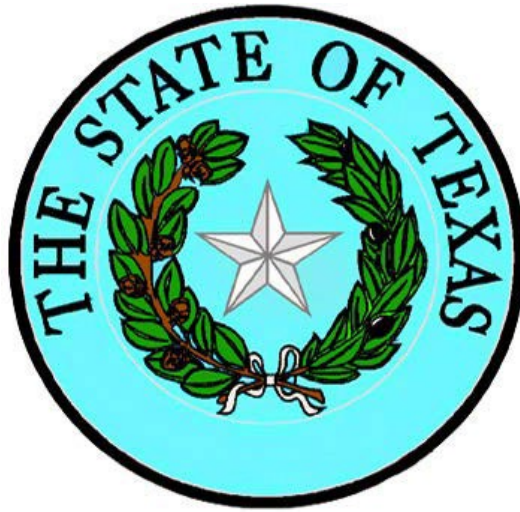


A.

Finance Commission

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FINANCE COMMISSION OF TEXAS

MEETING DATE**October 28, 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 DATESDecember 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*

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

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FINANCE COMMISSION AGENDA

Friday, October 28, 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, B2 – B5, C2, and D2 – D4, with NO DISCUSSION as notated in bold and italicized.

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

A. FINANCE COMMISSION MATTERS

1. Review and Approval of the Minutes of the August 19, 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 Fourth Quarter Investment Officer Reports

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

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

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

C. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Texas Department of Banking's 2022 Post Payment Audit Report as Prepared by the Texas Comptroller of Public Accounts

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

E. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Department of Savings and Mortgage Lending's Mortgage Grant Fund Administration Manual Pursuant to 7 TAC, Part 4, §51.402(c), Governing Administration of the Mortgage Grant Fund created under Finance Code, Chapter 156, Subchapter G.

6. Status Report on Implementation of Sunset Management Recommendations

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

7. Presentation on the Condition of the Texas State Banking System (FDIC - Alan Bush)
8. Discussion of and Possible Vote to Take Action on the Accomplishment Reports for Fiscal Year 2022 for the Commissioners of the Texas Department of Banking, the Office of Consumer Credit Commissioner and the Department of Savings and Mortgage Lending
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. 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 Readoption of 7 TAC, Part 1, Chapter 5, Concerning Administration of Finance Agencies, Resulting from Rule Review*
3. *Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 2, Chapter 11, Concerning Texas Department of Banking, Miscellaneous, Resulting from Rule Review*
4. *Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 2, Chapter 26, Concerning Perpetual Care Cemeteries, Resulting from Rule Review*
5. *Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 2, Chapter 27, Concerning Applications, Resulting from Rule Review*
6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 2, Chapter 26, Concerning Perpetual Care Cemeteries, Resulting from Rule Review
7. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

C. OFFICE OF CONSUMER CREDIT COMMISSIONER

1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities

2. ***Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 5, Chapter 90, Concerning 342, Plain Language Contract Provisions, Resulting from Rule Review***
3. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 5, Chapter 90, Concerning Chapter 342, Plain Language Contract Provisions, 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. 01-22-00712-CV, in the First Court of Appeals, Houston, Texas

D. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

1. Industry Status and Departmental Operations: a) Thrift Regulation Division Activities; b) Mortgage Regulation Division Activities; c) Operations Division Activities; d) Legal Division Activities, including Consumer Complaints and Gift Reporting; and e) Legislative Activities
2. ***Discussion of and Possible Vote to Take Action on the Adoption of Repeals in 7 TAC, Part 4, Chapter 76, Concerning Miscellaneous, Resulting from Rule Review***
3. ***Discussion of and Possible Vote to Take Action on the Adoption of Repeals in 7 TAC, Part 4, Chapter 77, Concerning Loans, Investments, Savings, and Deposits, Resulting from Rule Review***
4. ***Discussion of and Possible Vote to Take Action on the Adoption of Amendments in 7 TAC, Part 4, Chapter 79, §79.4, Concerning Bond Requirement***
5. Discussion of and Possible Vote to Take Action on the Adoption of New Rules and Repeals in 7 TAC, Part 4, Chapter 75, Concerning Applications, Resulting from Rule Review
6. 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, August 19, 2022

The Finance Commission of Texas convened at 9:59 a.m., on Friday, August 19, 2022, with the following members present:

Finance Commission Members in Attendance:

Phillip Holt, Chairman
George "Cliff" McCauley, Vice Chairman
Hector Cerna
G. Martin Green
Will Lucas

Sharon McCormick
Vince Puente
Debbie Scanlon
Laura Warren

Finance Commission Members Absent:

Roselyn "Rosie" Morris

Bob Borochoff

Commissioner Charles G. Cooper announced there was a quorum with nine (9) members present. *(2:08 on audio file).*

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
A. Finance Commission Matters		
1. Review and Approval of the Minutes of the June 24, 2022 Finance Committee Meeting	On Consent Agenda – Item A1 This item Approved on the Consent Agenda.	n/a
2. General Public Comment	No Action Required.	2:18 start of discussion
3. Consent Agenda – Items A1, A8, B2, B3, C2, D2 and D3	Vince Puente made a motion to Approve Consent Agenda items A1, A8, B2, B3, C2, D2 and D3. Will Lucas seconded and the motion passed.	6:13 start of discussion 6:22 Vote
4. Finance Commission Operations	No Discussion.	n/a
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	Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies' 2022 Third Quarter Investment Officer Reports passed.	2:47 start of discussion
1. Office of Consumer Credit Commissioner		2:57
2. Department of Savings and Mortgage Lending		Vote
3. Texas Department of Banking		

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<p>B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Readoption of the Investment Policies for:</p> <ol style="list-style-type: none"> 1. Office of Consumer Credit Commissioner 2. Department of Savings and Mortgage Lending 3. Texas Department of Banking 	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Readoption of the Investment Policies, as modified, for the Office of Consumer Credit Commissioner, Department of Savings and Mortgage Lending and the Texas Department of Banking passed.</p>	<p>3:10 start of discussion</p> <p>3:23 Vote</p>
<p>C. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2022 Third Quarter Financial Statements</p> <ol style="list-style-type: none"> 1. Office of Consumer Credit Commissioner 2. Department of Savings and Mortgage Lending 3. Texas Department of Banking 	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies' 2022 Third Quarter Financial Statements passed.</p>	<p>3:38 start of discussion</p> <p>3:46 Vote</p>
<p>D. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' Fiscal Year 2023 Operating Budgets</p> <ol style="list-style-type: none"> 1. Office of Consumer Credit Commissioner 2. Department of Savings and Mortgage Lending 3. Texas Department of Banking 	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Office of Consumer Credit Commissioner's Fiscal Year 2023 Operating Budget passed.</p> <p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Department of Savings and Mortgage Lending's Fiscal Year 2023 Operating Budget passed.</p> <p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Texas Department of Banking's Fiscal Year 2023 Operating Budget passed.</p>	<p>3:58 start of discussion</p> <p>4:07 Vote</p> <p>4:42 Vote</p> <p>5:03 Vote</p>
<p>E. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Activities of the Texas Financial Education Endowment Fund</p>	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Activities of the Texas Financial Education Endowment Fund passed.</p>	<p>5:15 start of discussion</p> <p>5:22 Vote</p>
<p>6. Strategic Planning Committee Report</p>		
<p>A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Finance Commission of Texas 2023-2027 Strategic Plan</p>	<p>Coming upon Recommendation from the Strategic Planning Committee, no second is required and the motion to Approve the Finance Commission of Texas 2023-2027 Strategic Plan passed.</p>	<p>6:58 start of discussion</p> <p>9:23 Vote</p>

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<p>7. Discussion of and Possible Vote to Take Action on the Agency Priorities for Fiscal Year 2023 for the Commissioners of the Office Consumer Credit Commissioner, Department of Savings and Mortgage Lending and the Texas Department of Banking</p>	<p>Laura Warren made a motion to Approve the Agency Priorities for Fiscal Year 2023 for the Commissioners of the Office of Consumer Credit Commissioner. Sharon McCormick seconded and the motion passed.</p> <p>Laura Warren made a motion to Approve the Agency Priorities for Fiscal Year 2023 for the Department of Savings and Mortgage Lending. Martin Green seconded and the motion passed.</p> <p>Cliff McCauley made a motion to Approve the Agency Priorities for Fiscal Year 2023 for the Texas Department of Banking. Hector Cerna seconded and the motion passed.</p>	<p>9:43 start of discussion</p> <p>13:46 Vote</p> <p>14:10 Vote</p> <p>14:34 Vote</p>
<p>8. Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC, Part 1, § 5.107, Concerning Employee Leave Pools</p>	<p>On Consent Agenda – Item A8 This item Approved on the Consent Agenda.</p>	<p>n/a</p>
<p>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</p>	<p>No Discussion.</p>	<p>n/a</p>
<p>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</p>	<p>No Discussion.</p>	<p>n/a</p>
<p>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</p>	<p>No Discussion.</p>	<p>n/a</p>

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
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	No Discussion.	n/a
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	No Action Required.	15:08 start of discussion
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	On Consent Agenda – Item B2 This item Approved on the Consent Agenda.	n/a
3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 5, Chapter 85, Subchapter A, Concerning Rules of Operation for Pawnshops, 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 <i>Ernest Polk v. Texas Office of Consumer Credit Commissioner; Cause No. 2018-04375, in the 281st Judicial District Court of Harris County, Texas</i>	No Discussion.	n/a
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; e) Legislative Activities	No Action Required.	36:06 start of discussion
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	On Consent Agenda – Item C2 This item approved on the Consent Agenda.	n/a

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
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	Laura Warren made a motion to Approve the Proposal and Publication for Comment of New Rules and Repeals in 7 TAC, Part 4, Chapter 75, Concerning Applications, Resulting from Rule Review. Vince Puente seconded and the motion passed.	1:04:17 start of discussion 1:09:39 Vote
4. 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 76, Concerning Miscellaneous, Resulting from Rule Review	Debbie Scanlon made a motion to Approve the Proposal and Publication for Comment of New Rules and Repeals in 7 TAC, Part 4, Chapter 76, Concerning Miscellaneous, Resulting from Rule Review. Sharon McCormick seconded and the motion passed.	1:10:07 start of discussion 1:10:42 Vote
5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New Rules and Repeals in 7 TAC, Part 4, Chapter 77, Concerning Loans, Investments, Savings and Deposits, Resulting from Rule Review	Will Lucas made a motion to Approve the Proposal and Publication for Comment of New Rules and Repeals in 7 TAC, Part 4, Chapter 77, Concerning Loans, Investments, Savings and Deposits, Resulting from Rule Review. Debbie Scanlon seconded and the motion passed.	1:11:08 start of discussion 1:11:45 Vote
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	Will Lucas made a motion to Approve the Proposal and Publication for Comment of Amendments in 7 TAC, Part 4, Chapter 79, §79.4, Concerning Bond Requirement. Laura Warren seconded and the motion passed.	1:12:10 start of discussion 1:16:38 Vote
7. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Discussion.	n/a
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; and g) Legal Division Activities including Enforcement Activity and Gift Reporting; and h) Legislative Activities	No Action Required.	1:18:09 start of discussion
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	On Consent Agenda – item D2 This item approved on the Consent Agenda.	n/a

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
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	On Consent Agenda – item D3 This item approved on the Consent Agenda.	n/a
4. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Discussion.	n/a

There being no further business, Chairman Phillip Holt adjourned the meeting of the Finance Commission at 11:34 a.m. (1:35:32 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

October 28, 2022

A. Finance Commission Matters

1. Review and Approval of the Minutes of the August 19, 2022 Finance Commission Meeting

B. Texas Department of Banking

2. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 1, Chapter 5, Concerning Administration of Finance Agencies, Resulting from Rule Review
3. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 2, Chapter 11, Concerning Texas Department of Banking, Miscellaneous, Resulting from Rule Review
4. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 2, Chapter 26, Concerning Perpetual Care Cemeteries, Resulting from Rule Review
5. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 2, Chapter 27, Concerning Applications, Resulting from Rule Review

C. Office of Consumer Credit Commissioner

2. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 5, Chapter 90, Concerning Chapter 342, Plain Language Contract Provisions, Resulting from Rule Review

D. Department of Savings and Mortgage Lending

2. Discussion of and Possible Vote to Take Action on the Adoption of Repeals in 7 TAC, Part 4, Chapter 76, Concerning Miscellaneous, Resulting from Rule Review
3. Discussion of and Possible Vote to Take Action on the Adoption of Repeals in 7 TAC, Part 4, Chapter 77, Concerning Loans, Investments, Savings, and Deposits, Resulting from Rule Review
4. Discussion of and Possible Vote to Take Action on the Adoption of Amendments in 7 TAC, Part 4, Chapter 79, §79.4, Concerning Bond Requirement

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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 of Texas Members

FROM: Charles G. Cooper, Commissioner

DATE: August 31, 2022

RE: Department of Banking Fiscal Year 2022 Priorities

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 interim charge hearings as requested.

- *The agency's staff maintained regular contact with state and federal legislative leadership.*
- *Commissioner Cooper testified before the House Pensions, Investments & Financial Services Committee on August 25, 2022, regarding the regulatory treatment of virtual currency at the state and federal level.*

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

Measure: Notify Finance Commission members of significant federal laws and policy statements and how supervised entities may be affected. Provide sufficient information and materials to give members an overall assessment of our regulated industries.

- *Important material and updates are provided to members at each Finance Commission meeting and by email.*
- *Members received information on the Texas Treasury Safekeeping Trust Company at the February meeting.*

I.3 **Objective:** Monitor legislative interim charges that may affect the Department or its regulated entities. Implement legislative changes from the 87th legislative session that affect the agency.

Measure: Assist legislative committees with interim charges, if requested. Provide technical assistance and comprehensive resource materials when requested. Implement

legislation that directly affects the Department or the industries we regulate by updating or creating rules, policies, or procedures.

- *The interim charges for the Texas House of Representatives were released in March 2022 and staff is monitoring the activities related to these charges.*
- *Commissioner Cooper and Department staff met with Senate Business and Commerce Committee staff in August 2022 to discuss the status of the Department's regulation of virtual currency.*

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

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

Measure: Meet or exceed the strategic planning goals for performance measures. Maintain banking and money services business accreditation from CSBS. Report performance measure results to the Finance Commission quarterly.

- *Through August 31, 2022, all Bank & Trust (B&T) key performance measures were either met or exceeded.*
- *As of August 31, 2022, Non-Depository Supervision Division (NDS) did not meet Quarterly Output Measure – Number of Licensees Examined. NDS was within 1.5 percent of meeting the acceptable variance. All other key measures were met by NDS.*
- *Through August 31, 2022, the Corporate Division met or exceeded all assigned performance measures and processed 364 filings.*
- *B&T actively monitored and responded to the changing circumstances resulting from the COVID-19 pandemic. The Department maintained communication with regulated entities between examinations and performed off-site monitoring of key financial metrics. Examinations were conducted predominantly off-site, but some on-site work was performed as well as in-person management and board meetings on a limited basis.*
- *NDS actively monitored the impacts resulting from the COVID-19 pandemic, and when necessary, adjusted examination schedules accordingly. Based on various risk factors and in coordination with licensed entities, the number of prepaid funeral contract (PFC), perpetual care cemetery (PCC), and money services business (MSB) examinations conducted on-site increased in the second half of FY 2022, particularly for in-state domiciled licensed entities.*
- *NDS continued to perform off-site monitoring of key financial metrics for licensed entities, and when necessary, contacted licensed entities for additional information.*

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

Measure: Maintain active contact with other states individually and through regulatory associations (CSBS and MTRA), trade associations (IBAT and TBA) and frequent

contact with federal regulators to be aware of events, decisions, other state and federal policies, and other areas of actual or potential impact to the Department's regulatory functions or the industry. Participate in the networked supervision and examination of MSBs licensed in multi-states. Take proactive steps to respond as issues arise affecting the industries or our supervisory duties.

- *Commissioner Cooper attended the Joint Financial and Banking Information Infrastructure Committee/Financial Services Sector Coordinating Council Meeting held in-person on August 2-3, 2022.*
- *In July 2022, Director Saucillo attended an in-person meeting between members of the Multi-State MSB Examination Taskforce (MMET) and Money Transmitter Regulators Association (MTRA) in Minneapolis, Minnesota, to discuss various topics, among them was the creation of a new task force to address MSB license holders impacted by the downturn of the cryptocurrency market.*
- *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.*
- *Department personnel represented the Department at the TBA 2022 Conference held in Round Rock on May 18 - 20, 2022.*
- *Commissioner Cooper attended the Joint Financial and Banking Information Infrastructure Committee/Financial Services Sector Coordinating Council Meeting held virtually on April 13 - 14, 2022.*
- *Department personnel represented the Department at the 2022 Conference of State Bank Supervisors (CSBS) District IV Virtual Spring Meeting on April 11, 2022.*
- *Beginning on March 28, 2022, Commissioner Cooper and select Department staff attended the CSBS Government Relations Fly-In and Board Meetings in Washington, D.C. During the event, various speakers discussed topics impacting the effective supervision of entities licensed by the Department. The event provided state regulators with the opportunity to discuss regulatory matters with members of Congress*
- *Headquarters and regional office personnel participated in the Independent Bankers Association of Texas 2022 Regional Meetings held in various Texas cities from March 8, 2022, through April 12, 2022.*
- *Beginning on February 27, 2022, Commissioner Cooper represented the Department at the Independent Community Bankers of America (ICBA) 2022 Annual Convention in San Antonio, Texas.*
- *Department staff attended the Conference of State Bank Supervisors (CSBS) NMLS Annual Conference held virtually beginning on February 22, 2022. Various MSB topics related to examination and industry trends were discussed.*
- *The Commissioner participated as a panelist at the Independent Bankers Association of Texas (IBAT) Winter Summit XXVI in Avon, Colorado, in January.*
- *As a member of the State Coordinating Committee (SCC), the NDS Director participated in the SCC – Consumer Financial Protection Bureau (CFPB)*

Winter Meeting in January 2022 to discuss trends, major developments, key areas of focus, and major findings noted during past examinations. The Department also participated in various routine calls throughout FY 2022. The SCC is responsible for coordinating the supervision of activities related to MSBs, mortgage, debt collection, and payday lending with the CFPB.

- *The Commissioner and select Department staff participated in the CSBS Supervisor's Symposium held in San Diego in early December 2021.*
- *The Lubbock Regional Director graduated from the University of Texas – Austin, Executive Management Development Program held over a three-week period ending in November 2021.*
- *Department staff participated in a Money Transmitter Model Law (MSB Model Law) Workshop Series offered by the CSBS in October and November 2021. The series was designed to provide state regulatory agencies with additional knowledge and insight related to the implementation of the MSB Model Law.*
- *Select NDS staff attended the North American Death Care Regulators Association (DCRA) Annual Meeting & Training Seminar held virtually the week of October 4, 2021. The meeting provided a forum for death care state regulators to listen to industry-related presentations and to discuss matters affecting the death care industry.*
- *Department Staff attended the 2021 Community Banking in the 21st Century Research and Policy Conference held virtually beginning on September 28, 2021. This conference, which is co-sponsored by CSBS, the Federal Reserve System, and the FDIC, focused on a wide variety of topics affecting community banks.*
- *Department staff participated in the CSBS Virtual Strategic Planning Meeting beginning on September 20, 2021. This meeting provides the Department with an opportunity to help direct the long-term strategic direction of CSBS as well as set its priorities for the coming year.*
- *Department staff attended the Independent Bankers Association of Texas (IBAT) Annual Convention held in Austin beginning on September 19, 2021.*
- *NDS staff continues to participate in State Examination System (SES) meetings to discuss and provide ongoing feedback to CSBS personnel regarding SES. SES is an examination management system developed by the CSBS to facilitate MSB examinations by improving communication and coordination among the states and licensees. NDS continues to assess SES system functionality during select examinations.*
- *The agency is an active member of the Multi-State MSB Examination Taskforce (MMET). The Commissioner continues to serve as the Chairman of MMET. Regularly scheduled monthly calls are held to discuss issues impacting MSBs.*
- *The NDS Director continues to serve as a member of the MTRA Board of Directors. Routine calls and meetings are held to discuss MSB matters.*
- *Commissioner Cooper continues to represent the state banking supervisors on the Financial Stability Oversight Council (FSOC) and attends the meetings of this council.*
- *The General Counsel served on the CSBS SRR Lawyers Committee until July 2022; the Deputy General Counsel now serves on that committee.*
- *Commissioner Cooper serves on various CSBS Committees, including:*
 - *Regulatory Committee Member At-Large*

- *Chair of District IV*
- *Finance Compensation and Benefits Committee*

II.3 **Objective:** Maintain an ongoing awareness of our bank and trust entities' risk profiles and the condition of the economy in which they operate. Monitor individual or systemic conditions, including the continuing economic effects of the COVID-19 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 other regulators, and attend training to maintain an understanding of conditions in which our entities operate. Maintain a leading role in the effort to combat cybersecurity threats. Maintain an off-site monitoring program of bank and trust industries while initiating appropriate regulatory responses and actions when applicable. Research and take required actions against institutions with unacceptable risk profiles to minimize the adverse impact on depositors, shareholders, and the banking system in general. Maintain a current bank watch list reflecting entities with a heightened risk of becoming a problem bank.

- *Commissioner Cooper continues to represent the state banking supervisors of the Financial and Banking Information Infrastructure Committee (FBIIC) and attends the meetings and briefings of this group. Director of IT Security Examinations also attends meetings related to cybersecurity.*
- *B&T and NDS are monitoring the developments in Ukraine as well as other state, national, and world political and economic events impacting the industry. Both divisions continue to monitor and respond to changing circumstances brought about by the COVID-19 pandemic on all regulated entities.*
- *B&T is monitoring the impact of rapid rising interest rates on the banking industry.*
- *B&T and NDS continue to monitor cybersecurity incidents and the impact on the regulated entities and consumers. Incidents are reviewed in coordination with an Information Technology (IT) Specialist, as needed.*
- *Based on available resources and certain risk factors, NDS continues to collaborate with the IT examination staff to conduct reviews of IT systems of MSB license holders. Coordination of IT reviews are also conducted to the extent possible with other MSB state regulators as part of the network supervision of MSBs.*
- *B&T continues to monitor the condition of banks and trust companies between examination through our off-site monitoring programs. These programs consist of quarterly reviews of call report data, the use of data analytic tools, and conducting calls to bank management. The division's watch list of institutions exhibiting heightened risk is monitored and adjusted quarterly.*
- *B&T and NDS continue to ensure that appropriate supervisory action is taken on intuitions exhibiting an unacceptable risk profile.*

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

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

- *Department staff participated in a combined total of 16 regulatory panel discussions and cyber security presentations in fiscal year 2022.*
- *On May 26, 2022, a Prepaid Funeral Guaranty Fund Advisory Council meeting was held via teleconference. The funds' activities covering March 1, 2021, to February 28, 2022, were discussed.*
- *The Department issued [Industry Notice 2022-05](#), Amendment to Rule Requiring Notification of a Computer Security Incident by a Texas State-Chartered Bank, on August 22, 2022. The notice highlighted the Department's rule change for state-chartered banks to notify the Department of computer security incidents. The rule amendment reduced regulatory burden by allowing state banks to provide the Banking Commissioner the same computer security incident notification to their federal regulator as required under federal law.*
- *NDS staff continues to participate in various MMET and MTRA committees, including the MTRA Examination Standards Committee tasked with updating the MSB work program and the MTRA Licensing/Emerging Issues calls. The Department also participates in routine scheduling calls and meetings facilitated by the MMET to coordinate multi-state examinations as part of the Networked Supervision of MSBs, and discuss current supervisory issues impacting the MSB area, including cryptocurrency related matters.*
- *NDS staff is a member-at-large of the Executive Committee of the DCRA, which strives to promote a forum for death care regulators to discuss problems affecting the public and death care industry.*
- *On October 25, 2021, NDS staff participated as a speaker at the annual convention of the Texas Cemeteries & Crematories Association in Fort Worth. The annual convention discusses various concerns and issues relating to cemeteries and crematories in Texas.*
- *The Department issued [Industry Notice 2021-07](#), Cybersecurity Awareness Month: Focusing on the Fundamentals, on October 6, 2021. The notice highlighted the fact that the majority of successful cyberattacks are the result of a failure to follow well-established cybersecurity practices. Additionally, the notice provided a link to a short video that highlights a three-step strategy for managing cybersecurity threats in a community bank.*
- *Staff monitored entity office and business closures caused by COVID-19 exposures, Hurricane Nicholas in September 2021, and both Winter Storm events in February 2022. Events of prolong significance were reported to the Finance Commission.*

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

Measure: Monitor for 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 applicable industries. Refer cases as needed to local, state, or federal law enforcement agencies or the Texas Attorney General.

- *Agency staff continues to monitor regulated industries and initiate enforcement actions against both licensed and unlicensed entities that are engaging in apparent illegal practices. For fiscal year 2022, the following actions were taken against individuals and entities:*
 - *Issued one consent order against a bank.*
 - *Issued two orders of bank supervision.*
 - *Issued three removal and prohibition orders against bank employees.*
 - *Brought one case to hearing involving a bank employee.*
 - *Issued eight consent orders against unauthorized money transmitters.*
 - *Issued one consent order against a licensed money transmitter.*
 - *Issued one cease and desist order and revoked license of a currency exchange operator.*
 - *Issued one consent order requiring payment of penalty and restitution against an unauthorized prepaid funeral contract seller.*
 - *Issued two cease and desist orders against unauthorized prepaid funeral contract sellers.*
 - *Brought one case to hearing involving an unauthorized prepaid funeral contract seller and issued final order requiring payment of penalty and restitution.*
- *Fifteen MSB entities were notified that they may be engaged in money transmission without a license; information is under review by the Legal Division.*

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 strategic planning goals for consumer activity performance measures.

- *Consumer assistance activity is reported at each Finance Commission meeting, which includes the percentage of written complaints resolved in 90 days and the number of written complaints resolved.*
- *All performance measures related to consumer assistance activities were met for the fiscal year.*
- *A Consumer Assistance Supervisor was hired in September 2021 to supervise and manage the daily operations of the consumer assistance activities area for commercial financial institutions and similar entities as well as maintain the goals and objectives of the area; develop and adhere to procedures and policies; develop priorities and standards to effectively and efficient coordinate and implement complaint activities.*

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 in response to changing COVID-19 conditions.

- *Reviewed and revised commercial examination procedures:*
 - *Planning & Control*
 - *Management and COVID-19 Supplemental Review*
 - *Officer's Questionnaire*
 - *Cryptocurrency Questions*
- *Reviewed and revised trust examination documents:*
 - *Level II Table of Contents*
- *Reviewed and revised information technology examination:*
 - *Planning & Control*
 - *Table of Contents*
 - *Request List*
 - *Scope Form*
 - *Wires and ACH*
- *Added new IT examination procedures:*
 - *Nonbank Work Programs – Baseline and Enhanced*
- *Updated examination reference materials for commercial, trust, and IT procedures*
- *Issued new Examiner Bulletin:*
 - *XB 2022-01 Ongoing Assessment of Pandemic Risks and Documentation Requirements for the Call-In Memo and Report of Examination Related to COVID-19 (for commercial examiners) - Issued January 2022*
- *Examiners' Council reviewed bank, trust, and information technology examination workpapers as required per Administrative Memorandum 2015. Findings were communicated to examination staff in a timely manner. (January/February)*
- *Reviewed and revised two money transmitter and one currency exchange MSB examination procedures to further enhance verifying compliance with applicable regulations.*
- *Reviewed and revised the Examination Notice and Request List for MSB to mirror the updates to the aforementioned MSB procedures.*
- *Reviewed and revised two PCC procedures to further enhance verifying compliance with applicable regulations.*
- *Reviewed and revised six PFC procedures to further enhance verifying compliance with applicable regulations.*
- *Updated examination templates for PCC and PFC procedures for consistency*
- *Updated in the NMLS system Money Transmission application instructions for obtaining a Texas Money Services Business license.*

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

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

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

- *Revised and issued the following Supervisory Memorandum (SM):*
 - *SM 1032 Policy for Other Real Estate Owned (OREO) for State-Chartered Trust Companies (November 2021)*

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

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

- *Reviewed 7 Texas Administrative Code (TAC), Chapter 3, State Bank Regulation rules in accordance with requirement in Texas Government Code § 2001.039. Determined that chapter should continue to exist and identified several rules in the chapter that should be amended. These amendments included revising 7 TAC, § 3.24, to streamline requirements for reporting cybersecurity incidents to conform with changes in federal law. Changes became effective September 8, 2022.*
- *Effective September 8, 2022, changes were made to 7 TAC, § 5.107, to formalize the finance agencies' family and sick leave pool procedures.*
- *Effective September 8, 2022, changes were made to 7 TAC, § 17.3, concerning sale or lease agreements with trust company insiders.*
- *Reviewed 7 TAC, Chapter 33, Money Services Businesses rules in accordance with requirement in Texas Government Code § 2001.039. Determined that chapter should continue to exist, and recommended amendments at the February meeting of the Finance Commission. Changes became effective May 12, 2022.*

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

Measure: Periodically update the Department's financial education web pages and brochure. Highlight financial institutions with active programs in agency publications. Participate in financial education events and webinars throughout the year.

- *The Department presented a financial education webinar on August 31, 2022, titled "Understanding Your Credit". Eighty-five attendees participated in this webinar.*
- *On April 27, 2022, 67 participants attended the Department, FRB Dallas and the OCC joint financial educational webinar titled "Building Wealth".*

- *On February 24, 2022, a financial education webinar was held titled “Money Smart: Values, Influences, Spending and Saving” and was presented jointly by the Department and OCCC. Thirty-four attendees participated in this webinar.*
- *On November 18, 2021, 30 participants attended the Department and OCCC joint financial education webinar titled “Holiday Spending”.*
- *The October 2021 edition of the Texas Bank Report featured two financial education articles: “Financial Literacy Initiative Passes 87th Regular Session” and “Financial Education Webinars: Are You in the Know.”*
- *The [financial education brochure](#) and Department’s financial education [web page](#) were reviewed and updated in October 2021.*

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

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

Measure: Actively recruit entry level positions at state universities and colleges by attending job fair events (if available) and supporting banking programs at Texas universities. Utilize recruiting platforms that reach a wide talent pool. Promptly post vacancies. Periodically review and update personnel policies and procedures with changes due to the 87th legislative session.

- *Forty-two positions were posted from September 1, 2021 through August 31, 2022.*
- *Hired three Financial Examiner I and two Financial Examiner II in NDS.*
- *Hired one Human Resources Specialist IV and one Human Resources Specialist III in Human Resources.*
- *Hired one Administrative Assistant V in Corporate Activities.*
- *Hired eight Financial Examiner I – Commercial, one Financial Examiner VII – Commercial, one Financial Examiner I – Trust, two Financial Examiner I – IT, and two interns in B&T.*
- *Hired two Attorney II and one Law Clerk in Legal.*
- *Hired one System Support Specialist in MIS.*
- *Hired one Accountant VII and one Accountant IV in Administrative Services.*
- *Revised internal hiring procedures and forms.*
- *Utilized LinkedIn account to actively recruit.*
- *Updated Department jobs website page to enhance user experience.*
- *Created a new recruiting brochure for use at career fairs.*
- *Agency representatives attended twelve career fairs.*
- *Created a new Compensation Resource webpage on our intranet that includes the Department’s Compensation Administration Guide and Career Planning Guide.*
- *Updated Recruitment/Workforce Diversity/Equal Employment Opportunity Plan.*
- *Revised Administrative Memo 2007 to reflect CAPPS time reporting codes.*

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

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

- *Agency fiscal year 2022 turnover rate through August 31, 2022, was 17.96%. Agency turnover excluding retirements was 13.17%. Financial Examiner turnover was 14.17%. Financial Examiner turnover excluding retirements was 10.84%.*
- *Through August 31, 2022, the agency hired 28 employees and lost 30.*
- *Promoted 31 individuals to positions with increased responsibility and qualifications.*
- *Administered annual performance appraisals for calendar year 2021 using NEOGOV in February 2022.*
- *Administered and received results from UT Survey of Employee Engagement. Received feedback from Employee Advisory Council with Executive recommendations.*

- IV.3 **Objective:** Transition to the Centralized Accounting Payroll/Personnel System (CAPPS) HR/Payroll.

Measure: Report on activities related to CAPPS HR/Payroll transition and implementation.

Update:

- *Attended CAPPS HR/Payroll meetings with Comptroller of Public Accounts implementation team.*
- *Identified and addressed gaps in current Department business processes with CAPPS capabilities.*
- *Reviewed conversation data and provided additional data from Department PERS HRIS for inclusion in CAPPS files.*
- *Participated in User Acceptance Testing.*
- *Successfully launched CAPPS HR/Payroll as of July 1, 2022.*
- *Created Department specific CAPPS employee self-service and manager self-service training.*
- *Provided staff with live CAPPS HR/Payroll training demonstrations.*
- *Offered continuous troubleshooting and user support.*

- IV.4 **Objective:** Maintain up-to-date computer hardware and software to enhance the effectiveness, speed and quality of the work products that are compatible with our federal counterparts. Provide timely technical support and training to staff.

Measure: Provide technology tools necessary for staff to perform their job functions efficiently, effectively, and securely. Where appropriate, provide technology solutions that support Department wide remote work in accordance with agency determined limitations. Maintain software currency in accordance with the Department of Information Resources guidelines. Ensure network, website, and databases function appropriately and without prolonged downtimes.

- *Ordered and received replacement computers for staff. Coordinating deployment of the equipment with regional offices for final deployment.*
- *Regional office networks were updated in the fiscal year.*
- *MIS continues to move all feasible services to the cloud. The migration of applications and databases are in process while all other services have been migrated.*
- *The Document Exchange system is being replaced. The replacement process is underway. The new system will provide services via our cloud provider.*
- *Application Xtender replacement has commenced. This impacts all FC agencies.*
- *All Department of Banking regional office networks have been updated.*
- *Several internal programs have been moved to .Net and are cloud ready.*
- *PFC, PCC and MSB updates were completed as required.*
- *CAPPS HR has been deployed , data transactions between CPA and the Department have been established.*

- IV.5 **Objective:** Safeguard the integrity of data and information technology networks and systems from unauthorized access or use, ensuring that access to critical systems are available during an emergency to staff.

Measure: Perform an 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. Continue periodic intrusion testing by the Department of Information Resources for both the network and external facing web resources. Conduct an annual test of the Department's disaster recovery plan and initiate corrective actions to ensure operations will function appropriately. Execute quarterly information security tabletop exercises to ensure staff are ready to respond to various incident types, when and if they occur.

- *Completed two of the three recommendations identified in the bi-annual Texas Cybersecurity Framework Assessment Report. By July 31, 2022, the third recommendation was implemented.*
- *Conducted four tabletop exercises to ensure staff are ready to respond to various incident types.*
- *Cloud Security Review and update began in August and are underway. Initial steps are the review and updating of database services. Cloud Security Reviews will now be an annual activity.*

- *Drupal, a web content management system, was updated in July to version 8.*
- *Virtual private network (VPN) services were updated in April to the latest versions available.*
- *Automated patch management was deployed for all computers in April 2022.*
- *Internet Explorer was retired in October as a supported browser by the Department.*

IV.6 Objective: Ensure financial examiners receive adequate and proper training to perform their duties and progress within the financial examiner series.

Measure: Provide core required training courses to financial examiners in the FE I – FE III series so they can progress in the financial examiner series. Adequately prepare assistant examiners to successfully complete the Bank and Trust Supervision commissioning test. Continue agency efforts to provide continuing education to field examiners.

- *Thirty-nine examiners in the Financial Examiner I–III series attended 27 different training courses during fiscal year 2022.*
- *For fiscal year 2022, three examiners received their commission.*
- *A total of 121 examiners attended a two-day internal virtual Cybersecurity class held the week of January 18th.*

IV.7 Objective: Ensure agency expenditures are necessary and prudent and within budgetary constraints; revenues collected are adequate to cover expenditures; and provide a cash reserve or fund balance that complies with Finance Commission policies.

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

- *Monthly financial statements were provided to all divisions for review and reported quarterly to the Finance Commission.*
- *Budget variances are analyzed quarterly.*
- *For fiscal year 2022, actual revenues were at 87.2% of budget and actual expenditures were at 86.4% of budget.*
- *Cash reserves are within policy guidelines of at least two months, but no more than six months.*

IV.8 Objective: Periodically review internal controls and processes to improve the efficiency and effectiveness of the agency.

Measure: Report on improvements identified and implemented.

- *Administrative Memorandums (AM) revisions related to internal processes or procedures:*
 - *Reviewed and revised AM 2017 Accounting for State Property (November 2021).*

- *Reviewed and revised AM 2025 Internal Purchasing Procedures (January 2022).*
- *Reviewed and revised AM 2016 Investment Policy for Funds Under the Oversight of the Guaranty Fund Advisory Council (May 2022)*
- *Issued new Administrative Memorandum 2004 Information Security for Financial Crimes Enforcement Network (FinCEN) Data (July 2022).*
- *Reviewed and updated the Department's Contract Management Guide and Handbook (January 2022).*

IV.9 **Objective:** Continue to explore options for physical relocation of the Finance Commission agencies that meet the needs of all three agencies.

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

- *Real estate brokerage, architectural, and outside legal counsel services contracts are in effect for the relocation of the Finance Commission agencies.*
- *The agencies have been in communications with TxDMV and TxDOT with regard to the parcel on the Camp Hubbard campus. The site is anticipated to be available to the Finance Commission agencies in late 2023. The Finance Commission agencies and TxDOT are working together to implement a Memorandum of Understanding for the Camp Hubbard parcel.*
- *The agencies updated preliminary programming space needs and contacted the Texas Facilities Commission for an analysis and evaluation of the proposed project.*
- *The agencies made a formal request, consistent with the December action of the Finance Commission, to increase the reserves for long term facilities planning to the Office of the Governor, which is pending approval.*

IV.10 **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.

- *The Plan exercise was conducted and submitted to SORM in January 2022. SORM reviewed the plan and provided positive feedback.*

The Department of Banking is considered to be one of the top financial regulators in the country by our regulatory peers. We work hard to achieve and maintain this position and will continue to improve our processes and techniques to properly supervise the industries that we regulate and serve the citizens of Texas.

Office of Consumer Credit Commissioner

Agency Priorities Year-End Status Report

FY 2022

1. LEGISLATIVE

1.1. Legislative Interim Studies.

1.1.1. Objective: Participate in legislative interim studies and provide information and research to the Texas Legislature.

Measure: Respond promptly to legislative requests for information. Communicate with the Finance Commission regarding interim legislative activity.

Status: *The OCCC responded promptly to legislative requests for information. During the legislative interim, the Texas Legislature did not issue interim charges directly affecting the OCCC, and did not hold an interim hearing directly affecting the OCCC. The OCCC monitored interim charges that might indirectly affect the agency or its licensees, relating to data privacy, online consumer protections, virtual currencies, and remote work issues related to the state workforce.*

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.

Status as of 8/31/2022:

License Type	Examination Compliance	Enforcement Activity
<i>Pawnshop</i>	<i>100% acceptable level of compliance</i>	<i>5 injunctive actions 6 administrative penalty actions 1 license revocation</i>
<i>Regulated Lender</i>	<i>95.8% acceptable level of compliance</i>	<i>39 injunctive actions 27 administrative penalty actions 5 license revocations</i>
<i>Property Tax Lender</i>	<i>88.9% acceptable level of compliance</i>	<i>5 injunctive actions 1 administrative penalty action</i>

<i>Credit Access Business</i>	<i>97.0% acceptable level of compliance</i>	<i>23 injunctive actions 7 administrative penalty actions</i>
<i>Motor Vehicle Sales Finance</i>	<i>85.8% acceptable level of compliance</i>	<i>7 injunctive actions 4 administrative penalty actions 1 license application denial 2 license revocations</i>

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

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

Status: *The agency completed 3,149 examinations which is 105% of the annual goal for fiscal year 2022. The overall compliance rate is 92.3% for all five examination areas combined with each industry group meeting or exceeding the benchmark compliance rate of 85%. Restitution from examinations conducted is \$24.8 million as of August 31, 2022. During this period, the agency closed 133 enforcement actions concerning the five examination areas. The 133 closed cases include 79 injunctive actions, 45 administrative penalty actions, 8 license revocations, and 1 license application denial.*

2.1.3. Objective: 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.

Status: *OCCC examination and legal staff actively participate in the following committees of the National Association of Consumer Credit Administrators: Executive Committee, Auto Finance Committee (chaired by a senior OCCC examiner), Emerging Issues Committee (chaired by the OCCC's deputy general counsel), Consumer Finance Exams Standards Committee, and Legislation Committee. These committees, along with regular monthly member calls and other association events, provide a forum for the OCCC and other state agencies to collaborate and develop solutions to emerging issues, and provide a framework for states to coordinate examinations of multistate companies.*

2.1.4. Objective: 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 exams that examiners participated in and the number of examinations conducted through SES.

Status: *Senior examiners have led and experienced examiners have participated in four multi-state auto exams and two multi-state mortgage exams in FY22. The multi-state mortgage exams have utilized the SES. Staff have also participated in developing standards for consumer finance exams for use by multiple states. Exam staff have also been evaluating the recent nonbank cybersecurity exam tools for potential use.*

2.2. Licensing.

2.2.1. Objective: Process 85% of license applications within 60 days from received date to completion date. Provide professional development and training opportunities to licensing staff once per quarter.

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

Status: *At the end of Q4 the department has processed 57% of license applications within 60 days with an average processing time of 75 days. During FY22, multiple departures resulted in extended periods during which the department had challenges in filling vacant positions. The department focused on retaining key staff in FY 22. Certain positions were filled in early FY23 which will allow for the licensing specialists to provide more priority to application processing, which will in turn diminish processing time.*

3. POLICY AND RULE DEVELOPMENT

3.1. Rulemaking.

3.1.1. Objective: Complete rule reviews for the following rule chapters: 7 TAC Chapter 83, Subchapter A (relating to regulated lenders) and Chapter 88 (relating to debt management service providers). Work with stakeholders to clarify and improve rules.

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

Status: *The Finance Commission has completed these two rule reviews. In December 2021, the Finance Commission completed the rule review of 7 TAC Chapter 88 by readopting the chapter, with amendments proposed in a separate rule action. In February 2022, the Finance Commission completed the rule review of 7 TAC Chapter 83, Subchapter A by readopting the subchapter, with amendments proposed in a separate rule action. Before*

presenting these rule actions to the Finance Commission, OCCC staff posted advance notices of rule review and held webinars to obtain input from stakeholders.

In addition to these rule reviews, the Finance Commission completed three other rule reviews in FY 2022. In April 2022, the Finance Commission readopted 7 TAC Chapter 2 (relating to residential mortgage loan originators), with amendments proposed in a separate rule action. In June 2022, the Finance Commission readopted 7 TAC Chapter 85, Subchapter A (relating to pawnshops), with amendments proposed in a separate rule action. In August 2022, the Finance Commission readopted 7 TAC Chapter 86 (relating to registered creditors). Before presenting these rule actions to the Finance Commission, OCCC staff posted advance notices of rule review to obtain input from stakeholders.

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

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

Status: *In February 2022, the Finance Commission adopted rule amendments that implemented SB 1132 (2021) by adjusting registration fees for crafted precious metal dealers. In June 2022, the Finance Commission adopted rule amendments that implemented SB 15 (2021) by specifying requirements for motor vehicle records privacy. In August 2022, the Finance Commission adopted a new rule that implemented provisions of HB 2063 (2021) relating to family leave pools. Before presenting these rule actions to the Finance Commission, OCCC staff held webinars to obtain input from stakeholders.*

4. CONSUMER ISSUES / COMMUNICATION & OUTREACH STRATEGIES

4.1 Texas Financial Education Endowment Fund (TFEE).

- 4.1.1. Objective:** Conclude the TFEE 2021-2022 grant cycle, including monitoring the completion of award recipient's grant cycles, reporting on grant award program progress, and processing reimbursement requests. Begin the TFEE 2022-2023 grant cycle, including selecting award recipients, monitoring grant award recipients, reporting on grant award program progress, and processing 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.

Status: *The 2020-2021 grant cycle concluded on December 31, 2021. The 2020-2021 grant cycle Impact Report has been published and included grantee reporting data, financials, highlights, and grant program activities. The 2022-2023 grant cycle is underway and first period reimbursement requests have been processed. Agency staff are evaluating program needs and continue to conduct outreach to expand the grant program.*

4.2 Financial Education

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

Measure: Report on number of people and programs reached.

Status: *Agency staff provided financial education programs to 1,070 individuals during fiscal year 2022. OCCC staff partnered with other state agencies, civic groups, and community organizations to promote financial capability. Additionally, agency staff attended the Financial Literacy Summit and have expanded the agency's financial education course catalog. OCCC participated in 3 financial education webinars that were coordinated with the Department of Banking.*

4.3. Industry and Stakeholder Outreach

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

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

Status: *OCCC staff attended or participated in 45 events during fiscal year 2022. Agency staff presented at the TxDMV seminar on a recurring basis and also attended several events, including meetings or presentations for TPTLA, TCFA, and TIADA. Additionally, the OCCC hosted several rule review webinars. A staff member also serves on the board of the Texas Jump\$tart Coalition and Financial Examiners routinely participate in training events with NACCA and AARMR.*

5. AGENCY MANAGEMENT

5.1. Performance Measures.

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

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

Status: *The OCCC attained 73% of key performance targets attaining 8 of 11 measures. Two of the unmet measures relate to licensing. Due to staffing issues throughout the year, the licensing department was unable to meet their key performance measure targets. The remaining unmet measure related to turnover which trended slightly above the forecast due to economic conditions.*

5.2. Human Resources.

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

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

Status: *The turnover ratio is 17.5%, due to retirements, voluntary separations and inter-agency transfers. Interestingly, almost 1/3 of the turnover was attributable to short-term employees (less than one year). Significant efforts were undertaken to study and attempt to address competitive compensation schedules and career ladder promotions and adjustments. Work continues on employee retention strategies.*

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

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

Status: *Financial Examiners completed 40 hours of continuing education in Property Tax Lending, Consumer Lending, Home Equity Lending, CAB transactions, and Project Management Best Practices. Training events were held in person and via webinar throughout the year. Financial Examiners also attended NACCA and participated in continuing education workshops, initial training, regional training meetings, and field training. Seventy-two percent of Austin administrative staff attended some type of professional or job-related training during the period. Additionally, all OCCC staff completed cybersecurity training and privacy 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.

Status: *OCCC filled a vacancy in the HR Officer position as of September 19, 2022. Agency HR policies will continue to be reviewed and updated as needed. Supervisor training resources remain in development.*

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

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

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

Status: *The OCCC management monitors and reviews its financial status through monthly Operating Statements and Budget Analysis reports. These reports are also reviewed on a quarterly basis by the Finance Commission. Financial performance during FY 22 is within the budgeted levels approved by the Finance Commission. The fund balance has remained above the liquidity guidelines in FY22, with the year-end balance one month above the recommended level. The OCCC's financial operations in FY22 deliberately reduced revenues through enhancing discounts to the industry. This action had the effect of reducing operating reserves by almost the equivalent of one month. The OCCC will continue to closely monitor its financial position and make necessary adjustments.*

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

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

Status: *The Finance Commission agencies have continued to actively work on options towards a long-term solution for headquarters facilities. Real estate brokerage, architectural, and outside legal counsel services contracts are in effect for the relocation of the Finance Commission agencies. The agencies have been in communications with TxDMV and TxDOT with regard to the parcel on the Camp Hubbard campus. The site is anticipated to be available to the Finance Commission agencies in late 2023. The Finance Commission agencies and TxDOT are working together to implement a Memorandum of Understanding for the Camp Hubbard parcel. The agencies updated preliminary programming space needs and received an analysis and evaluation of the proposed project from the Texas Facilities Commission. The agencies made a formal request, consistent with the December action of the Finance Commission, to increase the reserves for long term facilities planning to the Office of the Governor, which is pending approval.*

5.4. Information Technology.

- 5.4.1. Objective: CAPPs Financial & HR Migration.** Complete OCCC migration to CPA's CAPPs (Centralized Accounting and Payroll/Personnel System) Financial system and undertake subsequent introduction of CAPPs HR system.

Measure: Successful, on-time transitions to Financial and HR systems.

Status: *OCCC successfully migrated to CAPPs-HR/Payroll in mid-July. CAPPs Financial was implemented at the beginning of FY'22.*

- 5.4.2 Objective: Remote Access Security Improvements.** Improve remote access security posture by introduction of new utility, coordinated under a DIR program.

Measure: Activation and successful deployment of utility.

Status: *In July, OCCC successfully adopted the multi-factor authentication utility offered by DIR for remote VPN access into agency internal systems, a significant enhancement to the security posture.*

- 5.4.3 Objective: Cloud Backup and Dark Capacity.** Improve continuity of operations by conversion of OCCC backup procedures to DIR's cloud services, and contract to using the Dark Capacity server recovery service. These are separate services which both improve the agency's posture for potential disaster recovery.

Measure: Commencement and completion of the initial data copy and subsequent updates.

Status: *The cloud backup service successfully went live in May. The predecessor backup method has been discontinued after a brief period of running in parallel. Dark Capacity server recovery service has been postponed for reasons outside of the agency.*

- 5.4.4 Objective: Web-based TPE Payment Page for Non-ALECS Transactions.** Update OCCC's payment options by introducing a payment webpage for digital transactions outside the scope of ALECS, executed through NIC's Transaction Processing Engine.

Measure: Progress on project implementation and reporting of revenue streamed through the webpage.

Status: *The project was successfully managed and completed, replacing a cumbersome manual process for certain types of transactions. The new payment engine functionality was successfully released in late August.*

- 5.4.5 Objective: ALECS Enhancements.** Continuing improvements to ALECS, including operations related to recent legislative requirements for Crafted Precious Metal Dealers (CPMD).

Measure: Deployment of CPMD functionality as defined and on time.

Status: *An ALECS build that deployed the legislative requirements for Crafted Precious Metal Dealers was released at end of November 2021.*

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Agency Priorities for Fiscal Year 2022

I. Legislative

I.1 Objective: Monitor Interim Charges that may affect the Department or its regulated industries.

Measure: Provide regular updates to the Finance Commission regarding interim legislative activities.

Status: *The Department has monitored the Interim Charges and has reported to the Finance Commission concerning such charges.*

I.2 Objective: Monitor federal legislation and regulations that may affect the Department or its regulated entities.

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

Status: *The Department has monitored federal legislation and has reported to the Finance Commission concerning legislation that may affect the Department or its regulated industries.*

II. Regulatory

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

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

Status: *The Department monitored quarterly financials reported by state savings banks to identify risks or trends in the portfolio and a summary of the portfolio was reported to the Finance Commission on a regular basis. During FY2022, the department has conducted 18 examinations of state savings banks. The Department has maintained the state savings bank priority examination schedule. During FY2022, no enforcement actions were issued against state savings banks.*

II.2 Objective: Continue compliance examinations of mortgage companies and Residential Mortgage Loan Originators (RMLOs), 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 found.

Status: *As of August 31, 2022, the Department has conducted 399 examinations of mortgage entities covering 13,217 mortgage loan originators. The Department maintained the mortgage examination schedule, as set by the Department policy, and issued formal and informal enforcement actions as deemed*

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necessary. The Department has provided information on the top violations to the industry on the Mortgage Examination page of its website and at various presentations to local associations.

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

Measure: Report on enforcement actions.

Status: For FY2022, the Department issued a total of 114 enforcement actions concerning the mortgage loan industry, an increase of approximately 30% as compared to FY2021. Several of such enforcement actions (76) related to the REES Multi-State Taskforce and Settlement whereby the Department, together with 43 other state regulatory agencies, jointly took action to address RMLO continuing education fraud.

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

Measure:

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

Status:

- a. The Department reported to the Finance Commission concerning the aging of complaints at each of its bi-monthly meetings during FY2022.
- b. Throughout FY2022, Department staff closely monitored the aging of open complaints and took measures to resolve any complaints open over 120 days. At the end of FY2022, there were no open complaints over 90 days, and the average number of days to close to a complainant was under 30 days.
- c. The Department conducted periodic complaint surveys throughout FY2022. Starting in December 2021, the Department began transmitting the survey on a monthly basis rather than quarterly, resulting in a modest increase in response rates (approximately 9%). Starting in July 2022, the Department began transmitting the survey in both English and Spanish. The Department reviews survey results each month to identify potential changes to its policies and procedures and opportunities for staff training concerning complaint investigations.

II.5 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.

Status:

- a. The Department has monitored the timeliness of the licensing process on an ongoing basis. In order to improve the processing times for license requests, during the first half of FY2022, the Department hired two License and Permit Specialists and used the services of two temporary employees to process residential mortgage loan originator applications (MU4s). For the second half of FY2022, the Department has used the services of, at least, one temporary employee to process residential mortgage loan originator applications. The Department has substantially reduced the processing time for the initial review of the company applications (MU1s), branch applications (MU3s) and the individual residential mortgage loan originator applications (MU4s).

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- b. *The Department conducted licensing customer service surveys quarterly and reviewed the results in order to identify any actionable items.*

II.6 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.

Status:

- a. *On September 10, 2021, the Finance Commission and Credit Union Commission published proposed amendments to the home equity interpretation rules (7 TAC §§153.1, 153.5, 153.12, 153.13, 153.17, 153.22, 153.26, 153.45 and 156.51) in the Texas Register, designed to (i) specify requirements for electronic disclosures and (ii) describe the applicability of the Texas Constitution's home equity provisions (Article 16, Section 50) to out-of-state financial institutions. On December 31, 2021, the amendments were published in the Texas Register for adoption and became effective on January 6, 2022.*

During the first half of FY2022 the Home Equity Lending Working Group held meetings to discuss potential amendments to the home equity interpretative rules of the Joint Financial Regulatory Agencies in response to an informal request for an interpretation (7 TAC §151.1(c)) received in August of 2021. On March 25, 2022, the Finance Commission and Credit Union Commission published proposed amendments to 7 TAC §153.1 in the Texas Register, designed to (i) amend the definition of "business day" to ensure that the definition appropriately excludes legal public holidays (including recognition of the Juneteenth National Independence Day), reflects the common understanding of "business day" in the context of mortgage loan disclosures, and is consistent with similar definitions under federal law, and (ii) make technical corrections to ensure consistency in the text of other definitions. On July 8, 2022, the amendments were published in the Texas Register for adoption and became effective on July 14, 2022.

- b. *The Department has implemented the rules and interpretations adopted by the Finance Commission.*

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

Measure:

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

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- c. Report to the Finance Commission on interaction with federal agencies in all of the above listed activities.

Status: *The Department maintained contact with regulatory agencies, including FDIC, FRB, CFPB and the various trade associations to coordinate supervisory oversight of the state savings banks and the mortgage industry. Deputy Commissioner, Stephany Trotti, participated in the regulator panel for annual IBAT convention as well as the Southwest Association of Bank Counsel. The Mortgage Regulation Division actively engaged in various webinar meetings with AARMR, CFPB, CSBS, NMLS and other state regulators to stay abreast of issues affecting the mortgage industry. Some of the webinars or meetings include the State/CFPB Mortgage Implementation Call, CSBS State Examination System Hive meeting, and NMLS Ombudsman meeting. Several members of the Mortgage Regulation Division also served roles with the AARMR Board of Directors, CSBS Performance Standards Committee, and NMLS Policy Committee. The Department reported participation in the above activities to the Finance Commission on a regular basis.*

II.8 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 and create a 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.

Status:

- a. *The Mortgage Grant Administration Manual was developed and created during FY2022 and will be formally presented to the Finance Commission Audit Committee for approval on October 28, 2022.*
- b. *The Commissioner appointed Andrea Herrera, Legal Assistant, as the Mortgage Grant Fund Grant Coordinator.*
- c. *The Mortgage Grant Advisory Committee Members have been identified and will be formally appointed when the Mortgage Grant Administration Manual has been approved by the Finance Commission Audit Committee.*
- d. *The Department reported to the Finance Commission concerning the Mortgage Grant Fund and the rules adopted to govern the Mortgage Grant Fund.*

II.9 Objective: Develop and implement policies and procedures for the examination or inspection of wrap lenders registered under Chapter 159 of the Texas Finance Code.

Measure:

- a. Develop examination policies and procedures for the examination or inspection of wrap lenders.
- b. Provide training to Financial Examiners regarding the new examination policies and procedures for the examination or inspection of wrap lenders.

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Status:

- a. *During FY2022, the Department completed policies and procedures for the examination or inspections of wrap lenders including changes to the Application Compliance Worksheet (ACW), an examination checklist used by the mortgage financial examiners.*
- b. *The Department has provided two training sessions to the mortgage financial examiners regarding the statutes and rules involving wrap mortgage loan transactions. The Department developed a training manual for examiners to use on wrap mortgage loan examinations.*

III. Policy and Rule Development

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

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

Status: *On September 10, 2021, the Finance Commission published in the Texas Register proposed changes to the Department's mortgage licensing rules identified during rule review. On October 29, 2021, the changes were published for adoption in the Texas Register and became effective on November 4, 2021.*

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

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

Status: *On September 3, 2021, the Finance Commission published in the Texas Register proposed new rules 7 TAC §80.206 and §81.206, designed to provide clear guidance to licensed mortgage companies and registered mortgage bankers concerning licensing/registration requirements for office locations and the ability for the employees and sponsored mortgage loan originators to work remotely. On October 29, 2021, the new rules were published for adoption in the Texas Register and became effective on November 4, 2021.*

In February 2022, the Finance Commission approved for publication in the Texas Register the proposed repeal and new rule of 7 TAC §80.204, and §81.204, designed to provide clear guidance to licensed mortgage companies and individual loan originators, and registered mortgage bankers concerning the books and records they are required to maintain to comply with applicable state and federal law (including Finance Code Chapter 159, Wrap Mortgage Loan Financing, which became effective on January 1, 2022).

On August 6, 2022, the Finance Commission approved for publication in the Texas Register proposed rule changes to 7 TAC Chapters 75, 76, and 77, arising from rule review. The Finance Commission will consider the rule changes on adoption at its meeting scheduled for October 28, 2022.

On August 6, 2022, the Finance Commission approved for publication in the Texas Register proposed rule changes to 7 TAC §79.4, concerning Bond Requirement, designed to render the rule compatible with electronic surety bonds for residential mortgage loan servicers registered with the Department under Texas Finance Code Chapter 158. The Finance Commission will consider the rule changes on adoption at its meeting scheduled for October 28, 2022.

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III.3 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.

Status: During the first half of FY22, rule changes were adopted to implement HB3617 and SB1900 and the enactment of changes to Finance Code §156.2041 and §156.2042, concerning the elimination of physical office requirements for licensed mortgage loan companies.

During the same period, rule changes were adopted to implement HB3617 and the enactment of new Finance Code Chapter 156, Subchapter G, concerning the creation of the mortgage grant fund.

During the first half of FY22, rule changes and the new 7 TAC Chapter 78, Wrap Mortgage Loans, were adopted to implement SB43 and the enactment of new Finance Code Chapter 159, concerning the regulation of wrap mortgage loan financing.

During the first half of FY22, rule changes to amend 7 TAC §76.95, relating to Special Examination Fees, were adopted to clarify the examination authority over savings bank affiliates and third-party servicers, as a result of SB1900 and the enactment of changes to Finance Code Chapter 96.

IV. Industry Outreach and Communication

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

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

Status: The Mortgage Regulation Division has participated in numerous virtual and in person events with the mortgage industry including:

- On September 2, 2021, Director of Mortgage Regulation William Purce provided a virtual presentation to the Originator Connect Network's Texas Mortgage Round Up. The presentation included updates on the Department's progress in completing license requests and conducting examinations of residential mortgage loan companies and mortgage bankers.
- On October 12, 2021, Director of Mortgage Regulation William Purce provided an in-person presentation to the San Antonio Texas Mortgage Bankers Association. The presentation discussed: (1) the staffing changes within the Department; (2) current licensing issues, (3) mortgage examination issues; (4) common complaint issues; and (5) the upcoming new regulations.
- On November 8, 2021, the Department held its 9th Annual Mortgage Industry Day at the Renaissance Dallas at Plano Legacy West Hotel in Plano, TX, and provided numerous presentations to the mortgage industry. The presentations addressed various topics including cybersecurity and information security plans.
- On February 22, 2022, Chief Mortgage Examiner Ellena Meier provided a presentation during the 2022 NMLS Annual Conference to address the "Facts and Fiction about (Mortgage) Accreditation."
- On April 6, 2022, Commissioner Hector Retta and Director of Mortgage Regulation William Purce provided an in-person presentation to the Austin Mortgage Bankers Association. The presentation discussed: (1) the current status of the Mortgage Licensing section; (2) common issues holding up company, branch and RMLO applications; (3) the number of examinations conducted; (4) common examination violations or findings; (5) adopted regulations including the remote work regulation and

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safeguarding of non-public personal information (Information Security Plan); and (6) an update on complaint issues.

- 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. The topics were generally the same topics discussed at the Austin Mortgage Bankers Association.
- On July 19, 2022, Commissioner Hector Retta and Director of Mortgage Regulation William Purce provided an in-person presentation to the Greater Houston Association of Mortgage Professionals. The topics were generally the same topics discussed in the Austin Mortgage Bankers Association.
- On August 10, 2022, Chief Mortgage Examiner Ellena Meier was a moderator for State Hot Topics Examination panel at the American Association of Residential Mortgage Regulators' (AARMR) 2022 Annual Conference.
- On August 10, 2022, Manager of Licensing Chris Osuna was a panelist on the State Hot Topics Licensing panel at the American Association of Residential Mortgage Regulators' (AARMR) 2022 Annual Conference.
- Beginning in September 2021, the Mortgage Regulation Division held monthly emerging issues webinars with interested stakeholders to address issues affecting the licensing and examination of mortgage-related entities or individuals.

The Thrift Regulation Division participated in numerous virtual and in person events with the state savings bank industry including:

- On September 18-21, 2021, Deputy Commissioner Trotti attended and spoke at the Independent Bankers Association of Texas (IBAT) annual convention in Austin, Texas. The four-day event took an in-depth look at key issues affecting the banking industry, specifically those related to community banks.
- On September 9, 2021, the Department held the 14th Annual Thrift Industry Day virtually/in person. Celeste Embrey (TBA), John Fleming (TMBA), and Steve Scurlock (IBAT) provided the industry with a legislative updates. Jeremy Wilson with the Department of Information Resources discussed emerging issues and best practices regarding cybersecurity. The Thrift Regulation Division staff made presentations relating to topics of interest to the industry.
- On October 7, 2021, Deputy Commissioner Trotti spoke on the Regulatory Panel at the Southwest Association of Bank Counsel's 2021 Annual Legal Conference in San Antonio, Texas. The conference covered legal issues affecting the day-to-day management of banks.
- The Thrift Regulation Division held emerging issues webinars for state savings banks monthly to address and bring awareness to issues affecting financial services.

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.

Status: During FY2022, the Department filled thirteen positions and had ten separations of employment, including two retirements. During the year, 100% of the personnel received job-related training. The Department began the development of an internship program.

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

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

Status: *The Department reports quarterly its performance to the Finance Commission. As of the end of the FY2022, the Department has met or exceeded all key performance measures.*

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

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

Status: *During FY2022, the Department underwent through an internal audit of the Legal and Enforcement area. As of August 31, 2022, there are no outstanding audit findings, recommendations, or observations. Business processes, however, continue to be reviewed and improved as necessary.*

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

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

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

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

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

Status: *The updated Department's website was published in October 2021. The Department's Information Resources staff worked with DIR and third-party contractors to transition of the Department's network to the Data Center. The Department's externally-faced systems and applications underwent an External Network Penetration Test and Web Application Vulnerability Scan. As deemed appropriate, the Department has implemented critical patches, updates, and upgrades to the network and staff computers.*

V.6 Objective: Deploy the Centralized Accounting and Payroll/Personnel System (CAPPS) Financials' Core Modules: Asset Management, Accounts Payable, General Ledger, and Purchasing. Prepare for the deployment of the CAPPS Human Resources/Payroll Modules, scheduled for September 1, 2022.

Measure: Provide necessary information and documentation, perform tasks, and participate in onboarding and deployment activities, as required by Comptroller of Public Account's CAPPS Teams and according to

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the Interagency Cooperation Contract for CAPPs Services between the Texas Comptroller of Public Account and the Department of Savings and Mortgage Lending.

Status: *The CAPPs Financials modules were deployed successfully in the beginning of FY2022. The Department's staff actively participated in the deployment preparation activities of CAPPs HR/Payroll throughout the year. The CAPPs HR/Payroll modules were implemented in July 2022.*

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

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

Status: *The Department reported to the Finance Commission on the COVID-19 pandemic impact on the operational and examination activities on- and off-site, the staff, and the regulated industries.*

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

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

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

The agencies have been in communications with TxDMV and TxDOT with regard to the parcel on the Camp Hubbard campus. The site is anticipated to be available to the Finance Commission agencies in late 2023. The Finance Commission agencies and TxDOT are working together to implement a Memorandum of Understanding for the Camp Hubbard parcel.

The agencies updated preliminary programming space needs and contacted the Texas Facilities Commission for an analysis and evaluation of the proposed project.

The agencies made a formal request, consistent with the December action of the Finance Commission, to increase the reserves for long-term facilities planning to the Office of the Governor, which is pending approval.

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B.

Texas Department of Banking

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Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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To: Finance Commission Members

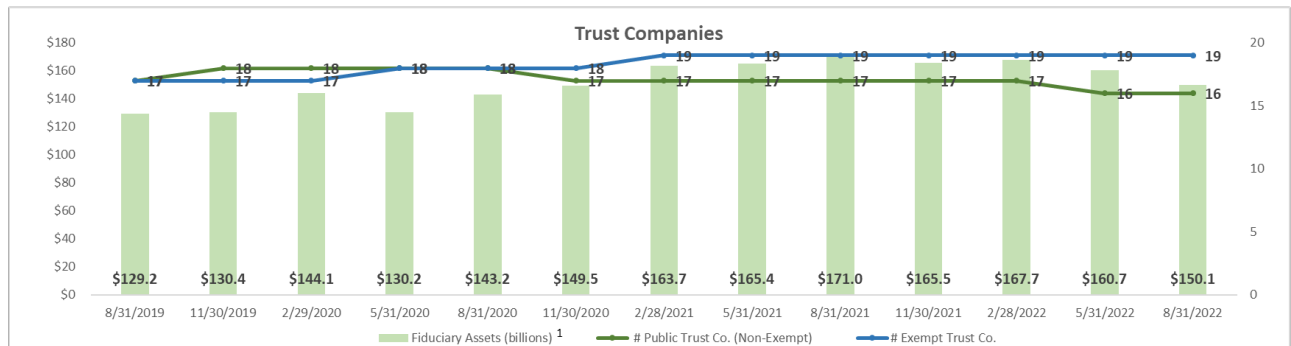
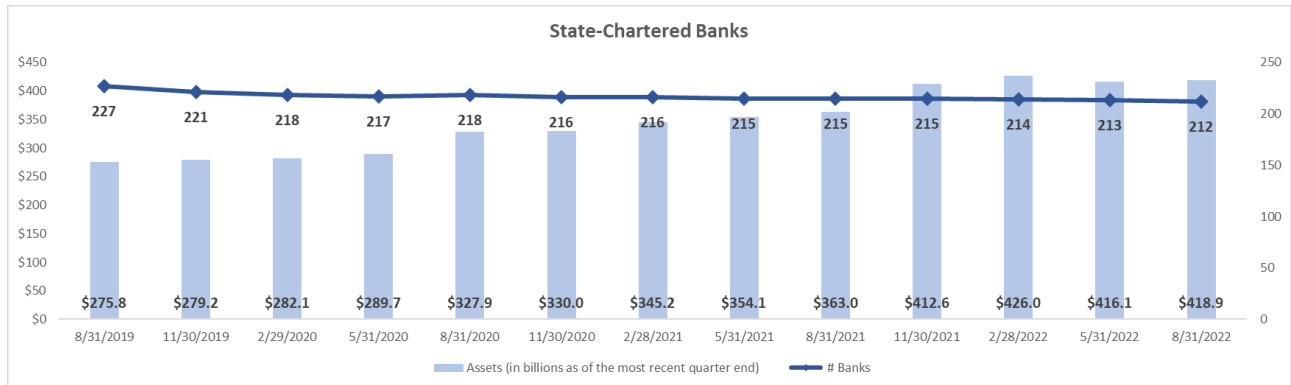
From: Dan Frasier, Director of Bank & Trust Supervision *DBF*

Date: October 5, 2022

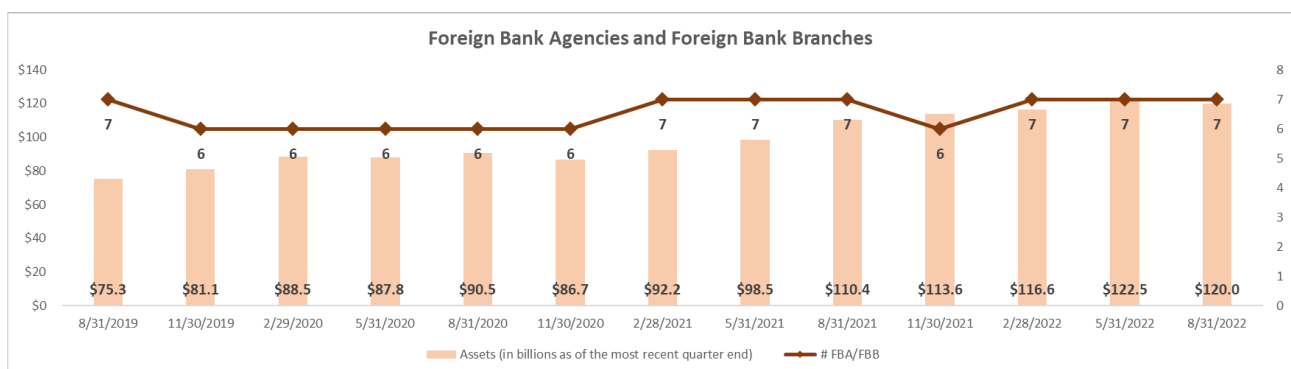
Subject: Summary of the Bank & Trust Supervision Division Activities

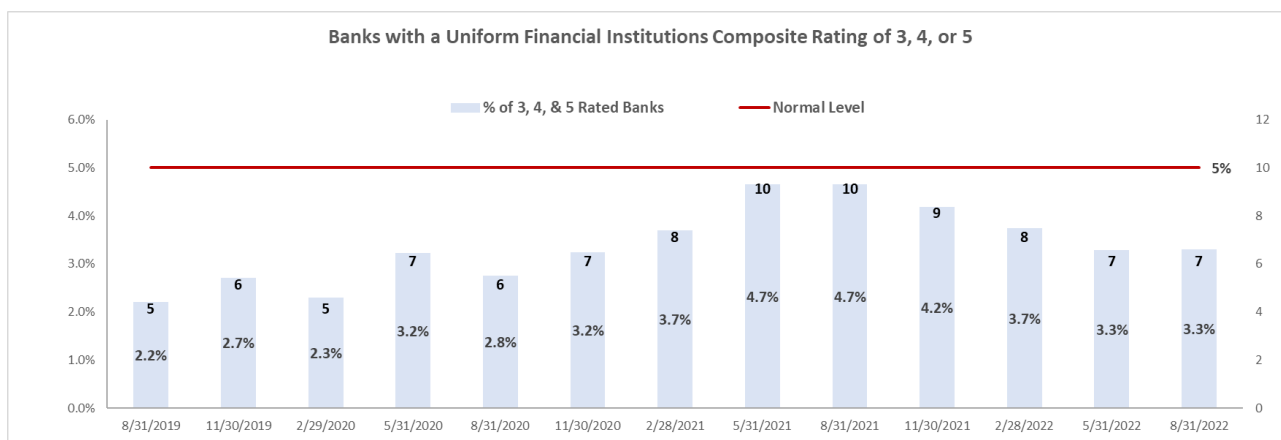
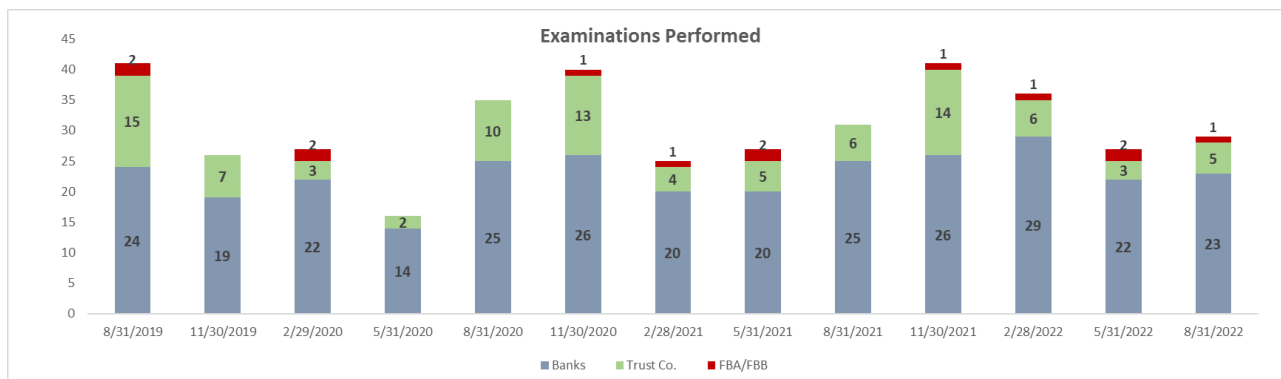
Bank and Trust Supervision – Industry Profiles

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



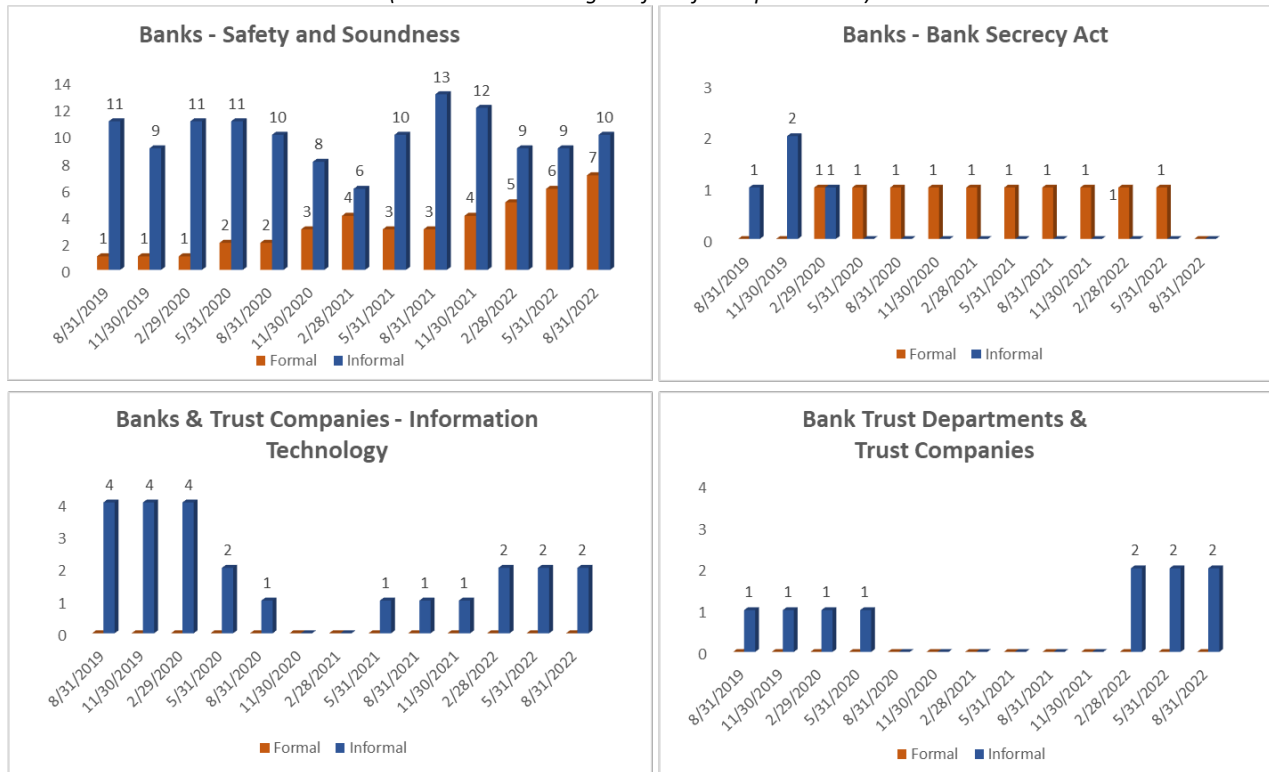
¹Fiduciary Assets for public trust companies (non-exempt) only as of the most recent quarter end.



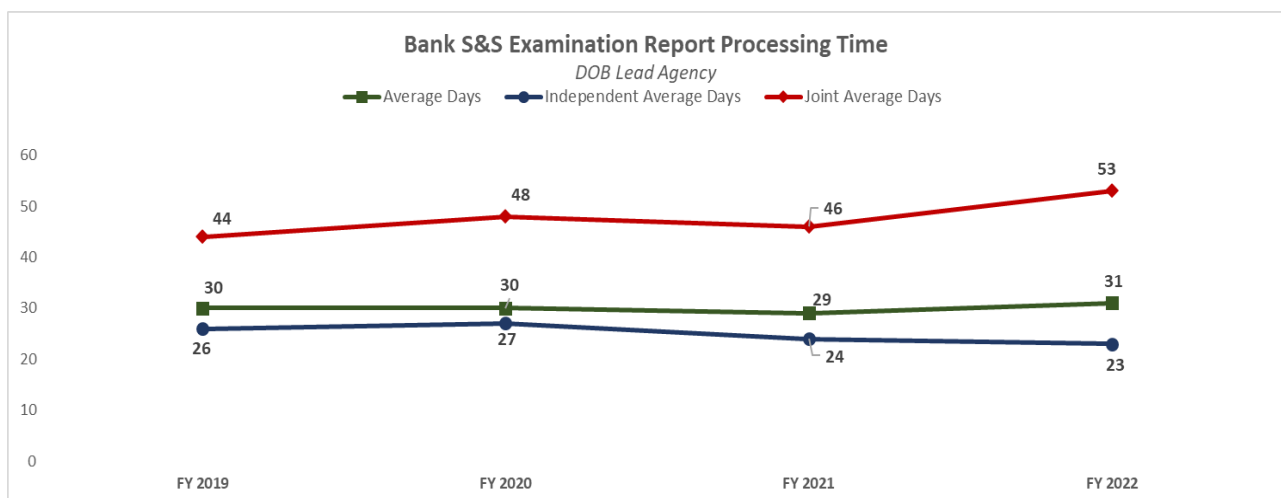


The Department considers any bank with a Uniform Financial Institutions Composite Rating of 3, 4, or 5, to be a problem bank. The number of problem banks remain in the normal range between 3% and 5% of the total number of institutions.

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.



The chart above depicts the number of days necessary to complete the processing of bank safety and soundness reports measured from the time the examination staff leaves the bank until a report is mailed to the bank. Reports for joint examinations on average take longer to process, primarily because joint examinations are typically conducted on larger banks and in problem institutions. Larger banks are typically more complex, and problem institution reports are more voluminous, and the vetting and report review process is more time consuming. Finally, the processing time is extended due to two regulators needing time to review and edit the report.

Compliance with Examination Priorities

Percent of examinations conducted within Department guidelines

Entity Type	FY 2021	FY 2022
Commercial Banks (All / DOB Only)	95% / 93%	96% / 92%
IT	98% / 100%	95% / 91%
Trust	97% / 100%	100% / 100%
Foreign Banks (FRB)	67%	92%
Trust Companies (DOB)	100%	96%

Examination categories with less than 95% of examinations conducted within guidelines include foreign bank examinations with one examination performed late by 104 days and IT examinations of trust companies with one examination late by 36 days.

Division Highlights

- **Interest Rates:** The Department continues to monitor the rapid rise in interest rates and the resulting risk to the banking industry as the Federal Reserve increases rates to combat inflation.
- **Banking Commissioner Charles G. Cooper Re-Appointed to FSOC:** Commissioner Charles G. Cooper was re-appointed on September 15, 2022, for a third consecutive term to serve as the state bank representative on the Financial Stability Oversight Council (FSOC). The FSOC consists of federal financial regulators, state regulators, and an independent insurance expert that are charged with identifying risks to the financial stability of the United States; promoting market discipline; and responding to emerging risks to the stability of the United States' financial system.
- **Rule Requiring Notification of a Security Incident Amended:** The Department issued [Industry Notice 2022-05](#), Amendment to Rule Requiring Notification of a Computer Security Incident by a Texas State-Chartered Bank, on August 22, 2022. This notice alerts banks to the amendment to Title 7, Texas Administrative Code §3.24 which reduces regulatory burden by allowing state banks to provide the Banking Commissioner with the same computer security incident notification as is required under federal law.
- **Special Operations and Conferences:**
 - o Beginning on August 2, 2022, Commissioner Cooper represented the Department at the Financial and Banking Information Infrastructure Committee and the Financial Services Sector Coordinating Council (FBII/C/FSSCC) Joint Meeting, Summer 2022 in Washington, D.C.
 - o On September 8, 2022, many Department staff from headquarters and the regional offices met with staff members from the Federal Reserve Bank of Dallas. The Regulator Outreach Meeting was held virtually, and covered topics including payment system risk, discount window operations, management of daylight and overnight credit, and bank condition monitoring.

- o Beginning on September 12, 2022, Commissioner Cooper, Deputy Commissioner Wendy Rodriguez, General Counsel Catherine Reyer, Director of Bank & Trust Supervision Dan Frasier, Regional Director (RD) Jacqueline Willardson, Director of Non-Depository Supervision Jesse Saucillo and Review Examiner (RE) Jared Whitson represented the Department at the Conference of State Bank Supervisors (CSBS) Supervisory Strategic Planning Meeting in Big Sky, Montana. This meeting provides states with an opportunity to help direct the long-term strategic direction of CSBS as well as set its priorities for the coming year.
- o Director of Examination Support Activities Chris Robinson represented the Department on a regulatory panel at the Texas Bankers Association (TBA) 17th Annual Real Estate Lending School on September 14, 2022, in Austin, Texas.
- o On September 15, 2022, RD Tom Susany represented the Department on a regulatory panel at the TBA 2022 Annual Legal Conference in Fort Worth, Texas.
- o Beginning on September 24, 2022, Commissioner Cooper, RD David Reed, RD Susany, RE Melissa Dvoracek, Examiner Tim Anderson, and Examiner Lea Ann Wilson represented the Department at the Independent Bankers Association of Texas (IBAT) Annual Convention in Fort Worth. RD Tom Susany represented the Department on the bank regulatory panel during the conference.
- o Beginning on September 28, 2022, Commissioner Cooper represented the Department virtually at the hybrid 2022 Community Banking Research Conference in the 21st Century, St. Louis, Missouri. This conference, which is co-sponsored by CSBS, the Federal Reserve System, and the FDIC, focused on a wide variety of topics affecting community banks.



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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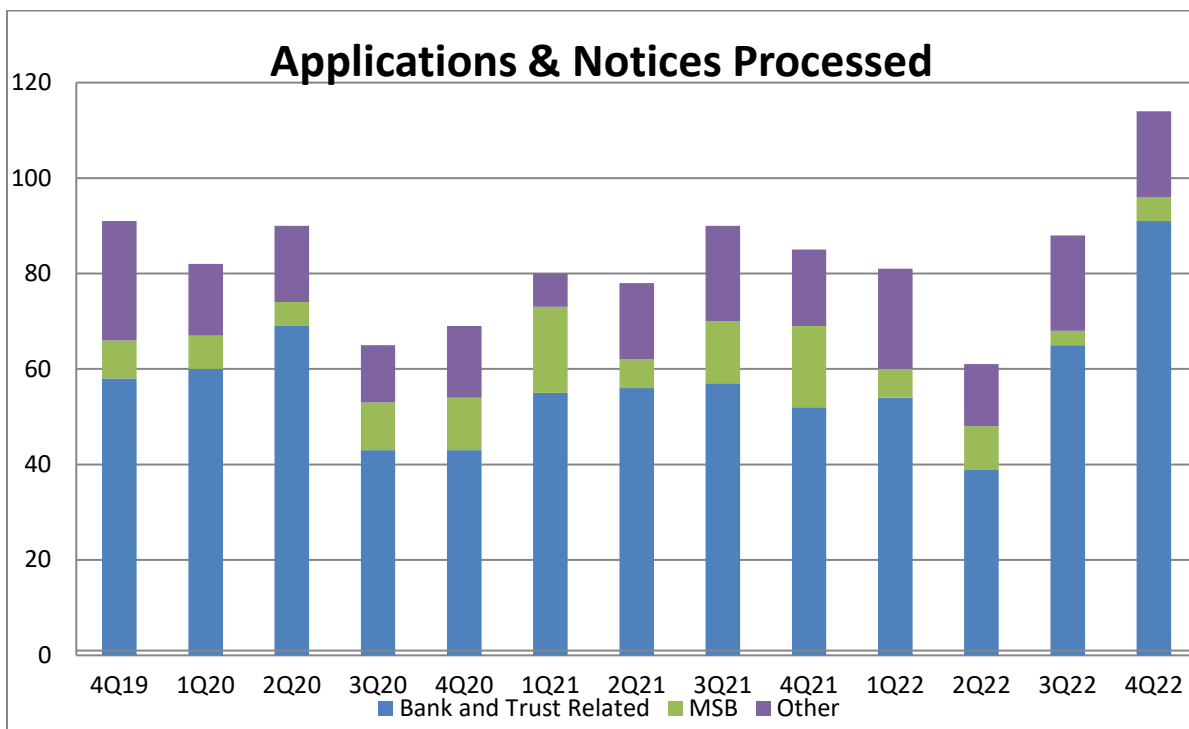
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To: Finance Commission Members

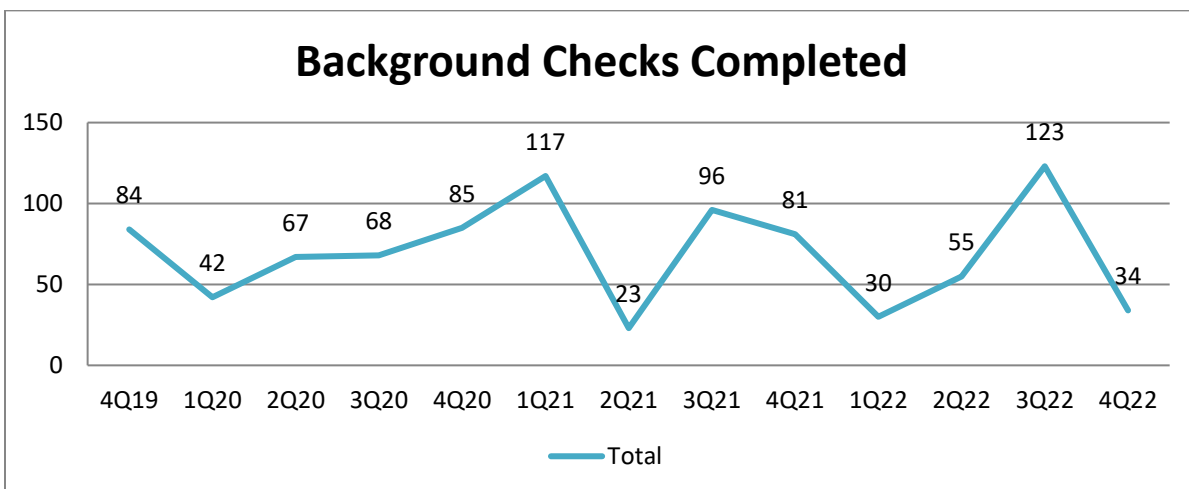
From: Mark Largent, Director of Corporate Activities

Date: October 5, 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 October 4, 2022)
Bank Related	33
Trust Companies	6
Money Services Business (MSB)	53
Others	4
Totals	96

Division Highlights

- Application volume increased compared to the level reported at the last Finance Commission meeting. Compared to our last report submitted, the Corporate Division's filings presently under review by category type changed by:
 - Bank related increased 14(74%)
 - Trust company was constant 0 (0%)
 - MSB related increased 4 (8%)
 - Other increased 1 (33%)
- Various personnel measures are being implemented to help address the continuing significant volume of applications. These measures include assigning, on an interim basis, a Bank and Trust Supervision Review Examiner with prior corporate analyst experience to the Corporate Division. Later in October, a Bank and Trust Supervision examiner will be reassigned to the Corporate Division. In addition, interviews conducted in response to several postings for corporate analyst positions have been completed and job offers are currently being processed.
- Significant Filings:
 - Worthington National Bank, Arlington, Texas, has applied to convert to a Texas state bank charter under the name of Worthington Bank [estimated gain in state banking assets of approximately \$540 million].
- **Charter, Conversion, and Merger Activity** – Since the last report to the Finance Commission, the following transactions have consummated:
 - *Banks*
 - Texas Traditions Bank, Katy, Texas, a de novo Texas state bank, opened for business [estimated gain in state banking assets of approximately \$35 million].
 - CommunityBank of Texas, N.A., Beaumont, Texas, merged into Allegiance Bank, Houston, Texas [estimated gain in state banking assets of approximately \$4.3 billion].
 - The Roscoe State Bank, Roscoe, Texas, merged into Cornerstone Home Lending, Inc., Houston, Texas, with the surviving entity known as Cornerstone Capital Bank, SSB, Houston, Texas [estimated loss in state banking assets of approximately \$220 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:
 - Director Mark Largent and Senior Corporate Analyst Greg Webb participated in the Money Transmitter Regulators Association Annual Conference in Fort Worth, Texas, on September 19-22.
 - Corporate Analyst Greg Webb virtually attended a “Supervisory Updates and Emerging Issues” seminar sponsored by the Federal Financial Institutions Examination Council on September 13th and 14th.



Charles G. Cooper
Commissioner

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To: Finance Commission Members

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

Date: October 1, 2022

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

			FY 2022							
Entity	FY 2021		1 st		2 nd		3 rd		4 th	
Industry Profile (# / Assets (billions))										
Money Services Businesses (MSB)	196	\$219.2	197	\$219.4	198	\$218.8	197	\$223.9	194	\$315.1
Prepaid Funeral Contract (PFC)	345	\$4.5	346	\$4.5	342	\$4.5	336	\$4.5	335	\$4.6
Perpetual Care Cemeteries (PCC)	243	\$401.8*	243	\$413.2*	243	\$420.8*	243	\$428.0*	244	\$435.6*
Check Verification Entities (CVE)	2	n/a	2	n/a	2	n/a	2	n/a	2	n/a
Examinations Performed										
MSB	79		19		20		25		27	
MSB Limited Scope	1		1		0		0		0	
MSB Accepted other State	5		6		2		3		5	
PFC	230		60		69		43		51	
PFC Limited Scope	0		0		1		0		0	
PCC	212		43		34		39		36	
PCC Limited Scope	0		0		0		1		1	
Ratings (# / %) Assigned to All Regulated Entities										
1	288	38.40%	288	38.35%	293	38.91%	290	38.62%	294	39.10%
2	392	52.27%	401	53.40%	398	52.86%	400	53.26%	401	53.32%
3	66	8.80%	58	7.72%	55	7.30%	52	6.92%	49	6.52%
4 & 5	4	0.53%	4	0.53%	7	0.93%	9	1.20%	8	1.06%
Noncompliance with Examination Priorities (Past Due)										
MSB	1		8		17		25		25	
PFC	0		1		0		1		1	
PCC	0		0		0		1		3	

NOTES:

Limited scope examinations do not receive a rating.

* PCC \$ amounts reflected in the millions.

Industry Profile and Ratings

A comparison of the ending FY 2022 to FY 2021 totals in the Industry Profile section of the previous page reflects that while the number of MSB license holders has decreased slightly, the total assets reported by licensed MSBs has increased by \$95.9 billion to approximately \$315 billion. An analysis of the MSB industry information reveals that the ten largest MSBs, as determined by asset size, account for over 75% of the total increase. The remaining industry statistics totals remain comparable with no significant variations to year-over-year growth.

No major variations were noted in the FY 2022 rating profiles of NDS license holders compared to FY 2021.

Examination Activities

As previously communicated in prior Finance Commission memorandums, NDS did not meet the *Quarterly Output Measure – Number of Licensees Examined* in the fourth quarter of FY 2022. The Department continued to be hampered by the financial examiner resignations that began in calendar year 2021. Specifically, from July 2021 to date, six or approximately 40% of the Division's financial examiners resigned and/or retired. Although NDS has filled these vacancies, most were in the training phase throughout FY 2022, which negatively impacted the number of examinations performed. Despite these limitations, NDS was within 1.5%, or approximately ten examinations, of meeting the acceptable quarterly output measure variance.

The number of MSB past due examinations has remained at twenty-five for both the third and fourth quarters of FY 2022, of which eight were conducted in September 2022, and nine are scheduled to be conducted between October and November 2022. The increase in past-due examinations is attributable to more examinations becoming due in FY 2022 as determined by the Department's examination frequency policy, [Supervisory Memorandum \(SM\) 1023](#), and MSB examination staff being in training in FY 2022. Of the twenty-five past-due MSB examinations, thirteen examinations were delayed in order to be conducted in coordination with other MSB state regulators as part of a nationwide joint examination process. The Networked Supervision of MSBs promotes a better, more efficient examination while also enhancing collaborative training and tools among state regulators.

The one-past due PFC examination and the three past-due PCC examination were conducted in September 2022.

The number of PFC, PCC, and MSB examinations conducted on-site continues to increase, primarily for in-state domiciled licensed entities. In addition to on-site and off-site examinations, the Department also continues to perform off-site monitoring of key financial metrics for licensed entities, and when necessary, additional information is requested and reviewed to ensure compliance with applicable regulations.

Division Activities

- Department staff, including Director Saucillo, participated in the Conference of State Bank Supervisors (CSBS) Board and Strategic Planning Meeting the week of September 12, 2022, in Big Sky, Montana. The meeting provided a forum to discuss the long-term strategic direction and the goal of CSBS as well as set its priorities for the coming year.

- Commissioner Cooper, Director Saucillo, and three MSB financial examiners participated in the 2022 Money Transmitters Regulators Association (MTRA) Annual Conference and Regulators' School (Conference) which began on September 19, 2022, in Fort Worth, Texas. Along with training to MSB financial examiners, the Conference provided an opportunity for MTRA member states and the MSB industry to discuss topics impacting MSB regulation. Director Saucillo was a speaker in some of the panels and presentations that discussed current matters impacting MSBs, such as the Networked Supervision approach. Director Saucillo continues to serve as a member of the MTRA Board of Directors.
- NDS staff continues to participate in various Multistate MSB Examination Task Force (MMET) and MTRA committees, including the MTRA Examination Standards Committee tasked with updating the MSB work program and the MTRA Licensing/Emerging Issues calls. The Department is also a member of a newly created Enforcement Action Taskforce charged with monitoring and coordinating MSB related issues on a national scale. Among other things, the taskforce, in coordination with CSBS and MTRA, will identify and monitor troubled institutions and risky behavior; develop enforcement policies and procedures; and coordinate responses to negative news that indicates safety and soundness concerns.
 - The Department continues to participate in multi-state coordinated discussions and regulatory actions through MTRA, and with other Texas state agencies, regarding an unlicensed cryptocurrency lender who filed for bankruptcy.
- Effective September 1, 2022, [SM 1031](#) regarding the examination frequency policy for PCCs was revised. After evaluating risk factors and examination results, the revision to SM 1031 was made to extend the examination frequency schedule for PCCs, without jeopardizing consumer protection. The revised extended examination frequency also assists in reducing the regulatory burden of well-managed PCCs.
- NDS continues to monitor and investigate non-compliant activity. During this reporting period, NDS initiated regulatory enforcement actions against licensed and unlicensed entities to ensure compliance with applicable rules and regulations to protect the rights and interests of Texas consumer.



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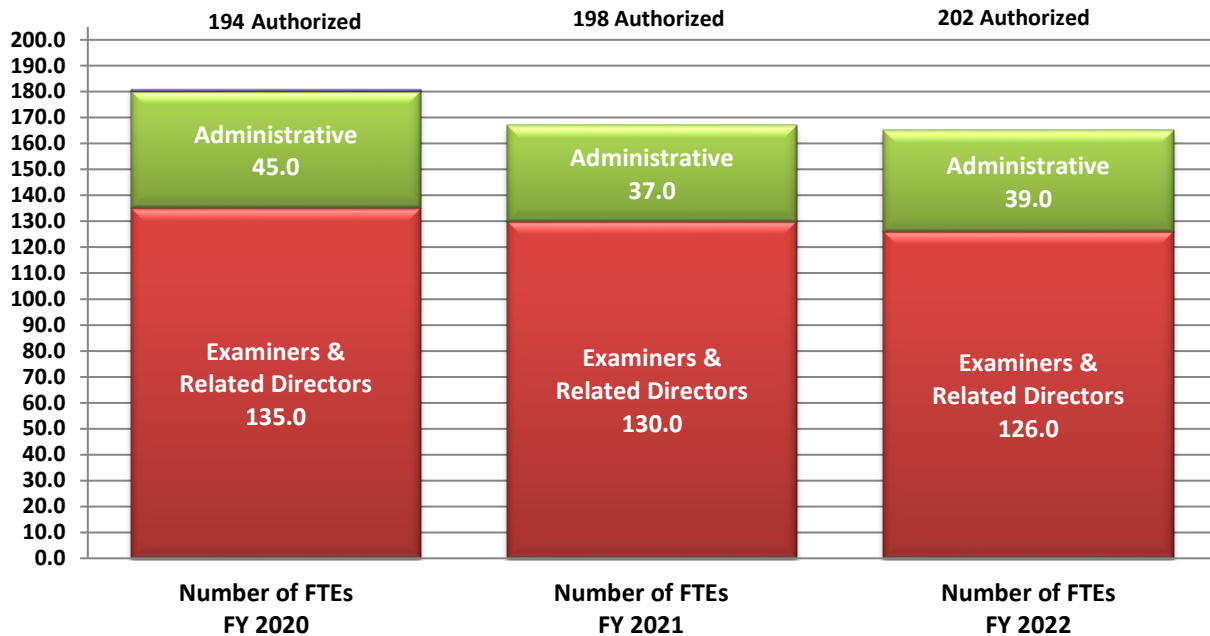
Memorandum

To: Finance Commission Members
From: Lori Wright, Director of Human Resources
Date: October 5, 2022
Subject: Summary of the Human Resources Division Activities

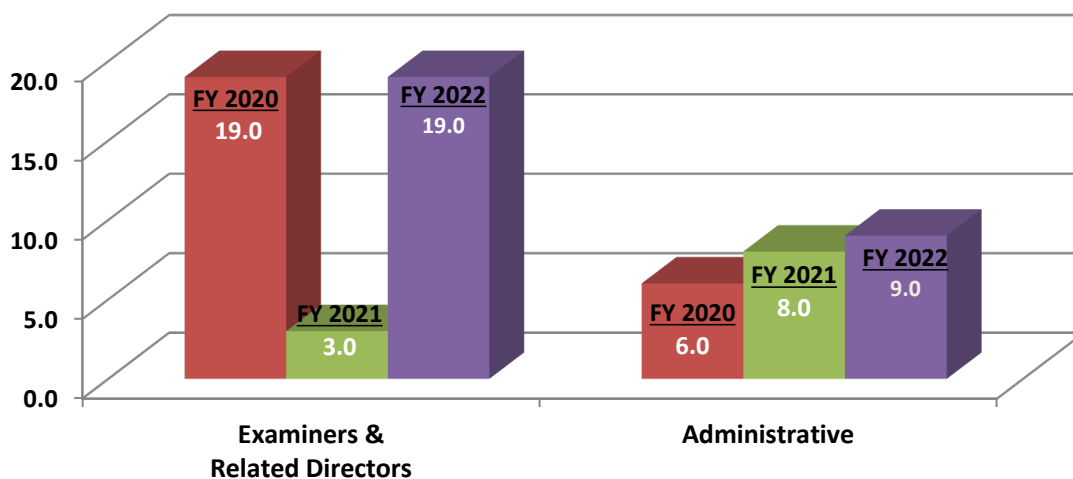
Active Postings				
Number of Positions	Position	Division	Status	Activities
1	Financial Examiner V-VI Corporate Analyst	Corporate	Open Until Filled	Offer Phase
1	Financial Examiner III-IV Corporate Analyst	Corporate	Open Until Filled	Offer Phase
1	Accountant V	Administrative Services	Open Until Filled	Recruiting
1	Compliance Analyst 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
1	Financial Examiner I-II (PFC/PCC)	NDS	Closed	Selection
11	Financial Examiner I Assistant Bank Examiner	Bank and Trust	Closed	Selection
1	Financial Examiner I Assistant Trust Examiner	Bank and Trust	Closed	Selection
1	Financial Examiner I Assistant IT Examiner	Bank and Trust	Closed	Selection
1	Financial Examiner VIII Regional Review Examiner	Bank and Trust	Closed	Selection

- Attending discovery meeting with Comptroller of Public Accounts for implementation of CAPPS Recruit.
- Supervisor Performance Evaluations (NEOGOV) launching November 2022.
- Reviewing State Auditor's Office Classification Plan for the 2024-2025 Biennium (recommended changes).

Texas Department of Banking Employee Data for Fiscal Years 2020, 2021 and 2022 as of 08/31/2022

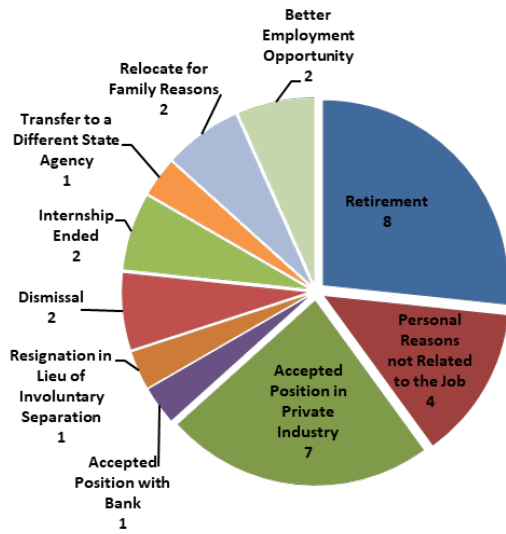


New Hire Data for Fiscal Years 2020, 2021 and 2022

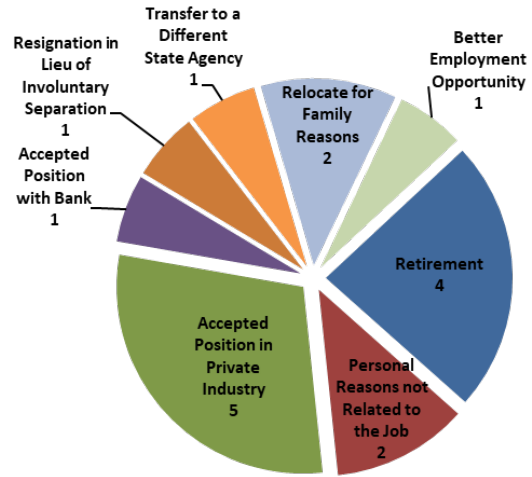


FY 2022 Employee Turnover Reasons

All Employees
30 Resignations



Financial Examiners Only
17 Resignations



As of 08/31/2022

ACTUAL PERFORMANCE FOR OUTCOME MEASURES

TEXAS DEPARTMENT OF BANKING

FISCAL YEAR 2022

8/31/2022

Actual Performance for Outcome Measures
Fiscal Year 2022
For Period Ending August 2022

Type/Strategy/Measure	2022 Target	2022 YTD	Percent of Annual Target
Outcome Measures - Key			
1-1 QUALITY BANK REGULATION			
1. % BANKS EXAMINED	95.00%	98.10%	103.26%
1-2 QUALITY NON-BANK REGULATION			
1. % MSB LICENSEES EXAMINED	90.00%	86.63%	96.26%
2. % PFC LICENSEES EXAMINED	95.00%	99.70%	104.95%
3. % PCC LICENSEES EXAMINED	95.00%	98.75%	103.95%
1-3 APPLICATION PROCESSING			
1. % B&T, MSB APPS COMPLETED	95.00%	98.37%	103.55%
1-4-1 APPLICATION PROCESSING			
1. % WRITTEN COMPLAINTS CLOSED	100.00%	100.00%	100.00%
1-5 OPERATIONAL EFFICIENCY			
1. % REGULAR EMPLOYEES SEPARATED	11.00%	17.96%	163.27%
Fiscal year 2022 turnover is higher than the target due to workforce factors related to the pandemic and other external labor force competition in the region that increased retirements and resignations.			
3. % ACTUAL EXPENDITURES TO BUDGETED	95.00%	83.40%	87.79%
The measure is below target mainly due to salaries and associated benefits and travel expenditures coming in lower than budgeted. This is due to vacancies and travel not increasing as expected due to the pandemic.			

*Varies by 5% or more from target.

ACTUAL PERFORMANCE FOR EXPLANATORY MEASURES

TEXAS DEPARTMENT OF BANKING

FISCAL YEAR 2022

8/31/2022

Actual Performance for Explanatory Measures
Fiscal Year 2022
For Period Ending August 2022

Type/Strategy/Measure	2022 Target	2022 YTD	Percent of Annual Target
Explanatory Measure - Key			
1-1-1 BANK EXAMINATION			
1. % BANKS CLASSIFIED SAFE & SOUND	95.00%	96.70%	101.79%

*Varies by 5% or more from target.

ACTUAL PERFORMANCE FOR OUTPUT/EFFICIENCY MEASURES

TEXAS DEPARTMENT OF BANKING

FISCAL YEAR 2022

5/31/2022

Department of Banking
Actual Performance for Output Measures
Fiscal Year 2022

Type/Strategy/Measure	2022 Target	2022 Actual	2022 YTD	Percent of Annual Target	Comparable Historical Data for the same time period			
					FY2021	FY2020	FY2019	FY2018
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%				
Quarter 1	94	23	99	105.32%	91	81	101	32
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.								
FY 2022, Quarter 4 - The number of bank examinations is above the target due to performing more joint examinations than projected in this quarter.								
	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%				
Quarter 1	230	49	234	101.74%	207	194	226	47
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%				
Quarter 4	520	120	486	93.46%	527	550	565	124
FY 2022, Quarter 4 - The measure is below the target due to financial examiner staff resignations and vacancies that existed throughout FY 2022. Although the MSB vacancies have been filled, two PFC/PCC vacancies exist as of end of FY 2022. Further, three NDS examiners are currently in the training phase. The inability to meet this quarterly output measure may continue into fiscal year 2023 until NDS is able to fill all vacancies and properly train financial examiners in the respective areas. In September 2022, the Department posted job notices to fill the two financial examiner vacancies.								
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%				
Quarter 4	324	118	364	112.35%	353	327	343	104
FY 2022, Quarter 4 - The higher than anticipated number of corporate filings were primarily the result of branch and related filings, Money Services Businesses and bank change of control filings, and Loan Production Office-related filings.								

ACTUAL PERFORMANCE FOR NON-KEY MEASURES

TEXAS DEPARTMENT OF BANKING

FISCAL YEAR 2022

8/31/2022

Actual Performance for Non-Key Measures
Fiscal Year 2022
For Period Ending August 2022

Type/Strategy/Measure	2022 Target	2022 YTD	Percent of Annual Target
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Non-Key Measures

1-1-1 BANK EXAMINATION

2. % FOREIGN BANK AGENCIES EXAMINED	100.00%	92.31%	92.31%
The percentage is below the target due to one past due foreign bank representative office examination.			
3. % TRUST COMPANIES EXAMINED	95.00%	96.30%	101.37%
4. % PROBLEM INSTITUTIONS WITH APPROPRIATE SUPERVISORY ACTIONS IN PLACE	100.00%	100.00%	100.00%
5. CERTIFICATE OF ACCREDITATION BY CSBS MAINTAINED IN GOOD STANDING	YES	YES	YES
8. AVERAGE COST PER BANK EXAMINATION	\$91,330.00	\$84,345.52	92.35%
The average cost per bank examination is lower than the target due to less examination travel than projected during the fiscal year.			
9. ASSETS EXAMINED PER EXAMINER DAY (IN MILLIONS)	\$11.60	\$11.18	96.38%
11. # STATE-CHARTERED BANKS IN TEXAS	212	212	100.00%
12. TOTAL ASSETS IN TEXAS STATE-CHARTERED BANKS (IN BILLIONS)	\$426.10	\$418.90	98.31%

1-2-1 NON-BANK EXAMINATION

4. % PCC AND PFC APPLICATIONS COMPLETED WITHIN STATUTORY PERIOD	95.00%	100.00%	105.26%
The Division exceeded the FY 2022 target due to being able to retain a PFC/PCC administrative staff that is knowledgeable and fully trained in the processing of applications.			
6. AVERAGE DIRECT COST PER PFC AND PCC LICENSEE EXAMINATION	\$2,750.00	\$2,524.68	91.81%
The Division's average cost per PFC/PCC examination was less than the target amount in FY 2022 due to: 1) not being fully staffed and 2) examinations continuing to be conducted off-site. As a result, travel expenses incurred were lower than budgeted.			
7. AVERAGE DIRECT COST PER MSB LICENSEE EXAMINATION	\$11,000.00	\$9,084.14	82.58%
The Division's average cost per MSB examination was less than the target amount in FY 2022 due to lower than budgeted examination related travel expenses as a result of most examinations continuing to be conducted off-site.			
8. DOLLAR AMOUNT OF PREPAID FUNERAL CONTRACTS IN FORCE (IN BILLIONS)	\$4.5	\$4.6	102.22%
9. NUMBER OF NDS LICENSEES	775	773	99.74%
10. PERCENTAGE OF NDS LICENSEES CLASSIFIED SAFE AND SOUND	95.00%	98.94%	104.15%

Actual Performance for Non-Key Measures
Fiscal Year 2022
For Period Ending August 2022

Type/Strategy/Measure	2022 Target	2022 YTD	Percent of Annual Target
-----------------------	----------------	-------------	-----------------------------

Non-Key Measures

1-3-1 APPLICATION PROCESSING

2. # WRITTEN COMPLAINTS CLOSED	225	271	120.44%
More complaints than anticipated were received and able to be resolved within the quarter.			

1-4-1 REGULATORY OVERSIGHT

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

1-5-1 OPERATIONAL EFFICIENCY

2. % REGULAR EMPLOYEES SEPARATED (EXCLUDING RETIREMENTS)	9.00%	13.17%	146.33%
Fiscal year 2022 turnover is higher than the target due to resignations related to workforce factors that are tied to the pandemic and other external labor force competition in the region.			

*Varies by 5% or more from target.



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

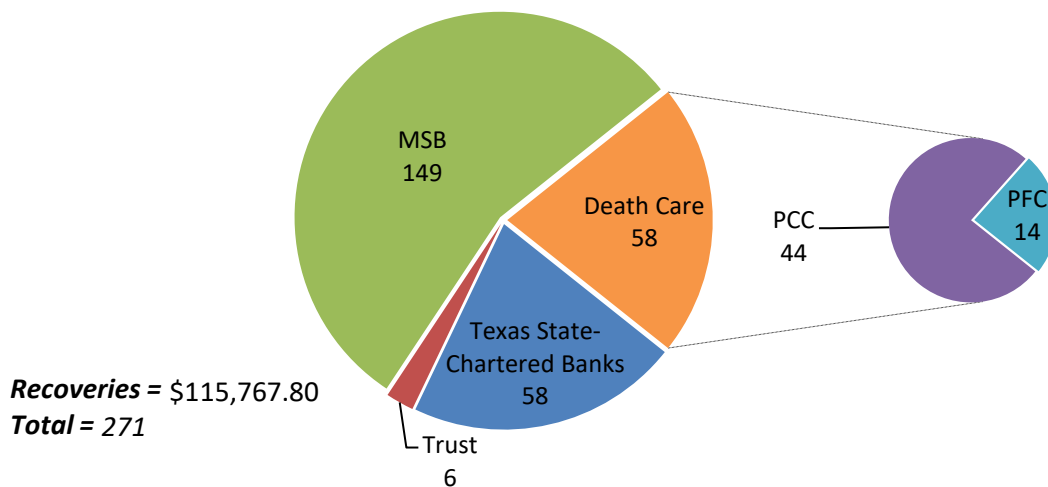
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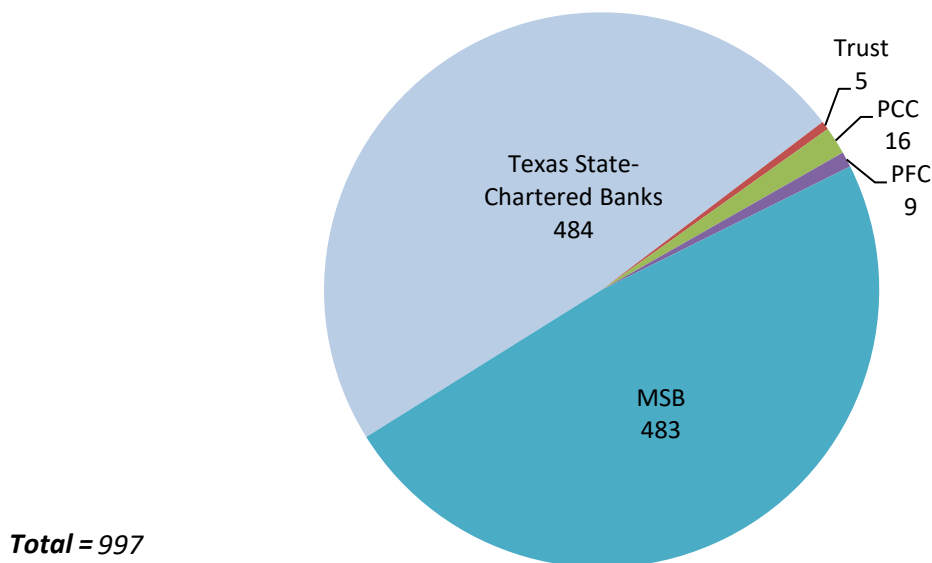
www.dob.texas.gov

To: Finance Commission Members
From: Phil Lena, Financial Analyst
Date: October 5, 2022
Subject: Summary of the Strategic Support Division Activities

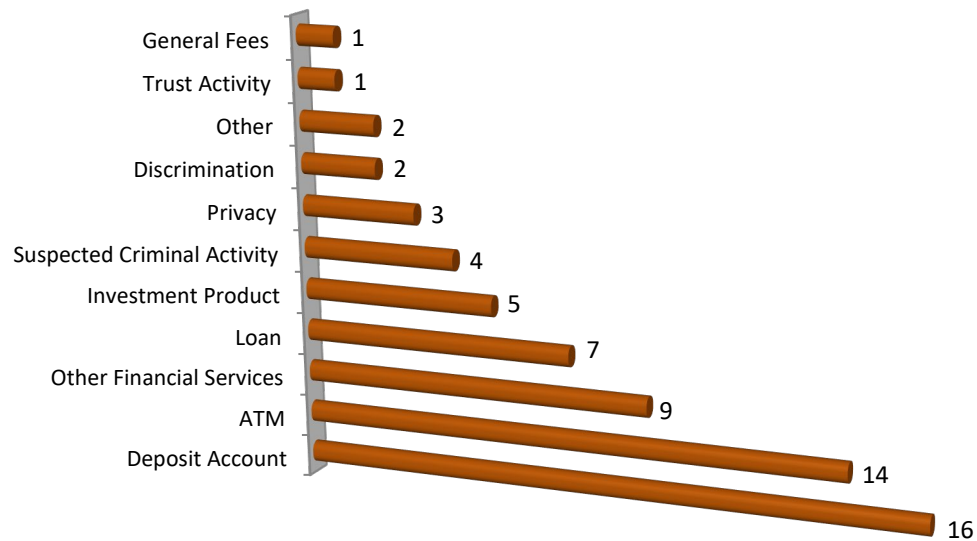
Jurisdictional Written Complaints September 2021-August 2022



Inquiries on Jurisdictional Entities September 2021-August 2022

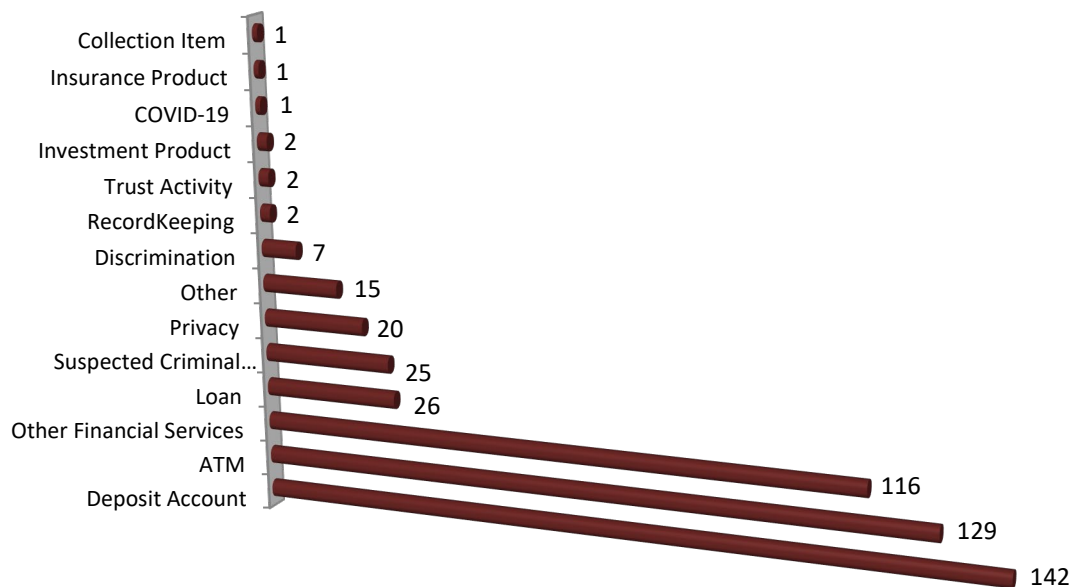


State-Chartered Banks and Trust Companies Written Complaints by Type September 2021-August 2022



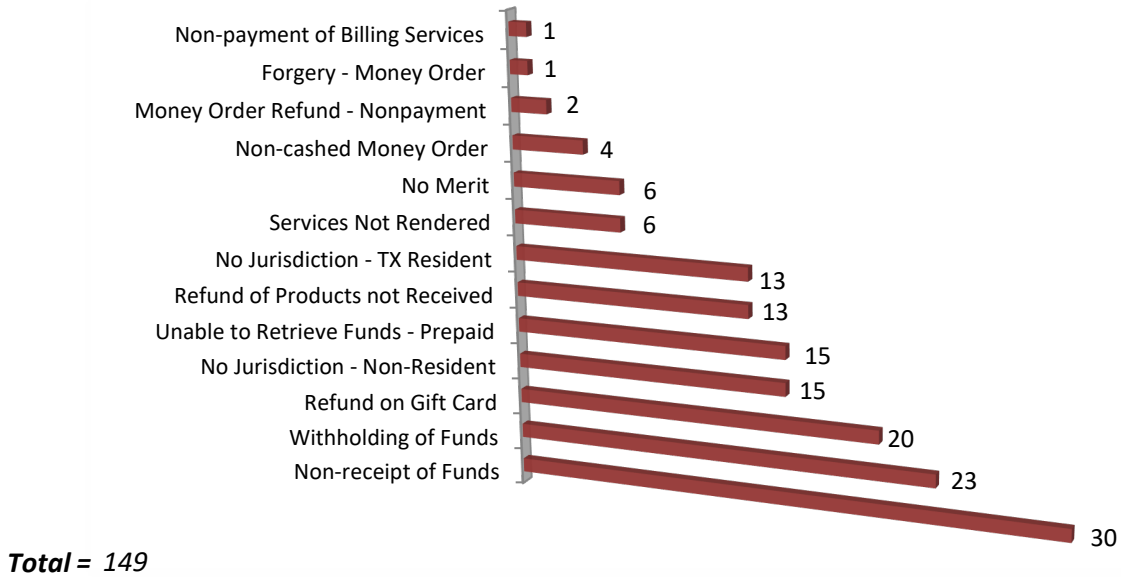
Total = 64

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

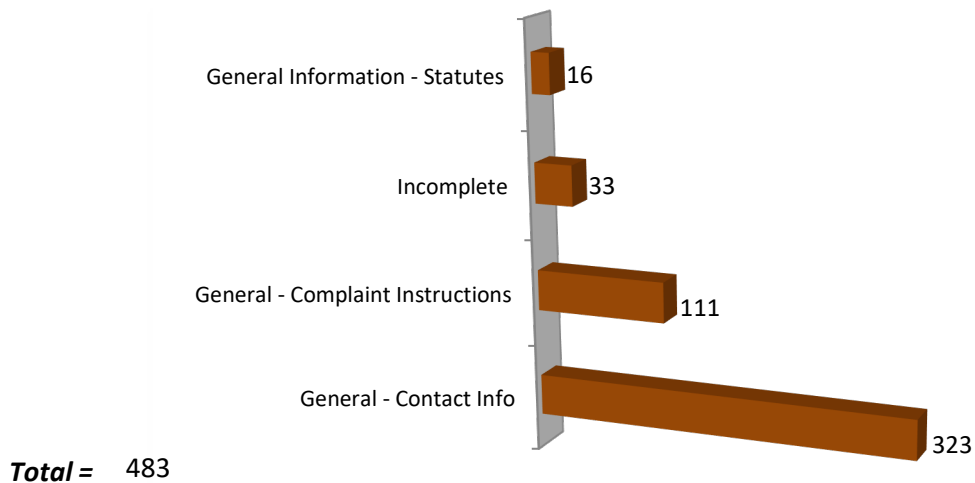


Total = 489

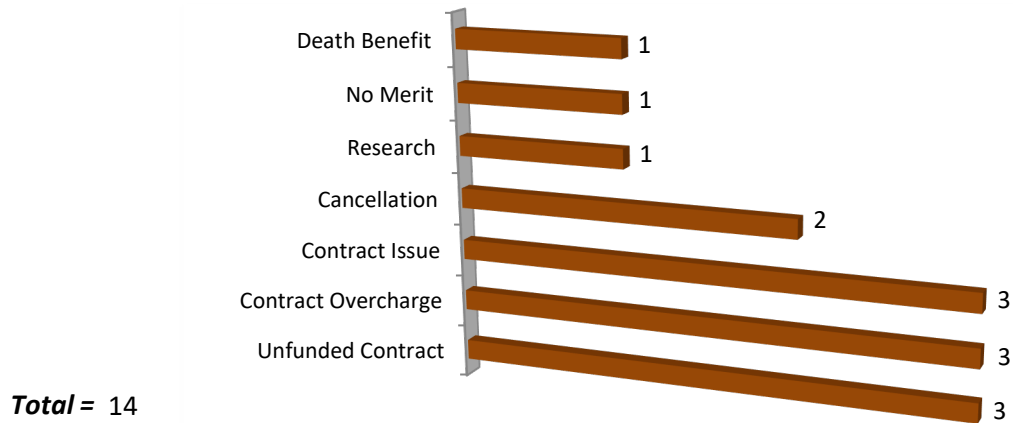
Money Services Businesses Written Complaints by Type September 2021-August 2022



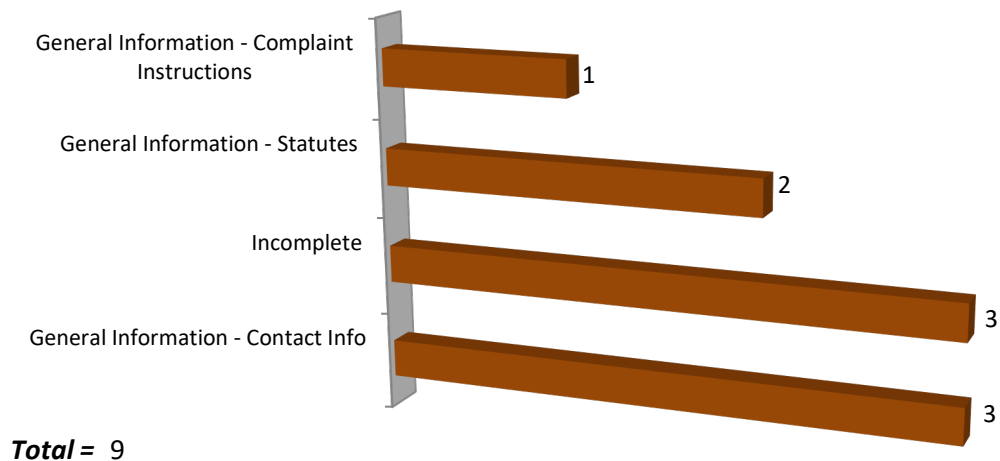
Money Services Businesses Inquiries by Type September 2021-August 2022



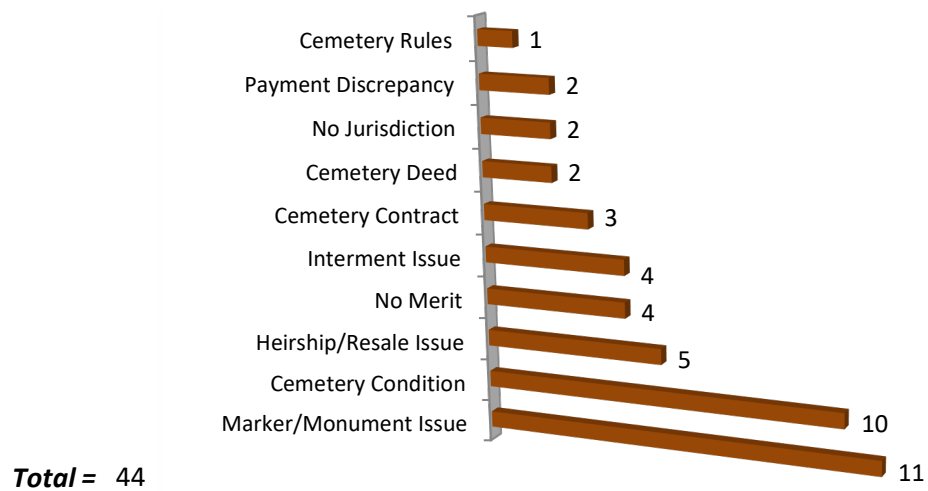
**Prepaid Funeral Contract Sellers
Written Complaints by Type
September 2021-August 2022**



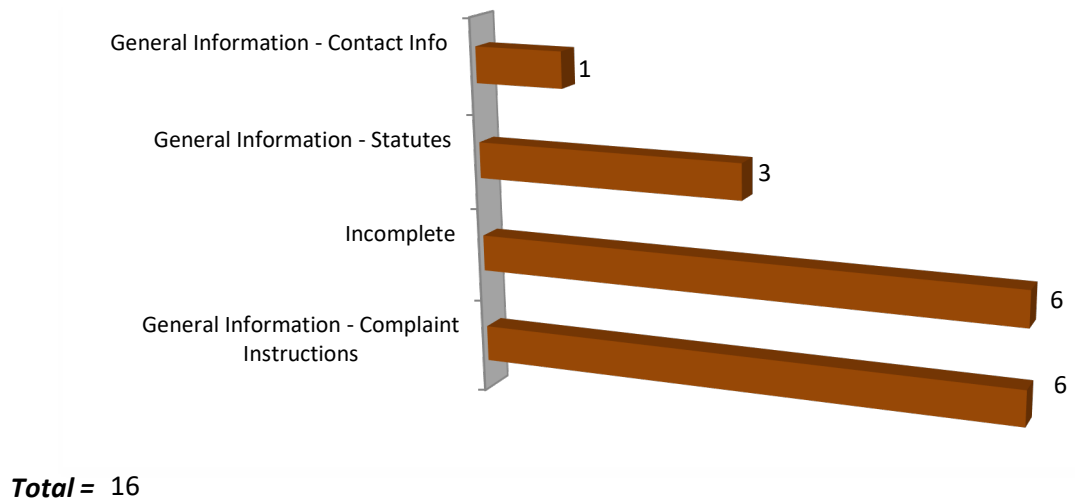
**Prepaid Funeral Contract Sellers
Inquiries by Type
September 2021-August 2022**



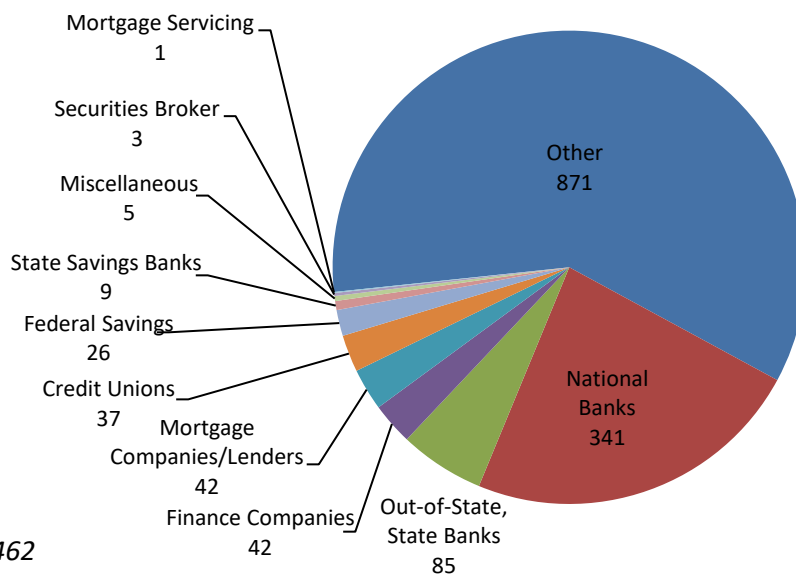
**Perpetual Care Cemeteries
Written Complaints by Type
September 2021-August 2022**



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



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



Total = 1,462

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	12
Percentage of Written Complaints Resolved Within 90 days	100%	100%	100%	100%
Number of Written Complaints Resolved	13	15	11	19
Trust				
Avg. Number of Days to Close a Written Complaint	15	17	28	28
Percentage of Written Complaints Resolved Within 90 days	100%	100%	100%	100%
Number of Written Complaints Resolved	2	1	2	1
PFC/PCC				
Avg. Number of Days to Close a Written Complaint	28	30	30	30
Percentage of Written Complaints Resolved Within 90 days	100%	100%	100%	100%
Number of Written Complaints Resolved	13	11	16	18
MSB				
Avg. Number of Days to Close a Written Complaint	25	24	22	22
Percentage of Written Complaints Resolved Within 90 days	100%	100%	100%	100%
Number of Written Complaints Resolved	26	45	35	43

Closed Account Notification System (CANS) Activity

January 1, 2019 – August 31, 2022

Entity	Enrolled	Compromised Accounts Reported
Texas State-Chartered Banks	184	346
Texas State-Chartered Savings Banks	22	57
Federal Savings Banks	10	0
State Credit Unions	135	670
Federal Credit Unions	229	427
National Banks	171	109
Out-of-State State-Chartered Banks	12	65
Out-of-State National Banks	6	0
Total	769	1,674

Bank Examination Testing System (BETS) Activity

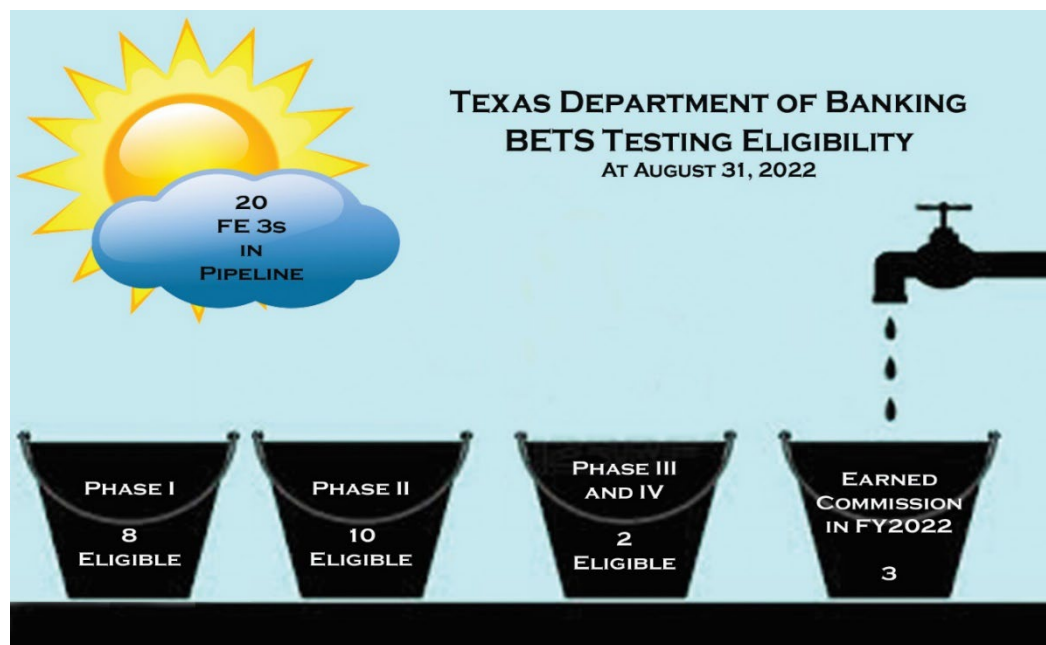
Number of Candidates Passing Each Phase

	FY 2019	FY 2020	FY 2021	FY 2022 As of 8/31/2022
I. General Knowledge	3	4*	6	5
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	13

Promotions

Commissioned Examiners	5*	7	5	3
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**Includes a FE V Credit Specialist*



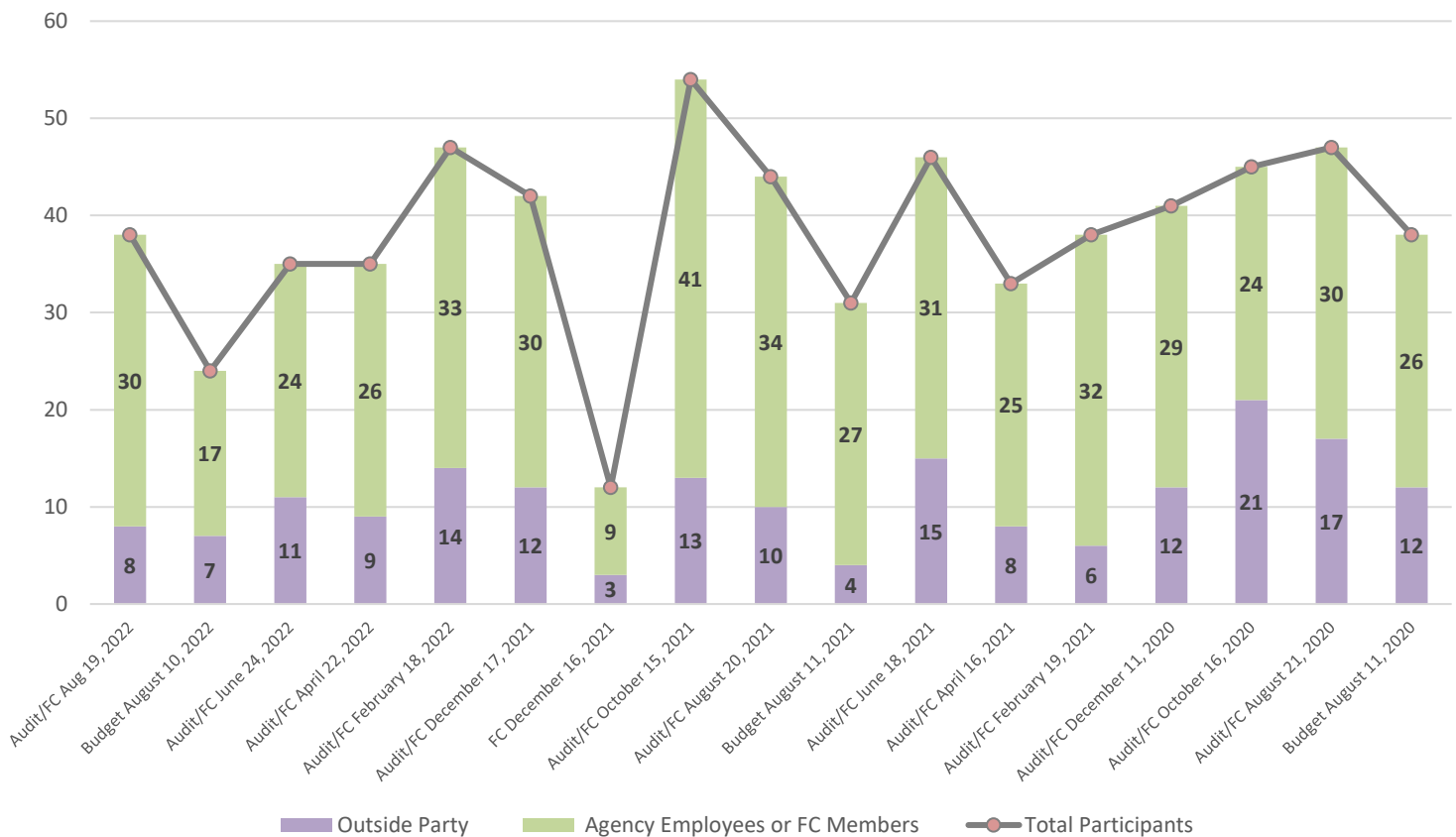
Other Divisional Items:

- *Publications*
 - The following were updated with June 30, 2022 financial data:
 - [Agency Profile](#) – An overview of the Department and its regulated and licensed entities.
 - [Texas Banking Activity](#) – Contains all state and national banking activity in Texas.
 - [Top 100 Banks](#) – List of Texas banks by asset size.
- *Bank & Trust Examination Resources*
 - *Examiner Bulletins*
 - *New*
 - *XB 2022-02-CML Guidelines for Procedures and Work Paper Documentation for Commercial Examinations*
 - *XB 2022-03-TR Guidelines for Procedures and Work Paper Documentation for Trust Examinations*
 - *XB 2022-04-IT Guidelines for Procedures and Work Paper Documentation for Information Technology Examinations*
 - *Rescinded*
 - *XB 2022-01 Ongoing Assessment of Pandemic Risks and Documentation Requirements for the Call-In Memo and Report of Examination Comments Related to COVID-19*
 - *Examination Procedures Updated*
 - *Commercial*
 - *Management*
 - *Trust*
 - *Planning & Control*
 - *Request Lists*
 - *Fiduciary Management*
 - *Operations, Internal Controls & Audits*
 - *Fiduciary Earnings*
 - *Compliance*
 - *Fiduciary Asset Management*
 - *Trust Company Capital*
 - *Trust Company Asset Quality*
 - *Trust Company Liquidity*
 - *Examination Procedures - New*
 - *IT*
 - *Nonbank Work Program - New*
 - *Nonbank Request List - New*
 - *Financial Education*
 - A financial education webinar titled “Understanding Your Credit” was held on August 31, 2022, by the Department of Banking. Eighty-five participants attended the 45-minute presentation.

- Website Statistics for Fiscal Year

- The Texas Department of Banking website had 194,891 unique pageviews of the homepage. The top three pages were the Entity Search (47,048 pageviews), Consumer Information (33,159 pageviews) and Contact Us (15,842 pageviews). The Financial Education webpage had 1,963 pageviews during the same period. Users are accessing the site via Desktop (118,573), mobile (117,787), and tablet devices (2,968).
- The Finance Commission website had 35,501 Unique page views. The top three visited pages were the Home Page (11,556 pageviews), Finance Commission Meetings (4,346 pageviews), and 2021 Meetings Archive (906 pageviews). Users are accessing the site via desktop (9,557), mobile (4,759), and tablet devices (166).
- The Texas Prepaid Funeral Contracts website had 42,886 pageviews of the homepage. The top three pages after the home page were General Information (4,946 pageviews), Prepaid Planning Brochure (4,365 pageviews) and FAQs (2,903 pageviews). Users are accessing the site via mobile (22,591), desktop (15,770), and tablet devices (1,480).

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: October 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. 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) submitted a joint motion for final judgment and dismissal. Once this is signed by the district court judge, we will resume our discussion of options for appeal.

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 August 1, 2022 – September 30, 2022

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

Non-Depository Supervision

- Consent Order dated August 25, 2022; TD Ameritrade, Inc., Omaha, Nebraska
- Consent Order dated September 22, 2022; Heartland Payroll Solutions, Inc., Atlanta, Georgia

Public Information Requests

From August 1 through September 30, 2022, staff received and responded to 20 requests for public information addressed to the Department of Banking and received seven inquiries from the "Ask a Question" feature.

During the same period, we received and responded to no public information requests or inquiries addressed to the Finance Commission. No requests for OAG opinion were requested during this period.

Gifts

Commissioner Cooper attended the FBIIC-FSSCC Joint Meeting on August 2-3, 2022, at the Willard InterContinental Hotel in Washington, D.C. The Conference of State Bank Supervisors covered Commissioner's hotel expenses in the amount of \$734.53.

FY 2022 Quarterly Order Activity

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

*Hearing requested, order not final

Projected Future Rule Actions (December):

None

2. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 1, Chapter 5, Concerning Administration of Finance Agencies, Resulting from Rule Review

PURPOSE: Texas Government Code §2001.039 requires a state agency to review each of its rules every four years and readopt, readopt with amendments, or repeal a rule based upon the agency's rule review and its determination as to whether the reasons for initially adopting the rules continue to exist.

Notice of the proposed review of 7 TAC, Chapter 5 was published in the *Texas Register* as required on August 26, 2022 (47 TexReg 5145). The Department received no comments regarding the review.

The Department believes the reasons for initially adopting the rules in Chapter 5 continue to exist and those rules should be readopted.

RECOMMENDED ACTION: The Department requests that the Commission find that the reasons for initially adopting the rules in 7 TAC, Chapter 5 continue to exist and that the Commission readopt these rules.

RECOMMENDED MOTION: I move that we find that the reasons for initially adopting the rules in 7 TAC, Chapter 5 continue to exist, and that those rules be readopted.

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed its review of Texas Administrative Code, Title 7, Chapter 5 (Administration of Finance Agencies), in its entirety.

Notice of the review of Chapter 5 was published in the August 26, 2022, issue of the *Texas Register* (47 TexReg 5145). No comments were received in response to the notice.

The commission believes the reasons for initially adopting Chapter 5 continue to exist. However, the commission has determined that certain revisions and amendments may be appropriate and necessary. Proposed amendments and revisions to Chapter 5, with discussion of the justification for the proposed changes, will be published in the Texas Register at a later date.

Accordingly, the commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 5 in accordance with the requirements of the Government Code, §2001.039.

3. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 2, Chapter 11, Concerning Texas Department of Banking, Miscellaneous, Resulting from Rule Review

PURPOSE: Texas Government Code §2001.039 requires a state agency to review each of its rules every four years and readopt, readopt with amendments, or repeal a rule based upon the agency's rule review and its determination as to whether the reasons for initially adopting the rules continue to exist.

Notice of the proposed review of 7 TAC, Chapter 11 was published in the *Texas Register* as required on August 26, 2022 (47 TexReg 5145). The Department received no comments regarding the review.

The Department believes the reasons for initially adopting the rules in Chapter 11 continue to exist and those rules should be readopted.

RECOMMENDED ACTION: The Department requests that the Commission find that the reasons for initially adopting the rules in 7 TAC, Chapter 11 continue to exist and that the Commission readopt these rules.

RECOMMENDED MOTION: I move that we find that the reasons for initially adopting the rules in 7 TAC, Chapter 11 continue to exist, and that those rules be readopted.

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed its review of Texas Administrative Code, Title 7, Chapter 11 (Miscellaneous), in its entirety.

Notice of the review of Chapter 11 was published in the August 26, 2022, issue of the *Texas Register* (47 TexReg 5145). No comments were received in response to the notice.

The commission believes the reasons for initially adopting Chapter 11 continue to exist. However, the commission has determined that certain revisions and amendments may be appropriate and necessary. Proposed amendments and revisions to Chapter 11, with discussion of the justification for the proposed changes, will be published in the Texas Register at a later date.

Accordingly, the commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 11 in accordance with the requirements of the Government Code, §2001.039.

4. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 2, Chapter 26, Concerning Perpetual Care Cemeteries, Resulting from Rule Review

PURPOSE: Texas Government Code §2001.039 requires a state agency to review each of its rules every four years and readopt, readopt with amendments, or repeal a rule based upon the agency's rule review and its determination as to whether the reasons for initially adopting the rules continue to exist.

Notice of the proposed review of 7 TAC, Chapter 26 was published in the *Texas Register* as required on August 26, 2022 (47 TexReg 5145). The Department received no comments regarding the review.

The Department believes the reasons for initially adopting the rules in Chapter 26 continue to exist and those rules should be readopted.

RECOMMENDED ACTION: The Department requests that the Commission find that the reasons for initially adopting the rules in 7 TAC, Chapter 26 continue to exist and that the Commission readopt these rules.

RECOMMENDED MOTION: I move that we find that the reasons for initially adopting the rules in 7 TAC, Chapter 26 continue to exist, and that those rules be readopted.

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed its review of Texas Administrative Code, Title 7, Chapter 26 (Perpetual Care Cemeteries), in its entirety.

Notice of the review of Chapter 26 was published in the August 26, 2022, issue of the *Texas Register* (47 TexReg 5145). No comments were received in response to the notice.

The commission believes the reasons for initially adopting the rules in Chapter 26 continue to exist. However, the commission has determined that certain revisions and other changes are appropriate and necessary. Proposed amended Chapter 26 sections, with discussion of the justification for the proposed changes, will be published in this issue of the *Texas Register*.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 26 in accordance with the requirements of the Government Code, §2001.039.

5. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 2, Chapter 27, Concerning Applications, Resulting from Rule Review

PURPOSE: Texas Government Code §2001.039 requires a state agency to review each of its rules every four years and readopt, readopt with amendments, or repeal a rule based upon the agency's rule review and its determination as to whether the reasons for initially adopting the rules continue to exist.

Notice of the proposed review of 7 TAC, Chapter 27 was published in the *Texas Register* as required on August 26, 2022 (47 TexReg 5146). The Department received no comments regarding the review.

The Department believes the reasons for initially adopting the rules in Chapter 27 continue to exist and those rules should be readopted.

RECOMMENDED ACTION: The Department requests that the Commission find that the reasons for initially adopting the rules in 7 TAC, Chapter 27 continue to exist and that the Commission readopt these rules.

RECOMMENDED MOTION: I move that we find that the reasons for initially adopting the rules in 7 TAC, Chapter 27 continue to exist, and that those rules be readopted.

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed its review of Texas Administrative Code, Title 7, Chapter 27 (Applications), in its entirety.

Notice of the review of Chapter 27 was published in the August 26, 2022, issue of the *Texas Register* (47 TexReg 5146). No comments were received in response to the notice.

The commission believes the reasons for initially adopting Chapter 27 continue to exist. However, the commission has determined that certain revisions and amendments may be appropriate and necessary. Proposed amendments and revisions to Chapter 27, with discussion of the justification for the proposed changes, will be published in the Texas Register at a later date.

Accordingly, the commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 27 in accordance with the requirements of the Government Code, §2001.039.

6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 2, Chapter 26, Concerning Perpetual Care Cemeteries, Resulting from Rule Review

PURPOSE: The purpose of the amendments to 7 TAC, Chapter 26, is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039.

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

RECOMMENDED MOTION: I move that we publish the proposed amendments to 7 TAC, Chapter 26 in the *Texas Register*.

Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 26. Perpetual Care Cemeteries

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend certain rules in 7 TAC Chapter 26, governing Texas perpetual care cemeteries. In particular, the commission proposes to amend §26.1, concerning fees to operate a perpetual care cemetery; §26.2, concerning required records to maintain; §26.3, concerning responding to written notice to prohibit interment of a homicide perpetrator in the same cemetery as a homicide victim; §26.4 concerning burial markers or monuments; §26.5, concerning conveyance of a cemetery plot; §26.6, concerning required record for cremains receptacle; §26.11, concerning information to consumers on how to file a consumer complaint; and §26.12, concerning response to written consumer complaints.

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

The rules in 7 TAC Chapter 26, govern perpetual care cemeteries. A reference is no longer needed and minor cleanup and reorganization is beneficial.

Section 26.1(a) sets out definitions for this section. Proposed amendments to §26.1(a) improve formatting consistency, add a definition for clarity, and consolidate all definitions into one subsection.

Section 26.1(b) discusses required fees for operating a perpetual care cemetery. Proposed amendment to §26.1(b) eliminates references to a renewal fee as it is no longer applicable.

Section 26.1(c) discusses the manner of fee payment. Proposed amendment to §26.1(c) makes a minor language change for clarity.

Section 26.1(d) explains how the annual assessment fee is adjusted. Proposed amendments to §26.1(d) remove the definition in order to consolidate all definitions in one subsection and make minor punctuation changes for clarity.

Section 26.1(e) explains when an additional examination may be necessary and what the associated costs may be. Proposed amendment to §26.1(e) makes a minor punctuation change for clarity.

Section 26.2(a) sets out definitions for this section. Proposed amendments to §26.2(a) add a definition for clarity and make a punctuation change for consistency.

Section 26.2(b) discusses record retention requirements. Proposed amendments to §26.2(b) make clerical changes for consistency.

Section 26.2(c) explains where records must be kept. Proposed amendments to §26.2(c) make clerical changes for consistency.

Section 26.3 provides suggested actions for cemetery owners relating to the interment of certain persons. Proposed amendments to

§26.3 make clerical changes for clarity and consistency.

Section 26.4(h) explains requirements for cemeteries related to the purchase of outside burial markers or monuments. Proposed amendment to §26.4(h) makes a clerical change for clarity.

Section 26.5 explains the requirements for the issuance of conveyance documents for a cemetery plot. Proposed amendment to §26.5 makes a clerical change for consistency.

Section 26.6 explains the requirements for cremains receptacle maps. Proposed amendments to §26.6 make clerical changes for consistency.

Section 26.11(b) explains the requirements for providing notice of a consumer complaint. Proposed amendments to §26.11 make minor clerical changes for consistency.

Section 26.12(b) explains the requirements for responding to a consumer complaint. Proposed amendments to §26.12 make minor clerical changes for consistency.

Jesse Saucillo, Director of Non-Depository Supervision, Texas Department of Banking, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the proposed rules.

Director Saucillo also has determined that, for each year of the first five years the

rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is greater clarity of the rules and efficiency in the regulation of perpetual care cemeteries.

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

For each year of the first five years that the rules will be in effect, the rules will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rules' applicability; and
- positively or adversely affect this state's economy.

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There will be no difference in the cost of compliance for these entities.

Most of the proposed amendments are clerical changes to improve clarity. A small number of proposed amendments make slightly more substantive changes for

PROPOSED AMENDMENTS TO 7 TAC §§26.1 et seq.
Page 3 of 11

purposes of better organization or make minor modifications to reflect current requirements, but those changes do not expand existing regulations or create new regulations.

To be considered, comments on the proposed amendments must be submitted no later than 5:00 p.m. on December 12, 2022. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amended rules are proposed under Texas Finance Code (Finance Code), §712.008, which authorizes the commission to adopt rules to enforce and administer Health and Safety Code, Chapter 712.

Chapter 712 of the Health and Safety Code is affected by the proposed amended sections.

§26.1. What Fees Must I Pay to Operate a Perpetual Care Cemetery? [~~What fees must I pay to operate a perpetual care cemetery?~~]

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

(1) “Act” means [~~Act~~] Health and Safety Code, Chapter 712, as amended.

(2) “Examination” means [~~Examination~~] the department’s review and evaluation of the books and records of a perpetual care cemetery corporation by on-site examination

or off-site review pursuant to § [~~Section~~] 712.044(a) of the Act.

(3) “You,” “Your,” or “I” means [~~You, Your, I~~] the owner or operator of a perpetual care cemetery.

(4) “Fund balance” means [~~Fund balance~~] the total amount of perpetual care monies that are required to be deposited in your perpetual care fund under the Act, excluding capital gains, capital losses, undistributed interest income and any voluntary contributions.

(5) “Fiscal year” means [~~Fiscal year~~] the 12-month period from September 1st to August 31st.

(6) “Certificate of authority” means [~~Certificate of authority~~] a certificate issued by the department to operate a perpetual care cemetery, which remains in effect until it is revoked by a district court or the department[;] or surrendered by the certificate holder.

(7) “GDPIPD factor” means the annual factor that is equal to the percentage change in the Gross Domestic Product Implicit Price Deflator index values published quarterly by the Bureau of Economic Analysis, United States Department of Commerce 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).

(8) “Department” means the Texas Department of Banking.

(b) If I want to operate a perpetual care cemetery, what fees must I pay to the department?

(1) A filing fee of \$500 must be paid with your application for a certificate of authority to operate a perpetual care cemetery as required by § [Section] 712.0033(a) of the Act.

(2) If the department does not receive your completed annual report by the due date, a late fee of \$100 per day for each business day after the due date that the department does not receive your completed annual report may be imposed. You must pay this fee immediately upon receipt of the department's written invoice.

(3) An annual assessment will be imposed as an examination fee [~~and as a renewal fee~~] on a perpetual care cemetery corporation to defray the cost of administering the Act, as required by § [Sections—712.0037,] 712.042 and §712.044(b) of the Act. The annual assessment will be collected pursuant to 7 TAC §26.1(c)(1). The amount of your annual assessment is based on your fund balance as reflected on the statement of funds in the most recent annual report you have filed with the department. You must pay the annual assessment specified in the following table:

Figure: 7 TAC §26.1(b)(3) (No change.)

(4) If you are a new certificate holder and have not yet filed your first annual report, which includes the statement of funds required by § [Section] 712.041 of the Act, you must pay an examination fee of \$75.00 per hour for each examiner and all associated

travel expenses. Your subsequent annual assessments will be calculated in accordance with paragraph (3) of this subsection.

(c) How will the department bill me for the annual assessment and by when must I pay it?

(1) - (2) (No change.)

(d) Adjustments for inflation or deflation. [~~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) Beginning September 1, 2020, and each September 1 thereafter, the table in subsection (b) of this section, as most recently revised before such date pursuant to this subsection, may be revised as follows:

(A) The base assessment amount listed in column three of the table may be increased or decreased [~~(or decreased)~~] by an amount proportionate to the measure of inflation or deflation [~~(or deflation)~~] reflected in the annual GDPIPD factor, rounded to whole dollars; and

(B) Each factor listed in column three of the table may be increased or decreased [~~(or decreased)~~] by an amount proportionate to the measure of inflation or deflation [~~(or~~

~~deflation)~~] reflected in the annual GDPIPD factor, rounded to four decimal places for fund balances not over \$499,999.99 and five decimal places for fund balances of \$500,000.00 or more.

(2) If the table in subsection (b) of this section is revised for inflation or deflation, [~~or deflation~~], then 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 will provide each certificate holder with notice of and access to the revised table.

(e) Must I pay for additional examinations and if so, how much and when?

(1) - (2) (No change.)

(f) - (g) (No change.)

§26.2. What Records am I Required to Maintain?

(a) What unique defined terms are used in this section?

(1) "You" or "I" means the owner or operator of a perpetual care cemetery.

(2) "Perpetual care property" or "property" means all niches, crypts, and ground space sold in connection with perpetual care.

(3) "Consumer complaint" means a written complaint you receive, either at your corporate office or your cemetery location, from a consumer regarding the manner in which you operate your perpetual care cemetery or perform your obligations under a perpetual care cemetery contract or Health

and Safety Code, Chapter 711, or Chapter 712. The term includes a written complaint you receive either directly from the consumer or through the department. The term does not include an oral complaint.

(4) "Maintain" means to store and retain records either in hard copy form or on microfiche or in an electronic database from which the record can be retrieved and printed in hard copy in a manner that does not impede the efficient completion of the examination.

(5) "Department" means the Texas Department of Banking.

(b) What records must I maintain?

(1) You must maintain the following records in a general file that is readily accessible to the department:

(A) - (F) (No change.)

(G) minutes of each meeting of the cemetery corporation's board of directors held since the last [~~banking~~] department examination or, if the cemetery corporation is a wholly-owned subsidiary and does not hold board meetings, minutes of each meeting of the parent corporation's board of directors held since the last examination;

(H) all recordkeeping exceptions and other department or commissioner approvals or directions upon which the certificate holder relies in connection with its current operations;

(I) all maps, plats, and property dedications, and a list of these that reflects the dates of filing in the county records under Health and Safety Code, §711.034;

(J) your current sales maps showing the sold and unsold spaces in all gardens, mausoleums, crematories, and columbaria in the cemetery;

(K) records and photographs relating to lawn crypt construction and completion, to demonstrate you complied with Health and Safety Code, § [§§]711.061, §711.063 and §711.064;

(L) - (O) (No change.)

(2) - (4) (No change.)

(5) You must maintain a monthly recapitulation of all conveyance of interment rights issued since the date of your last examination that includes, for each paid-in-full property sale:

(A) - (H) (No change.)

(I) total deposits for each conveyance, which is the sum of subparagraphs (G) and (H) of this subsection [~~paragraph~~] for each conveyance; and

(J) cumulative monthly totals of the amounts listed in subparagraphs (F), (G), and (H) of this subsection [~~paragraph~~].

(c) Where do I need to keep the records required under this section?

(1) You must keep all required records at the perpetual care cemetery's physical location, corporate office located in this state, or another location approved in writing by the commissioner.

(2) If the physical location of the records is not conducive to examination by [~~banking~~] department personnel, the [~~banking~~]

department may request that you provide your records at a mutually agreeable location in your area that is more suitable for conducting an examination. In this situation, if you refuse to agree, the commissioner may consider your inaction to constitute refusal to submit to an examination and initiate an appropriate enforcement action against you under Health and Safety Code, §§712.0441 - 712.0444.

(d) With respect to purchase agreements executed prior to the effective date of this section, a perpetual care cemetery will not violate this section if it cannot produce records required under this section that were not previously required by statute or rule.

§26.3. How to Respond to a Written Notice to Prohibit Interment of a Homicide Perpetrator in the Same Cemetery as a Homicide Victim.

(a) What unique defined terms are used in this section?

(1) "Authorized person" means the person that has the right to control the disposition of an individual's remains, as specified by Health and [~~&~~] Safety Code, §711.002.

(2) "Barred individual" means a natural person whose remains you have been or may be requested to inter in your cemetery, who caused the death of a victim already interred in your cemetery as a result of conduct constituting:

(A) murder under Penal Code, §19.02;

(B) capital murder under Penal Code, §19.03;

(C) criminally negligent homicide under Penal Code, §19.05;

(D) intoxication manslaughter under Penal Code, §49.08; or

(E) a crime under a statute of another state that is similar to Penal Code, § [§§] 19.02, §19.03, §19.05, or §49.08.

(3) "Time of interment" means the time you place the remains of an individual in the individual's final resting place.

(4) "Written notice" means the notice specified by Health and [&] Safety Code, §712.009(b)(2), requesting that a barred individual not be interred in your cemetery.

(5) "You" or "I" means the owner or operator of a perpetual care cemetery.

(6) "Department" means the Texas Department of Banking.

(b) What should I do if I receive a written notice requesting that I not inter a named person in my cemetery? If you receive a written notice under Health and [&] Safety Code, §712.009(b)(2), this subsection specifies the actions you should take within the two-week period following the date you receive the notice. It may be in your best interests to inform your attorney and the [~~banking~~] department that you received a notice under Health and [&] Safety Code, §712.009(b)(2). If you consult an attorney, you should follow your attorney's advice.

(1) If you receive the written notice after the time of interment of the person named as

a barred individual in the notice, you should state that interment has already occurred in a written reply to the person who sent you the notice.

(2) If you receive the written notice prior to the time of interment of the person named as a barred individual in the notice, you should take the actions specified in this paragraph of this subsection.

(A) - (C) (No change.)

(c) What must the written notice contain to satisfy legal requirements? To satisfy the requirements of Health and [&] Safety Code, §712.009, a written notice must be received by you prior to the time of interment of the person named as the barred individual, and must contain, or have attached documents containing, information that unambiguously:

(1) - (4) (No change.)

(d) What must I do if I receive a written notice that complies with subsection (c) of this section? If you are subject to a written notice that satisfies the requirements of Health and [&] Safety Code, §712.009(b)(2), as discussed in subsection (c) of this section, you should take the actions specified in this subsection.

(1) - (2) (No change.)

(3) If you are not aware that the barred individual has died or you have not scheduled or been requested to provide interment of the barred individual's remains, you should also make appropriate entries in your records to remind you of future actions that may be required if you are requested in the future to inter the barred individual's remains. For

example, if the written notice contained and relied on a certified trial court judgment, you should, by means of a notice in writing, give a reasonable opportunity (e.g., two weeks) to:

(A) the authorized person of the barred individual, to submit satisfactory proof that the conviction was overturned on appeal, to possibly avoid the application of Health and [¶] Safety Code, §712.009; and

(B) the authorized person of the victim, to submit a document that satisfies subsection (c)(5)(B) of this section if the conviction was overturned on appeal, or a certified document demonstrating that the conviction was finally upheld on appeal, to ensure that Health and [¶] Safety Code, §712.009, will apply to interment of the barred individual.

(e) Does a written notice that complies with subsection (c) of this section ever expire?

(1) If you are subject to a written notice that satisfies the requirements of Health and [¶] Safety Code, §712.009(b)(2), as discussed in subsection (c) of this section, you are bound by Health and [¶] Safety Code, §712.009, for a period that ends seven years after the date you received the written notice. However, the authorized representative of the victim may periodically extend this period by sending you a written renewal notice under Health and [¶] Safety Code, §712.009(f).

(2) If you receive a written renewal notice before the expiration of the seven year period initiated by a previous notice, you should immediately examine the written renewal notice, any accompanying documents, and

the documents you received in connection with any prior notice to determine if the written renewal notice satisfies the requirements of subsection (c) of this section, in a manner similar to the investigation you conducted under subsection (b)(2)(C) of this section when you received the initial written notice.

(3) If a written renewal notice, any accompanying documents, and the documents you received in connection with any prior notice collectively satisfy the requirements of Health and [¶] Safety Code, §712.009(b)(2), as discussed in subsection (c) of this section, the period during which you are bound by Health and [¶] Safety Code, §712.009, will be extended for an additional period that ends seven years after the date you received the written renewal notice.

(f) What should I do if I have a contract to inter the barred individual's remains and I am subject to a written notice that complies with subsection (c) of this section? You should consult an attorney if you have a contract to inter the remains of a barred individual. Although you are protected from owing damages to the authorized representative of the barred individual under Health and [¶] Safety Code, §712.009(e), if you are barred from interring remains under that section, you will still be required to return any funds you received under a contract that you did not earn. You and the authorized representative of the barred individual may be able to negotiate a satisfactory settlement to enable you to earn at least a portion of the funds you received for the contract, such as by

performing services not involving interment in your cemetery or assisting in alternate arrangements for disposition of the barred individual's remains.

(g) What records must I maintain if I receive a written notice? You must maintain the following records with respect to each victim interred in your cemetery that has been identified by a written notice:

(1) - (4) (No change.)

(5) to the extent not already identified by prior paragraphs of this subsection, all correspondence to or from the authorized person of the victim or the authorized person's legal representative or attorney, including any complaints that you were required by a written notice to comply with Health and [¶] Safety Code, §712.009, but you inappropriately or unlawfully failed to comply;

(6) to the extent not already identified by prior paragraphs of this subsection, all correspondence to or from the authorized person of the barred individual or the authorized person's legal representative or attorney, including any complaints that a written notice was defective and did not require you to comply with Health and [¶] Safety Code, §712.009, but you inappropriately or unlawfully complied;

(7) all correspondence to or from your attorney concerning a written notice or related matters, subject to valid claims of privilege;

(8) if interment is authorized under Health and [¶] Safety Code, §712.009(d),

documents demonstrating that you interred the barred individual in a place that is as far away as possible from the place you interred the victim;

(9) any contract that purported to require interment of the barred individual in your cemetery and, to the extent not already identified by prior paragraphs of this subsection, all correspondence, agreements, modifications, releases, cancelled checks, and deposit slips relating to the resolution of claims related to the contract; and

(10) to the extent not already identified by prior paragraphs of this subsection, all correspondence, pleadings, briefs, and court orders relating to litigation you initiated or defended with regard to issues of compliance or noncompliance with Health and [¶] Safety Code, §712.009.

(h) How long must I retain records relating to a written notice I received?

(1) With respect to a written notice that you determined was invalid and did not require you to comply with Health and [¶] Safety Code, §712.009, you must retain the records specified by subsection (g) of this section at least until the day after the third anniversary of the date you received the written notice.

(2) With respect to a written notice that you determined met the requirements of Health and [¶] Safety Code, §712.009, you must retain the records specified by subsection (g) of this section at least until the day after the 10th anniversary of the date you last received a written notice or renewal notice (i.e., the day after the third anniversary

of the date the effective period of the last written notice or renewal notice expired).

§26.4. When Must I Order and Set a Burial Marker or Monument in my Perpetual Care Cemetery?

(a) - (g) (No change.)

(h) Does subsection (b) of this section apply to burial markers or monuments the purchaser buys from someone other than my cemetery or an affiliate of my cemetery? No. Subsection (b) of this section applies to only those markers and monuments purchased from you or from an affiliate of your cemetery. For purposes of this subsection, an affiliate means a company that directly or indirectly controls, is controlled by, or is under common control with you.

(i) If a purchaser buys a burial marker or monument from a vendor other than my cemetery and has it delivered to my cemetery, must I install the marker or monument within the time period provided for in subsection (c) or (d) of this section? Yes, provided:

(1) the purchaser has paid you all amounts due for the space or spaces in your cemetery on which the marker or monument will be set;

(2) the purchaser or vendor has paid all setting fees;

(3) the marker or monument meets your cemetery's standards requirements; and

(4) if applicable, the vendor has met all requirements relating to the setting and placement of the marker or monument under your cemetery's rules and regulations.

§26.5. When Must I Issue a Conveyance Document for a Cemetery Plot? [~~When must I issue a conveyance document for a cemetery plot?~~]

A perpetual care cemetery must issue a conveyance document for a cemetery plot, as defined by Health and Safety Code, §711.001(25), no later than 20 days after the end of the month in which the contract is paid in full.

§26.6. Required Record for a Cremains Receptacle.

(a) For purposes of this section, the terms "cremains receptacle," "plot" and "niche" have the meanings assigned by Health and Safety Code, §711.001.

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

§26.11. How Do I Provide Information to Consumers on How to File a Complaint?

(a) Definitions.

(1) - (4) (No change.)

(b) How do I provide notice of how to file complaints?

(1) You must use the following notice in order to let your consumers know how to file complaints: Complaints concerning perpetual care cemeteries should be directed to: Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705; 1-877 - [f] 276-5554 (toll free); www.dob.texas.gov.

(2) - (5) (No change.)

§26.12. What Must I Do If I Receive a Written Consumer Complaint?

(a) Definitions.

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

(b) When must I respond to a written consumer complaint and what must my response include?

(1) You must respond to the consumer complaint in writing on or before the 30th day after the date you receive the consumer complaint.

(2) In your written response, you must:

(A) set out the actions you have taken or plan to take, with a corresponding timeline, to resolve or otherwise dispose of the consumer complaint; or

(B) if you dispute the consumer complaint or do not believe any corrective or other action is required, explain your conclusion and refer to any supporting legal authority.

(3) If the consumer complaint was forwarded to you by the department, [~~Department~~], you must send the department [~~Department~~] a copy of your response on or before the 5th day after the date you mail the response to the consumer.

(c) Must I keep records of the consumer complaints I receive? Yes. You must keep the records regarding consumer complaints in accordance with the requirements of §26.2(b)(2) of this title (relating to What Records am I Required to Maintain?).

C.

**Office of Consumer Credit
Commissioner**

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Consumer Protection and Consumer Assistance Report

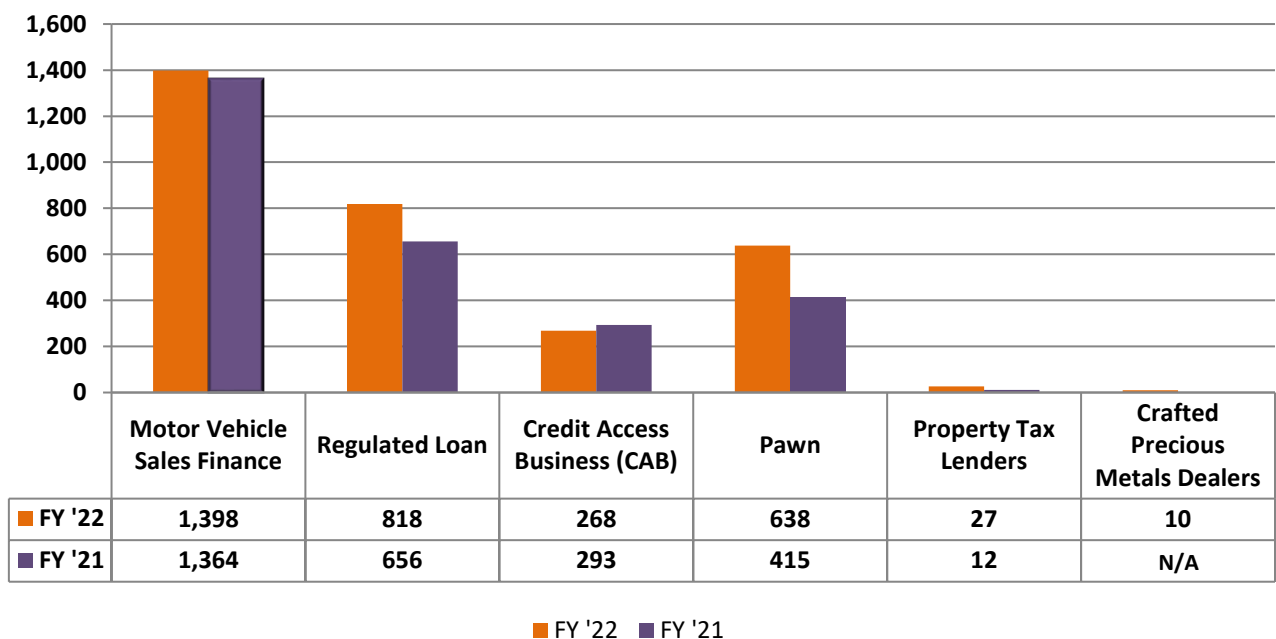
The OCCC's examination performance exceeded production targets as of August 31, 2022. The OCCC completed 3,149 exams, or 105% of Fiscal Year 2022 target of 3,000 examinations. As noted in the August briefing, the examination department is planning to resume out of state travel to conduct examinations in Fiscal Year 2023.

Examiner training and development remains the high priority focus. Two new examiners who began training the week of July 15, 2022, successfully completed initial examiner training and testing. The new examiners are certified in Texas Finance Code, Chapter 342-F (small loan) and Chapter 371 (pawnshop) exams and are conducting exams working as a team for the next month.

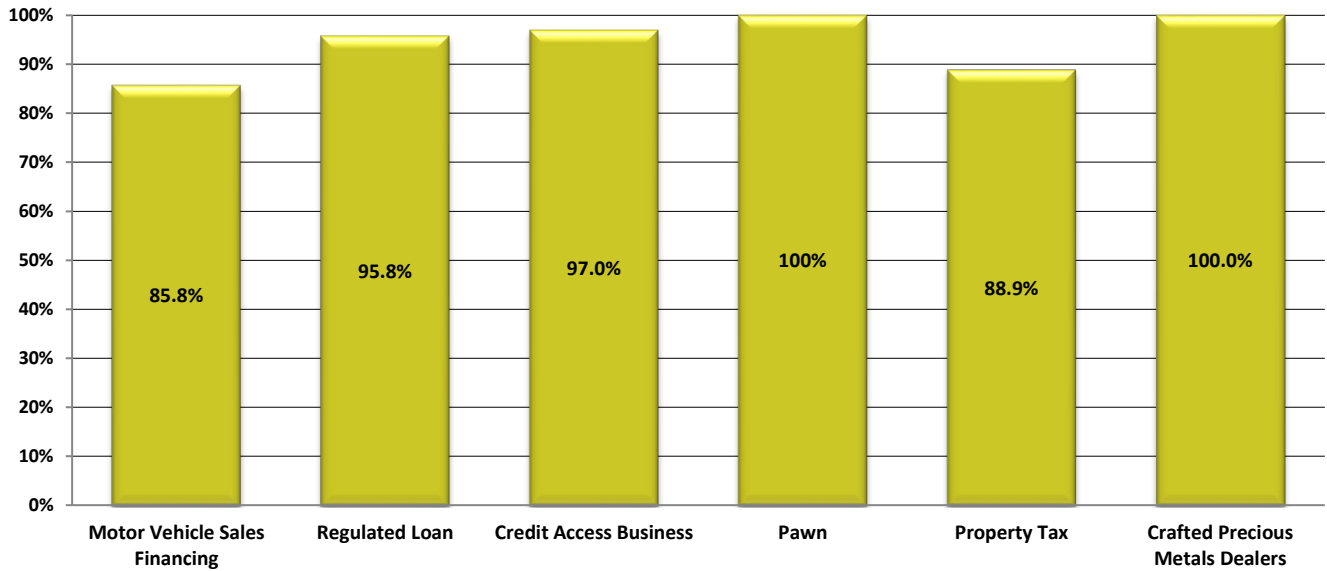
The annual examiner training meeting was held (in person) the week of September 19, 2022 in Kerrville and included a number of tabletop case studies exposing the examiners to real world issues being worked by the department and reinforced technical concepts related to their jobs. A new financial examiner career ladder was presented that clearly demonstrates how to achieve career growth at the Office of Consumer Credit Commissioner.

In September, exam staff participated in four college recruiting events. Initial feedback from the recruiting efforts is positive. Recruiting will continue with multi-channel efforts (LinkedIn, Indeed, website job postings, and follow-up recruiting of promising introductions from college recruiting events) focusing on forming a new examiner class in January 2023.

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

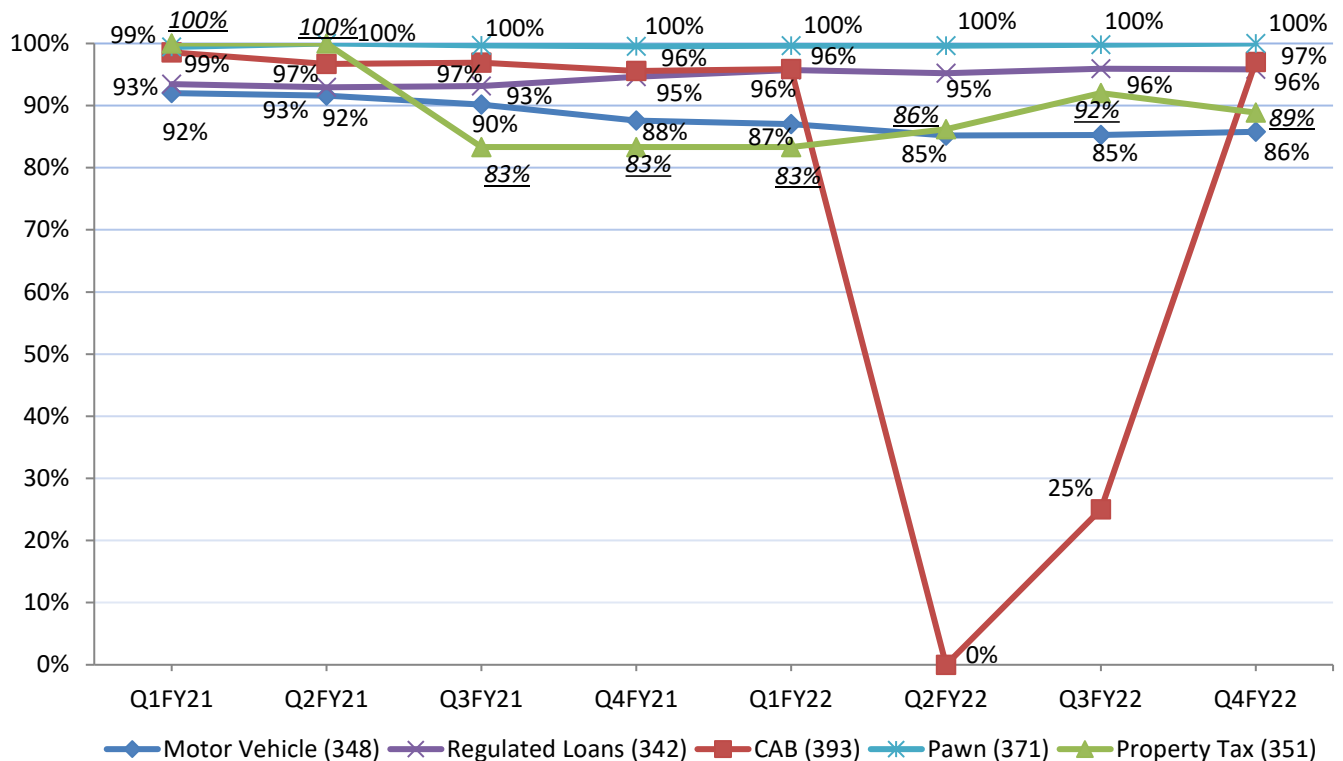


Acceptable Level of Compliance FY '22 (Sept 2021 - Aug 2022)



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

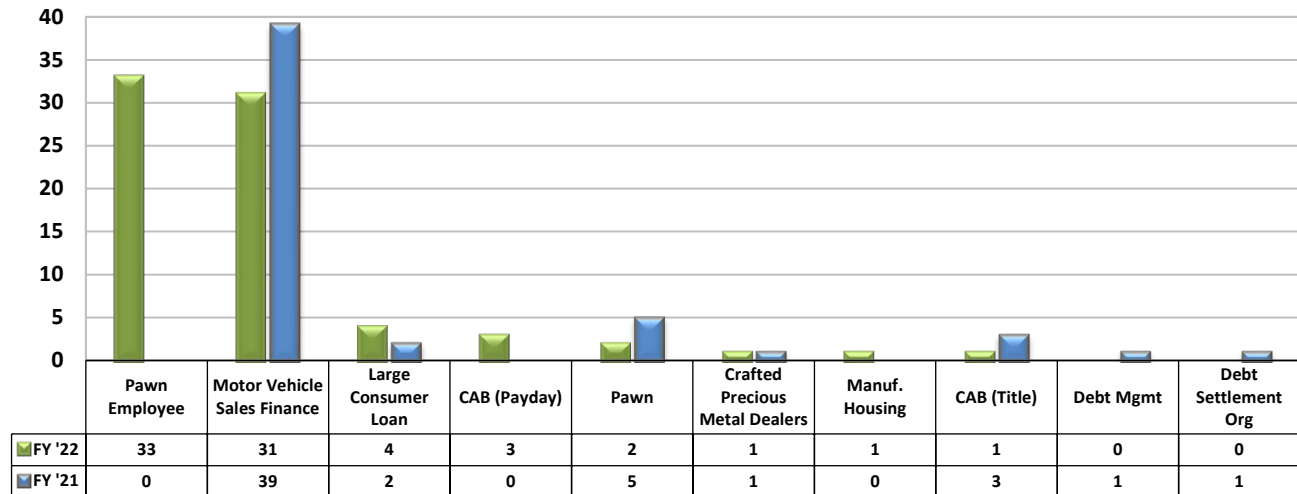
Acceptable Compliance Levels - Trailing 12 Months (at quarter end)



Investigations

For FY 2022, the OCCC completed 76 investigations out of the goal of 75. Compliance issues with pawnshop employees comprise 43.4% of the overall number of completed investigations.

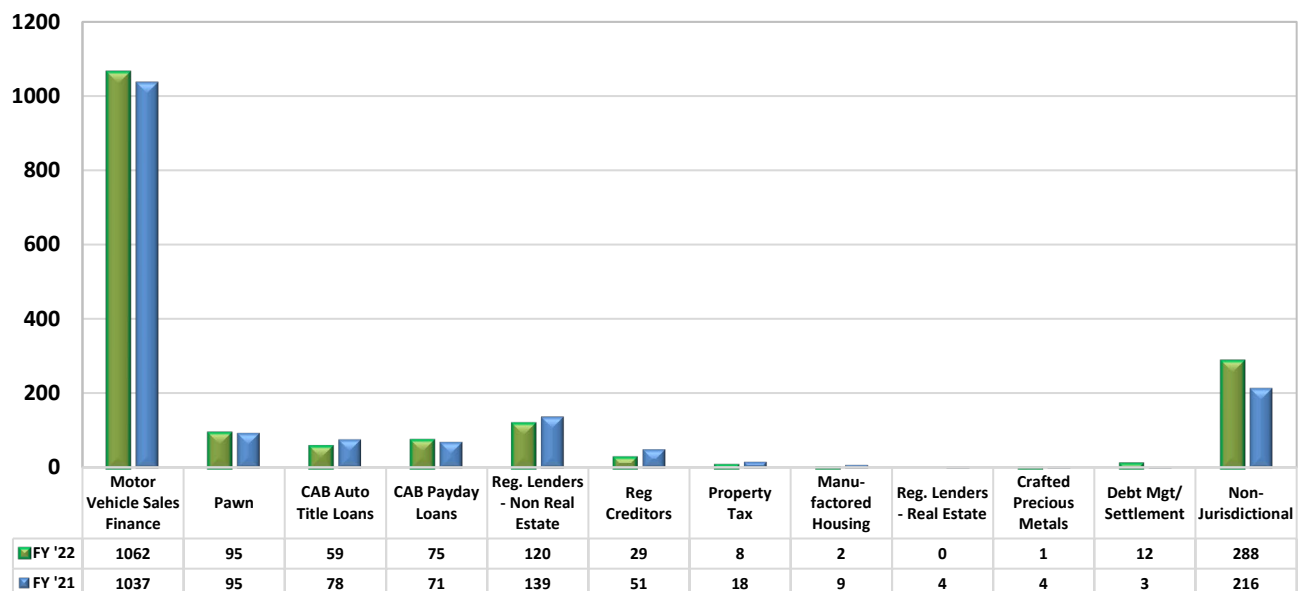
Investigations Completed FY '22 (Sept 2021 - Aug 2022) Total: 76 FY '21 (Sept 2020 - Aug 2021) Total: 52



Consumer Assistance

During FY 2022 there were 1,751 complaints closed, of which 288 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 60.6%. The second largest category was CAB complaints at 7.6% collectively, separately these are 4.3% for payday loans and 3.3% for title loans. The third largest category came from Regulated Lenders Non-Real Estate at 6.9%. The fourth largest category was Pawnshops at 5.3%.

Complaints Closed FY '22: (Sept 2021 - Aug 2022) Total: 1751 FY '21: (Sept 2020 - Aug 2021) Total: 1725



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	432	362
Business	0	0	2	0
Law Enforcement	0	0	0	0
State or Federal Agency	23	67	44	41
OCCC	2	1	3	0
Whistleblower	0	NA	0	0
Other	0	NA	0	0
Total	444	423	481	403

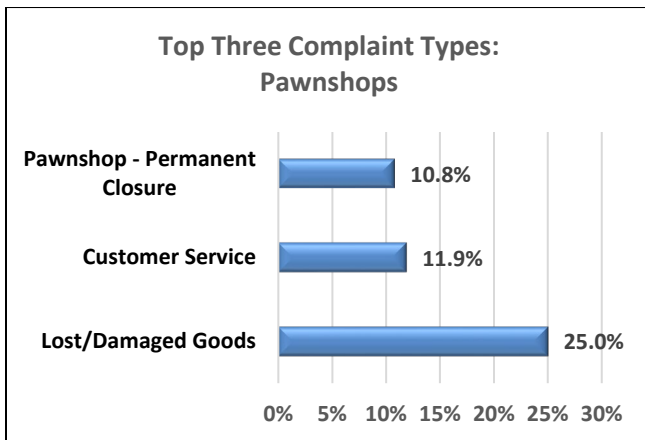
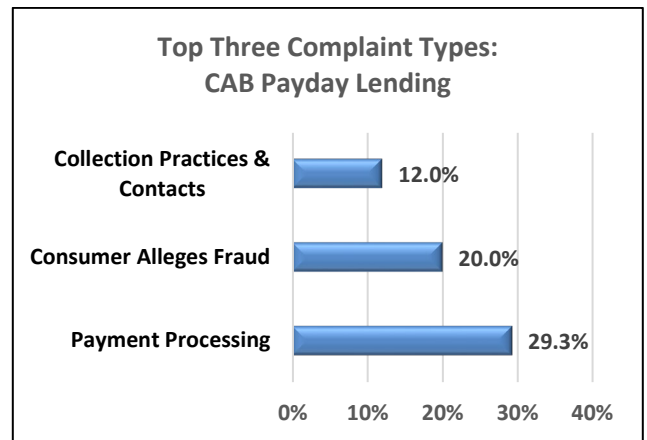
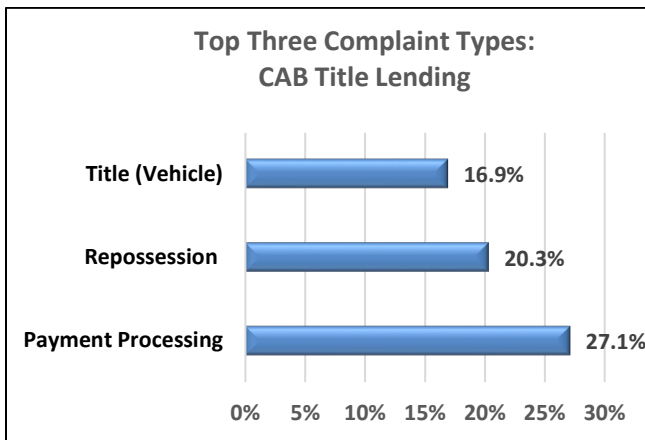
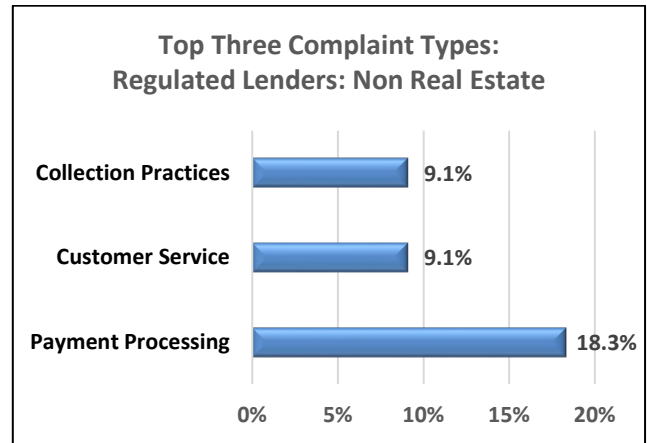
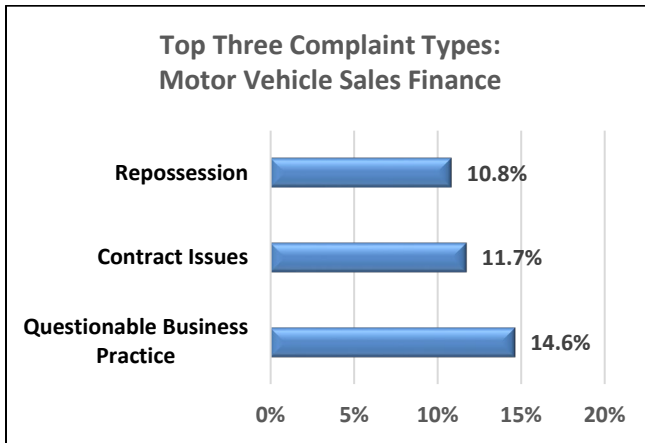
Table 2

Subjects	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Motor Vehicle Sales Finance	295	263	302	204
CAB Payday Loans	23	17	19	17
CAB Auto Title Loans	12	12	18	17
Reg. Lenders Non-Real Estate	23	32	36	29
Pawn	22	14	26	33
Registered Creditors	7	6	6	10
Crafted Precious Metals Dealers	1	0	0	0
Mortgage Lenders: Real Estate	0	0	0	0
Manufactured. Housing	0	0	2	0
Property Tax Lenders	2	0	3	3
Debt Management/Settlement	3	5	3	2
Non-Jurisdictional	56	74	66	88
Refund Anticipation Loan	0	0	0	0
Total	444	423	481	403

Table 3

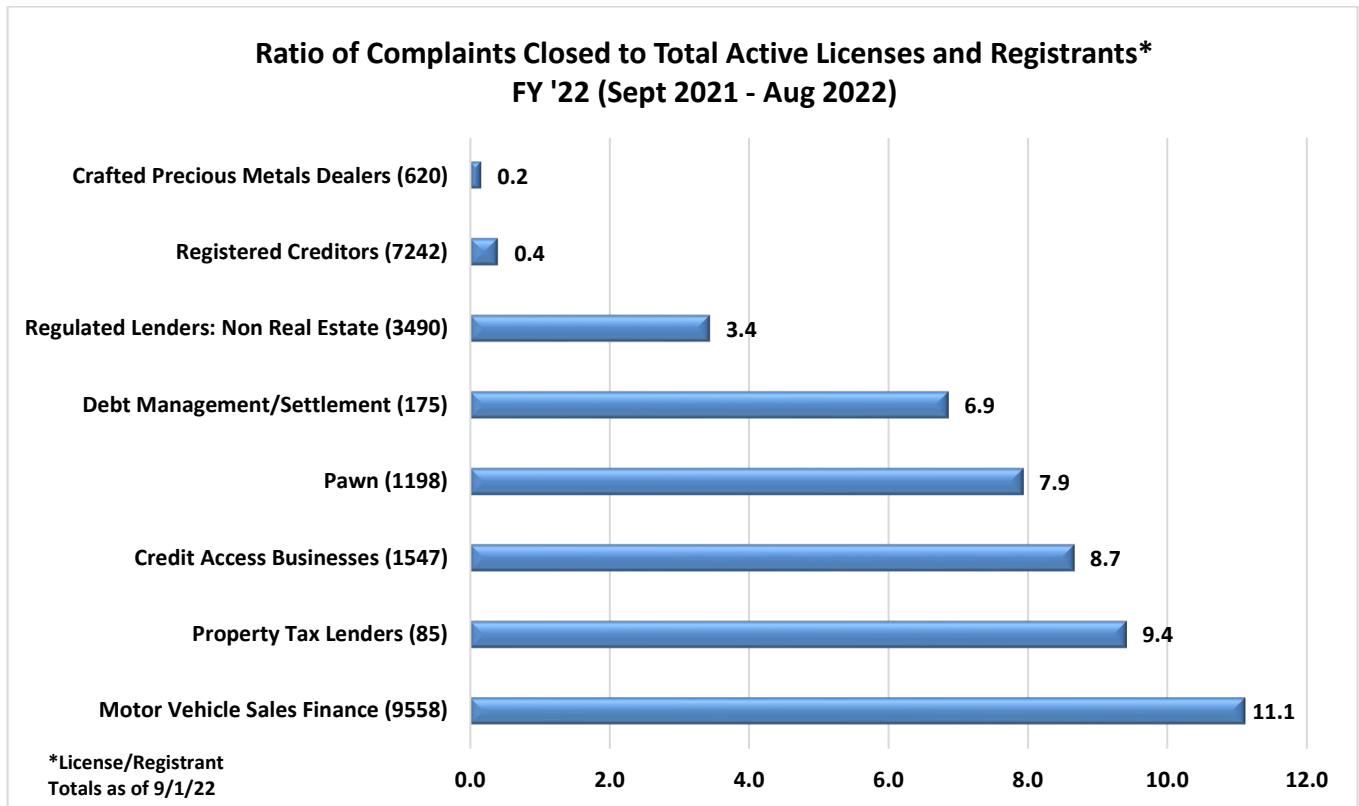
Disposition:	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Closed to Investigation	7	7	9	4
Closed to Legal	0	0	0	0
Closed-Action Taken	195	138	148	114
Closed-No Violation	88	130	141	69
Closed-Administratively	96	74	117	128
Closed-Non-Jurisdictional	58	74	66	88
Total	444	423	481	403

The following charts represent the most frequent 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. The OCCC has seen a reduction in the percentage of these types of complaints, as this category is down from a high of 17.7% in April of 2022.



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%	92.3%
Average Number of Days to Close a Complaint	38.9	41.4	39.5	37.8
Number of Complaints Closed	444	423	481	403

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



CAB Reporting Update

Summaries of CAB reports through the second quarter of 2022 are available on the OCCC website. Presented are selected statistics of first and second-quarter reports compared with previous years. New loan origination in 2022 increased by 16% through the first six months of the year in comparison to 2021 figures. Installment payday loans made up 83% of all new payday loan originations in the first half of the year. Repossessions in 2022 have decreased by 6% from 2021 but are up 20% from the 2019 pandemic lows during the same period.

Data Highlights (All Loan Types) Q1-Q2 Comparison	2022	2021	2020	2019	2018	2017
Number of new payday loans	820,368	708,826	704,447	985,394	1,000,386	1,044,152
Number of new auto title loans	105,843	90,573	89,048	140,604	149,604	129,322
Percentage of payday loans due in multiple installments	83%	70%	61%	56%	50%	45%
Percentage of auto title loans due in multiple installments	48%	45%	54%	58%	55%	45%
Number of vehicles repossessed under all auto title loans	22,000	23,473	18,396	22,005	16,620	15,162
Total number of locations reporting activity	1,347	1,454	1,538	1,756	1,832	1,817

Payday Loans Q1-Q2	Single Installment			Multiple Installment		
	2022	2021	2020	2022	2021	2020
Number of consumers obtaining loans	97,280	145,281	191,811	593,638	439,274	381,840
Number of new loans	140,657	213,229	276,613	679,711	495,597	427,834
Number of total refinances ¹	154,000	186,979	375,983	153,634	100,110	115,142
Average loan amount	\$506	\$495	\$452	\$593	\$553	\$604
Average fee per \$100 borrowed	\$27	\$24	\$23	\$125	\$128	\$138
Average original term (in days)	20	22	21	145	141	149
Average Fee Converted to a Daily Rate ²	1.32%	1.12%	1.07%	0.86%	0.91%	0.93%

Title Loans Q1-Q2	Single Installment			Multiple Installment		
	2022	2021	2020	2022	2021	2020
Number of consumers obtaining loans	44,451	39,126	33,233	47,089	38,077	44,876
Number of new loans	55,540	50,098	41,332	50,303	40,493	47,716
Number of total refinances ¹	199,368	228,291	267,879	43,759	46,276	68,309
Average loan amount	\$1,784	\$1,792	\$1,379	\$1,651	\$1,596	\$1,208
Average fee per \$100 borrowed	\$16	\$15	\$15	\$103	\$106	\$113
Average original term (in days)	31	31	30	162	161	158
Average Fee Converted to a Daily Rate ²	0.53%	0.50%	0.50%	0.64%	0.66%	0.71%

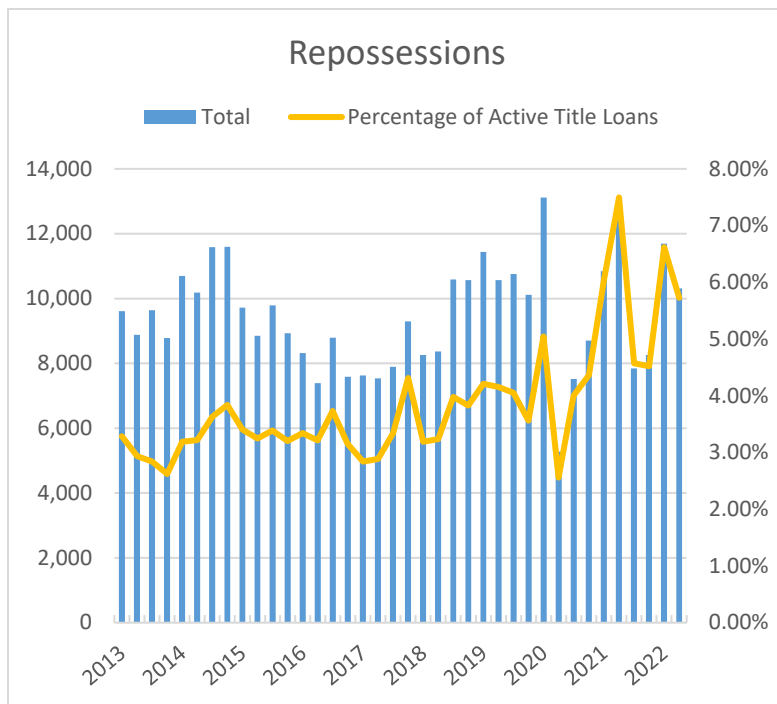
¹ Refinance activity represents all renewals, including the renewals of loans that originated in prior quarters.

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

Additional Repossession Information

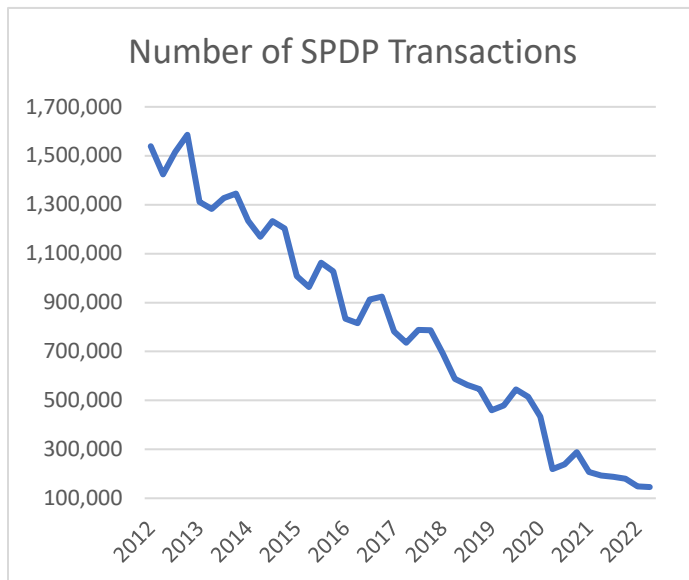
Quarterly report CAB data capturing repossessions began Jan 1, 2012. Repossession figures have shown increased volatility in the past few years, beginning in 2020. The number of repossessions decreased in the second quarter of 2022 to 10,311 continuing the trend of volatility from previous quarters. The historical average number of repossessions is 9,461 per quarter.

The Q2 repossession rate of 5.73% (as defined by the number of repossessions per loans outstanding) decreased from the all-time high of 7.5% observed one year ago. The historical rate is 3.84%.



Additional Single-Payment Deferred Presentment Information

Single-Payment Deferred Presentment Transactions (SPDP) or "payday loans" originally represented the majority of all CAB transactions. However, the total reported number of SPDP transactions has steadily declined and now makes up just 18% of new payday loans in the second quarter of 2022. Many cities have passed their own ordinances to regulate them, causing a drop in the number of loans made. An alternative product, installment-payday loans have increased due to the lengthier term offering the loan to be paid back in smaller periodic installments. Additionally, some companies are also opting to make similar (non-CAB CSO) loans that avoid city ordinances and are not reported to the OCCC.





Licensing Report- October 2022

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

Renewals

The department opened renewal for both motor vehicle sales finance and commercial motor vehicle sales finance in mid-September. It is projected that about 90% of licensees will renew. As of October 10, 2022, 60% of motor vehicle licensees have renewed and 75% of commercial motor vehicle licensees have renewed. Renewal notices were sent on October 1st and staff is currently working on sending delinquency notices. The deadline for renewal is October 31.

Renewal for registered creditors is also currently ongoing.

Staff are also preparing for renewal for property tax lenders, credit access businesses and regulated lenders which will open online sometime in November.

Applications Processing

The volume of incoming applications for FY 22 averaged 125 applications monthly. This is a decrease from prior years which averaged 140 monthly.

Additionally, the average application processing time has been lower than anticipated in FY 22 due to challenges with staffing and filling vacancies. Management does anticipate improved application processing in FY 23.

Other Updates

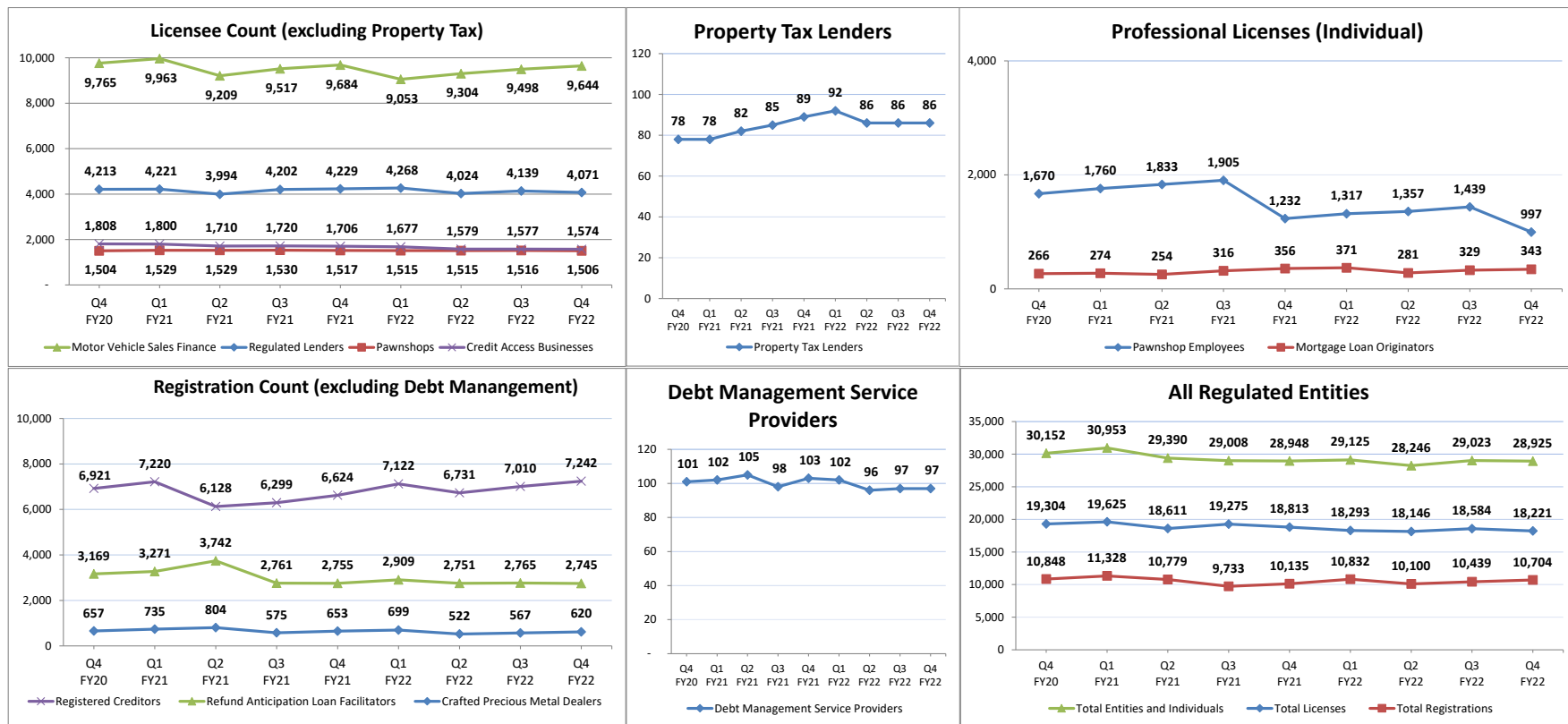
Over the past few months the department has been working with DIR and OCCC IT personnel to utilize the DIR-Shared Technology Services program vendor for print and mail services for renewal notices. The first batch has been successfully generated and mailed for motor vehicle sale finance and commercial motor vehicle sales finance.

The department continues to work with our internal teams on continual improvements to ALECS.

Regulated Entity Population Trend

The following charts reflect quarterly data for the number of OCCC regulated entities from Q4 FY 2020 through Q4 FY 2022.

Number of OCCC Regulated Entities Quarterly Comparison of FY20-22





ADMINISTRATION REPORT

FINANCIAL EDUCATION AND TFEE

TFEE grant reimbursements totaled \$138,801.08 during the first semi-annual cycle. The TFEE 2022-2023 Cycle Semi-Annual Report has been published as well as the TFEE 2020-2021 Impact Report. Both reports are available for review at www.tfee.texas.gov.

In September, Financial Education staff debuted a new Credit presentation at the Examiner Training conference. Additionally, staff are scheduled to present a webinar, “Avoiding Financial Exploitation” for Texas County & District Retirement System members later this month.

COMMUNICATION

OCCC senior staff hosted a virtual town hall for all agency employees on September 9, 2022. The virtual town hall allowed agency leadership to provide updates to all staff on agency initiatives. Additionally, OCCC staff continue to provide presentations to regulated entities and other regulatory groups as follows:

- On September 8, 2022 Financial Examiner Fancher provided a presentation to automobile dealers at a webinar sponsored by the Texas Department of Motor Vehicles.
- On September 13, 2022 Commissioner Pettijohn, Director Lewis, and Deputy General Counsel Nance provided a presentation at the Texas Property Tax Lienholders Association Annual Meeting.
- On September 15, 2022 Commissioner Pettijohn, Deputy General Counsel Nance, Senior Paralegal Harmon, Assistant Director Hubenthal, and Financial Examiner Baker hosted a Plain Language Rule Review webinar for stakeholders.
- On October 6, 2022 Financial Examiner Fancher provided a presentation to automobile dealers at a webinar sponsored by the Texas Department of Motor Vehicles.

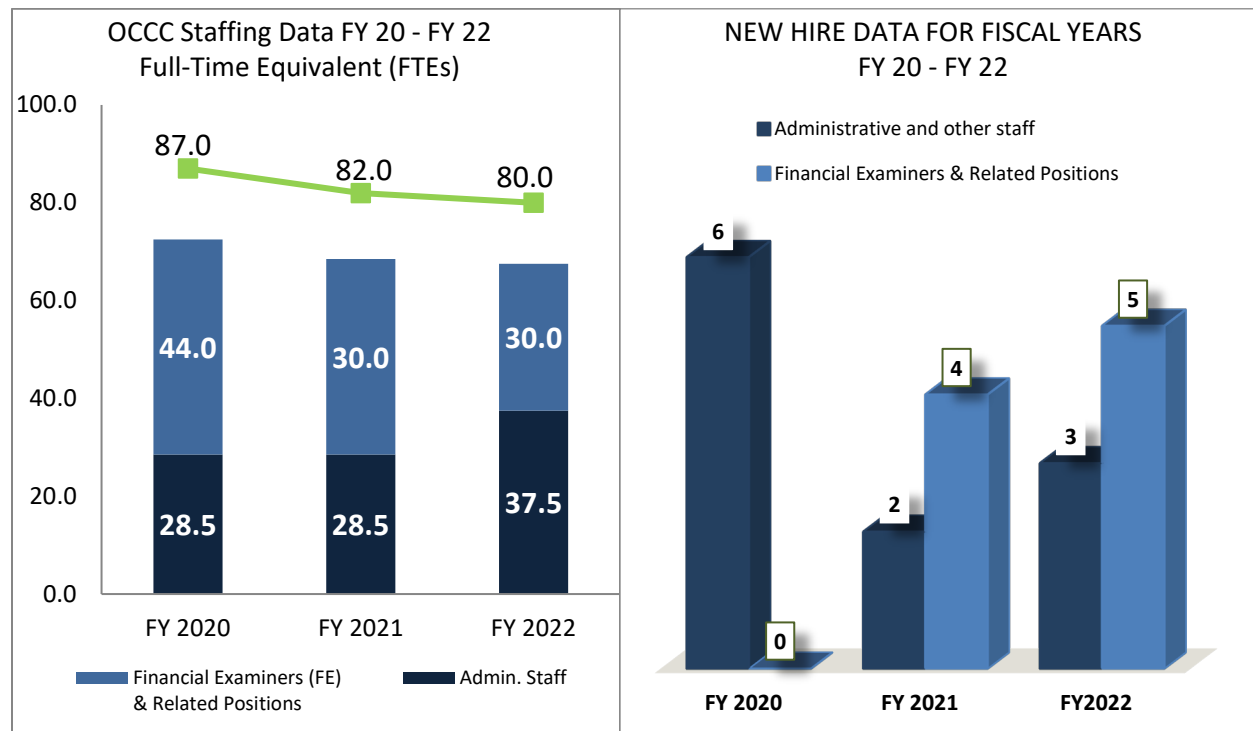
HUMAN RESOURCES

During this reporting period through August 31, 2022, the OCCC was staffed with a total of 67.5 FTEs. The OCCC filled the HR Specialist Position on September 19, 2022, and welcomes Mr. Kelley Williams as the OCCC's Human Resources Officer.

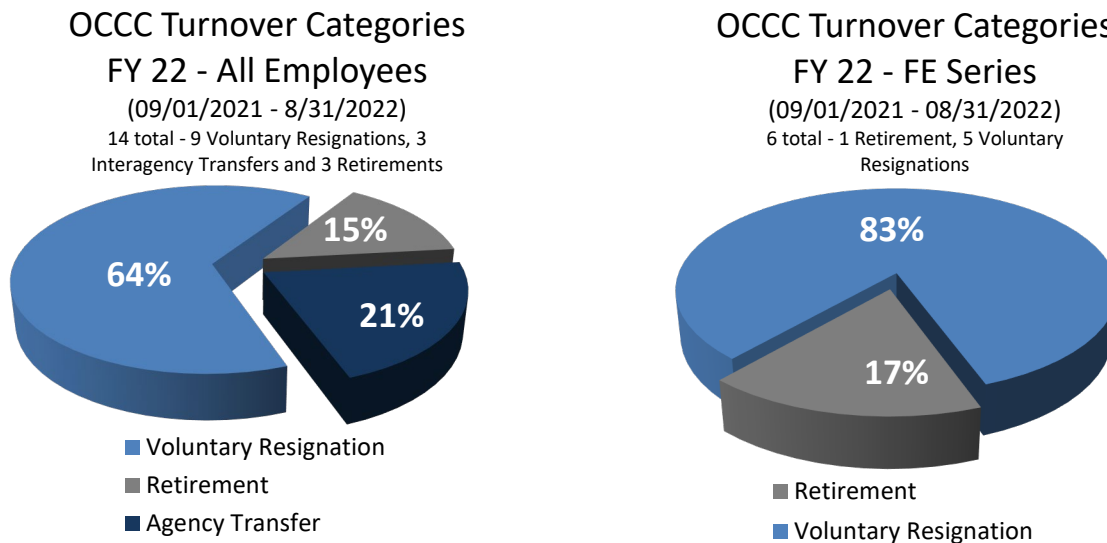
Currently the OCCC has the following open positions.

Vacancy	Status
Financial Examiner I	Open - 4
Customer Service Representative II/III	Open - 1
Compliance Analyst I	Open - 1

The following charts represent staffing data for Fiscal Years 2020 - 2022.



The turnover rate as of August 2022 is 17.5%, and the chart below represents FY22 data. The data is reflective of the current job market.



An important item of note with regard to terminations in FY 22 is that the OCCC experienced a high number of terminations for employees who were with the agency for 1 year or less. Of the 14 terminations in FY 22, almost 1/3 were employed with the OCCC for less than 1 year.

INFORMATION TECHNOLOGY

Technology modernization and deployment

The OCCC website (<https://occc.texas.gov>) was updated and refreshed, integrating a newer, more secure platform, and standardizing many design elements. The updated site was released in August.

A payment feature was added to ALECS to enable certain payments to be made through Texas.gov by, or on behalf of, non-licensees. These payments typically relate to public information requests, publication orders, or debt cancellation contract reviews. The new functionality was released to production in late August. The automated payment feature enhances the security and efficiency of processing these payment types which were previously all handled manually.

The annual asset inventory was completed.

OCCC is migrating to Microsoft 365, which will replace several, disparate systems and applications. In particular, agency email will use Outlook, SharePoint will be used for file-sharing, and Teams will become our primary videoconferencing and collaboration app, along with familiar productivity apps like Word and Excel. Migration should be completed by the end of the calendar year.



Accounting Report- October 2022

Mirand Diamond, Director of Licensing & Finance

Staffing

The Accounting Department has hired an Accountant II who will start with the agency on October 17, 2022. The Department is now fully staffed and will begin working to train the new accountant.

CAPPS

The Department has completed the transition to CAPPS HR/Payroll and will use the system for all current and future payroll transactions. The Department has successfully used CAPPS Financials for the first full year and will continue its use for all financial transactions.

Procedures

The Department is working to update procedures as a result of CAPPS HR/Payroll and Financial system implementations.

Other Items

In compliance with Government Code, Section 2101.011, and in accordance with the requirements established by the Comptroller of Public Accounts, the Department has completed the FY2022 Annual Financial Report.

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

In accordance with statutory requirements, the Department has completed and submitted reports to oversight agencies on Funds Held Outside the Treasury and various workforce reports, including FTE data, management-to-staff ratios, and veteran employment data.

OFFICE OF CONSUMER CREDIT COMMISSIONER
EXECUTIVE SUMMARY

As of August 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	583	24,756
Regulated Lenders Examinations	576	656	244	175	159	240	818
Property Tax Lender Examinations	7	12	1	24	0	2	27
Pawnshop Examinations	276	415	157	124	145	212	638
Motor Vehicle Examinations	1,350	1,364	406	365	329	298	1,398
Credit Access Businesses Examinations	284	293	6	0	259	3	268
CONSUMER ASSISTANCE							
Telephone Complaints Received	459	489	120	81	144	146	491
Written Complaints Received	1,303	1,241	283	317	322	330	1,252
Total Complaints Closed	1,756	1,725	444	423	481	403	1,751
% of Written Complaints Closed within 90 Calendar Days	86.6%	96.6%	93.7%	90.7%	91.4%	92.3%	92.3%
ADMINISTRATIVE ENFORCEMENT ACTIONS							
Originated	188	224	23	18	21	52	114
Finalized	270	197	68	30	24	16	138
LICENSING AND REGISTRATION							
Licenses							
Regulated Lender Licenses	4,213	4,229	4,268	4,024	4,139	4,071	4,071
Pawnshop Licenses	1,504	1,517	1,515	1,515	1,516	1,506	1,506
Pawnshop Employee Licenses	1,670	1,232	1,317	1,357	1,439	997	997
Commercial MV Sales Fin. Licenses	54	57	55	56	58	59	59
Motor Vehicle Sales Finance Licenses	9,711	9,627	8,998	9,248	9,440	9,585	9,585
Property Tax Lender Licenses	78	89	92	86	86	86	86
Mortgage Loan Originators	266	356	371	281	329	343	343
Credit Access Business Licenses	1,808	1,706	1,677	1,579	1,577	1,574	1,574
Registrations							
Registered Creditors	6,921	6,624	7,122	6,731	7,010	7,242	7,242
Crafted Precious Metal Dealers	657	653	699	522	567	620	620
Debt Management Service Providers	101	103	102	96	97	97	97
Refund Anticipation Loan Facilitators	3,169	2,755	2,909	2,751	2,765	2,745	2,745
Applications							
Business -- New	1,621	1,579	298	464	389	283	1,434
Business -- Change of Ownership	87	141	8	13	12	25	58
Pawnshop Employees -- New	630	408	98	58	104	106	366
HUMAN RESOURCES DATA							
Field Examiners Staffing	44	40	40	38	36	30	30
Total Staffing	73	68.5	69.5	69.5	65.5	67.5	67.5

**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	Comparable Historical Data for the same time period			
					FY2021	FY2020	FY2019	FY2018
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	481	1348	77.0%				
Quarter 4	1,750	403	1751	100.1%	1,725	1,756	1,719	1,762
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%				
Quarter 4	3,000	755	3,149	105.0%	2,740	2,493	1,383	4,503
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.								
Quarter 4	1800	283	1434	79.7%	*	1,579	1,621	1,679
The Licensing Department met 80% of the targeted goal due to vacant positions within the department. During FY 22, multiple departures resulted in extended periods during which the department was unable to fill vacant positions.								

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%	*
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The Financial Education Department exceeded third quarter targets as the result of a larger than projected number of presentations during financial literacy month.

Quarter 4	900	17	1,070	118.9%	*	1,940	2,863	337	332
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The Financial Education Department exceeded targets as a result of a higher number of individuals attending events than anticipated.

*Varies by 5% or more from target.

Actual Performance for Key Outcome & Efficiency Measures

Type/Strategy/Measure	2022 Target	2022 YTD	Percent of Annual Target	
Outcome Measures-Key				
CONSUMER PROTECTION				
A.1 CONSUMER COMPLAINTS				
1. % WRITTEN COMPLAINTS CLOSED WITHIN 90 DAYS	85%	92.3%	108.6%	*
Consumer Assistance staff exceeded the target due to increased emphasis on teamwork and regular coordination with senior staff to discuss more complex complaints.				
A.2 ENSURE COMPLIANCE				
1. % EXAMINATIONS REPORTING ACCEPTABLE LEVEL OF COMPLIANCE	85%	92.3%	108.5%	*
OCCC licensees, especially in the mature industries Pawn (100% acceptable compliance) and Regulated Lending (95% acceptable compliance), have very high compliance ratings. None of the industry groups recorded annual acceptable compliance ratings below the benchmark of 85%.				
2. MONIES RETURNED TO CONSUMERS	\$12,500,000	\$24,756,000	198.0%	*
A large Enterprise Examination Review was completed and closed. During the review and closing process, a significant amount of refunds were confirmed through a combination of cash refunds and account credits.				
EFFECTIVE LICENSING & REGISTRATION				
B.1 1. % BUSINESS LICENSE APPLICATIONS PROCESSED WITHIN 60 DAYS	85%	57.0%	67.1%	*
The department has experienced continuous vacancies which impacted processing times. ☐				
EFFICIENT AND EFFECTIVE AGENCY OPERATION				
C.1 1. % REGULAR EMPLOYEES SEPARATED FROM AGENCY	16%	17.5%	109.4%	*
This data is reflective of the current job market and how prospective candidates see the job market. There is an ongoing effort to stabilize retention in OCCC.				
Efficiency Measures-Key				
CONSUMER PROTECTION				
A.1 1. AVERAGE NUMBER OF DAYS TO CLOSE AN ENFORCEMENT ACTION	100	103	103.0%	
EFFECTIVE LICENSING & REGISTRATION				
B.1 2. AVERAGE PROCESSING TIME (DAYS) FOR BUSINESS LICENSE APPS	45	75	167%	*
The Licensing Department was faced with short-staffing throughout this fiscal year. Other licensing tasks also required priority handling, which had to be balanced with application processing.				

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

OCCC Actual Performance for Non-Key Measures
Fiscal Year 2022
For Period Ending August 31, 2022

Type/Strategy/Measure	2022 Target	2022 YTD	Percent of Annual Target
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Non-Key Measures

A. CONSUMER PROTECTION

A.1.1	AVERAGE NUMBER OF DAYS FOR ALL COMPLAINTS TO REACH FINAL DISPOSITION	60	40.7	67.8%
A.1.2	AVERAGE NUMBER OF DAYS TO CLOSE A COMPLAINT	45	37.8	84.0%
A.1.3	AVERAGE COST PER COMPLAINT	\$180	\$133	74.1%
A.2.1	AVERAGE COST PER EXAMINATION	\$1,650	\$1,224	74.2%
A.2.2	% OF LICENSED LOCATIONS AND REGISTERED OFFICES EXAMINED ANNUALLY	18%	18.7%	104.0%
A.2.3	NUMBER OF INVESTIGATIONS COMPLETED	75	76	101.3%
A.3.1	% OF REPEAT REFERRALS FOR ENFORCEMENT ACTION	25%	32.0%	128.0%
	The legal department received fewer referrals for enforcement matters than anticipated. This measure only counts enforcement actions that resulted in a final order. Several enforcement matters were closed without a final order. Based on information from FY22, the OCCC adjusted this target for FY23.			
A.3.2	% OF ENFORCEMENT ACTIONS CLOSED WITHIN TARGETED TIMEFRAME	70%	77%	110.0%
A.3.3	NUMBER OF ENFORCEMENT ACTIONS TAKEN AND CLOSED	250	119	47.6%
	The legal department received fewer referrals for enforcement matters than anticipated. This measure only counts enforcement actions that resulted in a final order. Several enforcement matters were closed without a final order. Based on information from FY22, the OCCC adjusted this target to 200 for FY23.			
A.3.4	NUMBER OF CONTESTED CASES HEARD AT SOAH	2	1	50.0%
	The OCCC was able to resolve some matters before a hearing was held, resulting in fewer hearings than anticipated. For FY23, the legal department has replaced this measure with Number of Contested Cases Docketed at SOAH, in order to provide a more complete measure of SOAH case activity.			
A.3.5	NUMBER OF COMPLIANCE AIDS AND TOOLS PUBLISHED	45	33	73.3%
	The agency received fewer requests for compliance aids than anticipated.			
A.3.6	NUMBER OF INDUSTRY STAKEHOLDER AND OUTREACH EVENTS HOSTED OR ATTENDED BY OCCC STAFF	30	45	150.0%

B. EFFECTIVE LICENSING AND REGISTRATION

B.1.1	AVERAGE PROCESSING TIME (DAYS) FOR PAWNSHOP EMPLOYEE APPS	30	53	176.7%
	The processing time increased due to staff vacancies and changes leading to processing delays			
B.1.2	AVERAGE PROCESSING TIME (DAYS) FOR RMLO APPS	15	56	373.3%
	The processing time increased due to the number of received applications increasing.			
B.1.3	NUMBER OF PAWNSHOP EMPLOYEE LICENSE APPLICATIONS PROCESSED	475	366	77.1%
	The department received fewer applications than projected.			
B.1.4	NUMBER OF RMLO APPLICATIONS PROCESSED	100	132	132.0%

C. FINANCIAL EDUCATION

C.2	% OF TFEF AWARD RECIPIENTS WHO REACHED THEIR CONSUMER PARTICIPATION GOAL WITHIN THE GRANT PERIOD	100%	59.0%	59.0%
	TFEF grant cycles are every two calendar years. Agency cycles are reported per fiscal year. This presents a challenge in reporting grant-related data. Fiscal year 2022 covers two separate grant cycles. For the 2020-2021 grant cycle, the aggregate program results, across all organizations, reported achieving 162% of the projected participation goal of the Number of Texans Served. For the 2022-2023 cycle 8 out of 12 organizations met their pro-rated goals and all organizations anticipate achieving their entire goal over the remainder of the grant cycle.			

D. EFFICIENT AND EFFECTIVE AGENCY OPERATION

D.1	PERCENTAGE OF ACTUAL EXPENDITURES TO BUDGETED EXPENDITURES	95%	90.4%	95.2%
D.2.1	PERCENTAGE OF PUBLIC INFORMATION REQUESTS ADDRESSED WITHIN 5 BUSINESS DAYS	80%	78.0%	97.5%
D.2.2	NUMBER OF PUBLIC INFORMATION REQUESTS CLOSED	185	159	85.9%
	The OCCC received fewer public information requests than anticipated.			
D.2.3	NUMBER OF PUBLIC INFORMATION REQUESTS WITHDRAWN	8	10	125.0%
	The OCCC had more requests withdrawn than anticipated.			
D.2.4	AVERAGE NUMBER OF DAYS TO ADDRESS A PUBLIC INFORMATION REQUEST	2.2	2.8	127.3%
	In FY22 the OCCC received more complex requests that required more time to complete than usual. Based on this new trend, the OCCC has adjusted this target to 3.0 for FY23, which is still well below the allowed 10-day timeframe.			
D.2.5	NUMBER OF PUBLIC INFORMATION REQUESTS RECEIVED	193	169	87.6%
	The OCCC received fewer public information requests than anticipated.			

SCHEDULE C. HUB USAGE

1	NUMBER OF HUB CONTRACTORS AND SUBCONTRACTORS CONTACTED FOR BID PROPOSALS	10	6	60.0%
	Only 2 contracts required bids			
2	NUMBER OF HUB CONTRACTS AND SUBCONTRACTS AWARDED	2	3	150.0%
3	DOLLAR VALUE OF HUB CONTRACTS AND SUBCONTRACTS AWARDED	\$75,000	\$236,144	314.9%

* Varies by 5% or more from target.



Legal Department Report

Michael Rigby, General Counsel

October 2022

Enforcement Report

Contested Cases

The OCCC currently has one case pending before the State Office of Administrative Hearings (SOAH), and recently closed another case that was previously pending.

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 closing briefs on July 28 and filed reply briefs on August 16.

On October 11, the SOAH administrative law judge issued a proposal for decision in this case. The judge recommended that the OCCC affirm and modify its order requiring Cooley to reduce its documentary fees and provide customers with restitution. The deadline for the parties to file exceptions to the proposal for decision is October 26.

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

The OCCC has closed this case, and the denial of Dallas Daily Driver's motor vehicle sales finance license application has become final. When Dallas Daily Driver filed its license application in February 2022, it failed to completely disclose its owner's criminal history in the license application. The company also failed to respond to the OCCC's follow-up request for criminal history information. Based on this, the OCCC denied Dallas Daily Driver's license application. Dallas Daily Driver requested a hearing on the denial, and the OCCC docketed the case with SOAH. However, on August 29, Dallas Daily Driver withdrew its hearing request. The denial of Dallas Daily Driver's license application has become final, and SOAH has canceled the hearing that was previously scheduled for September 27.

Orders on Reporting Violations

In September 2022, the OCCC issued 43 orders against regulated lenders that failed to file their 2021 annual reports by the May 1, 2022 deadline. Of these orders, 25 were injunctions requiring the licensee to file timely and accurate reports, and 18 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 August 31, 2022	
Cases Opened	114
Cases Closed	138
Average Number of Days to Close an Enforcement Action	103
Contested Cases Docketed at SOAH	2
Contested Cases Heard at SOAH	1
Enforcement Actions Taken and Closed by Final Order	119

September 1, 2022 through September 30, 2022	
Cases Opened	30
Cases Closed	5
Average Number of Days to Close an Enforcement Action	108
Contested Cases Docketed at SOAH	0
Contested Cases Heard at SOAH	0
Enforcement Actions Taken and Closed by Final Order	4

As of September 30, 2022, the OCCC does not have any SOAH hearings scheduled.

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

Enforcement Actions Closed as of September 30, 2022			
	FYTD 2023	FY 2022	FY 2021
Injunction Actions			
Crafted Precious Metal Dealer	0	0	0
Credit Access Business	1	23	33
Debt Management Provider	0	2	10
Manufactured Housing	0	0	0
Motor Vehicle Sales Finance	1	7	11
Motor Vehicle Sales Finance Commercial	0	0	1
Pawnshop	0	5	48
Pawnshop Employee	0	0	0
Property Tax Lender	0	5	2
Registered Creditor	0	0	0
Regulated Lender	0	39	28
Residential Mortgage Loan Originator	0	0	0
Total Injunction Actions	2	81	133
Administrative Penalty Actions			
Crafted Precious Metal Dealer	0	0	0
Credit Access Business	0	7	12
Debt Management Provider	0	3	2
Motor Vehicle Sales Finance	0	4	8
Pawnshop	0	6	15
Pawnshop Employee	0	0	0
Property Tax Lender	0	1	1
Regulated Lender	2	27	18
Residential Mortgage Loan Originator	0	0	0
Total Administrative Penalty Actions	2	48	56
Revocation / Suspension Actions			
Crafted Precious Metal Dealer	0	0	0
Credit Access Business	0	0	1
Motor Vehicle Sales Finance	0	2	1
Pawnshop	0	1	4
Pawnshop Employee	0	0	0
Property Tax Lender	0	0	0
Regulated Lender	0	5	0
Residential Mortgage Loan Originator	0	0	0
Total Revocation / Suspension Actions	0	8	6
Application Denial and Protest Actions			
Credit Access Business	0	0	0
Motor Vehicle Sales Finance	1	1	2
Pawnshop	0	0	0
Pawnshop Employee	0	0	0
Property Tax Lender	0	0	0
Regulated Lender	0	0	0
Residential Mortgage Loan Originator	0	0	0
Total App. Denial and Protest Actions	1	1	2
Total Actions Closed	5	138	197

Rule Actions

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

Litigation

Ernest Polk v. Texas Office of Consumer Credit Commissioner

This is an employment discrimination lawsuit pending before the First Court of Appeals in Houston (case no. 01-22-00712-CV). In February 2022, the OCCC filed a second plea to the jurisdiction in the district court, arguing that the plaintiff's claims are barred by sovereign immunity and challenging the sufficiency of the plaintiff's evidence. On September 7, the district court granted the OCCC's plea to the jurisdiction and dismissed the plaintiff's case. On September 27, the plaintiff filed a notice of appeal. The appeal is currently pending.

Advisory Bulletins

From August 1, 2022 to September 30, 2022, the OCCC did not issue any advisory bulletins.

Official Interpretation Requests

From August 1, 2022 to September 30, 2022, the OCCC did not receive any requests for official interpretations of the Texas Finance Code. As of September 30, 2022, there were no pending requests for official interpretations of the Texas Finance Code.

Public Information Requests

August 1, 2022 through September 30, 2022	
Requests Received	30
Requests Closed	30
Requests Withdrawn	2
Requests Referred to Office of Attorney General	0
Average Number of Days to Address a Public Information Request	3.3

Gifts Received by the OCCC

From August 1, 2022 to September 30, 2022, the OCCC received no gifts.

C. OFFICE OF CONSUMER CREDIT COMMISSIONER

2. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 5, Chapter 90, Concerning Chapter 342, Plain Language Contract Provisions, Resulting from Rule Review

PURPOSE: Pursuant to Texas Government Code, §2001.039, the OCCC has completed the review of 7 TAC Chapter 90, 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 90 following rule review, because the reasons for the rules continue to exist.

RECOMMENDED MOTION: I move that we readopt 7 TAC Chapter 90 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 90. Chapter 342, Plain Language Contract Provisions

The Finance Commission of Texas (commission) has completed the rule review of Texas Administrative Code, Title 7, Part 5, Chapter 90, concerning Chapter 342, Plain Language Contract Provisions, in its entirety. The rule review was conducted under Texas Government Code, §2001.039.

Notice of the review of 7 TAC Chapter 90 was published in the August 5, 2022, issue of the *Texas Register* (47 TexReg 4691). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this chapter continue to exist.

As a result of internal review by the Office of Consumer Credit Commissioner, the commission has determined that certain revisions are appropriate and necessary. Those proposed changes are published elsewhere in this issue of the *Texas Register*.

As a result of the rule review, the commission finds that the reasons for initially adopting the rules in 7 TAC Chapter 90 continue to exist, and readopts this chapter in accordance with the requirements of Texas Government Code, §2001.039.

C. OFFICE OF CONSUMER CREDIT COMMISSIONER

3. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 5, Chapter 90, Concerning Chapter 342, Plain Language Contract Provisions, Resulting from Rule Review.

PURPOSE: The purpose of the amendments to 7 TAC Chapter 90 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039.

RECOMMENDED ACTION: The OCCC requests that the Finance Commission approve the amendments to 7 TAC Chapter 90 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve for publication and comment the amendments to 7 TAC Chapter 90.

Title 7, Texas Administrative Code

Part 5. Office of Consumer Credit Commissioner

Chapter 90. Chapter 342, Plain Language Contract Provisions

The Finance Commission of Texas (commission) proposes amendments to §90.103 (relating to Format) and §90.104 (relating to Non-Standard Contract Filing Procedures) in 7 TAC Chapter 90, concerning Chapter 342, Plain Language Contract Provisions.

The rules in 7 TAC Chapter 90 govern plain language contracts for regulated lenders. In general, the purpose of the proposed rule changes to 7 TAC Chapter 90 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. In July 2022, the OCCC issued an advance notice of rule review, seeking informal feedback on the rule review. The OCCC did not receive any informal comments on the advance notice. Notice of the review of 7 TAC Chapter 90 was published in the *Texas Register* on August 5, 2022 (47 TexReg 4691). The commission did not receive any official comments in response to the notice published in the *Texas Register*.

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

Proposed amendments to §90.103 would update the list of typefaces that are considered easily readable for plain language contracts. Under Texas Finance Code, §341.502(a)(2), loan contracts must be "printed in an easily readable font and type size." Currently, §90.103(b) lists the

following typefaces considered to be readable: Arial, Calibri, Caslon, Century Schoolbook, Garamond, Helvetica, Scala, and Times New Roman. The proposal would revise this list to add Georgia and Verdana, and to remove Caslon, Century Schoolbook, Garamond, and Scala. Since the commission originally adopted §90.103 in 2006, electronic contracts and screen reading have changed how consumers view contracts. The amendments to §90.103 are based on updated guidance for accessibility and screen reading, including guidance from federal agencies on typefaces that are considered accessible. *See, e.g.,* U.S. Department of Health and Human Services, Research-Based Web Design and Usability Guidelines, p. 106; Centers for Medicare & Medicaid Services, Section 508 Guide for Microsoft Word 2013, p. 5 (rev. 2018). Other amendments throughout §90.103 add a descriptive title to each subsection.

Proposed amendments to §90.104 would reorganize and clarify the requirements for submitting non-standard plain language contracts. Under Texas Finance Code, §341.502(b), if a regulated lender uses a loan contract other than a model contract adopted by the commission, then the lender must submit the contract to the OCCC for review. Currently, §90.104 describes the requirements for submitting these non-standard contracts to the OCCC. Under the proposal, subsection (a) would be amended to provide an up-front summary of the submission requirements, including the requirements under Texas Finance Code, §341.502. In particular, new paragraph (a)(3) would specify that non-standard loan contracts "must be consistent with Texas law

and federal law." Currently, lenders are required to ensure that contracts comply with applicable law, and the OCCC's prescribed certification requires a person submitting a non-standard contract to certify compliance with state and federal law. If a contract contains illegal provisions, then the contract is misleading, and is not "easily understood by the average consumer" as required by Texas Finance Code, §341.502(a)(1). Before submitting a loan contract for review, lenders and form providers should work with their legal counsel and compliance staff to ensure that contracts comply with applicable law. Proposed amendments to subsection (b) would specify the grounds for disapproving a non-standard contract under Texas Finance Code, §341.502(c). These amendments replace language on the certification of readability, which would be moved into subsection (d). Proposed amendments to subsection (c) would specify that the subsection refers to the requirements for filing copies of the loan contract. Proposed amendments to subsection (d) would consolidate the rule's requirements for the submission form that must be submitted with the copies of the loan contract. The commission believes that it is helpful to reorganize these related requirements into a single subsection.

Mirand Diamond, Director of Licensing, Finance and Human Resources, has determined that for the first five-year period the proposed rule changes are in effect, there will be no fiscal implications for state or local government as a result of administering the rule changes.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of the changes will be

that the commission's rules will be more easily understood by licensees required to comply with the rules, will ensure that loan contracts are easily understood by consumers, and will ensure that the OCCC can efficiently process plain language contract filings.

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

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

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposal does not require an increase or decrease in fees paid to the OCCC. The proposal would not create a new regulation. The proposal would expand current §90.103 by adjusting the list of readable typefaces, and would expand current §90.104 by specifying requirements for submitting non-

standard contracts. The proposal would limit current §90.103 by adjusting the list of readable typefaces. The proposal would not repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rule's applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

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

The rule amendments are proposed under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of plain language contracts for regulated loans. In addition, Texas Finance Code, §11.304 authorizes the Finance Commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 341.

Subchapter A. General Provisions

§90.103. Format

(a) Generally. Plain language contracts must be printed in an easily readable font and

type size pursuant to Texas Finance Code, §341.502(a). If other state or federal law requires a different type size for a specific disclosure or contractual provision, the type size specified by the other law should be used.

(b) Typeface readability. The text of the document must be set in an easily readable typeface. Typefaces considered to be readable include [≐] Arial, Calibri, Georgia, [~~Caslon, Century Schoolbook, Garamond,~~] Helvetica, [~~Scala, and~~] Times New Roman, and Verdana.

(c) Titles and headings. Titles, headings, subheadings, numbering, captions, and illustrative or explanatory tables or sidebars may be used to distinguish between different levels of information or to provide emphasis.

(d) Typeface size. Typeface size is referred to in points. Because different typefaces in the same point size are not of equal size, typeface is not strictly defined but is expressed as a minimum size in the Times New Roman typeface for visual comparative purposes. Use of a larger typeface is encouraged. The typeface for the federal disclosure box or other disclosures required under federal law must be legible, but no minimum typeface is required. Generally, the typeface for the remainder of the contract must be at least as large as 8 point in the Times New Roman typeface. A point is generally viewed as 1/72nd of an inch.

§90.104. Non-Standard Contract Filing Procedures

(a) Non-standard contracts. A non-standard contract is a contract that uses clauses other than [~~does not use~~] the model contract provisions. Before a licensee uses a non-standard contract, the contract must be

submitted to the OCCC for review under Texas Finance Code, §341.502(c). A non-standard contract: [Non-standard contracts submitted in compliance with the provisions of Texas Finance Code, §341.502(c) will be reviewed to determine that the contract is written in plain language.]

(1) must be written in plain language designed to be easily understood by the average consumer, as required by Texas Finance Code, §341.502(a);

(2) must be printed in an easily readable font and type size, as required by Texas Finance Code, §341.502(a) and §90.103 of this title (relating to Format);

(3) must be consistent with Texas law and federal law;

(4) must include a notice with the OCCC's contact information, as required by Texas Finance Code, §14.104 and §90.105 of this title (relating to OCCC notice);

(5) must comply with the requirements described in subsection (c) of this section, including the maximum Flesch-Kincaid Grade Level score; and

(6) must be accompanied by a complete submission form containing the information required by subsection (d) of this section.

(b) Disapproval. If a non-standard contract filing fails to comply with one or more of the requirements listed in subsection (a) of this section, then the OCCC may disapprove the filing under Texas Finance Code, §341.502(c). A licensee must cease using a disapproved contract immediately after an order of disapproval takes effect, as provided by Texas Finance Code,

§341.502(d). [Certification of readability. Contract filings subject to this chapter must be accompanied by a certification signed by an officer of the licensee or the entity submitting the form on behalf of the licensee. The certification must state that the contract is written in plain language and that the contract can be easily understood by the average consumer. The certification must also state that the contract is printed in an easily readable font and type size, including a list of the typefaces used in the contract, the font sizes used in the contract, and the Flesch-Kincaid Grade Level score of the contract. The OCCC will prescribe the form of the certification.]

(c) Contract filing [Filing] requirements. Copies of the loan contract [Contract filings must be identified as to the transaction type. Contract filings] must be submitted in accordance with the OCCC's instructions and the following requirements:

(1) Microsoft Word format. One copy must be submitted in a Microsoft Word format with the document having either a .doc or .docx extension. The Flesch-Kincaid Grade Level score of the contract must be based on the Microsoft Word readability statistics function for the Microsoft Word version of the contract.

(2) PDF format. One copy must be submitted in a text-searchable PDF format so that the contract may be visually reviewed in its entirety. The page size must be 8.5 inches by 11 inches or 8.5 inches by 14 inches. The PDF may not be locked or restricted in a way that prohibits comparison of different versions of the contract.

(3) No other formats permitted. The OCCC will not accept paper filings or any

other unlisted formats for non-standard contract filings.

(4) Maximum Flesch-Kincaid score. The maximum Flesch-Kincaid Grade Level scores for Chapter 342 contract filings are:

(A) grade 8 for Subchapter F (signature loans);

(B) grade 9 for Subchapter E (secured installment loans);

(C) grade 10 for Subchapter G, computed by scoring the note and security document in one continuous Microsoft Word document (home equity loans, second lien purchase money loans, and second lien home improvement contracts).

(d) Submission form. A non-standard contract must be accompanied by a written submission form prescribed by the OCCC. The submission form must be completed in accordance with the OCCC's instructions and the following requirements: ~~[Contact person. One person shall be designated as the contact person for each filing submitted. Each submission should provide the name, address, phone number, and fax number, if available, of the contact person for that filing. If the contracts are submitted by anyone other than the licensee itself, the contracts must be accompanied by a dated letter which contains a description of the anticipated users of the contracts and designates the legal counsel or other designated contact person for that filing.]~~

(1) Transaction subchapter. The submission form must identify the subchapter of Texas Finance Code, Chapter 342 under which the contract will be used (Subchapter E, Subchapter F, or Subchapter G).

(2) Contact person. The submission form must identify an individual as the contact person for the contract filing, and must include the individual's name, address, phone number, and email address. If a contract is submitted by a person other than a licensee, then the contract must be accompanied by a dated letter that contains a description of the anticipated users of the contract, and designates the legal counsel or other designated contact person for that filing.

(3) Certification of readability. The submission form must include a certification signed by an officer of the licensee or the entity submitting the form on behalf of the licensee. The certification must state that the contract is written in plain language and that the contract can be easily understood by the average consumer. The certification must also state that the contract is printed in an easily readable font and type size, including a list of the typefaces used in the contract, the font sizes used in the contract, and the Flesch-Kincaid Grade Level score of the contract. The OCCC will prescribe the form of the certification.

Certification

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

Issued in Austin, Texas on October 28, 2022.

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

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D.

**Department of Savings and
Mortgage Lending**

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D. Department of Savings and Mortgage Lending

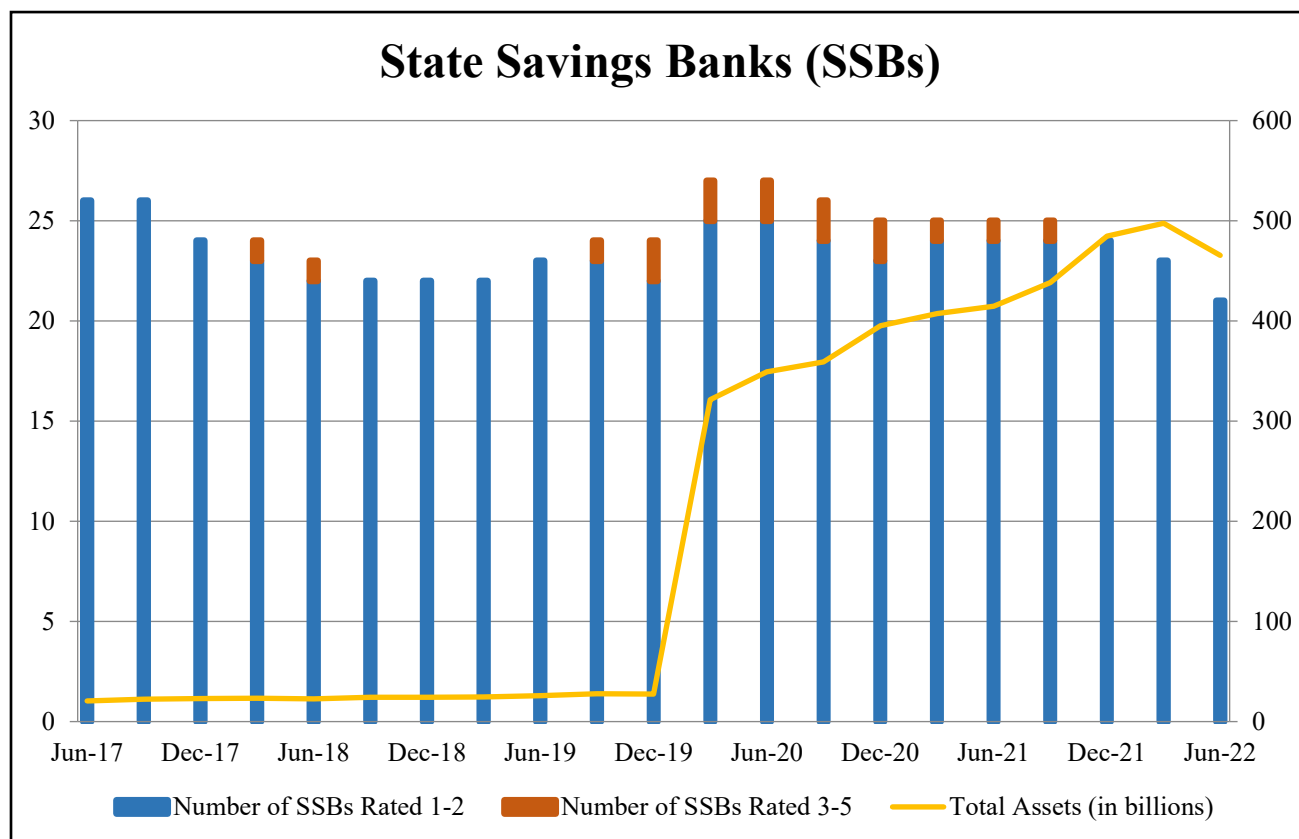
1. Industry Status and Departmental Operations: a) Thrift Regulation Division Activities; b) Mortgage Regulation Division Activities; c) Operations Division Activities; d) Legal Division Activities, including Consumer Complaints and Gift Reporting; and e) Legislative Activities

a) Thrift Regulation Division Activities

Industry Status

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

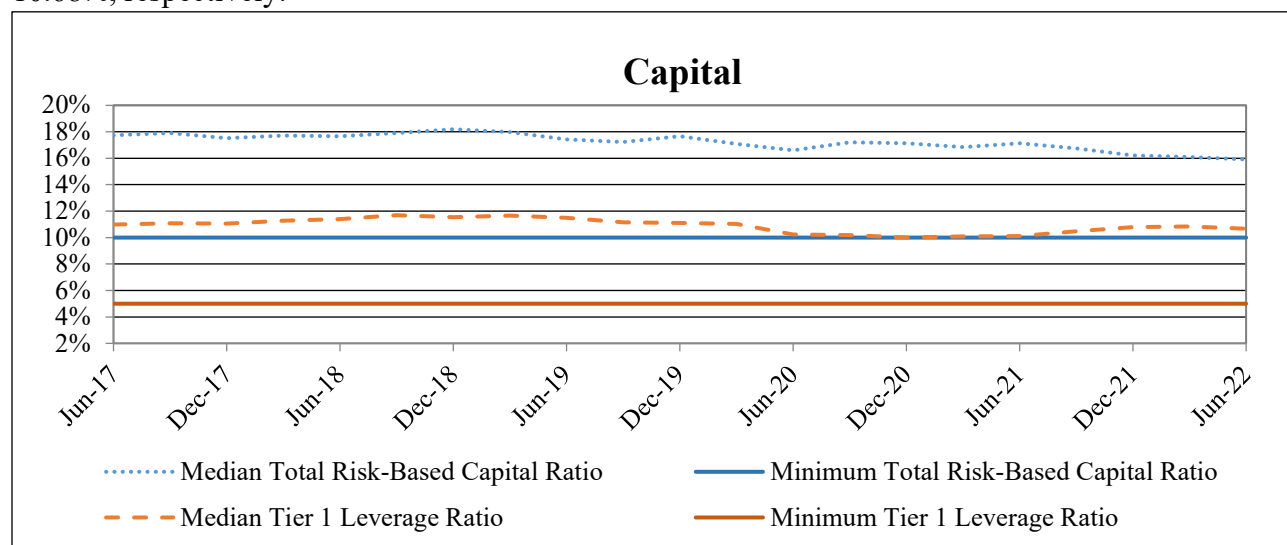
The Department conducts bank examinations to ensure confidence in the banking system using the Uniform Financial Institutions Rating System (UFIRS). Banks with a UFIRS rating of 1 or 2 are considered well rated. The industry consists of 21 state savings banks with assets totaling \$465.4 billion as of June 30, 2022. The industry remains sound with all banks being well rated. As of August 31, 2022, no supervisory actions are in place.



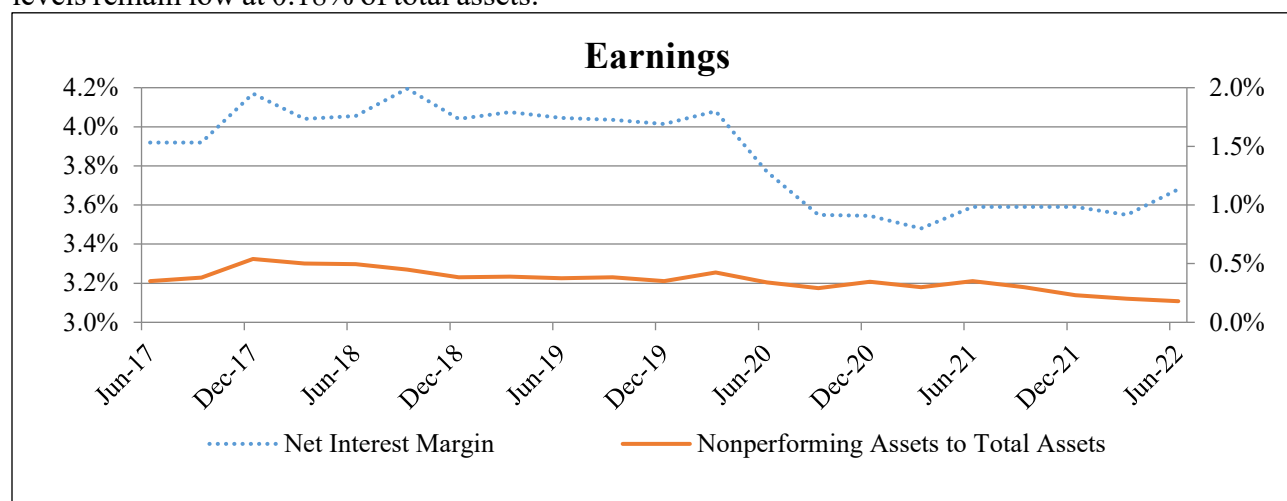
All SSBs are subject to quarterly offsite reviews. Those with the highest risk profiles receive enhanced scrutiny, as warranted, with targeted visitations, accelerated examinations, and/or corrective actions.

Below are specific areas that the Department monitors in relation to changes in the state and national economic environment.

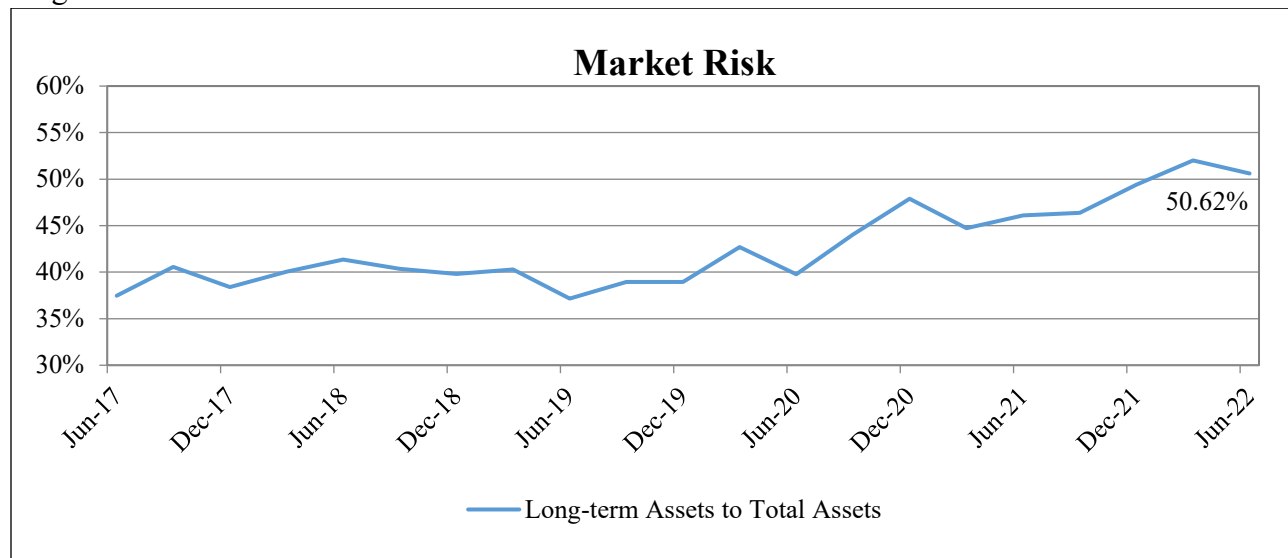
Bank capital performs several very important functions, including absorbs losses, promotes public confidence, helps restrict excessive asset growth and provides protection to the depositors. Regulatory capital standards are designed to strengthen the quality and quantity of bank capital and promote a stronger financial industry that is more resilient to economic stress. As of June 30, 2022, all SSBs remain well above regulatory capital minimums. The portfolio median total risk-based capital ratio and median leverage capital protection have remained generally consistent and are now 15.92% and 10.68%, respectively.



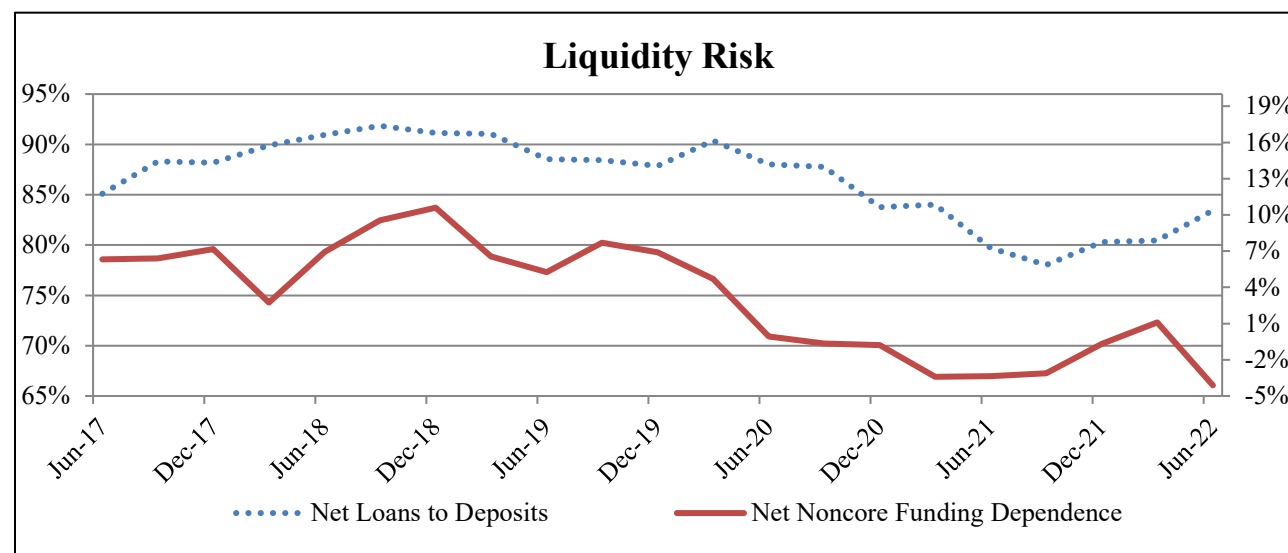
Earnings is the initial safeguard against the risk of engaging in the banking business and is the first line of defense against capital depletion resulting from shrinkage in asset value. Earnings performance should allow the bank to remain competitive by providing the resources required to implement management's strategic initiatives. The net interest or profit margin is 3.68%. Non-performing asset levels remain low at 0.18% of total assets.



Market risk primarily reflects exposures to changing interest rates over time. Long-term asset exposure can be an indicator of the degree of market risk taken by a state savings bank. As of June 30, 2022, long-term assets to total assets ratio decreased to 50.62%.



Liquidity risk reflects the bank's ability to fund assets and meet financial obligations under various scenarios, including adverse conditions. Liquidity risk continues to decline. The Net Noncore Funding Dependence (NNCFD) Ratio, a measure of the funding of long-term assets using short-term funding strategies, is negative 4.12%. The loan-to-deposit ratio, a measure of the use of deposits to fund lending activities, is 83.45%.



Thrift Examination Activity Report

On-site examination activities have resumed.

Thrift Supervision Activity Report

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

An application to charter a Texas savings bank to be named Cornerstone Capital Bank, SSB, Houston, and an application to merge The Roscoe State Bank, Roscoe, Texas with and into Cornerstone Capital Bank, SSB, were each received on June 12, 2021. The transaction was approved September 30, 2022, and consummated on October 1, 2022.

Outreach and Training

Commissioner Retta and Deputy Commissioner Trotti attended the annual Independent Bankers Association of Texas convention on September 25-27, 2022, covering key issues impacting the banking industry.

b) Mortgage Regulation Division Activities

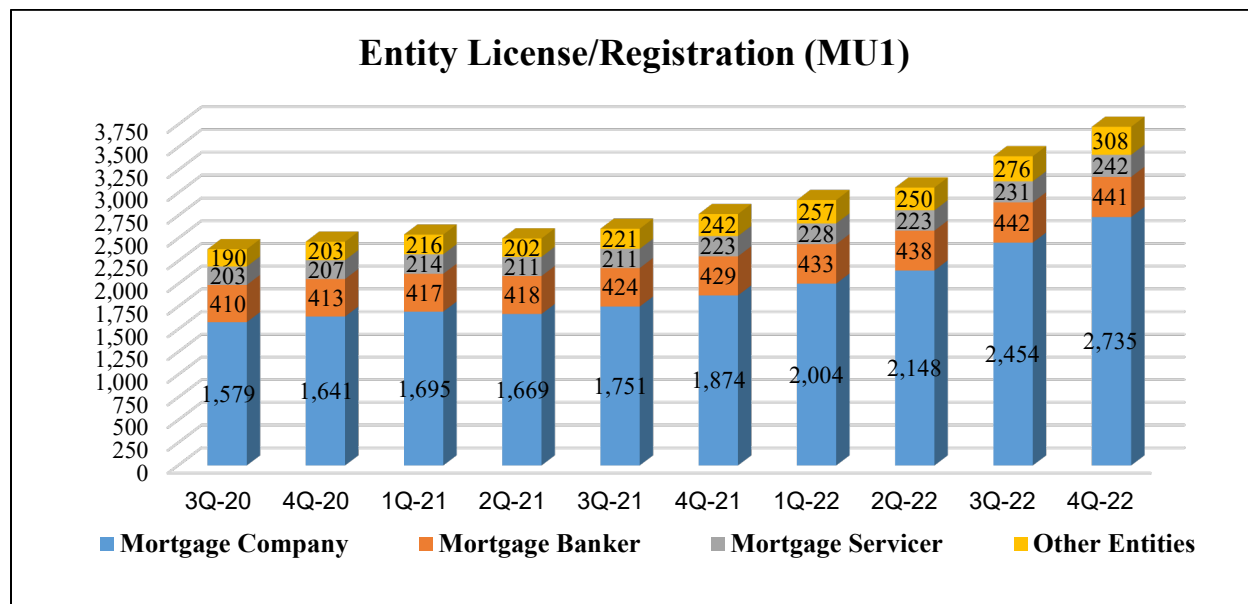
Industry Status

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.

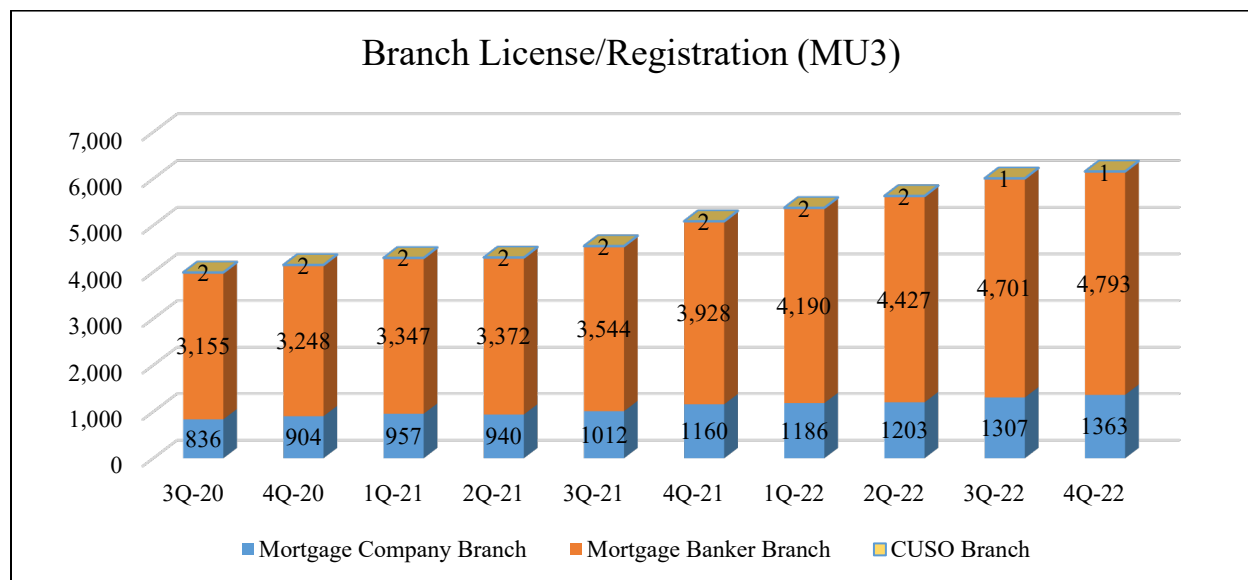
During FY2022, the overall number of mortgage entities (residential mortgage loan companies, mortgage bankers, and residential mortgage loan servicers) increased by 958 entity licenses/registrations, equating to a 34.60% increase. Most of the residential mortgage loan companies are headquartered (main or principal address) in Texas; however, the percentage of residential mortgage loan companies domiciled in Texas has significantly declined over the past fiscal year from 74% to 57%. The reduction in the percentage of residential mortgage loan companies domiciled in Texas was driven, in part, by the removal of the physical office requirement by the 87th Texas Legislature. As of August 31, 2022, only 13.47% of the mortgage bankers and 43.50% of the residential mortgage loan servicers had their principal office located in Texas.

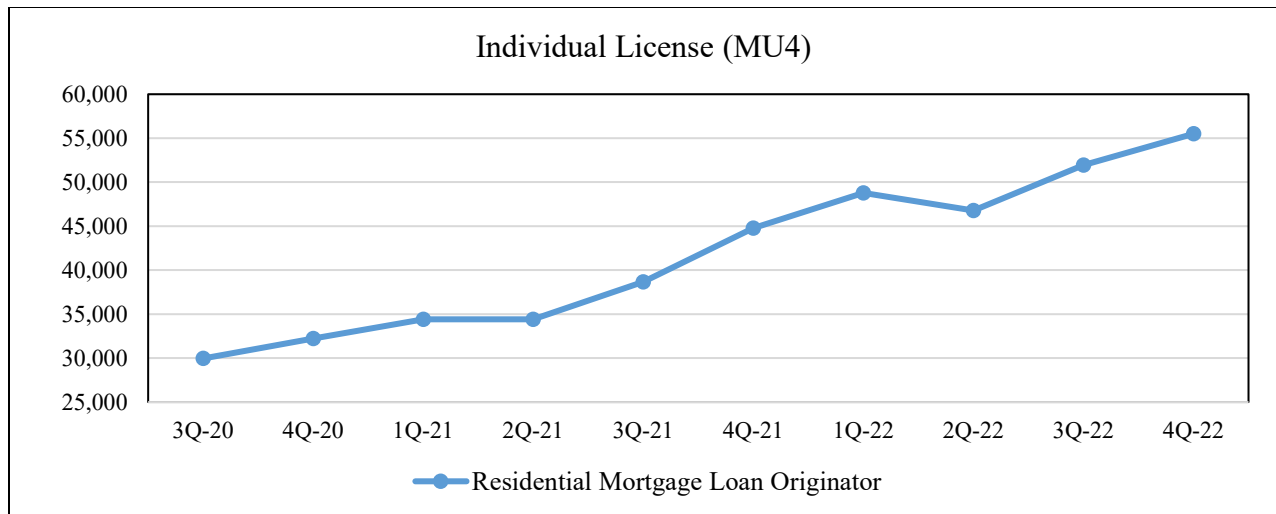
Over FY2022, the number of residential mortgage loan originators licensed in Texas has increased by 10,709 individuals, equating to 23.91% increase.

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



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

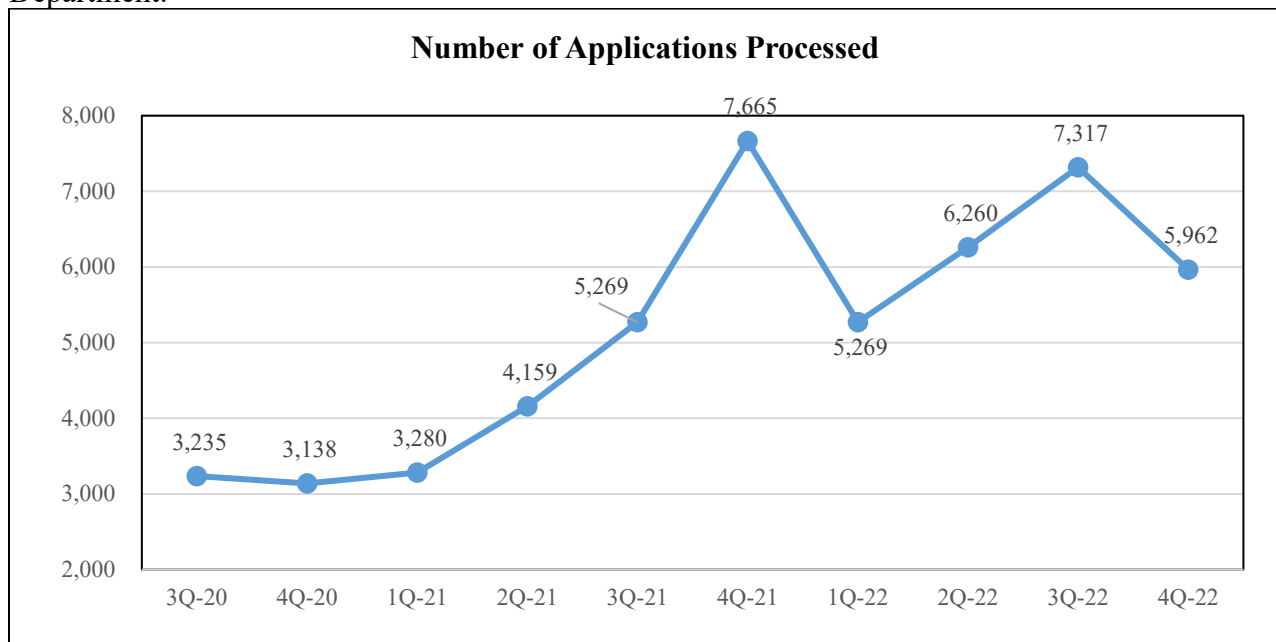




Licensing Activity Report

For the fourth quarter of FY2022, the Mortgage Licensing section processed 5,962 applications and approved 4,575 applications, including 338 mortgage entities, 630 branch offices, and 3,607 residential mortgage loan originators. The remaining 1,387 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.



The Mortgage Licensing section exceeded the FY2022 target of 18,000 applications processed. Overall, the Mortgage Licensing section processed 24,808 applications for FY2022.

Additionally, according to NMLS Data Analytics for FY2022, the Mortgage Licensing section processed 130,534 license amendments, 42,641 credit report reviews, 19,887 sponsorship removals, and 29,849 sponsorship requests.

The Mortgage Licensing section is preparing for the upcoming renewal period which runs from November 1, 2022, to December 31, 2022. Companies that have not filed mortgage call reports or have outstanding deficiencies and individuals who have not completed the required continuing education will not be able to submit a renewal until the issues are resolved.

Mortgage Examination Activity Report

The Department nearly attained the FY2022 goal of 14,000 for the number of licensees examined. During FY2022, the Mortgage Examination section conducted 399 examinations covering 13,217 individual licensees. The number of examinations is slightly lower when compared to the same reporting period in FY2021; however, the number of individual licensees covered is significantly higher by approximately 106% (6,406 versus 13,217).

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 August 10, 2022, Chief Mortgage Examiner Ellena Meier served as Conference Co-Chair and a moderator for the State Hot Topics Examination panel at the 2022 Annual Conference for the American Association of Residential Mortgage Regulators (AARMR); whereas Manager of Licensing Chris Osuna served as a panelist on the State Hot Topics Licensing panel at the same conference.

c) Operations Division Activities

Accounting, Budget, and Financial Reporting

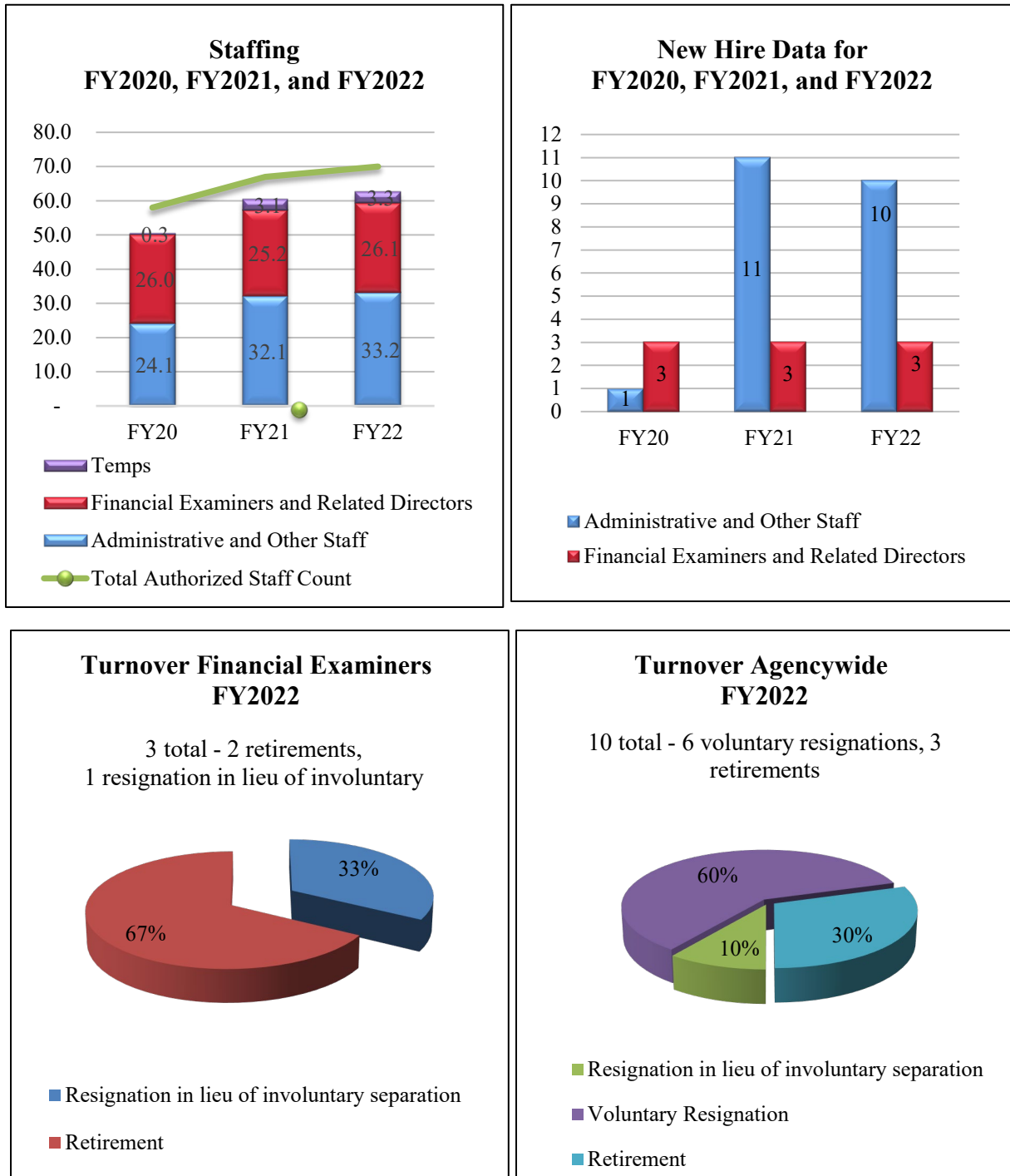
Staff closed fiscal year 2023. In compliance with Government Code, Section 2101.011, and in accordance with the requirements established by the Comptroller of Public Accounts, the Department has prepared and submitted the Annual Financial Report to oversight agencies.

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

CAPPS Implementation – The agency requested to participate in the FY2023 deployment of CAPPS Recruit. Due to the Comptroller's limited resources and team availability, our participation was postponed to FY2024.

Human Resources

Staffing Charts as of August 31, 2022



As of October 10, the Department was staffed at 58 regular full-time employees. During the months of August and September, an Accountant, a Financial Examiner-Thrift, and a General Counsel separated from the Department. During the same period, one new employee – an Accountant joined the Department. Additionally, in the beginning of October, one Executive Assistant separated and one Financial Examiner – Thrift joined the Department.

The Department is utilizing the services of two temporary workers – one Editor and one License and Permit Specialist.

Below is the status of the Department’s vacancies:

Vacancy Status	
Financial Examiner V – Thrift	Position Filled
Accountant VII	
Financial Examiner V – Thrift	Collecting and reviewing applications, interviewing candidates
Financial Examiner VI/VII – Thrift - 3	
Administrative Assistant III/IV (Licensing)	Collecting and reviewing applications
Financial Examiner I-II -Thrift (Information Technology)	
Administrative Assistant II/III (Complaints)	
Investigator II/III - Licensing	
General Counsel IV/V	
Executive Assistant II/III	

Outreach and Training

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

The next quarterly agency-wide meeting and training is scheduled for November 10, 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		Comparable Historical Data for the same quarter ending time period			
						FY2021	FY2020	FY2019	FY2018
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%	*				
Quarter 4	21	4	18	85.71%	*	16	20	22	22
* 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	18,000	6,260	11,529	64.05%	*				
Quarter 3	18,000	7,317	18,846	104.70%	*				
Quarter 4	18,000	5,962	24,808	137.82%	*	20,373	10,801	8,922	10,501
*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%	*				
*78% of the examinations conducted involved 10 or less originators. The Department plans to conduct examinations involving a substantial number of originators in subsequent quarters.									

Quarter 2	14,000	6,840	8,478	60.56%	*				
*An examination of a mortgage entity with a large number of originators was issued.									
Quarter 3	14,000	2,258	10,736	76.69%					
Quarter 4	14,000	2,481	13,217	94.41%	*	6,406	5,958	5,890	9,924
*The top five entities examined this year had a significant reduction in force leading to the lower number of licensed residential mortgage loan originators examined.									

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%	*				
Quarter 4	1,300	378	1,506	115.85%	*	1,264	1,024	1,134	1,053
*The number of complaints received was higher than anticipated; therefore, the number of applications processed is affected in the same manner.									

*Varies by 5% or more from target.

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

Type/Strategy/Measure	2022 Target	2022 YTD	Percent of Annual Target	
Outcome Measures-Key - Annual Reporting				
1-1-1 Thrift Safety and Soundness				
1. Percentage of State Chartered Savings Institutions Receiving Examination within the Required Timeframes	100%	100%	100.00%	
2. Percentage of Savings Institutions Classified Safe and Sound	90%	100%	111.11%	*
*All thrift institutions are well rated, causing the measure to be above projections.				
2-1-1 Mortgage Regulation				
1. Percentage of Satisfactory Levels of Compliance Reported Through Examination	90%	92%	102.76%	
3-1-1 Consumer Responsiveness				
1. Percentage of Complaints Closed within Ten Business Days of Receipt of Complete Information	99%	99%	100.00%	
2. Percentage of Written Complaints Closed within 90 Days	95%	98%	103.33%	
4-1-1 Agency Administration				
1. Percentage of Employees Separated from the Agency	10%	17%	168.60%	*
*Separations from the agency exceeded projections. Turnover, excluding retirements, is at 11.8%.				
2. Percentage of Actual Expenditures to Budgeted Expenditures	95%	90%	94.95%	*
*Unfilled vacancies and lower travel caused this measure to be under projections.				
Explanatory Measures-Key - Annual Reporting				
1-1-1 Thrift Safety and Soundness				
1. Number of State-Chartered Savings Institutions	24	21	87.50%	*
*Three savings banks left the state system during the year.				
2. Dollar Amount of Assets under Regulation (in Billions)	\$456.0	\$465.4	102.06%	

*Varies by 5% or more from target.

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

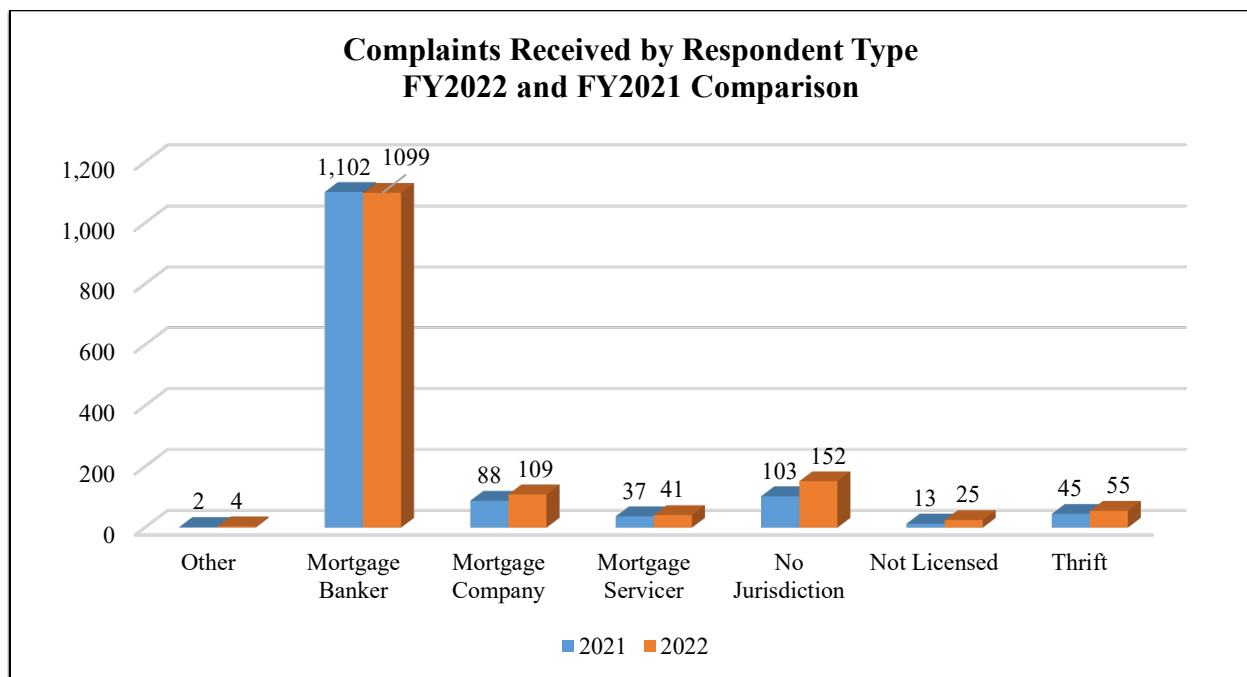
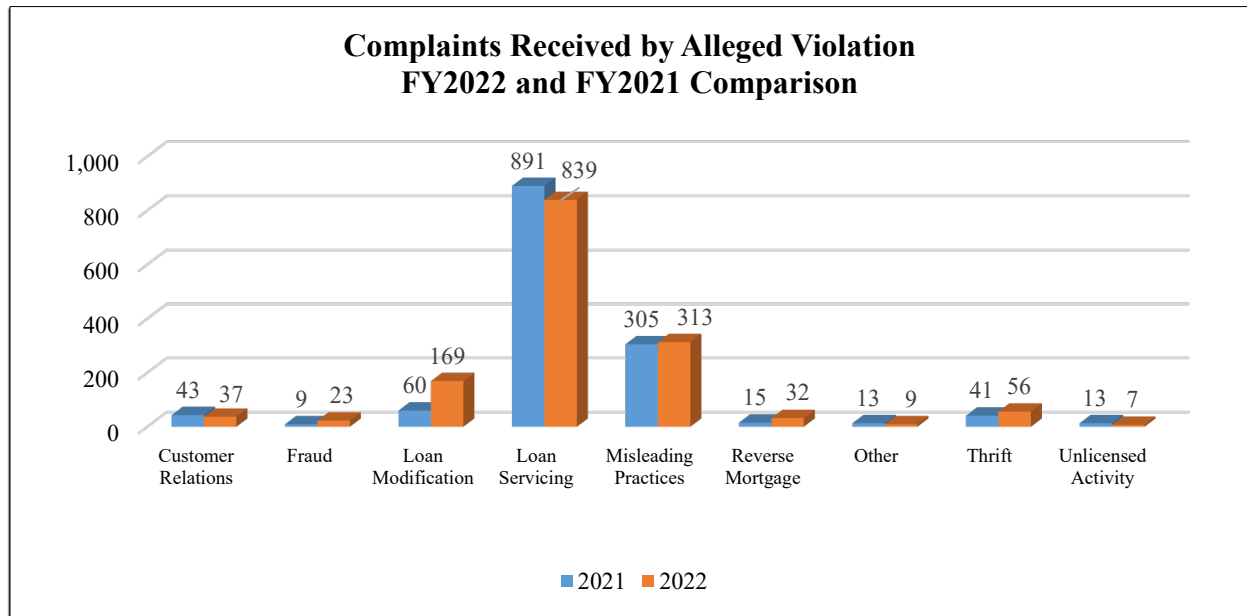
Type/Strategy/Measure	2022 Target	2022 YTD	Percent of Annual Target	
Non-Key Measures				
Thrift Safety and Soundness				
01-01 Outcome Measures				
1. Percentage of State Chartered Savings Institution Applications Processed within Statutory Timeframes	100%	100%	100.00%	
Output Measures				
1. Number of State Chartered Savings Institution Applications Processed	15	21	140.00%	*
*Increased application activity caused this measure to be above projections.				
Efficiency Measures				
1. Assets Examined Per Examiner Day (in Millions)	\$213.9	\$219.3	102.54%	
2. Average Time (Business Days) to Complete Analysis of Quarterly Financial Data	7	4	57.14%	*
*Measure is below target due to technology upgrades and process efficiencies.				
Mortgage Regulation				
02-01 Efficiency Measures				
1. Average Cost Per Application Processed	\$57.00	\$52.84	92.70%	*
*Due to the higher than targeted number of applications processed, a lower cost per applications was achieved.				
Explanatory Measures				
1. Total Number of Licensees in an Approved Status	55,000	65,381	118.87%	*
*Measure is above target due to higher than anticipated application activity and lower than anticipated withdrawal/surrender activity.				
Consumer Responsiveness				
03-01 Efficiency Measures				
1. Average Cost Per Complaint Closed	\$435.00	\$398.84	91.69%	*
*Due to the higher than targeted number of complaints processed, a lower cost per complaint was achieved.				

* Varies by 5% or more from target.

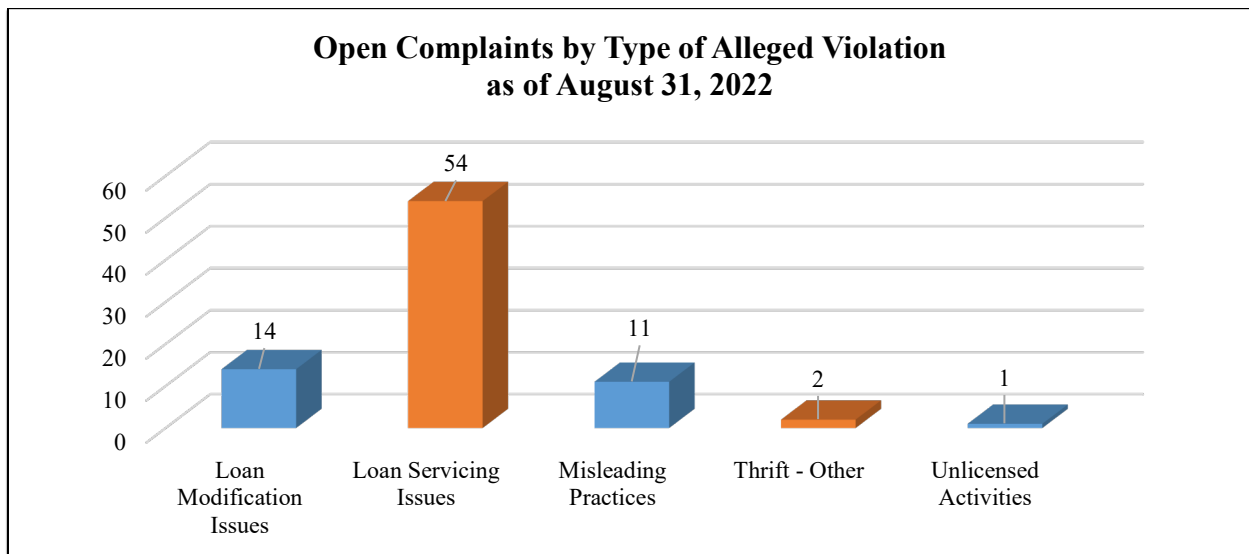
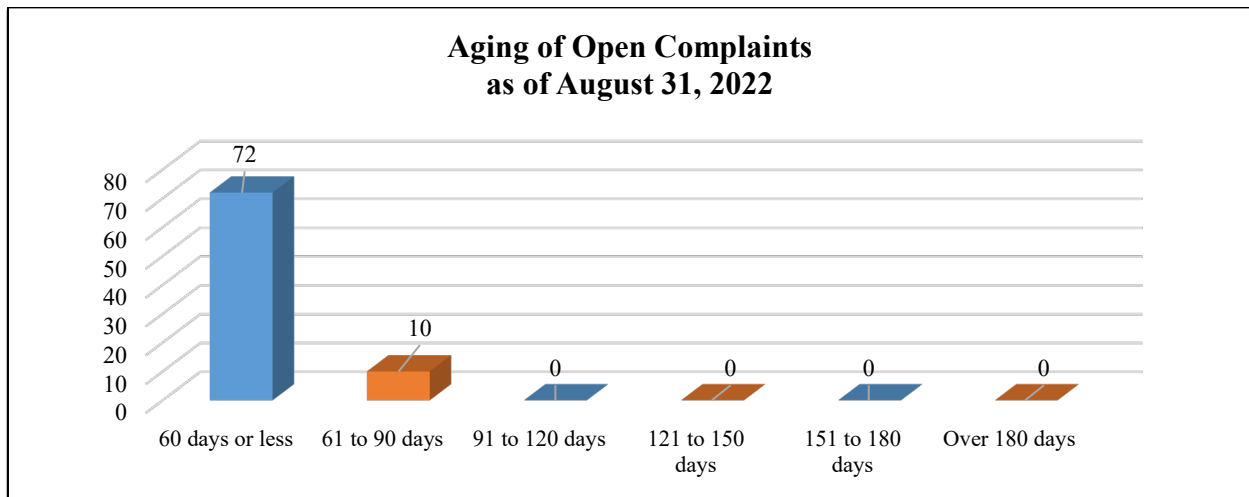
d) Legal Division Activities, including Consumer Complaints and Gift Reporting

Consumer Complaints Activity Report

Complaints Received – The total number of complaints received in FY2022 was 1,485, compared to 1,390 received in FY2021, representing a 6.83% increase.



Aging of Open Complaints – As of August 31, 2022, there were 82 open complaint files. Complaint aging is within acceptable ranges with 100% of complaints aged 90 days or less.



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	198
Average Number of Days to Close a Complaint	26	24	24	24
Percentage of Complaints Closed Within 90 Days	96.0%	96.5%	98.2%	98%
Non-Servicing Complaints				
Number of Non-Servicing Complaints Closed	153	168	164	180
Average Number of Days to Close a Complaint	34	22	23	29
Percentage of Complaints Closed Within 90 Days	92.2%	95.8%	98.2%	92.2%
Total	328	366	434	378

Legal and Enforcement Activity Report

Mortgage Enforcement Actions – The total number of enforcement actions taken in FY2022 was 114, compared to 88 taken in FY2021, representing a 29.54% increase.

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

Recovery Claim Applications – The total number of recovery claim applications received in FY2022 was 13, compared to 8 received in FY2021, representing a 62.5% increase.

Status of Pending Recovery Claim Applications as of August 31, 2022	
Pending Investigation	1
Pending Preliminary Determination Letter	3
Preliminary Determination Letter Issued	1
On Appeal	1
Open to Facilitate Resolution by the Parties	1
Total	7

Closed Recovery Claim Files	FY2022			
	1 st Qtr	2 nd Qtr	3 rd Qtr	4 th Qtr
Granted	0	0	0	3
Denied	0	0	1	2
Resolved by the Parties	0	0	1	3
Claim Withdrawn	0	0	0	1
Total	0	0	2	9

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 claim). Josh Rackley and Toni Rackley, a/k/a Toni Guggenbickler filed a recovery claim 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. On September 15, 2022, a hearing on the merits was held before an Administrative Law Judge (ALJ) at SOAH. The Department now awaits issuance of the ALJ's Proposal for Decision.

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 gave notice of his intent 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. On September 27, 2022, the Department received the ALJ's Proposal for Decision (PFD), recommending that the Commissioner deny the license. On October 12, 2022, the time period to file exceptions to the PFD expired. On October 14, 2022, the Commissioner issued his final order adopting the PFD, and denying Ms. Luu's license application.

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 gave notice of his intent 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. On August 4, 2022, a hearing on the merits was held before an Administrative Law Judge (ALJ) at SOAH. On September 27, 2022, the Department received the ALJ's Proposal for Decision (PFD), recommending that the Commissioner approve the license. On October 12, 2022, the time period to file exceptions to the PFD expired. On October 13, 2022, the Commissioner issued his final order adopting the PFD, and approving Mr. Thomas' license application.

Eldridge E. Cloud v. Brian K. Howell (SOAH Docket No. 450-22-06464; recovery 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. Mr. Cloud, in order to qualify for the loan amount sought, was relying on down payment assistance from Harris County. Mr. Howell successfully assisted Mr. Cloud in qualifying for assistance from Harris County; however, Mr. Cloud entered into a real estate sales contract for a property located outside the county limits, but within the city limits of Houston, Texas. Mr. Howell attempted to assist Mr. Cloud in obtaining similar down payment assistance from the City of Houston; however, before that process could be completed, the real estate sales contract was terminated at the option of the seller when Mr. Cloud was unable to close within the contracted timeframe, resulting in Mr. Cloud forfeiting the earnest money tendered under the contract. On June 16, 2022, the Department issued a predetermination letter denying the recovery claim. Mr. Cloud appealed the Department's preliminary determination. On July 18, 2022, the Department docketed the matter at SOAH. On August 24, 2022, a hearing on the merits was held before an Administrative Law Judge (ALJ) at SOAH. On September 8, 2022, the ALJ issued his

Proposal for Decision (PFD), recommending that the recovery claim be denied. On September 23, 2022, the time period to file exceptions to the PFD expired. On September 26, 2022, the Commissioner issued his final order adopting the PFD and denying the recovery claim.

Department of Savings and Mortgage Lending v. Jack Stinson (SOAH Docket No. 450-23-00854.CHI; confidential proceeding) Mr. Stinson applied with the Department for licensure as a residential mortgage loan originator. On June 3, 2022, the Commissioner gave notice of his intent to deny the application based on information discovered during the application process. On June 13, 2022, Mr. Stinson appealed the Commissioner's decision. On September 9, 2022, the matter was docketed at SOAH. A hearing on the merits is scheduled for October 11, 2022.

Department of Savings and Mortgage Lending v. Princess Powers (SOAH Docket No. 450-23-00856.CHI; confidential proceeding) Ms. Powers applied with the Department for licensure as a residential mortgage loan originator. On June 6, 2022, the Commissioner gave notice of his intent to deny the application based on information discovered during the application process. On June 14, 2022, Ms. Powers appealed the Commissioner's decision. On September 14, 2022, the matter was docketed at SOAH. A hearing on the merits is scheduled for November 4, 2022.

Department of Savings and Mortgage Lending v. Julie Litton (SOAH Docket No. 450-23-01979.CHI; confidential proceeding) Ms. Litton applied with the Department for licensure as a residential mortgage loan originator. On June 24, 2022, the Commissioner gave notice of his intent to deny the application based on information discovered during the application process. On June 29, 2022, Ms. Litton appealed the Commissioner's decision. On September 23, 2022, the matter was docketed at SOAH. A hearing on the merits is scheduled for November 9, 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 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 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 second motion for extension of time to file the appellee's brief. On March 29, 2022, such motion was granted, and the deadline to file the appellee's brief was extended to May 31, 2022. On May 31, 2022, the appellee's brief was filed. On June 30, 2022, the Third Court of Appeals marked the case as ready to be set for hearing, as determined by the court. It is anticipated that the case will be heard on the written briefs submitted, without oral argument.

Public Information Requests

During the 4th Quarter of FY2022, the Department received 38 public information requests, and of those requests, two were referred to the Office of the Attorney General for a ruling on the Department's claimed exceptions. As of the date these materials were submitted, the Department had not received a response to either request for a ruling.

Public Information Requests	FY2022			
	1 st Qtr	2 nd Qtr	3 rd Qtr	4 th Qtr
Requests Received	33	31	44	38

Rulemaking

SML Future Rule Activity		
Rule	Rulemaking Action	Projected Date for Presentation
Chapter 52, Charter Applications	Rule Review	April 2023
Chapter 53, Additional Offices	Rule Review	April 2023
Chapter 57, Change of Office Location or Name	Rule Review	April 2023
Chapter 61, Hearings	Rule Review	April 2023
Chapter 63, Fees and Charges	Rule Review	April 2023
Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints	Rule Review	April 2023

Chapter 65, Loans and Investments	Rule Review	April 2023
Chapter 67, Savings and Deposit Accounts	Rule Review	April 2023
Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion	Rule Review	April 2023
Chapter 71, Change of Control	Rule Review	April 2023
Chapter 73, Subsidiary Corporations	Rule Review	April 2023

Gift Reporting

In September 2022, the Department, based on its status as a government agency, received a one-year subscription to Compliance Alliance, a compliance resource service for the banking industry that is owned and managed by 32 state bankers associations. The subscription is valued at \$2,000.00.

e) Legislative Activities

The 88th Legislature will convene on January 10, 2023. On November 14, 2022, legislators may begin filing bills in advance of the upcoming legislative session. Department staff is monitoring legislative committee hearings in advance of the upcoming legislative session.

2. Discussion of and Possible Vote to Take Action on the Adoption 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 adoption.

RECOMMENDED ACTION: The Department recommends that the Finance Commission approve adoption of the repeals in 7 TAC Chapter 76.

RECOMMENDED MOTION: I move that the Finance Commission approve adoption of the repeals in 7 TAC Chapter 76.

ADOPTION OF REPEALS
7 TAC CHAPTER 76
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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), adopts the repeal all preexisting 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. The commission's proposal was published in the September 2, 2022, issue of the *Texas Register* (47 TexReg 5215). The rule repeals are adopted without changes to the text as published in the *Texas Register* and will not be republished.

Explanation of and Justification for the Rules

The preexisting 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 adopted rules repeal all preexisting rules in Chapter 76.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments, or October 2, 2022. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

SUBCHAPTER A. BOOKS, RECORDS, ACCOUNTING PRACTICES, FINANCIAL STATEMENTS AND RESERVES

7 TAC §§76.1, 76.2, 76.4 - 76.7, 76.12

Statutory Authority

The rule repeals are adopted 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.

The adopted rule repeals affect 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.

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

ADOPTION OF REPEALS
7 TAC CHAPTER 76
PAGE 2 OF 4

§76.7. Examinations.

§76.12. Bylaws.

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

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



SUBCHAPTER B. CAPITAL AND CAPITAL OBLIGATIONS

7 TAC §§76.21 - 76.26

Statutory Authority

The rule repeals are adopted 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.

The adopted rule repeals affect 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 adoption and found it to be within the state agency's legal authority.

Iain A. Berry

Deputy General Counsel

Department of Savings and Mortgage Lending



SUBCHAPTER C. HOLDING COMPANIES

7 TAC §§76.41 - 76.47

Statutory Authority

The rule repeals are adopted 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.

The adopted rule repeals affect 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.

ADOPTION OF REPEALS
7 TAC CHAPTER 76
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§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 adoption and found it to be within the state agency's legal authority.

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



SUBCHAPTER F. FEES AND CHARGES

7 TAC §§76.91 - 76.103, 76.105, 76.107 - 76.110

Statutory Authority

The rule repeals are adopted 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 adopted rule repeals affect 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.

§76.106. Fee for Mutual to Stock Conversion.

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

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



SUBCHAPTER H. COMPLAINT
PROCEDURES

7 TAC §76.122

Statutory Authority

The rule repeal is adopted 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.

The adopted rule repeal 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 adoption and found it to be within the state agency's legal authority.

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

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3. *Discussion of and Possible Vote to Take Action on the Adoption 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 adoption.

RECOMMENDED ACTION: The Department recommends that the Finance Commission approve adoption of the repeals in 7 TAC Chapter 77.

RECOMMENDED MOTION: I move that the Finance Commission approve adoption of the repeals in 7 TAC Chapter 77.

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), adopts the repeal all preexisting 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 77.116. The commission's proposal was published in the September 2, 2022, issue of the *Texas Register* (47 TexReg 5218). The rule repeals are adopted without changes to the text as published in the *Texas Register* and will not be republished.

Explanation of and Justification for the Rules

The preexisting 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 adopted rules repeal all preexisting rules in Chapter 77.

Changes Concerning Loan Requirements

The department's preexisting 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 adoption concerning new rules in 7 TAC Chapter 75, published elsewhere in this issue of the *Texas Register*.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments, or October 2, 2022. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

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

The rule repeals are adopted 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.

ADOPTION OF REPEALS
7 TAC CHAPTER 77
PAGE 2 OF 3

The adopted rule repeals affect 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.

§77.11. Unsecured 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 adoption and found it to be within the state agency's legal authority.

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

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SUBCHAPTER B. SAVINGS AND DEPOSITS

7 TAC §77.115, §77.116

Statutory Authority

The rule repeals are adopted 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.

The adopted rule repeals affect 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 adoption and found it to be within the state agency's legal authority.

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

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4. Discussion of and Possible Vote to Take Action on the Adoption of Amendments in 7 TAC, Part 4, Chapter 79, §79.4, Concerning Bond Requirement

PURPOSE: The purpose of the amendments in 7 TAC §79.4 is to render the rule compatible with electronic surety bonds. An explanation of and justification for the rule is contained in the proposed preamble for the rule adoption.

RECOMMENDED ACTION: The Department recommends that the Finance Commission approve adoption of the amendments in 7 TAC §79.4.

RECOMMENDED MOTION: I move that the Finance Commission approve adoption of the amendments in 7 TAC §79.4.

ADOPTION OF AMENDMENTS

7 TAC §79.4

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TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 79. RESIDENTIAL MORTGAGE LOAN SERVICERS

7 TAC §79.4

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts amendments to 7 TAC Chapter 79, §79.4, concerning Bond Requirement. The commission's proposal was published in the September 2, 2022, issue of the *Texas Register* (47 TexReg 5220). The rule is adopted without changes to the text as published in the *Texas Register* and will not be republished.

Explanation of and Justification for the Rule

The preexisting 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." Preexisting §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 preexisting §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 adopted rule renders §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 adopted rule makes 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.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments, or October 2, 2022. A public

ADOPTION OF AMENDMENTS

7 TAC §79.4

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hearing in accordance with Government Code §2001.029 was not required. No comments were received.

Department of Savings and Mortgage Lending

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Statutory Authority

The rule is adopted 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.

The adopted rule affects the statutes contained in Finance Code Chapter 158, the Residential Mortgage Loan Servicer Registration Act.

§79.4. Bond Requirement.

(a) (No change.)

~~[(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 adoption and found it to be within the state agency's legal authority.

Iain A. Berry
Deputy General Counsel

5. Discussion of and Possible Vote to Take Action on the Adoption 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 adoption.

RECOMMENDED ACTION: The Department recommends that the Finance Commission approve adoption of the new rules and repeals in 7 TAC Chapter 75.

RECOMMENDED MOTION: I move that the Finance Commission approve adoption of the new rules and repeals in 7 TAC Chapter 75.

ADOPTION OF NEW RULES AND REPEALS

7 TAC CHAPTER 75

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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), adopts the repeal of all preexisting rules sections in 7 TAC Chapter 75, as follows: §§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, and 75.201 - 75.204. The commission further adopts 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 - 75.245, 75.251, 75.252, 75.261, 75.301 - 75.309, 75.321, 75.323 - 75.326, 75.331, and 75.332. The commission's proposal was published in the September 2, 2022, issue of the *Texas Register* (47 TexReg 5186). The following rules are adopted with changes to the published text and are republished to reflect such changes: §§75.101, 75.102, 75.103, 75.121, 75.122, 75.131, 75.132, 75.133, 75.141, 75.144, 75.145, 75.152, 75.161, 75.163, 75.171, 75.182, 75.203, and 75.223. The changes regulate no new parties and affect no new subjects of regulation. As a result, the rules will not be republished as proposed rules for comment. The remaining rules in the proposal are adopted without changes to the proposed text as published in the *Texas Register* and will not be republished.

Explanation of and Justification for the Rules

The preexisting 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 adopted rules: (i) repeal all existing rules in Chapter 75; and (ii) adopt new rules largely patterned after the preexisting rules in 7 TAC Chapters 75 - 77.

Changes Concerning Loan Requirements

The department's preexisting 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 adoption.

Other Modernization and Update Changes.

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

ADOPTION OF NEW RULES AND REPEALS
7 TAC CHAPTER 75
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Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments, or October 2, 2022. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

SUBCHAPTER A. CHARTER APPLICATIONS

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

Statutory Authority

The rule repeals are adopted 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.

The adopted rule repeals affect 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 adoption and found it to be within the state agency's legal authority.

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

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SUBCHAPTER B. EXPEDITED APPLICATIONS

7 TAC §§75.25 - 75.27

Statutory Authority

The rule repeals are adopted 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.

The adopted rule repeals affect 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 adoption and found it to be within the state agency's legal authority.

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Deputy General Counsel
Department of Savings and Mortgage Lending

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ADOPTION OF NEW RULES AND REPEALS
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SUBCHAPTER C. ADDITIONAL OFFICES

7 TAC §§75.31 - 75.33, 75.35, 75.36, 75.38, 75.39, 75.41

Statutory Authority

The rule repeals are adopted 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.

The adopted rule repeals affect 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 adoption and found it to be within the state agency's legal authority.

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

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

7 TAC §§75.81 - 75.83, 75.87 - 75.91

Statutory Authority

The rule repeals are adopted 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.

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

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

§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.

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§75.91. Mutual to Stock Conversion.

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

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



SUBCHAPTER E. CHANGE OF CONTROL

7 TAC §§75.122 - 75.124, 75.126, 75.127

Statutory Authority

The rule repeals are adopted 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.

The adopted rule repeals affect 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 adoption and found it to be within the state agency's legal authority.

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



SUBCHAPTER F. GENERAL PROVISIONS

7 TAC §§75.201 - 75.204

Statutory Authority

The rule repeals are adopted 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.

The adopted rule repeals affect 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.

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

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



CHAPTER 75. SAVINGS BANKS

ADOPTION OF NEW RULES AND REPEALS
7 TAC CHAPTER 75
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SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §75.1, §75.2

Statutory Authority

The rules are adopted 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 adopted under the authority of, and to implement, Finance Code: §91.002 and §92.055(a).

The adopted rules affect 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 his or her spouse and the members of their immediate family who are 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

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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 his or her 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 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.

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(13) Controlling person--A person having control as defined by paragraph (12) 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) Finance Commission--The Finance Commission of Texas, the oversight body responsible for overseeing and coordinating the Department under Finance Code Chapter 11.

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

(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 that 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 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

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

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

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SUBCHAPTER B. APPLICATIONS

DIVISION 1. GENERAL PROVISIONS

7 TAC §§75.101 - 75.104

Statutory Authority

The rules are adopted 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 adopted under the authority of, and to implement, Finance Code §96.002(a)(2). 7 TAC §75.102 is also adopted 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 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 adopted 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 adopted under the authority of, and to implement, Finance

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Code: §92.057(a)(1); §92.352(a)(1); and §92.557(d).

The adopted rules affect 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 are 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. The applicant has a continuing obligation and duty to supplement the application with any other information or supporting documentation requested by the Commissioner in writing. The applicant must provide any information or supporting documentation submitted in connection with any related application made to the appropriate federal agency, to the extent 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). The Commissioner may, in his or her sole discretion, require the applicant to republish the public notice.

§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.

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

(2) Office Locations.

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

(B) Mobile facility: \$500, plus \$100 for each location where the mobile facility is to be conducting banking business for purposes of §75.132 of this title (relating to Mobile Facility).

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

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(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.

(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.

(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:

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

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

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

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

(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.

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

(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.

(A) Registration: \$2,000.

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

(7) Investment in subsidiaries.

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

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

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

(D) Change of name: \$100.

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

(b) Filing Fees for Expedited Applications. An applicant qualifying for expedited treatment for purposes of §75.152 of this chapter (relating to Expedited Applications) must pay the following filing fees in lieu of the filing fee required by subsection (a):

(1) Branch office: \$500.

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

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

ADOPTION OF NEW RULES AND REPEALS

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(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 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.

If an application requires that notice to the public be given, such notice must comply with the requirements of this section, unless otherwise provided by §75.152 of this title (relating to Expedited Applications). The notice must use 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 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 adoption and found it to be within the state agency's legal authority.

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

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DIVISION 2. CHARTER APPLICATIONS
AND AMENDMENTS

7 TAC §§75.121 - 75.123

ADOPTION OF NEW RULES AND REPEALS
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Statutory Authority

The rules are adopted 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 adopted 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 adopted under the authority of, and to implement, Finance Code: §92.063; and §96.002(a)(2) and (14).

The adopted rules affect 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 necessary 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 later than 18 months from the date the charter was approved, unless extended in writing by the Commissioner.

(c) Capital Requirements. No application to incorporate a savings bank will be approved unless the Commissioner determines 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 §75.101 of this title

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(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 (d) of this section, otherwise, any right or opportunity to protest or have a hearing on the application under Finance Code §92.057 is deemed 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 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 to protest or have a hearing on the application under Finance Code §92.063 is deemed 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

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

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

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DIVISION 3. OFFICE LOCATIONS

7 TAC §§75.131 - 75.133

Statutory Authority

The rules are adopted 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. The rules are also adopted under the authority of, and to implement, Finance Code: §92.063; §96.002(a)(2) and (14); and §201.003.

The adopted rules affect 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

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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, 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 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 operations within a period

of 12 months after the date of approval unless the Commissioner grants a written extension. 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.

(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 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 to protest or have a hearing on the application under Finance Code §92.063 is deemed waived.

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(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 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.

(b) Required Information. The application must provide the following information, 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 that all requirements for approval of a branch office (§75.131 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

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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 to protest or have a hearing on the application under Finance Code §92.063 is deemed 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.

(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, subscribed to and sworn before a notary:

(1) the addresses of the existing or new office location;

(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;

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(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 that all requirements for approval of a branch office (§75.131 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 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 to protest or have a hearing on the application under Finance Code §92.063 is deemed 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 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 adoption and found it to be within the state agency's legal authority.

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

7 TAC §§75.141 - 75.145

Statutory Authority

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The rules are adopted 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 adopted 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 adopted under the authority of, and to implement, Finance Code §92.352. 7 TAC §75.143 is also adopted under the authority of, and to implement, Finance Code: Chapter 92, Subchapter F; and §96.002(a)(2) and (13). 7 TAC §75.144 is adopted 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 adopted under the authority of, and to implement, Finance Code: §92.052; and §96.002(a)(2) and (13).

The adopted rules affect 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:

(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 members or shareholders entitled to vote on the plan; 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,

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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 (e) of this section, otherwise any right or opportunity to protest or have a hearing on the application under Finance Code §92.352 is deemed 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 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 or territorial regulatory requirements have been satisfied. The Commissioner will not approve such an application unless the Commissioner determines 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 Savings Bank) as 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;

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(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 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 §75.101 of this title (relating to Application Filing

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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 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.

(d) Denial; Request for Hearing. An applicant is entitled to a hearing under 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

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(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 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 §75.101 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

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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.

(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 that is not otherwise required by statute.

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

Iain A. Berry
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Department of Savings and Mortgage Lending

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DIVISION 5. EXPEDITED APPLICATIONS

7 TAC §§75.151 - 75.153

Statutory Authority

The rules are adopted 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 adopted under the authority of, and to implement, Finance Code §96.002(a)(2).

The adopted rules affect 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

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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, 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 does not apply to an application made in accordance with this 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 §75.101 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

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

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DIVISION 6. CHANGE OF CONTROL

7 TAC §§75.161 - 75.165

Statutory Authority

The rules are adopted 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. The rules are also adopted under the authority of, and to implement, Finance Code: Chapter 92, Subchapter L; and §96.002(a)(2) and (10).

The adopted rules affect 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

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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 individuals 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 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 regulations, 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

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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 review of the application; and

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

(2) If the person required to file the information required by paragraph (1) of 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 required by paragraph (1) of 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 §75.101 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;

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(B) the 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;

(G) the applicant has not provided information pertinent to the application requested by the Commissioner; or

(H) 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

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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) When the Commissioner determines reasonable cause exists to believe that a change of control may have taken place without prior approval, the Commissioner may call a hearing to determine whether there has been in fact a change of control. If the Commissioner finds by a preponderance of the evidence 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.

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; and

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

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Deputy General Counsel

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DIVISION 7. CAPITAL NOTES AND DEBENTURES

7 TAC §75.171

Statutory Authority

The rules are adopted 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. The rules are also adopted under the authority of, and to implement, Finance Code: §96.002(a)(11); and §93.004(b).

The adopted rules affect 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 issue and sell its capital notes or debentures without the prior written approval of the Commissioner. The Commissioner, in approving the issuance and sale, may impose any conditions the Commissioner determines necessary 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 adoption and found it to be within the state agency's legal authority.

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Department of Savings and Mortgage Lending

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DIVISION 8. HOLDING COMPANY APPLICATIONS

7 TAC §75.181, §75.182

Statutory Authority

The rules are adopted 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. The rules are also adopted under

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the authority of, and to implement, Finance Code: §96.002(a)(11) and (15); and §97.002. 7 TAC §75.182 is also adopted under the authority of, and to implement, Finance Code Chapter 98, Subchapter B.

The adopted rules affect 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 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

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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 Finance Code §97.053(a)(3) and (4). 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 bylaws 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).

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

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DIVISION 9. SUBSIDIARY APPLICATIONS

7 TAC §75.191

Statutory Authority

The rules are adopted 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. The rules are also adopted under the authority of, and to implement, Finance Code §96.002(a)(16)(Q).

This adopted rules affect 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;

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(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;

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

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SUBCHAPTER C. OPERATIONS

DIVISION 1. OFFICE LOCATIONS

7 TAC §§75.201 - 75.204

Statutory Authority

The rules are adopted 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. The rules are also adopted under the authority of, and to implement, Finance Code: §92.063; and §96.002(a)(14).

The adopted rules affect 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 §75.133 of this title (relating to Relocate Home or Additional Office).

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(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 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

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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:

(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 Approval of Offices Required; Closing an Office; Activities Not Requiring an Approved Office) is deemed revoked. Written notice of any temporary closing must be furnished to the Commissioner no later than 10 days after such closing, and the office may not reopen until the Commissioner receives written notification at least 10 days before 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 adoption and found it to be within the state agency's legal authority.

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

7 TAC §§75.221 - 75.227

Statutory Authority

The rules are adopted 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 adopted 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 adopted under the authority of, and to implement, Finance Code: §92.201; and §96.002(a)(3) and (4). 7 TAC §75.223 is also adopted under the authority of, and to implement, Finance Code: §96.002(a)(7) and (11); §96.051; and §96.053. 7 TAC §75.224 is also adopted under the authority of, and to implement, Finance Code §96.002(a)(11). 7 TAC §75.225 is also adopted under the authority of, and to implement, Finance Code §96.002(a)(9). 7 TAC §75.226 is also adopted under the authority of, and to implement, Finance Code §96.002(a)(11). 7 TAC §75.227 is also adopted 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).

The adopted rules affect 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, no later than 90 days after 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

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

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DIVISION 3. CAPITAL AND CAPITAL OBLIGATIONS

7 TAC §§75.231 - 75.234

Statutory Authority

The rules are adopted 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 adopted 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 adopted under the authority of, and to implement, Finance Code: Chapter 96, Subchapter C; and §96.002(a)(1) and (11). 7 TAC §75.234 is also adopted under the authority of, and to implement, Finance Code: §93.004(b); and §96.002(a)(11).

The adopted rules affect 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 that 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

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(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 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; or

(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 that have total capital less than the

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amount required under §75.231 of this title (relating to Capital Requirements) or §75.232 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 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 adoption and found it to be within the state agency's legal authority.

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DIVISION 4. HOLDING COMPANIES

7 TAC §§75.241 - 75.245

Statutory Authority

The rules are adopted 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 adopted under the authority of, and to implement, Finance Code: §96.002(a)(11) and (15); and §97.002. 7 TAC §75.241 is also adopted under the authority of, and to implement, Finance Code §97.002. 7 TAC §75.242 is also adopted under the authority of, and to implement, Finance Code §97.004. 7 TAC §75.243 is also adopted under the authority of, and to implement, Finance Code §97.005 and §96.352. 7 TAC §75.244 is also adopted under the authority of, and to implement, Finance Code §97.006. 7 TAC § 75.245 is also adopted under the authority of, and to implement, Finance Code §97.007. 7 TAC §75.246 is also adopted under the authority of, and to implement, Finance Code §97.003. 7 TAC §75.247 is also adopted under the authority of, and to implement, Finance Code Chapter 98, Subchapter B.

The adopted rules affect 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

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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 §75.221 of this title (relating to Books and Records), pertaining to savings banks.

§75.243. Examinations.

Each holding company and each subsidiary of a holding company is subject to examinations as 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.

§75.244. 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.

§75.245. 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 adoption and found it to be within the state agency's legal authority.

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DIVISION 5. ASSESSMENTS AND FEES

7 TAC §75.251, §75.252

Statutory Authority

The rules are adopted 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 adopted under the authority of, and to implement, Finance Code §96.055(a).

The adopted rules affect the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

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§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 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) (.pdf)

§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

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

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DIVISION 6. COMPLAINT PROCEDURES

7 TAC §75.261

Statutory Authority

The rules are adopted 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. The rules are also adopted under the authority of, and to implement, Finance Code: Chapter 96, Subchapter C; §96.002(a)(11); and §96.054.

The adopted rules affect the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.261. Savings Bank Complaint Notes

(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

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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 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.

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

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**SUBCHAPTER D. LOANS, INVESTMENTS,
SAVINGS, AND DEPOSITS**

**DIVISION 1. AUTHORIZED LOANS AND
INVESTMENTS**

7 TAC §§75.301 - 75.309

Statutory Authority

The rules are adopted 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. The rules are also adopted under the authority of, and to implement, Finance Code §96.002(a)(16).

The adopted rules affect 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

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acquisition of such developed building sites. This term does not include 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 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% or 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;

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(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.

§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

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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 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;

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(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 generally include the documents in subsection (b)(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.

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(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 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

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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 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.

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§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.

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

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Department of Savings and Mortgage Lending

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DIVISION 2. SUBSIDIARIES

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7 TAC §§75.321, 75.323 - 75.326

Statutory Authority

The rules are adopted 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. The rules are also adopted under the authority of, and to implement, Finance Code §96.002(a)(16)(Q).

The adopted rules affect the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.321. Investment in and Divestiture of Subsidiaries.

(a) A savings bank may, only after prior written approval of the Commissioner, invest in a subsidiary.

(b) 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.

(c) 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;

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(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, 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 §75.221 of this title (relating to Books and Records), pertaining to savings banks.

§75.325. *Subsidiary Investment and Debt Limitation.*

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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 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 §75.325 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 adoption and found it to be within the state agency's legal authority.

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Department of Savings and Mortgage Lending

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DIVISION 3. SAVINGS AND DEPOSITS

7 TAC §75.331, §75.332

Statutory Authority

The rules are adopted 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. The rules are also adopted under the authority of, and to implement Finance Code Chapter 59, Subchapter D.

The adopted rules affect 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

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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 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

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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 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;

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(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.

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6. Discussion of and Possible Action Regarding Anticipated and Pending Litigation

Anticipated Litigation

None

Pending Litigation

None