

A.

Finance Commission

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FINANCE COMMISSION OF TEXAS

MEETING DATEJune 24, 2022

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

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

FUTURE MEETING DATESAugust 10, 2022 (Budget Hearing)
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, June 24, 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, A7, B3, and D2 - D4, with NO DISCUSSION as notated in bold and italicized.

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

A. FINANCE COMMISSION MATTERS

1. Review and Approval of the Minutes of the April 22, 2022 Finance Commission Meeting

2. General Public Comment

3. Consent Agenda

4. Finance Commission Operations

5. Audit Committee Report

A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Department of Savings and Mortgage Lending's 2022 Annual Internal Audit Report as Prepared and Presented by Garza/Gonzalez and Associates

B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Texas Department of Banking's 2022 Annual Internal Audit Report as Prepared and Presented by Garza/Gonzalez and Associates

C. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Office of Consumer Credit Commissioner's 2022 Annual Internal Audit Report as Prepared and Presented by Garza/Gonzalez and Associates

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

6. Strategic Planning Committee Report

A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies 2023-2027 Strategic Plans

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

B. Discussion of the Finance Commission of Texas 2023-2027 Strategic Plan

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

8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC, §5.107, Concerning Employee Leave Pools
9. Discussion of and Possible Vote to Take Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Duties and Compensation of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to the Duties and Compensation of Persons Holding the Position of Agency Commissioner Positions, and Other Staff
10. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to §551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property
11. Discussion of and Consultation with Attorney and Possible Vote to Take Action Pursuant to §551.071, Texas Government Code, for the Purpose of Seeking the Advice or Attorney-client Privileged Communications from our Attorneys, Including Matters Related to the Potential Financial Exposure of the Finance Commission Agencies and Their Officers and the Finance Commission and its Officers and Including Matters of Pending and Contemplated Litigation
12. Discussion of and Consultation on Security Audit, Possible Issue Related to Confidential or Sensitive Information, Security Breach Audit and Assessment, or Security Assessments or Deployment Related to Information Resources Technology as Authorized by §§551.076 and 551.089, Texas Government Code

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; e) Legislative Activities
2. Discussion of and Possible Vote to Take Action on the Adoption of New Rules and Repeals in 7 TAC, Part 4, Chapter 51, Concerning Charter Applications, Resulting from Rule Review
3. *Discussion of and Possible Vote to Take Action on the Adoption of New Rules and Repeals in 7 TAC, Part 4, Chapter 52, Concerning Department Administration, Resulting from Rule Review*
4. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

C. TEXAS DEPARTMENT OF BANKING

1. Industry Status and Departmental Operations: a) Current Issues Affecting Department's Regulated Entities; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Non-Depository Supervision Division Activities; e) Administrative, Staffing and Fiscal Division Activities; f) Strategic Support Division Activities including Consumer Complaint Data; g) Legal Division Activities including Enforcement Activity and Gift Reporting; and h) Legislative Activities
2. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 1, Chapter 3, Concerning State Bank Regulation, Resulting from Rule Review
3. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 2, §17.3, Concerning Sale or Lease Agreements with Trust Company Insiders
4. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

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
2. *Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 1, Chapter 2, Concerning Residential Mortgage Loan Originators Regulated by the 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 82, Concerning Administration*
4. *Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 5, Chapter 85, Subchapter A, Concerning Rules of Operation for Pawnshops, 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 85, Subchapter A, Concerning Rules of Operation for Pawnshops, 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

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, April 22, 2022

The Finance Commission of Texas convened at 9:30 a.m., on Friday, April 22, 2022, with the following members present:

Finance Commission Members in Attendance:

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

Commissioner Charles G. Cooper announced there was a quorum with 11 members present. *(2:13 on the audio file).*

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
A. Finance Commission Matters		
1. Review and Approval of the Minutes of the February 18, 2022 Finance Committee Meeting	On Consent Agenda – Item A1 This item Approved on the Consent Agenda.	n/a
2. General Public Comment	No Action Required.	3:20 Start of discussion
3. Consent Agenda – Items A1, B2, B3, C2, C3, and D2 – D4	Will Lucas made a motion to Approve Consent Agenda items A1, B2, B3, C2, C3, and D2 - D4. Laura Warren seconded and the motion passed.	3:50 Start of discussion 4:11 Vote
4. Finance Commission Operations	No Action Required.	4:40 Start of discussion
5. Audit Committee Report		
A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2022 Second Quarter Investment Officer Reports 1. Texas Department of Banking 2. Office of Consumer Credit Commissioner 3. Department of Savings and Mortgage Lending	Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies' 2022 Second Quarter Investment Officer Reports passed.	5:14 Start of discussion 5:24 Vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<p>B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2022 Second Quarter Financial Statements</p> <ol style="list-style-type: none"> 1. Texas Department of Banking 2. Office of Consumer Credit Commissioner 3. Department of Savings and Mortgage Lending 	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies' 2022 Second Quarter Financial Statements passed.</p>	<p>5:34 Start of discussion</p> <p>5:42 Vote</p>
<p>C. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action to Reapprove the Internal Audit Contract for Garza/Gonzalez and Associates for Fiscal Year 2023</p>	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Reapprove the Internal Audit Contract for Garza/Gonzalez and Associates for Fiscal Year 2023 passed.</p>	<p>5:56 Start of discussion</p> <p>6:05 Vote</p>
<p>D. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Texas Department of Banking's Bank Examination Audit Report as Prepared and Presented by Garza/Gonzalez and Associates</p>	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Texas Department of Banking's Bank Examination Audit Report as Prepared and Presented by Garza/Gonzalez and Associates passed.</p>	<p>6:18 Start of discussion</p> <p>6:29 Vote</p>
<p>E. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Activities of the Texas Financial Education Endowment Fund</p>	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Activities of the Texas Financial Education Endowment Fund passed.</p>	<p>6:40 Start of discussion</p> <p>6:48 Vote</p>
<p>6. Status Report on Implementation of Finance Commission Directive on the Efficiency Audit Regarding Sunset Recommendation 2.6 – "Direct the Finance Commission to minimize duplication of agency functions and promote more cost-efficient administration of finance agencies."</p>	<p>No Action Required.</p>	<p>7:04 Start of discussion</p>
<p>7. Discussion of the Process for the 2023-2027 Strategic Plans for the Finance Commission Agencies</p>	<p>No Action Required.</p>	<p>8:16 Start of discussion</p>
<p>8. Discussion of and Possible Vote to Take Action on the Finance Commission Agencies' Fiscal Year 2022 Mid-Term Accomplishment Reports</p>	<p>Laura Warren made a motion to Approve the Finance Commission Agencies' Fiscal Year 2022 Mid-Term Accomplishment Reports. Sharon McCormick seconded and the motion passed.</p>	<p>12:46 Start of discussion</p> <p>22:51 Vote</p>

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
9. Discussion of the Condition of the Texas Sates Banking System Report (Note: Report provided separately)	No Action Required.	23:14 Start of discussion
10. Discussion of and Possible Vote to Take Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Duties and Compensation of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to the Duties and Compensation of Persons Holding the Position of Agency Commissioner Positions, and Other Staff	No Discussion.	n/a
11. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to §551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property	No Action Required.	25:16 Start of discussion
12. 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
13. Discussion of and Consultation on Security Audit, Possible Issue Related to Confidential or Sensitive Information, Security Breach Audit and Assessment, or Security Assessments or Deployment Related to Information Resources Technology as Authorized by Tex. Govt. Code Secs. 551.076 and 551.089	No Discussion.	n/a
B. Texas Department of Banking		
1. Industry Status and Departmental Operations: a) Current Issues Affecting Department's Regulated Entities; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Non-Depository Supervision Division Activities; e) Administrative, Staffing and Fiscal Division Activities; f) Strategic Support Division Activities including Consumer Complaint Data; g) Legal Division Activities including Enforcement Activity and Gift Reporting; and h) Legislative Activities	No Action Required.	26:31 Start of discussion

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
2. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 2, Chapter 33, Concerning Money Services Businesses, Resulting from Rule Review	On Consent Agenda – Item B2 This item approved on the Consent Agenda.	n/a
3. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 2, Chapter 3, Concerning State Bank Regulation, Resulting from Rule Review	On Consent Agenda – Item B3 This item approved on the Consent Agenda	n/a
4. Discussion of and Possible Vote to Take Action on the Adoption 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	Debbie Scanlon made a motion to Approve the Adoption 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. Sharon McCormick seconded and the motion passed.	52:56 Start of discussion 54:35 Vote
5. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Discussion	n/a
C. Office of Consumer Credit Commissioner		
1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities	No Action Required.	55:21 start of discussion
2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Chapter 83, Subchapter A, Concerning Rules for Regulated Lenders, Resulting from Rule Review	On Consent Agenda – Item C2 This item approved on the Consent Agenda.	n/a
3. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Chapter 2, Concerning Residential Mortgage Loan Originators Regulated by the Office of Consumer Credit Commissioner, Resulting from Rule Review	On Consent Agenda – Item C3 This item approved on the Consent Agenda.	n/a
4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 1, Chapter 2, Concerning Residential Mortgage Loan Originators Regulated by the Office of Consumer Credit Commissioner, Resulting from Rule Review	Laura Warren made a motion to Approve the Proposal and Publication for Comment of Amendments to 7 TAC, Part 1, Chapter 2, Concerning Residential Mortgage Loan Originators Regulated by the Office of Consumer Credit Commissioner, Resulting from Rule Review. Sharon McCormick seconded and the motion passed.	1:20:53 start of discussion 1:23:31 Vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 5, Chapter 82, Concerning Administration	Vince Puente made a motion to Approve the Proposal and Publication for Comment of Amendments to 7 TAC, Part 5, Chapter 82, Concerning Administration. Will Lucas seconded and the motion passed.	1:24:07 start of discussion 1:26:10 Vote
6. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation <i>Ernest Polk v. Texas Office of Consumer Credit Commissioner; Cause No. 2018-04375</i> , in the 281st Judicial District Court of Harris County, Texas	No Discussion.	n/a
D. Department of Savings and Mortgage Lending		
1. Industry Status and Departmental Operations: a) Thrift Regulation Division Activities; b) Mortgage Regulation Division Activities; c) Operations Division Activities; d) Legal Division Activities, including Consumer Complaints and Gift Reporting; and e) Legislative Activities	No Action Required.	1:31:43 start of discussion
2. Discussion of and Possible Vote to Take Action on the Adoption of a New Rule and Repeal of §80.204 in 7 TAC, Part 4, Chapter 80, Concerning Residential Mortgage Loan Companies	On Consent Agenda – Item D2 This item approved on the Consent Agenda.	n/a
3. Discussion of and Possible Vote to Take Action on the Adoption of a New Rule and Repeal of §81.204 in 7 TAC, Part 4, Chapter 81, Concerning Mortgage Bankers and Residential Mortgage Loan Originators	On Consent Agenda – Item D3 This item approved on the Consent Agenda.	n/a
4. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 4, Chapter 51, Concerning Charter Applications, and Chapter 52, Concerning Department Administration, Resulting in Rule Review	On Consent Agenda – Item D4 This item approved on the Consent Agenda.	n/a
5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New Rules and Repeals in 7 TAC, Part 4, Chapter 51, Concerning Charter Applications, Resulting from Rule Review	Will Lucas made a motion to Approve the Proposal and Publication for Comment of New Rules and Repeals in 7 TAC, Part 4, Chapter 51, Concerning Charter Applications, Resulting from Rule Review. Sharon McCormick seconded and the motion passed.	1:48:54 start of discussion 1:51:46 Vote
6. Discussion of and Possible Vote to Take Action on the Proposal and Publications for Comment of New Rules and Repeals in 7 TAC, Part 4, Chapter 52, Concerning Department Administration, Resulting from Rule Review	Robin Armstrong made a motion to Approve the Proposal and Publication for Comment of New Rules and Repeals in 7 TAC, Part 4, Chapter 52, Concerning Department Administration, Resulting from Rule Review. Laura Warren seconded and the motion passed.	1:55:19 start of discussion 1:56:08 Vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
7. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Discussion.	n/a

There being no further business, Chairman Phillip Holt adjourned the meeting of the Finance Commission at 11:29 a.m. (1:59:06 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

Finance Commission of Texas

Consent Agenda

June 24, 2022

A. Finance Commission Matters

1. Review and Approval of the Minutes of the April 22, 2022 Finance Commission Meeting
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

B. Department of Savings and Mortgage Lending

3. Discussion of and Possible Vote to Take Action on the Adoption of New Rules and Repeals in 7 TAC, Part 4, Chapter 52, Concerning Department Administration, Resulting from Rule Review

D. Office of Consumer Credit Commissioner

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 1, Chapter 2, Concerning Residential Mortgage Loan Originators Regulated by the Office of Consumer Credit Commissioner, Resulting from Rule Review
3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 5, Chapter 82, Concerning Administration
4. Discussion and Possible Vote to Take Action on the Readoption of 7 TAC, Part 5, Chapter 85, Subchapter A, Concerning Rules of Operation for Pawnshops, Resulting from Rule Review

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Finance Commission of Texas Strategic Plan Timeline

Date	Action
July 1, 2022	DOB provides draft Plan to SML and OCCC
July 11, 2022	Comments due from SML and OCCC
July 18, 2022	Provide draft Plan to Strategic Planning Committee and Finance Commission Chair
July 29, 2022	Comments due from Strategic Planning Committee and Finance Commission Chair
August 5, 2022	Provide draft Plan to full Finance Commission
August 5 – 12, 2022	Finance Commission members provide feedback
August 19, 2022	Finance Commission meeting to vote on the Plan

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A. FINANCE COMMISSION MATTERS

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

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 adoption of amendments to 7 TAC Chapter 153.

RECOMMENDED MOTION: I move that the Finance Commission approve the adoption of the amendments to 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") adopt amendments to §153.1 (relating to Definitions) in 7 TAC, Chapter 153, concerning Home Equity Lending.

The commissions adopt the amendments to §153.1 without changes to the proposed text as published in the March 25, 2022, issue of the *Texas Register* (47 TexReg 1556).

The commissions received no official comments on the proposal.

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 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 informal 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.

The adoption amends the definition of "business day" in §153.1(2). 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 adopted amendments to §153.1(2) contain three definitions of "business day." First, for purposes of 7 TAC §153.13 (relating Preclosing Disclosures: Section 50(a)(6)(M)(ii)), the adoption states 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 previous 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 adoption 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 adoption amends §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 adoption states 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 adopted 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.

Based on these comments from stakeholders, the agencies believe that the adopted definitions reflect the common understanding of the term "business day" in the context of disclosures for mortgage loans. The definitions also have practical benefits. For example, by aligning the definition in §153.1(2) with Regulation Z, the adoption allows a lender to send the constitutionally required refinance disclosure on the same date it sends the federally required early disclosure. Also, the adoption allows 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 make technical corrections to ensure consistency of formatting and capitalization. The changes to

capitalization are based on feedback from staff of the *Texas Register*.

The rule changes are adopted 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 adoption are contained in Texas Constitution, Article XVI, §50. No statute is affected by this adoption.

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

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 adoption and found it to be within the agency's legal authority to adopt.

Issued in Austin, Texas on June 10, 2022, and June 24, 2022.

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

8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC §5.107, Concerning Employee Leave Pools

PURPOSE: New §5.107 would acknowledge, through formal rulemaking, the existence of the agencies' respective family leave pools and sick leave pools. The proposed new rule would set forth the purpose of each leave pool, designate the Commissioner of each finance agency as the pool administrator for their respective finance agency's leave pools, and require the Commissioner to maintain operating procedures consistent with the requirements of the proposed new rule and relevant laws governing operation of the pools.

RECOMMENDED ACTION: The Department recommends that the Commission approve publication of the proposed new rule in the *Texas Register* for comment.

RECOMMENDED MOTION: I move that we publish proposed new 7 TAC §5.107 in the *Texas Register*.

Title 7. Banking and Securities
Part 1. Finance Commission of Texas
Chapter 5. Administration of Finance
Agencies
7 TAC §5.107

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking, Department of Savings and Mortgage Lending, and Office of Consumer Credit Commissioner (agencies), proposes new §5.107, concerning Employee Leave Pools. The agencies posted an early precomment draft of the proposed rule online for interested stakeholders to review. The agencies did not receive any precomments on the rule text draft. The proposed rule is in response to House Bill (H.B.) 2063, 87th Legislature, Regular Session (2021), which amended Texas Government Code (Government Code), Chapter 661 by adding new Subchapter A-1 to require each state agency to create and administer an employee family leave pool. Under the provisions of new Government Code, §661.022, the governing body of each state agency is required to adopt rules and prescribe procedures relating to the operation of the agency family leave pool. Government Code, §661.002 has a similar provision that the governing body of each state agency is required to adopt rules and prescribe procedures relating to the operation of an agency's sick leave pool. In accordance with §661.002 and §661.022, the proposed new rule would acknowledge, through formal rulemaking, the existence of the agencies' respective family leave pools and sick leave pools. The proposed new rule would set forth the purpose of each leave pool, designate the Commissioner of each finance agency as the pool administrator for their respective finance agency's leave pools, and require the

Commissioner to maintain operating procedures consistent with the requirements of the proposed new rule and relevant laws governing operation of the pools.

Wendy Rodriguez (Deputy Commissioner, Texas Department of Banking), Antonia Antov (Director of Operations, Department of Savings and Mortgage Lending), and Mirand Diamond (Director of Licensing, Finance and Human Resources, Office of Consumer Credit Commissioner) have determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Wendy Rodriguez (Deputy Commissioner, Texas Department of Banking), Antonia Antov (Director of Operations, Department of Savings and Mortgage Lending), and Huffman Lewis (Director of Consumer Protection, Office of Consumer Credit Commissioner) have also determined that, for each year of the first five years the proposed rule is in effect, the public benefit anticipated as a result of adoption of the rule will be compliance with the directives of the Legislature.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed.

For each year of the first five years that the proposed rule will be in effect, the rule 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;
-
- 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.

The proposed rule creates a new regulation concerning employee leave pools for the agencies in compliance with the requirements of the Government Code.

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 proposed rule must be submitted no later than 5:00 p.m. on August 8, 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 new rule is proposed under the authority of Government Code, §661.002 and §661.022. Section 661.002 requires that the governing body of each state agency adopt rules and prescribe procedures relating to the

operation of an agency's sick leave pool. Section 661.022 requires the governing bodies of state agencies to adopt rules to create and administer an employee family leave pool.

The proposed new rule affects Government Code, Chapter 661.

§5.107. Employee Leave Pools.

(a) Generally. The finance agencies maintain policies for establishing and administering the sick leave pool and family leave pool of each respective finance agency.

(b) Sick leave pool. A sick leave pool is established to allow employees to transfer accrued sick leave to the pool to be used by employees who are eligible to withdraw time from the pool. The sick leave pool is intended to assist an employee and the employee's immediate family in dealing with a catastrophic illness or injury that forces the employee to exhaust all of the employee's available sick leave.

(1) The Commissioner of each finance agency is designated as the pool administrator for the respective finance agency's sick leave pool.

(2) The pool administrator will maintain operating procedures consistent with the requirements of this subsection and relevant law governing operation of the pool.

(3) Donations to the pool are strictly voluntary.

(c) Family leave pool. A family leave pool is established to allow employees to transfer accrued sick leave or vacation leave

to the pool to be used by employees who are eligible to withdraw time from the pool. The family leave pool is intended to provide employees the flexibility to bond with and care for children during a child's first year following birth, adoption, or foster placement; or to care for a seriously ill family member or the employee, including illnesses or complications resulting from a pandemic.

(1) The Commissioner of each finance agency is designated as the pool administrator for the respective finance agency's family leave pool.

(2) The pool administrator will maintain operating procedures consistent with the requirements of this subsection and relevant law governing operation of the pool.

(3) Donations to the pool are strictly voluntary.

B.

**Department of Savings and
Mortgage Lending**

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B. Department of Savings and Mortgage Lending

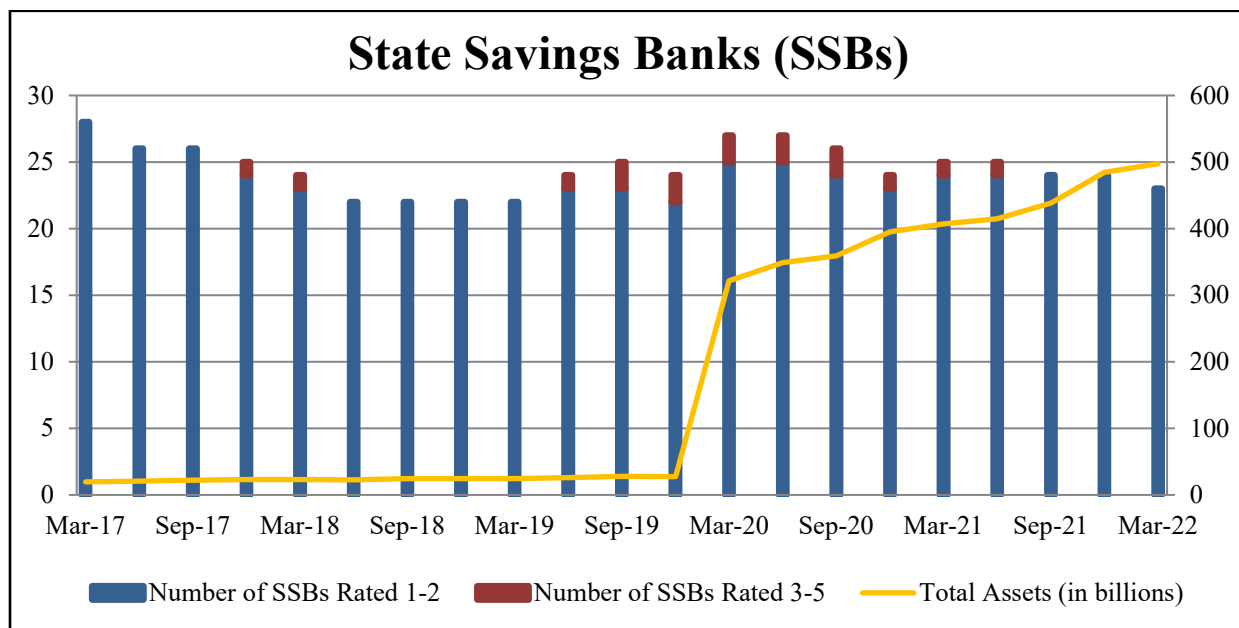
1. Industry Status and Departmental Operations: a) Thrift Regulation Division Activities; b) Mortgage Regulation Division Activities; e) Operations Division Activities; f) Legal Division Activities, including Consumer Complaints and Gift Reporting; and g) Legislative Activities

a) Thrift Regulation Division Activities

Industry Status

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

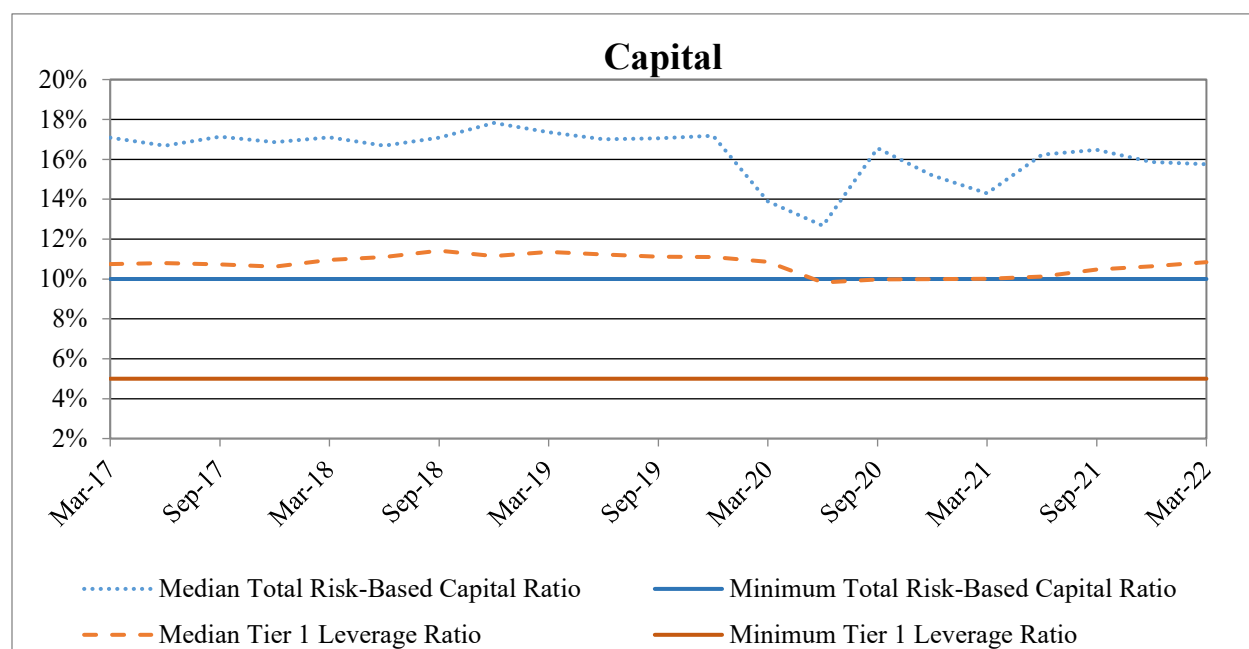
The Department conducts bank examinations to ensure confidence in the banking system using the Uniform Financial Institutions Rating System (UFIRS). Banks with a UFIRS rating of 1 or 2 are considered well rated. The industry consists of 23 state savings banks with assets totaling \$497.5 billion as of March 31, 2022. On January 1, 2022, Pioneer Bank, SSB, and Spirit of Texas Bank, SSB, merged out reducing assets by \$4.7 billion. The industry remains sound with all banks being well rated. As of March 31, 2022, no supervisory actions are in place.



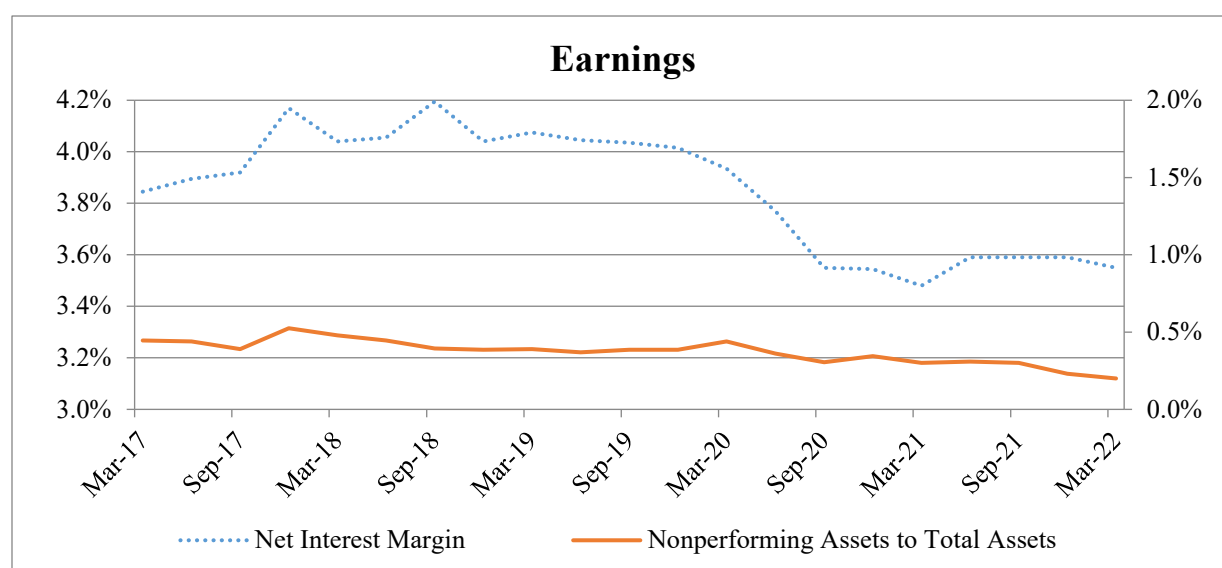
All SSBs are subject to quarterly offsite reviews. Those with the highest risk profiles receive enhanced scrutiny, as warranted, with targeted visitations, accelerated examinations, and/or corrective actions. Below are specific areas that the Department monitors in relation to changes in the state and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

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

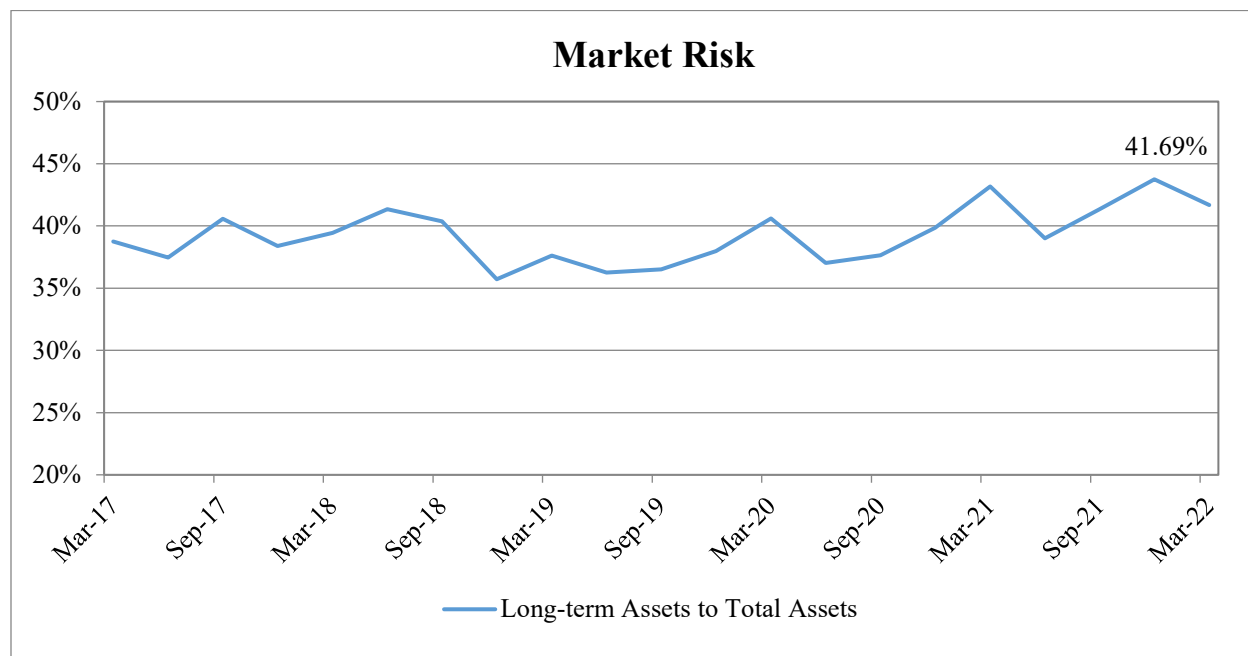
Regulatory capital standards are designed to strengthen the quality and quantity of bank capital and promote a stronger financial industry that is more resilient to economic stress. As of March 31, 2022, all SSBs remain well above regulatory capital minimums. The portfolio median total risk-based capital ratio and median leverage capital protection have remained generally consistent and are now 15.76% and 10.84%, respectively.



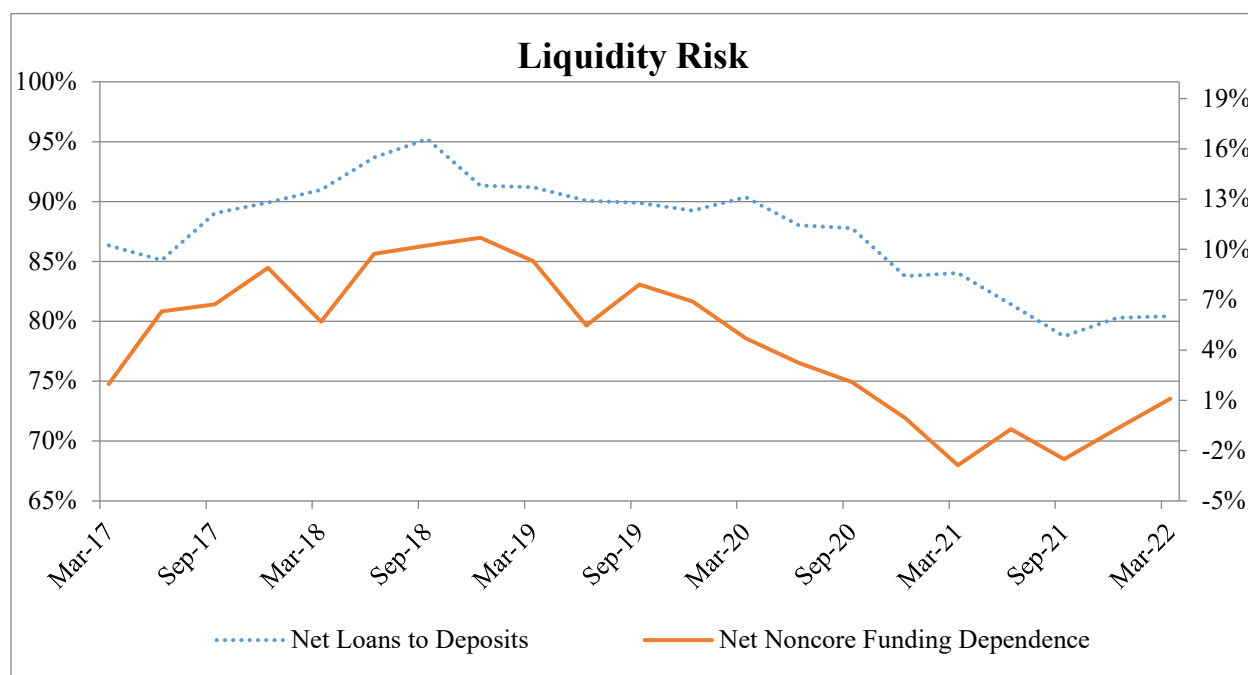
Earnings is the initial safeguard against the risk of engaging in the banking business, and is the first line of defense against capital depletion resulting from shrinkage in asset value. Earnings performance should allow the bank to remain competitive by providing the resources required to implement management's strategic initiatives. The net interest or profit margin is 3.55%. Nonperforming asset levels remain low at 0.20% of total assets.



Market risk primarily reflects exposures to changing interest rates over time. Long-term asset exposure can be an indicator of the degree of market risk taken by a state savings bank. As of March 31, 2022, long-term assets to total assets ratio decreased to 41.69%.



Liquidity risk reflects the bank's ability to fund assets and meet financial obligations under various scenarios, including adverse conditions. Liquidity risk continues to decline. The Net Noncore Funding Dependence (NNCFD) Ratio, a measure of the funding of long-term assets using short-term funding strategies, is negative 0.68%. The loan-to-deposit ratio, a measure of the use of deposits to fund lending activities, is 79.60%.



Thrift Examination Activity Report

On-site examination activities have resumed on a limited basis.

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 effective, since the April 2022 Finance Commission meeting.

Outreach and Training

On April 1, 2022, Jose Villa obtained his Cybersecurity and Infrastructure Security Agency (CISA) certification.

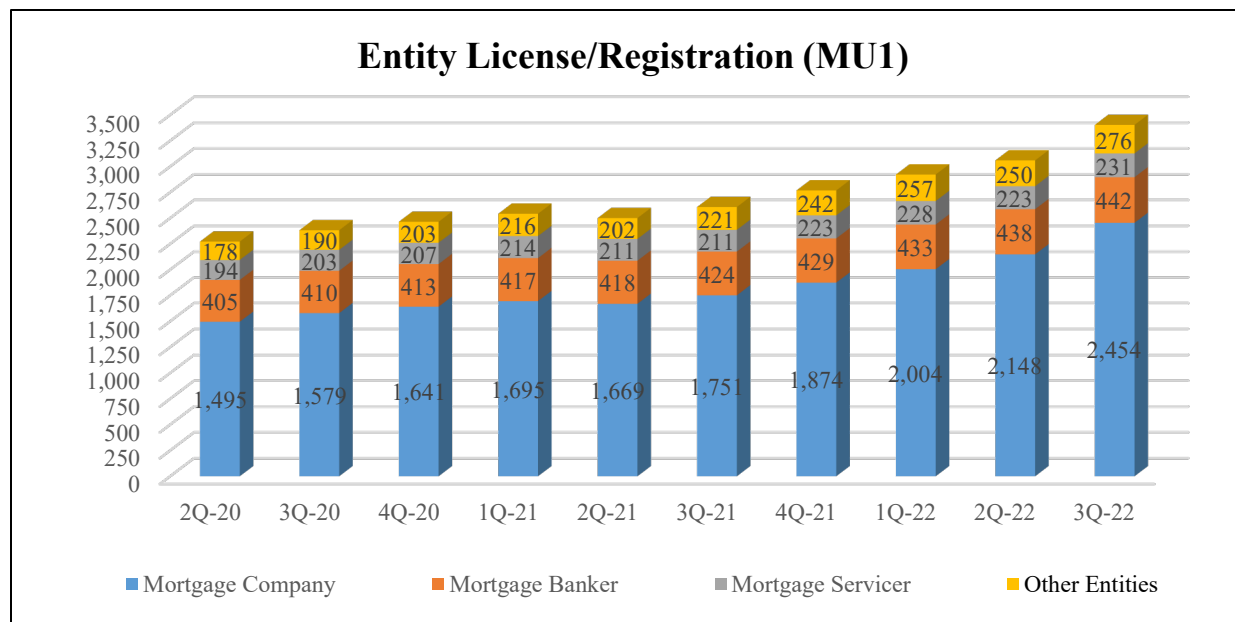
On May 19-20, 2022, Deputy Commissioner Stephany Trotti attended the annual Texas Bankers Association convention and held a SSB roundtable discussion to network, exchange ideas and discuss relevant banking topics.

b) Mortgage Regulation Division Activities

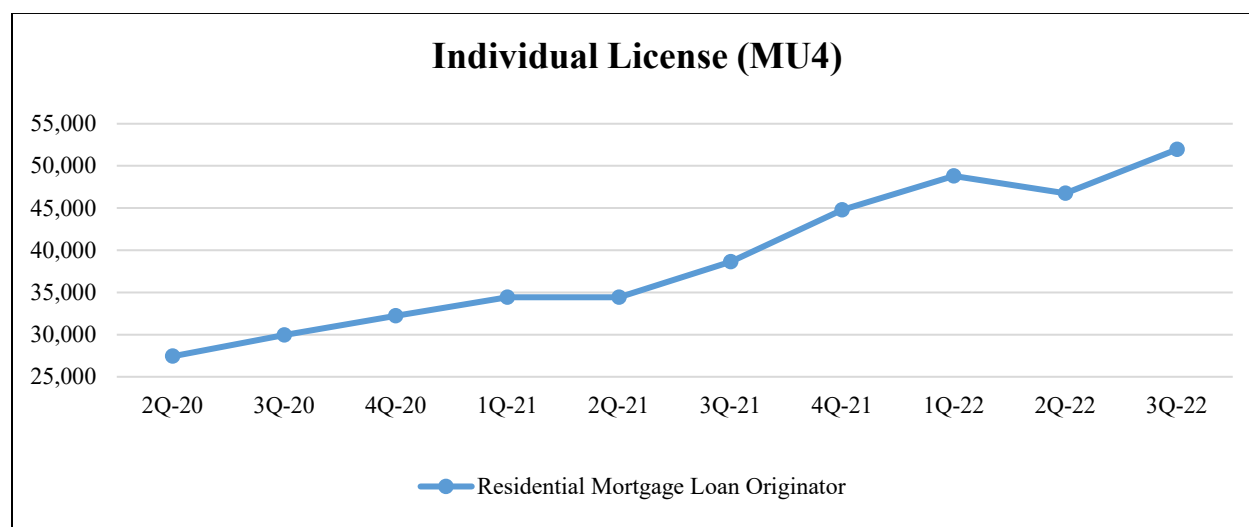
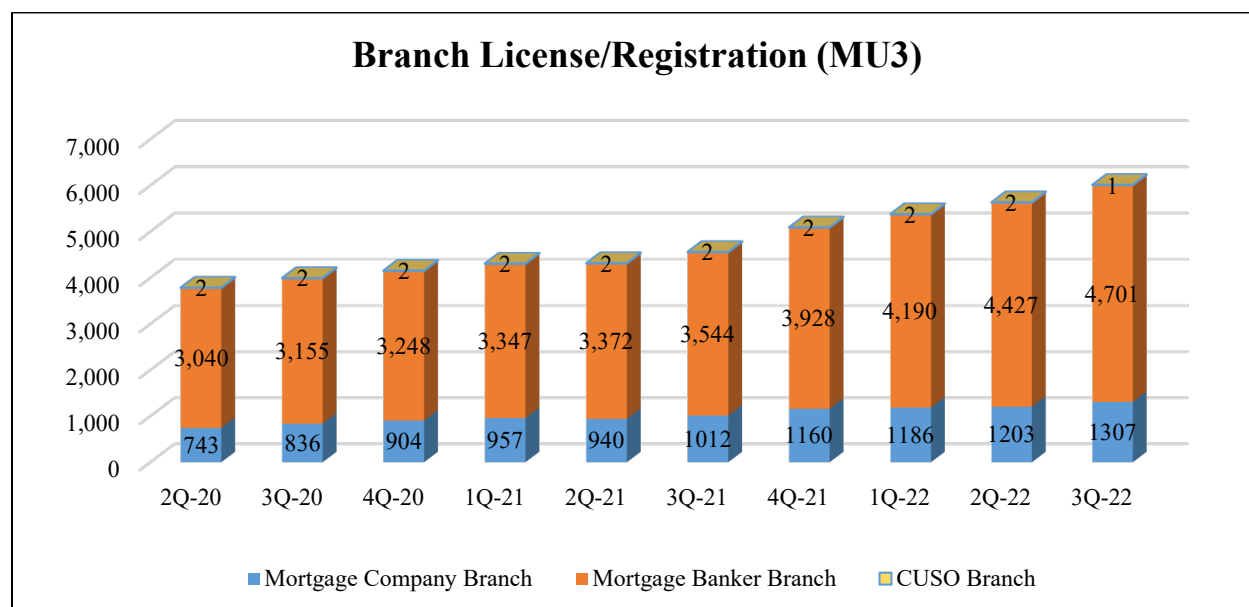
Industry Status

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 number 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.



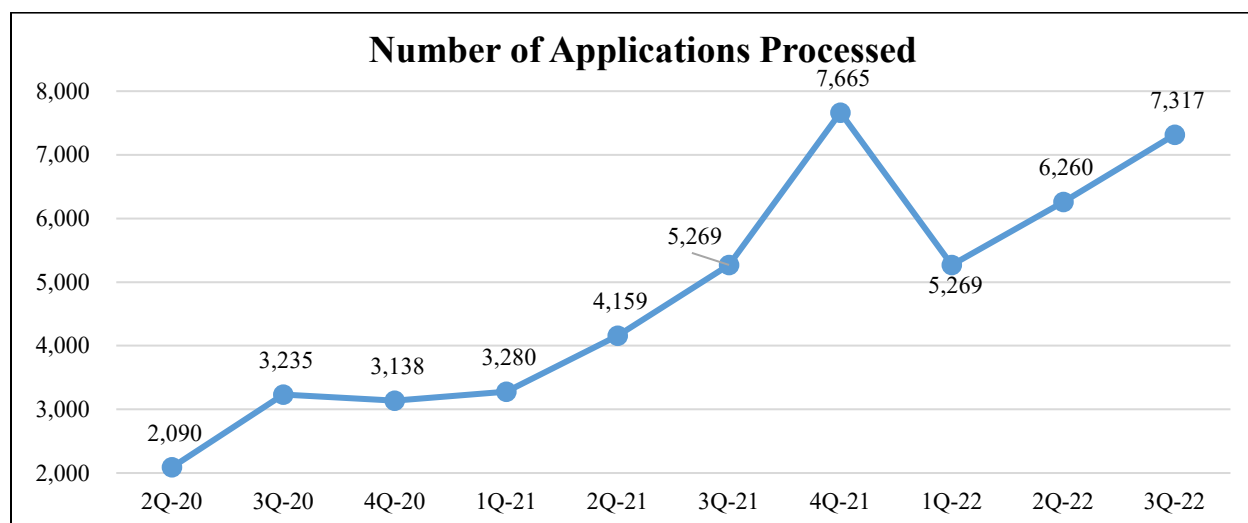
The growth of the number of licensees/registrants in an approved status has also correlated to a substantial increase in the number of loans and dollar amount of loans made in Texas. Over the past three calendar years, the number of loans has increased 90.82% and the dollar amount of loans has increased 124.10%. The aggregate Mortgage Call Report information reported by licensees and registrants for calendar years 2019, 2020, and 2021 is shown in the table below.

Mortgage Call Report Data*			
CY2021	\$ Amount	# Loans	Average \$ Loan
Direct	\$200,014,816,908	738,859	\$270,708
3 rd Party	\$30,330,937,877	100,534	\$301,698
CY2020	\$ Amount	# Loans	Average \$ Loan
Direct	\$173,494,757,236	698,173	\$248,498
3 rd Party	\$24,291,175,551	87,516	\$277,563
CY2019	\$ Amount	# Loans	Average \$ Loan
Direct	\$90,324,411,329	392,191	\$230,307
3 rd Party	\$12,462,384,057	47,692	\$261,309
*Aggregate information as reported by licensees.			

Licensing Activity Report

During the third quarter of FY2022, the Mortgage Licensing section processed 7,317 applications and approved 6,316 applications, including 358 mortgage entities, 860 branch offices, and 5,098 residential mortgage loan originators. The remaining 1,001 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.



According to NMLS Data Analytics for the third quarter of FY2022, the Mortgage Licensing section processed 33,191 license amendments, 2,361 credit report reviews, 7,204 sponsorship removals, and 8,302 sponsorship requests.

Mortgage Examination Activity Report

During the third quarter of FY2022, the Mortgage Examination section conducted 98 examinations covering 2,151 individual licensees. Compared to the same reporting period in FY2021, the overall number of examinations conducted was 5.77% lower (98 to 104 examinations), however, the

number of individual licensees examined was 15.65% higher (2,151 versus 1,860) due to more of the examined entities in FY22 having greater than 10 sponsored 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, Information Security Program and Remote Work Policies), non-compliant social media advertisements, and non-compliant Conditional Pre-Qualification/Conditional Approval Letters.

Outreach and Training

On April 6, 2022, Commissioner Hector Retta and Director of Mortgage Regulation William Purce provided an in-person presentation to the Austin Mortgage Bankers Association. The presentation discussed: (1) the current and historical licensing trends; (2) common issues found in license/registration applications; (3) the current and historical examination trends; (4) common examination findings; (5) current complaint issues; (6) the upcoming new regulations; and (7) cybersecurity, remote work policies, and information security plans.

c) Operations Division Activities

Accounting, Budget, and Financial Reporting

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

CAPPS Implementation – Staff participates in weekly user acceptance testing (UAT) sessions related to each CAPPS HR/Payroll Module. During these sessions, the Comptroller's office CAPPS teams and Department's staff test multiple scenarios in order to determine the agency module configurations are functioning properly. Go-live is scheduled for July 11, 2022.

Audit

Garza Gonzales and Associates completed the internal audit over the Legal and Enforcement Area. The report is located elsewhere in the packet.

Human Resources

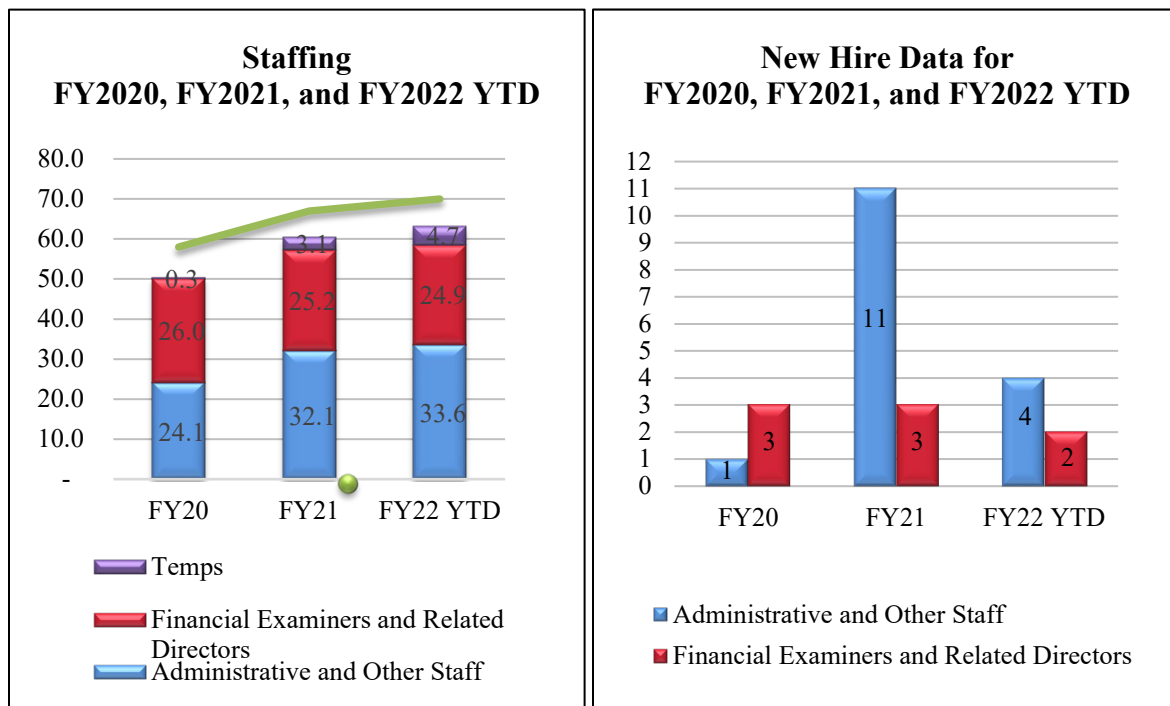
As of May 31, 2022, the Department was staffed at 59 regular full-time employees. During the months of April and May, one Legal Assistant and one Thrift Financial Examiner separated from the Department. During the same period, three new employees joined the Department – an HR Specialist, a Mortgage Financial Examiner, and an Executive Assistant.

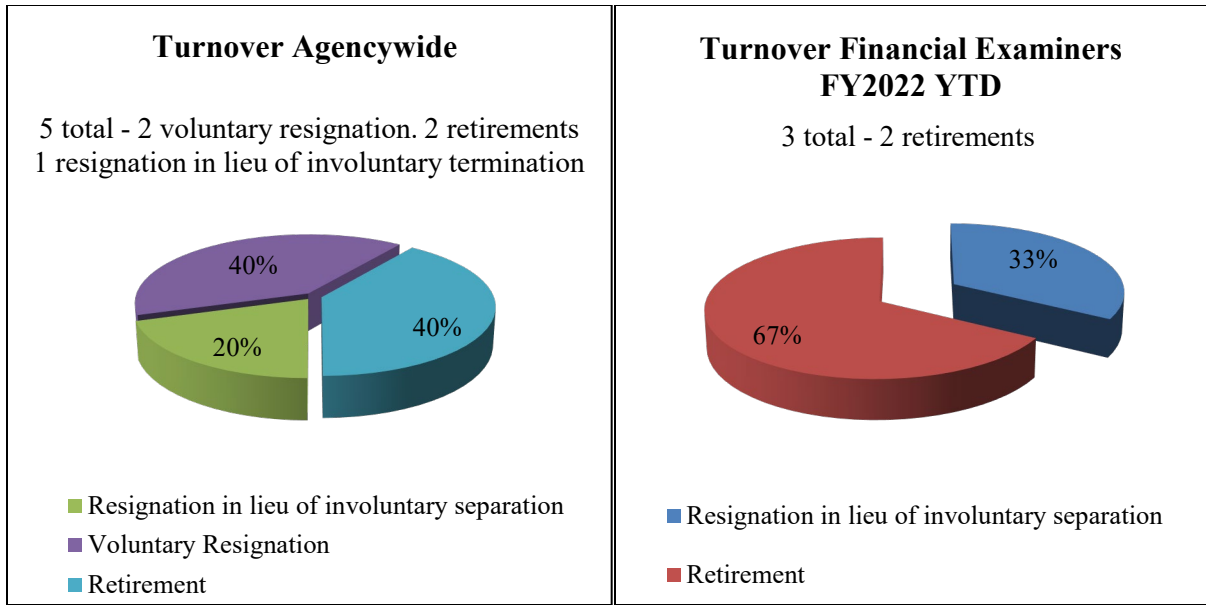
The Department is also utilizing the services of five temporary workers – one Administrative Assistant, one Editor, two License and Permit Specialists, and one Legal Assistant.

Below is the status of the Department's vacancies:

Vacancy Status	
Executive Assistant II/III	Position Filled
Financial Examiner I/II- Mortgage - 1	
HR Specialist IV/V	
Financial Examiner V – Thrift - 2	Collecting and reviewing applications, interviewing candidates
Financial Examiner VI/VII – Thrift - 3	
Financial Examiner I/II- Mortgage - 1	
Administrative Assistant II/III - 1	
Legal Assistant II/III	Collecting and reviewing applications
Financial Examiner I-II -Thrift (Information Technology)	
Administrative Assistant II/III - 1	
Investigator II/III - Licensing	
Systems Support Specialist II/III	

Human Resources Charts as of May 31, 2022





Outreach and Training

The quarterly agency-wide meeting and training was held virtually on May 26 2022. It included agency and division updates, internal presentations on multiple topics, including CAPPs, Department Policies and Procedures, Microsoft Office 365, etc.

As mandated by Section 2054.5191 of the Texas Government Code, at least once each year, state government employees must complete a cybersecurity training program certified by the Department of Information Resources (DIR). All the Department employees are in compliance with this requirement.

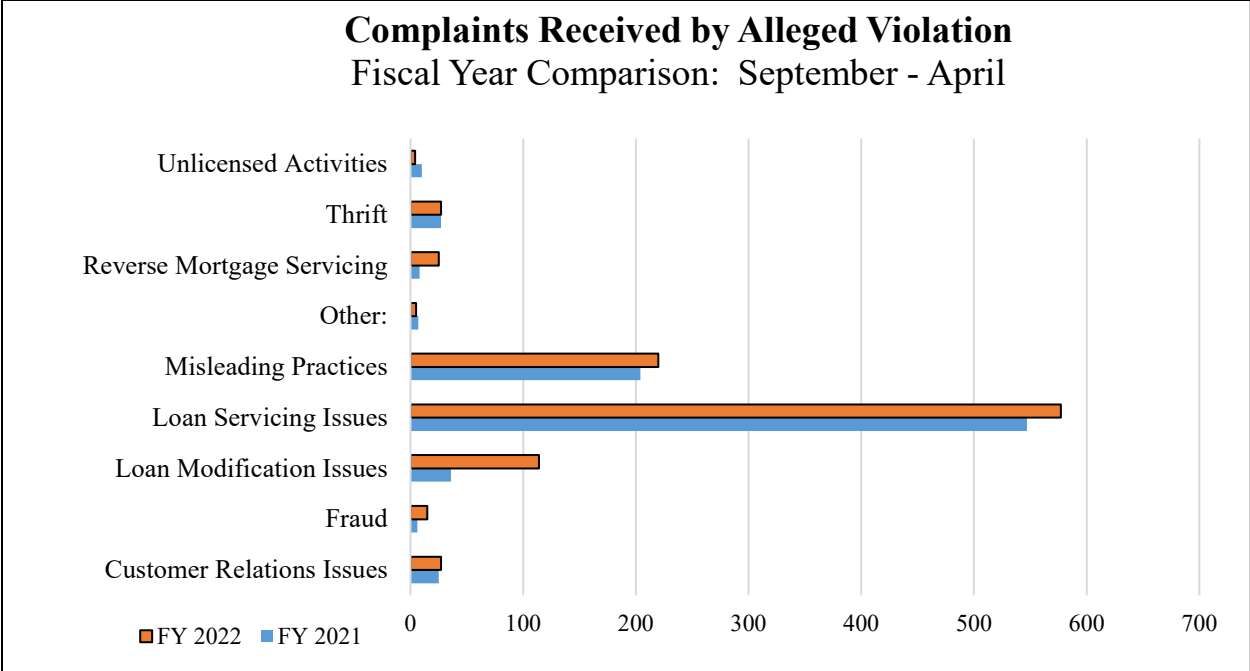
All employees are currently in the process of completing the required CAPPs HR/Payroll training prior to the launch on July 11, 2022.

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

Consumer Complaints Activity Report

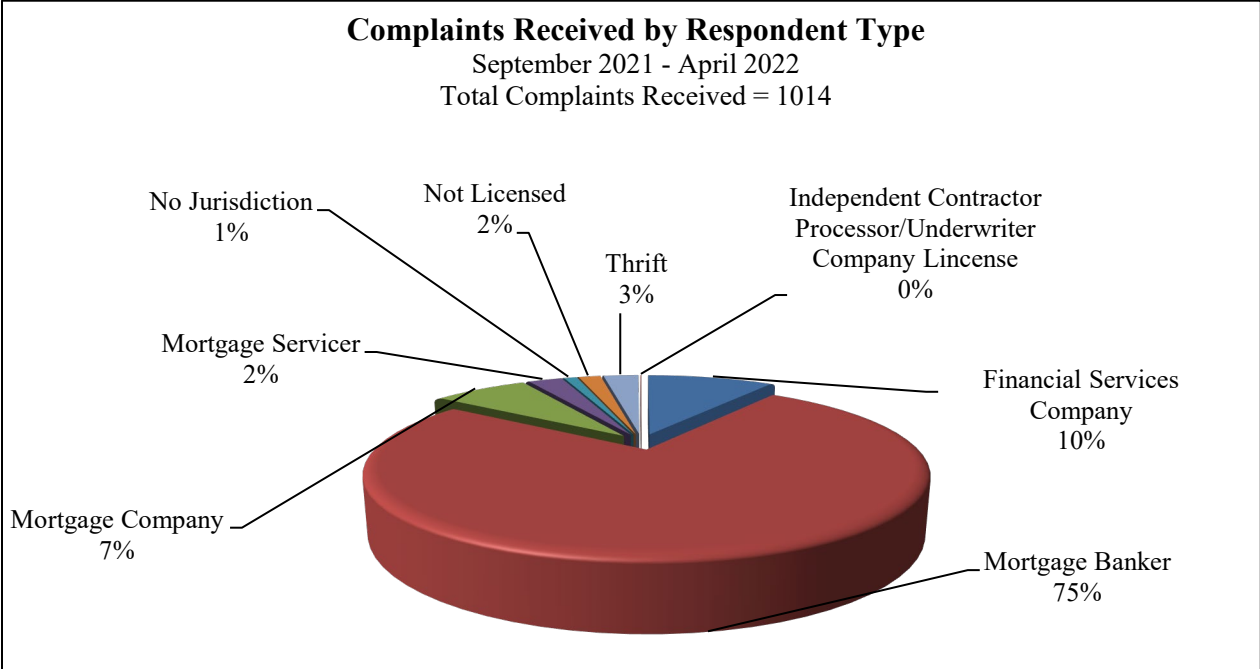
Complaints Received by Type of Alleged Violation

From September 2021 to April 2022, the Department received 1014 complaints, representing a 17% increase in complaints received during the same period in FY2021. While loan servicing still makes up more than half of all complaints received during FY2022, compared to FY2021 the Department has seen the greatest percentage increase in the following areas: 1) Loan Modification Issues; 2) Reverse Mortgage Servicing; and 3) Fraud.



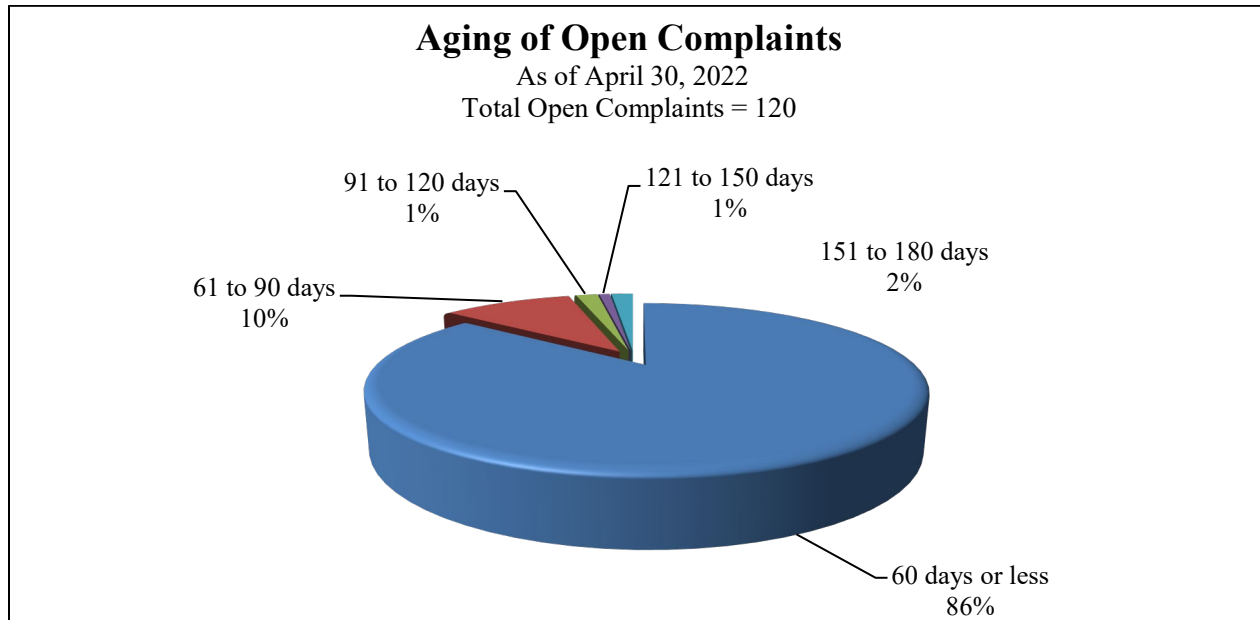
Complaints Received by Respondent Type

While mortgage bankers continue to represent the largest percentage overall of respondent type, the Department has seen the greatest percentage increase within the following types: Financial Services Company and those Not Licensed.



Aging of Open Complaints

As of April 30, 2022, there were 120 open files. Open complaint aging remains within acceptable ranges with 96% of complaints aged 90 days or less. Of the five (5) files that were aged over 90 days, two (2) files had been closed during the month of May and the investigators are still conferring with Enforcement on three (3) other files.



Closed Complaints	FY2022			
	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr
Servicing Complaints				
Number of Servicing Complaints Closed	175	198	270	
Average Number of Days to Close a Complaint	26	24	24	
Percentage of Complaints Closed Within 90 Days	96.0%	96.5%	98.2%	
Non-Servicing Complaints				
Number of Non-Servicing Complaints Closed	153	168	164	
Average Number of Days to Close a Complaint	34	22	23	
Percentage of Complaints Closed Within 90 Days	92.2%	95.8%	98.2%	
Total Complaints Closed				
	328	366	434	

Legal and Enforcement Activity Report

Enforcement Actions

Mortgage Enforcement Actions	FY2022			
	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr
Advisory Letter	4	3	1	
Agreed Order to Take Affirmative Action	2	1	0	
Agreed Order to Cease and Desist	0	0	2	
Agreed Order – Other	1	74	1	
Letter of Reprimand	0	0	0	
Notice of Pending Revocation	0	2	1	
Order to Cease and Desist	0	6	1	
Order to Take Affirmative Action	0	5	3	
Total	7	91	9	

Recovery Fund Applications

From September 2021 to April 2022, the Department received nine (9) Recovery Fund applications: two (2) applications were closed due to parties resolving matters, three (3) applications were denied, two (2) applications remain open and under investigation, and two (2) applications are recommended for approval by the Commissioner.

Contested State Office of Administrative Hearings (SOAH) Cases

Recovery Fund Claim - Joseph Merlinsky v. Cassandra D. Guidry (SOAH Docket No. 450-22-1870) The Department previously entered into an agreed revocation of Ms. Guidry's RMLO license which included an agreed order for her to pay Mr. Merlinsky \$6,379 in restitution. Ms. Guidry made all but approximately \$2,571 of the restitution, which Mr. Merlinsky tried to recover through the recovery fund. The matter was set for hearing and shortly before the hearing Ms. Guidry paid the remaining restitution to Mr. Merlinsky. The case was dismissed on May 25, 2022.

William Henry Scott Jr. (SOAH Docket No. 450-22-1643-CHI; confidential proceeding)

Mr. Scott applied with the Department for licensure as a residential mortgage loan originator. On November 16, 2021, the Commissioner sought to deny the application based on information discovered during the application process. On November 23, 2021, Mr. Scott appealed the Commissioner's decision. On February 7, 2022, the matter was docketed at SOAH. On March 22, 2022, a final hearing on the merits was held before an Administrative Law Judge (ALJ) at SOAH. ALJ's Proposal for Decision recommending that the Commissioner grant the license was received on May 20, 2022.

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. On January 28, 2022, Mr. Wagner filed his appellant's brief. On February 28, 2022, OAG, on behalf of the Department, filed a motion for extension of time to file the appellee's brief. On February 28, 2022, such motion was granted, and the deadline to file the appellee's brief was extended to March 30, 2022. On March 28, 2022, OAG, on behalf of the Department, filed a motion for extension of time to file the appellee's brief. On March 29, 2022, such motion was granted, and the appellee's brief was filed May 31, 2022.

Public Information Requests

From September 2021 to April 2022, the Department received 96 public information requests. In contrast from September 2020 to April 2021, the Department received 56 requests.

Of the 96 requests received, the Department referred three (3) requests to the OAG for ruling.

Rulemaking

SML Future Rule Activity		
Rule	Rulemaking Action	Projected Date for Presentation
Chapter 75, Applications	Adoption of Rule Review; Proposed Rule Changes Resulting from Rule Review	August 2022
Chapter 76, Miscellaneous	Adoption of Rule Review; Proposed Rule Changes Resulting from Rule Review	August 2022
Chapter 77, Loans, Investments, Savings, and Deposits	Adoption of Rule Review; Proposed Rule Changes Resulting from Rule Review	August 2022

Chapter 75, Applications	Adoption of Proposed Rule Changes Resulting from Rule Review	October 2022
Chapter 76, Miscellaneous	Adoption of Proposed Rule Changes Resulting from Rule Review	October 2022
Chapter 77, Loans, Investments, Savings, and Deposits	Adoption of Proposed Rule Changes Resulting from Rule Review	October 2022

Gift Reporting

The Department did not receive any gifts during the months of March or April 2022.

e) Legislative Activities

The Department monitors federal legislation, executive orders, agency regulations, and other developments that might affect the Texas mortgage and thrift industries. Areas of interest include 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.

State

Interim Charges

Lt. Governor Dan Patrick and House Speaker Dade Phelan each issued their interim charges for each respective chamber's committees to take up and consider in advance of the upcoming 88th Legislative Session. Notable charges are listed below (the list does not include charges related to monitoring or implementation of legislation already enacted).

Senate Business and Commerce Committee

- **Blockchain and Virtual Currencies:** Study current state and federal regulations surrounding blockchain and virtual currencies. Examine how these technologies impact industries such as banking, business, and electricity. Make recommendations to protect consumers while encouraging innovation.
- **Cybersecurity:** Review current state and federal laws regarding cybersecurity protections and requirements for local governments, state agencies, and critical industries of our state. Make recommendations for legislation to improve resilience and protection against cybersecurity attacks and ensure the privacy protection of the citizens of Texas.
- **State Workforce:** Study where state employees are located and the benefits and drawbacks of remote working. Evaluate the impact of the potential growth of remote work and proximity of employees to their place of employment on traffic studies over the next 10 years. Study and make recommendations for establishing uniform statewide standards for remote work. Study possible implications and standards for statewide recruitment and employment of remote state employees from all parts of the state.

Federal

Congress

- H.R.7003 – Expanding Financial Access for Underserved Communities Act
- S.3954 — A bill to amend the Federal Reserve Act to prohibit the Federal reserve banks from offering certain products or services directly to an individual, and for other purposes.
- H.R.4521 — United States Innovation and Competition Act of 2021
- H.R.5912 — Close the ILC Loophole Act
- H.R.2954 — Securing a Strong Retirement Act of 2021
- 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

Presidential Executive Orders

- EO 14067, March 9, 2022 — Ensuring Responsible Development of Digital Assets

2. Discussion of and Possible Vote to Take Action on the Adoption of New Rules and Repeals in 7 TAC, Part 4, Chapter 51, Concerning Charter Applications, Resulting from Rule Review

PURPOSE: The purpose of the new rules and repeals in 7 TAC Chapter 51 is to implement changes resulting from the Department's periodic review of its rules, conducted pursuant to Government Code §2001.039. An explanation of and justification for the rules is contained in the proposed preamble for the rule proposal.

RECOMMENDED ACTION: The Department recommends that the Finance Commission approve adoption of the new rules and repeals in 7 TAC Chapter 51.

RECOMMENDED MOTION: I move that the Finance Commission approve adoption of the new rules and repeals in 7 TAC Chapter 51.

ADOPTION OF NEW RULES AND REPEALS

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TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 51. CHARTER APPLICATIONS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts the repeal of all preexisting rules in 7 TAC Chapter 51, as follows: §§51.1 - 51.15. The commission further adopts new rules in 7 TAC Chapter 51, as follows: §§51.1 - 51.4, 51.100, 51.200, 51.300 - 51.304, 51.400 - 51.405, and 51.500 - 51.506. The commission's proposal was published in the May 6, 2022, issue of the *Texas Register* (47 TexReg 2622). The following rules are adopted with changes to the published text and are republished to reflect such changes: §§51.1, 51.2, 51.100, 51.300, 51.301, 51.400, 51.401, 51.403, 51.500, and 51.501. The changes regulate no new parties and affect no new subjects of regulation. As a result, the rules will not be republished as proposed rules for comment. The remaining rules in the proposal are adopted without changes to the proposed text as published in the *Texas Register* and will not be republished.

Explanation of and Justification for the Rules

Changes Concerning the Relocation (Swapping) of 7 TAC Chapters 51 and 52

The department's preexisting rules in 7 TAC Chapters 51, 53, 57, 61, 64, 65, 67, 69, 71, and 73 implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations regulated by the department. The department's preexisting rules in 7 TAC Chapter 52, Department Administration, concern the administrative processes and procedures of the Department, and are therefore located among the rule chapters concerning

savings and loan associations which may tend to create confusion for the reader. The department further asserts that 7 TAC Chapter 51 - the first rule chapter assigned to the department - is a more appropriate chapter for the department's rules concerning its administrative processes and procedures to reside. As a result, the department has determined it should relocate the preexisting rules in 7 TAC Chapters 51 and 52 by essentially swapping the rules in such chapters. Specifically, the adopted rules: (i) repeal the preexisting rules in 7 TAC Chapter 51 and insert new rules largely patterned after the preexisting rules in 7 TAC Chapter 52; and (ii) rename 7 TAC Chapter 51 to reflect the new rules inserted in such chapter.

Changes concerning Complaint Processing Rules

The department receives, analyzes, and investigates complaints from consumers concerning the persons it regulates. The adopted rules make changes to the department's preexisting rules in 7 TAC Chapter 52, Subchapter A, Complaint Processing, including: (i) changes to preexisting §52.10, Definitions, to: add definitions for the terms "Commissioner" and "Department"; and clarify that the department will attempt to collect appropriate information to facilitate analysis or investigation of a complaint but will not treat such complaint as an inquiry for failure to include all such information; (ii) changes to preexisting §52.11, Complaint Processing, to: clarify that a person filing a complaint who wishes to remain anonymous must request such treatment; clarify that an inquiry concerning a person or activity the department does not regulate will be referred to the appropriate regulatory authority, if known; clarify that a complaint may not be forwarded to the entity or individual that is the subject of the complaint if notice of the complaint would jeopardize analysis or investigation of the complaint by the department; and clarify when the department provides status updates to the

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complainant concerning their complaint (no less often than quarterly); and (iii) changes to preexisting §52.12, Complaint Resolution and Disposition, to: clarify the department's process to close a complaint if it is outside the department's jurisdiction; clarify that, if an enforcement action is deemed to be warranted in order to address the complaint, the party to such action will be notified of the complaint being closed through such enforcement action and will not receive a separate notice; and establish a time limit of ninety days for a complainant to appeal the department's disposition of their complaint, and clarify that the department will provide written notice to the complainant of the results of a timely appeal request.

Changes concerning the Mortgage Grant Fund grant program

Finance Code Chapter 156, Subchapter G requires the department's commissioner to administer the mortgage grant fund. The primary purpose of the mortgage grant fund is to promote financial education relating to mortgage loans and to support other statewide financial education, activities, and programs. The adopted rules make changes to the department's preexisting rule at 7 TAC §52.205, Grant Program, to properly align the rule's provisions concerning the grant program's programmatic schedule with the department's plans for the inaugural grant cycle to occur in calendar year 2023.

Other Modernization and Update Changes.

The adopted rules make changes to modernize and update the rules including: adding and replacing language for clarity and to improve readability; removing unnecessary or duplicative provisions; and updating terminology.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments, or June 5, 2022. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

7 TAC §§51.1 - 51.15

Statutory Authority

The rule repeals are adopted under the authority of: Finance Code §11.302(a), authorizing the commission to adopt rules applicable to Texas-chartered savings associations (savings and loan associations); Finance Code §62.001, authorizing the commission to adopt rules concerning the information required in an application for a savings and loan association charter; and Finance Code §66.002(3), authorizing the commission to adopt rules concerning the procedures for processing, hearing, and deciding applications filed with the department's commissioner relating to the operation of a savings and loan association.

The adopted rule repeals affect the statutes contained in Finance Code Title 3, Subtitle B.

§51.1. Form and Content of Application to Incorporate; Requirements for Capital Stock and Paid-in Surplus or Savings Liability and Expense Fund; Payment before Opening for Business.

§51.2. Use of Approved Forms.

§51.3. Hearing on Charter Application; Subsequent Competing Application Filed Prior to Hearing; Amendments to Charter Applications.

§51.4. Publication of Notice of Charter Application.

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§51.5. Notice to Associations.

§51.6. Filing Proof of Publication.

§51.7. Hearing When Application Not Protested.

§51.8. Purpose of Hearing; Post-Hearing Investigation.

§51.9. Time of Decision on Charter Applications.

§51.10. Motions for Rehearing.

§51.11. Definition of Community.

§51.12. Identification of Office Site; Temporary Location.

§51.13. Qualifying Management.

§51.14. Notice to Applicants.

§51.15. Appeals.

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

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

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CHAPTER 51. DEPARTMENT
ADMINISTRATION

SUBCHAPTER A. COMPLAINTS

7 TAC §§51.1 - 51.4

Statutory Authority

The rules are adopted under the authority of: Government Code §2001.004(1), requiring a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Finance Code §96.002(a), authorizing the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks; Finance Code §156.102, authorizing the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act; Finance Code §157.0023, authorizing the commission to adopt rules necessary to implement or fulfill the purposes of Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act; Finance Code §158.003(b), authorizing the commission to adopt and enforce rules necessary for the purposes of or to ensure compliance with Finance Code Chapter 158, the Residential Mortgage Loan Servicer Registration Act; Finance Code §159.108, authorizing the commission to adopt and enforce rules necessary for the intent of or to ensure compliance with Finance Code Chapter 159, Subchapter C; Finance Code §180.004, authorizing the commission to implement rules necessary to comply with Finance Code Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009 (Texas SAFE Act); and Finance Code §180.061(5), authorizing the commission to adopt rules establishing requirements for investigation and examination authority for purposes of investigating a violation or complaint arising under the Texas SAFE Act. The rules are also adopted under the authority of, and to implement, Finance Code §§11.307, 13.011, 156.301, 157.0022, 157.009, 157.021, 158.059, and 158.102.

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The adopted rules affect the statutes contained in Finance Code: Title 3, Subtitles B and C; and Chapters 13, 156, 157, 158, 159, and 180.

§51.1. Definitions.

The following terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) "Commissioner" means the Savings and Mortgage Lending Commissioner appointed under Finance Code Chapter 13.

(2) "Complainant" means a person who files a complaint with the Department.

(3) "Complaint" means a signed, written communication received by the Department's division for consumer assistance that expresses dissatisfaction with a transaction or alleges wrongful conduct. The Department will collect the following items and information regarding a complaint, if available:

(A) the complainant's name and contact information;

(B) the name of the entity or individual against whom the complaint is submitted;

(C) the date and place of the alleged misconduct, violation, or transaction;

(D) a description of the facts or conduct alleged to violate applicable statutes or rules; and

(E) any written documentation supporting the complaint.

(4) "Department" means the Department of Savings and Mortgage Lending.

(5) "Inquiry" means a written communication received by the Department's division for consumer assistance that is not a complaint.

§51.2. Complaint Processing.

(a) Complaints and inquiries filed with the Department are generally considered public information, unless a specific statutory exception applies.

(b) The Department, at the request of the complainant, will make a good faith effort to protect the complainant's identity to the extent possible.

(c) The Department will determine if a complaint or inquiry relates to an activity that the Department regulates, and:

(1) if the Department does not regulate the activity that is the subject of the complaint or inquiry, the Department will close the complaint or inquiry and refer the person making the complaint or inquiry to the appropriate regulatory authority, if known; or

(2) if the Department regulates the activity that is the subject of a complaint, the Department will send a copy or a summary of the complaint and appropriate supporting documentation to the entity or individual that is the subject of the complaint to request a response, unless notice of the complaint would jeopardize analysis or investigation of the complaint or the Commissioner or his or her designee otherwise determines an undercover or covert investigation is warranted.

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(d) A regulated entity or individual that receives a complaint forwarded by the Department must respond within 14 calendar days from the date the request was sent by the Department, unless an extension of time is granted. If an extension of time is granted, the regulated entity or individual must respond by the deadline recited in or otherwise created by the extension of time.

(e) The Department will prioritize complaints for purposes of determining the order in which complaints are investigated, taking into account the seriousness of the allegations made in a complaint and the length of time a complaint has been pending.

(f) The Department will monitor how long each complaint is open, and will make all reasonable efforts to resolve complaints within 90 calendar days of receipt of actionable information. The Department will notify the complainant of his or her complaint status at least quarterly until final disposition, unless such notice would jeopardize an ongoing complaint analysis or investigation.

§51.3. Complaint Resolution and Disposition.

(a) If the Department determines the complaint is not supported by the evidence, is not within the Department's jurisdiction, contains no violation, or is resolved to the satisfaction of the parties, the complaint will be closed.

(b) If the Department determines the complaint is sufficiently supported by the evidence and justifies enforcement action, the complaint will be closed and referred for an enforcement action.

(c) The Department will notify all parties to the complaint within 10 business days of closing the complaint (closing notice). However, if the complaint is closed with a referral for an enforcement action, the respondent in such enforcement action will be notified by and

through the enforcement action only, and will not receive a separate closing notice.

(d) A complainant who disagrees with the disposition of a complaint may appeal by sending a written appeal request to the Department's division for consumer assistance within 90 calendar days after the date the closing notice was issued. Upon receipt of a timely appeal request, a senior member of the Department's division for consumer assistance or other qualified employee designated by the Commissioner will review all information and make a determination regarding the complaint. Unless such review results in a new determination, this review will be considered final and may not be appealed further with the Department. The Department will provide the complainant with written notice concerning the results of a review performed in accordance with this subsection.

§51.4. Complaint Review and Reporting.

(a) The Department will maintain records of all complaints received in accordance with its retention policy. Such records will include the information required by Finance Code §13.011.

(b) At least quarterly, a senior member of the Department's division for consumer assistance or other qualified employee designated by the Commissioner will review a sample of complaints closed administratively due to lack of jurisdiction, lack of a violation, or for evidentiary reasons.

(c) At least quarterly, the Department will submit to the Finance Commission of Texas a report of the sources, subjects, types, and dispositions of complaint activity during the preceding period.

(d) The Department will make available on its website information describing procedures for complaint receipt, investigation, and disposition.

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

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SUBCHAPTER B. HEARINGS AND APPEALS

7 TAC §51.100

Statutory Authority

The rule is adopted under the authority of: Government Code §2001.004(1), requiring a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; and Government Code §2009.051(c), authorizing a state agency to adopt alternative dispute resolution procedures by rule. The rule is also adopted under the authority of, and to implement, Finance Code §13.017.

The adopted rule affects the statutes contained in Finance Code: Title 3, Subtitles B and C; and Chapters 13, 156, 157, 158, 159, and 180.

§51.100. Appeals, Hearings, and Informal Settlement Conferences.

(a) Alternative Resolution of Appeal. If legal or enforcement staff determines an enforcement action that has been appealed may be resolved without a hearing, legal or enforcement staff may pursue settlement through negotiation, mediation, agreed order, consent order, informal settlement conference, alternative dispute resolution, or other appropriate means.

(b) Informal Settlement Conferences. The Department may conduct an informal settlement conference in order to resolve an enforcement action that has been appealed. An individual or entity subject to an enforcement action may request an informal settlement conference. An informal settlement conference does not create any new rights or obligations. Informal settlement conferences:

(1) are conducted at the discretion of legal or enforcement staff;

(2) may not be used as a delay tactic; and

(3) may be primarily conducted remotely, including solely over the phone or videoconference, or by email.

(c) Mediation. As applicable under Finance Code §13.017, the Department may, at the discretion of the Commissioner or his or her designee, arrange for the services of a qualified mediator or subject matter expert to assist in resolving complaints or other matters.

(d) Hearings. Hearings may be conducted in accordance with Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings), with Texas Government Code Chapter 2001, and may be conducted by the State Office of Administrative Hearings (SOAH).

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

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**SUBCHAPTER C. ADVISORY
COMMITTEES**

7 TAC §51.200

Statutory Authority

The rule is adopted under the authority of: Government Code §2001.004(1), requiring a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; and Government Code §2110.008, authorizing a state agency that has established an advisory committee to designate, by rule, the date on which the committee will be automatically abolished. The rule is also adopted under the authority of, and to implement, Finance Code §13.018.

The adopted rule affects Finance Code §§13.018, 156.104, and 157.0024.

§51.200. Advisory Committees and Informal Conferences.

(a) Advisory Committees. The mortgage industry advisory committee referenced in Finance Code §§156.104 and 157.0024, as well as any advisory committees which may be created under Finance Code §13.018, shall continue in existence, and unless continued further, shall be automatically abolished on September 1, 2031.

(b) Informal Conferences. The Commissioner, in addition to obtaining advice and guidance from an advisory committee, may use informal conferences and consultations with other interested persons to obtain advice and guidance, and assist the Commissioner in carrying out his or her duties.

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

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Department of Savings and Mortgage Lending

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SUBCHAPTER D. RECOVERY FUND

7 TAC §§51.300 - 51.304

Statutory Authority

The rules are adopted under the authority of: Finance Code §156.102(a), authorizing the commission to adopt and enforce rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing Act; and Finance Code §156.102(b-1), authorizing the commission to adopt rules to promote the fair and orderly administration of the recovery fund administered by the department's commissioner under Finance Code Chapter 156, Subchapter F

The adopted rules affect the statutes contained in Finance Code Chapter 156.

§51.300. Purpose and Applicability.

The rules contained in 7 TAC Chapter 51, Subchapter D govern the Commissioner's administration of the recovery fund the Commissioner is required to establish, administer and maintain in accordance Finance Code §13.016 and Chapter 156, Subchapter F.

§51.301. Definitions.

The following terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) "Application" means a request, in any form, for an offer (or a response to a solicitation

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for an offer) of residential mortgage loan terms, and the information about the mortgage applicant that is customary or necessary in a decision on whether to make such an offer, including, but not limited to, a mortgage applicant's name, income, social security number to obtain a credit report, property address, an estimate of the value of the real estate, and/or the mortgage loan amount.

(2) "Claimant" means a mortgage applicant making or seeking to make a claim on the recovery fund in accordance with Finance Code §156.504.

(3) "Commissioner" means the Savings and Mortgage Lending Commissioner appointed under Finance Code Chapter 13.

(4) "Department" means the Department of Savings and Mortgage Lending.

(5) "Mortgage applicant" means an applicant for a residential mortgage loan or a person who is solicited (or contacts an originator in response to a solicitation) to obtain a residential mortgage loan, and includes a person who has not completed or started completing a formal loan application on the appropriate form (e.g., Fannie Mae's Form 1003 Uniform Residential Loan Application), but has submitted financial information constituting an application as provided by paragraph (1) of this section.

(6) "Originator" has the meaning assigned by Finance Code §180.002 in defining the term "residential mortgage loan originator."

(7) "Recovery fund" means the fund the Commissioner is required to establish, administer, and maintain in accordance with Finance Code §13.016 and Chapter 156, Subchapter F.

(8) "Residential mortgage loan" has the meaning assigned by Finance Code §180.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan which is secured by a structure that is suitable for occupancy as a dwelling, but is used for a commercial purpose such as a professional office, salon, or other non-residential use, and is not used as residence.

§51.302. Claims.

(a) Application Required. As provided by Finance Code §156.504, a claimant seeking to recover from the recovery fund must file a sworn written application with the Department which must be made on the current form prescribed by the Commissioner and posted on the Department's website (sml.texas.gov).

(b) Payment of Approved Claims. Upon approval of a claim made on the recovery fund, the Commissioner will issue an order disbursing funds from the recovery fund. The Commissioner will direct Department staff to cause disbursement of the funds after the date upon which such order becomes final and unappealable for purposes of Finance Code §156.504(d), or if the Department's preliminary determination under Finance Code §156.504(c)(2) was disputed and an adjudicative hearing required, for purposes of Government Code Chapter 2001.

(c) Cooperation by Claimant Required. The claimant must cooperate with Department staff's instructions for effectuating disbursement of an approved claim from the recovery fund. Among other things, the claimant must provide such information and complete such documentation required in order to cause the claimant to be a valid payee for purposes of the Texas Comptroller of Public Accounts.

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§51.303. Administrative Penalty Against Originator.

If the Commissioner approves a claim made under Finance Code §156.504, the Commissioner may impose an administrative penalty on the originator whose acts or omissions caused the claim.

§51.304. Liability for Unpaid Claims.

(a) No Liability. The recovery fund, the Commissioner, and the Department are not liable to a claimant for a claim approved by the Commissioner under Finance Code §156.504 if the assets of the recovery fund are insufficient to pay such claim.

(b) Payment of Unpaid Claims. If the recovery fund contains insufficient assets to pay a claim approved by the Commissioner under Finance Code §156.504, the Commissioner will:

(1) record the time and date the claim was approved; and

(2) pay approved but unpaid claims for which a recordation was made under paragraph (1) of this subsection as funds in the recovery fund become available, in the order of the recorded time and date of such claims.

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

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Deputy General Counsel
Department of Savings and Mortgage Lending

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SUBCHAPTER E. MORTGAGE GRANT FUND

7 TAC §§51.400 - 51.405

Statutory Authority

The rules are adopted under the authority of: Finance Code §156.102(a), authorizing the commission to adopt and enforce rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing Act; and Finance Code §156.556, authorizing the commission to adopt rules to administer Finance Code Chapter 156, Subchapter G, Mortgage Grant Fund, including rules to: (i) ensure that a grant awarded from the mortgage grant fund, administered by the department's commissioner under Finance Code Chapter G (mortgage grant fund), is used for a public purpose; and (ii) provide a means of recovering money awarded from the mortgage grant fund that is not used for a public purpose.

The adopted rules affect the statutes contained in Finance Code Chapter 156.

§51.400. Purpose and Applicability.

The rules contained in 7 TAC Chapter 51, Subchapter E govern the Commissioner's administration of the Mortgage Grant Fund as provided by Finance Code Chapter 156, Subchapter G other than claims made against the Mortgage Grant Fund in accordance with Finance Code §156.555 which are governed by the rules contained in 7 TAC Chapter 51, Subchapter F (relating to Mortgage Grant Fund: Recovery Claims for Unlicensed Activity).

§51.401. Definitions.

The following terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

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(1) "Auxiliary mortgage loan activity company" has the meaning assigned by Finance Code §156.002.

(2) "Commissioner" means the Savings and Mortgage Lending Commissioner appointed under Finance Code Chapter 13.

(3) "Department" means the Department of Savings and Mortgage Lending.

(4) "Finance Commission" means the Finance Commission of Texas.

(5) "Grant Coordinator" means the individual appointed as the Grant Coordinator for purposes of §51.403 of this title (relating to Grant Coordinator).

(6) "Mortgage Grant Advisory Committee" or "MGAC" means the Mortgage Grant Advisory Committee formed to advise the Commissioner concerning administration of the fund, as provided by §51.404 of this title (relating to Mortgage Grant Advisory Committee).

(7) "Mortgage Grant Administration Manual" means the manual created by the Commissioner to reflect the various policies and procedures governing administration of the Mortgage Grant Fund grant program as provided by §51.402 of this title (relating to Commissioner as Manager).

(8) "Mortgage Grant Fund" or "fund" means the fund the Commissioner is required to establish, administer, and maintain in accordance with Finance Code Chapter 156, Subchapter G.

§51.402. Commissioner as Manager.

(a) Manager. As provided by Finance Code §156.553, the Commissioner serves as manager

of the fund and administers all aspects of the fund.

(b) Periodic Reports to the Finance Commission. Unless the Finance Commission directs otherwise, the Commissioner or his or her designee (including but not limited to the Grant Coordinator) will report to the Finance Commission audit committee concerning the status and activities of the fund at each regularly called meeting of the Finance Commission audit committee, or otherwise at the request of the Finance Commission or its audit committee.

(c) Mortgage Grant Administration Manual. The Commissioner will develop and create a manual reflecting the Commissioner's policies and procedures governing administration of the fund and the Mortgage Grant Fund grant program to be known and referred to as the Mortgage Grant Administration Manual (MGAM). The MGAM, and any amendments to the MGAM, must be approved by the Finance Commission audit committee.

§51.403. Grant Coordinator.

The Commissioner may appoint an employee of the Department to serve as grant coordinator to assist the Commissioner in discharging his or her duties related to the fund. The Grant Coordinator serves under the direction of the Commissioner and acts as liaison between grantees and the Mortgage Grant Advisory Committee. The Commissioner may delegate any authority of the Commissioner to act as manager of the fund to the Grant Coordinator, including any specific duties listed under Finance Code §156.553 except the authority to appear at hearings or judicial proceedings related to the fund.

§51.404. Mortgage Grant Advisory Committee.

(a) Formation. The Mortgage Grant Advisory Committee (MGAC) is created to serve in an

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advisory role and makes program recommendations to the Commissioner and Grant Coordinator regarding administration of the fund and the grant awards to be made from the fund. MGAC will continue in existence until the abolishment date set by §51.200 of this title (relating to Advisory Committees and Informal Conferences).

(b) Governance. MGAC will be governed by the provisions of the Mortgage Grant Administration Manual, including composition, eligibility, appointment, and membership terms.

(c) Reporting. MGAC will make and report written recommendations to the Commissioner and Grant Coordinator for review and consideration concerning all aspects of administering the fund including:

(1) evaluating grant applications to determine whether the application should be approved, and if so, a specific grant amount to award;

(2) monitoring ongoing grant awards to determine compliance;

(3) considering potential amendments to the Mortgage Grant Administration Policy Manual; and

(4) evaluating potential candidates for appointment to MGAC.

§51.405. Grant Program.

(a) Scope. This section governs the administration of and disbursements from the fund (each of which is considered a grant disbursement) for purposes of:

(1) Finance Code §156.554(b)(1), concerning grants to an auxiliary mortgage loan

activity company or another nonprofit organization to promote financial education relating to mortgage loans; and

(2) Finance Code §156.554(b)(3), concerning disbursements to provide support for statewide financial education, activities, and programs specifically related to mortgage loans for consumers, or for the purposes provided by Finance Code §393.628(c).

(b) Grant Cycle. The fund may have one competitive grant cycle every two years.

(1) Funding Determination. The grant funding determination is made by the Commissioner by December 31 of each even-numbered year. The Commissioner will determine the separate funding available and allocated to each of the purposes of Finance Code §156.554(b)(1) and (3).

(2) Programming Cycle. A new fund grant programming cycle may open on January 1 of every odd-numbered year. An applicant may choose to apply for a one-year grant programming cycle, or a two-year grant programming cycle. The grant programming cycle for a one-year grantee begins on January 1 and ends on December 31 of the odd-numbered year for the applicable cycle. The grant programming cycle for a two-year grantee begins on January 1 of the odd-numbered year and ends on December 31 of the following even-numbered year for the applicable cycle.

(c) Eligibility. A grant made under Finance Code §156.554(b)(1) and subsection (a)(1) of this section may only be given to a company licensed by the Department as an auxiliary mortgage loan activity company, or a nonprofit organization. A grant made under Finance Code §156.554(b)(3) and subsection (a)(2) of this section may be given to a nonprofit organization, school, or for-profit entity. Grant funding is not available to entities

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licensed or registered by the Department other than auxiliary mortgage loan activity companies in accordance with Finance Code §156.554(b)(1) and subsection (a)(1) of this section.

(d) Grant Application. To be considered for the grant program, an applicant must complete and submit the grant application by the deadline and in accordance with the instructions for the applicable grant cycle. Late or incomplete grant applications will not be accepted. Meeting eligibility criteria and timely submission of a grant application does not guarantee award of a grant in any amount.

(e) Review and Approval. The Commissioner, upon receipt of advice from MGAC and the Grant Coordinator, will review timely and complete applications and determine the grants to be awarded.

(f) Grant Agreement. To participate in the grant program, a grantee approved by the Commissioner to receive a grant must execute the grant agreement approved by the Commissioner for the applicable grant cycle (grant agreement).

(g) Grantee Compliance. A grantee must comply with applicable financial, administrative, and programmatic terms and conditions, and exercise proper stewardship over grant program funds. A grantee must use awarded funds in compliance with the following in effect for the applicable grant cycle:

(1) all applicable state laws and regulations;

(2) all applicable federal laws and regulations;

(3) the Mortgage Grant Administration Manual;

(4) the grant application, including all application guidelines and instructions at the time of application;

(5) the grant agreement signed by the Commissioner or the Commissioner's designee and the grantee;

(6) all reporting and monitoring requirements, as outlined in the grant agreement; and

(7) any other guidance documents posted on the Mortgage Grant Fund website for the applicable grant cycle.

(h) Reporting and Monitoring.

(1) General reporting requirements. To receive reimbursement of grant expenses a grantee must:

(A) submit periodic grant reports as provided by the grant agreement;

(B) maintain satisfactory compliance with the grant agreement and the grant activities as proposed by the grantee in its grant application;

(C) identify, track and report performance measures; and

(D) track and report participant demographic information.

(2) Progress Reports. A grantee must submit progress reports that demonstrate performance outcomes and financial information over the term of the grant in accordance with and by the deadlines set forth in the grant agreement.

(3) Six-month Longitudinal Report. A grantee must submit a six-month longitudinal

ADOPTION OF NEW RULES AND REPEALS
7 TAC CHAPTER 51
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report after program completion to demonstrate program objectives.

(4) Monitoring. The Grant Coordinator or MGAC may use the following methods to monitor a grantee's performance and expenditures:

(A) Desk Review. The Grant Coordinator or MGAC may conduct a desk review of a grantee to review and compare individual source documentation and materials to summary data provided during the reporting process; or

(B) Site Visits and Inspection Reviews. The Grant Coordinator or MGAC may conduct a scheduled site visit to a grantee's place of business to review compliance and performance issues. Site visits may be comprehensive or limited in scope.

(i) Reimbursement.

(1) Eligibility. To be eligible for reimbursement, a grantee must comply with all terms of the grant agreement, as well as all other items provided in subsection (g) of this section. To ensure that grant funds are used for a public purpose as provided by Finance Code §156.556(1), grant funds will only be awarded on a cost reimbursement basis for all actual, allowable, and allocable costs incurred by a grantee pursuant to the grant agreement. Expenses that were incurred before the beginning or after termination of the grant agreement are not eligible for reimbursement.

(2) Procedure. To request reimbursement for work performed on grant activities, a grantee must submit a grant reimbursement report in accordance with and by the deadlines set forth in the grant agreement. A grantee must submit a detailed expense report with supporting documentation to justify the reimbursement

request. The Department will review and approve requests for reimbursement that satisfy the requirements and promptly disburse funds in response to approved requests.

(j) Misuse of Grant Funds. The Commissioner may require a refund of grant funds already disbursed to the grantee and may cancel the grant agreement or disqualify the grantee from receiving future grants from the fund if:

(1) grant funds are not used for a public purpose allowable under Finance Code §156.554;

(2) grant funds are used in an illegal manner;

(3) the grantee violates the terms or conditions of the grant agreement or otherwise violates the requirements of subsection (g) of this section; or

(4) the Commissioner discovers the grantee made any material misrepresentations in obtaining the grant or in seeking reimbursement of grant funds.

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

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

♦ ♦ ♦

**SUBCHAPTER F. MORTGAGE GRANT
FUND: RECOVERY CLAIMS FOR
UNLICENSED ACTIVITY**

7 TAC §§51.500 - 51.506

ADOPTION OF NEW RULES AND REPEALS

7 TAC CHAPTER 51

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Statutory Authority

The rules are adopted under the authority of: Finance Code §156.102(a), authorizing the commission to adopt and enforce rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing Act; and Finance Code §156.556, authorizing the commission to adopt rules to administer Finance Code Chapter 156, Subchapter G, Mortgage Grant Fund, including rules to: (i) ensure that a grant awarded from the mortgage grant fund, administered by the department's commissioner under Finance Code Chapter G (mortgage grant fund), is used for a public purpose; and (ii) provide a means of recovering money awarded from the mortgage grant fund that is not used for a public purpose.

The adopted rules affect the statutes contained in Finance Code Chapter 156.

§51.500. Purpose and Applicability.

The rules contained in 7 TAC Chapter 51, subchapter F govern the Commissioner's administration of Finance Code §156.555, allowing for claims to be made against the Mortgage Grant Fund to compensate persons for actual out-of-pocket damages incurred because of fraud committed by an individual who acted as a residential mortgage loan originator but who did not hold the required license issued under Finance Code Chapter 157.

§51.501. Definitions.

The following terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) "Application" means a request, in any form, for an offer (or a response to a solicitation

for an offer) of residential mortgage loan terms, and the information about the mortgage applicant that is customary or necessary in a decision on whether to make such an offer, including, but not limited to, a mortgage applicant's name, income, social security number to obtain a credit report, property address, an estimate of the value of the real estate, and/or the mortgage loan amount.

(2) "Claimant" means a mortgage applicant making or seeking to make a claim on the Mortgage Grant Fund in accordance with Finance Code §156.555.

(3) "Commissioner" means the Savings and Mortgage Lending Commissioner appointed under Finance Code Chapter 13.

(4) "Department" means the Department of Savings and Mortgage Lending.

(5) "Mortgage applicant" means an applicant for a residential mortgage loan or a person who is solicited (or contacts an originator or an individual acting or attempting to act in the capacity of an originator in response to a solicitation) to obtain a residential mortgage loan, and includes a person who has not completed or started completing a formal loan application on the appropriate form (e.g., Fannie Mae's Form 1003 Uniform Residential Loan Application), but has submitted financial information constituting an application as provided by paragraph (1) of this section.

(6) "Mortgage Grant Fund" means the fund the Commissioner is required to establish, administer, and maintain in accordance with Finance Code Chapter 156, Subchapter G.

(7) "Originator" has the meaning assigned by Finance Code §180.002 in defining the term "residential mortgage loan originator."

ADOPTION OF NEW RULES AND REPEALS

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(8) "Recovery fund" means the fund the Commissioner is required to establish, administer, and maintain in accordance with Finance Code §13.016 and Finance Code Chapter 56, Subchapter F.

(9) "Residential mortgage loan" has the meaning assigned by Finance Code §180.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan which is secured by a structure that is suitable for occupancy as a dwelling, but is used for a commercial purpose such as a professional office, salon, or other non-residential use, and is not used as residence.

§51.502. Claims.

(a) Application Required. As provided by Finance Code §156.555, adopting by reference the procedural requirements for making a claim on the Commissioner's recovery fund in accordance with Finance Code Chapter 156, Subchapter F, a claimant must file a sworn written application with the Department and must be made on the current form prescribed by the Commissioner and posted on the Department's website (sml.texas.gov).

(b) Payment of Approved Claims. Upon approval of a claim on the Mortgage Grant Fund for purposes of Finance Code §156.555, the Commissioner will issue an order disbursing funds from the Mortgage Grant Fund. The Commissioner will direct Department staff to cause disbursement of the funds after the date upon which such order becomes final and unappealable for purposes of Finance Code §156.504(d) (by application of Finance Code §156.555), or if the Department's preliminary determination letter under §156.504(c)(2) was disputed and an adjudicative hearing required, for purposes of Government Code Chapter 2001.

(c) Cooperation by Claimant Required. The claimant must cooperate with Department staff's instructions for effectuating disbursement of an approved claim from the Mortgage Grant Fund for purposes of Finance Code §156.555. Among other things, the claimant must provide such information and complete such documentation required in order to cause the claimant to be a valid payee for purposes of the Texas Comptroller of Public Accounts.

§51.503. Consequences for Unlicensed Individual.

(a) Administrative Penalty. If the Commissioner approves a claim made under Finance Code §156.555, the Commissioner may impose an administrative penalty on the unlicensed individual whose fraudulent acts caused the claim.

(b) Grounds for Denial. As provided by Finance Code §180.201(1), failure by the unlicensed individual to pay the administrative penalty imposed by this section is a violation of an order of the Commissioner and therefore constitutes grounds for denial of an application from such individual for a residential mortgage loan originator license under Finance Code Chapter 157.

§51.504. Liability for Unpaid Claims.

(a) No Liability. The Mortgage Grant Fund, the Commissioner, and the Department are not liable to a claimant for a claim approved by the Commissioner under Finance Code §156.555 if the assets of the Mortgage Grant Fund are insufficient to pay such claim.

(b) Payment of Unpaid Claims. If the Mortgage Grant Fund contains insufficient assets to pay a claim approved by the Commissioner under Finance Code §156.555, the Commissioner will:

ADOPTION OF NEW RULES AND REPEALS
7 TAC CHAPTER 51
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(1) record the time and date the claim was approved; and

(2) pay approved but unpaid claims for which a recordation was made under paragraph (1) of this subsection as funds in the Mortgage Grant Fund become available, in the order of the recorded time and date of such claims; and, provided, the Commissioner determines in his or her sole discretion that disbursement from the Mortgage Grant Fund will not injure, hamper, or impede the Commissioner's administration of and disbursements from the Mortgage Grant Fund for purposes of Finance Code §156.554.

§51.505. Eligibility.

(a) Application of Finance Code Chapter 156, Subchapter F. Finance Code §156.555(b), adopts by reference the eligibility and procedural requirements for making a claim on the Commissioner's recovery fund in accordance with Finance Code Chapter 156, Subchapter F. This section clarifies how certain of such requirements apply to a claim made on the Mortgage Grant Fund in accordance with Finance Code §156.555.

(b) Actions by an Unlicensed Individual Acting as an Originator. To be eligible to recover from the Mortgage Grant Fund, the individual alleged to have caused harm to the claimant must have been acting or attempting to act in the capacity of an originator - actions for which a license under Finance Code Chapter 157 was required as provided by Finance Code §157.012 and §81.100 of this title (relating to Licensing - General).

(c) Fraudulent Acts. Recovery under Finance Code §156.555 is limited to acts of fraud committed by an individual who acted as a residential mortgage loan originator but who did not hold the license required by Finance Code Chapter 157. Finance Code §156.501(b), applicable to claims made on the recovery fund,

provides that recovery is limited to acts by a licensed originator that constitute a violation of specific, enumerated provisions of Finance Code §§157.024(a) and 156.304(b). As a result, in order to recover under Finance Code §156.555, a claimant must establish that the acts of the unlicensed individual, had he or she been licensed as a residential mortgage loan originator at the time of such acts, would have constituted fraudulent dealings for purposes of Finance Code §157.024(a)(3).

§51.506. Statute of Limitations at Inception.

Finance Code §156.555(b) adopts by reference the statute of limitations period for making claims on the recovery fund under Finance Code Chapter 156, Subchapter F and applies it to claims made against the Mortgage Grant Fund in accordance with Finance Code §156.555. Specifically, pursuant to Finance Code §156.503, a claim made on the recovery fund may not be filed after the fourth anniversary of the date the acts causing the actual damages occurred or should reasonably have been discovered. Finance Code §156.555 and the Mortgage Grant Fund came into existence effective September 1, 2021. As a result, the earliest possible date for a claim to have accrued for purposes of the limitations period applicable to claims made under Finance Code §156.555 is September 1, 2017, and any claim accruing prior to that date is barred.

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

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Department of Savings and Mortgage Lending

◆ ◆ ◆

3. Discussion of and Possible Vote to Take Action on the Adoption of New Rules and Repeals in 7 TAC, Part 4, Chapter 52, Concerning Department Administration, Resulting from Rule Review

PURPOSE: The purpose of the new rules and repeals in 7 TAC Chapter 52 is to implement changes resulting from the Department's periodic review of its rules, conducted pursuant to Government Code §2001.039. An explanation of and justification for the rules is contained in the proposed preamble for the rule proposal.

RECOMMENDED ACTION: The Department recommends that the Finance Commission approve adoption of the new rules and repeals in 7 TAC Chapter 52.

RECOMMENDED MOTION: I move that the Finance Commission approve adoption of the new rules and repeals in 7 TAC Chapter 52.

ADOPTION OF NEW RULES AND REPEALS

7 TAC CHAPTER 52

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TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 52. CHARTER APPLICATIONS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts the repeal of all preexisting rules in 7 TAC Chapter 52, as follows: §§52.10 - 52.13, 52.20, 52.30, 52.100 - 52.104, 52.200 - 52.205, and 52.300 - 52.306. The commission further adopts new rules in 7 TAC Chapter 52, as follows: §§52.1 - 52.15. The commission's proposal was published in the May 6, 2022, issue of the *Texas Register* (47 TexReg 2631). The rules are adopted without changes to the proposed text as published in the *Texas Register* and will not be republished.

Explanation of and Justification for the Rules

Changes Concerning the Relocation (Swapping) of 7 TAC Chapters 51 and 52

The department's preexisting rules in 7 TAC Chapters 51, 53, 57, 61, 64, 65, 67, 69, 71, and 73 implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations regulated by the department. The department's preexisting rules in 7 TAC Chapter 52, Department Administration, concern the administrative processes and procedures of the Department, and are therefore located among the rule chapters concerning savings and loan associations which may tend to create confusion for the reader. The department further asserts that 7 TAC Chapter 51 - the first rule chapter assigned to the department - is a more appropriate chapter for the department's rules concerning its administrative processes and procedures to reside. As a result, the department has determined it should relocate the preexisting

rules in 7 TAC Chapters 51 and 52 by essentially swapping the rules in such chapters. Specifically, the adopted rules (i) repeal the preexisting rules in 7 TAC Chapter 52 and insert new rules largely patterned after the preexisting rules in 7 TAC Chapter 51; and (ii) rename 7 TAC Chapter 52 to reflect the new rules inserted in such chapter.

Other Modernization and Update Changes.

The adopted rules make changes to modernize and update the rules including: adding and replacing language for clarity and to improve readability; removing unnecessary or duplicative provisions; and updating terminology.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments, or June 5, 2022. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

7 TAC §§52.1 - 52.15

Statutory Authority

The rules are adopted under the authority of: Finance Code §11.302(a), authorizing the commission to adopt rules applicable to state savings associations (savings and loan associations); Finance Code §62.001, authorizing the commission to adopt rules concerning the information required in an application for a savings and loan association charter; and Finance Code §66.002(3), authorizing the commission to adopt rules concerning the procedures for processing, hearing, and deciding applications filed with the department's commissioner relating to the operation of a savings and loan association.

ADOPTION OF NEW RULES AND REPEALS
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The adopted rules affect the statutes contained in Finance Code Title 3, Subtitle B.

§52.1. Form and Content of Application to Incorporate; Requirements for Capital Stock and Paid-in Surplus or Savings Liability and Expense Fund; Payment before Opening for Business.

(a) When the Certificate of Formation of a new association is presented to the savings and mortgage lending commissioner for approval, such Certificate of Formation shall be accompanied by an application which conforms to the statutory requirements provided in the Texas Savings and Loan Act, §62.001, and states the proposed location of the principal office of the new association and the identity and qualifications of the proposed managing officer. There shall also be submitted with the application a detailed description of each proposed loan instrument and such additional information as may be required by the proposed bylaws of the association together with such statements, exhibits, maps, plans, photographs, and other data, sufficiently detailed and comprehensive to enable the commissioner to pass upon matters set forth in the Texas Savings and Loan Act, §62.007. Such information must show that the proposed association will have and maintain independent quarters as considered appropriate by the commissioner with a ground floor location or its equivalent. The Certificate of Formation and all statements of fact tendered to the commissioner shall be verified as required by the Texas Savings and Loan Act, §62.001.

(b) No application to incorporate a new association shall be approved unless the application and evidence produced at hearing satisfy the commissioner that the proposed association has received subscriptions for capital stock and paid-in surplus in the case of a capital stock association, or pledges for savings liability and expense fund in the case of a mutual association, in an amount not less than the greater

of the amount required to obtain insurance of deposit accounts by the Federal Deposit Insurance Corporation, if applicable, or the amount required of a national bank.

(c) No association with an approved charter shall open or do business as a savings and loan association until the commissioner certifies receipt of proof satisfactory to him or her that the above-required dollar amounts of capital stock and paid-in surplus, or the savings liability and expense fund, as applicable, have been received by the association in cash, free of encumbrance.

(d) No application to incorporate as an association for an acquisition or merger under the Texas Savings and Loan Act, §62.051, shall be approved unless the application and evidence produced at hearing satisfy the commissioner that the proposed association will be capitalized in an amount sufficient to accomplish the purposes for which incorporation is requested, which shall be an amount sufficient to insure that, after the proposed acquisition or merger, the resulting association will meet and continue to meet applicable minimum net worth requirements.

§52.2. Use of Approved Forms.

The commissioner shall furnish approved forms of application, and other information to aid in the filing of the application. After the application and its supporting data have been received by the commissioner, the commissioner shall make or cause to be made an investigation or onsite review of the application. The application form is available from the Department of Savings and Mortgage Lending, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705.

§52.3. Hearing on Charter Application; Subsequent Competing Application Filed Prior to Hearing; Amendments to Charter Applications.

ADOPTION OF NEW RULES AND REPEALS

7 TAC CHAPTER 52

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Within 10 days after the filing of a proper application, the commissioner shall set a date for a hearing on the application, which date shall not be more than 90 days after the date the application is deemed substantially complete. If an application for charter is filed at least 10 days before the date set for hearing of a pending charter application, for a location which, in the opinion of the commissioner, is for the same community as the pending application, such applications may be heard in one hearing to be held upon the date set for the pending application. In such cases, the proposed incorporators named in any such subsequent application shall cause the first two paragraphs of the notice required by §52.4 (relating to Publication of Notice of Charter Application) of this title to be published at least five days before the date of such hearing, and shall file proof of such publication at the hearing. In addition, the commissioner shall mail notice of such joint hearing to the parties set out in §52.5 of this title (relating to Notice to Associations). If any material change occurs in the facts set forth in, or if the applicant files any amendment of, the application filed with the commissioner under the provisions of this chapter, the amendment setting forth such change, together with copies of documents or other material relevant to such change shall be filed with the commissioner no less than 10 days prior to the date of hearing. Any amendment filed fewer than 10 days prior to the date of hearing shall be accepted only at the discretion of the hearing officer and the hearing officer may, upon motion of any interested party having filed notice of intention to appear at said hearing, postpone or delay the hearing to a later date if it appears that such amendment materially alters the application on file. Provided, however, no additional publication of the date of such hearing shall be required.

§52.4. Publication of Notice of Charter Application.

The proposed incorporators shall publish at least 20 days before the date of the hearing, in a newspaper printed in the English language of general circulation in the county where the proposed association will have its principal office, a notice in a format acceptable to the commissioner.

§52.5. Notice to Associations.

The commissioner shall mail notice of such hearing to at least all state and federal savings and loan associations with offices in the county of the proposed location or in any adjoining or adjacent counties within a proximity that might be served or affected by the proposed association.

§52.6. Filing Proof of Publication.

At least 10 days before the hearing date the proposed incorporators shall file proof of publication in the manner provided in §52.4 of this title (relating to Publication of Notice of Charter Application) with the commissioner and if 10 days before the hearing date the commissioner has received no written statements of intention to appear in person or by attorney to protest the application from one or more parties, the hearing may be dispensed with by the commissioner. The commissioner shall notify the proposed incorporators at least five days before the date of the hearing in the event the hearing has been dispensed with.

§52.7. Hearing When Application Not Protested.

When requested by the proposed incorporators, a hearing may be held at the commissioner's discretion on the application even though no person has indicated a desire to be heard against it.

§52.8. Purpose of Hearing; Post-Hearing Investigation.

ADOPTION OF NEW RULES AND REPEALS
7 TAC CHAPTER 52
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The purpose of the hearing shall be to accumulate a record of all pertinent information, testimony, records, reports, and other data in favor of or opposed to the application upon which the commissioner shall make a determination of whether the application should be granted or denied. The commissioner may, in his or her discretion, make an independent investigation of matters raised in the hearing and, in the event the commissioner desires to base his or her decision on any evidence disclosed by such investigation which is not a part of the official record, the commissioner shall make the results of such investigation a part of the official record of the hearing and permit all parties to the hearing an opportunity to be heard in respect thereto by reopening the hearing, if necessary. This shall be done within 30 days after the date of the original hearing.

§52.9. Time of Decision on Charter Applications.

The commissioner shall render a decision within 60 calendar days after the date the hearing is finally closed if the hearing was held in accordance with §52.3 of this title (relating to Hearing on Charter Application; Subsequent Competing Application Filed Prior to Hearing; Amendments to Charter Applications), or after the date on which the hearing is dispensed with, as the case may be. Provided, however, in cases of conflicting applications meeting the requirements of §62.008 of the Texas Savings and Loan Act, where one or more subsequent applications are filed before the first application is heard, the commissioner may delay his or her decision on all such competing applications until 60 days after the last such application has been heard.

§52.10. Motions for Rehearing.

In the event a motion for rehearing is filed pursuant to §61.006 of the Texas Savings and Loan Act, as a condition precedent thereto,

copies of such motion shall be sent to all parties who have appeared and participated in the hearing, and certification of such fact shall be made to the commissioner at the time of filing said motion; replies to such motions for rehearing must be filed with the commissioner within 25 days after the day the decision or order is entered, and the commissioner's action upon such motion for rehearing shall be taken within 45 days after the date of the original order or decision. If the commissioner's action is not taken within 45-day period, the motion for rehearing is overruled by operation of law 45 days after the date of rendition of the original order or decision.

§52.11. Definition of Community.

In connection with any application for charter or for an additional office, the term "community" as used in the Texas Savings and Loan Act shall be considered to mean that geographical area so situated with respect to the proposed location that persons residing in such area could patronize the proposed office in the ordinary course of their business.

§52.12. Identification of Office Site; Temporary Location.

In connection with any application for charter or for an additional office, the proposed office site shall be identified with such particularity so as to exactly locate it within the community to be served. The commissioner may approve opening and operating a temporary facility for an approved charter or additional office, provided that such facility is within one-half mile radius of the approved permanent site and, further, provided that the operation of the temporary facility will cease immediately upon the permanent facility being completed for occupancy, but in any event no longer than 18 months, unless extended in writing by the commissioner.

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7 TAC CHAPTER 52
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§52.13. Qualifying Management.

In determining the question of "qualified full-time management" of a proposed or new association:

(1) a person shall be prima facie qualified if currently managing a savings and loan association in this state, or if at the date of filing an application shall have had, next preceding such date, at least three consecutive years of practical experience in the executive management of a savings and loan association in this state; and

(2) a person shall be prima facie disqualified if they have less than three years active experience in real estate mortgage lending or has filed for bankruptcy; has made a voluntary assignment for benefit of creditors; has been convicted of a felony; defaulted on a fidelity bond; or has had a license revoked under The Real Estate License Act, The Securities Act, or the Insurance Code of this state.

§52.14. Notice to Applicants.

Within 30 days of receipt of an application for any form of authorization to be granted by the commissioner pursuant to this title, and for which a filing fee is charged pursuant to Chapter 63 of this title, the commissioner shall issue a written notice to the applicant informing the applicant either that the application is complete and accepted for filing, or that the application is deficient and that specific additional information is required.

§52.15. Appeals.

(a) An applicant may appeal directly to the commissioner for a timely resolution of a dispute arising from a violation of the time periods set forth in this title. An applicant shall perfect an

appeal by filing a written request therefor within 30 days of the date a decision is made on the application by the commissioner, addressed to the commissioner, requesting review of the application to determine whether the established period for the granting or denying of the application was exceeded. The commissioner shall base his decision on the written appeal filed by the applicant, the application and all data, correspondence and other information related thereto, and the record of any hearing held on such application.

(b) The commissioner shall decide the appeal in the applicant's favor if he or she determines that the time periods set forth in this title were exceeded without good cause. The commissioner shall issue a written decision to the applicant within 60 days of the filing of an appeal. If an appeal is decided in the applicant's favor, the applicant shall be reimbursed all of its application fees.

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

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

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CHAPTER 52. DEPARTMENT
ADMINISTRATION

SUBCHAPTER A. COMPLAINTS

7 TAC §§52.10 - 52.13

Statutory Authority

The rule repeals are adopted under the authority of: Government Code §2001.004(1), requiring a

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state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The adopted rule repeals affect the statutes contained in Finance Code: Title 3, Subtitles B and C; and Chapters 13, 156, 157, 158, 159, and 180.

§52.10. Definitions.

§52.11. Complaint Processing.

§52.12. Complaint Resolution and Disposition.

§52.13. Complaint Review and Reporting.

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

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SUBCHAPTER B. HEARINGS AND APPEALS

7 TAC §52.20

Statutory Authority

The rule repeal is adopted under the authority of Government Code §2001.004(1), requiring a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The adopted rule repeal affects the statutes contained in Finance Code: Title 3, Subtitles B and C; and Chapters 13, 156, 157, 158, 159, and 180.

§52.20. Appeals, Hearings, and Informal Settlement Conferences.

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

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SUBCHAPTER C. ADVISORY COMMITTEES

7 TAC §52.30

Statutory Authority

The rule repeal is adopted under the authority of Government Code §2001.004(1), requiring a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The adopted rule repeal affects the statutes contained in Finance Code §§13.018, 156.104, and 157.0024.

§52.30. Advisory Committees and Informal Conferences.

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

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ADOPTION OF NEW RULES AND REPEALS

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SUBCHAPTER D. RECOVERY FUND

7 TAC §§52.100 - 52.104

Statutory Authority

The rule repeals are adopted under the authority of Government Code §2001.004(1), requiring a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The adopted rule repeals affect the statutes contained in Finance Code Chapter 156.

§52.100. Purpose and Applicability.

§52.101. Definitions.

§52.102. Claims.

§52.103. Administrative Penalty Against Originator.

§52.104. Liability for Unpaid Claims.

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

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SUBCHAPTER E. MORTGAGE GRANT FUND

7 TAC §§52.200 - 52.205

Statutory Authority

The rule repeals are adopted under the authority of Government Code §2001.004(1), requiring a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The adopted rule repeals affect the statutes contained in Finance Code Chapter 156.

§52.200. Purpose and Applicability.

§52.201. Definitions.

§52.202. Commissioner as Manager.

§52.203. Grant Coordinator.

§52.204. Mortgage Grant Advisory Committee.

§52.205. Grant Program.

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

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SUBCHAPTER F. MORTGAGE GRANT FUND: RECOVERY CLAIMS FOR UNLICENSED ACTIVITY

7 TAC §§52.300 - 52.306

Statutory Authority

The rule repeals are adopted under the authority of Government Code §2001.004(1), requiring a state agency to adopt rules of practice stating the

nature and requirements of all available formal and informal procedures.

The adopted rule repeals affect the statutes contained in Finance Code Chapter 156.

§52.300. Purpose and Applicability.

§52.301. Definitions.

§52.302. Claims.

§52.303. Consequences for Unlicensed Individual.

§52.304. Liability for Unpaid Claims.

§52.305. Eligibility.

§52.306. Statute of Limitations at Inception.

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

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Deputy General Counsel
Department of Savings and Mortgage Lending

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

Anticipated Litigation

None

Pending Litigation

None

C.

Texas Department of Banking

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Charles G. Cooper
Commissioner

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www.dob.texas.gov

To: Finance Commission Members

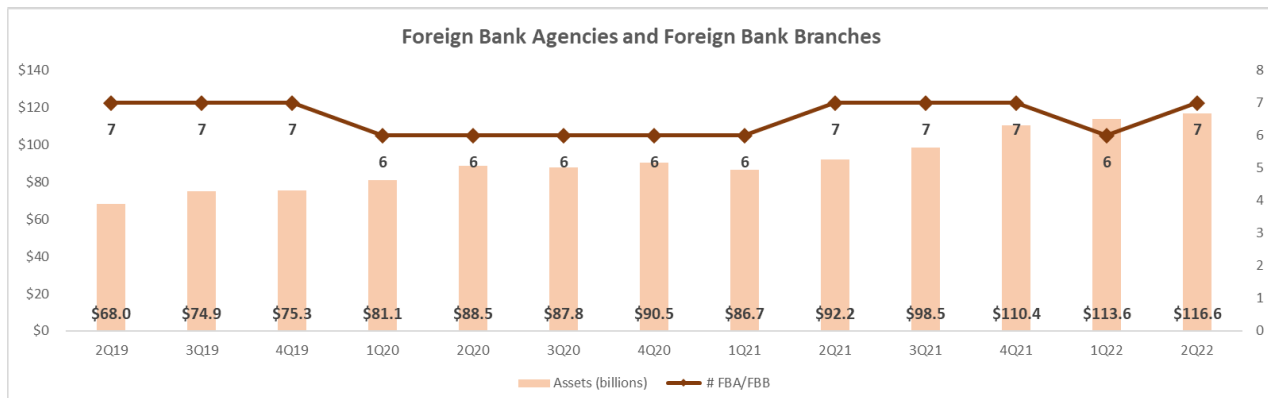
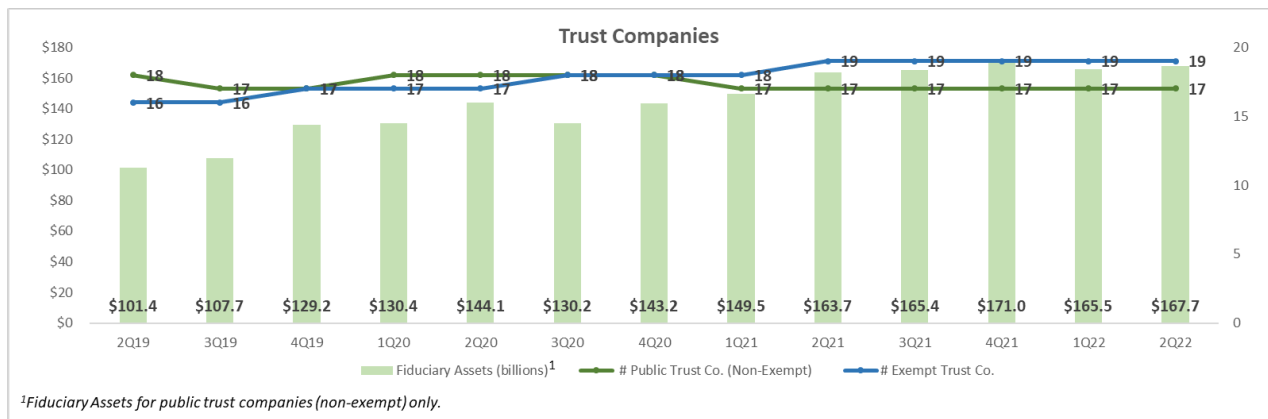
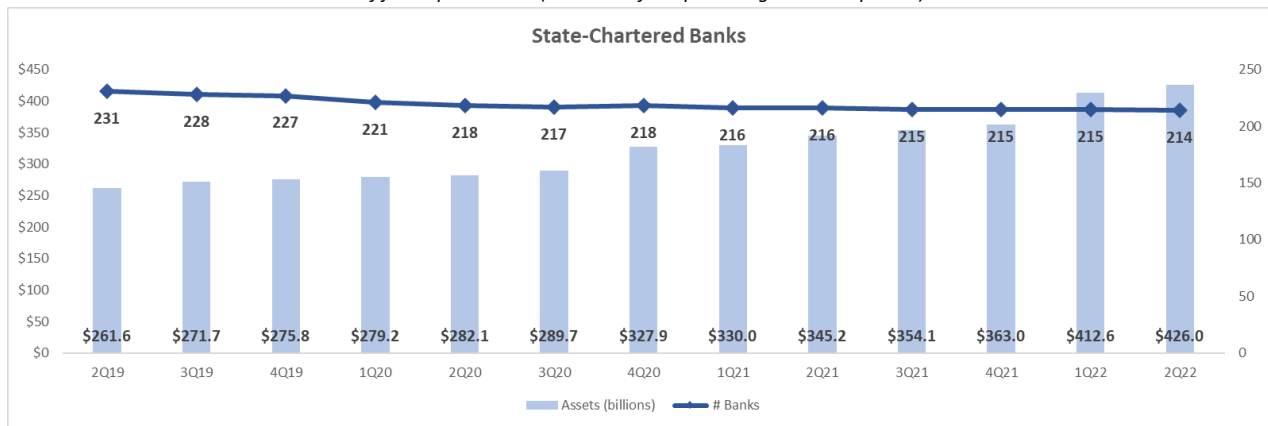
From: Daniel Frasier, Director of Bank & Trust Supervision *DBF*

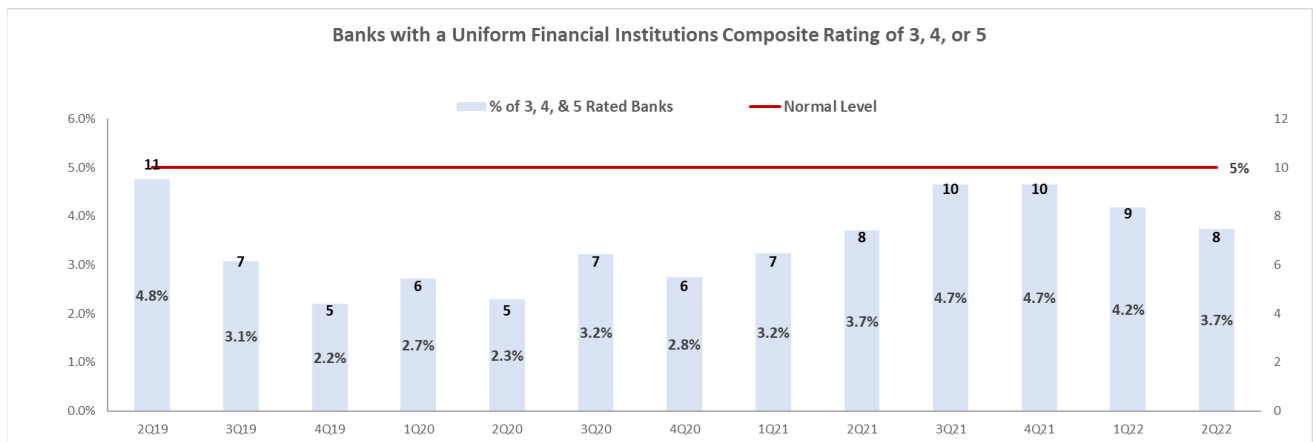
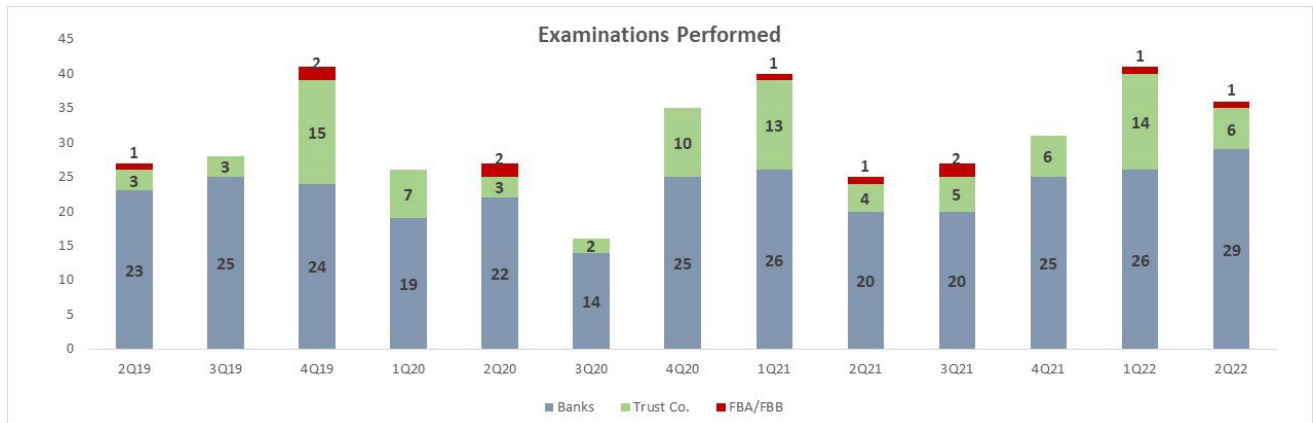
Date: June 8, 2022

Subject: Summary of the Bank & Trust Supervision Division Activities

Bank and Trust Supervision – Industry Profiles

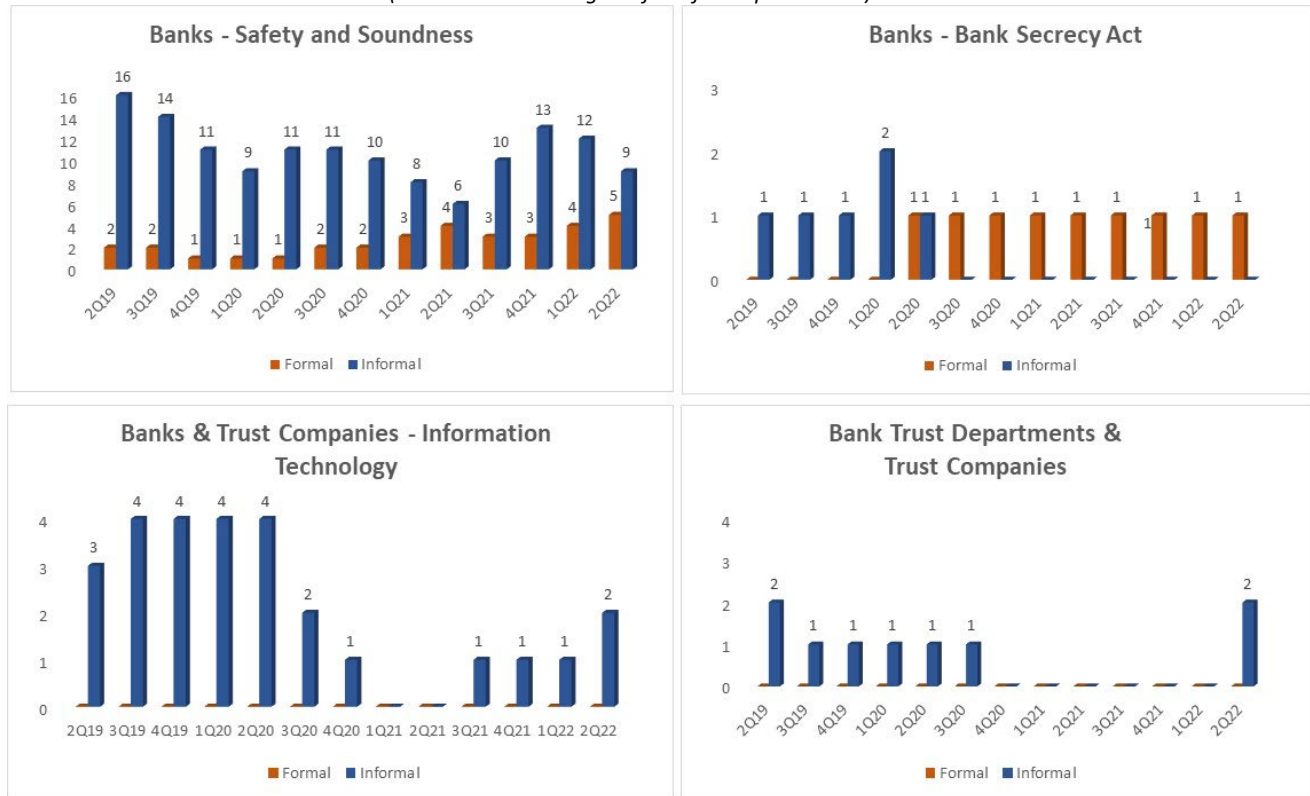
As of fiscal quarter-end (assets as of the preceding calendar quarter)





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.

Enforcement Actions Outstanding by Type (Number outstanding as of the fiscal quarter-end)



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 – April 2022)
Commercial Banks (All / DOB Only)	95% / 93%	98% / 97%
IT	98% / 100%	95% / 91%
Trust	97% / 100%	100% / 100%
Foreign Banks (FRB)	67%	91%
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 IT examinations and foreign banks. This fiscal year, five DOB led IT bank examinations were started late by an average of 15 days and the examination for one foreign bank is currently 46 days late. The percent of commercial bank examinations completed on time is expected to decline modestly through the end of FY

2022. The expected decline is a result of staffing vacancies and incorporating investigation examinations for de novo and conversion applications into the tight examination schedule.

Division Highlights

- **COVID-19 Update:**
 - o The Department continues to actively monitor and respond to the changing circumstances brought about by the COVID-19 pandemic. The Department maintains communication with regulated entities between examinations and performs offsite monitoring of key financial metrics. The impact of the COVID-19 pandemic to bank loan portfolios has thus far been minimal and overall credit risk remains sound.
 - o In-person meetings with various stakeholders are occurring regularly at Austin Headquarters. Examiners are returning to in-office and onsite examination activities with flexibility provided given the needs and circumstances present for each examination, training, and outreach activity.
- **Special Operations and Conferences:**
 - o On April 8, 2022, Review Examiner Travis Graham represented the Department on the Regulatory Panel at the Texas Bankers Association (TBA) Compliance School in Georgetown.
 - o Commissioner Charles G. Cooper and many other Department personnel represented the Department at the 2022 CSBS District IV Virtual Spring Meeting on April 11, 2022.
 - o Commissioner Cooper attended the Joint Financial and Banking Information Infrastructure Committee/Financial Services Sector Coordinating Council Meeting held virtually on April 13 - 14, 2022.
 - o Commissioner Cooper represented the Department at the Texas Bankers Hall of Fame Gala and the 25th Annual James B. Bexley Bank Executives and Directors Seminar held on April 28 and April 29, 2022 respectively in Huntsville.
 - o On April 28, 2022, Bank and Trust Supervision Director Dan Frasier, represented the Department at the Mays Business School Advisory Board Meeting and Awards Luncheon, in College Station.
 - o Commissioner Cooper, Director Dan Frasier, Regional Director Kenneth Kuntschik, Regional Director Larry Walker, and Review Examiner Jared Whitson represented the Department at the TBA 2022 Conference held in Round Rock on May 18 - 20, 2022.
 - o Twelve B&T division staff participated as instructors in the internal Financial Examiner II School in Dallas the week of June 6, 2022. This school is designed to provide assistant examiners with progressive training on bank examination procedures and processes.



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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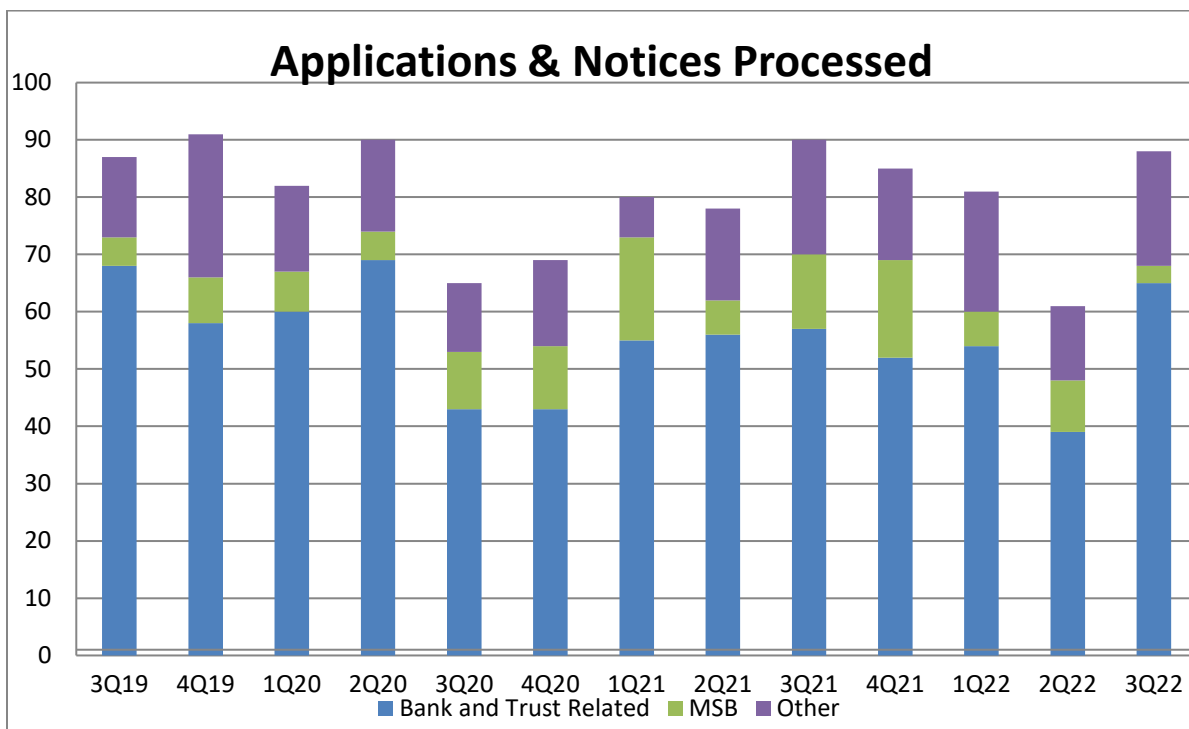
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To: Finance Commission Members

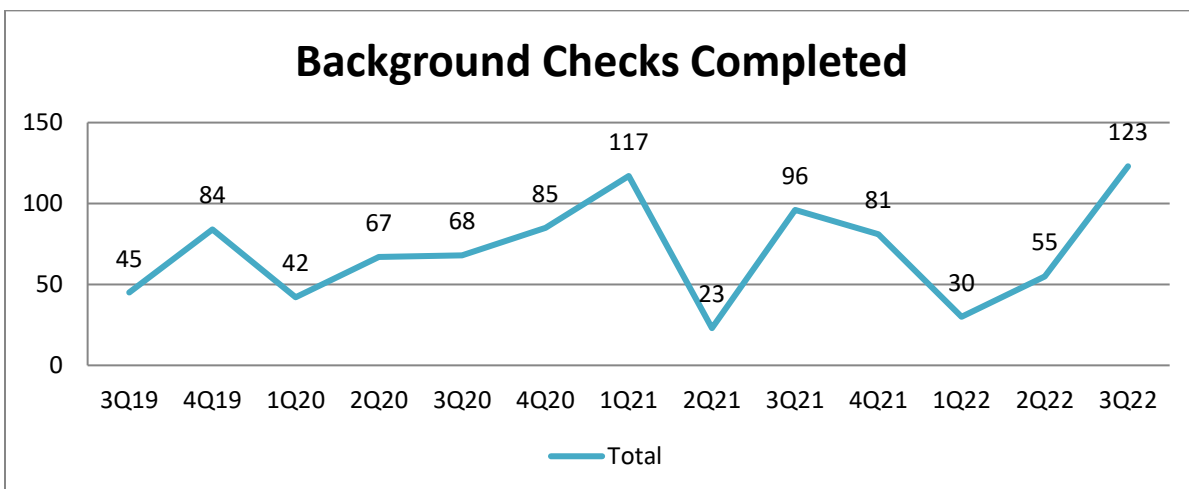
From: Mark Largent, Director of Corporate Activities

Date: June 8, 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 June 7, 2022)
Bank Related	27
Trust Companies	5
Money Services Business (MSB)	38
Others	4
Totals	74

Division Highlights

- Application volume is similar 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 decreased 7 (21%)
 - Trust company increased 2 (67%)
 - MSB related increased 7 (23%)
 - Other decreased 2 (33%)
- The Corporate Division is finalizing several postings for corporate analyst positions to help address the continuing significant volume of applications and increasing complexity.
- **Charter, Conversion, and Merger Activity** – Since the last report to the Finance Commission, the following transactions have consummated:
 - *Banks*
 - None.
 - *Trust Companies*
 - None.
- **Conferences, Conventions, and Committee Meetings** – Since the last report to the Finance Commission, Corporate Division personnel have participated in the following:
 - Director Mark Largent participated in the 2022 Texas Bankers Association Annual Convention held in Round Rock, Texas on May 19-20.



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To: Finance Commission Members

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

Date: June 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	198	\$218.8	*	*		
Prepaid Funeral Contract (PFC)	345	\$4.5	346	\$4.5	342	\$4.5	*	*		
Perpetual Care Cemeteries (PCC)	243	\$401.8**	243	\$413.2**	243	\$420.8**	*	*		
Check Verification Entities (CVE)	2	n/a	2	n/a	2	n/a	*	*		
Examinations Performed										
MSB	79		19		20		*			
MSB Limited Scope	1		1		0		*			
MSB Accepted other State	5		6		2		*			
PFC	230		60		69		*			
PFC Limited Scope	0		0		1		*			
PCC	212		43		34		*			
PCC Limited Scope	0		0		0		*			
Ratings (# / %) Assigned to All Regulated Entities										
1	288	38.40%	288	38.35%	293	38.91%	*	*		
2	392	52.27%	401	53.40%	398	52.86%	*	*		
3	66	8.80%	58	7.72%	55	7.30%	*	*		
4 & 5	4	0.53%	4	0.53%	7	0.93%	*	*		
Noncompliance with Examination Priorities (Past Due)										
MSB	1		8		17		*			
PFC	0		1		0		*			
PCC	0		0		0		*			

NOTES:

Limited scope examinations do not receive a rating.

* Third quarter of fiscal year 2022 data has not been finalized and will be provided in the next report.

** PCC \$ amounts reflected in the millions.

Examination Activities

No significant changes have occurred in the division's examination activities since the prior NDS report submitted to the Finance Commission. Although the third quarter of fiscal year 2022 examination results are not available as of the date of this report, NDS expects to meet performance measures.

Examinations of NDS license holders continue to be conducted on-site and off-site, or a combination thereof, by the Department. The primary goal is to conduct in-state examinations on-site while also considering factors such as an entity's overall risk profile, recent events and/or complaints, as well as recent developments related to the COVID-19 pandemic. MSB examinations remained primarily off-site since most require out-of-state travel; however, some on-site examinations are scheduled for late summer of 2022. More examinations will be performed in a hybrid approach consisting of off-site and on-site reviews.

Unfortunately, NDS continues to experience turnover in the Financial Examiner series. Most recently, a Financial Examiner in the PFC/PCC area with approximately five years of experience submitted their resignation effective April 2022. In total, NDS currently has three PFC/PCC Financial Examiner vacancies. NDS conducted interviews for the PFC/PCC Financial Examiner vacancies in May 2022, but no vacancies were filled as a result of the interviews. The job postings remain active and NDS anticipates conducting more interviews in June 2022 to fill these vacancies.

As a result of the continued Financial Examiner turnover, the division has begun to experience the adverse impact on our ability to continue to conduct examinations when due. In addition, the division continues to focus available resources to the ongoing training and development of new MSB hires. Due to the current vacancies and staff in training, NDS does not anticipate that the division's examination performance measures will be met starting in the fourth quarter of fiscal year 2022. This trend will continue until the division is able to hire and properly train examiners in the respective areas.

Division Activities

- On May 26th, the Prepaid Funeral Guaranty Fund Advisory Council (Council) meeting was held via teleconference. The funds' activities covering March 1, 2021, to February 28, 2022, and other agenda items, were discussed and approved by the Council. Barring any unforeseen events, the next Council meeting is tentatively scheduled for May 2023.
- The Department continues to monitor and investigate complaints related to non-compliant activity. During this reporting period, the Department issued a regulatory enforcement action against an individual who sold prepaid funeral benefit contracts without a valid permit from the Department. NDS also conducted a hearing against individuals to seek administrative penalties and restitution regarding the sale of prepaid funeral benefit contracts without the required permit.



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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Memorandum

To: Finance Commission Members
From: Lori Wright, Director of Human Resources
Date: June 6, 2022
Subject: Summary of the Human Resources Division Activities

Human Resources Fiscal Year 2022 Activities

Active Postings				
Number of Positions	Position	Division	Status	Activities
2	Attorney II	Legal	June 20, 2022	Recruiting
1	Accountant IV	Administrative Services	Open Until Filled	Recruiting
1	Director III – V	DSS	June 10, 2022	Recruiting
1	Financial Examiner IV-VI Financial Analyst – Training Coordinator	DSS	Open Until Filled	Recruiting
2	Financial Examiner I-II Prepaid Funeral Contract/Perpetual Care Cemetery	NDS	Open Until Filled	Recruiting
1	Financial Examiner V Credit Review Specialist	Bank and Trust	Open Until Filled	Recruiting
NA	Financial Examiner IV-V Commercial Bank Examiner	Bank and Trust	Perpetual Posting	Recruiting
NA	Financial Examiner VI-VII Commercial Bank Examiner	Bank and Trust	Perpetual Posting	Recruiting

CAPPS

Attending CAPPS HR/Payroll meetings and performing User Acceptance Testing. Go-Live scheduled July 11, 2022.

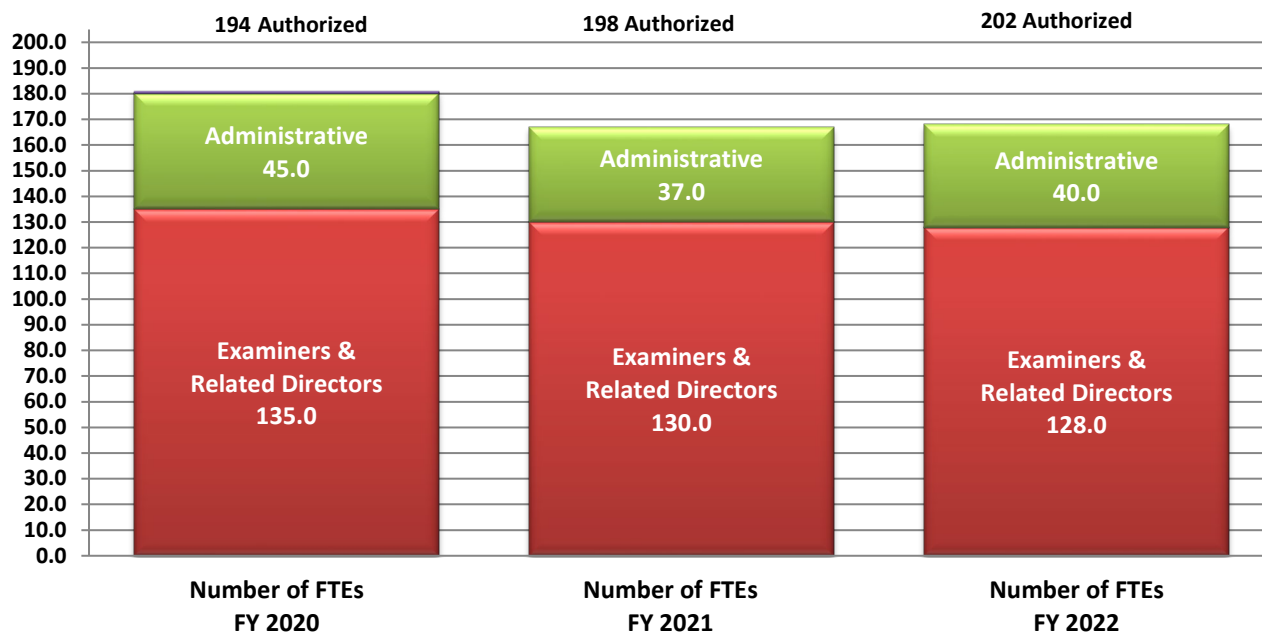
Strategic Plan – Workforce Plan

Completed Workforce Plan for Strategic Plan 2023-2027.

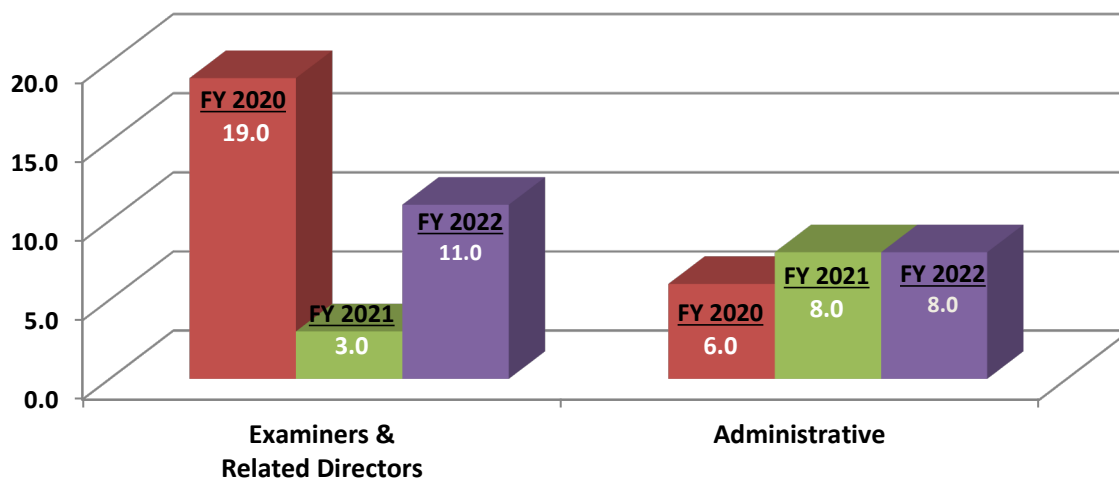
Personnel Policy and Procedures Manual Update

Section 6-11 Performance Appraisal Impact

Texas Department of Banking Employee Data for Fiscal Years 2020, 2021 and 2022 as of 05/31/2022

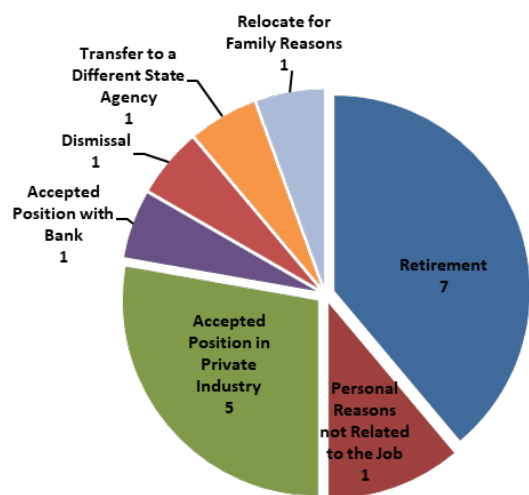


New Hire Data for Fiscal Years 2020, 2021 and 2022

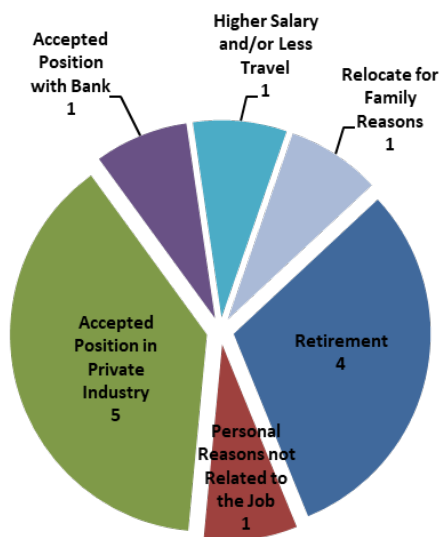


FY 2022 Employee Turnover Reasons

All Employees
18 Resignations



Financial Examiners Only
13 Resignations



As of 05/31/2022



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

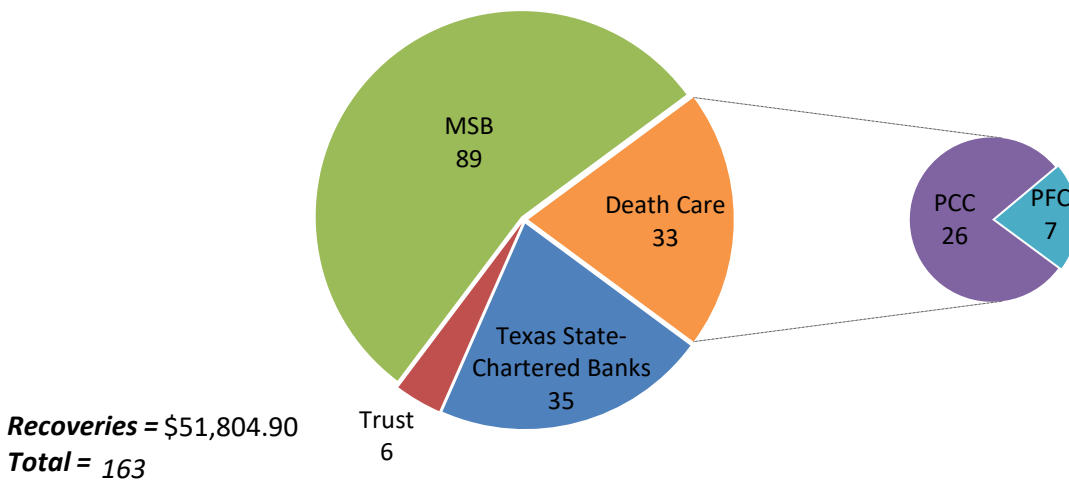
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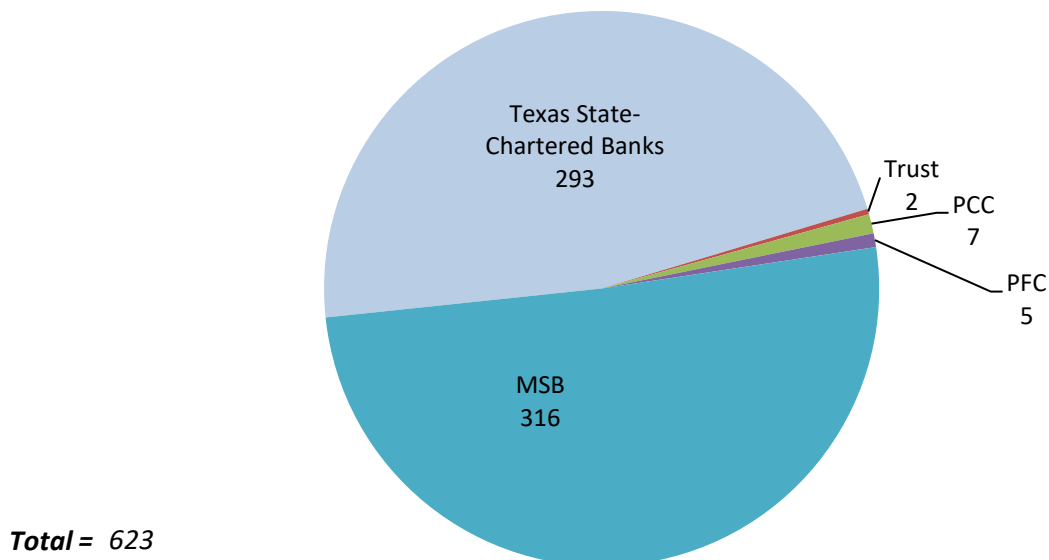
www.dob.texas.gov

To: Finance Commission Members
From: Phil Lena, Financial Analyst
Date: June 1, 2022
Subject: Summary of the Strategic Support Division Activities

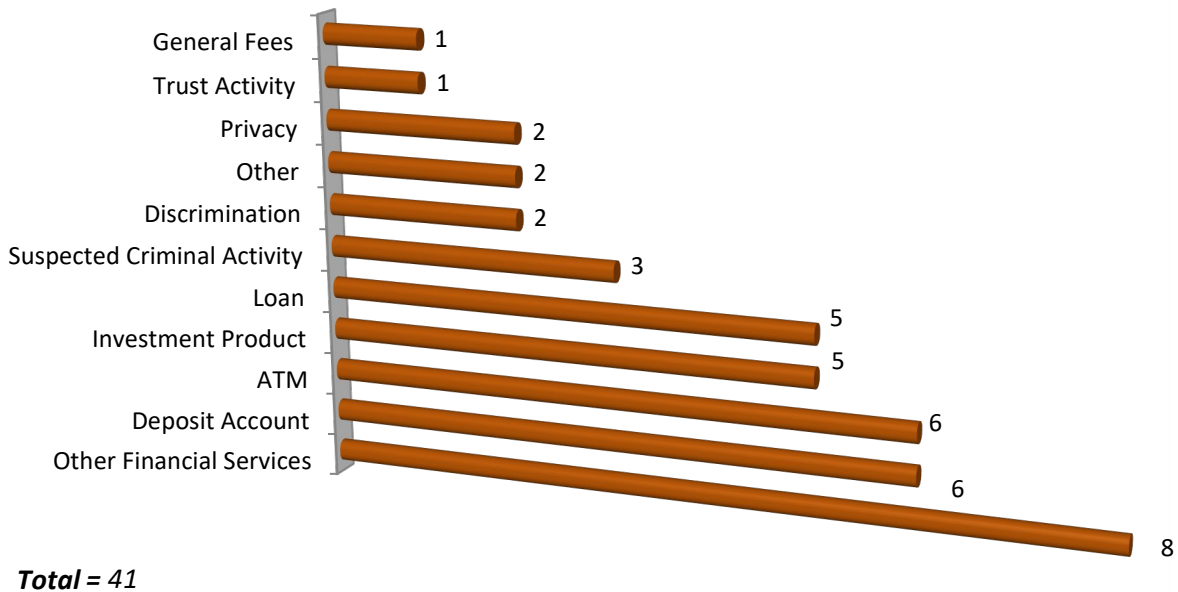
Jurisdictional Written Complaints September 2021-April 2022



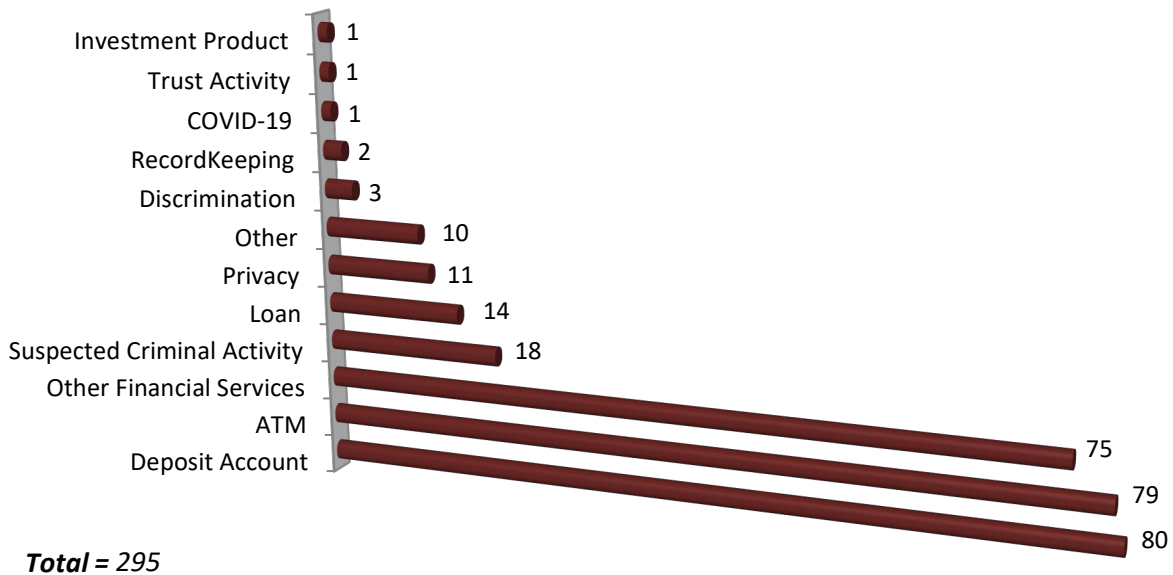
Inquiries on Jurisdictional Entities September 2021-April 2022



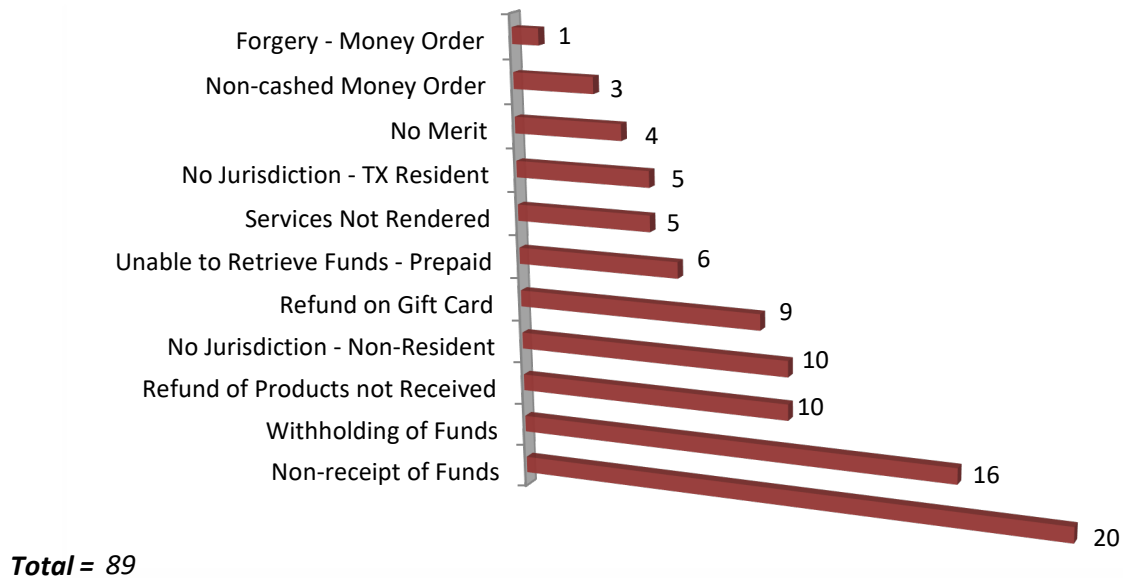
**State-Chartered Banks and Trust Companies
Written Complaints by Type
September 2021-April 2022**



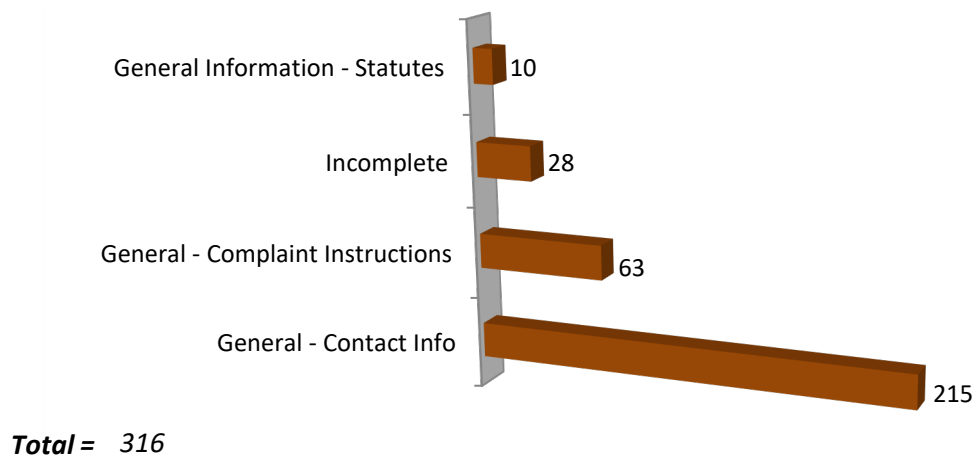
**State-Chartered Banks and Trust Companies
Inquiries by Type
September 2021-April 2022**



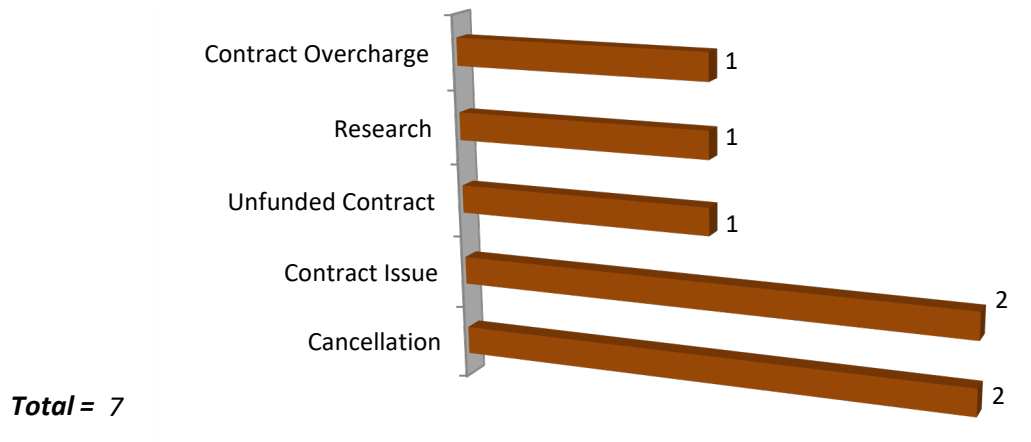
**Money Services Businesses
Written Complaints by Type
September 2021-April 2022**



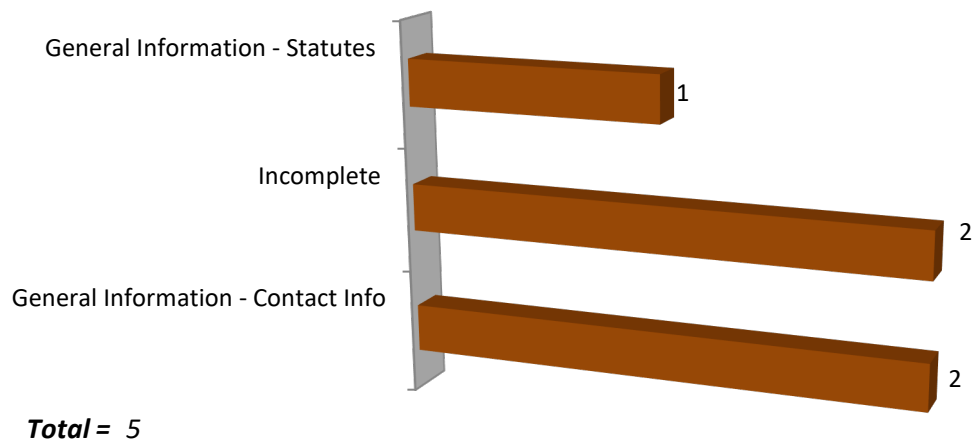
**Money Services Businesses
Inquiries by Type
September 2021-April 2022**



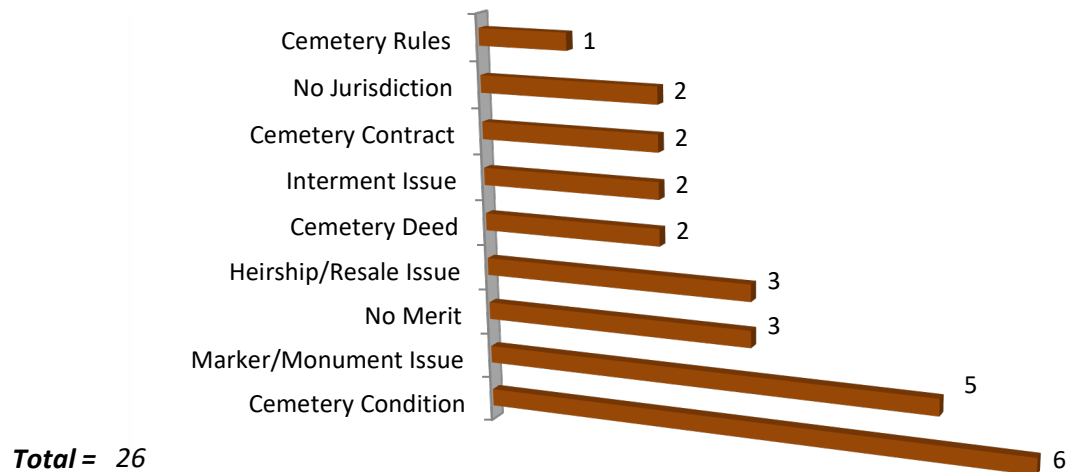
**Prepaid Funeral Contract Sellers
Written Complaints by Type
September 2021-April 2022**



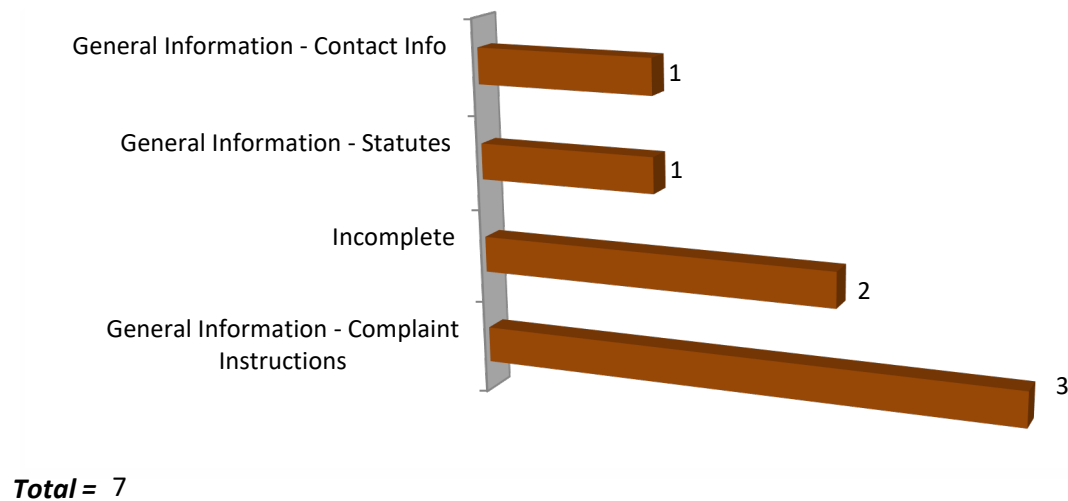
**Prepaid Funeral Contract Sellers
Inquiries by Type
September 2021-April 2022**



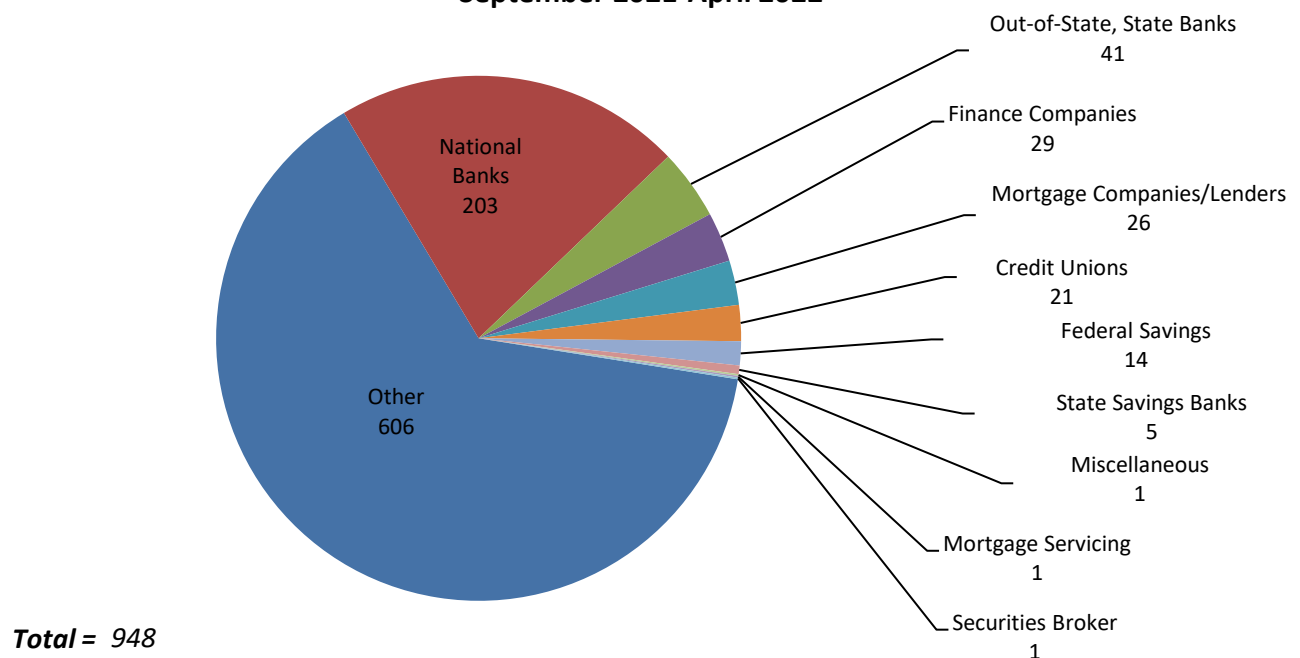
**Perpetual Care Cemeteries
Written Complaints by Type
September 2021-April 2022**



**Perpetual Care Cemeteries
Inquiries by Type
September 2021-April 2022**



Complaints and Inquiries Against Non-Jurisdictional Entities September 2021-April 2022



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	13	N/A	N/A
Percentage of Written Complaints Resolved Within 90 days	100%	100%	N/A	N/A
Number of Written Complaints Resolved	13	15	N/A	N/A
Trust				
Avg. Number of Days to Close a Written Complaint	15	17	N/A	N/A
Percentage of Written Complaints Resolved Within 90 days	100%	100%	N/A	N/A
Number of Written Complaints Resolved	2	1	N/A	N/A
PFC/PCC				
Avg. Number of Days to Close a Written Complaint	28	30	N/A	N/A
Percentage of Written Complaints Resolved Within 90 days	100%	100%	N/A	N/A
Number of Written Complaints Resolved	13	11	N/A	N/A
MSB				
Avg. Number of Days to Close a Written Complaint	25	24	N/A	N/A
Percentage of Written Complaints Resolved Within 90 days	100%	100%	N/A	N/A
Number of Written Complaints Resolved	26	45	N/A	N/A

*Third quarter data is not yet available

Closed Account Notification System (CANS) Activity
January 1, 2019 – May 31, 2022

Entity	Enrolled	Compromised Accounts Reported
Texas State-Chartered Banks	188	322
Texas State-Chartered Savings Banks	22	52
Federal Savings Banks	11	0
State Credit Unions	134	612
Federal Credit Unions	229	362
National Banks	171	100
Out-of-State State-Chartered Banks	12	60
Out-of-State National Banks	6	0
Total	773	1,508

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

	FY 2019	FY 2020	FY 2021	FY 2022 As of 5/31/2022
I. General Knowledge	3	4*	6	3
II. Loan Analysis	5	7	1	2
III. Panel	5	10	3	1
IV. Test Bank	4	7	5	3
Total FE3	19	15	17	16

Promotions

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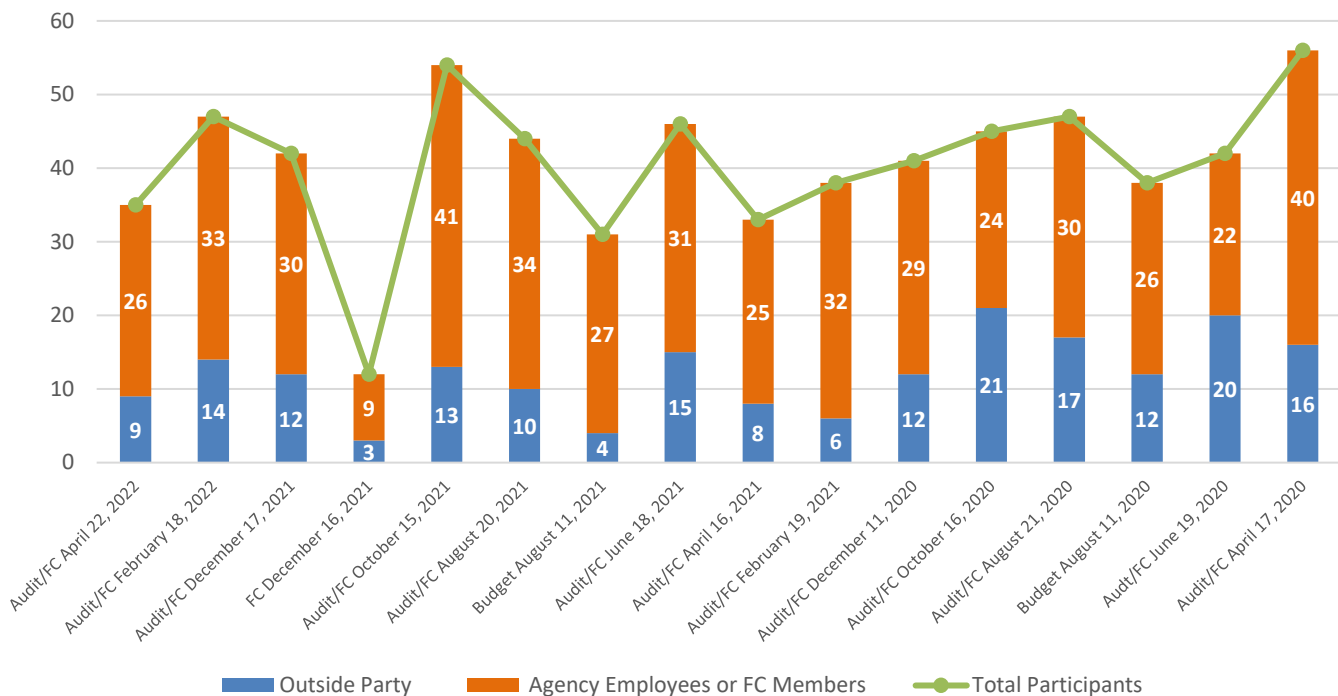
**Includes a FE V Credit Specialist*

Other Divisional Items:

- *Publications*
 - The Strategic Plan for Fiscal Years 2023-2027
 - The Strategic Plan was submitted on June 1, 2022 to state leadership and is available on the Department's [website](#).
- *Personnel Policy and Procedures Manual Updates*
 - Revised Administrative Memorandums (AM)
 - AM 2013 – Authorization for Release of Confidential Information to Governmental Entities (May)
 - AM 2031 – Delegation of Authority (April)

- **Examination Procedure Updates**
 - Commercial Bank Procedures (May)
 - Planning & Control
 - Officer's Questionnaire
 - Request List
 - Cryptocurrency Questions
 - IT Procedures (May)
 - ITP Scoring Matrix
 - Request List
 - Summary of Findings
- **Training**
 - Fifteen assistant examiners attended the Department's internal Financial Examiner II School held in Dallas the week of June 6, 2022. The school is designed to provide assistant examiners with progressive training on bank examination procedures and processes.
- **Financial Education**
 - On April 27, 2022, the Department of Banking and Office of Consumer Credit Commissioner jointly hosted a presentation by the Federal Reserve Bank of Dallas for building personal wealth. Sixty-seven participants attended the 45-minute webinar.

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: June 1, 2022
RE: Legal Division Update

Litigation

Cornelius Campbell Burgess vs. Charles G. Cooper, in his official capacity as the Texas Banking Commissioner; Cause No. D-1-GN-22-000504, in the 345th Judicial District Court of Travis County, Texas. This case, filed January 31, 2022, included a petition for mandamus seeking to compel the Commissioner to refer the administrative case against Mr. Burgess to the State Office of Administrative Hearings (SOAH), instead of having it heard by the Department's contracted independent administrative law judge. The case also sought an emergency stay of the administrative action. Following a hearing on February 2, the motion for emergency stay was denied. In April, both parties filed Motions for Summary Judgment; a remote hearing on the motions was conducted on May 16, 2022. We are awaiting the court's ruling.

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 affirming the Department's position was issued following the hearing. On May 10, 2022, Commissioner Cooper issued a final order requiring payment of the recommended penalty and restitution.

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 was held February 2, 2022. Following the hearing, the parties submitted written closing arguments and responses. A proposal for decision is expected this summer.

In the Matter of Edward Russell Weaver, individually and as administrator of the Estate of Aaron Weaver, dba Pierce Boone Funeral Home, and Karen E. Randle, Wharton, Texas; Docket No. BF-2202-20-289. Respondents were alleged to have sold prepaid funeral benefits to at least three Texas customers without the required permit. Staff attended a hearing on May 5, 2022, seeking \$6,100 in restitution for customers and a monetary penalty of \$9,000. A proposal for decision (PFD) imposing the requested amounts against Mr. Weaver was issued on May 13, 2022. Mr. Weaver subsequently filed exceptions to the PFD, and staff filed its reply on June 2, 2022.

Orders Issued April 1, 2022 – May 31, 2022

The Commissioner issued two enforcement orders, both of which are final and non-appealable:

Non-Depository Supervision

- Consent Order dated April 1, 2022; Brex Treasury LLC, Draper, Utah
- Final Order dated May 10, 2022; Robert L. Green, Sr.

Public Information Requests

From April 1 through May 31, 2022, staff received and responded to 23 requests for public information addressed to the Department of Banking and received four inquiries from the “Ask a Question” feature. During the same period, we received and responded to one public information request addressed to the Finance Commission. One request for OAG opinion related to a public information request is pending.

Gifts

The Department received complimentary lodging (\$696.60) from the Conference of State Bank Supervisors for Commissioner Cooper’s attendance at meetings in Washington, D.C. February 15-17, 2022, with representatives of the United States Department of the Treasury and the federal financial regulatory agencies. The Department also received complimentary registration (\$400 value) from the Texas Bankers Association for Commissioner Cooper to attend the 137th Annual Convention, May 18-20, 2022, in Round Rock, Texas.

FY 2022 Quarterly Order Activity

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

*Hearing requested, order not final

Projected Future Rule Actions:

We do not anticipate presenting any rule actions for consideration at the August 2022 meeting.

2. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Chapter 3, Concerning State Bank Regulation, Resulting from Rule Review

PURPOSE: The purpose of the amendments to 7 TAC Chapter 3, is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039.

RECOMMENDED ACTION: The Department recommends that the Commission approve publication of the proposed amended rule in the *Texas Register* for comment.

RECOMMENDED MOTION: I move that we publish the proposed amendments to 7 TAC, Chapter 3 in the *Texas Register*.

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

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend certain rules in 7 TAC Chapter 3 governing Texas state-chartered banks (state banks) and other banks operating in Texas. In particular, the commission proposes to amend §3.1, concerning private placement of securities by state banks; §3.3, concerning securities and other activities of subsidiaries of state banks; §3.4, concerning foreign banking; §3.21, concerning state bank call reports; §3.22, concerning sale or lease agreements with an officer, director, principal shareholder, or affiliate of a state bank; §3.24, concerning notice of cybersecurity incident; §3.37, concerning calculation of annual assessment for state banks; §3.44, concerning statements of registration, notices and filings related to foreign bank representative offices; §3.53, concerning asset deposit and pledge requirement applicable to foreign bank branch or agency with nonrelated deposit liabilities; §3.59, concerning foreign bank deposit agreement and conditions; §3.62, concerning foreign bank asset maintenance; §3.91, concerning loan production offices; §3.93, concerning deposit production offices; and §3.111, concerning confidential information.

The proposed amendments arise from rule review conducted pursuant to Texas Government Code, §2001.039 and provide clarity, improve consistency and workability, eliminate unneeded rules, correct or update citations and address certain clerical errors, and maintain consistent formatting within the chapter.

In February 2022, the department issued an advance notice of rule review, seeking informal feedback on the rule review. Notice of the review of 7 TAC Chapter 3 was published in the *Texas Register* on February 18, 2022 (47 TexReg 797). No comments were received in response to that notice. On April 22, 2022, the commission determined that the reasons for initially adopting these rules continue to exist, and readopted 7 TAC Chapter 3 in its entirety, but also stated that certain revisions and amendments may be appropriate, and that such amendments would be proposed at a later date (47 TexReg 2778). These proposed amendments are discussed below.

The rules in 7 TAC Chapter 3, Subchapter A govern securities activities and subsidiaries of state banks. A number of provisions in these rules are no longer needed.

Section 3.1 discusses private placements of securities by state banks. Proposed amendments to §3.1(a) correct a clerical error and improve formatting consistency.

Section 3.1(b) states that state banks may not acquire equity securities for which those banks have acted as agent or broker. Broader restrictions on investments in equity securities by state banks exist in Texas Finance Code (Finance Code), §34.101(b)(1). Proposed amendments eliminate §3.1(b) because this subsection is no longer needed.

Section 3.3 discusses securities activities, and other activities of subsidiaries of state banks. Proposed amendment to the title of §3.3 reflects that this section is not limited to securities activities.

Section 3.3(a) states that state banks may establish or acquire subsidiaries that engage in securities activities subject to certain federal banking regulations that have been repealed without replacement. Proposed amendments to §3.3(a) eliminate that reference because it is no longer applicable.

Section 3.3(b) imposes an investment ceiling on state bank securities subsidiaries. This is redundant of a similar ceiling in Finance Code, §34.103(b). Further, unlike §3.3(b), Finance Code, §34.103(b) provides that the ceiling can be waived by the Texas Banking Commissioner (commissioner). The proposed repeal of §3.3(b) is consistent with the Texas Banking Act's provisions on investment ceilings for state bank subsidiaries.

Section 3.3(d) limits the purchase and retention of equity securities by state banks and state bank subsidiaries. Section 3.3(d)(1) states that a state bank subsidiary must dispose of any equity security acquired for its own account within 90 days after the purchase. Although Texas law has other restrictions on the ownership of equity securities by state banks and state bank subsidiaries, such as Finance Code, §34.101 and §34.103, it does not have this strict divestment deadline. Neither does analogous federal banking law. This restriction should be repealed.

Section 3.3(d)(2) states that a state bank may not purchase, in its discretion as fiduciary or managing agent, any security underwritten, distributed, or issued by the bank's securities subsidiary or any security issued by an investment company advised by the subsidiary. Other applicable law limits a state bank's exercise of discretion as a fiduciary or managing agent where such

potential conflicts of interest exist. Given these other limits, this provision is no longer needed. In recognition of this, federal regulations for national banks at 12 CFR §9.12(a) now permit such investment decisions to be made if authorized by applicable law. The proposed amendment to §3.3(d) provides state banks with the same authority.

Section 3.3(e) requires state banks filing notices with the Federal Deposit Insurance Corporation (FDIC) regarding subsidiaries to file copies of those notices with the commissioner. Federal regulations on notices to federal banking regulators relating to bank subsidiaries have changed. Notice to the commissioner prior to a state bank subsidiary being acquired or established or commencing new activities is required by Finance Code, §34.103(b). Proposed amendments to §3.3(e) update the rule to refer to currently applicable federal and Texas notice requirements and clarify requirements for state banks to provide the commissioner with copies of federal filings related to subsidiary activities if those subsidiary-related activities are also being reported to the commissioner under Texas law.

Section 3.4 relates to state banks conducting foreign activity. Proposed amendments to §3.4 change a citation format for consistency.

The rules in 7 TAC Chapter 3, Subchapter B are general rules governing state banks.

Section 3.21 governs call reports. Proposed amendments to §3.21(a) change citation formats for consistency.

Federal regulations similar to §3.21(f) requiring call reports to be posted in bank lobbies have been repealed in recent years because federal regulators publish call reports of federally insured banks online. Proposed amendments to §3.21(f) follow this trend by eliminating the Texas requirement for a state bank to publicly post its call reports in its lobby, as long as the bank is federally insured and its call reports are available online, unless the commissioner has specifically ordered the bank to post or otherwise publish its call reports.

Section 3.22 governs insider sales and leases. Finance Code, §33.109 requires prior approval by a disinterested majority of the board of directors of the bank or by the commissioner for sales or leases of bank assets to bank insiders. Section 3.22(c) requires the transaction to be approved by a majority of an ordinary quorum of the board, and requires this quorum to be composed entirely of disinterested directors. Such quorums often cannot be obtained, and this is not consistent with provisions of general Texas corporate law for approval of insider transactions by disinterested directors of Texas non-bank corporations. Proposed amendments to §3.22(c) clarify and improve this provision by applying the normal requirements for approval of insider transactions by disinterested directors of Texas non-bank corporations to state banks.

Proposed amendments to §3.22(d) also clarify the requirements for approval of an insider transaction by a disinterested majority of the board of a state bank in conformity with general Texas corporate law.

Additional proposed amendments to §3.22(d) update the reference to Financial Account Standards Board (FASB) Account

Standard Codification (ASC) Topic 842 from FASB ASC Topic 840 pursuant to recent changes to FASB ASC.

Section 3.24 requires state banks to provide the department with notice and certain information regarding certain computer-security incidents. This rule became effective in 2020. Analogous federal computer-security incident notification rules that apply to all state banks became effective in 2022. The department proposes following these new federal requirements for incident notifications by state banks to the department rather than continuing to impose state requirements that are different from these new federal requirements.

Section 3.37 discusses state bank annual assessment calculations. As §3.37(b) explains, every year the base assessment table included in §3.37(a) is adjusted by the department based on inflation statistics and published on the department website. The department recommends amendments to the base table in §3.37(a) to the commission at least every four years and if approved, the base table and the effective date are adjusted. For these reasons, the statement in §3.37(a) about the effective date for the unadjusted values in the base table is accurate even though this date has passed. However, to provide further clarification, the annual update of the table can be explained in the base table itself along with the expiration date for that table and information on where to find the current version of the table on the department's website. Proposed amendments to §3.37(a) remove the language about the effective date for the values in the base table from the rule and amend the base table itself to include this and other useful information.

The rules in 7 TAC Chapter 3, Subchapter C, govern foreign bank branches, agencies, and offices. Section 3.44 requires foreign bank representative offices to file statements, notices, and other filings with the commissioner. The proposed amendment to §3.44(b) corrects the reference to §3.44(c)(2) for rules on applications by foreign banks with Texas state branches or agencies to establish new representative offices in Texas.

The rules in 7 TAC Chapter 3, Subchapter D, govern the pledge and maintenance of assets by foreign banks with Texas state branches or agencies. Section 3.53(c) purports to override the ordinary provisions of the Uniform Commercial Code (UCC) for perfecting a security interest in the assets foreign banks must pledge to the commissioner. However, the commission may lack legal authority to override the UCC through rulemaking, so this provision may not be effective. The department therefore currently obtains a perfected, first-priority security interest in the pledged assets under the UCC and other applicable law. Proposed amendments to §3.53(c) reflect this policy.

Section 3.53(d) discusses the calculation and timing for the deposit of the assets that a foreign bank is pledging to the commissioner. A foreign bank branch or agency that does not carry deposit liabilities may not need to pledge assets, as §3.54 states. Proposed amendments to §3.53(d) clarify and confirm that the asset pledge only needs to be made before deposit liabilities are accepted by a foreign bank branch or agency, rather than being made upon the opening of a branch or agency that is not accepting deposit liabilities at opening but may later do so, and confirm that the deposit amount should continue to be calculated based on projections of total nonrelated liabilities at one year after

commencement of such deposit-related operations.

Section 3.59 provides requirements for the deposit agreement between the foreign bank and the third-party depository holding the assets pledged to the commissioner by the foreign bank. Section 3.59(d) states that the commissioner is deemed to have a security interest in the pledged assets. However, this provision may not be effective. Proposed amendments to §3.59(d) therefore require foreign banks to ensure that the commissioner does have a perfected, first-priority security interest in the pledged assets.

Section 3.62 relates to asset maintenance requirements for foreign banks. Finance Code, §204.114 provides the commissioner with sole discretion in setting these requirements, and §3.62(b) then lists various factors that the commissioner may consider. Proposed amendments to §3.62(b) remove these discretionary factors because these do not need to be enumerated.

The rules in 7 TAC Chapter 3, Subchapter E govern banking houses and other facilities, such as loan production offices (LPOs) and deposit production offices (DPOs).

Section 3.91 applies to LPOs. It states that LPOs may not engage the public in the business of banking, including making loans, receiving deposits, and paying withdrawals, drafts, or checks. Continuing, §3.91(a) states “deposit or withdrawal activity must be performed by the state bank customer in person at the home office or a branch, or by mail, electronic transfer, or similar transfer method.” Proposed amendments clarify that deposits or withdrawals via mail, electronic transfer, or similar remote methods cannot be

done with the LPO and instead must be done with the bank's home office or branch office.

Section 3.93 applies to DPOs. It states that DPOs may not engage the public in the business of banking, including making loans, receiving deposits, and paying withdrawals, drafts, or checks. Continuing, §3.93(a) states "deposit or withdrawal activity must be performed by the state bank customer in person at the home office or a branch, or by mail, electronic transfer, or similar transfer method." Proposed amendments clarify that deposits or withdrawals via mail, electronic transfer, or similar remote methods cannot be done with the DPO and instead must be done with the bank's home office or branch office.

The rules in 7 TAC Chapter 3, Subchapter F, govern access to information.

Finance Code, §31.301(a)(1) states that information obtained by the department in any manner, including application, may be confidential. Proposed amendments to §3.111(b)(2) clarify that information provided by an applicant or an applicant's service provider may be confidential, the same as information provided by a financial institution that is already chartered or licensed. Additional proposed amendments to §3.111(b)(2) correct a clerical error.

Pursuant to Finance Code, §31.301(a), the commission has enacted rules to permit the commissioner to waive confidentiality for information received from or relating to a failed financial institution. Proposed amendments to §3.111(e)(3)(B) clarify that such waiver is in the sole discretion of the commissioner and not subject to appeal or other challenge.

Finance Code §36.224 and §186.224 state that records obtained from financial institutions that have been liquidated are not government records for any purposes, including requests for public information. Proposed amendments to §3.111(e)(3)(B) also confirm that records obtained from financial institutions that have failed are not government records for any purposes, regardless of whether the institution has been formally liquidated under Finance Code chapters 36 or 186.

Dan Frasier, Director of Bank & Trust Supervision for the department, 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 Frasier 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 as amended is greater clarity of the rules and efficiency for the regulated financial institutions.

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;
- positively or adversely affect this state's economy; or
- increase or decrease the number of individuals subject to the rule's applicability.

Most of the proposed amendments limit or repeal existing regulations. Certain proposed amendments relating to state bank subsidiary-related notices, foreign bank asset pledges, and LPO and DPO activities do clarify or make minor modifications to currently applicable requirements, but those changes do not materially expand existing regulations or create new regulations.

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 August 8, 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.

SUBCHAPTER A. SECURITIES ACTIVITIES AND SUBSIDIARIES

The amendments are proposed under Finance Code, §31.003(a), which authorizes the commission to adopt rules to administer

Subtitle A of Title 3 of the Finance Code. As required by Finance Code, §31.003(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within this state.

Chapters 33 and 34 of the Finance Code are affected by the proposed amendments.

§3.1. Private Placement of Securities.

~~[(a)]~~ A state-chartered ~~[state-chartered]~~ bank may engage in private placement transactions by acting as broker and bringing together buyers and sellers of privately placed instruments. The term "private placement transactions" means:

- (1) making recommendations regarding the terms and timing of the transaction;
- (2) assisting in the preparation of the financing documents;
- (3) contacting potential institutional investors;
- (4) arranging meetings between the issuer and potential investors; and
- (5) assisting in subsequent negotiations involving these parties.

~~[(b) Except as otherwise permitted by Finance Code, Title 3, Subtitle A, a state chartered bank may not acquire for its own account any equity securities for which it has acted as agent or broker pursuant to this section.]~~

*§3.3. Securities and Other Activities of
Subsidiaries of State Banks.*

(a) Securities activities permitted. Pursuant to Finance Code, §34.103(c), ~~[and subject to the provisions of 12 Code of Federal Regulations (CFR), §337.4,]~~ a state bank may establish or acquire a subsidiary that engages in securities activities; provided, however, that said subsidiary shall comply with all rules and regulations of the Securities and Exchange Commission and the State Securities Board applicable to registered brokers-dealers and investment advisors. The term "securities activities" means issuing, underwriting, selling, or distributing, or acting as agent or advisor in the issuing, underwriting, selling, or distributing of stocks, bonds, debentures, notes, or other securities.

(b) ~~[Investment ceiling. Pursuant to Finance Code, §34.103(c), a state bank may invest not more than 10% of its capital and certified surplus in a subsidiary engaged in securities activities that the bank is prohibited from conducting directly.]~~

~~[(e)]~~ Capitalization. Any subsidiary engaged in securities activities pursuant to this regulation must comply with any applicable state and federal capital requirements including, but not limited to, those imposed by the Securities and Exchange Commission, the State Securities Board, or the National Association of Securities Dealers.

(c) ~~[(d)]~~ Limitations.

~~[(1) Unless otherwise permitted by Finance Code, Title 3, Subtitle A, a subsidiary of a state bank must dispose of any equity securities acquired for its own account within 90 days after the day of purchase.]~~

~~[(2)]~~ A state bank may not purchase, in its discretion as fiduciary or managing agent, any security underwritten, distributed, or issued by the bank's securities subsidiary or any security issued by an investment company advised by the subsidiary unless authorized by applicable law.

(d) ~~[(e)]~~ Notice. A state bank must, before or at the time of submitting a letter to the banking commissioner regarding a new subsidiary or new subsidiary activity as required by Finance Code, §34.103(e), submit to the banking commissioner any related filing or application made with the Federal Deposit Insurance Corporation or with a Federal Reserve Bank, including filings required under the provisions of 12 CFR part 208 or part 362, or any successor regulation. ~~[file with the banking commissioner copies of all notices required to be filed with the Federal Deposit Insurance Corporation under the provisions of 12 CFR, §337.4, or any successor regulation.]~~

§3.4. Foreign Banking.

(a) Any state-chartered bank that is well-capitalized as defined by Section 38, Federal Deposit Insurance Act, 12 U.S.C. §1831o, ~~[United States Code (USC), §1831o,]~~ may file an application with the banking commissioner for permission to exercise, upon such conditions as may be prescribed by the banking commissioner, the following powers:

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

(b) - (c) (No change.)

SUBCHAPTER B. GENERAL

The amendments are proposed under Finance Code, § 31.003(a), which authorizes the commission to adopt rules to administer Subtitle A of Title 3 of the Finance Code. As

required by Finance Code, §31.003(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within this state.

Chapters 31 and 33 of the Finance Code are affected by the proposed amendments.

§3.21. Bank Call Reports.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise.

(1) Call report--A report of condition and income in FFIEC form as required by 12 U.S.C. §1817, [~~United States Code (USC),~~] or a report of financial condition and results of operations of a state bank as mandated by the banking commissioner pursuant to the Finance Code, §31.108.

(2) FDIA--The Federal Deposit Insurance Act, 12 U.S.C. §1811 *et seq.* [~~United States Code (USC), §1811 et seq.~~]

(3) - (5) (No change.)

(b) - (e) (No change.)

(f) Publication. Each state bank which is subject to regulation under FDIA will be considered to have publicly posted its call report if it has filed its call report pursuant to subsection (b) of this section. A state bank must publicly post or publish its call report in a newspaper or other media of general circulation if specifically directed to do so by the banking commissioner. [~~Lobby notice~~

~~and publication. The latest call report filed with the banking commissioner pursuant to subsections (b) and (c) of this subsection must be posted in the lobby of the state bank at a point accessible to the public. A state bank is not required to publish its call report in a newspaper or other media unless specifically directed to do so by the banking commissioner. A state bank required to publish its call report by the banking commissioner shall publish the report in a newspaper or other medium of general circulation as directed by the banking commissioner.]~~

(g) - (h) (No change.)

§3.22. Sale or Lease Agreements with an Officer, Director, or Principal Shareholder of the Bank or of an Affiliate of the Bank.

(a) - (b) (No change.)

(c) Board action. All proposed transactions subject to [the] Finance Code, §33.109, must be considered and voted upon by the board. Under Finance Code, §33.109(a), without the prior approval of a disinterested majority of the board, or the transaction at issue must be submitted for prior approval of the banking commissioner. For purposes of this section, approval of a disinterested majority of the board is obtained in the manner specified by the Texas Business Organizations Code, §21.418, with respect to a banking association, or §101.255, with respect to a limited banking association. [Under the Finance Code, §33.109(a), the prior approval of a majority of a quorum composed entirely of disinterested directors must be obtained or the transaction at issue must be submitted for prior approval of the banking commissioner. For purposes of this section, a quorum shall consist of a majority of the number of directors elected at the last meeting of shareholders. Even if the

~~transaction is subject to the prior approval of the banking commissioner because a quorum composed entirely of disinterested directors cannot be obtained, as a matter of good corporate policy, a state bank proposing to enter into a transaction subject to the Finance Code, §33.109, should obtain the affirmative vote of a majority of the disinterested directors of the board.]~~

(d) Application for approval. If a sale or lease agreement requires the written approval of the banking commissioner prior to consummating, renewing, or extending a sale or lease agreement, a written request for approval must be submitted to the banking commissioner at least 60 days prior to the proposed effective date of the sale or lease agreement and must include the following information:

(1) a copy of the proposed sale or lease agreement;

(2) a complete description of the personal or real property to be sold or leased;

(3) a full disclosure of all existing transactions and/or relationships, whether direct or indirect, between the state bank and the parties involved;

(4) in the case of a lease agreement involving real property, a copy of the minutes of the board meeting reflecting an analysis of the information contained in this subsection;

(5) a certified copy of a board resolution approving the transaction and indicating those directors voting or abstaining, as the case may be, and either:

(A) evidence that the transaction received the approval of a disinterested majority of the board; or ~~[affirmative vote of at least a majority of disinterested directors on the board; or]~~

(B) a statement explaining the reasons the approval of a disinterested majority of the board could not be obtained; ~~[affirmative vote of at least a majority of disinterested directors on the board could not be obtained;]~~

(6) copies of appropriate supporting documentation, including analysis of comparable terms and rates for the real or personal property to be sold or leased;

(7) in the case of a lease agreement, evidence demonstrating that the state bank will account for the lease in accordance with Financial Account Standards Board Account Standard Codification Topic 842, Leases; and ~~[FASB ASC Topic 840, Leases; and]~~

(8) other information which the banking commissioner may request.

(e) - (f) (No change.)

§3.24. Notice of Computer-Security
[Cybersecurity] Incident.

A state bank shall notify the banking commissioner and submit the information required by 12 C.F.R. part 225, subpart N, or part 304, subpart C, as applicable, or any successor regulation, regarding a computer-security incident that qualifies under such regulations as a notification incident, no later than the time the information is required to be submitted to the applicable federal regulatory agency.

~~[(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.]~~

~~[(1) “Cybersecurity incident” means any observed occurrence in an information system, whether maintained by the bank or~~

~~by an affiliate or third party service provider at the direction of the bank, that:]~~

~~[(A) jeopardizes the cybersecurity of the information system or the information the system processes, stores or transmits; or]~~

~~[(B) violates the security policies, security procedures or acceptable use policies of the information system owner to the extent such occurrence results from unauthorized or malicious activity.]~~

~~[(2) "Information system" means a set of applications, services, information technology assets or other information handling components organized for the collection, processing, maintenance, use, sharing, dissemination or disposition of electronic information, including the operating environment as well as any specialized system such as electronic banking systems, industrial/process control systems, telephone switching and private branch exchange systems, and environmental control systems.]~~

~~[(b) Notice required. A state bank shall notify the banking commissioner and submit the information required by subsection (c) of this section as soon as practicable but prior to customer notification, and not later than 15 days following the bank's determination that a cybersecurity incident regarding the bank's information system will likely:]~~

~~[(1) require submission of a notice or report to a state or federal regulatory or law enforcement agency or to a self-regulatory body other than the notice required by this section:]~~

~~[(2) require sending a data breach notification to customers of the bank under applicable state or federal law, including Business and Commerce Code, §521.053, or a similar law of another state; or]~~

~~[(3) substantively impact the ability of the bank to effect transactions on behalf of customers, accurately report transactions to customers, or otherwise conduct bank business.]~~

~~[(e) Content of notice. The confidential notice required by subsection (b) of this section must include, to the extent known at the time of submission:]~~

~~[(1) a brief description of the cybersecurity incident, including the approximate date of the incident, the date the incident was discovered, and the nature of any data that may have been illegally obtained or accessed;]~~

~~[(2) subject to subsection (d) of this section, a list of the state and federal regulatory agencies, self-regulatory bodies, and foreign regulatory agencies to whom notice has been or will be provided; and]~~

~~[(3) the name, address, telephone number, and email address of the employee or agent of the bank from whom additional information may be obtained regarding the incident.]~~

~~[(d) Omission of certain information. The filing of a suspicious activity report (SAR) related to the cybersecurity incident under applicable federal law constitutes a notice described by subsection (b)(1) of this section. However, the bank should not reference or mention the filing of a SAR in the notice filed with the commissioner.]~~

~~[(e) Incident response plan. The notice requirement imposed by this section must be incorporated into the bank's written incident response plan, maintained as part of the bank's information security program.]~~

§3.37. Calculation of Annual Assessment for Banks.

(a) Bank assessment calculation table. The annual assessment for a state bank is calculated as described in this section and paid as provided by §3.36 of this title (relating to Annual Assessments and Specialty Examination Fees), based on the values in the following table, as such values may be periodically adjusted in the manner provided by subsection (b) of this section. Certain terms used in this section and in the following table are defined in §3.36(b). ~~[The unadjusted values in the following table are effective until September 1, 2021]:~~

Figure: 7 TAC §3.37(a)

(b) (No change.)

SUBCHAPTER C. FOREIGN BANK BRANCHES, AGENCIES AND REPRESENTATIVE OFFICES

The amendments are proposed under Finance Code, §201.003(a), which authorizes the commission to adopt rules to administer Subtitle G of Title 3 of the Finance Code. As required by Finance Code, §201.003(b), the commission considered the need to coordinate with applicable federal law, promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive position of Texas state banks with regard to other depository institutions consistent with the safety and soundness of Texas state banks and the Texas state bank system, and allow for economic development in this state.

No statute, article, or code is affected by the proposed amended sections.

§3.44. Statements of Registration, Notices and Filings Related to Foreign Bank Representative Offices.

(a) (No change.)

(b) Applicability. This section applies only to a foreign bank that does not maintain a Texas branch or agency. A foreign bank that maintains a Texas branch or agency is not subject to this section and may establish a representative office by providing the notice required under §3.41(c) ~~[§3.41(b)(2)]~~ of this title (relating to Applications, Notices and Reports Related to Foreign Bank Branches and Agencies).

(c) - (f) (No change.)

SUBCHAPTER D. PLEDGE AND MAINTENANCE OF ASSETS BY FOREIGN BANK LICENSED TO MAINTAIN TEXAS STATE BRANCH OR AGENCY

The amendments are proposed under Finance Code, §201.003(a), which authorizes the commission to adopt rules to administer Subtitle G of Title 3 of the Finance Code. As required by Finance Code, §201.003(b), the commission considered the need to coordinate with applicable federal law, promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive position of Texas state banks with regard to other depository institutions consistent with the safety and soundness of Texas state banks and the Texas state bank system, and allow for economic development in this state.

Chapter 204 of the Finance Code is affected by the proposed amendments.

§3.53. Asset Deposit and Pledge Requirement Applicable to Branch or Agency with Nonrelated Deposit Liabilities.

(a) - (b) (No change.)

(c) Pledge of assets to banking commissioner. The assets required to be

deposited under this section are deemed to be pledged to the banking commissioner for the benefit of the creditors and depositors of the Texas state branch's or agency's business in this State. Notwithstanding any provision of the Uniform Commercial Code to the contrary, the banking commissioner is deemed to have a security interest in such assets. The foreign bank must ensure that the banking commissioner has a perfected, first-priority security interest in such assets under applicable law at all times.

(d) Projection of liabilities. Prior to its first Texas state branch or agency carrying nonrelated deposit liabilities on the books and records of such branch or agency, a foreign bank must deposit assets based upon such branch's or agency's projection of total nonrelated liabilities, consisting of nonrelated deposit liabilities and nonrelated other liabilities, at the end of its first year of such operations. [~~Upon opening its first Texas state branch or agency that will carry nonrelated deposit liabilities on the books and records of such branch or agency, a foreign bank must deposit assets based upon such branch's or agency's projection of total nonrelated liabilities, consisting of nonrelated deposit liabilities and nonrelated other liabilities, at the end of its first year of operation.~~]

(e) (No change.)

§3.59. *Deposit Agreement and Conditions.*

(a) - (b) (No change.)

(c) Assets pledged to banking commissioner. The assets must be pledged to the banking commissioner for the benefit of the creditors and depositors of the Texas state branch's or agency's business in this State. The banking commissioner must be provided

with, and is deemed to have a security interest in the pledged assets.

(d) - (p) (No change.)

§3.62. *Asset Maintenance.*

(a) (No change.)

(b) Authority of banking commissioner to require maintenance of specific ratio. The banking commissioner may require a foreign bank to maintain a specific ratio of assets to liabilities as deemed necessary or desirable. [~~In addition to the factors identified in Finance Code, §204.114(d), the banking commissioner may take into account the following in determining the ratio:~~]

~~[(1) the existence any formal supervisory, regulatory or enforcement actions outstanding against the foreign bank in any jurisdiction or its Texas state branch or Texas state agency;]~~

~~[(2) the composite ROCA rating for the Texas state branch or agency; and]~~

~~[(3) the comprehensive composite ROCA rating of the foreign bank's operations in the United States; and]~~

~~[(4) the financial strength or condition of the foreign bank.]~~

(c) (No change.)

SUBCHAPTER E. BANKING HOUSE
AND OTHER FACILITIES

The amendments are proposed under Finance Code, §31.003 and §201.003, which authorize the commission to adopt rules to administer Subtitles A and G of Title 3 of the Finance Code. As required by Finance Code, §31.003(b) and §201.003(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive

banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within this state.

No statute, article, or code is affected by the proposed amended sections.

§3.91. Loan Production Offices.

(a) Loan production activities. A Texas state bank may, to the extent authorized by its board of directors, engage in loan production activities at a site other than the home office or a branch of the bank, and may use the services of, and compensate, persons not employed by the bank in its loan production activities. Subject to the requirements of subsection (b) of this section, the bank or its operating subsidiary may establish a loan production office (LPO) at which an employee or agent of the bank or of its operating subsidiary accepts loan applications, provided that the loan is made at the home office or a branch of the bank or at an office of the operating subsidiary located on the premises of, or contiguous to, the home office or branch of the bank. A LPO is not a branch within the meaning of Finance Code, §31.002(a)(8), so long as it does not engage the public in the business of banking as defined by Finance Code, §31.002(a)(4), including making loans, receiving deposits, and paying withdrawals, drafts, or checks. All such deposit or withdrawal activity must be performed by the state bank customer in person at the home office or a branch, or by mail, electronic transfer, or similar transfer method with the home office or a branch.

(b) - (h) (No change.)

§3.93. Deposit Production Offices

(a) Engaging in deposit production activities. A Texas state bank may, to the extent authorized by its board of directors, engage in deposit production activities at a site other than the home office or a branch of the bank, including establishing a deposit production office (DPO) of the bank. A DPO may only solicit deposits, provide information about deposit products, and assist persons in completing application forms and related documents to open a deposit account. A DPO is not a branch within the meaning of Finance Code, §31.002(a)(8), so long as it does not engage the public in the business of banking as defined by Finance Code, §31.002(a)(4), including making loans, receiving deposits, and paying withdrawals, drafts, or checks. All such deposit or withdrawal activity must be performed by the state bank customer in person at the home office or a branch, or by mail, electronic transfer, or similar transfer method with the home office or a branch.

(b) - (e) (No change.)

SUBCHAPTER F. ACCESS TO
INFORMATION

The amendments are proposed under Finance Code, §31.003, §181.003, and §201.003, which authorize the commission to adopt rules to administer Subtitles A, F and G of Title 3 of the Finance Code. As required by Finance Code, §31.003(b), §181.00(b), and §201.003(b), the commission considered the need to promote a stable banking and trust services environment, provide the public with convenient, safe, and competitive banking and trust services, preserve and promote the competitive parity of state banks and trust companies consistent with the safety and soundness of state banks trust companies and the state banking and trust

company system, and allow for economic development within this state.

No statute, article, or code is affected by the proposed amended sections.

§3.111. *Confidential Information.*

(a) (No change.)

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Confidential information--Written and oral information obtained directly or indirectly by the department relative to the financial condition or business affairs of a financial institution, an applicant, or a present, former, or prospective shareholder, participant, officer, director, manager, affiliate, or service provider of a financial institution or applicant, whether obtained through application, examination, or otherwise, and all related files and records of the department, regardless of the form of the information when obtained or as held by the department or when the department first obtained it, and whether or not the information is part of the department's official files or records. The term does not include:

(A) - (E) (No change.)

(3) - (5) (No change.)

(c) - (d) (No change.)

(e) Exceptions to non-disclosure.

(1) – (2) (No change.)

(3) Disclosures of certain information.

(A) (No change.)

(B) Records of a failed financial institution. Subject to the sole discretion ~~[an appropriate finding]~~ of the banking commissioner under this subparagraph, the department may release confidential information in or related to the records of a failed financial institution. Release may not occur under this subparagraph earlier than three years after the date such financial institution failed. Information subject to release must pertain only to the condition of the financial institution and cannot include confidential customer information, absent customer consent, or information made confidential by laws other than the Finance Code, Title 3, Subtitle A, or this section. Pursuant to Finance Code §36.224 and §186.224, records of failed financial institutions are not government records and are not subject to public information requests under Texas Government Code, Chapter 552. [Confidential information, as limited herein, may be released if the banking commissioner, in the exercise of discretion, finds that:]

~~[(i) production of records is neither overly burdensome nor contrary to the public interest;]~~

~~[(ii) the need for the information clearly outweighs the need to maintain the confidentiality of the information; or]~~

~~[(iii) a compelling need exists for release of the records.]~~

(C) (No change.)

(f) (No change.)

Figure: 7 TAC §3.37(a)

First determine the bank's assessable asset group, then:

Steps	Assessment Calculation:	Assessable Asset Group:						
		1	2	3	4	5	6	7
1.	For assessable assets of at least (in thousands)	\$0	\$10,000	\$25,000	\$40,000	\$70,000	\$100,000	\$250,000
	But not greater than (in thousands):	\$10,000	\$25,000	\$40,000	\$70,000	\$100,000	\$250,000	\$1,000,000
2.	Take the total assessable assets over (in thousands):	\$0	\$10,000	\$25,000	\$40,000	\$70,000	\$100,000	\$250,000
3.	And multiply by the marginal assessment rate :	0.868964	0.493029	0.234188	0.229258	0.221862	0.135583	0.09121
4.	Add this result to the base assessment amount :	\$3,067	\$11,757	\$19,152	\$22,665	\$29,543	\$36,199	\$56,536
5.	Multiply the total by the factor corresponding to the bank's CAMELS composite rating (as defined in §3.36(b)):							
	a. Composite rating of 3, 4, or 5:	2.0	2.0	2.0	2.0	2.0	2.0	2.0
	b. Composite rating of 1 or 2:	1.0	1.0	1.0	1.0	1.0	1.0	1.0
6.	And multiply the total by 0.875 if bank has <u>on-book</u> assets of \$500 million or less and a CAMELS composite rating of 1 or 2.							
Steps	Assessment Calculation:	Assessable Asset Group:						
		8	9	10	11	12	13	14
1.	For assessable assets of at least (in thousands):	\$1,000,000	\$5,000,000	\$10,000,000	\$20,000,000	\$40,000,000	\$60,000,000	\$80,000,000
	But not greater than (in thousands):	\$5,000,000	\$10,000,000	\$20,000,000	\$40,000,000	\$60,000,000	\$80,000,000	-----
2.	Take the total assessable assets over (in thousands):	\$1,000,000	\$5,000,000	\$10,000,000	\$20,000,000	\$40,000,000	\$60,000,000	\$80,000,000
3.	And multiply by the marginal assessment rate :	0.081351	0.073954	0.059354	0.03536	0.022732	0.015155	0.010103
4.	Add this result to the base assessment amount :	\$124,944	\$450,348	\$820,118	\$1,413,658	\$2,120,858	\$2,575,498	\$2,878,598
5.	Multiply the total by the factor corresponding to the bank's CAMELS composite rating (as defined in §3.36(b)):							
	a. Composite rating of 3, 4, or 5:	2.0	2.0	2.0	2.0	2.0	2.0	2.0
	b. Composite rating of 1 or 2:	1.0	1.0	1.0	1.0	1.0	1.0	1.0

NOTE: The values in this table are effective until September 1, 2022. These values are adjusted each year on September 1. See 7 Tex. Admin. Code § 3.37(b). The current adjusted table is available on the Department of Banking's website.

3. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, §17.3, Concerning Sale or Lease Agreements with Trust Company Insiders

PURPOSE: The purpose of the amendments to 7 TAC §17.3 is to update and improve rules for Texas trust companies relating to insider transactions.

RECOMMENDED ACTION: The Department recommends that the Commission approve publication of the proposed amended rule in the *Texas Register* for comment.

RECOMMENDED MOTION: I move that we publish the proposed amendments to 7 TAC, §17.3, in the *Texas Register*.

Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 17. Trust Company Regulation

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend certain rules in 7 TAC, Chapter 17, governing Texas state-chartered trust companies (trust companies).

In particular, the commission proposes to amend §17.3, concerning sale or lease agreements with an officer, director, principal shareholder, or affiliate of a trust company.

Section 17.3 governs insider sales and leases. Texas Finance Code (Finance Code), §183.109, requires prior approval by a disinterested majority of the board of directors of the trust company or by the commissioner for sales or leases of trust company assets to trust company insiders. Section 17.3(c) requires the transaction to be approved by a majority of an ordinary quorum of the board, and requires this quorum to be composed entirely of disinterested directors. Such quorums often cannot be obtained, and this is not consistent with provisions of general Texas corporate law for approval of insider transactions by disinterested directors of Texas non-trust company corporations. Proposed amendments to §17.3(c) clarify and improve this provision by applying the normal requirements for approval of insider transactions by disinterested directors of Texas non-trust company corporations to trust companies.

Proposed amendments to §17.3(c) also make non-substantive modifications to the language of the rule to match the analogous rule for Texas state-chartered banks at §3.22.

Proposed amendments to §17.3(d) also clarify the requirements for approval of an insider transaction by a disinterested majority of the board of a trust company in conformity with general Texas corporate law.

Under 7 TAC §21.24(c)(3), certain family trust companies may be exempted from certain restrictions of Finance Code, §183.109(a), regarding transactions with management or affiliates. None of these existing exemptions for family trust companies will be negated or affected by these proposed amendments.

Additional proposed amendments to §17.3(d) update the reference to Financial Account Standards Board (FASB) Account Standard Codification (ASC) Topic 842 from FASB ASC Topic 840 pursuant to recent changes to FASB ASC.

Dan Frasier, Director of Bank & Trust Supervision for the Department, has determined that for the first five-year period the proposed amended 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 amended rules.

Director Frasier also has determined that, for each year of the first five years the amended rules as proposed are in effect, the public benefit anticipated as a result of

enforcing the rules as amended is greater clarity of the rules and efficiency for the regulated financial institutions.

For each year of the first five years that the amended rules will be in effect, there will be no economic costs to persons required to comply with the amended rules as proposed.

For each year of the first five years that the amended rules will be in effect, the amended 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 August 8, 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, §181.003, which authorizes the commission to adopt rules to administer Subtitles F of Title 3 of the Finance Code. As required by Finance Code, §31.003(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within this state.

Chapter 183 of the Finance Code is affected by the proposed amended sections.

§17.3. Sale or Lease Agreements with an Officer, Director, Principal Shareholder, or Affiliate.

(a) – (b) (No change.)

(c) Board action. All proposed transactions subject to Finance Code, §183.109(a), must be considered and voted upon by the board. Under Finance Code, §183.109(a), without the prior approval of a disinterested majority of the board, [All transactions subject to Finance Code, §183.009(a), must receive the prior approval of at least a majority of a quorum composed entirely of disinterested directors of the board or] the transaction at issue must be submitted for prior approval of the banking commissioner. For purposes of this section, approval of a disinterested majority of the board is obtained in the manner specified by the Texas Business Organizations Code, §21.418, with respect to a trust association, or §101.255, with respect to a limited trust

~~association. [a quorum shall consist of a majority of the number of directors elected at the last meeting of shareholders. Even if the transaction is subject to the prior approval of the banking commissioner because a quorum composed entirely of disinterested directors cannot be obtained, as a matter of good corporate policy, a trust company proposing to enter into a transaction subject to Finance Code, §183.109, should obtain the affirmative vote of a majority of the disinterested directors of the board.]~~

(d) Application for approval. If a sale or lease agreement requires the written approval of the banking commissioner prior to consummating, renewing, or extending a sale or lease agreement, a written request for approval must be submitted to the banking commissioner at least 60 days prior to the proposed effective date of the sale or lease agreement and must include the following information:

(1) a copy of the proposed sale or lease agreement;

(2) a complete description of the personal or real property to be sold or leased;

(3) a full disclosure of all existing transactions and/or relationships, whether direct or indirect, between the trust company and the parties involved;

(4) in the case of a lease agreement involving real property, a copy of the minutes of the board meeting reflecting an analysis of the information contained in this subsection;

(5) a certified copy of a board resolution approving the transaction and indicating those directors voting or abstaining, as the case may be, and either:

(A) evidence that the transaction received the approval of a disinterested majority of the board; or ~~[affirmative vote of at least a majority of disinterested directors on the board; or]~~

(B) a statement explaining the reasons the approval of a disinterested majority of the board could not be obtained; ~~[affirmative vote of at least a majority of disinterested directors on the board could not be obtained;]~~

(6) copies of appropriate supporting documentation, including analysis of comparable terms and rates for the real or personal property to be sold or leased;

(7) in the case of a lease agreement, evidence demonstrating that the trust company will account for the lease in accordance with Financial Account Standards Board Account Standard Codification Topic 842, Leases; and ~~[FASB ASC Topic 840, Leases; and]~~

(8) other information which the banking commissioner may request.

(e) – (f) (No change.)

D.

**Office of Consumer Credit
Commissioner**

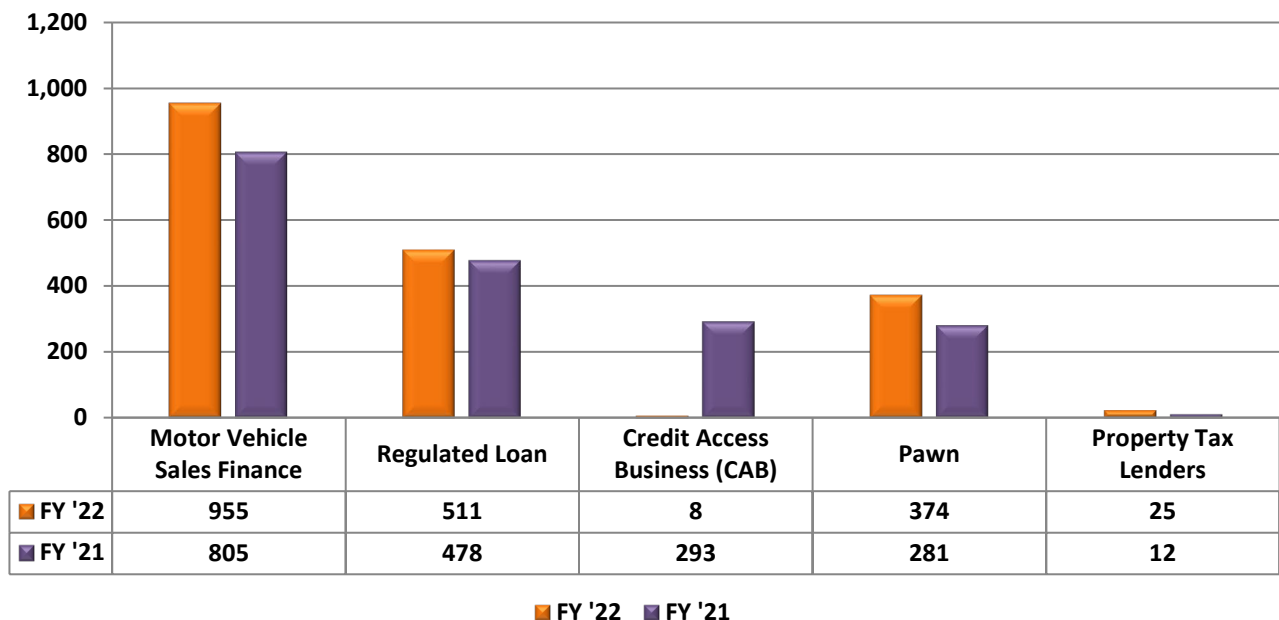
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Consumer Protection and Consumer Assistance Report

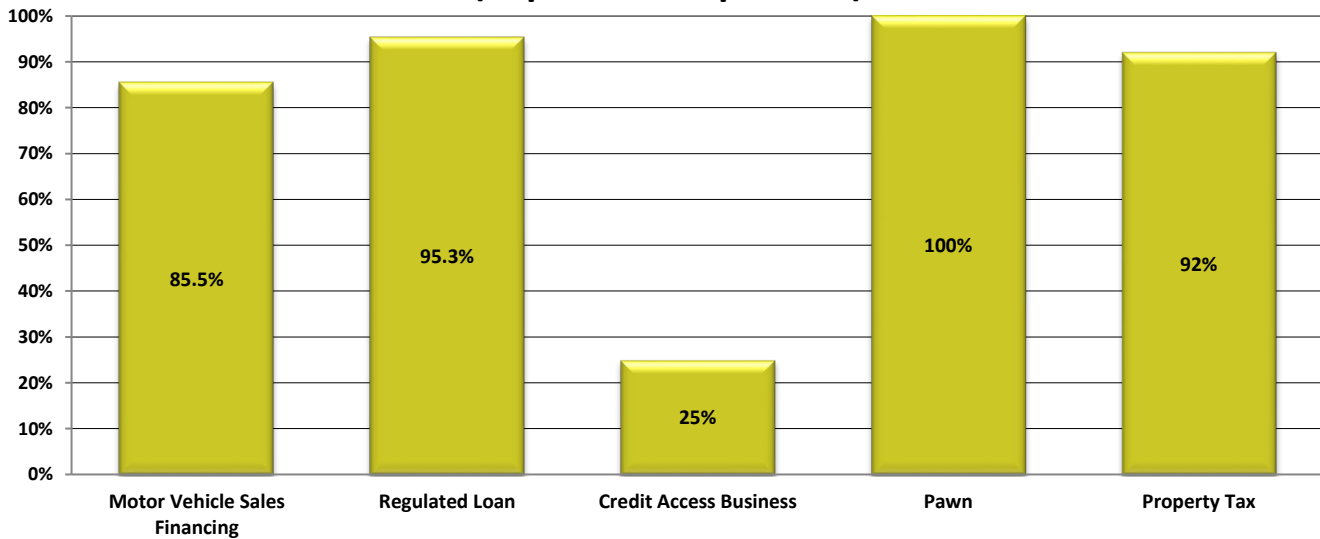
As of the end of April 2022, the department completed 62.3% of its targeted number of examinations. May was an especially successful month. The large enterprise Credit Access Business exam, consisting of 257 licensed locations, was completed, finalized, report of exam issued, and closed, bringing the total of Credit Access Business examinations to 265. Another multi state auto finance exam was completed, finalized with the report of examination issued, and closed. Transaction level reviews for a third multi state auto finance exam have begun. During the third quarter, the OCCC completed its participation in a multi-state mortgage exam that began in January. The report of exam is being reviewed by the Multi-State Mortgage Committee. The report is anticipated to be issued before the end of the fiscal year.

Examiner training and development remains the high priority focus. During the weeks of June 13, 2022 and June 20, 2022, the department will deliver back-to-back advanced training in project management, Motor Vehicle Sales Finance exams, Credit Access Business exams, Mortgage & Property Tax exams and complex Regulated Lender and Credit Insurance examinations.

Examinations Conducted: Sept - Apr Fiscal Year Comparison

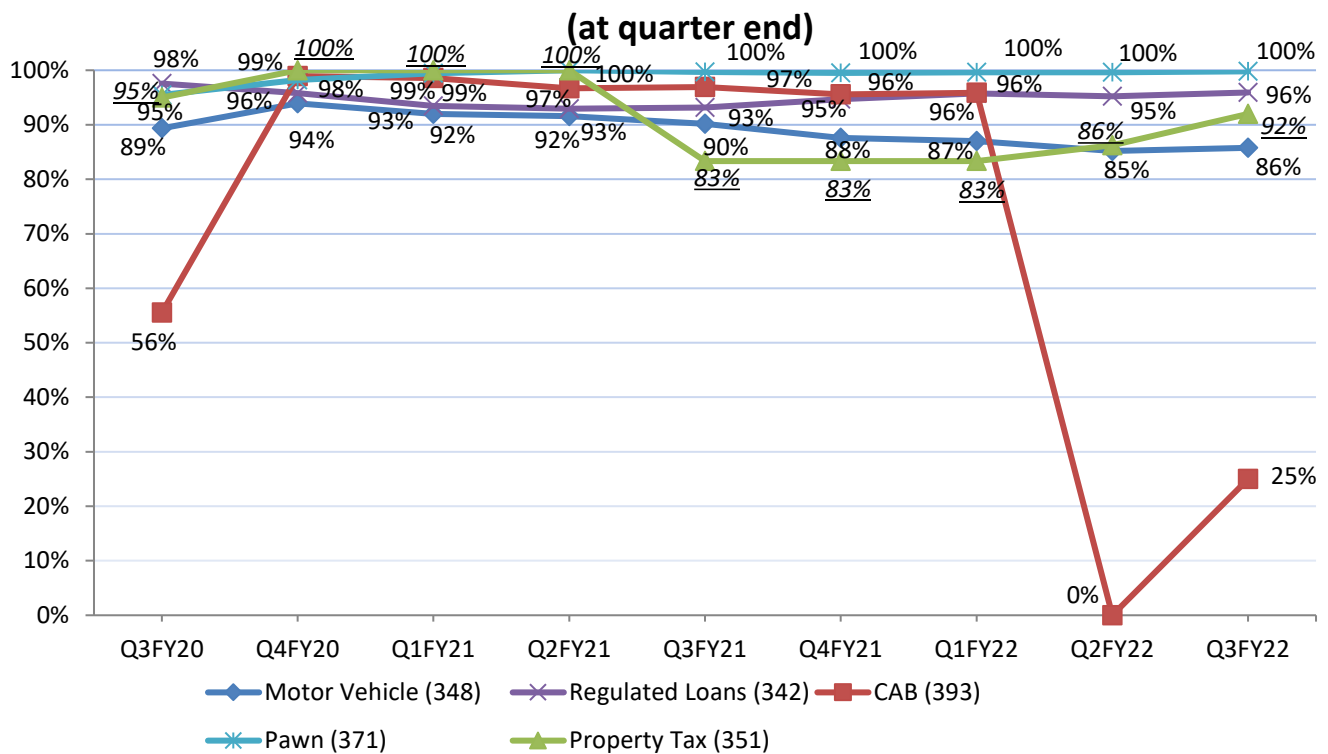


Acceptable Level of Compliance FY '22 (Sept 2021 - Apr 2022)



During the reporting period a small number of Credit Access Business exams were conducted which resulted in an unsatisfactory level of compliance. A large enterprise exam with an acceptable level of compliance was completed, but not within this reporting period. With the completion of this exam, the acceptable level of compliance will increase to 97.7%. The following chart denotes the acceptable level of compliance on a trailing 12-month basis through the end of April 2022. The 25% 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 completed exams.

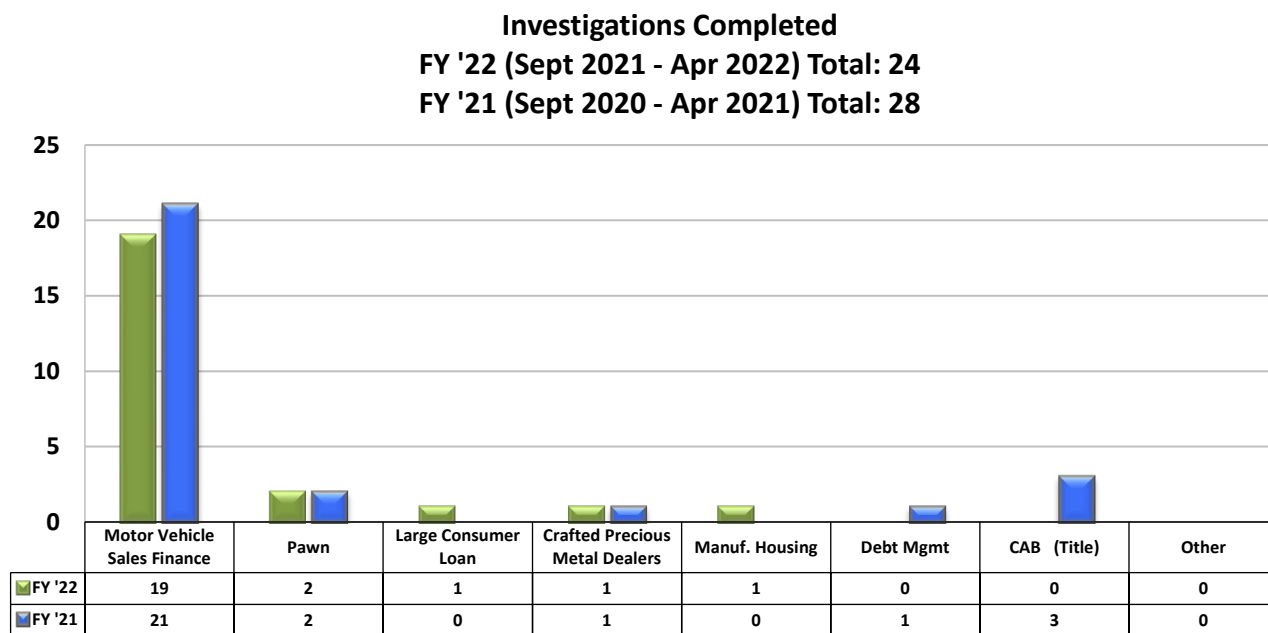
Acceptable Compliance Levels - Trailing 12 Months



Investigations

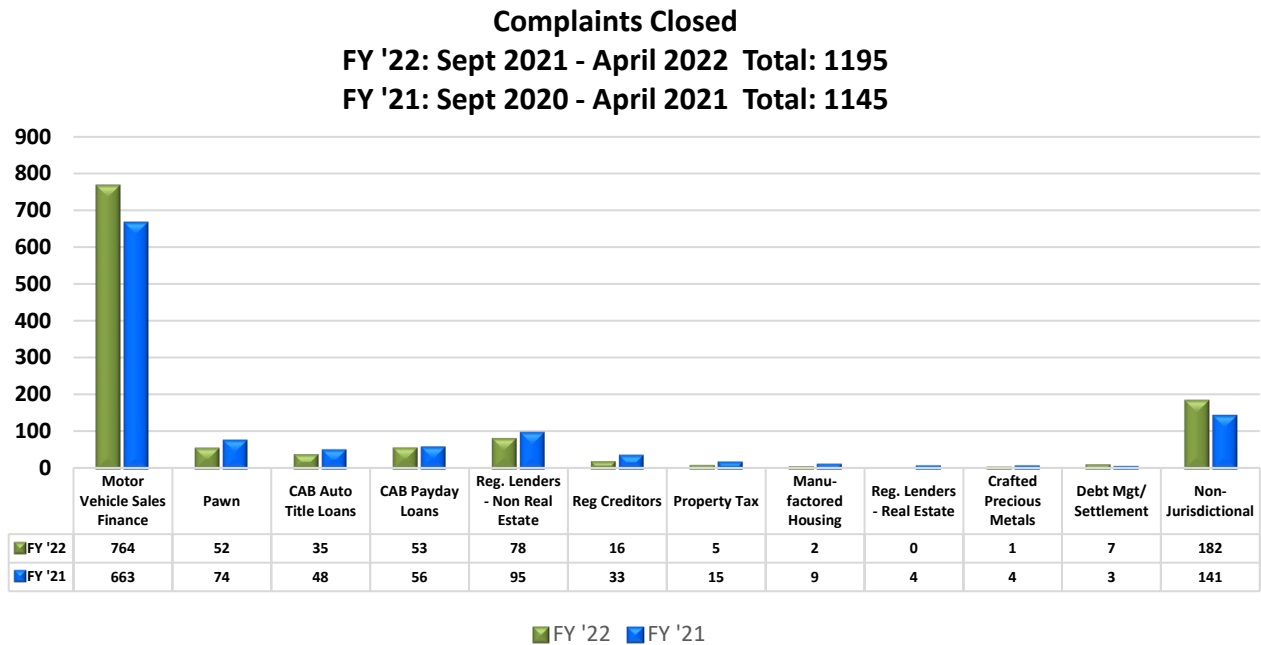
Through April 2022, the OCCC completed 24 investigations. The annual goal is to complete 75 investigations. The number of investigations completed is below the prorata target and 16% behind the pace of the prior fiscal year. The impacts of Covid-19 presented some challenges in FY 2021 in completing investigation fieldwork; however, investigation fieldwork returned to normal in FY 22 and the agency does not forecast this to be an issue going forward.

A lower number of investigations were opened due to decreased industry operations during the pandemic, a lagging effect of Covid-19. In the 10 quarters preceding the pandemic, an average of 19.4 investigations were opened per quarter. Starting with Q3 2020, an average of 10.3 investigations were opened per quarter (with a low of 5 in both Q4 2020 and Q4 2021). The first two quarters of 2022 saw 15 and 18 new investigations assigned, rebounding to near pre-pandemic norms. Priority will continue to be given to investigations that are time sensitive and those with greater potential consumer harm. The current projection is that there are enough investigations in progress to approach our goal of closing 75 by the end of the fiscal year.



Consumer Assistance

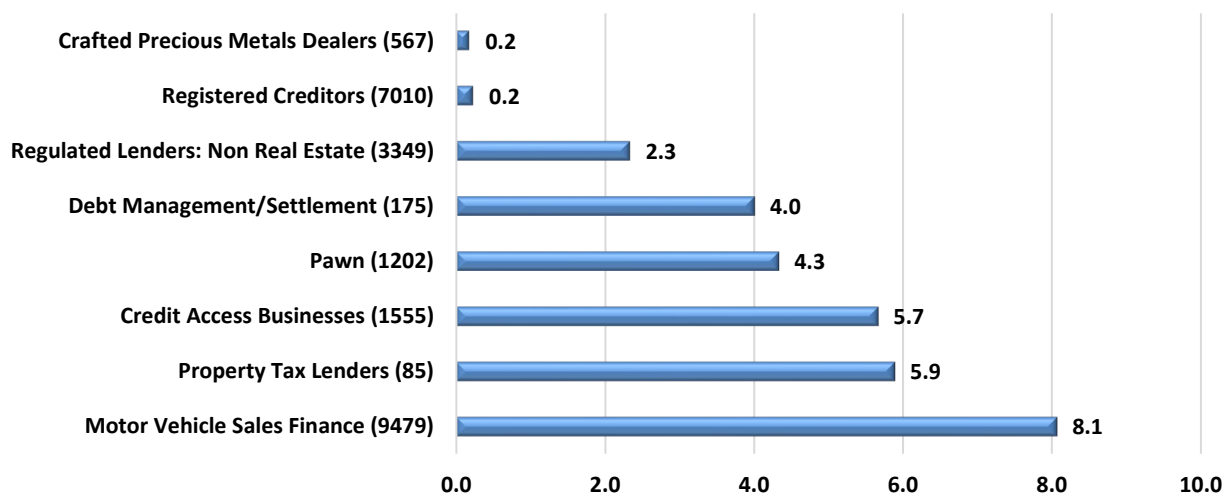
As of April 30, 2022, 1195 complaints were closed, of which 182 were classified as non-jurisdictional. The top four areas of jurisdictional complaints are (1) Motor Vehicle Sales Finance (MVSF), (2) Credit Access Businesses (CAB), (3) Regulated Lenders Non-Real Estate, and (4) Pawn. MVSF complaints were the largest complaint category at 63.9%. The second largest category was CAB complaints at 7.4% collectively, separately these are 4.4% for payday loans and 2.9% for title loans. The third largest category came from Regulated Lenders Non-Real Estate at 6.5%. The fourth largest category was Pawnshops at 4.2%.



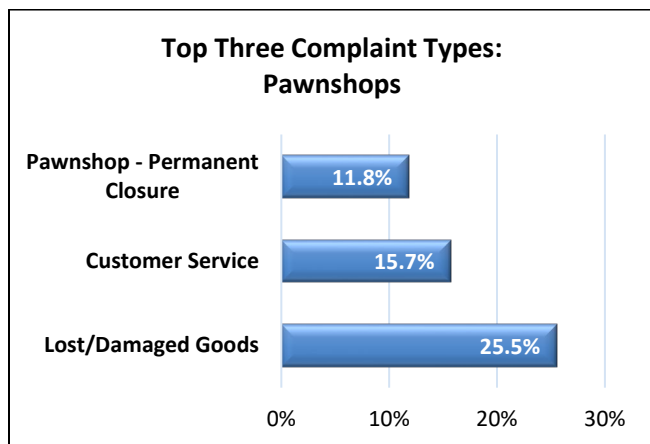
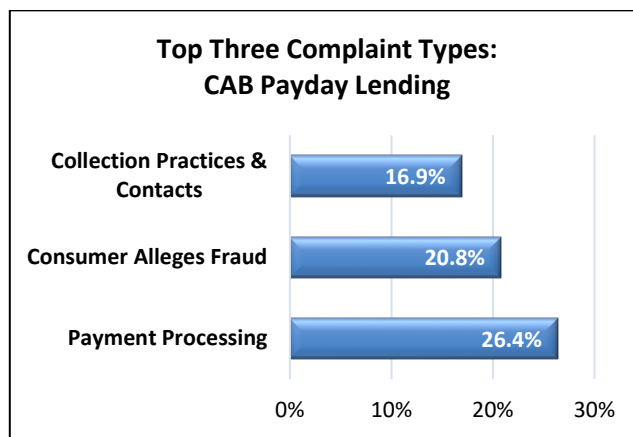
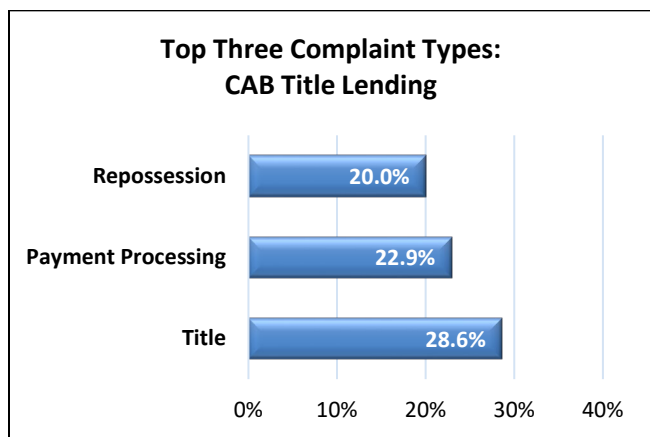
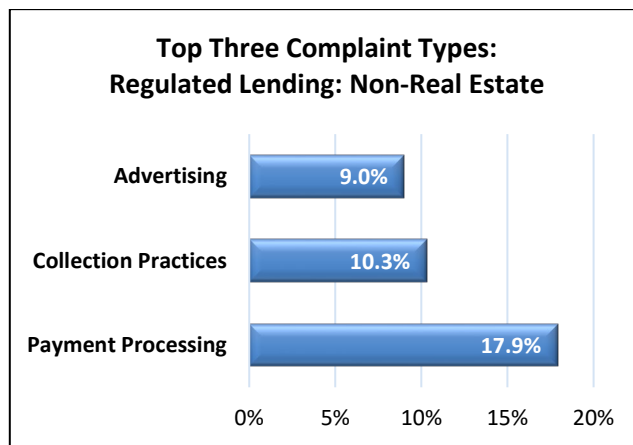
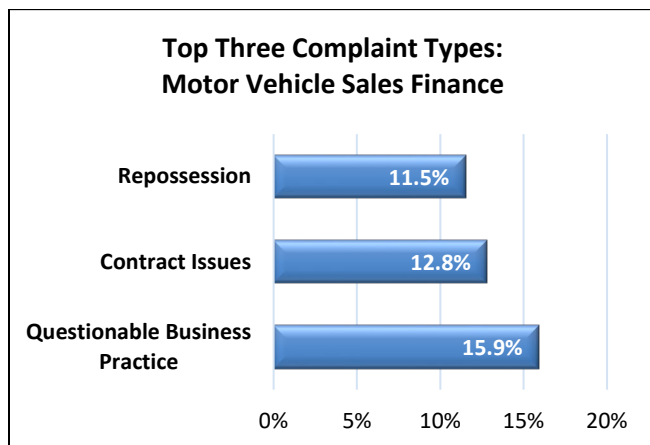
Comparison of complaints processed to the number of active license or registrant population is noted on the chart below. For this reporting period, the highest ratio of complaints to active license/registrants was Motor Vehicle Sales Finance, followed by Property Tax Lenders, Credit Access Businesses,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

Ratio of Complaints Closed to Total Active License or Registrants*

FY '22 (Sept 2021 - April 2022)



The following charts represent the top three complaint areas per license type. In the MVSF chart, the category *Questionable Business Practice* continues to primarily relate to allegations that dealers will not accept outside financing. For this period, 122 complaints were categorized as *Questionable Business Practice*. Of these, approximately 84% were related to allegations of dealers refusing to accept outside financing.





Licensing Report- June 2022

Mirand Diamond, Director of Licensing & Finance
Kanesha Daniels, Licensing Department Team Lead

Renewals

The department opened renewal for pawnshops and pawn employees in early May online in ALECS. Paper renewal and delinquency notices have been mailed out, as well as several email reminders to pawn shops. Active pawn shops were given a discount of 60% for a renewal rate of \$250. The department estimates that 95% of pawn shops and 60% of pawn employees will renew.

Applications Processing

The volume of incoming applications is averaging 132 applications monthly, which is about 6% below the average from the prior fiscal year. The department hopes to increase processing in the remainder of the fiscal year, particularly once fully staffed and after renewal periods conclude. The average number of pawn employee applications received monthly aligns with anticipated projections.

Other Updates

The department is fully staffed and is working to train two new customer service representatives.

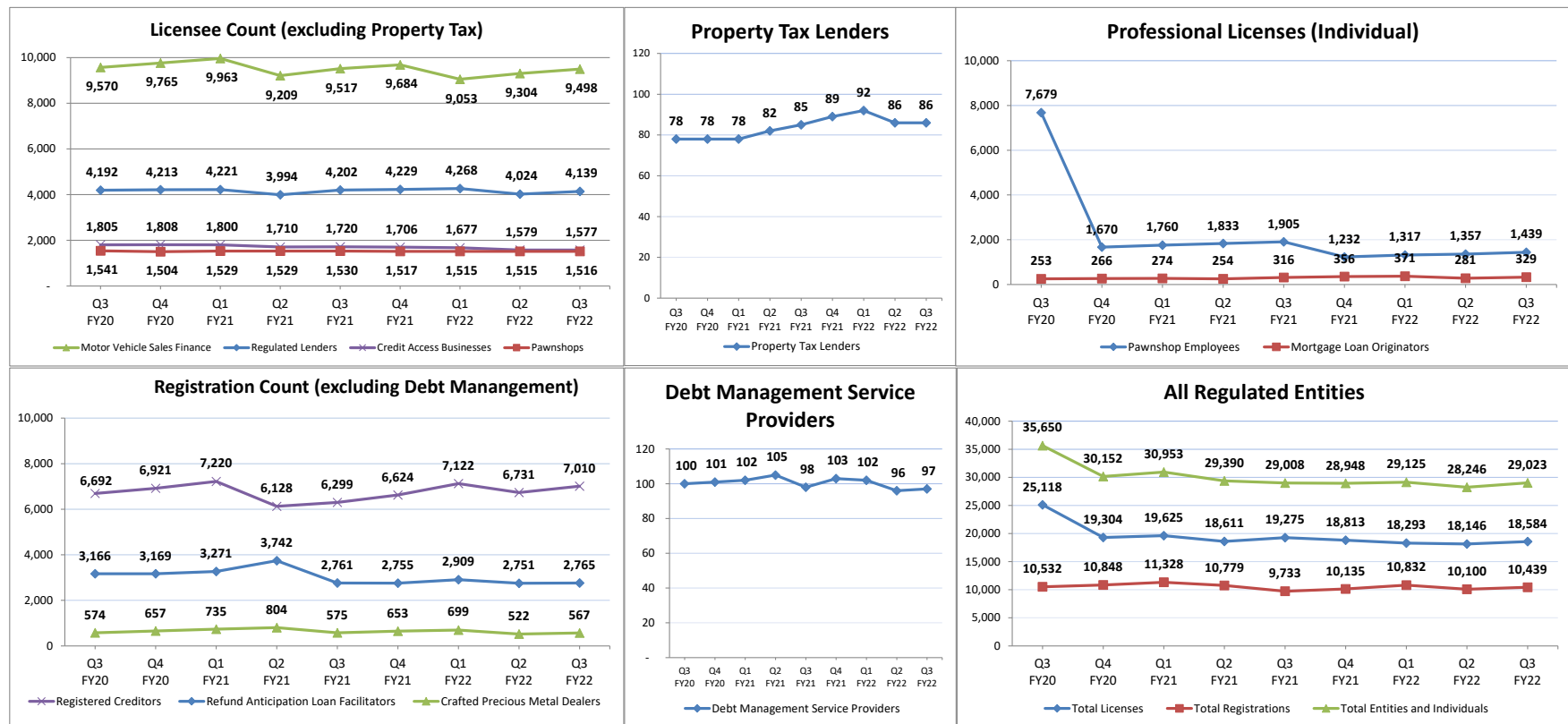
The department is working with IT and DIR's Shared Technology Services to contract services for printing and mailing renewal notices for each regulated industry. While the bulk of renewal transactions are performed online, renewal notices must be mailed for entities that have not renewed online before specific target dates. This task is currently handled by the Licensing Department. The project should significantly improve efficiency, while also being cost-effective.

Staff is actively working on imaging and verifying the remaining paper files in boxes and will soon begin disposition of paper files that are outside of record retention.

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





ADMINISTRATION REPORT

FINANCIAL EDUCATION AND TFEE

The Financial Education department is wrapping up a busy period of financial education events and outreach. During this period, staff participated in a financial education program for Windham ISD, reaching nearly 500 teachers and district support staff. Additionally, the OCCC partnered with the Department of Banking to host the Dallas Federal Reserve Bank's Building Wealth presentation and also rolled out a "Fraud Bingo" activity to assist seniors in recognizing and avoiding financial exploitation.

The 1st semi-annual reports for the 2022-2023 TFEE Grant cycle are due at the end of July. OCCC staff will be working on reviewing and compiling data for the first period of the grant cycle. First period grant data and activity are expected to be published early next fiscal year.

COMMUNICATION

The OCCC's Strategic Plan, including the Customer Service Report and Workforce Plan, were published on June 1, 2022. Active recruiting and interviewing is in process for the Communications Specialist position. The vacancy was published on LinkedIn, Indeed, and was promoted in a monthly newsletter, the Innovator, published by UT Austin. Additionally, staff continue to provide presentations to regulated entities and other regulatory groups as follows:

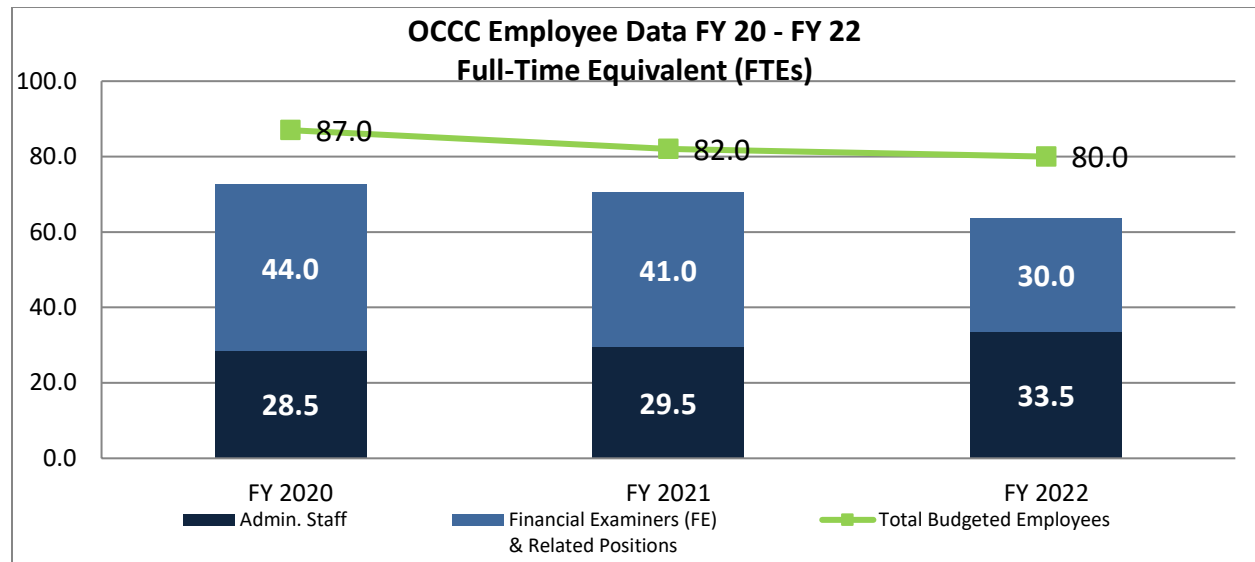
- On April 7, 2022 Financial Examiner Fancher provided a presentation to automobile dealers at a webinar sponsored by the Texas Department of Motor Vehicles (DMV).
- On May 5, 2022 Financial Examiner Fancher provided a presentation to automobile dealers at a webinar sponsored by the Texas Department of Motor Vehicles (DMV).
- On May 10, 2022 Director Lewis and Examiner Traweek provided a presentation to automobile dealers at an event hosted by the Houston Independent Auto Dealers Association.
- On May 24, 2022, Commissioner Pettijohn, Deputy General Counsel Nance, Assistant General Counsel Spalding, Financial Examiner Graham, Licensing Team Lead Daniels, and Senior Paralegal Ginger Harmon hosted a Pawnshop Rule Review Webinar.

HUMAN RESOURCES

During this reporting period through May 31, 2022, the OCCC was staffed with a total of 63.5 FTEs. Currently the OCCC has the following open positions.

Vacancy	Status
Financial Examiner I	Open - 6
Program Specialist III – Financial Education, Grant, & Communications Specialist	Open - 1
Accountant II - III	Open - 1

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



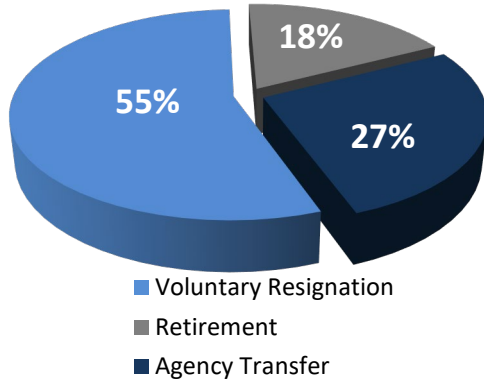
The turnover rate as of May 2022 is 11.3%, and the chart below represents FYTD22 data.

OCCC Turnover Categories

FY 22 - All Employees

(09/01/2021 - 5/31/2022)

9 total - 4 Voluntary Resignations, 3 Interagency Transfers and 2 Retirements.

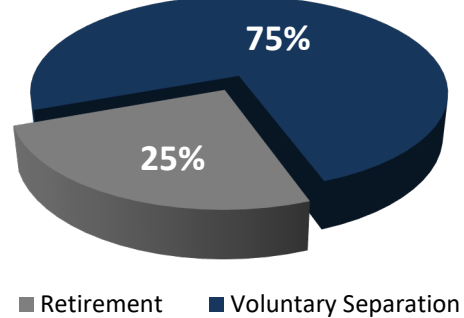


OCCC Turnover Categories

FY 22 - FE Series

(09/01/2021 - 05/31/2022)

4 total - 1 Retirement, 3 Voluntary Resignations.



INFORMATION TECHNOLOGY

Cybersecurity

Annual state-mandated cybersecurity training for agency staff and credentialed vendors was completed in May. The attestation has been submitted to DIR and subsequently acknowledged.

Technology Modernization and Deployment

OCCC has migrated to a daily cloud backup (BUaas - backup as a service) arranged through DIR.

The Statement of Work for a core update of the OCCC website was awarded to the successful vendor. The project is progressing and project metrics are green and on track. The estimated project completion date is August 31, 2022.

Two additional cybersecurity projects are in process with completion expected before fiscal year end. Another project is in preliminary development supporting technology modernization.

Training

IT personnel drafted a tutorial on reducing picture image file sizes with intent to upload it to the agency's learning management platform where viewings will be tracked and recorded.

Compliance

IT completed the biannual Security Plan review and submitted the approved document to DIR.



Accounting Report- June 2022

Mirand Diamond, Director of Licensing & Finance

Staffing

The accounting department will be experiencing a vacancy later this month, as one member of the department accepted a position in the private sector. Management is working to fill that vacancy as soon as possible.

CAPPS

The department is utilizing CAPPS financials for all FY22 financial transactions and working through new processes, while updating procedures. The third quarter financial cycle is being closed out and those financial statements will be presented at the August Finance Commission meeting.

Deployment activities continue for CAPPS HR/Payroll. Universal acceptance testing is in process. As of May 24, 2022, the project was 80% complete. Staff is developing training for all employees in preparation for agency wide cut-over and implementation on July 11, 2022.

Budget

The department is compiling information and working with department directors to prepare the FY23 draft budget. This work will continue through the end of July.

Other Items

Garza/Gonzalez and Associates has concluded its audit work and has prepared the Annual Internal Audit Report for FY2022. The report is presented elsewhere in the meeting materials.

Additionally, required quarterly reports, such as the FTE report, have been submitted.



Legal Department Report

Michael Rigby, General Counsel

June 2022

Enforcement Report

Contested Case

The OCCC currently has one contested case pending before the State Office of Administrative Hearings (SOAH), concerning ten motor vehicle sales finance licensees (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 conducted discovery and depositions. On April 12, 2022, the administrative law judge denied the motions for summary disposition filed by the Clay Cooley entities and the OCCC. The judge granted the OCCC's unopposed motion to continue the hearing from the previously scheduled April date, and a hearing before SOAH is currently scheduled for June 20–22, 2022.

Orders on Reporting Violations

In April 2022, the OCCC issued four orders against debt management providers who failed to file their 2021 annual reports by the January 31, 2022 deadline. Of these orders, one was an injunction requiring the registrant to file timely and accurate reports, and three 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 May 31, 2022				
	FYTD 2022	FY 2021	FY 2020	FY 2019
Injunction Actions				
Crafted Precious Metal Dealer	0	0	1	0
Credit Access Business	20	33	27	53
Debt Management Provider	2	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	69	133	186	262
Administrative Penalty Actions				
Crafted Precious Metal Dealer	0	0	1	0
Credit Access Business	6	12	11	14
Debt Management Provider	0	2	3	0
Motor Vehicle Sales Finance	3	8	13	19
Pawnshop	6	15	29	12
Pawnshop Employee	0	0	0	0
Property Tax Lender	0	1	3	6
Regulated Lender	27	18	18	7
Residential Mortgage Loan Originator	0	0	0	0
Total Administrative Penalty Actions	45	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	4	0	1	0
Residential Mortgage Loan Originator	0	0	0	0
Total Revocation / Suspension Actions	7	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	122	197	270	324

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

September 1, 2021 through May 31, 2022	
Cases Opened	62
Cases Closed	122
Average Number of Days to Close an Enforcement Action	107
Contested Cases Referred to SOAH	1
Contested Cases Heard at SOAH	0
Final Orders Issued	106

The OCCC has one upcoming SOAH hearing described above.

Rule Actions

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

- Adoption of amendments to 7 TAC Chapter 153 (relating to home equity lending), to amend the definition of “business day”
- Adoption of amendments to Chapter 2 (relating to residential mortgage loan originators), resulting from rule review
- Adoption of amendments to Chapter 82 (relating to administration), to implement motor vehicle records privacy requirements of SB 15 (2021)
- Readoption of Chapter 85, Subchapter A (relating to pawnshops), as well as proposed amendments to this chapter, resulting from rule review

At the August meeting, the OCCC intends to present the readoption of 7 TAC Chapter 86 (relating to registered creditors) as well as any proposed amendments to the chapter, resulting from rule review.

Federal Legislation

In March 2022, Congress enacted the federal Cyber Incident Reporting for Critical Infrastructure Act of 2022 (H.R. 2471). This legislation will require businesses in critical infrastructure sectors (including financial services companies) to report cyber incidents and ransomware payments to the U.S. Cybersecurity and Infrastructure Security Agency (CISA) within 72 hours of learning of the incident. The legislation directs CISA to adopt rules to implement the reporting requirement, and the requirement will take effect after CISA adopts a final rule.

Advisory Bulletins

From April 1, 2022 to May 31, 2022, the OCCC did not issue any advisory bulletins.

Official Interpretation Requests

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

Public Information Requests

April 1, 2022 through May 31, 2022	
Requests Received	29
Requests Closed	28
Requests Withdrawn	1
Requests Referred to Office of Attorney General	0
Average Number of Days to Address a Public Information Request	2.8

Gifts Received by the OCCC

From April 1, 2022 to May 31, 2022, the OCCC received no gifts.

D. OFFICE OF CONSUMER CREDIT COMMISSIONER

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 1, Chapter 2, Concerning Residential Mortgage Loan Originators Regulated by the Office of Consumer Credit Commissioner

PURPOSE: The purpose of the amendments to 7 TAC Chapter 2 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 2.

RECOMMENDED MOTION: I move that the Finance Commission approve the adoption of the amendments to 7 TAC Chapter 2.

*Title 7, Texas Administrative Code**Part 1. Finance Commission of Texas**Chapter 2. Residential Mortgage Loan Originators Regulated by the Office of Consumer Credit Commissioner*

The Finance Commission of Texas (commission) adopts amendments to §2.106 (relating to Denial, Suspension, or Revocation Based on Criminal History) and §2.202 (relating to Maintaining Contact Information), in 7 TAC, Chapter 2, concerning Residential Mortgage Loan Originators Regulated by the Office of Consumer Credit Commissioner.

The commission adopts the amendments to §2.106 and §2.202 without changes to the proposed text as published in the May 6, 2022, issue of the *Texas Register* (47 TexReg 2621).

The commission received no official comments on the proposed amendments.

The rules in 7 TAC Chapter 2 govern residential mortgage loan originators (RMLOs) regulated by the OCCC. In general, the purpose of the amendments to 7 TAC Chapter 2 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 2 was published in the *Texas Register* on February 4, 2022 (47 TexReg 541). The commission received no comments in response to that notice.

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

received no informal precomments on the rule text draft.

Amendments to §2.106 specify that the OCCC will receive criminal history information about an RMLO applicant through the NMLS system. Under Texas Finance Code, §180.055(a), the OCCC is authorized to consider an RMLO applicant's criminal history in determining whether to issue a license. Under Texas Finance Code, §180.054, RMLO applicants are required to submit fingerprints to NMLS, and the OCCC is authorized to use NMLS as a channeling agent for obtaining criminal history information. The amendments to §2.106(a) clarify that the OCCC receives criminal history information through NMLS.

Amendments to §2.202 specify requirements for RMLOs to maintain current contact information. Currently, §2.202 requires an RMLO to notify the OCCC if there is a change to the RMLO's address, name, or employer. Adopted subsection (a) specifies a 30-day deadline for providing updated information, similar to other OCCC rules that contain a 30-day deadline for licensees to provide updated contact information. Adopted subsection (b) explains that it is a best practice for RMLOs to regularly review contact information on file with the OCCC to ensure that it is current and correct, similar to other OCCC rules specifying this as a best practice. The OCCC requires current and correct information about RMLO licensees in order to carry out

its responsibilities under Texas Finance Code, Chapter 180.

The rule amendments are adopted under Texas Finance Code, §180.061, which authorizes the commission to adopt rules relating to criminal background checks for RMLOs, as well as rules relating to amending an RMLO license. In addition, Texas Finance Code, §180.004 authorizes the commission to implement rules to comply with Texas Finance Code, Chapter 180.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 180.

Chapter 2. Residential Mortgage Loan Originators Regulated by the Office of Consumer Credit Commissioner

Subchapter A. Application Procedures

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

(a) Criminal history record information. After an applicant submits a complete application to NMLS, including a set of fingerprints, and pays the fees required under §2.104 of this title (relating to Application and Renewal Fees), the OCCC will investigate the applicant. The OCCC will obtain criminal history record information through NMLS ~~[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 fingerprint information has been initially processed.

(b) - (f) (No change.)

Subchapter B. Operational Requirements

§2.202. Maintaining Current Information

(a) Requirement to maintain current information. An RMLO must maintain current information with NMLS. If any of the following items change, an [An] RMLO must notify the OCCC by filing a license amendment through NMLS within 30 calendar days after the RMLO has knowledge of the change ~~[, if any of the following items change]~~:

- (1) address;
- (2) name; or
- (3) employer.

(b) Best practice. It is a best practice for RMLOs to regularly review contact information on file with the OCCC to ensure that it is current and correct.

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 June 24, 2022.

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

D. 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 82, Concerning Administration

PURPOSE: The purposes of the amendments to 7 TAC Chapter 82 are to implement recent legislative amendments to Texas Transportation Code, Chapter 730, and to provide clarity to public information requestors about the agency's response to requests for motor vehicle records.

RECOMMENDED ACTION: The OCCC requests that the Finance Commission approve the adoption of amendments to 7 TAC Chapter 82.

RECOMMENDED MOTION: I move that the Finance Commission approve the adoption of the amendments to 7 TAC Chapter 82.

Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 82. Administration

The Finance Commission of Texas (commission) adopts amendments to §82.2 (relating to Public Information Requests; Charges) in 7 TAC, Chapter 82, concerning Administration.

The commission adopts the amendments to §82.2 without changes to the proposed text as published in the May 6, 2022, issue of the *Texas Register* (47 TexReg 2635).

The commission received no official comments on the proposed amendments.

In general, the purpose of rule changes to 7 TAC Chapter 82 are to implement recent legislative amendments to Texas Transportation Code, Chapter 730, and to provide clarity to public information requestors about the agency's response to requests for motor vehicle records.

In 2021, the Texas Legislature enacted SB 15 (the Texas Consumer Privacy Act Phase I). SB 15 amended Texas Transportation Code, Chapter 730 (the Motor Vehicle Records Disclosure Act), which governs the disclosure of motor vehicle records by state agencies. In particular, SB 15 added new Texas Transportation Code, §730.0121, stating: "An agency by rule shall require a requestor to delete from the requestor's records personal information received from the agency under this chapter if the requestor becomes aware that the requestor is not an authorized recipient of that information."

The adopted amendments to §82.2 implement SB 15 and describe how the OCCC handles requests for motor vehicle

records. In subsection (a), amendments add definitions of "Motor vehicle record" and "Personal information in a motor vehicle record." These definitions are consistent with existing definitions in Texas Transportation Code, Chapter 730, and are intended to provide clarity to public information requestors. The amendments also add a new subsection (g) to §82.2 describing requests for motor vehicle records. The new subsection explains that personal information in a motor vehicle record may be disclosed only to an authorized person described by Texas Transportation Code, Chapter 730. The new subsection also requires a requestor who learns that the requestor is not an authorized recipient of personal information in a motor vehicle record to delete the information from the requestor's records. The new subsection ensures consistency with new Texas Transportation Code, §730.0121 (as added by SB 15).

The rule changes are adopted under Texas Transportation Code, §730.014 and §730.0121, which authorize state agencies to adopt rules to implement and administer requirements for the disclosure of motor vehicle records. In addition, Texas Government Code, §552.230 authorizes governmental bodies to adopt reasonable rules of procedure under which public information may be inspected and copied.

The statutory provisions affected by the adoption are contained in Texas Transportation Code, Chapter 730.

Chapter 82. Administration

§82.2. Public Information Requests; Charges

(a) Definitions. The following words and terms, when used in this section, will have the following meanings, unless the context clearly indicates otherwise.

(1) Agency or OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

(2) Commissioner--The Consumer Credit Commissioner of the State of Texas.

(3) Motor vehicle record--Has the meaning provided by Texas Transportation Code, §730.003(4).

(4) Personal information in a motor vehicle record--Has the meaning provided by Texas Transportation Code, §730.003(6).

(5) ~~[(3)]~~ Public information request--A written request made for public information pursuant to Texas Government Code, Chapter 552 (the Texas Public Information Act). Another name for a "public information request" is an "open records request," and these terms may be used synonymously.

(6) ~~[(4)]~~ Readily available information--Public information that already exists in printed form, or information that is stored electronically, and is ready to be printed or copied without requiring any programming, but not information that is located in two or more separate buildings that are not physically connected with each other or information that is located in a remote storage facility as per Texas Government Code, §552.261.

(7) ~~[(5)]~~ Standard paper copy--A printed impression on one side of a piece of paper that measures up to 8 1/2 inches by 14

inches. A piece of paper that is printed on both sides will be counted as two copies.

(b) - (f) (No change.)

(g) Motor vehicle records.

(1) Generally. Requests for motor vehicle records are subject to Texas Transportation Code, Chapter 730 (the Motor Vehicle Records Disclosure Act).

(2) Disclosure of personal information in a motor vehicle record. Personal information in a motor vehicle record may be disclosed only to an authorized recipient. A requestor is an authorized recipient if the requestor is the subject of the information, has the consent of the person who is the subject of the information, or meets the criteria in Texas Transportation Code, §730.005 or §730.007.

(3) Unauthorized receipt of personal information in a motor vehicle record. If a requestor becomes aware that the requestor is not an authorized recipient of personal information in a motor vehicle record received from the OCCC, then the requestor must delete the information from the requestor's records, as provided by Texas Transportation Code, §730.0121.

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 June 24, 2022.

Audrey Spalding
Assistant General Counsel
Office of Consumer Credit Commissioner

D. OFFICE OF CONSUMER CREDIT COMMISSIONER

4. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 5, Chapter 85, Subchapter A, Concerning Rules of Operation for Pawnshops, Resulting from Rule Review

PURPOSE: Pursuant to Texas Government Code, §2001.039, the OCCC has completed the review of 7 TAC Chapter 85, 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 85, Subchapter A following rule review, because the reasons for the rules continue to exist.

RECOMMENDED MOTION: I move that we readopt 7 TAC Chapter 85, 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 85. Pawnshops and Crafted Precious Metal Dealers
Subchapter A. Rules of Operation for Pawnshops

The Finance Commission of Texas (commission) has completed the rule review of Texas Administrative Code, Title 7, Part 5, Chapter 85, Subchapter A, concerning Rules of Operation for Pawnshops, 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 one informal precomment from an industry association in response to the advance notice. The precomment recommended that the rule review address two issues. First, the association recommended addressing "COVID-19 and how it impacted pawnshops differently across the state. . . . Are pawnshops considered an essential business during a disaster? Can local governments prohibit pawnshop firearm transactions during a disaster? Does the state legislature have exclusive authority over pawnshops, even during a disaster?" Second, the association recommended that the OCCC "consider allowing pawnshops an avenue to sell their inventory at their local county fairs, flea markets, festivals, etc." The OCCC reviewed and considered this feedback. The first issue (relating to local authority during a disaster) appears to be outside the scope of OCCC rulemaking, and may be more appropriately addressed by attorney general opinions and emergency orders issued by the governor. The second issue is already addressed by Texas Finance Code, §371.153(c), which requires pawnshops to notify the OCCC of other locations where they do business. After considering this feedback, the commission and the OCCC do not intend to move forward with proposing rules on these two issues at this time.

Notice of the review of 7 TAC Chapter 85, Subchapter A was published in the April 1, 2022, issue of the *Texas Register* (47 TexReg 1701). The commission did not receive any official comments in response to that notice.

As a result of internal review by the OCCC, the commission has determined that certain revisions to the subchapter are appropriate and necessary. These proposed changes are published elsewhere in this issue of the *Texas Register*.

As a result of the rule review, the commission finds that the reasons for initially adopting the rules in 7 TAC Chapter 85, Subchapter A continue to exist, and readopts this subchapter in accordance with the requirements of Texas Government Code, §2001.039.

D. 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 85, Subchapter A, Concerning Rules of Operation for Pawnshops, Resulting from Rule Review

PURPOSE: The purpose of the amendments to 7 TAC Chapter 85, Subchapter A is to implement changes resulting from the commission's review of the subchapter under Texas Government Code, §2001.039.

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

Title 7, Texas Administrative Code

Part 5. Office of Consumer Credit Commissioner

Chapter 85. Pawnshops and Crafted Precious Metal Dealers

Subchapter A. Rules of Operation for Pawnshops

The Finance Commission of Texas (commission) proposes amendments to §85.202 (relating to Filing of New Application), §85.301 (relating to Filing of New Application), §85.420 (relating to Purchase Transactions), §85.421 (relating to Consumer Information), §85.422 (relating to Unclaimed Funds), and §85.601 (relating to Denial, Suspension, or Revocation Based on Criminal History), in 7 TAC, Chapter 85, Subchapter A, concerning Rules of Operation for Pawnshops.

The rules in 7 TAC Chapter 85, Subchapter A govern pawnshops. In general, the purpose of the proposed rule changes to 7 TAC Chapter 85, Subchapter A is to implement changes resulting from the commission's review of the subchapter under Texas Government Code, §2001.039. In March 2022, the OCCC issued an advance notice of rule review, seeking informal feedback on the rule review. The OCCC received one informal comment on the advance notice. Notice of the review of 7 TAC Chapter 85, Subchapter A was published in the *Texas Register* on April 1, 2022 (47 TexReg 1701). The commission did not receive any official comments in response to the notice published in the *Texas Register*.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC did not receive any informal precomments on the rule text draft.

Proposed amendments to §85.202 would update requirements for filing a new pawnshop license application. Currently, §85.202(a)(1)(A)(ii) requires a pawnshop license application to identify a "responsible person" who is responsible for day-to-day operations at one or more locations, and must be an individual with an ownership interest, a licensed pawnshop employee, or an applicant for a pawnshop employee license. The commission and the OCCC believe that it is unnecessary to require pawnshops to identify an owner or licensed pawnshop employee as a responsible person. Pawnshops are required to separately identify owners and principal parties under §85.202(a)(1)(B), and licensing of pawnshop employees is now optional under Texas Finance Code, §371.101 (as amended by HB 1442 in 2019). The proposal would replace the "responsible person" requirement in §85.202(a)(1)(A)(ii) with a requirement to list a "compliance officer," who must be an individual responsible for overseeing compliance, and must be authorized to receive and respond to communications from the OCCC. The amendment would enable pawnshops to identify an individual who can be contacted on a company-wide basis. The amendment is intended to ensure that each pawnshop lists an individual who can be contacted about compliance issues. In addition, a proposed amendment to §85.202(a)(2)(A)(v) would remove language suggesting that pawnshop license applicants send fingerprints directly to the OCCC. Currently, license applicants submit fingerprints through a party approved by the Texas Department of Public Safety.

A proposed amendment to §85.301 would remove language in §85.301(2)(B) suggesting that pawnshop employee license applicants send fingerprints directly to the OCCC. This is similar to the proposed change to §85.202(a)(2)(A)(v) described in the previous paragraph.

A proposed amendment to §85.420 would require pawnshops to maintain copies of certain agreements with local law enforcement. Under Texas Finance Code, §371.182, the OCCC may designate a reasonable hold period during which a pawnshop may not sell goods acquired and offered for sale. Currently, §85.420(b) provides a general hold period of 20 days, but allows a reduced hold period if the pawnshop enters a written agreement with local law enforcement for a reduced period. A proposed amendment to §85.420(b)(2) would add language specifying that if a pawnshop holds purchased items for less than 20 days under an agreement with local law enforcement, then the pawnshop must maintain a copy of the agreement that authorizes the reduced hold period. This amendment is intended to help ensure that OCCC can verify compliance with the requirements for holding purchased items.

Proposed amendments to §85.421 would update requirements for providing information to consumers. Under Texas Finance Code, §371.183, the commission may adopt rules requiring pawnshops to display materials provided by the OCCC that are designed to: (1) inform a consumer of the duties, rights, and responsibilities of parties to a pawn transaction; and (2) inform and assist a robbery, burglary, or theft victim. To implement this requirement, the OCCC has prepared a consumer brochure titled "Pawn Facts," which is available on the OCCC's website and may be ordered by pawnshops.

Currently, §85.421(a) states that the OCCC will provide each pawnshop a display and printed materials that must be placed in a location clearly visible to the consumer, and requires the pawnshop to refill the display. A proposed amendment to §85.421(a) would remove language suggesting that the OCCC will provide each pawnshop with a display and printed materials at the time of initial licensing. The amended language would still provide that pawnshops may request copies from the OCCC, or may print copies from the OCCC's website. This amendment would maintain flexibility for pawnshops while reducing the cost for the OCCC to send printed materials and displays. The commission and the OCCC invite comments from stakeholders on the feasibility of using other methods to disclose this information (e.g., in-store displays, website links) while also ensuring that each consumer can view the information.

Proposed amendments to §85.422 would make technical changes relating to the escheat of unclaimed funds. Amended text in §85.422(3) 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.

Proposed amendments to §85.601 relate to the OCCC's review of the criminal history of a pawnshop applicant or licensee. The OCCC is authorized to review criminal history of pawnshop applicants and licensees (as well as pawnshop employee applicants and licensees) under Texas Occupations Code, Chapter 53; Texas Finance Code, §14.151; and Texas Government Code,

§411.095. The proposed amendments to §85.601 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 §85.601 would implement these statutory changes from HB 1342. Other proposed amendments to §85.601 include technical corrections, clarifying changes, and updates to citations.

Mirand Diamond, Director of Licensing and Finance, has determined that for the first five-year period the proposed rule changes are in effect, there will be fiscal implications for state government as a result of administering the rules. The OCCC estimates that its costs will be reduced by approximately \$2,200 per year if the proposed amendments to §85.421 are adopted. This estimate is based on the reduced cost of ordering printed consumer brochures. The OCCC does not anticipate any change in costs to the state resulting from the proposed amendments to rule sections other than §85.421. The OCCC does not anticipate any change in revenue to the state as a result of administering the rules. The OCCC does not anticipate any fiscal implications for local government as a result of administering the rules.

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 be consistent with legislation recently passed by the legislature, and will provide additional flexibility to licensees in providing license contact information.

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 expand current §85.420 by requiring pawnshops to maintain certain agreements with local law enforcement. The proposal would limit current §85.202 by removing restrictions relating to designating a responsible person; would limit current §85.421 by removing language on providing printed materials; and would limit current §85.601 by amending grounds on which the OCCC may deny, suspend, or revoke a license on grounds of criminal history. The proposal would not 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 amendments are proposed under Texas Finance Code, §371.006, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 371 (the Texas Pawnshop Act). The amendments to §85.421 are proposed under Texas Finance Code, §371.183, which authorizes the commission to adopt rules requiring a pawnshop to display consumer materials. In addition, Texas Finance Code, §11.304

authorizes the Finance 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 371.

Division 2. Pawnshop License

§85.202. Filing of New Application

(a) An application for issuance of a new pawnshop license must be submitted in a format prescribed by the OCCC at the date of filing and in accordance with the OCCC's instructions. The OCCC may accept the use of prescribed alternative formats in order to accept approved electronic submissions. Appropriate fees must be filed with the application, and the application must include the following:

(1) Required application information. All questions must be answered.

(A) Application for license.

(i) Location. A physical street address must be listed for the proposed location for which the applicant can show proof of ownership or an executed lease agreement. A post office box or a mail box location at a private mail-receiving service may not be used except for a physical location that does not receive general mail delivery. An application for a new license is not permitted if the address or the full legal property description has not yet been determined or the application is for an inactive license.

(ii) Compliance officer. The application must list a compliance officer.

The compliance officer must be an individual responsible for overseeing compliance, and must be authorized to receive and respond to communications from the OCCC.
~~[Responsible person. The person responsible for the day-to-day operations of one or more of the applicant's proposed locations must be named. The responsible person is also known as the location contact. This person must be:]~~

~~[(I) an individual who has an ownership interest in the pawnshop license and is named on the application;]~~

~~[(II) a licensed pawnshop employee identified by license number; or]~~

~~[(III) an applicant for a pawnshop employee license with the date of application.]~~

(iii) Signature. Electronic signatures will be accepted in a manner approved by the commissioner. Each applicant must have the application signed by an authorized individual.

(B) - (J) (No change.)

(2) Other required filings.

(A) Fingerprints.

(i) For all persons meeting the definition of "principal party" as defined in §85.102 of this title, a complete set of legible fingerprints must be provided. All fingerprints should be submitted in a format prescribed by the OCCC and approved by the Texas Department of Public Safety and the Federal Bureau of Investigation.

(ii) For limited partnerships, if the owners and principal parties under paragraph (1)(B)(iii)(I) of this subsection

does not produce a natural person, the applicant must provide a complete set of legible fingerprints for individuals who are associated with the general partner as principal parties.

(iii) For entities with complex ownership structures that result in the identification of individuals to be fingerprinted who do not have a substantial relationship to the proposed applicant, the applicant may submit a request to fingerprint three officers or similar employees with significant involvement in the proposed business. The request should describe the relationship and significant involvement of the individuals in the proposed business. The agency may approve the request, seek alternative appropriate individuals, or deny the request.

(iv) For individuals who have previously been licensed by the OCCC and principal parties of entities currently licensed, fingerprints are generally not required if the fingerprints are on record with the OCCC, are less than 10 years old, and have been processed by both the Texas Department of Public Safety and the Federal Bureau of Investigation. Upon request, individuals and principal parties previously licensed by the OCCC may be required to submit a new set of fingerprints.

(v) For individuals who have previously submitted fingerprints to another state agency (e.g., Texas Department of Savings and Mortgage Lending), fingerprints are still required to be submitted under ~~[to the OCCC, as per]~~ Texas Finance Code, §14.152. Fingerprints cannot be disclosed to others, except as authorized by Texas Government Code, §560.002.

(B) - (I) (No change.)

(b) - (c) (No change.)

Division 3. Pawnshop Employee License

§85.301. Filing of New Application

An application for issuance of a new pawnshop employee license must be submitted in a format prescribed by the OCCC at the date of filing and in accordance with the OCCC's instructions. All questions must be answered. Appropriate fees must be filed with the application, and the application must include the following:

(1) (No change.)

(2) Fingerprints.

(A) A complete set of legible fingerprints must be provided for each applicant. An individual who has previously been licensed by the OCCC is generally not required to provide fingerprints. The commissioner may require fingerprints of an employee if the commissioner believes that the individual has not been fingerprinted for a significant amount of time and believes a new set of fingerprints might provide additional information about the individual's criminal background. All fingerprints should be submitted in a format prescribed by the OCCC and approved by the Texas Department of Public Safety and the Federal Bureau of Investigation.

(B) For individuals who have previously submitted fingerprints to another state agency (e.g., Texas Department of Licensing and Regulation), fingerprints are still required to be submitted under [to the OCCC, as per] Texas Finance Code, §14.152. Fingerprints cannot be disclosed to others,

except as authorized by Texas Government Code, §560.002.

Division 4. Operation of Pawnshops

§85.420. Purchase Transactions

(a) (No change.)

(b) Hold period.

(1) Each item of personal property purchased from the general public must be held at the licensed pawnshop location from the purchase date before being modified, changed, sold, or disposed of in any manner for a period of:

(A) at least 20 days; or

(B) a period of less than 20 days if a local jurisdiction has enacted an ordinance that specifies the hold period.

(2) A reduced hold period of less than 20 days may be agreed upon by the pawnbroker and the law enforcement agency if the pawn and purchase ticket information is exchanged electronically. The agreement for a reduced hold period must not conflict with any local ordinance and must be submitted to the commissioner in writing by and through the chief local law enforcement officer for the jurisdiction. If a pawnshop holds personal property for less than 20 days under an agreement with local law enforcement, then the pawnshop must maintain a copy of the agreement, and must provide a copy of the agreement to the OCCC upon request.

§85.421. Consumer Information

(a) Consumer education. Each pawnshop must provide financial education information as prescribed by the OCCC. The pawnshop must place the information in a location clearly visible to the consumer. To comply with this requirement, the pawnshop may request copies of brochures from the OCCC, or print copies of brochures available on the OCCC's website. [The OCCC will provide each pawnshop, at the time of initial licensing, a display and printed materials that must be placed in a location clearly visible to the consumer from the register. The pawnshop must refill the display as necessary by requesting additional copies from the OCCC, or by printing additional copies of the consumer brochures available on the OCCC's website.]

(b) (No change.)

§85.422. Unclaimed Funds

An amount due a pledgor unclaimed for one year must be transferred to an escheat suspense account. Reference to the transfer must be made on the printed copy in the numerical pawn ticket file.

(1) Proof of attempt to pay refund. Evidence of a bona fide attempt to pay a refund to a pledgor must be maintained in a file readily available for examination. The minimum acceptable evidence is a registered or certified letter addressed to the last known address of the pledgor. The file must include any information that indicates the pledgor's whereabouts are unknown, the pledgor has left the community, or has died leaving no wills or heirs.

(2) Use of unclaimed funds. Use of unclaimed funds within the business until such time as paid to the pledgor, the estate of the pledgor, or to the State of Texas is not

prohibited; however, funds transferred to the escheat account must not be commingled with the funds of the business.

(3) Payment of unclaimed funds. 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.

Division 6. License Revocation, Suspension, and Surrender

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

(a) Criminal history record information. After an applicant for a pawnshop license or pawnshop employee license submits a complete license application, including all required fingerprints, and pays the fees required by §85.211 of this title (relating to Fees) or §85.306 of this title (relating to Fees), the OCCC will investigate the applicant and any 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 any 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 pawnshop license or pawnshop employee 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 371, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Being a pawnbroker or pawnshop employee involves or may involve representations to borrowers and sellers, receiving money from borrowers, collecting due amounts in a legal manner, maintenance of accounts to make loans and replace lost or damaged goods, and compliance with reporting requirements to governmental agencies relating to certain transactions including firearms. 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 (including receiving or concealing stolen property);

(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:]

~~[(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.

(1) The OCCC may deny a pawnshop license application if the applicant does not show that the business will be operated lawfully and fairly, or if the applicant does not show that the applicant or the applicant's owners have the financial responsibility, experience, character, and general fitness to command the confidence of the public, as provided by Texas Finance Code, §371.052(a).

(2) The OCCC may deny a pawnshop employee license if the applicant is not of good business repute, or if the applicant does not possess the character and general fitness necessary to warrant the belief that the individual will operate the business lawfully

and fairly, as provided by Texas Finance Code, §371.102(a).

(3) In conducting its review of character and fitness, the OCCC will consider the criminal history of the applicant and any principal parties. If the applicant or a principal party has been convicted of an offense described by subsections (c)(1) or ~~(f)(1)~~ ~~[(4)(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)(2)-(3) [§53.021(a)(3)-(4)];~~

~~(2) [(3)] a conviction of a pawnshop licensee or a principal party for an offense directly related to the licensed occupation, as provided by Texas Finance Code, §371.251(a)(6);~~

~~(3) [(4)] errors or incomplete information in the license application;~~

~~(4) [(5)] 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, §371.251(a)(3) and §371.255(2);~~

~~(5) [(6)] a finding by the OCCC that the financial responsibility, experience, character, or general fitness of a pawnshop licensee or a principal party do not command the confidence of the public or warrant the belief that the business will be operated lawfully, fairly, and within the purposes of this chapter, as provided by Texas Finance Code, §371.251(a)(7); and~~

~~(6) [(7)] a finding by the OCCC that the character, business reputation, and general fitness of a pawnshop employee license holder do not warrant belief that the license holder will operate the business lawfully and fairly, as provided by Texas Finance Code, §371.255(3).~~

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 June 24, 2022.

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