

**SELF EVALUATION REPORT
TO
THE SUNSET ADVISORY COMMITTEE**



**OFFICE OF CONSUMER CREDIT
COMMISSIONER**

AUGUST 15, 1999

W. D. Hilton, Jr.,
Chair

Leslie L. Pettijohn
Commissioner

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OFFICE OF CONSUMER CREDIT COMMISSIONER ***Self-Evaluation Report***

The Office of Consumer Credit Commissioner (OCCC) is pleased to submit its self-evaluation report to the Sunset Advisory Commission (Sunset) as part of the review required by the Texas Legislature. The process will provide exciting opportunities and the agency will be happy to provide any additional information or answer any questions that arise as a result of this report and this process. Historically, the process has provided Texas state agencies with valuable insight into streamlining operations and understanding their constituencies. The OCCC believes that the staff and legislative members who will be reviewing agency operations will find that the agency is committed to providing exceptional customer service and valuable assistance to consumers and industry statewide.

I. Key Functions, Powers, and Duties

A. *Provide an overview of the agency's mission, key functions, powers, and duties. Specify which duties are statutory.*

The mission of the OCCC is to regulate the credit industry and educate consumers and creditors to produce a fair, lawful, and healthy credit environment for Texas. The agency's responsibilities are mandated by provisions of the Texas Finance Code. Specifically, the agency regulates non-depository creditors and has general jurisdiction over consumer credit transactions in Texas. The scope of the OCCC's regulatory authority varies depending on the industry. Businesses that advance cash or loan money require a higher degree of regulation than those who sell merchandise on credit. Pawnshops also require a higher degree of regulation and in this industry the employees are licensed as well. The OCCC's regulated responsibilities include a broad range of credit and credit providers:

Legal Entity	Number	Citation
Mortgage Lenders–Home Equity and Second Liens (also secondary mortgage brokers)	1,025	V.T.C.S. art. 5069-3A, Subchapter G
Finance Companies	835	V.T.C.S. art. 5059-3A, Subchapter E
Signature Loan Companies	1,719	V.T.C.S. art. 5059-3A, Subchapter F
Pawnshops	1,542	TEX. FIN. CODE Chapter 371
Pawnshop Employees	6,288	TEX. FIN. CODE Chapter 371
Retail Installment Sales	8,372	TEX. FIN. CODE Chapter 345
Manufactured Home Installments Sales	934	TEX. FIN. CODE Chapter 347
Motor Vehicle Installment Sales	5,381	TEX. FIN. CODE Chapter 348

Beyond performance of regulatory functions, the agency is charged with educating Texas consumers and industry and interpreting the credit laws of the state. The agency's education efforts center around the use of publications and cooperative agreements with other agencies and non-profit organizations. The interpretive authority over Title 4 of the Texas Finance Code authorizes the commissioner to issue interpretations, with approval by the Finance Commission, of the credit statutes. If a creditor complies with the interpretation, the lender may rely on the interpretation as an affirmative defense should the creditor be challenged on the practice.

B. Does the agency's enabling law correctly reflect the agency's mission, key functions, powers, and duties?

Yes. The agency's mission is derived directly from the responsibilities charged by the statutes.

The enabling statutes were modernized in 1997 as a result of an interim committee study charge of the House Financial Institutions Committee. Commissioner Pettijohn was selected by then Financial Institutions Chairman Kenny Marchant to lead the task force that revised the state's credit laws. In that same year, the existing body of governing law was the subject of a nonsubstantive recodification project of the Legislative Council. During the 1999 legislative session, the agency made recommendations for a technical correction bill, which passed, blending and harmonizing the two pieces of 1997 legislation.

C. Please explain why these functions are needed. Are any of these functions required by federal law?

Regulatory—The regulatory functions of this agency are designed to protect Texas consumers from unfair lending practices and to ensure consistent and fair practices among credit providers. The regulatory authority exists primarily for transactions that are for personal, family, or household use, and as a result, OCCC regulation affects almost every citizen in Texas. The agency's primary objective is to ensure that consumer credit transactions are constructed in compliance with the law. The responsibility for promulgation of administrative rules is an integral component to achieving this objective. Additionally, the agency invests resources in assisting industry with guidance at the transactional level. The agency's regulatory actions have led to the return of millions of dollars to consumers statewide. The agency strives to balance its regulatory functions – benefitting both consumers and creditors.

Education—The education function provides a valuable service to Texas consumers and the credit industry. Consumers who understand their credit options and the consequences of their actions are more likely to make better credit decisions and accept the personal responsibility those decisions carry. Also, a consumer who is more informed is less likely to be a victim of predatory lending practices. The education function for the credit industry is extremely beneficial in advising creditors on the proper

compliance methods. This type of education is an effective use of resources in the prevention of compliance problems and often benefits the industry by ensuring transactions conform with the usury laws protecting them from the penalties that these provisions carry.

Interpretation—This statutory authority provides benefits to all financial industries, including depository lenders, by authorizing the commissioner to issue interpretations of the credit laws. The interpretations, if followed by a creditor, provide an affirmative defense in the event of litigation. This process often provides for timely assistance in constructing credit transactions to comply with state law instead of waiting on lengthy court decisions to interpret these very technical and difficult statutes. This duty has been very important to the integrity of Texas credit laws since it was enacted in 1981. (*See attachment 24 relating to interpretation.*)

In its broadest sense, effective enforcement of consumer credit laws must encompass: (1) educating the consumer on how to stay out of trouble; (2) informing the consumer of his legal rights under the law; (3) preventing creditors from abusing consumers; and (4) aiding the aggrieved consumer once he has been injured (*Consumer Credit in the United States*, Report of the National Commission on Consumer Finance, 1972, p. 45).

Most consumer credit laws and the responsibility for their enforcement occur at the state level although there are a few federal laws pertaining to consumer credit transactions (e.g., the federal *Truth-in-Lending Act*, the *Equal Credit Opportunity Act*). The agency requires compliance by its licensees with these laws. The federal government has very limited enforcement capacity of these federal laws and never conducts enforcement actions of state usury law violations.

D. In general, how do other states carry out similar functions?

Almost every state exerts regulatory control over consumer credit transactions. The duties and powers in other states are substantially similar; however, each state seems to be somewhat unique in the authority and administration of their usury laws. A few states have even deregulated all or a portion of their usury statutes. In Texas, however, our usury and lending practice laws have historically remained strong and specifically defined.

Structurally, there is significant organizational diversity in the states' enforcement authority. Some states use a bureau system with a separate department of financial institutions or a separate department of consumer credit, while others have separate agencies. In Texas, having the shared oversight with the Department of Banking and the Savings and Loan Department allows for the operation of the OCCC as part of a common statewide financial focus, thus getting the benefit of the bureau system. The current system also requires direct accountability to the Legislature.

E. Describe any major agency functions that are outsourced.

Information Services—Historically, the agency has been able to recruit individuals on staff who have a willingness to learn and take on this challenge. When home equity lending was passed by the Texas voters, the new operating levels imposed on the agency's information systems made it impossible to have the flexibility to have a person fulfill this role and still perform the primary job function. Attempts to hire personnel failed and a decision was made to outsource this function.

Legal Representation—This function is performed in three ways:

- (1) With in-house counsel;
- (2) With attorney general representation; and
- (3) With private counsel - Private counsel is currently used only to help in the use of rule formulation and promulgation. This contract was awarded with the approval of the Office of the Attorney General and will be completed shortly.

Service Center—The agency shares some administrative functions (mail, copy center, supplies, and delivery) with the Department of Banking. These functions are divided based upon cost and usage and, although not truly outsourced, result in considerable savings for both agencies.

Reception—The agency shares this function with the Savings and Loan Department. This function is divided based upon cost and usage and, although not truly outsourced, results in considerable savings for both agencies.

Other—The agency uses cooperative agreements with other agencies whenever possible. Many of these interagency service agreements are common to state agencies. In particular, the agency relies on General Services Commission (GSC) for telephone, purchasing, and some mail services; the Comptroller of Public Accounts for accounting, property, payroll, and treasury functions; and Texas Department of Public Safety / Federal Bureau of Investigation for criminal history information.

F. Discuss anticipated changes in federal law and outstanding court cases as they impact the agency's key functions.

Federal statutes and regulations directly affect creditors as well as the agency in its regulatory efforts.

The United States Supreme Court has previously held that a national bank may export the lawful interest rate of its state of domicile into a foreign state. The *National Bank Act* expands this precedent by providing state banks with the same authority. Most recently, interpretations implementing the *Reigle-Neal Interstate Banking and Branching Efficiency Act* appear to expand the circumstances under

which a bank may export the laws of one state into another. A recent judicial decision expanding interstate branching to Texas also seems to extend this reach of exportation. The effect of these decisions and their application is that consumer protections which might exist in Texas will not be applicable to a transaction with a Texas citizen with a nexus to another state, such as South Dakota or Delaware, which has little or no regulation. With the globalization of commerce and banking, seamless operation across state borders is certainly appealing; however, the effect to a state's citizens is extensive. This evolution will strike deeply at the issue of states' rights and whether a state can maintain the ability to legislate protections for a citizen within its borders.

G. Please fill in the following chart, listing citations for all state and federal statutes that grant authority to or otherwise significantly impact the agency.

Office of Consumer Credit Commissioner Exhibit 1: Statutes/Attorney General Opinions	
Statutes	
Citation/Title	Authority/Impact on Agency
Texas Constitution, art. XVI, § 11	Provides the Legislature the authority to classify loans and lenders, license and regulate lenders, define interest and fix maximum rates of interest.
Texas Constitution, art. XVI, § 50	Provides the requirements for the encumbrance of a homestead for a loan.
TEX. FIN. CODE, Title 2	Agency's Operating Statute (<i>specifically Chapter 14</i>).
TEX. FIN. CODE, Chapter 301	General Provisions - Interest.
TEX. FIN. CODE, Chapter 302	Interest Rates.
TEX. FIN. CODE, Chapter 303	Optional Interest Rate Ceilings.
TEX. FIN. CODE, Chapter 304	Judgment Interest.
TEX. FIN. CODE, Chapter 305	Penalties and Liabilities.
TEX. FIN. CODE, Chapter 339	Miscellaneous Provisions Relating to Interest.
TEX. FIN. CODE, Chapter 341	General Provisions - Loans and Financed Transactions.
TEX. FIN. CODE, Chapter 342	Certain Cash Advance Loans.
TEX. FIN. CODE, Chapter 343	Installment Loans.
TEX. FIN. CODE, Chapter 344	Secondary Mortgage Loans.
TEX. FIN. CODE, Chapter 345	Retail Installment Sales.

Office of Consumer Credit Commissioner Exhibit 1: Statutes/Attorney General Opinions	
TEX. FIN. CODE, Chapter 346	Revolving Credit Accounts.
TEX. FIN. CODE, Chapter 347	Manufactured Home Credit Transactions.
TEX. FIN. CODE, Chapter 348	Motor Vehicle Installment Sales.
TEX. FIN. CODE, Chapter 349	Penalties and Liabilities.
TEX. FIN. CODE, Chapter 371	<i>Texas Pawnshop Act</i> - Pawnshop Regulations.
Texas Debt Collection Practices Act - TEX. FIN. CODE, Chapter 392	Provides limitations on collection activities, consumer rights, and penalties.
Texas Deceptive Trade Practices Act - TEX. BUS. & CODE, § 17.46 <i>et seq.</i>	Provides general limitations on transactions and representations made during the course of business dealings.
Federal Truth-in-Lending Act - 15 U.S.C.A., § 1601 <i>et seq.</i>	Provides for consumer disclosures in credit transactions.
Federal Equal Credit Opportunity Act - 15 U.S.C.A., § 1691 <i>et seq.</i>	Provides for requirements for non-discriminatory lending practices and appropriate penalties.
Federal Real Estate Settlement Procedures Act - 12 U.S.C.A., § 2601 <i>et seq.</i>	Provides for requirements for real estate secured loan transactions.
Federal Fair Credit Reporting Act - 15 U.S.C.A., § 1681 <i>et seq.</i>	Provides for limitations and procedures surrounding the reporting of credit information by and to credit bureaus.
Federal Fair Debt Collections Practices Act - 15 U.S.C.A., § 1692 <i>et seq.</i>	Provides limitations on third party collection activities, consumer rights, and penalties.
Attorney General Opinions	
Attorney General Opinion No.	Impact on Agency
M-1082	A lender may not use charges from one subchapter when the loan was made under another subchapter.
H-49	A lender may not take possession of collateral as security for a loan unless that lender complies with the provisions of the <i>Texas Pawnshop Act</i> .
H-709	A lender may not finance a mechanical breakdown insurance policy in connection with a motor vehicle installment sales contract.
H-980	Mere failure to deliver pledged collateral is not an offense under TEX. PEN. CODE § 32.33, Hindering a Secured Creditor.

Office of Consumer Credit Commissioner Exhibit 1: Statutes/Attorney General Opinions	
MW-457	A pawnbroker's license may be denied for an applicant who was convicted of crime involving moral turpitude such as robbery.
JM-225	A pawnbroker may not split a set of pawned items in an effort to gain a service charge greater than could be obtained on one transaction.
JM-1269	The <i>Federal Parity Act</i> (12 U.S.C. § 3801 <i>et seq.</i>) does not allow for the preemption of Texas homestead laws.
DM-253	A city may not regulate the outdoor displays and signs of a pawnshop.
DM-332	This letter opines that debt which is subject to a lender's subordination agreement generally is not an applicable liability for the purpose of calculating the pawnshop net assets under V.T.C.S. art. 5069-50.02(g).
DM-495	Authority of a state agency to construe home equity provisions of the Constitution.
LO-98-084	A dishonored check is a debt subject to the <i>Texas Debt Collection Practices Act</i> and the <i>Federal Fair Debt Collection Practices Act</i> .

H. Please fill in the following chart:

Office of Consumer Credit Commissioner Exhibit 2: Agency Contacts			
	Name	Address	Telephone / Fax / E-mail
Agency Head	Leslie L. Pettijohn, Commissioner	2601 N. Lamar Blvd. Austin, TX 78705	PH: (512) 936-7640 FAX: (512) 936-7610 leslie_pettijohn@occc.state.tx.us
Agency's Sunset Liaison	Leslie L. Pettijohn or A. Duane Waddill, Director of Administration	2601 N. Lamar Blvd. Austin, TX 78705	PH: (512) 936-7620 FAX: (512) 936-7610 duane_waddill@occc.state.tx.us

II. History and Major Events

- 1840** The Republic of Texas adopts an *Act to Regulate Interest*. This law structures a basic maximum interest rate of 12%.
- 1869** Adoption of the constitution removes all rate regulation and money lenders are active in Texas.
- 1876** Texas restores interest and usury provisions in the constitution under art. XVI, § 11. In its first session, the Legislature provides appropriate pains and penalties to prevent and punish usury. The 1876 constitutional and legislative definition of interest, after being somewhat refined in 1879, is the same definition of interest as today's statute.
- 1891** Texas reduces the maximum interest rate to 10%.
- 1959** The Texas Legislative Council reports to the Legislature that, "Small loans are the most expensive of all types of loans to make and service." That council recommends Texas enact a small loan law, citing three primary abuses of borrowers: excessive charges, pyramiding of loans, and harassment of borrowers in collection practices.
- 1960** Article XVI, § 11, of the Texas Constitution is amended to authorize the Legislature to classify loans and lenders, license and regulate lenders, define interest, and set maximum rates of interest.
- 1961** Governor Price Daniel asks the Legislative Council to update its report on small consumer loans.
- 1963** The 1960 constitutional amendment leads to the enactment of the *Texas Regulatory Loan Act*, the first statutory regulation of consumer credit in the history of our state. On August 23, 1963, the Office of Regulatory Loan Commissioner is established under the authority of the *Texas Regulatory Loan Act*. The agency has the responsibility for the regulation of two types of consumer loans under \$1,500, and oversight responsibility is given to the Finance Commission. Regulatory authority is very narrow and does not address problems which occur in loan transactions that exceed \$1,500. Additionally, the lending industry aggressively seeks expansion of the maximum limits in order to obtain a greater rate of interest on these loans.
- 1965** Governor John Connally issues a proclamation requesting the Finance Commission study the entire field of consumer credit in the state of Texas with a view toward developing comprehensive legislation which would protect the public from abuses and provide a fair, competitive climate for all lenders of consumer credit.
- 1966** The Finance Commission conducts a series of public hearings to gather information to make a recommendation in response to the governor's proclamation.

1967 The Finance Commission issues a report that recommends the passage of a comprehensive body of laws governing consumer credit transactions. This body of law is passed by the Legislature and becomes known as the *Texas Credit Code*.

With the enactment of the *Texas Credit Code* by the Legislature, the Office of Regulatory Loan Commissioner name is changed to the Office of Consumer Credit Commissioner. The legislation that creates the agency contains the following declaration of legislative intent:

“The Legislature finds as facts and determines:

(1) Many citizens of our State are being victimized and abused in various types of credit and cash transactions. These practices impose a great hardship upon the people of our State.

(2) Credit in its various forms is one of the most essential and vital elements of our economy. It can be truly said that credit affects every citizen every day. Credit transactions in our State amount to many billions of dollars per year.

(3) Credit abuses now existing in our State stem from the fact that many types of credit transactions are not now subject to effective public regulation and control and the penalties imposed for usury do not provide effective or workable safeguards in this vital area of economic activity.

(4) Such abuses are especially prevalent in the area of consumer transactions both cash and credit. Unscrupulous operators, lenders and vendors, many of whom are transient to our State, are presently engaged in many abusive and deceptive practices in the conduct of their businesses. These unregulated practices bring great social and economic hardship to many citizens of our State. They impose intolerable burdens on those segments of our society which can least afford to bear them — the uneducated, the unsophisticated, the poor and the elderly.

(5) These facts conclusively indicate a need for a comprehensive code of legislation to clearly define interest and usury, to classify and regulate loans and lenders, to regulate credit sales and services, and place limitations on charges imposed in connection with such sales and services, to provide for consumer education and debt counseling, to prohibit deceptive trade practices in all types of consumer transactions, and to provide firm and effective penalties for usury and other prohibited practices.

(6) It is the intent of the Legislature in enacting this revision of Title 79 of the Revised Civil Statutes of Texas, 1925, to protect the citizens of Texas from abusive and deceptive practices now being perpetrated by unscrupulous operators, lenders and vendors in both cash and credit consumer transactions and to implement the mandate of Section II [sic] of Article XVI of the Constitution of Texas which authorizes the Legislature to classify loans and lenders, license and regulate lenders, define interest and fix maximum rates of interest, and thus serve the public interest of the people of this State.”

Acts 1967, 60th Leg., p. 608, ch. 274, sec. 1, eff. Oct. 1, 1967.

1971 The Legislature adopts the *Texas Pawnshop Act*. In its enactment the Legislature states the following purposes:

“(1) prevent fraud, unfair practices, discrimination, imposition, and abuse of state residents;

(2) exercise the state's police power to ensure a sound system of making pawn loans and transfers of personal property by and through pawnshops;

- (3) prevent transactions in stolen property and other unlawful property transactions by licensing and regulating pawnbrokers and pawnshop employees;
 - (4) provide for licensing and investigation fees;
 - (5) provide minimum capital requirements for pawnbrokers;
 - (6) ensure financial responsibility to the state and its residents and compliance with federal, state, and local law, including rules and ordinances; and
 - (7) assist local governments in the exercise of their police power.”
- Acts 1971, 62nd Leg., p. 2757, ch. 894, sec. 1, eff. Aug. 30, 1971.*

- 1980** Industry has 1,688 regulated lenders and 780 pawnshops.
- 1981** The Legislature passes the “omnibus interest rate bill.” This bill significantly modifies the maximum interest rate structure of credit transactions in Texas. The Legislature also requires the licensing of pawnshop employees who write pawn transactions, buy or sell merchandise, or supervise other employees who write pawn transactions or buy or sell merchandise.
- 1985** Industry has 1,429 regulated lenders (with \$1.1 billion in loans made) and 1,021 pawnshops with 1,557 pawnshop employees.
- 1987** The Legislature requires persons who sell retail goods and services on credit to register with the agency. The registration is also required for arrangers, assignees, or holders of these contracts.
- 1990** Industry has 1,531 regulated lenders (with \$1.8 billion in loans made) and 1,300 pawnshops with 2,488 pawnshop employees. Additionally, there were 10,700 registered creditors.
- 1991** The Legislature implements the standard of “public need” in the licensing of pawnshops in counties with a population of more than 250,000. The new standard requires that before a pawnshop may open in a large county it must provide evidence to the commissioner that proves a public need and a reasonable probability of profitability before a pawnshop may operate at a particular location.
- 1992** The Office of Consumer Credit Commissioner establishes a consumer helpline and its number is printed on every contract of an authorized lender subject to regulation. Consumers can now reach regulatory authority quickly and easily; the volume reaches 4,000 calls per month within five years.
- 1995** The Legislature allows financing of medical and dental services as retail installment sales. Those doctors and dentists who finance their services must register with the agency.

Industry has 2,203 regulated lenders (with \$2.6 billion in loans made) and 1,489 pawnshops (with over \$500 million in loans made) with 4,740 pawnshop employees. Additionally, there were 12,372 registered creditors.

1997 Relevant events of the 75th Legislative Session are numerous. The Legislature passes House Joint Resolution 31 which, if adopted by the electorate, will allow home equity lending and reverse mortgages in the state. Further, House Joint Resolution 31 requires non-depository lenders wishing to make home equity loans in Texas to either be licensed by the OCCC or be an approved mortgagee of the federal government.

November 4, Texas voters adopt House Joint Resolution 31 allowing home equity loans in Texas by a margin of 59.6% to 40.4%.

Also, the *Texas Credit Code* reaches a significant milestone with the passage of both House Bill 1971 and the new Texas Finance Code (House Bill 10). The *Texas Credit Code* revision project focuses on three objectives. The first provides an accommodation for commercial loans that are relatively large in amount and permits additional flexibility to construct the terms of contingent compensation (interest) without running afoul of the usury laws. Secondly, the project modernizes the language while striving for consistency and clarity. The third objective parallels the work of the Legislative Council in drafting the new *Texas Credit Title* in a code format. The penalties for usury in a commercial context are evaluated and, consequently, recommendations are made to amend the statutory provisions to require borrowers to provide lenders with notice of possible violations, thereby giving the lenders an opportunity to cure any violation. In addition to these two significant pieces of legislation affecting the credit laws, several other bills concurrently pass modifying certain provisions of the law. The import of these conflicting adoptions of law creates sizable difficulties in interpreting and applying the law.

1998 January 1, the authorization for home equity lending becomes effective. Agency staff size increases, necessitated by the new regulatory responsibility over home equity lenders, from 29.5 full-time equivalents to the newly authorized level of 47.

Industry has 3,763 regulated lenders (with \$4 billion in loans made) and 1,505 pawnshops with 4,797 pawnshop employees. Additionally, there were 15,212 registered creditors.

1999 The Legislature passes House Bill 2180 which finally completes the modernization of lending laws into a single body of law, the *Texas Credit Title*, which is found in the Texas Finance Code.

III. Policymaking Structure

A. Please complete the following chart:

Finance Commission of Texas Exhibit 3: Policymaking Body				
Member Name	Term/ Appointment Dates/ All appointed by the Governor	Qualification (e.g., public member, industry representative)	Address	Telephone Number Fax Number E-mail Address
W. D. Hilton, Jr. Chair	Term: 2/1/02 Apptmt. date: 10/11/95	Public member	NGC Trust Services, Inc. 2608 Eastland Ave. Ste.202 Greenville, TX 75402	903/454-3700 903/455-5830 dhilton@trustservices.org
Jeff Austin, Jr.	Term: 2/1/00 Apptmt. date: 5/3/94	Banking executive	Austin Bank, Texas N.A. P.O. Box 951 Jacksonville, TX 75766	903/586-1526 903/586-0643 austin16@ballistic.com
Steven C. Hastings, Jr.	Term: 2/1/00 Apptmt. date: 5/3/94	Public member CPA	Medcare Financial Solutions, Inc. 600 Six Flags Dr., #524 Arlington, TX 76011	817/695-1122 817/695-1228 shastings@medcarefin.com
Deborah H. Kovacevich	Term: 2/1/04 Apptmt. date: 5/29/98	Banking executive	State Bank of Jewett P.O. Box 125 Jewett, TX 75846-0125	903/626-4483 903/626-5816 sboj@risecom.net
Marlene Martin	Term: 2/1/02 Apptmt. date: 6/28/96	Public member	Attorney at Law 6243 W. IH 10, Ste 840 San Antonio, TX 78201	210/737-3997 210/737-3990 mmmjdcpa@aol.com
Manuel J. Mehos	Term: 2/1/02 Apptmt. date: 6/28/96	Savings executive	Coastal Banc ssb 5718 Westheimer, Ste 600 Houston, TX 77057	713/435-5315 713/435-7878 mehos@coastalbanc.com
Victor (Buddy) Puente, Jr.	Term: 2/1/04 Apptmt. date: 6/28/96	Public member	Southwest Office Systems P.O. Box 612248 Dallas-Ft. Worth Airport, TX 75261-2248	817/255-8602 817/255-8640 bpuente@sostexas.com

Finance Commission of Texas Exhibit 3: Policymaking Body				
Member Name	Term/ Appointment Dates/ All appointed by the Governor	Qualification (e.g., public member, industry representative)	Address	Telephone Number Fax Number E-mail Address
John Snider	Term: 2/1/00 Apptmt. date: 5/29/98	Savings executive	Shelby Savings Bank, SSB P.O. Box 1806 Center, TX 75935-0706	409/598-5688 409/598-5350 ssbank@sat.net
Robert V. Wingo	Term: 2/1/04 Apptmt. date: 5/29/98	Public member	Sanders Wingo Galvin & Morton Advertising 4050 Rio Bravo, Ste 230 El Paso, TX 79902	915/533-9583 915/533-3601 bobwingo@swgm.com

B. How is the chair of the policymaking body appointed?

Under Fin. Code § 11.107, the Governor appoints a member of the Finance Commission as the presiding officer.

C. Describe the primary role and responsibilities of the policymaking body.

The primary role of the Finance Commission is to appoint the savings and loan commissioner, the banking commissioner, and the consumer credit commissioner and oversee the operation of their respective agencies. The Commission also adopts rules implementing statutes for most but not all of the industries supervised by the three agencies. Appeals of certain actions taken by the consumer credit and banking commissioner may be heard by the Commission, and the Commission’s administrative law judge (ALJ) conducts hearings on behalf of the agency heads. The Commission also performs mandated studies on the availability, quality, and prices of financial services offered to agricultural, small business and individual consumers in the state and on home equity lending in Texas.

D. List any special circumstances or unique features about the policymaking body or its responsibilities.

The Finance Commission is an umbrella agency, or an oversight board, employing one full time employee (an ALJ) and a part-time executive director (currently filled by the banking commissioner).

Commission members serve without remuneration. All administrative functions of the Commission are typically performed by the staff of the agency head who serves as executive director. Responsibility for the mandated legislative studies has been coordinated among the agency heads. Staff support and officing for the ALJ are provided by the Banking Department, with the other Finance Commission agencies billed for use of the ALJ's services in proportion to the amount of time devoted to each agencies' business. The costs of the Finance Commission building and shared services are generally borne by the supervised agencies in proportion to their respective share (Section 11.204 of the Texas Finance Code).

The Finance Commission must comply with all laws and requirements applicable to state agencies (including reports), although nearly all its activities are executed by its subsidiary agencies.

Although the banking and thrift industries have statutory representation on the Finance Commission, the majority of the Commission's members are public members. Supervised institutions other than banks and thrifts regulated by the Finance Commission agencies do not have statutorily mandated representation on the Commission.

E. In general, how often does the policymaking body meet? How many times did it meet in FY 1998? in FY 1999?

Fin. Code §11.106 requires that the Finance Commission meet at least six times a year. In FY 1998, the Commission met six times. To date in FY 1999, the Commission has met five times, with a sixth meeting scheduled for August 20, 1999.

F. What type of training do the agency's policymaking body members receive?

A one-day orientation is conducted for new Finance Commission members, which includes a review of: statutory responsibilities of the Finance Commission and its members; open meetings procedures; open records laws; the Public Funds Investment Act; ethics; administrative law; state accounting procedures; and instructions on preparation of travel vouchers. Each of the commissioners also familiarizes the new members with the activities and policies of their respective agencies. Additionally, members are regularly notified of and encouraged to attend various seminars conducted by the Governor's Office and the Office of the Attorney General.

G. Does the agency have policies that describe the respective roles of the policymaking body and agency staff in running the agency? If so, please describe these policies.

The roles of the Finance Commission members are outlined in Fin. Code §§ 11.101-107. In general, the Finance Commission adopts rules, reviews policy, and monitors performance of the Finance Commission agencies through its direct supervision of the commissioners. Each agency's commissioner operates as the chief executive officer of his/her respective agency, and is responsible for the agency's daily operations. The executive director of the Finance Commission is responsible for administrative support of the Commission and preparation of all required reports and records. The ALJ is an employee of the Finance Commission and reports to the Finance Commission through the Audit Committee. Under Fin. Code § 11.201, the executive director exercises administrative supervision over and prepares an annual evaluation of the ALJ for approval by the Finance Commission. The Finance Commission ALJ independently performs all quasi-judicial duties without direct supervision. Under Fin. Code § 11.203, the ALJ is not subject to the direction or control of the Department of Banking, Savings and Loan Department or Office of Consumer Credit Commissioner.

H. If the policymaking body uses subcommittees or advisory committees to carry out its duties, please fill in the following chart.

Finance Commission of Texas Exhibit 4: Subcommittees and Advisory Committees			
Name of Subcommittee or Advisory Committee	Size/Composition/How members are appointed	Purpose/Duties	Legal Basis for Committee
Audit Committee (Standing Committee)	Three members appointed by Chair.	To contract for and review a risk evaluation of the agencies, set the scope and review findings of audits of selected internal operations. Also, to annually review the evaluation of the ALJ and make recommendations to the full Finance Commission with regard thereto.	Fin. Code § 11.107 (c)(3)
Home Equity Study Committee (Ad Hoc Committee)	Three members appointed by Chair.	Contract for, set the scope of, and review findings of research on the availability, quality, and prices of financial services offered to agricultural businesses, small businesses, and individual consumers in Texas (currently home equity lending).	Fin. Code § 11.107 (c)(3)

Finance Commission of Texas Exhibit 4: Subcommittees and Advisory Committees			
Name of Subcommittee or Advisory Committee	Size/Composition/How members are appointed	Purpose/Duties	Legal Basis for Committee
Commissioner Search Committee (Ad Hoc Committee)	Four members appointed by Chair.	To select search firm, set profile of successful candidate, and recommend final candidates for the position of banking commissioner.	Fin. Code § 11.107 (c)(3)
Sunset Committee (Ad Hoc Committee)	Four members appointed by Chair.	To review and coordinate the agencies' response to the Sunset Advisory Commission.	Fin. Code § 11.107 (c)(3)

Other Finance Commission committees may be appointed as the presiding officer considers necessary to carry out the business of the Commission.

I. How does the policymaking body obtain input from the public regarding issues under the jurisdiction of the agency? How is this input incorporated into the operations of the agency?

The Finance Commission obtains public input through its open meetings, and the rulemaking process. Notice for Finance Commission and committee meetings is posted with the Secretary of State and on the Finance Commission website (<http://www.fc.state.tx.us>). Meetings are generally held in the Hearings Room at the Finance Commission Building, which can seat over 50 members of the public. Members of the public are able to address the Commission during the meetings through a sign-up procedure. Interested parties are also invited to participate in the Finance Commission studies of financial services and home equity lending.

All hearings conducted by the ALJ are open to the public except as to matters that are made confidential by law. Some sections of the Finance Code require public notice of particular types of hearings to be published in the newspaper, and sometimes for competitors of the applicant and law enforcement agencies to be given notice of the application and an opportunity to be heard for or against the application. These requirements are carefully observed in the hearing process.

All rule proposals are published for comment in the Texas Register. Many proposals are also distributed by the agencies for pre-comment among identified interested parties as a means of achieving negotiated, consensus solutions. Pre-comments are summarized for the Finance Commission prior to a vote to propose the rule, and comments received on proposals are summarized for the Finance Commission before a vote to adopt.

The Finance Commission reviews the feedback received by its agencies through surveys made of their respective constituencies.

IV. Funding

A. Describe the agency's process for determining budgetary needs and priorities.

The agency's budget and appropriation request follow the strategic priorities and functions of the agency. Functionally, the agency is managed along those same strategies. The agency uses performance measures and goals to determine where resources are needed and adjusts priorities accordingly. The budget is prepared with direct input from section management and the commissioner and is reviewed and approved by the Finance Commission before being submitted to the Legislature. The agency uses legislative priorities, Finance Commission priorities, industry input, and consumer trends to balance its operational and budget needs to ensure the most efficient and effective use of resources.

B. Show the agency's sources of revenue. Please include all local, state, and federal sources.

All revenue is collected from fees, primarily from the regulated industries. Agency expenditures and revenue requirements are maintained at a level consistent with the size and condition of the industries regulated. The agency must collect sufficient revenue to cover the cost of expenditures as well as the amount of indirect costs.

Office of Consumer Credit Commissioner Exhibit 5: Sources of Revenue – Fiscal Year 1998 (Actual)	
Source - 100% General Revenue	Amount
Licensing Fees	\$1,148,757
Examination Fees	670,379
Creditor Registration	293,202
Penalties	102,100
Sale of Publications	76,577
Other Revenue	75,327
GENERAL REVENUE TOTAL	\$2,366,342

C. Show the types of federal funding sources, include multiple programs.

Office of Consumer Credit Commissioner Exhibit 6: Federal Funds – Fiscal Year 1998 (Actual)				
Type of Fund	State/Federal Match Ratio	State Share	Federal Share	Total Funding
None				
TOTAL		N/A	N/A	N/A

D. Show the agency’s expenditures by strategy.

Office of Consumer Credit Commissioner Exhibit 7: Expenditures by Strategy – Fiscal Year 1998 (Actual)	
Goal / Strategy	Amount
Consumer Complaint Resolution (01/01)	\$148,185
Consumer Protection (02/01)	905,618
Licensing and Review (02/02)	557,351
Credit Education (03/01)	65,780
Indirect Administration (04/01)	389,121
TOTAL¹	\$2,066,055

¹ Expenditures do not include employee fringe benefits.

E. Show the agency’s expenditures and FTEs by program.

Office of Consumer Credit Commissioner Exhibit 8: Expenditures and FTEs by Program – Fiscal Year 1998 (Actual)					
Program	Budgeted FTEs	Actual FTEs ¹	Federal Funds	State Funds	Total Expended
Complaint Resolution	4.25	4.25	N/A	\$148,185	\$148,185
Consumer Protection	23.50	23.5	N/A	905,618	905,618
Licensing	8.75	8.75	N/A	557,351	557,351

Office of Consumer Credit Commissioner Exhibit 8: Expenditures and FTEs by Program – Fiscal Year 1998 (Actual)					
Credit Education	1.25	1.25	N/A	65,780	65,780
Administration/Legal	9.25	9.25	N/A	389,121	389,121
TOTAL	47.0	47.0	N/A	\$2,066,055	\$2,066,055

¹ Baseline Full Time Employees (FTE) were budgeted at 29.5; a rider in the *General Appropriations Act* added an additional 14 FTEs upon voter approval of home equity lending in Texas in November; the Legislative Budget Board (LBB) and Governor's Office of Budget and Planning (GOBP) granted an additional variance request to the agency for an additional 3.5 FTEs to ensure proper implementation of home equity lending in Texas. At the end of Fiscal Year 1998, the agency was fully staffed at 47.

F. Provide information on fees collected by the agency.

Office of Consumer Credit Commissioner Exhibit 9: Fee Revenue and Statutory Fee Levels – Fiscal Year 1998 (Actual)				
Description / Statutory Citation	Current Fee / Statutory Maximum	Number of Payers	Fee Revenue	Deposit Destination
License Fees - Regulated V.T.C.S. 5069-3A.201 & 7 TAC § 1.39 TEX. FIN. CODE § 342.154	\$200 Investigation \$200 Annual Fee if loans exceed \$100,000; otherwise \$100 Annual Fee Maximum is charged	3,763	\$731,70	Gen. Rev. Fund
License Fees - Pawn TEX. FIN. CODE § 371.055	\$500 Investigation \$100 Annual Fee Maximum is charged	1,505	417,056	Gen. Rev. Fund
Exam Fees - Regulated V.T.C.S. 5069-3A.907 TEX. FIN. CODE § 342.557	\$150 + \$60/hour No Maximum	1,174	408,415	Gen. Rev. Fund
Exam Fees - Pawn TEX. FIN. CODE § 371.207	\$150 + \$60/hour No Maximum	965	261,964	Gen. Rev. Fund

Office of Consumer Credit Commissioner Exhibit 9: Fee Revenue and Statutory Fee Levels – Fiscal Year 1998 (Actual)				
Registration TEX. FIN. CODE §§ 345.351, 347.451 & 348.401	Retail Sales \$10/yr; Man. Housing \$15/yr; Vehicle Sales \$25/yr Maximum is charged	15,212	293,202	Gen. Rev. Fund
Penalties TEX. FIN. CODE Ch 14, Subch. F	Varies No Maximum	11	102,100	Gen. Rev. Fund
Sale of Publications GEN. APPROP. ACT art IX, § 39	Reimbursable Cost No Maximum	est-1,200	76,577	Gen. Rev. Fund
Reimbursement of Court Costs TEX. FIN. CODE § 14.207	Reimbursable Cost No Maximum	22	66,931	Gen. Rev. Fund
Other Revenue TEX. FIN. CODE § 14.107	Reasonable Cost No Maximum	5	8,396	Gen. Rev. Fund
TOTAL			\$2,366,342	TOTAL GRF

G. Please fill in the following chart.

Office of Consumer Credit Commissioner Exhibit 10: Purchases from HUBs				
Fiscal Year 1996				
Category	Total \$ Spent	Total HUB \$ Spent	Percent of HUB	Statewide Goal
Heavy Construction	\$ -0-	\$ -0-	N/A	11.9%
Building Construction	-0-	-0-	N/A	26.1%
Special Trade	6,206	-0-	0.0%	57.2%
Professional Services	-0-	-0-	N/A	20.0%
Other Services	12,265	-0-	0.0%	33.0%
Commodities	57,403	21,328	37.1%	12.6%
TOTAL	\$75,874	\$21,328	28.1%	

Office of Consumer Credit Commissioner				
Exhibit 10: Purchases from HUBs				
Fiscal Year 1997				
Category	Total \$ Spent	Total HUB \$ Spent	Percent	Statewide Goal
Heavy Construction	\$ -0-	\$ -0-	N/A	11.9%
Building Construction	-0-	-0-	N/A	26.1%
Special Trade	-0-	-0-	N/A	57.2%
Professional Services	-0-	-0-	N/A	20.0%
Other Services	17,427	982	5.6%	33.0%
Commodities	43,089	27,789	64.4%	12.6%
TOTAL	\$60,516	\$28,771	47.5%	
Fiscal Year 1998				
Category	Total \$ Spent	Total HUB \$ Spent	Percent	Statewide Goal
Heavy Construction	\$ -0-	\$ -0-	N/A	11.9%
Building Construction	-0-	-0-	N/A	26.1%
Special Trade	20,477	20,477	100.0%	57.2%
Professional Services	-0-	-0-	N/A	20.0%
Other Services	104,284	23,068	22.1%	33.0%
Commodities	189,508	16,442	8.6%	12.6%
TOTAL	\$314,269	\$59,987	19.1%	

H. Does the agency have a HUB policy? How does the agency address performance shortfalls related to this policy?

The OCCC is committed to the goal of awarding contracts to historically underutilized businesses (HUBs). The agency strives always to award at least 20% of the total value of contracts to HUB vendors. In its procurement process, the agency has and will continue to seek bids from at least two HUB vendors for all competitive purchases. The agency uses the Centralized Master Bidders List as provided by the General Services Commission which maintains the most updated list of HUB vendors. In OCCC's strategic plan for the period 1999-2003, several output measures are included to help the

agency better track its performance. These include: the number of HUB contractors and subcontractors contacted for bid proposals; the number of HUB contractors and subcontractors to whom contracts are awarded; and the dollar value of HUB contracts and subcontracts awarded.

The agency will continue current practices in regard to its purchasing procedures. The OCCC does see an opportunity to increase its HUB business awards by aggressively seeking out such businesses in instances where competitive bidding is not required. In fact, since the last reporting period requested in Section G of this document, the General Services Commission released its semi-annual report for Fiscal Year 1999; OCCC has so far spent 48% of its total expenditures with HUB vendors.

V. Organization

A. Please fill in the following chart.

Office of Consumer Credit Commissioner			
Exhibit 11: FTEs by Location – Fiscal Year 1998			
Headquarters or Field Office	Location	Number of Budgeted FTEs	Number of Actual FTEs
Headquarters	Austin	28.0	28.0
No office - Examination staff only	Dallas	9.0	9.0
No office - Examination staff only	Houston	5.0	5.0
No office - Examination staff only	San Antonio	4.0	4.0
No office - Examination staff only	Harlingen	1.0	1.0
TOTAL		47.0	47.0

B. What was the agency’s FTE cap for FY 1998?

47.0 FTEs were authorized at the end of Fiscal Year 1998.

- Baseline FTEs were budgeted at 29.5
- A rider in the *General Appropriations Act* added an additional 14 FTEs upon voter approval of home equity lending in Texas in November (House Joint Resolution 31)
- The LBB and GOBP granted a variance request to the agency for an additional 3.5 FTEs to ensure proper implementation of home equity lending in Texas. (*See attachments 22 and 23*)

C. How many temporary or contract employees did the agency have as of August 31, 1998?

None

D. Please fill in the chart below.

Office of Consumer Credit Commissioner Exhibit 12: Equal Employment Opportunity Statistics							
Fiscal Year 1996							
Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	Labor Force	Agency	Labor Force	Agency	Labor Force
Officials/Administration	1	0%	5%	0	8%	100%	26%
Professional	18	5.5%	7%	11%	7%	28%	44%
Technical	7	0%	13%	0%	14%	86%	41%
Protective Svcs	N/A	N/A	13%	N/A	18%	N/A	15%
Para-Professionals	N/A	N/A	25%	N/A	30%	N/A	55%
Administrative Support	4	25%	16%	25%	17%	75%	84%
Skilled Craft	N/A	N/A	11%	N/A	20%	N/A	8%
Service/Maintenance	N/A	N/A	19%	N/A	32%	N/A	27%
Fiscal Year 1997							
Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	Labor Force	Agency	Labor Force	Agency	Labor Force
Officials/Administration	3	0%	5%	33%	8%	33%	26%
Professional	18	5.5%	7%	11%	7%	22%	44%
Technical	6	0%	13%	0%	14%	67%	41%

Office of Consumer Credit Commissioner Exhibit 12: Equal Employment Opportunity Statistics							
Protective Svcs	N/A	N/A	13%	N/A	18%	N/A	15%
Para-Professionals	N/A	N/A	25%	N/A	30%	N/A	55%
Administrative Support	5	20%	16%	20%	17%	60%	84%
Skilled Craft	N/A	N/A	11%	N/A	20%	N/A	8%
Service/Maintenance	N/A	N/A	19%	N/A	32%	N/A	27%
Fiscal Year 1998							
Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	Labor Force	Agency	Labor Force	Agency	Labor Force
Officials/Administration	3	0%	5%	33%	8%	33%	26%
Professional	30	3%	7%	13%	7%	30%	44%
Technical	4	0%	13%	25%	14%	75%	41%
Protective Svcs	N/A	N/A	13%	N/A	18%	N/A	15%
Para-Professionals	1	0%	25%	0%	30%	100%	55%
Administrative Support	9	0%	16%	22%	17%	89%	84%
Skilled Craft	N/A	N/A	11%	N/A	20%	N/A	8%
Service/Maintenance	N/A	N/A	19%	N/A	32%	N/A	27%

E. Does the agency have an equal employment opportunity policy? How does the agency address performance shortfalls related to the policy?

The Office of the Consumer Credit Commissioner highly values diversity and is strongly committed to its equal employment opportunity policy. Employment decisions are based on merit and business needs, not on race, color, citizenship status, national origin, ancestry, gender, age, religion, creed, physical or mental disability, marital status, veteran status, political affiliation, or any other factor protected by law.

It is the policy of OCCC to comply with all the relevant and applicable provisions of the *Americans with Disabilities Act (ADA)*. OCCC will not discriminate against any qualified employee or job

applicant with respect to any terms, privileges, or conditions of employment because of a person's physical or mental disability. The Office of Consumer Credit Commissioner will also make reasonable accommodation wherever necessary for all employees or applicants with disabilities, provided that the individual is otherwise qualified to safely perform the essential duties and assignments connected with the job and provided that any accommodations made do not impose an undue hardship on OCCC.

Management is primarily responsible for seeing that OCCC 's equal employment opportunity policies are implemented, but all members of the staff share responsibility for assuring that by their personal actions the policies are effective and apply uniformly to everyone. Any employees, including managers, involved in discriminatory practices will be subject to disciplinary action including termination.

VI. Guide to Agency Programs.

Consumer Complaint

A. *Please fill in the chart below.*

Office of Consumer Credit Commissioner Exhibit 13A: Program Information – Fiscal Year 1998	
Program Name	Consumer Complaint Resolution
Location/Division	Austin / Consumer Assistance
Contact	Rudy Aguilar
Budgeted FTEs	4.25
Actual FTEs	4.25

B. *What are the key services and functions of this program? Describe the major program activities involved in providing all services or functions.*

The bulk of this section's activity revolves around the toll-free consumer helpline (800-538-1579). The helpline number is required to be printed on every retail installment contract of an authorized lender subject to regulation. When problems with these contracts arise, Texas consumers may directly reach the regulatory authority quickly and easily to help them attain resolution. Shortly after installation in 1992, call volume stabilized at the current level of roughly 4,000 calls each month. Most complaints are resolved on the telephone the same day they are received.

The OCCC expends considerable effort resolving consumer complaints and, as circumstances merit, mediating disputes between consumers and creditors. The swift, fair resolution of consumer complaints and mediated disputes results in general satisfaction to both parties and serves the people of Texas by reducing the need for costly, lengthy litigation; to be successful, the employees of this section strive to provide complete and accurate information even if the request is beyond the scope of the agency's jurisdiction. The personnel who deal with consumers receive in-house training on problem resolution and on lending laws in Texas, as well as relevant federal statutes. Most often, the OCCC will provide information to empower the consumer to resolve the situation alone or will determine the facts necessary to mediate the issue between the parties.

C. When and for what purpose was the program created? Describe any statutory or other requirements for this program.

Consumer assistance has been a function of this office since its creation. The program was designed to inform consumers and assist them in resolving complaints with creditors. Because this office has always had a focus on consumer protection, consumer assistance has always been a valuable service deliverable of the agency. The Texas Finance Code provides requirements that creditors must meet and rights that consumers must be granted. For example, the agency's toll-free number is required to be printed on all contracts subject to the agency's oversight (TEX. FIN. CODE § 341.14.104, and 7 TAC §1.302). The OCCC will also provide information and guidance in regards to several federal statutes that pertain to credit (*i.e.*, the *Truth-in-Lending Act*, the *Fair Credit Reporting Act*, and the *Equal Credit Opportunity Act*). The performance measures in this area focus on prompt and immediate response to consumer needs. Addressing consumers' complaints and categorizing these complaints provides a regulatory tool to identify industry-wide compliance issues. The agency has found this avenue to be helpful in identifying unlicensed lenders in Texas. The statutory authority and reference concerning complaint resolution is found at TEX. FIN. CODE § 14.062.

D. Describe any important history not included in the general agency history section, including a discussion of how the services or functions have changed from the original intent. Will there be a time when the mission will be accomplished and the program will no longer be needed?

In 1992, the toll-free consumer helpline was added and was required to be printed on every contract subject to OCCC oversight. In 1997, this function was further refined by the implementation of an automated call distribution system and the formalization of job functions and training related to this task. As an agency typically concerned with the regulation of subprime lending, the OCCC cannot foresee a time when this function would not be extremely valuable to the citizenry of Texas. The agency must continue to support efforts in this area.

E. Describe who this program serves. How many people or entities are served? List any qualifications or eligibility requirements for receiving services or benefits.

The agency serves Texans from all over the state through this function as evidenced by the 4,000 calls per month average experienced by the agency over the last year. In addition to a borrower seeking a remedy against one of the OCCC's licensees or creditors, any Texan with a credit question or a problem with a lender, whether regulated by this agency or not, can receive basic information about the law, their alternatives, and contact information for the appropriate state or federal regulator. Those complainants who are properly within the OCCC's jurisdiction are able to file a complaint verbally, thus information gathering and resolution can begin immediately.

F. Describe how the program is administered. Include flowcharts, timelines, or other illustrations as necessary. List any field or regional services.

The majority of complaints are initially received and handled by the consumer assistance group. This group consists of three credit counselors and a supervisor (Examiner I). The staff verbally addresses issues that pertain to routine complaints or basic credit issues. More complex issues are referred to an experienced examiner for investigation. The most complex issues are handled in conjunction with input from the director of consumer protection or the legal section. Written complaints are normally more complex and are handled in the same fashion as the more complex issues. If onsite investigations are necessary to resolve an issue, an investigation is assigned to a field examiner and is scheduled according to priority and maximum efficiency.

G. If the program works with local units of government, (e.g., Councils of Governments, Soil and Water Conservation Districts), please include a brief, general description of these entities and their relationship to the agency. Briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Pawnshop complaints often deal with property issues and are coordinated with local law enforcement agencies (police departments and sheriff departments). Additionally, the agency may assist efforts by county and district attorneys in dealing with lenders who have credit foreclosures and collection issues that have resulted in criminal complaints against borrowers.

Some complaints are directed to other regulatory bodies when the scope of the complaint clearly falls outside the agency's authority. These complaints are most often directed to either the Federal Trade Commission, Office of the Attorney General, or the Department of Housing & Urban Development.

H. Identify all funding sources and amounts for the program, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

General Revenue—This strategy is supported by the licensing and registration fee revenue.

I. Are current and future funding resources appropriate to achieve program mission, goals, objectives, and performance targets? Explain.

Funding is appropriate for current complaint volumes. Complaint volumes are expected to remain in the 5,000 to 6,000 per year range. Of the complaints received 95% will continue to be addressed within 7 days. Handling the majority of complaints within 7 days provides Texans with the high level of service they deserve.

J. Identify any programs internal or external to the agency that provide identical or similar services or functions. Describe the similarities and differences.

The Consumer Protection Division of the Office of the Attorney General (OAG) offers a similar consumer service that addresses consumer concerns about general products and services provided to consumers. Their complaint process is primarily geared toward resolving written complaints. The OAG refers many complaints about credit issues to the OCCC. Likewise, the OCCC frequently refers consumers to the Consumer Protection Division for non-credit issues. The Federal Trade Commission and the Department of Housing & Urban Development are considerably slower in resolving complaints and typically do not even handle individual complaint resolution. They compile complaints to identify illegal patterns or practices of a credit provider which they will then pursue. It is generally the OCCC that assists these consumers.

K. Discuss how the program is coordinating its activities to avoid duplication or conflict with the other programs listed in Question J and with the agency's customers.

There is little duplication or conflict with the attorney general's office as they typically refer credit matters directly to the OCCC. If the occasion arises where the attorney general is conducting an investigation involving an OCCC licensee, the OCCC is at a minimum provided notice, and generally these investigations require cooperative efforts. Investigations involving non-licensees are sometimes conducted jointly with the Office of the Attorney General as well. In these cooperative arrangements, the OCCC typically provides financial review of records and the regulatory expertise to prosecute these cases.

L. Please provide any additional information needed to gain a preliminary understanding of the program.

Complaints involving OCCC licensees are routinely resolved due to the agency's existing regulatory relationship with the entity and the agency's ability to use administrative remedies. Complaints involving non-licensees require the facts to be verified, the parties be advised of the appropriate application of the law, and a resolution be mediated. If an unlicensed creditor is unwilling to resolve the complaint or accept the agency's determination, the debtor is informed of the right to take civil action in the court. Occasionally these issues are referred to the Office of the Attorney General.

An analysis of the complaints received from the 12 months ending July 31, 1999 provides valuable insight into current regulatory issues. Most complaints (31%) arise from motor vehicle transactions, a law that permits only limited enforcement. Far distant, the next group of complaints received are related to transactions at pawnshops (12%) and small loan companies (9%). Although complainants have a wide variety of issues, most complaints relate to either collection practices (15%), contract provisions (15%), charges assessed (14%), or deceptive trade practices (12%). Pawnshop complaints clearly are centered around lost and damaged good provisions (48%). This issue was also addressed as a part of House Bill 1878 passed in the most recent legislative session. However, as a result activity in this area will most likely continue to increase. In this bill, the Legislature provided clearer guidelines for the agency to administratively address these issues on an ongoing basis.

It is interesting to note that less than 100 complaints were received in the last twelve months with respect to home equity lending transactions. Most complaints concerned charges assessed (22%). Contract provisions (15%) and deceptive trade practices (15%) were also of concern.

Examination and Enforcement

A. Please fill in the chart below.

Office of Consumer Credit Commissioner Exhibit 13B: Program Information – Fiscal Year 1998	
Program Name	Examination and Enforcement
Location/Division	Austin / Examination
Contact	Rudy Aguilar

Office of Consumer Credit Commissioner Exhibit 13B: Program Information – Fiscal Year 1998	
Budgeted FTEs	23.5
Actual FTEs	23.5

B. What are the key services and functions of this program? Describe the major program activities involved in providing all services or functions.

The consumer protection section, often referred to as the examination and enforcement section, examines licensed lenders and performs investigations of creditors, licensees, and, on occasion, applicants for license. Licensees and other creditors are examined to assure that transactions with Texas consumers comply with the Texas Finance Code and other applicable state and federal statutes. In order to cover the 262,017 square miles of Texas efficiently, examiners are strategically stationed in areas of higher concentration of licensed lenders. Travel is required outside of the examiners' headquarters area approximately 50% of the time in order to reach lenders located in other areas of the state or out-of-state.

Although the examination staff recently almost doubled, the number of transactions and lenders has and will continue to rise dramatically as a result of home equity lending, potentially impacting the frequency of examinations of licensed lenders. Until 1978, the OCCC examined 100% of licensees annually; now, only about 45% of licensees are examined annually.

C. When and for what purpose was the program created? Describe any statutory or other requirements for this program.

The examination function was established with the enactment of the *Texas Regulatory Loan Act*. The function continues to exist through the provisions of the *Texas Credit Code* and the current Texas Finance Code. These statutes have all contained provisions that enabled the commissioner to examine a licensee's books and records to ensure the licensee's compliance with the appropriate statutes.

The current version of this statute (1997) reads as follows:

"Art. 3A.902. EXAMINATION OF LENDERS; ACCESS TO RECORDS.

(a)The commissioner or the commissioner's representative shall, at the times the commissioner considers necessary:

- (1) examine each place of business of each authorized lender; and

(2) investigate the lender's transactions, including loans, and records, including books, accounts, papers, and correspondence, to the extent the transactions and records pertain to the business regulated under this chapter.”

D. Describe any important history not included in the general agency history section, including a discussion of how the services or functions have changed from the original intent. Will there be a time when the mission will be accomplished and the program will no longer be needed?

The primary focus of examinations of regulated loan licensees has been directed toward the compliance of regulated loan transactions that primarily are either unsecured or secured by liens on personal property. The Texas constitutional amendment that authorized home equity lending has created a shift in focus of many examinations as these transactions involve loans secured by real property, which by their very nature are much more complex.

Data from recent years shows increased credit use among consumers. The more credit is used, the more important the examination activities of this office become. Without vigilant efforts in compliance examinations, many lenders and pawnbrokers might deviate from the statutory requirements causing compliance violations. Additionally, in the highly competitive market in which these industries operate many entities continually develop products that “push the envelope.” This function serves as a filter to protect consumers from these aggressive practices. The examination of non-depository lending institutions is an important consumer protection that must continue into the future.

E. Describe who this program serves. How many people or entities are served? List any qualifications or eligibility requirements for receiving services or benefits.

This program serves both consumers and lenders. Consumers benefit directly and indirectly. Directly as a result of an examination, those consumers who have been overcharged receive a direct refund or credit to their account. Indirectly, many consumers receive confidence that the company they are dealing with is a licensed and regulated company. Lenders benefit from examinations in multiple ways as well. First, our examinations provide a risk management quality to a licensee. The examination frequently may discover violations that potentially could result in lengthy and costly private litigation. During the examination the licensee may cure these violations, thereby preventing additional liability and exposure. Secondly, the examination has instructional or educational value for the licensee and the licensee’s employees. The OCCC currently has approximately 4,300 licensed lending locations. Examinations are normally scheduled every 12 to 18 months. If an examination results in a determination that a licensee has an unacceptable level of compliance, a reexamination is scheduled in six to nine months.

F. Describe how the program is administered. Include flowcharts, timelines, or other illustrations as necessary. List any field or regional services.

The examination function is purely compliance focused. An examiner conducting an examination will generally visit the licensee's location and perform various tests and reviews of the licensee's procedures. The tests and reviews are used to determine the licensee's compliance with appropriate state and federal statutes. Upon conclusion of the field work, the examiner prepares a written examination report and presents that report to the licensee at an exit conference. If the report requires any action from the licensee, the special instruction section of the examination report specifically outlines the action and reporting requirement. Licensees are normally given sixty days to comply with the aforementioned instructions and follow-up dates are tracked by the Austin staff.

The complexity and volume of documentation in mortgage transactions has required that the agency amend examination procedures for mortgage examinations. It is more practical and efficient to schedule examination dates in advance with mortgage licensees so that the appropriate documents can be available upon the examiner's arrival. Also, the reports produced as a result of these complex examinations are reviewed and edited by management before they are given to the licensee. This same examination procedure is used for out-of-state licensees regardless of the business type. Additionally, certain examinations are conducted on a "mail-in" basis. These exams generally apply to an out-of-state licensee who has a low volume of transactions. As businesses continue to expand product offerings across state lines (*i.e.*, e-commerce), the agency will refine its examination methods to ensure efficiency and effectiveness.

We have 19 field examiners based in:

Dallas/Fort Worth	(9)
Houston	(4)
San Antonio	(5)
Harlingen	(1)

The examiners are directly responsible to a supervising field examiner. The supervising field examiners report directly to the director of consumer protection. Examination schedules are prepared by the supervisors on a monthly basis and approved by the director of consumer protection before they are officially assigned.

G. If the program works with local units of government, (e.g., Councils of Governments, Soil and Water Conservation Districts), please include a brief, general description of these entities and their relationship to the agency. Briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

When appropriate, the OCCC will coordinate and share information with other regulatory or law enforcement agencies such as local police departments, local sheriff departments, the Bureau of Alcohol, Tobacco, and Firearms; Texas Department of Transportation, Motor Vehicle Division; Office of the Attorney General; and the Texas Department of Insurance. Generally, these efforts either address an industry-wide issue, such as particular provisions of a credit insurance policy, or specific enforcement activity pertaining to a licensee.

H. Identify all funding sources and amounts for the program, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

General Revenue—Examination fees are \$60.00 per examiner per hour with an administrative surcharge of \$150.00 for the first eight hour period and \$100.00 for additional eight hour periods. For examinations conducted outside of the state, the licensee is required to pay for actual travel costs incurred by the examiners in conducting that examination in addition to the regular examination charges.

I. Are current and future funding resources appropriate to achieve program mission, goals, objectives, and performance targets? Explain.

Current examiner staffing is sufficient to meet the projected targets for the number of examinations based upon the forecasted number of licensees for the next two years. The OCCC expects to conduct 2,000 examinations in each of the next two fiscal years. The agency will also be much more active in complex examinations, such as home equity examinations. Examiners also conduct investigations in support of our complaint resolution program which can require a diversion of resources away from the examination function. Additionally, the support required by the examination function for litigation either by the agency or for the attorney general impacts examination performance. Both of these activities are critical to success in the agency's enforcement efforts. However, these activities require additional resources and often unlike examinations, do not produce revenue.

J. Identify any programs internal or external to the agency that provide identical or similar services or functions. Describe the similarities and differences.

Many pawnshop licensees are also monitored by local law enforcement entities and the Bureau of Alcohol, Tobacco, and Firearms. These entities' activities are limited to the accomplishment of very narrow objectives related to the recovery of stolen property and the sale of firearms.

Some mortgage lenders enter into transactions that are insured by the Department of Housing and Urban Development (HUD). In order to make these loans, the lender must be a HUD approved mortgagee. HUD will occasionally review transactions of these lenders, but the overlap of these regulatory reviews is minimal. HUD rarely reviews compliance with state statutes, which is the primary focus of the OCCC.

K. Discuss how the program is coordinating its activities to avoid duplication or conflict with the other programs listed in Question J and with the agency's customers.

None of the entities described in Section J conduct the type of compliance examination that the agency performs.

L. Please provide any additional information needed to gain a preliminary understanding of the program.

N/A

Licensing and Registration

A. Please fill in the chart below.

Office of Consumer Credit Commissioner Exhibit 13C: Program Information – Fiscal Year 1998	
Program Name	Licensing and Registration
Location/Division	Austin / Licensing
Contact	Duane Waddill / Phyllis Wolfenbarger
Budgeted FTEs	8.75
Actual FTEs	8.75

B. What are the key services and functions of this program? Describe the major program activities involved in providing all services or functions.

This section processes all license applications and creditor registrations. Regulated loan, pawnshop, and pawnshop employee license applications are processed and the respective licenses are issued by this section. The licensing process consists of a review of complex business types, criminal history of company principals and employees, business experience, financial information, and other criteria before determining that the applicant meets the eligibility requirements for a license. Certain changes in ownership of a license also require an application to be filed. This transfer process is similar to a new application process, depending upon type of change.

Licenses are required to notify the agency when moving locations and submit a change of address form and fee.

This section also registers creditors that finance the sales of their goods and services. Although a key priority in the past was to reach creditors with information about registration requirements, the state auditor concurred with the OCCC that most of the industry has come into compliance with this portion of the law. Concentration of the registration program has now shifted to informing new industry entrants about registration.

C. When and for what purpose was the program created? Describe any statutory or other requirements for this program.

The licensing of lenders was established in 1963 as a basic tenet of the regulation of lending transactions in Texas (*see legislative intent in the history section*). By ensuring that only qualified entities engage in the lending of money, the state has greater assurance that consumers and borrowers are being treated fairly. Licensing requirements for regulated lenders can be found in Chapter 342 of the Texas Finance Code after September 1, 1999 (formerly V.T.C.S. art. 5069-3A). The licensing of pawnshops began in 1971 and the licensing of pawnshop employees began in 1981. The Legislature stated the purpose of regulating pawnshops in the purpose clause to the *Texas Pawnshop Act*. The provisions are found in Chapter 371 of the Texas Finance Code.

The registration of creditors was established to provide notification to the state of creditors that were engaging in this type of activity. Additionally, this activity created a revenue stream to support the consumer assistance function. Registration provisions for retail installment sales can be found in the TEX. FIN. CODE § 345.351, manufactured housing provisions in TEX. FIN. CODE § 347.451, and motor vehicle provisions in the TEX. FIN. CODE § 348.401.

D. Describe any important history not included in the general agency history section, including a discussion of how the services or functions have changed from the original intent. Will there be a time when the mission will be accomplished and the program will no longer be needed?

A major group of lenders has entered the Texas home equity lending market during the last 24 months, creating a surge in application processing activity. This group of lenders began submitting applications prior to the close of the 1997 legislative session in anticipation of the passage of home equity lending by the voters. The rise in application activity continued through 1998. Now that these applicants are licensed, maintenance of ownership records and the processing of the proper transfers, as well as the annual renewals, will be an ongoing challenge. Upcoming changes in the *Texas Pawnshop Act* will usher in a new era of challenges for the licensing of pawnshops. House Bill 1878 replaced the old “public need” standard used in large counties since 1991, which had been modeled after banking and savings and loan legislation, with a distance limitation between pawnshops. The Legislature sought to pass this new standard to eliminate pawnshops from clustering in large counties. This new distance requirement seeks to control pawnshop clustering by requiring new business entrants locate more than two miles from an existing pawnshop while providing for a lesser restriction on the movement of an existing license.

As long as the protection of consumers in credit transactions remains consistent with the legislative intent, licensing will be a required and necessary program that helps the agency meet this mission.

E. Describe who this program serves. How many people or entities are served? List any qualifications or eligibility requirements for receiving services or benefits.

The ultimate beneficiaries of licensing legitimate lenders are Texas consumers. Licensing by this agency helps ensure that unqualified individuals are not authorized to engage in the loan business. Customers who seek this division’s services are lending businesses and their owners and operators.

Currently there are:

3,621 regulated lenders	15,235 registered creditors
1,542 pawnshops	6,288 pawnshop employees

In Fiscal Year 1998, the agency processed:

1,496 regulated lender applications	771 registered creditors
135 pawnshops applications	2,125 pawn employee applications

Other than registered creditors who merely pay a fee, licensees are generally required to show good moral character, financial responsibility, general business fitness that warrants belief that the business will be operated fairly, and a minimum net asset requirement.

F. Describe how the program is administered. Include flowcharts, timelines, or other illustrations as necessary. List any field or regional services.

Once a license application is received it is assigned to a responsible staff member who is required to notify the applicant of application deficiencies within 14 days, forward fingerprints cards to law enforcement agencies, submit a credit inquiry, and generally correspond with the applicant throughout the process. When the applicant completes the required information, the application is thoroughly reviewed before submission to the commissioner with a recommendation for approval or denial. If the application is approved, the agency notifies the applicant and generates and mails the license; if the application is denied, an appeal may be requested for a hearing before the administrative law judge of the Finance Commission who subsequently submits a proposal for decision to the commissioner. A flowchart of the licensing process is attachment 25.

All licensing functions, except possible investigations, are performed in the Austin headquarters. Average processing times for legislative reporting are measured from the date the applicant completes its filing. On average in 1981, the processing time from completion to action was 32 days. Commonly, the agency finds that applicants view the processing time from the initial form filings, irregardless of completion. The average processing time from receipt of an application—complete or incomplete—to approval was 150 days in fiscal year 1998. While the latter is beyond the control of the agency, the OCCC has focused on reducing the processing times in both categories and continues to work with the industry on education in this area.

G. If the program works with local units of government, (e.g., Councils of Governments, Soil and Water Conservation Districts), please include a brief, general description of these entities and their relationship to the agency. Briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

This function is performed almost entirely in house, although the agency relies on criminal history information from the Texas Department of Public Safety and the Federal Bureau of Investigations. The agency also provides local police and sheriff departments the opportunity to comment on pawnshop applications before a decision is made (*Texas Pawnshop Act*, § 371.057). As a matter of practice, the agency also solicits information from other state regulators on applications made by lenders who may be regulated by another entity (Texas or otherwise).

H. Identify all funding sources and amounts for the program, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

General Revenue—All funding is generated through fees set by statute and rule and are adequate to cover this program's operation. These funds are deposited in general revenue and are clearly noted in Exhibit 9. However, see the discussion in policy issues related to revenue collection methodology.

I. Are current and future funding resources appropriate to achieve program mission, goals, objectives, and performance targets? Explain.

Current appropriation levels are adequate to support the licensing function. Historically, licensing revenues have been used to support other aspects of the agency's operation as well. The licensing fees have not been adjusted since their enactment in the 1960s. Obviously, inflation and the cost of operating state government have continued to increase. It is an appropriate time to review the licensing fee assessment and methodology. See the discussion in policy issues related to revenue collection methodology.

J. Identify any programs internal or external to the agency that provide identical or similar services or functions. Describe the similarities and differences.

Other agencies license and regulate various financial industries. Agencies with similar regulatory programs are the Department of Banking, the Credit Union Department, the Savings and Loan Department, the State Securities Board, and the Texas Department of Insurance. Perhaps the most similar program would be the new regulation of first lien mortgage brokers. This regulatory program, recently placed with the Texas Savings and Loan Department, addresses a lending activity performed by a non-depository entity. Many of our licensees, as of January 2000, will be required to acquire a mortgage broker license from the Savings & Loan Department, as well as maintain a regulated lender license from the Office of Consumer Credit Commissioner. A mortgage broker is defined as a person who makes or arranges first lien purchase money mortgage loans. If these same companies or individuals make or arrange second mortgage loans with an interest rate over 10%, they are required to have a regulated loan license from this agency and have been so since 1967.

K. Discuss how the program is coordinating its activities to avoid duplication or conflict with the other programs listed in Question J and with the agency's customers.

The credit statutes recognize depository institutions as "authorized lenders." The depository institutions were also required to obtain a regulated loan license until 1983, when the Legislature removed the provision requiring them to obtain an additional license. Any person who desires to lend money to consumers and avail themselves of the rates available to licensed lenders must go through the licensing process. There is no reciprocity for an entity or individual who may maintain some other type of license. The agencies coordinate and share information whenever possible relating to the licensing of these particular entities or individuals. The agencies are not permitted, however, to share criminal history information.

L. Please provide any additional information needed to gain a preliminary understanding of the program.

N/A

Education

A. Please fill in the chart below.

Office of Consumer Credit Commissioner Exhibit 13D: Program Information – Fiscal Year 1998	
Program Name	Education
Location/Division	Austin / Education Division
Contact	Duane Waddill / April Angele
Budgeted FTEs	1.25
Actual FTEs	1.25

B. What are the key services and functions of this program? Describe the major program activities involved in providing all services or functions.

A high priority area continues to be the education program which is designed to meet Texas consumer needs. The credit education program has two primary goals: the provision of credit information to consumers with the purpose of assistance in informed credit use and promotion of consumer resources

and assistance, including the agency's consumer helpline. Delivery of credit information is achieved through a multi-faceted approach that includes: presentations to community groups; attendance at community events, such as fairs or consumer-oriented conventions and shows; participation in workshops with other education oriented organizations; press releases; Internet publication of credit information; distribution of brochures, including through licensed lenders' offices; and, outreach to high school students and teachers. Collaboration with other entities — private, public, and non-profit — has proven to be an effective method for achieving greater reach for the agency.

Consumer need is primarily determined from information received from four sources: (1) examination of licensed entities where transactions often show a lack of understanding of credit; (2) the agency's consumer helpline queries; (3) other organizations that serve Texas consumers; and (4) studies which measure consumer competence, or lack thereof, in the area of credit.

The second facet of credit education is the education and dissemination of information to creditors. Creditors have wholeheartedly embraced this concept and continue to urge expansion of this area. The Commissioner and the agency staff regularly address creditor groups and use a combination of internal and external publications to communicate items of an educational nature to creditors. Creditor education programs will be instrumental in maintaining the agency's exposure and presence in the industry.

C. When and for what purpose was the program created? Describe any statutory or other requirements for this program.

“TEX. FIN. CODE § 14.102 Educational and Debt Counseling Programs. The commissioner shall coordinate, encourage, and assist public and private agencies, organizations, groups and consumer credit institutions in developing and operating voluntary educational and debt counseling programs designed to promote prudent and beneficial use of consumer credit by residents of this state. (Also TEX. FIN. CODE § 394.001)

The agency recognized the need to pursue an education program in the early 1990s. The program was barely in its infancy when the state auditor reviewed it in 1994. In the report, the state auditor noted the need for the agency to expand this program and to disseminate information of interest to the general public and appropriate state agencies. In addition, the following points were made:

“Regulated lenders grew from 2.2 million loans amounting to \$917 million in Calendar Year 1988 to 3.3 million loans amounting to \$1.75 billion in Calendar Year 1992. In addition, the agency processed 2,166 license applications in Fiscal Year 1993. *It is unrealistic to think that the agency can protect the consumer solely through examination and licensing in a growing industry.*” (emphasis added)

The state auditor's office concurred with agency management's contention that consumer education be a high priority for the agency and that the previously devised education program be implemented.

Furthermore, it should be noted that loan volumes more than doubled to exceed \$3.6 billion in 1997 and license applications grew to 3,756 in Fiscal Year 1998. The statement regarding the inadequacy of consumer protection by regulation alone bears even greater weight today.

In an action to directly reach those consumers who patronize the agency's regulated entities, consumer education displays have been designed and provided at no cost to each lender for placement in their customer areas. The displays consist of a frame to hold a changeable background with attached brochure and card holder for which the agency supplies educational brochures and cards.

D. Describe any important history not included in the general agency history section, including a discussion of how the services or functions have changed from the original intent. Will there be a time when the mission will be accomplished and the program will no longer be needed?

Historically, as examiners audited licensees' records, it became obvious that many consumers were not prudent in their credit decisions. This has been demonstrated most often by consumers who repeatedly renew lines of credit, occasionally over several years, virtually paying interest on a never-decreasing principal.

Public studies conducted nationwide support the finding that consumers, especially young consumers, make poor decisions simply because they are unaware of their options: they are financially "illiterate." Sadly, studies released in 1990, 1991, 1993, 1994, and 1998 consistently show that deficiency in consumer knowledge crosses all demographics, and no improvement in survey results has occurred over time. A 1998 study of high school students which contained 48 multiple choice questions resulted in an overall average of only 57.3% – a failing score by most educational standards.

The complexity and variety of consumer products increases as technology and laws evolve, yet the sophistication level of consumers remains low. Although the very basic principles of prudent credit use remain the same, it is the pricing of credit products and possible options available as a result of improved technology and the access to financial products that is changing rapidly. Since the very basic principles are themselves unknown or misunderstood by so many consumers, the latest developments in financial products are virtually unavailable to a large segment of the state's population.

A study conducted by the Finance Commission in 1998 made similar conclusions, stating "ongoing education in this area will ensure that consumers are well informed about the cost effectiveness of their choices and which products and services best meet their needs."

Presently, many school-aged consumers are being reached through voluntary programs offered to educators, but these efforts are limited by financial considerations as well as practical integration issues in an education system already overwhelmed with teacher and curriculum challenges.

E. Describe who this program serves. How many people or entities are served? List any qualifications or eligibility requirements for receiving services or benefits.

In Fiscal Year 1998, the agency reached the following:

2.8 million Texans;

12,903 face-to-face and the remainder through the media;

Industry reach included 5,149 compliance bulletins.

All Texas consumers are eligible to benefit from credit education efforts and even merit the attention, but the agency finds it more economical to focus on consumers already targeted by others. For example, one group the agency works with may itself only target high school students and offer classroom programs while another group the agency works with organizes fairs to provide information to first time homebuyers; other opportunities the agency will take could be to address a community or professional group as an invited speaker or reach a newspaper subscription population. As stated earlier, overall consumer knowledge needs improvement across all demographic lines; many minorities, however, still scored even lower and thus are priority targets of the agency while other established minority groups, such as seniors, merit attention because they are also commonly targets of fraudulent schemes.

The agency prioritizes some demographic groups, including: high school or college students, minority groups, low income consumers, women, and the elderly. The agency also target teachers and counselors who can exponentially enhance the agency's outreach. A prime example of this is the agency's perennial involvement in a program called "Train the Trainer" where the agency provides educational materials and resources for teachers and counselors to use in their schools.

F. Describe how the program is administered. Include flowcharts, timelines, or other illustrations as necessary. List any field or regional services.

Industry requests for presentations usually go directly to the commissioner, who coordinates these educational responses depending upon the target audience.

Requests for consumer directed educational efforts usually go directly to the consumer education specialist. The specialist maintains an ongoing dialogue with community service providers statewide to enhance agency participation in events, workshops, or other outreach opportunities as they develop. A number of recurring events are attended annually, such as credit fairs organized in communities during National Credit Education Week (last week of each April) or National Consumer Education Week (last week of October).

The specialist evaluates convention center materials statewide to determine feasibility and benefits of attendance and makes recommendations to the director of administration for inclusion in the schedule.

Furthermore, the agency requires licensees to maintain an education display with contact information in the display to assist consumers with credit matters and to make available the agency's toll-free consumer helpline. New consumer brochures are developed when the need arises, such as when the home equity lending constitutional amendment passed, or biannually when lenders renew the licenses.

G. If the program works with local units of government, (e.g., Councils of Governments, Soil and Water Conservation Districts), please include a brief, general description of these entities and their relationship to the agency. Briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

The agency actively seeks partnership opportunities with public or private entities in order to maximize consumer reach with only one dedicated education specialist.

H. Identify all funding sources and amounts for the program, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

General Revenue—All credit education activities are financed exclusively through the collections of the agency. The agency does have authority to solicit private grants, but has yet to actively solicit those funds. The agency believes that active solicitation would require the agency to hold donated funds outside general revenue (not currently an option) in some instrument like the safekeeping trust company. Historically, agencies that have engaged in fundraising in a general revenue environment have far less success than one where a donor can have increased confidence their donation will not be comingled with agency funds, will not be swept into state coffers for use on an unintended program, and will earn interest.

I. Are current and future funding resources appropriate to achieve program mission, goals, objectives, and performance targets? Explain.

Ideally Texas would be a state where every consumer is adequately educated in financial choices. Funding is always an issue with any educational program. While the OCCC, in tandem with other state or federal government agencies, private non-profit organizations, and even many lenders work to improve financial literacy, unless it becomes as commonly taught as the three Rs in school – especially in high school – the catch-up efforts to educate Texas' consumers will remain a great need. Realistically,

the agency could begin soliciting grants and private funds with minor statutory changes. Those changes could have exponential effects on the outcomes.

J. Identify any programs internal or external to the agency that provide identical or similar services or functions. Describe the similarities and differences.

Several entities provide services with a common goal to ours, but each has clear differences which results in complementary programs. Credit is an integral part of the overall financial industry which includes saving, investing, budgeting, and shopping. The State Securities Board has an education program aimed at getting facts to Texans about saving and investing. The State Securities Board distributes publications like “The Texas Family Guide to Personal Money Management” and participates in various state and nationwide informational campaigns.

The Texas Department of Insurance’s education program is similarly structured to this agency’s, but on a significantly larger scale. Providing insurance-related consumer tips for comparison shopping, arming consumers with knowledge of laws and rights, and promoting the agency’s free consumer assistance helpline and brochures, the staff of that agency’s education department speaks to consumer groups, provides information booths at exhibits and fairs, and distributes articles or other information to media and other direct consumer service providers in the state in order to reach Texas insurance consumers.

Consumer Credit Counseling Service (CCCS) is a private, non-profit organization with two basic missions that complement ours: a debt management program (DMP) and an education program directly stemming from and supporting its DMP. CCCS offers consumers who are overwhelmed by debt the opportunity to pay it off through the DMP. Counselors will complete a financial profile for the consumer, including financial goals, and make a payment plan to enable the consumer to pay off all debts. Consumers participating in the program must also attend education classes to prevent them from becoming heavily indebted again. CCCS has offices statewide that are associated with each other under one national organization, the National Foundation for Consumer Credit. However, because each is a completely separate entity, the quality and extent of services varies widely from city to city, and community to community. The OCCC frequently partners with each group to provide information to Texas consumers in such events as homebuyer workshops, credit college events, or credit fairs. The OCCC is frequently called on for counselor training and many of the lenders this agency regulates have customers who are DMP clients of CCCS.

Many lender associations, and even individual lenders, have programs geared to consumer education in Texas. Some lenders provide credit education material simply because they recognize the incredible need, while others do so only because they are required by law. Most of these organizations have valuable information for consumers; however, the quality and extent of education provided by these associations range widely, from an in-depth 7 week course in Houston to peripheral involvement in

public credit fairs. Furthermore, these associations often focus on one credit element, usually associated with their retail products.

The agency also participates in Jump\$tart Texas, a state chapter of a national program promoting financial literacy. The Texas group consists of private companies, state agencies (including Texas Education Agency, Department of Banking, State Securities Board, and the OCCC), and federal agencies.

Clearly, the agency has approached educational development from a cooperative position, leveraging on the resources of others to maximize program efficiency and effectiveness.

K. Discuss how the program is coordinating its activities to avoid duplication or conflict with the other programs listed in Question J and with the agency's customers.

The credit specialist coordinates efforts with other organizations so as to avoid duplication or conflict.

L. Please provide any additional information needed to gain a preliminary understanding of the program.

See attachments.

M. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. If this is a regulatory program, please describe:

- ℄ why the regulation is needed;*
- ℄ the scope of, and procedures for, inspections or audits of regulated entities;*
- ℄ follow-up activities conducted when non-compliance is identified;*
- ℄ sanctions available to the agency to ensure compliance; and*
- ℄ procedures for handling consumer/public complaints against regulated entities.*

The regulatory program of the OCCC is based on two major consumer protection functions: licensing and examination. OCCC examinations not only ensure compliance with appropriate state and federal statutes, but also provide an opportunity for licensees to ask questions and keep updated on changes in compliance issues.

Please refer to Section F for a discussion of scope, procedure, and follow up.

Sanctions

If a licensee refuses to comply with the requirements of the statutes and the rules, the OCCC can take administrative action that includes monetary penalties and suspension or revocation of the license.

Procedures for handling complaints

Complaints are preliminarily handled by the consumer assistance group, with most of the situations resolved immediately. The more complex issues are referred to an experienced examiner. Complaints that require field investigations are assigned to the appropriate personnel and when possible may be done in conjunction with the next scheduled examination to increase efficiency. For a more detailed discussion, please see the response to question E in the Consumer Complaint Section.

N. Please fill in the following chart for each regulatory program. The chart headings may be changed if needed to better reflect the agency's practices.

Office of Consumer Credit Commissioner						
Exhibit 14: Complaints Against Regulated Entities – Fiscal Year 1997 and 1998						
	Fiscal Year 1997			Fiscal Year 1998		
	Oral	Written	TOTAL	Oral	Written	TOTAL
Complaints Received	6,220	552	6,772	4,450	627	5,077
Complaints Resolved	6,220	394	6,614	4,450	413	4,863
Complaints Without Merit	1,654			1,216		
Sanctions	2,513			1,848		
Complaints from Prior Years	92			151		
Ave. Time to Resolve Complaint	3.59 days			8.88 days		
Number of Entities Examined	Exams	Investigations		Exams	Investigations	
	1,530	94		2,139	89	
Total Entities Regulated	Licensees		Registrants	Licensees		Registrants
	3,490		15,373	4,238		15,212

VII. Agency Performance Evaluation

A. *What are the agency's most significant accomplishments?*

One of the agency's most significant accomplishments is the smooth and successful implementation of home equity lending. The state of Texas was very slow to embrace the concept of discretionary lending secured by a homestead. The Texas Constitution preserved the sanctity of the homestead for more than 150 years. When the Texas Legislature embarked upon a path to introduce this type of lending, they created a lengthy set of exacting conditions that must be met in order to make a home equity loan. The Legislature expressed extreme concern about the manner in which lenders would engage in these transactions. Upon passage of the amendment, many referred to it as the greatest event since the Great Land Rush of Oklahoma. Many were fearful of massive chaos and abusive, predatory practices. Lenders were extremely confused by the wording prescribing the exacting conditions for these loans and were further fueling predictions of massive chaos. Many lenders proclaimed that the amendment was so convoluted and ambiguous that no one would make home equity loans at all.

Amid these concerns the agency sought input from lawyers representing lenders, title companies, and consumer groups to identify the legal issues and challenges surrounding the amendment. Although the agency was not granted rulemaking authority (no one was) in the constitutional amendment, the agency firmly believed that it was our job to implement the will of the Legislature and the citizens of this state. In lieu of rulemaking, the agency formulated a commentary on the home equity lending amendment (*see attachment 26*). Even though this document did not have the same authority and weight as administrative rules, it was established as the agency's enforcement policy. The OCCC prepared the commentary following the same procedures as rulemaking. Then, as now, the agency believes that it is only appropriate that lenders who are expected to comply with requirements should be entitled to know what those requirements are. Additionally, the commentary should represent consistent policy for all lenders in Texas. To achieve that objective the commissioner approached the banking commissioner, the savings and loan commissioner, and the credit union commissioner to jointly promulgate this commentary with the OCCC. The commentary immediately gained recognition, especially when it was cited as a guideline by Fannie Mae for those who wanted to sell their transactions on the secondary market. This adoption was a huge step for the state of Texas in bringing order to what could have been chaos and creating the stability required for a secondary market for this substantial volume of activity.

The implementation of home equity lending certainly fueled the interest of hundreds of lenders seeking to enter the new market in Texas. The amendment requires these lenders to be licensed in order to make home equity loans. Needless to say, the number of applications received for licensing ballooned. Processing these applications was a formidable task; however, by the day preceding implementation, December 31, 1997, every applicant who had completed an application was granted a decision on the application. Over the last two years, the total number of regulated loan licensees has doubled. This type of increase in the number of regulated entities also required growth in terms of personnel and budgeting resources. Implementing those changes certainly brought forth their own challenges.

In reviewing the last eighteen months of home equity lending, estimates indicate that the volume of loans made more than doubled the initial projections. In the first twelve months, it appears that between 11 and 12 billion dollars in loans were made. That result is an enormous impact to the state's economy and one that arrived without major problems or public horror stories. There are multiple opportunities to strengthen and clarify the provisions of the home equity lending amendment. Hopefully in the near future, the Legislature and the citizens will see fit to consider some of these amendments.

Other significant agency accomplishments relate to the major modifications to the agency's statutes. The agency's commissioners were instrumental in the creation and passage of the "*Credit Code Revision Act of 1997*," the "*Omnibus Interest Rate Revision Act of 1981*" and the "*Pawnshop Act of 1971*."

B. Describe the internal process used to evaluate agency performance, including how often performance is formally evaluated and how the resulting information is used by the policymaking body, management, the public, and customers.

Agency management receives monthly performance reports from each section and evaluates and adjusts priorities and activities as necessary. The Finance Commission receives summary status reports at every bi-monthly meeting and detailed reports quarterly. Annually, the commissioner is formally evaluated on the agency's performance by the Finance Commission.

C. What are the agency's biggest opportunities for improvement?

Credit Education

Consumer

Perhaps the greatest opportunity of all lies in credit education. Educating consumers gives them the ability to make informed decisions, increasing their self-sufficiency and personal responsibility. Education yields greater rewards and benefits to the citizens and the state.

Delivery of consumer education is monitored generally by how many consumers are "reached" with information. This delivery is captured in two performance measures; they are complementary objectives, yet each in itself requires dedicated and separate focus.

Giving consumers specific tools with which to make more informed decisions requires in-depth contact with consumers. The most successful delivery of this information is in-person contact. This type of delivery is more resource intensive than the other type of delivery: public service announcements through the mass media. Workshops and personal contact at such events as credit fairs is essential to providing

consumers with the details necessary to be helpful. Using such an approach yields smaller, but more meaningful results to the people it serves.

There are two easily identified opportunities for a more effective program of outreach to Texas consumers: coordination of a group toward efforts of an education initiative that has a comprehensive statewide impact, such as student materials or a curriculum based high school component; and increased penetration of the consumer population so the goals of consumer helpline awareness and in-person reach may be achieved in a consistent and singular manner.

Although this agency contributes to efforts led by several organizations with the desire to reach high school students with new curriculum intended to improve credit knowledge, no specific course of study has been so far approved and implemented. Various organizations have had a local community impact, and one notable organization, the Jump\$tart Coalition, is making progress on a national level with a state-level sub-organization. Unfortunately, no organization has specifically focused on statewide coordination of one agreed-upon product for public school student consumption. Such an effort would seemingly require devotion by state agencies, including this agency but necessarily others, such as the Texas Education Agency. Study after study details the need for consumer education, and while the majority of Texas' consumers currently are beyond high school age and require an ongoing outreach program to impact them, nearly all future's consumers may be reached through public education.

Creditor

Creditor workshops are requested by industry frequently. At this time, creditors must rely on their trade associations or legal advisors to provide extensive instruction and training. It is this agency's policy to provide compliance education to licensees during the course of an examination, and groups of licensees often invite the agency's staff to speak at events in order to improve compliance; however, an in-depth training program for the front-line staff is not in place industry-wide. Many believe this would be an excellent opportunity to provide a form of proactive regulation. For the pawn industry, this agency produced a general pawnshop employee responsibility video in 1994, but otherwise, specific training is left up to licensees themselves. Our staff does, however, make themselves available to the licensee population for questions and explanations as a resource available by telephone. Any training developed for licensees regarding the laws this agency enforces should include some of the same consumer components which lay outside this agency's direct responsibility but for which the agency is required to ensure the licensees comply, such as correct credit reporting, collection practices, and federal disclosures.

Rule Review and Promulgation

Adoption of administrative rules often does not rise to a level of significant importance in many executive branch agencies. In this technical financial environment, the promulgation of administrative rules can serve to greatly enhance the clarity of state law and the practices of creditors around the state. Providing guidance to creditors on the methods for complying with the state's usury laws serves multiple positive public policy objectives. Successful adoption of the appropriate administrative rules could serve to reduce or simplify litigation all over the state as creditors will be more likely to rely on promulgated rules in the construction of consumer credit transactions. The agency has almost completed its rule review relating to regulated loan licenses and is in the midst of the review of pawnshop rules. Opportunities exist in other areas of the credit statutes to engage in administrative rulemaking to enhance clarity and compliance.

Investigations of Usury

The agency is authorized to investigate the activities of unlicensed entities to determine if the entities are violating Texas usury laws. The last few years the popularity of these entities has continued to grow. Certain entities engage in transactions using artificial devices in an attempt to color the transaction as something other than a loan. Article 3A.101(b) provides that "a person may not use any device, subterfuge, or pretense to evade the application of this article." The agency believes that many of these companies are operating in violation of Texas state law and has referred several cases to the attorney general for enforcement. Expanding this function would serve the public by ensuring the integrity of Texas usury laws. Implementing this expansion, however, is very resource intensive, thus funding issues may severely impact this opportunity.

Licensing Responsiveness

Providing excellent customer service is a key objective for the licensing section, as well as for the entire agency. Customers of the licensing process often perceive the time required for the processing of license applications as excessive. Unfortunately, due to the high volume workload, the time required has occasionally exceeded an ideal standard. Most often, however, the problem may be attributed to perception or poor communication. The licensing section has always strived to improve the response time on licensing applications, but especially throughout the last six months. Significant improvements have been made as the backlog of applications has been reduced. Further improvements are still possible in this area. One major improvement that will likely have a substantial impact will be to create an interactive response to an applicant using the Internet. Applicants frequently call to check the status of their application. This consumes large amounts of staff resources to locate a file, retrieve it, and review it in order to provide a status report to the applicant. Facilitating some type of automated response to this inquiry would likely satisfy the applicant's need for information while creating efficiencies of staff

resources. Implementing this type of system, however, is likely to be highly complex and will require a very sophisticated system. Two areas the agency has identified to facilitate communication and response time are electronic based forms availability and optical imaging. Currently, application forms and instructions must be obtained directly from the agency, in person, or through the mail. Placing application forms and instructions on the agency's website will give applicants immediate access to forms and instructions. The agency is also preparing to implement an optical imaging system. The system will improve information access, resulting in the agency's enhanced ability to answer inquiries, requests, and provide better customer service. Long term, this system will be a key component of the automated response system. Between implementation of technology developments, improved communication with applicants, and further introduction of efficiencies within the licensing process, the customers of the licensing process will receive substantially enhanced service.

Examiner Retention and Development

Opportunities for improvement exist in the professional development of the examination staff which will also result in a higher level of staff retention. The implementation of home equity lending resulted in a substantial addition to the ranks of the examiner staff. The emphasis on real estate transactions provides ample opportunities for enhancing examiner training programs and the documentation and procedures for examination. This development process began during the home equity lending implementation; however, further opportunities exist for refining and improving the training elements. Planned enhancements are the introduction of a certification program, a professional development program designed to motivate and reward examiners for attaining certain levels of skills and abilities, and additional training for litigation support as expert witnesses.

D. How does the agency ensure its functions do not duplicate those of other entities?

The agency coordinates efforts with any other agency that may encounter activities related to our licensees. As well, duplication is avoided through an agency-wide focus on its mission and performance goals. Generally we find there is very little duplication or overlap of functions.

E. Are there any other entities that could perform any of the agency's functions?

No other agency currently has the training or expertise to perform the consumer protection responsibilities administered by the OCCC. Enforcement of state usury law is a state matter and no enforcement occurs at the federal level.

Texas is also notably distinct in its regulation and industry demographics of pawnshops. Florida is the only other state with a comparable number of pawnshops and it has no state regulation. The

OCCC has long been recognized nationwide as a leader in its enforcement efforts over Texas pawnshops.

While there are other state agencies regulating financial institutions (Department of Banking, Savings and Loan Department, and the Credit Union Department), these agencies have a primary objective of safety and soundness of the institutions. There is an inherent conflict between missions of safety and soundness and the protection of consumers through compliance regulation. The profile of customers of pawnshops and consumer finance companies is markedly different than the average consumer profile of a bank or savings and loan customer. In evaluating any type of restructuring proposal (as discussed in the Finance Commission submission in policy issues), it is important to consider the placement of consumer protection responsibilities. In a merged environment, consumer protection issues become secondary considerations to safety and soundness objectives. In discussions with consumer credit administrators from other states, this concern evidences itself through the lesser degree of attention compliance issues receive and through the lack of vigorous enforcement displayed in these consolidated environments. The citizens of Texas should not have their consumer protection rights jeopardized by an agency with competing missions. Safety and soundness are important objectives, but need not be met at the expense of consumer protection. Frequently, financial institutions propose new products and assess new types of charges. Each of these products or charges must be evaluated for their legality in the context of the appropriate statute; the same is true for proposed legislation. In a merged environment a single administrator must make a choice – approve a product or service that enhances the profits and health of the depository institution – a natural selection of a depository institution regulator – or potentially deny the product or charge because it does not “fit” within the spirit and intent of the law.

The attraction for maintaining independent separate state agencies lies in the control, accountability, and responsiveness that exists in that choice. Reporting to an umbrella organization, such as the Finance Commission, maintains the benefits of accountability and provides consistent policymaking across industry lines.

F. What process does the agency use to determine customer satisfaction and how does the agency use this information?

The agency relies on feedback from agency customers to determine customer satisfaction. The commissioner regularly and specifically solicits feedback of the agency’s performance at trade association or other industry meetings. The comments are very candid and the agency has made several adjustments as a result.

G. Describe the agency's process for handling complaints against the agency, including the maintenance of complaint files and procedures for keeping parties informed about the process. If the agency has a division or office, such as an ombudsman, for tracking and resolving complaints from the public or other entities, please provide a description.

Complaints against the agency would generally be filed with the commissioner, the Finance Commission, the governor, or the Legislature. The agency does not have a separate procedure for monitoring these complaints. If complaints are filed with the commissioner, the commissioner personally handles and responds to the complaint.

H. Please fill in the following chart.

Office of Consumer Credit Commissioner		
Exhibit 15: Complaints Against the Agency—Fiscal Years 1997 and 1999		
	FY 1997	FY 1998
Number of complaints received	0	1
Number of complaints resolved	0	1
Number of complaints dropped/found to be without merit	0	0
Number of complaints pending from prior years	1	1
Average time period of resolution of a complaint	0	7 months

I. What process does the agency use to respond to requests under the Public Information (Open Records) Act?

The legal division of the agency is responsible for the administration of this function. If a request is for non-standard information normally provided by the agency, the following process is used to respond to open records requests:

1. The agency employee who receives a request forwards it to the assistant general counsel who is assigned to respond to open records requests.
2. The legal department assigns a unique number to the request, creates a file, and calendars the request for response. The date of response is based on the date the request was received; both the 10-business-day deadline on which any letter claiming privileges would be due to the attorney

general and the 15-business-day deadline on which any documents supplementing that letter would be due to the attorney general are noted on the calendar.

3. The legal division requests information from each division of the agency to see if they have responsive documents.
4. An attorney reviews all responsive documents to determine whether the documents and information therein may be publicly disclosed or whether the documents and information are protected from disclosure pursuant to the privileges in the *Public Information (Open Records) Act*.
5. Documents or information within documents which the agency believes are protected from public disclosure pursuant to the *Open Records Act* are sent to the attorney general, setting out argument and seeking a determination on the disclosure. Meanwhile, all responsive and public documents are sent to the requestor. If public information is on the same page as information which is believed to be protected from disclosure, the legal division redacts the information which it believes should be protected.
6. Documents that the attorney general determines are, in fact, subject to public disclosure, are released upon notification to the agency of that determination.
7. A bill for copy costs and, when appropriate, search fees are sent with each cover letter transmitting public information unless the information is usually given to the public at no charge or unless copy costs were less than \$5.00.

J. Please fill in the following chart:

Office of Consumer Credit Commissioner Exhibit 16: Contacts		
INTEREST GROUPS (groups affected by agency actions or that represents others served by or affected by agency actions)		
Group or Association Name / Contact Person	Address	Telephone Number Fax Number E-mail Address
American Ass'n of Retired Persons / Roy Ray, Jr.	7612 Shoal Creek Austin, TX 78757	PH: (512) 459-9756
Central Texas Credit Coalition	P. O. Box 160042 Austin, TX 78716	PH: (512) 479-5665 FAX: (512) 479-5431

Office of Consumer Credit Commissioner Exhibit 16: Contacts		
City of Abilene / Senior Citizens Division	P. O. Box 60 Abilene, TX 79604	PH: (915) 676-6578
Consumer Credit Counseling Services of Austin / Lonnie Williams	1221 Ben White Blvd., #108-A Austin, TX 78704	PH: (512) 447-0711
Consumer Credit Counseling Services of South Texas / David C. Melton	1706 S. Padre Island Dr. Corpus Christi, TX 78416	PH: (512) 854-4357
Consumer Credit Counseling Services of Greater Dallas, Inc. / David H. Dugan	8737 King George Dr., #200 Dallas, TX 75235-2273	PH: (214) 638-2227
Consumer Credit Counseling Services of Greater Fort Worth / Marianne Gray	1320 S. University Dr., #200 Fort Worth, TX 76107	PH: (817) 732-2227
Consumer Credit Counseling Services of the Gulf Coast Area, Inc. / Terry M. Blaney	4600 Gulf Freeway, #500 Houston, TX 77023-3551	PH: (713) 394-3116 FAX: (713) 923-1268
Consumer Credit Counseling Services of North Central Texas, Inc. / Danny Wolf	901 N. McDonald, #600 McKinney, TX 75069	PH: (972) 542-0257
Consumer Credit Counseling Services of the Y.W.C.A. / Maureen Lingeman	6028 Surety, #102 El Paso, TX 79925	PH: (915) 774-5000
Consumer Credit Counseling Services of Greater San Antonio, Inc. / Ruby S. Bainum	6851 Citizens Parkway, #100 San Antonio, TX 78229	PH: (210) 979-4300
Consumers Union / Rob Schneider	1300 Guadalupe, #100 Austin, TX 78701	PH: (512) 477-4431 FAX: (512) 477-8934 e-mail: schnro@consumer.org
Conference of Homeowners Rights Public Strategies, Inc. / Rob Norcross	98 San Jacinto, #900 Austin, TX 78701	PH: (512) 474-8848 FAX: (512) 474-0120
Credit Professionals International / Alamo Chapter	P. O. Box 47134 San Antonio, TX 78265	<i>Changes with President</i>
Greater El Paso Coalition for Affordable Housing	6046 Surety El Paso, TX 79905	PH: (915) 778-5387
Homeward Bound	4631 Airport Blvd., #127 Austin, TX 78751	PH: (512) 459-6636
International Credit Ass'n of Dallas / Fort Worth Chapter / Donna Davis	1320 S. University, #200 Fort Worth, TX 76107	PH: (817) 882-8664

Office of Consumer Credit Commissioner		
Exhibit 16: Contacts		
Jump\$start	919 Eighteenth St., NW, 3rd Floor Washington, DC 20006	PH: (202) 466-8610 FAX: (202) 223-0320
League of United Latin American Citizens	P. O. Box 100931 San Antonio, TX 78201	PH: (210) 733-0406
NAACP - Community Development Resource Center	Arthur B. DeWitt Center, Room 201 2209 Rosewood Ave. Austin, TX 78702	PH: (512) 477-5541
Senior Citizens of Greater Dallas / Lynda Taylor Ender	2905 Swiss Ave. Dallas, TX 75204	PH: (214) 823-5700 FAX: (214) 826-2441
Texas Agriculture Extension Services / Family Development and Resource Management	Texas A& M University History Building College Station, TX 77843-2251	PH: (409) 845-3850
INTERAGENCY, STATE OR NATIONAL ASSOCIATIONS		
(that serve as an information clearinghouse or regularly interact with the agency)		
Group or Association Name / Contact Person	Address	Telephone Number Fax Number E-mail Address
American Association of Residential Mortgage Regulators / Charlene Petty	1015 18th St., NW, #1100 Washington, DC 20036	PH: (202) 789-7577
American Financial Services Ass'n / Randy Lively	919 Eighteenth St., N. W. Washington, DC 20006	PH: (202) 296-5544 FAX: (202) 223-0321
The Conference for Consumer Finance Law / Alvin C. Harrell	Campus Box 117-A 2501 N. Blackwelder Oklahoma City, OK 73106	PH: (405) 521-5198 FAX: (405) 521-5089 e-mail: ccflqr@lec.okcu.edu
Fannie Mae / Kelly Rodgers	Winstead Sechrest & Minick, P.C. 100 Congress Ave., #800 Austin, TX 78701	PH: (512) 370-2832 FAX: (512) 370-2850 e-mail: krodgers@winstead.com
Federal Trade Commission	100 N. Central Expressway, #500 Dallas, TX 75201	PH: (214) 767-5501
Independent Bankers Ass'n of Texas / Karen Neeley	408 W. 14th St. Austin, TX 78701-1691	PH: (512) 474-6889 FAX: (512) 322-9004 e-mail: k_neeley@ibat.org

Office of Consumer Credit Commissioner Exhibit 16: Contacts		
National Associations of Consumer Credit Administrator / Reitzel Deaton	P. O. Box 190441 Nashville, TN 37219-0441	PH: (919) 733-3016 FAX: (919) 733-6918 e-mail: deaton@banking.state.nc.us
National Home Equity Mortgage Ass'n / Lawrence Young	1415 Louisiana, 37th Floor Houston, TX 77002	PH: (713) 759-0818 FAX: (713) 759-6834 e-mail: lay@hwallp.com
Texas Association of Pawnbrokers / Susie Grimes	P.O. Box 140046 Austin, TX 78714	PH: (512) 452-4571
Texas Ass'n of Check Cashers / John Templar	P. O. Box 9878 Amarillo, TX 79105	PH: (806) 371-0499 FAX: (806) 379-6419 e-mail: jtem223094@aol.com
Texas Ass'n of Mortgage Brokers / Stacy London	RMC Financial Services, Inc. 10700 Richmond, #120 Houston, TX 77042	PH: (713) 975-7283 FAX: (713) 975-0665
Texas Automobile Dealers Ass'n / Karen Coffey	1108 Lavaca Austin, TX 78711	PH: (512) 476-2686
Texas Bankers Ass'n / Michelle Roberts	203 W. 10th St. Austin, TX 78701	PH: (512) 472-8388 FAX: (512) 473-2560
Texas Business Law Foundation / Val Perkins	1180 Galleria Financial Center 5075 Westheimer Houston, TX 77056	PH: (713) 850-9000 FAX: (713) 850-1330
Texas Consumer Finance Ass'n / Marilyn Johnson	12 Main St. Kerrville, TX 78028	PH: (800) 258-5316 FAX: (830) 896-8444
Texas Financial Services Ass'n / Robert J. Power	106 E. 6th St., #650 Austin, TX 78701	PH: (512) 477-5735 FAX: (512) 477-1993 e-mail: rjpower@ccsi.com
Texas Independent Automobile Dealers Ass'n / Jackie Gill	505 E. Huntland Dr., #320 Austin, TX 78752	PH: (512) 302-4001 FAX: (512) 302-4537
Texas Manufactured Housing Ass'n	2215 E. Anderson Ln. Austin, TX 78752	PH: (512) 459-1221
Texas Mortgage Bankers Ass'n / Diane Hughes	823 Congress Ave., #700 Austin, TX 78701	PH: (512) 480-8622 FAX: (512) 480-8621
Texas Retailers Ass'n / Mickey Moore	504 W. 12th St. Austin, TX 78701	PH: (512) 472-8261 FAX: (512) 474-5011

Office of Consumer Credit Commissioner Exhibit 16: Contacts		
Texas Sate Agency Business Administrators' Association / Cheryl McBride	P. O. Box 13164 Austin, TX 78711	PH: (512) 463-5183
LIAISONS AT OTHER STATE AGENCIES (with which the agency maintains an ongoing relationship, e.g., the agency's assigned analyst at the Legislative Budget Board, or attorney at the Attorney General's office)		
Agency Name / Relationship / Contact Person	Address	Telephone Number Fax Number E-mail Address
Attorney General's Office / Financial Litigation / David Mattax	P. O. Box 12548 Austin, TX 78711-2548	PH: (512) 463-2018 FAX: (512) 477-2348 e-mail: david.mattax@oag.state.tx.us
Comptroller of Public Accounts / Financial Reporting Specialist / Theresa Baney	P. O. Box 13528 Austin, TX 78711-3528	PH: (512) 475-0452 e-mail: theresa.baney@cpa.state.tx.us
Comptroller of Public Accounts / Appropriations Control Officer / Pat Sheehan	P. O. Box 13528 Austin, TX 78711-3528	PH: (512) 463-4524 FAX: (512) 475-0527 e-mail: pat.sheehan@cpa.state.tx.us
Credit Union / Commissioner / Harold Feeney	914 E. Anderson Ln. Austin, TX 78752-1699	PH: (512) 837-9236 FAX: (512) 832-0278
Department of Banking / Acting Commissioner / Randall James	2601 N. Lamar Blvd. Austin, TX 78705-4294	PH: (512) 475-1300 FAX: (512) 475-1313
General Services Commission / Statewide Telecommunications Coordinator / June Jordan	1711 San Jacinto Austin, TX 78701	PH: (512) 463-9177 FAX: (512) 463-3304 e-mail: june.jordan@gsc.state.tx.us
Governor's Office of Budget & Planning / Analyst / Wayne Kelley	P. O. Box 12428 Austin, TX 78711	PH: (512) 463-1778 FAX: (512) 463-1880 e-mail: wayne.kelley@governor.texas.gov
House Research Organization / Director / Tom Whatley	1100 N. Congress Capitol Building Austin, TX 78701	PH: (512) 463-0752

Office of Consumer Credit Commissioner Exhibit 16: Contacts		
Legislative Budget Board / Budget Analyst / David Pagan	105 W. 15th St., 3rd Floor Regan Bldg. Austin, TX 78701	PH: (512) 463-1202 FAX: (512) 475-2918 e-mail: david.pagan@lbb.state.tx.us
Legislative Council / David Skarke	1100 Congress Capitol Building, Room 1W.15 Austin, TX 78701	PH: (512) 463-1155
Secretary of State/Texas Register / Birdie Knight	P. O. Box 13824 Austin, TX 78711-3824	PH: (512) 463-5567 FAX: (512) 463-5569 e-mail: texreg@sos.state.tx.us
State Securities Board	208 E. 10th, 5th Floor Austin, TX 78701	PH: (512) 305-8300 FAX: (512) 305-8310
Texas Department of Insurance / Max Ryan	333 Guadalupe Austin, TX 78701	PH: (512) 322-3402
Texas Department of Public Safety / Fingerprint / Nancy Fisher	5805 N. Lamar Blvd. Austin, TX 78752	PH: (512) 424-2521
Texas Department of Transportation/ Motor Vehicle Laws / Brett Bray	P. O. Box 2293 Austin, TX 78768	PH: (512) 416-4800 FAX: (512) 416-4890
Texas Department of Transportation/ Enforcement / Carol Kent	P. O. Box 2293 Austin, TX 78768	PH: (512) 416-4800 FAX: (512) 416-4890
Texas Savings & Loan Department/ Commissioner/James L. Pledger	2601 N. Lamar Blvd. Austin, TX 78705-4241	PH: (512) 475-1350 FAX: (512) 475-1360

VIII. 76th Legislative Session Chart

Office of Consumer Credit Commissioner Exhibit 17: 76th Legislative Session Chart		
Legislation Enacted in the 76th Legislative Session		
Bill #	Author	Summary of Key Provisions/Intent
HB 744	Eiland	Revolving credit accounts
HB 1086	Solomons	Liens on manufactured homes
HB 1453	Smith, Todd	Coverage under a title insurance policy issued with respect to residential real property
HB 1510	Marchant	Documentary fee included in a vehicle retail installment contract

Office of Consumer Credit Commissioner Exhibit 17: 76th Legislative Session Chart		
HB 1511	Marchant	Operation and regulation of pawnshops
HB 1522	Siebert	Prompt payment requirements for work performed by contractors and subcontractors on certain real property
HB 1878	Averitt	Regulation of pawnbrokers and pawnshop employees
HB 2054	Solomons	Mechanic's, contractor's and materialmen's liens
HB 2176	Siebert	Discharge of a lien against a motor vehicle
HB 2180	Averitt	Usury and the regulation of lenders
HB 2337	Ehrhardt	Additional interest for default on a loan contract including simple interest
HB 2338	Ehrhardt	Certain charges for administration of loans and loan applications
HB 2653	Elkins	Law that applies to a contract made on the Internet
HB 2655	Elkins	Repossession of a motor vehicle for repair charges
HB 2781	Pitts	Definition of a qualified commercial loan
HB 3072	Averitt	Certain payments by a retail seller in a retail installment transaction involving a motor vehicle
HB 3515	Marchant	The nature of certain contracts included in the cash price of motor vehicles sold at retail
SB 85	Carona	Letters of credit
SB 172	Harris	Definition of a qualified commercial loan
SB 478	Carona	Filing of financing statements and certain other filings
SB 479	Carona	Fee for the electronic filing of a financing statement with the secretary of state
SB 496	Harris	Increasing the maximum size of an urban homestead to 10 acres and prescribing permissible uses of rural and urban homesteads
SB 570	Shapiro	Certain business documents filed and recorded with the secretary of state
SB 598	Duncan	Actions regarding certain computer failures
SB 957	Madla	Licensing of certain persons who provide services related to the business of insurance
SB 1058	Carona	Revision of the uniform law on secured transactions
SB 1074	Carona	Licensing of mortgage brokers
SB 1368	Harris	Nonsubstantive corrections to enacted codes

Office of Consumer Credit Commissioner Exhibit 17: 76th Legislative Session Chart		
SB 1775	Sibley	Regulation of certain providers of service contracts
SJR 12	Carona	Making of advances under and payment of a reverse mortgage
SJR 22	Harris	Increasing the maximum size of an urban homestead to 10 acres, prescribing permissible uses of urban homesteads, and preventing the overburdening of a homestead
Legislation Not Passed in the 76th Legislative Session		
Bill #	Author	Summary of Key Provisions/Intent/Reason Bill did not Pass
HB 9	McCall	Actions regarding certain computer date failures
HB 25	Goolsby	Creation of fraudulent use of identifying information and to the recovery of damages resulting from conduct described by that offense
HB 366	Smith, Todd	Letters of credit
HB 391	Tillery	Certain transactions subject to regulation as loans
HB 537	Danburg	Telephone solicitation
HB 562	Giddings	Certain transactions subject to regulation as loans
HB 611	Janek	Confidentiality of certain personal information provided by a customer to a business
HB 763	Dutton	Encumbrances that may be fixed on homestead property
HB 814	Jones, Jesse	Granting of pawnshop licenses and to public notification of an application for a pawnshop license in certain counties
HB 1000	Farrar	Creation of the offense of failing to report the loss or theft of a firearm
HB 1007	Thompson	Providing notice of a foreclosure sale of real property
HB 1221	Brimer	Increasing the maximum size of an urban homestead to 10 acres and prescribing permissible uses of rural and urban homesteads
HB 1299	Yarbrough	Prohibiting an encumbrance to be fixed or executed against homestead property for an obligation to pay certain property owners' association fees
HB 1305	George	Electronic filing of financing statements and certain other filings with the secretary of state
HB 1306	George	Filing of financing statements and certain other filings with the secretary of state
HB 1307	George	Fee for the electronic filing of a financing statement with the secretary of state
HB 1397	Pitts	Validity of an unrecorded instrument conveying an interest in real property

Office of Consumer Credit Commissioner Exhibit 17: 76th Legislative Session Chart		
HB 1485	Brimer	Regulation of persons who repossess motor vehicles, mobile and manufactured homes and vessels
HB 1547	Danburg	Adoption of rules to interpret home equity lending law
HB 1637	Dutton	Regulation of automobile insurance rates
HB 1830	Elkins	Number and qualifications of members of the Finance Commission of Texas
HB 1898	McCall	Credit property insurance
HB 1941	Siebert	Automobile clubs
HB 2058	Uher	Interest on judgments in certain civil actions
HB 2305	Maxey	Fees for use of an automated teller machine
HB 2347	Brimer	Certain business documents filed and recorded with the secretary of state
HB 2348	Brimer	Reports and other business filings made with the secretary of state
HB 2605	Solomons	Providing a right of rescission for certain owners executing residential construction contracts for improvements on homestead property
HB 2606	Solomons	Revision of the uniform law on secured transactions
HB 2652	Elkins	Liability for damages arising from failure of computer software to recognize and accurately process certain dates
HB 2656	Elkins	Designation of pawnshops as a permitted use in certain zoning classifications
HB 2676	Keel	Law enforcement procedures for electronically obtaining data from pawnshops, recording thumbprints on transaction records, and holding hearings for recovery of stolen property
HB 2717	Brimer	Construction or repair of improvements to real property located in this state
HB 2743	Wise	Disclosure of certain information by a lender
HB 2779	Pitts	Additional charges authorized for a qualified commercial loan
HB 2780	Pitts	Construction of definitions in state credit law
HB 2788	Eiland	Retail charge agreements
HB 2789	Eiland	Licensing of certain persons who provide services related to the business of insurance
HB 2790	Eiland	Regulation of certain insurance agents to the consolidation of insurance agents' licenses
HB 2845	Brimer	Regulation of certain providers of service contracts

Office of Consumer Credit Commissioner Exhibit 17: 76th Legislative Session Chart		
HB 2903	Counts	Rates for certain lines of insurance
HB 2993	Culberson	Award of prejudgment interest in certain civil cases
HB 3056	Edwards	Maximum interest rate on a home equity loan
HB 3118	Burnam	Private mortgage insurance
HB 3156	Wolens	Nonsubstantive corrections to certain enacted codes
HB 3171	Elkins	Law enforcement procedures for obtaining electronic data from pawnshops, information requirements for transactions records, firearms background checks, and recovery of stolen property
HB 3240	Denny	Alternate maximum interest charge on a non-real property loan
HB 3622	Tillery	Regulation of deferred presentment transactions
HB 3714	Shields	Collateral protection insurance for lenders
HB 3800	Uher	Accrual of interest on certain judgments
HJR 18	Chisum	When a payment may be required on a reverse mortgage
HJR 20	Hartnett	Securing an equity loan with a parcel of property containing an urban homestead and real property adjoining the homestead
HJR 37	Dutton	Permitting encumbrances to be fixed on homestead property for an obligation to pay certain property owners' association fees without permitting the forced sale of the homestead
HJR 43	Brimer	Increasing the maximum size of an urban homestead to 10 acres, prescribing permissible uses of urban homesteads, and preventing the overbuilding of a homestead
HJR 46	Yarbrough	Prohibiting an encumbrance to be fixed on or executed against homestead property for an obligation to pay certain property owners' association fees
HJR 57	Danburg	Permitting equity loans to be secured by one or more lots containing all or part of an urban homestead plus other real property
HJR 73	Solomons	Prescribing requirements for imposing a lien for work and material used in the construction, repair, or renovation of improvements on homestead property
HJR 76	Staples	Application of equity loan law to cooperative membership fees and certificates
SB 48	Carona	Adoption of rules to interpret home equity lending laws
SB 88	Carona	Certain transactions subject to regulation as loans
SB 120	Barrientos	Telephone solicitation

Office of Consumer Credit Commissioner Exhibit 17: 76th Legislative Session Chart		
SB 151	Barrientos	Grievance and complaint procedures for certain state employees
SB 319	Ellis, Rodney	Disclosure notices required for the sale of certain real property
SB 378	Nixon, Drew	Payment of judgment against an undivided interest in real property
SB 477	Carona	Electronic filing of financing statements and certain other filings with the secretary of state
SB 517	Shapiro	Automobile clubs
SB 520	Cain	Discharge of a lien on a motor vehicle
SB 546	Nixon, Drew	Exempting a co-owner's interest in real property from seizure to satisfy the debts of another co-owner of real property
SB 600	Wentworth	Regulation of automobile insurance rates
SB 776	Bivins	Interest on judgments in certain civil actions
SB 954	Ellis, Rodney	Governance of property owners' associations
SB 956	Madla	Regulation of certain insurance agents and to the consolidation of insurance agents' licenses
SB 963	Barrientos	Law enforcement procedures for electronically obtaining data from pawnshops
SB 1006	Wentworth	Requiring financial institutions to accept certain durable powers of attorney
SB 1052	Barrientos	Fees for use of an automated teller machine
SB 1076	Carona	Certain types of noncredit insurance and other products offered in connection with a consumer loan
SB 1082	Haywood	Appraisal of real property securing a mortgage loan
SB 1201	Cain	Usury and the regulation of lenders
SB 1339	Carona	Regulation of deferred presentment transactions
SJR 8	Carona	Authorizing the legislature to delegate to a state agency authority to adopt rules interpreting home equity lending law
SJR 14	Nelson	Securing an equity loan with one or more lots containing all or part of an urban homestead plus other nonhomestead real property
SJR 15	Harris	Transactions in connection with an encumbrance on a homestead by an incapacitated person
SJR 18	Ellis, Rodney	When payment may be required on a reverse mortgage

Office of Consumer Credit Commissioner Exhibit 17: 76th Legislative Session Chart		
SJR 28	Barrientos	Securing an equity loan with a parcel of property containing an urban homestead and real property adjoining the homestead
SJR 37	Harris	Application for equity loan law to cooperative membership fees and certificates

IX. Policy Issues

1. Revenue Collection Methodology

1A. Brief description of the issue.

The methodology for collecting revenues by the OCCC should be evaluated to determine if it adequately results in accurate matching and recovery of costs.

1B. Discussion.

The agency collects licensing and exam fees from its licensees. The license fees have been set by statute. The annual license fees are:

Regulated loan license	Receivables < \$100,000	\$100
	Receivables > \$100,001	\$200
Pawnshop license		\$100

These fees were established in 1967 and 1971 and have never been amended since those dates. In addition to these fees, examination fees are set by the agency and are intended to insure that the agency is able to recover its costs. The agency's fee structure for exam fees from 1971 through 1999 was:

Administrative and general surcharge	\$150
Hourly rate	\$ 32

From 1971 through 1987 there was a maximum charge of \$500 on pawnshop exams. The maximum limit was removed in 1987. The agency was forced to adjust examination fee rates in 1999 due to increasing costs and a need to recover those costs.

Many other states and financial regulatory agencies have migrated to an exam fee methodology based upon an assessment of some characteristic of the licensee intended to capture the impact of

the licensee's workload on regulatory efforts. For example, most depository regulators use an assessment methodology based upon asset size. Other consumer credit regulators utilize a methodology based upon volume or loans receivable.

In 1994, the comptroller's office recommended a similar system for the Texas Department of Insurance in their insurance premium finance licensing, which is very similar to the regulated loan licensing program. The report stated the agency would benefit through streamlined processes that would replace outdated ones and save time and resources, and that the industry would benefit by having a more efficient way to do business with the agency.

1C. Potential Solutions and Impact.

1. Statutes and rules could be changed to authorize the agency to use assessments to collect from the industry instead of using the current fee structure. While many affected licensees may not necessarily agree with the proposed amendment, it seems that an assessment based system would most fairly distribute the costs associated with regulation to the licensees. Performance of the agency's examination functions would not be impacted because of the examination targets in the General Appropriation Act.
2. Leave the current fee-based system. This solution has worked for some time, although it creates revenue and expenditure matching issues. As well it can create additional costs to the industry when excess revenues are swept into General Revenue and there are issues concerning whether licensees are equally sharing in the cost of regulation.

2. Home Equity Lending

2A. Brief description of the issue.

When the home equity lending amendment was passed, no state agency was designated to interpret its provisions or was granted rulemaking authority.

2B. Discussion.

The OCCC strongly believes there is a need to provide some type of rulemaking or guidance to encourage lenders to comply with the provisions of the home equity lending amendment. The OCCC has been in the position, primarily due to its long history of interpreting consumer credit statutes, of repeatedly being propounded with questions and issues by all lenders and their legal representatives on how to construct transactions in compliance with the law. The OCCC took steps to offer guidance to lenders in the *Regulatory Commentary on Equity Lending Procedures*, but that does not provide enough certainty or authority that the guidelines can be relied upon.

The Legislature took the unusual step of failing to pass any enabling legislation to correspond with this constitutional amendment. Generally the enabling legislation is the vehicle that provides a state agency with the rulemaking or interpretative authority to effectively implement the statute.

2C. Potential Solutions and Impact.

This issue is discussed further and potential solutions are highlighted in the Finance Commission policy issues section.

3. The Emergence of the “Pay Day Loan” Industry

3A. Brief discussion of the issue.

Certain businesses have engaged in a transaction with consumers that employs a device designed to advance money in an attempt to evade state usury laws. This tactic is plaguing many consumers as well as the local justice system.

3B. Discussion.

These transactions involve relatively small amounts of money and are extended for very short periods of time (usually two weeks or less). The transaction commands a very high charge. Two types of transactions are prevalent: check holding operations and sale-leaseback operations. In both of these transactions, the principal technique involves requiring the consumer to write a check as “security” for the cash advance. Rather than take a promissory note or a contract and security agreement as evidence of the legal obligation to repay the debt, as is typically the case in a loan, these entities either take a post-dated check or a check dated the same date, but with the explicit understanding that the lender will not present the check for deposit until a later time. Often consumers are even told to leave the payee and date sections blank on the check. The consumers are advanced cash on the basis of this “security.” After two weeks the initial cash advance plus the “associated fee” is due or the check is turned over to the district attorney for criminal prosecution. Interest rates on these transactions can approach 1,000%.

Commonly, consumers get caught in a vicious loop of borrowing where the principal balance never declines and the consumer can never repay the debt. Rarely is the consumer able to come up with the entire payoff amount and generally the consumer will extend the account. In certain cases a consumer ends up renewing 10-15 times before they ultimately default. For an initial amount advanced of \$200, renewing 12 times could amount to approximately \$800 that has been paid in “service charges” or “interest.” This is far in excess of the initial \$200 borrowed, yet the initial \$200 principal balance has not decreased at all.

One of the most objectionable consequences of these practices is the threat of criminal prosecution against consumers in the collection of worthless checks. In the Dallas area, the Justice of the Peace courts report hundreds of these cases being filed. These cases are creating substantial problems in the judicial system. The attorney general, at the request of the consumer credit commissioner, is actively involved in litigation against several of these companies.

The popularity of these transactions continues to grow even though many believe that the transactions are illegal and violate the state's usury laws. The Legislature began to review this activity in 1999; however, no solution was reached during the session.

3C. Potential Solutions and Impact.

1. Definitively prohibit the taking of a check as "security" for a loan in state law. Further require that any transaction similar to those above comply absolutely with existing state usury laws.
2. Legislatively permit this type of transaction and authorize its practice by creating a system of regulation to oversee and administer it. This is the approach that approximately 20 other states have taken with this new activity. Generally, the enactment of "deferred presentment" law incorporates a higher authorized rate structure than the existing usury statutes.
3. Depend upon efforts of the OCCC and the Attorney General to eradicate the activity through litigation. This is a long and slow method of enforcement with no assurance of absolute success. Additional resources should be allocated to this activity.

4. Interest Rate Simplification

4A. Brief discussion of the issue.

The interest rate structures in Texas are very complex and maximum limits vary depending upon the type of transaction. Should this structure be modified so as to simplify the rate structure?

4B. Discussion.

The comprehensive body of interest rate statutes was enacted in 1967. At that time most states adopted interest rate systems that were based upon add-on, precomputed methods of calculating interest. These methods were appropriate for their time, but with the advent of computers and calculators, society has moved towards more of a fixed rate system of calculating interest. For example, most individuals are familiar that the interest rate is disclosed to them on their loan documents as an annual percentage rate. Yet many calculations in Texas are not based upon an annual percentage rate as the methodology to derive the maximum rate.

In 1981, the Legislature passed the “Omnibus Interest Rate Bill,” which was probably the most comprehensive and complicated interest and finance legislation ever enacted in Texas. The bill included the adoption of interest rate ceilings expressed as an annual percentage rate and firmly incorporated these ceilings into Texas usury law. However, in many cases this ceiling was merely an alternative to some effective higher rate that could be derived using a precomputed, add-on method of calculating the charges.

Additionally in 1981, a period of rapidly changing interest rates, the Legislature adopted multiple interest rate ceilings for various time frames in order to capture the movement of interest rates. Weekly, monthly, quarterly, and annual interest rate ceilings are all statutorily created interest rate ceilings and computed according to fluctuations in the 26 week treasury bill rate. Over the last two decades interest rates have solidly stabilized. There is almost no need for the wide variety of interest rate statutes that have been created in the statute.

Texas usury statutes are well known for the high degree of complexity. It seems realistically possible to improve the usury statutes by simplifying and flattening the interest rate ceilings. This project, though, carries significant political challenges as the passage of any type of bill that adjusts a maximum charge allowable in a consumer credit transaction is a major undertaking. These bills usually are highly controversial and require a great deal of debate.

4C. Potential solutions.

1. Develop a rate simplification legislative model. Seek and build consensus behind this model. This project may require 3-5 years to effectively build the appropriate support required for passage.
2. Bifurcate the project into separate arms and work on narrow portions of the interest rate ceilings. This process is easier to build the appropriate support required for passage, but is harder to maintain consistency when the same special interest groups are no longer interested in the overall development and negotiations, especially if their special interest area is complete.
3. Continue with the same interest rate model and wait for the general economic trend and industry lobbying to eventually modify the state statutes. In this solution, there will almost assuredly be no consistency across the consumer credit statutes as a whole.

5. Federal Preemption

5A. *Brief discussion of the issue.*

The continual trend of federal preemption of state laws threatens the integrity of state usury laws.

5B. *Discussion.*

The globalization of the economy and the technological developments of society have resulted in the situation where business is transacted more freely across state borders. While these developments create more opportunities for businesses and consumers, laws that state legislatures have formed to uniquely protect the rights of citizens of their states are becoming more difficult to enforce. Specifically with the authorization for exportation of interest rates by national banks across state lines, a state's usury law limitations are impacted. The impact of the laws continues to erode as national banks locate their operations in states with little or no usury protections. The enactment of the *Riegle Neal Act* is further movement toward preemption allowing almost all lending activities to occur in another state, yet still permitting the exportation of interest charges into the new state through a branch location in the state.

Another example is the Office of Thrift Supervision stating that state licensing laws of lenders and mortgage companies that pertain to subsidiaries of state savings banks (no matter how far removed the subsidiary is from the parent savings bank) are preempted. Thus, the state again has lesser control over the activities of these entities. Furthermore, as explained earlier these federal entities do virtually no examination for compliance with state laws. Yet more examples are: (1) the Office of Thrift Supervision stating that state laws prohibiting prepayment penalties on mortgages, including home equity loans is preempted, and (2) the Office of Comptroller of the Currency implied preemption of loan to value ratios on any mortgage loans held or originated by a national bank. This type of preemption is even a greater concern for Texas in that, effectively, a successful preemption argument of these types could invalidate the entire authorization for home equity lending found in the constitution.

5C. *Possible solutions.*

None are readily apparent. This is an issue that requires vigilance in monitoring by the state's leadership. Should the state's laws be further threatened, perhaps the Texas congressional delegation could be persuaded to intervene on behalf of the state and its right to protect its citizens.

X. Comments

N/A

XI. Attachment List

Items Relating to Key Functions, Powers, and Duties

1. Enabling statute
2. N/A – Annual reports from Fiscal Year 1996-1999
3. Internal and external newsletters published by the agency from Fiscal Year 1998-1999
4. List of publications and brochures describing the agency
5. N/A – Studies required by legislation or riders adopted in the 76th Legislative Session

Items Relating to Policymaking Structure

6. Biographical information for all policymaking body members
7. Most recent rules

Items Relating to Funding

8. Legislative Appropriations Request for Fiscal Years 2000-2001
9. Annual financial reports from Fiscal Years 1996-1998
10. Operating budgets from Fiscal Years 1996-1998

Items Relating to Organization

11. Organizational chart
12. N/A – Map

Items Relating to Agency Performance Evaluation

13. Quarterly performance reports Fiscal Years 1997-1999
14. N/A – Studies conducted by outside management consultants or academic institutions
15. N/A – Current internal audit plan
16. N/A – Internal audit reports from Fiscal Years 1995-1999 completed by or in progress at the agency
17. State Auditor reports from Fiscal Years 1997-1999 that relate to the agency or any of its functions (1997 Small Agency Management Control Audit)
18. N/A – Legislative studies relating to the agency being performed during the current interim
19. Studies from other states, the federal government, or national groups/associations that relate to or affect the agency or agencies with similar duties or functions (*National Survey of Home Equity Loans*, Survey Research Center, University of Michigan)

Additional Attachments

20. *Texas Credit Laws*
21. *Texas Pawnshop Act*
22. Letter from Legislative Budget Board granting variance
23. Letter from Governor's Office of Budget and Planning granting variance
24. Interpretation white paper previously presented to Finance Commission
25. Licensing Flowchart
26. *Regulatory Commentary on Equity Lending Procedures*
27. Strategic Plan for the period 1999-2003