public information procedures, clarify the requirements to request a criminal history evaluation letter, clarify the recipients of consumer complaint procedures, and make technical corrections.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the amendments to 7 TAC, Chapter 82 without changes as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve for the amendments to 7 TAC, Chapter 82.

Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 82. Administration
§82.1 - §82.4

The Finance Commission of Texas (commission) adopts amendments to 7 TAC, Chapter 82, concerning Administration. The commission adopts amendments to all four rules contained in Chapter 82: §82.1, concerning Custody of Criminal History Record Information; §82.2, concerning Public Information Requests; Charges; §82.3, concerning request for Criminal History Evaluation Letter; and §82.4, concerning Consumer Complaint Process.

The commission adopts the amendments without changes to the proposed text as published in the April 29, 2016, issue of the *Texas Register* (41 TexReg 3042).

The commission received no written comments on the proposal.

In general, the purpose of the amendments to Chapter 82 is to implement changes resulting from the commission's review of this chapter under Texas Government Code, §2001.039. The notice of intention to review 7 TAC, Chapter 82 was published in the *Texas Register* on March 11, 2016 (41 TexReg 1979). The agency did not receive any comments on the notice of intention to review.

Overall, the adopted amendments update authorized viewers of criminal history information, update public information procedures, clarify the requirements to request a criminal history evaluation letter, clarify the recipients of consumer complaint procedures, and make technical corrections. The individual purposes of the amendments

to each rule are provided in the following paragraphs.

The purpose of the amendments to §82.1 is to update the list of agency employees who have access to criminal history record information, and to make technical corrections that improve readability. The adopted amendments to §82.1 implement Texas Government Code, §411.095, as amended by Senate Bill (SB) 1075 (effective September 1, 2015), relating to criminal history record information obtained by the Office of Consumer Credit Commissioner (OCCC). SB 1075 amended Texas Government Code, §411.095 by adding the following to the list of persons about whom the OCCC can obtain criminal history record information: (1) an employee or volunteer with the OCCC, (2) an applicant for employment with the OCCC, and (3) a contractor or subcontractor of the OCCC.

In §82.1(a), definitions of "commissioner," "criminal history record information," and "OCCC" have been added. In §82.1(b) (former subsection (a)), the provisions referring to the OCCC's use of criminal history record information have been updated to cite Texas Government Code, §411.095. In §82.1(c) (former subsection (b)), the list of agency employees with access to criminal history record information has been updated to include the following employees: the director of strategic communications, administration and planning; and the human resources specialist. These changes reflect the agency's practice. The commissioner has authorized the human resources specialist to

review criminal history record information in evaluating applicants for employment. In addition, the director of strategic communications, administration and planning may review criminal history record information in evaluating employees, applicants for employment, contractors, and subcontractors. Subsection (c) also includes changes to improve readability and conform to the definition of "commissioner."

The purpose of the amendments to §82.2 is to conform the rule to the agency's current public information process, remove obsolete language, and add clarification.

The OCCC has recently transferred its public information duties to the legal department and along with that reorganization, has reviewed and updated its public information procedures.

In subsection (a) of §82.2 concerning definitions, the term defined in paragraph (5) has been updated to match the one used by the Office of the Attorney General (OAG) in 1 TAC §70.2. Accordingly, the OAG term "Standard paper copy" has replaced the term "Standard-size copy" in §82.2(a)(5).

Subsection (b) of §82.2 includes several amendments to provide clarification regarding the initial receipt of public information requests by the OCCC. Subsection (b) has been divided into five paragraphs in order to provide better readability. The former language in §82.2(b) through the phrase "normal business activities" has been retained under new paragraph (1) with the tagline "Generally." The following new closing sentence has been added to adopted §82.2(1) for clarity: "All requests will be processed in accordance with the Texas Public

Information Act, and all requests will be treated equally." The remaining language from former subsection (b) has been relocated into new paragraph (4) "Confidential information," and new paragraph (5) "Fee waiver or reduction."

Two new paragraphs in §82.2(b) relate to requests received via email, and those received by other methods. Adopted new §82.2(b)(2) requires that public information requests submitted via email must be sent to the OCCC's designated public information officer, as authorized by Texas Government Code, §552.301(c). Directing requests for public information submitted via email to the public information officer or designee serves to streamline the agency's public information process, and will ensure that all email requests are handled timely and consistently.

Adopted new §82.2(b)(3) provides the agency's address for requests delivered by mail or hand delivery, and the fax number for requests sent by facsimile. This provision reflects the agency's existing policy for requests received by these methods, providing more clarification in the rule.

Subsection (c) of §82.2 concerning copy and service charges has experienced several revisions to better reflect current agency practice and provide clarity for requestors of public information. Introductory language has been added to subsection (c) citing use of the applicable charges established by the OAG. The adopted amendments to §82.2(c) clarify that the charges outlined are the most common charges the OCCC collects to produce copies of public information, but that they may be supplemented or modified as authorized by the OAG cost rules.

In §82.2(c)(1) and (2), references relating to number of pages have been removed, as the OCCC's updated public information procedures will generally not involve a copy charge per page (unless paper copies are requested). Additionally, the amendments throughout §82.2(c)(1)-(2) better align with the agency's use and requestors' receipt of electronic records.

The adopted amendments to §82.2(c)(1) clarify that no fees will be collected for requests resulting in charges of \$5 or less. This provision is similar to the former language, which states that no fee will be charged for 50 or fewer pages (\$0.10 per page x 50 pages = \$5). However, the new language also reflects that labor time of \$5 or less will also not be collected. It is the OCCC's understanding that most state Texas agencies do not collect fees for requests under a certain minimal dollar amount.

The adopted amendments to §82.2(c)(2) outline the application of charges to requests for public information received by the OCCC. In subparagraph (A), the clarifying phrases "copy charge" and "if paper copies are requested" clarify when \$0.10 per page will be charged. In subparagraph (B) regarding the existing \$15 per hour of personnel time, the amendments specify in more detail that the agency may charge requestors to "locate (including pulling documentation from archives), compile, manipulate (including redacting mandated confidential information), reproduce, and prepare." All of these actions are currently authorized by the OAG and used by the OCCC personnel to prepare public information. The adopted language reflects this policy and provides better clarity to requestors. In addition, the phrase "labor or" has been added before "personnel time," as

these two terms are often used interchangeably.

Adopted new subparagraph (C) in §82.2(c)(2) provides for a 20% overhead charge, calculated by multiplying the total personnel cost by 0.20. This 20% overhead charge is authorized by OAG cost rule 1 TAC §70.3(e). The OCCC has decided to begin charging requestors of public information an overhead charge, as the agency and requestors have shifted more to electronic records. An increasing number of the agency's requests involve manipulation of data into electronic spreadsheets, and the labor involved to compile information from the OCCC's databases can result in significant personnel time. Therefore, the controlling cost factor to produce public information is personnel time, and the resulting 20% overhead charge reflects that time.

Section 82.2(c)(3) related to requests for not readily available information has been deleted. While the cited OAG regulation is still valid and available should the agency need it, the OCCC believes it is no longer necessary to include in the agency's rule.

Since the adoption of this provision, the OCCC no longer maintains information at a remote storage location (aside from records stored at the Texas State Library and Archives Commission). In addition to increased digital storage of agency records, the OCCC has implemented an online license application system, where applicants upload documents directly to web-based cloud storage. The OCCC is currently working on a new IT project to include other agency functions, which will result in cloud storage of more types of agency records. Thus, subsection (c)(3) has been deleted as access to remote storage will become less

relevant to OCCC records. As a result of this deletion, the remaining paragraphs have been renumbered accordingly.

Amendments have been adopted in §82.2(c)(4) concerning certification to clarify that in addition to certifying copies, the OCCC also provides certified statements that verify information compiled from the OCCC's records. In addition to the commissioner, the adopted amendments include the option for a designated custodian of records to sign the certification.

In adopted §82.2(c)(4) (former (c)(5)), the term has been updated to match the one used by the OAG in 1 TAC §70.3. Accordingly, the OAG term "Nonstandard copy" has replaced the term "Non-standard-size copy" in §82.2(c)(4).

In §82.2(d)(2) regarding expedited delivery, the adopted amendments clarify that a requestor must ask and the agency must agree to provide public information by overnight delivery service or other expedited delivery. A sentence has been added at the end of the provision to further clarify that the requestor must pay for this service.

Section 82.2(d)(3) has been deleted, as the OCCC will no longer charge for electronic copies of pages that had to be scanned or copied in order to redact confidential information.

In §82.2(e)(2) regarding redaction of confidential information prepared for inspection, references relating to number of pages have been removed and replaced with references to "paper records." The adopted amendments state that if confidential information must be redacted prior to requestor's inspection of paper records, the

agency may charge \$0.10 per page to prepare the redacted pages.

Two new paragraphs in §82.2(e) relate to inspection of records. Adopted new §82.2(e)(3) provides that labor charges may be assessed if production of electronic information requires programming or manipulation of data prior to inspection. Adopted new §82.2(e)(4) states that the OCCC will send a cost estimate should a request for inspection result in charges over \$40. Adopted new §82.2(e)(3) and (4) reflect the agency's existing policy for requests to inspect records, providing more clarification in the rule. As a result of the two new paragraphs, the remaining paragraph has been renumbered accordingly.

Additional changes throughout §82.2 improve readability and clarity, and provide technical corrections.

The purpose of the amendments to §82.3 is to clarify the requirements for requesting a criminal history evaluation letter. The adopted amendments to §82.3 implement Texas Occupations Code, §53.102, which allows a person to request that a licensing authority issue a criminal history evaluation letter regarding the person's eligibility for a license issued by that authority if the person: (1) is enrolled or planning to enroll in an educational program that prepares a person for an initial license or is planning to take an examination for an initial license, and (2) has reason to believe that the person is ineligible for the license due to a conviction or deferred adjudication for a felony or misdemeanor offense.

In §82.3(a), definitions of "agency or OCCC," "commissioner," and "principal party" have been added. In §82.3(b) (former subsection (a)), the provisions relating to the

rule's purpose have been updated for readability and clarity. In §82.3(c) (former subsection (b)), the provisions relating to the rule's applicability have been updated to specify the individuals and business entities that may request the criminal history evaluation letter. The adopted amendments include references to the enrollment and examination requirement in Texas Occupations Code, §53.102(a)(1). In §82.3(d) (former subsection (c)), the provisions regarding required information have been updated to require a description of any educational program that the requestor is planning to enroll in, as well as a description of any examination that the requestor is planning to take. In §82.3(f) (former subsection (e)), the fee provisions have been amended to specify that the requestor must pay a fingerprint-processing fee to a party designated by the Texas Department of Public Safety (DPS), rather than a \$40 fingerprint-processing fee 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 changes throughout §82.3 improve readability and clarity.

The purpose of the amendments to §82.4 is to clarify the requirements for consumer complaints under Texas Finance Code, §14.062. In §82.4(b), a definition of "OCCC" has been added. Adopted new subsection (c) explains that as provided by Texas Finance Code, §14.062(b), the OCCC will provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the OCCC's policies and procedures relating to complaint investigation and resolution. In §82.4(d) (former subsection (c)), the text of the rule has been updated to specify that if

the OCCC receives a complaint from a source other than a person filing the complaint (e.g., another state agency), then the OCCC is not required to send the policies and procedures to the subject of the complaint or the source of the complaint. Additional changes throughout §82.4 improve readability and clarity.

The amendments are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Chapter 14 and Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §14.157 authorizes the commission to adopt rules governing the custody and use of criminal history record information obtained under Texas Finance Code, Chapter 14, Subchapter D. The adopted amendments to §82.2 are authorized under Texas Finance Code, §14.107(a), which authorizes the commission to establish reasonable and necessary fees for carrying out the commissioner's powers under Chapter 14. Additionally, Texas Government Code, §552.230 authorizes governmental bodies to adopt reasonable rules of procedure under which public information may be inspected and copied.

The adopted amendments to §82.3 are authorized by Texas Occupations Code, §53.105, which authorizes a licensing authority to charge a fee for a criminal history evaluation letter, in an amount necessary to cover the cost of administering Texas Occupations Code, Chapter 53, Subchapter D.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 14 and Title 4.

§82.1. Custody of Criminal History Record Information.

(a) Definitions. The following terms, when used in this section, have the following meanings:

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

(2) Criminal history record information--Has the meaning provided by Texas Government Code, §411.082(2).

(3) OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

(b) Use of criminal history record information. The OCCC may obtain criminal history record information under Texas Government Code, §411.095 and Texas Finance Code, Chapter 14, Subchapter D. The OCCC's use of criminal history information is limited to evaluating a person described by Texas Government Code, §411.095(a). All criminal history record information received by the OCCC is confidential and is for the exclusive use of the OCCC. The OCCC may not disclose criminal history record information except as provided by Texas Government Code, §411.095(b).

~~[(a) The use of "criminal history record information," as defined by Texas Government Code, §411.082, obtained or maintained by the Office of Consumer Credit Commissioner (OCCC) pursuant to Texas Finance Code, Chapter 14, Subchapter D, will be limited to assisting the commissioner in determining the character and fitness of an applicant for a license issued by the OCCC or in determining the character and fitness of a current license holder of the OCCC. All criminal history~~

~~record information received by the OCCC is confidential information and is for the exclusive use of the OCCC. Except on court order or as otherwise provided by Texas Finance Code, §14.155, such information may not be disclosed to any person or agency.]~~

(c) Employee access. [(b)] Access to criminal history record information maintained by the OCCC will be limited to the following persons:

(1) the commissioner [Consumer Credit Commissioner];

(2) - (6) (No change.)

(7) the director of strategic communications, administration and planning;

(8) the human resources specialist;

(9) [(7)] any person appointed to act on behalf of or in the stead of any of the above; and

(10) [(8)] any employee of the OCCC who:

(A) [that] requires access to criminal history record information in order to fulfill the employee's duties; and

(B) is [as designated and] approved by the commissioner or the director of consumer protection to view criminal history record information [a party provided in paragraph (1) or (5) of this subsection].

§82.2. Public Information Requests; Charges.

(a) Definitions. The following words and terms, when used in this section, will have the following meanings, unless the context clearly indicates otherwise.

(1) Agency or OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

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

(3) Public information request--A written request made for public information pursuant to Texas Government Code, Chapter 552 (the Texas Public Information Act). Another name for a "public information request" is an "open records request," and these terms may be used synonymously.

(4) Readily available information--Public information that already exists in printed form, or information that is stored electronically, and is ready to be printed or copied without requiring any programming, but not information that is located in two or more separate buildings that are not physically connected with each other or information that is located in a remote storage facility as per Texas Government Code, §552.261.

(5) Standard paper [~~Standard size~~] copy--A printed impression on one side of a piece of paper that measures up to 8 1/2 inches by 14 inches. A piece of paper that is printed on both sides will be counted as two copies.

(b) Receipt of public information request.

(1) Generally. Upon receipt of a written request from a requesting party which clearly identifies the public records requested to be copied or examined pursuant to Texas Government Code, Chapter 552 (the Texas Public Information Act), the agency will make every reasonable effort to provide the information in the manner requested as quickly as possible without disruption of normal business activities. All requests will be processed in accordance with the Texas Public Information Act, and all requests will be treated equally. [~~on condition that information that is confidential by law will not be provided except under court order, Attorney General directive, or other legal process. All inquiries will be treated equally. Fees imposed by this section may be waived or reduced at the discretion of the commissioner as per Texas Government Code, §552.267.~~]

(2) Requests by email directed to OCCC public information officer or designee. Public information requests submitted via email must be sent to the OCCC's designated public information officer.

(3) Requests sent by other methods. Public information requests, other than email requests, may be submitted to the OCCC as follows:

(A) By mail or hand delivery. Submit the request to Public Information Officer, Office of Consumer Credit Commissioner, 2601 N. Lamar Blvd., Austin, TX 78705; or

(B) By fax. Submit the request to 512-936-7610.

(4) Confidential information. Information that is confidential by law will not be provided except under court order, attorney general directive, or other legal process.

(5) Fee waiver or reduction. Fees imposed by this section may be waived or reduced at the discretion of the commissioner as per Texas Government Code, §552.267.

(c) Copy and service charges. The cost to any person requesting copies of public information from the OCCC will be the applicable charges established by the Office of the Attorney General under Title 1, Part 3, Chapter 70 (relating to Cost of Copies of Public Information). This subsection outlines the OCCC's most common charges to produce copies of public information. These charges may be supplemented or modified as authorized by 1 TAC Chapter 70.

(1) Fees not collected [50 pages or fewer]. No fee will be collected [charged] for requests [for 50 or fewer standard size copies of public information] resulting in charges of \$5 or less.

(2) Application of charges. The [More than 50 pages. For standard size copies of more than 50 pages of public information, the] following charges may [will] apply to requests for public information:

(A) \$0.10 copy charge per page if paper copies are requested; [and]

(B) \$15 per hour of labor or personnel time spent to locate (including pulling documentation from archives), compile, manipulate (including redacting

mandated confidential information), reproduce, and prepare [locating, copying, and preparing] the information for delivery or inspection; [and.]

(C) 20% overhead charge, calculated by multiplying the total personnel cost under subparagraph (B) by 0.20.

[~~(3) Not readily available information. For standard size copies of information that is not readily available and that must be retrieved from a separate or remote storage location as per Texas Government Code, §552.261, and regardless of number of pages, a charge of \$15 per hour of personnel time spent driving to and from the storage location or locating, retrieving, and restoring the information may be added to the charges specified by this subsection as per 1 TAC §70.3 (relating to Charges for Providing Copies of Public Information).~~]

(3) [(4)] Certification. If certification of copies as true and accurate from the OCCC's records, or a certified statement verifying information on record with the OCCC is requested, an additional charge of \$5 per certification will be added to the computed fee. The certification will include [A certified statement copy will bear] the signature of the commissioner, or a designated custodian of records for the information being certified, and the OCCC seal.

(4) [(5)] Nonstandard [Non standard size] copies. The cost for nonstandard [non standard size] copies will be determined by reference to any recommended standards promulgated by the Office of the Attorney General, Title 1, Part 3, Chapter 70 (relating to Cost of Copies of Public Information).

(5) ~~[(6)]~~ Cost estimates.

(A) Over \$40. If the anticipated charges under this subsection plus anticipated charges under subsection (d) of this section exceed \$40, the agency will send an estimate outlining the estimated cost to fulfill the request as per Texas Government Code, §552.2615.

(B) Over \$100. If the anticipated charges under this subsection plus anticipated charges under subsection (d) of this section exceed \$100, the agency will send a cost estimate as provided in subparagraph (A) of this paragraph. In addition, the agency may require cash prepayment or bond equal to the total anticipated charges prior to providing copies of the requested information, as per Texas Government Code, §552.263.

(d) Delivery charges.

(1) U.S. mail. When public information is ~~[copies are]~~ required to be mailed, the cost of postage will be added to the computed fee.

(2) Expedited delivery. When a requestor asks and the agency agrees to provide public information ~~[copies are required to be sent]~~ by overnight delivery service or other expedited delivery, the cost of the service will be added to the computed fee unless the requestor arranges to pay the delivery charges directly. The agency is not required to provide expedited delivery without payment for the service.

~~[(3) Email. When copies of more than 50 pages are sent via email, the \$0.10 per page copying charge will not apply except for pages requiring redaction of confidential information.]~~

(e) Inspection of records.

(1) Generally. Records access for purposes of inspection will be by appointment only and will only be available during regular business hours of the agency. If the safety of any public record or the protection of confidential information is at issue, or when a request for inspection would be unduly disruptive to the ongoing business of the office, physical access may be denied and the option of receiving copies at the usual fees will be provided.

(2) Redaction of confidential information from paper records ~~[and more than 50 pages]~~. If confidential information must be redacted prior to a requestor's inspection of paper records ~~[and the request totals more than 50 pages]~~, \$0.10 per page may be charged to prepare the inspection copies containing the remaining public information.

(3) Inspection of electronic information. Labor charges may be assessed if production of the information requires programming or manipulation of data (including redaction). Overhead is not charged.

(4) Over \$40. If a request for inspection would result in charges under Texas Government Code, §552.271 that exceed \$40, the agency will send an estimate outlining the estimated cost to fulfill the request as per Texas Government Code, §552.2615.

(5) ~~[(3)]~~ Over \$100. If a request for inspection would result in charges of over \$100, the agency may require a 50% cash prepayment or a bond equal to the total anticipated charges prior to providing access to the requested information, as per Texas

Government Code, §552.263 and 1 TAC §70.7 (relating to Estimates and Waivers of Public Information Charges).

(f) Agency officer for public information. The commissioner or the commissioner's designee is the agency's officer for public information.

§82.3. Request for Criminal History Evaluation Letter.

(a) Definitions. The following terms, when used in this section, have the following meanings:

(1) Agency or OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

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

(3) Principal party--An individual who would qualify as a principal party as provided by the relevant chapter of this title under which a business entity is considering applying for a license or registration.

(b) [(a)] Purpose [and definitions]. The purpose of this section is to provide the procedures for a potential applicant [a person considering applying for a license from the Office of Consumer Credit Commissioner] to request a criminal history evaluation letter from the OCCC [regarding the person's eligibility for a license] under Texas Occupations Code, Chapter 53, Subchapter D. [This section adopts the words and terms as defined in §82.2 of this title (relating to Public Information Requests; Charges).]

(c) Applicability.

(1) This section applies to an individual who:

(A) is considering applying for a license or registration for which the OCCC may obtain criminal history record information;

(B) is enrolled or planning to enroll in an educational program that prepares the individual for a license or registration, or is planning to take an examination for a license or registration, as provided by Texas Occupations Code, §53.102(a)(1); and

(C) has reason to believe that the individual is ineligible for the license or registration due to a conviction or deferred adjudication for a felony or misdemeanor offense, as provided by Texas Occupations Code, §53.102(a)(2).

(2) This section applies to a business entity that:

(A) is considering applying for a license or registration for which the OCCC may obtain criminal history record information; and

(B) has at least one principal party who:

(i) is enrolled or planning to enroll in an educational program that prepares the principal party for a license or registration, or is planning to take an examination for a license or registration, as provided by Texas Occupations Code, §53.102(a)(1); and

(ii) has reason to believe that the business entity is ineligible for the license or registration due to a conviction or

deferred adjudication for a felony or misdemeanor offense of the principal party, as provided by Texas Occupations Code, §53.102(a)(2).

~~[(b) Applicability. This section applies to all persons, including business entities, considering applying for a license with the agency under Title 4 of the Texas Finance Code. This section also applies to any other licensed business, occupation, or profession requiring a criminal history evaluation assigned to the regulatory authority of the agency under other law.]~~

(d) [(e)] Required information. In order to request [A request for] a criminal history evaluation letter, a person must submit the request [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. The [Appropriate fees must be filed with the request, and the] request must include the following:

(1) a description of any educational program that the requestor is enrolled in or planning to enroll in to prepare for the license or registration;

(2) a description of any examination that the requestor is planning to take for the license or registration;

(3) [(4)] all court documentation relevant to the requestor's criminal history, including:

(A) copies of all court indictments, judgments, and orders against the requestor; and

(B) an explanation of the circumstances and events of the criminal action that led to the arrest, conviction, or sentence;

(4) [(2)] the basis for the requestor's potential ineligibility for a license or registration; and

(5) [(3)] an explanation of [as to] why any potential ineligibility should be disregarded.

(e) [(d)] Business entities. A business entity [Business entities] must provide the information required by subsection (d) [(e) of this section] for the entity and for each principal party. [every individual who would qualify as a principal party if the entity were applying for a license. To determine qualifying principal parties, each business entity requesting a determination under this section should consult the definition of "principal party" located in the respective chapter of this title under which the entity is considering applying for a license.]

(f) [(e)] Processing fees. A requestor must pay a \$75 processing fee to the OCCC for each individual or business entity that is considering applying for a license or registration. The requestor must pay the fee at the time the request is filed. In addition, for each individual potential applicant and each principal party, the requestor 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. [The fees to process a request for a criminal history evaluation letter are \$75 for each entity requestor plus \$40 for fingerprint processing for each

~~individual or principal party included in the criminal history evaluation letter request.]~~

(g) [(f)] Notice of agency determination. Upon completion of the agency's investigation, the agency will notify the requestor of the agency's determination within 90 days of the requestor satisfying all of the agency's requests for information to complete the criminal history evaluation letter request. The determination letter will include the agency's determination on each ground of potential ineligibility.

§82.4. Consumer Complaint Process.

(a) Purpose. The purpose of this section is to clarify the applicability of Texas Finance Code, §14.062, Consumer Information and Complaints.

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

(1) OCCC--The Office of Consumer Credit Commissioner of the State of Texas [~~Generally. This section adopts the words and terms as defined in §82.2 of this title (relating to Public Information Requests; Charges).~~].

(2) Person filing the complaint--An [~~complaint. For purposes of Texas Finance Code, §14.062(b) and (c), "person filing the complaint" means an~~] individual who has sought or is seeking to obtain goods, services, or financing from a commercial entity. This definition applies for purposes of Texas Finance Code, §14.062(b) and (c).

(c) Copy of OCCC policies and procedures. As provided by Texas Finance Code, §14.062(b), the OCCC will provide to the person filing the complaint and to each

person who is a subject of the complaint a copy of the OCCC's policies and procedures relating to complaint investigation and resolution.

(d) Copy [(e) ~~Notice~~] of [OCCC] policies and procedures not required. If [~~When~~] the OCCC receives a complaint from a source other than a person filing the complaint (e.g., another state agency), then [~~"person filing the complaint" as defined in subsection (b)(2) of this section,~~] the OCCC is not required to send the policies and procedures [~~relating to complaint and investigation and resolution~~] to the subject of the complaint or the source of the complaint.

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 June 10, 2016.

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

C. OFFICE OF CONSUMER CREDIT COMMISSIONER

4. Discussion of and Possible Vote to Take Action on the Completed Rule Review of 7 TAC, Part 5, Chapter 87, Concerning Tax Refund Anticipation Loans

PURPOSE: Pursuant to Texas Government Code, §2001.039, the agency has completed the review of 7 TAC, Part 5, Chapter 87. The notice of the review was published in the *Texas Register* as required on May 6, 2016 (41 TexReg 3317). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this chapter continue to exist. As a result of internal review by the agency, the commission has determined that certain revisions are appropriate and necessary. Rule changes to Chapter 87 are being separately presented for proposal.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve and adopt the rule review of Chapter 87, as the reasons for these rules continue to exist.

RECOMMENDED MOTION: I move that we find that the reasons for adopting Chapter 87 continue to exist and that the rules are repropose and readopted.

Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 87. Tax Refund Anticipation Loans

The Finance Commission of Texas (commission) has completed the review of Texas Administrative Code, Title 7, Part 5, Chapter 87, concerning Tax Refund Anticipation Loans. Chapter 87 contains Subchapter A, concerning Registration Procedures. Subchapter A consists of §87.102, concerning Filing of New Application; §87.103, concerning Processing of Application; §87.104, concerning Relocation of Registered Location; §87.105, concerning Fees; §87.106, concerning Applications and Notices as Public Records; and §87.107, concerning Annual Renewal. The rule review was conducted pursuant to Texas Government Code, §2001.039.

Notice of the review of 7 TAC, Part 5, Chapter 87 was published in the *Texas Register* as required on May 6, 2016, (41 TexReg 3317). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this chapter continue to exist.

As a result of internal review by the agency, the commission has determined that certain revisions are appropriate and necessary. The rule changes to Chapter 87 are being concurrently published elsewhere in this issue of the *Texas Register*.

Subject to the proposed rule changes to Chapter 87, the commission finds that the reasons for initially adopting these rules continue to exist, and readopts this chapter in accordance with the requirements of Texas Government Code, §2001.039.

This concludes the review of 7 TAC, Part 5, Chapter 87.

C. OFFICE OF CONSUMER CREDIT COMMISSIONER

5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments, New Rules, and Repeals in 7 TAC, Part 5, Chapter 83, Subchapter A, Concerning Rules for Regulated Lenders

PURPOSE: The purpose of the proposal is to update rules regarding the licensing of regulated lenders, and to make technical corrections. The proposed rule changes relate to the following issues: contact information, transfers, criminal history review, definitions, 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 83, 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 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) proposes amendments to §§83.102, 83.301, 83.302, 83.304, 83.306, 83.310, 83.403, and 83.828; proposes new §83.303 and §83.404; and proposes the repeal of §§83.303, 83.404, and 83.405 in 7 TAC, Chapter 83, Subchapter A, concerning Rules for Regulated Lenders.

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 proposed rule changes relate to the following issues: contact information, transfers, criminal history review, definitions, 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 one informal written precomment. Certain concepts recommended by the precommenter 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 Section 83.102(3), the definition of "amount financed" is proposed to be replaced with a reference to Regulation Z, 12 C.F.R. §1026.18(b). The current rule

contains 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 proposed amendment replaces the current definition with a reference to Regulation Z.

A proposed amendment 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 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 §83.302(1)(E)-(F).

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Section 83.303 is proposed for repeal and replacement with a new rule, with the intent to clarify the requirements when a licensee transfers ownership. Currently, §83.303 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, but it provides two different paths the transferee can take for a transfer of ownership: either an application to transfer the license, or a new license application on transfer of ownership. The amendments outline 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 recommends 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, proposed §83.303(b)(3) states that a transfer of ownership does not include a relocation of regulated transactions from one licensed location to another licensed location.

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, §342.163. 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 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 makes the following recommendations. First, the precommenter recommends against using the phrase "joint and several responsibility," because the precommenter believes that this phrase could lead to confusion. Second, the precommenter recommends against drafting the subsection's paragraphs so that they overlap with each other. Third, the precommenter recommends 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 proposed 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, proposed subsection (h)(2) specifies that the transferor and transferee are each responsible. The agency believes that 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 proposed rule's statement that the transferor is responsible for acts performed during a permission to operate is consistent with the current rule at §83.303(d), which states: "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 are proposed corresponding to proposed new §83.303. Throughout subsections (b) and (c), references have been added to the second path a transferee may take, i.e., a new license application on transfer of ownership.

Proposed 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. Proposed 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. Proposed 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.

A proposed 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. Proposed amendments to §83.310(d) conform the rule to proposed new §83.303 and add numbered paragraphs for clarity.

Proposed 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).

Proposed 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 would replace the current §83.404 and §83.405, 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 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 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.

A proposed 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

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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 proposed 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, a proposed amendment to the recordkeeping rule in §83.828(10)(C) updates a reference to the Texas Department of Public Safety "Driver's Crash Report" form.

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

Commissioner Pettijohn also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the 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 regulated lender licensees.

There is no anticipated cost to persons who are required to comply with the rule changes as proposed. The Department of Defense's Military Lending Act Rule requires lenders to provide the disclosures described in the proposed amendments to

§83.828. Any costs of complying with the proposed amendments to §83.828 are imposed by federal law, and are not imposed by the proposed amendments.

There is no anticipated adverse economic effect on small or micro businesses. There will be no 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, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the proposal 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

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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,~~

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~~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 will replace the current section 83.303, 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 regulated loan license.

(2) Permission to operate--A temporary authorization from the OCC, 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);

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(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, §342.512. 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

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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.

(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; [~~;~~

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(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) [~~(d)~~] 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 would replace sections 83.404 and 83.405, both of which will be 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

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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, 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,

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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 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

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applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. The OCCC will, however, consider the factors identified in subsection (c)(2)-(3) of this section in its review of character and fitness.

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

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

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

(2) a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42.12, §3g, 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 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 proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on June 10, 2016.

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

C. OFFICE OF CONSUMER CREDIT COMMISSIONER

6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments and a New Rule in 7 TAC, Part 5, Chapter 87, Concerning Tax Refund Anticipation Loans, Resulting from Rule Review

PURPOSE: The purpose of the proposal is to implement changes resulting from the commission's review of Chapter 87 under Texas Government Code, §2001.039. The proposed 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 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve for publication and comment 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) proposes amendments and a new rule in 7 TAC, Chapter 87, concerning Tax Refund Anticipation Loans. The commission proposes amendments to §§87.102 - 87.105, and 87.107; and proposes new §87.201.

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 explaining to consumers 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.

Proposed 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" will provide 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 include proposed amendments to replace the use of "commissioner" or "commissioner's" with a reference to the OCCC: §87.103(a)(1) and §87.104.

Proposed 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 current rules in Chapter 87 specify requirements for renewing a registration, they do 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.

Proposed 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.

Proposed amendments to §87.105(a)-(c) amend current 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.

Proposed 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.

Proposed amendments to §87.107(a) conform to other amendments in the proposal. The current 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.

Proposed 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.

Proposed 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).

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

Commissioner Pettijohn also has determined that for each year of the first five years the rule changes are in effect, the public benefit anticipated as a result of the changes will be that the commission's rules will be more easily understood by registrants and more easily enforced. Additionally, proposed new §87.201 will provide notice to consumers regarding how to file a complaint, resulting in the agency's enhanced ability to fulfill its regulatory duty of resolving consumer issues.

Additional economic costs may be incurred in order for registrants to comply with this proposal. The agency anticipates that

any costs resulting from the proposal would be minimal and involve complying with proposed new §87.201, which requires registrants to add the OCCC notice to either their existing privacy notice or existing written disclosure provided to consumers.

The OCCC believes that proposed 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.

For those who will be required to comply with the proposed new rule, the anticipated costs would include the costs associated with adding the notice to existing forms, or producing new forms, and costs attributable to the loss of obsolete forms inventory. 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 compliance date of January 1, 2017, and invites comments on this issue.

Overall, the agency anticipates that any costs involved to comply with proposed new §87.201 will be minimal for most registrants. Registrants are already required under federal law to provide privacy notices, and they are already required to provide cost disclosures under Texas Finance Code, §352.004. There are multiple ways to comply with the proposed 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. For the third option, the agency estimates that costs will not exceed \$0.05 per new page printed.

In order to obtain more complete information, the agency would like to invite comments from registrants on any costs involved to comply proposed new §87.201, as well as any alternatives to lessen those costs while achieving the purpose of the proposed new rule.

Any costs of complying with the proposed amendments to §87.105, concerning Fees, are imposed by the existing statutory requirements, and are not a result of the proposed amendments to this section. Additionally, the proposed amendments solely relate to tax refund anticipation loan facilitators that conduct unregistered business or that fail to timely renew. Thus, for registrants that properly comply with registration requirements, there will be no costs 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 should that effect be adverse to small businesses.

Aside from the previously outlined costs to provide the OCCC notice in proposed §87.201, 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 by 5:00 p.m. central time on or before 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 commission to adopt rules to enforce Chapter 14 and Title 4 of the Texas Finance Code. The rule changes are also proposed under Texas Finance Code, §352.003, which authorizes the commission to prescribe procedures for the registration of tax refund anticipation loan facilitators. Proposed new §87.201 is 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 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 proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on June 10, 2016.

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