



GOVERNOR GREG ABBOTT

To: Philip Holt, Chair
Charles Cooper, Banking Commissioner and Executive Director
Robert Nichols, General Counsel
Finance Commission of Texas

From: Caleb Gunnels, Counsel
Regulatory Compliance Division, Office of the Governor

Date: August 15, 2024

Subject: Proposed Title 7 Texas Administrative Code Section 33.27 (RCD Rule Review #2024-005)

I. Syllabus

The Finance Commission of Texas (“commission”), on behalf of the Texas Department of Banking (“department”), proposed amended 7 TAC §33.27 to increase the assessment and examination fees charged to money services businesses subject to Chapters 152 and 160 of the Texas Finance Code.¹ The commission submitted the proposed amended rule to the Regulatory Compliance Division (“division”) for review on July 5, 2024.² The division invited public comments on the proposed rule for a 25-day period ending on August 9, 2024, and received no comments.

Based on the following analysis, the division has determined that the proposed amended rule is consistent with state policy, and, thus, the proposed amended rule is approved by the division and may be finally adopted and implemented.

II. Analysis

The department is generally tasked with licensing and supervising money transmitters and currency exchangers (“money services businesses”), including digital asset service providers, pursuant to Chapters 152 and 160, Texas Finance Code.³ Money services businesses offer a wide

¹ 49 Tex. Reg. 4866 (2024) (to be codified at 7 TAC §33.27) (proposed July 5, 2024) (Fin. Comm’n Tex.).

² Rule Submission Memorandum from the Finance Commission of Texas (July 5, 2024), at 1 (on file with the Regulatory Compliance Division of the Office of the Governor).

³ “Money transmission” is generally defined as selling or issuing payment instruments, selling or issuing stored value, or receiving money for money transmission services from a person located in the state, and also includes payroll processing services pursuant to Section 152.003(22), Texas Finance Code. “Currency exchange” is generally defined as receiving the currency of one government and exchanging it for the currency of another government, or

range of services, including currency exchange, currency transportation, sales of money orders and travelers' checks, virtual currency activity involving stablecoin, stored value products, payroll transmission, and other money transmission.⁴

As part of its licensing and supervisory responsibilities, the department conducts annual assessments of money services businesses pursuant to Section 152.107(d), Texas Finance Code, and may conduct examinations, either by on-site or off-site review, through the process of evaluating the books and records of a license holder pursuant to Section 152.057, Texas Finance Code. Further, the department is authorized to impose and collect fees from applicants and license holders to cover application costs, department assessments, and examinations pursuant to Sections 152.052(b), 152.056(e), 152.107(d)(1), 152.104(d), and 152.151(b)(2), Texas Finance Code.

Current §33.27 is purposed to fund the department's regulation and oversight of money services businesses through its collection of annual assessments and examination fees, but assessment fees have not been updated since 2014.⁵ Since the rule's last update, the money services business industry has grown in size and in complexity, with the introduction of new technologies, higher annual transaction volumes, and recent department licensure of advanced "fintech" companies, including money transmission affiliates of some of the largest technology companies in the world.⁶ Further, after the 88th Legislature's recent passage of House Bill 1666, the department is also responsible for administering Chapter 160, Texas Finance Code, to oversee money transmitters that qualify as digital asset service providers and to ensure compliance relating to the safekeeping, transmitting, or exchanging of virtual currencies and other customer funds.⁷ The commission notes that department expenses required to maintain an acceptable level of regulatory oversight for money services businesses have significantly increased over the past decade, and without adjustment, may result in harms to the public and Texas consumers due to lack of oversight or enforcement.⁸

Leading up to the rulemaking, the department analyzed the growth in the money services business industry, the increase in department time and resources needed to properly examine licensees, the incurrence of additional department expenses to fulfill its statutory responsibilities, and it also conducted an analysis to determine the department revenues required to cover the expenses of properly overseeing the industry.⁹ As a result of the department's analyses, the

receiving a negotiable instrument and exchanging it for the currency of another government pursuant to Section 152.003(10), Texas Finance Code. "Money services businesses" include licensed money transmitters that qualify as digital asset service providers pursuant to Section 160.003, Texas Finance Code.

⁴ Rule Submission Memorandum from the Finance Commission of Texas (July 5, 2024), at 1-2.

⁵ *Id.* at 2.

⁶ *Id.* For example, the commission notes that in 2014, annual transaction volume for licensed money transmitters was \$84 billion, and has recently increased to \$316 billion.

⁷ 49 Tex. Reg. 4867 (2024) (preamble to proposed §33.27) (July 5, 2024) (Fin. Comm'n Tex.); Rule Submission Memorandum from the Finance Commission of Texas (July 5, 2024), at 3.

⁸ Rule Submission Memorandum from the Finance Commission of Texas (July 5, 2024), at 5.

⁹ *Id.* at 4.

commission proposed amended §33.27, generally, to increase assessment fees for money services businesses licensed by the department, to permit the department to further adjust assessment fees on a yearly basis consistent with cost inflation as measured by the Gross Domestic Product Implicit Price Deflator index, and to increase the hourly examination fees charged to licensees in certain limited scenarios.

Given that an increase in assessment and examination fees could create a barrier to market competition and may result in higher prices or reduced competition, for a product or service provided by or to license holders in the state, proposed amended §33.27 may affect competition pursuant to Section 57.105(d)(1) and (2), Texas Occupations Code, and was thus submitted to the division for review.

Proposed amended §33.27(d)(1)(A), (e)(3), (f)(1), (g)(3), (h)(2) and (h)(4) increase department investigation and examination fees, charged to applicants and license holders for each department examiner required to conduct an investigation or examination of an applicant or license holder's business and records, including any associated travel expenses required, from \$75 per hour to \$120 per hour. Section 152.056, Texas Finance Code, in part, authorizes the commissioner of the department to conduct investigations, examinations, or other proceedings necessary and appropriate to enforce Chapter 152, and to recover reasonable costs incurred in connection with an investigation. Likewise, in accordance with its supervisory duties, Section 152.057, Texas Finance Code, in part, authorizes the department commissioner to conduct examinations or investigations of money services licensees or authorized delegates as reasonably necessary to administer and enforce Chapter 152 and other applicable law, and to recover all costs reasonably incurred in connection with an examination. Lastly, Section 152.052(b), Texas Finance Code, generally authorizes the commission to adopt rules to impose and collect proportionate and equitable fees and costs for notices, applications, examinations, investigations, and other actions to recover the costs of maintaining and operating the department and administering and enforcing Chapter 152 and other applicable law. The commission correctly notes that "other applicable law" includes Chapter 160, Texas Finance Code, because it charges the department with regulating money transmitter licensees that qualify as digital asset service providers and, thus, expands the scope of the department's regulatory duties under Chapter 152.¹⁰ And, Section 160.006, Texas Finance Code, authorizes the commission to adopt rules to administer and enforce the chapter, including rules necessary and appropriate to implement and clarify the chapter. Of course, the department reasonably incurs greater operational costs in expanding its regulatory oversight to include additional market participants. Likewise, the commission also claims that department costs, such as conducting required periodic examinations of licensees, have increased due to rising inflation that impacts wages and travel costs, the necessity to hire and retain additional qualified personnel, as well as the additional time, resources, and attention that are now required due to the increasing size and complexity of industry applicants and licensees.¹¹

¹⁰ *Id.* at 3.

¹¹ *Id.*

Next, proposed amended §33.27(e)(1) and (2), increase the annual assessment for currency exchange licensees and money transmission licensees, respectively, that is, the fee assessed annually to pay the costs incurred by the department in examining a license holder and in administering Chapter 152, Texas Finance Code, including the annual license fee required pursuant to Section 152.107(d)(1), which authorizes the commission to establish such fees by rule. And, Section 152.052(b), Texas Finance Code, in part, authorizes the commission to impose and collect, by rule, proportionate and equitable fees and costs for notices, applications, examinations, investigations, and other actions required to operate the department and to administer and enforce Chapter 152 and other applicable law, such as Chapter 160, as discussed earlier.

In each graphic within the proposed amended rules, the commission proposed increasing the base assessment fee for annual transaction dollar amounts that fall within any one of eight brackets. For example, under current §33.27(e)(1), if the total dollar amount of a currency exchange licensee's annual transactions is below \$249,999.99, which is the lowest bracket, the base annual assessment is \$2,750. If the total transaction dollar amount is between \$250,000 and \$499,999.99, the annual assessment is \$2,750 plus the amount of the licensee's transactions over \$250,000 multiplied by a factor of .00235. Thus, it follows, as each bracket increases, the base annual assessment fee increases, but the factor utilized to increase the base fee, if utilized at all, differs for each bracket. The maximum bracket is for licensees with a total dollar amount of annual transactions exceeding \$200,000,000. The annual assessment for such licensees is currently \$9,150, plus the amount of a licensee's transactions over \$200 million multiplied by a factor of .00001125, but will not exceed \$21,250. Proposed amended §33.27(e)(1) increases the annual base assessment fee in each bracket for currency exchange licensees, while leaving the bracket amounts and factors utilized to increase a base assessment fee the same as they are under the current rule. For example, the base assessment for the lowest bracket is proposed to increase from \$2,750 to \$3,150, and for the highest bracket, the proposed increase for the base assessment fee is from \$9,150 to \$10,500. And, the maximum assessment fee that can be charged is proposed to increase from \$21,250 to \$24,450.

The annual assessment graphic for money transmission licensees under current §33.27(e)(2) mirrors the graphic in current §33.27(e)(1), except that the annual base assessment amounts are higher, with a minimum assessment of \$3,950, and a maximum assessment of \$21,250. Proposed amended §33.27(e)(2) similarly increases the base assessment fee and factor utilized to increase the base fee for each bracket, while maintaining the bracket amounts under the current rule. For example, the base assessment for the lowest bracket is proposed to increase from \$3,950 to \$4,500, and for the highest bracket, the proposed increase for the base assessment fee is from \$11,100 to \$13,000, with the maximum assessment fee increasing from \$21,250 to \$60,000.

Lastly, proposed new §33.27(e)(4) generally permits the department to further adjust assessment fees on a yearly basis consistent with cost inflation as measured by the Gross Domestic Product Implicit Price Deflator index ("GDPIPD"), published quarterly by the Bureau of Economic Analysis, United States Department of Commerce, and which generally measures changes in the

prices of goods and services produced in the United States, including those exported to other countries.¹² Based on the GDPIPD, the proposed amended rule further details the procedures for calculating, and the timelines for publishing and notifying licensees of the base assessment amounts in each bracket, the factors utilized to increase base assessment fees in each bracket, and the maximum assessment amount listed in each graphic under §33.27(e)(1) and (2). Importantly, each value may be increased or decreased by an amount proportionate to the measure of inflation or deflation reflected in the annual GDPIPD factor.¹³

As noted above, since annual assessment fees were last updated by the department, the money services business industry has grown exponentially and increased in complexity due to developments in technology, financial services, the recent licensure of large “fintech” companies, and the department’s new oversight of digital asset service providers.¹⁴ In describing industry growth, the commission notes that since 2014, annual transaction volume for department-licensed money transmitters has increased from \$84 billion to \$316 billion, for example.¹⁵ And, in expanding its operations to include administration of Chapter 160, Texas Finance Code, the department estimated that annual license assessments will increase by 35%.¹⁶ It also estimated that annual submission reviews would require 25 hours per license holder, examination reviews would require 65 hours per examination, and application reviews would require 50 hours per applicant.¹⁷

Industry growth has required the department to increase full-time money services business financial examiners from six in fiscal year 2021, to twelve in fiscal year 2023, and the department plans to hire three more for the current year in order to properly and timely examine license holders and anticipated applicants.¹⁸ The commission notes that rising inflation has impacted wage and travel costs, and that the increasing size and complexity of the industry requires additional time, resources, and expertise to ensure proper oversight.¹⁹ It also highlights that the department requires additional resources to attract, hire, and retain enough qualified personnel to maintain effective operations.²⁰ After analyzing its forecasted revenues and expenditures, as compared to its historical budgets and operational costs, the department predicts it will operate on an increasing deficit in each fiscal year without adjustment to annual assessment, examination, and investigation fees.²¹ In other words, while the department’s duties

¹² Bureau of Economic Analysis, U.S. Department of Commerce, *GDP Price Deflator*, <https://www.bea.gov/data/prices-inflation/gdp-price-deflator> (last visited Aug. 8, 2024).

¹³ In accordance with proposed new §33.27(e)(4), the annual GDPIPD factor is equal to the percentage change in the GDPIPD index values published for the first quarter of the current year compared to the first quarter of the previous year (the March-to-March period immediately preceding the calculation date), rounded to a hundredth of a percent.

¹⁴ Rule Submission Memorandum from the Finance Commission of Texas (July 5, 2024), at 2 and 3.

¹⁵ *Id.* at 2.

¹⁶ *Id.* at 50-51.

¹⁷ *Id.*

¹⁸ *Id.* at 3.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 61.

and operational costs have increased, the fees utilized to fund the department's regulatory duties have remained static.

In considering alternatives to raising annual assessment, examination, and investigation fees, the commission notes that the department has attempted to reduce expenses, when possible, during each budgeting process.²² However, the commission urges that because assessment fees have not been adjusted in over a decade, the department has exhausted its ability to mitigate costs.²³ Yet, in considering the industry impact of the proposed amended rule, the commission points to current §33.27(i)(3), which, in part, authorizes the commissioner to decrease annual assessment fees if it is determined that a lesser amount than would otherwise be collected is necessary to fund the department's operations.²⁴ In fact, in fiscal years 2019-2023, the department reduced total billable annual assessments by 38%, 33%, 26%, 29%, and 22%, respectively, largely due to unbudgeted penalties collected by the department for unlicensed money services business activity and non-compliance by licensed money services businesses, as well as staff vacancies.²⁵ Its oversight and enforcement against unlicensed activities and licensee non-compliance also protects the public and Texas consumers.

In implementing the proposed amended rule, the department intends to follow its precedent in ensuring that increases in assessments are only incurred by licensees in response to actual increases in department expenses.²⁶ Ultimately, given the data presented by the commission, the broad statutory authority granted to the department to charge and recover annual assessment fees and investigation and examination costs, and that such fees are solely intended to fund the department's operations, proposed amended §33.27 is a reasonable exercise of the commission's authority and is consistent with state policy.

III. Determination

Based on the above analysis, the proposed amended rule is approved by the division and may proceed to final adoption and implementation.

²² *Id.* at 5.

²³ *Id.*

²⁴ *Id.* at 6.

²⁵ *Id.*

²⁶ *Id.*