



# TEXAS DEPARTMENT OF BANKING

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## SUPERVISORY MEMORANDUM – 1016

May 3, 2016

**TO:** Texas State-Chartered Banks  
Foreign Bank Branches and Agencies  
Texas Trust Companies  
All Bank and Trust Examining Personnel

**FROM:** Charles G. Cooper, Banking Commissioner

**SUBJECT:** Providing Consumer Complaint Notices

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### PURPOSE

This Memorandum clarifies certain circumstances under which a bank, trust company, or other entity subject to Texas Administrative Code, Title 7, §11.37 is not required to provide to consumers information regarding filing a complaint with the Texas Department of Banking.

### OVERVIEW

Texas Administrative Code Title 7, §11.37, “How Do I Provide Information to Consumers on How to File a Complaint?” (TAC §11.37) requires a bank, foreign bank, bank holding company, or trust company (collectively, an entity) chartered, licensed, or registered by the Texas Department of Banking (Department) to provide notice to a consumer of how to file a complaint with the Department<sup>1</sup>. The rule was adopted to ensure that consumers are aware that contacting the Department is one available method of helping to resolve an issue they have with an entity.

### *Entities as Financial Agents*

Entities occasionally enter into agreements with government agencies to act as the government’s financial agent or fiduciary in order for the government agency to carry out its goal of providing certain financial services or benefits to the public. How these joint entity-government programs are to operate is largely dictated by the contracting government agency overseeing the program. The Department is not a party to these agreements and the terms are established by the entity and the government agency, not the Department.

When the Department receives a question or concern from a consumer regarding a government program being operated by an entity as the government’s financial agent, the Department does

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<sup>1</sup>*Regulatory Guidance 3005 provides further guidance on implementation of the notice.*

not have the authority or the knowledge of the details of the program necessary to assist the consumer. This results in the Department only being able to direct the consumer to the appropriate government agency providing the program, rather than providing substantive assistance.

***Who is a “consumer”?***

TAC §11.37 requires that complaint notices be given to a “consumer” of an entity, which is defined as “an individual who obtains or has obtained a product or service from [an entity] that is to be used primarily for personal, family, or household purposes.” In the situation described above, the individual obtains the product or service from the government agency, not from the fiduciary agent or entity. Therefore, an individual receiving a product or service from a government’s financial agent or fiduciary is not a “consumer” within the meaning of TAC §11.37.

**CONCLUSION**

An entity acting as a financial agent or fiduciary on behalf of a government agency is not required to provide information regarding filing a complaint with the Department with all privacy statements issued to those individuals, but the entity is encouraged to provide information regarding filing a complaint with the appropriate government agency overseeing the program.