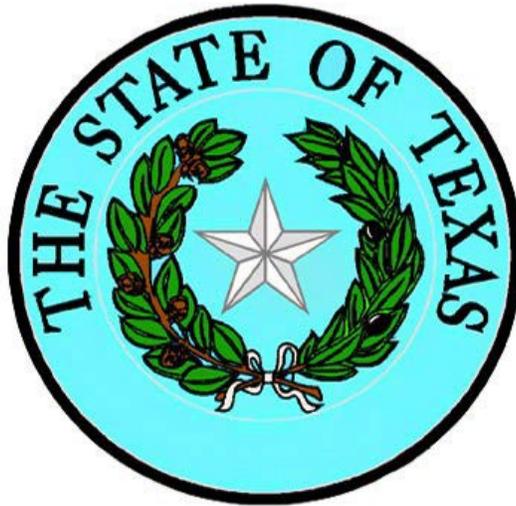


A.

Finance Commission

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FINANCE COMMISSION OF TEXAS

MEETING DATEDecember 16, 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 DATESFebruary 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, December 16, 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, C2, C3 and D2 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 October 28, 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' Fiscal Year 2023 Internal Auditor's Risk Assessment and Audit Plan

1. Department of Savings and Mortgage Lending

2. Texas Department of Banking

3. Office of Consumer Credit Commissioner

6. 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

7. 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

8. 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

9. Discussion of and Consultation on Security Audit, Possible Issue Related to Confidential or Sensitive Information, Security Breach Audit and Assessment, or Security Assessments or Deployment Related to Information Resources Technology as Authorized by §§ 551.076 and 551.089, Texas Government Code

B. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

1. Industry Status and Departmental Operations: a) Thrift Regulation Division Activities; b) Mortgage Regulation Division Activities; c) Operations Division Activities; d) Legal Division Activities, including Consumer Complaints and Gift Reporting; e) Legislative Activities
2. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

C. TEXAS DEPARTMENT OF BANKING

1. Industry Status and Departmental Operations: a) Current Issues Affecting Department's Regulated Entities; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Non-Depository Supervision Division Activities; e) Administrative, Staffing and Fiscal Division Activities; f) Strategic Support Division Activities including Consumer Complaint Data; g) Legal Division Activities including Enforcement Activity and Gift Reporting; and h) Legislative Activities
2. *Discussion of and Possible Vote to Take Action on the New Appointment of J. Kyle Williams as the Industry Representative to the Guaranty Fund Advisory Council for the Period January 1, 2023, to December 31, 2024*
3. *Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 2, Chapter 26, Concerning Perpetual Care Cemeteries, Resulting from Rule Review*
4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendment to 7 TAC, Part 1, §3.37, Concerning Calculation of Annual Assessment for Banks
5. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

D. OFFICE OF CONSUMER CREDIT COMMISSIONER

1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities
2. *Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 5, Chapter 90, Concerning Chapter 342, Plain Language Contract Provisions, Resulting from Rule Review*
3. 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

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.

**MINUTES OF THE
FINANCE COMMISSION MEETING
Friday, October 28, 2022**

The Finance Commission of Texas convened at 9:40 a.m., on October 28, 2022, with the following members present:

Finance Commission Members in Attendance:

Phillip Holt, Chairman	Sharon McCormick
George “Cliff” McCauley, Vice Chairman	Roselyn “Rosie” Morris
Bob Borochoff	Vince Puente
Hector Cerna	Debbie Scanlon
G. Martin Green	Laura Warren
Will Lucas	

Commissioner Charles G. Cooper announced there was a quorum with 11 members present. *(0:48 on the audio file).*

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
A. Finance Commission Matters		
1. Review and Approval of the Minutes of the August 19, 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.	1:08 start of discussion
3. Consent Agenda – Items A1, B2-B5, C2, and D2-D4	Debbie Scanlon made a motion to Approve Consent Agenda items A1, B2-B5, C2, and D2-D4. Will Lucas seconded, and the motion passed.	1:42 start of discussion 2:04 Vote
4. Finance Commission Operations	No Action Required.	2:32 start of discussion
5. Audit Committee Report		
A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies’ 2022 Fourth Quarter Investment Officer Reports	Coming upon the Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies’ 2022 Fourth Quarter Investment Officer Reports passed.	53:50 start of discussion
1. Texas Department of Banking		54:01 Vote
2. Office of Consumer Credit Commissioner		
3. Department of Savings and Mortgage Lending		

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<p>B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies’ 2022 Fourth Quarter Financial Statements</p> <ol style="list-style-type: none"> 1. Texas Department of Banking 2. Office of Consumer Credit Commissioner 3. Department of Savings and Mortgage Lending 	<p>Coming upon the Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies’ 2022 Fourth Quarter Financial Statements passed.</p>	<p>54:14 start of discussion</p> <p>54:22 Vote</p>
<p>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</p>	<p>Coming upon the Recommendation from the Audit Committee, no second is required and the motion to Approve the Texas Department of Banking’s 2022 Post Payment Audit Report as Prepared by the Texas Comptroller of Public Accounts passed.</p>	<p>54:33 start of discussion</p> <p>54:44 Vote</p>
<p>D. 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>No Action Required.</p>	<p>54:56 start of discussion</p>
<p>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</p>	<p>Coming upon the Recommendation from the Audit Committee, no second is required and the motion to Approve 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 passed.</p>	<p>55:06 start of discussion</p> <p>55:24 Vote</p>
<p>6. Status Report on Implementation of Sunset Management Recommendations</p> <p>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.”</p>	<p>No Action Required.</p>	<p>55:48 start of discussion</p>
<p>7. Presentation on the Condition of the Texas State Banking System</p>	<p>No Action Required.</p>	<p>3:29 start of discussion</p>

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<p>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</p>	<p>Laura Warren made a motion to Approve the Accomplishment Report for Fiscal Year 2022 for the Commissioner of the Texas Department of Banking. Hector Cerna seconded, and the motion passed.</p> <p>Will Lucas made a motion to Approve the Accomplishment Report for Fiscal Year 2022 for the Commissioner of the Office of Consumer Credit Commissioner. Debbie Scanlon seconded, and the motion passed.</p> <p>Martin Green made a motion to Approve the Accomplishment Report for Fiscal Year 2022 for the Commissioner of the Department of Savings and Mortgage Lending. Laura Warren seconded, and the motion passed.</p>	<p>57:26 start of discussion</p> <p>57:30 Vote</p> <p>57:49 Vote</p> <p>58:11 Vote</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>
<p>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</p>	<p>No Discussion.</p>	<p>n/a</p>

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
B. Texas Department of Banking		
1. Industry Status and Departmental Operations: a) Current Issues Affecting Department’s Regulated Entities; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Non-Depository Supervision Division Activities; e) Administrative, Staffing and Fiscal Division Activities; f) Strategic Support Division Activities including Consumer Complaint Data; g) Legal Division Activities including Enforcement Activity and Gift Reporting; and h) Legislative Activities	No Action Required.	58:42 start of discussion
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	On Consent Agenda – Item B2 This item approved on the Consent Agenda.	n/a
3. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 2, Chapter 11, Concerning Texas Department of Banking, Miscellaneous, Resulting from Rule Review	On Consent Agenda – Item B3 This item approved on the Consent Agenda.	n/a
4. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 2, Chapter 26, Concerning Perpetual Care Cemeteries, Resulting from Rule Review	On Consent Agenda – Item B4 This item approved on the Consent Agenda.	n/a
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	On Consent Agenda – Item B5 This item approved on the Consent Agenda.	n/a
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	Vince Puente made a motion to Approve the Proposal and Publication for Comment of Amendments to 7 TAC, Part 2, Chapter 26, Concerning Perpetual Care Cemeteries, Resulting from Rule Review. Sharon McCormick seconded, and the motion passed.	1:22:42 start of discussion 1:24:31 Vote
7. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Discussion.	n/a
C. Office of Consumer Credit Commissioner		
1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; f) Legislative Activities	No Action Required.	1:25:11 start of discussion

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
2. Discussion of and Possible Vote to Take Action on the Readoption of TAC, Part 5, Chapter 90, Concerning 342, Plain Language Contract Provisions, Resulting from Rule Review	On Consent Agenda – Item C2 This item approved on the Consent Agenda.	n/a
3. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 5, Chapter 90, Concerning Chapter 342, Plain Language Contract Provisions, Resulting in Rule Review	Rosie Morris made a motion to Approve the Proposal and Publication for Comment of Amendments to 7 TAC, Part 5, Chapter 90, Concerning Chapter 342, Plain Language Contract Provisions, Resulting in Rule Review. Laura Warren seconded, and the motion passed.	1:43:48 start of discussion 1:46:49 Vote
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. 01-22-00712-CV</i> , in the First Court of Appeals, Houston, Texas	No Discussion.	n/a
D. Department of Savings and Mortgage Lending		
1. Industry Status and Departmental Operations: a) Thrift Regulation Division Activities; b) Mortgage Regulation Division Activities; c) Operations Division Activities; d) Legal Division Activities, including Consumer Complaints and Gift Reporting; e) Legislative Activities	No Action Required.	1:47:23 start of discussion
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	On Consent Agenda – Item D2 This item approved on the Consent Agenda.	n/a
3. Discussion of and Possible Vote to Take Action on the Adoption of Repeals in 7 TAC, Part 4, Chapter 77, Concerning Loans, Investments, Savings, and Deposits, Resulting from Rule Review	On Consent Agenda – Item D3 This item approved on the Consent Agenda.	n/a
4. Discussion of and Possible Vote to Take Action on the Adoption of Amendments in 7 TAC, Part 4, Chapter 79, §79.4, Concerning Bond Requirement	On Consent Agenda – Item D4 This item approved on the Consent Agenda.	n/a
5. Discussion of and Possible Vote to Take Action on the Adoption of New Rules and Repeals in 7 TAC, Part 4, Chapter 75, Concerning Applications, Resulting from Rule Review	Martin Green made a motion to Approve the Adoption of New Rules and Repeals in 7 TAC, Part 4, Chapter 75, Concerning Applications, Resulting from Rule Review. Sharon McCormick seconded, and the motion passed.	1:59:14 start of discussion 2:00:54 Vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
6. 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 11:42 a.m. (2:02:36 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

December 16, 2022

A. Finance Commission Matters

1. Review and Approval of the Minutes of the October 28, 2022, Finance Commission Meeting

B. Texas Department of Banking

2. Discussion of and Possible Vote to Take Action on the New Appointment of J. Kyle Williams as the Industry Representative to the Guaranty Fund Advisory Council for the Period January 1, 2023, to December 31, 2024
3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 2, Chapter 26, Concerning Perpetual Care Cemeteries, Resulting from Rule Review

C. Office of Consumer Credit Commissioner

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

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B.

**Department of Savings and
Mortgage Lending**

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B. Department of Savings and Mortgage Lending

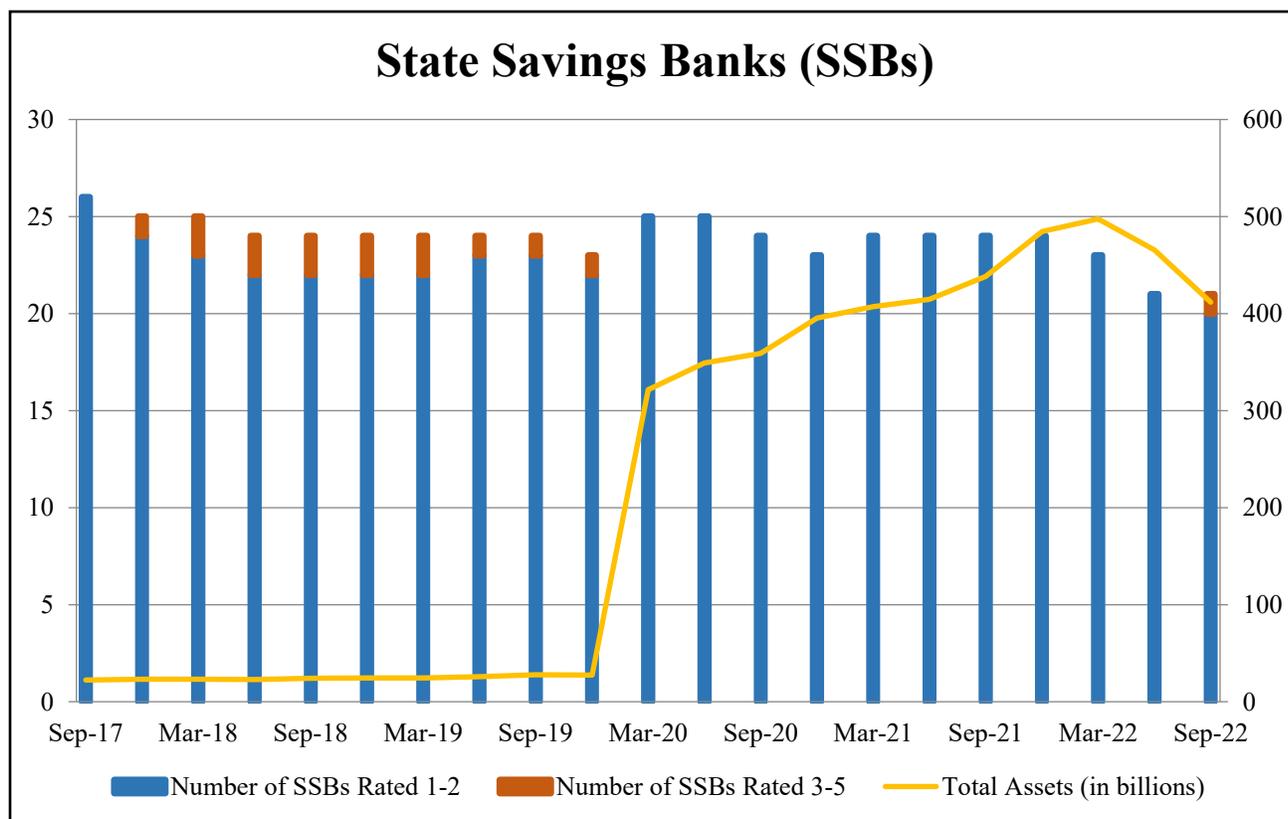
1. Industry Status and Departmental Operations: a) Thrift Regulation Division Activities; b) Mortgage Regulation Division Activities; c) Operations Division Activities; d) Legal Division Activities, including Consumer Complaints and Gift Reporting; and e) Legislative Activities

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.

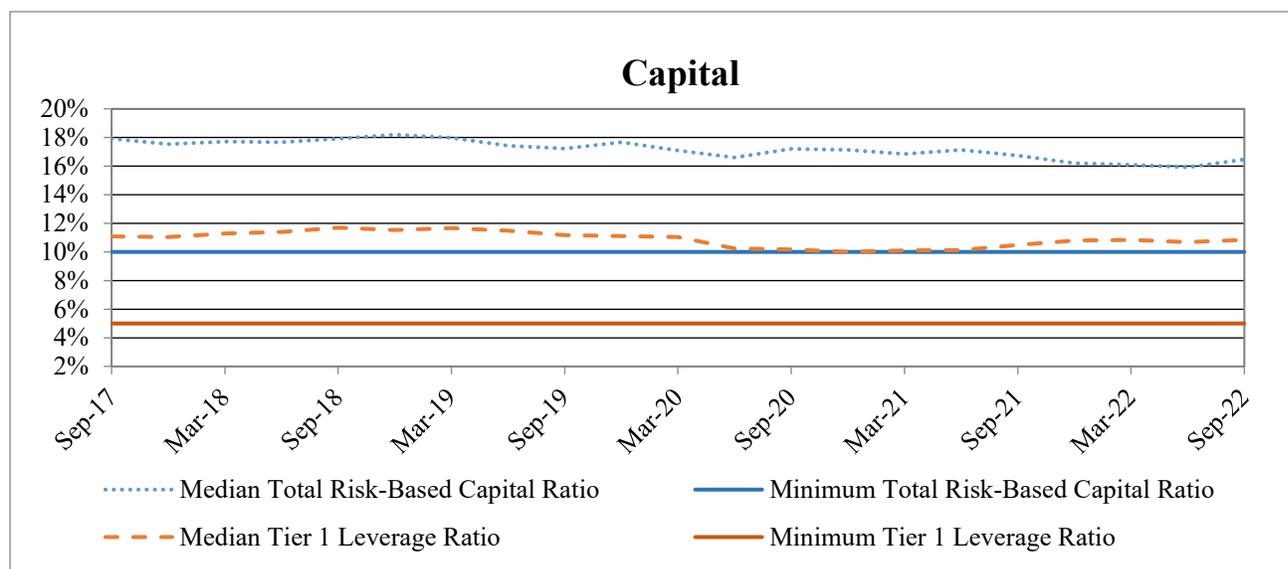
The Department conducts bank examinations to ensure confidence in the banking system using the Uniform Financial Institutions Rating System (UFIRS). Banks with a UFIRS rating of 1 or 2 are considered well rated. The industry consists of 21 state savings banks with assets totaling \$411.9 billion as of September 30, 2022. The industry remains sound with 95% of banks being well rated. As of September 30, 2022, one informal supervisory action is in place.



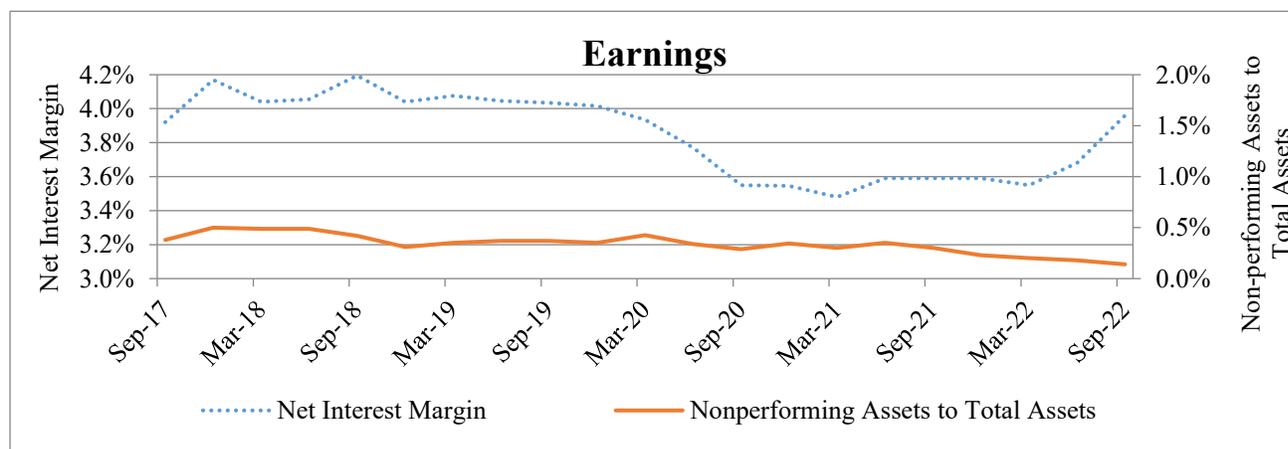
All SSBs are subject to quarterly offsite reviews. Those with the highest risk profiles receive enhanced scrutiny, as warranted, with targeted visitations, accelerated examinations, and/or corrective actions.

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

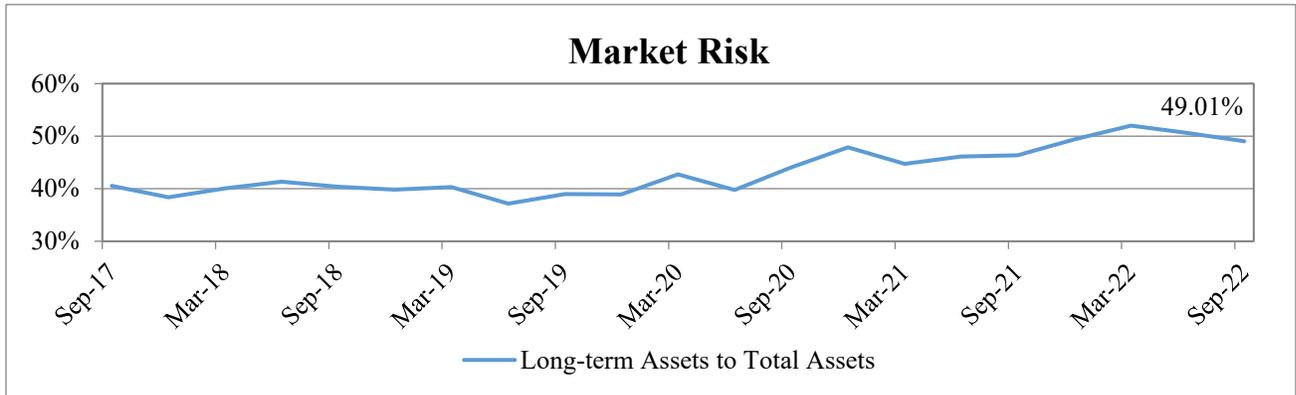
Bank capital performs several very important functions, including absorbs losses, promotes public confidence, helps restrict excessive asset growth and provides protection to the depositors. Regulatory capital standards are designed to strengthen the quality and quantity of bank capital and promote a stronger financial industry that is more resilient to economic stress. As of September 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 16.47% and 10.85%, respectively.



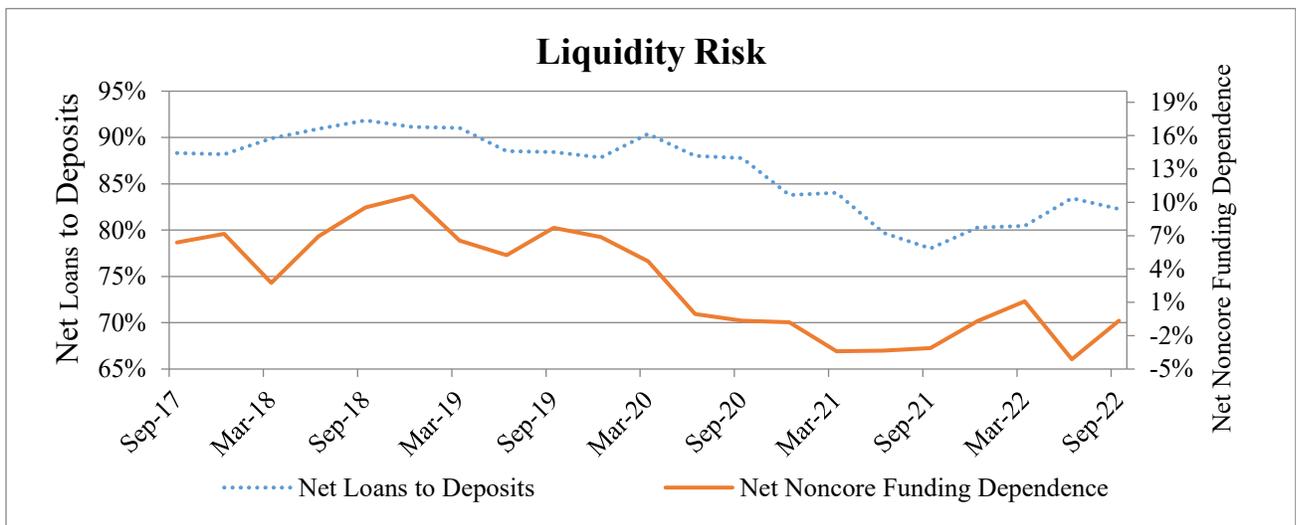
Earnings is the initial safeguard against the risk of engaging in the banking business and is the first line of defense against capital depletion resulting from shrinkage in asset value. Earnings performance should allow the bank to remain competitive by providing the resources required to implement management’s strategic initiatives. The net interest or profit margin is 3.96%. Non-performing asset levels remain low at 0.14% 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 September 30, 2022, long-term assets to total assets ratio decreased to 49.01%.



Liquidity risk reflects the bank’s ability to fund assets and meet financial obligations under various scenarios, including adverse conditions. Liquidity risk continues to decline. The Net Noncore Funding Dependence (NNCFD) Ratio, a measure of the funding of long-term assets using short-term funding strategies, is negative 0.66%. The loan-to-deposit ratio, a measure of the use of deposits to fund lending activities, is 82.28%.



Thrift Examination Activity Report

On-site examinations are being conducted. Risk scoping, availability of bank staff, and request of bank management are taken into consideration when determining the examination approach.

Thrift Supervision Activity Report

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

No merger activity was received, approved or effective since the October 2022 Finance Commission meeting.

Outreach and Training

Deputy Commissioner Trotti participated in the Regulator Panel at the FDIC Banker Outreach, providing updates on current and emerging banking issues, in Austin on November 2, 2022.

Supervisory Compliance Examiner Bill Poe participated in the Regulator Panel at the IBAT 2022 Compliance Summit, covering current compliance topics, in Austin on November 4, 2022.

b) Mortgage Regulation Division Activities

Industry Status

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

The number of licensed/registered mortgage entities in an approved status with the Department continued to increase. The following table represents the growth in the number of licensees/registrations and branch locations in approved status from October 31, 2021, to October 31, 2022.

License/Registration Type	Approved Count as of		% Change
	10/31/2021	10/31/2022	
Mortgage Banker	429	438	2.10%
Mortgage Company	1,954	2,837	45.19%
Residential Mortgage Loan Servicer	225	248	10.22%
Independent Contractor Company	243	317	30.45%
Credit Union Subsidiary Organization	3	5	66.67%
Auxiliary Mortgage Loan Activity Company	4	3	-25.00%
Financial Services Company	0	0	0%
<i>Subtotal Entity Licenses/Registrations</i>	2,858	3,848	34.64%
Mortgage Banker Branches	4,075	4,591	12.66%
Mortgage Company Branches	1,139	1,342	17.82%
Credit Union Subsidiary Organization Branches	2	1	-50.00%
<i>Subtotal Branch Licenses/Registrations</i>	5,216	5,934	13.77%
Mortgage Loan Originator	47,320	56,623	19.66%
<i>Subtotal Individual Licenses</i>	47,320	56,623	19.66%
Total Count of Licenses/Registrations	55,394	66,405	19.88%

Licensing Activity Report

From September 1, 2022, to October 31, 2022, the Mortgage Licensing section processed 2,027 applications and approved 1,625 applications, including 151 mortgage entities, 283 branch offices, and 1,191 residential mortgage loan originators. The remaining 402 applications were either withdrawn by the applicant or denied by the Department.

According to NMLS Data Analytics, from September 1, 2022, to October 31, 2022, the Mortgage Licensing section processed 21,000 license amendments, 1,035 credit report reviews, 5,236 sponsorship removals, and 3,502 sponsorship requests.

The Mortgage Licensing section is currently in the 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

From September 1, 2022, to October 31, 2022, the Mortgage Examination section issued 33 examination reports covering 1,507 individual licensees. The overall production for issued examinations reports was less than FY2022 (72 exams covering 712 licensees) due to a vacant position responsible for processing examination reports and the attendance of the entire Mortgage Examination staff of reverse mortgage training. As of December 1, 2022, the position has been filled which will lead to an overall improvement in the number of issued examination reports.

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 September 14, 2022, Commissioner Hector Retta and Director of Mortgage Regulation William Purce provided an in-person presentation to the Houston 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 safeguarding of non-public personal information (Information Security Plan); and (6) an update on complaint issues.

On October 11, 2022, Commissioner Hector Retta and Director of Mortgage Regulation William Purce provided an in-person presentation to the Texas Mortgage Bankers Association – San Antonio. The topics were generally the same topics as discussed in the Houston Mortgage Bankers Association presentation.

During the month October 2022, the entire Mortgage Examination staff attended 25 hours of reverse mortgage training provided by the American Association of Residential Mortgage Regulators (AARMR) which was held in 5-hour webinar sessions over five days.

c) Operations Division Activities

Accounting, Budget, and Financial Reporting

Staff is working on closing first quarter of fiscal 2023.

As a self-directed semi-independent agency, the Department of Savings and Mortgage Lending submitted annual financial information required under Finance Code, Section 16.005(c), for fiscal year 2022, and biennial agency activities information required under Finance Code, Section 16.005(b), for fiscal years 2021 and 2022, to oversight agencies and members of the legislature.

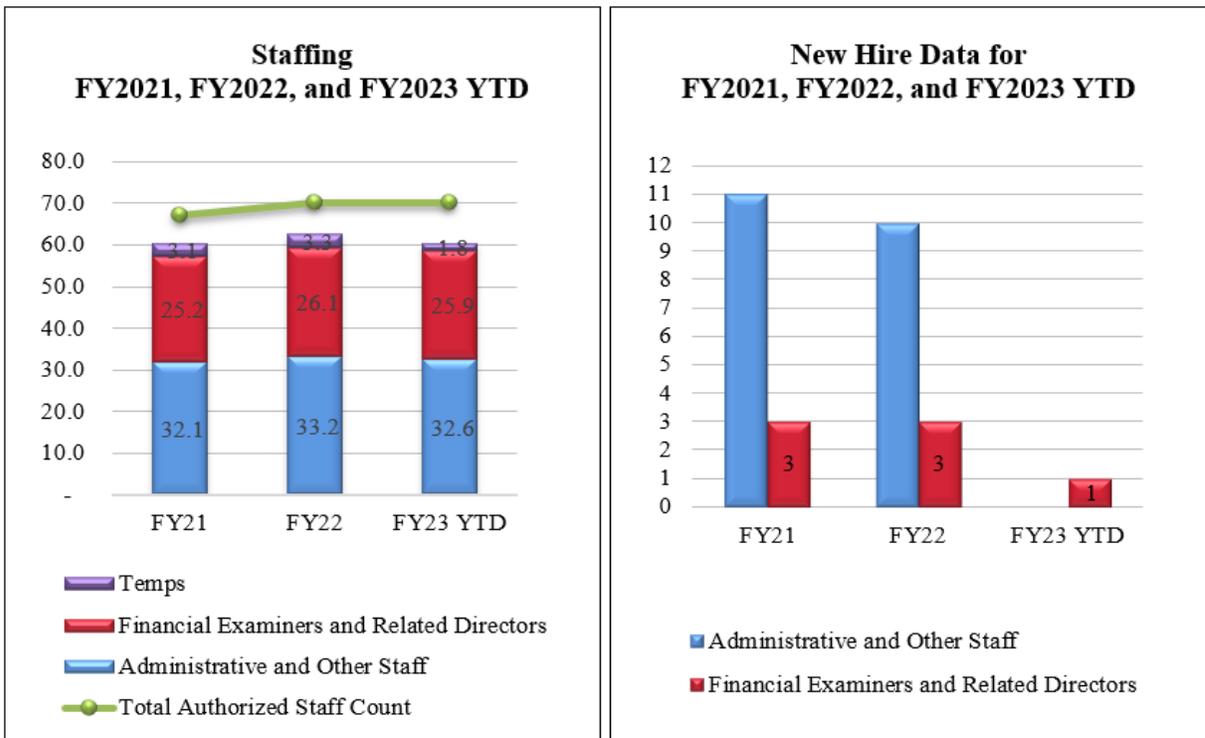
Legislative Activity – Staff has begun to review and analyze pre-filed bills for fiscal impact on the agency and the regulated industries.

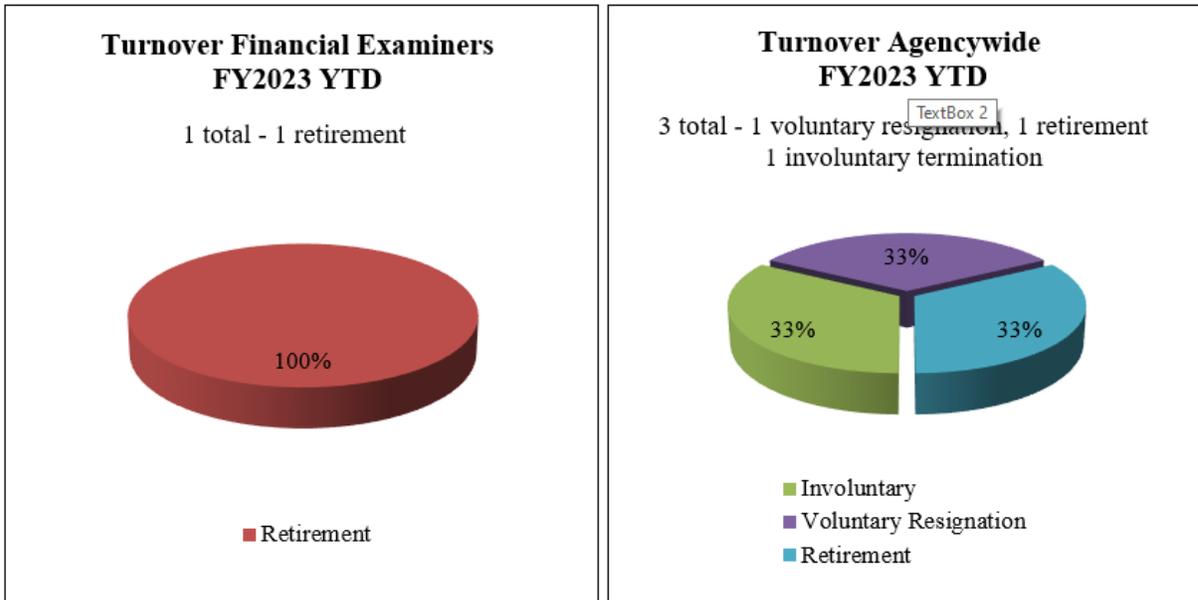
Audit

The annual risk assessment was completed by Garza/Gonzales and Associates. The report can be found elsewhere in the packet.

Human Resources

Staffing Charts as of November 30, 2022





As of November 30, the Department was staffed at 59 regular full-time employees. On December 1, 2022, two new hires joined the Department – an Administrative Assistant and an Executive Assistant. Additionally, the General Counsel position was filled by an internal candidate.

The Department is currently utilizing the services of one temporary worker - an Editor.

Below is the status of the Department’s vacancies:

Vacancy Status	
Administrative Assistant III/IV (Mortgage)	Position Filled
Executive Assistant II/III	
General Counsel IV/V	
Financial Examiner V – Thrift - 2	Collecting and reviewing applications, interviewing candidates
Financial Examiner VI/VII – Thrift - 3	
Management Analyst III/IV	
Technical Writer I/II	
Financial Examiner I-II – Thrift (Information Technology)	Collecting and reviewing applications
Financial Examiner I - Thrift	
Administrative Assistant II/III (Complaints)	
Investigator II/III (Licensing)	

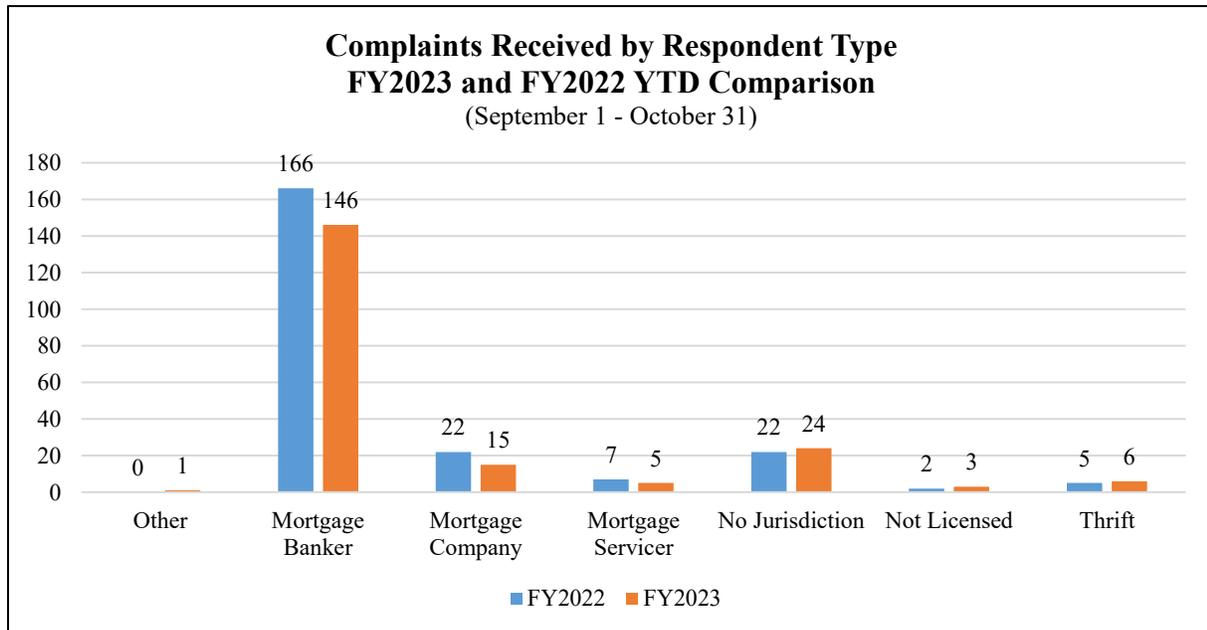
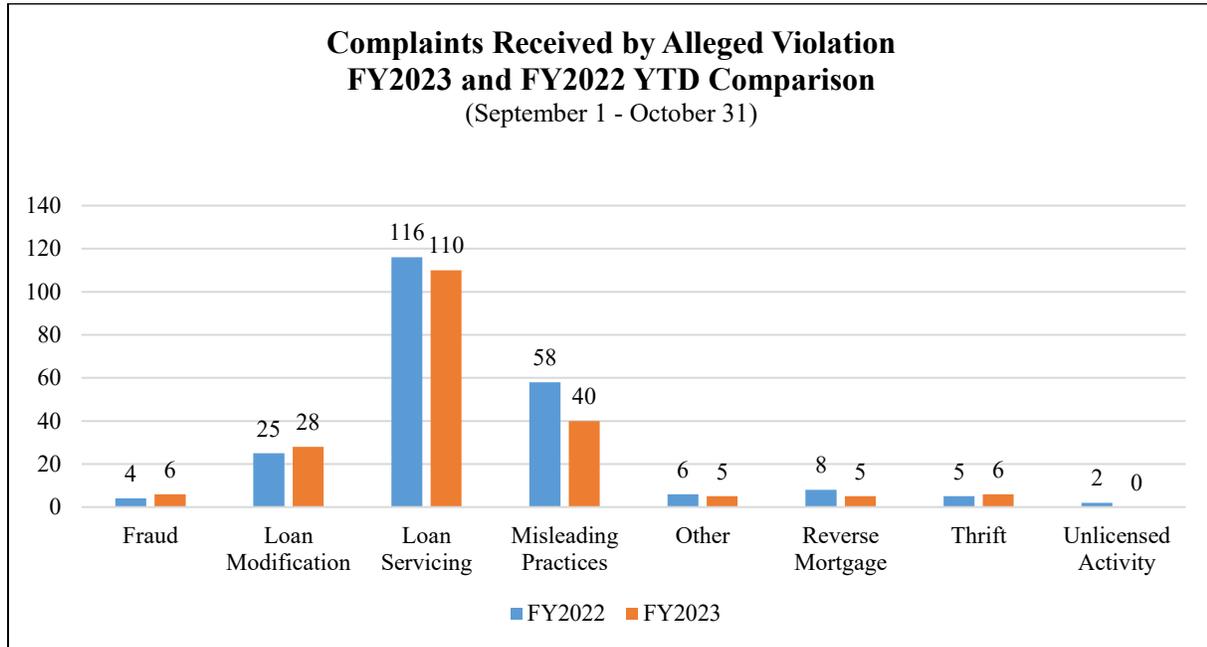
Outreach and Training

The quarterly agency-wide meeting and training was conducted on November 10, 2022. The training agenda included multiple sessions on agency and state policies and procedures and wellness training.

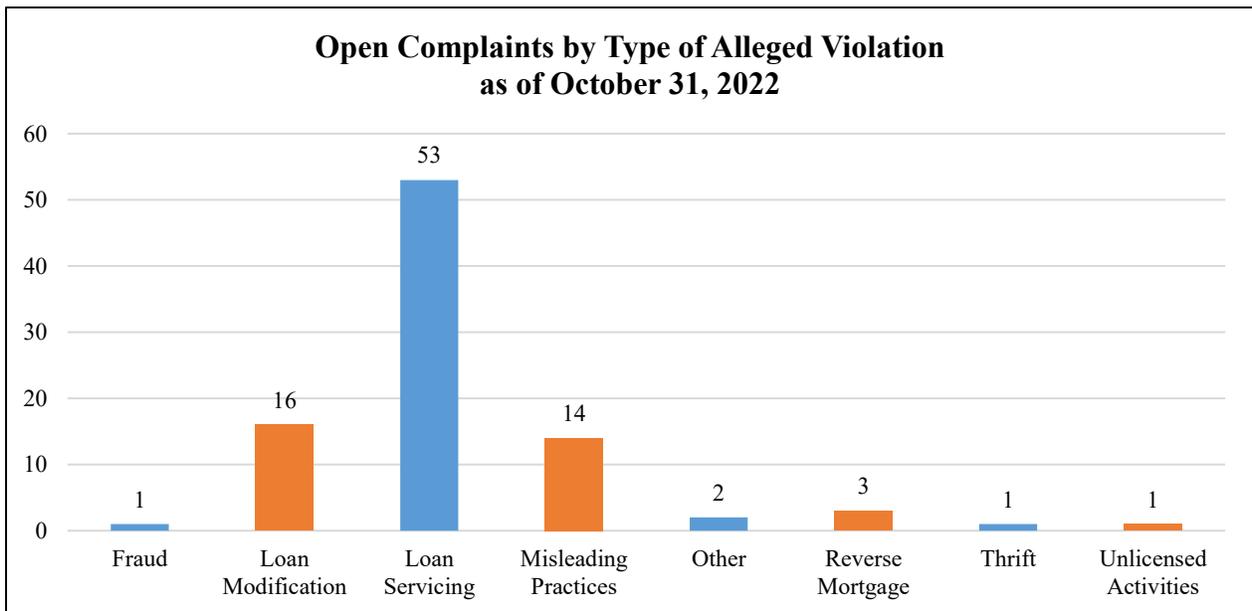
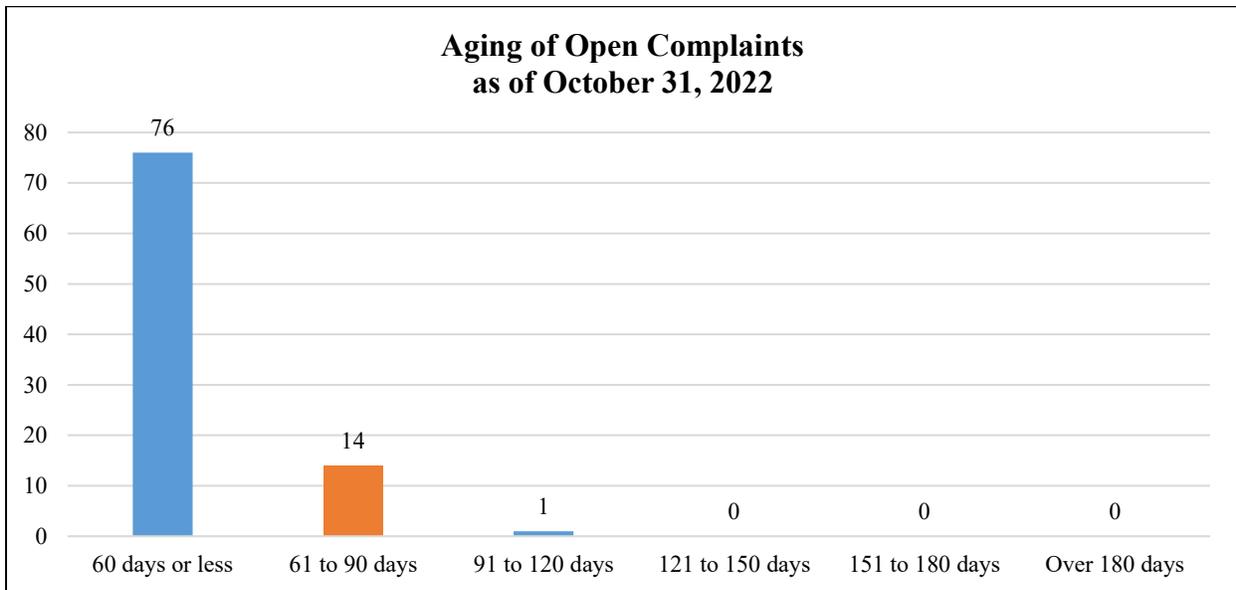
d) Legal Division Activities, including Consumer Complaints and Gift Reporting

Consumer Complaints Activity Report

Complaints Received – In September and October 2022 (FY2023), the Department received 200 complaints, compared to 224 received during the same period in FY2022, representing a 10.72% decrease.



Aging of Open Complaints – As of October 31, 2022, there were 91 open complaint files. Complaint aging is within acceptable ranges with 99% of complaints aged 90 days or less.



Closed Complaints – In September and October 2022, a total of 191 complaints were closed. Of those complaints, 111 were related to servicing issues, 99.1% of which were closed within 90 days, and 80 were related to non-servicing issues, 100% of which were closed within 90 days. Data for the first quarter of FY2023 will be provided at the February 2023 meeting of the Finance Commission.

Legal and Enforcement Activity Report

Mortgage Enforcement Actions – In September and October 2022, 42 enforcement actions were taken. Data for the first quarter of FY2023 will be provided at the February 2023 meeting of the Finance Commission.

Recovery Claims – In September and October 2022, one recovery claim application was received, and one recovery claim file closed. Data for the first quarter of FY2023 will be provided at the February 2023 meeting of the Finance Commission.

Status of Pending Recovery Claim Files as of October 31, 2022	
Pending Investigation	0
Pending Preliminary Determination Letter	5
Preliminary Determination Letter Issued	0
On Appeal	1
Open to Facilitate Resolution by the Parties	0
Total	6

Contested Cases before the State Office of Administrative Hearings (SOAH)

Joshua Rackley and Toni Rackley, a/k/a Toni Guggenbickler v. Thrive Mortgage and Ashlynn Anne Kelso (SOAH Docket No. 450-22-1867; recovery claim). Joshua 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 Finance Code Sections 157.024(a) or 156.304(b). The applicants/claimants, Joshua 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. On November 10, 2022, the ALJ issued his Proposal for Decision, recommending that the Commissioner deny the recovery claim. On November 25, 2022, the time period to file exceptions to the PFD expired without any party having filed exceptions. On November 30, 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. On October 7, 2022, the parties jointly filed a motion for continuance in order to conduct discovery and explore the possibility of settlement. On October 10, 2022, such motion was granted and the hearing reset. A hearing on the merits is now scheduled for January 30, 2023.

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. On October 17, 2022, Ms. Powers withdrew her appeal, rendering the proceeding moot. On that same day, the Department filed its motion to dismiss the proceeding. On that same day (October 17, 2022), such motion was granted, and the proceeding dismissed. The Commissioner's decision to deny the license application is now final.

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. In late October 2022 the parties reached a settlement to resolve the matters giving rise to the hearing, resulting in Ms. Litton receiving a license on a conditional basis. On November 3, 2022, the Department filed its motion to dismiss the proceeding. On that same day, such motion was granted, and the proceeding dismissed.

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 the case will be heard on the written briefs submitted, without oral argument.

Public Information Requests

During September and October FY2023, the Department received 45 public information requests. Data for the first quarter of FY2023 will be provided at the February 2023 meeting of the Finance Commission.

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

On October 11, 2022, Chief Mortgage Examiner, Ellena Meier, attended a training seminar conducted by the American Association of Residential Mortgage Regulators (AARMR). The applicable registration fee of \$199 was waived.

On October 20, 2022, Director of Mortgage Regulation, William Purce, and Chief Mortgage Examiner, Ellena Meier, attended a training webinar conducted by the Texas Mortgage Bankers Association (TMBA). The applicable fee of \$59 (\$118 total) was waived.

On November 2, 2022, Deputy Commissioner and Director of Thrift Regulation, Stephany Trotti, attended an industry conference conducted by the Texas Bankers Association (TBA) and was a speaker at the event. The applicable fee of \$325 was waived.

e) Legislative Activities

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

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

Anticipated Litigation

None

Pending Litigation

None

C.

Texas Department of Banking

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Charles G. Cooper
Commissioner

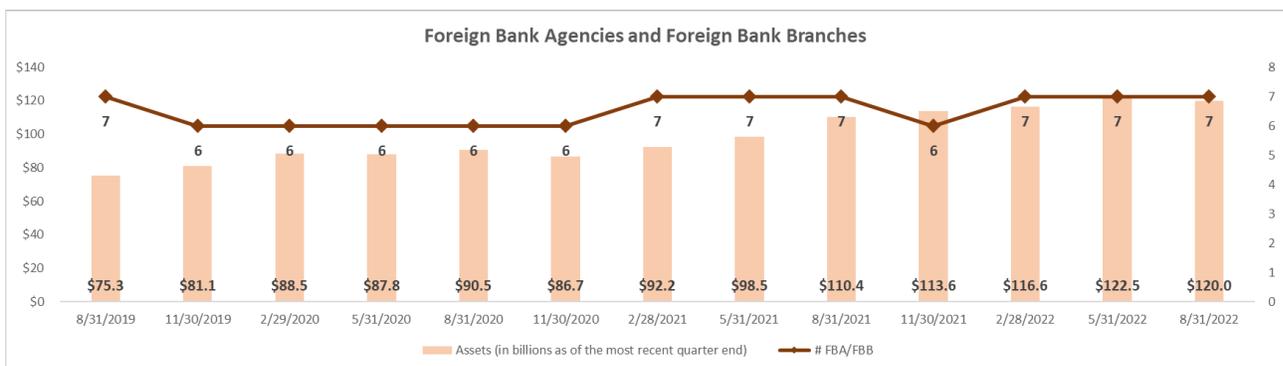
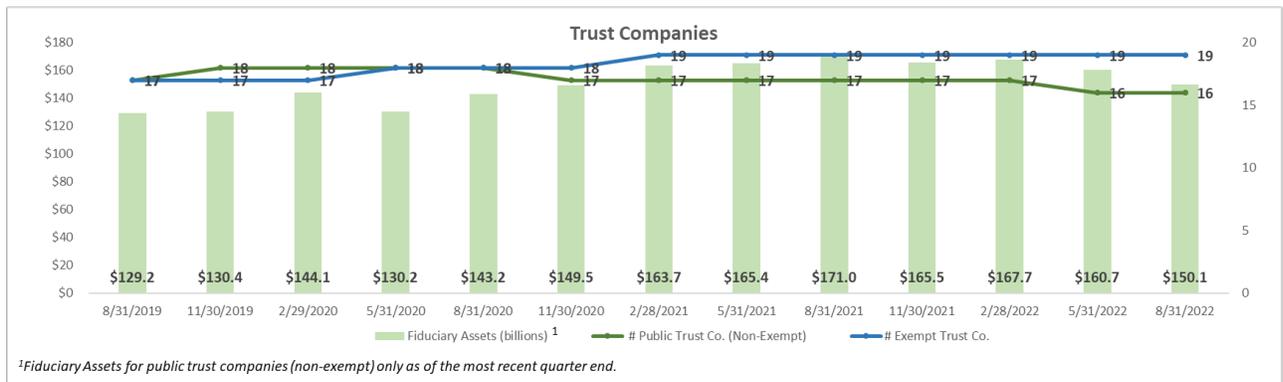
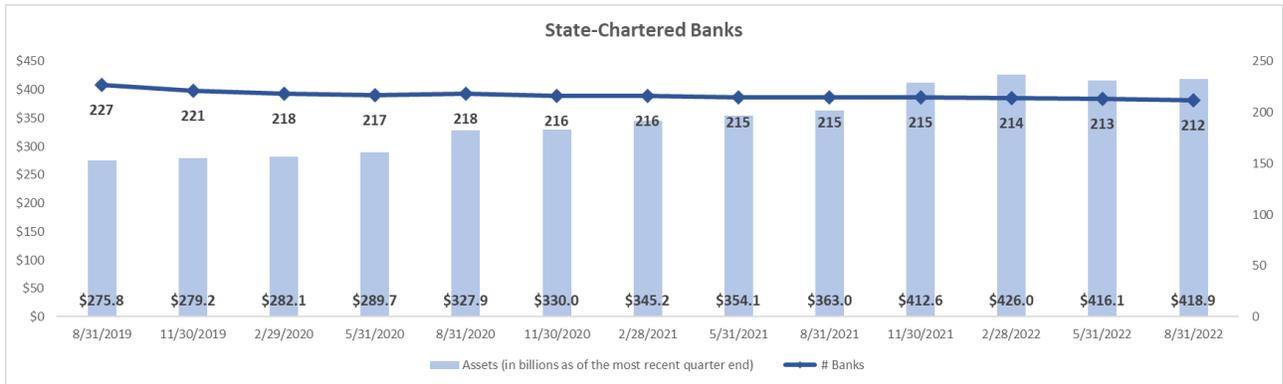
TEXAS DEPARTMENT OF BANKING

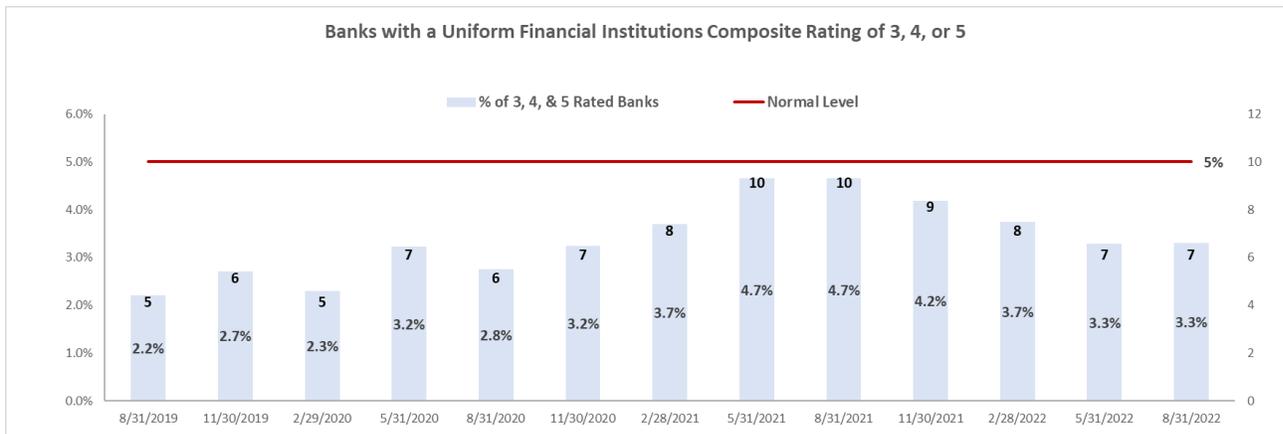
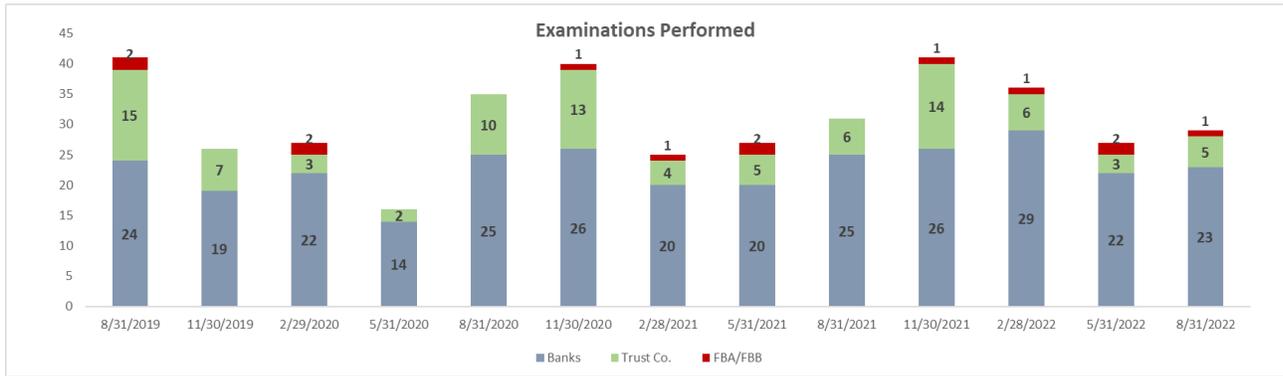
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To: Finance Commission Members
From: Dan Frasier, Director of Bank & Trust Supervision *DBF*
Date: November 30, 2022
Subject: Summary of the Bank & Trust Supervision Division Activities

Bank and Trust Supervision – Industry Profiles

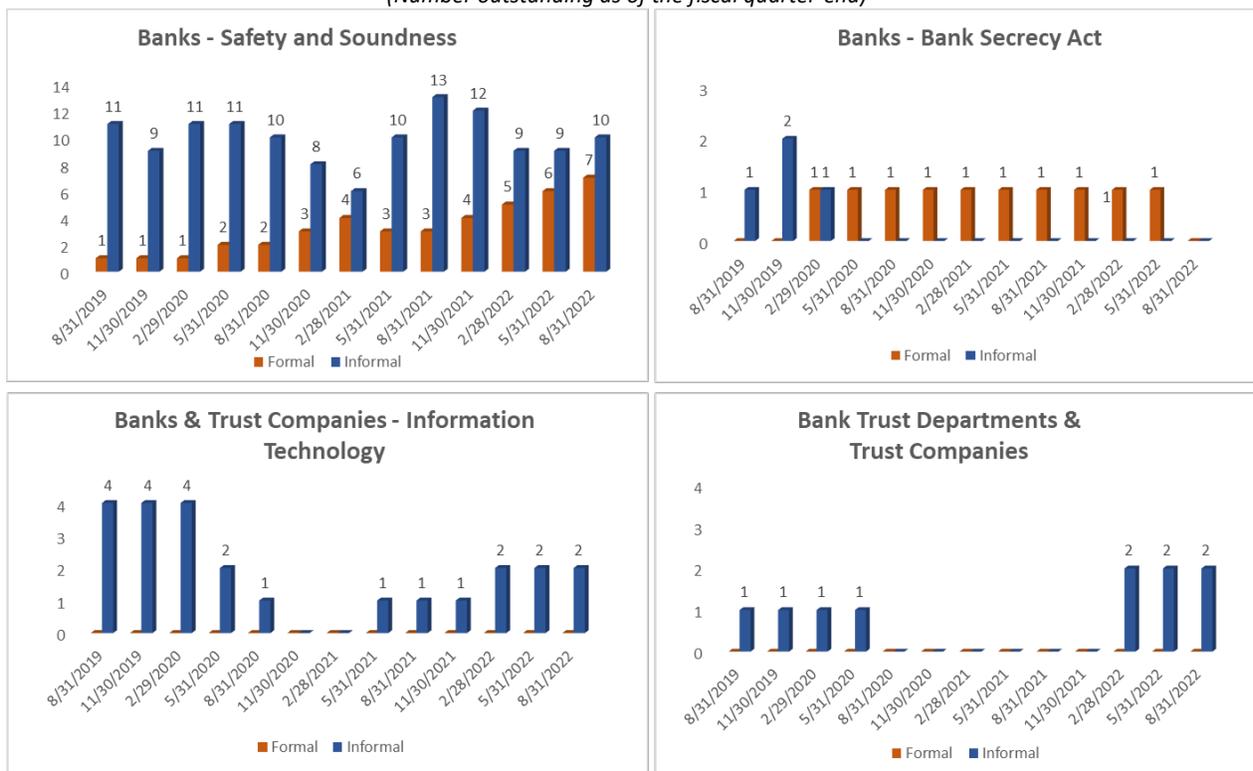
As of fiscal quarter-end (assets as of the preceding calendar quarter)





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

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



Formal actions include Orders to Cease and Desist, Consent Orders, Written Agreements and Supervisor Actions. Informal actions include Determination Letters, Memoranda of Understanding, Commitment Letters and Board Resolutions. Compliance actions are not included.

Compliance with Examination Priorities

Percent of examinations conducted within Department guidelines

Entity Type	FY 2022	FY 2023 (YTD – Oct 2022)
Commercial Banks	96%	92%
IT	95%	83%
Trust	100%	60%
Foreign Banks (FRB)	92%	100%
Trust Companies (DOB)	96%	71%
IT	88%	75%

Examination categories with less than 95% of examinations conducted within guidelines for FY 2023 include:

- Commercial Banks – two exams past due by an average of 16 days.
- IT Examinations of Banks – four exams past due by an average of 13 days.
- Trust Departments – two exams past due by an average of 14 days.
- Trust Companies – two exams past due by an average of 24 days.
- IT Examinations of Trust Companies – one exam past due by 24 days.

Division Highlights

- **Special Operations and Conferences:**

- On October 5, 2022, Director of Bank & Trust Supervision Dan Frasier represented the Department on the Regulator Panel of the Texas Bankers Association (TBA) Internal Audit School in San Antonio, Texas.
- On October 11, 2022, Regional Director (RD) Tom Susany represented the Department on the Regulator Panel at the Independent Bankers Association of Texas (IBAT) Bank Operations Institute event in Irving, Texas.
- On October 13, 2022, Director of IT Security Examinations Phillip Hinkle taught a session on cyber security at the IBAT Bank Operations Institute event in Irving, Texas.
- On October 17, 2022, RD Susany represented the Department on the Regulatory Panel for the Texas Society of CPAs Financial Institution Conference in Dallas, Texas.
- On October 18, 2022, Commissioner Charles G. Cooper represented the Department at the Banking Day and Fall Smith-Hutson Banking Advisory Board Meeting at Sam Houston State University in Huntsville, Texas.
- On October 19, 2022, Director Frasier and Examiner Lilliana Abbassi taught a class titled *Bank Regulatory Framework* for the Commercial Banking Program at Texas A&M University, College Station, Texas.
- On October 20, 2022, Director Frasier represented the Department at the Texas A&M University Commercial Banking Program's Advisory Board Meeting and Bert Fields Excellence in Banking Awards Dinner in College Station, Texas.
- On October 21, 2022, Commissioner Cooper, Deputy Commissioner Wendy Rodriguez, RD Susany, and Examiners Jeff Gerlach and Keith Bryan represented the Department at the TBA and FDIC Banker Outreach Program in Farmers Branch, Texas. The program covered emerging risks in a rising rate and inflationary environment, a regulator panel, consumer protection, third-party risk management, and information technology cybersecurity. Commissioner Cooper represented the Department on the Regulator Panel.
- On October 24, 2022, Commissioner Cooper represented the Department at the FDIC Advisory Committee of State Regulators at FDIC headquarters in Washington, D.C.
- On November 2, 2022, Commissioner Cooper, Deputy Commissioner Rodriguez, Director Frasier, RD Kenneth Kuntschik, and Review Examiners Jared Whitson and Kevin Wu represented the Department at the TBA and FDIC Banker Outreach Program in Austin, Texas. Commissioner Cooper represented the Department on the Regulator Panel section of the program.
- On November 3, 2022, Director Phillip Hinkle represented the Department as a speaker at the Independent Bankers Association of Texas (IBAT) Compliance Summit in Austin, Texas.

- On November 17, 2022, RD David Reed represented the Department at the SouthWest Bank Economic Forecast Conference, in Odessa, Texas.
- The 2022 Commissioner's Post Examination Survey responses are available on the agency's [website](#). The purpose of the survey is to solicit input regarding the division's examination processes. The division received 143 total responses in fiscal year 2022 and most of the responses reflect either "strongly agree" or "agree" ratings.



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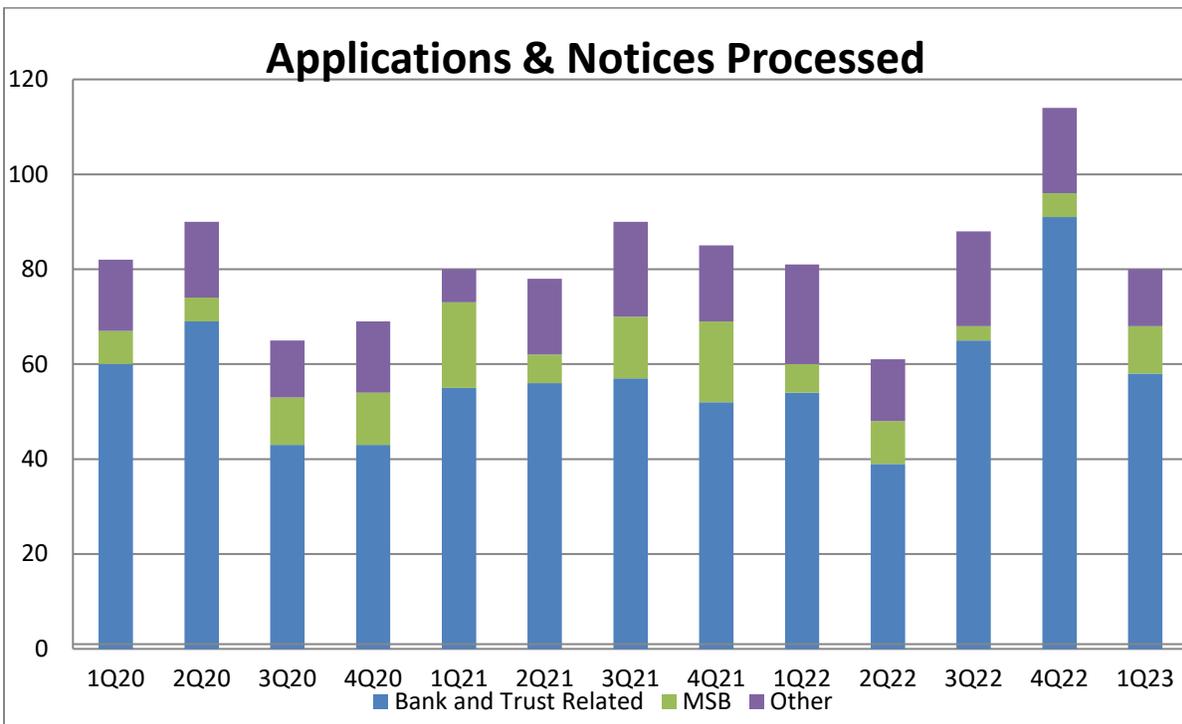
Charles G. Cooper
Commissioner

To: Finance Commission Members

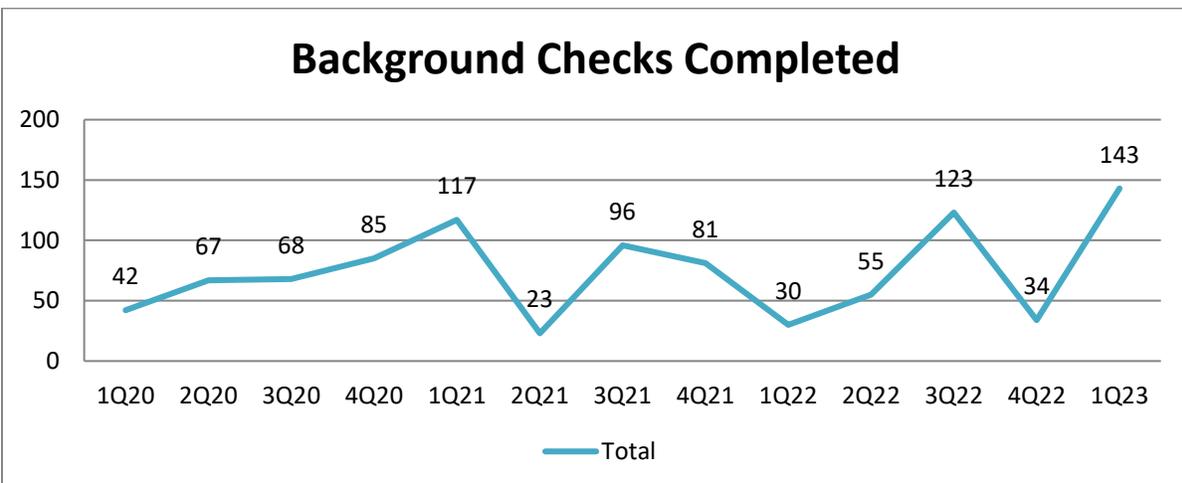
From: Mark Largent, Director of Corporate Activities *Mark R. Largent*

Date: December 1, 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 November 30, 2022)
Bank Related	23
Trust Companies	5
Money Services Business (MSB)	55
Others	3
Totals	86

Division Highlights

- Application volume modestly declined compared to the level reported at the last Finance Commission meeting. Compared to our last report submitted, the Corporate Division’s filings presently under review by category type changed by:
 - Bank related decreased 10 (30%)
 - Trust company decreased 1 (17%)
 - MSB related increased 2 (4%)
 - Other decreased 1 (25%)

- To help with the processing of applications, on October 10, 2022, a Bank and Trust Supervision examiner was reassigned to the Corporate Division and two additional Corporate Analysts were hired effective November 1, 2022.

- Significant Filings:
 - Prosperity Bank, El Campo, Texas, has applied to acquire via merger FirstCapital Bank of Texas, N.A., Midland, Texas [estimated gain in state banking assets of \$2.2 billion].
 - Prosperity Bank, El Campo, Texas, has applied to acquire via merger Lone Star State Bank of West Texas, Lubbock, Texas [no estimated change in state banking assets].

- **Charter, Conversion, and Merger Activity** – Since the last report to the Finance Commission, the following transactions have consummated:
 - *Banks*
 - Worthington National Bank, Arlington, Texas, converted to a Texas state bank charter under the name of Worthington Bank [estimated gain in state banking assets of approximately \$540 million].
 - Crockett National Bank, San Antonio, Texas merged into Pinnacle Bank, Fort Worth, Texas [estimated gain in state banking assets of approximately \$610 million].
 - The First Liberty National Bank, Liberty, Texas, converted to a Texas state bank charter under the name of First Liberty Bank [estimated gain in state banking assets of approximately \$430 million].
 - *Trust Companies*
 - None.



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Commissioner

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To: Finance Commission Members

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

Date: December 1, 2022

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

		FY 2023								
Entity	FY 2022		1 st		2 nd		3 rd		4 th	
Industry Profile (# / Assets (billions))										
Money Services Businesses (MSB)	194	\$315.1	*	*						
Prepaid Funeral Contract (PFC)	335	\$4.6	*	*						
Perpetual Care Cemeteries (PCC)	244	\$435.6**	*	*						
Check Verification Entities (CVE)	2	n/a	*	*						
Examinations Performed										
MSB	91		*							
MSB Limited Scope	1		*							
MSB Accepted other State	16		*							
PFC	223		*							
PFC Limited Scope	1		*							
PCC	152		*							
PCC Limited Scope	2		*							
Ratings (# / %) Assigned to All Regulated Entities										
1	294	39.10%	*	*						
2	401	53.32%	*	*						
3	49	6.52%	*	*						
4 & 5	8	1.06%	*	*						
Noncompliance with Examination Priorities (Past Due)										
MSB	25		*							
PFC	1		*							
PCC	3		*							

NOTES:

- * First quarter Fiscal Year 2023 data has not been finalized and will be provided in the division's next summary.
- ** PCC \$ amounts reflected in the millions.
- Limited scope examinations do not receive a rating.

Examination Activities

The division's analysis of performance compliance for the first quarter of Fiscal Year 2023 has not been finalized. However, despite ongoing financial examiner vacancies and recently hired financial examiners continuing to be in the training phase, it is anticipated NDS will meet performance measures for the first quarter of Fiscal Year 2023. Below is a summary of the division's personnel status.

- Although the division is fully staffed in the MSB area, two financial examiners are in the training phase. It is anticipated that both financial examiners will complete their training in the summer of 2023.
- The division currently has two financial examiner vacancies in the PFC/PCC area which have not been filled.
- The one PFC/PCC administrative assistant vacancy was filled in November 2022.

Division Activities

- In the last several weeks, there has been constant negative news regarding cryptocurrencies, exchanges, and the markets in general. Several large firms have filed for bankruptcy indicating potential losses in the millions of dollars to users/investors. We have indications that some impacted are Texas citizens.

The Department continues to work in collaboration with other state MSB regulators to monitor regulatory concerns on a national scale. As part of the joint MSB enforcement task force formed earlier this year, Departmental personnel regularly meet with other state regulators to discuss MSBs that are licensed or are seeking licensure in a majority of the states to identify any potential risky behavior and/or concerns, and uniformly communicate with these companies to gather information on behalf of the state system.

Further discussion on these actions is in the Legal report.

- On November 17, 2022, Commissioner Cooper testified at the Texas Senate Committee on Business and Commerce hearing on "Blockchain and Virtual Currencies."



Charles G. Cooper
Commissioner

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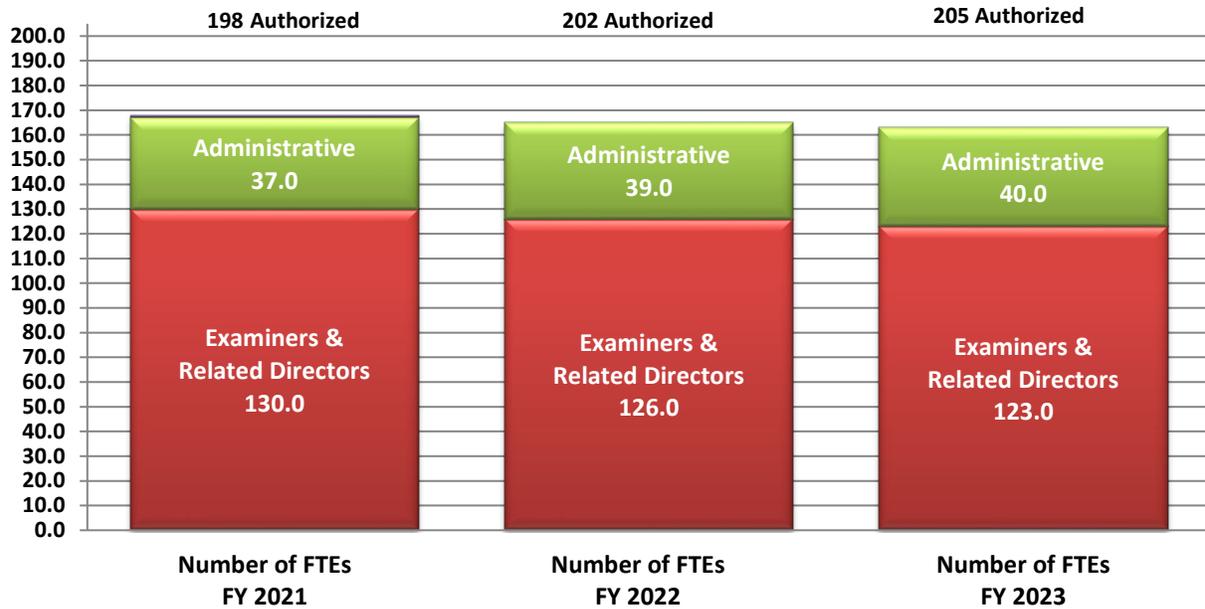
Memorandum

To: Finance Commission Members
From: Lori Wright, Director of Human Resources *LW*
Date: November 30, 2022
Subject: Summary of the Human Resources Division Activities

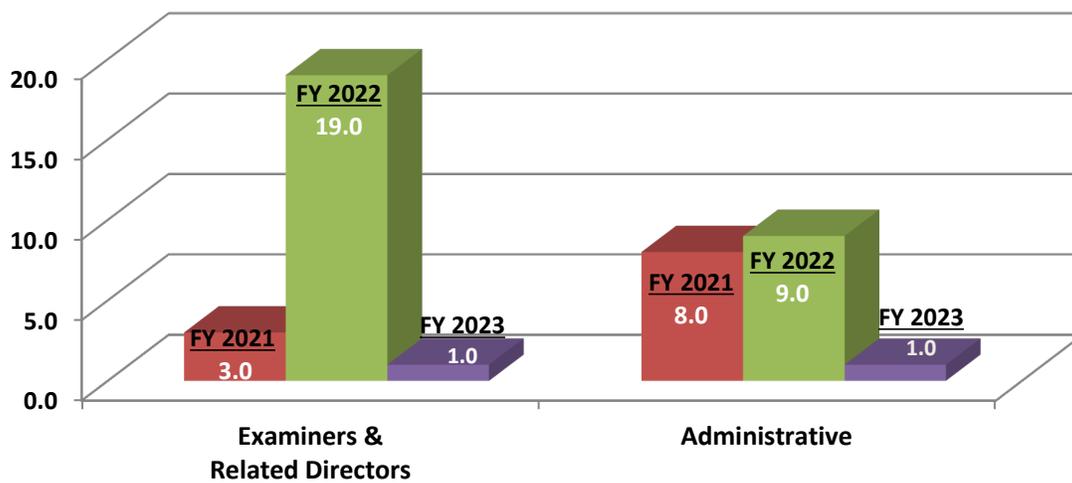
Active Postings				
Number of Positions	Position	Division	Status	Activities
1	Accountant V	Administrative Services	Open Until Filled	Recruiting
1	Compliance Analyst II Consumer Assistance Specialist	DSS	Open Until Filled	Recruiting
1	Financial Examiner IV-VI Financial Analyst – Training Coordinator	DSS	Open Until Filled	Recruiting
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 V Credit Review Specialist	Bank and Trust	Open Until Filled	Recruiting

- Approved discovery and gap analysis with Comptroller of Public Accounts for implementation of CAPPS Recruit.
- Supervisor Performance Evaluations (NEOGOV) completed November 2022.
- Filled Human Resources Specialist position.
- The Bank & Trust Division attended 14 college career fairs as part of increased recruiting efforts. This momentum in college recruiting will continue for the foreseeable future as the Department seeks quality applicants and to promote career opportunities to future candidates.

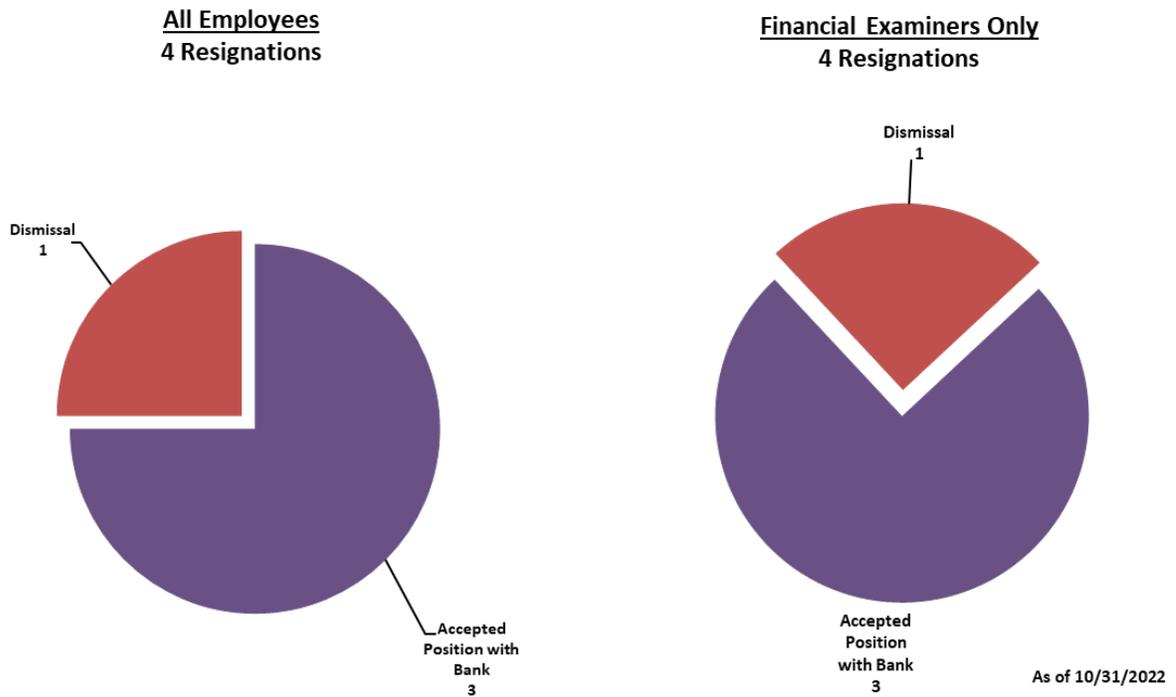
Texas Department of Banking Employee Data for Fiscal Years 2021, 2022 and 2023 as of 10/31/2022



New Hire Data for Fiscal Years 2021, 2022 and 2023



FY 2023 Employee Turnover Reasons





Charles G. Cooper
Commissioner

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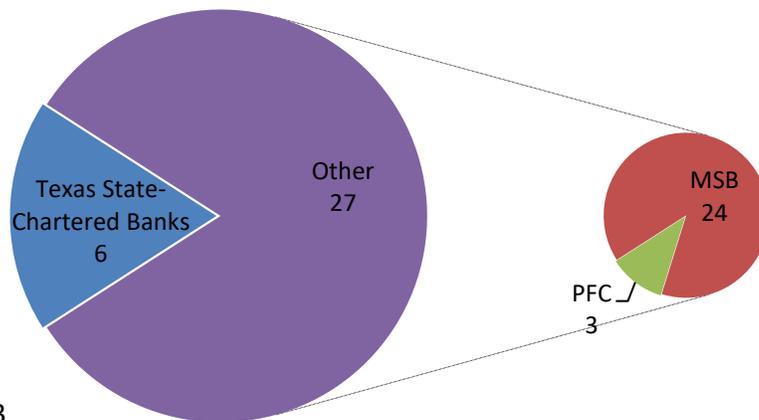
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To: Finance Commission Members
From: Phil Lena, Financial Analyst
Date: December 1, 2022
Subject: Summary of the Strategic Support Division Activities

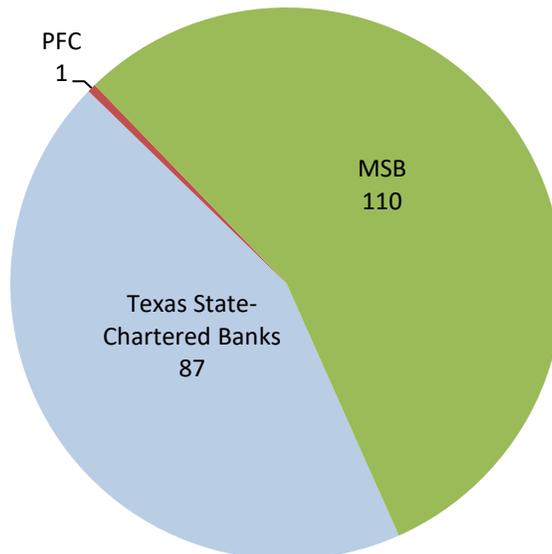
Jurisdictional Written Complaints September 2022-October 2022



Recoveries = \$15,053.33

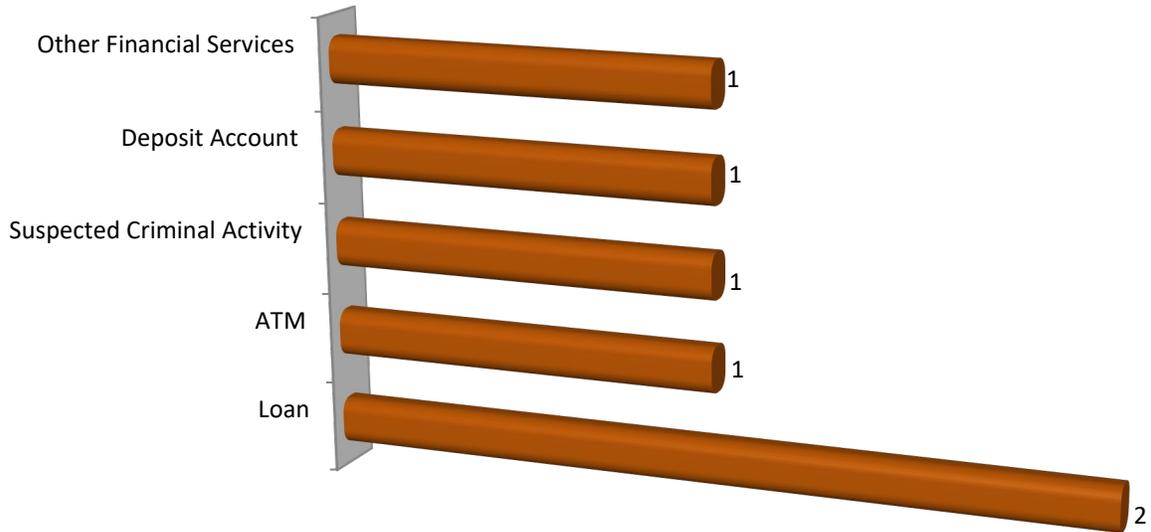
Total = 33

Inquiries on Jurisdictional Entities September 2022-October 2022



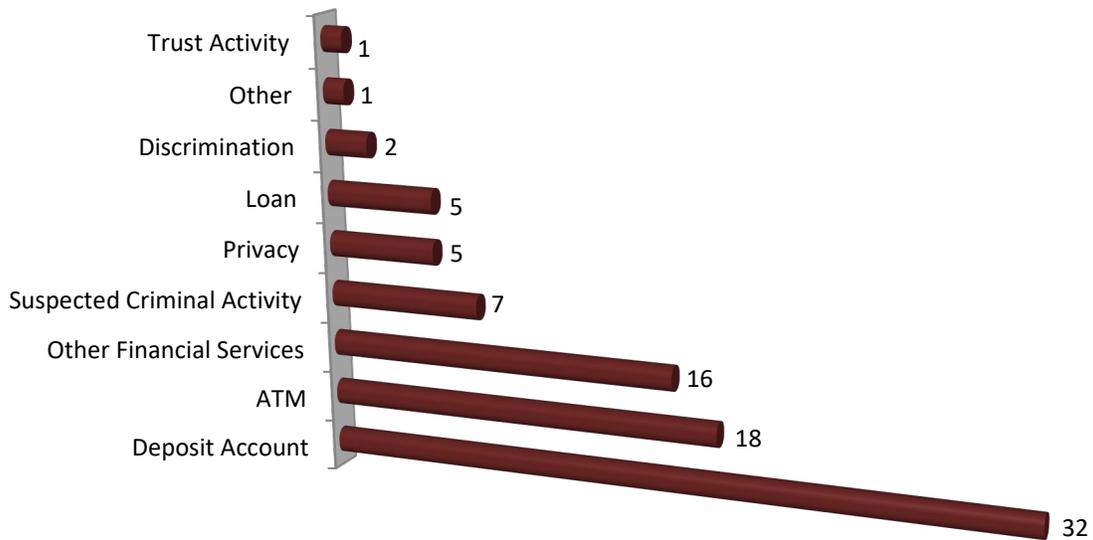
Total = 198

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



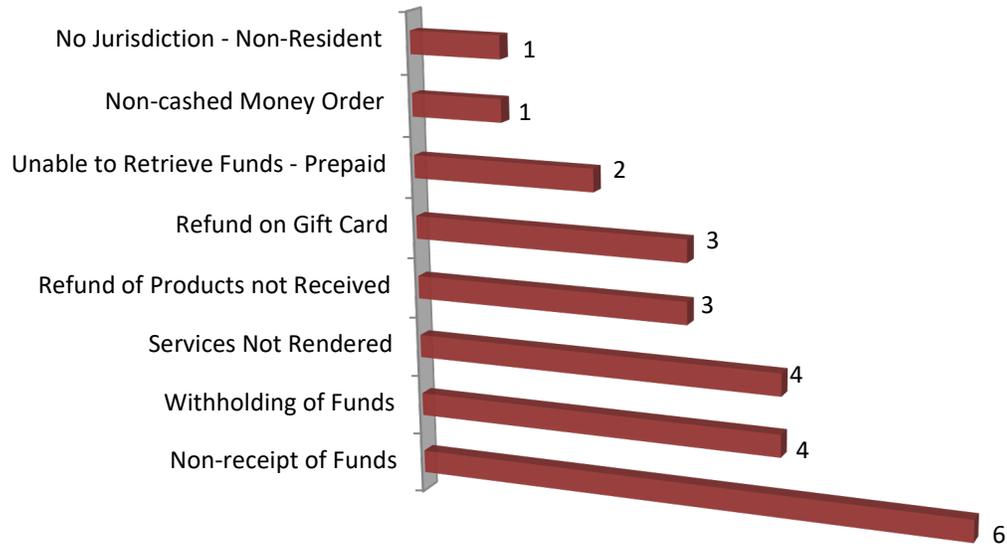
Total = 6

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



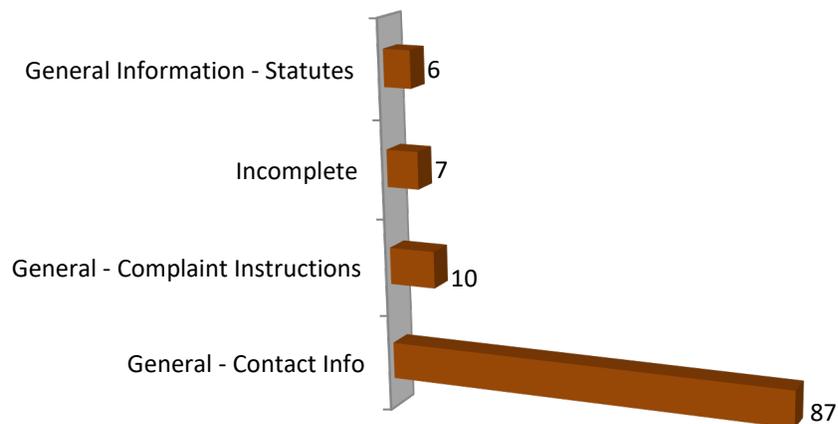
Total = 87

Money Services Businesses Written Complaints by Type September 2022-October 2022



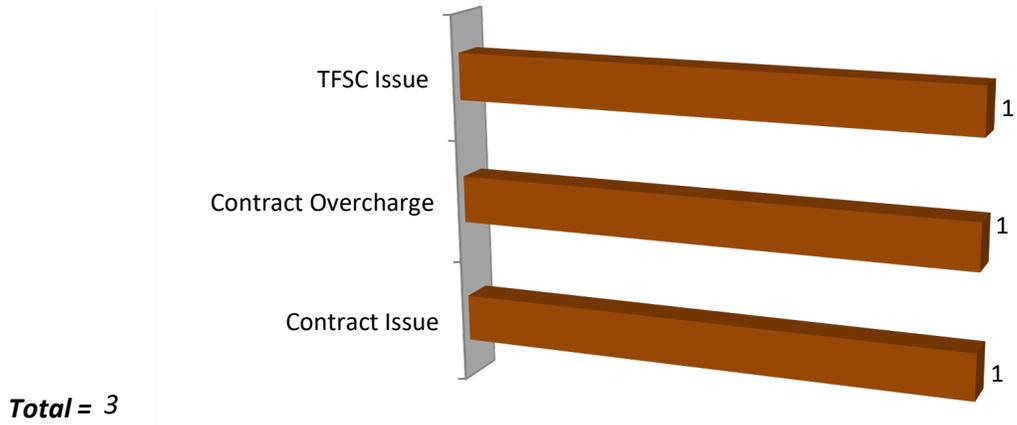
Total = 24

Money Services Businesses Inquiries by Type September 2022-October 2022

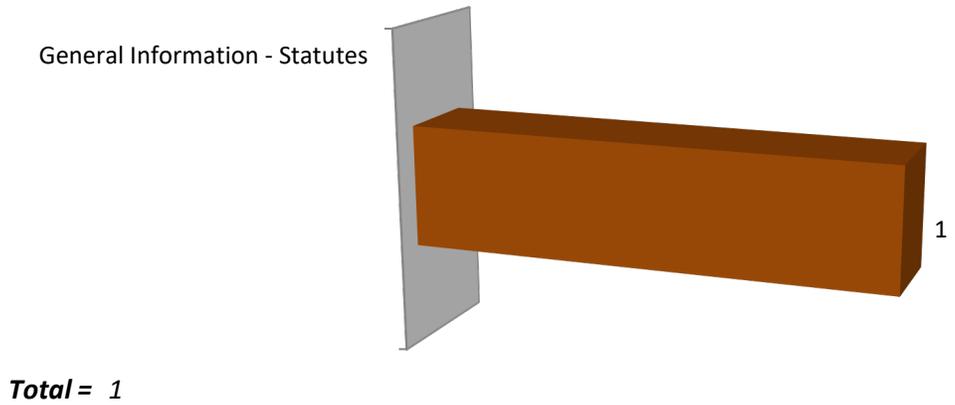


Total = 110

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



**Prepaid Funeral Contract Sellers
Inquiries by Type
September 2022-October 2022**



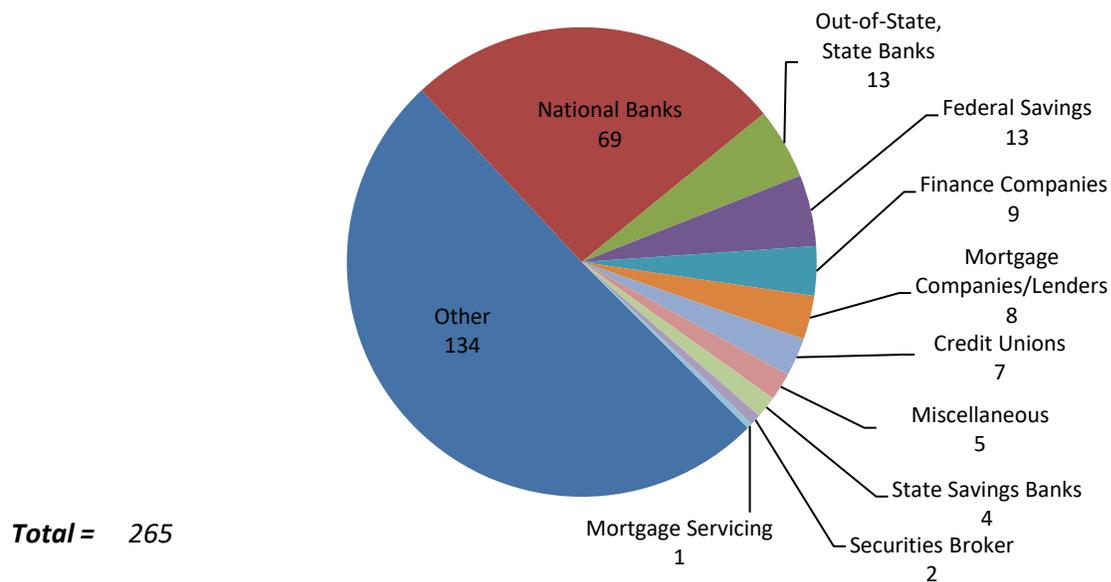
Perpetual Care Cemeteries Inquiries by Type September 2022-October 2022

No inquiries were reported during this period.

Perpetual Care Cemeteries Written Complaints by Type September 2022-October 2022

No complaints were reported during this period.

Complaints and Inquiries Against Non-Jurisdictional Entities September 2022-October 2022



Often, consumers do not provide the name of the entity they need assistance with. In these situations, the communication is categorized in the "Other" category.

Complaint Activities Information by Quarter

	1st Qtr.*	2nd Qtr.	3rd Qtr.	4th Qtr.
State-Chartered Banks				
Avg. Number of Days to Close a Written Complaint	-	-	-	-
Percentage of Written Complaints Resolved Within 90 days	-	-	-	-
Number of Written Complaints Resolved	-	-	-	-
Trust				
Avg. Number of Days to Close a Written Complaint	-	-	-	-
Percentage of Written Complaints Resolved Within 90 days	-	-	-	-
Number of Written Complaints Resolved	-	-	-	-
PFC/PCC				
Avg. Number of Days to Close a Written Complaint	-	-	-	-
Percentage of Written Complaints Resolved Within 90 days	-	-	-	-
Number of Written Complaints Resolved	-	-	-	-
MSB				
Avg. Number of Days to Close a Written Complaint	-	-	-	-
Percentage of Written Complaints Resolved Within 90 days	-	-	-	-
Number of Written Complaints Resolved	-	-	-	-

* First quarter Fiscal Year 2023 data is not finalized and will be provided in the division's next summary.

Closed Account Notification System (CANS) Activity

January 1, 2019 – November 30, 2022

Entity	Enrolled	Compromised Accounts Reported
Texas State-Chartered Banks	184	386
Texas State-Chartered Savings Banks	22	62
Federal Savings Banks	10	0
State Credit Unions	135	732
Federal Credit Unions	229	493
National Banks	171	121
Out-of-State State-Chartered Banks	12	78
Out-of-State National Banks	6	0
Total	769	1,872

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

	FY 2020	FY 2021	FY 2022	FY 2023 As of 11/30/2022
I. General Knowledge	4*	6	5	1
II. Loan Analysis	7	1	3	1
III. Panel	10	3	3	1
IV. Test Bank	7	5	3	3
Total FE3	15	17	13	17

Promotions

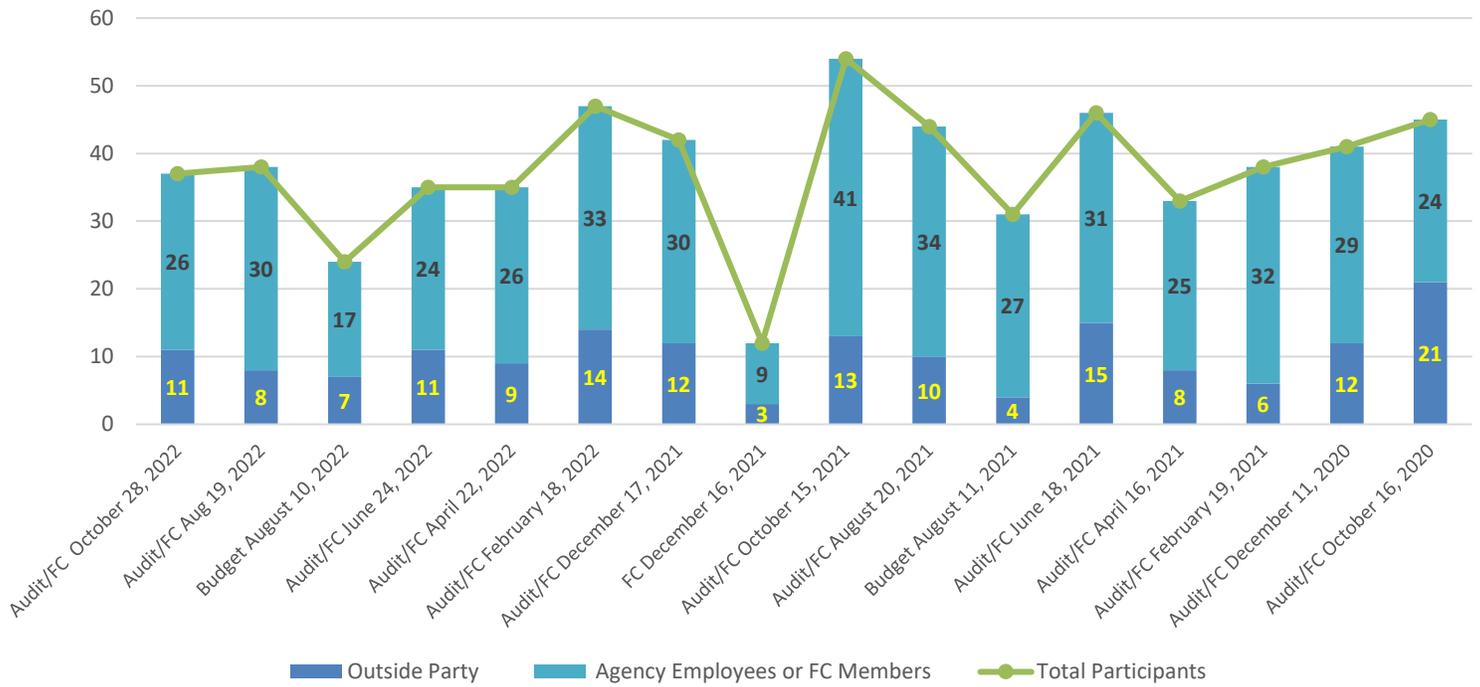
Commissioned Examiners	7	5	3	2
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**Includes a FE V Credit Specialist*

Other Divisional Items:

- *88th Legislative Session*
 - The 88th Legislative session begins on Tuesday January 10, 2023 at noon.
 - Pre-filing of bills for the upcoming session began on Monday, November 14, 2022.
- *Publications*
 - The November edition of the [Texas Bank Report](#) with financial data as of June 30, 2022 is available on the website.
- *Financial Education*
 - A financial education webinar titled “Avoiding the Risk of Financial Exploitation” was jointly presented by the Texas Department of Banking and the Office of the Consumer Credit Commissioner on November 30, 2022.

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: December 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. On November 9, 2022, the Office of Attorney General filed an appeal of this case in the Texas Third Court of Appeals.

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.

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 October 1, 2022 – November 30, 2022

The Commissioner issued six enforcement orders, all of which are final and non-appealable:

Bank and Trust Supervision

- Consent Order Prohibiting Further Participation dated October 19, 2022; Chad Dingler, Athens, Texas

- Consent Order Prohibiting Further Participation dated November 15, 2022; Matthew Viera, Corpus Christi, Texas

Non-Depository Supervision

- Consent Order dated October 17, 2022; CoinList Markets LLC, San Francisco, California
- Consent Order dated November 14, 2022; Metallicus, Inc., San Francisco, California
- Emergency Order to Cease and Desist Activity dated November 18, 2022; West Realm Shires Services Inc., dba FTX US, Berkeley, California
- Consent Order dated November 23, 2022; BlockFi Trading LLC, Jersey City, New Jersey

Public Information Requests

From October 1 through November 30, 2022, staff received and responded to 20 requests for public information addressed to the Department of Banking and received 12 inquiries from the “Ask a Question” feature. During the same period, we received and responded to three public information requests or inquiries addressed to the Finance Commission. One request for the Office of Attorney General (OAG) opinion was submitted during this period.

Gifts

Commissioner Cooper attended the Financial Stability Oversight Council (FSOC) meeting October 3, 2022, in Washington, D.C. The Conference of State Bank Supervisors covered Commissioner’s hotel expenses in the amount of \$664.14. Commissioner Cooper also attended the FDIC Advisory Committee of State Regulators Meeting on October 24, 2022, in Washington, D.C. The FDIC paid for Commissioner’s airfare in the amount of \$668.19.

FY 2023 Quarterly Order Activity

BANK				
Type of Action	1st	2nd	3rd	4th
Consent Order	0	0	0	0
Cease & Desist	0	0	0	0
Supervision	0	0	0	0
Prohibition	2	0	0	0
Total	2	0	0	0
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	0	0	0
Cease & Desist	2	0	0	0
Final Order after hearing	0	0	0	0
Total	5	0	0	0

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	0
Cease & Desist	0	0	0	0
Final Order	0	0	0	0
Total	0	0	0	0

Projected Future Rule Actions (February):

None



DEPARTMENT OF BANKING
LEGISLATIVE REPORT TO FINANCE COMMISSION
Pre-filed Bills for 88th Legislative Session
 12-01-2022

DOB-FC Report								
HB 139	Klick, Stephanie(R)	<p>Relating to the provision of notice of certain proposed rules by state agencies.</p> <p>Remarks: HB 139 amends Chapter 2001 of the Government Code. The bill requires a state agency to include with a notice of proposed rule the bill number for the legislation that enacted the statutory authority under which the rule is proposed to be adopted. If the proposed rule is for a statute that was enacted in the previous 4 years, the state agency would also be required to notify each person who was a primary author or sponsor of a bill that enacted the statute if that person is a current member of the legislature. Failure to provide this notice would not invalidate a rule adopted by a state agency or an action taken by the agency under that rule.</p> <p>Bill History: 11-14-22 H Filed</p>						
HB 264	Toth, Steve(R)	<p>Relating to requirements for the physical presence of a borrower for signing certain documents related to a home equity loan.</p> <p>Remarks: HB 264 amends Chapter 343 of the Finance Code and Chapter 752 of the Estates Code. Currently, a home equity loan must be closed at the office of the lender, an attorney at law, or a title company. This bill allows for virtual closings for a limited number of individuals who cannot attend an in-person closing due to military or federal deployment outside of the state, verified disability or quarantine needs, or incarceration. The bill also amends the Estates Code to modify the Durable Power of Attorney form.</p> <p>These statute changes would take effect on January 1, 2024 if the constitutional amendment proposed by HJR 20 is approved by voters.</p> <p>Bill History: 11-14-22 H Filed</p>						
HB 390	Howard, Donna(D)	<p>Relating to the Internet broadcast or audio recording of certain open meetings.</p> <p>Companions:</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 15%;">HB 327</td> <td style="width: 55%;">Howard, Donna</td> <td style="width: 30%;">(Refiled from 87R Session)</td> </tr> <tr> <td>SB 341</td> <td>West, Royce</td> <td>(Refiled from 87R Session)</td> </tr> </table>	HB 327	Howard, Donna	(Refiled from 87R Session)	SB 341	West, Royce	(Refiled from 87R Session)
HB 327	Howard, Donna	(Refiled from 87R Session)						
SB 341	West, Royce	(Refiled from 87R Session)						

Remarks: HB 390 amends Chapter 551 of the Government Code. The bill adds Section 551.024 applicable to a state agency with general appropriations of greater than \$10 million and 100 or more full-time employees.

The bill also adds Section 551.025 requiring state agencies (that do not meet the requirements in section 551.024) to post the audio recording of an open meeting on the agency's website no later than the 7th day after an open meeting is held. The agency would also be required to post the notice of the open meeting on its website within the required time frames. Agencies are exempt from these requirements in the event of a catastrophe or a technical breakdown which prevents the agency from complying.

Bill History: 11-14-22 H Filed

HB 448 Schofield, Mike(R)

Relating to compensation for damages caused by governmental actions that close or effectively close businesses.

Companions: HB 3241 Schofield, Mike (Refiled from 87R Session)

Remarks: HB 448 adds Chapter 2010 to the Government Code. The bill provides that a business owner is entitled to compensation from a governmental entity for losses to the owner's business caused by a governmental action taken by a governmental entity that closes a business permanently or temporarily; or effectively closes a business by limiting the business's operations to the extent the business owner cannot effectively maintain the business; or ordering customers not to patronize the business. ("Governmental action" is defined in the bill as an order, ordinance, or other regulation by a governmental entity, including an executive order issued during a declared state of disaster.)

A business owner would not be entitled to compensation if the governmental entity can demonstrate that the primary reason for the action was a judicial finding or a finding that the business owner failed to (1) acquire or maintain a license required by the governmental entity; (2) file or maintain records required by secretary of state; or (3) pay taxes. A business owner may bring an action against a governmental entity for compensation for damages caused to the business by a governmental action. The bill waives governmental immunity, allowing a governmental entity to be sued and held liable. A person may not bring judgement against property of the governmental entity.

Bill History: 11-14-22 H Filed

HB 489 Meza, Terry(D)

Relating to restrictions on certain contributions and lobbyist compensation by persons appointed to public office by the governor.

Remarks: HB 489 amends Chapter 601 of the Government Code. The bill restricts the eligibility of individuals for a

governor appointment if they contributed more than \$2,500, in aggregate, in the previous year to the governor or a specific purpose committee supporting the governor as a candidate or an officeholder. The restrictions also apply to an appointed officer during any single year while serving in that position. An appointed officer who violates this restriction is liable for triple the amount of contributions in a single year that exceeded the limit. Contributions made by the spouse or dependent children of the individual or from an organization made in the individual's name is considered to be a contribution by the individual. An individual appointed by the governor must sign an attestation before taking office that such contributions have not been made.

The bill also requires an attestation by a governor appointee that the individual or a business entity directed by the individual will not compensate a lobbyist for communicating directly with a member of the legislative or executive branch on a matter affecting the individual's state agency. Violations of these requirements by a governor appointee or a lobbyist are considered a Class A misdemeanor.

Bill History: 11-14-22 H Filed

HB 563

Raymond, Richard(D)

Relating to honesty in state taxation.

Remarks: HB 563 amends the Tax Code by adding Chapter 102, "Honesty in State Taxation". The bill defines regulatory tax to include a fee, surcharge, assessment, fine, penalty or any other charge imposed by the state for a primary purpose other than to raise revenue for general purposes. This includes (1) a charge imposed for the reasonable regulatory cost to this state related to the issuance of a license or permit, the performance of an investigation, inspection, or audit, or the enforcement of a state law or order; and (2) a fine, penalty or other monetary charge imposed by this state for or in connection with a violation of a state law or order.

The legislature and legislative council will change the reference to a state charge incorrectly identified as a state tax when amending the state law containing the reference.

A state agency could not identify a state tax, including a regulatory tax, as another type of state charge such as a "fee", "assessment", "fine" or "penalty" when proposing or adopting the agency's rules, reference materials, publications, and electronic media. Reference to a state charge incorrectly identified as a state tax would be changed when amending the agency's rules, reference materials, publications, and electronic media.

The bill adds a section to Chapter 325 of the Government Code, allowing the sunset commission to make recommendations regarding statutory revisions

necessary to correctly identify state charges as state taxes.

These statute changes would take effect on January 1, 2024 if the constitutional amendment proposed by HJR 40 is approved by voters.

Bill History: 11-14-22 H Filed

HB 645 Toth, Steve(R)

Relating to prohibiting financial institutions and other businesses from using value-based criteria.

Remarks: HB 645 adds Chapter 121 to the Business & Commerce Code. The bill prohibits a financial institution or business from discriminating against, advocating for, or giving disparate treatment to a person using value-based criteria, including the person's social media activity; the person's membership or participation in a club, association, union, or other group; the person's political affiliation or beliefs; the person's current or former employer; or any other social, credit, environmental, social governance, or similar value -based standards.

The bill allows a financial institution or business to refuse or discontinue business with a person if necessary for the physical safety of employees. A financial institution or business is not prevented from offering a product or service that uses value-based criteria if disclosed to a potential customer. The bill allows for a civil penalty of not less than \$100,000.

Bill History: 11-14-22 H Filed

HB 709 Harris, Cody(R)

Relating to prohibiting the use of certain credit scores, including environmental, social, or governance scores and social credit scores, by certain financial institutions and other lenders in this state.

Remarks: HB 709 adds Chapter 74 to the Business & Commerce Code. The bill prevents a financial institution or other lender from discriminating against a customer in the price or rate for a loan or other extension of credit based on a credit score, including a social credit score or an environmental, social, or governance score derived from subjective or arbitrary standards such as the customer's social media posts; participation or membership in an organization; political affiliation; or employer.

A financial institution or lender is not prohibited from entering into a transaction in which a practice is fully disclosed to the potential customer prior to agreeing to the transaction. A financial institution may discontinue or refuse to conduct a transaction with a person if necessary for the physical safety of employees. This bill also includes civil penalties not to exceed \$50,000 for the first violation and \$250,000 for each subsequent violation.

Bill History: 11-15-22 H Filed

HB 791 Harrison, Brian(R) Relating to state agency review of adopted rules.

Remarks: HB 791 amends Chapter 2001 of the Government Code. The bill requires, as part of an agency’s rule review, an assessment of any cost imposed on a regulated person. Each assessment conducted by the agency must be published on the agency’s website, including a link to the materials used in the assessment. The bill also stipulates that if an agency fails to complete a rule review by the date required, the rule will expire, becoming void and unenforceable. The bill provides that any person injured by the continued enforcement of an expired rule, may file a civil action to discontinue the rule’s enforcement.

Bill History: 11-22-22 H Filed

HJR 20 Toth, Steve(R) Proposing a constitutional amendment authorizing the legislature to provide for exceptions to the requirement that a home equity loan be closed only at the office of the lender, an attorney at law, or a title company.

Companions: HJR 104 Toth, Steve (Refiled from 87R Session)

Remarks: HJR 20 amends Section 50 of Article XVI of the Texas Constitution. The proposed amendment would allow for an exception that the home equity loan closing to occur at the office of the lender, attorney, or title company if the borrower qualifies for an exception as allowed in statute. HB 264 is the enabling legislation which would amend the statute. The proposed constitutional amendment would be submitted to voters on November 7, 2023.

Bill History: 11-14-22 H Filed

HJR 40 Raymond, Richard(D) Proposing a constitutional amendment providing honesty in state taxation.

Companions: HJR 36 Raymond, Richard (Refiled from 87R Session)

Remarks: HJR 40 amends Article VIII of the Texas Constitution. The amendment adds the definition of a "regulatory tax" as a fee, levy, surcharge, assessment, fine, penalty, or other charge of any kind imposed by the state, regardless of when the law imposing the charge was enacted or whether the revenue from the charge is dedicated for a primary purpose other than to raise revenue for general purposes. This would include, among other charges, (1) a charge imposed for the reasonable regulatory cost to this state related to the issuance of a license or permit, the performance of an investigation, inspection, or audit, or the enforcement of a state law or order; and (2) a fine, penalty, or other monetary charge imposed by this state for or in connection with a violation of a state law or order.

After November 7, 2023, the legislature may not enact a general law that imposes a state tax, including a regulatory tax, or amends the provisions relating to a

state tax, including a regulatory tax, if the enacted or amended provisions relating to the tax identify the tax as another type of charge such as a "fee," "levy," "surcharge," "assessment," "fine," or "penalty."

Not later than January 1, 2026, the legislature shall revise every reference in state statute to a fee, levy, surcharge, assessment, fine, penalty, or other charge of any kind imposed by this state for a primary purpose other than to raise revenue for general purposes to refer to the charge as a "regulatory tax."

Beginning January 1, 2026, a regulatory tax identified in statute as another type of charge such as a "fee," "levy," "surcharge," "assessment," "fine," or "penalty" is void and may not be collected.

This proposed constitutional amendment would be submitted to the voters at an election to be held November 7, 2023. HB 563 is the enabling legislation which would amend the statutes.

Bill History: 11-14-22 H Filed

SB 42

Zaffirini, Judith(D)

Relating to remote and other meetings held under the open meetings law.

Remarks: SB 42 amends Chapter 551 of the Government Code. The bill addresses public access to an open meeting of a governmental body in which a majority of members participate by conference call or videoconference call. The governmental body must ensure that members of the public are able to listen to, and if applicable, speak at an open meeting by telephone and videoconference call. The bill also specifies open meeting notice requirements. A recording of the meeting must be made available to the public not later than 24 hours after adjourning the meeting.

The bill also provides that for a meeting conducted in person, a person attending may stream live video and audio of the meeting over the internet. A governmental body may adopt rules to maintain order at a meeting relating to the equipment and manner in which the livestreaming is conducted. The bill also specifies meeting notice requirements related to agenda subjects for open and closed meetings.

The bill also provides that a governmental body shall broadcast an open meeting over the Internet or hold an open meeting by telephone conference call or videoconference call, if the physical location of the meeting is not accessible to members of the public or is not large enough to accommodate all persons seeking to attend the meeting in person, including if the location has reduced capacity as the result of an emergency or urgent public necessity.

Bill History: 11-14-22 S Filed

Total Bills: 12

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August 10th, 2022

Texas Department of Banking
Attention; Jay Kim

Mr. Kim,

Thank you for giving me the opportunity to serve on the Prepaid Funeral Contract Guaranty Fund Board. If you choose to proceed with my appointment, I would be honored to serve. Please consider my short biography below and if you require any further information, I will gladly provide it.

J. Kyle Williams, born 1961 in Garland, TX and graduated from Garland High school in 1980. Earned a BBA in Finance from Southern Methodist University in 1985 and began my career at Williams Funeral Directors shortly after. In 1986 I was put in charge of all prepaid funeral operations and regulatory compliance for our company and still maintain that role. In that period of time, we have never received a compliance rating of under a 2. I have attended two compliance seminars put on by the Department and consider myself fully knowledgeable of Texas prepaid funeral law. I also served on the Texas Prepaid Funeral Advisory board where we streamlined compliance issues as well as produced the content of the "Information About Prepaid Funeral Planning" brochure.

Sincerely,
J. Kyle Williams VP / GM
Williams Funeral Directors



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

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

RECOMMENDED ACTION: No comments were received regarding the proposed amendments to 7 TAC Chapter 26. The Department recommends that the Commission approve adoption of the amendments without changes to the proposal as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we adopt the amendments to 7 TAC Chapter 26 without changes to the proposal as previously published 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), adopts amendments to certain rules in 7 TAC Chapter 26, governing Texas perpetual care cemeteries. The amended rules are adopted without changes to the proposed text as published in the November 11, 2022, issue of the *Texas Register* (47 TexReg 7505). The amended rules will not be republished.

In particular, the commission adopts amendments to §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 adopted 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.

In August 2022, the department issued an advance notice of rule review, seeking

informal feedback on the rule review. Notice of the review of 7 TAC Chapter 26 was published in the *Texas Register* on August 26, 2022 (47 TexReg 5145). No comments were received in response to that notice. On October 28, 2022, the commission determined that the reasons for initially adopting these rules continue to exist, and readopted 7 TAC Chapter 26, in its entirety, but also stated that certain revisions and other changes were appropriate and necessary, and that such amendments would be proposed concurrently (47 TexReg 7505). These amendments as adopted are discussed below.

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. Adopted 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. Adopted 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. Adopted amendment to §26.1(c) makes a minor language change for clarity.

Section 26.1(d) explains how the annual assessment fee is adjusted. Adopted 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. Adopted amendment to §26.1(e) makes a minor punctuation change for clarity.

Section 26.2(a) sets out definitions for this section. Adopted 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. Adopted amendments to §26.2(b) make clerical changes for consistency.

Section 26.2(c) explains where records must be kept. Adopted 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. Adopted 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. Adopted 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. Adopted amendment to §26.5 makes a clerical change for consistency.

Section 26.6 explains the requirements

for cremains receptacle maps. Adopted amendments to §26.6 make clerical changes for consistency.

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

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

The department received no comments regarding the proposed amendments.

The amended rules are adopted pursuant to 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 adopted amended sections.

§26.1. 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 Health and Safety Code, Chapter 712, as amended.

(2) “Examination” means 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 §712.044(a) of the Act.

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

(4) “Fund balance” means 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 the 12-month period from September 1st to August 31st.

(6) “Certificate of authority” means 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 §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 on a perpetual care cemetery corporation to defray the cost of administering the Act, as required by §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 §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.

(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 by an amount proportionate to the measure of inflation 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 by an amount proportionate to the measure of inflation 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, 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 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 for each conveyance; and

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

(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 department personnel, the 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 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?

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; 1-877-276-5554 (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, you must send the 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?).

4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendment to 7 TAC, Part 1, §3.37, Concerning Calculation of Annual Assessment for Banks

PURPOSE: Amendment to §3.37 would ensure that assessment fees remain in line with the revenue needs of the Department.

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 amendment to 7 TAC §3.37 in the *Texas Register*.

Title 7. Banking and Securities
Part 1. Finance Commission of Texas
Chapter 3. State Bank Regulation
7 TAC §3.37

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §3.37, concerning calculation of annual assessment for banks. The proposed amendment will allow the banking commissioner permissive authority to adjust the calculated annual assessment for inflation (or deflation).

In 2015, §3.37 was amended to add subsection (b) of this section, automatically escalating marginal assessment rates based on the percentage change in the Gross Domestic Product Implicit Price Deflator (GDPIPD) index. This was added to eliminate the need for a large, one-time increase in annual assessments, as had occurred previously. At the time of adoption, the department noted that an increase in the GDPIPD will automatically increase marginal assessment rates but may not necessarily result in a proportionate increase in annual assessments. Thus, the department anticipated periodically forgiving a portion of assessments otherwise due in a year when the additional funds are not needed to fund the department's operations, specifically with respect to bank and trust supervision.

In every fiscal year since 2015, the department has discounted or forgiven a portion of a state bank's annual assessment because the forgiven revenue was not needed to cover the department's regular operations, as authorized by §3.36(g). In fiscal years 2015, 2016, 2017, 2018, 2019, 2020, 2021, and 2022, the department reduced the billable annual assessment by 3.3 percent, 2.9

percent, 13.8 percent, 15.6 percent, 20.1 percent, 22.4 percent, 23.8 percent, and 36.4 percent, respectively.

The proposed amendment removes the automatic nature of the GDPIPD adjustment, instead making it a permissive tool to be used by the banking commissioner, as necessary. This would ensure that assessment fees remain in line with the revenue needs of the department.

Dan Frasier, Director of Bank and Trust Supervision, Texas Department of Banking, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Mr. Frasier also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is better matching of the actual cost of regulation with the service provided.

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

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

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;

- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; and
- positively or adversely affect this state's economy.

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

To be considered, comments on the proposed amendment must be submitted no later than 5:00 p.m. on January 30, 2023. 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 amendment is proposed pursuant to Texas Finance Code (Finance Code), §31.003(a)(4) and §31.106, which authorize the commission to adopt rules necessary or reasonable to recover the cost of supervision and regulation by imposing and collecting ratable and equitable fees. As required by Finance Code, §31.003(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive position of state banks with regard to national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the

state bank system, and allow for economic development in this state.

Finance Code, §31.106, is affected by the proposed amendment.

§3.37. Calculation of Annual Assessment for Banks.

(b) Adjustments [~~Required adjustments~~] for inflation. In this section, "GDPIPD" means the Gross Domestic Product Implicit Price Deflator, published quarterly by the Bureau of Economic Analysis, United States Department of Commerce. The "annual GDPIPD factor" is equal to the percentage change in the GDPIPD index values published for the first quarter of the current year compared to the first quarter of the previous year (the March-to-March period immediately preceding the calculation date), rounded to a hundredth of a percent (two decimal places).

(1) Each September 1, the table in subsection (a) of this section, as most recently revised before such date pursuant to this subsection, may be [~~is~~] revised as follows:

(A) each marginal assessment factor listed in Step 3 of the table is increased (or decreased) by an amount proportionate to the measure of inflation (or deflation) reflected in the annual GDPIPD factor, rounded to six decimal places;

(B) the base assessment amount listed in Step 4 for assessable asset group 1 is increased (or decreased) by an amount proportionate to the measure of inflation (or deflation) reflected in the annual GDPIPD factor, rounded to whole dollars; and

(C) each base assessment amount listed in Step 4 for assessable asset groups 2 through 14 is adjusted to an amount equal to the maximum annual assessment possible for the next lower assessable asset group (without surcharge), rounded to whole dollars. For example, the base assessment amount for assessable asset group 2 is equal to the annual assessment (without surcharge) calculated under assessable asset group 1 for a bank with exactly \$10 million in assessable assets.

(2) If the table in subsection (a) of this section is revised for inflation (or deflation), then not [Not] later than August 1 of each year, the department shall calculate and prepare a revised table reflecting the inflation-adjusted values to be applied effective the following September 1, and shall provide each state bank with notice of and access to the revised table. At least once every four years, the department shall propose amendments to this section for the purpose of substituting a current revised table in subsection (a) of this section, and for such other purposes as may be appropriate.

D.

**Office of Consumer Credit
Commissioner**

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Consumer Protection and Consumer Assistance Report

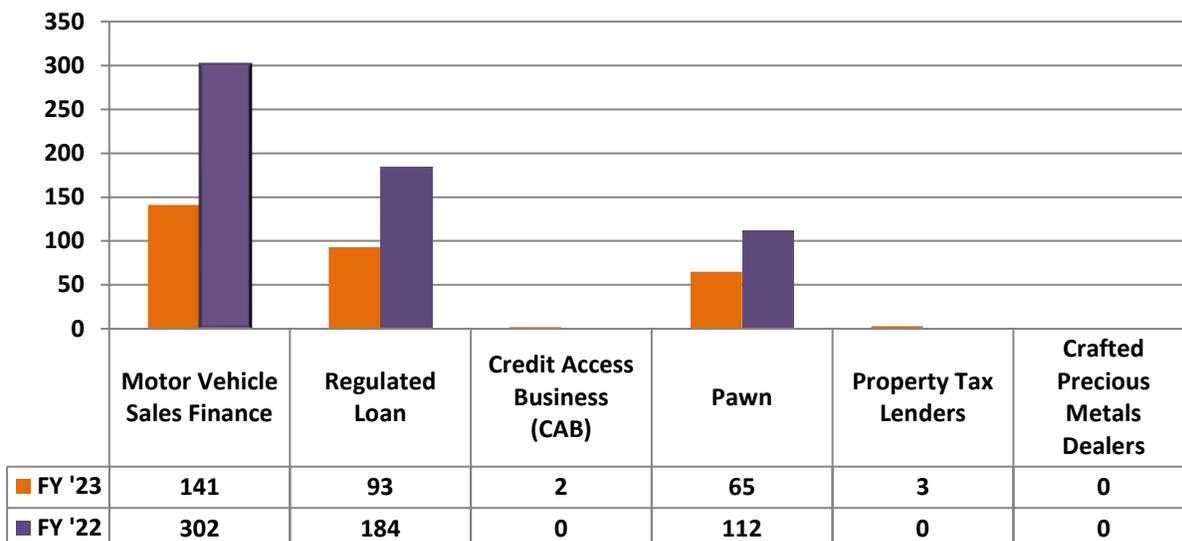
The OCCC’s FY 2023 examination program is underway. One large Enterprise CAB examination was completed in November. A second large Enterprise CAB examination in progress will be completed by the end of December 2022. A large Property Tax Lender examination launched with on-site work commencing December 5, 2022. Finally, a large Enterprise Motor Vehicle Sales Finance examination was identified, which will begin after January 2023. As noted in the August briefing, the examination department is planning to resume out-of-state travel to conduct examinations in Fiscal Year 2023.

Two out-of-state examinations have been identified, which will commence sometime during February 2023. The OCCC has indicated interest in a number of multi-state auto finance and multi-state mortgage exams. These exams are scheduled to begin much later in fiscal year 2023. Examiner-in-Charge (EIC) and Single Point of Contact leadership for these examinations has not been established at this time. OCCC participation in these exams, though important in the larger context of networked supervision and enforcement, will not yield any examination production numbers for the OCCC this fiscal year.

Examiner training and development remains the high priority focus. Three examiners have been promoted to Financial Examiner II effective December 1, 2022. As noted in the October briefing, two new examiners hired in July have successfully completed initial examiner training and testing, and continue to conduct exams working as a team. This July 22 class of examiners will begin motor vehicle sales finance training (Texas Finance Code, Chapter 348) in February of 2023.

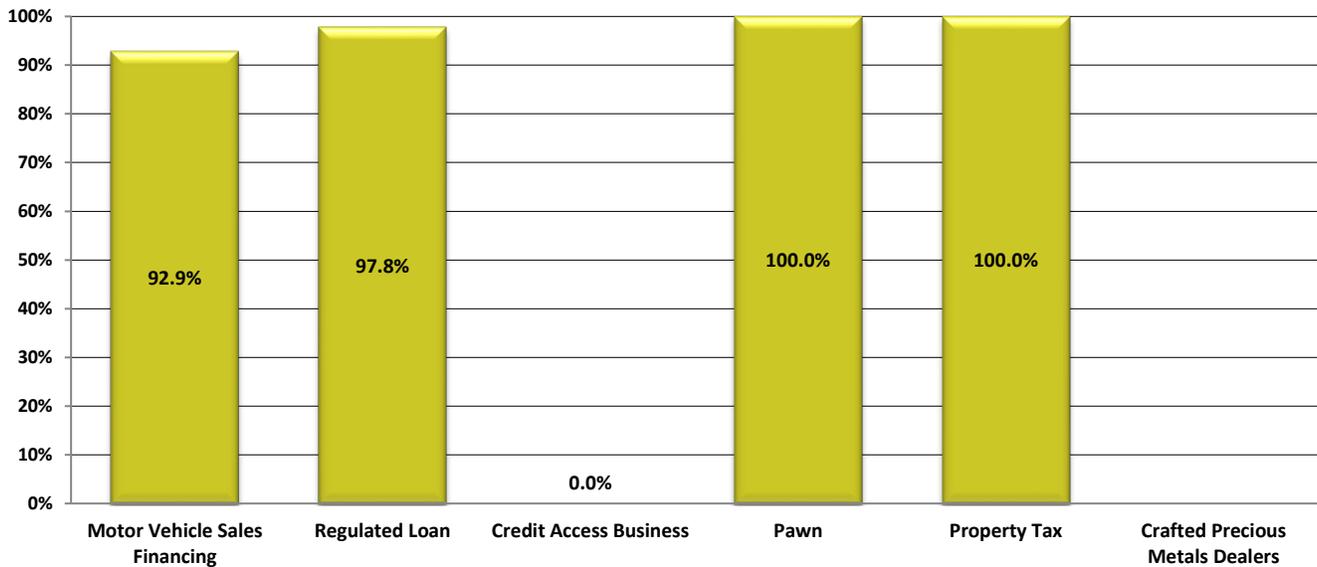
Field training in Chapter 342-E examinations has begun for the group of tenured Financial Examiner II’s. The 342-E examination is a more complex regulated consumer loan transaction. Finally, second interviews are being completed for entry-level financial examiners with the intent to form a training class beginning January 9, 2023, assuming the hiring process can be completed by then.

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



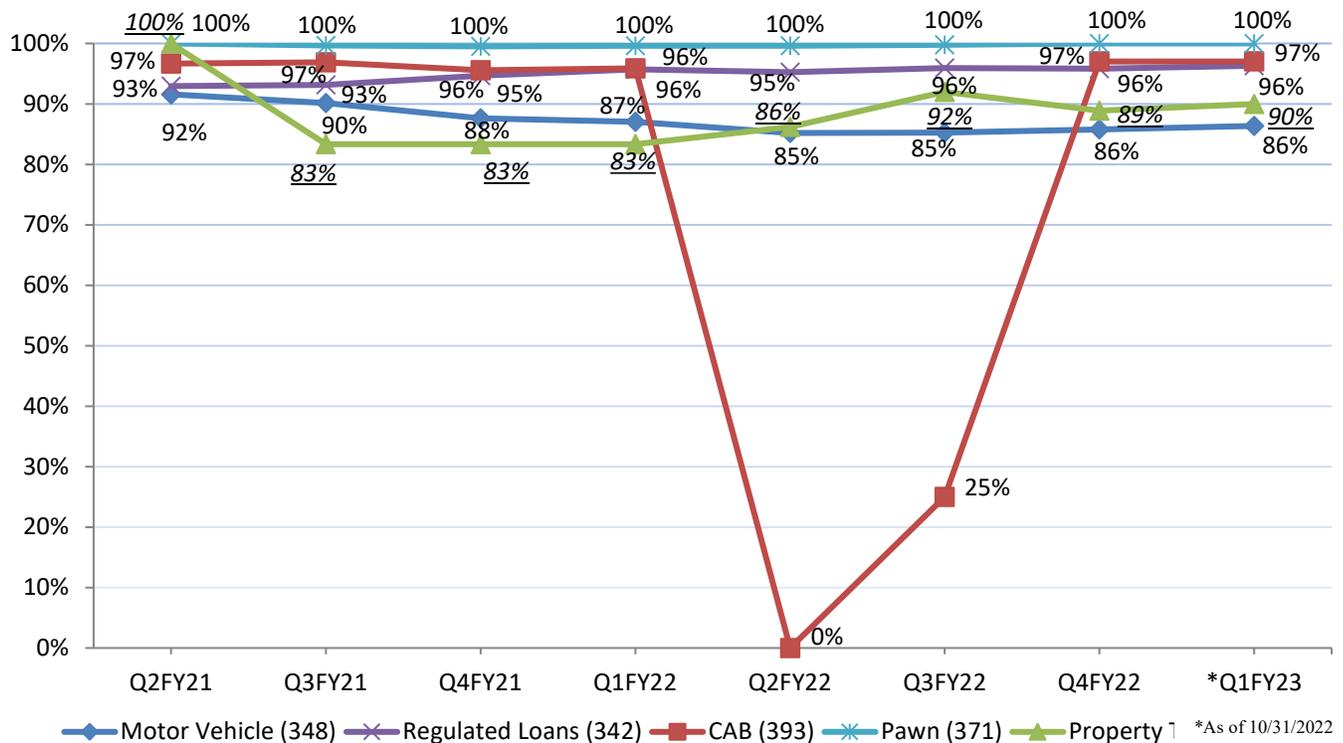
During the period only two credit access business exams were conducted which both resulted in a unsatisfactory level of compliance and no Crafted Precious Metal exams were conducted.

Acceptable Level of Compliance FY '23 (Sept 2022 - Oct 2022)



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

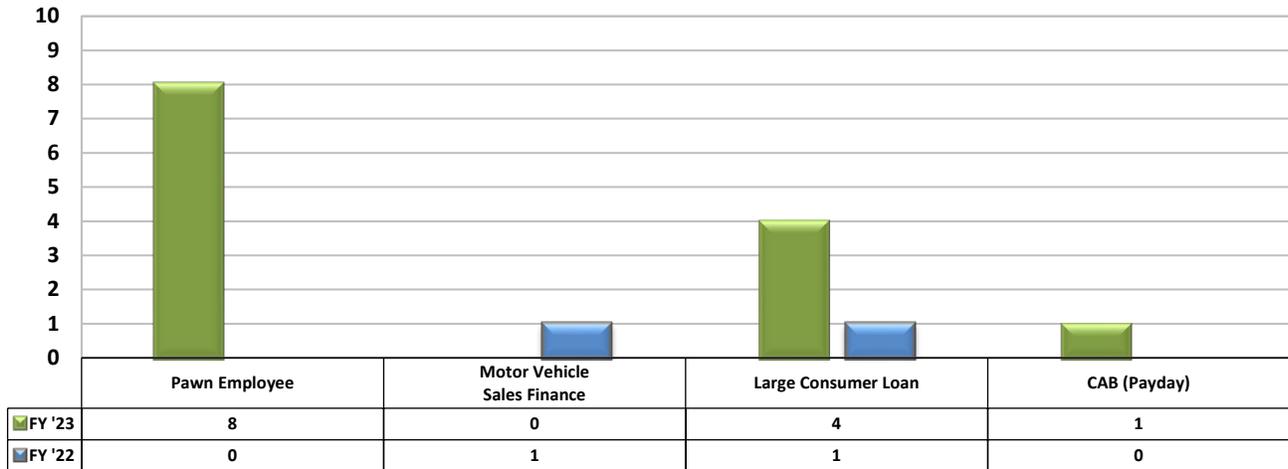
Acceptable Compliance Levels - Trailing 12 Months (at quarter end)



Investigations

For FY 2023 through October, the OCCC completed 13 investigations out of the goal of 75. Pawn Employee issues comprise 61.5% of the overall number of completed investigations.

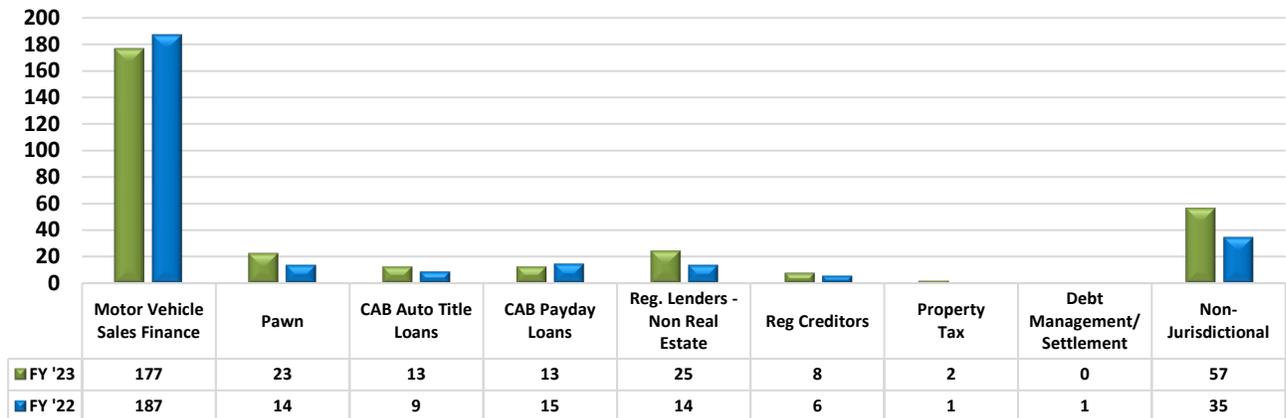
Investigations Completed
FY '23 (Sept 2022 - Oct 2022) Total: 13
FY '22 (Sept 2021 - Oct 2021) Total: 2



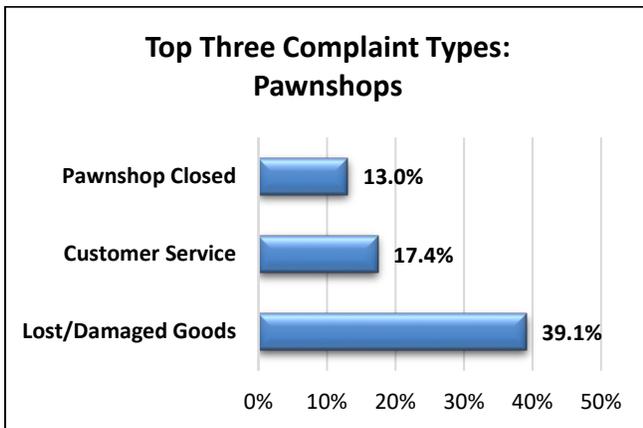
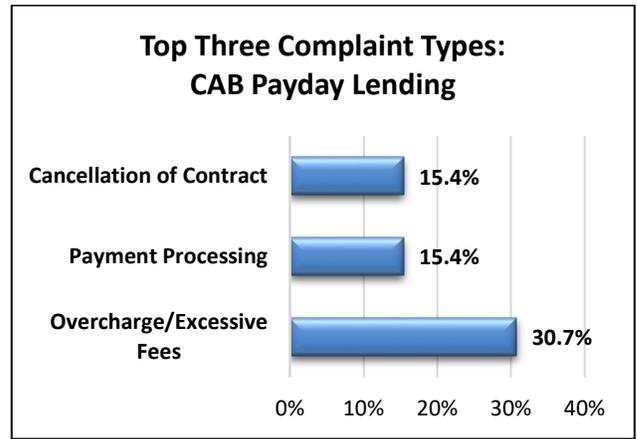
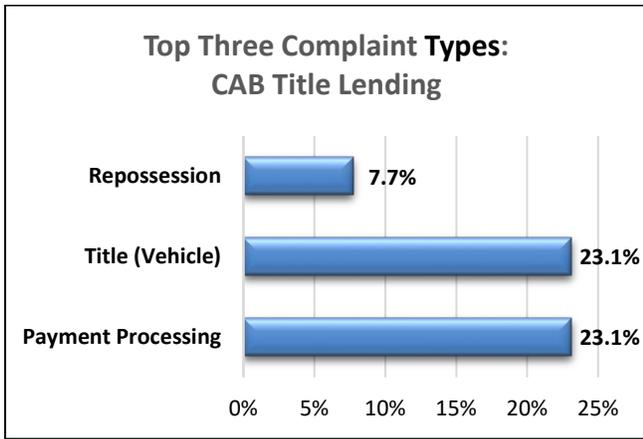
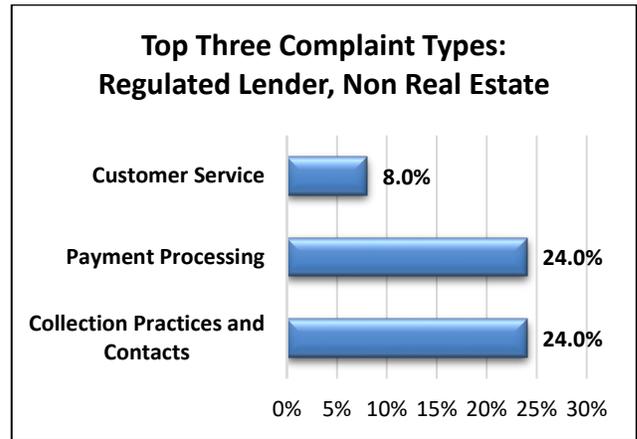
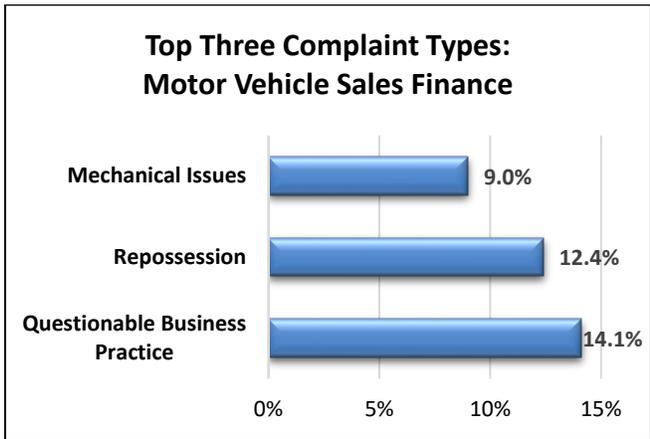
Consumer Assistance

During this reporting period, 318 complaints were closed, of which 57 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 55.7%. The second largest category was CAB complaints at 8.2% collectively, separately these are 4.1% for payday loans and 4.1% for title loans. The third largest category came from Regulated Lenders Non-Real Estate at 7.8%. The fourth largest category was Pawnshops at 7.2%.

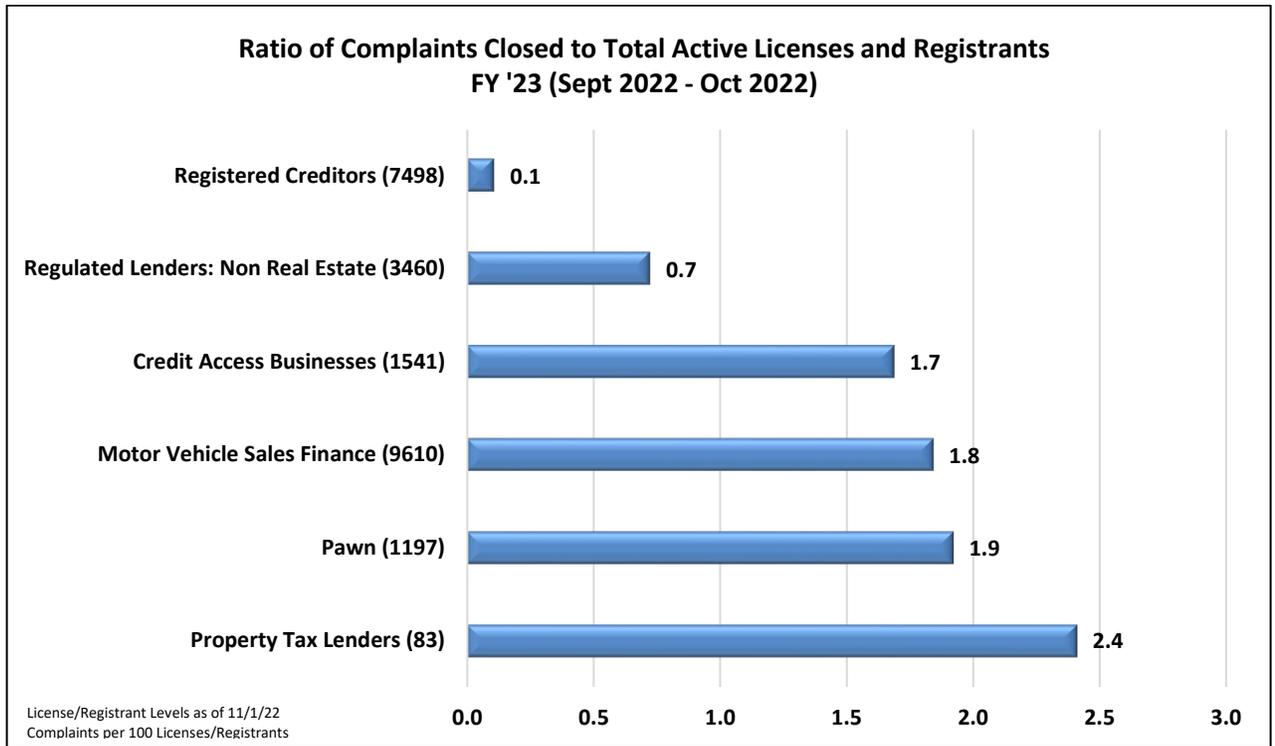
Complaints Closed
FY '23 (Sept 2022 - Oct 2022) Total: 318
FY '22 (Sept 2021 - Oct 2021) Total: 282



The following charts represent the top three complaint areas per license type. In the MVSF chart, 64% of the complaints in the category *Questionable Business Practice* relate to allegations that dealers will not accept outside financing. The remainder in this category relate to various allegations of misleading practices, including misleading contracts and customer service concerns.



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 is Property Tax Lenders, followed by Pawn, Motor Vehicle Sales Finance, and Credit Access Businesses. Property Tax Lenders have a small number of licenses in relation to other license/registrant types. As such, although only two Property Tax Loan complaints were received during this reporting period, the complaints to license/registrant ratio is the highest.



CAB Reporting Update

Summaries of CAB reports through the third quarter of 2022 are available on the OCCC website. Presented are selected statistics of first, second and third quarter reports compared with previous years. New loan origination in 2022 has continued to show steady growth from 2021, having increased 13% through the first nine months of the year. Installment payday loans made up 84% of all new payday loan originations in the first three quarters of the year. Repossessions in Q3 2022 have increased 8.4% from last quarter and are up 6% for the year compared to 2021.

Data Highlights (All Loan Types) Q1-Q3 Comparison	2022	2021	2020	2019	2018	2017
Number of new payday loans	1,278,977	1,131,406	1,093,086	1,612,428	1,563,242	1,598,074
Number of new auto title loans	167,092	147,878	141,051	215,925	245,826	214,454
Percentage of payday loans due in multiple installments	84%	72%	63%	56%	52%	45%
Percentage of auto title loans due in multiple installments	47%	45%	53%	60%	54%	41%
Number of vehicles repossessed under all auto title loans	33,174	31,312	25,916	32,763	27,210	23,052
Total number of locations reporting activity	1,319	1,837	2,026	2,034	1,999	2,113

Payday Loans Q1-Q3	Single Installment			Multiple Installment		
	2022	2021	2020	2022	2021	2020
Number of consumers obtaining loans	140,355	145,281	191,811	930,394	727,819	616,723
Number of new loans	203,058	213,229	276,613	1,075,919	817,989	693,845
Number of total refinances ¹	224,506	186,979	375,983	255,804	162,596	169,297
Average loan amount	\$501	\$495	\$452	\$606	\$559	\$595
Average fee per \$100 borrowed	\$27	\$24	\$23	\$124	\$128	\$136
Average original term (in days)	20	22	21	145	142	148
Average Fee Converted to a Daily Rate ²	1.34%	1.12%	1.07%	0.86%	0.90%	0.92%

Title Loans Q1-Q3	Single Installment			Multiple Installment		
	2022	2021	2020	2022	2021	2020
Number of consumers obtaining loans	70,004	63,297	52,612	73,986	63,075	69,913
Number of new loans	87,898	81,059	66,727	79,194	66,837	74,324
Number of total refinances ¹	307,913	319,415	370,125	66,618	65,516	95,402
Average loan amount	\$1,762	\$1,818	\$1,430	\$1,662	\$1,621	\$1,251
Average fee per \$100 borrowed	\$16	\$15	\$15	\$103	\$106	\$112
Average original term (in days)	31	31	30	162	161	158
Average Fee Converted to a Daily Rate ²	0.53%	0.49%	0.50%	0.64%	0.66%	0.71%

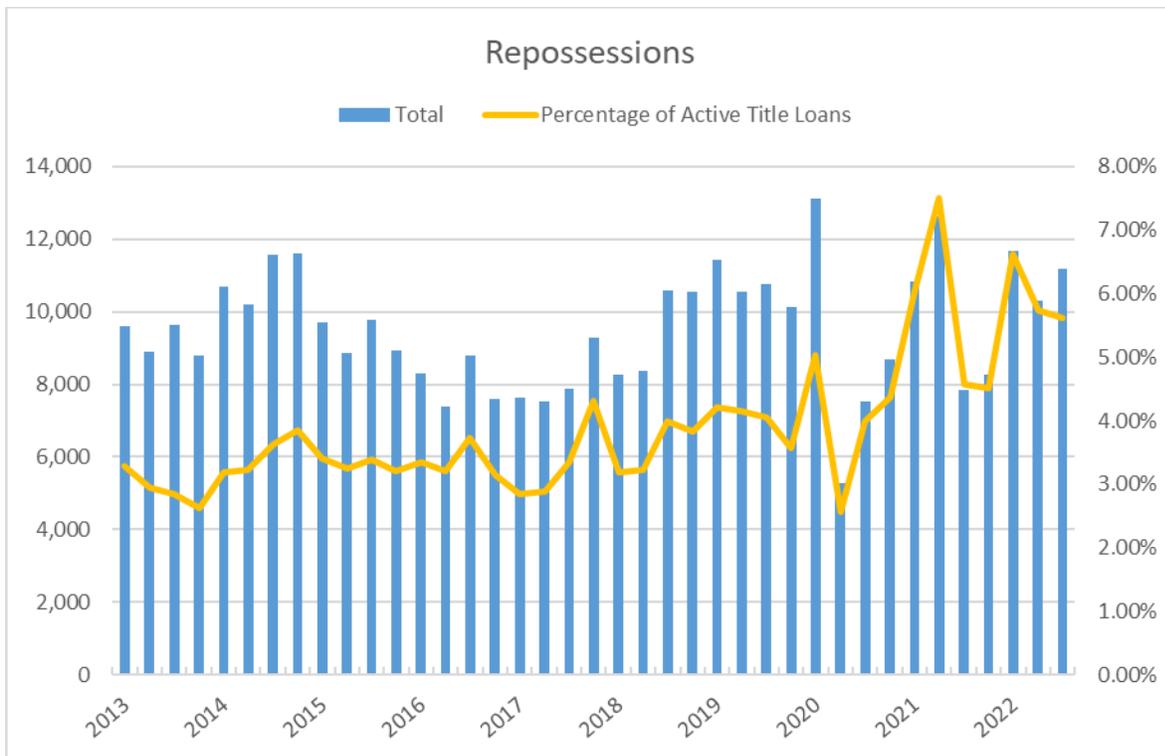
¹ Refinance activity represents all renewals, including the renewals of loans that originated in prior quarters.

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. Repossessions slowed considerably in the second quarter of 2020 due to Covid-19 related measures (creditor concessions and pandemic assistance to taxpayers). The number of repossessions reached an all-time low of 5,282 in the second quarter of 2020. The number of repossessions increased in the second quarter of 2021 to 12,627 representing the second highest reported quarterly, and the figure continues to remain relatively volatile to this day. The historical average number of repossessions is 9,505 per quarter and a repossession rate of 3.91% of accounts.

The third quarter of 2022 maintained a slightly elevated level of repossessions. Repossessions as a percentage of active title loans decreased slightly from its yearly high to 5.6%, but is still above historical averages.





Licensing Report- December 2022

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

Renewals

Renewals for motor vehicle sales finance and commercial motor vehicle sales finance closed on October 31st, with 89% of the industry group renewing their license.

The renewal period for regulated lenders, credit access businesses, and property tax lenders extends through December 31st. Regulated lenders received a 30% discount on their annual fee and credit access businesses received a 15% discount on their annual fees.

Registration renewal for crafted precious metal dealers and refund anticipation loan facilitators began their annual renewal period on December 1st.

Applications Processing

The volume of incoming applications is averaging 116 monthly so far in FY 23. The volume is running below projections. The department estimated the receipt of approximately 135 applications monthly. Incoming pawn employee applications is averaging 37 in FY23, which is higher than initially projected.

Other Updates

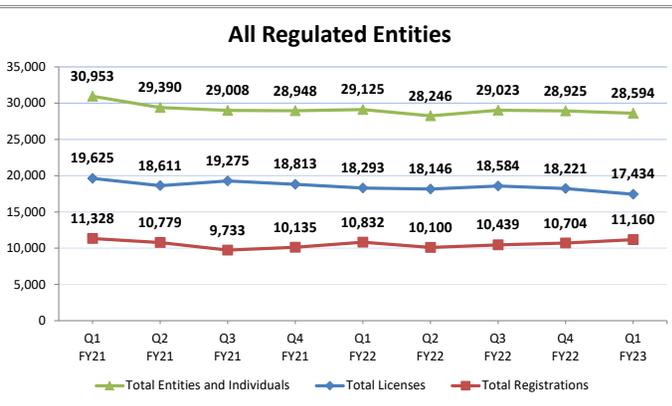
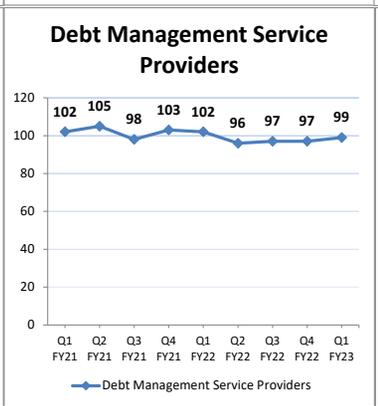
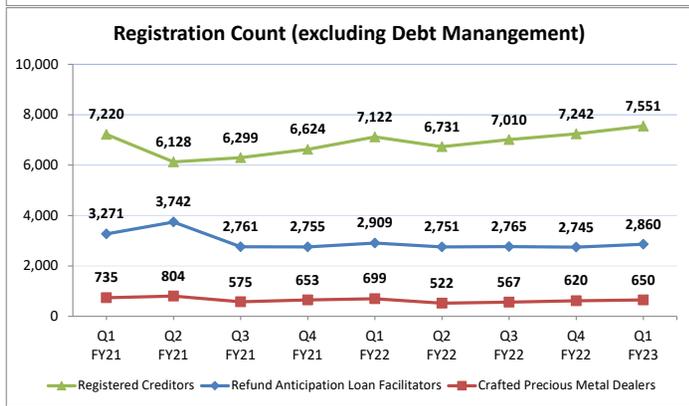
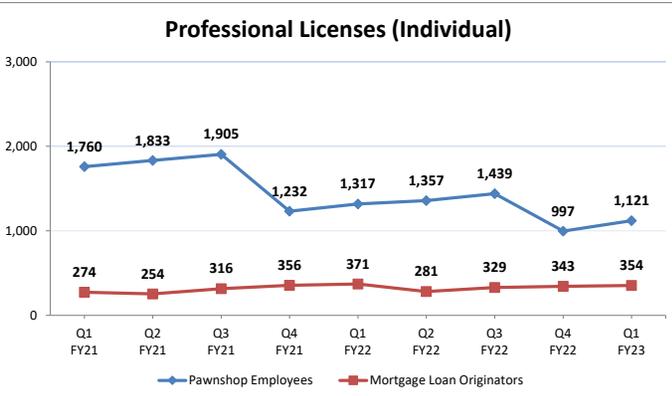
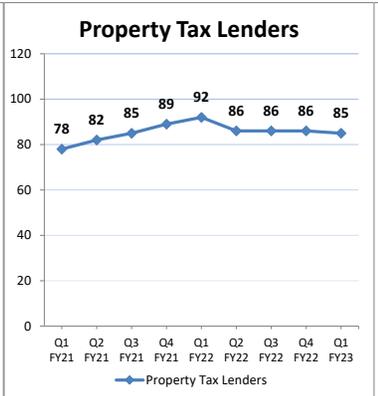
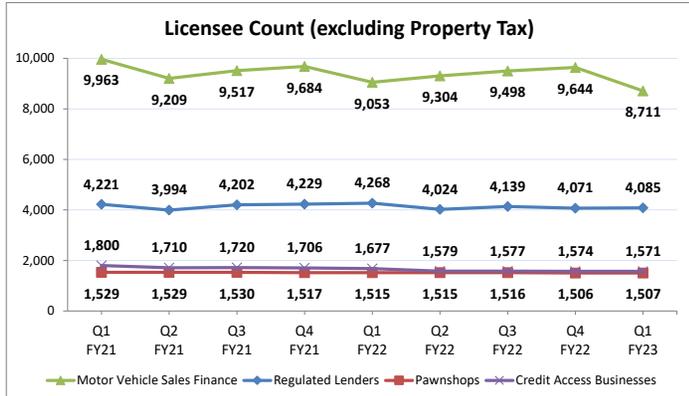
Senior members of the team attended a professional development conference hosted by Executive Women in Texas Government. Monthly business license round table meetings, as well as other trainings and discussions also promote professional development among the licensing staff.

The department is actively planning a records management project to consolidate remaining historical paper files and is scheduling a work week in January for this project to support imaging the remaining records.

Regulated Entity Population Trends

The following charts reflect the number of OCCC regulated entities at the end of each quarter in fiscal years 2021 and 2022 to current data.

Number of OCCC Regulated Entities Quarterly Comparison of FY21-23





ADMINISTRATION REPORT

FINANCIAL EDUCATION AND TFEE

During this reporting period, a self-paced *Credit 101* financial education module was released to allow individuals to access financial education on demand. OCCC staff also recently collaborated with the Texas Department of Banking to present the webinar *Avoiding Financial Exploitation*. Additionally, financial education staff are in the process of coordinating and training to volunteer through Junior Achievement to teach financial education in central Texas area elementary schools.

TFEE’s 2nd semi-annual reimbursement period ends on December 31, 2022. Grant reimbursement requests are due by January 31, 2022. After all grant reimbursements are processed, the 2nd period semi-annual report will be published.

COMMUNICATION

OCCC senior staff hosted a virtual town hall for all agency employees on December 2, 2022. The virtual town hall allowed agency leadership to provide updates on agency initiatives, including updates on agency action related to the results of the Survey of Employee Engagement. During this reporting period, the staff have started working on the design and layout of the new agency intranet site. Additionally, staff continue to provide presentations to regulated entities and other groups as follows:

- On November 3, 2022 Financial Examiner Fancher provided a presentation to automobile dealers at a webinar sponsored by the Texas Department of Motor Vehicles (DMV).
- On November 10, 2022 Commissioner Pettijohn and Director Lewis delivered a presentation to the Texas Consumer Credit Coalition.
- On November 17, 2022 Assistant Director Graham conducted a media interview with Telemundo Dallas (39) related to financing solar panels.

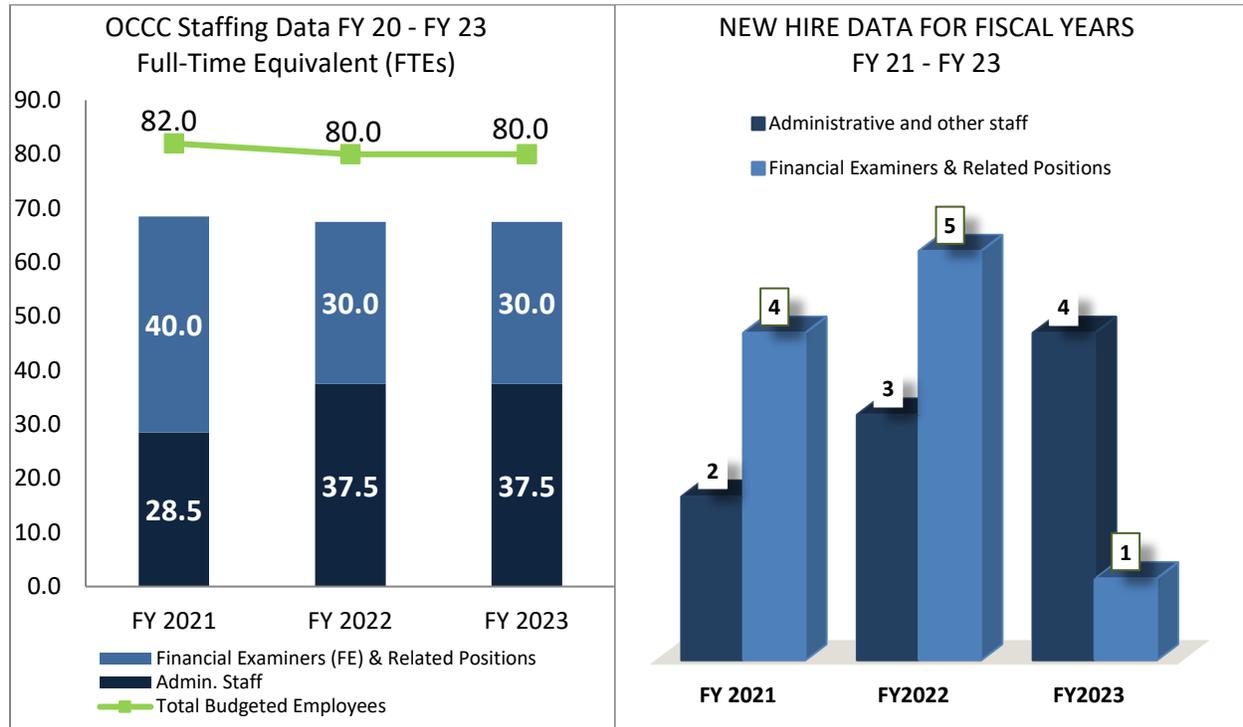
HUMAN RESOURCES

During this reporting period from September 1, 2022 thru November 30, 2022 the OCCC was staffed with a total of 67.5 FTEs. The OCCC filled the Accountant II position in October and welcomed back a Financial Examiner II in the Dallas-Fort Worth area who had previous tenure with the agency.

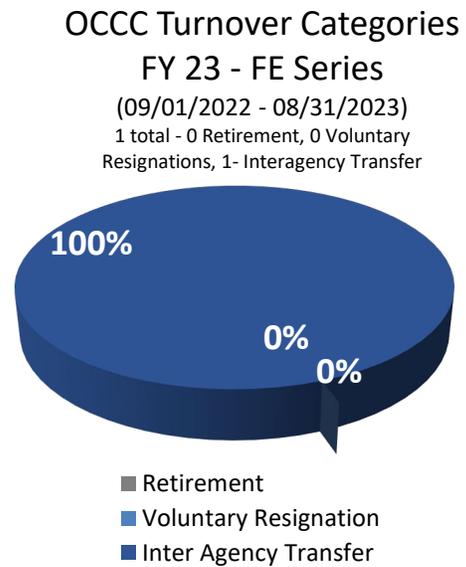
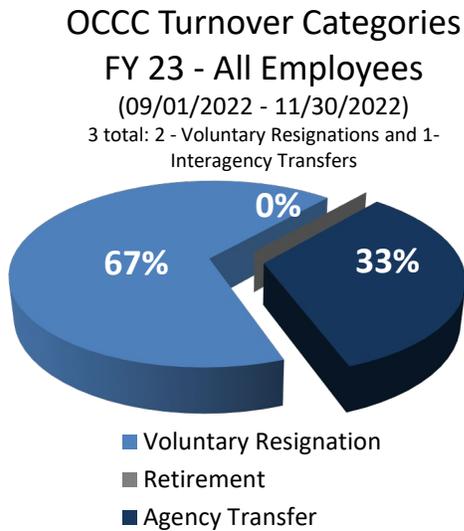
Currently the OCCC has the following open positions.

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 2021 - 2023.



The turnover rate as of November 2022 is 3.75%, and the chart(s) below represents FY23 data.



INFORMATION TECHNOLOGY

Technology modernization and deployment

The migration to Microsoft 365 continues in progress. ALECS is being revised to send email through Amazon Web Services, as MS 365 does not permit application email. The primary agency domain is now occc.texas.gov, and occc.state.tx.us is still functional, but now secondary. The 365 version of the familiar Office suite (Word, Excel, etc.) is being installed on all endpoint computers.

IT and Xerox successfully enabled a secure file transfer protocol for delivering notices to be printed and mailed, under a DIR Shared Services program.

Agency staff accesses review was completed in mid-November. No irregularities were found, and no changes were needed. Further, user access reviews were completed for all agency users of systems operated by the Comptroller of Public Accounts.



Accounting Report- December 2022

Mirand Diamond, Director of Licensing & Finance

Staffing

The Accounting Department is now fully staffed and continues to work to meet all deadlines and cross-train on all tasks.

Financial Reporting

The first quarter of fiscal year 2023 ended on November 30, 2022, and staff is working to close out the quarter.

Procedures

The department is updating all procedures as a result of CAPPs HR/Payroll and Financial system implementations. As a team, the accounting department continues to meet weekly and discuss the procedures log to track and notate completion.

Other Items

In compliance with Government Code, Section 2101.0115, accounting staff are working to complete the Annual Report of Non-financial Data by December 31.

In compliance with Government Code, Section 403.011, accounting staff completed and submitted the annual report on local funds in December.

In compliance with Finance Code Section 16.005(c), pertaining to the self-directed, semi-independent agencies, OCCC submitted the required annual report, which included annual financial information, as well as the required biannual report.



Legal Department Report

Michael Rigby, General Counsel

December 2022

Enforcement Report

Contested Cases

The OCCC currently has two cases pending before the State Office of Administrative Hearings (SOAH), and one pending before the OCCC following a SOAH hearing.

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 OCCC and the Clay Cooley entities filed exceptions to the proposal for decision on October 26, and filed replies to the exceptions on November 10. On November 16, the judge issued a letter with recommended changes to the proposal for decision based on the exceptions. SOAH will provide the contested case record to the OCCC, and the Commissioner's designee will issue a final order.

Empire Capital and Loan (SOAH Docket No. 466-23-06416)

Empire Capital and Loan is a credit access business. Under the Finance Code and its implementing rules, credit access businesses are required to file quarterly and annual reports with the OCCC. The OCCC issued an Order of Revocation against Empire Capital and Loan based on its repeated failure to file timely reports, and based on its failure to pay an administrative penalty that the OCCC imposed for late reporting. Empire Capital and Loan requested a hearing on the order. The OCCC has docketed the case with SOAH, and a hearing has been set for February 22, 2023.

Five Star Finance (SOAH Docket No. 466-23-06417)

Five Star Finance is a regulated lender. Under the Finance Code and its implementing rules, regulated lenders are required to file annual reports with the OCCC. The OCCC issued an Order of Revocation against Five Star Finance based on its repeated failure to file timely reports, and based on its failure to pay an administrative penalty that the OCCC imposed for late reporting. Five Star Finance requested a hearing on the order. The OCCC has docketed the case with SOAH, and a hearing has been set for February 28, 2023.

Orders on Reporting Violations

In October 2022, the OCCC issued 24 orders against pawnshops that failed to file their 2021 annual reports by the July 31, 2022 deadline. Of these orders, 16 were injunctions requiring the licensee to file timely and accurate reports, and 8 imposed an administrative penalty for violating a previous injunction.

Also, in October 2022, the OCCC issued one order against a credit access business that failed to file its 2022 second quarter report by the July 31, 2022 deadline. The order was an injunction requiring the licensee to file timely and accurate reports.

Performance Report

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

September 1, 2022 through November 30, 2022	
Cases Opened	34
Cases Closed	70
Average Number of Days to Close an Enforcement Action	83
Contested Cases Docketed at SOAH	2
Enforcement Actions Taken and Closed by Final Order	66

As of November 30, 2022, the OCCC has two upcoming SOAH hearings scheduled, as described above.

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 November 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	1	2	10
Manufactured Housing	0	0	0
Motor Vehicle Sales Finance	1	7	11
Motor Vehicle Sales Finance Commercial	0	0	1
Pawnshop	13	5	48
Pawnshop Employee	0	0	0
Property Tax Lender	0	5	2
Registered Creditor	0	0	0
Regulated Lender	25	39	28
Residential Mortgage Loan Originator	0	0	0
Total Injunction Actions	41	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	2	4	8
Pawnshop	4	6	15
Pawnshop Employee	0	0	0
Property Tax Lender	0	1	1
Regulated Lender	19	27	18
Residential Mortgage Loan Originator	0	0	0
Total Administrative Penalty Actions	25	48	56
Revocation / Suspension Actions			
Crafted Precious Metal Dealer	0	0	0
Credit Access Business	1	0	1
Motor Vehicle Sales Finance	2	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	3	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	70	138	197

Rule Actions

At the December meeting, the OCCC is presenting the adoption of amendments to 7 TAC Chapter 90 (relating to plain language contracts for regulated lenders), resulting from rule review.

Federal Litigation and Rulemaking

Community Financial Services Association of America v. CFPB

This case is currently pending before the United States Supreme Court (case no. 22-448). The lawsuit is a challenge to the CFPB's Payday Rule, which contains ability-to-repay requirements and payment-withdrawal requirements for certain short-term and long-term consumer loans. The plaintiffs argue that the Payday Rule is unconstitutional, exceeds the CFPB's statutory authority, and violates the federal Administrative Procedure Act. On October 19, 2022, the Fifth Circuit issued an opinion in the case, striking down the rule and holding that the CFPB's funding structure is unconstitutional. On November 14, the CFPB filed a certiorari petition, requesting that the United States Supreme Court reverse the Fifth Circuit's decision.

FTC Safeguards Rule Extension

The FTC has extended the deadline for compliance with certain sections of its amended Safeguards Rule. Currently, the rule requires financial institutions to develop a written information security program, to assess risks to security, to test safeguards, to oversee service providers, and to adjust the program based on monitoring. In October 2021, the FTC adopted amendments requiring institutions to designate a qualified individual responsible for overseeing the security program, to protect customer information by encryption, to develop procedures for disposal of customer information, and to provide personnel with security awareness training. These amendments were originally scheduled to go into effect on December 9, 2022. On November 19, the FTC announced that it would extend the compliance deadline for these amendments to June 9, 2023.

Advisory Bulletins

From October 1, 2022 to November 30, 2022, the OCCC issued one advisory bulletin. The bulletin describes the Finance Code's licensing requirements for property tax lenders and individual residential mortgage loan originators.

Official Interpretation Requests

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

Public Information Requests

October 1, 2022 through November 30, 2022	
Requests Received	28
Requests Closed	22
Requests Withdrawn	3
Requests Referred to Office of Attorney General	0
Average Number of Days to Address a Public Information Request	1.7

Gifts Received by the OCCC

The Conference on Consumer Finance Law (CCFL) allowed two OCCC staff attorneys to attend the CCFL's Annual Consumer Financial Services Conference without charge. The conference took place in Plano on October 20 and 21, 2022. The CCFL's website stated that there would be "No Charge" for "In House Counsel/Staff." The OCCC's staff attorneys were considered to be in-house counsel who could attend the conference without charge. If the OCCC had been required to pay the registration fees for two employees, the total fee amount would have been \$990.



Legislative Issues for 2023

December 2022

Updates and Technical Corrections

The OCCC has identified updates and technical corrections that could help modernize and clarify the Texas Finance Code. (Note: The first three issues were listed in the OCCC's 2023-2027 Strategic Plan.)

- **License surrender:** Currently, various provisions of the Finance Code state that a business may surrender its license by delivering the license and written notice of the surrender to the OCCC. These provisions are based on the assumption that the OCCC will issue a physical paper license. An amendment to these provisions, specifying that a licensee may surrender a license by complying with OCCC instructions, would ensure that the OCCC can specify an efficient, appropriate procedure for surrendering licenses electronically.
- **Rulemaking:** One change would amend Section 371.006 of the Finance Code to remove the requirement that the OCCC keep pawnshop rules "in a permanent record book" and mail a copy of a new rule to each license holder. This provision is outdated and redundant with the rule-submission requirements of the Texas Administrative Procedure Act. The change would allow the OCCC to submit pawnshop rules through an efficient online process, without also having to send paper mailings. A similar change would remove the requirement in Section 342.551(c) to maintain regulated lending rules "in a permanent record book."
- **Hearing requests:** Many provisions of the Finance Code state that the OCCC may take enforcement actions after "notice and an opportunity for a hearing," but Section 371.255, regarding pawnshop employees, states that the agency may take action after "notice and a hearing." One change would amend Section 371.255 to specify that the agency may take action after notice and an opportunity for a hearing. This change would ensure that respondents receive due process while maintaining the agency's ability to resolve cases efficiently. The OCCC's 2019 Sunset bill included similar changes for other types of enforcement actions.
- **Fee Authority:** Almost all of the fee provisions related to the OCCC state that the amount of a license or registration fee is determined by the Finance Commission by rule in amounts or rates necessary to recover the costs of administering the respective area. Two provisions that still need to be amended, consistent with the other provisions, are Sections 345.351 and 347.451 where the fee amounts are provided directly in the statute.
- **TFEE investment standard and grantmaking authority:** Currently, Section 393.628 of the Finance Code provides that funds in the Texas Financial Education Endowment (TFEE) may be "invested and reinvested in the same manner as funds of the Employees Retirement System of Texas." One possible change would replace this language with a requirement to follow the

“prudent investor” standard, which would clarify the investment standard. Another possible change would be to conform the language to current practice regarding the award of grants.

- **Statutory agent:** Under Section 342.556 of the Finance Code, an authorized lender must maintain with the commissioner a written appointment of a resident of this state for service of all process or legal notice. If an authorized lender does not comply, service may be made on the commissioner. Section 371.073 contains similar provisions for pawnshops. These provisions could be modernized to specify that each licensee must disclose a registered agent to the OCC, and to remove the provisions regarding service on the commissioner.
- **Citation updates:** The Finance Code contains outdated citations to state and federal law. These provisions could be amended to include current and accurate citations.



Finance Commission Agencies Bill Status Report

12-01-2022 - 08:51:22

A - Action in the date range **R** - Link to Related Information () - Priority

OCCC Finance Commission Report

A HB 207 Murr, Andrew(R) Relating to the exclusion of certain conveyances from classification as sham or pretended sales.

Specific Remarks: Amends Ch. 41, Prop. Code. Currently, the Texas Constitution prohibits pretended sales of the homestead. Courts interpret the constitution to prohibit transactions that facially appear to be property sales, but are actually disguised mortgage loans. This bill provides that a conveyance of urban homestead is not considered a "sham or pretended sale" if certain conditions are met. The conditions include the following: (1) the property must be conveyed by an individual to an entity in which the individual or the individual's spouse has an ownership interest, (2) the individual must not reside on the parcel at the time of conveyance, and (3) the individual must record an affidavit acknowledging that the individual is estopped from claiming that the conveyance is a sham or pretended sale (among other items required in the affidavit).

Bill History: 11-14-22 H Filed

A HB 219 Noble, Candy(R) Relating to the release of a deed of trust or other contract lien securing a home loan after payoff by mortgagor.

Specific Remarks: Amends Ch. 343, Fin. Code. Requires a mortgage servicer or lender, within 60 days after receiving the correct payoff amount for a home loan, to deliver a lien release to the borrower or file a lien release with the county clerk's office. Requires the servicer or lender to provide the lien release within 30 days if the borrower requests delivery or filing before the date of payoff.

Bill History: 11-14-22 H Filed

A HB 225 Murr, Andrew(R) Relating to increasing the maximum reference base amount for certain consumer loans.

Companions:
HB 2432 Murr, Andrew (Refiled from 87R Session)
SB 1089 Buckingham, Dawn (Refiled from 87R Session)

Specific Remarks: Amends Ch. 342, Fin. Code. This bill increases the reference base amount for loans under Subchapter F from \$200 to \$300. Currently, a lender can make a Subchapter F loan if the cash advance is \$1,600 or less, and this amount is adjusted annually based on the Consumer Price Index. The bill would have the effect of increasing this amount to approximately \$2,400.

 HB 264

Toth, Steve(R)

Relating to requirements for the physical presence of a borrower for signing certain documents related to a home equity loan.

Specific Remarks: Amends Ch. 343, Fin. Code; Ch. 752, Estates Code. Implements HJR 20. Currently, the Texas Constitution provides that a home equity loan must be closed at the office of a lender, an attorney at law, or a title company. This bill allows certain borrowers to close a home equity loan from a remote location using online notarization, or through an agent acting under a durable power of attorney. This exception applies to active duty service members and their spouses, certain federal employees accompanying the armed forces assigned to a foreign country, borrowers with a disability prohibiting travel, and borrowers unable to travel due to incarceration or house arrest. The bill makes conforming changes to forms for durable powers of attorney.

Bill History: 11-14-22 H Filed

 HB 297

Bernal, Diego(D)

Relating to credit services organizations and extensions of consumer credit facilitated by credit services organizations.

Companions: [HB 206](#) Bernal, Diego (Refiled from 87R Session)

Specific Remarks: Amends Ch. 393, Fin. Code. Limits the amount of an extension of credit based on the consumer's income (or the vehicle's value for a title loan). Limits the number of refinances and number of installments for payday and title loans. Requires a credit access business (CAB) to review documentation establishing a consumer's income, and lists acceptable forms of documentation, including a payroll document, a paycheck, a bank statement, and a W-2. Prohibits a CAB from assisting a consumer in obtaining loans other than payday or title loans. Prohibits a CAB from transferring its license. Provides that local ordinances regulating CABs are not preempted if they are compatible with and equal to or more stringent than a requirement imposed by Chapter 393. Provides that Chapter 393 applies to extensions of credit made to consumers who are located in Texas, regardless of whether the extension of credit was made in person. Requires a CAB to provide copies of the contract and other documents in English and in any other language in which the contract is negotiated. Requires the CAB disclosure to be available in English and Spanish, and to refer to nonprofit agencies that provide financial education or cash assistance. Provides record retention requirements for CABs.

Bill History: 11-14-22 H Filed

 HB 446

Craddick, Tom(R)

Relating to the terminology used in statute to refer to intellectual disability and certain references to abolished health and human services agencies.

Specific Remarks: Amends various codes, including Ch. 393, Fin. Code. Updates statutes to revise terminology referring to intellectual disability. In particular, the bill amends Section 393.624 of the Finance Code to revise the terminology used in a provision prohibiting credit access businesses from advertising in intermediate care facilities for persons with intellectual disabilities.

Bill History: 11-14-22 H Filed

A HB 645

Toth, Steve(R)

Relating to prohibiting financial institutions and other businesses from using value-based criteria.

Specific Remarks: Adds Ch. 121, Bus. & Comm. Code. Prohibits financial institutions and businesses from discriminating against, advocating for, or giving disparate treatment to a person using value-based criteria, including the person's social media activity; the person's membership or participation in a club, association, or other group; the person's political affiliation or beliefs; the person's current or former employer; or any other social credit, environmental, social governance, or similar value-based standards. Allows a financial institution or business to discontinue or refuse business with a person if necessary for physical safety. Allows a financial institution to offer a product or service that uses value-based criteria if disclosed to a potential customer. Allows persons other than employees of state or local government to bring civil actions against financial institutions and businesses that violate the bill's requirements.

Bill History: 11-14-22 H Filed

A HB 709

Harris, Cody(R)

Relating to prohibiting the use of certain credit scores, including environmental, social, or governance scores and social credit scores, by certain financial institutions and other lenders in this state.

Specific Remarks: Adds Ch. 74, Bus. & Comm. Code. Prohibits financial institutions and other lenders from discriminating against customers in rates based on credit scores (including social credit scores and environmental, social, or governance scores) that are derived from subjective or arbitrary standards, such as social media posts, membership in an organization, political affiliation, or employer. Allows a financial institution or lender to enter a transaction where a practice is fully disclosed to a potential customer before the customer agrees to enter the transaction. Allows a financial institution or other lender to discontinue or refuse a transaction if necessary for physical safety. Allows the attorney general to bring an action for civil penalties for a violation of the bill's requirements.

Bill History: 11-15-22 H Filed

A HJR 20

Toth, Steve(R)

Proposing a constitutional amendment authorizing the legislature to provide for exceptions to the requirement that a home equity loan be closed only at the office of the lender, an attorney at law, or a title company.

Companions: [HJR 104](#) Toth, Steve (Refiled from 87R Session)

Specific Remarks: Amends Art. XVI, Sec. 50, Tex. Const. Implemented by HB 264. Currently, the Texas Constitution provides that a home equity loan must be closed at the office of a lender, an attorney at law, or a title company. This resolution allows the legislature to enact exceptions to this requirement by statute. The resolution makes conforming changes to the consumer disclosure provided in connection with a home equity loan.

Bill History: 11-14-22 H Filed

Proposing a constitutional amendment providing that a residence homestead is not subject to seizure or sale for delinquent ad valorem taxes.

Companions: HJR 43 Wilson, Terry (Refiled from 87R Session)

Specific Remarks: Amends Art. VIII Secs. 13 & 15, Art. XVI Sec. 50, Tex. Const. Removes provisions allowing the foreclosure of a homestead for failure to pay property taxes. Renumbers provisions related to work-and-material loans, home equity loans, and reverse mortgages. Specifically, the resolution would renumber the provision governing home equity loans from Section 50(a)(6) to Section 50(a)(5).

Bill History: 11-14-22 H Filed

Total Bills: 10

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D. OFFICE OF CONSUMER CREDIT COMMISSIONER

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 5, Chapter 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 adoption of the amendments to 7 TAC Chapter 90.

RECOMMENDED MOTION: I move that we approve the adoption of 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) adopts 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 commission adopts the amendments to §90.103 and §90.104 without changes to the proposed text as published in the November 11, 2022, issue of the *Texas Register* (47 TexReg 7510).

The commission received no official comments on the proposed amendments.

The rules in 7 TAC Chapter 90 govern plain language contracts for regulated lenders. In general, the purpose of the 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.

Amendments to §90.103 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 adoption revises 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.

Amendments to §90.104 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 adoption, subsection

(a) is 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) specifies 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 OCC'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. Amendments to subsection (b) 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). Amendments to subsection (c) specify that the subsection refers to the requirements for filing copies of the loan contract. Amendments to subsection (d) 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.

The rule amendments are adopted 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 OCC and ensure

compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption 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 adoption and found it to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas on December 16, 2022.

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