

# INTEROFFICE MEMO

Gary Grief, Executive Director

Alfonso D. Royal III, Charitable Bingo Operations Director

**To:** J. Winston Krause, Chairman  
Carmen Arrieta-Candelaria, Commissioner  
Doug Lowe, Commissioner  
Robert Rivera, Commissioner

**From:** Bob Biard, General Counsel *BB*

**Date:** April 12, 2018

**Re:** Consideration of and possible discussion and/or action, including adoption, on new 16 TAC §403.800 (Savings Incentive Program)

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Attached is a draft rule prepared for submission to the *Texas Register* to adopt new 16 TAC §403.800 (Savings Incentive Program), without changes to the proposed text as published in the February 23, 2018, issue of the *Texas Register* (43 TexReg 988) (also attached). The purpose of the adoption is to implement language required by newly-enacted SB 132 from the Regular Session of the 85th Texas Legislature concerning savings incentive programs for state agencies. While currently the Commission has no undedicated general revenue appropriated to it that would allow for a savings incentive program, the statute requires that the Commission enact rules in case such funds are appropriated in the future.

The Commission received no written comments on the proposal during the public comment period.

Recommendation: Staff recommends the Commission adopt the attached new 16 TAC §403.800 (Savings Incentive Program).

1           The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §403.800  
2   (Savings Incentive Program), without changes to the proposed text as published in the February  
3   23, 2018, issue of the *Texas Register* (43 TexReg 988). The purpose of the adoption is to  
4   implement language required by newly-enacted SB 132 from the Regular Session of the 85th  
5   Texas Legislature concerning savings incentive programs for state agencies. While currently the  
6   Commission has no undedicated general revenue appropriated to it that would allow for a savings  
7   incentive program, the statute requires that the Commission enact rules in case such funds are  
8   appropriated in the future.

9           The Commission received no written comments on the proposal during the public comment  
10   period.

11           This adoption is intended to implement Texas Government Code, Chapter 466.  
12   §403.800. Savings Incentive Program.

13   (a) Purpose. This section implements Chapter 2108 of the Texas Government Code, which  
14   requires state agencies to provide notice to the comptroller of savings realized from  
15   appropriated undedicated general revenue and to retain a portion of the amounts verified by  
16   the comptroller. Currently, the Commission has no appropriated undedicated general  
17   revenue and therefore may not retain any savings. However, consistent with the statute, this  
18   section will govern any potential future savings realized from appropriated undedicated  
19   general revenue.

20   (b) Retention of Funds. The commission will retain one-half of the amount of savings  
21   verified by the comptroller.

22   (c) Use of Funds. Of the savings retained by the Commission, one-half:

1 (1) must be used to make additional principal payments for general obligation bonds  
2 issued by the Commission or on behalf of the Commission by the Texas Public Finance  
3 Authority; or

4 (2) if there are no outstanding general obligation bonds issued by the Commission  
5 or on behalf of the Commission by the Texas Public Finance Authority, may be used to  
6 provide bonuses, distributed equally, to each Commission employee who:

7 (A) is a current full-time equivalent employee of the Commission;

8 (B) worked for the Commission as a full-time equivalent employee for the  
9 entire fiscal year in which the savings were realized; and

10 (C) is directly responsible for or worked in a department, office, or other  
11 division within the Commission that is responsible for the savings realized.

12 (3) If the amount of savings verified by the comptroller, expressed as a percentage  
13 of the total amount of undedicated general revenue derived from nonfederal sources  
14 appropriated to the Commission for the fiscal year in which the savings were realized, is:

15 (A) less than three percent, a bonus described by subsection (c)(2) may not  
16 exceed \$250;

17 (B) at least three percent but less than five percent, a bonus described by  
18 subsection (c)(2) may not exceed \$500;

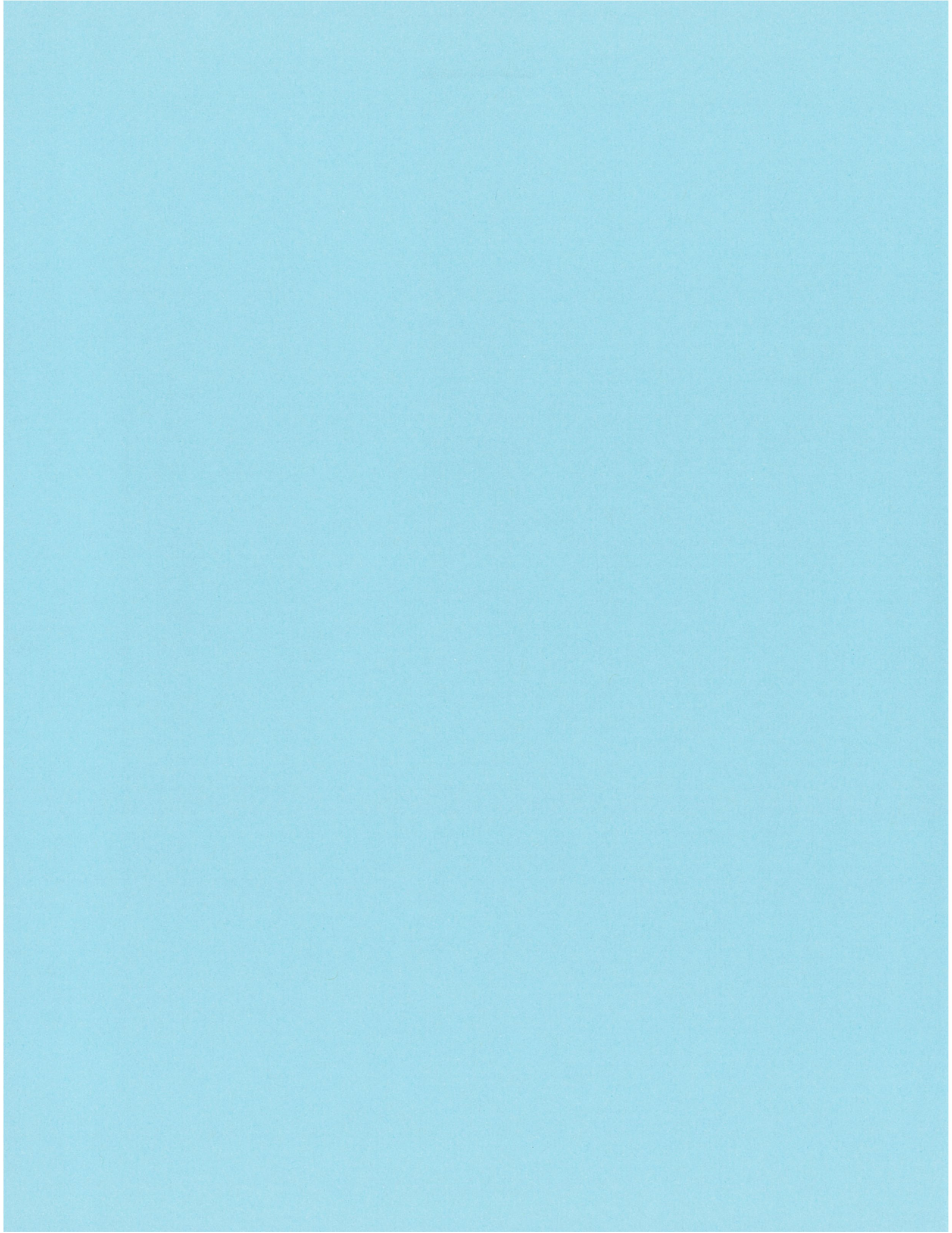
19 (C) at least five percent but less than 10 percent, a bonus described by  
20 subsection (c)(2) may not exceed \$750; and

21 (D) 10 percent or more, a bonus described by subsection (c)(2) may not  
22 exceed \$1,000.

1           (4) The Commission may not provide a bonus under subsection (c)(2) to an  
2 employee of the Commission who serves in a director-level position, including the  
3 executive director.

DRAFT





(4) "Identity recovery" means a process, through a limited power of attorney and the assistance of an identity recovery expert, that returns the identity of an identity theft victim to pre-identity theft event status.

(5) [(4)] "Qualified financial institution" means a financial institution organized and licensed under the laws of the United States, a state of the United States, or the District of Columbia.

(6) "Service contract" means an agreement that is entered into for a separately stated consideration and for a specified term under which a provider agrees to:

(A) repair, replace, or maintain a product, or provide indemnification for the repair, replacement, or maintenance of a product, for operational or structural failure or damage caused by a defect in materials or workmanship or by normal wear;

(B) provide identity recovery, if the service contract is financed under Chapter 348 or 353, Finance Code; or

(C) provide compensation to the buyer of a vehicle on the total constructive loss under a depreciation benefit optional member program.

(7) "Service contract holder" means a person who purchases or otherwise holds a service contract.

(8) [(2)] "Third-party administration of a service contract" includes any of the following activities performed on behalf of a service contract provider:

(A) - (D) (No change.)

(9) [(3)] The term "third party administration of a service contract" does not include the performance of repairs, or clerical functions ancillary to the performance of repairs, by a repair facility that performs no other activities with respect to a service contract.

(10) "Total constructive loss" means a loss of such significance that the cost of restoring damaged property would exceed its value after restoration.

#### §77.26. Additional Provider Requirements--Depreciation Benefit Optional Member Programs.

(a) This section applies only to a provider who sells or issues service contracts that provide a depreciation benefit optional member program as described by Texas Occupations Code §1304.003(a)(2)(C). For purposes of this section, these service contracts are referred to herein as "depreciation benefit service contracts."

(b) A provider or its dealers may not require the purchase of a depreciation benefit service contract as a condition of approval of a loan for the purchase of a vehicle.

(c) A depreciation benefit service contract may not be offered by a dealer who requires a loan for the purchase of a vehicle to be financed exclusively with the dealer.

(d) The fee or purchase price that is charged for a depreciation benefit service contract must be reasonable in relation to the benefit provided by the depreciation benefit service contract.

#### §77.70. Responsibilities of Providers and Administrators.

(a) - (e) (No change.)

(f) As part of the disclosures required under subsection (d), a provider and/or any administrator appointed by the provider who sells or issues service contracts described under Texas Occupations Code §1304.003(a)(2)(C) (referred herein as "depreciation benefit service contracts") must disclose the following information:

(1) the names and locations of the participating dealers who are part of the depreciation benefit optional member program;

(2) the amount of the credit that will be paid or the method of calculation that will be used to pay the credit toward the purchase of a replacement vehicle;

(3) a statement that purchase of the service contract is not required as a condition of approval of a loan for the purchase of a vehicle;

(4) a statement that a service contract may not be offered by a dealer who requires a loan for the purchase of a vehicle to be financed exclusively with the dealer; and

(5) a statement that the service contract may be cancelled by the service contract holder and the procedures and timeframes for a service contract holder to cancel the service contract and obtain a refund as specified under subsections (d)(2) and (d)(3).

(g) [(f)] If not provided by the seller at the time of sale, the provider and/or any administrator appointed by the provider must provide a copy of the service contract to the service contract holder within a reasonable amount of time after the date of purchase that still allows the service contract holder the opportunity to cancel the contract and receive a full refund.

(h) [(g)] If not provided by the seller at the time of sale, the provider and/or any administrator appointed by the provider must provide a receipt for or other written evidence of the purchase of a service contract to the service contract holder within a reasonable amount of time after the date of purchase that still allows the service contract holder the opportunity to cancel the contract and receive a full refund.

(i) [(h)] A provider shall report to the department within 30 days any change in information required by §77.20 and §77.21.

(j) [(i)] An administrator shall report to the department within 30 days any change in information required by §77.22 and §77.23.

(k) [(j)] Upon notification by the department, the provider and/or any administrator appointed by the provider shall allow the department to audit records required to be maintained by Texas Occupations Code Chapter 1304. These records include copies of the service contracts marketed, sold, administered or issued in this state.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 12, 2018.

TRD-201800579

Brian E. Francis

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: March 25, 2018

For further information, please call: (512) 463-3671

## PART 9. TEXAS LOTTERY COMMISSION

### CHAPTER 403. GENERAL ADMINISTRATION 16 TAC §403.800



The Texas Lottery Commission (Commission) proposes new 16 TAC §403.800 (Savings Incentive Program). The purpose of the proposed new rule is to implement language required by newly-enacted SB 132 from the Regular Session of the 85th Texas Legislature concerning savings incentive programs for state agencies. While currently the Commission has no undedicated general revenue appropriated to it that would allow for a savings incentive program, the statute requires that the Commission enact rules in case such funds are appropriated in the future.

Kathy Pyka, Controller, has determined that for each year of the first five years the new rule will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed new rule. There will be no adverse effect on small businesses or rural communities, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the new rule, as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed new rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Ms. Pyka, Controller, has determined that for each year of the first five years the proposed new rule will be in effect, the public benefit is reflecting the statutory change regarding savings incentive programs and, potentially in the future if the Commission is funded differently, encouraging employees to identify cost savings to the state.

Pursuant to Texas Government Code §2001.0221, the Commission provides the following Government Growth Impact Statement for the proposed rule. This statement is based on the absence of any undedicated general revenue in the Commission's current and anticipated legislative appropriations that would trigger the implementation of the savings incentive program. Accordingly, for each year of the first five years the proposed rule will be in effect, Kathy Pyka, Controller, has determined the following:

- (1) The proposed rule does not create or eliminate a government program.
- (2) Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the Commission.
- (4) The proposed rule does not require an increase or decrease in fees paid to the Commission.
- (5) The proposed rule creates a new regulation only as mandated by the Texas Legislature.
- (6) The proposed rule does not expand or limit an existing regulation.
- (7) The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability.
- (8) The proposed rule does not positively or adversely affect this state's economy.

The Commission requests comments on the proposed new rule from any interested person. Comments on the proposed new rule may be submitted to Ryan Mindell, Managing Attorney, by mail at Texas Lottery Commission, P.O. Box 16630, Austin,

Texas 78761-6630; by facsimile at (512) 344-5189; or by email at [legal.input@lottery.state.tx.us](mailto:legal.input@lottery.state.tx.us). Comments must be received within 30 days after publication of this proposal in the *Texas Register* in order to be considered.

The new rule is proposed under Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction; and Texas Government Code §2108.103(f), which requires the Commission to adopt rules for its implementation.

The proposed new rule implements changes to Chapter 2108 of the Texas Government Code.

§403.800. Savings Incentive Program.

(a) Purpose. This section implements Chapter 2108 of the Texas Government Code, which requires state agencies to provide notice to the comptroller of savings realized from appropriated undedicated general revenue and to retain a portion of the amounts verified by the comptroller. Currently, the Commission has no appropriated undedicated general revenue and therefore may not retain any savings. However, consistent with the statute, this section will govern any potential future savings realized from appropriated undedicated general revenue.

(b) Retention of Funds. The commission will retain one-half of the amount of savings verified by the comptroller.

(c) Use of Funds. Of the savings retained by the Commission, one-half:

(1) must be used to make additional principal payments for general obligation bonds issued by the Commission or on behalf of the Commission by the Texas Public Finance Authority; or

(2) if there are no outstanding general obligation bonds issued by the Commission or on behalf of the Commission by the Texas Public Finance Authority, may be used to provide bonuses, distributed equally, to each Commission employee who:

(A) is a current full-time equivalent employee of the Commission;

(B) worked for the Commission as a full-time equivalent employee for the entire fiscal year in which the savings were realized; and

(C) is directly responsible for or worked in a department, office, or other division within the Commission that is responsible for the savings realized.

(3) If the amount of savings verified by the comptroller, expressed as a percentage of the total amount of undedicated general revenue derived from nonfederal sources appropriated to the Commission for the fiscal year in which the savings were realized, is:

(A) less than three percent, a bonus described by subsection (c)(2) may not exceed \$250;

(B) at least three percent but less than five percent, a bonus described by subsection (c)(2) may not exceed \$500;

(C) at least five percent but less than 10 percent, a bonus described by subsection (c)(2) may not exceed \$750; and

(D) 10 percent or more, a bonus described by subsection (c)(2) may not exceed \$1,000.

(4) The Commission may not provide a bonus under subsection (c)(2) to an employee of the Commission who serves in a director-level position, including the executive director.



The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 9, 2018.

TRD-201800550

Bob Biard

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: March 25, 2018

For further information, please call: (512) 344-5012

## TITLE 19. EDUCATION

### PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

#### CHAPTER 1. AGENCY ADMINISTRATION SUBCHAPTER E. STUDENT COMPLAINT PROCEDURE

##### 19 TAC §1.114, §1.115

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Chapter 1, Subchapter E, §1.114 and §1.115 concerning the Student Complaint Procedure. Specifically, these amendments will update the division name in the student complaint mailing address, remove the language prohibiting the acceptance of Facsimile (FAX) transmissions of student complaint forms, and clarify the student complaint procedures.

The twofold purpose of the Student Complaint Procedure is to encourage the early resolution of student complaints through use of the institutions' grievance procedures or informal processes and enable the State to review and address student complaints directly or through referrals when appropriate. The Student Complaint Procedure was created to comply with the U.S. Department of Education's "Program Integrity" regulations, which require each state to have a student complaint procedure in order for public and private higher education institutions to be eligible for federal Title IV funds.

General Counsel Mr. William Franz has determined that for each year of the first five years the section is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Franz has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the clarification of the student complaint procedures. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment. There will be no impact on small businesses or rural communities, as described in Texas Government Code, Chapter 2006, and therefore an Economic Impact analysis is not required.

Government Growth Impact Statement

(1) the rules will not create or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule; and

(7) the rules will not change the number of individuals subject to the rule.

Comments on the proposal may be submitted to William Franz, General Counsel, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711, or via email to Kammi Contreras, [kammi.contreras@theccb.state.tx.us](mailto:kammi.contreras@theccb.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §61.031, which provides the Coordinating Board with the authority to establish policies and procedures relating to complaint investigation and resolution; Texas Education Code, §61.028, which provides that the Board can delegate these responsibilities to the Commissioner; and Texas Education Code, §61.027, which provides the Coordinating Board with the authority to adopt and publish rules and regulations to effectuate the provisions of Texas Education Code, Chapter 61.

The amendments affect the implementation of Texas Education Code, §61.031.

##### *§1.114. Filing a Complaint.*

(a) (No change.)

(b) Complainants shall submit student complaint forms through the online process provided on the agency's website, by electronic mail (email) to [StudentComplaints@theccb.state.tx.us](mailto:StudentComplaints@theccb.state.tx.us), or by hard copy sent to the Texas Higher Education Coordinating Board, Office of General Counsel, [College Readiness and Success Division] P.O. Box 12788, Austin, Texas 78711-2788. [Facsimile (FAX) transmissions of the student complaint form are not accepted.]

(c) All submitted complaints must include the following three completed, signed forms: a student complaint form, [and a signed] Family Educational Rights and Privacy Act (FERPA) Consent and Release form, and THECB Consent and Agreement form. [which is at the bottom of the student complaint form.] Submitted complaints regarding students with disabilities shall also include a signed Authorization to Disclose Medical Record Information form, [which is at the bottom of the student complaint form.]

(d) - (e) (No change.)

*§1.115. Referral of Certain Complaints to Other Agencies or Entities.* Once the Agency receives a student complaint form, the Agency may refer the complaint to another agency or entity as follows:

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

(3) If the Agency determines that the complaint is appropriate for investigation and resolution by the institution's recognized accrediting agency, the Agency may refer the complaint to the accrediting agency. If the Agency refers the complaint to such accrediting agency, the Agency may ask [request] the accrediting agency to send quarterly updates in writing to the Agency regarding the status of the investigation of the complaint and to [shall] notify the Agency in writing of the