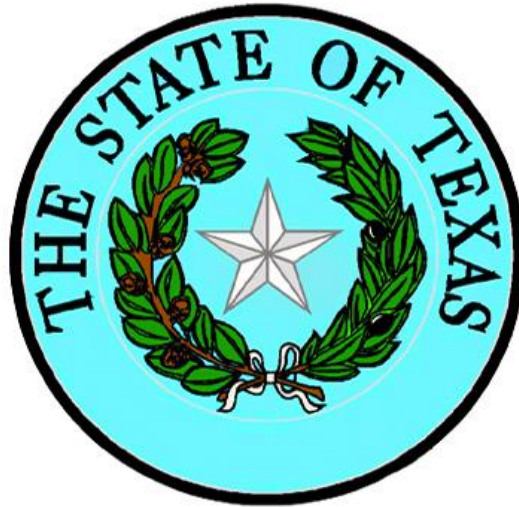


**A.**

## **Finance Commission**

*This page left blank intentionally.*



## FINANCE COMMISSION OF TEXAS

**MEETING DATE**.....**October 15, 2021**

**MEETING LOCATION** .....Finance Commission Building  
William F. Aldridge Hearing Room  
2601 North Lamar Boulevard  
Austin, Texas 78705

**CONTACT INFORMATION**.....Phone: (512) 936-6222  
Website: [www.fc.texas.gov](http://www.fc.texas.gov)

**FUTURE MEETING DATES** .....December 17, 2021  
February 18, 2022  
April 15, 2022  
June 17, 2022  
August 19, 2022  
October 21, 2022  
December 16, 2022

*\*\* 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.*

*This page left blank intentionally.*

# FINANCE COMMISSION AGENDA

Friday, October 15, 2021  
9:00 a.m.  
or Upon Adjournment of the Audit Committee Meeting  
Finance Commission Building  
William F. Aldridge Hearing Room  
2601 N. Lamar Blvd.  
Austin, Texas 78705

---

***Section A.3 will take up agenda items A1 and D7 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 August 20, 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 on the Agencies' 2021 Fourth Quarter Investment Officer Reports**

1. Texas Department of Banking
2. Office of Consumer Credit Commissioner
3. Department of Savings and Mortgage Lending

#### **B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2021 Fourth Quarter Financial Statements**

1. Texas Department of Banking
2. Office of Consumer Credit Commissioner
3. Department of Savings and Mortgage Lending

#### **C. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action to Amend the Amount of Grant Awards for the 2022-2023 Grant Cycle for the Texas Financial Education Endowment (TFEE)**

#### **D. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Final Selection of Organizations to Receive Grant Funds from the Texas Financial Education Endowment Fund**

### **6. Status Report on Implementation of Sunset Management Recommendations**

#### **A. Sunset Recommendation 2.6 – “Direct the Finance Commission to minimize duplication of agency functions and promote more cost-efficient administration of the finance agencies.”**

### **7. Discussion of the Condition of the Texas State Banking System Report (*Note: Report provided separately*)**

8. Discussion of and Possible Vote to Take Action on the Accomplishment Reports for Fiscal Year 2021 for the Commissioners of the Texas Department of Banking, the Office of Consumer Credit Commissioner and the Department of Savings and Mortgage Lending
9. Status Report from the Search Committee on the Process to Recommend Candidates for Consideration to Fill the Position of Department of Savings and Mortgage Lending Commissioner
10. Discussion of and Possible Vote to Take Action on the Selection of an Executive Recruiting Service to Conduct a Search for Additional Qualified Candidates to Fill the Position of Department of Savings and Mortgage Lending Commissioner
11. Discussion of and Possible Vote to Take Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Appointment of a New Texas Department of Savings and Mortgage Lending Commissioner
12. 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
13. 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
14. 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
15. 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. 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 Anticipated and Pending Litigation

**C. 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 the Adoption of Amendments to 7 TAC, Part 1, Chapter 7, Concerning Texas Financial Education Endowment Fund, and Part 5, Chapter 83, Subchapter B, Concerning Rules for Credit Access Businesses, Resulting from Rule Review
3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments and a Repeal in 7 TAC, Part 5, Chapter 89, Concerning Property Tax Lenders, Resulting from Rule Review
4. 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 the Adoption of Amendments, New Rules, and Repeals in 7 TAC, Part 4, Chapter 80, Subchapter B, Concerning Licensing, Resulting from Rule Review
3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments, New Rules, and Repeals in 7 TAC, Part 4, Chapter 81, Subchapter B, Concerning Licensing, Resulting from Rule Review
4. Discussion of and Possible Vote to Take Action on the Adoption of Amendments, New Rules, and Repeals in 7 TAC, Part 4, Chapter 80, Concerning Texas Residential Mortgage Loan Companies
5. Discussion of and Possible Vote to Take Action on the Adoption of Amendments, New Rules, and Repeals in 7 TAC, Part 4, Chapter 81, Concerning Mortgage Bankers and Residential Mortgage Loan Originators
6. Discussion of and Possible Vote to Take Action on the Adoption of New Rules in 7 TAC, Part 4, Chapter 52, Concerning Department Administration
7. ***Discussion of and Possible Vote to Take Action on the Adoption of a New Rule and the Repeal of 7 TAC §76.95, Concerning Fee for Special Examination or Audit***
8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New Rules in 7 TAC, Part 4, Chapter 78, Concerning Wrap Mortgage Loans
9. 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.

*This page left blank intentionally.*



# MINUTES OF THE FINANCE COMMISSION MEETING Friday, August 20, 2021

The Finance Commission of Texas convened at 9:57 a.m. on August 20, 2021, with the following members present:

**Finance Commission Members in Attendance** *(some members in attendance via webinar):*

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

Commissioner Charles G. Cooper announced there was a quorum with 11 members present. *(0.53 on the audio file).*

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<b>A. Finance Commission Matters</b>		
1. Review and Approval of the Minutes of the June 18, 2021 Finance Committee Meeting	<b>On Consent Agenda – Item A1</b> This item Approved on the Consent Agenda.	n/a
2. General Public Comment	No Action Required.	1:12 start of discussion
3. Consent Agenda – Items A1, B2 and B3	Vince Puente made a motion to Approve Consent Agenda items A1, B2 and B3. Sharon McCormick seconded and the motion passed.	2:28 start of discussion  2:48 Vote
4. Finance Commission Operations	No Action Required.	3:15 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 Third Quarter Investment Officer Reports	Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies' 2021 Third Quarter Investment Officer Reports passed.	4:29 start of discussion
1. Office of Consumer Credit Commissioner		4:39 Vote
2. Department of Savings and Mortgage Lending		
3. Texas Department of Banking		

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<p>B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Readoption of the Investment Policies for:</p> <ol style="list-style-type: none"> <li>1. Office of Consumer Credit Commissioner</li> <li>2. Department of Savings and Mortgage Lending</li> <li>3. Texas Department of Banking</li> </ol>	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Readoption of the Investment Policies passed.</p>	<p>5:00 start of discussion  5:13 Vote</p>
<p>C. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2021 Third Quarter Financial Statements</p> <ol style="list-style-type: none"> <li>1. Office of Consumer Credit Commissioner</li> <li>2. Department of Savings and Mortgage Lending</li> <li>3. Texas Department of Banking</li> </ol>	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies' 2021 Third Quarter Financial Statements passed.</p>	<p>5:33 start of discussion  5:42 Vote</p>
<p>D. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' Fiscal Year 2022 Operating Budgets</p> <ol style="list-style-type: none"> <li>1. Office of Consumer Credit Commissioner</li> <li>2. Department of Savings and Mortgage Lending</li> <li>3. Texas Department of Banking</li> </ol>	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies' Fiscal Year 2022 Operating Budgets passed.</p>	<p>6:02 start of discussion  6:11 Vote</p>
<p>F. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Department of Savings and Mortgage Lending's 2021 Annual Internal 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 Department of Savings and Mortgage Lending's 2021 Annual Internal Audit Report as Prepared and Presented by Garza/Gonzalez and Associates passed.</p>	<p>7:16 start of discussion  7:28 Vote</p>
<p>E. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Office of Consumer Credit Commissioner's 2021 Annual Internal 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 2021 Annual Internal Audit Report as Prepared and Presented by Garza/Gonzalez and Associates passed.</p>	<p>7:45 start of discussion  7:58 Vote</p>
<p>6. Discussion of and Possible Vote to Take Action on the Agency Priorities for Fiscal Year 2022 for the Commissioners of the Office of Consumer Credit Commissioner, Department of Savings and Mortgage Lending and the Texas Department of Banking</p>	<p>Laura Warren made a motion to Approve the Agency Priorities for Fiscal Year 2022 for the Commissioners of the Office of Consumer Credit Commissioner, Department of Savings and Mortgage Lending and the Texas Department of Banking. Vince Puente seconded and the motion passed.</p>	<p>8:19 start of discussion  12:37 Vote</p>

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
7. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 8, Chapter 153, Concerning Home Equity Lending	Will Lucas made a motion to Approve the Proposal and Publication for Comment of Amendments to 7 TAC, Part 8, Chapter 153, Concerning Home Equity Lending. Sharon McCormick seconded and the motion passed.	13:06 start of discussion  18:56 Vote
8. 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
9. 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
10. 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
11. 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

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<b>B. Office of Consumer Credit Commissioner</b>		
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.	19:40 start of discussion
2. <i>On Consent</i>	<b>On Consent Agenda – Item B2</b> This item Approved on the Consent Agenda.	n/a
3. <i>On Consent</i>	<b>On Consent Agenda – Item B3</b> This item Approved on the Consent Agenda.	n/a
4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 1, Chapter 7, Concerning Texas Financial Education Endowment Fund, and Part 5, Chapter 83, Subchapter B, Concerning Rules for Credit Access Businesses, Resulting from Rule Review	Laura Warren made a motion to Approve the Proposal and Publication for Comment of Amendments to 7 TAC, Part 1, Chapter 7, Concerning Texas Financial Education Endowment Fund, and Part 5, Chapter 83, Subchapter B, Concerning Rules for Credit Access Businesses, Resulting from Rule Review. Sharon McCormick seconded and the motion passed.	35:17 start of discussion  42:43 Vote
5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments and a Repeal in 7 TAC, Part 5, Chapter 89, Concerning Property Tax Lenders, Resulting from Rule Review	Vince Puente made a motion to Approve the Proposal and Publication for Comment of Amendments and a Repeal in 7 TAC, Part 5, Chapter 89, Concerning Property Tax Lenders, Resulting from Rule Review. Laura Warren seconded and the motion passed.	43:17 start of discussion  50:10 Vote
6. 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
<b>B. Department of Savings and Mortgage Lending</b>		
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.	50:50 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 Amendments, New Rules, and Repeals in 7 TAC, Part 4, Chapter 80, Subchapter B, Concerning Licensing, Resulting from Rule Review	Debbie Scanlon made a motion to Approve the Proposal and Publication for Comment of Amendments, New Rules, and Repeals in 7 TAC, Part 4, Chapter 80, Subchapter B, Concerning Licensing, Resulting from Rule Review. Sharon McCormick seconded and the motion passed.	1:07:04 start of discussion  1:12:17 Vote
3. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments, New Rules, and Repeals in 7 TAC, Part 4, Chapter 81, Subchapter B, Concerning Licensing, Resulting from Rule Review	Will Lucas made a motion to Approve the Proposal and Publication for Comment of Amendments, New Rules, and Repeals in 7 TAC, Part 4, Chapter 81, Subchapter B, Concerning Licensing, Resulting from Rule Review. Laura Warren seconded and the motion passed.	1:12:52 start of discussion  1:14:40 Vote
4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments, New Rules, and Repeals in 7 TAC, Part 4, Chapter 80, Concerning Texas Residential Mortgage Loan Companies	Debbie Scanlon made a motion to Approve the Proposal and Publication for Comment of Amendments, New Rules, and Repeals in 7 TAC, Part 4, Chapter 80, Concerning Texas Residential Mortgage Loan Companies. Will Lucas seconded and the motion passed.	1:15:12 start of discussion  1:19:44 Vote
5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments, New Rules, and Repeals in 7 TAC, Part 4, Chapter 81, Concerning Mortgage Bankers and Residential Mortgage Loan Originators	Laura Warren made a motion to Approve the Proposal and Publication for Comment of Amendments, New Rules, and Repeals in 7 TAC, Part 4, Chapter 81, Concerning Mortgage Bankers and Residential Mortgage Loan Originators. Larry Long seconded and the motion passed.	1:20:16 start of discussion  1:26:34 Vote
6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New Rules in 7 TAC, Part 4, Chapter 52, Concerning Department Administration	Robin Armstrong made a motion to Approve the Proposal and Publication for Comment of New Rules in 7 TAC, Part 4, Chapter 52, Concerning Department Administration. Sharon McCormick seconded and the motion passed.	1:27:08 start of discussion  1:30:39 Vote
7. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of a New Rule and the Repeal of 7 TAC §76.95, Concerning Fee for Special Examination or Audit	Vince Puente made a motion to Approve the Proposal and Publication for Comment of a New Rule and the Repeal of 7 TAC §76.95, Concerning Fee for Special Examination or Audit. Debbie Scanlon seconded and the motion passed.	1:31:09 start of discussion  1:33:11 Vote
8. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No discussion.	n/a

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<b>D. Texas Department of Banking</b>		
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.	1:34:39 start of discussion
2. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No discussion.	n/a

Chairman Phillip Holt called for an Executive Session at 11:49 a.m. (1:51:53 *on the audio file*). The open meeting resumed at 11:59 a.m. (1:52:38 *on the audio file*).

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<b>Executive Session</b>		
1. Chairman Holt appointed the Search Committee to locate a successor of Department of Savings and Mortgage Lending Commissioner Caroline Jones. The Search Committee consists of Will Lucas, Chair, Sharon McCormick and Larry Long. Discussion of and Possible Vote that the Finance Commission Issue a Request for Proposal for an Executive Recruiting Service to conduct a search for qualified candidates for the Commissioner of the Department of Savings and Mortgage Lending	Will Lucas made a motion to Request for Proposal for an Executive Recruiting Service to conduct a search for qualified candidates for the Commissioner of the Department of Savings and Mortgage Lending. Laura Warren seconded and the motion passed.	1:52:59 start of discussion  1:53:29 Vote
2. Discussion of and Possible Vote to Take Action on the Appointment of an Interim Commissioner for the Department of Savings and Mortgage Lending	Will Lucas made a motion that the Finance Commission appoint Stephany Trotti as the Interim Commissioner for the Department of Savings and Mortgage Lending. Debbie Scanlon seconded and the motion passed.	1:53:58 start of discussion  1:54:03 Vote

There being no further business, Chairman Phillip Holt adjourned the meeting of the Finance Commission at 12:04 p.m. (1:57:26 *on the audio file*).

---

Charles G. Cooper, Executive Director  
Finance Commission of Texas

---

Brenda Medina, Executive Assistant  
Finance Commission of Texas

*This page left blank intentionally.*



# Finance Commission of Texas

## **Consent Agenda**

October 15, 2021

### **A. Finance Commission Matters**

1. Review and Approval of the Minutes of the August 20, 2021 Finance Commission Meeting

### **D. Department of Savings and Mortgage Lending**

7. Discussion of and Possible Vote to Take Action on the Adoption of a New Rule and the Repeal of 7 TAC §76.95, Concerning Fee for Special Examination or Audit

*This page left blank intentionally.*



## October 2021 Status Report on Implementation of Finance Commission Directive on Efficiency Audit

### 1. Budget and Accounting

- a. **Accounts Payable:** The DOB, as performing agency, can perform reconciliation and review of all records required for a payment as well as the data entry of the completed vouchers. The receiving agency would retain final review and approval. The DOB can provide this service to one agency without additional staff.
  - **Update:** CAPPS implementation was completed on September 1, 2021. As practicable and efficiently as possible, the agencies will work together on business processes and best practices.
- b. **Alignment/Best Practices:** The Agencies will establish a workgroup to share best practices and align financial reporting to the Finance Commission as much as possible.
  - *Final reporting format as approved by Commissioners was presented at the Audit Committee meeting in February 2020.*
  - *The format and reporting of audit activities to the Finance Commission was finalized.*

### 2. Complaint Intake

- a. The Agencies will establish a workgroup to explore opportunities to improve customer service, align performance measure reporting, review best practices, federal complaint issues, and emerging trends.
  - **Performance Measure:**
    - *Operational efficiency measures were developed and aligned between the three Agencies. This included aligning complaint measures and/or adding measures for complaints which were presented at the August 16, 2019, Finance Commission meeting.*
  - **Best Practices/Federal Compliant Issue/Emerging Trends:**
    - **Update:** No new trends or issues impacting all three agencies.

### 3. Financial Literacy Program

- a. DOB and the OCCC will work together to define a strategy and deliverables for an agreement to share financial education outreach services.
  - **Update:** A joint agency financial education webinar was held in July 2021. The webinar focused on what building a better budget. The next joint webinar is planned for November 2021.

### 4. Purchasing and Contracting

- a. The Agencies will expand the already shared central office supply purchasing and inventory. Currently the DOB performs office supply purchasing and inventory for OCCC. The SML will be included in this shared service.
  - **Purchasing and Contracting:**
    - *Effective March 1, 2020, SML implemented on a trial basis. Status will be reevaluated in September 2020 after two billing cycles are complete.*
    - *DOB and SML will continue with the shared service.*

- **Explore Other Purchasing Options:**
  - **Update:** No new purchasing opportunities arose in quarter four.

## 5. Human Resources

- a. The Agencies will establish a workgroup to share best practices and align performance measures in reporting to the Finance Commission to enhance consistency and alignment.
  - **Performance Measures:**
    - *Operational efficiency measures were developed and aligned between the three Agencies. The new measure(s) related to turnover were presented at the August 16, 2019, Finance Commission meeting.*
  - **Best practices:**
    - **Update:** The work group continues to share best practices. The next meeting will focus on a discussion to align the reporting format for the Finance Commission and other possible policy alignments.
- b. As the Agencies evaluate the impact and timing of CAPPS, the Agencies will explore the option of DOB offering the following HR services to the other Agencies: (1) benefits coordinator; (2) new employee orientation; (3) employee separation processing; and (4) possibly background checks, if appropriate clearance can be obtained.
  - **CAPPS:**
    - **Update:** CAPPS HR/Payroll deployment project began in September 2021. Each individual agency is in the discovery phase at this time and will work together through the process to determine if any module configurations can be aligned within the individual agencies' business processes.
  - **Shared Services:**
    - **No Update.**

## 6. Information Technology

**Update:** The workgroup continues to share best practices and strategic alignment, review emerging trends in cybersecurity, and review other ways to enhance IT services. Most recently, two agencies worked on tabletop exercises related to cybersecurity for disaster recovery. The finance agencies are collaborating to build redundant secure access to the shared imaging system.



Charles G. Cooper  
Commissioner

## **TEXAS DEPARTMENT OF BANKING**

2601 North Lamar Blvd., Austin, Texas 78705

512-475-1300 / 877-276-5554

[www.dob.texas.gov](http://www.dob.texas.gov)

### **MEMORANDUM**

TO: The Finance Commission of Texas

FROM: Charles G. Cooper, Commissioner

DATE: October 1, 2021

RE: Department of Banking Priorities for Fiscal Year 2021 as of August 31, 2021.

---

#### **I. LEGISLATIVE – *State and National Legislative Issues***

I.1 **Objective:** Provide appropriate and comprehensive resource material as requested in a timely manner.

**Measure:** To the extent legally permissible, respond accurately and timely to all requests for resource information. Maintain contact with legislative committee chairs and staff. Testify at hearings as requested.

- *Maintained contact with state and federal legislative committees.*
- *Responded to requests for information from state legislators relating to regulated financial service providers.*
- *Commissioner Cooper testified on behalf of the Finance Commission and Texas Department of Banking at the House Pensions, Investments & Financial Services organizational hearing on March 3, 2021.*

I.2 **Objective:** Maintain accurate, timely, and complete communication with Finance Commission members about significant state and federal legislative issues as well as conditions, trends, and significant events in the industries the agency supervises.

**Measure:** Notify Finance Commission members of state legislature committee hearings, actions, and other items of interest on a timely basis. Keep members informed of significant federal laws and policy statements and how supervised entities are affected. Provide sufficient information and materials to give Finance Commission members an overall assessment of our regulated industries.

- *Beginning in January, weekly legislative reports are provided by email to Commission members.*
- *Commission members were provided an update on legislative matters at the December and February Finance Commission meetings.*
- *Finance Commission members received copies of Department press releases, industry notices, and a proclamation.*
- *Severe Winter Weather Storm: Commissioner Cooper issued a proclamation on February 17, 2021, in response to the disaster declaration by Governor*

*Greg Abbott and the continued severe winter weather in Texas. The proclamation authorized banks, at their discretion, to close offices in areas affected by the severe winter weather until conditions improved and utilities and security could be restored to safely serve the financial service needs of the affected communities.*

- *Finance Commission members were provided legislative tracking reports during the first and second Special Legislative Sessions.*

**I.3 Objective:** Monitor state legislation that may affect the Department or its regulated entities. Make recommendations for state legislative changes to address areas that the law does not adequately address, correct technical errors, and modernize outdated statutes.

**Measure:** Monitor interim charges and aid legislative committees if requested. Provide proposals for legislative improvements if requested by legislative committees. Monitor legislation and provide technical assistance and comprehensive resource materials when requested. Begin implementation of any legislation that directly affects the Department or the industries we regulate.

- *Suggestions for statutory improvements were provided to the Chairman of the House Pensions, Investments and Financial Services Committee and Representative Slawson's Office.*
- *The agency tracked 980 bills in 85<sup>th</sup>(R) Legislative Session.*
- *The agency completed five fiscal notes in the 85th(R) Legislative Session related to filed bills.*
- *Identified bills finally passed and effective requiring some type of implementation; determine appropriate next steps (e.g., rulemaking, supervisory memoranda, policy changes).*
- *In the first Special Session, the agency tracked 63 bills.*
- *In the second Special Session, the agency tracked 57 bills.*

**I.4 Objective:** Implement Sunset "Management Actions" approved by the Sunset Commission.

**Measure:** Continue with implementation of the Finance Commission's Plan to minimize duplication of agency functions and promote more cost-efficient administration of the finance agencies. Coordinate these efforts with the other finance agencies.

- *Meetings were held, as needed, with representatives of OCCC and SML regarding the sharing of information technology resources, human resources, budget and accounting, purchasing and procurement, and consumer complaints.*
- *On October 16, 2020, the Department, along with the other finance agencies, provided a status report on the progress of the work groups to implement the Finance Commission directive related to Sunset Recommendation 2.6.*
- *On April 16, 2021, the finance agencies reported the status of each work group to the Finance Commission members.*

## II. REGULATORY ACTIVITIES – *Examination Activity and Enforcement Actions*

II.1 **Objective:** Efficiently structure the agency to meet performance measures. Ensure performance goals are a true evaluation of major functions of the Department (See Attachment A for all performance measures).

**Measure:** Continue to meet or exceed the strategic planning goals for performance measures. Maintain banking accreditation and obtain the inaugural MSB accreditation from CSBS. Quarterly, report results to the Finance Commission.

- *All examination activity key measure targets were either met or exceeded for fiscal year 2021.*
- *The Department received CSBS Money Services Businesses (MSB) Accreditation in December 2020, becoming the second state agency to earn such accreditation.*
- *The Bank & Trust Supervision (B&T) Division continued to sustain the CSBS requirements to maintain accreditation.*
- *All key performance measures were met or exceeded for FY 2021.*
- *COVID-19 Response: In coordination with license holders and multi-state MSB examinations, NDS examinations continue to be performed remotely without a material impact to the scope and the examination priorities.*
- *COVID-19 Response: B&T continues to use modified examination procedures to properly evaluate a bank or trust company's condition while being mindful of the burden an examination places on the institution's staff and resources. The modified examination approach focuses on the most relevant examination aspects as conditions dictate. We maintain the flexibility to expand the procedures when we encounter heightened risk in an institution or circumstances otherwise warrant. Adjustments to the modified examination procedures are made as warranted.*
- *COVID-19 Response: The agency's staff are leveraging the off-site monitoring program and other capabilities to closely assess the condition of regulated entities throughout the pandemic.*

II.2 **Objective:** Remain active and involved at the national level in supervisory issues affecting banking, money services business activities, trust services and other areas of direct supervisory oversight in Texas.

**Measure:** Maintain active contact with other states individually and through regulatory associations (CSBS and MTRA), trade associations (IBAT and TBA) and frequent contact with federal regulators to be aware of events, decisions, other state and federal policies, and other areas of actual or potential impact to the Department's regulatory functions or the industry. Continue to participate in the networked supervision and examination of MSBs licensed in multi-states. Take proactive steps to respond as issues arise affecting the industries or our supervisory duties.

- *Department staff participated in the CSBS Board Meeting and Strategic Planning Meeting held virtually the week of September 14, 2020.*

- *Department staff attended the 2020 MTRA Annual Conference held virtually the week of September 14, 2020.*
- *Commissioner Cooper was re-appointed on September 24, 2020, for a second consecutive term to serve as the state bank representative on the Financial Stability Oversight Council (FSOC). The FSOC consists of federal financial regulators, state regulators, and an independent insurance expert that are charged with identifying risks to the financial stability of the United States; promoting market discipline; and responding to emerging risks to the stability of the United States' financial system.*
- *Departmental staff participated in the 2020 Community Banking in the 21st Century Research and Policy Conference held virtually beginning on September 30, 2020. This conference, which is hosted by CSBS, the Federal Reserve Bank of St. Louis, and the Federal Deposit Insurance Corporation (FDIC), focused on a wide variety of topics affecting community banks.*
- *On October 14, 2020, Commissioner Cooper participated in the first FDIC Advisory Committee of State Regulators. The committee discussed and received updates on a range of policy issues regarding the regulation of state-chartered financial institutions throughout the United States.*
- *Select NDS staff attended the North American Death Care Regulators Association Annual Meeting & Training Seminar held virtually the week of October 19, 2020. The meeting provided a forum for death care state regulators to listen to industry-related presentations and to discuss matters affecting the death care industry.*
- *The Director of IT Security Examinations Phillip Hinkle helped facilitate a Ransomware Tabletop Exercise in collaboration with the U. S. Department of the Treasury and CSBS on November 2, 2020. This was the first of several planned exercises with approximately 70 bankers from across the United States participating in this exercise.*
- *Commissioner Cooper and Deputy Commissioner Purdom participated virtually in a CSBS District IV meeting on November 10, 2020. Deputy Commissioner Purdom temporarily served as Chairman of District IV which is now chaired by Commissioner Cooper.*
- *In November 2020, NDS Director Saucillo was appointed as a representative to the State Coordinating Committee responsible for coordinating the supervision of activities related to MSBs, mortgage, debt collection, and payday lending with the Consumer Financial Protection Bureau. A quarterly meeting was held on August 13 and 14, 2021, to discuss trends, major developments, key areas of focus, and major findings noted during past examinations.*
- *Department staff members participated in the CSBS Supervisors Symposium held virtually starting December 9, 2020.*
- *Commissioner Cooper and NDS Director Saucillo attended the annual Multi-State MSB Examination Taskforce (MMET) meeting held virtually throughout the weeks of January 11 and 18, 2021. A joint meeting with MTRA members was also held during this timeframe to discuss issues impacting the MSB industry. Commissioner Cooper continues to serve as Chairman of MMET.*
- *NDS Director Saucillo continues to serve as a member of State Examination System (SES) Steering Committee. SES is an examination management system*



*developed by CSBS intended to facilitate MSB examinations by improving communication and coordination among the states and licensees. NDS completed the first pilot examination of an MSB utilizing SES as part of a coordinated multi-state examination in January 2021.*

- The Department submitted a comment on February 12, 2021, in response to a CSBS issued Request for Comment regarding MSB Business-Specific Requirements.*
- Department staff attended the 2021 Nationwide Multistate Licensing System (NMLS) Annual Conference and Training event held virtually the week of February 23, 2021.*
- Departmental staff attended the 2021 State-Federal Supervisory Forum (SFSF) held virtually on May 19 and 20, 2021.*
- Through active participation in the Regulator Industry Clearing House Working Group, Department staff collaborated with CSBS in the development of the CSBS Uniform Money Transmission Modernization Act, also known as the Money Transmitter Model Law. The Money Transmitter Model Law was approved by the CSBS Board on August 9, 2021.*
- Department staff attended the 2021 MTRA Annual Conference held virtually starting August 31, 2021. At this meeting, Director Saucillo was elected to serve as a member of the MTRA Board of Directors.*
- Commissioner Cooper and staff participated in the FDIC Banker Outreach Virtual Roundtable Meetings beginning on August 12, 2021.*
- Department staff represented the Department at the Texas Bankers Association Annual Convention held in Austin beginning on August 25, 2021.*
- Corporate Activities Director Largent continues to participate in a joint regulatory and MSB industry working group to develop an application module that will be used in the modernized NMLS to disclose and determine the need for vetting key management individuals and owners.*
- Commissioner Cooper served as the Vice-Chairman on the CSBS State Regulatory Registry Board (SRR) of Managers which oversees NMLS.*
- Commissioner Cooper serves as the senior state agency representative for CSBS on Financial and Banking Information Infrastructure Committee (FBIIC).*
- Throughout FY 21, Commissioner Cooper and Director of IT Security Examinations Phillip Hinkle participated in several meetings with the Bankers' Electronic Cyber Crimes Task Force.*

**II.3 Objective:** Maintain an ongoing awareness of our bank and trust entities' risk profiles and the condition of the economy in which they operate. Continue ongoing monitoring of individual or systemic conditions, including the economic effects of the COVID-19 pandemic, cybersecurity threats and other high-risk activities which present risks to their financial stability. Monitor and take necessary actions against institutions exhibiting unacceptable risk profiles.

**Measure:** Perform research, maintain ongoing dialogue with other regulators, and attend training to maintain an understanding of conditions in which our entities operate. Maintain a leading role in the effort to combat cybersecurity threats. Maintain an off-site monitoring program of bank and trust industries while initiating appropriate

regulatory responses and actions when applicable. Research and take required actions against institutions with unacceptable risk profiles to minimize the adverse impact on depositors, shareholders, and the banking system in general. Maintain a current bank watch list reflecting entities with a heightened risk of becoming in troubled condition.

- *In October 2020, the Department issued Industry Notice 2020-13, Self-Assessment Tool for Mitigating the Risks of Ransomware. The notice introduces the Ransomware Self-Assessment Tool (R-SAT), which is a brief questionnaire that provides banks with an overview of their preparedness to identify, protect, detect, respond, and recover from a ransomware attack. The tool helps bankers evaluate their current cybersecurity operations as it relates to ransomware and identify areas for improvement.*
- *In December 2020, the Department sent a Cyber Alert regarding the SolarWinds Compromise to all banks, foreign bank organizations, and trust companies regulated by the agency. Due to the critical nature of the threat, the Department immediately began surveying regulated financial institutions to ensure that their management team was aware of the threat and to assess any impact on their institution.*
- *In December 2020, NDS participated in a multi-state coordinated outreach effort of the largest MSBs to assess the impact of the SolarWinds Orion Code compromise on its systems. As part of the coordinated effort with other MSB state regulators, the Department directly contacted thirteen MSBs and requested that a SolarWinds Nonbank Survey be completed to assess their impact of the compromise, if any.*
- *In December 2020, NDS issued Industry Notices 2020-15 and 2020-16 relating to the Self-Assessment Tool for Mitigating the Risks of Ransomware. Ransomware Self-Assessment Tool (R-SAT) for Nonbank Financial Services Businesses to MSB, PCC, and PFC license holders.*
- *In March 2021, NDS participated in a multi-state coordinated outreach effort of MSBs to assess the impact of the Microsoft exchange server vulnerabilities. As part of the coordinated effort, the Department communicated with MSBs being examined in March 2021 to assess the impact of the compromise, if any.*
- *B&T and NDS continue to monitor cybersecurity incidents and the impact on the regulated entities and consumers. Incidents are reviewed in coordination with an IT specialist, as needed.*
- *NDS collaborated with the IT Division to conduct reviews of IT systems during the examination of several MSBs during in the fiscal year.*
- *B&T continues to monitor the condition of banks and trust companies between examinations through our off-site monitoring programs. These programs consist of quarterly reviews of call report data, the use of data analytic tools, and conducting calls to bank management. The division's watch list of institutions exhibiting heightened risk is monitored and adjusted quarterly.*
- *COVID-19 Response: Agency personnel have been continuously monitoring industry developments and actions taken to effectively meet customers' financial needs.*

II.4 **Objective:** Monitor emerging issues in our areas of regulation. Determine and communicate the impact of these issues to the regulated entities. Monitor the effects of

COVID-19 on our regulated entities and ensure that supervisory activities remain appropriate and effective.

**Measure:** Report on emerging issues to the Finance Commission and regulated entities. Provide publications that address topics of interest. Participate in industry meetings, seminars, committees and working groups. Continue to be involved in speaking opportunities with regulated industries to provide updates relating to ongoing supervisory issues.

- *Staff members monitored office closures caused by the severe winter weather storm conditions and power outages in February 2021.*
- *NDS staff continues to participate in various MMET and MTRA committees, including the MTRA Examination Standards Committee tasked with updating the MSB work program and the MTRA Licensing/Emerging Issues calls. The Department also participates in routine scheduling calls facilitated by the MMET to coordinate multi-state examinations as part of the Networked Supervision of MSBs.*
- *An agency staff member serves on the Executive Committee of the North American Death Care Regulators Association, which strives to promote a forum for death care regulators to discuss problems affecting the public and death care industry.*
- *Department staff actively provides feedback regarding the NMLS Modernization in 2022, which is intended to improve access to data, increased uniformity, and more automation of state licensing and regulatory activities.*
- *Department staff participated in 25 regulatory panel in fiscal year 2021, which includes cybersecurity presentations. Staff also actively participate in graduate school of banking programs.*
- *Commissioner Cooper serves as the Chairman of the CSBS COVID Recovery Steering Group which evaluates the feedback from across the country.*
- *On June 9, 2021, the NDS Director participated as the speaker at the Regliance 2021 virtual conference. The conference was designed for compliance professionals in the money transfer and cross-border payments industry, which included discussion of what steps and actions a MSB license holder can take to successfully prepare for an examination.*

II.5 **Objective:** Monitor areas/industries we regulate for illegal activity.

**Measure:** Monitor for and investigate illegal activity, and when necessary, initiate appropriate regulatory enforcement actions against licensed and/or unlicensed entities to ensure compliance with applicable statutes and rules to protect the rights and interests of consumers. Refer cases as needed to local, state, or federal law enforcement agencies or the Texas Attorney General.

- *Agency staff continues to monitor regulated industries and initiate enforcement actions against both licensed and unlicensed entities that are engaging in apparent illegal practices. During FY21, twenty actions were taken against individuals and entities:*
  - *Issued one order of supervision against a bank.*

- *Issued one consent order against a bank.*
- *Issued three prohibition orders against former bank employees.*
- *Issued one cease and desist order against an unauthorized entity purporting to be a bank.*
- *Issued twelve consent orders against unauthorized money transmitters.*
- *Issued one consent order against a licensed money transmitter.*
- *Issued one cease and desist order against a prepaid funeral contract seller.*

**II.6 Objective:** Process consumer complaints/inquiries professionally, appropriately, and timely.

**Measure:** Periodically report to the Finance Commission on the complaints/inquiries received and processed.

- *Consumer assistance activity is reported at each Finance Commission meeting, which includes the percentage of written complaints resolved in 90 days and the number of written complaints resolved.*
- *An additional consumer specialist was hired in January 2021 to help process complaints and inquiries in the Consumer Assistance Activities area.*
- *All complaint related measures were met for FY21.*

**II.7 Objective:** Continue to develop and refine examination procedures, reference materials, and internal guidance to enhance the examination process.

**Measure:** Monitor regulatory changes and update examination materials and guidance in a timely manner. Perform internal reviews of examination procedures to ensure proper intent and applicability. Timely and regularly communicate updates/changes to examiners. Continue to make examination procedure and process modifications in response to COVID-19.

- *Reviewed and revised three commercial examination procedures: Planning & Control, Loans & Leases, Management.*
- *Reviewed and revised three trust examination procedures: Fiduciary & Corporate Management, Fiduciary & Corporate Earnings, and Exempt Trust Company – Off-Site.*
- *Reviewed and revised two information technology procedures: Type A Work program – Cybersecurity/GLBA, and Type B & C Work program with Examiners' Summary and Table of Contents.*
- *Updated examination reference materials for commercial, trust, and IT procedures.*
- *Reviewed and revised two money transmitter MSB examination procedures related to compliance, and nine procedures related to accepting of MSB Reports of Examination of other state agencies, in accordance with Supervisory Memorandum 1024.*
- *Updated examination training materials for money transmitter and currency exchange related to MSB examination procedures.*

- *Reviewed and revised two perpetual care cemetery procedures to assist in verifying compliance with applicable regulations.*
- *Reviewed and revised one prepaid funeral contract procedure to assist in verifying compliance with applicable regulations.*
- *Reviewed and revised two trust examination procedures: Asset Management and Exempt Trust Company-Off-Site*
- *Reviewed and revised IT examination procedures for Charter Investigations and Conversion Examinations.*
- *Updated examination training materials and templates for PCC and PFC procedures for consistency.*
- *The Corporate Division's Background Check and MSB Processing manuals were reviewed and revised (July 2021).*
- *Updated Bank of Anytown for commercial examinations (December 2020).*
- *Issued three Examiner Bulletins:*
  - *XB 2020-04 regarding BSA/AML Risk-Focused Examination Procedures (Revised – September 2020).*
  - *XB 2020-04 Supplement regarding BSA/AML Transaction Testing and Other Reviews During an Off-Site Examination (New – October 2020).*
  - *XB 2020-05 regarding Call-In Memo and Report of Examination Comments Related to COVID-19 (New – December 2020).*
- *Administrative Memorandums:*
  - *Reviewed and revised Administrative Memorandum (AM) 2034 regarding the Examination Due Date Calculation for MSB, PCC, and PFC License Holders (September 2020).*
  - *Reviewed and revised AM 2016 regarding the Investment Policy for Funds Under the Oversight of the Guaranty Fund Advisory Council (May 2021).*
  - *Reviewed and revised AM 2041 regarding Examination Due Date Calculation for Bank and Trust entities (August 2021).*

### **III. POLICY AND RULE DEVELOPMENT – Policies, Rules and Financial Education Activities**

**III.1 Objective:** Issue formal communications to regulated entities to clarify and/or promote best practices to assist in complying with laws and policy statements.

**Measure:** Issue Supervisory Memorandums, Regulatory Guidance, and Legal Opinions in a timely manner as needed.

- *Revised and issued the following Supervisory Memorandums (SM):*
  - *SM 1008 regarding Policy for Other Real Estate Owned (OREO) (October 2020).*
  - *SM 1023 regarding Examination Frequency Policy for Money Services Businesses (September 2020).*
  - *SM 1024 regarding Accepting MSB Report of Examination of Other State Agencies (September 2020).*
- *Issued new SM 1043 regarding Permissible Uses of "Bank" and Related Terms in Marketing and Other Limits Related to Marketing Regulated Financial Services (December 2020).*



- *Repealed outdated/superseded Legal Opinions 03-01 and 14-01; issued Interpretive Statement 2020-01 in their place (November 2020).*
- *Issued Industry Notice 2021-02 regarding Additional Anti-Money Laundering Program Requirements and Participation in 314(a) Program for Texas State-Chartered Public Trust Companies (June 2021).*
- *Issued Industry Notice 2021-03 regarding Banks Providing Virtual Currency Custody Services (June 2021).*

**III.2 Objective:** Monitor and suggest amendments to the Texas Administrative Code as necessary to reflect changes in state and federal laws, clarify existing laws, and address the dynamics of the changing industries. Perform periodic reviews of fee rules to ensure each regulated area covers its cost of regulation.

**Measure:** Draft amendments and new rules for potential adoption by the Finance Commission to timely effect as necessary. Conduct reviews of all rules every four years to evaluate their continued necessity and applicability.

- *Effective December 31, 2020, changes were made to 7 Texas Administrative Code 19.51 regarding Other Real Estate Owned by trust companies to bring Texas requirements in line with federal rules.*
- *Effective December 31, 2020, changes were made to 7 Texas Administrative Code 3.37 to update the table showing the calculation of annual assessments for banks as adjusted for inflation, and to correct typographical errors.*
- *Effective March 11, 2021, changes were made to 7 Texas Administrative Code 33.13 to clarify the accepted payment form and refund of Money Services Businesses license application fees.*
- *Effective July 12, 2021, changes were made to 7 Texas Administrative Code 3.36 to decrease a state bank's assessment base by the amount attributable to PPP loans reflected the bank's financial statements.*

**III.3 Objective:** Maintain participation in financial education and outreach efforts.

**Measure:** Maintain and periodically update the Department's financial education web pages and brochure. Highlight financial institutions with active programs in agency publications. Participate in financial education events or committees when possible.

- *The September 2020 edition of the [Texas Bank Report](#) featured two financial education articles: "Financial Education Resources Available for Parents" and "The Financial Education Show Must Go On" highlighting Happy State Bank's financial education program.*
- *The [financial education brochure](#) and Department's financial education [web page](#) were reviewed and updated in October 2020.*
- *On November 10, 2020, sixty-two participants attended the Department and OCCC joint financial education webinar titled "Applying for Credit."*
- *The January 2021 edition of the [Texas Bank Report](#) featured an article on the FDIC Banking Survey and the importance of financial education.*

- *On April 14 2021, the Corporate Director and a representative from the OCCC co-hosted a financial education webinar entitled “A Blueprint for Smart Housing Decisions” attended by fifty-six participants.*
- *On July 15, 2021, a Dallas Financial Examiner and a representative from the OCCC co-hosted a financial education webinar relate to building a better budget. Fifty-one participants attended.*

#### **IV. AGENCY MANAGEMENT – *Staffing, Recruiting, Fiscal Responsibility, and Technology***

**IV.1 Objective:** Actively recruit qualified personnel while strengthening the diversity of the workforce whenever possible. Maintain compliance with all state and federal employment laws.

**Measure:** Actively recruit entry level positions at state universities and colleges by attending job fair events (if available) and supporting banking programs at Texas universities. Utilize recruiting platforms that reach a wide talent pool. Promptly post vacancies. Periodically review and update personnel policies and procedures.

- *Twenty-seven jobs were posted from September 1, 2020 through August 31, 2021.*
- *Filled one Financial Examiner I position in B&T Regional Office.*
- *Filled one Financial Examiner VI BSA Examiner position in B&T.*
- *One Central Point of Contact was selected through internal posting.*
- *Filled one Law Clerk position in Legal.*
- *Filled one Consumer Assistance Specialist position in DSS.*
- *Filled one Accountant IV position in Administrative Services.*
- *Filled one Financial Examiner I position in NDS – MSB.*
- *Filled one Intern position in Dallas Regional Office.*
- *Filled two Attorney II positions in Legal.*
- *Filled one Purchaser V position in Administrative Services.*
- *Filled one Executive Assistant II position in Executive.*
- *Filled four Financial Examiner VII positions through competitive internal posting.*
- *Contracted one Programmer V position through DIR ITSAC.*
- *In December 2020, updated Section 8-05A Emergency Paid Sick Leave/Emergency Family and Medical Leave Expansion Act to include extension through March 31, 2021.*
- *In May 2021, updated Section 8-05A Emergency Paid Sick Leave/Emergency Family and Medical Leave Expansion Act to include extension through September 30, 2021.*
- *Reviewed AM 2014 Military Employment Rights (December).*
- *Updated AM 2031 Delegation of Authority (January).*
- *Reviewed and updated AM 2037 Student Educational Employment Program (SEEP) (February/May).*
- *Updated Recruiting Brochure and posted to LinkedIn page.*
- *Agency representatives attended one virtual recruiting fair.*

- *In June 2021, began participation in a six-month LinkedIn pilot Recruiting program to increase active recruiting.*
- *Updated AM 2031 Delegation of Authority (July).*
- *Updated AM 2008 Normal Work Hours and Schedules for Department Employees to include work at home policy when normal office functions return (August).*

IV.2 **Objective:** Strive to attain full staffing, with an emphasis on employee retention and staff diversity. Promote junior staff involvement in new responsibilities to better enable seamless transition into senior staff positions as vacancies occur. Continue efforts to maintain a competitive salary structure. Obtain feedback from employees and the Employee Advisory Council and implement changes where feasible.

**Measure:** Continue to improve examination staff retention by addressing major issues that contribute to non-retirement resignations, with a goal to have the agency turnover rate (excluding retirements and intern separations) not exceed 9% for the fiscal year. Maintain a competitive examiner salary program compared to the FDIC by striving to be at a 95% equivalency. Implement, when feasible, recommendations of the Employee Advisory Council.

- *Agency fiscal year 2021 turnover rate through August 31, 2021, was 13.45%. Agency turnover excluding retirements was 9.53%. Financial Examiner turnover was 7.20%. Financial Examiner turnover excluding retirements was 5.60%.*
- *Through August 31, 2021, the agency hired eleven employees and lost twenty-four.*
- *Administered annual performance appraisals for calendar year 2020 using NEOGOV in February 2021.*
- *Conducted Supervisor Evaluations using NEOGOV in June 2021.*
- *Administered Internal Employee Satisfaction Survey. Posted results to intranet (DOBE) and provided result to the Employee Advisory Council for their review (January 2021).*
- *Provided employees with their job descriptions and individual compensation study results through the employee portal.*
- *Administered EEO/Driver Safety training to all staff in October 2020.*
- *COVID-19 Response: Tracked illness and worksite exposure. Administered FFCRA leave.*

IV.3 **Objective:** Have up-to-date computer hardware and software to enhance the effectiveness, speed and quality of the work products that are compatible with our federal counterparts. Provide timely technical support to staff.

**Measure:** Provide technology tools necessary for staff to perform their job functions efficiently, effectively, and securely. Where appropriate, provide technology solutions that support department wide remote work for an extended period of time in accordance with agency determined limitations. Ensure network, website, and databases function appropriately and without prolonged downtimes.



- *Replacement laptops were issued to field examiners with laptops that had reached end-of-life and the replacement cycle for FY21 was completed.*
- *Deployment of “soft phones” was initiated to improve communications for staff members working remotely and to minimize the disruption of services to the public. MIS completed deploying “soft phones” to regional offices and two divisions at the Headquarters office.*
- *Updated Microsoft Collaboration services for staff in December 2020.*
- *VPN solutions were completed allowing for improved availability, stability and secure access by staff working remotely.*
- *Cloud based VPN services were piloted and approved for use. The service will improve network performance and availability of systems.*
- *All websites were migrated to Oracle Cloud Infrastructure (OCI) in June/July 2021.*
- *Eighteen servers were deployed in OCI.*
- *Seven Applications converted to dotnet technology in FY21.*
- *Implemented a single Help Desk telephone solution and updated coverage to include more IT staff monitoring help line.*
- *Updated the ticketing system in September 2020 to ensure alignment with the DIR Security Control Catalogue.*
- *Updated the operating system for computers used by staff.*
- *Deployed and updated the agency collaboration software to allow for improved collaboration with external entities.*
- *Completed migration to cloud services for utility services and file storage throughout FY.*
- *Updated reporting services to begin separation of reporting functions from applications in April 2021.*
- *Five physical servers were retired.*
- *Completed the conversion of three regional offices from dedicated circuits to commodity internet solutions in FY21.*

IV.4 **Objective:** Safeguard the integrity of data and information technology networks and systems from unauthorized access or use and ensure that access to critical systems by employees are available during an emergency.

**Measure:** Perform an annual external information security risk assessment and initiate corrective actions to maintain data integrity and minimize the risk of unauthorized access or use. Continue periodic intrusion testing by the Department of Information Resources for both the network and external facing web resources. Conduct an annual test of the Department’s disaster recovery plan and initiate corrective actions to ensure operations will function appropriately.

- *Annual required information security training was released in February 2021 and completed by staff.*
- *Implemented next generation anti-malware, content filtering, and vulnerability management solutions.*
- *Completed initial portion of the bi-annual security risk evaluation in April 2021. Implementation of recommendations continue.*

- *Implemented new standard operating procedures for Intake, Incident Response, Change Management, Disaster Recovery, and Governance.*
- *MIS conducted four tabletop exercises for Disaster Recovery, and Incident Management in FY21.*
- *Executed additional staff training for malware and ransomware awareness in August 2021.*

IV.5 **Objective:** Ensure financial examiners receive adequate and proper training to perform their duties and progress within the financial examiner series.

**Measure:** Provide core required training courses to financial examiners in the FE I – FE III series so they can progress in the financial examiner series. Adequately prepare assistant examiners to pass the Bank and Trust Supervision commissioning test. Continue agency efforts to provide continuing education to Bank and Trust Supervision commissioned examiners as well as Non-Depository Supervision examiners.

- *Thirty examiners in the Financial Examiner I–III series attended nine different training courses in the first six months of fiscal year 2021.*
- *In the first half of fiscal year 2021, four examiners received their commission.*
- *Twenty-seven examiners in the Financial Examiner I-III attended a two-day virtual internal Bank Secrecy Act class held the week of February 22nd.*
- *In the second half of the fiscal year, one additional examiner was commissioned.*
- *Thirty-two examiners in the Financial Examiner I-III series attended ten different training courses in the second half of the fiscal year.*

IV.6 **Objective:** Ensure agency expenditures are necessary and prudent and within budgetary constraints; revenues collected are adequate to cover expenditures; and provide a cash reserve or fund balance that complies with Finance Commission policies.

**Measure:** Review expenditure and revenue patterns monthly. Prepare quarterly financial statements to substantiate the agency’s financial position and cash reserve.

- *Monthly financial statements are provided to all divisions for review and quarterly to the Finance Commission.*
- *Budget variances are analyzed quarterly.*
- *For fiscal year 2021, revenues were 93.8 % of budget and expenditures were 88.0 % of budget.*
- *Cash reserves are within policy guidelines of 2-6 months.*

IV.7 **Objective:** Periodically review internal controls and processes to improve the efficiency and effectiveness of the agency.

**Measure:** Report on improvements identified and implemented.

- *Administrative Memorandums (AM) revisions related to internal processes or procedures:*
  - *Reviewed and revised AM 2042 Deletion of Records (December 2020)*

- *Reviewed and revised AM 2033 Confidential Email Addresses of the Public (July)*
- *Personnel Manual revision related to internal processes:*
  - *Section 10 – Travel/Per Diem Guidelines and Reimbursement (January 2021)*
  - *Section 2 - Fraud Prevention Policy (March 2021)*

IV.8 **Objective:** Continue to explore options for physical relocation of the Finance Commission agencies that meets the needs of all three agencies.

**Measure:** Report on activities related to the relocation of the Finance Commission agencies.

- *Real estate brokerage, architectural, and outside legal counsel services contracts are in effect for the relocation of the Finance Commission agencies.*
- *A meeting was held on November 18, 2020, that reinforces the use of the 4-acre portion by the agencies with available surface parking. The 4-acre site is anticipated to be available to the Finance Commission agencies in late 2023.*
- *The TxDMV, TxDOT and the Finance Commission agencies are working together to implement a Memorandum of Understanding for the Camp Hubbard campus.*

IV.9 **Objective:** Comply with the directives of the State Office of Risk Management (SORM) regarding the Continuity of Operations Plan (Plan).

**Measure:** Ensure that updates are made, and the Plan is exercised as determined by SORM.

- *The plan update was submitted to SORM in January 2021, and we received a favorable review. The next Plan exercise is due to SORM in January 2022.*

As Commissioner, my overriding objective continues to be for the Banking Department to be considered the top financial regulator by the industries we regulate, as well as our regulatory peers and counterparts, and the top employer by our personnel. The culmination and achievement of these goals will help achieve this objective.

*This page left blank intentionally.*

# Office of Consumer Credit Commissioner

## Agency Priorities

FY 2021

### 1. LEGISLATIVE

#### 1.1. 87<sup>th</sup> Legislative Session

**1.1.1. Objective:** Monitor legislation that affects industries regulated by the OCCC. Respond to new legislative issues and requests for information or testimony. Develop relationships with legislators and legislative staff. Review or draft legislation as appropriate.

**Measure:** Respond promptly to legislative requests for information. Provide regular weekly legislative reports to the Finance Commission.

**Status:** *The OCCC provided weekly status reports to Finance Commission members throughout the regular legislative session. Members of the 87<sup>th</sup> legislative session filed 6,927 bills, which is 5.4% fewer bills than the 86<sup>th</sup> legislative session (7,324 bills). The OCCC's high-priority legislation report included 29 bills that would have directly affected the OCCC and its regulated industries. OCCC staff provided resource support related to legislation, and testified at legislative committee hearings.*

#### 1.2. Sunset Review.

**1.2.1. Objective:** Provide information requested by the Sunset Advisory Commission in its follow-up review of changes resulting from the Sunset Advisory Commission's staff report and the OCCC's Sunset legislation.

**Measure:** Provide requested information to Sunset staff. Provide updates on the Sunset review to the Finance Commission.

**Status:** *The OCCC provided the requested follow-up information to the Sunset Advisory Commission regarding the changes outlined in the Sunset Advisory Commission's staff report and the OCCC's Sunset legislation. Further, the OCCC provided requested follow-up information to the State Auditor's Office regarding management recommendations from the Sunset Report. The OCCC has fully implemented all statutory and management actions required by the Sunset Advisory Commission and the implementing legislation enacted by the 86<sup>th</sup> Legislature. As for the management actions related to coordination among the Finance Commission agencies, the OCCC has participated in work groups to implement the Finance Commission directive related to Sunset Recommendation 2.6.*

### 2. REGULATORY ACTIVITIES

#### 2.1. Regulated Entities.

**2.1.1. Objective:** Supervise and monitor the jurisdictionally appropriate industry segments for

compliance with state and federal law. Investigate illegal activity. Take appropriate enforcement actions to ensure compliance with state and federal law.

**Measure:** Reporting on compliance by regulated industry segment and enforcement actions.

**Status as of 8/31/2021:**

License Type	Examination Compliance	Enforcement Activity
<i>Pawnshop</i>	<i>99.5% acceptable level of compliance</i>	<i>48 injunctive actions 15 administrative penalty actions 4 license revocations</i>
<i>Regulated Lender</i>	<i>94.7% acceptable level of compliance</i>	<i>28 injunctive actions 18 administrative penalty actions</i>
<i>Property Tax Lender</i>	<i>83.3% acceptable level of compliance</i>	<i>2 injunctive actions 1 administrative penalty action</i>
<i>Credit Access Business</i>	<i>95.6% acceptable level of compliance</i>	<i>33 injunctive actions 12 administrative penalty actions 1 license revocation</i>
<i>Motor Vehicle Sales Finance</i>	<i>87.6% acceptable level of compliance</i>	<i>11 injunctive actions 8 administrative penalty actions 2 license application denial 1 license revocation</i>

- 2.1.2. Objective:** Achieve overall weighted average acceptable level of compliance of 85% through examinations and industry education efforts. Monitor follow-up and restitution orders for licensees with outstanding examination issues.

**Measure:** Number of examinations completed. Report the rate of satisfactory compliance. Report the amount of restitution returned to consumers as a result of examinations.

**Status:** *The OCCC completed 2,740 examinations which is 109.6% of the annual goal for fiscal year 2021. The overall compliance rate is 91.9% for all five examination areas combined. Restitution from examinations conducted is \$3,385,505.26 as of August 31, 2021. During this period, the OCCC closed 184 enforcement actions concerning the five examination areas. The 184 closed cases include 122 injunctive actions, 54 administrative penalty actions, 6 license revocations, and 2 license application denials.*

- 2.1.3. Objective:** Develop and refine the remote examination program including implementation of secure file transfer (FILR).

**Measure:** Report on the number of remote examinations completed.

**Status:** *For fiscal year 2021, the OCCC conducted remote examinations of 184 companies with a total of 625 licensed locations. Fifty-one of the 184 examined submitted*

*documentation for off-site review using the secure file transfer (FILR) system.*

## **2.2. Licensing.**

- 2.2.1. Objective:** Process 90% of license applications within 60 days from received date to completion date. Provide professional development and training opportunities to licensing staff once per quarter.

**Measure:** Report on license activities, benchmarks, application processing status, and departmental professional development.

**Status:** *In FY 21 the licensing department processed 67% of applications within 60 days of receipt. This is due to a vacant position for approximately half of the fiscal year. The department continues to conduct bi-weekly meetings, monthly round table discussions and monthly team building, along with attending and conducting various trainings to support staff professional development.*

## **3. POLICY AND RULE DEVELOPMENT**

### **3.1. Rulemaking.**

- 3.1.1. Objective:** Complete rule reviews for the following rule chapters: 7 TAC Chapter 7 (relating to the Texas Financial Education Endowment Fund), Chapter 84 (relating to Motor Vehicle Sales Finance), and Chapter 89 (relating to Property Tax Lenders). Work with stakeholders to clarify and improve rules.

**Measure:** Present rules to the Finance Commission for readoption according to schedule. Propose appropriate rule amendments to the Finance Commission. Request feedback from stakeholders on whether rules should be updated, and conduct webinars on proposed rule amendments.

**Status:** *The Finance Commission has completed these three rule reviews. In October 2020, the Finance Commission completed the rule review of 7 TAC Chapter 84 by readopting the chapter, with amendments proposed in a separate rule action. In August 2021, the Finance Commission completed the rule review of 7 TAC Chapters 7 and 89, with amendments to these chapters proposed in separate rule actions.*

- 3.1.2. Objective:** Prepare any rule proposals necessary to implement 2021 legislation. Work with stakeholders to seek feedback on proposed rules.

**Measure:** Present rules to the Finance Commission for proposal and adoption. Request feedback from stakeholders and conduct webinars on proposed rules.

**Status:** *During FY 2022, the OCCC plans to work with stakeholders and prepare rule proposals to implement the following 2021 legislation: SB 1132 (allowing the OCCC to*

*examine crafted precious metal dealers) and SB 15 (regarding privacy of motor vehicle records).*

#### **4. CONSUMER ISSUES / COMMUNICATION & OUTREACH STRATEGIES**

##### **4.1 Texas Financial Education Endowment Fund (TFEE).**

**4.1.1. Objective:** Manage the TFEE 2020-2021 grant cycle, including monitoring grant award recipients, reporting on grant award program progress, and process reimbursement requests. Promote TFEE for the 2022-2023 grant cycle, review procedures, and receive grant applications for review.

**Measure:** Reporting on fund activities, investment earnings, grant request submissions, grants awarded, and grantee reporting highlights. Identify and implement ways in which to improve and expand the grant program based on report findings and program needs.

**Status:** *The 2020-2021 TFEE Grant Cycle first, second, and third period semi-annual reports are available online at [www.tfee.texas.gov](http://www.tfee.texas.gov). These reports detail fund activities and highlight grant award recipients' activity. The agency received 27 grant applications for the 2022-2023 TFEE Grant Cycle and the Grant Advisory Committee (GAC) made funding recommendations to the Finance Commission. The agency continues to expand outreach of the TFEE through social media, emails, and other outreach to community organizations.*

##### **4.2 Financial Education**

**4.2.1. Objective:** Identify underserved populations and locations in need of financial education. Provide financial education to new demographics of consumers by collaborating with community organizations, state agencies, non-profit organizations, and consumer advocacy groups. Collaborate with the Department of Banking in the promotion and delivery of financial education. Expand financial education content online by remote learning and webinar techniques.

**Measure:** Report on number of people and programs reached.

**Status:** *The Financial Education Department provided educational services to 1,940 individuals during Fiscal Year 2021. The agency partnered with Department of Banking and Employees Retirement System for a series of joint webinars. The agency continues to promote financial education events on social media and through community outreach. Additionally, the Veteran's Land Board and Texas Commission on Environmental Quality promoted the agency's financial education webinars through internal employee newsletters, blogs, and social media posts.*

##### **4.3. Industry and Stakeholder Outreach**

**4.3.1. Objective:** Continue to build relationships with industry and interested stakeholders to



ensure clear communications on education or regulatory compliance. Monitor emerging issues in agency's areas of regulation and communicate the impact to regulated and licensed entities. Develop publications that address topics of interest and share with regulated and licensed entities. Participate in or attend industry meetings or seminars.

**Measure:** Report to the Finance Commission on the content and frequency of communications.

**Status:** *The OCCC has participated in seminars with the TX DMV, TPTLA, TIADA, TDHCA, TCFA, the State Agency Council, industry town hall meetings, and has held rule review stakeholder meetings. The OCCC published and regularly updated COVID-19 bulletins to provide guidance to regulated industries. The Commissioner concluded a term as President of NACCA during the year and the OCCC's Financial Education Coordinator is a board member of Texas Jump\$tart. During Fiscal Year 2021, staff presented or participated in seventy-five meetings or events.*

## 5. AGENCY MANAGEMENT

### 5.1. Performance Measures.

**5.1.1. Objective:** Performance Targets. Meet or exceed 80% of key performance targets within  $\pm 5\%$  of the projected target.

**Measure:** Continue to meet or exceed the strategic planning goals for key performance measures, including attainment of at least 9 out of 11 key performance targets. Report results to Finance Commission on a quarterly basis.

**Status:** *The OCCC staff adapted processes and procedures to successfully work remotely due to COVID-19. However, the agency was unable to attain 9 measures, meeting 8 of the 11 key performance targets. The three measures where the OCCC did not meet the projection were related to licensing, which was impacted by increased application volume and staffing turnover during COVID-19.*

### 5.2. Human Resources.

**5.2.1. Objective:** Recruit and retain qualified personnel with the appropriate skill set necessary to meet short and long-term needs. Continue efforts to right size staffing, based on performance requirements, with an emphasis on employee retention and diversity. Ensure staff receives adequate cross-training to minimize institutional knowledge loss due to work separation or retirement. Maintain competitive compensation schedules. Continue efforts to be proactive in competitive salary administration.

**Measure:** Report on turnover ratio, cross-training initiatives and retention efforts. Maintain competitive financial examiners career development and progression path.

**Status:** *As of August 2021, turnover rate was 15.1% which was better than the projected rate of 16%. HR staff continues to thoroughly review exit interviews comments and the overall general statistics provided from the State Auditor's Office. The agency provides internal employment opportunities for current employees for potential advancements or change in duties.*

- 5.2.2. Objective:** Promote opportunities for staff professional development. Ensure that examiners and investigators receive a minimum of 40 hours of continuing education. Ensure that at least 40% of administrative staff receives additional professional or job-related training.

**Measure:** Reporting on training opportunities and attainment of minimum exam staff training and administrative staff training.

**Status:** *OCCC Examiners completed virtual Examiner Training School in September 2020 and an additional On-site Examiner Training School in August 2021 providing a total of 72 hours in FY 2021, exceeding the 40 required hours. Several employees attended the National Association of Consumer Credit Administrators (NACCA) and American Association of Residential Mortgage Regulators (AARMR) training. All Administrative staff continue to attend professional or job-related training through webinars or online training. Agency employees continue to participate in the Cyber Security Training assigned by the OCCC IT Department.*

- 5.2.3. Objective:** Conduct review of Human Resources policies and update as appropriate. Enhance supervisory resources and training.

**Measure:** Report on completion of review and progress on supervisor resources.

**Status:** *The Employee Policies & Procedures Manual Version 2.06 was updated in November 2020. Policies are regularly monitored to ensure compliance with local, state and federal law. Communications and Human Resources staff are in the process of the next annual review and update of the Employee Manual.*

### **5.3. Financial and Self-Directed, Semi-Independent Status.**

- 5.3.1. Objective:** Ensure that the agency's revenues and expenditures are appropriate and balanced and maintain a cash reserve or fund balance in compliance with Finance Commission policies. Provide greater data reliability, more efficient transactional processing, and enhanced reporting.

**Measure:** Review internal financial statements and variances on a monthly basis. Submit quarterly financial data relating to the agency's financial position and fund balance for review by the Finance Commission.

**Status:** *The OCCC management monitors and reviews financial status through monthly*

*Operating Statements and Budget Analysis reports. These reports are also reviewed on a quarterly basis by the Finance Commission. Financial performance during FY 21 is within the budgeted levels approved by the Finance Commission. The OCCC's cash reserve level at the end of FY 20 was less than 6 months, however due to lower than expected expenditures in FY 21 associated with COVID-19, the number of months of operating reserves increased. The OCCC will be taking measures to reduce the operating reserves during FY 22 and into FY23.*

- 5.3.2. Objective:** Transition to the Centralized Accounting Payroll/Personnel System (CAPPS) for the financial module.

**Measure:** Report on activities related to CAPPS transition and implementation.

**Status:** *The OCCC has transitioned to CAPPS Financial online system for all FY 22 transactions. Additionally, implementation work has begun for CAPPS HR/payroll management systems to be launched in the summer of 2022.*

- 5.3.3. Objective:** Continue to work towards a long term solution, in collaboration with the other Commission agencies, to address headquarter facilities space and parking needs.

**Measure:** Report on activities related to the relocation of the Finance Commission agencies.

**Status:** *The Finance Commission agencies have continued to actively work on options towards a long term solution for headquarters facilities. The Finance Commission has been regularly briefed on these activities at Finance Commission meetings. Real estate brokerage, architectural, and outside legal counsel services contracts are in effect for the relocation of the Finance Commission agencies. The TxDMV, TxDOT and the Finance Commission agencies are working together to implement a Memorandum of Understanding for a potential site within the Camp Hubbard campus that is anticipated to be available to the Finance Commission agencies in 2023.*

#### **5.4. Information Technology.**

- 5.4.1. Objective: Software Modernization and Continuous Improvement.** Ongoing enhancements to the Application, Licensing, Examination, Compliance System (ALECS), improving functionality and security. Consolidation of agency services to one internal directory.

**Measure:** Reporting on development and milestones.

**Status:** *ALECS can now export financial information which is transmitted to CAPPS. Identity credentialing consolidation has been postponed into FY22. Full commonality of endpoint computer operating systems is expected no later than October.*

- 5.4.2 Objective: Hardware Modernization.** Updating and maintaining the OCCC endpoint computer asset deployment and the shared network equipment, with focus on provisioning dispersed workforce as a result of pandemic protocols.

**Measure:** Reporting on milestones and distribution.

**Status:** *IT completed upgrading the field staff to modern endpoint computers concurrent with the Examiner Conference in early August. Subsequent upgrading of Austin staff is nearly complete; outside of the IT department, three laptops remain to be upgraded, pending receipt of compatible peripheral equipment.*

- 5.4.3 Objective: Increase Agency Security Posture.** Using the recommendations provided in the FY19 cybersecurity assessment, OCCC will increase security maturity for objectives in the Texas Cybersecurity Framework.

**Measure:** Activity reporting on the roadmap with timelines for implementation of recommendations.

**Status:** *OCCC contracted for and received a voluntary firewall audit, which was found to be in sound shape. High- and medium-risk findings were quickly addressed. OCCC completed, and successfully passed, its biannual Texas Cybersecurity Framework audit and Network Penetration Test, validating the quality of the existing security posture. Findings offer opportunities for improvement, which IT and management continue to work on implementing.*

- 5.4.4 Objective: Formal Change Management Procedure.** Continued use and improvement of the agency's change management procedure, including consistent, collected documentation.

**Measure:** Reporting of change request documentation metrics and summaries.

**Status:** *The application used for change management has proven its utility.*



## Agency Priorities for Fiscal Year 2021

### I. Legislative Items

**I.1 Objective:** Monitor legislation, throughout the 87<sup>th</sup> Legislative Session, that may affect the Department, or its regulated industries; analyze the potential impact, and plan implementation of legislative changes as needed.

**Measure:** Provide regular updates to the Finance Commission on the status of such legislation.

**Status:** *The Department monitored legislation that might affect the Department or the regulated industries, for a total of 502 bills. The bills that have direct impact on the Department or the regulated industries were reported weekly to the Finance Commission.*

**I.2 Objective:** Serve as a resource for the Texas Legislature and other members of leadership. Respond promptly and accurately to any requests for information, providing appropriate and comprehensive resource materials, as legally permissible.

**Measure:** Notify Finance Commission members about any testimony given by the Department.

**Status:** *On March 3, 2021, Commissioner Jones provided written and oral testimony at the organizational meeting of the House Committee on Pensions, Investments, and Financial Services. General Counsel Ernest Garcia has been available as a resource witness as requested by members of the Legislature. The Department's staff has responded promptly to requests for information. The Department served as a resource on SB43, SB1900, and HB3617, all of which passed with impact to the Department and its regulated industries. The Department also proposed rules relative to the statutes effective Sept. 1, 2021 and January 1, 2022, for consideration by the Finance Commission.*

**I.3 Objective:** Monitor federal legislation and regulations that may affect the Department or its regulated entities.

**Measure:** Communicate relevant information with the Finance Commission and industries, as necessary.

**Status:** *During FY2021, the Department monitored legislation and regulations at the federal level and as appropriate reported information to the Finance Commission, as well as to its regulated industries.*

**I.4 Objective:** At Finance Commission direction, continue to explore and collaborate with the other Finance Commission agencies on enhanced sharing opportunities as recommended by Sunset Review.

**Measure:** Participate in the established workgroups and report the status and progress to the Finance Commission on a semi-annual basis.

**Status:** *Meetings continue to be held with representatives of OCCC and DOB regarding the sharing of information technology resources, human resources, accounting, procurement, and consumer complaints.*

# DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

*On October 16, 2020, the Department, along with the other finance agencies, provided a status report on the progress of the workgroups to implement the Finance Commission directive related to Sunset Recommendation 2.6.*

*On April 16, 2021, the finance agencies reported the status of each workgroup to the Finance Commission members.*

## II. Regulatory Items

**II.1 Objective:** Continue to closely monitor the Department's savings banks' risk profiles and the economic conditions in which they operate. Continue ongoing monitoring of both individual and systemic conditions that present risks to their financial security through the Department's off-site financial information software and onsite presence

**Measure:** Maintain off-site monitoring program of savings banks while initiating appropriate regulatory responses and enforcement actions when applicable. Maintain state savings bank examination schedule as set by Department policy.

**Status:** *The Department monitors the thrift industry's risk profiles and reports information to the Finance Commission on a regular basis on items such as Liquidity, Profit Margin, and Non-Performing Assets. The Department actively engaged in on-site and off-site monitoring to determine whether supervisory action was necessary. During FY2021, no enforcement actions were issued. Compliance with existing enforcement actions is monitored through quarterly reports from the thrifts and/or on-site visitations and examinations. The Department has maintained the state savings bank examination schedule, as set by Department policy.*

**II.2 Objective:** Continue compliance examinations of mortgage companies and Residential Mortgage Loan Originators, licensed under Finance Code, Chapters 156 and 157, respectively, to ensure that licensees are in compliance with applicable laws and regulations when conducting business with Texas consumers. Analyze recurring examination findings and take steps to communicate best practices to the mortgage industry.

**Measure:** Maintain mortgage examination schedule, as set by Department policy, and as needed initiate appropriate regulatory responses and enforcement actions for violations found.

**Status:** *As of August 31, 2021, the Department has conducted 412 examinations of mortgage entities covering 6,406 mortgage loan originators. The Department maintained the mortgage examination schedule, as set by the Department policy, and issued formal and informal enforcement actions as deemed necessary. The Department provided information on the top violations to the industry at various opportunities, including presentations to local associations and at the Department's annual Mortgage Seminar. During FY2021, the Department made presentations to eight mortgage groups providing updates on the mortgage industry, including topics such as licensing information, most frequent violations found in exams, and legislative updates.*

**II.3 Objective:** Initiate appropriate regulatory enforcement to ensure compliance with federal and state laws and regulations.

**Measure:** Report on enforcement actions.

**Status:** *During FY2021, the Department issued 88 orders related to examinations and complaints.*

## DEPARTMENT OF **SAVINGS AND MORTGAGE LENDING**

**II.4 Objective:** Retain prompt resolution times on consumer complaints.

**Measure:**

- a) Provide updates to the Finance Commission on the aging of complaints.
- b) Conduct management review of any complaints open over 120 days to identify issues preventing the timely closing of such complaints.
- c) Conduct consumer complaint surveys on a regular basis.

**Status:**

- a) *The Department reports to the Finance Commission the aging of complaints on a quarterly basis. As of August 31, 2021, 98% of the open consumer complaints were aged less than 120 days.*
- b) *As of August 31, 2021, the Department had 3 complaints aged over 120 days. Management reviews all complaints over 120 days to identify issues preventing the timely closing of such complaints.*
- c) *The Department conducts consumer complaint surveys quarterly and reviews the results in order to identify any actionable items.*

**II.5** Process complete licensing applications and registrations in a timely manner.

**Measure:**

- a) Monitor the timeliness of licensing process.
- b) Conduct survey of license applicants on a regular basis.

**Status:**

- a) *Management monitors the timeliness of the licensing process on an ongoing basis. During FY2021, the Department hired a Licensing Investigator and a Licensing Manager and assessed the need to hire additional staff in order to assist with the timeliness of the licensing process.*
- b) *The Department conducts licensing customer service surveys quarterly and reviews the results in order to identify any actionable items.*

**II.6 Objective:** Participate in the development and implementation of home equity interpretations.

**Measure:**

Continued involvement in meetings of the Home Equity Lending Working Group as it develops and recommend home equity rules and interpretations as necessary.

- a) Implement any rule and interpretations adopted by the Finance Commission and the Credit Union Commission.

**Status:** *During FY2021, the Joint Financial Regulatory Agencies and their Home Equity Lending Working Group worked collaboratively to develop and make recommendations to the Finance Commission and Credit Union Commission for changes to their home equity interpretations adopted by rule in 7 TAC Chapter 153 (7 TAC §§153.8, 153.11, 153.14, 153.15, 153.22, 153.26, and 153.41), arising from rule review conducted by the agencies in late FY2020. The agencies further worked collaboratively to develop and make recommendations to the Finance Commission and Credit Union Commission concerning changes to their joint rule concerning procedures governing the home equity interpretation process in 7 TAC §151.1, also resulting from rule review conducted by the agencies in late FY2020. The foregoing rulemaking actions were adopted by the Finance Commission and Credit Union Commission and published in the Texas Register on November 20, 2020, and became effective on November 26, 2020. No formal petition for rulemaking under 7 TAC §153.1(d) was initiated during*

## DEPARTMENT OF **SAVINGS AND MORTGAGE LENDING**

*FY2021. During FY2021, the Joint Financial Regulatory Agencies received three informal requests for an interpretation made pursuant to 7 TAC §151.1(c), one of which was received by the Department. The Department, in consultation with the other Joint Financial Regulatory Agencies, responded to the informal request it received, offering an informal interpretation (made without the official interpretative authority afforded the Finance Commission and Credit Union Commission under the Texas Constitution), and did not result in a recommendation by the Joint Financial Regulatory Agencies for rulemaking action by the Finance Commission and Credit Union Commission. Two other informal requests for an interpretation (received by DOB and OCC, respectively) originated from the same requestor, were related, and resulted (in part) in the Joint Financial Regulatory Agencies developing and making recommendations for changes to the Finance Commission's and Credit Union Commission's home equity interpretations under 7 TAC §§153.1, 153.5, 153.12, 153.13, 153.17, 153.22, 153.26, 153.45, and 153.51. The rulemaking action was proposed and published for public comment by the Finance Commission and Credit Union Commission in the September 10, 2021, issue of the Texas Register and is therefore anticipated to be resolved during FY2022. During FY2021 the Home Equity Lending Working Group of the Joint Financial Regulatory Agencies further worked collaboratively on guidance concerning home equity lending and emergency measures during the Covid-19 pandemic, with the latest such guidance issued on November 30, 2020.*

**II.7 Objective:** Remain active and involved at the national level on supervisory issues affecting savings banks and the mortgage industry.

**Measure:**

- a) Maintain contact with state regulators from other states, regulatory associations (e.g. ACSSS, CSBS, and AARMR), trade associations, (e.g. TBA, IBAT, TMBA, ATMP, TLTA, and TAR), and federal regulators (e.g. CFPB, FDIC, FRB), in order to be aware of events, decisions, other state and federal policies and other areas of actual and potential impact on the Department's regulatory functions or the industries. Take proactive steps to respond as issues arise affecting the industries or supervisory duties.
- b) Continue working with the FDIC and FRB, and other federal agencies as appropriate, on examinations, supervision, and consumer complaint resolution issues. Monitor federal rule writing activity and interpretations of existing statutes.
- c) Report to the Finance Commission on interaction with federal agencies in all of the above listed activities.

**Status:**

- a) *During FY2021, Department's staff members served in leadership positions on several national associations and committees. These include the State Regulatory Registry (Board), Nationwide Mortgage Licensing System and Registry, and Conference of State Bank Supervisors committees and working groups. The Department has maintained contact with various state trade associations,*
- b) *The Department co-hosted a state savings bank Bankers Outreach with the FDIC.*
- c) *The Department has continued its joint Safety & Soundness examination program with the FDIC and FRB, as well as its Compliance examination program.*
- d) *The Department has reported to the Finance Commission on interaction with federal agencies in all of the above listed activities as appropriate.*



# DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

## III. Policy and Rule Development

**III.1 Objective:** Conduct rule review of all rules related to mortgage licensing. Propose necessary amendments to the rules as necessary.

**Measure:** Have final action taken, either readoption or repeal, on the rule review and proposal of any amendments needed to these rules.

**Status:** *The Department initiated and completed review of its licensing rules (7 TAC Chapter 80, Subchapter B and Chapter 81, Subchapter B) during FY2020, ultimately readopting such rules effective August 24, 2020 in compliance with the measure. However, the Department did identify potential rule changes during the rule review process, and recommended such changes to the Finance Commission at its meeting on August 20, 2021. The Finance Commission published such rulemaking changes for comment in the September 10, 2021 issue of the Texas Register. The Department anticipates presenting such rule changes for the Finance Commission to consider on adoption at its October 15, 2021 meeting.*

**III.2 Objective:** Monitor and modify Texas Administrative Code rules as necessary to reflect changes in state and federal laws and address the dynamics of the changing industries.

**Measure:** Amend rules and adopt new rules as necessary to timely implement necessary changes.

**Status:** *Amendments of rules and any new rules, relating to statutory changes during the 87<sup>th</sup> Legislative Session will be presented to Finance Commission during FY2022.*

## IV. Industry Outreach and Communication

**IV.1 Objective:** Communicate with regulated industries on matters of supervisory and industry interest, including emerging issues, through a variety of means both virtual and in person as deemed appropriate and efficient.

**Measure:** Provide regular updates to the Finance Commission regarding activities conducted in these areas by reporting the number of communications sent and events participated in.

**Status:** *The Department stayed in contact with the relevant state trade associations. During FY2021, the Department served on panels or presented to 12 statewide or local chapters of trade associations, including, but not limited to, the Texas Mortgage Round Up, the Department's Mortgage Seminar, Mortgage Banking Livestream (Podcast), Thrift Industry Day, TBA's Texas Economic Resilience Summit, and IBAT's Annual Convention, Greater Houston Association of Mortgage Professionals; North Texas Association of Mortgage Professionals, and Texas Land Developers Association.*

*Various Department representatives discussed issues related to the industry via electronic means as deemed necessary and appropriate. The Commissioner and Deputy Commissioner hold a monthly Emerging Issues call for State Savings Banks Presidents/CEOs and other staff members from their institutions. During FY2021, two virtual stakeholder meetings for industry representatives and other stakeholders were held. The Commissioner held outreach meetings with two state savings banks.*

## V. Agency Operations

**V.1 Objective:** Recruit well qualified personnel, while seeking to broaden the Department's workforce diversity. Train and cross-train employees as needed to minimize knowledge loss due to employee

## DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

departure and to prepare for business needs due to changes in regulated industries and/or technology. Provide and promote opportunities for professional development through individual training plans.

**Measure:** Report on staffing activity, actions to retain staff, and turnover ratios to the Finance Commission.

**Status:** *During FY2021, the Department filled fourteen (14) positions and had eight separations of employment, including four retirements. During the same period, 100% of personnel received job-related training.*

**V.2 Objective:** Meet or exceed 90% of the key performance measures within the Department's control. Strive to reduce deficiencies, if any, in the performance measures outside the Department's control.

**Measure:** Provide regular updates to the Finance Commission regarding performance measures.

**Status:** *The Department has reported on its four key output measures to the Finance Commission on a quarterly basis. As of August 31, 2021, the Department has met or exceeded all of these key measures.*

**V.3 Objective:** Implement improvements in business processes and internal controls in response to evolving business needs, audit recommendations, and/or internal reviews.

**Measure:** Report on outcome of audits and implementation progress to Finance Commission Audit Committee.

**Status:** *During FY2021, the Department has reported all audits to the Audit Committee of the Finance Commission. As of August 31, 2021, there are no outstanding audit findings, recommendations, or observations. Business processes, continue to be reviewed and improved as necessary.*

**V.4 Objective:** Monitor the Department's budgeted and actual revenues, expenditures, and reserve balances, as approved by the Finance Commission, in order to maximize the responsiveness and flexibility allowed by the Department's Self-Directed Semi-Independent status. Make decisions relating to finances in a fiscally prudent manner.

**Measure:** Report to the Finance Commission Audit Committee on revenue and expenditure variances to the budget at least quarterly.

**Status:** *Reports were submitted quarterly to the Finance Commission as required, with detailed explanations of budget variances and cash reserves. Internally, the budget is monitored and analyzed on an ongoing basis.*

**V.5 Objective:** Ensure information technology is kept current to maintain effectiveness and quality of work product of the Department. Safeguard the integrity of data and information technology networks and systems.

**Measure:** Report to the Finance Commission activities in this area.

**Status:** *In December 2020, the Department reported to the Audit Committee the results of the External Network Penetration Test, Web Application Vulnerability Scan, and the Texas Cybersecurity Framework Assessment. As deemed appropriate, the Department has implemented critical patches to the network and staff computers.*

## DEPARTMENT OF **SAVINGS AND MORTGAGE LENDING**

**V.6 Objective:** Prepare for the deployment of the Centralized Accounting and Payroll/Personnel System (CAPPS) Financials' Core Modules: Asset Management, Accounts Payable, General Ledger, and Purchasing, scheduled for September 2021.

**Measure:** Provide necessary information and documentation, perform tasks, and participate in onboarding activities, as required by Comptroller of Public Account's CAPPS Financials Team and according to the Interagency Cooperation Contract for CAPPS Services between the Texas Comptroller of Public Account and the Department of Savings and Mortgage Lending.

**Status:** *During FY2021, Department's staff has actively participated in all work sessions related to the deployment of CAPPS Financials and has timely provided all items required by the Comptroller's CAPPS Financials Team related to security and module configurations. The efforts related to the deployment were reported to the Finance Commission throughout the year.*

**V.7 Objective:** Monitor emergencies, natural disasters, or pandemics as they relate to the Department or its regulated industries.

**Measure:** Report to the Finance Commission activities in this area.

**Status:** *During FY2021, the Department monitored one pandemic and one natural disaster as they relate to the Department and the regulated industries. The Department began reporting to the Finance Commission the Department's activities related to COVID-19 in FY2020 and continued its reports at each Finance Commission meeting in FY2021. The reports included information relating to the conducting of thrift and mortgage exams off-site. Additionally the Department has reported on safety measures taken in the office and its remote working status.*

**V.8 Objective:** Continue to evaluate headquarters space and parking needs in collaboration with the other Finance Commission agencies.

**Measure:** Report to the Finance Commission activities related to the relocation of the agencies.

**Status:** *Real estate brokerage, architectural, and outside legal counsel services contracts are in effect for the relocation of the Finance Commission agencies.*

*The Texas Department of Motor Vehicles, the Texas Department of Transportation, and the Finance Commission agencies are working together to implement a Memorandum of Understanding for a potential site within the Camp Hubbard campus that is anticipated to be available to the Finance Commission agencies in 2023.*

*This page left blank intentionally.*

**B.**

**Texas Department of Banking**

*This page left blank intentionally.*



Charles G. Cooper  
Commissioner

## TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705

512-475-1300 / 877-276-5554

[www.dob.texas.gov](http://www.dob.texas.gov)

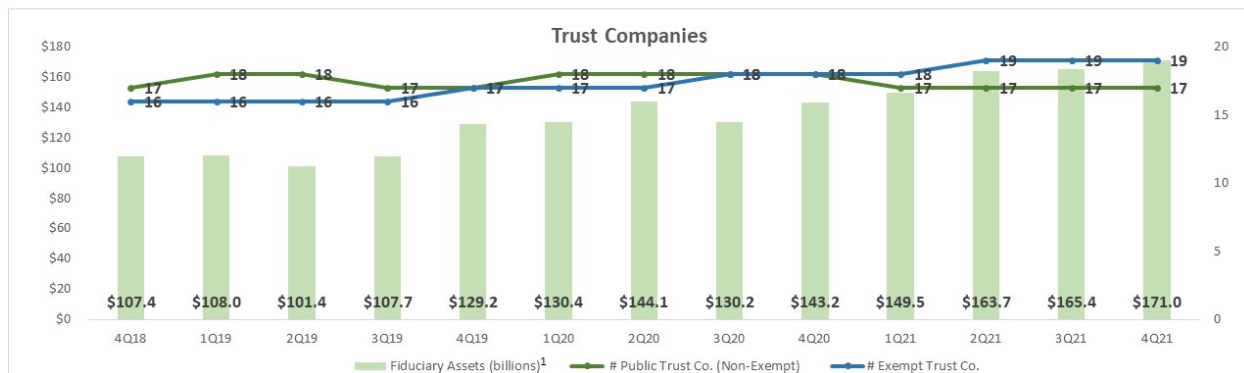
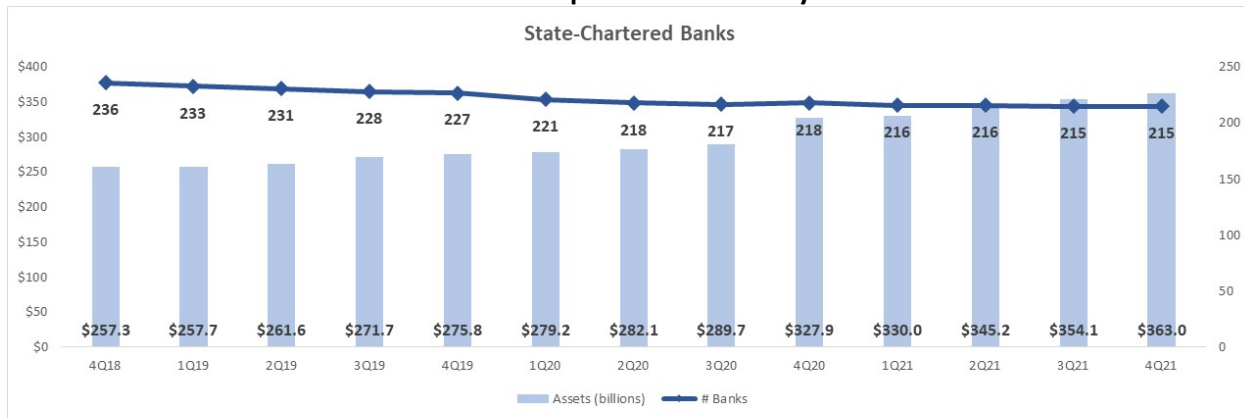
To: Finance Commission Members

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

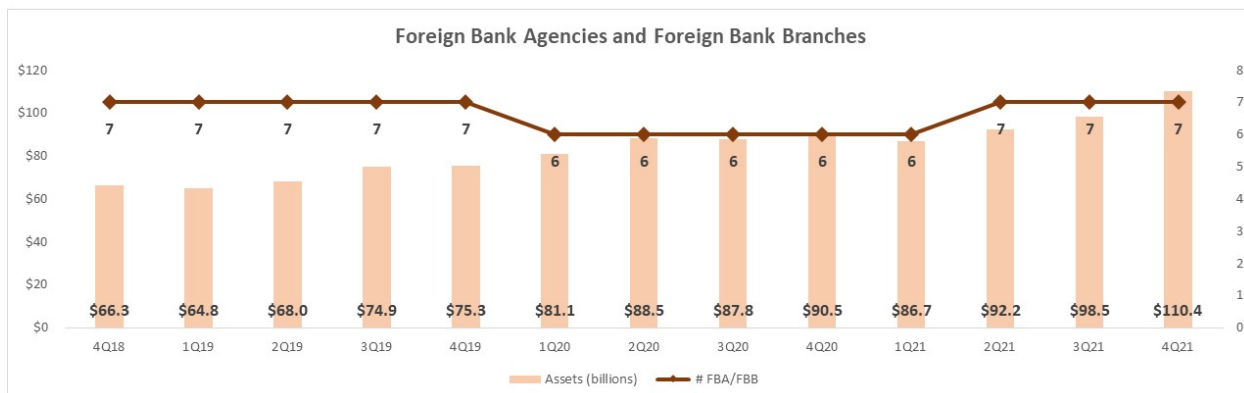
Date: September 29, 2021

Subject: Summary of the Bank & Trust Supervision Division Activities

### Bank and Trust Supervision – Industry Profiles

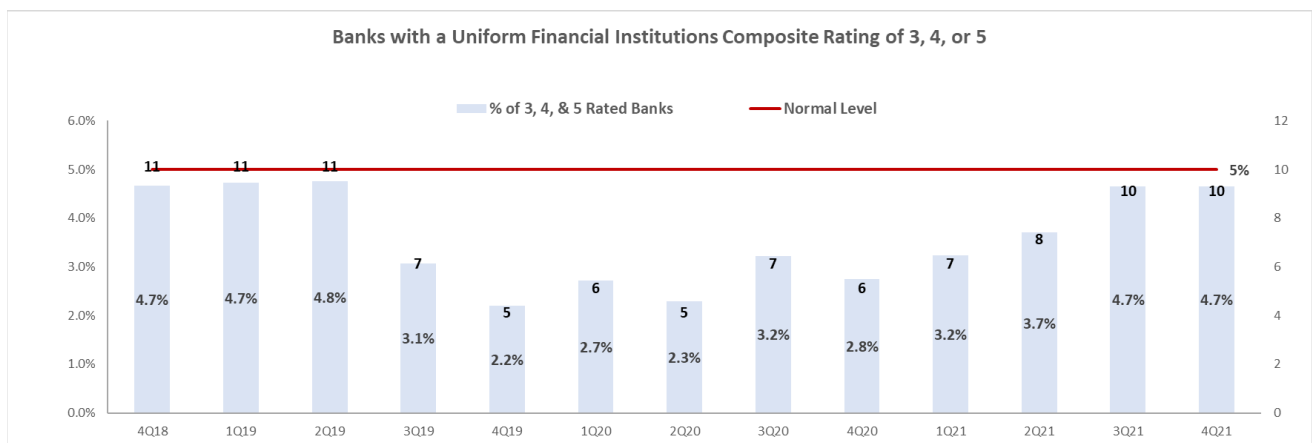
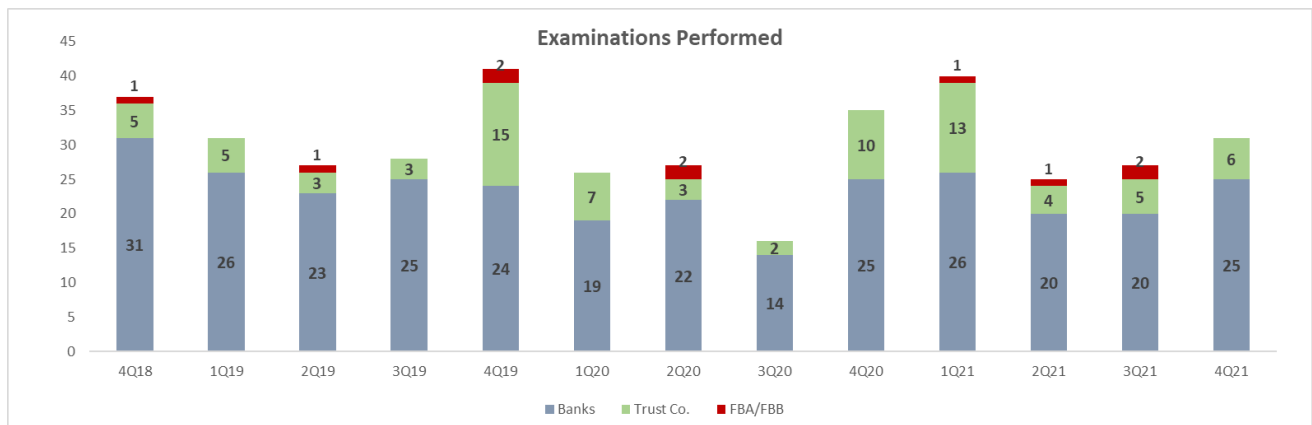


<sup>1</sup>Fiduciary Assets for public trust companies (non-exempt) only.



## Summary of the Bank &amp; Trust Supervision Division Activities

Page 2



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 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.

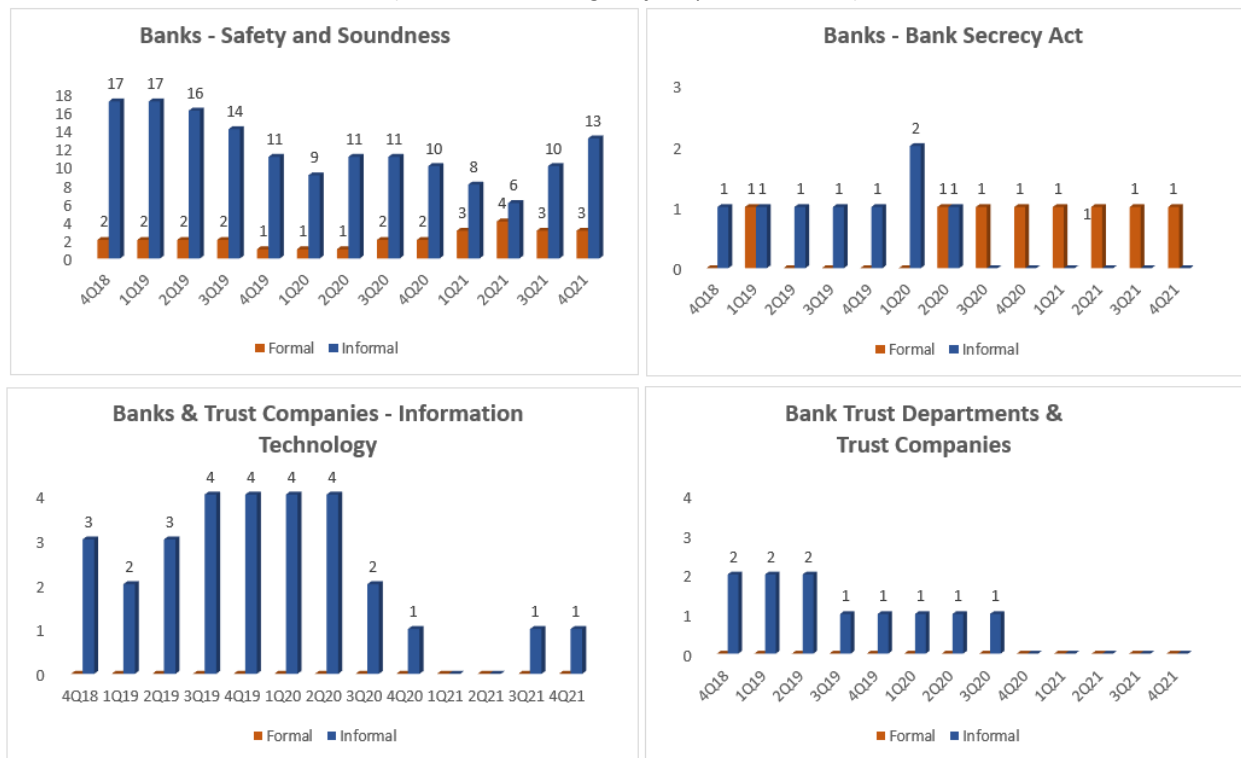


## Summary of the Bank &amp; Trust Supervision Division Activities

Page 3

**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
Commercial Banks (All / DOB Only)	96% / 94%	95% / 93%
IT	97% / 97%	98% / 100%
Trust	100% / 100%	97% / 100%
Foreign Banks (FRB)	67%	67%
Trust Companies (DOB)	67%	100%
IT	100%	100%

The division met examination priorities during FY 2021 for commercial, IT and trust examinations but fell outside of guidelines for foreign bank examinations. Compliance with examination priorities for foreign bank entities was a challenge as these examinations are conducted jointly with the Federal Reserve, who is focusing examination efforts on higher risk entities.

## Division Highlights

- **COVID-19 Update:**

- The Department continues to actively monitor and respond to the changing circumstances brought about by the COVID-19 pandemic. Most banks have reverted to normal operating schedules now that vaccines are readily available; however, several instances of COVID outbreaks have occurred resulting in temporary branch closures. The Department maintains regular communication with regulated entities and performs offsite monitoring of key financial metrics.
- The Department continues to conduct predominantly offsite examinations but is conducting some onsite work as well as in-person management and board meetings on a limited basis. Banks and trust companies due for an examination are now given the option for either an onsite or offsite examination based on management's comfort level and COVID-19 cases in the community. In addition, in-person meetings with staff at Austin Headquarters are occurring upon request.
- 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, most deferrals have returned to original payment terms.

- **Special Operations and Conferences:**

- On August 10, 2021, Regional Review Examiner Kenny Reed represented the Department on the Regulatory Panel for the Texas Tech School of Banking in Lubbock.
- Commissioner Charles G. Cooper, Director of Bank and Trust Supervision (DB&T) Dan Frasier and Review Examiner Jared Whitson participated in the Federal Deposit Insurance Corporation (FDIC) Banker Outreach Virtual Roundtable Meetings beginning on August 12, 2021. These meetings provided an opportunity to hear from bankers and discuss emerging risks, operational challenges, and other supervisory hot topics such as offsite examination processes under pandemic conditions.
- Commissioner Cooper, Deputy Commissioner Wendy Rodriguez, DB&T Frasier, and Review Examiner Kevin Wu represented the Department at the Texas Bankers Association Annual Convention held in Austin beginning on August 25, 2021.
- Commissioner Cooper, DB&T Frasier, Regional Director Jacque Willardson, and Review Examiner Whitson represented the Department at the Independent Bankers Association of Texas Annual Convention held in Austin beginning on September 19, 2021.
- Commissioner Cooper, DB&T Frasier, Director of Non-Depository Supervision Jesse Saucillo, Review Examiner Whitson, Review Examiner Jay Kim, Financial Analyst Krissna Jones, Regional

Review Examiner Allen Millsap, and Deputy General Counsel Marcus Adams participated in the Conference of State Bank Supervisors (CSBS) Virtual Strategic Planning Meeting beginning on September 20, 2021. This meeting provides the Department with an opportunity to help direct the long-term strategic direction of CSBS as well as set its priorities for the coming year.

- Regional Director David Reed represented the Department at the 100<sup>th</sup> Annual Agriculture & Rural Affairs Conference, held in Austin beginning on September 22, 2021.
- Commissioner Cooper and Regional Director Kenneth Kuntschik attended the 2021 Community Banking in the 21st Century Research and Policy Conference held virtually beginning on September 28, 2021. This conference, which is co-sponsored by CSBS, the Federal Reserve System, and the FDIC, focused on a wide variety of topics affecting community banks.



Charles G. Cooper  
Commissioner

## TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705

512-475-1300 / 877-276-5554

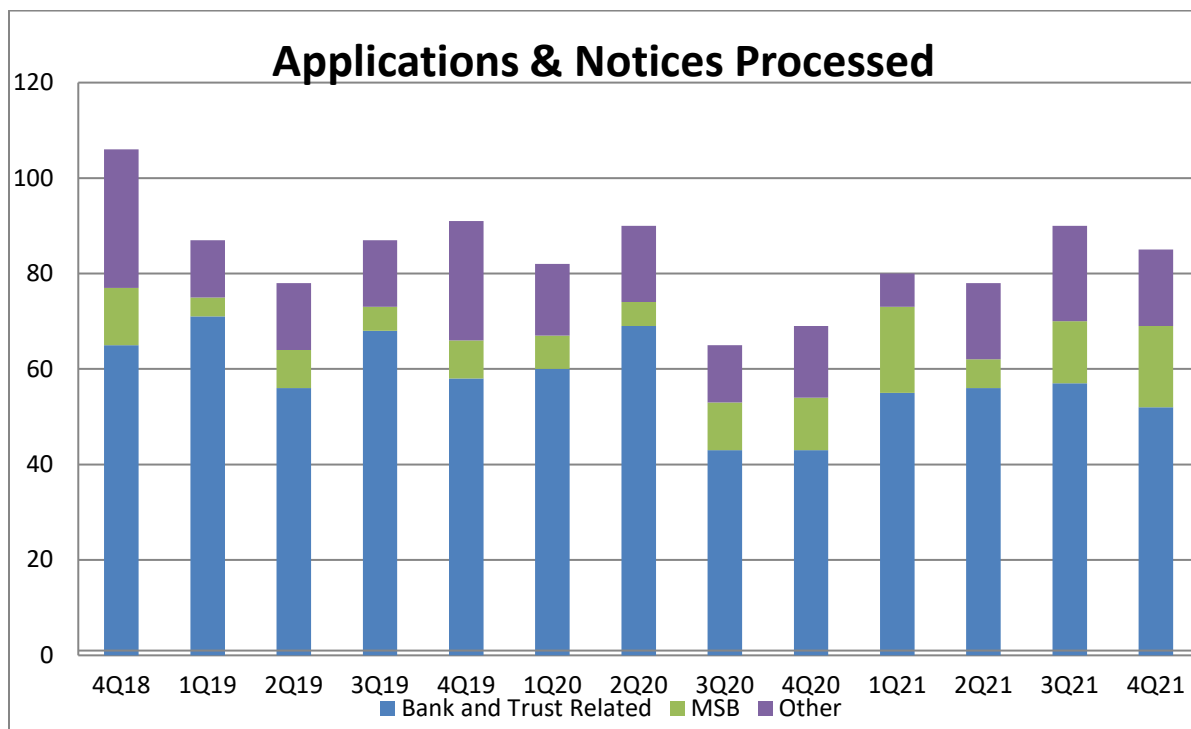
[www.dob.texas.gov](http://www.dob.texas.gov)

To: Finance Commission Members

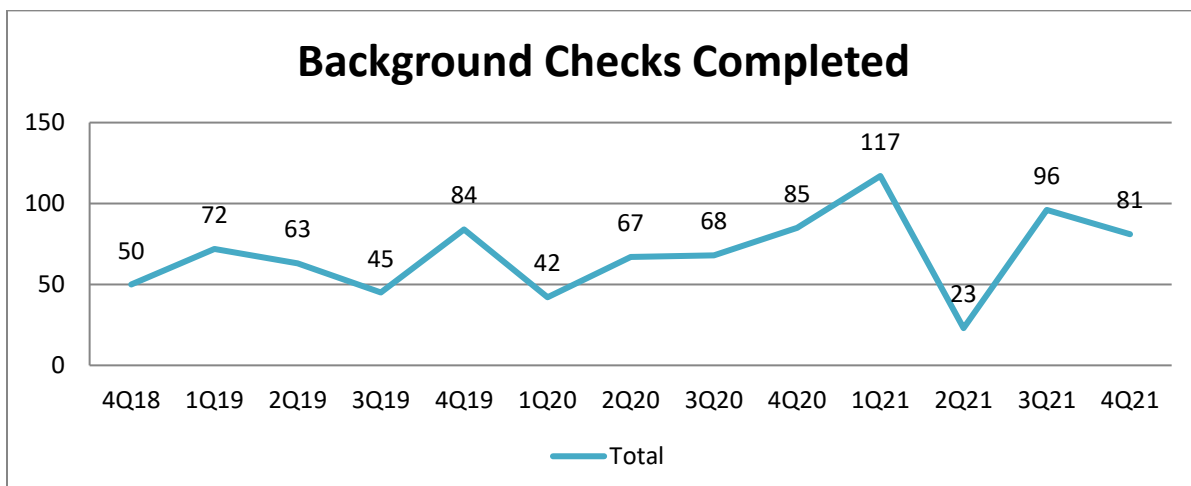
From: Mark Largent, Director of Corporate Activities

Date: September 29, 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 September 28, 2021)
Bank Related	20
Trust Companies	1
Money Services Business (MSB)	26
Others	3
<b>Totals</b>	<b>50</b>

#### Division Highlights

- Application volume remains high and similar to 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 4 (25%)
  - Trust company decreased -1 (50%)
  - MSB related was unchanged 0 (0%)
  - Other decreased -1 (25%)
- The division has several vacancies for analysts and an administrative assistant due to retirements and resignations. On an interim basis, a Bank and Trust Review Examiner with prior corporate analyst experience is assisting with the processing of corporate filings.
- **Charter, Conversion, and Merger Activity** – Since the last report to the Finance Commission, the following transactions have consummated:
  - *Banks*
    - Texas Capital Bank, N.A., Dallas, Texas, converted to a Texas state bank charter under the name of Texas Capital Bank [estimated gain in state banking assets of \$35 billion].  
  
The Bank also became the fourth-largest state-chartered commercial bank in Texas.
    - First United Bank, Dimmitt, Texas, completed its merger with First Bank & Trust of Childress, Childress, Texas [no change in state banking assets].
  - *Trust Companies*
    - None.



Charles G. Cooper  
Commissioner

## TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705  
512-475-1300 / 877-276-5554  
[www.dob.texas.gov](http://www.dob.texas.gov)

To: Finance Commission Members

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

Date: October 1, 2021

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

			FY 2021							
Entity	FY 2020		1 <sup>st</sup>		2 <sup>nd</sup>		3 <sup>rd</sup>		4 <sup>th</sup>	
Industry Profile (# / Assets (billions))										
Money Services Businesses (MSB)	171	\$163.4	181	\$164.1	184	\$163.6	191	\$171.0	196	\$219.2
Prepaid Funeral Contract (PFC)	353	\$4.3	352	\$4.3	354	\$4.5	347	\$4.5	345	\$4.5
Perpetual Care Cemeteries (PCC)	243	\$376.5*	243	\$386.7*	243	\$390.9*	243	\$395.1*	243	\$401.8*
Check Verification Entities (CVE)	2	n/a	2	n/a	2	n/a	2	n/a	2	n/a
Examinations Performed										
MSB	93		24		21		18		16	
MSB Limited Scope	2		1		0		0		0	
MSB Accepted other State	12		0		2		1		2	
PFC	263		61		42		58		69	
PFC Limited Scope	0		0		0		0		0	
PCC	179		51		53		59		49	
PCC Limited Scope	1		0		0		0		0	
Ratings (# / %) Assigned to All Regulated Entities										
1	298	39.84%	294	38.99%	296	39.31%	294	39.41%	288	38.40%
2	391	52.27%	389	51.59%	387	51.39%	379	50.80%	392	52.27%
3	56	7.49%	66	8.75%	67	8.90%	71	9.52%	66	8.80%
4 & 5	3	0.40%	5	0.67%	3	0.40%	2	0.27%	4	0.53%
Noncompliance with Examination Priorities (Past Due)										
MSB	14		3		3		1		1	
PFC	2		2		0		0		0	
PCC	0		0		0		0		0	

### NOTES:

Limited scope examinations do not receive a rating.

\* PCC \$ amounts reflected in the millions.

## Examination Activities

NDS continues to monitor developments related to COVID-19 on Department staff and the MSB, PFC and PCC industries. As a result, NDS continues to primarily conduct all examinations remotely (off-site) and remains flexible when coordinating examinations with license holders. In the MSB area, all multi-state examinations continue off-site and most other state MSB regulators indicate that remote examinations will continue through the end of 2021. The Department remains active and participates in various Multi-state MSB Examination Task Force (MMET) and Money Transmitters Regulators Association (MTRA) working groups impacting the MSB industry. NDS' ability to continue to perform remote examinations has allowed the division to meet all NDS performance measures for the fourth quarter of fiscal year 2021.

Below is additional information on the examination results reflected on previous page of this memorandum.

- No PFC or PCC examinations were past due.
- One past due MSB examination was delayed so that it could be conducted in September 2021 as part of a multi-state examination.
- NDS resumed non-overnight travel in September 2021 in a very limited capacity for PFC and PCC examinations. The decision to travel is based on various risk factors and the review of physical documents is coordinated with license holders.

## Division Activities

- An NDS staff meeting was held virtually in September 2021 to discuss matters affecting regulated industries and to also promote consistency among examiners when conducting regulatory activities. Examiners were provided updates regarding division activities, including personnel updates.
- On August 13<sup>th</sup> and 14<sup>th</sup>, as a member of the State Coordinating Committee (SCC), Director Saucillo participated in the Consumer Financial Protection Bureau (CFPB) – State Coordinating Committee Quarterly Meeting to discuss trends, major developments, key areas of focus, and major findings noted during past examinations. In September 2021, Director Saucillo also attended a CFPB and MTRA MSB examination scheduling call. The SCC is responsible for coordinating the supervision of activities related to MSBs, mortgage, debt collection, and payday lending with the CFPB.
- On August 31<sup>st</sup>, September 1<sup>st</sup>, and 2<sup>nd</sup>, Department staff attended the virtual 2021 MTRA Annual Conference. The conference provided an opportunity for MTRA member states to discuss topics impacting MSB regulation. Presentations impacting MSBs, such as the One Company, One Exam initiative, network supervision, and cybersecurity threats were provided and discussed. Also in August 2021, Director Saucillo was elected as a member of the MTRA Board of Directors.
- During the week of September 20<sup>th</sup>, Department staff participated in the virtual CSBS Strategic Planning Meeting. Primary discussion topics were cryptocurrency, cybersecurity, and MSB networked supervision.

- Through active participation in the Regulator Industry Clearing House Working Group, Department staff collaborated with CSBS in the development of the CSBS Uniform Money Transmission Modernization Act, also known as the Money Transmitter Model Law. The Money Transmitter Model Law was approved by the CSBS Board in August 2021.
- In September 2021, one PFC/PCC Financial Examiner and two MSB Financial Examiners began their employment with the Department. The division is now fully staffed and is focusing its efforts to effectively train staff remotely.





Charles G. Cooper  
Commissioner

## **TEXAS DEPARTMENT OF BANKING**

2601 North Lamar Blvd., Austin, Texas 78705

512-475-1300 / 877-276-5554

[www.dob.texas.gov](http://www.dob.texas.gov)

### **Memorandum**

**To:** Finance Commission Members

**From:** Lori Wright, Director of Human Resources

**Date:** September 29, 2021

**Subject:** Summary of the Human Resources Division Activities

### **Human Resources Fiscal Year 2021 Activities**

<b>Active Postings</b>				
<b>Number of Positions</b>	<b>Position</b>	<b>Division</b>	<b>Status</b>	<b>Activities</b>
1	Administrative Assistant V	Corporate Activities	Closing 10/11/2021	Extended
1	Programmer V	MIS	Open Until Filled	
1	Financial Examiner I-II <i>Assistant IT Security Examiner</i>	Bank and Trust	Closing 10/15/2021	
1	Financial Examiner VI-VII <i>IT Security Examiner</i>	Bank and Trust	Open Until Filled	
1	Financial Examiner V-VI <i>Corporate Analyst</i>	Corporate Activities	Open Until Filled	
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	

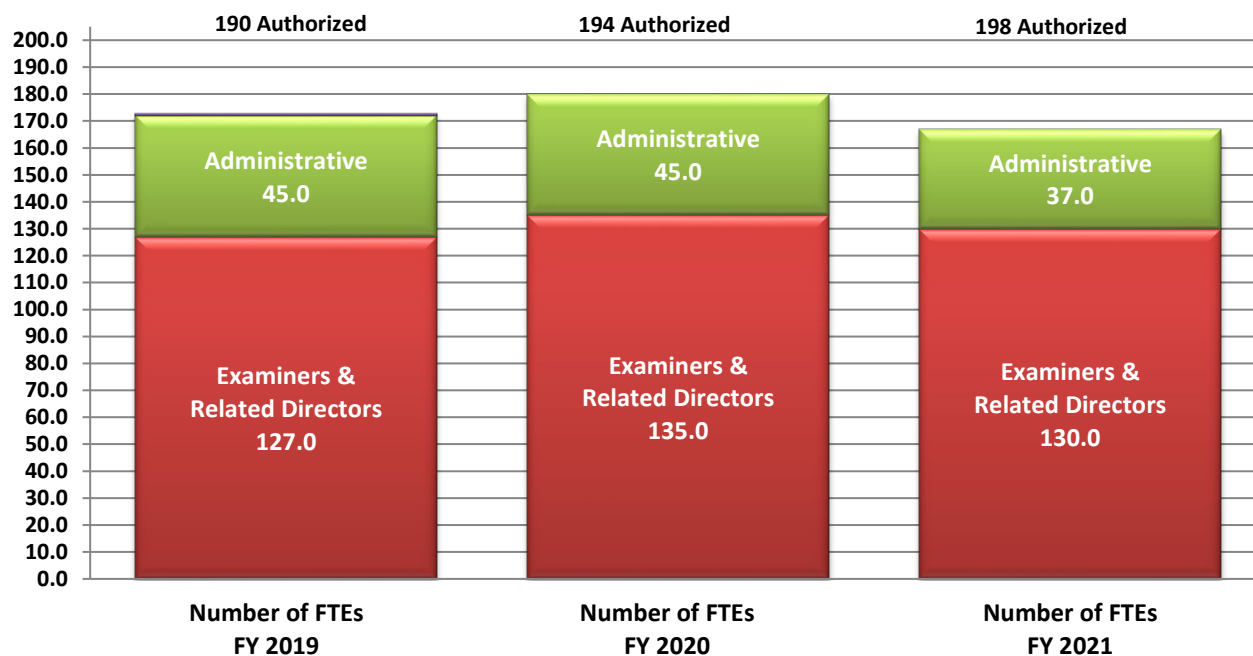
#### CAPPS

Attending CAPPS HR/Payroll discovery meetings

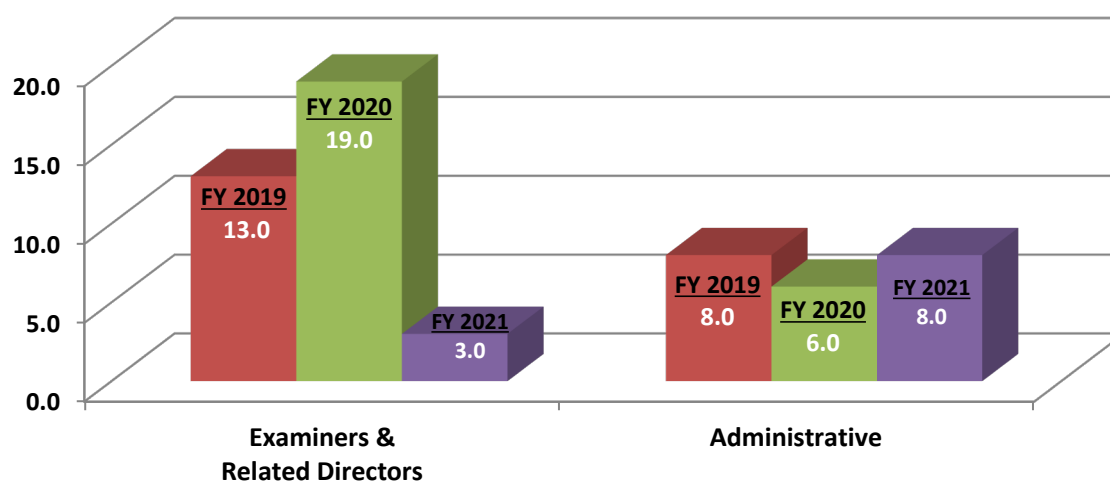
#### Staff Update

Hired Staffing/Recruiting Specialist

## Texas Department of Banking Employee Data for Fiscal Years 2019, 2020 and 2021 as of 08/31/2021

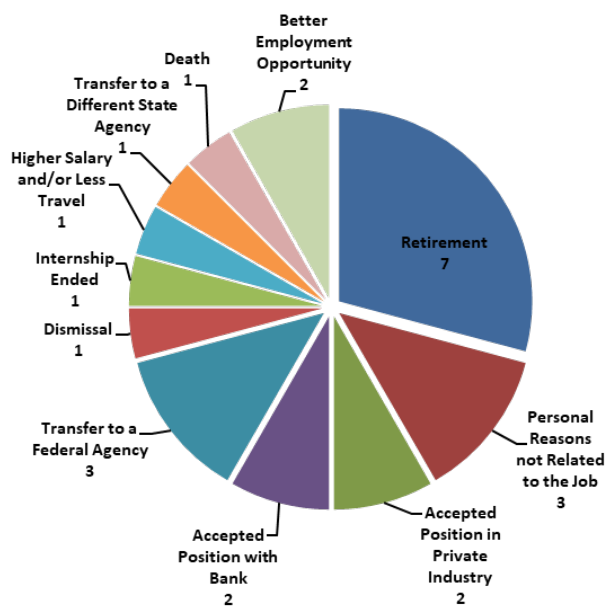


## New Hire Data for Fiscal Years 2019, 2020 and 2021

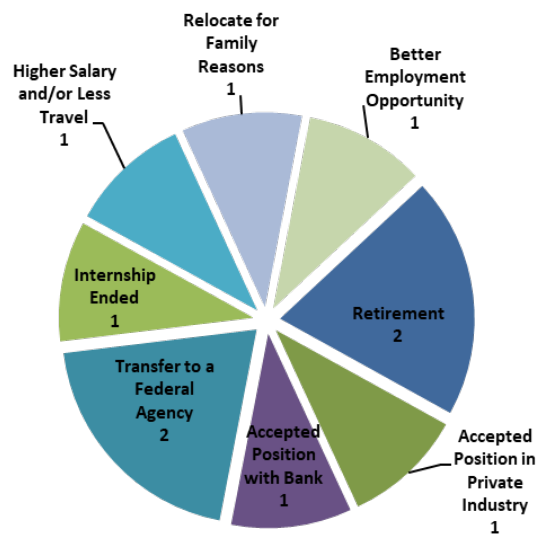


## FY 2021 Employee Turnover Reasons

All Employees  
24 Resignations



Financial Examiners Only  
10 Resignation



As of 08/31/2021

**ACTUAL PERFORMANCE FOR OUTCOME MEASURES**

**TEXAS DEPARTMENT OF BANKING**

**FISCAL YEAR 2021**

**8/31/2021**

**Actual Performance for Outcome Measures**  
**Fiscal Year 2021**  
**For Period Ending August 2021**

Type/Strategy/Measure	2021 Target	2021 YTD	Percent of Annual Target	
<b>Outcome Measures - Key</b>				
1-1 QUALITY BANK REGULATION				
1. % BANKS EXAMINED	95.00%	94.56%	99.54%	
1-2 QUALITY NON-BANK REGULATION				
1. % MSB LICENSEES EXAMINED	90.00%	99.41%	110.46%	*
The Division exceeded the FY 2021 target primarily due to the amendment of the Department's examination cycle for Money Services Businesses (MSB), which extended the examination cycle for Money Transmitters (MT) by six months for 1, 2, and 3 rated entities. As outlined in Supervisory Memorandum 1023, which was revised on September 1, 2020, the examination cycle of MTs was expanded to allow the Department to better coordinate multi-state examinations of MSBs licensed in multiple states.				
2. % PFC LICENSEES EXAMINED	95.00%	100.00%	105.26%	*
The Division exceeded the FY 2021 target because of being able to retain a fully trained and knowledgeable examination staff for most of FY 2021. Note: an FE IV resigned effective July 31, 2021, but the schedules of remaining examiners were adjusted accordingly in August.				
3. % PCC LICENSEES EXAMINED	95.00%	100.00%	105.26%	*
The Division exceeded the FY 2021 target because of being able to retain a fully trained and knowledgeable examination staff for most of FY 2021. Note: an FE IV resigned effective July 31, 2021, but the schedules of remaining examiners were adjusted accordingly in August.				
1-3 APPLICATION PROCESSING				
1. % B&T, MSB APPS COMPLETED	95.00%	95.47%	100.49%	
1-4-1 APPLICATION PROCESSING				
1. % WRITTEN COMPLAINTS CLOSED	100.00%	100.00%	100.00%	
1-5 OPERATIONAL EFFICIENCY				
1. % REGULAR EMPLOYEES SEPARATED	11.00%	13.45%	122.27%	*
The measure is not within target due to the unusual number of retirements and voluntary turnover during the pandemic.				
3. % ACTUAL EXPENDITURES TO BUDGETED	95.00%	88.00%	92.63%	*
The measure is not within target due to salary lapse, lower travel and training expenditures due to the pandemic, and lower professional services than budgeted.				

\*Varies by 5% or more from target.

**ACTUAL PERFORMANCE FOR EXPLANATORY MEASURES**

**TEXAS DEPARTMENT OF BANKING**

**FISCAL YEAR 2021**

**8/31/2021**

**Actual Performance for Explanatory Measures**  
**Fiscal Year 2021**  
**For Period Ending August 2021**

Type/Strategy/Measure	2021 Target	2021 YTD	Percent of Annual Target
<b>Explanatory Measure - Key</b>			
1-1-1 BANK EXAMINATION			
1. % BANKS CLASSIFIED SAFE & SOUND	95.00%	95.35%	100.37%

\*Varies by 5% or more from target.

**ACTUAL PERFORMANCE FOR OUTPUT/EFFICIENCY MEASURES**

**TEXAS DEPARTMENT OF BANKING**

**FISCAL YEAR 2021**

**8/31/2021**



**Department of Banking**  
**Actual Performance for Output Measures**  
**Fiscal Year 2021**

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target		Comparable Historical Data for the same time period			
						FY2020	FY2019	FY2018	FY2017
<b>Output Measures-Key</b>									
<b>1-1-1 Bank Examination</b>									
<b>1. # Bank Examinations Performed</b>									
Quarter 1	89	27	27	30.34%	*				
Quarter 2	89	20	47	52.81%					
Quarter 3	89	19	66	74.16%					
Quarter 4	89	25	91	102.25%		81	101	32	27
FY 2021, Quarter 1 - The number of bank examinations for quarter one was corrected from 26 to 27 to reflect accurate data.									
The number of bank examinations is above the target due to performing more joint examinations than projected.									
<b>2. # Foreign/Trust/IT Examinations Performed</b>									
Quarter 1	197	58	58	29.44%					
Quarter 2	197	45	103	52.28%					
Quarter 3	197	64	167	84.77%	*				
Quarter 4	197	40	207	105.08%	*	194	226	47	42
FY 2021, Quarter 3 - The measure is above the target due to performing more IT examinations than anticipated this quarter.									
FY 2021, Quarter 4 - The measure is above the target due to performing more IT examinations than anticipated this quarter.									
<b>1-2-1 Non-Bank Examination</b>									
<b>1. # NDS Licensees Examined</b>									
Quarter 1	550	137	137	24.91%					
Quarter 2	550	118	255	46.36%					
Quarter 3	550	136	391	71.09%					
Quarter 4	550	136	527	95.82%		550	565	124	120
<b>1-3-1 Application Processing</b>									
<b>1. # License Applications Completed</b>									
Quarter 1	298	85	85	28.52%					
Quarter 2	298	83	168	56.38%	*				
Quarter 3	298	92	260	87.25%	*				
Quarter 4	298	93	353	118.46%	*	327	343	104	87
FY 2021, Quarter 2 - The number of subsidiary, money services business, and conversion filing activities exceeded expectations.									
FY 2021, Quarter 3 - The output measure is approximately 12.3% above target due to an overall increase in corporate related activities. Most notably, applications and notices are above target through the third quarter for subsidiary and Money Services Businesses filings.									
FY 2021, Quarter 4 - The output measure is approximately 18.5% above budget for the fiscal year. The higher than anticipated number of corporate filings were primarily the result of Money Services Businesses charter and change of control filings, Bank-related change of control filings, and Loan Production Office-related filings.									

**Actual Performance for Non-Key Measures  
Fiscal Year 2021  
For Period Ending August 2021**

Type/Strategy/Measure	2021 Target	2021 YTD	Percent of Annual Target
-----------------------	----------------	-------------	-----------------------------

**Non-Key Measures**

**1-1-1 BANK EXAMINATION**

2. % FOREIGN BANK AGENCIES EXAMINED	70.00%	66.67%	95.24%	
3. % TRUST COMPANIES EXAMINED	85.00%	100.00%	117.65%	*
The number of trust companies receiving examinations when due is higher than the target due to successfully training staff and effectively resuming examinations within required timeframes.				
4. % PROBLEM INSTITUTIONS WITH APPROPRIATE SUPERVISORY ACTIONS IN PLACE	100.00%	100.00%	100.00%	
5. CERTIFICATE OF ACCREDITATION BY CSBS MAINTAINED IN GOOD STANDING	YES	YES	YES	
8. AVERAGE COST PER BANK EXAMINATION	\$98,380.00	\$88,000.46	89.45%	*
The average cost per bank examination is lower than the target due to examination travel not starting as expected in December 2020 which decreased the cost per bank examination.				
9. ASSETS EXAMINED PER EXAMINER DAY (IN MILLIONS)	\$10.95	\$11.90	108.68%	*
The assets examined per examiner day is higher than target due to greater assets examined than anticipated this fiscal year.				
11. # STATE-CHARTERED BANKS IN TEXAS	207	215	103.86%	
12. TOTAL ASSETS IN TEXAS STATE-CHARTERED BANKS (IN BILLIONS)	\$319.60	\$363.00	113.58%	*
The total assets in Texas state-chartered banks is higher than target due to an increase in total assets related to conversions (3), growth, and Paycheck Protection Program loans.				

**1-2-1 NON-BANK EXAMINATION**

4. % PCC AND PFC APPLICATIONS COMPLETED WITHIN STATUTORY PERIOD	95.00%	100.00%	105.26%	*
The Division exceeded the FY 2021 target because of being able to retain a fully trained PFC/PCC staff to process applications timely.				
6. AVERAGE DIRECT COST PER PFC AND PCC LICENSEE EXAMINATION	\$2,750.00	\$2,547.23	92.63%	*
The Division's average cost per PFC/PCC examination was less than target amount in FY 2021 primarily due to examinations being conducted off-site. As a result, there were no travel expenses incurred while the Department performed examinations off-site.				
7. AVERAGE DIRECT COST PER MSB LICENSEE EXAMINATION	\$9,500.00	\$12,826.54	135.02%	*
The Division's average cost per MSB examination was more than target amount in FY 2021 due to having two MSB examiners in training. Note: the target average cost per MSB examination was increased in FY 2022 in consideration of additional MSB examiners hired.				

**Actual Performance for Non-Key Measures  
Fiscal Year 2021  
For Period Ending August 2021**

Type/Strategy/Measure	2021 Target	2021 YTD	Percent of Annual Target
-----------------------	----------------	-------------	-----------------------------

**Non-Key Measures**

8. DOLLAR AMOUNT OF PREPAID FUNERAL CONTRACTS IN FORCE (IN BILLIONS)	\$4.3	\$4.5	104.65%
9. NUMBER OF NDS LICENSEES	760	784	103.16%
10. PERCENTAGE OF NDS LICENSEES CLASSIFIED SAFE AND SOUND	95.00%	99.50%	104.74%

**1-3-1 APPLICATION PROCESSING**

2. # WRITTEN COMPLAINTS CLOSED	225	225	100.00%
--------------------------------	-----	-----	---------

**1-4-1 REGULATORY OVERSIGHT**

3. # FC MEETINGS CONVENED	6	6	100.00%
---------------------------	---	---	---------

**1-5-1 OPERATIONAL EFFICIENCY**

2. % REGULAR EMPLOYEES SEPARATED (EXCLUDING RETIREMENTS)	9.00%	9.53%	105.89%
Unusual number of retirements and voluntary turnover following pandemic.			



Charles G. Cooper  
Commissioner

## TEXAS DEPARTMENT OF BANKING

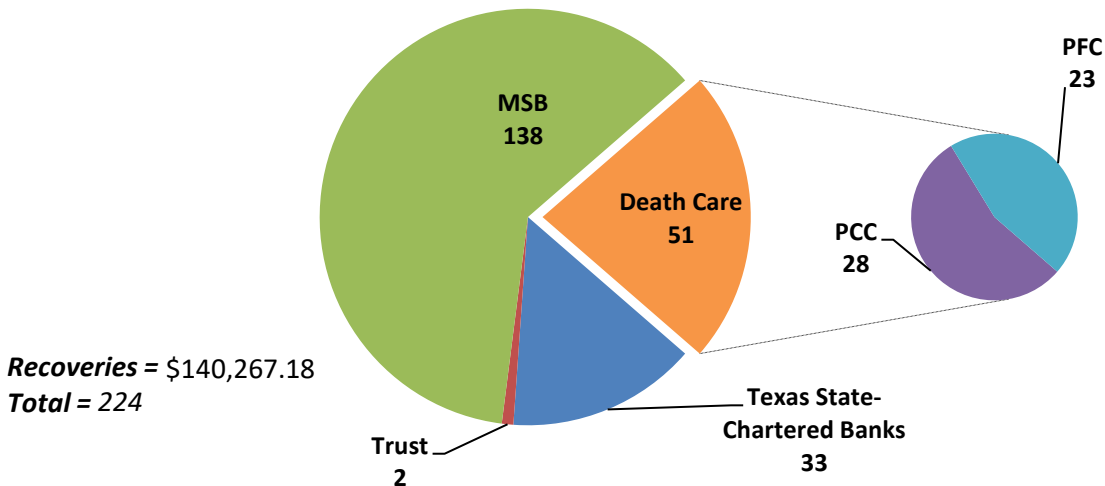
2601 North Lamar Blvd., Austin, Texas 78705

512-475-1300 / 877-276-5554

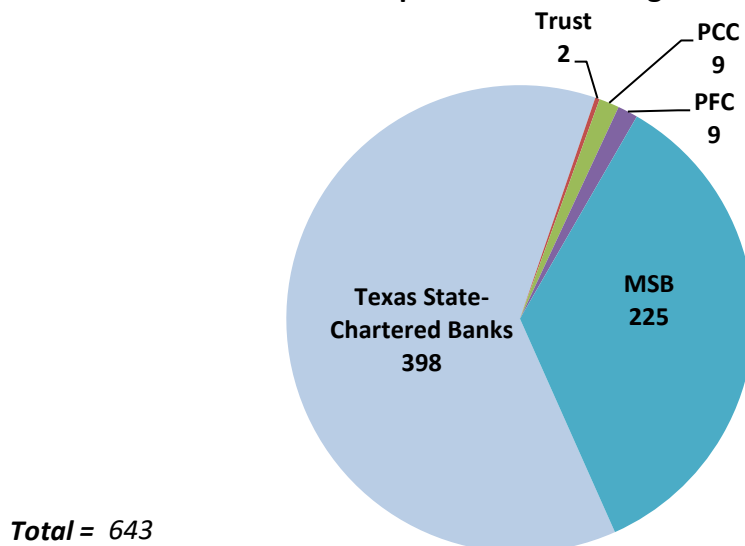
[www.dob.texas.gov](http://www.dob.texas.gov)

**To:** Finance Commission Members  
**From:** Phil Lena, Financial Analyst  
**Date:** September 30, 2021  
**Subject:** Summary of the Strategic Support Division Activities

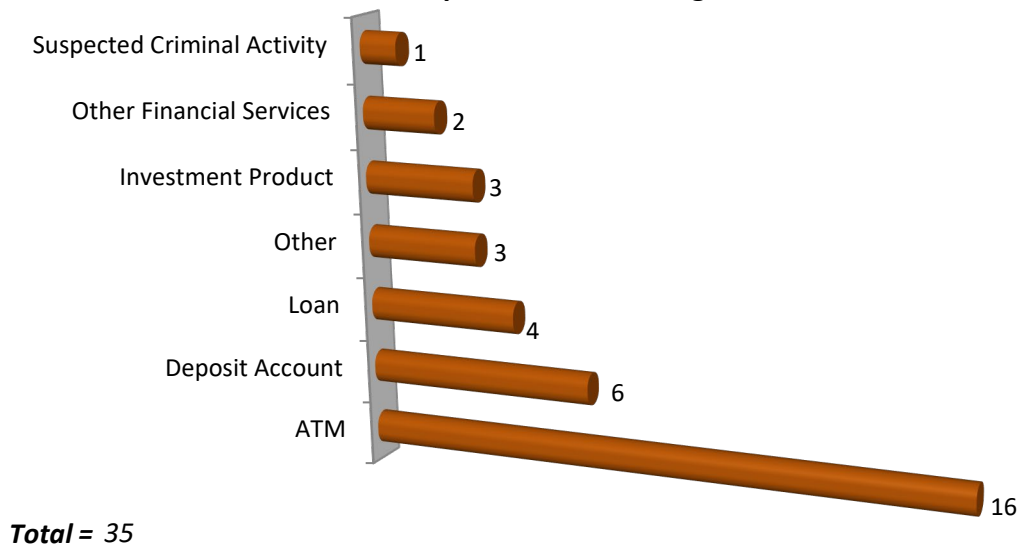
### Jurisdictional Written Complaints September 2020 - August 2021



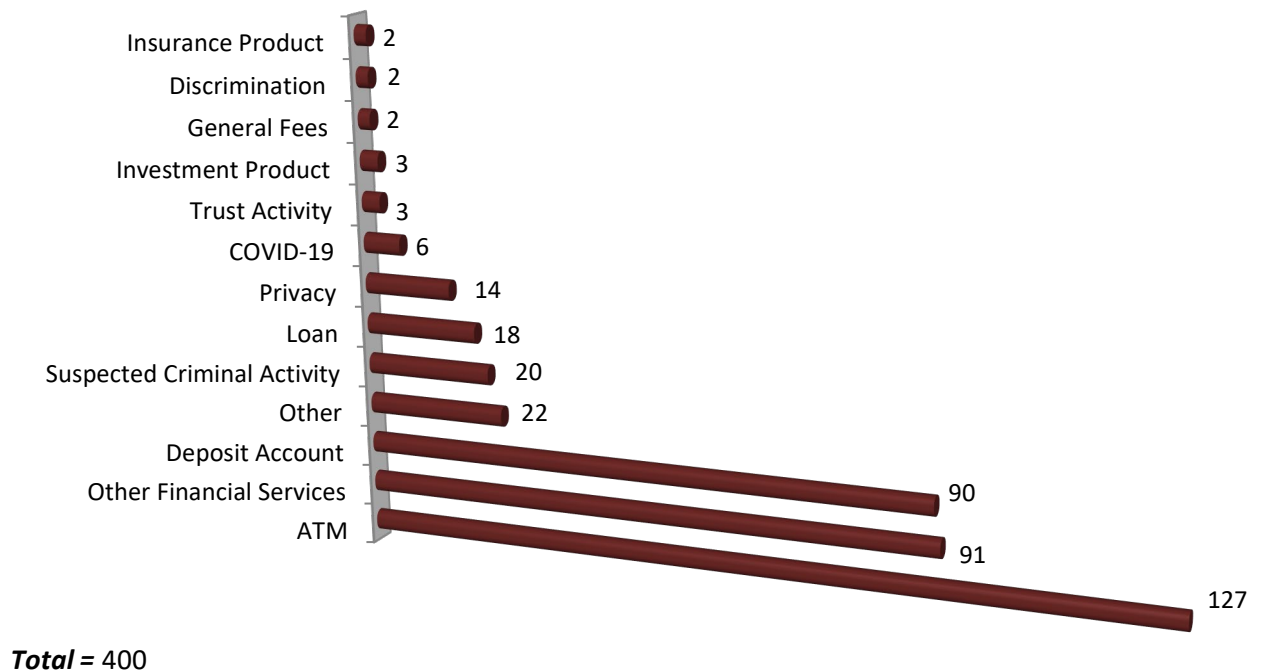
### Inquiries on Jurisdictional Entities September 2020 - August 2021



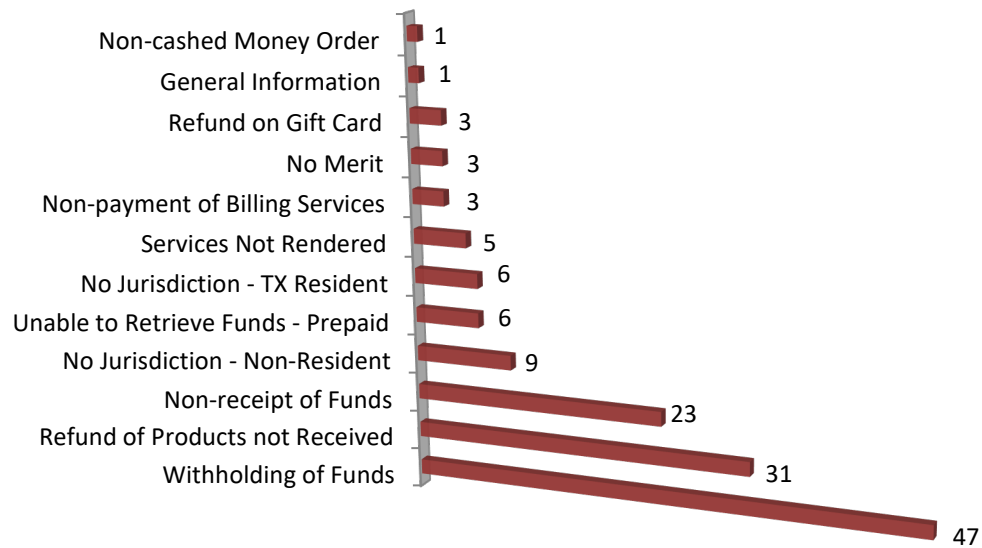
**State-Chartered Banks and Trust Companies  
Written Complaints by Type  
September 2020 - August 2021**



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

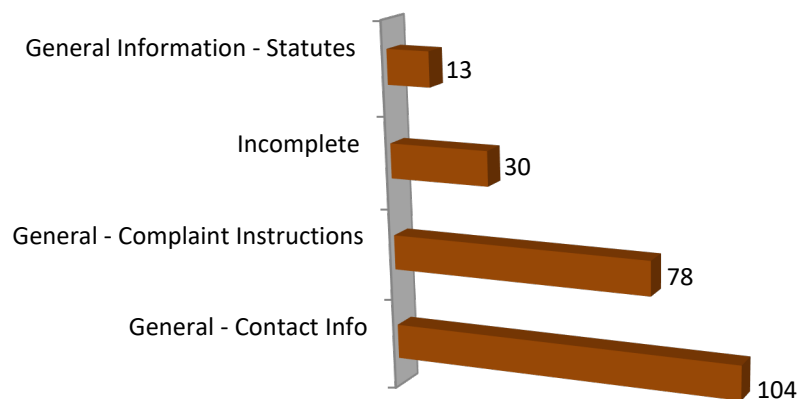


**Money Services Businesses  
Written Complaints by Type  
September 2020 - August 2021**



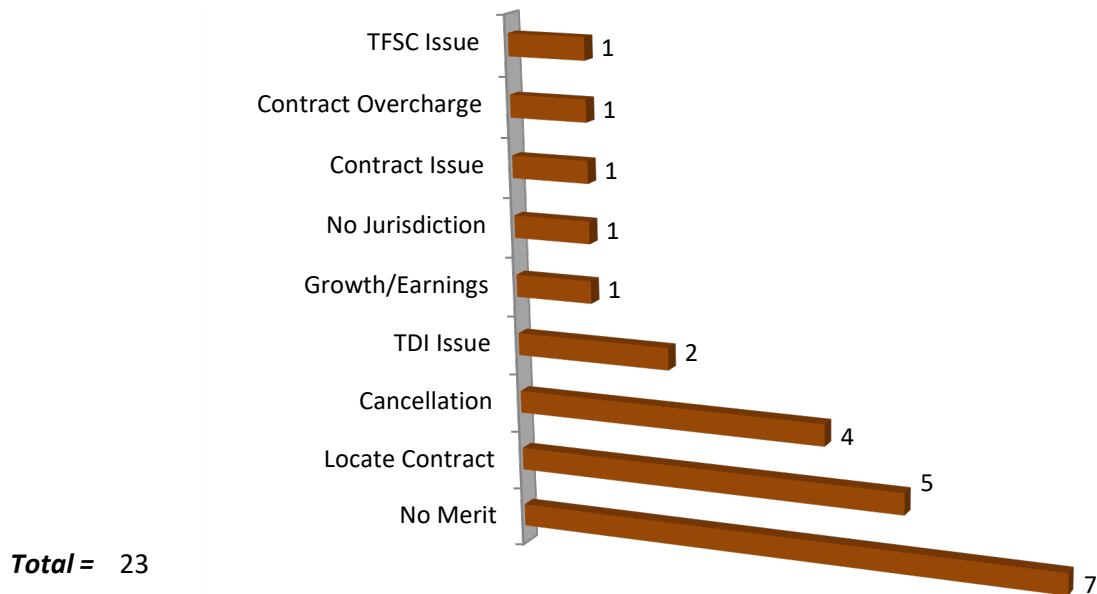
**Total = 138**

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

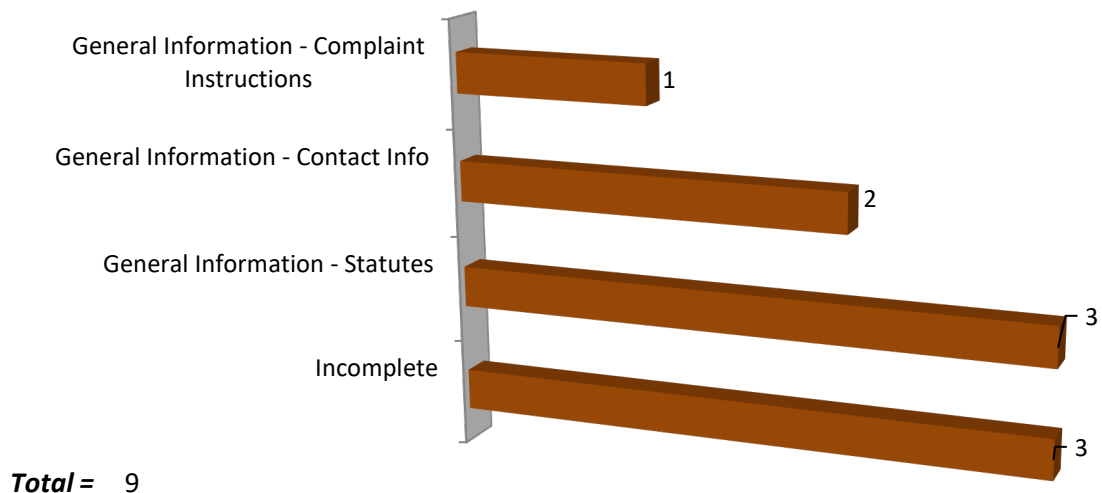


**Total = 225**

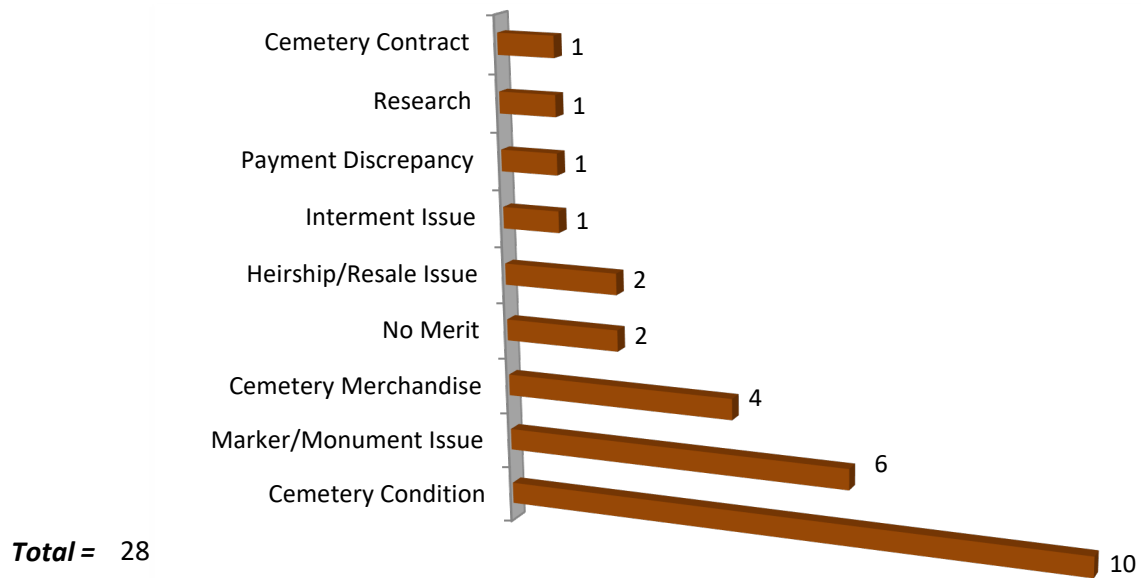
**Prepaid Funeral Contract Sellers  
Written Complaints by Type  
September 2020 - August 2021**



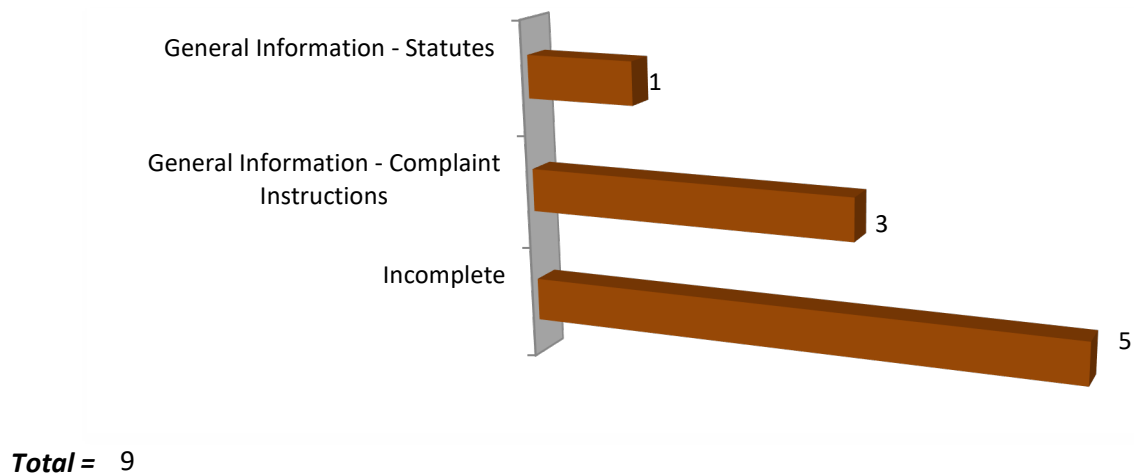
**Prepaid Funeral Contract Sellers  
Inquiries by Type  
September 2020 - August 2021**



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

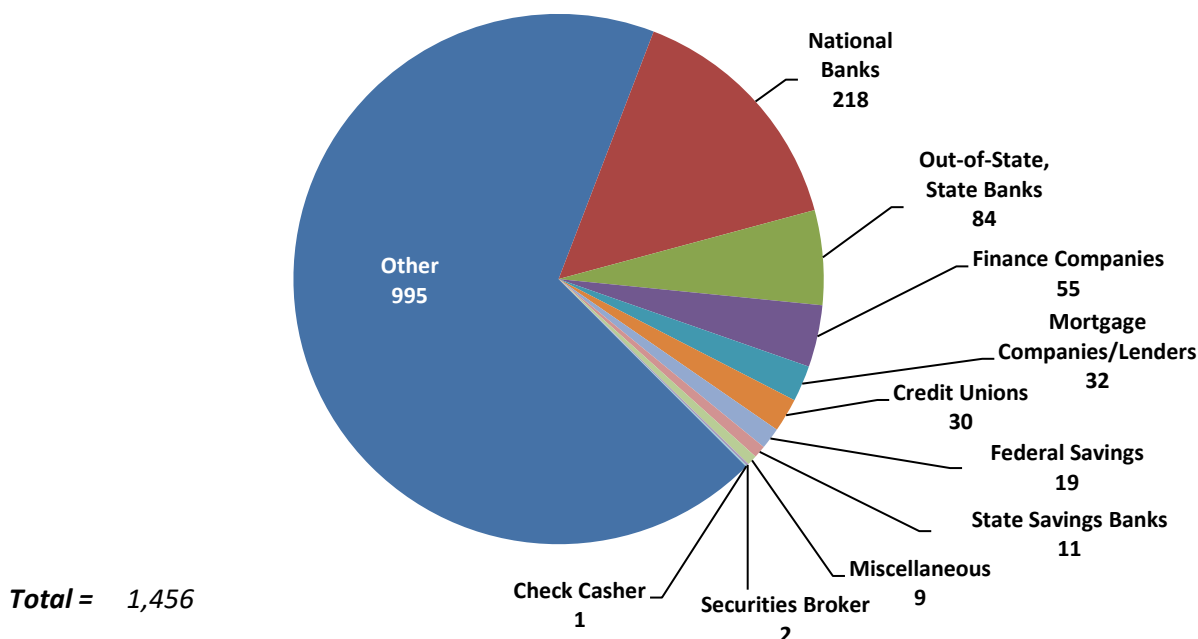


**Perpetual Care Cemeteries  
Inquiries by Type  
September 2020 - August 2021**





### Complaints and Inquiries Against Non-Jurisdictional Entities September 2020 - August 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
<b>State-Chartered Banks</b>				
Avg. Number of Days to Close a Written Complaint	55	42	57	21
Percentage of Written Complaints Resolved Within 90 days	100%	100%	100%	100%
Number of Written Complaints Resolved	10	7	7	10
<b>Trust</b>				
Avg. Number of Days to Close a Written Complaint	N/A	N/A	N/A	22
Percentage of Written Complaints Resolved Within 90 days	N/A	N/A	N/A	100%
Number of Written Complaints Resolved	N/A	N/A	N/A	2
<b>PFC/PCC</b>				
Avg. Number of Days to Close a Written Complaint	22	23	22	25
Percentage of Written Complaints Resolved Within 90 days	100%	100%	100%	100%
Number of Written Complaints Resolved	15	6	14	16
<b>MSB</b>				
Avg. Number of Days to Close a Written Complaint	24	25	24	20
Percentage of Written Complaints Resolved Within 90 days	100%	100%	100%	100%
Number of Written Complaints Resolved	27	30	49	32

### Closed Account Notification System (CANS) ACTIVITY

January 1, 2018 – September 28, 2021

Entity	Enrolled	Compromised Accounts Reported
Texas State-Chartered Banks	191	355
Texas State-Chartered Savings Banks	22	60
Federal Savings Banks	10	0
State Credit Unions	133	697
Federal Credit Unions	229	327
National Banks	171	113
Out-of-State State-Chartered Banks	12	110
Out-of-State National Banks	6	0
<b>Total</b>	<b>774</b>	<b>1,662</b>

### Bank Examination Testing System (BETS) Activity

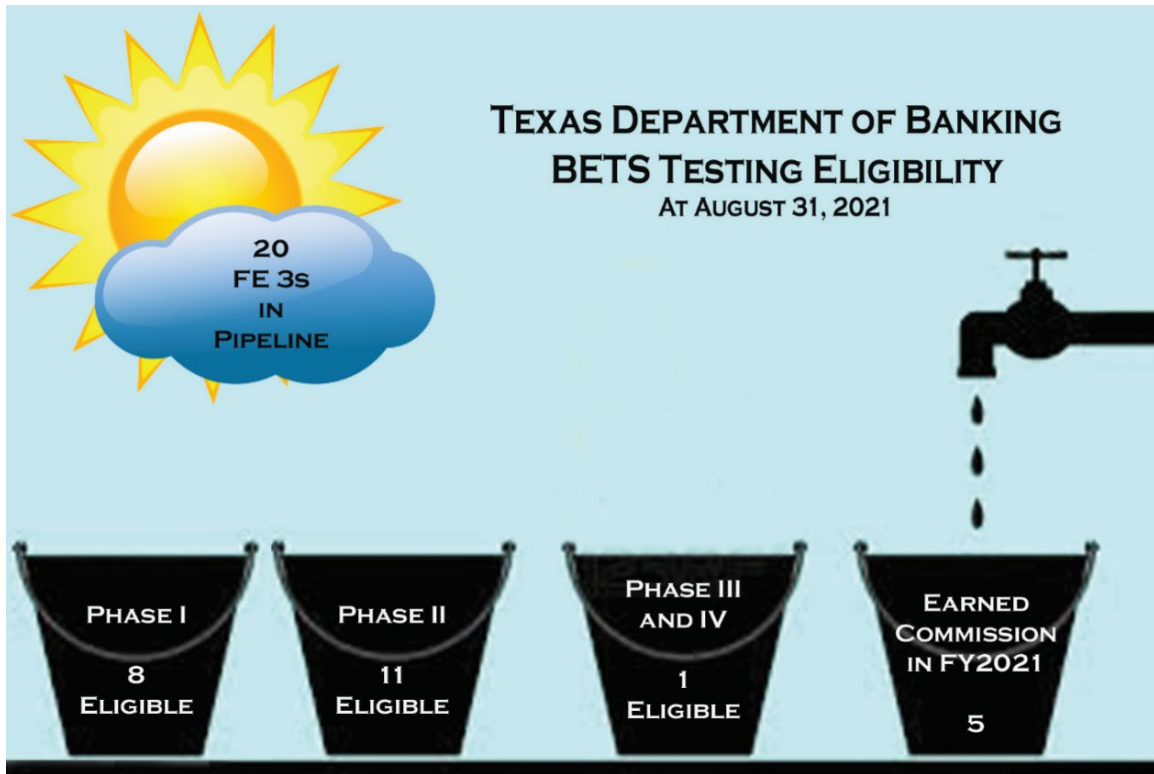
Number of Candidates Passing Each Phase

	FY 2018	FY 2019	FY 2020	FY 2021
I. General Knowledge	6	3	4*	6
II. Loan Analysis	3	5	7	1
III. Panel	2	5	10	3
IV. Test Bank	3	4	7	5
<b>Total FE3</b>	<b>22</b>	<b>19</b>	<b>15</b>	<b>17</b>

### Promotions

<b>Commissioned Examiners</b>	2	5*	7	5
-------------------------------	---	----	---	---

\*Includes a FE V Credit Specialist

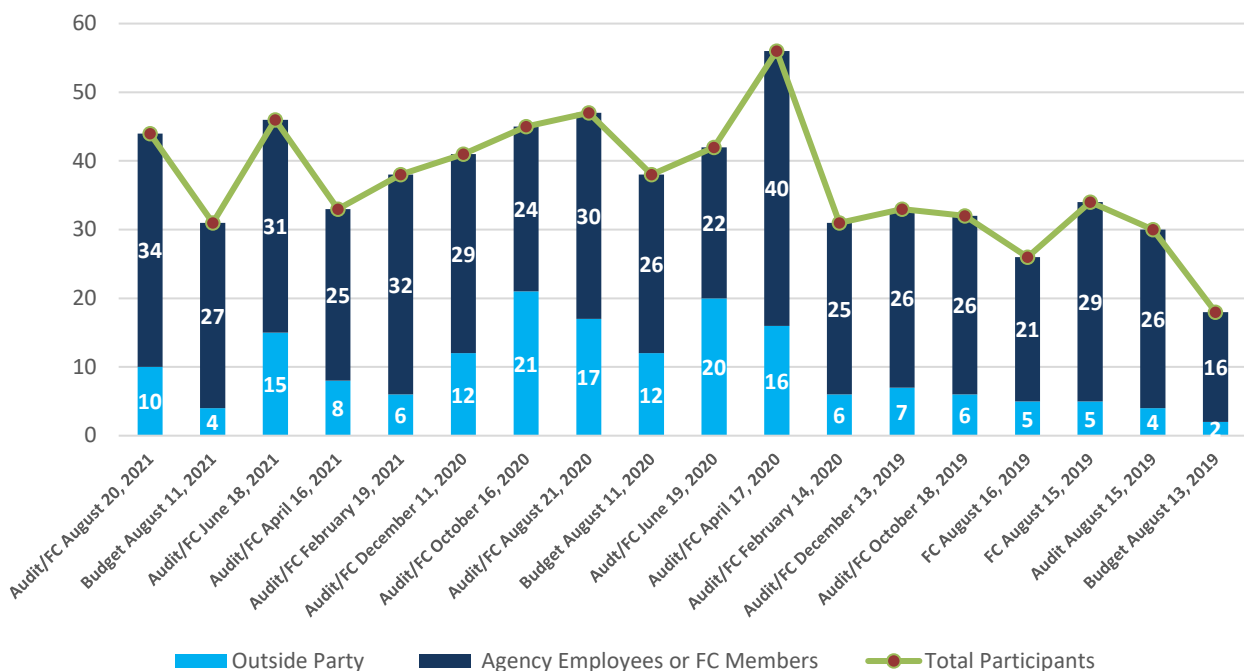


**Other Divisional Items:**

- *Staffing*
  - Ms. Sheon Corley accepted the position of Program Supervisor of Consumer Assistance effective September 1, 2021.
- *Second and Third Special Legislative Sessions*
  - Governor Greg Abbott convened a Second Special Session on August 7, 2021, with 17 agenda items. Another item was added to the agenda by Governor Abbott on August 25, 2021. The special session concluded on September 3, 2021, with legislators filing 380 bills and joint resolutions. Of these, 15 passed during the special session. These bills do not impact the Department or regulated entities.
  - A Third Special Legislative Session was convened by Governor Greg Abbott on Monday, September 20, 2021, with five agenda items. Two additional items were added on September 22, 2021. The House and Senate are conducting hearings and the Department is tracking several bills related to the following agenda item: Legislation regarding whether any state or local governmental entities in Texas can mandate that an individual receive a COVID-19 vaccine and, if so, what exemptions should apply to such mandate.
- *Publications*
  - The September 2021 edition of the [Condition of the Texas State Banking System](#) report is available with financial data as of June 30, 2021.

- The following were updated with June 30, 2021 financial data:
  - [Agency Profile](#) – An overview of the Department and its regulated and licensed entities.
  - [Texas Banking Activity](#) – Contains all state and national banking activity in Texas.
  - [Top 100 Banks](#) – List of Texas banks by asset size.
- *Examination Procedure Updates*
  - *IT examiners are field testing new payments workprograms for ACH and Wire Transfer during September and October 2021.*
- *Website Statistics for Fiscal Year*
  - The Texas Department of Banking website had 402,137-page views of the homepage. The top three pages were the Entity Search (28,728-page views), Applications and Forms (8,601-page views) and Contact Us (9,664-page views). The financial education webpage had 946-page views during the same period. Users are accessing the site via mobile (57,385), desktop (46,119), and tablet devices (1,478).
  - The Finance Commission website had 23,492-page views. The top three visited pages were the Home Page (7,126-page views), Finance Commission Meetings (2,839-page views), and 2021 Meetings Archive (902-page views). Users are accessing the site via desktop (4,148), mobile (2,207), and tablet devices (83).
  - The Texas Prepaid Funeral Contracts website had 43,926-page views of the homepage. The top three pages after the home page were General Information (6,499-page views), Prepaid Planning Brochure (3,394-page views) and FAQs (2,150-page views). Users are accessing the site via mobile (10,660), desktop (7,916), and tablet devices (704).

## Finance Commission Webcast Historical Data





Charles G. Cooper  
Commissioner

## ***TEXAS DEPARTMENT OF BANKING***

2601 North Lamar Blvd., Austin, Texas 78705

512-475-1300 / 877-276-5554

[www.dob.texas.gov](http://www.dob.texas.gov)

### **Memorandum**

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

---

#### **Litigation**

There are no pending litigation matters at this time.

#### **Contested Case Hearings**

No cases are currently docketed for administrative hearing at this time. Several investigations are pending.

#### **Orders Issued 8/1/21 – 9/30/21**

No enforcement orders were issued during this time period.

#### **Public Information Requests**

From August 1, 2021 through September 30, 2021, staff received and responded to 22 requests for public information addressed to the Department of Banking, and received 14 inquiries from the “Ask a Question” feature.

#### **Gifts**

Commissioner Charles G. Cooper and Director of Bank and Trust Supervision Dan Frasier received complimentary registration (value \$990.00) to attend the Independent Bankers Association of Texas Conference September 18-21, 2021 in Austin.

Commissioner Cooper also received complimentary registration (value \$445) to attend the Texas Bankers Association Convention August 25-27, 2021 in Austin.

**FY 2021 Quarterly Order Activity**

<b>Type of Action</b>	<b>1st</b>	<b>2nd</b>	<b>3rd</b>	<b>4th</b>
Consent Order	1	1	0	0
Cease & Desist	0	0	1	0
Supervision	1	0	0	0
Prohibition	0	1	1	0
Total	2	2	2	0

<b>Type of Action</b>	<b>1st</b>	<b>2nd</b>	<b>3rd</b>	<b>4th</b>
Consent Order	0	0	0	0
Cease & Desist	0	0	0	0
Supervision	0	0	0	0
Prohibition	0	0	0	0
Total	0	0	0	0

<b>Type of Action</b>	<b>1st</b>	<b>2nd</b>	<b>3rd</b>	<b>4th</b>
Consent Order	7	5	0	1
Cease & Desist	0	0	0	0
Final Order after hearing	0	0	0	0
Total	7	5	0	1

<b>Type of Action</b>	<b>1st</b>	<b>2nd</b>	<b>3rd</b>	<b>4th</b>
Consent Order	0	0	0	0
Cease & Desist	0	0	0	0
Refusal to Renew Cert/Auth	0	0	0	0
Final Order after hearing	0	0	0	0
Total	0	0	0	0

<b>Type of Action</b>	<b>1st</b>	<b>2nd</b>	<b>3rd</b>	<b>4th</b>
Consent Order	0	0	0	0
Cease & Desist	0	0	1	0
Total	0	0	1	0

**Projected Future Rule Actions:**

*December 2021*

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

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

**C.**

**Office of Consumer Credit  
Commissioner**

*This page left blank intentionally.*



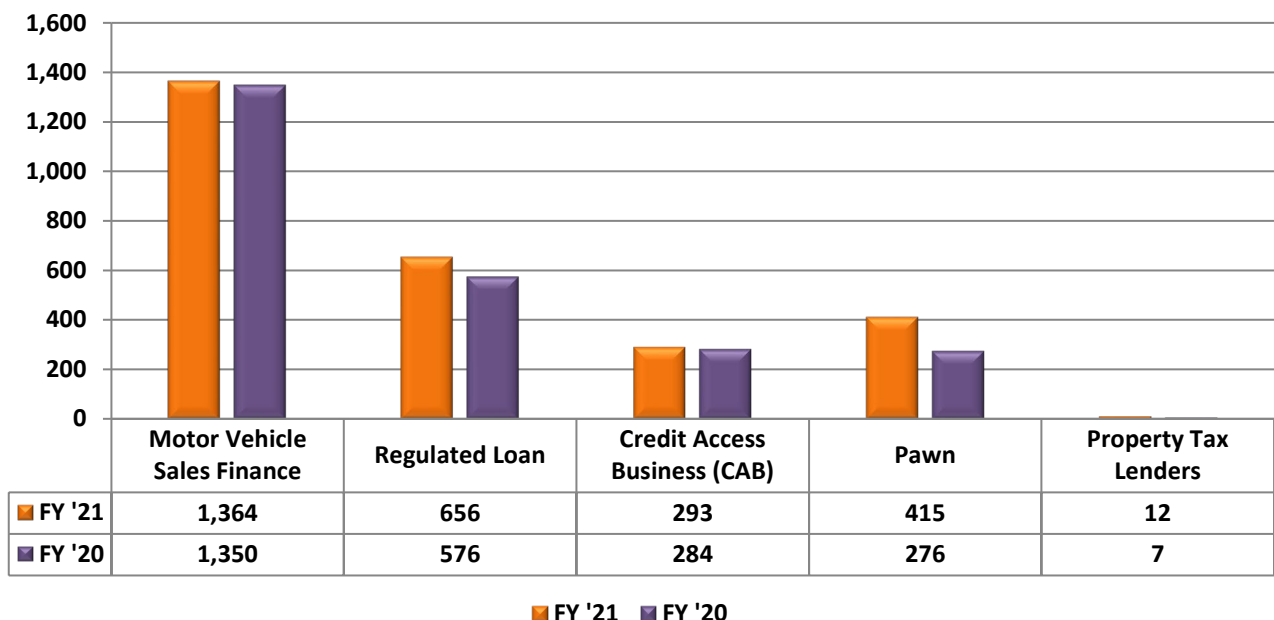
## Consumer Protection and Consumer Assistance Report

The OCCC's examination performance exceeded production targets for fiscal year 2021 in all individual license categories except Property Tax Lender examinations. However, the overall examination production was 109.6% of target. A multi-state auto finance exam has been completed. The report is currently in review among the participating states. This examination is being conducted in coordination with the Consumer Financial Protection Bureau (CFPB). A second multi-state auto finance exam is well underway. The participating states have communicated their document requests and sampling requirements to the company. 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 completed its participation in a new Multi-State Mortgage Exam in September. The OCCC's initiative to attain re-accreditation under the Conference of State Bank Supervisors Accreditation Program is complete. The agency successfully sustained its Accredited Mortgage Regulator status.

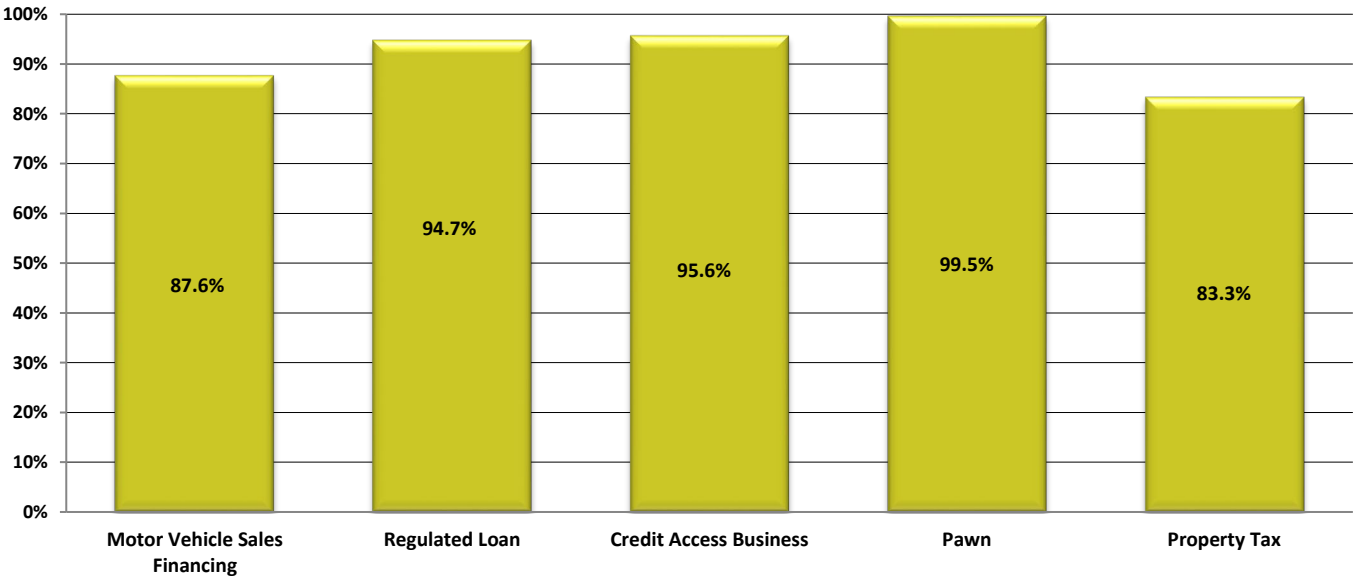
Staff development and retention remains a primary focus area. Seven financial examiners (FE) were promoted during fiscal year 2021. One examiner was promoted to FE II, five examiners were promoted to FE III, and one examiner was promoted to FE IV. Our experienced non-supervisory field exam staff now consists of six FE IV's, and 12 FE III's. Three FE I's were hired August 2, 2021. They are expected to be certified in pawn shop and 342-F examinations by the end of October 2021. They will begin training in Motor Vehicle Sales Finance examination late in October 2021 continuing through calendar year end. The agency is targeting their Motor Vehicle Sales Finance examination certifications for the end of the second quarter (February 2022).

### Examinations Conducted: Sept - Aug Fiscal Year Comparison

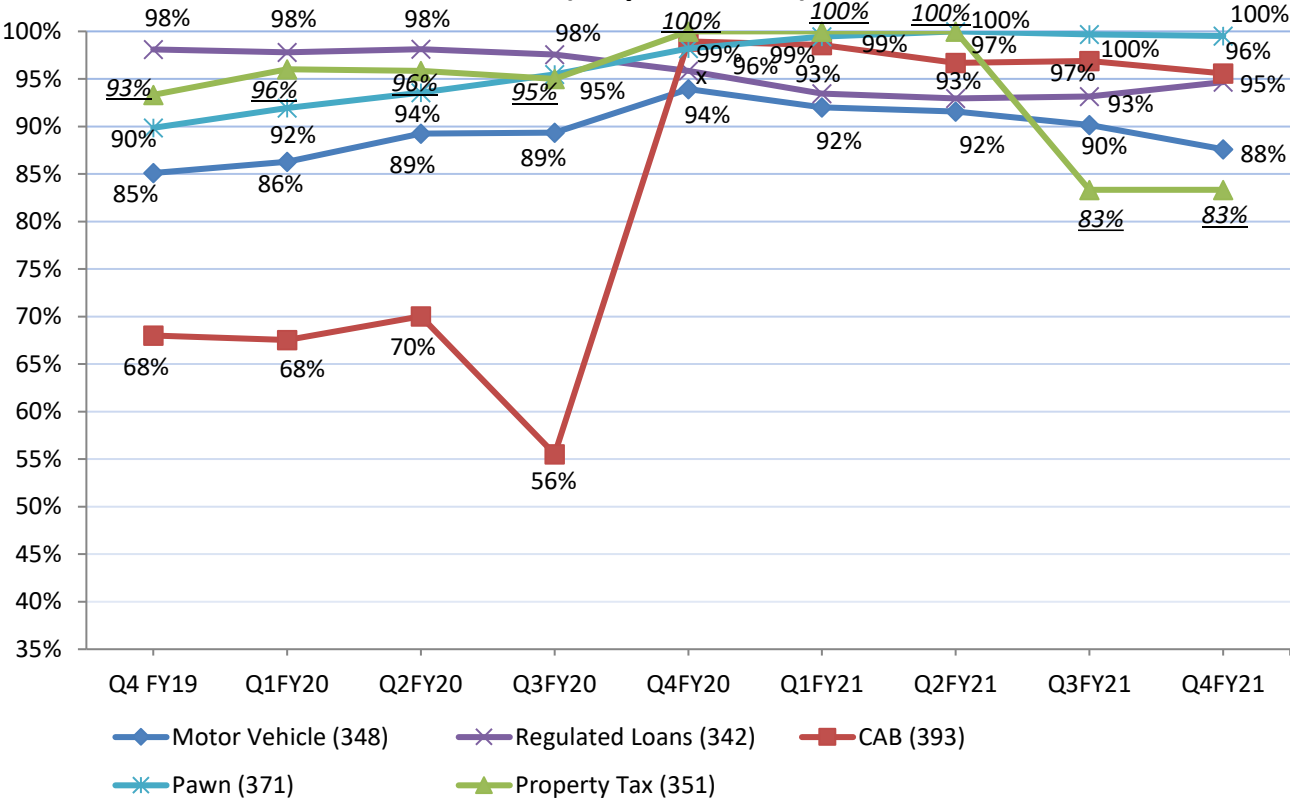


The second chart below denotes the acceptable level of compliance on a trailing 12-month basis through the end of August 2021.

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



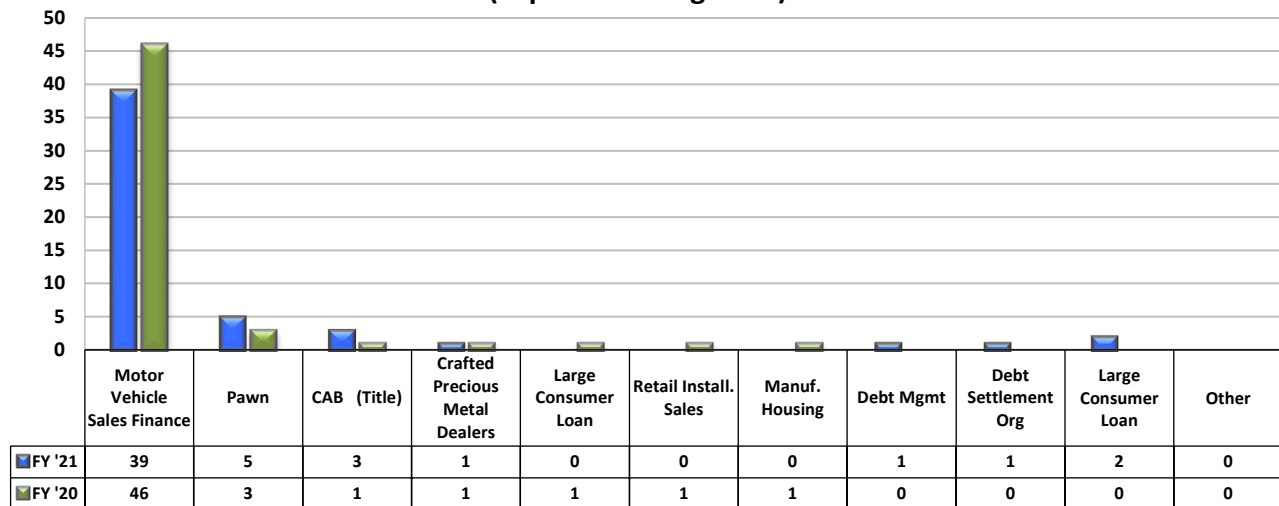
**Acceptable Compliance Levels - Trailing 12 Months  
(at quarter end)**



## Investigations

For FY 2021, the OCC completed 52 investigations, 94.5% 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 - Aug 2021) Total: 52 FY '20 (Sept 2019 - Aug 2020) Total: 54



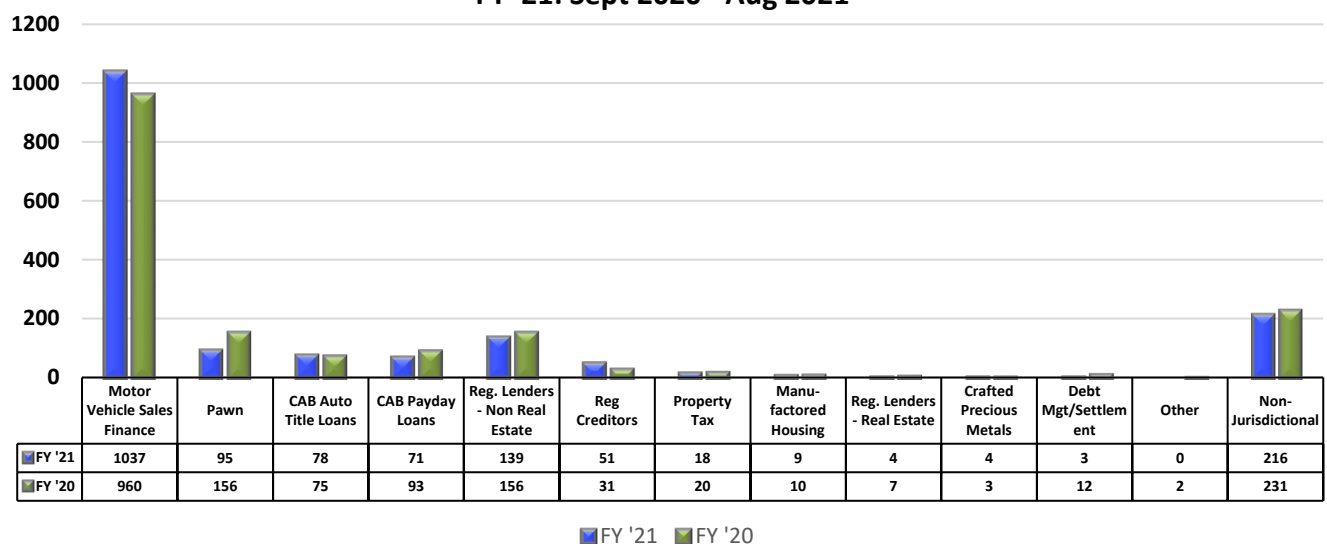
## Consumer Assistance

For this period 1725 complaints were closed of which 216 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 60.12%. The second largest category were CAB complaints at 8.64% collectively; separately, these are 4.12% for payday loans and 4.52% for title loans. The third largest category came from Regulated Lenders Non-Real Estate at 8.06%. The fourth largest category was Pawnshops at 5.28%.

### Complaints Closed FY '20: Sept 2019 - Aug 2020 FY '21: Sept 2020 - Aug 2021



**Fiscal Year 2021: Number of Complaints Closed by Source (Table 1), Subject (Table 2), and Disposition (Table 3).**

**Table 1**

Source of Complaint	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Consumer	373	375	403	415
Business	2	0	0	0
Law Enforcement	1	0	0	0
State or Federal Agency	47	34	23	26
OCCC	7	34	4	4
Whistleblower	0	0	1	1
Other	0	0	1	1
	<b>430</b>	<b>416</b>	<b>432</b>	<b>447</b>

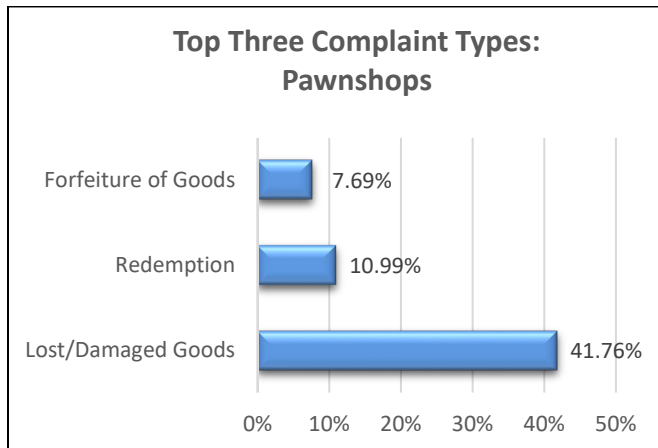
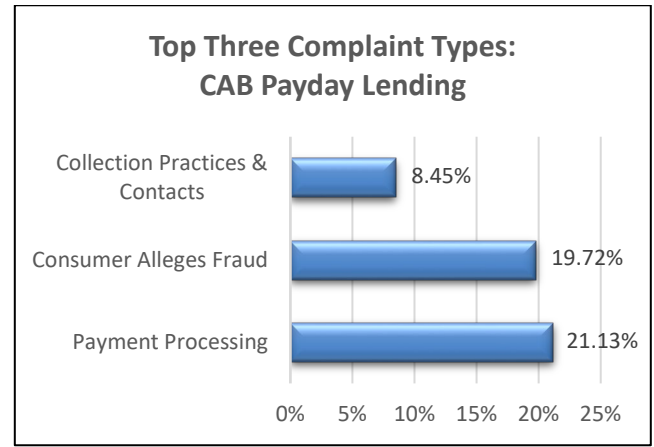
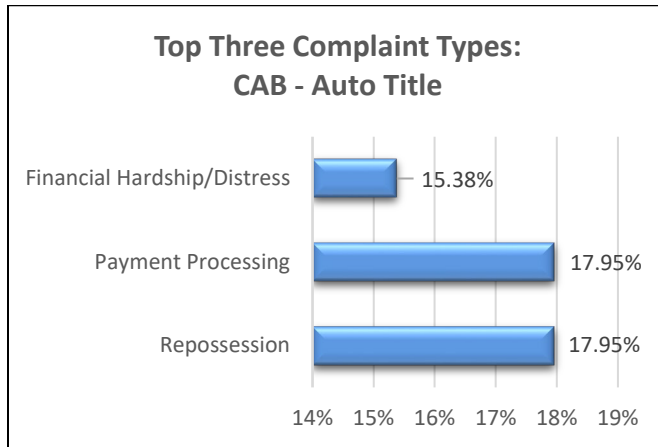
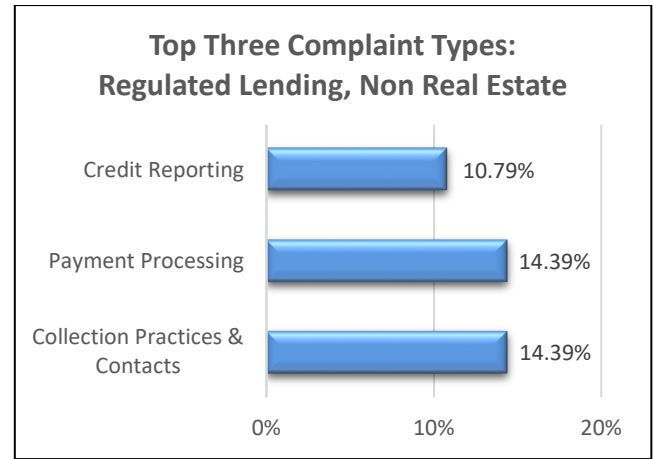
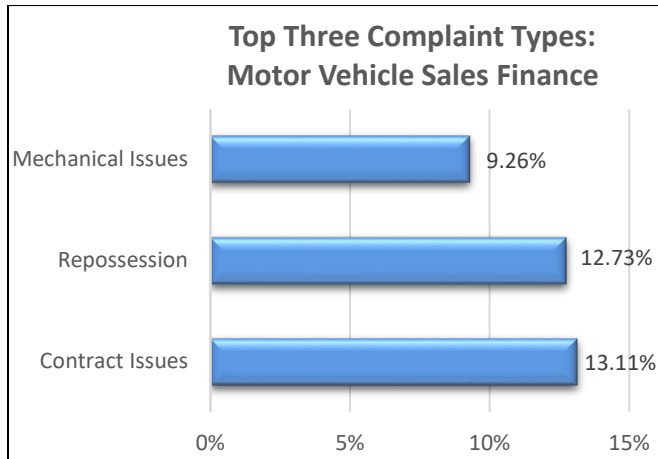
**Table 2**

Subjects	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Motor Vehicle Sales Finance	253	244	256	284
CAB Payday Loans	22	17	14	20
CAB Auto Title Loans	13	21	26	16
Reg. Lenders Non-Real Estate	43	29	31	33
Pawn	19	32	30	15
Registered Creditors	18	9	9	15
Crafted Precious Metals Dealers	1	1	2	0
Mortgage Lenders: Real Estate	1	0	3	0
Manufactured. Housing	4	5	1	0
Property Tax Lenders	7	3	6	2
Debt Management/Settlement	1	1	1	0
Non-Jurisdictional	48	54	53	62
Refund Anticipation Loan	0	0	0	0
Other	0	0	0	0
<b>Total</b>	<b>430</b>	<b>416</b>	<b>432</b>	<b>447</b>

**Table 3**

Disposition:	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Closed to Investigation	7	8	4	1
Closed to Legal	0	2	0	0
Closed-Action Taken	212	152	180	168
Closed-No Violation	75	85	77	93
Closed-Administratively	88	115	118	124
Closed-Non Jurisdictional	48	54	53	61
<b>Total</b>	<b>430</b>	<b>416</b>	<b>432</b>	<b>447</b>

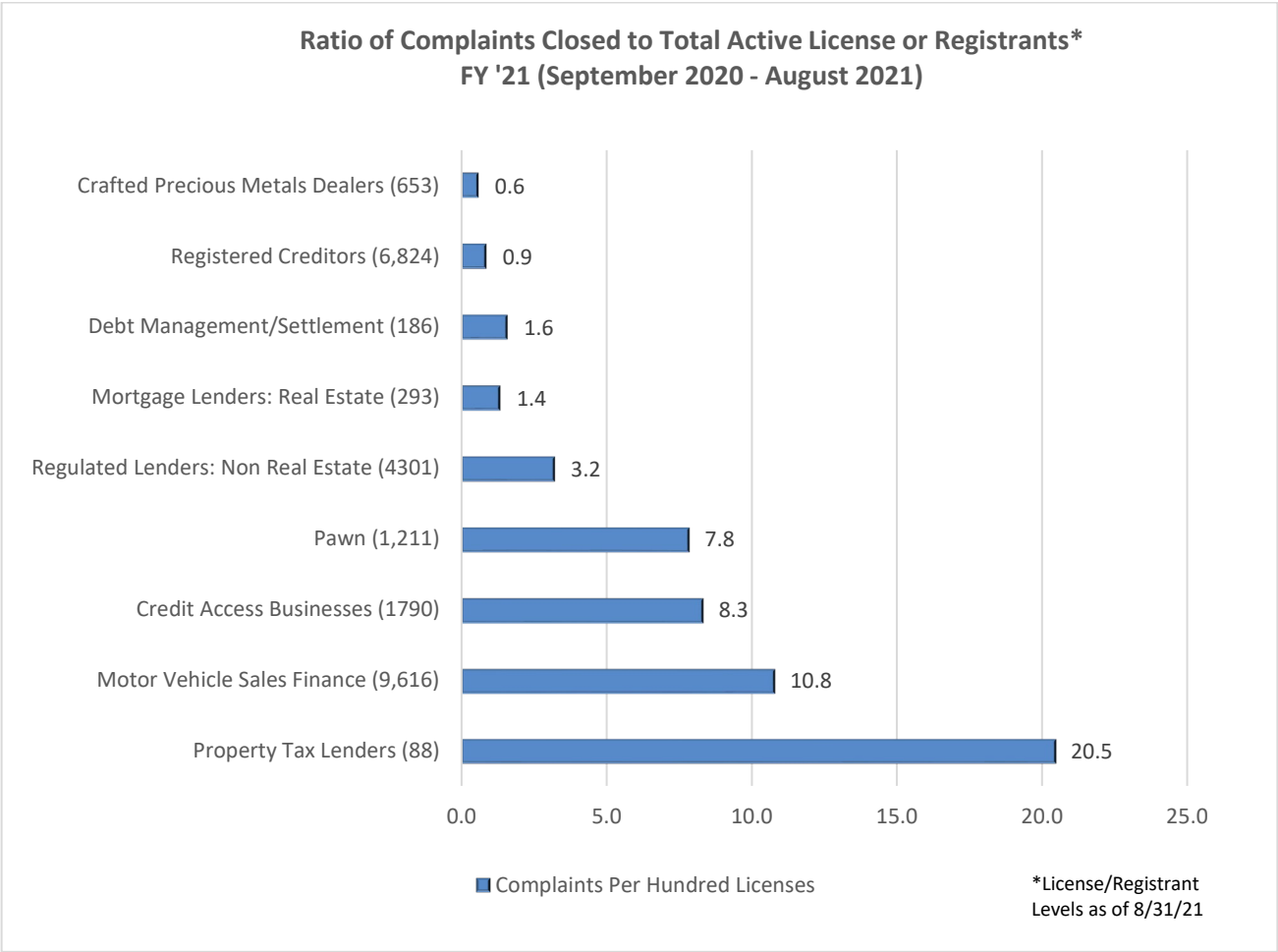
Each of the following charts represent the three top complaint areas per license type:



#### Consumer Assistance Activities Information by Quarter

Production Targets and Priorities	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Percentage Written Complaints Closed within 90 days	92.8%	95.1%	93.1%	96.6%
Average Number of Days to Close a Complaint	41.9	37.7	38.0	31.1
Number of Complaints Closed	430	416	432	447

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 second quarter of 2021 are available on the OCCC website. Presented are selected statistics of first and second quarter reports compared with previous years. New loan origination in 2021 is comparable to 2020 having increased less than 1% through the first six months of the year. Installment payday loans made up 70% of all new payday loan originations in the first half of the year. Repossessions in 2021 have increased 28% from their pandemic lows during the same period.

Data Highlights (All Loan Types) Q1-Q2 Comparison		2021	2020	2019	2018	2017	2016
Number of new payday loans		708,826	704,447	985,394	1,000,386	1,044,152	1,064,650
Number of new auto title loans		90,573	89,048	140,604	149,604	129,322	133,881
Percentage of payday loans due in multiple installments		70%	61%	56%	50%	45%	41%
Percentage of auto title loans due in multiple installments		45%	54%	58%	55%	45%	40%
Number of vehicles repossessed under all auto title loans		23,473	18,396	22,005	16,620	15,162	15,702
Total number of locations reporting activity		1,454	1,538	1,756	1,832	1,817	2,002

Payday Loans Q1-Q2	Single Installment			Multiple Installment		
	2021	2020	2019	2021	2020	2019
Number of consumers obtaining loans	145,281	191,811	298,848	439,274	381,840	500,444
Number of new loans	213,229	276,613	430,071	495,597	427,834	555,323
Number of total refinances <sup>1</sup>	186,979	375,983	508,144	100,110	115,142	189,423
Average loan amount	\$495	\$452	\$456	\$553	\$604	\$668
Average fee per \$100 borrowed	\$24	\$23	\$23	\$128	\$138	\$132
Average original term (in days)	22	21	21	141	149	145
Average Fee Converted to a Daily Rate <sup>2</sup>	1.12%	1.07%	1.05%	0.91%	0.93%	0.92%

Title Loans Q1-Q2	Single Installment			Multiple Installment		
	2021	2020	2019	2021	2020	2019
Number of consumers obtaining loans	39,126	33,233	51,859	38,077	44,876	77,574
Number of new loans	50,098	41,332	58,716	40,493	47,716	81,888
Number of total refinances <sup>1</sup>	228,291	267,879	311,343	46,276	68,309	75,800
Average loan amount	\$1,792	\$1,379	\$1,634	\$1,596	\$1,208	\$1,281
Average fee per \$100 borrowed	\$15	\$15	\$15	\$106	\$113	\$116
Average original term (in days)	31	30	29	161	158	156
Average Fee Converted to a Daily Rate <sup>2</sup>	0.49%	0.50%	0.52%	0.66%	0.71%	0.75%

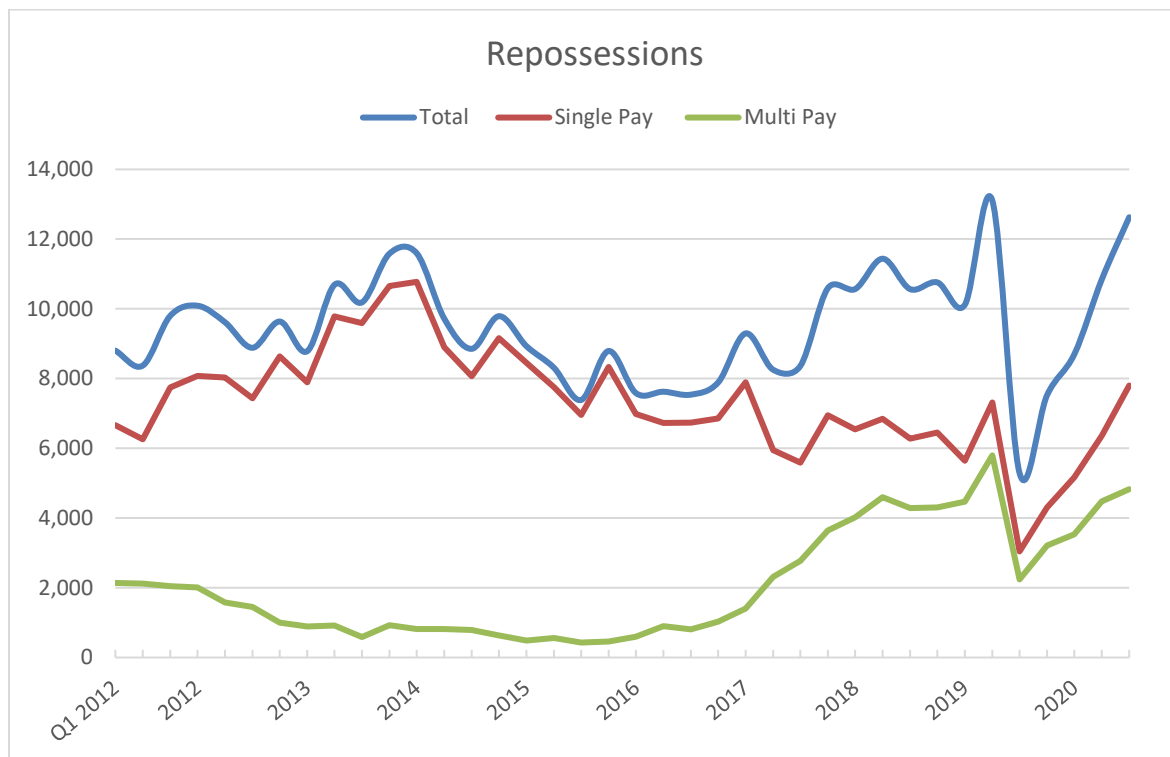
<sup>1</sup> Refinance activity represents all renewals, including the renewals of loans that originated in prior quarters.

<sup>2</sup> 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 2020. The number of repossessions increased in the second quarter of 2021 to 12,627 representing the second highest reported quarterly. The historical average number of repossessions is 9,434 per quarter.

The second quarter of 2021 also represented the highest percentage of repossessions per active account at 7.50%. The high number and percentage of repossessions per active account highlight affordability concerns facing current borrowers.







## **Licensing Report- October 2021**

*Mirand Diamond, Director of Licensing & Finance*

*Kaneshia Daniels, Licensing Team Lead*

### **Renewals**

The department is currently going through the renewal cycle for both motor vehicle sales finance and commercial motor vehicle sales finance. It is projected that 90% of licensees will renew. The department will continue to send renewal correspondence via email and will also mail out paper renewals. The renewal period will end October 31<sup>st</sup>.

The department is simultaneously in the period for renewal of registered creditors. This renewal will end December 1<sup>st</sup>.

### **Applications Processing**

The team continues to maintain all aspects of departmental functionality while working a hybrid model of in-office hours and telecommuting.

The volume of incoming business applications remained near 140 monthly on average in FY 2021. As we enter FY 22, the licensing department will target to process 150 applications monthly.

### **Other Updates**

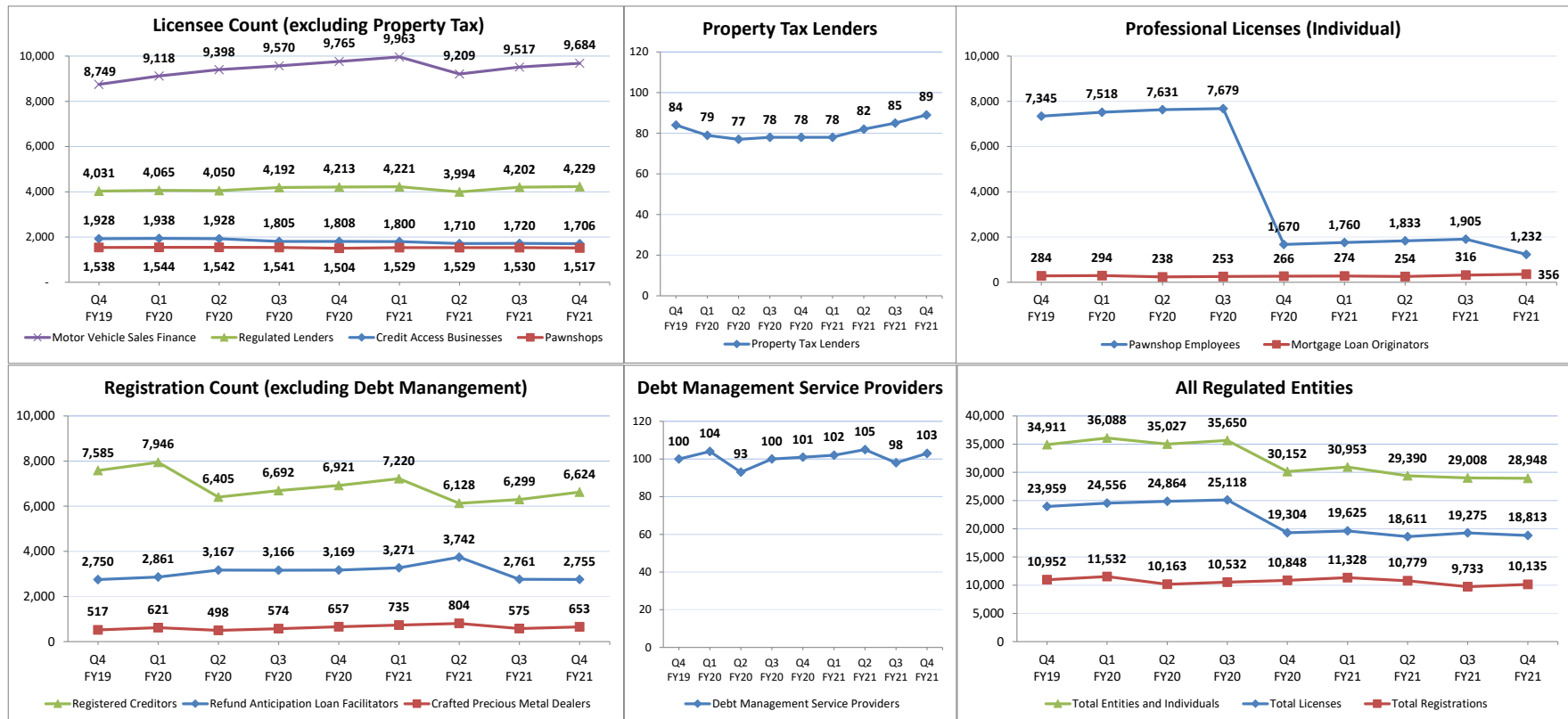
The department continues to work with IT and the agency's change advisory committee to enhance ALECS, which includes future modifications that will be made to Crafted Precious Metal Dealers to identify locations that meet the new statutory definition of "jewelry store".

Leadership within the department continues to work to fill a vacancy for one license and permit specialist.

### **Regulated Entity Population Trends**

The following charts reflect the number of OCCC regulated entities at the end of each quarter in fiscal year 2021.

## Number of OCCC Regulated Entities Quarterly Comparison of FY19-21





## **ADMINISTRATION REPORT**

### **FINANCIAL EDUCATION AND TFEE**

During Fiscal Year 2021, the Financial Education Department provided educational services to 1,940 individuals. Since the last report, educational events included weekly webinars, two in person “Avoiding Financial Exploitation” presentations, and a three series webinar partnership with Employees Retirement Systems (ERS) covering Budgeting, Credit, and Buying a Home.

During the third semi-annual reporting period of the 2020-2021 Texas Financial Education Endowment (TFEE) cycle, a total of \$98,602.72 was requested and reimbursed to grant recipients. The 4<sup>th</sup> and final semi-annual reports and reimbursement requests for the 2020-2021 grant cycle are due January 30, 2022.

The agency received 27 applications for the 2022-2023 TFEE Grant Cycle. The Grant Advisory Committee has submitted its recommendations for grant award recipients.

### **COMMUNICATION**

The OCCC continues to communicate with stakeholders through presentations and written publications. Agency staff provided virtual presentations to regulated entities and other regulatory groups as follows:

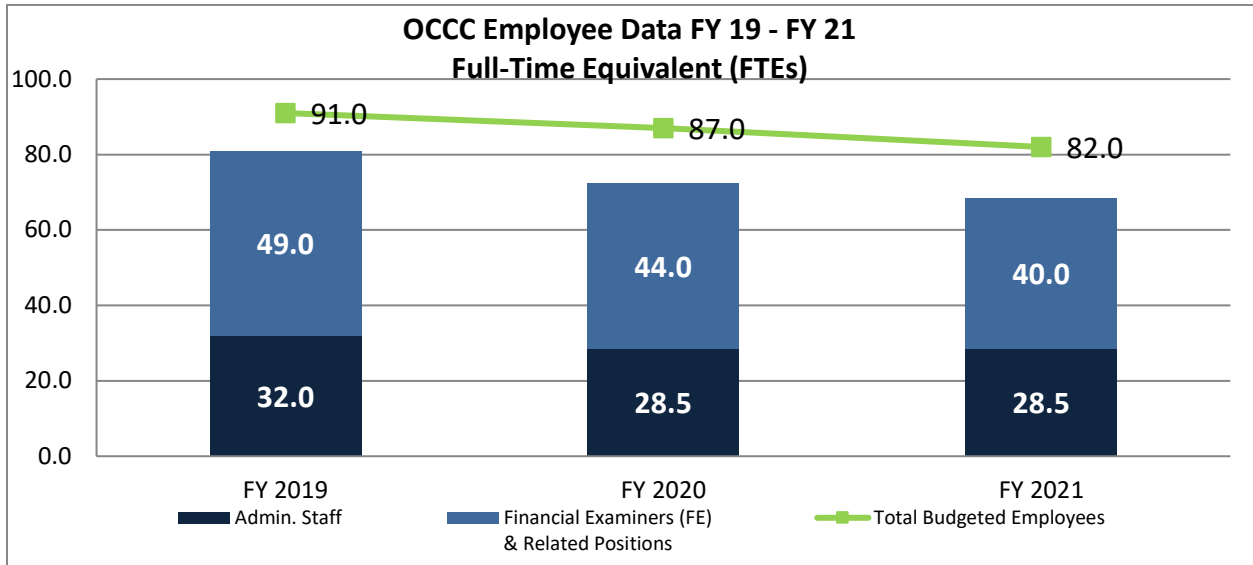
- On August 5, 2021, Financial Examiner Eric Fancher provided a presentation to automobile dealers at a webinar sponsored by the Texas Department of Motor Vehicles (DMV).
- On September 14, 2021 Commissioner Pettijohn, Director of Consumer Protection Huffman Lewis, and Deputy General Counsel Matthew Nance presented at the Texas Property Tax Lienholders Association Annual Meeting.
- On September 16, 2021, Financial Examiner Eric Fancher provided a presentation to automobile dealers at a webinar sponsored by the Texas Department of Motor Vehicles (DMV).

### **HUMAN RESOURCES**

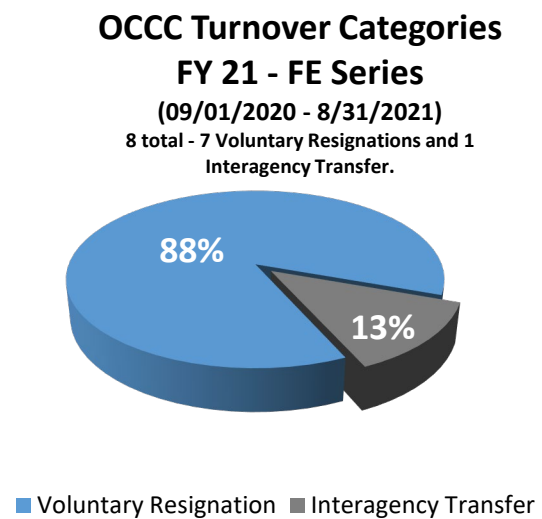
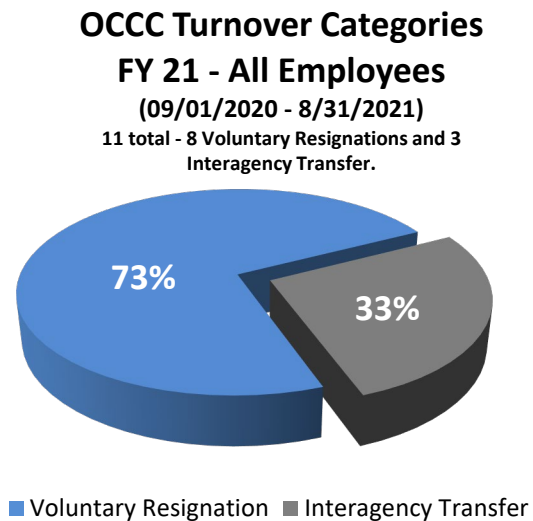
During this reporting period from July 2021 to the end of August 2021, the OCCC was staffed with a total of 69 FTEs (68 full time equivalent and one part time). Currently OCCC has the following open positions.

Vacancy	Status
License and Permit Specialist III	Open - 1
Investigator I	Open - 1

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



The turnover rate as of August 2021 is 15.1%, and the chart below represents FY21 data.



OCCC employees are following annual required policies and updates. Policies are regularly monitored to ensure compliance with local, state and federal law. HR continues to monitor health and safety measures for staff working in the Austin headquarters.

## **INFORMATION TECHNOLOGY**

### **Hardware and technology deployment**

As of mid-September, all but three non-IT Austin staff have upgraded or newly provisioned laptops. These last three will be upgraded, expected October, pending receipt of peripheral equipment.

A new server host was received in September and was installed. Complete migration to it, and subsequent depreciation of an end-of-life unit, is in progress.

Five “hotel” workstations were provisioned in Austin office.

The annual asset verification was completed by August 31, and the executive attestation was submitted to CPA prior to the September 20 deadline.

To alleviate manpower constraints in Licensing, a shared phone and Cisco Finesse access were established.

### **Cybersecurity Training**

FY’22 cybersecurity training began in late August. The first set of course materials is 98% completed.

Six employees joined the agency between August 02 and September 15, and all have completed training materials exclusively assigned to new hires.

### **Web & software**

Staff programmer created a “hotel reservation” system on the agency internal website for visiting members of field staff to secure workstations autonomously.

### **ALECS**

The migration to CAPPS Financials, including establishing a means for automatically provisioning ALECS data, was completed, and went live on September 01.



## **Accounting Report- October 2021**

*Mirand Diamond, Director of Licensing & Finance*

### Staffing

The accounting department is now fully staffed and is working to train and cross-train on all tasks. The department has recently completed the FY21 annual financial report.

### CAPPS

The department has begun utilizing CAPPS financials for all FY 22 financial transactions.

Meeting and discovery session of CAPPS HR/Payroll have also begun. This system will launch in Summer 2022.

### Procedures

Procedures for travel have been updated as a result of the Garza/Gonzalez internal audit. The department is also working to update accounts payable, purchasing, asset management, deposit and other procedures as a result of CAPPS financial system implementation.

### Other Items

The accounting department is working with the State Auditor's Office on an SDSI audit. The last audit of this type occurred in 2016-2017. Meetings and document production began in September.

The risk assessment analysis conducted by Garza/Gonzalez as part of the internal audit plan is also beginning.

**OFFICE OF CONSUMER CREDIT COMMISSIONER**  
**EXECUTIVE SUMMARY**

*As of August 31, 2021*

	FY 2019	FY 2020	FISCAL YEAR 2021				
			1st QTR	2nd QTR	3rd QTR	4th QTR	FYTD
CONSUMER PROTECTION							
Monies Returned (000)	14,578	4,391	808	555	302	1,721	3,386
Regulated Lenders Examinations	942	576	250	134	136	136	656
Property Tax Lender Examinations	30	7	1	7	4	0	12
Pawnshop Examinations	473	276	22	129	162	102	415
Motor Vehicle Examinations	2,463	1,350	288	213	450	413	1,364
Credit Access Businesses Examinations	475	284	14	279	0	0	293
CONSUMER ASSISTANCE							
Telephone Complaints Received	510	459	100	146	138	105	489
Written Complaints Received	1,151	1,303	274	283	281	404	1,242
Total Complaints Closed	1,737	1,756	430	416	432	447	1,725
% of Written Complaints Closed within 90 Calendar Days	85.4%	86.6%	92.8%	95.1%	93.1%	96.6%	96.6%
ADMINISTRATIVE ENFORCEMENT ACTIONS							
Originated	417	188	112	23	10	79	224
Finalized	324	270	80	78	21	18	197
LICENSING AND REGISTRATION							
Licenses							
Regulated Loan Licenses	4,031	4,213	4,221	3,994	4,202	4,229	4,229
Pawnshop Licenses	1,538	1,504	1,529	1,529	1,530	1,517	1,517
Pawnshop Employee Licenses	7,345	1,670	1,760	1,833	1,905	1,232	1,232
Commercial MV Sales Fin. Licenses	49	54	58	52	54	57	57
Motor Vehicle Sales Finance Licenses	8,700	9,711	9,905	9,157	9,463	9,627	9,627
Property Tax Loan Licenses	84	78	78	82	85	89	89
Mortgage Loan Originators	284	266	274	254	316	356	356
Credit Access Business Licenses	1,928	1,808	1,800	1,710	1,720	1,706	1,706
Registrations							
Registered Creditors	7,585	6,921	7,220	6,128	6,299	6,624	6,624
Crafted Precious Metal Dealers	517	657	102	804	575	653	653
Debt Management Service Providers	100	101	102	105	98	103	103
Refund Anticipation Loan Facilitators	2,750	3,169	3,271	3,742	2,761	2,755	2,755
Applications							
Business -- New	1,679	1,621	284	426	566	303	1,579
Business -- Change of Ownership	131	87	18	27	54	42	141
Pawnshop Employees -- New	3,640	630	99	104	87	118	408
HUMAN RESOURCES DATA							
Field Examiners Staffing	49	44	43	41	40	40	40
Total Staffing	81	73	73.5	72.5	70.5	68.5	68.5

**Office of Consumer Credit Commissioner**  
**Actual Performance for Key Output Measures**  
**Fiscal Year 2021**

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target	Comparable Historical Data for the same time period			
					FY2020	FY2019	FY2018	FY2017
Output Measures-Key								
CONSUMER PROTECTION								
1-1-1	Complaint Resolution							
	1. # Complaints Closed							
Quarter 1	1,750	430	430	24.6%				
Quarter 2	1,750	416	846	48.3%				
Quarter 3	1,750	432	1278	73.0%				
Quarter 4	1,750	447	1725	98.6%	1,756	1,719	1,762	2,139
2-1-1	Examination and Enforcement							
	1. # Examinations Completed							
Quarter 1	2,500	575	575	23.0%				
Quarter 2	2,500	762	1,337	53.5%				
Quarter 3	2,500	752	2,089	83.6%				
This variance is a result of a full return to field exam operations beginning March 15, 2021. The agency discontinued work on remote exams, which take more time to complete. The field exam staff focused on pawnshop, motor vehicle, and regulated loan exams.					*			
Quarter 4	2,500	651	2,740	109.6%	2,493	4,383	4,503	4,288
Exam production exceeded targets as a result of better coordination of Enterprise Exam Project Management and a return to field based examinations.					*			
EFFECTIVE LICENSING & REGISTRATION								
2-2-1	Licensing and Registration							
	1. # Business License Applications Processed							
Quarter 1	1,750	284	284	16.2%				
The Licensing Department had increased call volume and customer service contact in September and October due to motor vehicle renewal, which focused resources and time on these tasks and took time away from application processing, resulting in a lower number of applications processed in Q1 of FY 21. Application processing will increase during the remainder of the fiscal year. The department was also working to fill an administrative assistant vacancy during this time, which has since been filled.					*			



<b>Quarter 2</b>	1,750	426	710	40.6%	*
------------------	-------	-----	-----	-------	---

The Licensing Department had increased call volume and customer service contact in December due to renewal for regulated lenders, property tax lenders and credit access businesses, which focused resources and time on these tasks and took time away from application processing, resulting in a lower number of applications processed in Q2 of FY 21. Application processing will increase during the remainder of the fiscal year.

<b>Quarter 3</b>	1,750	566	1,276	72.9%	
------------------	-------	-----	-------	-------	--

<b>Quarter 4</b>	1,750	303	1,579	90%	*
------------------	-------	-----	-------	-----	---

The licensing department was able to process 90% of targeted goal in FY 22. This is mostly due to a vacant position that was difficult to fill for almost half of the fiscal year.

1621	1679	1594	1660
------	------	------	------

## FINANCIAL EDUCATION

### 3-3-1 Financial Education

#### 1. # People Receiving Direct Educational Services

<b>Quarter 1</b>	775	247	247	31.9%	*
------------------	-----	-----	-----	-------	---

The Financial Education department exceeded first quarter goals for the number of people receiving direct education services as a result of increased attendance at agency webinars.

<b>Quarter 2</b>	775	308	555	71.6%	*
------------------	-----	-----	-----	-------	---

The Financial Education Department has exceeded its target for number of people receiving direct education services. The agency has increased promotion of webinars via email and social media during FY 2021; this has resulted in increased attendance at OCCC hosted financial education webinars.

<b>Quarter 3</b>	775	405	960	123.9%	*
------------------	-----	-----	-----	--------	---

The Financial Education Department has exceeded its target for number of people receiving direct education services. The agency continues to increase promotion of webinars via email, presentations, and social media. This has resulted in increased attendance at OCCC hosted financial education webinars.

<b>Quarter 4</b>	775	980	1,940	250.3%	*
------------------	-----	-----	-------	--------	---

The positive variance in the number of consumers receiving financial education is attributable to partnerships with community organizations, state agencies, and increased outreach through social media platforms.

2,863	337	332	342
-------	-----	-----	-----

\*Varies by 5% or more from target.

## Actual Performance for Key Outcome & Efficiency Measures

Type/Strategy/Measure	2021 Target	2021 YTD	Percent of Annual Target
<b>Outcome Measures-Key</b>			
<b>CONSUMER PROTECTION</b>			
<b>A.1 CONSUMER COMPLAINTS</b>			
1. % WRITTEN COMPLAINTS CLOSED WITHIN 90 DAYS The Consumer Assistance Department has exceeded the annual target for percentage of written complaints closed within 90 days. This positive variance is attributable to an increased focus on monitoring complaints that are reaching 90 days, with an emphasis on department collaboration to analyze complaints involving complex transaction types	85%	94.4%	111.1%
<b>A.2 ENSURE COMPLIANCE</b>			
1. % EXAMINATIONS REPORTING ACCEPTABLE LEVEL OF COMPLIANCE Examinations reporting acceptable level of compliance exceeds target as a result of closer coordination between exam review activities and new exam planning and scoping.	85%	91.9%	108.1%
2. MONIES RETURNED TO CONSUMERS Exam Review Program implementation primarily responsible for Monies Returned to Consumers exceeding target due to focused attention combined	\$2,500,000	\$3,385,505	135.4%
<b>EFFECTIVE LICENSING &amp; REGISTRATION</b>			
B.1 1. % BUSINESS LICENSE APPLICATIONS PROCESSED WITHIN 60 DAYS An ongoing staffing shortage impacted application processing time due to increased workload for current staff.	90%	67%	74.4%
<b>EFFICIENT AND EFFECTIVE AGENCY OPERATION</b>			
C.1 1. % REGULAR EMPLOYEES SEPARATED FROM AGENCY The turnover rate was slightly below the estimated projection which is a positive outcome.	16%	15.1%	94.4%
<b>Efficiency Measures-Key</b>			
<b>CONSUMER PROTECTION</b>			
A.1 1. AVERAGE NUMBER OF DAYS TO CLOSE AN ENFORCEMENT ACTION	100	98	98.0%
<b>EFFECTIVE LICENSING &amp; REGISTRATION</b>			
B.1 2. AVERAGE PROCESSING TIME (DAYS) FOR BUSINESS LICENSE APPS While the department missed the target of processing applications in 45 days or less, licensing applications were processed under 60 days. Staffing challenges filling a vacant position for almost half of the fiscal year impacted this measure.	45	58	129%

\* Varies by 5% or more from quarterly or year-end targets.

**OCCC Actual Performance for Non-Key Measures**  
**Fiscal Year 2021**  
**For Period Ending August 31, 2021**

Type/Strategy/Measure		2021 Target	2021 YTD	Percent of Annual Target
<b>Non-Key Measures</b>				
<b>A. CONSUMER PROTECTION</b>				
A.1.1	AVERAGE NUMBER OF DAYS FOR ALL COMPLAINTS TO REACH FINAL DISPOSITION	60	43	71.7%
A.1.2	AVERAGE NUMBER OF DAYS TO CLOSE A COMPLAINT	45	36.7	81.6%
A.1.3	AVERAGE COST PER COMPLAINT	\$180	\$151	83.9%
A.2.1	AVERAGE COST PER EXAMINATION	\$1,725	\$1,264	73.3%
A.2.2	% OF LICENSED LOCATIONS AND REGISTERED OFFICES EXAMINED ANNUALLY	15%	16.0%	106.3%
A.2.3	NUMBER OF INVESTIGATIONS COMPLETED	55	52	94.5%
	Number of Investigations completed was short of target by .5% impacted primarily by COVID and inability to accomplish site visits necessary to complete the Investigations.			
A.3.1	% OF REPEAT REFERRALS FOR ENFORCEMENT ACTION	13%	23%	176.9%
	This measure tracks patterns of compliance over time. A lower percentage of repeat referrals suggests enforcement activities are effectively ensuring compliance. In FY21, there were 52 repeat referrals out of 224 total referrals (cases opened). In FY21, overall repeat referrals were 12% less than in FY20, which indicates progress in the right direction. Based on information from the last two years, the OCCC adjusted this target to 25% for FY22.			
A.3.2	% OF ENFORCEMENT ACTIONS CLOSED WITHIN TARGETED TIMEFRAME	70%	82%	117.1%
A.3.3	NUMBER OF ENFORCEMENT ACTIONS TAKEN	275	169	61.5%
	The legal department received fewer referrals for enforcement matters than anticipated. This measure only counts enforcement actions that resulted in a final order. Several enforcement matters were closed without a final order. Based on information from FY21, the OCCC adjusted this target to 250 for FY22.			
A.3.4	NUMBER OF CONTESTED CASES HEARD AT SOAH	5	1	20.0%
	The OCCC docketed four contested case hearings at SOAH. Additional hearing requests were resolved without the need of a hearing. This resulted in fewer overall hearings than anticipated.			
A.3.5	NUMBER OF COMPLIANCE AIDS AND TOOLS PUBLISHED	45	33	73.3%
	The agency received fewer requests for advisory letters than anticipated. The OCCC issued ongoing guidance relating to the COVID-19 pandemic through several bulletin revisions. Each advisory bulletin is counted once, so revisions to the COVID-19 bulletins did not increase the count.			
A.3.6	NUMBER OF INDUSTRY STAKEHOLDER AND OUTREACH EVENTS HOSTED OR ATTENDED BY OCCC STAFF	30	75	250.0%
<b>B. EFFECTIVE LICENSING AND REGISTRATION</b>				
B.1.1	AVERAGE PROCESSING TIME (DAYS) FOR PAWNSHOP EMPLOYEE APPS	30	42	140.0%
	Days to process for pawn employee applications was higher due to the department focusing on business license application processing periodically throughout the year.			
B.1.2	AVERAGE PROCESSING TIME (DAYS) FOR RMLO APPS	15	58.7	391.3%
	The number of RMLO applications received increased significantly in FY 21, which impacted processing times.			
B.1.3	NUMBER OF PAWNSHOP EMPLOYEE LICENSE APPLICATIONS PROCESSED	600	396	66.0%
	The agency received fewer applications than projected because pawn employee licensing is now optional.			
B.1.4	NUMBER OF RMLO APPLICATIONS PROCESSED	60	190	316.7%

\* Varies by 5% or more from target.

**OCCC Actual Performance for Non-Key Measures**  
**Fiscal Year 21**  
**For Period Ending August 31, 2021**

Type/Strategy/Measure	2021 Target	2021 YTD	Percent of Annual Target
-----------------------	----------------	-------------	-----------------------------

**Non-Key Measures**

**C. FINANCIAL EDUCATION**

C.2	% OF TFEF AWARD RECIPIENTS WHO REACHED THEIR CONSUMER PARTICIPATION GOAL WITHIN THE GRANT PERIOD	100%	50.0%	50.0%
	TFEF grant cycles are two calendar years and agency cycles are reported per fiscal year. This presents a challenge in reporting grant-related data. As of the third reporting period of the 2020-2021 grant cycle, five out of ten award recipients reached their consumer participation goals. The five award recipients who were unable to meet their goals reported challenges implementing programs as a result of the COVID-19 pandemic. Grant recipients anticipate increased participation during the final period of the grant cycle.			
<b>D. EFFICIENT AND EFFECTIVE AGENCY OPERATION</b>				
D.1	PERCENTAGE OF ACTUAL EXPENDITURES TO BUDGETED EXPENDITURES	95%	81.0%	85.3%
	Agency expenditures were 14 % under budget in FY 21 due to decreased spending in areas such as staffing, IT, professional services, employee training and other miscellaneous operating costs			
D.2.1	PERCENTAGE OF PUBLIC INFORMATION REQUESTS ADDRESSED WITHIN 5 BUSINESS DAYS	80%	89%	111.3%
D.2.2	NUMBER OF PUBLIC INFORMATION REQUESTS CLOSED	185	158	85.4%
	The OCCC received fewer public information requests than anticipated.			
D.2.3	NUMBER OF PUBLIC INFORMATION REQUESTS WITHDRAWN	10	6	60.0%
D.2.4	AVERAGE NUMBER OF DAYS TO ADDRESS A PUBLIC INFORMATION REQUEST	2.6	1.9	73.1%
D.2.5	NUMBER OF PUBLIC INFORMATION REQUESTS RECEIVED	200	165	82.5%
	The OCCC received fewer public information requests than anticipated. Based on information from FY21, the OCCC adjusted this target to 193 for FY22.			

**SCHEDULE C. HUB USAGE**

1	NUMBER OF HUB CONTRACTORS AND SUBCONTRACTORS CONTACTED FOR BID PROPOSALS	10	26	260.0%
2	NUMBER OF HUB CONTRACTS AND SUBCONTRACTS AWARDED	2	2	100.0%
3	DOLLAR VALUE OF HUB CONTRACTS AND SUBCONTRACTS AWARDED	\$75,000	\$98,000	130.7%

\* Varies by 5% or more from target.



## **Legal Department Report**

*Michael Rigby, General Counsel*

October 2021

### **Enforcement Report**

#### **Contested Cases**

The OCCC has two contested cases currently pending before the State Office of Administrative Hearings (SOAH), and recently closed a previously pending case:

##### ***Clay Cooley Entities (SOAH Docket No. 466-22-0322)***

This case is currently pending before SOAH. Texas law allows motor vehicle retail sellers to charge a documentary fee for processing documents relating to the sale of a vehicle. Before charging a documentary fee over \$150, a seller must notify the OCCC and provide a cost analysis showing that the fee is reasonable. Duncanville N LLC and nine other Clay Cooley entities filed for documentary fees ranging from \$199 to \$299. After reviewing the cost analyses for these entities, the OCCC determined that these documentary fees were unreasonable. On September 9, 2021, the OCCC issued an Order to Reduce Documentary Fees and Make Restitution against the Clay Cooley entities. The entities requested a hearing on the order, and a hearing before SOAH has been scheduled for December 7, 2021.

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

This case is currently pending before SOAH. 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. On July 12, both sides filed motions for summary disposition requesting that the administrative law judge rule on whether PrimaLend and Good Floor engaged in unlicensed activity. The administrative law judge has continued the hearing previously scheduled for August 25, pending a ruling on the motions for summary disposition.

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

The OCCC recently closed this case. 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. On June 10, the administrative law judge issued a proposal for decision recommending that the OCCC approve Houston Motors' license application and allow Houston Motors to pay a \$10,000 late filing fee in 10 installments. On August 11, the OCCC entered an agreed order with Houston Motors to resolve the case. Under the agreed order, the OCCC agreed to grant Houston Motors' application, and Houston Motors agreed to pay the \$10,000 fee in monthly installments, beginning on September 1, 2021. The agreed order authorizes the OCCC to revoke

the license if Houston Motors fails to pay any installment. At this time, Houston Motors has not paid its first installment payment, and may be subject to revocation under the agreed order.

### **Orders on Reporting Violations**

In September 2021, the OCCC issued 59 orders against regulated lenders that did not timely and accurately file their 2020 annual reports by the deadline of May 1, 2021. Of these orders, 35 were injunctions requiring the licensees to file timely and accurate reports, and 22 imposed an administrative penalty for violating a previous injunction. There were two revocation orders against licensees that repeatedly failed to file timely annual reports, despite receiving an injunction and several administrative penalty orders.

Also in September, the OCCC issued eight orders against credit access businesses that did not timely and accurately file their 2021 second quarter reports by the deadline of July 31, 2021. Of these orders, seven were injunctions requiring the licensees to file timely and accurate reports, and one imposed an administrative penalty for violating a previous injunction.

### **Performance Report**

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

<b>September 1, 2020, through August 31, 2021</b>	
Cases Opened	224
Cases Closed	197
Average Number of Days to Close an Enforcement Action	98
Contested Cases Referred to SOAH	4
Contested Cases Heard at SOAH	1
Final Orders Issued	169

<b>September 1, 2021, through September 30, 2021</b>	
Cases Opened	10
Cases Closed	6
Average Number of Days to Close an Enforcement Action	91
Contested Cases Referred to SOAH	0
Contested Cases Heard at SOAH	0
Final Orders Issued	5

The OCCC has two upcoming SOAH hearings 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 September 30, 2021				
	FYTD 2022	FY 2021	FY 2020	FY 2019
<b>Injunction Actions</b>				
Crafted Precious Metal Dealer	0	0	1	0
Credit Access Business	1	33	27	53
Debt Management Provider	0	10	9	10
Manufactured Housing	0	0	0	0
Motor Vehicle Sales Finance	0	11	54	20
Motor Vehicle Sales Finance Commercial	0	1	0	0
Pawnshop	0	48	44	82
Pawnshop Employee	0	0	0	67
Property Tax Lender	0	2	1	8
Registered Creditor	0	0	1	0
Regulated Lender	2	28	49	22
Residential Mortgage Loan Originator	0	0	0	0
<b>Total Injunction Actions</b>	<b>3</b>	<b>133</b>	<b>186</b>	<b>262</b>
<b>Administrative Penalty Actions</b>				
Crafted Precious Metal Dealer	0	0	1	0
Credit Access Business	1	12	11	14
Debt Management Provider	0	2	3	0
Motor Vehicle Sales Finance	1	8	13	19
Pawnshop	0	15	29	12
Pawnshop Employee	0	0	0	0
Property Tax Lender	0	1	3	6
Regulated Lender	0	18	18	7
Residential Mortgage Loan Originator	0	0	0	0
<b>Total Administrative Penalty Actions</b>	<b>2</b>	<b>56</b>	<b>78</b>	<b>58</b>
<b>Revocation / Suspension Actions</b>				
Crafted Precious Metal Dealer	0	0	0	0
Credit Access Business	0	1	0	1
Motor Vehicle Sales Finance	0	1	2	0
Pawnshop	1	4	0	0
Pawnshop Employee	0	0	0	1
Property Tax Lender	0	0	0	0
Regulated Lender	0	0	1	0
Residential Mortgage Loan Originator	0	0	0	0
<b>Total Revocation / Suspension Actions</b>	<b>1</b>	<b>6</b>	<b>3</b>	<b>2</b>
<b>Application Denial and Protest Actions</b>				
Credit Access Business	0	0	0	0
Motor Vehicle Sales Finance	0	2	3	2
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
<b>Total App. Denial and Protest Actions</b>	<b>0</b>	<b>2</b>	<b>3</b>	<b>2</b>
<b>Total Actions Closed</b>	<b>6</b>	<b>197</b>	<b>270</b>	<b>324</b>

## **Rule Actions**

At the October meeting, the OCCC is presenting the following rule actions:

- Adoption of amendments to 7 TAC Chapters 7 (relating to the Texas Financial Education Endowment) and 83 (relating to credit access businesses), resulting from rule review
- Adoption of amendments to Chapter 89 (relating to property tax lenders), resulting from rule review

At the December meeting, the OCCC plans to present the following rule actions:

- Readoption of 7 TAC Chapter 88 (relating to debt management services), as well as proposed amendments to Chapter 88, resulting from rule review
- Proposed amendments to Chapter 85, Subchapter B (relating to crafted precious metal dealers), to adjust registration fees and implement recent legislation

In February 2022, the OCCC plans to present the readoption of 7 TAC Chapter 83, Subchapter A (relating to regulated lenders), as well as any proposed amendments resulting from rule review. Before presenting amendments to the commission, the OCCC plans to request feedback from stakeholders regarding the upcoming rule review. In particular, in November, the OCCC plans to request further information regarding the administrative fee for Chapter 342, Subchapter E regulated loans.

## **Litigation**

### ***CFPB Payday Rule Litigation***

The Consumer Financial Protection Bureau's Payday Rule includes payment-withdrawal requirements for certain short-term and long-term consumer loans. A lawsuit challenging this rule, *Community Financial Services Association of America and Consumer Services Alliance of Texas v. CFPB*, is currently pending in the federal Fifth Circuit Court of Appeals (case no. 21-50826). The plaintiffs argue that the Payday Rule is unconstitutional, exceeds the CFPB's statutory authority, and violates the federal Administrative Procedure Act. On August 31, 2021, a federal district court ruled in the CFPB's favor, finding that the payment-withdrawal requirements are consistent with the CFPB's authority (case no. 1:19-cv-00295-LY). On September 9, the plaintiffs appealed the district court's decision to the Fifth Circuit.

## **Advisory Bulletins**

From August 1, 2021 to September 30, 2021, the OCCC issued three advisory bulletins: one for regulated lenders, one for property tax lenders, and one for motor vehicle sales finance licensees. The three bulletins summarize HB 3510, a recently enacted piece of legislation that allows certain OCCC licensees to let employees work remotely if certain conditions are met. These conditions including maintaining safeguards for consumer data, providing appropriate employee training, and maintaining written procedures to ensure compliance.

## **Official Interpretation Requests**

From August 1, 2021 to September 30, 2021, the OCCC did not receive any requests for official interpretations of the Texas Finance Code. As of September 30, 2021, there were no pending requests for official interpretations of the Texas Finance Code.



**Public Information Requests**

August 1, 2021 through September 30, 2021	
Requests Received	22
Requests Closed	21
Requests Withdrawn	1
Requests Referred to Office of Attorney General	0
Average Number of Days to Address a Public Information Request	2.3

**Gifts Received by the OCCC**

From August 1, 2021 to September 30, 2021, the OCCC received no gifts.

## **C. OFFICE OF CONSUMER CREDIT COMMISSIONER**

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 1, Chapter 7, Concerning Texas Financial Education Endowment Fund, and Part 5, Chapter 83, Subchapter B, Concerning Rules for Credit Access Businesses, Resulting from Rule Review

**PURPOSE:** The purpose of the amendments to 7 TAC Chapters 7 and 83 is to implement changes resulting from the commission's review of Chapter 7 under Texas Government Code, §2001.039.

**RECOMMENDED ACTION:** The agency requests that the Finance Commission approve the adoption of the amendments to 7 TAC Chapter 89.

**RECOMMENDED MOTION:** I move that the Finance Commission approve the adoption of the amendments to 7 TAC Chapters 7 and 83.

*Title 7. Banking and Securities*

*Part 1. Finance Commission of Texas*

*Chapter 7. Texas Financial Education Endowment Fund*

*Part 5. Office of Consumer Credit Commissioner*

*Chapter 83. Regulated Lenders and Credit Access Businesses*

*Subchapter B. Rules for Credit Access Businesses*

*7 TAC, Part 1, Chapter 7*

The Finance Commission of Texas (commission) adopts amendments to §7.102 (relating to TFEE Responsibilities), in 7 TAC, Chapter 7, concerning Texas Financial Education Endowment Fund.

The commission adopts the amendments to §7.102 without changes to the proposed text as published in the September 3, 2021, issue of the *Texas Register* (46 TexReg 5493).

The commission received no written comments relating to the proposed amendments to 7 TAC §7.102. Comments that the commission received on proposed amendments to 7 TAC §83.3010 (relating to Fees) are discussed separately in this issue of the *Texas Register*.

The rules in 7 TAC Chapter 7 govern the Texas Financial Education Endowment (TFEE). The Texas Legislature established TFEE under Texas Finance Code, §393.628(c), in order to "support statewide financial education and consumer credit building activities and programs."

In general, the purpose of the rule changes to 7 TAC Chapter 7 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 7 was published in

the *Texas Register* on May 28, 2021 (46 TexReg 3425). The commission received no comments in response to that notice.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC received no informal precomments on the rule text draft.

The amendments to §7.102 relate to the consumer credit commissioner's authority to designate other persons to perform functions related to TFEE. New text in subsection (a) explains that the investment officer's responsibilities include maintaining compliance. Subsection (a) will also be amended to move text on executing grant agreements into a new sentence. The updated text will provide some flexibility and clarify the commissioner's authority to designate another person (not necessarily the investment officer) to execute grant agreements.

The rule changes are adopted under Texas Finance Code, §393.622, which authorizes the commission to adopt rules necessary to enforce and administer Texas Finance Code, Chapter 393, Subchapter G (governing credit access businesses). In addition, Texas Finance Code, §393.628 authorizes the commission to adopt rules regarding TFEE.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 393.

*7 TAC, Part 5, Chapter 83, Subchapter B*

The Finance Commission of Texas (commission) adopts amendments to §83.3010 (relating to Fees) in 7 TAC, Chapter 83, Subchapter B, concerning Rules for Credit Access Businesses.

The commission adopts the amendments to §83.3010 with changes to the proposed text as published in the September 3, 2021, issue of the *Texas Register* (46 TexReg 5512).

The commission received two written comments on the proposed amendment to 7 TAC §83.3010 during the 30-day official comment period. One comment was from United Ways of Texas, and one comment was from an individual. The commissions' response to these comments is included following the discussion of §83.3010.

In addition, the commission received a written comment after the October 3 deadline for official comments. Because these comments were not received during the 30-day official comment period, the commission will consider them informal comments.

The rules in 7 TAC Chapter 83, Subchapter B govern credit access businesses (CABs). In general, the purpose of the rule changes to 7 TAC Chapter 83, Subchapter B is to reduce the annual assessment paid by licensed CABs for the Texas Financial Education Endowment (TFEE).

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC received no informal precomments on the rule text draft.

The amendments to §83.3010 relate to the amount of the annual assessment that CABs pay toward TFEE. Currently, §83.3010(g)(4) requires each licensed entity to pay a fee up to \$200 for each annual renewal, to contribute to TFEE. This provision also explains that the commission may reduce the amount of the fee if it determines that the endowment is of a sufficient size to accomplish its purpose. The amendment to §83.3010(g)(4) will reduce this fee from \$200 to \$50. This amendment is different from the originally proposed amendment to §83.3010, which would have reduced the fee from \$200 to \$100.

The commission and the OCCC believe that now is an appropriate time to reduce the \$200 annual fee paid to TFEE. This determination is based on the balance needed to match resources with spending needs. TFEE has increased each year CABs have been licensed, and has experienced substantial gains in recent years. As of February 28, 2021, the TFEE fund balance was approximately \$9.1 million. This was a substantial increase from \$8.3 million in FY 2020 and \$7.9 million in FY 2019. At the same time, the grant process must be matched to the applications being received. In 2019, TFEE had to extend the application deadline to allow greater outreach and participation, and ensure it received enough applications for the upcoming grant cycle. The commission and the OCCC wish to ensure that the grant process remains competitive and funds go to appropriate organizations. A

decrease to the fee will also help reduce the regulatory burden on licensed credit access businesses.

The commission and the OCCC believe that the endowment is close to a sustaining level and will continue growing with a \$50 annual fee. This is based on anticipated projections using a \$50 fee amount. The commission and the OCCC also believe that a \$50 fee will continue to enable increasing grant amounts to support financial education in Texas. In June 2021, the commission approved the TFEE Grant Advisory Committee's recommendation to disburse \$350,000 during the 2022-2023 TFEE grant cycle. In a separate proposal to be made in October 2021, the committee intends to recommend that the commission increase this amount to \$409,000, based on the anticipated amount of distributions that can be made. When future disbursements occur, there will be further opportunities to consider the amounts of disbursements and whether the amounts appropriately meet the objectives of the program.

The commission received two official comments, both of which expressed concerns about reducing the annual fee to TFEE. One of these commenters stated: "Respectfully, the lack of proper financial coaching and counseling for low-income families is costing the Texas tax payers millions if not billions of dollars a year. We need to be spending far more than \$400,000 a year on adult Financial Education. . . . With the current funding level, at \$40,000 per grant, that's only 10 grants across the entire State of Texas. If you put more money into this program simply by NOT reducing the fees, the people on the front lines of financial education and the tax payers of Texas will thank you." Similarly, the other commenter stated: "Our state needs more funding for financial education and

capability programs, not less. Unfortunately, there are many communities in Texas that do not receive funding from the TFEE to support financial education and capability programming impacting the financial wellness of many Texas families and communities. Since its inception, most grants (59%) funded by the TFEE has supported programs in larger areas, such as Houston, DFW, and Austin." In addition, the two informal comments received after the October 3 deadline expressed similar concerns about reducing the fee.

The commission disagrees with these comments, and still believes that it is appropriate to reduce the annual fee paid to TFEE at this time. As discussed earlier, the commission and the OCCC anticipate that a \$50 fee will enable TFEE to continue growing, while also matching the grant process to the applications and ensuring a competitive application process. The commission and the OCCC wish to ensure that TFEE's growth occurs in a financially responsible manner and provides a sustainable source of funding for financial education programs, consistent with good stewardship of state funds. At the same time, for the reasons discussed earlier, there should be further opportunities in the future to consider disbursement amounts as TFEE continues to grow.

The rule changes are adopted under Texas Finance Code, §393.622, which authorizes the commission to adopt rules necessary to enforce and administer Texas Finance Code, Chapter 393, Subchapter G (governing CABs). In addition, Texas Finance Code, §393.628 authorizes the commission to set the annual assessment that CABs pay toward TFEE (up to \$200), and authorizes the commission to adopt rules regarding TFEE.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 393.

*Part 1. Finance Commission of Texas*

*Chapter 7. Texas Financial Education Endowment Fund*

*§7.102. TFEE Responsibilities.*

(a) Finance commission and Office of Consumer Credit Commissioner (OCCC). The finance commission administers all aspects of TFEE, including the grant program, gifts, donations, funding and policy decisions. The OCCC is responsible for collection of assessment fees, disbursement and tracking of TFEE funds, and maintaining financial records of revenue, expenditures, and reconciliation of funds. The Consumer Credit Commissioner (commissioner) or the commissioner's designee serves as the investment officer appointed by the finance commission to maintain compliance, [execute grant agreements,] accept gifts and donations, and invest TFEE funds. The commissioner may designate a person to execute grant agreements.

(b) Grant Advisory Committee (GAC) and grant coordinator. The GAC serves in an advisory role and makes program recommendations to the grant coordinator and finance commission audit committee regarding TFEE administration. The grant coordinator serves under the direction of the commissioner, provides information regarding grant activity to the GAC and finance commission, and serves as the liaison between grantees and the GAC.

*Part 5. Office of Consumer Credit Commissioner*

*Chapter 83. Regulated Lenders and Credit Access Businesses*

*Subchapter B. Rules for Credit Access Businesses*

*Division 3. Application Procedures*

*§83.3010. Fees*

(a) - (f) (No change.)

(g) Annual renewal and assessment fees.

(1) - (3) (No change.)

(4) In addition to the annual assessment fee, a fee not to exceed \$50 [~~\$200~~] is required for each annual renewal of a licensed entity, in order to contribute to the Texas Financial Education Endowment. The finance commission may reduce the amount of the fee if it determines that the endowment is of a sufficient size to accomplish its purpose.

**Certification**

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on October 15, 2021.

Matthew J. Nance  
Deputy General Counsel  
Office of Consumer Credit Commissioner



9/13/2021

ATTN: Matthew Nance, Deputy General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705

Submitted Electronically:

Re: TRD-202103270 Proposed rule changes to the annual assessment paid by licensed CABs for the Texas Financial Education Endowment, CHAPTER 83. REGULATED LENDERS AND CREDIT ACCESS BUSINESSES SUBCHAPTER B. RULES FOR CREDIT ACCESS BUSINESSES DIVISION 3. APPLICATION PROCEDURES 7 TAC §83.3010

Dear Mr. Nance:

My name is Jay Meador.

I'm the Brazos Valley Financial Fitness Center Director. I work with people to build financial wellbeing and transition away from relying on public benefits, like government housing and food stamps, in a 5-year time frame.

Generational poverty can be a defining force that hinders financial wellbeing for many families. Though not the only solution for building wealth, financial coaching and education is an extremely important piece of the puzzle. How can they teach it to their kids if they don't learn it themselves? Each low income family has an average of three kids. Do the math, if we don't handle this problem now, soon, it will be too late. We need to make sure that better financial services choices exist in our communities. People also need to learn about finances in order to manage what they have, seek new opportunities, take full advantage of good loans and other financial services, and stay away from the bad ones.

Reducing the contribution for CREDIT ACCESS BUSINESSES to the Texas Financial Education Endowment from \$200 to \$100 is a step backwards. I understand that the Office of Consumer Credit Commissioner has indicated that enough funds have been raised for the Education Endowment and that \$100 fee will be sufficient to keep it going, but the need in Texas for financial education and other financial wellbeing support services far exceeds the endowment. Though the endowment cannot meet all the needs, particularly now, with our economy recovering from an unprecedented crisis, we need all of the resources we can muster.

Respectfully, the lack of proper financial coaching and counseling for low-income families is costing the Texas tax payers millions if not billions of dollars a year. We need to be spending far more than \$400,000 a year on adult Financial Education.

In the four years that I've been The Financial Fitness Director, I have been coaching around 800 people one on one. About half of them have started saving. Over 200 have had a credit increase of at least 50 points. Around 150 have saved over \$650 and 15 have purchased their own home and are free from government assistance. In the next two years we should have about 40 in their own home and off of government assistance.

For EACH family that would invests time and effort to achieve financial wellbeing but is not successful due to the lack of guidance and support, taxpayers pay a minimum of \$12,000 a year (housing plus food stamps plus health care). This cost, taken over the whole Texas low income population, reaches millions of dollars.

I am a one man show. With a \$40,000 grant from this program, I could add one part-time intern for two years, which would help increase my productivity by as much as 30%. I imagine other programs would get the same productivity boost. Though I have applied for this grant, this letter is not advocating for more money for my organization, but rather showing the impact of an additional grant of \$40,000. With the current funding level, at \$40,000 per grant, that's only 10 grants across the entire State of Texas. If you put more money into this program simply by NOT reducing the fees, the people on the front lines of financial education and the tax payers of Texas will thank you.

Sincerely,

Jay Meador  
Brazos Valley Financial Fitness Director  
Brazos Valley Affordable Housing Corp.  
4001 E 29<sup>th</sup> St. 180  
Bryan TX. 77805  
979 595-2809 Ext. 6



September 30, 2021

Matthew Nance  
Deputy General Counsel  
Office of Consumer Credit Commissioner  
2601 North Lamar Boulevard  
Austin, Texas 78705

Re: TRD-202103270 Proposed rule changes to the annual assessment paid by licensed CABs for the Texas Financial Education Endowment, CHAPTER 83. REGULATED LENDERS AND CREDIT ACCESS BUSINESSES SUBCHAPTER B. RULES FOR CREDIT ACCESS BUSINESSES DIVISION 3. APPLICATION PROCEDURES 7 TAC §83.3010

Dear Mr. Nance,

United Ways of Texas (UWT) is a statewide organization of over 60 local United Ways from diverse communities across the state. United Ways of Texas creates lasting change in peoples' lives and in Texas communities by leading and collaborating with a trusted and powerful network of local member United Ways. United Ways are independent nonprofits that mobilize and invest local resources to address community needs.

We are a member of the Texas Fair Lending Alliance (TFLA), a coalition of more than 60 community-based and nonprofit organizations across the state working to transform the Texas payday and auto title loan market from one based on a cycle of debt, to one that thrives on a cycle of success. United Ways in Texas who are individually members of TFLA include: United Way of Central Texas, United Way of Coastal Bend, United Way of Greater Houston, United Way of Metropolitan Dallas, United Way of San Antonio, and United Way of Southern Cameron County.

Texas United Ways believe that all Texans should have the opportunities and tools to lead productive and financially stable lives. As a result of this belief, United Ways across the state focus on a continuum of strategies aimed at supporting individuals to achieve productive and financially stable lives - from building individual financial capability and assets; helping individuals to access stable employment and career pathways; supporting work that builds access to affordable credit; and helping individuals avoid debt.

Financial education is one of the strategies that many Texas United Ways have prioritized at the local level to help families on their path to financial stability.

**United Ways of Texas is very concerned about the proposed rule change that would reduce the Texas Financial Education Endowment (TFEE) contribution for Credit Access Businesses (CABs) from \$200 to \$100.**

Our state needs more funding for financial education and capability programs, not less. Unfortunately, there are many communities in Texas that do not receive funding from the TFEE to support financial education and capability programming impacting the financial wellness of many Texas families and communities. Since its inception, most grants (59%) funded by the TFEE has supported programs in larger areas, such as Houston, DFW, and Austin. There has

been need for more financial education services and supports, including financial coaching for many years and the need continues to grow. A 2016 survey of local United Ways and Volunteer Income Tax Assistance (VITA) coalitions by United Ways of Texas found that program capacity and limited resources (both funding and volunteers) are barriers to expanding financial stability services, including financial coaching and that the need for services will continue to grow as Texas' population increases and economic forces constrain lower income families and individuals.

Additionally, the fee change would be insignificant to CABs—an industry that most recently accessed \$20.45 million in subsidies through PPP loans, more than twice the average loan amount for all Texas businesses—but would undermine the mission and goals of the TFEE. The TFEE aims to support statewide financial capability and consumer credit building activities and programs as well as the OCCC, which works to enhance the financial well-being of the citizens of Texas. The fee that CABs pay contributes to this important work and should not be decreased, especially given the devastating impact COVID-19 has had on the financial wellbeing of Texas families and communities.

Texas United Ways believe the TFEE plays an important role in helping Texans have access to services and supports that teach them how to develop long-term financial stability and that our state should be investing more into financial education and capability programs across all Texas communities. Thank you for your consideration and we look forward to continuing to work with the OCCC on strengthening the financial stability of Texas families and communities.

Sincerely,

Ashley R. Harris, Director of Public Policy and Advocacy  
United Ways of Texas

**C. OFFICE OF CONSUMER CREDIT COMMISSIONER**

3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments and a Repeal in 7 TAC, Part 5, Chapter 89, Concerning Property Tax Lenders, Resulting from Rule Review

**PURPOSE:** The purpose of the amendments to 7 TAC Chapter 89 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039.

**RECOMMENDED ACTION:** The agency requests that the Finance Commission approve the adoption of the amendments to 7 TAC Chapter 89.

**RECOMMENDED MOTION:** I move that the Finance Commission approve the adoption of the amendments to 7 TAC Chapter 89.

*Title 7. Banking and Securities**Part 5. Office of Consumer Credit Commissioner**Chapter 89. Property Tax Lenders*

The Finance Commission of Texas (commission) adopts amendments to §89.310 (relating to Fees) and §89.405 (relating to Denial, Suspension, or Revocation Based on Criminal History), and adopts the repeal of §89.409 (relating to License Reissuance), in 7 TAC, Chapter 89, concerning Property Tax Lenders.

The commission adopts the amendments to §89.310 and the repeal of §89.409 without changes to the proposed text as published in the September 3, 2021, issue of the *Texas Register* (46 TexReg 5513).

The commission adopts the amendments to §89.405 with changes to the proposed text as published in the September 3, 2021, issue of the *Texas Register* (46 TexReg 5513).

The commission received no written comments on the proposal.

In general, the purpose of the rule changes to 7 TAC Chapter 89 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 89 was published in the *Texas Register* on May 28, 2021 (46 TexReg 3425). The commission received no comments in response to that notice.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC received one informal precomment on the rule text draft, addressing the issue of below-market-rate loans under Texas Tax Code,

§32.06(a-8). The precomment did not address the proposed rule changes in §§89.310, 89.405, and 89.409. The OCCC appreciates the thoughtful input provided by stakeholders.

An amendment to §89.310 adjusts the volume-based portion of the annual fee paid by property tax lender licensees. Under Texas Finance Code, §351.154, property tax lender licensees are required to pay a license fee to the OCCC. Under Texas Finance Code, §14.107, the commission is authorized to set the amount of the license fee in an amount necessary to recover the costs of administering Texas Finance Code, Chapter 351. Under Texas Finance Code, §16.002 and §16.003, the OCCC is a self-directed, semi-independent agency. This means that the OCCC is responsible for the costs of its operations, and may set fees in amounts necessary for the purpose of carrying out its functions.

Under current §89.310(g)(1), the annual license fee paid by active property tax lender licensees consists of two components: (1) a fixed fee up to \$600, and (2) a volume fee up to \$0.03 for each \$1,000 advanced in property tax loans, in accordance with the property tax lender's most recent annual report. Under current §89.310(g)(3), the total annual license fee shall not average more than \$1,200 per active licensed location.

The amendment to §89.310(g)(1)(B) adjusts the volume-based portion of the annual license fee from \$0.03 to \$0.05 per \$1,000 advanced. The commission and the OCCC believe that this change is necessary to ensure that licensing fees are sufficient to

recover the costs of administering Texas Finance Code, Chapter 351. Currently, property tax lenders contribute approximately 0.8% of the total revenue that the OCCC receives from license fees. However, property tax lender examinations make up approximately 1.5% of the OCCC's workload of examination hours. This suggests that the current revenue from property tax lender license fees is not sufficient in comparison to other industries.

In the OCCC's experience, the property tax lending industry has required significant staff resources due to the complexity of the property tax loan transaction. A property tax lender examination often requires a team of examiners with specialized training and experience. On average, a property tax lender examination requires approximately 20 examination hours (compared to 16 hours for motor vehicle sales finance licensees and 10 hours for regulated lenders). The OCCC has also received a number of complaints about property tax lenders. Compared to other industries, property tax lenders have consistently tended to have a higher ratio of complaints to the number of active licensees. Many of these complaints are complex and require significant staff time to process. In the OCCC's experience, costs for property tax lenders tend to scale with loan volumes, with the OCCC generally expending more resources on property tax lenders that have larger loan volumes.

Currently, the volume-based fee for property tax lenders is lower than the corresponding fee for regulated lenders. Whereas property tax lenders currently pay \$0.03 per \$1,000 advanced under §89.310(g)(1)(B), regulated lenders currently pay \$0.05 per \$1,000 of loans made under Texas Finance Code, Chapter 342, Subchapter E, as provided by the current rule

at 7 TAC §89.310(g)(1)(B)(iii) (relating to Fees). Adjusting the volume-based fee for property tax lenders from \$0.03 to \$0.05 would bring property tax lenders more in line with other licensees. This would help ensure that property tax lenders pay their fair share of costs for regulating the industry, and that other industries are not subsidizing the cost of regulating property tax lenders.

Amendments to §89.405 relate to the OCCC's review of the criminal history of a property tax lender applicant or licensee. The OCCC is authorized to review criminal history of applicants and licensees under Texas Occupations Code, Chapter 53; Texas Finance Code, §14.109; and Texas Government Code, §411.095. The amendments to §89.405 will ensure consistency with HB 1342, which the Texas Legislature enacted in 2019. HB 1342 included the following changes in Texas Occupations Code, Chapter 53: (1) the bill repealed a provision that generally allowed denial, suspension, or revocation for any offense occurring in the five years preceding the application, (2) the bill added provisions requiring an agency to consider correlation between elements of a crime and the duties and responsibilities of the licensed occupation, as well as compliance with conditions of community supervision, parole, or mandatory supervision, and (3) the bill removed previous language specifying who could provide a letter of recommendation on behalf of an applicant. Amendments throughout subsections (c) and (f) of §89.405 implement these statutory changes from HB 1342. Other amendments to §89.405 include technical corrections, clarifying changes, and updates to citations.

Since the proposal, a change has been made in §89.405(d), to correct an internal reference that should refer to §89.405(f)(1).

The adoption would repeal §89.409. Currently, §89.409 requires a licensee to return its license certificate in the event of reissuance of a license. When this section was adopted, it was based on the assumption that the OCCC would issue a paper license certificate. Because the OCCC now issues licenses through an online system (ALECS), this section is no longer necessary.

The rule changes are adopted under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351. In addition, Texas Finance Code, §14.107 authorizes the commission to set licensing fees under Chapter 351 at amounts necessary to recover the costs of administering that chapter. Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 351.

#### *Chapter 89. Property Tax Lenders*

##### *Subchapter C. Application Procedures*

##### *§89.310. Fees*

(a) - (f) (No change.)

(g) Annual renewal and assessment fees.

(1) An annual assessment fee is required for each active license consisting of:

(A) a fixed fee not to exceed \$600; and

(B) a volume fee based upon the lending activity conducted and the volume of business that consists of an amount not to exceed \$0.05 [~~\$0.03~~] per each \$1,000 advanced for license holders whose regulated operations occur within Texas Finance Code, Chapter 351 in accordance with the most recent annual report filing required by Texas Finance Code, §351.164.

(2) An annual assessment fee not to exceed \$250 is required for each inactive license.

(3) The maximum annual assessment fee for each licensed entity shall not average more than \$1,200 per active licensed location.

##### *Subchapter D. License*

##### *§89.405. Denial, Suspension, or Revocation Based on Criminal History*

(a) Criminal history record information. After an applicant submits a complete license application, including all required fingerprints, and pays the fees required by §89.310 of this title (relating to Fees), the OCCC will investigate the applicant and its principal parties. The OCCC will obtain criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant's fingerprint submission. The OCCC will continue to receive information on new criminal activity reported after the fingerprints have been initially processed.

(b) Disclosure of criminal history. The applicant must disclose all criminal history information required to file a complete application with the OCCC. Failure to provide any information required as part of the application or requested by the OCCC

reflects negatively on the belief that the business will be operated lawfully and fairly. The OCCC may request additional criminal history information from the applicant, including the following:

(1) information about arrests, charges, indictments, and convictions of the applicant and its principal parties;

(2) reliable documents or testimony necessary to make a determination under subsection (c) of this section, including letters of recommendation from prosecution, law enforcement, and correctional authorities;

(3) proof that the applicant has maintained a record of steady employment, has supported the applicant's dependents, and has otherwise maintained a record of good conduct; and

(4) proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid or are current.

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been convicted of an offense that directly relates to the duties and responsibilities of a licensee under Texas Finance Code, Chapter 351, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Originating, acquiring, or servicing loans under Texas Finance Code, Chapter 351 involves or may involve making representations to consumers regarding the terms of the loan, receiving money from consumers, remitting money to third parties, maintaining accounts, collecting due amounts in a legal manner, foreclosing on

real property in compliance with state and federal law, and compliance with reporting requirements to government agencies. Consequently, the following crimes are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation:

(A) theft;

(B) assault;

(C) any offense that involves misrepresentation, deceptive practices, or making a false or misleading statement (including fraud or forgery);

(D) any offense that involves breach of trust or other fiduciary duty;

(E) any criminal violation of a statute governing credit transactions, property tax lending, or debt collection;

(F) failure to file a government report, filing a false government report, or tampering with a government record;

(G) any greater offense that includes an offense described in subparagraphs (A) - (F) of this paragraph as a lesser included offense;

(H) any offense that involves intent, attempt, aiding, solicitation, or conspiracy to commit an offense described in subparagraphs (A) - (G) of this paragraph.

(2) In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.022:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; ~~and~~

(D) the relationship of the crime to the ability or ~~;~~ capacity ~~;~~ ~~or fitness~~ required to perform the duties and discharge the responsibilities of a licensee; and ~~;~~

(E) any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.

(3) In determining whether a conviction for a crime renders an applicant or a licensee unfit to be a licensee, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.023:

(A) the extent and nature of the person's past criminal activity;

(B) the age of the person when the crime was committed;

(C) the amount of time that has elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person before and after the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while

incarcerated or after release, or following the criminal activity if no time was served; ~~and~~

(F) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and

(G) ~~(F)~~ evidence of the person's current circumstances relating to fitness to hold a license, which may include letters of recommendation, ~~from one or more of the following:~~

~~[(i) prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;]~~

~~[(ii) the sheriff or chief of police in the community where the person resides; and]~~

~~[(iii) other persons in contact with the convicted person.]~~

(d) Crimes related to character and fitness. The OCCC may deny a license application if the OCCC does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §351.104(a)(1). In conducting its review of character and fitness, the OCCC will consider the criminal history of the applicant and its principal parties. If the applicant or a principal party has been convicted of an offense described by subsections (c)(1) or (f)(1) ~~(f)(2)~~ of this section, this reflects negatively on an applicant's character and fitness. The OCCC may deny a license application based on other criminal history of



the applicant or its principal parties if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. The OCCC will, however, consider the factors identified in subsection (c)(2) and (3) of this section in its review of character and fitness.

(e) Revocation on imprisonment. A license will be revoked on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

(f) Other grounds for denial, suspension, or revocation. The OCCC may deny a license application, or suspend or revoke a license, based on any other ground authorized by statute, including the following:

~~[(1) a conviction for an offense that does not directly relate to the duties and responsibilities of the occupation and that was committed less than five years before the date of application, as provided by Texas Occupations Code, §53.021(a)(2);]~~

(1) [(2)] a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42A.054 or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(2)-(3) ~~[(53.021(a)(3)-(4))];~~

(2) [(3)] errors or incomplete information in the license application;

(3) [(4)] a fact or condition that would have been grounds for denying the license application, and that either did not exist at the

time of the application or the OCCC was unaware of at the time of application, as provided by Texas Finance Code, §351.156(3); and

(4) [(5)] any other information warranting the belief that the business will not be operated lawfully and fairly, as provided by Texas Finance Code, §351.104(a)(1) and §351.156.

**{{Section 89.409 will be repealed.}}**

~~[§89.409. License Reissuance]~~

~~[In the event of reissuance of a license for any reason, the licensee must return to the OCCC the license certificate that was held prior to the reissuance. Should the licensee be unable to return the license certificate to the OCCC, the licensee must provide a written statement to that effect, including the reason for inability to return it (e.g., lost, destroyed).]~~

### Certification

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on October 15, 2021.

Matthew J. Nance  
Deputy General Counsel  
Office of Consumer Credit Commissioner

*This page left blank intentionally.*

**D.**

**Department of Savings and  
Mortgage Lending**

*This page left blank intentionally.*

## D. Department of Savings and Mortgage Lending

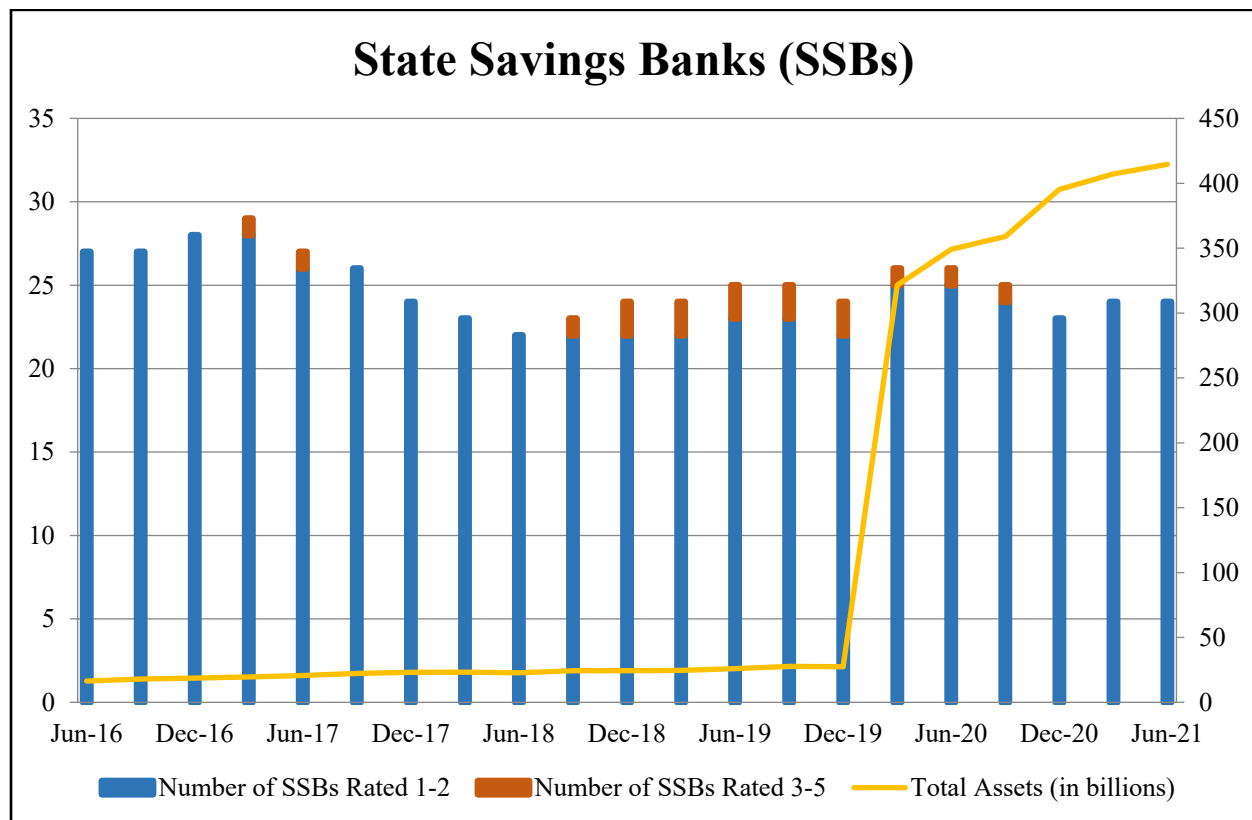
### 1. Industry Status and Departmental Operations: a) Thrift Regulation Division Activities; b) Mortgage Regulation Division Activities; e) Operations Division Activities; f) Legal Division Activities, including Consumer Complaints and Gift Reporting; and g) Legislative Activities

#### a) Thrift Regulation Division Activities

##### Industry Status

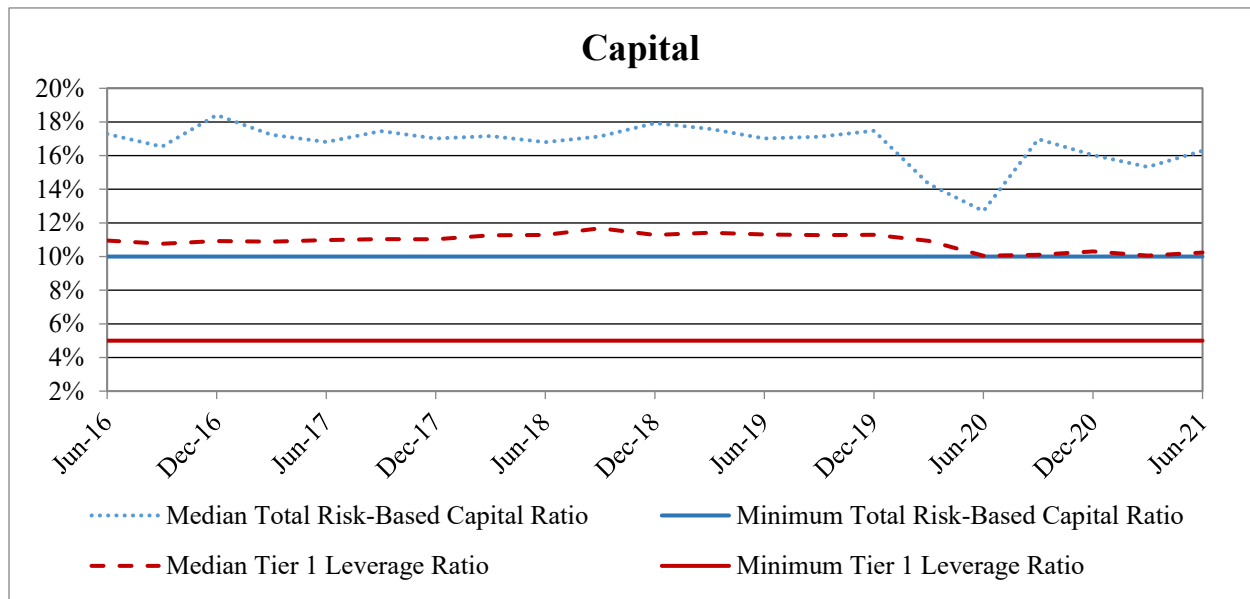
The Department continues to monitor various local, state, and national data sources to best understand the risks that the industry and individual savings banks are facing.

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. As of June 30, 2021, the industry consist of 24 state savings banks with assets totaling \$414.6 billion. The industry remains sound with all banks well rated. As of June 30, 2021, one formal supervisory action remains in place.

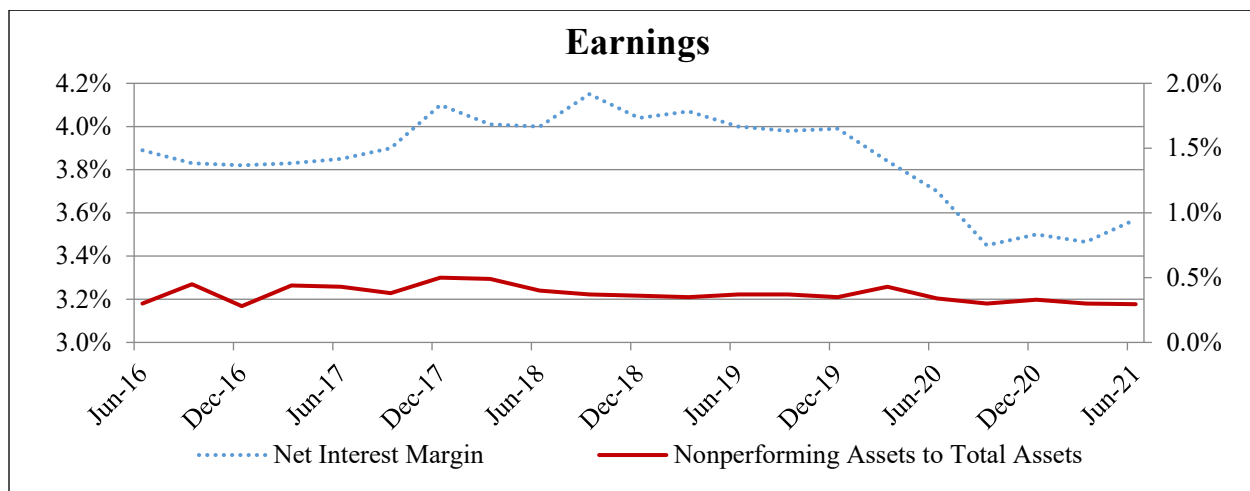


All SSBs are subject to quarterly offsite reviews. Those with the highest risk profiles receive enhanced scrutiny, as warranted, with targeted visitations, accelerated examinations, and/or corrective actions. Below are specific areas that the Department monitors in relation to changes in the state and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

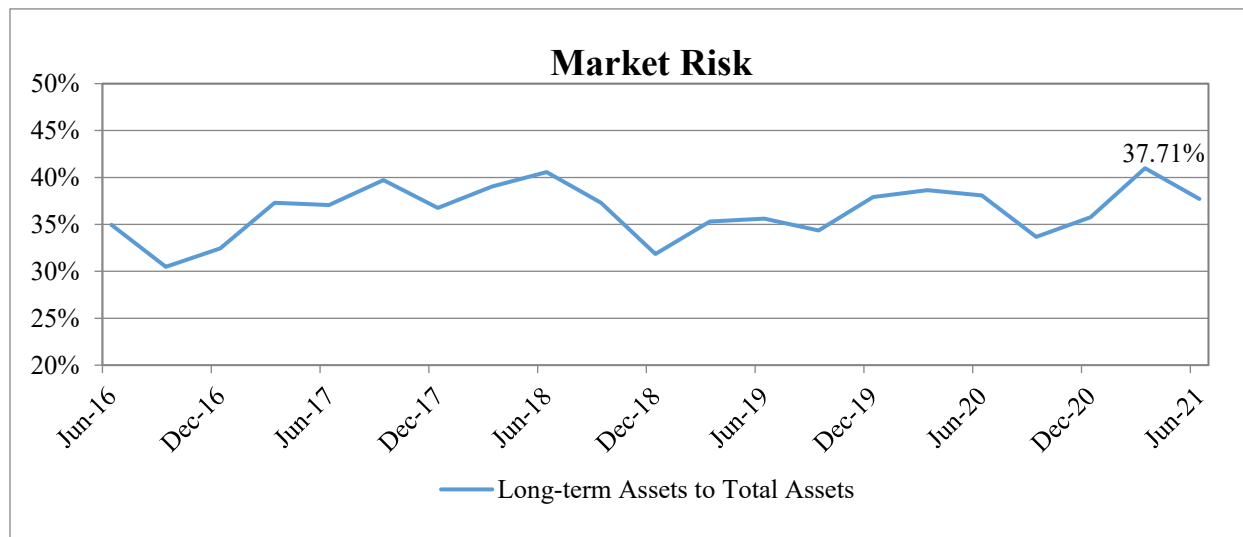
Bank capital serves several important functions, including absorbing losses, promoting public confidence, restricting excessive asset growth, and providing protection to the depositors. Regulatory capital standards are designed to strengthen the quality and quantity of bank capital and promote a stronger financial industry that is more resilient to economic stress events. As of June 30, 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 16.29% and 10.24%, respectively.



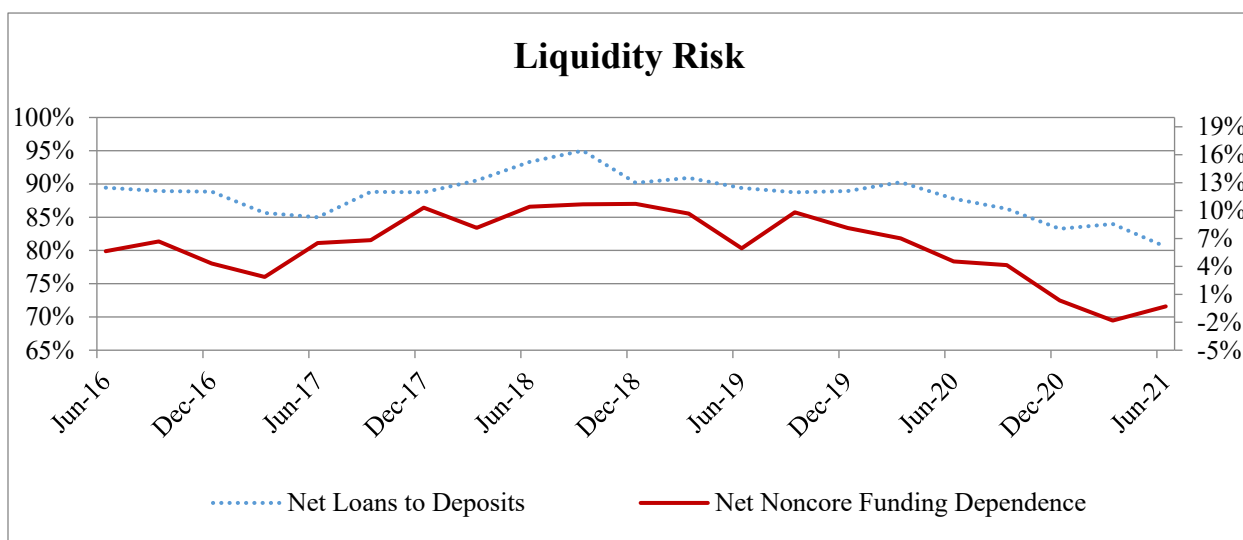
Earnings is the initial safeguard against the risk of engaging in the banking business and is the first line of defense against capital depletion resulting from shrinkage in asset value. Earnings performance should allow the bank to remain competitive by providing the resources required to implement management's strategic initiatives. The net interest, or profit margin, is 3.57%. 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 June 30, 2021, the long-term assets to total assets ratio decreased to 37.71%.



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 0.30%. The loan-to-deposit ratio, a measure of the use of deposits to fund lending activities, is 80.56%.



### **Thrift Examination Activity Report**

Due to COVID-19, thrift examinations continue to be conducted off-site. However, limited on-site activities are currently being conducted.

### **Thrift Supervision Activity Report**

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

An application to charter a Texas savings bank to be named Cornerstone Capital Bank, SSB, Houston, and an application to merge The Roscoe State Bank, Roscoe, Texas with and into Cornerstone Capital Bank, SSB, were each received on June 12, 2021, and both applications are under review.

### **Outreach and Training**

On August 10, 2021, Interim Commissioner Trotti virtually co-hosted a Bankers Outreach with the Federal Deposit Insurance Corp. (FDIC) to discuss challenges in the industry and emerging trends.

On August 27-28, 2021, Interim Commissioner Trotti attended the annual Texas Bankers Association (TBA) convention in Austin, Texas. The annual convention allows bankers and vendors to network, share ideas, and learn about industry and political updates.

On September 18-21, 2021, Interim Commissioner Trotti attended and spoke at the Independent Bankers Association of Texas (IBAT) annual convention in Austin, Texas. The four-day event took an in-depth look at key issues affecting the banking industry, specifically those related to community banks.

On September 9, 2021, the Department held the 14th Annual Thrift Industry Day virtually/in person. Celeste Embrey (TBA), John Fleming (TMBA), and Steve Scurlock (IBAT) provided the industry with legislative updates. Jeremy Wilson with the Department of Information Resources discussed emerging issues and best practices regarding cybersecurity. The Thrift Regulation Division staff made presentations relating to topics of interest to the industry. Below is the agenda of the event.





# DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

## 14<sup>TH</sup> ANNUAL THRIFT INDUSTRY DAY

THURSDAY, SEPTEMBER 9, 2021

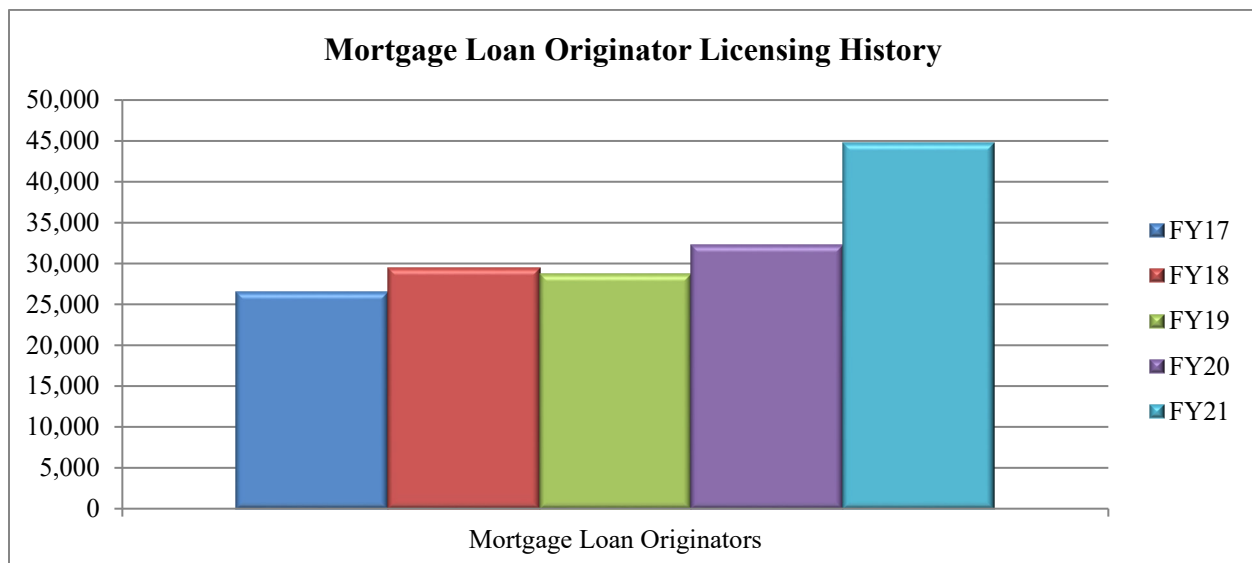
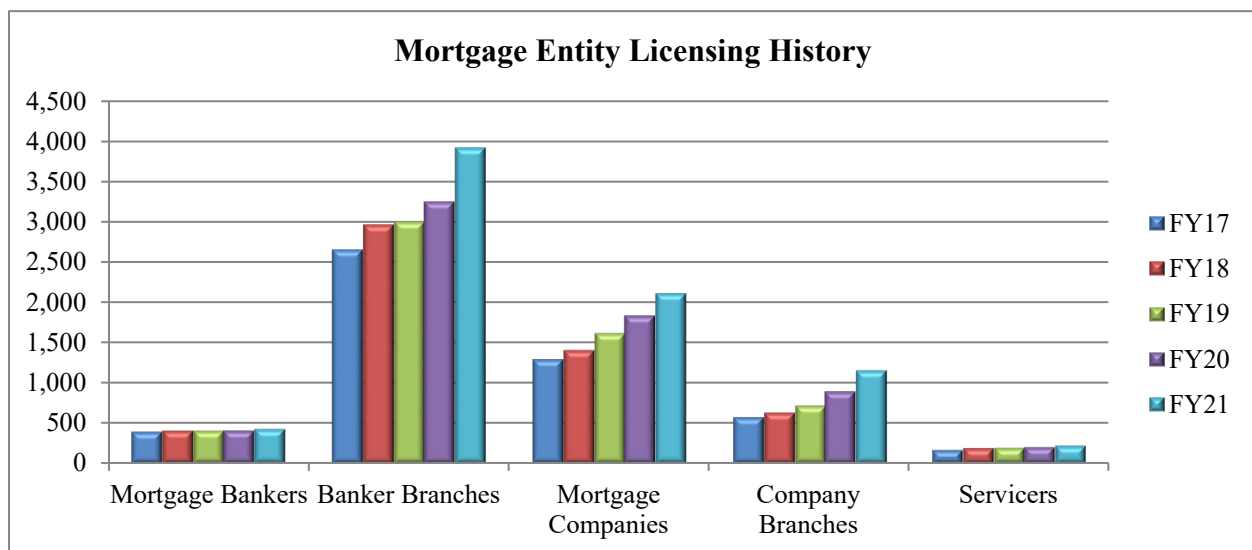
12:30 pm – 1:00pm	<u>Registration</u> Meet & Greet
1:00 pm – 1:10 pm	<u>Welcome and Opening Comments</u>
1:10 pm – 2:10 pm	<u>Legislative Panel</u> <ul style="list-style-type: none"><li>• Celeste Embrey, <i>EVP, Government Relations &amp; Deputy General Counsel, Texas Bankers Association</i></li><li>• John Fleming, <i>General Counsel, Texas Mortgage Bankers Association</i></li><li>• Steve Scurlock, <i>Executive Vice President, Independent Bankers Association of Texas</i></li><li>• Ernest Garcia, <i>General Counsel, DSML (Moderator)</i></li></ul>
2:10 pm – 2:30 pm	<u>Consumer Compliance</u> Bill Poe, <i>Supervisory Compliance Examiner, CSME</i>
2:30 pm- 2:45 pm	Break
2:45 pm – 3:45 pm	<u>Cybersecurity - Emerging Issues and Best Practices</u> Jeremy Wilson, <i>Multi Factor Authentication Statewide Program Manager, Department of Information Resources</i>
3:45 pm – 3:55 pm	Break
3:55 pm – 4:15 pm	<u>US Economic Update and Outlook</u> Carol Leung, <i>Financial Examiner, CFA</i>
4:15 pm – 4:45 pm	<u>Hot Topics</u> Stephany Trotti, <i>Interim Commissioner, CPA</i>
4:45 pm – 5:00 pm	<u>Agency Overview and Adjournment</u>

## b) Mortgage Regulation Division Activities

### Industry Status

During FY2021, the mortgage industry has seen significant growth driven by several factors including: (1) historically low interest rates that led to a substantial number of mortgage loans being refinanced; (2) increase in the demand for new construction and existing homes due to the rise of new residents migrating to Texas; and (3) increase in home improvement loans taken out by homeowners to modernize or upgrade their existing homes.

The following charts provide a five-year licensing history of the mortgage industry in Texas as of the fiscal-year end.



During FY2021, the overall number of mortgage entities (mortgage companies, mortgage bankers, and residential mortgage loan servicers) increased by 307 entity licenses/registrations, equating to a 12.47% increase.

The majority of the mortgage companies are headquartered (main or principal address) in Texas. As of August 31, 2021, 74% of the mortgage companies had their principal offices located in Texas. With the removal of the physical office requirement by the 87th Texas Legislature, the Department expects this number to decline. As of August 31, 2021, only 14% of the mortgage bankers and 48% of the residential mortgage loan servicers had their principal office located in Texas.

During FY2021, the number of residential mortgage loan originators licensed in Texas has increased by 12,547 individuals, equating to 38.92% increase.

The following chart provides additional details of the mortgage industry growth during FY2021.

License/Registration Type	Approved Count as of		% Change
	08/31/2020	08/31/2021	
Mortgage Banker	413	429	3.87%
Mortgage Company	1,639	1,874	14.33%
Residential Mortgage Loan Servicer	207	223	7.73%
Independent Contractor Company	195	235	20.51%
Credit Union Subsidiary Organization	3	3	0.00%
Auxiliary Mortgage Loan Activity Company	3	4	33.33%
Financial Services Company	1	0	-100.00%
<b>Subtotal Entity Licenses/Registrations</b>	<b>2,461</b>	<b>2,768</b>	<b>12.47%</b>
Mortgage Banker Branches	3,246	3,926	20.95%
Mortgage Company Branches	902	1,157	28.27%
Credit Union Subsidiary Organization Branches	2	2	0.00%
<b>Subtotal Branch Licenses/Registrations</b>	<b>4,150</b>	<b>5,085</b>	<b>22.53%</b>
Mortgage Loan Originator	32,238	44,785	38.92%
<b>Subtotal Individual Licenses</b>	<b>32,238</b>	<b>44,785</b>	<b>38.92%</b>
<b>Total Count of Licenses/Registrations</b>	<b>38,849</b>	<b>52,638</b>	<b>35.49%</b>

### **Licensing Activity Report**

During FY2021, according to the NMLS Data Analytics function, the Licensing Division received 22,906 license applications compared to historical averages of 8,600 to 10,000 applications received per year. Additionally, the Department received 173,636 other filings (i.e. sponsorships, amendments, etc.). To address the significant increase in the number of license applications and filings, the Department devoted greater resources to the Licensing Division by: (1) temporarily

reassigning staff from other divisions; (2) employing temporary employees; (3) permitting existing staff to work 16 hours overtime per week; and (4) hiring two additional License and Permit Specialists.

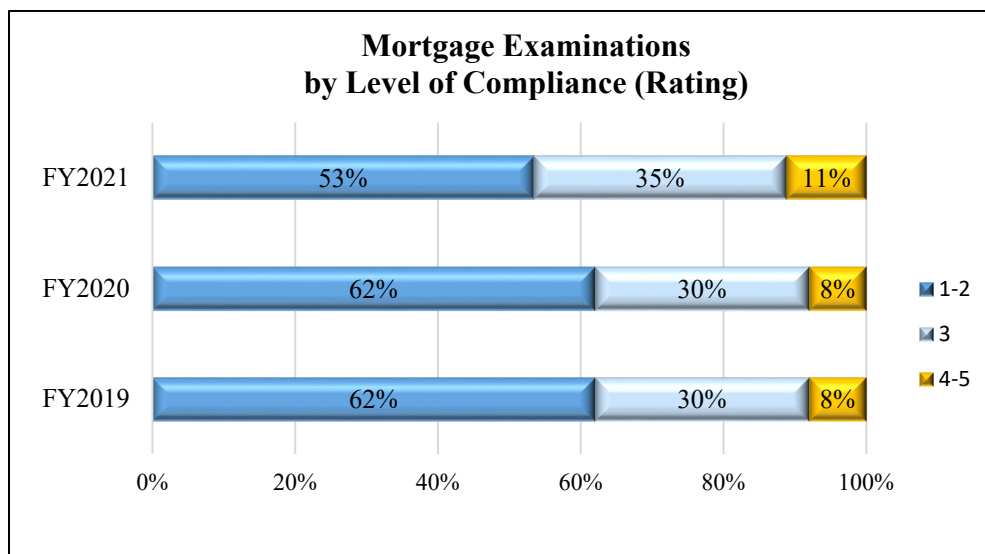
The Department exceeded the FY2021 target of 8,600 applications processed. During FY2021, the Licensing staff processed 20,373 applications and numerous other filings, including 26,109 sponsorship requests.

The Licensing section is preparing for the upcoming renewal period November 1 - December 31, 2021. Companies that have not filed mortgage call reports or have outstanding deficiencies and individuals who have not completed the required continuing education will not be able to submit a renewal until the issues are resolved.

### **Mortgage Examination Activity Report**

The Department exceeded the FY2021 target of 5,900 licensees examined. During FY2021, the Department conducted 412 examinations covering 6,406 individual licensees. The number of examinations is lower when compared to the same reporting period in FY2020; however, the number of individual licensees covered is higher by approximately 7.5%. 47% (or 194) of all the examinations conducted during FY2021 were first-time examinations of newly licensed entities.

Below is a breakdown of mortgage examination results by compliance rating for FY2021. As shown in the chart, the stratification of examination ratings during FY2021 revealed lower levels of satisfactory compliance for the licensees.



Review and analysis of the 3, 4, and 5-rated examinations, show that the level of compliance was impacted, in part, by one or more of the three relevant factors:

1. approximately 50% of the 3, 4, and 5-rated examinations involved a first-time examination of a newly licensed mortgage entity that was not completely familiar with all aspects of federal and state law;

2. the tremendous growth in the number of Texas-licensed residential mortgage loan originators and the corresponding increase in the number of consummated loans by these originators stressed the compliance management systems of the mortgage entities (the number of licensed Texas residential mortgage loan originators has increased by 56% in the last two fiscal years); and
3. the transition from an office-based to remote working environment created information technology (IT) issues for some mortgage entities that led to compliance issues (e.g. the routing of mortgage applications to non-licensed residential mortgage originators).

The examinations revealed violations related to unlicensed independent loan processors, unlicensed residential mortgage loan originators, inadequate recordkeeping, failure to maintain adequate policies and procedures (e.g. anti-money laundering programs, identity theft prevention programs), non-compliant social media advertisements, and non-compliant Conditional Qualification/Conditional Approval Letters.

Additionally, several of the newly licensed entities did not have a sufficient understanding of their role and responsibilities in file maintenance and record retention. Newly licensed entities that perform primarily mortgage brokerage services were relying almost entirely on the lender not only for delivering disclosures, but also for presumed “storage” of the loan files. All mortgage companies are required to maintain their own records for purposes of an examination/inspection. Through numerous outreach measures, the Department is working with the mortgage industry to improve the overall compliance of the industry.

### **Outreach and Training**

During the last week of August, Interim Commissioner Stephany Trotti, Director of Mortgage Regulation William Purce, Chief Mortgage Examiner Ellena Meier, and Manager of Licensing Chris Osuna, attended the Texas Mortgage Bankers Association’s 105<sup>th</sup> Annual Convention in Fort Worth, Texas. The event included sessions on fair lending and servicing, an economic update and forecast for the industry, and other mortgage-related topics.

On September 2, 2021, Director of Mortgage Regulation William Purce provided a virtual presentation to the Originator Connect Network’s Texas Mortgage Round Up.

On September 21, 2021, the Mortgage Regulation Division held its first monthly Mortgage Industry Emerging Issues Call with the industry to discuss various licensing and examination updates and to address issues affecting the industry. The Department will hold these calls every month to keep the mortgage industry abreast of the current issues affecting the mortgage industry. The outreach is intended to improve the industry’s overall compliance.

### **c) Operations Division Activities**

#### **Risk Management**

Many of the office staff are participating in the Department’s teleworking program with preapproved office and telework days. Each section is required to have in-office coverage daily. When employees are determined to be positive for COVID, measures are taken according to the circumstances and safety protocols.

Mortgage and thrift examinations field staff perform on-site activities at a regulated entity's request.

The management team monitors the situation and maintains regular communication with staff.

### **Accounting, Budget, and Financial Reporting**

Staff has closed out FY2021 financial reporting. In compliance with Government Code, Section 2101.011, and in accordance with the requirements established by the Comptroller of Public Accounts, the Department has prepared and submitted the Annual Financial Report to the oversight agencies.

Pursuant to Government Code, Section 661.902(d), the Department has reported information to the Comptroller of Public Accounts on emergency leave granted to employees during the prior fiscal year.

CAPPS Implementation – Effective September 3, 2021, CAPPS Financials is live. Five CAPPS HR/Payroll Kick-off meetings were held September 6-16, 2021.

Legislative Activity – Staff is reviewing Special Session bills for fiscal impact on the agency and the regulated industries.

### **Audit**

The SORM On-site consultation is scheduled to be performed in November 2021.

### **Human Resources**

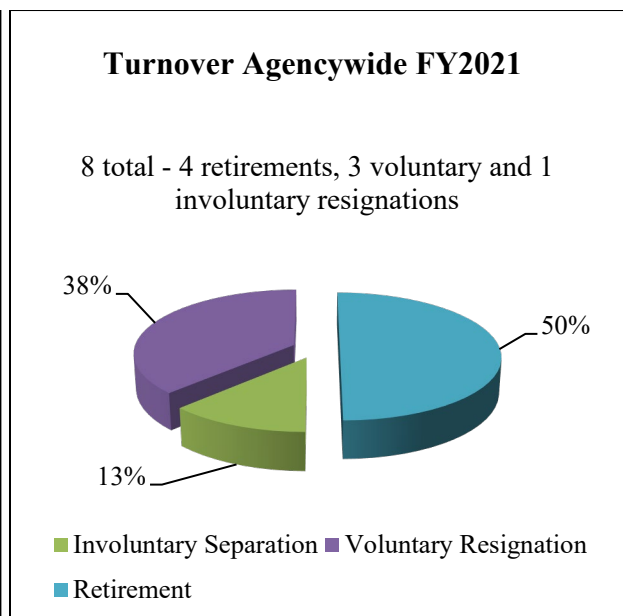
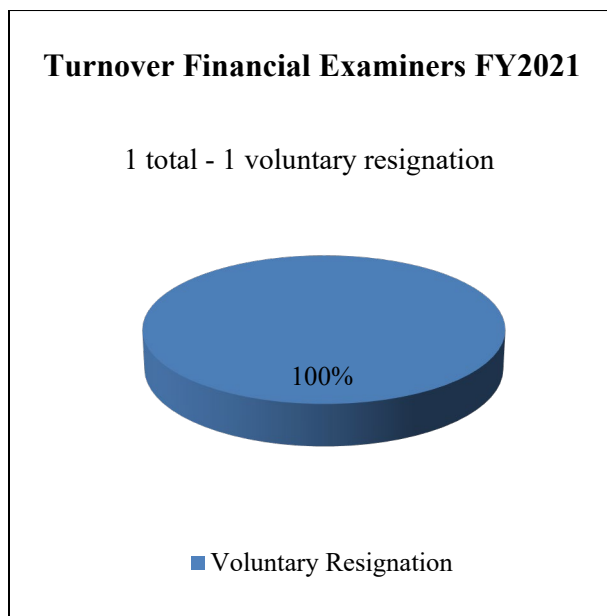
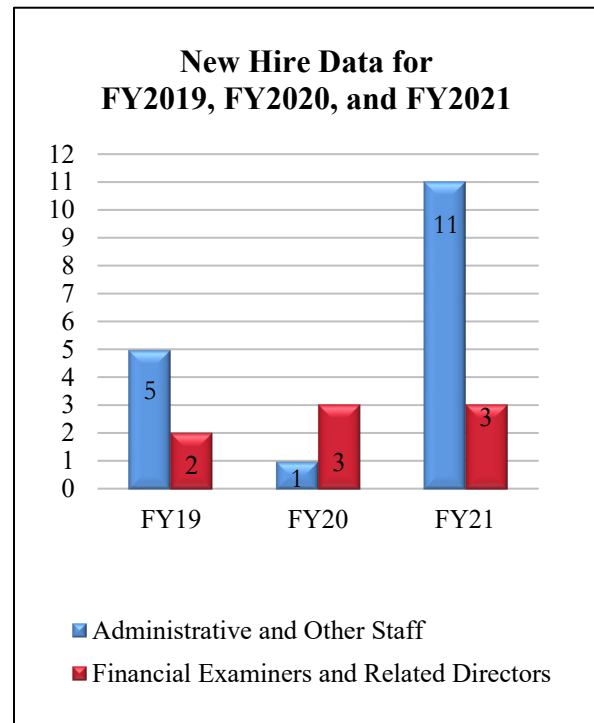
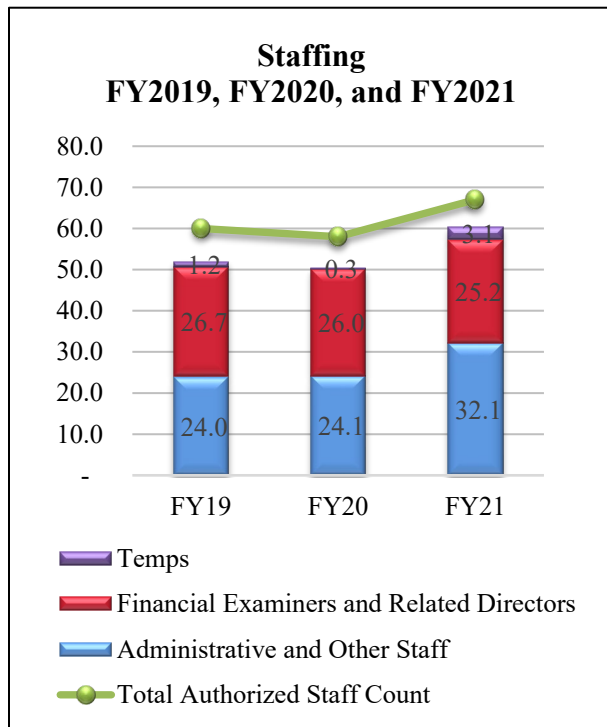
As of September 30, 2021, the Department was staffed at 58 regular full-time and 1 part-time employees. In August, the Department had two separations – the Commissioner and an Executive Assistant. In September, two License and Permit Specialists joined the Department.

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 candidates
Financial Examiner VI/VII – Thrift - 3	
Attorney III/IV - Thrift	
Commissioner	FC Search Committee
Executive Assistant	Preparing job posting

## Staffing Charts as of August 31, 2021



## Outreach and Training

The quarterly agency-wide meeting and training was held virtually on August 23, 2021. It included agency and division updates, legislative update, and sessions on Information Resources topics, Records Management, and Travel.

**Department of Savings and Mortgage Lending**  
**Actual Performance for Output Measures**

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target		Comparable Historical Data for the same quarter ending time period			
						FY2020	FY2019	FY2018	FY2017
Output Measures-Key									
1-1-1 Thrift Safety and Soundness									
1. Number of State Chartered Savings Institution Examinations Performed									
Quarter 1	16	4	4	25.00%	*				
Quarter 2	16	6	10	62.50%					
Quarter 3	16	2	12	75.00%					
Quarter 4	16	4	16	100.00%		20	22	22	23
* The Department examines state chartered savings banks jointly with the FDIC and FRB, based on a priority schedule. The results for this measure may fluctuate between quarters due to the timing of individual examinations.									
2-1-1 Mortgage Regulation									
1. Number of Applications Processed									
Quarter 1	8,600	3,280	3,280	38.14%	*1				
Quarter 2	8,600	4,159	7,439	86.50%	*2				
Quarter 3	8,600	5,269	12,708	147.77%	*				
Quarter 4	8,600	7,665	20,373	236.90%	*	10,801	8,922	10,501	9,190
*The number of applications received was higher than anticipated; therefore, the number of applications processed is affected in the same manner.									
2. Number of Licensees Examined									
Quarter 1	5,900	1,670	1,670	28.31%					
Quarter 2	5,900	2,052	3,722	63.08%	*				
Quarter 3	5,900	1,025	4,747	80.46%	*				



<b>Quarter 4</b>	5,900	1,659	6,406	108.58%	*	5,958	5,890	9,924	6,253
* The Department exceeded the established target for the year due to completed examinations of mid-size mortgage entities employing a high number of licensees.									

### 3-1-1 Consumer Responsiveness

#### 1. Number of Complaints Closed

<b>Quarter 1</b>	1,000	253	253	25.30%					
<b>Quarter 2</b>	1,000	239	492	49.20%					
<b>Quarter 3</b>	1,000	463	955	95.50%	*				
<b>Quarter 4</b>	1,000	400	1,355	135.50%	*	1,264	1,024	1,134	1,053
*Increased volume of complaints in FY2021 over FY2020, paired with increased investigations staff led to a higher volume of complaints closed.									

\*Varies by 5% or more from target.

<sup>1</sup> The first quarter number has been restated from what was previously reported. The original number reported was 2,317.

<sup>2</sup> The second quarter number has been restated from what was previously reported. The original number reported was 3,521.

**Department of Savings and Mortgage Lending**  
**Actual Performance for Outcome/Efficiency Measures**

Type/Strategy/Measure	2021 Target	2021 YTD	Percent of Annual Target	
<b>Outcome Measures-Key - Annual Reporting</b>				
<b>1-1-1 Thrift Safety and Soundness</b>				
1. Percentage of State Chartered Savings Institutions Receiving Examination within the Required Timeframes	100%	100%	100.00%	
2. Percentage of Savings Institutions Classified Safe and Sound	90%	100%	111.11%	*
All thrift institutions are well rated, causing the measure to be above projections.				
<b>2-1-1 Mortgage Regulation</b>				
1. Percentage of Satisfactory Levels of Compliance Reported Through Examination	90%	88%	97.78%	
<b>3-1-1 Consumer Responsiveness</b>				
1. Percentage of Complaints Completed within Ten Business Days of Receipt of Complete Information	99%	96%	96.97%	
2. Percentage of Written Complaints Closed within 90 Days	95%	92%	96.42%	
<b>4-1-1 Agency Administration</b>				
1. Percentage of Employees Separated from the Agency	10%	15%	148.50%	*
*Separations from the agency exceeded projections. Turnover, excluding retirements, is at 7.4%.				
2. Percentage of Actual Expenditures to Budgeted Expenditures	95%	87%	91.89%	
*Unfilled vacancies and the impact of COVID-19 pandemic on spending caused this measure to be under projections.				
<b>Explanatory Measures-Key - Annual Reporting</b>				
<b>1-1-1 Thrift Safety and Soundness</b>				
1. Number of State-Chartered Savings Institutions	23	24	104.35%	
2. Dollar Amount of Assets under Regulation (in Billions)	\$325.5	\$414.60	127.37%	*
*Asset growth in the industry caused this measure to be above projections.				

\*Varies by 5% or more from target.

**Department of Savings and Mortgage Lending  
Actual Performance for Non-Key Measures**

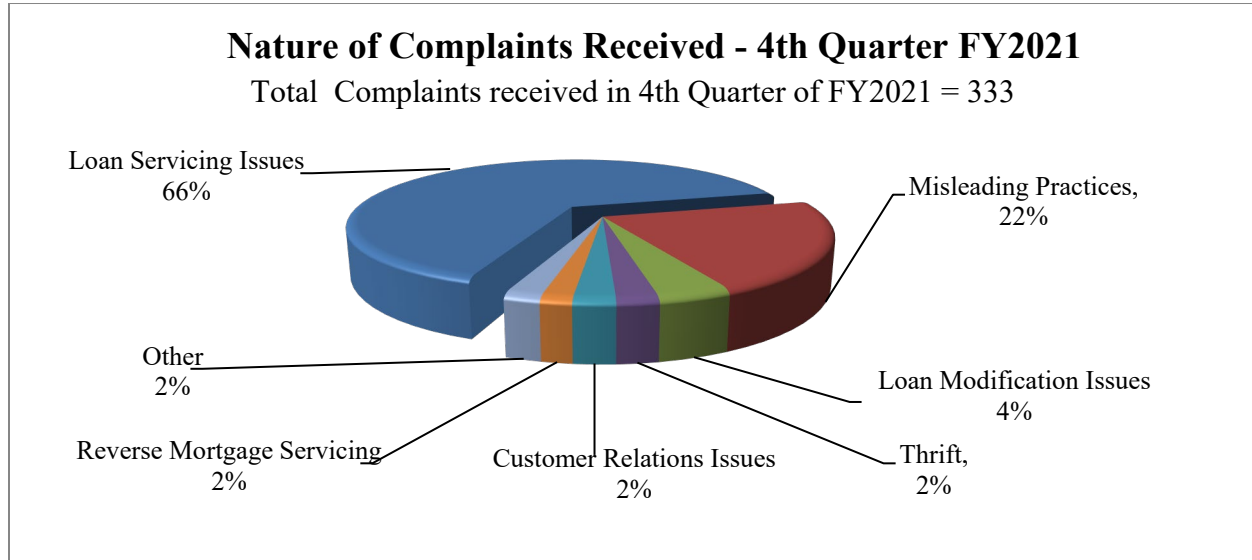
Type/Strategy/Measure	2021 Target	2021 YTD	Percent of Annual Target	
<b>Non-Key Measures</b>				
<b>Thrift Safety and Soundness</b>				
<b>01-01 Outcome Measures</b>				
1. Percentage of State Chartered Savings Institution Applications Processed within Statutory Timeframes	100%	100%	100.00%	
<b>Output Measures</b>				
1. Number of State Chartered Savings Institution Applications Processed	10	18	180.00%	*
*Increased application activity caused this measure to be above projections.				
<b>Efficiency Measures</b>				
1. Assets Examined Per Examiner Day (in Millions)	\$92.0	\$164.9	179.24%	*
*Due to increased asset levels during the COVID-19 pandemic, this measure is above projections.				
2. Average Time (Business Days) to Complete Analysis of Quarterly Financial Data	7	2.25	32.14%	*
*Measure is below target due to technology upgrades and process efficiencies.				
<b>Mortgage Regulation</b>				
<b>02-01 Efficiency Measures</b>				
1. Average Cost Per Application Processed	\$55.00	\$40.96	74.47%	
*A significant increase in applications volume caused a decrease in the average processing cost.				
<b>Explanatory Measures</b>				
1. Total Number of Licensees in an Approved Status	38,000	52,638	138.52%	*
*Measure is above target due to growth in the industry and related increased application activity.				
<b>Consumer Responsiveness</b>				
<b>03-01 Efficiency Measures</b>				
1. Average Cost Per Complaint Closed	\$400.00	\$503.11	125.78%	*
*Adding and training new investigations staff increased total complaint investigations costs, which in turn led to an increased average cost per complaint.				

\* Varies by 5% or more from target.

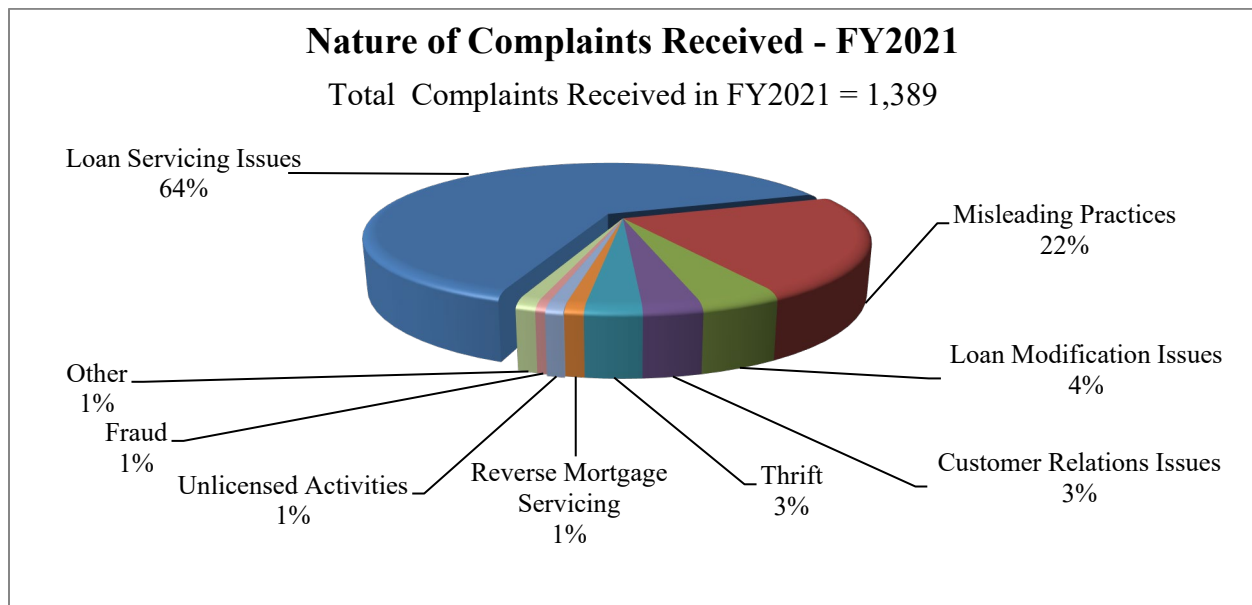
#### d) Legal Division Activities, including Consumer Complaints and Gift Reporting

##### **Consumer Complaints Activity Report**

**Complaints Received** - Loan Servicing complaints continue to be the largest complaint category accounting for 66% of the total number of complaints received in the fourth quarter of FY2021 compared to 61% received in the same reporting period in FY2020. The total number of complaints received in the fourth quarter of FY2021 increased 7% when compared to the same reporting period in FY2020.

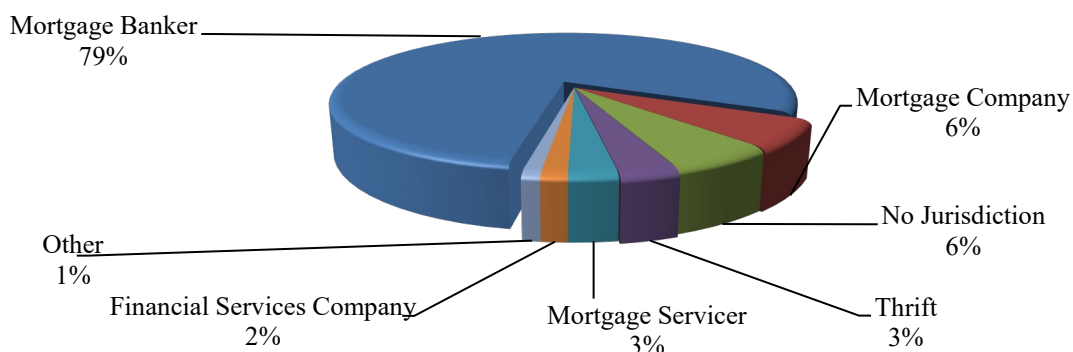


**Total Number of Complaints Received – Fiscal Year** - The total number of complaints received in FY2021 was 1,389, compared to 1,248 received in FY2020. This represents an 11.3% increase in the number of complaints received.



### Respondent License Types - Complaints Received FY2021

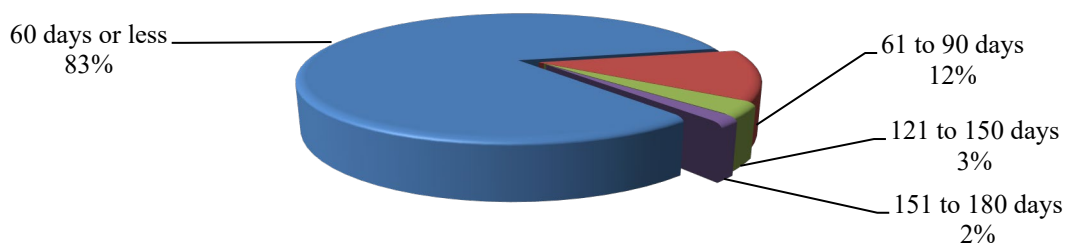
Total Complaints Received in FY2021 = 1,389



**Complaint Aging** - The following charts reflect the consumer complaint information through the end of the fourth quarter of FY2021. Open complaint aging has remained within acceptable ranges with 95% aged less than 90 days.

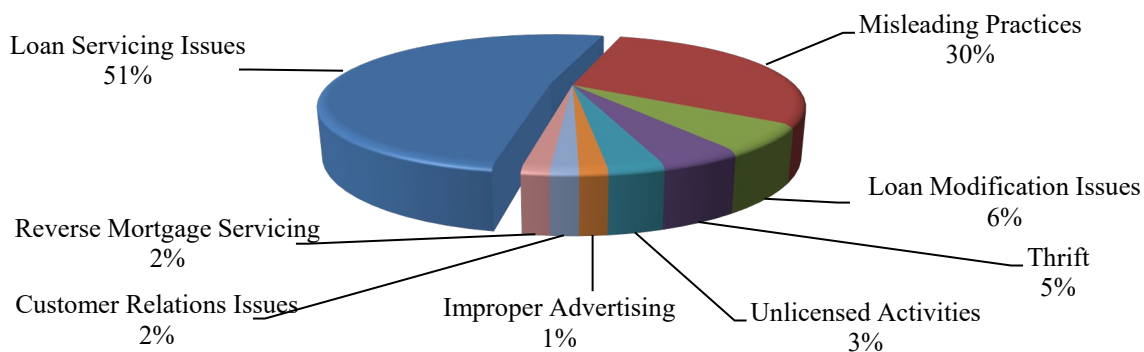
### Aging of Open Complaints as of August 31, 2021

Total Open Complaints as of August 31, 2021 = 64



### Nature of Open Complaints as of August 31, 2021

Total Open Complaints as of 08-31-2021 = 64



**Complaints Resolution** – The fluctuations in the average number of days to close a servicing complaint during FY2021 are due to changes in staffing and increased number of complaints received.

<b>Resolved Complaints FY2021</b>	<b>1st Qtr</b>	<b>2nd Qtr</b>	<b>3rd Qtr</b>	<b>4th Qtr</b>
<b>Servicing Complaints</b>				
Average Number of Days to Close a Complaint	22.3	26.8	41.0	25.9
Percentage of Complaints Closed Within 90 Days	95.6%	95.95%	87.9%	97.1%
Number of Servicing Complaints Closed	160	148	297	273
<b>Non-Servicing Complaints</b>				
Average Number of Days to Close a Complaint	29.4	30.3	46.5	29.6
Percentage of Complaints Closed Within 90 Days	92.5%	90.1%	82.5%	96.9%
Number of Non-Servicing Complaints Closed	93	91	166	127
<b>All Complaints</b>				
Total Complaints Closed	253	239	463	400

## **Legal and Enforcement Activity Report**

### **Enforcement Orders**

During the months of August and September 2021, the Commissioner issued thirteen (13) orders related to violations cited during mortgage company examinations. Of these orders, five were formal advisory letters, two were an Order to Cease and Desist, and six were an Order to Take Affirmative Action. Nine of these orders imposed an administrative penalty for the violations cited during the examination and one of these was appealed.

In August 2021, the Commissioner issued one Formal Advisory Letter related to complaint investigation.

<b>Enforcement Order Activity</b>	<b>FY 2021</b>			
<b>Type of Action</b>	<b>1<sup>st</sup> Qtr</b>	<b>2<sup>nd</sup> Qtr</b>	<b>3<sup>rd</sup> Qtr</b>	<b>4<sup>th</sup> Qtr</b>
Agreed Order to Take Affirmative Action	0	2	2	0
Agreed Order to Cease and Desist	0	1	4	0
Agreed Order	1	1	1	1
Advisory Letter	8	5	9	9
Conditional License Agreement	0	0	1	0
Final Order	1	0	0	0
Letter of Reprimand	4	0	0	0
Order to Cease and Desist	3	2	7	7
Order to Take Affirmative Action	7	0	3	8
Order Rescinding Previous Order	0	0	1	0
<b>Total</b>	<b>24</b>	<b>11</b>	<b>28</b>	<b>25</b>

### **Multi-State Enforcement Settlement Agreement**

On September 23, 2021, Texas joined eleven (11) other states in entering into a settlement agreement with Rocket Mortgage regarding their advertising practices. Under the settlement agreement, Rocket Mortgage was required to pay the Department a penalty of \$37,500.

### **Recovery Fund Applications**

The Department received one Recovery Fund application during the month of August, which is currently under investigation. The Department did not receive any applications during the month of September.

### **Contested State Office of Administrative Hearings (SOAH) Cases**

None since the August 2021 Finance Commission meeting.

### **Litigation**

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 by court order dated May 18, 2021, which provided that the department was granted a judgment in its favor for \$2,106,794. Thereafter in June 2021, Wagner timely filed a motion for a new trial. On August 10, 2021, Wagner filed a Notice of Appeal seeking a review of the trial court's decision by the Third Court of Appeals. Wagner's motion for new trial was not ruled upon by the district / trial court and thus it was deemed denied on August 25, 2021, in accordance with Tex. R. Civ. P. 329b(c). During September 2021, the record on appeal was filed and supplemented.

### **Public Information Requests**

During the months of August and September 2021, the Department received and responded to fourteen (14) public information requests, none of which were forwarded to the Attorney General's Office for a ruling.

### **Rulemaking**

<b>SML Future Rule Activity</b>		
<b>Rule</b>	<b>Rulemaking Action</b>	<b>Projected Date for Presentation</b>
Chapter 78, Wrap Mortgage Lending	Adoption of new rules	December 2021
7 TAC §80.204 and §81.204, Books and Records	Proposed amendments	December 2021

## **Gift Reporting**

None since the August 2021 Finance Commission meeting.

### **e) Legislative Activities**

Governor Abbott convened a Third Special Session on September 20, 2021. On September 22, 2021, he added legislation providing additional property tax relief for Texans as an agenda item to be considered during this special session. The Department continues to monitor the session for any legislation that might affect the Department or its regulated industries.

On September 30, 2021, Governor Abbott appointed four individuals to serve on a Work Group on Blockchain Matters. The work group will develop a master plan for the expansion of the blockchain industry in Texas and recommend policies and state investments in connection with blockchain technology.

The Department also monitors potential federal legislation that might impact the Texas mortgage and thrift industries. Such general areas include developments related to ESG (Environmental, Social, and Governance), cryptocurrency, cybersecurity, personal/data privacy, FinTech, and the hemp and legal cannabis industries. Regarding specific legislation, the Department is paying particular attention to the proposed IRS Reporting Requirement in the Congressional Reconciliation Bill and the recent inclusion of the cannabis related S.A.F.E. Banking Act in the National Defense Authorization Act as well as the following:

1. S.2499 – SAFE DATA Act
2. H.R.3105 – Common Sense Cannabis Reform for Veterans, Small Businesses, and Medical Professionals Act
3. H.R.2863 - First-Time Homebuyer Act of 2021
4. H.R.2561 - Promoting Access to Capital in Underbanked Communities Act of 2021
5. H.R.2270 - Bank Service Company Examination Coordination Act of 2021
6. S.910 - SAFE Banking Act of 2021
7. H.R.1996 - SAFE Banking Act of 2021
8. H.R.1847 - Rent and Mortgage Cancellation Act of 2021



**2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments, New Rules, and Repeals in 7 TAC, Part 4, Chapter 80, Subchapter B, Concerning Licensing, Resulting from Rule Review**

**PURPOSE:** The purpose of the amendments, new rules, and repeals in 7 TAC Chapter 80, Subchapter B, is to implement changes resulting from the Department's periodic review of its rules, conducted pursuant to Government Code §2001.039. An explanation of and justification for the rules is contained in the proposed preamble for the rule adoption.

**RECOMMENDED ACTION:** The Department recommends that the Finance Commission approve adoption of the amendments, new rules, and repeals in 7 TAC, Part 4, Chapter 80, Subchapter B, with changes to the proposed text as published in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we approve adoption of the amendments, new rules and repeals in 7 TAC Chapter 80, Subchapter B.

**ADOPTION OF AMENDMENTS, NEW RULES, AND REPEALS**  
**7 TAC CHAPTER 80**  
**PAGE 1 OF 4**

**TITLE 7. BANKING AND SECURITIES**

**PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING**

**CHAPTER 80. TEXAS RESIDENTIAL MORTGAGE LOAN COMPANIES**

**SUBCHAPTER B. LICENSING**

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts amendments, new rules, and rule repeals in 7 TAC Chapter 80, Texas Residential Mortgage Loan Companies. The commission's proposal was published in the September 10, 2021 issue of the *Texas Register* (46 TexReg 5681). The following rules sections are adopted with changes to the published text and are republished to reflect such changes: §80.102, and §80.107. The changes regulate no new parties and affect no new subjects of regulation. As a result, the rules will not be republished as proposed rules for comment. The remaining rules sections in the proposal are adopted without changes to the text as published in the *Texas Register*, and will not be republished.

**Explanation of and Justification for the Rules**

The existing rules under 7 TAC Chapter 80 implement Finance Code Chapter 156, Residential Mortgage Loan Companies (Chapter 156). The adopted rules were identified during the department's periodic review of 7 TAC Chapter 80 conducted pursuant to Government Code §2001.039.

*Changes Concerning Licensing Procedures*

The department licenses residential mortgage loan companies (for purposes of the adopted

rules, a "residential mortgage loan company" has the meaning assigned by Finance Code §156.002; mortgage company). The department utilizes the Nationwide Mortgage Licensing System & Registry (NMLS), owned and operated by a company that is a wholly-owned subsidiary of the Conference of State Bank Supervisors (CSBS), as its licensing database system. The adopted rules make various changes to clarify and set forth in rule various procedures utilized by the department in licensing mortgage companies. The adopted rules, among other things: (i) clarify how a mortgage company goes about sponsoring individual residential mortgage loan originators and its responsibility for supervising such originators; (ii) clarify the role of the individual residential mortgage loan originator appointed as the qualifying individual for purposes of Finance Code §156.002(10-b), including requiring the consent of such individual to be appointed; and (iii) clarify the commissioner's authority to approve a license renewal or reinstatement application with a minor deficiency so as to enable the licensed mortgage company to conduct regulated activities while the deficiency is resolved.

*Changes Concerning License Records*

The adopted rules make various changes concerning: the license records the department maintains with respect to each licensee in NMLS; responsibility for a licensed mortgage company to update such records; and the department's procedures for contacting a licensed mortgage company using the contact information derived from such records. The adopted rules, among other things: (i) expand existing requirements concerning a mortgage company updating and keeping current in the NMLS system various information associated with its license (contact information, information concerning its owners, etc.) by requiring that the mortgage company update such records within ten days after a material change occurs in such information; (ii)

**ADOPTION OF AMENDMENTS, NEW RULES, AND REPEALS**  
**7 TAC CHAPTER 80**  
**PAGE 2 OF 4**

set forth in rule an existing requirement prohibiting a licensed mortgage company from allowing an individual residential mortgage loan originator to act on its behalf prior to becoming sponsored of record by such mortgage company in the NMLS system; (iii) set forth in rule procedures for the department to contact a mortgage company utilizing the contact information designated by the licensed mortgage company; and (iv) establish a new requirement providing that a licensed mortgage company must monitor the email address it has designated in the NMLS system for purposes of receiving correspondence or other notices from the department.

*Other Modernization and Update Changes*

The adopted rules make changes to modernize and update the rules including: adding and replacing language to improve clarity and readability; removing unnecessary or duplicative provisions; updating terminology; and reorganizing the rules sections by subject matter and to align more closely with similar subject matter in 7 TAC Chapter 81, Mortgage Bankers and Residential Mortgage Loan Originators.

*Summary of Public Comments*

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments, or October 10, 2021. A public hearing in accordance with Government Code §2001.029 was not required. The commission received one comment in response the proposal from Black Mann & Graham L.L.P. (commenter). The commenter suggested proposed §80.102 (relating to Qualified Individual) be adopted with changes to subsection (b) to eliminate language the commenter deemed unnecessary. The commission agrees with the substance of the comment, and the adopted rules reflect changes

responsive to such comment. The commenter further suggested proposed §80.107 (relating to NMLS License Records; Notice to Licensee) be adopted with changes to subsection (d) to use the term "mortgage company" in place of "originator." The commission agrees with the substance of the comment, and the adopted rules reflect changes responsive to such comment.

**7 TAC §§80.101, 80.102, 80.105 - 80.107**

*Statutory Authority*

The rules are adopted under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

The adopted rules affect the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

§80.102. Qualified Individual.

(a) Qualified Individual Required. A mortgage company must appoint at least one originator to be the mortgage company's qualifying individual for purposes of Tex. Fin. Code §156.002 (Qualified Individual). As provided by Tex. Fin. Code § 156.002, the Qualified Individual is a personal representative of the mortgage company and is deemed to have authority to bind the mortgage company concerning its operations in Texas. In order to serve as the Qualified Individual the licensee must hold his or her individual license in a status which enables him or her to engage in regulated activities with the license, and must be sponsored by the mortgage company for which he or she seeks to serve as

**ADOPTION OF AMENDMENTS, NEW RULES, AND REPEALS**  
**7 TAC CHAPTER 80**  
**PAGE 3 OF 4**

Qualified Individual. A mortgage company may appoint more than one originator as Qualifying Individual. If a mortgage company appoints more than one originator to serve as Qualified Individual, each such originator is deemed to serve concurrently and is responsible for all of the originators sponsored by the mortgage company or individuals otherwise allowed to act as originator on its behalf.

(b) Consent Required. The appointment of the Qualified Individual must be consented to by the originator. The originator must acknowledge and confirm his or her consent by making a corresponding license record amendment in NMLS to reflect such appointment using the appropriate form prescribed by NMLS.

§80.107. NMLS License Records; Notice to Licensee.

(a) Amendments to License Records Required. Unless Tex. Fin. Code §156.211 applies and requires additional notice, a mortgage company must amend its NMLS license records (MU1 filing) within 10 days after any material change occurs affecting any aspect of the MU1 filing, including but not limited to:

(1) name (which must be accompanied by supporting documentation submitted to the Department establishing the name change);

(2) the addition or elimination of an assumed name (a/k/a trade name or "doing business as" name; which must be accompanied by a certificate of assumed business name or other documentation establishing or abandoning the assumed name);

(3) the contact information for the mortgage company listed in the MU1 filing under "Identifying Information";

(A) principal address (main address);

(B) mailing address;

(C) phone number;

(D) fax number; and

(E) email address;

(4) the contact information listed under "Resident/Registered Agent";

(5) the contact information listed under "Contact Employee Information;" and

(6) answers to disclosure questions (which must be accompanied by explanations for each such disclosure, together with supporting documentation concerning such disclosure).

(b) Amendments to MU2 Associations Required. A mortgage company must cause the individuals who are required to register an association with the mortgage company (MU2 filing) to do so within the NMLS system and must ensure such associations are amended within 10 days after any material change occurs affecting such associations.

(c) Branch Office License Required. A mortgage company must apply for and obtain a branch office license for each office constituting a branch office of the mortgage company for purposes of §80.206 of this title (relating to Office Locations; Remote Work), which must be licensed prior to conducting operations at such office. The application must be submitted through NMLS and must be made on the appropriate form prescribed by NMLS (MU3 filing). A mortgage company must amend its MU3 filing to surrender the branch office license within 10 days after closing a branch office.

**ADOPTION OF AMENDMENTS, NEW RULES, AND REPEALS**  
**7 TAC CHAPTER 80**  
**PAGE 4 OF 4**

(d) Notice to Licensee. Service of any correspondence, notification, alert, message, official notice or other written communication issued by the Department will be served on the licensee in accordance with this subsection utilizing the licensee's current contact information of record in NMLS unless another method is prescribed by other applicable law (notice to the mortgage company in a matter referred to the State Office of Administrative Hearings for an adjudicative hearing will be performed in accordance with 1 Texas Administrative Code §155.105).

(1) Service by Email. Service by email will be made utilizing the email address the mortgage company has designated in its MU1 filing listed under "Identifying Information." Service by email is complete on transmission of the email by the Department to the mortgage company's email service provider; provided, the Department does not receive a "bounce back" notification, or similar, from the email service provider indicating that delivery was not effective. The mortgage company has an ongoing duty and a continuing obligation to monitor such email account including to ensure that correspondence from the Department is not lost in a "spam" or similar folder, or undelivered due to intervention by a "spam filter" or similar service. A mortgage company is deemed to have constructive notice of any email correspondence or NMLS system notifications sent to the email address it has designated in its MU1 filing listed under "Identifying Information."

(2) Service by Mail. Service by mail is complete on deposit of the document, postpaid and properly addressed, in the mail or with a commercial delivery service. If service is made on the mortgage company by mail and the document communicates a deadline by or a time during which the mortgage company must perform some act, such deadline or time period for action is extended by three days. However, if

service was made by another method prescribed by this subsection, such deadline or time period will be calculated based on the earliest possible deadline or shortest applicable time period.

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

Iain A. Berry  
Associate General Counsel  
Department of Savings and Mortgage Lending

◆ ◆ ◆

**7 TAC §§80.102 - 80.104, 80.107**

Statutory Authority

The rule repeals are adopted under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

The adopted rule repeals affect the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

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

Iain A. Berry  
Associate General Counsel  
Department of Savings and Mortgage Lending

◆ ◆ ◆



**Attorneys At Law**

8584 Katy Freeway, Suite 420

Houston, TX 77024

Phone: 713-871-0005

Fax: 713-871-1358

**Partners**

**Gregory S. Graham**<sup>1</sup>

**Shawn P. Black**<sup>2</sup>

**Ryan Black**<sup>3</sup>

**Senior Lawyers**

**David F. Dulock**

**Diane M. Gleason**

**Daniel S. Engle**<sup>4</sup>

**Margaret A. Noles**

**Associates**

**Nick Stevens**

**Syndy Davis**

**Brandon Pieratt**

**Ambria Wilmore**

**Of Counsel**

**David M. Tritter**

**Calvin C. Mann, Jr.**

**Thomas E. Black, Jr.**<sup>5</sup>

**Retired Partner(s)**

**Calvin C. Mann, Jr.**

**Thomas E. Black, Jr.**<sup>5</sup>

<sup>1</sup> Also Licensed in Georgia

<sup>2</sup> Also Licensed in Kentucky and New York

<sup>3</sup> Also Licensed in District of Columbia

<sup>4</sup> Also Licensed in New York

<sup>5</sup> Also Licensed in New York and Washington

September 27, 2021

Iain A. Berry, Associate General Counsel  
Texas Savings and Mortgage Lending Department  
2601 North Lamar Boulevard, Suite 201  
Austin, Texas 78705-4294  
[rules.comments@sml.texas.gov](mailto:rules.comments@sml.texas.gov)

RE: Comments on proposed amendments to 7 TAC Chapters 80 (Residential Mortgage Loan Companies) and 81 (Mortgage Bankers and Residential Mortgage Loan Originators) published in the September 10, 2021 *Texas Register* (Vol. 46, No. 37)

Dear Mr. Berry:

The purpose of this letter is to comment on proposed new rules §80.102, §80.107, §81.103, and §81.110 as follows

§80.102(b): We recommend that the second sentence in subsection (b) be amended to read: "The originator must acknowledge and confirm his or her consent by making a corresponding license record amendment in NMLS to reflect such appointment [~~and must be made~~] using the appropriate form prescribed by NMLS.

§80.107(d): The term "originator" is mistakenly used three times — once in the parenthetical phrase in the introductory sentence and twice in subsection (d)(2) for the recipient of service by mail. The term "mortgage company" should be inserted in their place. New rule §81.07(d) provides for the same notice of service for the originator.

§81.103(c): Subsection (c) mistakenly cites §157.0062. The cite should be corrected to refer to §157.016 because §157.016 applies to mortgage loan originator license reinstatement and §157.0062 applies to mortgage banker registration reinstatement.

§81.110(f)(4): The stated purpose of §81.110 is to "establish the criteria utilized by the Commissioner and Department staff in reviewing individuals with a criminal history to determine his or her fitness to be licensed by the Department as an originator" (subsection (a)). For that reason, we recommend that subsection (f)(4) be revised to add the phrase "to act as an originator" so that it reads "(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the license sought by the individual to act as an originator."

§81.110(g)(8): We recommend the following amendments to §81.110(g)(8) to correct usage errors: "[T]he Commissioner ... will consider: (8) any other letters of recommendation, signed and dated, by an individual familiar with the applicant and [~~their~~] his or her character and fitness, with specific and complete knowledge of the individual's criminal history, [~~and~~] able to offer competent information about the nature and extent of the applicant's rehabilitative efforts."

§81.110: This is a general comment regarding §81.110. Rearranging, amending, and cross-referencing its various subsections, as applicable, will aid in understanding how to correctly apply these subsections. The following recommendations illustrate this general comment.

(2 pages)

1. Subsection (b), "Ineligibility by Operation of Law," is cross-referenced in subsection (k), "Offenses Deemed to Involve Fraud or Dishonesty," but subsection (k) is not cross-referenced in subsection (b). We recommend that either subsection (b) be amended to cross-reference subsection (k), or the text of subsection (k) be added to subsection (b).

2. Subsection (c), "Schedule of Criminal Offenses Determined to be Directly Related," and subsection (e), "Categories of Offenses Related to Residential Mortgage Loan Origination," both state they are directly related to an originator's duties and responsibilities but are not cross-referenced and do not explain how these subsections are in relationship with each another or how they are to be used for purposes of denying licensure of an originator with a criminal history. If subsections (c) and (e) are to be used for the same purposes, we recommend they be amended to cross-reference each other or that they be merged into one subsection. In either event, we further recommend that they be amended to add how they are in relationship with each another and how they are to be used for purposes of denying licensure of an originator with a criminal history. If subsections (c) and (e) are not to be used for the same purposes, we recommend that each subsection be amended to add how it is to be used for purposes of denying licensure of an originator with a criminal history. (See also Recommendation 4. below.)

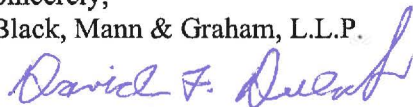
3. Subsection (k) makes reference to the Schedule in subsection (c) and to subsections (e)(1) and (2) but subsection (k) is not cross-referenced with subsection (c) or subsections (e)(1) and (2). Subsection (k) also connects subsections (e)(1) and (2) and a felony criminal offense listed in the Schedule with subsection (b)'s ineligibility by operation of law. Subsections (b) and (e)(1) and (2) make no such connection.

4. §81.110 uses the following terms in addressing the right to be licensed by an originator with a criminal history. Subsections (b), (f), (i), (j) and (k) use the term "ineligible," and/or "ineligibility." Subsections (i) and (j) also use those terms but also use the term "disqualifying." Subsection (g) only uses the term "disqualified." In addition, §81.111 uses the term "ineligible," but does not use the terms "disqualifying" or "disqualified" in addressing a request for a preliminary review of the right to be licensed by an originator with a criminal history. Our question is, are the terms "ineligible" and "ineligibility" being used interchangeably with "disqualifying," and "disqualified," and vice versa, or are they different for purposes of denying licensure of an originator with a criminal history? (See also Recommendation 2. above.)

We appreciate the opportunity to provide the Finance Commission, on behalf of the Texas Savings and Mortgage Lending Department, with the above comments.

Sincerely,

Black, Mann & Graham, L.L.P.



David F. Dulock  
For the Firm

**3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments, New Rules, and Repeals in 7 TAC, Part 4, Chapter 81, Subchapter B, Concerning Licensing, Resulting from Rule Review**

**PURPOSE:** The purpose of the amendments, new rules, and repeals in 7 TAC Chapter 81, Subchapter B, is to implement changes resulting from the Department's periodic review of its rules, conducted pursuant to Government Code §2001.039. An explanation of and justification for the rules is contained in the proposed preamble for the rule adoption.

**RECOMMENDED ACTION:** The Department recommends that the Finance Commission approve adoption of the amendments, new rules, and repeals in 7 TAC, Part 4, Chapter 81, Subchapter B, with changes to the proposed text as published in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we approve adoption of the amendments, new rules and repeals in 7 TAC Chapter 81, Subchapter B.



**ADOPTION OF AMENDMENTS, NEW RULES, AND REPEALS**  
**7 TAC CHAPTER 81**  
**PAGE 1 OF 8**

**TITLE 7. BANKING AND SECURITIES**

**PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING**

**CHAPTER 81. MORTGAGE BANKERS AND RESIDENTIAL MORTGAGE LOAN ORIGINATORS**

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts amendments, new rules, and rule repeals in 7 TAC Chapter 81, Mortgage Bankers and Residential Mortgage Loan Originators. The commission's proposal was published in the September 10, 2021 issue of the *Texas Register* (46 TexReg 5684). The following rules sections are adopted with changes to the published text and are republished to reflect such changes: §81.103, and §81.110. The changes regulate no new parties and affect no new subjects of regulation. As a result, the rules will not be republished as proposed rules for comment. The remaining rules sections in the proposal are adopted without changes to the text as published in the *Texas Register*, and will not be republished.

**Explanation of and Justification for the Rules**

The existing rules under 7 TAC Chapter 81 implement Finance Code Chapter 157, Mortgage Bankers and Residential Mortgage Loan Originators (Chapter 157), and Chapter 180, Residential Mortgage Loan Originators (Texas SAFE Act), with respect to persons regulated under Chapter 157. The adopted rules were identified during the department's periodic review of 7 TAC Chapter 81 conducted pursuant to Government Code §2001.039.

*Criminal Conviction Guidelines*

The department licenses individuals to act as residential mortgage loan originators. Pursuant to Occupations Code §53.025, the department, as a licensing authority for an occupational license, is required to issue guidelines relating to the department's administration of Occupations Code Chapter 53, including stating the reasons a particular crime is considered to relate the duties and responsibilities of the license and any other criterion that affects the decisions of the department in administering Occupations Code Chapter 53. The adopted rules implement Occupations Code §53.025 by adopting comprehensive criminal conviction guidelines in rule. The authority for denial of an application for licensure based on an individual's criminal history under the Occupations Code is in addition to and augments that arising from the Finance Code. The adopted rules further outline the commissioner's authority for denial of an application for licensure under the Finance Code based on criminal history, including outlining certain offenses deemed by rule to be grounds for denial of licensure under the Finance Code.

*Changes Concerning Licensing Procedures*

The department licenses individuals to act as residential mortgage loan originators. The department utilizes the Nationwide Mortgage Licensing System & Registry (NMLS), owned and operated by a company that is a wholly-owned subsidiary of the Conference of State Bank Supervisors (CSBS), as its licensing database system. The adopted rules make various changes to clarify and set forth in rule various procedures utilized by the department in licensing residential mortgage loan originators. The adopted rules, among other things: (i) clarify how a residential mortgage loan originator goes about being sponsored by a mortgage company or mortgage banker so as to engage in regulated activities with the license; (ii) clarify how an individual licensed in another jurisdiction or by a different licensing authority as a residential

## ADOPTION OF AMENDMENTS, NEW RULES, AND REPEALS

### 7 TAC CHAPTER 81

#### PAGE 2 OF 8

mortgage loan originator, or is a "registered mortgage loan originator" (as defined by Finance Code §180.002(16)) may engage in regulated activities under temporary authority while he or she seeks licensure by the department; (iii) with respect to an applicant for licensure who is a military service member or military veteran, clarify that his or her military service, training, or education cannot constitute grounds for waiving the pre-licensing examination required by Finance Code §180.057, the pre-licensing education training and coursework required by Finance Code §180.056, or the continuing education training and coursework required by Finance Code §180.060; (iv) with respect to a military spouse, clarify that a military spouse seeking temporary authority to act as a residential mortgage loan originator in Texas must do in conformity with Finance Code §180.0511; (v) with respect to pre-licensing education, expand an existing requirement by requiring that such pre-licensing education lapses if the individual does not achieve licensure by limiting the applicable time period from four years to three years; (vi) with respect to pre-licensing education taken in another jurisdiction, establish a new requirement that any portion of such training and coursework which was specific to such jurisdiction does not count towards the minimum hours of required pre-licensing education; (vii) clarify the commissioner's authority to approve a license renewal or reinstatement application with a minor deficiency so as to enable the individual to conduct regulated activities while the deficiency is resolved (viii) clarify the commissioner's authority to conduct background checks other than through the NMLS system; and (ix) set forth in rule procedures for conducting background checks by the department.

#### *Changes Concerning License Records*

The adopted rules make various changes concerning: the license records the department maintains with respect to each licensee in NMLS;

responsibility for a licensed residential mortgage loan originator to update such records; and the department's procedures for contacting a residential mortgage loan originator using the contact information derived from such records. The adopted rules, among other things: (i) expand existing requirements concerning a residential mortgage loan originator updating and keeping current in the NMLS system various information associated with his or her license (contact information, disclosures concerning criminal history and financial background, etc.) by requiring that the originator update such records within ten days after a material change occurs in such information; (ii) set forth in rule an existing requirement prohibiting a residential mortgage loan originator from engaging in regulated activities prior to becoming sponsored of record in the NMLS system by a mortgage company or mortgage banker; (iii) set forth in rule procedures for the department to contact a residential mortgage loan originator utilizing the contact information designated by the residential mortgage loan originator in his or her NMLS license records; and (iv) establish a new requirement requiring a residential mortgage loan originator to monitor the email address he or she has designated in the NMLS system to manage his or her account with NMLS and receive system-generated messages from NMLS, for purposes of receiving correspondence or other notices from the department.

#### *Other Modernization and Update Changes*

The adopted rules make changes to modernize and update the rules including: adding and replacing language to improve clarity and readability; removing unnecessary or duplicative provisions; updating terminology; and reorganizing the rules sections by subject matter and to align more closely with similar subject matter in 7 TAC Chapter 80, Texas Residential Mortgage Loan Companies.

**ADOPTION OF AMENDMENTS, NEW RULES, AND REPEALS**  
**7 TAC CHAPTER 81**  
**PAGE 3 OF 8**

**Summary of Public Comments**

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments, or October 10, 2021. A public hearing in accordance with Government Code §2001.029 was not required. The commission received one comment in response the proposal from Black Mann & Graham, L.L.P. (commenter). The commenter suggested proposed §81.103 (relating to Licensing of Military Service Members, Military Veterans, and Military Spouses) be adopted with changes to subsection (c) to replace a reference to Finance Code §157.0062 with a reference to Finance Code §157.016. The commission agrees with the substance of the comment, and the adopted rules reflect changes responsive to such comment. The commenter further suggested proposed §81.110 be adopted with changes to: (i) revise subsection (f)(4) to clarify that the factors used by the department to evaluate an individual with a criminal history for licensure pertain to a license to act as a residential mortgage loan originator; (ii) revise subsection (g)(8) to use gender-specific pronouns; (iii) make clarifying revisions to resolve differing usage within the section of the terms "ineligible" and "disqualified" (or derivations thereof) with respect to the eligibility of an individual with a criminal history for a residential mortgage loan originator license; and (iv) reorganize or otherwise clarify the interplay between subsections (c) and (e) as proposed. The commission agrees with the substance of the comment, and the adopted rules reflect changes responsive to such comment.

**SUBCHAPTER B. LICENSING OF  
INDIVIDUAL ORIGINATORS**

**7 TAC §§81.101 - 81.111**

**Statutory Authority**

The rules are adopted under the authority of Finance Code §157.0023, which authorizes the commission to adopt rules necessary to implement or fulfill the purposes of Finance Code Chapter 157, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act). 7 TAC §81.103 is also adopted under the authority of, and to implement, Occupations Code Chapter 55. 7 TAC §81.108 is also adopted under the authority of Government Code §411.1385. 7 TAC §81.110 is also adopted under the authority of, and to implement, Occupations Code §53.025. 7 TAC §81.111 is also adopted under the authority of, and to implement, Occupations Code Chapter 53, Subchapter D.

The adopted rules affect the statutes contained in Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act, and Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009.

*§81.103. Licensing of Military Service Members, Military Veterans, and Military Spouses.*

(a) Purpose and Applicability. The purpose of this section is to specify licensing requirements for military service members, military veterans, and military spouses, in accordance with Occupations Code Chapter 55.

(b) Definitions. In this section, the terms "military service member," "military spouse," and "military veteran" have the meanings assigned by Tex. Occ. Code §55.001.

(c) Late Renewal (Reinstatement). As provided by Tex. Occ. Code §55.002, an individual is exempt from any increased fee or other penalty for failing to renew his or her originator license

**ADOPTION OF AMENDMENTS, NEW RULES, AND REPEALS**  
**7 TAC CHAPTER 81**  
**PAGE 4 OF 8**

in a timely manner if the individual establishes to the satisfaction of the Commissioner that the individual failed to timely renew the license because the individual was serving as a military service member. A military service member who fails to timely renew his or her originator license must seek reinstatement of the license within the time period prescribed by Tex. Fin. Code §157.016; otherwise, the individual must obtain a new license, including complying with the requirements and procedures then in existence for obtaining an original license.

(d) Expedited License Procedure. As provided by Tex. Occ. Code §55.004 and §55.005, the Department will process a license application as soon as practicable and issue a license to a qualifying applicant who is a military service member, military veteran, or military spouse, if the applicant:

(1) holds a current license in another jurisdiction as a residential mortgage loan originator in accordance with the S.A.F.E. Mortgage Licensing Act, 12 U.S.C. §§5101-5117; or

(2) held a residential mortgage loan originator license in Texas within the five years preceding the date of the application.

(e) Temporary Authority for Military Spouse. Tex. Occ. Code §55.0041 provides that a military spouse may engage in a business or occupation for which a license is required without obtaining the applicable license if the spouse is currently licensed in good standing in another jurisdiction with substantially similar licensing requirements. However, federal law imposes specific, comprehensive requirements governing when and under what circumstances an individual sanctioned to act as an originator in another jurisdiction may act under temporary authority in this state (12 U.S.C. §5117 (relating to Employment Transition of Loan Originators)).

Tex. Occ. Code §55.0041(c) further requires that a military spouse "comply with all other laws and regulations applicable to the business or occupation." As a result, a military spouse seeking to avail himself or herself of the temporary authority conferred by Tex. Occ. Code §55.0041 must apply for and seek temporary authority in accordance with Tex. Fin. Code §180.0511 and §81.102 of this title (relating to Temporary Authority).

(f) Substantial Equivalency. For purposes of this section and Tex. Occ. Code §55.004, a residential mortgage loan originator license issued in another jurisdiction is substantially equivalent to a Texas residential mortgage loan originator license if it is issued in accordance with the requirements of the S.A.F.E. Mortgage Licensing Act, 12 U.S.C. §§5501-5117. The Department will verify a license issued in another jurisdiction through NMLS.

(g) Credit for Military Experience. As provided by Tex. Occ. Code §55.007, with respect to an applicant who is a military service member or military veteran, the Department will credit verified military service, training or education toward the requirements for an originator license by considering the service, training, or education as part of the applicant's employment history. The following items cannot be substituted for military service, training, or education:

\_\_\_\_\_ (1) the pre-licensing examination, as provided by Tex. Fin. Code §180.057;

\_\_\_\_\_ (2) the required pre-licensing education training and coursework, as provided by Tex. Fin. Code §180.056 and §81.104 of this title (relating to Required Education); and

\_\_\_\_\_ (3) continuing education training and coursework, as provided by Tex. Fin. Code §180.060 and §81.104 of this title (relating to Required Education).

**ADOPTION OF AMENDMENTS, NEW RULES, AND REPEALS**  
**7 TAC CHAPTER 81**  
**PAGE 5 OF 8**

§81.110. Criminal Conviction Guidelines.

(a) Purpose and Applicability. This section establishes the criteria utilized by the Commissioner and Department staff in reviewing an individual with a criminal history to determine his or her eligibility and fitness to be licensed by the Department as an originator. This section implements the requirements of Tex. Occ. Code §53.025, requiring the Department to establish guidelines related to such reviews, including designating particular crimes and offenses the Department considers to be directly related to the duties and responsibilities of acting as an originator and may constitute grounds for denial of licensure. The Commissioner's authority to deny an application for licensure based on an individual's criminal history under the Occupations Code is in addition to and augments that arising from the Finance Code. This section also describes the Commissioner's other statutory authority arising from the Finance Code for denial of licensure based on an individual's criminal history, including outlining certain offenses deemed by this section to be grounds for denial under the Finance Code.

(b) Ineligibility by Operation of Law. The following individuals are ineligible for licensure by operation of law due to his or her criminal history:

(1) an individual who, within the seven years preceding the date of the application, has been convicted of, or pled guilty or nolo contendere to, a felony in a court of this state, another state or territory of the United States, a federal court of the United States, or other foreign, or military court, in accordance with Tex. Fin. Code §180.055(a); and

(2) an individual who, at any time, has been convicted of, or pled guilty or nolo contendere to, a felony offense involving an act of fraud, dishonesty, breach of trust, or money

laundering, in accordance with Tex. Fin. Code §180.055(a). Any felony offense listed in the schedule contained in subsection (e) of this section having a nexus to residential mortgage loan origination arising from the categories of criminal offenses related to residential mortgage loan origination under subsection (d)(1) or (2) of this section (concerning crimes involving fraud, falsification, dishonesty, deception and breach of trust, and theft or embezzlement, respectively) is deemed to constitute a crime involving an act of fraud, dishonesty, breach of trust, or money laundering for purposes of Tex. Fin. Code §180.055(a).

(c) Duties and Responsibilities of a Residential Mortgage Loan Originator. An originator acts as an intermediary between the consumer seeking a residential mortgage loan and the underwriter who ultimately determines whether the consumer qualifies for the loan. The originator may assist the consumer in reviewing his or her income, expenses and credit worthiness to determine whether he or she will qualify for a loan, and on what terms he or she might qualify. The originator may assist the consumer in making the loan application, and sometimes directs the consumer to present his or her financial information in the manner to which the lender or underwriter is accustomed. A residential mortgage loan often takes place in the context of a real estate transaction, and as a result, an originator sometimes advises the consumer of his or her financial ability to purchase residential real estate, including providing prequalification documents to establish the consumer's purchasing power while shopping in the marketplace. Once the loan has entered the underwriting process, the originator may assist the consumer in resolving any outstanding conditions of the underwriter to qualify for the loan and obtain approval, including addressing items of concern on a consumer's credit report, immigration/residency status, available cash-on-hand for the transaction, and income which may

**ADOPTION OF AMENDMENTS, NEW RULES, AND REPEALS**  
**7 TAC CHAPTER 81**  
**PAGE 6 OF 8**

not be readily established by documentary evidence, such as that of an independent contractor. The originator communicates to the consumer the ever-changing loan terms as prevailing rates in the marketplace fluctuate, and is often a key figure in advising the consumer of when and how he or she may "lock" the loan in advance of closing and solidify the loan terms. The originator may serve as communications liaison between the consumer and various parties to the transaction, including the lender, the underwriting department or a third-party underwriter, real estate brokers and sales agents, appraisers, insurance providers, closing/settlement agents, and representatives of various taxing authorities. In performing his or her duties, an originator has access to sensitive information of the consumer, including his or her social security number, date of birth, immigration/residency status, and all the personal financial details of the consumer, including employment, income, assets, and expenses.

(d) Categories of Offenses Related to Residential Mortgage Loan Origination. The Finance Commission of Texas and the Department's Commissioner has determined the following categories of criminal offenses are directly related to the duties and responsibilities of acting as an originator:

(1) criminal offenses involving fraud, falsification, dishonesty, deception, and breach of trust;

(2) criminal offenses involving theft or embezzlement; and

(3) criminal offenses involving intoxication by drugs or alcohol.

(e) Schedule of Criminal Offenses Determined to be Directly Related. The Finance Commission of Texas and the Department's Commissioner has

determined the criminal offenses in the following schedule meet one or more of the categories deemed to relate to residential mortgage loan origination by subsection (d) of this section, and are directly related to the duties and responsibilities of an individual licensed by the Department to act as an originator. The schedule includes those criminal offenses most likely to be encountered by Department staff and is made from the perspective of the criminal laws of the State of Texas and the United States federal government. However, the schedule is not an exhaustive review of all offenses, and does not limit the Department from considering a criminal offense not specifically listed in the schedule. The schedule should be construed to include any criminal offense meeting one or more of the categories deemed to relate to residential mortgage loan origination, as provided by subsection (d) of this section. The schedule should further be construed to include the substantially similar or functionally equivalent crime of any state or territory of the United States, violations of the Texas Code of Military Justice (Government Code Chapter 432), violations of the Uniform Code of Military Justice, or crimes of a foreign country or governmental subdivision thereof. In determining whether a criminal offense of another jurisdiction is substantially similar or functionally equivalent, an inquiry will be made comparing the subject offense with an offense on the schedule to determine whether the subject offense has similar elements, including intent and classification of punishment, and whether the crime would have been punishable had the acts been committed in Texas.

Figure: 7 TAC §81.110(e).

(f) Factors. Unless the individual is ineligible for licensure by operation of law as provided by subsection (b) of this section, in determining whether a criminal offense is directly related to the duties and responsibilities of an individual

**ADOPTION OF AMENDMENTS, NEW RULES, AND REPEALS**  
**7 TAC CHAPTER 81**  
**PAGE 7 OF 8**

licensed by the Department to act as an originator, the Commissioner will consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to act as an originator;

(3) the extent to which an originator license might offer an opportunity for the individual to engage in further criminal activity of the same type as that in which the individual has previously been involved;

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensed originator; and

(5) any correlation between the elements of the crime and the duties and responsibilities of licensed originator.

(g) In addition to the factors listed in subsection (f) of this section, the Commissioner, in determining whether an individual who has been convicted of a crime (as determined by Tex. Fin. Code §157.0131 and subsection (h) of this section) is unfit and ineligible for licensure, will consider:

(1) the extent and nature of the individual's past criminal activity;

(2) the age of the individual when the crime was committed;

(3) the amount of time that has elapsed since the individual's criminal activity;

(4) the amount of time that has elapsed since the individual's release from incarceration;

(5) the conduct and work activity of the individual before and after the criminal activity;

(6) evidence of the individual's rehabilitation or rehabilitative efforts;

(7) letters of recommendation, signed and dated, by a current employer, if the individual is employed, or a previous employer, stating that the employer has specific and complete knowledge of the individual's criminal history and the reasons the employer is recommending that the individual be considered fit to be licensed by the Department; and

(8) any other letters of recommendation, signed and dated, by an individual familiar with the applicant and his or her character and fitness, with specific and complete knowledge of the individual's criminal history, able to offer competent information about the nature and extent of the applicant's rehabilitative efforts.

(h) Convictions Considered. The determination of whether a criminal proceeding is considered to have resulted in a conviction for purposes of this section will be made in accordance with Tex. Fin. Code §157.0131, which states that an individual is considered to have been convicted of a criminal offense if:

(1) a sentence is imposed on the individual;

(2) the individual received probation or community supervision, including deferred adjudication or community service; or

(3) the court deferred final disposition of the individual's case.

(i) Consideration of Disciplinary Actions. Unless the individual is ineligible for licensure by operation of law as provided by subsection (b) of

**ADOPTION OF AMENDMENTS, NEW RULES, AND REPEALS**  
**7 TAC CHAPTER 81**  
**PAGE 8 OF 8**

this section, in addition to the individual's criminal history, the Commissioner may consider the individual's past history of disciplinary actions with the Department, or another regulatory body or official of another jurisdiction regulating residential mortgage loan origination or other financial services, which may serve as separate grounds for license ineligibility, or as an aggravating factor rendering the individual ineligible for licensure.

(j) Consideration of Financial Responsibility, Character and General Fitness. Unless the individual is ineligible for licensure by operation of law as provided by subsection (b) of this section, in addition to the individual's criminal history, the Commissioner may consider the individual's financial responsibility, and other evidence of character and general fitness, which may serve as separate grounds for license ineligibility, or as an aggravating factor rendering the individual ineligible for licensure. A conviction for a criminal offense having a nexus to residential mortgage loan origination arising from the categories of criminal offenses deemed to relate to residential mortgage loan origination under subsection (d) of this section is indicative of a failure to demonstrate requisite character and general fitness to command the confidence of the community in accordance with Tex. Fin. Code §180.055(a)(3), and honesty, trustworthiness and integrity in accordance with Tex. Fin. Code §157.012(c)(1).

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

Iain A. Berry  
Associate General Counsel  
Department of Savings and Mortgage Lending

◆ ◆ ◆

**7 TAC §§81.102 - 81.104, 81.106 - 81.110**

Statutory Authority

The rule repeals are adopted under the authority of Finance Code §157.0023, which authorizes the commission to adopt rules necessary to implement or fulfill the purposes of Finance Code Chapter 157, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

The adopted rule repeals affect the statutes contained in Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act, and Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009.

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

Iain A. Berry  
Associate General Counsel  
Department of Savings and Mortgage Lending

◆ ◆ ◆



## Schedule of Criminal Offenses Determined to be Directly Related to Residential Mortgage Loan Origination

### State Offenses:

Offense	Statutory Reference	Nexus to Residential Mortgage Loan Origination  (reference to Department Rule §81.110(d))
Abuse of Official Capacity	Tex. Pen. Code §39.02	(1), (2)
Acceptance of Gift/Honorarium by Public Servant	Tex. Pen. Code §§36.07, 36.08	(1)
Agreement to Abduct Child	Tex. Pen. Code §25.031	(2)
Burglary, in furtherance of theft; Burglary of Vehicle	Tex. Pen. Code §§30.02, 30.04	(2)
Breach of Computer Security	Tex. Pen. Code §33.02	(1), (2)
Bribery	Tex. Pen. Code §36.02	(1)
Bribery, Commercial	Tex. Pen. Code §32.43	(1)
Coercion of Public Servant or Voter	Tex. Pen. Code §36.03	(1)
Counterfeiting Trademark	Tex. Pen. Code §32.23	(1)
Credit Card or Debit Card Abuse	Tex. Pen. Code §32.31	(1), (2)
Credit Card Transaction Record Laundering	Tex. Pen. Code §32.35	(1)
Criminal Attempt, Solicitation, or Conspiracy	Tex. Pen. Code §§15.01, 15.02, 15.03, 15.031	See offense attempted, solicited or conspired
Criminal Simulation	Tex. Pen. Code §32.22	(1)
Criminally Negligent Homicide, arising from intoxication	Tex. Pen. Code §19.05	(3)
Deceptive Business Practices	Tex. Pen. Code §32.42	(1)
Driving/Boating/Flying while Intoxicated	Tex. Pen. Code §§49.04, 49.05, 49.06, 49.09	(3)
Driving while Intoxicated with Child Passenger	Tex. Pen. Code §49.045	(3)
Drug Offenses	Tex. Health & Safety Code Chs. 481, 482, 483	(3)

Figure: 7 TAC §81.110(e)

Escape from Custody	Tex. Pen. Code §38.06	(1)
Evading Arrest or Detention	Tex. Pen. Code §38.04	(1)
Exploitation of Child/Elderly/Disabled	Tex. Pen. Code §32.53	(1), (2)
False Report of Emergency	Tex. Pen. Code §42.06	(1)
False Report to Law Enforcement	Tex. Pen. Code §37.08	(1)
False Statement to Obtain Property, Credit or Services	Tex. Pen. Code §32.32	(1), (2)
Forgery	Tex. Pen. Code §32.21	(1), (2)
Fraudulent Court Record	Tex. Pen. Code §37.13	(1)
Fraudulent Destruction, Removal, or Concealment of Writing	Tex. Pen. Code §32.47	(1)
Fraudulent Filing of Financing Statement	Tex. Pen. Code §37.101	(1)
Fraudulent or Fictitious Military Record	Tex. Pen. Code §32.54	(1)
Fraudulent Use or Possession of Identifying Information	Tex. Pen. Code §32.51	(1)
Fraudulent, Substandard, or Fictitious Degree	Tex. Pen. Code §32.52	(1)
Fraudulent Transfer of a Motor Vehicle	Tex. Pen. Code §32.34	(1)
Hindering Apprehension or Prosecution	Tex. Pen. Code §38.05	(1)
Hindering Secured Creditors	Tex. Pen. Code §32.33	(1), (2)
Impersonating Lawyer	Tex. Pen. Code §38.122	(1)
Impersonating Public Servant	Tex. Pen. Code §37.11	(1)
Impersonating Peace Officer	Tex. Pen. Code §37.12	(1)
Improper Gift to Public Servant	Tex. Pen. Code §36.09	(1)
Improper Influence	Tex. Pen. Code §36.04	(1)
Insurance Fraud	Tex. Pen. Code §35.02	(1)
Intoxication Assault	Tex. Pen. Code §49.07	(3)
Intoxication Manslaughter	Tex. Pen. Code §49.08	(3)
Manslaughter, arising from intoxication	Tex. Pen. Code §19.04	(3)
Medicaid Fraud	Tex. Pen. Code §35A.02	(1), (2)
Misapplication of Fiduciary Property or Property of Financial Institution	Tex. Pen. Code §32.45	(1), (2)
Misuse of Official Information	Tex. Pen. Code §39.06	(1)

Figure: 7 TAC §81.110(e)

Money Laundering	Tex. Pen. Code §34.02	(1), (2)
Official Oppression by Public Servant	Tex. Pen. Code §39.03	(1)
Online Impersonation	Tex. Pen. Code §33.07	(1)
Organized Criminal Activity	Tex. Pen. Code §71.02	See underlying offense
Perjury; Aggravated Perjury	Tex. Pen. Code §§37.02, 37.03	(1)
Prohibited Substances and Items in Correctional Facility	Tex. Pen. Code §38.11	(1), (3)
Robbery; Aggravated Robbery	Tex. Pen. Code §§29.02, 29.03	(2)
Securing Execution of Document by Deception	Tex. Pen. Code §32.46	(1), (2)
Simulating Legal Process	Tex. Pen. Code §32.48	(1)
Smuggling of Persons; Continuous Smuggling of Persons	Tex. Pen. Code §§20.05, 20.06	(1)
Stealing or Receiving Stolen Check	Tex. Pen. Code §32.24	(1), (2)
Tampering of Electronic Data	Tex. Pen. Code §33.023	(1)
Tampering with Consumer Product	Tex. Pen. Code §22.09	(1)
Tampering with Governmental Record	Tex. Pen. Code §37.10	(1)
Tampering with Identification Numbers	Tex. Pen. Code §31.11	(1)
Tampering with or Fabricating Physical Evidence	Tex. Pen. Code §37.09	(1)
Tampering with Witness	Tex. Pen. Code §36.05	(1)
Theft	Tex. Pen. Code §31.03	(2)
Theft – Organized Retail Theft	Tex. Pen. Code §31.16	(2)
Theft of Cargo	Tex. Pen. Code §31.18	(2)
Theft of Petroleum Product	Tex. Pen. Code §31.19	(2)
Theft of Service	Tex. Pen. Code §31.04	(1), (2)
Trafficking of Persons; Continuous Trafficking of Persons	Tex. Pen. Code §§20A.02, 20A.03	(1)
Unauthorized Absence from Corrections Facility	Tex. Pen. Code §38.113	(1)
Unauthorized Acquisition or Transfer of Financial Information	Tex. Pen. Code §31.17	(1), (2)
Unauthorized Use of a Vehicle	Tex. Pen. Code §31.07	(1), (2)
Unlawful Access to Stored Communications	Tex. Pen. Code §16.04	(1), (2)

Figure: 7 TAC §81.110(e)

Unlawful Interception, Use, or Disclosure of Wire, Oral or Electronic Communications	Tex. Pen. Code §16.02	(1)
Unlawful Use of Criminal Instrument or Mechanical Security Device	Tex. Pen. Code §16.01	(1)
Unlawful Use of Pen Register or Trap and Trace Device	Tex. Pen. Code §16.03	(1)

### Federal Offenses:

Offense	Statutory Reference	Nexus to Residential Mortgage Loan Origination  (reference to Department Rule §81.110(d))
Bankruptcy Fraud	18 U.S.C. §§151-158	(1)
Bribery, Graft and Conflicts of Interest	18 U.S.C. §§201-227	(1)
Conspiracy to Commit Offense or Defraud	18 U.S.C. §§371-373	(1); See also conspired offense, if applicable
Counterfeiting and Forgery	18 U.S.C. §§470-514	(1)
Customs Fraud	18 U.S.C. §§541-555	(1)
Drug Offenses	21 U.S.C. §§841-865	(3)
False Claims Affecting Government	18 U.S.C. §§281-293	(1)
Fraud, False Statements, Identity Theft	18 U.S.C. §§1001-1070	(1)
Mail Fraud, and other fraud offenses (Wire Fraud, bank fraud, health care fraud, securities/investment fraud)	18 U.S.C. §§1341-1351; 15 U.S.C. §§ 78ff(a), 78j, 77x, 80b-17, 80a-48, 77yyy	(1), (2)
Obstruction of Justice / Tampering with Government Records	18 U.S.C. §§1501-1521; 2071-2076	(1)
Passport/Visa Fraud	18 U.S.C. §§1541-1547	(1)
Perjury	18 U.S.C. §§1621-1623	(1)
Racketeering/RICO Offenses/ Money Laundering Offenses	18 U.S.C. §§1951-1990	(1), (2)

Figure: 7 TAC §81.110(e)

Robbery and Burglary	18 U.S.C. §§2111-2119	(2)
Tax Fraud	26 U.S.C. §§7201-7230	(1), (2)
Theft, Embezzlement	18 U.S.C. §§641-670	(2)



**Attorneys At Law**

8584 Katy Freeway, Suite 420

Houston, TX 77024

Phone: 713-871-0005

Fax: 713-871-1358

**Partners**

**Gregory S. Graham** <sup>1</sup>

**Shawn P. Black** <sup>2</sup>

**Ryan Black** <sup>3</sup>

**Senior Lawyers**

**David F. Dulock**

**Diane M. Gleason**

**Daniel S. Engle** <sup>4</sup>

**Margaret A. Noles**

**Associates**

**Nick Stevens**

**Syndy Davis**

**Brandon Pieratt**

**Ambria Wilmore**

**Of Counsel**

**David M. Tritter**

**Calvin C. Mann, Jr.**

**Thomas E. Black, Jr.** <sup>5</sup>

**Retired Partner(s)**

**Calvin C. Mann, Jr.**

**Thomas E. Black, Jr.** <sup>5</sup>

<sup>1</sup> Also Licensed in Georgia

<sup>2</sup> Also Licensed in Kentucky and New York

<sup>3</sup> Also Licensed in District of Columbia

<sup>4</sup> Also Licensed in New York

<sup>5</sup> Also Licensed in New York and Washington

September 27, 2021

Iain A. Berry, Associate General Counsel  
Texas Savings and Mortgage Lending Department  
2601 North Lamar Boulevard, Suite 201  
Austin, Texas 78705-4294

[rules.comments@sml.texas.gov](mailto:rules.comments@sml.texas.gov)

RE: Comments on proposed amendments to 7 TAC Chapters 80 (Residential Mortgage Loan Companies) and 81 (Mortgage Bankers and Residential Mortgage Loan Originators) published in the September 10, 2021 *Texas Register* (Vol. 46, No. 37)

Dear Mr. Berry:

The purpose of this letter is to comment on proposed new rules §80.102, §80.107, §81.103, and §81.110 as follows

§80.102(b): We recommend that the second sentence in subsection (b) be amended to read: "The originator must acknowledge and confirm his or her consent by making a corresponding license record amendment in NMLS to reflect such appointment [~~and must be made~~] using the appropriate form prescribed by NMLS.

§80.107(d): The term "originator" is mistakenly used three times — once in the parenthetical phrase in the introductory sentence and twice in subsection (d)(2) for the recipient of service by mail. The term "mortgage company" should be inserted in their place. New rule §81.07(d) provides for the same notice of service for the originator.

§81.103(c): Subsection (c) mistakenly cites §157.0062. The cite should be corrected to refer to §157.016 because §157.016 applies to mortgage loan originator license reinstatement and §157.0062 applies to mortgage banker registration reinstatement.

§81.110(f)(4): The stated purpose of §81.110 is to "establish the criteria utilized by the Commissioner and Department staff in reviewing individuals with a criminal history to determine his or her fitness to be licensed by the Department as an originator" (subsection (a)). For that reason, we recommend that subsection (f)(4) be revised to add the phrase "to act as an originator" so that it reads "(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the license sought by the individual to act as an originator."

§81.110(g)(8): We recommend the following amendments to §81.110(g)(8) to correct usage errors: "[T]he Commissioner ... will consider: (8) any other letters of recommendation, signed and dated, by an individual familiar with the applicant and [~~their~~] his or her character and fitness, with specific and complete knowledge of the individual's criminal history, [~~and~~] able to offer competent information about the nature and extent of the applicant's rehabilitative efforts."

§81.110: This is a general comment regarding §81.110. Rearranging, amending, and cross-referencing its various subsections, as applicable, will aid in understanding how to correctly apply these subsections. The following recommendations illustrate this general comment.

(2 pages)

1. Subsection (b), "Ineligibility by Operation of Law," is cross-referenced in subsection (k), "Offenses Deemed to Involve Fraud or Dishonesty," but subsection (k) is not cross-referenced in subsection (b). We recommend that either subsection (b) be amended to cross-reference subsection (k), or the text of subsection (k) be added to subsection (b).

2. Subsection (c), "Schedule of Criminal Offenses Determined to be Directly Related," and subsection (e), "Categories of Offenses Related to Residential Mortgage Loan Origination," both state they are directly related to an originator's duties and responsibilities but are not cross-referenced and do not explain how these subsections are in relationship with each another or how they are to be used for purposes of denying licensure of an originator with a criminal history. If subsections (c) and (e) are to be used for the same purposes, we recommend they be amended to cross-reference each other or that they be merged into one subsection. In either event, we further recommend that they be amended to add how they are in relationship with each another and how they are to be used for purposes of denying licensure of an originator with a criminal history. If subsections (c) and (e) are not to be used for the same purposes, we recommend that each subsection be amended to add how it is to be used for purposes of denying licensure of an originator with a criminal history. (See also Recommendation 4. below.)

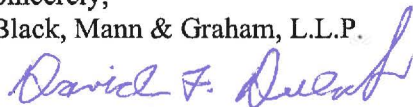
3. Subsection (k) makes reference to the Schedule in subsection (c) and to subsections (e)(1) and (2) but subsection (k) is not cross-referenced with subsection (c) or subsections (e)(1) and (2). Subsection (k) also connects subsections (e)(1) and (2) and a felony criminal offense listed in the Schedule with subsection (b)'s ineligibility by operation of law. Subsections (b) and (e)(1) and (2) make no such connection.

4. §81.110 uses the following terms in addressing the right to be licensed by an originator with a criminal history. Subsections (b), (f), (i), (j) and (k) use the term "ineligible," and/or "ineligibility." Subsections (i) and (j) also use those terms but also use the term "disqualifying." Subsection (g) only uses the term "disqualified." In addition, §81.111 uses the term "ineligible," but does not use the terms "disqualifying" or "disqualified" in addressing a request for a preliminary review of the right to be licensed by an originator with a criminal history. Our question is, are the terms "ineligible" and "ineligibility" being used interchangeably with "disqualifying," and "disqualified," and vice versa, or are they different for purposes of denying licensure of an originator with a criminal history? (See also Recommendation 2. above.)

We appreciate the opportunity to provide the Finance Commission, on behalf of the Texas Savings and Mortgage Lending Department, with the above comments.

Sincerely,

Black, Mann & Graham, L.L.P.



David F. Dulock  
For the Firm

**4. Discussion of and Possible Vote to Take Action on the Adoption of Amendments, New Rules, and Repeals in 7 TAC, Part 4, Chapter 80, Concerning Texas Residential Mortgage Loan Companies**

**PURPOSE:** The purpose of the amendments, new rules, and repeals in 7 TAC, Part 4, Chapter 80, is to implement Senate Bill 1900 (SB1900) and House Bill 3617 (HB3617), enacted during the 87<sup>th</sup> Legislature (Regular Session), which among other things, eliminated the requirement for a mortgage company or credit union subsidiary organization to maintain a physical office in Texas. The amendments, new rules, and repeals, further seek to formalize and clarify existing authority for the employees and sponsored originators of a mortgage company to work remotely. The rule changes further seek to formalize and clarify in rule existing requirements concerning what constitutes the main office or a branch office of a mortgage company such that the office must be licensed by the Department. An explanation of and justification for the rules is contained in the proposed preamble for the rule adoption.

**RECOMMENDED ACTION:** The Department recommends that the Finance Commission approve adoption of the amendments, new rules, and repeals in 7 TAC, Part 4, Chapter 80, with changes to the proposed text as published in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we approve adoption of the amendments, new rules, and repeals in 7 TAC Chapter 80.



**ADOPTION OF AMENDMENTS, NEW RULES, AND REPEALS**  
**7 TAC CHAPTER 80**  
**PAGE 1 OF 5**

**TITLE 7. BANKING AND SECURITIES**

**PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING**

**CHAPTER 80. ~~[TEXAS]~~ RESIDENTIAL MORTGAGE LOAN COMPANIES**

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts amendments, new rules, and rule repeals in 7 TAC Chapter 80, Texas Residential Mortgage Loan Companies. The commission's proposal was published in the September 3, 2021 issue of the *Texas Register* (46 TexReg 5303). 7 TAC §80.206 is adopted with changes to the published text and is republished to reflect such changes. The changes regulate no new parties and affect no new subjects of regulation. As a result, the rule will not be republished as a proposed rule for comment. The remaining rules sections in the proposal are adopted without changes to the text as published in the *Texas Register*, and will not be republished.

**Explanation of and Justification for the Rules**

The existing rules under 7 TAC Chapter 80 implement Finance Code Chapter 156, Residential Mortgage Loan Companies (Chapter 156).

*Changes Concerning Office Requirements and Remote Work*

Prior to September 1, 2021, pursuant to now former Finance Code Sections 156.2041(7) and 156.2042(6), a residential mortgage loan company or credit union subsidiary organization licensed by the department under Finance Code Chapter 156 was required to "maintain a physical office in Texas" (physical office requirement).

During the 87th Legislature (Regular Session), Senate Bill 1900 (SB1900) and House Bill 3617 (HB3617) were enacted into law (eff. September 1, 2021) which, among things, amended Finance Code Sections 156.2041 and 156.2042 to eliminate the physical office requirement. One stated purpose for HB3617, as reflected by the bill's House Committee Report was to address "a rise in demand for remote working." The adopted rules implement those portions of HB3617 addressing elimination of the physical office requirement and further seek to fulfill the stated purpose of HB3617 by formalizing and clarifying in rule existing authority for the employees and sponsored originators of a "residential mortgage loan company" (as defined by Finance Code §156.002(13); mortgage company) to work remotely. The adopted rules also formalize and clarify in rule existing requirements concerning what constitutes the main office or a branch office of a mortgage company such that the office must be licensed by the department. The adopted rules: (i) eliminate use of the term "physical office" throughout Chapter 80 and instead use the terms "main office" and "branch office" - terms that are used in Chapter 156; (ii) eliminate existing requirements for a mortgage company to maintain records tied to the now defunct physical office requirement; (iii) create definitions for the terms "administrative office," "branch office," "licensed office," and "main office" for purposes of administering the adopted rules, including to clarify which offices of a mortgage company must be licensed by the department; (iv) clarify that the main office or a branch office must be established by the mortgage company and not a sponsored originator; (v) describe conditions under and parameters by which the employees and sponsored originators of a mortgage company are authorized to work from a remote location; (vi) establish a new requirement for a mortgage company to provide appropriate training to its employees and sponsored originators to ensure that remote work is

## ADOPTION OF AMENDMENTS, NEW RULES, AND REPEALS

### 7 TAC CHAPTER 80

#### PAGE 2 OF 5

conducted in an environment conducive and appropriate to consumer privacy; (vii) establish a new requirement for a mortgage company to establish, adopt, maintain, and follow written procedures concerning its employees and sponsored originators working remotely; (viii) establish a new requirement for a mortgage company to create and maintain a list of its offices constituting an "administrative office" as defined by the adopted rules; and (xi) establish a new requirement for a mortgage company to maintain records reflecting compliance with the requirements for the employees and sponsored originators of the mortgage company to work remotely.

#### Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments, or October 3, 2021. A public hearing in accordance with Government Code §2001.029 was not required. The commission received one comment in response the proposal from Black Mann & Graham L.L.P. (commenter). The commenter suggested proposed §80.206 (relating to Office Locations; Remote Work) be adopted with changes to define use of the terms "residential mortgage loan business" (as used in proposed §80.206(a)(5)) or "business and work" (as used in proposed §80.206(c)), or otherwise clarify the scope of work that an employee or sponsored originator of a mortgage company may perform remotely. The commission agrees with the substance of the comment, and the adopted rules reflect changes responsive to such comment.

#### SUBCHAPTER A. GENERAL PROVISIONS

##### 7 TAC §80.2

Statutory Authority

The rule is adopted under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

The adopted rule affects the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

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

Iain A. Berry

Associate General Counsel

Department of Savings and Mortgage Lending

◆ ◆ ◆

#### SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

##### 7 TAC §§80.203, 80.204, 80.206

Statutory Authority

The rules are adopted under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

The adopted rules affect the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

**ADOPTION OF AMENDMENTS, NEW RULES, AND REPEALS**  
**7 TAC CHAPTER 80**  
**PAGE 3 OF 5**

§80.206. Office Locations; Remote Work.

(a) Definitions. The following terms, when used in this section, will have the following meanings, unless the context clearly indicates otherwise.

(1) "Administrative office" means any office of a mortgage company that is separate and distinct from its main office or a branch office, whether located in Texas or not, at which the mortgage company conducts residential mortgage loan business in Texas. The term does not include a "remote location" as defined by this section. The term includes:

(A) an office or location at which the employees of the mortgage company act solely in the capacity of a "loan processor or underwriter," as that term is defined by Tex. Fin. Code §180.002;

(B) an office or location at which the employees of the mortgage company perform solely administrative or clerical tasks on behalf of an individual licensed as an originator, as provided by Tex. Fin. Code §180.002(19)(B)(i); or

(C) an office or location which conducts any combination of activities described by subparagraphs (A) or (B) of this paragraph.

(2) "Branch office" means any office a mortgage company maintains that is separate and distinct from its main office, whether located in Texas or not, at which it conducts residential mortgage loan origination business with mortgage applicants or prospective mortgage applicants in Texas or concerning residential real estate located in Texas. The term does not include:

(A) an office or location at which the employees of the mortgage company act solely in the capacity of a "loan processor or underwriter," as that term is defined by Tex. Fin. Code §180.002;

(B) an office or location at which the employees of the mortgage company perform solely administrative or clerical tasks on behalf of an individual licensed as an originator, as provided by Tex. Fin. Code §180.002(19)(B)(i);

(C) an office or location which conducts any combination of the activities described by subparagraphs (A) and (B) of this paragraph; or

(D) a "remote location" as defined by this section.

(3) "Licensed office" means a physical office of the mortgage company that is licensed by the Department as its main office or a branch office.

(4) "Main office" means the office the mortgage company has listed in its NMLS license records (MU1 filing) as its "main address" (principal address) under "identifying information," and is therefore licensed by the Department through the mortgage company's license.

(5) "Remote location" means a location other than a licensed office or an administrative office of the mortgage company from which the employees or sponsored originators of the mortgage company conduct residential mortgage loan business as provided by subsection (c) of this section.

(b) Office Requirements. A mortgage company must obtain a license for any office constituting the main office or a branch office of the mortgage

**ADOPTION OF AMENDMENTS, NEW RULES, AND REPEALS**  
**7 TAC CHAPTER 80**  
**PAGE 4 OF 5**

company. A mortgage company must also obtain a license for any office or location it advertises or promotes to the general public as an office or location at which the mortgage company's sponsored originators meet in-person with mortgage applicants or prospective mortgage applicants. A licensed office of the mortgage company must be a physical office and have a permanent physical or street address (a post office box or other similar arrangement is not sufficient). The main office or a branch office must be established by the mortgage company. A sponsored originator cannot establish his or her own office other than an office or location from which he or she performs remote work as provided by subsection (c) of this section.

(c) Authorization for Remote Work. The employees of a mortgage company and its sponsored originators may conduct business and work from a remote location to the same extent as if such employees or originators were physically present at a licensed office of the mortgage company; provided, the mortgage company:

(1) maintains appropriate safeguards for the mortgage company and its consumer data, information, and records, including the use of secure virtual private networks and data storage encryption (including cloud storage) where appropriate;

(2) employs appropriate risk-based monitoring and oversight processes for work performed from a remote location and maintains records of those processes;

(3) ensures that physical records containing consumer information are not maintained at a remote location (as defined by this section) and any electronic records containing consumer information located at or accessible from the remote location are secured;

(4) ensures that consumer information and records of the mortgage company, including written procedures and training for work from remote locations authorized under this section, are accessible and available to the Commissioner or the Commissioner's designee on request;

(5) provides appropriate training to its employees and sponsored originators to ensure that remote employees or sponsored originators work in an environment conducive and appropriate to consumer privacy; and

(6) adopts, maintains, and follows written procedures to ensure that:

(A) the mortgage company and its employees and sponsored originators comply with this section; and

(B) the employees and sponsored originators do not perform an activity from a remote location that would be prohibited at a licensed office or administrative office of the mortgage company.

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

Iain A. Berry  
Associate General Counsel  
Department of Savings and Mortgage Lending

◆ ◆ ◆

**7 TAC §80.206**

Statutory Authority

The rule repeal is adopted under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance

**ADOPTION OF AMENDMENTS, NEW RULES, AND REPEALS**  
**7 TAC CHAPTER 80**  
**PAGE 5 OF 5**

Code Chapter 156, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

Iain A. Berry  
Associate General Counsel

Department of Savings and Mortgage Lending

The adopted rule repeal affects the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

◆ ◆ ◆

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

Iain A. Berry  
Associate General Counsel  
Department of Savings and Mortgage Lending

◆ ◆ ◆

**SUBCHAPTER D. COMPLIANCE AND ENFORCEMENT**

**7 TAC §80.300**

**Statutory Authority**

The rule is adopted under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

The adopted rule affects the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

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



**Attorneys At Law**

8584 Katy Freeway, Suite 420

Houston, TX 77024

Phone: 713-871-0005

Fax: 713-871-1358

**Partners**

Gregory S. Graham <sup>1</sup>

Shawn P. Black <sup>2</sup>

Ryan Black <sup>3</sup>

**Senior Lawyers**

David F. Dulock

Diane M. Gleason

Daniel S. Engle <sup>4</sup>

Margaret A. Noles

**Associates**

Nick Stevens

Syndy Davis

Brandon Pieratt

Ambria Wilmore

**Of Counsel**

David M. Tritter

Calvin C. Mann, Jr.

Thomas E. Black, Jr. <sup>5</sup>

**Retired Partner(s)**

Calvin C. Mann, Jr.

Thomas E. Black, Jr. <sup>5</sup>

<sup>1</sup> Also Licensed in Georgia

<sup>2</sup> Also Licensed in Kentucky and New York

<sup>3</sup> Also Licensed in District of Columbia

<sup>4</sup> Also Licensed in New York

<sup>5</sup> Also Licensed in New York and Washington

September 16, 2021

Iain A. Berry, Associate General Counsel  
Texas Savings and Mortgage Lending Department  
2601 North Lamar Boulevard, Suite 201  
Austin, Texas 78705-4294

[rules.comments@sml.texas.gov](mailto:rules.comments@sml.texas.gov)

RE: Comments on proposed amendments to 7 TAC Chapters 80 (Residential Mortgage Loan Companies) and 81 (Mortgage Bankers and Residential Mortgage Loan Originators) published in the September 3, 2021 *Texas Register* (Vol. 46, No. 36).

Dear Mr. Berry:

The purpose of this letter is to comment on proposed amendments §§80.206 and 81.206 (*Office Locations; Remote Work*). Our concern is that these proposed amendments do not clarify what type of activities may be conducted from a remote location (*see* §§80.206(a)(5), 81.206(a)(5), 80.206(c) and 81.206(c)). These sections of the proposed amendments use the terms “residential mortgage loan business” (§§80.206(a)(5) and 81.206(a)(5)) and “business and work” (§§80.206(c) and 81.206(c)). These terms are not defined by the above referenced Chapters 80 and 81 of the Texas Administrative Code or by Chapters 156, 157 or 180 of the Texas Finance Code.

We understand that the above terms do not include “mortgage loan origination business with mortgage applicants or prospective mortgage applicants in Texas or concerning residential real estate located in Texas” because that origination business is reserved for the licensed office of the mortgage company and the registered office of the mortgage banker (*see* §§80.206(a)(3) and 81.206(a)(4)).

Therefore, we recommend that the proposed amendments be further amended either to define “residential mortgage loan business” or to specify the type of “business and work” that may be conducted at a remote location.

We appreciate the opportunity to provide the Finance Commission, on behalf of the Texas Savings and Mortgage Lending Department, with the above comments on §§80.206 and 81.206.

Sincerely,  
Black, Mann & Graham, L.L.P.

David F. Dulock  
For the Firm

**5. Discussion of and Possible Vote to Take Action on the Adoption of Amendments, New Rules, and Repeals in 7 TAC, Part 4, Chapter 81, Concerning Mortgage Bankers and Texas Residential Mortgage Loan Originators**

**PURPOSE:** The purpose of the amendments, new rules, and repeals in 7 TAC, Part 4, Chapter 81, is to formalize and clarify existing authority for the employees and sponsored originators of a mortgage banker to work remotely. The rule changes further seek to formalize and clarify in rule existing requirements concerning what constitutes the main office or a branch office of a mortgage banker, such that the office must be registered with the Department. An explanation of and justification for the rules is contained in the proposed preamble for the rule adoption.

**RECOMMENDED ACTION:** The Department recommends that the Finance Commission approve adoption of the amendments, new rules, and repeals in 7 TAC, Part 4, Chapter 81, with changes to the proposed text as published in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we approve adoption of the amendments, new rules, and repeals in 7 TAC Chapter 81.

**ADOPTION OF AMENDMENTS, NEW RULES, AND REPEALS**  
**7 TAC CHAPTER 81**  
**PAGE 1 OF 6**

**TITLE 7. BANKING AND SECURITIES**

**PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING**

**CHAPTER 81. MORTGAGE BANKERS AND RESIDENTIAL MORTGAGE LOAN ORIGINATORS**

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts amendments, new rules, and rule repeals in 7 TAC Chapter 81, Mortgage Bankers and Residential Mortgage Loan Originators. The commission's proposal was published in the September 3, 2021 issue of the *Texas Register* (46 TexReg 5508). 7 TAC §81.206 is adopted with changes to the published text and is republished to reflect such changes. The changes regulate no new parties and affect no new subjects of regulation. As a result, the rule will not be republished as a proposed rule for comment. The remaining rules sections in the proposal are adopted without changes to the text as published in the *Texas Register*, and will not be republished.

**Explanation of and Justification for the Rules**

The existing rules under 7 TAC Chapter 81 implement Finance Code Chapter 157, Mortgage Bankers and Residential Mortgage Loan Originators (Chapter 157), and Chapter 180, Residential Mortgage Loan Originators (Texas SAFE Act), with respect to persons regulated under Chapter 157.

*Changes Concerning Office Requirements and Remote Work*

The adopted rules recognize the growing demand for the employees and sponsored originators of a

mortgage banker to work remotely by formalizing and clarifying in rule existing authority for the employees and sponsored originators of a mortgage banker to do so. The adopted rules also formalize and clarify in rule existing requirements concerning what constitutes the main office or a branch office of a mortgage banker such that the office must be registered with the department. The adopted rules are further designed to fully implement the requirement, pursuant to Finance Code §157.003(b)(6), for a mortgage banker to provide the commissioner with "a list of any offices that are separate and distinct from the primary office identified on the mortgage banker registration and that conduct residential mortgage loan business." The adopted rules: (i) create definitions for the terms "administrative office," "branch office," "main office," and "registered office," for purposes of administering the adopted rules, including to clarify which offices of a mortgage banker must be registered with the department; (ii) clarify that the main office or a branch office must be established by the mortgage banker or mortgage company and not an originator; (iii) describe conditions under and parameters by which the employees and sponsored originators of a mortgage banker are authorized to work from a remote location; (iv) establish a new requirement for a mortgage banker to provide appropriate training to its employees and sponsored originators to ensure that remote work is conducted in an environment conducive and appropriate to consumer privacy; (v) establish a new requirement for a mortgage banker to establish, adopt, maintain, and follow written procedures concerning its employees and sponsored originators working remotely; (vi) establish a new requirement for a mortgage banker to create and maintain a list of its offices constituting an "administrative office" as defined by the adopted rules; and (vii) establish a new requirement for a mortgage banker to maintain records reflecting compliance with the requirements for the employees and sponsored



**ADOPTION OF AMENDMENTS, NEW RULES, AND REPEALS**  
**7 TAC CHAPTER 81**  
**PAGE 2 OF 6**

originators of the mortgage banker to work remotely.

**Summary of Public Comments**

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments, or October 3, 2021. A public hearing in accordance with Government Code §2001.029 was not required. The commission received two comments in response the proposal. One commenter (Black Mann & Graham L.L.P.) suggested proposed §81.206 (relating to Office Locations; Remote Work) be adopted with changes to define use of the terms "residential mortgage loan business" (as used in proposed §81.206(a)(5)) or "business and work" (as used in proposed §81.206(c)), or otherwise clarify the scope of work that an employee or sponsored originator or a mortgage company may perform remotely. The commission agrees with the substance of the comment, and the adopted rules reflect changes responsive to such comment. One commenter (Texas Mortgage Bankers Association) suggested that proposed §81.206(a) be adopted with changes to clarify and better define the types of activities that a mortgage banker acting as a residential mortgage loan servicer may perform at an "administrative office" of the mortgage banker as defined by the adopted rules. The commission agrees with the substance of the comment, and the adopted rules reflect changes responsive to such comment.

**SUBCHAPTER A. GENERAL PROVISIONS**

**7 TAC §81.2**

**Statutory Authority**

The rule is adopted under the authority of Finance Code §157.0023 and §180.004 which

authorizes the commission to adopt rules necessary to implement or fulfill the purposes of Chapter 157 and the Texas SAFE Act, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

The adopted rule affects the statutes contained in Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator Act, and Chapter 180, the Texas Fair Enforcement for Mortgage Licensing Act of 2009.

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

Iain A. Berry  
Associate General Counsel  
Department of Savings and Mortgage Lending

♦ ♦ ♦

**SUBCHAPTER C. DUTIES AND RESPONSIBILITIES**

**7 TAC §§81.203, 81.204, 81.206**

**Statutory Authority**

The rules are adopted under the authority of Finance Code §157.0023 and §180.004, which authorizes the commission to adopt rules necessary to implement or fulfill the purposes of Chapter 157 and the Texas SAFE Act, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

The adopted rules affect the statutes contained in Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator Act, and Chapter 180, the Texas Fair

**ADOPTION OF AMENDMENTS, NEW RULES, AND REPEALS**  
**7 TAC CHAPTER 81**  
**PAGE 3 OF 6**

Enforcement for Mortgage Licensing Act of 2009.

§81.206. Office Locations; Remote Work.

(a) Definitions. The following terms, when used in this section, will have the following meanings, unless the context clearly indicates otherwise.

(1) "Administrative office" means any office of a mortgage banker that is separate and distinct from its main office or a branch office, whether located in Texas or not, at which the mortgage banker conducts residential mortgage loan business in Texas. The term does not include a "remote location" as defined by this section. The term includes:

(A) an office or location at which the employees of the mortgage banker act solely in the capacity of a "loan processor or underwriter," as that term is defined by Tex. Fin. Code §180.002;

(B) an office or location at which the employees of the mortgage banker perform solely administrative or clerical tasks on behalf of an individual licensed as an originator, as provided by Tex. Fin. Code §180.002(19)(B)(i);

(C) with respect to a mortgage banker whose registration under Finance Code Chapter 157 reflects it acts as a servicer of residential mortgage loans, an office or location at which a mortgage banker or its employees solely perform activities relating to residential mortgage loan servicing, including:

(i) collection of the residential mortgage loan;

(ii) the administration of escrow accounts;

(iii) loss mitigation;

(iv) administering or enforcing the terms of a residential mortgage loan; or

(v) administering the terms of an investor servicing agreement for a residential mortgage loan; or

(D) an office or location which conducts any combination of activities described by subparagraphs (A)-(C) of this paragraph.

(2) "Branch office" means any office a mortgage banker maintains that is separate and distinct from its main office, whether located in Texas or not, at which it conducts residential mortgage loan origination business with mortgage applicants or prospective mortgage applicants in Texas or concerning residential real estate located in Texas. The term does not include:

(A) an office or location at which the employees of the mortgage banker act solely in the capacity of a "loan processor or underwriter," as that term is defined by Tex. Fin. Code §180.002;

(B) an office or location at which the employees of the mortgage banker perform solely administrative or clerical tasks on behalf of an individual licensed as an originator, as provided by Tex. Fin. Code §180.002(19)(B)(i);

(C) with respect to a mortgage banker whose registration under Finance Code Chapter 157 reflects it acts as a servicer of residential mortgage loans, an office or location at which a mortgage banker or its employees solely perform activities relating to residential mortgage loan servicing, including:

(i) collection of the residential mortgage loan;

**ADOPTION OF AMENDMENTS, NEW RULES, AND REPEALS**  
**7 TAC CHAPTER 81**  
**PAGE 4 OF 6**

\_\_\_\_\_ (ii) the administration of escrow accounts;

\_\_\_\_\_ (iii) loss mitigation;

\_\_\_\_\_ (iv) administering or enforcing the terms of a residential mortgage loan; or

\_\_\_\_\_ (v) administering the terms of an investor servicing agreement for a residential mortgage loan;

(D) an office or location which conducts any combination of activities described by subparagraphs (A)-(C) of this paragraph; or

(E) a "remote location" as defined by this section.

(3) "Main office" means the office the mortgage banker has listed in its NMLS registration (MU1 filing) as its "main address" (principal address) under "identifying information," and is therefore registered with the Department.

(4) "Registered office" means a physical office of the mortgage banker that is registered with the Department as its main office or a branch office.

(5) "Remote location" means a location other than a registered office or an administrative office of the mortgage banker from which the employees or sponsored originators of the mortgage banker conduct residential mortgage loan business as provided by subsection (c) of this section.

(b) Office Requirements. A mortgage banker must register any office constituting the main office or a branch office of the mortgage banker. A mortgage banker must also register any office or location it advertises or promotes to the general public as an office or location at which

the mortgage banker's sponsored originators meet in-person with mortgage applicants or prospective mortgage applicants. A registered office of the mortgage banker must be a physical office and have a permanent physical or street address (a post office box or other similar arrangement is not sufficient). The main office or a branch office must be established by the mortgage banker or mortgage company. An originator cannot establish his or her own office other than an office or location from which he or she performs remote work as provided by subsection (c) of this section.

(c) Authorization for Remote Work. The employees of a mortgage banker and its sponsored originators may conduct business and work from a remote location to the same extent as if such employee or originators were physically present at a licensed or registered office of the mortgage banker; provided:

(1) maintains appropriate safeguards for the mortgage banker and its consumer data, information, and records, including the use of secure virtual private networks and data storage encryption (including cloud storage) where appropriate;

(2) employs appropriate risk-based monitoring and oversight processes for work performed from a remote location and maintains records of those processes;

(3) ensures that physical records containing consumer information are not maintained at a remote location (as defined by this section) and any electronic records containing consumer information located at or accessible from the remote location are secured;

(4) ensures that consumer information and records of the mortgage banker, including written procedures and training for work from

**ADOPTION OF AMENDMENTS, NEW RULES, AND REPEALS**  
**7 TAC CHAPTER 81**  
**PAGE 5 OF 6**

remote locations authorized under this section, are accessible and available to the Commissioner or the Commissioner's designee on request;

(5) provides appropriate training to its employees and sponsored originators to ensure that remote employees or sponsored originators work in an environment conducive and appropriate to consumer privacy; and

(6) adopts, maintains, and follows written procedures to ensure that:

\_\_\_\_\_ (A) the mortgage banker and its employees and sponsored originators comply with this section; and

\_\_\_\_\_ (B) the employees and sponsored originators do not perform an activity from a remote location that would be prohibited at a registered office or administrative office of the mortgage banker.

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

Iain A. Berry  
Associate General Counsel  
Department of Savings and Mortgage Lending

◆ ◆ ◆

**7 TAC §81.206**

Statutory Authority

The rule repeal is adopted under the authority of Finance Code §157.0023 and §180.004, which authorizes the commission to adopt rules necessary to implement or fulfill the purposes of Chapter 157 and the Texas SAFE Act, and as required to carry out the intentions of the federal

Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

The adopted rule repeal affects the statutes contained in Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator Act, and Chapter 180, the Texas Fair Enforcement for Mortgage Licensing Act of 2009.

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

Iain A. Berry  
Associate General Counsel  
Department of Savings and Mortgage Lending

◆ ◆ ◆

**SUBCHAPTER D. COMPLIANCE AND ENFORCEMENT**

**7 TAC §81.300**

Statutory Authority

The rule is adopted under the authority of Finance Code §157.0023 and §180.004, which authorizes the commission to adopt rules necessary to implement or fulfill the purposes of Chapter 157 and the Texas SAFE Act, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

The adopted rule affects the statutes contained in Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator Act, and Chapter 180, the Texas Fair Enforcement for Mortgage Licensing Act of 2009.

**ADOPTION OF AMENDMENTS, NEW RULES, AND REPEALS**  
**7 TAC CHAPTER 81**  
**PAGE 6 OF 6**

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

Iain A. Berry  
Associate General Counsel

Department of Savings and Mortgage Lending

◆ ◆ ◆



**Attorneys At Law**

8584 Katy Freeway, Suite 420

Houston, TX 77024

Phone: 713-871-0005

Fax: 713-871-1358

**Partners**

Gregory S. Graham <sup>1</sup>

Shawn P. Black <sup>2</sup>

Ryan Black <sup>3</sup>

**Senior Lawyers**

David F. Dulock

Diane M. Gleason

Daniel S. Engle <sup>4</sup>

Margaret A. Noles

**Associates**

Nick Stevens

Syndy Davis

Brandon Pieratt

Ambria Wilmore

**Of Counsel**

David M. Tritter

Calvin C. Mann, Jr.

Thomas E. Black, Jr. <sup>5</sup>

**Retired Partner(s)**

Calvin C. Mann, Jr.

Thomas E. Black, Jr. <sup>5</sup>

<sup>1</sup> Also Licensed in Georgia

<sup>2</sup> Also Licensed in Kentucky and New York

<sup>3</sup> Also Licensed in District of Columbia

<sup>4</sup> Also Licensed in New York

<sup>5</sup> Also Licensed in New York and Washington

September 16, 2021

Iain A. Berry, Associate General Counsel  
Texas Savings and Mortgage Lending Department  
2601 North Lamar Boulevard, Suite 201  
Austin, Texas 78705-4294

[rules.comments@sml.texas.gov](mailto:rules.comments@sml.texas.gov)

RE: Comments on proposed amendments to 7 TAC Chapters 80 (Residential Mortgage Loan Companies) and 81 (Mortgage Bankers and Residential Mortgage Loan Originators) published in the September 3, 2021 *Texas Register* (Vol. 46, No. 36).

Dear Mr. Berry:

The purpose of this letter is to comment on proposed amendments §§80.206 and 81.206 (*Office Locations; Remote Work*). Our concern is that these proposed amendments do not clarify what type of activities may be conducted from a remote location (*see* §§80.206(a)(5), 81.206(a)(5), 80.206(c) and 81.206(c)). These sections of the proposed amendments use the terms “residential mortgage loan business” (§§80.206(a)(5) and 81.206(a)(5)) and “business and work” (§§80.206(c) and 81.206(c)). These terms are not defined by the above referenced Chapters 80 and 81 of the Texas Administrative Code or by Chapters 156, 157 or 180 of the Texas Finance Code.

We understand that the above terms do not include “mortgage loan origination business with mortgage applicants or prospective mortgage applicants in Texas or concerning residential real estate located in Texas” because that origination business is reserved for the licensed office of the mortgage company and the registered office of the mortgage banker (*see* §§80.206(a)(3) and 81.206(a)(4)).

Therefore, we recommend that the proposed amendments be further amended either to define “residential mortgage loan business” or to specify the type of “business and work” that may be conducted at a remote location.

We appreciate the opportunity to provide the Finance Commission, on behalf of the Texas Savings and Mortgage Lending Department, with the above comments on §§80.206 and 81.206.

Sincerely,  
Black, Mann & Graham, L.L.P.

David F. Dulock  
For the Firm



October 1, 2021

Finance Commission of Texas  
and  
Mr. Ian Berry  
Associate General Counsel  
Department of Savings and Mortgage Lending  
*Via email to* [rules.comments@sml.texas.gov](mailto:rules.comments@sml.texas.gov)

Re Proposed Rule Changes to 7 Texas Administrative Code Chapter 81

Honorable Members of the Finance Commission  
and Honorable Mr. Berry:

The Texas Mortgage Bankers Association is submitting its public comments concerning the proposed changes to 7 TAC Chapter 81. At the outset, we wish to express our appreciation for the process Savings and Mortgage Lending used to develop the proposed rule. The providing of a pre-comment draft and opportunity for participation in stakeholder calls has been beneficial in providing an exchange of views.

The residential mortgage lending industry continues to evolve rapidly. Business today is conducted far differently from the days when the original provisions of this Chapter were adopted. Consumers demand more online options, and the role of traditional “bricks and mortar” offices is substantially reduced. In many, if not most transaction, residential mortgage loan originations a consumer may interact totally online. They may rarely, if ever, have a face to face meeting with their loan originator.

The proposed rules reflect this reality. TMBA endorses the formalizing of remote work. We believe that the proposed rules make explicit what Savings and Mortgage Lending policy has been in both formal and informal guidance. Importantly, the language details precise requirements for mortgage bankers and their employees to follow. The proposed rules on remote work include adequate safeguards for consumers.

However, we do believe some changes are necessary to the proposed changes to 81.206(a)(1)(C) and 81.206(2)(C) as these provisions relate to mortgage servicing. 81.206(a)(1) adds a definition for Administrative Office. As proposed, this definition recognizes the Department’s longstanding informal and formal guidance that many residential mortgage lending functions may be performed from locations that are not licensed or registered branches. Proposed 81.206(a)(2)(C) excludes from the definition of a branch office certain mortgage servicing functions.

We concur with the intent of the proposal that mortgage servicing is an activity that may be conducted from an administrative office that is not a main office or branch office. However, the proposed

definition of mortgage servicing is too narrow. The proposed language defines a mortgage servicing office as “ an office or location at which a mortgage banker or its employees or sponsored originators act solely in the capacity of a "residential mortgage loan servicer," as that term is defined by Tex. Fin. Code §158.002.” Reference to that definition would mean that for mortgage servicing, only offices whose *sole activity* is the acceptance of mortgage payments and escrow payments and the disbursement of those payments are administrative offices. Mortgage servicing involves much more. Mortgage servicing among other functions includes: (a) responding to consumers relating to payment and account inquiries; (b) dealing with escrow issues; (c) receiving and disbursement of casualty insurance payments; (d) dealing with loan defaults and collection efforts; (e) providing payoff information to consumers and third parties; (f) preparing and issuing releases of liens; (g) loss mitigation processes, including forbearance; (g) foreclosure processing; (h) management and disposition of foreclosed properties; (i) filing and management of the claims against FHA, VA, mortgage guaranty insurers and similar insurers for losses of the lender on insured loan products. In this age of specialization, not all of these functions will necessarily be performed from a single location. Our understanding is that SML has never restricted these broader activities to a registered office.

For those reasons, we believe the definition of mortgage servicing should be expanded to reflect these other functions above (which may not be totally inclusive).

A suggested alternative would be substituting the following language in proposed 81.206(a)(1)(C) and 81.206 (a) (2)(C) : “an office or location at which a mortgage banker or its employees solely perform activities relating to mortgage servicing, including (a) collection of the mortgage loan, (b) administration of escrow accounts, (c) administering or enforcing the terms of the mortgage loan; (d) loss mitigation; or (e) administering investor servicing agreements. “

Thank you for your consideration of our comments.

John C Fleming

General Counsel

Texas Mortgage Bankers Association.



**6. Discussion of and Possible Vote to Take Action on the Adoption of New Rules in 7 TAC, Part 4, Chapter 52, Concerning Department Administration**

**PURPOSE:** The purpose of the new rules in 7 TAC, Part 4, Chapter 52, is to establish in rule various processes and procedures governing the recovery fund the Commissioner is required to administer pursuant to Finance Code Section 13.016 and Finance Code Chapter 156, Subchapter F. The new rules further establish in rule various policies and procedures governing the mortgage grant fund the Commissioner is required to administer, pursuant to Finance Code Chapter 156, Subchapter G, arising from the enactment of House Bill 3617 (HB3617) during the 87<sup>th</sup> Legislature (Regular Session). The new rules further establish in rule various policies and procedures governing claims made against the mortgage grant fund, as provided by Tex. Fin. Code §156.555, also arising from enactment of HB3617. An explanation of and justification for the rules is contained in the proposed preamble for the rule adoption.

**RECOMMENDED ACTION:** The Department recommends that the Finance Commission approve adoption of the new rules in 7 TAC, Part 4, Chapter 52, with changes to the proposed text as published in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we approve adoption of new rules in 7 TAC Chapter 52.

**TITLE 7. BANKING AND SECURITIES**

**PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING**

**CHAPTER 52. DEPARTMENT ADMINISTRATION**

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts new rules in 7 TAC Chapter 52, Department Administration. The commission's proposal was published in the September 3, 2021 issue of the *Texas Register* (46 TexReg 5496). The following rules sections are adopted with changes to the published text and are republished to reflect such changes: §§52.102, 52.103, 52.202, 52.205, 52.302, 52.303, 52.305, and 52.306. The changes regulate no new parties and affect no new subjects of regulation. As a result, the rules will not be republished as proposed rules for comment. The remaining rules sections in the proposal are adopted without changes to the text as published in the *Texas Register*, and will not be republished.

**Explanation of and Justification for the Rules**

The rules under 7 TAC Chapter 52 generally govern the department's internal processes and procedures including existing rules concerning consumer complaints filed with the department, the resolution of contested cases by informal settlement conference, and the use of advisory committees as provided by Finance Code §13.018. The adopted rules establish new rules governing certain other internal processes and procedures related to: (i) the recovery fund administered by the department's commissioner (commissioner) under Finance Code Chapter 156, Subchapter F (recovery fund); (ii) the mortgage grant fund administered by the

commissioner under Finance Code Chapter 156, Subchapter G (mortgage grant fund); and (iii) claims made against the mortgage grant fund as provided by Finance Code §156.555.

*New Rules Concerning the Recovery Fund*

Pursuant to Finance Code §13.016 and Chapter 156, Subchapter F, the commissioner is required to administer and maintain a fund against which persons may make a claim to recover actual out-of-pocket damages incurred because of acts committed by an individual licensed by the department as a residential mortgage loan originator under Finance Code Chapter 157. The adopted rules: (i) create definitions necessary to administer the recovery fund, derived from similar definitions contained in existing 7 TAC §81.2 (relating to Definitions); (ii) clarify that a person seeking to make a claim against the recovery fund must file a sworn written application using the current form prescribed by the commissioner and posted on the department's website; (iii) clarify when the commissioner disburses funds on an approved claim (after the opportunity to appeal the commissioner's decision has lapsed); (iv) clarify that, in order to get paid from the recovery fund, a claimant must provide the necessary information and documentation necessary to be a valid payee for the purposes of the Texas Comptroller of Public Accounts; (v) clarify that a licensed residential mortgage loan originator against whom a claim was made and approved may have an administrative penalty imposed on him or her; and (vi) establish a process and procedure for paying approved claims in the event funds in the recovery fund are unavailable at the time the claim is approved.

*New Rules Concerning the Mortgage Grant Fund*

During the 87<sup>th</sup> Legislature (Regular Session), House Bill 3617 (HB3617) was enacted into law

(eff. September 1, 2021) which, among other things, amended Finance Code Chapter 156 to create a new Subchapter G, creating a new mortgage grant fund for the commissioner to administer, funded primarily by excess contributions made to the recovery fund. The primary purpose of the mortgage grant fund is to promote financial education relating to mortgage loans and to support other statewide financial education, activities, and programs. The adopted rules: (i) create definitions necessary to administer the mortgage grant fund; (ii) clarify the commissioner's role as manager of the mortgage grant fund, including providing periodic reports to the commission; (iii) provide for the creation of a manual reflecting the commissioner's policies and procedures governing administration of the mortgage grant fund; (iv) provide for the appointment of an employee of the department to serve as a grant coordinator to assist the commissioner in managing the mortgage grant fund; (v) provide for the creation of an advisory committee to make recommendations to the commissioner and the grant coordinator concerning management of the mortgage grant fund; and (vi) establish various processes and procedures for grantees to apply for, receive disbursements, and return misused funds, from the mortgage grant fund.

*New Rules Concerning Recovery Claims Made Against the Mortgage Grant Fund*

HB3617 further amended Finance Code Chapter 156 by creating a new Section 156.555, allowing for claims to be made against the mortgage grant fund to compensate persons for actual out-of-pocket damages incurred because of fraud committed by an individual who acted in the capacity of a residential mortgage loan originator but did not hold the license required under Finance Code Chapter 157. The adopted rules: (i) create definitions necessary to administer claims made against the mortgage grant fund; (ii) clarify that a person seeking to make a claim against the

mortgage grant fund must file a sworn written application using the current form prescribed by the commissioner and posted on the department's website; (iii) clarify when the commissioner disburses funds on an approved claim (after the opportunity to appeal the commissioner's decision has lapsed); (iv) clarify that, in order to get paid from the mortgage grant fund, a claimant must provide the necessary information and documentation to be a valid payee for the purposes of the Texas Comptroller of Public Accounts; (v) clarify that an unlicensed individual against whom a claim was made and approved may have an administrative penalty imposed on him or her, and that failure to pay such penalty constitutes grounds for denial of licensure under Finance Code Chapter 157; (vi) establish a process and procedure for paying approved claims in the event funds in the mortgage grant fund are unavailable at the time the claim is approved; (vii) clarify certain eligibility requirements for making a claim against the mortgage grant fund required by application of the requirements for making a claim against the mortgage grant fund as provided by Finance Code §156.555(b); and (viii) clarify how the statute of limitations period for making claims on the recovery fund applies to claims made on the mortgage grant fund, thereby expressly allowing for claims prior to the effective date of Finance Code §156.555 and inception of the mortgage grant fund.

**Summary of Public Comments**

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments, or October 3, 2021. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

**SUBCHAPTER D. RECOVERY FUND**

**ADOPTION OF NEW RULES**  
**7 TAC CHAPTER 52**  
**PAGE 3 OF 8**

**7 TAC §§52.100 - 52.104**

Statutory Authority

The rules are adopted under the authority of Finance Code §156.102(a) which authorizes the commission to adopt and enforce rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156. The rules are also adopted under the authority of Finance Code §156.102(b-1) which authorizes the commission to adopt rules to promote the fair and orderly administration of the recovery fund consistent with the purposes of Finance Code Chapter 156, Subchapter F.

The adopted rules affect the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

§52.102. Claims.

(a) Application Required. As provided by Tex. Fin. Code §156.504, a claimant seeking to recover from the recovery fund must file a sworn written application with the Department which must be made on the current form prescribed by the Commissioner and posted on the Department's website (sml.texas.gov).

(b) Payment of Approved Claims. Upon approval of a claim made on the recovery fund, the Commissioner will issue an order disbursing funds from the recovery fund. The Commissioner will direct Department staff to cause disbursement of the funds after the date upon which such order becomes final and unappealable for purposes of Finance Code §156.504(d), or if the Department's preliminary determination under Finance Code §156.504(c)(2) was disputed and an adjudicative hearing required, for purposes of Government Code Chapter 2001.

(c) Cooperation by Claimant Required. The claimant must cooperate with Department staff's instructions for effectuating disbursement of an approved claim from the recovery fund. Among other things, the claimant must provide such information and complete such documentation required in order to cause the claimant to be a valid payee for purposes of the Texas Comptroller of Public Accounts.

§52.103. Administrative Penalty Against Originator.

If the Commissioner approves a claim made under Tex. Fin. Code §156.504, the Commissioner may impose an administrative penalty on the originator whose acts or omissions caused the claim.

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

Iain A. Berry  
Associate General Counsel  
Department of Savings and Mortgage Lending

♦ ♦ ♦

SUBCHAPTER E. MORTGAGE GRANT FUND

**7 TAC §§52.200 - 52.205**

Statutory Authority

The rules are adopted under the authority of Finance Code §156.102(a) which authorizes the commission to adopt and enforce rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156. The rules are also adopted under the authority of Finance Code §156.556 which authorizes the commission to adopt rules to administer Finance Code Chapter

156, Subchapter G including rules to: (i) ensure that a grant awarded from the mortgage grant fund is used for a public purpose; and (ii) provide a means of recovering money awarded from the mortgage grant fund that is not used for a public purpose.

The adopted rules affect the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

§52.202. Commissioner as Manager.

(a) Manager. As provided by Tex. Fin. Code §156.553, the Commissioner serves as manager of the fund and administers all aspects of the fund.

(b) Periodic Reports to the Finance Commission. Unless the Finance Commission directs otherwise, the Commissioner or his or her designee (including but not limited to the Grant Coordinator) will report to the Finance Commission audit committee concerning the status and activities of the fund at each regularly called meeting of the Finance Commission audit committee, or otherwise at the request of the Finance Commission or its audit committee.

(c) Mortgage Grant Administration Manual. The Commissioner will develop and create a manual reflecting the Commissioner's policies and procedures governing administration of the fund and the Mortgage Grant Fund grant program to be known and referred to as the Mortgage Grant Administration Manual (MGAM). The MGAM, and any amendments to the MGAM, must be approved by the Finance Commission audit committee.

§52.205. Grant Program.

(a) Scope. This section governs the administration of and disbursements from the

fund (each of which is considered a grant disbursement) for purposes of:

(1) Tex. Fin. Code §156.554(b)(1), concerning grants to an auxiliary mortgage loan activity company or another nonprofit organization to promote financial education relating to mortgage loans; and

(2) Tex. Fin. Code §156.554(b)(3), concerning disbursements to provide support for statewide financial education, activities, and programs specifically related to mortgage loans for consumers, or for the purposes provided by Tex. Fin. Code §393.628(c).

(b) Grant Cycle. The fund may have one competitive grant cycle every two years.

(1) Funding determination. The grant funding determination is made by the Commissioner by December 31 of each odd-numbered year. The Commissioner will determine the separate funding available and allocated to each of the purposes of Tex. Fin. Code §156.554(b)(1) and (3).

(2) Programming cycle. A new fund grant programming cycle may open on January 1 of every even-numbered year. An applicant may choose to apply for a one-year grant programming cycle, or a two-year grant programming cycle. The grant programming cycle for a one-year grantee begins on January 1 and ends on December 31 of the even-numbered year for the applicable cycle. The grant programming cycle for a two-year grantee begins on January 1 of the even-numbered year and ends on December 31 of the following odd-numbered year for the applicable cycle.

(c) Eligibility. A grant made under Tex. Fin. Code §156.554(b)(1) and subsection (a)(1) of this section may only be given to a company

licensed by the Department as an auxiliary mortgage loan activity company, or a nonprofit organization. A grant made under Tex. Fin. Code §156.554(b)(3) and subsection (a)(2) of this section may be given to a nonprofit organization, school, or for-profit entity. Grant funding is not available to entities licensed or registered by the Department other than auxiliary mortgage loan activity companies in accordance with Tex. Fin. Code §156.554(b)(1) and subsection (a)(1) of this section.

(d) Grant Application. To be considered for the grant program, an applicant must complete and submit the grant application by the deadline and in accordance with the instructions for the applicable grant cycle. Late or incomplete grant applications will not be accepted. Meeting eligibility criteria and timely submission of a grant application does not guarantee award of a grant in any amount.

(e) Review and Approval. The Commissioner, upon receipt of advice from MGAC and the Grant Coordinator, will review timely and complete applications and determine the grants to be awarded.

(f) Grant Agreement. To participate in the grant program, a grantee approved by the Commissioner to receive a grant must execute the grant agreement approved by the Commissioner for the applicable grant cycle (grant agreement).

(g) Grantee Compliance. A grantee must comply with applicable financial, administrative, and programmatic terms and conditions, and exercise proper stewardship over grant program funds. A grantee must use awarded funds in compliance with the following in effect for the applicable grant cycle:

(1) all applicable state laws and regulations;

(2) all applicable federal laws and regulations;

(3) the Mortgage Grant Administration Manual;

(4) the grant application, including all application guidelines and instructions at the time of application;

(5) the grant agreement signed by the Commissioner or the Commissioner's designee and the grantee;

(6) all reporting and monitoring requirements, as outlined in the grant agreement; and

(7) any other guidance documents posted on the Mortgage Grant Fund website for the applicable grant cycle.

(h) Reporting and Monitoring.

(1) General reporting requirements. To receive reimbursement of grant expenses a grantee must:

(A) submit periodic grant reports as provided by the grant agreement;

(B) maintain satisfactory compliance with the grant agreement and the grant activities as proposed by the grantee in its grant application;

(C) identify, track and report performance measures;

(D) track and report participant demographic information.

(2) Progress reports. A grantee must submit progress reports that demonstrate

performance outcomes and financial information over the term of the grant in accordance with and by the deadlines set forth in the grant agreement.

(3) Six-month longitudinal report. A grantee must submit a six-month longitudinal report after program completion to demonstrate program objectives.

(4) Monitoring. The Grant Coordinator or MGAC may use the following methods to monitor a grantee's performance and expenditures:

(A) Desk review. The Grant Coordinator or MGAC may conduct a desk review of a grantee to review and compare individual source documentation and materials to summary data provided during the reporting process; or

(B) Site visits and inspection reviews. The Grant Coordinator or MGAC may conduct a scheduled site visit to a grantee's place of business to review compliance and performance issues. Site visits may be comprehensive or limited in scope.

(i) Reimbursement.

(1) Eligibility. To be eligible for reimbursement, a grantee must comply with all terms of the grant agreement, as well as all other items provided in subsection (g) of this section. To ensure that grant funds are used for a public purpose as provided by Tex. Fin. Code §156.556(1), grant funds will only be awarded on a cost reimbursement basis for all actual, allowable, and allocable costs incurred by a grantee pursuant to the grant agreement. Expenses that were incurred before the beginning or after termination of the grant agreement are not eligible for reimbursement.

(2) Procedure. To request reimbursement for work performed on grant activities, a grantee must submit a grant reimbursement report in accordance with and by the deadlines set forth in the grant agreement. A grantee must submit a detailed expense report with supporting documentation to justify the reimbursement request. The Department will review and approve requests for reimbursement that satisfy the requirements and promptly disburse funds in response to approved requests.

(j) Misuse of Grant Funds. The Commissioner may require a refund of grant funds already disbursed to the grantee and may cancel the grant agreement or disqualify the grantee from receiving future grants from the fund if:

(1) grant funds are not used for a public purpose allowable under Tex. Fin. Code §156.554;

(2) grant funds are used in an illegal manner;

(3) the grantee violates the terms or conditions of the grant agreement or otherwise violates the requirements of subsection (g) of this section; or

(4) the Commissioner discovers the grantee made any material misrepresentations in obtaining the grant or in seeking reimbursement of grant funds.

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

Iain A. Berry  
Associate General Counsel  
Department of Savings and Mortgage Lending

◆ ◆ ◆

SUBCHAPTER F. MORTGAGE GRANT  
FUND: RECOVERY CLAIMS FOR  
UNLICENSED ACVITY

**7 TAC §§52.300 - 52.305**

Statutory Authority

The rules are adopted under the authority of Finance Code §156.102(a) which authorizes the commission to adopt and enforce rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156. The rules are also adopted under the authority of Finance Code §156.556 which authorizes the commission to adopt rules to administer Finance Code Chapter 156, Subchapter G.

The adopted rules affect the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

§52.302. Claims.

(a) Application Required. As provided by Tex. Fin. Code §156.555, adopting by reference the procedural requirements for making a claim on the Commissioner's recovery fund in accordance with Finance Code Chapter 156, Subchapter F, a claimant must file a sworn written application with the Department and must be made on the current form prescribed by the Commissioner and posted on the Department's website (sml.texas.gov).

(b) Payment of Approved Claims. Upon approval of a claim on the Mortgage Grant Fund for purposes of Tex. Fin. Code §156.555, the Commissioner will issue an order disbursing funds from the Mortgage Grant Fund. The Commissioner will direct Department staff to cause disbursement of the funds after the date

upon which such order becomes final and unappealable for purposes of Finance Code §156.504(d) (by application of Finance Code §156.555), or if the Department's preliminary determination letter under §156.504(c)(2) was disputed and an adjudicative hearing required, for purposes of Government Code Chapter 2001.

(c) Cooperation by Claimant Required. The claimant must cooperate with Department staff's instructions for effectuating disbursement of an approved claim from the Mortgage Grant Fund for purposes of Tex. Fin. Code §156.555. Among other things, the claimant must provide such information and complete such documentation required in order to cause the claimant to be a valid payee for purposes of the Texas Comptroller of Public Accounts.

§52.303. Consequences for Unlicensed Individual.

(a) Administrative Penalty. If the Commissioner approves a claim made under Tex. Fin. Code §156.555, the Commissioner may impose an administrative penalty on the unlicensed individual whose fraudulent acts caused the claim.

(b) Grounds for Denial. As provided by Tex. Fin. Code §180.201(1), failure by the unlicensed individual to pay the administrative penalty imposed by this section is a violation of an order of the Commissioner and therefore constitutes grounds for denial of an application from such individual for a residential mortgage loan originator license under Finance Code Chapter 157.

§52.305. Eligibility.

(a) Application of Finance Code Chapter 156, Subchapter F. Tex. Fin. Code §156.555(b), adopts by reference the eligibility and procedural



**ADOPTION OF NEW RULES**  
**7 TAC CHAPTER 52**  
**PAGE 8 OF 8**

requirements for making a claim on the Commissioner's recovery fund in accordance with Finance Code Chapter 156, Subchapter F. This section clarifies how certain of such requirements apply to a claim made on the Mortgage Grant Fund in accordance with Tex. Fin. Code §156.555.

(b) Actions by an Unlicensed Individual Acting as an Originator. To be eligible to recover from the Mortgage Grant Fund, the individual alleged to have caused harm to the claimant must have been acting or attempting to act in the capacity of an originator - actions for which a license under Finance Code Chapter 157 was required as provided by Tex. Fin. Code §157.012 and §81.100 of this title (relating to Licensing - General).

(c) Fraudulent Acts. Recovery under Tex. Fin. Code §156.555 is limited to acts of fraud committed by an individual who acted as a residential mortgage loan originator but who did not hold the license required by Finance Code Chapter 157. Tex. Fin. §156.501(b), applicable to claims made on the recovery fund, provides that recovery is limited to acts by a licensed originator that constitute a violation of specific, enumerated provisions of Tex. Fin. Code §§157.024(a) and 156.304(b). As a result, in order to recover under Tex. Fin. Code §156.555, a claimant must establish that the acts of the unlicensed individual, had he or she been licensed as a residential mortgage loan originator at the time of such acts, would have constituted fraudulent dealings for purposes of Tex. Fin. Code §157.024(a)(3).

§52.306. Statute of Limitations at Inception.

Tex. Fin. Code §156.555(b) adopts by reference the statute of limitations period for making claims on the recovery fund under Finance Code

Chapter 156, Subchapter F and applies it to claims made against the Mortgage Grant Fund in accordance with Tex. Fin. Code §156.555. Specifically, pursuant to Tex. Fin. Code §156.503, a claim made on the recovery fund may not be filed after the fourth anniversary of the date the acts causing the actual damages occurred or should reasonably have been discovered. Tex. Fin. Code §156.555 and the Mortgage Grant Fund came into existence effective September 1, 2021. As a result, the earliest possible date for a claim to have accrued for purposes of the limitations period applicable to claims made under Tex. Fin. Code §156.555 is September 1, 2017, and any claim accruing prior to that date is barred.

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

Iain A. Berry  
Associate General Counsel  
Department of Savings and Mortgage Lending

◆ ◆ ◆

7. ***Discussion of and Possible Vote to Take Action on the Adoption of a New Rule and the Repeal of TAC §76.95, Concerning Fee for Special Examination or Audit.***

**PURPOSE:** The purpose of the new rule and repeal of 7 TAC §76.95 is to implement Senate Bill 1900 (SB1900), enacted during the 87<sup>th</sup> Legislature (Regular Session), which, among other things, amended Chapter 96 of the Finance Code to provide the Commissioner with examination authority over savings bank affiliates and third-party service providers. An explanation of and justification for the rule is contained in the proposed preamble for the rule adoption.

**RECOMMENDED ACTION:** The Department recommends that the Finance Commission approve adoption of the new rule and repeal of 7 TAC §76.95, without changes to the proposed text as published in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we approve adoption of the new rule and repeal of 7 TAC Chapter §76.95.

## TITLE 7. BANKING AND SECURITIES

## PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

## CHAPTER 76. MISCELLANEOUS

## SUBCHAPTER F. FEES AND CHARGES

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts the repeal of and a new rule at 7 TAC §76.95 without changes to the proposed text as published in the September 10, 2021 issue of the *Texas Register* (46 TexReg 5679). The rule will not be republished.

## Explanation of and Justification for the Rule

The existing rules under 7 TAC Chapter 76 partially implement Finance Code Subtitle C, the Texas Savings Bank Act.

*Changes Concerning Special Examination Fees*

Existing §76.95 (relating to Fee for Special Examination or Audit), establishes a fee for examination of a savings bank occurring outside of a savings bank's regular periodic examination (special examination). During the 87th Legislature (Regular Session), Senate Bill 1900 (SB 1900) was enacted into law (eff. September 1, 2021) which, among other things, amended Finance Code Chapter 96 to provide to the department's commissioner (commissioner) examination authority over savings bank affiliates and third-party service providers. The Finance Code, as amended by SB 1900 (Tex. Fin. Code §96.0551(c)), authorizes the commissioner to collect a fee for conducting examinations on savings bank affiliates and third-party service providers. New §76.95: (i) clarifies the commissioner's existing authority to perform

examinations of savings bank holding companies, affiliates, and third-party service providers; (ii) classifies the examination of a savings bank holding company, affiliate, or third-party service provider as a special examination subject to the rule; and (iii) changes the calculation for the fee assessed for a special examination from a daily fee (\$325) to an hourly fee (\$75). The department asserts an hourly fee more accurately reflects the actual work performed by the department's examiners and will result in fees that are more equitable and will better reflect the true cost of regulation. The existing daily fee of \$325 has been in place since the rule was originally adopted on January 5, 2012. Existing §76.95 is also patterned after a previous rule adopted by the Department (at that time, the Texas Savings and Loan Department) effective September 23, 1993 (18 TexReg 4808; 1993 rule) which was repealed and replaced by existing §76.95. The 1993 rule similarly imposed a daily fee of \$325 to conduct a special examination. Assuming a standard workday of eight hours, this \$325 daily figure amounts to an hourly fee of approximately \$42.63. According to an inflation calculator provided by the United States Bureau of Labor Statistics on its website, based on the consumer price inflation index, an hourly fee of \$42.63 in September of 1993 would equate to a fee of \$76.44 in July of 2021 (more than the \$75 in the adopted rule). As a result, the increased rate in the adopted rule is likely in keeping with the requirements of the original rule in 1993.

*Other Modernization and Update Changes*

New §76.95 makes changes to modernize and update existing §76.95 including: (i) adding and replacing language to improve clarity and readability; (ii) removing unnecessary or duplicative provisions; and (iii) updating terminology.

## ADOPTION OF NEW RULE AND REPEAL

7 TAC §76.95

PAGE 2 OF 2

### Summary of Public Comments

Publication of the commission's proposal to repeal and adopt a new rule at 7 TAC §76.95 recited a deadline of 30 days to receive public comments, or October 10, 2021. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received in response to the proposal.

### 7 TAC §76.95

#### Statutory Authority

The rule repeal is adopted under the authority of Finance Code §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. The rule repeal is also adopted under the authority of Finance Code §96.002(a) which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks.

The adopted rule repeal affects the statutes contained in Finance Code Title 3, Subtitle C, the Texas State Savings Bank Act.

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

Iain A. Berry  
Associate General Counsel  
Department of Savings and Mortgage Lending

♦ ♦ ♦

### 7 TAC §76.95

#### Statutory Authority

The rule is adopted under the authority of Finance Code §11.302(a) which authorizes the

commission to adopt rules applicable to state savings banks. The rule is also adopted under the authority of Finance Code §96.002(a) which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks.

The adopted rule affects the statutes contained in Finance Code Title 3, Subtitle C, the Texas State Savings Bank Act.

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

Iain A. Berry  
Associate General Counsel  
Department of Savings and Mortgage Lending

♦ ♦ ♦

**8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New Rules in 7 TAC, Part 4, Chapter 78, Concerning Wrap Mortgage Loans**

**PURPOSE:** The purpose of the new rules in 7 TAC, Part 4, Chapter 78 is to adopt rules for the Department's administration and enforcement of Finance Code Chapter 159, concerning Wrap Mortgage Financing, arising from enactment of Senate Bill 43 (SB43) during the 87<sup>th</sup> Legislature (Regular Session). An explanation of and justification for the rules is contained in the proposed preamble for the rule proposal.

**RECOMMENDED ACTION:** The Department requests that the Finance Commission approve the publication of the proposed new rules in 7 TAC, Part 4, Chapter 78 for comment in the *Texas Register*.

**RECOMMENDED MOTION:** I move that that the Finance Commission approve the publication of the proposed new rules in 7 TAC Chapter 78 for comment in the *Texas Register*.

**TITLE 7. BANKING AND SECURITIES**

**PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING**

**CHAPTER 78. WRAP MORTGAGE LOANS**

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes new rules in 7 TAC Chapter 78, Wrap Mortgage Loans. The proposal and the new rules as proposed by this proposal are referred to collectively as the "proposed rules."

**Explanation of and Justification for the Rules**

During the 87th Legislature (Regular Session), Senate Bill 43 (SB43) was enacted into law (eff. January 1, 2022) which, among other things, amended the Finance Code to create new Finance Code Chapter 159, concerning Wrap Mortgage Loan Financing (Chapter 159). A wrap mortgage loan is a loan made to finance the purchase of residential real estate that leaves a preexisting loan and lien owed by the previous owner (wrap lender) in place when the property is sold (and is therefore thought to encapsulate or "wrap around" the preexisting loan). The borrower (wrap borrower) signs a new promissory note and deed of trust to secure the purchase price of the residential real estate (less any down payments). The wrap loan is thus subordinated and becomes "junior" or "inferior" to the preexisting lien. The wrap borrower makes periodic payments to the wrap lender or its third-party servicer for the wrap lender or third-party servicer to then make payments toward and satisfy the amounts owed on the preexisting lien. The proposed rules, if adopted, would: (i) create definitions necessary to administer Chapter 159; (ii) clarify how time periods measured in days by Chapter 159 are to be calculated; (iii) clarify and establish requirements related to the written disclosure a

wrap lender is required to provide to the wrap borrower in accordance with Finance Code §159.101, including: adoption of a model disclosure form by the commission, as mandated by such section; establishing formatting requirements for the disclosure; clarifying when a wrap lender is deemed to have provided the disclosure for purposes of the statute; establishing requirements concerning the requirement that a wrap lender provide a foreign-language version of the disclosure, for negotiations with the wrap borrower conducted primarily in a language other than English; and clarifying that the disclosure may be delivered by the wrap lender and signed by the wrap borrower electronically; (iv) clarify and establish requirements related to the requirement, pursuant to Finance Code §159.105, that a wrap mortgage loan be "closed by an attorney or a title company"; (v) establish requirements related to the wrap borrower's right to make deductions from the amounts the wrap borrower is required to pay under the terms of the wrap mortgage loan for payments made to the preexisting lienholder or other obligee in connection with the preexisting loan or lien, as provided by Finance Code §159.202; (vi) clarify and establish requirements related to the fiduciary duties owed to a wrap borrower by a person who collects or receives payment from a wrap borrower, as provided by Finance Code §159.152, including: clarifying that a wrap lender may not delegate or assign its fiduciary duties to another person except as a result of selling or assigning the wrap mortgage loan; clarifying that, unless agreed to otherwise in writing by the wrap borrower and wrap lender, funds received from a wrap borrower must be placed in a trust account maintained for the benefit of the wrap borrower; and establishing requirements for the wrap lender to maintain a separate accounting for each wrap

mortgage loan made by the wrap lender; (vii) clarify and establish requirements concerning the wrap lender's use of a third party to act as residential mortgage loan servicer; (viii) establish requirements concerning the books and records a wrap lender that is required to register as a residential mortgage loan servicer under Finance Code Chapter 158 (wrap lender registrant) must create and maintain, as mandated of the commission by Finance Code §159.252(d)(1); and (ix) clarify and establish requirements related to the savings and mortgage lending commissioner's authority to make inspections (examinations) and conduct investigations of a wrap lender registrant, including: establishing what constitutes reasonable cause for an investigation, as mandated of the commission by Finance Code §159.252(d)(2); and, addressing the reimbursement of expenses for examination by the commissioner (by and through the commissioner's examiners) of records located outside of Texas, as mandated of the commission by Finance Code §159.252(g).

#### **Fiscal Impact on State and Local Government**

Antonia Antov, Director of Operations for the department, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in

revenue to the state overall and that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the department because the department is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because the department does not contribute to the state's general revenue fund. Enforcement or administration of the proposed rules may result in monies paid to the department by a wrap lender registrant to reimburse the department for its costs in examining records of a wrap lender registrant, located outside of Texas. However, any estimate of such expenses would be: inherently speculative; unreliable for budgetary planning purposes; directly attributable to (and will offset) the actual costs borne by the department and allocable to the wrap lender registrant examined by the commissioner; and, will not actually function as additional revenue to the department.

#### **Public Benefits**

William Purce, Director of Mortgage Regulation for the department, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing or administering the proposed rules will be for the public to have a clearer understanding of the department's administration and enforcement of Chapter 159, including the rights and responsibilities under Chapter 159, Subchapter E of a member of the public who is a borrower under the terms of a wrap mortgage loan.

**Probable Economic Costs to Persons Required to Comply with the Proposed Rules**

William Purce, Director of Mortgage Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs). The proposed rules establish requirements for a wrap lender to maintain a written accounting for each wrap mortgage loan made by the wrap lender. However, the information comprising such accounting is already generated in the ordinary course of business of the wrap lender or its third-party servicer, and merely requires the wrap lender (or its servicer) to transpose or otherwise capture such information in order to fulfill the fiduciary duties owed to the wrap borrower pursuant to Finance Code §159.152, and facilitate the potential duty of the wrap lender to rescind the wrap mortgage loan transaction in accordance with Finance Code §159.101 and §159.104. As a result, maintenance of such an accounting does not impose substantial economic costs on persons required to comply with the proposed rules. The proposed rules require a person who collects or receives a payment from a wrap borrower, in the absence of a written agreement with the wrap borrower providing otherwise, to hold such funds in a trust account at a financial institution, and may have some attendant costs. However, the agreement between the wrap lender and wrap borrower concerning the borrower's payments ultimately determines the handling of such funds (the wrap lender and wrap borrower may agree, in writing, to elect not to use a trust account), and therefore use of a trust account is not required to comply with the proposed rules. The proposed rules establish requirements concerning the books and records a wrap lender

registrant must create and maintain, and may have some attendant costs. However, the statutory requirements of Finance Code §159.252 direct a wrap lender registrant to create and maintain records sufficient to facilitate examination by the commissioner, and not the proposed rules. Moreover, many of the records required to be maintained under the proposed rules are already created in the wrap lender registrant's ordinary course of business and such creation costs are therefore not directly attributable to the proposed rules. Similarly, any direct requirement to create records to comply with the proposed rules involves information already generated in the ordinary course of the wrap lender registrant, and merely requires the wrap lender registrant to transpose or otherwise capture such information in a manner readily examinable by the commissioner; and, therefore does not impose substantial economic costs to persons required to comply with the proposed rules.

#### One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

#### Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions. The department anticipates enforcement and administration of Chapter 159 will require two additional full-time equivalent employee positions; however, these employee positions are required as a result of the statutory requirements



of Chapter 159, and not the proposed rules; (3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do create a new regulation (rule requirement). The proposed rules establish requirements for a wrap borrower to provide notice to the wrap lender of amounts the wrap borrower deducts from the amounts the wrap borrower is required to pay under the terms of the wrap mortgage loan. The proposed rules further establish requirements for a wrap lender to maintain a written accounting for each wrap mortgage loan made by the wrap lender. The proposed rules further establish requirements concerning the books and records a wrap lender registrant must create and maintain; (6) the proposed rules do not expand, limit, or repeal an existing regulation (rule requirement); (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

#### Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

#### Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and

a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

#### Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

#### Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, Associate General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to [rules.comments@sml.texas.gov](mailto:rules.comments@sml.texas.gov). All comments must be received within 30 days of publication of this proposal.

### SUBCHAPTER A. GENERAL PROVISIONS

#### **7 TAC §§78.1 - 78.3**

#### Statutory Authority

This proposal is made under the authority of Finance Code §159.108 which authorizes the commission to adopt and enforce rules for the intent of or to ensure compliance with Finance Code Chapter 159.

This proposal affects the statutes contained in Finance Code Chapter 159, Wrap Mortgage Financing.

#### §78.1. Purpose and Applicability.

This chapter governs the Commissioner's administration and enforcement of Finance Code Chapter 159, governing wrap mortgage loans concerning residential real estate located in Texas. This chapter applies to wrap mortgage lenders, borrowers, and any person who collects or receives a payment from a wrap borrower

**PROPOSED NEW RULES**  
**7 TAC CHAPTER 78**  
**PAGE 5 OF 19**

under the terms of a wrap mortgage loan, including servicers of a wrap mortgage loan.

§78.2. Definitions.

The following terms, when used in this chapter, and in the Commissioner's administration and enforcement of Finance Code Chapter 159, have the following meanings, unless the context clearly indicates otherwise:

(1) "Application" means a request, in any form, for an offer (or a response to a solicitation for an offer) of wrap mortgage loan terms, and the information about the mortgage applicant that is customary or necessary in a decision on whether to make such an offer, including, but not limited to, a mortgage applicant's name, income, social security number to obtain a credit report, property address, an estimate of the value of the real estate, and/or the mortgage loan amount.

(2) "Attorney" has the meaning assigned by Texas Insurance Code §2501.003.

(3) "Commissioner" means the Savings and Mortgage Lending Commissioner appointed under Finance Code Chapter 13.

(4) "Department" means the Department of Savings and Mortgage Lending.

(5) "E-Sign Act" refers to the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§7001-7006.

(6) "Inspection" includes examination.

(7) "Legal holiday" means the federal legal public holidays set forth in 5 U.S.C. §6103(a).

(8) "Nationwide Mortgage Licensing System and Registry" or "NMLS" has the meaning assigned by Finance Code §180.002.

(9) "Residential mortgage loan" has the meaning assigned by Finance Code §159.001. The term does not include a loan which is secured by structure that is suitable for occupancy as a dwelling but is used for a commercial purpose such as a professional office, salon, or other non-residential use, and is not used as a residence.

(10) "Residential mortgage loan originator" has the meaning assigned by Finance Code §180.002.

(11) "Residential mortgage loan servicer" has the meaning assigned by Finance Code §158.002.

(12) "Residential real estate" has the meaning assigned by Finance Code §159.001. For purposes of Finance Code §159.002(b)(1), the term does not include "unimproved residential estate," as that term is defined by Finance Code §159.002(a).

(13) "Superior lien" refers to any lien described by Finance Code §159.001(7)(A).

(14) "Superior lienholder" means the holder of any lien described by Finance Code §159.001(7)(A).

(15) "Third-party servicer" means a person other than the wrap lender acting as residential mortgage loan servicer for a wrap mortgage loan.

(16) "Title company" means a "title insurance company" as that term is defined by Texas Insurance Code §2501.003

(17) "UETA" refers to the Texas Uniform Electronic Transactions Act, Texas Business & Commerce Code Chapter 322.

**PROPOSED NEW RULES**  
**7 TAC CHAPTER 78**  
**PAGE 6 OF 19**

(18) "Wrap borrower" has the meaning assigned by Finance Code §159.001.

(19) "Wrap lender" has the meaning assigned by Finance Code §159.001.

(20) "Wrap lender registrant" means a wrap lender who is required to register as a residential mortgage loan servicer under Finance Code Chapter 158.

(21) "Wrap mortgage applicant" means an applicant for a wrap mortgage loan or a person who is solicited (or contacts a wrap lender in response to a solicitation) to obtain a wrap mortgage loan, and includes a person who has not completed or started completing a formal loan application on the appropriate form (e.g., Fannie Mae's Form 1003 Uniform Residential Mortgage Loan Application), but has submitted financial information constituting an application, as provided by paragraph (1) of this section.

(22) "Wrap mortgage loan" has the meaning assigned by Finance Code §159.001.

§78.3. Computation of Time.

The calculation of any time period measured in days by Finance Code Chapter 159 is to be made using calendar days. In computing a period of days, the first day is excluded and the last day is included. Except with respect to the disclosure required by Finance Code §159.101 and §78.101 of this title (relating to Required Disclosure), if the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday.

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

Iain A. Berry

Associate General Counsel  
Department of Savings and Mortgage Lending

◆ ◆ ◆

SUBCHAPTER B. LENDER  
REQUIREMENTS AND RESPONSIBILITIES

**7 TAC §§78.100 - 78.102**

Statutory Authority

This proposal is made under the authority of Finance Code §159.108 which authorizes the commission to adopt and enforce rules for the intent of or to ensure compliance with Finance Code Chapter 159. §78.101(b) is further proposed under the authority of, and to implement, Finance Code §159.101(c).

This proposal affects the statutes contained in Finance Code Chapter 159, Wrap Mortgage Financing.

§78.100. Purpose and Applicability.

The purpose of this subchapter is to clarify and establish requirements related to a wrap lender's requirements and responsibilities under a wrap mortgage loan, as provided by Finance Code Chapter 159, Subchapter C, and §159.105.

§78.101. Required Disclosure.

(a) Purpose. The purpose of this section is to clarify and establish requirements related to the written disclosure a wrap lender is required to provide the wrap borrower in accordance with Finance Code §159.101 (disclosure).

(b) Model Disclosure Form. In accordance with Finance Code §159.101(c), the following form (Figure: 7 TAC §78.100(b); model disclosure form) is deemed to satisfy the substantive requirements of Finance Code §159.101(a).

Interested persons should visit the Department's website (sml.texas.gov) for a form-fillable version of the model disclosure form and an editable version in Word format (including for purposes of attaching additional sheets to supplement the form with additional information, as necessary). A wrap lender may modify and customize the model disclosure form; provided, the form:

(1) contains all substantive information contained in the model disclosure form that is applicable to the person issuing the disclosure;

(2) conforms to the formatting requirements of subsection (c) of this section; and

(3) otherwise fulfills the requirements of Finance Code §159.101(a).

Figure: 7 TAC §78.100(b).

(c) Formatting Requirements. The disclosure must be made in 12-point font using an easily readable typeface. A font point generally equates to 1/72 of an inch. Those portions of the disclosure comprising the body must use a normal font type. Those portions of the disclosure comprising a heading must use a bolded font type. Those portions of the disclosure comprising the content required by Finance Code §159.101(a)(2) and Texas Property Code §5.016(a)(7) must use an "all caps" or "small caps" font type. The following typefaces are deemed to be easily readable for purposes of this section (this list is not exhaustive and other typefaces may be used; provided, the typeface is easily readable):

\_\_\_\_\_ (1) Arial;

\_\_\_\_\_ (2) Calibri;

\_\_\_\_\_ (3) Century Schoolbook;

\_\_\_\_\_ (4) Garamond;

\_\_\_\_\_ (5) Georgia;

\_\_\_\_\_ (6) Lucida Sans;

\_\_\_\_\_ (7) Times New Roman;

\_\_\_\_\_ (8) Trebuchet; and

\_\_\_\_\_ (9) Verdana.

(d) Effective Date. The disclosure is deemed to be provided by the wrap lender and received by the wrap borrower for purposes of Finance Code §159.101 on the date the disclosure is dated and signed by the wrap borrower, as provided by Finance Code §159.101(b).

(e) Foreign Language Requirement. The wrap borrower must be provided an English-language version of the disclosure in addition to and contemporaneously with the foreign-language version required by Finance Code §159.102, if applicable. A wrap lender may provide the English-language and foreign-language disclosure in a single, combined disclosure. A wrap borrower receiving a foreign-language version of the disclosure may, but is not required to, date and sign the foreign-language disclosure. A wrap borrower receiving a foreign-language version of the disclosure must date and sign the English-language version of the disclosure, which determines the effective date the disclosure is received by the wrap borrower, as provided by subsection (d) of this section. A Spanish-language version of the model disclosure form is available on the Department's website (sml.texas.gov) and is deemed to satisfy the substantive requirements of Finance Code §159.101(a) and §159.102, with respect to negotiations with a wrap borrower conducted primarily in Spanish.

(f) Electronic Delivery and Signature. The wrap lender may provide, and the wrap borrower may sign, the disclosure electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA and E-Sign Act include requirements for electronic signatures and delivery.

(g) Computation of Time. Computation of the time period for a wrap lender to provide the disclosure required by Finance Code §159.101(a) is made using calendar days, irrespective of any Saturdays, Sundays, or legal holidays.

§78.102. Closing Requirements.

(a) Purpose. The purpose of this section is to clarify and establish requirements related to the requirement that a wrap mortgage loan be closed by an attorney or title company, as provided by Finance Code §159.105.

(b) Closing by Title Company. For purposes of Finance Code §159.105, a wrap mortgage loan may only be closed by a title company issuing an owner's title insurance policy to the wrap borrower for the residential real estate secured or designed to be secured by the wrap mortgage loan.

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

Iain A. Berry  
Associate General Counsel  
Department of Savings and Mortgage Lending

◆ ◆ ◆

SUBCHAPTER C. BORROWER'S RIGHTS  
AND RESPONSIBILITIES

**7 TAC §78.200, §78.201**

Statutory Authority

This proposal is made under the authority of Finance Code §159.108 which authorizes the commission to adopt and enforce rules for the intent of or to ensure compliance with Finance Code Chapter 159.

This proposal affects the statutes contained in Finance Code Chapter 159, Wrap Mortgage Financing.

§78.200. Purpose and Applicability.

The purpose of this subchapter is to clarify and establish requirements related to a wrap borrower's rights under a wrap mortgage loan, as provided by Finance Code Chapter 159, Subchapter E.

§78.201. Right to Deduct; Notice of Deduction.

(a) Purpose. The purpose of this section is to clarify and establish requirements related to a wrap borrower's right to make deductions from the amounts the wrap borrower owes to the wrap lender under the terms of a wrap mortgage loan, as provided by Finance Code §159.202.

(b) Notice of Deduction. To the extent the wrap borrower seeks to exercise its right to deduct amounts owed to the wrap lender pursuant to Finance Code §159.202, the wrap borrower must, at the time the wrap borrower makes the deduction, provide the wrap lender or its third-party servicer notice of the amounts deducted including:

(1) an itemized list of the deductions made, describing in detail the amounts paid by the wrap borrower on behalf of the wrap lender;

(2) the dates on which such payments were made; and

**PROPOSED NEW RULES**  
**7 TAC CHAPTER 78**  
**PAGE 9 OF 19**

(3) supporting documentation evidencing paragraphs (1) and (2) of this subsection.

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

Iain A. Berry  
Associate General Counsel  
Department of Savings and Mortgage Lending

◆ ◆ ◆

**SUBCHAPTER D. WRAP LENDER AND SERVICER REQUIREMENTS**

**7 TAC §§78.300 - 78.303**

**Statutory Authority**

This proposal is made under the authority of Finance Code §159.108 which authorizes the commission to adopt and enforce rules for the intent of or to ensure compliance with Finance Code Chapter 159.

This proposal affects the statutes contained in Finance Code Chapter 159, Wrap Mortgage Financing.

**§78.300. Purpose and Applicability.**

The purpose of this subchapter is to clarify and establish requirements applicable to persons who collect or receive a payment from a wrap borrower under the terms of a wrap mortgage loan, as provided by Finance Code Chapter 159, Subchapter D. The rules in this subchapter apply to a wrap lender or any other person who collects or receives a payment from a wrap borrower under the terms of a wrap mortgage loan, including a third-party servicer servicing a wrap mortgage loan.

**§78.301. Fiduciary Duties; Required Accounting.**

(a) Purpose. The purpose of this section is to clarify and establish requirements related to the fiduciary duties owed to a wrap borrower by a person who collects or receives a payment from a wrap borrower under the terms of a wrap mortgage loan, as provided by Finance Code §159.152.

(b) Non-Delegation of Duties. A wrap lender or other person collecting or receiving a payment from a wrap borrower under the terms of a wrap mortgage loan may not delegate or assign its fiduciary duties owed under Finance Code §159.152 to another person except as a result of the wrap lender selling, assigning, transferring, or conveying the wrap mortgage loan. Any sale, assignment, transfer, or conveyance by a wrap lender of a wrap mortgage loan is deemed to include an assignment of the fiduciary duties owed by the wrap lender to the wrap borrower under Finance Code §159.152. A sale, assignment, transfer, or conveyance by a wrap lender of a wrap mortgage loan does not extinguish the assigning wrap lender's fiduciary duties to the wrap borrower in connection with amounts collected or received by the wrap lender from the wrap borrower prior to the effective date of the sale, assignment, transfer, or conveyance of the wrap mortgage loan.

(c) Required Accounting. The wrap lender must, either directly, or through use of a third-party servicer it has contracted with, maintain, on a current basis, separate written accountings for each wrap mortgage loan made by the wrap lender sufficient to account for, track, and retrospectively trace all payments received from the wrap borrower under the terms of the wrap mortgage loan, and all disbursements, transfers, or assignments of such funds, including, but not limited to, disbursements made to a superior lienholder, taxing authority, or insurance

company in connection with the residential real estate secured by the wrap mortgage loan. The accounting required by this subsection must be maintained by the wrap lender or its successor-in-interest until the limitations period for the wrap borrower to bring any cause of action against the wrap lender arising from a violation of law in connection with the wrap mortgage loan transaction has lapsed. To the extent the wrap lender utilizes the services of a third-party servicer, a wrap lender must establish and maintain policies and procedures that are reasonably designed to acquire from the third-party servicer any information or supporting documentation necessary or prudent to ensure the wrap lender satisfies the accounting required by this subsection. The accounting required by this subsection may be accomplished through administration of and the retention of records in connection with a trust account as provided by §78.302 of this title (relating to Trust Account; Maintenance of Funds Held in Trust).

§78.302. Trust Account; Maintenance of Funds Held in Trust.

(a) Purpose. The purpose of this section is to clarify and establish requirements related to the requirement of a person who collects or receives a payment from a wrap borrower under the terms of a wrap mortgage loan to hold such funds in trust, as provided by Finance Code §159.151.

(b) Definitions. The following terms in this section have the following meanings, unless the context clearly indicates otherwise:

\_\_\_\_\_ (1) "Financial institution" has the meaning assigned by Finance Code §201.101(1).

\_\_\_\_\_ (2) "Trust account" means a custodial, trust, or escrow account managed by one person for the benefit of another person.

\_\_\_\_\_ (3) "Trust funds" means the funds collected or received from a wrap borrower under the terms of a wrap mortgage loan.

\_\_\_\_\_ (4) "Receiver" means a wrap lender or other person collecting or receiving trust funds.

(c) Trust Account Required. Unless otherwise agreed to in writing by the wrap borrower and wrap lender in connection with the wrap mortgage loan, trust funds must be placed in a trust account meeting the requirements of this section, and maintained or disbursed in accordance with this section.

(d) Trust Account Requirements.

\_\_\_\_\_ (1) The trust account must be clearly identified as such at the financial institution.

\_\_\_\_\_ (2) The receiver may, but is not required to, maintain separate trust accounts for each wrap mortgage loan or wrap borrower. To the extent the receiver maintains separate trust accounts for each wrap mortgage loan or wrap borrower, the same trust account may also be used for purposes of administering an escrow account for the wrap mortgage loan or wrap borrower.

\_\_\_\_\_ (3) Funds in the trust account must be capable of being disbursed by the receiver on-demand or in an amount of time sufficient to timely effect disbursements reasonably anticipated from the trust account.

\_\_\_\_\_ (4) A receiver, in addition to depositing trust funds, may deposit and maintain a limited amount of money in the trust account necessary to avoid or cover potential fees imposed by the financial institution in connection with the trust account including account maintenance fees or fees charged for insufficient funds.

(e) A receiver may not:

(1) commingle trust funds with non-trust funds;

(2) deposit or maintain trust funds in a personal account or any form of business account; or

(3) pay operating expenses or otherwise make withdrawals or disbursements from a trust account for any purpose other than the proper disbursement of trust funds.

(f) Disbursement of Trust Funds.

(1) A receiver may only disburse money from a trust account in accordance with the terms of the wrap mortgage loan or such other agreement as may be entered into with the wrap borrower to govern the disbursement of trust funds.

(2) If a receiver is unable to reasonably determine to which party or parties trust funds should be disbursed, the receiver may tender trust funds into the registry of a court of competent jurisdiction and interplead the relevant party or parties.

§78.303. Use of a Third-Party Servicer.

(a) Purpose. The purpose of this section is to clarify and establish requirements concerning a wrap lender's use of a third party to act as a residential mortgage loan servicer of wrap mortgage loan.

(b) Use of a Third-Party Servicer. A wrap lender is authorized to use the services of a third party to act as the residential mortgage loan servicer of a wrap mortgage loan (also known as a "subservicer").

(c) Handling of Payments and Disbursements. To the extent a wrap lender uses the services of a third-party servicer, the handling of payments

and disbursement of funds received by the third-party servicer is governed by the agreement between the wrap lender and third-party servicer, including:

(1) whether or not and on what terms the third-party servicer makes disbursements to the superior lienholder;

(2) disbursements made to the wrap lender; and

(3) how payments by the wrap borrower in excess of the current amount due under the terms of the wrap mortgage loan are handled, applied, or disbursed.

(d) No Limitation on Liability. As provided by Finance Code §159.107, any agreement between a wrap lender and a third-party servicer may not seek to waive or limit the wrap lender's or third-party servicer's liability to the wrap borrower arising from the fiduciary duties owed to the wrap borrower pursuant to Finance Code §159.152. However, an agreement between a wrap lender and third-party servicer may contain an indemnification agreement concerning potential liability arising from the fiduciary duties owed to the wrap borrower under Finance Code Chapter §159.152.

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

Iain A. Berry  
Associate General Counsel  
Department of Savings and Mortgage Lending

♦ ♦ ♦

SUBCHAPTER E. COMPLIANCE AND ENFORCEMENT

**7 TAC §§78.400 - 78.403**



**Statutory Authority**

This proposal is made under the authority of Finance Code §159.108 which authorizes the commission to adopt and enforce rules for the intent of or to ensure compliance with Finance Code Chapter 159. §§78.401 - 78.403 are further proposed under the authority of, and to implement, Finance Code §159.252(d). §78.402(g) is further proposed under the authority of, and to implement, Finance Code §159.252(g).

This proposal affects the statutes contained in Finance Code Chapter 159, Wrap Mortgage Financing.

§78.400. Purpose and Applicability. The purpose of this subchapter is to clarify and establish requirements related to the Commissioner's authority to conduct inspections of, and investigations on, a wrap lender who is required to register as a residential mortgage loan servicer under Finance Code Chapter 158 (wrap mortgage registrant), as provided by Finance Code Chapter 159, Subchapter F. This subchapter further clarifies and establishes requirements concerning the Commissioner's authority to seek enforcement action against a wrap mortgage registrant under Finance Code Chapter 159, Subchapter G.

§78.401. Required Books and Records by a Wrap Lender Registrant.

(a) Purpose. This section clarifies and establishes requirements related to the wrap lender's requirement to maintain information and records necessary to facilitate the Commissioner's inspection of a wrap lender required to register as a residential mortgage loan servicer under Finance Code Chapter 158, as provided by Finance Code §159.252(d)(1). The requirements of this section are in addition to and supplement the requirements a wrap lender registrant or other

person is required to maintain as a licensee or registrant under Finance Code Chapter 156, 157, 158, or 342, as applicable.

(b) Maintenance of Records, Generally. Each wrap lender registrant must maintain records with respect to each wrap mortgage loan under Finance Code Chapter 159 and make those records available for examination under Finance Code §159.252. The records required by this section may be maintained using a paper, manual, electronic, or digitally-imaged recordkeeping system, or a combination thereof, unless otherwise specified by other applicable law. The records must be accurate, complete, current, legible, and readily accessible and sortable. If the requirements of other applicable law governing recordkeeping by the wrap loan registrant differ from the requirements of this section, such other applicable law prevails only to extent this section conflicts with the requirements of this section.

(c) Required Records. A wrap lender registrant must maintain the following items:

(1) Wrap Mortgage Servicing Log. A wrap mortgage servicing log for each wrap mortgage loan serviced by a wrap lender registrant, maintained on a current basis (which means that all entries must be made within seven days from the date on which the matters they relate to occurred), setting forth, at a minimum:

(A) the loan or account number, or other unique identifier assigned by the wrap lender registrant to the wrap mortgage loan;

(B) the name and contact information of each wrap borrower; and

(C) the date the wrap mortgage loan was entered into by the wrap lender and wrap borrower.

(2) Wrap Borrower Index. The current alphabetical index or a report of outstanding wrap mortgage loans of the wrap lender registrant, regardless of whether or not it services the wrap mortgage loan, reflecting the name of each wrap borrower and the loan or account number, or other unique identifier assigned by the wrap lender to the wrap mortgage loan. A wrap lender registrant may maintain the wrap borrower index as a part of other records maintained by the wrap lender registrant; provided, the wrap lender registrant is able to sort, generate, and print, as a separate record, the wrap borrower index in strict alphabetical order.

(3) Wrap Mortgage Transaction File. A wrap lender registrant must maintain a wrap mortgage transaction file for each wrap mortgage loan or be able to produce the same information within a reasonable time upon request. The wrap mortgage transaction file must contain documents demonstrating the wrap lender registrant's compliance with applicable law, including Finance Code Chapter 159, and any applicable state and federal statutes, rules, or regulations. The wrap mortgage loan transaction file must include the following records or documents:

(A) for all wrap mortgage loan transactions:

(i) the promissory note, loan agreement, or repayment agreement, signed by the wrap borrower(s);

(ii) the recorded deed of trust, contract, security deed, security instrument, or other lien transfer document signed by the wrap borrower(s);

(iii) the title insurance policy or abstract of title;

(iv) the initial and final mortgage application (including any attachments, supplements, or addenda thereto), signed and dated by the mortgage applicant and the residential mortgage loan originator, and any other written or recorded information used to evaluate the mortgage application, as required by Regulation B, 12 C.F.R. §1002.4(c);

(v) the real estate contract documenting the sale of the residential real estate securing the wrap mortgage loan;

(vi) the disclosure statement requirement by Finance Code §159.101 and §78.100 of this title (relating to Required Disclosure), including any foreign-language disclosure required by Finance Code §159.102;

(vii) the initial and any revised integrated loan estimate disclosure required by Regulation Z - Truth-in-Lending, 12 C.F.R. §1026.37;

(viii) the initial, revised, and final closing disclosure as required by Regulation Z - Truth-in-Lending, 12 C.F.R. §1026.38;

(ix) any rate lock agreements, or similar document;

(x) the records relating to the ability-to-repay the wrap mortgage loan required by Regulation Z, 12 C.F.R. §1026.25 and §1026.43;

(xi) copies of any appraisal reports or written valuation reports used to determine the value of the residential real estate;

(xii) the privacy notice required by Regulation P, 12 C.F.R. §1016.5; and

(xiii) the wrap borrower's authorization and consent to receive electronic

**PROPOSED NEW RULES**  
**7 TAC CHAPTER 78**  
**PAGE 14 OF 19**

documents as required by the E-sign Act and Regulation Z - Truth-in-Lending, 12 C.F.R. §1026.17(a)(1);

(B) with respect to servicing the wrap mortgage loan, the following additional records are required to be maintained:

(i) any payoff requests received from the wrap borrower, agent of the wrap borrower, another lender, or a title company;

(ii) any payoff statements issued to the wrap borrower, agent of the wrap borrower, another lender, or a title company;

(iii) if the wrap mortgage loan is paid off or otherwise satisfied, a copy of the release of lien;

(iv) receipts or invoices along with proof of payment for any attorneys' fees assessed, charged, or collected in the collection of a delinquent wrap mortgage loan;

(v) if collateral protection insurance is acquired or purchased, a copy of the insurance policy or certificate of insurance and the notice required by Finance Code §307.052;

(vi) any periodic statements or billing invoices sent to the wrap borrower;

(vii) copies of any collection letters or notices sent by the wrap lender registrant or its agent to the wrap borrower;

(viii) any modification, reinstatement, or settlement agreement that is proposed or entered into between the wrap borrower and the wrap lender registrant;

(ix) any records related to a consumer inquiry, complaint, or error resolution;

(x) any records or documents relating to a request for protection under the Servicemembers Civil Relief Act, 50 U.S.C. §3901 et seq.; and

(xi) any other servicing notice, disclosure, or record required by federal or state law;

(C) for wrap mortgage loan transactions involving a foreclosure or attempted foreclosure, the following records:

(i) for transactions involving judicial foreclosure:

(I) any records pertaining to a judicial foreclosure including records from the wrap lender registrant's attorneys, the court, or the wrap borrower or the wrap borrower's agent;

(II) any notice to cure the default sent to the wrap borrower and each superior lienholder as required by Texas Property Code §51.002(d), including verification of delivery of the notice;

(III) any notice of intent to accelerate sent to the wrap borrower and each superior lienholder, including verification of delivery of the notice;

(IV) any notice of acceleration sent to the wrap borrower and each superior lienholder; and

(V) any records related to receipt of the foreclosure proceeds;

(ii) for transactions involving non-judicial foreclosure:

**PROPOSED NEW RULES**  
**7 TAC CHAPTER 78**  
**PAGE 15 OF 19**

(I) the notice to cure the default sent to the wrap borrower and each superior lienholder as required by Texas Property Code §51.002(d), including verification of delivery of the notice;

(II) the notice of intent to accelerate sent to the wrap borrower and each superior lienholder, including verification of delivery of the notice;

(III) the notice of acceleration sent to the wrap borrower and each superior lienholder;

(IV) the notice of sale required by Texas Property Code §51.002(b) including verification of delivery of the notice;

(V) any records related to the foreclosure sale by the trustee including the person purchasing the property, and the dollar amount of the proceeds received from the foreclosure sale;

(VI) any records related to a short sale, deed-in-lieu of foreclosure, or similar disposition;

(VII) proof of payment of reasonable fees or charges paid by the trustee in connection with the deed of trust or similar instrument including fees for enforcing the lien against or posting for sale, selling, or releasing the residential real estate secured by the deed of trust; and

(VIII) the foreclosure deed upon sale of the property;

(D) for wrap mortgage loan transactions where the wrap borrower provided an actionable notice of rescission and the wrap lender registrant did not avoid the rescission, a copy of the notice of rescission and

documentation reflecting that the wrap lender registrant refunded to the wrap borrower all amounts required by Finance Code §159.104(c);

(E) for wrap mortgage loan transactions where the wrap lender avoided the rescission, documentation reflecting that the wrap lender:

(i) paid the outstanding balance due on the debt owed on the residential real estate to the superior lienholders;

(ii) paid any due and unpaid taxes or other governmental assessments owed on the residential real estate;

(iii) paid to the wrap borrower as damages for noncompliance the sum of \$1,000 and any reasonable attorneys' fees incurred by the wrap borrower; and

(iv) evidence of compliance with clause (i) or (ii) above provided to the wrap borrower;

(F) for wrap mortgage loan transactions where the wrap borrower has deducted from the amount owed to the wrap lender under the terms of the wrap mortgage loan as authorized by Finance Code §159.202, any records related to this action including the written notice from the wrap borrower required by §78.201 of this title (relating to Right to Deduct; Notice of Deduction), and any actions taken to address the deductions;

(4) General Business Records. General business records include:

(A) all servicing and sub-servicing agreements entered into by the wrap lender registrant as a residential mortgage loan servicer;

**PROPOSED NEW RULES**  
**7 TAC CHAPTER 78**  
**PAGE 16 OF 19**

(B) policies and procedures related to the origination and servicing of wrap mortgage loans by the wrap lender registrant, including, but not limited to, Quality Control Policy / Compliance Manual, Identify Theft Prevention Program / Red Flags Rule required by 16 C.F.R. §681 et seq., Anti-Money Laundering Program required by Title X of the Financial Institutions Regulatory and Interest Rate Control Act of 1978, Personnel Administration / Employee Policies, Ability-to-Repay Underwriting Policies, and an information security program required by 16 C.F.R. §314.1 et seq.;

(C) records reflecting the disbursement of money to pay the superior lienholders and payment of taxes and insurance for which the wrap lender registrant has received from the wrap borrower;

(D) all checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and cancelled checks (or copies thereof) relating to disbursements made in connection with wrap mortgage loans by the wrap lender registrant;

(E) complete records (including invoices and supporting documentation) for all expenses and fees paid in connection with the wrap mortgage loan, including the date and amount of all such payments;

(F) copies of all written complaints or inquiries (or summaries of any verbal complaints or inquiries) along with any and all correspondence, notes, responses, and documentation relating thereto and the disposition thereof;

(G) copies of all contractual agreements or understandings with third parties in any way relating to a wrap mortgage loan transaction;

(H) copies of all reports of audits, examinations, reviews, investigations, or other similar matters performed by any third party, including any regulatory or supervisory authorities; and

(I) copies of all advertisements in the medium (e.g., recorded audio, video, and print) in which they were published or distributed;

(5) Record of the wrap borrower's account (payment and collection history). A separate record must be maintained for the servicing account of each wrap borrower and the record must contain at least the following information on each wrap mortgage loan serviced by the wrap lender registrant:

(A) loan identification number;

(B) loan repayment schedule and terms, itemized to reflect:

(i) the date of the loan;

(ii) the number of installments;

(iii) the due date of installments;

(iv) the amount of each installment; and

(v) the maturity date;

(C) name, address, and phone number of the wrap borrower(s);

(D) legal description of the residential real estate;

(E) principal amount;

**PROPOSED NEW RULES**  
**7 TAC CHAPTER 78**  
**PAGE 17 OF 19**

(F) total interest charges, including the scheduled base finance charge, points (i.e., prepaid finance charge), and per diem interest;

(G) amount of official fees for recording or releasing a security interest that are collected at the time the loan is made;

(H) individual payment entries, itemized to show:

(i) the date payment was received (dual postings are acceptable if the date of posting is other than the date of receipt);

(ii) actual amounts received for application to principal and interest; and

(iii) actual amounts paid for default, deferment, or other authorized charges;

(J) individual entries for disbursements of funds from a wrap borrower under the terms of wrap mortgage loan to superior lienholders, taxing authorities, insurance companies, or other payees, itemized to show:

(i) the actual date of disbursement; and

(ii) the actual amounts disbursed;

(K) any refunds of unearned charges that are required in the event a loan is prepaid in full, including records of final entries, and entries to substantiate that refunds due were paid to the wrap borrower(s), with refund amounts itemized to show interest charges

refunded, including the refund of any unearned points; and

(L) collection contact history, including a record of each contact made by a wrap lender registrant with the wrap borrower or any other person and each contact made by the wrap borrower with the wrap lender registrant, in connection with amounts due, with each record including the date, method of contact, contacted party, person initiating the contact, and a summary of the contact.

(d) A wrap lender registrant must maintain such other books and records as may be required to evidence compliance with applicable state and federal laws, rules, and regulations, including, but not limited to: the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, and the Truth in Lending Act.

(e) A wrap lender registrant must maintain such other books and records as the Commissioner or the Commissioner's designee may from time to time specify in writing.

(f) Production of Records. All books and records required by this section must be maintained in good order and must be produced for the Commissioner or the Commissioner's designee upon request.

(g) Records Retention Period. All books and records required by this section must be maintained for three years or such longer period(s) as may be required by applicable state or federal laws, rules, and regulations.

(h) Records Retention After Dissolution. Within ten days of termination of operations, a wrap lender registrant must provide the Department with written notice of where the required records will be maintained for the prescribed periods. If such records are transferred to another wrap lender registrant, the transferee must provide the

**PROPOSED NEW RULES**  
**7 TAC CHAPTER 78**  
**PAGE 18 OF 19**

Department with written notice within ten days after receiving such records.

§78.402. Examination of Wrap Lender Registrants.

(a) Purpose. This section clarifies and establishes requirements related to the Commissioner's authority to make inspections of a wrap lender required to register as a residential mortgage loan servicer under Finance Code Chapter 158, as provided by Finance Code §159.252.

(b) Notice of Examination. Except when the Department determines that giving advance notice would impair the examination, the Department will give the primary contact person of the wrap lender registrant listed in NMLS, or a person designated by the primary contact person, advance notice of each examination. Such notice will be sent to the primary contact person's or designated person's mailing address or email address of record with NMLS and will specify the date on which the Department's examiners are scheduled to begin the examination. Failure to actually receive the notice will not be grounds for delay or postponement of the examination. The notice will include a list of the documents and records that must be produced or made available to facilitate the examination.

(c) Scope. Examinations will be conducted to determine compliance with Finance Code Chapter 159, and this chapter, and will specifically address whether:

(1) all required books and records are being maintained in accordance with §78.401 of this title (relating to Required Books and Records by a Wrap Lender Registrant).

(2) all legal and regulatory requirements applicable to the wrap lender registrant are being properly followed; and

(3) other matters as the Commissioner may deem necessary or advisable to carry out the purposes of Finance Code Chapter 159.

(d) The examiners will review a sample of wrap mortgage loan files identified by the examiners and randomly selected from the wrap lender registrant's wrap mortgage servicing log. The examiner may expand the number of files to be reviewed if, in his or her discretion, conditions warrant.

(e) The examiners may require a wrap lender registrant, at its own cost, to make copies of loan files or such other books and records as the examiners deem appropriate for the preparation of or inclusion in the examination report.

(f) Confidentiality. The work papers, compilations, findings, reports, summaries, and other materials, in whatever form, relating to an examination conducted under this section, will be maintained as confidential except as permitted or required by law.

(g) Reimbursement for Costs. When the Department must travel outside of Texas to conduct an examination of a wrap lender registrant because the required records are maintained at a location outside of Texas, the Department will require reimbursement for the actual costs incurred by the Department in connection with such travel, including, but not limited to, transportation, lodging, meals, communications, courier service, and any other reasonably related costs.

§78.403. Investigation of Wrap Lender Registrants.

(a) Purpose. The purpose of this section is to implement the requirements of Finance Code §159.252 concerning the Commissioner's authority to conduct an investigation of a wrap

**PROPOSED NEW RULES**  
**7 TAC CHAPTER 78**  
**PAGE 19 OF 19**

lender required to register as a residential mortgage loan servicer under Finance Code Chapter 158.

(b) Reasonable Cause for Investigation. Pursuant to Finance Code §159.252(b), the Commissioner may, upon a finding of reasonable cause, examine a wrap lender registrant to determine whether the wrap lender registrant is complying with Finance Code Chapter 159, and this chapter. Reasonable cause will be deemed to exist if the Commissioner has received information from a source the Commissioner has no reason to believe to be other than reliable, including documentary or other evidence, or information, indicating facts which a prudent person would deem worthy of investigation as a violation of Finance Code Chapter 159, or this chapter.

(c) Investigations will be conducted as deemed appropriate in light of all the relevant facts and circumstances then known. Such investigation may include any or all of the following:

(1) review and consideration of any complaints received by the Department against a wrap lender registrant;

(2) review of documentary evidence;

(3) interviews with complainants, licensees, and third parties;

(4) obtaining reports, advice, and other comments and assistance from other state and/or or federal regulatory, enforcement, or oversight bodies; and

(5) other lawful investigative techniques as the Commissioner deems necessary or appropriate, including, but not limited to, requesting that complainants or other parties that are the subject of a complaint provide explanatory, clarifying, or supplemental information.

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

Iain A. Berry  
Associate General Counsel  
Department of Savings and Mortgage Lending

♦ ♦ ♦



Figure: 7 TAC §78.100(b)

**NOTICE OF WRAP-AROUND MORTGAGE FINANCING ENCUMBERED BY  
SUPERIOR LIEN PURSUANT TO TEXAS FINANCE CODE SECTION 159.101 AND  
TEXAS PROPERTY CODE SECTION 5.016**

**WARNING:** ONE OR MORE RECORDED LIENS HAVE BEEN FILED THAT MAKE A CLAIM AGAINST THE PROPERTY REFERENCED BELOW AND WILL BE IN A SUPERIOR POSITION TO ANY LIEN CREATED BY THE FINANCING YOU ARE SEEKING. THIS NOTICE CONTAINS INFORMATION CONCERNING WHETHER OR NOT THE SUPERIOR LIENHOLDER(S) HAVE CONSENTED TO THE PROPERTY BEING TRANSFERRED TO YOU. IF A SUPERIOR LIEN HAS NOT BEEN RELEASED AND THE PROPERTY IS CONVEYED WITHOUT THE CONSENT OF THE SUPERIOR LIENHOLDER, IT IS POSSIBLE THE SUPERIOR LIENHOLDER COULD DEMAND FULL PAYMENT OF THE OUTSTANDING BALANCE SECURED BY THE SUPERIOR LIEN AND MAY AFFECT YOUR RIGHTS AS BUYER OF THE PROPERTY. YOU MAY WISH TO CONTACT EACH LIENHOLDER FOR FURTHER INFORMATION OR DISCUSS THIS MATTER WITH AN ATTORNEY.

**IMPORTANT NOTICE REGARDING PROPERTY INSURANCE:** ANY INSURANCE MAINTAINED BY A SELLER, LENDER, OR OTHER PERSON WHO IS NOT THE BUYER OF THE PROPERTY MAY NOT PROVIDE COVERAGE TO THE BUYER IF THE BUYER SUFFERS A LOSS OR INCURS LIABILITY IN CONNECTION WITH THE PROPERTY. TO ENSURE YOUR INTERESTS ARE PROTECTED, YOU SHOULD PURCHASE YOUR OWN PROPERTY INSURANCE POLICY TO INSURE THE PROPERTY. BEFORE PURCHASING THIS PROPERTY, YOU MAY WISH TO CONSULT WITH AN INSURANCE AGENT LICENSED BY THE TEXAS DEPARTMENT OF INSURANCE REGARDING THE INSURANCE COVERAGE OPTIONS AVAILABLE TO YOU AS BUYER OF THE PROPERTY.

**PROPERTY INFORMATION:**

Physical Address		
Street:		
City:	State:	Zip:
Legal Description		

# NOTICE OF WRAP-AROUND MORTGAGE FINANCING

## ISSUED BY:

<b>Lender</b>		
Legal Name:		
<b>Date of Issuance</b>		
Date:		
<b>Mailing Address</b>		
Street:		
City:	State:	Zip:
<b>Contact Information</b>		
Phone:	Fax:	
Email:	Website:	
<b>Loan Originator (Company) License/Registration Information (if applicable)</b>		
Legal Name:		
NMLS ID:		

**LIENHOLDER(S) AND LIEN INFORMATION** (list by order of the date the lien was perfected, from oldest to newest; attach additional sheets as necessary):

<b><u>Lien 1:</u></b>		
<b>Lienholder</b>		
Legal Name:		
<b>Mailing Address</b>		
Street:		
City:	State:	Zip:
<b>Contact Information</b>		
Phone:	Fax:	
Email:	Website:	
<b>Lien Information</b>		
Account/Reference No.:		
Principal Balance:	Payoff Figure:	
Payment Frequency:	Payment Amount:	
Interest Rate:	Date of Maturity:	
Other Terms or Conditions:		
<b>Consent</b>		
Has the Lienholder Consented to the Transfer?	YES	NO

## NOTICE OF WRAP-AROUND MORTGAGE FINANCING

<b>Lien 2:</b>		
<b>Lienholder</b>		
Legal Name:		
<b>Mailing Address</b>		
Street:		
City:	State:	Zip:
<b>Contact Information</b>		
Phone:	Fax:	
Email:	Website:	
<b>Lien Information</b>		
Account/Reference No.:		
Principal Balance:	Payoff Figure:	
Payment Frequency:	Payment Amount:	
Interest Rate:	Date of Maturity:	
Other Terms or Conditions:		
<b>Consent</b>		
Has the Lienholder Consented to the Transfer?	YES	NO

### INSURANCE INFORMATION (attach additional sheets as necessary):

<b>Policy 1:</b>		
<b>Insurer</b>		
Legal Name:		
<b>Mailing Address</b>		
Street:		
City:	State:	Zip:
<b>Contact Information</b>		
Phone:	Fax:	
Email:	Website:	
<b>Policy Information</b>		
Account/Reference No.:		
Insured Amount:		
Insured Property:		
Insured Party:		

## NOTICE OF WRAP-AROUND MORTGAGE FINANCING

<b>Policy 2:</b>		
<b>Insurer</b>		
Legal Name:		
<b>Mailing Address</b>		
Street:		
City:	State:	Zip:
<b>Contact Information</b>		
Phone:	Fax:	
Email:	Website:	
<b>Policy Information</b>		
Account/Reference No.:		
Insured Amount:		
Insured Property:		
Insured Party:		

### PROPERTY TAX INFORMATION:

<b>Property Taxes Due on the Property</b>	
Amount:	
<b>Annual Property Tax Estimate</b>	
Amount:	Tax Year:

### ACKNOWLEDGMENT BY BUYER(S):

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

**3. Discussion of and Possible Action Regarding Anticipated and Pending Litigation:**

**Anticipated Litigation**

None

**Pending Litigation**

None