

A.

Finance Commission

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FINANCE COMMISSION OF TEXAS

MEETING DATEAugust 19, 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 DATESOctober 28, 2022
December 16, 2022
February 17, 2023
April 21, 2023
June 16, 2023
August 18, 2023
October 20, 2023
December 15, 2023

*** 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, August 19, 2022
9:00 a.m.

or Upon Adjournment of the Audit Committee Meeting
Finance Commission Building
William F. Aldridge Hearing Room
2601 North Lamar Boulevard
Austin, Texas 78705

Section A.3 will take up agenda items A1, A8, B2, B3, C2, D2 and D3, 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 June 24, 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 Agencies' 2022 Third Quarter Investment Officer Reports

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

B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Readoption of the Investment Policies for:

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

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

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

D. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' Fiscal Year 2023 Operating Budgets

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

E. 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 Finance Commission of Texas 2023-2027 Strategic Plan

7. Discussion of and Possible Vote to Take Action on the Agency Priorities for Fiscal Year 2023 for the Commissioners of the Office of Consumer Credit Commissioner, Department of Savings and Mortgage Lending and the Texas Department of Banking
8. ***Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC, Part 1, §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. 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 Readoption of 7 TAC, Part 5, Chapter 86, Concerning Retail Creditors, Resulting from Rule Review***
3. ***Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 5, Chapter 85, Subchapter A, Concerning Rules of Operation for Pawnshops, Resulting from Rule Review***
4. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

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

C. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

1. Industry Status and Departmental Operations: a) Thrift Regulation Division Activities; b) Mortgage Regulation Division Activities; c) Operations Division Activities; d) Legal Division Activities, including Consumer Complaints and Gift Reporting; and e) Legislative Activities
2. ***Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 4, Chapter 75, Concerning Applications, Chapter 76, Concerning Miscellaneous, and Chapter 77, Concerning Loans, Investments, Savings, and Deposits, Resulting from Rule Review***

3. 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 75, Concerning Applications, Resulting from Rule Review
4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 76, Concerning Miscellaneous, Resulting from Rule Review
5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 77, Concerning, Loans, Investments, Savings and Deposits, Resulting from Rule Review
6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments in 7 TAC, Part 4, Chapter 79, §79.4, Concerning Bond Requirement
7. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

D. TEXAS DEPARTMENT OF BANKING

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

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, June 24, 2022**

The Finance Commission of Texas convened at 9:30 a.m., on June 24, 2022, with the following members present:

Finance Commission Members in Attendance:

Phillip Holt, Chairman	Will Lucas
George "Cliff" McCauley, Vice Chairman	Sharon McCormick
Bob Borochoff	Roselyn "Rosie" Morris
Debbie Scanlon	Vince Puente

Finance Commission Members Absent:

Hector Cerna	Laura Warren	Dr. Robin Armstrong
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Commissioner Charles G. Cooper announced there was a quorum with eight (8) members present. (1:13 on audio file).

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
A. Finance Commission Matters		
1. Review and Approval of the Minutes of the April 22, 2022 Finance Commission Meeting	On Consent Agenda – Item A1 This item Approved on the Consent Agenda.	n/a
2. General Public Comment	No Action Required.	1:27 start of discussion
3. Consent Agenda – Item A1, A7, B3, and D2 – D4	Debbie Scanlon made a motion to Approve Consent Agenda item A1, A7, B3, and D2 – D4. Bob Borochoff seconded and the motion passed.	3:13 start of discussion 3:34 Vote
4. Finance Commission Operations	No Action Required.	4:01 start of discussion
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	Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Department of Savings and Mortgage Lending’s 2022 Annual Internal Audit Report as Prepared and Presented by Garza/Gonzalez and Associates passed.	4:15 start of discussion 4:28 Vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
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	Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Texas Department of Banking’s 2022 Annual Internal Audit Report Prepared and Presented by Garza/Gonzalez and Associates passed.	4:42 start of discussion 4:53 Vote
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	Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Office of Consumer Credit Commissioner’s 2022 Annual Internal Audit Report Prepared and Presented by Garza/Gonzalez and Associates passed	5:08 start of discussion 5:19 Vote
D. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Activities of the Texas Financial Education Endowment Fund	Coming upon Recommendation from the Audit Committee, no second is required and the motion to recommend that the Finance Commission adopt a modification to the TFEE Grant Administration of Policy Manual to add a new Subsection F to Section I that would increase the maximum grant award not to exceed \$45,000 for one-year period and \$90,000 for a two-year period passed.	5:35 start of discussion 5:53 Vote
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	Vince Puente made a motion to Approve the Department of Savings and Mortgage Lending’s 2023-2027 Strategic Plan. Sharon McCormick seconded and the motion passed. Bob Borochoff made a motion to Approve the Texas Department of Banking’s 2023-2027 Strategic Plan. Will Lucas seconded and the motion passed. Cliff McCauley made a motion to Approve to the Office of Consumer Credit Commissioner’s 2023-2027 Strategic Plan. Sharon McCormick seconded and the motion passed.	6:21 start of discussion 11:52 Vote 12:15 Vote 12:35 Vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
B. Discussion of the Finance Commission of Texas 2023-2027 Strategic Plan	No Action Required.	13:04 start of discussion
7. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 8, Chapter 153, Concerning Home Equity Lending	On Consent Agenda – Item A7 This item approved on the Consent Agenda.	n/a
8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC, §5.107, Concerning Employee Leave Pools	Debbie Scanlon made a motion to Approve the Proposal and Publication for Comment of New 7 TAC, §5.107, Concerning Employee Leave Pools. Will Lucas seconded and the motion passed.	15:44 start of discussion 19:13 Vote
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	Deferred to Executive Session – no vote taken.	n/a
10. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to §551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property	Deferred to Executive Session – no vote taken.	n/a
11. Discussion of and Consultation with Attorney and Possible Vote to Take Action Pursuant to §551.071, Texas Government Code, for the Purpose of Seeking the Advice or Attorney-Client Privileged Communications from our Attorneys, including Matters Related to the Potential Financial Exposure of the Finance Commission Agencies and Their Officers, and the Finance Commission and its Officers and Including Matters of Pending and Contemplated Litigation	Deferred to Executive Session – no vote taken.	n/a
12. Discussion of and Consultation on Security Audit, Possible Issue Related to Confidential or Sensitive Information, Security Breach Audit and Assessments or Deployment Related to Information Resources Technology as Authorized by §§ 551.076 and 551.089, Texas Government Code	Deferred to Executive Session – no vote taken.	n/a

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
B. Department of Savings and Mortgage Lending		
1. Industry Status and Departmental Operations: a) Thrift Regulation Division Activities; b) Mortgage Regulation Division Activities; c) Operations Division Activities; d) Legal Division Activities, including Consumer Complaints and Gift Reporting; and e) Legislative Activities	No Action Required.	19:51 start of discussion
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	Sharon McCormick made a motion to Approve the Adoption of New Rules and Repeals in 7 TAC, Part 4, Chapter 51, Concerning Charter Applications, Resulting from Rule Review. Will Lucas seconded and the motion passed.	39:07 start of discussion 40:30 Vote
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	On Consent Agenda – Item B3 This item approved on the Consent Agenda.	n/a
4. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Action Required.	n/a
C. Texas Department of Banking		
1. Industry Status and Departmental Operations: a) Current Issues Affecting Department’s Regulated Entities; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Non-Depository Supervision Division Activities; e) Administrative, Staffing and Fiscal Division Activities; f) Strategic Support Division Activities including Consumer Complaint Data; g) Legal Division Activities including Enforcement Activity and Gift Reporting; and h) Legislative Activities	No Action Required.	41:08 start of discussion
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	Will Lucas made a motion to Approve the Proposal and Publication for Comment of Amendments to 7 TAC, Part 1, Chapter 3, Concerning State Bank Regulation, Resulting from Rule Review. Sharon McCormick seconded and the motion passed.	1:10:01 start of discussion 1:18:45 vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
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	Sharon McCormick made a motion to Approve the Proposal and Publication for Comment of Amendments to 7 TAC, Part 2, §17.3, Concerning Sale or Lease Agreements with Trust Company Insiders. Roselyn Morris seconded and the motion passed.	1:19:32 start of discussion 1:20:27 vote
4. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Action Required.	n/a
D. Office of Consumer Credit Commissioner		
1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities	No Action Required.	1:21:06 start of discussion
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	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 Amendments to 7 TAC, Part 5, Chapter 82, Concerning Administration	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 5, Chapter 85, Subchapter A, Concerning Rules of Operation for Pawnshops, Resulting from 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 Amendments to 7 TAC, Part 5, Chapter 85, Subchapter A, Concerning Rules of Operation for Pawnshops, Resulting from Rule Review	Debbie Scanlon made a motion to Approve the Proposal and Publication for Comment of Amendments to 7 TAC, Part 5, Chapter 85, Subchapter A, Concerning Rules of Operation for Pawnshops. Cliff McCauley seconded and the motion passed.	1:42:44 start of discussion 1:47:25 Vote
6. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation <i>Ernest Polk v. Texas Office of Consumer Credit Commissioner; Cause No. 2018-04375, in the 281st Judicial District Court of Harris County, Texas</i>	No Action Required.	n/a

Chairman Phillip Holt called for an Executive Session at 11:18 a.m. (1:48:10 on the audio file). The open meeting resumed at 11:48 a.m. (1:49:10 on the audio file).

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
Executive Session		
10. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to §551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property	No Action Taken	n/a
11. Discussion of 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 Action Taken.	n/a

There being no further business, Chairman Phillip Holt adjourned the meeting of the Finance Commission at 11:49 p.m. (1:49:32 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

August 19, 2022

A. Finance Commission Matters

1. Review and Approval of the Minutes of the June 24, 2022 Finance Commission Meeting
8. Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC, Part 1, §5.107, Concerning Employee Leave Pools

B. Office of Consumer Credit Commissioner

2. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 5, Chapter 86, Concerning Retail Creditors, Resulting from Rule Review
3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 5, Chapter 85, Subchapter A, Concerning Rules of Operation for Pawnshops, Resulting from Rule Review

C. Department of Savings and Mortgage Lending

2. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 4, Chapter 75, Concerning Applications, Chapter 76, Concerning Miscellaneous, and Chapter 77, Concerning Loans, Investments, Savings, and Deposits, Resulting from Rule Review

D. Texas Department of Banking

2. Discussion of and Possible Vote to Take Action on the Adoption 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 Adoption of Amendments to 7 TAC, Part 2, §17.3, Concerning Sale or Lease Agreements with Trust Company Insiders

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Office of Consumer Credit Commissioner

Agency Priorities

FY 2023

1. LEGISLATIVE

1.1. 88th Legislative Session.

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

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

2. REGULATORY ACTIVITIES

2.1. Regulated Entities - Supervision.

2.1.1. Objective: Supervise and monitor the jurisdictionally appropriate industry segments for compliance with state and federal law. Investigate illegal activity. Take appropriate enforcement actions to ensure compliance with state and federal law.

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

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

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

2.1.3. Objective: Continue to actively engage in regulatory activities and supervisory issues relating to consumer finance, auto finance, and payday lending at the national and multistate level.

Measure: Maintain active contact with other state and federal regulators, independently and through regulatory associations to keep abreast of trends and emerging issues that may impact the OCCC's regulatory responsibilities or the regulated industries. Engage in and respond as appropriate to developing issues that impact the OCCC or its regulated entities.

2.1.4. Objective: Continue to implement Networked Supervision Program by developing processes for using the State Examination System (SES) and participating in auto and mortgage multistate exams.

Measure: Report on the number of auto finance and mortgage multistate exams in which OCCC participated.

2.2. Licensing.

2.2.1. Objective: Maintain a focus on ensuring prompt and effective customer service. Process 80% of license applications within 60 days from received date to completion date. Provide professional development and training opportunities to licensing staff once per quarter.

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

3. POLICY AND RULE DEVELOPMENT

3.1. Rulemaking.

3.1.1. Objective: Complete the rule review for 7 TAC Chapter 90 (relating to plain language contracts for regulated lenders). Work with stakeholders to clarify and improve rules.

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

3.1.2. Objective: Prepare any rule proposals necessary to implement 2023 legislation. Work with stakeholders to seek feedback on proposed rules.

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

4. CONSUMER ISSUES / COMMUNICATION & OUTREACH STRATEGIES

4.1 Texas Financial Education Endowment Fund (TFEE).

4.1.1. Objective: Administer the 2022-2023 TFEE grant cycle, including monitoring the progress of grant recipient's performance, reporting on grant award program progress, and processing reimbursement requests. Launch the application process for the 2023-2024 grant cycle, including expanding outreach, reviewing forms, manuals, and reimbursement procedures to ensure best practices. Coordinate Grant Advisory Committee activities, grant application reviews, recommend grant award recipients, monitor grant award recipients, and process reimbursement requests.

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

4.2 Financial Education

4.2.1. Objective: Identify traditionally underserved populations and locations in need of financial education. Provide and support financial education by conducting financial education events and conducting outreach to community organizations, state agencies, non-profit organizations, and consumer advocacy groups that may benefit from financial education events. Continue to collaborate with the Department of Banking in the promotion and delivery of financial education. Continue to offer financial education content by remote learning and webinar mediums while also increasing in-person events.

Measure: Report on number of people and programs reached.

4.3. Industry and Stakeholder Outreach

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

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

5. AGENCY MANAGEMENT

5.1. Performance Measures.

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

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

5.2. Human Resources.

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

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

- 5.2.2. Objective:** Promote opportunities for staff professional development. Ensure that examiners and investigators receive a minimum of 40 hours of continuing education. Ensure that administrative staff have additional professional or job-related training opportunities and that at least 50% receive such training.

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

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

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

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

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

Measure: Review internal financial statements and variances on a monthly basis. Submit quarterly financial data relating to the agency's financial position and fund balance for review by the Finance Commission. Report on activities related to functionality and evaluation of CAPPs enhancements.

- 5.3.2. Objective:** Continue to work towards permanent relocation, in collaboration with the other Commission agencies, TxDOT and the Office of the Governor.

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

- 5.3.3. Objective:** Periodically review internal controls and processes to improve the efficiency and effectiveness of the agency. Coordinate with the Department of Banking and Savings and Mortgage Lending Department, when possible, to minimize duplication of duties and processes.

Measure: Report on improvements identified and implemented.

5.4. Information Technology.

- 5.4.1. Objective: Productivity Cloud.** Migrate agency endpoint computers to the MS Office 365 application suite. Prevalent dispersal of O365 among other organizations in and beyond

Texas means some compatibility issues will be immediately mitigated. Operations will benefit from continuity with some familiar apps (e.g., Word, Excel) and ready integration with other communications tools (MS Teams, SharePoint).

Measure: Successful, on-time migration, with anticipated implementation by March 31, 2023.

- 5.4.2 Objective: ALECS Enhancements.** Continue to refine and implement enhancements to ALECS through the change management process. ALECS requires thorough user acceptance testing with every new build, sometimes consuming massive staff resources. Develop an automated testing protocol that would lead to efficiencies, consistency of testing protocols, and savings of costs and time.

Measure: Reporting on ALECS enhancements. Successful implementation of the automated testing program by May 31, 2023.

- 5.4.3 Objective: Technology Modernization and Security Enhancements.** Evaluate OCCC's technology posture with a focus towards keeping resources up-to-date and deploying modern technology improvements and security enhancements. Ultimately, migrate the agency to Microsoft Windows 11 as exclusive endpoint operating system in FY'24 which will require modernization of a portion of the currently deployed endpoint fleet. OCCC's network stack is reliable but aging. New components will bring security improvements and mitigate against hardware faults. Deploy other projects and enhancements as appropriate.

Measure: Reporting on the phased update of endpoint computer fleet to Windows 11 compatibility without depreciating active assets unnecessarily. Successful integration of new network component units with no loss of operations or communications. Reporting on other technology modernization efforts and security enhancements.

FY 23 Performance Measures		FY 23 Target	FY 22 Target
Office of Consumer Credit Commissioner			
Consumer Protection:			
Outcome Measures (Annual)			
Key	Monies returned to consumers	\$12,000,000	12,500,000
Key	Percentage of written complaints closed within 90 days ¹	85%	85%
Key	Percentage of examinations reporting acceptable level of compliance ²	85%	85%
	Percentage of licensed locations and registered offices examined annually	18%	18%
	Percentage of repeat referrals for enforcement action	n/a	25%
	Percentage of enforcement actions closed within targeted timeframe	75%	75%
Output Measures (Quarterly)			
Key	Number of complaints closed ¹	1750	1750
Key	Number of examinations completed ¹	3150	3000
	Number of investigations completed	75	75
	Number of enforcement actions taken	200	250
	Number of contested cases heard at SOAH	n/a	2
	Number of contested cases docketed at SOAH	4	n/a
	Number of compliance aids and tools published	45	45
	Number of industry stakeholder and outreach events hosted or attended by OCC staff	30	30
Efficiency Measures (Annual)			
	Average number of days for all complaints to reach final disposition	60	60
	Average number of days to close a complaint	45	45
	Average direct cost per complaint ²	\$165	\$180
	Average direct cost per examination	\$1,550	\$1,650
Key	Average number of days to close an enforcement action	100	100
Effective Licensing & Registration:			
Outcome Measures (Annual)			
Key	Percentage of business license applications processed within 60 days	80%	85%
Output Measures (Quarterly)			
Key	Number of business license applications processed ¹	1300	1800
	Number of pawnshop employee license applications processed	375	475
	Number of residential mortgage loan originator licenses processed ¹	125	100
Efficiency Measures (Annual)			
Key	Average processing time (days) for business license applications	45	45
	Average processing time (days) for pawnshop employee applications	30	30
	Average processing time (days) for residential mortgage loan originators	15	15
Efficient and Effective Agency Operation:			
Outcome Measures (Annual)			
Key	Percentage of regular employees separated from the agency ¹	16%	16%
	Percentage of public information requests addressed within 5 business days	80%	80%
	Percentage of actual expenditures to budgeted expenditures ¹	95%	95%
Output Measures (Quarterly)			
	Number of public information requests closed	185	185
	Number of public information requests withdrawn	8	8
Efficiency Measures (Annual)			
	Average number of days to address a public information request	3	2.2
Explanatory Measures (Annual)			
	Number of public information requests received	193	193
Financial Education:			
Output Measures (Quarterly)			
Key	Number of people receiving direct educational services	650	900
	Percentage of TFE award recipients who reached their consumer participation goal within the grant period	100%	100%

¹ These measures are comparable to similar measures with the Departments of Banking and Savings and Mortgage Lending

² These measures are comparable to similar measures with the Department of Savings and Mortgage Lending

Agency Priorities for Fiscal Year 2023

I. Legislative – State and National Legislation

I.1 Objective: Monitor legislation throughout the 88th Legislative Session that may affect the Department or its regulated industries.

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

I.2 Objective: Serve as a resource for the Texas Legislature and other members of State leadership by responding promptly and accurately to any information requests, and providing comprehensive resource materials.

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

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

Measure: Communicate relevant information to the Finance Commission and regulated industries as deemed necessary.

II. Regulation – Thrift and Mortgage

II.1 Objective: Establish performance measures to allow for monitoring of the agency's efforts to effectively and efficiently meet Department goals.

Measure: Meet or exceed performance measures. Report performance measures quarterly to the Finance Commission.

II.2 Objective: Monitor the Department savings banks' risk profiles to allow for understanding of how changes in the economic environment may impact the overall condition. Ensure supervisory action is appropriate to address heightened risk within the portfolio.

Measure: Complete off-site monitoring of savings banks on a quarterly bases to identify changes in risk profile of state savings banks and report overall portfolio status to Finance Commission. Initiate supervisory response when necessary.

II.3 Objective: Monitor emerging issues in the financial services industry and bring awareness to the Thrift industry as appropriate.

Measure: Participate in meetings, webinars, and other training to stay appraised of topics of interest. Report on emerging issues to the Finance Commission and the Thrift Industry.

II.4 Objective: Evaluate processes and procedures, as well as new technologies, for added efficiencies in thrift supervision and examination.

Measure: Continue to assess, document and communicate updates to Thrift Supervision and Examination procedures to staff.

DEPARTMENT OF
SAVINGS AND MORTGAGE LENDING

II.5 Objective: Continue compliance examinations of mortgage companies and Residential Mortgage Loan Originators, licensed under Finance Code, Chapters 156, 157, and 159 respectively; to ensure that licensees comply with applicable laws and regulations when conducting business with Texas consumers. Analyze recurring examination findings and take steps to communicate best practices to the mortgage industry.

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

II.6 Objective: Initiate appropriate regulatory enforcement to ensure compliance with federal and state laws and regulations.

Measure: Report on enforcement actions.

II.7 Objective: Retain prompt resolution times on consumer complaints.

Measure:

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

II.8 Objective: Process complete licensing applications and registrations in a timely manner.

Measure:

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

II.9 Objective: Participate in the development and implementation of home equity interpretations.

Measure:

- a. Continued involvement in meetings of the Home Equity Lending Working Group as it develops recommended home equity rules and interpretations.
- b. Implement any rule and interpretations adopted by the Finance Commission and the Credit Union Commission.

II.10 Objective: Remain active and involved at the national level on supervisory issues affecting savings banks and the mortgage industry.

Measure:

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

DEPARTMENT OF
SAVINGS AND MORTGAGE LENDING

II.11 Objective: Establish, administer, and maintain a Mortgage Grant Fund as required by Subchapter G of the Chapter 156 of the Texas Finance Code.

Measure:

- a. Develop the Mortgage Grant Fund Investment Policy, program guidelines, Grant Application and Eligibility Checklist, and Grant Agreement pursuant to the Mortgage Grant Administration Manual that establishes the policies and procedures for governing the administration of the fund and the issuance of any grant funds.
- b. Appoint a Grant Coordinator to assist the Commissioner in discharging his or her duties related to the Mortgage Grant Fund.
- c. Establish a Mortgage Grant Advisory Committee to serve in an advisory role and make program recommendations to the Commissioner and Grant Coordinator regarding the administration of the fund and the award of grant(s) from the Mortgage Grant Fund.
- d. Provide periodic reports to the Finance Commission on the creation, development, and implementation of the Mortgage Grant Fund.

II.12 Objective: Adopt and implement the use of the CSBS State Examination System (SES) for multi-state and coordinated examinations of non-depository mortgage entities.

Measure:

- a. Submit the SES Agency Interest Form to the Conference of State Bank Supervisors (CSBS).
- b. Compare the Department's standard information requests to the standard information requests found in the SES library.
- c. Develop the Department's Industry and Communication Plan to inform the mortgage industry of the Department's transition to SES for multi-state examinations.
- d. Complete the necessary training to utilize the SES.
- e. Develop examination policies, procedures, and work items for the use of SES.
- f. Provide any additional training to Financial Examiners to conduct examinations in SES.

II.13 Objective: Adopt and implement the use of electronic surety bonds in NMLS for residential mortgage loan servicers subject to Finance Code, Chapter 158.

Measure:

- a. Revise the Residential Mortgage Loan Servicer Bond to comply with all necessary requirements for an electronic surety bond (ESB).
- b. Submit the revised ESB and ESB Intent to Adopt Form to NLMS.
- c. Update the surety bond rule for residential mortgage loan servicers to permit the use of ESB.
- d. Develop and submit the Department's Conversion Plan for the transition to ESB to the NMLS State Relations Team.
- e. Review and approve SRR communication to Surety Companies and Providers alerting them of the adoption of ESB for residential mortgage loan servicers.
- f. Send communication to the Department's residential mortgage loan servicers of the ESB adoption.
- g. Review and approve the News Item to be posted on the NMLS Resource Center.
- h. Provide training to the appropriate Mortgage Licensing staff for the adoption and implementation of the ESB process.
- i. Review and update the company checklist for residential mortgage loan servicers found on the State Licensing Checklist in NMLS.
- j. Update the License Settings and Fee System (LSFS) to reflect the adoption of ESB.
- k. Develop policies, procedures, and work items for the use of ESBs.

DEPARTMENT OF
SAVINGS AND MORTGAGE LENDING

III. Policy and Rule Development

III.1 Objective: Monitor and modify Texas Administrative Code rules as necessary to reflect changes in state and federal laws and address the dynamics of the changing industries.

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

III.2 Objective: Propose rules necessary to implement enacted bills that impact the Department or the industries.

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

IV. Industry Outreach and Communication

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

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

V. Agency Operations

V.1 Objective: Recruit well qualified personnel, while seeking to broaden the Department's workforce diversity. Train and cross-train employees as needed to minimize knowledge loss due to employee departure and to prepare for business needs due to changes in regulated industries and/or technology. Provide and promote opportunities for professional development through individual training plans.

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

V.2 Objective: Meet or exceed 90% of the key performance measures within the Department's control. Strive to reduce deficiencies, if any, in the performance measures outside the Department's control. (See Attachment A for all Performance Measures)

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

V.3 Objective: Periodically review internal controls and processes to improve the efficiency and effectiveness of the agency. Coordinate with the Office of Consumer Credit Commissioner and Department of Banking, when possible, to minimize duplication of duties and processes.

Measure: Report on improvements identified and implemented.

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

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

DEPARTMENT OF
SAVINGS AND MORTGAGE LENDING

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

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

V.6 Objective: Continue activities related to the Centralized Accounting Payroll/Personnel System (CAPPS) implementation.

Measure: Report on activities related to the CAPPS implementation

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

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

V.8 Objective: Work with TXDOT and the Office of the Governor on relocation of the Finance Commission agencies.

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

Performance Measures Targets for Fiscal Year 2023

		FY23 Target	FY22 Target	
01-01 Thrift Safety and Soundness				
Outcome Measures (Annual)				
Key	01	Percentage of State Chartered Savings Institutions Receiving Examination within the Required Timeframes ¹	100%	100%
Key	02	Percentage of Savings Institutions Classified Safe and Sound ¹	90%	90%
Non-Key	04	Percentage of State Chartered Savings Institution Applications Processed within Statutory Timeframes ¹	100%	100%
Output Measures (Quarterly)				
Key	01	Number of State Chartered Savings Institution Examinations Performed ¹	19	21
Non-Key	04	Number of State Chartered Savings Institution Applications Processed. ²	15	15
Efficiency Measures (Annual)				
Non-Key	01	Assets Examined Per Examiner Day (in Millions)	\$240.7	\$213.9
Non-Key	02	Average Time (Business Days) to Complete Analysis of Quarterly Financial Data	7	7
Explanatory Measure (Annual)				
Key	01	Number of State-Chartered Savings Institutions	20	24
Key	02	Dollar Amount of Assets under Regulation (in Billions)	\$385.0	\$456.0
02-01 Mortgage Regulation				
Outcome Measures (Annual)				
Key	01	Percentage of Satisfactory Levels of Compliance Reported through Examination ³	90%	90%
Key	02	Percentage of Examinations Initiated within Established Timeframes	90%	N/A
Key	03	Percentage of Applications Processed within Established Timeframes ³	65%	N/A
Output Measures (Quarterly)				
Key	01	Number of Applications Processed ²	13,000	18,000
Key	02	Number of Examination Reports Issued ²	10,500	14,000
Efficiency Measures (Annual)				
Non-Key	01	Average Cost Per Application Processed	\$75	\$57
Explanatory Measures (Annual)				
Non-Key	01	Total Number of Licensees/Registrants in an Approved Status	60,000	55,000
Non-Key	02	Number of Licensees Examined	10,500	N/A
03-01 Consumer Responsiveness				
Outcome Measures (Annual)				
Key	01	Percent of Complaints Closed within Ten Business Days of Receipt of Complete Information	99%	99%
Key	02	Percentage of Written Complaints Closed within 90 Days ²	95%	95%
Output Measures (Quarterly)				
Non-Key	01	Number of Complaints Closed within 90 Days ²	1,300	1,300
Efficiency Measures (Annual)				
Non-Key	01	Average Cost Per Complaint Closed ³	\$475	\$435
04-01 Agency Administration				
Outcome Measures (Annual)				
Key	01	Percentage of Employees Separated from the Agency ²	10%	10%
Key	02	Percentage of Actual Expenditures to Budgeted Expenditures ²	95%	95%

¹ These measures are comparable to similar measures with the Department of Banking

² These measures are comparable to similar measures with the Department of Banking and Office of Consumer Credit Commissioner.

³ These measures are comparable to similar measures with the Office of Consumer Credit Commissioner



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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MEMORANDUM

TO: Finance Commission of Texas

FROM: Charles G. Cooper, Commissioner

DATE: August 8, 2022

RE: Department of Banking Priorities for Fiscal Year 2023

I. LEGISLATIVE – *State and National Legislative Issues*

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

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

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

Measure: Provide Finance Commission members with information on significant federal laws and policy statements and the effect on supervised entities, if any. Provide sufficient information and materials to give members an overall assessment of our regulated industries.

I.3 **Objective:** Monitor the 88th legislative session and any legislation that may affect the Department or its regulated entities. Make recommendations for state legislative changes to address areas the law does not adequately address, correct technical errors, and modernize outdated statutes.

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

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

II.1 **Objective:** Strive to ensure performance measure goals are met while working through the labor market challenges. (See Attachment A for all performance measures).

Measure: Meet or exceed the strategic planning goals for key performance measures. Report performance measure results to the Finance Commission quarterly.

- II.2 **Objective:** Remain active and involved at the national level regarding supervisory issues affecting areas of direct supervisory oversight in Texas.

Measure: Maintain active contact with other states directly and through regulatory associations (CSBS and MTRA), trade associations (IBAT and TBA) as well as frequent contact with members of Congress and federal regulators to be aware of actions and decisions and areas of actual or potential impact to the Department's regulatory functions or the industries to proactively respond as needed.

- II.3 **Objective:** Maintain an ongoing awareness of the risk profiles of our regulated entities and the condition of the economy in which they operate. Monitor individual or systemic conditions, including the inflationary pressure, lingering effects of the pandemic, cybersecurity threats and other high-risk activities which present risks to their financial stability. Ensure that supervisory activities remain appropriate and take necessary actions against institutions exhibiting unacceptable risk profiles.

Measure: Perform research, maintain ongoing dialogue with regulatory counterparts, and attend training to maintain an understanding of conditions in which our entities operate. Maintain a leadership role in the effort to combat cybersecurity threats. Maintain an off-site monitoring program of the bank and trust industries while initiating appropriate regulatory responses and actions when appropriate. Research and take required actions against institutions with unacceptable profiles who have a heightened risk of becoming a problem bank to minimize the adverse impact on depositors, shareholders, and the banking system in general.

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

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

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

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

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

Measure: Report complaints/inquiries activity at each Finance Commission meeting. Meet or exceed the goals for consumer activity performance measures.

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

Measure: Monitor regulatory changes and update examination materials and guidance in a timely manner. Continue to perform internal reviews of examination procedures to ensure proper intent and applicability. Timely and regularly communicate updates/changes to examiners. Refine examination procedures and processes for better efficiency.

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

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

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

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

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

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

Measure: Periodically update the Department’s financial education web page and brochure. Participate in financial education webinars throughout the year.

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

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

Measure: Actively recruit entry level positions at state universities and colleges by attending career fairs (if available) and support banking programs at Texas universities. Utilize recruiting platforms that reach a wide talent pool for all positions. Promptly post vacancies and review applications timely. Periodically review and update personnel policies and procedures with changes due to legislation or judicial decisions.

- IV.2 **Objective:** Strive to attain full staffing, with an emphasis on employee retention and staff diversity. Provide and promote opportunities for professional development for junior staff and offer opportunities in new responsibilities to minimize the loss of institutional knowledge as vacancies and retirements occur. Continue efforts to

maintain a competitive salary structure. Obtain feedback from employees and implement changes where feasible.

Measure: Improve staff retention by addressing major issues that contribute to non-retirement resignations, with a goal to have the agency turnover rate (excluding retirements and intern separations) not exceed 9% for the fiscal year. Maintain a competitive examiner salary program comparable to the FDIC.

- IV.3 **Objective:** Maintain up-to-date computer hardware and software to enhance the effectiveness, speed, and quality of the work products. Provide timely technical support and training to staff.

Measure: Provide technology tools necessary for staff to perform their job functions efficiently, effectively, and securely. Provide support for remote work in accordance with agency determined limitations. Maintain software in accordance with the Department of Information Resources guidelines. Ensure network, website, and databases function appropriately and with limited downtimes.

- IV.4 **Objective:** Safeguard the integrity of data and information technology networks and systems from unauthorized access or use, ensuring that access to critical systems is available during an emergency to staff.

Measure: Perform a bi-annual external or internal information security risk assessment and initiate corrective actions to maintain data integrity and minimize the risk of unauthorized access or use. Perform annual intrusion testing by the Department of Information Resources and periodic vulnerability reviews for network and external facing web resources. Conduct an annual test of the Department's disaster recovery plan and initiate corrective actions to ensure operations will function appropriately. Execute quarterly information security tabletop exercises to ensure staff are ready to respond to various incident types, when and if they occur.

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

Measure: Provide core required training courses to financial examiners in the FE I – FE III series to progress in the financial examiner series. Adequately prepare assistant examiners to successfully complete the Bank and Trust Supervision commissioning process.

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

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

- IV.7 **Objective:** Periodically review internal controls and processes to improve the efficiency and effectiveness of the agency. Coordinate with the Office of Consumer

Credit Commissioner and Savings and Mortgage Lending Department, when possible, to minimize duplication of duties and processes.

Measure: Report on improvements identified and implemented.

IV.8 **Objective:** Work with TXDOT and the Office of the Governor on relocation of the Finance Commission agencies.

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

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

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

Performance Measures for 2023
Department of Banking

			Target 2023	Target 2022
Bank and Trust:				
K Outcome Measures (Annual)				
K	01-01.01	Percentage of Banks Receiving Examinations Within Required Timeframes ¹	95.00%	95.00%
	01-01.02	Percentage of Foreign Bank Organizations Receiving Examinations Within Required Timeframes	95.00%	100.00%
	01-01.03	Percentage of Trust Companies Receiving Examinations Within Required Timeframes	95.00%	95.00%
	01-01.04	Percentage of Problem Institutions with Appropriate Supervisory Actions in Place	100.00%	100.00%
	01-01.05	Certificate of Accreditation by CSBS Maintained in Good Standing	YES	YES
K Output Measures (Quarterly)				
K	01-01.06	Number of Bank Examinations Performed ¹	93	94
K	01-01.07	# Foreign Bank Organization, Trust Co, Trust Dept, & IT Exams and Other Specialized Reviews Performed	227	230
Efficiency Measures (Annual)				
	01-01.08	Average Cost Per Bank Examination	\$86,080.00	\$91,330.00
		Average Cost Per Bank Examination		
	01-01.09	Assets Examined Per Examiner Day (in millions)	\$11.75	\$11.60
		Assets Examined Per Examiner Day (in millions)		
K Explanatory Measure (Annual)				
K	01-01.10	Percentage of Banks Classified Safe and Sound ¹	95.00%	95.00%
	01-01.11	Number of Texas State-Chartered Banks	210	212
	01-01.12	Total Assets in Texas State-Chartered Banks (in Billions)	\$453.30	\$426.10
Non-Depository Supervision (NDS):				
K Outcome Measures (Annual)				
K	01-02.01	Percentage of Money Services Business Licensees Examined By NDS Within Required Timeframes	90.00%	90.00%
K	01-02.02	Percentage of Prepaid Funeral Contract Licensees Examined By NDS Within Required Timeframes	95.00%	95.00%
K	01-02.03	Percentage of Perpetual Care Cemetery Licensees Examined By NDS Within Required Timeframes	95.00%	95.00%
	01-02.04	Percentage of PCC and PFC Applications Processed within Statutory Period	95.00%	95.00%
K Output Measures (Quarterly)				
K	01-02.05	Number of NDS Licensees Examined ²	500	520
Efficiency Measures (Annual)				
	01-02.06	Average Direct Cost Per Prepaid Funeral Contract and Perpetual Care Cemetery Licensee Examination.	\$2,750	\$2,750
	01-02.07	Average Direct Cost Per Money Services Business Licensee Examination	\$12,500	\$11,000
Explanatory Measures (Annual)				
	01-02.08	Dollar Amount of Prepaid Funeral Contracts in Force (in Billions)	\$4.5	\$4.5
	01-02.09	Number of NDS Licensees	775	775
	01-02.10	Percentage of NDS Licensees Classified Safe and Sound	95.00%	95.00%
Application Processing:				
K Outcome Measures (Annual)				
K	01-03.01	Percentage of Applications and Notices for Banks, Trust Companies, Money Service Businesses, and Check Verification Companies Processed within Statutory Time Periods ¹	95.00%	95.00%
K Output Measures (Quarterly)				
K	01-03.02	Number of Applications and Notices Processed for Banks, Trust Companies, Money Service Businesses, and Check Verification Companies ²	358	298
K Outcome Measures (Annual)				
K	01-04.01	Percentage of Written Complaints Closed Within 90 Days ²	100.00%	100.00%
Output Measures (Quarterly)				
	01-04.02	Number of Written Complaints Closed ²	260	225
Regulatory Oversight: (Finance Commission) (Reported Internally)				
Output Measures (Quarterly)				
	01-04.03	Number of Meetings Convened	6.0	6.0
Operational Efficiency:				
K Outcome Measures (Annual)				
K	01-05.01	Percentage of Regular Employees Separated from the Agency ²	11.00%	11.00%
	01-05.02	Percentage of Regular Employees Separated from the Agency (Excluding Retirements)	9.00%	9.00%
K	01-05.03	Percentage of Actual Expenditures to Budgeted Expenditures ²	95.00%	95.00%

¹ These measures are comparable to similar measures with the Department of Savings and Mortgage Lending

² These measures are comparable to similar measures with the Department of Savings and Mortgage Lending and Office of Consumer Credit Commissioner

A.8. Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC, Part 1, §5.107, Concerning Employee Leave Pools

PURPOSE: New §5.107 acknowledges, through formal rulemaking, the existence of the agencies' respective family leave pools and sick leave pools. The new rule sets forth the purpose of each leave pool, designates the Commissioner of each finance agency as the pool administrator for their respective finance agency's leave pools, and requires 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: No comments were received regarding proposed new 7 TAC §5.107. The Department recommends that the Commission approve adoption of the new rule without changes to the proposal as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we adopt new 7 TAC §5.107 without changes to the proposal as previously published 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), adopts new §5.107, concerning Employee Leave Pools. The new rule is adopted without changes to the proposed text as published in the July 8, 2022, issue of the *Texas Register* (47 TexReg 3856). The new rule will not be republished.

In accordance with §661.002 and §661.022, the new rule as adopted acknowledges, through formal rulemaking, the existence of the agencies' respective family leave pools and sick leave pools. The adopted new rule sets forth the purpose of each leave pool, designates the Commissioner of each finance agency as the pool administrator for their respective finance agency's leave pools, and requires the Commissioner to maintain operating procedures consistent with the requirements of the proposed new rule and relevant laws governing operation of the pools.

No comments were received regarding the proposed new rule.

The new rule is adopted 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 adopted 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.

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B.

**Office of Consumer Credit
Commissioner**

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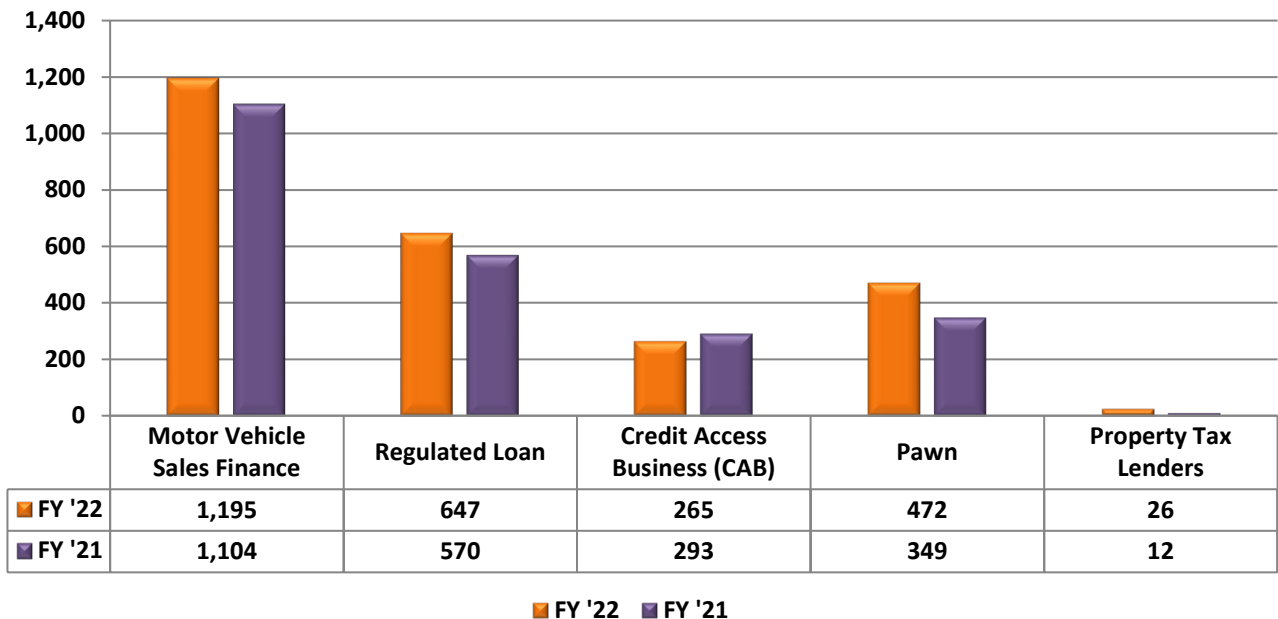
Consumer Protection and Consumer Assistance Report

The OCCC’s examination performance exceeds production targets as of June 30, 2022 with 2,605 (86.8%) of fiscal year 2022’s target (3,000) examinations completed. In addition, ten Crafted Precious Metal Dealer examinations (a new examination type) have been completed, which were required by the 87th Legislature’s amendment to the Texas Occupations Code, Section 1956.06131, effective January 1, 2022.

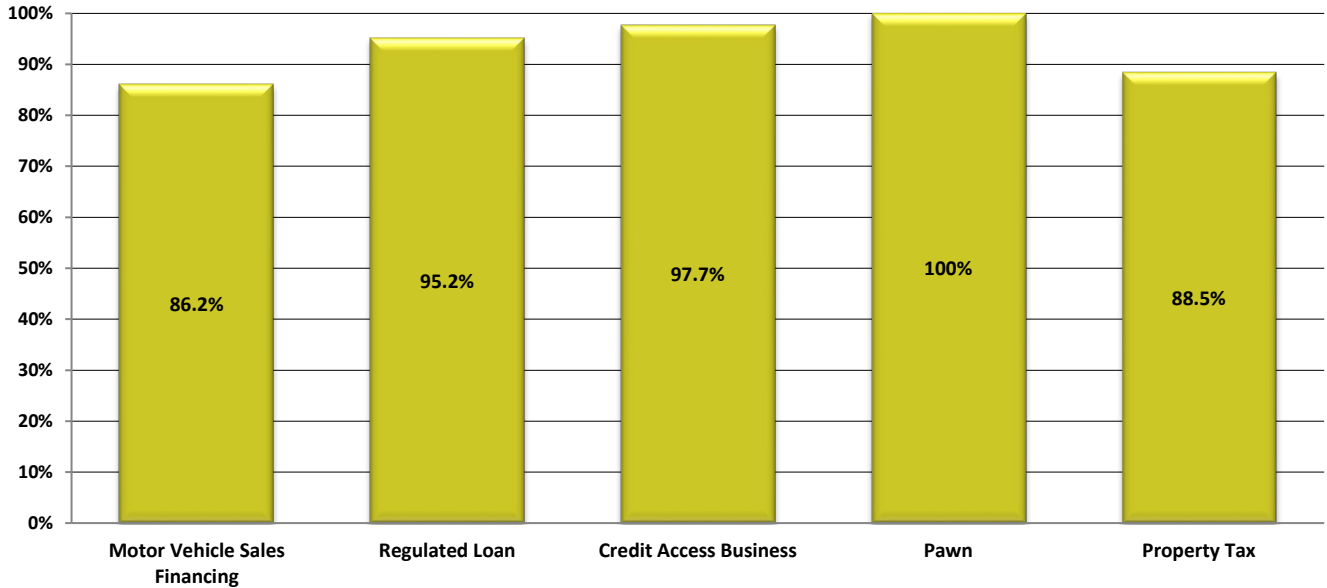
Examination department staff participated in and presented at the annual conventions of the Texas Consumer Finance Association and the Texas Independent Automobile Dealers in July 2022. OCCC examiners are nearing completion of Texas portion of the final Multi-State Auto Finance Exam for Fiscal Year 2022. The examination department is planning on resuming out of state travel to conduct examinations in Fiscal Year 2023.

Examiner training and development remains the high priority focus. Two new financial examiners began training the week of July 15, 2022. The new examiners observed field exam operations the week of August 1 and are scheduled for final classroom training and testing the week of August 8. The department is scheduled to participate in four college recruiting fairs the week of September 11, 2022. The annual examiner training conference is scheduled (in person) beginning the week of September 18, 2022.

**Examinations Conducted: Sept - Jun
 Fiscal Year Comparison**

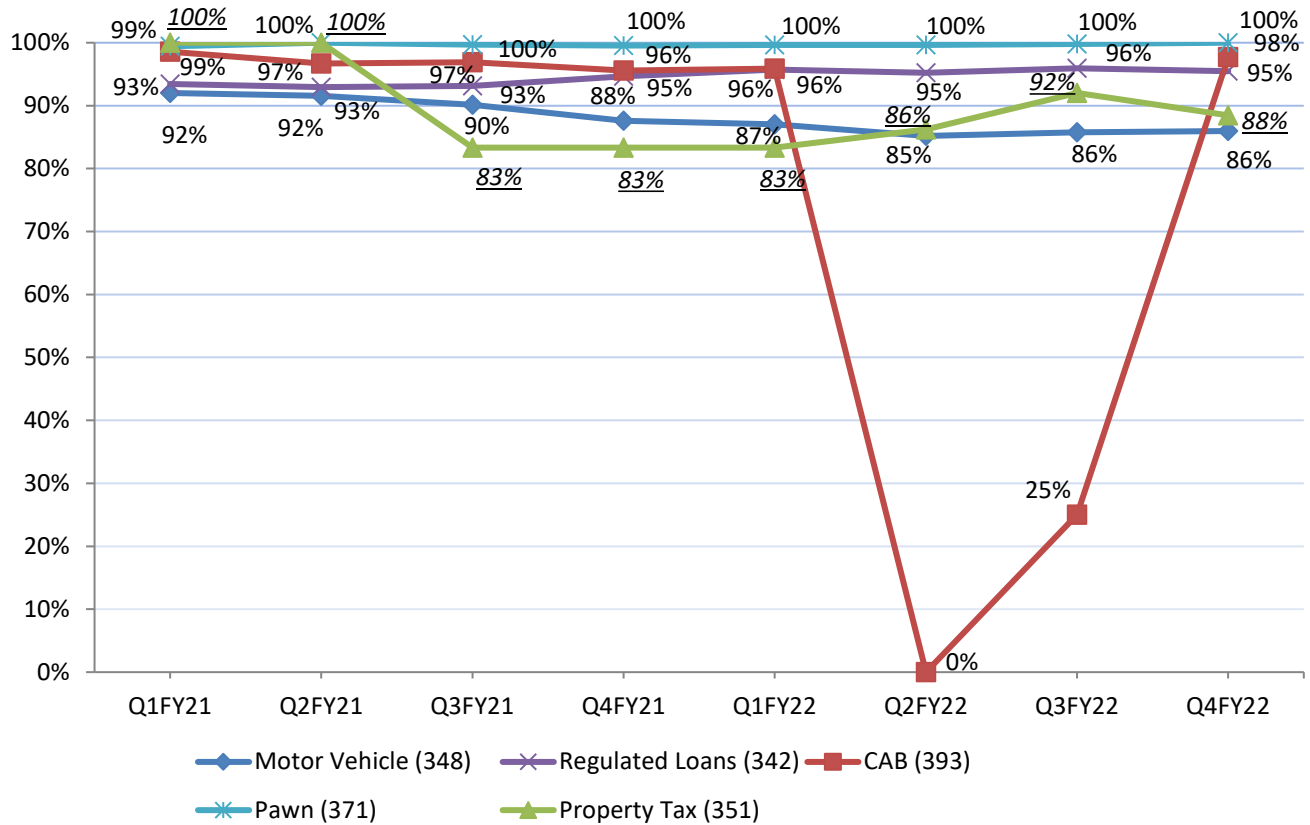


Acceptable Level of Compliance FY '22 (Sept 2021 - Jun 2022)



The following chart denotes the acceptable level of compliance on a trailing 12-month basis through the end of June 2022.

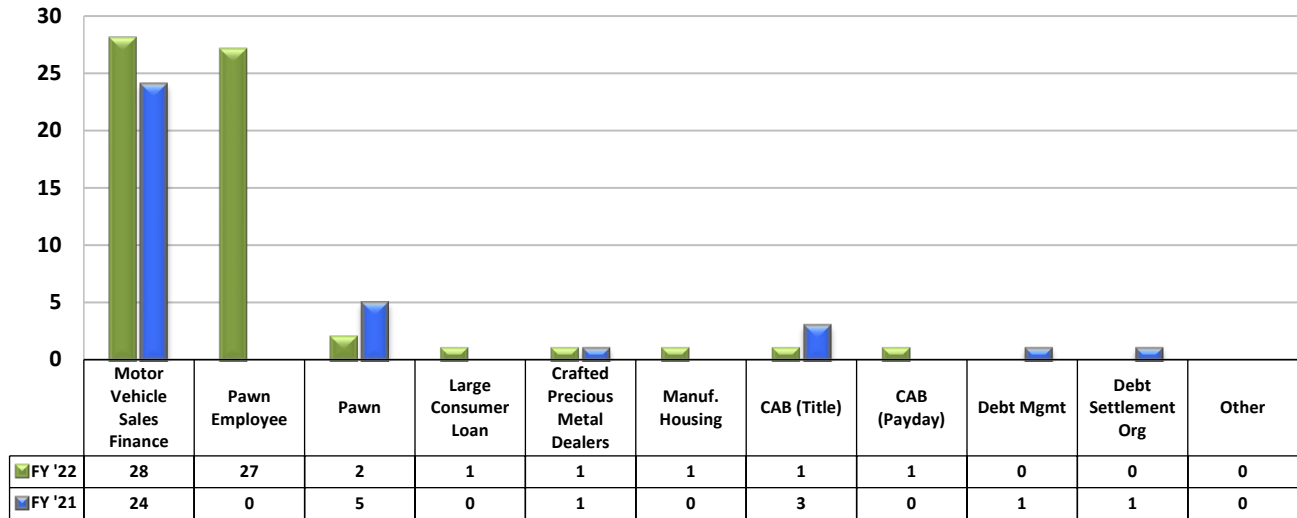
Acceptable Compliance Levels - Trailing 12 Months (at quarter end)



Investigations

Through June 2022, the OCCC completed 62 investigations out of the goal of 75. Motor Vehicle Sales Finance comprises 45.2% of the overall number of completed investigations. Staff anticipates completing the remaining targeted number of investigations.

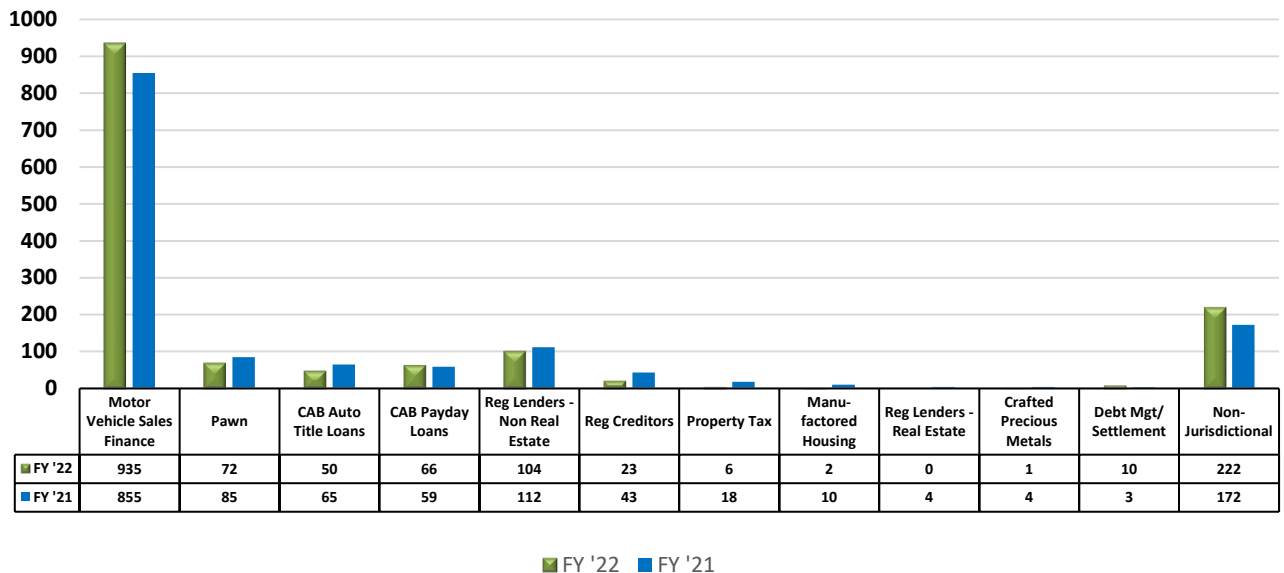
Investigations Completed
FY '22 (Sept 2021 - Jun 2022) Total: 62
FY '21 (Sept 2020 - Jun 2021) Total: 35



Consumer Assistance

As of June 30, 2022, 1,491 complaints were closed, of which 222 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 62.7%. The second largest category was CAB complaints at 8% collectively; separately these are 4.4% for payday loans and 3.6% for title loans. The third largest category came from Regulated Lenders Non-Real Estate at 7%. The fourth largest category was Pawnshops at 4.8%.

Complaints Closed
FY '22: (Sept 2021 - Jun 2022) Total: 1491
FY '21: (Sept 2020 - Jun 2021) Total: 1430



Fiscal Year 2022: Number of Complaints Closed by Source (Table 1), Subject (Table 2), and Disposition (Table 3)

Table 1

Source of Complaint	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Consumer	419	355	433	NA
Business	0	0	2	NA
Law Enforcement	0	0	0	NA
State or Federal Agency	23	67	44	NA
OCCC	2	1	3	NA
Whistleblower	0	NA	0	NA
Other	0	NA	0	NA
Total	444	423	482	NA

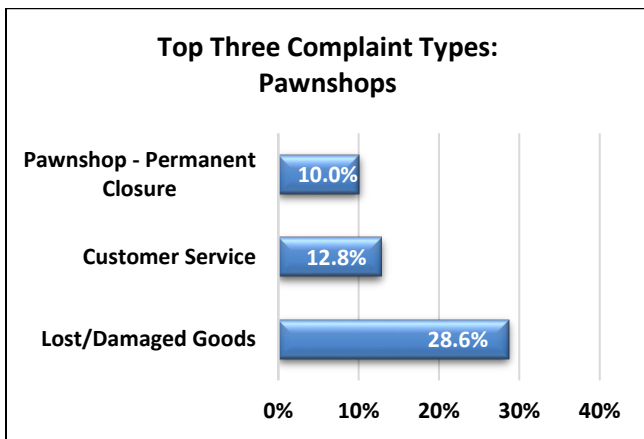
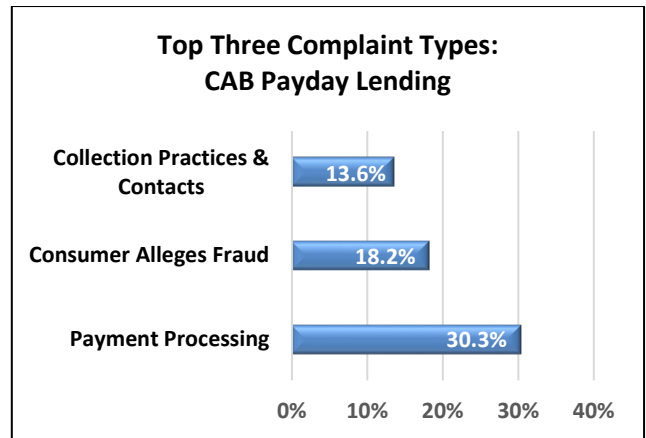
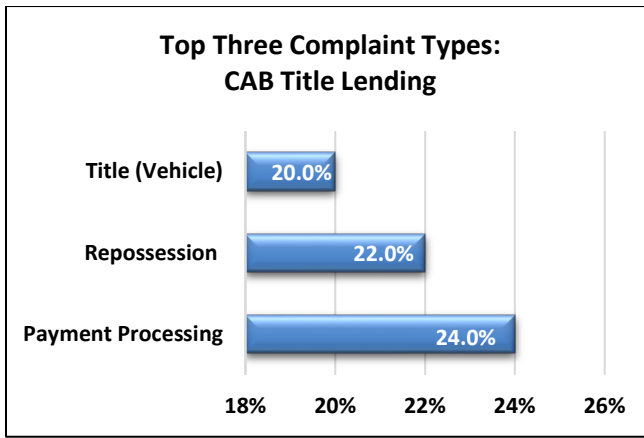
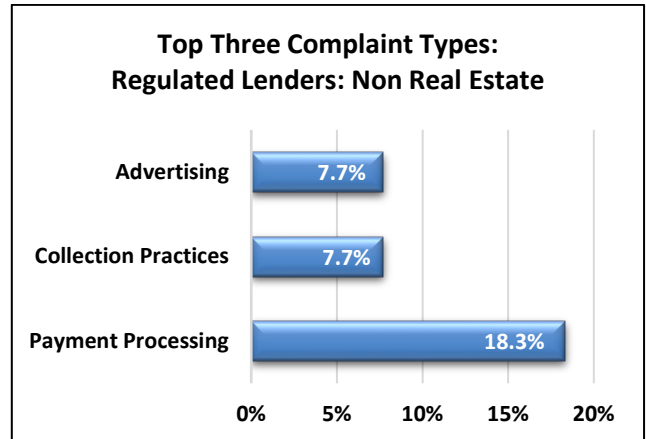
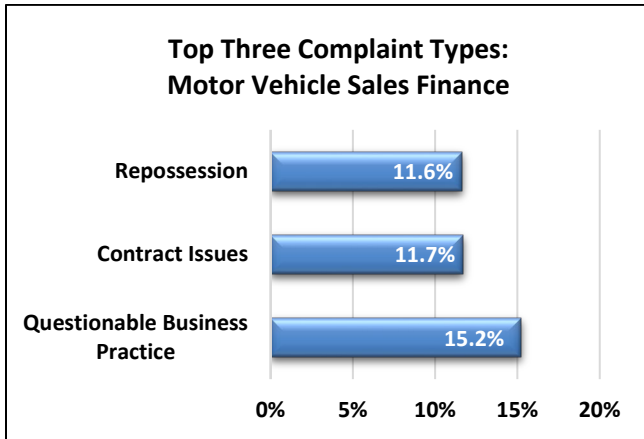
Table 2

Subjects	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Motor Vehicle Sales Finance	295	263	303	NA
CAB Payday Loans	23	17	19	NA
CAB Auto Title Loans	12	12	18	NA
Reg. Lenders Non-Real Estate	23	32	36	NA
Pawn	22	14	26	NA
Registered Creditors	7	6	6	NA
Crafted Precious Metals Dealers	1	0	0	NA
Mortgage Lenders: Real Estate	0	0	0	NA
Manufactured. Housing	0	0	2	NA
Property Tax Lenders	2	0	3	NA
Debt Management/Settlement	3	5	3	NA
Non-Jurisdictional	56	74	66	NA
Refund Anticipation Loan	0	0	0	NA
Total	444	423	482	NA

Table 3

Disposition:	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Closed to Investigation	7	7	9	NA
Closed to Legal	0	0	0	NA
Closed-Action Taken	195	138	149	NA
Closed-No Violation	88	130	141	NA
Closed-Administratively	96	74	117	NA
Closed-Non-Jurisdictional	58	74	66	NA
Total	444	423	482	NA

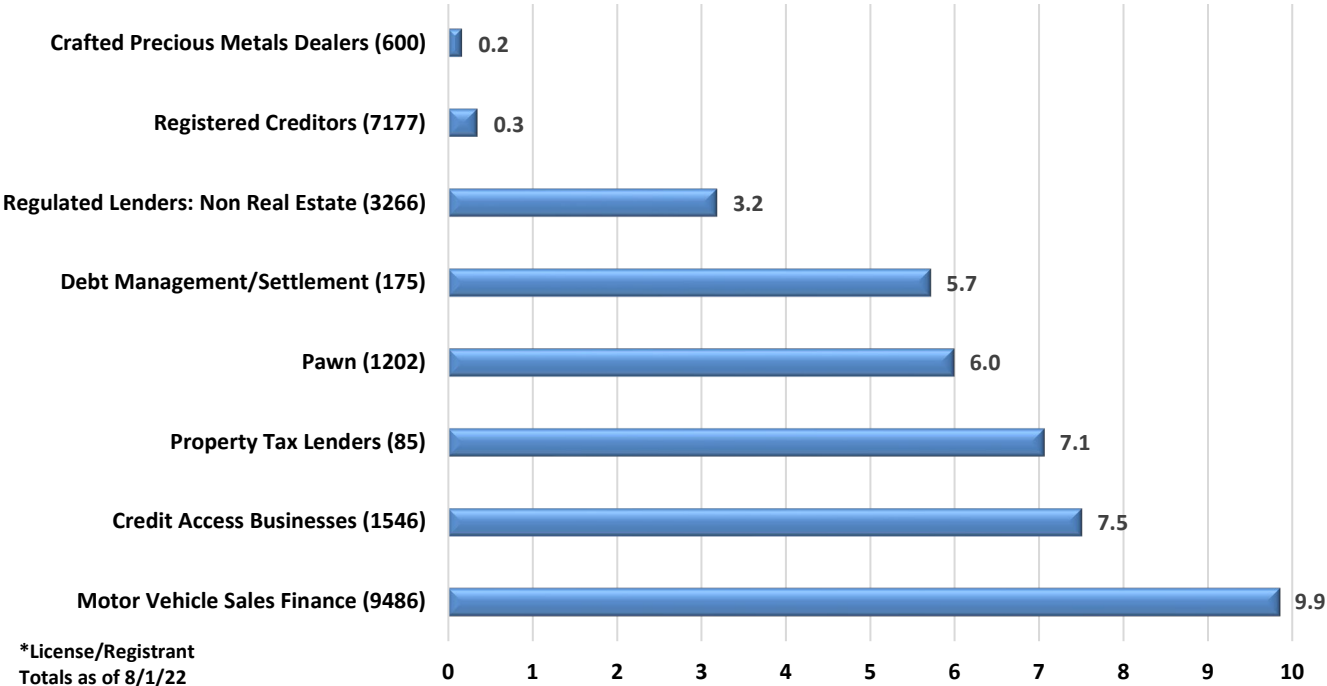
The following charts represent the top three complaint areas per license type. In the MVSF chart, the category *Questionable Business Practice* continues to primarily relate to allegations that dealers will not accept outside financing.



Production Targets and Priorities	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Percentage Written Complaints Closed within 90 days	93.7%	90.7%	91.4%	NA
Average Number of Days to Close a Complaint	38.9	41.4	39.5	NA
Number of Complaints Closed	444	423	482	NA

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

**Ratio of Complaints Closed to Total Active Licenses and Registrants*
FY '22 (Sept 2021 - Jun 2022)**





Licensing Report- August 2022

Mirand Diamond, Director of Licensing & Finance

Kanasha Daniels, Licensing Department Team Lead

Renewals

The department has concluded renewal for pawn shops and pawn employees with 98% of pawn shops renewing and 63% of pawn employees renewing. Renewal rates were stronger than anticipated as the department estimated that 95% of shops would renew and 50% of employees would renew.

The department is preparing for motor vehicle sales finance renewal and is planning to open renewal early online in September. The renewal period will end October 31, 2022.

Applications Processing

The volume of incoming applications is averaging 125 applications monthly, which is about 12% below the average from the prior fiscal year. The department is anticipating increased application 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 is within range of the fiscal year projected goal.

Other Updates

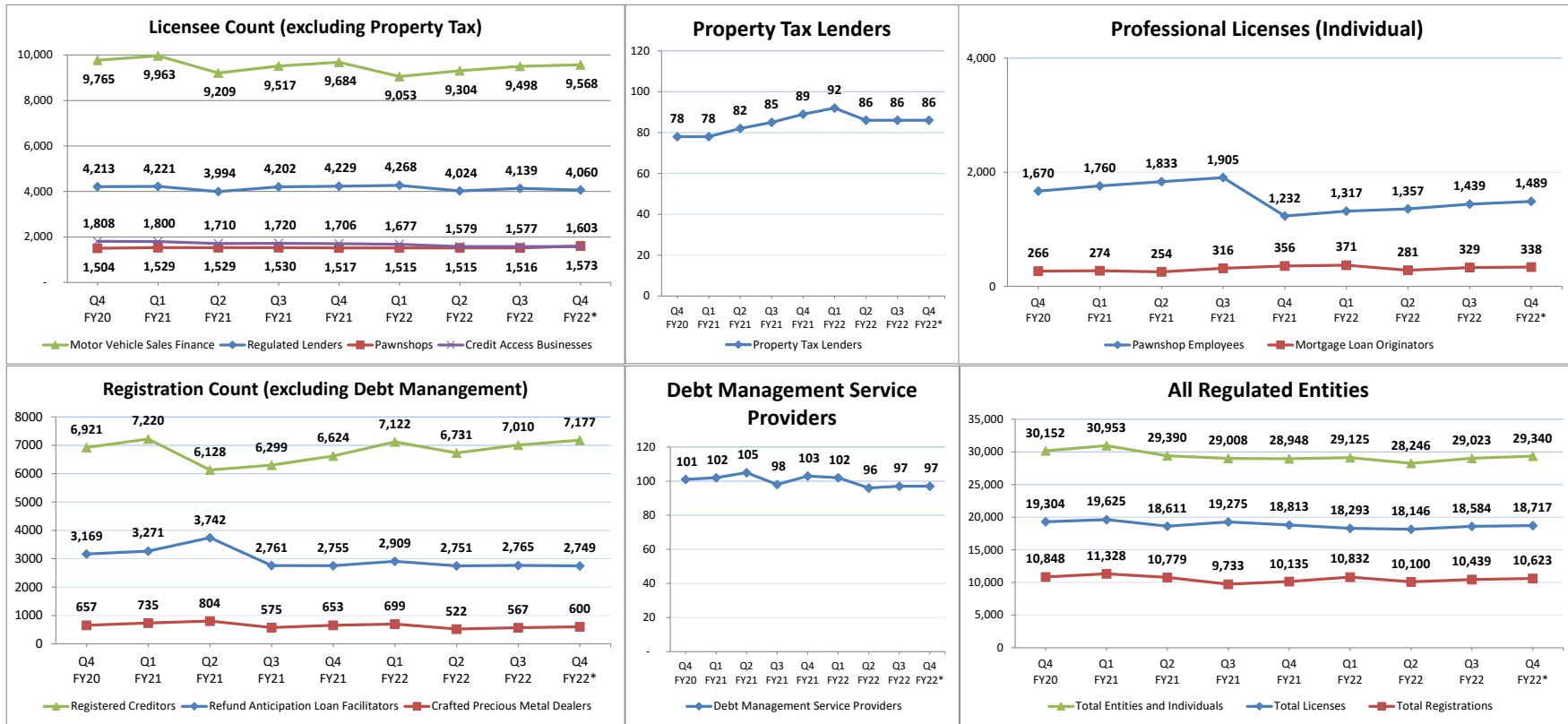
Over the past two months the licensing team has worked to train new staff. Professional development training is also ongoing, such as the most recent training this summer the team attended, which was focused on diffusing hostile customers.

The Department is currently working with the IT department on continual improvements to ALECS. We currently are in user acceptance testing for a technical issue that is affecting 22000-series master files in ALECS and preventing the completion of certain tasks internally.

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



* Q4 Data through 7/31/2022



ADMINISTRATION REPORT

FINANCIAL EDUCATION AND TFEE

The OCCC is currently processing TFEE reimbursement requests and compiling Longitudinal Reports. The first period 2022-2023 TFEE Semi-Annual Report and 2020-2021 Grant Cycle Impact Report will be published next month. The OCCC has hired a new Grant, Education, and Communication Specialist and is currently providing training and background on the agency’s financial education and grant program.

COMMUNICATION

OCCC senior staff hosted its quarterly virtual town hall for all agency employees on June 3, 2022. The virtual town hall allowed agency staff to hear updates from leadership, submit questions or concerns, and provide feedback. Additionally, OCCC staff continue to provide presentations to regulated entities and other regulatory groups as follows:

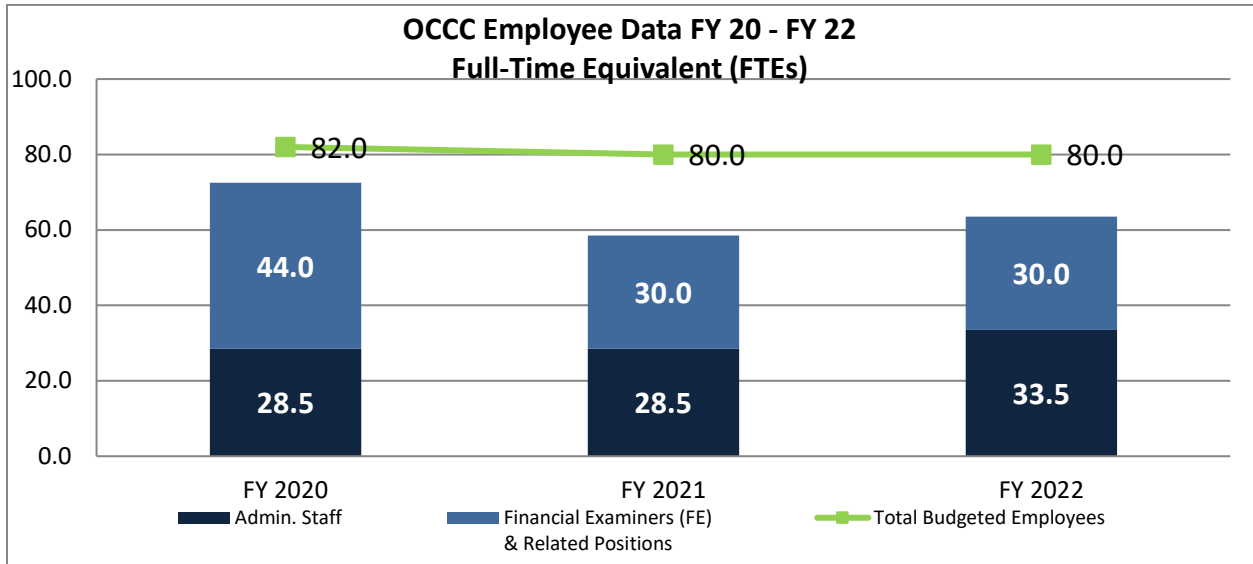
- On June 2, 2022 Financial Examiner Fancher provided a presentation to automobile dealers at a webinar sponsored by the Texas Department of Motor Vehicles.
- On July 14, 2022, Commissioner Pettijohn and Director Lewis attended and provided a presentation at the Texas Consumer Finance Association.
- On July 21-22, 2022, Assistant Director Graham attended the Financial Literacy Summit hosted by Texas Jump\$tart in collaboration with the Texas Bankers Association.
- On July 26-27, 2022, Director Lewis and Financial Examiner Fancher attended and provided a presentation at the Texas Independent Automobile Dealers Association conference.

HUMAN RESOURCES

During this reporting period through July 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 - 4
Customer Service Representative II/III	Open - 2
Accountant II - III	Open - 1
Human Resources Specialist V-VI	Open - 1

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



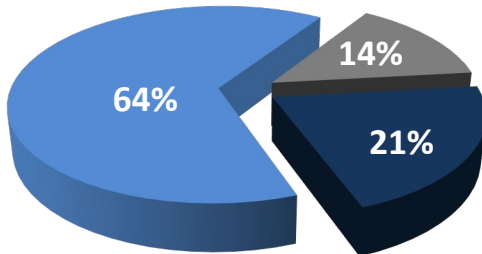
The turnover rate as of July 2022 is 17.5%, and the chart below represents FY22 data.

OCCC Turnover Categories

FY 22 - All Employees

(09/01/2021 - 7/31/2022)

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



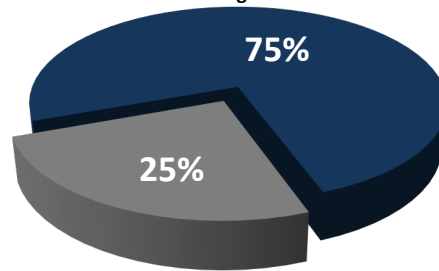
- Voluntary Resignation
- Retirement
- Agency Transfer

OCCC Turnover Categories

FY 22 - FE Series

(09/01/2021 - 07/31/2022)

6 total - 1 Retirement, 5 Voluntary Resignations



- Retirement
- Voluntary Separation

INFORMATION TECHNOLOGY

Technology modernization and deployment

CAPPS HR/Payroll was successfully deployed in July 2022, which included establishing all agency personnel in TDIS (Texas.gov Digital Identity Solution, DIR's credentialing application).

The agency upgraded its security posture by integrating TDIS with our VPN access of the internal network. This was deployed in July, within days following the CAPPs HR/Payroll release, ensuring that end user familiarity with TDIS grew quickly.

A comprehensive rebuild of ALECS to integrate the newest revision of SQL completed testing and was released. A subsequent change to ALECS is in testing.

A vendor was selected and contracted to provide a core software update, along with a refresh and re-homing of the agency public website. This is in progress, with the site being reviewed and tested by agency stakeholders.

Training

All personnel were assigned active shooter safety developed by the Advanced Law Enforcement Rapid Response Training Center. IT obtained the training material, converted it to a compatible format, and uploaded it into our KnowBe4 content base before assigning it to all personnel.



Accounting Report- August 2022

Mirand Diamond, Director of Licensing & Finance

Staffing

Staff is working to fill one vacancy for an Accountant II-III. In the meantime, management has been working with a staffing agency to contract a temporary accountant to assist with covering duties. Thus far, the search has been unsuccessful.

CAPPS

CAPPS HR/Payroll was successfully implemented on July 11, 2022. Accounting staff has worked to train agency employees and all supervisors on the new system. The OCCC may look to implement non-core modules of CAPPS Financials or HR/Payroll at a later date.

Financial Reporting

Fiscal year 2022 third quarter financial reports were completed and are presented elsewhere in the FC material. Preliminary work has begun towards fiscal year end closing and opening of the new fiscal year.

Budget

The department has worked extensively to finalize the budget for FY 23. Reports and tracking will be utilized to carefully monitor incoming revenue and expenditures throughout the year.

Other Items

Quarterly reports such as the Multi-worksite report and the IRS 941 have been submitted.

OFFICE OF CONSUMER CREDIT COMMISSIONER
EXECUTIVE SUMMARY

As of May 31, 2022

	FY 2020	FY 2021	FISCAL YEAR 2022				
			1st QTR	2nd QTR	3rd QTR	4th QTR	FYTD
CONSUMER PROTECTION							
Monies Returned (000)	4,391	3,386	1,473	21,679	1,021		24,173
Regulated Lenders Examinations	576	656	244	175	159		578
Property Tax Lender Examinations	7	12	1	24	0		25
Pawnshop Examinations	276	415	157	124	145		426
Motor Vehicle Examinations	1,350	1,364	406	365	329		1,100
Credit Access Businesses Examinations	284	293	6	0	259		265
CONSUMER ASSISTANCE							
Telephone Complaints Received	459	489	119	81	144		344
Written Complaints Received	1,303	1,241	283	317	322		922
Total Complaints Closed	1,756	1,725	444	423	482		1,349
% of Written Complaints Closed within 90 Calendar Days	86.6%	96.6%	93.7%	90.7%	91.4%		91.4%
ADMINISTRATIVE ENFORCEMENT ACTIONS							
Originated	188	224	23	18	21		62
Finalized	270	197	68	30	24		122
LICENSING AND REGISTRATION							
Licenses							
Regulated Lender Licenses	4,213	4,229	4,268	4,024	4,139		4,139
Pawnshop Licenses	1,504	1,517	1,515	1,515	1,516		1,516
Pawnshop Employee Licenses	1,670	1,232	1,317	1,357	1,439		1,439
Commercial MV Sales Fin. Licenses	54	57	55	56	58		58
Motor Vehicle Sales Finance Licenses	9,711	9,627	8,998	9,248	9,440		9,440
Property Tax Lender Licenses	78	89	92	86	86		86
Mortgage Loan Originators	266	356	371	281	329		329
Credit Access Business Licenses	1,808	1,706	1,677	1,579	1,577		1,577
Registrations							
Registered Creditors	6,921	6,624	7,122	6,731	7,010		7,010
Crafted Precious Metal Dealers	657	653	699	522	567		567
Debt Management Service Providers	101	103	102	96	97		97
Refund Anticipation Loan Facilitators	3,169	2,755	2,909	2,751	2,765		2,765
Applications							
Business -- New	1,621	1,579	298	464	389		1,151
Business -- Change of Ownership	87	141	8	13	12		33
Pawnshop Employees -- New	630	408	98	58	104		260
HUMAN RESOURCES DATA							
Field Examiners Staffing	44	40	40	38	30		30
Total Staffing	73	68.5	69.5	69.5	63.5		63.5

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

Type/Strategy/Measure	2022 Target	2022 Actual	2022 YTD	Percent of Annual Target	
Output Measures-Key					
CONSUMER PROTECTION					
1-1-1	Complaint Resolution				
	1. # Complaints Closed				
Quarter 1	1,750	444	444	25.4%	
Quarter 2	1,750	423	867	49.5%	
Quarter 3	1,750	482	1349	77.1%	
2-1-1	Examination and Enforcement				
	1. # Examinations Completed				
Quarter 1	3,000	814	814	27.1%	
Quarter 2	3,000	688	1,502	50.1%	
Quarter 3	3,000	892	2,394	79.8%	
EFFECTIVE LICENSING & REGISTRATION					
2-2-1	Licensing and Registration				
	1. # Business License Applications Processed				
Quarter 1	1,800	298	298	16.6%	*
	The licensing department has worked to meet departmental goals, but staffing continues to be a challenge, with the license and permit specialist position remaining unfilled. There are currently no business licenses up for renewal, so staff will focus on processing pending and new applications.				
Quarter 2	1,800	464	762	42.3%	*
	The variance is due to lower application processing in Q2 because of increased call volume and customer service contact in connection with renewal and reinstatement of regulated lenders, credit access business, and property tax licensees throughout the quarter.				
Quarter 3	1,800	389	1151	63.9%	*
	The variance is due to lower application processing in Q3 because of staffing issues, coupled with increased call volume in connection with pawn renewal.				
FINANCIAL EDUCATION					
3-3-1	Financial Education				
	1. # People Receiving Direct Educational Services				
Quarter 1	900	205	205	22.8%	
Quarter 2	900	34	239	26.6%	*
	Due to staffing issues, the Financial Education Department has been unable to conduct classes as forecasted. The agency is actively recruiting a Financial Education Specialist and anticipates an increase in classes during the month of April for Financial Literacy Month.				
Quarter 3	900	814	1,053	117.0%	*
	The Financial Education Department exceeded third quarter targets as the result of a larger than projected number of presentations during financial literacy month.				

*Varies by 5% or more from target.



Legal Department Report

Michael Rigby, General Counsel

August 2022

Enforcement Report

Contested Cases

The OCCC currently has two cases pending before the State Office of Administrative Hearings (SOAH).

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

This case concerns ten Clay Cooley entities that hold motor vehicle sales finance licenses. 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. The 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. A contested case hearing was held on June 20–22, 2022. The parties filed their closing briefs on July 28, and reply briefs are due August 16. The OCCC anticipates that the administrative law judge will issue a proposal for decision in October.

Dallas Daily Driver, LLC (SOAH Docket No. 466-22-07028)

This case is an appeal of the OCCC's denial of a motor vehicle sales finance license application. The applicant failed to completely disclose its owner's criminal history in the license application, and failed to respond to the OCCC's follow-up request for criminal history information. Based on this, the OCCC notified the applicant of its intent to deny the license application. The applicant requested a hearing on the denial. The OCCC has docketed the case with SOAH, and a hearing is set for September 27, 2022.

Orders on Reporting Violations

In June 2022, the OCCC issued three orders against property tax lenders that failed to file their 2021 annual reports by the March 31, 2022 deadline. Of these orders, two were injunctions requiring the licensee to file timely and accurate reports, and one imposed an administrative penalty for violating a previous injunction.

In July 2022, the OCCC issued four orders against credit access businesses that failed to file their 2022 first quarter reports by the April 30, 2022 deadline. Of these orders, three were injunctions requiring the licensee to file timely and accurate reports, and one imposed an administrative penalty for violating a previous injunction.

Performance Report

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

September 1, 2021 through July 31, 2022	
Cases Opened	70
Cases Closed	131
Average Number of Days to Close an Enforcement Action	105
Contested Cases Referred to SOAH	2
Contested Cases Heard at SOAH	1
Final Orders Issued	112

The OCCC has one upcoming SOAH hearing described above.

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

Enforcement Actions Closed as of July 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	5	11	54	20
Motor Vehicle Sales Finance Commercial	0	1	0	0
Pawnshop	5	48	44	82
Pawnshop Employee	0	0	0	67
Property Tax Lender	4	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	75	133	186	262
Administrative Penalty Actions				
Crafted Precious Metal Dealer	0	0	1	0
Credit Access Business	6	12	11	14
Debt Management Provider	3	2	3	0
Motor Vehicle Sales Finance	4	8	13	19
Pawnshop	6	15	29	12
Pawnshop Employee	0	0	0	0
Property Tax Lender	1	1	3	6
Regulated Lender	27	18	18	7
Residential Mortgage Loan Originator	0	0	0	0
Total Administrative Penalty Actions	47	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	5	0	1	0
Residential Mortgage Loan Originator	0	0	0	0
Total Revocation / Suspension Actions	8	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	131	197	270	324

Rule Actions

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

- Adoption of amendments to Chapter 85, Subchapter A (relating to pawnshops), resulting from rule review
- Readoption of 7 TAC Chapter 86 (relating to registered creditors), resulting from rule review

At the October meeting, the OCCC intends to present the readoption of 7 TAC Chapter 90 (relating to plain language contracts for regulated lenders) as well as any proposed amendments to the chapter, resulting from rule review.

Litigation

Ernest Polk v. Texas Office of Consumer Credit Commissioner

This is an employment discrimination lawsuit in Harris County district court (case no. 2018-04375). On August 3, the court held a hearing regarding the OCCC's motion for continuance and request to rule on its second plea to the jurisdiction. The court reset the trial for the two-week docket starting on October 3, 2022. However, the court has not yet issued an order regarding the OCCC's second plea to the jurisdiction.

Federal Rulemaking

FTC Motor Vehicle Dealers Trade Regulation Rule

On July 13, 2022, the Federal Trade Commission published a proposed new Motor Vehicle Dealers Trade Regulation Rule. The proposed rule would: (1) prohibit motor vehicle dealers from making certain misrepresentations in the course of selling, leasing, or arranging financing for motor vehicles, (2) require accurate pricing disclosures in dealers' advertising and sales discussions, (3) require dealers to obtain consumers' express, informed consent for charges, (4) prohibit the sale of any add-on product or service that confers no benefit to the consumer, and (5) require dealers to keep records of advertisements and customer transactions. The proposed rule states that it will not preempt state laws that provide greater protection to consumers. The FTC is accepting comments on the proposal until September 12, 2022.

Advisory Bulletins

From June 1, 2022 to July 31, 2022, the OCCC did not issue any advisory bulletins.

Official Interpretation Requests

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

Public Information Requests

June 1, 2022 through July 31, 2022	
Requests Received	21
Requests Closed	20
Requests Withdrawn	2
Requests Referred to Office of Attorney General	1
Average Number of Days to Address a Public Information Request	3.4

Gifts Received by the OCCC

From June 1, 2022 to July 31, 2022, the OCCC received no gifts.

B. OFFICE OF CONSUMER CREDIT COMMISSIONER

2. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 5, Chapter 86, Concerning Retail Creditors, Resulting from Rule Review

PURPOSE: Pursuant to Texas Government Code, §2001.039, the OCCC has completed the review of 7 TAC Chapter 86, 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 86 following rule review, because the reasons for the rules continue to exist.

RECOMMENDED MOTION: I move that we readopt 7 TAC Chapter 86 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 86. Retail Creditors

The Finance Commission of Texas (commission) has completed the rule review of Texas Administrative Code, Title 7, Chapter 86, concerning Retail Creditors, 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 an amendment to 7 TAC §86.201 (relating to Documentary Fee), to increase the maximum documentary fee for covered land vehicles from \$125 to \$150. Regarding this precomment, the commission does not believe that an increase in the maximum documentary fee is supported at this time. The OCCC intends to study this issue further.

Notice of the review of 7 TAC Chapter 86 was published in the June 3, 2022, issue of the *Texas Register* (47 TexReg 3277). The commission did not receive any official comments in response to that notice.

As a result of the rule review, the commission finds that the reasons for initially adopting the rules in 7 TAC Chapter 86 continue to exist, and readopts this chapter in accordance with the requirements of Texas Government Code, §2001.039.

B. OFFICE OF CONSUMER CREDIT COMMISSIONER

3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 5, Chapter 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 agency requests that the Finance Commission approve the adoption of the amendments to 7 TAC Chapter 85, Subchapter A.

RECOMMENDED MOTION: I move that the Finance Commission approve the adoption of 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) adopts 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 commission adopts the amendments to §85.202, §85.301, §85.420, §85.421, §85.422, and §85.601 without changes to the proposed text as published in the July 8, 2022, issue of the *Texas Register* (47 TexReg 3859).

The commission received no official comments on the proposed amendments.

The rules in 7 TAC Chapter 85, Subchapter A govern pawnshops. In general, the purpose of the 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.

Amendments to §85.202 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 adoption replaces 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 will 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, an amendment to §85.202(a)(2)(A)(v) removes 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.

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

An amendment to §85.420 requires 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. An amendment to §85.420(b)(2) adds 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.

Amendments to §85.421 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. An amendment to §85.421(a) removes language suggesting that the OCCC will provide each pawnshop with a display and printed materials at the time of initial licensing. The amended language will still provide that pawnshops may request copies from the OCCC, or may print copies from the OCCC's website. This amendment will maintain flexibility for pawnshops while reducing the cost for the OCCC to send printed materials and displays.

Amendments to §85.422 make technical changes relating to the escheat of unclaimed funds. Amended text in §85.422(3) reflects that unclaimed funds are submitted to the Unclaimed Property Division of the Texas Comptroller of Public Accounts. Another amendment adds 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.

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 amendments to §85.601 ensure consistency

with HB 1342, which the Texas Legislature enacted in 2019. HB 1342 included the following changes in Texas Occupations Code, Chapter 53: (1) the bill repealed a provision that generally allowed denial, suspension, or revocation for any offense occurring in the five years preceding the application, (2) the bill added provisions requiring an agency to consider correlation between elements of a crime and the duties and responsibilities of the licensed occupation, as well as compliance with conditions of community supervision, parole, or mandatory supervision, and (3) the bill removed previous language specifying who could provide a letter of recommendation on behalf of an applicant. Amendments throughout subsections (c) and (f) of §85.601 implement these statutory changes from HB 1342. Other amendments to §85.601 include technical corrections, clarifying changes, and updates to citations.

Regarding the effective date of these amendments, Texas Finance Code, §371.006 contains a provision requiring notice to licensees concerning rulemaking for the pawnshop industry. In order to comply with this statutory notice requirement, the delayed effective date for the changes included in this adoption will be October 1, 2022.

The rule amendments are adopted 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 adopted 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 adoption 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) [(f)(2)] of this section, this reflects negatively on an applicant's character and fitness. The OCCC may deny a license application based on other criminal history of the applicant or its principal parties if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. The OCCC will, however, consider the factors identified in subsection (c)(2) - (3) of this section in its review of character and fitness.

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

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

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

~~(1) [(2)] a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42A.054 or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(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 repute, 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 adoption and found it to be

a valid exercise of the agency's legal authority.

Issued in Austin, Texas on August 19, 2022.

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

C.

**Department of Savings and
Mortgage Lending**

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C. Department of Savings and Mortgage Lending

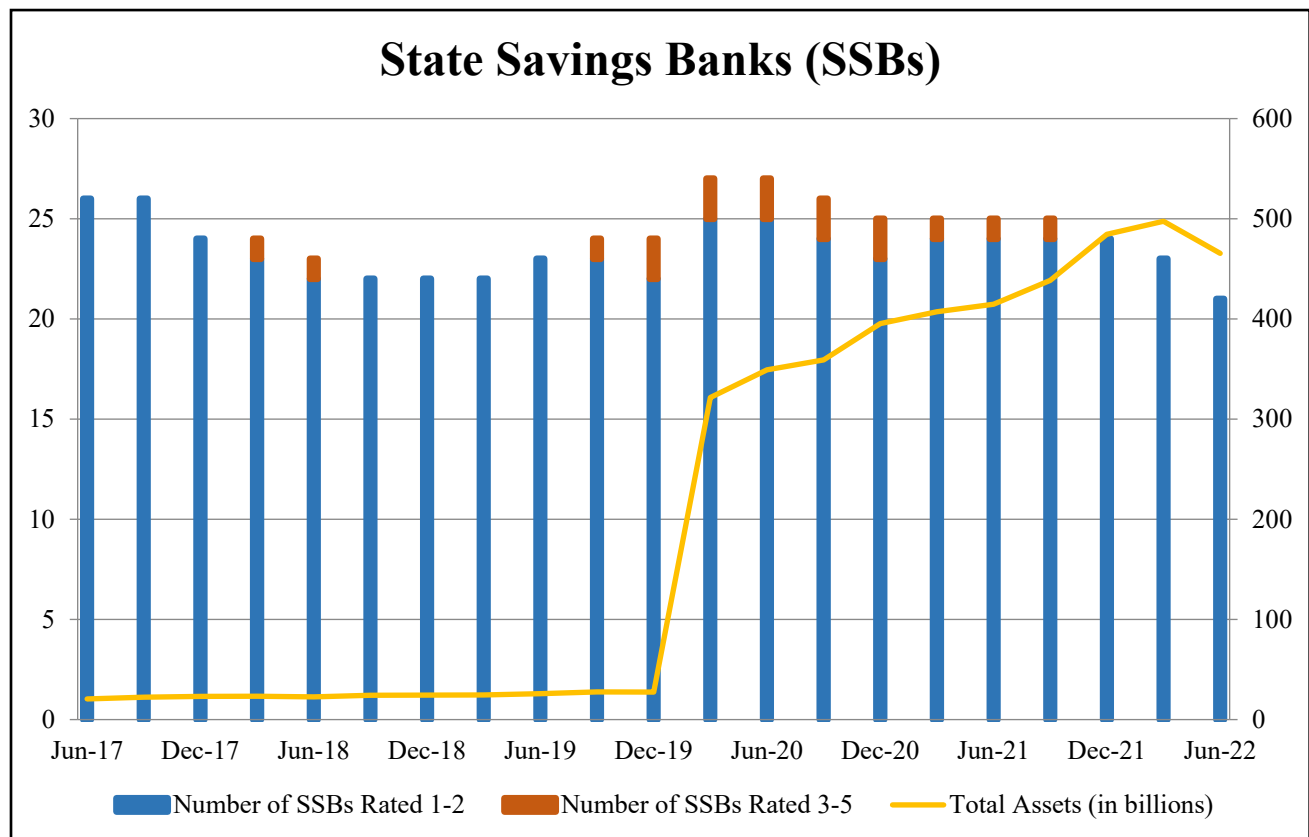
1. Industry Status and Departmental Operations: a) Thrift Regulation Division Activities; b) Mortgage Regulation Division Activities; c) Operations Division Activities; d) Legal Division Activities, including Consumer Complaints and Gift Reporting; and e) Legislative Activities

a) Thrift Regulation Division Activities

Industry Status

The Department continues to monitor various local, state, and national data sources to understand 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 consist of 21 state savings banks with assets totaling \$465.4 billion as of June 30, 2022. The industry remains sound with all banks being well rated. As of June 30, 2022, no supervisory actions are in place.



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 June 2022 Finance Commission meeting.

b) Mortgage Regulation Division Activities

Industry Status

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

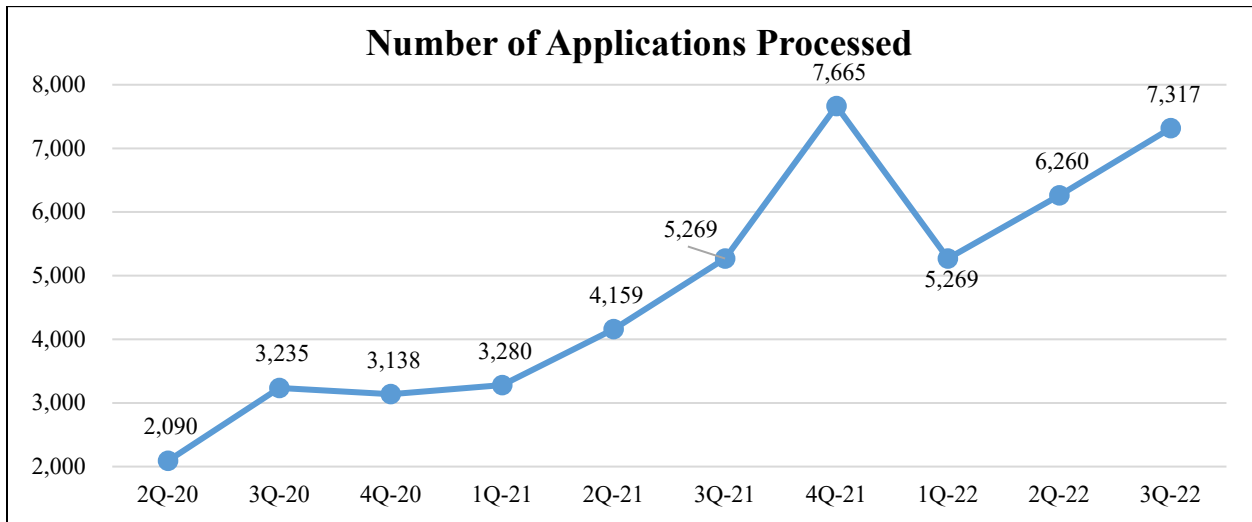
The following table represents the growth in the number of licenses/registrations and branch locations in approved status on July 31, 2021, and July 31, 2022.

License/Registration Type	Approved Count as of		% Change
	07/31/2021	07/31/2022	
Mortgage Banker	427	445	4.22%
Mortgage Company	1,830	2,616	42.95%
Residential Mortgage Loan Servicer	220	241	9.55%
Independent Contractor Company	229	289	26.20%
Credit Union Subsidiary Organization	3	5	66.67%
Auxiliary Mortgage Loan Activity Company	4	3	-25.00%
Financial Services Company	0	0	0.00%
<i>Subtotal Entity Licenses/Registrations</i>	2,713	3,599	32.66%
Mortgage Banker Branches	3,830	4,741	23.79%
Mortgage Company Branches	1,099	1,342	22.11%
Credit Union Subsidiary Organization Branches	2	1	-50.00%
<i>Subtotal Branch Licenses/Registrations</i>	4,931	6,084	23.38%
Mortgage Loan Originator	43,000	54,505	26.76%
<i>Subtotal Individual Licenses</i>	43,000	54,505	26.76%
<i>Total Count of Licenses/Registrations</i>	50,644	64,188	26.74%

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 2,258 individual licensees. Compared to the same reporting period in FY2021, the overall number of examinations conducted was 5.77% lower (98 vs. 104), however, the number of individual licensees examined was 21.40% higher (2,258 vs. 1,860) due to more of the examined entities in FY2022 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 July 13, 2022, Commissioner Hector Retta and Director of Mortgage Regulation William Purce provided an in-person presentation to the North Texas Association of Mortgage Professionals (NTXAMP). On July 10, 2022, Commissioner Hector Retta and Director of Mortgage Regulation William Purce provided an in-person presentation to the Greater Houston Association of Mortgage Professionals (GHAMP). Both presentations 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) adopted new regulations; and (7) cybersecurity, remote work policies, and information security plans. Questions and answer sessions followed both presentations.

c) Operations Division Activities

Accounting, Budget, and Financial Reporting

Staff closed the third quarter of FY2022 and developed the budget for FY2023.

CAPPS Implementation –CAPPS HR/Payroll was deployed on July 11, 2022. Staff is planning fiscal year 2023 CAPPS activities.

Human Resources

As of August 1, 2022, the Department was staffed at 59 regular full-time employees. During the months of June and July, two Administrative Assistants, a Systems Support Specialist, and an Attorney separated from the Department. During the same period, five new employees joined the Department – an Administrative Assistant, a Mortgage Financial Examiner, a Systems Support Specialist, a Legal Assistant, and an Attorney.

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

Vacancy Status	
Legal Assistant II/III	Position Filled
Administrative Assistant II/III	
Systems Support Specialist II/III	
Financial Examiner I/II- Mortgage	
Financial Examiner V – Thrift – 2	Collecting and reviewing applications, interviewing candidates
Financial Examiner VI/VII – Thrift - 3	
Administrative Assistant III/IV	
Financial Examiner I-II -Thrift (IT)	Collecting and reviewing applications
Administrative Assistant II/III (Complaints)	

Outreach and Training

The quarterly agency-wide meeting and training is scheduled for August 18, 2022. The training agenda includes Active Shooter Training and multiple sessions on agency and state policies and procedures.

Director of Operations Antonia Antov attended the Texas State Agency Business Administrators Association Annual Conference in San Antonio, TX from July 20 to July 22, 2022.

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

Type/Strategy/Measure	2022 Target	2022 Actual	2022 YTD	Percent of Annual Target	
Output Measures-Key					
1-1-1 Thrift Safety and Soundness					
1. Number of State Chartered Savings Institution Examinations Performed					
Quarter 1	21	5	5	23.81%	
Quarter 2	21	7	12	57.14%	*
Quarter 3	21	2	14	66.67%	*
*The Department examines state chartered savings banks jointly with the FDIC and FRB, based on a priority schedule. The results for this measure may fluctuate between quarters due to the timing of individual examinations.					
2-1-1 Mortgage Regulation					
1. Number of Applications Processed					
Quarter 1	18,000	5,269	5,269	29.27%	*
Quarter 2		6,260	11,529	64.05%	*
Quarter 3		7,317	18,846	104.70%	*
*The number of applications received was higher than anticipated; therefore, the number of applications processed was affected in the same manner.					
2. Number of Licensees Examined					
Quarter 1	14,000	1,638	1,638	11.70%	*
*A vast majority of the examinations conducted (87 out of 112 examinations) involved 10 or less originators. The Department is planning on conducting three examinations involving a substantial number of originators in the third and four quarters.					
Quarter 2		6,840	8,478	60.56%	*
*An examination of a mortgage entity with a large number of originators was issued.					
Quarter 3		2,151	10,629	75.92%	
3-1-1 Consumer Responsiveness					
1. Number of Complaints Closed					
Quarter 1	1,300	328	328	25.23%	
Quarter 2	1,300	366	694	53.38%	
Quarter 3	1,300	434	1,128	86.77%	*
*The number of complaints received was higher than anticipated; therefore, the number of complaints closed was affected in the same manner.					

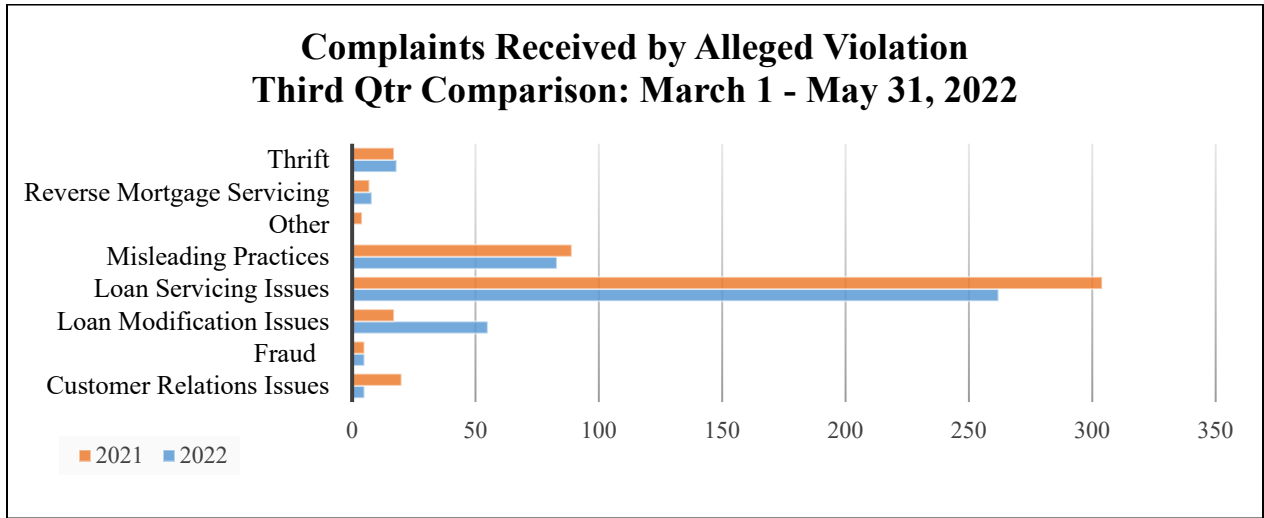
* Varies by 5% or more from target.

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

Consumer Complaints Activity Report

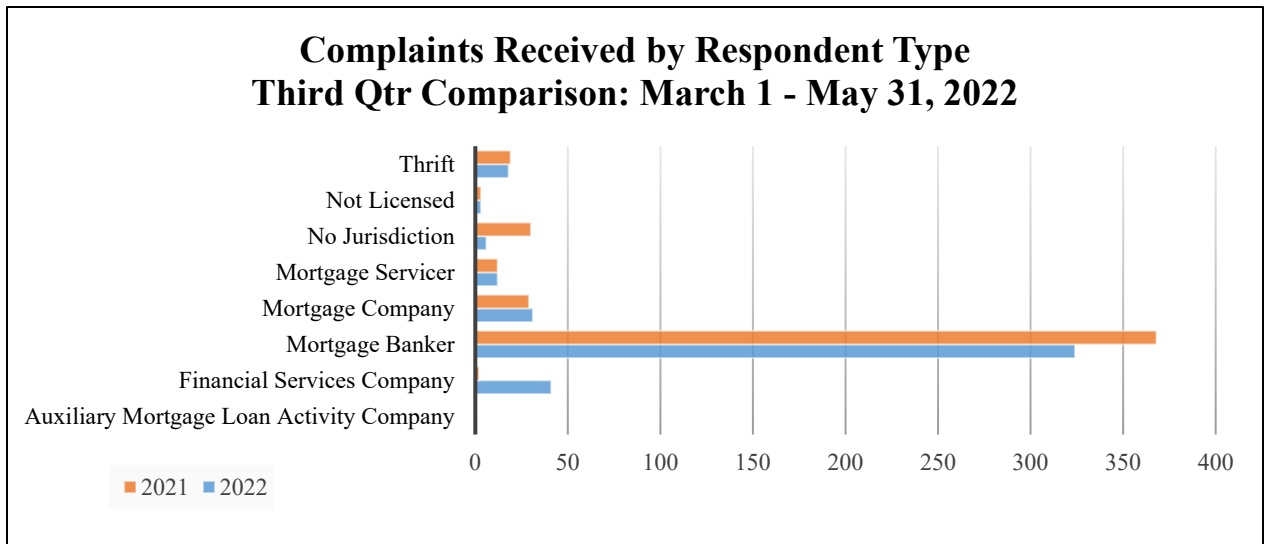
Complaints Received by Type of Alleged Violation

During the third quarter FY2022, the Department received 436 complaints, representing a 6% decrease in complaints received during the same period in FY2021. Comparing the third quarter data between FY 2021 and FY 2022, there has been an increase in complaints regarding loan modification issues and reverse mortgage servicing.



Complaints Received by Respondent Type

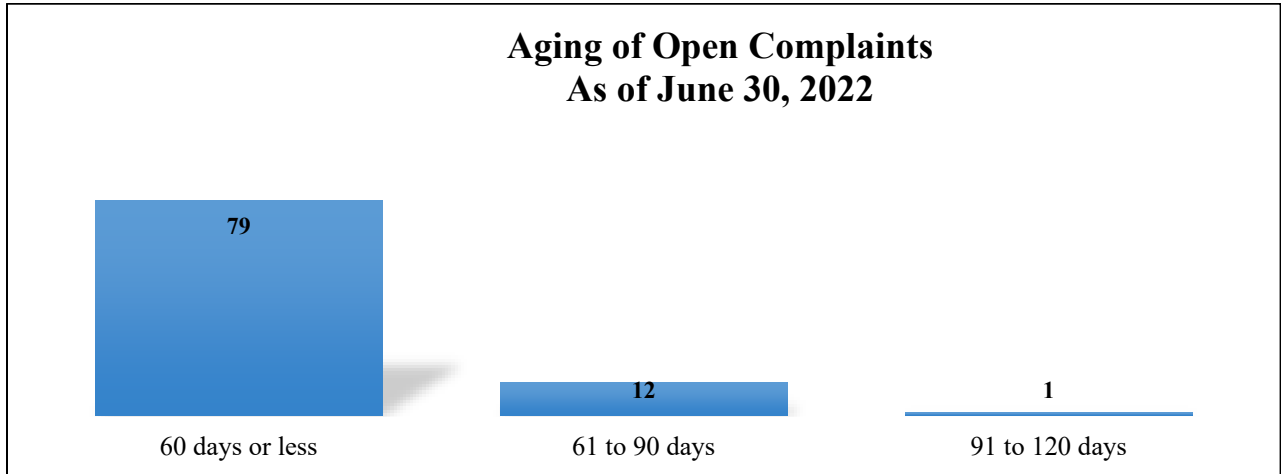
While mortgage bankers continue to represent the largest percentage overall of respondent type during the third quarter FY2022, the Department has seen an increase in complaints relating to Financial Services Companies and a decrease in complaints in which the Department had No Jurisdiction when compared to the third quarter FY2021.



In the third quarter of FY2022, there was one complaint received relating to an Auxiliary Mortgage Loan Activity Company and there were none in this category during the third quarter of FY2021.

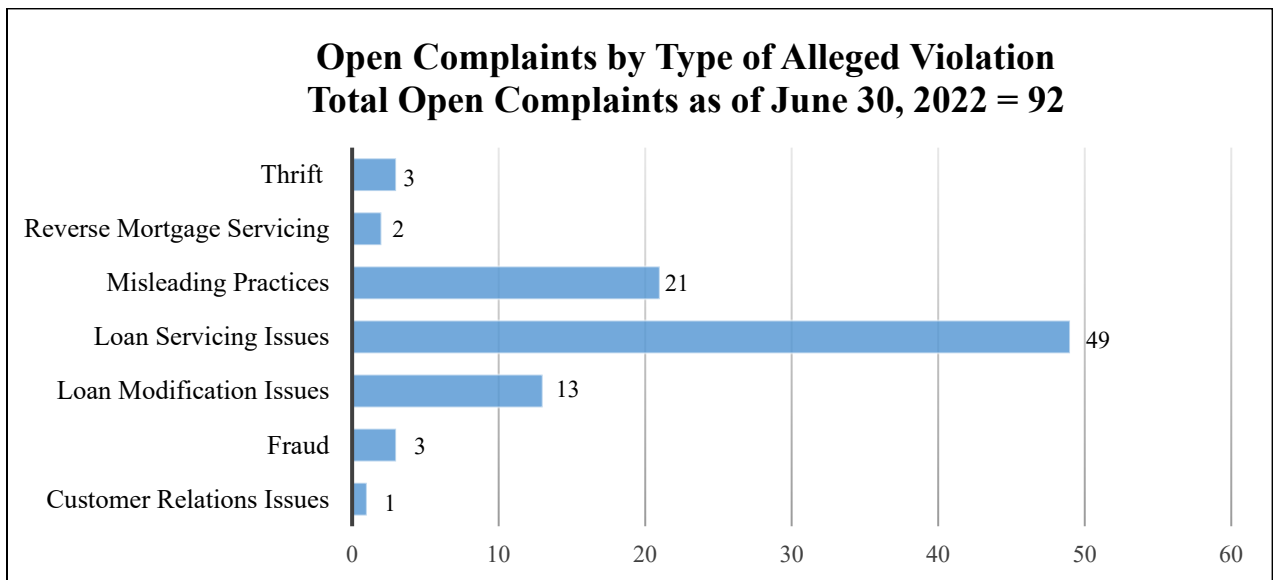
Aging of Open Complaints

As of June 30, 2022, there were 92 open files. Open complaint aging remains within acceptable ranges with 99% of complaints aged 90 days or less. The one (1) file that was aged over 90 days, has since been closed.



Open Complaints by Type of Alleged Violation

Regarding the 92 open files as of June 30, 2022, the largest volume relate to loan servicing issues.



Closed Complaints	FY2022			
	1 st Qtr	2 nd Qtr	3 rd Qtr	4 th 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			
	1 st Qtr	2 nd Qtr	3 rd Qtr	4 th 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 / Mortgage Grant Fund Claim Applications

Status of Open Claim Application Files as of May 31, 2022	Received prior to Mar 1, 2022	Received Mar 1-May 31, 2022
Commissioner signed Order granting claim applications / funds	2	1
Appeal received to Department preliminary determination letter	2	0
Investigation being conducted	2	2
Preliminary determination letter issued for denial of application	1	1

As a result of the three orders signed by the Commissioner, absent any motion for re-hearings or appeal to district court, \$28,930 will be disbursed to consumers.

Contested State Office of Administrative Hearings (SOAH) Cases

Josh Rackley and Toni Rackley, a/k/a Toni Guggenbickler v. Thrive Mortgage and Ashlynn Anne Kelso (SOAH Docket No. 450 22-1867; recovery fund claim). Josh Rackley and Toni Rackley, a/k/a Toni Guggenbickler filed a claim application against the recovery fund seeking \$60,000 in connection with an application for a residential mortgage loan submitted to Ashlynn Kelso (NMLS ID 1074888), a residential mortgage loan originator licensed by the Department, and Thrive Mortgage, LLC (NMLS ID 268552), a mortgage banker registered with the Department. The loan application was ultimately denied by the underwriter. On July 1, 2021, the Department issued a preliminary determination letter denying the recovery claim because the Department concluded there was insufficient evidence to establish a violation of Tex. Fin. Code Section 157.024(a) or 156.304(b). The applicants/claimants, Josh Rackley and Toni Rackley, appealed the Department's preliminary determination. On February 24, 2022, the Department docketed the matter at SOAH. The contested hearing due to scheduling conflicts of the various parties has been continued several times. A final hearing on the merits is set for August 15, 2022.

Department of Savings and Mortgage Lending v. Thynancy Nguyet Luu (SOAH Docket No. 450 22-04314.CHI; confidential proceeding) Ms. Luu applied with the Department for licensure as a residential mortgage loan originator. On April 8, 2022, the Commissioner sought to deny the application based on information discovered during the application process. On April 18, 2022, Ms. Luu appealed the Commissioner's decision. On June 24, 2022, the matter was docketed at SOAH. On July 15, 2022, a hearing on the merits was held before an Administrative Law Judge (ALJ) at SOAH. Ms. Luu requested additional time to submit post hearing supplemental documentation as exhibits. The ALJ set a deadline for the additional documents to be submitted by August 5, 2022. As a result, Ms. Luu did submit supplemental documents. The matter is now under consideration by the ALJ.

Department of Savings and Mortgage Lending v. Kyle Christopher Thomas (SOAH Docket No. 450 22-04351.CHI; confidential proceeding) Mr. Thomas applied with the Department for licensure as a residential mortgage loan originator. On March 22, 2022, the Commissioner sought to deny the application based on information discovered during the application process. On March 29, 2022, Mr. Thomas appealed the Commissioner's decision. On June 29, 2022, the matter was docketed at SOAH. A hearing on the merits is presently scheduled for August 4, 2022.

Eldridge E. Cloud v. Brian K. Howell (SOAH Docket No. 450 22-06464; recovery fund claim) Eldridge E. Cloud filed a claim application against the recovery fund seeking \$9,918.64 in connection with an application for a residential mortgage loan submitted to Brian Howell Sr. (NMLS ID 1216026), a residential mortgage loan originator licensed by the Department. The loan was not consummated as Cloud asserted Howell did not assist him in applying for down payment assistance appropriately. On June 16, 2022, the Department issued a predetermination letter denying the recovery claim. The applicant/claimant, Eldridge E. Cloud appealed the Department's preliminary determination. On July 18, 2022, the Department docketed the matter at SOAH and was accepted. A hearing on the merits is scheduled to occur August 24, 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. The Court informed OAG in early July that the case had been submitted.

Public Information Requests

Public Information Requests	FY2022			
	1 st Qtr	2 nd Qtr	3 rd Qtr	4 th Qtr
Requests Received	33	31	44	

During the third quarter of FY 2022, one request was sent to the Office of the Attorney General (OAG) for a ruling. The Department received a response from OAG on June 21, 2022, which stated that the Department should withhold production of any responsive documents.

Rulemaking

SML Future Rule Activity		
Rule	Rulemaking Action	Projected Date for Presentation
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
Chapter 79, §79.4, Bond Requirement	Adoption of Proposed Rule Changes	October 2022
Chapter 52, Charter Applications	Rule Review	FY2023
Chapter 53, Additional Offices	Rule Review	FY2023
Chapter 57, Change of Office Location or Name	Rule Review	FY2023
Chapter 61, Hearings	Rule Review	FY2023
Chapter 63, Fees and Charges	Rule Review	FY2023
Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints	Rule Review	FY2023
Chapter 65, Loans and Investments	Rule Review	FY2023
Chapter 67, Savings and Deposit Accounts	Rule Review	FY2023
Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion	Rule Review	FY2023
Chapter 71, Change of Control	Rule Review	FY2023
Chapter 73, Subsidiary Corporations	Rule Review	FY2023

Gift Reporting

Financial Examiner Justin Accola attended the 2022 National Test Maintenance Committee Meeting held June 8 – June 9, 2022. The travel expenses totaling \$471.56 were paid by State Regulatory Registry, LLC (CSBS NTMC).

e) Legislative Activities

The Department's staff is reviewing needed amendments and modifications to statutory provisions in preparation for the upcoming legislative session.

2. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 4, Chapter 75, Concerning Applications, Chapter 76, Miscellaneous, and Chapter 77, Loans, Investments, Savings, and Deposits, Resulting from Rule Review

PURPOSE: Pursuant to Texas Government Code §2001.039, the Department has completed its review of 7 TAC Chapters 75 - 77 and has determined that the reasons for initially adopting the rules contained in these chapters continue to exist.

RECOMMENDED ACTION: The Department recommends that the Finance Commission approve readoption of 7 TAC Chapters 75 - 77 following rule review, because the reasons for the rules continue to exist.

RECOMMENDED MOTION: I move that the Finance Commission approve readoption of 7 TAC Chapters 75 - 77 following rule review, because the reasons for the rules continue to exist.

ADOPTION OF RULE REVIEW
7 TAC CHAPTERS 75 - 77
PAGE 1 OF 1

Department of Savings and Mortgage Lending

Title 7, Part 4

The Department of Savings and Mortgage Lending (department) has completed its review of the following chapters of 7 TAC Part 4:

Chapter 75, Applications (§§75.1 - 75.3, 75.6, 75.8, 75.10, 75.25 - 75.27, 75.31 - 75.33, 75.35, 75.36, 75.38, 75.39, 75.41, 75.81 - 75.83, 75.87 - 75.91, 75.122 - 75.124, 75.126, 75.127, 75.201 - 75.204);

Chapter 76, Miscellaneous (§§76.1, 76.2, 76.4 - 76.7, 76.12, 76.21 - 76.26, 76.41 - 76.47, 76.91 - 76.103, 76.105 - 76.110); and

Chapter 77, Loans, Investments, Savings, and Deposits (§§77.1 - 77.11, 77.31, 77.33, 77.35, 77.51, 77.71, 77.73, 77.91, 77.92, 77.93, 77.94, 77.95, 77.96).

The review of 7 TAC Chapters 75 - 77 was conducted in accordance with Government Code §2001.039. Notice of the review was published in the May 6, 2022 issue of the *Texas Register* (47 TexReg 2777). No comments were received in response to the notice.

The rules contained in 7 TAC Chapters 75 - 77 were adopted by the Finance Commission of Texas (commission) on behalf of the department.

As a result of the rule review conducted by the department, the commission has determined that certain changes to the rules are appropriate and necessary. Those proposed rule changes are published in the Proposed Rules section in this issue of the *Texas Register*.

The commission, after considering the results of the rule review conducted by the department, finds that the reasons for initially adopting the

rules reviewed continue to exist and readopts 7 TAC Chapters 75 - 77.

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

◆ ◆ ◆

3. 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 75, Concerning Applications, Resulting from Rule Review

PURPOSE: The purpose of the new rules and repeals in 7 TAC Chapter 75 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 publication of the new rules and repeals in 7 TAC Chapter 75 for comment in the *Texas Register*.

RECOMMENDED MOTION: I move that the Finance Commission approve publication of the new rules and repeals in 7 TAC Chapter 75 for comment in the *Texas Register*.

PROPOSED NEW RULES AND REPEALS
7 TAC CHAPTER 75
PAGE 1 OF 60

TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 75. APPLICATIONS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal all existing rules sections in 7 TAC Chapter 75, as follows: §§75.1 - 75.3, 75.6, 75.8, 75.10, 75.25, 75.26, 75.27, 75.31, 75.32, 75.33, 75.35, 75.36, 75.38, 75.39, 75.41, 75.81 - 75.83, 75.87 - 75.91, 75.122 - 75.124, 75.126, 75.127, and 75.201 - 75.204. The commission further proposes new rules in 7 TAC Chapter 75, as follows: §§75.1, 75.2, 75.101 - 75.104, 75.121 - 75.123, 75.131 - 75.133, 75.141 - 75.145, 75.151 - 75.153, 75.161 - 75.165, 75.171, 75.181, 75.182, 75.191, 75.201 - 75.204, 75.221 - 75.227, 75.231 - 75.234, 75.241, 75.242, 75.244 - 75.246, 75.251, 75.252, 75.261, 75.301 - 75.309, 75.321, 75.323 - 75.326, 75.331, and 75.75.332. This proposal and the rules as repealed or added as a new rule by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The existing rules in 7 TAC Chapter 75, Applications, Chapter 76, Miscellaneous, and Chapter 77, Loans, Investments, Savings, and Deposits, implement Finance Code Title 3, Subtitle C, Savings Banks, and affect savings banks regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 75, 76, and 77 into Chapter 75

When viewing the department's rules as a whole, it is somewhat difficult to discern which of the chapters affects savings banks regulated by the department, particularly when such rules are

located alongside the eleven other chapters that affect savings associations and have similar titles. In consideration of the foregoing, the department has determined that it should reorganize Chapters 75 - 77 by consolidating the subject matter of such chapters into one chapter - Chapter 75 - and renaming such chapter "Savings Banks." The proposed rules, if adopted, would: (i) repeal all existing rules in Chapter 75; and (ii) adopt new rules largely patterned after the existing rules in 7 TAC Chapters 75 - 77.

Changes Concerning Loan Requirements

The department's existing rules in Chapter 77, Subchapter A, §§77.2 - 77.9 establish various requirements for loans made by a savings bank. While such rules, at one time, were appropriate, the department has determined that, given the requirements of federal law governing loan products, the rules are now overly prescriptive and should be repealed. As a result, the subject matter of such rules is not included as new rules in this proposal.

Other Modernization and Update Changes.

The proposed rules, if adopted, would 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.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in

PROPOSED NEW RULES AND REPEALS
7 TAC CHAPTER 75
PAGE 2 OF 60

effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall and that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the department because the department is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because the department does not contribute to the state's general revenue fund.

Public Benefits

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing or administering the proposed rules will be for the department's rules governing savings banks to be easier to locate by members of the public.

Probable Economic Costs to Persons Required to Comply with the Proposed Rules

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by

Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions; (3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules related to Changes Concerning Loan Requirements have the effect of repealing an existing rule requirement by purposely not proposing new rules to adopt the subject matter of existing 7 TAC §§77.2 - 77.9 in connection with the department's proposal to consolidate the subject matter of the existing rules in 7 TAC Chapter 77 into Chapter 75; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a

PROPOSED NEW RULES AND REPEALS
7 TAC CHAPTER 75
PAGE 3 OF 60

local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, Deputy General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this proposal.

SUBCHAPTER A. CHARTER APPLICATIONS

7 TAC §§75.1 - 75.3, §75.6, §75.8, §75.10

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §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.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.1. Application for Savings Bank Charter.

§75.2. Publication of Notice of Charter Application.

§75.3. Hearing on Charter Application.

§75.6. Time of Decision on Charter Application.

§75.8. Identification of Office Site; Temporary Location and Community.

§75.10. Change of Name Application.

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

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



SUBCHAPTER B. EXPEDITED APPLICATIONS

7 TAC §§75.25 - 75.27

Statutory Authority

This proposal is made under the authority of: Finance Code §11.302, authorizing the commission to adopt rules applicable to savings banks; and 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.

PROPOSED NEW RULES AND REPEALS
7 TAC CHAPTER 75
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This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.25. Eligible Institution.

§75.26. Expedited Applications.

§75.27. Denial of Expedited Treatment.

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

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



SUBCHAPTER C. ADDITIONAL OFFICES

7 TAC §§75.1 - 75.33, 75.35, 75.36, 75.38, 75.39, 75.41

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §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.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.31. Approval of Offices Required; Closing an Office; Activities Not Requiring an Approved Office.

§75.32. Types of Additional Offices.

§75.33. Branch Office Applications.

§75.35. Mobile Facilities.

§75.36. Exemption for Supervisory Sale.

§75.38. Change of Home or Additional Office Location.

§75.39. Temporary Closing of Additional Offices.

§75.41. Offices in Other States or Territories.

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

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



SUBCHAPTER D. REORGANIZATION, MERGER, CONSOLIDATION, CONVERSION, PURCHASE, AND ASSUMPTION AND ACQUISITION

7 TAC §§75.81 - 75.83, 75.87 - 75.91

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §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.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.81. Reorganization, Merger, Consolidation or Purchase and Assumption Transaction.

PROPOSED NEW RULES AND REPEALS
7 TAC CHAPTER 75
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§75.82. Form and Content of Application.

§75.83. Notice of Hearing.

§75.87. Exemption for Supervisory Merger.

§75.88. Acquisitions Involving Financial Institutions in Other States or Territories.

§75.89. Reorganization, Merger or Conversion to Another Financial Institution Charter.

§75.90. Conversion into a Savings Bank.

§75.91. Mutual to Stock Conversion.

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

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



SUBCHAPTER E. CHANGE OF CONTROL

7 TAC §§75.122 - 75.124, 75.126 - 75.127

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §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.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.122. Acquisition of a Savings Bank.

§75.123. Notice and Hearing.

§75.124. Retention of Control.

§75.126. Abeyance of Other Applications.

§75.127. Exempt Transactions.

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

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



SUBCHAPTER F. GENERAL PROVISIONS

7 TAC §§75.201 - 75.204

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §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.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.201. Definitions.

§75.202. Application Filing Requirements.

§75.203. Public Notice of Application.

§75.204. Motions for Rehearing.

PROPOSED NEW RULES AND REPEALS
7 TAC CHAPTER 75
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The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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



CHAPTER 75. SAVINGS BANKS.
SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §§75.1, 75.2

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §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. 7 TAC §75.2 is also proposed under the authority of, and to implement, Finance Code: §91.002 and §92.055(a).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.1. Purpose and Applicability.

This chapter governs the chartering, administration, and operations of a Texas-chartered savings bank, including the affiliates and third-party service providers of a savings bank under Finance Code Title 3, Subtitle C, the Texas Savings Bank Act (Finance Code §91.001 et seq.).

§75.2. Definitions.

As used in this chapter, and in the

Commissioner's administration and enforcement of Finance Code Title 3, Subtitle C, the following words and terms are assigned the following meanings, unless the context clearly indicates otherwise.

(1) Affiliate--An affiliate of, or person affiliated with, a person that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

(2) Affiliated person--

(A) a director, officer, or controlling person of a savings bank;

(B) a spouse of a director, officer, or controlling person of a savings bank;

(C) a member of the immediate family of a director, officer, or controlling person of a savings bank, who is a director or officer of any subsidiary of a savings bank or of any holding company affiliate of a savings bank;

(D) any company (other than the savings bank, its holding company, or an operating subsidiary) of which a director, officer, or controlling person of a savings bank:

(i) is a director or officer;

(ii) in the case of a limited liability company, is a manager or managing member;

(iii) in the case of a partnership, is a general partner;

(iv) in the case of a partnership, is a limited partner who, directly or indirectly, either alone or with their spouse and the members of their immediate family who are

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also affiliated persons of the savings bank, owns an interest of 10% or more in the partnership (based on the value of their contribution) or who, directly or indirectly with other directors, officers, and controlling persons of a savings bank, and their spouses and their immediate family members who are also affiliated persons of the savings bank, owns an interest of 25% or more in the partnership; or

(v) directly or indirectly, either alone or with their spouse and the members of their immediate family, who are also affiliated persons of the savings bank, owns or controls 10% or more of any class of equity securities, or owns or controls with other directors, officers, and controlling persons of a savings bank and their spouses and their immediate family members, who are also affiliated persons of the savings bank, 25% or more of any class of equity securities; and

(E) any trust or other estate in which a director, officer, or controlling person of a savings bank, or a member of the director's, officer's, or controlling person's immediate family, has a substantial beneficial interest or as to which such person or their spouse serves as trustee or in a similar fiduciary capacity.

(3) Application--An application requesting authorization or other relief from the Commissioner pursuant to this chapter or under the Texas Savings Bank Act for which a filing fee is required under §75.102 of this section (relating to Application Fees and Charges).

(4) Appropriate banking agency--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002).

(5) Board--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002).

(6) Bylaws--The rules adopted to regulate or manage a company, regardless of the name used to designate the rules, and with respect to a limited liability company (including a limited savings bank), means the company agreement, or similar rules adopted to regulate or manage the limited liability company.

(7) Capital stock--Has the meaning assigned by the Texas Savings Bank Act (Tex. Fin. Code §91.002).

(8) Capital stock savings bank--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002).

(9) Certificate of formation--The document evidencing the formation of the business entity, referred to in other governmental jurisdictions as the articles of incorporation, certificate of incorporation, or articles of organization, as applicable.

(10) Commissioner--The savings and mortgage lending commissioner appointed under Finance Code Chapter 13.

(11) Company--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002).

(12) Control--The power to exercise, directly or indirectly, a controlling influence over the management or policies of a company. Control is deemed to exist when a person, directly or indirectly, or acting through or in concert with one or more persons:

(A) owns, controls, or has the power to vote 25% or more of any class of voting securities of a company;

(B) is an officer or director of the company and owns, controls, or has the power to

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vote 10% or more of any class of voting securities of a company, and no other person owns, controls, or has the power to vote a greater percentage of that class of voting securities; or

(C) controls, in any manner, the election of a majority of the directors, trustees, or other persons exercising similar functions of a company.

(13) Controlling person--A person having control as defined by paragraph (13) of this section.

(14) Day--A calendar day, unless another method of counting days is specified.

(15) Deposit account--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002).

(16) Deposit liability--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002)

(17) FDIC--The Federal Deposit Insurance Corporation, including any successor.

(18) Financial institution--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002).

(19) Finance Commission--The Finance Commission of Texas, the oversight body responsible for overseeing and coordinating the Department under Finance Code Chapter 11.

(20) GAAP--Generally Accepted Accounting Principles.

(21) Holding company affiliate--A company of which a savings bank is a subsidiary and any other subsidiary of such company other than a subsidiary of the savings bank.

(22) Home office--The office where a savings bank has its headquarters and from which all of its operations are directed.

(23) Immediate family--The spouse of an individual, the individual's minor children, and any of the individual's children (including adults) residing in the individual's home.

(24) Issuer--The savings bank which has issued the security in question.

(25) Limited savings bank--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002).

(26) Managing officer--An individual designated by the board as being responsible for, and having the authority to direct, the day-to-day operations of the savings bank. The managing officer must have sufficient banking experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that, under the management and supervision of the managing officer, the savings bank will operate in compliance with applicable law and that success of the savings bank is probable.

(27) Member--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002).

(28) Mutual savings bank--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002).

(29) Officer--The president, any vice president (but not an assistant vice president, second president, or other vice president having authority similar to an assistant or second vice president), the secretary, the treasurer, the comptroller, and any other person performing similar functions with respect to any entity or organization, whether incorporated or

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unincorporated. The term “officer” includes the chairman of the board, if the savings bank’s certificate of formation or bylaws authorize the chairman to participate in the operating management of the entity or organization, or if the chairman actually participates in such management.

(30) Person--An individual, corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing acting in concert.

(31) Recourse-- A contract by a borrower or guarantor to repay 100% of all amounts due and owing under the loan.

(32) Savings bank--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002).

(33) Shareholder--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002).

(34) Subsidiary-- Any company that is controlled by the savings bank or by a company that is controlled by a company which is controlled, directly or indirectly, by the savings bank.

(35) Surplus--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002).

(36) Texas Savings Bank Act--Finance Code Title3, Subtitle C (Finance Code §91.001 et seq.).

(37) Unsafe and unsound practice--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002), and includes excessive operating expenses, excessive growth, high-risk or undiversified investment positions, and non-existent or poorly followed lending or

underwriting policies, procedures, or guidelines.

(38) Voting security--includes any security convertible into or evidencing a right to acquire a voting security.

(39) Withdrawal value--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002) in defining “withdrawal value of deposit account.”

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

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



SUBCHAPTER B. APPLICATIONS

DIVISION 1. GENERAL PROVISIONS

7 TAC §§75.101 - 75.104

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §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. 7 TAC §§75.101 - 75.103 are also proposed under the authority of, and to implement, Finance Code §96.002(a)(2). 7 TAC §75.102 is also proposed under the authority of Finance Code: §16.003(c), providing that the department may set the amount of fees, penalties, charges, and revenues as necessary for the

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purpose of carrying out the functions of the department; and §91.007, requiring the commission to adopt rules setting the amount of fees the commissioner charges, including fees relating to filing an application or other documents. 7 TAC §75.102 is also proposed under the authority of, and to implement, Finance Code: §91.007; §92.051(a)(2); §92.063; §93.004(b); and §97.001. 7 TAC §75.103 is also proposed under the authority of, and to implement, Finance Code: §92.057(a)(1); §92.352(a)(1); and §92.557(d).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.101. Application Filing Requirements.

(a) Purpose and Applicability. Applications submitted to the Department must comply with the requirements of this section.

(b) Application Forms. All applications must be made on the current form for the application prescribed by the Commissioner.

(c) Incomplete Filings; Notice of Acceptance; Deemed Withdrawal. An application is complete only if all required information and supporting documentation is included and all required fees have been received. Within 30 days of receipt of an application the Commissioner or the Commissioner's designee will issue a written notice to the applicant informing them either that the application is complete and accepted for filing, or that the application is incomplete and specifying the information required to render the application complete. The application may be deemed withdrawn and the applicable fee forfeited if, within 30 days of being notified the application was incomplete, the applicant fails to provide to the Department the supplemental information or supporting documentation necessary to render the application complete.

(d) Duty to Supplement. Even after being notified of the application being complete, the applicant has a continuing obligation and duty to supplement the application with any information or other supporting documentation the Commissioner determines to be necessary to render a decision on the application, upon written request. The applicant must provide to the Department any information or supporting documentation submitted to the appropriate federal banking agency in connection with the relief sought by the application not previously provided to the Department.

(e) Duty to Amend. If a material change occurs in the facts contained in or information furnished in support of the application, the applicant must file an amended application or otherwise supplement the application to address the material change. The applicant must endeavor to resolve any potential changes or amendments to the application prior to publishing public notice of the application as provided by §75.103 of this title (relating to Public Notice of Application). Amendments made after publication of such notice may require the notice to be republished, as determined in the sole discretion of the Commissioner, with written notice to the applicant.

§75.102. Application Fees and Charges.

(a) Filing Fees. An applicant must pay the following filing fees, unless an expedited filing fee applies (see subsection (b) of this section):

(1) Charter Application and Amendments.

(A) Charter application:
\$10,000.

(B) Change of name:
\$500.

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(C) Certificate of formation or bylaws amendments: \$100 per request.

million - \$500 million: \$5,000.

(2) Office Locations.

(iii) \$500 million - 1 billion: \$10,000.

(A) Branch office (other than a mobile facility): \$1,500.

(iv) over 1 billion - \$15,000.

(B) Mobile facility: \$500, plus \$100 for each location where the mobile facility is to be conducting banking business for purposes of §75.133 of this title (relating to Mobile Facility).

(D) For the conversion of a savings bank into another type of financial institution charter, or a reorganization, merger, or consolidation transaction that otherwise results in a savings bank reorganizing into, or merging or consolidating with a financial institution that is not a savings bank, no fee will be assessed.

(C) Relocate home or branch office: \$500.

(E) for the conversion of a mutual savings bank into a stock savings bank, a fee of \$7,500.

(3) Reorganization, merger, consolidation, conversion, or purchase and assumption:

(A) For a reorganization, merger, or consolidation transaction in which the resulting institution will be a savings bank, a fee of \$2,500 for each financial institution involved in the transaction.

(4) Change of control (obtaining control of a savings bank): \$5,000.

(5) Permission to issue capital notes or debentures: \$1,000.

(6) Holding Companies.

(B) For a purchase and assumption transaction by a savings bank as purchaser, a fee of \$2,000 for each financial institution involved in the transaction.

(A) Registration: \$2,000.

(B) Reorganization as a mutual holding company: \$7,500.

(C) For the conversion by a financial institution that is not a savings bank into a savings bank, the fee will be determined based on the total asset size of the institution, as follows:

(7) Investment in subsidiaries.

(i) \$0 - 125 million: \$2,500.

(A) Initial investment: \$1,500, plus \$100 for each office other than the home office of the proposed subsidiary.

(ii) \$125 million - \$500 million: \$5,000.

(B) Service subsidiary application to engage in a new activity: \$500.

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(C) Redesignation of operating subsidiary: \$300.

(D) Change of name: \$100.

(E) Relocate home or branch office: \$100.

(b) Filing Fees for Expedited Applications. Notwithstanding subsection (a) of this section, an applicant qualifying for expedited treatment for purposes of §75.152 of this chapter (relating to Expedited Applications) must pay the following filing fees:

(1) Branch office: \$500.

(2) Mobile facility: \$500 (no additional per-site fee).

(3) Relocate home or additional office location: \$250.

(4) Reorganization, merger, or consolidation: \$2,500.

(5) Purchase and assumption transactions: \$2,000.

(c) Reimbursement for Costs. In addition to filing fees established in subsections (a) and (b) of this section, the applicant must reimburse the Department for any costs incurred in connection with investigating or conducting a hearing on the application, including travel expenses.

(d) Protest Filing Fee. A person filing a protest to an application or otherwise requesting a hearing on an application (other than the applicant) must pay a fee of \$2,500 which must be paid at the time the protest or request for hearing is filed.

(e) Fees Nonrefundable; Discretion to Waive Fees and Costs. All filing fees must be paid at the

time the application is filed and are nonrefundable. Except for fees set or required by statute, the Commissioner, in his or her sole discretion, may waive, in whole or in part, any fees or costs required by this section.

§75.103. Public Notice of Application.

An application for which notice to the public is required to be published must comply with the requirements of this section, unless otherwise provided by §75.152 of this title (relating to Expedited Applications). The notice must be made using language and content preapproved by the Commissioner prior to publishing. The notice must be submitted to the publisher for publication within 15 days after the date the applicant receives notice that the application is complete and accepted for filing as provided by §75.101 of this title (relating to Application Filing Requirements). The notice must be published in an English language newspaper of general circulation in each county required by the rule(s) governing such application. The applicant must, within 10 days after publishing the notice, provide the Commissioner with a publisher's affidavit evidencing that the notice was properly published in conformity with this section. The notice is deemed properly effected when the appropriate notice has been published in conformity with this section, and more than 10 days have elapsed.

§75.104 Motions for Rehearing.

A motion for rehearing pursuant to Finance Code §91.006 must be filed not later than the 14th day after the date the decision or order that is the subject of the motion is signed. A copy of the motion for rehearing must be served on all parties who made an appearance or otherwise submitted a filing in the proceeding, and the motion must include a certificate of service reciting the parties served and the method of service. A party must file a reply to the motion for rehearing, if any, not

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later than the 30th day after the date the decision or order that is the subject of the motion is signed. The Commissioner must act on the motion for rehearing not later than the 45th day after the date the decision or order that is the subject of the motion for rehearing is signed or the motion for rehearing is deemed overruled by operation of law.

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

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



**DIVISION 2. CHARTER APPLICATIONS
AND AMENDMENTS**

7 TAC §§75.121 - 75.123

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §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. 7 TAC §75.121 is also proposed to implement Finance Code: Chapter 92, Subchapter B; §92.203; §92.601(b); and §96.002(a)(2) and (14). 7 TAC §75.122 is also proposed under the authority of, and to implement, Finance Code: §92.063; and §96.002(a)(2) and (14).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.121. Savings Bank Charter.

(a) Application Requirements. The charter application and all required supporting information must be executed by the proposed incorporators of the proposed savings bank which must consist of at least five adult residents of this state and must include all of the information required by Finance Code §92.051. The application must include a request for a corporate name to be approved by the Commissioner. The application must include the proposed home office of the savings bank, the identity and qualifications of the proposed managing officer(s), and any additional information the Commissioner deems to be necessary or prudent to enable the Commissioner to determine the matters set forth in Finance Code §92.058.

(b) Identification of Home Office; Definition of Community; Temporary Office Location. The proposed location for the home office must be specifically identified so as to exactly locate it within the community to be served. The term "community" as used in the Finance Code §92.058 means the geographical area surrounding the proposed location of the home office within which persons would be reasonably anticipated to patronize the proposed office in the ordinary course of their business. The Commissioner may approve the opening and operation of a temporary home office location for an approved charter, provided that such office is within the 1/2-mile radius of the permanent home office approved in the charter. If a temporary home office location is approved, the savings bank must promptly cease operations at such office upon the permanent home office being constructed or rendered fit for occupancy, but in any event no longer than 18 months from the date the charter was approved, unless extended in

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writing by the Commissioner.

(c) Capital Requirements. No application to incorporate a savings bank will be approved unless the application and evidence produced at a hearing, if one is required, satisfy the Commissioner that the proposed savings bank has received subscriptions for capital stock and paid-in surplus in the case of a capital stock savings bank, or pledges for savings liability and expense fund in the case of a mutual savings bank, in an amount not less than the greater of the amount required to obtain insurance of deposit accounts by the FDIC or the amount required of a national bank. No savings bank with an approved charter may open or do business as a savings bank until the Commissioner certifies that the Commissioner has received satisfactory proof that the amounts of capital stock and additional paid-in capital, or the savings liability and expense fund, as set forth in this section, have been received by the savings bank in cash, free of encumbrance.

(d) Public Notice. A charter application is deemed to be a complete application for purposes of Finance Code §92.057 at the time the Department notifies the applicant that the application is complete and has been accepted for filing as provided by §75.102 of this title (relating to Application Filing Requirements). Upon receipt of such notice, the proposed incorporators must publish a public notice of the charter application as provided by §75.103 of this title (relating to Public Notice of Application), which must be published in the county where the proposed savings bank will have its home office. Such notice, when properly effected, is deemed to be the Commissioner's public notice of the application for purposes of Finance Code §92.057.

(e) Request for Hearing; Deadline to Protest. A person may protest or otherwise request a hearing on the application as provided by Finance Code

§92.057. Any person desiring to protest the application or otherwise requesting a hearing on the application must file a written protest with the Department within 10 days from the date the public notice was made as provided by subsection (c) of this section, otherwise, any right or opportunity by such person to protest or have a hearing on the application under Finance Code §92.057 is deemed to be waived.

(f) Hearing. If a charter application is protested or a hearing on the application is otherwise requested, the Commissioner will set a hearing on the application within 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(g) Time of Decision. To the extent a hearing on the charter application is required, the Commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision. Only then will the hearing be deemed to have ended for purposes of Finance Code §92.058. If a hearing on the charter application is not required, the Commissioner will render a decision within 30 days after the time period for protesting or requesting a hearing on the application lapsed as provided by Finance Code §92.057.

§75.122. Change of Name.

(a) Approval Required. A savings bank may not change its name without the prior written approval of the Commissioner, and a savings bank may not operate under any name which has not been approved by the Commissioner in

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writing.

(b) Public Notice. An applicant seeking to change its name must publish a public notice of the application as provided by §75.103 of this title (relating to Public Notice of Application), which must be published in the county where the savings bank has its home office.

(c) Request for Hearing; Deadline to Protest. A person affected by the proposed name change may protest or otherwise request a hearing on the change of name application as provided by Finance Code §92.063. Any person affected by the proposed name change and desiring to protest the application or otherwise requesting a hearing on the application must file a written protest with the Department within 10 days from the date the public notice was made as provided by subsection (b) of this section, otherwise, any right or opportunity by such person to protest or have a hearing on the application under Finance Code §92.063 is deemed to be waived.

(d) Persons Affected by the Change of Name. A person is affected by a change of name for purposes of Finance Code §92.063 only if the requested name change, if granted, would result in the savings bank's name being substantially or deceptively similar to the party alleged to be affected, or is otherwise reasonably anticipated to create confusion in the marketplace involving the party alleged to be affected. A person requesting a hearing on a change of name application must allege and provide information in support of their request indicating they are a person that might be affected by the proposed name change as provided by this section. The Commissioner will review the request for hearing and determine, in his or her sole discretion, if the person might be affected so as to require a hearing under Finance Code §92.063.

(e) Hearing. If a hearing is required, the

Commissioner will set a hearing on the application within 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning contested cases contained in Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(f) Time of Decision. To the extent a hearing on the application is required, the Commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision. If a hearing on the application is not required, the Commissioner will render a decision within 30 days after the time period for protesting or requesting a hearing on the application lapsed as provided by subsection (c) of this section.

§75.123. Certificate of Formation or Bylaws Amendments.

(a) Approval Required. A savings bank may not amend its certificate of formation, bylaws, or other governing documents without the prior written approval of the Commissioner.

(b) Application Requirements. The application to amend the savings bank's certificate of formation, or bylaws must include the proposed amendments together with an explanation as to why the amendments are necessary.

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

Iain A. Berry

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Deputy General Counsel
Department of Savings and Mortgage Lending



DIVISION 3. OFFICE LOCATIONS

7 TAC §§75.131 - 75.133

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §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. This proposal is also made under the authority of, and to implement, Finance Code: §92.063; and §96.002(a)(2) and (14).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.131. Branch Office.

(a) Approval Required. A savings bank may not establish a branch office or an additional office as provided by §75.202 of this title (relating to Types of Additional Offices) without prior written approval of the Commissioner. A branch office application is required if a state savings bank would like to establish and operate a courier/messenger service pursuant to §75.202 of this title (relating to Types of Additional Offices).

(b) Required Information. The application must provide the following information which must be subscribed to and sworn before a notary:

- (1) proposed location for the office;
- (2) the personnel and office facilities

to be provided;

(3) the estimated cost and projected profits of such office; and

(4) any information deemed necessary by the Commissioner to render a determination on the matters set forth in subsection (c) of this section.

(c) Determination by Commissioner. The Commissioner will not approve the application unless the Commissioner determines from the information furnished with the application, the evidence produced at the hearing, if one is required, and the Department's records that:

(1) the operation and condition of the savings bank affords no basis for supervisory objection;

(2) the character, responsibility and general fitness of the current management of the savings bank warrant a belief that the branch office will be operated in accordance with the Texas Savings Bank Act; and

(3) the financial effect of establishing and operating the proposed office will not adversely affect the safe and sound operation of the savings bank.

(d) Commencement of Operations. The branch office must commence operation within a period of 12 months after the date of approval unless an extension is granted, in writing, by the Commissioner. No more than one 12-month extension will be approved by the Commissioner, unless good cause for such extension is shown. At the end of any approved extension, if the office has not been opened, the approval for such office is deemed revoked and a new application must be made.

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(e) Identification of Branch Office; Definition of Community. The proposed location for the branch office must be specifically identified so as to exactly locate it within the community to be served. The term “community” as used in Finance Code §92.060 means the geographical area surrounding the proposed location of the branch office within which persons would be reasonably anticipated to patronize the proposed office in the ordinary course of their business.

(f) Public Notice. An applicant seeking to establish a branch office must publish a public notice of the application as provided by §75.103 of this title (relating to Public Notice of Application), which must be published both in the county where the proposed branch office is to be located and in the county where the savings bank has its home office.

(g) Request for Hearing; Deadline to Protest. A person affected by the proposed establishment of a branch office may protest or otherwise request a hearing on the branch office application as provided by Finance Code §92.063. Any person affected by the proposed establishment of a branch office and desiring to protest the application or otherwise request a hearing on the application must file a written protest within the Department within 10 days from the date the public notice was made as provided by subsection (f) of this section, otherwise any right or opportunity by such person to protest or have a hearing on the application under Finance Code §92.063 is deemed to be waived.

(h) Hearing. If a hearing is required, the Commissioner will set a hearing on the application within 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(i) Time of Decision. To the extent a hearing on the application is required, the Commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision. If a hearing on the application is not required, the Commissioner will render a decision within 30 days after the time period for protesting or requesting a hearing on the application lapsed as provided by subsection (g) of this section.

(j) Offices in Other States or Territories. To the extent permitted by the laws of the state or territory in question, and subject to the requirements of this chapter, a savings bank may establish branch offices in any state or territory of the United States. Each application for permission to establish such a branch office must comply with the requirements of this section, and must include a certified copy of an order from the appropriate banking agency approving the office or unit, or other evidence satisfactory to the Commissioner that all state or territorial regulatory requirements have been satisfied. The Commissioner will not approve the application unless the Commissioner determines from the information furnished with the application, the evidence produced at the hearing, if one is required, and the Department’s records that all requirements of this chapter applicable to the office have been met, and that all applicable requirements of the laws of the state or territory in question have been met.

§75.132. Mobile Facility.

(a) Approval Required. A savings bank may not establish a mobile facility as provided by §75.202 of this title (relating to Types of Additional Offices) without prior written approval of the Commissioner.

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(b) Required Information. The application must provide the following information which must be subscribed to and sworn before a notary:

(1) the proposed location(s) at and times during which the mobile facility will operate;

(2) the need for the mobile facility within the community;

(3) the personnel and office facilities to be provided; and

(4) the estimated expense to operate the mobile facility.

(c) Determination by Commissioner. The Commissioner will not approve the application unless the Commissioner determines from the information furnished with the application, the evidence produced at the hearing, if one is required, and the Department's records, that all requirements for approval of a branch office (§75.132 of this title, relating to Branch Office) have been met. Additionally, the savings bank must show that adequate safeguards exist for the security of the mobile facility.

(d) Public Notice. An applicant seeking to establish a mobile facility must publish a public notice of the application as provided by §75.103 of this title (relating to Public Notice of Application), which must be published in the county or counties where the proposed mobile facility is to be operating and in the county where the savings bank has its home office.

(e) Request for a Hearing; Deadline to Protest. A person affected by the proposed establishment of a mobile facility may protest or otherwise request a hearing on the mobile facility application, as provided by Finance Code §92.063. Any person affected by the proposed establishment of a

mobile facility and desiring to protest the application or otherwise request a hearing on the application must file a written protest with the Department within 10 days from the date the public notice was made as provided by subsection (d) of this section, otherwise, any right or opportunity by such person to protest or have a hearing on the application under Finance Code §92.063 is deemed to be waived.

(f) Hearing. If a hearing is required, the Commissioner will set a hearing on the application within 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(g) Time of Decision. To the extent a hearing on the application is required, the Commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision. If a hearing on the application is not required, the Commissioner will render a decision within 30 days after the time period for protesting or requesting a hearing on the application lapsed as provided by subsection (e) of this section.

§75.133. Relocate Home or Additional Office.

(a) Approval Required. A savings bank may not move its home office or any additional office as provided by §75.202 of this title (relating to Types of Additional Offices) beyond its immediate vicinity without the prior written approval of the Commissioner.

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(b) Immediate Vicinity. The term “Immediate vicinity” as used in Finance Code §92.063 means the area within a radius of 1 mile from the present location of such office. However, if the office to be relocated has not been open for business at its present location for more than 2 years, approval in accordance with this section is required as if the office were not within the immediate vicinity. If the existing office has been open for more than 2 years, prior written notice must be provided to the Commissioner describing the saving bank’s plans for the relocation, including the precise location for the new office, the date of the relocation, and information supporting that the new location of the office will be within the immediate vicinity of the present location and does not require the Commissioner’s approval.

(c) Relocation of Existing Offices. Notwithstanding subsection (a) of this section, a savings bank may retain its existing home office as a branch office and relocate its home office to another established branch office by providing the Commissioner with prior written notice. Upon such notification, the establishment of such office is deemed to be an approved branch office of the savings bank.

(d) Required Information. Each application for prior approval, or prior written notice, whichever is applicable, must provide the following information which must be subscribed to and sworn before a notary:

- (1) the existing and new branch location's address;
- (2) a description of the land and building to be built or leased and terms thereof;
- (3) estimates of the cost of removal to and maintenance of the new location;
- (4) whether any affiliated parties are

involved in transactions regarding the purchase, sale, construction, or lease of the new proposed office;

(5) evidence of the board's approval of the relocation; and

(6) any other information deemed necessary by the Commissioner.

(e) Determination by Commissioner. The Commissioner will not approve the application unless the Commissioner determines from the information furnished with the application, the evidence produced at the hearing, if one is required, and the Department’s records, that all requirements for approval of a branch office (§75.132 of this title, relating to Branch Office) have been met.

(f) Public Notice. An applicant seeking to change the location of the home or an additional office must publish a public notice of the application as provided by §75.103 of this title (relating to Public Notice of Application), which must be published in the county where the office is presently located, the county where the proposed new location is to be located, and the county where the savings bank has its home office.

(g) Request for Hearing; Deadline to Protest. A person affected by the proposed change in home or additional office location may protest or otherwise request a hearing on the application, as provided by Finance Code §92.063. Any person affected by the proposed change in home or branch office location and desiring to protest the application or otherwise requesting a hearing on the application must file a written protest with the Department within 10 days from the date the public notice was made as provided by subsection (f) of this section, otherwise any right or opportunity by such person to protest or have a hearing on the application under Finance Code

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§92.063 is deemed to be waived.

(h) Hearing. If a hearing is required, the Commissioner will set a hearing on the application within 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(i) Time of Decision. To the extent a hearing on the application is required, the Commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal or decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision. If a hearing on the application is not required, the Commissioner will render a decision within 30 calendar days after the time period for protesting or requesting a hearing on the application lapsed as provided by subsection (g) of this section.

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

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



DIVISION 4. REORGANIZATION, MERGER,
CONSOLIDATION, CONVERSION,
PURCHASE, AND ASSUMPTION AND
ACQUISITION

7 TAC §§75.141 - 75.145

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §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. 7 TAC §75.141 is also proposed under the authority of, and to implement, Finance Code: Chapter 92, Subchapters C, H and I; and §96.002(a)(2) and (13). 7 TAC §75.142 is also proposed under the authority of, and to implement, Finance Code §92.352. 7 TAC §75.143 is also proposed under the authority of, and to implement, Finance Code: Chapter 92, Subchapter F; and §92.002(a)(2) and (13). 7 TAC §75.144 is proposed under the authority of, and to implement, Finance Code: Chapter 92, Subchapter G; and §96.002(a)(2) and (13). 7 TAC §75.145 is also proposed under the authority of, and to implement, Finance Code: §92.052; and §96.002(a)(2) and (13).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.141 Reorganization, Merger, Consolidation or Purchase and Assumption Transaction - Resulting in a Savings Bank.

(a) Applicability. This section governs:

(1) A reorganization, merger, or consolidation transaction in which the resulting institution will be a savings bank; and

(2) A purchase and assumption transaction by a savings bank as purchaser.

(b) Non-Applicability. This section does not govern:

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(1) the conversion of a savings bank into another type of financial institution charter, or a reorganization, merger, or consolidation transaction that otherwise results in a savings bank reorganizing into, or merging or consolidating with, a financial institution that is not a savings bank, which is governed by section §75.143 of this title (relating to Reorganization, Merger or Conversion by a Savings Bank to Another Financial Institution Charter); or

(2) the conversion by a financial institution that is not a savings bank into a savings bank, which is governed by section §75.144 (relating to Conversion into a Savings Bank).

(c) Plan Required. Any savings bank seeking to reorganize, merge, and/or consolidate or to engage in a purchase and assumption transaction in which the resulting institution will be a savings bank must do so pursuant to a plan adopted by the board and filed with the Commissioner as a part of an application for approval. Purchase and assumption transactions include purchases of assets, deposit accounts or other liabilities in bulk not made in the ordinary course of business.

(d) Application Required. The application for approval of the plan must contain: proof that the plan was adopted by the board of each institution involved; documentation showing that the plan has been approved by each institution by a majority of the total vote the members or shareholders of each are entitled to cast; a statement that the corporate continuity of the resulting institution will possess the same incidents as that of a savings bank which has converted in accordance with the Texas Savings Bank Act; and a statement identifying the home office of the resulting institution. A true and correct copy of the plan, as adopted, must be filed as part of the application. All documents and their contents must be subscribed and sworn to before a notary.

(e) Public Notice. An applicant seeking reorganization, merger, consolidation, conversion, purchase and assumption or acquisition must publish a public notice of the plan and application as provided by §75.103 of this title (relating to Public Notice of Application), which must be published in each county in which a financial institution participating in the plan has its home office. Such notice, when properly effected, is deemed to be the Commissioner's public notice of the plan and application for purposes of Finance Code §92.352.

(f) Request for Hearing; Deadline to Protest. Any interested person desiring to protest the plan and application or otherwise request a hearing on the plan and application must file a written protest with the Department within 10 days from the date the public notice was made as provided by subsection (a) of this section, otherwise any right or opportunity by such person to protest or have a hearing on the application under Finance Code §92.352 is deemed to be waived.

(g) Hearing. If a hearing is required, the Commissioner will set a hearing on the plan and application within 60 days after the date the protest or request for hearing and the required fee are received, unless the Commissioner determines that the provisions set forth in §75.142 of this title (relating to Exemption for Supervisory Merger) apply, and the merger is designated as a supervisory merger for purposes of Finance Code §92.352(e). The hearing is governed by the procedural requirements concerning contested cases set forth in Government Code Chapter 2001 and Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(h) Time of Decision. To the extent a hearing on the plan and application is required, the Commissioner will render a decision within 30

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days after the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision. If a hearing on the plan and application is not required, the Commissioner will render a decision within 30 days after the time period for requesting a hearing on the plan and application lapsed as provided by subsection (f) of this section, unless the Commissioner establishes a longer time period, with written notice to the applicant.

(i) Transactions Involving Financial Institutions in Other States or Territories. To the extent permitted by the laws of the state or territory in question, and subject to the requirements of this section, a savings bank may acquire, by merger or purchase of stock, a financial institution incorporated under the laws of another state or territory. Each such application must include a certified copy of an order from the appropriate state regulatory authority approving the merger or acquisition, or other evidence satisfactory to the Commissioner that all state regulatory requirements have been satisfied. The Commissioner will not approve such an application unless the Commissioner determines from the information furnished with the application, the evidence produced at the hearing, if one is required, and the Department's records, that all requirements of this section have been met, and all applicable requirements of the laws of the state or territory in question have been met.

§75.142. Exemption for Supervisory Merger.

(a) The Commissioner may designate a transaction under §75.141 of this title (relating to Reorganization, Merger, Consolidation or Purchase and Assumption Transaction - Resulting in a State Savings Bank) to be a supervisory merger when:

(1) the Commissioner has placed one or more of the savings banks involved under voluntary supervisory control or under conservatorship pursuant to the Texas Savings Bank Act;

(2) the Commissioner has determined that one or more of the savings banks involved is in an unsafe condition; or

(3) the FDIC has determined, and certified to the Commissioner, that the merger of one or more of the institutions involved is necessary to prevent the failure or possible failure of the said institution.

(b) For purposes of this section, unsafe condition means that the savings bank is (or savings banks are) insolvent or in imminent danger of insolvency, or that there has been a substantial dissipation of assets or earnings due to any violation(s) of applicable law, rules, or regulations, or to any unsafe or unsound practice or practices; or that the savings bank is in an unsafe and unsound condition to transact business in that there has been a substantial reduction of its capital; or that the savings bank and its directors and officers have violated any material conditions of its charter or bylaws, the terms of any order issued by the Commissioner, or any agreement between the savings bank and the Commissioner; or that the savings bank, its directors, and officers have concealed or refused to permit examination of the books, papers, accounts, records, and affairs, of the savings bank by the Commissioner or other duly authorized personnel of the Department; or any other condition affecting the savings bank which the Commissioner and the board agree place the savings bank in an unsafe condition.

(c) Effect of Exemption. If the Commissioner designates the transaction as a supervisory merger, the application and all information

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relating to the application are deemed confidential. As a result, the requirements of §75.141 of this title (relating to Reorganization, Merger, Consolidation or Purchase and Assumption Transaction - Resulting in a Savings Bank) concerning public notice of the application, and a hearing on the application are not applicable.

§75.143. Reorganization, Merger or Conversion by a Savings Bank to Another Financial Institution Charter.

(a) A savings bank is authorized to reorganize, merge, or convert into another type of financial institution charter subject to applicable law and regulation relating to the type of charter which will be held by the resulting institution.

(b) The Commissioner must be given written notice of the intention of the savings bank to reorganize, merge or convert no less than 30 days prior to the proposed transaction.

(c) The savings bank must file with the Commissioner:

(1) a copy of the application filed with the appropriate banking agency having jurisdiction over the surviving financial institution;

(2) a certified copy of all minutes of meetings of the board, shareholders, or members;

(3) a publisher's certificate certifying the publication of the notice required to be published by the appropriate banking agency; and

(4) evidence to ensure that no undue harm will be caused to the public interest or to any other existing financial institution.

(d) The Commissioner is deemed to have consented to the reorganization, merger or conversion into another type of financial institution charter at the time the Department notifies the savings bank that the filing made in accordance with this section is complete and has been accepted for filing as provided by §75.102 of this title (relating to Application Filing Requirements). Upon compliance with the provisions of this section and the granting of a successor charter by the appropriate banking agency, a copy of which must be filed with the Commissioner, the savings bank receiving the new charter ceases to exist as a savings bank and will no longer be subject to the jurisdiction of the Commissioner. The foregoing notwithstanding, the Commissioner must receive the original charter certificate or a certified affidavit of lost certificate in order to be released from the requirement to pay annual assessments as provided by §75.251 of this title (relating to Annual Assessments.)

§75.144. Conversion into a Savings Bank.

(a) The Commissioner may authorize any financial institution to convert itself into a savings bank in a manner consistent with the provisions of applicable law and regulations of the institution.

(b) Plan and Application. In order to obtain such authorization, the converting institution's board must approve and authorize the filing of a conversion plan and application. Upon approval of the conversion plan, the plan must be approved by a majority vote of the members or shareholders of the financial institution entitled to vote at any annual or special meeting called to consider such conversion, a resolution declaring that the savings bank will be so converted, which resolution, verified by affidavit of the secretary or an assistant secretary, must be filed with the Commissioner and mailed to the appropriate banking agency within 10 days after the date of

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its adoption. At the meeting to vote on a conversion to a savings bank, the members or stockholders must also vote on the directors of the savings bank. The proposed directors must execute an application for savings bank charter as provided by Finance Code Chapter 92, Subchapter B, and §75.121 of this title (relating to Savings Bank Charter).

(c) Review by Commissioner; Approval. The Commissioner, on receipt of the application and verified copy of the minutes, will conduct an examination of the financial institution seeking conversion. Following the examination, the Commissioner will approve the conversion without a hearing if the Commissioner determines that the converting financial institution is in sound condition and meets all standards, conditions, and requirements of Finance Code Chapter 92, Subchapter B, and §75.121 of this title (relating to Savings Bank Charter). On approval of the conversion, the saving bank's charter is deemed to include a paragraph stating that the savings bank is incorporated by conversion from another financial institution, as required by Finance Code §92.303(c).

(d) Denial; Request for Hearing. An applicant is entitled to a hearing under the Chapter 2001 of the Texas Government Code if the Commissioner denies an application to convert and a written request for a hearing is delivered to the Commissioner within 10 days after the date of denial. A hearings officer designated by the Commissioner will hold the hearing. The Commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision. Only then will the hearing be deemed to be completed for purposes of Finance Code §92.304.

§75.145. Mutual to Stock Conversion.

(a) The application for mutual to stock conversion must include:

(1) a plan of conversion;

(2) amendments to the savings bank's certificate of formation and bylaws;

(3) a copy of the proxy and soliciting materials to be used; and

(4) such other information the Commissioner may require.

(b) The plan of conversion must provide:

(1) a comprehensive description of the nontransferable subscription rights received each eligible accountholder, including details on oversubscriptions;

(2) that the shares of the converting savings bank be offered to persons with subscription rights and management, in that order, and that any remaining shares will be sold either in a public offering through an underwriter or directly by the converting savings bank in a direct community offering;

(3) that a direct community offering by the converting savings bank will give a preference to natural persons residing in the counties in which the savings bank has an office;

(4) that the sale price of the shares of capital stock to be sold in the conversion will be a uniform price determined in accordance with paragraph (1) of this subsection, and specify the underwriting and/or other marketing arrangements to be made;

(5) that the conversion must be

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completed within 24 months from the date the savings bank members approve the plan of conversion;

(6) that each savings accountholder of the converting savings bank will receive, without payment, a withdrawable savings account or accounts in the converted savings bank equal in withdrawable amount to the withdrawal value of such accountholder's savings account or accounts in the converting savings bank;

(7) for an eligibility record date;

(8) that expenses incurred in the conversion are reasonable;

(9) that the converting savings bank may not loan funds or otherwise extend credit to any person to purchase the capital stock of the savings bank;

(10) that the proxies held with respect to voting rights in the saving bank will not be voted regarding the conversion, and that new proxies will be solicited for voting on the proposed plan of conversion; and

(11) the amount of the deposit of an accountholder will be the total of the deposit balances in the accountholder's savings accounts in the converting savings bank as of the close of business on the eligibility record date. The plan of conversion may provide that the total deposit balances of less than \$50 (or any lesser amounts) will not be considered for purposes of paragraph (6) of this subsection.

(c) A plan of conversion must be adopted by not less than two-thirds of the board.

(d) Public Notice. An application for mutual to stock conversion is deemed to be a complete

application at the time the Department notifies the applicant that application is complete and has been accepted for filing as provided by §75.102 of this title (relating to Application Filing Requirements). Upon receipt of such notice, the proposed incorporators must publish a public notice of the application as provided by §75.103 of this title (relating to Public Notice of Application), which must be published in each county in which the savings bank has an office, and must prominently post the notice in each of its offices.

(e) Following approval of the application for conversion by the Commissioner, the plan of conversion must be submitted to the members at an annual or special meeting and the plan must be approved, in person or by proxy, by at least a majority of the total outstanding votes of the members.

(f) No offer to sell securities of a savings bank pursuant to a plan of conversion may be made prior to Commissioner's approval of the:

(1) application for conversion;

(2) proxy statement; and

(3) offering circular.

(g) Within 45 days:

(1) of the date of the mailing of the subscription form, the subscription rights must be exercised;

(2) after the last day of the subscription period, the sale of all shares of capital stock of the converting savings bank to be made under the plan of conversion, including any sale in a public offering or direct community marketing, must be completed.

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(h) The converting savings bank must pay interest at not less than the savings account interest rate on all amounts paid in cash or by check or money order to the savings bank to purchase shares of capital stock in the subscription offering or direct community offering from the date payment is received by the savings bank until the conversion is completed or terminated.

(i) For the purpose of this rule, the public offering and a direct community offering is deemed to commence upon the declaration of effectiveness by the Commissioner of the final offering circular.

(j) The Commissioner may grant a written waiver from any requirement of this rule.

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

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



DIVISION 5. EXPEDITED APPLICATIONS

7 TAC §§75.151 - 75.153

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §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. 7 TAC §§75.151 - 75.153 are also

proposed under the authority of, and to implement, Finance Code §96.002(a)(2).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.151. Eligible Institution.

An eligible institution is a financial institution that:

(1) is well capitalized as defined by 12 C.F.R. §324.403;

(2) received a composite rating of either 1 or 2 as defined by the Uniform Financial Institutions Rating System (CAMELS) at the most recent examination by the Department or federal regulatory agencies, and management is rated either 1 or 2;

(3) received a CRA and compliance rating of satisfactory or above at the savings bank's most recent inspection by the appropriate federal banking agency;

(4) is not operating in violation of a regulatory condition or directive imposed by the state or federal banking regulatory agency; and

(5) is not operating under a supervisory action of, or a plan for remedial or corrective action imposed by, a state or federal banking agency.

§75.152. Expedited Applications.

(a) An eligible institution as defined in §75.151 of this title (relating to Eligible Institution) may file an expedited filing in lieu of an application required pursuant to §75.131 of this title (relating to Branch Office), §75.132 of this title (relating to Mobile Facility), §75.133 of this title (relating to Relocate Home or Branch Office Location), or §75.111 of this title (relating to Reorganization,

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Merger, Consolidation or Purchase and Assumption Transaction - Resulting in a Savings Bank), and simultaneously tender the required filing fee pursuant to §75.102 of this title (relating to Application Fees and Charges).

(b) An expedited filing must include the following items, unless waived in writing by the Commissioner:

(1) a detailed description of the transaction;

(2) a pro forma balance sheet and income statement for all parties to the transaction, including adjustments, reflecting the proposed transaction as of the most recent quarter ended immediately prior to the filing of the application, demonstrating that the resulting state savings bank is well capitalized as defined by 12 C.F.R. §324.403, including pro forma financials for the first four quarters after the effective date of the transaction;

(3) a certified resolution of the board and, if required, shareholders approving the proposed transaction;

(4) copies of all other required regulatory notices or filings submitted concerning the transaction; and

(5) evidence satisfactory to the Commissioner that a public notice of the application has been published and effected as provided by §75.103 of this title (relating to Public Notice of Application), published in each county where a non-expedited application is required to be published (however, the requirement for the publication to be preapproved by the Commissioner shall not apply to an application made in accordance with the section, and the notice may be published contemporaneously with the application being

submitted; provided, the notice is otherwise deemed to be acceptable to the Commissioner).

(c) The Commissioner will render a decision on the expedited application within 30 days after the date the expedited filing is complete and has been accepted for filing as provided by §75.102 of this title (Relating to Application Filing Requirements), provided, the application is not protested or a hearing is not otherwise requested. The Commissioner may, at any time before the time period to render a decision on the application has expired, elect to refer the expedited application to a hearing. If a hearing is required, consideration of the application will proceed in the same fashion as a non-expedited application.

(d) The applicant bears the burden to supply all material information necessary to enable the Commissioner to make a fully informed decision regarding the expedited filing, including but not limited to, the applicant's eligibility to make the application on an expedited basis in accordance with §75.151 of this title (relating to Eligible Institution).

§75.153. Denial of Expedited Treatment.

(a) The Commissioner may deny expedited filing treatment to an otherwise eligible applicant if the Commissioner determines in his or her sole discretion that the proposed transaction involves significant policy, supervisory, or legal issues; is contingent upon other statutory or regulatory approval; results in an entity that is not a financial institution; or involves an entity that is not domiciled in Texas.

(b) The Commissioner will provide written notification to the applicant within 15 days after the date the expedited filing is complete and has been accepted for filing as provided by §75.101 of this title (relating to Application Filing

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Requirements) if expedited filing treatment is denied, indicating the reason for denial.

(c) A decision by the Commissioner to deny expedited treatment is final and may not be appealed.

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

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



DIVISION 6. CHANGE OF CONTROL

7 TAC §§75.161 - 75.165

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §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. This proposal is also made under the authority of, and to implement, Finance Code: Chapter 92, Subchapter L; and §96.002(a)(2) and (10).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.161. Acquisition of a Savings Bank.

The following procedures must be followed when a person desires to obtain control of a savings bank (including change of control of a savings bank holding company).

(1) No person other than the issuer may make a public tender offer for, solicitation or a request or invitation for tenders of, or enter into and consummate any agreement to exchange securities for, seek to acquire, or acquire in the open market or by means of a privately negotiated agreement or contract, any voting security or any security convertible into a voting security of a savings bank if, after the consummation thereof, such person would directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such savings bank, unless such person has filed with the Commissioner all of the following information on an application form approved by the Commissioner and which application form is deemed by the Commissioner to be complete and has received a written order from the Commissioner approving such acquisition or change of control:

(A) the background and identity of the applicant, if such applicant and any affiliate is an individual, or all persons who are directors, executive officers, or owners of 10% or more of the voting securities of the applicant if the applicant is not an individual. Such filing must contain the following information:

(i) name and address;

(ii) present principal business activity, occupation, or employment including position and office held and the name, principal business, and address of any corporation or other organization in which such employment is carried on;

(iii) _____ material occupations, positions, offices, or employments previously held by the individual, giving the starting and ending dates of each and the name, principal business, and address of any business corporation or other organization in which each

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such occupation, position, office, or employment was carried on, indicating if any such occupation, position, office, or employment required licensing by or registration with any federal, state, or municipal governmental agency;

(iv) whether such individual is presently charged with or has ever been convicted of a violation of law in a criminal proceeding (excluding minor traffic violations) and, if so, giving the date, nature of conviction, name and location of the court, and penalty imposed or other disposition of the case;

(v) whether such individual has been or is a party to any federal, state, or municipal court lawsuit in which such individual is or was alleged to have violated any federal or state statutes or regulation, and, if so, giving the date, style of the suit, case number, court location, and disposition of the suit;

(vi) whether any such individual has been or is a party to any federal, state, or municipal governmental agency administrative actions in which such individual was or is alleged to be in violation of any governmental agency statute or regulation, and if so, giving the date, nature of the action, name and location of the governmental agency, and disposition of the case; and any other relevant information requested by the Commissioner;

(B) if the applicant is not an individual, the nature of its business operations for the past five years or for such lesser period as such applicant and any predecessors thereof have been in existence;

(C) description of the interrelationships between the applicant and all affiliates of the applicant;

(D) nature, identity, source, and

amount of funds or other consideration used or to be used in effecting the acquisition of control, and, if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained, there must be a description of the transaction, the names of the parties, and all arrangements, or other understanding with such parties, including all arrangements, agreements, or understandings in regard to repayment of the funds;

(E) any plans or proposals which the applicant may have to declare dividends to liquidate such savings banks, to sell its assets, or to merge it with any person or persons or to make any other material change in its business operations or corporate structure or management, including modifications in or plans to enter into any management contracts, and any financial or employment guarantees given to present and contemplated management;

(F) the terms and conditions of any proposed acquisition and the manner in which the acquisition is to be made;

(G) the number of shares of the savings bank's voting securities (including securities convertible or evidencing rights to acquire voting securities) which the applicant, its affiliates, affiliated persons, and any other related person plans to acquire, and the terms of the offer, request, invitation, agreement, or acquisition;

(H) a description of any contracts, arrangements, or understandings with respect to any voting security of the savings bank in which the applicant, its affiliates, or any related person is involved;

(I) copies of any contracts, agreements, or other documents which the Commissioner determines are relevant to the

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review of the application; and

(J) any other relevant information requested by the Commissioner.

(2) If the person required to file the information referred to in this section is a partnership, limited partnership, syndicate, trust, or other group, the Commissioner may require that the information must be given to:

(A) each partner of such partnership or limited partnership;

(B) each member of such syndicate or group; and

(C) each person who controls such partner or member.

(3) If the person required to file the information referred to in this section is a corporation, the Commissioner may require that the information called for must be given with respect to such corporation and each officer and director of such corporation and each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding voting securities of such corporation.

(4) The transaction for acquisition of control of a savings bank may not be consummated until the Commissioner approves the application for acquisition of control. The application will be processed and considered in accordance with Finance Code §92.556 and §92.557. The Commissioner will render a decision within 60 days after the application is complete and has been accepted for filing as provided by §75.102 of this title (relating to Application Filing Requirements) The application will be denied if the Commissioner finds any of the following:

(A) the acquisition would

substantially lessen competition or would in any manner be in restraint of trade and would result in a monopoly or would be in furtherance of a combination or conspiracy to monopolize or attempt to monopolize the savings and loan or the savings bank industry in any part of the state, unless the Commissioner also finds that the anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of acquisition in meeting the convenience and needs of the community to be served and that the proposed acquisition is not a violation of any law of this state or the United States;

(B) the poor financial condition of any acquiring party might jeopardize the financial stability of the savings bank being acquired;

(C) plans or proposals to liquidate or sell the savings bank or its assets are not in the best interest of the savings bank;

(D) the experience, ability, standing, competence, trustworthiness, or integrity of the applicant is such that the acquisition would not be in the best interest of the savings bank;

(E) the savings bank will not be solvent, have adequate capital structure, or be in compliance with the laws of this state after the acquisition;

(F) the acquisition would result in the violation of any law or regulation or it has been evidenced that the applicant, affiliates, or affiliated persons may cause to be abused the fiduciary responsibility held by the savings bank or other demonstration or untrustworthiness of the applicant, affiliates, or affiliated persons which would affect the savings bank has been evidenced; or

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(G) the applicant is not acting in good faith.

§75.162. Notice and Hearing.

(a) Public Notice. An applicant timely requesting a hearing on the Commissioner's decision to deny the application must publish a public notice of the application as provided by §75.103 of this title (relating to Public Notice of Application), which must be published in the county where the savings bank has its home office. Such notice, when properly effected, is deemed to be the Commissioner's public notice of the application for purposes of Finance Code §92.557.

(b) Hearing. If a hearing is required, the Commissioner will set a hearing on the denial within 60 days after the date the request for a hearing on the denial was received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(c) Time of Decision. To the extent a hearing on the Commissioner's decision to deny the application is required, the Commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision, unless the Commissioner establishes a longer time period, with written notice to the applicant.

§75.163. Retention of Control.

(a) The following conditions affecting any controlled savings bank, regardless of when or how such control has been acquired, are grounds

for the Commissioner to investigate, seek to enjoin, or set aside any change of control of a savings bank, if the Commissioner deems the transfer to be against the public interest:

(1) the violation of any law, these regulations, abuse of the fiduciary responsibility held by a savings bank, or other demonstration of untrustworthiness by the savings bank, its holding company, or any controlling person, affiliates, affiliated persons, or any of the officers or directors which would affect the savings bank; or

(2) the violation of any antitrust law of this state by the savings bank, the holding company, or any affiliate.

(b) The Commissioner may require the submission of such information as necessary to determine whether any retention of control complies with the law of this state, as a condition of approval of such retention of control.

(c) The Commissioner may, when it appears that a change of control may have taken place without prior approval, call a hearing to determine whether there has been in fact a change of control or whether any unauthorized person, or persons, having no apparent ownership interest in the savings bank, acting alone or in concert with others, effectively have indirect controlling or dominating influence over the management or policies of a savings bank. If the Commissioner finds that such unauthorized control exists, the Commissioner may, after notice and hearing, issue an order requiring immediate divestiture by certain persons of unapproved or indirect control, or the Commissioner may issue any other supervisory order the Commissioner deems appropriate.

§75.164. Abeyance of Other Applications.

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When an application for approval of acquisition of control of a savings bank has been received by the Commissioner and the savings bank also has other applications on file with the Commissioner, such applications may, at the Commissioner's discretion, be held in abeyance until the change of control application has been disposed of.

§75.165. Exempt Transactions.

The following transactions are exempt from the application requirements of this division:

(1) control of an insured institution acquired solely as a result of foreclosure on the stock of a savings bank which secures a loan contracted for in good faith, where such loan was made in the ordinary course of business of the lender, provided that the acquisition of control pursuant to such foreclosure is reported to the Commissioner within 30 days and provided further that the acquiror may not retain such control for more than one year from the date on which such control was acquired. The Commissioner may, upon application by the acquiror, extend such one-year period from year to year for an additional period of time, not to exceed three years, if the Commissioner finds such extension is warranted and would not be detrimental to the public interest. Nothing in this subsection prevents such acquiror from filing an application pursuant to this chapter for permanent approval of the acquisition of control;

(2) control of an insured institution acquired through a percentage increase in stock ownership following a pro-rata stock dividend or stock split, if the proportional interest of the recipients remains substantially the same;

(3) acquisition of additional stock of a savings bank by any person who has held power to vote 25% or more of any class of voting stock in such savings bank continuously for the three-

year period preceding such acquisition, or has maintained control of the savings bank continuously since acquiring control in compliance with the provisions of law or regulation then in effect provided that such acquisition is consistent with any conditions imposed in connection with such acquisition of control and with the representations made by the acquiror in its application.

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

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



DIVISION 7. CAPITAL NOTES AND DEBENTURES

7 TAC §75.171

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §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. This proposal is also made under the authority of, and to implement, Finance Code: §96.002(a)(11); and §93.004(b).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.171. Capital Notes and Debentures.

(a) Approval Required. No savings bank may

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issue and sell its capital notes or debentures without the prior written approval of the Commissioner and subject to any conditions the Commissioner may impose with regard to safety and soundness and maintenance of adequate financial condition particularly in areas of preservation of capital, quality of earnings, and adequacy of reserves.

(b) Requirements. A savings bank may, by resolution of its board and with prior approval of the Commissioner, issue capital notes, debentures, bonds, or other secured or unsecured capital obligations, which may be convertible in whole or in part to shares of permanent reserve fund stock, or may be issued with warrants attached, to purchase at a future date, shares of permanent reserve fund stock of the issuing savings bank, provided:

(1) the savings bank provides adequate proof to the satisfaction of the Commissioner that the holders of such obligations will receive properly amortized payments of both principal and interest at regularly stated intervals, or that proper provision is made for sinking fund allocations to retire all principal of and interest on such obligations; and

(2) sufficient evidence is furnished to the Commissioner as to the need and utilization of such funds by the savings bank in a profitable manner.

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

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



DIVISION 8. HOLDING COMPANY APPLICATIONS

7 TAC §§75.181, 75.182

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §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. This proposal is also made under the authority of, and to implement, Finance Code: §96.002(a)(11) and (15); and §97.002. 7 TAC §75.182 is also proposed under the authority of, and to implement, Finance Code Chapter 98, Subchapter B.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.181. Registration.

A holding company must apply and register with the Commissioner within the time prescribed by Finance Code §97.002. The application must include information on the financial condition, ownership, operations, management, and intercompany relations of the holding company and its subsidiaries, and on related matters the Commissioner finds necessary and appropriate. On written request, the Commissioner may, in his or her sole discretion, extend the time within which a holding company is required to register and file the required information.

§75.182. Reorganization as a Mutual Holding Company.

(a) A savings bank may reorganize as a mutual

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holding company by complying with the provisions of Finance Code §§97.051 - 97.053. The savings bank must provide to the Commissioner an application to reorganize in a form specified by the Commissioner. The applicant must provide one signed original and at least one copy of the application together with complete exhibits. The application must include:

(1) the proposed certificate of formation for the proposed subsidiary savings bank which must comply with the requirements of Finance Code §92.051 and §92.052 or §92.053, as applicable;

(2) the proposed bylaws for the proposed subsidiary;

(3) the proposed restated certificate of formation and bylaws of the mutual holding company;

(4) the complete plan of reorganization; and

(5) a certification by the president or secretary as to how that the reorganization, including the amendments to the certificate of formation and bylaws of the mutual holding company have been approved by a majority of the members or shareholders of the reorganizing savings bank in accordance with Finance Code Chapter 97, Subchapter B;

(b) On receipt of the application, the Commissioner may conduct an examination of the applicant savings bank.

(c) The Commissioner may approve the reorganization without a hearing if the Commissioner determines:

(1) that the resulting savings bank will be in sound condition and meets all

requirements of Finance Code Chapter 92, Subchapter B, and relevant rules of the Commissioner and the Finance Commission; and

(2) the applicant has received all approvals required under federal law for the creation of a bank or thrift holding company.

(d) If the Commissioner denies an application to reorganize, the applicant may appeal in the same manner as provided in Finance Code §92.304.

(e) A mutual holding company may establish a subsidiary holding company as a direct subsidiary to hold 100% of the stock of its savings bank subsidiary in accordance with the provisions of this subsection.

(1) The subsidiary holding company may be established either at the time of the initial mutual holding company reorganization or at a subsequent date, subject to the approval of the Commissioner.

(2) For the purposes of Finance Code §97.053(a)(3) and (4), the subsidiary holding company will be treated as a savings bank issuing stock and must comply with the requirements of those sections. The mutual holding company parent must at all times own more than 50% of the outstanding stock of the subsidiary holding company.

(3) The certificate of formation and by-laws of a subsidiary holding company must be approved by the Commissioner and may only be amended with the prior approval of the Commissioner by making an application in accordance with §75.123 of this title (relating to Certificate of Formation or Bylaws Amendments).

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

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



DIVISION 9. SUBSIDIARY APPLICATIONS

7 TAC §§75.191

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §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. This proposal is also made under the authority of, and to implement, Finance Code §96.002(a)(16)(Q).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.191 Subsidiary Application.

(a) In order to obtain approval for a subsidiary, the savings bank must file with the Commissioner an application accompanied by the following information:

_____ (1) an audited financial statement in the event of acquisition of an existing company;

_____ (2) a certified board resolution of the board of the applying savings bank approving the investment in the proposed subsidiary;

_____ (3) a certified copy of the certificate of formation and bylaws of the proposed subsidiary;

_____ (4) the acquisition terms, cost, or investment requirements of the savings bank;

_____ (5) projected operating statements of the proposed subsidiary for the first 3 years of operation;

_____ (6) an attorney's opinion letter as to direct, indirect, and/or contingent liability of the savings bank and the proposed subsidiary;

_____ (7) an outline of plans for operation of the proposed subsidiary;

_____ (8) evidence that the proposed subsidiary will have adequate management and operating personnel with proper supervision by savings bank management;

_____ (9) plans for the safeguarding of assets of the proposed subsidiary;

_____ (10) affidavits from all directors of a savings bank and the proposed subsidiary fully disclosing any interest they may directly or indirectly have in the proposed subsidiary; and

_____ (11) such other information or data as the Commissioner may require.

(b) The Commissioner may approve an investment in a subsidiary if the Commissioner finds that:

_____ (1) the operation and condition of the savings bank affords no basis for supervisory objection;

_____ (2) there are adequate income and reserves to support the proposed investment;

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(3) the operations of the subsidiary will be clearly distinguishable from those of the parent savings bank; and

(4) the subsidiary is or will be profitably operating within a reasonable period of time or the investment is reasonably projected to result in economic benefit to the savings bank.

(c) If the Commissioner finds that a savings bank has abused or is abusing the authority to invest in a subsidiary, the Commissioner may exercise discretion in denying such savings bank the right to future exercise thereof until such abuse or abuses have been corrected.

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

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



SUBCHAPTER C. OPERATIONS
DIVISION 1. OFFICE LOCATIONS
7 TAC §§75.201 - 75.204

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §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. This proposal is also made under

the authority of, and to implement, Finance Code: §92.063; and §96.002(a)(14).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.201. Approval of Offices Required; Closing an Office; Activities Not Requiring an Approved Office.

(a) Approval Required. No savings bank may establish, maintain, or relocate its home office, or an additional office as provided by §75.202 of this title (relating to Types of Additional Offices), without the prior written approval of the Commissioner, except as otherwise provided by §75.145 of this title (relating to Change of Home or Additional Office Location).

(b) Ancillary Facilities. An authorized or approved office of a savings bank is the place where the business of the savings bank is conducted, and with the prior written consent of the Commissioner, may include facilities ancillary thereto for the extension of the savings bank's services to the public. Any authorized or approved office of a savings bank also means, with the prior written consent of the Commissioner, separate quarters or facilities to be used by the savings bank for the purpose of performing service functions in the efficient conduct of its business.

(c) Notice of Home Office. All offices of a savings bank which are located outside the county of its home office must display a sign which is suitable to advise the public of the type of additional office which is located therein and the location of the home office of such savings bank.

(d) Closing an Office. Before closing an approved branch or other office, other than a temporary closure as provided by §75.203 of this title (relating to Temporary Closing of

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Additional Offices), or an emergency closure as provided by Finance Code §93.011, a savings bank must comply with the notice requirements of federal law, and provide the Commissioner with a copy of the closing notice filed with the appropriate federal banking agency upon filing such notice. A savings bank must provide the Commissioner with confirmation within 10 days after the actual closing date. Once closed, prior written approval from the Commissioner to operate a branch or other office is deemed revoked, and a savings bank may not reopen the branch or other office without seeking new approval from the Commissioner.

(e) Activities Not Requiring an Approved Office. The following activities of a savings bank, or any combination thereof, may be performed at a location other than the home or a branch office and such location does not constitute an "additional office" requiring notice to or the prior approval of the Commissioner for purposes of Finance Code §92.063:

(1) Automated or remote activities. A savings bank may engage in limited banking activities through infrastructure and equipment by automated or remote means, including use of an automated teller machine (ATM), automated loan machine, automated device for receiving deposits (remote deposit capture), or other remote service unit.

(2) Loan production activities. A savings bank may engage in loan production activities including taking loan applications, making a credit decision, accepting payments on loans, or managing or selling real estate owned by the institution in connection with such loans, unless such activity conflicts with applicable state or federal law.

(3) Administrative activities (administrative offices). A savings bank may

establish or maintain administrative offices to perform the internal operations of the bank, provided the savings bank does not conduct banking activities.

(4) Advertising and marketing. A savings bank may advertise and market itself to the public including soliciting deposits, providing information about the financial products of the savings bank, and assisting persons in completing application forms to open a deposit account, provided the savings bank does not conduct banking activities.

(5) Trade association participation; community events and engagement. A savings bank may participate in trade association events promoting the banking or financial services industry broadly. A savings bank may also host, attend, or otherwise participate in community events, provided the savings bank does not conduct banking activities at such event.

(6) Information technology (IT) infrastructure. A savings bank may operate information technology infrastructure or equipment including the placement of IT infrastructure in a data center, the hosting or processing of a website or data by a third party IT service provider, or such other physical presence tied to the IT infrastructure of the savings bank.

(7) Ancillary customer service activities. A savings bank may engage in customer service activities ancillary to its banking functions including relating to accessing or using its website or a software application.

§75.202. Types of Additional Offices.

The following types of additional offices may be established and maintained by a savings bank:

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(1) branch offices at which the savings bank may transact any business that could be done in the home office;

(2) mobile facilities at which the savings bank may transact any business of the institution which could be done in the home office (a detailed record of the transactions at such facility must be maintained); and

(3) courier/messenger service to transport items relevant to the bank's transactions with its customers, including courier services between financial institutions.

§75.203. Temporary Closing of Additional Offices.

In the event a savings bank closes any additional office of any type on a temporary basis, such office must be reopened within 12 months or less, unless otherwise extended by written authorization of the Commissioner. In the event such office is not reopened within the allotted 12-month period, or the longer period established by the Commissioner, if applicable, the Commissioner's approval to establish such office for purposes of §75.201 of this title (relating to Additional Offices; Activities Not Requiring an Approved Office) is deemed revoked. Written notice of any temporary closing must be furnished to the Commissioner within 10 days of such closing, and no additional office may reopen until the Commissioner receives written notification within 10 days of such reopening.

§75.204. Operation of a Mobile Facility.

Mobile facilities must be operated consistent with the following requirements:

(1) Such facility may be operated only at locations approved by the Commissioner, each of which must at all times be appropriately

identified at the site and on the facility, and located within 100 miles of the savings bank's home office or a branch office.

(2) The savings bank must maintain adequate safeguards for the security of the mobile facility. The Commissioner may require additional safeguards, if in the Commissioner's sole discretion, existing safeguards are inadequate, with written notice to the savings bank.

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

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



DIVISION 2. BOOKS, RECORDS,
ACCOUNTING PRACTICES, FINANCIAL
STATEMENTS AND RESERVES

7 TAC §§75.221 - 75.227

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §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. 7 TAC §75.221 is also proposed under the authority of, and to implement, Finance Code: §92.201; §96.002(a)(3) and (5); and §96.056. 7 TAC §75.222 is also proposed under the authority of, and to implement, Finance Code: §92.201; and §96.002(a)(3) and (4). 7 TAC §75.223 is also proposed under the

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authority of, and to implement, Finance Code: §96.002(a)(7) and (11); §96.051; and §96.053. 7 TAC §75.224 is also proposed under the authority of, and to implement, Finance Code §96.002(a)(11). 7 TAC §75.225 is also proposed under the authority of, and to implement, Finance Code §96.002(a)(9). 7 TAC §75.226 is also proposed under the authority of, and to implement, Finance Code §96.002(a)(11). 7 TAC §75.227 is also proposed under the authority of, and to implement, Finance Code: §92.051(b)(2); §92.058(c)(2); §92.062; §92.157; §92.205; and §96.002(a)(11).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.221. Books and Records.

A savings bank must create and maintain books and records of its operations, including complete minutes of the meetings of its members and the board, and actions taken by written consent in lieu of such meetings. Records must be maintained in compliance with the applicable requirements of the appropriate federal banking agency and established industry best practices promoted by the Federal Financial Institution Examination Counsel. Records must be accurate, complete, current, legible, readily accessible, and readily sortable. A state savings bank may store original records or copies of records at a location other than the home office; however, a savings bank must ensure that a complete set of its books and records is readily accessible at the home office at all times so as to facilitate the examination of the savings bank by the Commissioner at the home office. A savings bank may maintain copies of its books and records in an electronic, digital, or magnetic format. A true and correct copy of an original record stored in an electronic, digital, or magnetic format is deemed to be an original record.

§75.222. Accounting Practices.

Every savings bank must use such forms and observe such accounting principles and practices as the Commissioner may require from time to time.

§75.223. Financial Statements; Annual Reports; Audits.

For safety and soundness purposes, within 90 days of its fiscal year end, each savings bank is required to submit to the Department the results and findings of an independent audit of its financial statements and all correspondence reasonably related to the audit. The audit is to be performed in accordance with generally accepted auditing standards and the provisions of the FDIC set forth in 12 C.F.R. §363.2 and §363.3, with the exception of any matters specifically addressed by this section, the Texas Savings Bank Act, or the rules (regulations) adopted thereunder.

§75.224. Misdescription of Transactions.

No savings bank may, either directly or indirectly, knowingly make any entry on its books that is not accurate or otherwise fails to appropriately describe the transaction, or withholds information material to the transaction.

§75.225. Charging Off or Setting Up Reserves against Bad Debts.

The Commissioner, after a determination of value, may order that assets in the aggregate, to the extent that such assets have depreciated in value, or to the extent the value of such assets, including loans, are overstated in value for any reason, be charged off, or that a special reserve or reserves equal to such depreciation or overstated value be established in accordance

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with GAAP.

§75.226. Examinations.

(a) The Commissioner will examine every state savings bank once in each year, or more frequently if the Commissioner determines that the condition of the savings bank justifies more frequent attention to enforce the Texas Savings Bank Act. The Commissioner may defer an examination for not more than six months if the Commissioner considers the deferment appropriate to the efficient enforcement of the Texas Savings Bank Act and consistent with the safe and sound operation of the institution.

(b) An examination under this section may be performed jointly or in conjunction with an examination by the saving bank's appropriate federal banking agency. The Commissioner may accept an examination made by such federal banking agency in lieu of an examination pursuant to this section.

§75.227. Bylaws.

(a) The bylaws of a savings bank must contain sufficient provisions to govern the institution in accordance with the Texas Savings Bank Act, the Texas Business Organizations Code, and other applicable laws, rules and regulations, or the certificate of formation. Bylaws may contain a provision which permits such bylaws to be adopted, amended, or repealed by either a majority of the shareholders or a majority of the board. Bylaw amendments may not take effect before being filed with and approved by the Commissioner in accordance with §75.123 of this title (relating to Certificate of Formation or Bylaws Amendments).

(b) A savings bank is specifically authorized to adopt in its bylaws a provision which limits the liability of directors as contained in the Texas

Business Organizations Code to the same extent permitted under state law for banks and savings and loan associations. Such bylaw provision is optional and within the discretion of the savings bank.

(c) Other optional bylaws may be adopted by a state savings bank with the approval of the Commissioner obtained in accordance with §75.123 of this title (relating to Certificate of Formation or Bylaws Amendments).

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

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



DIVISION 3. CAPITAL AND CAPITAL OBLIGATIONS

7 TAC §§75.231 - 75.234

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §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. 7 TAC §75.231 and §75.232 are proposed under the authority of, and to implement, Finance Code: §92.052(b); §92.053(b); §92.054; §92.102; §92.203; and §96.002(a)(1) and (11). 7 TAC §75.233 is also proposed under the authority of, and to implement, Finance Code: Chapter 96,

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Subchapter C; and §96.002(a)(1) and (11). 7 TAC §75.234 is also proposed under the authority of, and to implement, Finance Code: §93.004(b); and §96.002(a)(11).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.231. Capital Requirements.

(a) Unless the context clearly indicates otherwise, when used in this division, "Capital" for a savings bank includes (as applicable) the amount of its issued and outstanding common stock, preferred stock (to the extent such preferred stock may be considered a part of the savings bank's capital under GAAP) plus any retained earnings and additional paid-in capital as well as such other items as the Commissioner may approve in writing for inclusion as capital.

(b) Minimum capital requirement. Each savings bank must maintain capital at levels which are required for institutions whose accounts are insured by the FDIC.

§75.232. Increase or Decrease of Minimum Capital Requirements.

(a) The Commissioner may increase or decrease the minimum capital requirement set forth in this chapter upon written request by a savings bank or by supervisory directive if the Commissioner determines that:

(1) the savings bank's failure to meet the minimum capital requirement, if applicable, is not due to unsafe and unsound practices in the conduct of the affairs of the savings bank, a violation of any provision of the certificate of formation or bylaws of the savings bank, or a violation of any law, rule, or supervisory action applicable to the savings bank or any condition that the Commissioner has imposed on the savings bank by written order or agreement;

(2) the savings bank is well managed. In determining whether the savings bank is well managed, the Commissioner may consider:

(A) management's record of operating the savings bank;

(B) management's record of compliance with laws, regulations, directives, orders, and agreements;

(C) management's timely recognition and correction of regulatory violations, unsafe and unsound practices, or other weaknesses identified through the examination or supervisory process;

(D) management's ability to operate the savings bank in changing economic conditions; and

(E) such other factors as the Commissioner may deem necessary to properly evaluate the quality of the savings bank's management; and

(3) the savings bank has submitted a plan acceptable to the Commissioner for restoring capital within a reasonable period of time. Such plan must describe the means and schedule by which capital will be increased. The plan must also specifically address restrictions on dividend levels; compensation of directors, executive officers, or individuals having a controlling interest; asset and liability growth; and payment for services or products furnished by affiliated persons. The plan must provide for improvement in the savings bank's capital on a continuous or periodic basis from earnings, capital infusions, liability and asset shrinkage, or any combination thereof. A plan that projects no significant improvement in capital until near the end of the waiver or variance period or that does not appear to the Commissioner to be reasonably

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feasible will not be acceptable. The Commissioner may require modification of the savings bank's plan in order for the institution to receive or to continue to receive such waiver or variance.

(b) Progress Reports. Any savings bank which receives an increase or decrease of its minimum capital requirement from the Commissioner must file quarterly progress reports regarding compliance with its capital plan. The Commissioner may require more frequent reports. Any contemplated action that would represent a material variance from the plan that must be submitted to the Commissioner for approval.

(c) With respect to the granting of any waiver or variance of the minimum capital requirement, the Commissioner may impose any condition, limitation, or restriction on such increase or decrease as the Commissioner may deem necessary to ensure compliance with law and regulations and to prevent unsafe and unsound practices.

(d) The Commissioner may withdraw or modify any increase or decrease granted pursuant to this section if:

(1) the savings bank fails to comply with its capital plan;

(2) the increase or decrease was granted contingent upon the occurrence of events that do not subsequently occur;

(3) the savings bank undergoes a change of control or a material change in management that was not approved by the Commissioner;

(4) the savings bank engages in practices inconsistent with achieving its

minimum capital requirement;

(5) information is discovered that was not made available to the Commissioner at the time that the increase or decrease was granted and that indicates that the increase or decrease should not have been granted;

(6) the savings bank engages in unsafe and unsound practices, violates any provision of its certificate of formation or bylaws, or violates any law, rule, or supervisory order applicable to the savings bank or any condition that the Commissioner has imposed upon the savings bank by written order or agreement;

(7) the savings bank fails to submit the reports required by this section.

§75.233. Business Plans.

(a) All savings banks whose operations are considered by the Commissioner unsafe or unsound or which have total capital less than the amount required under §76.231 of this title (relating to Capital Requirements) or §76.232 of this title (relating to Increase or Decrease of Minimum Capital Requirements) must develop a business plan and have such business plan available for review by the examiners. The period covered by the business plan must be at least 1 year, but may be for so long as the Commissioner may require.

(b) The savings bank's business plan will be reviewed to determine its continued viability in accordance with current economic conditions and approved or revised, as determined by its board, at least annually.

§75.234. Joint Issuance of Capital Obligations.

Joint Issuance of Capital Obligations. On the

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same terms and conditions as stated in §75.171 of this title (relating to Capital Notes and Debentures), a savings bank may, by resolution of its board and with prior approval of the Commissioner, join other savings banks in the joint issuance of capital notes, debentures, bonds, or other secured or unsecured capital obligations.

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

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



DIVISION 4. HOLDING COMPANIES

7 TAC §§75.241 - 75.246

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §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. 7 TAC §§75.241 - 75.246 are also proposed under the authority of, and to implement, Finance Code: §96.002(a)(11) and (15); and §97.002. 7 TAC §75.241 is also proposed under the authority of, and to implement, Finance Code §97.002. 7 TAC §75.242 is further proposed under the authority of, and to implement, Finance Code §97.004. 7 TAC §75.243 is further proposed under the authority of, and to implement, Finance Code §97.005. 7 TAC §75.244 is further proposed

under the authority of, and to implement, Finance Code §97.006. 7 TAC § 75.245 is further proposed under the authority of, and to implement, Finance Code §97.007. 7 TAC §75.246 is further proposed under the authority of, and to implement, Finance Code §97.003. 7 TAC §75.247 is further proposed under the authority of, and to implement, Finance Code Chapter 98, Subchapter B.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.241. Reports.

Each holding company and each subsidiary of a holding company, other than a savings bank, must file with the Commissioner reports required by the Commissioner. The reports must be made under oath and must be in the form and for the periods prescribed by the Commissioner. Each report must contain information concerning the operations of the holding company and its subsidiaries as the Commissioner may require. A holding company must file with the Commissioner copies of any filings, documents, statements, or reports required to be filed with the appropriate federal banking agency, unless such filing, document, statement, or report is publicly available.

§75.242. Books and Records.

Each holding company must maintain books and records as may be prescribed by the Commissioner. The records must be created and maintained in accordance with the requirements of §76.221 of this title (relating to Books and Records), pertaining to savings banks.

§75.244. Examinations.

Each holding company and each subsidiary of a holding company is subject to examinations as

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the Commissioner may prescribe. The holding company must pay the cost of an examination. The confidentiality provisions of Finance Code §96.356 apply to an examination performed in accordance with this section, however, the Commissioner may furnish examination and other reports to any appropriate governmental department, agency, or instrumentality of this state, another state, or the United States. For purposes of this section, the Commissioner, to the extent deemed feasible, may use reports filed with or examinations made by appropriate federal agencies or regulatory authorities of other states.

§75.245. Agent for Service of Process.

The Commissioner may require a holding company or a person other than a corporation connected with a holding company to execute and file a prescribed form of irrevocable appointment of agent for service of process.

§75.246. Release from Registration.

The Commissioner at any time, on the Commissioner's own motion or on written request, may release a registered holding company from a registration made by the company if the Commissioner determines that the company no longer controls a savings bank. If released, the savings bank associated with the holding company must maintain the books and records of such holding company.

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

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



DIVISION 5. ASSESSMENTS AND FEES

7 TAC §75.251, §75.252

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; §16.003(c), providing that the department may set the amount of fees, penalties, charges, and revenues as necessary for the purpose of carrying out the functions of the department; §91.007, requiring the commission to adopt rules setting the amount of fees the commissioner charges, including fees relating to the supervision and examination of savings banks; and §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. 7 TAC § 75.252 is also proposed under the authority of, and to implement, Finance Code §96.055(a).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.251. Annual Assessments

(a) Annual assessment. All savings banks chartered under the laws of the state and all foreign savings banks (as defined by the Texas Savings Bank Act) holding a certificate of authority to do business in this state must pay to the department an annual assessment fee in an amount determined by the Commissioner as provided by subsection (c) of this section in accordance with the rate requirements set by the Finance Commission of Texas, and subject to the maximum assessment rates established by subsection (d) of this section. The Department

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will maintain on its website information concerning current rate requirements.

(b) Payment of Assessment. The annual assessment must be paid in quarterly installments. Upon receipt of a written invoice from the department, the savings bank must pay the assessment fee by electronic/ACH payment, or by another method, if directed to do so by the Department.

(c) Determination of assessment. The assessment will be determined based on either the total assets, or total risk-weighted assets of the savings bank, whichever results in the lowest fee being assessed. The valuation of assets will be determined as of the close of the calendar quarter immediately preceding the effective date of the assessment. A savings bank's total assets or total risk-weighted assets will be derived from the savings bank's Federal Financial Institutions Examination Council consolidated report of condition and income (call report), filed in accordance with federal law. If a savings bank is not required by applicable federal law to disclose its total risk-weighted assets in the call report, the savings bank may voluntarily report to the Commissioner information concerning its total risk-weighted assets for purposes of calculating its assessment, which must be provided to the Commissioner in the manner and within the time prescribed by the Commissioner; otherwise, the assessment will be based on the savings bank's total assets.

(d) Maximum Assessment Rates. The assessment rates set by the Finance Commission of Texas may not exceed the maximum rates established in the following rate schedule:

[Figure: 7 TAC §75.251(d)]

§75.252. Fee for Special Examination.

(a) A special examination is one that is conducted outside the context of a savings bank's annual examination and includes, but is not limited to, examinations of a savings bank holding company, interstate branches of savings banks in Texas as the host state, and a savings bank's affiliates and third-party service providers. The savings bank or other regulated entity that is the subject of the special examination is subject to a fee and liable for the Department's costs as provided by this section in order to recoup the salary expense of the examiner(s) plus a proportionate share of Department overhead allocable to the special examination, and the actual costs by the examiner in conducting the special examination.

(b) The fee for a special examination under this section will be calculated at a rate not to exceed \$75 per examiner per hour. The entity that is the subject of the examination must also pay to the Department an amount for actual travel expenses and costs incurred by the Department's examiner(s), including mileage, public transportation, food, and lodging. The Commissioner, in his or her sole discretion, may lower the applicable rate for the examination fee or waive, in whole or in part, any fees or costs chargeable in accordance with this section.

(c) In connection with an examination under this section, the regulated entity or other legally responsible party (including the savings bank, with respect to affiliates and third-party service providers) must pay the examination fee and costs incurred as provided by this section.

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

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



DIVISION 6. COMPLAINT PROCEDURES

7 TAC §75.261

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §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. This proposal is also made under the authority of, and to implement, Finance Code: Chapter 96, Subchapter C; §96.002(a)(11); and §96.054.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.261. Savings Bank Complaint Notices.

(a) Definitions.

(1) Privacy notice means any notice which a state savings bank gives regarding a consumer's right to privacy, regardless of whether it is required by a specific state or federal law or given voluntarily.

(2) Required notice means a notice in a form set forth or provided for in subsection (b)(1) of this section.

(b) Notice of how to file complaints.

(1) In order to let its consumers know how to file complaints, state savings banks must use the following notice: The (name of state savings bank) is chartered under the laws of the State of Texas and by state law is subject to

regulatory oversight by the Department of Savings and Mortgage Lending. Any consumer wishing to file a complaint against the (name of state savings bank) should contact the Department of Savings and Mortgage Lending through one of the means indicated below: In Person or by Mail: 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294, Phone: (877) 276-5550, Fax: (512) 936-2003, or through the Department's website at www.sml.texas.gov.

(2) A required notice must be included in each privacy notice that a state savings bank sends out.

(3) Regardless of whether a state savings bank is required by any state or federal law to give privacy notices, each state savings bank must take appropriate steps to let its consumers know how to file complaints by giving them the required notice in compliance with paragraph (1) of this subsection.

(4) The following measures are deemed to be appropriate steps to give the required notice:

(A) In each area where a state savings bank conducts business on a face-to-face basis, the required notice, in the form specified in paragraph (1) of this subsection, must be conspicuously posted. A notice is deemed to be conspicuously posted if a customer with 20/20 vision can read it from the place where he or she would typically conduct business or if it is included on a bulletin board, in plain view, on which all required notices to the general public (such as equal housing posters, licenses, Community Reinvestment Act notices, etc.) are posted.

(B) For customers who are not given privacy notices, the state savings bank must give the required notice when the customer

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relationship is established.

(C) The required notice must be posted on each website of the savings bank that is accessible by the public and either used to conduct banking activities or from which the savings bank advertises to solicit such business. The required notice is deemed to be conspicuously posted on a website when it is displayed on the initial or home page of the website (typically the base-level domain name) or is otherwise contained in a linked page with the link to such page prominently displayed on such initial or home page.



SUBCHAPTER D. LOANS, INVESTMENTS,
SAVINGS, AND DEPOSITS

DIVISION 1. AUTHORIZED LOANS AND
INVESTMENTS

7 TAC §75.301

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §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. This proposal is also made under the authority of, and to implement, Finance Code §96.002(a)(16).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.301. Definitions.

As used in this division, the following words and terms are assigned the following meanings,

unless the context clearly indicates otherwise.

(1) Commercial real estate--Land on which structures or improvements do not qualify the property as residential real estate are located.

(2) Home--A structure designed and used as a residence by one family, or a structure designed and used for occupancy for one to four family units. The term also includes common areas around town houses or condominium units which are incidental to ownership of the residence.

(3) Home improvement loan--Any loan made for the improvement, maintenance, repair, modernization, or equipment of a home.

(4) Interim construction loan--A loan made to finance the improvement of or the building of residential or commercial structures on developed building sites, and may include the acquisition of such developed building sites. This term does not include home improvement loans allowed under §75.304 of this title (relating to Home Improvement Loans).

(5) Manufactured home--A structure, transportable in one or more sections, which in the traveling mode is 8 feet or more in width or and 40 feet or more in length, or when erected on site, is 400 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems.

(6) One borrower--Any person or entity that is, or that upon the making of a loan will become, obligor on a loan or guarantor of a loan; nominees of such obligor; all persons, trusts, syndicates, partnerships, and corporations of which such obligor is a nominee, a beneficiary, a member, a general partner, a limited partner

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owning an interest of 10% or more (based on the value of their contribution), or a record or beneficial stockholder owning 10% or more of the capital stock; and if such obligor is a trust, syndicate, partnership, or corporation, all trusts, syndicates, partnerships, and corporations of which any beneficiary, member, general partner, limited partner owning an interest of 10% or more, or record or beneficial stockholder owning 10% or more of the capital stock, is also a beneficiary, member, general partner, limited partner owning an interest of 10% of more, or record or beneficial stockholder owning 10% or more of the capital stock of such obligor. In the case of a loan that has been assumed by a third party with the consent of the lending institution, the former debtor will not be deemed an obligor.

(7) Personal property--Tangible and intangible property that is not real property, including the following items as defined in the Texas Business and Commerce Code: consumer goods, equipment, farm products, inventory, accounts, instruments, chattel paper, documents, general intangibles, cash proceeds, and non-cash proceeds.

(8) Residential real estate--Land on which a house, a home, or an apartment house is located, including combinations of farm residences and commercial farm real estate.

(9) Unimproved real estate--Land which has no substantial improvements or utilities. All other real estate will be considered either residential real estate or commercial real estate.

§75.302. Loans Authorized.

(a) A savings bank may originate, invest in, sell, purchase, service, participate, or otherwise deal in (including brokerage or warehousing) loans or participations subject to the requirements of the Texas Savings Bank Act, and this subchapter,

including:

(1) residential real estate loans, including loans on the security of leasehold interests in residential real estate;

(2) home improvement loans;

(3) manufactured home loans,;

(4) interim construction loans;

(5) other real estate loans, including loans on the security of leasehold interest in real estate;

(6) personal property loans;

(7) commercial real estate loans, including loans on the security of leasehold interest in real estate;

(8) non-real estate commercial loans;

(9) loans fully secured by savings accounts owned or otherwise pledged for or by the borrower;

(10) unsecured loans; and

(11) loans which are insured or guaranteed by the United States or any instrumentality thereof.

(b) Parity. A savings bank may purchase or commit to purchase any loan it could make if it were incorporated and operating as a federal savings bank domiciled in this state, so long as for each such transaction the savings bank complies with all applicable regulations governing such activities by federal savings banks. However, all such loans must be documented in accordance with the applicable requirements of this chapter.

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§75.303. Non-Real Estate Commercial Loans.

A savings bank may lend and invest not more than 40% of its total assets in non-real estate commercial loans for business, corporate, or agricultural purposes. The amount of each letter of credit or other unfunded commitment to make a non-real estate commercial loan must be included in computing this limitation.

§75.304. Unsecured Loans.

(a) A savings bank may make unsecured loans or purchase participations in unsecured loans, on the terms and in amounts consistent with the savings bank's lending policies, subject to the limitations of this section.

(b) Real estate, personal property, or interests in oil and gas leases may be provided as security for such loans without meeting the requirements of this chapter for real estate or personal property loans, so long as all requirements of this section are met.

§75.305. Loan Policies and Documentation.

(a) Policies. Each savings bank must establish written policies approved by its board establishing prudent credit underwriting and loan documentation standards. Such standards must be designed to identify potential safety and soundness concerns and ensure that action is taken to address those concerns before they pose a risk to the savings bank's capital. Credit underwriting standards should consider the nature of the markets in which loans will be made; provide for consideration, prior to credit commitment, of the borrower's overall financial condition and resources, the financial stability of any guarantor, the nature and value of underlying collateral, and the borrower's character and willingness to repay as agreed; establish a system of independent, ongoing credit review and

appropriate communication to senior management and the board; take adequate account of concentration of credit risk; and are appropriate to the size of the savings bank and the scope of its lending activities.

(b) Loan Documentation Standards. Loan documentation standards must be established and maintained to enable the savings bank to make informed lending decisions and assess risk, as necessary, on an ongoing basis; identify the purpose of the loan and source of repayment, and assess the ability of the borrower to repay the indebtedness in a timely manner; ensure that any claim against a borrower is legally enforceable; demonstrate appropriate administration and monitoring of a loan; and consider the size and complexity of a loan. The following documents are generally appropriate and can be used as a guideline for prudent lending; however, unless such documents are specifically required by other state and federal statutes or regulations, there may be alternative documents equally suitable in satisfying the safety and soundness intent of this section which the savings bank may substitute and still address the safety and soundness concern:

(1) an application for the loan, signed and dated by the borrower or their agent (and if the borrower is a corporation, a board resolution authorizing the loan), which discloses the purpose for which the loan is sought, the identity of the security property, and the source of funds which will be used to repay the loan;

(2) a statement signed by the borrower or their agent, or a copy of the executed contract, disclosing the actual price at which the security is being purchased by the borrower, if the loan is made for the purpose of financing the purchase of the security for the loan;

(3) current financial statements

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signed by the borrower and all guarantors and/or current documented credit reports disclosing the financial ability of the borrower and guarantors (a current financial statement is as of a date within 180 days before the application is filed) together with written certification by the borrower and guarantors that no material adverse changes in financial condition have occurred since the financial statement was prepared;

(4) a loan approval sheet (which may be part of the loan application form) indicating the amount and terms of the loan, the date of loan approval, by whom approved, the signatures of the persons approving the loan, any conditions of approval, and verifying that the persons approving the loan have confirmed applicable limitations on loans to one borrower for purposes of Finance Code §94.001 are met;

(5) a loan disbursement statement or other documentation, indicating the date, amount, and ultimate recipient of every disbursement of the proceeds of such loan (this requirement is not met by showing one or more disbursements to a title company or other escrow agent, but for a construction loan, this requirement may be met by documenting bona fide construction draw disbursements to the general contractor of the project, upon their completion of an affidavit stating that all bills for labor and materials have been paid as of the date of the disbursement);

(6) a loan settlement statement, indicating in detail the expenses, fees, and charges the borrower or borrowers have paid in connection with such loan;

(7) the promissory note or notes containing the borrower's obligation to repay duly executed by the borrower and all guaranty agreements duly executed by the guarantors (a copy of the note or notes may be kept in the loan

file, if the original notes are stored for safekeeping in another location at the savings bank);

(8) the original mortgage, deed of trust, or other instrument creating or constituting the lien securing the loan;

(9) for real estate loans, an attorney's opinion letter based on an abstract of title, or a policy of title insurance, or binder of same, issued by a title company authorized to insure titles in the state in which the security for the loan is located, showing that the lien securing such loan meets the applicable requirements of this chapter for liens securing the loan in question;

(10) evidence that the insurable improvements of the real estate are insured against loss by a fire and extended coverage policy or its equivalent issued by an insurance company authorized to do business in the state in which the real estate security is located and naming the savings bank as a co-insured, as its interest may appear;

(11) for real estate loans, an appraisal or evaluation completed in accordance with the requirements of 12 C.F.R. §323.1, et seq.;

(12) for personal property loans, a detailed explanation of how the savings bank arrived at the appraised or market value of the security property;

(13) any loan agreement or other ancillary documents relating to the loan; and

(14) any documents required by the Texas Credit Title (Finance Code §301.001 et seq.).

(c) Unsecured Loans. Documentation guidelines for unsecured loans under this chapter would

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generally include the documents in subsection (a)(1) and (3) - (7) of this section.

(d) Loan documentation which meets the documentation requirements of the applicable agency meets the requirements of this section for any loan of which at least 80% of the principal is guaranteed by the United States or any agency or instrumentality thereof.

(e) Closing Agent. A savings bank may designate as escrow agent an attorney or a title company, either of which must be duly licensed in the state where the transaction is closed. However, where an escrow agent is used, all original documents must be forwarded to the savings bank within 5 business days after closing, or immediately after recording, for those documents which require filing of record.

(f) Permanent Loan File Requirements.

(1) Loan documentation must be in the possession of the savings bank or an escrow agent designated by the savings bank before funding, together with a signed certification by an officer or employee that the loan documentation was complete before funding and such documents and records must be placed in one permanent loan file immediately upon receipt by the savings bank.

(2) The permanent loan file required by this section must be located at an office of the savings bank. Duplicate loan files or other files containing loan documentation not required by this rule may be maintained at the savings bank's discretion. Files for loans which are fully secured by accounts at the savings bank may be maintained at the office where the loan was originated.

(3) The permanent loan file must contain evidence that the savings bank obtained

the prompt recording in the proper records of every mortgage, deed of trust, or other instrument creating, constituting or transferring any lien securing in whole or part any loan made under this chapter, or the savings bank's interest therein. This requirement does not apply to loan participations purchased by the savings bank.

(4) Where the proceeds of a loan are disbursed over the term of the loan in the form of draws by the borrower, the documentation supporting each draw must be part of the permanent file.

(5) When a savings bank purchases whole loans or participations in loans, it must cause the assignment or transfer of its interest in the liens securing such loans to be in recordable form and maintained in the permanent file. If such loans are serviced by others, the servicing agreement must be a part of the permanent file. The savings bank must obtain a certification from the seller of the loan or participation that the seller is in possession of all documents required by this section.

(g) The records of the savings bank must reflect that the board has by appropriate resolution established procedures for the approval of all loans, loan commitments or letters of credit made by the savings bank and specifically fixing the authority and responsibility for preliminary loan approval by officers and employees of the savings bank. Loans originating in branch offices, loan offices, or agencies must be approved in the same manner as loans originating in the principal office.

(h) A savings bank must maintain a register of all outstanding loan commitments, including commitments to purchase loans or participations, containing the name and address of the customer to whom the commitment is made, dollar amount of the commitment, and a summary of all

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material terms of the commitment, with a description of any written documents evidencing the loan commitment.

§75.306. Loans to and Transactions with Officers, Directors, Affiliated Persons, and Employees.

All transactions, including loans, involving officers, directors, affiliated persons, controlling persons or employees are subject to the requirements of Federal Reserve Board Regulations O and W, which sections are hereby incorporated by reference. The Department will monitor and enforce compliance with such provisions.

§75.307. Letters of Credit.

A savings bank may issue letters of credit in accordance with the terms and conditions of the Uniform Commercial Code of the State of Texas and the Uniform Customs and Practice for Documentary Credits, subject to the following requirements.

(1) The savings bank must maintain a letter of credit register containing name of customer, address, amount of credit extended, and identifying number.

(2) Each letter of credit must conspicuously state that it is a letter of credit or must be conspicuously entitled as such.

(3) The savings bank's undertaking must contain a specified expiration date or be for a definite term and must be limited in amount.

(4) The savings bank's obligation to pay arises only upon presentation of a draft and other documents as specified in the letter of credit and there is no obligation on the part of the savings bank to determine questions of fact or law at

issue between the account party and the beneficiary.

(5) The savings bank must obtain an unqualified obligation from its customer to reimburse it for payments made under the letter of credit.

(6) The amount of each letter of credit must be included in the aggregation of loans subject to the limitations of this chapter relating to the loans to one borrower for purposes of Finance Code §94.001.

(7) Each letter of credit's terms is subject to the limitations and documentation requirements to the same extent as if it were a loan made under this chapter.

(8) An appropriate fee may be collected for each letter of credit issued.

§75.308. Investment in Securities.

(a) A savings bank is deemed to have power to invest in obligations of, or guaranteed as to principal and interest by, the United States or this state; in stock of a federal home loan bank of which it is eligible to be a member, and in any obligations or consolidated obligations of any federal home loan bank or banks; in stock or obligations of the FDIC; in stock or obligations of a national mortgage association created by federal law or any successor or successors thereto; in demand, time, or savings deposits with any bank or trust company the deposits of which are insured by the Federal Deposit Insurance Corporation; in stock or obligations of any corporation or agency of the United States or this state, or in deposits therewith to the extent that such corporation or agency assists in furthering or facilitating the savings bank's purposes or power; in demand, time, or savings deposits of any financial institution the deposits of which are insured by the FDIC; in bonds, notes, or other

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evidences of indebtedness which are a general obligation of any city, town, village, county, school district, or other municipal corporation or political subdivision of this state; and in such other securities or obligations approved by the Commissioner.

(b) A savings bank investing in securities under this section must insure that the securities are delivered to the savings bank, or for the savings bank's account to a custodial agent or trustee designated by the savings bank, within 3 business days after paying for or becoming obligated to pay for the securities. The savings bank may employ as custodial agent or trustee a federal home loan bank, a federal reserve bank, a bank the accounts of which are insured by the Federal Deposit Insurance Corporation, any savings and loan association legally exercising trust powers and the accounts of which are insured by the Federal Deposit Insurance Corporation, or such other trust company approved in advance by the Commissioner. When employing any of the foregoing entities as trustee or custodial agent to accept delivery of the securities, the savings bank must insure that it receives a custodial or trust receipt for the securities within 3 business days of the delivery of the securities.

(c) No savings bank or subsidiary thereof may invest, either directly or indirectly, in the stocks, bonds, notes, or other securities of any affiliated person without the prior written approval of the Commissioner.

(d) No savings bank or subsidiary thereof may, either directly or indirectly, purchase securities from any affiliated person of such savings bank.

(e) Investments in equity securities.

(1) A savings bank or any service corporation, operating subsidiary, or finance subsidiary of a savings bank may not invest in

stock or equity securities unless the securities qualify as investment grade securities. Additionally, no savings bank may invest in stock or equity securities unless the securities are eligible investments for federal savings banks.

(2) The limitations of paragraph (1) of this subsection do not apply to equity securities:

(A) issued by any United States government-sponsored corporation including the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Student Loan Marketing Association; or

(B) issued by a service corporation, an operating subsidiary, or a finance subsidiary of the savings bank.

(f) A savings bank may be a member of the Federal Home Loan Bank System and/or Federal Reserve System and is specifically authorized to invest in such Federal Home Loan Bank and Federal Reserve Bank stock.

§75.309. Investment in Banking Premises and Other Real Estate Owned.

(a) A savings bank may not, without prior written consent of the Commissioner, invest an amount in excess of its capital in fixed assets, including land, improvements, furniture and fixtures, and other depreciable assets, and capital leases.

(b) A savings bank may not acquire real estate, other than its domicile, except in satisfaction or partial satisfaction of indebtedness, or in the ordinary course of the collection of loans and other obligations owing the savings bank, or for the use of the bank in future expansion of its banking facilities.

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(c) Real estate acquired for the future expansion of a savings bank's facilities not improved and occupied as banking facilities within 5 years from the date of its acquisition must be sold or otherwise disposed of. Existing bank facilities must be sold or otherwise disposed of within 5 years of the date the real estate ceases to be used for banking purposes. The Commissioner may, for good cause shown, grant an extension of time for the sale or disposition of the real estate, as described in this subsection.

(d) Real estate acquired in satisfaction or partial satisfaction of indebtedness, or in the ordinary course of the collection of loans and other obligations owing the savings bank may be held by a savings bank for no more than 5 years, unless the Commissioner extends in writing the holding period for such property.

(e) Subject to subsection (f) of this section, when real estate is acquired in accordance with subsection (d) of this section, a savings bank must substantiate the market value of the real estate by obtaining an appraisal within 90 days of the date of acquisition. An evaluation may be substituted for an appraisal if the recorded book value of the real estate is \$500,000 or less. The Commissioner may, for good cause shown, grant an extension of time for obtaining an appraisal or evaluation (as appropriate), as described in this subsection.

(f) An additional appraisal or evaluation is not required when a savings bank acquires real estate in accordance with subsection (d) of this section, if a valid appraisal or appropriate evaluation was made in connection with the real estate loan that financed the acquisition of the real estate and the appraisal or evaluation is less than 1 year old.

(g) An evaluation must be made on all real estate acquired in accordance with subsection (d) of this section at least once a year. An appraisal must be

made at least once every 3 years on real estate with a recorded book value in excess of \$500,000.

(h) Notwithstanding any other provision of this section, the Commissioner may require an appraisal of real estate if the Commissioner considers an appraisal necessary to address safety and soundness concerns.

(i) An appraisal or evaluation made in accordance with this section must be performed in accordance with the standards described by the Federal Deposit Insurance Corporation in 12 C.F.R., Part 323, Subpart A or the Federal Reserve System in 12 C.F.R., Part 225, Subpart G, as applicable.

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

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



DIVISION 2. SUBSIDIARIES

7 TAC §§75.321 - 75.326

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §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. This proposal is also made under

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the authority of, and to implement, Finance Code §96.002(a)(16)(Q).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.321. Investment in and Divestiture of Subsidiaries.

(b) A savings bank may, only after prior written approval of the Commissioner, invest in a subsidiary.

(d) Subsequent to obtaining approval for its initial investment and activity, a subsidiary may not engage in additional or substitute activities without the prior written approval of the Commissioner.

(e) A savings bank may, with prior written approval of the Commissioner, divest itself of a subsidiary or merge or consolidate the subsidiary with another company if the Commissioner finds that the terms and conditions of the transaction are in the best interests of the savings bank.

§75.323. Authorized Subsidiary Investments.

(a) Activities of a subsidiary must consist of one or more of the following:

(1) loan origination, purchasing, selling, and servicing;

(2) acquisition of unimproved real estate lots and other unimproved real estate for the purpose of prompt development and subdividing;

(3) purchasing, selling, owning, renting, leasing, managing, subdividing, improving, operating for income, or otherwise dealing in and with real property, whether improved or unimproved (excluding any investment of any nature in an oil and gas drilling

venture, whether such investment be in the stock of a corporate entity or in the partnership or joint venture interest of any entity making purchases or investments in oil and gas drilling ventures);

(4) acquisition of improved residential real estate and mobile home lots to be held for sale or rental;

(5) acquisition of improved residential real estate for remodeling, rehabilitation, modernization, renovation, or demolition and rebuilding for sale or for rental;

(6) maintenance and management of rental real estate;

(7) serving as real estate brokers;

(8) serving as insurance broker or agent;

(9) engaging in or owning an interest in insurance companies engaged in the property, casualty, fire and marine, life, health and accident, title, fidelity, guaranty, and surety insurance business;

(10) serving in the capacity of trustee under deeds of trust or escrow agent;

(11) preparation of state and federal tax returns for the savings bank's accountholders and/or borrowers;

(12) acquisition, maintenance, and management of real estate to be used for savings bank offices and related facilities;

(13) investing in obligations of, or guaranteed as to principal and interest by, the United States or this state, and in bonds, notes, or other evidences of indebtedness which are a general obligation of any city, town, village,

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county, school district, or other municipal corporation or political subdivision of this state;

(14) investing in venture capital through small business investment corporations; and

(15) other activities which may be approved by the Commissioner.

(b) A subsidiary may not, without prior approval of the Commissioner, invest in the stock of any savings and loan association or savings bank.

(c) A subsidiary may not receive payments on new or established savings accounts or pay out withdrawals of monies from savings accounts, and may not perform any duties for the savings bank other than those specifically authorized in this section.

(d) The savings bank must maintain the originals of all documents relating to the activities of its subsidiaries that do not require prior approval by the Commissioner, which documents must be made available at all times to state and federal supervisory authorities for examination and review.

§75.324. *Subsidiary Operations.*

(a) The savings bank must obtain prior written approval of the Commissioner for the establishment and location of the home office, and any branch office, agency office, or any other office or facility of the subsidiary, and for any change of name of the subsidiary.

(b) A verified copy of all contracts, instruments, joint ventures, and partnership agreements and financing arrangements of the subsidiary investments must be furnished to the savings bank within 30 days from date of execution.

(c) The subsidiary must furnish, at the expense of the subsidiary or parent savings bank or its holding company, an independent appraiser's report or other expert opinion as determined to be necessary by the Commissioner for the purpose of establishing the value of any investments made by the subsidiary.

(d) Each subsidiary must maintain fidelity bond coverage with an acceptable bonding company in an amount that adequately protects the subsidiary from such loss. Coverage as an additional insured entity under a fidelity bond of the parent savings bank or its holding company may satisfy this requirement.

(e) All directors of the savings bank and subsidiary must furnish affidavits fully disclosing any direct or indirect interest they may have in each investment made by the corporation.

(f) Each subsidiary must maintain books and records as may be prescribed by the Commissioner. The records must be created and maintained in accordance with the requirements of §76.201 of this title (relating to Books and Records), pertaining to savings banks.

§75.325. *Subsidiary Investment and Debt Limitation.*

Investment in subsidiaries is deemed to include investment in the subsidiary's capital stock, paid-in capital, subordinated debentures, unsecured loans, advances, contingencies, and other obligations (excluding secured conforming loans), and may not, in the aggregate, exceed 10% of the savings bank's total assets without prior approval.

§75.326. *Operating Subsidiaries.*

A savings bank is authorized to invest in operating subsidiaries, the activities of which are

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exclusively limited to activities which could be conducted directly by the parent savings bank. Because an operating subsidiary is limited to activities that could otherwise be conducted directly by the savings bank, operating subsidiary investment is not limited by the percentage of assets or dollar amount restrictions applicable to subsidiary corporations as set forth in §75.321 of this title (relating to Subsidiary Investment and Debt Limitation). Notwithstanding this exclusion, all other provisions of this chapter applicable to a subsidiary apply equally to an operating subsidiary.

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

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



DIVISION 3. SAVINGS AND DEPOSITS

7 TAC §75.331, §75.332

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; §59.310, requiring the commission to adopt rules to implement Finance Code Chapter 59, Subchapter D; and §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. This proposal is also made under the authority of, and to implement Finance Code Chapter 59, Subchapter D.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.331. User Safety at Unmanned Teller Machines.

(a) Definitions. Words and terms used in this subchapter that are defined in the Finance Code §59.301, have the same meanings assigned by such section.

(b) Measurement of candle foot power. For purposes of measuring compliance with the Finance Code §59.307, candle foot power should be determined under normal, dry weather conditions, without complicating factors such as fog, rain, snow, sand or dust storm, or other similar condition.

(c) Leased premises.

(1) Noncompliance by Landlord. Pursuant to the Finance Code, §59.306, the landlord or owner of property is required to comply with the safety procedures of the Finance Code, Chapter 59, Subchapter D, if an access area or defined parking area for an unmanned teller machine is not controlled by the owner or operator of the unmanned teller machine. If an owner or operator of an unmanned teller machine on leased premises is unable to obtain compliance with safety procedures from the landlord or owner of the property, the owner or operator must notify the landlord in writing of the requirements of the Finance Code Chapter 59, Subchapter D, and of those provisions for which the landlord is in noncompliance.

(2) Enforcement. Noncompliance with safety procedures required by the Finance Code Chapter 59, Subchapter D, by a landlord or owner of property after receipt of written notification from the owner or operator constitutes a violation of the Finance Code Chapter 59, Subchapter D, which may be

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enforced by the Texas Attorney General.

(d) Safety Evaluations.

(1) The owner or operator of an unmanned teller machine must evaluate the safety of each machine on a periodic basis no less frequently than annually.

(2) The scope of the safety evaluation must include, at a minimum, the factors identified in Finance Code §59.308.

(3) The owner or operator of the unmanned teller machine may provide the landlord or owner of the property with a copy of the safety evaluation if an access area or defined parking area for an unmanned teller machine is not controlled by the owner or operator of the machine.

(e) Notice. An issuer of access devices must furnish its customers with a notice of basic safety precautions that each customer should employ while using an unmanned teller machine. The notice must be personally delivered or sent to each customer whose mailing address is in this state, according to records for the account to which the access device relates, and may be included with other disclosures related to the access device, including an initial or periodic disclosure statement furnished under the Electronic Fund Transfer Act (15 U.S.C. §1693 et seq.). The notice may be delivered electronically if permissible under Texas Business & Commerce Code §322.008.

(1) When Notice is Required. The issuer must furnish the notice to its customer whenever an access device is issued or renewed. If the issuer furnishes an access device to more than one customer on the same account, the issuer is not required to furnish the notice to more than one of the customers.

(2) Content of Notice. The notice of basic safety precautions required by this subsection may include recommendations or advice regarding:

(A) security at walk-up and drive-up unmanned teller machines, such as recommendations that the customer should:

(i) remain aware of surroundings and exercise caution when withdrawing funds;

(ii) inspect an unmanned teller machine before use for possible tampering, or for the presence of an unauthorized attachment that could capture information from the access device or the customer's personal identification number;

(iii) refrain from displaying cash and put it away as soon as the transaction is completed; and

(iv) wait to count cash until the customer is in the safety of a locked enclosure, such as a car or home;

(B) protection of the customer's code or personal identification number, such as a recommendation that the customer ensure no one can observe entry of the customer's code or personal identification number;

(C) safeguarding and protection of the customer's access device, such as a recommendation that the customer treat the access device as if it were cash, and if the access device has an embedded chip, that the customer keep the access device in a safety envelope to avoid undetected and unauthorized scanning;

(D) procedures for

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reporting a lost or stolen access device and for reporting a crime;

(E) reaction to suspicious circumstances, such as a recommendation that a customer who observes suspicious persons or circumstances, while approaching or using an unmanned teller machine, should not use the unmanned teller machine at that time or, if the customer is in the middle of a transaction, should cancel the transaction, take the access device, leave the area, and come back at another time, or use an unmanned teller machine at another location;

(F) safekeeping and secure disposition of unmanned teller machine receipts;

(G) the inadvisability of surrendering information about the customer's access device over the telephone or over the Internet, unless to a trusted merchant in a call or transaction initiated by the customer;

(H) protection against unmanned teller machine fraud, such as a recommendation that the customer promptly review the customer's monthly statement and compare unmanned teller machine receipts against the statement;

(I) protection against Internet fraud, such as a recommendation that the customer, if purchasing online with the access device, should end transactions by logging out of websites instead of just closing the web browser; and

(J) other recommendations that the issuer reasonably believes are appropriate to facilitate the security of its unmanned teller machine customers.

(f) Video Surveillance Equipment. Video surveillance equipment is not required to be installed at all unmanned teller machines. The owner or operator must determine whether video surveillance or unconnected video surveillance equipment should be installed at a particular unmanned teller machine site, based on the safety evaluation required under Finance Code §59.308. If an owner or operator determines that video surveillance equipment should be installed, the owner or operator must provide for selecting, testing, operating, and maintaining appropriate equipment.

(g) Unmanned Teller Machines Located in a Bank Vestibule. The provisions of the Finance Code Chapter 59, Subchapter D, and this section are applicable to an unmanned teller machine located in a bank vestibule if there is 24 hour access to the vestibule from outside the building.

(h) Certification of Compliance. The security officer of each depository must certify compliance with the Finance Code Chapter 59, Subchapter D, and this section on a basis no less frequently than annually.

§75.332. Pledging of Assets to Secure Deposits of Certain Public Purpose Entities.

A savings bank may pledge its assets to secure the deposits of:

(1) the United States government or any instrumentality thereof;

(2) any State or political subdivision, agency, or instrumentally thereof;

(3) any local municipality, agency, or instrumentally thereof;

(4) any federally-recognized Indian tribe;
or

(5) any other entity, as required by state or federal law, or court order.

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

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

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DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

MAXIMUM ANNUAL ASSESSMENT RATE SCHEDULE

Assets Over	Not Over	Amount	Plus	Over
\$0	\$2 million	\$5,548	0.000000000	\$0
2 million	20 million	5,548	0.000219058	2 million
20 million	100 million	9,491	0.000175245	20 million
100 million	200 million	23,510	0.000113940	100 million
200 million	1 billion	34,900	0.000096381	200 million
1 billion	2 billion	112,004	0.000078857	1 billion
2 billion	6 billion	190,861	0.000070094	2 billion
6 billion	20 billion	471,237	0.000059643	6 billion
20 billion	40 billion	1,306,239	0.000044928	20 billion
40 billion	250 billion	2,204,799	0.000035103	40 billion
250 billion		9,576,429	0.000034751	250 billion

4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 76, Concerning Miscellaneous, Resulting from Rule Review

PURPOSE: The purpose of the repeals in 7 TAC Chapter 76 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 publication of the repeals in 7 TAC Chapter 76 for comment in the *Texas Register*.

RECOMMENDED MOTION: I move that the Finance Commission approve publication of the repeals in 7 TAC Chapter 76 for comment in the *Texas Register*.

TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 76. MISCELLANEOUS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal all existing rules sections in 7 TAC Chapter 76, as follows: §§76.1, 76.2 - 76.7, 76.12, 76.21 - 76.26, 76.41 - 76.47, 76.91 - 76.103, 76.105 - 76.110, and 76.122. This proposal and the rules as repealed by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 75, Applications, Chapter 76, Miscellaneous, and Chapter 77, Loans, Investments, Savings, and Deposits, implement Finance Code Title 3, Subtitle C, Savings Banks, and affect savings banks regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 75, 76, and 77 into Chapter 75

When viewing the department's rules as a whole, it is somewhat difficult to discern which of the chapters affects savings banks regulated by the department, particularly when such rules are located alongside the eleven other chapters that affect savings associations and have similar titles. In consideration of the foregoing, the department has determined that it should reorganize Chapters 75 - 77 by consolidating the subject matter of such chapters into one chapter - Chapter 75 - and renaming such chapter "Savings Banks." The proposed rules, if adopted, would repeal all existing rules in Chapter 76.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall and that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the department because the department is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because the department does not contribute to the state's general revenue fund.

Public Benefits

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing or administering the proposed rules will be for the department's rules governing savings banks to be easier to locate by members of the public.

Probable Economic Costs to Persons Required to Comply with the Proposed Rules

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions; (3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules, if adopted, would repeal all existing rules in Chapter 76; however, in a related proposal published elsewhere in this issue of the *Texas Register*, the department proposes new rules in 7 TAC Chapter 75 patterned after the existing rules in Chapter 76; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and

(8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, Deputy General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this proposal.

SUBCHAPTER A. BOOKS, RECORDS, ACCOUNTING PRACTICES, FINANCIAL STATEMENTS AND RESERVES

7 TAC §§76.1, 76.2, 76.4, 76.5, 76.6, 76.7, 76.12

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §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.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§76.1. Books and Records.

§76.2. Accounting Practices.

§76.4. Financial Statements; Annual Reports; Audits.

§76.5. Misdescription of Transactions.

§76.7. Examinations.

§76.12. Bylaws.

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

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



SUBCHAPTER B. CAPITAL AND CAPITAL OBLIGATIONS

7 TAC §§76.21 - 76.26

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings

banks; and §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.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§76.21. Capital Requirements.

§76.22. Increase or Decrease of Minimum Capital Requirements.

§76.23. Business Plans.

§76.24. Capital Notes and Debentures.

§76.25. Provisions for Issuance of Secured or Unsecured Capital Obligations.

§76.26. Joint Issuance of Capital Obligations.

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

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



SUBCHAPTER C. HOLDING COMPANIES

7 TAC §§76.41 - 76.47

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §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.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§76.41. Registration.

§76.42. Reports.

§76.43. Books and Records.

§76.44. Examinations.

§76.45. Agent for Service of Process.

§76.46. Release from Registration.

§76.47. Mutual Holding Companies.

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

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



SUBCHAPTER F. FEES AND CHARGES

7 TAC §§76.91 - 76.103, 76.105 - 76.110

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §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.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§76.91. Fee for Charter Application.

§76.92. Fee for Branch Office.

§76.93. Fee. For Mobile Facility.

§76.94. Fee for Change of Name or of Location.

§76.95. Fee for Special Examination.

§76.96. Fee for Certificate of Formation and Bylaw Amendments.

§76.97. Fee for Permission To Issue Capital Obligations.

§76.98. Annual Assessments.

§76.99. Fee for Reorganization, Merger, and Consolidation.

§76.100. Fees for Expedited Applications.

§76.101. Fee for Change of Control.

§76.102. Fee for Subsidiaries.

§76.103. Fee for Charter Application under 7 TAC §75.36.

§76.105. Fee for Conversion into a Savings Bank.

§76.107. Fee for Holding Company Registration.

§76.108. Fees for Public Information Requests.

§76.109. Fee for Protest Filing.

§76.110. Fees Nonrefundable.

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

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



SUBCHAPTER H. COMPLAINT
PROCEDURES

7 TAC §75.122

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §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.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§76.122. Savings Bank Complaint Notices.

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

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



5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 77, Concerning Loans, Investments, Savings, and Deposits, Resulting from Rule Review

PURPOSE: The purpose of the repeals in 7 TAC Chapter 77 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 publication of the repeals in 7 TAC Chapter 77 for comment in the *Texas Register*.

RECOMMENDED MOTION: I move that the Finance Commission approve publication of the repeals in 7 TAC Chapter 77 for comment in the *Texas Register*.

TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 77. LOANS, INVESTMENTS, SAVINGS, AND DEPOSITS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal all existing rules sections in 7 TAC Chapter 77, as follows: §§77.1 - 77.11, 77.31, 77.33, 77.35, 77.51, 77.71, 77.73, 77.91 - 77.96, 77.115, and 77.16. This proposal and the rules as repealed by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 75, Applications, Chapter 76, Miscellaneous, and Chapter 77, Loans, Investments, Savings, and Deposits, implement Finance Code Title 3, Subtitle C, Savings Banks, and affect savings banks regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 75, 76, and 77 into Chapter 75

When viewing the department's rules as a whole, it is somewhat difficult to discern which of the chapters affects savings banks regulated by the department, particularly when such rules are located alongside the eleven other chapters that affect savings associations and have similar titles. In consideration of the foregoing, the department has determined that it should reorganize Chapters 75 - 77 by consolidating the subject matter of such chapters into one chapter - Chapter 75 - and renaming such chapter "Savings Banks." The proposed rules, if adopted, would repeal all existing rules in Chapter 77.

Changes Concerning Loan Requirements

The department's existing rules in Chapter 77, Subchapter A, §§77.2 - 77.9 establish various requirements for loans made by a savings bank. While such rules, at one time, were appropriate, the department has determined that, given the requirements of federal law governing loan products, the rules are now overly prescriptive and should be repealed. As a result, the subject matter of such rules is not included in the department's related proposal concerning proposed new rules in 7 TAC Chapter 75, published elsewhere in this issue of the *Texas Register*.

Other Modernization and Update Changes.

The proposed rules, if adopted, would 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.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall and that would impact the state's general revenue fund as a result of

enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the department because the department is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because the department does not contribute to the state's general revenue fund.

Public Benefits

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing or administering the proposed rules will be for the department's rules governing savings banks to be easier to locate by members of the public.

Probable Economic Costs to Persons Required to Comply with the Proposed Rules

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions; (3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules, if adopted, would repeal all existing rules in Chapter 77; however, in a related proposal published elsewhere in this issue of the *Texas Register*, the department proposes new rules in 7 TAC Chapter 75 patterned after the existing rules in Chapter 77. The foregoing notwithstanding, the proposed rules related to Changes Concerning Loan Requirements do have the effect of repealing an existing rule requirement by purposely not proposing new rules to adopt the subject matter of existing 7 TAC §77.2 - 77.9 in connection with the department's proposal to consolidate the subject matter of the existing rules in Chapter 77 into 7 TAC Chapter 75; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, Deputy General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this proposal.

SUBCHAPTER A. AUTHORIZED LOANS AND INVESTMENTS

7 TAC §§77.1 - 77.11, 77.31, 77.33, 77.35, 77.51, 77.71, 77.73, 77.91 - 77.96

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §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.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§77.1. Loans Authorized.

§77.2. Limitations on Aggregate Loans to One Borrower.

§77.3. Residential Real Estate Loans.

§77.4. Home Improvement Loans.

§77.5. Manufactured Home Loans.

§77.6. Interim Construction Loans.

§77.7. Other Real Estate Loans.

§77.8. Personal Property Loans.

§77.9. Commercial Real Estate Loans.

§77.10. Non-Real Estate Commercial Loans.

§77.31. Loan Policies and Documentation.

§77.33. Loans to and Transactions with Officers, Directors, Affiliated Persons, and Employees.

§77.35. Definitions.

§77.51. Letters of Credit.

§77.71. Investment in Securities.

§77.73. Investment in Banking Premises and Other Real Estate Owned.

§77.91. Investment in and Divestiture of Subsidiary Corporations.

§77.92. Subsidiary Corporation Application.

§77.93. Authorized Subsidiary Investments.

§77.94. Subsidiary Operations.

§77.95. Subsidiary Investment and Debt Limitation.

§77.96. Operating Subsidiaries.

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

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



SUBCHAPTER B. SAVINGS AND DEPOSITS

7 TAC §77.115, §77.116

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §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.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§77.115. User Safety at Unmanned Teller Machines.

§77.116. Pledging of Assets to Secure Deposits of Certain Public Entities.

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

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



6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments in 7 TAC, Part 4, Chapter 79, §79.4, Concerning Bond Requirement, Resulting from Rule Review

PURPOSE: The purpose of the amendments in 7 TAC §79.4 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 publication of the amendments in 7 TAC §79.4 for comment in the *Texas Register*.

RECOMMENDED MOTION: I move that the Finance Commission approve publication of the amendments in 7 TAC §79.4 for comment in the *Texas Register*.

TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 79. RESIDENTIAL MORTGAGE LOAN SERVICERS

SUBCHAPTER A. REGISTRATION

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to amend 7 TAC Chapter 79, §79.4, concerning Bond Requirement. This proposal and the rule as amended by this proposal are referred to collectively as the "proposed rule."

Explanation of and Justification for the Rule

The existing rules under 7 TAC Chapter 79, Residential Mortgage Loan Servicers, implement Finance Code Chapter 158, Residential Mortgage Loan Servicers, and affect residential mortgage loan servicers registered with the department to service residential mortgage loans secured by real estate located in Texas.

Changes Concerning Electronic Surety Bonds

Pursuant to Finance Code §158.055, a residential mortgage loan servicer, in order to qualify for the registration, must obtain and maintain a surety bond against which the department's commissioner (commissioner) may make a claim in the event the residential mortgage loan servicer is unable or unwilling to make payment to comply with a final order of the commissioner. Finance Code §158.055(g) authorizes the commission to adopt rules "establishing the terms and conditions of the surety bond and the qualifications of the surety." Existing §79.4 establishes requirements concerning such surety bond, including: (i) that the seal of the surety appear on the face of the bond; (ii) that the bond

include an attached power of attorney; and (iii) the filing of a newly-issued bond in the event the commissioner recovers against the bond. Such requirements are relevant to the issuance of a traditional, paper surety bond. Since adoption of existing §79.4, there has been a growing trend, both in the surety bond industry, and with regulatory agencies that require such bonds, towards the use of electronic surety bonds. The department seeks to adopt the use of such electronic surety bonds by first allowing their optional use during the 2023 registration period (applications accepted beginning November 1, 2022), and then transitioning to electronic surety bonds on a mandatory basis, perhaps as early as the 2024 registration period (applications accepted beginning November 1, 2023). The proposed rule, if adopted, would render §79.4 compatible with electronic surety bonds by clarifying that the requirements concerning a seal and power of attorney apply only to a traditional, paper bond (electronic surety bonds do not include a seal or power of attorney), and eliminating the requirement to seek reissuance of the bond in the event of a successful claim (electronic surety bonds are perpetual unless cancelled and need not be reissued).

Other Modernization and Update Changes.

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

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, has determined that for the first five-year period the proposed rule is in effect there are

PROPOSED AMENDMENTS

7 TAC §79.4

PAGE 2 OF 4

no foreseeable increases or reductions in costs to local governments as a result of enforcing or administering the proposed rule. Antonia Antov has further determined that for the first five-year period the proposed rule is in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rule. Antonia Antov has further determined that for the first five-year period the proposed rule is in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall and that would impact the state's general revenue fund as a result of enforcing or administering the proposed rule. Implementation of the proposed rule will not require an increase or decrease in future legislative appropriations to the department because the department is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rule will not result in losses or increases in revenue to the state because the department does not contribute to the state's general revenue fund.

Public Benefits

William Purce, Director of Mortgage Regulation for the department, has determined that for each of the first five years the proposed rule is in effect the public benefit anticipated as a result of enforcing or administering the proposed rule will be increased efficiency by the department in reviewing applications for a residential mortgage loan servicer registration. Specifically, as residential mortgage loan servicer registrants completely transition to use of an electronic surety bond, the department's staff in its Licensing section will no longer need to obtain and review evidence of the surety bond or continuation certificate during the renewal process other than ensuring that the amount of the surety bond is adequate. By easing these burdens,

the department may reallocate such resources to its other functions, thereby ensuring the efficient review and decision-making on applications for a residential mortgage loan servicer registration, and other license/registration types regulated by the department, thereby ensuring that the industries regulated by the department in the area of residential mortgage loans are appropriately staffed and meeting demand, thereby potentially reducing costs to Texas consumers.

Probable Economic Costs to Persons Required to Comply with the Proposed Rule

William Purce, Director of Mortgage Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation of new employee positions; (3) implementation of the proposed rule does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rule does not require an increase or decrease in fees paid to the agency; (5) the proposed rule

PROPOSED AMENDMENTS

7 TAC §79.4

PAGE 3 OF 4

does not create a new regulation (rule requirement); (6) the proposed rule does expand, limit, or repeal an existing regulation (rule requirement). The proposed rules related to Changes Concerning Electronic Surety Bonds repeal an existing rule requirement by eliminating the requirement that all surety bonds include the seal of the surety and a power of attorney; and by eliminating the requirement that the bond be reissued in the event of a successful claim; (7) the proposed rule does not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rule does not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rule. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rule will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

Takings Impact Assessment

There are no private real property interests affected by the proposed rule. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, Deputy General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this proposal.

7 TAC §79.4

Statutory Authority

This proposal is made under the authority of Finance Code: §158.003, authorizing the commission to adopt rules necessary for the purposes of or to ensure compliance with Finance Code Chapter 158; and §158.055(g), authorizing the commission to adopt rules establishing the terms and conditions of surety bond required of a person to be registered as a residential mortgage loan servicer under Finance Code Chapter 158.

This proposal affects the statutes contained in Finance Code Chapter 158, the Residential Mortgage Loan Servicer Registration Act.

§79.4. Bond Requirement.

(a) Bonds submitted for the approval of a Residential Mortgage Loan Servicer registration application must be on the prescribed form and for the amount determined applicable under Finance Code §158.055(b) or (c).

~~[(b) Bonds should be payable to the Commissioner; any recovery made against a bond by the Commissioner shall require a new bond to be filed within 10 days.]~~

(b) [(e)] The name of the principal insured on the bond must match exactly the name filed with [as it will appear on the registration information as approved by] the Texas Secretary of State, if applicable. If the bond is a paper bond, it must include the [The] surety seal and an attached

power of attorney [~~must accompany the bond
when submitted to the Department~~].

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

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

◆ ◆ ◆

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

Anticipated Litigation

None

Pending Litigation

None

D.

Texas Department of Banking

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Charles G. Cooper
Commissioner

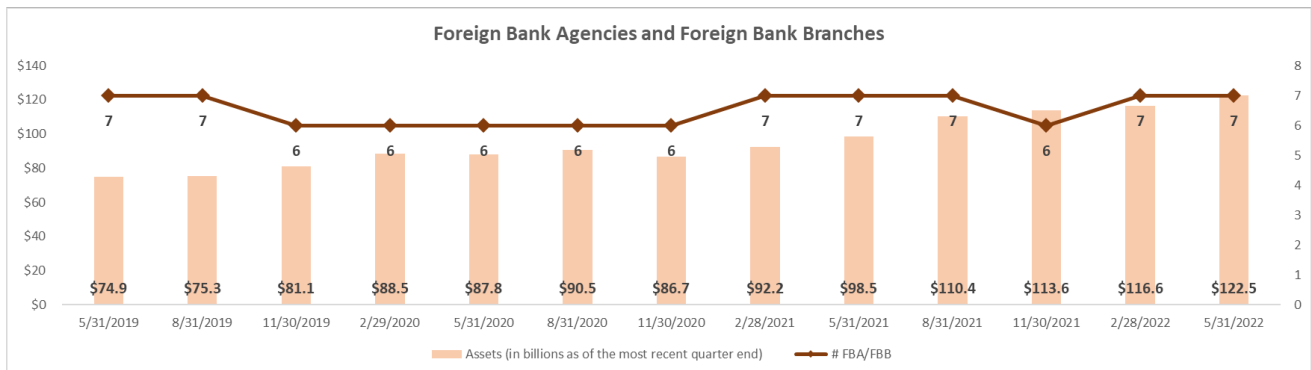
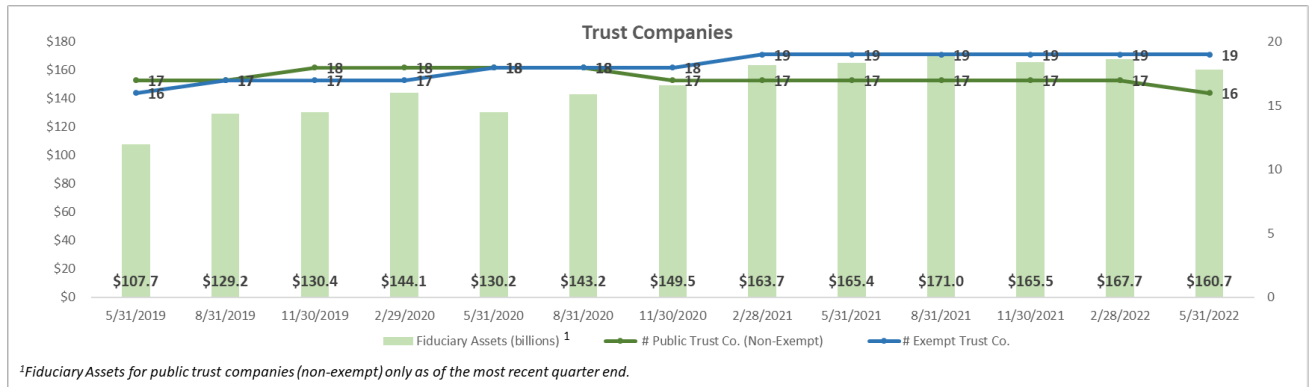
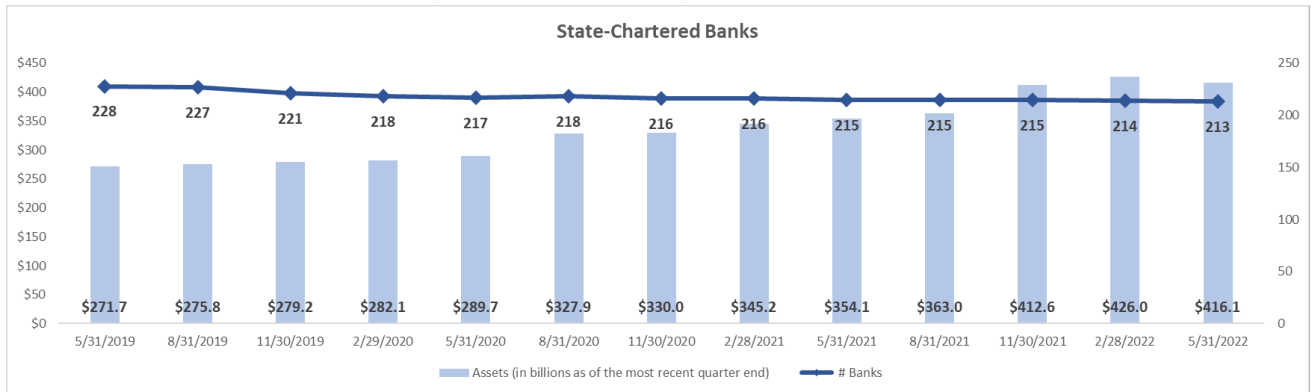
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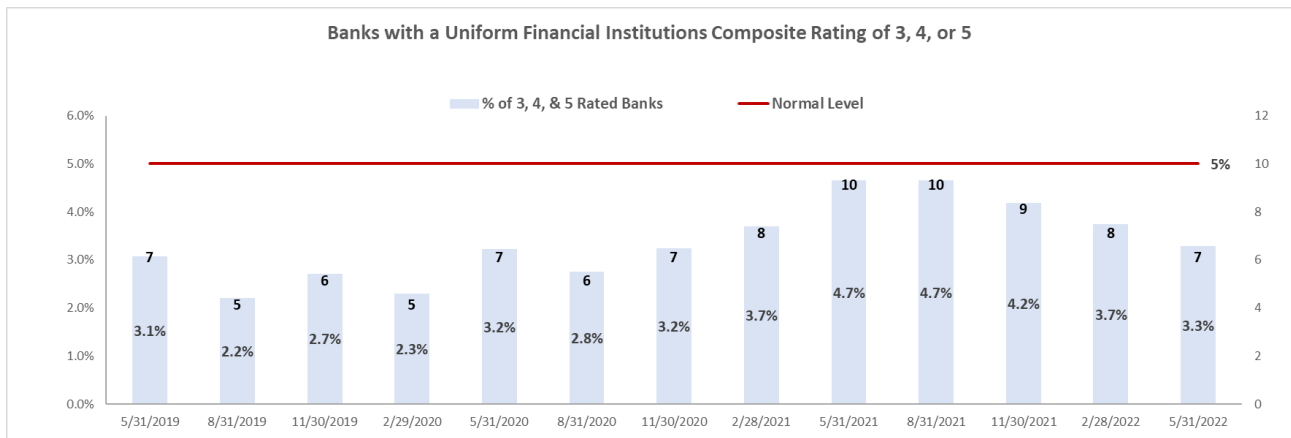
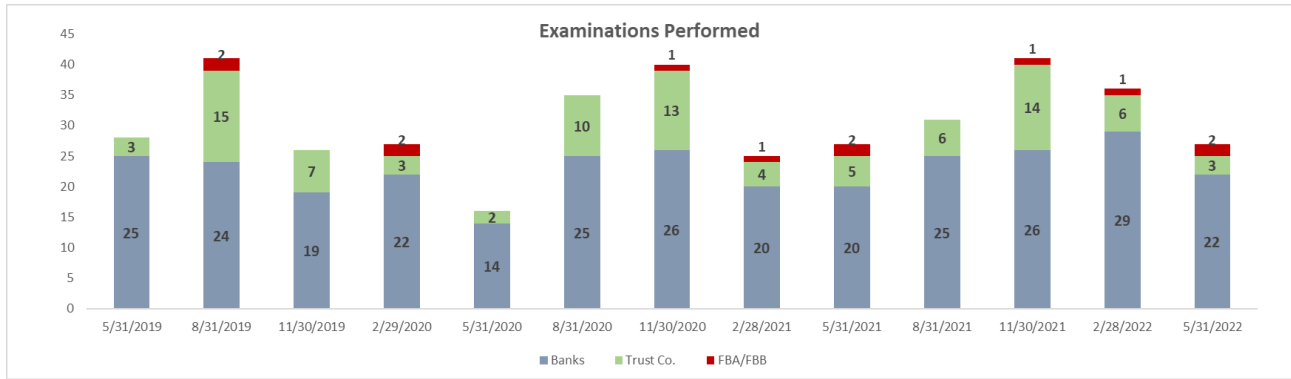
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To: Finance Commission Members
From: Daniel Frasier, Director of Bank & Trust Supervision *DBF*
Date: August 3, 2022
Subject: Summary of the Bank & Trust Supervision Division Activities

Bank and Trust Supervision – Industry Profiles

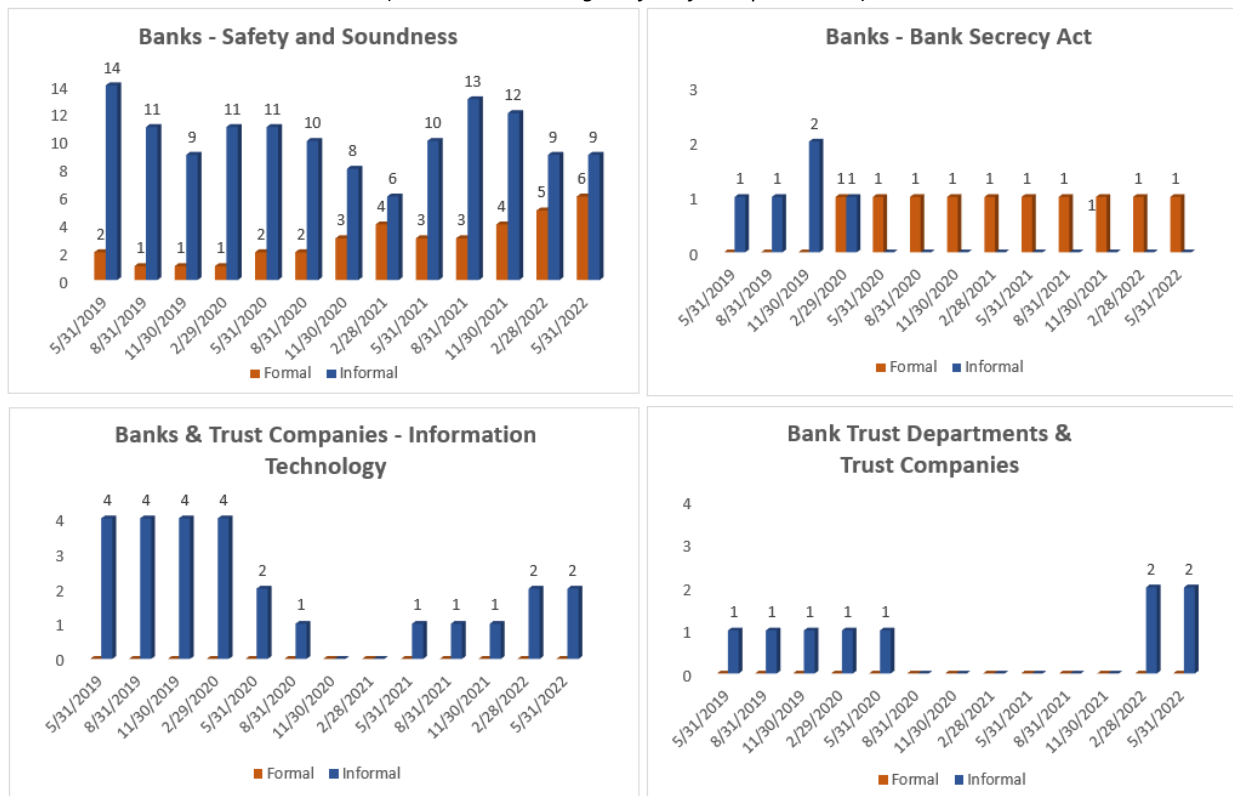
As of fiscal quarter-end (assets as of the preceding calendar quarter)





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 – June 2022)
Commercial Banks (All / DOB Only)	95% / 93%	98% / 96%
IT	98% / 100%	95% / 89%
Trust	97% / 100%	100% / 100%
Foreign Banks (FRB)	67%	92%
Trust Companies (DOB)	100%	96%
IT	100%	88%

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, seven DOB led IT bank examinations were started late by an average of 21 days and the examination for one foreign bank was started 104 days late. The percent of commercial bank examinations completed on time is expected to continue declining 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

- **Interest Rate Risk:** The Department is monitoring the rapid rise in interest rates and its effects on banks' financial condition. The Federal Reserve lowered interest rates to near zero to stimulate the economy following the onset of the COVID-19 pandemic. Starting in March of 2022, the Federal Reserve began to rapidly raise interest rates to combat inflation. In July, the Federal Reserve increased the central bank's overnight lending rate to a level between 2.25% and 2.5%. Banks' net interest margins generally improve in a rising rate environment. However, financial institutions with an outsized portion of their assets in long-term securities and loans could see further net interest margin compression as funding costs increase faster than asset yields. Additionally, institutions' fixed rate investments decline in value in a rising rate environment.
- **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 Commissioner Charles G. Cooper represented the Department on the virtual regulatory panel at the Texas Bankers Association (TBA) CFO Conference on June 10, 2022.
 - o Many Department staff from headquarters and the four regional offices participated in the TBA Texas Tour events held in Abilene, Austin, Dallas, Houston, Lubbock, and San Antonio. These sessions were held between June 28th and July 8th and provided updates on what the political, regulatory, and competitive environment holds for Texas bankers over the coming year.
 - o Review Examiner Kevin Wu represented the Department on the regulatory panel at the TBA Bank Secrecy Act Training Seminar in San Antonio on July 13, 2022.



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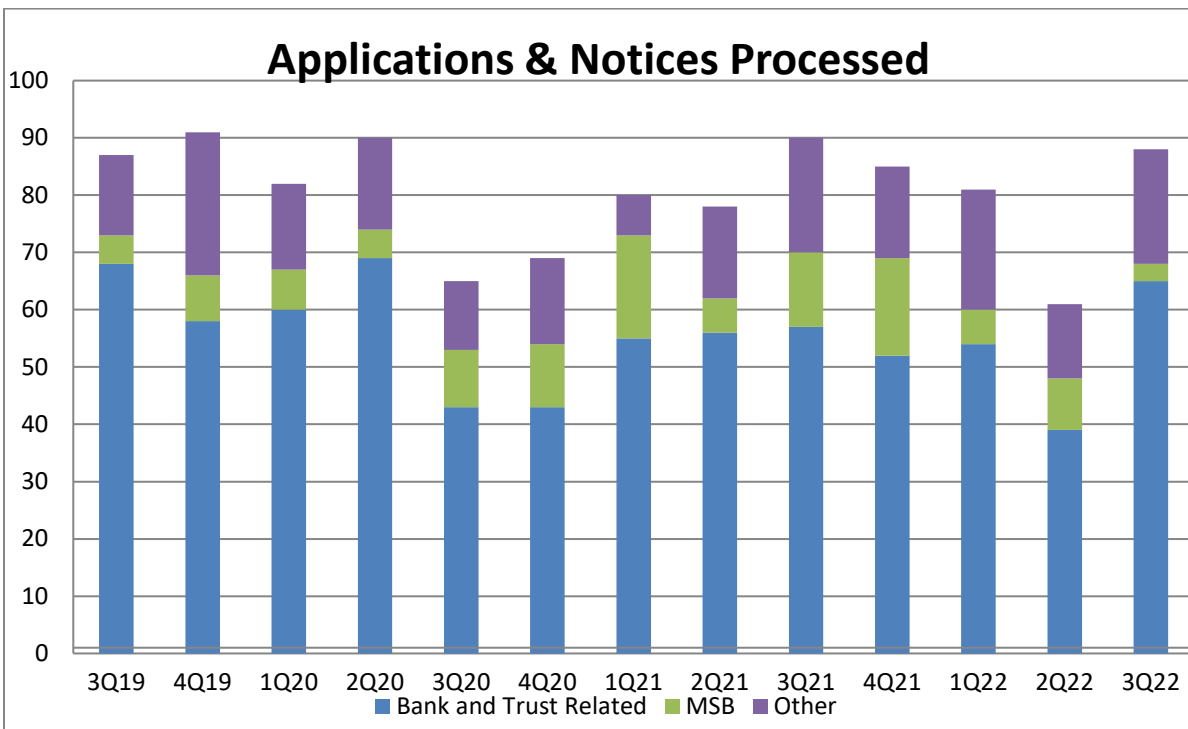
Charles G. Cooper
Commissioner

To: Finance Commission Members

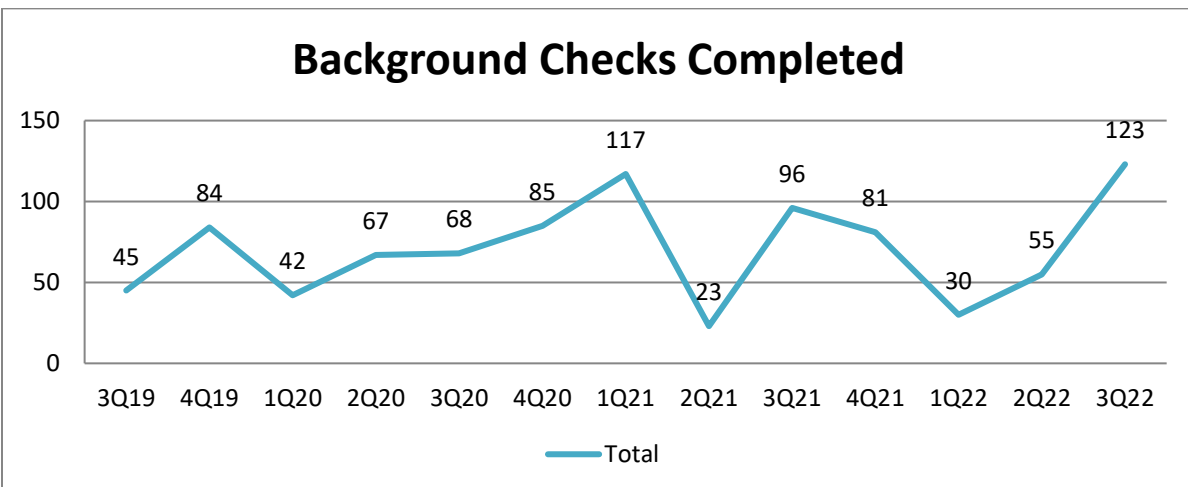
From: Mark Largent, Director of Corporate Activities *Mark N. Largent*

Date: August 3, 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 August 2, 2022)
Bank Related	19
Trust Companies	6
Money Services Business (MSB)	49
Others	3
Totals	77

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 8 (30%)
 - Trust company increased 1 (20%)
 - MSB related increased 11 (29%)
 - Other decreased 1 (25%)
- The Corporate Division has several postings for corporate analyst positions to help address the continuing significant volume of applications and increasing complexity.
- Significant Filings:
 - The First Liberty National Bank, Liberty, Texas, has applied to convert to a Texas state bank charter under the name of First Liberty Bank [estimated gain in state banking assets of approximately \$430 million].
 - Pinnacle Bank, Fort Worth, Texas, has applied to acquire via merger Crockett National Bank, San Antonio, Texas [estimated gain in state banking assets of \$614 million].
- **Charter, Conversion, and Merger Activity** – Since the last report to the Finance Commission, the following transactions have consummated:
 - *Banks*
 - The National Bank of Texas at Fort Worth, Fort Worth, Texas, converted to a Texas state bank charter under the name of NBT Financial Bank [estimated gain in state banking assets of approximately \$448 million].
 - The Bank of Houston, National Association, Houston, Texas, converted to a Texas state bank charter under the name of Bank of Houston [estimated gain in state banking assets of approximately \$445 million].
 - United Bank of El Paso del Norte, El Paso, Texas, merged into First American Bank, Artesia, New Mexico [estimated loss in state banking assets of approximately \$321 million].
 - The First State Bank, Rice, Texas, merged into The First National Bank of Kemp, Kemp, Texas [estimated loss in state banking assets of approximately \$226 million].

- *Trust Companies*
 - None.
- **Conferences, Conventions, and Committee Meetings** – Since the last report to the Finance Commission, Corporate Division personnel have participated in the following:
 - Corporate Analyst Lea Booker attended the Graduate Banking School program sponsored by the University of Colorado held in Boulder, Colorado, on July 17-29.



Charles G. Cooper
Commissioner

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To: Finance Commission Members

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

Date: August 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 (Number of Licensees/Assets (billions))										
Money Services Businesses (MSB)	196	\$219.2	197	\$219.4	198	\$218.8	197	\$223.9		
Prepaid Funeral Contract (PFC)	345	\$4.5	346	\$4.5	342	\$4.5	336	\$4.5		
Perpetual Care Cemeteries (PCC)	243	\$401.8*	243	\$413.2*	243	\$420.8*	243	\$428.0*		
Check Verification Entities (CVE)	2	n/a	2	n/a	2	n/a	2	n/a		
Examinations Performed										
MSB	79		19		20		25			
MSB Limited Scope	1		1		0		0			
MSB Accepted other State	5		6		2		3			
PFC	230		60		69		43			
PFC Limited Scope	0		0		1		0			
PCC	212		43		34		39			
PCC Limited Scope	0		0		0		1			
Ratings (# / %) Assigned to All Regulated Entities										
1	288	38.40%	288	38.35%	293	38.91%	290	38.62%		
2	392	52.27%	401	53.40%	398	52.86%	400	53.26%		
3	66	8.80%	58	7.72%	55	7.30%	52	6.92%		
4 & 5	4	0.53%	4	0.53%	7	0.93%	9	1.20%		
Noncompliance with Examination Priorities (Past Due)										
MSB	1		8		17		25			
PFC	0		1		0		1			
PCC	0		0		0		1			

NOTES:
 Limited scope examinations do not receive a rating.
 * PCC \$ amounts reflected in the millions.

Examination Activities

The division continues to increase the number of examinations conducted on-site, particularly in-state domiciled licensed entities. On-site examinations of out-of-state license holders, primarily MSBs, also continue to increase. The division's ability to perform both on-site and off-site examinations has enabled NDS to meet all performance measures as of the third quarter of fiscal year 2022. Below is additional information on the examination activities reflected on the previous page.

- Of the twenty-five past-due MSB examinations, sixteen examinations will be conducted in coordination with other MSB state regulators as part of a nationwide joint examination process. Nineteen of the past-due MSB examinations will be conducted between June and August 2022. The examination dates of the remaining six past-due examinations will be determined in coordination with other MSB state regulators and are anticipated to be completed in the fall of 2022. The coordination of examinations with other MSB state regulatory agencies allows states to create a more efficient and effective scheduling process while promoting the efficient utilization of state resources.
- The one past-due PFC examination was completed in July 2022, and the one past-due PCC examination is scheduled to be completed in August 2022. The two examinations were on average one-month past-due.

The table on the prior page reflects that the number of past-due examinations increased each quarter in fiscal year 2022. This is primarily the result of NDS operating with financial examiner vacancies. Notably, interviews were conducted in July 2022 to fill the vacancies, and two offers were extended and accepted by the individuals. NDS anticipates posting another financial examiner vacancy in mid-August 2022.

Nonetheless, due to the previously discussed financial examiner staff shortages and prior hires that remain in the training phase, NDS does not anticipate achieving examination performance measures in the fourth quarter of fiscal year 2022. This trend may continue into fiscal year 2023 until the division is able to fill all vacancies and properly train financial examiners in the respective areas.

Division Activities

- During the week of July 25th, Director Saucillo attended the joint Multi-State MSB Examination Taskforce (MMET) and Money Transmitter Regulators Association (MTRA) meeting in Minneapolis, Minnesota. Topics impacting multi-state examinations and supervision of MSBs were discussed among group members. In addition, final preparations were discussed regarding the upcoming 2022 MTRA Annual Conference & Regulators' School scheduled for the week of September 19, 2022. It will be held in Fort Worth, Texas, and various Departmental staff plan on attending the conference.

Group members also discussed the recent volatility in the cryptocurrency market and the impact on MSB license holders. MMET and MTRA state regulators acknowledge the need to closely monitor and coordinate the supervisory oversight of MSB license holders that offer cryptocurrency products to consumers to ensure compliance with state regulations.

- NDS staff continues to work closely and participate in various meetings with organizations, such as Conference of State Bank Supervisors (CSBS), MMET and MTRA, to stay informed of matters affecting our regulated entities, and to promote consistency in regulatory activities. For example, in July 2022, NDS participated in a multi-state coordinated discussion to assess the impact of an MSB that filed for bankruptcy. Although this MSB is not currently licensed in Texas, Department staff participated in state regulatory calls to stay informed of current developments in the MSB industry.
- NDS staff continues provide detailed feedback to CSBS personnel regarding State Examination System (SES). SES is an examination management system developed by the CSBS that was intended to facilitate MSB examinations by improving communication and coordination among the states and licensees.
- NDS continues to monitor and investigate non-compliant activity, and when necessary, coordinate with the Department's Legal Division to issue appropriate administrative enforcement actions. In June 2022, the Department issued an order to cease and desist activity and to revoke the license against a currency exchange license holder who repeatedly violated the Texas Finance Code. Further, in July 2022, the Department issued a consent order related to the sale of unlicensed prepaid funeral benefits.
- On August 1st, the Department notified NDS license holders of a reduction in the assessments for fiscal year 2022. The total assessment amounts collected were between 25% to 35% less than the maximum allowable amount that could have been assessed. Reduced assessments were in part due to the Department's effective oversight of its regulated industries and reduced operating expenses.



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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Memorandum

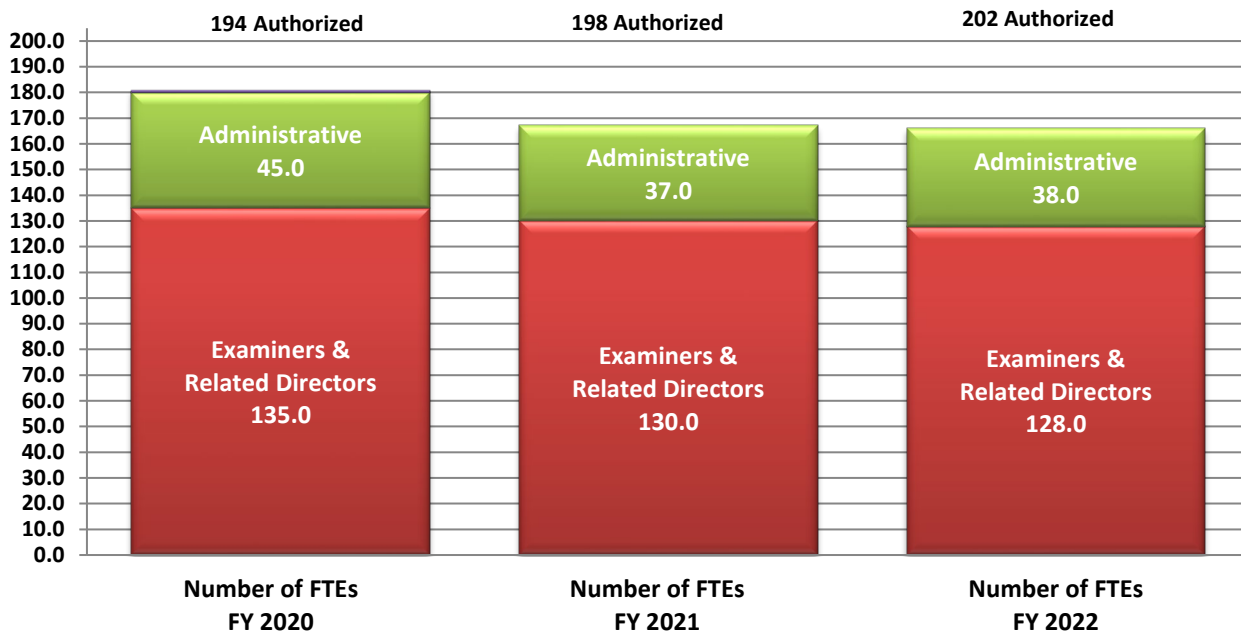
To: Finance Commission Members
From: Lori Wright, Director of Human Resources
Date: August 3, 2022
Subject: Summary of the Human Resources Division Activities

Active Postings				
Number of Positions	Position	Division	Status	Activities
1	Financial Examiner V-VI Corporate Analyst	Corporate	Open Until Filled	Recruiting
1	Financial Examiner III-IV Corporate Analyst	Corporate	Open Until Filled	Recruiting
1	Accountant IV - Revised	Administrative Services	Open Until Filled	Recruiting
1	Program Specialist II Consumer Assistance Specialist	DSS	Open Until Filled	Recruiting
1	Financial Examiner IV-VI Financial Analyst Training Coordinator	DSS	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

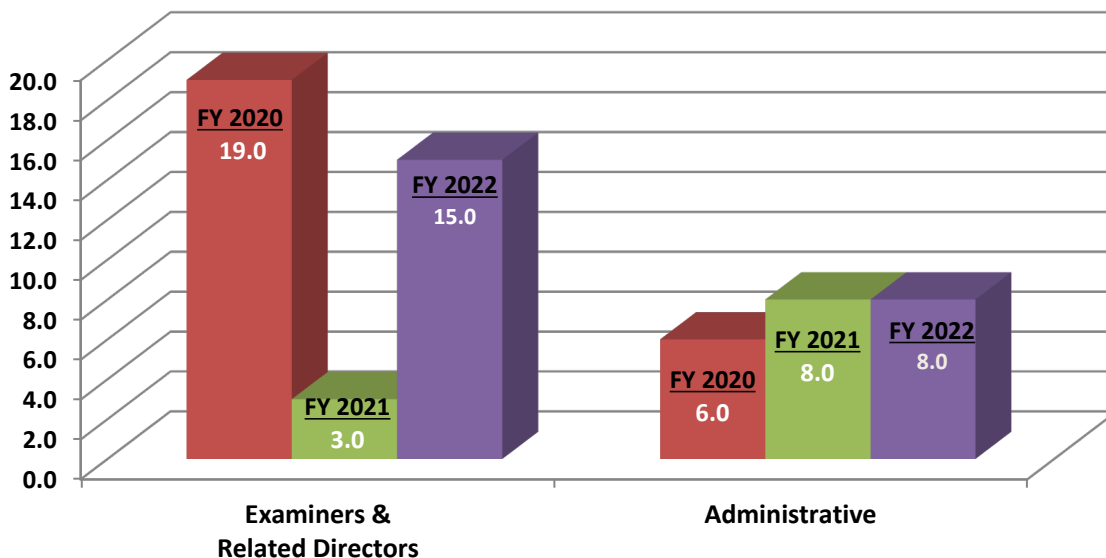
CAPPS

- On July 11, 2022, transitioned into CAPPS HR. Several training sessions were held for staff and managers.
- The agency plans on acquiring the CAPPS Recruit in the next fiscal year. This is an optional module for agencies who have deployed the CAPPS HR/Payroll core modules. Deployment of the CAPPS Recruit module occurs the fiscal year following deployment to the core CAPPS HR/Payroll modules.

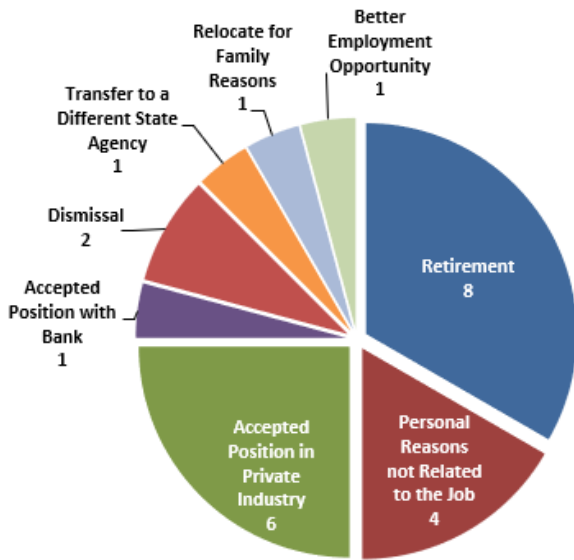
Texas Department of Banking Employee Data for Fiscal Years 2020, 2021 and 2022 As of July 31, 2022



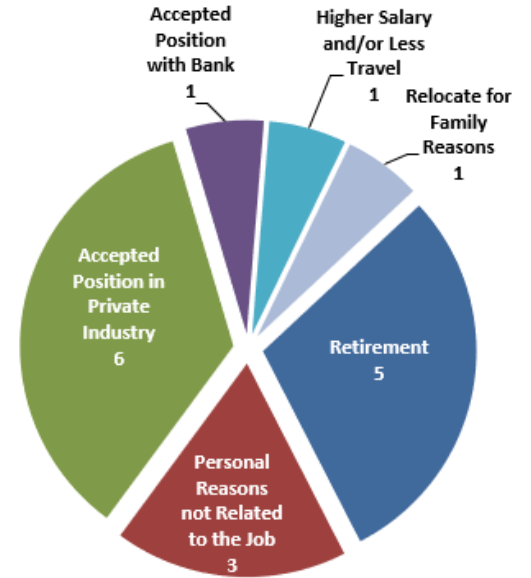
New Hire Data for Fiscal Years 2020, 2021 and 2022



All Employees
24 Resignations



Financial Examiners Only
17 Resignations



As of 07/31/2022

Department of Banking
Actual Performance for Output Measures
Fiscal Year 2022

Type/Strategy/Measure	2022 Target	2022 Actual	2022 YTD	Percent of Annual Target
Output Measures-Key				
1-1-1 Bank Examination				
1. # Bank Examinations Performed				
Quarter 1	94	26	26	27.66%
Quarter 2	94	29	55	58.51%
Quarter 3	94	21	76	80.85%
FY 2022, Quarter 2 - The number of bank examinations is above the target due to performing more joint examinations than projected.				
FY 2022, Quarter 3 - The number of bank examinations is above the target due to performing more joint examinations in this quarter than projected.				
2. # Foreign/Trust/IT Examinations Performed				
Quarter 1	230	63	63	27.39%
Quarter 2	230	63	126	54.78%
Quarter 3	230	59	185	80.43%
FY 2022, Quarter 3 - The measure is above the target due to performing more IT examinations than anticipated this quarter.				
1-2-1 Non-Bank Examination				
1. # NDS Licensees Examined				
Quarter 1	520	129	129	24.81%
Quarter 2	520	126	255	49.04%
Quarter 3	520	111	366	70.38%
1-3-1 Application Processing				
1. # License Applications Completed				
Quarter 1	324	90	90	27.78%
Quarter 2	324	64	154	47.53%
Quarter 3	324	92	246	75.93%

*Varies by 5% or more from target.



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

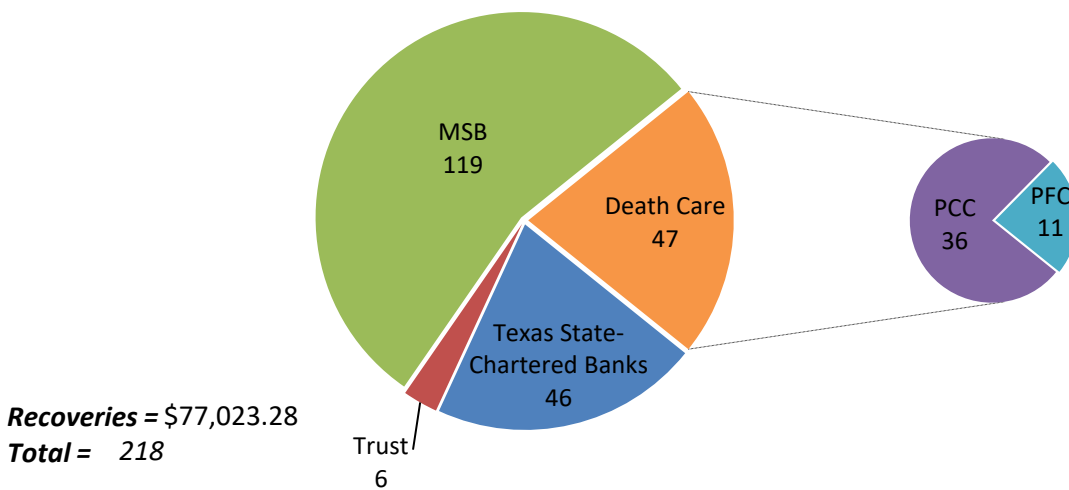
2601 North Lamar Blvd., Austin, Texas 78705

512-475-1300 / 877-276-5554

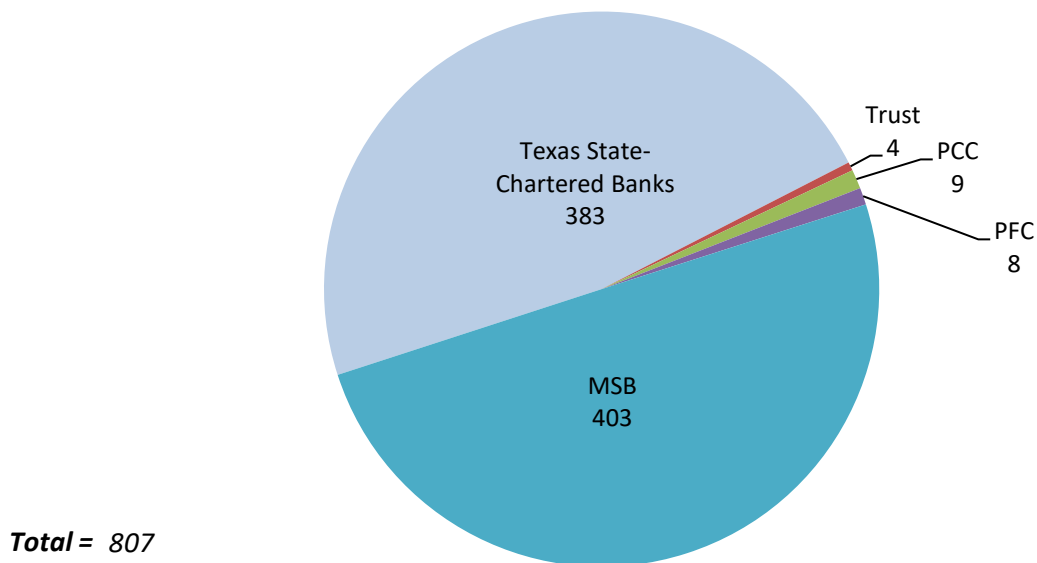
www.dob.texas.gov

To: Finance Commission Members
From: Phil Lena, Financial Analyst
Date: August 3, 2022
Subject: Summary of the Strategic Support Division Activities

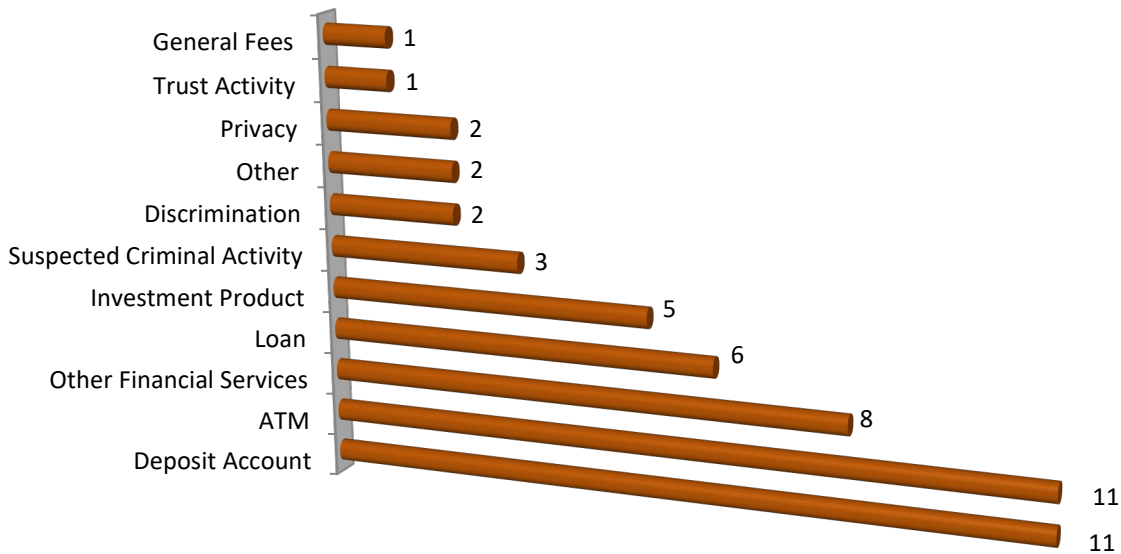
Jurisdictional Written Complaints September 2021-June 2022



Inquiries on Jurisdictional Entities September 2021-June 2022

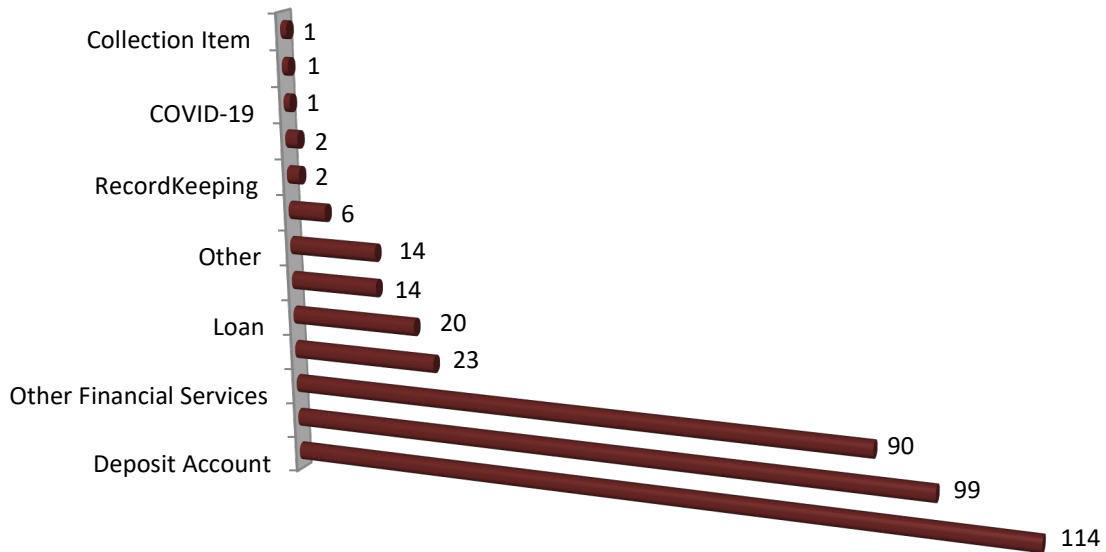


**State-Chartered Banks and Trust Companies
 Written Complaints by Type
 September 2021-June 2022**



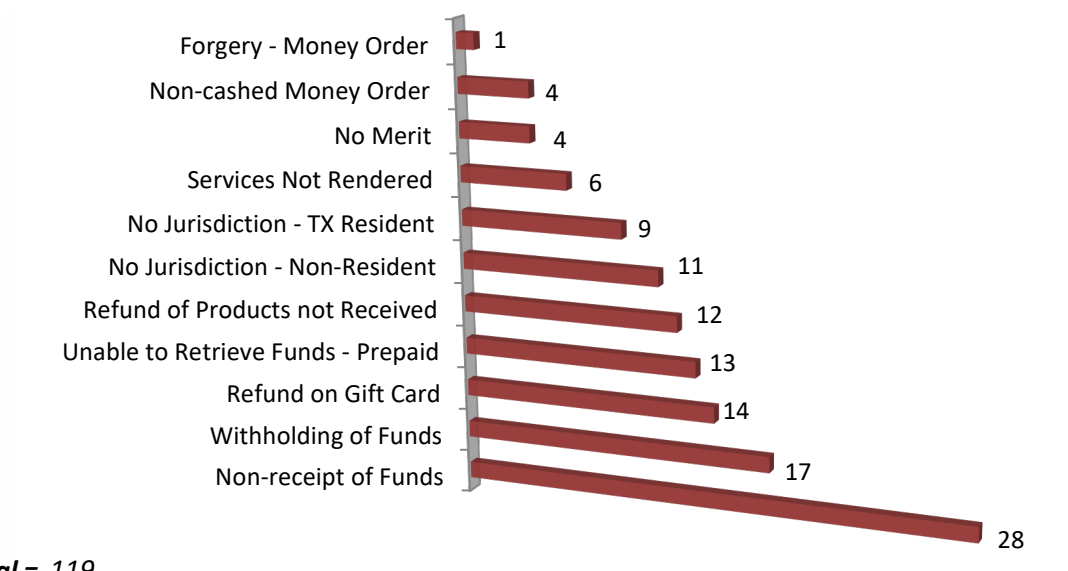
Total = 52

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

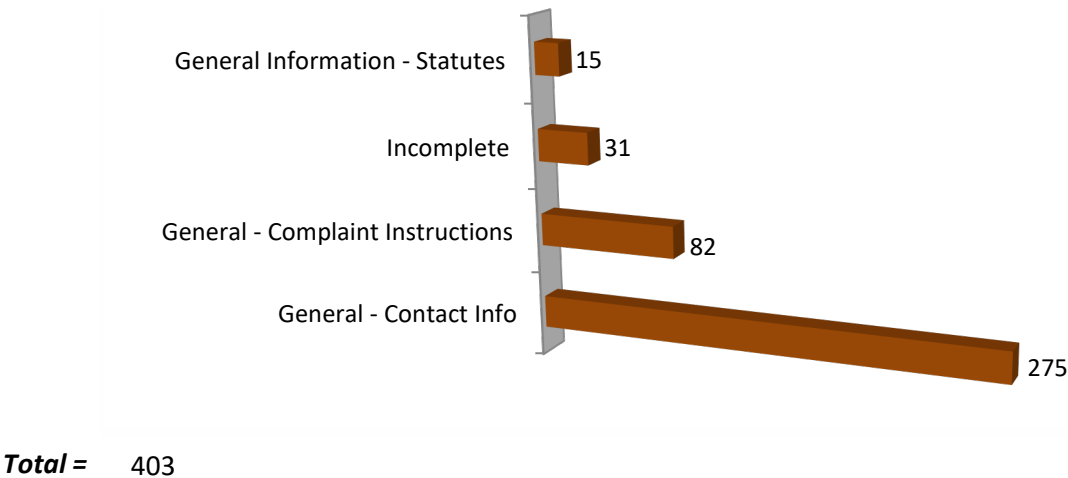


Total = 387

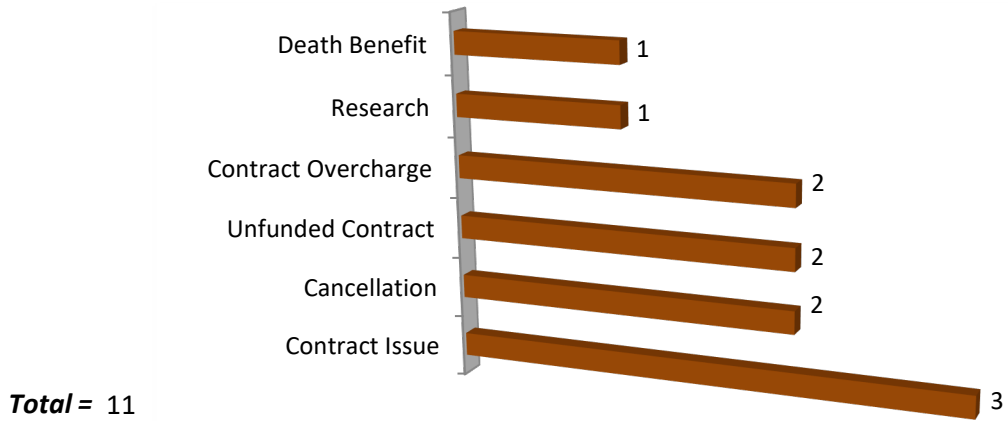
Money Services Businesses Written Complaints by Type September 2021-June 2022



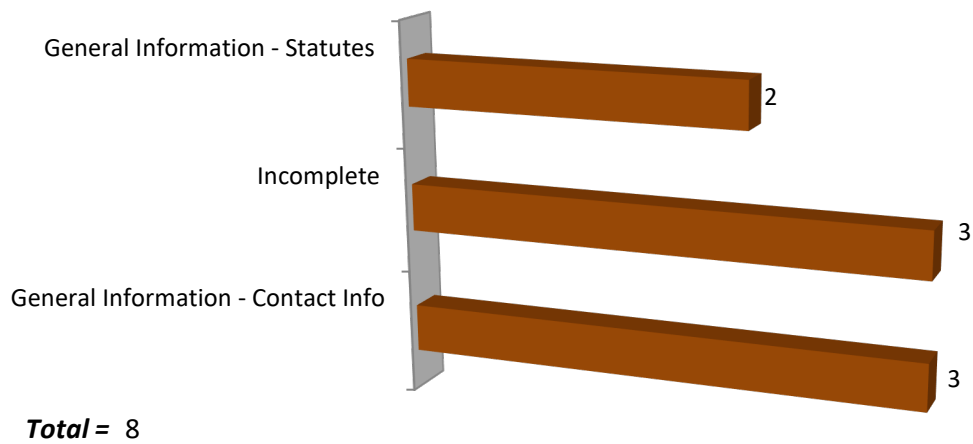
Money Services Businesses Inquiries by Type September 2021-June 2022



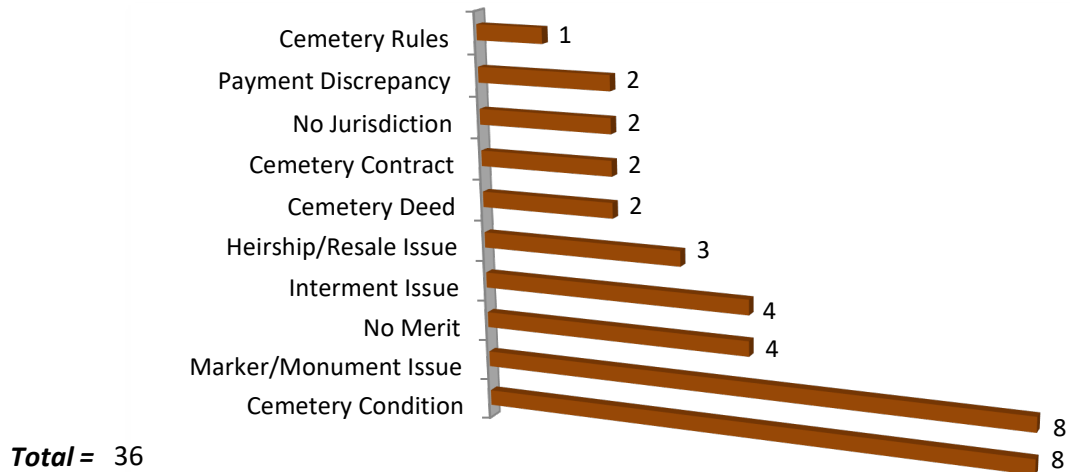
Prepaid Funeral Contract Sellers Written Complaints by Type September 2021-June 2022



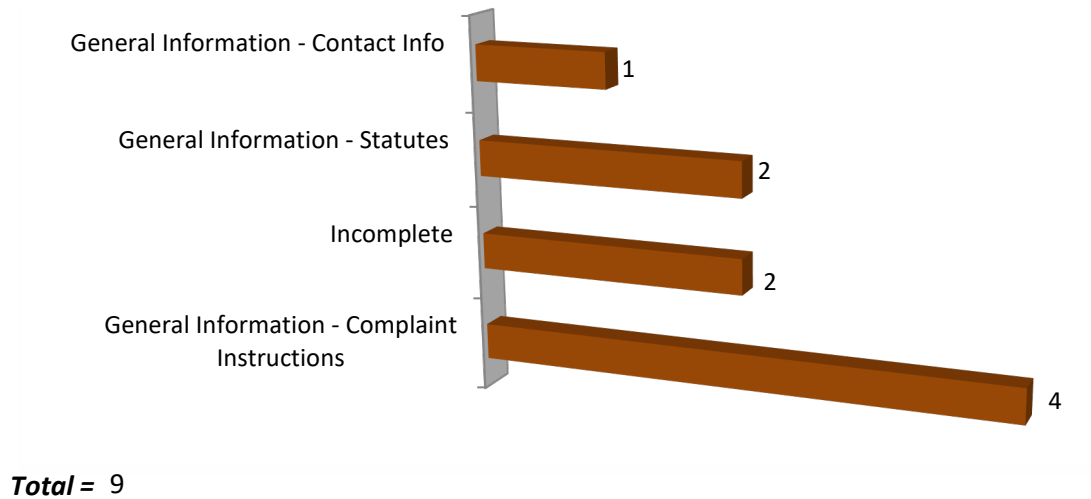
Prepaid Funeral Contract Sellers Inquiries by Type September 2021-June 2022



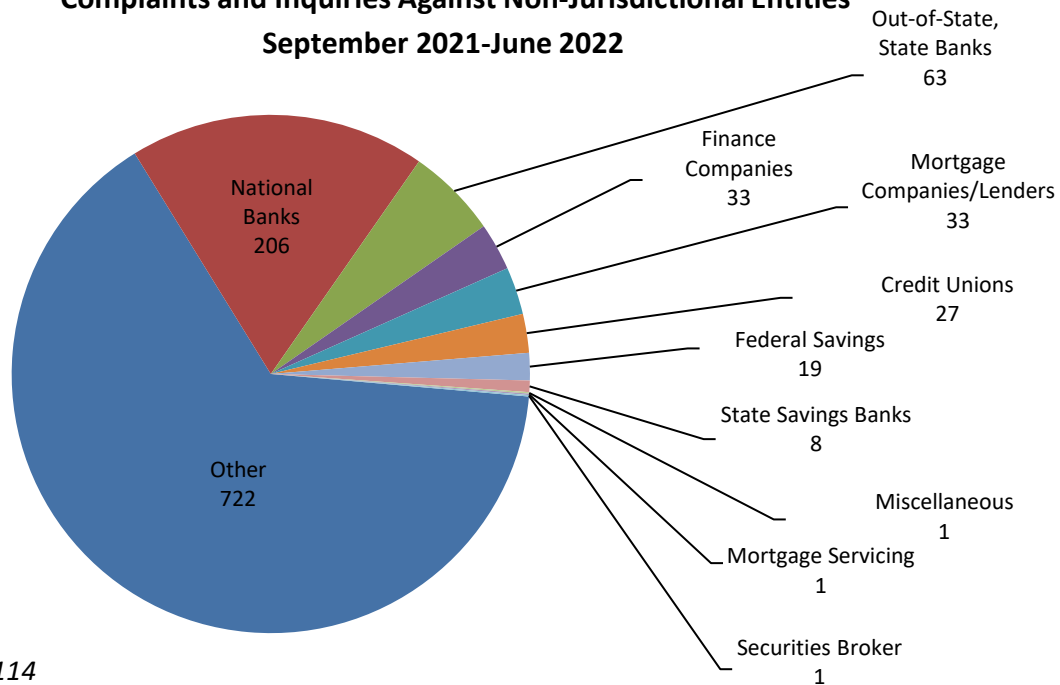
Perpetual Care Cemeteries Written Complaints by Type September 2021-June 2022



Perpetual Care Cemeteries Inquiries by Type September 2021-June 2022



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



Total = 1,114

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	10	N/A
Percentage of Written Complaints Resolved Within 90 days	100%	100%	100%	N/A
Number of Written Complaints Resolved	13	15	11	N/A
Trust				
Avg. Number of Days to Close a Written Complaint	15	17	28	N/A
Percentage of Written Complaints Resolved Within 90 days	100%	100%	100%	N/A
Number of Written Complaints Resolved	2	1	2	N/A
PFC/PCC				
Avg. Number of Days to Close a Written Complaint	28	30	30	N/A
Percentage of Written Complaints Resolved Within 90 days	100%	100%	100%	N/A
Number of Written Complaints Resolved	13	11	16	N/A
MSB				
Avg. Number of Days to Close a Written Complaint	25	24	22	N/A
Percentage of Written Complaints Resolved Within 90 days	100%	100%	100%	N/A
Number of Written Complaints Resolved	26	45	35	N/A

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

Entity	Enrolled	Compromised Accounts Reported
Texas State-Chartered Banks	184	339
Texas State-Chartered Savings Banks	22	56
Federal Savings Banks	10	0
State Credit Unions	135	648
Federal Credit Unions	229	409
National Banks	171	106
Out-of-State State-Chartered Banks	12	60
Out-of-State National Banks	6	0
Total	769	1,618

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

	FY 2019	FY 2020	FY 2021	FY 2022 As of 7/31/2022
I. General Knowledge	3	4*	6	3
II. Loan Analysis	5	7	1	3
III. Panel	5	10	3	3
IV. Test Bank	4	7	5	3
Total FE3	19	15	17	14

Promotions

Commissioned Examiners	5*	7	5	3
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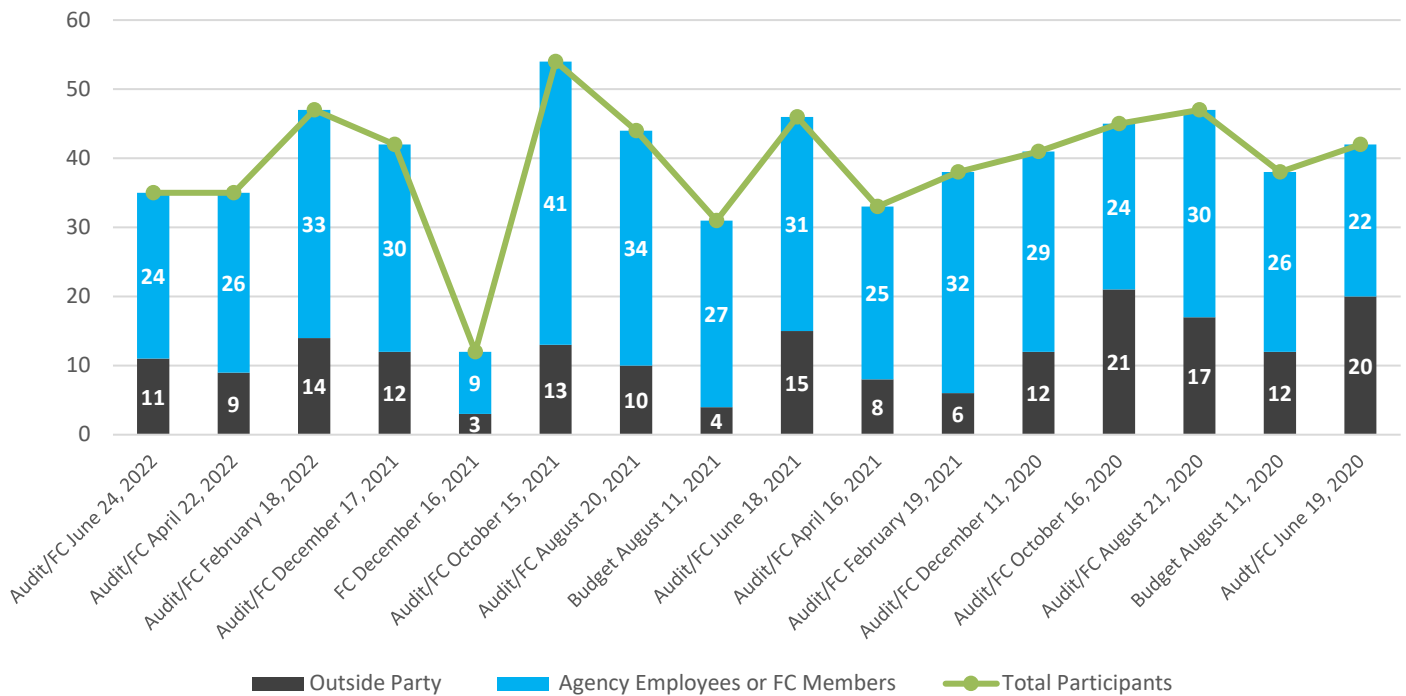
*Includes a FE V Credit Specialist

Other Divisional Items:

- *Publications*
 - *Finance Commission of Texas Strategic Plan for Fiscal Years 2023-2027.*
 - The Finance Commission will review the Plan for possible approval at the August 19, 2022 meeting.
- *Personnel Policy and Procedures Manual Updates*
 - New Administrative Memorandum (AM)
 - AM 2004 – *Information Security for Financial Crimes Enforcement Network Data* (July)
 - The content in AM 2004 was previously included in Chapter 14 of the Personnel Policy and Procedures Manual. It was removed from the manual and converted to an Administrative Memorandum.

- **Training**
 - Ten assistant examiners attended the Department’s internal Credit School held in Dallas the week of July 25, 2022. The school is designed to provide assistant examiners with progressive training on loan analysis in preparation for the commissioning process.
- **Financial Education**
 - A financial education webinar titled “Understanding Your Credit” will be held on August 31, 2022 by the Department.

Finance Commission Webcast Historical Data





Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705

512-475-1300 /877-276-5554

www.dob.texas.gov

Memorandum

TO: Finance Commission Members
FROM: Catherine Reyer, General Counsel
DATE: August 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. On June 15, 2022, the district court granted Burgess' motion for summary judgment, and ordered that the case be heard by SOAH. Our representative from the Office of the Attorney General (OAG) is working with opposing counsel to agree on language for the final order dismissing the case.

Contested Case Hearings

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 before the Department's contracted administrative law judge on February 2, 2022. Case will be refiled at SOAH (see above entry).

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. This case will also be refiled at SOAH.

Orders Issued June 1, 2022 – July 31, 2022

The Commissioner issued five enforcement orders, all of which are final and non-appealable¹:

Bank and Trust Supervision

- Order Removing and Prohibiting Further Participation and Requiring Restitution dated June 28, 2022; Hailee Ray, Grand Prairie, Texas
- Consent Order Prohibiting Further Participation dated July 5, 2022; Itzel Arlete Vega, McAllen, Texas

¹ One final order is confidential.

Non-Depository Supervision

- Order to Cease and Desist Activity and to Revoke License dated June 13, 2022; Enrique Garcia dba La Casita Money Exchange, Brownsville, Texas
- Consent Order dated June 19, 2022; David Benjamin Vaughan, Boerne, Texas

Public Information Requests

From June 1 through July 31, 2022, staff received and responded to 24 requests for public information addressed to the Department of Banking and received 11 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. We received one OAG opinion related to a public information request, and one request for OAG opinion is pending.

Gifts

No gifts were received during this reporting period.

FY 2022 Quarterly Order Activity

BANK				
Type of Action	1st	2nd	3rd	4th
Consent Order	1	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 (October):

Review of 7 TAC, Part 1, Chapter 5, Concerning Administration of Finance Agencies

Review of 7 TAC, Part 2, Chapter 11, Concerning Texas Department of Banking - Miscellaneous

Review of 7 TAC, Part 2, Chapter 26, Concerning Perpetual Care Cemeteries

Review of 7 TAC, Part 2, Chapter 27, Concerning Applications

D.2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 1, Chapter 3, Concerning State Bank Regulation, Resulting from Rule Review

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

RECOMMENDED ACTION: No comments were received regarding the proposed amendments to 7 TAC, Chapter 3. The Department recommends that the Commission approve adoption of the amendments without changes to the proposal as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we adopt the amendments to 7 TAC, Chapter 3, without changes to the proposal as previously published in the *Texas Register*.

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

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to certain rules in 7 TAC Chapter 3, governing Texas state-chartered banks (state banks) and other banks operating in Texas. The amended rules are adopted without changes to the proposed text as published in the July 8, 2022, issue of the *Texas Register* (47 TexReg 3849). The amended rules will not be republished.

In particular, the commission adopts amendments to §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 adopted 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 amendments as adopted 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. Adopted 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). Adopted 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. The adopted 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. Adopted 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 adopted 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 adopted 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). Adopted 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. Adopted 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. Adopted 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. Adopted 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. Adopted 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.

Adopted 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 adopted amendments to §3.22(d) update the reference to Financial Accounting Standards Board (FASB) Accounting Standards 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 proposed 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. Adopted 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 adopted 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. Adopted 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. Adopted 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. Adopted 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. Adopted 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.” Adopted 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.” Adopted 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. Adopted 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 adopted 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. Adopted 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. Adopted 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.

Comments supporting the adopted amendments were received from Independent Bankers Association of Texas (IBAT). IBAT expressed support for the amendments generally, noting that they “appear to be a good ‘clean-up’ of existing rules and, as such, are very helpful.” IBAT further commented:

With regard to 7 TAC 3.91 and 3.93, it is our understanding that the amendments do not prevent a state chartered bank from establishing an ATM (remote service unit) at the same location as a deposit production office (DPO) or a loan production office (LPO). ATMs are not themselves branches, and the fact that they offer both withdrawal of funds and remote deposit capture of deposits does not violate the limitations expressed in these rules. Permitting ATMs to be combined with DPOs and LPOs would also be consistent with the powers of national charters and thus clearly permitted under parity principles. The authority for such combination and the fact such a combination does not result in a branch is discussed in the OCC Branches and Relocations handbook at page 10.

The Department appreciates and agrees with IBAT’s comments.

Notice of the adopted amendments was submitted to the Regulatory Compliance Division of the Office of the Governor (Division) as the rule amendments have the

potential to affect market competition. The Division approved the amendments without further revision.

**SUBCHAPTER A. SECURITIES
ACTIVITIES AND SUBSIDIARIES**

The amendments are adopted 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 adopted amendments.

§3.1. Private Placement of Securities.

A 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.

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

(a) Securities activities permitted. Pursuant to Finance Code, §34.103(c), 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) 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) Limitations. 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) 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.

§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, 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) to establish branches in foreign countries of dependencies or insular possessions of the United States for the furtherance of foreign commerce and to act as fiscal agent for any governmental entity;

(2) to invest an amount not exceeding in the aggregate 10% of its paid-in capital stock and surplus in the stock of one or more banks or corporations chartered or incorporated under the laws of the United State or of any state thereof, and principally engaged in international or foreign banking, or banking in a dependency or insular possession of the United States either directly or indirectly; and

(3) to require and hold, directly or indirectly, stock or other evidences of ownership in one or more banks organized under the law of a foreign country or a

dependency or insular possession of the United States and not engaged, directly or indirectly, in any activity in the United States except as, in the judgment of the banking commissioner, shall be incidental to the international or foreign business of such foreign bank; and to make loans or extensions of credit to or for the account of such bank in a manner and within limits prescribed by the banking commissioner.

(b) Such application shall specify the name and capital of the state bank filing it, the powers applied for, and the place or places where the banking or financial operations proposed are to be carried on. The banking commissioner shall have the power to approve or reject such application in whole or in part and shall also have the power from time to time to increase or decrease the number of places where such banking operations may be carried on.

(c) The investment limitation of Finance Code, §34.103(b), does not apply to an investment made pursuant to this section. The banking commissioner may approve any activity or investment authorized by this section subject to such restrictions as the banking commissioner deems advisable and consistent with safe and sound banking practices, and may require any investment pursuant to subsection (2) or (3) of this section to constitute a majority interest in the voting securities of the bank or corporation acquired.

SUBCHAPTER B. GENERAL

The amendments are adopted 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 adopted 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, 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.

(3) FDIC--The Federal Deposit Insurance Corporation.

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

(5) State bank--A bank as defined by the Finance Code, §31.002(a)(50).

(b) Reporting requirements of FDIA regulated state banks. Each state bank which is subject to regulation under FDIA will be considered to have filed a copy of its call report with the banking commissioner if the

state bank has filed its call report pursuant to FDIA and FFIEC guidelines and requirements.

(c) Reporting requirements for non-FDIA regulated entities. Each state bank not subject to subsection (b) of this section shall file four call reports annually with the banking commissioner. Such call reports must be filed with the banking commissioner no later than April 30, July 31, and October 31 of each year and by January 31 of the subsequent year, and shall be for the periods ending on March 31, June 30, September 30, and December 31, respectively, of the annual reporting year. The call reports required under this subsection must be in substantially the same form and contain substantially the same information as call reports filed by FDIA-regulated state banks in accordance with FDIA and FFIEC requirements pursuant to subsection (b) of this section. The call report forms, the instructions for completing the reports and the accompanying materials will be furnished to all state banks subject to this subsection, or may be obtained upon request from the Bank and Trust Division, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294. The banking commissioner may make such modifications and additions to call report form and contents under this subsection as considered necessary in the discretionary discharge of the banking commissioner's duties, notwithstanding FDIA and FFIEC guidelines and requirements.

(d) Special call reports. In addition to the requirements of subsections (b) and (c) of this section, the banking commissioner may require a state bank to file and submit a special call report, in such form and manner

and containing such information as may be requested, on dates fixed, whenever in the banking commissioner's discretion the special call report is necessary in the performance of the banking commissioner's supervisory duties related to the safety and soundness of the state bank. Special call reports must contain only such information as is specifically requested by the banking commissioner.

(e) Call report declarations and attestations. Each call report or special call report required to be filed under subsections (c) and (d) of this section must contain a declaration by the president, a vice president, the cashier, or by another officer designated by the board of directors of the state bank to make such declaration, that the report is true and correct to the best of such individual's knowledge and belief. The correctness of the call report or special call report must also be attested by the signatures of at least two of the directors of the state bank other than the officer making the declaration. The declaration of the directors must state that the call report or special call report has been examined by them and is true and correct to the best of their knowledge and belief.

(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.

(g) Confidentiality. Pursuant to the Finance Code, §31.301, call reports filed under subsections (b) or (c) of this section

are public information to the extent that such reports are considered public records under the FDIA, implementing federal regulations, and FFIEC guidelines, and may be published or otherwise disclosed to the public. Special call reports filed pursuant to subsection (d) of this section and non-public portions of call reports filed pursuant to subsections (b) or (c) of this section are confidential, subject only to such disclosure as may be permitted by the Finance Code, §§31.302 - 31.308, or by §3.111 of this title (relating to Confidential Information).

(h) Penalties for failure to file or for filing a report with false or misleading information. A state bank which fails to make, file, or submit a call report or a special call report or fails to timely file a call report or special call report as required by this section is subject to a penalty not exceeding \$500 a day to be collected by the attorney general on behalf of the banking commissioner. Any state bank which makes, files, submits or publishes a false or misleading call report or special call report is subject to an enforcement action pursuant to the Finance Code, Chapter 35.

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

(a) Agreement in writing. A sale or lease agreement between a state bank and an officer, director, or principal shareholder of the bank or of an affiliate of the bank must be in writing. Existing verbal agreements must be reduced to writing and approved by the board.

(b) Terms of agreement. A sale or lease agreement between a state bank and an officer, director, or principal shareholder of

the bank or of an affiliate of the bank must comply with applicable laws and regulations, be consistent with prudent and sound banking principles, and have terms and rates that are substantially equivalent to or more favorable to the bank than those prevailing at the time for comparable transactions with or involving nonaffiliated parties.

(c) Board action. All proposed transactions subject to 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.

(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

(B) a statement explaining the reasons the approval of a disinterested majority of 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 Accounting Standards Board Accounting Standards Codification Topic 842, Leases; and

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

(e) Records. A state bank shall maintain the originals of all sale or lease agreements with an officer, director, or principal shareholder of the bank or of an affiliate of the bank, which documents must be made available at all times to the Texas Department of Banking for examination and

review. For purposes of this subsection, required documentation need not be retained beyond three years after the expiration of the sale or lease agreement to which the documentation pertains.

(f) Exemption. Finance Code, §33.109, and this section do not apply to a transaction subject to and in compliance with the Federal Reserve Act, §23A and §23B (12 U.S.C. §371c and §371c-1), and implementing regulations, applicable to nonmember insured state banks by virtue of the Federal Deposit Insurance Act, §18(j)(1) (12 U.S.C. §1828(j)(1)).

§3.24. Notice of Computer-Security Incident.

A state bank shall notify the banking commissioner and submit the information required by 12 CFR 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.

§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):

Figure: 7 TAC §3.37(a)

(b) Required adjustments for inflation. In this section, "GDPIPD" means the Gross Domestic Product Implicit Price Deflator, published quarterly by the Bureau of Economic Analysis, United States Department of Commerce. The "annual GDPIPD factor" is equal to the percentage change in the GDPIPD index values published for the first quarter of the current year compared to the first quarter of the previous year (the March-to-March period immediately preceding the calculation date), rounded to a hundredth of a percent (two decimal places).

(1) Each September 1, the table in subsection (a) of this section, as most recently revised before such date pursuant to this subsection, is revised as follows:

(A) each marginal assessment factor listed in Step 3 of the table is increased (or decreased) by an amount proportionate to the measure of inflation (or deflation) reflected in the annual GDPIPD factor, rounded to six decimal places;

(B) the base assessment amount listed in Step 4 for assessable asset group 1 is increased (or decreased) by an amount proportionate to the measure of inflation (or deflation) reflected in the annual GDPIPD factor, rounded to whole dollars; and

(C) each base assessment amount listed in Step 4 for assessable asset groups 2 through 14 is adjusted to an amount equal to the maximum annual assessment possible for the next lower assessable asset group (without surcharge), rounded to whole dollars. For example, the base assessment amount for assessable asset group 2 is equal to the annual assessment (without surcharge)

calculated under assessable asset group 1 for a bank with exactly \$10 million in assessable assets.

(2) Not later than August 1 of each year, the department shall calculate and prepare a revised table reflecting the inflation-adjusted values to be applied effective the following September 1, and shall provide each state bank with notice of and access to the revised table. At least once every four years, the department shall propose amendments to this section for the purpose of substituting a current revised table in subsection (a) of this section, and for such other purposes as may be appropriate.

SUBCHAPTER C. FOREIGN BANK BRANCHES, AGENCIES AND REPRESENTATIVE OFFICES

The amendments are adopted 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 adopted amended sections.

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

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(a) General. A foreign bank may establish a representative office in this state whether or not the foreign bank is authorized to maintain a Texas branch or agency.

(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) of this title (relating to Applications, Notices and Reports Related to Foreign Bank Branches and Agencies).

(c) Statement of registration. To establish a representative office in this state, a foreign bank shall file with the banking commissioner a statement of registration on the form prescribed by the department. The statement of registration must:

(1) be in English and be signed, sworn to and acknowledged by an officer of the foreign bank;

(2) be fully completed and provide the information and include as attachments the documentation specified in the registration form and the department's instructions, including the information and documentation required under the Finance Code, §204.201, and such other information and documentation as the banking commissioner reasonably requests; and

(3) be accompanied by the registration fee established in §15.2(b) of this title (relating to Filing and Investigation Fees).

(d) Commencement of operations. A foreign bank may establish its representative

office upon receipt of written confirmation from the banking commissioner that the statement of registration is complete and all required fees have been paid.

(e) Separate statement of registration required. A statement of registration must be filed for each representative office a foreign bank establishes in this state. If a foreign bank has established an initial representative office in accordance with this section, the banking commissioner may waive one or more of the informational requirements of the statement of registration form with respect to any additional Texas representative office the foreign bank seeks to establish. However, payment of the registration fee provided for in §15.2(b) of this title (relating to Filing and Investigation Fees) may not be waived.

(f) Notices. A foreign bank that maintains a representative office in this state shall file the following notices in English with the banking commissioner:

(1) the change of control notice required under the Finance Code, §204.005;

(2) notice of the closing of a representative office in this state at least 30 days before the effective date of the closing;

(3) notice of a change in location containing the street, post office and mailing address of the new location at least 30 days before the effective date of the relocation; and

(4) copies of other notices or applications filed with a federal regulator affecting the representative office in this state, at the time filed with the federal regulator.

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

The amendments are adopted 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 adopted amendments.

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

(a) Asset pledge required. A foreign bank that maintains and operates a Texas state branch or agency, and carries nonrelated deposit liabilities on the books and records of its Texas state branch or agency as liabilities of such branch or agency, must pledge and keep assets on deposit with a depository in accordance with this subchapter.

(b) Amount of deposit. Subject to a minimum deposit of \$100,000, the amount of assets required to be deposited under subsection (a), based upon the lower of

principal amount or market value, is equal to the lesser of:

(1) one percent of the average total nonrelated liabilities, consisting of nonrelated deposit liabilities and nonrelated other liabilities, for the previous calendar quarter of such branch or agency appearing on the books, accounts and records of such branch or agency; or

(2) \$100 million.

(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.

(e) Increase in amount of required deposit. The banking commissioner may increase the amount required to be deposited by a foreign bank under this section if necessary or desirable to:

(1) maintain the Texas state branch or agency in sound financial condition;

(2) protect the depositors, creditors and the public interest in Texas; or

(3) support public confidence in the business of the Texas state branch or agency.

§3.59. Deposit Agreement and Conditions.

(a) Approved deposit agreement. A foreign bank and a depository must execute a deposit agreement approved by the banking commissioner before the foreign bank may deposit assets for purposes of Finance Code, §204.113, and this subchapter. In addition to any other terms and conditions that are not inconsistent with those listed in this section or imposed by the banking commissioner, the deposit agreement must include the terms and conditions set forth in subsections (b) through (m) of this section.

(b) Limitation on assets that may be deposited. Only assets eligible to be pledged under §3.58 of this title (relating to Eligible Assets and Conditions) may be deposited into the pledge account.

(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) Assets held as special deposit. The depository must hold the assets deposited under the agreement as a special deposit free of any lien, charge, right of set-off, credit, or

preference in connection with any claim of the depository against the foreign bank or the Texas state branch or agency. The depository may not accept any asset under the agreement that is not accompanied by documentation necessary to facilitate transfer of title.

(e) Depository to furnish receipt. The depository must furnish the foreign bank, upon the deposit of assets under the depository agreement, a receipt or statement as evidence of the deposit. The receipt or statement must identify the deposit as having been made pursuant to Finance Code, §204.113, and under the deposit agreement, and must state the amount of the deposit and, with respect to the deposit of securities, a description of each security deposited.

(f) Release of securities by depository. The depository must release deposited assets to the foreign bank upon written request:

(1) when accompanied by a certificate, as described in subsection (g) of this section, signed by a duly authorized officer of the foreign bank; or

(2) upon receipt of the banking commissioner's written order to release such part of the deposited assets under such conditions and terms as the order may specify.

(g) Model certificate. A duly authorized officer of the foreign bank must execute the following or a similar certificate before making a withdrawal under subsection (f)(1) of this section: It is hereby certified that the aggregate value of securities and/or funds remaining on deposit pursuant to the Deposit Agreement after this withdrawal or substitution amounts to \$_____, valued

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at the lower of principal amount or market value, and that such amount is at least equal to the amount required to be deposited under Finance Code, §204.113, and 7 TAC §3.51 et seq. The amount required to be maintained on deposit, calculated in accordance with this subchapter, is \$ _____ as of this date.

(h) Depository to furnish monthly statement of all transactions. The depository must furnish to the foreign bank, at least once in each calendar month, a statement of all transactions in the pledge account since the closing date of the previous statement. The statement must include a listing of the securities and/or the amount of funds on deposit as of the closing date of the statement. The depository must simultaneously send a copy of the statement to the banking commissioner.

(i) Depository may pay interest. So long as the Texas state branch or agency continues business in the ordinary course, the depository may pay interest earned on the assets in the pledge account in accordance with such arrangements as may be made between the depository and the foreign bank.

(j) Responsibility of depository with respect to deposited securities. Except as provided in this subsection, a depository must hold securities deposited under the deposit agreement separate and apart from all other securities and must permit duly authorized representatives of the foreign bank or of the banking commissioner to examine and compare such securities. A depository may utilize a central depository, clearing corporation or book entry system to hold securities deposited under the deposit agreement, provided that the records of the

central depository, clearing corporation or book entry system show that the depository holds the securities as principal or as agent or as custodian of its customers. The depository must maintain adequate records to demonstrate the disposition of any book entry deposits.

(k) Safeguarding of deposited securities. The depository must give the same degree of care to the safekeeping, handling and shipping of deposited securities that the depository would give to its own securities.

(l) Banking commissioner not to pay for services rendered. The banking commissioner is not required to pay for any of the services rendered or any expenses incurred by the depository or the foreign bank under or in connection with 7 TAC §§3.51-3.61 or the deposit agreement.

(m) Termination of deposit agreement by foreign bank or depository. The foreign bank or the depository may terminate the deposit agreement by giving the other party at least sixty days written notice of the termination, or such shorter notice as the banking commissioner may approve, provided that no termination by the foreign bank or the depository is effective until:

(1) the foreign bank has designated another depository;

(2) the foreign bank has provided the banking commissioner with the name and address of the successor depository;

(3) the foreign bank and the successor depository have executed a deposit agreement that conforms to this section and has been approved by the banking commissioner; and

(4) the depository has released to foreign bank all the deposited assets in accordance with written instructions from the foreign bank approved by the banking commissioner.

(n) Additional terms and conditions. The banking commissioner may at any time impose different or additional terms and conditions upon the deposit agreement as deemed necessary or desirable.

(o) Termination of the right to substitute or withdraw assets. Upon notice to the foreign bank and the depository, the banking commissioner may terminate or suspend the authority of the foreign bank under subsection (f)(1) of this section to substitute or withdraw deposited assets.

(p) Termination of deposit agreement by banking commissioner. Upon notice to the foreign bank and the depository, the banking commissioner may terminate the deposit agreement and order the depository to release the pledged assets on such terms as are specified in the order if the foreign bank or the depository fails to comply with any term of the deposit agreement required by this section or with any other terms and conditions imposed by the banking commissioner under subsection (n) of this section.

§3.62. Asset Maintenance.

(a) Maintenance of specific ratio not generally required. Subject to subsection (b) of this section, a foreign bank is not required to maintain a specific ratio of assets to liabilities appearing on the books, accounts and records of its Texas state branch or agency.

(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.

(c) Determination of Assets and Liabilities. The banking commissioner will determine the assets and liabilities that may or must be included for purposes satisfying the requirements of this section consistent with Finance Code, §204.114.

**SUBCHAPTER E. BANKING HOUSE
AND OTHER FACILITIES**

The amendments are adopted 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 adopted 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) Required information. Pursuant to Finance Code, §32.204(b), a Texas state bank shall notify the banking commissioner of its intent to establish a new LPO. The banking commissioner must be notified in writing before the 31st day preceding the date of establishment of the LPO, except that the banking commissioner in the exercise of discretion may waive or shorten the period. The written notification must include the physical address of the planned LPO, a list of the specific activities to be performed at the planned LPO, the anticipated date for the establishment of the LPO, and other information which the banking commissioner may reasonably request.

(c) Relocation or closure of a LPO. A Texas state bank which seeks to relocate or close an established LPO, shall notify the banking commissioner in writing before the fifth day preceding the date of the planned relocation or closure of the LPO. The written notification must include the physical address of the relocated or closed LPO, the anticipated date for the closure or relocation of the LPO, and other information which the banking commissioner may reasonably request.

(d) Exemption: temporary LPO. Subsections (b) and (c) of this section do not apply to a LPO which operates for less than a total of 21 days in any one 12-month period. Instead, state banks shall register the location of a temporary LPO with the banking commissioner no later than the tenth day after such office is opened. As a part of such notice, the bank may indicate the anticipated repeated use of such office through the year. For example, a temporary LPO in a convention or exposition hall used in connection with trade shows may be registered once each year with an estimate of usage throughout the year.

(e) Transactions with management and affiliates. A state bank establishing a LPO involving the purchase or lease of personal or real property from an officer, director, manager, managing participant, or principal shareholder or participant of the bank or an affiliate of the bank, must comply with the provisions of the Finance Code, §33.109, and §3.22 of this title (relating to Sale or Lease Agreements With an Officer, Director, or Principal Shareholder of the Bank or of an Affiliate of the Bank).

(f) Out-of-state banks. A bank not domiciled or primarily located in this state

must comply with the provisions of the Finance Code, Chapter 201, Subchapter B (§§201.101 et seq.), to establish a LPO in this state.

(g) Foreign bank LPOs. A banking corporation or association incorporated or organized under the laws of a jurisdiction other than the United States or a state, territory, commonwealth, or other political subdivision of the United States, must comply with the provisions of the Finance Code, Chapter 201, Subchapter B (§§201.101 et seq.), and Finance Code, Chapter 204, to establish an LPO, unless the LPO will be an office of a Federal branch regulated by the Office of the Comptroller of the Currency (OCC). In the latter case, the Federal branch must comply with subsection (h) of this section.

(h) Federal branch LPO. A Federal branch may establish an LPO in this state by complying with the provisions of Finance Code, Chapter 201, Subchapter B (§§201.101 et seq.), and by notifying the banking commissioner of its intent to establish the LPO.

(1) The Federal branch shall notify the banking commissioner in writing on or before the 31st day preceding the date of establishment of the LPO, except that the banking commissioner may waive or shorten the period if the banking commissioner does not have a significant supervisory or regulatory concern regarding the Federal branch or its planned LPO. The written notification must include the physical address of the planned LPO, a list of the specific activities to be performed at the planned LPO, the anticipated date for the establishment of the LPO, documentation evidencing the approval of the OCC, and

such other information as the banking commissioner may reasonably request.

(2) To relocate or close an existing LPO in this state, a Federal branch shall notify the banking commissioner in writing on or before the tenth day following the date of the relocation or closure of the LPO. The written notification must include the physical address of the LPO, the date for its closure or relocation, documentation evidencing the approval or acquiescence of the OCC, and such other information as the banking commissioner may reasonably request.

(3) An LPO of a Federal branch established in compliance with this section is not subject to examination by the banking commissioner under, or subject to any fee imposed by, Finance Code, Chapter 204.

§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) Notification to the banking commissioner. Pursuant to Finance Code, §32.204(b), a Texas state bank shall notify the banking commissioner in writing before the 31st day preceding the date of establishment of a DPO, except the banking commissioner in the exercise of discretion may waive or shorten the period. The written notification must include the physical address of the DPO, a list of the specific activities to be performed at the planned DPO, and other information which the banking commissioner may reasonably request.

(c) Relocation or closure of a DPO. A Texas state bank which seeks to relocate or close an established DPO shall notify the banking commissioner in writing before the fifth day preceding the date of the planned relocation or closure of the DPO. The written notification must include the physical address of the relocated or closed DPO, the anticipated date for the closure or relocation of the DPO, and other information which the banking commissioner may reasonably request.

(d) Transactions with management and affiliates. A state bank establishing a DPO involving the purchase or lease of personal or real property from an officer, director, manager, managing participant, or principal shareholder or participant of the bank or an affiliate of the bank, must comply with the provisions of the Finance Code, §33.109, and §3.22 of this title (relating to Sale or Lease Agreements with an Officer, Director, or Principal Shareholder of the Bank or of an Affiliate of the Bank).

(e) Out-of-state banks. A bank not domiciled or primarily located in this state must comply with the provisions of the Finance Code, Chapter 201, Subchapter B (§§201.101 et seq.), to establish a DPO in this state.

SUBCHAPTER F. ACCESS TO INFORMATION

The amendments are adopted 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 adopted amended sections.

§3.111. Confidential Information.

(a) Policy. The Texas Department of Banking (the department) is committed to the concept of open state government. As a regulator of financial institutions, however, the department recognizes the mandate of the legislature to balance the competing interests of the need of financial institutions for confidentiality regarding their financial condition and business affairs with the general public's need for information. The legislature has determined that confidential

information, with limited exceptions, should not be disclosed. See Finance Code, Chapter 31, Subchapter D, Chapter 181, and §§201.007, 204.102(c), 204.117(d) and 204.205(d). Inappropriate disclosures can result in substantial harm to financial institutions and to those persons and entities (including other financial institutions) that have relationships with them. In accordance with the historical availability of records of financial institutions and the sound public policy that generally protects them, non-disclosure under this section protects the stability of such institutions by preventing disclosures that could adversely impact financial institutions. For example, the department may criticize a bank in an examination report for a financial weakness that does not currently threaten the solvency of the bank. If improperly disclosed, the criticism can lead to adverse impacts such as the possibility of bank "runs," short-term liquidity problems, and volatility in costs of funds, which in turn can exacerbate the problem and cause the failure of the bank. Bank failures lead to reduced access to credit and greater risk to depositors. Further, specific loans may be criticized in an examination report, and confidentiality of the information protects the financial privacy of customers. Finally, protecting confidential information from disclosure facilitates the free exchange of information between the financial institution and the regulator, encourages candor, and promotes regulatory responsiveness and effectiveness. Information that does not fall within the meaning of confidential information as defined in this section may be confidential under other definitions and controlled by other laws, and is not subject to this section.

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

(1) Affiliate--A company that directly or indirectly controls, is controlled by, or is under common control with a bank or other company.

(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) the public portions of call reports of state banks and public trust companies;

(B) the names of proposed directors of a de novo financial institution or an entity converting to a state financial institution;

(C) information contained in an official document required to be filed with the department in order to have legal effect (Examples of such documents include, without limitation, Certificate of Amendment, Certificate of Merger, or Certificate of Conversion);

(D) information contained in the portion of an application submitted to the department that has been designated as public by the applicant, department or a federal agency; or

(E) information previously disclosed to the public by the person or entity to which the information relates.

(3) Financial institution--As defined in the Finance Code, §31.002(a)(25). For purposes of this section only, the term includes a trust company incorporated under the Texas Trust Company Act, Finance Code, Chapters 181 et seq, or a predecessor statute, and a foreign bank branch, agency or representative office licensed under the Finance Code, Chapter 204 et seq.

(4) Governmental agency--Another department of this state, another state, the United States, a foreign sovereign state, or any related agency or instrumentality.

(5) Court--A court of law or equity or other adjudicatory tribunal with jurisdiction to issue a subpoena or other legal process for the production of documents, including a government agency exercising adjudicatory functions and an alternative dispute resolution mechanism, voluntary or required, under which a party may compel the production of documents.

(c) Authority to receive, hold or disclose confidential information. Authority to disclose confidential information to an individual, business, or governmental agency under this section constitutes authority to disclose it to the appropriate person officially connected to such individual, business, or governmental agency that has a need to know the information in connection with the discharge

of official responsibilities and authority for the person who is officially connected to such individual, business, or governmental agency to receive such information. A person officially connected to a financial institution includes its holding company, officer, director, manager, attorney, auditor, independent auditor, employee, and a person reasonably designated as officially connected with the financial institution by resolution duly adopted by the board of directors of the financial institution. A financial institution or its service provider, or affiliate may disclose confidential information, other than as specifically mentioned, to a non-employee, such as its agent, bonding company, or a prospective acquirer, only pursuant to board resolution designating the person or entity as officially connected with the financial institution, affiliate, or service provider. The financial institution, affiliate, or service provider may not disclose confidential information to a shareholder or participant that is specifically denied to such person under the Finance Code, §31.308. Only a person to whom confidential information has been released pursuant to lawful authority may disclose that information to another, and all such further disclosures must be in accordance with the Finance Code and this section.

(d) Disclosure prohibited.

(1) Pursuant to the Finance Code, §31.301, and *Stewart v. McCain*, 575 S.W.2d 509 (Tex. 1978), the department possesses an absolute privilege against disclosure of confidential information held by the department. Except as provided by the Finance Code, Title 3, Subtitle A, and rules adopted under the Finance Code, the finance commission, a member of the

finance commission, the banking commissioner, or an employee or agent of the department may not directly or indirectly disclose confidential information, whether voluntarily or pursuant to subpoena or other legal process. Confidential information is discoverable from the department under this section only pursuant to a protective order under subsection (f) of this section in a case in which the department is a party other than as intervenor under this section. Pursuant to the Finance Code, §31.306, and notwithstanding any other provision of this section authorizing the release of confidential information, the banking commissioner may refuse to release information or records in the custody of the department if, in the opinion of the banking commissioner, release of the information or records might jeopardize an ongoing investigation by the department or other governmental agency of potentially unlawful activities.

(2) Except as provided by the Finance Code, Title 3, Subtitle A, and this section, a financial institution, its service provider, or its affiliate may not disclose confidential information received from the department. Confidential information includes an examination report of, correspondence with, and formal and informal actions of the department taken against the financial institution, service provider, or affiliate.

(e) Exceptions to non-disclosure.

(1) Disclosures by the department. Confidential information disclosed by the department pursuant to an exception to disclosure remains the confidential property of the department. The department may:

(A) disclose confidential information to the finance commission and other governmental agencies as provided by the Finance Code, §31.302 and §31.303;

(B) publish final removal, prohibition, and cease-and-desist orders and information regarding the existence of a cease-and-desist order as provided by the Finance Code, §35.012;

(C) release employment information as provided by the Finance Code, §31.307;

(D) provide a copy of the regular report of examination and an order, opinion, or other confidential information to the financial institution, its service provider, or affiliate for which it was prepared and to which it relates and correspond with that financial institution, service provider, or affiliate regarding such information;

(E) provide a copy of the regular report of examination of a service provider and an order, opinion, or other confidential information relating to the service provider to the financial institution or institutions it services;

(F) forward to a court of proper jurisdiction, subject to any existing administrative protective order, the record of an administrative hearing under appeal that contains confidential information. In the event an administrative protective order does not exist, the department or another party shall file a motion with the court for a protective order consistent with the terms of subsection (f)(4) of this section prior to filing the administrative record. Discretion of the banking commissioner or finance commission to vacate an administrative protective order entered under §9.22 of this

title (relating to Protective Orders; Motions to Compel) ceases at the time the appeal is filed;

(G) provide complete copies of documents previously submitted to the department by a financial institution to the same financial institution or the successor financial institution upon request; and

(H) provide certificates and certified copies upon request. The cost for a formal certificate issued by the department shall be \$20.00 plus \$1.00 per page for certified copies of pages attached to the certificate.

(2) Further disclosure by a governmental agency, financial institution, service provider or affiliate. Except for disclosures pursuant to subsection (f) of this section, confidential information released to a financial institution, its service provider, or affiliate may be disclosed by the recipient only to a person officially connected to the recipient as provided by subsection (c) of this section and, if authorized under the terms of a confidentiality agreement between the department and another governmental agency, to that governmental agency in the discharge of its official duties. Disclosures to a person designated by board resolution as officially connected to the financial institution, service provider, or affiliate must be made pursuant to a confidentiality agreement between the financial institution, service provider, or affiliate and the recipient. Confidential information released to a governmental agency may be disclosed by the agency only to a person officially connected to the agency as provided by subsection (c) of this section or to another governmental agency to the extent authorized by this section or

other law, and must be in accordance with the terms of this section and a confidentiality agreement with or letter of instructions from the department.

(3) Disclosures of certain information.

(A) Statistical data. Confidential information consisting solely of statistical data may be disclosed, providing its release does not directly or indirectly disclose the identity of an individual or financial institution related to the data.

(B) Records of a failed financial institution. Subject to the sole discretion 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.

(C) Records of another governmental agency. Information the department has obtained from a federal or state governmental agency that is confidential under federal or state law or by agreement with the other agency is not considered part of the department's records.

The department may not release such information unless the request for release is submitted with a certification from the appropriate state or federal authority that the information is subject to release under the laws of that jurisdiction.

(f) Discovery of confidential information from a governmental agency, financial institution, service provider, or affiliate.

(1) General rule. A governmental agency, financial institution, service provider, or affiliate that receives a subpoena or other legal process in any proceeding for the release of confidential information shall promptly notify the department of the request, provide the department with a copy of the process and of the requested documents or information, and object by written motion or other means available under applicable rules of procedure. Notice and documents should be sent to the Texas Department of Banking at 2601 North Lamar Boulevard, Austin, Texas, 78705-4294, to the attention of the General Counsel, and should be labeled "Request for Release of Confidential Information under 7 TAC §3.111." Prior to the release of confidential information, such government agency, financial institution, service provider, or affiliate also must file and obtain a ruling on a motion for a protective order and in camera inspection in accordance with this subsection. Confidential information may be released only pursuant to a protective order in a form consistent with that set out in this section and only if a court with jurisdiction has found that:

(A) the party seeking the information has a substantial need for the information;

(B) the information is directly relevant to the legal dispute in issue; and

(C) the party seeking the information is unable without undue hardship to obtain its substantial equivalent by other means.

(2) Discretionary filings by department. On receipt of notice under subsection (f)(1) of this section, the department may take action as may be appropriate to protect confidential information. The department has standing to intervene in a suit or administrative hearing for the purpose of filing a motion for protective order and in camera inspection in accordance with this subsection.

(3) Motion for protective order and in camera inspection. The movant shall ask the court to enter a protective order in accordance with this subsection regarding the release of confidential information. If necessary to resolve a dispute regarding the confidential status or direct relevance of any information sought to be released, the party seeking the protective order shall move for in camera inspection of the pertinent information. Until subject to a protective order, confidential information may not be released, and the party seeking a protective order shall request the court officer to deny discovery of such confidential information. The party seeking the protective order must comply with the court's applicable rules of procedure.

(4) Protective order. A protective order obtained pursuant to the terms of this subsection must:

(A) specifically bind each party to the litigation, including one who becomes a party to the suit after the protective order

is entered, each attorney of record, and each person who becomes privy to the confidential information as a result of its disclosure under the terms of the protective order;

(B) describe in general terms the confidential information to be produced;

(C) state substantially the following in the body of the protective order:

(i) absent court order to the contrary, only the court reporter and attorneys of record in the cause may copy confidential information produced under the protective order in whole or part;

(ii) the attorneys of record are custodians responsible for all originals and copies of confidential information produced under the protective order and must insure that disclosure is limited to those persons specified in the protective order;

(iii) confidential information subject to the protective order and all information derived therefrom may be used only for the purpose of the trial, appeal, or other proceedings in the case in which it is produced;

(iv) confidential information to be filed or included in a filing in the case must be filed with the clerk separately in a sealed envelope bearing suitable identification, and is available only to the court and to those persons authorized by the order to receive confidential information, and all originals and copies made of such documents and records must be kept under seal and disclosed only in accordance with the terms of the protective order;

(v) confidential information produced under to the protective order may be disclosed only to the following persons and only after counsel has explained the terms of the order to the person who will receive the information and provided that person with a copy of the order:

(I) to a party and to an officer, employee, or representative of a party, to a party's attorneys (including other members and associates of the respective law firms and contract attorneys in connection with work on the case) and, to the extent an attorney of record in good faith determines disclosure is necessary or appropriate for the conduct of the litigation, legal assistants, office clerks and secretaries working under that attorney's supervision;

(II) to a witness or potential witness in the case;

(III) to an outside expert retained for consultation or for testimony, provided the expert agrees to be bound by the terms of the protective order and the party employing the expert agrees to be responsible for the compliance of its expert with this confidentiality obligation; and

(IV) to the court or to an appellate officer or body with jurisdiction of an appeal in the case;

(vi) at the request of the department or a party, only the court, the parties and their attorneys, and other persons the court reasonably determines should be present may attend the live testimony of a witness or discussions or oral arguments before the court that may include confidential information or relate to such confidential information. The parties shall request the court to instruct all persons

present at such testimony, discussions, or arguments that release of confidential information is strictly forbidden;

(vii) a transcript, including a deposition transcript, that may include confidential information subject to non-disclosure is subject to the protective order. The party requesting the testimony of a current or former department officer, employee, or agent shall, at its expense, furnish the department a copy of the transcript of the testimony once it has been transcribed.

(viii) upon ultimate conclusion of the case by final judgment and the expiration of time to appeal, or by settlement or otherwise, counsel for each party shall return to the party that produced the confidential information all copies of every document subject to the protective order and for which the counsel is custodian; and

(ix) production of documents subject to the protective order does not waive a claim of privilege or right to withhold the documents from a person not subject to the protective order.

(D) Clauses (i), (ii), and (v) - (vii) of subparagraph (C) of this paragraph are subject to modification by the court for good cause before the conclusion of the proceeding, upon notice and opportunity to appear to the department.

D.3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 2, §17.3, Concerning Sale or Lease Agreements with Trust Company Insiders

PURPOSE: Amendments to 7 TAC, §17.3 update and improve rules for Texas trust companies relating to insider transactions.

RECOMMENDED ACTION: No comments were received regarding the proposed amendments to 7 TAC, §17.3. The Department recommends that the Commission approve adoption of the amendments without changes to the proposal as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we adopt the amendments to 7 TAC, §17.3 without changes to the proposal as previously published 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), adopts amendments to certain rules in 7 TAC Chapter 17, governing Texas state-chartered trust companies (trust companies). The amended rules are adopted without changes to the proposed text as published in the July 8, 2022, issue of the *Texas Register* (47 TexReg 3857). The amended rules will not be republished.

In particular, the commission adopts amendments to §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. The adopted 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.

The adopted 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.

The adopted 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 the adopted amendments.

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

The department received no comments regarding the adopted amendments.

Notice of the adopted amendments was submitted to the Regulatory Compliance Division of the Office of the Governor (Division) as the rule amendments have the potential to affect market competition. The Division approved the amendments without further revision.

ADOPTION OF AMENDMENTS TO 7 TAC §17.3
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The amendments are adopted 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.

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

(a) Agreement in writing. A sale or lease agreement between a trust company and an officer, director, principal shareholder, or affiliate of the trust company must be in writing. Existing verbal agreements must be reduced to writing and approved by the board.

(b) Terms of agreement. A sale or lease agreement between a trust company and an officer, director, principal shareholder, or affiliate must comply with applicable laws and regulations, be subject to the exercise of prudent judgment, and have terms and rates that are substantially equivalent to or more favorable to the trust company than those prevailing at the time for comparable transactions with or involving nonaffiliated parties.

(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, 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.

(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

(B) a statement explaining the reasons the approval of a disinterested majority of 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 Accounting Standards Board Accounting Standards Codification Topic 842, Leases; and

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

(e) Records. A trust company shall maintain the originals of all sale or lease agreements with an officer, director, manager, managing participant, principal shareholder, or principal participant of the trust company, or an affiliate, which documents must be made available at all times to the Texas Department of Banking for examination and review. For purposes of this subsection, required documentation need not be retained beyond three years after the expiration of the sale or lease agreement to which the documentation pertains.

(f) Exemption. Subsection (d) of this section does not apply to a legally binding, written lease entered into by a trust company prior to June 16, 1991, until such lease is renewed or extended beyond its original term.

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