

A.

Finance Commission

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FINANCE COMMISSION OF TEXAS

MEETING DATEFebruary 17, 2023

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 DATESApril 21, 2023
June 16, 2023
August 18, 2023
October 27, 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, February 17, 2023
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 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 December 16, 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' 2023 First Quarter Investment Officer Reports

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

B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2023 First Quarter Financial Statements

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

C. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Solicitation of an Internal Auditor for the Finance Commission Agencies for Fiscal Year 2024

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

E. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Activities of the Mortgage Grant Fund

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. 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 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

C. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

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

D. TEXAS DEPARTMENT OF BANKING

1. Industry Status and Departmental Operations: a) Current Issues Affecting Department's Regulated Entities; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Non-Depository Supervision Division Activities; e) Administrative, Staffing and Fiscal Division Activities; f) Strategic Support Division Activities including Consumer Complaint Data; g) Legal Division Activities including Enforcement Activity and Gift Reporting; and h) Legislative Activities
2. *Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 1, §3.37, Concerning Calculation of Annual Assessment for Banks*
3. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

NOTE: The Finance Commission of Texas may go into executive session (close its meeting to the public) on any agenda item if appropriate and authorized by the Open Meetings Act, Texas Government Code, Chapter 551.

Meeting Accessibility: Under the Americans with Disabilities Act, the Finance Commission of Texas will accommodate special needs. Those requesting auxiliary aids or services should notify the Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 936-6222, as far in advance of the meeting as possible.

**MINUTES OF THE
FINANCE COMMISSION MEETING
Friday, December 16, 2022**

The Finance Commission of Texas convened at 9:03 a.m., on December 16, 2022, with the following members present:

Finance Commission Members in Attendance:

Phillip Holt, Chairman	Martin “Marty” Green
George “Cliff” McCauley, Vice Chairman	Roselyn “Rosie” Morris
Bob Borochoff	Vince Puente
Hector Cerna	

Finance Commission Members Absent:

Will Lucas	Debbie Scanlon
Sharon McCormick	Laura Warren

Chairman Phillip Holt made a motion to excuse Will Lucas, Sharon McCormick, Debbie Scanlon, and Laura Warren from the Finance Commission meeting held on December 16, 2022. There were no objections and the motion passed unanimously. (0:36 on audio file)

Deputy Commissioner Wendy Rodriguez announced there was a quorum with seven (7) members present. (1:13 on audio file).

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
A. Finance Commission Matters		
1. Review and Approval of the Minutes of the October 28, 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.	1:20 start of discussion
3. Consent Agenda – Items A1, C2, C3 and D2	Bob Borochoff made a motion to Approve Consent Agenda items A1, C2, C3, and D2. Martin Green seconded, and the motion passed.	1:54 start of discussion 2:14 Vote
4. Finance Commission Operations	No Action Required.	2:40 start of discussion
5. Audit Committee Report		
A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies’ Fiscal Year 2023 Internal Auditor’s Risk Assessment and Audit Plan	Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies’ Fiscal Year 2023 Internal Auditor’s Risk Assessment and Audit Plan passed.	5:13 start of discussion
1. Department of Savings and Mortgage Lending		5:28 Vote
2. Texas Department of Banking		
3. Office of Consumer Credit Commissioner		

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
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	No Discussion.	n/a
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	No Discussion.	n/a
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	No Discussion.	n/a
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	No Discussion.	n/a
B. Department of Savings and Mortgage Lending		
1. Industry Status and Departmental Operations: a) Thrift Regulation Division Activities; b) Mortgage Regulation Division Activities; c) Operations Division Activities; d) Legal Division Activities, including Consumer Complaints and Gift Reporting; e) Legislative Activities	No Action Required.	6:03 start of discussion
2. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Action Required.	n/a

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
C. Texas Department of Banking		
1. Industry Status and Departmental Operations: a) Current Issues Affecting Department’s Regulated Entities; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Non-Depository Supervision Division Activities; e) Administrative, Staffing and Fiscal Division Activities; f) Strategic Support Division Activities including Consumer Complaint Data; g) Legal Division Activities including Enforcement Activity and Gift Reporting; and h) Legislative Activities	No Action Required.	22:28 start of discussion
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	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 Adoption of Amendments to 7 TAC, Part 2, Chapter 26, Concerning Perpetual Care Cemeteries, Resulting from Rule Review	On Consent Agenda – Item C3 This item Approved on the Consent Agenda.	n/a
4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendment to 7 TAC, Part 1, §3.37, Concerning Calculation of Annual Assessment for Banks	Cliff McCauley made a motion to Approve the Proposal and Publication for Comment of Amendment to 7 TAC, Part 1, §3.37, Concerning Calculation of Annual Assessment for Banks. Martin Green seconded, and the motion passed.	35:48 start of discussion 39:29 Vote
5. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Discussion.	n/a
D. Office of Consumer Credit Commissioner		
1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities	No Action Required.	40:24 start of discussion
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	On Consent Agenda – Item D2 This item Approved on the Consent Agenda.	n/a

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
3. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation <i>Ernest Polk v. Texas Office of Consumer Credit Commissioner; Cause No. 01-22-00712-CV, in the First Court of Appeals, Houston, Texas</i>	No Discussion.	n/a

There being no further business, Chairman Phillip Holt adjourned the meeting of the Finance Commission at 10:10 a.m. (1:07:31 on the audio file).

Phillip Holt, Chairman
 Finance Commission of Texas

Wendy Rodriguez, Deputy Commissioner
 Texas Department of Banking

Ruth Wright, Executive Assistant
 Finance Commission of Texas

Finance Commission of Texas

Consent Agenda

February 17, 2023

A. Finance Commission Matters

1. Review and Approval of the Minutes of the December 16, 2022, Finance Commission Meeting

D. Texas Department of Banking

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 1, §3.37, Concerning Calculation of Annual Assessment for Banks

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B.

**Office of Consumer Credit
Commissioner**

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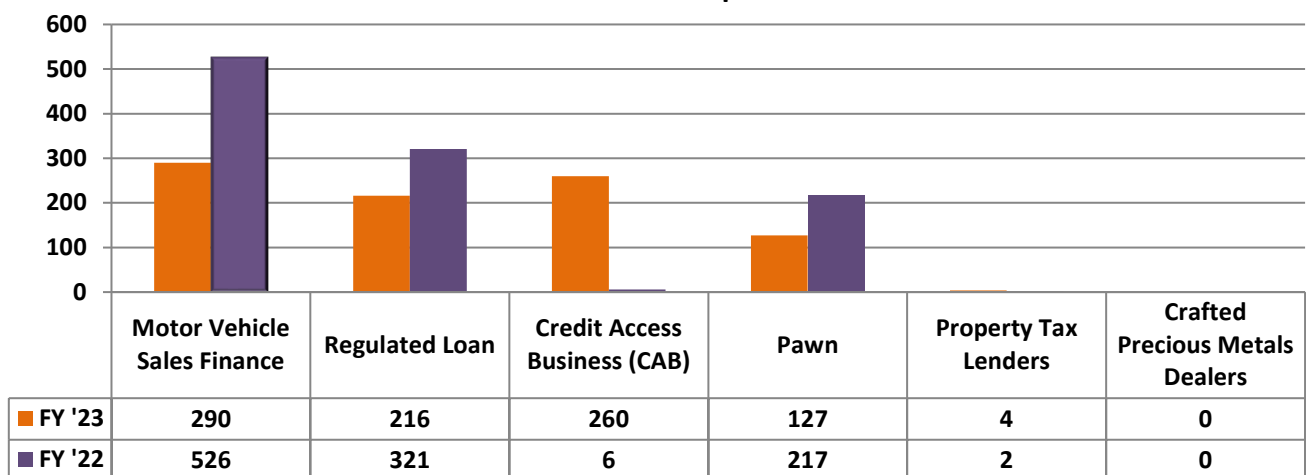
Consumer Protection and Consumer Assistance Report

The OCCC's FY 2023 examination program is underway. Although slightly behind target at the end of the first quarter, the department anticipates pro-rata targets will be met as larger examinations are completed during the 2nd and 3rd quarters. A large Enterprise CAB exam was completed in December. Another large Enterprise CAB examination has commenced with preliminary scoping and test sampling completed. This examination is anticipated to be finalized by the end of March 2023. Site work on a large Property Tax Lender examination begun December 5, 2022, has been completed and the exam report is in the drafting phase. As noted in the August briefing, the examination department is planning to resume out-of-state travel to conduct examinations in FY 2023.

Initial planning on two out-of-state examinations has begun with site visits tentatively scheduled for March and April. The OCCC has committed to and begun preliminary work on a multi-state auto finance exam. The OCCC will coordinate the exam with the Consumer Financial Protection Bureau (CFPB). Senior OCCC examiners are leading this exam on behalf of the states serving in the Single Point of Contact and Examiner-in-Charge roles. The OCCC has committed to participate in a multi-state mortgage exam. The multi-state mortgage exam has not been scheduled as of the date of this report. As noted in the December briefing, OCCC participation in these exams, though important in the larger context of networked supervision and enforcement, will not yield significant examination production numbers this fiscal year.

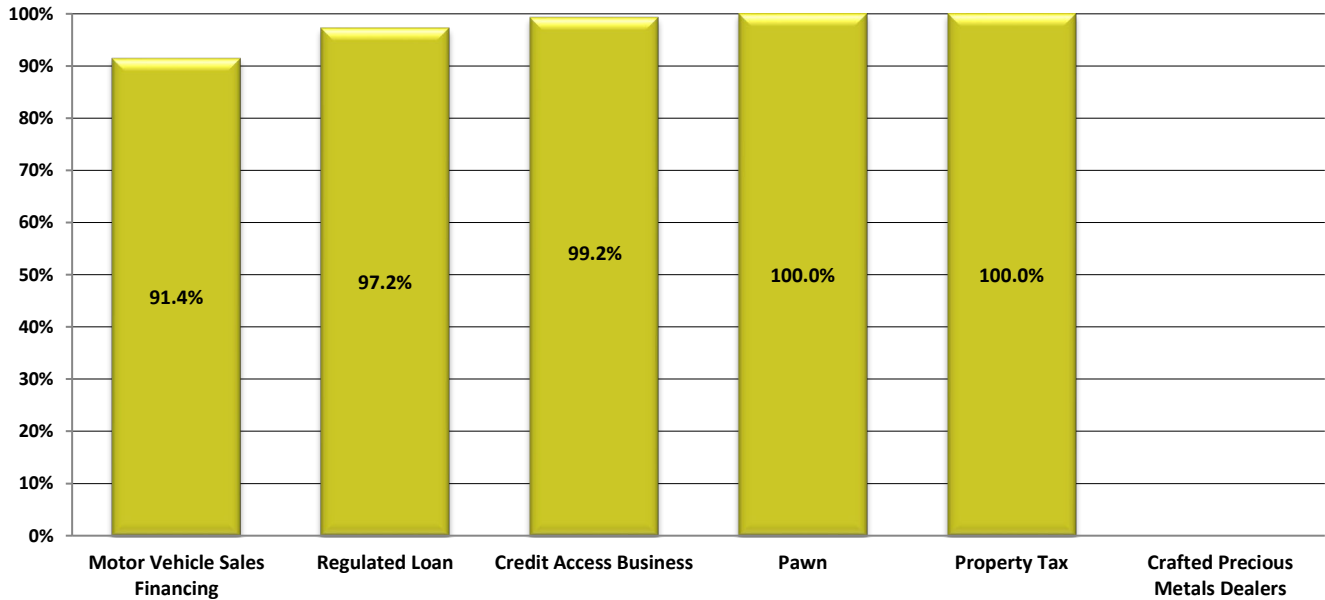
Examiner training and development remains the high priority focus. A new examiner training class formed on January 9, 2023. Two new examiners have completed the first three weeks of classroom instruction and are scheduled for field training beginning the week of February 5, 2023. The two examiners hired in July have been certified in Chapter 371 and Chapter 342-F examinations and have been conducting examinations as a team and individually. Field training for the new examiners is scheduled to begin in Chapter 348 examinations paired with tenured examiners the week of February 5, 2023. Two tenured examiners were certified in Chapter 342-E exams as of January 31, 2023. Additionally, one examiner was promoted to Financial Examiner III in January and two examiners were promoted to Financial Examiner III effective February 1, 2023. Recruiting methods and efforts are under review with plans to form a new class consisting of four examiners beginning June 1, 2023.

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



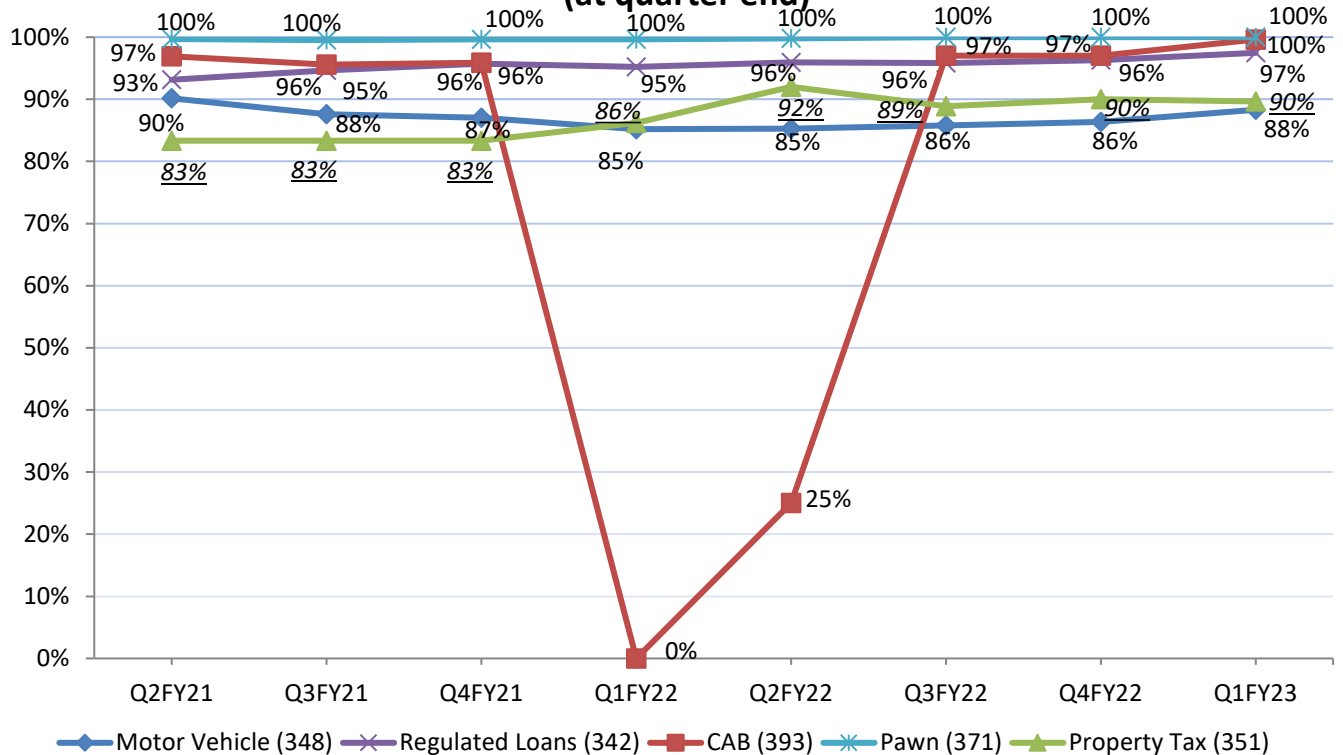
During the reporting period no Crafted Precious Metal examinations were conducted.

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



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

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

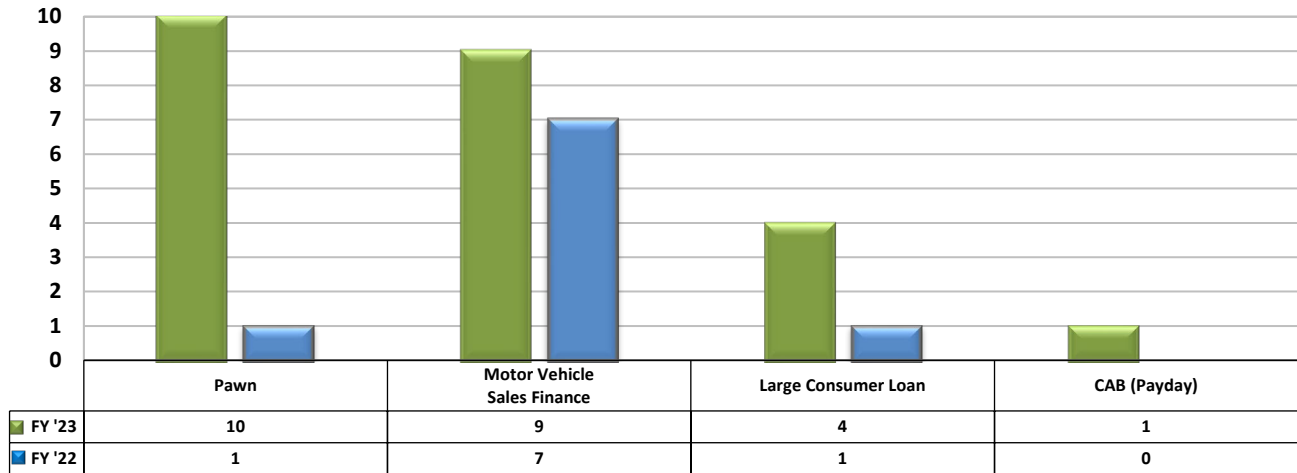


*As of 12/31/2022

Investigations

For FY 2023 through December, the OCC completed 24 investigations out of the goal of 75. Pawn Employee and Motor Vehicle Sales Finance issues comprise 75% of the overall number of completed investigations.

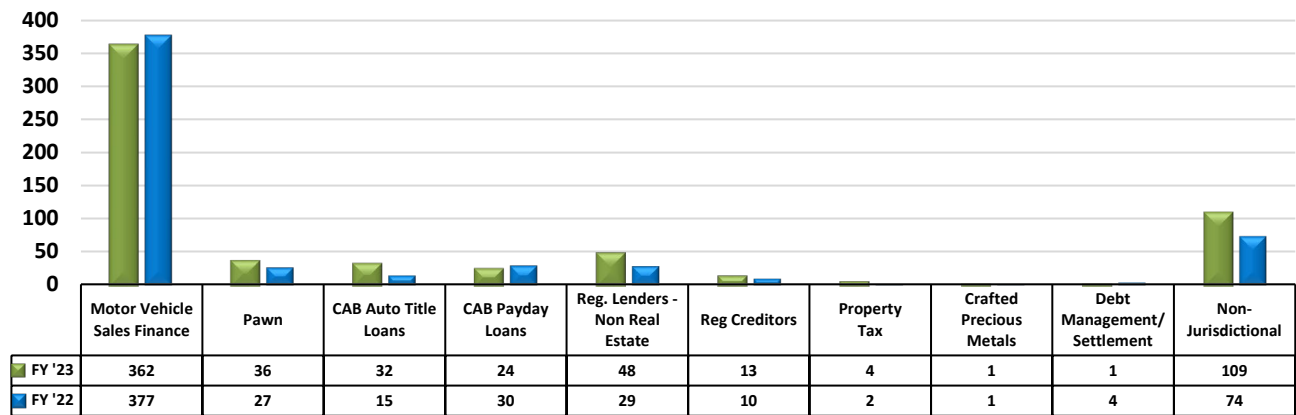
Investigations Completed
FY '23 (Sept 2022 - Dec 2022) Total: 24
FY '22 (Sept 2021 - Dec 2021) Total: 9



Consumer Assistance

During this reporting period, 630 complaints were closed, of which 109 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 57.5%. The second largest category was CAB complaints at 8.9% collectively, separately these are 5.1% for payday loans and 3.8% for title loans. The third largest category came from Regulated Lenders Non-Real Estate at 7.6%. The fourth largest category was Pawnshops at 5.7%.

Complaints Closed
FY '23 Sept 2022 - Dec 2022
FY '22 Sept 2021 - Dec 2021



■ FY '23 ■ FY '22

Fiscal Year 2023: Number of Complaints Closed by Source (Table 1), Subject (Table 2), and Disposition (Table 3)

Table 1

Source of Complaint	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Consumer	442	NA	NA	NA
Business	0	NA	NA	NA
Law Enforcement	0	NA	NA	NA
State or Federal Agency	31	NA	NA	NA
OCCC	2	NA	NA	NA
Whistleblower	0	NA	NA	NA
Other	0	NA	NA	NA
Total	475	NA	NA	NA

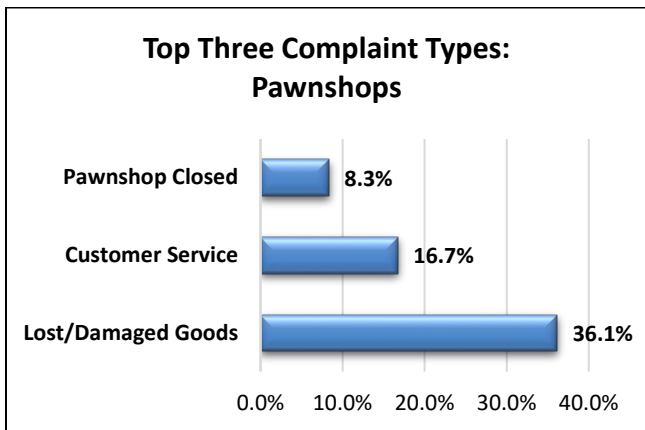
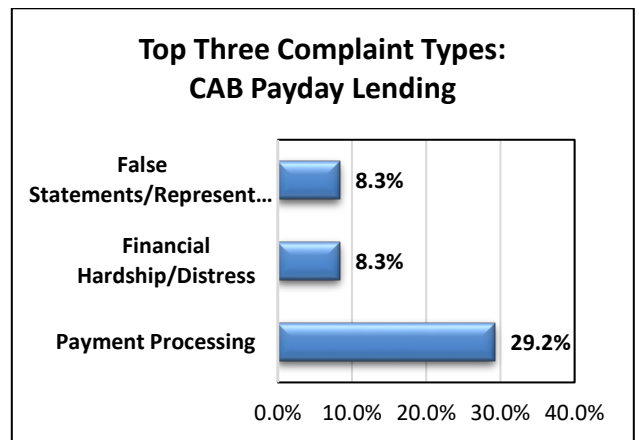
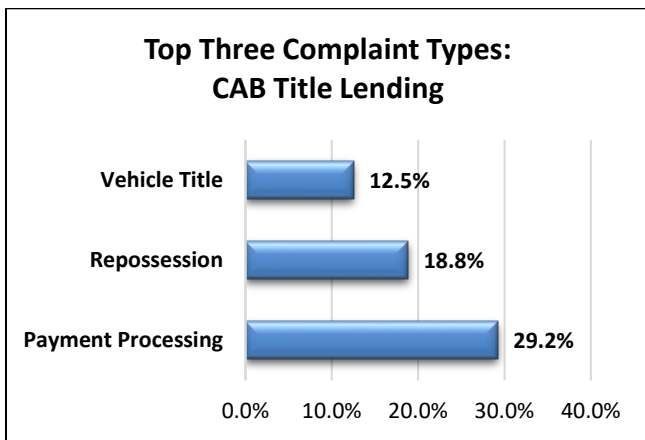
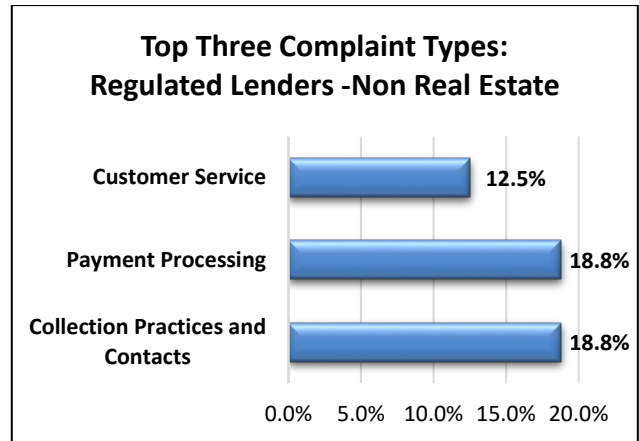
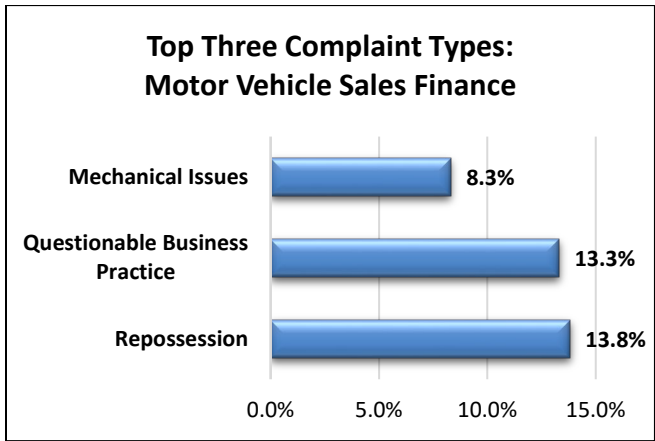
Table 2

Subjects	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Motor Vehicle Sales Finance	273	NA	NA	NA
CAB Payday Loans	20	NA	NA	NA
CAB Auto Title Loans	19	NA	NA	NA
Reg. Lenders - Non Real Estate	33	NA	NA	NA
Pawn	28	NA	NA	NA
Registered Creditors	11	NA	NA	NA
Crafted Precious Metal Dealers	0	NA	NA	NA
Regulated Lenders - Real Estate	0	NA	NA	NA
Manufactured Housing	0	NA	NA	NA
Property Tax Lenders	4	NA	NA	NA
Debt Management/Settlement	1	NA	NA	NA
Refund Anticipation Loan	0	NA	NA	NA
Non-Jurisdictional	86	NA	NA	NA
Total	475	NA	NA	NA

Table 3

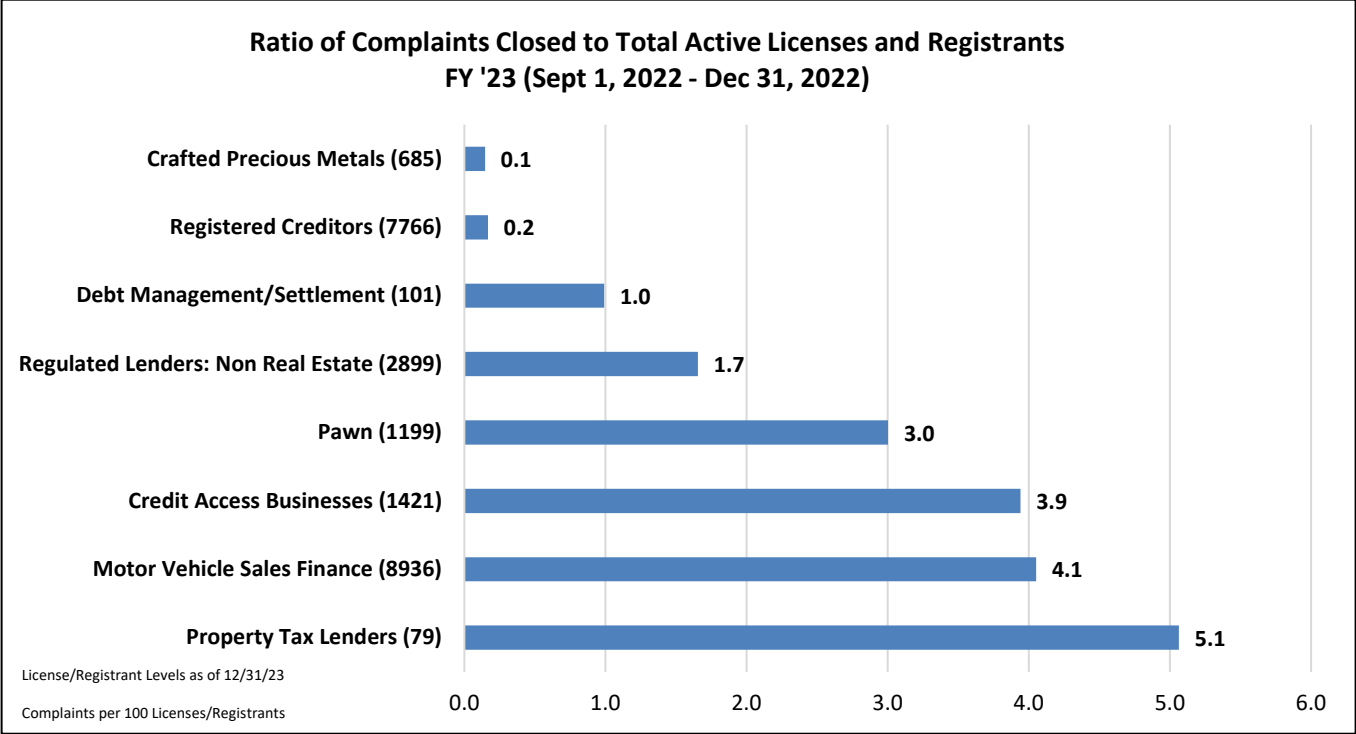
Disposition	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Closed to Investigation	5	NA	NA	NA
Closed to Legal	0	NA	NA	NA
Closed -Action Taken	106	NA	NA	NA
Closed -No Violation	145	NA	NA	NA
Closed - Administratively	133	NA	NA	NA
Close - Non-Jurisdictional	86	NA	NA	NA
Total	475	NA	NA	NA

The following charts represent the top three complaint areas per license type. In the MVSF chart, 56.2% of the complaints in the category Questionable Business Practice relate to allegations that dealers will not accept outside financing. From the last reporting period, complaint allegations in the Questionable Business Practice category related to not accepting outside financing are down 7.8%. The remainder in this category relate to various allegations of misleading practices related to customer service concerns, contractual obligations, and add-on products.



Production Targets and Priorities	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Percentage of Written Complaints Closed within 90 days	88.6%	NA	NA	NA
Average Number of Days to Close a Complaint	41.5	NA	NA	NA
Number of Complaints Closed	475	NA	NA	NA

Comparison of complaints processed to the number of active license or registrant population is noted on the chart below. For this reporting period, the highest ratio of complaints to active license/registrants is Property Tax Lenders, followed by Motor Vehicle Sales Finance, Credit Access Businesses, and Pawn. Property Tax Lenders continue to have the highest ratio due to the smaller number of active licenses in relation to other license/registrant types.





Licensing Report- February 2023

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

Renewals

Renewal for regulated lenders, credit access business and property tax lenders concluded at the end of December. For this renewal period, 92% of credit access business renewed, 93% of property tax lenders renewed and 85% of regulated lenders renewed. The number of regulated lenders that renewed was 7% below expectations and 5% below the prior year renewal rate.

Registration renewals for crafted precious metal dealers, refund anticipation loan facilitators, registered creditors and debt management settlement providers also concluded in December and January.

Applications Processing

The volume of incoming applications averaged 98 monthly for the period September – December. The volume is running below the projection of 108 monthly. Incoming pawn employee applications averaged 29 monthly for the period of September – December, which is also lower than initially projections of 31 applications per month.

Other Updates

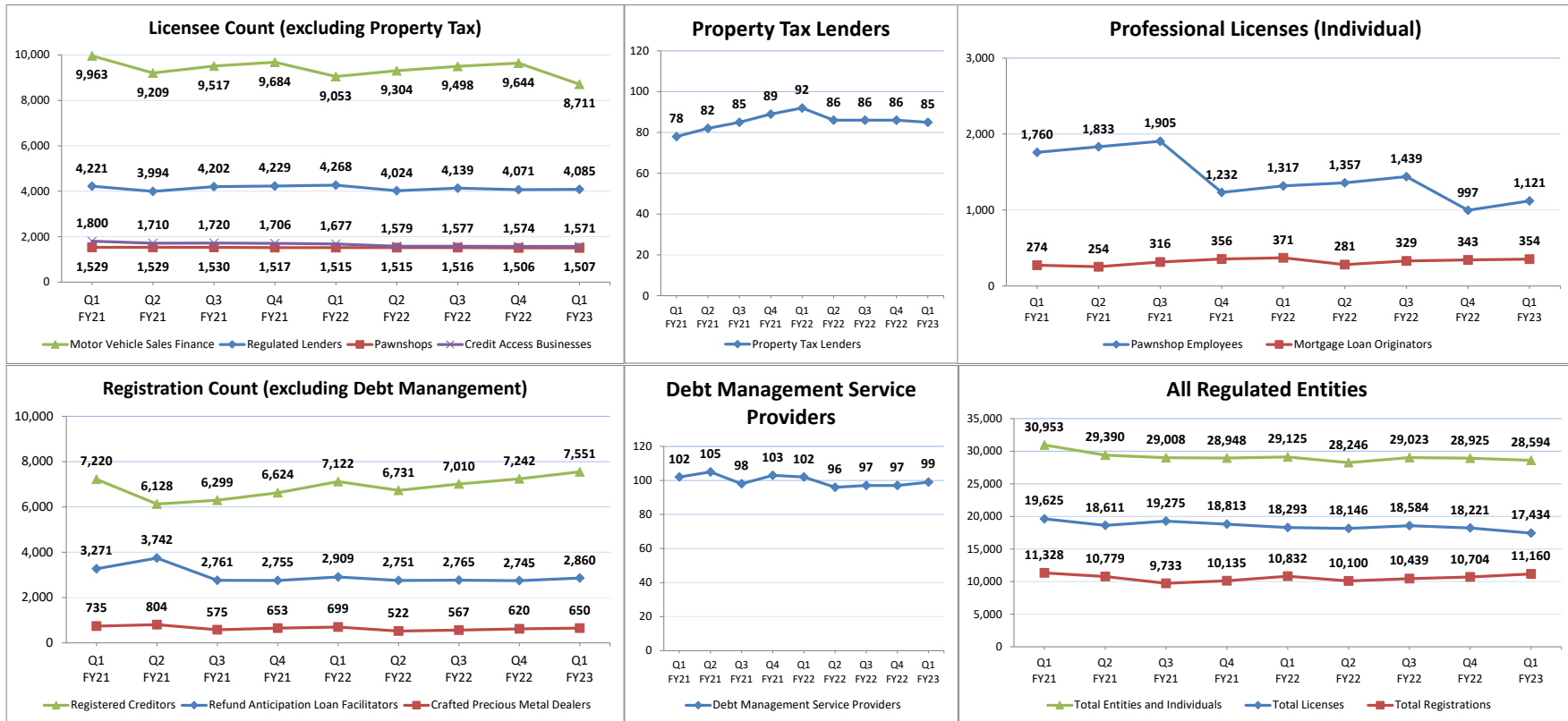
The Licensing Department is continuing with professional development for the team. All team members attended training on time management during with AWP, the contracted employee assistance provider.

The department is actively planning a records management project to consolidate remaining historical paper files and is scheduling a work week in February 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

Two on-demand financial education modules, *Credit 101* and *Consumer Holiday Spending Tips*, were released in prior months and continue to be accessed for viewing. OCCC staff are in the process of developing another collaborative webinar with the Texas Department of Banking and are scheduled to make financial education presentations at several local libraries in the coming month. Additionally, staff will be traveling to the Rio Grande Valley (RGV) area in February to participate in two annual financial education summits established by one of the TFEE grantees, who has also scheduled a meeting between Agency staff and local RGV organizations to promote TFEE.

TFEE's 2nd semi-annual reporting information and reimbursement requests are now being collected through the TFEE SharePoint site, which is expected to shorten the reimbursement processing time. Once all grant reimbursements are processed, the OCCC will publish the 2nd period semi-annual report.

COMMUNICATION

The new OCCC intranet site was released to all staff on February 1, 2023. The redesigned intranet site was developed to ensure all employees have easy access to agency information in a streamlined and intuitive manner. The communications team will lead activity to ensure the site maintains updated and relevant information. Additionally, staff continue to provide presentations to regulated entities and other groups as follows:

- On December 8, 2022, Financial Examiner Fancher provided a presentation to automobile dealers at a webinar sponsored by the Texas Department of Motor Vehicles (DMV).
- On January 5, 2023, Financial Examiner Fancher provided a presentation to automobile dealers at a webinar sponsored by the Texas Department of Motor Vehicles (DMV).
- On January 23, 2023, Commissioner Pettijohn and Financial Examiner Fancher presented at the American Financial Services Association Vehicle Finance Conference in the Dallas area.
- On January 23, 2023, Commissioner Pettijohn addressed the American Financial Services Association Women's Leadership Council at their Dallas meeting.

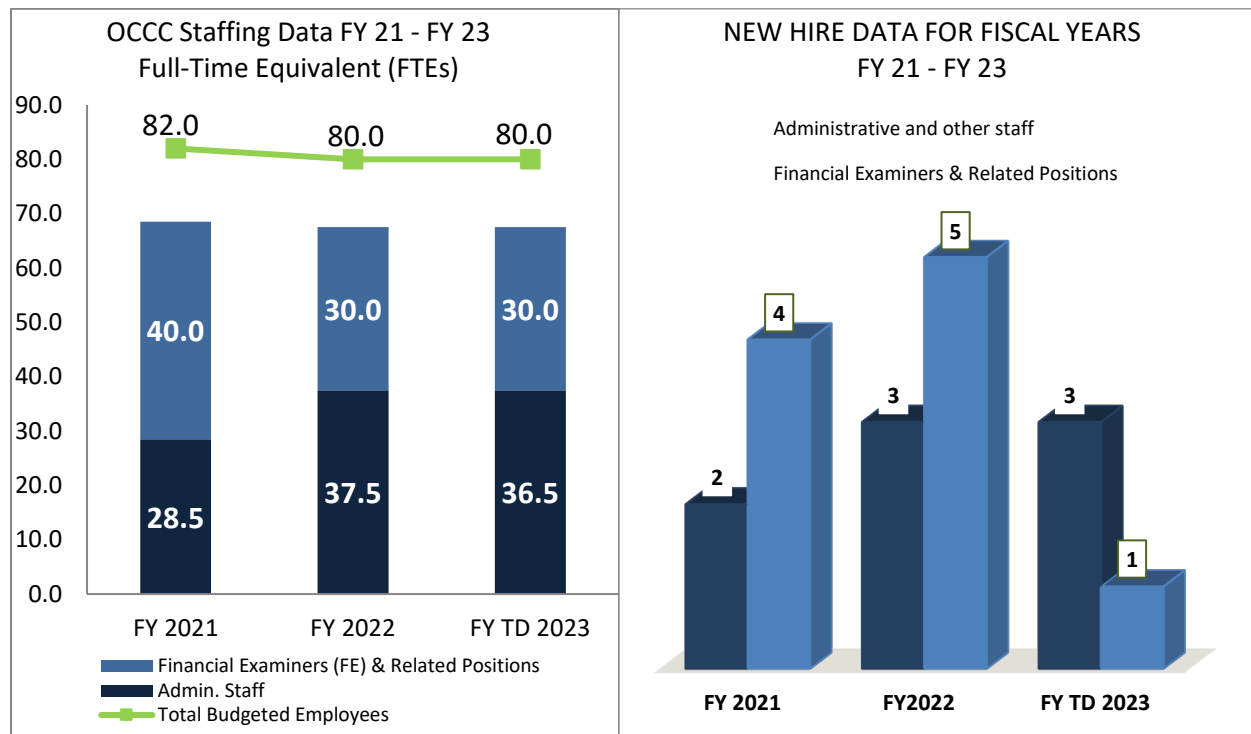
HUMAN RESOURCES

During this reporting period from September 1, 2022, through December 31, 2022. The OCCC was staffed with a total of 66.5 FTEs.

Currently the OCCC has the following open positions as of December 31, 2022.

Vacancy	Status
Administrative Assistant	Open - 1
Customer Service Representative II/III	Open - 1
Compliance Analyst I	Open - 1

The following charts represent staffing data for Fiscal Years 2021 – 2023 through December 2022.



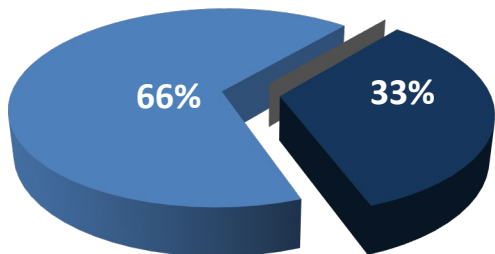
The turnover rate as of December 31, 2022, is 3.75%, and the chart(s) below represents FY23 data.

OCCC Turnover Categories

FY 23 - All Employees

(09/01/2022 - 12/31/2022)

3 total: 2 - Voluntary Resignations and 1-
Interagency Transfers



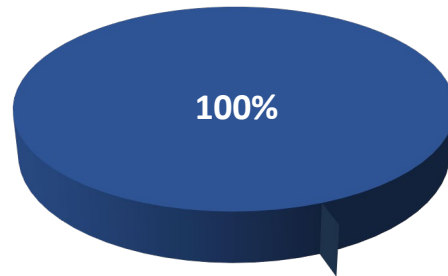
■ Voluntary Resignation ■ Interagency Transfer

OCCC Turnover Categories

FY 23 - FE Series

(09/01/2022 - 12/31/2022)

1 total : 1- Interagency Transfer



■ Interagency Transfer

Information Technology (February 2023)

Technology modernization and deployment

Migration to Microsoft 365 is nearing completion, with go-live target ultimately set to February 01. ALECS was updated to send email through Amazon Web Services, with mass mailings trafficked through Amazon Pinpoint to circumvent triggering spam detection engines. The primary agency domain is now *occ.texas.gov*; *occ.state.tx.us* also remains functional.

In addition to modifications to integrate with MS 365, ALECS revisions included necessary changes to the Debt Management program. These were tested and approved by the end of December and released to production.

In accordance with Governor Abbott's directive of 07-December-2022, OCCC blocked access to known websites that are used by TikTok, a short-form video application that aggressively collects data. Many states and federal agencies have also blocked TikTok.

All IT staff completed Criminal Justice Information Services Security Awareness training.



Accounting Report- February 2023

Mirand Diamond, Director of Licensing & Finance

Financial Reporting

The first quarter of fiscal year 2023 ended on November 30, 2022. The first quarter financial statements are presented elsewhere in the material.

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 monitors procedure revisions.

Other Items

In compliance with Government Code, Section 2101.0115, the accounting staff submitted the Annual Report of Non-financial Data by the December 31 due date.

In accordance with Texas Government Code, Section 2052.103, the agency reported to the State Auditor's Office any federally funded FTEs as well as the management-to-staff ratio as specified in Texas Government Code, Section 651.004.

As required by Texas Government Code, Section 657.008(c), the Veteran Workforce Summary Report was submitted. Additionally, the Multiple Worksite and the IRS 941 quarterly reports were submitted in December and January as well.

In January the accounting staff completed the preparation and distribution of W-2s and 1099s.

OFFICE OF CONSUMER CREDIT COMMISSIONER
EXECUTIVE SUMMARY

As of November 30, 2022

	FY 2021	FY 2022	FISCAL YEAR 2023				
			1st QTR	2nd QTR	3rd QTR	4th QTR	FYTD
CONSUMER PROTECTION							
Monies Returned (000)	3,386	24,756	753				753
Regulated Lenders Examinations	656	818	160				160
Property Tax Lender Examinations	12	27	4				4
Pawnshop Examinations	415	638	99				99
Motor Vehicle Examinations	1,364	1,398	215				215
Credit Access Businesses Examinations	293	268	120				120
CONSUMER ASSISTANCE							
Telephone Complaints Received	489	491	127				127
Written Complaints Received	1,241	1,252	318				318
Total Complaints Closed	1,725	1,751	475				475
% of Written Complaints Closed within 90 Calendar Days	96.6%	92.3%	88.6%				88.6%
ADMINISTRATIVE ENFORCEMENT ACTIONS							
Originated	224	114	34				34
Finalized	197	138	70				70
LICENSING AND REGISTRATION							
Licenses							
Regulated Lender Licenses	4,229	4,071	4,085				4,085
Pawnshop Licenses	1,517	1,506	1,507				1,507
Pawnshop Employee Licenses	1,232	997	1,121				1,121
Commercial MV Sales Fin. Licenses	57	59	56				56
Motor Vehicle Sales Finance Licenses	9,627	9,585	8,711				8,711
Property Tax Lender Licenses	89	86	85				85
Mortgage Loan Originators	356	343	354				354
Credit Access Business Licenses	1,706	1,574	1,571				1,571
Registrations							
Registered Creditors	6,624	7,242	7,551				7,551
Crafted Precious Metal Dealers	653	620	650				650
Debt Management Service Providers	103	97	99				99
Refund Anticipation Loan Facilitators	2,755	2,745	2,860				2,860
Applications							
Business -- New	1,579	1,434	160				160
Business -- Change of Ownership	141	58	9				9
Pawnshop Employees -- New	408	366	94				94
HUMAN RESOURCES DATA							
Field Examiners Staffing	40	30	30				30
Total Staffing	68.5	67.5	66.5				66.5

Office of Consumer Credit Commissioner
Actual Performance for Output Measures
Fiscal Year 2023

Type/Strategy/Measure	2023 Target	2023 Actual	2023 YTD	Percent of Annual Target
Output Measures-Key				
CONSUMER PROTECTION				
1-1-1 Complaint Resolution				
1. # Complaints Closed				
Quarter 1	1,750	475	475	27.1%
2-1-1 Examination and Enforcement				
1. # Examinations Completed				
Quarter 1	3,150	598	598	19.0% *
Examination results are more than 5% under the quarterly target primarily due to turnover and resources associated with training instead of productions. Examination production is expected to normalize throughout the year.				
EFFECTIVE LICENSING & REGISTRATION				
2-2-1 Licensing and Registration				
1. # Business License Applications Processed				
Quarter 1	1,300	169	169	13.0% *
The number of applications processed in Q1 is less than expected as the licensing department was short-staffed and more staff time was dedicated to customer service related to the renewal periods. Application processing is expected to increase in Q2.				
FINANCIAL EDUCATION				
3-3-1 Financial Education				
1. # People Receiving Direct Educational Services				
Quarter 1	650	171	171	26.3%

*Varies by 5% or more from target.



Legal Department Report

Michael Rigby, General Counsel

February 2023

Enforcement Report

Contested Cases

The OCCC does not currently have any cases pending before the State Office of Administrative Hearings (SOAH). The following three cases were recently pending before SOAH.

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

This case concerns ten Clay Cooley entities that hold motor vehicle sales finance licenses. Under the Texas Finance Code, before a motor vehicle retail seller charges a documentary fee over \$150, the seller must notify the OCCC and provide a cost analysis showing that the fee is reasonable. The Clay Cooley entities filed for documentary fees ranging from \$175 to \$299. After reviewing the cost analyses for these entities, the OCCC determined that these documentary fees were unreasonable. On September 9, 2021, the OCCC issued an Order to Reduce Documentary Fees and Make Restitution against the Clay Cooley entities. The Clay Cooley entities requested a hearing on the order. A contested case hearing was held, and the parties filed closing and reply briefs.

The SOAH administrative law judge issued a proposal for decision, the parties filed exceptions and replies, and the judge modified her proposal for decision. On January 18, 2023, the Commissioner's designee issued a final order adopting the judge's proposal for decision as modified. The parties have until February 12, 2023 to file a motion for rehearing.

North Texas Empire Capital and Loan LLC d/b/a Empire Capital and Loan (SOAH Docket No. 466-23-06416)

Empire Capital and Loan was a licensed 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, and the OCCC docketed the case with SOAH. On December 8, 2022, Empire Capital and Loan withdrew its hearing request. Because of the withdrawal, the hearing previously set for February 22, 2023 has been canceled, and the revocation of Empire Capital and Loan's license has become final.

Daniel De Groff d/b/a Five Star Finance (SOAH Docket No. 466-23-06417)

Five Star Finance was a licensed 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, and the OCCC docketed the case with SOAH. On January 11, 2023, Five Star Finance withdrew its hearing request. Because of the withdrawal, the hearing previously set for February 28, 2023 has been canceled, and the revocation of Five Star Finance’s license has become final.

Orders on Reporting Violations

In January 2023, the OCCC issued two orders against credit access businesses that did not timely and accurately file their 2022 third quarter reports by the deadline of October 31, 2022. Both orders were injunctions requiring the licensees 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 January 31, 2023	
Cases Opened	37
Cases Closed	83
Average Number of Days to Close an Enforcement Action	92
Contested Cases Docketed at SOAH	2
Enforcement Actions Taken and Closed by Final Order	78

As of January 31, 2023, the OCCC has no upcoming SOAH hearings scheduled.

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

Enforcement Actions Closed as of January 31 2023			
	FYTD 2023	FY 2022	FY 2021
Injunction Actions			
Crafted Precious Metal Dealer	0	0	0
Credit Access Business	2	23	33
Debt Management Provider	1	2	10
Manufactured Housing	0	0	0
Motor Vehicle Sales Finance	2	7	11
Motor Vehicle Sales Finance Commercial	0	0	1
Pawnshop	15	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	45	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	3	4	8
Pawnshop	10	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	32	48	56
Revocation / Suspension Actions			
Crafted Precious Metal Dealer	0	0	0
Credit Access Business	2	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	1	5	0
Residential Mortgage Loan Originator	0	0	0
Total Revocation / Suspension Actions	5	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	83	138	197

Rule Actions

The OCCC is not presenting any rule actions at the February meeting.

Litigation

Ernest Polk v. Texas Office of Consumer Credit Commissioner

This is an employment discrimination lawsuit pending before the First Court of Appeals in Houston (case no. 01-22-00712-CV). In February 2022, the OCCC filed a second plea to the jurisdiction, arguing that the plaintiff's claims are barred by sovereign immunity and challenging the sufficiency of the plaintiff's evidence. On September 7, 2022, the district court granted the OCCC's plea to the jurisdiction and dismissed the plaintiff's case. The plaintiff appealed the case to the court of appeals. On December 28, the plaintiff filed a brief with the court of appeals, arguing that the district court should not have dismissed his case. On January 27, 2023, the OCCC filed a brief with the court of appeals, arguing that the district court correctly dismissed his case. The appeal is currently pending.

Federal Rulemaking

Proposed CFPB Nonbank Registry Rules

The Consumer Financial Protection Bureau (CFPB) recently proposed two rules that would require certain nonbank financial institutions to register with the CFPB. The first rule (which the CFPB proposed on December 12, 2022) would require covered nonbank financial institutions to register with the CFPB if they are subject to final orders under state or federal law for violating certain consumer financial protection laws. The second rule (which the CFPB proposed on January 11, 2023) would require covered nonbank financial institutions to register with the CFPB if they use contracts that claim to waive or limit certain consumer rights and protections. For both rules, the CFPB would make registration information available to the public. For the first rule, the official comment deadline will be March 31, 2023. For the second rule, the official comment deadline will be the later of March 13, 2023, or 30 days after the rule is published in the *Federal Register*.

Advisory Bulletins

From December 1, 2022 to January 31, 2023, the OCCC did not issue any advisory bulletins.

Official Interpretation Requests

From December 1, 2022 to January 31, 2023, the OCCC did not receive any requests for official interpretations of the Texas Finance Code. As of January 31, 2023, there were no pending requests for official interpretations of the Texas Finance Code.

Public Information Requests

December 1, 2022 through January 31, 2023	
Requests Received	29
Requests Closed	30
Requests Withdrawn	0
Requests Referred to Office of Attorney General	0
Average Number of Days to Address a Public Information Request	1.5

Gifts Received by the OCCC

From December 1, 2022 to January 31, 2023, the OCCC received no gifts.

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C.

**Department of Savings and
Mortgage Lending**

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C. Department of Savings and Mortgage Lending

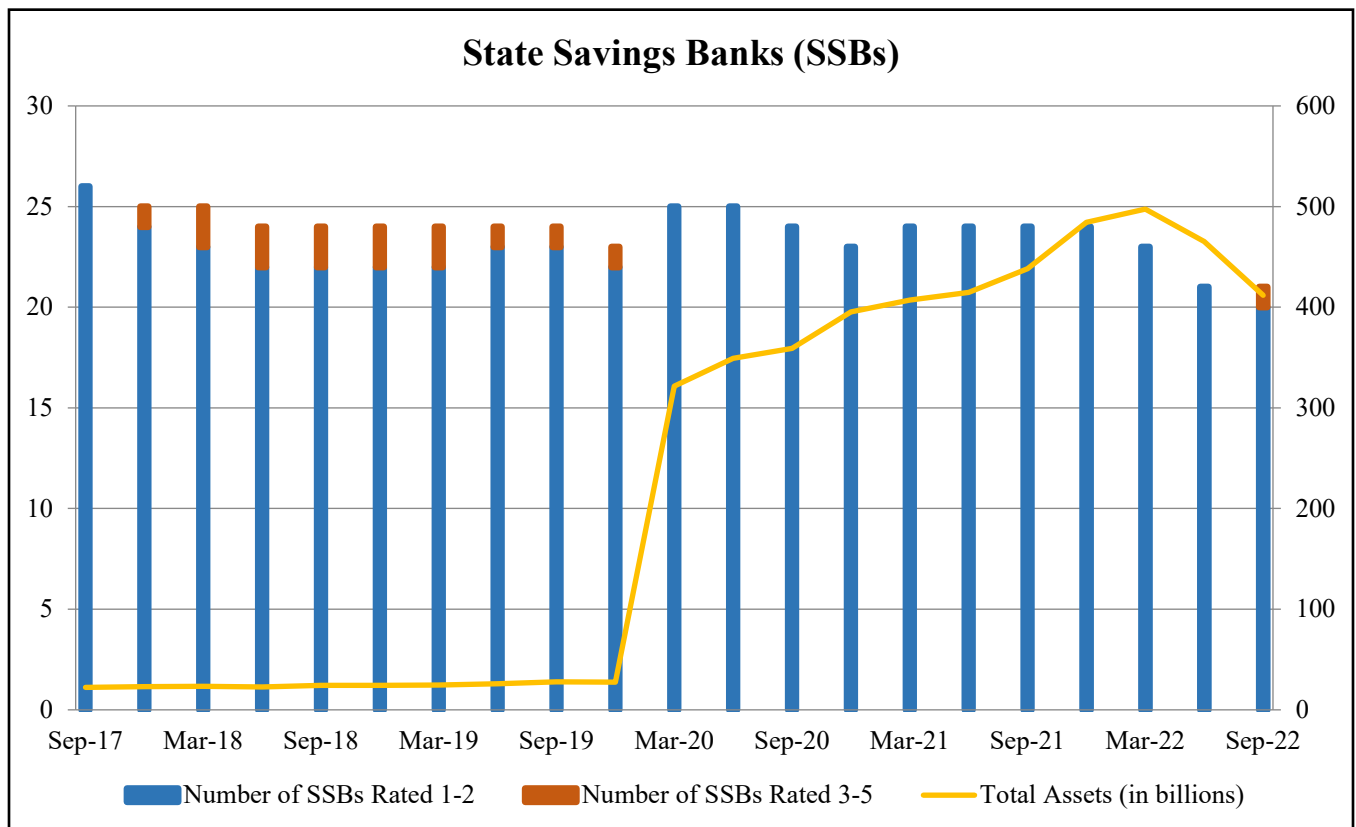
1. Industry Status and Departmental Operations: a) Thrift Regulation Division Activities; b) Mortgage Regulation Division Activities; c) Operations Division Activities; d) Legal Division Activities, including Consumer Complaints and Gift Reporting; and e) Legislative Activities

a) Thrift Regulation Division Activities

Industry Status

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

The Department conducts bank examinations to ensure confidence in the banking system using the Uniform Financial Institutions Rating System (UFIRS). Banks with a UFIRS rating of 1 or 2 are considered well rated. The industry consists of 21 state savings banks with assets totaling \$411.9 billion as of September 30, 2022. On October 1, 2022, Cornerstone Capital Bank, SSB became a state savings bank adding approximately \$1.4 billion in assets. On December 16, 2022, Providence Bank of Texas, SSB was sold, reducing assets by approximately \$193.5 million. The industry remains sound with 95% of banks being well rated as of year end 2022 with one informal supervisory action 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.

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.

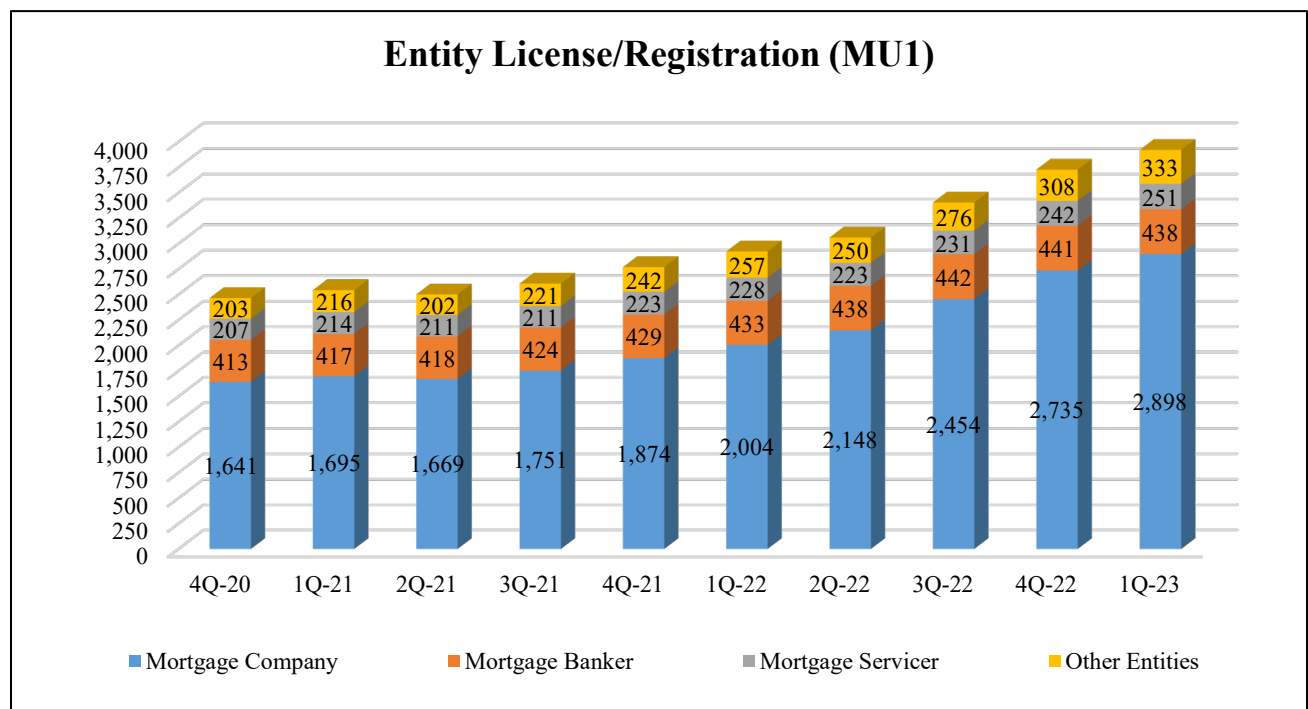
On December 16, 2022, Providence Bank of Texas, SSB was acquired by Great Plains National Bank, Elk City, Oklahoma.

b) Mortgage Regulation Division Activities

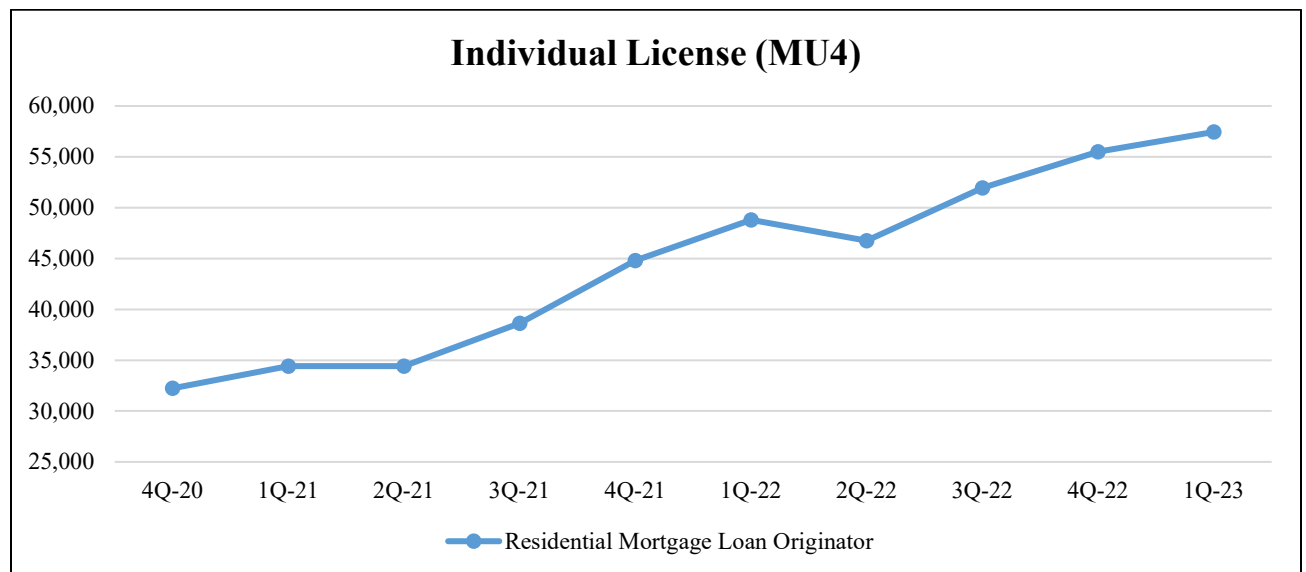
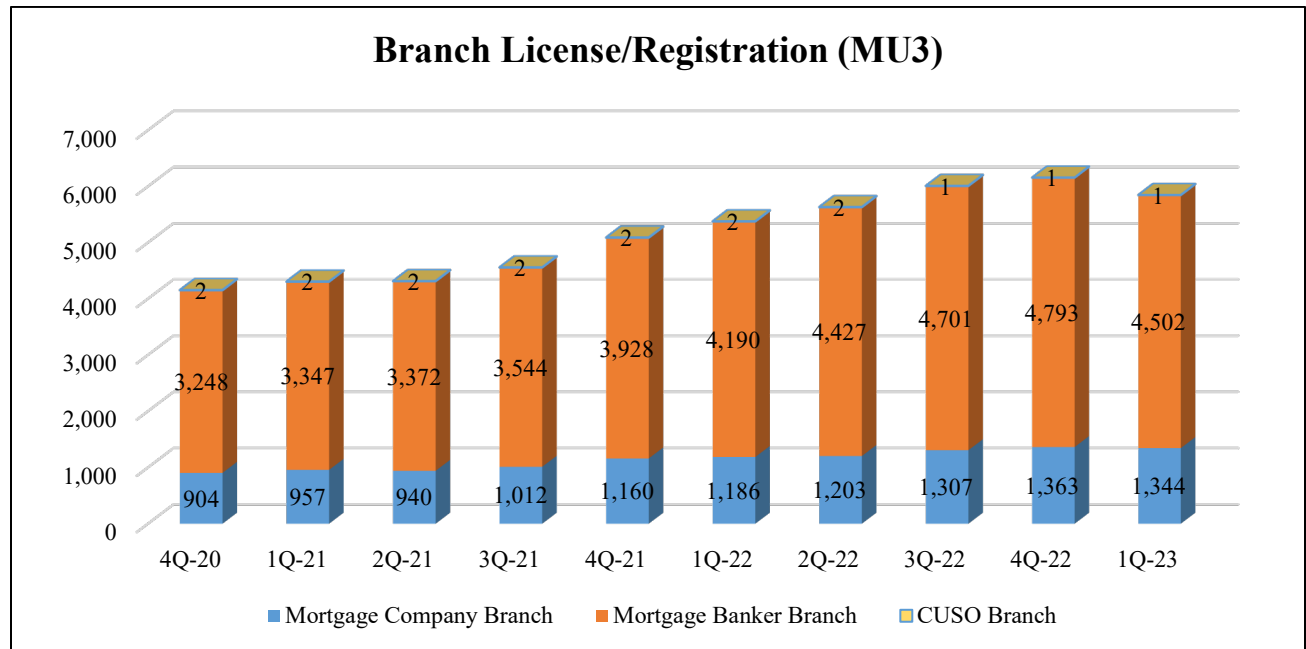
Industry Status

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

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



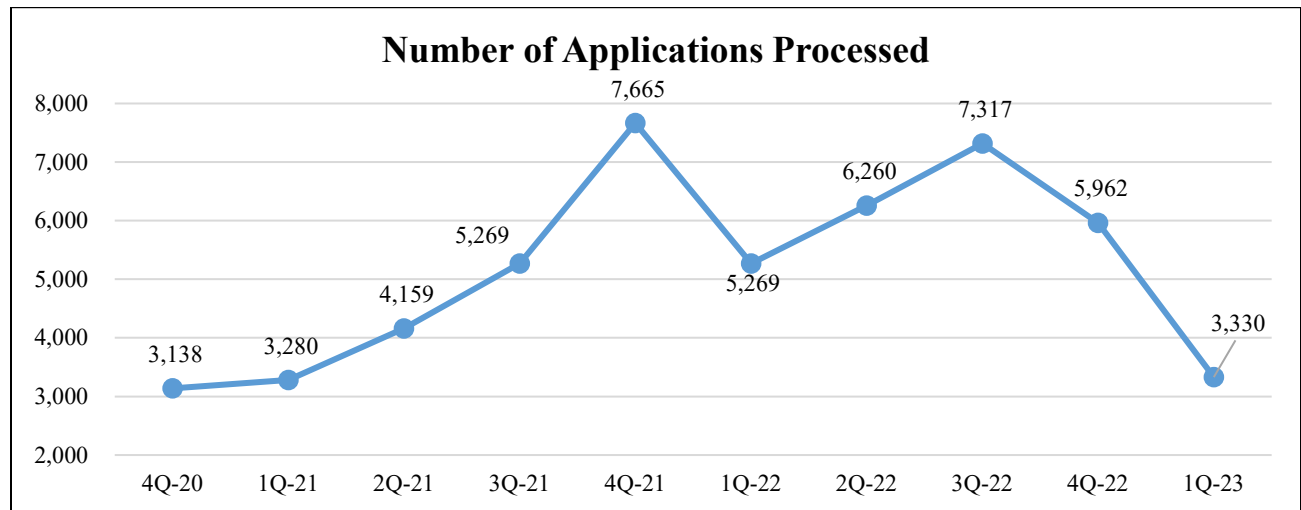
Other entities include Auxiliary Mortgage Loan Activity Company, Credit Union Subsidiary Organization (CUSO), Financial Services Company, and Independent Contractor Processor/Underwriter Company.



Licensing Activity Report

For the first quarter of FY2023, the Mortgage Licensing section processed 3,330 applications and approved 2,773 applications, including 242 mortgage entities, 478 branch offices, and 2,053 residential mortgage loan originators. The remaining 557 applications were either withdrawn by the applicant or denied by the Department.

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



High interest rates, reduced housing supply, and other macro issues have affected the number of applications received by the Department for mortgage entities, branches and residential mortgage loan originators. The number of applications received for the first quarter of FY2023 was approximately 53% lower than the first quarter of FY2022. This trend is anticipated to continue throughout the remainder of the fiscal year. The number of applications is more aligned with the historical averages.

Additionally, according to NMLS Data Analytics for first quarter of FY2023, the Mortgage Licensing section processed 28,948 license amendments, 5,445 credit report reviews, 8,207 sponsorship removals, and 5,218 sponsorship requests.

The Department is currently in the reinstatement period (January 1, 2023, to February 28, 2023) which allows licensees and registrants that did not renew timely the ability to request reinstatement for the calendar year 2023. If an entity or individual did not renew timely, they are prevented from originating residential mortgage loans until their renewal request is completed and approved. Companies or individuals that fail to reinstate by February 28th will have to restart the application process.

After the conclusion of the renewal and reinstatement period, it is expected that there will be a notable reduction in the overall number of licensed residential mortgage loan originators and a modest reduction in the number of licensed residential loan companies and registered mortgage bankers.

Mortgage Examination Activity Report

For the first quarter of FY2023, the Mortgage Examination section issued 88 examination reports covering 2,307 individual licensees. The overall production for issued examination reports was less than FY2022 due to a vacant position responsible for processing examination reports and the attendance of the entire Mortgage Examination staff to reverse mortgage training. As of December 1,

2022, the vacant 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 Programs and Remote Work Policies), non-compliant social media advertisements, and non-compliant Conditional Pre-Qualification/Conditional Approval Letters.

Outreach and Training

On November 7, 2022, the Department held its 10th Annual Mortgage Industry Day at the Renaissance Dallas at Plano Legacy West Hotel in Plano, Texas. The Mortgage Regulation Division staff made presentations relating to topics of interest to the industry. Below is the agenda of the event.

10th Annual Mortgage Industry Seminar
 Monday, November 7, 2022
 Renaissance Dallas at Plano Legacy West Hotel
 6007 Legacy Drive Plano, Texas 75024
 1:30 pm – 3:30 pm

1:30 pm – 1:35 pm	<u>Welcome and Opening Comments</u> Hector Retta, <i>Commissioner</i>
1:35 pm – 1:55 pm	<u>Examination Best Practices and Common Violations</u> Ellena Meier, <i>Chief Mortgage Examiner</i>
1:55 pm – 2:15 pm	<u>Review of Updated Books and Records Rule</u> Justin Accola, <i>Review Examiner, CSME</i>
2:15 pm – 2:35 pm	<u>Licensing Update and Issues</u> Chris Osuna, <i>Manager of Licensing</i>
2:35 pm – 3:15 pm	<u>Texas Home Equity Loans – Requirements and Limitations</u> William Purce, <i>Director of Mortgage Regulation</i>
3:15 pm – 3:25 pm	<u>Open Forum Discussion</u>
3:25 pm – 3:30 pm	<u>Closing Comments</u> Hector Retta, <i>Commissioner</i>

On December 5, 2022, Review Examiner Justin Accola attended an in-person meeting of the Performance Standards Committee held in New York, New York as part of the CSBS Supervisors Symposium. The Performance Standards Committee oversees all aspects of the CSBS Accreditation Program and meets periodically to evaluate accreditation standards, to review the Program’s format, content, and procedures, and to oversee accreditation reviews of state regulatory agencies. Review Examiner Accola has been a member of the Committee since July 2022.

c) Operations Division Activities

Accounting, Budget, and Financial Reporting

Staff closed out the first quarter of fiscal year 2023. The reports are located elsewhere in the packet. The annual tax forms W-2 and 1099 were prepared and distributed.

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

As a self-directed semi-independent agency, the Department of Savings and Mortgage Lending submitted financial information regarding the funds held outside the state treasury, required under Texas Government Code, Section 403.011, and Texas Finance Code, Chapter 16, to the Texas Comptroller of Public Accounts.

Legislative Activity – Staff is reviewing and analyzing filed bills for fiscal impact on the agency and the regulated industries.

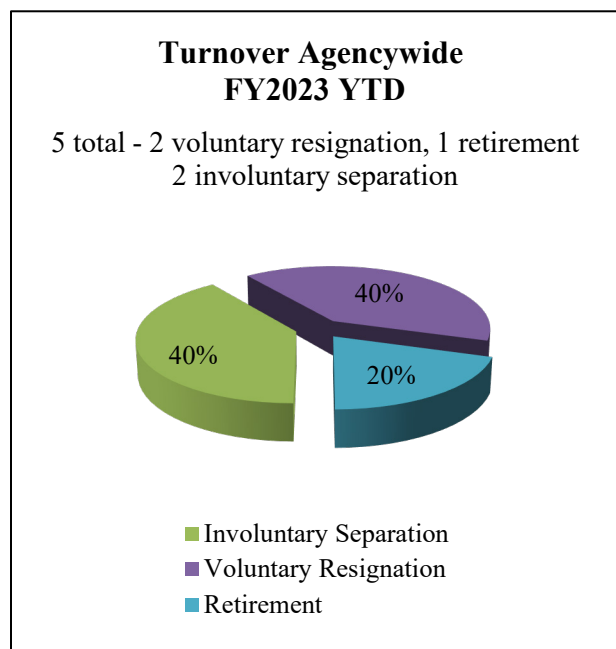
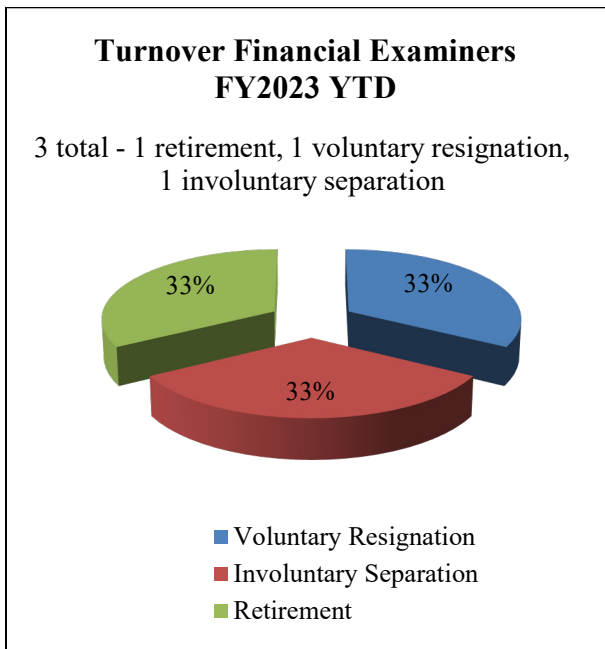
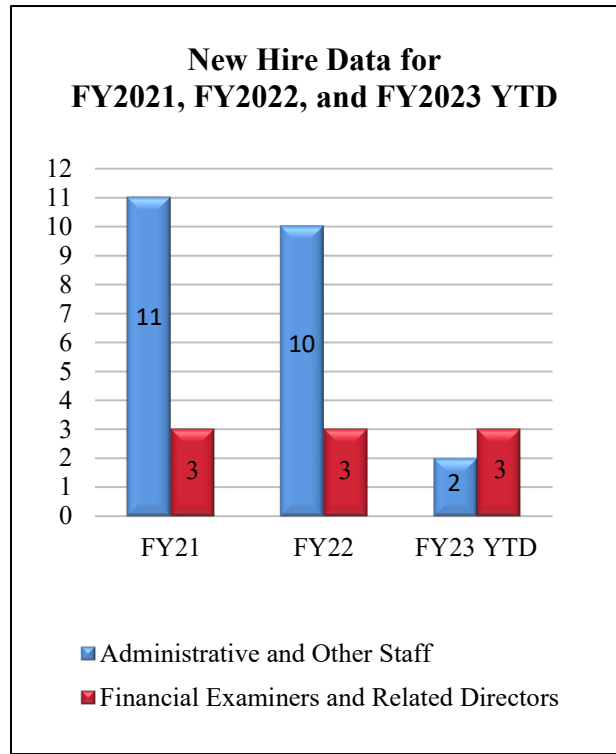
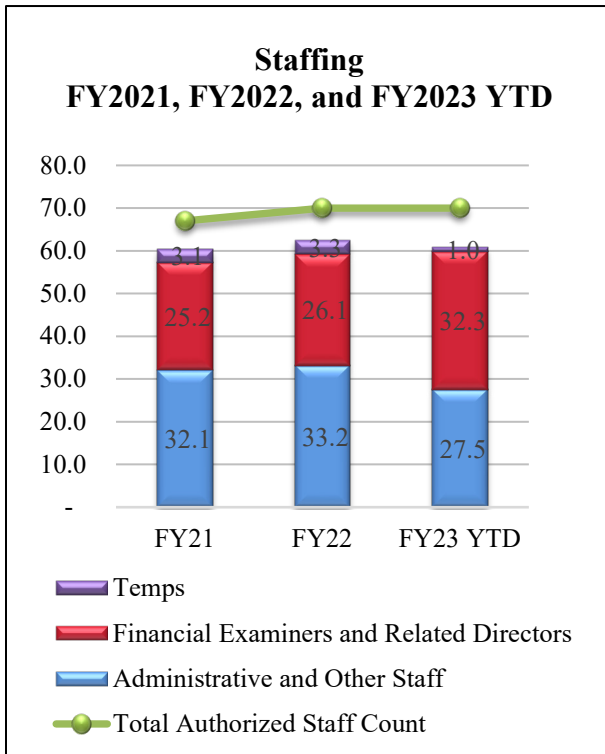
Human Resources

As of February 1, the Department was staffed at 61 regular full-time employees. In January, one Financial Examiner-Mortgage separated and two Financial Examiners-Thrift joined the Department. On February 1st, a Technical Writer was added to the staff.

Below is the status of the Department’s vacancies:

Vacancy Status	
Financial Examiner V – Thrift Supervision	Position Filled
Financial Examiner V – Thrift Examinations	
Technical Writer I/II	
Financial Examiner VI/VII – Thrift - 3	Collecting and reviewing applications, interviewing candidates
Management Analyst III/IV	
Financial Examiner V – Thrift Examinations	
Financial Examiner I-II -Thrift Examinations (IT)	Collecting and reviewing applications
Investigator II/III – Licensing	
Financial Examiner I – Thrift Examinations	
Attorney I/II	

Staffing Charts as of January 31, 2023



Outreach and Training

The next quarterly agency-wide meeting and training is scheduled for February 23, 2023.

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

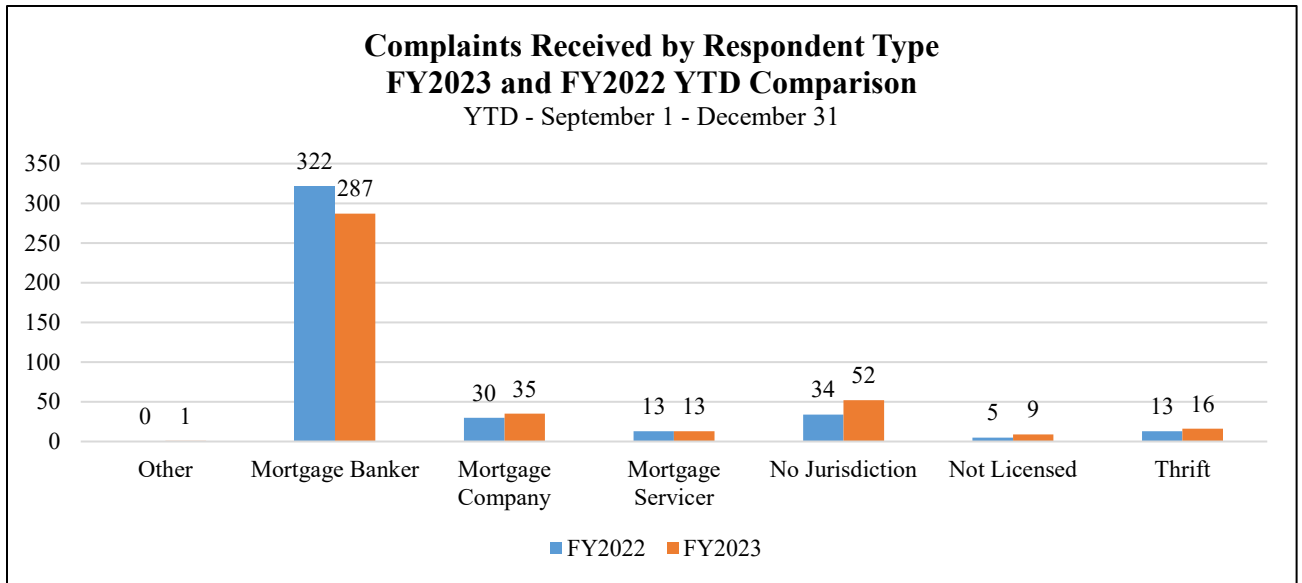
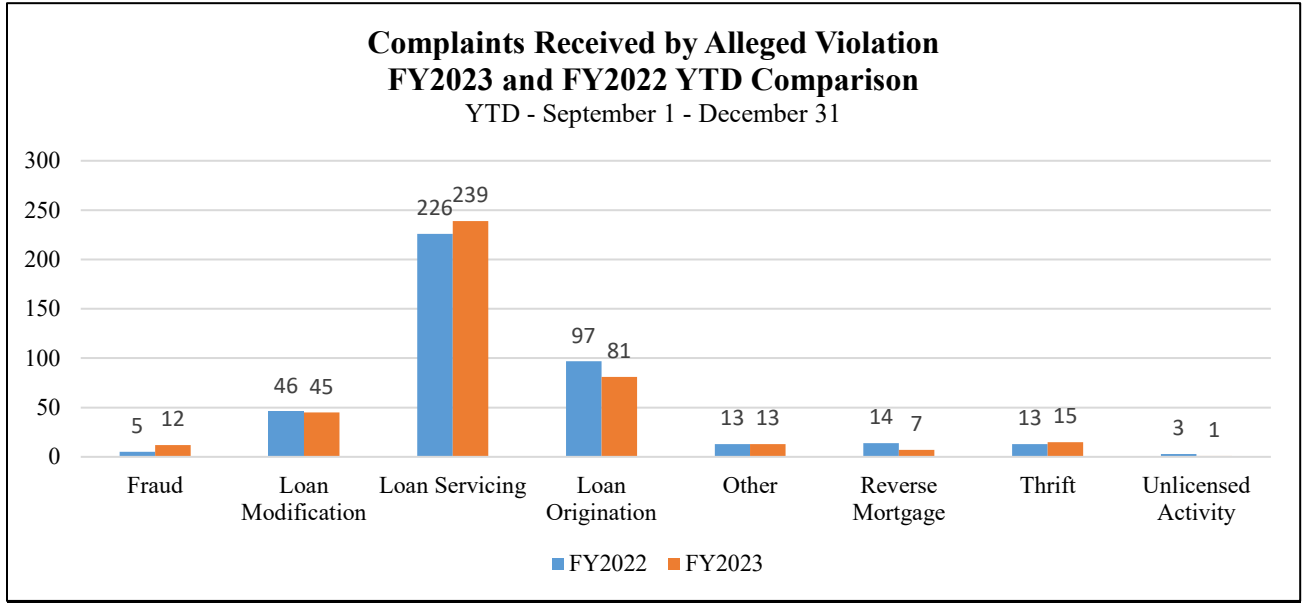
Type/Strategy/Measure	2023 Target	2023 Actual	2023 YTD	Percent of Annual Target	
Output Measures-Key					
1-1-1 Thrift Safety and Soundness					
1. Number of State Chartered Savings Institution Examinations Performed					
Quarter 1	19	2	2	10.53%	*
* The Department examines state-chartered savings banks jointly with the FDIC and FRB, based on a priority schedule. The results for this measure may fluctuate between quarters due to the timing of individual examinations.					
2-1-1 Mortgage Regulation					
1. Number of Applications Processed					
Quarter 1	13,000	3,330	3,330	25.62%	
2. Number of Examination Reports Issued					
Quarter 1	550	88	88	16.00%	*
*The overall production was affected by a vacancy and the attendance of the entire Mortgage Examination staff at reverse mortgage training.					
3-1-1 Consumer Responsiveness					
1. Number of Complaints Closed					
Quarter 1	1,300	297	297	22.85%	

*Varies by 5% or more from target.

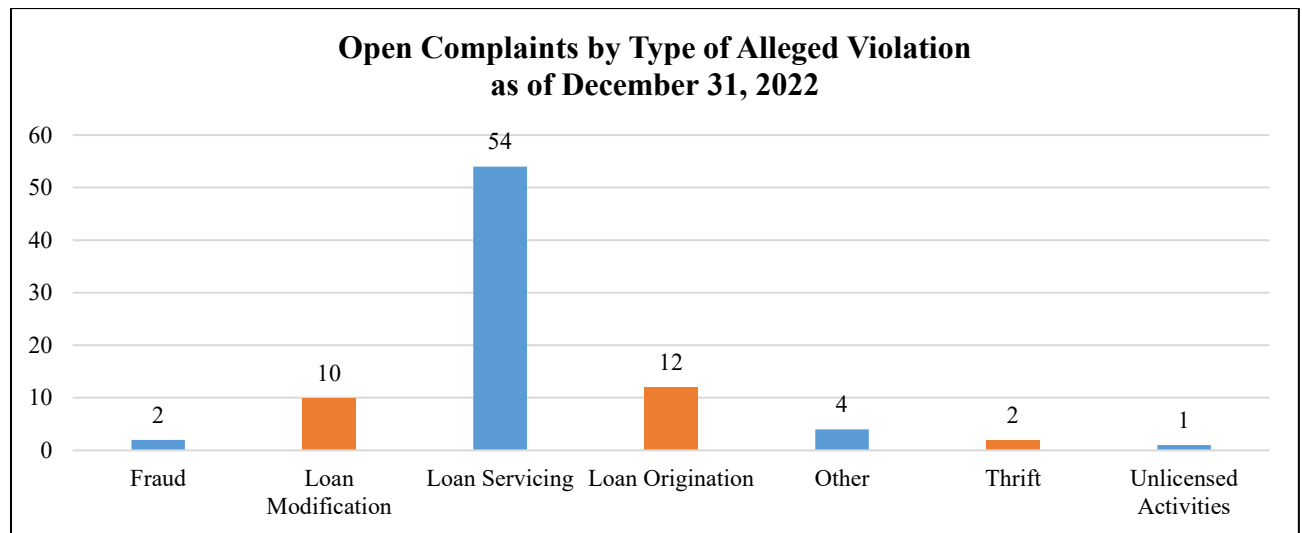
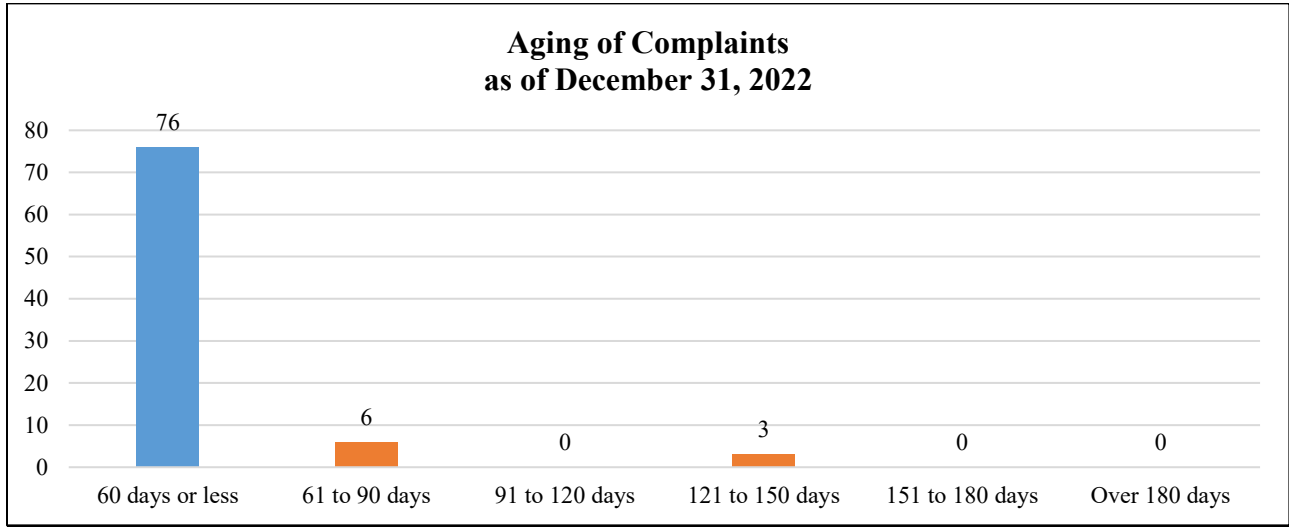
d) Legal Division Activities, including Consumer Complaints and Gift Reporting

Consumer Complaints Activity Report

Complaints Received – For the fiscal year to date (September 1 – December 31, 2022), the Department received 413 complaints, compared to 417 received during the same period in FY2022, representing a 0.96% decrease.



Aging of Open Complaints – As of December 31, 2022, there were 85 open complaint files. Complaint aging is acceptable with 96% of complaints aged 90 days or less.



Closed Complaints	FY2023			
	1 st Qtr	2 nd Qtr	3 rd Qtr	4 th Qtr
Servicing Complaints				
Number of Servicing Complaints Closed	177			
Average Number of Days to Close a Complaint	26			
Percentage of Complaints Closed Within 90 Days	99.4%			
Non-Servicing Complaints				
Number of Non-Servicing Complaints Closed	120			
Average Number of Days to Close a Complaint	20			
Percentage of Complaints Closed Within 90 Days	100%			
Total	297			

Legal and Enforcement Activity Report

Mortgage Enforcement Actions

Enforcement Action	FY2023			
	1 st Qtr	2 nd Qtr	3 rd Qtr	4 th Qtr
Advisory Letter	14			
Agreed Order to Take Affirmative Action	1			
Agreed Order to Cease and Desist	0			
Agreed Order – Other	0			
Letter of Reprimand	0			
Notice of Revocation	3			
Order to Cease and Desist	10			
Order to Take Affirmative Action	19			
Total	47			

Recovery Fund Applications

Recovery Claim Applications Received	FY2023			
	1 st Qtr	2 nd Qtr	3 rd Qtr	4 th Qtr
	2			

Status of Pending Recovery Claim Applications as of December 31, 2022	
Pending Investigation	4
Pending Preliminary Determination Letter	1
Preliminary Determination Letter Issued	0
On Appeal	0
Open to Facilitate Resolution by the Parties	1
Total	6

Closed Recovery Claim Files	FY2023			
	1 st Qtr	2 nd Qtr	3 rd Qtr	4 th Qtr
Granted	1			
Denied	4			
Resolved by the Parties	0			
Claim Withdrawn	0			
Total	5			

Contested State Office of Administrative Hearings (SOAH) Cases

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 January 6, 2023, the parties reached a settlement, resulting in Mr. Stinson receiving a license on a conditional basis. On January 10, 2023, the Department filed its motion to dismiss the proceeding. On January 12, 2023, such motion 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. On May 31, 2022, the appellee's brief was filed. On January 26, 2023, the Third Court of Appeals issued its Memorandum Opinion affirming the district court's order that resulted in judgment being entered against Mr. Wagner in the amount of \$2,106,794. The Department now awaits the possibility of further appeal by Mr. Wagner.

Public Information Requests

Public Information Requests	FY2023			
	1 st Qtr	2 nd Qtr	3 rd Qtr	4 th Qtr
Requests Received	50			

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 November 17, 2022, Chief Mortgage Examiner, Ellena Meier, attended a training seminar conducted by the Texas Mortgage Bankers Association (TMBA). The applicable fee of \$59 was waived.

e) Legislative Activities

The 88th Legislature convened on January 10, 2023. Department staff is monitoring the legislative activity and reviewing filed bills.

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

Anticipated Litigation

None

Pending Litigation

None

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D.

Texas Department of Banking

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Charles G. Cooper
Commissioner

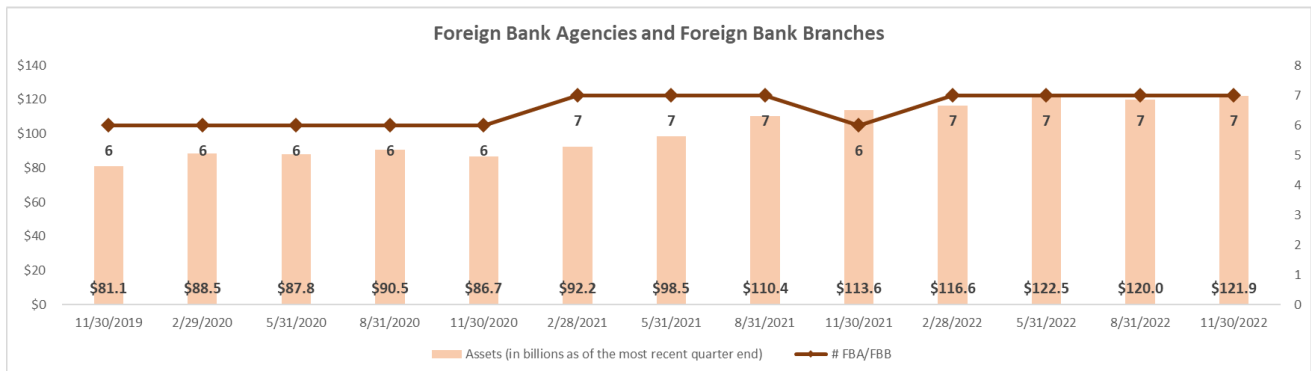
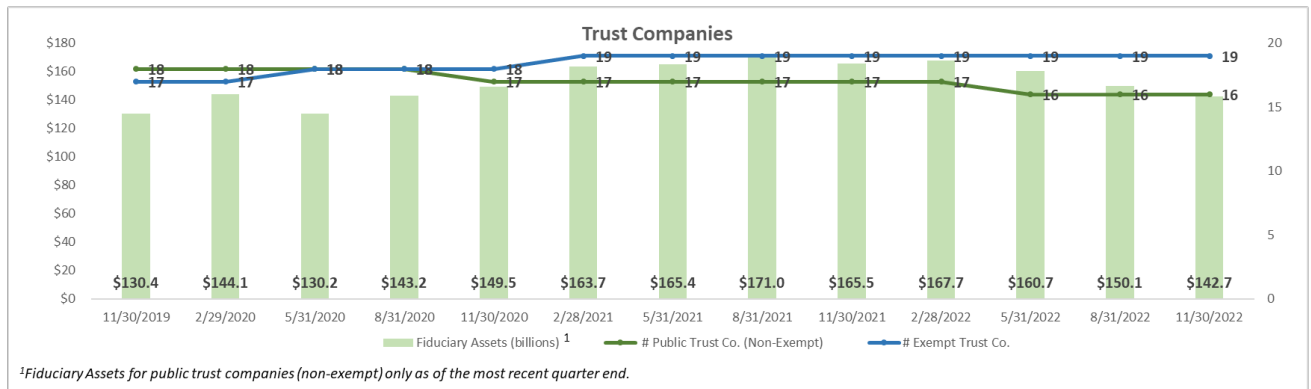
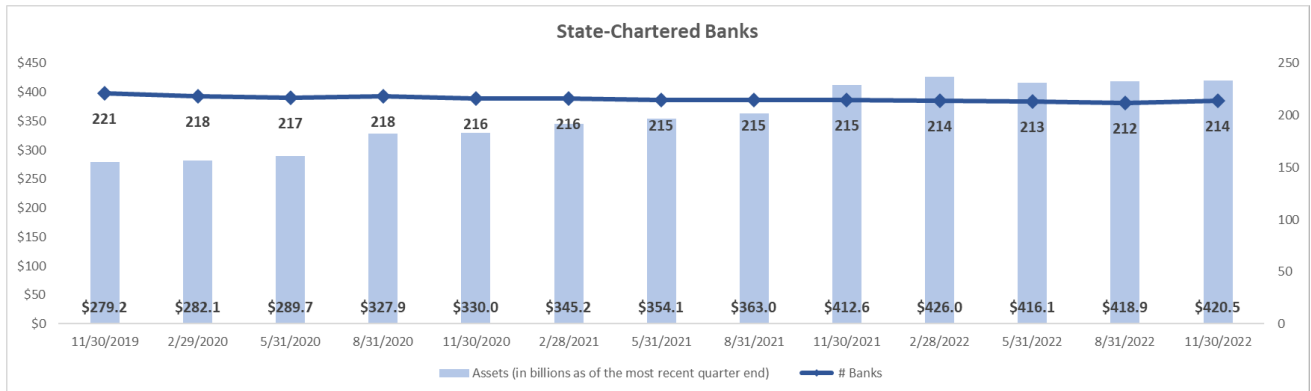
TEXAS DEPARTMENT OF BANKING

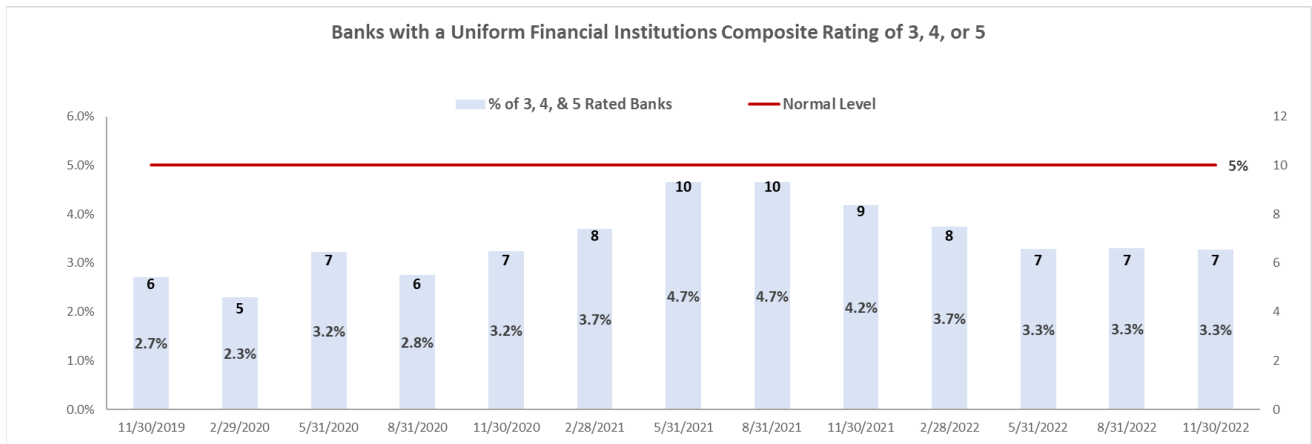
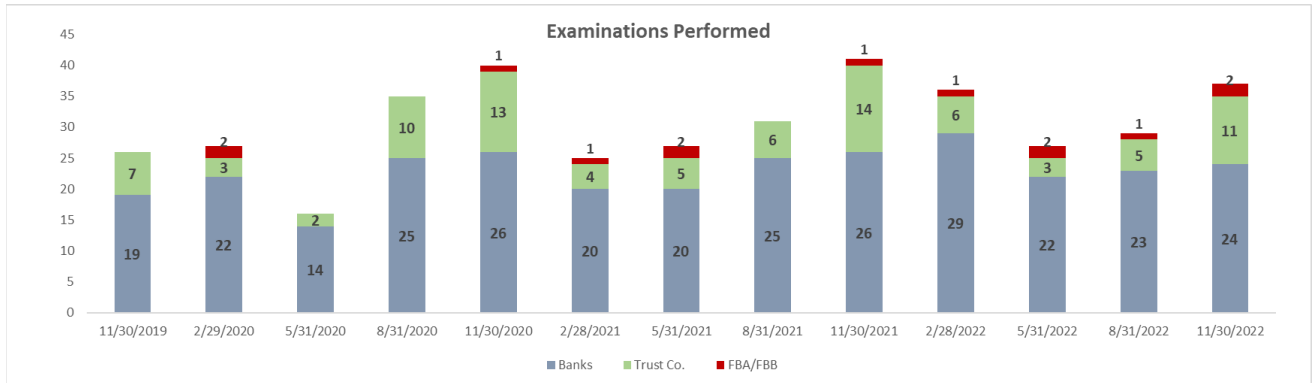
2601 North Lamar Blvd., Austin, Texas 78705
512-475-1300 /877-276-5554
www.dob.texas.gov

To: Finance Commission Members
From: Dan Frasier, Director of Bank & Trust Supervision *DBF*
Date: February 1, 2023
Subject: Summary of the Bank & Trust Supervision Division Activities

Bank and Trust Supervision – Industry Profiles

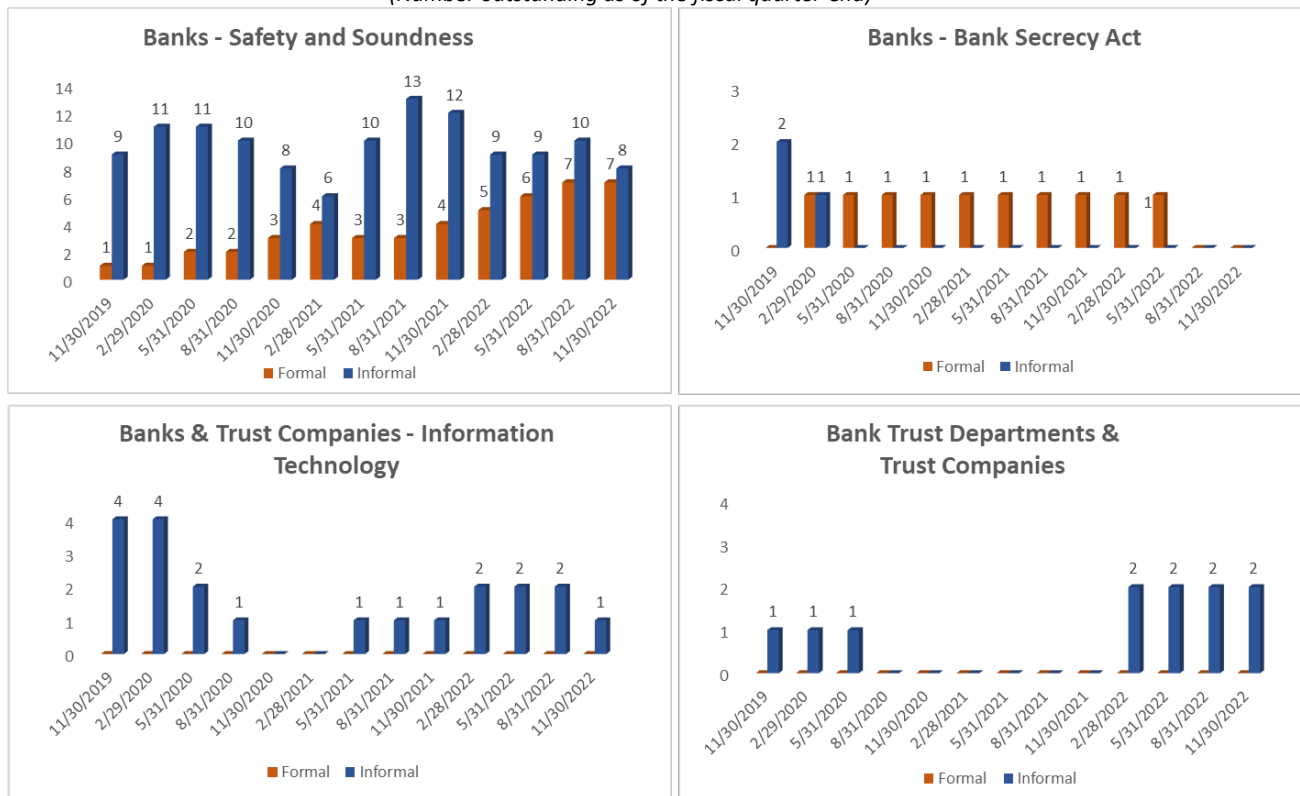
As of fiscal quarter-end (assets as of the preceding calendar quarter)





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 – Dec 2022)
Commercial Banks	96%	91%
IT	95%	88%
Trust Departments	100%	71%
Foreign Banks (FRB)	92%	100%
Trust Companies (DOB)	96%	72%
IT	88%	86%

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

- Commercial Banks – four exams past due by an average of 17 days.
- IT Examinations of Banks – five exams past due by an average of 16 days.
- Trust Departments – two exams past due by an average of 20 days.
- Trust Companies – five exams past due by an average of 12 days.
- IT Examinations of Trust Companies – one exam past due by 24 days.

Division Highlights

- **Special Operations and Conferences:**

- Beginning December 5, 2022, Commissioner Charles G. Cooper, Deputy Commissioner Wendy Rodriguez, Regional Director Kenneth Kuntschik, Chief IT Security Examiner Ruth Norris and Assistant General Counsel Jesse Moore represented the Department at the CSBS Meeting & Supervisors Symposium in New York, New York.
- Beginning on January 19, 2023, Commissioner Cooper represented the Department at the Southwestern Graduate School of Banking (SWGSB) 155th Assembly for Bank Directors in Naples, Florida.
- Beginning January 29, 2023, Commissioner Cooper represented the Department at the Independent Bankers Association of Texas (IBAT) 2023 Winter Summit in Avon, Colorado.



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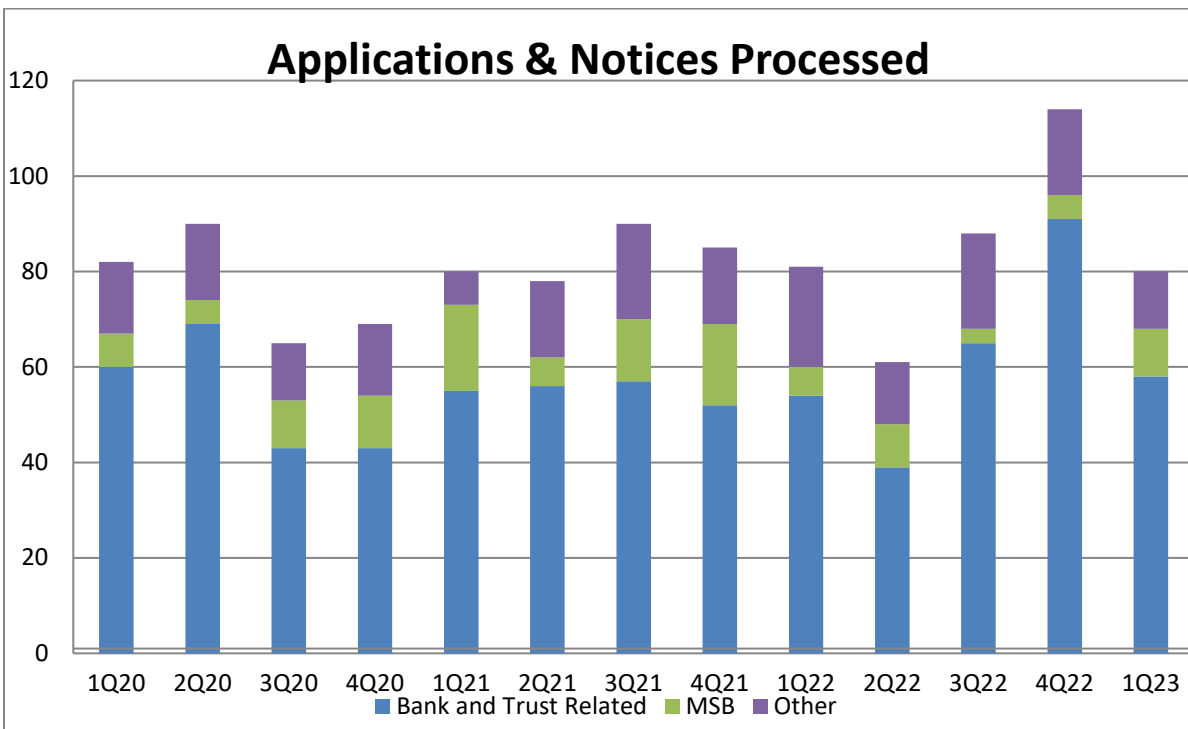
Charles G. Cooper
Commissioner

To: Finance Commission Members

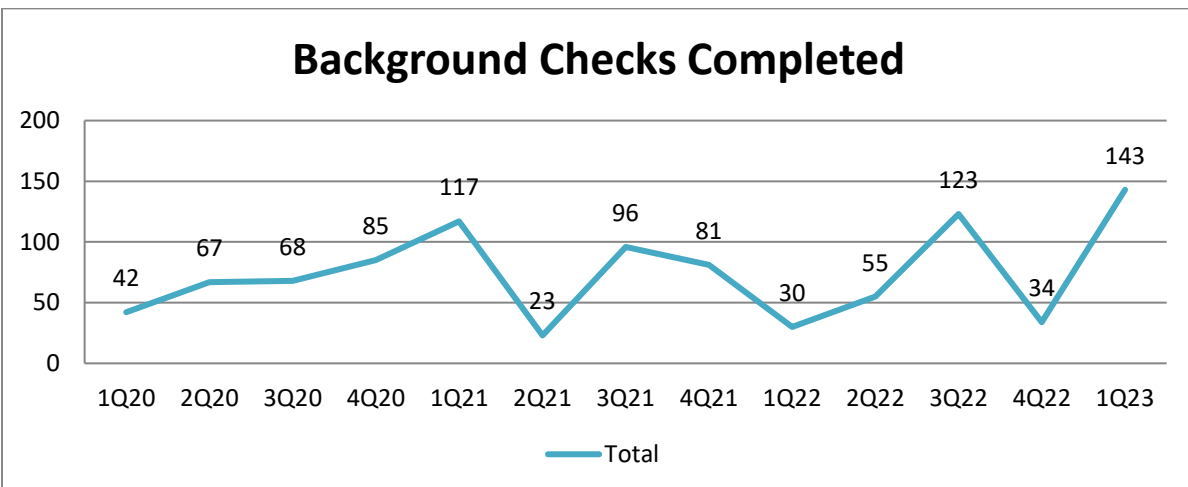
From: Mark Largent, Director of Corporate Activities *Mark R. Largent*

Date: February 1, 2023

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 January 31, 2023)
Bank Related	18
Trust Companies	5
Money Services Business (MSB)	56
Others	5
Totals	84

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 5 (22%)
 - Trust company was constant 0 (0%)
 - MSB related increased 1 (2%)
 - Other increased 2 (67%)

- **Charter, Conversion, and Merger Activity** – Since the last report to the Finance Commission, the following transactions have consummated:
 - *Banks*
 - None.

 - *Trust Companies*
 - Lone Oak Trust Company, Fort Worth, Texas, a de novo non-exempt trust company was added to the state system.



Charles G. Cooper
Commissioner

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To: Finance Commission Members

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

Date: February 1, 2023

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	194	\$315.0						
Prepaid Funeral Contract (PFC)	335	\$4.6	336	\$4.6						
Perpetual Care Cemeteries (PCC)	244	\$435.6*	243	\$438.9*						
Check Verification Entities (CVE)	2	n/a	2	n/a						
Examinations Performed										
MSB	91		29							
MSB Limited Scope	1		1							
MSB Accepted other State	16		0							
PFC	223		39							
PFC Limited Scope	1		1							
PCC	152		45							
PCC Limited Scope	2		0							
Ratings (# / %) Assigned to All Regulated Entities										
1	294	39.10%	292	38.57%						
2	401	53.32%	410	54.16%						
3	49	6.52%	48	6.34%						
4 & 5	8	1.06%	7	0.93%						
Noncompliance with Examination Priorities (Past Due)										
MSB	25		16							
PFC	1		11							
PCC	3		5							

NOTES:

Limited scope examinations do not receive a rating.
* PCC \$ amounts reflected in the millions.

Examination Activities

The majority of examinations conducted in the first quarter of fiscal year 2023 of Texas domiciled NDS license holders were performed on-site. To a lesser degree, examinations of out-of-state domiciled license holders were also conducted on-site depending on travel conditions, the risk profile of the company and, as applicable, in coordination with other MSB state regulators. The division's ability to effectively conduct both off-site and on-site examinations has resulted in NDS meeting all performance measures.

Below is additional information on the examination activities reflected on the previous page.

- Of the sixteen past-due MSB examinations, thirteen examinations will be conducted in coordination with other MSB state regulators as part of a nationwide network multi-state examination process. Six of the past-due MSB examinations were conducted between December 2022 and January 2023, and another six of the past-due examinations are scheduled to be completed before the end of April 2023. The remaining four past-due examinations were delayed in order to be conducted as part of network multi-state examination process and are anticipated to be completed on or before the end of summer of 2023.
- Of the eleven past-due PFC examinations, seven examinations were completed in January 2023 and the remaining four examinations are scheduled to be completed in February 2023.
- Of the five past-due PCC examinations, four examinations were conducted between December 2022 and January 2023, and the one remaining examination is scheduled to be completed in February 2023.
 - The increase in past-due PFC/PCC examinations compared to prior fiscal years is the result of two ongoing PFC/PCC Financial Examiner vacancies. The Department is in the process of interviewing candidates for these vacancies and in-person interviews will be held in February 2023. Until the division is able to hire and train examiners to fill these vacancies, it is anticipated that continued past-due PFC/PCC examinations will be reported through the remainder of fiscal year 2023.
- The division closely monitors various factors such as consumer complaints, compliance history of license holders, and current industry trends to ensure the examinations of higher risk license holders are prioritized.

Division Activities

- Divisional staff continues to participate in various Multi-state MSB Examination Taskforce (MMET), MSB Enforcement Taskforce, and Money Transmitters Regulators Association (MTRA) committees and working groups to address areas of concern impacting MSBs. Specifically, staff participated in routine monthly MMET calls to discuss various issues impacting the nationwide multi-state examination process, such as resolving scheduling conflicts and deciding on course of actions to address company specific issues.
- The division also continues to monitor and takes actions on licensed and unlicensed entities. Lately, Departmental resources have been assigned to monitor and address issues with MSBs offering cryptocurrencies to Texas consumers. These actions include but are not limited to enforcement actions, monitoring of bankruptcy filings and eligible claims, and review of MSB licensure applications.

- The division collaborated with the Legal division to prepare and finalize the Money Transmission Modernization Act (MTMA) for consideration in the 88th Texas Legislature. The MTMA is designed to establish nationwide common standards and requirements for money transmission designed to harmonize regulations across state lines.
- The division continues to hold various remote meetings with examination staff to keep lines of communication open and to provide timely notifications of upcoming events/news, including developments in the recent cryptocurrency related matters.

Department of Banking
Actual Performance for Output Measures
Fiscal Year 2023

Type/Strategy/Measure	2023 Target	2023 Actual	2023 YTD	Percent of Annual Target
Output Measures-Key				
1-1-1	Bank Examination			
	1. # Bank Examinations Performed			
	Quarter 1			
	93	25	25	26.88%
	2. # Foreign/Trust/IT Examinations Performed			
	Quarter 1			
	227	54	54	23.79%
1-2-1	Non-Bank Examination			
	1. # NDS Licensees Examined			
	Quarter 1			
	500	115	115	23.00%
1-3-1	Application Processing			
	1. # License Applications Completed			
	Quarter 1			
	358	87	87	24.30%

*Varies by 5% or more from target.



Charles G. Cooper
Commissioner

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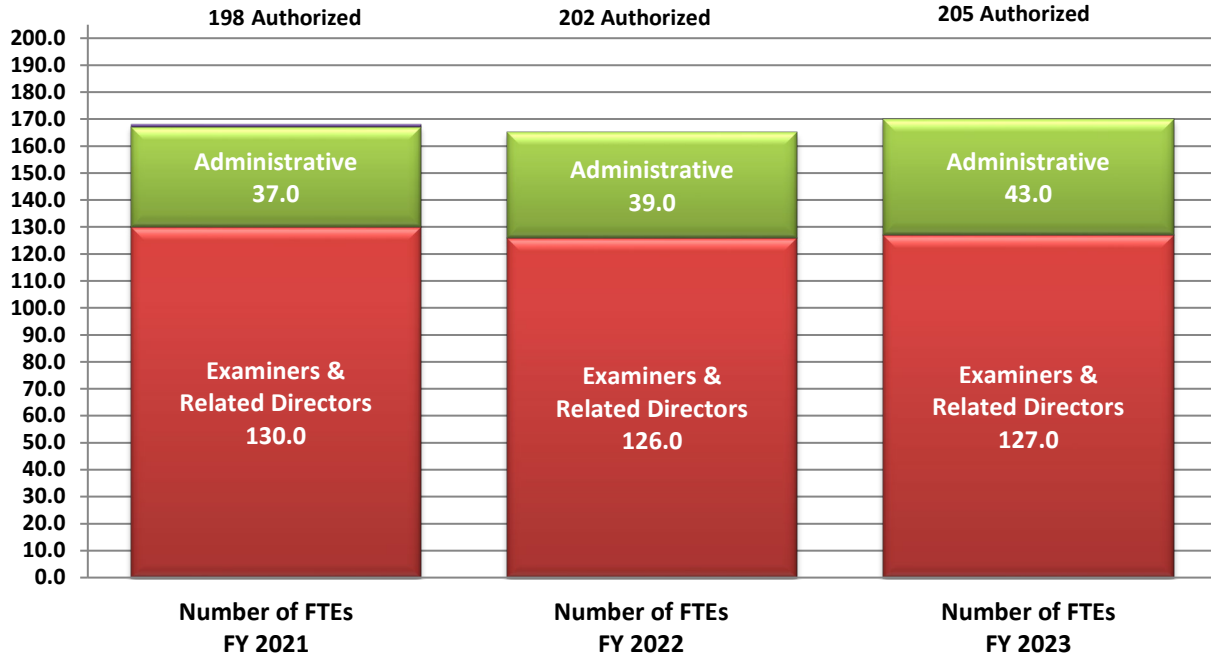
Memorandum

To: Finance Commission Members
From: Lori Wright, Director of Human Resources *LW*
Date: February 1, 2023
Subject: Summary of the Human Resources Division Activities

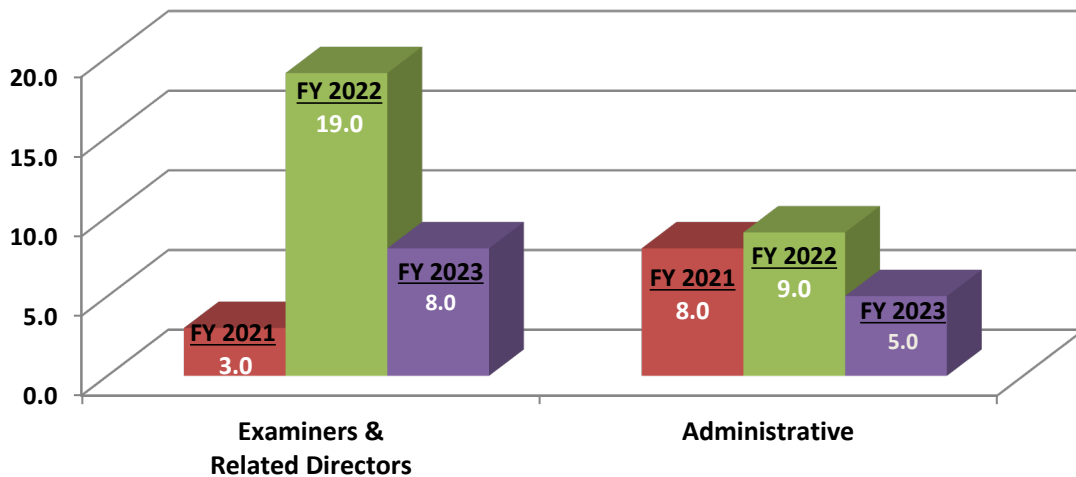
Active Postings				
Number of Positions	Position	Division	Status	Activities
1	Accountant V	Administrative Services	Open Until Filled	Recruiting
1	Compliance Analyst II Consumer Assistance Specialist	DSS	Open Until Filled	Recruiting
1	Financial Examiner IV-VI Financial Analyst – Training Coordinator	DSS	Open Until Filled	Recruiting
10	Financial Examiner I - Assistant Bank Examiner	Bank and Trust	March 6, 2023	Recruiting
1	Financial Examiner I - Assistant Trust Examiner	Bank and Trust	March 6, 2023	Recruiting
2	Financial Examiner I - Assistant IT Examiner	Bank and Trust	March 6, 2023	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

- Conference Room Pilot - CAPPS Recruit implementation.
- Annual Employee Performance Evaluations (NEOGOV) in process.
- Preparing for Internal Employee Satisfaction Survey.

Texas Department of Banking Employee Data for Fiscal Years 2021, 2022 and 2023 As of 01/31/2023

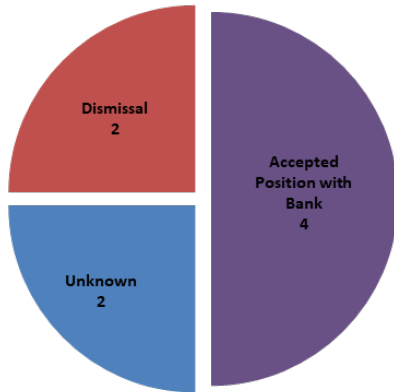


New Hire Data for Fiscal Years 2021, 2022 and 2023

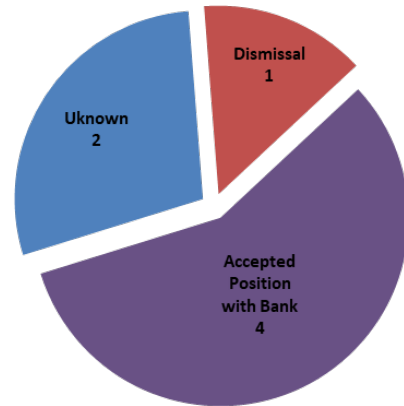


FY 2023 Employee Turnover Reasons

All Employees
8 Resignations



Financial Examiners Only
7 Resignations



As of 01/31/2023



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

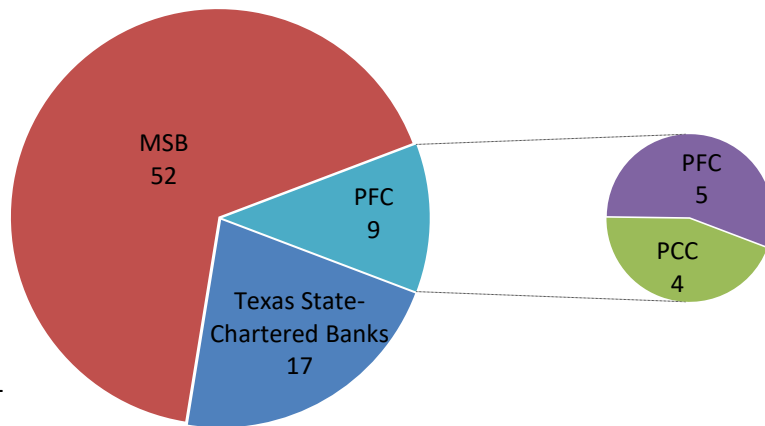
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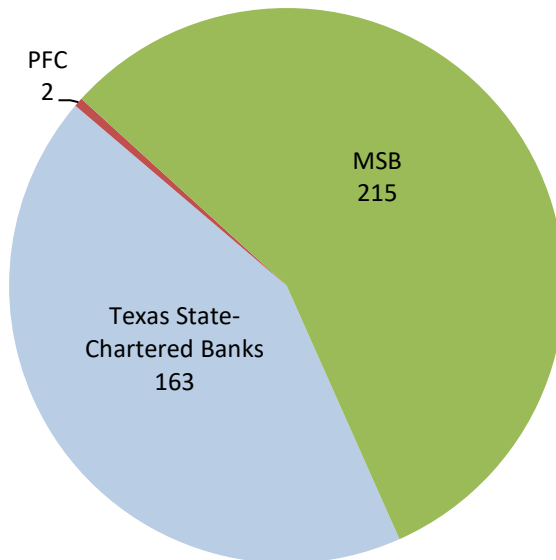
To: Finance Commission Members
From: Phil Lena, Financial Analyst
Date: February 1, 2023
Subject: Summary of the Strategic Support Division Activities

Jurisdictional Written Complaints September 2022-December 2022



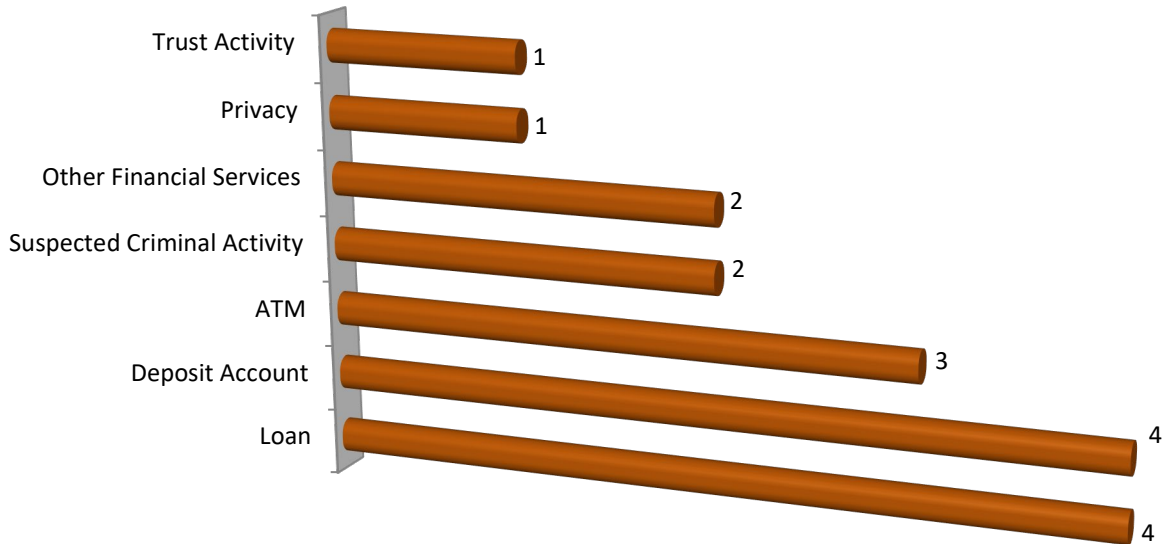
Recoveries = \$45,360.11
Total = 78

Inquiries on Jurisdictional Entities September 2022-December 2022



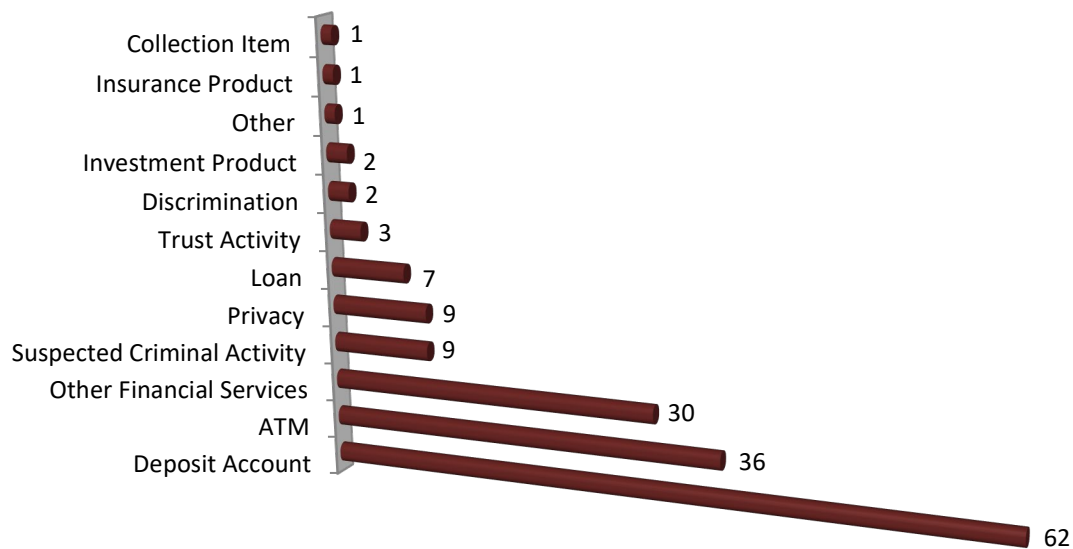
Total = 380

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



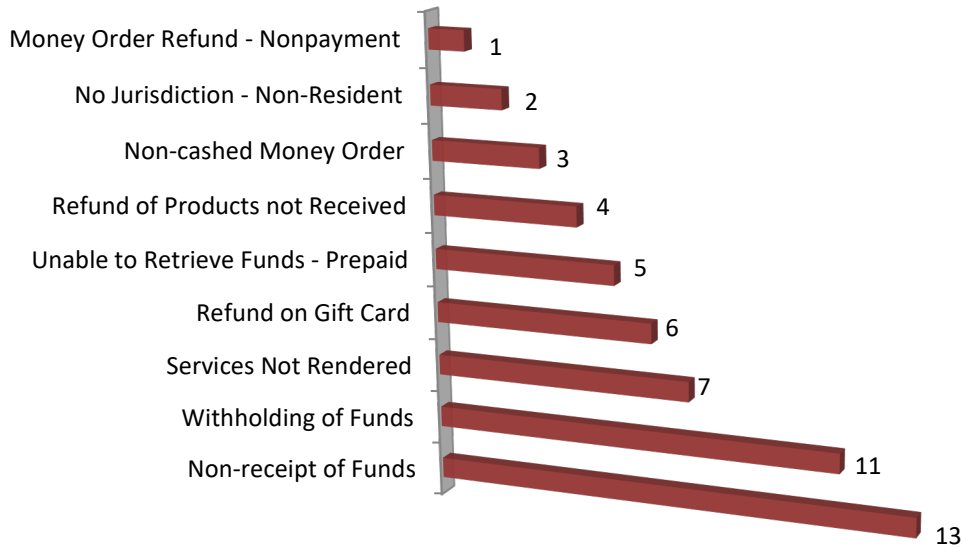
Total = 17

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



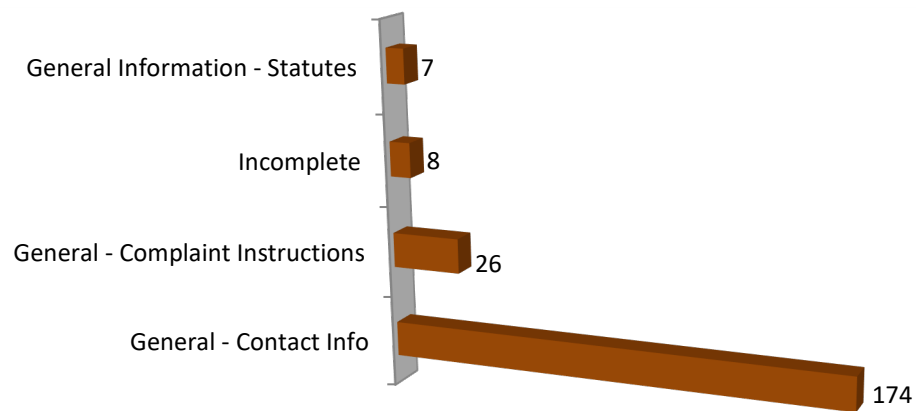
Total = 163

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



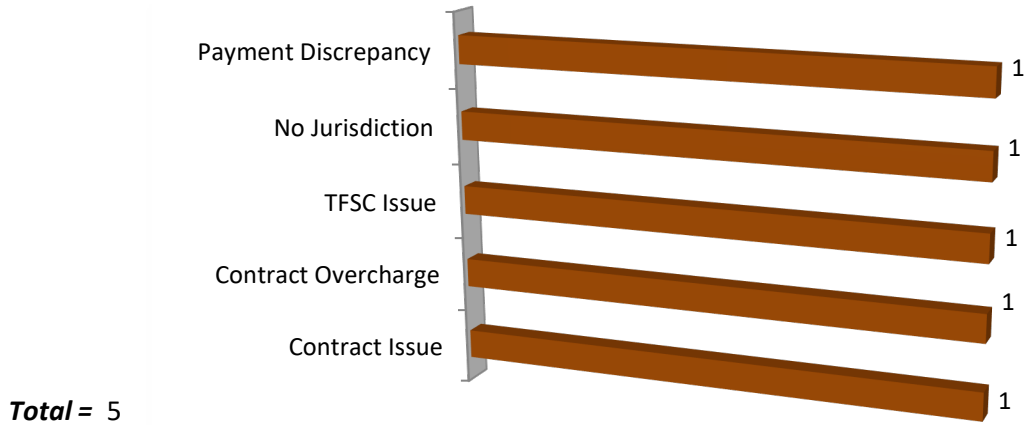
Total = 52

Money Services Businesses Inquiries by Type September 2022-December 2022

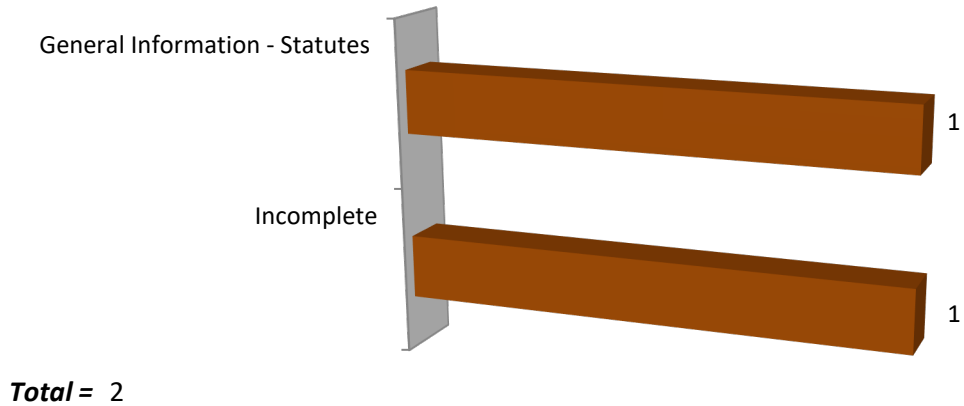


Total = 215

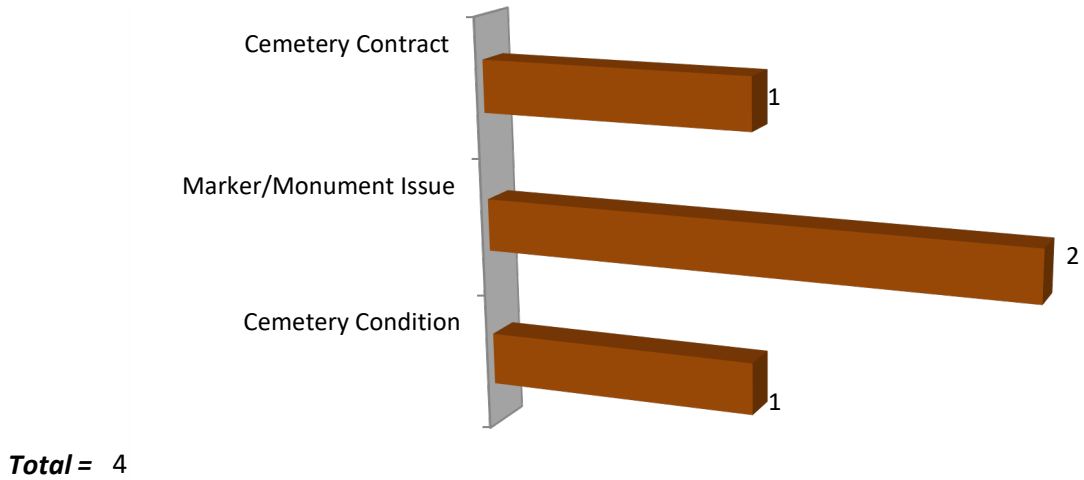
Prepaid Funeral Contract Sellers Written Complaints by Type September 2022-December 2022



Prepaid Funeral Contract Sellers Inquiries by Type September 2022-December 2022



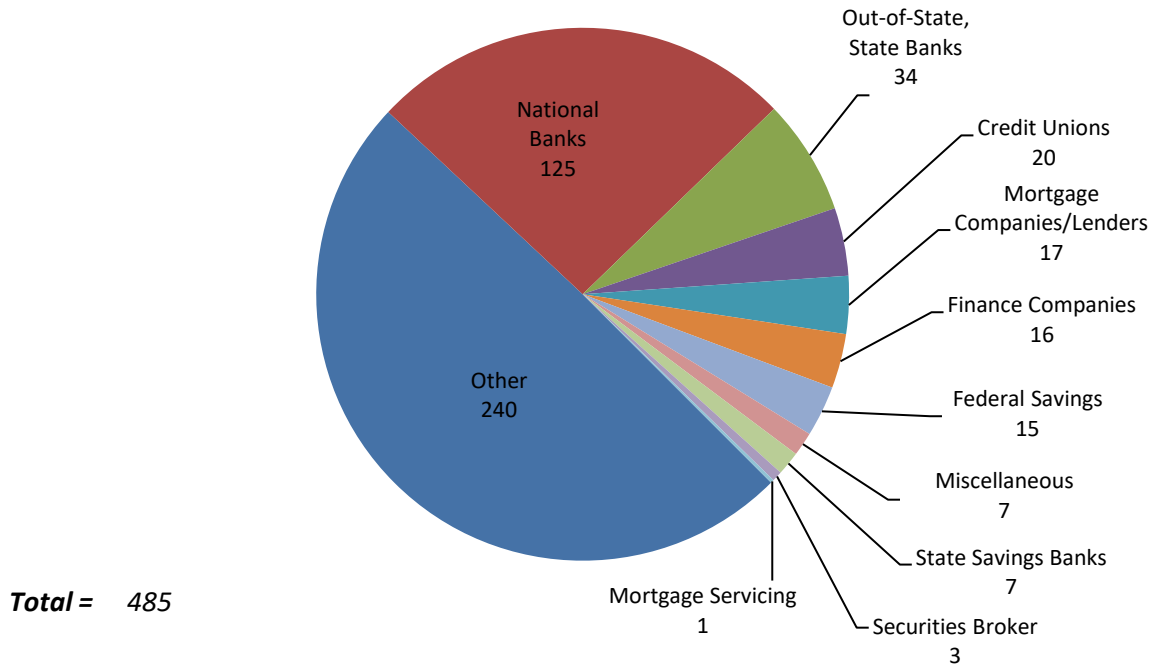
**Perpetual Care Cemeteries
Written Complaints by Type
September 2022-December 2022**



**Perpetual Care Cemeteries
Inquiries by Type
September 2022-December 2022**

No inquiries were reported during this period.

Complaints and Inquiries Against Non-Jurisdictional Entities September 2022-December 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	12	-	-	-
Percentage of Written Complaints Resolved Within 90 days	100%	-	-	-
Number of Written Complaints Resolved	14	-	-	-
Trust				
Avg. Number of Days to Close a Written Complaint	N/A	-	-	-
Percentage of Written Complaints Resolved Within 90 days	N/A	-	-	-
Number of Written Complaints Resolved	N/A	-	-	-
PFC/PCC				
Avg. Number of Days to Close a Written Complaint	21	-	-	-
Percentage of Written Complaints Resolved Within 90 days	100%	-	-	-
Number of Written Complaints Resolved	7	-	-	-
MSB				
Avg. Number of Days to Close a Written Complaint	26	-	-	-
Percentage of Written Complaints Resolved Within 90 days	100%	-	-	-
Number of Written Complaints Resolved	39	-	-	-

Closed Account Notification System (CANS) Activity
January 1, 2020 – January 31, 2023

Entity	Enrolled	Compromised Accounts Reported
Texas State-Chartered Banks	185	304
Texas State-Chartered Savings Banks	23	51
Federal Savings Banks	10	0
State Credit Unions	135	532
Federal Credit Unions	229	429
National Banks	171	92
Out-of-State State-Chartered Banks	12	58
Out-of-State National Banks	6	0
Total	771	1,466

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

	FY 2020	FY 2021	FY 2022	FY 2023 As of 01/31/2023
I. General Knowledge	4*	6	5	1
II. Loan Analysis	7	1	3	2
III. Panel	10	3	3	2
IV. Test Bank	7	5	3	4
Total FE3	15	17	13	15

Promotions

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

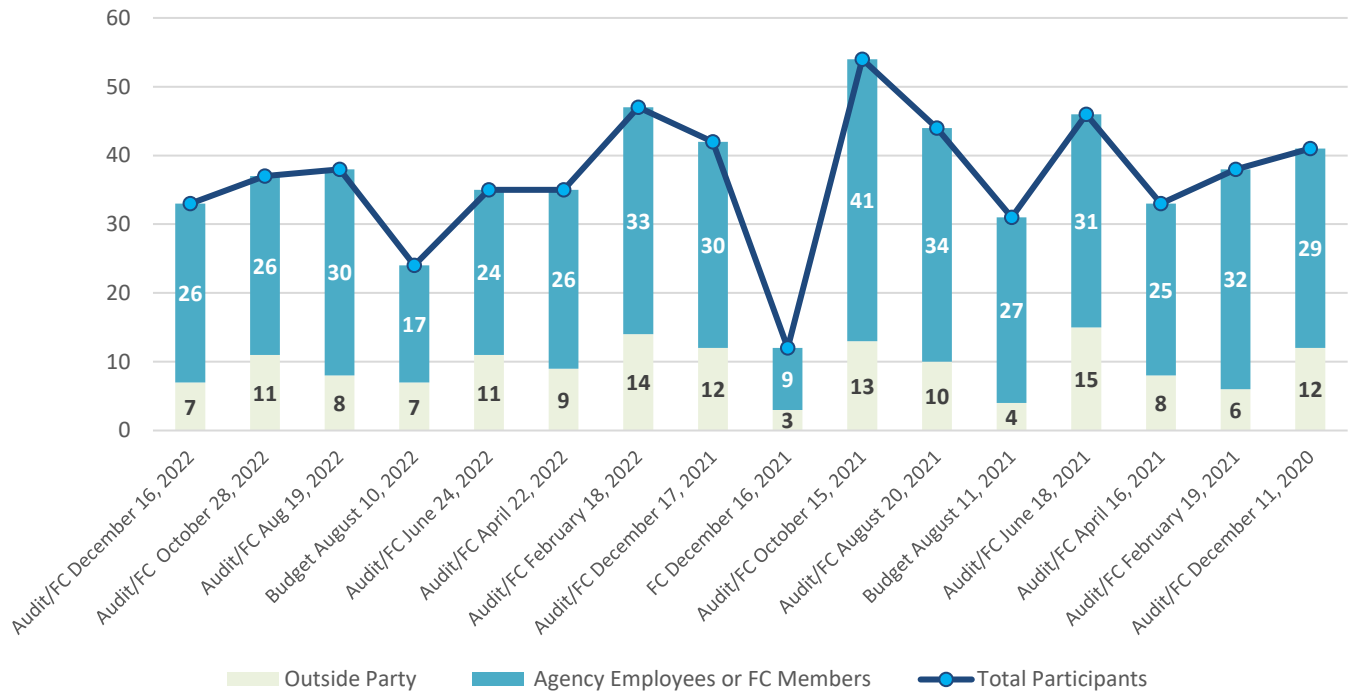
Other Divisional Items:

- *88th Legislative Session*
 - The Texas Legislature convened on Tuesday, January 10, 2023. The first weekly tracking report on bills of interest to the Finance Commission (FC) was provided to each FC member on January 17, 2023. Senate Committee assignments were made on January 23, 2023 and have been provided to FC members. House Committee assignments are expected in early February. As of January 30, 2023, the Department is tracking 157 bills. Bill tracking reports are updated weekly and posted on the Department’s intranet (DOBIE) to help keep agency staff informed of legislative activities.
- *Publications*
 - [Community Reinvestment in Texas, Fiscal Years 2019-2023](#)

The Community Reinvestment Work Group was created in 1999 by the Texas Legislature to collaborate with the financial industry to develop statewide community reinvestment strategies. The Work Group, authorized by Finance Code, Chapter 395, is comprised of the following agencies: Texas Comptroller of Public Accounts, Texas Department of Banking, Governor’s Office Economic Development and Tourism, Texas Department of Housing and Community Affairs, and Texas Department of Insurance. This publication provides a synopsis of the Community Reinvestment Act (CRA) and highlights the state agencies’ community reinvestment goals, strategies and instances of Texas community reinvestment initiatives, plus financial literacy workshops and surveys held across the state for fiscal years 2019-2023.

- *Financial Education*
 - A financial education webinar titled “Making a Streetwise Vehicle Purchase” will be jointly presented by the Texas Department of Banking and the Office of the Consumer Credit Commissioner in March 2023.
- *Examiners’ Council*
 - Examiners’ Council met in Austin the week of January 23, 2023, to review examination work papers for commercial, trust, and IT. The Examiners’ Council also recommended changes to Examiner Bulletins on work paper guidelines, as well as changes to various planning documents for commercial examinations.
- *Examiner Bulletin (XB)*
 - XB 2023-01 Guidelines for Imaging Examination Work Papers (January)
- *Personnel and Policies Manual Updates*
 - Revised Administrative Memorandums (AM)
 - AM 2002 – Equal Employment Opportunity, Discrimination and Sexual Harassment Policy (January)

Finance Commission Webcast Historical Data





Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705

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Memorandum

TO: Finance Commission Members
FROM: Catherine Reyer, General Counsel
DATE: February 1, 2023
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. We are considering whether to refile the case at SOAH, see litigation entry information above.

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 has been set for rehearing at SOAH on February 24.

Orders Issued December 1, 2022 – January 31, 2023

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

Non-Depository Supervision

- Consent Order dated December 1, 2022; West Realm Shires Services Inc., dba FTX US, Berkeley, California

- Consent Order dated December 8, 2022; Paysend PLC, London, United Kingdom
- Consent Order dated December 20, 2022; Voyager Digital, LLC, Miami, Florida
- Consent Order dated January 14, 2023; Paxful USA, Inc., Wilmington, Delaware
- Consent Order dated January 25, 2023; Inova Payroll, LLC

Public Information Requests

From December 1, 2022, through January 31, 2023, staff received and responded to 20 requests for public information addressed to the Department of Banking, and received eight inquiries from the “Ask a Question” feature. During the same period, we received and responded to one public information request or inquiry addressed to the Finance Commission. One request for Office of Attorney General (OAG) opinion remains pending (submitted November 14, 2022).

Gifts

Commissioner Cooper attended the Financial Stability Oversight Council (FSOC) meeting December 16, 2022, in Washington, DC. The Conference of State Bank Supervisors covered Commissioner’s hotel expenses in the amount of \$393.13. Commissioner Cooper also attended the Southwestern Graduate School of Banking (SWGSB) Foundation 155th Assembly for Bank Directors, January 19-22, in Naples, Florida. The Foundation paid for Commissioner’s travel and lodging in the amount of \$2,904.75. Commissioner Cooper also attended and served on a speaking panel at the Independent Bankers Association of Texas (IBAT) Winter Summit in Avon, Colorado, January 29-31. IBAT provided the Commissioner complimentary registration for the event, value \$695.

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				
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	0	0	0	0
Total	0	0	0	0

MONEY SERVICES BUSINESS				
Type of Action	1st	2nd	3rd	4th
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 (April):

7 TAC § 25.8, Exemption for Sale of Funeral Goods

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 1, §3.37, Concerning Calculation of Annual Assessment for Banks

PURPOSE: Amendment to 7 TAC §3.37, ensures that assessment fees remain in line with the revenue needs of the Department.

RECOMMENDED ACTION: No comments were received regarding the proposed amendment to 7 TAC §3.37. The Department recommends that the Commission approve adoption of the amendment without changes to the proposal as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we adopt the amendment to 7 TAC §3.37 without changes to the proposal as previously published in the *Texas Register*.

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

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts an amendment to §3.37, concerning calculation of annual assessment for banks. The amended rule is adopted without changes to the proposed text as published in the December 30, 2022, issue of the *Texas Register* (47 TexReg 8846). The amended rule will not be republished.

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 amendment as adopted 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.

The department received no comments regarding the proposed amendment.

The amendment is adopted pursuant to 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.

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

Figure: 7 TAC §3.37(a)

(b) 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 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 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