

A.

Finance Commission

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FINANCE COMMISSION OF TEXAS

MEETING DATEFebruary 18, 2022

MEETING LOCATIONFinance 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

FUTURE MEETING DATESApril 22, 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*

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FINANCE COMMISSION AGENDA

Friday, February 18, 2022
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 B2 – B4, 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 December 17, 2021 Finance Commission Meeting

2. General Public Comment

3. Consent Agenda

4. Finance Commission Operations

5. Presentation from the Texas Treasury Safekeeping Trust Company related to the Texas Financial Education Endowment Fund

6. Audit Committee Report

A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2022 First Quarter Investment Officer Reports

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

B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2022 First Quarter Financial Statements

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

C. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Activities of the Texas Financial Education Endowment Fund

D. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Appointment of a New Grant Advisory Committee Member Deborah Reyes

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

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

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
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
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 §551.076 and §551.089, Texas Government Code

B. OFFICE OF CONSUMER CREDIT COMMISSIONER

1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities
2. *Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 5, Chapter 85, Subchapter B, Concerning Rules for Crafted Precious Metal Dealers*
3. *Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 5, Chapter 88, Concerning Consumer Debt Management Services, Resulting from Rule Review*
4. *Discussion of and Possible Vote to Take Action on the Readoption of Chapter 83, Subchapter A, Concerning Rules for Regulated Lenders, Resulting from Rule Review*
5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 5, Chapter 83, Subchapter A, Concerning Rules for Regulated Lenders, Resulting from Rule Review
6. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

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

C. 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 Proposal and Publication for Comment of a New Rule and Repeal of §80.204 in 7 TAC, Part 4, Chapter 80, Concerning Residential Mortgage Loan Companies
3. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of a New Rule and Repeal of §81.204 in 7 TAC, Part 4, Chapter 81, Concerning Mortgage Bankers and Residential Mortgage Loan Originators
4. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

D. TEXAS DEPARTMENT OF BANKING

1. Industry Status and Departmental Operations: a) Current Issues Affecting Department’s Regulated Entities; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Non-Depository Supervision Division Activities; e) Administrative, Staffing and Fiscal Division Activities; f) Strategic Support Division Activities including Consumer Complaint Data; g) Legal Division Activities including Enforcement Activity and Gift Reporting; and h) Legislative Activities
2. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Chapter 33, §§33.7, 33.23, 33.27, 33.33, 33.37, 33.51, 33.54, Concerning Money Services, Resulting from Rule Review
3. 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.

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**MINUTES OF THE
FINANCE COMMISSION MEETING
Friday, December 17, 2021**

The Finance Commission of Texas convened at 9:12 a.m. on Friday, December 17, 2021, with the following members present:

Finance Commission Members in Attendance:

- | | |
|--|------------------|
| 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 | |

Chairman Phillip Holt announced there was a quorum with 11 members present. *(1:11 on the audio file).*

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
A. Finance Commission Matters		
1. Review and Approval of the Minutes of the October 15, 2021 Finance Committee Meeting	On Consent Agenda – Item A1 This item Approved on the Consent Agenda.	n/a
2. General Public Comment	No Action Required.	1:15 start of discussion
3. Consent Agenda – Items A1, A7, C2 and D2.	Laura Warren made a motion to Approve Consent Agenda items A1, A7, C2 and D2. Sharon McCormick seconded and the motion passed.	8:12 start of discussion 8:24 Vote
4. Recognition of Previous Finance Commission Members – Molly Curl, Stacy London, Lori McCool, and Paul Plunket	No Action Required.	1:51 start of discussion

Chairman Phillip Holt called for a break at 9:22 a.m. *(7:43 on the audio file)*. The open meeting resumed at 9:32 a.m. *(7:56 on the audio file)*.

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
5. Finance Commission Operations	No Action Required.	8:47 start of discussion

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
6. Audit Committee Report		
A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' Fiscal Year 2022 Internal Auditor's Risk Assessment and Audit Plan 1. Department of Savings and Mortgage Lending 2. Texas Department of Banking 3. Office of Consumer Credit Commissioner	Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies' Fiscal Year 2022 Internal Auditor's Risk Assessment and Audit Plan passed.	12:30 start of discussion 12:45 Vote
B. Discussion of and Possible Vote to Recommend the Finance Commission Take Action on the Appointment and Reappointment of Grant Advisory Committee Members	Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Appointment and Reappointment of Grant Advisory Committee Members Linda Davis-Demas and Laura Rosen respectively.	12:57 start of discussion 13:09 Vote
7. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 8, Chapter 153, Concerning Home Equity Lending	On Consent Agenda – Item A7 This item Approved on the Consent Agenda.	n/a
8. 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 Department of Savings and Mortgage Lending Commissioner	No Discussion.	n/a
9. Discussion of and Possible Vote to Take Action Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Duties and Compensation of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to the Duties and Compensation of Persons Holding the Position of Agency Commissioner Positions, and Other Staff	No Discussion.	n/a
10. Discussion of and 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

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
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
B. 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	No Action Required.	13:35 Start of discussion
2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments of New Rules in 7 TAC, Part 4, Chapter 78, Concerning Wrap Mortgage Loans	Laura Warren made a motion to Approve the Adoption of Amendments of New Rules in 7 TAC, Part 4, Chapter 78, Concerning Wrap Mortgage Loans. Sharon McCormick seconded and the motion passed.	26:07 start of discussion 28:14 Vote
3. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Discussion.	n/a
C. Texas Department of Banking		
1. Industry Status and Departmental Operations: a) Current Issues Affecting Department's Regulated Entities; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Non-Depository Supervision Division Activities; e) Administrative, Staffing and Fiscal Division Activities; f) Strategic Support Division Activities including Consumer Complaint Data; g) Legal Division Activities including Enforcement Activity and Gift Reporting; and h) Legislative Activities	No Action Required.	28:50 Start of discussion

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
2. Discussion of and Possible Vote to Take Action on the Reappointment of Rebecca Ann Motley as the Consumer Representative and the Reappointment of Amy Biggs as the Insurance Industry Representative to the Guaranty Fund Advisory Council for the Period January 1, 2022 to December 21, 2023	<i>On Consent Agenda – Item C2</i> This item Approved on the Consent Agenda	n/a
3. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Discussion.	n/a
D. Office of Consumer Credit Commissioner		
1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities	No Action Required.	54:03 start of discussion
2. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 5, Chapter 88, Concerning Consumer Debt Management Services, Resulting from Rule Review	<i>On Consent Agenda – Item D2</i> This item Approved on the Consent Agenda	n/a
3. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 5, Chapter 85, Subchapter B, Concerning Rules for Crafted Precious Metal Dealers	Laura Warren made a motion to Approve the Proposal and Publication for Comment of Amendments to 7 TAC, Part 5, Chapter 85, Subchapter B, Concerning Rules for Crafted Precious Metal Dealers. Robin Armstrong seconded and the motion passed.	1:15:14 start of discussion 1:17:35 Vote
4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 5, Chapter 88, Concerning Consumer Debt Management Services, Resulting from Rule Review	Larry Long made a motion to Approve the Proposal and Publication for Comment of Amendments to 7 TAC, Part 5, Chapter 88, Concerning Consumer Debt Management Services, Resulting from Rule Review. Will Lucas seconded and the motion passed.	1:18:01 start of discussion 1:22:32 Vote
5. 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

Chairman Phillip Holt called for an Executive Session at 10:48 a.m. (1:24:22 on the audio file). The open meeting resumed at 11:05 a.m. (1:25:01 on the audio file).

There being no further business, Chairman Phillip Holt adjourned the meeting of the Finance Commission at 11:06 a.m. (1:26:08 on the audio file).

Phillip Holt, Chairman
Finance Commission of Texas

Charles G. Cooper, Executive Director
Finance Commission of Texas

Ruth Wright, Executive Assistant
Finance Commission of Texas

**MINUTES OF THE
THE FINANCE COMMISSION
Thursday, December 16, 2021**

The Finance Commission of Texas convened at 3:00 p.m., on Thursday, December 16, 2021, with the following members present:

Finance Commission Members in Attendance:

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

Chairman Phillip Holt announced there was a quorum with nine (9) members present. *(1:09 on audio file)*.

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
A. 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	Coming upon the Recommendation from the Search Committee, no second is required and the motion to Approve to interview One Candidate for the Position of Department of Savings and Mortgage Lending Commissioner passed.	1:39 start of discussion 2:09 Vote

Chairman Holt called for an Executive Session at 3:03 p.m. *(2:49 on the audio file)*. The open meeting resumed at 4:36 p.m. *(3:11 on the audio file)*.

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
B. 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 Department of Savings and Mortgage Lending Commissioner	Will Lucas made a motion to the Finance Commission to Approve the appointment of Hector Retta as the New Department of Savings and Mortgage Lending Commissioner with the effective date of February 1, 2022. Debbie Scanlon seconded and the motion passed.	3:19 start of discussion 3:24 Vote
C. 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	No Discussion.	n/a

Chairman Holt called for an Executive Session at 4:37 p.m. (4:07 on the audio file). The open meeting resumed at 5:02 p.m. (4:36 on the audio file).

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
D. 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	<p>Laura Warren made a motion to the Finance Commission to Approve to Authorize Commissioner Charles Cooper to negotiate and execute the documents for the Purchase of a Parcel of Real Property as Contemplated in Senate Bill 1349, passed in the 85th Regular Session of the Texas Legislature. Larry Long seconded and the motion passed.</p> <p>Will Lucas made a motion to the Finance Commission to Authorize the increase the long-term facilities planning reserves by \$2,965,000 for each agency for the purchase and acquisition of land and new building construction. Laura Warren seconded and the motion passed.</p>	<p>4:39 start of discussion</p> <p>4:43 Vote</p> <p>5:16 Vote</p>

There being no further business of the Search Committee of the Finance Commission of Texas, Chairman Holt adjourned the meeting at 5:03 p.m. (5:45 on the audio file).

Phillip Holt, Chairman
 Finance Commission of Texas

Charles G. Cooper, Executive Director
 Finance Commission of Texas

Ruth Wright, Executive Assistant
 Finance Commission of Texas

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Finance Commission of Texas

Consent Agenda

February 18, 2022

A. Finance Commission Matters

1. Review and Approval of the Minutes of the December 17, 2021 Finance Commission Meeting

B. Office of Consumer Credit Commissioner

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 5, Chapter 85, Concerning Rules for Crafted Precious Metal Dealers
3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 5, Chapter 88, Concerning Consumer Debt Management Services, Resulting from Rule Review
4. Discussion of and Possible Vote to Take Action on the Readoption of Chapter 83, Subchapter A, Concerning Rules for Regulated Lenders, Resulting from Rule Review

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A. FINANCE COMMISSION MATTERS

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

PURPOSE: The purpose of the amendments to 7 TAC Chapter 153 is to amend the definition of "business day" and to make technical corrections.

RECOMMENDED ACTION: The Joint Financial Regulatory Agencies request that the Finance Commission approve the amendments to 7 TAC Chapter 153 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve for publication and comment the amendments in 7 TAC Chapter 153.

*Title 7. Banking and Securities
Part 8. Joint Financial Regulatory Agencies
Chapter 153. Home Equity Lending*

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") propose amendments to §153.1 (relating to Definitions) in 7 TAC, Chapter 153, concerning Home Equity Lending.

7 TAC Chapter 153 contains the commissions' interpretations of the home equity lending provisions of Texas Constitution, Article XVI, Section 50 ("Section 50"). In general, the purposes of the proposed rule changes to 7 TAC Chapter 153 are: (1) to amend the definition of "business day" to ensure that the definition appropriately excludes legal public holidays, reflects the common understanding of "business day" in the context of mortgage loan disclosures, and is consistent with similar definitions under federal law, and (2) to make technical corrections to ensure consistency in the text of other definitions.

The interpretations in 7 TAC Chapter 153 are administered by the Joint Financial Regulatory Agencies ("agencies"), consisting of the Texas Department of Banking, Department of Savings and Mortgage Lending, Office of Consumer Credit Commissioner, and Texas Credit Union Department. The agencies distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held an online webinar regarding the proposed changes. The agencies received verbal feedback from stakeholders during the webinar, and received one written precomment on the rule text draft. The agencies appreciate the thoughtful input provided by stakeholders.

Proposed amendments to §153.1(2) would amend the definition of "business day." The term "business day" is used in Section 50(a)(6)(M)(ii) and Section 50(f)(2)(D). Under Section 50(a)(6)(M)(ii), the lender must provide a preclosing disclosure to the owner at least one business day before the closing of a home equity loan. Under Section 50(f)(2)(D), when a lender refinances a home equity loan into a non-home-equity loan, the lender must provide a refinance disclosure within three business days after the homeowner submits a loan application.

The proposal would amend §153.1(2) to contain three definitions of "business day." First, for purposes of 7 TAC §153.13 (relating Preclosing Disclosures: Section 50(a)(6)(M)(ii)), the proposal would state that a business day is a calendar day except for Sunday or a legal public holiday described by federal law. This is similar to the current definition of "business day" in §153.1(2), but adds Juneteenth National Independence Day as a listed holiday. In 2021, federal law was amended to add Juneteenth as a legal public holiday. Juneteenth National Independence Day Act, Pub. L. No. 117-17, 135 Stat. 287 (2021) (codified at 5 U.S.C. §6103(a)). The proposal also adds a reference to the federal law listing legal public holidays at 5 U.S.C. §6103(a) (in case this section is amended to describe additional holidays in the future). Second, for purposes of 7 TAC §153.45 (relating to Refinance of an Equity Loan: Section 50(f)), the proposal would amend §153.1(2) to state that a business day is a day on which the lender's offices are open to the public for carrying on substantially all of its business functions. Third, for purposes of 7 TAC

§153.25 (relating to Right of Rescission: Section 50(a)(6)(Q)(viii)), the proposal would state that a business day has the meaning provided by Regulation Z, 12 C.F.R. §1026.2(a)(6) that applies for purposes of rescission.

These definitions are based on the definitions of "business day" that currently apply to mortgage disclosures under federal law, as well as regulatory commentary on those definitions. Federal Regulation Z, 12 C.F.R. part 1026, requires a lender to provide several disclosures to a borrower in connection with a mortgage loan. The two definitions of "business day" are listed in Regulation Z, 12 C.F.R. §1026.2(a)(6). One of these definitions provides that a business day is a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. The other definition provides that a business day is any calendar day except Sundays and legal public holidays listed in federal law. In its official commentary to Regulation Z, the Consumer Financial Protection Bureau (CFPB) refers to these two definitions as the "business function test" and the "more precise rule," respectively. Official Interpretations of Regulation Z, 12 C.F.R. pt. 1026, supp. I, para. 2(a)(6). Each definition applies to a different set of deadlines and timing requirements under Regulation Z. For example, the business function test applies for purposes of the requirement to provide an early disclosure within three business days after a creditor receives the consumer's application (as provided by 12 C.F.R. §1026.18(e)(1)(iii)(A)). The more precise rule applies for purposes of the requirement to provide final disclosures at least three days before closing (as provided by 12 C.F.R. §1026.18(f)(1)(ii)(A)), as well as the consumer's right to rescind certain mortgage loans within three business days after

consummation (as provided by 12 C.F.R. §1026.23(a)(2)). The CFPB analyzed how these definitions apply to Juneteenth in an interpretive rule issued in August 2021. Consumer Financial Protection Bureau, Impact of the 2021 Juneteenth Holiday on Certain Closed-End Mortgage Requirements, 86 Fed. Reg. 44,267 (2021).

The changes to the definition of "business day" respond to an informal comment that the agencies received from an industry attorney in August 2021. This attorney recommended adding a reference to Juneteenth in §153.1(2), and recommended consistency with Regulation Z's definitions of "business day."

During the online webinar on the precomment draft of the amendments, a second industry attorney expressed general support for the amendments, agreeing that the amendments reflected her members' understanding of what a business day is. This attorney requested additional clarity regarding observed holidays (such as holidays observed on the Monday following a holiday). In response to this verbal comment, the proposed amendment at §153.1(2)(A) includes guidance on observed holidays, based on the CFPB's commentary to Regulation Z, 12 C.F.R. pt. 1026, supp. I, para. 2(a)(6)1.

A third industry attorney (who works for a company that prepares closing documents for Texas mortgage lenders) submitted a written precomment expressing general support for the amendments. This attorney stated: "We believe the proposed amendments are a positive step in aligning the Texas and federal business day definitions. . . . We believe the draft amendments are appropriate and consistent with the Texas Constitution. In the context of

mortgage loan disclosures, the term 'business day' has multiple meanings that are set out in Regulation Z. The term obviously has differing meanings depending on the context and type of disclosure" The attorney explained that the proposed amendments would lead to fewer mistakes that may result from lenders manually providing Texas disclosures that do not align with their automated loan origination systems. The attorney also recommended replacing the list of holidays in §153.1(2)(A) with a single reference to federal law. The agencies considered this approach, but believe that the list of holidays helps the reader quickly understand the definition without having to refer to a separate legal source. The commissions invite further comment on this issue during the comment period on this proposal.

Based on these comments from stakeholders, the agencies believe that the proposed definitions reflect the common understanding of the term "business day" in the context of disclosures for mortgage loans. The proposed definitions would also have practical benefits. For example, by aligning the definition in §153.1(2) with Regulation Z, the proposal would allow a lender to send the constitutionally required refinance disclosure on the same date it sends the federally required early disclosure. Also, the proposal would allow a lender additional time to provide the refinance disclosure if its offices are closed for business functions due to an emergency (such as a pandemic or storm).

Other changes throughout §153.1 would make technical corrections to ensure consistency of formatting and capitalization. The changes to capitalization are based on feedback from staff of the *Texas Register*.

Dan Frasier (Director of Bank and Trust Supervision, Texas Department of Banking), Antonia Antov (Director of Operations, Department of Savings and Mortgage Lending), Huffman Lewis (Director of Consumer Protection, Office of Consumer Credit Commissioner), and John Kolhoff (Commissioner, Texas Credit Union Department) have determined that for the first five-year period the proposed rule changes are in effect, there will be no fiscal implications for state or local government as a result of administering the rule changes.

Dan Frasier (Director of Bank and Trust Supervision, Texas Department of Banking), William Purce (Director of Mortgage Regulation, Department of Savings and Mortgage Lending), Huffman Lewis (Director of Consumer Protection, Office of Consumer Credit Commissioner), and John Kolhoff (Commissioner, Texas Credit Union Department) have determined that for each year of the first five years the proposed rule changes are in effect, the public benefits anticipated as a result of the changes will be that the commissions' rules will better reflect the common understanding of the term "business day" in the mortgage lending context, will better align with deadlines for federal disclosures, and will provide clearer guidance to ensure that lenders comply with Section 50.

The agencies do not anticipate any economic cost to persons who are required to comply with the amendments as proposed.

The agencies do not anticipate any adverse economic effect on small businesses, micro-businesses, or rural communities resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule changes, the agencies invite comments from

interested stakeholders and the public on any economic impacts on small businesses, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses, micro-businesses, and rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the agencies, because the agencies are self-directed, semi-independent agencies that do not receive legislative appropriations. The proposed rule changes do not require an increase or decrease in fees paid to the agencies. The proposal would not create a new regulation. The proposal would expand current §153.1 to provide additional guidance in the definition of "business day." The proposal would not limit or repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rule's applicability. The agencies do not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Matthew Nance, Deputy General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before the 30th day after the date the proposal is published in the *Texas Register*. After the 30th day after the proposal is published in the *Texas Register*, no further

written comments will be considered or accepted by the commissions.

The rule changes are proposed under Texas Finance Code, §11.308 and §15.413, which authorize the commissions to issue interpretations of Texas Constitution, Article XVI, §50(a)(5) - (7), (e) - (p), (t), and (u), subject to Texas Government Code, Chapter 2001.

The constitutional provisions affected by the proposal are contained in Texas Constitution, Article XVI, §50. No statute is affected by this proposal.

Chapter 153. Home Equity Lending

§153.1. Definitions

Any reference to Section 50 in this interpretation refers to Article XVI, Texas Constitution, unless otherwise noted. These words and terms have the following meanings when used in this chapter, unless the context indicates otherwise:

(1) Balloon--~~An~~ An installment that is more than an amount equal to twice the average of all installments scheduled before that installment.

(2) Business day [~~Day--All calendar days except Sundays and these federal legal public holidays: New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day~~].

(A) As used in Section 50(a)(6)(M)(ii) and §153.13 of this title (relating to Preclosing Disclosures: Section 50(a)(6)(M)(ii)), "business day" means all

PROPOSED AMENDMENTS

7 TAC CHAPTER 153

calendar days except Sundays and the following legal public holidays: New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Juneteenth National Independence Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other legal public holiday specified in 5 U.S.C. § 6103(a). When a holiday falls on a Saturday or Sunday, entities might observe the holiday on the preceding Friday or following Monday (e.g., when July 4 falls on a Saturday, entities might observe the holiday on Friday, July 3). For purposes of this subparagraph, these observed holidays (in the example, July 3) are business days.

(B) As used in Section 50(f)(2)(D) and §153.45 of this title (relating to Refinance of an Equity Loan: Section 50(f)), "business day" means a day on which the lender's offices are open to the public for carrying on substantially all of its business functions. Activities that indicate that the lender is open for substantially all of its business functions include the availability of personnel to make loan disbursements, to open new accounts, and to handle loan inquiries. Activities that indicate that the lender is not open for substantially all of its business functions include a bank's having its customer-service windows open only for limited purposes such as deposits and withdrawals, bill paying, and related services.

(C) As used in §153.25 of this title (relating to Right of Rescission: Section 50(a)(6)(Q)(viii)), "business day" has the meaning provided by Regulation Z, 12 C.F.R. §1026.2(a)(6) that applies for purposes of rescission.

(3) Closed or closing--The [the] date when each owner and the spouse of each owner signs the equity loan agreement or the act of signing the equity loan agreement by each owner and the spouse of each owner.

(4) Consumer disclosure--The [Disclosure--the] written notice contained in Section 50(g) that must be provided to the owner at least 12 days before the date the extension of credit is made.

(5) Cross-default provision--A [a] provision in a loan agreement that puts the borrower in default if the borrower defaults on another obligation.

(6) Date the extension of credit is made--The [the] date on which the closing of the equity loan occurs.

(7) E-Sign Act--The [the] federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§7001-7006.

(8) Equity loan--An extension of credit as defined and authorized under the provisions of Section 50(a)(6).

(9) Equity loan agreement--The [the] documents evidencing the agreement between the parties of an equity loan.

(10) Fair market value--The [the] fair market value of the homestead as determined on the date that the loan is closed.

(11) Force-placed insurance--Insurance [insurance] purchased by the lender on the homestead when required insurance on the homestead is not maintained in accordance with the equity loan agreement.

(12) Interest--As used in Section 50(a)(6)(E), "interest" means the amount determined by multiplying the loan principal by the interest rate over a period of time.

(13) Lockout provision--A [a] provision in a loan agreement that prohibits a borrower from paying the loan early.

(14) Owner--A person who has the right to possess, use, and convey, individually or with the joinder of another person, all or part of the homestead.

(15) Preclosing disclosure--The written itemized disclosure required by Section 50(a)(6)(M)(ii).

(16) Two percent limitation--The [the] limitation on fees in Section 50(a)(6)(E).

(17) UETA--The [the] Texas Uniform Electronic Transactions Act, Texas Business & Commerce Code, Chapter 322.

Certification

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

Issued in Austin, Texas on February 18, 2022, and March 11, 2022.

Matthew J. Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
Joint Financial Regulatory Agencies

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B.

**Office of Consumer Credit
Commissioner**

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Consumer Protection and Consumer Assistance Report

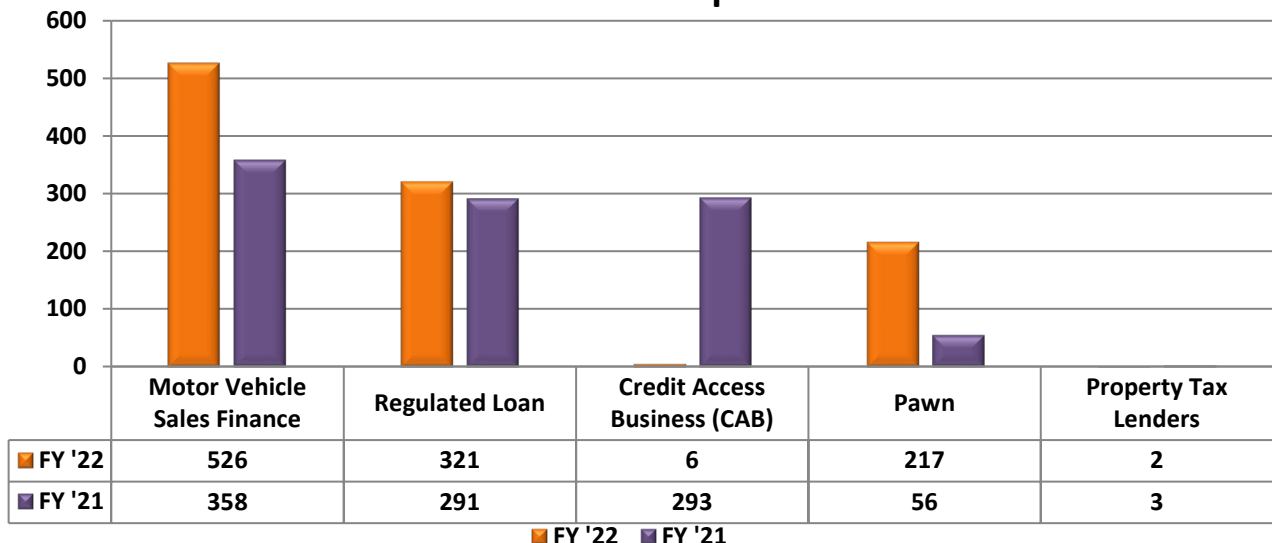
The OCCC’s examination program remains on track and ahead of plan. The agency has completed 44.5% of its targeted number of examinations as of the end of January 2022. Field work has begun on a large enterprise Credit Access Business Exam. The agency is finalizing the report of exam for a multi-state auto finance exam that began in November. The OCCC served as both single point of contact (SPOC) and project examiner in charge (EIC) roles on this multi-state auto finance examination.

A new multi-state auto finance exam began in January. This examination is a coordinated examination with the CFPB. The OCCC will be in a leadership position again on this multi-state auto finance examination, serving as the single point of contact (SPOC) between the CFPB, the states, and the subject company. Additionally, the OCCC is participating in a multi-state mortgage exam that began in January. Finally, the agency has committed to participate in a third multi-state auto finance examination that is in the planning stages.

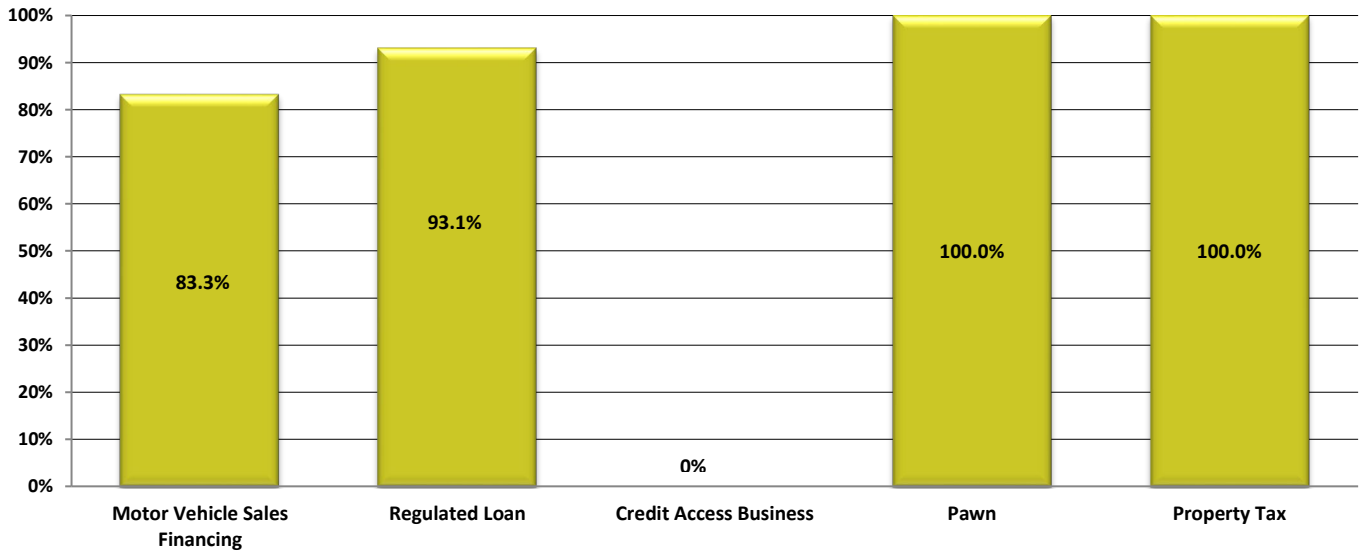
Staff training and development remains the high priority focus. Fiscal Year 2022 will end up being the agency’s strongest commitment to date in multi-state exams. This effort is consistent with supporting the Networked Supervision and Enforcement concepts that continue to develop at the national level. To participate at this level, the agency continues to develop advanced project management skills, tools and methods. Several senior examiners are participating, managing, or leading these endeavors.

The three Financial Examiner (FE I’s) hired August 2, 2021 are on track to be certified in motor vehicle finance exams by the end of February. These three examiners have been trained and will be certified at a much faster pace than in years past. This is the result of deliberate planning and organizing field exam training experiences and pairing with senior staff examiners who are proven trainers and mentors. Additionally, this is testament to their initiative, abilities and commitment to our training program.

Examinations Conducted: Sept - Dec Fiscal Year Comparison

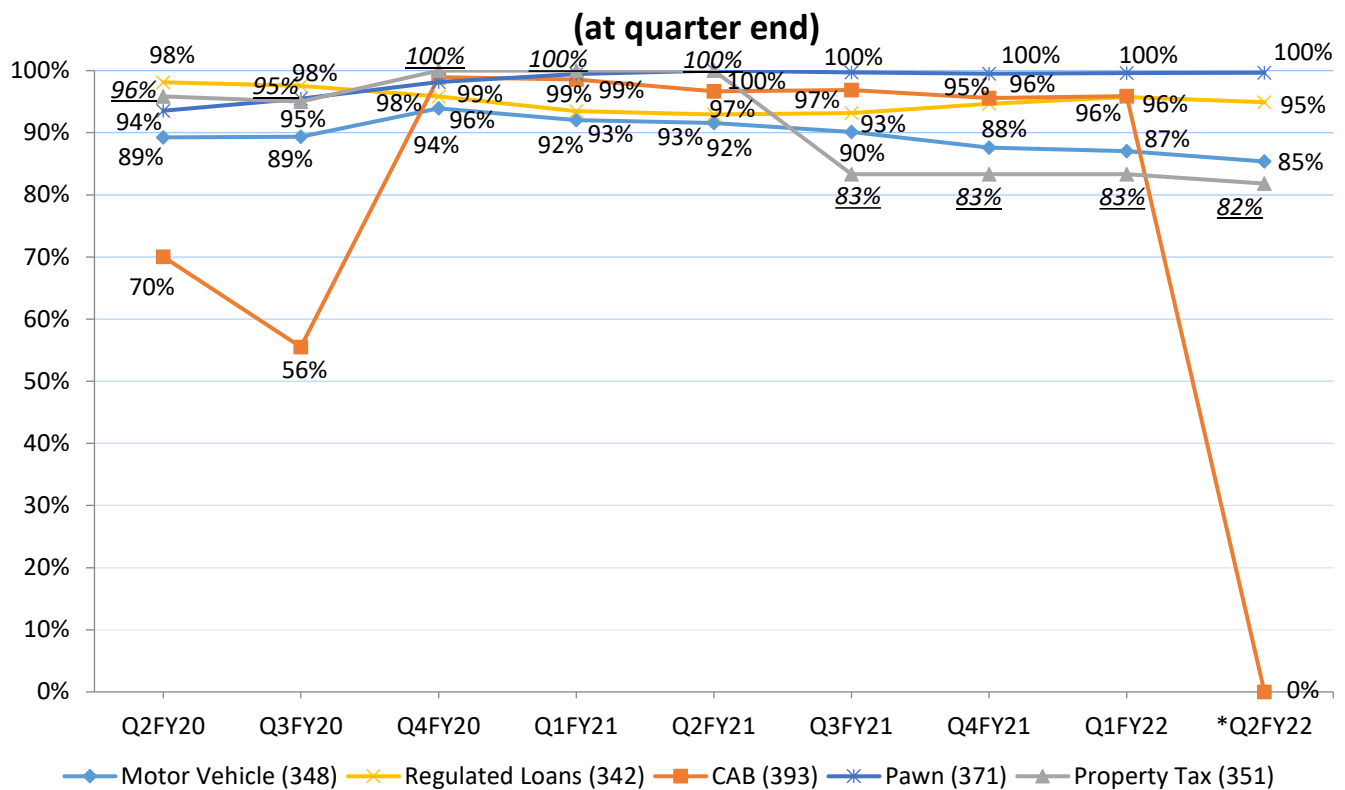


Acceptable Level of Compliance FY '22 (Sept 2021 - Dec 2021)



During the period a small number of credit access business exams were conducted which all resulted in a unsatisfactory level of compliance. A large enterprise exam is in progress, but was not completed within this period. The following chart denotes the acceptable level of compliance on a trailing 12-month basis through the end of December 2021. The zero percent trailing 12 month compliance rating for CAB exams is the result of a large enterprise exam falling outside of the trailing 12 month time period leaving a small number of non-compliant exams.

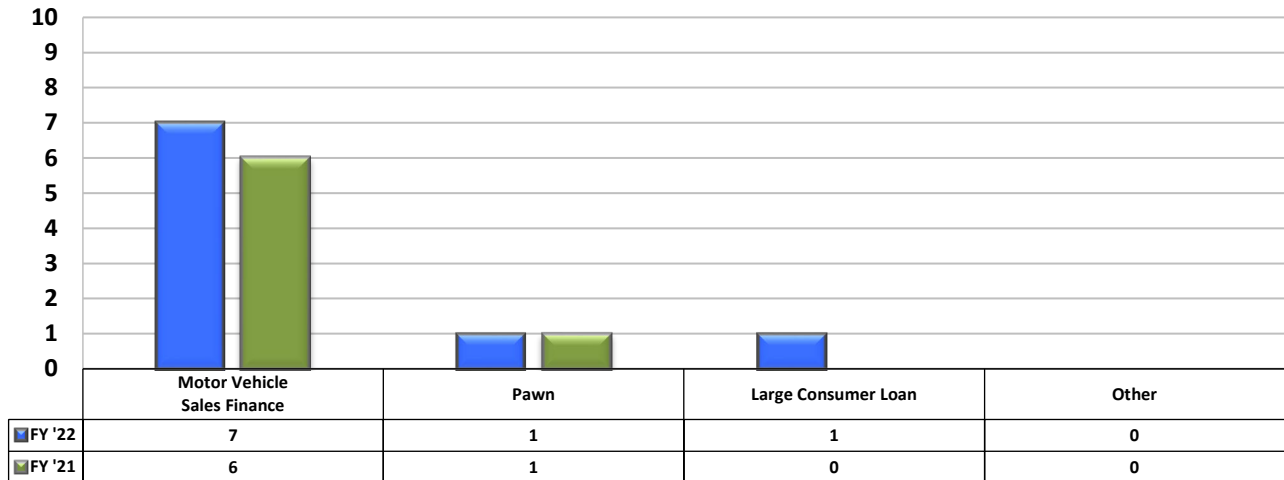
Acceptable Compliance Levels - Trailing 12 Months



Investigations

For FY 2022, the OCCC completed 9 investigations of the goal of 75. Motor Vehicle Sales Finance comprises 77.7% of the overall number of completed investigations.

Investigations Completed
FY '22 (Sept 2021 - Dec 2021) Total: 9
FY '21 (Sept 2020 - Dec 2020) Total: 7

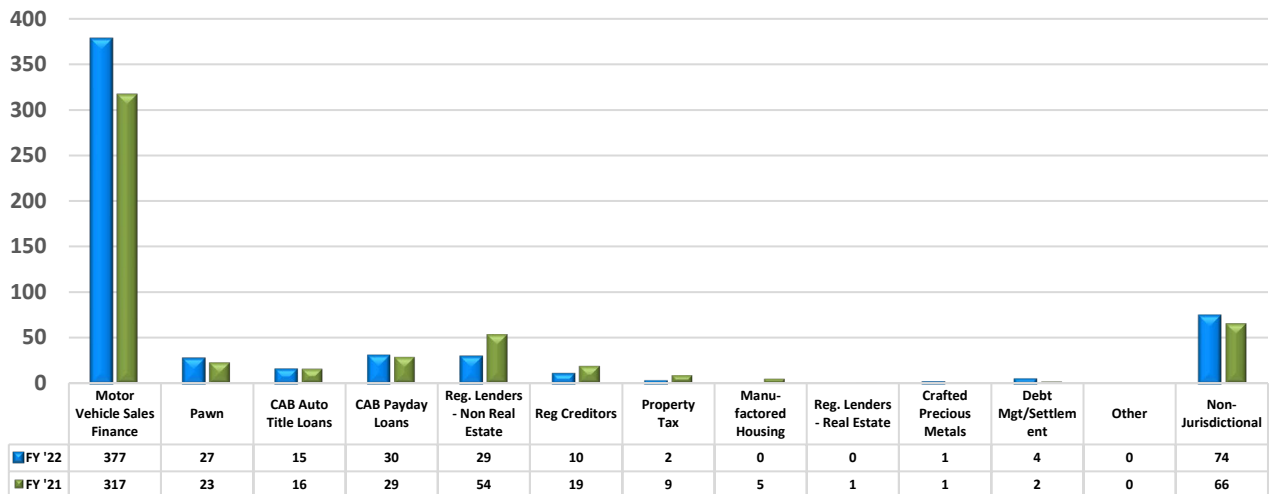


Consumer Assistance

From September 1, 2021 until December 31, 2021, 569 complaints were closed of which 74 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 66.3%. The second largest category were CAB complaints at 7.9% collectively; separately, these are 5.3% for payday loans and 2.6% for title loans. The third largest category came from Regulated Lenders Non-Real Estate at 5.1%. The fourth largest category was Pawnshops at 4.8%.

Complaints Closed
FY '22: Sept 2021 - Dec 2021
FY '21: Sept 2020 - Dec 2020



■ FY '22 ■ FY '21

Fiscal Year 2022: 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	419	NA	NA	NA
Business	0	NA	NA	NA
Law Enforcement	0	NA	NA	NA
State or Federal Agency	23	NA	NA	NA
OCCC	2	NA	NA	NA
Whistleblower	0	NA	NA	NA
Other	0	NA	NA	NA
Total	444	NA	NA	NA

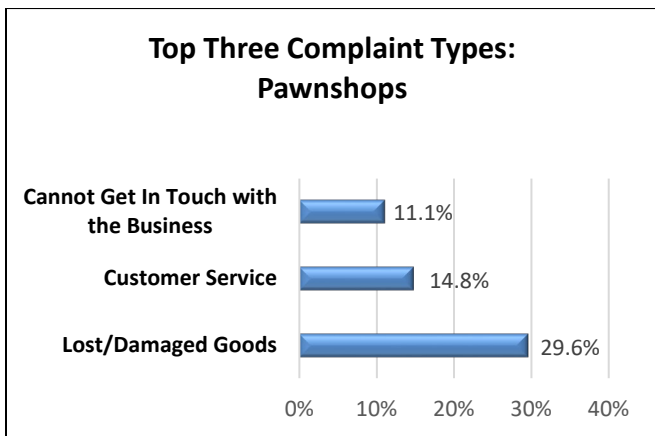
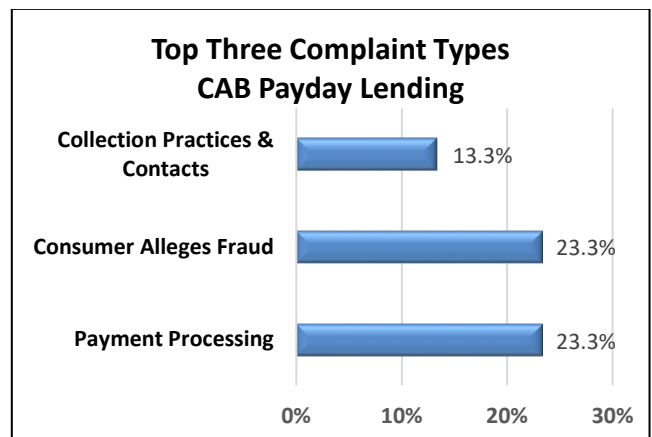
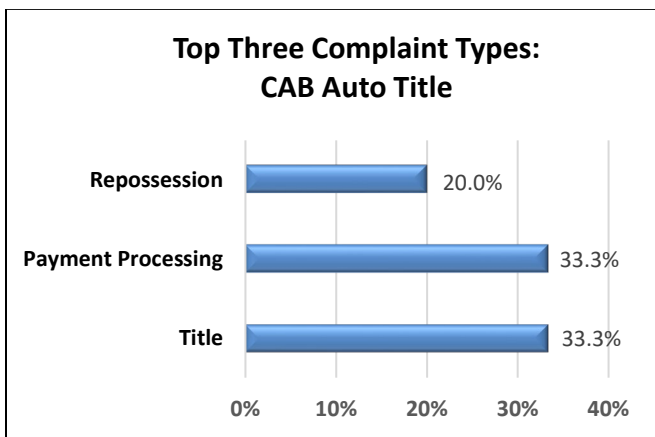
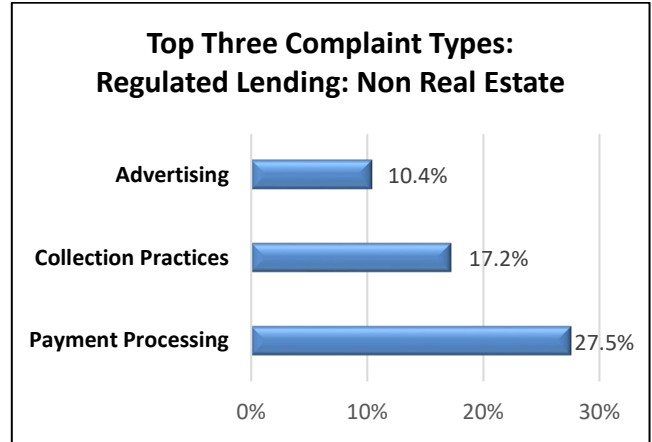
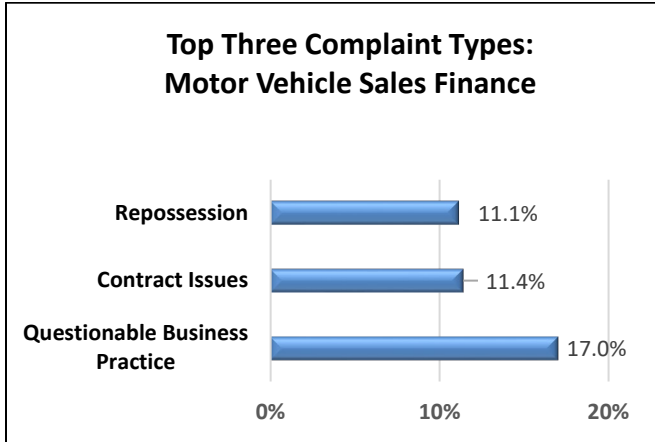
Table 2

Subjects	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Motor Vehicle Sales Finance	295	NA	NA	NA
CAB Payday Loans	23	NA	NA	NA
CAB Auto Title Loans	12	NA	NA	NA
Reg. Lenders Non-Real Estate	23	NA	NA	NA
Pawn	22	NA	NA	NA
Registered Creditors	7	NA	NA	NA
Crafted Precious Metals Dealers	1	NA	NA	NA
Mortgage Lenders: Real Estate	0	NA	NA	NA
Manufactured. Housing	0	NA	NA	NA
Property Tax Lenders	2	NA	NA	NA
Debt Management/Settlement	3	NA	NA	NA
Non-Jurisdictional	56	NA	NA	NA
Refund Anticipation Loan	0	NA	NA	NA
Total	444	NA	NA	NA

Table 3

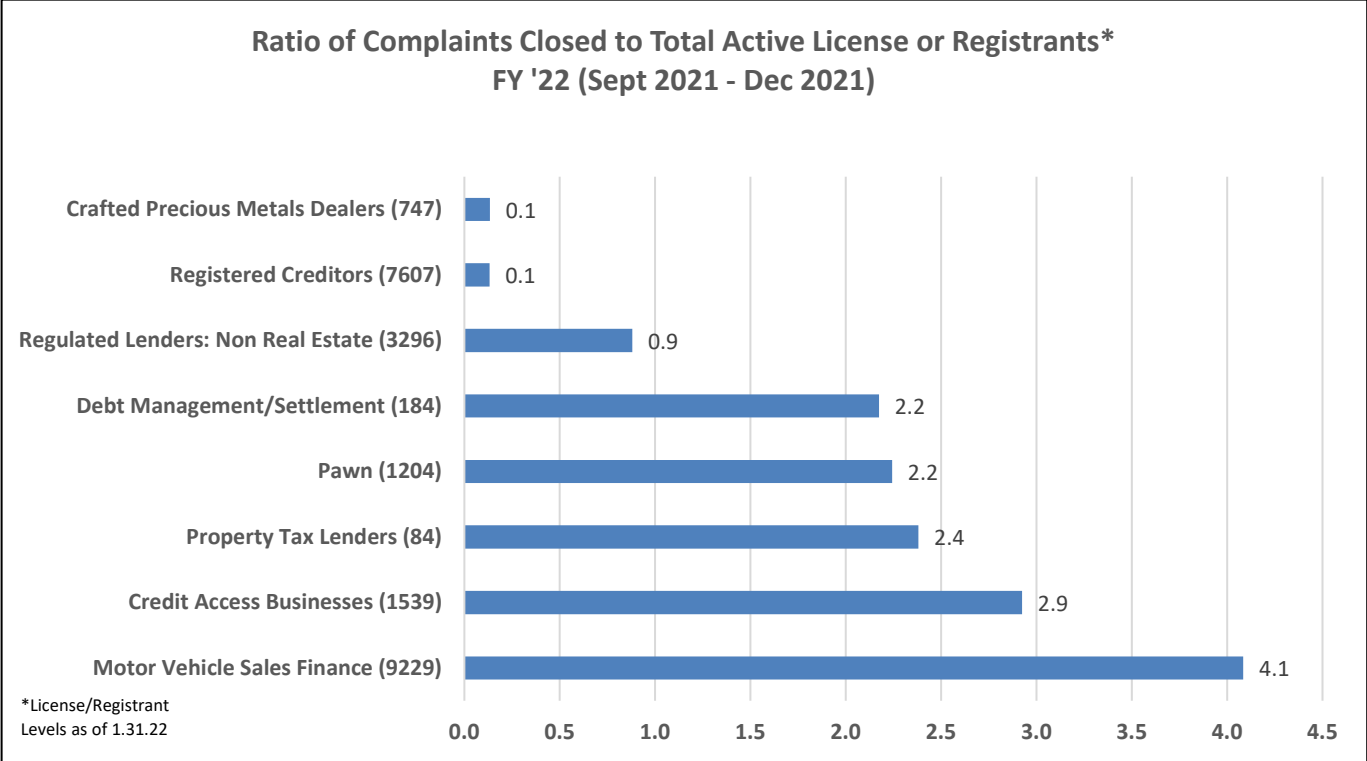
Disposition:	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Closed to Investigation	7	NA	NA	NA
Closed to Legal	0	NA	NA	NA
Closed-Action Taken	195	NA	NA	NA
Closed-No Violation	88	NA	NA	NA
Closed-Administratively	96	NA	NA	NA
Closed-Non-Jurisdictional	58	NA	NA	NA
Total	444	NA	NA	NA

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



Production Targets and Priorities	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Percentage Written Complaints Closed within 90 days	93.7%	NA	NA	NA
Average Number of Days to Close a Complaint	38.9	NA	NA	NA
Number of Complaints Closed	444	NA	NA	NA

Comparison of complaints processed to the number of active license or registrant population is noted on the chart below. For this reporting period, the highest ratio of complaints to active license/registrants was Motor Vehicle Sales Finance, followed by Credit Access Businesses, Property Tax Lenders, and Pawn. This is a slight change from the previous reporting period wherein the highest ratio of complaints to active license/registrants was Motor Vehicle Sales Finance, followed by Credit Access Businesses, Pawn, and Property Tax.





Licensing Report- February 2022

Mirand Diamond, Director of Licensing & Finance

Kanisha Daniels, Licensing Team Lead

Renewals

The renewal period concluded at the end of December for regulated lender, credit access businesses, and property tax lenders. Ninety-three percent of credit access businesses renewed their license, 88% of property tax lenders renewed, and 90% of regulated lenders renewed. Regulated lenders and property tax lenders are currently in the reinstatement period for licenses that have canceled.

Registration for crafted precious metal dealers, refund anticipation loan facilitators, registered creditors and debt management and settlement providers ended in December and January. An average of 74% of registrants have renewed in the four industry groups.

Applications Processing

The team continues to maintain all aspects of departmental functionality. The volume of incoming applications continues to average 175 per month. While pending applications had increased and processing lagged during the renewal period, the pending volume of applications are now within normal expectations.

Creditor registration had an increase of 15% in registrations and 70% in revenue for the first quarter. Typically new registrations increase during the renewal period due to creditor registering additional locations as well as registrants that reinstate registrations through a late filing fee. One master file in particular reinstated 76 registrations retroactively for 3 years.

Other Updates

The department continues to work with IT and the agency's change advisory committee to enhance ALECS.

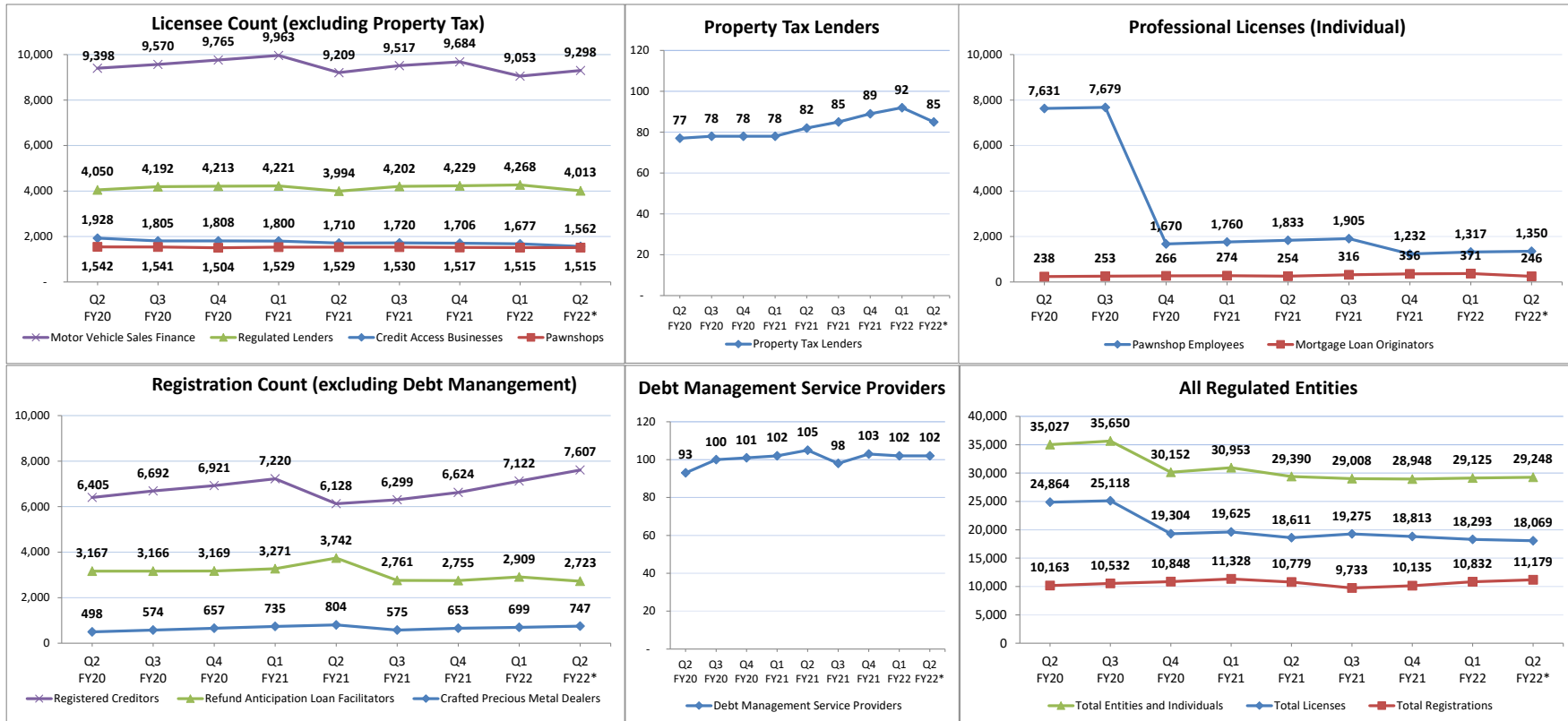
Additionally, department staff are working on verifying document imaging and are expected to have the current verification project completed by March 15, 2022. In response to the audit, the team is using the revised imaging and verification procedures.

Leadership within the department continues to work to fill a long-term 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 years 2020 and 2021 to current data.

Number of OCCC Regulated Entities Quarterly Comparison of FY20-22



* data as of 1/31/2022



ADMINISTRATION REPORT

FINANCIAL EDUCATION AND TFEE

The Financial Education Department has posted a Program Specialist III position and is currently soliciting qualified applications. The OCCC and the Department of Banking jointly have scheduled a Savings and Spending webinar for February 24, 2022. Staff are preparing for Financial Literacy month in April and are developing several potential presentations in partnership with another state agencies.

The 4th and final semi-annual reports and reimbursement requests for the 2020-2021 TFEE grant cycle are currently being processed. The 2022-2023 grant cycle began on January 1, 2022 and a new grant recipient webinar was conducted on January 13, 2022.

COMMUNICATION

The OCCC has launched the Employee Engagement Survey, administered by the Institute of Organizational Excellence at UT Austin, to gather feedback from employees in preparation for the completion of the agency Strategic Plan. Additionally, staff continues to communicate with stakeholders through presentations and written publications. OCCC staff provided virtual presentations to regulated entities and other regulatory groups as follows:

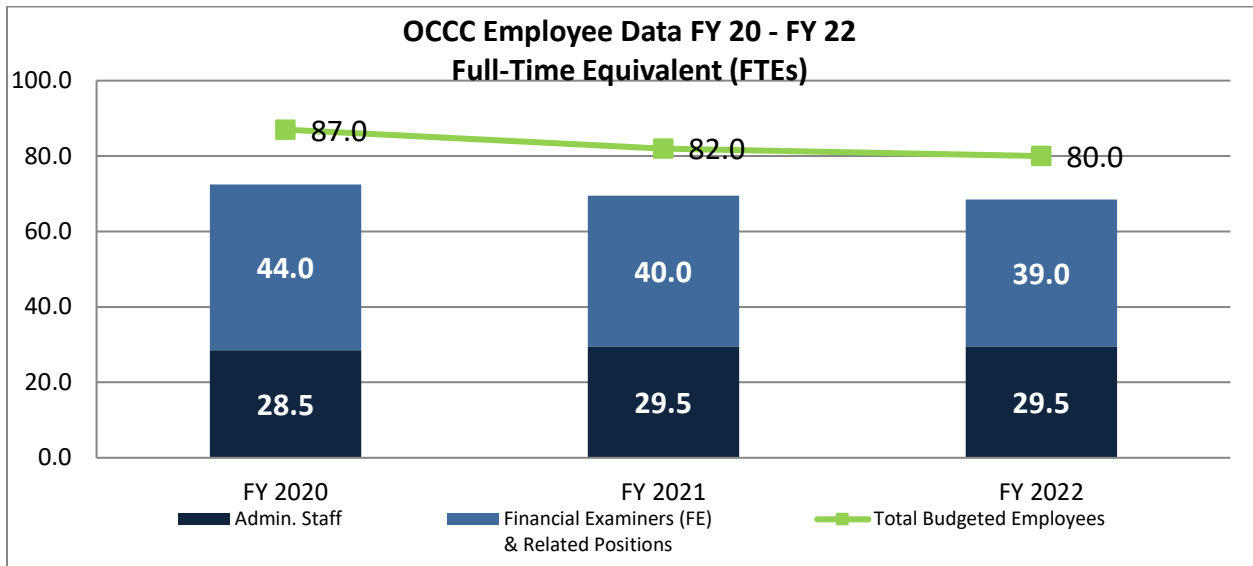
- On December 2, 2021 Financial Examiner Eric Fancher provided a presentation to automobile dealers at a webinar sponsored by the Texas Department of Motor Vehicles (DMV).
- On January 13, 2022 Financial Examiner Eric Fancher provided a presentation to automobile dealers at a webinar sponsored by the Texas Department of Motor Vehicles (DMV).
- On December 16, 2022 General Counsel Michael Rigby participated in a Motor Vehicle Regulation Advisory Committee meeting.

HUMAN RESOURCES

During this reporting period from November 2021 to the end of January 2022, the OCCC was staffed with a total of 68.5 FTEs. Currently OCCC has the following open positions.

Vacancy	Status
License and Permit Specialist III	Open - 1
Program Specialist III – Financial Education, Grant, & Communications Specialist	Open - 1
Accountant V, VI or VII	In final selection stage
Human Resources Specialist V – VI	Filled effective 2/15/22

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



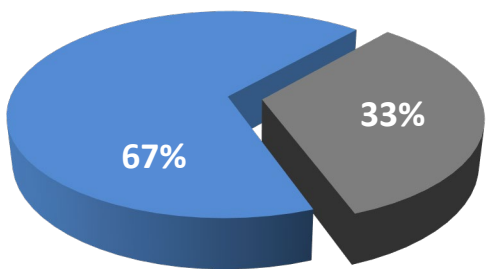
The turnover rate as of January 2022 is 4.1%, and the chart below represents FY22 data.

OCCC Turnover Categories

FY 22 - All Employees

(09/01/2021 - 1/31/2022)

3 total - 2 Voluntary Resignations and 1 Retirement.



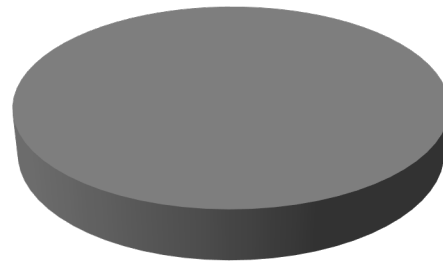
■ Voluntary Resignation ■ Retirement

OCCC Turnover Categories

FY 22 - FE Series

(09/01/2021 - 01/31/2022)

1 total - 1 Retirement.



■ Retirement

INFORMATION TECHNOLOGY

Cybersecurity

IT evaluated agency assets following the public disclosure of the Log4j vulnerability (CVE-2021-44228) in December. Appropriate patches and mitigations have been applied.

Technology modernization and deployment

IT has several projects in progress with DIR, including cloud storage backup at the Data Center; endpoint detection and response (EDR) to succeed our current solution; and user authentication security enhancements.

A new HP printer, primarily for use by Legal, was procured and added to the agency internal network. This printer has enterprise-class print quality, durability, and security.

ALECS is undergoing UAT to evaluate an upgrade to the underlying SQL software.

Training

Cybersecurity training for agency personnel is due to reach the 180+ minute annual requirement well in advance of the June deadline. Additional materials were distributed by email in advance of the holiday season to foster awareness of common e-commerce and commercial scam risks.

Audit

IT has continued to respond to requests from the SAO in connection with the current audit.



Accounting Report- February 2022

Mirand Diamond, Director of Licensing & Finance

Staffing

The accounting department has one vacancy for an accountant. Management is working to fill the vacancy with a qualified candidate. The selection process is in the final stages.

Financial Reporting and Accounting

Accounting staff have concluded the processing of renewal payments for regulated lenders, credit access businesses and property tax lenders. The department is utilizing CAPPs financials for all FY 22 financial transactions and working through new processes, especially related to quarter end processing. First quarter financial reporting has been completed is found elsewhere in the packet.

Discovery sessions of CAPPs HR/Payroll have begun. The OCCC will go live with CAPPs HR/Payroll in Summer 2022.

Additionally, IRS 941 reports as well as the multi-worksites report for the Bureau of Labor Statistics were timely completed and submitted. Tax forms, 1099s and W2s, were processed for calendar year 2021. Lastly the Annual Report of Non-Financial Data for the year ended August 31, 2021, was completed and submitted to the Office of the Governor, the Legislative Budget Board, and the State Auditor's Office, pursuant to Gov't Code §2101.0112 before the December 31 due date.

Audits

The accounting department has been responsive to requests by the State Auditor's Office related to their audit of the OCCC for FY 21. Fieldwork began in September 2021. The final report is expected this spring.

Risk Management

An on-site consultation with the State Office of Risk Management is scheduled for February 23, 2022.

Procedures

The department is working to update accounts payable, purchasing, asset management, deposit and other procedures as a result of CAPPs financial system implementation.

OFFICE OF CONSUMER CREDIT COMMISSIONER
EXECUTIVE SUMMARY

As of November 30, 2021

	FY 2020	FY 2021	FISCAL YEAR 2022				
			1st QTR	2nd QTR	3rd QTR	4th QTR	FYTD
CONSUMER PROTECTION							
Monies Returned (000)	4,391	3,386	1,473				1,473
Regulated Lenders Examinations	576	656	244				244
Property Tax Lender Examinations	7	12	1				1
Pawnshop Examinations	276	415	157				157
Motor Vehicle Examinations	1,350	1,364	406				406
Credit Access Businesses Examinations	284	293	6				6
CONSUMER ASSISTANCE							
Telephone Complaints Received	459	489	119				119
Written Complaints Received	1,303	1,241	283				283
Total Complaints Closed	1,756	1,725	444				444
% of Written Complaints Closed within 90 Calendar Days	86.6%	96.6%	93.7%				93.6%
ADMINISTRATIVE ENFORCEMENT ACTIONS							
Originated	188	224	23				23
Finalized	270	197	68				68
LICENSING AND REGISTRATION							
Licenses							
Regulated Lender Licenses	4,213	4,229	4,268				4,268
Pawnshop Licenses	1,504	1,517	1,515				1,515
Pawnshop Employee Licenses	1,670	1,232	1,317				1,317
Commercial MV Sales Fin. Licenses	54	57	55				55
Motor Vehicle Sales Finance Licenses	9,711	9,627	8,998				8,998
Property Tax Lender Licenses	78	89	92				92
Mortgage Loan Originators	266	356	371				371
Credit Access Business Licenses	1,808	1,706	1,677				1,677
Registrations							
Registered Creditors	6,921	6,624	7,122				7,122
Crafted Precious Metal Dealers	657	653	699				699
Debt Management Service Providers	101	103	102				102
Refund Anticipation Loan Facilitators	3,169	2,755	2,909				2,909
Applications							
Business -- New	1,621	1,579	298				298
Business -- Change of Ownership	87	141	8				8
Pawnshop Employees -- New	630	408	98				98
HUMAN RESOURCES DATA							
Field Examiners Staffing	44	40	40				40
Total Staffing	73	68.5	69.5				69.5

**Office of Consumer Credit Commissioner
Actual Performance for Output Measures
Fiscal Year 2022**

Type/Strategy/Measure	2022 Target	2022 Actual	2022 YTD	Percent of Annual Target
Output Measures-Key				
CONSUMER PROTECTION				
1-1-1 Complaint Resolution				
1. # Complaints Closed				
Quarter 1	1,750	444	444	25.4%
2-1-1 Examination and Enforcement				
1. # Examinations Completed				
Quarter 1	3,000	814	814	27.1%
EFFECTIVE LICENSING & REGISTRATION				
2-2-1 Licensing and Registration				
1. # Business License Applications Processed				
Quarter 1	1,800	298	298	16.6% *
The licensing department has worked to meet departmental goals, but staffing continues to be a challenge, with the license and permit specialist position remaining unfilled. There are currently no business licenses up for renewal, so staff will focus on processing pending and new applications.				
FINANCIAL EDUCATION				
3-3-1 Financial Education				
1. # People Receiving Direct Educational Services				
Quarter 1	900	205	205	22.8%

*Varies by 5% or more from target.



Legal Department Report

Michael Rigby, General Counsel

February 2022

Enforcement Report

Contested Case

The OCCC currently has one contested case pending before the State Office of Administrative Hearings (SOAH), concerning ten Clay Cooley entities (SOAH Docket No. 466-22-0322). Under the Texas Finance Code, before a motor vehicle retail seller charges a documentary fee over \$150, the 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 \$175 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 Clay Cooley entities requested a hearing on the order. The parties have begun conducting discovery, including a deposition of the Clay Cooley entities' expert witness, which the OCCC conducted on January 25–26, 2022. A hearing before SOAH is currently scheduled for April 26–28, 2022.

Orders on Reporting Violations

In December 2021, the OCCC issued eight orders against credit access businesses that did not timely and accurately file their 2021 third quarter reports by the deadline of October 31, 2021. Of these orders, six were injunctions requiring the licensees to file timely and accurate reports, and two imposed an administrative penalty for violating a previous injunction.

Performance Report

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 January 31, 2022				
	FYTD 2022	FY 2021	FY 2020	FY 2019
Injunction Actions				
Crafted Precious Metal Dealer	0	0	1	0
Credit Access Business	8	33	27	53
Debt Management Provider	1	10	9	10
Manufactured Housing	0	0	0	0
Motor Vehicle Sales Finance	4	11	54	20
Motor Vehicle Sales Finance Commercial	0	1	0	0
Pawnshop	4	48	44	82
Pawnshop Employee	0	0	0	67
Property Tax Lender	0	2	1	8
Registered Creditor	0	0	1	0
Regulated Lender	39	28	49	22
Residential Mortgage Loan Originator	0	0	0	0
Total Injunction Actions	56	133	186	262
Administrative Penalty Actions				
Crafted Precious Metal Dealer	0	0	1	0
Credit Access Business	2	12	11	14
Debt Management Provider	0	2	3	0
Motor Vehicle Sales Finance	2	8	13	19
Pawnshop	4	15	29	12
Pawnshop Employee	0	0	0	0
Property Tax Lender	0	1	3	6
Regulated Lender	22	18	18	7
Residential Mortgage Loan Originator	0	0	0	0
Total Administrative Penalty Actions	30	56	78	58
Revocation / Suspension Actions				
Crafted Precious Metal Dealer	0	0	0	0
Credit Access Business	0	1	0	1
Motor Vehicle Sales Finance	2	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
Total Revocation / Suspension Actions	3	6	3	2
Application Denial and Protest Actions				
Credit Access Business	0	0	0	0
Motor Vehicle Sales Finance	1	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
Total App. Denial and Protest Actions	1	2	3	2
Total Actions Closed	90	197	270	324

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

September 1, 2021 through January 31, 2022	
Cases Opened	41
Cases Closed	90
Average Number of Days to Close an Enforcement Action	100
Contested Cases Referred to SOAH	1
Contested Cases Heard at SOAH	0
Final Orders Issued	84

The OCCC has one upcoming SOAH hearing described above.

Rule Actions

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

- Adoption of amendments to 7 TAC Chapter 85, Subchapter B (relating to crafted precious metal dealers), adjusting registration fees to implement SB 1132 (2021)
- Adoption of amendments to Chapter 88 (relating to debt management services), resulting from rule review
- Readoption of Chapter 83, Subchapter A (relating to regulated lenders), as well as proposed amendments to this subchapter, resulting from rule review
- Proposed amendments to Chapter 153 (relating to home equity lending), to amend the definition of “business day”

In April 2022, the OCCC plans to present the following rule actions:

- Readoption of 7 TAC Chapter 2 (relating to residential mortgage loan originators), as well as any proposed amendments to Chapter 2, resulting from rule review
- Proposed amendments to Chapter 82 (relating to administration) relating to privacy of motor vehicle records, to implement SB 15 (2021)

Rulemaking from Other Agencies

TxDMV Temporary Tags Rule

The Texas Transportation Code allows motor vehicle dealers to issue temporary tags (i.e., temporary paper license plates affixed to vehicles), and requires the Texas Department of Motor Vehicles (TxDMV) to maintain a database for issuing temporary tags. In 2021, the Texas Legislature passed HB 3927, which authorized TxDMV to deny dealers’ access to the temporary tag database. The bill was passed in response to concerns about the fraudulent use of temporary tags for masking criminal activity, including stolen vehicles.

On January 27, 2022, the board of TxDMV adopted rules establishing the maximum number of temporary tags that a dealer may issue. The number is based on a dealer’s sales data for the preceding three years. A dealer may request an increase by providing credible information to support the request. In addition to this rule adoption, the board instructed TxDMV staff to prepare a rule proposal requiring dealers to submit fingerprints in order to obtain or renew a dealer license with TxDMV.

Advisory Bulletins

From December 1, 2021 to January 31, 2022, the OCCC did not issue any advisory bulletins.

Official Interpretation Requests

From December 1, 2021 to January 31, 2022, the OCCC did not receive any requests for official interpretations of the Texas Finance Code. As of January 31, 2022, there were no pending requests for official interpretations of the Texas Finance Code.

Public Information Requests

December 1, 2021 through January 31, 2022	
Requests Received	28
Requests Closed	28
Requests Withdrawn	1
Requests Referred to Office of Attorney General	0
Average Number of Days to Address a Public Information Request	2.5

Gifts Received by the OCCC

From December 1, 2021 to January 31, 2022, the OCCC received one gift. The OCCC received one free registration worth \$250 for the 2022 NMLS Annual Conference & Training.

B. OFFICE OF CONSUMER CREDIT COMMISSIONER

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 5, Chapter 85, Subchapter B, Concerning Rules for Crafted Precious Metal Dealers

PURPOSE: The purpose of the amendments to 7 TAC Chapter 85, Subchapter B is to implement SB 1132 (2021) by adjusting annual registration fees for crafted precious metal dealers.

RECOMMENDED ACTION: The OCCC requests that the Finance Commission approve the adoption of the amendments to 7 TAC Chapter 85, Subchapter B.

RECOMMENDED MOTION: I move that we approve the adoption of the amendments to 7 TAC Chapter 85, Subchapter B.

Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 85. Pawnshops and Crafted Precious Metal Dealers
Subchapter B. Rules for Crafted Precious Metal Dealers

The Finance Commission of Texas (commission) adopts amendments to §85.1011 (relating to Fees) in 7 TAC, Chapter 85, concerning Pawnshops and Crafted Precious Metal Dealers.

The commission adopts the amendments to §85.1011 without changes to the proposed text as published in the December 31, 2021, issue of the *Texas Register* (46 TexReg 9139).

The commission received no written comments on the proposal.

The rules in 7 TAC Chapter 85, Subchapter B govern crafted precious metal dealers. In general, the purpose of the rule changes to 7 TAC §85.1011 is to implement SB 1132 (2021) by adjusting annual registration fees for crafted precious metal dealers.

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

The Texas Legislature passed SB 1132 in the 2021 legislative session. SB 1132 amended Texas Occupations Code, Chapter 1956, Subchapter B by adding new Section 1956.06131, which authorizes the OCCC to examine the places of business of crafted precious metal dealers, and requires the OCCC to examine at least 10 dealers each calendar year. SB 1132 also amended Texas Occupations Code, §1956.0612(c), to specify

that the OCCC shall prescribe a registration processing fee in an amount necessary to cover the costs of administering Chapter 1956, Subchapter B. The OCCC is responsible for the costs of its operations. Under Texas Finance Code, §16.002 and §16.003, the OCCC is a self-directed, semi-independent agency, and may set fees in amounts necessary for the purpose of carrying out its functions.

The amendments to §85.1011 implement SB 1132 by adjusting annual registration fees for crafted precious metal dealers. An amendment to subsection (a) increases the annual registration fee for permanent locations from \$50 to \$70. An amendment to subsection (b) increases the annual registration fee for temporary locations from \$25 to \$40.

The OCCC believes that a \$20 increase to registration fees will enable the OCCC to cover the additional costs resulting from examinations of crafted precious metal dealers, as required by SB 1132. The OCCC currently employs financial examiners who examine licensed nondepository financial institutions throughout Texas. To implement SB 1132, some of these examiners will receive training on requirements for crafted precious metal dealers, and will spend a portion of their time traveling and examining dealers. Based on its previous experience in conducting financial examinations, the OCCC anticipates that the new examinations will result in approximately \$19,950 of additional costs for the first year, and approximately \$11,970 of additional costs for subsequent years. Based on an average total

number of crafted precious metal dealer registrations of 600, the OCCC anticipates that the \$20 increase will provide \$12,000 of revenue per year to cover the cost of the examination program.

The rule changes are adopted under Texas Occupations Code, §1956.0611, which authorizes the commission to adopt rules to implement and enforce Texas Occupations Code, Chapter 1956, Subchapter B. In addition, Texas Occupations Code, §1956.0612(c) (as amended by SB 1132) authorizes the OCCC to prescribe a registration fee in an amount necessary to cover the costs of administering Texas Occupations Code, Chapter 1956, Subchapter B. Texas Finance Code, §16.003(c) authorizes the OCCC to set fees as necessary to carry out its functions.

The statutory provisions affected by the adoption are contained in Texas Occupations Code, Chapter 1956, Subchapter B.

Chapter 85. Pawnshops and Crafted Precious Metal Dealers

Subchapter B. Rules for Crafted Precious Metal Dealers

Division 1. Registration Procedures

§85.1011. Fees

(a) Fee for permanent registered locations. In connection with a new application or an annual renewal, a crafted precious metal dealer must pay a \$70 [~~\$50~~] fee for each permanent registered location.

(b) Fee for temporary locations. In connection with a new application for a temporary location, a crafted precious metal

dealer must pay a \$45 [~~\$25~~] fee for each temporary location.

(c) Amendments to permanent registered location. In order to amend a registration by changing the assumed name of the registrant or relocating a permanent registered location, a crafted precious metal dealer must pay a \$25 fee.

(d) Amendments to temporary location. In order to amend a registration by relocating a temporary location, a crafted precious metal dealer must pay a fee of \$25 for each amended location.

(e) Fees nonrefundable, nontransferable, and not prorated. All fees paid relating to a crafted precious metal dealer's registration with the OCCC are nonrefundable and nontransferable. All fees are fixed and will not be prorated based on the date of the dealer's application.

(f) Nonsufficient funds fee. As provided by Texas Business and Commerce Code, §3.506, the OCCC may charge a fee for nonsufficient funds if an applicant provides a payment device that is dishonored.

Certification

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas on February 18, 2022.

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

B. OFFICE OF CONSUMER CREDIT COMMISSIONER

3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 5, Chapter 88, Concerning Consumer Debt Management Services, Resulting from Rule Review

PURPOSE: The purpose of the amendments to 7 TAC Chapter 88 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 88.

RECOMMENDED MOTION: I move that the Finance Commission approve the adoption of the amendments to 7 TAC Chapter 88.

Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 88. Consumer Debt Management Services

The Finance Commission of Texas (commission) adopts amendments to §88.104 (relating to Updating Application and Contact Information), §88.110 (relating to Denial, Suspension, or Revocation Based on Criminal History), §88.202 (relating to Annual Report), §88.304 (relating to Credit Counseling Standards), and §88.306 (relating to Fees for Debt Management Services), in 7 TAC, Chapter 88, concerning Consumer Debt Management Services.

The commission adopts the amendments to §88.104, §88.110, and §88.304 without changes to the proposed text as published in the December 31, 2021, issue of the *Texas Register* (46 TexReg 9140).

The commission adopts the amendments to §88.202 and §88.306 with changes to the proposed text as published in the December 31, 2021, issue of the *Texas Register* (46 TexReg 9140).

The rules in 7 TAC Chapter 88 govern debt management providers. In general, the purpose of the rule changes to 7 TAC Chapter 88 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 88 was published in the *Texas Register* on October 1, 2021 (46 TexReg 6547). 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 webinar regarding the rule

changes. The OCCC received no informal precomments on the rule text draft.

Amendments to §88.104 add a new subsection (b) specifying that debt management registrants must provide certain updated information within 30 calendar days after the registrant has knowledge of a change in the information. The information includes the name or operating name of the registrant, location of any offices, websites, names of principal parties, and criminal history. Current subsection (b) already provides that registrants are responsible for ensuring that all contact information on file with the OCCC is current and correct, but the current rule does not provide a deadline for providing updated contact information. The new subsection specifies a 30-day deadline for providing update information, similar to other OCCC rules that contain a 30-day deadline for licensees to provide updated contact information. The OCCC requires current and correct information about registrants in order to carry out its responsibilities under Texas Finance Code, Chapter 394.

Amendments to §88.110 relate to the OCCC's review of the criminal history of a debt management applicant or registrant. The OCCC is authorized to review criminal history of debt management applicants and registrants under Texas Occupations Code, Chapter 53; Texas Finance Code, §14.109 and §394.204; and Texas Government Code, §411.095. The amendments to §88.110 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 §88.110 implement these statutory changes from HB 1342. Other amendments to §88.110 include technical corrections, clarifying changes, and updates to citations.

Amendments to §88.202 specify information that debt management registrants must submit with annual reports. Amendments throughout §88.202 add descriptions of information that registrants must provide annually under Texas Finance Code, §394.205 and §394.206, and add citations to these statutory provisions. These amendments are intended to help registrants comply with reporting requirements by clearly identifying information required by the statute. The amendments remove current §88.202(b)(2), which requires a registrant to provide a list of all owners and principal parties with the annual report. The OCCC anticipates that this list will no longer be necessary based on the amendments to §88.104 described earlier in this adoption, and believes that removing this list will simplify the reporting process. New §88.202(d) specifies that the annual report must be verified by oath or affirmation, as required by Texas Finance Code, §394.205(c), and requires registrants to certify that they have reviewed contact

information and submitted any updates in accordance with the OCCC's instructions.

Since the proposal, changes have been made in §88.202(b) to further simplify reporting of information about consumer counseling. Under Texas Finance Code, §394.208(a)(1), before enrolling a consumer in a debt management plan, a provider must provide individualized counseling and educational information to the consumer. Currently, §88.202(b)(3) requires providers to include information about credit counseling with the annual report, including the number of credit counselors employed and the name of the accreditation organization. The adoption removes this provision and replaces it with new §88.202(b)(4), requiring the provider to state whether it has provided individualized counseling to each consumer. Combined with the amendment to §88.304(b) described in the following paragraph, this change will simplify annual reporting requirements relating to credit counseling, while maintaining the requirement to provide this information to the OCCC upon request.

An amendment to §88.304(b) removes language that currently requires providers to submit documentation of the certification of the provider's credit counselors with the annual report. The OCCC believes that removing this requirement will simplify the reporting process. The amendments maintain current language requiring a provider to provide this information upon request by the OCCC. The amendments also replace "commissioner" with "OCCC" in this subsection to ensure consistency with other rules.

Amendments to §88.306 add citations to statutory limitations on fees for debt management services. Currently, this section

states that a provider may not charge for services unrelated to debt management or financial education unless approved by the commissioner. Under Texas Finance Code, §394.210(a), a debt management provider may not charge any fees other than fees that are authorized by Texas Finance Code, §394.210. New §88.306(a) includes a reference to this statutory section and explains that providers may not impose a fee or other charge except as authorized by the statute. The amendments remove the phrase "unless approved by the commissioner in advance" from the current rule, because fees for services unrelated to debt management or financial education are not authorized by Texas Finance Code, §394.210. Although the commissioner may authorize certain counseling and education fees under Texas Finance Code, §394.210(d), this does not include fees for unrelated services. New §88.603(c) explains that the OCCC will periodically compute and publish adjustments to debt management fees, as provided by Texas Finance Code, §394.2101.

Since the proposal, a change has been made in §88.306(c) to specify the base year for purposes of the fee adjustments described in the previous paragraph. Under Texas Finance Code, §394.2101(a), the OCCC is authorized to adopt a base year for purposes of adjustments to debt management fees. The Texas Legislature added this language in 2011 (under SB 141). For this reason, new language in §88.306(c) explains that the OCCC has adopted 2011 as a base year for purposes of these adjustments.

The rule changes are adopted under Texas Finance Code, §394.214(a), which authorizes the commission to adopt rules to carry out Texas Finance Code, Chapter 394, Subchapter C.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 394.

Chapter 88. Consumer Debt Management Services

Subchapter A. Registration Procedures

§88.104. Updating Application and Contact Information

(a) Applicant's updates to registered provider application information. Before an application for registration is approved, an applicant must report to the OCCC any information that would require a materially different answer than that given in the original registered provider application and which relates to the qualifications for registration within 14 calendar days after the person has knowledge of the information.

(b) Registrant's updates to registration application information. A registrant must report to the OCCC any information that would require a different answer than that given in the original registration application within 30 calendar days after the registrant has knowledge of the information, if the information relates to any of the following:

(1) the name or any operating name of the registrant;

(2) the location of any additional offices;

(3) the registrant's website address;

(4) the names of principal parties;

(5) criminal history;

(6) actions by regulatory agencies; or

(7) court judgments.

(c) [~~(b)~~] Contact information. Each applicant or registered provider is responsible for ensuring that all contact information on file with the OCCC is current and correct, including all mailing addresses, all phone numbers, and all e-mail addresses. It is a best practice for registered providers to regularly review contact information on file with the OCCC to ensure that it is current and correct.

§88.110. Denial, Suspension, or Revocation Based on Criminal History

(a) Criminal history record information. After an applicant submits a complete registration application, including all required fingerprints, and pays the fees required by §88.107 of this title (relating to Fees), the OCCC will investigate the applicant. 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;

(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 registered occupation. The OCCC may deny a registration application, or suspend or revoke a registration, if the applicant or registrant has been convicted of an offense that directly relates to the duties and responsibilities of a debt management services provider, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Providing debt management services involves making representations to consumers regarding the terms of the services, holding money entrusted to the provider, remitting money to third parties, collecting charges in a legal manner, and compliance with reporting requirements to government agencies. Consequently, the following crimes are directly related to the duties and responsibilities of a registered provider 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 transaction 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 registration, 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 registration to engage in the occupation;

(C) the extent to which a registration 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 registrant; 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 registrant unfit to be a registrant, 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 registration, 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) Offenses involving moral turpitude. The OCCC may deny a registration application, or suspend or revoke a registration, if the applicant, ~~[or] registrant,~~ or a principal party has been convicted of or found civilly liable for an offense involving moral turpitude, as provided by Texas Finance Code, §394.204(i)(1), (k)(1)-(2). Offenses involving moral turpitude include the following:

- (1) forgery;
- (2) embezzlement;
- (3) obtaining money under false pretenses;
- (4) larceny;
- (5) extortion;
- (6) conspiracy to defraud; and
- (7) any other similar offense or violation.

(e) Revocation on imprisonment. A registration will be revoked on the registrant'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 registration application, or suspend or revoke a registration, 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) ~~[(3) [§53.021(a)(3)-(4)]]~~;

(2) ~~[(3)]~~ errors or incomplete information in the registration application, as provided by Texas Finance Code, §394.204(h);

(3) ~~[(4)]~~ a fact or condition that would have been grounds for denying the registration 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, §394.204(k)(1)-(2); 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, §394.204(i)(3), (k)(9).

§88.202. Annual Report

(a) General requirement. Each authorized debt management services provider must file an annual report under this section and must comply with all instructions from the OCCC relating to submitting the report.

(b) Annual report. Each year, at the time of annual renewal, an authorized debt management services provider must file with the OCCC, in a form prescribed by the OCCC, a report that contains the following:

(1) if the provider is a nonprofit or tax exempt organization, the assets and liabilities at the beginning and end of the reporting period, as required by Texas Finance Code, §394.205(b)(1);

(2) the total number of debt management plans the provider has initiated on behalf of consumers in Texas during the reporting period, as required by Texas Finance Code, §394.205(b)(2);

(3) the total and average fees charged to consumers, including all voluntary contributions received from consumers, as required by Texas Finance Code, §394.205(b)(3); and

(4) if the provider has initiated one or more debt management plans during the reporting period, a statement of whether the provider provided individualized counseling to each consumer through the services of an independently certified counselor, as required by Texas Finance Code, §394.208(a)(1).

(c) Required documents. A provider must submit the following additional documents with the annual report, in accordance with the OCCC's instructions:

(1) a blank copy of any debt management services agreement used by the provider, as required by Texas Finance Code, §394.205(d) (the OCCC may allow a provider to certify current use of a previously submitted agreement);

(2) blank copies of the provider's consumer educational information, individualized financial analysis, initial debt management plan, and any other required disclosures relating to credit counseling, as required by Texas Finance Code, §394.205(d) (the OCCC may allow a provider to certify current use of previously submitted information); and

(3) a copy of the provider's surety bond or a compliant insurance policy, as required by Texas Finance Code, §394.206(a).

~~[(1) the information required by Texas Finance Code, §394.205 (the OCCC may allow a provider to certify current use of previously submitted information required by this paragraph);]~~

~~[(2) a list of all owners and principal parties, including any change in ownership that occurred during the preceding calendar year; and]~~

~~[(3) information regarding the provider's credit counselors, including the number of credit counselors employed at the time the annual report is prepared, and the accreditation organization or program that certifies the provider's counselors.]~~

(d) Certification. An annual report must be verified by the oath or affirmation of the owner, manager, president, chief executive officer, or chairman of the board of directors

of the provider, as required by Texas Finance Code, §394.205(c). The provider must certify that the provider has reviewed all contact information and principal party information on file with the OCCC, and has submitted any updates to this information in accordance with the OCCC's instructions.

(e) Other information. [(e)] Upon request by the OCCC, the provider must provide any other information the commissioner deems relevant concerning the provider's business and operations during the preceding calendar year.

Subchapter C. Operational Requirements

§88.304. Credit Counseling Standards

(a) For purposes of Texas Finance Code, §394.202(2) and §394.208(a)(2), a provider must be accredited by an independent, third-party accreditation organization that covers, at a minimum, competency in the following core areas:

- (1) service environment and planning;
- (2) service accessibility and delivery;
- (3) training and supervision;
- (4) quality management and improvement;
- (5) ethical standards; and
- (6) financial education.

(b) Each provider must provide the name and contact information of the accreditation organization or program that certifies its counselors. The provider must maintain documentation of the certification of the

provider's credit counselors, which must be submitted [~~with the annual report and~~] upon request by the OCCC [~~commissioner~~]. The commissioner may issue an order disapproving the accreditation organization or program if the commissioner determines that the organization or program does not provide comprehensive education training on the following:

- (1) alternatives available to resolve an indebted consumer's credit problems;
- (2) how to analyze a consumer's current financial condition;
- (3) budget development;
- (4) money management; and
- (5) wise use of credit.

(c) The provider must maintain documentation of individualized counseling and analysis that has been provided under Texas Finance Code, §394.208(a)(2).

§88.306. Fees for Debt Management Services

(a) Limitation on fees. The maximum fees for debt management services are described by Texas Finance Code, §394.210. A provider may not impose a fee or other charge, or receive payment from a consumer or other person on behalf of a consumer, except as allowed under Texas Finance Code, §394.210.

(b) Fees for unrelated services. A provider may not charge a consumer for or provide credit or other insurance, coupons for goods or services, membership in a club, access to computers or the Internet, or any other matter not directly related to debt management services or educational services

concerning personal finance [~~—unless approved by the commissioner in advance~~].

(c) Adjustment of fee amounts. As provided by Texas Finance Code §394.2101, the OCCC will periodically compute and publish dollar amounts of fees specified in Texas Finance Code, §394.210, to reflect inflation as measured by the Consumer Price Index for All Urban Consumers. These adjustments will be published on the OCCC's website. For purposes of these adjustments, the OCCC has adopted 2011 as a base year.

Certification

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas on February 18, 2022.

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

B. OFFICE OF CONSUMER CREDIT COMMISSIONER

4. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 5, Chapter 83, Subchapter A, Concerning Rules for Regulated Lenders, Resulting from Rule Review

PURPOSE: Pursuant to Texas Government Code, §2001.039, the OCCC has completed the review of 7 TAC Chapter 83, Subchapter A, and believes that the reasons for initially adopting the rules contained in this chapter continue to exist.

RECOMMENDED ACTION: The OCCC requests that the Finance Commission readopt 7 TAC Chapter 83, Subchapter A following rule review, because the reasons for the rules continue to exist.

RECOMMENDED MOTION: I move that we readopt 7 TAC Chapter 83, Subchapter A following rule review, because the reasons for the rules continue to exist.

*Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 83. Regulated Lenders and Credit Access Businesses
Subchapter A. Rules for Regulated Lenders*

The Finance Commission of Texas (commission) has completed the rule review of Texas Administrative Code, Title 7, Part 5, Chapter 83, Subchapter A, concerning Rules for Regulated Lenders, in its entirety. The rule review was conducted under Texas Government Code, §2001.039.

Before publishing notice of the review in the *Texas Register*, the Office of Consumer Credit Commissioner (OCCC) issued an informal advance notice of the rule review to stakeholders. The OCCC received two informal precomments in response to the advance notice. The OCCC appreciates the thoughtful input provided by stakeholders.

Notice of the review of 7 TAC Chapter 83, Subchapter A was published in the December 3, 2021, issue of the *Texas Register* (46 TexReg 8261). The commission received two official comments in response to that notice. One official comment was from the Texas Consumer Credit Coalition, and the other official comment was from the Texas Fair Lending Alliance and Faith Leaders 4 Fair Lending. Both of these official comments deal with whether the commission should amend §83.503 (relating to Administrative Fee). Currently, §83.503 provides a \$100 maximum administrative fee for a consumer loan under Texas Finance Code, Chapter 342, Subchapter E.

In its official comment, the Texas Consumer Credit Coalition (an organization of licensed lenders) argues that §83.503 should be amended to increase the maximum administrative fee. The comment explains that the costs of originating loans, including labor, occupancy, and technology, have increased since the \$100 maximum was adopted in 2013. The comment refers to aggregated data that the coalition previously provided to the OCCC as an informal comment. In November 2020, the coalition provided an informal comment to the OCCC with aggregated cost information from five companies, purporting to justify increasing the maximum administrative fee to \$200.

In their official comment, the Texas Fair Lending Alliance and Faith Leaders 4 Fair Lending (organizations of community and faith leaders supporting reforms to protect Texas consumers) argue that §83.503 should not be amended to increase the maximum administrative fee. The comment expresses concerns about increasing the administrative fee to \$200, arguing that this is not supported by available data. The comment points out that licensed lenders have experienced profits and certain decreased expenses. The comment argues that if §83.503 is amended, the maximum should be decreased from \$100.

Regarding these official comments, the commission does not believe that the submitted information supports an increase to \$200 at this time. The OCCC intends to study this issue further.

As a result of comments from stakeholders and internal review by the OCCC, the commission has determined that certain revisions are appropriate and necessary. These proposed changes are published elsewhere in this issue of the *Texas Register*. The OCCC intends to further study the issue of whether the maximum administrative fee in §83.503 should be amended.

READoption FROM RULE REVIEW
7 TAC CHAPTER 83, SUBCHAPTER A
Page 2 of 2

As a result of the rule review, the commission finds that the reasons for initially adopting the rules in 7 TAC Chapter 83, Subchapter A continue to exist, and readopts this subchapter in accordance with the requirements of Texas Government Code, §2001.039.



December 17, 2021

Mr. Matthew Nance
Deputy General Counsel
2601 North Lamar Boulevard
Austin, Texas 78705

Re: Regulated Lender Rule Review

Mr. Nance:

On behalf of the Texas Consumer Credit Coalition (“TCCC”), thank you for the opportunity to provide feedback on the Regulated Lender Rule Review posted by the Office of Consumer Credit Commissioner (“OCCC”) in the *Texas Register* on December 3, 2021. The TCCC is a member-driven organization of community-based lenders licensed by the OCCC and regulated in accordance with Chapter 342E of the Texas Finance Code. The Coalition’s mission is to promote the increased availability of quality consumer credit to Texans that is carefully underwritten for the ability to repay and provided at fair and reasonable prices.

In connection with the rule review, please consider the following a response to your request for additional justification to consider an increase in the administrative fee currently authorized in Texas Administrative Code, Title 7, Section 83.503. Individual TCCC member companies have indicated they plan to file comments on other regulations included in the Review.

How have costs increased since 2013?

TCCC member companies operate through branch locations across the State in a “high-touch,” community-based lending model. The relationships built through personal interactions with borrowers are vital to their success and have contributed to single digit industry-wide default rates. An administrative fee adjustment will help Chapter 342E lenders offset a significant portion of the actual costs incurred in making affordable credit available in local communities across Texas and support the continued availability of beneficial consumer credit to the widest range of qualified borrowers.

As such, our analysis has focused on how certain costs – labor, occupancy (rents, utilities, etc.), hardware, software, and compliance – have influenced the interaction between our customers and employees over the past several years.

This Summer, the TCCC provided data to the OCCC illustrating direct costs per loan in an aggregated manner to protect the privacy of our member companies. Analyzing aggregated costs can often be challenging in assessing changes to cost structures, but the data unquestionably

demonstrates that labor costs have risen in Texas. As the OCCC and other Finance Commission agencies have recognized in their annual budget presentations over the past eight years, costs to maintain competitive salaries and retain qualified employees have risen. Since 2012, wages in Texas have increased almost 29%, according to the [Bureau of Labor Statistics and the Federal Bank of St. Louis](#).

In addition to increasing labor costs in Texas, occupancy costs such as rent and utilities are also on the rise. While rent increases are captured in the analysis, complexities with longer-term leases associated with commercial properties may hide incremental increases.

The migration from paper to electronic records requires increased investment in technology. New hardware, software, and programming costs continue to increase as opportunities for data collection and protection innovations occur. Legal, regulatory, licensing, and compliance requirements also drive technology costs. However, economies of scale are realized when companies can spread such expenditure to new branch locations.

Further, efforts by lenders to safeguard financial privacy, to combat identity theft, and ensure cybersecurity have required continued company-wide and Texas-specific investments. One example of an increase in compliance costs for our members is reflected in the [OCCC Advisory Bulletin B17-4](#) issued on September 29, 2017 setting forth significant requirements for licensees in the wake of the Equifax data breach. Also, we would note that the Federal Trade Commission recently published an update to the [Safeguards Rule](#) (16 CFR Part 314) which will result in hardware, software, and employee training costs to ensure compliance.

Without exception, all these direct costs have increased and promise to rise precipitously with the [forecasted trajectory of inflation](#). Whether TCCC lenders are making a \$2,500.00 loan, or a \$7,500.00 loan, those operating costs are the same per loan.

Should marketing and lead generation be within the scope of costs that should be included in the administrative fee?

While we believe that marketing costs are an integral part of the cost of originating a loan, for purposes of this rulemaking, we are updating our previous submission to omit such marketing costs from our calculation and will convey this information under separate cover.

What amount of time, costs, or resources do lenders spend on marketing optional ancillary products? How, specifically, do lenders account for this when calculating their costs?

TCCC members offer optional ancillary products to borrowers in accordance with applicable law. The Legislature has long authorized such products under Subchapter I, Chapter 342, Texas Finance Code and as further proscribed by 7 TAC Sec. 83.801 et seq. Additionally, any insurance products that may be presented to our customers are fully regulated by the Texas Department of Insurance. While we have only anecdotal information regarding time, costs, or resources spent on marketing these benefits to our borrowers, that time, and related costs and resources, is generally

considered to be ancillary to the time spent on a consumer loan. Further, as noted previously, we have excluded marketing costs from our calculation.

Have any costs gone down since 2013 due to increased efficiency? Are these reduced costs outweighed by other costs that have increased? What have publicly traded lenders reported to their investors about changes in administrative costs?

As mentioned above, the migration from paper to electronic records reduces paper costs and record storage costs. However, certain legal and regulatory requirements continue to necessitate written disclosures and notices, as well as “hard” copies of contracts. While laser printers may be more efficient than copy machines, for example, the expenses to maintain the hardware remains a factor.

Improvements in technology create economies of scale, but those savings have been overwhelmed by increased financial privacy, identity theft, and cybersecurity protection requirements. Software costs (purchases from vendors and internal development to integrate new systems), hardware costs, and compliance training costs have exceeded technology economies of scale since 2013.

Market conditions over the last decade have allowed companies to absorb increasing costs without raising rates or reducing the availability of credit for borrowers on the margin of approval for a loan. Companies in this industry rely on capital markets to obtain the money which is in turn lent to Texans. The below graph shows the 3-year Swap rate (i.e., “risk free rate” and a benchmark rate for wholesale borrowing) since 2000 and shows that since the Great Financial Crisis of ‘08/’09, rates have been historically low due to the slow pace of recovery and – until recently – low inflation. A return to even pre-recession levels would be an increase of almost six times (5.62% in June ’07 vs 1.04% today) just in benchmark rates.



For reference, the financial markets expect this rate to be approaching 1.5% by late 2022, a 50% increase. While low costs of funds have enabled licensees to absorb cost increases over the decade, history and the financial markets tells us these costs will increase in the future.

TCCC members have attempted to demonstrate how net origination costs (technology economies of scale vs. labor, occupancy cost increases) at some of the largest industry participants have not

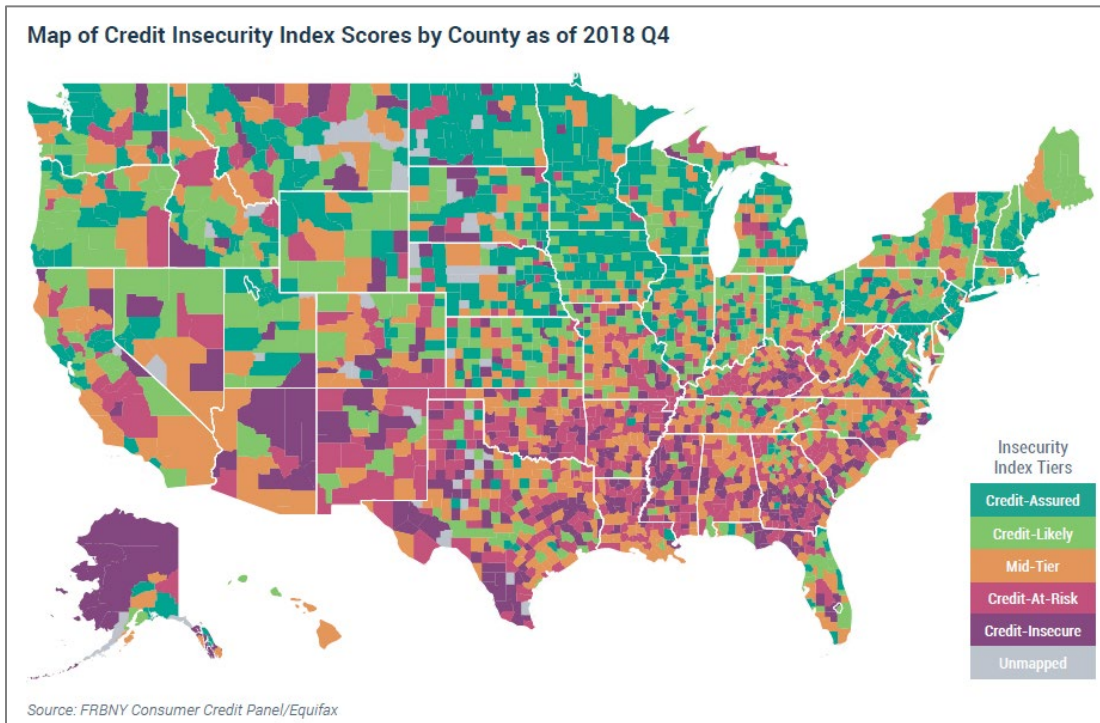
improved despite the success of the companies as whole. Companies have found ways to increase profitability and be more efficient – much like the OCCC has found ways to increase salaries but decrease the overall budget – but one cannot say successful companies necessarily have lower input costs. All businesses are unique and achieve success in diverse ways.

If the administrative fee is increased, how many additional consumers would be served?

This question implies that an increase in the administrative fee would be utilized as a “back door” attempt to increase the effective interest rate charged to our clients. This is not the intent of the Coalition’s administrative fee increase request. Our request is to adjust the fee to more accurately reflect the administrative costs associated with originating a loan under Chapter 342, Subchapter E and thereby ensure that borrowers are fully underwritten so that we may properly match our products to those we serve.

What would be the benefits of amending the rule at this time?

According to the Federal Reserve Bank of New York’s [“Unequal Access to Credit: the Hidden Impact of Credit Constraints”](#), Texas has a credit insecurity index score that indicates being “credit-at-risk” with an outsized number of counties in these designations.



In its most recent listing of the fifty most credit insecure counties in the United States, the Federal Reserve Bank of New York identified fourteen Texas counties on their list, representing 28% of the most underserved counties.

An administrative fee adjustment will help Chapter 342E lenders offset a sizable portion of the actual costs incurred in making affordable credit available in local communities across Texas ensuring the continued availability of beneficial consumer credit to the widest range of qualified borrowers.

On behalf of the TCCC, thank you for the opportunity to respond to your questions. We look forward to collaborating with you and your staff during the Rule Review process.

Sincerely,

A handwritten signature in cursive script that reads "Deborah Goodell Polan". The signature is written in black ink and is positioned above the typed name.

Deborah Goodell Polan

General Counsel



December 15, 2021

Matthew Nance, Deputy General Counsel
Office of the Consumer Credit Commissioner
Texas Finance Commission
2601 N Lamar Blvd.
Austin, TX 78705
Sent via email to: rule.comments@occc.texas.gov.
RE: Regulated Lender Administrative Fee Rule

Dear Mr. Nance,

The Texas Fair Lending Alliance and Faith Leaders 4 Fair Lending are coalitions of community and faith leaders who support regulatory and legislative reforms to protect vulnerable Texans from high-cost loans and promote financial wellbeing. We believe that consumer lending policies should encourage affordable credit that helps to build financial security for hard-working families.

We are offering comments in response to the [Proposed Rule Review](#) of Texas Administrative Code, Title 7, Part 5, Chapter 83, Subchapter A, concerning Rules for Regulated Lenders. Overall, we agree that a continued need for the rules exists. We would like to emphasize the importance of consumer protections that currently exist in the regulated lender rules and strongly encourage maintaining those in support of a healthy market for borrowers and lenders alike.

In the informal pre-comment period that closed on December 2, 2021, the Office of Consumer Credit Commissioner (OCCC) requested general comments on the rule review as well as specific comments related to a request by a group of lenders to increase the permissible administrative fee in the regulated lender administrative fee rule under Texas Administrative Code, Title 7, Section 83.503. The group of lenders is requesting a 100% increase in the administrative fee for a 342 E loan. We would like to express substantial concern regarding this request and our comment below provide details regarding our concerns.

Under current Sec. 83.503 rules, 342 E lenders can charge a flat \$100 fee per loan. They are asking to double that amount to \$200 despite substantial evidence that unique costs associated with underwriting a loan, closing a loan, and disbursing payments are decreasing. As we will elaborate below, we do not believe a fee increase is justified because the administrative costs of closing a loan and providing money to borrowers have decreased in the 8 years since the rule was originally adopted as a result of increased efficiencies driven by technology and increased borrower adoption of online platforms to originate loans.

In 2013, when the administrative fee increased to \$100, it increased from \$25, a 400% increase. If the loan charge is increased again and to the rate the lenders are requesting, **they would be**

charging 800% more in administrative fees compared to 2013, an astounding rate of increase, particularly in light of the increased efficiency that technology has brought to the process of closing a loan and providing money to the borrower.¹

In 2019, according the OCCC data, there were [795,552](#) Chapter 342-E loans. Based on this loan volume, doubling the administrative fee would cost borrowers **\$79.55 million** more in upfront fees than they are currently paying. In addition, this fee is often financed into the loan, and so the actual cost to borrowers over the life of a loan (on average 2 to 5 years) would be an additional \$26 to \$71.3 million (assuming a 2 to 5-year loan term with no refinance and a 28.8% interest rate). Based on this estimate, **the total added periodic cost to Texas borrowers, would be a minimum of \$105.6 million to \$150.9 million.**

We are concerned about imposing such a high cost on Texas borrowers. The push to double administrative fees appears to be a backdoor attempt to effectively raise rates on these loans by increasing the total cost of credit for borrowers, rather than a response to expected rising costs. Infact, all evidence points in the opposite direction, that administrative fees should, in the coming years, be less expensive:

1. Publicly available data regarding 342 E lenders indicate that these businesses are successful and growing. They are also expanding their loan offerings to include smaller loans, in the \$1,500 to \$3,000 range.
2. Many 342 E lenders are expanding offerings to additional products, such as credit cards and credit insurance products. This cross-selling should lead to lower administrative fees for regulated loans, as the same underwriting systems and staff time are being used to administer multiple products and not just regulated loans.
3. HB 3510, which passed in the 87th Texas Legislative Session and codified under Sec. 341.503, Finance Code, creates a new opportunity for added efficiency and to expand benefits from any investments made due to COVID-related shifts to work from home, as does improved technology; and
4. 342 E lenders should not attribute marketing costs, loan collection costs, and costs related to service of existing customers to the administrative fee, as those are separate from the costs to underwrite and disburse a particular loan.

Detailed Discussion

1. Publicly available data regarding 342 E lenders indicate that these businesses are successful and growing. They are also expanding their loan offerings to include smaller loans, in the \$1,500 to \$3,000 range.

According to OCCC data the dollar value of these 342 E loans more than tripled from 2014 to

¹ In contrast, the [Bureau of Labor Statistics](#) reports that costs have increased less than 20% since 2013. Doubling from \$100 to \$200 implies a 9% per year growth rate, while in fact the annual inflation rate over the last 8 years has averaged 1.9%. In addition, this rate of inflation does not accommodate for savings due to increased use of technology and increased efficiency

2019, from \$1.4 billion to \$4.5 billion.² A deeper dive into the data, looking at the most recent 5-year period beginning in 2016 shows consistent annual increases in the number of unique businesses licensed as 342 E lenders, the number of licensed locations, the total number of

342 E Licensee Data from the OCCC

2016-2019

Year	# of Unique Licensees	# of Licensed Locations	Total # of Loans	Total Dollars Lent
2016	263	985	412,786	\$2,583,684,922
2017	284	1102	608,371	\$3,387,076,267
2018	298	1120	688,876	\$3,996,434,929
2019	315	1270	795,552	\$4,451,851,105

Source: Licensing Data for 342 E Lenders from the OCCC, 2016-2019, obtained by Texas Appleseed through public information requests.

Loans, and the total dollar amount lent. All of these numbers taken together reflect a vibrant market with increased volume and efficiency. Though the total dollar amount lent by 342-E lenders in 2020 decreased to \$3,895,401,923, due to lower credit demand by borrowers stemming from economic impacts of the COVID-19 pandemic, the total number of loans in Texas increased to [816,133](#).

Similar trends are also reflected in publicly available documents regarding the largest 342 E lenders in Texas. For example, OneMain Holdings, a major lender in Texas, reported “pretax income of \$463 million and net income of \$350 million for the second quarter of 2021, compared to \$118 million and \$89 million, respectively, in the prior year quarter” – a 393% increase in net income year over year. During the second quarter of 2021, the Company repurchased 612,000 shares of common stock and declared a dividend of \$4.20 per share.³

Even during 2020, at the height of the pandemic’s economic impacts, the company boasted strong performance. According to OneMain CEO, Doug Schulman, “2020 was a year of strong financial performance, as we generated \$1.1 billion of capital, \$81 million more than 2019, and drove net charge offs to an all-time low of 5.5%. This significant capital generation allowed us to simultaneously originate attractive loans, reinvest in growth initiatives, and distribute meaningful capital to shareholders. We returned \$6.27 to our shareholders in 2020, and this capital return is continuing into the first quarter with the declared dividend of \$3.95 per share. We’ve now declared almost \$13 in dividends since we started paying a regular dividend in February 2019, two years ago.”⁴ Strong loan performance and a desire to reach a broader market has also led OneMain to add new products, including a smaller loan of as low as \$1,500, which the company

² https://occc.texas.gov/sites/default/files/uploads/pub/2020_study_consumer_loan_products.acc_.pdf , at 5.

³ <https://investor.onemainfinancial.com/News/news-details/2021/OneMain-Holdings-Inc.-Reports-Second-Quarter-2021-Results/default.aspx>.

⁴ OneMain February 9, 2021 Earnings Call, available at: <https://78449.choruscall.com/dataconf/productusers/omf/mediaframe/43290/indexr.html>.

is actively marketing.⁵

Pre-Approved Offer From OneMain in Austin, Texas in July of 2021

You're invited to apply for a loan of up to \$10,000.¹
See why 16 million Americans have trusted OneMain Financial.

We all experience the unexpected. And here at OneMain, offering help is what we do. That's why you're invited to apply for a loan from **\$1,500 to \$10,000.**¹

As the nation's largest lending-only financial institution, we're proud that we've helped 16 million people get the money they need, when they've needed it.

To be eligible for this offer, you must apply at OMF.com/offer, call 512-406-0214 or 800-713-2299, or stop by your local branch.

Sincerely,
Sierra Gonzales
Sierra Gonzales
Branch Manager

EXTRA FAST – AND EXTRA EASY

- 1 Our online application takes just minutes to complete.
- 2 Receive your money as soon as one hour after loan closing, if approved.²
- 3 Extra fast doesn't mean extra pressure. You always have 7 days to change your mind. See reverse for details.

Want to find out more?
Tell your smart speaker:
Alexa: "Open Respond Fast"
Google: "Talk to Respond Fast"
Use phrase: "OneMain Offer"

LOAN OFFER AMOUNT:	STATUS EXPIRES:	OFFER NUMBER:
Up to \$10,000 ¹	July 5, 2021	[REDACTED]

The OneMain Consolidated Income Statement from February 21, of 2021 shows a steady decrease in operating expenses over the past three fiscal years.⁶ The decrease in operating expenses coupled with the stock buy backs, increasing dividends, and growing product diversification all point to a likelihood that current administrative fees may be too high rather than too low.

In its most recent earnings presentation for Q3, 2021, OneMain announced additional dividends to shareholders, totaling \$9.55 over the last 12 months, and repurchased an additional 2.44 million shares.⁷ The presentation noted, "Our company generates considerable excess capital for reinvestment and capital returns."⁸ The company announced strong origination trends and record low charge offs. It also showed a reduced operating expense ratio, below 2019 levels, "despite continued investment in the business."⁹

Regional Finance (Regional Management Corporation) shows a similar positive financial profile. It had record low contractual delinquencies as of March of 2021 (4.3%), had record net income, and completed a \$30 million stock buyback program, of 951,841 shares.¹⁰ The company also announced reduced operating costs and substantial investment in growth initiatives.¹¹ In its third

⁵ *Id.*

⁶ Operating expenditures were as follows, in millions: FY 2018, \$1,493; FY 2019, \$1,367; FY 2020, \$1,329. Source: *OneMain Financial Company Overview*, at 18 (Feb. 21, 2021).

⁷ [OneMain Financial 3Q21 Earnings Presentation](#), at 15 (October 21, 2021).

⁸ *Id.*

⁹ *Id.*, at 12.

¹⁰ <https://www.regionalmanagement.com/news-and-events/news/press-release-details/2021/Regional-Management-Corp.-Announces-First-Quarter-2021-Results/default.aspx>.

¹¹ *Id.*

quarter 2021 results, the company CEO, Robert W. Beck announced, “We had another fantastic quarter, as our strategic initiatives continued to fuel record growth...Our sustained focus on geographic expansion, digital investment, and product and channel development enabled us to reach new consumers and gain market share, driving record sequential portfolio growth of \$130.8 million in the quarter. Our portfolio exceeded \$1.3 billion at quarter-end, generating record revenue of \$111.5 million, up 23% year-over-year. As a result, we posted \$22.2 million of net income and very attractive returns of 7.1% ROA and 31.6% ROE.”¹² In the same report, the company announced the launch of “end-to-end digital lending,” indicating that the company will see lower loan costs in the future, as digital lending expands.

As part of the stakeholder meeting held by the OCCC, a representative of banks provided some added insight into appropriate administrative charges when asked about bank charges. The representative indicated that, “It varies all across the board. Some banks charge the full \$100. There are others that charge \$25. There are banks that charge it on a sliding scale.” With banks charging less than the full \$100 fee in at least some circumstances, along with the positive financial profile and growth in lending for 342 E licensees, little evidence supports the need for higher fees. Instead, lower fees should be considered if permitted maximum fee amount is changed.

2. Many 342 E lenders are expanding offerings to additional products, such as credit cards, credit insurance, credit building products, and savings products. This cross-selling should lead to lower administrative fees for regulated loans, as the same technology platforms, underwriting systems, and staff time are being used to administer multiple products and not just regulated loans.

A number of 342 E lenders sell credit life, credit disability, and credit unemployment insurance in conjunction with loans. The fees for these insurance products are generally financed into the loan principal, providing added interest income associated with the loans. These products, generally offered through an insurance company owned by the same parent company as the lender, are optional and are actively marketed to customers. A sample of over 300 342 E contracts found one or more insurance products purchased in 65% of the contracts, adding between 1% and 13% to the principal of the loan.¹³

Though not all 342 E lenders sell insurance, the vast majority do, and any time spent explaining, marketing, or selling those products should not be included in the costs attributed to the administrative fee. In the stakeholder meeting, one lender representative initially indicated that the time spent selling those products was “infinitesimal,” but went on to acknowledge that it could take, “5 min, 10 min, 15 minutes,” indicating that, in actuality, it takes a meaningful amount of time to explain the various insurance products, market them to customers, and obtain the customer’s approval to purchase the product.

At least two 342 E lenders, Oportun and OneMain, are launching or have launched credit card

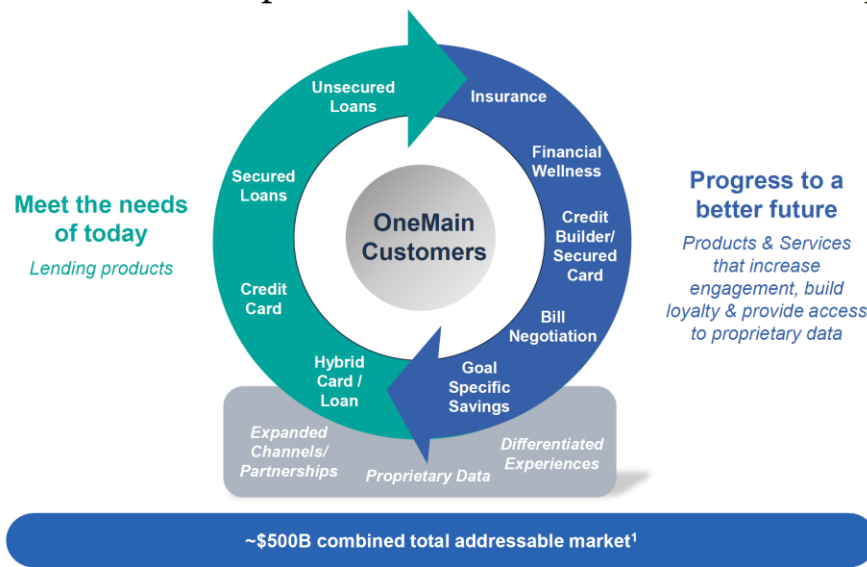
¹² “[Regional Management Corp. Announces Third Quarter 2021 Results](#),” (Nov. 2, 2021).

¹³ Texas Appleseed analysis of 358 OneMain contracts obtained through lawsuit case records filed in Harris County in 2019.

products. Any investments in systems and underwriting that also benefit those new products should not be attributed to the administrative fee of the 342 E loan and should offset overall operating expenditures.

In its most recent earnings presentation, OneMain profiled a plan for the coming five years that involves a broad continuum of products and services for customers.¹⁴ The graphic below offers further evidence that costs uniquely attributable to underwriting a loan should be carefully pulled out of general technology and operating costs.¹⁵ The discussion in the graphic of proprietary data, which indicates possibly monetizing customer data, provides compelling evidence that actual costs uniquely associated with a loan should not only exclude any costs associated with cross-selling other products, but also should be offset by income or financial benefit that the company derives from borrower data related to the loan transaction.

Future Vision Deepens & Broadens Customer Relationships



OneMain Financial. 1. Source: Internal analysis of third-party credit data. Reflects near-prime credit card and personal loans, with a Vantage score of 550-700. Personal loans reflects original loan balance \$1-30k.

Another publicly traded 342 E company, Oportun, appears to have experienced financial hardship at the height of the stay-at-home orders in Q2 of 2020, with major improvement since that quarter. Most interesting is that this company also experienced extremely low loan defaults, and though it reported higher “customer acquisition costs”¹⁶ for Q2 2020, it is noteworthy that

¹⁴ *Supra* note 7, at 6.

¹⁵ *Id.*

¹⁶ [Oportun Investor Presentation](#) (June 2021) at 25 shows 30+ delinquencies consistently in the 3% to 4% range. In the same report, the company defines “customer acquisition costs” as: “sales and marketing expenses, which include the costs associated with various paid marketing channels, including direct mail, digital marketing and brand marketing and the costs associated with our telesales and retail operations divided by number of loans originated and new credit activated to new and returning customers during a period.” at 29. Pages 30 and 31 of the same report detail customer acquisition costs (CAC) including the average CAC per quarter, calculated based on their methodology, the number of loans, and the operating expenditures for marketing and sales. Though the number of loans varies widely across quarter, from a high of 153,847 to a low of 48, 193 (a 69% fluctuation from the highest to the lowest value), the operating expenditures for sales and marketing see a much small fluctuation, from \$24.8 million to \$20.1 million (a fluctuation of just 19% from the highest to the lowest cost).

associated operations costs were largely fixed across quarters, no matter the number of loans completed. They are a combination of sales and marketing costs, and costs for the Oportun credit card product offered through WebBank. The data indicate that the majority of costs are in the marketing arena and that the administrative fees unique to a loan transaction are quite low, as they appear to make up just a small proportion of the overall costs in this category. The overall costs also point to financial stress being attributed to a lack of demand for the loan products rather than any rising or excessing administrative fees uniquely associated with underwriting and disbursing a loan. The administrative fee should not be used a way to recoup costs related to soft loan demand.

In recent months, Oportun has aggressively expanded its operations and product lines with the purchase of Digit, a money management app that offers accounts and savings opportunities through a bank partnership, for \$212.9 million. Oportun CEO Raul Vasquez stated, “In Digit, we are purchasing a proven and scalable neobanking solution that gets us to market 3-5 years earlier than if we were to build it on our own.”¹⁷ Oportun has reported nearly 1000% growth in its credit card business as well as increased loan originations and decreased defaults.¹⁸ In addition, Oportun also announced substantial refunds for 3,600 borrowers in Illinois with loan APRs above 36%, to bring them in line with a newly adopted all-in 36% rate cap for loan in that state. While commendable, it is interesting to note that a similar refund was not announced for Texas borrowers who have loans outstanding at rates above 36% APR.¹⁹

3. HB 3510, which was passed in the 87th Texas Legislative Session, creates a new opportunity for added efficiency and to expand benefits from any investments made due to COVID-related shifts to work from home, as does improved technology.

HB 3510, adopted in the 87th legislative session and codified as Sec. 341.503, Finance Code, creates additional flexibility for OCC-regulated lenders and enables them to continue to benefit from the infrastructure investments made to accommodate work shifts tied to the COVID-19 pandemic.²⁰ This law is designed to provide tools to regulated lenders to improve efficiency while maintaining legally compliant practices. Among other provisions, HB 3510 allows an employee of a license holder to work from a remote location if they ensure that in-person consumer interactions are conducted at a licensed location, maintain appropriate safeguards for consumer data, utilize risk-based monitoring and oversight processes for work, sets out recordkeeping requirements, and requires employee training.

These provisions reflect an on-going trend in the industry to leverage efficiencies enabled by technology. Though the COVID-19 pandemic caused substantial disruption, it also sped up transitions towards more efficient business operations. For example, in its February 9, 2021 Investor Call, OneMain noted that 40% of customers closed their loans digitally in the 4th quarter

¹⁷ [“Oportun Announces Definitive Agreement to Buy Digit,”](#) (Nov. 16, 2021).

¹⁸ [“Oportun Investor Presentation,”](#) (September 2021).

¹⁹ [“Borrowers, Woodstock Institute Challenge Other Lenders to Take Similar Action,”](#) (November 18, 2021).

²⁰ [Bill Analysis, HB 3510,](#) 87th Texas Legislative Session.

of 2020.²¹ The company also touted its artificial intelligence (AI) and machine-learning based underwriting model that leverages 1,400 unique pieces of data.²² Oportun has noted similar trends, touting its own AI-driven underwriting platform that used, “billions of data points.”²³ This same trend of improved efficiency and streamlined underwriting capacity was highlighted by one of the 342 E lender representatives in the stakeholder meeting, who noted that the increase in the use of technology, “has created a huge amount of data which is used by the company to make things better for the company, to help market to the consumer, so that they are charged the appropriate rate.”

All these factors together point to a lending industry on the cusp of major changes that should continue to improve efficiency and reduce cost. Given that any increase in administrative fees is forward rather than backwards looking, trends do not support increasing the fees and could instead offer support for a decrease in those charges.

4. 342 E lenders should not attribute marketing, collection, and costs related to service of existing customers to the administrative fee, as those are separate from the costs to underwrite and disburse a particular loan.

Costs, such as marketing, producing, and mailing pre-approved offers, costs for loans that are not approved, and general operating costs, such as collections, customer service, and efforts to market refinances to existing customers are not related to origination and should not be included in the administrative fee. Based on the stakeholder meeting, it appears that some lenders are trying to attribute those unrelated costs to the administrative fee.

One stakeholder mentioned increased costs to protect against data breaches and secure customer data were part of the rationale for increasing the fees. Another noted, “We have to build that computer to protect against the hacking, theft of data and all the things that go along with security functions.” Such costs are general operating costs and are distinct from specific loan underwriting and disbursement costs.

One stakeholder highlighted that, “We, on average, end up booking one out of four applications. Those represent costs that are never recovered.” Successful customers should not be required to absorb the cost of those that are unsuccessful, and the administrative fee should not be a means to offset such general operating expenditures.

Marketing and expenditures related to pre-approvals of new and refinanced loans should also not be considered as part of the administrative fee. One stakeholder bemoaned the expense of online marketing, “One of the costs of the digital revolution is the affiliate cost and the aggregator cost—Credit Karma and Lending Tree. Google is not cheap to move you to the appropriate spot.” These are general operating expenses and business choices, but they are not attributable to the administrative fee for a particular loan.

²¹ OneMain February 9, 2021 Earnings Call, available at: <https://78449.choruscall.com/dataconf/productusers/omf/mediaframe/43290/indexr.html>.

²² *Id.*

²³ [Oportun Investor Presentation](#) (June 2021) at 6.

Though some stakeholders indicate refinances have the same cost as an initial loan, that does not ring true. Most refinances take place because they are actively marketed to customers. It is likely that much of the loan approval process has already been completed, as part of the pre-approval for marketing of the refinance, and therefore should not be included as part of the administrative fee. This point is important because refinances are a big part of the business. Though refinance data for the full 342 E market is not publicly available through the state regulator, one major market player indicated in a recent investor phone call that 50% of customers refinance at some during their loan term.²⁴

Available data regarding 342 E lenders in Texas point to a vibrant and growing market fueled by technology and product innovation (like adding new credit card products and other products and services to the mix of loans). Though COVID brought challenges and reduced demand for loans for a period of 2020, most companies appear to have weathered that well, buying back tens of millions of dollars in stocks and paying meaningful dividends to stockholders.

Based on comments in the stakeholder meeting we have substantial concerns that this effort is based in a backdoor attempt to raise the cost of 342 E loans. As one stakeholder noted, “I believe and our trade association believes that by increasing this origination charge, it will enable us to serve more subprime and more near prime customers. Even to the point of down in the credit desert. This fee will allow us to reach deeper into the desert.” This perspective is concerning as it emphasizes that the fee increase is really perceived as a way to raise the return on the loans rather than an accommodation for loan-specific administrative costs. In fact, data in the market, as it stands, shows promising trends of offering smaller loans—\$1,500 and smaller—within the current cost structure of 342 E loans, challenging the notion that a “credit desert” even exists.

The cost to Texans of making this change is substantial and the evidence to support it is weak at best. Given the many transitions, the expanding 342 E lending market, and the increased use of online originations and of technology, we urge the OCCC to maintain the administrative fee at its current level. If a change is made, we recommend reducing the fee based on substantial evidence of added efficiencies for 342 E lenders.

Thank you for considering our comments and we look forward to working with you in support of the financial wellbeing of Texans and a fair consumer credit market in our state.

Sincerely,

Jennifer Allmon
Texas Catholic Conference of Bishops
jennifer@txcatholic.org

Ann Baddour
Texas Appleseed
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²⁴ OneMain February 9, 2021 Earnings Call, available at:
<https://78449.choruscall.com/dataconf/productusers/omf/mediaframe/43290/indexr.html>.

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B. OFFICE OF CONSUMER CREDIT COMMISSIONER

5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 5, Chapter 83, Subchapter A, Concerning Rules for Regulated Lenders, Resulting from Rule Review

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

RECOMMENDED ACTION: The OCCC requests that the Finance Commission approve the amendments to 7 TAC Chapter 83, Subchapter A for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve for publication and comment the amendments to 7 TAC Chapter 83, Subchapter A.

Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 83. Regulated Lenders and Credit Access Businesses
Subchapter A. Rules for Regulated Lenders

The Finance Commission of Texas (commission) proposes amendments to §83.101 (relating to Purpose and Scope), §83.205 (relating to Loans by Mail and Internet), §83.301 (relating to Definitions), §83.308 (relating to Relocation), §83.404 (relating to Denial, Suspension, or Revocation Based on Criminal History), §83.504 (relating to Default Charges), §83.602 (relating to Default Charges), §83.703 (relating to Default Charges), and §83.834 (relating to Unclaimed Funds) in 7 TAC, Chapter 83, Subchapter A, concerning Rules for Regulated Lenders.

The rules in 7 TAC Chapter 83, Subchapter A govern regulated lenders. In general, the purpose of the proposed rule changes to 7 TAC Chapter 83, Subchapter A is to implement changes resulting from the commission's review of the subchapter under Texas Government Code, §2001.039. In November 2021, the OCCC issued an advance notice of rule review, seeking informal feedback on the rule review. Notice of the review of 7 TAC Chapter 83, Subchapter A was published in the *Texas Register* on December 3, 2021 (46 TexReg 8261). The commission received two official comments in response to that notice. Both of these official comments deal with whether the commission should amend the maximum administrative fee in §83.503 (relating to Administrative Fee). The OCCC intends to study this issue further.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder webinar regarding the rule

changes. The OCCC received five precomments on the rule text draft. The five precomments deal with whether the commission should amend the maximum administrative fee in §83.503. The OCCC intends to study this issue further.

Proposed amendments to §83.101 would ensure that language about the scope of the rules is consistent with amendments in HB 1442, which the Texas Legislature passed in 2019. HB 1442 amended Texas Finance Code, §342.005 to state that Chapter 342 applies to a consumer loan made to a person who is located in Texas at the time the loan is made. To be consistent with this statutory amendment, the proposal would add the phrase "to a person located in Texas at the time the loan is made" in subsection (b)(1)(B). The proposal would also remove the phrase "or secured by a lien on real estate" in subsection (b)(1)(C)(i). This phrase is unnecessary, because subsection (b)(1)(C)(ii) specifies that the rules apply to a secondary mortgage loan, which is the type of real-estate-secured loan that is subject to Chapter 342 (and therefore subject to the rules).

Proposed amendments to §83.205 would ensure that language about online loans is consistent with amendments in HB 1442 (2019). HB 1442 added the words "or online" to Texas Finance Code, §342.053(b), which deals with loans by mail. As a result of the amendment, Texas Finance Code, §342.053(b) now states: "A lender may make, negotiate, arrange, and collect loans by mail or online from a licensed office." This proposal would add the words "or online" in §83.205(b) and (c), to use wording that is

consistent with the statute. The proposal would remove subsection (d), which currently provides that an internet loan is considered a "loan by mail," because this language would no longer be necessary due to the other changes to §83.205. The proposal would also amend the title of the section to replace "and Internet" with "or Online," to use wording that is consistent with the statute.

Proposed amendments to §83.301 would update the definition of "net assets." The amendment would explain that debt may be subordinated to the net asset requirement under certain conditions. This would ensure consistency with other OCCC rules regarding net assets. This would also ensure consistency with Texas Attorney General Opinion No. DM-332 (1995).

Proposed amendments to §83.308 relate to notifying debtors when a licensed lender relocates. Currently, §83.308(b) requires licensees to mail a notice to all debtors before relocation of an office. A proposed amendment to §83.308(b) explains that a licensee may send this notice by email in lieu of mail if the debtor has provided an email address to the licensee and has consented in writing to be contacted at the email address. The commission believes that this change will improve licensees' ability to use electronic communication to ensure compliance. This change responds to an informal comment that proposed revising this subsection to allow electronic notice.

Proposed amendments to §83.404 relate to the OCCC's review of the criminal history of a regulated lender applicant or licensee. The OCCC is authorized to review criminal history of regulated lender applicants and licensees under Texas Occupations Code, Chapter 53; Texas Finance Code, §14.109;

and Texas Government Code, §411.095. The proposed amendments to §83.404 would 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. Proposed amendments throughout subsections (c) and (f) of §83.404 would implement these statutory changes from HB 1342. Other proposed amendments to §83.404 include technical corrections, clarifying changes, and updates to citations.

Proposed amendments to §83.504, §83.602, and §83.703 would remove references to the Federal Reserve Board's Regulation AA. The Federal Reserve Board repealed this rule in 2016. 81 Fed. Reg. 8133 (Feb. 18, 2016). The proposed amendments to §83.504, §83.602, and §83.703 would maintain current references to the Federal Trade Commission's Credit Practices Rule, 16 C.F.R. §444.4, and therefore would not affect the current prohibition on pyramiding late charges.

Proposed amendments to §83.834(d) would make technical changes relating to the escheat of unclaimed funds. Amended text in this subsection (d) would reflect that unclaimed funds are submitted to the "Unclaimed Property Division" of the Texas Comptroller of Public Accounts. Another

proposed amendment would add a reference to Texas Property Code, §74.301, in order to provide a more complete statutory reference for the requirement to pay unclaimed funds to the state after three years.

Huffman Lewis, Director of Consumer Protection, has determined that for the first five-year period the proposed rule changes are in effect, there will be no fiscal implications for state or local government as a result of administering the rule changes.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of the changes will be that the commission's rules will be more easily understood by licensees required to comply with the rules, will ensure that licensees may charge a maximum administrative fee that keeps pace with changing costs, will be consistent with legislation recently passed by the legislature, and will better enable licensees to comply with Chapter 342 of the Texas Finance Code.

The OCCC does not anticipate economic costs to persons who are required to comply with the rule changes as proposed.

The OCCC is not aware of any adverse economic effect on small businesses, micro-businesses, or rural communities resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule changes, the OCCC invites comments from interested stakeholders and the public on any economic impacts on small businesses, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses, micro-businesses, and rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposal does not require an increase or decrease in fees paid to the OCCC. The proposal would not create a new regulation. The proposal would limit §83.301 by allowing certain subordinated debt to be included in net assets; and would limit current §83.404 by amending grounds on which the OCCC may deny, suspend, or revoke a license on grounds of criminal history. The proposal would not expand or repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rule's applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Matthew Nance, Deputy General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before the 30th day after the date the proposal is published in the *Texas Register*. After the 30th day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The rule changes are proposed under Texas Finance Code, §342.551, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 342.

Chapter 83. Regulated Lenders and Credit Access Businesses

Subchapter A. Rules for Regulated Lenders

Division 1. General Provisions

§83.101. Purpose and Scope

(a) Purpose. The purpose of this subchapter is to assist in the administration and enforcement of Texas Finance Code, Chapter 342.

(b) Scope.

(1) This subchapter applies to all persons engaged in the business of making, transacting, or negotiating loans subject to Texas Finance Code, Chapter 342. As such, this subchapter only applies to lenders and brokers in the business of making, transacting, or negotiating loans that:

(A) contract for, charge, or receive interest in excess of 10% per year;

(B) are loans extended primarily for personal, family, or household use to a person located in Texas at the time the loan is made; and

(C) are either:

(i) unsecured [~~or secured by a lien on real estate~~];

(ii) secured under a secondary mortgage loan; or

(iii) secured by personal property.

(2) This subchapter applies to term loans extended primarily for personal, family, or household purposes.

(3) This subchapter also applies to a loan broker who arranges, negotiates, or brokers loans for a lender that funds the loan. This subchapter does not apply to any loans made under Texas Finance Code, Chapters 301 - 308 or Chapter 339, including commercial and agricultural loans.

Division 2. Authorized Activities

§83.205. Loans by Mail or Online [~~and Internet~~]

(a) Definitions. The words "make," "negotiate," "arrange," and "collect" as used in Texas Finance Code, §342.053(b) are to be construed according to the definitions contained in §83.204(a) of this title (relating to Multiple Licenses).

(b) Application. Any office, wherever located, making, negotiating, arranging, or collecting loans by mail or online must be licensed. For example, if a lender receives and reviews loan applications at one office, makes the loan decision at another office, funds the loan at a third, and collects past-due payments from another, all of these offices involved in lending by mail must be licensed.

On the other hand, an office that merely receives, records, accounts for, and processes payments need not be licensed.

(c) Authorized lenders. The following entities with offices located outside of Texas may make loans by mail or online to Texas residents and are considered to meet the definition of authorized lender as contained in §83.102 of this title (relating to Definitions):

(1) a person who has obtained a regulated loan license from the OCCC;

(2) a bank, savings bank, savings and loan association, or credit union doing business under the laws of this state, another state, or the United States;

(3) a bank, savings bank, or savings and loan association chartered in another state and insured by the Federal Deposit Insurance Corporation; and

(4) a credit union chartered in another state and insured through the National Credit Union Share Insurance Fund.

~~[(d) Internet loans. For purposes of Texas Finance Code, §342.053(b), a loan made, negotiated, arranged, or collected by or through the Internet is considered a "loan by mail."]~~

Division 3. Application Procedures

§83.301. Definitions

Words and terms used in this subchapter that are defined in Texas Finance Code, Chapter 342, have the same meanings as defined in Chapter 342. The following words and terms, when used in this subchapter, will

have the following meanings, unless the context clearly indicates otherwise.

(1) Net assets--The total value of acceptable assets used or designated as readily available for use in the business, less liabilities, other than those liabilities secured by unacceptable assets. Unacceptable assets include, but are not limited to, goodwill, unpaid stock subscriptions, lines of credit, notes receivable from an owner, property subject to the claim of homestead or other property exemption, and encumbered real or personal property to the extent of the encumbrance. Generally, assets are available for use if they are readily convertible to cash within 10 business days. Debt that is either unsecured or secured by current assets may be subordinated to the net asset requirement pursuant to an agreement of the parties providing that the creditor forfeits its security priority and any rights it may have to current assets in the amount of \$25,000. Debt subject to such a subordination agreement would not be an applicable liability for purposes of calculating net assets.

(2) Principal party--An adult individual with a substantial relationship to the proposed lending business of the applicant. The following individuals are principal parties:

(A) a proprietor;

(B) general partners;

(C) officers of privately held corporations, to include the chief executive officer or president, the chief operating officer or vice president of operations, the chief financial officer or treasurer, and those with substantial responsibility for lending operations or compliance with Texas Finance Code, Chapter 342;

(D) directors of privately held corporations;

(E) individuals associated with publicly held corporations designated by the applicant as follows:

(i) officers as provided by subparagraph (C) of this paragraph (as if the corporation were privately held); or

(ii) three officers or similar employees with significant involvement in the corporation's activities governed by Texas Finance Code, Chapter 342. One of the persons designated must be responsible for assembling and providing the information required on behalf of the applicant and must sign the application for the applicant;

(F) voting members of a limited liability company;

(G) trustees and executors; and

(H) individuals designated as principal parties where necessary to fairly assess the applicant's financial responsibility, experience, character, general fitness, and sufficiency to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly as required by the commissioner.

§83.308. Relocation

(a) Filing requirements. A licensee may move the licensed office from the licensed location to any other location by paying the appropriate fees and giving notice of intended relocation to the commissioner not less than 30 calendar days prior to the anticipated moving date. Notification must be filed on the Amendment to Regulated

Loan License or an approved electronic submission as prescribed by the commissioner. The notice must include the contemplated new address of the licensed office, the approximate date of relocation, a copy of the notice to debtors, and the applicable fee as outlined in §83.310 of this title (relating to Fees).

(b) Notice to debtors. Written notice of a relocation of an office, or of transactions as outlined in subsection (c) of this section, must be mailed to all debtors of record at least five calendar days prior to the date of relocation. A licensee may send notice to a debtor by email in lieu of mail if the debtor has provided an email address to the licensee and has consented in writing to be contacted at the email address. Any licensee failing to give the required notice must waive all default charges on payments coming due from the date of relocation to 15 calendar days subsequent to the mailing of notices to debtors. Notices must identify the licensee, provide both old and new addresses, provide both old and new telephone numbers, and state the date relocation is effective. The notice to debtors can be waived or modified by the commissioner when it is in the public interest. A request for waiver or modification must be submitted in writing for approval. The commissioner may approve notification to debtors by signs in lieu of notification by mail, if in the commissioner's opinion, no debtors will be adversely affected.

(c) Relocation of regulated transactions. If the licensee is only relocating or transferring regulated transactions from one licensed location to another licensed location, the licensee must comply with subsection (b) of this section and provide, if requested, a list of regulated transactions relocated or transferred. This list of relocated or transferred regulated transactions must

include the loan number and the full name of the debtor.

Division 4. License

§83.404. 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 §83.310 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 342, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Originating, acquiring, or servicing loans under Texas Finance Code, Chapter 342 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, repossessing property without a breach of the peace, maintaining goods that have been repossessed, collecting due amounts in a legal manner, and foreclosing on real property in compliance with state and federal law. 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 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:]~~

PROPOSED AMENDMENTS

7 TAC CHAPTER 83

~~[(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, §342.104(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)(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) - (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)(3)-(4) ~~[(§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, §342.156(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, §342.104(a)(1) and §342.156.

Division 5. Interest Charges on Loans

§83.504. Default Charges

(a) Precomputed loans. Additional interest for default may be charged on a precomputed loan, whether regular or irregular, or on a precomputed loan contracted for on a scheduled installment earnings method, to the extent it is authorized by Texas Finance Code, §342.203 or §342.206.

(b) Interest-bearing loans. Additional interest for default may be charged on an interest-bearing Chapter 342, Subchapter E loan as authorized under Texas Finance Code, §342.203 or §342.206.

(c) Contract required. No default charge may be assessed, imposed, charged, or collected unless contracted for in writing by the parties.

(d) Default period. A default charge may not be assessed until after the 10th day after the installment due date. For example, if the installment due date is the 1st of the month, a default charge may not be assessed until the 12th of the month.

(e) Missed payment covered by insurance. When any payment or partial payment in default is later paid by some form of insurance, such as credit disability insurance, unemployment insurance, or collateral protection insurance, any prior assessment of additional interest for default must be waived.

(f) Pyramiding prohibited. An authorized lender seeking to assess additional interest for default on a precomputed loan under Texas Finance Code, §342.203 or §342.206 must comply with the prohibition on the pyramiding of late charges provided by the

Federal Trade Commission's Credit Practices Rule at 16 C.F.R. §444.4 [~~or in Regulation AA, 12 C.F.R. Part 227, promulgated by the Board of Governors of the Federal Reserve System, as applicable~~].

(g) Default charge on final installment of multiple payment loan. A default charge is allowed on the final installment of a multiple installment loan.

(h) Default charge on single payment loan. A default charge under Texas Finance Code, §342.203(d) or §342.206(b) is not allowed on a single payment loan. After maturity interest may be contracted for, charged, and collected on a single payment loan.

Division 6. Alternate Charges for Consumer Loans

§83.602. Default Charges

(a) Precomputed loans. Additional interest for default may be charged on a Texas Finance Code, Chapter 342, Subchapter F precomputed loan to the extent it is authorized by Texas Finance Code, §342.257.

(b) Subchapter F loans less than \$100. If the cash advance of the loan is less than \$100, an authorized lender may assess, charge, and collect a default charge equal to 5% of the scheduled installment amount if any part of the installment remains unpaid after the 10th day after the date on which the installment is due, including Sundays and holidays.

(c) Subchapter F loans equal to or greater than \$100. If the cash advance of the loan is equal to or greater than \$100, an authorized lender may contract for a default charge:

(1) that does not exceed 5% of the scheduled installment amount if any part of the installment remains unpaid after the 10th day after the date on which the installment is due, including Sundays and holidays; or

(2) that does not exceed 5% of the scheduled installment amount or \$10, whichever is greater, if any part of the installment remains unpaid after the 10th day after the date on which the installment is due, including Sundays and holidays.

(d) Contract required. No default charge may be assessed, imposed, charged, or collected unless contracted for in writing by the parties.

(e) Default period. A default charge may not be assessed until after the 10th day after the installment due date. For example, if the installment due date is the 1st of the month, a default charge may not be assessed until the 12th of the month.

(f) Pyramiding prohibited. An authorized lender seeking to assess additional interest for default on a precomputed loan under Texas Finance Code, §342.257 must comply with the prohibition on the pyramiding of late charges provided by the Federal Trade Commission's Credit Practices Rule at 16 C.F.R. §444.4 [~~or in Regulation AA, 12 C.F.R. Part 227, promulgated by the Board of Governors of the Federal Reserve System, as applicable~~].

(g) Default charge on final installment of multiple payment loan. A default charge is allowed on the final installment of a multiple installment loan.

(h) Default charge on single payment loan. A default charge under Texas Finance Code, §342.257 is not allowed on a single

payment loan. After maturity interest may be contracted for, charged, and collected on a single payment loan.

Division 7. Interest and Other Charges on Secondary Mortgage Loans

§83.703. Default Charges

(a) Precomputed loans. Additional interest for default may be charged on a precomputed secondary mortgage loan, whether regular or irregular, or on a secondary mortgage loan that employs the scheduled installment earnings method, to the extent it is authorized by Texas Finance Code, §342.302 or §342.305.

(b) Interest-bearing loans. Additional interest for default may be charged on an interest-bearing Texas Finance Code, Chapter 342, Subchapter G loan as authorized under Texas Finance Code, §342.302.

(c) Contract required. No default charge may be assessed, imposed, charged, or collected unless contracted for in writing by the parties.

(d) Default period. A default charge may not be assessed until after the 10th day after the installment due date. For example, if the installment due date is the 1st of the month, a default charge may not be assessed until the 12th of the month.

(e) Missed payment covered by insurance. If any payment or partial payment in default is later paid by some form of insurance, such as credit disability insurance or collateral protection insurance, any prior assessment of additional interest for default must be waived.

(f) Pyramiding prohibited. An authorized lender seeking to assess additional interest for default on a precomputed secondary mortgage loan under Texas Finance Code, §342.302 or §342.305 must comply with the prohibition on the pyramiding of late charges provided by the Federal Trade Commission's Credit Practices Rule at 16 C.F.R. §444.4 [~~or in Regulation AA, 12 C.F.R. Part 227, promulgated by the Board of Governors of the Federal Reserve System, as applicable~~].

Division 10. Duties and Authority of Authorized Lenders

§83.834. Unclaimed Funds

(a) Escheat suspense account. The licensee must transfer any amounts due a borrower not paid within one year, i.e., unclaimed funds, to an escheat suspense account. The transfer must be noted on the account record of the borrower.

(b) Required information. Evidence of a bona fide attempt to pay a refund to a borrower must be kept in the records of the borrower. The licensee must place with the records of the borrower any information received by the licensee that indicates the borrower has died leaving no will or heirs, or has left the community and the borrower's whereabouts are unknown. If deemed necessary with respect to a specific borrower, a licensee may be required to send the unclaimed funds by registered or certified mail to the last known address of the borrower.

(c) Use of unclaimed funds. Use of unclaimed funds within the business until such time as paid to the borrower, to the estate of the borrower, or to the State of Texas is not prohibited; however, funds transferred

to an escheat suspense account must not be commingled with the funds of the business.

(d) Escheat to state. At the end of three years, the unclaimed funds must be paid to the State of Texas Comptroller of Public Accounts, Unclaimed Property [~~Treasury~~] Division, as required by Texas Property Code, §72.101 and §74.301, or must be paid to the appropriate state or other governmental entity under the time period provided by the other state's or entity's applicable law.

(e) Record retention. The records of the escheat suspense account must be retained for a period of 10 years.

Certification

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

Issued in Austin, Texas on February 18, 2022.

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

C.

**Department of Savings and
Mortgage Lending**

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C. Department of Savings and Mortgage Lending

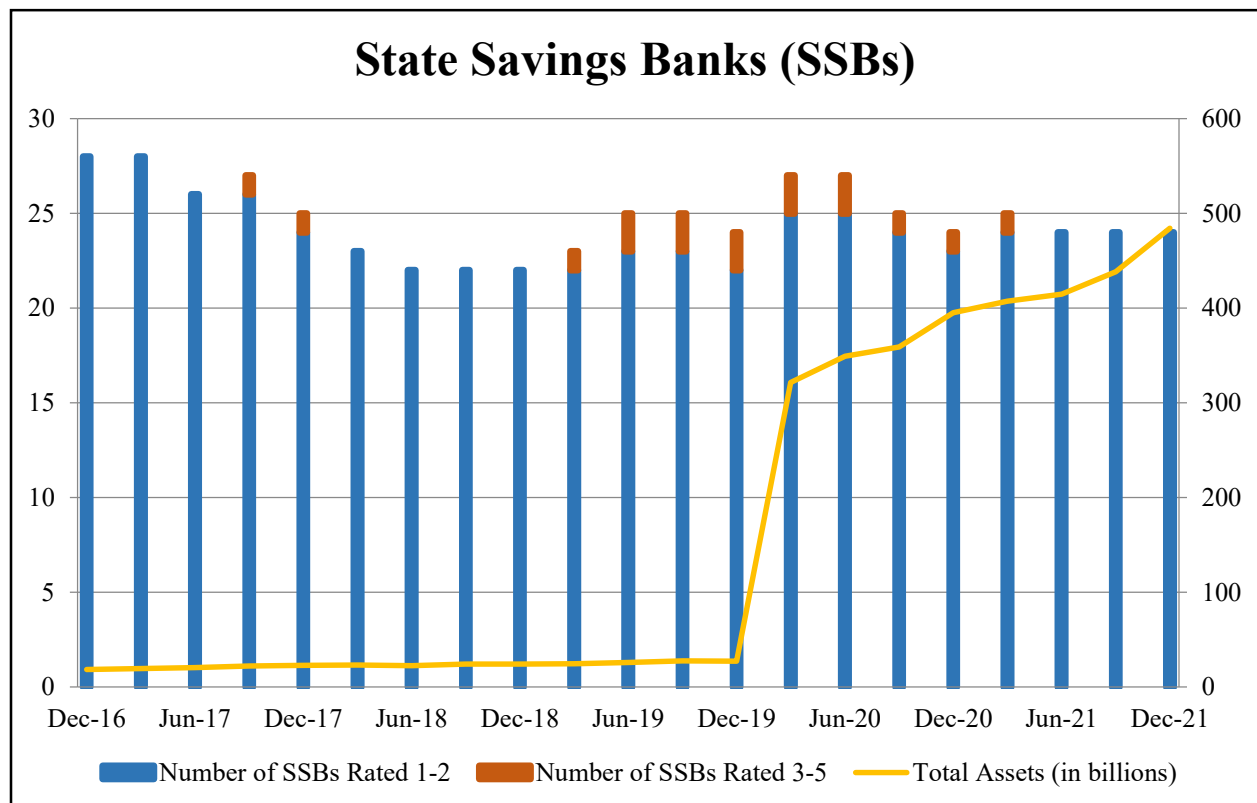
1. **Industry Status and Departmental Operations: a) Thrift Regulation Division Activities; b) Mortgage Regulation Division Activities; c) Operations Division Activities; d) Legal Division Activities, including Consumer Complaints and Gift Reporting; and e) Legislative Activities**

a) Thrift Regulation Division Activities

Industry Status

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

The Department conducts bank examinations to ensure confidence in the banking system using the Uniform Financial Institutions Rating System (UFIRS). Banks with a UFIRS rating of 1 or 2 are considered well rated. The industry consisted of 24 state savings banks with assets totaling \$484.5 billion, as of December 31, 2021. On January 1, 2022, Texas Exchange Bank, ssb, converted to a state commercial bank reducing assets by \$3.2 billion. The industry remains sound with all banks being well rated. As of December 31, 2021, no supervisory actions are in place.



Thrift Examination Activity Report

On-site examination activities have continued following appropriate safety protocol.

Thrift Supervision Activity Report

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

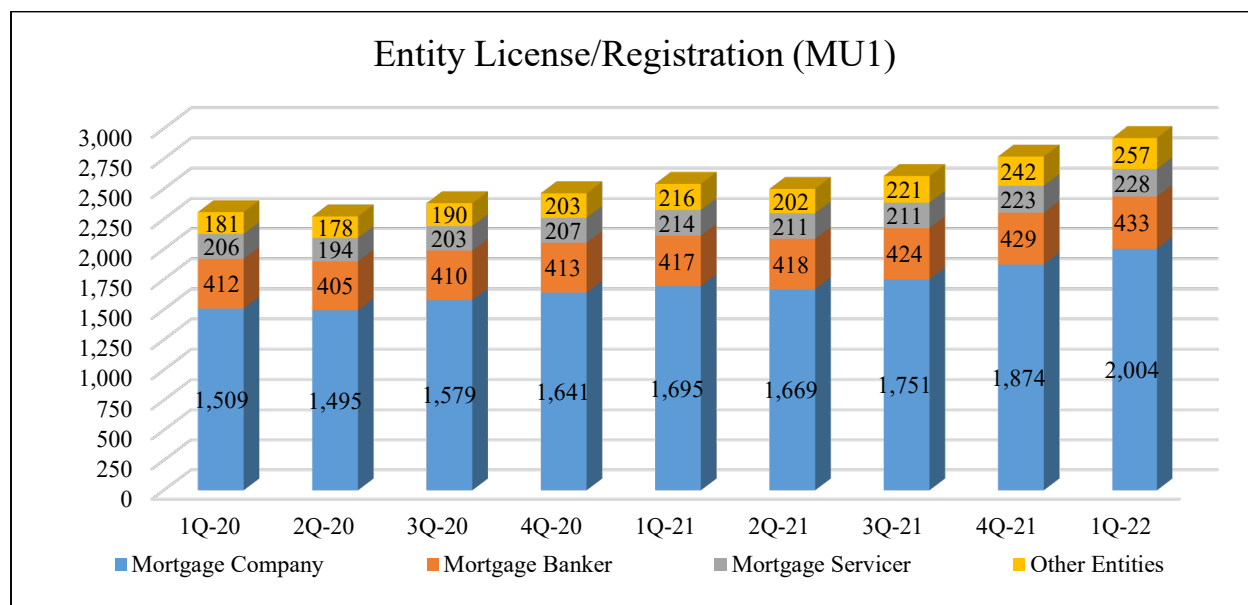
No merger activity was received, approved, or became effective since the December 2021 Finance Commission meeting.

b) Mortgage Regulation Division Activities

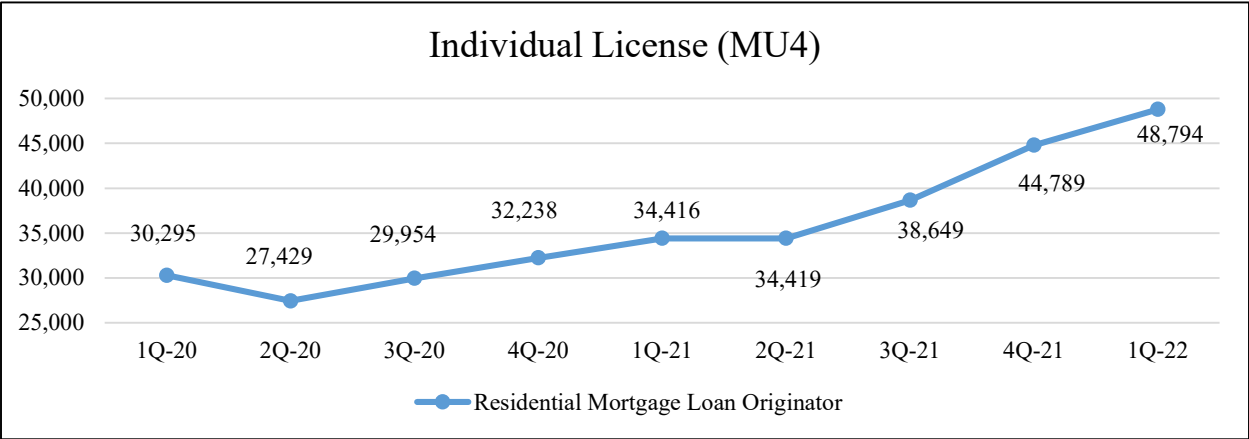
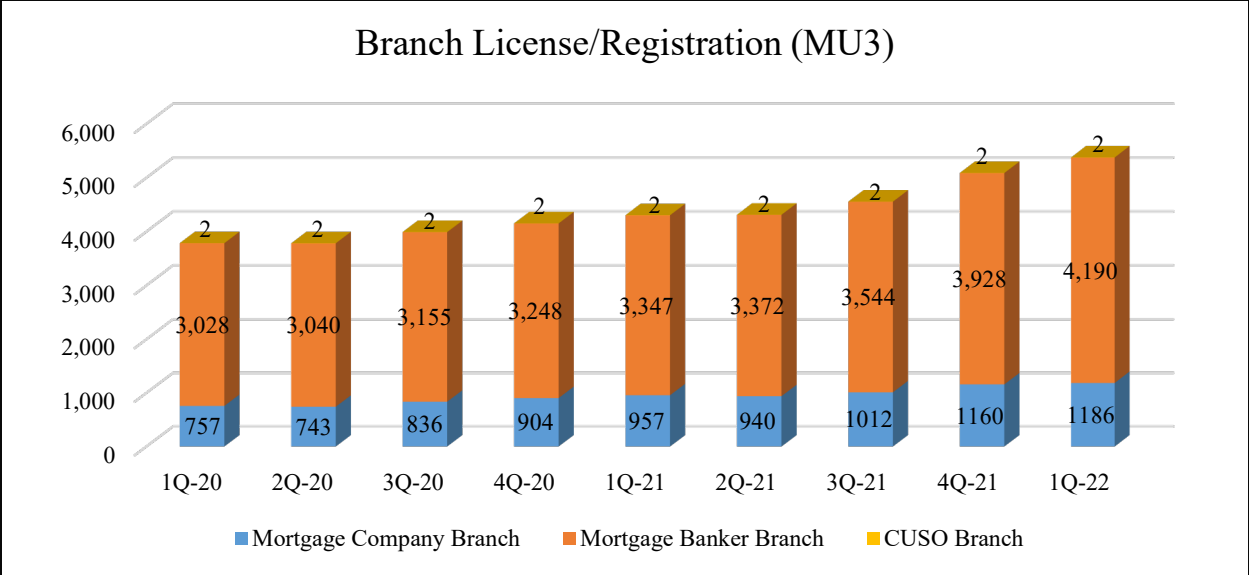
Industry Status

The Department continues to monitor various local, state, and national data sources closely in order to keep track of interest rate changes, housing supply and demand, and trends in homeownership for any impact on the mortgage industry.

The charts below reflect historical information regarding the counts of licenses and registrations in an approved status.



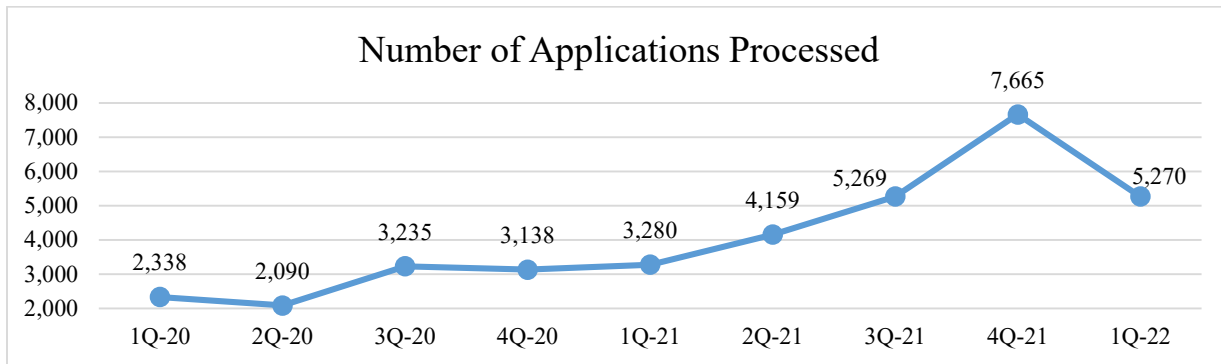
Other entities include Auxiliary Mortgage Loan Activity Company, Credit union Subsidiary Organization (CUSO), Financial Services Company, and Independent Contractor Processor/Underwriter Company.



Licensing Activity Report

During the first quarter of FY2022, the Mortgage Licensing section processed 5,270 applications and approved 4,747, including 164 mortgage entities, 502 branch offices, and 4,081 residential mortgage loan originators licenses and registrations. The remaining 523 applications were either withdrawn by the applicant or denied by the Department.

The chart below reflects historical information of the total number of applications processed by the Department.



During the first quarter of FY2022, the Mortgage Licensing section focused on processing license amendments and credit report reviews for the renewal period; therefore, the number of license requests processed declined. After the renewal and reinstatement period, the Mortgage Licensing section will assign more personnel to handle the license requests.

According to NMLS Data Analytics for the first quarter of FY2022, the Mortgage Licensing section processed 26,953 license amendments, 17,957 credit report reviews, 2,974 sponsorship removals, and 6,887 sponsorship requests.

The Department is currently in the reinstatement period, January 1, 2022 through February 28, 2022, which allows licensees and registrants that did not renew timely the ability to request reinstatement for the calendar year 2022. If an entity or individual did not renew timely, they are prevented from originating residential mortgage loans until their renewal request is completed and approved. Companies or individuals that fail to reinstate by February 28th will have to restart the application process.

Mortgage Examination Activity Report

During the first quarter of FY2022, the Mortgage Examination section conducted 112 examinations covering 1,638 individual licensees. The overall number of examinations conducted and the number of individual licensees examined are slightly lower when compared to the same reporting period in FY2021, as the Department conducted several examinations of mortgage entities that had 10 or fewer residential mortgage loan 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 Pre-Qualification/Conditional Approval Letters.

Outreach and Training

On November 8, 2021, the Department held the 9th Annual Mortgage Industry Day at the Renaissance Dallas at Plano Legacy West Hotel in Plano, TX. The Mortgage Regulation Division staff made presentations relating to topics of interest to the industry. Below is the agenda of the event.



9th Annual Mortgage Industry Seminar

Monday, November 8, 2021
Renaissance Dallas at Plano Legacy West Hotel
6007 Legacy Drive Plano, Texas 75024
3:00 pm – 5:00 pm

3:00 pm - 3:05 pm	<u>Welcome and Opening Comments</u> Stephany Trotti, <i>Interim Commissioner</i>
3:05 pm - 3:25 pm	<u>Examination Best Practices and Common Violations</u> Ellena Meier, <i>Chief Mortgage Examiner</i>
3:25 pm - 3:45 pm	<u>Consumer Compliance and Complaint Issues</u> Bill Poe, <i>Supervisory Compliance Examiner, CSME</i>
3:45 pm - 4:05 pm	<u>Licensing Update and Issues</u> Chris Osuna, <i>Manager of Licensing</i>
4:05 pm - 4:45 pm	<u>Mortgage Regulation Updates (Remote Work Requirements & Information Security Issues)</u> William Purce, <i>Director of Mortgage Regulation</i>
4:45 pm - 4:55 pm	<u>Open Forum Discussion</u>
4:55 pm - 5:00 pm	<u>Closing Comments</u> Stephany Trotti, <i>Interim Commissioner</i>

On November 16, 2021, the Mortgage Regulation Division held its monthly Mortgage Industry Emerging Issues Call. The topics discussed during the call included the new remote work regulations, updated exam procedures related to Information Security Plans, and processing times for license/registration applications.

c) Operations Division Activities

Risk Management

The Omicron surge affected multiple Department employees and their families; however, there was no significant negative impact on the Department’s programs. All divisions remain fully functional.

Accounting, Budget, and Financial Reporting

Staff closed out the first quarter of FY2022 and prepared and distributed annual tax forms W-2 and 1099.

In compliance with the Texas Government Code, Section 2101.0112 the Department submitted the Annual Report of Nonfinancial Data for the year ended August 31, 2021, including the annual HUB progress report to the Governor’s Office, State Auditor’s Office, and the Legislative Budget Board.

CAPPS Implementation – Staff participates in work sessions related to the CAPPS HR/Payroll implementation. During these sessions, the Comptroller’s office CAPPS teams and Department’s staff discuss and determine the agency configurations.

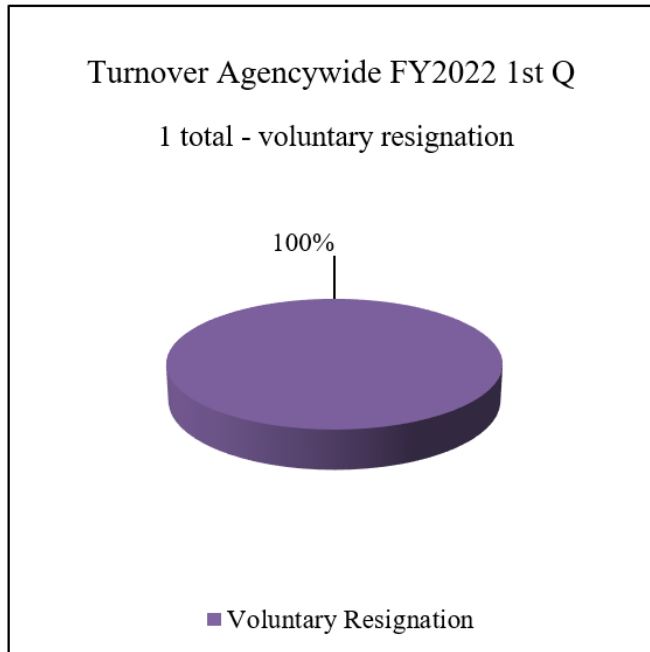
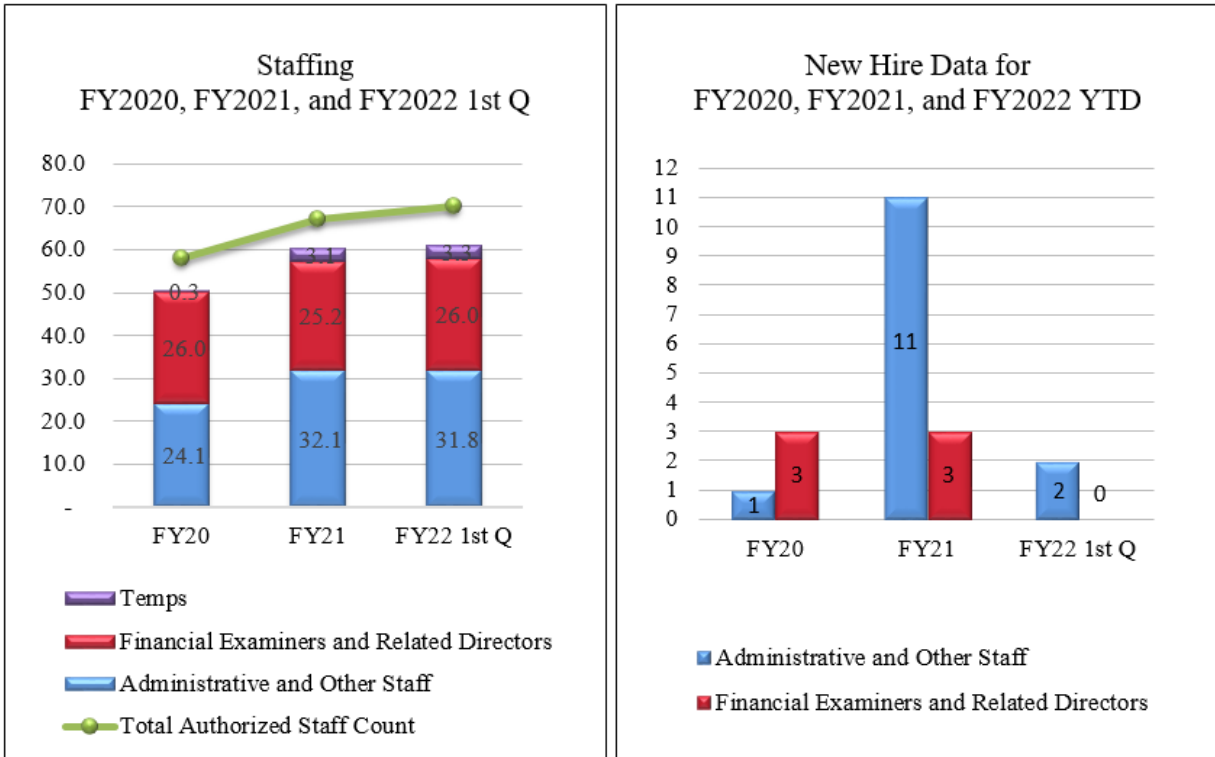
Human Resources

As of January 31, 2022, the Department was staffed at 56 regular full-time employees and four temporary workers. During the month of December, two Thrift Financials Examiners separated from the Department.

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	
Financial Examiner I/II- Mortgage - 2	
Financial Examiner I-II -Thrift (Information Technology)	Collecting and reviewing applications
Investigator II/III - Licensing	
Executive Assistant II- III	Collecting applications

Staffing Charts for the Quarter Ending November 30, 2021



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

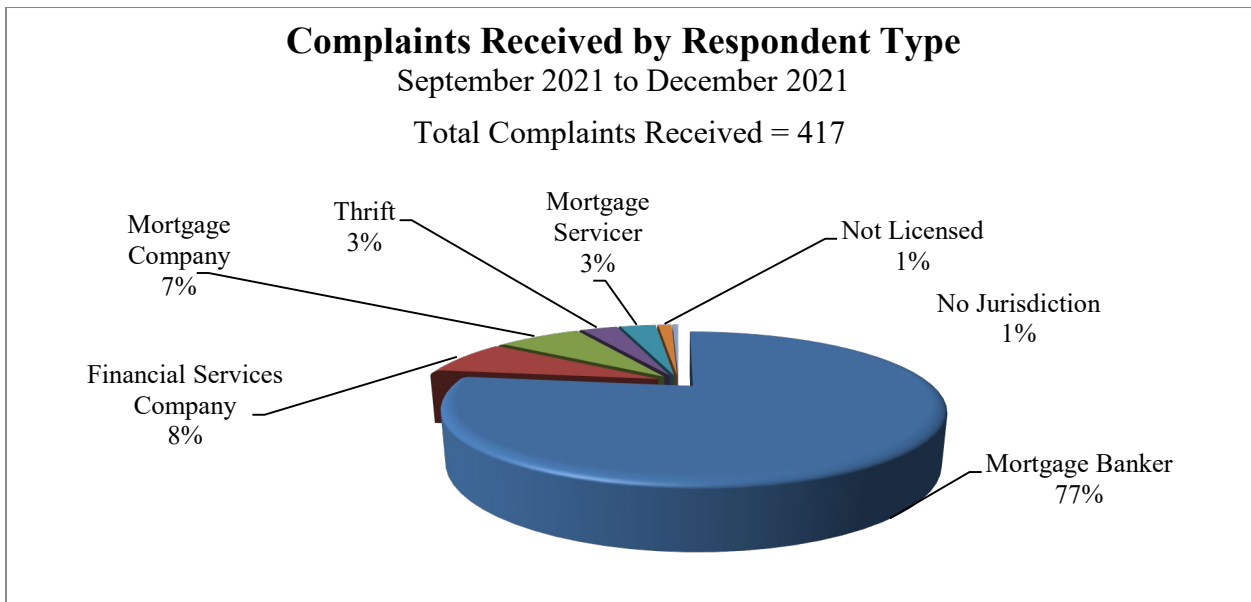
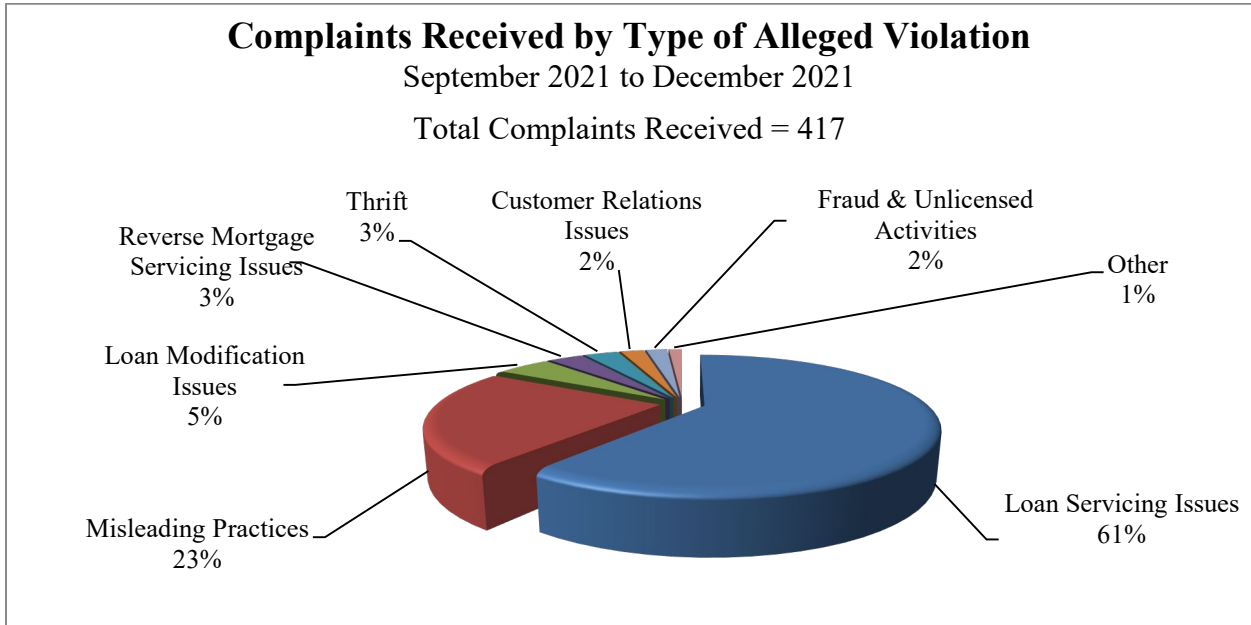
Type/Strategy/Measure	2022 Target	2022 Actual	2022 YTD	Percent of Annual Target
Output Measures-Key				
1-1-1 Thrift Safety and Soundness				
1. Number of State Chartered Savings Institution Examinations Performed				
Quarter 1	21	5	5	23.81%
2-1-1 Mortgage Regulation				
1. Number of Applications Processed				
Quarter 1	18,000	5,270	5,270	29.28%
2. Number of Licensees Examined				
Quarter 1	14,000	1,638	1,638	11.70%
* 78% the examinations conducted involved 10 or less originators. The Department plans to conduct examinations involving a substantial number of originators in subsequent quarters.				
3-1-1 Consumer Responsiveness				
1. Number of Complaints Closed				
Quarter 1	1,300	328	328	25.23%

*Varies by 5% or more from target.

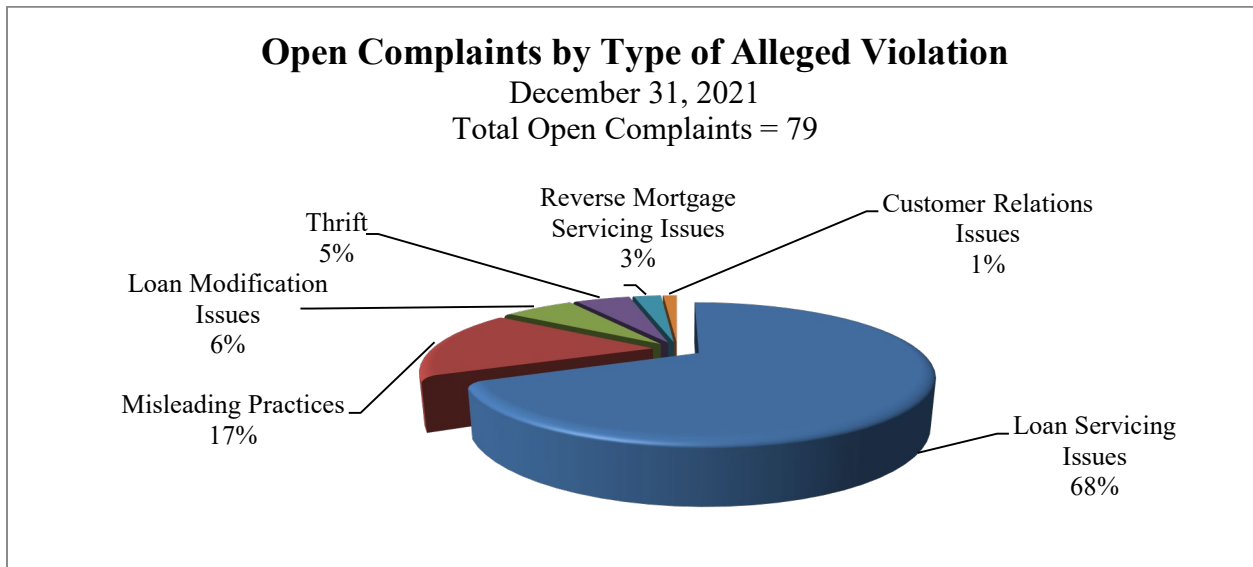
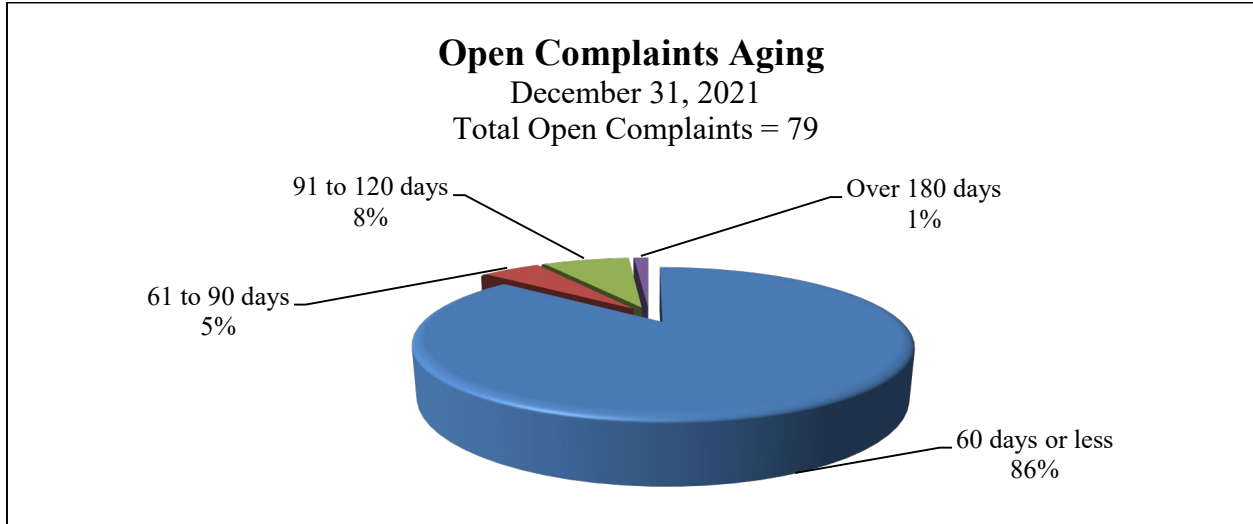
d) Legal Division Activities, including Consumer Complaints and Gift Reporting

Consumer Complaints Activity Report

During the period September to December 2021, the Department received 417 complaints, representing an 8.6% increase in complaints received during the same period in FY2021. Loan servicing complaints continue to be the largest complaint category, representing 61% of complaints received.



Open complaint aging remains within acceptable ranges with 91% of complaints aged 90 days or less. The chart reflects one complaint open longer than 180 days, as of December 31, 2021. The complaint has since been closed after being resolved by agreement of the parties involved.



Closed Complaints	FY2021				FY2022
	1 st Qtr	2 nd Qtr	3 rd Qtr	4 th Qtr	1 st Qtr
Servicing Complaints					
Number of Servicing Complaints Closed	160	148	297	273	186
Average Number of Days to Close a Complaint	22	27	41	26	26
Percentage of Complaints Closed Within 90 Days	96.0%	96.0%	87.9%	97.0%	96.2%
Non-Servicing Complaints					
Number of Non-Servicing Complaints Closed	93	91	166	127	142
Average Number of Days to Close a Complaint	29	30	47	30	34
Percentage of Complaints Close Within 90 Days	92.5%	90.1%	82.5%	96.6%	91.6%
Total Complaints Closed					
	253	239	463	400	328

Legal and Enforcement Activity Report

Enforcement Activities

Enforcement Actions	FY2021				FY2022
	1 st Qtr	2 nd Qtr	3 rd Qtr	4 th Qtr	1 st Qtr
Advisory Letter	8	5	9	9	4
Agreed Order to Take Affirmative Action	0	2	2	0	2
Agreed Order to Cease and Desist	0	1	4	0	0
Agreed Order - Other	1	1	1	1	0
Conditional License Agreement	0	0	1	0	0
Final Order	1	0	0	0	0
Letter of Reprimand	4	0	0	0	0
Order to Cease and Desist	3	2	7	7	0
Order to Take Affirmative Action	7	0	3	8	0
Order Rescinding Previous Order	0	0	1	0	0
Total	24	11	28	25	6

REES Multi-State Taskforce and Settlement

The Department, along with 43 other state regulatory agencies across the United States (collectively, the Taskforce), recently settled with more than 400 individual residential mortgage loan originators nationwide (more than 70 regulated by the Department) who fraudulently claimed credit for pre-licensing education or continuing education classes they did not actually take. All such education coursework was taken through education provider Danny Yen, d/b/a Real Estate Educational Services (REES), based in Carlsbad, California. The settlement with the Taskforce requires each originator to: (i) surrender his or her license and forbear from seeking licensure for 3 months, (ii) pay an administrative penalty of \$1,000 to the regulatory authority in each

jurisdiction where they were licensed, and (iii) take all education and coursework required of an individual seeking their initial license to act as a residential mortgage loan originator in order to seek resumption of their license. A link to the press release of the Conference of State Bank Supervisors (CSBS) announcing the settlement may be found on the Department's website.

Recovery Fund Applications

During November and December 2021, the Department received two Recovery Fund applications, which are currently under investigation.

Contested State Office of Administrative Hearings (SOAH) Cases

The Department does not have any cases currently pending at SOAH.

Litigation

Peter David Wagner, d/b/a Preservation of Your Home and Educational Ministries v. Texas Department of Savings and Mortgage Lending (Cause No. 03-21-00389, pending before the Texas Third Court of Appeals); Appeal of Department of Savings and Mortgage Lending v. Peter D. Wagner, d/b/a Preservation of Your Home and Educational Ministries (Cause No. D-1-GN-20-004218, before the 345th District Court, Travis County, Texas)

This case involves a settlement agreement entered into between the Department and Mr. Wagner to resolve a contested case matter. Per the terms of the settlement agreement, Mr. Wagner was required to make restitution payments to consumers in connection with unlicensed residential mortgage loan originator activity he engaged in. In May 2020, Mr. Wagner defaulted under the terms of the settlement agreement. On August 12, 2020, at the request and on behalf of the Department, the Financial Litigation and Charitable Trusts Division of the Office of the Attorney General (OAG) filed suit against Mr. Wagner to reduce the settlement agreement to an enforceable state court judgment. On or about May 18, 2021 the Department's Motion for Summary Judgment was granted, and judgment was entered against Mr. Wagner in the amount of \$2,106,794. In June, 2021 Mr. Wagner filed an appeal with the Third Court of Appeals. The appellant's (Mr. Wagner's) brief was initially due on September 23, 2021. On November 9, 2021 the Department received notice from the court stating that, unless Mr. Wagner files his appellant's brief on or before November 19, 2021, the appeal would be subject to dismissal for want of prosecution. On November 23, 2021, Mr. Wagner filed a motion for extension of time to file the appellant's brief. On November 29, 2021 such motion was granted, and the deadline for Mr. Wagner to file the appellant's brief was extended to January 7, 2022. On January 4, 2022, Mr. Wagner filed a second motion for extension of time to file the appellant's brief. On January 7, 2022 such motion was granted, and the deadline for Mr. Wagner to file the appellant's brief was extended to January 28, 2022. The court, in granting the motion, noted that "no further extension of time will be granted."

With respect to collection of the district court judgment, on October 13, 2021, OAG, on behalf of the Department, filed an Abstract of Judgment in the Travis County real property records (Mr. Wagner's last known county of residence) to create a judgment lien on any non-exempt real property he may own in such county. To the extent judgment is not overturned on appeal, OAG will undertake further collections efforts on the judgment.

Public Information Requests

During the first quarter of FY2022, the Department responded promptly to the received public information requests in compliance with the Public Information Act. One request was sent to the Attorney General’s Office for a ruling.

Public Information Requests	FY2021				FY2022
	1 st Qtr	2 nd Qtr	3 rd Qtr	4 th Qtr	1 st Qtr
Requests Received	23	18	20	30	33

Rulemaking

SML Future Rule Activity		
Rule	Rulemaking Action	Projected Date for Presentation
7 TAC §80.204 and §81.204, Books and Records	Adoption of new rules and repeals	April 2022
Chapter 51, Charter Applications	Adoption of Proposed Rule Changes Resulting from Rule Review	April 2022
Chapter 52, Department Administration	Adoption of Proposed Rule Changes Resulting from Rule Review	April 2022
Chapter 75, Applications	Proposed Rule Changes Resulting from Rule Review	June 2022
Chapter 76, Miscellaneous	Proposed Rule Changes Resulting from Rule Review	June 2022
Chapter 77, Loans, Investments, Savings, and Deposits	Proposed Rule Changes Resulting from Rule Review	June 2022

Gift Reporting

Chief Mortgage Examiner Ellena Meier attended the annual conference of the American Association of Residential Mortgage Regulators held November 30 - December 2, 2021. The applicable registration fee of \$795 was waived.

e) Legislative Activities

State

On January 7, 2022 Governor Abbott made four appointments to the Joint Interim Committee to Study Land Banks. Their terms of appointment expire on September 1, 2023, when state law provides that the committee is abolished. Created by the 87th Texas Legislature, the committee is tasked with studying the powers of land banks to acquire and dispose of real property, the impact of land banks on affordable housing, the funding mechanisms of land banks, and more.

The Department continues to monitor the activities of the Texas Legislature and any interim committee charges assigned while the Legislature is adjourned.

Federal

The Department monitors federal legislation, rules, and developments that might affect the Texas mortgage and thrift industries. Areas of interest are ESG (Environmental, Social, and Governance), cryptocurrency, cybersecurity, personal/data privacy, FinTech, IRS reporting requirements, DEI (Diversity, Equity, and Inclusion), and hemp and legal cannabis industries. The specific bills monitored include as follows:

- H.R.6274 — FDIC Board Accountability Act
- H.R.5977 — States Reform Act
- H.R.6134 — CBD Product Safety and Standardization Act of 2021
- H.R.2561 — Promoting Access to Capital in Underbanked Communities Act of 2021
- H.R.2270 — Bank Service Company Examination Coordination Act of 2021
- S.910 — Cannabis-related SAFE Banking Act of 2021
- H.R.1996 — Cannabis-related SAFE Banking Act of 2021
- H.R.1847 — Rent and Mortgage Cancellation Act of 2021
- S.3249 — Revises reporting requirements for digital assets
- H.R.6006 — Amends the Internal Revenue Code to clarify the definition of broker
- S.3206 — Repeals provisions of the Infrastructure Investment and Jobs Act
- S.2499 – SAFE DATA Act
- H.R.3105 – Common Sense Cannabis Reform for Veterans, Small Businesses, and Medical Professionals Act
- H.R.2863 — First-Time Homebuyer Act of 2021

2. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of a New Rule and Repeal at §80.204 in 7 TAC, Part 4, Chapter 80, Concerning Residential Mortgage Loan Companies

PURPOSE: The purpose of the new rule and repeal at 7 TAC §80.204 is to clarify the requirements concerning the books and records that a mortgage company must maintain in order to facilitate inspection of a licensed mortgage company by the Department's commissioner. 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 publication of the proposed new rule and repeal at 7 TAC §80.204 for comment in the *Texas Register*.

RECOMMENDED MOTION: I move that the Finance Commission approve publication of the proposed new rule and repeal at 7 TAC §80.204 for comment in the *Texas Register*.

TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 80. RESIDENTIAL MORTGAGE LOAN COMPANIES

SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal 7 TAC §80.204, Books and Records. The commission further proposes a new rule concerning the same or similar subject matter at 7 TAC §80.204, Books and Records. This proposal and the rules as repealed or added as a new rule by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The rules under 7 TAC Chapter 80 implement Finance Code Chapter 156, Residential Mortgage Loan Companies (Chapter 156). The department, under Chapter 156, licenses residential mortgage loan companies that originate residential mortgage loans (a loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other security interest on a dwelling or residential real estate) made to consumers (for purposes of the proposed rules, "residential mortgage loan company" has the meaning assigned by Finance Code §156.002; mortgage company). A mortgage company acts by and through one or more individuals licensed by the department as a residential mortgage loan originator under Finance Code Chapters 157 and 180 (originator).

Books and Recordkeeping Changes

Pursuant to Finance Code §156.301(a), the department's commissioner (commissioner) may conduct inspections (including examinations) of a mortgage company or an originator sponsored by a mortgage company (sponsored originator) to determine compliance with the requirements of Chapter 156 and the rules adopted thereunder. Inspections include inspection of the mortgage company's or sponsored originator's "books, records, documents, operations, and facilities . . . and access to any documents required under rules adopted under [Chapter 156]" (Finance Code §156.301(a)). Pursuant to Finance Code §156.301(b), the commissioner, upon receipt of a signed written complaint against a mortgage company, "shall investigate the actions and records" of the mortgage company or its sponsored originator. Pursuant to Finance Code §156.301(e), the commission "by rule shall . . . determine the information and records to which the commissioner may demand access during an inspection or an investigation." Pursuant to Finance Code §156.102(c), the commission "may adopt rules regarding books and records that a [mortgage company] is required to keep, including the location at which the books and records must be kept." Existing §80.204 establishes requirements concerning the books and records that a mortgage company must maintain. The proposed rules, if adopted, would: (i) establish a new requirement concerning the location where required records must be maintained; (ii) clarify existing requirements concerning the mortgage transaction log a mortgage company is required to maintain under existing §80.204, with respect to the description of the purpose for the mortgage loan, and the owner's or prospective owner's intended occupancy of the real estate secured or designed to be secured by the mortgage loan; (iii) expand an existing requirement under existing §80.204

by requiring that the mortgage transaction log include information concerning the type of lien anticipated after consummation of the mortgage loan (first lien, second lien, or wrap mortgage); and (iv) clarify existing requirements concerning the books and records that a mortgage company must maintain under existing §80.204 by specifically identifying certain records a mortgage company is required to maintain to comply with the requirements of applicable state law (other than the proposed rules; including in connection with wrap mortgage loans made in accordance with Finance Code Chapter 159, Wrap Mortgage Loan Financing, which became effective on January 1, 2022), and federal law.

Other Modernization and Update Changes.

The proposed rules, if adopted, would make changes to modernize and update the rule including: removing unnecessary or duplicative provisions; updating terminology; and reorganizing and restating the requirements of existing §80.204 for clarity and to improve readability, including the insertion of explanatory headings throughout the rule.

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.

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 rule to better facilitate inspection by the commissioner of a mortgage company and its sponsored originators (including in response to a complaint by a member of the public against a mortgage company) which will enable the commissioner to better detect and address violations of the requirements of Chapter 156 (and the rules adopted thereunder), and thereby better protect those members of the public utilizing the services of a mortgage company, while simultaneously streamlining the inspections/investigations process for the department and regulated persons alike.

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 generally establish requirements concerning the books and records a mortgage company must maintain, nearly all of which are already required under existing §80.204. The maintenance of such records may have some attendant costs. However, the statutory requirements of Finance Code §156.301 direct a mortgage company to maintain records sufficient to facilitate an inspection by the commissioner to determine compliance with Chapter 156, and not the proposed rules. Moreover, most of the records required to be maintained under the proposed rules are already maintained by the mortgage company to comply with the requirements of applicable state law (other than the proposed rules), and federal law; or, are otherwise maintained by the mortgage company in the ordinary course of doing business. Such maintenance costs are therefore not direct costs attributable to the proposed rules. Applicable state and federal law that a mortgage company is required to comply with and that triggers the maintenance of records identified in the proposed rules includes, but is not limited to: (i) Article XVI, Section 50, Texas Constitution (ii) Finance Code Chapter 156; (iii) Finance Code Chapter 159; (iv) Finance Code Chapter 343; (v) the federal Truth in Lending Act (15 U.S.C. §1601 et seq.) and Regulation Z (12 C.F.R. §1026.1 et seq.); (vi) the federal Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and Regulation X (12 C.F.R. §1024.1 et seq.); (vii) the federal Equal Credit Opportunity Act (15 U.S.C. §1691 et seq.) and Regulation B (12 C.F.R. §1002.1 et seq.); (viii) the federal Fair Credit Reporting Act (15 U.S.C. §1681 et seq.) and Regulation V (12 C.F.R. §1022.1 et seq.);

(ix) the federal Gramm-Leach-Bliley Act (15 U.S.C. §6801 et seq.) and Regulation P (12 C.F.R. §1016.1 et seq.), and the regulations of the Federal Trade Commission (16 C.F.R. §313.1 et seq.); (x) the federal Secure and Fair Enforcement for Mortgage Licensing Act (12 U.S.C. §5101 et seq.) and Regulation H (12 C.F.R. §1008.1 et seq.); and (xi) federal Regulation N (Mortgage Acts and Practices-Advertising (MAP Rule); 12 C.F.R. §1014.1 et seq.). The proposed rules require a mortgage company to record additional information on the mortgage transaction log that it is already required to maintain under existing §80.204 (specifically, information concerning the type of lien anticipated after consummation of the mortgage loan). However, such additional information is created and exists as a byproduct of the mortgage loan origination process, and is thus generated by the mortgage company in the ordinary course of doing business. The proposed rules merely require that the mortgage company transpose such information to the existing mortgage transaction log for review by the department's examiners and investigators in the same manner as the other information required to be on the mortgage transaction log under existing §80.204. A mortgage company may be using electronic forms or physical (paper) logs for purposes of maintaining its mortgage transaction log. A mortgage company that uses such electronic forms may be inclined to update the forms to more easily comply with the proposed rules, and which may have some attendant costs. However, any such costs are anticipated to be insignificant. Moreover, the use of electronic forms is not required by the proposed rules, and is discretionary (not a direct cost attributable to the proposed rules). Physical logs established prior to the potential adoption of the proposed rules may still be used and supplemented with the

required information, at no cost. Taking the foregoing into consideration, the proposed rules do not impose substantial economic costs on 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; (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 not create a new regulation (rule requirement). The proposed rules related to Books and Recordkeeping Changes establish a requirement concerning the location where required records must be maintained; (6) the proposed rules do not expand, limit, or repeal an existing regulation (rule requirement). The proposed rules related to Books and Recordkeeping Changes expand an existing rule requirement under existing §80.204 that a mortgage company maintain a mortgage transaction log by requiring the mortgage company to include on the mortgage transaction log information concerning the type of lien anticipated after consummation of the mortgage loan; (7) the proposed rules do not increase or decrease the number of individuals subject to the rule's 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. All comments must be received within 30 days of publication of this proposal.

7 TAC §80.204

Statutory Authority

This proposal is made under the authority of Finance Code §156.102 which authorizes the

PROPOSED NEW RULE AND REPEAL
7 TAC §80.204
PAGE 5 OF 12

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; 12 U.S.C. §5101 et seq.).

This proposal affects the statutes contained in Finance Code Chapter 156, Residential Mortgage Loan Companies.

§80.204. Books and Records.

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



7 TAC §80.204

Statutory Authority

This proposal is made under the authority of Finance Code §156.102(a) and (a-1) 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; 12 U.S.C. §5101 et seq.). This proposal is also made under the authority of Finance Code §156.102(c) which authorizes the commission to adopt rules regarding books and records that a person licensed under Finance Code 156 is required to keep, including the location at which the books and records must be kept. This

proposal is also made under the authority of, and to implement, Finance Code §156.301.

This proposal affects the statutes contained in Finance Code Chapter 156, Residential Mortgage Loan Companies.

§80.204. Books and Records.

(a) Maintenance of Records, Generally. In order to ensure a mortgage company will have all records necessary to facilitate an inspection (including an examination) of the mortgage company by the Commissioner or the Commissioner's designee, enable the Commissioner or the Commissioner's designee to investigate complaints against a mortgage company or its sponsored originators, and otherwise ensure compliance with the requirements of Finance Code Chapter 156, and this chapter, a mortgage company must maintain records as prescribed by this section.

(1) Format. The records required by this section may be maintained by using a physical, electronic, or digitally-imaged recordkeeping system, or a combination thereof. The records must be accurate, complete, current, legible, and readily accessible and sortable.

(2) Location. A mortgage company must ensure the records required by this section (or true and correct copies thereof) are maintained at or are otherwise readily accessible from either the main office of the mortgage company or the location the mortgage company has designated in its MU1 filing under "Books and Records Information" in NMLS. (For purposes of this section "main office" has the meaning assigned by §80.206 of this title (relating to Office Locations; Remote Work.)

(3) Production of Records; Disciplinary Action. All records required by this section must

be maintained in good order and produced for the Commissioner or the Commissioner's designee upon request. Failure to produce records upon request after a reasonable time for compliance may result in disciplinary action against the mortgage company, including, but not limited to, suspension or revocation of the mortgage company's license.

(4) Retention Period. All records required by this section must be maintained for 3 years or such longer period as may be required by other applicable law.

(5) Conflicting Law. If the requirements of other applicable law governing recordkeeping by the mortgage company differ from the requirements of this section, such other applicable law prevails only to the extent this section conflicts with the requirements of this section.

(b) Required Records. A mortgage company is required to maintain the following items:

(1) Mortgage Transaction Log. A mortgage transaction log, maintained on a current basis (which means all entries must be made within no more than 7 days from the date on which the matters they relate to occurred), setting forth, at a minimum:

(A) the name and contact information of each mortgage applicant;

(B) the date of the initial loan application;

(C) the full name of the originator who took the initial loan application, and his or her NMLS identification number;

(D) a description of the purpose for the loan (e.g., purchase, refinance,

construction, home equity, home improvement, land lot loan, wrap mortgage loan, etc.);

(E) a description of the owner's or prospective owner's intended occupancy of the real estate secured or designed to be secured by the loan (e.g., primary residence (including real estate (land lot) or a dwelling not suitable for occupancy at the time the loan is consummated but that the owner intends to occupy as their primary residence after consummation of the loan), secondary residence, or investment property (no intent to occupy as their residence));

(F) the lien type (e.g., first lien, second lien, or wrap mortgage);

(G) a description of the current status or disposition of the loan application (e.g., in-process, withdrawn, closed, or denied); and

(H) if the loan is closed, the identity of the person who initially funded and/or acquired the loan; and

(2) Residential Mortgage Loan File. For each residential mortgage loan transaction or prospective residential mortgage loan transaction, a residential mortgage loan file containing, at a minimum:

(A) All Transactions. For all transactions, the following records:

(i) the initial and any final loan application (including any attachments, supplements, or addendum thereto), signed and dated by each mortgage applicant and the sponsored originator, and any other written or recorded information used in evaluating the application, as required by Regulation B, 12 C.F.R. §1002.4(c);

PROPOSED NEW RULE AND REPEAL
7 TAC §80.204
PAGE 7 OF 12

(ii) the initial and any revised good faith estimate (Regulation X, 12 C.F.R. §1024.7), integrated loan estimate disclosure (Regulation Z, 12 C.F.R. §1026.37), or similar, provided to the mortgage applicant;

(iii) the final settlement statement (Regulation X, 12 C.F.R. §1024.8), closing statement, or integrated closing disclosure (Regulation Z, 12 C.F.R. §1026.19(f) and §1026.38);

(iv) the disclosure statement required by Finance Code §156.004 and §80.200(a) of this title (relating to Required Disclosures), signed and dated by each mortgage applicant and the sponsored originator;

(v) if provided to a mortgage applicant or prospective mortgage applicant, the Conditional Pre-Qualification Letter, or similar, as specified by Finance Code §156.105 and §80.201 of this title (relating to Loan Status Forms);

(vi) if provided to a mortgage applicant or prospective mortgage applicant, the Conditional Approval Letter, or similar, as specified by Finance Code §156.105 and §80.201 of this title (relating to Loan Status Forms);

(vii) each item of correspondence, all evidence of any contractual agreement or understanding, and all notes and memoranda of conversations or meetings with a mortgage applicant or any other party in connection with the loan application or its ultimate disposition (e.g., fee agreements, rate lock agreements, or similar documents);

(viii) if the loan is a "home loan" as defined by Finance Code

§343.001, the notice of penalties for making a false or misleading written statement required by Finance Code §343.105, signed at closing by each mortgage applicant;

(ix) if the transaction is a purchase money or wrap mortgage loan transaction, the real estate sales contract or real estate purchase agreement for the sale of the residential real estate;

(x) consumer reports or credit reports obtained in connection with the loan or prospective loan, and if a fee is paid by or imposed on the mortgage applicant for such consumer report or credit report, invoices and proof of payment for the purchase of the consumer report or credit report;

(xi) appraisal reports or written valuation reports used to determine the value of the residential real estate secured or designed to be secured by the loan, and if a fee is paid by or imposed on the mortgage applicant for such appraisal report or written valuation report, invoices and proof of payment for the appraisal report or written valuation report;

(xii) invoices and proof of payment for any third party fees paid by or imposed on the mortgage applicant;

(xiii) refund checks issued to the mortgage applicant;

(xiv) if applicable, the risk-based pricing notice required by Regulation V, 12 C.F.R. §1022.72;

(xv) if applicable, invoices for independent loan processors or underwriters;

(xvi) if the mortgage company or sponsored originator acts in a dual

capacity as the loan originator and real estate broker, sales agent, or attorney in the transaction, the disclosure of multiple roles in a consumer real estate transaction, signed and dated by each mortgage applicant, as required by Finance Code §156.303(a)(13) and §157.024(a)(10);

(xvii) the initial privacy notice required by Regulation P, 12 C.F.R. §1016.4 or 16 C.F.R. §313.4;

(xviii) the mortgage applicant's written authorization to receive electronic documents;

(xix) records reflecting compensation paid to employees or independent contractors in connection with the transaction;

(xx) any other agreements, notices, disclosures, or affidavits required by federal or state law in connection with the transaction; and

(xxi) any written agreements or other records governing the origination of the loan or prospective loan;

(B) Lender Transactions. For transactions where the mortgage company acted as the lender, the following records:

(i) the promissory note, loan agreement, or repayment agreement, signed by the borrower (mortgage applicant);

(ii) the recorded deed of trust, contract, security deed, security instrument, or other lien transfer document, signed by the borrower (mortgage applicant);

(iii) any verifications of income, employment, or deposits obtained in connection with the loan;

(iv) copies of any title insurance policies with endorsements or title search reports obtained in connection with the loan, and if a fee is paid by or imposed on the mortgage applicant for such title insurance policies or title search reports, invoices and proof of payment for the title insurance policy or title search report; and

(v) if applicable, the flood determination certificate obtained in connection with the loan, and if a fee is paid by or imposed on the mortgage applicant for such flood certificate, invoices and proof of payment for the flood determination certificate;

(C) Truth in Lending Act (TILA). For transactions that are subject to the requirements of TILA (15 U.S.C. §1601 et seq.) and Regulation Z (12 C.F.R. §1026.1 et seq.), the following records:

(i) the initial Truth-in-Lending statement for home equity lines of credit and reverse mortgage transactions required by Regulation Z, 12 C.F.R. §1026.19;

(ii) if the transaction is an adjustable rate mortgage transaction, the adjustable rate mortgage program disclosures;

(iii) records relating to the mortgage applicant's ability to repay the loan, as required by Regulation Z, 12 C.F.R. §1026.43(c);

(iv) if the mortgage applicant is permitted to shop for a settlement service, the written list of providers required by Regulation Z, 12 C.F.R. §1026.19(e)(1)(vi)(C);

(v) the notice of intent to proceed with the transaction required by Regulation Z, 12 C.F.R. §1026.19(e)(2)(i)(A);

(vi) if applicable, records related to a changed circumstance required by Regulation Z, 12 C.F.R. §1026.19(e)(3)(iv);

(vii) the notice of right to rescission required by Regulation Z, 12 C.F.R. §1026.15 or §1026.23;

(viii) for high-cost mortgage loans, the disclosures required by Regulation Z, 12 C.F.R. §1026.32(c);

(ix) for high-cost mortgage loans, the certification of counseling required by Regulation Z, 12 C.F.R. §1026.34(a)(5)(i); and

(x) any other notice or disclosure required by TILA or Regulation Z;

(D) Real Estate Settlement Procedures Act (RESPA). For transactions that are subject to the requirements of RESPA (12 U.S.C. §2601 et seq.) and Regulation X (12 C.F.R. §1024.1 et seq.), the following records:

(i) records reflecting delivery of the special information booklet required by Regulation X, 12 C.F.R. §1024.6;

(ii) any affiliated business arrangement disclosure statement provided to the mortgage applicant in accordance with Regulation X, 12 C.F.R. §1024.15;

(iii) records reflecting delivery of the list of homeownership counseling organizations required by Regulation X, 12 C.F.R. §1024.20; and

(iv) any other notice or disclosure required by RESPA or Regulation X;

(E) Equal Credit Opportunity Act - Transactions Not Resulting in Approval. For residential mortgage loan applications where a

notice of incompleteness is issued, a counteroffer is made, or adverse action is taken, as provided by Regulation B (12 C.F.R. §1002.1 et seq.), the following records, as applicable:

(i) the notice of incompleteness required by Regulation B, 12 C.F.R. §1002.9(c)(2);

(ii) the counteroffer letter sent to the mortgage applicant in accordance with Regulation B, 12 C.F.R. §1002.9; and

(iii) the adverse action notification (a/k/a turndown letter) required by Regulation B, 12 C.F.R. §1002.9(a);

(F) Home Equity Transactions. For home equity loan or home equity line of credit transactions, the following records (references in this subparagraph to Section 50 refers to Article XVI, Section 50, Texas Constitution):

(i) the preclosing disclosures required by Section 50(a)(6)(M)(ii) and §153.13 of this title (relating to Preclosing Disclosures: Section 50(a)(6)(M)(ii); as provided by such section, the closing disclosure or account-opening disclosures required by Regulation Z fulfills this requirement);

(ii) the consumer disclosure required by Section 50(g) and §153.51 of this title (relating to Consumer Disclosure: Section 50(g));

(iii) if an attorney-in-fact executes the closing documents on behalf of the owner or owner's spouse, a copy of the executed power of attorney and any other documents evidencing execution of such power of attorney at the permanent physical address of an office of the lender, an attorney at law, or a title

PROPOSED NEW RULE AND REPEAL
7 TAC §80.204
PAGE 10 OF 12

company, as required by §153.15 of this title (relating to Location of Closing: Section 50(a)(6)(N));

(iv) if the borrower (mortgage applicant) uses the proceeds of the loan to pay off a non-homestead debt with the same lender, a written statement, signed by the mortgage applicant, indicating the proceeds of the home equity loan were voluntarily used to pay such debt (see Section 50(a)(6)(Q)(i));

(v) notice of the right of rescission, as required by Section 50(a)(6)(Q)(viii) (as provided by §153.25 of this title (relating to Right of Rescission: Section 50(a)(6)(Q)(viii)), the notice of right of rescission required by TILA and Regulation Z fulfills this requirement);

(vi) the written acknowledgement as to the fair market value of the homestead property, as required by Section 50(a)(6)(Q)(ix) and §153.26 of this title (relating to Acknowledgement of Fair Market Value: Section 50(a)(6)(Q)(ix)); and

(vii) if the home equity loan is refinanced into a non-home equity loan, the Texas Notice Concerning Refinance of Existing Home Equity to Non-Home Equity Loan, as required by Section 50(f)(2)(D) and §153.45 of this title (relating to Refinance of an Equity Loan: Section 50(f));

(G) Wrap Mortgage Loans. For wrap mortgage loan transactions subject to the requirements of Finance Code Chapter 159, the following records:

(i) the disclosure statement required by Finance Code §159.101 and §78.101 of this title (relating to Required Disclosure), signed and dated by each mortgage

applicant, and any foreign language disclosure statement required by Finance Code §159.102;

(ii) the disclosure statement required by Tex. Prop. Code §5.016 provided to each existing lienholder (the disclosure statement required by Finance Code §159.101 and §78.101 of this title (relating to Required Disclosure) referenced in clause (i) of this subparagraph fulfills this requirement if it was provided to each existing lienholder); and

(iii) documents evidencing that the wrap mortgage loan was closed by an attorney or a title company, as required by Finance Code §159.105;

(H) Home Improvement Loans. For home improvement transactions (including repair, renovation, and new construction), the following records:

(i) the mechanic's lien contract;

(ii) documents evidencing the transfer of lien from the contractor to the lender;

(iii) the residential construction contract;

(iv) notice of the right of rescission required by Article XVI, Section 50(a)(5)(C), Texas Constitution (the notice of right of rescission required by TILA and Regulation Z fulfills this requirement); and

(v) any other notice or disclosure required by Texas Property Code Chapter 53;

(I) Reverse Mortgages. For reverse mortgage transactions, the following records:

(i) the disclosure required by Article XVI, Section 50(k)(9), Texas Constitution;

(ii) the certificate of counseling required by Article XVI, Section 50(k)(8), Texas Constitution;

(iii) the servicing disclosure statement required by Regulation X, 12 C.F.R. §1024.33(a);

(iv) the disclosures required by Regulation Z, 12 C.F.R. §1026.33(b); and

(v) any other notice or disclosure required by federal or state law to originate a reverse mortgage;

(3) General Business Records. General business records include:

(A) all checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and cancelled checks (or copies thereof) relating to residential mortgage loan origination business;

(B) complete records (including invoices and supporting documentation) for all expenses and fees paid on behalf of a mortgage applicant, including a record of the date and amount of all such payments actually made by each mortgage applicant;

(C) all federal tax withholding forms, reports of income for federal taxation, and evidence of payments to all mortgage company employees, independent contractors and all others compensated by the mortgage company in connection with residential mortgage loan origination business;

(D) all written complaints or inquiries (or summaries of any verbal

complaints or inquiries) along with any correspondence, notes, responses, and documentation relating thereto and the disposition thereof;

(E) all contractual agreements or understandings with third parties in any way relating to a residential mortgage loan transaction including, but not limited to, any delegations of underwriting authority, any agreements for pricing of goods or services, investor contracts, or employment agreements;

(F) all reports of audits, examinations, inspections, reviews, investigations, or similar, performed by any third party, including any regulatory or supervisory authorities;

(G) all advertisements in the medium (e.g., recorded audio, video, Internet or social media site posting, or print) in which they were published or distributed; and

(H) policies and procedures related to the origination of residential mortgage loans by the mortgage company and its sponsored originators, including, but not limited to:

(i) identity theft prevention program (red flags rule; 16 C.F.R. §681.1(d));

(ii) anti-money laundering program (31 C.F.R. §1029.210);

(iii) information security program (16 C.F.R. §314.3(a));

(iv) ability-to-repay underwriting policies, if any (Regulation Z, 12 C.F.R. §1026.43(c));

if any; (v) quality control policy,

if any; and (vi) compliance manual,

(vii) personnel
administration/employee
policies, if any;

(4) Other Records Required by Federal Law. A mortgage company must maintain such other books and records as may be required to evidence compliance with applicable federal laws and regulations, including, but not limited to:

(i) the Fair Credit Reporting Act (15 U.S.C. §1681 et seq.) and Regulation V (12 C.F.R. §1022.1 et seq.);

(ii) the Gramm-Leach-Bliley Act (15 U.S.C. §6801 et seq.) and Regulation P (12 C.F.R. §1016.1 et seq.), and the regulations of the Federal Trade Commission (16 C.F.R. §313.1 et seq.);

(iii) the Secure and Fair Enforcement for Mortgage Licensing Act (12 U.S.C. §5101 et seq.) and Regulation H (12 C.F.R. §1008.1 et seq.); and

(iv) Regulation N (Mortgage Acts and Practices-Advertising (MAP Rule); 12 C.F.R. §1014.1 et seq.);

(5) Other Records Designated by the Commissioner. A mortgage company must maintain such other books and records as the Commissioner or the Commissioner's designee may, from time to time, specify in writing;

(6) Records Concerning Administrative Offices. A mortgage company must maintain a list reflecting any office constituting an "administrative office" of the mortgage

company for purposes of §80.206 of this title (relating to Office Locations; Remote Work); and

(7) Records Concerning Remote Work. A mortgage company must maintain records reflecting its compliance with the requirements for remote work, as provided by §80.206 of this title (relating to Office Locations; Remote Work).

(c) Records Retention After Terminating Operations. Within 10 days of termination operations, a mortgage company must provide the Department with written notice of where the records required by this section will be maintained for the prescribed period. If such records are transferred to another mortgage company licensed by the Department, the transferee must provide the Department with written notice within 10 days after receiving such records.

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
[Deputy](#) General Counsel
Department of Savings and Mortgage Lending

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3. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of a New Rule and Repeal at §81.204 in 7 TAC, Part 4, Chapter 81, Concerning Mortgage Bankers and Residential Mortgage Loan Originators

PURPOSE: The purpose of the new rule and repeal at 7 TAC §81.204 is to clarify the requirements concerning the books and records that a mortgage banker and individual residential mortgage loan originator must maintain in order to facilitate inspection of a residential mortgage loan originator, and investigation of a consumer complaint against a mortgage banker, by the Department's commissioner. 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 publication of the proposed new rule and repeal at 7 TAC §81.204 for comment in the *Texas Register*.

RECOMMENDED MOTION: I move that the Finance Commission approve publication of the proposed new rule and repeal at 7 TAC §81.204 for comment in the *Texas Register*.

TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 81. MORTGAGE BANKERS AND RESIDENTIAL MORTGAGE LOAN ORIGINATORS

SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal 7 TAC §81.204, Books and Records. The commission further proposes a new rule concerning the same or similar subject matter at 7 TAC §81.204, Books and Records. This proposal and the rules as repealed or added as a new rule by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The 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 department, under Chapter 157, registers mortgage bankers (for purposes of the proposed rules, "mortgage banker" has the meaning assigned by Finance Code §157.002). Under Chapter 157 and the Texas SAFE Act the department also licenses individuals to act a residential mortgage loan originator (originator). Mortgage bankers and originators (acting on behalf of either a mortgage banker or a residential mortgage loan company licensed by the department under Finance Code Chapter 156 (mortgage company)) originate residential mortgage loans (a loan primarily for personal,

family, or household use that is secured by a mortgage, deed of trust, or other security interest on a dwelling or residential real estate) made to consumers.

Books and Recordkeeping Changes

With respect to originators, pursuant to Finance Code §157.021(a), the department's commissioner (commissioner) may conduct inspections (including examinations) of an originator to determine compliance with Chapter 157 and the Texas SAFE Act, or the rules of the department adopted thereunder. Inspections include inspection of the originator's "books, records, documents, operations, and facilities" (Finance Code §157.021(a)). Pursuant to Finance Code §157.021(b), the commissioner, upon receipt of a signed written complaint against an originator, "shall investigate the actions and records" of the originator. Pursuant to Finance Code §157.021(e), the commission "by rule shall . . . determine the information and records [of the originator] to which the commissioner may demand access during an inspection or an investigation." Pursuant to Finance Code §157.02015(b), the commission "may adopt rules regarding books and records that [an originator] is required to keep, including the location at which the books and records must be kept." With respect to mortgage bankers, pursuant to Finance Code §157.0022, the commissioner "may request documentary and other evidence [from a mortgage banker] considered by the commissioner as necessary to effectively evaluate [a consumer] complaint, including correspondence, loan documents, and disclosures . . . [and a] mortgage banker shall promptly provide any evidence requested by the commissioner." In conducting an inspection of an originator the commissioner may also "request the assistance and cooperation of the sponsoring

mortgage banker in providing needed documents and records" (Finance Code §157.021(a)). Existing §81.204 establishes requirements concerning the books and records that a mortgage banker and an originator must maintain. The proposed rules, if adopted, would: (i) establish a new requirement concerning the location where required records must be maintained; (ii) clarify existing requirements concerning the mortgage transaction log an originator is required to maintain under existing §81.204, with respect to the description of the purpose for the mortgage loan, and the owner's or prospective owner's intended occupancy of the real estate secured or designed to be secured by the mortgage loan; (iii) expand an existing requirement under existing §81.204 by requiring that the mortgage transaction log include information concerning the type of lien anticipated after consummation of the mortgage loan (first lien, second lien, or wrap mortgage); (iv) clarify existing requirements concerning the books and records that an originator must maintain under existing §81.204 by specifically identifying certain records an originator is required to maintain to comply with the requirements of applicable state law (other than the proposed rules; including in connection with wrap mortgage loans made in accordance with Finance Code Chapter 159, Wrap Mortgage Loan Financing, which became effective on January 1, 2022), and federal law; and (v) establish a new requirement for a mortgage banker to maintain records concerning its general business operations, and simultaneously repeal such requirement as it pertains to originators under existing §81.204 as being inapplicable to an originator when considering that, in practice, such records are actually maintained in the ordinary course of business by the mortgage banker or mortgage company sponsoring the originator.

Other Modernization and Update Changes.

The proposed rules, if adopted, would make changes to modernize and update the rule including: removing unnecessary or duplicative provisions; updating terminology; and reorganizing and restating the requirements of existing §81.204 for clarity and to improve readability, including the insertion of explanatory headings throughout the rule.

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.

Public Benefits

PROPOSED NEW RULE AND REPEAL
7 TAC §81.204
PAGE 3 OF 13

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 rule to better facilitate inspection by the commissioner of an originator (including in response to a complaint by a member of the public against an originator), and the investigation by the commissioner of consumer complaints made against a mortgage banker (including by a member of the public) which will enable the commissioner to better detect and address violations of the requirements of Chapter 157 and the Texas SAFE Act (and the rules of the department adopted thereunder), and thereby better protect those members of the public utilizing the services of a mortgage banker or an originator, while simultaneously streamlining the inspections/investigations process for the department and regulated persons alike.

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 generally establish requirements concerning the books and records a mortgage banker or an originator must maintain, nearly all of which are already required under existing §81.204. The maintenance of such records may have some attendant costs. However, the statutory requirements of Finance Code §157.021 direct an originator to maintain records sufficient to facilitate an inspection by

the commissioner (and further requires the assistance and cooperation of a mortgage banker sponsoring an originator to provide relevant documents and records) to determine compliance with Chapter 157 and the Texas SAFE Act, and not the proposed rules. Moreover, most of the records required to be maintained under the proposed rules are already maintained by the mortgage banker or originator to comply with the requirements of applicable state law (other than the proposed rules), and federal law; or, are otherwise maintained by the mortgage banker or originator in the ordinary course of doing business. Such maintenance costs are therefore not direct costs attributable to the proposed rules. Applicable state and federal law that a mortgage banker or originator is required to comply with and that triggers the maintenance of records identified in the proposed rules includes, but is not limited to: (i) Article XVI, Section 50, Texas Constitution (ii) Finance Code Chapter 156; (iii) Finance Code Chapter 157; (iv) Finance Code Chapter 159; (v) Finance Code Chapter 180; (vi) Finance Code Chapter 343; (vii) the federal Truth in Lending Act (15 U.S.C. §1601 et seq.) and Regulation Z (12 C.F.R. §1026.1 et seq.); (viii) the federal Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and Regulation X (12 C.F.R. §1024.1 et seq.); (ix) the federal Equal Credit Opportunity Act (15 U.S.C. §1691 et seq.) and Regulation B (12 C.F.R. §1002.1 et seq.); (x) the federal Fair Credit Reporting Act (15 U.S.C. §1681 et seq.) and Regulation V (12 C.F.R. §1022.1 et seq.); (xi) the federal Gramm-Leach-Bliley Act (15 U.S.C. §6801 et seq.) and Regulation P (12 C.F.R. §1016.1 et seq.), and the regulations of the Federal Trade Commission (16 C.F.R. §313.1 et seq.); (xii) the federal Secure and Fair Enforcement for Mortgage Licensing Act (12 U.S.C. §5101 et seq.) and Regulation H (12 C.F.R. §1008.1 et seq.); and (xiii) federal

Regulation N (Mortgage Acts and Practices-Advertising (MAP Rule); 12 C.F.R. §1014.1 et seq.). The proposed rules require an originator to record additional information on the mortgage transaction log that the originator is already required to maintain under existing §81.204 (specifically, information concerning the type of lien anticipated after consummation of the mortgage loan). However, such additional information is created and exists as a byproduct of the mortgage loan origination process, and is thus generated by the originator in the ordinary course of doing business. The proposed rules merely require that the originator transpose such information to the existing mortgage transaction log for review by the department's examiners and investigators in the same manner as the other information required to be on the mortgage transaction log under existing §81.204. An originator may be using electronic forms or physical (paper) logs for purposes of maintaining its mortgage transaction log. An originator that uses such electronic forms may be inclined to update the forms to more easily comply with the proposed rules, and which may have some attendant costs. However, any such costs are anticipated to be insignificant. Moreover, the use of electronic forms is not required by the proposed rules, and is discretionary (not a direct cost attributable to the proposed rules). Physical logs established prior to the potential adoption of the proposed rules may still be used and supplemented with the required information, at no cost. Taking the foregoing into consideration, the proposed rules do not impose substantial economic costs on 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; (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 related to Books and Recordkeeping Changes establish a requirement concerning the location where required records must be maintained. The proposed rules related to Books and Recordkeeping Changes further establish a requirement that a mortgage banker maintain records concerning its general business operations; (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules related to Books and Recordkeeping Changes expand an existing rule requirement under existing §81.204 that an originator maintain a mortgage transaction log by requiring the originator to include on the mortgage transaction log information concerning the type of lien anticipated after consummation of the mortgage loan. The proposed rules related to Books and Recordkeeping Changes repeal an existing rule requirement under existing §81.204 for an originator to maintain general business records, and instead, appropriately reassign such requirement to the mortgage banker sponsoring the originator, as related above; (7) the proposed rules do not increase or decrease the number of

PROPOSED NEW RULE AND REPEAL
7 TAC §81.204
PAGE 5 OF 13

individuals subject to the rule's 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. All comments must be received within 30 days of publication of this proposal.

7 TAC §81.204

Statutory Authority

This proposal is made under the authority of Finance Code §157.0023 which authorizes the commission to adopt rules necessary to implement or fulfill the purpose 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; 12 U.S.C. §5101 et seq.).

This proposal affects the statutes contained in Finance Code Chapter 157, Mortgage Bankers and Residential Mortgage Loan Originators, and Finance Code Chapter 180, Residential Mortgage Loan Originators, with respect to persons licensed under Finance Code Chapter 157.

§81.204. Books and Records.

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



7 TAC §81.204

Statutory Authority

This proposal is made under the authority of Finance Code §157.0023(a) and (c) which authorizes the commission to adopt rules necessary to implement or fulfill the purpose 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; 12 U.S.C. §5101 et seq.). This proposal is also made under the authority of Finance Code §157.02015(b) which

authorizes the commission to adopt rules regarding books and records that a person licensed under Finance Code Chapter 157 is required to keep, including the location at which the books and records must be kept. This proposal is also made under the authority of, and to implement, Finance Code §§157.0022(b), 157.003(b)(6), 157.009(d), and 157.021.

This proposal affects the statutes contained in Finance Code Chapter 157, Mortgage Bankers and Residential Mortgage Loan Originators, and Finance Code Chapter 180, Residential Mortgage Loan Originators, with respect to persons licensed under Finance Code Chapter 157.

§81.204. Books and Records.

(a) Maintenance of Records, Generally. In order to ensure a mortgage banker or an originator will have all records necessary to facilitate an inspection (including an examination) of an originator, enable the Commissioner or the Commissioner's designee to investigate complaints against a mortgage banker or an originator, and otherwise ensure compliance with the requirements of Finance Code Chapters 157 and 180, and this chapter, a mortgage banker and an originator must maintain records as prescribed by this section.

(1) Format. The records required by this section may be maintained by using a physical, electronic, or digitally-imaged recordkeeping system, or a combination thereof. The records must be accurate, complete, current, legible, and readily accessible and sortable.

(2) Location. A mortgage banker must ensure the records required by this section (or true and correct copies thereof) are maintained at or are otherwise readily accessible from either the main office of the mortgage banker or the

location the mortgage banker has designated in its MU1 filing under "Books and Records Information" in NMLS. An originator must ensure the records required by this section (or true and correct copies thereof) are maintained at or are otherwise readily accessible from the main office of the mortgage banker or the mortgage company sponsoring the originator, or the location the mortgage banker or mortgage company has designated in its MU1 filing under "Books and Records Information" in NMLS. (For purposes of this section "main office" has the meaning assigned by §81.206 of this title (relating to Office Locations; Remote Work), with respect to a mortgage banker, and §80.206 of this title (relating to Office Locations; Remote Work), with respect to a mortgage company.)

(3) Production of Records; Disciplinary Action or Violation. All records required by this section must be maintained in good order and produced for the Commissioner or the Commissioner's designee upon request. Failure by an originator to produce records upon request after a reasonable time for compliance may result in disciplinary action against the originator, including, but not limited to, suspension or revocation of the originator's license. Failure by a mortgage banker to produce records upon request after a reasonable time for compliance in response to a complaint investigation conducted by the Department may be treated as a failure by the mortgage banker to provide evidence in violation of the requirements of Finance Code §157.0022(b).

(4) Retention Period. All records required by this section must be maintained for 3 years or such longer period as may be required by other applicable law.

(5) Conflicting Law. If the requirements of other applicable law governing recordkeeping by the mortgage banker or originator differ from the requirements of this section, such other applicable law prevails only to the extent this section conflicts with the requirements of this section.

(6) Compliance by the Mortgage Banker or Mortgage Company on Behalf of the Originator. An originator fulfills the requirements of subsection (b) of this section if his or her sponsoring mortgage banker or mortgage company maintains the required books and records on behalf of the originator.

(b) Required Records of an Originator. An originator is required to maintain the following items:

(1) Mortgage Transaction Log. A mortgage transaction log, maintained on a current basis (which means all entries must be made within no more than 7 days from the date on which the matters they relate to occurred), setting forth, at a minimum:

(A) the name and contact information of each mortgage applicant;

(B) the date of the initial loan application;

(C) the full name of the originator who took the initial loan application, and his or her NMLS identification number;

(D) a description of the purpose for the loan (e.g., purchase, refinance, construction, home equity, home improvement, land lot loan, wrap mortgage loan, etc.);

(E) a description of the owner's or prospective owner's intended occupancy of the real estate secured or designed to be secured

by the loan (e.g., primary residence (including real estate (land lot) or a dwelling not suitable for occupancy at the time the loan is consummated but that the owner intends to occupy as their primary residence after consummation of the loan), secondary residence, or investment property (no intent to occupy as their residence));

(F) the lien type (e.g., first lien, second lien, or wrap mortgage);

(G) a description of the current status or disposition of the loan application (e.g., in-process, withdrawn, closed, or denied); and

(H) if the loan is closed, the identity of the person who initially funded and/or acquired the loan; and

(2) Residential Mortgage Loan File. For each residential mortgage loan transaction or prospective residential mortgage loan transaction, a residential mortgage loan file containing, at a minimum:

(A) All Transactions. For all transactions, the following records:

(i) the initial and any final loan application (including any attachments, supplements, or addendum thereto), signed and dated by each mortgage applicant and the sponsored originator, and any other written or recorded information used in evaluating the application, as required by Regulation B, 12 C.F.R. §1002.4(c);

(ii) the initial and any revised good faith estimate (Regulation X, 12 C.F.R. §1024.7), integrated loan estimate disclosure (Regulation Z, 12 C.F.R. §1026.37), or similar, provided to the mortgage applicant;

(iii) the final settlement statement (Regulation X, 12 C.F.R. §1024.8), closing statement, or integrated closing disclosure (Regulation Z, 12 C.F.R. §1026.19(f) and §1026.38);

(iv) for an originator sponsored by a mortgage banker, the disclosure statement required by Finance Code §157.0021 and §81.200(a) of this title (relating to Required Disclosures); or, for an originator sponsored by a mortgage company, the disclosure statement required by Finance Code §156.004 and §80.200(a) of this title (relating to Required Disclosures), signed and dated by each mortgage applicant and the sponsored originator;

(v) if provided to a mortgage applicant or prospective mortgage applicant, the Conditional Pre-Qualification Letter, or similar, as specified by Finance Code §157.02012 and §81.201 of this title (relating to Loan Status Forms), with respect to an originator sponsored by a mortgage banker, or Finance Code §156.105 and §80.201 of this title (relating to Loan Status Forms), with respect to an originator sponsored by a mortgage company;

(vi) if provided to a mortgage applicant or prospective mortgage applicant, the Conditional Approval Letter, or similar, as specified by Finance Code §157.02012 and §81.201 of this title (relating to Loan Status Forms), with respect to an originator sponsored by a mortgage banker, or Finance Code §156.105 and §80.201 of this title (relating to Loan Status Forms), with respect to an originator sponsored by a mortgage company;

(vii) each item of correspondence, all evidence of any contractual agreement or understanding, and all notes and memoranda of conversations or meetings with a mortgage applicant or any other party in connection with the loan application or its ultimate disposition (e.g., fee agreements, rate lock agreements, or similar documents);

(viii) if the loan is a "home loan" as defined by Finance Code §343.001, the notice of penalties for making a false or misleading written statement required by Finance Code §343.105, signed at closing by each mortgage applicant;

(ix) if the transaction is a purchase money or wrap mortgage loan transaction, the real estate sales contract or real estate purchase agreement for the sale of the residential real estate;

(x) consumer reports or credit reports obtained in connection with the loan or prospective loan, and if a fee is paid by or imposed on the mortgage applicant, invoices/receipts for the purchase of the consumer report or credit report;

(xi) appraisal reports or written valuation reports used to determine the value of the residential real estate secured or designed to be secured by the loan, and if a fee is paid by or imposed on the mortgage applicant for such appraisal report or written valuation report, invoices and proof of payment for the appraisal report or written valuation report;

(xii) invoices and proof of payment for third party fees paid by or imposed on the mortgage applicant;

(xiii) refund checks issued to the mortgage applicant;

PROPOSED NEW RULE AND REPEAL
7 TAC §81.204
PAGE 9 OF 13

(xiv) if applicable, the risk-based pricing notice required by Regulation V, 12 C.F.R. §1022.72;

(xv) if applicable, invoices for independent loan processors or underwriters;

(xvi) if the originator or the mortgage banker or mortgage company sponsoring the originator acts in a dual capacity as the loan originator and real estate broker, sales agent, or attorney in the transaction, the disclosure of multiple roles in a consumer real estate transaction, signed and dated by each mortgage applicant, as required by Finance Code §157.024(a)(10) and §156.303(a)(13);

(xvii) the initial privacy notice required by Regulation P, 12 C.F.R. §1016.4 or 16 C.F.R. §313.4;

(xviii) the mortgage applicant's written authorization to receive electronic documents;

(xix) records reflecting compensation paid to employees or independent contractors in connection with the transaction;

(xx) any other agreements, notices, disclosures, or affidavits required by federal or state law in connection with the transaction; and

(xxi) any written agreements or other records governing the origination of the loan or prospective loan;

(B) Lender Transactions. For transactions where the mortgage banker or mortgage company sponsoring the originator acted as the lender, the following records:

(i) the promissory note, loan agreement, or repayment agreement, signed by the borrower (mortgage applicant);

(ii) the recorded deed of trust, contract, security deed, security instrument, or other lien transfer document, signed by the borrower (mortgage applicant);

(iii) any verifications of income, employment, or deposits obtained in connection with the loan;

(iv) copies of any title insurance policies with endorsements or title search reports obtained in connection with the loan, and receipts/invoices for the title insurance policy or title search report; and

(v) if applicable, the flood determination certificate obtained in connection with the loan, and if a fee is paid by or imposed on the mortgage applicant for such flood certificate, invoices and proof of payment for the flood determination certificate;

(C) Truth in Lending Act (TILA). For transactions that are subject to the requirements of TILA (15 U.S.C. §1601 et seq.) and Regulation Z (12 C.F.R. §1026.1 et seq.), the following records:

(i) the initial Truth-in-Lending statement for home equity lines of credit and reverse mortgage transactions required by Regulation Z, 12 C.F.R. §1026.19;

(ii) if the transaction is an adjustable rate mortgage transaction, the adjustable rate mortgage program disclosures;

(iii) records relating to the mortgage applicant's ability to repay the loan, as required by Regulation Z, 12 C.F.R. §1026.43(c);

PROPOSED NEW RULE AND REPEAL
7 TAC §81.204
PAGE 10 OF 13

(iv) if the mortgage applicant is permitted to shop for a settlement service, the written list of providers required by Regulation Z, 12 C.F.R. §1026.19(e)(1)(vi)(C);

(v) the notice of intent to proceed with the transaction required by Regulation Z, 12 C.F.R. §1026.19(e)(2)(i)(A);

(vi) if applicable, records related to a changed circumstance required by Regulation Z, 12 C.F.R. §1026.19(e)(3)(iv);

(vii) the notice of right to rescission required by Regulation Z, 12 C.F.R. §1026.15 or §1026.23;

(viii) for high-cost mortgage loans, the disclosures required by Regulation Z, 12 C.F.R. §1026.32(c);

(ix) for high-cost mortgage loans, the certification of counseling required by Regulation Z, 12 C.F.R. §1026.34(a)(5)(i); and

(x) any other notice or disclosure required by TILA or Regulation Z;

(D) Real Estate Settlement Procedures Act (RESPA). For transactions that are subject to the requirements of RESPA (12 U.S.C. §2601 et seq.) and Regulation X (12 C.F.R. §1024.1 et seq.), the following records:

(i) records reflecting delivery of the special information booklet required by Regulation X, 12 C.F.R. §1024.6;

(ii) any affiliated business arrangement disclosure statement provided to the mortgage applicant in accordance with Regulation X, 12 C.F.R. §1024.15;

(iii) records reflecting delivery of the list of homeownership

counseling organizations required by Regulation X, 12 C.F.R. §1024.20; and

(iv) any other notice or disclosure required by RESPA or Regulation X;

(E) Equal Credit Opportunity Act - Transactions Not Resulting in Approval. For residential mortgage loan applications where a notice of incompleteness is issued, a counteroffer is made, or adverse action is taken, as provided by Regulation B (12 C.F.R. §1002.1 et seq.), the following records, as applicable:

(i) the notice of incompleteness required by Regulation B, 12 C.F.R. §1002.9(c)(2);

(ii) the counteroffer letter sent to the mortgage applicant in accordance with Regulation B, 12 C.F.R. §1002.9; and

(iii) the adverse action notification (a/k/a turndown letter) required by Regulation B, 12 C.F.R. §1002.9(a);

(F) Home Equity Transactions. For home equity loan or home equity line of credit transactions, the following records (references in this subparagraph to Section 50 refers to Article XVI, Section 50, Texas Constitution):

(i) the preclosing disclosures required by Section 50(a)(6)(M)(ii) and §153.13 of this title (relating to Preclosing Disclosures: Section 50(a)(6)(M)(ii); as provided by such section, the closing disclosure or account-opening disclosures required by Regulation Z fulfills this requirement);

(ii) the consumer disclosure required by Section 50(g) and

§153.51 of this title (relating to Consumer Disclosure: Section 50(g)):

(iii) if an attorney-in-fact executes the closing documents on behalf of the owner or owner's spouse, a copy of the executed power of attorney and any other documents evidencing execution of such power of attorney at the permanent physical address of an office of the lender, an attorney at law, or a title company, as required by §153.15 of this title (relating to Location of Closing: Section 50(a)(6)(N));

(iv) if the borrower (mortgage applicant) uses the proceeds of the loan to pay off a non-homestead debt with the same lender, a written statement, signed by the mortgage applicant, indicating the proceeds of the home equity loan were voluntarily used to pay such debt (see Section 50(a)(6)(Q)(i));

(v) notice of the right of rescission, as required by Section 50(a)(6)(Q)(viii) (as provided by §153.25 of this title (relating to Right of Rescission: Section 50(a)(6)(Q)(viii)), the notice of right of rescission required by TILA and Regulation Z fulfills this requirement);

(vi) the written acknowledgement as to the fair market value of the homestead property, as required by Section 50(a)(6)(Q)(ix) and §153.26 of this title (relating to Acknowledgement of Fair Market Value: Section 50(a)(6)(Q)(ix)); and

(vii) if the home equity loan is refinanced into a non-home equity loan, the Texas Notice Concerning Refinance of Existing Home Equity to Non-Home Equity Loan, as required by Section 50(f)(2)(D) and §153.45 of this title (relating to Refinance of an Equity Loan: Section 50(f));

(G) Wrap Mortgage Loans. For wrap mortgage loan transactions subject to the requirements of Finance Code Chapter 159, the following records:

(i) the disclosure statement required by Finance Code §159.101 and §78.101 of this title (relating to Required Disclosure), signed and dated by each mortgage applicant, and any foreign language disclosure statement required by Finance Code §159.102;

(ii) the disclosure statement required by Tex. Prop. Code §5.016 provided to each existing lienholder (the disclosure statement required by Finance Code §159.101 and §78.101 of this title (relating to Required Disclosure) referenced in clause (i) of this subparagraph fulfills this requirement if it was provided to each existing lienholder); and

(iii) documents evidencing that the wrap mortgage loan was closed by an attorney or a title company, as required by Finance Code §159.105;

(H) Home Improvement Loans. For home improvement transactions (including repair, renovation, and new construction), the following records:

(i) the mechanic's lien contract;

(ii) documents evidencing the transfer of lien from the contractor to the lender;

(iii) the residential construction contract;

(iv) notice of the right of rescission required by Article XVI, Section 50(a)(5)(C), Texas Constitution (the notice of

PROPOSED NEW RULE AND REPEAL
7 TAC §81.204
PAGE 12 OF 13

right of rescission required by TILA and Regulation Z fulfills this requirement); and

(v) any other notice or disclosure required by Texas Property Code Chapter 53;

(I) Reverse Mortgages. For reverse mortgage transactions, the following records:

(i) the disclosure required by Article XVI, Section 50(k)(9), Texas Constitution;

(ii) the certificate of counseling required by Article XVI, Section 50(k)(8), Texas Constitution;

(iii) the servicing disclosure statement required by Regulation X, 12 C.F.R. §1024.33(a);

(iv) the disclosures required by Regulation Z, 12 C.F.R. §1026.33(b); and

(v) any other notice or disclosure required by federal or state law to originate a reverse mortgage;

(3) Other Records Required by Federal Law. An originator must maintain such other books and records as may be required to evidence compliance with applicable federal laws and regulations, including, but not limited to:

(i) the Fair Credit Reporting Act (15 U.S.C. §1681 et seq.) and Regulation V (12 C.F.R. §1022.1 et seq.);

(ii) the Gramm-Leach-Bliley Act (15 U.S.C. §6801 et seq.) and Regulation P (12 C.F.R. §1016.1 et seq.), and

the regulations of the Federal Trade Commission (16 C.F.R. §313.1 et seq.);

(iii) the Secure and Fair Enforcement for Mortgage Licensing Act (12 U.S.C. §5101 et seq.) and Regulation H (12 C.F.R. §1008.1 et seq.); and

(iv) Regulation N (Mortgage Acts and Practices-Advertising (MAP Rule); 12 C.F.R. §1014.1 et seq.);

(4) Other Records of an Originator Designated by the Commissioner. An originator must maintain such other books and records as the Commissioner or the Commissioner's designee may, from time to time, specify in writing.

(c) Required Records of a Mortgage Banker. A mortgage banker must maintain the following records:

(1) General Business Records. General business records include:

(A) all checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and cancelled checks (or copies thereof) relating to residential mortgage loan origination business;

(B) complete records (including invoices and supporting documentation) for all expenses and fees paid on behalf of a mortgage applicant, including a record of the date and amount of all such payments actually made by each mortgage applicant;

(C) all federal tax withholding forms, reports of income for federal taxation, and evidence of payments to all employees of the mortgage banker, independent contractors, and all others compensated by the mortgage

PROPOSED NEW RULE AND REPEAL
7 TAC §81.204
PAGE 13 OF 13

banker in connection with residential mortgage loan origination business;

(D) all written complaints or inquiries (or summaries of any verbal complaints or inquiries) along with any correspondence, notes, responses, and documentation relating thereto and the disposition thereof;

(E) all contractual agreements or understandings with third parties in any way relating to a residential mortgage loan transaction including, but not limited to, any delegations of underwriting authority, any agreements for pricing of goods or services, investor contracts, or employment agreements;

(F) all reports of audits, examinations, inspections, reviews, investigations, or similar, performed by any third party, including any regulatory or supervisory authorities;

(G) all advertisements in the medium (e.g., recorded audio, video, Internet or social media site posting, or print) in which they were published or distributed; and

(H) policies and procedures related to the origination of residential mortgage loans by the mortgage banker and its sponsored originators, including, but not limited to:

(i) identity theft prevention program (red flags rule; 16 C.F.R. §681.1(d));

(ii) anti-money laundering program (31 C.F.R. §1029.210);

(iii) information security program (16 C.F.R. §314.3(a));

(iv) ability-to-repay underwriting policies, if any

(Regulation Z, 12 C.F.R. §1026.43(c));

(v) quality control policy, if any;

(vi) compliance manual, if any; and

(vii) personnel administration/employee policies, if any;

(2) Records Concerning Administrative Offices. A mortgage banker must maintain a list reflecting any office constituting an "administrative office" of the mortgage banker for purposes of §80.206 of this title (relating to Office Locations; Remote Work); and

(3) Records Concerning Remote Work. A mortgage banker must maintain records reflecting its compliance with the requirements for remote work, as provided by §80.206 of this title (relating to Office Locations; Remote Work).

(d) Records Retention After Terminating Operations. Within 10 days of terminating operations, a mortgage banker or originator must provide the Department with written notice of where the required records will be maintained for the prescribed period. If such records are transferred to another mortgage banker registered with the Department, the transferee must provide the Department with written notice within 10 days after receiving such records.

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-Deputy General Counsel
Department of Savings and Mortgage Lending

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

Anticipated Litigation

None

Pending Litigation

None

D.

Texas Department of Banking

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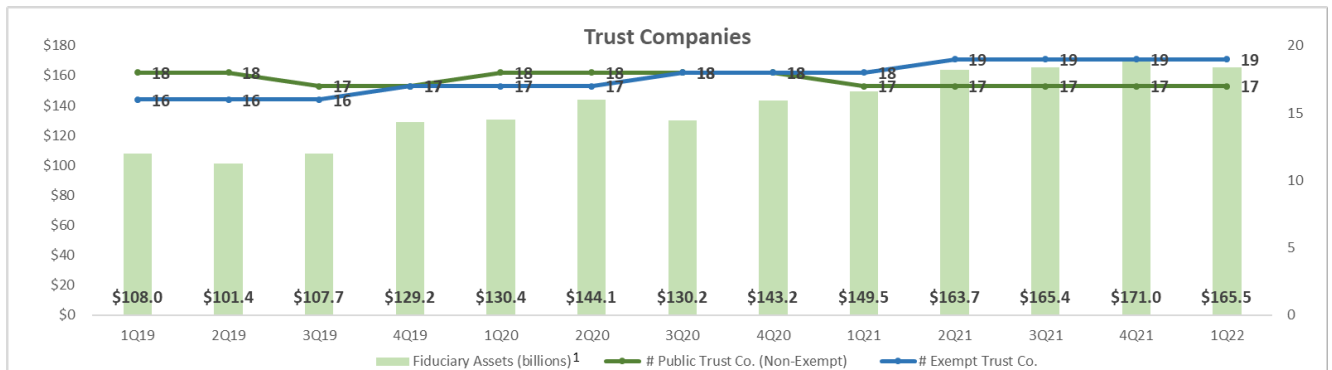
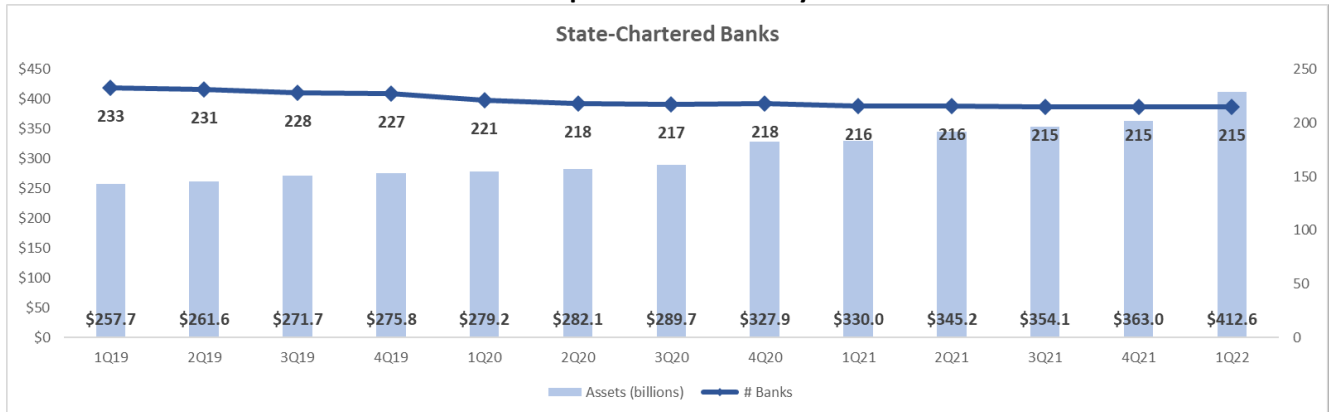
Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

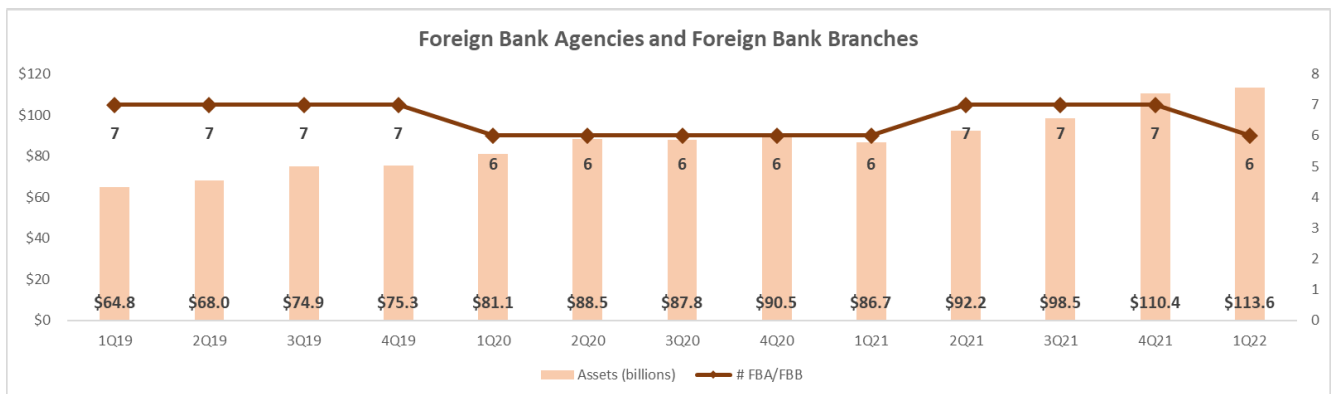
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512-475-1300 / 877-276-5554
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To: Finance Commission Members
From: Daniel Frasier, Director of Bank & Trust Supervision *DBF*
Date: February 2, 2022
Subject: Summary of the Bank & Trust Supervision Division Activities

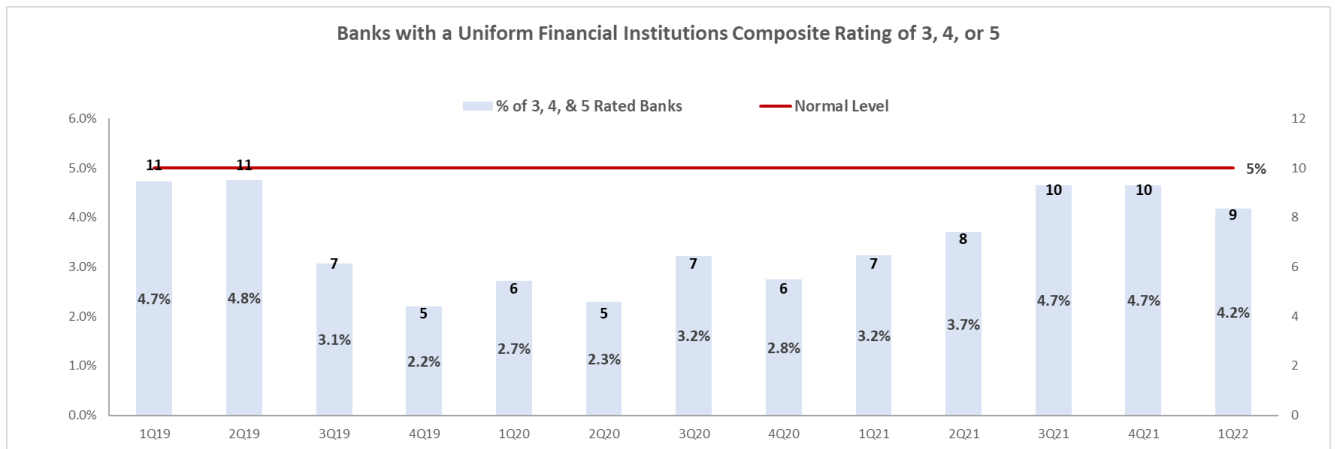
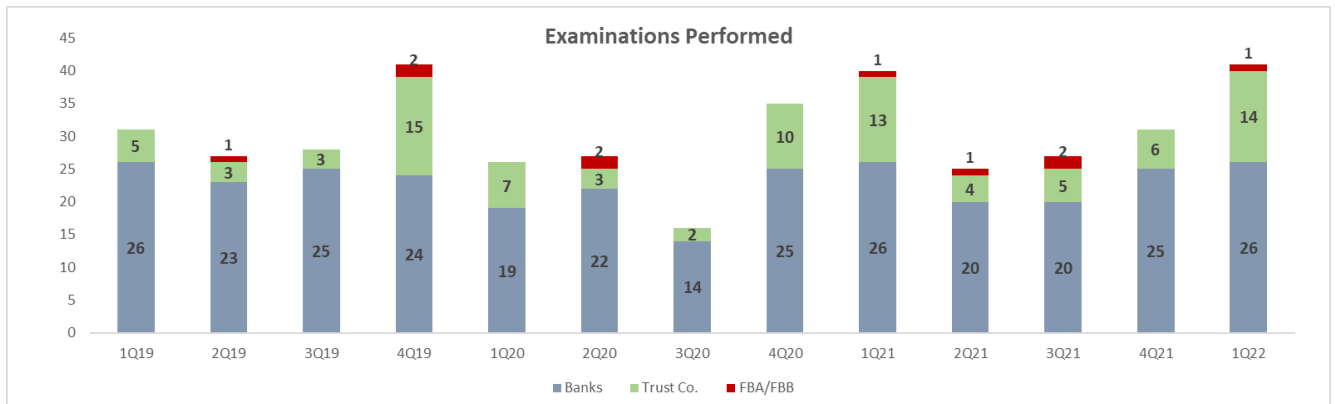
Bank and Trust Supervision – Industry Profiles



¹Fiduciary Assets for public trust companies (non-exempt) only.



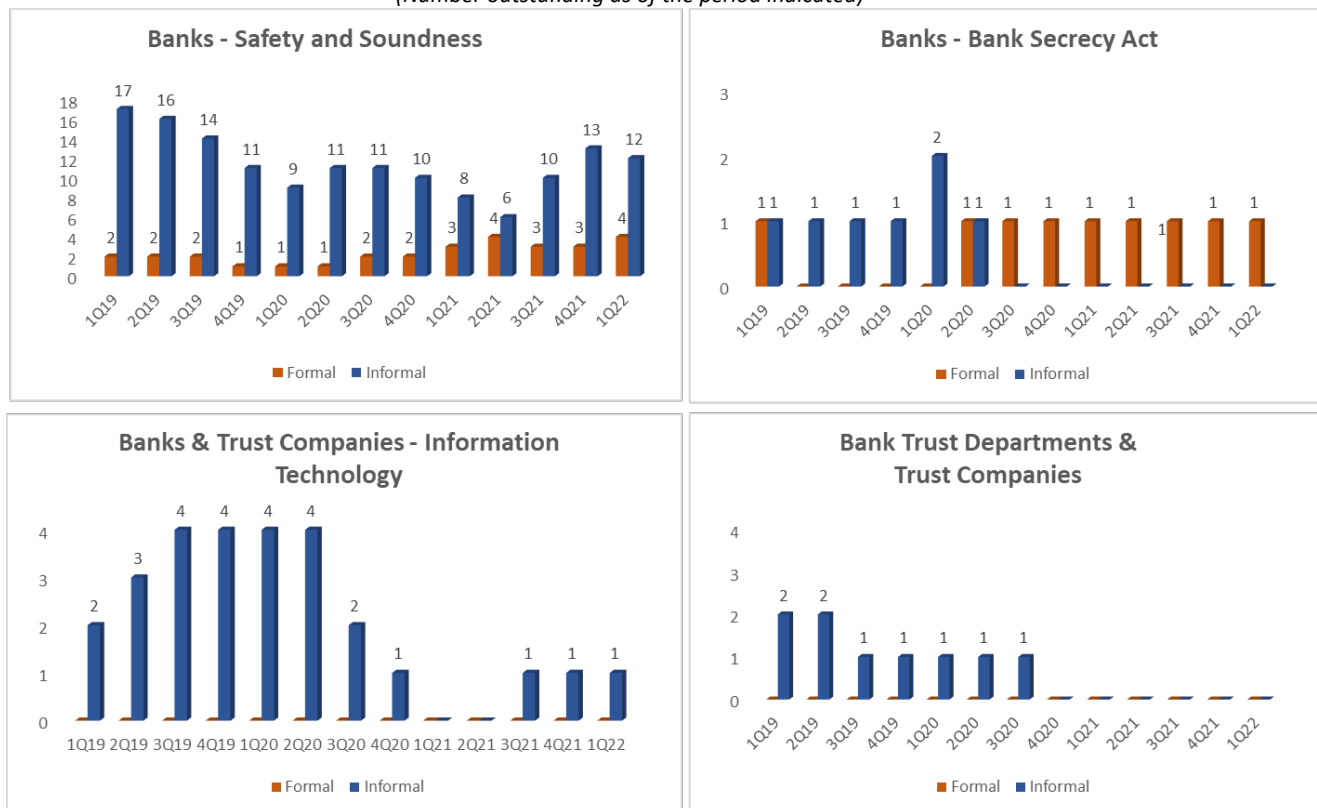
Summary of the Bank & Trust Supervision Division Activities



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 remain in the normal range between 3% and 5% of the total number of institutions. Continued improvement in economic conditions on the back of government stimulus programs has mitigated the financial impact to banks from the COVID-19 pandemic.

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 2021	FY 2022 (YTD – Dec. 2021)
Commercial Banks (All / DOB Only)	95% / 93%	96% / 93%
IT	98% / 100%	94% / 88%
Trust	97% / 100%	100% / 100%
Foreign Banks (FRB)	67%	100%
Trust Companies (DOB)	100%	100%
IT	100%	100%

The division is meeting its examination priorities for FY 2022 for all examinations except for DOB led commercial and IT examinations. Two commercial examinations were started late this fiscal year by an average of eight days, and three IT bank examinations were started late by an average of 13 days.

Division Highlights

- **Newly Commissioned Examiners:** The Bank & Trust Supervision Division is proud to congratulate five examiners for successfully completing the Department's Bank Examination Testing System (BETS) in 2021, and thereby earning their promotion to Commissioned Examiner. The newly commissioned examiners in 2021 were: Erin Kelly, Makenna Carson, Clayton Hendrix, Emmanuel Lerma, and Lilliana Abbassi. In 2020, the Department temporarily instituted virtual test bank procedures to allow the commissioning process to continue with as little disruption as possible to allow examiners to continue their advancement and complete the BETS process while working safely in a COVID-19 environment.

- **COVID-19 Update:**
 - The Department continues to actively monitor and respond to the changing circumstances brought about by the COVID-19 pandemic. As a result of the Omicron variant, the Department received a noted increase in bank operation disruption notices the last week of 2021, extending through the middle of January 2022. During this period, many banks either temporarily closed locations or provided only drive through and appointment only services to maintain social distancing precautions. Most closures were the result of COVID outbreaks causing staff members to quarantine. Customers were directed to nearby branches to receive services where applicable. The Department maintains communication with regulated entities between examinations and performs offsite monitoring of key financial metrics.

 - The Department continues to conduct predominantly offsite examinations, but is performing 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 provided with the option for either an onsite or offsite examination based on examiners' and 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 and overall credit risk remains sound.

- **Special Operations and Conferences:**
 - On December 1, 2021, Director of IT Security Examinations Phillip Hinkle represented the Department (virtually) as a speaker at the Illinois Department of Financial and Professional Regulation, Speaker Series for Banking Examiners.

 - Beginning on December 6, 2021, Commissioner Charles G. Cooper, Deputy Commissioner Wendy Rodriguez, General Counsel Catherine Reyer, and Director of Non-Depository Supervision Jesse Saucillo represented the Department at the Conference of State Bank Supervisors (CSBS) Board meeting and Supervisory Symposium in San Diego, California.

 - Beginning on January 23, 2022, Commissioner Cooper represented the Department at the Independent Bankers Association of Texas (IBAT) Winter Summit XXI in Avon, Colorado.



TEXAS DEPARTMENT OF BANKING

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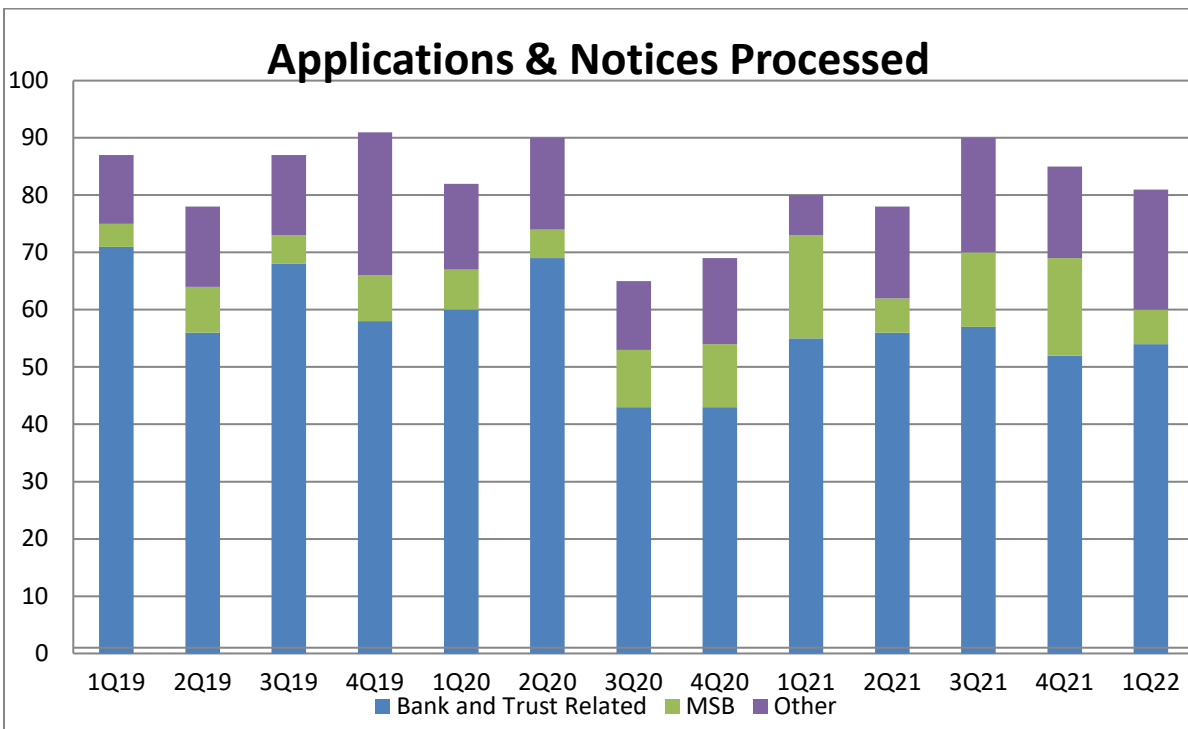
Charles G. Cooper
Commissioner

To: Finance Commission Members

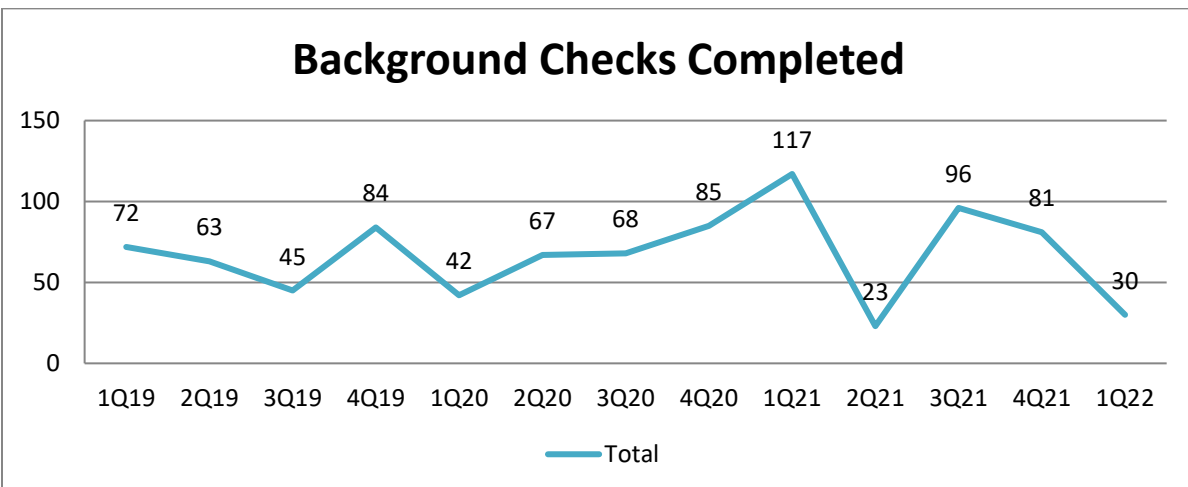
From: Mark Largent, Director of Corporate Activities *Mark R. Largent*

Date: February 2, 2022

Subject: Summary of the Corporate Division's Activities



Information on a Fiscal Quarter Basis.



Information on a Fiscal Quarter Basis.

Entities/Activities	Applications and Notices Under Review (as of February 1, 2022)
Bank Related	16
Trust Companies	2
Money Services Business (MSB)	32
Others	4
Totals	54

Division Highlights

- Application volume is moderately higher compared 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 1 (7%)
 - Trust company was unchanged 0 (0%)
 - MSB related increased 3 (10%)
 - Other increased 3 (300%)
- A new Administrative Assistant has joined the Corporate Division.
- **Significant Filings:**
 - Houston Bank of Commerce & Trust, a proposed de novo bank, has applied for a Texas state bank charter to be located in Houston, Texas [estimated gain in state banking assets of \$37 million].
 - Texas Traditions Bank, a proposed de novo bank, has applied for a Texas state bank charter to be located in Katy, Texas [estimated gain in state banking assets of \$35 million].
 - Bank of Houston, N.A., Houston, Texas, has applied to convert to a Texas state bank charter under the name of Bank of Houston [estimated gain in state banking assets of approximately \$445 million].
 - The National Bank of Texas at Fort Worth, Fort Worth, Texas, has applied to convert to a Texas state bank charter under the name of NBT Financial Bank [estimated gain in state banking assets of approximately \$448 million].
 - Allegiance Bank, Houston, Texas, has applied to acquire via merger Community Bank of Texas, N.A., Beaumont, Texas [estimated gain in state banking assets of \$4.3 billion].
- **Charter, Conversion, and Merger Activity** – Since the last report to the Finance Commission, the following transactions have consummated:
 - *Banks*
 - Texas Exchange Bank, SSB, Crowley, converted to a Texas state bank charter under the name of Texas Exchange Bank [estimated gain in state banking assets of approximately \$2.8 billion].
 - Texas Bank, Brownwood, Texas, completed its merger with its banking affiliate Texas Bank Financial, Weatherford, Texas [no change in state banking assets].

- *Trust Companies*
 - None.



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TEXAS DEPARTMENT OF BANKING

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To: Finance Commission Members

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

Date: February 1, 2022

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

		FY 2022								
Entity	FY 2021		1 st		2 nd		3 rd		4 th	
Industry Profile (# / Assets (billions))										
Money Services Businesses (MSB)	196	\$219.2	197	\$219.4						
Prepaid Funeral Contract (PFC)	345	\$4.5	346	\$4.5						
Perpetual Care Cemeteries (PCC)	243	\$401.8*	243	\$413.2*						
Check Verification Entities (CVE)	2	n/a	2	n/a						
Examinations Performed										
MSB	79		19							
MSB Limited Scope	1		1							
MSB Accepted other State	5		6							
PFC	230		60							
PFC Limited Scope	0		0							
PCC	212		43							
PCC Limited Scope	0		0							
Ratings (# / %) Assigned to All Regulated Entities										
1	288	38.40%	288	38.35%						
2	392	52.27%	401	53.40%						
3	66	8.80%	58	7.72%						
4 & 5	4	0.53%	4	0.53%						
Noncompliance with Examination Priorities (Past Due)										
MSB	1		8							
PFC	0		1							
PCC	0		0							

NOTES:

Limited scope examinations do not receive a rating.

* PCC \$ amounts reflected in the millions.

Examination Activities

The Department continues to monitor and adjust examination schedules based on the ongoing changing circumstances resulting from the COVID-19 pandemic. MSB license holders continue to operate in a hybrid status with staff working remotely, while PFC and PCC license holders have mostly kept a normal operating schedule. NDS continues to conduct examinations primarily off-site.

However, based on various risk factors, certain examinations may be conducted on-site when deemed necessary. In the MSB area, multi-state coordinated examinations continue to be conducted remotely. During the Multistate MSB Examination Task Force (MMET) quarterly scheduling calls, most other MSB state regulatory agencies have expressed their intent to continue with remote examinations at least through the second quarter of calendar year 2022.

The Department's ability to continue to perform remote examinations has allowed the division to meet all NDS performance measures for the first quarter of fiscal year 2022. Below is a breakdown of the past due examinations as of November 30, 2021, by industry type.

- Of the eight past due MSB examinations, seven examinations are part of joint examinations to be conducted in coordination with other MSB state regulatory agencies. Two of the past due examinations were conducted in December 2021 and two were conducted in January 2022. The remaining past due examinations are scheduled to be conducted as follows: one in February 2022, one in March 2022; and two in April 2022. The coordination of examinations with other state regulatory agencies allows states to create a more efficient and effective scheduling process while promoting the efficient utilization of state resources.
- One past due PFC examination was completed in January 2022. No PCC examinations were past due.

Division Activities

- NDS continues to hold conference calls and virtual meetings with examiners to ensure staff is kept informed of recent Departmental and industry developments, and to allow examiners an opportunity to discuss any issues impacting them.
- On December 13th and 14th, Director Saucillo, along with various other Departmental staff, attended the Conference of State Bank Supervisors (CSBS) Supervisor's Symposium in San Diego, California. The Supervisor's Symposium provided various presentations and information regarding the latest developments in financial supervision.
- On January 26, 2022, Director Saucillo participated in the State Coordinating Committee (SCC) - Consumer Financial Protection Bureau (CFPB) Winter Meeting. The meeting was held remotely to discuss trends, major developments, key areas of focus, and major findings noted during past examinations. The SCC is responsible for coordinating the supervision of activities related to MSBs, mortgage, debt collection, and payday lending with the CFPB.
- NDS staff continues to participate in State Examination System (SES) meetings to discuss and provide ongoing feedback to CSBS personnel regarding SES. Currently, the Department is conducting a multi-state MSB examination in SES to assess system functionality. SES is an examination management system developed by the CSBS to facilitate MSB examinations by improving communication and coordination among the states and licensees.

- NDS staff continues to monitor for and investigate non-compliant activity. During this reporting period, in coordination with the Legal Division, regulatory enforcement actions were issued against entities offering and conducting MSB activities in violation of applicable rules and regulations to protect the rights and interests of Texas consumers. NDS also conducted a hearing against an individual to seek administrative penalties and restitution regarding the sale of prepaid funeral benefits without the required permit.
- NDS conducted interviews in January to fill a MSB Financial Examiner I vacancy and anticipates extending a job offer to one candidate in February 2022. Also, in December 2021, a PFC Financial Examiner with 22 years of tenure retired. A posting to fill this vacancy closed in January 2022. We anticipate conducting interviews in February 2022 to attempt to fill the vacancy.

**Department of Banking
Actual Performance for Output Measures
Fiscal Year 2022**

Type/Strategy/Measure	2022 Target	2022 Actual	2022 YTD	Percent of Annual Target
Output Measures-Key				
1-1-1	Bank Examination			
	1. # Bank Examinations Performed			
	Quarter 1			
	94	26	26	27.66%
	2. # Foreign/Trust/IT Examinations Performed			
	Quarter 1			
	230	63	63	27.39%
1-2-1	Non-Bank Examination			
	1. # NDS Licensees Examined			
	Quarter 1			
	520	129	129	24.81%
1-3-1	Application Processing			
	1. # License Applications Completed			
	Quarter 1			
	324	90	90	27.78%

* Varies by 5% or more from target



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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Memorandum

To: Finance Commission Members
From: Lori Wright, Director of Human Resources
Date: February 2, 2022
Subject: Summary of the Human Resources Division Activities

Human Resources Fiscal Year 2022 Activities

Active Postings				
Number of Positions	Position	Division	Status	Activities
1	<i>Programmer III-V</i>	MIS	Open Until Filled	
1	<i>Financial Examiner IV-VI Financial Analyst – Training Coordinator</i>	DSS	Closes 02/23/2022	
1	<i>System Support Specialist IV</i>	MIS	Closes 02/08/2022	
1	<i>Accountant V-VII Chief Accountant</i>	Administrative Services	Open Until Filled	
1	<i>Financial Examiner I-II Prepaid Funeral Contract/ Perpetual Care Cemetery (PFC/PCC)</i>	NDS	Open Until Filled	
1	<i>Financial Examiner V Credit Review Specialist</i>	Bank and Trust	Open Until Filled	
1	<i>Financial Examiner VI - VII Commercial Bank Examiner</i>	Bank and Trust	Perpetual Posting	
1	<i>Financial Examiner IV - V Commercial Bank Examiner</i>	Bank and Trust	Perpetual Posting	

CAPPS

Attending CAPPS HR/Payroll meetings, providing information, and discussing business process needs.

UT Survey of Employee Engagement

Administered Survey. Results are currently being reviewed.

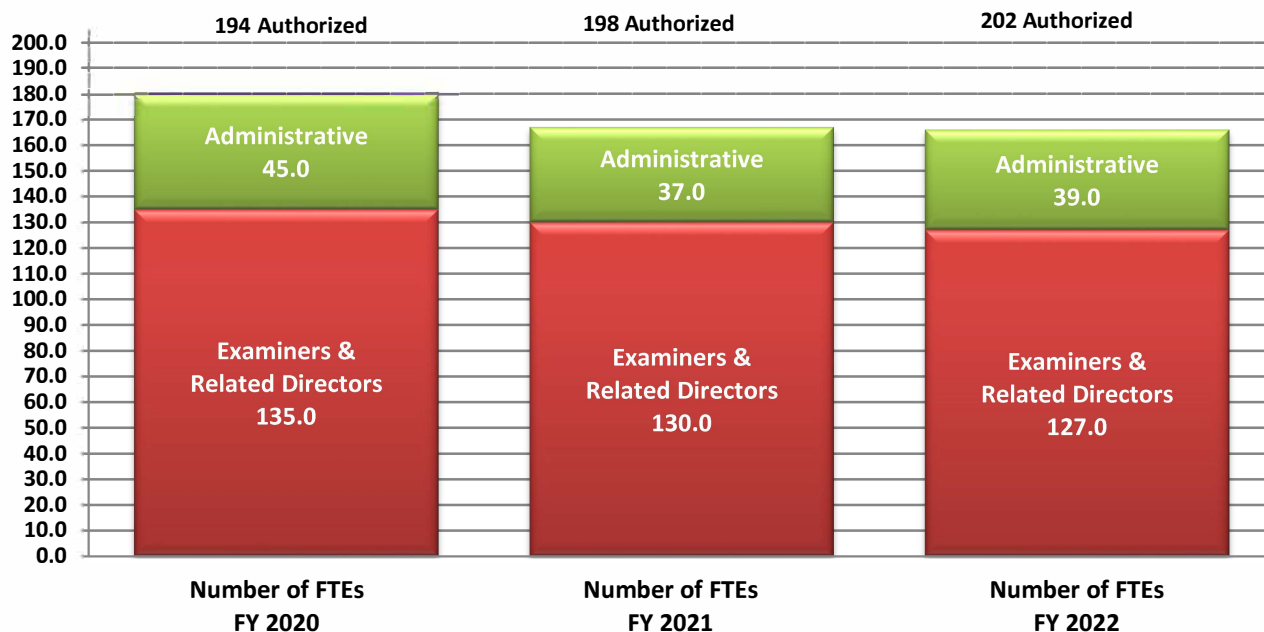
Performance Appraisals

Employees are participating in the Annual Performance Appraisal Process.

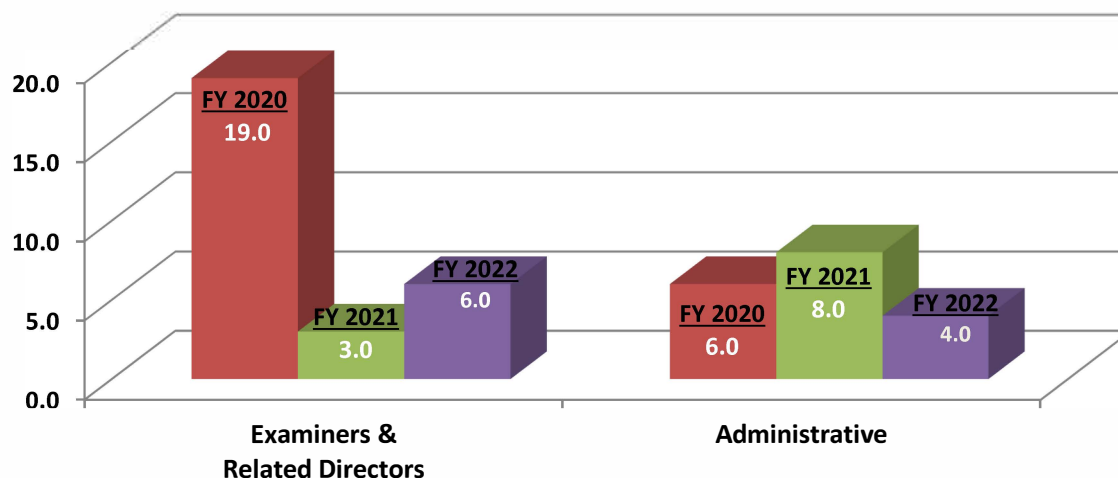
Form Updates

The Conflict of Interest Disclosure form was updated to reflect the latest resource links. This form must be completed by June 30th on an annual basis by all employees. (December 2021)

**Texas Department of Banking
Employee Data for Fiscal Years 2020, 2021 and 2022 as of
01/31/2022**

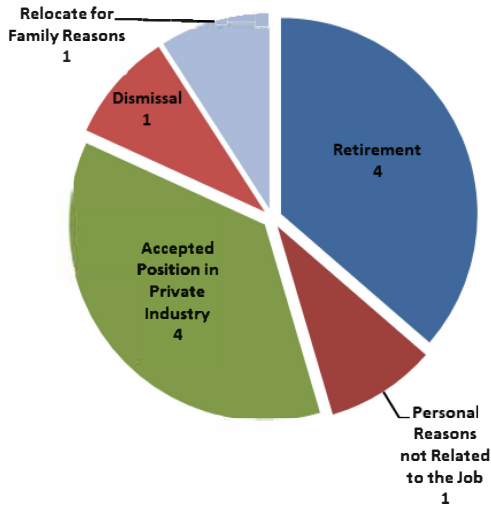


New Hire Data for Fiscal Years 2020, 2021 and 2022

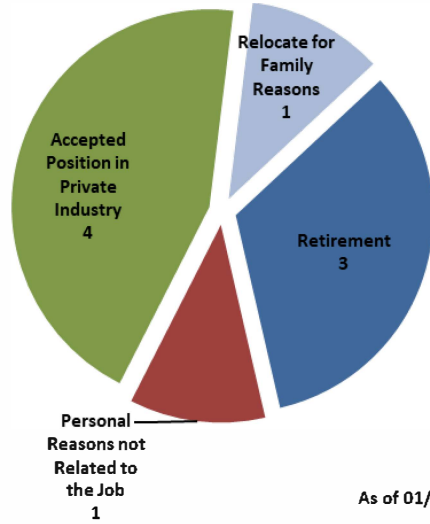


FY 2022 Employee Turnover Reasons

All Employees
11 Resignations



Financial Examiners Only
9 Resignation



As of 01/31/2022



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

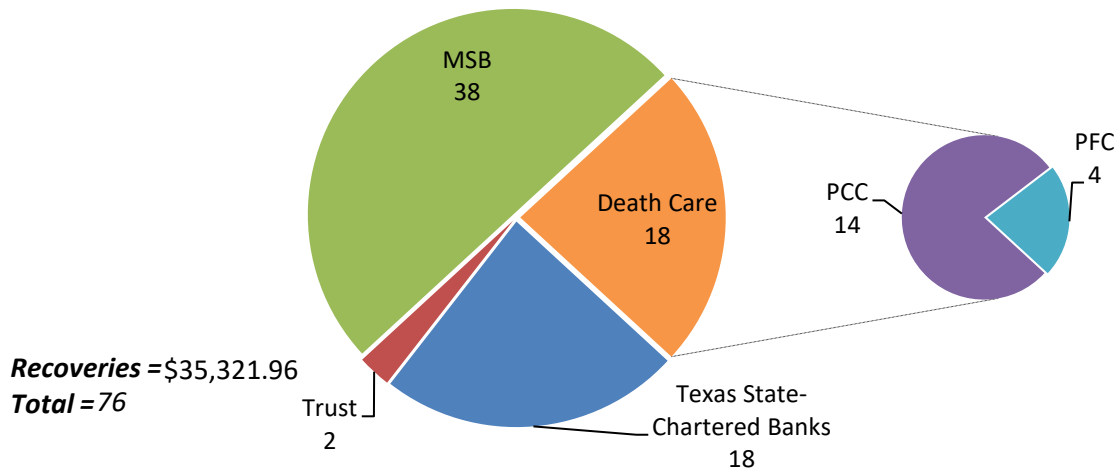
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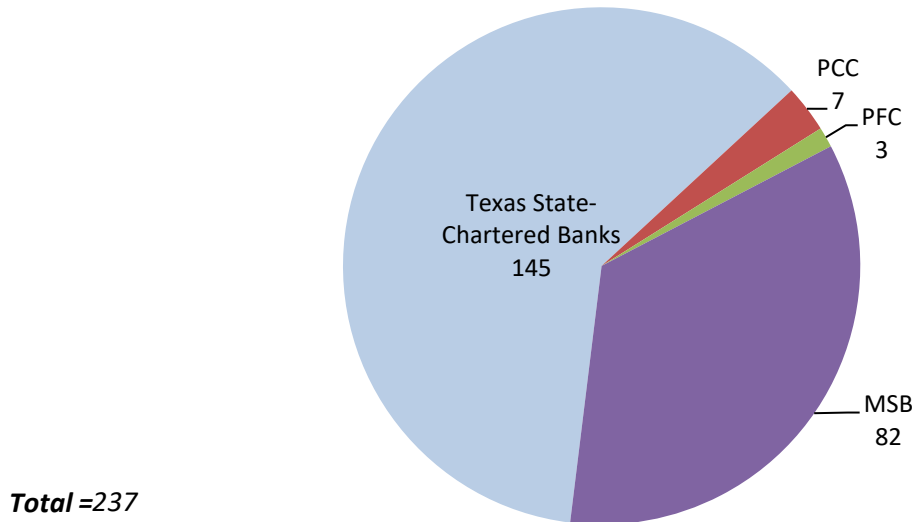
www.dob.texas.gov

To: Finance Commission Members
From: Phil Lena, Financial Analyst
Date: February 1, 2022
Subject: Summary of the Strategic Support Division Activities

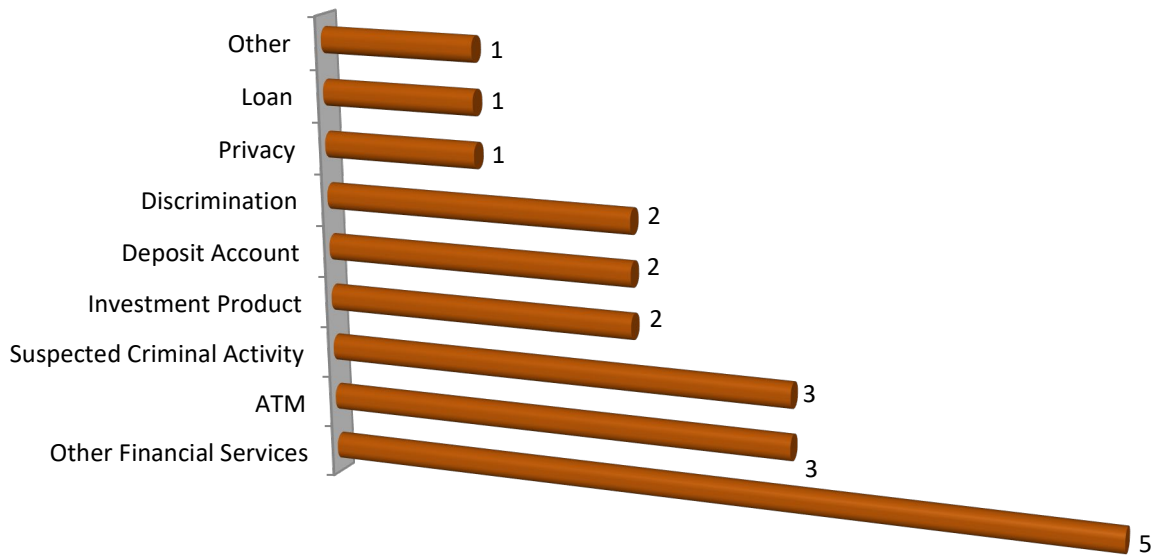
Jurisdictional Written Complaints September 2021-December 2021



Inquiries on Jurisdictional Entities September 2021-December 2021

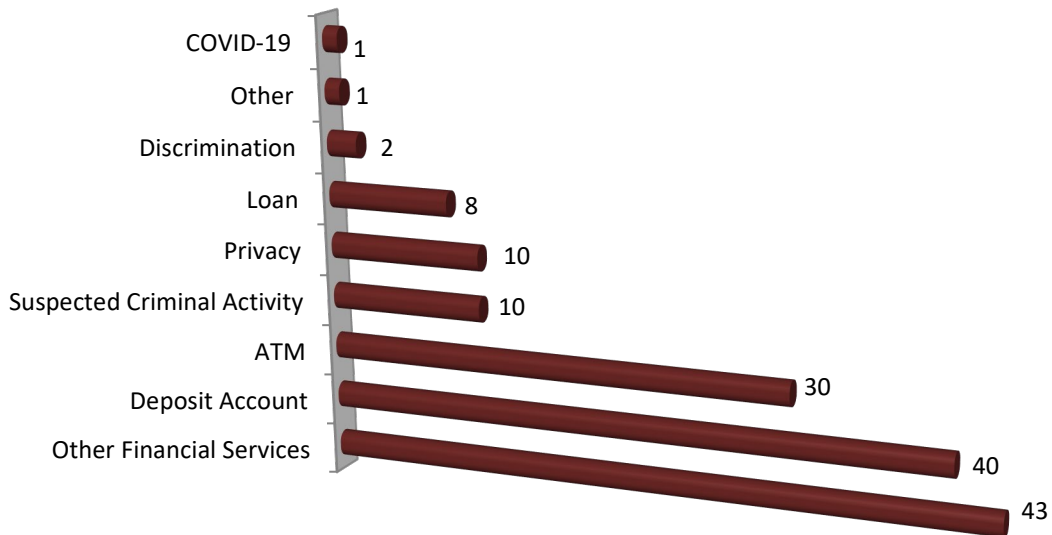


State-Chartered Banks and Trust Companies Written Complaints by Type September 2021-December 2021



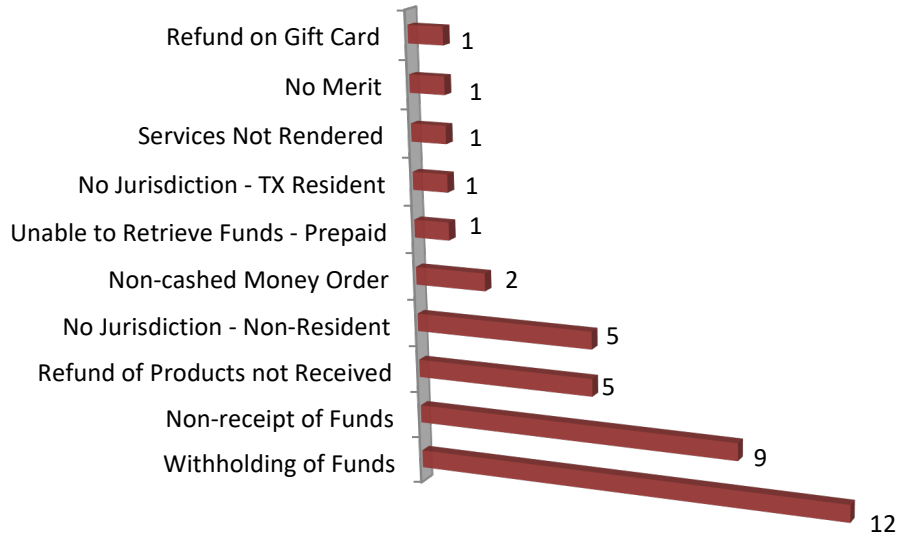
Total = 20

State-Chartered Banks and Trust Companies Inquiries by Type September 2021-December 2021



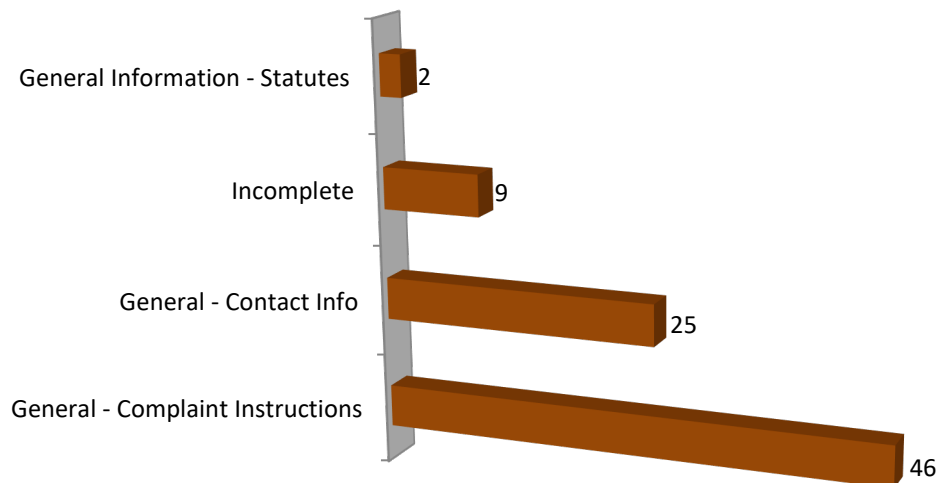
Total = 145

**Money Services Businesses
Written Complaints by Type
September 2021-December 2021**



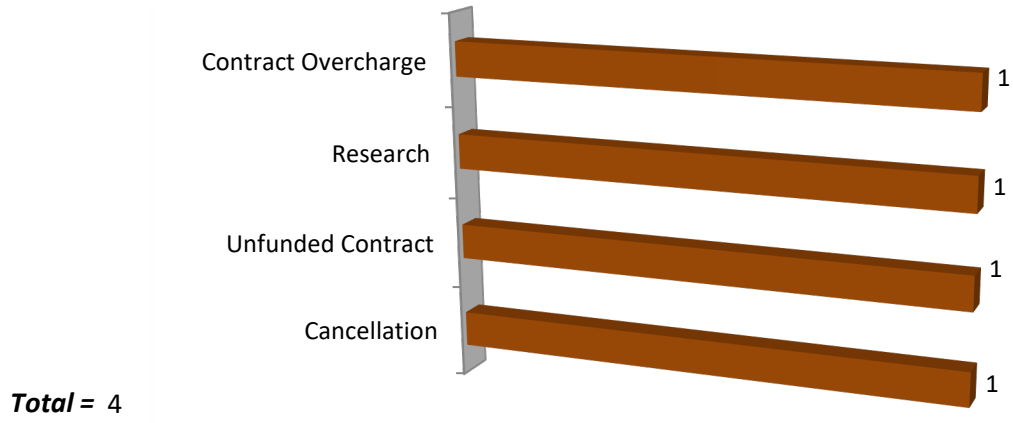
Total = 38

**Money Services Businesses
Inquiries by Type
September 2021-December 2021**

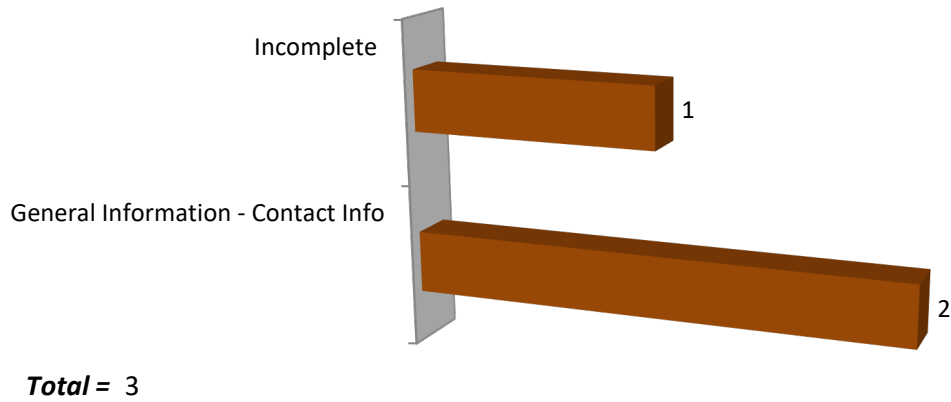


Total = 82

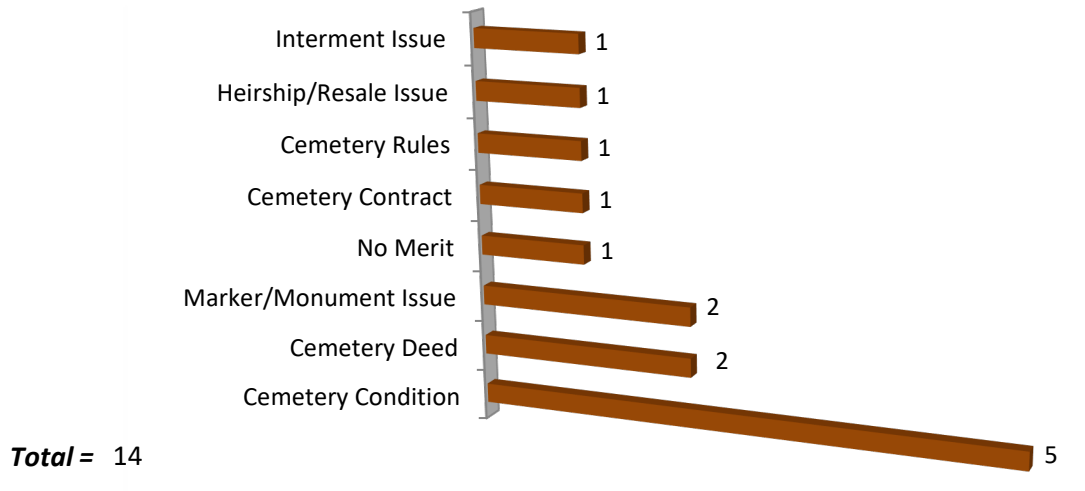
**Prepaid Funeral Contract Sellers
Written Complaints by Type
September 2021-December 2021**



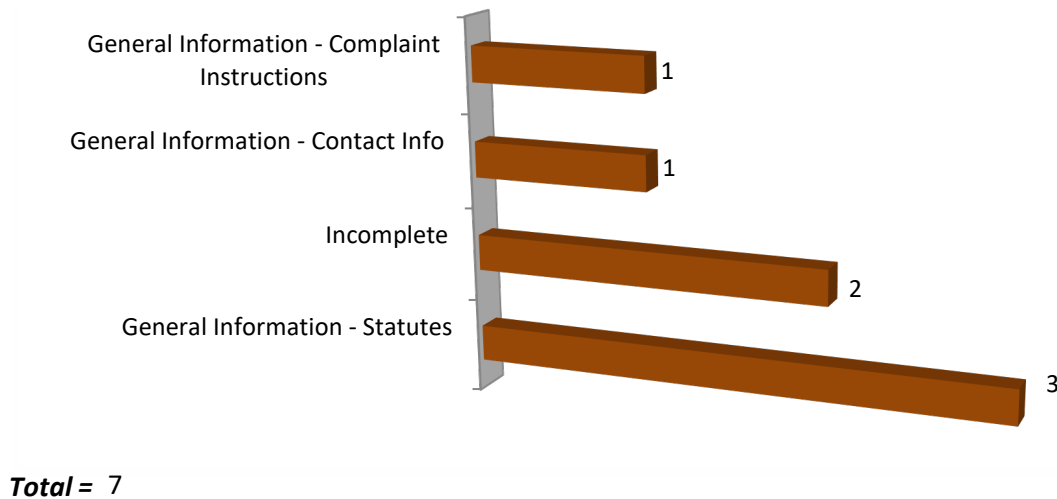
**Prepaid Funeral Contract Sellers
Inquiries by Type
September 2021-December 2021**



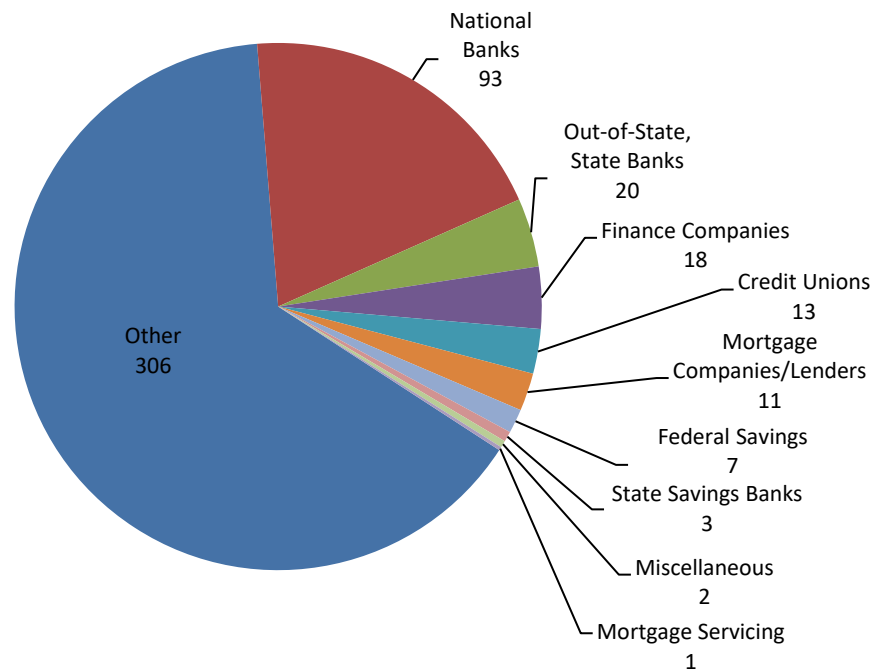
Perpetual Care Cemeteries Written Complaints by Type September 2021-December 2021



Perpetual Care Cemeteries Inquiries by Type September 2021-December 2021



Complaints and Inquiries Against Non-Jurisdictional Entities September 2021-December 2021



Total = 474

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

Complaint Activities Information by Quarter

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr
State-Chartered Banks				
Avg. Number of Days to Close a Written Complaint	17	N/A	N/A	N/A
Percentage of Written Complaints Resolved Within 90 days	100%	N/A	N/A	N/A
Number of Written Complaints Resolved	13	N/A	N/A	N/A
Trust				
Avg. Number of Days to Close a Written Complaint	15	N/A	N/A	N/A
Percentage of Written Complaints Resolved Within 90 days	100%	N/A	N/A	N/A
Number of Written Complaints Resolved	2	N/A	N/A	N/A
PFC/PCC				
Avg. Number of Days to Close a Written Complaint	28	N/A	N/A	N/A
Percentage of Written Complaints Resolved Within 90 days	100%	N/A	N/A	N/A
Number of Written Complaints Resolved	13	N/A	N/A	N/A
MSB				
Avg. Number of Days to Close a Written Complaint	25	N/A	N/A	N/A
Percentage of Written Complaints Resolved Within 90 days	100%	N/A	N/A	N/A
Number of Written Complaints Resolved	26	N/A	N/A	N/A

Closed Account Notification System (CANS) Activity
January 1, 2019 – January 31, 2022

Entity	Enrolled	Compromised Accounts Reported
Texas State-Chartered Banks	189	265
Texas State-Chartered Savings Banks	22	47
Federal Savings Banks	10	0
State Credit Unions	133	544
Federal Credit Unions	229	307
National Banks	171	84
Out-of-State State-Chartered Banks	12	57
Out-of-State National Banks	6	0
Total	772	1,304

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

	FY 2019	FY 2020	FY 2021	FY 2022
I. General Knowledge	3	4*	6	1
II. Loan Analysis	5	7	1	1
III. Panel	5	10	3	1
IV. Test Bank	4	7	5	2
Total FE3	19	15	17	15

Promotions

<i>Commissioned Examiners</i>	5*	7	5	2
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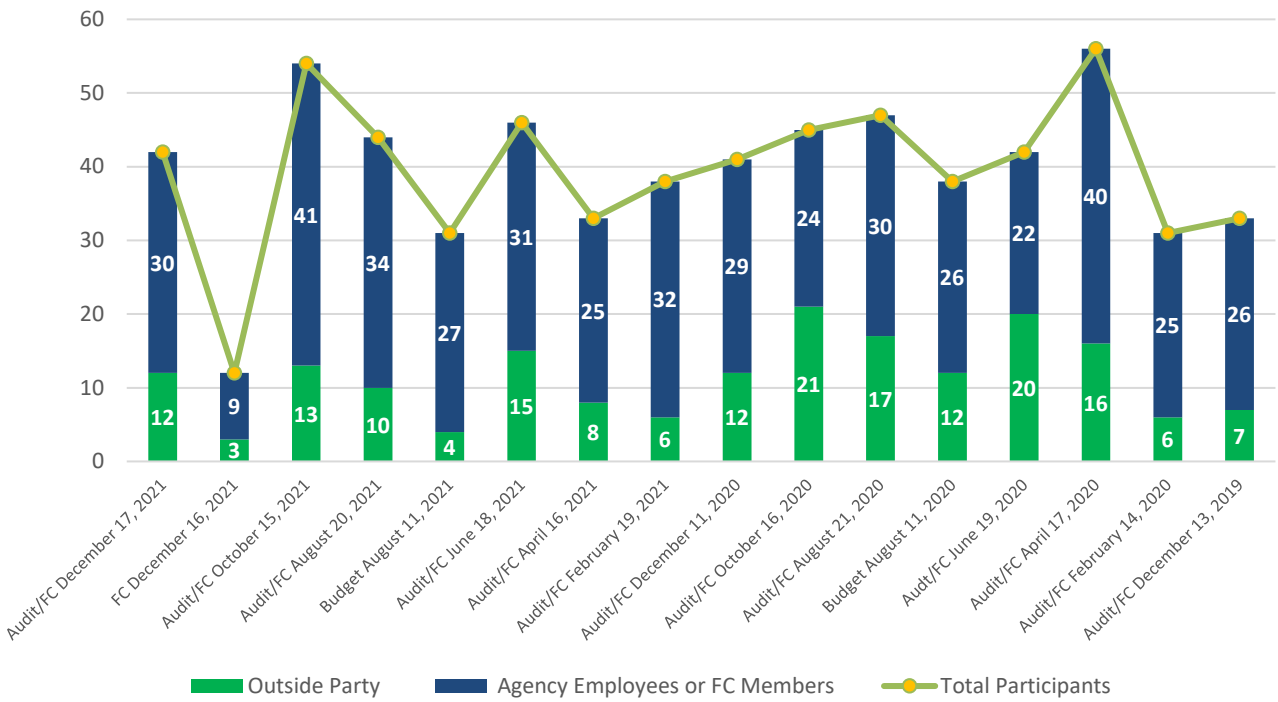
**Includes a FE V Credit Specialist*

Other Divisional Items:

- *Rate the Department*
 - The annual Rate the Department survey opened on January 10, 2022. The survey is available to chartered, registered, or licensed entities to provide feedback on their experience in communicating or working with Department personnel over the last 12 months. The survey closes on February 7, 2022.
- *Publications*
 - [Contract Management Guide and Handbook](#) was revised to reflect current statutes, state guidelines, Department practices, and organizational structure. (January)
 - The following were updated with September 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.
- *Personnel and Policies Manual Updates*
 - Personnel Manual
 - Section 3 – Training was updated to add clarity and consistency to agency training practices and policies, and processing of travel vouchers. (December)
 - Revised Administrative Memorandum (AM)
 - AM 2025 – Internal Purchasing Procedures (January)
- *Examiner Bulletin (XB)*
 - XB 2022-01 – Assessment of Pandemic Risks and Documentation Requirements for the Call-In Memo and Report of Examination Related to COVID-19 (January)
- *Examination Procedure Updates*
 - Commercial Bank Procedures
 - #1 Planning and Control (January)
 - #16 Management (January)
 - BSA/AML (December)
 - Trust Procedures
 - #2 Fiduciary and Corporate Management (January)
 - #7 Trust Company Capital (January)
 - #8 Trust Company Asset Quality (January)
 - #11 Trust Company Liquidity (January)
- *Examiners' Council*
 - Examiners' Council met virtually the week of January 24, 2022, to review examination work papers for commercial, trust, and IT.

Finance Commission Webcast Historical Data





Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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Memorandum

TO: Finance Commission Members
FROM: Catherine Reyer, General Counsel
DATE: February 1, 2022
RE: Legal Division Update

Litigation

There are no pending litigation matters at this time.

Contested Case Hearings

In the Matter of Robert L. Green, Individually and as President of Green's Mortuary, and Green's Mortuary, Bay City, Texas; Docket No. BF-2101-20-215. Respondents, a funeral services provider and funeral home, are alleged to have sold prepaid funeral benefits to at least six Texas customers without the required permit. Staff attended a hearing on January 20, 2022, seeking \$25,099 in restitution for customers and a monetary penalty of \$18,000. A proposal for decision is expected soon.

In the Matter of Cornelius Campbell Burgess, Amarillo, Texas; Docket No. BB-2201-21-120. Respondent, a director of a state-chartered bank, is alleged to have refused to submit to examination. Staff is seeking to have Mr. Burgess removed from the bank and prohibited from participation in the affairs of any entity regulated by the Department. Hearing is set for February 2, 2022.

Orders Issued December 1, 2021 – January 31, 2022

During this time period, the Commissioner issued three enforcement orders, two of which are final and non-appealable¹:

Non-Depository Supervision

- Consent Order dated January 10, 2022; National Payment Corp., Tampa, Florida
- Consent Order dated January 20, 2022; Prime Trust, Las Vegas, Nevada

¹ An order of prohibition was issued December 8, 2021; as noted in the Contested Case section above, a hearing on that order is pending.

Public Information Requests

From December 1, 2021 through January 31, 2022, staff received and responded to 15 requests for public information addressed to the Texas Department of Banking, and received seven inquiries from the “Ask a Question” feature. During the same period, we received and responded to two public information requests addressed to the Finance Commission.

Gifts

No gifts were received during this reporting period.

FY 2022 Quarterly Order Activity

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

*Hearing requested, order not final

Projected Future Rule Actions:

April 2022

7 TAC Ch.3 – Proposed Amendments Resulting from Rule Review

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

2. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Chapter 33, §§33.7, 33.23, 33.27, 33.33, 33.37, 33.51, 33.54, Concerning Money Services Businesses, Resulting from Rule Review

PURPOSE: Amendments to Chapter 33, §§33.7, 33.23, 33.27, 33.33, 33.37, 33.51, 33.54 result from rule review conducted pursuant to Texas Government Code §2001.1039. The purpose of these amendments is to provide clarity, correct statutory citations and certain scrivener's errors, and maintain consistent formatting within the chapter. These amendments have no substantive effect on the application of the various sections.

RECOMMENDED ACTION: The Department recommends that the Commission approve publication of the proposed amended rules in the *Texas Register* for comment.

RECOMMENDED MOTION: I move that we publish the proposed amendments to 7 TAC, Chapter 33, §§33.7, 33.23, 33.27, 33.33, 33.37, 33.51, 33.54 in the *Texas Register*.

**Title 7. Banking and Securities
Part 2. Finance Commission of Texas
Chapter 33. Money Services Businesses
7 TAC, §§33.7, 33.23, 33.27, 33.33, 33.37,
33.51, 33.54**

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §33.7, concerning how to obtain an exemption from licensing related to exchanging currency in connection with retail, wholesale or service transactions; §33.23, concerning additional provisions that apply to permissible investments; §33.27, concerning fees to obtain and maintain a license; §33.33, concerning receipts issued relating to currency exchange transactions; §33.37, concerning receipts issued relating to money transmission transactions; §33.51, concerning providing information to customers on how to file a complaint; and, §33.54, concerning an exemption from licensure for securities dealers and agents. The amended rules arise from rule review conducted pursuant to Texas Government Code §2001.1039 and are proposed to provide clarity, correct statutory citations and certain scrivener's errors, and maintain consistent formatting within the chapter.

Section 33.7 discusses how a person can obtain an exemption from licensing if they exchange currency in connection with retail, wholesale or service transactions. Section 33.7 as amended corrects the formatting and language to mirror Texas Finance Code §151.502(d).

Section 33.23 discusses the permissible investment requirement for a money transmitter under §151.309 of the Texas Finance Code. Section 33.23 as amended revises the reference to the Texas Finance Code in subsection (f) in order to ensure

consistent formatting with the rest of Chapter 33.

Section 33.27 explains what fees must be paid to get and maintain a license. Section 33.27 as amended clarifies how annual assessment fees are calculated and maintains consistent formatting with the rest of Chapter 33.

Section 33.33 pertains to what receipts must be issued relating to currency exchange transactions. Section 33.33 as amended corrects the citations to 31 C.F.R. §§1010.100(t) and 1010.100(ff).

Section 33.37 pertains to what receipts must be issued relating to money transmission transactions. Section 33.37 as amended maintains consistent formatting with the rest of Chapter 33 and removes the reference to Texas Finance Code §278.053 as the statute was repealed.

Section 33.51 addresses when and how a money services business must provide customers with the information necessary to file a complaint with the department. Section 33.51 as amended maintains consistency with the rest of Chapter 33.

Section 33.54 provides an exemption for licensure for registered securities dealers and agents. Section 33.54 as amended revises the reference to the Texas Finance Code in subsection (b)(2) in order to ensure consistent formatting with the rest of Chapter 33.

Jesus Saucillo, Director of Non-Depository Supervision, Texas Department of Banking, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state government or for local government as

a result of enforcing or administering the proposed rules.

Director Saucillo also has determined that, for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is greater clarity of the rules to which money services businesses are subject.

For each year of the first five years that the rules will be in effect, there will be no economic costs to persons required to comply with the rules as proposed.

For each year of the first five years that the rules will be in effect, the rules will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; and
- positively or adversely affect this state's economy.

There will be no adverse economic effect on small businesses, micro-businesses, or

rural communities. There will be no difference in the cost of compliance for these entities.

To be considered, comments on the proposals must be submitted no later than 5:00 p.m., on April 5, 2022. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amendments are proposed under Finance Code, §151.102, which authorizes the commission to adopt rules to administer and enforce Texas Finance Code, Chapter 151.

No statute, article, or code is affected by the proposed amended sections.

§33.7 How Do I Obtain an Exemption from Licensing Because I Exchange Currency in Connection with Retail, Wholesale or Service Transactions?

(a) Does this section apply to me?

(1) This section applies if you are a retailer, wholesaler, or service provider and in the ordinary course of business:

(A) accept the currency of a foreign country or government as payment for your goods or services;

(B) in connection with the transaction, make or give change in the currency of a different foreign country or government; and

(C) qualify for an exemption under Finance Code, §151.502(d).

(2) (No change.)

(b) To request an exemption, you must submit a letter to the commissioner that fully explains your business and is accompanied by a statement, signed and sworn to before a notary, affirming that none of the disqualifying conditions set out in Finance Code, §151.502(d)(1) - (5), apply to you. For purposes of the subsection (d)(4) disqualification, you are considered to be engaged in the "business of cashing checks, drafts or other payment [~~monetary~~] instruments" if, in the 12 month period immediately preceding the filing of the application for exemption, you derived more than 1.00% of your gross receipts, directly or indirectly, from fees or other consideration you charged, earned, or imputed from cashing checks, drafts or other monetary instruments.

(c) – (d) (No change.)

§33.23. What Additional Provisions Apply to Permissible Investments?

(a) – (e) (No change.)

(f) For the purpose of satisfying a license holder's permissible investments requirement under Finance Code, [~~Tex. Fin. Code—Ann.~~] §151.309, the Department interprets "cash in demand or interest-bearing accounts with a federally insured depository institution" to include funds held by a license holder's depository institution after being withdrawn from the license holder's account for transmission to satisfy the license holder's outstanding money transmission obligation.

(g) – (k) (No change.)

§33.27 What Fees Must I Pay to Get and Maintain a License?

(a) (No change.)

(b) Definitions. The following words and terms, when used in this section, have the following meanings unless the context clearly indicates otherwise.

(1) "Annual Assessment" means [–] the fee assessed annually to pay the costs incurred by the department to examine a license holder and administer Finance Code, Chapter 151, including the annual license fee required by Finance Code, §151.207(b)(1).

(2) "Examination" means [–] the process, either by on-site or off-site review, of evaluating the books and records of a license holder under the authority of Finance Code, §151.601, relating to its money services activities. For purposes of this section, the term does not include an investigation conducted under the authority of Finance Code, §151.104, §151.305, or §151.505.

(c) – (d) (No change.)

(e) What fees must I pay to maintain my money transmission or currency exchange license? You must pay your annual assessment. Subject to paragraph (3) of this subsection, the amount of your annual assessment is determined based on the total annual dollar amount of your Texas money transmission and or currency exchange transactions, as applicable, as reflected on your most recent annual report filed with the department under Finance Code, §151.207(b)(2).

(1) If you hold a currency exchange license, you must pay the annual assessment specified in the following table:

Figure: 7 TAC §33.27(e)(1).

(2) If you hold a money transmission license, you must pay the annual assessment specified in the following table:

Figure: 7 TAC §33.27(e)(2).

(3) (No change.)

(f) – (h) (No change.)

(i) How and when do I need to pay for the fees required by this section?

(1) – (3) (No change.)

(4) You must pay the investigation fee required under subsection (f) of this section within 10 days of receipt of the department's written invoice. [You must pay the filing fees required by subsection (g) of this section at the time you file your proposed change of control or prior determination request. You must pay any required additional fees within 10 days of receipt of the department's written invoice.]

(5) You must pay the filing fees required by subsection (g) of this section at the time you file your proposed change of control or prior determination request. You must pay any required additional fees within 10 days of receipt of the department's written invoice. [You or another person must pay the investigation fee required under subsection (f) of this section within 10 days of receipt of the department's written invoice.]

(6) – (8) (No change.)

(j) (No change.)

§33.33 What Receipts Must I Issue Related to Currency Exchange Transactions?

(a) (No change.)

(b) Must I issue a receipt in connection with the currency exchange transactions I conduct?

(1) For purposes of this section, "receipt" means a receipt, electronic record, or other written confirmation.

(2) (No change.)

(3) With respect to a currency exchange transaction you conduct with another financial institution as that term is defined in 31 C.F.R. §1010.100(t) [~~§1010.100(n)~~] or with a financial institution located outside the United States, you must obtain a contemporaneous receipt for each transaction regardless of where the transaction is conducted. If the other financial institution is a money services business as that term is defined in 31 C.F.R. §1010.100(ff) [~~§1010.100(uu)~~], or a money services business or financial institution located outside the United States, the receipt must contain:

(A) the date and amount of the transaction;

(B) the currency names and total amount of each currency;

(C) the rate of exchange;

(D) the name and address of the money services business issuing the receipt; and

(E) information sufficient to identify the employee or representative who conducts the transaction for the entity issuing the receipt, such as initials, unique employee or representative code, or other appropriate identifier.

§33.37 What Receipts Must I Issue Related to Money Transmission Transactions?

(a) (No change.)

(b) Must I issue a receipt in connection with the money transmission transactions I conduct?

(1) For purposes of this section "receipt" means a receipt, electronic record, or other written confirmation. If the customer conducts the transaction online or electronically, the term includes a means by which the customer can save or print a receipt or other record of the transaction that contains the information required under this section.

(2) – (3) (No change.)

(4) With respect to a currency transmission transaction subject to Finance Code, Chapter 278, you must provide the receipt required under Finance Code, §278.051 [~~and §278.053, as applicable~~]. The information required under those sections may be included on the receipt required under paragraph (2) of this subsection.

§33.51. How do I Provide Information to My Customers about How to File a Complaint?

(a) (No change.)

(b) Definitions. Words used in this section that are defined in Finance Code, Chapter 151, have the same meaning as defined in the Finance Code. The following words and terms, when used in this section, shall have the following meanings unless the text clearly indicates otherwise.

(1) “Conspicuously posted” means displayed [~~Conspicuously posted~~ ~~Displayed~~] so that a customer with 20/20 vision can read it from the place where he or she would typically conduct business with you or, alternatively, on a bulletin board, in plain view, on which you post notices to the general public (such as equal housing posters, licenses, Community Reinvestment Act notices, etc.).

(2) “Customer” means, as to money transmission or currency exchange, [~~Customer~~ ~~As to money transmission or currency exchange, "customer" means~~] any Texas resident to whom, either directly or through an authorized delegate, you provide or have provided money transmission or currency exchange products or services or for whom you conduct or have conducted a money transmission or currency exchange transaction.

(3) “Privacy notice” means any [~~Privacy notice~~ ~~Any~~] notice regarding a person's right to privacy that you are required to give under a specific state or federal law.

(4) “Required notice” means the [~~Required notice~~ ~~The~~] notice described in subsection (d) of this section.

(c) – (h) (No change.)

§33.54 Exemption for Registered Securities Dealers and Agents.

(a) (No change.)

(b) A dealer or dealer agent who, in the course of providing dealer or dealer agent services as to securities, receives or has control over a customer's money or monetary value, need not obtain a money transmission license if they are:

(1) (No change.)

(2) only conducting money transmission as defined by [~~Texas~~] Finance Code, §151.301, to the extent reasonable and necessary to provide dealer or dealer agent services for contractual customers as to securities.

Figure: 7 TAC §33.27(e)(1)

Annual Assessment Fee Schedule for CEX License Holders:

If the total dollar amount of your annual transactions is:		Then your annual assessment is:
Over --	But not over --	
-----	\$249,999.99	\$2,750.00
\$250,000.00	\$499,999.99	\$2,750.00 plus the amount of your transactions over \$250,000 multiplied by a factor of .00235
\$500,000.00	\$999,999.99	\$3,350.00 plus the amount of your transactions over \$500,000 multiplied by a factor of .00175
\$1,000,000.00	\$9,999,999.99	\$4,250.00 plus the amount of your transactions over \$1 million multiplied by a factor of .000115
\$10,000,000.00	\$24,999,999.99	\$5,250.00 plus the amount of your transactions over \$10 million multiplied by a factor of .0000835
\$25,000,000.00	\$49,999,999.99	\$6,250.00 plus the amount of your transactions over \$25 million multiplied by a factor of .0000735
\$50,000,000.00	\$199,999,999.99	\$7,950.00 plus the amount of your transactions over \$50 million multiplied by a factor of .00001155
\$200,000,000.00	-----	\$9,150.00 plus the amount of your transactions over \$200 million multiplied by a factor of .00001125, but not more than \$21,250.00.

If the calculation result is greater than \$21,250, your annual assessment is \$21,250.

Figure: 7 TAC §33.27(e)(2)

Annual Assessment Fee Schedule for MT License Holders:

If the total dollar amount of your annual transactions is:		Then your annual assessment is:
Over --	But not over --	
-----	\$249,999.99	\$3,950.00
\$250,000.00	\$499,999.99	\$3,950.00 plus the amount of your transactions over \$250,000 multiplied by a factor of .00235
\$500,000.00	\$999,999.99	\$4,550.00 plus the amount of your transactions over \$500,000 multiplied by a factor of .00175
\$1,000,000.00	\$9,999,999.99	\$5,450.00 plus the amount of your transactions over \$1 million multiplied by a factor of .000115
\$10,000,000.00	\$24,999,999.99	\$6,450.00 plus the amount of your transactions over \$10 million multiplied by a factor of .0000835
\$25,000,000.00	\$49,999,999.99	\$7,700.00 plus the amount of your transactions over \$25 million multiplied by a factor of .0000735
\$50,000,000.00	\$199,999,999.99	\$9,450.00 plus the amount of your transactions over \$50 million multiplied by a factor of .00001155
\$200,000,000.00	-----	\$11,100.00 plus the amount of your transactions over \$200 million multiplied by a factor of .00001125, but not more than \$21,250.00.

If the calculation result is greater than \$21,250, your annual assessment is \$21,250.