

A.

Finance Commission

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FINANCE COMMISSION OF TEXAS

MEETING DATEJune 18, 2021

MEETING LOCATIONVia Webinar

CONTACT INFORMATION.....Phone: (512) 936-6222
Website: www.fc.texas.gov

FUTURE MEETING DATESAugust 20, 2021
October 15, 2021
December 17, 2021

*** The State of Texas fiscal year begins September 1 and ends August 31. The dates noted meet the minimum statutory requirement of six meetings per calendar year. Fin. Code §11.106.*

Meeting Accessibility. Under the Americans with Disabilities Act, the agency will accommodate special needs. Those requesting auxiliary aids or services should notify the Finance Commission of Texas Administrator several days prior to the meeting using the contact information above by mail, telephone, or email.

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FINANCE COMMISSION AGENDA

Friday, June 18, 2021

9:00 a.m.

or Upon Adjournment of the Audit Committee Meeting
Via Webinar

Due to Governor Greg Abbott's March 13, 2020 proclamation of a state of disaster affecting all counties in Texas due to the Coronavirus (COVID-19) and the Governor's March 16, 2020 suspension of certain provisions of the Texas Open Meetings Act, the June 18, 2021 meeting of the Finance Commission of Texas will be held via webinar/telephonic conference call, as authorized under Texas Government Code section 551.125.

Members of the public who would like to participate in this meeting will need to register at www.fc.texas.gov or at <https://register.gotowebrinar.com/register/1843024895265950736>. An electronic copy of the agenda is now available at www.fc.texas.gov, and a copy of the meeting materials will be available on June 10, 2021 at www.fc.texas.gov. To access the recording visit www.fc.texas.gov after June 18, 2021.

Section A.3 will take up agenda items A1 and C2 with NO DISCUSSION as notated in bold and italicized.

Public comment on any agenda item or issue under the jurisdiction of the Finance Commission of Texas agencies is allowed unless the comment is in reference to a rule proposal for which the public comment period has ended. However, upon majority vote of the Commission, public comment may be allowed related to final rule adoption.

A. FINANCE COMMISSION MATTERS

1. Review and Approval of the Minutes of the April 16, 2021 Finance Commission Meeting

2. General Public Comment

3. Consent Agenda

4. Finance Commission Operations

5. Audit Committee Report

A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action to Reapprove the Internal Auditor Contract for Garza/Gonzalez & Associates for Fiscal Year 2022

B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Texas Department of Banking's 2021 Annual Internal Audit Report as Prepared and Presented by Garza/Gonzalez and Associates

C. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Revised Texas Financial Education Endowment (TFEE) Fund Grant Administration & Advisory Policy Manual and 2022-2023 Funding Priorities

D. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action to Approve an Amount for the Upcoming 2022-2023 Grant Cycle for the Texas Financial Education Endowment (TFEE)

6. Discussion of and Possible Vote to Take Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Duties and Compensation of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to the Duties and Compensation of Persons Holding the Position of Agency Commissioner Positions, and Other Staff

7. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to §551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property
8. Discussion of and Consultation with Attorney and Possible Vote to Take Action Pursuant to §551.071, Texas Government Code, for the Purpose of Seeking the Advice or Attorney-client Privileged Communications from our Attorneys, Including Matters Related to the Potential Financial Exposure of the Finance Commission Agencies and Their Officers and the Finance Commission and its Officers and Including Matters of Pending and Contemplated Litigation
9. Discussion of and Consultation on Security Audit, Possible Issue Related to Confidential or Sensitive Information, Security Breach Audit and Assessment, or Security Assessments or Deployment Related to Information Resources Technology as Authorized by Tex. Govt. Code Secs. 551.076 and 551.089

B. OFFICE OF CONSUMER CREDIT COMMISSIONER

1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities
2. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

Ernest Polk v. Texas Office of Consumer Credit Commissioner; Cause No. 2018-04375, in the 281st Judicial District Court of Harris County, Texas

C. TEXAS DEPARTMENT OF BANKING

1. Industry Status and Departmental Operations: a) Current Issues Affecting Department's Regulated Entities; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Non-Depository Supervision Division Activities; e) Administrative, Staffing and Fiscal Division Activities; f) Strategic Support Division Activities including Consumer Complaint Data; g) Legal Division Activities including Enforcement Activity and Gift Reporting; and h) Legislative Activities
2. *Discussion of and Possible Vote to Take Action on the Adoption of Amendment to 7 TAC §3.36, Concerning Annual Assessments and Specialty Examination Fees*
3. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

D. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

1. Industry Status and Departmental Operations: a) Thrift Regulation Division Activities; b) Mortgage Regulation Division Activities; c) Operations Division Activities; d) Legal Division Activities, including Consumer Complaints and Gift Reporting; and e) Legislative Activities
2. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

NOTE: The Finance Commission of Texas may go into executive session (close its meeting to the public) on any agenda item if appropriate and authorized by the Open Meetings Act, Texas Government Code, Chapter 551.

Meeting Accessibility: Under the Americans with Disabilities Act, the Finance Commission of Texas will accommodate special needs. Those requesting auxiliary aids or services should notify the Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 936-6222, as far in advance of the meeting as possible.

MINUTES OF THE FINANCE COMMISSION MEETING Friday, April 16, 2021

The Finance Commission of Texas convened at 9:25 a.m. on April 16, 2021 with the following members present:

Finance Commission Members in Attendance (via webinar):

Phillip Holt, Chairman	Will Lucas
George "Cliff" McCauley, Vice Chairman	Sharon McCormick
Robin Armstrong	Vince Puente
Hector Cerna	Laura Warren
Larry Long	

Chairman Phillip Holt made a motion to excuse Bob Borochoff from the Finance Commission meeting held on April 16, 2021. There were no objections and the motion passed unanimously. *(1:56:06 on audio file)*.

Commissioner Charles Cooper announced there was a quorum with nine members present. *(2:34 on audio file)*.

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
A. Finance Commission Matters		
1. Review and Approval of the Minutes of the February 19, 2021 Finance Committee Meeting	On Consent Agenda – Item A1 This item Approved on the Consent Agenda.	n/a
2. General Public Comment	No Action Required.	2:46 start of discussion
3. Consent Agenda – Item A1	Laura Warren made a motion to Approve Consent Agenda item A1. Sharon McCormick seconded and the motion passed.	3:30 start of discussion 3:52 Vote
4. Finance Commission Operations	No Action Required.	4:19 start of discussion
5. Audit Committee Report		
A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2021 Second Quarter Investment Officer Reports 1. Texas Department of Banking 2. Department of Savings and Mortgage Lending 3. Office of Consumer Credit Commissioner	Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies' 2021 Second Quarter Investment Officer Reports passed.	9:25 start of discussion 9:59 Vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<p>B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2021 Second Quarter Financial Statements</p> <ol style="list-style-type: none"> 1. Texas Department of Banking 2. Department of Savings and Mortgage Lending 3. Office of Consumer Credit Commissioner 	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies' 2021 Second Quarter Financial Statements passed.</p>	<p>10:23 start of discussion</p> <p>10:30 Vote</p>
<p>C. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Texas Department of Banking's Consumer Assistance Audit Report as Prepared and Presented by Garza/Gonzalez and Associates</p>	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Texas Department of Banking's Consumer Assistance Audit Report as Prepared and Presented by Garza/Gonzalez and Associates passed.</p>	<p>10:51 start of discussion</p> <p>11:01 Vote</p>
<p>D. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Office of Consumer Credit Commissioner's TFEE Fund Investment Portfolio Administration Audit Report as Prepared and Presented by Garza/Gonzalez and Associates</p>	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Office of Consumer Credit Commissioner's TFEE Fund Investment Portfolio Administration Audit Report as Prepared and Presented by Garza/Gonzalez and Associates passed.</p>	<p>11:21 start of discussion</p> <p>11:35 Vote</p>
<p>6. Status Report on Implementation of Finance Commission Directive on the Efficiency Audit Regarding Sunset Recommendation 2.6 – "Direct the Finance Commission to minimize duplication of agency functions and promote more cost efficient administration of the finance agencies."</p>	<p>No Action Required.</p>	<p>12:01 start of discussion</p>
<p>7. Discussion of and Possible Vote to Take Action on the Finance Commission Agencies' Fiscal Year 2021 Mid-Term Accomplishment Reports</p>	<p>Laura Warren made a motion to Approve the Finance Commission Agencies' Fiscal Year 2021 Mid-Term Accomplishment Reports. Sharon McCormick seconded and the motion passed.</p>	<p>15:05 start of discussion</p> <p>27:03 Vote</p>
<p>8. Discussion of the Condition of the Texas State Banking System Report (<i>Note: Report provided separately</i>)</p>	<p>No Action Required.</p>	<p>27:28 start of discussion</p>

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
9. Discussion of and Possible Vote to Take Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Duties and Compensation of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to the Duties and Compensation of Persons Holding the Position of Agency Commissioner Positions, and Other Staff	No Discussion.	n/a
10. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to §551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property	No Discussion.	n/a
11. Discussion of and Consultation with Attorney and Possible Vote to Take Action Pursuant to §551.071, Texas Government Code, for the Purpose of Seeking the Advice or Attorney-client Privileged Communications from our Attorneys, Including Matters Related to the Potential Financial Exposure of the Finance Commission Agencies and Their Officers and the Finance Commission and its Officers and Including Matters of Pending and Contemplated Litigation	No Discussion.	n/a
12. Discussion of and Consultation on Security Audit, Possible Issue Related to Confidential or Sensitive Information, Security Breach Audit and Assessment, or Security Assessments or Deployment Related to Information Resources Technology as Authorized by Tex. Govt. Code Secs. 551.076 and 551.089	No Discussion.	n/a
B. Texas Department of Banking		
1. Industry Status and Departmental Operations: a) Current Issues Affecting Department's Regulated Entities; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Non-Depository Supervision Division Activities; e) Administrative, Staffing and Fiscal Division Activities; f) Strategic Support Division Activities including Consumer Complaint Data; g) Legal Division Activities including Enforcement Activity and Gift Reporting; and h) Legislative Activities	No Action Required.	39:19 start of discussion

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
2. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendment to 7 TAC §3.36, Concerning Annual Assessments and Specialty Examination Fees	Vince Puente made a motion to Approve the Proposal and Publication for Comment of Amendment to 7 TAC §3.36, Concerning Annual Assessments and Specialty Examination Fees. Laura Warren seconded and the motion passed.	1:00:18 start of discussion 1:02:32 Vote
3. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Discussion.	n/a
C. Department of Savings and Mortgage Lending		
1. Industry Status and Departmental Operations: a) State Savings Bank Examinations and Supervision Division Activities; b) Mortgage Licensing Division Activities; c) Mortgage Examinations Division Activities; d) Consumer Complaints Division Activities; e) Administration and Finance Division Activities; f) Legal Division Activities, including Gift Reporting; and g) Legislative Activities	No Action Required.	1:03:17 start of discussion
2. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Discussion.	n/a
D. Office of Consumer Credit Commissioner		
1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities	No Action Required.	1:29:43 start of discussion
2. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation <i>Ernest Polk v. Texas Office of Consumer Credit Commissioner; Cause No. 2018-04375, in the 281st Judicial District Court of Harris County, Texas</i>	No Discussion.	n/a

There being no further business, Chairman Phillip Holt adjourned the meeting of the Finance Commission at 11:22 a.m. *(1:56:49 on the audio file)*.

Phillip Holt, Chairman
Finance Commission of Texas

Charles G. Cooper, Executive Director
Finance Commission of Texas

Brenda Medina, Executive Assistant
Finance Commission of Texas

Finance Commission of Texas

Consent Agenda

June 18, 2021

A. Finance Commission Matters

1. Review and Approval of the Minutes of the April 16, 2021 Finance Commission Meeting

C. Texas Department of Banking

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendment to 7 TAC §3.36, Concerning Annual Assessments and Specialty Examination Fees

B.

**Office of Consumer Credit
Commissioner**

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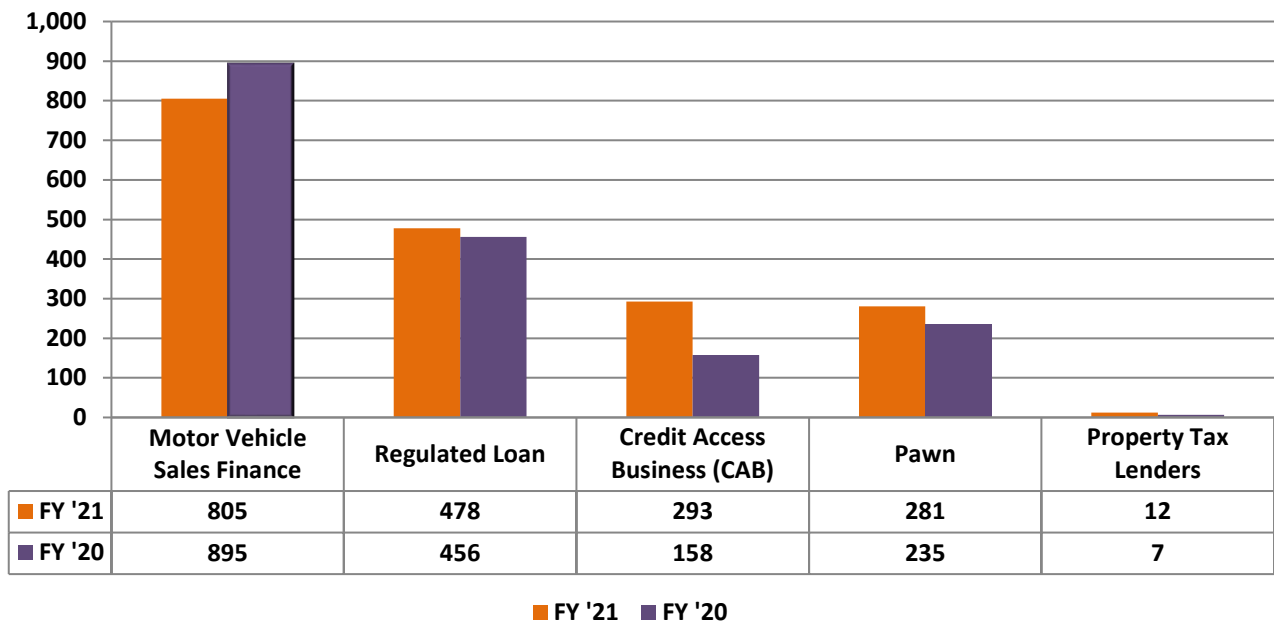
Consumer Protection and Consumer Assistance Report

The OCCC's examination performance exceeds exam production targets as of the end of the third quarter. The multi-state auto finance exam commenced since the last briefing is well underway. This examination is being conducted in coordination with the Consumer Financial Protection Bureau (CFPB). Completion of the states' portion of this exam is expected by the end of the fiscal year. A second multi-state auto finance exam has begun and is in the initial planning stages. The OCCC is serving as Single-Point-of-Contact (SPOC) and the Examiner-In-Charge (EIC) for all participating states for both multi-state auto finance exams.

The OCCC is finalizing its submission of materials to attain re-accreditation as a mortgage regulator under the Conference of State Bank Supervisors/American Association of Residential Mortgage Regulators Mortgage Accreditation Program. The accreditation review process has taken several months to complete. The process includes a comprehensive review of agency policies, procedures, budgets, and performance metric reporting for Examination and Enforcement Activities. In conjunction with the mortgage re-accreditation process, the OCCC is participating in two (2) multi-state mortgage examinations.

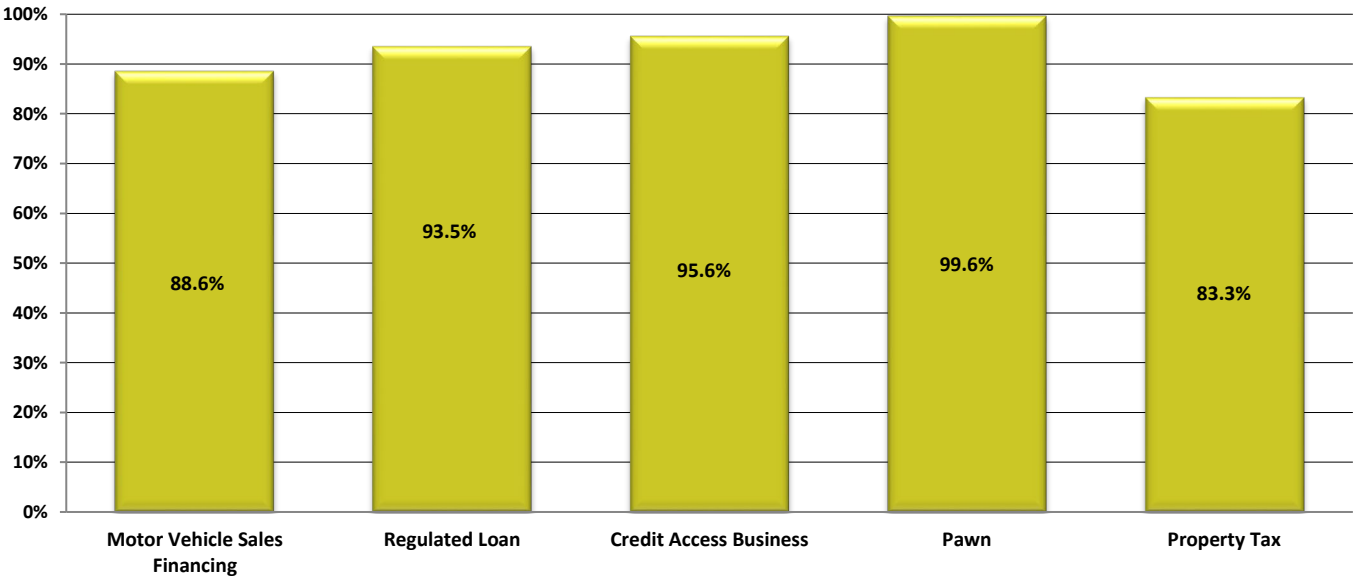
Staff development and retention remains a primary focus area. The Examination Department has continued with staff development strategies in support of this focus. Since the last briefing, two examiners successfully completed Financial Examiner III testing/certification and have been promoted. The next group of Financial Examiner III candidates is expected to begin testing in late summer.

Examinations Conducted: Sept - Apr Fiscal Year Comparison

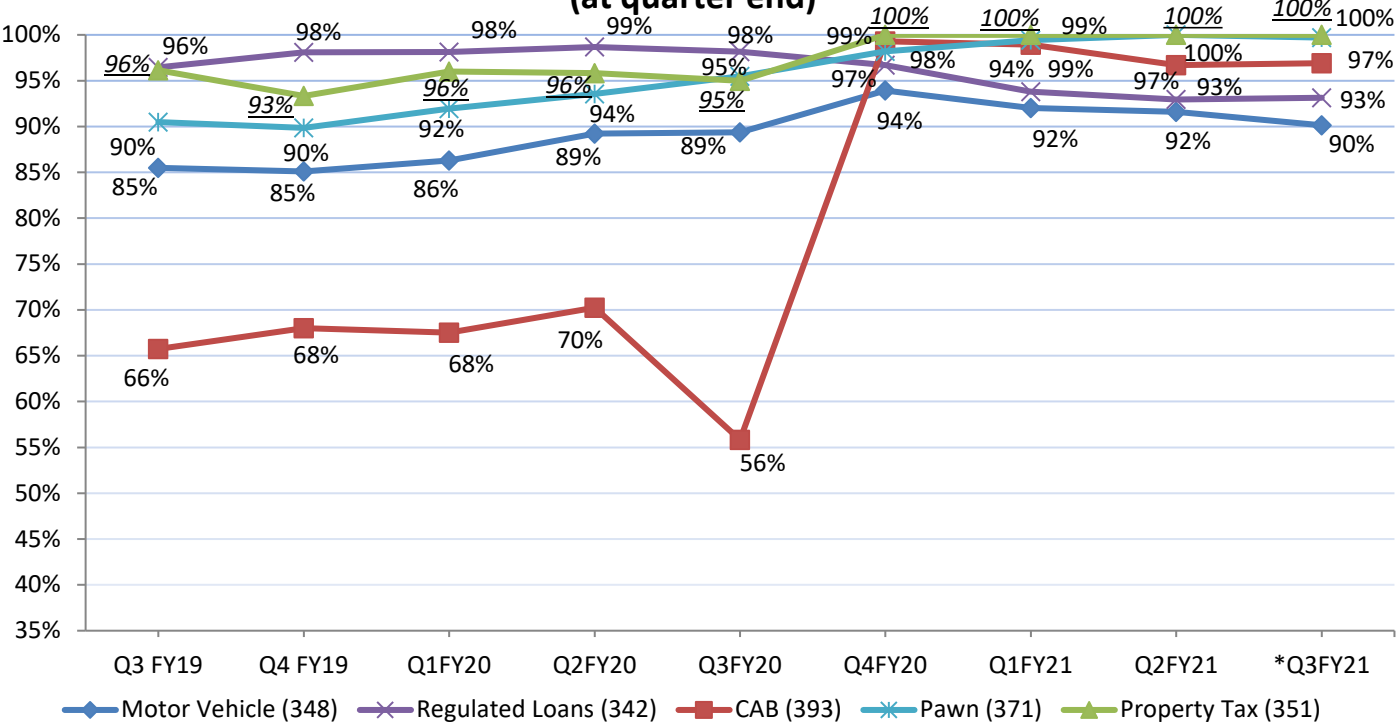


The second chart below denotes the acceptable level of compliance on a trailing 12-month basis through the end of April 2021.

Acceptable Level of Compliance FY '21 (Sept 2020 - Apr 2021)



Acceptable Compliance Levels - Trailing 12 Months (at quarter end)

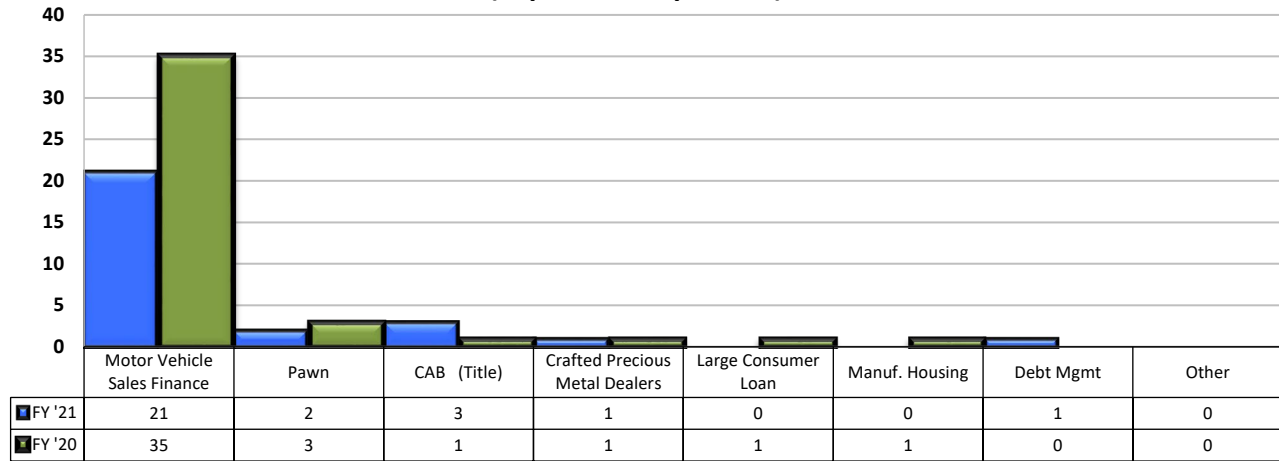


*As of 4/31/2021

Investigations

For FY 2021, the OCC has completed 28 investigations, 50.9% of the FY 2021 goal of 55. While activity in this area increased substantially over the past two months, the number of investigations completed is still being impacted by COVID-19 restrictions. Motor Vehicle Sales Finance comprises 75% of the overall number of investigations.

Investigations Completed FY '21 (Sept 2020 - Apr 2021) Total: 28 FY '20 (Sept 2019 - Apr 2020) Total: 42



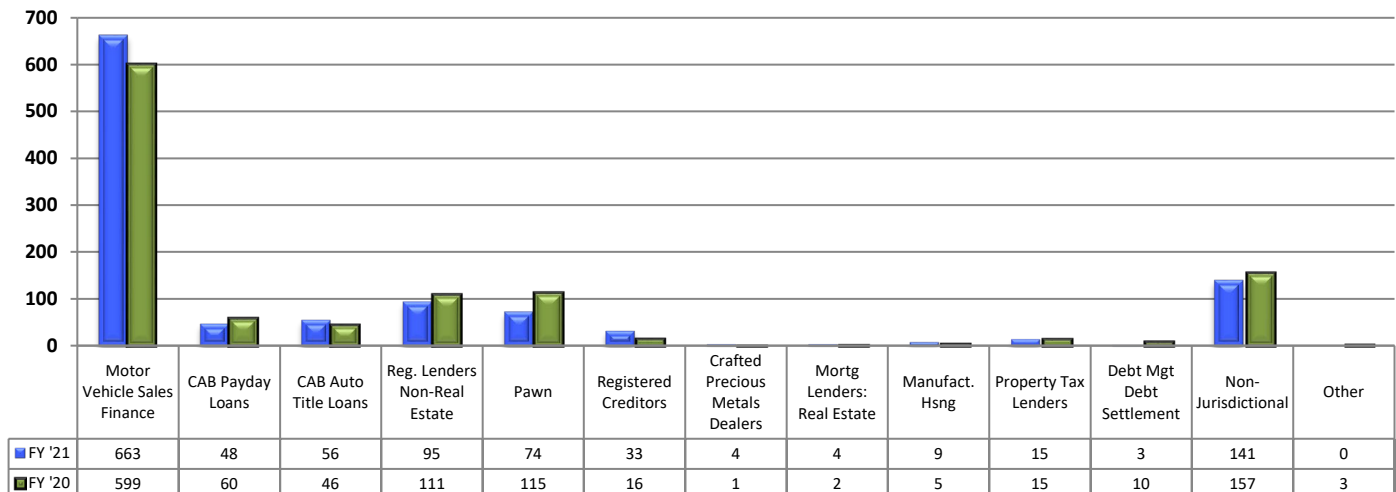
Consumer Assistance

For this period, 1,145 complaints were closed of which 141 were classified as non-jurisdictional.

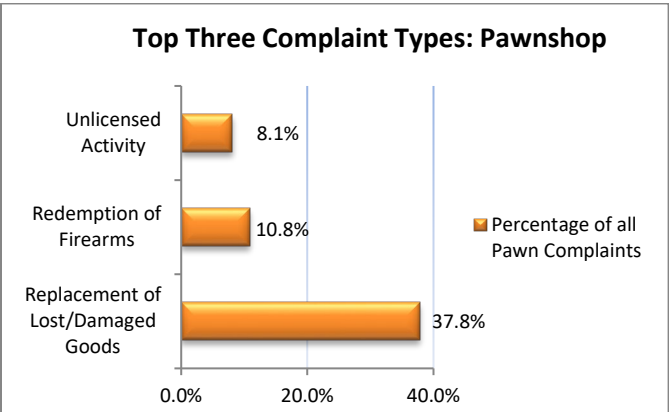
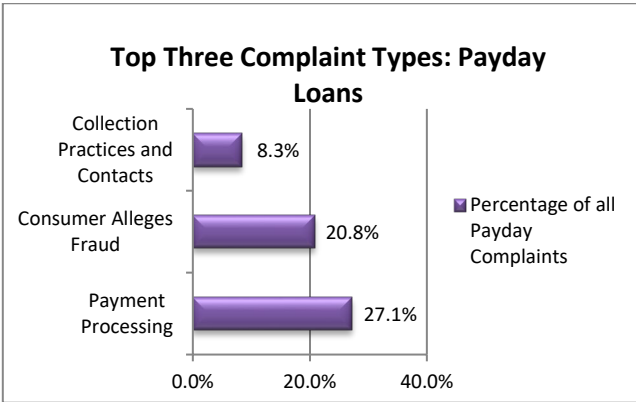
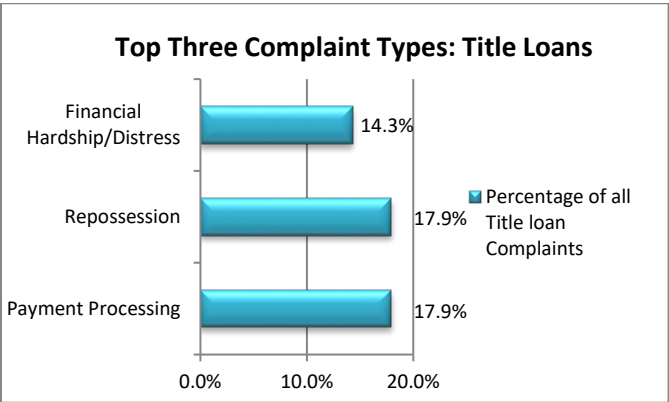
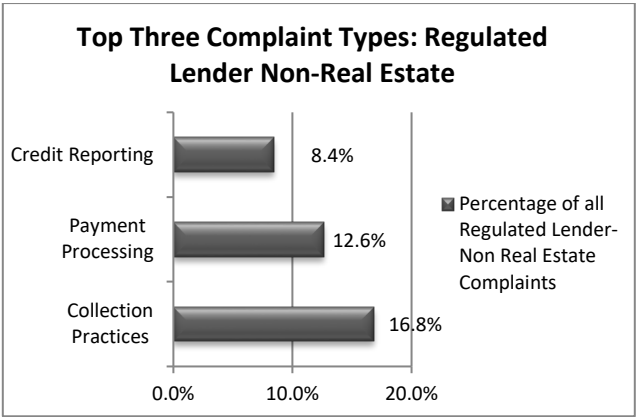
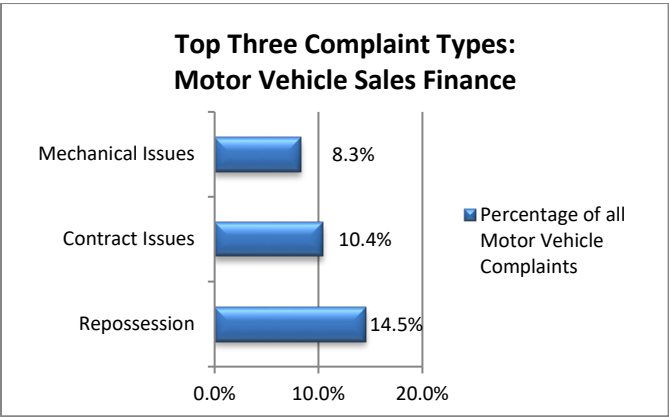
The top four areas of jurisdictional complaints are (1) Motor Vehicle Sales Finance (MVSF), (2) Credit Access Business (CAB), (3) Regulated Lenders Non-Real Estate, and (4) Pawn.

MVSF complaints were the largest complaint category at 57.9%. The second largest category were CAB complaints at 9.1% collectively; separately, these are 4.2% for payday loans and 4.9% for title loans. The third largest category came from Regulated Lenders Non-Real Estate at 8.3%. The fourth largest category was Pawnshops at 6.5%.

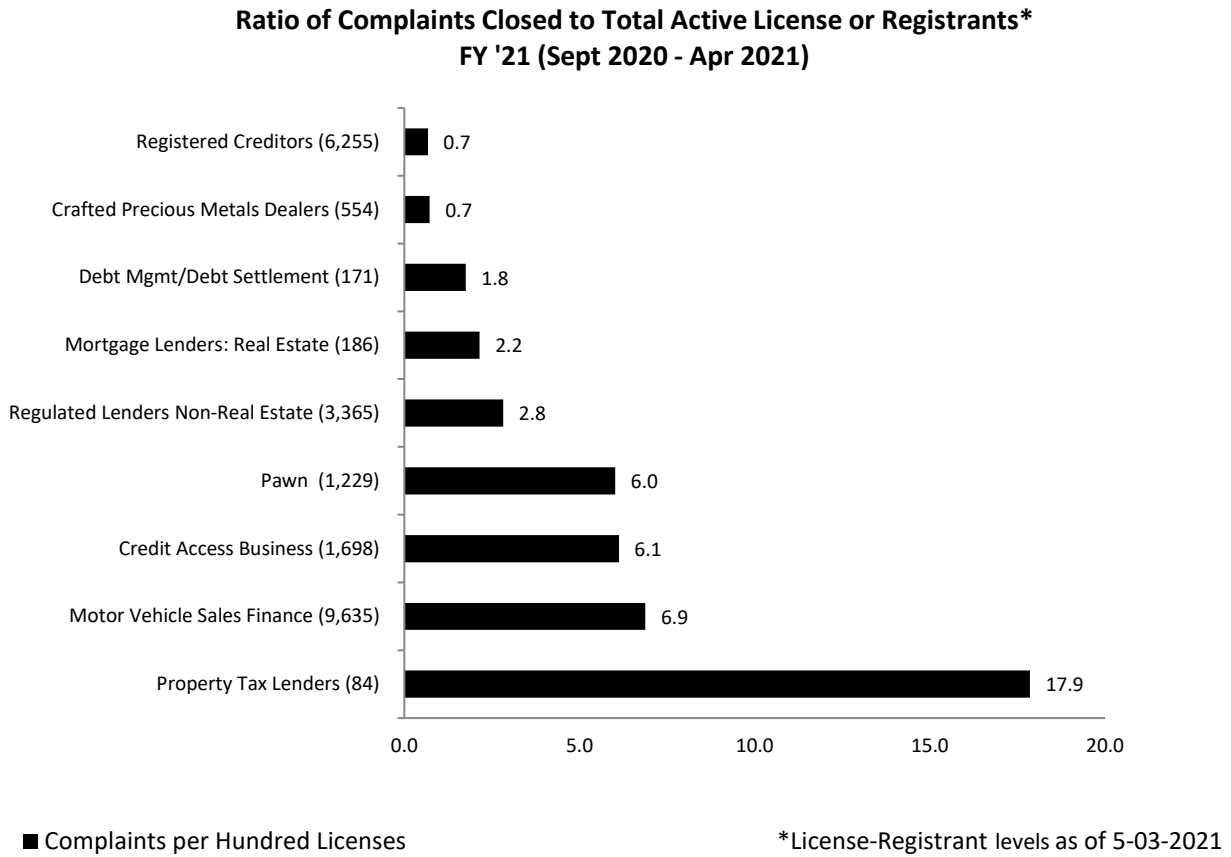
Complaints Closed FY 2021 (Sept 2020 - Apr 2021) Total: 1,145 FY 2020 (Sept 2019 - Apr 2020) Total: 1,140



Each of the following charts represent the three top complaint areas per license type:



Comparison of complaints processed to the number of active license or registrant population is noted on the chart below. The highest ratio of complaints to total active business licenses and registrations were Property Tax Lenders. Motor Vehicle Sales Finance had the second highest ratio followed by, Credit Access Business as the third, and Pawn as the fourth highest.



CAB Reporting Update

Summaries of CAB reports through the first quarter of 2021 are available on the OCCC website. Presented are selected statistics of first quarter reports compared with previous years. New loan origination is down 30% and stores making loans are down 10% from the first three months of 2020. Repossessions are also down from the first quarter of 2020 but have increased from the other COVID-19 impacted quarters in 2020.

Data Highlights (All Loan Types) Q1 Comparison	2021	2020	2019	2018	2017	2016
Number of new payday loans	328,989	461,052	426,745	453,457	495,132	489,990
Number of new auto title loans	36,363	57,608	67,594	65,167	56,503	58,492
Percentage of payday loans due in multiple installments	69%	60%	54%	45%	42%	39%
Percentage of auto title loans due in multiple installments	46%	53%	53%	55%	43%	41%
Number of vehicles repossessed under all auto title loans	10,846	13,113	11,438	8,256	7,623	8,315
Total number of locations reporting activity	1,473	1,637	1,745	1,841	1,837	2,502

Payday Loans Q1	Single Installment			Multiple Installment		
	2021	2020	2019	2021	2020	2019
Number of consumers obtaining loans	69,512	127,507	133,058	200,390	247,039	211,603
Number of new loans	102,621	184,050	195,470	226,368	277,002	231,275
Number of total refinances ¹	104,292	249,810	263,957	47,883	71,813	87,927
Average loan amount	\$486	\$455	\$468	\$547	\$627	\$650
Average fee per \$100 borrowed	\$24	\$23	\$23	\$127	\$143	\$133
Average original term (in days)	21	21	21	140	153	143
Average Fee Converted to a Daily Rate ²	1.14%	1.09%	1.08%	0.91%	0.94%	0.93%

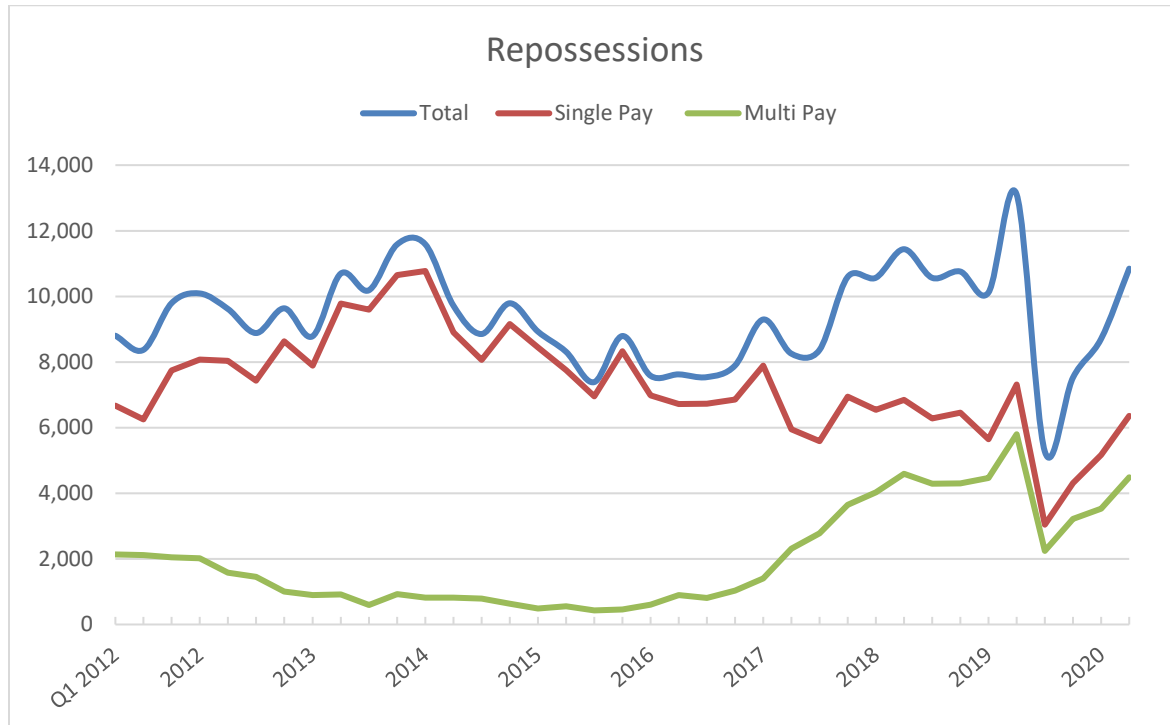
Title Loans Q1	Single Installment			Multiple Installment		
	2021	2020	2019	2021	2020	2019
Number of consumers obtaining loans	15,937	21,856	26,277	15,621	28,770	34,208
Number of new loans	19,701	27,120	31,457	16,662	30,488	36,137
Number of total refinances ¹	105,713	150,283	155,119	23,072	36,485	37,929
Average loan amount	\$1,828	\$1,476	\$1,518	\$1,595	\$1,254	\$1,279
Average fee per \$100 borrowed	\$15	\$15	\$15	\$108	\$112	\$118
Average original term (in days)	31	30	30	162	157	155
Average Fee Converted to a Daily Rate ²	0.50%	0.50%	0.52%	0.67%	0.71%	0.76%

¹ Refinance activity represents all renewals, including the renewals of loans that originated in prior quarters.

² Based on averages, per dollar borrowed a consumer would pay this percentage per day. The APR could be approximated by multiplying this rate by 365; however, it could be significantly higher if the multiple installment loans reduce principal with each payment and the total fees remain the same.

Additional Repossession Information

Quarterly report CAB data capturing repossessions began Jan 1, 2012. Repossessions slowed considerably in the last three quarters of 2020 due to Covid-19 related measures (creditor concessions and pandemic assistance to taxpayers). The number of repossessions reached an all-time low of 5,282 in the second quarter of last year. The number of repossessions increased in the first quarter of 2021 to 10,846 and are once again above the quarterly average of 9,348 per three months.





Licensing Report- June 2021

Mirand Diamond, Director of Licensing & Finance

Renewals

The department has begun renewal for pawn shops and opened the renewal period early online in ALECS in late May. Renewal and delinquency notices will be mailed in June, as well as several email reminders to pawn shops. Active pawn shops were given a discount of 40% for a renewal rate of \$375. The department estimates that 97% of shops and 25% of employees will renew.

Applications Processing

The volume of incoming applications remains near 140 monthly on average in FY 2021, holding steady as related to prior fiscal years.

The average number of pawn employee applications received monthly aligns with anticipated projections.

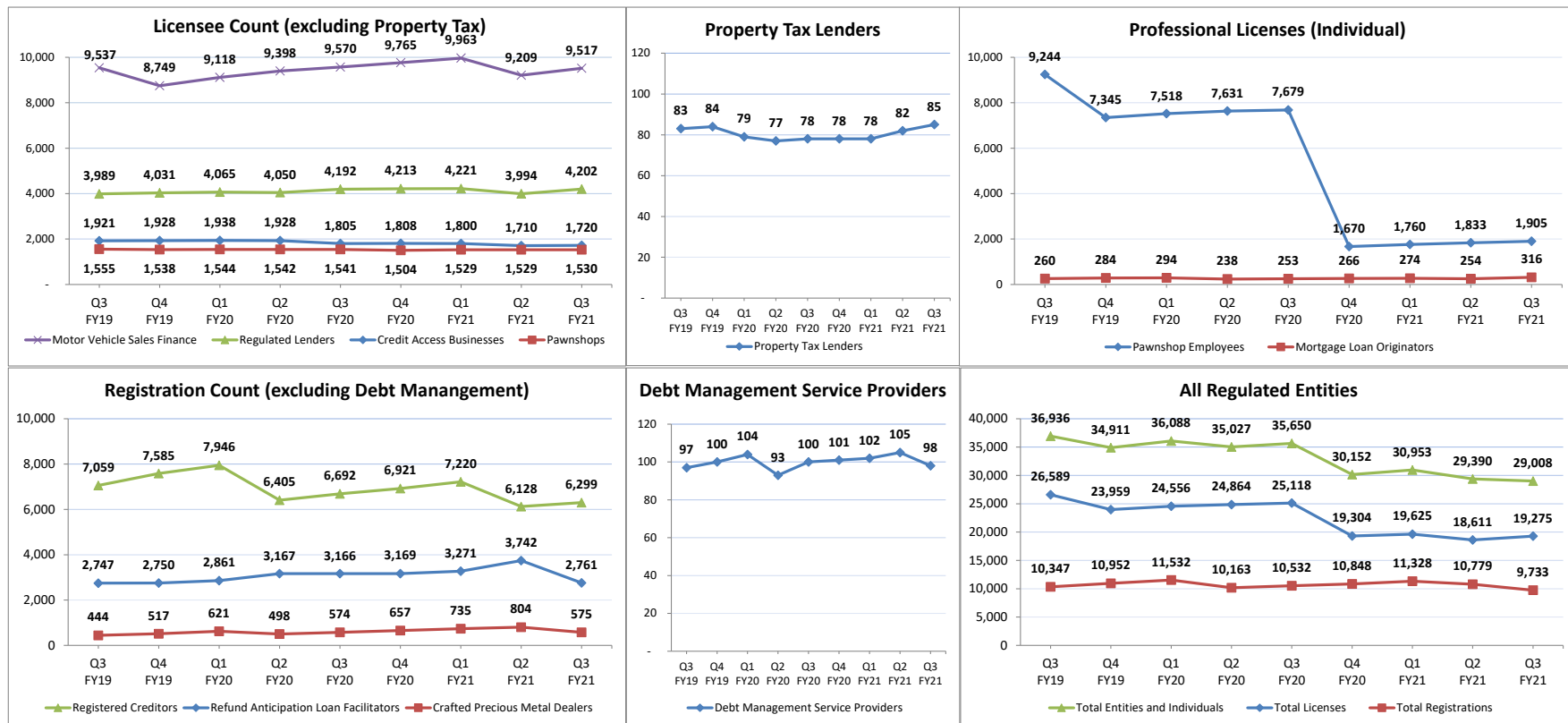
Other Updates

The department continues to work with IT and the OCCC's change advisory committee to enhance and refine ALECS. An upcoming intra-agency project that will involve the Licensing Department is a project related to revenue collection from companies that have not applied for a license or are not licensed or registered with the agency, but that need to pay for services.

Regulated Entity Population Trends

The following charts reflect the number of OCCC regulated entities at the end of each quarter in fiscal years 2019 and 2020 to current data.

Number of OCCC Regulated Entities Quarterly Comparison of FY19-21





ADMINISTRATION REPORT

FINANCIAL EDUCATION AND TFEE

As of May 31, 2021, the Financial Education Department has provided financial education services to 945 individuals. The OCCC is in the planning stages of partnering with the Employees Retirement System (ERS) to deliver a series of three financial education webinars in August. Additionally, the OCCC and Department of Banking are currently developing a joint budgeting webinar that is scheduled for the end of July.

The OCCC has processed TFEE reimbursements totaling \$104,513.04. Third period grant award recipients' semi-annual reports are due on July, 31, 2021.

TFEE funding priorities, funding amounts, and TFEE Grant Administration & Advisory Manual revisions for the 2022-2023 TFEE Grant Cycle are presented in the Audit Committee materials.

COMMUNICATION

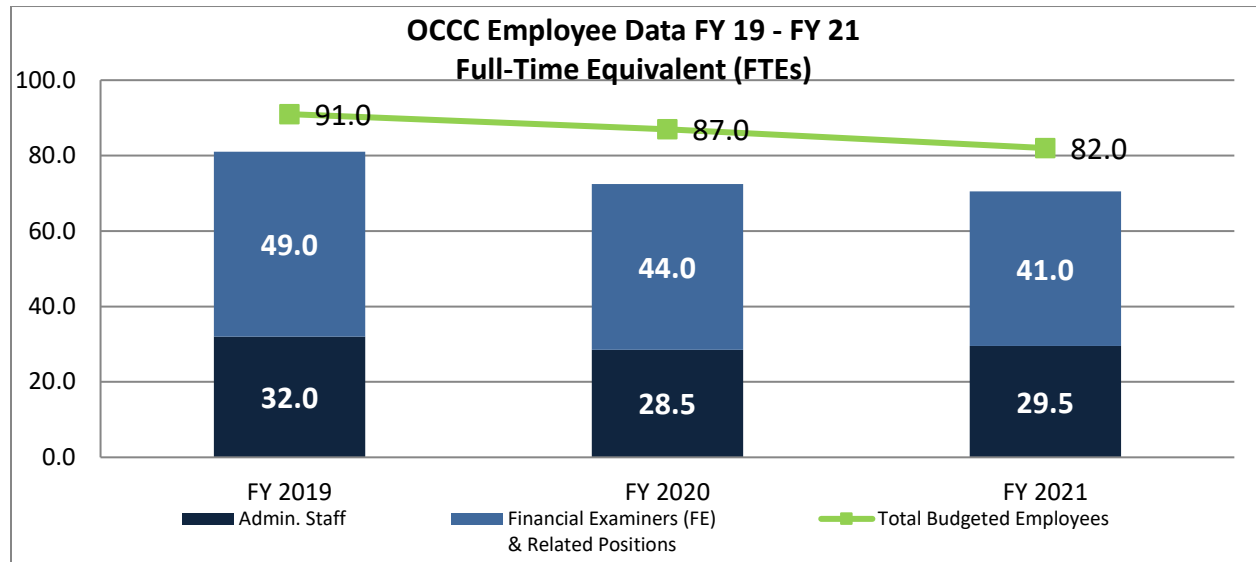
The OCCC continues to communicate with stakeholders through virtual presentations and written publications. Advisory Bulletins regarding Coronavirus Guidance were recently updated. Additionally, Financial Examiner Eric Fancher provided presentations on April 15th and May 6th to automobile dealers at a webinar sponsored by the Texas Department of Motor Vehicles.

HUMAN RESOURCES

During this reporting period from the end of March 2021 to the end of May 2021, the OCCC was staffed with a total of 71 FTEs. Currently OCCC has the following open positions.

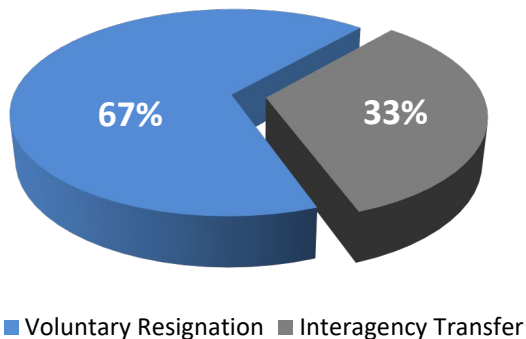
Vacancy	Status
License and Permit Specialist III	Open – 1
Accountant V, VI or VII	Open – 1
Financial Analyst I	Open – 1
Financial Examiner	Open – 6 (2-Houston, 2-Fort Worth/Dallas and 2-San Antonio)

The following chart compares administrative staff vs. financial examiners (FEs) for the last three fiscal years.

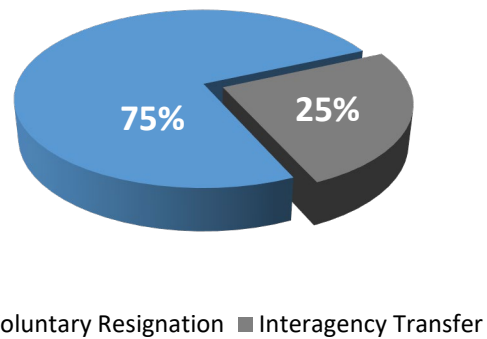


The turnover rate as of May 2021 is 8.2%, and the chart below represents FY21 data.

OCCC Turnover Categories
FY 21 - All Employees
(09/01/2020 - 5/31/2021)
6 total - 4 Voluntary Resignations and 2 Interagency Transfer.



OCCC Turnover Categories
FY 21 - FE Series
(09/01/2020 - 5/31/2021)
4 total - 3 Voluntary Resignations and 1 Interagency Transfer.



INFORMATION TECHNOLOGY

Cybersecurity

Addressing a finding of the Texas Cybersecurity Framework audit, each member of IT now has their own, unique administrative domain account to enhance traceability.

A configuration audit of the agency firewall has been scheduled for early June through DIR.

Hardware and technology deployment

IT has procured 20 laptop computers to maintain currency in the endpoint fleet.

Three dedicated mobile hotspot device test units were deployed just prior to pandemic protocols activating in 2020, intended for evaluation of a different model than agency standard in hopes of gaining better field performance. Travel restrictions prevented extensive use, diminishing the evaluation attempt. After approximately a year, the battery failed in two of the units, with a small but real chance of safety risk. Simultaneously, the vendor issued a recall for the unit model. The test units have been replaced with standard units.

Training

The annual requirement for cybersecurity training for all agency personnel was completed in late May.

The Security Policy Compliance Committee conducted three short-form tabletop exercises, simulating instances of disaster recovery.

Web presence

Exploration into upgrading the agency website to a newer, more secure version of the platform software discovered that expected cost and complexity are comparable to a complete refresh and redesign of a new website. The decision was made to pursue the refresh option, with the Web Committee, which has representation from all departments, tasked with leading the effort. IT will have strong participation, particularly on the technical aspects, while other departments define the new site's qualitative specifications. (This effort does not include the ALECS website.)

ALECS

Current efforts continue to prepare for a routine interface of data with CAPPs, and updating the SQL service to current versions.



Accounting Report- June 2021

Mirand Diamond, Director of Licensing & Finance

Staffing

The accounting department currently has a vacancy for one accountant and is working to fill that position. Staff is working to meet all deadlines and cover tasks in the meantime.

CAPPS

The department continues to make preparations to transition to CAPPS for financials. Staff is currently working through detailed scripts for user acceptance testing and business processes for all four modules in CAPPS. Implementation is scheduled for September 1, 2021.

Procedures

Procedures for monthly reconciliations, revenue verification and monthly disbursements have been completed. The department is working to complete procedure reviews in phases, and continues to identify tasks that need procedures to be written, reviewed or updated.

Other Items

The accounting department concluded the fieldwork phase of the internal audit of fixed assets and travel. The department will work to implement any recommendations promptly.



Legal Department Report

Michael Rigby, General Counsel

June 2021

Enforcement Report

Contested Cases

The OCCC has two contested cases currently pending before the State Office of Administrative Hearings (SOAH), and recently dismissed two cases previously pending.

Mike Jack Enterprises LLC d/b/a Houston Motors (SOAH Docket No. 466-21-1786)

In January 2021, the OCCC notified Houston Motors that it intended to deny Houston Motors' license application based on unlicensed activity and failure to comply with an agreed order. Houston Motors requested a hearing on the license application denial, and a hearing was held by remote videoconference before SOAH on April 15, 2021. As of June 3, the OCCC is awaiting a proposal for decision from the administrative law judge.

PrimaLend Capital Partners, LP and Good Floor Loans LLC (SOAH Docket No. 466-21-1015)

In April 2021, the OCCC issued an Amended Order to Cease and Desist Unlicensed Activity, Take Affirmative Action, and Make Restitution, alleging that PrimaLend and Good Floor engaged in unlicensed activity by acting as holders and transferees of motor vehicle retail installment contracts, and by making false representations of their rights under contracts. PrimaLend and Good Floor requested a hearing on the amended order, and a hearing before SOAH is scheduled for August 25, 2021.

Auto Bueno, LLC d/b/a The Auto Cave and North Texas Financial, LLC (SOAH Docket No. 466-21-1012)

In November 2020, the OCCC issued an Amended Order to Cease and Desist Unlicensed Activity, Take Affirmative Action, and Make Restitution, alleging that Auto Bueno and North Texas Financial engaged in unlicensed activity by purporting to acquire retail installment contracts from 1and2 Automotive LLC. In May 2021, Auto Bueno and North Texas Auto Bueno and North Texas Financial paid late filing fees, submitted proof that refunds had been paid, and obtained motor vehicle sales finance licenses from the OCCC. The OCCC withdrew its order against the two companies and requested that SOAH dismiss the case, and SOAH has dismissed it.

Daylight Motors Inc. and Lamar Capital Ltd. (SOAH Docket No. 466-21-1677)

In January 2021, the OCCC issued amended orders to revoke the motor vehicle sales finance licenses of Daylight Motors and Lamar Capital, based on the federal criminal convictions of their principal parties. Larry Tillery, the owner of Daylight Motors and Lamar Capital, pleaded guilty to federal money laundering and tax evasion charges, in connection with an illegal gambling ring that he ran out of Daylight Motors. The OCCC has entered agreed orders to revoke the licenses of both companies based on these criminal convictions. The revocations will be effective on October 1, 2021, to allow time for an orderly wind down

of the businesses and transfer of consumer accounts to another licensed business. After entering the agreed orders, the OCCC requested that SOAH dismiss the case, and SOAH has dismissed it.

Orders on Reporting Violations

In April 2021, the OCCC issued 11 orders against debt management service providers that did not timely and accurately file their 2020 annual reports and required documents by the deadline of January 31, 2021. Of these orders, 10 were injunctions requiring the registrants to file timely and accurate reports, and 1 imposed an administrative penalty for violating a previous injunction.

Performance Report

The following table includes data on performance measures the legal department is tracking.

September 1, 2020, through May 31, 2021	
Cases Opened	145
Cases Closed	179
Average Number of Days to Close an Enforcement Action	83
Contested Cases Referred to SOAH	4
Contested Cases Heard at SOAH	1
Final Orders Issued	161

The OCCC has one upcoming SOAH hearing as described above.

The following table summarizes enforcement actions closed by the OCCC during the last four fiscal years. These figures reflect enforcement actions that have been fully resolved by formal order, informal resolution, or dismissal. Actions that are still pending are not included in the table.

Enforcement Actions Closed as of May 31, 2021				
	FYTD 2021	FY 2020	FY 2019	FY 2018
Injunction Actions				
Crafted Precious Metal Dealer	0	1	0	0
Credit Access Business	31	27	53	27
Debt Management Provider	7	9	10	5
Manufactured Housing	0	0	0	0
Motor Vehicle Sales Finance	9	54	20	19
Motor Vehicle Sales Finance Commercial	1	0	0	0
Pawnshop	48	44	82	39
Pawnshop Employee	0	0	67	48
Property Tax Lender	0	1	8	2
Registered Creditor	0	1	0	1
Regulated Lender	27	49	22	12
Residential Mortgage Loan Originator	0	0	0	1
Total Injunction Actions	123	186	262	154
Administrative Penalty Actions				
Crafted Precious Metal Dealer	0	1	0	0
Credit Access Business	12	11	14	6
Debt Management Provider	1	3	0	1
Motor Vehicle Sales Finance	7	13	19	26
Pawnshop	15	29	12	6
Pawnshop Employee	0	0	0	0
Property Tax Lender	0	3	6	6
Regulated Lender	18	18	7	0
Residential Mortgage Loan Originator	0	0	0	0
Total Administrative Penalty Actions	53	78	58	45
Revocation / Suspension Actions				
Crafted Precious Metal Dealer	0	0	0	0
Credit Access Business	1	0	1	0
Motor Vehicle Sales Finance	1	2	0	1
Pawnshop	0	0	0	0
Pawnshop Employee	0	0	1	0
Property Tax Lender	0	0	0	0
Regulated Lender	0	1	0	0
Residential Mortgage Loan Originator	0	0	0	0
Total Revocation / Suspension Actions	2	3	2	1
Application Denial and Protest Actions				
Credit Access Business	0	0	0	0
Motor Vehicle Sales Finance	1	3	2	0
Pawnshop	0	0	0	0
Pawnshop Employee	0	0	0	0
Property Tax Lender	0	0	0	0
Regulated Lender	0	0	0	0
Residential Mortgage Loan Originator	0	0	0	0
Total App. Denial and Protest Actions	1	3	2	0
Total Actions Closed	179	270	324	200

Litigation

CAB Municipal Ordinance Litigation

TitleMax of Texas, Inc. has filed two lawsuits against the City of Austin, challenging the City of Austin's credit access business (CAB) ordinance. The Austin ordinance contains requirements and limitations for payday or title loans obtained by a CAB, including a limit on the number of installment payments. In May 2020, the City of Austin amended its ordinance to apply to credit services organizations generally, not just to CABs that obtain payday or title loans.

The first *TitleMax of Texas, Inc. v. City of Austin* case is currently pending in the Houston court of appeals (case no. 01-20-00071-CV). In this lawsuit, TitleMax alleges that the Austin ordinance's requirements for payday and title loans are preempted by state law. In November 2019, a Travis County district court ruled against TitleMax, finding that the court had no jurisdiction to hear TitleMax's claims (case no. D-1-GN-19-002613). TitleMax appealed the case to the Austin court of appeals, and the case was transferred to the Houston court of appeals (1st district). The parties have filed their briefs in the case.

The second *TitleMax* case was recently remanded to the Travis County district court from the Amarillo court of appeals (case no. 07-20-00305-CV). In this lawsuit, TitleMax alleges that the Austin ordinance's requirements for loans other than payday and title loans are preempted by state law. In October 2020, a Travis County district court ruled against TitleMax, finding that the court had no jurisdiction to hear TitleMax's claims (case no. D-1-GN-20-003-55). On May 11, 2021, the Amarillo court of appeals issued an opinion holding that the district court has jurisdiction to hear TitleMax's case, and remanded the case back to the Travis County district court.

Rule Actions

The OCCC is not presenting any rule actions at the June 2021 meeting.

During July 2021, the OCCC intends to seek feedback from stakeholders regarding the current rule that sets a \$100 maximum for the administrative fee for Chapter 342, Subchapter E regulated loans. Some regulated lenders have requested a rule amendment to increase this fee.

At the August 2021 meeting, the OCCC plans to present proposed home equity interpretation amendments concerning out-of-state banks' authority to make home equity loans, as well as electronic copies of disclosures.

At the August 2021 meeting, the OCCC also plans to present rule actions to readopt the following chapters after rule review (and to present proposals of any amendments resulting from the rule review):

- 7 TAC Chapter 7 (relating to the Texas Financial Education Endowment)
- 7 TAC Chapter 89 (relating to property tax lenders)

Federal Rulemaking

OCC True Lender Rule

In October 2020, the Office of the Comptroller of the Currency (OCC), the primary regulator for national banks, issued a final rule identifying the "true lender" in loans where a national bank partners with another company. The OCC's rule states that a national bank makes a loan if it is named as the lender in the loan

agreement or funds the loan. Some stakeholders, including the National Association of Consumer Credit Administrators, expressed concern that the rule would undermine states' ability to protect their citizens from usurious lending practices, and would leave an opening for so-called "rent-a-bank" schemes.

In May 2021, the U.S. Senate passed a resolution to invalidate the OCC's True Lender Rule under the Congressional Review Act (S.J. Res. 15). As of June 3, the resolution is pending before the U.S. House of Representatives to decide whether the rule should be invalidated.

Advisory Bulletins

From April 1, 2021 to May 31, 2021, the OCC did not issue any new advisory bulletins.

During this period, the OCC revised five previously issued advisory bulletins describing COVID-19 emergency measures for OCC licensees, to explain that the bulletins' guidance is in effect through June 30, 2021.

Official Interpretation Requests

From April 1, 2021 to May 31, 2021, the OCC did not receive any requests for official interpretations of the Texas Finance Code. As of May 31, 2021, there were no pending requests for official interpretations of the Texas Finance Code.

On March 30, 2021, the OCC received a request for an official interpretation of the Texas Constitution's home equity lending provisions. The request asks whether a bank organized under the laws of another state may make a home equity loan under the Texas Constitution. The OCC has discussed the request with staff of the other Joint Financial Regulatory Agencies (Texas Department of Banking, Texas Department of Savings and Mortgage Lending, and Texas Credit Union Department). The OCC currently plans to present proposed amendments on this issue at the August 2021 Finance Commission meeting.

Public Information Requests

April 1, 2021 through May 31, 2021	
Requests Received	51
Requests Closed	47
Requests Withdrawn	3
Requests Referred to Office of Attorney General	1
Average Number of Days to Address a Public Information Request	1.8

Gifts Received by the OCC

From April 1, 2021 to May 31, 2021, the OCC received no gifts.



Summary of 2021 Legislation

Matthew Nance, Deputy General Counsel

June 2021

This is a summary of the Texas Legislature's recently passed legislation that affects the OCCC and its regulated industries. Most of the bills are awaiting the governor's approval as of June 3, and most are scheduled to go into effect on September 1, 2021. Bills that have already been approved, or that have a different effective date, are noted below.

Bills affecting credit transactions and the OCCC's authority

HB 3510—Remote work

This bill authorizes some OCCC licensees to allow employees to work from remote unlicensed locations, if the licensee meets certain conditions.

The bill applies to four types of OCCC licensees under the Texas Finance Code:

- Regulated lender licensees under Chapter 342
- Motor vehicle sales finance licensees under Chapter 348
- Property tax lender licensees under Chapter 351
- Commercial vehicle sales finance licensees under Chapter 353

The bill's conditions for remote work include:

- ensuring that in-person consumer interactions will occur at the physical licensed location,
- maintaining safeguards for consumer information,
- employing risk-based monitoring and oversight,
- ensuring that consumer information and records are not maintained at a remote location,
- ensuring that information and records remain accessible for regulatory oversight,
- providing employee training, and
- adopting, maintaining, and following written procedures to ensure compliance.

The bill provides that these provisions apply to a Chapter 348 or 353 licensee only if the employee engages in making, servicing, holding, or collecting a motor vehicle retail installment transaction. The bill provides rulemaking authority to the Finance Commission regarding these provisions.

SB 1132—Crafted precious metal dealer examinations

This bill authorizes the OCCC to periodically examine crafted precious metal dealers, and review their transactions and records. Current law requires these dealers to register with the OCCC, and allows the OCCC to investigate dealers upon receiving a complaint, but does not include examination authority. The bill provides that the OCCC shall examine 10 dealers each calendar year, and exempts jewelry stores from the examination provision.

The bill also provides that the OCCC's registration fee is based on the amount necessary to administer the subchapter governing crafted precious metal dealers (replacing current language limited to the registration section), requires the OCCC to provide copies of enforcement orders to local law enforcement, and clarifies the statutory exclusion for items purchased for more than 105% of scrap value.

The bill is generally scheduled to go into effect on September 1, 2021, except for the new section authorizing the OCCC to conduct examinations, which is scheduled for January 1, 2022.

In the next year, the OCCC intends to present rules to the Finance Commission to adjust the annual registration fee for crafted precious metal dealers.

SB 43—Wrap mortgage loans

This bill adds Chapter 159 to the Texas Finance Code, containing requirements for wrap mortgage loans. A wrap mortgage loan is a mortgage to finance the purchase of real estate that continues to be secured by debt owed by someone other than the borrower. The bill includes disclosure requirements for wrap mortgage loans, requires a person collecting payments from a borrower to hold money in trust, and includes a right for a borrower to deduct amounts paid to cure a default by the wrap lender. The bill authorizes the Department of Savings and Mortgage Lending (SML) to enforce the new chapter. To make or originate a wrap mortgage loan, a person must hold a license or registration with SML under Chapter 156 or 157 of the Finance Code, or a regulated lender license with the OCCC under Chapter 342.

The governor has approved this bill, and it will go into effect on January 1, 2022.

HB 735—Depreciation benefit service contracts for leased or purchased motor vehicles

A depreciation benefit service contract is an agreement that provides a credit toward the purchase of a replacement vehicle, in the event of total loss to the buyer's vehicle. Current law allows these contracts in connection with a motor vehicle retail installment contract under the Finance Code. This bill expands this authority to allow these contracts for motor vehicle purchases and leases.

The governor has approved this bill, and it will go into effect on September 1, 2021.

HB 876—Prohibiting fees for payment by check

This bill prohibits a person from charging a fee to a payee when the payee elects to receive payment by paper check, instead of automated clearinghouse (ACH) or electronic funds transfer.

HB 2879—Notice requirements for possessory motor vehicle liens

This bill amends a notice requirement for holders of possessory liens on motor vehicles (e.g., car mechanics and service departments that hold a lien until the consumer pays for repairs). Current law requires the possessory lienholder to send a notice to other recorded lienholders, and to file the notice with the county within 30 days after charges accrue. This bill changes the deadline for vehicles weighing 16,000 pounds or more, requiring the notice to be filed within 30 days after charges accrue or within 30 days before the proposed sale of the vehicle.

HB 4474—Secured creditor's control of virtual currency

Currently, Texas law allows a creditor to perfect a security interest by controlling the collateral. This bill

explains what constitutes control of virtual currency for purposes of perfecting a security interest. Generally, a creditor has control of virtual currency if the creditor has the power to derive substantially all benefit from the virtual currency, and has the exclusive power to transfer control of the virtual currency to another person. The bill also provides that a purchaser of virtual currency acquires all of the transferor's rights in the virtual currency, and prohibits claims against purchasers who obtain virtual currency for value and without notice of an adverse claim.

SB 876—County processing of motor vehicle registrations and titles

Currently, Texas law generally requires a vehicle owner to apply for title in the county where the vehicle is purchased, and to apply for registration in the county where the owner resides. This bill expands these provisions to allow the owner to apply for title and registration in any county that is willing to accept the application.

This bill is scheduled to go into effect on March 1, 2022.

SB 1063—High school personal financial literacy course

This bill amends the current requirement for Texas high school students to complete at least one-half credit in economics, so that the law would require at least one-half credit in “economics or personal financial literacy & economics.” The bill requires the State Board of Education to ensure that two-thirds of instruction time in the personal financial literacy and economics course are allocated to personal financial literacy. The bill requires the Texas Education Agency to develop a list of free and publicly available curricula, and to seek and spend grant funds and gifts to provide the course.

The bill is scheduled to apply beginning with the 2022–2023 school year.

Bills affecting state agency administration

HB 757—License denial based on dismissed criminal convictions

This bill limits the situations where a licensing agency may deny, suspend, or revoke a license based on an applicant or license holder's criminal offense that was dismissed after deferred adjudication. The bill allows agencies to consider deferred adjudication for offenses related to the occupation, as well as certain offenses involving sexual violence. Otherwise, the bill generally prohibits agencies from denying, suspending, or revoking a license based on an offense that was dismissed following deferred adjudication.

This bill is scheduled to take effect on September 1, 2021. The bill's amendments apply only to a defendant placed on deferred adjudication on or after the effective date.

HB 1118—Cybersecurity training

This bill amends cybersecurity training requirements for state agencies. The bill requires state agencies to include a written certification of compliance with a certified cybersecurity training program in their strategic plans. The bill requires the Texas Department of Information Resources (DIR) to create a form for state agencies to indicate the percentage of employees who complete the required cybersecurity training.

This bill went into effect immediately upon the governor's approval on May 18, 2021. The strategic plan

requirements apply to strategic plans submitted on or after January 1, 2022.

HB 1322—Rule summaries

This bill requires state agencies to publish summaries of proposed rules on their websites. When an agency files a notice of a proposed rule, the agency must publish a summary of the rule on the agency website in plain language in both English and Spanish.

This bill is scheduled to take effect on September 1, 2023, and applies to rules proposed on or after that date.

HB 1493—Enjoining use of name falsely implying governmental affiliation

This bill allows a governmental entity to enjoin another person's use of an entity name that falsely implies affiliation with the governmental entity. If a person files a name with the Texas Secretary of State that falsely implies affiliation with a governmental entity, the governmental entity may file a written request with the Secretary of State. The Secretary of State may make a determination that the filing falsely implies an affiliation, requiring the person to cease doing business under the name or provide an amended filing. The attorney general may bring a lawsuit to enforce these requirements.

HB 2025—Date for recognizing 2020 census results

This bill identifies the date on which governmental entities will begin recognizing the results of the 2020 federal census for purposes of Texas law. The bill requires governmental entities to recognize the results of the census on the later of: (1) September 1 of the year after the year the census was taken, or (2) the first day of the first calendar month more than 150 days after the date the report or count is published. The bill also adds a temporary provision (set to expire on September 1, 2023), stating that except as expressly provided by other law, political subdivisions continue to be subject to the same statutes that apply under the results of the 2010 federal census.

The bill is scheduled to take effect immediately upon the governor's approval.

This bill affects the OCCC's administration of the Texas Pawnshop Act, which includes minimum distance requirements for pawnshops in counties with a population of 250,000 or more.

HB 2063—Family leave pool

This bill establishes a family leave program to provide flexibility to eligible state employees to care for children and sick family members. The bill provides that a governing body of a state agency shall allow agency employees to voluntarily transfer sick or vacation leave to a family leave pool. The bill requires the governing body of an agency to adopt rules and prescribe procedures relating to the operation of the agency family leave pool.

HB 2622—Second Amendment Sanctuary State Act

This bill prohibits state agencies and political subdivisions from assisting federal agencies with respect to certain federal firearms laws, including any laws that require a person to be licensed to own or carry a firearm, as well as any laws requiring a background check for the private sale or transfer of a firearm.

SB 15—Texas Consumer Privacy Act Phase I

This bill limits state agencies' disclosure of personal information in motor vehicle records. The bill

identifies the OCCC as an agency that is authorized to receive disclosure of personal information in motor vehicle records of the Texas Department of Motor Vehicles (TxDMV). The bill removes current provisions that allow disclosure of motor vehicle records for market research activities, and creates a criminal offense for unauthorized disclosure or sale of a specific customer's personal information. The bill requires agencies to adopt rules requiring a requestor to delete personal information if the requestor is not an authorized recipient of personal information in a motor vehicle record. The bill requires an agency that discloses motor vehicle records to designate an employee responsible for monitoring compliance with these requirements, and for referring violations of these requirements to law enforcement.

The bill is scheduled to take effect immediately upon the governor's approval.

SB 19—Prohibition on state contracts with companies discriminating against firearm industry

This bill prohibits state contracts with companies that discriminate against the firearm or ammunition industries. For a contract over \$100,000 between a governmental entity and a company with at least 10 full-time employees, the bill requires the contract to include a written verification that the company does not discriminate against a firearm entity or firearm trade association.

SB 321—ERS cash balance plan for new state employees

This bill specifies that the state contribution to the Employees Retirement System of Texas (ERS) is equal to 9.5% of the total compensation of all members for a fiscal year. The bill requires the state to make actuarially sound payments in amounts necessary to amortize ERS's unfunded actuarial liabilities by the end of fiscal year 2054. The bill creates a new cash balance benefit retirement plan for new state employees hired on or after September 1, 2022. The retirement benefits for these new state employees would be based on the accumulated account balance contributed for the employee.

SB 475—Information security requirements

This bill requires DIR to establish a state risk and authorization management program to provide a standardized approach for security assessment, authorization, and continuous monitoring of cloud computing services that process the data of a state agency. The bill requires state agencies to require vendors providing cloud computing services to comply with DIR's program. The bill requires state contracts for accessing, transmitting, or storing data to include a provision requiring the vendor to meet security controls. The bill prohibits state agencies from using global positioning system technology or contact tracing to identify an individual or the individual's location without the individual's consent.

The bill is scheduled to take effect immediately upon the governor's approval.

SB 799—State agency contracting

Current law generally requires a state agency to solicit bids for purchases and acquisitions over \$15,000. This bill increases this amount to \$25,000. In a statutory list of factors that an agency may consider in determining the best value to the state, the bill adds the impact of the purchase on the agency's administrative resources.

SB 800—Deadlines for required agency reports

This bill adjusts deadlines and requirements for several state agency reports required by Texas law:

- For the report that agencies must file with the Texas Comptroller of Public Accounts describing agency programs for which no appropriation is made, the bill changes the deadline from September 30 of each year to September 30 of each even-numbered year.
- For the information security officer's report assessing computer system vulnerability to unauthorized access, the bill changes the deadline from October 15 of each even-numbered year to June 1 of each even-numbered year.
- For the data security plan required for agencies implementing websites that process sensitive personal or confidential information, the bill changes the deadline from October 15 of each even-numbered year to June 1 of each even-numbered year.
- Current law requires a state agency contractor who has access to a state computer system or database to complete cybersecurity training. The bill specifies that the agency's contract manager must report the contractor's completion of the training to DIR no later than August 31 of each year.

SB 968—Public health emergencies and COVID-19 passport prohibition

This bill prohibits governmental entities from requiring documentation of an individual's COVID-19 vaccination status, and prohibits businesses from requiring customers to certify COVID-19 vaccination status to receive services. The bill states that appropriate state agencies shall ensure that businesses comply with this requirement, and that agencies may require compliance as a condition for a license.

The bill authorizes the Department of State Health Services (DSHS), during a state of disaster declared by the governor, to declare a public health emergency due to communicable disease. The bill provides that DSHS will coordinate statewide or regional efforts to protect public health. The bill prohibits political subdivisions from issuing orders during a disaster that would curtail housing construction and sales, governmental services for title searches and recording, real estate services, or maintenance and constructions services for essential products.

The bill is scheduled to take effect immediately upon the governor's approval.

SB 1225—Suspension of public information requirements in a catastrophe

Currently, the Texas Public Information Act allows agencies to suspend public information requirements for two weeks in the event of a catastrophe. This bill provides that a catastrophe does not include a period where staff works remotely and can access information electronically. The bill specifies that an agency may suspend requirements only once for each catastrophe (for an initial seven-day period plus one seven-day extension). In situations where an agency closes its physical offices but requires staff to work remotely, the bill requires the agency to make good faith efforts to continue responding to public information requests, to the extent that staff has access to responsive information.

The governor has approved this bill, and it will go into effect on September 1, 2021.

SB 2116—Prohibition on state critical infrastructure contracts with certain foreign-owned companies

This bill prohibits agencies from entering contracts that provide a company with access to critical infrastructure, if the company is owned by individuals who are citizens of China, Iran, North Korea, Russia, or another country designated by the governor as a threat to critical infrastructure. The term "critical infrastructure" includes communication infrastructure and cybersecurity systems.

The bill is scheduled to take effect immediately upon the governor's approval.

C.

Texas Department of Banking

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Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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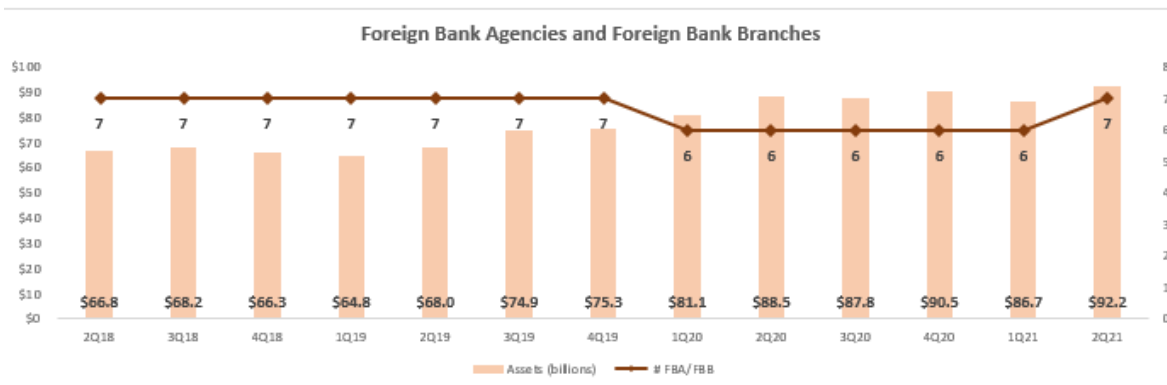
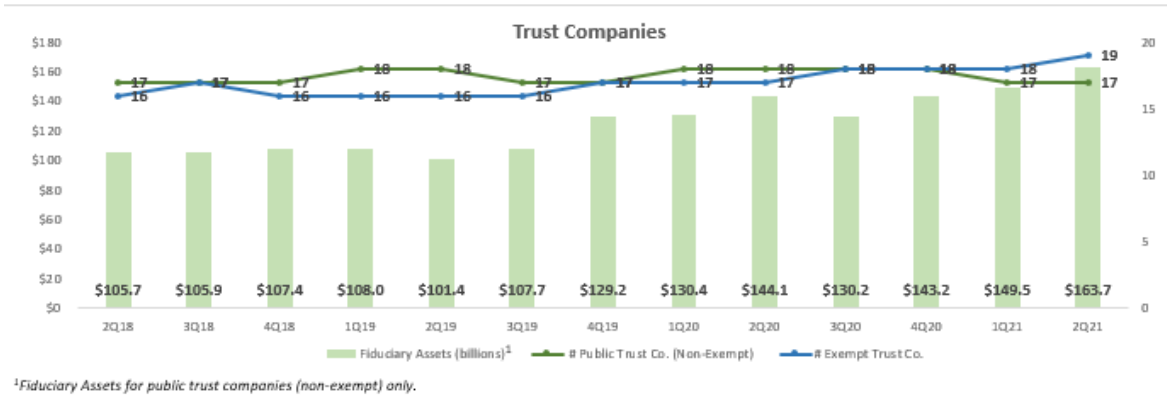
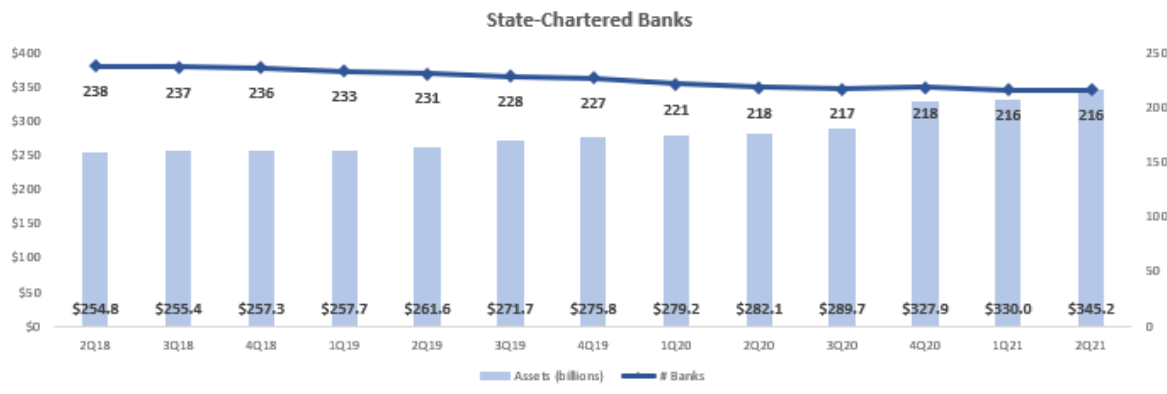
To: Finance Commission Members

From: Daniel Frasier, Director of Bank & Trust Supervision *DBF*

Date: June 2, 2021

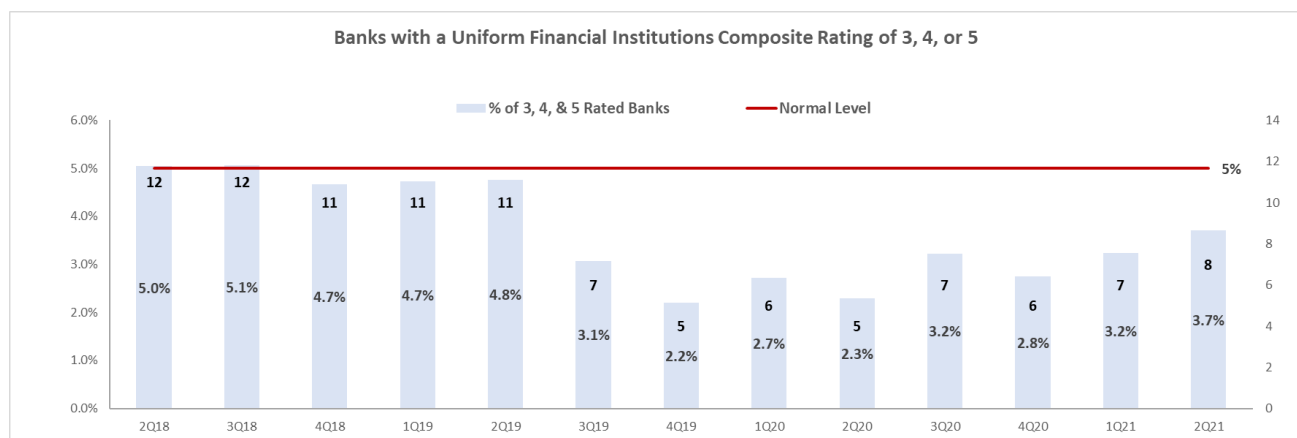
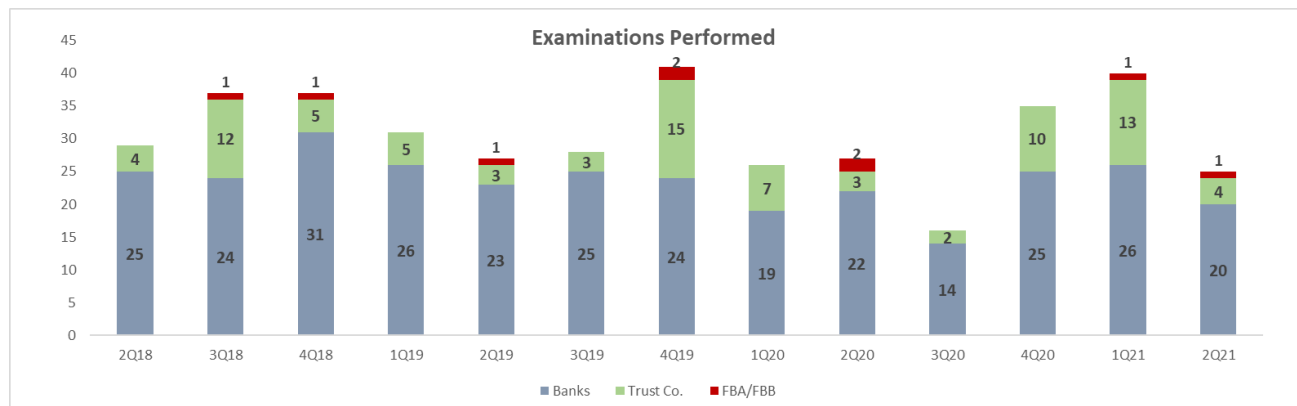
Subject: Summary of the Bank & Trust Supervision Division Activities

Bank and Trust Supervision – Industry Profiles



Summary of the Bank & Trust Supervision Division Activities

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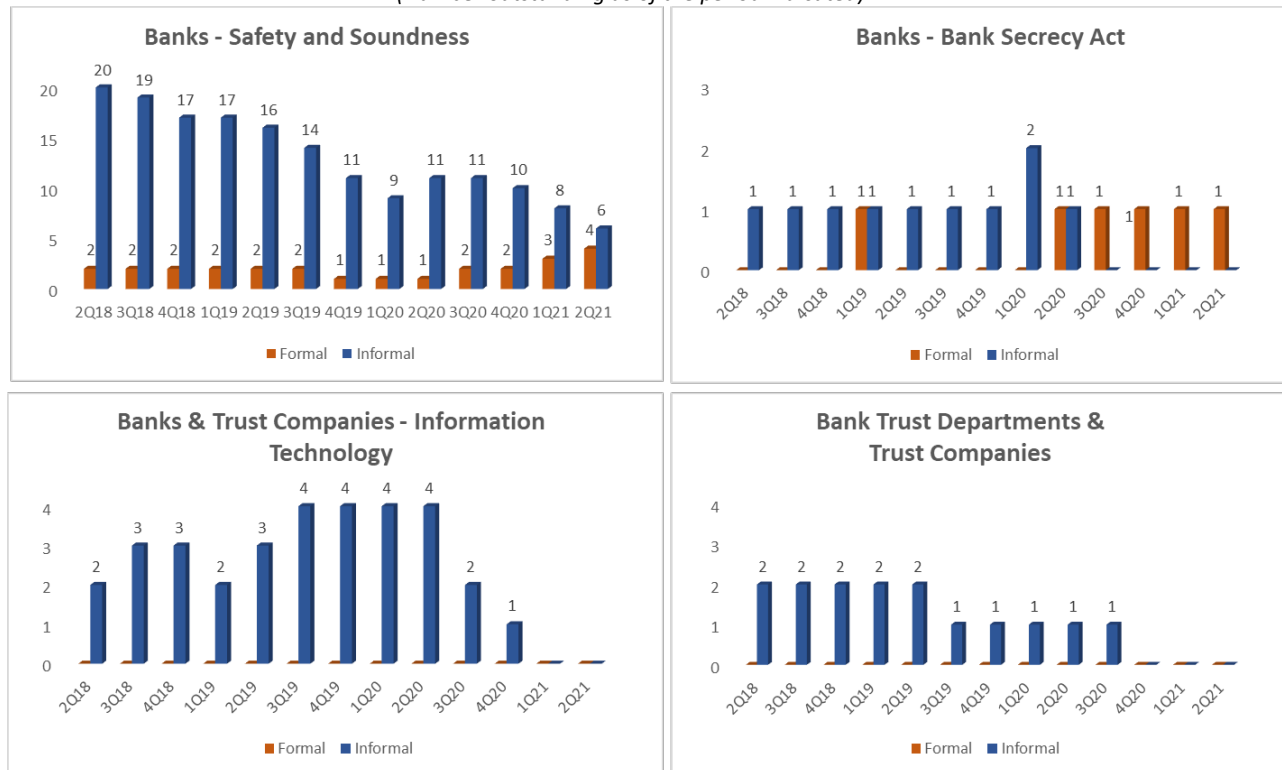
The Department considers any bank with a Uniform Financial Institutions Composite Rating of 3, 4, or 5, to be a problem bank. The number of problem banks is in the normal range of between 3% and 5% of the total number of institutions. The support of the government stimulus programs has limited the economic fallout from the COVID-19 pandemic, and economic conditions continue to improve as businesses reopen. As a result, the risk of problem banks increasing due to the COVID-19 pandemic is lessening.

Summary of the Bank & Trust Supervision Division Activities

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Enforcement Actions Outstanding by Type

(Number outstanding as of the period indicated)



Formal actions include Orders to Cease and Desist, Consent Orders, Written Agreements and Supervisor Actions. Informal actions include Determination Letters, Memoranda of Understanding, Commitment Letters and Board Resolutions. Compliance actions are not included.

Compliance with Examination Priorities		
Percent of Examinations Conducted within Department Guidelines		
Entity Type	FY 2020	FY 2021 (YTD – April 2021)
Commercial Banks (All / DOB Only)	96% / 94%	93% / 89%
IT	97% / 97%	98% / 100%
Trust	100% / 100%	100% / 100%
Foreign Banks (FRB)	67%	50%
Trust Companies (DOB)	67%	100%
IT	100%	100%

The division is meeting examination priorities for FY 2021 for IT and trust but is outside of guidelines for commercial and foreign bank examinations. Seven commercial bank examinations were started late this fiscal year with an average of 14 days late. The delayed examination starts were primarily the result of catching up on examinations and targeted reviews that were paused due to the pandemic as well as

rearranging the schedule to accommodate two conversion investigation examinations. Continued improvement in compliance with commercial bank examination priorities is expected through the remainder of this fiscal year. As a reminder, compliance with examination priorities for foreign bank entities will remain a challenge for fiscal year 2021 as these examinations are conducted jointly with the Federal Reserve, who is focusing examination efforts on higher risk entities.

Division Highlights

- Commissioner Charles G. Cooper and Chief Operating Officer Wendy Rodriguez visited the Regional Offices April 27th through April 29th to discuss current operations and offsite examinations during the COVID-19 pandemic. Conversations also centered on return-to-work strategies for examination staff.
- Commissioner Cooper was elected as CSBS District IV Chairman on May 17, 2021.
- **COVID-19 Update:**
 - The Department continues to actively monitor and respond to the changing circumstances brought about by the COVID-19 pandemic. More banks are reverting to normal operating schedules now that vaccines are readily available. The Department maintains regular communication with regulated entities and performs offsite monitoring of key financial metrics.
 - Examination activity continues to be performed offsite as we are taking a cautious approach while the COVID-19 pandemic persists.
 - The impact of the COVID-19 pandemic to bank loan portfolios has thus far been minimal. Adversely classified asset levels have increased modestly, and overall credit risk remains sound. Most of our banks provided loan deferrals at the onset of the pandemic to help their customers cope with decreased cash flow. Subsequently, feedback from bankers is that only a small portion of the deferrals have not returned to original payment terms.
- **Special Operations and Conferences:**
 - On April 12, 2021, Commissioner Cooper represented the Department as a panelist at the Independent Bankers Association of Texas (IBAT) “Day at the Capital Event.”
 - On April 14, 2021, Review Examiner Kevin Wu represented the Department on the Texas Bankers Association (TBA) Compliance School Regulatory Panel hosted virtually.
 - On April 23, 2021, Commissioner Cooper represented the Department on the Regulator Panel at the Texas Bankers Hall of Fame Gala held in Huntsville.
 - On May 17, 2021, Commissioner Cooper, attended (virtually) the CSBS Board of Directors and Annual Membership Meeting.
 - Beginning on May 19, 2021, Commissioner Cooper, attended (virtually) the CSBS State-Federal Supervisory Forum and participated in the Cyber Panel. Many Department staff also participated in this event.

Summary of the Bank & Trust Supervision Division Activities

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- On May 26, 2021, Director of IT Security Examinations Phillip Hinkle, was a guest speaker at IBAT's 2021 Cybersecurity Summit held virtually on the topic of Ransomware.
- On May 27, 2021, Director Hinkle, was a guest speaker at the TBA sponsored Zoom and Brews event held virtually. He spoke about the current fraud landscape in banking and how to prevent bank systems from being breached.
- On June 1, 2021, Director Hinkle represented the Department on the Cybersecurity Panel at the IBAT Bank Operations Institute event hosted virtually.



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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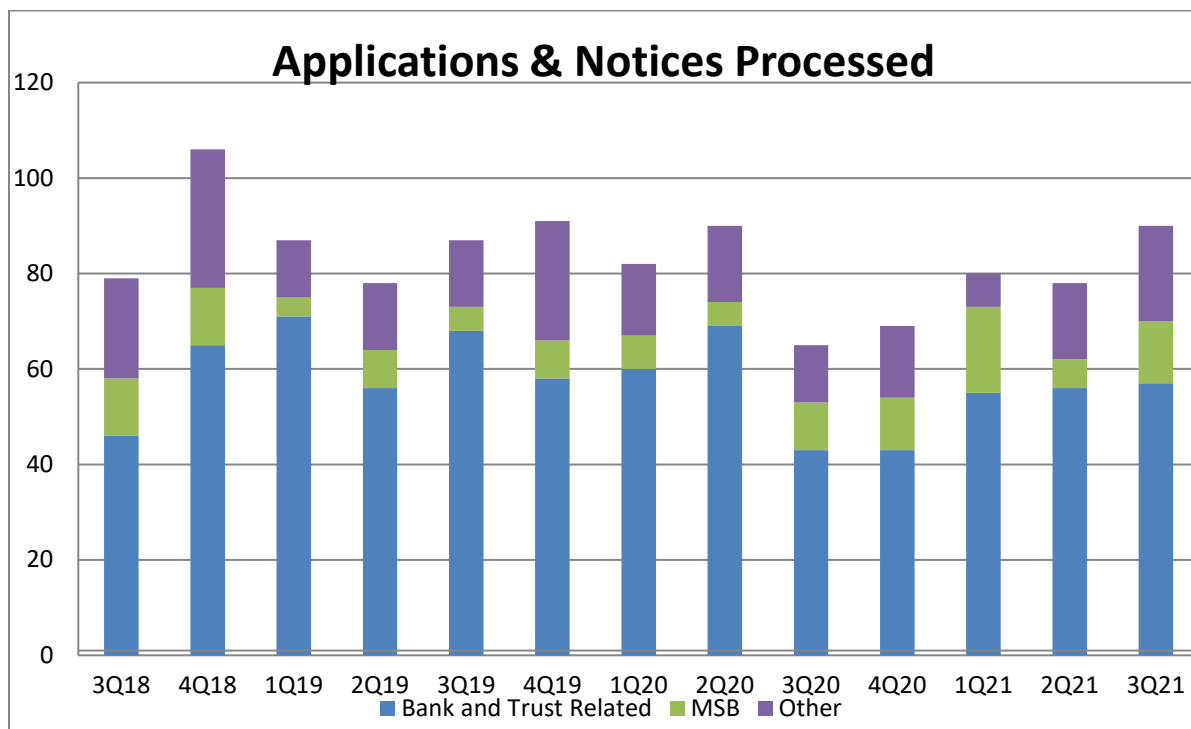
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To: Finance Commission Members

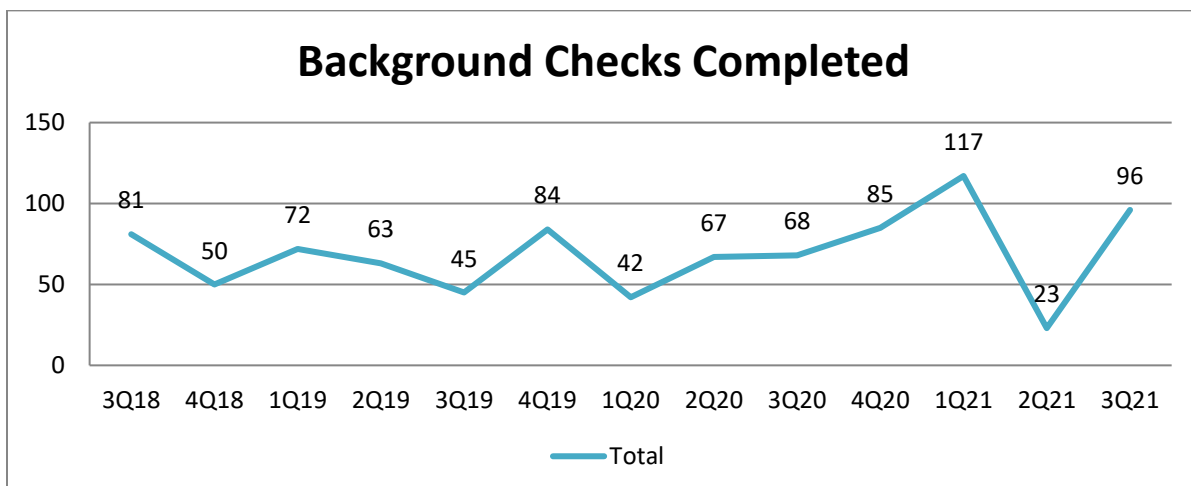
From: Mark Largent, Director of Corporate Activities

Date: June 2, 2021

Subject: Summary of the Corporate Division's Activities



Information on a Fiscal Quarter Basis.



Information on a Fiscal Quarter Basis.

Note: The reduction in background checks in 2Q21 was the result of delays in accessing federal background check information caused by the SolarWinds security breach. This has been resolved and the division has resumed the checks.

Entities/Activities	Applications and Notices Under Review (as of June 1, 2021)
Bank Related	28
Trust Companies	2
Money Services Business (MSB)	33
Others	4
Totals	67

Division Highlights

- Application volume remains high and slightly above the level reported at the last Finance Commission meeting. Compared to our last report submitted, the Corporate Division's filings presently under review by category type changed by:
 - Bank related increased 3 (12%)
 - Trust company increased 1 (100%)
 - MSB related increased 3 (10%)
 - Other decreased 2 (33%)
- **Significant Filing**
 - Texas Capital Bank, N.A., Dallas, Texas, has applied to convert to a Texas state bank charter under the name of Texas Capital Bank. With \$40 billion in total assets, Texas Capital Bank would immediately become the third largest Texas state bank.
- **Charter, Conversion, and Merger Activity** – Since the last report to the Finance Commission, the following transactions have consummated:
 - *Banks*
 - Peoples Bank, Lubbock, Texas, completed its merger with First Bank & Trust, Seymour, Texas [no change in state banking assets].
 - *Trust Companies*
 - None.



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To: Finance Commission Members

From: Jesus "Jesse" Saucillo, Director of Non-Depository Supervision

Date: June 3, 2021

Subject: Summary of Non-Depository Supervision (NDS) Activities

			FY 2021							
Entity	FY 2020		1 st		2 nd		3 rd		4 th	
Industry Profile (# / Assets (billions))										
Money Services Businesses (MSB)	171	\$163.4	181	\$164.1	184	\$163.6	*	*		
Prepaid Funeral Contract (PFC)	353	\$4.3	352	\$4.3	354	\$4.5	*	*		
Perpetual Care Cemeteries (PCC)	243	\$376.5**	243	\$386.7**	243	\$390.9**	*	*		
Check Verification Entities (CVE)	2	n/a	2	n/a	2	n/a	*	*		
Examinations Performed										
MSB	93		24		21		*			
MSB Limited Scope	2		1		0		*			
MSB Accepted other State	12		0		2		*			
PFC	263		61		42		*			
PFC Limited Scope	0		0		0		*			
PCC	179		51		53		*			
PCC Limited Scope	1		0		0		*			
Ratings (# / %) Assigned to All Regulated Entities										
1	298	39.84%	294	38.99%	296	39.31%	*	*		
2	391	52.27%	389	51.59%	387	51.39%	*	*		
3	56	7.49%	66	8.75%	67	8.90%	*	*		
4 & 5	3	0.40%	5	0.67%	3	0.40%	*	*		
Noncompliance with Examination Priorities (Past Due)										
MSB	14		3		3		*			
PFC	2		2		0		*			
PCC	0		0		0		*			

NOTES:

Limited scope examinations do not receive a rating.

* Third quarter fiscal year 2021 data has not been finalized and will be provided in the next summary.

** PCC \$ amounts reflected in the millions.

Examination Activities

- As of the close of the third quarter of fiscal year 2021, NDS continued to perform remote examinations in coordination with license holders. Remote examinations continue to assess management's actions in response to the pandemic to ensure capital adequacy and overall compliance with regulations are maintained. Although NDS has not finalized its analysis related to examination performance compliance, it is anticipated that all NDS performance measures will be met for the third quarter of fiscal year 2021.
- The division continues to hold various remote meetings with examination staff to keep lines of communication open and to provide timely notifications of upcoming events/news. Division staff also continue to coordinate with other state and federal regulatory agencies such as the Multistate MSB Examination Task Force (MMET) and the Money Transmitters Regulators Association.

Division Activities

- NDS staff continues to work closely with several organizations, including various Conference of State Bank Supervisors (CSBS) committees, to stay informed of matters affecting our regulated entities. For example, starting in late April 2021, the Department, along with other state regulators, became aware of an incident involving a Texas licensed MSB entity. Specifically, the MSB which offers electronic payment processing for a mortgage company incorrectly processed mortgage payment drafts while conducting a test of their systems. In coordination with federal regulatory agencies and state attorney offices, the Department is part of an ongoing multi-state working group to investigate the incident.
- The division continues to review and update policies and procedures as necessary to promote consistency with the Nationwide Multistate Licensing System (NMLS) Modernization initiative, which is intended to promote improved access to data, increased uniformity, and more automation of state MSB licensing and regulatory activities. As a member of the NMLS Money Services Businesses Call Report (MSBCR) subcommittee, Departmental staff continues to provide input to standardize information available to state regulators.
- On April 13th and 14th, as a member of the State Coordinating Committee (SCC), NDS Director Saucillo participated in the Consumer Financial Protection Bureau (CFPB) – State Coordinating Committee Quarterly Meeting. The SCC is made up of 12 individuals representing the state system of non-depository supervision and is responsible for coordinating the supervision of activities such as MSB, mortgage, debt collection, and payday lending with the CFPB. During the meeting, CFPB and SCC representatives discussed a high-level review of the trends and major recent developments, along with key areas of focus and major findings noted during past examinations.
- On May 19th and 20th, Director Saucillo, along with other Departmental staff, remotely attended the 2021 State-Federal Supervisory Forum (SFSF). The SFSF is an annual gathering of state and federal representatives in which matters impacting the banking and non-depository industries are discussed.

- On May 26th, the Prepaid Funeral Guaranty Fund Advisory Council (Council) meeting was held via teleconference. The funds' activities covering March 1, 2020 to February 28, 2021 were discussed and approved by the Council, along with the other meeting agenda items. Barring any unforeseen events, the next Council meeting is tentatively scheduled to be held in May 2022.

Personnel Updates

- On May 27th, Assistant Deputy Commissioner (ADC) Russell S. Reese announced his retirement effective August 31, 2021. ADC Reese's over 30 years of knowledge in the non-depository industries will be greatly missed by the Department.
- Also, in May 2021, the Department's longest tenured MSB examiner submitted his retirement notice effective August 31, 2021. A job posting to fill this vacancy will be posted in June 2021.



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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Memorandum

To: Finance Commission Members

From: Lori Wright, Director of Human Resources

Date: June 2, 2021

Subject: Summary of the Human Resources Division Activities

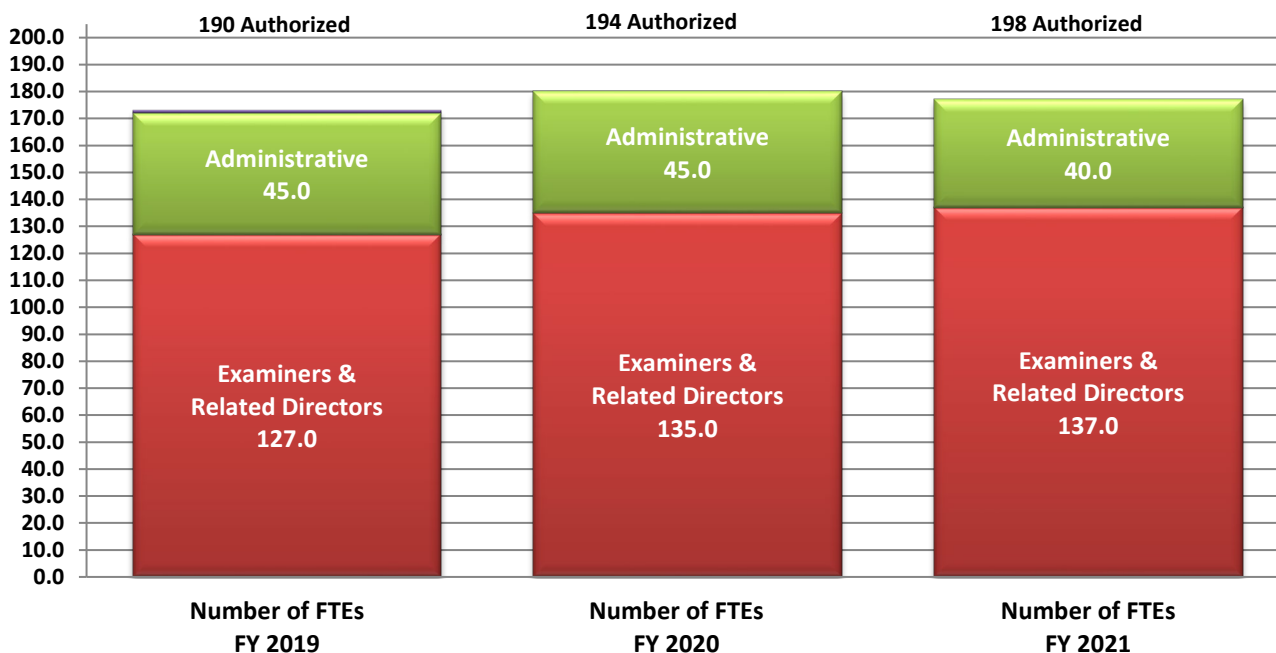
Human Resources Fiscal Year 2021 Activities

Active Postings				
<i>Number of Positions</i>	<i>Position</i>	<i>Division</i>	<i>Status</i>	<i>Activities</i>
1	Purchaser V	Administrative Services	Open Until Filled	
1	Programmer V	MIS	Open Until Filled	
1	Program Specialist <i>Consumer Assistance</i>	DSS	Open Until Filled	Interviews
1	Financial Examiner V <i>Credit Review Specialist</i>	Bank and Trust	Open Until Filled	
1	Financial Examiner IV-V <i>Commercial Bank Examiner</i>	Bank and Trust	Perpetual Posting	
1	Financial Examiner VI-VII <i>Commercial Bank Examiner</i>	Bank and Trust	Perpetual Posting	

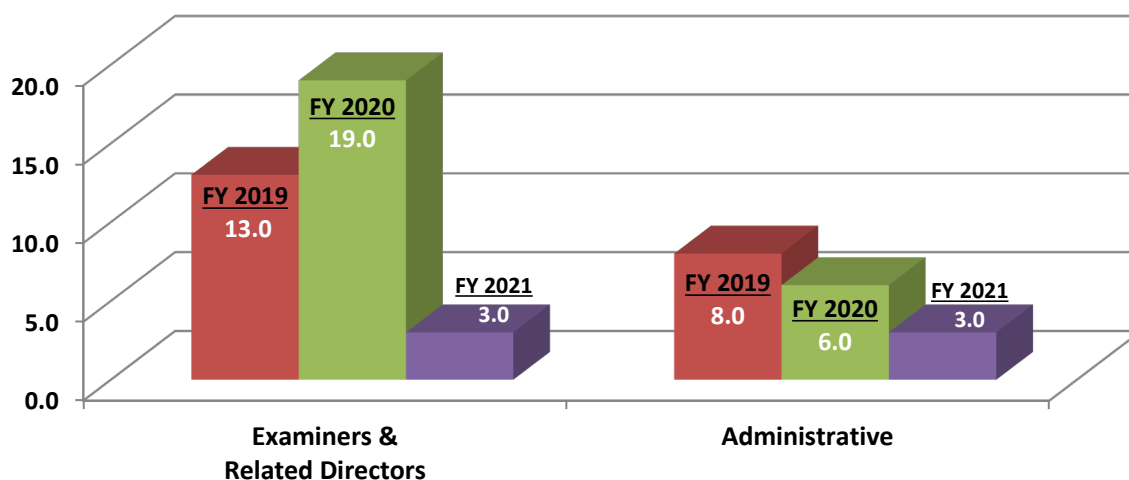
NEOGOV

Preparing to launch FY 2021 Supervisor Evaluations June 15, 2021.

Texas Department of Banking Employee Data for Fiscal Years 2019, 2020 and 2021 as of 05/31/2021

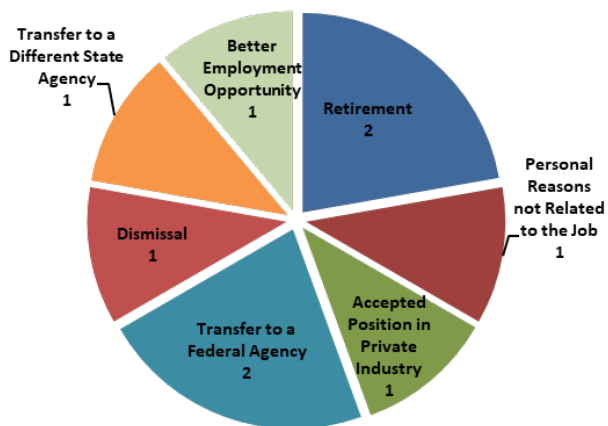


New Hire Data for Fiscal Years 2019, 2020 and 2021



FY 2021 Employee Turnover Reasons

All Employees
9 Resignations



Financial Examiners Only
1 Resignation



As of 05/31/2021




Charles G. Cooper
Commissioner

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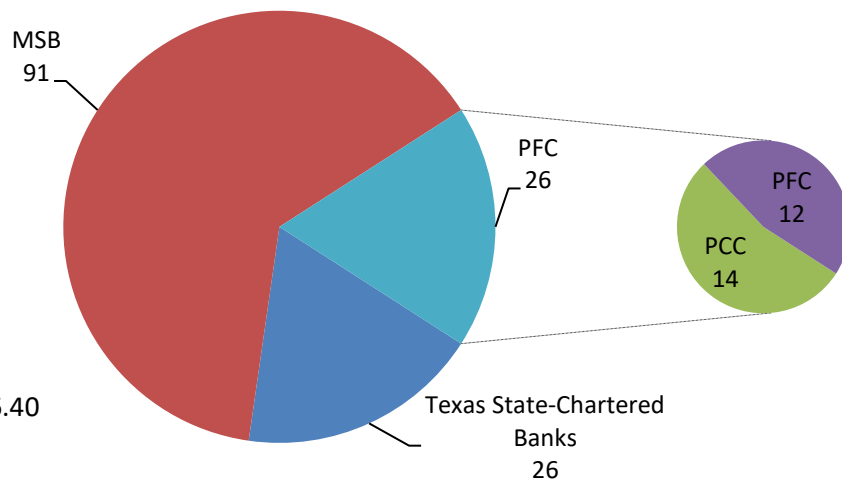
To: Finance Commission Members

From: Michelle Hodge, Director of Strategic Support 

Date: June 2, 2020

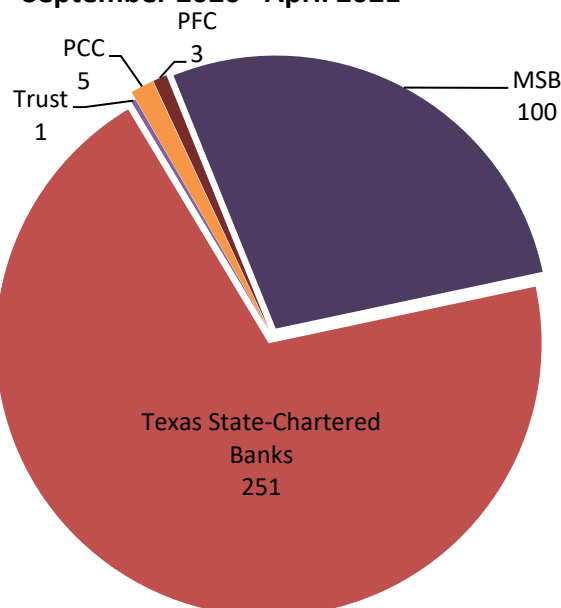
Subject: Summary of the Strategic Support Division Activities

Jurisdictional Written Complaints September 2020 - April 2021



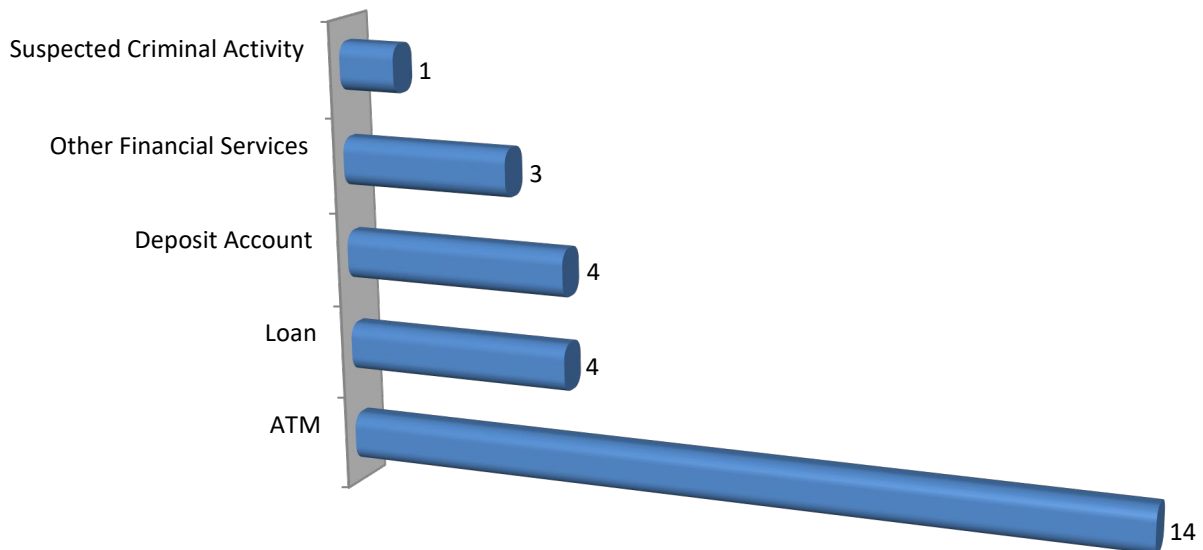
Recoveries = \$70,546.40
Total = 143

Inquiries on Jurisdictional Entities September 2020 - April 2021



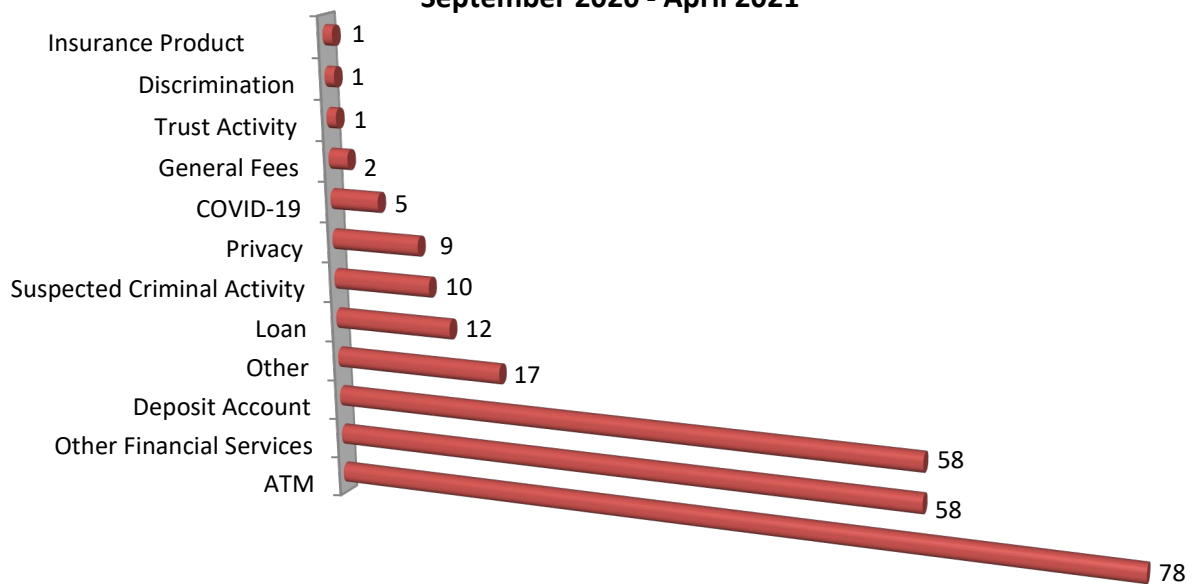
Total = 360

**State-Chartered Banks and Trust Companies
Written Complaints by Type
September 2020 - April 2021**



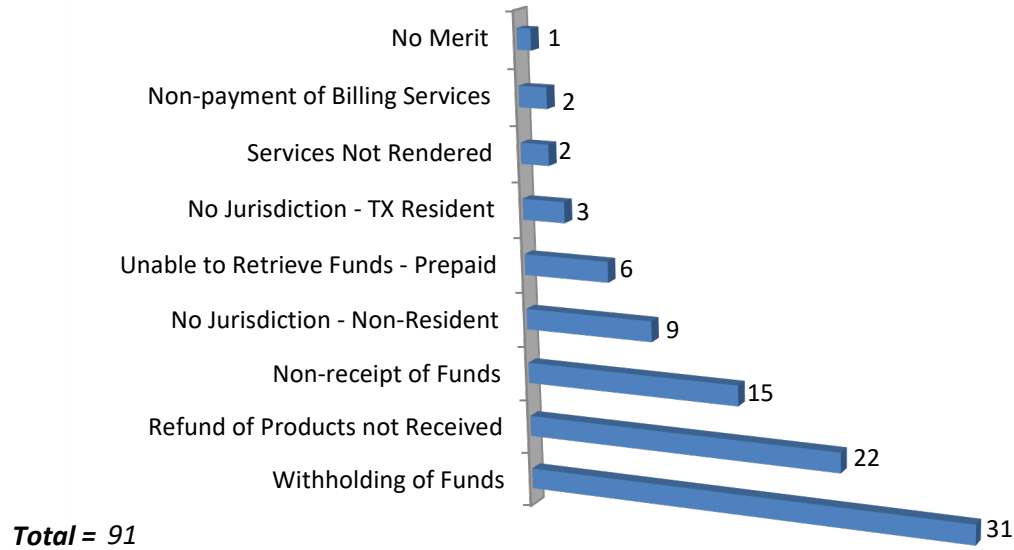
Total = 26

**State-Chartered Banks and Trust Companies
Inquiries by Type
September 2020 - April 2021**

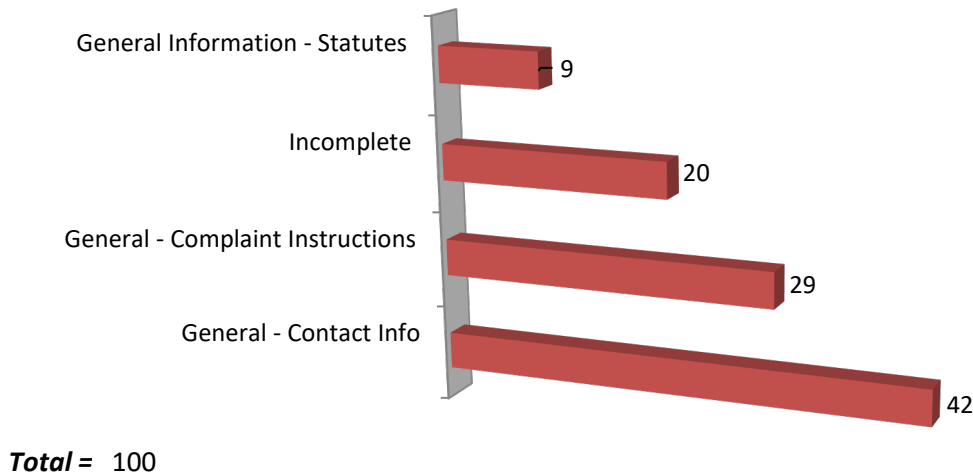


Total = 252

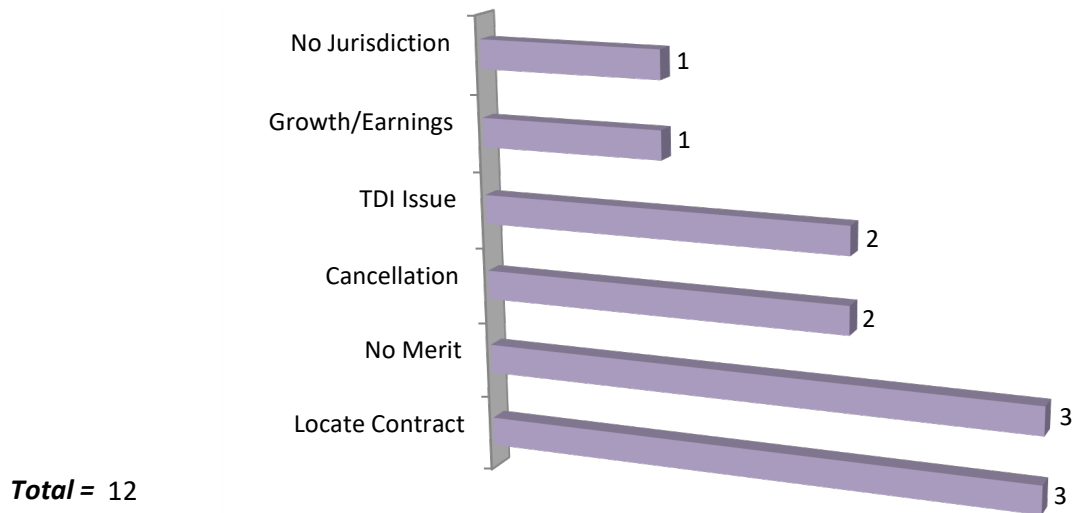
**Money Services Businesses
Written Complaints by Type
September 2020 - April 2021**



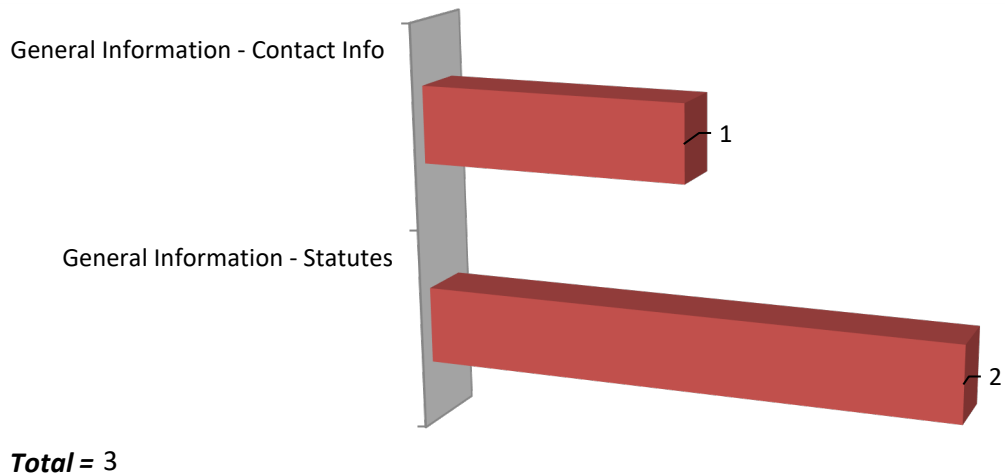
**Money Services Businesses
Inquiries by Type
September 2020 - April 2021**



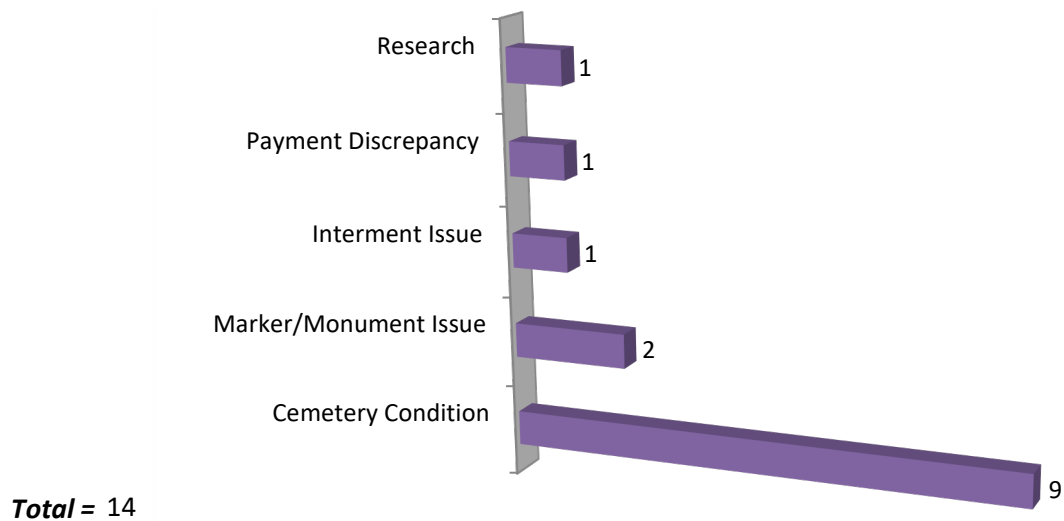
**Prepaid Funeral Contract Sellers
Written Complaints by Type
September 2020 - April 2021**



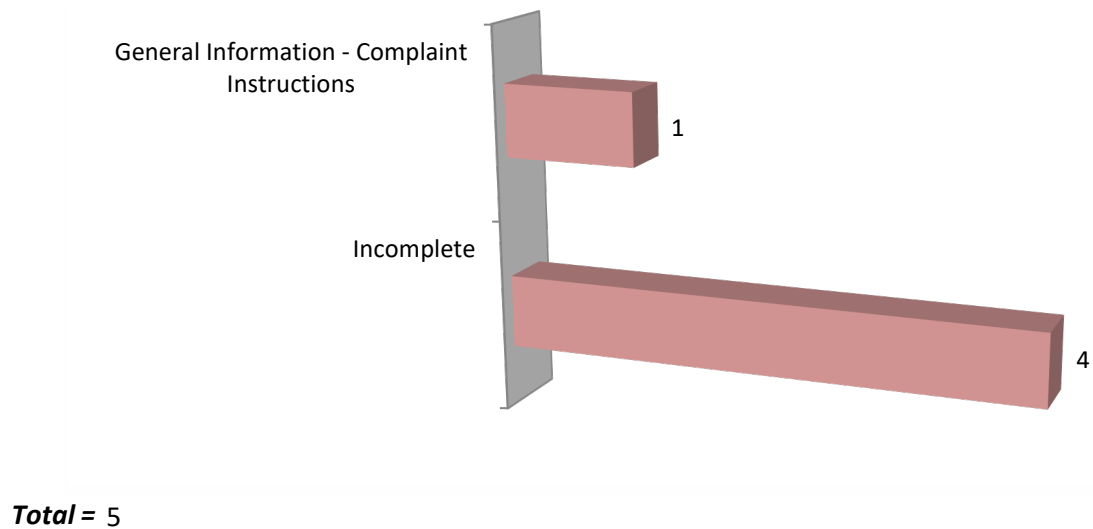
**Prepaid Funeral Contract Sellers
Inquiries by Type
September 2020 - April 2021**



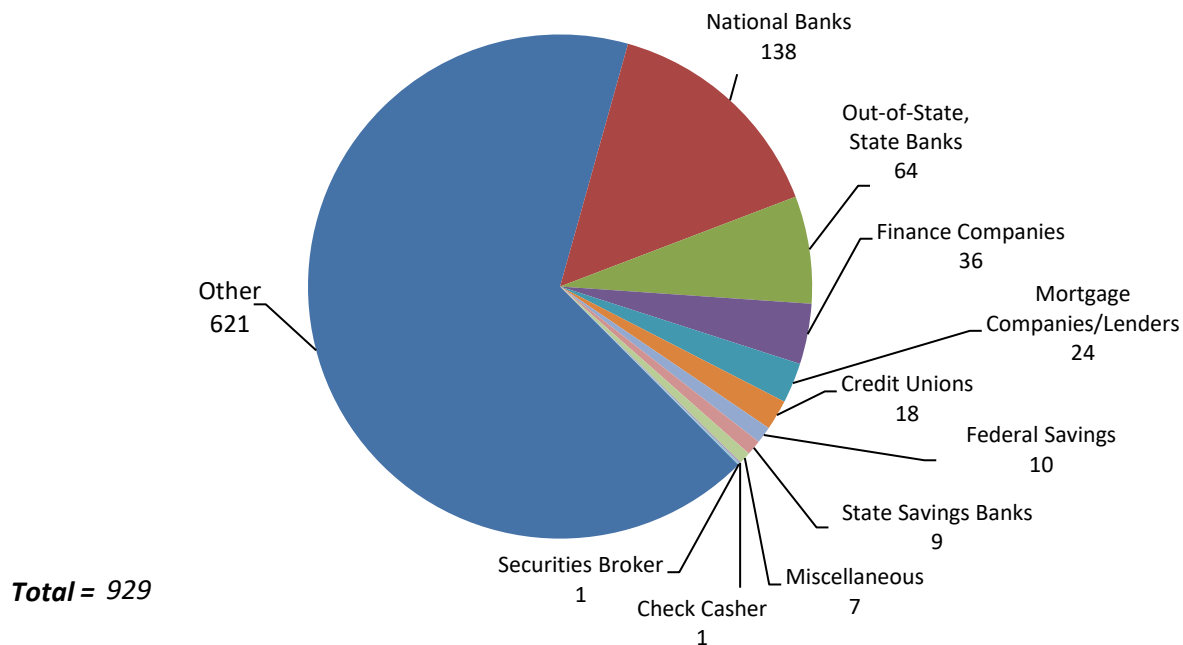
**Perpetual Care Cemeteries
Written Complaints by Type
September 2020 - April 2021**



**Perpetual Care Cemeteries
Inquiries by Type
September 2020 - April 2021**



Complaints and Inquiries Against Non-Jurisdictional Entities September 2020 - April 2021



Often, consumers do not provide the name of the entity they need assistance with. In these situations, the communication is categorized in the "Other" category.

Complaint Activities Information by Quarter

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr
State-Chartered Banks				
Avg. Number of Days to Close a Written Complaint	55	42	N/A	N/A
Percentage of Written Complaints Resolved Within 90 days	100%	100%	N/A	N/A
Number of Written Complaints Resolved	10	7	N/A	N/A
Trust				
Avg. Number of Days to Close a Written Complaint	N/A	N/A	N/A	N/A
Percentage of Written Complaints Resolved Within 90 days	N/A	N/A	N/A	N/A
Number of Written Complaints Resolved	N/A	N/A	N/A	N/A
PFC/PCC				
Avg. Number of Days to Close a Written Complaint	22	23	N/A	N/A
Percentage of Written Complaints Resolved Within 90 days	100%	100%	N/A	N/A
Number of Written Complaints Resolved	15	6	N/A	N/A
MSB				
Avg. Number of Days to Close a Written Complaint	24	25	N/A	N/A
Percentage of Written Complaints Resolved Within 90 days	100%	100%	N/A	N/A
Number of Written Complaints Resolved	27	30	N/A	N/A

*Third quarter data is not yet available

Closed Account Notification System (CANS) ACTIVITY
January 1, 2018 – June 1, 2021

Entity	Enrolled	Compromised Accounts Reported
Texas State-Chartered Banks	191	326
Texas State-Chartered Savings Banks	22	53
Federal Savings Banks	10	N/A
State Credit Unions	133	651
Federal Credit Unions	229	280
National Banks	170	107
Out-of-State State-Chartered Banks	12	98
Out-of-State National Banks	6	N/A
Total	773	1,515

Bank Examination Testing System (BETS) Activity
Number of Candidates Passing Each Phase

	FY 2018	FY 2019	FY 2020	FY 2021 As of 05/31/21
I. General Knowledge	6	3	4*	3
II. Loan Analysis	3	5	7	1
III. Panel	2	5	10	2
IV. Test Bank	3	4	7	4
Total FE3	22	19	15	20

Promotions

Commissioned Examiners	2	5*	7	4
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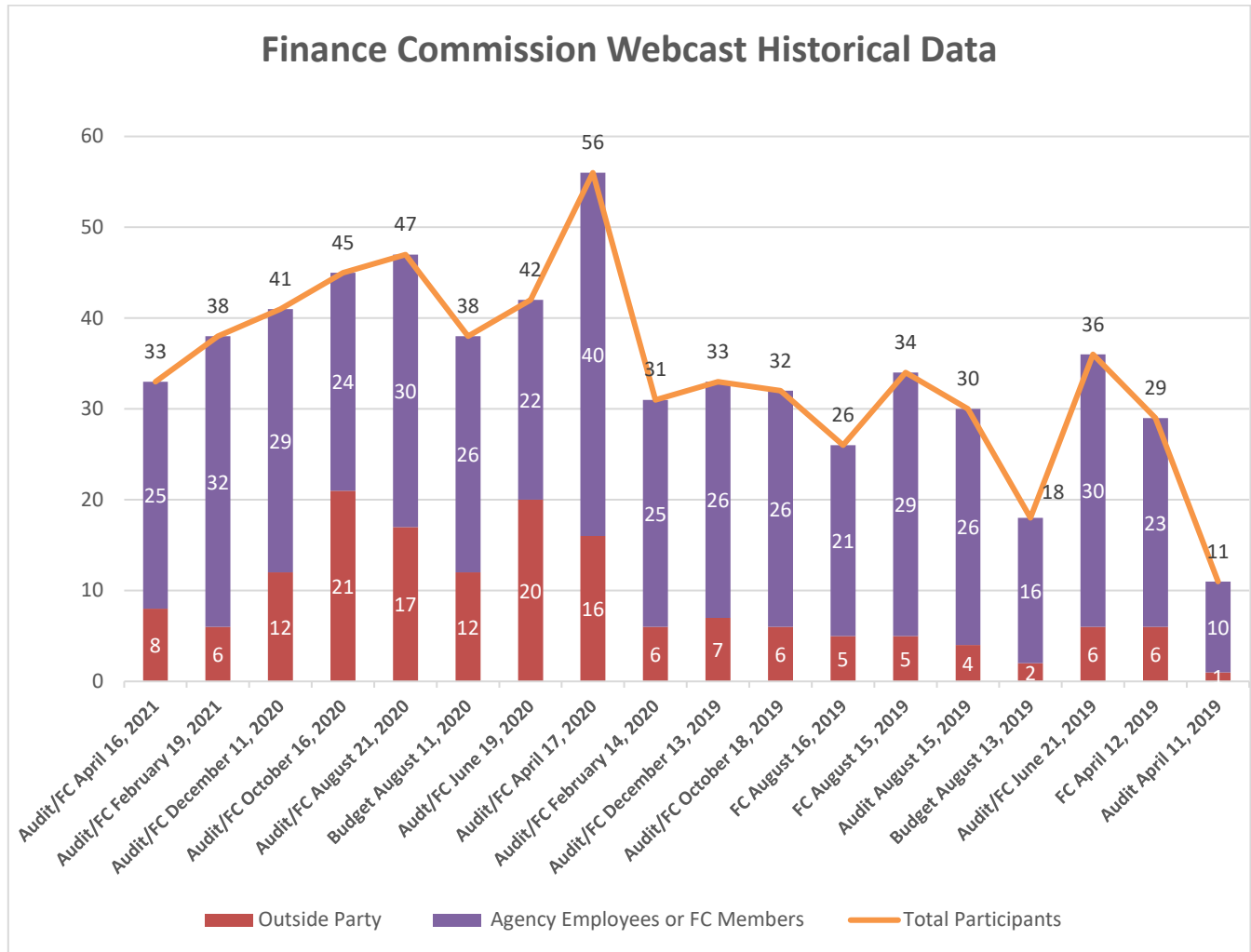
*Includes a FE V Credit Specialist

Other Divisional Items:

- *87th Legislative Session*
 - The last day of the regular session of the 87th Legislature was May 31, 2021. The House and Senate adjourned sine die passing 1,079 (15%) of the 7,148 bills and joint resolutions filed. The Governor has until June 20th to either sign or veto the bills. Department staff is evaluating all the bills that passed this session to see how they will affect the agency or our regulated entities. At least one special session is expected to address redistricting and possibly some of the governor's priorities not passed during the regular session.
- *Financial Education*
 - April is National Financial Literacy Month. On Wednesday, April 28, 2021, the Department held a joint financial education webinar "A Blueprint for Smart Housing Decisions" with the OCC. A 45-minute webinar was led by the Department's Director of Corporate Activities Mark Largent and the OCC's TFEE Grant and Financial Education Coordinator Andrea Johnson with a total of 56 participants.



- *Personnel and Policies Manual and Procedure Updates:*
 - Personnel Manual
 - Section 3 – Training Policy (April 2021)
 - Revised Administrative Memorandum (AM)
 - AM 2037 – Student Educational Employment Program (May 2021)
 - Procedure
 - Updated IT Scope Form for InTREx and Project 19 examinations (April 2021)
 - IT Charter Investigation and Conversion Examination procedures (April 2021)
 - Capital Procedure for Banks (May 2021)
- *Training*
 - Trust Lunch and Learn webinar was held on May 19, 2021 for Department employees. Trust examiners discussed the basic components of trust accounts and the examination process of trust companies.
 - Eduardo Perez attended TBA’s Compliance School virtually.
 - Phil Lena attended the Financial Crimes Seminar virtually.





Charles G. Cooper
Commissioner

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Memorandum

TO: Finance Commission Members
FROM: Catherine Reyer, General Counsel
DATE: June 1, 2021
RE: Legal Division Update

Litigation

E. Edward Okpa vs. Charles G. Cooper, Texas Banking Commissioner, Texas Department of Banking, Cause No. D-1-GN-20-005368, in the 53rd Judicial District Court of Travis County, Texas. This case was filed 9/28/20, seeking a declaratory judgment that the plaintiff's proposed business model would not require a money transmission license under the Texas Finance Code. On January 22, 2021, the OAG filed its answer on behalf of the Commissioner and the Department. On May 10, 2021, plaintiff filed a notice of nonsuit.

Orders Issued 4/1/21 – 5/31/21

During this time period, the Commissioner issued two enforcement orders, both of which are public, final and non-appealable:

Bank and Trust

- Consent Prohibition Order dated April 6, 2021; Adriana Montemayor, Brownsville, TX
- Cease and Desist Order dated April 27, 2021; FincreBank of New Mexico LLC and Carlos A. Gonzalez, Dallas, TX

Public Information Requests

From February 1, 2021 through March 31, 2021, staff received and responded to 18 requests for public information. During the same period, we received and responded to one public information request addressed to the Finance Commission.

Gifts

No gifts were received during this reporting period.

FY 2021 Quarterly Order Activity

BANK				
Type of Action	1st	2nd	3rd	4th
Consent Order	1	1	0	
Cease & Desist	0	0	1	
Supervision	1	0	0	
Prohibition	0	1	1	
Total	2	2	2	
TRUST COMPANY				
Consent Order	0	0	0	
Cease & Desist	0	0	0	
Supervision	0	0	0	
Prohibition	0	0	0	
Total	0	0	0	
MONEY SERVICES BUSINESS				
Consent Order	7	5	0	
Cease & Desist	0	0	0	
Final Order After Hearing	0	0	0	
Total	7	5	0	
PERPETUAL CARE CEMETERY				
Consent Order	0	0	0	
Cease & Desist	0	0	0	
Refusal to Renew Cert/Auth	0	0	0	
Final Order after hearing	0	0	0	
Total	0	0	0	
PREPAID FUNERAL CONTRACT				
Consent Order	0	0	0	
Cease & Desist	0	0	1	
Total	0	0	1	

Projected Future Rule Actions:

August 2021

7 TAC Sec. 3.22 – Sale or Lease Agreement with Bank Insiders

7 TAC Sec. 17.3 – Sale or Lease Agreements with Trust Company Insiders

Selected Legislation of Interest

87th Legislative Session, 2021

HB 1258 (effective 9/1/21)

- Requires financial institutions to exchange data with the comptroller each calendar quarter to facilitate matching delinquent taxpayers with account holders

HB 1322 (effective 9/1/23 unless vetoed)

- Requires state agencies to publish a plain language (English and Spanish) summary of any proposed rule on the agency website

HB 1526 (effective upon signature unless vetoed)

- Allows persons to apply to the governing body of a municipality to establish or use a cemetery within certain geographical and population limits

HB 1571 (effective 9/1/21 unless vetoed)

- Exempts from perpetual care regulation a cemetery established in a municipality within certain population limits

HB 1576 (effective 9/1/21)

- Establishes a work group to develop a master plan for the expansion of the blockchain industry and recommend corresponding policies and state investments

HB 2005 (effective 9/1/21)

- Exempts from perpetual care regulation a private family cemetery located at the site of a presidential library and museum

HB 2063 (effective 9/1/21 unless vetoed)

- Requires state agencies to adopt rules allowing employees to contribute leave time to a family leave pool

HB 2106 (effective 9/1/21)

- Provides for enforcement against credit card skimmers by the Texas Department of Licensing and Regulation

HB 2533 (effective 9/1/21 unless vetoed)

- Exempts certain real property valuations from requirements of Texas Appraiser Licensing and Certification

HB 4474 (effective 9/1/21 unless vetoed)

- Establishes rights of purchasers who obtain control of virtual currency for purposes of the Uniform Commercial Code

HB 4477 (effective 9/1/21 unless vetoed)

- Clarifies requirements of financial institutions that suspect financial abuse of vulnerable adults

SB 13 (effective 9/1/21 unless vetoed)

- Prohibits state agencies from investing in financial companies that boycott energy companies
- Defines financial company as a publicly traded financial services, banking, or investment company

Selected Legislation of Interest - Continued

87th Legislative Session, 2021

SB 19 (effective 9/1/21 unless vetoed)

- Prohibits state agencies from contracting with companies that discriminate against firearm or related businesses

SB 424 (effective 9/1/21 unless vetoed)

- Prohibits a state agency from imposing an administrative penalty against a small unless the agency has first provided notice and opportunity to remedy the violation

SB 475 (effective 9/1/21 unless vetoed)

- Requires vendors providing cloud services to state agencies to comply with the cybersecurity program established by the Department of Information Resources
- Prohibits state agencies from using location tracking technology or contact tracing without an individual's consent

SB 516 (effective 9/1/21)

- Increases the penalty for the offense of criminal mischief involving impairment or interruption of access to an ATM

SB 968 (effective 6/7/21)

- Omnibus bill relating to state agency responses to public health emergencies
- Prohibits state agencies from issuing a COVID "passport"; prohibits businesses from requiring customers to provide a COVID "passport" to access the business or receive services from the business
- Requires state agencies to ensure their regulated entities comply with the new law prohibiting COVID passports

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendment to 7 TAC §3.36, Concerning Annual Assessments and Specialty Examination Fees

PURPOSE: The amendment to §3.36 mitigates the assessment effects of participating in the Paycheck Protection Program by decreasing a state bank's assessment base by the amount attributable to Paycheck Protection Program loans reflected in the bank's financial statements.

RECOMMENDED ACTION: The department received one comment from the Independent Bankers Association of Texas in support of the proposed amendment to 7 TAC §3.36. The Department recommends that the Commission approve adoption of the amendment without changes to the proposal as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we adopt the amendment to 7 TAC §3.36 without changes to the proposal as previously published in the *Texas Register*.

Title 7. Banking and Securities
Part 1. Finance Commission of Texas
Chapter 3. State Bank Regulation
Subchapter B. General

7 TAC §3.36

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts an amendment to §3.36, concerning annual assessments and specialty examination fees. The amended rule is adopted without changes to the proposed text as published in the April 30, 2021, issue of the *Texas Register* (46 TexReg 2875). The amended rule will not be republished.

The rule is amended to mitigate the assessment effects of participating in the Paycheck Protection Program (PPP) by decreasing a state bank's assessment base by the amount attributable to PPP loans reflected in the bank's financial statements.

Recent events have significantly and adversely impacted the global economy and financial markets. The spread of the Coronavirus Disease (COVID-19) has slowed economic activity in many countries, including the United States. Small businesses have experienced liquidity difficulties and a collapse in revenue streams as millions of Americans have been ordered to stay home, severely reducing their ability to engage in normal commerce. Many small businesses have been forced to close temporarily or furlough employees. Continued access to financing is crucial for small businesses to weather economic disruptions caused by COVID-19 and, ultimately, to help restore economic activity.

As part of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116-136 (Mar. 27, 2020), and in recognition of the exigent circumstances faced by small businesses, the United States Congress created the PPP. PPP loans are fully guaranteed as to principal and accrued interest by the Small Business Administration (SBA), the amount of each being determined at the time the guarantee is exercised. As a general matter, SBA guarantees are backed by the full faith and credit of the U.S. Government. PPP loans also afford borrowers forgiveness up to the principal amount of the PPP loan if the proceeds of the PPP loan are used for certain expenses. The SBA reimburses PPP lenders for any amount of a PPP loan that is forgiven. PPP lenders are not held liable for any representations made by PPP borrowers in connection with a borrower's request for PPP loan forgiveness.

The annual assessment chargeable to a state bank for the 12-month period beginning each September 1 is calculated based in part on the institution's total assets as reported in its most recent March 31st call report. The total loan portfolio of an institution that assists economic stability and recovery during the COVID-19 crisis by making PPP loans to customers increases, all else being equal, which increases the total assets on its balance sheet by an amount equal to the outstanding balance of PPP loans. Under the pre-amendment assessment rule, this increase in total assets would result in an increase to the institution's annual assessment.

In recognition of the important role Texas state banks have played in providing liquidity to small businesses and helping to stabilize

the broader economy in the midst of the economic disruption caused by COVID-19, the adopted amendment mitigates this potential for increased assessments by excluding the outstanding balance of all PPP loans from the institution's total assets.

Specifically, the definition of "on-book assets" in §3.36(b)(6) is amended to subtract the outstanding balance of PPP loans included on "Schedule RC-M – Memoranda" in the institution's March 31st call report from total assets. A definition for "PPP" is also added as new §3.36(b)(7).

The department received one comment supporting the proposed amendment from the Independent Bankers Association of Texas.

The amendment is adopted pursuant to Finance Code, §31.003(a)(4) and §31.106, which authorize the commission to adopt rules necessary or reasonable to recover the cost of supervision and regulation by imposing and collecting ratable and equitable fees. As required by Finance Code, §31.003(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive position of state banks with regard to national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development in this state.

§3.36 Annual Assessments and Specialty Examination Fees.

(a) Authority. The assessment schedule contained in this section is made under the

authority contained in the Finance Code, §31.003(a)(4) and §204.003(b).

(b) Definitions. The following words and terms, when used in this section, §3.37 of this title (relating to Calculation of Annual Assessment for Banks), or §3.38 of this title (relating to Calculation of Annual Assessment for Foreign Bank Branches and Agencies), shall have the following meanings, unless the context clearly indicates otherwise.

(1) Assessable assets--The sum of on-book assets and average off-book assets of a bank, foreign bank branch, or foreign bank agency.

(2) Average off-book assets--The average of the off-balance sheet items reported by a bank, foreign bank branch, or foreign bank agency in its most recent March 31st call report and the three immediately preceding call reports, as adjusted under subsection (c) of this section.

(3) Call report--The FFIEC quarterly, consolidated report of condition and income (including domestic and foreign subsidiaries) prepared and filed by a bank, foreign bank branch, or foreign bank agency under state and federal law.

(4) CAMELS composite rating--A bank's composite rating under the Uniform Financial Institutions Rating System (UFIRS), as described more fully in Supervisory Memorandum 1001, assigned by the department to a state bank in connection with its most recent examination by the department or by a federal bank regulatory agency.

(5) FFIEC--The Federal Financial Institutions Examination Council.

(6) On-book assets--The total assets reported by a bank, foreign bank branch, or foreign bank agency on the balance sheet contained in its most recent March 31st call report, minus the outstanding balance of PPP loans included on "Schedule RC-M – Memoranda."

(7) PPP--The Paycheck Protection Program administered by the Small Business Administration.

(c) Calculation of average off-book assets. As a component of assessable assets, a bank, foreign bank branch, or foreign bank agency must calculate a four-quarter average of off-book assets specifically as instructed in the assessment form applicable to the institution, using the most recent March 31st call report and the three preceding call reports. In general, the bank, foreign bank branch, or foreign bank agency must sum all line items for which values are included on "Schedule RC-L-Off-Balance Sheet Items," which could result in assets of the institution, with the exception of:

(1) Amount of financial standby letter of credit conveyed to others;

(2) Amount of performance standby letter of credit conveyed to others;

(3) Participations in acceptances conveyed to others by the reporting bank, foreign bank branch, or foreign bank agency; and

(4) All line items related to derivative products as identified by the department.

(d) Annual assessment. Effective September 1 of each year, the department will establish the annual assessment for each bank, foreign bank branch, and foreign bank agency under subsections (f) and (g) of this section.

(1) The assessment for a bank is based on its assessable assets and calculated in the manner described in §3.37 of this title. Upon receipt of written notice from the department, the bank must pay the assessment to the department in quarterly installments by electronic payment/ACH debited effective September 15, December 15, March 15, and June 15 of each year, or by another method if directed to do so by the department.

(2) The assessment for a foreign bank branch or a foreign bank agency is based on its assessable assets and calculated in the manner described in §3.38 of this title. Upon receipt of a written invoice from the department, the foreign bank branch or foreign bank agency must pay the assessment to the department in quarterly installments, due on or before September 15, December 15, March 15, and June 15 of each year, or by another method if directed to do so by the department.

(3) A foreign bank representative office shall pay an annual assessment fee of \$2,500 to cover the cost of examinations and all associated expenses unless the foreign bank also maintains a foreign bank branch or foreign bank agency in this state subject to assessment under paragraph (2) of this subsection. Upon receipt of a written invoice from the department, each foreign bank representative office to which this paragraph applies must pay its annual assessment to the department in a single installment, due on or

before September 15 of each year. The department may require each foreign bank representative office to pay the annual assessment fee through electronic funds transfer.

(e) Review of assessment factors. The department will review all appropriations, revenue sources, expenditure patterns, and other revenues and costs related to examination and supervision of banks, foreign bank branches, foreign bank agencies, and present to the finance commission no less frequently than once each biennium such information and a calculation chart that sets forth the annual assessment factors.

(f) Interim adjustments.

(1) If the size, condition, or other characteristics of a bank, foreign bank branch or foreign bank agency change sufficiently during a year to cause the institution to fall into a different assessable asset group or to be subject to a new or different surcharge based on a change in the institution's CAMELS composite rating, the department will adjust the annual assessment to the appropriate amount beginning with the first billed quarterly installment after the change.

(2) In the event of an acquisition or merger involving a surviving state bank, foreign bank branch, or foreign bank agency, the department will adjust the annual assessment to reflect the result of the acquisition or merger beginning with the first billed quarterly installment after the consummation of the transaction. The asset group will be calculated on the basis of the combined assessable assets of the surviving institution.

(3) A financial institution that becomes subject to this section during a fiscal year as a result of conversion, merger, branching, or other change during a fiscal year must pay to the department an assessment beginning in the quarter of the conversion, merger, or other change to reflect only the quarter or quarters of the year in which the institution is subject to this section.

(4) Each bank, foreign bank branch, and foreign bank agency must pay to the department the full quarterly installment of the assessment for the next three-month period on the due date of the installment without proration for any reason.

(g) Adjustment of an installment. The banking commissioner may, after review and consideration of actual and projected revenues and expenditures in the current fiscal year, lower the aggregate amount of an installment and bill each institution subject to assessment a proportionally lower amount, without the prior approval of the finance commission.

(h) Specialty examination fees.

(1) Examinations of fiduciary activities and other special examinations and investigations, including but not limited to examinations of bank holding companies, interstate branches of state banks in Texas as host state, affiliates, and third-party contractors, are subject to a separate charge to cover the cost of time and expenses incurred in these examinations.

(2) The fee for an examination under this subsection will be calculated at a rate not to exceed \$110 per examiner hour, to recoup the salary expense of examiners plus a

proportionate share of department overhead allocable to the examination function. The banking commissioner in the exercise of discretion may lower the rate in connection with a specific examination or investigation for equitable reasons, without the prior approval of the finance commission.

(3) In connection with an examination under this subsection, the regulated entity or other legally responsible party shall pay to the department the examination fee set forth in paragraph (2) of this subsection, and shall also pay to the department an amount for actual travel expenses incurred by the examiners, including mileage, public transportation, food, and lodging.

(i) Special assessments. The finance commission may approve a special assessment to cover material expenditures, such as major facility repairs and improvements and other extraordinary expenses.

D.

**Department of Savings and
Mortgage Lending**

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D. Department of Savings and Mortgage Lending

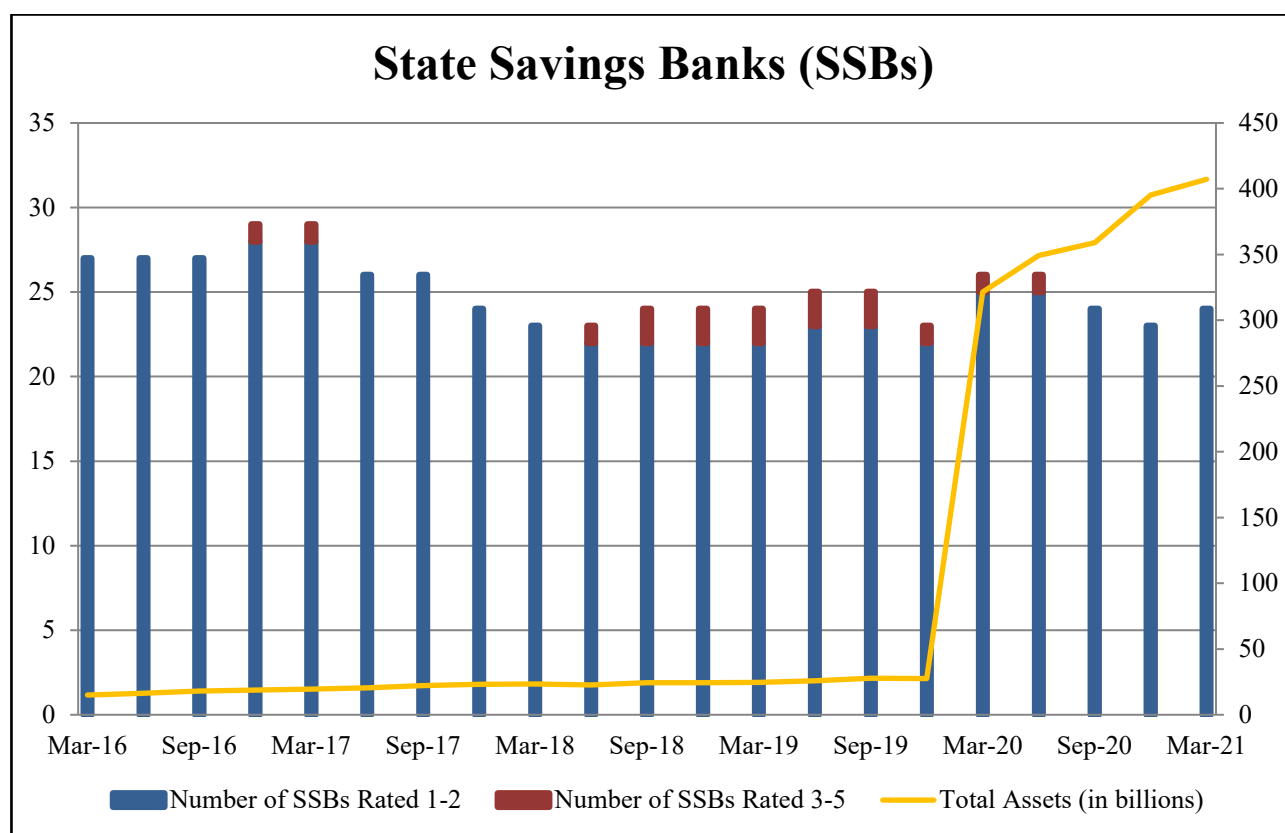
1. Industry Status and Departmental Operations: a) Thrift Regulation Division Activities; b) Mortgage Regulation Division Activities; c) Operations Division Activities; d) Legal Division Activities, including Consumer Complaints and Gift Reporting; and e) Legislative Activities

a) Thrift Regulation Division Activities

Industry Status

The Department continues to monitor various local, state, and national data sources to understand the risks facing the industry and individual savings banks.

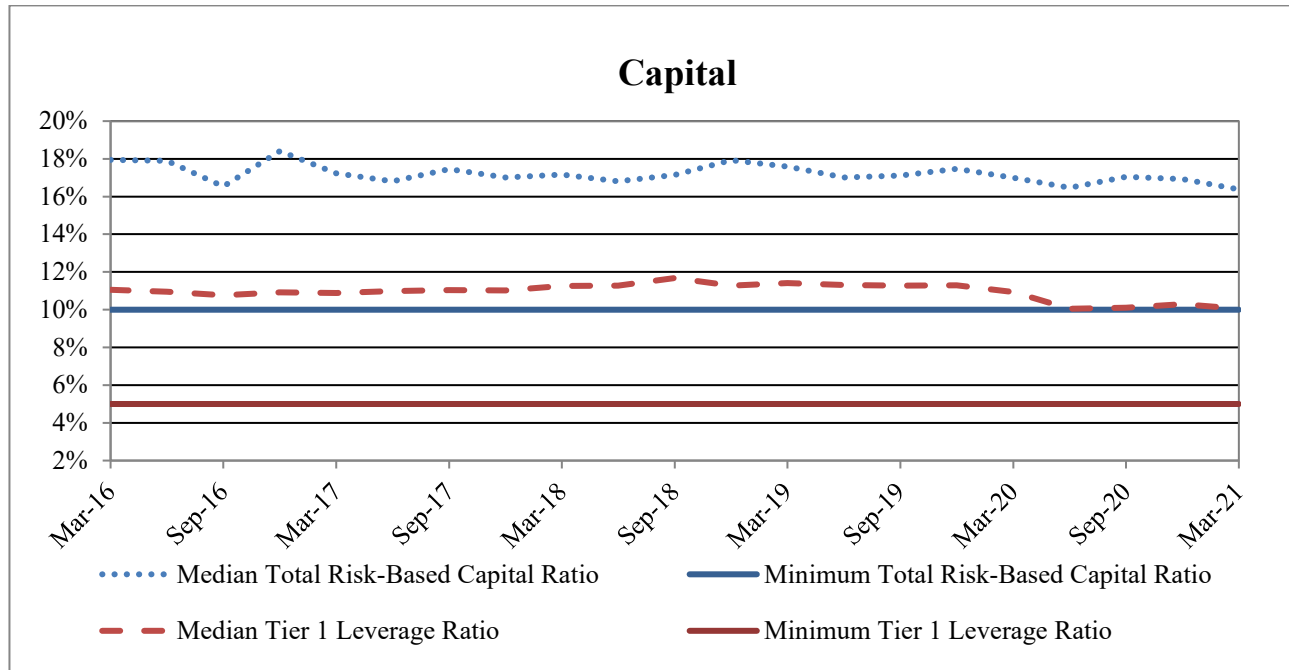
The Department conducts bank examinations to ensure confidence in the banking system using the Uniform Financial Institutions Rating System (UFIRS). Banks with a UFIRS rating of 1 or 2 are considered well rated. The industry consists of 24 state savings banks with assets totaling \$407.2 billion as of March 31, 2021. The industry remains sound with all banks being well rated. As of March 31, 2021, one formal supervisory action remains in place.



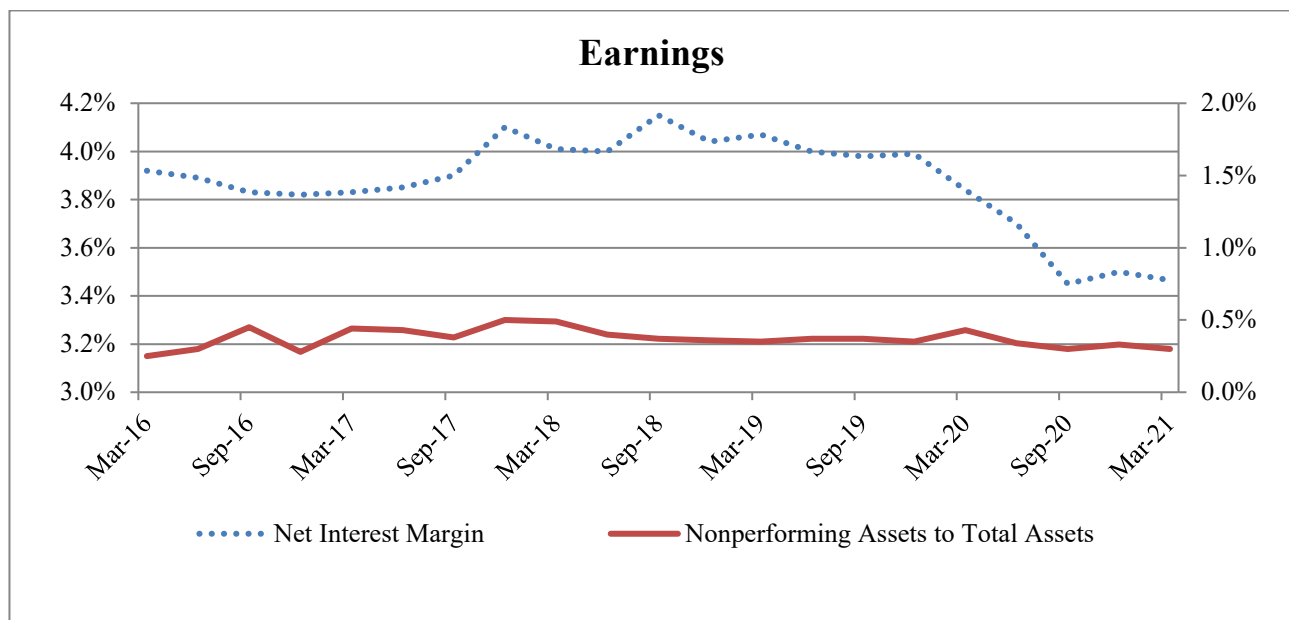
All SSBs are subject to quarterly offsite reviews. Those with the highest risk profiles receive enhanced scrutiny, as warranted, with targeted visitations, accelerated examinations, and/or corrective actions. Below are specific areas that the Department monitors in relation to changes in the state and national economic environment.

Bank capital performs several very important functions, including absorbs losses, promotes public confidence, helps restrict excessive asset growth, and provides protection to the depositors.

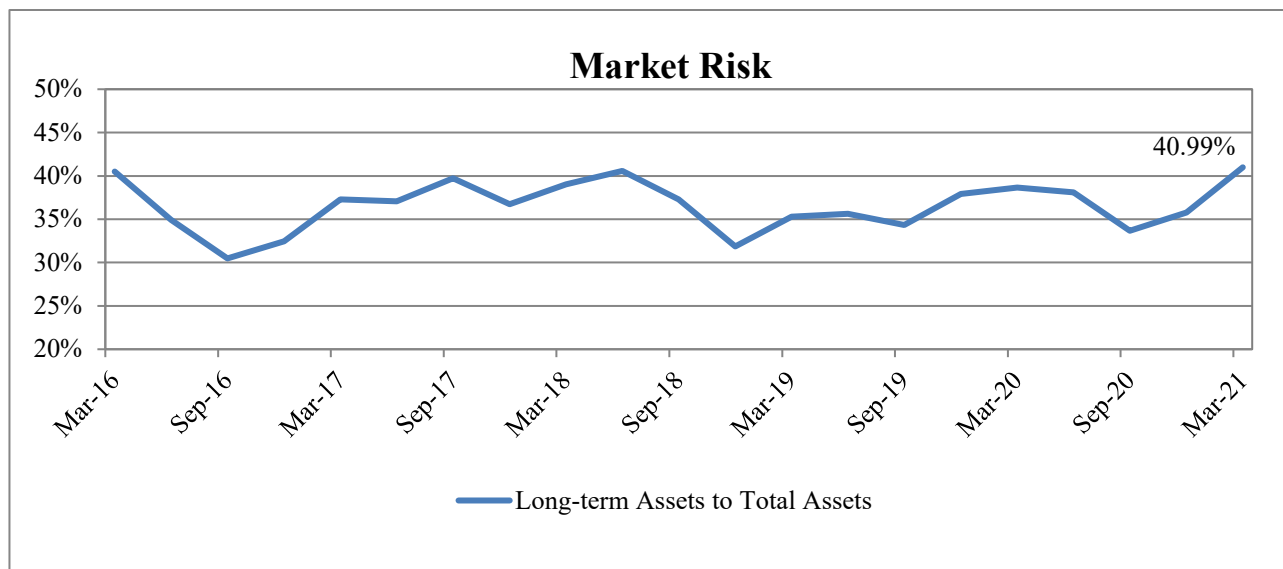
Regulatory capital standards are designed to strengthen the quality and quantity of bank capital and promote a stronger financial industry that is more resilient to economic stress. As of March 31, 2021, all SSBs remain well above regulatory capital minimums. The portfolio median total risk-based capital ratio and median leverage capital protection have remained generally consistent and are now 16.38% and 10.06%, respectively.



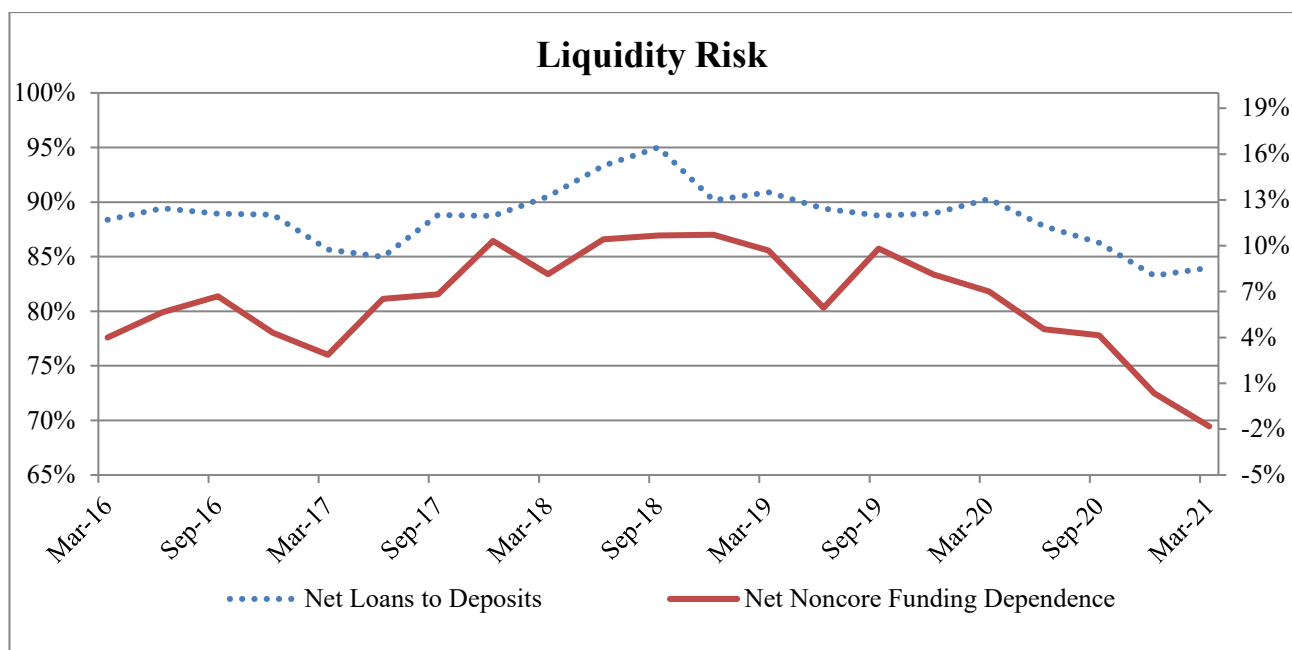
The earnings indicator is the initial safeguard against the risk of engaging in the banking business, and is the first line of defense against capital depletion resulting from shrinkage in asset value. Earnings performance should allow the bank to remain competitive by providing the resources required to implement management's strategic initiatives. The net interest or profit margin is 3.47%. Non-performing asset levels remain low at 0.30% of total assets.



Market risk primarily reflects exposures to changing interest rates over time. Long-term asset exposure can be an indicator of the degree of market risk taken by a state savings bank. As of March 31, 2021, long-term assets to total assets ratio increased to 40.99% but remains manageable.



Liquidity risk reflects the bank's ability to fund assets and meet financial obligations under various scenarios, including adverse conditions. Liquidity risk continues to decline. The Net Noncore Funding Dependence (NNCFD) Ratio, a measure of the funding of long-term assets using short-term funding strategies, is negative 1.82%. The loan-to-deposit ratio, a measure of the use of deposits to fund lending activities, is 83.98%.



Thrift Examination Activity Report

Due to COVID-19, thrift examinations continue to be conducted off-site. On-site activities are being offered by SML. If any on-site activities are conducted, safety protocols will be followed.

Thrift Supervision Activity Report

Thrift Supervision section continues to receive and process various requests for approval, including branch, subsidiary, and holding company applications.

An application to reorganize Mineola Community Mutual Holding Company from a mutual to a stock form of ownership was received from Mineola Community Bank, SSB, on February 9, 2021, was approved April 26, 2021, and is pending the meeting of the members.

No merger activity was received, approved or effective since the April 2021 Finance Commission meeting.

Outreach and Training

Supervisory Financial Examiner Susanna Blevins attended the virtual FFIEC: Financial Crimes Seminar on April 13-15, 2021.

Deputy Commissioner Trotti completed the Chainalysis Cryptocurrency Certification on April 22-23, 2021.

Commissioner Jones and Deputy Commissioner Trotti attended the virtual CSBS Spring Summit, each Tuesday for four consecutive weeks, April 6-27, 2021.

Deputy Commissioner Trotti, Supervisory Analyst Teresa Nelson, and Financial Examiner Mark Hutchison attended the virtual FFIEC Supervisory Updates and Emerging Issues for Large, Complex Financial Institutions on May 4-6, 2021.

Financial Examiner Carol Leung attended the virtual FFIEC Structured Finance: Investment Analysis and Risk Management on May 17-20, 2021.

Commissioner Jones attended the virtual CSBS State Federal Supervisory Forum on May 19-20, 2021.

Commissioner Jones and Deputy Commissioner Trotti conducted Emerging Issues calls with the state savings banks on the second Tuesday of April, May, and June.

b) Mortgage Regulation Division Activities

Industry Status

License/Registration Type	Approved Count as of		% Change
	05/31/2020	05/31/2021	
Mortgage Banker	410	424	3%
Mortgage Company	1,579	1,751	11%
Residential Mortgage Loan Servicer	203	211	4%
Independent Contractor Company	182	214	18%
Credit Union Subsidiary Organization	4	3	-25%
Auxiliary Mortgage Loan Activity Company	3	4	33%
Financial Services Company	1	0	-100%
<i>Subtotal Entity Licenses/Registrations</i>	2,382	2,607	9%
Mortgage Banker Branches	3,155	3,544	12%
Mortgage Company Branches	834	1,010	21%
Credit Union Subsidiary Organization Branches	2	2	0%
<i>Subtotal Branch Licenses/Registrations</i>	3,991	4,556	14%
Mortgage Loan Originator	29,953	38,649	29%
<i>Subtotal Individual Licenses</i>	29,953	38,649	29%
Total Count of Licenses/Registrations	36,326	45,812	26%

Licensing Activity Report

During the 3rd quarter of fiscal year 2021, the Licensing Section staff approved 4,732 new licenses and processed 53,072 NMLS filings for regulated entities.

Through the first three quarters of fiscal year 2021, the Department received 17,460 new license/registration and branch requests and 123,847 other filings (amendments, sponsorships, etc.).

Mortgage Examination Activity Report

During the first three quarters of fiscal year 2021, the Department conducted a total of 302 examinations covering 4,747 individual licensees. The number of examinations is lower than compared to the same reporting period in fiscal year 2020; however, the number of individual licensees covered is higher by 25%. The examinations continue to identify various degrees of non-compliance involving issues related to unlicensed activity, unauthorized activity, the issuance of non-compliant conditional qualification/conditional approval letters, and non-compliant social media advertisements.

Outreach and Training

On May 18, 2021, Commissioner Jones provided a virtual presentation on residential mortgage topics to the Texas Mortgage Roundup.

CSBS Mortgage Reaccreditation

The Conference of State Bank Supervisors (CSBS) is currently conducting the five-year reaccreditation review of the Department. The CSBS Re-Accreditation process involves an in-depth

review of the Department’s policies, procedures, and operations to determine whether the Department meets the standards set forth by the Performance Standards Committee (PSC). During the week of May 23rd, the CSBS Review Team conducted the virtual “on-site” review of the Department. The CSBS Review Team reviewed all requested documents and conducted a series of interviews with key personnel. The Department expects the results of the five-year re-accreditation review within 60 days.

c) Operations Division Activities

Risk Management

The Austin office presence has increased to no more than 75% in the office at any given time. Hygienic supplies are provided in the office and we continue to social distance. All office staff is equipped to work effectively and efficiently both remotely and in the office.

Mortgage and thrift examinations field staff continues to perform off-site activities, however on-site visits are offered and are conducted at a regulated entity’s request.

The management team continues to maintain regular communication with staff and to stay informed, in order to be prepared in case of changes in the COVID situation.

Accounting, Budget, and Financial Reporting

Staff is closing out the third quarter of fiscal year 2021 and has started developing the budget for fiscal year 2022.

CAPPS Implementation – Staff participates in weekly user acceptance testing (UAT) sessions related to each CAPPS Financials Module. During these sessions, the Comptroller’s office CAPPS teams and Department’s staff test multiple scenarios in order to determine the agency module configurations are functioning properly. The user acceptance testing phase is scheduled to be completed in the first week of July. In addition to the module meetings, Director Antov participates in weekly UAT coordinator meetings.

Legislative Activity – Staff is reviewing bills that passed the House and Senate for fiscal impact on the agency and the regulated industries and planning needed implementation.

Human Resources

As of May 31, 2021, the Department was staffed at 58 regular full-time and one part-time employees. During the month of April, William Purce joined the Department as the Director of Mortgage Regulation. The Department had no separations during the months of April and May.

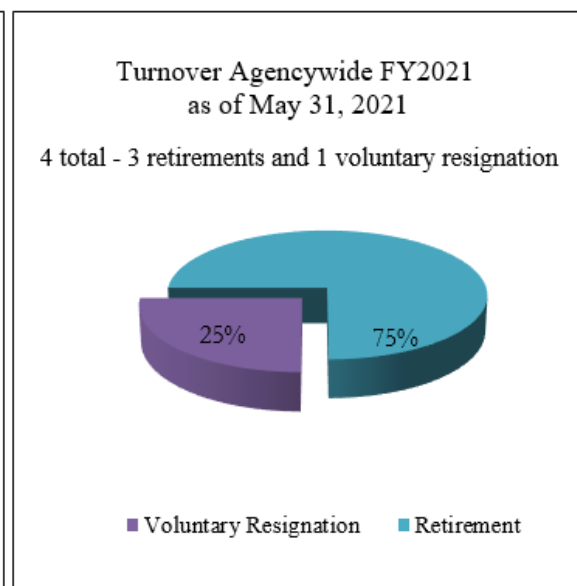
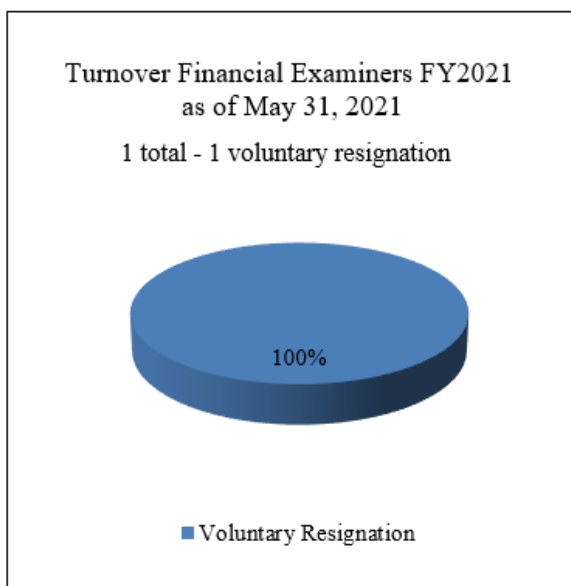
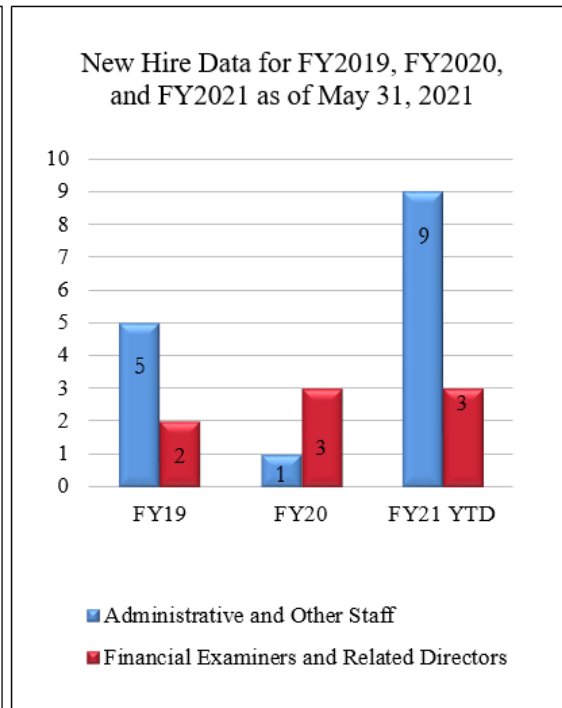
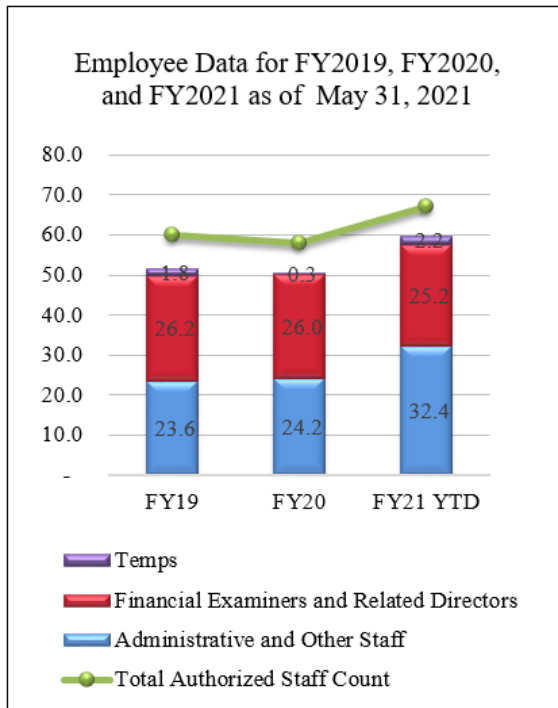
The staff turnover as of May 31, 2021, is 7.27%.

The Department is also utilizing the services of three temporary workers – one Editor, one License and Permit Specialist, and one Investigator.

Below is the status of the Department's vacancies:

Vacancy Status	
Financial Examiner V – Thrift – 2	Collecting and reviewing applications, interviewing
Financial Examiner VI/VII – Thrift - 3	
Attorney III/IV – Thrift	
License and Permit Specialist I/II - 2	
License and Permit Specialist II/III – 2	Collecting applications
Purchaser III/IV	Collecting applications

Staffing Charts as of May 31, 2021



Outreach and Training

Virtual agency-wide training was held on May 24, 2021. It included sessions on Diversity, EEO and Discrimination Prevention, Drivers Safety and Cybersecurity and Privacy, which are required by statute.

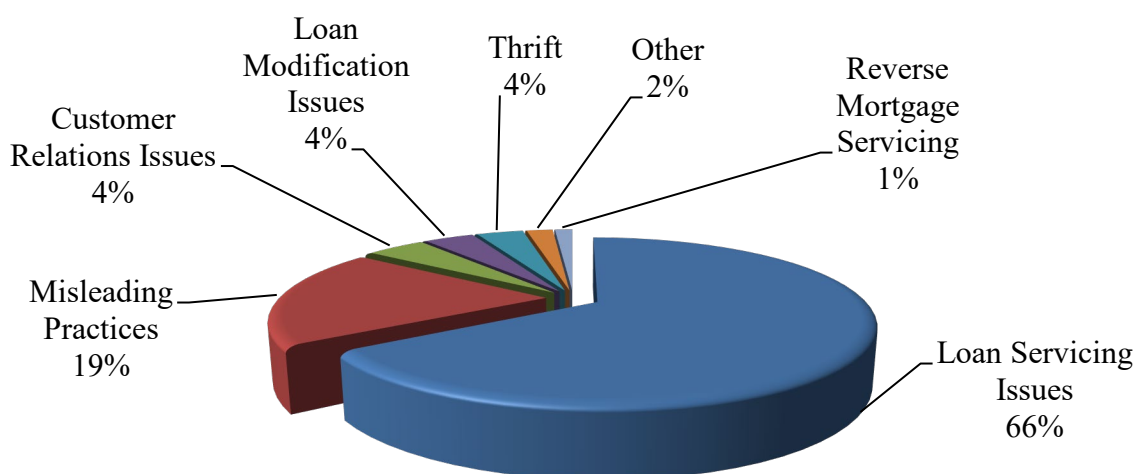
d) Legal Division Activities, including Consumer Complaints and Gift Reporting

Consumer Complaints Activity Report

Loan Servicing complaints continue to be the largest complaint category accounting for 66% of the total number of complaints received in the third quarter of fiscal year 2021 compared to 67% received in the same reporting period in fiscal year 2020. The total number of complaints received in the third quarter of fiscal year 2021 increased 33% when compared to the same reporting period in fiscal year 2020.

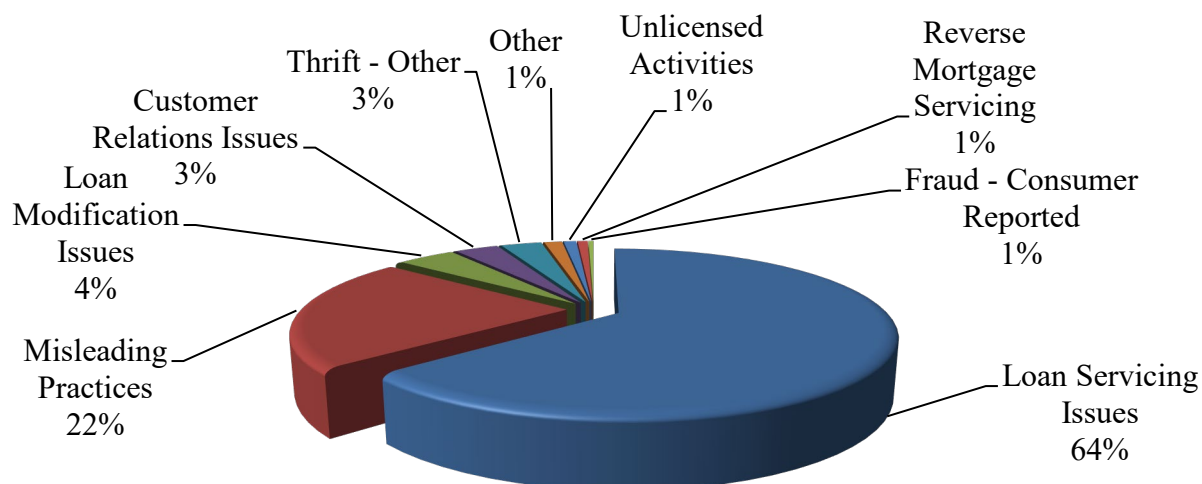
Nature of Complaints Received - 3rd Quarter FY2021

Total Complaints Received March 1, 2021 to May 31, 2021 = 460



* The "Other" Category includes: Unlicensed Activities, Inadequate Disclosures, Reverse Mortgage Origination, Fraud - Consumer Reported, Bait and Switch and Fraud

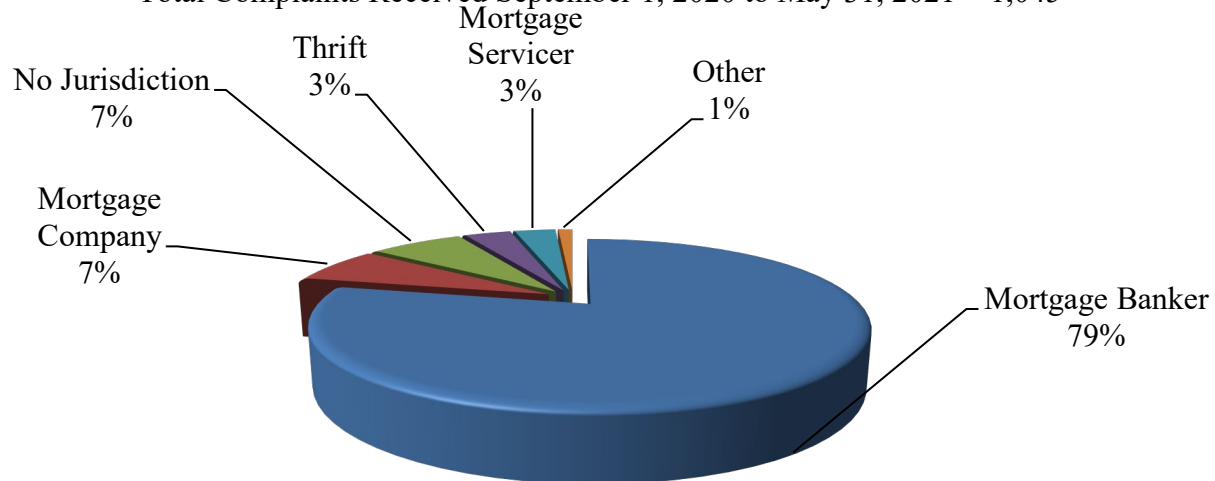
Nature of Complaints Received - FY 2021 YTD



* The "Other" Category includes: Identity Theft, Improper Advertising, Reverse Mortgage Origination, Fraud, Permissible Fees, Bait and Switch, Failure to Pay Vendors, Refunds and File Transfers, and Inadequate Disclosures.

Complaints Received by Respondent Type - FY 2021 YTD

Total Complaints Received September 1, 2020 to May 31, 2021 = 1,045

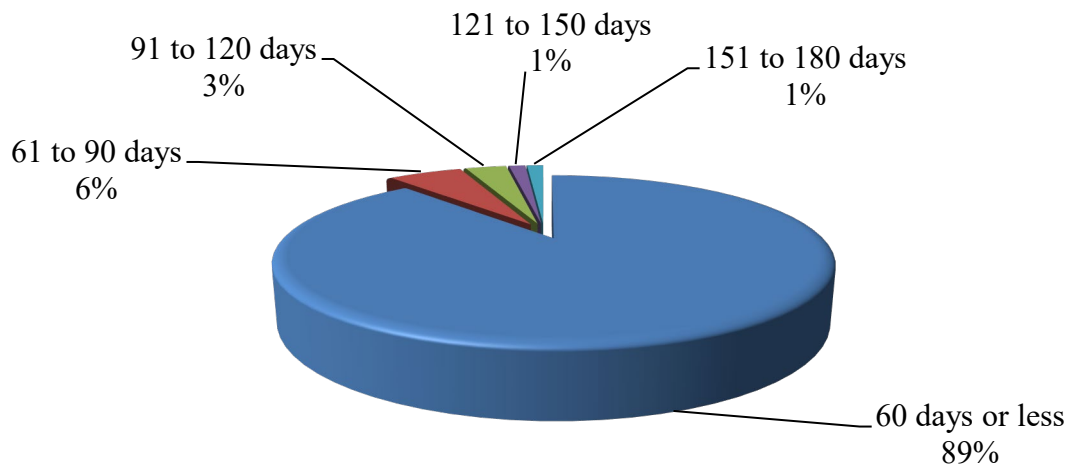


* The "Other" Category includes: Not Licensed and Financial Services Company

The following charts reflect the consumer complaint information through the end of the third quarter of fiscal year 2021. The aging of the open complaints remains within the target range with no open complaints over 180 days. Open complaint aging has remained within acceptable ranges with 95% being aged less than 90 days.

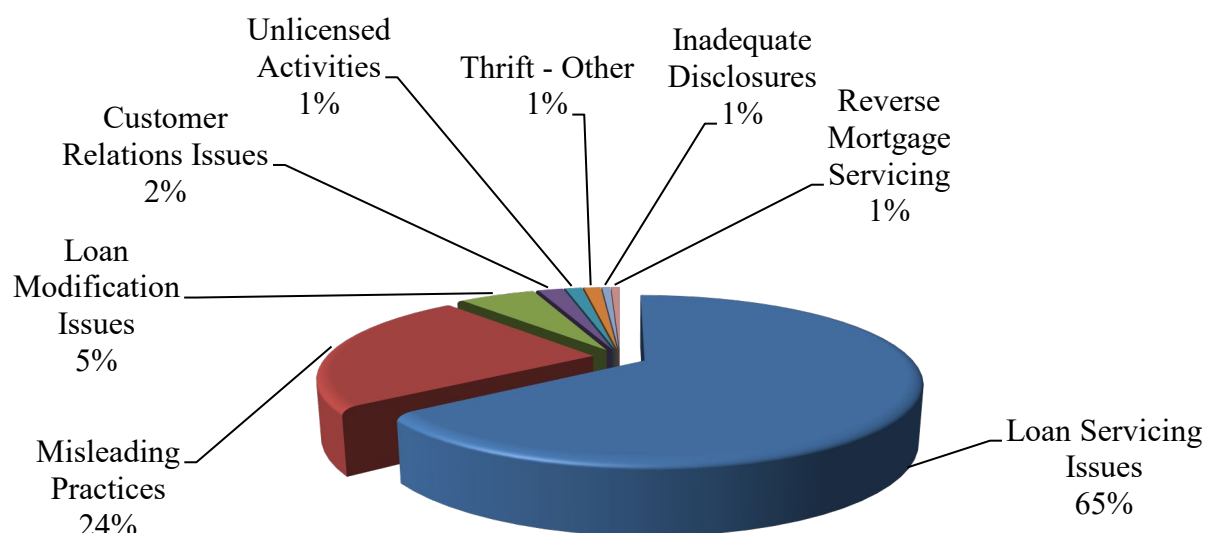
Aging of Open Complaints as of May 31, 2021

Total Open Complaints as of May 31, 2021 = 160



Nature of Open Complaints as of May 31, 2021

Total Open Complaints as of May 31, 2021 = 160



Closed Complaints Information by Quarter	FY2021			
	1 st Qtr	2 nd Qtr	3 rd Qtr	4 th Qtr
Servicing Complaints				
Average Number of Days to Close a Complaint	22.3	26.8	41.10	
Percentage of Complaints Closed Within 90 Days	95.6%	96.0%	87.88%	
Number of Servicing Complaints Closed	160	148	297	
Non-Servicing Complaints				
Average Number of Days to Close a Complaint	29.4	30.3	46.53	
Percentage of Complaints Closed Within 90 Days	92.5%	90.1%	82.53%	
Number of Non-Servicing Complaints Closed	93	91	166	
All Complaints				
Total Number of Complaints Closed	253	239	463	

The average number of days to close a servicing complaint increased to 41.10 days compared to 20.9 days in third quarter fiscal year 2020. Non-servicing complaint resolution time increased from 20.9 days in third quarter fiscal year 2020 to 46.53 days in the same period fiscal year 2021.

Legal and Enforcement Activity Report

Enforcement Orders

During third quarter fiscal year 2021, the Commissioner issued 28 enforcement orders:

Enforcement Activity By Quarter	FY 2021			
Type of Action	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr
Agreed Order to Surrender License	0	0	0	
Agreed Order to Take Affirmative Action	0	2	2	
Agreed Order to Cease and Desist	0	1	4	
Agreed Order	1	1	1	
Advisory Letter	8	5	9	
Conditional License Agreement	0	0	1	
Consent Order	0	0	0	
Final Order	1	0	0	
Letter of Reprimand	4	0	0	
Order to Cease and Desist	3	2	7	
Order to Take Affirmative Action	7	0	3	
Order of Suspension	0	0	0	
Order of Revocation	0	0	0	
Order Rescinding Previous Order	0	1	1	
Total Number of Enforcement Actions	24	11	28	

The Department issued 25 orders related to violations cited during company examination audits. Of these orders, eight were formal advisory letters, five were an Order to Cease and Desist, one was an Agreed Order, one was a Conditional License Agreement, one was an Order Rescinding Prior Order, two were Agreed Orders to Take Affirmative Action, four were Agreed Orders to Cease and Desist, and three were an Order to Take Affirmative Action. Seven of these orders imposed an administrative penalty for the violations cited during the audit.

The Department issued a formal advisory letter and two Orders to Cease and Desist related to complaint investigations. One of these orders imposed an administrative penalty.

Recovery Fund Applications

Since the last Finance Commission Meeting on April 16, 2021, the Department received two applications for the recovery fund. The allegations in both applications are currently under investigation.

Contested State Office of Administrative Hearings (SOAH) Cases

Case No. 450 21-1361 *Department of Savings and Mortgage Lending v. Guillermo Magdaleno Jr. a/k/a Guillermo Hernandez Magdaleno*.

The Department denied the RMLLO license application of Guillermo Magdaleno based on a criminal conviction for presenting false or misleading information on an insurance claim when he held a license to act as an insurance agent. Mr. Magdaleno appealed the denial and the case was heard at SOAH on February 25, 2021. On April 23, 2021, the Administrative Law Judge issued her Proposal for Decision (PFD) recommending that Mr. Magdaleno's application for a residential mortgage loan originator license be granted. On May 11, 2021, Commissioner Jones issued her final order adopting the PFD and granting Mr. Magdaleno's application for licensure.

Litigation

Case No. 19-31300-HMC In Re: John Hoang Trien and Adversary No. 20-03001 State of Texas v. John Hoang Trien pending before the U.S. Bankruptcy Court for the Western District of Texas, El Paso Division.

The Department sought to enforce past administrative cease and desist orders (issued for unlicensed residential loan origination and unregistered residential loan servicing activity), by enlisting the services of the Texas Attorney General's Office. The subject John Trien filed a Chapter 11 bankruptcy proceeding. The State of Texas continued its efforts by filing an Adversary Proceeding (lawsuit within the bankruptcy) against Mr. Trien. Bankruptcy Judge Christopher Mott, on the Motion of the United States Trustee's Office, converted the Chapter 11 bankruptcy to a Chapter 7 bankruptcy. This case is now in liquidation not reorganization. In May 2020, the State of Texas filed a motion to amend its adversary complaint against Mr. Trien, which was granted by the court. Within the adversary proceeding Mr. Trien had also filed a motion to strike the amended complaint, as well as a motion for summary judgment and such motions were denied by the court during May 2020. There have been numerous discovery disputes recently. Trien's deposition and several others were taken in September 2020. On November 9, 2020, the Parties participated in a mediation and have agreed to settle all matters in controversy, subject to final Division and Executive Office approval. Mr. Trien and his counsel have agreed to permanent injunctive terms; consumer damages totaling \$197,513 (\$142,513 of which will be deemed non-dischargeable); civil penalties totaling \$400,000, (\$75,000 of which will be deemed non-dischargeable); and attorneys' fees of \$150,000 (\$75,000 of which will be deemed non-dischargeable). The injunctive terms will include provisions that prohibit Mr. Trien from originating or servicing residential mortgage loans. The Agreed Final Order and Permanent Injunction was submitted to the U.S. Bankruptcy Court for approval on May 6, 2021, objections were filed by a third party. A court hearing on the Joint Motion to Approve Compromise is set for June 16, 2021.

Case No: D-1-GN-20-004218 State of Texas v. Peter Wagner

The Department had entered into a settlement agreement, whereby Mr. Wagner was to make certain restitution payments to consumers for his unlicensed residential loan modification activity. In May 2020, Mr. Wagner defaulted on his installment payments and the department asked the Texas Attorney General's Financial Litigation and Charitable Trusts Division to reduce the agreement to a district court judgment. The lawsuit was filed on August 12, 2020. Defendant was served and filed his answer. Discovery was exchanged. The Attorney General filed a Motion for Summary Judgment, which was heard on March 8, 2021, and subsequently granted on May 12, 2021. The order granted the department a judgment in the sum of \$2,106,794, plus an award of \$10,000 in attorneys' fees. An Abstract of Judgment has been requested to be filed in Travis and Bastrop Counties.

Public Information Requests

During the 3rd quarter of fiscal year 2021, the Department received and responded to 22 public information requests, one of which was forwarded to the Attorney General's Office for a ruling.

Rulemaking

SML Future Rule Activity		
Rule	Rulemaking Action	Projected Date for Presentation
Chapter 80, Texas Residential Mortgage Loan Companies, Subchapter B, Licensing	Proposed repeals, amendments, and new rules	August 2021
Chapter 81, Mortgage Bankers and Residential Mortgage Loan Originators, Subchapter B, Licensing	Proposed repeals, amendments, and new rules	August 2021
Chapter 156, Residential Mortgage Loan Companies, rules implementing new Subchapter G, Mortgage Grant Fund	Proposed new rules	August 2021
Rules implementing new Finance Code Chapter 159, Wrap Mortgage Loan Financing	Proposed new rules	October 2021

Gift Reporting

None. The Department did not receive any gifts during April and May 2021.

e) Legislative Activities

The following are bills filed that affect the Department or the regulated industries:

HB1118 – (Rep. Capriglione) Relating to state agency and local government compliance with cybersecurity training requirements - This bill adds Section 772.012 of the Government Code to require every state agency in their respective strategic plan to certify, in writing, their compliance with the cybersecurity training required under Sections 2054.5191 and 2054.5192 of the Government Code.

Status: Signed by the Governor May 18, 2021; effective immediately.

HB1195 – (Rep. Geren) Relating to the franchise tax treatment of certain loans and grants made under the federal Coronavirus Aid, Relief, and Economic Security Act - This bill adds Section 171.10131 of the Tax Code to exclude the amount of any qualifying loan or grant proceeds from revenue, while still allowing expenses paid from loan proceeds to be factored into determining cost of goods sold and compensation.

Status: Signed by the Governor May 8, 2021; effective immediately

HB1258 – (Rep. Ashby) Relating to data matching with financial institutions to facilitate the collection of certain delinquent tax liabilities - This bill would add Section 111.025 to Chapter 111 of the Tax Code, and would require financial institutions to exchange data quarterly with the comptroller to match delinquent taxpayers with their account holders.

Status: Sent to the Governor May 25, 2021.

HB1322 – (Rep. Shaheen) Relating to a summary of a rule proposed by a state agency - This bill would amend Sections 2001.023 and 2001.024 of the Government Code to require state

agencies to publish a plain-language summary of any proposed rule on their website at the time it files notice in the Texas Register.

Status: Sent to the Governor June 1, 2021.

HB1514 – (Rep. Landgraf) Relating to the administration of unclaimed property - This bill updates various sections of the Estates Code, the Insurance Code, and the Property Code to detail the manner in which reports and/or unclaimed property must be delivered to the comptroller. It also adds Section 74.405 to the Property Code to permit the comptroller to liquidate securities for not less than market value on the day the security is sold. Finally, it amends various sections of the Property Code to clarify procedures for the comptroller's office when adjudicating an unclaimed property claim.

Status: Signed by the Governor May 18, 2021; effective immediately.

HB1576 – (Rep. Parker) Relating to the creation of a work group on blockchain matters concerning this state - This bill authorizes a workgroup to be formed for the purpose of developing a master plan for expanding the blockchain industry in Texas, including recommending policies and state investments with blockchain technology. Findings must be reported by October 31, 2022.

Status: Sent to the Governor May 26, 2021.

HB2533 – (Rep. Darby) Relating to performance of an evaluation of real property for use by a financial institution - This bill proposes to amend various parts of Section 1103 of the Occupations Code to define the terms Federally regulated financial institution and non-bank financial institution, provide for exemptions for evaluations provided by certain parties for certain uses, and require a disclosure when a valuation is not subject to the Uniform Standards of Professional Appraisal Practice.

Status: Sent to the Governor May 20, 2021.

HB3617 – (Rep. Anchia) Relating to certain qualifications and requirements of licensed mortgage companies, the investment and use of excess residential mortgage loan originator recovery fund fees, and the creation of the mortgage grant fund; charging a fee - This bill amends Section 13.016 of the Finance Code to give authority to the savings and mortgage lending commissioner to establish and administer a recovery fund and to enforce disciplinary action related to the fund.

This bill also amends Section 156.2041 of the Finance Code to remove the requirement for residential mortgage loan originators to maintain a physical office in this state.

The bill creates a Mortgage Grant Fund to which excess recovery fund monies will be deposited. The fund will not exceed \$300,000, and grants of not more than \$100,000 may be made to certain entities that provide consumer financial education services.

It allows consumers who are victims of fraud perpetrated by unlicensed loan originators to recover actual damages.

Status: Sent to the Governor June 1, 2021.

SB6 – (Sen. Hancock) Relating to liability for certain claims arising during a pandemic or other disaster or emergency - This bill seeks to eliminate liability relating to exposure to the pandemic disease, unless it can be proven that one knowingly failed to warn or remediate a condition they had control over or they knowingly failed to implement or comply with a government standard, guidance

or protocol, and it can be proven that such knowing failure was the cause in fact of an individual contracting the disease.

Status: Sent to the Governor June 1, 2021

SB43 – (Sen. Zaffirini) Relating to residential mortgage loans, including the financing of residential real estate purchases by means of a wrap mortgage loan; providing licensing and registration requirements; authorizing an administrative penalty - This bill creates a new Chapter 159 within the Texas Finance Code, to be administered by the Department. Chapter 159 would address wrap mortgage loans. The bills also amends the eligibility for licensing exemption sections within Chapters 156, 157 and 180 (to read the same as the proposed exemption language in Chapter 159), such that if one is involved in more than three residential mortgage loan transactions they will need to be licensed as a loan originator.

Status: Signed by the Governor May 24, 2021; effective January 1, 2022

SB424 – (Sen. Hinojosa) Relating to state agency enforcement of laws regulating small businesses - This bill would add a Section 2006.003 to the Government Code to prevent state agencies from imposing an administrative or civil penalty against a business with fewer than 100 employees, or less than 6 million in annual receipts, for a first violation of a statute or rule administered by the agency, unless the agency has first issued a notice of the violation and given the business an opportunity to remedy the violation. Each agency must adopt a policy in this regard by January 1, 2022, if this bill becomes law.

Status: Sent to the Governor June 1, 2021.

SB516 – (Sen. Huffman) Relating to increasing the criminal penalty for the offense of criminal mischief involving impairment or interruption of access to an automated teller machine - This bill amends Section 28.03(b) of the Penal Code to classify any whole or partial impairment or interruption of access to an ATM, regardless of the amount of loss, as a third-degree felony.

Status: Sent to the Governor May 24, 2021.

SB1900 – (Sen. Zaffirini) Relating to the regulatory authority of the savings and mortgage lending commissioner - This bill amends various subsections of Sections 92, 96, 97 and 156 of the Finance Code. The amendments would: allow the commissioner to regulate, examine, and collect examination fees from third-party service providers and affiliates of a state savings bank; require a change of control applicant to publish information regarding a state savings bank application in the Texas Register or in a newspaper in the county where the bank is to have its principal office; give authority to the commissioner to take enforcement actions against a holding company which holds a state savings bank the same as if it were a state savings bank; and remove the requirement that a mortgage company maintain a physical office in this state.

Status: Sent to the Governor June 1, 2021.

2. Discussion of and Possible Action Regarding Anticipated and Pending Litigation:

Anticipated Litigation

None

Pending Litigation

None